

**TESTIMONY OF
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ON**

Restoring the Voting Rights Act: Protecting the Native American and Alaska Native Vote

**BEFORE THE
COMMITTEE ON THE JUDICIARY - SUBCOMMITTEE ON THE CONSTITUTION
UNITED STATES SENATE**

OCTOBER 20, 2021

Yá'át'ééh (Hello) Chairman Blumenthal, Ranking Member Cruz, and Members of the Subcommittee. Thank you for the opportunity to talk to you today about the importance of the Native American vote.

Native Americans were the first Americans, and yet we were the last to be granted citizenship in the United States. As citizens, Native Americans should have the same access to voting opportunities as all other citizens, but too often we find that this is not the case.

With over 27,000 square miles and 400,000 citizens, the Navajo Nation (Nation) is the largest federally recognized tribe in the United States both in terms of land mass and membership. With land spread across Arizona, New Mexico, and Utah, we are happy to say that we are represented by six U.S. Senators, and five members of the U.S. House of Representatives, but even with such a broad base of support in the United States Congress, many of our citizens still face barriers to voting that are unique to Indian Country. The main areas I will focus on in this testimony that pose a challenge when it comes to voting are: geography, language, institutional barriers, and our socio-economic realities.

I. Geographic distance and multiple jurisdictions limit access

As stated above, the Navajo Nation has over 27,000 square miles, making it slightly larger than the state of West Virginia and nine other states. With our large land base, many of our citizens live in rural areas and travel long distances to access basic needs and services. Getting to a polling station is often a difficult task, as transportation options are limited. Our people rely on relatives or clan members for rides because most households only have one car for the entire family. Travel across the Nation can also be difficult as over 86% of the roads are unpaved. This burden is exacerbated when it comes to: (1) driving to voting locations located on the Nation; and (2) driving from the Nation to a County Recorder's office, or county seat.

Counties retain broad discretion on the placement of polling locations for early voting and on Election Day - including how many polling sites they are willing to place on the Nation and where. For example, in the 2018 election, the closest early voting location to Teec Nos Pos, a Navajo community located in the northern part of Apache County, Arizona, was in Fort Defiance, AZ. This resulted in Navajo voters having to travel 113 miles one way to participate in early voting.

When the Nation made a request to the County for an early polling location in Teec Nos Pos it was denied.

On the New Mexico side of the Nation, during the 2020 election, the Nation requested San Juan County to provide more drop boxes beyond the two available, but our request was denied. This resulted in Navajo voters living in Crystal having to travel at least 54 miles, round trip, to deliver their ballot to the nearest drop box in Newcomb.

And on the Utah side of the Nation, in the 2018 election, San Juan County removed all in-person polling locations on the Nation, requiring anyone who wanted to vote in person to travel to the county seat in Monticello, a journey of 196 miles one way from the Navajo Mountain community. The Navajo Nation Human Rights Commission filed a lawsuit to restore those polling locations.

Driving off the Nation to a county seat to register or clarify a voting issue can also present unique difficulties: using the same example of Apache County, if a voter resides in Teec Nos Pos they would need to travel 211 miles one way to the county seat in St. Johns. This distance to a county seat presents a burden for those voters who must travel to correct their ballots or provide proof of residence in-person.

Many of the problems we face due to the largely rural and expansive nature of the Navajo Nation could be solved with increased polling locations per precincts and adding voter registration centers across the Nation. This would ease the burden of travel and allow more opportunities for voters to participate in state and federal elections. However, local opposition to these measures has prevented solutions that have often only been rectified by bringing challenges to court.

Utah Cases

There are two key cases in Utah that affected the voting rights of Navajo citizens. The first is *Navajo Nation v. San Juan County*.¹ In 2012, the Nation filed a lawsuit against San Juan County (County) alleging violations of the constitution and the Voting Rights Act. The federal district court in Utah found the County violated the constitutional rights of Native Americans living in San Juan County through its malapportioned school board district and its racial gerrymandering of its county commissioner district.

Based on these findings the District Court allowed the County an opportunity to draw new districts that were constitutionally sound and in compliance with the Voting Rights Act. When the County presented these districts to the Judge, they were rejected because he found them to be drawn predominantly based upon race. The Court then appointed a Special Master to draw new districts. After completing this task in December 2017, the District Court accepted the districts drawn by the Special Master and implemented them for the 2018 election.

The District Court also ordered the County to hold new elections for all county commission and school board seats in 2018. As a result of the new districts, two Navajo individuals were elected to the county commission, creating a Native American majority of the commission for the first time in San Juan County's history.

