



Native American Voting Rights Issues

Native American Rights Fund

Overview

- Native Voter Turnout
- Historical Exclusion of Native Americans from Voting
- Structural Barriers Preventing Native Americans from Voting
- Contemporary Practices that Suppress the Native Vote
- Major Voting Rights Laws and NARF Cases Defending Native American Voting Rights
- Policy fixes



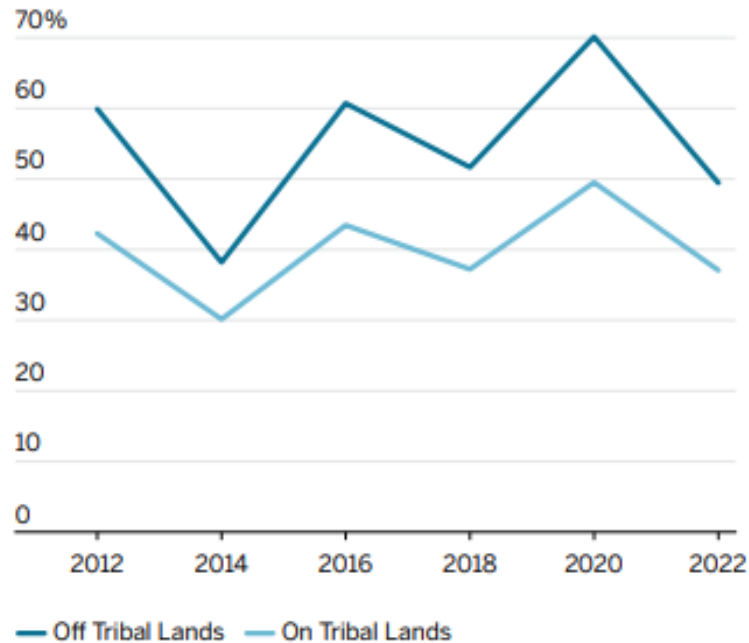
Native voter turnout – Measurement challenges

- Small population sizes
- Biased samples
- Giving meaning to the data

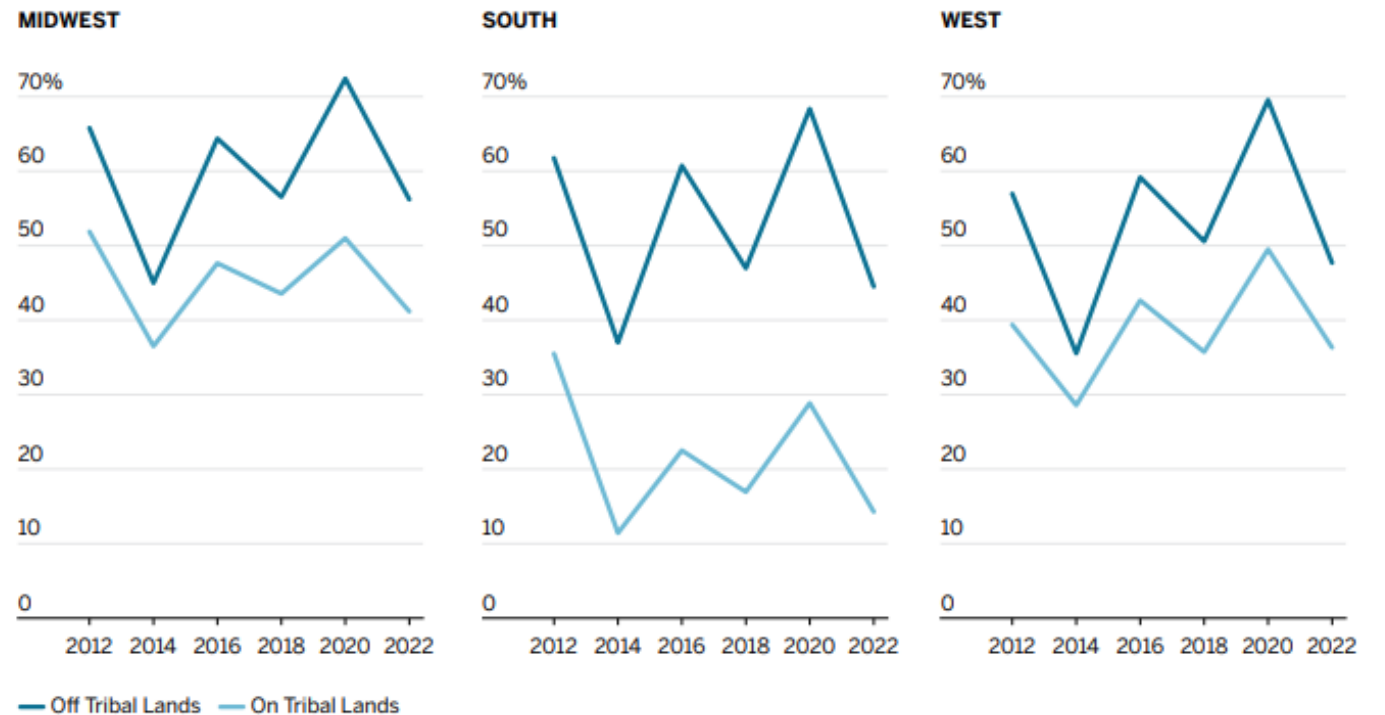


Native voter turnout – Tribal land residents

Average Voter Turnout on and off Tribal Lands, 2012–2022



Average Voter Turnout on and off Tribal Lands by Region, 2012–2022

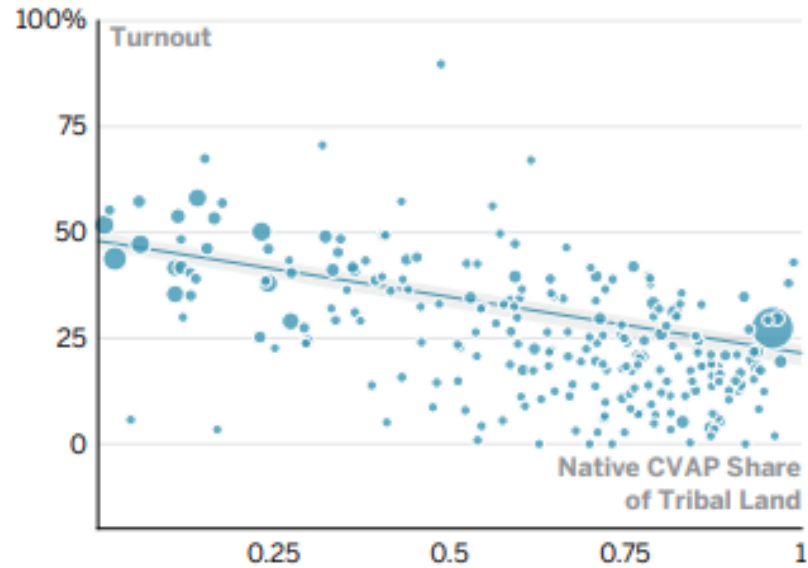


Voting on Tribal Lands, Brennan Center for Justice at: <https://www.brennancenter.org/our-work/research-reports/voting-tribal-lands>

