

Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada and South Dakota

**Survey Research Report Executive Summary and Policy Reform
Recommendations**

The Native American Voting Rights Coalition

January 2018

NATIVE AMERICAN VOTING RIGHTS COALITION

Vision Statement:

To secure equal access, free from discrimination, for Native American voters to participate in the political process and elect candidates of their choice.

Mission Statement:

We, the members of the Native American Voting Rights Coalition, a group of non-profits, lawyers, organizers, advocates, Native Nations, and academics committed to protecting the voting rights of Native Americans, agree to work collaboratively and to empower tribal governments and their citizens through education, legislation, and litigation for the advancement of voting rights for all Native American voters in non-tribal public elections in a manner that protects and respects their cultural integrity.

Guiding Principles:

- Accountability, communications with and responsibility to the Native American voters we serve
- Collaboration, maximize our work to achieve the vision
- Cooperation, seek consensus whenever possible
- Confidentiality, abide by our agreement to protect our work (ask before you share)
- Commitment, perform some of the work as your capacity allows
- Empowerment, provide the tools to advance Native American political participation in non-tribal public elections
- Integrity, follow through on work you commit to perform
- Respect, work together rather than in competition with each other
- Transparency, be open and honest in all communications with each other

Survey Research Report

In 2015, the Native American Rights Fund created the Native American Voting Rights Coalition (NAVRC) with the goal of assessing the extent to which Native peoples face unique difficulties and challenges in attempting to register and vote in non-tribal elections. In late spring 2016, the Kellogg Foundation provided funding for the NAVRC to conduct survey research among Native Americans living primarily on reservations and in rural parts of Nevada, South Dakota, New Mexico and Arizona.¹ Four Directions Inc. undertook the primary responsibility for research in Nevada and South Dakota with assistance from Claremont Graduate University faculty and students. The Navajo Nation Human Rights Commission, the Inter Tribal Council of Arizona, and the Native America Voters Alliance of New Mexico undertook the primary responsibility for the research in Arizona and New Mexico, with the assistance of the staff of Fair Elections Legal Network.²

Over the past decade, a range of new suppressive registration and voting laws and practices have been implemented including:

- Restrictions on the hours, days and places that people can register and vote.
- Requirements that people provide government issued identification before voting.
- The removal of eligible voters from the lists of registered voters.

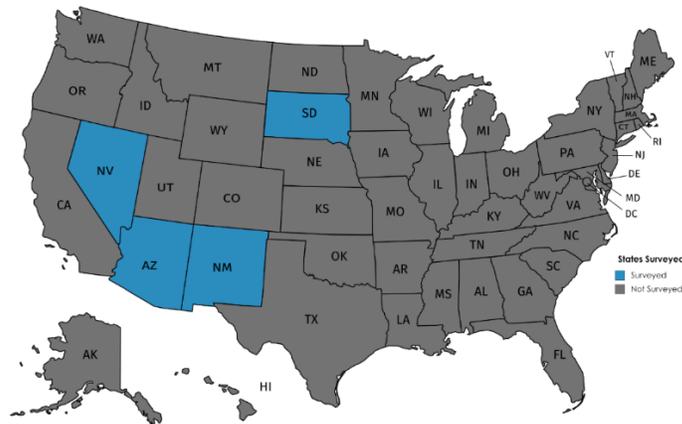
Opponents of these measures argue that these laws disenfranchise large numbers of African Americans, Latinos, the poor, the elderly and the young.³ Little or no attention has been paid to whether Native Americans face similar substantial barriers in trying to register and vote in non-tribal elections. The survey research for this project represents the first comprehensive effort to identify barriers confronted by members of Native American communities in Nevada, South Dakota, Arizona and New Mexico. The principal goal of NAVRC is to ensure that Native Americans have an equal opportunity to register and vote, but before remedial actions can take place to address problems, it must first develop a better understanding of those problems; that is the genesis of this study. The NAVRC needs a more complete understanding of the types of barriers that Native Americans face in trying to access the ballot box. The information provided by this survey will be the foundation of a reform agenda to begin to address the problems identified.

