

Written Testimony of Navajo Nation President Jonathan Nez

The Navajo Nation is one of the largest Indian Nations in the country with a population of over 300,000 citizens. It is incredibly vast, extending over 27,000 square miles and across three states: Arizona, New Mexico, and Utah. While the Navajo Nation's capital is located in Window Rock, Arizona, there are 110 subunits of government, called chapters, located throughout the Nation. The Navajo language is widely spoken by Navajo voters and enjoys coverage under Section 203 of the Voting Rights Act. The poverty rate on the Navajo Nation (38%) is more than twice as high as the poverty rate in the State of Arizona (15%). Voting on the Navajo Nation is difficult due to a lack of traditional addresses, the remote location of many of our communities, language barriers, and the lack of resources.

I. Non-Traditional Addresses and Remote Location is a Barrier for Navajo Nation Voters.

A majority of Navajo citizens residing on the reservation do not have traditional street addresses. Of the Navajo Nation's 110 chapters, about 70 of them do not have street names or numbered addresses, which adds up to at least 50,000 unmarked properties. While Arizona registration forms allow a space for an individual to draw a map location of their resident, these maps often do not allow for sufficient detail to properly locate the residence. This results in registers assigning voters to the wrong precincts. If a voter is placed in the wrong precinct, it can lead to longer travel times for the voter or to the County rejecting the ballot, if they determine the voter is voting in the wrong precinct. It can also result in the county not processing the voter registration form. In 2012, Apache County, Arizona purged 500 Navajo voters because their addresses were deemed "too obscure."

Due to the remote location and lack of traditional addresses on the Nation, many Navajo citizens must utilize P.O. Boxes to receive their mail. Because the Nation spans three states, three counties in Arizona, one county in Utah, and four counties in New Mexico, an individual's P.O. Box location may be in a different state or county than the individual's residence. A person may reside in Arizona but their P.O. Box and Chapter House is in New Mexico (i.e. Red Lake Chapter and Crystal Chapter) or reside in Utah and their P.O. Box in Arizona (Navajo Mountain Chapter). Some individuals reside in Navajo County but their P.O. Box and local Chapter House is in Coconino County. (i.e. Birdsprings Chapter). A discrepancy in the state or county location between an individual's P.O. Box and their physical residence leads to difficulties for individual Navajos in registering to vote. If the County cannot confirm the location of an individual's residence it will reject the registration application.

P.O. Boxes are usually shared by multiple family members. Multiple family members will utilize one box because some family members may not be able to afford their own P.O. Box. The sharing of P.O. Boxes by multiple individuals can lead to lost or delayed ballots and voter notifications, as one family may not provide the other individuals on the P.O. Box with their mail in a timely manner, if at all. Even with multiple family members on one P.O. Box, there are not enough P.O. Boxes to serve the community. The post office limits the number of people that can be listed on a P.O. Box, causing individuals who do share P.O. Boxes with their family to be removed from the box. Post offices on the Navajo Nation only have a limited number of P.O. Boxes available at each location. If an individual is not able to secure a P.O. Box, or is removed from their family box, they may have to travel 30 to 40 miles to the next closest post office. At times this can be in addition to the 30 miles they traveled to reach their local post office. Long travel times to P.O. Boxes makes checking the mail a hardship for individuals who are elderly or

disabled. It also results in individuals checking their mail less frequently. Some citizens are only able to check their P.O. box once a week or even as little as once every three to four weeks.

Some of these issues could be resolved if the counties had satellite offices in Navajo communities to assist Navajo voters in completing voter registration forms. Not only would this assist in correct precinct placement, but it would also improve access to voter registration. In 2018, voters who wanted to register to vote had limited options across the Nation. Some Navajo citizens are required to drive over 100 miles to register to vote.

