

*Voting Problems?
Denied a Ballot or Assistance?*

Recent Developments in Democracy

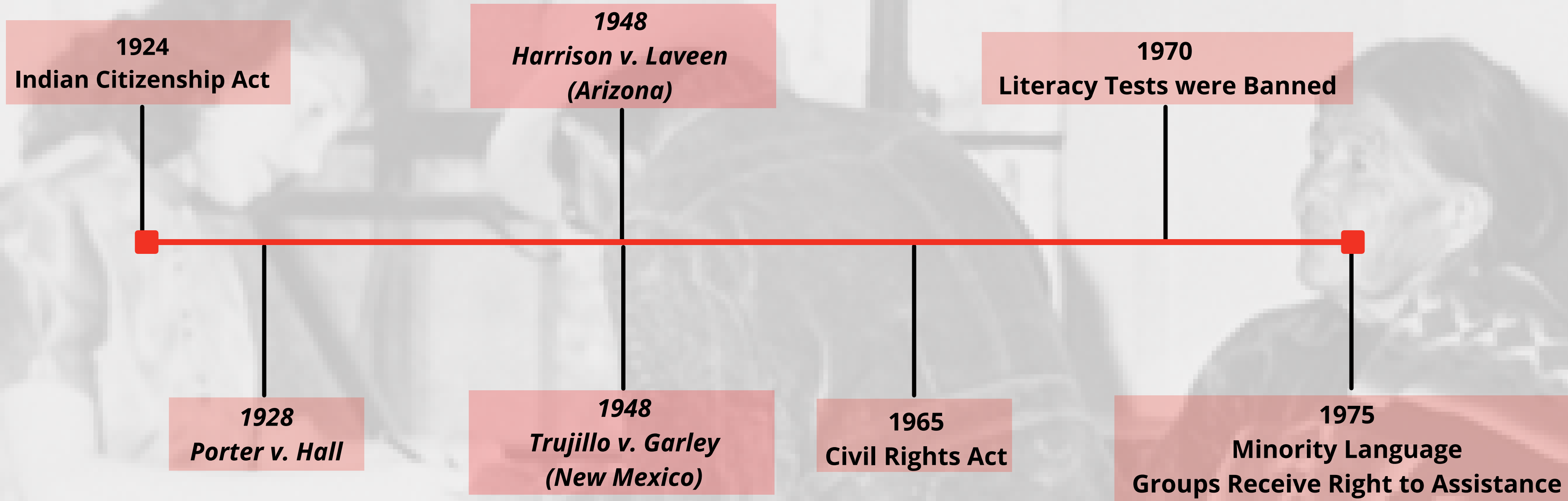
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The Native American Right to Vote

The History



Developments at the Federal Level

Litigation - United States Supreme Court

The Supreme Court of the United States this past summer issued a ruling in ***Brnovich v. Democratic National Committee***, a case originating in Arizona challenging state election law and policies.

Issues before the court:

1. Does Arizona's out-of-precinct policy violate Section 2 of the Voting Rights Act?
 - Held: This policy does not violate Section 2 of the Voting Rights Act.
2. Does Arizona's ban on ballot collection violate Section 2 of the Voting Rights Act?
 - Held: This law does not violate Section 2 of the Voting Rights Act.
3. Was Arizona's ban on ballot collection passed with racially discriminatory intent in violation of the Fifteenth Amendment to the United States Constitution?
 - Held: This law was not passed with racially discriminatory intent and does not violate the Fifteenth Amendment to the United States Constitution.

Litigation - United States Supreme Court

1982 Senate Factors

1. The history of discrimination in the jurisdiction;
2. The degree to which voting in the jurisdiction is racially polarized;
3. The extent to the jurisdiction's use of majority vote requirements, unusually large electoral districts, prohibitions on bullet voting and other discriminatory devices
4. Whether minority candidates are denied access to the jurisdiction's candidate slating processes, if any;
5. The extent to which the jurisdiction's minorities are discriminated against in socioeconomic areas such as education, employment, and health;
6. Whether overt or subtle racial appeals in campaigns exist;
7. The extent to which minority candidates have won elections;
8. The degree that elected officials have won elections'
9. Whether the policy justification for the law is tenuous.