¹ 266 F.Supp.3d 1341 (D. Ct. Utah 2018).

The second case is *Navajo Nation Human Rights Commission v. San Juan County*.² In 2014 San Juan County attempted to transition to an all-mail voting system, reducing its number of physical polling places from nine across the County down to one, located only at the County Clerk's office. After the case was filed, the County added three in-person polling sites on the Nation and provided Navajo language assistance. None of the three-added locations were accessible for the early voting period.

The Navajo Nation Human Rights Commission argued that the political process in San Juan County was not equally open to Navajo voters in violation of Section 2 of the Voting Rights Act. The three polling locations in the majority-Navajo precincts were only open on Election Day while the polling place in the majority-non-Native precinct was accessible for 14 days during the early voting period.

The case was settled in February 2018. Per the terms of the settlement agreement, the County was required to (1) continue to provide three polling locations on the Nation through the 2020 election; (2) open satellite offices in three on-the-Nation locations for in-person voting assistance during the 28-days preceding the primary and general election; and (3) provide in-person voting assistance, confirm language assistance, and discuss public notification of election deadlines, locations, and other election-related information. The settlement has been extended through the 2024 election cycle.

Although the situation in Utah has been rectified *for the moment*, when the current settlement expires, we may be forced to go to court once again unless Congress acts. There are some issues that are rightly decided at the local level, but when a fundamental right such as the right to vote is at stake, and states are not being responsive to the needs of their citizens, that is one of the areas when it is appropriate for the federal government to step in.

II. Navajo voters face language barriers in voting

The Navajo language is widely spoken by Navajo voters, and it is the first and preferred language for many Navajo people. The Navajo people are a racial and language minority under Section 2 of the Voting Rights Act and entitled to language assistance under Section 203 of the Act.³ Section 2 of the Act prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified in Section 4(f)(2) of the Act. Section 203 of the Act requires covered jurisdictions to provide language assistance to all aspects of the voting process, including during voter registration and early voting.

Navajo is traditionally an oral language, not a written one, and many Navajos struggle to read and require in-person language assistance to cast a ballot. There are sometimes differences between dialects across the Nation, so in-person translations can be particularly beneficial. Any written election material provided in the English language must also be provided in Navajo. However, providing written election materials alone is not always helpful as translations are not guaranteed to be accurate and can cause more confusion than assistance. This means that any changes to a

² 215 F. Supp. 3d 1201, 1206 (D. Ct. Utah 2016).

³ Voting Rights Act of 1965, 52 U.S.C. §§ 10301 et seq.

complete vote-by-mail system would deny Navajo speakers the opportunity to vote. In this example, Navajo voters who do not speak English would be required to find their own designated individual to explain the ballot. In-person translation services are sometimes preferred. For these reasons, Navajo voters must be provided complete and accurate translations before they cast their vote.

III. Institutional barriers limit the ability of Navajo citizens to cast their vote

Homes across the Nation are unmarked and lack formal street addresses. Navajo citizens do not enjoy at-home mail delivery and instead must rely on post office boxes to receive mail. These post offices boxes are often limited in availability, shared within families, require a fee, and require traveling significant distances to access.

Post offices generally limit the number of people that can be listed on a box, causing some who share P.O. boxes with their families to be removed from the box. Even if multiple family members are able to share one box, there are not enough boxes to serve an entire community. There are a limited number of post office boxes available at each location, and across the Nation there is a critical shortage of postal service providers.

Some families also share a family box because individually they may not be able to afford their own post office box. Renting a post office box can cost a considerable amount: in Arizona the fee is \$136.00 per year, and if the fee is not paid on time, the box could be closed.⁴ This means that if there is no availability on the family box, or if voters do not have enough money to pay the yearly fee, voters are forced to travel longer distances to secure any available post office boxes, sometimes in addition to the travel made to the initial postal service provider. This drastically limits the ability of the voter to receive important voter information or their ballot in the mail. Long travel times make checking post office boxes a hardship for voters who are elderly or disabled. Voters might also choose to check their mail less frequently, checking once a week or even as little as once every few weeks, making receipt of time sensitive information difficult.

Additionally, when the voter does utilize a post office to mail off their ballot, mail routes and timing are unreliable. Using the example of Apache County, a ballot sent from Window Rock to the county recorder in St. Johns must first route through Gallup, then to Albuquerque, then to Phoenix, then to Show Low, and then finally to St. Johns⁵ – at a minimum taking at least 10 days from the time of sending to the time of delivery. This increases the risk of a ballot going uncounted. Because of the long delay in mailing, many Navajo citizens prefer to vote in-person or utilize drop boxes to ensure their vote is counted.

