

TESTIMONY OF DR. JAMES THOMAS TUCKER

**Before the Subcommittee on the Constitution, Civil Rights and Civil Liberties
of the U.S. House Committee on the Judiciary**

“Discriminatory Barriers to Voting”

University of Memphis Cecil C. Humphreys School of Law

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Chairman Nadler, Chairman Cohen and Ranking Member Johnson, and Committee Members, thank you for your invitation to testify at the hearing on discriminatory barriers to voting. The Native American Voting Rights Coalition (NAVRC) applauds the Subcommittee for examining this important topic.

NAVRC is a coalition of national and regional grassroots organizations, academics, and attorneys advocating for the equal access of Native Americans to the political process.²

Discriminatory Barriers are Widespread in Indian Country.

In June 2013, the United States Supreme Court struck down the coverage formula for what has long been recognized as “the heart of the Voting Rights Act,” Section 5, the Act’s preclearance provisions.³ A narrow majority concluded that “things have changed dramatically,” with “voter turnout and registration rates now approach[ing] parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.”⁴ Similarly, the District Court stated in dicta and without any evidence that certain jurisdictions like Alaska were “swept” into Section 5 coverage despite “little or no evidence of current problems.”⁵

Those conclusions are just as wrong today as they were then in Indian Country and in the jurisdictions that formerly were covered for other racial and language minority groups.

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² For more information about the NAVRC, see NARF, About the Native American Voting Rights Coalition, available at <https://www.narf.org/native-american-voting-rights-coalition/>.

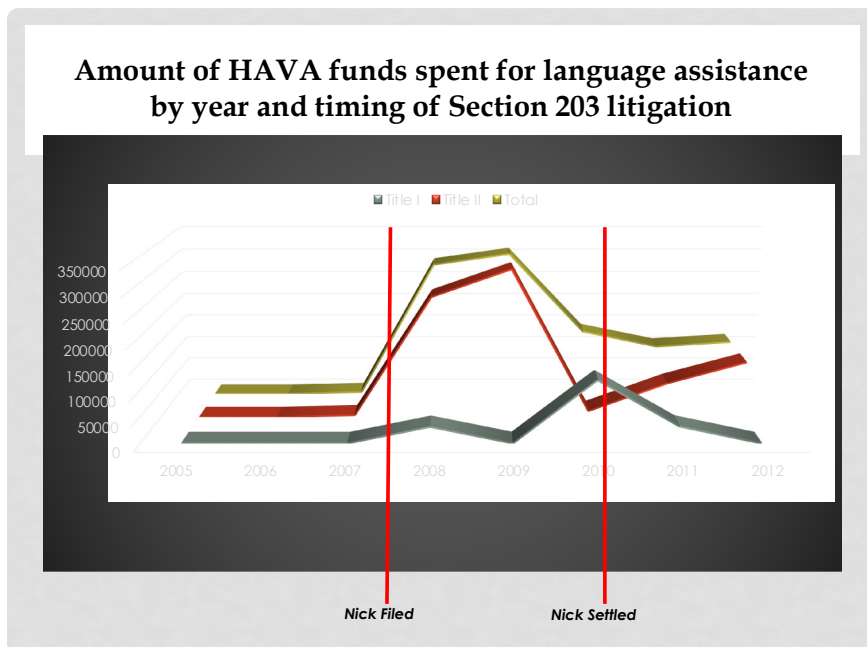
³ See *Shelby County v. Holder*, 570 U.S. 529, 557 (2013).

⁴ *Id.* at 547.

⁵ *Shelby County v. Holder*, 679 F.3d 848, 881 (D.C. Cir. 2012) (three-judge court).

While the *Shelby County* case was being litigated, Alaska was under a settlement agreement for violating the language assistance provisions in Section 203 of the Voting Rights Act (“VRA”) and the voter assistance provisions in Section 208 of the VRA.⁶ The agreement followed the federal court’s 2008 issuance of a preliminary injunction in *Nick v. Bethel* finding that the State of Alaska had engaged in a wholesale failure to provide language assistance to Yup’ik-speaking voters in the Bethel Census Area.⁷ The court noted that “State officials became aware of potential problems with their language-assistance program in the spring of 2006,” but their “efforts to overhaul the language assistance program did not begin in earnest until *after this litigation.*”⁸ A graph depicting Alaska’s federal HAVA expenditures makes that conclusion clear:

Figure 1. Alaska’s Language Assistance Expenditures After Being Sued.



⁶ See Settlement Agreement and Release of All Claims, *Nick v. Bethel*, No. 3:07-cv-00098-TMB, docket no. 787-2 (D. Alaska Feb. 16, 2010).

⁷ In particular, the District Court found that the State of Alaska and other state defendants violated Section 203 of the VRA by failing to:

provide print and broadcast public service announcements (PSA’s) in Yup’ik, or to track whether PSA’s originally provided to a Bethel radio station in English were translated and broadcast in Yup’ik; ensure that at least one poll worker at each precinct is fluent in Yup’ik and capable of translating ballot questions from English into Yup’ik; ensure that “on the spot” oral translations of ballot questions are comprehensive and accurate; or require mandatory training of poll workers in the Bethel census area, with specific instructions on translating ballot materials for Yup’ik-speaking voters with limited English proficiency.

Order Re: Plaintiffs’ Motion for a Preliminary Injunction Against the State Defendants, *Nick v. Bethel*, No. 3:07-cv-00098-TMB, docket no. 327 at 7-8 (D. Alaska July 30, 2008).

⁸ *Id.* at 8 (emphasis added).

Alaska's election officials previously had used federal HAVA funds to open a new elections office in the predominately non-Native community of Wasilla, which had a population of less than 8,000.⁹ However, state officials chose not to use any funds for language assistance for tens of thousands of Alaska Natives until after the *Nick* case was filed, even though that was one of the approved uses for the federal appropriation. Notably, they did so reluctantly and only after being sued. Eventually, election officials used a small percentage of the HAVA appropriation so that no state funds would have to be used to make voting accessible to Limited-English Proficient (LEP) Alaska Native voters.

At that time, Alaska had been covered under Section 5 for Alaska Natives since 1975. However, state officials had taken no steps "to ensure that Yup'ik-speaking voters have the means to fully participate in the upcoming State-run elections" in 2008,¹⁰ a third of a century later.

Alaska Native villages outside of the Bethel region expected that the fruits of the hard-fought victory in the *Nick* litigation would be applied to other regions of Alaska where language coverage was mandated. However, Alaska officials made a "policy decision" not to do so despite the continued Section 203 coverage of several other boroughs and Census Areas. The State's own documents show that the statewide bilingual coordinator was directed to deny language assistance to those areas. Coincidentally (or not so), the bilingual coordinator's last day of employment was on December 31, 2012, the very day that the *Nick* agreement ended.

That led Alaska Native voters and villages from three covered regions, the Dillingham and Wade Hampton Census Areas¹¹ for Yup'ik and the Yukon-Koyukuk Census Area for the Athabascan language of Gwich'in, to file suit just a month after *Shelby County* was decided. In *Toyukak v. Treadwell*, Alaska Natives sued the State for again violating Section 203 and for intentional discrimination in violation of the United States Constitution because election officials deliberately chose to deny language assistance to other regions of Alaska even while the *Nick* settlement was in effect.

In defending the latter claim, Alaska argued that the Fifteenth Amendment was inapplicable to Alaska Native voters.¹² At the same time, state officials argued that Alaska Natives were entitled to less voting information than English-speaking voters. They rested their

⁹ U.S. Census Bureau, QuickFacts, Wasilla City, Alaska, Population estimates as of April 1, 2010, available at <https://www.census.gov/quickfacts/fact/table/wasillacityalaska/LND110210> (population in 2010 was 7,816, of whom over 80 percent were White alone).

¹⁰ *Id.* at 9.

¹¹ The area was named after Wade Hampton III, a Lieutenant General for the Confederate States of America who later served as Governor and United States Senator from South Carolina and who opposed Reconstruction. Alaska renamed the area after the Kuslivak Mountain Range following the June 17, 2015 massacre at the Charleston Emanuel African Methodist Episcopal Church by a white supremacist. See Lisa Demer, *Wade Hampton no more: Alaska census area honoring Confederate officer is renamed*, ANCHORAGE DAILY NEWS, July 2, 2015.

