

# Native American Rights Fund

## Indigenous Peoples' Rights

<https://www.narf.org/cases/nd-voter-id/>

## Campaign and Advocacy

Consolidated with *Spirit Lake Tribe v. Jaeger*, this case stems from North Dakota's 2013 restrictive voter ID law and was settled in early 2020.

Status: Archived

**On April 24, 2017, North Dakota Governor Doug Burgum signed [House Bill 1369](#). This restrictive voter ID law put North Dakota beyond the norms of voter ID laws and violated the constitutional rights of the states citizens. Just like North Dakotas previous law, which was found unconstitutional by a federal court, this law made it harder for some citizens specifically Native American citizens to exercise their right to vote.**

**Despite a nationwide outcry during the 2018 election cycle, North Dakotas discriminatory voter ID law remained on the books. Finally, in February 2020, the Secretary of State agreed to settle two federal voting rights lawsuits brought by two tribes and several individual voters.**

**On April 24, 2020, the Spirit Lake Nation and Standing Rock Sioux Tribe filed a binding agreement with the state of North Dakota. The agreement is enforceable by court order and will provide essential safeguards to protect Native Americans right to vote, easing the financial and logistical burdens that North Dakotas voter ID law placed on tribes and individuals.**

The Native American Rights Fund (NARF) and the Campaign Legal Center (CLC) represented the [two tribes in their legal challenge, \*Spirit Lake Tribe v. Jaeger\*](#), which was consolidated with the *Brakebill v. Jaeger* case. The two lawsuits stem from the restrictive voter ID law enacted in 2013. Collectively, the two tribes have over 7,000 residents of voting age that will benefit from the consent decree, which will be in force for the statewide primary election on June 9.

For the last four years, we have fought hard to protect the voice of Native voters in North Dakota. The ability to vote should never depend on home ownership or whether the government has assigned your home an address, said NARF [Staff Attorney Matthew Campbell](#). We are relieved that North Dakota has recognized the need to hear all of its citizens voices, and we commend the state for taking these steps to ensure that Native American voters are able participate in the political process.

One of its strongest protections in the proposed consent decree is a provision that allows Native American voters who do not have or do not know their residential street address to locate their residence on a map at the polls or when applying for an absentee ballot, be provided with their address by county officials, and have their ballots counted.

North Dakotas agreement with the two tribes will ensure that tribal IDs and tribally designated street addresses are accepted as valid. It also cements commitments made by state officials in February to seek reimbursement of the tribes expenses in producing voter IDs and to coordinate with the Department of Transportation to visit reservations prior to each election to provide access to state-issued IDs at no cost.

[\[Click here to read a joint statement on the settlement by North Dakota Secretary of State Al Jaeger, Spirit Lake Nation, and Standing Rock Sioux Tribe\]](#)

In the wake of the district courts denial of the States motion to dismiss, the Secretary of State has agreed to settle two federal voting rights lawsuits brought by two Native American Tribes and several individual voters over North Dakotas voter ID law.

The law requires voters to present identification listing their residential street address a substantial hurdle for many Native Americans living on reservations, because the state has failed to assign residential street addresses to homes on tribal reservations.

In January 2016, in *Brakebill, et al. v. Jaeger*, eight Native Americans, represented by the Native American Rights Fund (NARF), Tom Dickson, and Rich de Bodo filed suit to block the North Dakota voter ID law, which disenfranchised Native American voters and violated both state and federal constitutions as well as the Voting Rights Act.

On October 30, 2018, NARF, Campaign Legal Center (CLC), Robins Kaplan LLP, and Cohen Milstein Sellers and Toll PLLC filed [a separate lawsuit on behalf of the Spirit Lake Tribe and six individual plaintiffs to ensure that eligible Native American voters residing on reservations in North Dakota would be able to cast a ballot](#) in the 2018 midterm elections and in all future elections. The Standing Rock Sioux Tribe, with approximately 5,868 residents of voting-age that could be affected by the law, joined the Spirit Lake case in early 2019.

