



November 3, 2018

Al Jaeger  
North Dakota Secretary of State  
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Re: Voting inconsistencies in Sioux and Rolette Counties

SENT VIA EMAIL

Dear Secretary Jaeger:

The Native American Rights Fund and the Campaign Legal Center have recently become aware of several discrepancies in how counties in North Dakota are applying the residential address requirement for voting, including the Rolette County auditor's plan to require voters with "invalid" addresses to vote a set-aside ballot and the Sioux County auditor's practice of requiring voters to update stale DOT database information prior to voting. This raises additional concerns beyond those currently addressed in the *Spirit Lake Tribe v. Jaeger* litigation. To the extent counties have adopted standards for accepting or rejecting a person's valid identification for voting purposes that vary either from county to county, or within a particular county, the residential address scheme as implemented by the state is in violation of the Equal Protection Clause of the Fourteenth Amendment and the Civil Rights Act of 1964. We ask that you issue guidance to county auditors by **noon on Monday, November 5** to prevent further violations of law.

Counties and other political subdivisions within a state must apply uniform standards for determining whether an individual is qualified to cast a ballot. *See Bush v. Gore*, 531 U.S. 98, 104-05 (2000) ("Having once granted the right to vote on equal terms, The State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."). Allowing counties to apply different standards on an arbitrary and disparate basis is "inconsistent with the minimum procedures necessary to protect the fundamental right of each voter" to cast a ballot. *Id.* at 109.

Further, pursuant to the Civil Rights Act of 1964, a county cannot apply standards, practices, or procedures for establishing the qualifications of any individual voter or category of voters, that are different from those procedures applied to any other individual voter or category of voters in the county. 52 U.S.C. § 10101(a)(2)(A).

Yet, several counties in North Dakota have recently made conflicting public statements as to how they are implementing the residential address requirement for the November 6, 2018 election. When asked how poll workers would respond to a voter who presented an acceptable form of identification with an address that cannot be found in the state's system, County Auditors in Eddy, Mercer, McLean, and Sioux County stated that the voter would be entitled to vote a regular ballot.<sup>1</sup> This is what is required by state law. The County Auditor in Rolette County, however, stated that a voter who presented an address that appeared to be "invalid" according to the state's system would instead be offered a set-aside ballot. This is particularly concerning given that Rolette County purports to have only recently finishing assigning addresses,<sup>2</sup> and the responsible county officials have acknowledged to voters that Rolette County's address assignment is inconsistent and duplicative, as evidenced by the filings in the *Spirit Lake Tribe v. Jaeger* litigation.

In addition, we have become aware of at least two instances where the Sioux County Auditor's Office initially refused to permit qualified electors to vote an in-person absentee ballot, despite the fact that both voters presented a valid form of identification that listed their name, date of birth, and current residential address.

In the first instance, a woman was told that she would not be able to vote unless she updated her address on the DOT website. The voter tried to update her address for almost forty minutes, and was unsuccessful. The elections official at the Sioux County Auditor's office continued to tell her she would not be able to vote, until a second official resolved the problem by "transferring" the voter's address from her absentee ballot application into the database being used by the Auditor's Office.

In the second instance, a man with a newly issued tribal ID listing his name, birth date, and residential address in the dorms at Sitting Bull College was informed that he could not vote unless he presented supplemental documentary proof of his residence. He was forced to leave the auditor's office and obtain a letter on tribal letterhead affirming his residence before he could return and cast his ballot.

Both of these voters had previously obtained DOT-issued identification when they were living at a different address, and did not update their address with DOT when they moved. Both voters subsequently obtained tribal IDs that list their current residential address, and presented their tribal IDs to election officials when requesting their absentee ballots.

It appears that the Sioux County Auditor has taken the position that the address listed for a particular voter in the DOT database constitutes their current residential address for purposes of voting, even where a voter has a more recent form of

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<sup>1</sup> Carrie Levine, *Federal judge won't stay North Dakota Voter ID law Native Americans say hurts them*, Center for Public Integrity, updated November 2, 2018, <https://www.publicintegrity.org/2018/11/01/22427/federal-judge-won-t-stay-north-dakota-voter-id-law-native-americans-say-hurts-them>.

<sup>2</sup> James MacPherson, *ND Officials Tell Tribes of Election Requirements*, Rapid City Journal (Oct 2, 2018), [https://rapidcityjournal.com/news/state-and-regional/nd-officials-tell-tribes-of-election-requirements/article\\_d62a5623-cf66-5211-b5f3-4dc2210ac550.html](https://rapidcityjournal.com/news/state-and-regional/nd-officials-tell-tribes-of-election-requirements/article_d62a5623-cf66-5211-b5f3-4dc2210ac550.html).

identification listing the address at which the voter actually resides. As such, voters who present identification listing a different address will be required to update their address with the DOT or provide supplementary proof of residence before voting.

These voters' experience gives rise to the concern that similar impediments will be imposed upon other voters who have moved since the last election, have not updated their address with the DOT, and have since obtained a tribal ID with their current residential street address. To our knowledge, there is no legal requirement that a voter update their DOT issued address in order to vote. If election officials are requiring voters to update a state database with proof of their qualifications for voting in advance of casting a ballot, they are no longer enforcing a voter identification requirement, but instead are administering a de facto (and unannounced) voter registration requirement, which threatens to disenfranchise unknown numbers of voters.

The public statements by County Auditors and the experience of voters in Sioux County indicate that individual counties have adopted different standards for determining whether and how a person who presents an acceptable form of identification listing their name, date of birth, and current residential address will be allowed to cast their ballot. In addition, it appears that Sioux County has adopted different standards for different voters within the county. These differing procedures as applied to both voters in different counties and voters within Sioux County violate the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment.

As Secretary of State, you are "the supervisor of elections," responsible for providing "uniform training materials" and ensuring "uniform voting opportunities throughout the state." N.D. Cent. Code §§ 16.1.1-01-01(1), (2)(a), & (3). Immediate guidance is required to ensure that further violations of the law do not occur. The undersigned therefore request that your office provide direction to all counties by no later than noon on Monday, November 5, 2018 that voters who present an acceptable form of identification listing a current residential address must be allowed to vote a regular ballot, and that such voters may not be required to take additional actions before so doing.

Sincerely,

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