¹² See James T. Tucker, Natalie A. Landreth & Erin Dougherty Lynch, "Why Should I Go Vote Without Understanding What I am Going to Vote For?": *The Impact of First Generation Barriers on Alaska Natives*, 22 MICH. J. RACE & LAW 327, 361-62 (2017) (quoting trial transcripts).

argument on a paternalistic belief that the State, not the voters, should determine what voting information provided to other voters was important enough for LEP Alaska Native voters to know before exercising their fundamental right to vote.¹³

The Alaska Native voters ultimately prevailed, but only after nearly two million dollars in attorneys' fees and costs, the passage of fourteen months for the "expedited" litigation, and a two-week trial in federal court.¹⁴ The court concluded that "based upon the considerable evidence," the plaintiffs had established that DOE's actions in the three census areas were "not designed to transmit substantially equivalent information in the applicable minority... languages."¹⁵

The *Toyukak* decision came just fourteen months after *Shelby County*. That victory, and many others like it in Indian Country since 2013, refute the majority's conclusion that "things have changed dramatically" and "[b]latantly discriminatory evasions of federal decrees are rare."¹⁶ The norm in many areas like Alaska in a post-*Shelby* world is defiance and deliberate violations of federal voting rights law to suppress registration and voting by American Indians and Alaska Natives.

That is not to say that no progress has been made. Far from it. The historic 2018 election of the two first Native American women to Congress, Congresswoman Debra Haaland from New Mexico and Congresswoman Sharice Davids from Kansas, shows that great strides have occurred. Congress recognized as much in reauthorizing the expiring provisions of the Voting Rights Act in 2006.¹⁷ Nevertheless, despite how far Native Americans have come, they remain dramatically underrepresented at every level of government. They comprise only two tenths of one percent of all elected officials in the United States, even though the 6.8 million American Indians and Alaska Natives constitute two percent of the country's 326.6 million people.¹⁸

Clearly, much work remains to be done. The progress has fallen far short of the blanket statement in *Shelby County* that "[v]oter turnout and registration rates now approach parity."¹⁹ While Native "candidates hold office at unprecedented levels,"²⁰ representation reflecting just one-tenth of their population certainly is not the unqualified success suggested by the *Shelby County* majority.

¹³ *Id.* at 361.

¹⁴ *Id.* at 361.

¹⁵ *Id.* at 372.

¹⁶ 570 U.S. at 547.

¹⁷ See generally Voting Rights Reauthorization Act of 2006, Pub. L. No. 109-246, 2006 U.S.C.C.A.N. (120 Stat.) 577, § 2(b)(1) ("Significant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices.").

¹⁸ See U.S. Census Bureau, American Indian and Alaska Native Heritage Month: November 2018 (Oct. 25, 2018), available at <https://www.census.gov/newsroom/facts-for-features/2018/aian.html> (2017 estimate of AIAN population alone or in combination with another race).

¹⁹ 570 U.S. at 540 (quoting *Northwest Austin Mun. Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 202 (2009)).

²⁰ *Id.* at 547.

A decade after the Voting Rights Act was reauthorized, we realized that it was time to take a “temperature check” of Indian Country to determine the extent of any progress that had been made in Native American registration and voting.

In late 2017 and early 2018, led by the Native American Rights Fund, the Native American Voting Rights Coalition completed a series of nine field hearings in seven states on the state of voting rights in Indian Country.²¹ Approximately 125 witnesses from dozens of tribes in the Lower Forty-Eight testified about the progress of the First Americans in non-tribal elections, and the work that remains to be done. Field hearings were not conducted in Alaska because the Alaska Advisory Committee to the U.S. Commission on Civil Rights already had a similar effort underway.

Those hearings show that the first-generation barriers that *Shelby County* found to be largely eradicated²² remain the dominant norm for Native American voters.

Barriers include depressed socio-economic status, lower levels of educational achievement, geographic isolation, and language, among others. When those barriers are combined with methods of election that either intentionally or innocently exploit their impact, they result in vote denial. For example, geographical isolation leads to what political scientists refer to as the “tyranny of distance.” When in-person registration and voting locations are placed far off of reservations and at great distances that can be 100 miles or more from Native communities, and when combined with the lack of time or resources to reach those locations, entire communities are disenfranchised.

As I will discuss, it is no coincidence that much of the post-*Shelby* litigation in Indian Country has focused on voting changes that exploit the everyday barriers that American Indians and Alaska Natives face when trying to participate in the political process.

General factors negatively impacting Native American registration and voting.

Members of the 573 federally recognized tribes²³ face many barriers to political participation. Although many other American voters share some of these obstacles, no other racial or ethnic group faces the combined weight of these barriers to the same degree as Native voters in Indian Country. Moreover, the government-to-government relationship between the tribes and the United States is unique to the American Indian and Alaska Native population.

²¹ The field hearings were conducted at the following locations: Bismarck, North Dakota on September 5, 2017; Milwaukee, Wisconsin on October 16, 2017; Phoenix, Arizona on January 11, 2018; Portland, Oregon, on January 23, 2018; on the tribal lands of the Rincon Band of Luiseño Indians north of San Diego, California, on February 5, 2018; Tulsa, Oklahoma on February 23, 2018; on the tribal lands of the Isleta Pueblo just outside of Albuquerque, New Mexico on March 8, 2018; Sacramento, California on April 5, 2018; and on the tribal lands of the Navajo Nation in Tuba City, Arizona on April 25, 2018.

²² 570 U.S. at 547.

²³ U.S. Dep’t of the Interior, Bureau of Indian Affairs, Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 84 Fed. Reg. 1,200 to 1,205 (June 24, 2019) (listing federally recognized tribes and Alaska Native villages).

Historical distrust of the federal government:

It is impossible to fully understand voting barriers in Indian Country without starting with the bad relationship the indigenous population has had, and continues to have, with the federal government. Antipathy and distrust persist towards Federal, State, and local governments because of past (and in some cases, ongoing) actions that discriminate against Natives or that undermine the preservation of their culture and heritage.

In late 2016 and early 2017, NAVRC oversaw one of the most comprehensive in-person surveys ever conducted in Indian Country about barriers faced by Native voters. A total of 2,800 Native voters in four states completed the in-person survey.²⁴ In all four states, Native voters expressed the greatest trust in their Tribal Governments. Although the federal government was identified by respondents as the most trusted of non-tribal governments (federal, state, local), the level of trust ranged from a high of just 28 percent in Nevada to a low of only 16.3 percent in South Dakota.²⁵ Those negative experiences often are exacerbated and reinforced when Native Americans are denied equal opportunities to register to vote and to cast ballots that are counted.

Geographical isolation:

The isolated locations of tribal lands contribute to the political exclusion of Native Americans. Approximately one-third of all American Indians and Alaska Natives (AIAN) live in Hard-to-Count Census Tracts – roughly 1.7 million out of 5.3 million people from the 2011-2015 American Community Survey (ACS) estimates.²⁶ Hard-to-Count Census Tracts include those Census Tracts “in the bottom 20 percent of 2010 Census Mail Return Rates (i.e. Mail Return Rates of 73 percent or less) or tracts for which a mail return rate is not applicable because they are enumerated in 2010 using the special Update/Enumerate method.”²⁷ The states with the greatest percentage of the AIAN population in Hard-to-Count Census Tracts reside in the western states: New Mexico (78.6 percent), Arizona (68.1 percent), and Alaska (65.6 percent).²⁸ Geographical isolation plays one of the most significant reasons for why those states have such a large percentage of their AIAN population in Hard-to-Count areas.

²⁴ See The Native American Voting Rights Coalition, Survey Research Report: Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada and South Dakota 8, 38, 67 (Jan. 2018) (“NAVRC Report”), available at <https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-results.pdf>. The Executive Summary of the NAVRC Report is available at <https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-summary.pdf>. The survey respondents included 644 Native voters in Arizona, 1,052 in Nevada, 602 in New Mexico, and 502 in South Dakota. NAVRC Report, *supra*, at 8, 38, 67.

²⁵ See NAVRC Report, *supra* note 24, at 15, 45, 77, 111. Respondents were asked, “Which government do you trust most to protect your rights?” *Id.* at 15, 45, 76-77. Among respondents in the other two states, 22.1 percent identified the federal government in Arizona and 27.4 percent identified the federal government in New Mexico. *See id.* at 77, 111.

