



Four Directions

Advancing equality at the
ballot box across Indian Country
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Written Testimony by

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Madam Chairwoman Fudge and members of the subcommittee; thank you for inviting me to speak with you today regarding barriers to voting for Native Americans, especially the lack of equal access for Native Americans to satellite in-person voter registration, in-person early voting, and in-person election day voting opportunities in the Dakotas and elsewhere, and what we believe is a common sense, low cost, achievable solution for the Congress to consider.

My name is Oliver Semans, Sr. and my wife Barb and I are the Co-Executive Directors of Four Directions, Inc., a nonprofit organized to benefit the social welfare of Native American citizens by conducting extraordinarily successful Native voter registration and get-out-the-vote drives, voter protection programs, and improved Native voter access through litigation, litigation threats, and persuasion with local and state government officials in Nevada, Arizona, North Carolina,

Montana, Minnesota, North Dakota, and South Dakota over the past 16 years.

We have been able to leverage partnerships with Tribes and Tribal organizations including the Coalition of Large Tribes, Inter-Tribal Council of Nevada, Great Plains Tribal Chairman's Association, Rocky Mountain Tribal Leaders Council (formerly known as the Montana Wyoming Tribal Leaders Council) and the National Congress of American Indians, Universities, top Law Firms, and Civil Rights groups such as ACLU, the Lawyers Committee on Civil Rights Under Law, Indian Legal Clinic at Arizona State University, and the Native American Rights Fund to achieve our goals and to move toward equality of access to the ballot box for Native American voters.

The principle of an equal opportunity to vote, for all of our citizens, is the backbone of our democracy, and it has a cost. Native American Indians and veterans understand this only too well. Many of us have paid the price in full. The cost is not just in the amount of dollars and cents that some public officials reference while opposing equal access – even when we have offered to cover all the costs of satellite offices on American Indian Reservations, but the ultimate cost paid by members of the armed forces—for some, that cost includes their lives, and for others, it involves lifelong pain and disability.

We worked with the lead plaintiff in *Wandering Medicine vs McCulloch*, Mark Wandering Medicine, who was severely wounded while serving with the United States Marines in Vietnam. His son, a Marine serving in a tank division, was one of the first Americans to enter Iraq. We worked with the plaintiffs in *Sanchez vs Cegavske*, Ralph Burns, Jimmie James, and Johnny Williams, Jr, all veterans of our Nation's overseas conflicts in Korea and Vietnam. We have paid these costs for a long time, while serving with distinction in this country's armed forces in a higher proportion than

any other population group. During World War I, Choctaw Indians served as codetalkers in the U.S. Army. World War II's codetalkers came from the Navajo, Cherokee, Choctaw, Lakota, Meskwaki and Comanche nations. More Natives fought on the front lines. More recently, American Indians and Alaska Natives have died in Afghanistan and Iraq, paying the price for equality. Among the fallen soldiers is Corporal Antonio C. Many Hides Burnside, a member of the Blackfeet Nation and citizen of Montana who was in the 82nd Airborne Division. He died on April 6, 2012 in Afghanistan. Other recent supreme sacrifices include Marine Corporal Brett Lundstrom, a member of the Oglala Sioux Tribe killed in Iraq in 2006. Army 101st Airborne Division Private First Class Sheldon R. Hawk Eagle, from the Cheyenne River Sioux Tribe, died in Iraq in 2003. We have worked to overcome the unequal access facing Native voters with voter registration drives, with get-out-the-vote drives, with teams of lawyers and law students to protect the vote at election day voting locations, with requests for satellite offices described above, with, when necessary, litigation for which we have often had to front out of the credit lines and credit cards of friends, and by engaging in the public square and in the media.

We have, working with Tribes, been able to achieve some measure of success, but the cost in monetary resources has been too high. The opponents of equality, on the other hand, hold public office, come from both major political parties, and are able to tap into taxpayer resources to oppose equal access for Native American voters living on Indian Reservations. It is, to put it bluntly, an unfair fight that Congress can and should correct.