NARF [Staff Attorney Matthew Campbell](#) commented on the agreement, It has always been our goal to ensure that every native person in North Dakota has an equal opportunity to vote, and we have achieved that today. We thank the Spirit Lake Nation, Standing Rock Sioux Tribe, and the individual native voters that stood up for the right to vote.

Facing a trial date in the *Spirit Lake* case in May of this year, the Secretary of State announced an emergency rulemaking last week in an

attempt to address some of the issues raised by the lawsuit. At an in-person mediation at the North Dakota capitol on February 6, 2020 with representatives from the Spirit Lake Nation and attorneys from CLC and NARF, the Secretary agreed to take additional steps to ensure that eligible Native American voters are not disenfranchised due to the restrictive voter ID law.

Because of the states broken addressing system, many Native Americans living on reservations do not have or do not know their residential addresses, and are therefore unable to comply with the North Dakota voter ID law. During the 2018 election, the Spirit Lake Nation and the Standing Rock Sioux tribe expended substantial resources to ensure that their tribal members would have the identification necessary to vote, including by shouldering the burden of identifying and providing residential street addresses for their members.

The unique burdens faced by Native Americans in North Dakota including a severe housing shortage mean that tribal members are much more likely to have moved in the intervening time, or to be homeless or precariously housed. As a result, determining members residential addresses and providing them with the documentation necessary to vote is an ongoing effort that requires substantial resources.

In addition to the previously announced rulemaking, which requires the state to recognize tribal IDs and supplemental documentation issued to tribal members, the Secretary has agreed to enter into a binding consent decree, enforced by a federal court order, which will ensure that Native American voters who do not have or do not know their residential street address are able to vote.

The Secretary of State also agreed to work with the Department of Transportation to develop and implement a program with tribal governments to distribute free non-driver photo IDs on every reservation statewide within 30 days of future statewide elections.

In the 2020 election, Native American voters will have the opportunity to mark their residence on a map, a process that is commonly used by voters in other states. The burden will then shift to the state to verify the residential street addresses for these voters, to provide that information to the voter and the tribe, and to ensure those voters ballots are counted.

The court-ordered consent decree will include details about what the state must do to educate the public and train poll workers on the new procedures, as well as measures designed to enable the Tribes to ensure the state is complying with its obligations under the agreement.

(See the full *Right to Vote* film at [publicsquaremedia.org/right-to-vote/](https://publicsquaremedia.org/right-to-vote/))

Today, a divided panel of judges from the [U.S. Court of Appeals for the Eighth Circuit vacated a lower courts injunction](#), which was put in place to protect Native American and other voters in North Dakota. The lower court had barred the enforcement of North Dakotas voter ID law because it found it was discriminatory and unconstitutional. The Eighth Circuit acknowledged that Native American voters may be disenfranchised but found that the lower courts injunction was too broad. Disappointingly, this weeks order from the Eighth Circuit again allows North Dakota to continue using the discriminatory new law, providing no relief to disenfranchised Native voters.

NARF [Staff Attorney Matthew Campbell](#) stated We must protect the integrity of our voting system and ensure that all eligible voters (regardless of income, housing, or place of residence) have the freedom to vote. Every persons voice must be heard. We will fight to ensure the voices of Americansand specifically first Americansare counted even if they do not have the luxury of a permanent home. Rules that inhibit an individuals freedom to vote are a threat to our democratic ideals. We will continue to stand strong against these anti-democratic attacks.

On October 30, 2018, NARF, Campaign Legal Center, Robins Kaplan LLP, and Cohen Milstein Sellers and Toll PLLC filed a separate but related lawsuit on behalf of the Spirit Lake Tribe and six individual plaintiffs to ensure that eligible Native American voters residing on reservations in North Dakota will be able to cast a ballot in the 2018 midterm elections and in all future elections. [Read more about the Spirit Lake Tribe v. Jaeger case.](#)

NARF is working in conjunction with the Spirit Lake Tribe, Standing Rock Sioux Tribe, Turtle Mountain Band of Chippewa Indians, and the Three Affiliated Tribes (MHA), as well as community organizations Four Directions and Western Native Voice, to ensure that tribal members living in North Dakota who come to the polls on Election Day will be provided voter identification free of charge. [Read the related fact sheet and statement from the tribes.](#)