²⁶ See The Leadership Conference Education Fund, Table 1a: States Ranked by Number of American Indian/Alaska Natives (race alone or combination) living in Hard-to-Count (HTC) Census Tracts, available at <http://civilrightsdocs.info/pdf/census/2020/Table1a-States-Number-AIAN-HTC.pdf>.

²⁷ *Id.*

²⁸ See The Leadership Conference Education Fund, Table 1b: States Ranked by Percent of American Indian/Alaska Natives (race alone or combination) living in Hard-to-Count (HTC) Census Tracts, available at <http://civilrightsdocs.info/pdf/census/2020/Table1b-States-Percent-AIAN-HTC.pdf>.

Isolation due to physical features such as mountains, canyons, oceans, rivers, and vast expanses of unoccupied land are compounded by an absence of paved roads to connect tribal lands with off-reservation communities. Even where roads are present, Native voters often lack reliable transportation to travel the vast distances to elections offices and county seats. Inclement weather conditions frequently make such travel impossible, particularly in early November when general elections are held.

Non-traditional mailing addresses, homelessness, and housing instability:

Access to voting in Indian Country is made substantially more difficult because of the prevalence of non-traditional mailing addresses, homelessness, and housing instability.

The Census Bureau's 2015 National Content Test (NCT) Report illustrates these points. Among all of the population groups included in the 2015 NCT, the AIAN population experienced the lowest 2010 Census mail response rate, at 57.8 percent.²⁹

Non-traditional mailing addresses are prevalent among American Indians and Alaska Natives residing on tribal lands. Non-traditional mailing addresses encompass "noncity-style addresses, which the Census Bureau defines as those that do not contain a house number and/or a street name."³⁰ Examples of noncity-style mailing addresses include:

- General delivery
- Rural route and box number
- Highway contract route and box number
- Post office box only delivery

Noncity-style addresses used by the Census Bureau also include location descriptions such as "BRICK HOUSE with ATTACHED GARAGE ON RIGHT," structure points (geographic coordinates), and census geographic codes including state code, county code, census tract number, and census block number.³¹

It is commonplace for homes on tribal lands to use noncity-style mailing addresses. Many homes can only be identified by a geographic location (e.g., "hogan located three miles down dirt road from Hardrock Chapter House"). Others may be located by reference to a BIA, state, or county road mile marker (e.g., "the house located on the right side of BIA-41 between highway marker 17 and highway marker 18") or intersection (e.g., the house at the intersection of BIA-41 and BIA-15"). Additionally, mailboxes may be on the side of the road far from where

²⁹ See U.S. Census Bureau, 2015 National Content Test Race and Ethnicity Analysis Report 32, table 2 (Feb. 28, 2017) ("NCT Report").

³⁰ U.S. Census Bureau, 2020 Census Local Update of Census Addresses Program Improvement Project Recommendations 2 (Apr. 13, 2015) ("2020 LUCA Recommendations"), available at https://www2.census.gov/geo/pdfs/partnerships/2020_luca_recommendation.pdf.

³¹ *Id.*

the home(s) associated with them are located, with the mailbox identified only by a General Delivery number, Rural Route, or box number. Many AIAN residents of tribal lands only receive their mail by post office box. Often, several families or generations of a single family might share a post office or general delivery box to get their mail.

The disproportionately high rate of homelessness in Indian Country is another major factor that prevents Native Americans from registering to vote and casting a ballot. According to the 2016 ACS, only 52.9 percent of single-race American Indian and Alaska Native householders owned their own home, compared to 63.1 percent of the total population.³² According to data from the U.S. Department of Housing and Urban Development, although “only 1.2 percent of the national population self-identifies as AI/AN ... 4.0 percent of all sheltered homeless persons, 4.0 percent of all sheltered homeless individuals, and 4.8 percent of all sheltered homeless families self-identify as Native American or Alaska Native.”³³ The AIAN population likewise experiences higher rates of homelessness among veterans than other population groups. Specifically, “2.5 percent of sheltered, homeless Veterans were American Indian or Alaska Native, although only 0.7 percent of all Veterans are American Indian or Alaska Native.”³⁴

Homelessness takes several forms in Indian Country. Witnesses at the NAVRC field hearings in Portland and San Diego testified about “couch-surfing,” in which Native Americans lacking permanent housing “crash on a couch” of a friend or family member or temporarily sleep at a relative’s house when they are on the reservation. According to the 2016 ACS, approximately 15.5 percent of the AIAN population was residing in a different house than the one they reported a year earlier.³⁵

In Wyoming, it is estimated that 55 percent of the 11,000 members of the Northern Arapaho Tribe residing on the Wind River Indian Reservation lack permanent housing. HUD found that if couch surfing did not occur in the Navajo Nation between 42,000 and 85,000 Navajo people living on tribal lands would be homeless. HUD has estimated that nationally, 68,000 new housing units are needed on tribal lands to alleviate the housing crisis – 33,000 new homes to eliminate overcrowding and 35,000 new homes to replace deteriorated or delapidated housing units.

³² U.S. Census Bureau, Facts for Features: American Indian and Alaska Native Heritage Month: November 2017 (Oct. 6, 2017), available at <https://www.census.gov/newsroom/facts-for-features/2017/aian-month.html> (“2017 AIAN Summary”).

³³ Substance Abuse and Mental Health Services Administration (SAMHSA), Expert Panel on Homelessness among American Indians, Alaska Natives, and Native Hawaiians 5 (2012), available at https://www.usich.gov/resources/uploads/asset_library/Expert_Panel_on_Homelessness_among_American_Indians_%2C_Alaska_Natives%2C_and_Native_Hawaiians.pdf.

³⁴ *Id.* at 8 (citing HUD & VA, Veteran Homelessness: A Supplemental Report to the 2010 Annual Homeless Assessment Report to Congress).

³⁵ See U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, Selected Population Profile in the United States: American Indian and Alaska Native alone (300, A01-Z99) (“2016 AIAN Profile”), available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

Frequently changing residences, with no single permanent residence, can prevent many American Indians and Alaska Natives from being able to register to vote and casting a ballot.³⁶

Socio-economic barriers:

Socio-economic barriers likewise make the voting process less accessible for Native Americans. Native peoples have the highest poverty rate of any population group, 26.6 percent, which is nearly double the poverty rate of the nation as a whole.³⁷ The poverty rate was even higher on federally recognized Indian reservations and Alaska Native villages, at 38.3 percent.³⁸ The median household income of single-race American Indian and Alaska Native households in 2016 was \$39,719, far below the national median household income of \$57,617.³⁹

Native Americans also has lower rates of educational attainment. Among the American Indian Alaska Native population 25 years of age and older, 20.1 percent had less than a high school education.⁴⁰ The unemployment rate of those aged 16 and older in the workforce was 12 percent.⁴¹ Approximately 19.2 percent lacked health insurance,⁴² and 13.4 percent of all occupied households lacked access to a vehicle, making it impossible to travel great distances to register and vote.⁴³

Language barriers and illiteracy among Limited-English Proficient Tribal Elders:

Dozens of different dialects are widely spoken among the major American Indian and Alaska Native languages. Over a quarter of all single-race American Indian and Alaska Natives speak a language other than English at home.⁴⁴ Two-thirds of all speakers of American Indian or

³⁶ U.S. Department of Housing and Urban Development, “Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs (Jan. 2017), available at <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>.

³⁷ U.S. Census Bureau, Profile America Facts for Features: CB16-FF.22, American Indian and Alaska Native statistics, available at <https://www.census.gov/newsroom/facts-for-features/2016/cb16-ff22.html> (Nov. 2, 2016) (“2016 AIAN FFF”).

³⁸ U.S. Census Bureau, Table B17001C: Selected Population Profile in the United States: 2015 American Community Survey 1-Year Estimates (last visited on Feb. 7, 2018), available at https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/B17001C/0100000US/0100089US.

³⁹ 2017 AIAN Summary, *supra* note 32.

⁴⁰ See 2016 AIAN Profile, *supra* note 35.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 2016 AIAN FFF, *supra* note 37 (27 percent).

