

THE  
CARTER CENTER



**The Challenges of Native American Participation and Confidence  
in Elections in the United States**

**THE CARTER CENTER  
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**SUMMARY OF PROCEEDINGS**

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**I. Introduction**

In addition to participating in U.S. federal, state, and local elections, Native American peoples also regularly elect tribal authorities for their nations. Elections in Native America face a series of multifaceted challenges that are too often overlooked. Voter participation by Native Americans in federal, state and local elections has historically been low – according to the limited data available. In the wake of the 2013 Supreme Court decision in *Shelby County v. Holder*, and the contentious 2016 general elections, The Carter Center convened a small experts meeting to discuss challenges to Native American voter participation. The meeting brought together experts and practitioners to explore various issues regarding Native American participation in elections in the United States, as well as opportunities and challenges around tribal elections. Participants discussed a wide range of issues, including: the current state of voting rights for Native Americans; capacity building for and promotion of voter participation; the role that non-partisan organizations can play in promoting greater confidence in elections among Native American voters; lessons about participation and voter confidence that can be learned from tribal elections; the measurable effects on participation and politics of increased voter participation in Indian Country; and current challenges facing Native Americans in U.S. and tribal elections.

The meeting was held over two days and was conducted under Chatham House rules.

## **II. Opening Remarks & Overview of the Work of The Carter Center**

*Presenters: Avery Davis-Roberts, TCC*

David Carroll opened the meeting, welcoming the participants and leading a round of introductions. Avery Davis-Roberts then gave an overview of the mission and work of The Carter Center, including the main program areas for the Democracy Program - international election observation; transition monitoring; capacity building for civil society; consensus building on [norms and standards for elections](#) and [guidelines for election observation](#). Davis-Roberts also mentioned The Carter Center's collaboration with the National Conference of State Legislatures and the League of Women Voters on [The Observability of U.S. Elections project](#), and the Center's observation of tribal elections in the Cherokee Nation in 1999 and 2011. She concluded with the goals of the meeting - (1) to facilitate reflection on lessons learned from the 2016 elections and discussion of the way forward; and (2) to identify areas where The Carter Center could help advance Native American voting rights and/or support credible and inclusive tribal elections.

After the presentation, discussion turned to previous bipartisan efforts to support elections, and a participant asked whether The Carter Center has considered more direct involvement with regard to U.S. elections in the future. It was noted that President Carter, in his personal capacity, has worked with senior Republicans on blue-ribbon commissions on electoral reform – the [Carter-Ford Commission](#) and the [Carter-Baker Commission](#). While the Center was established with an international mandate and has not historically been active on election issues within the U.S., Carter Center staff noted that The Center might consider more activities on domestic issues in the future.

Conversation then turned to the observation of U.S. elections. One participant noted that Arizona did not allow non-partisan international observers, which was unfortunate as there were some problems regarding the conduct of partisan observers. Carter Center staff stated that one of the major findings of the Observability of the U.S. Elections project was that partisan observation is much more common in the United States than nonpartisan observation. At the same time, a gap between law and practice exists. While many states do not have rules that explicitly authorize or address nonpartisan observation, many of those states informally allow observation. This disparity between law and practice poses risks for both observers and those making the decisions about observation. In addition, most of the rest of the world is allows nonpartisan observation, which has emerged as an international norm.

## **III. Session One: Political Participation Rights of indigenous Peoples: the International Perspective**

*Presenter: Josee Daris, DOCIP*

*Facilitator: Jonathan Stonestreet, TCC*

Jonathan Stonestreet opened the session by pointing out that the meeting was organized to begin with a discussion of the international legal framework for indigenous perspective, then to narrow down to the national and then the tribal level. He noted that the U.S., as a member of the United Nations, has signed a number of treaties, documents, and commitments related to elections and the right to participation. Although the U.S. does not always live up to its commitments, they

provide a framework for understanding human rights issues and laws, and help to determine what may be unacceptable internationally. He then introduced [Josee Daris](#) who gave a brief overview of the work of the Indigenous People's Centre for Documentation, Research, and Information (DOCIP) and the international framework for indigenous rights.

