

TESTIMONY OF GOVERNOR STEPHEN ROE LEWIS
GILA RIVER INDIAN COMMUNITY
BEFORE THE
HOUSE OF REPRESENTATIVES COMMITTEE ON HOUSE ADMINISTRATION
SUBCOMMITTEE ON ELECTIONS
“VOTING RIGHTS AND ELECTIONS ADMINISTRATION IN ARIZONA”

TUESDAY, OCTOBER 1, 2019

Chairperson Fudge, Ranking Member Davis, and distinguished Members of the Subcommittee, I want to thank you for holding this field hearing on Voting Rights and Elections Administration in Arizona. I am Stephen Roe Lewis, the Governor of the Gila River Indian Community (“Community”), which is a federally recognized Indian Tribe of over 22,000 tribal members, located near Phoenix, Arizona.

Enacted in 1924, the Indian Citizenship Act,¹ made tribal members full United States citizens. Since that historic turning point, each tribal government’s voting rights history has been different because of the particular circumstances of each tribal community’s Indian lands and the barriers imposed by the states in which each community is located. Overall, however, I can state that in my experience, tribal members across Indian Country still must fight to secure their right to vote. Generally, tribal members residing within the boundaries of an Indian reservation face unique voting challenges that individuals living in cities take for granted and this is no different in Arizona. The Community strives to address and tear down the barriers faced by its members and is actively involved in undertaking initiatives to increase voter turnout across the Gila River Indian Reservation (“Reservation”).

I. THE GILA RIVER INDIAN COMMUNITY AND ITS UNIQUE VOTING RIGHTS HISTORY

The Community is comprised of the Akimel O’otham and the Pee-Posh tribes, and has over 22,000 enrolled members. Approximately 12,000 of these members live on the Reservation, which is roughly 372,000 acres and located in south central Arizona in both Maricopa and Pinal Counties. The Reservation is divided into seven political districts with each district having representation on the Community Council based on the population of the district. Five districts are located in Pinal County and two districts are located in Maricopa County.

Arizona has the United States’ third-largest American Indian population, according to census figures.² American Indians in Arizona face a unique voting rights history and the Community is keenly aware of this struggle. This is because in 1928, the Community’s own tribal members, Peter Porter and Rudolph Johnson, were denied the right to register to vote in

¹ 43 Stat. 253.

² “In Arizona, Native Americans try to boost turnout: ‘Our ancestors couldn’t vote, but we can,’” Los Angeles Times (June 12, 2018) *available at* <https://www.latimes.com/nation/la-na-arizona-native-voting-20180612-story.html>.

Pinal County. The County recorder deemed Porter and Johnson to be unqualified for two reasons.³ First, because they resided on the Reservation and therefore, the County did not believe that they resided within the State of Arizona. Second, because the County believed that as American Indians, Porter and Johnson remained wards of the federal government and under Arizona law, American Indians in Arizona were not entitled to vote in Arizona elections for state and federal officers.

Porter and Johnson litigated Pinal County's decision by filing an original petition in the Arizona Supreme Court for a writ of mandamus, directing the County recorder to allow them to register to vote.⁴ On November 2, 1928 in *Porter v. Hall*, the Arizona Supreme Court agreed in part with the County recorder and ruled against the Community members.⁵ Although the Arizona Supreme Court held that both Porter and Johnson resided within the State,⁶ the court agreed with the County recorder that they were "under guardianship" of the federal government and thus, not entitled to vote.⁷ In determining the meaning of "under guardianship," the court reasoned, "[b]roadly speaking, persons under guardianship may be defined as those who, because of some peculiarity of status, defect of age, understanding, or self-control, are considered incapable of managing their own affairs, and who therefore have some other person lawfully invested with the power and charged with the duty of taking care of their persons or managing their property, or both."⁸ In the court's eyes, "this guardianship was founded on the idea that the Indians were not capable of handling their own affairs in competition with the whites, if left free to do so,"⁹ and that Indians had "not been emancipated from their guardianship" of the federal government.¹⁰