On October 9, the U.S. Supreme Court denied NARFs emergency application to stop the State of North Dakota from implementing a

discriminatory voter ID law. After the District Court found the law had a disproportionate and discriminatory effect on Native voters, the Eighth Circuit issued an opinion overturning the Court-ordered relief. In so doing, the Eighth Circuit changed the identification laws on the eve of the election and after early voting already had begun. The majority of Supreme Court justices decided to allow the Eighth Circuit decision to stand. However, Justices Ginsburg and Kagan noted in their dissent that:

The risk of voter confusion appears severe here because the injunction against requiring residential-address identification was in force during the primary election and because the Secretary of States website announced for months the ID requirements as they existed under that injunction.

Now, voters in North Dakota may find when they go to the polls in November that the voter ID that they used in the primary just a few months earlier is no longer accepted because it does not include their current residential address. In this case, Native American voters will be especially affected because they often lack residential street addresses because their homes *do not have addresses on them* by no fault of their own.

According to NARF [Staff Attorney Jacqueline De Len](#), Access to voting should not be dependent on whether one lives in a city or on a reservation. The District Court in North Dakota has found this voter identification law to be discriminatory; nothing in the law has changed since that finding. North Dakota Native American voters will now have to vote under a system that unfairly burdens them more than other voters. We will continue to fight this discriminatory law.

With the Supreme Court decision, and as we head into an election, North Dakota is able to enact a voter identification law that will take away the opportunity to vote for thousands of Native American United States citizens. NARF will continue to fight this law and invites any North Dakotan Native American who encounters problems voting to contact us at [vote@narf.org](mailto:vote@narf.org).

On September 27, NARF, on behalf of its clients, a group of Native American voters in North Dakota, filed an emergency appeal to the United States Supreme Court. They are asking the court to stay a recent Eighth Circuit decision that allows the State of North Dakota to impose new voter identification and residential address requirements in the upcoming election, even though early voting already has begun. Earlier this week, a divided panel of judges from the U.S. Court of Appeals for the Eighth Circuit removed a lower courts order, which was put in to place in April of this year to protect Native American and other voters in North Dakota. The order barred the enforcement of a voter ID law that the District Court identified as discriminatory and unconstitutional. This weeks order from the Eighth Circuit allows North Dakota to begin using the discriminatory new law in the upcoming election. It not only changed the rules of the election **after early voting had begun**, it created a situation where several thousand people in North Dakota, who are qualified to vote in North Dakota, will be unable to vote in this years election simply because they do not have a residential address or because they lack the documentation and/or funds to obtain the required voter identification.

NARF [Executive Director John Echohawk](#) stated, Having a fixed residential street address and being able to pay fees for an ID are not related to an individuals right to vote. This litigation has been going on since 2016 and the facts are clear: thousands of Native American (and non-Native) voters lack an address or a qualifying voter ID under the new law. With the Court of Appeals decision, these voters have lost their ability to vote. And changing the rules of an election, rules which have been in place since April, after early voting already has begun, will do nothing but cause voter confusion and harm to the democratic process. We are calling on the U.S. Supreme Court to protect the voters of North Dakota and stop the state from disenfranchising thousands of Native American voters on the eve of this years election.

In April 2018, Judge Hovland of the U.S. District Court of North Dakota identified sections of the recently passed North Dakota voter ID law as a clear legal obstacle inhibiting the opportunity to vote. He found the voter ID law to have a discriminatory impact and ordered the state to allow a more equitable set of voter IDs. (Read more about that order below.)

Following Judge Hovlands order, the State of North Dakota filed an appeal to the United States Court of Appeals for the Eighth Circuit with the hopes of keeping their voter id law in effect regardless of its discriminatory effects. On September 10, 2018, NARF attorneys and Elvis Norquay, one of the plaintiffs affected by the law, attended a special session of hearings at the Eighth Circuit Court of Appeals. A three-judge panel heard arguments from the two sides and will decide whether to keep the district courts order in effect for the upcoming election or allow the continued use of the discriminatory voter id law.

