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Poll Booth Proximity, Tribal ID, and Bilingual Accessibility: Three Provisions to Increase Native American Turnout in the Native American Voting Rights Act Of 2019

Grant Baldwin

On March 12, 2019, Senator Udall (D-NM) and Representative Lujan (D-NM-3) introduced the Native American Voting Rights Act of 2019 (S.739; HR 1694) to both chambers of the United States Congress as a proposed solution to problems concerning low voter turnout among Native Americans and Alaska Natives. (While I recognize there are notable differences between Native American groups and Alaska Native groups, for the remainder of this analysis I use the terms Native, Native American, American Indian, and Alaska Native interchangeably.) If enacted, the bill would provide voting assistance to Native communities by bringing poll booth and voter registration locations closer to Native Americans, ensuring that tribal identification cards qualify as valid forms of ID for voter registration, and expanding bilingual voting accessibility to Native languages. Shortly after the bill's introduction, it was referred to the Senate's Judiciary Committee and the House's Subcommittee on the Constitution, Civil Rights, and Civil Liberties and has not made any progress since.

In this paper, I evaluate the validity of the claims made by the Native American Voting Rights Act of 2019 and anticipate what the consequences of enacting this policy would bring. First, I examine to what extent Native disenfranchisement exists and the recent political behaviors of Native Americans as a group. Then, I scrutinize the bill's policy logic by exploring the potential of its proposed measures—proximate polling booths, tribal identification voter ID, and expanding bilingual voting accessibility—to work toward solving the problem of low Native turnout. Considering the gathered evidence, I find that Native Americans continue to suffer explicit and inconspicuous state-sanctioned disenfranchisement in the United States. And while the Native American Voting Rights Act of 2019 may not completely solve the current problem of low Native American turnout throughout the US, it will work toward

removing thick barriers that currently prevent or hinder Native Americans' ability to participate in the voting process.

Native American Disenfranchisement & Political Behavior

Although they are the ancient inhabitants of the continent, Native Americans were the last racial/ethnic group born in the United States to gain citizenship and the ability to vote (Schroedel & Hart 2015). Congress did not unilaterally grant citizenship to Native Americans without the requirement to abandon tribal allegiances until they passed the Indian Citizenship Act in 1924. However, this policy victory ended up hollow because while the Act granted citizenship, it left the rights that came alongside Native citizenship—most notably, the franchise—either vague or undefined.

Because of the autonomy of the individual states within the federal system, it did not take long for disapproving whites living in states with significant Native populations to use the ambiguous nature of the Native citizenship to their advantage. Immediately following the Indian Citizenship Act of 1924, state legislatures enacted various policies that worked toward disenfranchising their new Native American citizens. In particular, Idaho, New Mexico, and Washington state constitutions added provisions that denied voting rights to untaxed Indians regardless of citizenship status (Schroedel & Hart 2015). Arizona applied the guardianship clause of its constitution—a provision that prevented the “mentally incompetent” from casting ballots—to Native American citizens based on explicitly anti-native sentiments. In addition to these more extreme examples, states across the nation claimed that Native Americans living on reservations were not *actually* residents of the state and thus barred them from participating in state and local elections.

Today, citizens and scholars have a common conception that the explicit state-sanctioned legislation that prevented minority groups' access to the ballot box had been done away with in the fallout of the Voting Rights Act of 1965. Currently, scholars have come to a general agreement that the Voting Rights Act of 1965 was successful in its efforts to mediate “first-generation” voting rights issues—instances in which written policy and government action explicitly prevent minority groups from voting (Davidson & Grofman 1994). However, most of the scholarship on the effects of the Voting Rights Act of 1965 focuses on either African American or Latinx groups' voting ability. As a result, scholars often ignore the Act's impact on Native population's “first-generation” issues (Schroedel & Hart 2015). In fact, in many states across the country, outdated policies that restrict Native Americans' access to voting still stand. Further, there are many policies in the states that do not explicitly claim to disenfranchise Native voters. However, in practice, they often place barriers in the way of Native ballots being cast (Ferguson-Bohnee 2020).

Despite these obstacles, the Native American vote first garnered national attention in the 2000 elections. Notably, presidential candidate Al Gore attributed his victory in New Mexico to Native American voters (McCool, Olson & Robinson 2007). Native groups in Washington state also mobilized in 2000 to ensure the labeled

“anti-Indian” Senator Slade lost his reelection campaign. Generally, when Native American voters play pivotal roles in elections, they favor Democratic candidates and generally follow cues from tribal leaders in making their vote choice.