Tribal members residing on reservations in Arizona remained unable to vote in Arizona elections for state and federal officers until 1948, when the Arizona Supreme Court in *Harrison v. Laveen* overturned *Porter* to the extent that the court previously held that tribal members were unable to vote because they were persons under guardianship of the United States,¹¹ thereby recognizing tribal members' right to vote in Arizona. The case in *Harrison* involved tribal members who resided on the Fort McDowell Indian Reservation and were similarly turned away from registering to vote in Maricopa County. In *Harrison*, the court stated that it had "no hesitancy in re-examining and reconsidering the correctness of the legal principles involved [in *Porter v. Hall*] because the civil liberties of our oldest and largest minority group (11.5% of State's population) of whom 24,317 are over twenty-one years of age (1940 U.S. census) are involved, and it has ever been one of the great responsibilities of supreme courts to protect the civil rights of the American people, of whatever race or nationality, against encroachment."¹² At

³ *Porter v. Hall*, 34 Ariz. 308, 312 (1928).

⁴ *Id.* at 311.

⁵ *Id.* at 321, 332.

⁶ *Id.* at 321.

⁷ *Id.* at 324-32.

⁸ *Id.* at 323-24.

⁹ *Id.* at 325.

¹⁰ *Id.* at 330.

¹¹ *Harrison v. Laveen*, 67 Ariz. 337, 349 (1948).

¹² *Id.* at 341.

the time of the court's 1948 decision, only two states continued to disenfranchise American Indian voters -- New Mexico and Arizona.¹³ In rejecting the prior court's holding that the status of being an Indian brings a person under legal guardianship, the court held that, "to ascribe to all Indians residing on reservations the quality of being 'incapable of handling their own affairs in an ordinary manner' would be a grave injustice for amongst them are educated persons as fully capable of handling their affairs as their white neighbors."¹⁴

Tribal members' right to vote in Arizona may now be fully recognized under the law, but tribal members continue to face voting challenges when they attempt to exercise their right to vote. The Community and its leadership value the importance of voting and the unique struggles that American Indians have faced in exercising their rights at the polls in Arizona. With great appreciation and understanding of this historical backdrop, the Community is committed to empowering and engaging all tribal citizens to vote in tribal, state, and federal elections.

II. VOTING CHALLENGES

Within Indian Country, it is all too common that tribal members are turned away at the polls because of voter address issues and often, such issues are not easily resolved due to ineffective poll workers who are placed at precinct locations on reservations that are unknown to tribal voters or frequently change. Some of the Community's own tribal members have faced such difficulties because they lack a residential address and rely on non-traditional addresses, difficulties our tribal brothers and sisters in North Dakota know all too well and are currently battling in their State.¹⁵

Many individuals who attempt to use tribal identification cards face problems because their addresses do not match up to inaccurate poll address lists. Moreover, poll workers are not necessarily trained in a culturally appropriate manner to work within tribal populations and do not effectively help and inform tribal voters who may not know how to handle address issues, identification questions, or the protocol for casting provisional ballots. Such challenges are caused or exacerbated by voter intimidation and policies designed to suppress the votes of tribal members. Confusion and uncertainty at the polls create hurdles for elders, younger tribal members, and tribal members who may have particular language barriers. These challenges foster voter and tribal member distrust and disenfranchisement in the voting process and perpetuate a lack of interest and motivation to vote in elections.

A. Address Issues

In 2004, Arizona voters approved the Arizona Taxpayer and Citizenship Protection Act, also known as Arizona Proposition 200, which required voters to present evidence of United States citizenship prior to voting. In 2013, elements of Proposition 200 were overturned by the U.S. Supreme Court in *Arizona v. Inter-Tribal Council of Arizona, Inc.*,¹⁶ in which the Supreme

¹³ *Id.*

¹⁴ *Id.* at 348.

