



**STATEMENT OF NICOLE BORROMEIO
EXECUTIVE VICE-PRESIDENT & GENERAL COUNSEL
THE ALASKA FEDERATION OF NATIVES**

**U.S. SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION**

**HEARING ON
“RESTORING THE VOTING RIGHTS ACT:
PROTECTING THE NATIVE AMERICAN AND ALASKA NATIVE VOTE”**

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Introduction

Chairman Blumenthal, Ranking Member Cruz, and Members of the Subcommittee on The Constitution of the U.S. Senate Committee on the Judiciary, thank you for the opportunity to testify today on “Restoring the Voting Rights Act: Protecting the Native American and Alaska Native Vote.” My name is Nicole Borromeo, and I am the Executive Vice President and General Counsel of the Alaska Federation of Natives (AFN).¹

Established in 1966 to achieve a fair and just settlement of aboriginal land claims, AFN is the oldest and largest statewide Native membership organization in Alaska. Our members include most of the federally recognized Alaska Native tribes; most of the regional and village Native corporations (ANCs) established under the Alaska Native Claims Settlement Act of 1971 (ANCSA);² and all of the regional nonprofit tribal consortia that contract or compact to administer federal programs pursuant to the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA).³

Having worked to overcome the decades-long disenfranchisement of Alaska Native voters, and counting as members nearly 500 federally recognized tribes and ANCs, AFN is well positioned to help the Committee understand the continuing need to protect the Alaska Native vote. The provisions in S.4, The John R. Lewis Voting Rights Advancement Act of 2021 (VRAA), and Title III of that bill, The Frank Harrison, Elizabeth Peratrovich, and Miguel Trujillo Native American Voting Rights Act of 2021 (NAVRA), are essential to address the obstacles that continue to impede the political participation of Alaska Natives.

Before I address the need for the VRAA and NAVRA in Alaska, I want to acknowledge the important efforts that two women have undertaken to help Alaska Natives achieve equal access to the political process.

I will begin with one of NAVRA’s namesakes, Elizabeth Peratrovich. Elizabeth was a Tlingit tribal member and a civil rights leader in Alaska. While moving to Juneau, the Territorial capital, in 1941, Elizabeth and her husband Roy encountered discrimination against Alaska Natives that paralleled discrimination in much of the South. They were denied access to housing through race-based restrictive covenants that barred Alaska Natives and persons of color from owning homes in many communities. When they tried to frequent restaurants or retail shops, they encountered signs in businesses that read, “No Natives, No Dogs” or advertised “All White Help.” Movie theaters and other places of public accommodation were segregated, with Alaska Natives and non-White patrons

¹ Shareholder of Doyon, Limited, the ANCSA regional corporation for Interior Alaska, and the Board Chairman for MTNT, Ltd., the ANCSA village corporation representing four Interior Alaska villages. Member of the Alaska Redistricting Board; the U.S. Census Bureau’s National Advisory Committee on Race, Ethnicity, and Other Populations; and the U.S. Department of Energy’s Indian Country Energy and Infrastructure Workgroup. Founding Board Member of Justice Not Politics Alaska, a nonpartisan organization promoting the independence of Alaska’s judiciary. Mentor in the Color of Justice Program. J.D., University of Washington; B.A., the University of Alaska-Anchorage. I reside in Anchorage with my husband and our four children.

² 43 U.S.C. § 1601 *et seq.*

³ 25 U.S.C. § 5301 *et seq.*

confined to balcony areas with derogatory references such as “N___er Heaven.”⁴

Through their work with the Alaska Native Sisterhood and the Alaska Native Brotherhood, Elizabeth and Roy Peratrovich began lobbying in 1941 for an anti-discrimination bill in Alaska’s Territorial Legislature. Four years later, the bill had not moved. A Territorial Senator spoke out against the bill, denouncing efforts to desegregate Alaska’s social and economic life by arguing, “Who are these people, barely out of savagery, who want to associate with us whites, with 5,000 years of recorded civilization behind us?”⁵ Elizabeth Peratrovich responded forcefully, decrying Alaska’s Jim Crow practices fostered by non-Natives who “believe[d] in the superiority of the white race.”⁶ She continued, “I would not have expected that I, who am ‘barely out of savagery,’ would have to remind gentlemen with five thousand years of recorded civilization behind them, of our Bill of Rights.”⁷

Alaska’s Territorial Legislature responded by enacting the Alaska Equal Rights Act of 1945. The Act protected equal access to public accommodations to Alaska Natives and all non-Whites, providing that “All citizens ... shall be entitled to the full and equal enjoyment of accommodations, advantages, facilities, and privileges” of public places.⁸ Sadly, although Elizabeth Peratrovich lived to see the Alaska Equal Rights Act signed into law, she passed away in 1958, long before other discriminatory laws in Alaska, such as the Territorial and State literacy tests, were nullified by the federal Voting Rights Act (VRA).⁹ I can think of no greater honor to bestow upon the first lady of civil rights for Alaska Natives, Elizabeth Peratrovich, than including her name on NAVRA.

I would be remiss if I failed to acknowledge the important work that another woman, U.S. Senator Lisa Murkowski, has done on behalf of Alaska Natives. Senator Murkowski has been a leader on issues of critical importance to Alaska Natives and rural Alaska. A true partner to the Alaska Federation of Natives, Senator Murkowski has been a staunch advocate for making registration and voting more accessible for Alaska Natives, including rural, Native villages. I applaud her for her continued support of, and her work with AFN on, S.4 and NAVRA. Senator Murkowski is a civil rights and voting rights champion who is committed to making the most fundamental right, the right to vote, equally accessible for all Americans.

AFN looks forward to working with Senator Murkowski in securing the passage of the John Lewis Voting Rights Advancement Act and Title III of the bill, NAVRA, so fittingly co-named after Elizabeth Peratrovich.

⁴ JAMES THOMAS TUCKER, *THE BATTLE OVER BILINGUAL BALLOTS: LANGUAGE MINORITIES AND POLITICAL ACCESS UNDER THE VOTING RIGHTS ACT 235-48* (2009).

⁵ *Id.* at 237.

⁶ *Id.*

⁷ Fran Ulmer, *Honoring Elizabeth Wanamaker Peratrovich*, Alaska House of Representatives (May 1, 1992).

⁸ TUCKER, *supra*, at 237.

⁹ 42 U.S.C. §§ 1973 to 1973aa-6.

Barriers Alaska Natives Face in Registration and Voting

Members of the 574 federally recognized tribes¹⁰ face numerous barriers to political participation every day. Although many other American voters share some of these obstacles, no other racial or ethnic group faces the combined weight of these barriers to the same degree as Alaska Native voters. Even if there were no discriminatory voting rules or practices, Alaska Natives would face numerous challenges in securing equal access to elections. The presence of discrimination, when combined with other obstacles, highlight the importance of and need for the remedial provisions of S.4 and NAVRA.

Geographic isolation.

Outside of the handful of urban centers in Alaska, much of the state faces considerable socio-economic, linguistic, and geographical barriers. Many of these barriers are virtually unknown in the Lower 48. Election administrators from other states routinely express how shocked they are that the unique challenges of conducting elections in Alaska still exist in the twenty-first century. Pictures of remote travel conditions and physical and geographic barriers to reaching Alaska Native villages often are met with wide-eyed astonishment. To quote Fannie Lou Hamer, a civil rights leader from the South whose name was added to the 2006 reauthorization of the Voting Rights Act, those unfamiliar with Alaska’s challenges are left asking, “Is this America?”

The answer is simple: yes, it is. Even today, nearly all of rural Alaska, which is composed of almost 200 rural, Native villages, is situated off the state road system. Access to these villages is typically by air or by boat. In the winter months, when the conditions permit, villages also may be connected by “ice roads,” which are traversed by trucks, snow machines, or all-terrain vehicles (ATVs) that travel on frozen rivers. Due to climate change, most of these ice roads no longer can be used safely. For villages that are not regional “hubs” like Bethel and Dillingham, air services are provided by “bush pilots” who use runways that are little more than gravel roads. Flights are limited to Visual Flight Rules (VFR) conditions when the rough-hewn runways are not iced over.

