

# WRITTEN STATEMENT OF BLAIR TARMAN-TONER PUBLIC COMMENT GIVEN ON OCTOBER 7, 2021

## I. Introduction and History of Native American Voting Rights in Arizona

Good afternoon Chairwoman Neuberg, Vice Chair Watchman, and Members of the Commission. My name is Blair Tarman, and I am a Native Vote Fellow representing the Indian Legal Clinic at the Sandra Day O'Connor College of Law at Arizona State University. The Indian Legal Clinic coordinates Arizona's Native Vote Election Protection Project, a non-partisan effort to protect Native American voting rights founded in 2008 in response to disparities in voting as a result of Arizona's voter identification law.

Native American voters in Arizona have experienced a long history of discrimination. Until 1948 when the Arizona Supreme Court overturned the prohibition on Native voting, the State prevented Native voters from exercising their right to vote. Following the court's 1948 decision, the State of Arizona utilized English literacy tests to further deny Native Americans the right to vote until the 1970s, when federal law prohibited the use of such tests. Vote dilution and redistricting have since been used to reduce the power of the Native vote.

For Native American voters, exercising the right to vote only came with the protections afforded by the Voting Rights Act and enforcement of those rights has required decades of litigation.<sup>1</sup> However, the United States Supreme Court's 2013 decision invalidating the preclearance formula deprives Native voters of one of the most powerful tools to ensure ballot access.<sup>2</sup> Prior to its invalidation, the Department of Justice objected to nine redistricting plans through the preclearance process due to the harmful impact the schemes had on Native voters. Five of the nine plans objected to were for the State of Arizona.<sup>3</sup> Due to the *Shelby County* decision, the 2021 redistricting cycle is the first redistricting cycle in which Arizona is not subject to preclearance since the adoption of the Voting Rights Act. However, the Independent Redistricting Commission must still comply with Section 2 of the Voting Rights Act when redrawing district boundaries.<sup>4</sup>

## II. Vote Dilution and Redistricting

As it has already been discussed at length, one of the six constitutional goals of redistricting requires the Commission to create district boundaries that respect communities of interest to the extent practicable. The Commission has defined a community of interest as "a geographic area

---

<sup>1</sup> *Voting in America: A National Perspective on the Right to Vote, Methods of Election, Jurisdictional Boundaries, and Redistricting*, Hearing Before the H. Subcomm. on Elections, 117th Cong. 3 (2021) [hereinafter *Hearings*] (statement of Patty Ferguson-Bohnee, Dir., Indian Legal Clinic, Sandra Day O'Connor Coll. of L.), <https://docs.house.gov/meetings/HA/HA08/20210624/112806/HHRG-117-HA08-Wstate-Ferguson-BohneeP-20210624.pdf>.

<sup>2</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>3</sup> *Hearings*, *supra* note 1, at 4 (statement of Patty Ferguson-Bohnee).

<sup>4</sup> In submitting this comment to the Arizona Independent Redistricting Commission, the Indian Legal Clinic is in no way attempting to speak on behalf of tribes, nor is the Indian Legal Clinic instructing the Commission on how maps should be drawn. The Indian Legal Clinic's purpose is only to inform the Commission of legal principals they must adhere to when redrawing Arizona's district boundaries.

comprised of people who have: (1) common social or economic interests; (2) shared characteristics or experiences; (3) similar issues or impacts of government policies; or (4) otherwise identify as a geographic area with a shared benefit from being kept undivided in a single district.”

Throughout the public comment process, many individuals cited the importance of respecting communities of interest that are organized around religious institutions, school districts, shared beliefs, and common industry. All communities of interest are entitled to respect as district lines are redrawn, but it is especially important that the Independent Redistricting Commission take into consideration the already defined geographic boundaries of Indian reservations. These boundaries demarcate state and Tribal jurisdiction which both carry unique political interests. Dividing reservations would imperil political interests and dilute the power of Indigenous communities, if done outside of a specific request from a Tribal government.

