



**Statement of Jacqueline De León Regarding H.B. 1289
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Chairman Kasper and Members of the House Government and Veterans Affairs Committee, thank you for allowing me to testify today. My name is Jacqueline De León, and I am a staff attorney with the Native American Rights Fund (“NARF”). I am here to oppose the extended durational residency requirements of H.B. 1289 and to urge the Committee to vote for a DO NOT PASS recommendation. Since 1970, NARF has provided legal assistance to Indian tribes, organizations, and individuals nationwide who might otherwise have gone without adequate representation. NARF has successfully asserted and defended the most important rights of Indians and tribes in hundreds of major cases, and has achieved significant results in such critical areas as tribal sovereignty, treaty rights, natural resource protection, and Indian education. NARF is a non-profit 501(c)(3) organization that focuses on applying existing laws and treaties to guarantee that national and state governments live up to their legal obligations. NARF is a leader in protecting voting rights and fostering voter engagement in Native communities nationwide, including securing voting rights for tribes in Nevada, Montana, and Alaska just last year.

In 2014, NARF received a request for assistance regarding Native Americans in North Dakota that were being turned away from the polls. NARF began its investigation and was appalled to learn that veterans, school teachers, elders, and other life-long voters were being rejected by poll workers that had known these individuals their entire lives. Following NARF’s investigation, in 2016, NARF filed suit on behalf of seven Turtle Mountain plaintiffs that were disenfranchised by the laws. NARF showed that North Dakota’s 2013 and 2015 voter ID laws disenfranchised Native American voters and violated both the U.S. and North Dakota Constitutions as well as the Voting Rights Act. The U.S. District Court in North Dakota granted an injunction in favor of the Native American plaintiffs. The Court found that the law violated the U.S. Constitution and required that North Dakota provide a fail-safe mechanism for the 2016 general election. In his decision, Judge Hovland stated, “it is clear that a safety net is needed for those voters who simply cannot obtain a qualifying ID with reasonable effort.” *Brakebill v. Jaeger*, No. 1:16-cv-008, 2016 WL 7118548 (D.N.D. Aug. 1, 2016) (order granting preliminary injunction).

This legislature again passed a voter ID law in 2018 that was also challenged on behalf of many of the same plaintiffs as well as in a lawsuit brought by the Spirit Lake Nation and Standing Rock Sioux Tribe. Those lawsuits were settled in May of last year when the Plaintiffs agreed to a Consent Decree with the State that increased access to IDs and established a process for Native

American voters that do not have proof of an address to vote. A copy of the Consent Decree is attached to our testimony.

Upon review of H.B. 1289, it was immediately evident that this proposed bill is likewise unconstitutional and discriminatory. **We oppose H.B. 1289.**

The proposed durational residency requirements for voting in H.B. 1289 are unconstitutional. The requirement infringes on two fundamental rights: the right to vote and the right to travel. The United States Supreme Court long ago heard a case in which another state, Tennessee, attempted to impose durational residency requirements of the exact same length proposed by H.B. 1289. In that case, *Dunn v. Blumstein*, 405 U.S. 330 (1972), the Supreme Court unequivocally held that Tennessee's requirement that a voter have lived in the state for a year and in the county for ninety days was an unconstitutional violation of the Equal Protection Clause of the 14th Amendment. NARF believes H.B. 1289 will meet this same fate if the Legislative Assembly passes it into law. I have attached *Dunn v. Blumstein*, for the record and for your review.

Because the right to vote and travel are so fundamental, any State imposing durational residency requirements must demonstrate that the restriction is necessary to further a compelling government interest. Any limitation on these rights must be "drawn with precision." This is important because any purported justification, such as fraud, must be supported by evidence. There has been no voter fraud in North Dakota that would have been prevented by H.B. 1289. The Heritage Foundation, a conservative think-tank, maintains a running account of all cases of voter fraud across the country dating back to the early 1980's. That database, available here: <https://www.heritage.org/voterfraud/search?state=ND>, includes just three cases from North Dakota – two where a person voted twice and one where someone collected petition signatures incorrectly. There is no evidence of the integrity of elections being at risk in North Dakota. There are also numerous other voting requirements that make it illegal to engage in voter fraud. These provisions already in place are sufficient to detect and deter fraud. And, again, even if there was a concern about fraud in North Dakota, which the Heritage Foundation proves there is not, extended residency requirements like the ones in H.B. 1289 will not effectively prevent it.

Since *Dunn*, many states have done away with durational residency requirements altogether. In other instances, courts have been accepting of durational residency requirements of about thirty days, which is the residency requirement currently in North Dakota law. There is no need to change the law. The proposed limitations in H.B. 1289 go far beyond what has been allowed by the courts and infringes on Americans' fundamental rights. As Justice Marshall wrote in *Dunn*, these laws "penalize those persons who have traveled from one place to another to establish a new residence." Many North Dakotans, even long-time residents of the state, may fall in to this category. Likewise, Native Americans may choose to live part of the year on the reservation and part of the year in search of economic opportunity. Moving frequently is not a crime. The ability to move frequently is in fact, a right. There is no justification for infringing upon this right.

Alarming, however, H.B. 1289 will also disproportionately discriminate against Native Americans. For many of the same reasons as the voter ID law, the extended residency requirements in HB 1289 will directly result in Native Americans in North Dakota having less opportunity to

vote. The unique burdens faced by Native Americans in North Dakota – including a severe housing shortage – mean that tribal members are much more likely to have moved, or to be homeless, or precariously housed. These Native Americans have no choice but to move frequently. They should not be disenfranchised because of instable housing.

Additionally, this bill does not address how these residency requirements will be enforced. Because of the state’s broken addressing system, some Native Americans living on reservations do not have residential addresses. The Department of Transportation (DOT) website does not recognize some addresses coming from Native communities. Native Americans also lack access to broadband and cannot always access the DOT online system. Therefore, there is no place for the State to check the residency of all Native Americans.

Indeed, any suggestion that an ID could or should be used to check residency requirements will directly implicate the litigation that has just recently concluded. Native Americans disproportionately lack access to ID, and in some instances it is impossible for them to get an ID with an accurate address on it. In North Dakota, Native Americans travel an average of an hour each way to reach drivers’ license sites. Some on the Standing Rock Sioux travel over 60 miles to reach the nearest drivers’ license site which is over an hour and a half each way. Evidence, including exhibits and testimony proving these facts, was provided to the court in the voter ID case and is attached to my written testimony for inclusion in the record here.

The settlement reached with the State requires the State to provide new IDs on reservations 30 days prior to the election. This agreement would be undermined if those IDs also had to show residency of a year in North Dakota and 90 days in a precinct since those IDs would not have been issued in time to meet those requirements. Further, the Consent Decree requires that any amendments to Chapter 72-06-03 of the North Dakota Administrative Code, entitled Tribal Identification for Voting, such as an amendment to require proof of durational residency, will require tribal consultations.

In conclusion, proof of durational residency may be impossible for many Native Americans and they could therefore be excluded from voting through no fault of their own. Given the extensive legislation around the voter ID laws, this legislature should be well aware of the limitations in Native communities. I implore you to begin crafting laws that take into account the hardships faced by Native communities. Ignoring those hardships to the detriment of Native voters is unconstitutional and fails the obligations each of you have to serve all of your constituents fairly and equitably.

We strongly oppose adoption of H.B. 1289. Thank you.