¹⁵ See *Brakebill v. Jaeger*, No. 18-1725 (8th Cir. 2019) and more information at "Brakebill, et al. v. Jaeger (ND VOTER ID LAW)," Native American Rights Fund *available at* <https://www.narf.org/cases/nd-voter-id/>.

¹⁶ 570 U.S. 1 (2013).

Court struck down the parts of Proposition 200 that required proof of citizenship from individuals who use federal voter registration forms to vote, but allowed the State to continue to require voters to show identification at polling places. Under current Arizona law, all persons voting in person on Election Day must provide identification in order to receive a regular ballot and this identification must include the person's address.¹⁷

If the form of identification does not include the individual's photo on it, then the law puts the burden on the individual to provide additional documentation. Two additional forms of documentation that include the person's address must be provided at the polls. When individuals are unable to produce the required identification, they are forced to vote by filing a provisional ballot. However, individuals who vote early either by mail or in person, do not have to provide identification before receiving their ballots.

Tribal members can use either their United States Postal Service post office box or a nonstandard address on their Arizona identification, but because the Community's tribal identification cards do not include addresses, many tribal members run into problems on Election Day. Additionally, individuals living on the Pinal County portion of the Reservation do not have standard County street addresses, through no fault of their own, so their addresses usually are not correctly listed on the poll worker's voting lists. Because many tribal members do not receive mail at their rural homes, they must pay for and obtain a United States Postal Service post office box, sometimes located far from their homes. Tribal members unwilling to pay the Postal Service fees do not have reliable mailing addresses.

While many off-Reservation members may prefer to vote and send their ballots by mail, Community members on Reservation typically prefer to vote in person on Election Day due to the lack of reliable and timely mail service on the Reservation, and the lack of standard mailing addresses. Voting by mail is difficult because Reservation voters in Pinal County do not receive mail at their homes and post office hours on the Reservation are limited to working hours during the week and shortened hours on Saturday mornings. Further, individuals may change mailing addresses or move in between elections, which leads to a person's current address not matching the address listed on their identification document or poll address list.

In 2012, voter identification laws were strictly enforced on the Pinal County portion of the Reservation and many Community voters were turned away from the polls when their addresses did not match the voter rolls at the polls. In very few instances, voters were offered and allowed to cast a provisional ballot despite not having an address on their tribal identification document, but the majority of voters who ran into issues were denied ballots altogether. The Community later learned that Community members' addresses did not match the rolls because the County reassigned the physical addresses of all Community voters to be the service center where they vote. Because of this, no voter's physical address matched the physical address on the voter rolls and led to voters being turned away at the polls.

For Maricopa County voters in Districts 6 and 7, address issues also complicated some tribal voter's experiences. Reservation voters in Maricopa County were assigned standard addresses prior to the 2012 General Election, which changed their voting precincts.

¹⁷ A.R.S. § 16-579(A).

Unfortunately, these changes were neither communicated in advance nor delivered clearly to voters. In one instance, the traditional polling location for the Community's Co-Op Village was completely relocated for the 2012 election and voters showed up at the "wrong" location. These voters were turned away or frustratingly left the precinct without voting, and in very few instances, cast provisional ballots that were not counted.

Leading up to the 2016 Election, Gila River worked with Pinal County to try to remedy the voter address issue so that no Community voter would be turned away. The County revised their poll worker training material concerning voter identification issues to address Reservation voters, and included tribal identifications as an acceptable form of identification. The County also agreed to test an early voting site for one day during the 2016 General Election period on the Reservation, providing Reservation voters with an opportunity to vote early without showing identification.

Despite these improvements, the Community still had Pinal County tribal members who were turned away at the polls and did not vote in the 2016 Election. Voter identification laws in Arizona and non-traditional tribal address problems remain a huge barrier for the Community's voters, and the Community's leadership expects that these problems will continue to cause much voter confusion and concern in the next election. The Community is continuing to work with the local communities, voting organizations, and State and non-State government agencies to address these voting barriers.