In general, political scientists have understudied the voting patterns and political behavior of Native Americans. The little available research reveals that when Natives express interest in participating in politics, they are much more interested in local politics (Huyser, Sanchez & Vargas 2017). Native advocacy groups realize that, for the most part, tribal nations interact more with the state governments than the federal government. When they participate in national politics, their focus is on electing officials that will reflect their tribal interests (Huyser, Sanchez & Vargas 2017). American Indian scholar Eileen Luna (2000) postulates that American Indians may not be as motivated to mobilize politically as other minority groups because of their diversity of tribal identities and geographic dispersion across the American West. A single politically mobilized tribe would not have enough sway to usher in any sweeping change, and the differences between tribes often prevent political unification toward a common good.

The low trends in voter turnout and political participation among Native Americans compared to other groups might have less to do with Native American attitudes and instead could be attributed to difficulties in registering and casting their votes. As of 2012, 34% of American Indians and Alaska Natives (about 1.2 million people) reported they were not registered to vote—compared to the 26.5% of non-Hispanic Whites that are not registered (Wang 2012). Survey data suggests that the most significant barriers to Native Americans registering to vote are the difficulty of traveling to registration locations and not knowing where or how to register (NAVRC 2018). Further, the most common reason that Native American survey respondents gave for not voting in 2012 was that barriers prevented them from registering in the first place (NAVRC 2018). Depending on the state, the turnout rate among Native Americans is one to ten percentage points lower than that of Black or Hispanic minority groups (Wang 2012). These data suggest an observable connection between the inability to register to vote and the lack of turnout on election day.

Policy Logic

To what extent will the proposed legislation in question work toward solving the problem of low Native turnout? The Native American Voting Rights Act of 2019 aims to simplify each step of the voting process for Native Americans, from initial registration to the casting of ballots on election day. The Act would require the federal government (Department of Justice) to ensure that the states (1) bring polling sites closer to rural Native voters, (2) accept tribal identification as valid under their voter ID laws, and (3) expand access to bilingual and language minority Native voters.

Polling Booth Proximity

First, the Act proposes that the Department of Justice ensure that states place polling booths in locations convenient for their rural Native populations to cast their ballots. Most academic research has reached a consensus that increased travel requirements to polling locations result in lower turnout levels (Cantoni 2020). The problem of precinct geography is much more prevalent for Natives in rural communities or living on reservations than those living in metropolitan areas (NAVRC 2018). Native communities are often dispersed across vast areas with low population densities, especially in Arizona, New Mexico, and Nevada. In these sparsely populated areas, states may often require voters to make journeys up to or longer than an hour by car to cast their vote at their designated polling place. In Nevada, 30% of Native American survey respondents indicated that they were not aware of the location where they could register and vote. And, nearly one-quarter of respondents recorded their need to travel more than twenty miles round trip to vote (NAVRC 2018). Along those lines, voting-by-mail is not a reliable alternative for Native Americans, as residences on reservations often are not labeled by traditional addresses and do not receive deliveries from the postal service (NARF n.d.). On the Navajo Nation, residents must travel 140 miles round trip to obtain postal services. Unfortunately, traveling many miles only to vote can be burdensome on Native Americans who are typically of a lower socioeconomic status.

The issue is further complicated once the politics involved in deciding where polling booths will be located is considered. In most states, determining the number of precincts within a county and their locations is delegated to each county clerk. And, because the county clerk is often a partisan elected official, electoral incentives can motivate their decisions concerning polling place locations. In fact, for most precincts and voters in the United States, voters belonging to the county's dominant political party (typically also the county clerk's party) travel significantly shorter distances to cast their votes than voters of the minority parties (Joslyn et al. 2020). The politics of polling location placement works against rural Native American voters due to their general association with the Democratic party—the typical minority party in rural areas. Thus, elected county clerks may find placing polling locations far from Native populations electorally advantageous.

Federal oversight in the placement of polling locations relative to rural Native American populations would indeed boost Natives' access to the voting process. Under the Native American Voting Rights Act of 2019, the Department of Justice would require states and counties that wish to move their polling places in areas with higher Native American populations to seek approval prior to doing so (S. 739; HR 1694). This requirement removes the responsibility of relocating precincts from organizations that may be politically motivated to discourage Native turnout. The Department of Justice can thus act as an impartial actor in ensuring the relocation of precincts would not harm Native American voters or benefit any one political party. Further, the Act would expand what facilities qualify as voter registration agencies—which facilities are currently limited to those determined by the states and often

inconveniently distant from Native populations. In practice, this would allow Native tribes to request that voter registration materials be available at federal offices already located on reservations (S. 739; HR 1694). If voter registration were available within the reservations themselves, this would work to remove both the knowledge and distance barriers that prevent Natives from currently registering.