Brnovich v. DNC

- Size of the burden
- The extent to which the rule departs from standards of voting in 1982
- The size of disparities
- Other opportunities to vote in the state
- The strength of the state's interest



Legislation - United States Congress (pending)

- **Freedom to Vote Act**

- Introduces minimum standards for early voting and voting by mail, modernizing voter registration, and restoration of the right to vote for people disenfranchised due to the criminal justice system.
- Sets rules for redistricting to prevent partisan gerrymandering.
- Creates an modernized public finance option for candidates.
- Makes election day a holiday, creates a national voter ID standard, minimum wait time requirement, includes automatic voter registration, same day voter registration, prohibits voter purges, restricts partisan removal of election administrators and post-election procedures.

- **John R. Lewis Voting Rights Advancement Act**

- Update the preclearance formula (original formula was struck down in *Shelby County v. Holder*) to ensure that laws with racially discriminatory impact are evaluated before going into effect.
- Require public notice of changes to voting.
- Addresses the decision in *Brnovich* by clarifying factors that can go to a vote dilution claim under Section 2 of the Voting Rights Act.
- Empowers the Department of Justice to request federal observers anywhere there is a serious threat of racial discrimination in voting.
- Eases the standards under which courts can temporarily block voting changes while a challenge is being reviewed in court. Important because once a vote is denied it cannot be returned.

Legislation - United States Congress (pending)

- **For the People Act**

- Massive democracy reform bill that intends to modernize voter registration, restore voting rights, restore the Voting Rights Act, guarantee DC/Territorial voting rights, end gerrymandering, improve election security, ensure campaign transparency, counter foreign interference in elections, reform campaign finance laws and empower small donors, Supreme Court ethics reform, expanding lobbyist disclosures, ethics reforms for the Congressional and Executive branches, disclosure of Presidential Tax returns.

- **Native American Voting Rights Act**

- Establishes the Native American voting task force, improves access to voter registration/polling places/drop boxes, streamlines process for adding pollin places on Tribal lands, provides uniformity for administering elections on Tribal lands in federal elections, requires the acceptance of tribally or federally issued IDs in states where ID is required, culturally appropriate language assistance, allows Tribes to designate buildings for registering or ballot pick-up/delivery, extends the categories of persons that can deliver voter registration/ballots on Tribal lands, allows the U.S. Attorney General to enforce the statute, restores pre-clearance so states cannot reduce accessibility without Tribal or DOJ approval, and allow Tribes to request federal election observers and requires DOJ-Tribal consultation on election issues.

Developments in Arizona

Barriers that Native Americans Continue to Face when Voting

Systemic Barriers

Ongoing Barriers that Originate Elsewhere but nonetheless Impact Voting

- Socio-economic barriers
- Lack of equitable access to mail
- Non-standardized addresses in communities
- Lack of infrastructure on Tribal lands
- Less access to broadband internet
- Thousands of miles on unpaved roads that makes travel difficult
- Language Barriers
- Voter Intimidation

Institutional Barriers

Barriers that are Created by or Built into Arizona Election Law or Election Administration

- Voter ID laws
- Lack of Equitable Access to Early Voting and In-Person Voting
- County Lines bisecting and trisecting reservations causing confusion
- Failing to comply with Section 203 of the Voting Rights Act (Section 203 covers the Navajo Nation for the Navajo Language and the San Carlos Apache Reservation for the Apache Language)
- Online voter registration not accepting non-Arizona Driver's licenses, like Tribal IDs

Litigation - Federal Courts (pending)

- ***Arizona Democratic Party v. Hobbs (currently at the Ninth Circuit)***

- Lawsuit brought by the Democratic National Committee (DNC), Democratic Senatorial Campaign Committee (DSCC) and Arizona Democratic Party against Arizona challenging the state's failure to provide an opportunity to cure an otherwise valid mail-in ballot that doesn't have a signature. The district court ordered Arizona to change its procedures to allow any signature issues to be addressed, which the state immediately appealed to the 9th U.S. Circuit Court of Appeals. Litigation is ongoing.
- Plaintiffs allege this policy violates the equal protection clause/due process clauses of the 14th Amendment.