The survey questions were grouped into five categories: 1) voter eligibility, 2) political engagement, 3) registering to vote, 4) voting, and 5) demographic information. Since the project's aim was to determine registration and voting barriers affecting Native Americans, individuals who were not potentially eligible to vote were excluded from participation. The *political engagement* questions were designed to measure the level of political participation and perceptions of political efficacy. With respect to political participation, questions about different forms of political engagement, as well as voting in tribal and non-tribal elections were included. Political efficacy questions either measure the extent to which respondents trust government institutions and leaders to be responsive to their concerns *or* the degree of confidence that respondents have in their understanding of politics and ability to influence outcomes.

Questions covering *registering to vote* were designed to identify a respondent's level of knowledge about how and where to vote in their state and whether they encountered administrative, legal or personal barriers, and if there were simply personal reasons for choosing not to register. Questions on the voting process were designed to identify a respondent's knowledge about voting,

experiences with voting, and reasons for not voting; the latter includes questions about possible barriers, personal, legal and administrative. They were also asked to evaluate the degree of trust they have about whether their votes count when using different forms of voting.

The final questions focused on demographics, identifying socio-economic factors, and using geographic information to estimate travel distances to locations where people can register and vote. Also, because mail-in voting has become a bigger factor in registering and voting, we identified the use of P.O. boxes and the travel distances necessary to access mail.



2,687 individual
respondents in
4 states surveyed



Overview of Findings

These surveys have clarified a number of major issues that contribute to the difficulty many Native Americans face trying to exercise their right to vote. There is a very low level of trust in local government. The responses make it clear that Native voters face multiple difficulties when they attempt to register to vote and cast a ballot. These include a lack of information on how and where to register and vote, a lack of convenient options, long distances to travel, low levels of access to the Internet, and some local officials and poll workers who are hostile, unhelpful, ill-informed or intimidating.

Trust in Government

- Elections are run locally. Great levels of distrust exist between the Native American population and local and state government. Lack of trust in government means less trust in the election process. Research has shown that there is a strong correlation between trust and the willingness of citizens to participate in electoral politics.⁴ The surveys indicated trust in local government ranged from 19% in New Mexico, 16% in Arizona, 11% in Nevada to only 5% in South Dakota. These data make it clear that local governments need to improve their relationship with tribes. NAVRC should focus future research efforts on understanding this low level of trust and developing strategies to improve it.

Overall voter participation

Levels of participation were relatively high (the number may be slightly lower given that some people do not want to admit they did not vote)⁵:

- Surveys done before the 2016 general election showed 56% of South Dakota respondents and 60% of Nevada respondents said they voted in non-tribal elections (although these voters could also be referring generally to past state and federal elections including Presidential elections.)
- Surveys done after the 2016 general election showed 65% of Arizona respondents and 69% of New Mexico respondents said they voted in the presidential election.⁶

Voter Registration

Voter registration rates were similar to overall non-Native state numbers but, as with the participation level, this may be slightly overstated.

- Arizona: 72%
- New Mexico: 71%
- South Dakota: 71%
- Nevada: 69%

This means 30% of the Native American populations surveyed are not registered. The data make it clear that NAVRC and tribes must focus their efforts at increasing the Native American registration rate.

Problems encountered in registration

Some respondents did not know how or where to register. It was the number one reason cited in all four states for failing to register. The second most cited reason in all four states at a consistent rate was missing the deadline, and the third was a lack of interest in politics. Thus, another goal for NAVRC is to disseminate information about where and how to register in each jurisdiction.

Not knowing what to do and missing the deadline, such as not understanding the forms or difficulty in traveling to registration sites, can be largely overcome by registration drives by third parties or elections officials, and properly functioning Division of Motor Vehicles (DMV) and social service agencies. These agencies are required by federal law to help their clients register when they interact with their office.

The surveys found that there were very few voter registration drives in the Native community compared to other communities of color, and a low level of compliance with the National Voter Registration Act (NVRA) requirement that clients at DMVs and social service agencies must offer voter registration assistance to anyone they are helping.

Of the four states, it was clear that Arizona and New Mexico were not complying with the NVRA requirements of DMV and social service agencies to affirmatively offer to help clients register to vote at each interaction with the agency. Only 42% of Arizona respondents indicated they were asked about registering at the DMV and 35% at social service agencies. In New Mexico, a state

that has been sued over its non-compliance with the NVRA, 29% indicated they were asked about registration at the DMV and 29% at social services. South Dakota was better with respondents indicating 61% had been asked at the DMV and 44% at social services. In Nevada, the numbers were 73% at DMVs and 28% at social services. NAVRC and tribes must work to ensure that state and local agencies are in fact complying with the NVRA in assisting Native American voters to register.