Our simple solution for this egregious problem revolves around the Help America Vote Act (HAVA). Congress should urge the Election Assistance Commission to make clear to States that the funds added to HAVA in 2018 by Congress can be used to improve the

administration of federal elections, and therefore can be used to fund satellite voting offices on American Indian Reservations.

Congress should additionally appropriate and earmark funding in the 2020 fiscal year appropriations for improving federal elections on tribal lands. We have previously been successful in 2014, and to the present, in persuading the South Dakota Board of Elections in utilizing HAVA funds to pay for satellite voting offices on Indian Reservations in South Dakota.

My testimony today focuses on South Dakota, but we have found identical situations across Indian Country. We have helped litigate Voting Rights Lawsuits in South Dakota (twice), Montana, Nevada, and Arizona, and most recently, we were able to develop a work-around of the anti-Indian North Dakota voter ID law that the Eighth Circuit and the Supreme Court allowed to be implemented in the 2018 election.

Before turning to my discussion of challenges faced by Native voters, I wanted to quote a decision of the United States Supreme Court that we believe has stood the test of time these last 55 years:

“Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”

Reynolds v. Sims, 377 U.S. 533, 561-62 (1964)

Vote Denial in Indian Country

We have assisted in five voting rights lawsuits across Indian Country brought under Section 2 of the Voting Rights Act from 2012 to the

present. They are: 1) Brooks vs. Gant (Oglala Sioux, South Dakota); 2) Wandering Medicine vs. McCulloch (Northern Cheyenne, Gros Ventre, Assiniboine, Crow, Montana); 3) Poor Bear vs. Jackson County (Oglala Sioux, South Dakota); 4) Sanchez vs. Cegavske (Pyramid Lake Paiute, Walker River Paiute, Nevada); and 5) Navajo Nation et al vs. Arizona Secretary of State, Apache County, Navajo County, Coconino County (Navajo Nation, Arizona).

The Navajo Nation case is currently in litigation. All five cases that we (Four Directions) have been involved with revolve around the refusal of state and county public officials to provide satellite voting offices on American Indian Reservations in violation of Section 2 of the Voting Rights Act. These denials are properly described as vote denial claims (See Exhibit SG2 and SG4).

Sanchez vs. Cegavske Preliminary Injunction

Two-Factor Test

Federal District Court Judge Miranda Du stated in October, 2016: *“Courts evaluating a Section 2 claim generally go through a two-step analysis. First, the court determines whether the challenged voting practice imposes a disparate burden on the electoral opportunities of minority as compared to nonminority voters.*

Second, the court asks whether the burden works in tandem with historical, social, and political conditions to produce a discriminatory result.”

The Court further stated: *“In evaluating the first question, the Court must account for both the likelihood that minority voters will face a given burden and their relative ability to overcome the burden. In other words, the Court must acknowledge the reality that a burden*

that may be insignificant to one demographic may be great for another.”

Senate Factors

The Court further stated: “In evaluating the second question (of the two-part vote denial test), courts are guided by a non-exhaustive list of factors identified by the Senate Report on the 1982 amendments to the VRA. Many of these factors are relevant to cases involving vote dilution due to the drawing of district lines. A few are also relevant in a case like this, where the claim is based on impediments to casting a ballot in the first place. Here, the relevant Senate Factors for the Court to consider are:

[T]he extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.

[and]

whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.”

The Court further determined that a round-trip distance of 32 miles to access an Election day polling location on the Pyramid Lake Paiute Reservation and that a 64 mile round-trip distance to access an early voting location violated Section 2 and required Washoe County, Nevada to place both an early voting satellite and an Election day

polling location in Nixon, Nevada, the capitol of the Pyramid Lake Paiute Tribe.

Funding

It is important to note that the Court in Sanchez vs. Cegavske did not find that Tribes and tribal citizens are required to fund equal access to the ballot box by paying counties.