DOCIP is a Swiss not-for-profit organization that was created by and for indigenous peoples in 1978. The organization aims to facilitate access to international mechanisms for indigenous peoples, providing strategic support, capacity development, information management, a document center, oral history preservation, and monitoring and evaluation, free of charge.

Daris detailed the three main international legal instruments that relate to indigenous political participation: [The United Nations Declaration on the Rights of Indigenous Peoples](#), the International Labour Organization [Indigenous and Tribal Peoples Convention \(No.169\)](#), and [Indigenous and Tribal Populations Conventions, 1957 \(No. 107\)](#); and a political one, the [Alta Outcome Document](#). Daris noted that there are two main sets of regular U.N. meetings on indigenous issues. The annual United Nations Permanent Forum on Indigenous Issues provides expert advice and recommendations to the Economic and Social Council, promotes cooperation on indigenous issues in the U.N. system, and serves to foster dialogue between Indigenous Peoples and other international actors. In addition, the Expert Mechanism on the Right of Indigenous People, which provides thematic advice to the Human Rights Council, has considered issues of political participation but has not focused on indigenous participation in national and local elections. She noted that there has not been a significant focus at the international level on indigenous political participation in elections.

Discussion began with questions about indigenous peoples in Europe and whether there is significant Native American participation in the international mechanisms. It was noted that there are not a significant number of indigenous peoples in Europe, but DOCIP works with indigenous peoples worldwide. In addition, there is participation from the Native American community in the U.N. mechanisms noted above. Another participant asked about DOCIP's funding base. DOCIP is largely supported by Switzerland, the European Union and the Saami parliament.

Discussion then turned to the possibilities of international engagement on issues regarding political participation in elections by Native Americans. In addition to the U.N. mechanisms, the annual OSCE Human Dimensions meeting was suggested as another forum to address issues facing indigenous peoples in participating states.

On a more practical level, participants considered the benefits of using international advocacy as a tool for change. While international pressure from international bodies can be useful, and international mechanisms can provide a forum for complaint when national remedies are exhausted, they will not necessarily provide remedies at the local level on issues such as disenfranchisement. It was also noted that the international mechanisms and U.N. system can be very difficult to navigate.

Participants considered the use of performance indices, like the [Economist Intelligence Unit's Democracy Index](#) or the [Pew Election Performance Index](#), as another means of promoting change around elections. The example was given of specific changes to voter registration

practices in Alaska (which recently introduced automatic voter registration) which has been a focus of the Pew elections team. Participants noted that indices can help promote healthy competition and encourage states and election administrators to improve practices in order to score better. The existing indices do not address Native American participation at all and therefore do not directly contribute to positive movements on issues of Native American participation. Participants suggested that these indices could potentially address Native American participation and/or a separate index on Native American participation and representation could be established.

Discussion turned to the use of international courts to resolve voting rights cases, specifically the Inter-American Court. There have been few voting rights cases referred to the Inter-American Court. Among the best known cases is that of [Casteñeda Gutman v Mexico](#). However, the Inter-American human rights system, like the U.N. mechanisms are very open to receiving more information and complaints about voting rights issues.

Participants then reflected on comparisons between voter suppression of Native Americans and indigenous peoples in other countries. It was noted that in the Philippines there is a good framework for the inclusion of indigenous peoples but that it is not well-implemented, and that indigenous peoples in the Philippines suffer more from neglect than active suppression. Illiteracy and difficulty accessing the polls severely impacted political participation by indigenous peoples. The Philippines conducted a pilot project in which they placed accessible voting centers near indigenous communities and found that it led to an increase in participation. There was general agreement that the implementation of similar projects in the U.S. might have a positive impact on Native American participation. The session concluded with an acknowledgment of the similarities face by indigenous peoples around the world regarding the right to participation.

#### **IV. Session Two: The 2016 U.S. Elections: Pre-election and Election Day Developments**

*Presenters: Laughlin McDonald, ACLU  
Dan McCool, University of Utah*  
*Facilitator: Avery Davis-Roberts, TCC*

Laughlin McDonald, ACLU, opened the discussion of the 2016 elections by presenting the history of Native American voter suppression from the Indian Citizenship Act of 1924 through to the 2016 elections, which were the first in 50 years to take place without the full protections of the Voting Rights Act (VRA). McDonald stressed the difficulties Native communities have in obtaining protection under the VRA, as the processes to qualify for protection were prohibitively expensive, time consuming, and require many expert witnesses.