The isolated locations of Alaska Native villages contribute to the political exclusion of voters in those villages. Nationally, about one-third of all American Indians and Alaska Natives (AIAN) live in Hard-to-Count Census Tracts. This equates to roughly 1.7 million out of 5.3 million people from the 2011-2015 American Community Survey (ACS) estimates.¹¹ Hard-to-Count Census Tracts include those Census Tracts “in the bottom 20 percent of 2010 Census Mail Return Rates (*i.e.*, Mail Return Rates of 73 percent or less) or tracts for which a mail return rate is not applicable because they are enumerated in 2010 using the special Update/Enumerate method.”¹² Alaska has the third highest percentage of its AIAN population living in Hard-to-Count Census Tracts (65.6 percent),

¹⁰ See National Congress of American Indians (NCAI), *Tribal Nations & the United States: An Introduction* (2020 ed.), available at <https://www.ncai.org/about-tribes>.

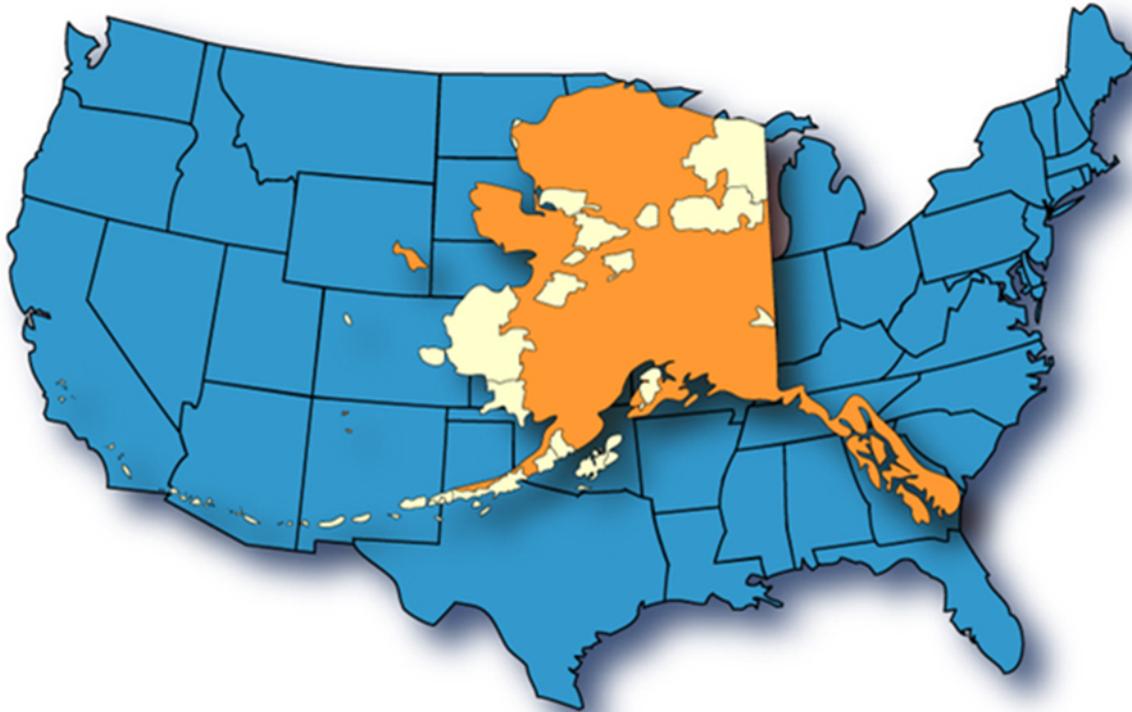
¹¹ See The Leadership Conference Education Fund, Table 1a: States Ranked by Number of American Indian/Alaska Natives (race alone or combination) living in Hard-to-Count (HTC) Census Tracts, available at <http://civilrightsdocs.info/pdf/census/2020/Table1a-States-Number-AIAN-HTC.pdf>.

¹² *Id.*

trailing only New Mexico (78.6 percent) and Arizona (68.1 percent).¹³

The impact that geographic isolation plays is best shown in a map comparing the size of Alaska with the states in the Lower Forty-Eight. To put a fine point on it, the land area of Alaska is two and one-half times that of Texas, the second largest state.

Figure 1. Comparison of the Size of Alaska to the Continental United States.



Yet, despite its vast size, the rural areas of Alaska are sparsely populated. As an example, my partners at the Native American Rights Fund (NARF) brought a voting rights action on behalf of the largest group of Yup'ik-speaking Alaska Natives: those residing in villages in the Bethel Census Area. The Bethel Census Area covers an area of over 40.5 million square miles¹⁴ or roughly the size of the state of Tennessee.¹⁵ However, in 2016, the Bethel Census Area had a total estimated population of just 17,968, a population density of just 0.4 persons per square mile.¹⁶ That compares

¹³ See The Leadership Conference Education Fund, Table 1b: States Ranked by Percent of American Indian/Alaska Natives (race alone or combination) living in Hard-to-Count (HTC) Census Tracts, available at <http://civilrightsdocs.info/pdf/census/2020/Table1b-States-Percent-AIAN-HTC.pdf>.

¹⁴ U.S. Census Bureau, QuickFacts: Bethel Census Area, Alaska (“BCA QuickFacts”), available at <https://www.census.gov/quickfacts/fact/table/bethelcensusareaalaska/PST045216>.

¹⁵ See U.S. Census Bureau, QuickFacts: Tennessee (“Tennessee QuickFacts”), available at <https://www.census.gov/quickfacts/TN>.

¹⁶ See BCA QuickFacts, *supra*.

to a population density of 153.9 persons per square mile for approximately the same sized area in the State of Tennessee.¹⁷

Isolation due to physical features such as mountains, glaciers, canyons, oceans, rivers, and vast expanses of unoccupied land are compounded by an absence of paved roads to connect Alaska Native villages to hub communities and cities. Even where roads are present, Alaska Native voters may lack reliable transportation or the economic ability to travel the vast distances to elections offices and other government offices.

The impact of unpredictable weather on remote Alaska Native villages.

Because of the limited accessibility to over 200 geographically isolated, rural and Alaska Native villages, travel is much more constrained by the dominant weather conditions than any other location in the continental United States. It is not unusual for villages to be inaccessible by air for several weeks due to inclement weather, icing conditions, and above all fog. Sadly, these extreme weather conditions have claimed the lives of many of Alaska's leaders in their travels in remote parts of the state: U.S. Senator Ted Stevens and U.S. Representative Nick Begich (the father of former U.S. Senator Mark Begich) are just two of the more notable deaths. "About 35% of all of the commuter and air taxi crashes in the U.S. have occurred" in Alaska, "where transportation depends on aviation to bridge vast tracts of wilderness."¹⁸

I experience these conditions first-hand in my travels to AFN's member villages. Flights are cancelled or delayed even under the best weather conditions, when the fog may linger late into the day. What makes it even more challenging is that Alaska holds its Regional Educational Attendance Area (REAA, *i.e.*, school board) elections and statewide general election in October and November, respectively, when weather can be especially unpredictable and deadly.

Aside from the risks that weather poses to those who are flying into and out of the villages, it has a deleterious impact on mail service. Federal mail carriers face extraordinary challenges every day in delivering mail to rural Alaska. Variable weather conditions in the outer reaches of Alaska always have the final say in the delivery and pick-up of mail. And that say may mean delays of days or even weeks in the delivery of time-sensitive mailings, including election materials and ballots.

During the pandemic, the barriers posed by weather show how strict elections deadlines for voting can disenfranchise entire communities in rural Alaska who do not receive their mail or are unable to return their completed ballots before voting closes. Vote-by-mail may have allowed many voters to have their voices heard in the Lower 48, but the challenges of the mail system in Alaska have not made it a panacea for many Alaska Native communities.

¹⁷ See Tennessee QuickFacts, *supra*.

¹⁸ Ralph Vartabedian, *Ted Stevens Crash is Nothing Unusual in Alaska*, LA TIMES (Aug. 11, 2010), available at <https://www.latimes.com/archives/la-xpm-2010-aug-11-la-na-alaska-crash-past-20100811-story.html>.

Non-traditional mailing addresses, homelessness, and housing instability.

Alaska Natives' access to voting is made much more difficult because of the prevalence of non-traditional mailing addresses, homelessness, and housing instability.