Alaska Native languages reside on a reservation or in a Native village,⁴⁵ including many who are linguistically isolated, have limited English skills, or a high rate of illiteracy.⁴⁶

Alaska, Arizona, and New Mexico have the largest number of Limited-English Proficient (LEP) persons voting-age citizens (that is, U.S. citizens who are 18 years of age and older). Between them, they account for approximately 87 percent of all American Indians and Alaska Natives who reside in an area required to provide language assistance in an Alaska Native or American Indian language:

Figure 2. Comparison Between the Top Three States with Limited-English Proficient AIAN Populations.

Alaska	Arizona	New Mexico
54,275 Alaska Natives live in one of the 15 areas covered by Section 203 for an Alaska Native language.	123,470 American Indians live in one of the six counties covered by Section 203 for an American Indian language.	132,955 American Indians live in one of the 10 counties covered by Section 203 for an American Indian language.
At least 10 percent of all Alaska Natives in covered areas are of voting age and LEP in an Alaska Native language.	At least 14.5 percent of all American Indians in covered areas are of voting age and LEP in an American Indian language.	At least 8 percent of all American Indians in covered areas are of voting age and LEP in an American Indian language.
LEP Alaska Natives are located in approximately 200 villages and communities in the 15 covered areas.	Approximately 96.7 percent of all American Indians who are LEP and reside in a county covered for Native language assistance reside in just three counties: Apache, Coconino, and Navajo.	91.1 percent of all American Indians and 89.3 percent of all voting-age American Indians who are LEP and live in a covered county live in just four counties: Bernalillo, McKinley, Sandoval, and San Juan.

Nationally, 357,409 AIAN persons reside in a jurisdiction covered by Section 203 of the Voting Rights Act, where assistance must be provided in the covered Native language.⁴⁷ Alaska Native language assistance is required in 15 political subdivisions of Alaska, which “is an increase of 8 political subdivisions from 2011.”⁴⁸ Assistance in American Indian languages is required in 35 political subdivisions in nine states, “up from the 33 political subdivisions of five states covered in the 2011 determinations.”⁴⁹

⁴⁵ See U.S. Census Bureau, *Native American Languages Spoken at Home in the United States and Puerto Rico: 2006-2010* at 2 (Dec. 2011).

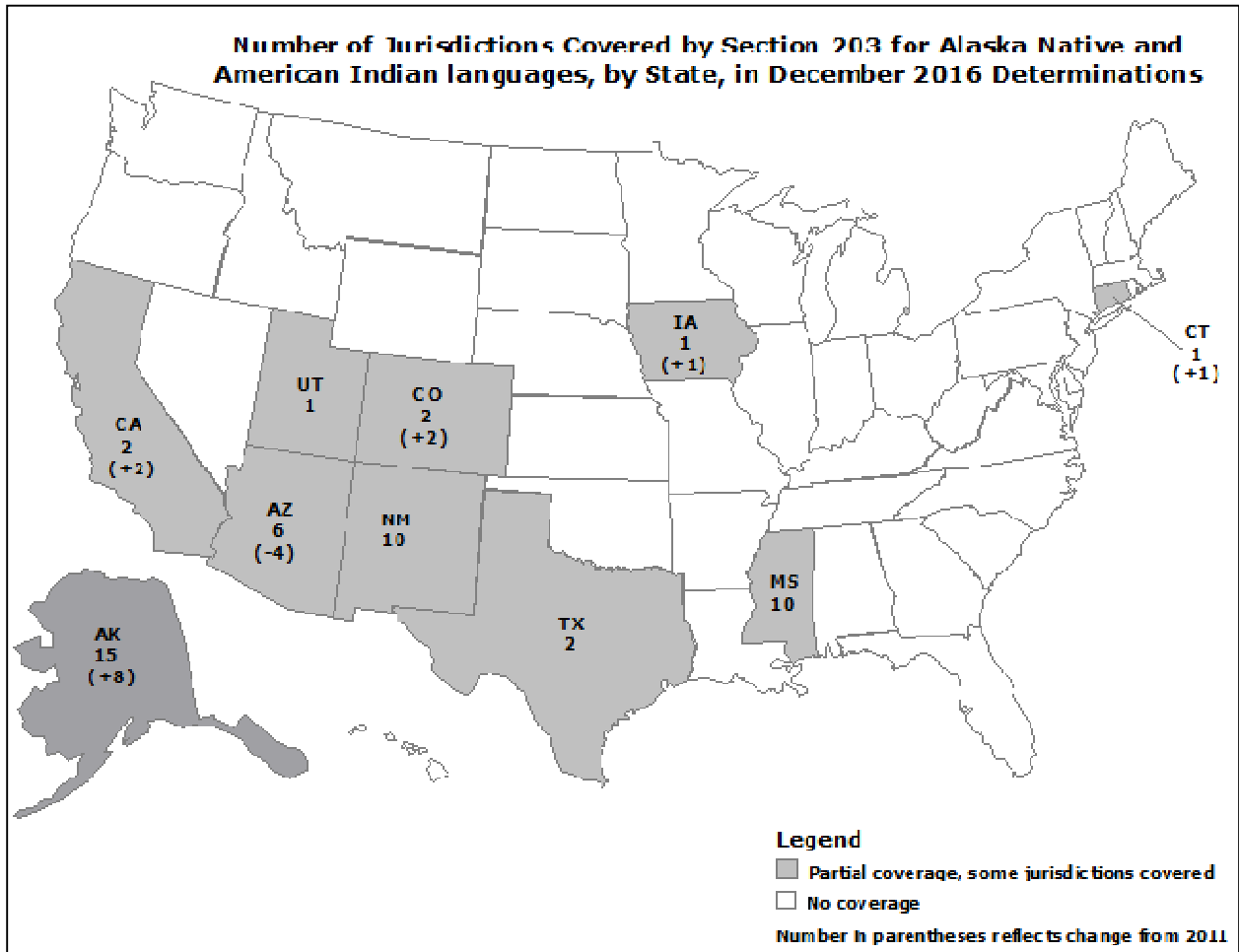
⁴⁶ See U.S. Census Bureau, Public Use Data File for the 2016 Determinations under Section 203 of the Voting Rights Act, available at https://www.census.gov/rdo/data/voting_rights_determination_file.html (Dec. 5, 2016).

⁴⁷ U.S. Census Bureau, Press Release: Census Bureau Releases 2016 Determinations for Section 203 of the Voting Rights Act (Dec. 5, 2016), available at <https://www.census.gov/newsroom/press-releases/2016/cb16-205.html>.

⁴⁸ AAJC, NALEO & NARF, Voting Rights Act Coverage Update 3 (Dec. 2016) (“Section 203 Update”), available at <https://advancingjustice-ajc.org/sites/default/files/2016-12/Section%20203%20Coverage%20Update.pdf>.

⁴⁹ *Id.*

Figure 3. Jurisdictions required to provide language assistance in Native languages.



Language poses a barrier to political participation for several reasons. First, LEP American Indians and Alaska Natives, like other LEP populations, are generally among the hardest to reach among all voters. Outreach and publicity communications written or transmitted in English usually are not understood unless they are translated into the applicable Native language. In-person communication through trained bilingual enumerators yields the best results, but can be confounded by the lack of enumerators fluent in the language, geography, and adequate funding to reach the LEP population.

Figure 4. American Indian and Alaska Native languages covered by Section 203, by State.

Language	Political subdivisions	Covered states
Navajo	11	AZ, NM, UT
Choctaw	10	MS
Yup'ik (Alaska Native)	9	AK
Inupiat (Alaska Native)	6	AK
American Indian (all other AI Tribes)	5	CA, CT, IA, TX
Apache	5	AZ, NM
Ute	4	CO, NM, UT
Alaska Athabascan (Alaska Native)	3	AK
Pueblo	3	NM, TX
Aleut	1	AK

Moreover, the difficulty in preparing complete, accurate, and uniform translations of voting materials (including instructions) is compounded by the absence of words in Native languages for many English terms. Frequently, that requires that concepts be interpreted to communicate the meaning of what is being asked, rather than word-for-word translations. Identification of those concepts usually requires closely coordinating with trained linguists from Native communities to provide effective translations.



Figure 5. “I voted” sticker in English and Yup’ik used in Alaska.