Eligible voters on the Nation should not face hardship in registering to vote, receiving important voting information, or casting their ballot. More locations on the Nation that can provide Navajo voters with voting-related services would alleviate some of these hardships. The Nation welcomes

⁴ Brief for the Navajo Nation as Amicus Curiae Supporting Respondents at 13, *Brnovich v. Democratic National Committee*, 594 U.S. __ (2021) (No. 19-1257) [hereinafter Brief for the Navajo Nation].

⁵ Teleconference with Samantha E. Lamb, AZ/NM Political Mail Coordinator, United States Postal Service (Sept. 29, 2020).

regular tribal consultation with the Postmaster General to address the mail barriers faced by Navajo voters.

IV. Socio-economic factors create challenges for Navajo voters

Navajo citizens face disparities in education, employment, and housing. Only four percent of the Nation's enrolled citizens have obtained college degrees.⁶ The current unemployment rate is 48.5% with the average household income at \$8,240, below federal poverty guidelines.⁷ The poverty rate on the Nation is 38%--twice as high as the poverty rate in Arizona.⁸ These socio-economic factors impede Navajo voters in many different ways. Voters lack access to vehicles; lack verifiable physical addresses; and lack secure housing.

In some parts of the Nation, only one in ten families own a vehicle.⁹ Voters are reliant on the family vehicle, friends, relatives, or clan members to catch a ride to work or school—and often pay for fuel. When it comes to voting, whether a voter intends to vote early, deposit their ballot at a drop box, or vote in-person on Election Day, any of the available options require a dependable vehicle to travel the distance to a polling location. The Nation also occupies some of the most remote and challenging terrain in the country.¹⁰ Notwithstanding the remote and expansive nature of the Nation, all of this creates an arduous journey for Navajo citizens who want to cast their vote.

Houses on the Nation are unmarked and lack traditional street addresses, meaning voters lack verifiable physical addresses. When registering to vote, a map is drawn showing where their house is located. This creates inaccuracies because on an Arizona voter registration form there is rarely enough space to show a house's location.¹¹ County officials are then left to make their best guess on the physical location of a residence, and sometimes voters are placed in the wrong precinct.

Housing is a two-fold issue because some Navajo citizens move intermittently from place-to-place and there is a lack of housing on the Nation. While most voters live in multi-generational homes, many still move from place-to-place because they cannot afford a single stable domicile. Lack of permanent housing or residency makes it hard for eligible Navajos to register to vote. With no reliable residential addresses, these voters cannot register to vote, even if they are moving around within the same precinct.

Overall, poverty combined with the rural nature of the Nation, language barriers, long distances between polling and registration sites, and state restrictions make voting for Navajo citizens uniquely challenging. These disparities hinder active participation in the political process and effectively deny Navajos living on tribal lands the right to vote.

⁶ Brief for the Navajo Nation. at 16.

⁷ Navajo Nation Department of Agriculture, <https://www.agriculture.navajo-nsn.gov/>.

⁸ Brief for the Navajo Nation. at 16.

⁹ *Id.* at 14.

¹⁰ *Id.* at 12.

¹¹ *Id.* at 16.

Conclusion

The Nation has a strong interest in ensuring that Native Americans have an equal opportunity to participate in the electoral process the same as other U.S. citizens. Each Navajo registered to vote in state and federal elections in Arizona, New Mexico, or Utah should have the ability to cast their ballot *and* have that vote count.

Protecting the Native American vote requires taking into consideration the unique challenges faced by Navajo voters. The Nation has, and continues, to fight repeated efforts by the states and their political subdivisions through restrictive voting laws and policies that try their best to impede access to the polls. The Navajo Nation cannot fully rely on states to provide protections to our right to vote.

We demand that Congress enact voting rights legislation to protect the constitutionally guaranteed right of Native Americans to vote. The federal government must fulfill its trust responsibility and safeguard our Navajo citizens' right to vote. The first peoples of this country should not be the last peoples to cast their ballots.

We thank Senator Ben Ray Luján for his diligent efforts in addressing these urgent needs in Indian Country by introducing the important legislation that is the Native American Voting Rights Act. We are also thankful for Senator Leahy's work to include the Native American Voting Rights Act within the John Lewis Voting Rights Advancement Act. We look forward to working with the 117th Congress to fully realize protections for Navajos and all Native Americans who wish to exercise their inherent right to vote in the United States.

Ahéhee' (Thank you).