

Ensuring Access to the Ballot
for American Indians & Alaska Natives:

New Solutions to Strengthen American Democracy

by: Tova Wang

DĒMOS is a non-partisan public policy research and advocacy organization founded in 2000. Headquartered in New York City, Dēmos works with policymakers around the country in pursuit of four overarching goals—a more equitable economy with widely shared prosperity and opportunity; a vibrant and inclusive democracy with high levels of voting and civic engagement; an empowered public sector that works for the common good; and responsible U.S. engagement in an interdependent world.

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EXECUTIVE SUMMARY

According to all available data, the voter participation rate of the first Americans, American Indians and Alaska Natives, is among the lowest of any ethnic group in the country. There are complex historical and cultural reasons that make the issue of voting among American Indians and Alaska Natives unique. Historically, American Indians and Alaska Natives have suffered appalling mistreatment by the U.S. government. Even in relatively recent times, state governments found ways to deny American Indians and Alaska Natives the right to vote outright. For example, some states argued that Indians were not residents of the state and therefore ineligible to vote until these policies were overturned through legal challenges begin-

ning in the 1950s and 1960s in cases decided in Utah and New Mexico. Indeed, American Indians could not vote in New Mexico until 1962. South Dakota legally denied American Indians the right to vote under state law until the 1940s, and then continued to deny them the vote until 1975 by claiming that people residing in “unorganized counties” were not eligible to vote. The three unorganized counties were Todd, Shannon, and Washabaugh—counties overwhelmingly comprised of American Indians.

Violations of voting rights, and discrimination and hostility in daily life with some non-Native communities continue today. Poverty and poor educational opportu-

nities are also still serious problems. When considering the issue of voting in national, state, and local elections, some American Indians and Alaska Natives are conflicted between participation in those elections versus loyalty to their tribe and tribal government, including through voting in tribal elections. There are also concerns about maintaining the sovereign status of tribes. Government, candidate or party voter outreach to Native communities is usually spotty at best.

“Although there is a range of cultural, philosophical and historical reasons for low participation rates, challenges in the procedural aspects of voting also present problems for would-be Native voters. One of these challenges is the voter registration system.”

Nonetheless, increasing numbers of American Indians and Alaska Natives are coming to the conclusion that in order to truly have control over their lives and livelihoods, Native people must strengthen their hand in relation to government policy, and part of this must be done through the ballot box. Yet obstacles remain. Although there is a range of cultural, philosophical and historical reasons for low participation rates, challenges in the procedural aspects of voting also present problems for would-be Native voters. One of these challenges is the voter registration system.

Given the history of manipulation, discrimination and forcible exclusion from the voting process, the federal government has an affirmative duty to encourage and support voter participation by American Indians and Alaska Natives today. The time is now for the federal government to send a strong and simple message to the Native communities: we recognize that government and

“Appropriate IHS facilities should be designated as official voter registration agencies along the same lines as state based public assistance agencies are now designated under the National Voter Registration Act (NVRA).”

civic participation in America began with American Indians and Alaska Natives, and therefore your voices should be heard at every level of government with respect to the issues that confront your families, tribes, and the country. It should be made clear that American Indians and Alaska Natives do not need to decide between supporting tribal government and tribal sovereignty and participating in U.S. elections. Both activities must be fully respected by the federal government.

The first step the federal government should undertake in this regard is to make the process of voter registration for Native voters easier and more accessible. This can be done through Indian Health Service (IHS), a federal entity within the U.S. Department of Health and Human Services whose facilities are run both by the federal government and the tribes. IHS should assist its clientele to register to vote all year round in a uniform and systematic fashion.

Appropriate IHS facilities should be designated as official voter registration agencies along the same lines as state based public assistance agencies are now designated under the National Voter Registration Act (NVRA).

This would mean that assigned staff at an appropriate IHS facility would provide each client with a voter registration form (in all mandated languages) and the opportunity to fill it out should the client wish to do so. Staff would also assist the client with the form if necessary and then collect and transmit it to the appropriate local election official. We know that with effective implementation this type of system can have an incredible impact. Dēmos has repeatedly found that voter registration rates rise exponentially when state based public assistance agencies have instituted effective voter registration programs in accordance with the NVRA.¹

“Even in relatively recent times, state governments found ways to deny American Indians and Alaska Natives the right to vote outright.”

INTRODUCTION

When it comes to American Indians and Alaska Natives, the first Americans, very little effort has been made to collect data on the community generally or to study their participation in the American political system. This has started to change with increased mobilization of the Native vote and increased clout for some tribes due to various successful enterprises, including gaming revenue. Nonetheless, very little research or data collection has been done to analyze an issue that goes to the heart of the democratic evolution of this country: continuing low rates of American Indian and Alaska Native participation in the American voting system.

As will become clear throughout this report, possible causes for low participation rates are quite complex. Addressing cultural and historical factors in detail is beyond the parameters of what voting rights analysts and advocates can address in the immediate term. However, structural barriers and discriminatory practices that keep voting levels low among American Indians and Alaska Natives are matters that people who care about Indian voting rights can and must pursue. It is clear that certain aspects of the way our voting system operates do play a role in low participation rates.

Our democracy is stronger when all of our citizens participate, and this is all the more true in the case of American Indians and Alaska Natives. The relatively low level of participation of the Native community is particularly salient given the historical mistreatment the American Indian community has suffered at the hands of the United States government. It indicates that the

government has a special responsibility – an affirmative duty -- to reduce unnecessary structural barriers to voting among American Indian and Alaska Native populations. At this stage in the development of our democracy, the U.S. government should acknowledge an obligation to do what is in its power to encourage American Indian and Alaska Native voting and participation in this country's political process. This starts with making the voter registration system more accessible.

“...the government has a special responsibility – an affirmative duty – to reduce unnecessary structural barriers to voting among American Indian populations.”