In addition to having a distinct political and jurisdictional reality, reservation communities are also defined by their unique social and economic interests, as well as other significant ties through shared ancestry, culture, language, beliefs, and values. These communities also interact with the federal government in unique and enduring ways – including with the federal courts, Bureau of Indian Affairs, the Indian Health Services, and other agencies that deliver critical services to reservation communities. These unique realities are not captured in off-reservation communities, and districts should be drawn in a way that ensures that these reservation communities can be represented in districts that will be attuned to their needs. Reservations stand to benefit from remaining whole, as unduly dividing Tribal nations into separate districts can result in preventing Native voters from electing candidates of their choice and dividing their communities of interest.

In light of these considerations, a reservation should not be separated into multiple districts unless a Tribe specifically requests division. Courts have recognized reservations as communities of interest and the District of Arizona has stated that Native voters “should not be engulfed in a structure that minimizes their potential for meaningful access to the political process.”<sup>5</sup>

Arizona has a history of using redistricting as a tool to minimize Native American political representation.<sup>6</sup> Ignoring reservation boundaries and Tribal communities in the redistricting process dilutes the Native American vote. While separating a reservation into multiple districts may be required to satisfy equal population requirements and to enhance voter effectiveness, there are many instances in which redistricting plans divide reservation communities in order to reduce the power of the Native vote.<sup>7</sup>

With the exception of the redistricting cycle following the 2010 Census, Native voters in Arizona challenged redistricting plans in each cycle since the 1960s.<sup>8</sup> In 1971, the Arizona Legislature passed a redistricting plan that divided the Navajo Reservation into three state legislative districts, thereby reducing Navajo voters’ ability elect candidates of their choice.<sup>9</sup> In subsequent litigation

---

<sup>5</sup> See *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 687 (D. Ariz. 1992) *aff’d sub nom. Hispanic Chamber of Commerce v. Arizonans for Fair Representation*, 507 U.S. 981(1993).

<sup>6</sup> *Hearings, supra* note 1, at 8 (statement of Patty Ferguson-Bohnee).

<sup>7</sup> *Id.* at 10.

<sup>8</sup> *Id.* at 8.

<sup>9</sup> *Klahr v. Williams*, 339 F. Supp. 922, 924, 927 (D. Ariz. 1972).

challenging the division of the Navajo Reservation, the court held that the 1971 redistricting plan violated the Equal Protection Clause of the Fourteenth Amendment, finding that the division “was made in order to destroy the possibility that the Navajos, if kept within a single legislative district, might be successful in electing one or more of their own choices to the Legislature.”<sup>10</sup> In 1981, the Department of Justice objected to a similar proposed redistricting plan that attempted to dilute the San Carlos Apache vote by splitting the Tribe into multiple districts on the grounds that the plan had a discriminatory effect.<sup>11</sup> The Tribe successfully challenged the proposed redistricting plan, as the court held the plan had “the effect of diluting the San Carlos Apache Tribal voting strength and dividing the Apache community of interest.”<sup>12</sup>

Since Proposition 106 transferred the redistricting responsibility to the Arizona Independent Redistricting Commission in 2000, the Commission approved a state legislative district aimed at “strengthen[ing] the ability of Native Americans to elect their candidates of choice” in the last redistricting cycle.<sup>13</sup> This district, current Legislative District 7, is the only Native American majority-minority legislative district in the State of Arizona. The district includes nine tribes and has a Native American voting age population of 63.1 percent.<sup>14</sup> Additionally, the Commission created a congressional district, Congressional District 1, in the last cycle containing twelve tribes with a Native American voting age population of 20.5 percent.<sup>15</sup> The redistricting plans from the 2011 cycle were the first in Arizona’s history to be precleared in a single attempt since the adoption of the Voting Rights Act.<sup>16</sup>

### III. The Census Undercount and Population Deviation

In addition to keeping Tribal reservation boundaries intact, it is important that the Commission consider the fact that Native Americans are notoriously undercounted in the United States Census. Undercounting is detrimental to Tribal communities, and ultimately results in Native voters being denied adequate representation, the ability to participate in important policy decisions that uniquely affect their communities, and the ability to elect candidates of their choice.

