

“Evidence of Current and Ongoing Voting Discrimination”

Tuesday, September 10th at 10:00 a.m.

Rayburn House Office Building, Room 2141

Testimony of Natalie A. Landreth

Senior Staff Attorney, Native American Rights Fund

Good morning. My name is Natalie Landreth and a member of the Chickasaw Nation, the Imatobby family. I am here today in my capacity as a senior staff attorney at the Native American Rights Fund. I have held this position since 2003 and I have worked on voting rights cases since 2006. Thank you for inviting me to speak on Current and Ongoing Voting Discrimination – because there is a lot in Indian Country.

There is a view that what are called first generation barriers, that is direct impediments to polling place and access to voting, is a thing of the past. That view is wrong. First generation barriers are not gone, and this month – in support of this testimony – the Native American Rights Fund will be submitting a report on nine field hearings we conducted throughout Indian Country that show the extent of such barriers across the country.

I want to address three things in my testimony today. First, I want to talk about how the loss of preclearance has impacted our work and the voting rights of our clients. Second, I want to talk about how some previously covered jurisdictions have conducted themselves in the absence of preclearance. And finally, I want to say a few words in support of what is called “known practices coverage,” because what we found in the hearings extended beyond the previously covered jurisdictions.

First, the loss of preclearance means that the burden has shifted from the jurisdictions directly onto the voters themselves. What I mean is that previously jurisdictions subject to preclearance had to submit their proposed changes for DOJ approval, a simple process that approved the vast majority of changes but caught some of the most egregious attempts at voter suppression. Now, there is no line of defense between jurisdictions and voters and so when a discriminatory or suppressive practice is implemented, voters themselves have to sue to block a change. This is the situation we are now in at NARF. It is enormously burdensome for voters, their lawyers and for the public at large. In an average voting case, we expend thousands of attorney hours over a period of years, and usually over \$1 million to stop a discriminatory voting change. The citizens of the jurisdiction end

up paying for this folly with their tax dollars. Notably – and I can't stress this point enough – the voters in Indian voting cases are almost always right, and almost always win. There have been approximately 94 voting cases about Indian voting rights and the Indians have prevailed in 87 of those – for a 92.5 percent success rate. What does that tell us? That the discrimination is real and it is ongoing. And that the voters are bearing heavier burdens than ever just to protect the basic right to vote.

Second, the loss of preclearance means that previously covered jurisdictions freely implemented discriminatory changes as soon as they could. Take for example Arizona. While preclearance was in effect, the State submitted HB 2023, commonly called the Ballot Harvesting law, that makes it a felony to possess anyone else's early ballot, whether voted or not. This was subject to a lot of controversy from the start, and the Department of Justice made a "more information request" or MIR that usually signaled to a jurisdiction that the change might not be approved. It was withdrawn. This is exactly how preclearance worked, and exactly how it is supposed to work. Rights after the *Shelby County* decision, Arizona immediately implemented this controversial change and we heard testimony described in detail the negative impact it would have on Native voters in particular. Outside of Pima and Maricopa counties, only 18 percent of Native Americans have home mail delivery. They rely on post office boxes that are often very far from their homes so families commonly "pool" their mail, meaning one person who is going to town would collect it for everyone else to drop it off at the post office. If that mail contained early ballots, that good neighbor helping you with your mail would suddenly be a felon. Years after this case began, it remains unresolved.

Also in formerly covered Arizona, in the first election conducted after the *Shelby County* case, Maricopa County took the astounding step of removing many of their polling locations from hundreds down to about 60 in March of 2016. The result was lines of four to six hours according to testimony we heard in the Arizona field hearing. This change would clearly have a negative impact on voters and thus never would have been approved under preclearance. Without that protection, the jurisdiction went ahead with these drastic changes and voters had to sue to get those polling locations back.

Why do these voters have to sue to not wait in a 4-6 hour line, have to sue to have a neighbor pick up or bring their sealed ballot to the post office for them? Because preclearance is gone. And when these actions are inevitably found to violate the law the economic burden falls on the voters to compensate for all the expense

that had to be taken to prove the very obvious point that waiting 4-6 hours for a polling location is wrong. It's the taxpayers who are forced to pay for officials making these poor decisions.

Finally, I want to speak briefly to the fact that there are bad actors everywhere. Let me give you just one example from California. During the field hearings, NARF heard testimony that on a reservation in northern California, some voters were told they could not register to vote if they lived in a mobile home because it was "not a permanent residence." These kind of obviously discriminatory practices can and do pop up in unlikely places. With respect to another jurisdiction not previously covered, I probably do not need to go into detail about the well-publicized situation in North Dakota, where the state legislature passed a voter photo ID law requiring a street address that was felt very heavily on reservations Indians who have no street addresses, only P.O. boxes. Several individual Indians sued and won an injunction for the 2016 election and the legislature then promptly moved the ball for the 2018 election and passed a new law to try and get around the court's decision. This case is ongoing today.

While jurisdictions previously covered by Section 5 may have earned extra special attention, there are certain practices that should be prohibited everywhere. I am referring to what is called the "known practices" section of the VRAA but also to the list of prohibited practices in the Native American Voting Rights Act. These kinds of suppressive tactics can and should be prohibited nationwide.

NARF will be submitting the full report on its field hearings and the conclusions therefrom in conjunction with this testimony. I am happy to answer any questions you may have.