

VOTER ID LAWS & THE NATIVE VOTE STATES OF CONCERN

Native
Vote
Every Vote Counts

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The National Congress of American Indians (NCAI) has long been committed to securing and protecting the voting rights of American Indian and Alaska Native voters. The organization's non-partisan Native Vote campaign is committed to ensuring that all Native voters have a fair chance at the polls every Election Day, including November 6, 2012, when they will vote in their federal, state, and local elections.¹

INTRODUCTION

Native nations are America's first governments, and American Indians and Alaska Natives played a key role in inspiring and establishing American democracy. Yet, as citizens of the United States, the equitable treatment of tribal citizens at the ballot box has all too often been denied. The voter ID laws, which pose a unique challenge to Native communities, are the most recent threat to the Native vote. NCAI is working to minimize the effects of these laws with its partners and encourages tribes to join in these advocacy efforts to ensure that every Native vote counts.

It was not until 1970 that discriminatory voting requirements affecting American Indian and Alaska Native voters were struck down in every state with the passage of the Voting Rights Act, ensuring Native people could participate as voters in state and national elections. The Indian Citizenship Act (1924) extended citizenship rights to a significant number of American Indians and Alaska Natives who had not already become US citizens by other means (e.g. through military service or denouncing tribal status and affiliations); however, not all states removed restrictions on American Indian voters, particularly those residing on the reservation, as well as those that spoke their traditional languages fluently but had trouble reading and writing in English.

In the 1940s, thousands of returning Native veterans were unable to vote. This injustice led to voting rights battles in federal court to decide whether Native people in Arizona could participate in national and state elections in 1948. These heroes of democracy included Ira Hayes – a member of the Gila River Indian Community, one of the brave men who raised the flag at Iwo Jima. However, this voting disparity was not limited to Arizona. Native people in Maine did not receive the right to vote in national elections until 1954 or in state elections until 1967. Also, literacy requirements in Colorado disproportionately affected Native people and did not cease until 1965, with enactment of the Voting Rights Act which, amongst other things, prohibits discriminatory voter eligibility requirements.

Despite many important victories and decades of advocacy for Native voter rights, tribal communities still face discrimination and challenges when it comes to exercising their right to vote. The most recent of these challenges are voter ID laws, which threaten the voting rights of many Native people across Indian Country.

¹ While many tribes hold tribal elections that coincide with federal, state, and local elections, the focus of this report is on the impact of state voting requirements on the rights of Native people to participate in national, state, and county elections. State voting requirements have no effect on tribal elections.

Of the 18 states that Native Vote has identified as focus states for protecting Native voter rights and increasing voter engagement, 11 have passed new voter ID laws that could disproportionately affect Native voters.² According to the National Conference of State Legislatures, three of these states (Florida, Michigan, and South Dakota) will require voters to present a photo ID in November 2012 (Legislatures, 2012). Of the remaining eight, seven states will also require voters to show identification, but it does not need to have a photo. One state, Wisconsin is not presently enforcing its strict voter ID law (requiring photo ID) after a state judge declared it unconstitutional. A map detailing each of the eighteen states and their voter ID requirements can be found on page 3. This report outlines the challenges that these voter ID laws pose to tribes and the ways in which tribal and community leaders can minimize the potential negative effects on Native voters.

DISPROPORTIONATE EFFECTS ON THE NATIVE VOTE

This report identifies three areas where voter ID requirements pose significant challenges for Native voters and can be characterized as having a disproportionate effect on the American Indian and Alaska Native vote: First, states with voter ID laws compromise the rights of Native voters by not accepting tribal IDs as valid forms of identification; second, such laws create barriers of cost, logistics, and distance to obtaining required IDs; and finally, these laws risk disenfranchising large numbers of Native voters through provisional ballots.

Tribal IDs Not Accepted

Of the 11 Native Vote focus states that have enacted voter ID laws, two – Alaska and Florida – do not list tribal IDs as an acceptable form of identification. Only Florida specifically requires a photo ID, while Alaska requires some combination of identification that proves name and address within the state (e.g., passports, utility bills, student ID, birth certificate, drivers license). Furthermore, a proposed voter ID law in Minnesota requires photo ID and does not list tribal ID as an acceptable form of identification to vote. The failure to include tribal identification in equivalent fashion to federal or state-issued ID, especially when non-government IDs are included (like student ID and utility bills), undermines tribal sovereignty and is a significant barrier for many Native voters. While there are compelling reasons to avoid overreaching voter ID laws, the status of tribal nations as co-equal sovereigns (as recognized by the Constitution and treaties) requires governmental parity and access to participation for all Native citizens. In addition to their constitutionality, voter ID laws should be reviewed to ensure they adequately acknowledge the role of tribal governments and recognize IDs issued by federally-recognized tribal governments as valid identification.