Arizona is ranked number one amongst states with the highest number of American Indians and Alaska Natives living in hard to count census tracts, with 68.1% of the State’s Native American population living in hard to count areas.<sup>17</sup> In addition to living in hard to count areas, poverty increases the likelihood of being undercounted.<sup>18</sup> In Arizona, Native Americans are impoverished

---

<sup>10</sup> *Id.* at 926–27.

<sup>11</sup> *Goddard v. Babbitt*, 536 F.Supp. 538, 541 (D. Ariz. 1982).

<sup>12</sup> *Id.* at 539–41.

<sup>13</sup> U.S. Department of Justice Submission under Section 5 of Voting Rights Act: IRC, State of Arizona Legislative Redistricting Plan at 2–3, 78 (Feb. 28, 2012).

<sup>14</sup> See ARIZ. INDEP. REDISTRICTING COMM’N, *Commission Approved Final Legislative Map, Population Data Table* (Jan. 17, 2012), <https://azredistricting.org/Maps/Final-Maps/Legislative/Reports/Final%20Legislative%20Districts%20-%20Population%20Data%20Table.pdf>.

<sup>15</sup> See ARIZ. INDEP. REDISTRICTING COMM’N, *Commission Approved Final Congressional Map, Population Data Table* (Jan. 17, 2012), <https://azredistricting.org/Maps/Final-Maps/Congressional/Reports/Final%20Congressional%20Districts%20-%20Population%20Data%20Table.pdf>.

<sup>16</sup> *Hearings, supra* note 1, at 9 (statement of Patty Ferguson-Bohnee).

<sup>17</sup> NAT’L CONG. AM. INDIANS, *Census*, <https://www.ncai.org/policy-issues/economic-development-commerce/census> (last visited Oct. 7, 2021).

<sup>18</sup> *Id.*

at more than double the rate of other residents, with 35% of Native Americans living in poverty compared to the state average of 14.9%.<sup>19</sup> Lack of broadband service, housing insecurity, language barriers, and the COVID-19 pandemic further increases the risk that the decennial census undercounted Arizona’s Native population.

In September 2021, President Nez of the Navajo Nation addressed this problem, stating that the COVID-19 pandemic “altered and halted” the Nation’s census operations.<sup>20</sup> President Nez further noted that “doing the census count on Native land...is different than doing the census in other parts of America where mailing and physical addresses and internet accessibility do not hinder these efforts.”<sup>21</sup> As such, the decennial census does not represent Native American communities in Arizona to their fullest.

Although congressional districts must achieve nearly precise equality among the districts, legislative districts may vary much more, so long as the variance is not unjustifiably large. In 2016, the United States Supreme Court upheld Arizona’s legislative maps because the maps were drawn in a good faith effort to comply with the Voting Rights Act.<sup>22</sup> The Court affirmed that total population deviations of 10% or less are presumptively constitutional.<sup>23</sup> Under the Commission’s approved draft maps, LD Test Map Version 10.0, six of the most underpopulated legislative districts are majority white districts. These districts include legislative districts 8, 10, 15, 17, 19, and 28.

A balance must be struck to satisfy one-person one-vote while protecting Native American voters in the redistricting process. During the last redistricting cycle, the Independent Redistricting Commission approved a legislative district to strengthen the ability of Native Americans to elect their candidates of choice under the Voting Rights Act.<sup>24</sup> Today, the Voting Rights Act instructs this Commission to continue to protect the strength of the Native Vote.