- ***Mi Familia Vota v. Hobbs (currently at the District Court)***

- A lawsuit challenging two recently-enacted voter suppression laws in Arizona. Senate Bill 1485 purges voters from the state's permanent early voter rolls if they do not vote by mail in two consecutive elections and Senate Bill 1003 changes the cure process for mail-in ballots, requiring ballots missing a signature to be cured by 7 pm on Election Day (despite the fact that mail-in ballots with inconsistent signatures can be cured up to five days after Election Day).
- The plaintiffs argue that these laws violate the First, 14th and 15th Amendments as well as Section 2 of the Voting Rights Act by burdening the right to vote, particularly among voters of color in Arizona.

Legislation - Arizona Legislature (enacted)

- The bills with the biggest impact on Tribes:
 - **SB 1485 (CURRENTLY BEING CHALLENGED IN COURT)**
 - County Recorder shall remove voters from PEVL who haven't voted with an early ballot in both the primary and general election for two consecutive primary and general elections for which there was a federal, statewide, or legislative race on the ballot. By December 1 of each even-numbered year, the recorder or elections officer shall send PEVL voters who have not voted with an early ballot for two consecutive primary and general elections a notice informing them that if they wish to remain in the PEVL, the voter shall confirm in writing.
 - **TRIBAL IMPACT:**
 - This bill will purge over 100,000 voters in Arizona from the permanent early voter list for failing to vote in four consecutive elections. The specific impact on Native American voters is unknown. Although Native American Voters in Arizona utilize the PEVL at some of the lowest rates in the state, more Native Americans used the PEVL in 2020 than elections past. Native Americans also have among the lowest turnout rate in the state for primary and midterm elections, which indicates that this bill may result in a higher purging rate of Native American voters.

Legislation - Arizona Legislature (enacted)

- **SB 1003 (CURRENTLY BEING CHALLENGED IN COURT)**

- Says Recorders "shall" reach out to voters with missing signatures on their early ballot envelopes to cure those issues, but curing of these ballots must stop at 7pm on E-Day.

- **TRIBAL IMPACT**

- This bill impacts Native Americans that do not sign their ballot by giving them a shorter window to cure the missing signature. In 2018 the Navajo Nation sued on behalf of its members that were not given instructions about signing their ballot in Navajo. Voters that have a mismatching signature are given 5 business days after election day to cure the signature mismatch, whereas under this bill voters without a signature will only have until 7PM on election day.

- **HB 2569**

- Prohibits the use of private funds in the administration of elections. (In 2020 Arizona received \$11.5 million in grant funding).

- **TRIBAL IMPACT**

- This bill will impact counties that utilize private funds to increase access to early voting or make other improvements. This bill may potentially impact Tribe's abilities to contribute to election administration on the reservation. In 2020 many counties relied on private funds to increase in-person early voting opportunities or make other improvements in elections. This bill will prohibit that and disproportionately hurt the poorer counties which have a less viable tax base to raise requisite funds, those counties include more Native Americans.

Initiatives & Referrals

- **Arizona Spartan Amendment**

- Requires all elections to be conducted on a single paper ballot that has been matched and verified with government issued identification cards then hand counted without the use of electronic or computerized tabulation equipment with the capacity to connect to the internet. All absentee voting procedures remain the same and any non-absentee form of voting by mail will be eliminated.

- **Voter's Right to Know Act**

- Any person spending over \$50,000 on statewide campaigns or \$25,000 on other campaigns must disclose original sources of contributions over \$5,000. They must also disclose their largest donors on campaign materials.

- **Arizonans for Voter ID**

- Requires people voting in person at early voting locations and on election day to show valid photo identification to vote. Eliminates the use of non-photo identification. Requires voters to include identification on mail-in ballots and requires election officials to verify this information. Requires the state to issue non-operating identification to be issued for free. Gives Arizona electors standing to sue to enforce this measure.