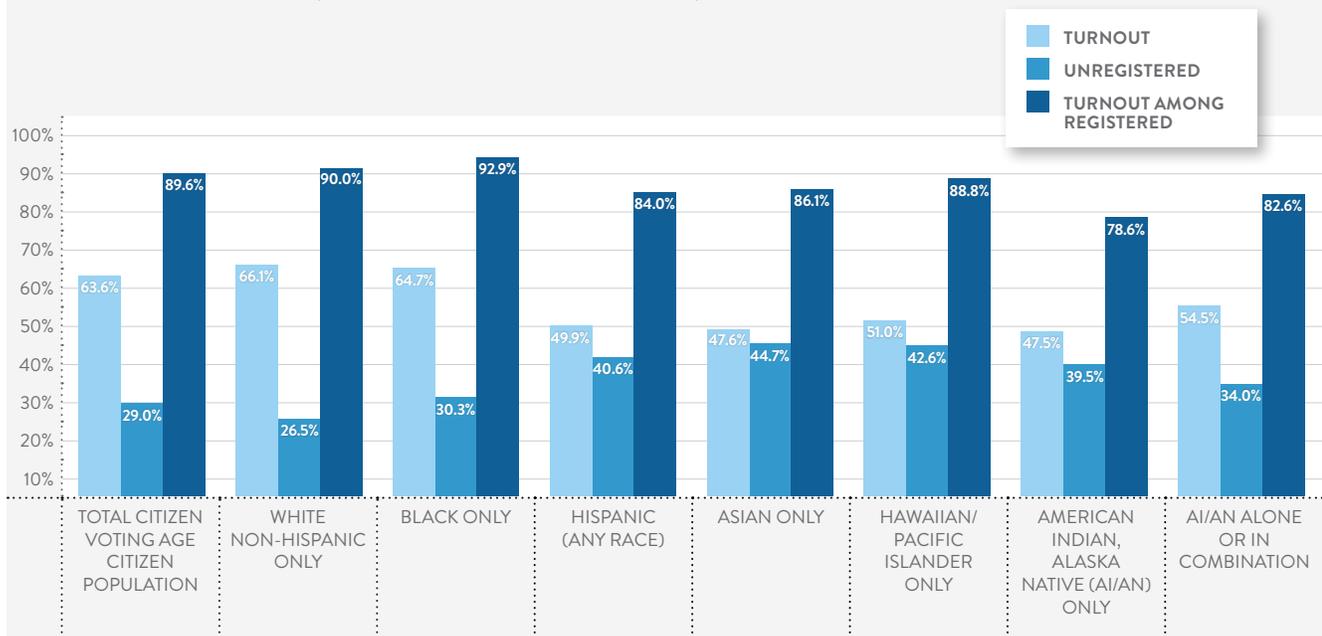
THE VOTER PARTICIPATION GAP

American Indians and Alaska Natives voting rates are among the lowest of all racial and ethnic groups in the U.S. Almost two out of five eligible American Indians and Alaska Natives are not registered to vote. Even among registered American Indians and Alaska Natives, the turnout rate is 5 to 14 percentage points lower than that of many of the registered voters of other racial and ethnic groups.

Turnout among American Indians and Alaska Natives is inherently difficult to assess given that this is a relatively small population (the U.S. Census Current Population Survey did not even separate American Indians and Alaska Natives out as a category until 1990). But the studies that have been done confirm the Census data

indicating that voter turnout among American Indians and Alaska Natives is low. For example, Geoffrey Peterson’s study of the 1990 and 1992 elections, one of the more comprehensive analyses done, concludes that American Indian and Alaska Native voter turnout is lower relative to other groups even when socio-economic levels are controlled.² In another study, Peterson finds that “counties with a high proportion of Native Americans tend to have lower turnout rates compared to counties with a low proportion of Native Americans.”³ Jerry Stubben similarly finds that American Indian and Alaska Native voting rates were relatively low throughout federal elections in the 1990s.⁴ Analysis of specific counties with high Native populations shows a similar trend.⁵

Fig. 1 | ELECTION TURNOUT & REGISTRATION RATE AMONG CITIZEN VOTING-AGE POPULATION, BY RACE AND ETHNICITY, NOVEMBER 2008



SOURCE: U.S. Census Bureau, DataFerrett, Current Population Survey, Voting and Registration, November 2008. Analysis by Dēmos.

There are complicated reasons for the differences in turnout but from what can be gleaned from Census data, problems with the voter registration system are at least part of the challenge. In the Current Population Survey, American Indians and Alaska Natives cited various reasons as to why they were not registered to vote. Such reasons included several problems with voter registration, including failure to meet registration deadlines (13.6 percent), lack of knowledge of where or how to register (6.6 percent), permanent illness or disability (6 percent), and difficulty with English (2 percent).

Moreover, a huge number of American Indians and Alaska Natives live below the poverty line. Voting experts have found that income is a major predictor of whether an individual is registered to vote.⁶ Among the American population at large, 11.5 million low-income Americans are not registered to vote and the registration gap between low-income and high-income citizens is over 19 percent.⁷ According to the Census, 12 percent of American Indians and Alaska Natives live below 50 percent of the poverty level, and 26 percent live below 100 percent of the poverty line. These statistics make American Indians and Alaska Natives the group in the United States with the greatest proportion of people living below the poverty level, edging out African American by decimal points, 25.9 percent and 25.1 percent respectively.⁸

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Fig. 2 | LESS THAN 100% POVERTY LINE

ONE RACE	13.4%
WHITE	10.8%
BLACK OR AFRICAN AMERICAN	25.1%
AMERICAN INDIAN & ALASKA NATIVE	25.9%
ASIAN	10.9%
NATIVE HAWAIIAN & OTHER PACIFIC ISLANDER	16.0%
SOME OTHER RACES	22.7%
TWO OR MORE RACES	17.3%

SOURCE: S1703. Selected Characteristics of people at specified levels of poverty in the past 12 months, Data Set: 2005–2009 American Community Survey 5-Year Estimates.

