



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 21, 2015

The Honorable Joseph R. Biden, Jr.
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

The right to vote is the bedrock guarantee of this great nation. For far too long, our American Indian and Alaska Native communities have faced significant obstacles that have prevented these communities from enjoying equal access to polling places and equal opportunities to cast a ballot. In addition to suffering from a long history of discrimination, the distance many American Indian and Alaska Native citizens must travel to reach a polling place presents a substantial and ongoing barrier to full voter participation. Following formal consultations with Indian Tribes, the Department of Justice believes that there is a pressing need for federal legislation to ensure equal access to voting by Native American voters. We are pleased to transmit to Congress the enclosed legislative proposal, which would ensure that American Indian and Alaska Natives have access to at least one polling place in their communities to cast their ballots and ensure their voices are heard – a basic right that most other citizens already take for granted.

This legislative proposal is in the form of a stand-alone bill, focused on enabling Native Americans to vote on or near tribal lands. It would require any State or local election administrator whose territory includes part or all of an Indian reservation, an Alaska Native village, or other tribal lands, to locate at least one polling place on or near tribal lands in a venue selected, and made available for the purpose of conducting elections, by the tribal government. The proposed legislation also would require States to fulfill certain obligations with respect to the operation of the polling place or polling places on tribal lands to ensure parity between these polling places and other polling places within the State. More specifically, under the legislative proposal, States must make voting materials available and provide compensation and other benefits to election officials and poll workers at the polling places provided under the Act to the same extent that these materials, compensation, and benefits are made available and provided at other polling places. Similarly, States would need to use the same voting procedures at the polling places provided under the Act that are used at other polling places. The States' obligations to provide these polling places, voting materials, and benefits to election officials and poll workers, are contingent on an Indian Tribe filing a timely formal request for the polling place or polling places and certifying that the Tribe has arranged for access to and appropriate staffing for the polling facility or facilities.

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The Department of Justice is committed to ensuring equal access to voting for Native American voters. We believe that the enclosed proposal would address serious voting obstacles faced by citizens who are members of Indian Tribes; provide equal access to polling places for all eligible citizens, including members of Indian Tribes; reinforce our Nation's commitment to the fundamental right to vote; and strengthen the government-to-government relationship between the United States and Indian Tribes. We look forward to working with you on this critically important proposed legislation.

Thank you for the opportunity to present this proposal. The Office of Management and Budget has advised us that there is no objection to submission of this proposal from the perspective of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Kadzik', written in a cursive style.

Peter J. Kadzik
Assistant Attorney General

Enclosures

IDENTICAL LETTER SENT TO THE HONORABLE JOHN A. BOEHNER, SPEAKER OF
THE HOUSE OF REPRESENTATIVES

DRAFT LEGISLATION

SECTION 1. SHORT TITLE.

This Act may be cited as the “Tribal Equal Access to Voting Act of 2015”.

SEC. 2. FINDINGS.—Congress finds that—

- (1) American Indian and Alaska Native citizens have suffered from a long history of disenfranchisement;
- (2) turnout rates for American Indian and Alaska Native citizens remain among the lowest in the United States;
- (3) one significant barrier to full voter participation lies in the distance many American Indian and Alaska Native citizens must travel to reach a polling place;
- (4) Indian lands are often located in rural areas, far from other population centers and well-developed mass-transit systems;
- (5) voters who are members of federally recognized Indian Tribes often are assigned to polling places that require significant travel; and
- (6) some jurisdictions have been unresponsive to reasonable requests from federally recognized Indian Tribes for more accessible polling places.

SEC. 3. PURPOSES.

The purposes of this Act are—

- (1) to address obstacles faced by members of federally recognized Indian Tribes with respect to their exercise of constitutionally guaranteed voting rights;
- (2) to provide equal access to polling places and equal opportunities to cast a ballot for all eligible citizens, including members of federally recognized Indian Tribes;
- (3) to reinforce our Nation’s commitment to the fundamental right to vote; and
- (4) to strengthen the government-to-government relationship between the United States and each federally recognized Indian Tribe.

SEC. 4. DEFINITIONS.—In this Act—

(1) The term “election” means any general, special, primary, or runoff election held solely or in part for the purpose of selecting, nominating, or electing any candidate for the office of President, Vice President, Presidential elector, Member of the United States Senate, or Member of the United States House of Representatives.

(2) The term “Indian lands of the Tribe” or “Indian lands of any Tribe” includes—

(A) any Indian country of the Tribe (as defined in section 1151 of title 18, United States Code);

(B) any land in Alaska owned, pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), by a Tribe that is a Native village (as defined in section 3 of that Act (43 U.S.C. 1602)) or by a Village Corporation that is associated with the Tribe (as defined in section 3 of that Act (43 U.S.C. 1602));

(C) any land on which the seat of government of the Tribe is located; and

(D) any land that is part or all of a Tribal designated statistical area associated with the Tribe, or is part or all of an Alaska Native village statistical area associated with the Tribe, as defined by the Census Bureau for the purposes of the most recent decennial census.

