



**Written Statement of Jacqueline De León  
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Before the House Committee on the Judiciary, Subcommittee on the Constitution, Civil  
Rights, and Civil Liberties  
United States House of Representatives  
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Thank you Chairman Cohen and Ranking Member Johnson, and Members of the Subcommittee, for having me testify today. My name is Jacqueline De León, I am a member of the Isleta Pueblo, and I am a staff attorney with the Native American Rights Fund (“NARF”). Thank you for having me testify on the state of Native American voting rights and the pressing need for federal action to fully restore the Voting Rights Act.

Since 1970, NARF has provided legal assistance to Indian tribes, organizations, and individuals nationwide who might otherwise have gone without adequate representation. NARF has successfully asserted and defended the most important rights of Indians and tribes in hundreds of major cases, and has achieved significant results in such critical areas as tribal sovereignty, treaty rights, natural resource protection, Indian education, and voting rights. NARF is a non-profit 501(c)(3) organization that focuses on applying existing laws and treaties to guarantee that national and state governments live up to their legal obligations.

NARF is headquartered in Boulder, Colorado, with branch offices in Washington, D.C., and Anchorage, Alaska. NARF is governed by a volunteer board of directors composed of thirteen Native Americans from different tribes throughout the country with a variety of expertise in Indian matters. A staff of seventeen staff attorneys handles over fifty major cases at any given time, with most of the cases taking several years to resolve. Cases are accepted on the basis of their breadth and potential importance in setting precedents and establishing important principles of Indian law. Voting rights cases fall under NARF’s priority area of promoting Native American human rights. Unfortunately, there remains much work to be done.

***Background***

Throughout history, States have actively resisted Native American participation in American democracy. For example, even after the passage of the Fifteenth Amendment, Minnesota’s Constitution prohibited Indians from voting unless they “adopted the language, customs and habits of civilization.”<sup>1</sup> South Dakota passed a law in 1903 that prevented Indians

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<sup>1</sup> Minn. Const., art. VII, § 1(4) (1858).

from voting while “maintaining tribal relations.”<sup>2</sup> In North Dakota, the State Supreme Court in 1920 granted only those Indians who had assimilated the right to vote because they “live the same as white people . . . [and requiring] that they have severed their tribal relations.”<sup>3</sup> In 1928, the Arizona Supreme Court held that Indians, despite being United States citizens, were excluded from registering to vote because they were wards of the federal government.<sup>4</sup> That decision equated Native Americans with incompetents and stood for twenty years.

Like African Americans, Native Americans who were fluent only in their Native languages but unable to read or write in English because they were denied equal educational opportunities, were disenfranchised by literacy tests designed to keep them from voting. An Arizona statute stipulated that only individuals who could read the U.S. Constitution in English could vote.<sup>5</sup> When Alaska became a state in 1959, the state’s new constitution required that a voter “shall be able to read or speak the English language as prescribed by law.”<sup>6</sup>

Whether through state constitutional provisions, residency requirements, requirements to abandon tribal culture, taxation, guardianship, or literacy tests, states and local jurisdictions with substantial Native populations have, like states in the South in the Jim Crow era, been quite creative in crafting various stratagems and legal devices that denied the right to vote to Native Americans. It was not until the passage of the Voting Rights Act (“VRA”) that Native Americans were promised full legal access to the franchise. That promise has not been realized for Native Americans, preventing them from securing equal access to federal and state elections.

Today, many Native American reservations are located in extremely rural areas, distant from the nearest off-reservation border town. This was by design, official government policies forcibly removed Native Americans and segregated them onto the most remote and undesirable land. As a result of these policies, travel to county seats for voting services can be an astounding hundreds of miles away. Services such as DMVs and post offices can also require hours of travel. As detailed extensively below, the impacts of discrimination are not only in the past. Due to ongoing discrimination and governmental neglect, many Native Americans live in overcrowded homes that do not have addresses, do not receive mail, and are located on dirt roads that become impassable with inclement weather. Lack of broadband internet, cell phone coverage, or the economic means for transportation to in-person assistance means there are Native Americans that cannot access basic government services.<sup>7</sup>

Too often, these vulnerabilities are exploited by state laws and county rules that undermine the ability for Native Americans to cast their ballot. As a result, voting in Native communities is difficult and can even be impossible. This exploitation of vulnerabilities can be intentional and the

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<sup>2</sup> S.D. Codified Laws § 26 (1903).