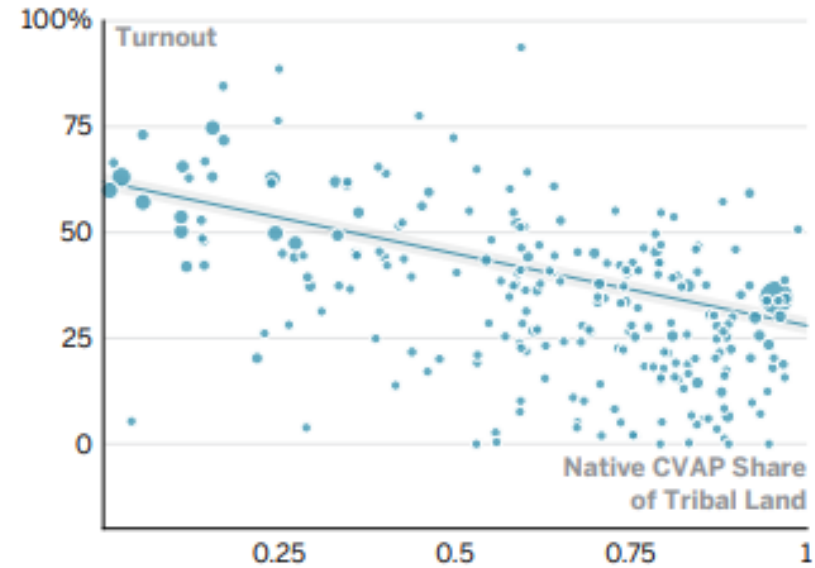
Native voter turnout – Tribal land residents (continued)

Turnout Rates on Tribal Lands by Native CVAP Share, 2012–2022

MIDTERM



PRESIDENTIAL

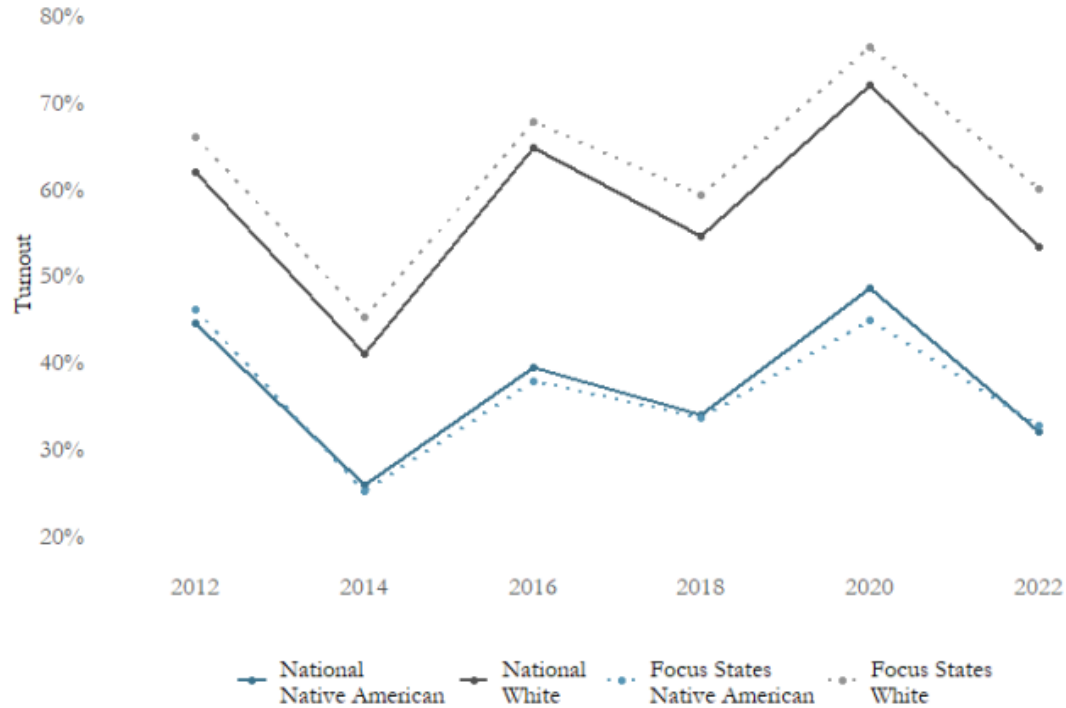


Voting on Tribal Lands, Brennan Center for Justice at: <https://www.brennancenter.org/our-work/research-reports/voting-tribal-lands>



Native voter turnout – Native Americans

Estimated Turnout for Native American and White, 2012-2022



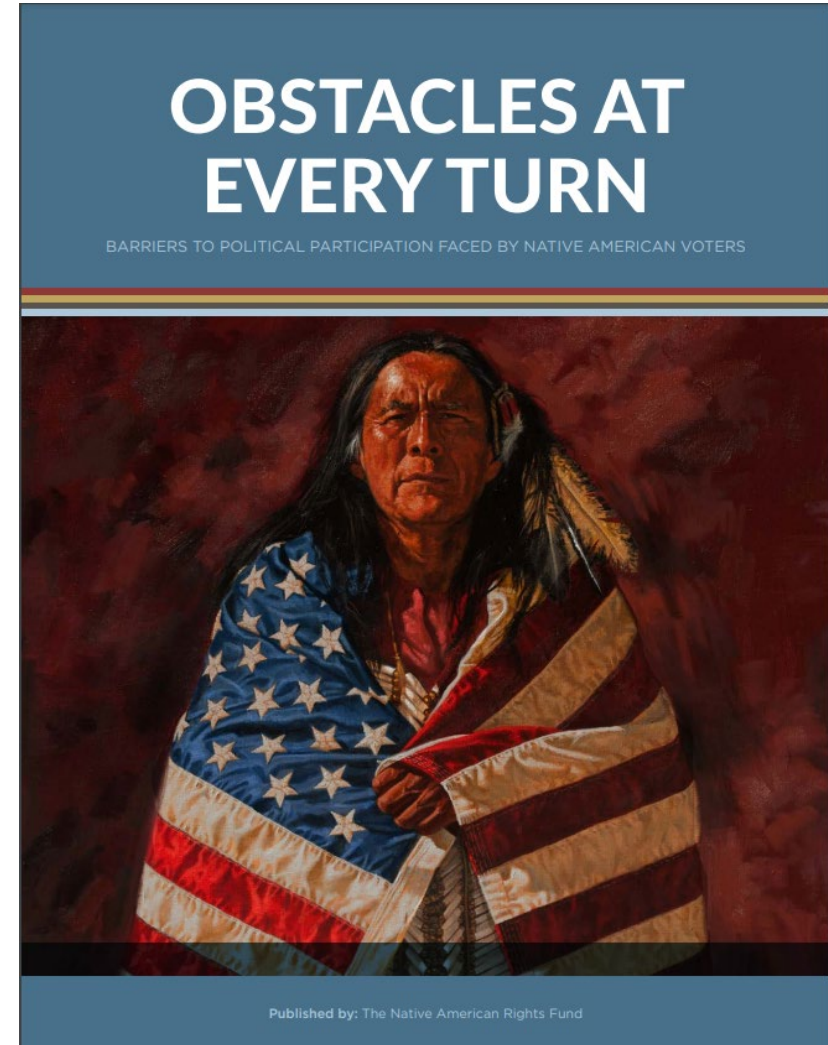
| Year | Overall | Native | White | Asian/PI/NH | Black | Hispanic | Multiracial |
|------|---------|--------|--------|-------------|--------|----------|-------------|
| 2022 | 46.90% | 31.90% | 53.10% | 32.70% | 41.60% | 30.60% | 38.30% |
| 2020 | 67.30% | 48.40% | 71.90% | 60.60% | 65.40% | 51.90% | 57.70% |
| 2018 | 50.40% | 33.80% | 54.30% | 37.90% | 51.10% | 35.90% | 43.60% |
| 2016 | 60.40% | 39.20% | 64.60% | 46.60% | 60.30% | 44.80% | 50.40% |
| 2014 | 36.80% | 25.80% | 40.80% | 23.10% | 36.80% | 21.10% | 29.20% |
| 2012 | 59.30% | 44.30% | 61.80% | 44.60% | 67.80% | 43.10% | 51.60% |



Election Inequities in Indian Country, Native American Rights Fund at: <https://narf.org/wordpress/wp-content/uploads/2024/08/turnout-in-federal-elections.pdf>

Barriers to the Native Vote

- Historical exclusion
- Structural barriers
- Contemporary policies and practices