The Census Bureau's 2015 National Content Test (NCT) Report illustrates these points. Among the population groups included in the 2015 NCT, the AIAN population experienced the lowest 2010 Census mail response rate, at 57.8 percent.¹⁹

Non-traditional mailing addresses are prevalent among American Indians and Alaska Natives residing on tribal lands or Alaska Native villages. Non-traditional mailing addresses encompass "noncity-style addresses, which the Census Bureau defines as those that do not contain a house number and/or a street name."²⁰ Examples of noncity-style mailing addresses include:

- General delivery
- Rural route and box number
- Highway contract route and box number
- Post office box only delivery

Noncity-style addresses used by the Census Bureau also include location descriptions such as "BRICK HOUSE with ATTACHED GARAGE ON RIGHT," structure points (geographic coordinates), and census geographic codes including state code, county code, census tract number, and census block number.²¹

The disproportionately high rate of homelessness in Indian Country is another major factor that prevents AIANs from registering to vote and casting a ballot. According to the 2016 ACS, only 52.9 percent of single-race American Indian and Alaska Native householders owned their own home, compared to 63.1 percent of the total population.²² According to data from the U.S. Department of Housing and Urban Development, although "only 1.2 percent of the national population self-identifies as AI/AN ... 4.0 percent of all sheltered homeless persons, 4.0 percent of all sheltered homeless individuals, and 4.8 percent of all sheltered homeless families self-identify as Native American or Alaska Native."²³ The AIAN population likewise experiences higher rates of

¹⁹ See U.S. Census Bureau, 2015 National Content Test Race and Ethnicity Analysis Report 32, table 2 (Feb. 28, 2017). ("NCT Report").

²⁰ U.S. Census Bureau, 2020 Census Local Update of Census Addresses Program Improvement Project Recommendations 2 (Apr. 13, 2015) ("2020 LUCA Recommendations"), available at https://www2.census.gov/geo/pdfs/partnerships/2020_luca_recommendation.pdf.

²¹ *Id.*

²² U.S. Census Bureau, Facts for Features: American Indian and Alaska Native Heritage Month: November 2017 (Oct. 6, 2017), available at <https://www.census.gov/newsroom/facts-for-features/2017/aian-month.html> ("2017 AIAN Summary").

²³ Substance Abuse and Mental Health Services Administration (SAMHSA), Expert Panel on Homelessness among American Indians, Alaska Natives, and Native Hawaiians 5 (2012), available at https://www.usich.gov/resources/uploads/asset_library/Expert_Panel_on_Homelessness_among_American_Indians%2C_Alaska_Natives%2C_and_Native_Hawaiians.pdf.

homelessness among veterans than other population groups. Specifically, “2.5 percent of sheltered, homeless Veterans were American Indian or Alaska Native, although only 0.7 percent of all Veterans are American Indian or Alaska Native.”²⁴

Frequently changing residences, with no single permanent residence, can prevent many American Indians and Alaska Natives from being able to register to vote and casting a ballot.²⁵

Socio-economic barriers.

Socio-economic barriers likewise make the voting process less accessible for Alaska Natives. Native peoples have the highest poverty rate of any population group, 26.6 percent, which is nearly double the poverty rate of the nation as a whole.²⁶ The poverty rate was even higher on federally recognized Indian reservations and Alaska Native villages, at 38.3 percent.²⁷ The median household income of single-race American Indian and Alaska Native households in 2016 was \$39,719, far below the national median household income of \$57,617.²⁸

Native Americans also have lower rates of educational attainment. Among the American Indian Alaska Native population 25 years of age and older, 20.1 percent had less than a high school education.²⁹ The unemployment rate of those aged 16 and older in the workforce was 12 percent.³⁰ Approximately 19.2 percent lacked health insurance,³¹ and 13.4 percent of all occupied households lacked access to a vehicle, making it impossible to travel great distances to register and vote, even when roads are available.³²

Language barriers among Limited-English Proficient Tribal Elders.

²⁴ *Id.* at 8 (citing HUD & VA, Veteran Homelessness: A Supplemental Report to the 2010 Annual Homeless Assessment Report to Congress).

²⁵ U.S. Department of Housing and Urban Development, “Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs (Jan. 2017), available at <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>.

²⁶ U.S. Census Bureau, Profile America Facts for Features: CB16-FF.22, American Indian and Alaska Native statistics, available at <https://www.census.gov/newsroom/facts-for-features/2016/cb16-ff22.html> (Nov. 2, 2016) (“2016 AIAN FFF”).

²⁷ U.S. Census Bureau, Table B17001C: Selected Population Profile in the United States: 2015 American Community Survey 1-Year Estimates, available at https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/B17001C/0100000US|0100089US.

²⁸ 2017 AIAN Summary, *supra*.

²⁹ See U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, Selected Population Profile in the United States: American Indian and Alaska Native alone (300, A01-Z99) (“2016 AIAN Profile”), available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

Dozens of different dialects are widely spoken among the major American Indian and Alaska Native languages. Over a quarter of all single-race American Indian and Alaska Natives speak a language other than English at home.³³ Two-thirds of all speakers of American Indian or Alaska Native languages reside on a reservation or in a Native village,³⁴ including many who are linguistically isolated, have limited English skills, or a high rate of illiteracy.³⁵

Alaska, Arizona, and New Mexico have the largest number of Limited-English Proficient (LEP) persons voting-age citizens (that is, U.S. citizens who are 18 years of age and older). Between them, they account for approximately 87 percent of American Indians and Alaska Natives who reside in an area required to provide language assistance in an Alaska Native or American Indian language:

Figure 2. Comparison Between the Top Three States with Limited-English Proficient AIAN Populations.

Alaska	Arizona	New Mexico
54,275 Alaska Natives live in one of the 15 areas covered by Section 203 for an Alaska Native language.	123,470 American Indians live in one of the six counties covered by Section 203 for an American Indian language.	132,955 American Indians live in one of the 10 counties covered by Section 203 for an American Indian language.
At least 10 percent of all Alaska Natives in covered areas are of voting age and LEP in an Alaska Native language.	At least 14.5 percent of all American Indians in covered areas are of voting age and LEP in an American Indian language.	At least 8 percent of all American Indians in covered areas are of voting age and LEP in an American Indian language.
LEP Alaska Natives are located in approximately 200 villages and communities in the 15 covered areas.	Approximately 96.7 percent of all American Indians who are LEP and reside in a county covered for Native language assistance reside in just three counties: Apache, Coconino, and Navajo.	91.1 percent of all American Indians and 89.3 percent of all voting-age American Indians who are LEP and live in a covered county live in just four counties: Bernalillo, McKinley, Sandoval, and San Juan.

Nationally, 357,409 AIAN persons reside in a jurisdiction covered by Section 203 of the Voting Rights Act, where assistance must be provided in the covered Native language.³⁶ Alaska Native language assistance is required in 15 political subdivisions of Alaska, which “is an increase of 8 political subdivisions from 2011.”³⁷ Assistance in American Indian languages is required in 35

³³ 2016 AIAN FFF, *supra* (27 percent).

³⁴ See U.S. Census Bureau, Native American Languages Spoken at Home in the United States and Puerto Rico: 2006-2010 at 2 (Dec. 2011).

³⁵ See U.S. Census Bureau, Public Use Data File for the 2016 Determinations under Section 203 of the Voting Rights Act, available at https://www.census.gov/rdo/data/voting_rights_determination_file.html (Dec. 5, 2016).