THE HISTORY & CULTURE BEHIND LOW PARTICIPATION RATES

In understanding Native voting rates, it is also important to consider the unique circumstances of Indian Country. Tribes are sovereign nations and therefore have their own governments and tribal elections. The federal government struggles to escape the (understandable) stigma of discrimination and mistreatment of Native people. As a result, the actions of the tribe and the tribal government are often perceived to have more relevance to the needs of Native people than the actions of the federal government.⁹

States do not have jurisdiction over tribes in the way states have jurisdiction over local governments. Native legal scholar William C. Canby, Jr. has said, “When a question arises as to the power of a city to enact a particular regulation, there must be some showing that the state has conferred such power on the city... A tribe, on the other hand, is its own source of power.”¹⁰

And yet there is ongoing friction between states and tribes in some states where the state government has tried to impose rules and jurisdiction over the Native community. States and tribes have overlapping citizenship and land, but have competed for power and resources and have had a conflicted relationship as a result of perceived cultural misunderstandings and opposing economic interests.¹¹

Ongoing mistrust by American Indians and Alaska Natives of federal and state government is a theme that grassroots organizers and other researchers cite as a major factor in whether American Indians and Alaska Natives participate in state and federal elections. As David Wilkins has written, “Because of the inherent tension between the doctrine of tribal sovereignty and the federal government’s historical effort to assimilate Native peoples, Native peoples have developed a complicated set of attitudes and values about their relationships to their nations and to the United States that affects their involvement

or lack of involvement in tribal, state, and federal elections.”¹² One advocate and organizer for the Native vote says some tribal leaders don’t even trust the state government with their voter information and will not share it with state elections officials because they are concerned the information will be misused. Some American Indians and Alaska Natives do not trust that voting in state or federal elections will have any impact, as compared to participation in tribal affairs. Tribal government is seen as more legitimate. At the same time, this advocate believes that tribal leaders are increasingly recognizing the need for a unified tribal voice in federal and state politics, and that improving access to the process, including through Indian Health Service, will go a long way in improving participation levels.¹³

Attitudes about voting vary among tribes and individuals. While a small handful of tribes express hostility toward voting in American elections, many more are strongly in favor of it. As Jefferson Keel president of the National Congress Of American Indians, stated at the most recent annual State of Indian Nations Address, “As grandmas on the Navajo nation and young people in Alaska Native villages go to the ballot box this November, they are standing on the shoulders of those who fought hard for that right... Our America is a place where all candidates know that we matter, and America sees it at the ballot box.”¹⁴ According to Wilkins, “Many of the native nations argue, in fact, that from their perspective, voting may be the best and possibly only way to protect their remaining land rights, economic rights to conduct gaming operations, and cultural rights like bilingual education.”¹⁵

The complete exclusion of American Indians and Alaska Natives as voters in American elections by the government in many states, and the relatively recent granting of voting rights in a few parts of the country, along with

the historical and current discrimination Native voters have confronted when attempting to attain some political power, have also impacted participation. Russ Lehman, director of the First American Education Project who has been researching and studying these issues for some years, points out that American Indians and Alaska Natives have a limited history of voting—and thus a lack of experience with the process—because they were barred from engaging in it for so long.

For example, it was not until passage of the 1924 Indian Citizenship Act—granting citizenship to Indians at the federal level—that American Indians and Alaska Natives were given the right to vote in U.S. elections. Notwithstanding this law, state governments found ways to prevent Native participation for years after:

- South Dakota legally denied American Indians the right to vote under state law until the 1940s, and then continued to deny them the vote until 1975 by claiming that people residing in “unorganized counties” were not eligible to vote. The three unorganized counties were Todd, Shannon, and Washabaugh—all overwhelmingly counties comprised of American Indians.
- Into the 1940s Idaho, Maine, Mississippi, New Mexico and Washington prohibited “Indians not taxed” from voting, even though they allowed whites who did not pay taxes the right to vote.
- Arizona denied Indians living on reservations the right to vote because they were “under guardianship” of the federal government. This policy remained in place until 1948.
- Some states argued that American Indians were not residents of the state and therefore ineligible to vote. These policies remained in place until they were overturned through legal challenges in Utah in 1957 and New Mexico in 1962.¹⁶

Federal law in the 1960s and 1970s had a big impact in advancing the voting rights of American Indians and Alaska Natives and countering these state practices. For example, the Voting Rights Act outlawed many discriminatory practices against minority voters and required that certain states “pre-clear” changes in the elections process with the Department of Justice before they could be implemented.¹⁷ The Voting Rights Act amendments in the 1970s added certain Native groups as a language minority so that heavily Native jurisdictions were required to provide Native language materials, information, and assistance related to voting.¹⁸

Nonetheless, discrimination in the elections process has continued. There have been dozens of challenges to redistricting schemes and forms of elections—such as at large elections—that dilute Native American voting power. There also have been several cases involving blatant blocking of American Indians and Alaska Natives’ voter registration and turnout. Such cases have documented different forms of discrimination and intimidation in Indian voting, including:

- Not appearing on the voter registration list when whites were for a variety of reasons, including because their names were removed by election officials
- Refusal by election registrars to provide registration forms to groups involved in registering American Indians and Alaska Natives
- Purging from registration lists
- Baseless charges of voter fraud by American Indians and Alaska Natives
- Failure to provide sufficient polling places.¹⁹

Most of these cases have occurred in the 12 Mountain West and Great Plains States, with New Mexico the locus of the most cases, 19, followed by South Dakota with 18. American Indians and Alaska Natives have been successful in almost all of these challenges.²⁰

TIMES ARE CHANGING: INCREASING NATIVE PARTICIPATION

Amid all this negativity and mistrust, there is also mounting evidence that a majority of American Indians and Alaska Natives want to participate in the American election system and are ready to fight for their voting power. One piece of evidence is the amount of litigation undertaken to vindicate these rights. Also telling is the dramatic increase in participation among American Indians and Alaska Natives in the just the last few election cycles, which is described below.