Registration Drives

Given the lack of awareness of how and where to register to vote, Native American voters would benefit from voter registration drives in their own communities, where they congregate and at institutions they trust. The surveys indicated that most respondents were not aware of any voter registration drives in their community. There were generally low levels of activity by third-party groups to conduct registration drives, with just 29% of Arizona and 33% of New Mexico respondents indicating awareness of third party registration drives. Slightly higher numbers were recorded in South Dakota (44%) and Nevada (43%). Clearly, more “get out the vote” drives need to be organized to increase turn out.

Non-traditional addresses for many reservation residents create additional registration problems.

It is important to understand that many Native American people do not have traditional street addresses. This can create significant problems in registering to vote and voting. Some respondents without traditional addresses had trouble describing where they live on the registration form.

Arizona and New Mexico’s voter registration forms provide a space to draw a map locating the nearest intersection, but the spaces are small, and this method often leads to registrars arbitrarily assigning a precinct that may be inappropriate and may result in that person not showing up on that precinct’s voter list.

Arizona, New Mexico and Nevada all have online registration, which can be beneficial to people living far from the registrar’s office, but only if they have Internet access and a working computer. Many of the respondents in these surveys live in rural areas, but Native Americans in any of these states seldom use online registration. Surprisingly, in Arizona, which has had online registration for more than 15 years and where 40% of all registrations were done online in 2016, only 6.7% of Native American respondents registered online. In New Mexico, where the system is relatively new, only 3.3% of the Native American respondents registered online and in Nevada 5.1% registered online (as opposed to 21% of all registrants).

Voting problems

Most of the U. S., including all four of the survey states, have expanded early voting and mail-in absentee voting options. However, many Native Americans are not choosing these options. Most people in Native communities vote in-person. There appears to be little familiarity with mail-in options and less trust in the process. For those that discussed mail-in voting, some mentioned that a ballot had never arrived, some mentioned difficulty in describing their voting addresses, and some did not understand how to fill out the ballot. Clearly, mail-in voting presents significant

difficulties for some Native American voters. This difficulty could be compounded by a trend toward all mail voting in some jurisdictions.

Voter Identification Requirements

Although it is a significant problem in other states not surveyed, such as North Dakota, access to voter identification was not a notable problem for survey respondents and, with the exception of Arizona, the four states do not require a strict form of ID. ID for voting and proof of citizenship for registration are required in Arizona, but those requirements appear to have little impact because the vast majority of potential Native American voters surveyed had access to the required IDs. In Arizona, 89% of respondents had an Arizona driver's license that can be used as proof of citizenship for registration; and 69% had a copy of their birth certificate. In addition, most of those respondents who lacked a valid *photo* voter ID in Arizona had a combination of two non-photo IDs that can be used to vote under the law.

Distances affected registration and voting

In most rural communities, traveling distances can create difficulty for residents trying to conduct official business or, in this case, registering and voting. That was true for both actual registration and voting in this survey. When those unregistered respondents were asked what problems affected their decision not to register, they gave multiple reasons, but long distance needed to travel to register was cited in 10% of responses in New Mexico, 14% in Arizona, 26% in Nevada and 32% in South Dakota.

Travel distances also played a role in problems encountered with in-person voting. Respondents were asked to list all problems encountered with in-person voting. Of the issues cited, difficulty in traveling to the polling place was mentioned by 10% of respondents in New Mexico, 15% of those in Arizona, 27% of those in Nevada, and 29% of those in South Dakota. It is clear from the data that increasing the number of registration and voting locations in order to reduce travel times is a crucial element in the effort to provide Native Americans with equal access to voting. This problem was so apparent during the conduct of the survey that the NAVRC has already begun to address this issue in various counties.