Tribal ID as Voter ID

Scholars and political leaders alike have long argued over the merits of requiring identification from voters during registration and polling. While proponents of such policies argue that voter ID laws protect elections from fraud, opponents contend that voter ID laws ultimately result in the disenfranchisement of poor and minority voters. Native Americans, in particular, are discouraged by voter ID laws due to their on-average lower socioeconomic status. Poorer individuals are prevented from voting in constituencies with voter ID laws because they often do not have a car or never travel by plane and thus do not need a government-issued ID for their day-to-day transportation (Sobel & Smith 2009). Along the same lines, poorer individuals without permanent residences or official addresses are ineligible for government-issued identification (Sobel & Smith 2009). Natives face several unique obstacles in the path to obtaining a government-issued ID for voting. For one, Natives often live far from state government identification issuing offices. Further, those living on reservations do not have specific addresses, and their identity documents may not be in English, both standard requirements to receive government-issued ID across the states (Ferguson-Bohnee 2020). Because numerous obstacles already prevent Natives from obtaining the proper identification to register to vote, it is no surprise that the lack of voter registration translates into a lack of votes cast.

The Native American Voting Rights Act of 2019 intends to mitigate some of the harm done by voter ID laws on Native American voters by requiring states to accept tribal identification as a valid form of identification under their voter ID laws. Despite the obstacles Native Americans must undergo to obtain official government identification, individual tribes provide tribal ID cards for their members. Extending the definition of valid identification to tribal IDs for voter registration would naturally remove a significant barrier that currently inhibits Native Americans from political participation. The hindrances that prevent Natives from obtaining a government-issued ID would no longer demotivate political behavior. While critics of voter ID laws may prefer voter ID requirements disappear entirely, the Act's provision to extend valid ID to tribal identification would be a step in the right direction to provide increased access to the political process.

Bilanguage Voter Accessibility

Lastly, the Native American Voting Rights Act of 2019 hopes to overcome the language barriers placed in the way of potential Native minority language voters. The Voting Rights Act of 1965 includes provisions that ensure states provide adequate materials to voters that do not speak English or have limited English

proficiency. However, in practice, the quality and availability of translated materials are not consistent across the United States' various jurisdictions (Reilly 2015). States face unique challenges in providing election resources in native languages because these languages are not as widely spoken as other minority languages. For instance, Spanish and Chinese speakers commonly receive adequate election materials within states where a significant proportion of the population speaks those languages. Some Native languages are not written languages which further complicates this issue. Additionally, the resources available to election agencies for translation are limited, so bureaucrats will choose to focus on benefiting the most significant number of people, often leaving smaller language minorities such as the Native Americans out of the picture (Reilly 2015).

Minority language Native voters have received moderate success from the courts in ensuring their access to election materials. In 2014's *Toyukak v. Treadwell*, the Alaska Native petitioners argued that the state failed to provide adequate election materials to Yup'ik and Gwich'in speaking voters. The state's defense claimed that translated materials were unnecessary because the state provided programs that taught Yup'ik and Gwich'in speakers English skills instead (Reilly 2015). The Court ruled in favor of the Alaska Native petitioners and ordered that the state provide written, pre-election materials to the Yup'ik and Gwich'in populations. This case offers key precedent moving forward concerning what bilingual voter materials need to be provided, who needs to provide them, and who they need to be provided to.

If enacted, the Native American Voting Rights Act of 2019 would follow after the Court's decision in *Toyukak*. Specifically, the Act proposes to amend the bilingual election requirements under the Voting Rights Act of 1965. The amendment would ensure that all voting materials, from registration to ballot provisions, would be provided to American Indians and Alaska Natives of minority languages and limited English proficiency (S. 739; HR 1694). Access to election materials in these minority languages will encourage the Native vote and allow Natives with limited skills in English to make informed decisions while participating in the political process. Additionally, unless a tribe specifies that it needs orally provided language materials, the states must provide written materials both before and during the process of casting a ballot. If necessary, the state may rely on local volunteers to provide oral translations of the election materials.

Opposition and Limitations

Opposition to the Native American Voting Rights Act of 2019 in Congress is part of a broader Republican political strategy to restrict voting nationwide (Wines 2021). Republican elites have been hesitant to enact policy that would simplify the voting process or remove barriers to specific groups' participation out of fear of compromising the sanctity and security of elections. Nationwide, more than half of Republican-leaning independents (51%) and conservative Republicans (61%) believe that citizens should prove their desire to vote by registering beforehand and paying any of the associated costs involved with registration — traveling the required distance, obtaining

government-issued ID (Laloggia 2018). Bearing in mind the attitudes of core Republican voters, the Republican delegation in Congress—especially the Republican majority in the Senate at the time of this bill’s introduction—has been hesitant to move forward on voting legislation that removes barriers or simplifies access to the political process.