#### **IV. The Inclusion of Flagstaff in Proposed Legislative District 6**

The Voting Rights Act instructs this Commission to use its lawful discretion to protect the interests of the only Native American majority-minority legislative district in Arizona. Under Section 2 of the Voting Rights Act, “[n]o voting qualification...or standard, practice, or procedure shall be imposed...by any State or political subdivision” that results in the denial or abridgement of the right to vote on account of race or color.<sup>25</sup> Section 2 is violated when members of a minority group have less opportunity than other members of the electorate to elect representatives of their choice.<sup>26</sup>

---

<sup>19</sup> Natalie M & Brianna M, *Native American Poverty in Arizona: How does poverty on Arizona reservations affect its residents?* (Jan. 17, 2020), <https://storymaps.arcgis.com/stories/b7b09da92c664e0baa5fd375c045cc26>.

<sup>20</sup> THE PAPER STAFF, *Navajo Nation President Stresses Importance of Native Voting Rights to Redistricting Committee*, ABQ NEWS (Sept. 30, 2021, 2:15 PM), <https://abq.news/2021/09/navajo-nation-president-stresses-importance-of-native-voting-rights-to-redistricting-committee/>.

<sup>21</sup> *Id.*

<sup>22</sup> *Harris v. Arizona Indep. Redistricting Comm’n*, 578 U.S. 253 (2016).

<sup>23</sup> *See Cox v. Larios*, 300 F. Supp. 2d 1320 (N.D. Ga.), *aff’d*; 542 U.S. 947 (2004); *Brown v. Thompson*, 462 U.S. 835 (1983).

<sup>24</sup> U.S. Department of Justice Submission under Section 5 of Voting Rights Act: IRC, State of Arizona Legislative Redistricting Plan at 2–3, 78 (Feb. 28, 2012).

<sup>25</sup> 52 U.S.C. § 10301(a) (2014).

<sup>26</sup> *Id.* at § 10301(b).

Pursuant to the Voting Rights Act, Arizona’s Native American voters are entitled to a district that gives them an opportunity to elect a candidate of choice.<sup>27</sup> In analyzing a vote dilution claim, the relevant inquiry is not whether a minority candidate is ever elected.<sup>28</sup> Rather, it is whether a majority bloc usually defeats the minority-preferred candidate.<sup>29</sup> In *Thornburg v. Gingles*, the Supreme Court explained that greater weight may be afforded to minorities’ lack of success over the course of multiple recent elections rather than to their success in a single election.<sup>30</sup> The Ninth Circuit defines a minority-preferred candidate as “a candidate who receives sufficient votes to be elected if the election were held only among the minority group in question.”<sup>31</sup>

Including Flagstaff in proposed Legislative District 6 would prevent Native American voters from electing a candidate of choice, as demonstrated by previous elections. In 2004, Native American voters were unable to elect their candidate of choice in Arizona’s only Native American majority-minority district because Flagstaff voters mobilized to defeat the Native Americans’ preferred candidate. In the 2010 redistricting cycle, Flagstaff was later excluded from the Native American majority-minority district, Legislative District 7. Under the 2010 maps, Native Americans were able to elect candidates of choice to the State legislature. The new maps should not undermine this progress.

The proposed draft map will not empower Native Americans to elect candidates of choice for two primary reasons. First, the growth rate of the Flagstaff community significantly outpaces the reservations and will shortly lead to a population difference that mathematically defeats the ability of Native Americans to elect candidates of their choice. Second, although Native Americans and non-Native Americans in Coconino County and the Flagstaff area demonstrate a similar preference for Democratic candidates, there is nonetheless racially polarized voting in the Democratic primaries that undermines the ability of Native Americans to elect candidates of choice in General Elections.

Since the 2010 Census, Flagstaff’s population has grown by more than 18%. Thus, including Flagstaff in proposed Legislative District 6 will not only render it more difficult—if not impossible—for Native Americans to elect a candidate of choice; but the inclusion of Flagstaff will also likely result in Native Americans losing their majority over the course of the next decade.