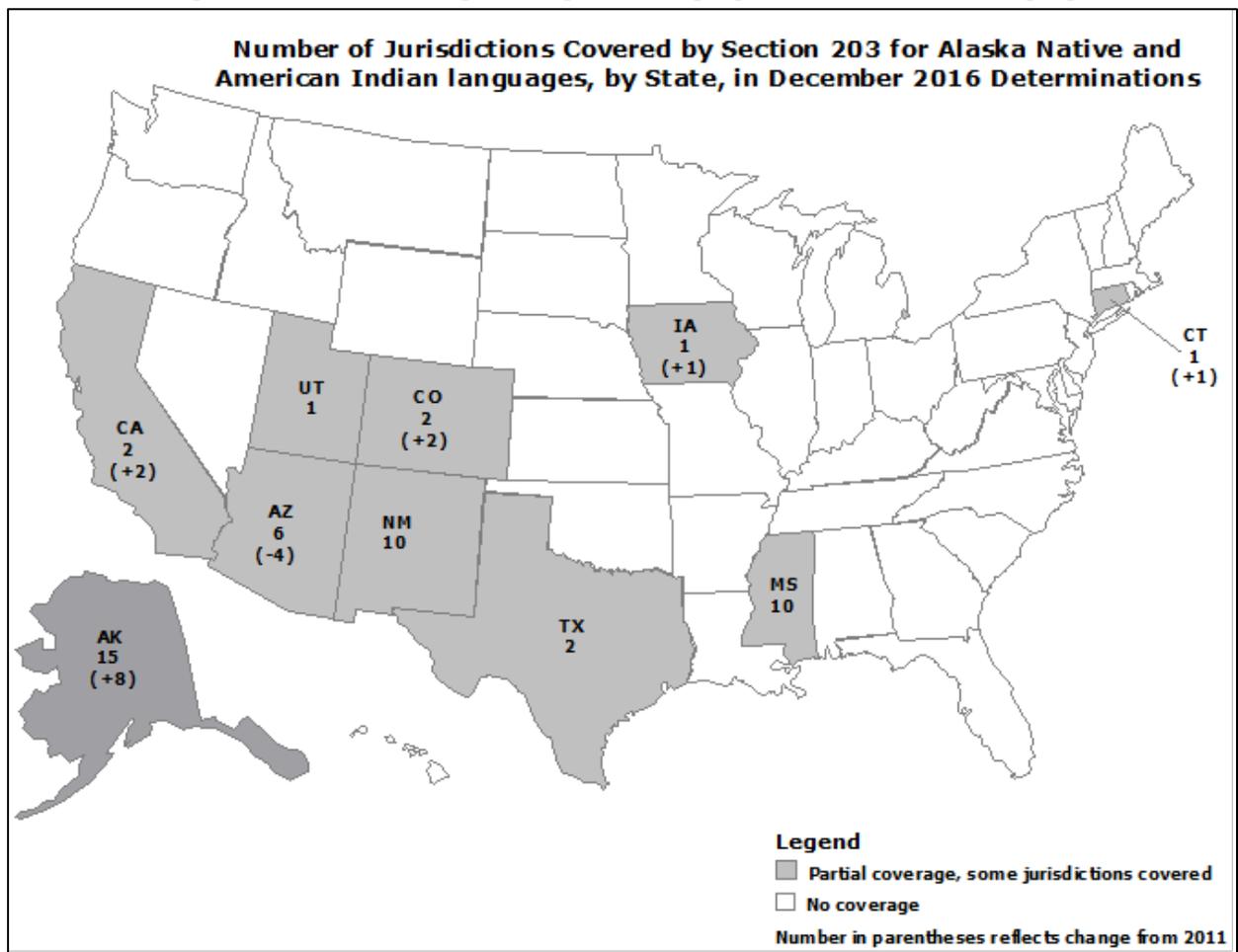
³⁶ U.S. Census Bureau, Press Release: Census Bureau Releases 2016 Determinations for Section 203 of the Voting Rights Act (Dec. 5, 2016), available at <https://www.census.gov/newsroom/press-releases/2016/cb16-205.html>.

³⁷ AAJC, NALEO & NARF, Voting Rights Act Coverage Update 3 (Dec. 2016) (“Section 203 Update”), available at

political subdivisions in nine states, “up from the 33 political subdivisions of five states covered in the 2011 determinations.”³⁸

In terms of the number of county-level political subdivisions covered by Section 203 for an American Indian or Alaska Native language, Alaska leads all states. Most Alaska Native villages in remote areas of the state are included in the coverage. The linguistic isolation of households in those villages, particularly those of Tribal Elders, is made significantly more complicated by the geographic isolation and weather conditions where they live. Those obstacles require the State of Alaska to build in sufficient time into the election schedule to translate all voting materials into the covered Alaska Native languages, to recruit a sufficient number of poll workers who are bilingual, fluent and literate in both English and the covered Alaska Native language, train them, and supply all needed written materials well in advance of Election Day.

Figure 3. Jurisdictions required to provide language assistance in Native languages.



Language poses a barrier to political participation for several reasons. First, LEP American Indians and Alaska Natives, like other LEP populations, are generally among the hardest to reach

<https://advancingjustice-ajc.org/sites/default/files/2016-12/Section%20203%20Coverage%20Update.pdf>

³⁸ *Id.*

among all voters. Outreach and publicity communications written or transmitted in English usually are not understood unless they are translated into the applicable Native language.

In-person communication through trained bilingual poll workers yields the best results, but can be confounded when election officials fail to recruit and train enough poll workers fluent in the language supported by adequate funding to reach the LEP population.

Moreover, the difficulty in preparing complete, accurate, and uniform translations of voting materials (including instructions) is compounded by the absence of words in Native languages for many English terms. Frequently, that requires that concepts be interpreted to communicate the meaning of what is being asked, rather than word-for-word translations. Identification of those concepts usually requires closely coordinating with trained linguists from Native communities to provide effective translations.

For Alaska Native languages, it is necessary for State election officials to use panels of highly skilled linguists to translate all voting information and materials to ensure that they can be understood by all voters in all dialects of the covered languages. This task often can take several days for a single ballot measure, particularly if that ballot measure has a very high readability score. Litigation in Alaska has demonstrated that many of Alaska’s ballot measures are written at a level of English well beyond that of someone who has a Ph.D., making those measures virtually impossible to understand for not only LEP voters, but the trained translators assisting them.

The next figure shows the scope of coverage for American Indian and Alaska Native languages. Yup’ik, which is the third most covered of all of those Native languages, is the most widely spoken Alaska Native language.

Figure 4. American Indian and Alaska Native languages covered by Section 203, by State.

Language	Political subdivisions	Covered states
Navajo	11	AZ, NM, UT
Choctaw	10	MS
Yup’ik (Alaska Native)	9	AK
Inupiat (Alaska Native)	6	AK
American Indian (all other AI Tribes)	5	CA, CT, IA, TX
Apache	5	AZ, NM
Ute	4	CO, NM, UT

Alaska Athabascan (Alaska Native)	3	AK
Pueblo	3	NM, TX
Aleut	1	AK

However, there also are dozens of dialects within the language groups identified above. For example, under the terms of the *Toyukak v. Treadwell* court order,³⁹ there are half a dozen dialects of Yup'ik covered by that order in the Dillingham and Kuslivak Census Areas.

Illiteracy rates are very high among LEP Elders.

Illiteracy also is very prevalent among LEP American Indians and Alaska Natives, especially among Elders. In areas covered by Section 203 of the Voting Rights Act, illiteracy among LEP voting-age citizens is many times higher than the national illiteracy rate of 1.31 percent in 2016.⁴⁰

In Alaska, in covered areas for which Census data is available, the illiteracy rate among LEP Alaska Natives of voting age is 40 percent for Aleut-speakers, 28.4 percent for Athabascan-speakers, 15 percent for Yup'ik-speakers, and 8.2 percent for Inupiat-speakers.⁴¹ Alaska's illiteracy rates for Alaska Natives are among the highest in the United States.

In Arizona, in covered areas for which Census data is available, the illiteracy rate among LEP American Indians of voting age is 25 percent for Navajo-speakers and 6.8 percent for Apache-speakers.⁴² In Mississippi, in covered areas for which Census data is available, the illiteracy rate among LEP American Indians of voting age is 34 percent for Choctaw-speakers.⁴³ Finally, in New Mexico, in covered areas for which Census data is available, the illiteracy rate among LEP American

³⁹ Stipulated Judgment and Order, *Toyukak v. Treadwell*, No. 3:13-cv-00137-SLG (D. Alaska Sept. 30, 2015), No. 235; see also Tucker, Landreth & Dougherty-Lynch, *supra*, at 376-77 (summarizing the requirements under the Stipulated Judgment and Order).

⁴⁰ See U.S. Census Bureau, Flowchart of How the Law Prescribes the Determination of Covered Areas under the Language Minority Provisions of Section 203 of the Voting Rights Act 2 (Dec. 5, 2016), available at https://www.census.gov/rdo/pdf/2_PrescribedFlowFor203Determinations.pdf. "Illiteracy" is defined as including those persons who "have less than a 5th grade education." *Id.*

⁴¹ See U.S. Census Bureau, Voting Rights Determination File: Section 203 Determinations (Dec. 5, 2016), Public Use Data File and Technical Documentation (Excel spreadsheet of "Determined Areas Only") ("Section 203 Determination File"), available at https://www.census.gov/rdo/data/voting_rights_determination_file.html. In Alaska, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 30.5 times higher for Aleut-speakers; 21.7 times higher for Athabascan-speakers; 11.4 times higher for Yup'ik-speakers; and 6.3 times higher for Inupiat-speakers.

⁴² See Section 203 Determination File, *supra*. In Arizona, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 19.1 times higher for Navajo-speakers; and 5.2 times higher for Apache-speakers.

