



December 6, 2021

The Honorable Deb Haaland
Secretary of the Department of the Interior
United States Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Re: Implementation of Executive Order 14019

Dear Madam Secretary:

The Campaign Legal Center (CLC) writes to commend your commitment to take action under Executive Order 14019, the Executive Order Promoting Access to Voting, and make recommendations on how the Department can most effectively and expansively achieve the Executive Order's goals. Exec. Order No. 14019, 86 Fed. Reg. 13623 (Mar. 7, 2021) ("EO 14019").

The Campaign Legal Center is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. As a part of our mission, CLC works to protect Native people's equal opportunity to participate effectively in nontribal elections. Amongst other advocacy, CLC represented the Spirit Lake Nation, Standing Rock Sioux Tribe, and various tribal citizens in a lawsuit challenging North Dakota's discriminatory voter identification law that resulted in a consent decree requiring the State to accept tribal IDs as valid voter ID. Likewise, in 2020-21, CLC represented the Pascua Yaqui Tribe and reached a settlement agreement requiring the reinstatement of an early voting location on the Tribe's reservation. Through this work, we have gained expertise on many of the barriers Native people face to participation in nontribal political processes.

As you know, EO 14019 was issued on March 7, 2021, and its aim is to ensure that federal agencies leverage their power, direct their programming, and adopt positions to promote and support civic engagement. EO 14019 at § 1. The Executive Order directs all federal agencies, including the Department of the Interior, to "evaluate ways in which the agency can . . . promote voter registration and voter participation," and within 200 days, publish a strategic plan detailing the steps the agency will take to accomplish these goals. *Id.* at § 3(a)-(b).

The Executive Order places a particular emphasis on the importance of ensuring voting access in Native communities. In Section 10, EO 14019 establishes a Native American Voting Rights Steering Group, comprised of various agency heads, including the Secretary of the Interior. *Id.* at § 10(a)-(b). The Steering Group, with the support of the Department of the Interior, is directed to consult with Tribal Nations and Native leaders, *id.* at § 10(c), (e), in order to “study the best practices for protecting voting rights of Native Americans,” and produce a report within one year detailing its recommendations. *Id.* at § 10(d).

On September 28, 2021, 212 days after President Biden signed EO 14019, the White House released a fact sheet summarizing some of the actions agencies will take pursuant to the Executive Order. The White House, Fact Sheet: Biden Administration Promotes Voter Participation with New Agency Steps (Oct. 18, 2021). The Department of the Interior committed to “disseminat[ing] information on registering and voting, including through onsite events, at schools operated by the Bureau of Indian Education and Tribal Colleges and Universities[.]” *Id.* In addition to providing voter education, the Department promised to make Tribal Colleges and Universities available as voter registration agencies pursuant to Section 7 of the National Voter Registration Act. To our knowledge, however, no further details, plans, or timelines have yet been made public.

CLC recognizes and commends the Department of the Interior’s commitment to protecting voting rights of Native Americans and taking action under EO 14019. This Letter details specific and additional action the Department should take pursuant to EO 14019’s directives in order to expand equitable access to the ballot for Native people.

I. Barriers to Voting for Native Americans

As you know, Native people face substantial barriers to effective participation in the nontribal political process. Historically, Indigenous peoples have been excluded from the US polity. In fact, despite the ratification of the Fourteenth Amendment in 1868, Native people did not become United States citizens until 1924,¹ with the passage of the Indian Citizenship Act of 1924.² Even after Native people attained US citizenship, they did not enjoy its full privileges: states and localities continued to disenfranchise Native Americans, including through laws directly targeting tribal citizens. States passed laws denying the vote to “Indians not taxed” or on account of tribal citizens’ alleged guardianship status and required tribal citizens to sever all tribal relations prior to casting a ballot; other laws determined that residence on a reservation located within a state’s borders was insufficient to meet the residency requirement for voter

¹ See *Elk v. Wilkins*, 112 U.S. 94 (1884) (holding that the Fourteenth Amendment’s grant of birthright citizenship did not extend to Native Americans, including an individual who had relinquished his tribal citizenship).

² Indian Citizenship Act of 1924, Pub. L. 68-175, 43 Stat. 253 (1924). Some Native people became citizens before this time through piecemeal legislation that conveyed citizenship in specific contexts, including certain treaties, the Allotment Acts, a law granting citizenship to Native women married to U.S. citizen men, and as veterans of World War I.

eligibility. Discriminatory devices like poll taxes and literacy tests, which were used to block access to the ballot for Black voters and other voters of color, similarly targeted Native voters. Many of these restrictions were not lifted until the passage of the Voting Rights Act of 1965 and its 1975 amendments extending protections to Indigenous peoples and other language minorities.

Today, despite decades of advocacy and litigation by Native Nations and Indigenous organizers, Native people continue to face unique and substantial barriers to the vote.³ Some of these barriers include:

- Inaccessibility of in-person voting due to distant placement of in-person voting locations, compounded by a lack of access to reliable transportation and roadways that become unusable in November's winter weather.
- Unavailability of mail voting due to the lack of residential mail services or of numbered street addresses on tribal lands and in rural Native communities.
- Lack of post offices in or near tribal communities; laws that ban ballot collection and conveyance, an important method used by Indigenous voters to return voted mail ballots.
- Failures of states and localities to comply with the language assistance provisions of the Voting Rights Act and lax enforcement by federal authorities.
- Inability to register to vote due to inaccessible and far-away in-person voter registration locations and lack of internet access, rendering online voter registration unavailable.
- Voter intimidation by non-Native poll workers and voters, especially at polling places located in border towns outside of tribal lands.
- State laws that directly target Native voters, including those that fail to recognize tribal identification cards as valid voter ID.
- Failures by state and local governments to engage in robust government-to-government consultation with tribal governments and foster positive relationships with Tribes and their citizens, leading to frustration and distrust and making government services, including voter registration and in-person voting, less accessible.
- Congressional, state, and local district maps or at-large election systems that undermine Indigenous political representation through vote dilution, racial gerrymandering, and malapportionment.
- Inadequate data collection in the American Community Survey and 2020 Decennial Census, rendering the federal legal protections that rely on this data, including the Voting Rights Act, less robust.