Limited English language or difficulty understanding the ballot

A relatively small number of respondents cited language as a problem in voting (between 3 and 4 percent) in all states, though higher percentages identified as limited English-proficient. Those numbers are probably slightly higher in roughly half of all Arizona and New Mexico respondents representing members of the Navajo Nation in Arizona and New Mexico. Others cited a general problem understanding the ballot as well, which might be impacted by language proficiency as well. However, even small percentages of language-challenged voters can be significant in close elections. Thus, in some areas of the four states, language assistance programs are critical to assuring that all Native Americans have access to the polls.

Conclusion

In sum, this survey is the first comprehensive, multi-state study of the problems and challenges facing Native American voters. The data clearly indicate that there is a variety of problems, each requiring a different strategy in order to resolve it. There is clearly a need for tribes, with the assistance of NAVRC and other partners, to implement a multi-pronged strategy to improve access to polls, with the overall goal of assuring that Native Americans have an equal opportunity to participate in that most fundamental of all rights, the right to vote.



POLICY REFORM RECOMMENDATIONS

A primary goal of the NAVRC is to identify policy reforms that would improve the voting experience of Native American voters in the states surveyed. The survey results themselves speak to some necessary changes that would improve electoral participation in Native American communities. While these suggested reforms cannot reduce the sense of disengagement and alienation from the political process, making the voting experience more accessible and less burdensome for Native voters will go a long way toward increasing participation.

ARIZONA AND NEW MEXICO

Arizona and New Mexico State and local officials working in Motor Vehicle Divisions (MVD), public assistance agencies and offices must comply with the NVRA, specifically Sections 5 and 7. They must affirmatively offer anyone engaging in a covered transaction an opportunity to register to vote, without requiring these individuals to duplicate the same system. New Mexico has a particularly checkered past on this, and it is incumbent on the State and watchdog groups to monitor the new digital voting system and ensure it works for Native American registrants. New Mexico should offer multiple languages through the registration process, including Native American languages, if it does not do so already. Computer interfaces aside, there is no substitute for MVD and public assistance office employees affirmatively inquiring about voter registration with the voters themselves.

- Online voter registration is now offered in both Arizona and New Mexico, but it does not serve the needs of the reservation-based Native American population. While a majority of survey participants said they have access to the Internet, many did not. State and local government entities should recognize this and commit to ensuring wired and/or wireless access at public libraries, community centers, chapter houses and other sites to ensure access to online voter registration. Creating on-reservation, in-person satellite centers for registering to vote will also fulfill this mission, with or without bringing more Internet connectivity for online voter registration to these regions.
- Arizona and New Mexico need to revise their state voter registration forms to include more space for a registrant to depict and describe in writing a non-traditional, rural or remote address that is not recognized by the U.S. Postal Service. For instance, Arizona's state voter registration form includes a box for drawing a home location, without any space to describe its location. Too many respondents experienced a problem in accurately describing their home location. Any improvements would have an impact on both registration accuracy as well as the ability of third-party groups to mobilize voters using more accurate lists.
- Local election officials in covered jurisdictions must comply with the requirements of Section 203 and Section 208 of the Voting Rights Act, ensuring language assistance (translation, interpretation, etc.) for covered languages and individual assistance for anyone who needs it. Local Native American organizations can play a key role in these by seeking the cooperation of local officials and volunteering their expertise in working in the community. Community organizations and local election officials should make a concerted effort to recruit Native American poll workers, especially if they can offer language assistance to voters.
- Arizona should join New Mexico in adopting a partial counting rule for wrong-precinct provisional ballots.⁷ It is likely unconstitutional to reject a ballot simply because it was cast in the wrong precinct. Wrong-precinct provisional ballots can be as much a result of official error as voter error.
- Poll worker training should be made mandatory in both states, and training on sensitivity to the particularities of the Native American experience and the unique barriers this community experiences in participating in elections should be included. Local officials should also be more proactive in recruiting poll workers from the Native American communities they are serving during the election.
- State and local election officials should conduct voter registration drives in Native American communities. They should not solely rely on third-party registration groups. Many respondents reported no registration activity in their community.
- State and local election officials in Arizona and New Mexico need to make a concerted effort to educate Native American voters on the mail-in voting process, so there is more trust in the system. They should also explain all the options available to them, given rural

Native American voters rely so heavily on P.O. boxes for their mail. Arizona and New Mexico should relax their laws on absentee ballot collection, allowing anyone with the voter's consent to collect and deliver these ballots. This way, tribal officials who are not relatives will be able to collect ballots and coordinate delivery with the local election office. Perhaps the relevant counties with large Native American voting populations could also create a single point of contact to educate the community about mail-in voting and to troubleshoot problems.