⁴³ See Section 203 Determination File, *supra*. In Mississippi, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 25.9 times higher for Choctaw-speakers.

Indians of voting age is 19.1 percent for Navajo-speakers and 6.7 percent for Apache-speakers; data was not available for speakers of the Pueblo languages.⁴⁴

In areas with LEP Tribal or Village Elders who are hampered by illiteracy, language assistance in the voting process generally must be done in-person by a bilingual enumerator fully fluent in the Native language and applicable dialect.

Alaska commits inadequate resources for language assistance compared to other states.

Inadequate resources by the State of Alaska directed at effective language assistance compounds the challenges of ensuring all LEP Elders are able to cast an informed vote on a ballot that they understand. Despite the tremendous size of Section 203-covered areas and the distances between rural villages and permanent Division of Elections offices, the number of personnel working on administering elections in those areas is minimal.

Again, a comparison in terms of geographic size and scope of language coverage is warranted. Alaska is approximately one-third the size of the entire continental United States. In New Mexico, in which Section 203-covered American Indian voters reside predominately in the northern third of the state in an area substantially smaller than just one of Alaska's covered census areas, the state has eight full-time language coordinators fluent in four Native languages in addition to the bilingual county clerks and their support staff.

In sharp contrast, Alaska has had at most just two full-time bilingual workers, with one or both of those positions periodically vacant. Often, Alaska's bilingual election workers are assigned other election tasks, including mundane data entry work, instead of working consistently on addressing the complicated language barriers facing LEP Elders. The meager full-time resources Alaska offers are supplement only by a patchwork of contract translation panels and part-time outreach workers whose reliability and efforts vary considerably from person to person.

Lack of broadband access and Internet use.

During the 18 months we have been fighting the COVID-19 pandemic, working virtually or remotely has become increasingly common. Many of us have not seen the inside of an office for months. This Subcommittee and its counterparts in the House now routinely allow witnesses to testify via videoconference. The United States Supreme Court has only recently resumed conducting oral arguments in person, after spending more than one term doing so telephonically. With respect to voting, online voter registration and dissemination of voting information has become predominant in many states.

Use of remote resources such as broadband, Internet, and online videoconferencing simply are not feasible options for reaching much of rural Alaska. Among all population groups, the digital divide is most profoundly felt in Indian Country. People residing in tribal areas have virtually no access to computers or the Internet, with the Federal Trade Commission estimating broadband

⁴⁴ See Section 203 Determination File, *supra*. In New Mexico, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 14.6 times higher for Navajo-speakers; and 6.7 times higher for Apache-speakers.

penetration in tribal communities at less than ten percent.⁴⁵ Not surprisingly, the hardest to reach areas for the rural AIAN population are all on reservations or in Alaska Native villages lacking reliable and affordable broadband access. To illustrate that fact, a mapping tool shows how Hard-to-Count Census Tracts correlate with reservations.⁴⁶

Even where some broadband access may be available, depressed socio-economic conditions often prevent American Indians and Alaska Natives from having access to or using online resources including the Internet. For example, the cost or inconvenience of driving to a location where Internet access can be obtained, or the cost of getting Internet service in those areas in Indian Country where it may be offered, prevents many American Indians and Alaska Natives from going online.⁴⁷

With the increasing use of online resources to register voters and disseminate voting information, accommodations need to be made for Native voters on tribal lands until broadband is fully accessible. AFN is hopeful that the passage of federal infrastructure legislation will help bridge the wide gulf that exists between Alaska Natives and American Indians and non-Natives in their access and use of broadband resources.

The Prevalence of Voting Discrimination Against Alaska Natives

Alaska Natives were among the last of the ingenuous peoples in this country to obtain our fundamental right to vote. I will only briefly describe some of the voting discrimination against Alaska Natives, summarizing some of the details that are presented in Attachments A and B of my written testimony.⁴⁸

Alaska Natives, like all First Peoples, were disenfranchised for much of our history. In Alaska's 1915 Territorial Act, Alaska Natives were denied citizenship unless they could prove through individual examination, conducted by non-Native examiners, that they had abandoned "any tribal customs or relationship" and adopted "the habits of a civilized life."⁴⁹ Thus, Alaska Natives could only become eligible to become citizens, based upon the subjective and often racist whims of non-Native decisionmakers, and only if the Alaska Natives gave up their cultural identity. The Indian Citizenship Act of 1924, which formally made all American Indians and Alaska Natives citizens of the United States who had not already become so, did little to improve the access of Alaska Natives to the ballot.

⁴⁵ Parkhurst et al., *The Digital Reality: E-Government and Access to Technology and Internet for American Indian and Alaska Native Populations* 3, available at <https://pdfs.semanticscholar.org/4bb4/f5efcd1cf4ec342b5d45dd824bb10d9bb0f2.pdf>.

⁴⁶ See Mapping Hard to Count (HTC) Communities for a Fair and Accurate 2020 Census, available at <http://www.censushardtocountmaps2020.us/>.

⁴⁷ See Gerry Smith, *On Tribal Lands, Digital Divide Brings New Form of Isolation*, HUFFPOST, Apr. 23, 2012, available at https://www.huffingtonpost.com/2012/04/20/digital-divide-tribal-lands_n_1403046.html.

⁴⁸ Attachment A, James Thomas Tucker, Natalie Landreth & Erin Dougherty-Lynch, "Why Should I Go Vote Without Understanding What I Am Going to Vote For?" *The Impact of First Generation Voting Barriers on Alaska Natives*, 22 MICH. J. RACE & LAW 327 (2017); Attachment B, Alaska Advisory Comm. to the U.S. Comm'n on Civil Rights, Advisory Mem. on Alaska Native Voting Rights (Mar. 27, 2018).

⁴⁹ Tucker, Landreth & Dougherty-Lynch, *supra*, at 330.

In 1925, Alaska’s Territorial Legislature responded to the Indian Citizenship Act of 1924 by passing a literacy test requirement for voting. Two of Alaska’s leading newspapers at the time laid bare what was behind the new law:

The *Alaska Daily Empire* stated that Alaska Natives “cannot be even remotely considered as possessing proper qualifications” for voting, and the *Fairbanks Daily News-Miner* warned of Native voters of a “lower order of intelligence.” Supporters of the literacy test ran an advertisement in the Juneau newspaper stating that its purpose was “to prevent the mass voting of illiterate Indians” and that the test was an “opportunity to keep the Indian in his place.”⁵⁰

The literacy test was designed to exploit the illiteracy of most Alaska Natives, who were denied schooling opportunities by educational discrimination that failed to provide any public schools in Alaska Native villages regardless of population.⁵¹ Compounding that discrimination, courts in Alaska upheld state efforts to maintain segregated schooling that denied admission to any Alaska Natives that non-Native officials deemed to be “uncivilized” through application of offensive cultural and racial stereotypes.⁵²

When schooling began to become available after statehood in 1959, it was provided to Alaska Native children by requiring them to fly thousands of miles from their homes to attend boarding schools, including some as far away as the east coast of the United States. Another alternative was for Alaska Native children to effectively become enslaved laborers for non-Native households who took them in to allegedly provide them with access to public schooling in Alaska’s urban centers. Alaska Native students were largely girls, with Alaska Native boys mostly staying home to assist their families with subsistence hunting and fishing.

Girls sent away to schooling frequently were sexually assaulted, subjected to mental and physical abuse, targeted with racial slurs, and segregated among student populations to make it difficult (and for some students impossible) to learn anything. Boys left behind in their villages then are today’s male Elders who suffer the highest rates of limited-English proficiency and illiteracy. “By 1972, only 2,200 out of over 51,000 Alaska Natives had a high school education,”⁵³ with illiteracy rates exceeding those of Black voters in every southern state covered by Section 5 of the Voting Rights Act.

Alaska Natives today bear the scars of educational discrimination, which can limit our ability to participate effectively in the voting process. “In 2002, the Alaska Advisory Committee to the U.S. Commission on Civil Rights found that Alaska Native students ‘score lower on achievement tests than any other minority group, and considerably lower than White students.’ Over 80 percent of

⁵⁰ *Id.*

⁵¹ *Id.* at 330-31.

⁵² *See id.* at 331-32 (quoting *Davis v. Sitka School Board*, 3 Alaska 481, 489–90 (D. Alaska Terr. 1908)).