Laughlin McDonald, a leading voting rights attorney who has written and worked extensively on Indian voting rights, relates a discussion with Jonathan Windy Boy, an American Indian and a member of the Montana House of Representatives.²¹ According to McDonald, the representative “said in the past there has been a lot of skepticism, even cynicism, among Indians about the idea of voting. “Some people didn’t vote as a point of pride—defiance, even,” he said. “But that’s all changed. There’s much more of a sense today that we can work within this system” Windy Boy observed. McDonald points to new developments driving increased political participation, including “business development, new wealth from casinos, the need to interact with non-tribal governments, and obtainment of state and federal funds for health clinics, education improvements, water reclamation projects, and cleanup of old mining areas.” In these times, he asserts, American Indians and Alaska Natives are increasingly feeling that they have a stake in the system that is worth fighting for.²²

American Indian and Alaska Native voters can be a significant voter bloc. Native voters were a crucial swing vote in the Washington senatorial election in 2000, the senatorial election in South Dakota in 2002, and the gubernatorial election in Oklahoma in 2002, and they increased mobili-

zation in the gubernatorial race in Arizona in 2004.²³

Indeed on a national level, 2004 was the pivotal year. There was a Presidential race, control of the U.S. Senate, the entire House of Representatives, many Governors’ races, statewide ballot measures and most of the country’s Statehouses at stake. This made it an important year for American Indians and Alaska Natives who wanted to demonstrate that they had the political power to make a strong showing. “It was within this environment that many leaders within Indian Country determined that 2004 was to be a priority for increasing Native participation and thus ‘Native Vote 2004’ was created. By and through the National Congress of American Indians (NCAI) and National Voice at the national level, and countless tribes and independent groups at the statewide and local levels, Native communities were educated, organized, and trained to increase registration and turnout numbers.”²⁴ 2004 was the first time there was a significant Native voter mobilization effort, and this led to significant increases in turnout in some communities.²⁵

While registration and turnout were still below non-Native averages in many parts of the country, according to a 2004 Native Vote analysis, many Native communities saw increases of 50 percent to 150 percent in turnout during that election cycle. The report also detailed the challenge of conducting outreach to American Indians and Alaska Natives who do not live on reservations but rather in cities.²⁶ Importantly for purposes here, the researchers found a direct correlation between local, targeted efforts to increase participation rates in Native communities and the actual increases.

American Indians and Alaska Natives continued to make a difference in specific states in the ensuing years. In particular, American Indian voters played a key role in

Montana's Jon Tester winning his Senate seat in 2006; indeed, given that he won the election by 1 percent, they may have been the margin of difference.²⁷ Tester himself credited the American Indian vote for the win.²⁸ In one example of the potential of this community to swing an election, in Blackfeet Reservation 2,461 voters turned out, 83 percent of them voting in favor of Tester.²⁹

IN CONGRESSIONAL TESTIMONY, JAMES TUCKER, A LAWYER REPRESENTING THE NATIVE AMERICAN RIGHTS FUND TESTIFIED THAT,

[T]he Red Lake Reservation in Minnesota reported its highest voter turnout ever. The NCAI reported survey results showing that tribal turnout on some Minnesota reservations was as high as 83 percent. In Montana, all nine precincts on the Crow Reservation saw increased voter turnout. Five precincts had turnout increases of 28 percent to 47 percent over 2004 turnout. . . . Over all, NCAI found that tribal turnout in Montana was about 65 percent, with the Crow Reservations having turnout estimated at 77 percent in some places. New Mexico had 11 pueblos and tribes that experienced increases in voter turnout of at least 25 percent over 2004, "with five pueblos recording notable increases ranging from 57 percent to 119 percent." In the northern half of the Standing Rock Reservation, which is on the border between North Dakota and South Dakota, early numbers show a 22.4 percent increase in Indian turnout over 2004 turnout.³⁰

The overall trend toward increased turnout seems to have continued in 2008.

Strong support from the Alaska Native community also played the key role in the historic and ultimately successful write-in campaign by Alaska Senator Lisa Murkowski in 2010.³¹ After a surprise loss in the Republican primary, Senator Murkowski took the unusual step of launching a write-in campaign for the general election. Alaska Federation of Natives, the largest statewide Native organization in Alaska, representing 178 villages, 13 regional Native corporations and 12 regional nonprofit and tribal consortiums, endorsed Murkowski in her bid.³² The Alaska Native villages seem to have been the difference.³³ As Senator Murkowski said herself in an address at the 2011 State of the Indian Nations, "If ever you wonder whether Native vote works, look no further than Lisa Murkowski. My success in running the history making write-in campaign that I ran last November would not have been possible if Alaska's Native people did not turn out at the polls."³⁴

WHY THE FEDERAL GOVERNMENT SHOULD ACT

A TENET OF FEDERAL INDIAN LAW IS THE “TRUST RESPONSIBILITY.” ACCORDING TO THE BUREAU OF INDIAN AFFAIRS,

The federal Indian trust responsibility is a legal obligation under which the United States, ‘has charged itself with moral obligations of the highest responsibility and trust’ toward Indian tribes...The federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages.³⁵

Given the history of manipulation, discrimination and exclusion from the voting process, the U.S. federal government has an affirmative duty to take stand by encouraging and supporting American Indian and Alaska Native voter participation today. The time is now for the federal government to send a strong and simple message to the Native community: we recognize that government and civic participation in America began with American Indians and therefore you have the right to have your voice heard at every level of government with respect to the issues that confront your families, tribes, and the country. It should be made clear that American Indians and Alaska Natives do not need to decide between supporting tribal government and tribal sovereignty and participating in U.S. elections. Both activities must be fully respected by the government.

