

**Testimony of Charles Walker,
Judicial Committee Chairman
Of the Standing Rock Sioux Tribe,
Before the Committee on House Administration,
Subcommittee on Elections.**

In Fort Yates, ND

April 16, 2019

Voting Rights and Election Administration in the Dakotas

Good morning Madam Chair and Committee Members. My name is Charles Walker and I serve as Chairman of the Judicial Committee of the Standing Rock Sioux Tribe. It is our pleasure to host you for this field hearing. Thank you for being here.

The Standing Rock Sioux Tribe is a federally recognized tribe located in both North and South Dakota. We have approximately 15,975 members, 8,367 of whom live on the Reservation. And of those living on the Reservation, roughly 5,868 are eighteen years or older.

The Standing Rock Sioux Tribe has strived for respectful relations with the state governments of North and South Dakota. However, tensions have been especially high in recent history. For example, North Dakota prosecuted hundreds of Dakota Access Pipeline protesters.¹ The last trial didn't finish until this February.² And the North Dakota Governor signed a bill on April 9 that will make it

¹ Blake Nicholson, *Dakota Access Criminal Cases Wrapping up in North Dakota*, AP NEWS (Feb. 6, 2019), <https://www.apnews.com/514723a4f3524009ab8923f2ed994c83>.

² *Id.*; Lisa Kaczke, *Pipeline Protest Bills Head to Noem with Senate, House Approval*, ARGUS LEADER (Mar. 7, 2019), <https://www.argusleader.com/story/news/politics/2019/03/07/keystone-xl-pipeline-protest-bills-pass-south-dakota-senate-house/3090014002/>.

harder to obtain public records regarding “critical infrastructure projects”—which is presumably targeted at further protecting pipeline construction projects.³ The South Dakota legislature also just passed a bill that could hold pipeline protesters liable for three times the cost of “extraordinary law enforcement costs,” presumably in preparation of protests over the pending Keystone XL Pipeline.⁴ The governor was the one who introduced the legislation, and it took only three days for both chambers of the state legislature to pass it. Even if the states claim that these laws were passed with a neutral lens, they suggest a heavy anti-Indian sentiment, especially regarding protests or other forms of political participation.

The state’s recent voter IDs laws carry a similar anti-Indian undertone. North Dakota has had voter ID laws in place since 2004, but for years the law still permitted individuals to vote if the poll worker could vouch for the identity of a qualified voter or the voter signed an affidavit swearing, under penalty of perjury, that he or she was qualified to vote.⁵ These exceptions were especially useful on the Standing Rock Reservation, where tribal members serve as poll workers and can vouch for almost every person within the community.

This all changed in 2013. Democrat Heidi Heitkamp won a Senate seat in 2012 by less than 3,000 votes, or roughly 1 percent of the state population.⁶ We believe Standing Rock votes had a large impact on that election, with Native American votes putting her over the top. In response, in 2013, the Legislature immediately imposed an ID requirement that required a residential address. Unfortunately, these

³ Will Parrish, *North Dakota Seeks to Restrict Access to Public Records After Standing Rock Reporting Exposed Law Enforcement Abuses*, THE INTERCEPT (Feb. 11, 2019), <https://theintercept.com/2019/02/11/north-dakota-public-records-pipeline-protest/>; S.B. 2209, 66th Leg. Assemb. (N.D. 2019).

⁴ S.B. 189, 94th Sess. (S.D. 2019).

⁵ *North Dakota Again Passes Discriminatory Voter ID Law*, NATIVE AMERICAN RIGHTS FUND (May 9, 2017), <https://www.narf.org/north-dakota-voter-id-law/>.

⁶ First Am. Compl. ¶ 146.

ID and residential address requirements severely impacted voters on the Standing Rock Reservation.

Many people on Standing Rock do not have an ID. It simply is not necessary for everyday life. Most people know each other and many people do not have a vehicle. And the truth is, an ID costs money that people simply do not have. The family poverty rate in Sioux County, North Dakota, alone is 35.9 percent.⁷ The nearest Driver's License Site is about 40 miles away – the average person is not going to travel that distance just to get an ID they do not need. And a tribal ID is still going to cost money. Typically, unless you are elderly, we charge for an ID since we need funding in order to cover the cost of staff time and printing the ID.

