

DECLARATION OF DR. JEAN SCHROEDEL AND BRET HEALY

A. Qualifications: Jean Schroedel

I am the Thornton F. Bradshaw Professor of Public Policy at Claremont Graduate University, where I have served four terms as department chair and one term as an academic dean. Prior to moving to Claremont Graduate University in 1991, I was an assistant professor in the Political Science Department at Yale University, and before that I was a lecturer in the Business, Government and Society Program at the University of Washington. I also spent the summer of 2004 as a visiting professor at the University of Kerala in Trivandrum, India, as part of a U.S. government funded exchange program. My formal education includes a BA (1981) in Political Science from the University of Washington and a Ph.D. (1990) in Political Science from the Massachusetts Institute of Technology, where my fields of concentration were American politics, public policy, and political economy.

My primary research and teaching interests are in American politics and public policy. I have written four single authored scholarly books, including *Is the Fetus a Person? A Comparison of Policies Across the Fifty States* (Cornell University Press), which was given the Victoria Schuck Book Award by the American Political Science Association, as well as two co-edited books funded by the Russell Sage Foundation. I have authored or co-authored more than 50 refereed journal articles and book chapters, and nearly 40 other publications. In addition to the previously mentioned book award, I have garnered a best paper award from the Western Political Science Association, the most cited article recognition from *State and Local Government Review*, and the Diversity in Teaching Award from the Claremont Colleges

Consortium. My research has been supported by grants from numerous foundations, including the aforementioned support from the Russell Sage Foundation.

Throughout my academic career, much of my research has examined the political representation of traditionally marginalized groups. Over the past decade, my primary research interest has been Native American political incorporation (eight journal articles and nine other publications). My most recent book, *Voting in Indian Country: The View from the Trenches* (University of Pennsylvania Press), which is an in-depth look at voting rights issues involving Native Americans, is due to be published in early September. I served as an expert witness in the *Wandering Medicine v McCulloch* (2014) case, which was settled. The conclusions that I reached in that report, as well as this one, are mine not related and/or endorsed by my university and were reached through an independent research and inquiry. Assistance on this report was provided by Dr. Joseph Dietrich (Ph.D. University of Pittsburgh, MA, Claremont Graduate University) and Ms. Jamaica Baccus-Crawford (MAPP, Claremont Graduate University).

B. Qualifications: Bret Healy

I have a Bachelor of Science degree in Animal Science from South Dakota State University and a Master of Science degree in Animal Science from Kansas State University. I worked for U.S Representative Tim Johnson as a senior legislative aide and for Senator Tim Johnson as a senior legislative aide and international trade director. At the request of Senator Johnson, I served as the Executive Director of the South Dakota Democratic Party (SDDP), overseeing SDDP's get-out-the-vote efforts in 2000 and 2002. Since that time, I have worked as a government relations and public affairs consultant with clients in the biofuels, government contracting, medical device, and finance industries.

I assist Tribes and tribal members pursuing equal opportunities to participate in federal and state elections starting in 2003 up to the current day. My experience includes:

- 1) Securing by persuasion or assisting the pursuit of litigation, to get state and local authorities to site satellite, in-person, early voting locations on tribal lands for tribal members of: Oglala Sioux Tribe, Rosebud Sioux Tribe, Crow Creek Sioux Tribe, Cheyenne River Sioux Tribe, Red Lake Nation, White Earth Nation, Leech Lake Band of Ojibwe, Crow Nation, Northern Cheyenne Tribe, Fort Belknap Indian Community (Assiniboine and Gros Ventre), Pyramid Lake Paiute Tribe, Walker River Paiute Tribe, and the Navajo Nation.
- 2) Assisting in the organizing and financing of voter registration and/or get-out-the-Native-vote drives for tribal members of the Tribal Nations in item 1, and for tribal members of: Lower Brule Sioux Tribe, Yankton Sioux Tribe, Sisseton-Wahpeton Oyate, Te-Moak Band of Western Shoshone, Fallon Paiute-Shoshone Tribe, Blackfeet Nation, Turtle Mountain Chippewa, Standing Rock Sioux Tribe, Flandreau Santee Sioux Tribe, Reno-Sparks Indian Colony, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, Washoe Tribe of Nevada and California, Yerington Paiute Tribe, and Lumbee Tribe of North Carolina.
- 3) Assisted in the rewrite of South Dakota's Help America Vote Plan in 2013-2014, at the request of then South Dakota Secretary of State Gant, achieving the stated goals of the Oglala Sioux Tribe, Crow Creek Sioux Tribe, Cheyenne River Sioux Tribe, and the Great Plains Tribal Chairman's Association (GPTCA). GPTCA's membership is the Tribal Chairmen of all Tribes in North Dakota, South Dakota, and Nebraska.

- 4) Assisting in the design and training of activists, law students, and lawyers for election protection activities for state and federal elections. Specific examples include polling locations on all nine South Dakota Indian Reservations from 2004 through 2018, Pyramid Lake Paiute Tribe and Walker River Paiute Tribe in 2016 and 2018, Blackfeet Nation in 2012, Standing Rock Sioux Tribe in 2018, and Navajo Nation in 2010 and 2018.
- 5) Assisting the Standing Rock Sioux Tribe and the United Tribes of North Dakota in developing a fail-safe method of assigning tribally authorized voting addresses in 2018 in response to the efforts by the State of North Dakota to reject tribal ids without a physical address. Member Tribes of the United Tribes of North Dakota include: Mandan, Hidatsa, and Arikara Nation, Turtle Mountain Band of Chippewa Indians, Spirit Lake Sioux Tribe, Standing Rock Sioux Tribe, and Sisseton Wahpeton Oyate.
- 6) Advising Tribal Organizations on voting issues in state and federal elections. Tribal organizations include: Great Plains Tribal Chairman's Association, Rocky Mountain Tribal Leaders Council (includes Tribes in Montana, Wyoming, and Idaho), Inter-Tribal Council of Nevada (27 Tribes in Nevada), Coalition of Large Tribes (includes Mandan, Hidatsa, and Arikara Nation, Oglala Sioux Tribe, Rosebud Sioux Tribe, Blackfeet Nation, Cheyenne River Sioux Tribe, Ute Indian Tribe, Eastern Shoshone Tribe, Spokane Tribe of Indians, Fort Belknap Indian Community, Sisseton Wahpeton Oyate, Shoshone Bannock Tribes, and Navajo Nation), and National Congress of American Indians.
- 7) Testifying in voting rights litigation. I was declared an expert witness for plaintiffs at the District Court hearing in *Wandering Medicine, et al. v McCulloch, et al.* by Chief Federal District Judge Richard Cebull, testified at the hearing in *Sanchez, et al., v. Cegavske, et al.*, testified via affidavit in *Brooks, et al. v Gant, et al.*, testified via affidavit and

deposition in *Poor Bear, et al. v. County of Jackson*, and testified via declaration in *Navajo Nation, et al., v. Hobbs, et al.*

C. Research Questions

The plaintiffs, through their attorney Chris McClure, have asked us to address the following research questions in the context of the state of Arizona’s possible response to the unprecedented conditions created by the COVID-19 pandemic:

1. Do Navajo Nation Tribal Members (“Tribal Members”) have less days than non-Indian voters to cast their mail-in ballots because of slower postal service than affluent areas like Scottsdale, Arizona?
2. Do Tribal Members living on the Arizona portion of the Navajo Nation have less access to voting-by-mail than non-Indian voters in Arizona, including St. John’s, county seat of Apache County, Holbrook, county seat of Navajo County, Flagstaff, county seat of Coconino County and Scottsdale in Maricopa County?
3. Does requiring mail-in ballots to be returned---rather than postmarked---on or by Election Day lead to the disenfranchisement of Tribal Member voters when their overdue ballots are rejected?