Illiteracy also is very prevalent among LEP American Indians and Alaska Natives, especially among Tribal Elders. In areas covered by Section 203 of the Voting Rights Act, illiteracy among LEP voting-age citizens is many times higher than the national illiteracy rate of 1.31 percent in 2016.⁵⁰

In Alaska, in covered areas for which Census data is available, the illiteracy rate among LEP Alaska Natives of voting age is 40 percent for Aleut-speakers, 28.4 percent for Athabascan-speakers, 15 percent for Yup'ik-speakers, and 8.2 percent for Inupiat-speakers.⁵¹ In Arizona, in covered areas for which Census data is available, the illiteracy rate among LEP American Indians of voting age is 25 percent for Navajo-speakers and 6.8 percent for Apache-speakers.⁵² In Mississippi, in covered areas for which Census data is available, the illiteracy rate among LEP American Indians of voting age is 34 percent for Choctaw-speakers.⁵³ Finally, in New Mexico, in covered areas for which Census data is available, the illiteracy rate among LEP American Indians of voting age is 19.1 percent for Navajo-speakers and 6.7 percent for Apache-speakers; data was not available for speakers of the Pueblo languages.⁵⁴

In areas with LEP Tribal Elders who are hampered by illiteracy, language assistance in the voting process generally must be done in-person by a bilingual enumerator fully fluent in the Native language and applicable dialect.

Lack of broadband access and Internet use:

Among all population groups, the digital divide is most profoundly felt in Indian Country. People residing in tribal areas have virtually no access to computers or the Internet, with the Federal Trade Commission estimating broadband penetration in tribal communities at

⁵⁰ See U.S. Census Bureau, Flowchart of How the Law Prescribes the Determination of Covered Areas under the Language Minority Provisions of Section 203 of the Voting Rights Act 2 (Dec. 5, 2016), available at https://www.census.gov/rdo/pdf/2_PrescribedFlowFor203Determinations.pdf. “Illiteracy” is defined as including those persons who “have less than a 5th grade education.” *Id.*

⁵¹ See U.S. Census Bureau, Voting Rights Determination File: Section 203 Determinations (Dec. 5, 2016), Public Use Data File and Technical Documentation (Excel spreadsheet of “Determined Areas Only”) (“Section 203 Determination File”), available at https://www.census.gov/rdo/data/voting_rights_determination_file.html. In Alaska, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 30.5 times higher for Aleut-speakers; 21.7 times higher for Athabascan-speakers; 11.4 times higher for Yup'ik-speakers; and 6.3 times higher for Inupiat-speakers. *Compare id. with supra* note 50 and accompanying text.

⁵² See Section 203 Determination File, *supra* note 51. In Arizona, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 19.1 times higher for Navajo-speakers; and 5.2 times higher for Apache-speakers. *Compare id. with supra* note 50 and accompanying text.

⁵³ See Section 203 Determination File, *supra* note 51. In Mississippi, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 25.9 times higher for Choctaw-speakers. *Compare id. with supra* note 50 and accompanying text.

⁵⁴ See Section 203 Determination File, *supra* note 51. In New Mexico, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 14.6 times higher for Navajo-speakers; and 6.7 times higher for Apache-speakers. *Compare id. with supra* note 50 and accompanying text.

less than ten percent.⁵⁵ Not surprisingly, the hardest to count Census areas for the rural AIAN population are all on reservations or in Alaska Native villages lacking reliable and affordable broadband access. To illustrate that fact, a mapping tool shows how Hard-to-Count Census Tracts correlate with reservations.⁵⁶

Even where some broadband access may be available, depressed socio-economic conditions often prevent American Indians and Alaska Natives from having access to or using online resources including the Internet. For example, the cost or inconvenience of driving to a location where Internet access can be obtained, or the cost of getting Internet service in those areas in Indian Country where it may be offered, prevents many American Indians and Alaska Natives from going online.⁵⁷

The digital divide is also a generational phenomenon in Indian Country. In NAVRC's field hearing in Bismarck, we heard testimony from Montana tribal members who described the widespread use of the Internet and smart phones by younger tribal members, despite the lack of use by Elders.

With the increasing use of online resources to register voters and disseminate voting information, accommodations need to be made for Native voters on tribal lands until broadband is fully accessible.

Summary of some of the findings from the field hearings in Indian Country.

A detailed report of findings from the Native American Voting Rights Coalition's field hearings will be provided to this Subcommittee. What follows is a summary of some of the key findings from those field hearings. The Coalition's final report will have much more detailed information about those findings, as well as other findings.

Finding 1: Non-traditional mailing addresses are used to disenfranchise Native voters.

Several Native witnesses testified about how their use of a non-traditional mailing address has either made it difficult to register to vote or has disenfranchised them altogether. This testimony has been consistent throughout Indian Country, regardless of the location of the tribal lands:

- At the Bismarck, North Dakota field hearing, an elected county official testified that many voters residing on the Crow Creek Indian Reservation in Buffalo County, South Dakota have had difficulty

⁵⁵ Parkhurst et al., The Digital Reality: E-Government and Access to Technology and Internet for American Indian and Alaska Native Populations 3, available at <https://pdfs.semanticscholar.org/4bb4/f5efcd1cf4ec342b5d45dd824bb10d9bb0f2.pdf>.

⁵⁶ See Mapping Hard to Count (HTC) Communities for a Fair and Accurate 2020 Census, available at <http://www.censushardtcountmaps2020.us/>.

⁵⁷ See Gerry Smith, *On Tribal Lands, Digital Divide Brings New Form of Isolation*, HUFFPOST, Apr. 23, 2012, available at https://www.huffingtonpost.com/2012/04/20/digital-divide-tribal-lands_n_1403046.html.

registering to vote because of non-traditional addresses. That problem persisted even after efforts were undertaken to identify physical addresses to use in the County's 911-emergency notification system.

- At the Portland, Oregon field hearing, voters from the Colville and Yakama Reservations in eastern Washington State testified that many tribal members were unable to register to vote to receive their ballot by mail for state elections because they only had post office boxes available that could not be readily correlated with a physical address where they actually lived. Notably, after the field hearing, Washington State enacted legislation that offers some relief for Native voters.
- At the San Diego field hearing, a member of the Torrez Martinez Desert Cahuilla Indian, located just west of the Salton Sea in California, did not have a traditional mailing address and was only able to vote because of the timely intervention of a family friend who was running for office and was able to get a waiver of the registration requirement for a physical address.
- At the Tuba City, Arizona field hearing, a member of the Navajo Nation testified that like many tribal members, he has multiple addresses that make it more difficult to vote by mail. His family's home on tribal lands does not have a physical address. He shares a post office box with several family members in Page, located approximately 75 miles up the highway. Some of his mail is delivered to the Chapter House in Tuba City. Other mail is delivered to the home where he resides in Flagstaff, where he is a school counselor. He often is unable to check his post office in Page more frequently than every 30-45 days. The 130 mile drive from Flagstaff to Page prevents him from getting his mail-in ballot in time to return it by the deadline to be counted.

Finding 2: Distances to in-person voting locations disenfranchise Native voters.

The tremendous distance to in-person locations to register to vote and to cast ballots also disenfranchises Native voters. Two examples from Nevada illustrate this point.

Elko County is the second largest county in Nevada and the fourth largest county in the United States. Distances between communities are made even greater by the additional mileage necessary to going around the mountain ranges throughout the County.

Figure 6. Communities and mountain ranges in Elko County, Nevada.