⁵³ *Id.*

Alaska Native graduating seniors were not proficient in reading comprehension.”⁵⁴

Language and literacy barriers were prevalent in Senator Murkowski’s successful effort to become the first United States Senate candidate in more than 50 years to win electoral office in a write-in campaign in 2010. In that case, a federal court rejected efforts to throw out write-in votes that clearly expressed the voter’s intent for Senator Murkowski, but misspelled her last name.⁵⁵

Alaska’s well-documented history of voting discrimination has been prevalent throughout recent years, in a series of decisions by both the U.S. Department of Justice and federal courts examining claims against the State’s two election officials responsible for administering the state’s elections: the Lieutenant Governor and the Director of the Division of Elections. As described in the attached article, contemporary discrimination by those election officials has included, among other things:

- Retrogression, or backsliding, by failing to provide language assistance according to the plan that the State of Alaska precleared with the U.S. Department of Justice;
- Unequal compensation for poll workers in many Alaska Native villages, compared to the compensation received by poll workers in urban polling locations;
- Disparate use of federal Help America Vote Act of 2002 (HAVA)⁵⁶ funding, including use of funds to open a new elections office and voter registration site in the predominately non-Native community of Wasilla, while failing to use funds for language assistance until the State was sued in federal court;
- Widespread designation of rural Alaska Native villages as Permanent Absentee Voting (PAV) sites, in which all voting materials and information was sent by mail in English, providing no in-person language assistance for LEP Alaska Native voters who were unable to read voting materials or to vote effectively without assistance;
- Shirking responsibility to provide language assistance to Alaska Native voters by sending English-only materials to radio stations and villages asking them to provide translations “if available;”
- Attempting to “realign” (a euphemism for “close”) polling places in Alaska Native villages and consolidating them with other Native villages accessible only by air travel, weather permitting, a practice the U.S. Department of Justice stopped through its Section 5 review process;

⁵⁴ *Id.* at 332-33.

⁵⁵ See *Federal judge dismisses challenge to Murkowski's re-election*, CNN (Dec. 28, 2010), available at <http://www.cnn.com/2010/POLITICS/12/28/alaska.senate.race/index.html>.

⁵⁶ Pub. L. No. 107-252, 116 Stat. 1666 (2002).

- Declining to provide early voting sites in Alaska Native villages, instead only authorizing some sites after AFN, through my efforts and those of other AFN staff, to recruit workers in 128 villages to provide early voting services in just eleven days (due to an arbitrary deadline set by the State), only to be followed by the Director of the Division of Elections falsely claiming credit in her public statements for the work that AFN did;
- Failing to implement any meaningful efforts at Yup'ik language assistance in Alaska Native villages in the Bethel Census Area until State officials were sued in *Nick v. Bethel*,⁵⁷ and even then the efforts by those officials was so poor that a federal judge entered a preliminary injunction against them after finding a substantial likelihood of success on the merits that the State had violated Sections 203 and 208 (the voter assistance provision) of the Voting Rights Act in 2008;
- Engaging in intentional discrimination against Alaska Native voters, with State officials including the Director of the Division of Elections, directing election staff to limit all Yup'ik language materials and information to the “Bethel Census Area only” in repeated written correspondence;
- Ending the employment of the one Yup'ik language coordinator on the last day that the *Nick v. Bethel* settlement agreement was in effect, and not replacing her until after the State officials were sued a second time for violating Section 203 in three other census areas in *Toyukak v. Treadwell* in 2013;
- Directing the one permanent bilingual Yup'ik bilingual coordinator hired after the *Toyukak* litigation was filed to spend most of his time doing data entry of voter registration records and voting history, instead of the language assistance needed throughout Alaska;
- Arguing in the *Toyukak* litigation that the Fifteenth Amendment did not apply to Alaska Natives because they were Alaska Natives;
- Maintaining that the State could paternalistically decide what election information Alaska Natives were entitled to know, with the State contending that Alaska Natives could receive less information than non-Native voters received in English simply because they were Natives;
- Failing to translate most ballot measures and materials in the Gwich'in language, even after being warned by the U.S. Department of Justice of the need to translate voting information provided on electronic voting machines;

⁵⁷ *Nick v. Bethel*, No. 3:07-cv-00098-TMB (D. Alaska filed June 11, 2007); see also Tucker, Landreth & Dougherty-Lynch, *supra*, at 350-58 (discussing the *Nick* litigation).

- Failing to provide effective language assistance in three regions of Alaska, the Dillingham, Kusilvak (formerly known as Wade Hampton, named after a Confederate General who advocated forced segregation of the races), and Yukon-Koyukuk Census Areas, as determined by a federal judge in *Toyukak v. Treadwell*, the first Section 203 language assistance case fully litigated through trial to a decision since 1980;
- Falling short of compliance with the requirements of the *Toyukak* order, as documented by federal observers in several elections since 2014;⁵⁸ and
- Most recently, in 2020, a state court suspended Alaska’s witness signature requirement (which mandated a witness outside of the voter’s household verify the signature was the voter’s), which would have prevented Alaska Native voters subject to village lock-down orders to limit the spread of COVID-19 from being able to vote.⁵⁹

Many of these practices which I have described, as well as other examples in a comprehensive report by NARF,⁶⁰ are the very ones that would be stopped by the amendments to the Voting Rights Act included in S.4 and Title III of the bill, NAVRA. In the next section of my testimony, I will briefly describe some of the amendments in those bills that are essential to protecting the right of Alaska Natives to register to vote, cast a ballot, and having their ballot counted.

Voting Protections for Alaska Natives Have Been Weakened Substantially by the Supreme Court

In *Shelby County v. Holder*,⁶¹ the D.C. Circuit Court of Appeals showed the dangers of the Third Branch engaging in dictum. The question of Alaska’s coverage under Section 5’s preclearance provisions was not before the Court. No evidence was taken by the court from Alaska Natives who have experienced Alaska’s long history of past and present voting discrimination first-hand. Nevertheless, the appellate court speculated that the Section 5 coverage formula might be imprecise because some jurisdictions, such as Alaska, were “swept in” under preclearance despite “little or no evidence of current problems.”⁶²

The record I have described demonstrates the dangers of federal courts ruling on factual questions that are not before them. The “case or controversy” requirement necessitates that judicial rulings be limited to only those facts and legal questions before the court. The continued need for coverage of Alaska was not one of those questions that the appellate court could consider properly in *Shelby County*. Nevertheless, at least the appellate court’s non-binding dictum had no effect on

⁵⁸ Tucker, Landreth & Dougherty-Lynch, *supra*; Alaska Advisory Comm. to the U.S. Comm’n on Civil Rts., *supra*.

⁵⁹ *Arctic Village Council vs. Meyer*, No. 3AN-20-7858 CIL, 2020 WL 6120133 (Alaska Oct. 5, 2020).

⁶⁰ See James Thomas Tucker, Jacqueline De Léon & Dan McCool, *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters* (NARF June 2020) <<https://vote.narf.org/obstacles-at-every-turn/>>.

⁶¹ 570 U.S. 529 (2013).

⁶² 679 F.3d 848, 880–81 (D.C. Cir. 2012).

the continued – and necessary – coverage of Alaska under Section 5.

The same cannot be said of the Supreme Court’s 2013 decision. In *Shelby County*, a narrow 5-4 majority of the Court ignored the broad enforcement powers that the Constitution conferred on Congress to remedy voting discrimination⁶³ by usurping that authority to overrule the sound judgments that the Senate and House made in the 2006 reauthorization of Section 5 of the Voting Rights Act. Although the case involved a single county in Alabama covered under a different provision of the Voting Rights Act, Section 4(b) of the Act, the Supreme Court broadly intruded on powers reserved to Congress to expand its decision to include all states and political subdivisions covered by Section 5, including those like Alaska that were covered under Section 4(f)(4) of the Act. With the issue of the continued need for coverage of Alaska not properly before the Court, five Justices struck down all of Section 5’s coverage formulas, including the one covering Alaska.⁶⁴

The impact that the loss of Section 5 coverage has had on Alaska Natives cannot be overstated. AFN’s members and the Alaska Native voters they represent saw critical protection for their voting rights disappear overnight. Preclearance effectively stopped discrimination before it occurred, whether it was through the intentional discrimination of Alaska’s Division of Elections to willfully ignore the language assistance requirements for Alaska’s indigenous peoples or to limit efforts to disenfranchise Alaska Native voters by eliminating in-person voting opportunities or consolidating polling places with far-flung communities that voters could not reach.