- S.B. 1485 - prevents S.B. 1485 from going into effect.

- H.B. 2569 - prevents H.B. 2569 from going into effect.

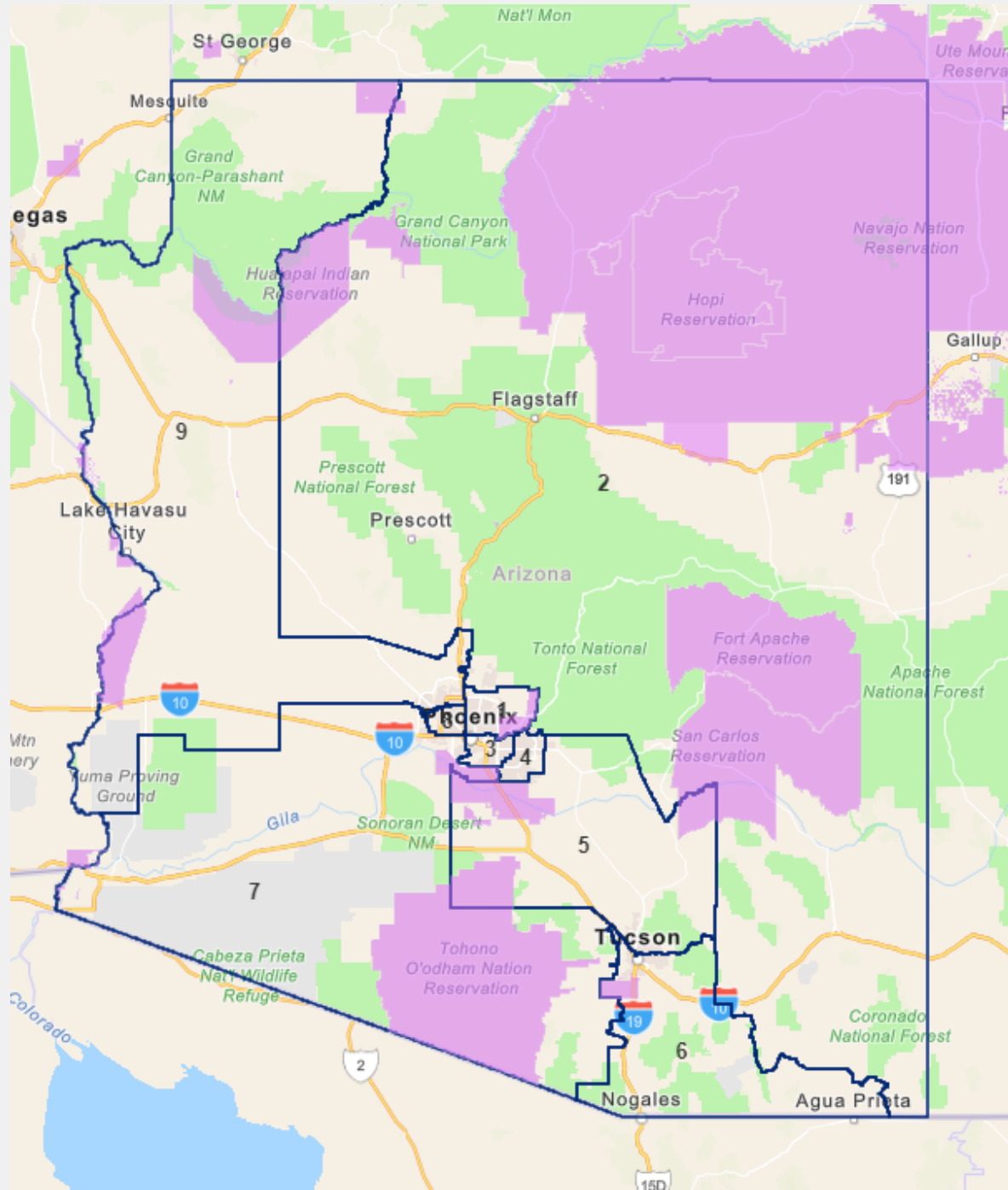
- S.B. 1819, Sec. 4, 5, 21, 25, 33 - refers introduced (but not passed) multi-part election bill to the ballot.