Even in some states where ID is not required, such as Iowa and Massachusetts, first time voters may be required to provide some form of ID at the polls. Most often in these states, tribal IDs are not included on the list of acceptable forms of ID. Over half a million Native youth will vote

² Alaska, Arizona, Colorado, Florida, Michigan, Montana, North Dakota, Oklahoma, South Dakota, Washington, Wisconsin.



VOTER IDS & THE NATIVE VOTE STATES OF CONCERN

18 NATIVE VOTE FOCUS STATES IN 2012

States where Native Vote is focusing on voter protection, engagement, and education.

6 NATIVE VOTE STATES OF CONCERN

States where voter ID laws may have a heightened impact on Native voter disenfranchisement.

ALASKA - Non-Photo Form of ID Required - No Tribal ID Accepted in Law

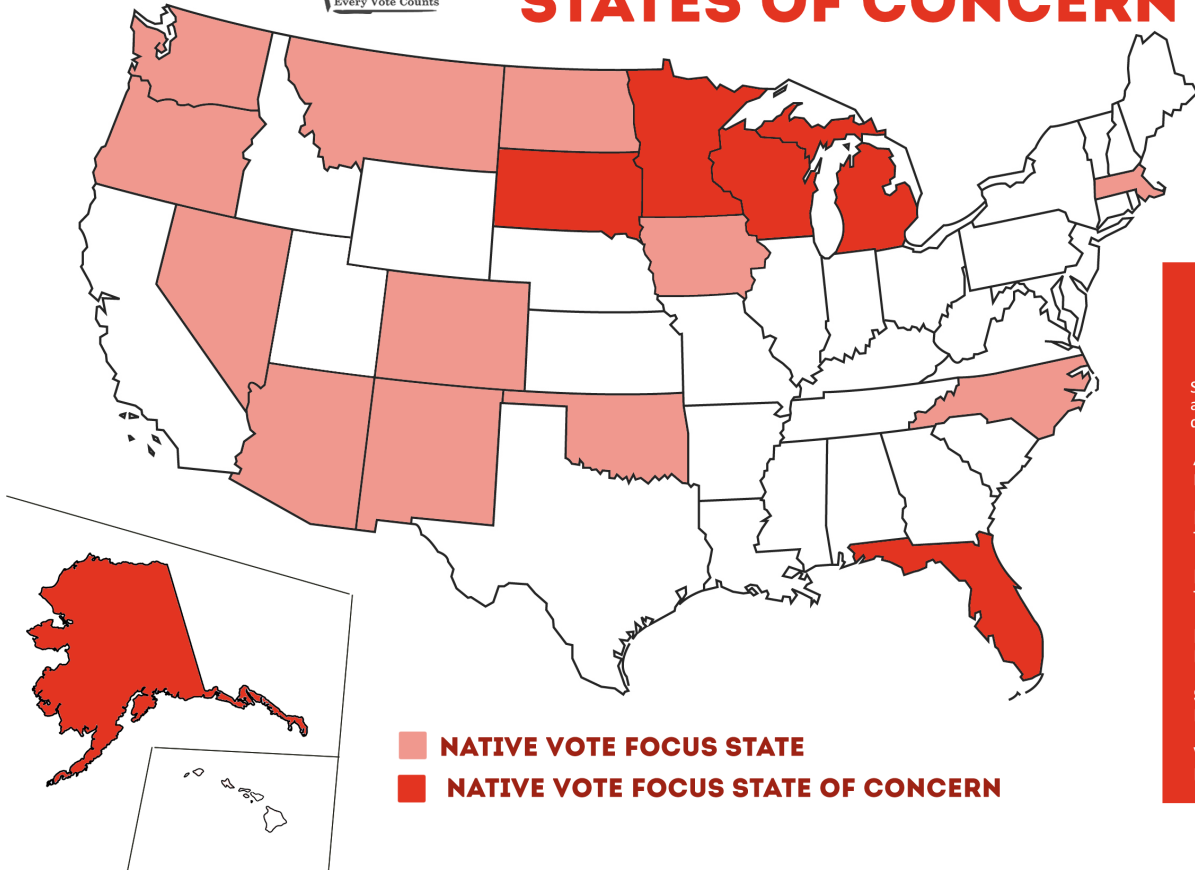
FLORIDA - Photo ID Required - No Tribal ID Included

