



February 2, 2023

Members of the New Mexico State Legislature
House Government, Elections and Indian Affairs Committee

Re: Support HB 4 to Restore Voting Rights to New Mexicans on Parole or Probation and Reduce Barriers for Native Americans

Dear Chair Johnson and Members of the House Government, Elections and Indian Affairs Committee,

We urge you to support House Bill 4 (“HB 4”), the New Mexico Voting Rights Act. This bill contains many provisions that would make voting more accessible and put New Mexico on the vanguard of protecting the sacred right to vote. We write today to discuss two measures in particular: HB 4’s automatic restoration of voting rights after incarceration, and its creation of a Native American Voting Rights Act.

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 that mission, CLC works to ensure that all voters have an equal opportunity to participate in elections. Our Restore Your Vote Campaign helps restore voting rights to people with past convictions by providing direct rights restoration services, empowering community leaders to understand rights restoration laws, and breaking down the false notion that a felony conviction always means you cannot vote. CLC also has significant expertise on many of the barriers Native people face to participation in nontribal political processes, gained through, among other advocacy, representing the Spirit Lake Nation, Standing Rock Sioux Tribe, and various tribal citizens in a lawsuit challenging North Dakota’s discriminatory voter identification law, assisting the Pascua Yaqui Tribe in Arizona to secure a safe and secure early voting location, and advocating for the U.S. Department of the Interior and Housing and Development to take specific steps to improve ballot access for Native Americans.

I. HB 4 Will Restore Voting Rights to Thousands of New Mexicans

HB 4 would restore voting rights to more than 11,000 New Mexicans¹ by ending New Mexico's practice of disenfranchising people on probation and parole, bringing it in line with 21 other states that only strip people of the right to vote while they are incarcerated for a felony.²

We strongly support ending New Mexico's disenfranchisement of people supervised in the community on probation or parole. Research shows that the act of voting can have a meaningful and sustaining positive influence on justice-impacted citizens by making them feel they belong to a community.³ Furthermore, there is evidence to suggest that having the right to vote immediately after incarceration impacts public safety. Individuals in states which continued to restrict the right to vote after incarceration were found to have a higher likelihood of experiencing a subsequent arrest compared to individuals in states who had their voting rights restored post-incarceration.⁴

The right to vote is sacred and foundational; to strip someone of that right is a profound and serious government act. Yet felony disenfranchisement serves no legitimate criminal legal purpose. These laws have no punitive, deterrent, or restorative value. In fact, studies show that disenfranchisement hinders re-entry⁵ and that restoring the right to vote can ease transition back into society.⁶ Despite those empirical facts, felony disenfranchisement laws proliferated around the country in the late 19th and early 20th Centuries and history explains why. These laws were part of an intentional scheme to strip Black Americans of their newly won freedom to vote. True to their design, these laws continue to have a large disproportionate impact on Black folks, Indigenous people, and other communities of color. Black New Mexicans of voting age are 2.9 times more likely than the rest of the population to be disenfranchised; Hispanic New Mexicans are 1.7 times more likely.⁷

¹ The Sentencing Project, *Locked Out 2022: Estimates of People Denied Voting Rights Due to a Felony Conviction* (Oct. 25, 2022), <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>.

² National Conference of State Legislatures, *Felon Voting Rights* (Jan. 25, 2023), <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>.

³ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 205 (2004).

⁴ Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA L.J. 407 (2012).

⁵ Uggen & Manza, *see* note 3.

⁶ Victoria Shineman, *Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government* (Oct. 25, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3272694.

⁷ The Sentencing Project, *New Mexico Should Restore Voting Rights to Over 17,000 Citizens* (Jan. 2023), <https://www.sentencingproject.org/app/uploads/2023/01/New-Mexico-Voting-Rights-for-People-with-Felony-Convictions.pdf>.

In addition to restoring the right to vote to more than 11,000 New Mexicans who are serving probation or parole, HB 4 will create a simple, bright line rule, alleviating *de facto* disenfranchisement. Confusion around voting rights after a felony conviction is rampant, compounded by the patchwork of varying laws across the states, misinformation, and a lack of access to legal information and services. The result is that in states with complex disenfranchisement and re-enfranchisement laws, many people with past convictions wrongly believe they cannot vote even if they are eligible. Stories of people prosecuted for unknowingly voting when they were ineligible exacerbate this misconception and intimidate eligible voters. Simplifying the law can drastically reduce *de facto* disenfranchisement, improving political participation even among citizens who were already eligible to vote, particularly when the change in the law is accompanied by a robust public education effort.

There are thousands of New Mexicans working to put their lives back together while serving probation or parole. They deserve a voice, and should not be excluded from their communities and our democracy.

II. HB 4’s Native American Voting Rights Act Will Address the Significant Barriers Faced by Native Voters

Native people face unique and 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 1868,⁸ Native people did not become United States citizens until 1924, with the passage of the Indian Citizenship Act.⁹ Even after Native people attained US citizenship, they did not enjoy its full privileges in New Mexico: the state and its localities continued to explicitly disenfranchise Native Americans, denying the right to vote to “Indians not taxed” under the state constitution.¹⁰ In fact, **Native Americans could not vote in New Mexico until 1948**, when a three-judge federal court invalidated the constitutional provision.¹¹

⁸ 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).

⁹ 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 specific treaties, the Allotment Acts, a law granting citizenship to Native women married to U.S. citizen men, and as veterans of World War I.

