

Native American Rights Fund

Indigenous Peoples' Rights

<https://www.narf.org/cases/2021-montana-voter-laws/>

Campaign and Advocacy

Tribes and Native voter organizations successfully sued Montana over two discriminatory voting laws.

Status: Active

On September 30, 2022, [a Montana court struck down as unconstitutional two state laws that hinder Native participation in the states electoral process](#). HB 176 eliminated Election Day registration, which reservation voters disproportionately rely upon to cast votes in Montana. HB 530 prohibited paid third-party ballot assistance, a service that aids Native voters living on reservations. The court ruled that the laws violate provisions of the Montana Constitution, including the right to vote, equal protection, free speech, and due process.

On behalf of the Blackfeet Nation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Fort Belknap Indian Community, and the Northern Cheyenne Tribe, the Native American Rights Fund (NARF), the American Civil Liberties Union (ACLU), the ACLU of Montana, and the Election Law Clinic at Harvard Law School filed the lawsuit challenging the two discriminatory voting laws in Montana.

In the final weeks of the 2021 legislative session, Montana legislators passed two laws that make it harder for Native voters to register and vote. The two new laws, which were passed mere months after a court found a similar Montana law unconstitutional, demonstrated an ongoing state pattern for passing anti-Native election-related legislation. Meanwhile, at the national level, around the time that the two Montana laws went into effect, 13 other states had also introduced over 100 bills that would disenfranchise Native voters.

Once again Tribes and GOTV organizations have been forced to defend the rights of Native voters from laws designed to make it difficult or impossible for Natives in Montana to vote, said NARF [Staff Attorney Jacqueline De Len](#).

[One of the new laws ended same-day registration \(HB 176\)](#), which reservation voters had relied upon to cast votes in Montana since 2005. Election-day registration allowed Native American voters residing on the lands of the Blackfeet Nation, for example, to coordinate one long-distance trip to participate in elections. Organizations, including Western Native Voice and Montana Native Vote, provide rides from tribal communities to county election offices on election day so that voters can register and vote.

The other [2021 law blocked organized ballot collection on rural reservations \(HB 530\)](#), in spite of the 13th district court ruling as unconstitutional a similar anti-ballot collection law in 2020 in [Western Native Voice v. Stapleton](#). Ballot collection services in Montana offer Native voters a reliable way to cast a vote from rural locations.

These laws are part of a broader scheme by the Montana legislature to attempt to cut out the Native vote. We stopped them before and well do it again, said NARF [Staff Attorney Samantha Keltz](#).

Similarly, in 2018, the Montana state legislature passed the Montana Ballot Interference Prevention Act (BIPA), which had been introduced by State Sen. Albert Olszewski (R). Subsequently, NARF and the ACLU of Montana filed suit on behalf of the Assiniboine & Sioux Tribes of Fort Peck, Blackfeet Nation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Crow Tribe, and Fort Belknap Indian Community, Western Native Voice, and Montana Native Vote because the new law severely restricted the right to vote for Indigenous people living on rural reservations. On September 25, 2020, Yellowstone County District Court Judge Jessica T. Fehr ruled in [Western Native Voice v. Stapleton](#) that [blocking ballot collection does not serve the state due to the detrimental impacts on Native voters](#) which NARF proved through cold, hard data. NARF [won the court decision against the Montana Ballot Interference Prevention Act \(BIPA\)](#) for the Assiniboine & Sioux Tribes of Fort Peck, Blackfeet Nation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Crow Tribe, and Fort Belknap Indian Community. ACLU Montana won the case with NARF for the Western Native Voice and Montana Native Vote.

For over three years, the Native American Rights Fund has researched every aspect of Native voting rights and attempts to disenfranchise Native voters in Montana, explained De Len, one of the NARF attorneys who presented irrefutable evidence about BIPAs negative impact on the Native vote. We know how Native Americans overcome barriers to cast a vote in Montana.

Native American voters must overcome [Obstacles at Every Turn](#), to participate in the U.S. political system, often driving twice as far as other citizens to register and to vote. Residents living on the seven tribal reservations within the borders of Montana contend with limited mail delivery and internet service combined with great distances from voting registration and polling centers.

The Blackfeet Nation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Fort Belknap Indian Community, and the Northern Cheyenne Tribe requested NARF represent them in challenging the constitutionality of HB 176 and HB 530. In partnership with the American Civil Liberties Union (ACLU) and ACLU Montana, who represented Western Native Voice and Montana Native Voice, NARF filed *Western Native Voice v. Jacobsen* in May 2021. [Link to [complaint](#)]

These laws are an unconstitutional attack on the right of Native Americans to vote, and we look forward to proving it in court, said [NARF Staff Attorney Jacqueline De Len](#).

On behalf of the tribal governments and voter support organizations, NARF, ACLU, and the ACLU of Montana [filed for an injunction](#) in the *Western Native Voice v. Jacobsen* lawsuit on Jan. 12, 2022. The injunction asked the court to prevent HB 176 and HB 530 from going into law until it decided the voter suppression case.

Instead of working with tribes to overcome the lack of residential mail delivery on reservations, or working to cut down the over 100 miles some voters have to travel to register to vote, the Montana Legislature took away options Native Americans depend on to vote. This injunction will protect these options until they are found unconstitutional. said NARF [Staff Attorney Jacqueline De Len](#).