On June 8, 2018, the U.S. Court of Appeals, Eighth Circuit, issued an order denying the State of North Dakotas request to stay the U.S. District Courts injunction in *Brakebill, et al. v. Jaeger*. In the case, several Native Americans living in North Dakota sued the state for its discriminatory voter ID law, which disproportionately kept Native Americans from voting. In April, citing the public interest in protecting the most cherished right to vote for thousands of Native Americans who currently lack a qualifying ID and cannot obtain one, Judge Hovland of the U.S. District Court, North Dakota, blocked the enforcement of the voter ID law and expanded the valid forms of voter identification while the case is under review.

Subsequently, the State of North Dakota asked the Court of Appeals to stay Judge Hovlands order and allow the discriminatory voter ID law to continue to be used while the case continues. Todays order denied that request.

Native American Rights Fund Staff Attorney Matthew Campbell, lead attorney on the case, commended the courts decision, Todays order by the Eighth Circuit Court of Appeals ensures that Judge Hovlands order remains in place and that all qualified voters will be able to vote in the primary election next Tuesday. Changing the rules on the eve of the election would only have sowed confusion about what rules apply. The Eighth Circuit saw that and upheld Judge Hovlands order.

On April 3, 2018, plaintiffs achieved a substantial victory when Judge Daniel L. Hovland of the U.S. District Court of North Dakota [filed an order in \*Brakebill, et al. v. Jaeger\* that significantly barred the enforcement of North Dakotas recently passed voter ID law \(House Bill 1369\)](#). Hovland cites the public interest in protecting the most cherished right to vote for thousands of Native Americans who currently lack a qualifying ID and cannot obtain one and prohibits the enforcement of discriminatory parts of NDs voter ID law. Additionally, the order allows P.O. box addresses prevalent in Native American communities to be used to prove residency, and dramatically expands the types of ID available to voters at the polls to include any document, letter, writing, enrollment card, or other form of tribal identification issued by a tribal authority to be used in lieu of ID cards, until final resolution of the case.

Judge Hovland found The State has acknowledged that Native American communities often lack residential street addresses . . . Nevertheless, **under current State law an individual who does not have a current residential street address will never be qualified to vote.** This is a clear legal obstacle inhibiting the opportunity to vote. (emphasis in original)

According to NARF Voting Rights Fellow Jacqueline De Len, one of the attorneys representing the plaintiffs in the case, Judge Hovland got it. He detailed the unfair nature of the states law and again recognized that the law created significant and unnecessary voting obstacles for Native voters in North Dakota. Laws such as these are a direct threat to the functioning of our democracy.

Importantly, Judge Hovlands order also expands the valid forms of voter identification to include documents issued by tribal governments, the Bureau of Indian Affairs, and other tribal agencies. This distinction is significant because putting that control back in the hands of tribal organizations allows tribal governments to ensure that their citizens do not continue to be disenfranchised, explains lead attorney on the case, NARF Staff Attorney Matthew Campbell.

On December 13, 2017, the Native American Rights Fund brought action against the state of North Dakota seeking to overturn North Dakotas discriminatory voter ID law. Before that, in 2016, NARF fought on behalf of Native American plaintiffs to enjoin enforcement of North Dakotas previous voter ID law, which also disproportionately prevented Native Americans from exercising their right to vote. In that action, Judge Hovland found [i]t is undisputed that the more severe conditions in which Native Americans live translates to disproportionate burdens when it comes to complying with the new voter ID laws. Read more about these cases below.

Although the case will continue, with this order, the judge has prevented the discriminatory voter ID law from disenfranchising Native voters in significant part until final determination is made in the matter. As Judge Hovland explains in his order, common sense and a sense of fairness can easily remedy the above-identified problems to ensure that all residents of North Dakota, including the homeless as well as those who live on the reservations, will have an equal and meaningful opportunity to vote.