II. The Move Towards Mail-In Ballots Hinders Voting on the Navajo Nation.

As Arizona, New Mexico, and Utah move towards mail-in voting, and away from in-person voting, as the primary means of voting, the issue of traditional addressing becomes more of a concern, as it becomes a significant hurdle for individuals in exercising their right to vote. In addition to the issues of a lack of traditional addressing and easily accessible P.O. Boxes, there are multiple issues surrounding the use of mail-in ballots on the Navajo Nation. First, Navajo individuals prefer in-person voting. There is a strong preference by Navajo citizens to cast their ballot in person. It is a time for the community to gather. Food is provided to voters who take the day to sit and talk with each other. For some people voting is the only time they see certain members of their community. This gathering for in-person voting is an incentive for people to vote on the Navajo Nation.

Second, there is a lack of language assistance provided to individuals who receive mail-in ballots. Translations of the ballot and instructions on how to complete the ballot in the Navajo language are not provided by mail. Coconino County provides language assistance if an individual with a mail-in ballot calls them. However, there is nothing provided in the mail-in ballot that informs the individual that this is an option. Rather the individual would just have to know to call

the County. When people do call the County for assistance with a mail-in ballot, it is usually an English speaking relative calling on behalf of their non-English speaking relative.

Third, mail-in ballots do not allow individuals the opportunity to receive in-person instructions on how to fill out the ballot. Even minor errors in completing the mail-in ballot, such as not signing the envelope, can result in the rejection of the ballot. In 2018 a number of individual ballots were rejected in Apache, Navajo, and Coconino because the envelope was not signed. The Navajo Nation brought litigation against these counties stating the lack of instruction provided to the individuals in Navajo on the signature requirement was a violation of the Section 203 of the Voting Rights Act, as well as a violation of the due process and equal protection clauses of the 14th Amendment.

Fourth, Arizona's Ban on "Ballot Harvesting" makes mail-in ballots that much less available to Navajo citizens. As discussed above it can be extremely hard for an individual to get their ballot to a post-office. This discussion does not even take into account the transportation issues many individuals on the Nation face. Many individuals rely on others to help them pick up and drop off mail. These individuals may be related by blood to the voter, or they may be a clan relation. They may also be a non-relation community member who happens to assist the individual at their house. The limitations placed on who can transport a ballot under Arizona law places the burden on low-income, isolated, elderly voters, who may not speak English as a first language, to find a way to get their ballot to a mail-box possibly as far as 30 miles away, in a timely manner.

III. Navajo citizens on the Nation are not provided the same opportunity that off-reservation individuals are to early vote.

In 2018, Apache County had only two early voting locations on the Navajo Nation in the southern part of the reservation. This resulted in community members from Teec-Nos-Pos Chapter,

located near the Utah border, having to drive a 95 mile one way trip to vote early. Coconino County had only one location on the Nation, in Tuba City. This resulted in community members from Coalmine Chapter having to travel 43 miles one way to vote early. Navajo County had multiple early voting locations on the Navajo Nation, however, these locations were open for couple hours each and moved around depending on the day. This is in contrast to the off-reservation population which had early voting locations in closer proximity to population centers and open for more days and longer hours. By limiting in-person early voting on the reservation, it hinders Navajo citizens from exercising their right to vote in their preferred manner.

IV. There is limited transportation options on the Navajo Nation.

There is no public transportation that allows for the pick-up of individual citizens at their place of residence. This severely limits the transportation options for elderly and disabled citizens. People are reliant on relatives or friends for rides, especially in the more rural areas. In some parts of the Nation, only one in ten families own a vehicle which further limits transportation options. In addition, if there are tribal elections on the same day as the state and federal elections, an individual may be required to travel to two separate locations, in two separate communities to cast ballots on election day. This can lead to an individual spending many hours in one-day driving and waiting in line to vote.

V. Language assistance continues to be an issue on the Navajo Nation.

The Navajo language is covered under Section 203 of the Voting Rights Act. This requires that all election material provided in the English language must also be provided in Navajo. The Nation continues to have issues with the counties and the State of Arizona providing sufficient translation services to Navajo voters in written materials, on radio, and to in-person voters. As

mentioned above, this issue is exacerbated in mail-in ballots, which resulted in the Nation filing its lawsuit against the counties after the 2018 election.