Additionally, the US Postal Service does not always operate in the rural areas of the Reservation. Many members use and share PO boxes instead of having mail delivered straight to their homes. And even if USPS did operate within the Reservation, many of the homes are not marked with house numbers, many streets lack signage, and even if the state government has an address listed for a particular residence, that might not have ever been communicated to the homeowners. And to make matters worse, the state uses multiple addressing systems, so some government officials might have one address listed while another has a different address. Simply put, it is a massive hurdle for many on the Standing Rock Reservation to figure out their actual residential address.

We also have a significant portion of the population that is moving from home to home because they do not have housing of their own, which means that even though they remain within the reservation, they do not have a consistent address. This makes the residential address requirement especially burdensome.

⁷ *Id.* at ¶39.

The North Dakota legislature has said that these voter ID laws are necessary to prevent voter fraud.⁸ But this is simply not a problem on the Standing Rock Reservation. Tribal members serve as poll workers, so they recognize just about all of the members in the community who come to vote and they will likely be able to spot someone who is attempting to vote illegally. There is little to no risk of voter fraud on the Standing Rock Reservation, and there has never been an issue with it before with more lenient voter ID laws.

Further, the “failsafe mechanisms” in the latest iteration of the voter ID law do not actually address the problems that Indian voters face. If the problem is simply a lack of a legitimate residential address, they likely do not have a utility bill or some other document addressed to that address. The same is true for the set-aside ballots; if a voter couldn’t obtain an address in time for the election, there is little evidence to suggest that they would be able to do so in the six days following the election.

Bottom line, members of the Standing Rock Tribe feel that the North Dakota voter ID law was meant to target them and dissuade them from exercising their constitutional right to vote. It was hurtful to our members to be excluded this way and our community remains outraged.

This election cycle the tribe responded by expending valuable resources to try to make sure that our members were not disenfranchised. We normally charge a \$5 fee to print new IDs for any tribal member under the age of 60; we waived this fee leading up to the election. We issued 807 new tribal IDs between October 15, 2018 and November 6, 2018. We would have charged a fee to print 486 of these IDs, which means we lost nearly \$2,500 in income and spent almost \$500 to print all of these IDs. And by comparison, previously the tribal enrollment office at Fort Yates printed an

⁸ *North Dakota Again Passes Discriminatory Voter ID Law*, *supra* note 6.

average of only 47 IDs per month—printing over 800 IDs in the span of roughly three and a half weeks was obviously a huge burden on the staff, and almost every day there were long lines of people waiting to receive new IDs. Luckily the ID printer we were using didn't start to malfunction until the last day, so we were able to print all of the IDs, but we will need to replace the machine.

Despite the fact that our efforts and the efforts of our get out the vote staff and volunteers led to strong voter turnout in 2018, our concern remains. The state has not offered any money or assistance in complying with the Voter ID law, there has been no effort to update the state's addressing system and make it 911-compliant, and homes remain unmarked. Before the election we attempted to assign addresses ourselves using the Burkle addressing system and we reached out to the State to see if they would accept these addresses. We never received confirmation that the State would accept these addresses. Instead, shortly before the election, the State said that members that need addresses should reach out to the county. But in our case, the assigned county employee was the Sheriff. Not only was the Sheriff busy with other matters and sometimes unavailable, many of our members do not like interacting with law enforcement. We do not think having a Sheriff as a point of contact to assign homes on a one by one basis is a good long term solution for assigning addresses to homes.

And even if we were able to assign a street address to each house on the Standing Rock Reservation, there are not enough units on the reservation to serve the population given our severe overcrowding problem, meaning people will still be moving home to home. And further, many people who may have received a compliant ID in 2018 or may receive one in the near future will have a new address in a matter of months, which will mean that they need to either receive yet another compliant ID or risk being turned away at the polls next year. Many members are transient or change residences frequently, and many live in poverty. We do not have the resources to offer free

IDs indefinitely, which means many people will have to make a choice of paying a prohibitive fee to obtain a new ID, or, again, losing the ability to vote in the 2020 election.

We remain concerned with the state's Voter ID law. We joined the Spirit Lake Tribe in their lawsuit against the state, and we will continue to fight against the repressive effects of the law.

Once again, thank you for being here today and for hearing our concerns. This concludes my comments.