D. Qualitative Methods

In this report we utilize a “Qualitative Methods” methods approach, which is one of the most widely employed methods in the social sciences.¹ The 2001 creation of the Consortium on Qualitative Research Methods is evidence of the methods widespread use and status within academia.² Two years later, the American Political Science Association created an organized

¹ For more on qualitative methods within academic research, see Denzin, Norman K. and Yvonna S. Lincoln, eds. 2000, 2011. *The SAGE Handbook of Qualitative Research*, 1st ed, 4th ed., Thousand Oaks, CA: SAGE Publications.

² Consortium on Qualitative Research Methods. n.d. https://www.maxwell.syr.edu/moynihancqrm/About_CQRM/.

section on qualitative methods.³ Another indication of the method's importance within political science is its widespread use in scholarly political science articles.⁴

Qualitative methods use data and information gleaned from multiple and overlapping sources. For this report we relied primarily upon the political science literature focusing on voting behavior and the design of electoral systems. An important strength of qualitative methods is that it can be used to analyze complex and multi-dimensional phenomena, in particular those that involve a large number of variables that change over time.⁵ This method has been widely used in research involving identities, such as race, gender and class.⁶

II. RESEARCH ON “VOTER COSTS,” “ACCESSIBILITY,” “VOTER HABITUATION” AND DEMOGRAPHICS

Within political science, there is a large body of research into the many factors and variables that affect voter behavior and voter turnout. Among this very large body of scholarship, the most relevant to this research are those examining “voter costs,” “accessibility,” “voter habituation,” and “demographics.” Although these are being treated here as separate categories, it is important to recognize they are inter-connected and may reinforce tendencies towards participation or non-participation in elections. Probably the final category, that we have labeled as “demographics,” but which encompasses a broad range of human capital/socio-demographic

³ American Political Science Association, section on Qualitative Methods. n.d. https://www.apsanet.org/content_57139.cfm.

⁴ By 2003, nearly half, of all peer-reviewed articles in political science journals, used qualitative methods. Bennett, Andrew, Aaron Barth and Kenneth Rutherford. 2003. “Do We Preach What We Practice? A Survey of Methods in Journals and Graduate Curriculum.” *PS: Political Science and Politics*, 36(3): 372-376.

⁵ Bartolini, Stefano. 2013. “The Temporal Dynamics of the Franchise Expansion: Timing, Tempo, and Reversals.” *Qualitative & Multi-Method Research* 11(2): 3-7.

⁶ Lamont, Michele and Patricia White. 2009. Workshop on Interdisciplinary Standards for Systematic Qualitative Research. Washington, DC: National Science Foundation, Cultural Anthropology, Law and Social Science, Political Science and Sociology Programs. www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf.

and economic factors, plays a very important role in either mitigating or exacerbating all of the effects of the others.

The basic voting calculus, which was developed more than sixty years ago, is expressed in a simple model ($R = PB - C$) where R , the reward that one gets from voting, is a function of PB , the perceived difference in benefits from the two parties, minus C , the cost of voting.⁷ But not all citizens are equally equipped to bear the costs of voting. Rosenstone and Hansen write, “Participation in politics, that is has a price, a price that is some combination of money, time, skill, knowledge, and self-confidence,” and then go on to note that wealthy and educated individuals with a sense of political efficacy are better able to bear the cost of participation.⁸ As Brady, Verba and Schlozman note, “time, money and civil skills” are “essential to political activity” (1995: 271).⁹ Moreover, state election laws and procedures differ across the state and those difference in electoral systems can increase, or decrease, those costs, which in turn affect electoral participation.¹⁰ Thus, if the goal is to increase participation, inclusivity, and turnout, then voter costs should be minimized.

The second theme in the academic literature is accessibility (e.g., how difficult it is to access registration and voting). Probably no area of research related to voting costs has generated more attention than the question of how much accessibility affects whether one votes or not votes. According to Gimpel and Schuknecht, accessibility is a function of two factors:

⁷ Downs, Anthony. 1957. *An Economic Theory of Democracy*. New York: Harper and Row.

⁸Rosenstone, Steven J. and John Mark Hansen. 1993. *Mobilization, Participation, and Democracy in America*. New York: MacMillan Publishing Company, 12-14.

⁹ Brady, Henry, Sidney Verba, and Kay Schlozman. 1995. “Toward SES: A Resource Model of Political Participation.” *American Political Science Review* 89(2): 271-294, 271. See also Berensky, Adam. 2005. “The Perverse Consequences of Electoral Reform in the United States.” *American Politics Research* 33: 471-491; and Brady, Henry and John McNulty. 2011. “Turning Out to Vote: The Costs of Finding and Getting to the Polling Place.” *American Political Science Review* 105(1): 115-134.

¹⁰ Li, Quan, Michael J. Pomantell, and Scott Schraufnagel. 2018. “Cost of Voting in the American States.” *Election Law Journal* 17(3): Published online 18 September. <https://doi.org/10.1089/elj.2017.0478>.

distance and impedance. While distance is a relatively straightforward concept to understand, impedance---“whatever stands in the way of getting from point A to point B”---can be affected by things, such as speed limits, traffic congestion, road quality, topographical barriers and so on. The study, which used geographical information system (GIS) to spatially locate voters’ residences and polling places, found that both of the factors affected voting accessibility.¹¹

A third theme in the literature concerns voting as a habituated behavior.¹² Voters are creatures of habit, and when accustomed forms of voting are disrupted, it tends to decrease turnout. As one study put it, “Voting may be habit-forming.”¹³ Another study noted that the outcome of elections can be changed by the “extensive manipulation of polling place locations.”¹⁴ Making changes to polling locations, new limits on “convenience voting,” and changes in voter criteria, deadlines or election schedules can reduce turnout. The impact of these changes that adversely impact turnout are not equally distributed across all sectors of the voting populations. Instead the greatest negative effects tend to be the greatest on those for whom the cost of voting already is higher than the average.

¹¹ They also found small changes in distance had a strong negative impact in urban areas, but that battling traffic congestion in the suburban ring was more of an impediment than somewhat longer distances. They also found the expected negative relationship between the percentage of female headed households and voting, as well as the positive relationship between education levels and voting. Gimpel, James G. and Jason E. Schuknecht. 2003. “Political Participation and the Accessibility of the Ballot Box.” *Political Geography* 22: 471-488, 476.

¹² Gerber, Alan, Donald Green and Ron Sachar. 2013. “Voting May Be Habit Forming: Evidence from a Randomized Field Experiment.” *American Journal of Political Science* 47(3): 540-550; Kwak, Nojin, Dhavan Shah and Lance Holbert. 2004. “Connecting, Trusting, and Participating: The Direct and Interactive Effects of Social Associations.” *Political Research Quarterly* 57(4): 643-652.

¹³ Gerber, Alan, Donald Green and Ron Sachar. 2013. “Voting May Be Habit Forming: Evidence from a Randomized Field Experiment.” *American Journal of Political Science* 47(3): 540-550. The role habit formation is important in explaining why voting increases with age. In the previously mentioned study by Gimpel and Schuknecht (2003) there was a negative relationship between the percentage of young voters and turnout further highlights the importance of habituation in voting.