NEVADA

- Nevada local officials (county and city clerks, especially) must pro-actively reach out to Tribal leaders to ensure that the new requirements of Senate Bill 492, under Nevada Statute, are upheld. S.B. 492's provisions regarding Indian Country were designed to codify into Nevada Statute the ruling by Judge Du in *Sanchez et al. v. Secretary Cegavske et al.* that required physical early voting locations on Indian reservations for the early voting period and a physical voting location on election day.
- Nevada local officials should make efforts to work with Tribal leaders and citizens to better serve tribal citizens in a non-discriminatory fashion. Tribal citizens feel that they face discrimination whenever they leave the reservation, and accordingly the survey results reveal that tribal citizens have a very low level of trust in local, non-native government.
- Nevada State officials should pro-actively reach out to Tribal leaders and local government officials to ensure equal access. The great distances faced by Tribal citizens to physical voter registration sites remains problematic. The Nevada Legislature and Governor have recently passed legislation that now accepts Tribal identification cards if they meet the provisions of the Federal Real ID. However, the tremendous differential in computer ownership and Internet access identified in the survey mean that online registration access is unequal for Native Americans.
- Lastly, one of the lessons learned while securing the surveys was line 14 on the Nevada Voter Registration Application that states "Important! If you are assisting a person to register to vote and you are not a field registrar appointed by a County Clerk/Registrar or an employee of a voter registration agency, you MUST complete the following. Your signature is required. Failure to do so is a felony." Upon follow-up, it is clear that there are no standards or clear case law regarding this statute. Nevada State officials should eliminate this disincentive to registration, or at the very least, develop clear standards on how it is enforced.

SOUTH DAKOTA

The survey made clear that there is an increased awareness among Native American citizens in South Dakota about voting issues. This is likely due to the fact that South Dakota has been sued for more voting rights violations in Indian Country than any other state. While there has been a shift at the Secretary of State's office since the 2014 election, local county governments remain stubborn, if not outright hostile, to Native American voting equality. The great distances to polling places, and lack of any reliable public transportation faced by tribal members when it comes to state and federal elections exacerbate the challenges.

- State officials need to lead by encouraging local officials more strongly to make voter registration and voting equal for Native American voters.
- The survey showed almost no trust in local governments by Native American voters in South Dakota; therefore, local governments need to make more of an outreach effort especially on reservations.
- Four Directions, Inc., a member of the NAVRC, has secured a commitment from the South Dakota Secretary of State and the South Dakota Elections Board to make federal Help America Vote Act (HAVA) funds available for early voting and registration satellite offices on reservations. This commitment needs to be made available to all tribes across Indian Country and cannot be a one-time agreement. This issue should be monitored to ensure compliance with the agreement.
- Local officials should receive training on how to implement the guarantees of the Voting Rights Act.
- Tribes also ought to be trained on the guarantees of the Voting Rights Act so as to better enable them to in make their demands for voting equality clear.
- Specifically, some direct pressure should be applied to Roberts County in northeastern South Dakota to make changes before the 2018 elections. Requests were made in 2014 for a satellite office on the Sisseton Wahpeton Oyate in Agency Village. The Roberts County Commission refused in 2014 and refused again for the 2016 election even with federal HAVA funds available.
- Direct pressure should also be applied to Buffalo County, which has continued to deny equal opportunity to vote and register to vote for members of the Crow Creek Sioux Tribe even with the availability of HAVA funds. Buffalo County's county courthouse is in a community of less than 12 people and the County Auditor refuses to open a satellite for more than a few hours each election in Fort Thompson, a community of more than 1,400 Native Americans more than 55 miles round-trip from the county courthouse.

