

Native American Rights Fund Report to the McDowell Foundation
North Dakota Voting Rights Case
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On January 20, 2016, seven Native Americans from North Dakota filed suit under the Voting Rights Act and the U.S. and North Dakota Constitutions challenging North Dakota's recently enacted voter ID law on the grounds it disproportionately burdens Native Americans and denies qualified voters the right to vote.

The plaintiffs are challenging North Dakota House Bills 1332 and 1333, which require North Dakota voters to present one of only four qualifying IDs with a current residential address printed on it in order to vote. Before enactment of these laws, North Dakota required a poll clerk to request an ID, but a voter without one could still vote if the clerk vouched for their qualifications or the voter signed an affidavit of identity. While other states also have voter ID requirements, North Dakota is the only state without a fail-safe provision, such as provisional balloting that allows a voter to produce their ID within a few days of the election or an affidavit of identity. Additionally, North Dakota's list of acceptable IDs is much more limited than other states, which allow U.S. passports and military IDs to be used.

Native Americans have long suffered from discrimination in North Dakota, and this discrimination has contributed to higher rates of poverty, unemployment, and lower levels of education. In turn, this discrimination has been directly reflected in state laws and practices seeking to make voting and other forms of electoral participation more difficult for Native Americans. North Dakota voting is polarized along racial lines, with Native Americans significantly more likely to vote for Democrats than white voters. The new voter ID laws are having a disparate negative impact on Native Americans, because many more Native Americans than whites lack qualifying voter ID and lack the means to easily obtain a qualifying voter ID. Native Americans have been historically underrepresented in state and local governments in North Dakota. Contrary to State claims, North Dakota has never had a voter fraud problem, let alone a problem of sufficient magnitude to justify such restrictive new voter ID laws.

Many Native Americans living on Indian reservations in North Dakota do not have qualifying IDs, such as driver's licenses or state ID cards containing a residential address. Thus, in both the primary and general election in 2014, many qualified North Dakota Native American voters were disenfranchised because their IDs did not list their residential address.

The lawsuit alleges that North Dakota's new voter ID requirements arbitrarily and unnecessarily limit the right to vote and disproportionately burden Native American voters in North Dakota. The burdens are substantial for a number of Native Americans who cannot afford to drive to the nearest driver's license site ("DMV"). There are no DMV locations on any Indian reservations in North Dakota, and for many Native Americans, a DMV location may be over 60 miles away.

Many Native Americans live below the poverty line, and do not have dependable access to transportation or cannot afford travel to a distant DMV location.

The State of North Dakota moved to dismiss the case for failure to state a claim, but the Court denied the motion on April 5, 2016. On June 20, 2016, the Plaintiffs moved the North Dakota federal district court to enjoin North Dakota's recently enacted strict voter ID law and to reinstate the voter identification procedures that were in place before the new laws. The State filed a Response in Opposition on July 5, and the Plaintiffs filed a Reply brief on July 18. The plaintiffs hope to obtain a ruling prior to the 2016 general election. The plaintiffs are represented by The Native American Rights Fund ("NARF"), Richard de Bodo of Morgan, Lewis & Bockius LLP, and Tom Dickson of the Dickson Law Office.

Two voting rights cases, similar to North Dakota's, were struck down in July by the federal courts. The U.S. Circuit Court of Appeals for the Fifth Circuit ruled that Texas' photo ID law violates Section 2 of the Voting Rights Act by discriminating against Latino and African American voters. The freedom to vote for 1.2 million eligible Texas citizens who lack the specific forms of identification required by Texas' strict photo ID law, including 600,000 citizens already registered to vote, was vindicated. African American and Latino voters were much less likely to have one of the few forms of approved identification and were disproportionately affected by the law. Similarly, a federal court in Wisconsin ruled that people who encounter difficulty obtaining identification under that state's strict photo ID law can sign an affidavit and vote a regular ballot in November. Since the Wisconsin requirements started, the state has rejected almost 20 percent of those applying for voter ID, a startling 85 percent of who are African American, Latino, or Native American. With these two rulings, we believe the court will also reject North Dakota's arguments.