¹⁴ Brady, Henry and John McNulty. 2011. “Turning Out to Vote: The Costs of Finding and Getting to the Polling Place.” *American Political Science Review* 105(1): 115-134, 115.

The final theme, which is interconnected with the other factors, is the human capital/socio-demographic and economic characteristics of the population base. In the late 1990s, researchers identified younger people, racial minorities, women, and those with lower incomes as having a statistically significant inverse relationship with voting.¹⁵ Twenty years later, McNulty, Dowling and Ariotti reiterated that socio-demographic and economic status affect political participation.¹⁶ A Task Force of the American Political Science Association emphasizes the interconnection between demographic categories, in particular race, ethnicity, education, economic class and gender, in predicting voter participation.¹⁷ Several studies found that early voting, which typically involves voting by mail, advantages those with socio-economic resources, thereby exacerbating existing biases within the electorate.¹⁸ The ability to bear the cost of voting, overcome accessibility challenges and become habituated to voting is much higher among those with resources, and those who do not have to overcome the historical effects of discrimination.

III. DO NAVAJO NATION TRIBAL MEMBERS (“TRIBAL MEMBERS”) HAVE LESS DAYS THAN NON-INDIAN VOTERS TO CAST THEIR MAIL-IN BALLOTS BECAUSE OF SLOWER MAIL SERVICE THAN THOSE IN AFFLUENT AREAS LIKE SCOTTSDALE, ARIZONA?

A. Logistical and Processing Issues with Voting by Mail

¹⁵ Timpone, Richard J. 1998. “Structure, Behavior, and Voter Turnout in the United States.” *American Political Science Review* 92(1): 145-158.

¹⁶ McNulty, John, Conor Dowling, and Margaret Ariotti. 2009. “Driving Saints to Sin: How Increasing the Difficulty of Voting Dissuades Even the Most Motivated Voters.” *Political Analysis* 17(Autumn): 435-455.

¹⁷ Williams, Linda Faye. 2004. “The Issue of Our Time: Economic Inequality and Political Power in America.” *Perspectives on Politics* 2(4): 683-689.

¹⁸ Berinsky, Adam. 2005. “The Perverse Consequences of Electoral Reform in the United States.” *American Politics Research* 33: 471-491; Meredith, Mary and Neil Malhotra. 2011. “Convenience Voting Can Affect Election Outcomes.” *Election Law Journal* 10(3): 227-253.

Well before the current pandemic, academics raised concerns about the “lost” votes problem in voting by mail systems. Ten years ago, Charles Stewart III from the CalTech/MIT Voting Technology Project analyzed national data and concluded that the “pipeline that moves mail ballots between voters and election officials is very leaky” and can result in more than 20% of ballots being lost at some point in the pipeline.¹⁹ A more limited Minnesota study of the 2008 election found many mail-in ballots were lost due to problems including minor voter errors, such as failure to sign, signing in the wrong place, and problems with the packaging of the ballot--- primarily including more than one family member’s ballot in the same envelope, that would not occur with in-person voting. Administrative processing errors by election officials resulted in at least 13% of Minnesota mail-in ballots being mistakenly rejected and there were numerous cases of postal system loss of ballots.²⁰

At this time, reliance on the United States Postal Service (U.S.P.S.) to perform its Constitutionally (Article I, Sec. 8, Clause 7) and statutorily (39 U.S.C. §101(a)) mandated functions has never been higher. The pandemic has triggered an extraordinary increase in voting by mail. For example, the use of mail-in voting increased 1,000% in the recent Iowa primary and just under 500% in South Dakota.²¹ This increase has occurred at the absolutely worst moment in terms of the U.S.P.S.’ capacity to handle increased demand.²² The U.S.P.S. has been cutting back on delivery and services and closing post offices and processing centers since 2011.

¹⁹ Stewart, Charles III. 2010. “Losing Votes by Mail.” *Journal of Legislation and Public Policy* 13: 573-602, 575.

²⁰ Yasinsac, Alec. 2012. “Did Your Mailed Ballot Count: The Unrecognized Unreliability of Voting by Mail.” *Systemics, Cybernetics and Informatics* 10(5) 55-60.

²¹ Greenwood, Max. 2020. “Turnout Surges After States Expand Mail-In Voting.” *The Hill*. June 7. <https://thehill.com/omenews/campaigns/501384/turnout-surges-after-states-expand-mail-in-voting>

²² According to GAO figures, the USPS was financially profitable until Congress in 2006 passed the Postal Accountability and Enhancement Act that required the USPS prefund health and retirement benefits. This requirement, combined with declines in first class mail over the past fifteen years, has left them with a \$160.9 billion deficit. Bogage, Jacob. 2020. “The Postal Service Needs a Bailout, Congress is Partly to Blame.” *Washington Post*. April 15.

There have been numerous complaints from voters that requested absentee ballots never arrived.²³ Many state processing centers are also simply unprepared to handle the mass influx of mailed ballots when they arrive.²⁴ During the Wisconsin and Ohio primaries, mail processing errors and other problems resulted in more than 2,000 otherwise valid ballots not being counted²⁵ and it took a court order for another 79,000 late Wisconsin ballots to be counted.²⁶ In short, there appears to be a mis-match between demand and capacity. Even before the recent upsurge in voting by mail due to COVID-19, the Bipartisan Policy Center was warning there would be “inevitable clogs” that might result in votes not being counted, particularly in rural states with a single center.²⁷

According to U.S.P.S. employees, recent actions by the new Postmaster General Louis DeJoy are causing additional delays in processing the mail. American Postal Workers Union President Mark Dimondstein, has received reports of slowed mail delivery and “degraded” service. This is consistent with an internal U.S.P.S. memo stating that postal workers are to stop making late trips and extra trips that did not originate at postal service headquarters.²⁸ There also are reports that under Postmaster General DeJoy the U.S.P.S. has begun removing more than 670 high speed mail sorting machines, which will further slow the delivery of mail, including

²³ Halper, Evan. 2020. “Election Officials Fear Disaster in the Fall.” *Los Angeles Times*. August 1: A4.

²⁴ Rakich, Nathaniel. “Few States Are Prepared To Switch To Voting By Mail. That Could Make For A Messy Election.” <https://fivethirtyeight.com/features/few-states-are-prepared-to-switch-to-voting-by-mail-that-could-make-for-a-messy-election>.

²⁵ Wilson, Reid. 2020. “Mail Ballot Surge Places Postal Service Under Spotlight.” *The Hill*. May 27. https://thehill.com/homenews/campaign/4999640-mail-ballot-surge-places-postal-service-under-spotlight?utm_source=&utm_medium=email&utm_campaign.

²⁶ Timm, Jane C. 2020. “States Reject Tens of Thousands of Mail Ballots in this Year’s Primaries, Setting Off Alarm Bells for November.” *NBC News*. July 18. https://www.nbcnews.com/politics/2020/election/states-reject-thousands-of-mail-ballots-in-this-years-primaries-setting-n1233833?cid=emi_nbn_20200718&utm_source=&utm_medium=email&

²⁷ Bipartisan Policy Center. 2016. “The New Realities of Voting by Mail in 2016.” June. <https://bipartisanpolicy.org/wp-content/uploads/2019/03/BPC-Voting-By-Mail.pdf>.