Although the coverage formula in [Section 4\(b\)](#) of the Voting Rights Act which was used to determine which jurisdictions were subject to “preclearance” under [Section 5](#) of the Voting Rights Act was overturned by the *Shelby County v. Holder* decision, [Section 2](#) of the Voting Rights still stands. [Section 2](#) prohibits discrimination in voting on the basis of race, color or language, but requires that a pattern of discrimination be proven, with the burden of proof falling on the plaintiff. This makes Section 2 challenges time consuming and costly, and requires resources that many Native American communities do not have.

Dan McCool, University of Utah, continued the discussion by addressing the current state of voter suppression in Native America, describing it as similar to the Jim Crow era, and emphasizing the need to aggressively challenge voter suppression measures in court. Referencing his research, he noted that since 2008, 87 of 92 cases challenging voter suppression against Native Americans have been won or settled to the satisfaction of the plaintiffs. He suggested that the Shelby County decision will result in more brazen voter suppression efforts that will require advocates to bring many more legal challenges than in the past, and that these cases will be expensive and will require many more expert witnesses. McCool raised the possibility that courts may be increasingly hostile to Native claims as the new administration appoints judges. He ended by noting that (1) there is a need for a new pool of expert witnesses that will be able to assist in challenges; (2) there needs to be more information about the barriers that voters face (noting that the four-state survey that is underway is an important step in this regard, see below for more information on those surveys); (3) a network of Native American voting rights allies must be created; and (4) there needs to be a better understanding of the longer-term policy impact of the legal challenges to discriminatory election practices..

Following the remarks of McDonald and McCool, participants continued to discuss the implications of the prohibitive costs of legal challenges, and voiced support for a greater understanding of the impact of legal victories in the last 10 years, which could help to convince tribes to invest in legal challenges while illustrating where problems continue. The example of the positive impact of recent changes in Alaska was highlighted – there, the use of minority language voter materials greatly increased voter turnout and resulted in significant changes to the legislature which then resulted in policy changes. Specifically, [Section 203](#) of the Voting Rights act requires language assistance for certain protected languages that meet a minimum population criterion, providing this assistance is vitally important in Alaska (as seen in the previous example, the Navajo Nation, and certain other reservations. It was suggested that such stories should be published and shared with other Native American communities.

Conversation then turned to specific forms of voter suppression. Examples included Native American voters being inexplicably dropped from the voter rolls very close to the date of the election, and restrictive early and absentee voting practices that made it difficult for Native Americans to use these means of voting.

The discussion ended with a consensus that the future challenges of voter suppression require native peoples to have more advocates and information to properly counter these measures. There is currently a survey effort being conducted by Four Directions, with support from the Native American Rights Fund (NARF), and the Arizona State University, to gain more information about the voter experience including voter suppression in Native America, but current funding only provides for this effort to cover four states (Arizona, New Mexico, Nevada, South Dakota). A participant also suggested that The Carter Center could help train more advocates.

**V. Session Three: The 2016 U.S. Elections: Post-election Developments and Lessons Learned**

*Speakers: Nathalie Landreth (NARF); Julian Nava (NCAI)*

*Discussion Facilitator: David Carroll*

After David Carroll opened the session, Nathalie Landreth began her remarks by stating that according to the last census there are 5.2 million Native Americans in the United States. Of those counted, 78 percent live outside of reservations, with 70 percent residing in urban areas. She noted that voter turnout is a major issue and that there is a desire to increase voter registration within the tribes. There are a number of barriers to voter registration within each tribe, especially when tribal territories cross state lines. Some states have easier voter registration and identification processes than others. Voter turnout among Native American populations is impacted not only by voter identification requirements, but also by voter education. Landreth gave the example of some people refusing to register because of concerns that they will then have to serve on a jury which can place a large burden on persons with insecure employment.

Landreth went on to cite two instances in which voter turnout was impacted positively by legal challenges— one in Alaska and one in North Dakota. A decade ago, Native American turnout was 10-12 percent lower than it is today in Alaska. Following legal action, as well as monitoring and pressure by the Department of Justice and other agencies, automatic voter registration was introduced in 2016. This increase in voter registration numbers, especially in rural areas, led to increased participation and has impacted the outcomes of local and state races.