MICHIGAN - Photo ID Required - Tribal ID Included

MINNESOTA - Proposed Photo ID Law - No Tribal ID Accepted in Law

SOUTH DAKOTA - Photo ID Required - Tribal ID Included

WISCONSIN - Proposed Photo ID Law - Tribal ID Accepted in Law



■ NATIVE VOTE FOCUS STATE
■ NATIVE VOTE FOCUS STATE OF CONCERN

NATIVE VOTE FOCUS STATE	FORM OF ID REQUIRED (NON-PHOTO)	TRIBAL ID INCLUDED	NO TRIBAL ID INCLUDED	PHOTO ID REQUIRED 2012	PROPOSED PHOTO ID FOR AFTER 2012
ALASKA	X		X		
ARIZONA	X	X			
COLOADO	X	X			
FLORIDA			X	X	
IOWA					
MASSACHUSETTS					
MICHIGAN		X		X	
MINNESOTA			X		X
MONTANA	X	X			
NEVADA					
NEW MEXICO					
NORTH CAROLINA					
NORTH DAKOTA	X	X			
OKLAHOMA	X	X			
OREGON					
SOUTH DAKOTA		X		X	
WASHINGTON	X	X			
WISCONSIN		X			X

for the first time within the next few years; voter ID laws that exclude tribal IDs could pose a direct challenge to the freedom of these new voters to participate in national elections.

States should recognize and accept tribal IDs as a valid form of identification to vote. Failure to do so in states where voter ID laws exist results in an unnecessary and burdensome restriction on the freedom of Native people to vote. Tribal voters that prefer to use tribal IDs should not be excluded from the democratic process.

Cost, Distance, and Logistical Barriers for Tribes and Individual Native Voters

Some of the proposed and existing voter ID requirements pose a number of significant logistical, cost, and distance challenges for tribal citizens and create major barriers to participation for Native voters.

In tribal communities the logistical barriers created by voter ID laws are unlike the barriers created in other communities. Many voter ID laws do not account for or acknowledge the specific challenges many in Indian Country face.

For example, Minnesota's proposed voter ID law requires all voters to provide current proof of residence. If a Native voter attempts to use a tribal ID that does not provide a current street address (PO Box numbers would not suffice), the voter would need to show a current utility bill in their name with the necessary street address. Many Native people, especially those living in rural areas and on reservations, would have trouble with this requirement because many tribal communities do not have street addresses.

Even obtaining a "free" state-issued ID can create obstacles for Native people. Though states that impose voter ID requirements are required by law to provide "free" IDs to voters who do not currently have them, it can be exceedingly difficult and costly for some people to acquire them. For Native voters in rural areas, traveling long distances to state agencies to get an ID could be both very expensive as well as very time-consuming. Also, for many people, obtaining a state issued ID requires a birth certificate. Obtaining a birth certificate can be a task that is difficult or even impossible for those who were born at home, cannot afford to pay the requisite fees, or live away from issuing offices and agencies—circumstances that frequently affect Native voters.

Also, individual Native voters living in states that have implemented or are looking to implement a voter ID law can expect to bear the cost of implementing the new laws through various fees and taxes. These costs will include fees for providing the "free" state issued IDs, computers for polling places, and additional staff to process provisional voting systems. In Minnesota, for example, where a constitutional amendment to require photo identification is on the 2012 ballot, the Greater Minnesota Counts organization predicts that a county of about 85,000 voters will accrue costs between \$435,000 and \$965,000 (Counts, 2012). They also estimate that the fiscal impact on the state government, based on similar legislation vetoed in

2011, will exceed \$32.4 million during the voter ID law's first year (Counts, 2012). Because of these costs, legal scholars argue that photo ID laws create a new "financial barrier to the ballot box" (Lee, 2012).

In addition to individual voter expenses, local governments incur great costs for issuing the "free" state IDs. For example, in 2010 Mississippi's Department of Public Safety issued 107,094 non-driver photo IDs to citizens of voting age. Each ID cost \$17.92 to manufacture, bringing the total loss of revenue for the department to \$1,499,000 (Hosemann, 2011). While tribes are obviously not required to issue "free" state IDs, tribes face a potentially enormous financial burden if they choose to upgrade tribal IDs to ensure they meet voter ID requirements imposed by state governments. Tribes would likely be significantly affected given that the Brennan Center estimates there are roughly 21 million citizens across the country who are eligible to vote and who do not have government-issued photo ID – almost 1 in 10 eligible voters (Law, 2012).