²⁸ Dean, Jessica, Jessica Schneider, and Caroline Kelly. 2020. “Postal Services Says It Has ‘Ample Capacity’ to Handle Election After Trump Casts Doubt.” *CNN*. August 3. <https://www.cnn.com/2020/08/03/politics/postal-servide-says-it-has-ample-capacity-to-handle-election-after-trum-casts-doubt>.

ballots.²⁹ The U.S.P.S. is now recommending that voters request mail-in ballots at least fifteen days prior to Election Day in order to ensure that their ballots will be returned by state deadlines.³⁰ Voting by mail requires the U.S.P.S. to take on an even greater role in gathering votes, just as many believe it is most threatened and least able to do so.

B. The Slowness of Non-Standard Mail Service

Voting by mail systems rest upon the premise that all citizens have equal mail service. According to Senator Tom Carper (D-DE), the United States Post Office is the one government entity that treats all Americans equally, delivering mail six days a week to everyone's mailbox.³¹ While largely true for the 84% of the country's population,³² who live in urban and suburban areas, it is not true for many people living in rural areas. Hundreds of thousands of rural Americans have non-standard mail service, which encompasses a range of service limits---mail not being delivered on a daily basis, issues with reliability in service, no residential delivery, post offices and postal provider sites located distant from people's homes and that have limited hours of operation and shortages of post office boxes.

According to the U.S.P.S., sixty percent of U.S. counties are classified as "rural" and at least 43 million households ("delivery points" in U.S.P.S. terminology), or 27% of the total

²⁹ Bogage, Jacob and Joseph Marks. 2020. "House Accelerates Oversight of Postal Service as Uproar Grows, Demanding Top Officials Testify at 'Urgent' Hearing." *Washington Post*. August 16. [Washingtonpost.com/business/2020/08/16/postal-service-mail-democrats-hearing-dejoy/?utm_campaign=wp_main&utm_medium=social&utm_source=facebook](https://www.washingtonpost.com/business/2020/08/16/postal-service-mail-democrats-hearing-dejoy/?utm_campaign=wp_main&utm_medium=social&utm_source=facebook).

³⁰ Panetta, Grace. 2020. "The US Postal Service is Urging Voters to Request Their November Mail-In Ballots at Least 15 Days Before Election" *Business Insider*. July 28. <https://www.msn.com/en-us/news/world/the-us-postal-service-is-urging-voters-to-request-their-november-mail-in-ballots-15-days-before-the-election>.

³¹ Wilson, Reid, 2020. . "Mail Ballot Surge Places Postal Service Under Spotlight." *The Hill*. May 27. https://thehill.com/homenews/campaign/4999640-mail-ballot-surge-places-postal-service-under-spotlight?utm_source=&utm_medium=email&utm_campaign.

³² University of Michigan Center for Sustainable Systems. N.d. "US Cities Fact Shett." <https://bit.ly/2BfSBsl>.

delivery points in the United States, are on rural carrier routes.³³ While some of these delivery points are residences, many are not, requiring people get their mail at post offices, which have limited hours and limited numbers of available PO boxes. Another roughly 1.6 million delivery points are classified as “without a regular postal route” or “without any scheduled mail delivery” that means any mail service in these places is handled by private contractors, such as occurs with postal provider offices. The U.S.P.S. classifies people as having “non-standard address” when they have no fixed address or use a PO box. The U.S.P.S. also allows “general delivery” for “non-standard addresses,” meaning that mail is sent to the Post Office address in the name of a person. The local post office holds onto the mail for 30 days. If it is not picked up, the mail is either disposed of or returned to the sender.

Among the most impacted by the lack of standard mail service and non-standard addresses are Native Americans, living on reservation lands. The Inter-Tribal Council of Arizona is opposed to all voting by mail elections because it imposes barriers to access for Native populations, particularly those living in rural areas.³⁴ See also for example, the Utah voting rights case, *Navajo Human Rights Commission v. San Juan County*, 2016).³⁵ There is additional evidence from the 2020 primaries that rural Native American populations with non-standard mail service and/or non-standard addressing are ill-served by voting by mail systems. In Montana, which had its first ever all mail-in voting in the primary, there was record high turnout,

³³ As of September 30, 2017, there were 31,000 post offices, states and branches in the United States, as well as 4,000 contract postal unites that includes 476 community post offices, and 821 village post offices and a network of places located in commercial buildings. Of its 229,000 routes, 75,000 were rural routes.

³⁴ Native American Rights Fund. 2020. *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters*. (quoting Travis Lane). <https://bit.ly/2CcreAc>.

³⁵ *Navajo Nation Human Rights Commission v. San Juan County*. 2016. Case No. 2:16-Cv-00154JNP-BCW (D. Utah).

but reservation counties, such as Big Horn County lagged far behind the more urban areas.³⁶ The MIT Election and Science Lab analyzed New Mexico data from the 2016 election when mail in ballots were sent out to all registered voters in the state. They discovered an enormous disparity across urban and rural parts of the state. In urban Santa Fe and Bernalillo, only 5% of the ballots were not returned, but in rural Cibola County, which includes the Laguna Indian Reservation, not a single ballot was returned.³⁷ The largest population group (43.9%) in Cibola County, according to Census data, is American Indian/Alaska Natives.³⁸

Arizona has allowed a version of mail in voting (early voting) since 1998 and currently approximately 80% of Arizona voters cast their ballots by mail.³⁹ The relevant language in Arizona’s election law is as follows: “Any election called pursuant to the laws of this state shall provide for early voting. Any qualified voter may vote by early ballot.”⁴⁰ While appearing to treat all potential voters equally, voters on the Navajo Reservation face greater barriers, due to the ways that non-standard mail service interacts with other conditions on the reservation.

IV. DO TRIBL MEMBERS LIVING ON THE ARIZONA PORTION OF THE NAVAJO NATION HAVE LESS ACCESS TO VOTING-BY-MAIL THAN NON-INDIAN VOTERS IN ARIZONA, INCLUDING ST. JOHNS, COUNTY SEAT OF APACHE, HOLBROOK,

³⁶ Mayer, Audrey. 2020. “Big Horn County has High Voter Turnout in Mail-In Only Primary Election.” *KURL8 News*. June 3. https://www.kulr8.com/news/big-horn-county-has-high-voter-turnout-in-mail-in-primary-election/article_27b86a18-a610-11ea-8a7a-032f42e0b18b.html

³⁷ Curiel, John. 2020. “Voting by Mail in the US: Past, Present and Future Advancements.” May 20. MIT Election Data and Science Lab. <https://storymaps.arcgis.com/stories/c3b3473262abe43a8a3f29c42a9174a75>.

³⁸ United States Census Bureau. 2020. “Quick Facts, New Mexico.” <https://census.gov/quickfacts/fact/table/socorrocountynewmexico,cibolacounty,nse Mexico,NM/PST045219>.

³⁹ Ferguson-Bohnee, Patty and James T. Tucker. 2020. “Voting During a Pandemic: Vote-By-Mail Challenges for Native Voters.” *Arizona Attorney*. July/August: 24-34, 28.

⁴⁰ A.R.S. 16-541(A).

COUNTY SEAT OF NAVAJO COUNTY, FLAGSTAFF, COUNTY SEAT OF COCONINO COUNTY AND SCOTTSDALE IN MARICOPA COUNTY?