In the case of North Dakota, there are restrictive voter ID laws, onerous requirements for identification and a requirement for street addresses which, on some reservations, do not exist. This is in addition to burdens and costs associated with travel and registration. Based on these difficulties, NARF sued based on Section II of the VRA and after a court review, the residential address requirement was removed from the voter registration process and the failsafe affidavit was created. The state moved the residential address requirement to the affidavit instead of the registration form which replicated the barrier to registration that was originally addressed in court.

Following Landreth's remarks, participants discussed voter suppression and how to counter it. One participant noted that voter suppression is not limited to identification issues. For example, having sheriffs outside of the polling place can be intimidating (as some persons reported in North Dakota.)

One participant explained that there is a wide range of issues impacting voter participation, including lack of access, lack of materials in native languages, lack of reliable mail, provisional ballot issues, and voter list purges before elections without notice. Additional issues also include not having a mailing address or sharing a mailing address and a lack of multilingual poll workers that can provide assistance. In terms of practical measures, a participant noted that establishing satellite offices for registration and voting in tribal areas can lead to a sharp increase in participation. Another participant stated that they increased tribal buy-in to various lawsuits by having them sign letters and use the media to assist in drawing attention to the issues.

Following these comments, Julian Nava spoke about the work of the National Congress of American Indians (NCAI). NCAI is funded by member tribes and works to secure traditional laws, cultures, ways of life, and to promote a common understanding of the rightful place of tribes in the American government. NCAI has a Native Vote Initiative that facilitates information sharing through a number of means including rallies, presentations, webinars, and outreach. They also work on Election Protection, voter education, candidate education, voter information on polling processes, and assisting tribes to work with state election boards to resolve issues prior to elections. NCAI recognizes that there are ways in which they could continue to grow and build on their current programming to further encourage and facilitate participation.

Following the presentation by Nava, David Carroll opened the discussion to the rest of the participants. Discussion focused mainly on mail-in balloting, which on the surface may seem like a good solution for remote voters, but in practice does not always work well for Native Americans living in rural areas. One participant noted that in their state, 22,000 people were unable to vote because the election administration forgot to send out the ballots, which fostered the lack of trust in the process. Another participant noted that the use of e-voting needs to take into account access to technology, penetration rates, and mobile coverage.

## **VI. Session Four: Tribal Elections: Opportunities and Challenges for Participation**

*Presenters: Lauren Bernally, Navajo Nation*

*Brett Lacy, TCC*

*Facilitator: Ray Kennedy*

To open the discussion on tribal elections, Lauren Bernally gave a presentation on the structure of Navajo tribal elections. The Navajo government is divided into three branches with local governance administrated by 110 chapters, which function like municipalities. During tribal elections, there is a polling station in each of the chapters and all members of the tribe who possess a Certification of Indian Blood (CIB) card can register to vote. Turnout is relatively high for tribal elections due to effective civic education and the presence of a polling station in each chapter. Voting information is disseminated through twice-monthly chapter meetings and there are various programs to assist voters (i.e. senior citizens) to understand the voting process. Election information is available in the Navajo language.

The main challenges to the administration of Navajo elections are that the voting equipment is old and some voters are required to travel long distances to vote. This problem is exacerbated by low confidence in mail-in balloting, as many members of the nation, particularly elders, prefer to complete paper ballots to ensure their vote is actually counted. Bernally also discussed how the Navajo nation liaises with state officials to provide more effective state elections. This cooperation includes the production of a standardized glossary of terms for the translation of state ballots into Navajo. She also noted that poll workers for Navajo tribal elections receive more remuneration than is provided by citizen and state officials for state elections, so it can be difficult to find Navajo poll workers for state elections, as the elections are held on the same day as tribal elections.

Next, Brett Lacy gave an overview of The Carter Center's work on tribal elections. She emphasized that the Center views Native American nations as sovereign, and that Carter Center

observation of tribal elections is, therefore, in line with the mandate to work on non-U.S./international elections. The Center has previously observed Cherokee elections in 1999 and 2011, and has received many invitations to observe other tribal elections over the years. Research and assessments of the political environment in which many tribal elections take place indicate that many of them are characterized by highly contested results and allegations of election malfeasance.