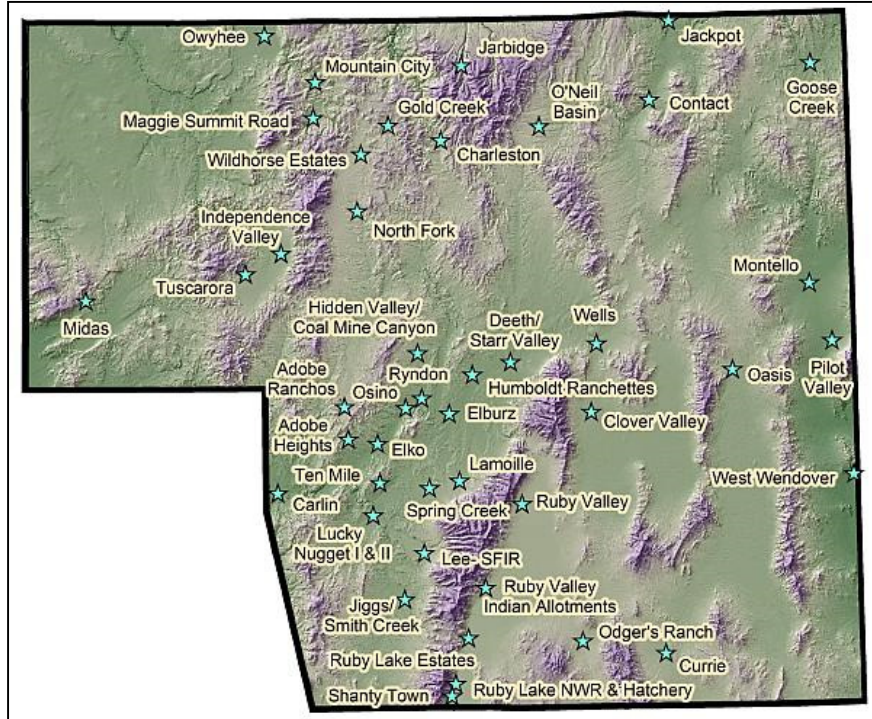
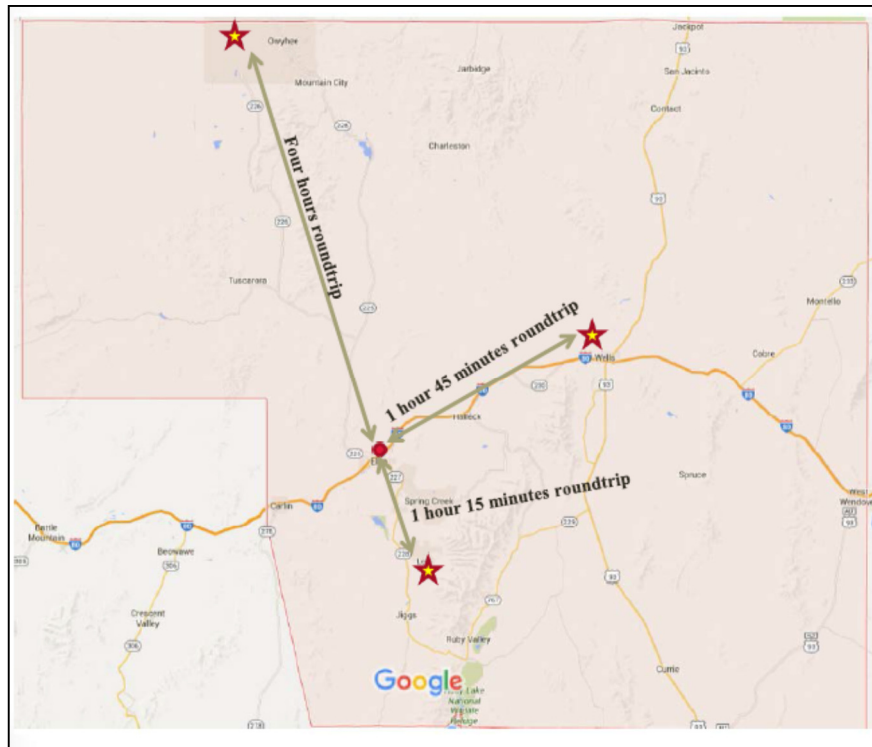


Figure 7. Driving distances from tribal lands to early voting location in Elko County, Nevada.



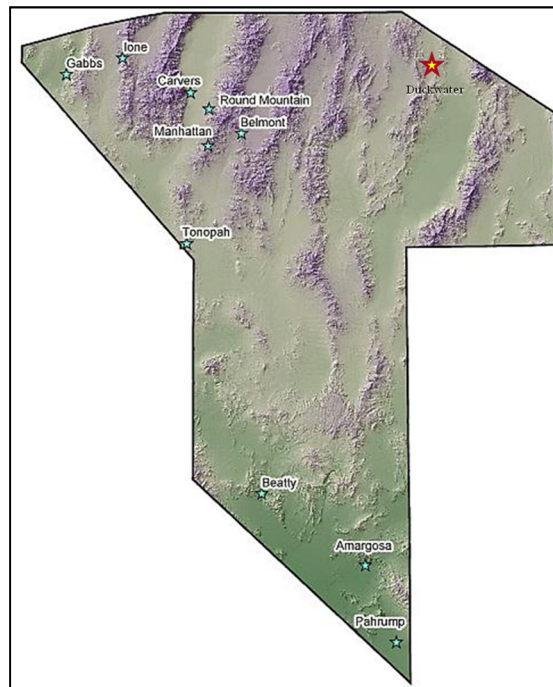
Elko County has six polling places for 41 precincts. All six polling places are located in the southern and central part of the county, including four in and around Elko. Twelve of the “rural” precincts were designated for all-mail voting.

The Duck Valley Shoshone-Paiute Reservation includes a single precinct in Owyhee (Precinct 29). There is no in-person voting location or polling place there, and the precinct is designated solely as a vote-by-mail location. It is estimated that less than a quarter of Elko County residents living on the Duck Valley Reservation are registered to vote in Nevada, with approximately 200 registered voters out of an eligible voting-age population greater than 800.

In addition, the disparate voting opportunities were reflected in voter turnout: Precinct 29 had turnout of 42 percent in the 2014 General (all through mail-in voting), compared to 55.6 percent for the county as a whole.⁵⁸ No ballots were cast through early voting or absentee ballots because of the all mail-in voting.

All tribal areas in Elko County other than the Elko Colony located in Elko lack an in-person early voting location. Travel to Elko can take as long as four hours roundtrip, with the possibility that roads may be impassable because of inclement weather conditions common in the fall and winter months.

Figure 8. Communities and mountain ranges in Nye County, Nevada.



Nye County is the largest county in Nevada and the third largest county in the United States. Like Elko County, distances between communities are made even greater by the additional mileage necessary to going around the mountain ranges throughout the County. The Duckwater Reservation is located in the northeastern corner of the County, presenting some of the longest drives in the Lower Forty-Eight States to reach the County's two election offices.

⁵⁸ Turnout is based on the number of ballots cast for governor, which was the highest profile race on the ballot.

There are 35 voting precincts in Nye County. Eight of those precincts, including Duckwater (located in Precinct 3), have exclusively all mail voting. Like the Duck Valley Reservation, Duckwater has a very depressed voter registration rate. Duckwater only had 59 registered voters, even though the population of the community was 368 in the 2000 Census.

Figure 9. Driving distances from tribal lands to early voting location in Nye County, Nevada.



For the 2016 election, there were two early voting locations: the Ian Deutch Justice Complex at 1520 East Basin Avenue in Pahrump, and the Nye County Clerk’s Office at 101 Radar Road in Tonopah. Neither location is accessible to tribal members. The Pahrump early voting location is 303 miles each way by road from Duckwater. The Tonopah early voting location is 140 miles each way by road from Duckwater.

Currently, no early voting is available in Duckwater. All voting is by mail. If voters living on the reservation were able to vote in-person, it would require either a five-hour roundtrip drive to Tonopah or a ten-hour roundtrip drive to Pahrump.

The tremendous distances that Native voters living on tribal lands face is partially a product of relocation to reservations that are far from non-Native communities. But far too often, distance itself is used to discriminate against Native Americans when local non-tribal officials deny registration and polling places on tribal lands. As the low registration and turnout numbers from Nevada show, and as will be discussed in the next section, denial of in-person voting effectively disenfranchises entire Native communities.

Finding 3: Native voters have unequal access to in-person voting locations.

In-person voting opportunities are inaccessible to many Native voters living on tribal lands because of distance issues and lack of transportation.

In some locations, local election officials have denied polling places on reservations in favor of establishing them in much more sparsely populated non-Native communities. For example, the polling location for the Crow Creek Reservation in South Dakota was established off-reservation in a non-Native community with just eight voters, even though the Reservation has a total population of over 2,200 people. Buffalo County refused to establish an in-person voting location at Fort Thompson, the capital and major community on the reservation with a population of about 1,300 people.

Similarly, voting locations often are not established on tribal lands, limiting all voting by mail. Even post offices may not be on tribal lands or may have reduced hours on Election Day, further limiting vote-by-mail opportunities for Native voters.

Three post-*Shelby* examples illustrate the litigation Native voters have had to bring to secure equal in-person voting opportunities denied to those living on reservations.

