

**Testimony of Standing Rock Sioux Tribe Chairman Mike Faith
Regarding Legislative Redistricting
North Dakota Legislative Council Redistricting Committee
September 15, 2021**

Introduction

Chairman Devlin and members of the Redistricting Committee, thank you for allowing me to testify today. I am Mike Faith, Chairman for the Standing Rock Sioux Tribe. Standing Rock is a federally recognized tribe located in the states of North Dakota and South Dakota. In North Dakota, the reservation makes up Sioux County and has 4,373 residents, 3,644 of whom are Native American. Sioux County has a Native American Voter Age Population of 86%. Standing Rock is a sovereign nation governed by its Tribal Council. Our tribal members are of the Dakota and Lakota nations. I am here to advocate on behalf of the Tribe and its members: (1) for the use of single member districts to elect representatives to the State House; (2) for Standing Rock to be kept together and not be split into multiple legislative districts; and (3) to request the North Dakota Redistricting Committee listen to tribal input and hold redistricting meetings and tribal consultations on reservations.

History of North Dakota Native American Voting Rights

Tribes across the nation and in North Dakota have had to fight for their right to vote. North Dakota has a long history of discrimination against Native Americans generally, and of denying Native Americans the right to vote in particular. Courts have recognized the history of discrimination in North Dakota against Native Americans with regard to voting. *See Spirit Lake Tribe v. Benson Cty., N.D.*, No. 2:10- cv-095, 2010 WL 4226614, at *3 (D.N.D. 2010); Consent Judgment and Decree, *United States v. Benson Cty.*, Civ. A. No. A2-00-30 (D.N.D. Mar. 10, 2000); *State ex rel. Tompton v. Denoyer*, 72 N.W. 1014, 1019 (N.D. 1897). In the late 19th Century, an Amendment to North Dakota's initial Constitution, adopted and ratified in 1898,

provided that only “[c]ivilized persons of Indian descent” who “severed their tribal relations two years next preceding such election” were eligible to vote. N.D. Const., art. V, § 121 (1898).

Thus, in order to vote, Native Americans had to be “civilized” and had to have explicitly “severed their tribal relations.” *Id.* This insidious classification only applied to Native Americans and was not removed until 1922. people”

In 1920 in *Swift v. Leach*, 178 N.W. 437 (N.D. 1920), the North Dakota Supreme Court was asked to apply the “civilized persons” constitutional provision to Native American voters. While the Court found that the Native American plaintiffs were eligible voters in that case, it required the local Superintendent of the Bureau of Indian Affairs, as well as other witnesses, to testify that the Natives “live just the same as white people” to show that they were “civilized” and had “severed” their tribal relationship. *Id.* at 438-40. This was despite the Appellant’s argument that the Native Americans, by being dependent on the federal government, could not be “civilized persons.” *Id.* at 441.

In 2000, the United States successfully sued Benson County over its use of at-large elections, which had the effect of diluting the Native American vote. And Standing Rock has also been at the forefront in protecting the right to vote. In 2018, the Tribe, on behalf of its members, sued the North Dakota Secretary of State over the state’s illegal voter identification requirements that would make it impossible for many tribal members to vote. In 2020, the parties entered into a mutually agreed upon consent decree that would allow for the recognition of tribal ID’s and allow tribal voters to identify their residence on a map due to many tribal members lacking a physical street address. The right to vote is a fundamental right in our democracy, and Standing Rock will vigorously defend that right of its members.

North Dakota Legislative Redistricting

In North Dakota, the Native American population grew by 29.7% in the last decade. So as the state of North Dakota undertakes its redistricting process, the Legislature should take several steps. First, the Legislature should move away from at-large districts for the State House of Representatives, which has a dilutive effect on Standing Rock votes. For the Standing Rock Sioux Tribe, the Legislature should utilize single member House districts to ensure we have equitable representation.

Failure to draw single-member House districts can dilute the Native vote. For example, the North Dakota portion of Standing Rock is located entirely with District 31. Besides Sioux County, District 31 also includes Grant County and parts of Hettinger and Morton counties. The Native population in District 31 is concentrated on the reservation in Sioux County, which has a Native voting age population of 86.1%. Even though the voters in Sioux County tend to strongly favor Democratic candidates, District 31 has been represented by the same three Republicans since 2011.

Indeed, I ran for the State House in 2014, along with another Standing Rock member, LaDonna Allard. But, we were outvoted in the at-large election. In 2010, a different Standing Rock Tribal member ran for the State House, but was likewise outvoted in the at-large system. Chase Iron Eyes, another Standing Rock member and candidate for US House, earned 78% of the vote in Sioux county, but was defeated in each of the other counties in District 31. This shows that the Native American voters have not been able to elect the candidate of their choice. This was just like in 2000 when the United States was forced to sue Benson County for its use of

at-large elections that diluted the voting power of Spirit Lake tribal members.¹ Creating a House sub-district would give tribal members the opportunity to elect their preferred candidate.

Second, Standing Rock should not be cracked, but rather kept together in a district. We are a community has similar language, culture, economics, and identity, and our community deserves uniform representation. Splitting the reservation or our communities into multiple districts would dilute the ability of tribal members to elect the representative of their choice.

Third, even though the redistricting schedule is abbreviated, I am extremely disappointed that the Committee has failed to formally consult with the tribes to take Tribal input into account in the redistricting process. Sending an informal invite to tribal leaders to testify a day before a hearing is highly disrespectful. North Dakota Native Vote requested formal government-to-government consultation on redistricting months ago. Failing to reach out to Tribal leaders for months, and then waiting for the last minute to invite us to provide this important information is unacceptable. Many other states began holding redistricting hearings months ago to get feedback directly from citizens and tribal governments. Our tribal governments, just like other governments all across the country, are dealing with the rising impact of the Delta variant. The actions by the Committee send the message that the Committee is not interested in hearing what we have to say and that it is not important at all.

Native people have also been requesting hearings on the reservations. But this Committee has chosen to only hold hearings in Bismarck or Fargo. Holding hearings in far-away communities has a disproportionately negative impact on tribal communities. Having hearings only in Bismarck is disproportionately burdensome for Native Americans, just as the North

¹ See Consent Decree, *United States of America v. Benson County*, CIVIL ACTION NO. A2-00-30 (March 10, 2000) available at <https://www.justice.gov/crt/case-document/file/1180491/download>.

Dakota District Court found that forcing Native Americans to travel to a driver's license site is disproportionately burdensome.² Additionally, as the North Dakota District Court recently recognized, there are high levels of poverty on our reservation.³ Native people also disproportionately lack access to transportation and broadband internet.⁴ The Committee should be holding hearings on reservations so that all tribal members have the opportunity to have their voices heard, and should hold tribal consultations after it has developed a draft plan. This process is far too important to ignore the perspective of tribal communities.

I thank the members of the Committee for your consideration of these important issues. I am happy to address any questions or discuss these issues further.

² *Brakebill v. Jaeger*, No. 1:16-CV-008, 2016 WL 7118548 at *6 (D.N.D. Aug. 1, 2016) (travel to a Driver's License Site to obtain a non-driver's ID card (or a driver's license) is substantially burdensome for Native Americans).

³ *Id.* at *8 (Native Americans living in North Dakota disproportionately live in severe poverty).

⁴ *Id.* at * 4 (Only 78.2% of Native Americans have a North Dakota driver's license, compared to 94.4% of non-Native Americans).