<sup>3</sup> *Swift v. Leach*, 178 N.W. 437 (N.D. 1920).

<sup>4</sup> *Porter v. Hall*, 271 P. 411, 417 (1928), *overruled in part by Harrison v. Laveen*, 196 P.2d 456 (1948).

<sup>5</sup> Ariz. Rev. Stat. Ann. § 16-101(A)(4)–(5) (1956).

<sup>6</sup> Alaska Const. art. V, § 1 (1959).

<sup>7</sup> A summary of these barriers is provided in testimony I previously submitted on February 22, 2020, in support of the Native American Voting Rights Act before the House Committee on Administration Subcommittee on Elections, available here: <https://www.congress.gov/116/meeting/house/110464/witnesses/HHRG-116-HA08-Wstate-DeLeonJ-20200211-U1.pdf>.

result of overt racist discrimination. Federal action is needed to protect Native Americans from this abuse. A fully functioning and restored Voting Rights Act would provide relief.

### ***Field Hearings***

To better understand the barriers preventing Native American access to the ballot, in 2015, NARF began the Native American Voting Rights Coalition, or NAVRC, a coalition of national and regional grassroots organizations, academics, and attorneys advocating for the equal access of Native Americans to the political process. It was founded to facilitate collaboration between its members on coordinated approaches to the many barriers that Native Americans face in registering to vote, casting their ballot, and having an equal voice in elections. Led by NARF, in April 2018 the NAVRC completed a series of nine field hearings in seven states on the state of voting rights in Indian Country. I, along with my colleague, NARF's pro bono counsel, Dr. James Tucker, had the honor of attending all of these hearings. We heard from approximately 125 witnesses from dozens of tribes in the Continental United States generated thousands of pages of transcripts with their testimony about the progress of the Native Americans in non-tribal elections, and the work that remains to be done.

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. 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. Coalition members also were familiar with Alaska's barriers after several years of voting rights litigation there.

Witnesses included tribal leaders, community organizers, academics, politicians, and Native voters. They shared their experiences in voter registration and voting in federal, state, and local (non-tribal) elections. I am humbled to be carrying their stories with me here today.

The testimony provided consistent evidence that across this country Native Americans are faced with unjust barriers that prevent them from having equal access to the ballot box. We were able to identify common factors discouraging political participation, including: (1) geographical isolation; (2) physical and natural barriers; (3) poorly maintained or non-existent roads; (4) distance and limited hours of government offices; (5) technological barriers and the digital divide; (6) low levels of educational attainment; (7) depressed socio-economic conditions; (8) homelessness and housing insecurity; (9) non-traditional mailing addresses such as post office boxes; (10) lack of funding for elections; (11) and overt and intentional racial discrimination against Native Americans. In addition to this daunting list of factors, language is "one of the closing gaps in the election process" for Native American voters. Under the 2011 determinations of jurisdictions that required language assistance, Native American languages were the second most common language group after Spanish. Section 203 language assistance protections were

required in 33 political subdivisions in five states. This rose to 35 jurisdictions in nine states in the 2016 determinations.

These barriers are extensively documented in a report that I co-authored with Dr. Tucker and Professor Daniel McCool, released in June of 2020, *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters*.<sup>8</sup> We are updating that report with the litigation brought in the 2020 election cycle and the outcome of the 2021 legislative sessions in states with significant Native populations. We will provide this subcommittee with the updated report as soon as it is completed.

### ***Litigation***

Besides leading the NAVRC, NARF has also successfully brought a number of seminal Native American voting rights cases in the last four years, including challenges to North Dakota's voter ID law,<sup>9</sup> a challenge to Montana's ballot collection ban,<sup>10</sup> a challenge to Alaska's witness signature requirement during a pandemic,<sup>11</sup> and a 2020 lawsuit challenging a county in Montana's refusal to open an in person polling location on the Blackfeet reservation.<sup>12</sup>

It is worth pausing to reflect on the egregious facts underlying the refusal to provide a polling place in Pondera County, Montana this past election. In Montana, in response to the global pandemic, county officials were given the option of conducting their elections by mail. Yet, Pondera County chose to maintain its in-person polling location at their county seat ensuring access for the over 90 percent white residents. Blackfeet tribal members requested in-person access as well. After all, the homes on the Blackfeet reservation do not receive residential mail delivery and so Native Americans are forced to travel to their rural post office a significant distance away that is only open limited hours to get their mail and ballots. County officials refused, instead insisting that Blackfeet tribal members travel 120 miles round trip to the county office in Conrad, Montana to vote. NARF was forced to bring a suit on behalf of the Blackfeet in federal court alleging violations of the Constitution and VRA. Only after suit was filed did Pondera County agree to provide on-reservation access.