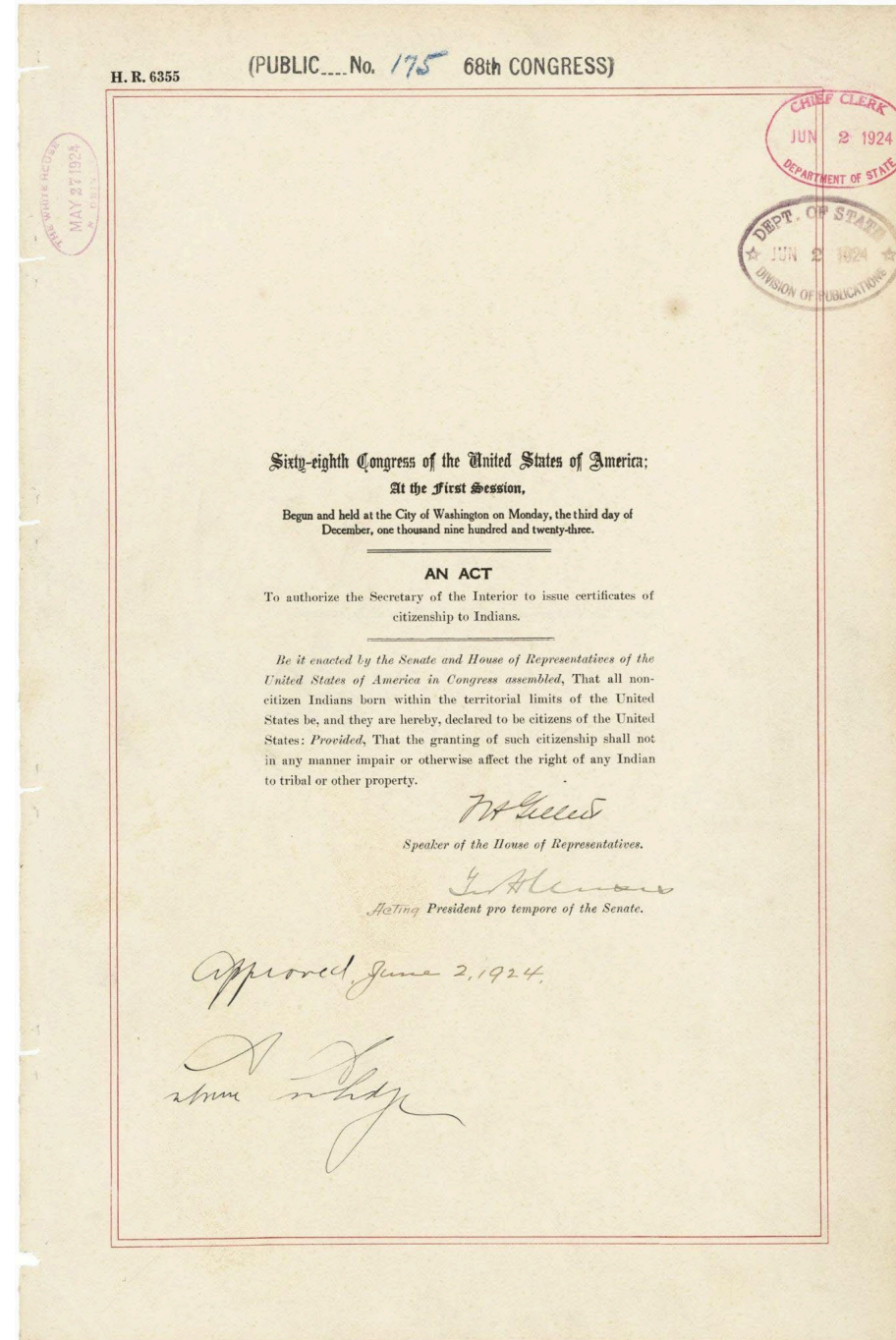


Obstacles at Every Turn, Native American Rights Fund at: https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf



Historical exclusion

Native Americans were not recognized as having birthright citizenship until passage of the Indian Citizenship Act of 1924

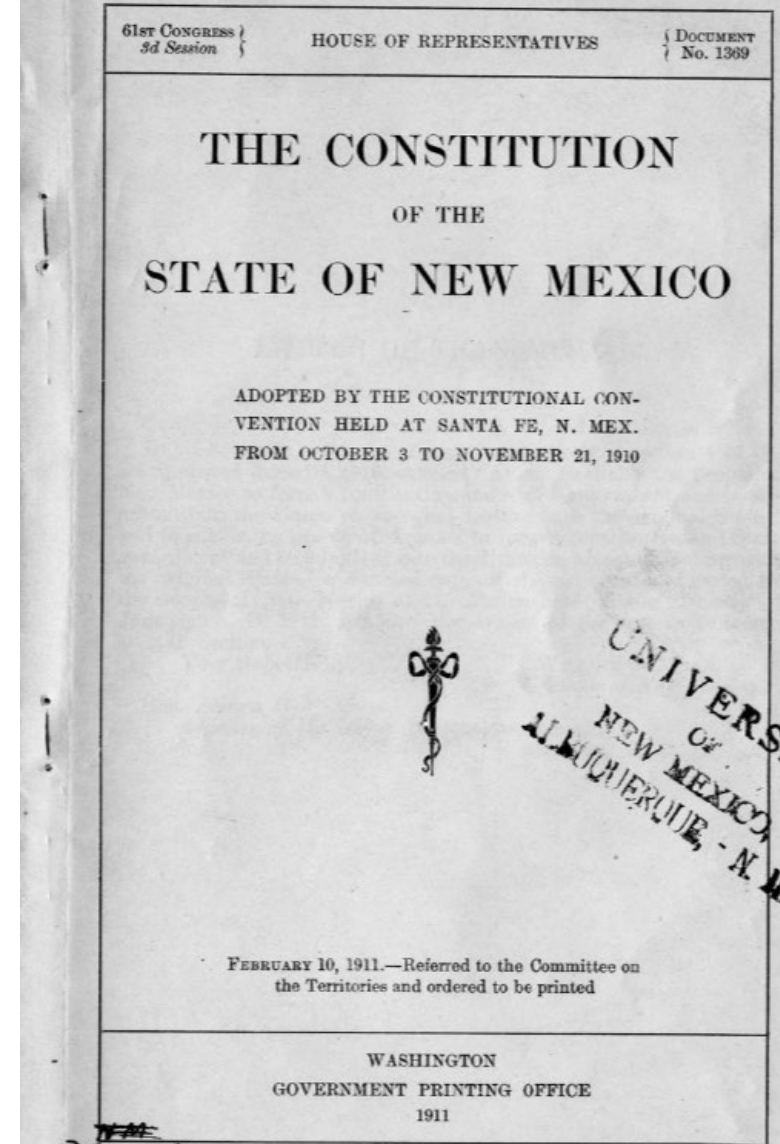


Historical exclusion

“[Indians] are, within the meaning of our constitutional provision, ‘persons under guardianship,’ and not entitled to vote.” *Porter v. Hall*, **Arizona State Supreme Court**, 1928 (not overturned until 1948)

“...nor shall Chinese or persons of Mongolian descent not born in the United States, nor Indians not taxed, who have not severed their tribal relations and adopted the habits of civilization, either vote, serve as jurors, or hold civil office.” **Idaho State Constitution**, 1889-1950

“Every male citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except... Indians not taxed, shall be qualified to vote at all elections for public officers.” **New Mexico State Constitution**, ruled unlawful in 1948



Historical exclusion

“...For these reasons we have declared in favor of a law to prevent the mass voting of illiterate Indians...”

Attention Republicans

A plan is on foot to extend to the Indians of Alaska all the privileges of whites, including the right to sit on juries, to vote irrespective of mental qualifications, and to send their children to the white schools to mingle, regardless of physical condition, with white children.