B. Election Administration Issues

In addition to address and mailing issues, poll workers who staff polling precincts that serve Community members lack sufficient education and training about voting laws and are unaware of the protocols for remedying voter registration administration issues on site. Many voters show up at polling precincts confused about whether they are registered to vote or are not aware of whether they are signed up for the permanent early voting list, and do not receive the necessary assistance from poll workers to help troubleshoot their particular issues so that they may cast a ballot. We found numerous instances of poll workers not even offering provisional ballots as an option for Community members. When asked why provisional ballots were not offered, at least one poll worker indicated that they were not trained on provisional ballots. Additionally, we learned that some poll workers were not trained until the day before the election and the training was quick and short. On Election Day, poll workers are busy, overwhelmed, lack cultural sensitivity, and seem unable or too bothered to assist Community members in ensuring that they are able to vote, even if by a provisional ballot. The Community also has a number of convicted felons who require additional education about how their voting rights can be restored so that they can exercise their voting rights.

Election administration issues can be easily addressed with the right focus and attention to helping and serving voters, and an awareness and understanding that tribal members face unique challenges. More education and training is needed so that poll workers are better prepared to serve all voters, and the training and education needs to take place sooner than the day before an election. The Community understands that poll workers mean well and try to be good citizens, but they can only help if they are properly educated and trained. The primary goal

of poll workers should be to ensure that every person casts a ballot, and they should be trained and encouraged to take their time to troubleshoot problems to make sure every person votes.

III. COMMUNITY EFFORTS TO INCREASE VOTER REGISTRATION

The Community has made active efforts at a grassroots level to encourage and inform Community members to participate in elections in partnership with Get Out The Vote (“GOTV”), the Inter Tribal Council of Arizona, Inc. (“ITCA”), the National Congress of American Indians (“NCAI”), and the Native American Rights Fund (“NARF”). The Community’s Communication and Public Affairs office worked with GOTV and NCAI to produce video content to increase voter turnout among Community members. These videos were aired on the Community’s local low power television station and published on the Community’s official social media pages. The segments focused on encouraging Community members to register and exercise their right to vote. Within these videos, the Community discussed the historic struggle to vote within Arizona and both elders and youth spoke candidly about the importance of voting and the need to increase the number of voters across Indian Country. Each video also featured contact information so that Community members could easily reach out to the Gila River Voter Registration Board and know where to find information about the Community’s campaign to ensure that “Every Native Vote Counts.”

This past August, we hosted the Arizona Native Right to Vote Day celebration in District 4 of our Reservation. The event raised awareness about the unique history and importance of voting, and shed light on the recent developments in voting registration. Voting registration has increased within the Community since the 2016 Election, but the Community remains committed to further increasing the registration numbers. By the Community’s estimates, only 58% of the voting-age population is currently registered to vote and more must be done. Efforts to increase awareness and voter registration are costly and not every tribe has the resources to put towards voter registration. It would be helpful to have some state or federal resources targeted towards voter awareness and registration efforts on Indian reservations.

IV. CONCLUSION

Exercising one’s right to vote should not be hard to do. Across the United States, tribal members face unique barriers to voting and out of frustration that can be prevented, sometimes give up on exercising their voting rights. The Community appreciates the advances that have been made to date, but more work is necessary in order to protect tribal members’ ability to exercise their right to vote. The Community strives to carry on the legacy of Peter Porter, Rudolph Johnson, and so many other tribal advocates who fought to secure the rights that American Indians in Arizona have today. As the 2020 Election approaches, the Community thanks ITAA, NCAI, and NARF for their hard work in helping tribal governments and individuals address and overcome voting barriers across Indian Country. Within the Reservation, the Community looks forward to continuing to work with our tribal, federal, state, and local partners to improve the voting process for all American Indians within Arizona.

I want to thank this Committee for conducting field hearings across the United States and especially for coming to Indian Country with the goal of ensuring barriers to voting are identified and remedied before the next election.