The injunction would protect voting rights for 2022. Rural tribal communities across the seven reservations in Montana depend on election day registration and ballot assistance to participate in elections, so if the state began implementing these laws, they would deny many Native Americans the right to vote in the upcoming 2022 midterm elections, said [Kelty](#).

On April 6, 2022, the Montana 13th District Court granted the injunction, blocking two state laws that hinder Native American participation in the states electoral process. HB 176 and HB 530 are designed to take advantage of the lack of residential mail delivery, poor roads, and inequitable access to election services plaguing Native communities. Such laws are unconstitutional, said De Len. No matter how many times Montana politicians try to pass laws restricting Native Americans, we will fight on behalf of tribes to ensure Native peoples right to vote in Montana is free and fair.

The NARF, ACLU of Montana, American Civil Liberties Union, and Harvard Law Schools Election Law Clinic challenged the laws on behalf of two Native American voting rights organizations and four tribal nations. This injunction ensures that legislation designed to limit who can participate in this democracy will not take effect in 2022, and we will continue to fight to ensure HB 176 and HB 530 never restrict Native peoples right to vote in Montana, said Kelty.

The Montana Secretary of State appealed the 13th Judicial District Court ruling to suspend the April 2022 preliminary injunction that prevented HB 176, which eliminates the same-day registration option for voters, and SB 169, which alters identification needed to register, from taking effect in the current election cycle. The Montana Supreme Court reversed its decision from a month prior on May 17, 2022, allowing the state to eliminate same-day registration and restrict voter ID requirements in 2022.

In July 2022, the Yellowstone County District Court considered the states motion for summary judgment on all counts of all plaintiffs complaints along with a cross motion for summary judgment from some of the non-tribal plaintiffs. While the court granted the plaintiffs cross motion for partial summary judgment, it denied every single one of the Secretary of States motions for summary judgment, finding that contested issues of fact required further consideration.

On August 15, 2022, the Blackfeet Nation, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the Fort Belknap Indian Community, and the Northern Cheyenne Tribe, Western Native Voice, and Montana Native Vote began their trial to protect voting rights. Proceedings took place in Billings, before the Montana 13th Judicial District Court, from August 15-26.

The nine-day trial took place in Yellowstone County, with the Honorable Michael Moses presiding. During testimony, Western Native Voice Executive Director Ronnie Joe Horse explained obstacles in voting for Native peoples. There has been a historical mistrust, specifically with the government. Sometimes, theres wrong information or lack of information, distances to the polls, microaggressions that could happen when you get there, especially in border towns, said Horse.

Horse and other plaintiffs and experts testified how services like ballot collection and election-day registration allow voters to surmount systemic disparities that make voting from Montana reservations difficult. HB 530 and HB 176 severely restricted or outright eliminated these voting options.

The Montana legislature passed the two bills which disenfranchise Native voters on rural reservations purportedly to protect voters from uncontrolled voter fraud and intimidation. Yet during the trial, the Office of the Secretary of State failed to provide evidence of voter fraud or any justification for the need for such restrictive voting laws as HB 530 and HB 176.

Chief Legal Counsel Austin James testified that after finding zero evidence of any recent voter fraud or intimidation in Montana, he had to perform research at the Montana Historical Society to unearth any substantive instances of voter fraud. James finally found one instance in 1887 and a second in 1912.

In a similar case in 2020, *Western Native Voice v. Stapleton*, a Montana court struck down a measure very much like HB 530 as unconstitutional after listening to cold, hard data on its detrimental impact on the Native vote. [Link <https://narf.org/nill/documents/20200925mt-ballot-order.pdf>] The 2020 law was struck down as unconstitutional because restrictions on ballot collection disproportionately harms Native Americans in rural tribal communities. On the stand, HB 530 bill co-sponsor Senator Hertz confessed he had not read the courts opinion on why the previous law violated the constitution, nor completed any research to determine how and if eliminating ballot collection services disenfranchised Native voters in Montana, before drafting the now defunct HB 530.

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The 2021 Montana Legislature enacted two laws that eliminated the very options that allow reservation, rural, and other voters to participate in U.S. elections, said NARF Staff Attorney Jacqueline De Len. In striking down HB 176 and HB 530, the court prevents legislators from greatly limiting who in Montana may vote come November.

Plaintiffs Western Native Voice, Montana Native Vote, the Blackfeet Nation, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the Fort Belknap Indian Community, and the Northern Cheyenne Tribe brought the lawsuit against HB 176 and HB 530. These Plaintiffs were represented by the Native American Rights Fund, American Civil Liberties Union (ACLU), ACLU of

Montana, and Harvard Law Schools Election Law Clinic (ELC).

Once again Tribes and GOTV organizations have been forced to defend the rights of Native voters from laws designed to make it difficult or impossible for Natives in Montana to vote. Passing discriminatory laws did not work then, does not work today, and each time Montana legislators try to limit the rights of Native Americans, we will protect Native rights in court, said De Len.

Please stand with us in protecting Native voting rights! To help communities build a brighter future for all, Native Americans must retain their right to vote. The Native American Rights Fund [protects Native voting rights](#) in Montana and across the country. Donate today to support our nonprofit legal organization.

Learn more about NARFs work to protect Native voting rights at vote.narf.org.

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