The Center uses the same methodology that is applied to other nations when considering tribal elections for possible observation missions. Unfortunately, many of the tools that are available to improve elections abroad - technical assistance and expertise, are not available for tribal elections, as there are not significant levels of funding available from international donors and organizations.

Following these remarks, discussions turned again to mail-in balloting which can enable voters who live far from a polling station to cast a ballot. Here again, several participants noted problems with mail-in ballots for Native voters, especially in remote rural areas where issues such as the use of P.O. boxes, or non-standardized addresses may prevent ballots from reaching potential voters. Mail-in balloting is more widely used by Native American voters in urban areas than by rural voters.

With regard to elections in the Navajo Nation, there was discussion about whether voters could simultaneously register for tribal and state elections, and whether tribal elections coincided with state and national election days. It was confirmed that while registration for tribal and U.S. elections are separate processes, election days have been held concurrently with state and national elections. Some participants wondered whether this practice boosted native voter participation in state and national elections. However, the results are unclear. On the one hand, it was suggested that concurrent elections improved turnout in some locations, but that polling stations were often in different places and, when they were in the same place, there was often no sign directing Native American voters to also participate in state elections. On the other hand, it was noted that, regardless of the impact of synced elections on voter turnout, some tribes did not want to sync elections. In Oklahoma, for example, tribes were reluctant to hold tribal elections on the same day as state and national elections because it would introduce restrictions on their sovereign elections (i.e. polling station locations, date of election, etc.).

Some participants suggested that more emphasis could be placed on educating and engaging youth on tribal elections, and that this might help to break the cycle of mistrust in electoral processes that exists in some communities. One participant noted that the Crow Nation had a successful outreach program through local universities as an example that could be replicated.

Another participant mentioned the “cookie-cutter” nature of the tribal election codes that do not adequately respond to the needs of individual tribes and were imposed by the U.S. Those election codes can lead to many problems including limited resources for elections, electoral reforms, and pressures that are ill-suited to handle the realities of tribal life. Constitutional reforms were then highlighted as one means of positively impacting tribal elections.

The discussion ended with a conversation about the need to promote Native American candidates in local, state and national elections. One participant noted that tribes should also push for

members to be appointed to positions, as many local government positions are appointed rather than elected. Another participant suggested that election to local government is a good way for Native American politicians to gain name recognition in the broader community and develop political relationships that would be necessary for higher offices.

## **VII. Day Two - Session Four: How can Participation in Elections in Native America be Improved?**

*Facilitators: David Carroll & Avery Davis-Roberts, TCC*

After breaking into three groups, participants were asked to brainstorm about how participation can be improved in Native America. The issues and questions that were generated on the basis of group discussion are included as an appendix to this report.

Group One focused on the difficulties of identifying and recruiting Native American candidates to run for office. The concept of “servant leadership” was highlighted as one means of making political candidacy more appealing. One concrete suggestion was the creation of a state-wide Elections Coordinator position in states with significant Native American populations, who would help organize civic education programs for Native American communities and identify Native American candidates. Participants noted that there were a number of funding mechanisms that could be available including, foundations, casino profits, and crowd sourcing. In addition, a participant suggested the creation of an independent institute to work on political participation issues to provide more resources, research, and support to assist with the various initiatives.

Group Two suggested that there should be a 50-state review of voter registration and voter identification laws and their impact on Native American communities. This would help those challenging restrictive electoral practices. Group Two also recommended more research on mail-in balloting, and other forms of voting. This research could focus on issues such as voter age, language, literacy rates, and could include a survey of tribal administrators. One participant suggested that these efforts could be led by The Carter Center, and/or an independent institute for native governance which would contribute to the sustainability of future research and governance programs. Finally, Group Two suggested that The Carter Center could convene a larger conference on Native American voting rights to raise awareness of these issues and broaden the network of organizations working on these issues.

Group Three also focused on the need for more research, but stressed the importance of improved civic education. They suggested that a voter education video with voter information, as well as an illustration of the importance of voting could be distributed to the tribes. In conjunction this message could also be broadcast on the radio in native communities to reach a broader audience. The efficacy of this approach was evidenced by the popularity of a video prepared by one of the participants, which featured a native veteran unable to vote due to restrictive ID laws.

