

# The 2020 Election in Indian Country: What Just Happened?

Indigenous Law Conference, Michigan State University College of Law



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# Overview

- **Super weird year**
- **Pandemic lawsuits**
- **Polling place closures**
- **Lack of Election Day chaos**
- **The 2020 Census was a mess and that still matters**
- **Your real problem is redistricting**
- **You need NAVRA**

# NARF's Voting Work

- NARF started voting work in the 1980s (with perennial bad actor South Dakota)
- Picked up again in 2006 with reauthorization of the VRA
- A decade of suing Alaska, now adding SD, ND, MT etc.
- Now 6 attorneys on voting = most ever (one third of staff)
- We did more voting work in 2020 than ever (because your voting rights have been going downhill since 2013)
- We protect the RIGHT ITSELF: we protect voters, not parties

# Pandemic cases

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- Pandemic made voting harder
- Ballot collection case: *Western Native Voice v. Stapleton*
- Witness signature case: *Arctic Village v. Meyer*
- Many cases filed across the U.S. failed
- The earthquake was in Pennsylvania: *Scarnati v. Boockvar*, where 4 Justices indicated willingness to review a State Supreme Court's decision on its OWN constitution

# How Far is Your Polling Place?

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- Tyranny of distance is real, and getting worse
- Most reservations do not have polling places and this year jurisdictions took away even more
- Some people had to drive 98 miles each way, most common distance was 35-40 miles each way
- ND had only one per county
- Montana tried to take them away at the last minute
- THIS IS VOTER SUPPRESSION

# Chaos, and Lack Thereof

- We were told to expect chaos at the polls
- There was some but not anywhere near what we heard
- **BIG REVEAL:** the chaos was the run-up, in which you were told to be afraid, the goal was to keep people home
- The “new” threat this year was Voter Intimidation and Disinformation

# Voter Intimidation

- ❑ Spreading false or misleading information intended to disenfranchise voters
- ❑ Confronting or questioning a voter in a harassing or intimidating manner
- ❑ Aggressively questioning voters about qualifications to vote
- ❑ Violent behavior
- ❑ Verbal threats of violence
- ❑ Following voters around or invading their physical space
- ❑ Brandishing or displaying firearms
- ❑ Confronting voters in military-style or official-looking uniforms
- ❑ Law enforcement officers, including off-duty officers, loitering around voters and polling places
- ❑ Disrupting voting lines or blocking the entrance to a polling place

# It's All Illegal

- Under federal law, it is a crime to intimidate, threaten, or coerce a person, or attempt to do so, for the purpose of interfering with their right to vote or vote as they may choose. The National Voting Registration Act also makes it a crime to intimidate, threaten, or coerce a person, or attempt to do so, for registering to vote, voting, or “urging or aiding” someone else to vote. Another statute, enacted as part of the Civil Rights Act of 1968, makes it a crime to use or threaten to use physical force to intimidate a person from voting or qualifying to vote. Federal law also provides non-criminal remedies for voter intimidation. For example, the Voting Rights Act provides for civil lawsuits and makes it unlawful to intimidate, threaten, or coerce a person, or attempt to do so for voting, attempting to vote, or “urging or aiding” someone else to vote.
- 18 U.S.C. § 594.
- 52 U.S.C. § 20511(1).
- 18 U.S.C. § 245(b)(1)(A).
- 52 U.S.C. § 10307(b).



# Voter Disinformation

- #1 problem in voting
- Stop retweeting, commenting false information
- Big reveal: WE are the chaos
- Commenting “this is not accurate” actually bumps up bad content
- Never repeat content unless sure of source
- To correct something, start a *new* post with correction
- Consider if what you are doing helps or hurts

# Census was a Mess

- Each PERSON that failed to complete the census cost their Tribe and local governments ***nearly \$3,200 per person (\$17,000 in Alaska)***
- **This is a loss of billions of dollars for Tribes over the next decade**
- **Hurt most were HTC:** New Mexico (78.6 percent), Arizona (68.1 percent), Alaska (65.6 percent). Severe undercounts elsewhere like SD
- In 2010, undercount was highest of all groups at 4.9 percent – this time it will be even worse

