

A Look at Where North Dakota's Voter ID Controversy Stands

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North Dakota is home to one of the most important Senate races of 2018, and less than three weeks before Election Day, it's embroiled in a fierce battle over who will be able to participate.

On Oct. 9, the Supreme Court allowed a new state voter identification requirement to take effect, meaning North Dakotans will be voting under different rules than in the primaries just a few months ago. The change disproportionately affects Native Americans, and tribal leaders and advocacy groups have spent the past week and a half scrambling. In a recent letter to the North Dakota secretary of state, one group called the state's current process unworkable and proposed a solution, but the secretary of state would not endorse it.

It is an extraordinary situation: the electoral process thrown into chaos at the last minute in a state that will help decide which party controls the Senate. Here's a look at where things stand.

Why is everyone talking about this?

The stakes couldn't be much higher. Senator Heidi Heitkamp, a Democrat, is in an extremely tough re-election race in a state that President Trump won by 36 percentage points. If she loses, Democrats' chances of taking the Senate, already pretty small, become minuscule. She's behind in the polls, and if turnout is low among Native Americans — who helped elect her in 2012 — it will be all but impossible for her to come back.

That's where the new law comes in. Under the requirement the Supreme Court just allowed to take effect, North Dakotans can't vote unless they have identification that shows their name, birth date and residential address. Many people on Native American reservations don't have residential addresses; they use P.O. boxes, and that's not enough at the polls anymore.

Native Americans are about 5 percent of North Dakota's 750,000 residents, and according to the Native American Rights Fund, they're more than twice as likely as other voters to lack a form of identification acceptable under the new law. The district court that ruled earlier this year found that about 5,000 Native American voters did not have the necessary identification, and that about 2,300 of that number also lacked supplemental documentation.

In 2012, Ms. Heitkamp won by fewer than 3,000 votes.

How did we get here?

Republicans in North Dakota have been trying to make this change since 2013. In fact, the state legislature began debating a voter ID law within months of Ms. Heitkamp's victory. Democrats say the change is a politically motivated attempt to suppress the Native American vote.

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Until recently, courts had blocked the enforcement of the residential address requirement, holding that it unfairly targeted Native Americans. Six months ago, a district court judge enjoined the latest version, writing: "The state has acknowledged that Native American communities often lack residential street addresses. Nevertheless, under current state law an individual who does not have a 'current residential street address' will never be qualified to vote."

But in September, the United States Court of Appeals for the Eighth Circuit lifted the injunction, and the Supreme Court declined to reinstate it.

What do supporters of the requirement say?

State officials say the requirement is needed to prevent voter fraud, especially because North Dakota does not require voter registration (instead, voters may simply bring ID to the polls on Election Day). And they maintain that no eligible voter will be disenfranchised.

In a letter to tribal leaders, the secretary of state's office wrote that any voter without a residential address could contact their county's 911 coordinator, describe the location of their home and, quickly and at no cost, be assigned an address that the coordinator could confirm in an official letter. The voter could then either use that letter to obtain new identification or present it at the polls alongside an ID card that would not have been sufficient on its own.

Still, the number of people affected, and the fact that the election is so soon, creates an enormous logistical challenge.

How are Native Americans responding?

Advocacy groups have been meeting with tribal leaders on all of North Dakota's far-flung reservations, trying to figure out how to help voters get the addresses and identification they need through the process the state described. It's a tall order.

One of the groups, Four Directions, came up with its own plan. In a letter to Secretary of State Al Jaeger, it suggested that tribal officials would be stationed at every voting location on the state's reservations, ready to issue identification letters on tribal letterhead. They would use an established addressing system for rural areas to assign residential addresses on the spot.

Oliver and Barbara Semans, co-executive directors of Four Directions, wrote that they believed Mr. Jaeger had "no authority to prevent tribal governments from implementing this plan," because "tribal governments have the inherent sovereignty to issue residential addresses to any tribal member who may lack such an address." But they urged him to "publicly support" it.

Mr. Jaeger declined. "It is inappropriate for me to do so because it is a legal question that is beyond the authority of this office as to whether a sovereign tribe has those powers within their jurisdiction," he wrote in a response that his office provided to The New York Times on Thursday.

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