NARF will continue to fight against these unconstitutional laws that insult the very fiber of our democracy. The government should not create unnecessary obstacles for qualified citizens to vote. And we, as a nation, must fight to ensure that every American is given the opportunity to vote in every election.

The plaintiffs are represented by the Native American Rights Fund, Richard de Bodo of Morgan, Lewis & Bockius LLP, and Tom Dickson of the Dickson Law Office.

On December 13, 2017, the Native American Rights Fund again brought action against the state of North Dakota seeking to overturn North Dakotas newest discriminatory voter ID law. NARF [filed an amended complaint](#) on behalf of Native American Plaintiffs impacted by the discriminatory law. Last year, NARF fought on behalf of Native American Plaintiffs to enjoin enforcement of North Dakotas voter ID law, which disproportionately prevented Native Americans from exercising their right to vote. In that action, Judge Daniel L. Hovland of the U.S. District Court for the District of North Dakota found [i]t is undisputed that the more severe conditions in which Native Americans live translates to disproportionate burdens when it comes to complying with the new voter ID laws. Judge Hovland, therefore, held the law likely violated the U.S. Constitution because it disproportionately kept Native Americans from voting and required the state to provide a fail-safe mechanism for those without IDs in the 2016 general election. Judge Hovland wrote, it is clear that a safety net is needed for those voters who simply cannot obtain a qualifying voter ID with reasonable effort.

In light of this defeat, the legislature amended their law earlier this year, but the new law failed to include meaningful protections for voters rights. In December 2017, Plaintiffs Richard Brakebill, Dorothy Herman, Della Merrick, Elvis Norquay, Ray Norquay, and Lucille Vivier amended their suit, which now challenges this recently enacted voter ID law, HB 1369. HB 1369 ignores the problems Judge Hovland identified in his previous opinion and perpetuates voter suppression tactics by requiring every voter to possess a narrowly prescribed form of ID. It also lacks the necessary fail-safe provisions that would ensure that qualified voters are not denied their right to vote. The Legislature passed these provisions despite knowing they would suppress the Native American vote. This law was implemented in order to deny qualified Native American voters access to the ballot box. The right to vote is a fundamental right in any democracy, and the Native American Rights Fund is committed to ensuring that our democratic values are protected. As NARF [Staff Attorney Matt Campbell](#) explains, voting is a fundamental, constitutionally protected right, and we intend to protect that right. The North Dakota legislature was fully aware the impact this law would have on the Native population in North Dakota. Yet, they passed the law anyway.

Fighting voter suppression has never been more timely or important. This year, North Dakota reduced the hours of the Drivers License Sitewhere voter IDs can be obtainedthat is closest to Plaintiffs. That Site now operates the most restrictive hours of any location; it is open for less than five hours one day a month. There is not a single Drivers License Site on an Indian reservation in North Dakota. Native Americans on the Lake Traverse Reservation, Fort Berthold Reservation, and Standing Rock Reservations have to travel an average of almost an hour just to access a Drivers License Site, some of which are only open for very limited hours.

On April 24, 2017, North Dakota Governor Doug Burgum signed [House Bill 1369](#). This restrictive voter ID law continues to put North Dakota beyond the norms of voter ID laws and violates the constitutional rights of the states citizens. Just like North Dakotas previous law, which was found unconstitutional by a federal court last year, this law makes it harder for some citizens specifically Native American citizensto exercise their right to vote.

The North Dakota legislature had an opportunity to address the real problem with voting in the statevoter disenfranchisement. Instead, it continues to chase the ghosts of illegal voters, an imagined problem that doesnt really exist. In the course of litigation and in the three consecutive legislative sessions where voting bills have been considered, there has simply been no demonstration that people are casting illegal ballots, said NARF [Staff Attorney Joel West Williams](#).

On April 24, 2017, Governor Doug Burgum signed a new voter ID bill into law. Some legislators supporting this new voter ID bill have described it as a way to cure the problems identified by the federal court. H.B. 1369, however, [does not contain any fail-safe mechanisms like the one required by the court](#). The newly minted law completely ignores Judge Hovlands directive. H.B. 1369 allows for provisional balloting, but it requires each voter to present a qualifying ID to an election official within six days in order for the vote to be counted. In this way, the law makes an allowance for voters who left their IDs at home, but it does not address the problem of voters who, although



qualified to vote, cannot obtain one of the narrow set of permitted IDs because of financial or other circumstances. Those qualified electors are not allowed to vote.