While there is generally a high preference for Democrats among Native and non-Native voters in Flagstaff, evidence of racially polarized voting illustrates that white voters tend to vote as a bloc so as usually to defeat Native Americans’ minority preferred candidate. For example, Wenona Benally Baldenegro was the Native American preferred candidate in the 2012 congressional primary election, and non-Natives preferred the non-native candidate. Thus, given the rate at which Flagstaff’s population is growing, the presence of racially polarized voting amongst Democrats in the area, and the historically low turnout amongst Native American voters,

---

<sup>27</sup> See *Thornburg v. Gingles*, 478 U.S. at 50–51 (describing the three-pronged test courts use to determine whether a minority group is entitled to a majority minority district).

<sup>28</sup> *Ruiz v. City of Santa Maria*, 160 F.3d 543, 549 (9th Cir. 1998).

<sup>29</sup> *Id.*

<sup>30</sup> 478 U.S. 30, 76 (1986).

<sup>31</sup> *Ruiz*, 160 F.3d at 552, citing *Lewis v. Alamance County*, 99F.3d 600 (4th Cir. 1996).

Legislative District 6 as proposed in the approved draft map would limit the ability of Native Americans to elect a candidate of choice in violation of the Voting Rights Act.

## V. The Communities of Interest in Northern Arizona

In addition to the more technical shortcomings of proposed Legislative District 6 discussed above, there are numerous practical considerations when determining which communities of interest stand to benefit from being represented by the same elected official. Specifically, the term “rural” seems to be used to exclude Native American communities and focuses more on race and partisanship.

Recent studies suggest that residents living in rural Arizona often feel underprioritized in comparison to urban residents.<sup>32</sup> Additionally, population loss, unemployment, and poverty are frequently concerns that are uniquely shared in rural communities.<sup>33</sup> The United States Census Bureau defines “rural” as “all population, housing, and territory not included within an urban area.”<sup>34</sup> Under this definition, census data has consistently categorized Flagstaff as urban, while Tribal reservation lands are consistently categorized as rural.<sup>35</sup>

In Arizona, rural areas tend to suffer in comparison to urban areas when it comes to income, education, and employment.<sup>36</sup> For example, the average poverty rate amongst rural Arizonans is 26.4%.<sup>37</sup> In this respect, Arizona’s Native American population aligns more closely with rural Arizona than with Flagstaff; as Native Americans live in poverty at nearly double rate of Flagstaff residents.<sup>38</sup> Further, data indicates that concerns regarding education are more likely to be shared between Arizona’s rural and Native communities than with Flagstaff and Native Americans. The Arizona 2020 Annual Indian Education Report defines “high-density schools” as Arizona schools with a Native American student population of 25% or greater.<sup>39</sup> In Arizona, 64 to 69% of high-density Native American schools are located in rural counties.<sup>40</sup> The 2020 Education Report further identifies Apache, Coconino, and Navajo Counties as “rural.”<sup>41</sup> These three counties have the highest population of Native American students in the State, with Native Americans

---

<sup>32</sup> DAVID R. BERMAN, REVISITING THE URBAN-RURAL RELATIONSHIP IN ARIZONA 4 (2019).

<sup>33</sup> *Id.* at 2.

<sup>34</sup> Urban Areas for the 2020 Census—Proposed Criteria, 86 Fed. Reg. 10237, 10240 (Feb. 19, 2021).

<sup>35</sup> See generally Rural America, How does the U.S. Census Bureau Define “Rural?”, U.S. CENSUS BUREAU, <https://mtgis-portal.geo.census.gov/arcgis/apps/MapSeries/index.html?appid=49cd4bc9c8eb444ab51218c1d5001ef6> (follow the “How Does the U.S. Census Bureau Define “Rural?” tab to see map of U.S. rural populations; then zoom in to examine Arizona).

<sup>36</sup> BERMAN, *supra* note 32.