In 2015, election officials in Jackson County, South Dakota agreed to open a satellite office in Wanblee on the Pine Ridge Reservation after they were sued. Prior to filing suit, Four Directions, a NAVRC member that focuses on Native voter registration and organizing, offered to provide staffing for the satellite office at no cost, but the County refused.⁵⁹

In 2016, Native voters in Nixon (on the Pyramid Lake Reservation) and in Shurz (on the Walker River Reservation) Nevada were facing roundtrip drives of 100 miles and 70 miles, respectively, to vote in-person because no polling places were established on tribal lands. They joined two other tribes and sued, obtaining a preliminary injunction requiring a polling place to be established on each reservation for the 2016 General election.⁶⁰

San Juan County, Utah eliminated all three of the polling places located on the Navajo Nation tribal lands in the southern part of the county. The County switched to a mail-in ballot that was printed in English, providing no language assistance in Navajo despite being covered for the language under Section 203. In 2018, the County settled after being sued, agreeing to restore the three closed polling places and to provide the mandated language assistance.⁶¹

⁵⁹ *Poor Bear v. Jackson County*, No. 5:14-cv-05059-KES (D.S.D. May 1, 2015).

⁶⁰ *Sanchez v. Cegavske*, 214 F. Supp.3d 961 (D. Nev. 2016).

⁶¹ *Navajo Nation Human Rights Commission v. San Juan County*, No. 2:16-cv-00154-JNP (D. Utah Feb. 2018).

Finding 4: Local election officials deny polling places based on voter threshold laws.

Laws in many states give county clerks the discretion to designate precincts in rural and tribal areas as all vote-by-mail if they do not meet a designated threshold of registered voters.

Nevada Revised Statutes § 293.343 provides that a registered voter residing in an “election precinct in which there were not more than 200 voters registered for the last preceding general election, or in a precinct in which it appears to the satisfaction of the county clerk and Secretary of State that there are not more than 200 registered voters,” may be required to vote-by-mail. Similarly, California Elections Code 3005(a) permits registrars of voters to designate precincts with fewer than 250 voters as “vote-by-mail.”

This form of official discretion is widely used on tribal lands to suppress Native voter participation. It creates a vicious cycle in which vote-by-mail depresses voter registration rates on tribal lands, making it even more difficult to meet the threshold for a mandatory in-person voting location. It leads to the low registration rates such as those described above for the Duck Valley and Duckwater Reservations in Nevada.

Shortly before the 2016 election, Native voters and tribes in northern Nevada prevailed in a federal lawsuit to obtain in-person early voting and Election Day voting locations on tribal lands.⁶²

During the field hearings, witnesses from California tribes testified about their difficulty in meeting the 200-voter threshold, even for more populous reservations. One witness testified that the Thule River Tribe secured a polling place for the first time in 2017, only after a two-year extensive voter registration campaign that they – and not the County – conducted.

Finding 5: Native voters have unequal access to online voter registration.

Increasingly, states are moving to online voter registration. State election officials tout savings from online registration over the administrative costs of processing paper application forms. According to the National Conference of State Legislatures (NCSL), 37 states and the District of Columbia offer online voter registration.⁶³ NCSL reports that “Arizona experienced a reduction in per-registration costs from 83 cents per paper registration to 3 cents per online registration. Other states have also experienced significant cost savings in processing registrations.”⁶⁴

⁶² See *Sanchez*, 214 F. Supp.3d at 961.

⁶³ See Nat’l Conf. of State Legis., Online voter registration (Dec. 6, 2017), available at <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>.

⁶⁴ *Id.*

However, NCSL’s advocacy for online voter registration is based on a false premise. According to NCSL, “[i]n all states, paper registration forms are available for anyone, including those who cannot register online.”⁶⁵ We received testimony from many Native voters that local election officials restrict how many paper voter registration applications that they are allowed to submit.

Several witnesses testified that many of those applications are rejected with no follow-up to the applicant to correct any “errors” that they find. Often, those “errors” are tied to a Native voter’s use of a non-traditional mailing address, such as a post office box, a home lacking a street address, or a shared address.

The outright vote denial they experience when their applications are restricted or rejected is compounded by the absence of access to the Internet and computer resources to use the Internet in much of Indian Country. This includes: lack of broadband penetration; inability to afford the cost of an Internet connection; lack of access to computers or smart phones; and the digital divide, especially among tribal Elders.

Until online voter registration is fully accessible to all Native Americans, paper voter registration forms need to be offered and made more readily available on tribal lands. Local election officials also need to conduct regular in-person voter registration drives on tribal lands. Finally, local election officials must be required to allow community organizers and grass roots advocates to submit completed voter registration applications, and those applications must be timely processed (consistent with the statutory requirements of the National Voter Registration Act, or NVRA).

Finding 6: Native voters have unequal access to in-person voter registration sites.

Permanent voter registration sites, such as those located at county clerk’s offices, elections offices, or Department of Motor Vehicle sites, are too distant for Native voters, many of whom lack any form of reliable transportation. Few election offices have permanent satellite voter registration locations on tribal lands, even where there are large populations of voters on the reservations.

On several reservations, particularly those in South Dakota, local election officials have denied requests from tribal governments for satellite offices due to a claimed lack of funding. Satellite offices are denied even when Tribes have departments and offices that would be designated as voter registration sites under the NVRA if they were branches of a non-tribal government. Moreover, few election offices recruit, train, and pay tribal members to serve as deputy voting registrars on tribal lands.

⁶⁵ *Id.*

Finding 7: Voter ID laws have a discriminatory impact on Native voters.

Many states have enacted voter identification laws, some of which include requirements that effectively bar Native Americans from registering to vote.

In some cases, Native voters lack the identification required by state law. Some laws, such as the original version of the statute challenged in North Dakota, do not accept tribal identification cards. Even where they do, the cards may not meet the requirements of the state law because they lack a picture, do not have a qualifying physical address, or do not have an expiration date.

Native voters frequently are unable to a state-issued identification card. Many Natives, especially tribal Elders, lack documentation proving their citizenship or birth. Non-traditional mailing addresses do not meet state requirements. Election officials exercise their discretion to challenge only Native voters because of their non-traditional address, claiming that the voter lives in another state or county, or that the alleged lack of specificity prevents the officials from identifying the precinct to which the voter should be assigned.

Socio-economic barriers also prevent many Natives from obtaining identification beyond their Tribal ID cards. State offices such as DMV locations where state-issued identification can be obtained often are vast distances from tribal lands, which poses barriers for those lacking transportation or those who cannot afford the cost of driving to the locations. Many Native voters cannot endure the inconvenience and time lost making a roundtrip drive that may take several hours, or even an entire day.

Furthermore, we heard testimony from Native voters who lacked identification when they attempted to vote, and were unable to return to the off-reservation polling place before it closed. That barrier is particularly prevalent where the in-person polling place is located a great distance from a voter's home. In addition, child care, job, school, or other commitments may prevent the voter from returning to vote. The inconvenience of having to make another round-trip drive and the bad experience they had when trying to vote also leads to disenfranchisement of Native voters.

Finding 8: Native voters are disproportionately impacted by voter purges.

Even when Native voters with non-traditional mailing addresses are registered, they may still be purged because of those addresses. Local election officials euphemistically refer to voter purges as "list maintenance procedures." Regardless of what they are called, the effect is the same. They disproportionately deprive Native Americans of their fundamental right to vote.

In 2012, Apache County, Arizona purged 500 Navajo voters because the County Recorder claimed their addresses were "too obscure" and the Recorder alleged that they could not be assigned to a precinct. The County Recorder failed to accept a P.O. Box and the applicants' drawing on the voter registration form to show the location of their home. Under the NVRA, election officials are required to accept the voter's drawing to identify their precinct, and cannot deny a voter registration application or purge an existing application because it uses a non-traditional address or has to be identified on a map by landmarks or geographic features.

Figure 10. Section of Arizona’s voter registration form to identify location of non-traditional address.

In places required to provide language assistance under Section 203, information about voter purges typically is not provided in the covered Native language. Many Native voters vote infrequently in non-Tribal elections, causing their registration to be purged if they do not respond to a NVRA notice that may be written in a language they do not read, if they are able to read at all.

Once purged, many Native voters won't vote again in non-Tribal elections. Effectively, a voter purge can result in permanent disenfranchisement.