An organization has been perfected to carry this plan into effect; and the organization has been adequately financed.

We do not believe that the Indians are yet ready to assume all the duties imposed on the whites; and we do not believe that the Indians generally have sufficient knowledge of the rules of sanitation to insure the safety of white children should both races be admitted freely to our schools together. For these reasons we have declared in favor of a law to prevent the mass voting of illiterate Indians; and we are against the law that will be proposed at the next Legislature, to compel school boards to admit all Indian children who apply for admission to the Territorial schools.

REMEMBER, THOSE WHO ARE EXPLOITING THE INDIANS ARE WELL ORGANIZED AND FINANCED.

Unless those who are opposed to having Indians in the Legislatures and white schools and on juries, also organize, the Indians are certain to have the balance of power.

An opportunity to keep the Indian in his place until he is better qualified to exercise all the privileges and assume all the duties of the whites; and to keep him here for his own good and the benefit of the Territory is afforded all Republican voters by supporting the undersigned at the primaries April 29th.

J. H. DAVIES, of Ketchikan,
For Senator.

H. R. SHEPARD of Juneau
HOWARD ASHLEY of Skagway

A. E. GURR of Wrangell
For Representatives.

ONE FOR ALL—ALL FOR ONE



Structural Barriers

“Every promise that was made to us has been broken.”



- **Long driving distances** to government offices, including voting locations.
- **Lack of transportation and infrastructure**, including paved roads, internet, and mail delivery.
- **Lack of city-style residential addresses** on many reservations.
- Disproportionately high rates of **poverty and disability**.



Structural Barriers

“The results show a consistent pattern where the Census Bureau estimates areas with large Native American populations have unreliable or non-existent home mail delivery through the U.S. Postal Service.”

DISCONNECTED DEMOCRACY: The Impact of Mail Service on Native American Voter Registration and Mail Balloting

Megan A. Gall, PhD, Kevin R. Stout, PhD and
NARF Staff Attorney Allison Neswood



Residential addressing and home mail delivery are critical issues in the voter registration and mail balloting process. While most households have residential addresses in the familiar city-style formats, some rural areas and especially Native American reservations do not have similar addressing systems or full U.S. Postal Service coverage. Lacking a residential address or access to home mail delivery complicates voter registration, election day voting, and vote by mail (VBM) opportunities. Nonexistent or unreliable mail service disrupts the delivery of timely registration forms and ballots and states often reject registrations from households that do

not have a physical address. Even if voter registration is successful, states sometimes fail to mail VBM ballots to these homes or count VBM ballots returned from these homes. And strict voter ID requirements sometimes disenfranchise voters with non-traditional addresses. These issues systematically suppress Native American participation and are especially harmful in states that significantly rely heavily on VBM. And we already know that Native American turnout is often lower than any other group¹ largely because of systematic barriers to voting.²

This paper explores the relationship between Native American populations and the availability of home mail delivery service using U.S. Census Bureau data to better understand the geographic and demographic dynamics in these areas. We show that areas with more Native Americans are associated with more unreliable mail delivery. This association is stronger for Native Americans than any other racial or ethnic group and applies to both on- and off-reservation areas. However, the pattern is especially strong in states with high numbers of Native Americans living on reservations. In these states, reservation areas are classified by the Census Bureau as having significantly more mail delivery barriers than off-reservation areas. In sum, the more Native Americans there are in an area—whether it is on a reservation or not—the more likely the area has been assessed by the Census Bureau as having unreliable mail delivery.

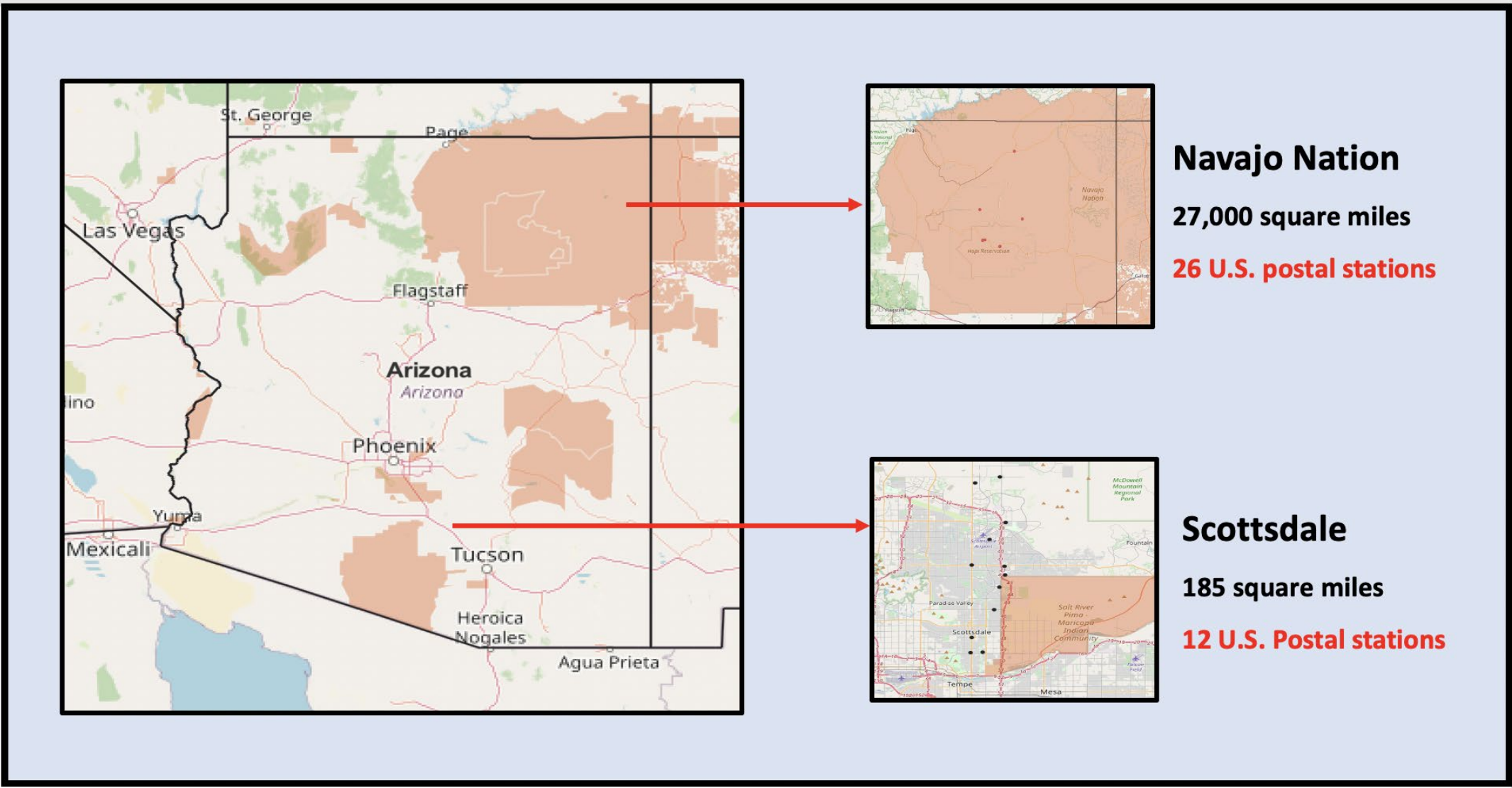
The Census Bureau is tasked with reaching all residents in the United States when conducting the decennial census and develops logistical plans to meet those goals just like all Secretaries of State must do in election planning and year-round voter registration efforts. While the Census Bureau does not publish data directly related to mail or the information used to make the determinations, they provide meaningful and informative classifications. The Census Bureau classifications show that some areas cannot be effectively serviced by mail. Residential addressing is just one of the many systemic barriers preventing Native Americans from full democratic participation, but it is critical

ernment in Federal Elections, Native
d Participation Faced by Native Amer-
ville, Joseph D. Voting for Native
house.gov/sites/evo-subsites/
les_Report-vm3.pdf.
and is a Census Bureau category
B areas in Alaska which require
d.geo.census.gov/aregis/apps/we-
020/TEA/.
cys/decennial-census/about/vot-
erican Community Survey, ACS 5-Year
022 Inflation-Adjusted Dollars).”
u. “Poverty Status in the Past 12
us Bureau. “OCCUPANCY STA-
ity of fifty thousand people or
where Update Leave is elevated
ervation borders and Alaska is an
of Benefits and Costs.” American
Native American Rights Fund.