Transforming attitudes formed by generations of cultural and political exclusion is something that will be a long evolving process and must be addressed both by tribes and state and federal officials. It is nonetheless important that the government fulfill its obligations to the American Indian community by making access to the system easier, and by so doing, sending a strong message that American Indians and Alaska Natives are encouraged to vote.

“The time is now for the federal government to send a strong and simple message to the Native community: we recognize that government and civic participation in America began with American Indians and therefore you have the right to have your voice heard at every level of government with respect to the issues that confront your families, tribes, and the country”

EXPANDING VOTER REGISTRATION OPPORTUNITIES THROUGH THE NATIONAL VOTER REGISTRATION ACT

HS facilities can advance political participation of American Indians and Alaska Natives by becoming voter registration agencies under the auspices of the National Voter Registration Act of 1993 (NVRA). The registration process would be similar to what occurs at public assistance offices across the country.

Congress enacted the NVRA with a bipartisan majority to, among other things, increase the number of eligible citizens who register to vote in federal elections.³⁶ The law is best known for its “motor voter” provision, which

requires each state’s department of motor vehicles to make voter registration a part of its application for a driver’s license.³⁷

A less well-known part of the law requires voter registration services at state-based public agencies.³⁸ This same section also allows for the possibility of *federal* agencies or nongovernmental offices to be designated under the law by a state and to voluntarily become an agency whose branch offices will provide voter registration services as a part of client transactions.³⁹ Federal offices

Fig. 3 | PUBLIC ASSISTANCE VOTER REGISTRATION : BEFORE AND AFTER IMPLEMENTATION REFORM

STATE	PRE REFORM, PROJECTED	POST-REFORM, ACTUAL	INTERVENTION IMPACT ⁸
ILLINOIS	21,070	237,448	216,378
MISSOURI	31,995	374,292	342,297
N. CAROLINA	39,498	168,998	129,499
OHIO	42,185	331,301	289,115
VIRGINIA	26,247	57,473	31,226
TOTAL	160,995	1,169,511	1,008,515

SOURCE: Pre-reform data from 2005-2006 EAC report
Post-reform data provided by respective Secretary of State or state public assistance agency

Fig. 3.2 | PRE- AND POST-REFORM COMPARISONS (MONTHLY AVG)

STATE	PRE REFORM, PROJECTED	POST-REFORM, ACTUAL	INTERVENTION IMPACT
ILLINOIS	373	7,088	1800%
MISSOURI	649	10,116	1459%
N. CAROLINA	484	3,045	529%
OHIO	1,775	16,161	810%
VIRGINIA	293	1,455	397%

SOURCE: Pre-reform data from 2005-2006 EAC report
Post-reform data provided by respective Secretary of State or state public assistance agency

must “to the greatest extent practicable, cooperate with the states” when designated.⁴⁰

At each of the designated agencies, staff must distribute a voter registration application form to each client, assist applicants, accept the completed form, and transmit it to elections officials.⁴¹

In the year following passage of the NVRA, President Clinton promulgated Executive Order 12926 directing federal departments, upon request by a state, to agree to be designated as a voter registration agency, provided that such a designation is consistent with the department’s legal authority and availability of funds, and to ensure that its offices in that state have voter registration applications available to the public.⁴²

Notwithstanding this directive, the NVRA’s federal agency designation provision has remained largely unused. In the last few years, several states have designated the Department of Veterans Affairs, the United States Citizenship and Immigration Services, the Social Security Administration, and military pay and personnel offices—as well as Indian Health Service—under the NVRA.⁴³ None of those designations has been accepted by the agencies.⁴⁴ As Dēmos has reported,...

Where fully implemented [at public assistance agencies], the agency provisions of the NVRA have been extremely effective. For example Dēmos has found the following: In the past two years, Ohio and Missouri have registered hundreds of thousands of additional low-income voters after entering into settlement agreements in 2009. Hence, Missouri and Ohio topped the charts in the number of public agency registration applications relative to the number of Food Stamp applications in the 2009–2010 biennial report by the Election Assistance Commis-

sion (EAC). These states *consistently* have been receiving over 10,000 (Missouri) and over 16,000 (Ohio) voter registration applications at public assistance agencies every month. In Illinois, the number of public agency registration applications is now at levels 18 times the rate before re-implementation of the NVRA’s Section 7 provisions. . . Cooperative work with state officials has also bumped up the number of public agency registrations in North Carolina and Virginia.⁴⁵

WHY DESIGNATE THE INDIAN HEALTH SERVICE

The Indian Health Service (IHS) is an especially promising voter registration partner for a number of reasons. Almost its entire staff is American Indian or Alaska Native.⁴⁶ A huge majority of American Indians and Alaska Natives have some interaction with an IHS facility at some point in a given year. Several directors of the facilities, known as “CEOs,” have expressed a strong interest in partaking in a system of providing registration services.⁴⁷ The biggest reason why IHS is the ideal agency to designate is its sheer reach in the Native community. According to its own data, IHS provides a comprehensive health service delivery system for approximately 1.9 million American Indians and Alaska Natives who belong to 566 federally recognized tribes in 35 states.⁴⁸ Indian health care services are provided in over 670 IHS and tribal health care facilities.⁴⁹ American Indians and Alaska Natives interact with IHS frequently, and often visits involve substantial wait times.