<sup>37</sup> *Id.*

<sup>38</sup> See Natalie M & Brianna M, *Native American Poverty in Arizona: How does poverty on Arizona reservations affect its residents?* (Jan. 17, 2020), <https://storymaps.arcgis.com/stories/b7b09da92c664e0baa5fd375c045cc26> (noting that 35 percent of Native Americans live in Arizona); see also U.S. CENSUS BUREAU, *QuickFacts, Flagstaff city, Arizona*, <https://www.census.gov/quickfacts/flagstaffcityarizona> (reporting Flagstaff’s poverty rate as showing 17.5 percent).

<sup>39</sup> OFF. INDIAN EDUC., ARIZONA DEP’T EDUC., Arizona 2020 Indian Education Annual Report 1 (2020).

<sup>40</sup> *Id.* at 20.

<sup>41</sup> *Id.*

comprising 74% of students attending Arizona schools in Apache County, 45% in Navajo County, and 34% in Coconino County.<sup>42</sup>

Additionally, the high school graduation rate amongst Native Americans is more similar to the graduation rate of rural Arizonans than to Flagstaff. At high-density schools, 26% of Native American students did not graduate from high school in four years.<sup>43</sup> This number increased to 36% when the Native American student population was less than 25%.<sup>44</sup> In comparison, 17.7% of rural Arizonan's have not completed high school,<sup>45</sup> while nearly 90% of Flagstaff's population has a high school diploma.<sup>46</sup>

In addition to income and education, reservation communities in Arizona are certainly considered rural in terms of their infrastructure needs. Many roads on reservations are unimproved dirt or gravel roads that become impassible after snow or rain. For example, the Navajo Nation Reservation contains more than 10,000 miles of road, 86% of which are unpaved.<sup>47</sup> Additionally, those living on Tribal lands are more likely to lack electricity, running water, or broadband services. There is a growing digital divide between Tribal and non-Tribal communities, 95% of people on Tribal lands have either unserved or underserved telecommunication infrastructure needs.<sup>48</sup> Comparatively, over 85% of households in Flagstaff have a broadband internet subscription.<sup>49</sup>

## **VI. Voter Turnout in Indian Country and the Ability to Elect a Candidate of Choice**

In addition to Flagstaff's growth rate threatening the Native American majority of proposed Legislative District 6, and the ability to elect a candidate of choice being jeopardized by the racially polarized voting present between Native American voters and white liberal voters in Flagstaff, voter turnout amongst Native Americans is consistently low. Therefore, Native American voters will not "dominate" future Legislative District 6 simply because the Native American Voting Age Population is greater than 50%. To craft an effective Native American majority-minority district, the Commission must consider voter registration and turn out rates when determining the number of Native American voters that need to live in the district to have an opportunity to elect their preferred candidate. The requisite number must be considerably higher than 50% when the Native American voter turnout and registration rates are lower than average, as is the case for Native American voters in Arizona.

---

<sup>42</sup> *Id.* at 8.

<sup>43</sup> *Id.* at 21.

<sup>44</sup> *Id.*

<sup>45</sup> RURAL HEALTH INFO. HUB, *Selected Social Determinants of Health for Rural Arizona*, <https://www.ruralhealthinfo.org/states/arizona> (last reviewed Oct. 28, 2021).

<sup>46</sup> <https://worldpopulationreview.com/us-cities/flagstaff-az-population>

<sup>47</sup> FY2019 Navajo Nation Tribal Transportation Plan at 1, available at [http://navajodot.org/uploads/files/Draft%20FY2019%20NNTTIP\\_08-20-18.pdf](http://navajodot.org/uploads/files/Draft%20FY2019%20NNTTIP_08-20-18.pdf).

<sup>48</sup> Ariz. Dep't of Admin, *Arizona Statewide Broadband Strategic Plan 16 (2018)*, available at [https://azlibrary.gov/sites/default/files/erate\\_2018\\_az\\_broadbandstrategicplan\\_final.PDF](https://azlibrary.gov/sites/default/files/erate_2018_az_broadbandstrategicplan_final.PDF).

<sup>49</sup> U.S. Census Bureau, *Quick Facts, Flagstaff City, Arizona*, available at <https://www.census.gov/quickfacts/flagstaffcityarizona>.