NATIVE AMERICAN RIGHTS FUND
250 ARAPAHOE AVENUE, BOULDER, CO 80203
303-447-8760 | VOTE.NARF.ORG



Structural Barriers



Navajo Nation

27,000 square miles

26 U.S. postal stations

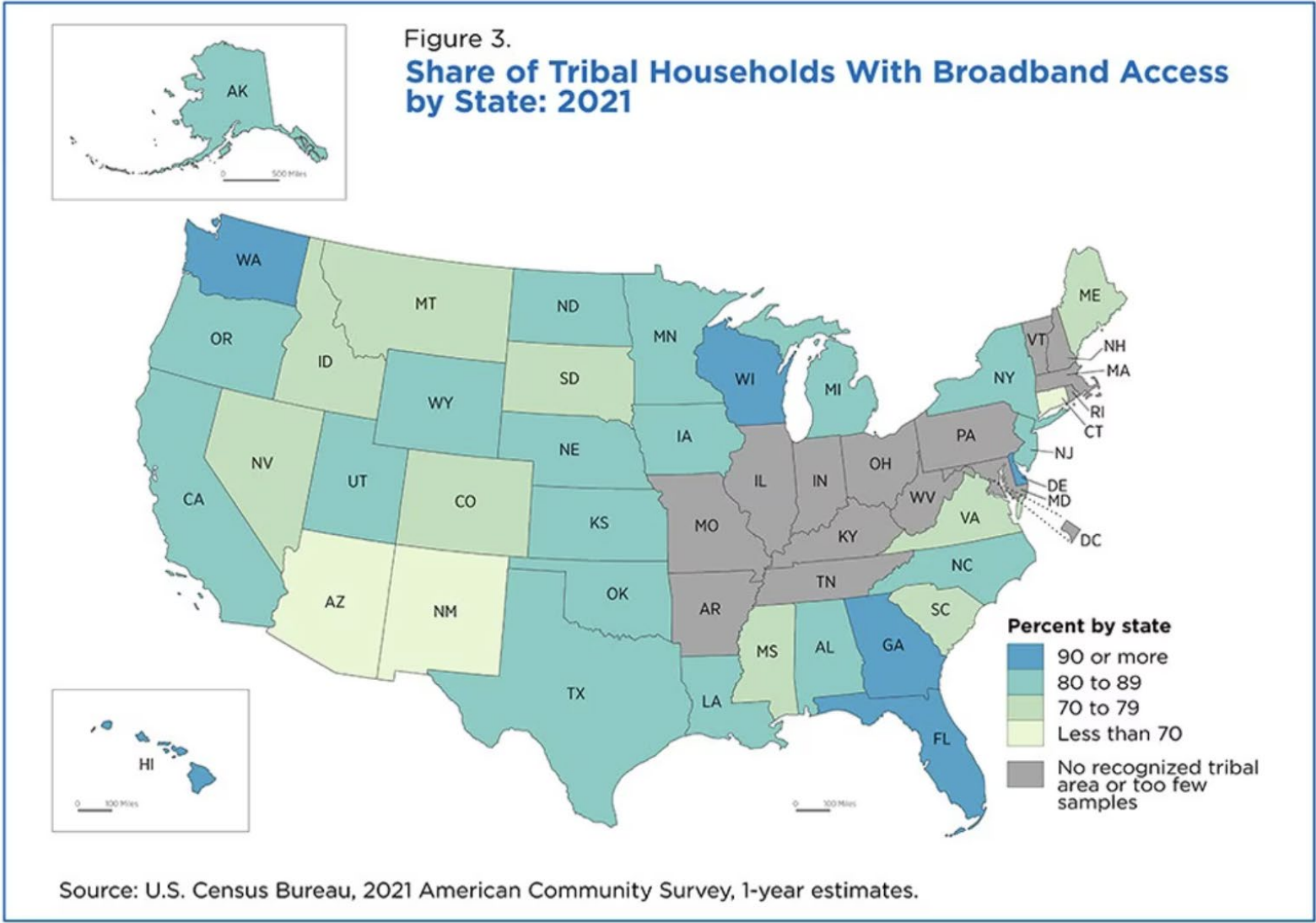
Scottsdale

185 square miles

12 U.S. Postal stations

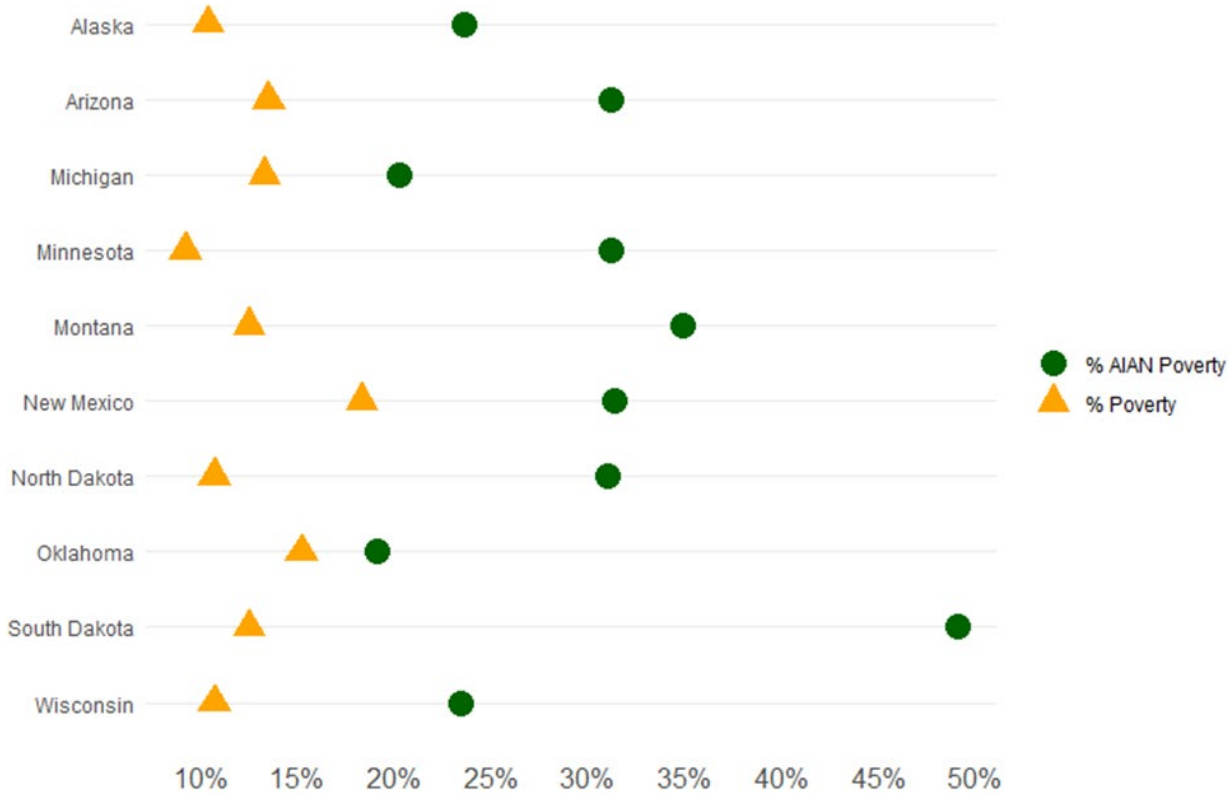


Structural Barriers

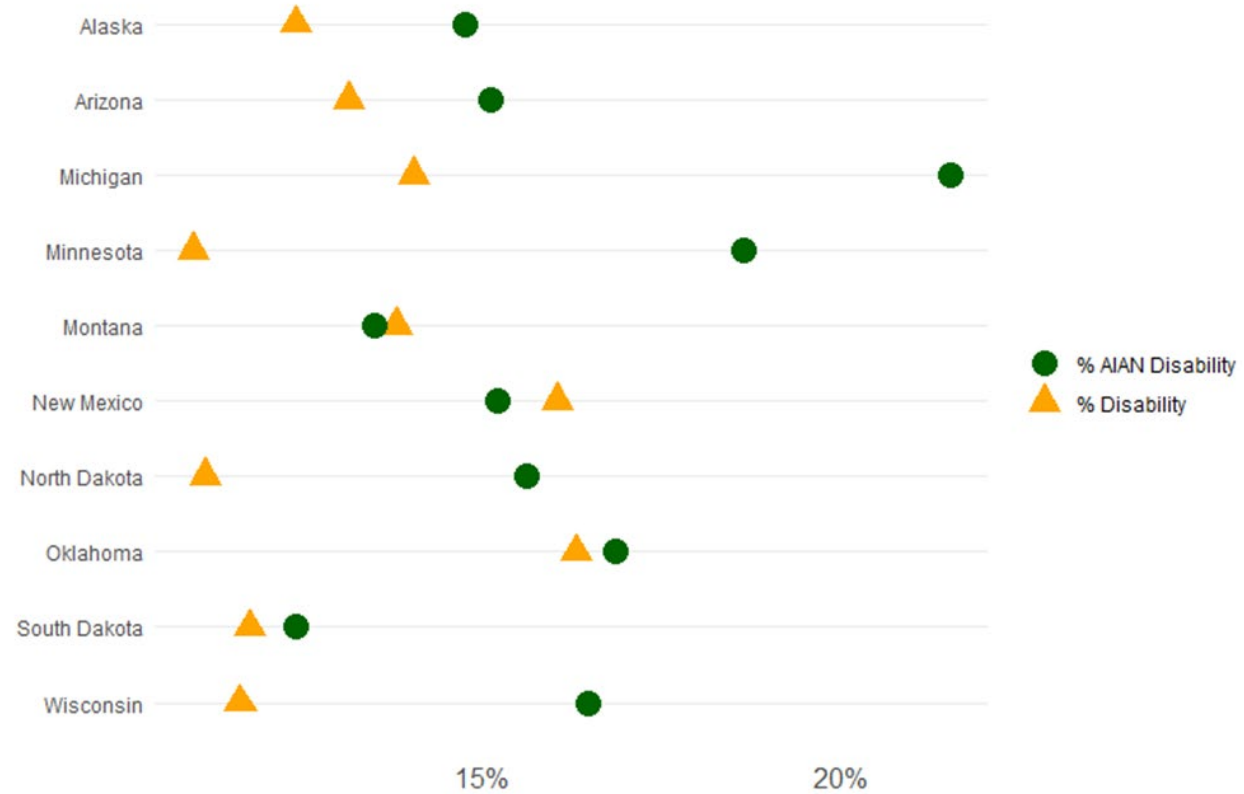


Structural Barriers


Poverty Rate



Disability Rate



Structural Barriers



**CENTER FOR
DEMOCRACY AND
CIVIC ENGAGEMENT**

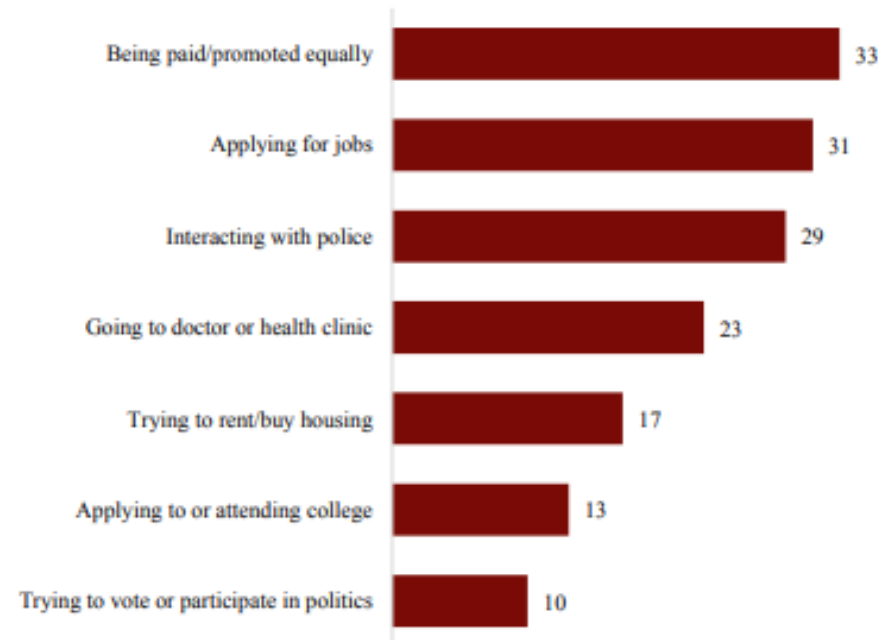
**WHO LACKED PHOTO ID IN 2020?:
An Exploration of the American National Election Studies**

Michael J. Hanmer
Professor, Government and Politics
Director, Center for Democracy and Civic Engagement
University of Maryland

Samuel B. Novey
Consulting Community Scholar, Center for Democracy and Civic Engagement
University of Maryland

March 13, 2023

Figure 1:
Percent of Native Americans Saying They Have Ever Been Personally
Discriminated Against In Each Situation Because They Are Native



NPR/Robert Wood Johnson Foundation/Harvard T.H. Chan School of Public Health, Discrimination in America: Experiences and Views of Native Americans, January 26 – April 9, 2017. S5/Q13, S6/Q15, Q17, Q19, Q21, S7/Q23, S8/Q25. Each question asked of half-sample. Total N=342 Native American U.S. adults.



Contemporary policies and practices



- Strict **ID requirements** for registration and/or voting.
- **Proof of address** requirements for registration and/or voting.