³ *See, e.g.*, JAMES THOMAS TUCKER, JACQUELINE DE LEÓN, AND DAN MCCOOL, NATIVE AMERICAN RIGHTS FUND, OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICAN VOTERS (2020), https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf; INDIAN LEGAL CLINIC, SANDRA DAY O'CONNOR COLLEGE OF LAW, ARIZONA STATE UNIVERSITY, ARIZONA NATIVE VOTE – ELECTION PROTECTION PROJECT 2016 ELECTION REPORT (Mar. 6, 2018), <https://law.asu.edu/sites/default/files/pdf/2016-native-vote-election-protection-report.pdf>.

The impact of these barriers on Native people’s inclusion in the nontribal political process is significant. Although Native Americans make up 2 percent of the United States population, they account for only 0.2 percent of elected officials across all levels of nontribal government nationwide.⁴ Voter registration and turnout are also affected: According to the National Congress of American Indians, there are more than 1 million Native Americans who are eligible to vote but are not registered and voter turnout is lower amongst Native Americans than any other racial and ethnic group.⁵ Yet because there are large concentrations of Native populations in key areas,⁶ the Native vote holds significant potential in local, state, and national races as long as Native Americans have access to the ballot box and their vote is not undermined through discriminatory districting schemes.

II. Recommendations

We appreciate that the Department of the Interior has already made a commitment to act pursuant to EO 14019. In particular, hosting in-person voter education events at schools operated by the Bureau of Indian Education and at Tribal Colleges and Universities will help to increase voter awareness and registration as well as civic participation amongst Native youth and young adults. However, as an agency that has the unique position of working closely in consultation with tribal governments across the United States, the Department of the Interior must take further action in order to achieve the Administration’s goal of increasing access to the ballot for all Native voters.

Specifically, the Department should take the following actions:

- Establish a voter registration and education program in coordination with tribal governments in order to facilitate voter registration drives on tribal lands and voter education of tribal citizens;
- Work with tribal and state governments to offer voter registration opportunities for American Indians and Alaska Natives when accessing the Financial Assistance and Social Services Program of the Bureau of Indian Affairs;
- Educate state and local governments on the importance of robust consultation with tribal governments on issues impacting Native voters;
- Deliver a barriers and best practices memorandum to state and local governments describing the common barriers Native voters face and effective ways to address those barriers;

⁴ NATIVE AMERICAN RIGHTS FUND, *supra* note 3 at 115.

⁵ NATIONAL CONGRESS OF AMERICAN INDIANS, EVERY NATIVE VOTE COUNTS: FAST FACTS (2020), <http://www.nativevote.org/wp-content/uploads/2020/05/2020-Native-Vote-Infographic.pdf>; TOVA ANDREA WANG, DEMOS, ENSURING ACCESS TO THE BALLOT FOR AMERICAN INDIANS & ALASKA NATIVES (Jun. 18, 2012), <https://www.demos.org/research/ensuring-access-ballot-american-indians-alaska-natives>.

⁶ *See* NATIONAL CONGRESS OF AMERICAN INDIANS, *supra* note 5.

- Facilitate coordination between tribal governments and state and local officials to establish ballot pickup and drop-off locations on tribal lands, in tribally-owned buildings, and federal, state, and local agency buildings serving tribal citizens;
- Work with the United States Postal Service to identify and resolve barriers to mail delivery and pickup on tribal lands;
- Distribute information regarding mail voting at voter education events, including the procedure and requirements for requesting and returning a mail ballot;
- Coordinate with tribal governments and other federal agencies, including the Department of Commerce, to gather robust and reliable data on Native American voter registration and turnout rates;
- Coordinate with tribal governments and other federal agencies, including the Department of Commerce, to improve data collection methods in tribal communities to ensure that future American Community Surveys and Decennial Censuses accurately count and capture the characteristics of tribal communities;
- Create and distribute a toolkit for states and localities to provide language assistance services beyond those required under Section 203 of the Voting Rights Act, including language assistance in non-covered languages that are spoken by Indigenous voters located in the state or locality; and
- Conduct voter outreach and education to inform voters about language assistance alternatives to Section 203 protections, including protections under Section 208 of the Voting Rights Act and relevant state law.

Our democracy works best when all eligible voters can participate, but all too often eligible voters sit out elections because of a lack access to registration and voting opportunities. President Biden’s Executive Order provides the Department of the Interior an important opportunity “to expand access to voter registration and accurate election information” and “to ensure that registering to vote and the act of voting be made simple and easy for all those eligible to do so.” EO 14019 at § 1. As an organization that is deeply involved in efforts to ensure equitable access to the ballot across the country, we have worked hard to understand the challenges that Native voters face, and we would welcome the opportunity to meet with you to discuss these recommendations and to work with you to implement the terms of EO 14019 or in any future work your agency does on this topic. If you have any questions, please do not hesitate to reach out to us at nhansen@campaignlegalcenter.org or 202-858-7911. Thank you for your time and consideration of this matter.

Sincerely,

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