(3) The term “Indian Tribe” or “Tribe” means any American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as a federally recognized Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a et seq.).

(4) The term “State” means each of the several States of the United States and also includes any political subdivision of a State that administers or conducts elections, not limited to counties, parishes, municipalities, boroughs, townships, and census areas.

(5) The terms “vote” and “voting” include all action necessary to make a vote effective in any election, including but not limited to registration or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast.

(6) The term “voting materials” means registration or voting notices, forms, instructions, assistance, or other materials or information related to voting or the electoral process, including ballots.

(7) The term “voting procedures” includes any standard, practice, or procedure related to voting or the electoral process, including but not limited to election-day voting, absentee voting, early voting, the hours during which polling places are open, the operation of voting mechanisms or systems, voter registration, and same-day registration.

SEC. 5. DESIGNATION OF TRIBAL POLLING PLACES.

(a) Obligations of the State.

(1) Each of the several States whose territory contains all or part of the Indian lands of any Tribe shall designate, for each such Tribe, an officer within that State responsible for compliance with the provisions of this Act. The State shall provide written notice to each such Tribe of the officer so designated.

(2) For each Indian Tribe that satisfies the obligations of subsection (b), and for each election that is held at least 180 days after the Tribe initially satisfies such obligations, any State whose territory contains all or part of the Indian lands of the Tribe—

(A) shall provide a minimum of one polling place in a location selected by the Tribe;

(B) shall provide an additional polling place or places in a location or locations selected by the Tribe if, based on the totality of circumstances, it is shown that providing fewer such polling places would result in members of the Tribe having less opportunity to vote than other citizens have;

(C) shall, at each polling place provided under this section, make voting machines, tabulation machines, ballots, provisional ballots, and other voting materials available to the same extent that such equipment and materials are made available at other polling places;

(D) shall, at each polling place provided under this section, conduct the election using the same voting procedures that are used at other polling places;

(E) shall, at each polling place provided under this section, provide compensation and other benefits to election officials and poll workers to the same extent that such compensation and benefits are provided to election officials and poll workers at other polling places;

(F) shall cooperate in good faith with the efforts of the Tribe to satisfy the certifications the Tribe made pursuant to subsection (b)(1)(B)-(E); and

(G) may fulfill its obligations under subparagraphs (A) and (B) by relocating existing polling places, by creating new polling places, or both.

(3) When assessing the opportunities to vote provided to members of the Tribe and to other citizens in the State, to determine the number of additional polling places (if any) that a State must provide pursuant to subparagraph (B) of paragraph (2), the State, and any court applying this Act, shall consider—

- (A) the number of eligible citizens assigned to each polling place;
- (B) the distances that voters must travel to reach the polling places;
- (C) the time that voters must spend traveling to reach the polling places;
- (D) the modes of transportation that voters use to reach the polling places;
- (E) the existence of and access to public transportation to the polling places; and
- (F) any other factor relevant to effectuating the purposes of this Act.

(b) Obligations of the Indian Tribe.

(1) The State obligations in subsection (a) shall apply only if the chief executive officer of an Indian Tribe, with authorization from the governing body of the Tribe, files a standing request with the officer designated under subsection (a)(1) for a polling place or polling places for future elections, pursuant to subparagraphs (A) and (B) of subsection (a)(2), which—

- (A) specifies the number and location or locations of such polling place or places;
- (B) certifies that the Tribe has arranged access to the facility or facilities in which such polling place or places will be located;
- (C) certifies that the Tribe will ensure that such polling place or places will be open and accessible to all eligible citizens who reside in the precinct or other geographic area assigned to such polling place or places, regardless of whether such citizens are or are not members of the Tribe or of any other Indian Tribe;

- (D) certifies that the Tribe will designate election officials and poll workers to staff such polling place or places on every day that the polling place or places will be open; and
 - (E) certifies that the Tribe will ensure that the election officials and poll workers who the Tribe designates to staff such polling place or places attend and satisfactorily complete any training that is required of election officials and poll workers who staff other polling places in nearby areas of the State.
- (2) At any time at least 60 days before an election, a Tribe that previously has satisfied the obligations of paragraph (1) may notify the State that the Tribe intends to opt out of the standing request for a particular election or for all future elections.

SEC. 6. ENFORCEMENT AND REMEDIES.

The government of an Indian Tribe or the Attorney General of the United States may bring a civil action against a State or against an appropriate State officer acting in an official capacity in an appropriate United States district court for such declaratory or injunctive relief as may be necessary to effectuate the provisions of this Act.

SEC. 7. ATTORNEY FEES.

In any civil action under this Act, the court, in its discretion, may allow the prevailing party, other than the United States, reasonable attorney fees, reasonable expert fees, and other reasonable litigation expenses as part of the costs.

SEC. 8. RELATIONSHIP TO OTHER LAWS.

