

Native American Rights Fund
Six-Month Report to the Barbara McDowell and Jerry Hartman Foundation
March 31, 2016

North Dakota Voting Rights Case Report

In 2013, the North Dakota Legislative Assembly enacted what may be the strictest voter ID law in the country – HB 1332. North Dakota then passed HB 1333 in 2015 to make the law more restrictive. The law requires qualified electors to submit one of four forms of ID, which must contain a qualified elector’s name, residential address, and date of birth. Due to reasons rooted in the discriminatory treatment of Native Americans, many living on Indian reservations in North Dakota do not have a qualifying ID, such as a driver’s license or state ID card. While North Dakota claims that tribal ID’s are qualifying ID’s under its law, most tribal ID’s do not have a residential address printed on them. This is due, in part, to the fact that the U.S. postal service does not provide residential delivery in these rural Indian communities. Thus, most tribal members primarily use a P.O. Box and, even if a tribal ID has an address, it is typically the P.O. Box address, which does not satisfy North Dakota’s restrictive voter ID law. In both the primary and general election in 2014, as we witnessed, many qualified North Dakota tribal electors were disenfranchised because they only had a tribal ID.

There is no doubt that there are qualified electors that do not have a qualifying ID and will have a very difficult time obtaining one due to a lack of underlying documentation. In order to obtain a state driver’s license or ID, an individual must produce one of the following: 1) a U.S. Birth Certificate; 2) a Valid unexpired U.S. Passport or U.S. Passport Card; 3) a U.S. Government-Issued Consular Report of Birth Abroad; 4) a Valid Foreign Passport with I-94 card or I-551 stamp; 5) a U.S. Active Duty/Retiree/Reservist Military ID card; 6) U.S. Court Order for adoption containing the legal name and date of birth; or 7) North Dakota state issued permit, license, or ID card. Many qualified voters, such as the disabled, the elderly and other racial minorities, may not have these documents due to their particular circumstances and the costs associated with obtaining these documents.

Seven Native American Plaintiffs filed suit against North Dakota on January 20, 2016, to have the voter ID law set aside. Shortly thereafter, North Dakota filed a Motion to Dismiss on February 3, 2016. The Plaintiffs opposed the Motion on March 2, 2016, and the State filed a Reply brief on March 9, 2016. The Motion is now fully briefed. The Court has not asked for oral argument yet, and because the State filed a dispositive motion so quickly after the complaint was filed there is no litigation schedule. In the next six months, the Court will decide the motion to dismiss and set forth a litigation schedule for the case.

Morgan O’Brien, Director of Development
morgan@narf.org (303) 447-8760