332 tribes—more than half of all federally recognized tribes—operate health facilities themselves through compacts with IHS. There are also approximately 232 tribes and tribal organizations that contract with IHS. “Overall, over half of the IHS budget authority appropriation is administered by Tribes, primarily through Self-Determination contracts or Self-Governance compacts.”⁵⁰ There are some health facilities that are virtually entirely managed by the tribes, some facilities that are almost entirely run by IHS directly, and some that have some combination of management.⁵¹

Since urban American Indians can be hard to reach as a unique group when it

comes to voter registration, it is notable that there are 34 urban IHS programs. The programs have the potential to reach 600,000 American Indians and Alaska Natives who reside in counties served by urban Indian health programs.⁵²

Moreover, having some level of federal assistance in voter registration is also important because groups have a great deal of trouble targeting Native voters, given that it is not always apparent from voter files who they are and where they are from. Grassroots Native groups have also struggled to raise the resources to do voter registration on a sustained basis. If the federal government can help facilitate voter registration, groups can focus more on mobilizing voters.⁵³

Finally, as has been made clear, it is important that the federal government send a clear message that it wants American Indians and Alaska Natives to vote and participate in the system, and cares about whether they do so or not.

Fig. 4 | MANAGEMENT OF INDIAN HEALTH SERVICE FACILITIES

	HOSPITALS	HEALTH CENTERS	ALASKA VILLAGE CLINICS	HEALTH STATIONS	SCHOOL HEALTH CENTERS
IHS	28	58	N/A	31	5
TRIBAL	17	235	166	92	28

SOURCE: U.S. Department of Health and Human Services, Indian Health Service.

HOW IHS CAN BECOME AN AGENCY THAT CONDUCTS VOTER REGISTRATION

The NVRA lays out the general procedure for an entity such as an IHS facility to become a voter registration agency.⁵⁴ First, the appropriate election official of the state (see Appendix A) in which the facility or facilities is located must designate the particular facility or group of facilities as voter registration agencies.⁵⁵ IHS facilities, however, cannot become voter registration agencies without their agreement.⁵⁶ Thus, prior to agreeing to designation, the IHS person or entity with authority to agree to the designation (“IHS designation authority”) and the appropriate election official would discuss and agree upon the logistics of the procedures to be implemented at the facility or facilities.⁵⁷ This discussion would conclude with the agreement to designation.

Depending on the circumstances, the designation may initiate in different ways. For example, as has happened in Kansas, California, and North Carolina, a state election official with an interest in the provision of voter registration services to the Native community might designate all the IHS facilities in his or her state. Or, it may be that a particular facility or group of facilities within a state have an interest in providing voter registration services. As one example, facilities run directly by the federal government may wish to demonstrate, through the provision of affirmative voter registration services, the federal government’s active support of voter registration and political participation by American Indians and Alaska Natives. In such a situation, the appropriate IHS-related individuals would need to approach the relevant state election officials, inform them that the facility or group of facilities in question would like to provide voter registration services, and ask to be designated under the NVRA. Alternatively, a tribe that has a large presence in a state or that manages a facility or facilities

pursuant to a subcontract with IHS may wish to have certain facilities provide voter registrations services and would approach the state election official requesting the designation of IHS facilities. Presumably, upon request, the state election official would make the designation.

Similarly, the person with authority to agree to the designation of IHS facilities will differ depending on circumstances. The first factor is whether the particular facility is run directly by IHS directly (the federal government) or whether it is run by a tribe pursuant to a subcontract with IHS. If the facility is federally run, it will be a federal official who has authority to agree to the designation and that official may be in Washington, DC or may be in the state that has made the designation. If the facility is managed by a tribe, however, it will likely be a tribal official with authority to agree to designation. The second factor is whether the designation is intended to affect a group of facilities within a state, or just one individual facility. Regardless of the federal or tribal management status of the facility, if an individual facility is designated, the person with authority to agree to the IHS designation likely would be the CEO of the facility. If a group of facilities is designated, a higher IHS official or tribal official likely would be the appropriate IHS designation authority.

HOW IT WOULD WORK OPERATIONALLY

The Requirements

Once an IHS facility has become a designated voter registration agency under Section 7 of the NVRA, staff at the facility will have the responsibility to institute and provide the voter registration procedures that currently take place in thousands of state-based public assistance agencies across the country every day. Specifically, the facility will have to:

- Distribute to each individual, at specified times, a voter registration application;
- Provide the individual with a form, commonly called a “Declination Form” or “Voter Preference Form,” that contains among other items the question, “If you are not registered to vote where you live now, would you like to apply to register to vote here today?”;
- Provide each individual choosing to register with the same degree of assistance in completing the voter registration application as would be provided in completing the IHS facility’s own forms; and
- Transmit all completed voter registration applications to the appropriate election official within a prescribed amount of time.⁵⁸

Beyond these core requirements that the NVRA mandates, other details of the program’s implementation could be determined through the discussion and negotiation that occurs between the designating state election official and the IHS designating authority. For example, Section 7 of the NVRA requires the distribution of a voter registration application at “application. . . recertification, renewal or change of address,” but it may be that individuals utilizing particular IHS facilities have no occasion to engage in any of these transactions; in such a case, the collaborating officials will need to determine the most analogous IHS transactions to determine the appropriate time for the provision of voter registration

services. To that end, voter registration services might be provided by a front desk intake worker or, alternatively, when people complete Medicaid or Medicare paperwork, which is done with each client visit. Either one of these options likely would be effective and would not interfere with patient care or with the responsibilities of medical staff. Other details regarding the “how” of the implementation also could be determined in light of the facilities’ existing processes.

Implementation

To implement effectively the provision of voter registration services at an IHS facility, “frontline staff”—those responsible for providing the voter registration service—should undergo some training.