Finding 9: Vote-By-Mail (VBM) often disenfranchises Native voters.

Vote-By-Mail is increasingly being used to conduct elections. According to NCSL, 22 states have adopted at least some form of VBM. Three states, Colorado, Oregon and Washington, conduct all of their voting by mail. In discussing the possible disadvantages of VBM, NCSL acknowledges the “disparate effect” on Native Americans:

Mail delivery is not uniform across the nation. Native Americans on reservations may in particular have difficulty with all-mail elections. Many do not have street addresses, and their P.O. boxes may be shared. Literacy can be an issue for some voters, as well. Election materials are often written at a college level. (Literacy can be a problem for voters at traditional polling place locations too.) One way to mitigate this is to examine how voter centers are distributed throughout counties to best serve the population.⁶⁶

⁶⁶ Nat'l Conf. of State Legis., All-Mail Elections (aka Vote-By-Mail) (June 27, 2019), available at <http://www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx>.

Native voters who testified at our field hearings consistently repeated similar concerns and gave examples of how they have been – or could be – disenfranchised by VBM, including:

- Inability to register to receive a VBM ballot because they lack physical addresses or otherwise have non-traditional mailing addresses;
- Inability to timely receive their VBM ballot because their mail is delivered far off their reservation, in some cases 100 miles or more each way from where they live;
- Lack of transportation to get their VBM ballot;
- Illiteracy or language barriers that prevent them from being able to read or understand their ballot;
- The closest post offices are only open on certain days or for restricted times that often conflict with their work schedules;
- Lack of security for VBM ballots once they are dropped off;
- Being required to pay postage to return a VBM ballot, which can have the same effect as a poll tax on economically disadvantaged voters;
- The absence of VBM drop-off boxes on tribal lands;
- Mistakes completing the envelope or other materials that are required for their VBM to be counted;
- Absence of in-person assistance from election officials;
- Delays in having their VBM ballot returned to the election office because of how mail from their community is routed by the post office;
- Native voters face socio-economic barriers that depress Native turnout through VBM; and
- Low levels of trust that their VBM will be counted, with a recent survey showing that a quarter of all Native voters have no trust in VBM.

In Arizona, only 18 percent of Native American voters have home mail delivery outside of the urban Maricopa (metropolitan Phoenix) and Pima (metropolitan Tucson) areas. VBM was used to suppress Native voting through a state law that barred collecting completed VBM ballots for those lacking transportation or the economic means to return them by mail or to drop off at an early voting location.

Similarly, as I mentioned previously, San Juan County switched to a VBM system as a means to eliminate all of the polling places on tribal lands and to deny voters language assistance in the Navajo language.⁶⁷ From Navajo Mountain, Utah, which is near Lake Powell, it is about 200 miles (a four or five hour drive) each way, weather conditions permitting. It requires driving south into northern Arizona on U.S. highway 98 to U.S. highway 160 in Navajo County, Arizona to U.S. highway 191 north back into Utah. Montezuma Creek is the closest Navajo community to the county seat in Monticello, which is a 75 mile drive each way.

These examples illustrate how even seemingly innocuous changes in the method of casting a ballot, such as VBM, can be used to disenfranchise an entire community of Native voters.

Finding 10: Jurisdictions are not providing translations of all voting materials.

Native voters in jurisdictions covered by Section 203 of the Voting Rights Act do not receive effective translations of all information provided to English-speaking voters in lengthy state-created voter information guides. In Arizona and New Mexico, we received substantial testimony that Native voters only receive a fraction of the information provided to voters in English, in apparent violation of Section 203's mandate. Voters do not receive translations of candidate statements, neutral ballot summaries, and other crucial information. The absence of television and radio announcements likewise deprives Native voters of much of the pre-election outreach and publicity provided in non-tribal areas.

Federal observers documented the following deficiencies under Section 203 and the *Toyukak* Order in the August and November 2016 elections in Alaska:

- ***Training deficiencies.*** Overall, training fell far short of the goal of mandatory training (with an emphasis on in-person training) for poll workers, with no poll workers trained on how to translate the ballot into the covered Alaska Native languages:
 - Less than half – 46 percent (55 poll workers) – received training in 2016
 - 4 percent (5 poll workers) received training at least a year earlier, in 2015
 - 10 percent (12 poll workers) received training two or more years earlier
 - 39 percent (47 poll workers) had never been trained
- ***Inadequate staffing of bilingual poll workers.*** Federal observers were unable to document how much bilingual assistance and translations, if any, were available in covered villages in the three census areas (Dillingham, Kuslivak, and Yukon-Koyukak) prior to Election Day. However, the lack of bilingual poll workers in many polling places in those areas suggests that much work remains to be done to provide full and equal access to the election process before and on Election Day. The summary federal observers provided indicates:

⁶⁷ *Navajo Nation Human Rights Commission v. San Juan County*, No. 2:16-cv-00154-JNP (D. Utah Feb. 2018).

- **August 2016 Primary Election**
 - No bilingual poll worker was available at any time in 3 out of 19 villages
 - Among the other 16 villages:
 - In Koliganek, a bilingual poll worker was only available “on call” and was not present in the polling place
 - In three villages (Dillingham, Kotlik, and Marshall), the bilingual poll worker left the polling place during a portion of the time the polls were open and there was no assistance available during their absence

- **November 2016 General Election**
 - No bilingual poll worker was available at any time in one out of the 12 villages observed
 - In Fort Yukon, there was no language assistance available for at least 80 minutes when the bilingual poll worker left
 - In Venetie, the only bilingual poll worker left the polling place 3 1/2 hours before the polls closed and did not return

- **Translated written materials required under the Order were unavailable in many locations.**
 - Among the 19 villages federal observers were at in August 2016:
 - No translated voting materials were available in six villages: Alakanuk, Kotlik, Arctic Village, Beaver, Fort Yukon, and Venetie
 - The “I voted” sticker was the only material in an Alaska Native language in Marshall and Mountain Village
 - In Emmonak, the Yup’ik glossary was the only translated material federal observers saw
 - 10 villages had a sample ballot written in Yup’ik but only two (Koliganek and Manokotak) had written translations of the candidate lists
 - Only one village, Aleknagik, had a written translation of the Official Election Pamphlet available for Yup’ik-speaking voters
 - Among the 12 villages federal observers were at in November 2016:
 - Six out of 12 polling places did not have a translated sample ballot available for voters
 - Five of those villages had no sample ballot at all: New Stuyakok, Alakanuk, Hooper Bay, Arctic Village, and Venetie

- Fort Yukon had a Gwich'in sample ballot that was kept at the poll worker's table and not made available for voter use
- The absence of translated voting materials had its greatest impact in polling places that did not have a bilingual poll worker present during all election hours
 - Lack of written translations in those locations meant no language assistance of any kind was provided
 - Lack of trained bilingual poll workers in some polling places contributed to the lack of language assistance

Little, if any, information about ballot measures is provided to Native voters before Election Day, including translation of those measures into Native languages or simplification so voters can understand them. The first time that many Native voters see or hear about a ballot measure is on Election Day when they vote. However, electioneering prohibitions often are cited as the reason for not explaining ballot measures to Native voters at voting locations.

At least one of the New Mexico Pueblos has started engaging in self-help by creating their own voter information pamphlets to explain the meaning and impact of ballot measures and including evaluations of candidates.

Many of these problems could be resolved for Native languages in which the tribes request written materials. As we found in Alaska, having written materials greatly facilitates complete, accurate, and uniform translations even for voters who are illiterate because bilingual poll workers can read those translations to them. Otherwise, the quality and content of the information an LEP Native voter receives will vary widely, depending on the on-the-spot translation skills of whichever poll worker happens to assist them.

Conclusion

The NAVRC looks forward to working with the House Judiciary Committee and the Subcommittee on the Constitution, Civil Rights and Civil Liberties to overcome the barriers to voting rights in Indian Country. As the initial passage and subsequent amendments to the federal Voting Rights Act have shown, protecting the fundamental right to vote is not a partisan issue. It is an American issue. All of us suffer, and our elected government has less legitimacy, each time an American Indian or Alaska Native is prevented from registering to vote or being turned away at the polls. We appreciate your efforts to address the very real struggles that Native Americans have every day in the voting process.

Thank you very much for your attention and your commitment to making voting fully accessible in Indian Country.