VI. The County precincts do not align with Navajo political subdivision, Chapters.

An individual's Chapter House may be the polling location of a county precinct, but because of where the individual lives in the Chapter may be assigned to a different county precinct. This causes confusion and results in voters casting ballots in the wrong precinct. Out of the three Arizona counties the Nation is located in, only one County (Navajo) allows for an individual to vote out of precinct on election day. Requiring voters to vote in precinct on election day may require them to make trips to multiple voting locations. An individual may have to vote at their Chapter House to vote in the Navajo elections and then drive to another to their County precinct voting location. This results in the individual having to drive to multiple locations to vote in Federal and Navajo elections. It causes confusion amongst the voters on where their polling location is. For example, two individuals went to vote at the Fort Defiance Chapter house in November 2018 to cast their ballots in the Navajo and Federal elections. While both individuals were members for Fort Defiance Chapter, because of the location of one of the women's residence, she was not allowed to cast her ballot of the Federal elections at Fort Defiance. Instead, she was instructed to drive to Window Rock to cast her ballot there, since that was her precinct's polling location. It is unclear if this woman took the time to do this. Another example, Cameron Chapter is not located in one county precinct, but is divided between several precincts. A resident of Cameron Chapter may be in the Bodaway-Gap Precinct of Coconino County. If the individual works in Tuba City, the individual would have to take time off work to vote at her Chapter House (26 miles) and then drive to the precinct polling location in Bodaway Gap (34 miles), for a trip total of 60 miles.

VII. ADA cases being brought by U.S. DOJ is affecting polling locations on the Navajo Nation.

The U.S. DOJ is entering into settlement agreements with counties in which the Navajo Nation is located. These settlements are entered into with any consultation of the Navajo Nation, and the Navajo Nation is not a party to the cases. It is not until after the settlements are signed that the Navajo Nation receives notice of the settlement.

The settlement requires the county to make sure all their polling places are ADA compliant. The Navajo Nation is not bound by the ADA and these settlements have the effect of applying a law it otherwise would not have to comply to its land. It also has had the effect of counties threatening to remove polling locations on the Nation, if the Nation cannot bring its structures into ADA compliance. This has caused a lot of local communities, who have limited funding, to worry about the loss of their polling locations. Some counties have tried to work with the local communities to come up with temporary solutions that do not require expensive structural changes. However, the temporary solutions are not meant to replace the ultimate goal of the settlement, which is to have only ADA compliant structures used as polling locations. In 2018, the Navajo Nation asked Coconino County for more early voting locations. One of the reasons the County gave for denying the Nation's request was its ADA settlement agreement with US DOJ. The County worried it could not provide these additional locations and be in compliance with the settlement agreement. A fear of these cases being filed has been brought up in discussions between the Navajo Nation and Navajo and Apache county, both of whom have cited it as a reason for not complying with the Nation's request for more voting locations.

VII. Conclusion and Recommendation

The Nation is currently working with the counties to try to provide more early polling locations on the Nation. In general, the Nation would like to see more in-person early voting opportunities for voters on the Nation, equal to those located off the reservation. These options should be highly publicized and provide translation services for voters. The Nation would like out of precinct voting across all of the counties so that individuals can vote at any polling location in the county. The Nation would like more resources dedicated to voter outreach and education. Most counties only have the funds to hire one outreach worker. This is insufficient to meet the needs of the residences of the Navajo Nation.

Lastly, the Nation would like to see Congress pass the Native American Voting Rights Act (NAVRA). NAVRA addresses a number of the concerns that have been raised in this testimony, such as providing voters adequate space on their voter registration application to identify the location of their residence. Many of the Nation's voting issues are based on policies passed at the county or State level. Since the counties policies governing voting on the Nation vary from county to county, it contributes to confusion amongst Navajo voters. NAVRA would provide much needed consistency in the administration of voting on the Navajo Nation. It would also honor the government-to-government relationship the Federal government has with the Navajo Nation.