Unfortunately, Section 2 is not self-enforcing and we have found that Secretaries of State and local county officials (of both major political parties) do not believe that they have any obligation under Section 2 to provide equal access to in-person voter registration locations, in-person early voting locations, and in-person Election day polling places on American Indian Reservations. In fact, even when Four Directions has offered to cover all out-of-pocket costs, local and state authorities have still refused to provide equal access. Their excuses are expansive and too numerous to cite here. The Exhibits we have provided under Brooks vs. Gant, Wandering Medicine vs. McCulloch, Poor Bear vs. Jackson County, Sanchez vs. Cegavske, and Navajo Nation vs. Arizona Secretary of State et al show these barriers raised by state and local public officials.

Four Directions has, from time to time, been able to persuade some counties to accept contributions to provide for equal access by establishing satellite voting offices on American Indian Reservations. And sometime we have been able to convince counties to provide some access without contributions. We have successfully done so without litigation in: 1) Shannon County, South Dakota 2004, 2008, 2010 (albeit with a public dispute in 2010); 2) Todd County, South Dakota 2004, 2008, 2010, 2012, 2014, 2016, and 2018; 3) Buffalo County, South Dakota 2004, 2008, 2010, 2012; 4) Becker County, Mahnomen County, Beltrami County, Itaska County, and Cass County – all in Minnesota in 2014.

Too often, though, where we have been unable to find financial resources for counties, they simply refuse to establish satellite voting offices the next time around. It was the abject failure by Shannon and Fall River County, South Dakota to provide satellite voting offices on the Pine Ridge Indian Reservation for 2012 that led us to assist Oglala Sioux Tribal Members bring the Brooks vs. Gant litigation in 2012.

This same failure is shown in Minnesota in 2016 and 2018. When Four Directions did not offer funding, the Minnesota counties of Becker, Mahnomen, Beltrami, Itaska and Cass did not establish satellite voting offices on the White Earth Nation, Red Lake Nation, and Leech Lake Band of Ojibwa in either 2016 or 2018.

And I would be remiss not to highlight our partnership with the Standing Rock Sioux Tribe in pursuing HAVA funding for potential satellite voting offices on the southern portion of Standing Rock and in developing the Fail Safe workaround of the discriminatory North Dakota voter ID Law on the northern portion of Standing Rock (See Standing Rock Sioux Tribe Exhibits).

I would further point out that Standing Rock Chairman Faith made a written request of North Dakota Secretary of State Jaeger to establish early voting on Standing Rock – which was available in Fargo, Bismarck, Manda, Grand Forks, and Minot, North Dakota -on October 18, 2018 (See Exhibit SRST4). Secretary Jaeger declined the request. This declination is one more reason for Congress to act by providing HAVA funding for Indian Country.

Help America Vote Act Funding (HAVA)

Congress can act to ensure that equal access to the ballot box for Indian Country is established as a matter of fact –as opposed to the

matter of law which Section dictates but cannot enforce outside of expensive and protracted litigation.

First, Congress should make clear to the Election Assistance Commission and to Secretaries of State that the 2018 HAVA funding provided by Congress can be used for the improvement of federal elections as per Title II, Section 251 of HAVA (See Exhibit SD14, page 12). At least one state official, former Arizona Secretary of State, has wrongly claimed that the 2018 HAVA funding could not be used for establishing in-person voter registration and in-person early voting satellite offices on the Navajo Nation (See Exhibit NN1, page 20).

Second, Congress should appropriate additional HAVA funds for the upcoming 2020 fiscal year and earmark those funds for in-person equal access to the ballot box for Native voters living on tribal lands. We (Four Directions) have shown in *Brooks vs. Gant*, *Wandering Medicine vs. McCulloch*, *Sanchez vs. Cegavske*, and will show in *Navajo Nation vs. Arizona Secretary of State et al* that this work is inexpensive. We estimate that just \$20 million per election cycle in HAVA funding would likely provide the financial resources so that every state and local jurisdiction can meet the standards described by Judge Miranda Du in *Sanchez vs. Cegavske* regarding in person early voting and Election day polling locations and meet the likely similar standard for in-person voter registration locations.

We (Four Directions) believe that should Congress act to provide this small level of HAVA funding for Indian Country, it will do as much or more to increase equal access for Native voters than reversal of the wrongly decided Shelby County decision by the Roberts Court. Thank you again for inviting me to speak before the Committee today. We appreciate the opportunity to provide this information to Congress.