¹⁰ See DANIEL MCCOOL, SUSAN M. OLSON, AND JENNIFER L. ROBINSON, *NATIVE VOTE: AMERICAN INDIANS, THE VOTING RIGHTS ACT, AND THE RIGHT TO VOTE* 10, 13-14 (2007); *Trujillo v. Garley*, Civ. No. 1353 (D.N.M. filed Aug. 11, 1948) (three-judge court).

¹¹ *Id.*

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.¹² 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 often become unusable due to inclement weather.
- Unavailability of mail voting due to the lack of residential mail services or a numbered street address on Tribal Lands and in rural Native communities.
- Lack of post offices, ballot drop boxes, and county services where ballots can be returned in and near Tribal communities.
- Failures of local jurisdictions to provide adequate language materials and services in Indigenous languages.
- 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 fellow voters, especially at polling places located in border towns outside of Tribal Lands.
- Failures by 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.
- Electoral district maps or at-large election systems that undermine Indigenous political representation through vote dilution, racial gerrymandering, and malapportionment.
- Insufficient broadband and cellular coverage on Tribal Lands, making online tools inaccessible for Tribal Members.
- Failure of Congress to enact legislation protecting the freedom to vote for Native Americans.

Unfortunately, these burdens are all too real in New Mexico. In 2021, for example, in a move that was successfully blocked by Native advocates, some county clerks sought to conduct elections entirely by mail, despite the barriers to mail service

¹² See, e.g., WHITE HOUSE, REPORT OF THE INTERAGENCY STEERING GROUP ON NATIVE AMERICAN VOTING RIGHTS (March 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/03/Tribal-Voting-Report-FINAL.pdf>; 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>.

faced by Native voters.¹³ New Mexico also has one of the largest populations of Indigenous language speakers with limited English proficiency, but local jurisdictions routinely fail to provide adequate voting materials in Indigenous languages and deny translation services, in direct violation of the Voting Rights Act.¹⁴ Native voters in New Mexico continue to have their vote diluted by discriminatory electoral districts, including in San Juan County where Navajo Nation recently sued for a violation of Section 2 of the Voting Rights Act.¹⁵

The impact of these barriers on Native people’s inclusion in the nontribal political process is significant. Despite accounting for more than 10 percent of New Mexico’s population, Native Americans are severely underrepresented in the State Legislature and in statewide offices.¹⁶

H.B. 4 Would Alleviate the Burdens on Native Voters.

Because Congress has failed to act to protect the freedom to vote for Native Americans, Native Nations, Indigenous advocates, and the White House have called on state legislatures to step in and enact legislation protecting the right to vote for Native Americans in their states.¹⁷ HB 4 incorporates important provisions from the Native American Voting Rights Act introduced in Congress that would help to address many of these barriers. Amongst other measures. HB 4 would:

- Allow Tribal Nations to request additional early voting locations, polling places, and drop boxes on or near Tribal Lands, and require county clerks to evaluate the distance voters must otherwise travel to cast a ballot when considering the request.
- Prohibit counties from eliminating or consolidating Election Day polling places on Tribal Lands during the same election cycle without written agreement from the Tribe.
- Create a statewide infrastructure for universal Automatic Voter Registration for eligible voters obtaining a driver’s license or other identification at State agencies and allow qualifying Tribal agencies to participate.

¹³ NATIVE AMERICAN RIGHTS FUND, 2021 ADDENDUM TO OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICANS 3 (2021), <https://vote.narf.org/wp-content/uploads/2021/10/obstacles-2021addendum.pdf>; New Mexico ex rel. Riddle v. Oliver, No. S-1-SC-38228, 2021 WL 1807330 (N.M. May 6, 2021).

¹⁴ NATIVE AMERICAN RIGHTS FUND, *supra* note 14 at 49-57; 62.

¹⁵ See Complaint, Navajo Nation v. San Juan County, No. 1:22-cv-00095 (D.N.M. Feb. 10, 2022), available at <https://latino.ucla.edu/wp-content/uploads/2022/02/1-Complaint.pdf>.

¹⁶ This reflects a nationwide trend. In 2020, although Native Americans made up 2 percent of the United States population, they accounted for only 0.2 percent of elected officials across all levels of nontribal government nationwide. NATIVE AMERICAN RIGHTS FUND, *supra* note 14 at 115.

¹⁷ See, e.g., WHITE HOUSE, *supra* note 14 at 2.

- Require county commissioners to consult Tribal Nations when drawing precinct boundaries and harmonize county precinct boundaries with the internal and external political boundaries of the Tribal Nation.
- Permit Native voters without addresses to designate a Tribal building as their address on voter registration forms and mail ballot applications.
- Allow Tribes to formally designate up to five individuals as “absentee ballot assistants” to collect absentee ballots from Tribal Members living on Tribal Lands and transmit them to county officials.
- Require the Secretary of State to use election funding to support counties’ compliance with these provisions.

By making voter registration and in-person and mail voting more accessible, these provisions would help New Mexico begin to address the barriers political participation faced by Native Americans.

III. Conclusion

Our democracy works best when every voter can participate. We urge you to step in where Congress has failed by protecting the freedom to vote and ensuring that voting is equitable and accessible for all New Mexicans. To strongly affirm the right to vote for all New Mexicans, the Legislature must act now to pass HB 4. We must ensure that barriers to voting that discriminate against Native Americans and voters with past convictions are dismantled, so they can have an equal say in our future.

Sincerely,

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