

Date of Hearing: May 13, 2020

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 2314 (Ramos) – As Introduced February 14, 2020

SUBJECT: Native American Voting Accessibility Advisory Committee.

SUMMARY: Requires the Secretary of State (SOS) to establish a Native American Voting Accessibility Advisory Committee and to consult with the committee to consider the committee's recommendations related to improving the accessibility of elections for Native American voters, as specified. Specifically, **this bill:**

- 1) Requires the SOS to establish a Native American Voting Accessibility Advisory Committee. Requires the SOS to consult with the committee to consider its recommendations related to improving the accessibility of elections for Native American voters. Permits the SOS to implement the committee's recommendations as appropriate.
- 2) Requires the committee to consist of the SOS, the SOS's designees, and additional members appointed by the SOS. Requires the appointees to have demonstrated experience with voting rights or be a county elections official.
- 3) Requires the committee to serve in an advisory capacity to the SOS and to do all of the following:
 - a) Establish guidelines for reaching as many Native American voters as practical.
 - b) Make recommendations for improving the availability and accessibility of election materials, including, but not limited to, state voter information guides, county voter information guides, and vote by mail ballots, and their delivery in print or alternative formats to Native American voters.
 - c) Make recommendations for the distribution of public service announcements identifying the availability of election materials for Native American voters at least 45 days before any federal, state, and local election.
 - d) Promote to Native American voters the SOS's toll-free voter registration telephone line for citizens needing voter registration information.
 - e) Make recommendations for providing Native American voters with information regarding the voter registration process, the voting process, and voting rights.
 - f) Make recommendations to improve the recruitment of Native American poll workers.
 - g) Establish subcommittees to further the scope and purposes of the committee as they relate to improving voter services and access for Native American voters.
 - h) Make recommendations for providing information and services to Native American voters regarding language assistance.

- i) Promote the use of plain language and alternative formats for election materials distributed to Native American voters.
 - j) Make recommendations for materials to train poll workers on issues related to serving Native American voters.
- 4) Provides that members of the committee shall not receive compensation for their service on the committee, but requires each member to be reimbursed for the member's reasonable and necessary expenses in connection with service on the committee.

EXISTING FEDERAL LAW:

- 1) Requires all non-citizen Indians born within the territorial limits of the United States (US) to be declared citizens of the US.
- 2) Requires a state or a political subdivision of a state to provide voting materials in the language of a minority group when that group within the jurisdiction has an illiteracy rate that is higher than the national illiteracy rate, and the number of the US citizens of voting age in that single language group within the jurisdiction meets at least one of the following:
 - a) Numbers more than 10,000;
 - b) Makes up more than five percent of all voting age citizens; or,
 - c) On an Indian reservation, exceeds five percent of all reservation residents.
- 3) Defines language minorities or language minority groups, for the purposes of the above provisions, to mean persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

EXISTING STATE LAW:

- 1) Establishes the SOS as the chief elections officer of the state and requires that the SOS ensure elections are efficiently conducted and that state election laws are enforced.
- 2) Declares the intent of the Legislature that non-English-speaking citizens, like other citizens, should be encouraged to vote and that appropriate efforts should be made to minimize obstacles to voting by citizens who lack sufficient skill in English to vote without assistance.
- 3) Requires the SOS, by January 1 of each year in which the Governor is elected, to determine the precincts where three percent or more of the voting age residents are members of a single language minority and lack sufficient skills in English to vote without assistance. For each specified precinct in their county, elections officials are required to do the following:
 - a) Translate a facsimile ballot and related instructions into the specified language(s); and,
 - b) Post the translation(s) in a conspicuous location in the appropriate polling place.

- 4) Requires elections officials to make reasonable efforts to recruit election officials who are fluent in a language if three percent or more of the voting age residents in any precinct are fluent in that language and lack sufficient skill in English to vote without assistance.
- 5) Requires the SOS to establish the Language Accessibility Advisory Committee (LAAC) and requires the SOS to consult with and consider the recommendations of the committee, as specified.
- 6) Requires the SOS to establish the Voting Accessibility Advisory Committee (VAAC) to make recommendations for improving access to voting and election materials and make recommendations related to improving the accessibility of elections for voters with disabilities, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Like other disenfranchised ethnic groups in the United States, the history of Native American voter rights and accessibility to those rights is shameful. According to the Native American Voting Rights Coalition, when the Fourteenth Amendment was passed in 1866, making all persons born in the United States citizens, Indians on reservations were specifically excluded. Michigan Senator Jacob Howard expressed a prevalent attitude: "I am not yet prepared to pass a sweeping act of naturalization by which all the Indian savages, wild or tame, belonging to a tribal relation, are to become my fellow-citizens and go to the polls and vote with me." (Congressional Globe. May 30, 1866)

Rights of citizenship for Native Americans could not be exercised without renouncing their tribal membership until 1924 with passage of the Snyder Act. Yet even then, voter suppression tactics such as those practiced against other groups were employed. Poll taxes, literacy tests, intimidation, along with more pragmatic issues such as high poverty rates, non-traditional mailing addresses, voter identification, language, and threshold requirements for polling locations posed and continue to pose obstacles to Native American participation in the electoral process.

As a result, voter turnout among Natives is 5 to 14 percentage points lower than that of other racial groups.

AB 2314 proposes that the Secretary of State form an advisory committee tasked with establishing guidelines and recommendations for increasing Native American voter turnout by removing as many barriers to electoral participation as possible. The committee shall consist of the Secretary of State, his or her designees and additional members appointed by the Secretary of State. All members shall have demonstrated experience with voting rights or be a county elections official.

