



Policy Brief

South Dakota Advisory Committee to the
U.S. Commission on Civil Rights

Voting Rights and Access in South Dakota¹

The South Dakota Advisory Committee identified several barriers to voting in South Dakota. Ensuring equal access to voting is a critical issue for safeguarding the civil rights of all South Dakotans. To examine this issue, the Committee conducted five public hearings in 2022. The Committee invited testimony from the legal community, academics, advocacy organizations, and individuals directly affected. Based on the testimony offered at the hearings, the Committee prepared a report detailing its findings and recommendations. The Committee found many barriers that specifically affect American Indians living throughout South Dakota, on both Tribal and non-Tribal Land.

Distance to registration, polling, and absentee balloting locations.

The largest study of American Indians in South Dakota found that out of **352 registered voters, 309 of them noted difficulty in traveling the long distances** to registration, polling, and absentee balloting locations.

Voter I.D. confusion. There is no I.D. required to register to vote in South Dakota, but there is prevalent confusion and lack of knowledge within American Indian communities, and perhaps as well as with poll workers, about the use of affidavits in lieu of any type of identification.

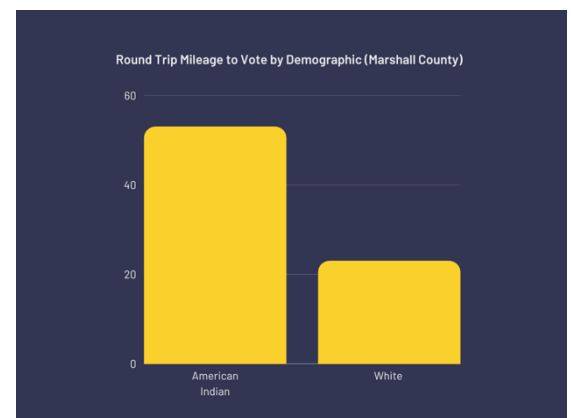
Distrust in non-Tribal governments and racial discrimination.

In a survey examining barriers faced by American Indian voters, only 5% of respondents in South Dakota expressed trust in non-Tribal governments. This distrust in non-Tribal governments can be linked to a history of imposing harmful policies upon American Indians without their consent. American Indians often experience racial discrimination and intimidation when attempting to register and to vote. In *Bone Shirt v. Hazeltine*, the district court detailed racial discrimination faced by American Indians in South Dakota. American Indian voters often feel uncomfortable, intimidated, or not welcome entering the courthouse or the auditor's office since the employees at these locations are almost always non-American Indian.

There have been 25 voting rights cases in South Dakota with American Indian plaintiffs, the 2nd largest number of cases in the country. In nearly all, the American Indian plaintiffs either won or successfully settled.

Indian voters having less opportunity than other members of the electorate to participate in the political process and to elect candidates of their choice. There have been other such cases (e.g. *Bone Shirt v. Hazeltine*) where courts have ruled that redistricting diluted American Indian voting power.

Purging voter lists. South Dakota law specifying when and why voters can be purged from registration lists disproportionately affects American Indians due to their overrepresentation in the criminal justice system and the use of non-standard addresses on Reservations.



Representation concerns.

There was an extreme undercount of American Indians in the 2020 census resulting in underrepresentation. Additionally, under the Trump administration, the only case brought by the DOJ voting section was in South Dakota (*United States v. Chamberlain School District*). Defendants agreed that the method of electing the Chamberlain School Board resulted in American

¹ Full and complete citations can be found in the report.

State Level Reform

The state legislature has the authority to remove these barriers by implementing the following Committee recommendations:

- Amend the HAVA reimbursement administrative rules to allow county reimbursement for pre-paid postage for absentee voting and voter registration.
- Enact legislation and allocate funding to create a non-partisan “Complete Count Committee” to ensure accurate census counts.
- Designate Indian Health Service locations and Veteran’s Affairs Medical Centers as voter sites.
- Repeal any South Dakota state law impeding the translation of ballots in languages other than English.
- Ensure that the South Dakota Secretary of State's office design and distribute a 1-page infographic on "How to Vote" in South Dakota for use on election day. This infographic should be available at all County auditor offices and voting locations on election day and should explain which IDs are permitted when voting, how to fill out an affidavit to vote without an ID, as well as other relevant information that has traditionally only been available through the Secretary of State's website.
- The Legislature or Board of Elections should define "serving a sentence" as found in SDCL 12-4-18 to clarify when one is eligible to register or re-register to vote. Further, that the Secretary of State prepares appropriate instruction for its implementation.
- Ensure that the State of South Dakota take affirmative measures to increase American Indian voting participation due to the long and relatively recent history of discouragement of American Indian voting in South Dakota. For example, elected officials should consider supporting the “Remove the Stain” act to signal to American Indians that the state is attempting to address the long-standing issues that have led to the lack of trust that American Indians’ experience in non-Native governments.

County and Municipality Reform

The Committee recommends for County and Municipal leaders to:

- Include the voices of American Indians by reaching out to Tribal governments for recommendations to improve engagement. Encourage American Indians to work at polling locations and run for office. Ensure that county auditor offices have a reasonable number of American Indians as officials.
- Urge Tribal leaders to hold Tribal elections on the same day as county, state, and federal elections.
- Encourage counties with reservation land to utilize HAVA funding to create satellite offices to offer in-person voting services on reservation land, with approval of the respective Tribes.

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A Report of the
South Dakota Advisory Committee to the
U.S. Commission on Civil Rights

Policy Brief

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. This product is part of the South Dakota Advisory Committee’s study, Voting Rights and Access. This policy-oriented summary of the published report is intended to aid stakeholders seeking solutions to this complex issue. You can find the full report here:

https://www.usccr.gov/files/2023-07/south-dakota-advisory-committee-report_voting-rights.pdf