Courts recognize that without a safety net, these laws disenfranchise voters, Campbell added, and eliminating the votes of poor and minority voters does not ensure election integrity. The North Dakota Legislatures continued failure to provide any safety net is a patent Constitutional violation. The court here already said so, and its astounding that the lawmakers didnt listen.

NARF is preparing to challenge the new law in court.

North Dakota has had a voter ID law since 2004. For years, the law functioned without issue. During that time, the law required voters to show identification, but allowed a voter without ID to cast a ballot if either:

In 2013, the North Dakota legislature greatly narrowed the law by restricting the acceptable forms of ID and eliminating the voucher and affidavit fail-safes. The following session, the legislature amended the law again to even further restrict the forms of acceptable ID.

In January 2016, eight Native Americans filed suit to block the voter ID law, alleging that it disenfranchised Native American voters and violated both state and federal constitutions as well as the Voting Rights Act.

The voter ID law required qualified electors to submit one of four forms of ID, which must contain name, residential address, and date of birth. While North Dakota claims that tribal IDs qualify under its law, most tribal IDs do not have a residential address printed on them. This is due, in part, to the fact that the U.S. postal service does not provide residential delivery in these rural Indian communities. Thus, most tribal members use a PO Box. If a tribal ID has an address, it is typically the PO Box address, which does not satisfy North Dakotas restrictive voter ID law. In both the primary and general election in 2014, many qualified North Dakota tribal electors were disenfranchised because they only had a tribal ID.

As a veteran who served this country, I know how important it is to vote, explained plaintiff Richard Brakebill. But I wasnt permitted to vote in 2014 because my address wasnt listed on my ID. That was very upsetting. Elvis Norquay, another plaintiff who is a veteran added: I felt bad about being turned away from the polls at the last election. It is my right to vote for whomever I want. I shouldnt be turned away just because I didnt have my address listed.

According to one study, more than 72,000 voting-eligible North Dakota citizens lack a qualifying ID. (That is in a total population around 750,000). Native Americans are more than twice as likely as non-Native Americans to lack a qualifying ID. Long distances, lack of transportation, and limited operating hours at state driver licensing centers closest to Native American populations, make it more burdensome for Native Americans to obtain a state ID. Obtaining the needed documents also requires paying fees, which is more difficult for Native Americans because of economic disparities. On some reservations the unemployment rate tops 70% and incomes of Native Americans are, on average, half of what non-Natives earn in North Dakota. Being poor should not prohibit someone from voting.

Those that argue that people must present ID to buy alcohol or cigarettes miss a crucial point. Voting is a fundamental, constitutionally protected right. In order for the government to burden that fundamental right, it needs to demonstrate a compelling reason. Here, the Secretary of State and the legislature have done a lot of speculation, but havent demonstrated why its necessary to take action that disenfranchises Native American voters, observed NARF [Staff Attorney Matthew Campbell](#).

No. In making the changes, the legislature cited the need to eliminate voter fraud, but illegal voting has never been a problem in the state. In fact, Secretary of State Alvin Jaeger declared in a 2006 letter, [D]uring my fourteen years as Secretary of State and the states chief election officer, my office has not referred any cases of voter fraud to the United States Attorney, the North Dakota Attorney General, or to local prosecutors. We havent had any to refer.

Months before the November 2016 election, Judge Hovland of the U.S. District Court, ND, found the law violated the U.S. Constitution and [required the state to provide a fail-safe mechanism for the 2016 general election](#). Judge Daniel L. Hovland wrote, it is clear that a safety net is needed for those voters who simply cannot obtain a qualifying voter ID with reasonable effort. Accordingly, the court required North Dakota to provide a fail-safe and permit voters without a qualifying ID to vote if they signed an affidavit swearing to their qualifications.

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