Following the small group discussions, participants reconvened in plenary. The plenary session began with one of the participants asking about The Carter Center’s intention to become more involved in Native American participation issues. Carter Center staff confirmed that they are

interested in becoming involved in these issues. However, the Center would have to secure funding and obtain institutional approval prior to engagement. It was also stated that the Center would only get involved in elections or governance issues based on the approval of native communities.

It was also suggested that connecting Native American advocacy groups to the international community could amplify calls for change. The International Indian Treaty Council was cited as a fantastic forum for “naming and shaming” countries that are not honoring agreements with indigenous peoples. There have been recent attempts by a number of Special Rapporteurs at the U.N. to highlight the issues of indigenous peoples, and the United States is scheduled for treaty review at the Human Rights Committee in 2018. A member of The Carter Center staff added that the Center could assist Native American groups with preparing reports for this process.

Given the extensive discussion of native candidature during the meeting, one participant asked why no-one in the meeting had run for office themselves. While one of the participants had run for office, many suggested that they were not prepared for the more unpleasant aspects of the process, such as being “talked over” and ignored in meetings. These concerns were also discussed more generally with participants suggesting that native candidates often do not run because they will be the only elected native person in their institution. In addition, there are cultural barriers, as the process of running for office brings unwanted scrutiny to families and many would like to keep their lives private. A participant noted that some of the barriers to running for office could be lessened by creating an institute and mentoring program that provides training and resources on running for public office. The session closed with one participant reminding the group of the over-arching issue at hand, regarding the urgency of protecting native voting rights, given that voter suppression measures are very likely to be implemented across the country.

#### **VIII. Session Five: Summary of meeting and next steps**

*Facilitator: David Carroll, TCC*

David Carroll concluded the meeting with a summary of lessons learned and potential next steps as follows:

#### **Lessons Learned**

- Obstacles to Native American participation are not just limited to barriers to participation but also voter perception of potential barriers to participation. For example, it was noted that some persons refuse to register because they do not want to be selected for jury duty. There is a need to address both regulatory and legislative barriers, as well as perceived barriers in order to increase participation.
- More emphasis needs to be placed on protection of the Voting Rights Act (VRA) going forward. The VRA provides the regulatory framework for ensuring equitable and fair voting processes and also for challenging discriminatory practices and laws. However, these protections must be secured during the next administration in order to ensure that the key attributes of the VRA are not stripped away.

- There needs to be an increased focus on voter education for Native American people. Such voter education programs should not only inform Native voters of their rights, but detail the importance and impact of engaging in the political process. A variety of methods can be used including social media, video, and training programs.
- There is relatively little engagement by Native Americans on issues of participation in elections at the international level. There are a variety of forums and international mechanisms that can be used to publicize issues facing Native Americans and they can be used as means exert pressure and increase the likelihood of positive change.
- There is a need to be vigilant in creating precedents for voting rights protection. Even as cases are won, some barriers that are eliminated reappear in other forms (see example of the North Dakota affidavit). Follow-up should include the evaluation and analysis of the implementation of legal decisions, as well as any newly created processes to ensure that barriers are permanently eliminated.

### **Next Steps**

Participants agreed that several steps could be identified as ways to build on discussions. The following steps were mentioned:

- Additional research on topics such as:
  - Mail-in ballots and voting access
  - Voter I.D. and registration requirements to strategize which jurisdictions should be targeted to advocate for change
  - The ability of tribes to administer U.S. elections in their territories
  - The scheduling of local and county elections, and key races, to create a calendar to help guide targeted candidacy campaigns.
- Focusing on Candidacy and encouraging participation and preparing candidates through training and videos. Representation at all levels of public office is needed.
- Encourage civic participation through education and a possible video series/radio series. There needs to be a variety of methods to get this information across to ensure that it reaches all tribes.
- Focus on the positives of inclusive jury selection. The importance of inclusive jury selection should be included in voter education initiatives. This will also aid in reducing the fear of voter registration due to possible jury duty service.
- Explore the possibility of a conference at The Carter Center, bringing together those working on elections in Native America to shed light on key issues and challenges, encouraging collaboration, and increasing opportunities for funding
- Increased engagement with international mechanisms to help exert pressure on States to advance and protect political participation rights.