The vast differences in experiences, opportunities, and realities facing on-reservation voters as compared to off-reservation voters impacts the Native American vote. Turnout for Native Americans is the lowest in the country, as compared to other groups.<sup>50</sup> Several issues contribute to low voter turnout amongst Native Americans, including low levels of trust in government, lack of information on how and where to register and to vote, long travel distances to register or to vote, low levels of access to the internet, hostility towards Native Americans, and intimidation are all obstacles to Native American voter participation.<sup>51</sup> Further, access to the polls and participation in the political process are impacted by isolating conditions such as language barriers, socioeconomic disparities, lack of access to transportation, lack of residential addresses, lack of access to mail, and the digital divide. Changes to voting processes interact with these isolating conditions to limit Native American voter participation.

In Arizona, the turnout rate for Native Americans consistently lags behind the State's average. In 2016, the State's turnout rate was 74.71%.<sup>52</sup> In comparison, half of Arizona's reservations had a turnout rate below 50% of registered voters. In 2018, the State's turnout rate was 64.85%.<sup>53</sup> For Tribal communities, the average turnout rate was 44%—with some Tribal precincts seeing turnout as low as 22%. In 2020, the State's turnout rate was 79.9%.<sup>54</sup> For Tribal communities, the average turnout rate was around 60%. The primary turnout data in Tribal communities is much lower than the State's average.

Proposed Legislative District 6 currently includes nine of Arizona's twenty-two Tribes: (1) the Havasupai Tribe; (2) the Hopi Tribe; (3) the Hualapai Tribe; (4) the Kaibab-Paiute Tribe; (5) the Navajo Nation; (6) the San Carlos Apache Tribe; (7) the San Juan Southern Paiute Tribe; (8) the White Mountain Apache Tribe; and (9) the Zuni Tribe.

Unequal access to in-person early voting and election day polling locations further contributes to the low voter turnout among Arizona's Tribal communities. Voters living on-reservation are often at the mercy of the county officials who decide where to place polling locations. For example, members of the Kaibab-Paiute Tribe, located in Mohave County, were required to travel 285 miles one way to participate in in-person early voting.<sup>55</sup> In 2016 and 2018, Mohave County denied the Kaibab-Paiute Tribe's requests for an on-reservation polling location.<sup>56</sup> In 2018, the County maintained that the request was made too late, and that the proposed facility failed to comply with

---

<sup>50</sup> Tova Wang, *Ensuring Access to the Ballot for American Indians & Alaska Natives: New Solutions to Strengthen American Democracy* at 3, 6, available at <https://www.demos.org/sites/default/files/publications/IHS%20Report-Demos.pdf>.

<sup>51</sup> Native American Voting Rights Coalition, *Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada, and South Dakota* at 3, 5 (Jan. 2018) (hereinafter "NAVRC Study").

<sup>52</sup> ARIZONA SEC'Y STATE, *Voter Registration and Historical Election Data*, <https://azsos.gov/elections/voter-registration-historical-election-data> (last visited Nov. 23, 2021).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> ASU INDIAN LEGAL CLINIC, *NATIVE VOTE – ELECTION PROTECTION PROJECT 2016 ELECTION REPORT* 1, 21 (2016).

<sup>56</sup> *Id.* at 1, 9 (forthcoming 2021).



the Americans with Disabilities Act.<sup>57</sup> After several requests, Mohave County reopened a polling location in 2020 on the Kaibab Paiute Reservation.