The Impact of Provisional Ballots

Voter ID laws not only create barriers leading up to and during the voting process, they also create barriers after votes are cast for those unable to provide valid ID on Election Day.

If a Native voter living in a state that has enacted voter ID laws is unable to show ID at the polls this November, he or she will be given a provisional ballot. These ballots will be kept separate from the regular ballots until the voter returns to the election officials and presents an acceptable ID. If voters do not return within the specified amount of time (generally a few days), their provisional ballots will not be counted. In other words, their vote is lost. To avoid this situation, tribes and communities must educate their citizens about their state's voter ID requirements. Given the various challenges faced by many tribal citizens – e.g., living in rural areas with high transportation costs and facing significant economic challenges – the requirement to travel to the polls twice is an insurmountable burden to having their vote count.

REDUCING THE IMPACT OF VOTER ID LAWS ON NATIVE VOTERS

Pushing Back in the Courts

Legal challenges to voter ID laws have proven to be an effective check against state legislatures seeking to limit the freedoms of some voters. In remarks to the NAACP at its annual convention in July, Attorney General Eric Holder compared the ID laws to a "poll tax," noting the "great distances" that many voters would have to travel to get appropriate IDs. He also vowed that the Department of Justice would continue to "aggressive[ly] defend voting rights" (Lee, 2012), especially in covered states where there exists a history of discrimination.

Tribes can support these legal challenges by collecting data on the cost they might incur from proposed voter ID laws. Furthermore, tribes residing in Minnesota, and other states where voter ID laws are proposed, should educate their members on proposed changes. If a voter ID

law is passed, it is critical that tribal IDs be accepted and that the cost of implementing a provisional balloting system is minimized.

Community-Level Organizing

It is not enough to hope that legal challenges to voter ID laws will be successful. Potentially affected tribes should also be active in developing strategies to reduce the voter ID laws' impact on the eligibility of tribal citizens to participate in elections.

NCAI suggests that tribes take the five following actions:

- **EDUCATE** - Actively educate and update tribal communities on recent developments on voter ID laws in their states. If new voter ID laws are upheld in their states, tribal leaders must ensure that their citizens are informed of all changes.
- **ASSIST** - Encourage and help voters, especially those who are physically and socially isolated such as the elderly and those from low-income households, to obtain the necessary identification to vote. Community-organized carpools to designated ID distribution centers such as tribal government offices, DMV offices, state ID-issuing locations, and polling places can significantly reduce barriers to both obtaining ID and casting a ballot on Election Day.
- **ADVOCATE** - Advocate for tribal IDs to be an acceptable form of identification in states that have proposed and enacted voter ID laws. This includes active engagement with state legislators to ensure governmental parity.
- **ENHANCE** – Many tribes are making efforts to enhance tribal IDs to meet international travel standards. All tribes should work to ensure that tribal IDs meet a high standard to protect Native voters if state voter ID laws are passed, particularly in states with large Native populations living in relative isolation from large cities. Requisite changes will vary state by state, but they will generally include:
 - Putting an expiration date on IDs;
 - Having a photograph of the card holder on the ID; and
 - Having the cardholder's signature on the card.
- **PROTECT** - Encourage tribal citizens to serve as poll watchers and election observers to ensure that Native voters' right to use tribal IDs are protected.

WORKS CITED

- Counts, G. M. (2012). Retrieved October 5, 2012, from GreaterMNCounts.org:
<http://www.greatermncounts.org/wp-content/uploads/2012/08/Amendment-Guide-8.31.pdf>
- Hosemann, S. o. (2011). *Secretary of State Delbert Hosemann Initiatives*. Retrieved October 5, 2012, from sos.ms.gov:
<http://www.sos.ms.gov/Elections/Initiatives/Initiatives/Voter%20Identification-PW%20revised.pdf>
- Law, N. S. (2012, October 3). *Brennan Center for Justice*. Retrieved October 5, 2012, from
http://www.brennancenter.org/content/resource/2012_summary_of_voting_law_changes/
- Lee, S. (2012, October 2). *ProPublica*. Retrieved October 5, 2012, from
<http://www.propublica.org/article/everything-youve-ever-wanted-to-know-about-voter-id-laws>
- Legislatures, N. C. (2012, October 2). *Voter Identification Requirements*. Retrieved October 5, 2012, from ncsf.org: <http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx>

This report was developed by the Native Vote team at the National Congress of American Indians. For more information go to www.NativeVote.org or call 202-466-7767.