This recent successful litigation aligns with the longstanding trend of successful outcomes in Native American voting rights cases. Relying upon the Fourteenth and Fifteenth Amendments, and various sections of the VRA, Native American voters have filed nearly a hundred lawsuits in an effort to gain equal access to election procedures and to have an equal opportunity to elect candidates of their choice. Prior to the last election cycle, out of the known 94 Native American voting rights cases there have been victories or successful settlements in 86 cases, and partial

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<sup>8</sup> Dr. James Thomas Tucker, Jacqueline De León, Dr. Daniel McCool, *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters*, Native American Rights Fund (2020), available at [https://vote.narf.org/wp-content/uploads/2020/06/obstacles\\_at\\_every\\_turn.pdf](https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf).

<sup>9</sup> *Brakebill v. Jaeger*, No. 1:16-CV008, 2016 WL 7118548, at \*1 (D.N.D. Aug. 1, 2016); *Spirit Lake Tribe v. Jaeger*, No. 1:18-cv00222 (D.N.D.) (Complaint filed Oct. 30, 2018).

<sup>10</sup> *W. Native Voice v. Stapleton*, DV-2020-377 (Mont. Dist. Ct. Sept. 25, 2020).

<sup>11</sup> *Arctic Village Council et al vs. Meyer, Kevin, et al*, DRC 3AN-20-7858CI (Alaska Super. Ct., October 5, 2020).

<sup>12</sup> *Blackfeet Nation v. Pondera Cty.*, 4:20-cv-00095-DLC (D. Mont. Oct. 14, 2020), ECF No. 9-1.

victories in two cases. That is a success rate of over 90 percent.<sup>13</sup> These cases have been litigated in front of judges appointed by Republican and Democratic Presidents, and yet the overwhelming factual patterns established in Native American voting rights cases compel relief. In short, the facts are so bad we nearly always win.

Despite widespread voter suppression and discrimination in Indian Country, we do not have the resources to bring every case. Litigation is costly and time consuming, and voters are often disenfranchised while litigation is pending. For example, the effort and resources necessary to mount a legal challenge to North Dakota's voter ID law were significant. In North Dakota, the state required addresses with IDs on them despite knowing that Native Americans throughout North Dakota lacked addresses on their homes.<sup>14</sup> This led to widespread disenfranchisement of Native Americans. This discrimination was deeply felt. As our Plaintiff, United States veteran Elvis Norquay, explained in his testimony before the House Administration Subcommittee on Elections last year, "[i]n November of 2014 I went to the KC hall to vote but was turned away. I voted many times for years before being turned away. I was always happy to go vote. Being turned away brought me down."<sup>15</sup>

Following a violation of the 14th amendment in which the federal judge held "it is clear that a safety net is needed for those voters who simply cannot obtain a qualifying ID with reasonable effort,"<sup>16</sup> the total sought for Plaintiffs' attorneys' fees and litigation expenses was \$1,132,459.41. This sum represents \$832,977 in attorneys' fees and \$299,482.41 in litigation expenses, including expert reports. Thousands of attorney hours over almost two years were expended in order to build a legal record and respond to numerous motions filed by the State in defense of the law. After the successful outcome in that case, the North Dakota legislature *again* enacted a voter ID law that had the same disenfranchising effects. NARF was again forced to bring litigation. Eventually, NARF waived its attorney fee motion for the second half of the case in order to help secure a successful settlement.

This whack-a-mole pattern of repeated violations of Native American voting rights is common across Indian Country. For example, numerous lawsuits alleging voting rights violations have been filed in South Dakota, including the only Section 2 case brought on behalf of plaintiffs under the US Department of Justice during the Trump administration.<sup>17</sup> In Montana, repeated

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<sup>13</sup> *Obstacles*, at 39.

<sup>14</sup> On April 16, 2019 I testified before the House Administration Subcommittee on Elections as to the details of North Dakota's voter ID law, available at:

[https://cha.house.gov/sites/democrats.cha.house.gov/files/documents/Jacqueline\\_De\\_Leon\\_Testimony.pdf](https://cha.house.gov/sites/democrats.cha.house.gov/files/documents/Jacqueline_De_Leon_Testimony.pdf).