Participation in the political process is further impacted by language barriers. Under Section 203 of the Voting Rights Act, Arizona's election officials must provide language assistance to the Navajo Nation Reservation, the San Carlos Apache Reservation, the Hopi Reservation, and the Kaibab-Paiute Reservation.<sup>58</sup> Language barriers have widespread impact across the Reservation for the Navajo Nation, as one-third of the Reservation's voting age population is limited-English proficient and over one quarter of the population is illiterate. In 2018, the Navajo Nation sued the State of Arizona, Apache County, Coconino County, and Navajo County, alleging that the State and counties failed to provide effective language assistance in violation of Section 203 of the Voting Rights Act.<sup>59</sup> Additionally, the Navajo Nation claimed that the State and counties failed to provide equal access to voter registration and in-person early voting, and the counties failed to provide instructions on how to complete an early mail-in ballot in the Navajo language.<sup>60</sup> Further, the Navajo Nation claimed that the counties failed to provide translators at voter registration sites and early voting locations, and refused to provide additional early voting locations on the Reservation which would have increased access to translators during the early voting process.<sup>61</sup> In the 2018 General Election, more than 100 ballots cast by Navajo's Tribal members were discarded for lack of signature when the counties did not provide ballot instructions in the Navajo language for early voters.<sup>62</sup>

Additionally, only 66% of eligible Native American voters are registered to vote.<sup>63</sup> In Arizona, voter registration for those living on-reservation has been practically limited to in-person registration. To register to vote online in Arizona, an individual must have an Arizona driver's license or state-issued identification card. Up until 14 days before the voter registration deadline in the 2020 General Election, voters with Arizona IDs and nonstandard addresses were unable to register online.<sup>64</sup> Lack of traditional addresses present obstacles for Native voters at nearly every stage of the voting process, and many Native Americans living on Arizona reservations lack traditional addresses. Instead, the locations for homes are often identified in terms of cross roads, landmarks, and descriptions.<sup>65</sup>

---

<sup>57</sup> *Id.*

<sup>58</sup> 86 Fed. Reg. 69611, 69612 (Dec. 8, 2021).

<sup>59</sup> First Amended Verified Complaint for Injunctive and Declaratory Relief at 22, *Navajo Nation v. Reagan*, No. CV-18-08329-PCT-DWL (D. Ariz. Dec. 11, 2018), ECF No. 29.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 5.

<sup>63</sup> DR. JAMES TUCKER ET. AL., OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICAN VOTERS 6 (2020), [https://vote.narf.org/wp-content/uploads/2020/06/obstacles\\_at\\_every\\_turn.pdf](https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf).

<sup>64</sup> Press Release, Katie Hobbs, Ariz. Sec'y State, Secretary of State's Office announces upgrade to ServiceArizona.com and new AZVoteSafe Guide for Native American voters (Sept. 21, 2020), <https://azsos.gov/about-office/media-center/press-releases/1223>.

<sup>65</sup> Native American Voting Rights Coalition, Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada, and South Dakota at 3, 5 (Jan. 2018).

As a result of these barriers to voter registration, Arizona has one of the lowest voter turnout rates in the United States.<sup>66</sup> The turnout rate for minority voters is substantially less than white voters, and Native American voters vote approximately 23 percentage points below the statewide average.<sup>67</sup>

These patterns in Arizona demonstrate that unequal access to voter registration opportunities, in-person early voting locations, voter identification and socioeconomic barriers that impede access to the ballot ultimately impede turnout and overall participation of Native Americans in the electorate. These factors must be considered as the Commission determines the number of Native American voters necessary to create an effective Native American majority minority district.

## **VII. Conclusion**

Under the Voting Rights Act, the Commission is required to maintain a robust Native American majority minority district that allows Native American voters to elect candidates of their choice. The City of Flagstaff is growing at a significantly faster rate than Arizona's Reservation communities, which will inevitably lead to Native Americans losing the majority in the district over the course of the decade. Data further indicates that racially polarized voting is present in the Democratic primaries which will undermine the ability of Native Americans to elect candidates of choice in General Elections. Additionally, and as a practical matter, Arizona's Tribal communities are rural and face similar issues as their rural neighbors. In drawing the district boundaries for Legislative District 6, the Commission should consider the low voter registration and voter turnout rates amongst Native Americans.

---

<sup>66</sup> *Democratic Nat'l Committee v. Hobbs*, 989, 1025 (9th Cir. 2020).

<sup>67</sup> *Id.*