- 2) **Voting Rights Act of 1965:** The 15th Amendment to the US Constitution provides, in part, "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." Additionally, the 15th Amendment authorizes Congress to enact legislation to enforce its provisions.

Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance by state officials to enforce the 15th Amendment. As a result, Congress passed and President Johnson signed the Voting Rights Act of 1965 (VRA). The VRA provides, among other provisions, that "[n]o voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge that right of any citizen of the United States to vote on account of race or color."

- 3) **Census:** Article I, Section 2 of the US Constitution mandates that the US Census Bureau conduct a survey of everyone living in the country every ten years. The data collected by the decennial census are used to determine the number of seats each state has in the US House of Representatives, to guide redistricting, and to distribute billions of dollars in federal funding for healthcare, education, and infrastructure. Moreover, the census provides a social, demographic, and economic profile of the country's residents, informing decisions by policymakers and businesses across the country.

According to research from the National Conference of State Legislators, hard-to-count (HTC) populations are groups that historically have been less likely to respond to the census. HTCs are in both rural and urban areas and usually include young children, racial and ethnic minorities, persons with limited English proficiency (LEP), low-income, the homeless, undocumented immigrants, mobile individuals such as college students, LGBTQ persons, and individuals who are angry at or distrustful of the government. Reaching HTC populations is difficult and each one can require a unique approach, whether it includes languages other than English, an understanding of cultural practices, or addressing suspicions of government motives.

According to the National Congress of American Indians, native people especially on reservations and in Alaska Native villages historically have been underrepresented in the census. In the 2010 Census, the Census Bureau estimated that American Indians and Alaska Natives living on reservations or in Native villages were under documented by approximately 4.9 percent, more than double the undercount rate of the next closest population group. California has one of the largest Native American populations in the country. According to the 2010 US Census, in California there are approximately 720,000 individuals that identify themselves as Native American.

- 4) **Brennan Center for Justice:** According to a 2019 Brennan Center for Justice analysis, Native American communities still face many roadblocks and challenges to the electoral process. The analysis discusses how many Native Americans, especially those that live on reservations, do not have traditional street addresses, which can result in rejected voter registrations, and states with strict voter identification laws often do not accept tribal identifications as valid forms of identification. Moreover, the article points out that Native American communities lack proper allocation of election resources, including a lack of polling sites, infrastructure for early voting, and election day resources. For example, limited

polling sites and drop boxes tend to be unreasonably far away and require significant travel time to cast a ballot. Finally, the article discusses the 2013 US Supreme Court ruling in *Shelby County v. Holder*, which held that the coverage formula in Section 4(b) of the Voting Rights Act (VRA) is unconstitutional and jurisdictions no longer need to seek preclearance from the US Attorney General or US District Court before implementing new voting changes. The article contends that the removal of this federal protection led to many previously covered jurisdictions enacting new voting restrictions.

- 5) **Other Advisory Committees:** In 2015, the Legislature approved and Governor Brown signed into law AB 1443 (Chau), Chapter 347, Statutes of 2015, which established and codified the Language Accessibility Advisory Committee (LAAC) to advise the SOS on issues related to language accessibility of elections and election materials. The mission of the LAAC is to advise and assist the SOS with implementation of federal and state laws relating to access of the electoral process by LEP voters, so that all voters can understand the voting process. Current law requires the LAAC to be comprised of appointees that demonstrate language accessibility experience, have knowledge of presenting election materials to voters using plain language methods or another method that is easy for voters to access and understand, or be a county elections official or their designee. Additionally, the LAAC provides recommendations identifying and prioritizing activities, programs, and policies to ensure every voter has equal access to the ballot. The responsibilities of the committee include: 1) providing expertise on language accessibility issues, 2) promoting language accessibility initiatives, and 3) responding to the SOS's questions regarding language. Additionally, local elections officials are encouraged to develop local language advisory groups or local LAACs.

In 2015, Governor Brown also signed into law AB 683 (Low), Chapter 334, Statutes of 2015, which required the SOS to establish the Voting Accessibility Advisory Committee (VAAC) to make recommendations for improving access to voting and election materials and related to improving the accessibility of elections for voters with disabilities, as specified.

Appointees to the VAAC must have demonstrated experience with accessibility requirements for voters with disabilities or be a county elections official. The responsibilities of the VAAC include: 1) establishing guidelines for reaching voters with disabilities; 2) making recommendations for improving the availability and accessibility of election materials; 3) increasing distribution of public service announcements, 4) making recommendations about web accessibility, 5) promoting voter hotlines, 6) promoting state and local library services for voters with disabilities, 7) making recommendations for improving access and participation, 8) promoting the use of plain language and alternative formats for election materials, and 9) making recommendations for pollworker training. Similar to the LAAC, local elections officials are encouraged to develop local voting accessibility advisory groups or local VAACs.

- 6) **Arguments in Support:** In support of this bill, the Yurok Tribe writes:

Native Americans in California have faced both historical and present day barriers to exercising their rights to vote. These barriers have resulted in disproportionately lower voter turnout rates for Native Americans. The proposed Native American Voting Accessibility Advisory Committee could make recommendations to address the many diverse barriers facing Native American voters such as distrust in state government based on historical genocide and

mistreatment, high rates of incarceration and criminal records, lack of traditional addressing on remote and poorly served Native American reservations, language barriers, transportation barriers, and lack of electricity and internet services with which to engage in state and local elections. Put simply, there is not one simple solution to this complex and important issue.

REGISTERED SUPPORT / OPPOSITION:**Support**

Secretary of State Alex Padilla (sponsor)
American Civil Liberties Union of California
California Native Vote Project
California Teachers Association
Yocha Dehe Wintun Nation
Yurok Tribe

Opposition

None on file.

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