The recommended basic components of the training include:

- The basics regarding the NVRA and IHS’ role as a designated agency
- How to best approach each client with the form when distributing and collecting it
- The fields in the form, which ones are required, and what should be filled in for each of them
- Being able to answer questions about filling out the data fields
- Ensuring that the form is completely filled out and legible
- The strict legal prohibition on partisanship
- The strict rules around confidentiality

The Mississippi Secretary of State, Virginia Department of Social Services, and North Carolina State Board of Elections all have strong examples of training resources designed for public assistance agencies containing many of these key points that could be modified and amended for use at IHS facilities.⁵⁹

To facilitate consistent implementation of the NVRA, CEOs should appoint an NVRA Coordinator in each facility or the facility in the jurisdiction. The coordinator should be responsible for maintaining voter registration supplies, sending completed applications to election officials, and reporting NVRA data to agency and election officials. Most importantly, NVRA Coordinators should have sufficient training that they can orient new staff and provide guidance to existing staff at their office in proper voter registration procedures.⁶⁰

Additionally, the state official designated as the “chief State election official to be responsible for coordination of State responsibilities under [the NVRA]”⁶¹ will have responsibility with respect to NVRA implementation at IHS facilities. In a state that manages its NVRA responsibilities well, the chief election official will have appointed someone within his or her office as responsible for overseeing agency implementation. This person would act as a liaison between the elections office and the facility CEOs or other appropriate IHS officials. The relevant staff within the chief election official’s office would also provide assistance with IHS staff training on the voter registration process—whether directly holding

trainings or conducting train-the-trainer sessions with CEOs or NVRA Coordinators—and provide training materials that are updated on a regular basis.⁶² As with all voter registrations in a state, the local election administrators must receive and process registration forms they receive from IHS facilities.

CEOs and/or the NVRA Coordinator and election officials should have regular communication about NVRA implementation and compliance. Each CEO should provide state election officials with the name of the NVRA Coordinator. IHS officials should be in regular contact with state and local election offices for assistance with any additional questions or training needs.

There is unlikely to be great cost involved in implementing this program, as Dēmos’ experience working with states implementing highly effective agency based registration services suggests.⁶³ Tellingly, when a bill was under consideration to make most medical facilities of the Veterans Administration voter registration agencies, the Congressional Budget Office estimated that it would cost the agency less than \$500,000 over a four year period to implement this on a nationwide basis.⁶⁴

CONCLUSION

The Native community in the United States is increasingly making its voice heard in state and national elections. Unfortunately, most of our history has been one of state mistreatment and exclusion of indigenous peoples. There are still problems and tensions. This makes it all the more incumbent upon the federal and state governments to fulfill their obligations and take an affirmative step to provide greater access to the ballot box for Native people. Making voter registration easier and more accessible through designation of Indian Health Service facilities as voter registration agencies will not solve all the problems that are causing low rates of participation among American Indians and Alaska Natives or fully address the ongoing mistrust. Nonetheless, it would be an important step that would have a significant positive impact on the voting rights of thousands of Americans.

APPENDIX A

STATE	DESIGNATING AUTHORITY
Alabama	Secretary of State
Alaska	Director of Elections
Arizona	Secretary of State
Arkansas	County Recorders
California	Secretary of State
Colorado	Secretary of State
Connecticut	Secretary of State
Delaware	State Elections Commissioner
Florida	Secretary of State
Georgia	Secretary of State
Hawaii	Chief Election Officer (appointed by the Elections Commission)
Idaho	Secretary of State
Illinois	Governor
Indiana	Elections Commission
Iowa	Secretary of State
Kansas	Secretary of State
Kentucky	Secretary of State
Louisiana	Secretary of State
Maine	Secretary of State
Maryland	State Board of Elections
Massachusetts	Secretary of State
Michigan	Governor (but see note)
Minnesota	N/A
Mississippi	Secretary of State
Missouri	Governor
Montana	Secretary of State (but see note)
Nebraska	Secretary of State
Nevada	Secretary of State

STATE	DESIGNATING AUTHORITY
New Hampshire	N/A
New Jersey	Legislature or Secretary of State
New Mexico	Secretary of State
New York	State Board of Elections
North Carolina	Executive Director of State Board of Elections
North Dakota	N/A
Ohio	Secretary of State
Oklahoma	Secretary of State
Oregon	Secretary of State
Pennsylvania	Secretary of the Commonwealth
Rhode Island	State Board of Elections
South Carolina	Executive Director of the State Election Commission
South Dakota	State Board of Elections
Tennessee	Coordinator of Elections
Texas	Secretary of State
Utah	County Clerks (seemingly no state-wide designation authority)
Vermont	Secretary of State
Virginia	Secretary of State
Washington	Governor, in consultation with the Secretary of State
West Virginia	Secretary of State
Wisconsin	N/A
Wyoming	N/A