<sup>15</sup> February 22, 2020 Testimony of Elvis Norquay, House Administration Subcommittee on Elections, available at: [HHRG-116-HA08-Wstate-NorquayE-20200211-U1.pdf \(congress.gov\)](https://www.congress.gov/records/hrgs/116-116-HA08-Wstate-NorquayE-20200211-U1.pdf).

<sup>16</sup> *Brakebill v. Jaeger*, No. 1:16-cv-008, 2016 WL 7118548 at 10 (D.N.D. Aug. 1, 2016) (order granting preliminary injunction).

<sup>17</sup> See Settlement Agreement, *Janis v. Nelson*, Civ. 5:09-cv-05019-KES-LLP-RLW(D.S.D. May 25, 2010), ECF No. 143 (remedying compliance issues with HAVA); *Brooks v. Gant*, No. Civ-12-5003-KES, 2012 WL 871262 (D.S.D. Mar. 14, 2012) (settlement for closer early voting locations); *Poor Bear v. Jackson*, 2015 WL 1969760 (settlement for a satellite office on the reservation); Consent Decree, *United States v. Chamberlain Sch. Dist.*, Civ. Action No. 4:20-cv-4084 (D.S.D. June 18, 2020), ECF No. 4 (consent decree settling at-large method of election for the school board in district with substantial Native population); Compl., *Rosebud Sioux Tribe v. Barnett*, Case No. 20-cv-5058 (Sept. 16, 2020) (2020 complaint alleging violations of the National Voter Registration Act).

successful litigation has challenged the disenfranchisement of Native Americans.<sup>18</sup> In Utah, San Juan County has had near constant, successful, voting rights litigation brought against it since the United States first brought suit on behalf of the Navajo in 1983.<sup>19</sup>

The suspension of Section 5 of the Voting Rights Act following the invalidation of the coverage formula in *Shelby County, Ala. v. Holder*,<sup>20</sup> negatively impacted Indian Country. Arizona and Alaska, both with substantial Native American and Alaska Native populations, were previously covered under Section 5, which meant protection for Native voters.

For example, in 2008, Alaska attempted to eliminate polling locations in the Alaska Native communities of Tatitlek, Pedro Bay, and Levelock and force Native voters to travel to predominately white communities to cast their ballots. These non-Native communities were not only a significant distance away, but were also only available by boat or plane. Because Alaska was forced to submit its proposal for review under Section 5, the DOJ responded with several detailed More Information Requests (MIR) about the impact on Native American voters. In response, Alaska withdrew its discriminatory proposals.<sup>21</sup>

In Arizona, the loss of Section 5 resulted in disenfranchisement of Native Americans. When Section 5 was still in effect in 2011, Arizona attempted to preclear restrictive ballot collection regulations. Bans on ballot collection, also disparagingly referred to as “ballot harvesting”, can disproportionately and severely impact Native communities. Because of high poverty rates, lack of access to transportation, and lack of mail delivery, Native Americans often pick up and drop off mail for each other.

For example, last year, NARF and the ACLU challenged Montana’s ballot collection ban, which was found unconstitutional under the Montana Constitution.<sup>22</sup> In Montana, four out of the five Native Nations that brought suit do not have residential mail service. The court found it compelling that poverty, lack of working vehicles, car insurance, and money for gas mean that tribal members often pick up and drop off mail, including ballots, for neighbors, friends, and acquaintances. Native people pool resources because, as the Chairwoman of the Confederate

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<sup>18</sup> *Wandering Medicine v. McCulloch*, No. 1:12-cv-135 (D. Mont. Oct. 10, 2012) (defendants agreed to establish satellite offices on reservations); Consent Decree, *Jackson v. Bd. of Trs. of Wolf Point*, No. 4:13-cv-00065-BMM, (D. Mont. Apr. 9, 2014), ECF No. 70 (permanent injunction barring a -75.24% deviation from ideal population size in school board race); *W. Native Voice v. Stapleton*, DV 2020-377, slip op. (ballot collection ban declared unconstitutional); *Blackfeet Nation v. Pondera Cty.*, 4:20-cv-00095-DLC (D. Mont. Oct. 14, 2020), ECF No. 34 9-1 (county agreed to open satellite election offices and ballot drop boxes).