- Prohibitions on **same-day registration**.
- Restrictions on who may return a voter's ballot ("**ballot collection bans**").
- Limits on how a voter can **cast a ballot**
- **Dilution** of Native voting strength



National Voter Registration Act - Overview

- Voter registration at State **motor vehicle agencies**
- **Mail-in** voter registration
- Voter registration at certain **State and local offices**, including public assistance and disability offices
- Requirements with respect to the **administration** of voter registration by States
- Standards for voter **list maintenance**



National Voter Registration Act – *Rosebud Sioux Tribe et al., v. Barnett*

Case 5:20-cv-05058-LLP Document 44 Filed 08/10/21 Page 1 of 51 PageID #: 426

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

ROSEBUD SIOUX TRIBE and their
members, OGLALA SIOUX TRIBE and
their members, LAKOTA PEOPLE'S
LAW PROJECT, Kimberly Dillon, and
Hoksila White Mountain,

Plaintiffs,

v.

STEVE BARNETT, in his official
capacity as Secretary of State for the State
of South Dakota and Chairperson of the
South Dakota State Board of Elections;
LAURIE GILL, in her official capacity as
Cabinet Secretary for the South Dakota
Department of Social Services; MARCIA
HULTMAN, in her official capacity as
Cabinet Secretary for the South Dakota
Department of Labor and Regulation; and
CRAIG PRICE, in his official capacity as
Cabinet Secretary for the South Dakota
Department of Public Safety,

Defendants.