A. Accessibility to Voting by Mail on the Navajo Reservation in Arizona

The Navajo Nation Reservation encompasses 27,425 square miles (or slightly larger than West Virginia). The reservation is located in Apache, Coconino and Navajo Counties in Arizona, as well as five counties in New Mexico and Utah. More than two-thirds of the land mass is in the three Arizona counties. The reservation's population, according to the 2010 Census, is 173,667; nearly 60% of whom live in Arizona and the Arizona voting age population is 67,252. The people are very dispersed across the reservation. The population density is 6.33 persons per square mile as opposed to the U.S. average of 345 persons per square mile.⁴¹ There is non-standard mail service, which means most residents do not have access to at home delivery and must travel from their homes to get their mail. There are eleven reservation post offices and fifteen postal provider offices to service the Arizona portion of the Navajo Nation Reservation and another thirteen in Utah and New Mexico, but the rural state of West Virginia, which has a slightly smaller land mass, has 725 post offices and postal provider sites.⁴²

In determining whether Navajo voters have fewer days to cast their mail-in ballots than do voters in affluent areas, a key factor is accessibility. As noted earlier, accessibility is comprised of two elements---travel distance and impedance; both of which are relevant to assessing the quality of mail service on the Navajo Nation Reservation. There are two aspects of travel distance that are relevant to this research: 1. The distance that Navajo voters must travel to pick up and return ballots to the post offices/postal provider offices and 2. The distance that

⁴¹ This data was compiled from the following report: Navajo Division of Health and Navajo Epidemiology Center. 2013. *Navajo Population Profile 2010 U.S. Census*. December. <https://www.nec.navajo-nsn.gov/Portals/0/Reports/NN2010PopulationProfile.pdf>.

⁴² <https://www.postalallocations.com/wv>.

mail-in ballots must travel from the post offices/postal provider office on the distant corners of the reservations to the mail processing centers and then from those centers to the election official's office. Each of these aspects of travel distance will be considered.

The first aspect of travel distance, the challenges that Navajo on the reservation face in getting mail, was recently discussed in an article, written by Patty Ferguson-Bohnee and James Tucker and published in *Arizona Attorney*: "...traveling to the PO box to pick up your ballot and then returning it can be an all-day task; without a car, it may be impossible. The distances Native voters must travel to obtain mail ins compounded by the socioeconomic factors faced by Natives because of decreased access to public transportation, or requisite funds to travel such distances to obtain or return a ballot."⁴³

Among the most relevant of the socioeconomic factors are median household income for Navajo tribal members (\$25,827), which is roughly half of the median household income in Arizona and roughly 30% of the median household income in Scottsdale.⁴⁴ Even more troubling is the high number of people, whom the Census Bureau classifies as "severely poor," which means their income is less than half of the income designated as delineating between the "poor" and "near poor." On the Arizona part of the Navajo Nation Reservation, 21.8% have incomes below the 0.5 of the poverty threshold and another 19.3% are between 0.5 and 0.99 of the poverty threshold, while another 8.4% meet the criteria for near poor (1.0 to 1.24% of the poverty threshold).⁴⁵ Public transportation is minimal,⁴⁶ which makes having access to a vehicle

⁴³ Ferguson-Bohnee, Patty and James T. Tucker, 30.

⁴⁴ Combrink, Thomas. n.d. *Demographic Analysis of the Navajo Nation Using 2011-2015 Census and 2010 American Community Survey Estimates*, Arizona Rural Poverty Institute, 27. https://gotr.azgovernor.gov/sites/default/files/navajo_nation0.pdf.

⁴⁵ Combrink, 35.

⁴⁶ Horning, Megan. Border Town Bullies: The Bad Auto Deal and Subprime Lending Problem Among Navajo Nation Car Buyers. May 16, 2017. <https://www.nlg.org/nlg-review/article/border-town-bullies-the-bad-auto-deal-and-subprime-lending-problem-among-navajo-nation-car-buyers/>

extraordinarily important for gaining regular access to mail. For impoverished Navajo, traveling to a place to get mail is not just a burden in terms of travel distance and time, but also a financial cost either to pay for gasoline or pay a person to take them to the post office or postal provider site.

To identify the areas where large percentages of people living on the Navajo Nation Reservation have no vehicles, we performed a hot spot analysis, using geographic information systems (GIS). Looking at census tract-level data, we identified statistically significant spatial clusters of high values (hot spots) that showed where the percentage of residents who do not own cars was more pronounced than in a random distribution. This analysis demonstrates where the levels of car ownership are the most limited. Many of the hot spots found in the analysis were on the Navajo Nation Reservation. The average percentage of residents in a census tract in Arizona that do not own a vehicle is 6.72%. However, we were able to identify at least six reservation hot spots, with a statistical significance of 95%, where more than 25% of households do not own a vehicle. This is summarized in the following table.⁴⁷

Navajo Nation Census Tract Analysis: Households Without Vehicle

Census Tract	County	Percentage No Vehicle
9400.14	Navajo	30.5
9422.02	Coconino	26.78
9423	Navajo	30.62
9449.01	Apache	30.99
9449.02	Apache	28.39
9449.02	Apache	26.98

⁴⁷ United States Census Bureau. Arizona_ACS_2018_BlockGroup. For hotspot analysis, see <https://arcg.is/1WLKCX0>.

In addition, Navajo tribal members face the additional cost of renting a Post Office box, which can be a considerable amount if one is poor or even near poor. For example, the fees at the Leeup Post Office are as follows: \$6.00 key fee for new box, \$9.00 for replacement of a key, and \$136.00 rental for a year.⁴⁸ Without a post office box, a person has to rely on general delivery, where mail is discarded or returned to sender after 30 days. All of this means that Navajos face very significant barriers---both travel and financial ones---that do not apply to voters living off-reservation. If the voter lives closer to a drop box location, the cost of travel to post the ballot may be lessened, but there still is significant cost in collecting the ballot and then traveling to a drop box location.

Non-Indian voters living in affluent areas, such as Scottsdale (median household income \$84,601),⁴⁹ do not face a significant travel distance barrier in obtaining and casting a mail-in ballot. For most of these voters, the total travel distance is the walk from their front door to their mail box, which may be attached to their house or is down their driveway. In other words, it is measured in steps. If the person is uncomfortable leaving the filled-out ballot in their mail box, they have easy access to post offices. Scottsdale is a geographically large city, encompassing 184 square miles, but there are twelve post offices, which ensure that no resident has to travel far to conduct post business. What this translates into is one Post Office for every 15.3 square miles in Scottsdale versus one Post Office every 707 square miles on the Navajo Nation Reservation in Arizona. The area served by a single postal location on the Navajo Nation Reservation is thus 46

⁴⁸ <https://leupp.navajochapters.org/post-office.aspx>.

⁴⁹ According to the most recent Census Bureau data, the population in Scottsdale is 258,069: only 0.8% of the Scottsdale population is American Indian/Alaska Native and 80.3% is white alone, not Hispanic. United States Census Bureau. 2019. "Quick Facts: Scottsdale city, Arizona." <https://www.census.gov/quickfacts/fact/table/table/scottsdalecityarizona/INC110818>.

times larger than that in Scottsdale. Phoenix, which is located adjacent to Scottsdale has another twenty post offices.⁵⁰

Predominantly non-Indian voters, in towns that are less affluent than Scottsdale, do not face a significant travel distance barrier in obtaining and casting a mail-in ballot. Consider the county seats of Navajo County and Coconino County: Holbrook and Flagstaff. As was true in Scottsdale, there is home mail delivery available in these towns, as well access to post offices. There are 3,500 people in St. Johns, where the median household income is \$47,857⁵¹ and a single post office. Holbrook, which is slightly larger with a population of 5,005 and a median household income of \$44,348,⁵² also has a single post office. The largest county seat is Flagstaff, which has population 69,903. It also is the most affluent with a median household income of \$51,758.⁵³ There are three post offices in Flagstaff, as well as home mail delivery. While the median household incomes in all of these cities are below that of Scottsdale, as well as Arizona as a whole, those incomes are substantially higher than what is typical on the Navajo Nation Reservation. But these voters have easy access to voting by mail, whether at home or at their local post offices.