<sup>19</sup> Consent Decree, *United States v. San Juan Cty.*, No. 2:12-cv-00039-RJS (D. Utah Nov. 9, 2015), ECF No. 261-1; *Navajo Nation v. San Juan Cty.*, 929 F.3d 1270, 1274 (10th Cir. 2019) (affirming the District Court’s resolution of vote-dilution case filed in 2011); *Grayeyes v. Cox*, No. 4:18-CV-00041, 2018 WL 3830073, at \*9 (D. Utah Aug. 9, 2018) (injunctive relief granted for likely violation of candidates due process rights); Order re Stip. Settlement, *Navajo Nation Human Rights Comm’n v. San Juan Cty.*, No. 2:16-cv00154-JNP, (D. Utah Feb. 22, 2018), ECF No. 199 (county agreed to maintain polling places and provide language assistance).

<sup>20</sup> 570 U.S. 529 (2013).

<sup>21</sup> Brief for the Alaska Federation of Natives, Alaska Native Voters and Tribes as Amicus Curiae, p. 35, *Shelby County v. Holder*, 570 U.S. 529 (2013), available at: [https://narf.org/bloglinks/shelby\\_county\\_brief.pdf](https://narf.org/bloglinks/shelby_county_brief.pdf).

<sup>22</sup> *W. Native Voice v. Stapleton*, DV 2020-377, slip op.

Salish and Kootenai Tribes testified, “[s]ometimes we have to make choices between buying a tank of gas, or you know, buying food for our family.”<sup>23</sup>

Likewise, in Arizona, Native Americans lack residential addresses, are disproportionately poor, lack access to vehicles, and depend on each other to pick up and drop off mail. Therefore, after the Arizona Attorney General had submitted its voting revisions, S.B. 1412, to the DOJ for preclearance, the DOJ precleared most of the bill, except the provisions regulating third party ballot collection. After the DOJ issued a MIR to determine if the ballot collection ban was discriminatory on the basis of race, Arizona withdrew its request. Following *Shelby*, however, Arizona again attempted to pass stringent ballot collection regulations and eventually succeeded in H.B. 2023.<sup>24</sup> Because preclearance was not available to stop H.B. 2023’s implementation, advocates were forced to litigate the law. The 9th Circuit determined H.B. 2023 was intentionally discriminatory and violates the 15th Amendment and Section 2 of the Voting Rights Act.<sup>25</sup> That case is currently on appeal to the United States Supreme Court, with oral arguments completed on March 2, 2021.

When enforceable, Section 5 protects Native voters from discriminatory laws and reduces the costs of repeated litigation. Section 5 remains a viable provision of the Voting Rights Act. The Supreme Court expressly issued “no holding on §5 itself, only on the coverage formula.”<sup>26</sup> Given the pervasive need in Indian Country, I urge this committee to take up the Court’s invitation to “draft another formula based on current conditions”<sup>27</sup> so that Section 5 can come back into effect, fully restoring the VRA.

### ***Current Proposed Legislation***

The need for federal action is urgent and compelling. This year, legislators in states across the country have targeted vulnerable Native American voters. NARF is monitoring bills introduced in states with sizeable Native American populations. In just 14 states – Alaska, Arizona, California, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Washington, and Wisconsin – legislators have introduced over 100 bills that either will disenfranchise Native American voters altogether or will make it more difficult for them to vote.<sup>28</sup>

Some of these bills contain stringent voter identification provisions, restrict ballot collection, remove drop boxes, remove in-person polling locations, purge voters, eliminate same-day registration, and deny registration because of previous convictions. Native Americans already do not have enough access to residential mail delivery, fully functional roads, and must travel unreasonable distances to their polling locations or DMVs. As a result, they are disproportionately disenfranchised by these burdensome laws.

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<sup>23</sup> *Id.* at 15.

<sup>24</sup> *Democratic Nat’l Comm. v. Hobbs*, 948 F.3d 989, 1008–09 (9th Cir.), *cert. granted sub nom. Arizona Republican Party v. Democratic Nat’l Comm.*, 141 S. Ct. 221, 207 L. Ed. 2d 1165 (2020), and *cert. granted sub nom. Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 222, 207 L. Ed. 2d 1165 (2020).

<sup>25</sup> *Id.* at 1046.

<sup>26</sup> *Shelby Cty., Ala. v. Holder*, 570 U.S. at 557.

<sup>27</sup> *Id.*

<sup>28</sup> State Voting Bills Tracker 2021, Brennan Center for Justice, available at: <https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021>.