Case No. 5:20-cv-05058-LLP

AMENDED
COMPLAINT

- The Election Assistance Commission (EAC) reported drastic **84 percent decline** in annual voter registration from **public assistance** agencies in South Dakota
- A **2020 investigation** by NARF revealed **non-compliance** with Section 5 and Section 7 of the NVRA by State agencies, especially near Tribal communities
- Rosebud Sioux Tribe, Oglala Sioux Tribe, Lakota Peoples' Law Project, and two **Native voters** filed suit alleging several NVRA violations
- After plaintiffs received a favorable **summary judgement** ruling on most of their claims, the parties reached a **settlement** agreement
- Under the settlement agreement the state agencies were subject to **NVRA training** and **compliance reporting** requirements



National Voter Registration Act – *Tohono O’odham Nation et al., v. Brnovich*

- In 2021, the Arizona legislature passed a law (HB 2492) requiring **documentary proof of location of residence (DPOR)** to register to vote
- **Compliance** with the DPOR requirement “constitutes confirmation of the **address** on the applicant’s application at the time of registration”
- A **NARF investigation** showed that over **40,000 households** in Tribal communities in Arizona did not have a residential address
- Tohono O’odham Nation, Gila River Indian Community, and three Native youth sued challenging the **address requirement**
- The district court held that the NVRA prohibited Arizona from requiring DPOR from **federal voter registration form** applicants and that **tribal ID** must satisfy DPOR for **state form applicants**

| | | |
|----|---|-----------|
| 8 | IN THE UNITED STATES DISTRICT COURT | |
| 9 | FOR THE DISTRICT OF ARIZONA | |
| 10 | | No. |
| 11 | Tohono O’odham Nation | COMPLAINT |
| 12 | and Gila River Indian Community, | |
| 13 | Plaintiffs, | |
| 14 | v. | |
| 15 | Mark Brnovich in his official capacity as | |
| 16 | Attorney General of Arizona; Katie Hobbs, | |
| 17 | in her official capacity as Arizona | |
| 18 | Secretary of State; Dana Lewis in her | |
| 19 | official capacity as Pinal County Recorder; | |
| 20 | Gabriella Cázares-Kelly in her official | |
| 21 | capacity as Pima County Recorder; Stephen | |
| 22 | Richer in his official capacity as Maricopa | |
| 23 | County Recorder, | |
| 24 | Defendants. | |
| 25 | Plaintiffs Tohono O’odham Nation and Gila River Indian Community (“Tribes”) | |
| 26 | bring this Complaint against Defendants Arizona Secretary of State Katie Hobbs, | |
| 27 | Arizona Attorney General Mark Brnovich, Pinal County Recorder Dana Lewis, Pima | |
| 28 | County Recorder Gabriella Cázares-Kelly, and Maricopa County Recorder Stephen | |



Voting Rights Act Preclearance – Overview and Demise

- State and local jurisdictions with histories of racial **discrimination** in voting required to preclear changes to voting policies with the DOJ or a federal district court
- In 2013, the Supreme Court in *Shelby County v. Holder* held that the formula for identifying jurisdictions subject to preclearance did not reflect current conditions and **invalidated preclearance**
- In dissent, **Justice Ginsberg** said “throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a **rainstorm** because you’re not getting wet”
- After *Shelby County* a **wave** of restrictive voting policies was implemented in jurisdictions previously subject to preclearance
- A 2024 Brennan Center study found that the **racial turnout gap** has increased since *Shelby County* and that it is **growing most quickly** in jurisdictions that had been subject to preclearance



Section 2 of the Voting Rights Act - Overview



- Prohibits voting practices that result in “a denial or abridgment of the right . . . to vote **on account of race**”
- Has been used to **challenge** discriminatory vote denial and vote dilution
- The use of Section 2 to challenge discriminatory **vote denial** ground to a halt after *Brnovich v. DNC*
- The test for establishing a Section 2 **vote dilution** claim comes from *Gingles v. Thornburg*
- The three ***Gingles* preconditions** are 1) a geographically compact minority group, 2) political cohesion among the minority group, and 3) political cohesion among the majority which typically defeats minority candidates of choice



Section 2 of the Voting Rights Act – *Turtle Mountain et al., v. Howe*

- During the last redistricting cycle, North Dakota legislators drew a map that reduced Native voters' representation
- Turtle Mountain, Spirit Lake, and three Native voters challenged the map claiming that it diluted Native American voting strength in violation of Section 2
- The district court judge sided with the tribes and eventually ordered the map the tribes had advocated for during the redistricting process
- After the new map went into effect, three Tribal members were elected from the region to serve in the state legislature
- The Eighth Circuit overturned the win, holding that only the DOJ could sue to enforce Section 2
- The Supreme Court stayed the 8th Circuit's ruling and the tribes' cert petition is pending



Section 2 of the Voting Rights Act – Louisiana v. Callais



Mail Voting – *Watson v. Republican National Committee*

No. 24-1260

IN THE
Supreme Court of the United States

MICHAEL WATSON,
MISSISSIPPI SECRETARY OF STATE,
Petitioner,

v.

REPUBLICAN NATIONAL COMMITTEE, *et al.,*
Respondents.


ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICI CURIAE* NATIONAL
CONGRESS OF AMERICAN INDIANS, ALASKA
FEDERATION OF NATIVES, AND WASHINGTON
CONSERVATION ACTION EDUCATION FUND
IN SUPPORT OF PETITIONER

| | |
|---|---|
| JACQUELINE D. DE LEÓN <i>Counsel of Record</i> | SAMANTHA D. BLENCKE MORGAN E. SAUNDERS |
| ALLISON A. NESWOOD NATIVE AMERICAN RIGHTS FUND 250 Arapahoe Avenue Boulder, CO 80302 (803) 447-8760 jdeleon@narf.org | NATIVE AMERICAN RIGHTS FUND 950 F Street NW, Suite 1050 Washington, DC 20004 |
| WESLEY JAMES FURLONG KIRSTEN D. GERBATSCH NATIVE AMERICAN RIGHTS FUND 745 W. 4th Avenue, Suite 502 Anchorage, AK 99501 | TOREY K. DOLAN UNIVERSITY OF WISCONSIN LAW SCHOOL GREAT LAKES INDIGENOUS LAW CENTER 975 Bascom Mall Madison, WI 53706 |