In assessing the second type of travel distance, how far a ballot must travel from the reservation postal locations to the county recorder office, where votes are tabulated, the first step is to understand the way that mail moves through the postal system. In 2012, as part of the cutbacks in mail services, the mail processing center (“sectional center facility” or “SCF” in U.S.P.S. terminology) in Flagstaff was closed, which meant that all mail, originating in the

⁵⁰ <https://www.post.officelocations.net/scottsdale-az/>; <https://www.postofficelocations.net/phoenix-az/>.

⁵¹ <https://data.io/profile/geo/st-johns-az/>.

⁵² <https://data.io/profile/geo/holbrook-az/>.

⁵³ <https://data.io/profile/geo/flagstaff-az/>.

northern part of Arizona, is now processed in the sectional center facility in Phoenix.⁵⁴ At the facility, mail is sorted and rerouted for the destination zip codes. If the zip code is for a location outside of the SCF service area, the mail is transferred via truck to the processing center serving those zip codes, where it would again go through sorting before being sent out for delivery to the addressee.⁵⁵ The further the distance, the more likely it is for mail to be misplaced or delivered late.

What this means is that an assessment of travel distance for a ballot, starting at either the election office (county recorder office in Arizona) or at the voter's post office/postal provider office, must account for the distance to and from the processing center in Phoenix. The county recorder offices that handle voting on the Navajo Nation Reservation are those in Apache, Navajo and Coconino Counties.⁵⁶ To get a sense of the total distance, we picked post offices/postal provider offices in each of the three counties and then calculated the total driving distances, using the most direct and modern routes. These distances are summarized below.

Direct Distance: Travel Mileage to County Recorder Office

Apache County

Teec Nos Pos: **664 miles** via US160 and I-17 then I-17 and I-40 and US180
 Dinnehotso: **616 miles** via US160 and I-17 then I-17 and I-40 and US180
 Ganado: **585 miles** via US191 and I-17 then I-17 and I-40 and US180
 Rock Point: **648 miles** via US191, US160, and I-17 then I-17 and I-40 and US180

Navajo County

Kayenta: **539 miles** via US160, US89 and I-17 then I-17, I40
 Pinon: **514 miles** via AZ264, Navajo15, I-17 then I-17, I-40

⁵⁴ The Phoenix sectional center facility is located at 4949 East Van Buren Street, Phoenix, AZ 85026.

⁵⁵ To access a link describing the process, go to https://about.usps.com/news/state-release/az/2011/az_2011_0804.html.

⁵⁶ The Apache County Recorder Office is located at 75 West Cleveland Street, St. John's AZ 85936. The Navajo County Recorder Office is located at 100 Code Talkers Drive, Holbrook, AZ 86025. The Coconino County Recorder Office is located at 110 East Cherry Avenue, Flagstaff, AZ 86001.

Shonto: **518 miles** via Navajo221, US160, US89, I-17 then I-17, I-40

Coconino County

Cameron: **352 miles** via US89 and I-17

Tonalea: **400 miles** via US160, US89, and I-17

Kaibito: **421 miles** via US160, US89, and I-17

Navajo Mtn: **467 miles** via Navajo16, US160, US89, I-17 (Despite technically being just across the line into Utah, the local Arizona zip code is serviced by the SCF in Phoenix.)

As a next step, we calculated the total driving distances from the off-reservation post offices in St. Johns, Holbrook and Flagstaff, to the processing center in Phoenix and then back to the county recorder office in each of the counties. This provided us with a sense of the distance that an off-reservation ballot had to travel, again using the most direct and modern routes. In Apache County, the total distance from the one post office in St. Johns to the processing center and back to the county recorder office in St. Johns was 420.8 miles. While a substantial distance, mail posted in Teec Nos Pas, Dinnehotso, Ganado and Rock Point on the reservation have to travel 164-244 miles further. In Navajo County, the total distance from the post office in Holbrook to the processing center and back to the county recorder office in Hobrook is 356.1 miles, again a substantial distance, but 158 to 183 miles less than the reservation locations in Kayenta, Pinon and Shonto. There are three post offices in Flagstaff and the total travel distance for mailed posted there is from 298.5 miles to 301.5 miles. Using the 301.5 miles distance for comparison purposes, the travel distance difference for reservation locations in Cameron, Tonalea, Kaibito, and Navajo Mountain is from 50.6 to 165.5 miles further.

The distances that are outlined above are for the most direct routes between each of the locations, keeping in mind the need for the mail to go through the processing center in Phoenix, but what if the mail does not follow the most direct routes. Donna Semans from Four Directions sent different classes of mail (first class, certified first class, priority and priority express) from

reservation post offices to county recorder offices. What we discovered is that the mail actually goes much longer distances and follows different routes. Consider the example of mail sent from Teec Nos Pos to Apache County Recorder in St. Johns. The most direct route, as we showed earlier, would have a letter traveling 664 miles, but none of the letters sent by Donna Semans on August 8, 2020 followed the most direct route. We were able to track the certified first class, priority and priority express letters and discovered all followed different routes and took different lengths of time. But it is possible that the travel distances that are presented below understate the actual distances because in our measurements we used the most direct routes from each location to the next. It is possible that the actual mail followed more circuitous routes.

Mail Routing & Time from Teec Nos Pos to Apache County Recorder in St. Johns

Priority Mail: Six Days⁵⁷

August 7	3:32 p.m.	Letter Posted in Teec Nos Pos, but Not Date-Stamped ⁵⁸	
August 8	10:07 a.m.	Teec Nos Pos Post Office Date-Stamped Letter	
	10:10 a.m.	Depart	
	10:20 p.m.	Arrive Albuquerque Post Office	228 miles
August 9	3:41 a.m.	Depart	
August 12	1:48 p.m.	Flagstaff Post Office	320 miles
	8:58 p.m.	Arrive Phoenix Facility	153 miles
August 13	9:31 a.m.	Arrive St. Johns Post Office	215 miles
	10:44 a.m.	Delivery to Apache County Recorder	0.5 miles
			916.5 Total Miles

Certified 1st Class: Four Days⁵⁹

August 7	3:32 p.m.	Letter Posted in Teec Nos Pos, but Not Date Stamped	
August 8	10:00 a.m.	Teec Nos Pos Post Office Date Stamped Letter	
	10:10 a.m.	Depart	
	7:59 p.m.	Arrive Albuquerque Post Office	228 miles
August 9	3:41 a.m.	Depart	
August 10	5:22 a.m.	Arrive Phoenix Facility	411 miles

⁵⁷ United States Postal Service tracking number 9114901075742902802137.

⁵⁸ Donna Semans obtained a receipt, with the date and time, at the Teec Nos Pos Post Office, but all classes of mail were not date stamped and put into tracking until August 8.

⁵⁹ United States Postal Service tracking number 70200090000095937706.