ENDNOTES

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- ⁴ Jerry D. Stubben, “Native Americans and Political Participation,” *ABC-Clio*, 2004, p. 130.
- ⁵ Open Left, 2008 Electorate – Increasing Participation, November 6, 2009.
- ⁶ See Thom File and Sarah Crissey, Voting and Registration in the Election of 2008, U.S. Census, May 2010, p. 4; Jan Leighley and Jonathan Nagler, “Class Bias in the U.S. Electorate, 1972-2004,” Paper prepared for presentation at the annual meeting of the American Political Science Association, August 31-September 3, 2006, Philadelphia, Pennsylvania; “America Goes to the Polls: Voter Participation Gaps in the 2010 Midterm Election,” *Nonprofit Vote*, 2010, available at <http://www.nonprofitvote.org/download-document/voter-participation-gaps-in-the-2010-midterm-election.html>.
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- ⁹ Interviews with Native American rights advocates; see also David Wilkins and Heidi Kiiwetinepinesik Stark, “American Indian Politics And The American Political System,” Rowman & Littlefield Publishers; 2nd edition, June 22, 2006.
- ¹⁰ William C. Canby, Jr. Senior Judge, United States Court Of Appeals For The Ninth Circuit, “American Indian Law In A Nutshell,” Fifth Edition, West Publishing Company, 1981, P 79, 101.
- ¹¹ David Wilkins and Heidi Kiiwetinepinesik Stark, “American Indian Politics And The American Political System,” Rowman & Littlefield Publishers; 2nd edition, June 22, 2006, p. 113.
- ¹² Id. at 171.
- ¹³ Interview by telephone with Sally Fineday, Executive Director, Native Vote Alliance of Minnesota, July 18, 2011.
- ¹⁴ Remarks by Jefferson Keel, President, 10th Annual State of Indian Nations Address, National Congress of American Indians (NCAI), January 26, 2012, Newseum, Knight Studios, Washington, DC.
- ¹⁵ Wilkins and Stark at 170.
- ¹⁶ ACLU Voting Rights Project, “Voting Rights In Indian Country,” September 2009, p. 7.
- ¹⁷ 42 U.S.C. §§ 1973-1973aa-6.
- ¹⁸ 42 U.S.C. §§ 1973aa-1a.
- ¹⁹ See Laughlin Mcdonald, “American Indians And The Fight For Equal Voting Rights,” University of Oklahoma Press, May 14, 2010; ACLU Voting Rights Project, “Voting Rights In Indian Country,” September 2009.
- ²⁰ Dan McCool, Susan M. Olson, and Jennifer L. Robinson, “Native Vote: American Indians, the Voting Rights Act and the Right to Vote,” Cambridge University Press, 2007, p. 46.
- ²¹ Windy Boy is now a member of the State Senate.
- ²² Laughlin Mcdonald, “American Indians And The Fight For Equal Voting Rights,” University of Oklahoma Press, May 14, 2010, p. 259.
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- ²⁴ Native Vote, “Native Vote 2004: A National Survey and Analysis of Efforts to Increase the Native Vote in 2004 and the Results Achieved,” First American Education Project and National Congress of American Indians, 2004, p. 6.
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- ²⁸ Tristan Ahtone, “Paying Attention to the Native American Vote,” Frontline on PBS at <http://www.pbs.org/frontlineworld/election2008/2008/11/paying-attention-to-the-n.html>.
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- ³⁰ Testimony of Dr. James Thomas Tucker, Native American Rights Fund (NARF), Before the House Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties, “Lessons Learned from the 2008 Presidential Election,” March 19, 2009.
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- ³² Jeff Richardson, “Alaska Native Groups Support Murkowski,” *Daily News-Miner*, September 23, 2010.

- ³³ Kyle Hopkins, "Villages Probably Made Write-In Difference," Anchorage Daily News, November 7, 2010
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- ³⁶ 42 U.S.C. § 1973gg(b)(1).
- ³⁷ 42 U.S.C. § 1973gg-3.
- ³⁹ 42 U.S.C. § 1973gg-5(a)(3).
- ⁴⁰ 42 U.S.C. § 1973gg-5(b).
- ⁴¹ 42 U.S.C. § 1973gg-5(a)(4)(A).
- ⁴² Exec. Order No. 12926, 59 Fed. Reg. 47227 (Sept. 12, 1994) ("EO 12926").
- ⁴³ The following designations occurred in 2009: California, Kansas, Vermont, North Carolina, and Ohio designated the Department of Veterans Affairs; California, Kansas, Vermont, and North Carolina designated USCIS; California, Kansas, and North Carolina designated the Social Security Administration; California, Kansas, and North Carolina designated Indian Health Service; North Carolina designated military pay and personnel offices.
- ⁴⁴ All designations remain pending except Kansas's designation of the Social Security Administration, which was refused; North Carolina's designation of Indian Health Service, which was refused because there were no appropriate facilities within North Carolina; and North Carolina's designation of military pay and personnel offices, which was rendered moot by the 2009 MOVE Act. The 2009 MOVE Act authorized the Secretary of Defense to allow designation of military pay and personnel offices as NVRA agencies, and the Secretary of Defense announced his intent to proceed with such designations in December 2009. See Letter dated December 16, 2009 to Senator Jon Cornyn and Senator Charles Schumer from Deputy Secretary of Defense William J. Lynn III.
- ⁴⁵ Youjin Kim and Lisa Danetz, "1 Million New Voters Among The 99%: How Agency-Based Voter Registration Gives Low-Income Americans a Voice in Democracy," Demos, November 2011, available at http://www.demos.org/sites/default/files/publications/Million_Mark_Demos.pdf.
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- ⁴⁷ IHS Combined Councils meeting July 27, 2011
- ⁴⁸ U.S. Department of Health and Human Services, Indian Health Service, "Indian Health Service Introduction," <http://www.ihs.gov/index.cfm?module=ihsIntro>. The actual number currently is 566 recognized tribes.
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- ⁵⁶ 42 U.S.C. §§ 1973gg-5(a)(3)(B)(ii).
- ⁵⁷ See 42 U.S.C. §§ 1973gg-5(b); see generally 42 U.S.C. §§ 1973gg-5(c) for information regarding Armed Forces recruitment offices.
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- ⁶¹ 42 U.S.C. § 1973gg-8.
See *Harkless v. Brunner*, 545 F.3d 445, 451-452 (6th Cir. 2008).
- ⁶³ Letter to Lisa J. Danetz, Senior, Counsel, Demos from Gary O. Bartlett, Executive Director of the North Carolina State Board of Elections, September 12, 2008. In the letter, Mr. Bartlett states, "At the time the NVRA was passed in 1993 and became effective in 1995, many county agencies in North Carolina stated they could not comply with the NVRA because of the extra costs compliance with it would entail. However, at no time since 1995, when the NVRA was actually implemented, am I aware that any North Carolina county or state agency covered by the NVRA continues to make costs and expenditures complaints to the extent of bringing them to the attention of our agency, the North Carolina General Assembly, or the United States Congress for action or requesting reimbursement. I believe that this lack of the continuation of the cost argument as to NVRA implementation has resulted from the fact that, contrary to the fears first expressed by some agencies, there have not been extensive additional expenditures of funds and manpower created by the NVRA mandates placed on agencies."
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