January 9, 2026
Counsel for Amici Curiae

335473

 COUNSEL PRESS
(800) 274-3321 • (800) 359-6559

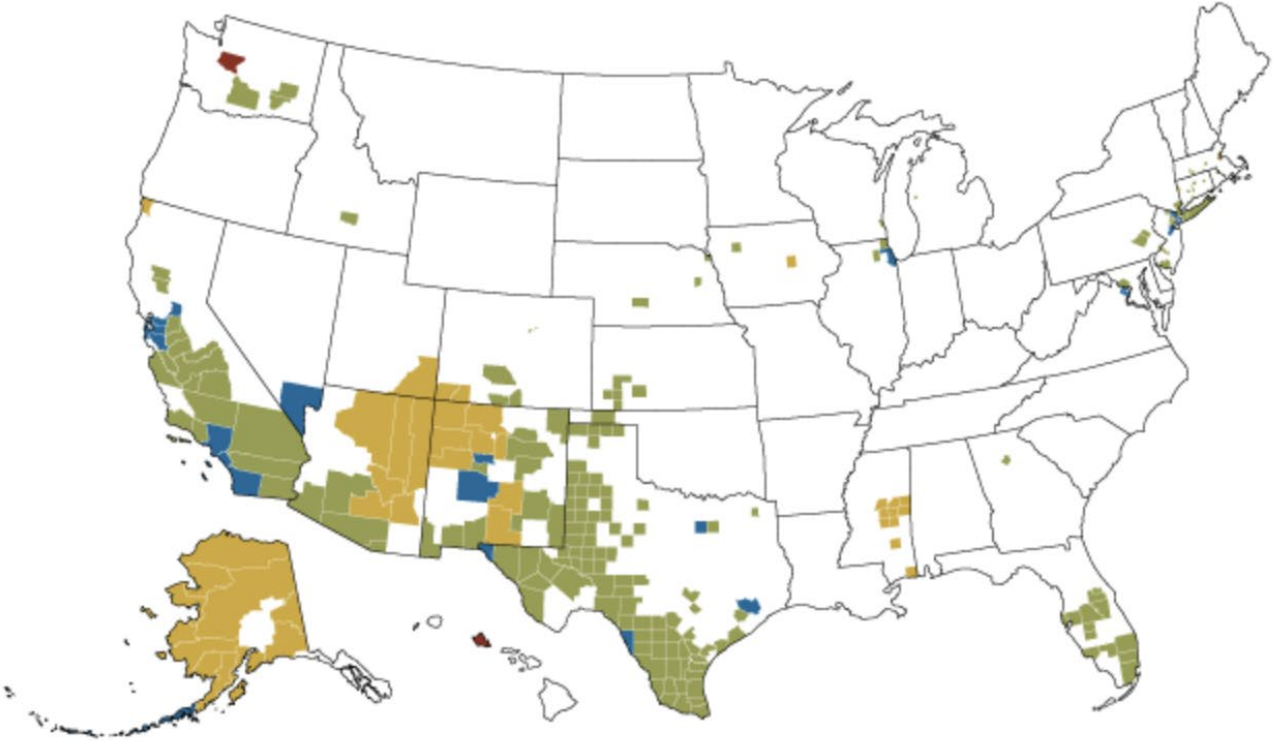
- Under Mississippi law, there is a five-day **grace period** for ballots postmarked by election day
- The Republican National Committee is seeking to have the Mississippi law **invalidated** under federal law
- NARF submitted an **amicus brief** to the Supreme Court in support of the law being upheld
- The brief focused on the importance of mail ballot grace periods for Native voters in States with similar policies, particularly **Alaska** and **Washington**
- In both states, ballots from **Native areas** arrive during the grace period at disproportionate rates



Section 203 of the Voting Rights Act – Overview

Counties, cities and other jurisdictions required to translate election materials to languages other than English

● Spanish ● American Indian/Alaska Native languages ● Asian languages ● Multiple languages



Note: "Multiple languages" includes any combinations of Spanish, American Indian/Alaska Native and Asian language families. The Census Bureau requires 31 municipalities in Connecticut, Massachusetts, Michigan, Rhode Island and Wisconsin to translate election materials into other languages, although they may not be visible in this map. The Census Bureau also requires California, Florida and Texas to translate any election materials they distribute statewide into Spanish. Source: U.S. Census Bureau.

PEW RESEARCH CENTER

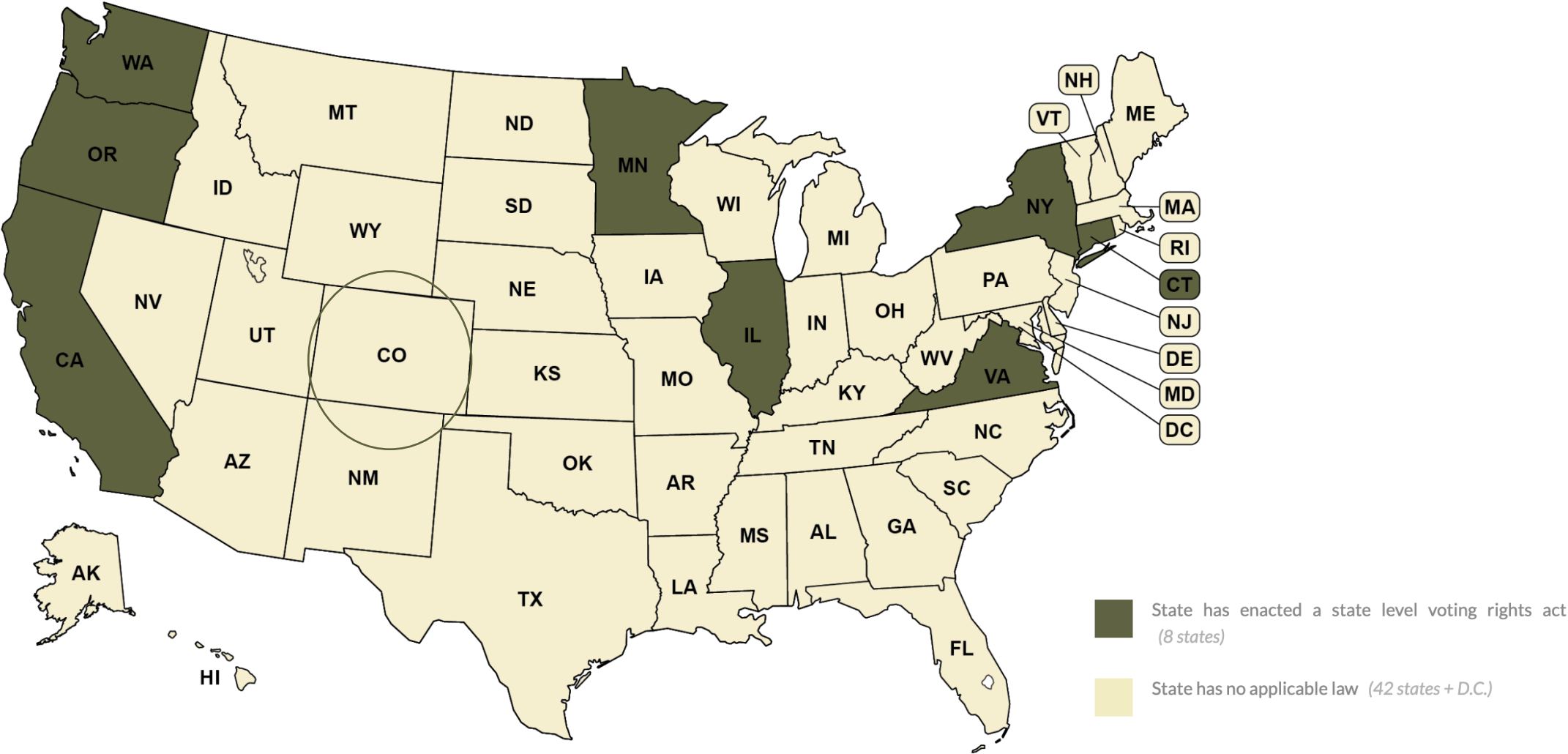


Policy Fixes - Federal Legislation

- **John Lewis Voting Rights Advancement Act** would address the ways in which the courts have weakened the Voting Rights Act (i.e., establish a new preclearance formula, codify the *Gingles* test, codify a “*Brnovich* fix”)
- **Freedom to Vote Act** would set uniform minimum standards for accessibility in federal elections
- **Native American Voting Rights Act** would set minimum standards for voting accessibility in Tribal communities (in-person voting in Tribal communities, mail-voting in Tribal communities, fixes to voter registration challenges)



Policy Fixes – State Voting Rights Acts



Model State Voting Rights Act: <https://www.naacpldf.org/state-voting-rights-acts/state-vra-model-bill/>



Policy Fixes - Washington Native American Voting Rights Act (SB 5079)

- Tribal IDs are valid without expiration date or residential address
- Non-traditional addresses can be used for voter registration
- Tribal government buildings may serve as a voting address
- Online voter registration with Tribal ID
- Requires at least one ballot drop box on Tribal land





Allison Neswood
Senior Staff Attorney
neswood@gmail.com