	6:13 p.m.	Depart	
August 11	9:58 a.m.	Arrive St. Johns Post Office	215 miles
	12:15 p.m.	Delivery to Apache County Recorder	0.5 miles
			854.5 Total Miles

Priority Express Mail: Three Days⁶⁰

August 7	3:32 p.m.	Letter Posted in Teec Nos Pos, but Not Date Stamped	
August 8	10:08 a.m.	Teec Nos Pos Post Office Date Stamps Letter	
	10:10 a.m.	Depart	
	4:29 p.m.	Arrive Gallup Post Office	118 miles
	7:52 p.m.	Arrive Albuquerque Post Office	139 miles
August 9	3:41 a.m.	Depart	
	12:53 p.m.	Arrive Phoenix Facility	411 miles
August 10	8:37 a.m.	Arrive St. Johns Post Office	215 miles
	8:53a.m.	Delivery to Apache County Recorder	0.5 miles
			883.5 Total Miles

There are several important take-aways from this experiment. First, the total distance the letters traveled is far greater than we initially expected and the routes more diverse; both of which provide many more opportunities for the mail to be delayed or mis-paced. Second, it showed that if someone in Teec Nos Pos was able to pay for priority express mail, that the time could be reduced to three days. But few Navajo tribal members in Teec Nos Pos have the resources to shrink the time for delivery.⁶¹ Third, and very importantly, this shows that mail is not always date-stamped with the day and time that it is actually posted, even when that time is within the normal hours of operation at a Post Office.

But Teec Nos Pos is not the only Post Office on the Navajo Nation Reservation, where mail may take as long as six days to reach the office of a county recorder. We found all of the letters (first class, certified first class, priority mail and priority express) mailed from the Pinon

⁶⁰ United States Postal Service tracking number EJ077813006US.

⁶¹ Not all places used for mail provide priority and priority express mail service. For example, Donna Semans found that the postal provider site in Cameron only offers first class mail as an option.

Post Office to the Navajo County Recorders Office in Holbrook took six days to arrive. The letters were posted on August 4, but were not successfully delivered until August 10th. As can be seen from the summary below, there were attempts to deliver on Saturday August 8th, but the Navajo County Recorders Office was closed, so delivery was delayed until August 10th.

Mail Routing & Time from Pinon to Navajo County Recorder in Holbrook⁶²

August 4	3:32 p.m.	Pinon Post Office ⁶³	
August 5	11:37 a.m.	Depart	
	10:41p.m.	Arrive Albuquerque Post Office	90 miles
August 6	7:57 a.m.	Depart	
August 7	1:22 a.m.	Arrive Phoenix Facility	411 miles
August 8	7:49 a.m.	Arrive Holbrook Post Office	356 miles
	8:00 a.m.	Tried to Deliver, but Failed	
August 10	9:17 a.m.	Delivery to Navajo County Recorder	
			857 Total Miles

It is also worth considering travel distances in the much more affluent and non-rural parts of the state that are in Maricopa County, which also use the northern Arizona process center. Mail-in ballots deposited at the twelve post offices in Scottsdale have to travel from 4.5 to 26.7 miles to reach the processing center and then another eight miles to the Maricopa County Recorder Office⁶⁴ for total distances from 12.5 miles to 34.7 miles. For ballots mailed from the twenty Phoenix post offices, the total distance that mail must travel to the Maricopa County Recorder Office is 8.0 to 25.9 miles. Also the time that it takes for a letter, from Scottsdale, to reach the Maricopa County Recorder Office is very short, sometimes less than 18 hours.⁶⁵

⁶² United States Postal Service tracking number 7019297000082112661, certified 1st class mail.

⁶³ The address of the Pinon Post Office is 500 State Road, AZ 8650.

⁶⁴ The Maricopa County Recorder Office is located at 111 South 3rd Avenue, Phoenix, AZ 85003.

⁶⁵ United States Postal Service tracking number 70192970000082112722.

Exhibit A to this report summarizes other locations and classes of mail delivery times from the Four Directions field investigation with some delivery times as long as 7 and 10 days.

But the disparities in total distance are only part of what constitutes accessibility. The other piece is impedance. The degree of geographic isolation from urban America is compounded by physical features of the terrain, such as mountains and canyons, bad weather conditions and poorly maintained roads. In other words, the problem is not simply distance and isolation, but equally one of impedance. On the Arizona portion of the reservation, there are more than 10,000 miles of roads, but less than 14% are paved,⁶⁶ which makes travel slow and subject to closures, during inclement weather.⁶⁷ Most homes on the reservation are located miles away from paved roads, "accessible only by dirt roads which are highly susceptible to damage from heavy snows, floods, and washouts making roads useless for travel and pose risks for school buses and families."⁶⁸

According to Ferguson-Bohnee and Tucker, bad weather conditions can make travel impossible, during early November.⁶⁹ Postal service employees and contract providers have to travel these poorly maintained roads throughout the year, but their ability to provide their services are most compromised right at the time when absentee ballot requests are made, ballots need to be delivered to rural post offices and postal provider locations and then those filled out ballots need to be returned to election officials. Moreover, voters have to travel some of the

⁶⁶ Fiscal Year 2019 Navajo Nation Tribal Transportation Plan at 1, cited in Ferguson-Bohnee and Tucker: 28.

⁶⁷ *Governing Magazine* ran an article about the Navajo Reservation roads in Utah and described the poor condition of roads and the frequency of their becoming impassible due to heavy rain and snow as threat to human life, since emergency vehicles cannot get to people needing assistance. Vock, Daniel C. 2017. "In Navajo Nation, Bad Roads Can Mean Life or Death." *Governing Magazine* July. <https://www.governing.com/topics/transportation-infrastructure/gov-navajo-utah-raods-infrastructure.html>.

⁶⁸ Chaco, Paulson. Roads and Transportation on the Navajo Nation. February 15, 2012.

<https://obamawhitehouse.archives.gov/blog/2012/02/15/roads-and-transportation-navajo-nation>

⁶⁹ Ferguson-Bohnee and Tucker, 28.

worst maintained roads and trails to get to those offices to put in their requests for absentee ballots and later return them. Exhibit B to this report presents photographic evidence of road conditions encountered by Donna Semans from Four Directions.

V. DOES REQUIRING MAIL-IN BALLOTS TO BE RETURNED---RATHER THAN POSTMARKED---ON OR BY ELECTION DAY LEAD TO THE DISENFRANCHISEMENT OF TRIBAL MEMBER VOTERS WHEN THEIR OVERDUE BALLOTS ARE REJECTED?

A. Cross-State Differences in Ballot Receipt Deadlines

Even though the first Tuesday in November (2nd through 8th) is statutorily enshrined as the date for holding elections for federal public officials---president and members of Congress, not all ballots in the United States must be received by that date to be counted. There are enormous differences in the requirements that states have with respect to when a ballot must be received in order to be counted. The most restrictive states are Louisiana and Mississippi that require mail-in ballot be received by the election official offices a day prior to Election Day. Among the thirty-one states that require ballots be received by Election Day, there still is variance about how late in the day that the ballots can arrive and still be counted. There are seventeen states that allow some ballots to be counted if they are received after Election Day, but the cross-state differences are enormous, with some requiring that ballots be postmarked by the day prior to Election Day and others accepting those with Election Day postmarks. Texas is the most stringent, requiring that the ballot be postmarked the day prior to Election Day and that it arrive one day later. In contrast, Illinois allows ballots received within fourteen days and postmarked by Election Day be counted. Utah law, which applies to those on the Navajo Nation Reservation in the state, allows ballots to

be counted seven to fourteen days after Election Day, if postmarked prior to Election Day.⁷⁰ What this means is that in reality there are quite different dates or deadlines by which people must vote, if they are choosing to vote by mail, which certainly makes sense during a pandemic.