Legislators in Arizona, which, again, previously had to preclear its voting laws with the Department of Justice under Section 5, have taken full advantage of the suspension of Section 5 to the detriment of Native American voters. Even after hearing ample testimony that the legislation will impede Native voters' access to the franchise, Arizona continues to advance a greater number of destructive bills than nearly every other state. At least twenty-seven proposed bills out of Arizona would make it more difficult for Native Americans to vote.<sup>29</sup> A fully functioning Voting Rights Act would force objective review of these laws before they are able to take effect. Instead, NARF is preparing for costly and time consuming litigation.

### ***Overt Racial Discrimination***

Finally, in case there is any doubt that Native Americans face overt discrimination on the basis of race, NARF has collected extensive evidence of the racism faced by Native voters. Native Americans continue to experience overt discrimination in their everyday lives and when they attempt to vote.

This past election, the weekend before Election Day, a man visited several bars in Glasgow, roughly ten miles from the Fort Peck Reservation's Western border, in full KKK attire. None of the other bar patrons were phased, and many even supported him. Indeed, the "costume" was the winner at a local Halloween costume contest.<sup>30</sup> Though mostly associated with the Deep South, the KKK has been prominent since at least the 1920s in Glasgow, Plentywood, and Bainville—all locations that border the Reservation. A primary goal of the KKK in Glasgow was to undermine Native voting rights.<sup>31</sup> As the General Counsel to the Fort Peck Tribes relayed to me following the incident, "[t]his is why satellite voting sites are so important for our tribal members. Not everyone is comfortable going into places in Glasgow, and not everyone in Glasgow is going to make our tribal members feel welcome."

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<sup>29</sup> Arizona: HB 2358 (purges eligible voters if they change their address); HB 2369 (requires mail ballots to be notarized); HB 2370 (repeal of permanent early voting list); HB 2373 (identifiers required for voter registration groups); HB 2560 (removal of permanent early voting list); HB 2569 (prohibition on private funding for elections); HB 2701 (bans vote by mail and limits ids); HB 2720 (allows the legislature to overturn the results of a presidential election); HB 2722 (limits polling places); HB 2792 (request required for early ballots); HB 2793 (request required for voter registration); HB 2794 (modifications prohibited to election deadlines); HB 2798 (requires early voters to send back signature cards); HB 2799 (voter registration roll purge); HB 2800 (granting the legislature plenary authority over elections); HB 2811 (prohibition on same day registration); HB 2826 (allows legislature to certify election results before transmitting to the secretary of state); HB 2875 (requires permanent early voters to reconfirm that they want a ballot before every election); SB 1003 (shortens window to cure ballot due to missing signature); SB 1069 (makes the permanent early voting list non-permanent); SB 1106 (creates new ways to remove eligible voters from the rolls and new criminal penalties for unsuspecting voters); SB 1358 (prevents county from conducting registration drive on nongovernment property); SB 1485 (purges voters from permanent early voting list for failing to vote); SB 1503 (requires all ballots mailed to voters to be hand-delivered to designated sites/drop boxes); SB 1593 (shortens the early voting period and discards ballots not postmarked 5 days before the election); SB 1678 (eliminate permanent absentee voting); and SB 1713 (requires additional information to vote).

<sup>30</sup> <https://www.greatfallstribune.com/story/news/2020/11/02/montana-r-man-kkk-costume-reportedly-wins-glasgow-bar-contest/6130962002/>.

<sup>31</sup> "Official Circular" (6 December 1924), Ku Klux Klan collection, MS 131, Box 2, Folder 163 Eastern Washington State Historical Society, Spokane, Washington, available at: <https://www.northwestmuseum.org/collections/research-archives/>



In Arizona, racial tensions are so fraught between the Kaibab Band of Paiute Indians and the border town that the pipes sending water to the reservation are regularly blocked by border town residents.<sup>32</sup> In Utah, a Field Hearing witness' Native grandson attempted to play baseball and was accosted by a non-Native woman who "started screaming at him, 'Who in the hell do you think you are? You think you're that good? You damn welfare people are starting to take over.'"<sup>33</sup>

These racist attitudes do not stop at residents. Voting officials also discriminate against Native Americans. For example, the registration offices and polling places that primarily service Native American communities can be hostile. All of these incidents took place within the last 10 years:

- In South Dakota, Native American voters were forced to vote in a repurposed chicken coop with no bathroom facilities and feathers on the floor.<sup>34</sup>
- In Wisconsin Native American voters were forced to vote where a sheriff's office was located.<sup>35</sup>
- In South Dakota, Native American voters were forced to walk past a sheriff who kept his hand on his gun while standing in the entrance to the only polling place on a reservation (see image).