In the absence of Section 5, Alaska’s election officials have accelerated efforts to replace in-person voting with mail-in Permanent Absentee Voting (PAV) voting that denies LEP voters with much-needed language assistance. Often, as I have noted already, mail-in voting simply is not feasible in villages where mail service is too unpredictable and unreliable to allow Alaska Natives to exercise their fundamental right to vote. Unequal opportunities for in-person early voting are provided to Alaska Natives, who are compelled to engage in self-help for services that the Division of Elections prioritizes for non-Native communities where registration and voting already is much more accessible.

The expensive and time-consuming *Toyukak* litigation itself was a byproduct of *Shelby County*’s assault on the voting rights of Alaska Natives. Immediately after that decision, when Division of Elections personnel, including the current Director, were informed of widespread violations of language assistance requirements for Gwich’in and Yup’ik speaking villages in three regions of Alaska, they demurred. Rather than taking efforts to correct their violations of Section 203 of the Voting Rights Act, Alaska’s election officials rejected their legal duties and forced Alaska Native voters and villages to sue them. Despite being fast-tracked to secure relief before the 2014 election cycle, it was a year before the case went to trial. The case was marred by the State of Alaska’s racially discriminatory argument that the Fifteenth Amendment did not apply to Alaska Natives. Following a two-week bench trial, which cost the plaintiffs and the State of Alaska over \$2 million, the federal court issued a decision several months later, in September 2014, holding that election

⁶³ See U.S. CONST. amend. XIV § 5; U.S. CONST. amend. XV § 2.

⁶⁴ See 570 U.S. 529 (2013).

officials violated Section 203 of the Voting Rights Act.⁶⁵

Other decisions by the Supreme Court have exacerbated *Shelby County*'s impact on ensuring that Alaska Natives, like all Americans, have equal opportunities to exercise their most fundamental right, the right to vote. Those decisions, which have been discussed in detail by other witnesses during the hearings on S.4 and its House counterpart, H.4, include:

- *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, in which the Court diminished the ability of organizations and individuals seeking relief from voting discrimination to recover their reasonable attorneys' fees and costs under the Voting Rights Act, by rejecting the well-accepted catalyst theory to determine litigants who qualified as "prevailing parties";⁶⁶
- *Purcell v. Gonzalez*, a decision that gave rise to the so-called "*Purcell* Principle," which discourages federal courts from providing substantive relief from voting discrimination if it would potentially disrupt administration of elections, even where a voting rule, procedure or practice was adopted by election administrators close to an election;⁶⁷ and
- *Brnovich v. Democratic National Committee*, decided on July 1 of this year, in which the Supreme Court substantially narrowed the scope of vote denial or abridgment claims by rewriting Section 2 of the Voting Rights Act to use a new "totality of the circumstances" test inconsistent with the plain language of the Act and over a half century of jurisprudence interpreting the Act's general non-discrimination provision.⁶⁸

Current discrimination against Alaska Natives is neither sophisticated nor covert. The examples I have described show that intentional discrimination by Alaska's election officials are done openly and comprise the most basic efforts to reduce opportunities by Alaska Natives to register to vote, cast ballots, and to have their votes counted. Each of these four Supreme Court decisions makes it more difficult for Alaska Natives to eliminate these barriers to their political participation. S.4 includes critically needed fixes that will clarify congressional intent on the proper scope of protections under the Voting Rights Act.

The Need to Honor Elizabeth Peratrovich through Passage of NAVRA

In her testimony in support of the Alaska Equal Rights Act of 1945, Elizabeth Peratrovich observed, "... asking you to give me equal rights implies that they are yours to give. Instead, I must demand that you stop trying to deny me the rights all people deserve." The power and force of her

⁶⁵ See Tucker, Landreth & Dougherty-Lynch, *supra*, at 358-82.

⁶⁶ 532 U.S. 598 (2001).

⁶⁷ 549 U.S. 1 (2006) (per curiam).

⁶⁸ 141 S.Ct. 2321 (2001).

words are just as true today, as the Senate considers passage of S.4 and the provisions of NAVRA in Title III of the Act.

NAVRA is an especially important part of S.4 because it targets the unique barriers that Alaska Native and American Indian voters experience when they attempt to register to vote, to cast a ballot and to have that ballot counted. Equally important, Congress has broad authority to enact NAVRA to remedy voting discrimination not just through its Enforcement Clause powers under the Reconstruction Amendments, but also through its constitutional abilities to regulate relations with Tribes and their citizens in the Government-To-Government relationship the United States has with federally recognized Tribes. NAVRA spells out that authority very clearly in its introductory section.

I am going to concentrate on some of NAVRA's provisions next to explain why they are needed to protect Alaska Native voters.

A Native American Voting Task Force Grant Program is needed.

As an initial matter, Section 304 of NAVRA establishes a Native American Voting Task Force Grant Program, seeking to improve voter registration and ballot access in Native American communities through many methods. A fully funded grant program purposed to expand registration and voting opportunities for rural Alaska and the rest of Indian Country is critical to securing equal access for Native voters.

Far too often, Tribes, Native organizations or individuals, like AFN, are compelled to engage in self-help to secure the most basic services that are provided on a routine basis at no-cost to non-Natives. That is apparent in some of the actions Alaska's election officials have taken in registration and voting opportunities in Alaska Native villages.

To this point, I will reiterate my earlier example of early voting locations in the *Toyukak* litigation. For several months, officials in Alaska's Division of Elections worked diligently to identify facilities that could serve as early voting sites for the predominately non-Natives living in Alaska's urban communities. Their efforts excluded rural Alaska and the tens of thousands of Alaska Native voters. Instead, it was only by Alaska Native prompting that officials at the Division of Elections even considered Alaska Native villages as an afterthought. At that point, however, they told Native leaders that it was too late for them to do anything. It was only after AFN continued to insist that equal voting opportunities be provided to Alaska's most vulnerable voting population, Alaska Natives, that officials begrudgingly acquiesced to allowing AFN and a handful of other Native entities to establish early voting sites in rural Native villages. But there were strings attached. AFN and our partners had to assume complete responsibility for securing early voting locations and workers for the Alaska Native communities in a little more than a week.

Ultimately, the grassroots campaign lead by AFN prevailed in creating early voting in rural Native villages, and 128 polling locations were brought online in 11 days, but at tremendous time and expense that we had to bear on our own. Passage, implementation and funding of a Grant Program would go a long way to providing resources for similar efforts in the future, as well as others like: outreach; establishing early voting sites; improving bilingual materials and assistance; enhancing election official training; and encouraging greater cooperation by election officials with

Alaska Native governments and organizations such as AFN.

I want to emphasize the importance of ensuring that funds for the Grant Program actually are used for their designated purposes and are not simply a means for a state to earn interest or use funds to subsidize programs election officials are required to provide already. That is precisely what happened in Alaska. For years, Alaska left federal HAVA funds untouched, accruing interest on the funds. When Alaska officials began using the funds in earnest, they did so to improve registration and voting of non-Natives for whom both already were accessible, at the expense of neglecting Alaska Native communities. There must be accountability for how those funds are used.

NAVRA makes registration and voting more accessible in Alaska Native communities.

Section 305 of NAVRA amends § 7 of the National Voter Registration Act of 1993⁶⁹ by adding as designated voter registration sites those federally funded facilities located on Indian land or primarily engaged in providing services to Native Americans. This provision is important for two reasons. First, many Alaska Native villages have federally funded offices that help service programs that are essential to the social, economic and health needs of residents. Second, those offices are not currently required to offer voter registration services. Section 305 would cure that deficiency through the common-sense measure of requiring existing federal service centers in rural Alaska to simply add voter registration to the mandated services they provide already.

Section 306 would allow Tribal Governments to designate at least one in-person polling site on the Tribe's Indian lands, which includes ANCSA lands, to prevent the reduction of polling places on those lands, and provide additional polling sites based upon several criteria such as the number of voters assigned to polling places, travel distances and time to reach polling sites, transportation barriers, waiting times, and other factors. This measure responds to a growing problem in Alaska. Far too often, citing expense and inconvenience to their office, Division of Elections staff have sought to avoid federal language assistance mandates by designating Alaska Native villages as Permanent Absentee Voting sites. Such designations effectively can disenfranchise all voters in villages that receive that designation. NAVRA would stop that discriminatory practice. In its place, it would leave the authority for determining the polling place for Alaska Native villages where it properly belongs: in the hands of the Tribal Government for that village. In the process, this measure helps preserve the right to vote of all Alaska Natives through the simple act of allowing sovereign Tribal Governments to decide the best interests of their voters, and not be subject to the discriminatory whims of non-Native officials located hundreds of miles away.