The Native American Voting Rights Coalition currently consists of:

Native American Rights Fund, National Congress of American Indians, American Civil Liberties Union, Arizona State University Indian Legal Clinic, California Native Vote, Fair Elections Legal Network, Four Directions Inc., Inter Tribal Council of Arizona, Lawyers Committee on Civil Rights Under Law, the NAACP LDF, the Navajo Nation Human Rights Commission, the Navajo Nation Attorney General's Office, and Western Native Voice. It also includes the talents of several individual attorneys: Dr. Jim Tucker (Wilson Elser), Bryan Sells (Law Office of Bryan Sells), Maya Kane (Kane Law) and Sam Hirsch (Jenner Block). The Coalition is also fortunate to benefit from two academic advisors: Dr. Jean Schroedel and Professor Dan Mc Cool.

The field surveyors for this report:

Four Directions Inc., Claremont Graduate University faculty and students, The Navajo Nation Human Rights Commission, the Inter Tribal Council of Arizona, and the Native America Voters Alliance of New Mexico, and the Fair Elections Legal Network.

And finally, the contributors and editors of this report:

Jean Schroedel of Claremont Graduate University, Jon Sherman of the Fair Elections Legal Network, Professor Dan McCool and the Native American Rights Fund.

**The full analysis and data set of aggregated surveys is available at
www.narf.org**

¹ A sub-group of the NAVRC was given the task of designing survey instruments that could be used in the different states. The sub-group was convened by Jon Sherman from the FELN and it included Bret Healy and OJ Semans from Four Directions, Laughlin McDonald from the ACLU and political scientists Dan McCool and Jean Schroedel. Suggestions also were provided by attorneys, most notably Natalie Landreth from NARF, Jim Tucker and Bryan Sells, as well as from Tribal leaders in the four states.

² These four states were chosen for several reasons, including their histories of voting rights litigation, the size of the Native American populations, reports of unequal access, and their electoral importance.

³ See, for example, Brennan Center for Justice. 2012. *Voting Rights & Elections*. New York: New York University School of Law. http://www.brennancenter.org/content/section/category/voting_rights. Accessed 1/25/2013. For up-to-date data on the different state laws, see the National Conference of State Legislatures. *Voter Identification Requirements*. Washington, DC: NCSL. http://ncsl.org/research/elections_and-campaigns/voter-id.aspx.

⁴ Although some early research showed only a slight relationship between political trust and electoral participation, more recent studies that also explored linkages between trust and related variables showed a significant relationship between political trust and voting. See, for example, Wang, Ching-Hsing. 2016. "Political Trust, Civic Duty and Voter Turnout: The Mediation Argument." *Social Science Journal* 53(3): 291-330 and Hooghe, Marc. Forthcoming 2018. "Trust and Elections," in Eric Uslander, ed. *The Oxford Handbook of Social and Political Trust*. New York: Oxford University Press.

⁵ These findings and the overall registration numbers below can also be overstated by the self-selection of some of the respondents, who tend to be those more engaged with tribal government and those with the ability to get to tribal centers where many of the surveys were collected.

⁶ The proportion of respondents in Nevada and South Dakota stating they had voted in 2012, as well as the proportion stating they generally vote in non-tribal elections, is roughly the same as the national data on voting turnout among registered voters. The proportion of respondents in Arizona and New Mexico who said they voted in 2016 as well as the proportion stating they generally vote in non-tribal elections, is roughly the same as the national data on voting turnout among registered voters. However, one must be careful about interpreting survey responses to questions asking whether people voted. Voting is considered to be a socially desirable behavior and researchers have found a consistent pattern of survey respondents over-stating their propensity to vote. Depending upon the population, the over-voting bias ranges from 11% to more than 50%. See Bernstein, Robert, Anita Chada, and Robert Monjoy. 2001. "Overreporting Voting: Why It Happens and Why It Matters." *Public Opinion Quarterly* 65: 22-44; Cassell, Carol. 2003. "Overreporting and Electoral Participation Research." *American Politics Research* 31(1): 81-92; Silver, Brian, Barbara A. Anerson, and Paul R. Abramson. 1986. "Who Overreports Voting." *American Political Science Review* 80: 631-624.

⁷ Jon Sherman, Fair Elections Legal Network, SAVING VOTES: AN EASY FIX TO THE PROBLEM OF WASTING PROVISIONAL BALLOTS CAST OUT OF PRECINCT (Feb. 2014), available at <http://fairelectionsnetwork.com/wp-content/uploads/Provisional-Ballot-Rejection-Memo-FINAL.pdf>.



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