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<sup>32</sup> *Obstacles*, at 108.

<sup>33</sup> *Obstacles*, at 44.

<sup>34</sup> *Obstacles*, at 87 (quoting Donita Loudner's testimony, "You go take them in there to vote, and it was a chicken coop. It was an old chicken coop. It still had dirt on the floor. You go in there, and it had enough for one desk. And you had three people sitting around there, and you could barely come in. There was no place to vote. You had to take it outside to vote. You could see the -- where the chickens used to lay: You know, those little boxes. They would still have those around outside. And no bathroom facilities. . . So I went in front of the county commission in Hughes County, our county seat or our county capital. And I got on the agenda, and I asked them, 'Whatever happened with, you know, these funds that they set down for us? You guys got a chicken coop.'")

<sup>35</sup> *Obstacles*, at 45.



*In South Dakota, a law enforcement officer inside the entry of a polling place on the Pine Ridge satellite voting office during the 2014 election. Photo by Donna Semans, Four Directions.*

- In South Dakota, the approximately 1,500 Crow Creek Reservation residents comprise about 90 percent of Buffalo County’s population. Nevertheless, to register to vote or run for office, tribal members have to drive 40 miles round trip to Gann Valley, which has a population of about 12, all non-Natives. While Gann Valley’s 12 residents had full voting access, Buffalo County’s Auditor/Register of Deeds refused to provide an on-reservation early polling site to service the Crow Creek Reservation’s substantially larger population, even after Help America Vote Act (“HAVA”) funding was secured to cover the full cost of the voting site.<sup>36</sup>

And, too often, modern day experiences echo past instances of discrimination. In 1986, in a VRA and Constitutional case having to do with an unfair at-large voting system in Montana the court also uncovered evidence that voter registration was intentionally withheld from Native voters. The Court recounted how “an Indian testified that he was given only a few voter registration cards and when he asked for more was told that the county was running low. Having driven a long way to get the cards, he asked his wife, who is white, to go into the county building and request some cards. She did and was given about 50 more cards than he was.”<sup>37</sup> We heard remarkably similar testimony at the September 5, 2017 Field Hearing. A Native community activist from

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<sup>36</sup> *Obstacles*, at fn. 270.

<sup>37</sup> *Windy Boy v. Big Horn Cty.*, 647 F. Supp. 1002, 1008 (D. Mont. 1986).

Montana testified how when she went to return voter registration cards the clerk would complain and hassle her for the number of voter registration cards returned. There was no law, but the clerk stated that only 70 registration cards could be returned at one time and in 2016 dropped that number to 40.<sup>38</sup>

In Utah, in 2018, the San Juan County clerk committed fraud in an attempt to kick the Native American candidate off of the ballot. The District Court reinstated the Native candidate to the ballot and found the clerk likely violated the Native candidate's constitutional rights.<sup>39</sup> Yet, no charges were brought against the clerk. Even more frustratingly, this deception echoes a 1972 case of discrimination in the very same county where a clerk misled two Navajo candidates about filing deadlines in order to undermine their candidacy. The Federal Courts were forced to order those candidates back on the ballot as well.<sup>40</sup>

It is no surprise that experiences like these have provoked a widespread distrust of the state and federal government by Native Americans. In the fall of 2016 and spring of 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.<sup>41</sup> 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.<sup>42</sup> Trust of local government in South Dakota was notably bad with only 5.02% of respondents indicating they most trusted the local government, which is especially significant considering it is the local governments that are most often responsible for the administration of elections.

Today, I place my trust in the federal government, and in this Committee, to provide the protections Native Americans need and deserve so they may vote safely and free from racist discrimination. I urge this committee to do the necessary work of investigating and recording these injustices and to craft a coverage formula that restores the Voting Rights Act.

Thank you for inviting me here today. I am prepared to answer any questions.

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<sup>38</sup> *Obstacles*, at 80.

<sup>39</sup> *Grayeyes v. Cox*, No. 4:18-CV-00041, 2018 WL 3830073, at \*9 (D. Utah Aug. 9, 2018).

<sup>40</sup> *Yanito v. Barber*, 348 F. Supp. 587, 593 (D. Utah 1972).