Voting during the COVID-19 pandemic increasingly has relied upon alternatives to in-person voting, such as mail-in voting. When such alternatives are appropriate (that is, for voters other than LEP Tribal Elders who need in-person language assistance and those voters lacking reliable mail service), NAVRA facilitates their use in Alaska Native communities. Tribal Governments may designate at least one building per voting precinct as ballot pickup and collection sites. At the request of Tribes, mail-in and absentee ballots are to be provided to registered Native voters without requiring a residential address or completed application for the ballot. Tribally designated buildings may be substituted for required residential or mailing addresses. At least one ballot drop box must be

⁶⁹ 52 U.S.C. § 20506(a).

provided for each Tribal Nation's lands, with additional drop boxes provided if the totality of the circumstances demonstrates their need. In-person early voting opportunities must be offered on Tribal lands if a State or political subdivision offers them elsewhere, which must provide at least a 10-hour period to vote for each day early voting sites are open.

Provisional ballots have impaired the ability of many Alaska Native voters to cast effective ballots. Section 306 of NAVRA addresses the problems of forcing Native voters to travel extensive distances to resolve any deficiencies preventing the counting of their ballot. Under NAVRA, Native voters must be provided clear notice of any errors or issues with their ballots, and be allowed to resolve those issues at any polling place on Indian lands or through alternative means such as facsimile. The bill also resolves a barrier created by the Help America Vote Act by creating a private cause of action for Native voters to enforce the provisional ballot requirements in NAVRA. That fix will ensure that Native voters, or their Tribal Governments, are able to take legal action against any recalcitrant election officials who fail to comply with provisional ballot mandates.

Section 307 of NAVRA offers an important recognition of Tribal Sovereignty in the voting process. It requires that any State or political subdivision seeking to remove a voter registration or polling site on Indian lands must either obtain the consent of the Tribal Government or institute a declaratory judgment action in the U.S. District Court for the District of Columbia. Alternatively, the change may be submitted for review and approval by the Attorney General after consultation with the Tribal Government. This provision ensures that approval authority for changes in voting locations affecting Alaska Native voters comes from Tribal Governments, not non-Native election officials.

Acceptance of Tribal identification to confirm Native voters' identities.

Voter identification problems faced by Native voters are the focus of Section 308 of NAVRA. Under that provision, if a state or political subdivision requires identification to register to vote or to cast a ballot, they must accept an identification card issued by a federally recognized Tribe, the Bureau of Indian Affairs, the Indian Health Service, or any other Tribal or Federal agency that issues identification cards to eligible Native voters. This remedy cannot be circumvented by requiring multiple forms of identification. Election officials also must consult with Tribes to ensure that any identification that must be submitted online is accessible to Native voters.

Like the other provisions of NAVRA, this is a much-needed common-sense measure. Because so many Alaska Native villages are located off the state road system in places where ATVs or snowmobiles – not cars – are used, thousands of Alaska Native voters lack a driver's license issued by the State Department of Motor Vehicles. Instead, they use identification issued by Federal agencies, the ANCs or their village corporations, including when they use public transportation.

Section 308 of NAVRA recognizes this common usage of identification cards that are not issued by state governments. It ensures that the unique circumstances of Alaska Native voters, which range from inability to get a state identification card because they lack a birth certificate or other required documentation, or they simply do not need one because of where they live, is not a means to disenfranchise them.

Ballot collection procedures can resolve some transportation issues.

NAVRA also facilitates ballot collection from Native voters who often lack access to reliable and affordable transportation to get to voting locations, post offices or drop boxes. Section 309 permits any person to return a sealed ballot of a voter residing on Indian lands, as long as the person returning the ballot receives no compensation. There is no limit placed on the number of ballots that may be returned. Organizations collecting and returning sealed ballots are required to keep a record of the materials collected and the location and date the ballot materials were submitted.

Section 203 of the VRA is amended to fix a proviso used to disenfranchise Native voters.

Section 310 of NAVRA includes a simple, but important, fix to the language assistance provisions of the Voting Rights Act. As currently written Section 203 provides that covered jurisdictions do not have to provide written translations for languages that are “historically unwritten.”⁷⁰ For decades, Alaska election officials used this proviso to deny all language assistance to Alaska Native voters.

In the *Nick* litigation, Alaska election officials argued that no written translations of voting materials and information were required because they claimed that all Alaska Native languages are “historically unwritten.” They made that argument even though several Alaska Native languages including but not limited to Gwich’in, Inupiaq and Yup’ik, are written and widely used by Native voters and even Alaska’s own poll workers.⁷¹ The federal court in *Nick* ultimately found that even where a language is “historically unwritten” bilingual written translations might be needed to ensure that oral language translations were accurate and effective.⁷² However, that narrow construction of Section 203’s requirements leaves all LEP Alaska Native voters vulnerable to a contrary interpretation that may revert back to placing the entire burden of translations on bilingual workers to interpret complex ballot measures on-the-spot.

This section of NAVRA cures this problem by providing that Native voters in jurisdictions covered by Section 203 for their language may receive written translations in their language if their Tribal Government determines that written translations are needed. Again, that ensures that Tribal Governments, not non-Native election officials or federal judges, are the ones who decide whether written translations are to be provided in the covered Alaska Native language.

NAVRA’s remaining provisions facilitate Alaska Native voting.

Section 311 of NAVRA allows Tribes to request that the Attorney General send federal observers by identifying one or more instances in which a voting rights violation is expected to occur in an election. That provides Tribal Governments in Alaska a means to request early intervention by

⁷⁰ See generally 52 U.S.C. § 10503(c) (“... Provided, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.”).

⁷¹ See generally TUCKER, *supra*, at 91-98, 280-85; see also Tucker, Landreth & Dougherty-Lynch, *supra*, at 354-55.

⁷² See Tucker, Landreth & Dougherty-Lynch, *supra*, at 355-57.

the U.S. Department of Justice if it appears that Alaska’s election officials are failing to comply with one or more provisions of federal voting rights law.

Section 312 recognizes Tribal jurisdiction to detain or remove any non-Indian unaffiliated with the Federal or a State or local government who intimidates, harasses, or impedes the conduct of an election or voting. This provision acknowledges authority that Tribal Governments have already. In Alaska, this section is especially important because most Alaska Native villages lack any access to or coverage by state law enforcement officials. If Tribal Government officials do not have that authority, which NAVRA provides, it would leave unaddressed efforts to disenfranchise Alaska Native voters through direct suppression.

Section 313 requires the Attorney General annually consult with Tribal Nations regarding Federal elections. While this is something that should occur without legislation, far too often it does not.

Section 314 provides for recovery of attorneys’ fees, litigation expenses and expert fees to a prevailing party in any enforcement action brought under NAVRA. As I have explained briefly in my discussion of the *Buckhannon* decision, more restrictive attorneys’ fees provisions can significantly hamper enforcement of federal voting rights protections for Alaska Natives.

Section 315 directs the Government Accounting Office (GAO) to conduct a study and report on the prevalence of nontraditional or nonexistent mailing addresses for Native voters and to identify alternatives to resolve those barriers. Finally, Section 316 requires consultation with the U.S. Postal Service to resolve addressing problems. Both of these are significant issues in Alaska.

AFN applauds the Senate for including NAVRA in the bill, to help ensure that all Alaska Natives have equal access to the voting process.

The Senate should pass S.4, including NAVRA, to protect voting by Alaska Natives

Protecting the right to vote is not a partisan issue. It is a fundamental civil rights issue for Alaska Natives. Everyone suffers, and elected government has less legitimacy, each time an Alaska Native is prevented from registering to vote or is turned away at the polls. I commend Senator Murkowski for her leadership in working with the Alaska Federation of Natives to address the barriers to voting equality of Alaska Native citizens.

I will leave you with these enduring words of one of NAVRA’s namesakes, Elizabeth Peratrovich: “Speak your intent to help us overcome discrimination.” Now is the time to act. Now is the time to pass S.4, the John R. Lewis Voting Rights Advancement Act of 2021, and Title III of that bill, The Frank Harrison, Elizabeth Peratrovich, and Miguel Trujillo Native American Voting Rights Act of 2021.

Thank you very much for your attention and your commitment to making voting fully accessible for Alaska Natives and other voters in Indian Country. I welcome the opportunity to answer any questions you may have.