B. Arizona’s Ballot Receipt “Deadlines”

The reasoning behind having a ballot receipt “deadline” is that it is a firm and inviolate line of demarcation, a single point that applies equally to all voters, but as is clear from the cross-state summary above, there is no single deadline that applies to all voters. Arizona law, which is among the strictest, requires that mail in ballots be received by the county recorder by 7:00 on Election Day.⁷¹ But the reality is that Arizona actually does not have a single “deadline” for all voters. Instead functionally there is a second important “deadline” (e.g., the day when an absentee-ballot must be posted so that it will arrive to the county recorder office in time to be counted.) Unlike the Election Day “deadline” for receipt of the ballot, the second deadline is not a firm date, but instead it varies for different populations. Moreover, it may change with little warning, such as a post office closing due to the pandemic or newly instituted cutbacks in U.S.P.S. service due to changes in the senior leadership of the U.S.P.S. or priorities of an administration. This introduces a high level of uncertainty into the process of voting.

This report demonstrates Navajo voters on the reservation face greater challenges in meeting that deadline than do non-Indian voters living off-reservation, due to the previously described inequalities in mail service. For the upcoming general election, the last time that a voter can request a ballot-by-mail is Friday October 23 at 5:00 p.m. when the county recorder office

⁷⁰ National Conference of State Legislatures. 2020. *VOPP: Table 11: Receipt and Postmark Deadlines for Absentee Ballots*. July 31. <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-11-receipt-and-postmark-deadlines-for-absentee-ballots.aspx>.

⁷¹ A.R.S. 16-548(A).

closes for the day.⁷² October 23 is eleven days prior to Election Day on November 3, but what if the ballot does not get sent out until Monday, October 26, which is eight days prior to the election. The U.S.P.S. is now recommending that voters get their requests for voting by mail into officials at least fifteen days prior to election, which is October 19.⁷³ Secretary of State Katie Hobbs had recommended that voters send in their ballots six days prior to Election Day.⁷⁴ Her updated recommendation is now for ballots to be sent seven days prior to the election.

For off-reservation voters with standard mail service, particularly home mail delivery, those eleven or eight days to receive their ballot and return it via the mail is much less of a burden than it is for Navajo without home mail delivery. Non-Indian voters likely will get their ballots delivered to their home within a couple days. But even in the worst-case scenario that their ballots are not sent out until October 26 and take seven days to arrive, their ballot will still arrive prior to Election Day. Since these voters likely have access to vehicles, they also could easily hand deliver their ballots to county recorder offices. In short, it is not physically impossible for them to vote, whether by using the mail to return the ballot or by taking their mail-in ballots via auto to the required locations.

Moreover, those off-reservation voters have additional time to consider their vote. The time of voting interacts with campaign effects which means that those with more time have additional information, which can affect their voting choices.⁷⁵ The fast delivery times of mail in places, such as Scottsdale or Phoenix, means a voter, in those communities, could post a ballot as late as

⁷² <https://www.az.cleanelections.gov/how-to-vote/early-voting/vote-by-mail>.

⁷³ Panetta, Grace. 2020. "The US Postal Service is Urging Voters to Request Their November Mail-In Ballots at Least 15 Days Before the Election." *Business Insider*. July 27. <https://www.msn.com/en/us/newa/world/the-us-postal-service-is-urging-voters-to-request-their-november-mail-in-ballots-at-least-15-days-before-the-election>.

⁷⁴ Bell, David. 2020. "Mail-In Ballots Should Be Sent by Wednesday." *Gila Valley Central*. July 28. <https://gilavalleycentral.net/mail-in-ballots-should-be-sent-by-wednesday>.

⁷⁵ Fournier, Patrick, Richard Nadeau, Andre Blais, Elizabeth Gidengil and Neil Nevitte. 2004. "Time-of-Voting Decision and Susceptibility to Campaign Effects." *Electoral Studies* 23 (4): 661-681.

Monday, November 2 and be reasonably confident the ballot will arrive at the Maricopa County Recorder Office by 7:00 on the following day. While not maybe the wisest course of action, it is possible, and that voter would be able to consider far more information than someone who had to mail in their ballot much earlier in order to meet the current Arizona deadline.

The situation for Navajo voters, however, is much different. We discovered that mail posted from the Teec Nos Pos and Pinon Post Offices took six days and travel distances of more than 850 miles to reach the offices of the Apache County Recorder and Navajo County Recorder. If these county recorders mail out ballots on October 23 (the last day to request one), those ballots might not arrive in Teec Nos Pos or Pinon until October 29th. Even if the Navajo voter immediately re-posted on the 29th, that ballot likely would not reach the offices of the county recorders by 7:00 p.m. on Election Day (October 29th plus 6 days means arrival on November 4th). Moreover, those ballots would have taken very long and circuitous routes, which make it more likely the ballots would be misplaced or lost, due to the “leaky pipeline.” What this means is that the Navajo voter must request an absent ballot earlier and return it much earlier than the voter in Scottsdale or Phoenix----and be sure to consider weekend delays. The Navajo voter must decide with less information than the Scottsdale or Phoenix voter, who is able to cast a vote at a later point in time.


Signature Page Follows

Signature Page

I declare under penalty of perjury the foregoing is true and correct. Executed this 23rd day of August, 2020.



I declare under penalty of perjury the foregoing is true and correct. Executed this 23rd day of August, 2020.



Exhibits Follow

Exhibit A

Delivery Speed Various Locations

Sent From	Date/Time	Arrived at	Date/Time	Mail Class	Delivery Speed
Scottsdale, Evans Rd	August 5/1:55 pm	Maricopa Recorder	Aug 6/7:43 am	Certified 1st	17h 38min
Teec Nos Pos	"August 7	Apache Recorder	"August 11	Certified 1st	4 days
Teec Nos Pos	"August 7	Apache Recorder	"August 13	Priority	6 days
Teec Nos Pos	"August 7	Apache Recorder	"August 10	Priority Express	3 days
Dinehotso	"August 7	Apache Recorder	"August 17	Certified 1st	10 days
Dinehotso	"August 7	Apache Recorder	"August 13	Priority	6 days
Dinehotso	"August 7	Apache Recorder	"August 14	Priority Express	7 days
Rock Point	"August 7	Apache Recorder	"August 13	Certified 1st	6 days
Rock Point	"August 7	Apache Recorder	August 13	Priority Express	6 days
Navajo Mtn	"July 31	Coconino Recorder	"August 6	Certified 1st	6 days
Navajo Mtn	"July 31	Coconino Recorder	"August 3	Priority Express	3 days
Pinon	"August 4	Navajo Recorder	"August 10	First Class	6 days
Pinon	"August 4	Navajo Recorder	"August 10	Certified 1st	6 days
Pinon	"August 4	Navajo Recorder	"August 10	Priority	6 days
Pinon	"August 4	Navajo Recorder	"August 10	Priority Express	6 days

Exhibit B

Road Conditions
Dinnehotso, Rock Point to Teec Nos Pos

This is the road into the Donehetso post office I had gone from 25 to 5 mph and almost stopped and got stuck due to the sand.



rock point and sweet water to
Teec Nos Pos



This is the road from rock point to
Teec Nos Pos the entire 35 miles like
this or bigger ruts forgive the quality I
couldn't slow down or id be stuck and
I couldn't stop or id be there all night



Exhibit C

Distribution of Post Offices in Arizona

8/23/2020

Image 8-23-20 at 7.24 PM.jpg

