

## THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION

### RESOLUTION #2019-010

#### **TITLE: Urging All Levels of Government to Protect the Voting Rights of Native People**

**WHEREAS**, the National Native American Bar Association (“NNABA”) was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors, and law students, and NNABA promotes and addresses social, cultural, political, and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, Native people were largely deprived of the right to vote in elections in the United States from the beginning of democratic self-government throughout most of the history of the United States, along with many other minority groups; and

**WHEREAS**, even during passage of the Fourteenth Amendment to the United States Constitution, which aimed to address the citizenship and equal protection of various minority groups, Congress specifically excluded “Indians not taxed” from citizenship and an ability to participate in the electoral process; and

**WHEREAS**, even though the Fifteenth Amendment granted all United States citizens the right to vote regardless of race, most levels of government continued to exclude Native people from citizenship and an ability to participate in the electoral process; and

**WHEREAS**, the United States Supreme Court held, in *Elk v. Wilkins*, 112 U.S. 94 (1884), that the lawsuit of an American Indian man seeking to register to vote must be dismissed because “[t]he plaintiff, not being a citizen of the United States under the Fourteenth Amendment of the Constitution, has been deprived of no right secured by the Fifteenth Amendment, and cannot maintain this action;” and

**WHEREAS**, it was not until 1924, with the passage of the Snyder Act, that the federal government recognized the United States citizenship of Native peoples; and

**WHEREAS**, even after the passage of the Snyder Act, many states and local governments withheld voting rights from Native peoples, using the same mechanisms and strategies, such as poll taxes, literacy tests, fraud and intimidation, that kept other minorities from exercising that right; and

**WHEREAS**, Native peoples were not fully enfranchised in law until 1962, when New Mexico removed its state-level restrictions on voting for Native peoples, and only achieved real-life voting rights with the 1965 passage of the Voting Rights Act and subsequent legislation in 1970, 1975, and 1982; and

**WHEREAS**, Native peoples still face difficulty accessing the right to vote, difficulties which include: physical isolation in rural communities and on remote reservations, which creates long travel times to polls; technological isolation and lack of access to voting information; language barriers; high levels of poverty; and lower rates of permanent housing; and

**WHEREAS**, these difficulties have been compounded by efforts by state and local governments to disenfranchise Native voters, including requiring Native voters to provide proof of residence at physical “911” addresses for voter registration, onerous voter identification requirements, a refusal to accept post office box addresses or tribal identification cards at polls, unnecessarily heavy police presence at polling stations, and inappropriate and/or inaccessible polling stations; and

**WHEREAS**, federal courts have ignored these efforts to disenfranchise Native voters and have refused to strike state-level restrictions designed to keep Native voters from accessing the polls, as the Eighth Circuit Court of Appeals most recently did in *Brakebill et al. v. Jaeger*, No. 18-1725 (8th Cir. 2019), which vacated a lower court’s statewide injunction against enforcement of North Dakota’s onerous voter identification and physical address requirement; and

**WHEREAS**, improved voter protections are needed to address and prevent these voter suppression efforts, to ensure that Native voters have equal access to the electoral process, and to provide equal access to resources and other information regarding federal and state elections.

**NOW THEREFORE BE IT RESOLVED**, that the National Native American Bar Association calls upon Congress to pass the Native American Voting Rights Act of 2019, which would enact measures such as increasing Native access to voter registration sites and polling locations; authorize tribal identification cards for voting purposes; bolster Native voter registration, education, and election participation efforts; authorize a first-of-its-kind Native American Voting Rights Task Force; and prohibit states from undertaking discriminatory actions without Department of Justice agreement and government-to-government consultation.

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association calls upon Congress to ensure there is adequate funding for those who oversee and conduct the election process, including sufficient funding to provide rural polling locations, training, and alternate forms of voting other than in person ballot casting.

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association calls upon the United States Supreme Court and all levels of federal, state, and tribal courts to enforce existing laws that protect Native voters from disenfranchisement and Native voters’ access to the polls.

**BE IT FINALLY RESOLVED**, that the National Native American Bar Association calls upon the Department of Justice to vigorously enforce all federal laws relating to elections and voter protection, send federal observers to Indian Country and other Native communities to document voting problems and discrimination, and file actions when Native voters are discriminated against in the voting process.

**CERTIFICATION**

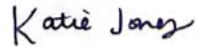
The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on October 2, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.



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Robert Saunooke, President

ATTEST:



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Katie Jones, Secretary