At the same time, however, Republicans may also be inclined to push back against this legislation not because they wish to protect the security of election administration but because they fear the potential electoral consequences. Social science research suggests that, especially in sparsely populated states such as Montana and North Dakota, increasing Native American voter turnout could substantially affect the party preferences of the states’ electorate (Peterson 1997). Typically, Native American voters favor Democratic candidates and liberal policies (Schroedel & Hart 2015). Indeed, in North Dakota’s 2012 Senate race, Democratic candidate Heidi Heitkamp won her election by a 1% margin and claimed that “her only road to Washington, DC was through Indian Country” (NCAI n.d.). Democrats also saw a victory in Montana’s 2018 Senate race. Increased turnout among the state’s Native women population allowed Democratic candidate John Tester to secure his Senate seat by less than 20,000 votes (NCAI n.d.). (It is also important to consider that Native Americans do not exclusively support Democratic candidates. For example, Republican Senator Lisa Murkowski from Alaska successfully won her Senate write-in campaign due to the significant power of votes from Alaska Natives (NCAI n.d.).) Considering these narrow Democratic victories in states that may otherwise be safe seats for Republicans in Congress, the Republican delegation in Congress has strong electoral incentives to limit the turnout of Native American voters to secure legislative majorities moving forward.

Beyond political opposition, the Native American Voting Rights Act of 2019 fails to provide adequate aid and support to Native American voters in one key area. While the Act moves in the right direction by ensuring language access to registration and pre-election materials, it does not explicitly address the variance in consistency and quality of translations across jurisdictions. Under the Act, tribes that feel the provided translated materials are inadequate may challenge their state’s election administrators using the courts. However, relying on the courts to redress these inadequacies takes a significant amount of time. Often, as was the case with *Toyukak v. Treadwell*, the courts’ decisions—even if they favor Native petitioners—do not come until months or years after the administration of an election (Reilly 2015; Schroedel & Hart 2015). I fear that due to the Act’s lack of specificity on any standard of quality for the provided translated materials, it may take years for tribes to use the courts to ensure each minority language has equal access to voting material.

Additionally, the Act’s intended effects on increased access to the political process for Native Americans will only occur if the delegated arms of the federal government properly enforce the Act’s provisions. No matter how well-intended Congress may be in passing this legislation, they are reliant on executive bureaucracies to carry out these changes—and on the states to be compliant in following the orders of

these agencies. Federal enforcement of voting rights legislation has been somewhat unequal in the past. Certain jurisdictions and minority groups have benefited from federal intervention in election processes. Still, scholarship on the subject suggests that some groups and jurisdictions lack proper attention from federal voting rights enforcement (Montjoy 2008). This policy's success, in particular, will depend on the extent to which the Department of Justice appropriately enforces it.

Findings and Conclusion

For the political process to be genuinely democratic, every individual that wishes to voice their opinion should have that ability. Unsuitably, descendants of this continent's ancient inhabitants, and a sizable proportion of the voting-eligible population, continue to be discouraged from participating in the political process even after the gains made by the Indian Citizenship Act of 1924 and the Voting Rights Act of 1965. Compared to other racial and ethnic minority groups in the United States, Native American and Alaska Native voter registration and voter turnout levels are significantly lower (Wang 2012). The examined evidence suggests that Native Americans' political participation is inhibited by a lack of trust in government and a lack of required resources and knowledge in the political process (NAVRC 2018). The proposed Native American Voting Rights Act of 2019 aims to use the federal government's power to break down the hefty resource and knowledge stumbling blocks that currently repress Native American's ability to participate in the political process.

Despite its inability to escape its assigned congressional committees, the Native American Voting Rights Act of 2019 has received high praise. Civil and voting rights organizations such as the National Council of American Indians, American Civil Liberties Union, American Bar Association, and Brennan Center of Justice all endorse the legislation as the proper route of action to tackle the issue of low Native turnout. Likewise, the proposed legislation aligns with a substantial majority (67%) of Americans that believe the government should do everything possible to make it easy for every citizen to vote (Laloggia 2018).

The Native American Voting Rights Act of 2019, although not perfect, is a significant step in the right direction toward expanding and simplifying Native American access to political participation. The current bill's three most prominent provisions—bringing voter registration and polling places closer to Native populations, validating tribal identification under voter ID requirements, and ensuring election material accessibility to minority language voters—each work toward removing legitimate hindrances that currently stand in the way of Native American political participation. The Act may not completely solve problems of low Native turnout across the United States, but it would at least begin to break down these barriers.

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