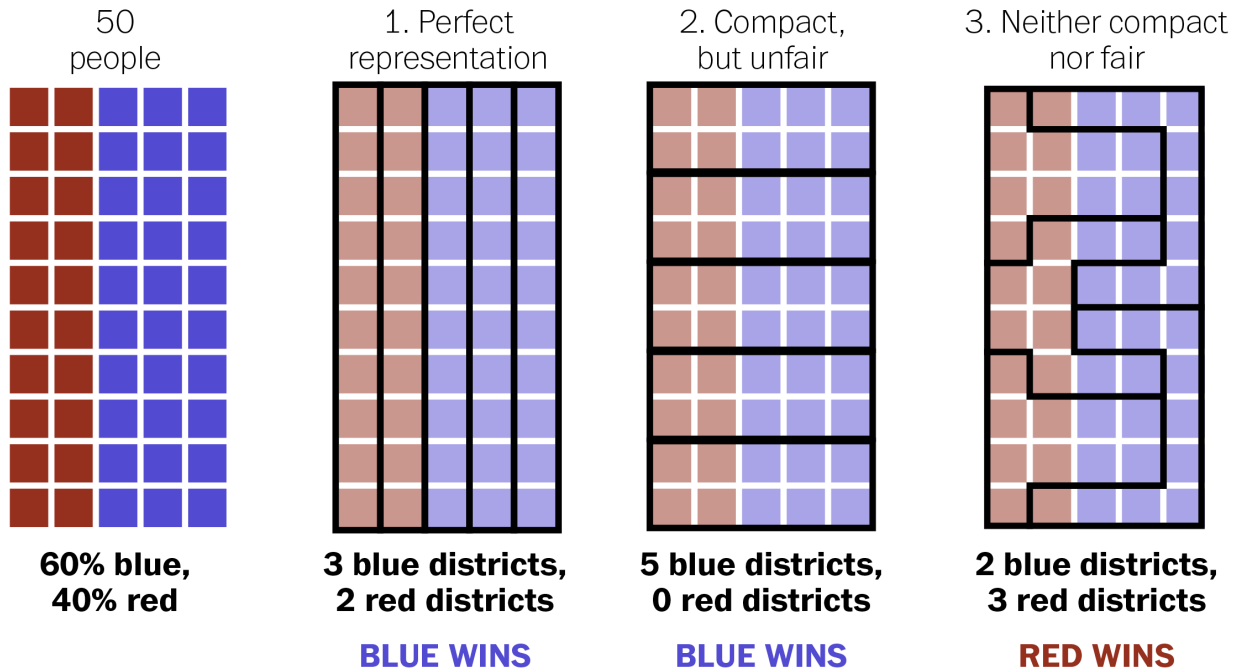
# Census Impacts are Real

- Between **\$600 and \$900 billion** in federal funding is distributed **annually** based on population counts obtained by federal agencies
- In Fiscal Year 2016, \$493 billion was disbursed based upon Census surveys including:
  - \$361 billion for Medicaid
  - \$40 billion for highway roads and construction
  - \$17 billion for Temporary Assistance for Needy Families (TANF)
  - \$14 billion for the Children's Health Insurance Program (CHIP)
  - \$6 billion for Women, Infants and Children (WIC)

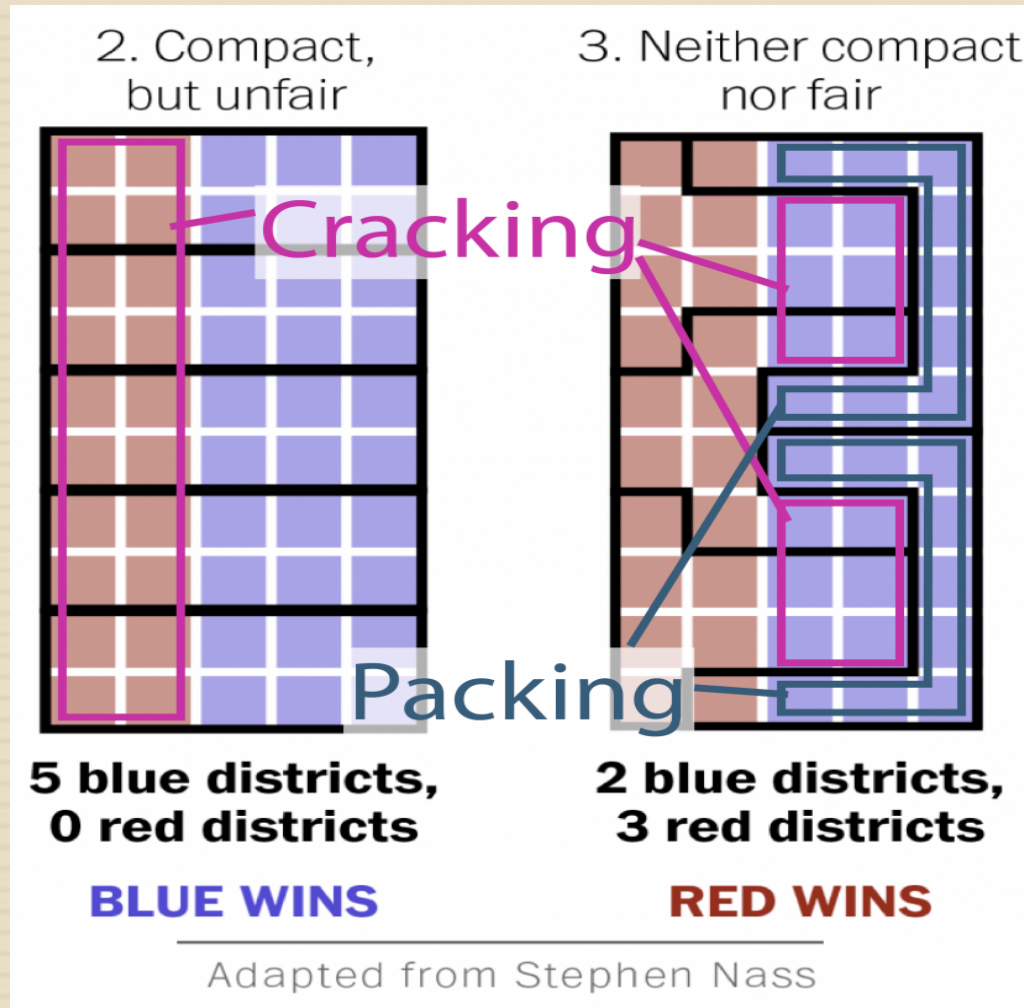
# ... but your real problem is redistricting!

## Gerrymandering, explained

Three different ways to divide 50 people into five districts



# Tribal Communities are Often “Cracked” or “Packed”



# **PRESENTER**

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