Nothing in this Act shall invalidate, or limit the rights, remedies, or procedures available under, or supersede, restrict, or limit the application of, the Voting Rights Act of 1965 (52 U.S.C. 10301 et seq.), the National Voter Registration Act of 1993 (52 U.S.C. 20501 et seq.), the Help America Vote Act of 2002 (52 U.S.C. 20901 et seq.), or any other Federal law or regulation related to voting or the electoral process.

SEC. 9. RULE OF CONSTRUCTION.

A State can reduce the number of polling places located on the Indian lands of any Tribe from the number of polling places that the State had established on such Indian lands before the effective date of this Act only if the Tribe consents in writing or the Attorney General of the United States concludes that the reduction neither has the purpose nor will have the effect of denying citizens protected by this Act of an equal opportunity to vote.

SEC. 10. SEVERABILITY.

If any provision of this Act, or the application of such a provision to any person, entity, or circumstance, is held to be invalid, the remaining provisions of this Act and the application of all provisions of this Act to any other person, entity, or circumstance shall not be affected by the invalidity.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

SEC. 12. EFFECTIVE DATE.

This Act shall take effect on the date of its enactment and shall apply to any election held more than 180 days after the effective date.

SECTION-BY-SECTION

SEC. 1. SHORT TITLE.

This section designates the Act as the “Tribal Equal Access to Voting Act of 2015.”

SEC. 2. FINDINGS.

This section lays out the findings of the Act, namely: (1) American Indian and Alaska Native citizens have suffered from a long history of disenfranchisement; (2) turnout rates for American Indian and Alaska Native citizens remain among the lowest in the United States; (3) one significant barrier to full voter participation lies in the distance many American Indian and Alaska Native citizens must travel to reach a polling place; (4) Indian lands are often located in rural areas, far from other population centers and well-developed mass-transit systems; (5) voters who are members of federally recognized Indian Tribes often are assigned to polling places that require significant travel; and (6) some jurisdictions have been unresponsive to reasonable requests from federally recognized Indian Tribes for more accessible polling places.

SEC. 3. PURPOSES.

This section lays out the purposes of the Act, namely: (1) to address obstacles faced by members of federally recognized Indian Tribes with respect to their exercise of constitutionally guaranteed voting rights; (2) to provide equal access to polling places and equal opportunities to cast a ballot for all eligible citizens, including members of federally recognized Indian Tribes; (3) to reinforce our Nation’s commitment to the fundamental right to vote; and (4) to strengthen the government-to-government relationship between the United States and each federally recognized Indian Tribe.

SEC. 4. DEFINITIONS.

This section provides the definitions of key terms used in the Act. The Act limits the meaning of the term “election” to certain federal elections. The Act defines “Indian tribe” or “Tribe” to broadly include all American Indian and Alaska Native communities that exist as a federally recognized Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994. The Act also defines “State” to include any political subdivision of a State that administers or conducts elections.

SEC. 5. DESIGNATION OF TRIBAL POLLING PLACES.

This section requires States whose territory contains all or part of the Indian lands of any Indian Tribe to provide a minimum of one polling place for each such Tribe, in a location selected by the Tribe. States must designate an officer responsible for complying with the provisions of the Act and provide written notice to each Tribe of the designated officer. States also must make voting materials available and provide compensation and other benefits to election officials and poll workers at the polling places provided under the Act to the same extent that these materials, compensation, and benefits are made available and provided at other polling places. Similarly, States must use the same voting procedures at the polling places provided

under the Act that are used at other polling places. The States' obligations to provide these polling places, voting materials, and benefits to election officials and poll workers, are contingent on an Indian Tribe filing a timely formal request with the designated State official that includes certain specific information. The Tribe's request must specify the number and location of the designated polling place or polling places for future elections. In addition, the Tribe's request must provide certifications that the Tribe has arranged for access to and appropriate staffing for the polling facility or facilities.

SEC. 6. ENFORCEMENT AND REMEDIES.

This section authorizes the government of an Indian Tribe or the Attorney General of the United States to bring an action for declaratory or injunctive relief to enforce the legislative proposal's substantive provisions. It does not, however, provide for a private right of action by individual citizens.

SEC. 7. ATTORNEY FEES.

This section entitles a prevailing party other than the United States reasonable attorney fees and litigation expenses.

SEC. 8. RELATIONSHIP TO OTHER LAWS.

This section makes clear that the Act does not invalidate or limit the rights and remedies under the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Help America Vote Act of 2002, or any other Federal law or regulation relating to voting or the electoral process.

SEC. 9. RULE OF CONSTRUCTION.

This section clarifies that the Act does not permit a State to reduce the number of existing polling places on Indian lands absent written consent from the Tribe or a conclusion by the Attorney General of the United States that the reduction neither has the purpose nor the effect of denying citizens protected by the Act of an equal opportunity to vote.

SEC. 10. SEVERABILITY.

This section ensures that if any provision of the Act is held invalid by a court, the remaining protections of the Act nevertheless will remain in effect.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

This section authorizes Congress to appropriate funds to effectuate the Act.

SEC. 12. EFFECTIVE DATE.

This section provides that the Act will take effect on the date of its enactment and will apply to any election held more than 180 days after the effective date.