Redistricting

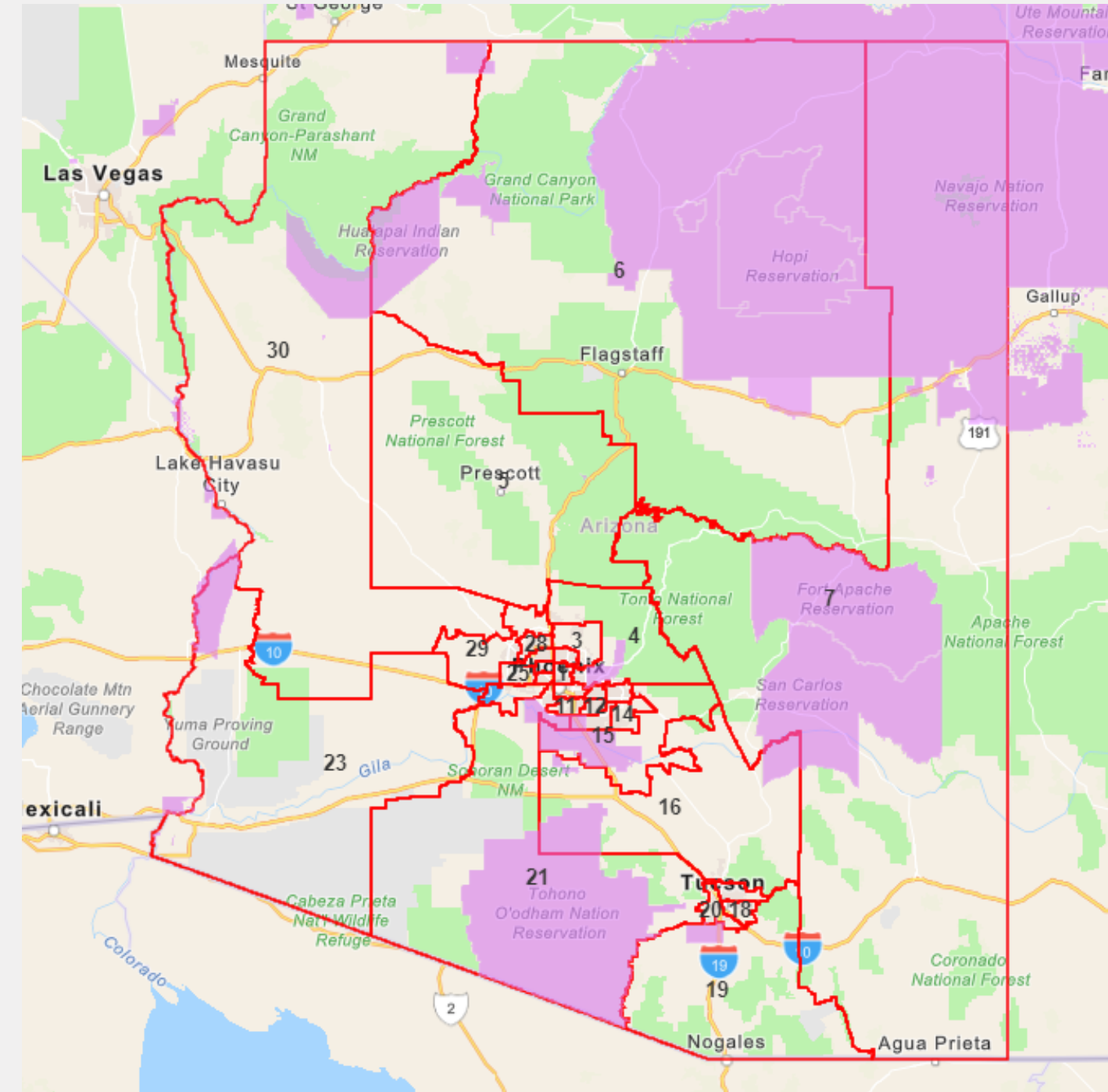
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Arizona has an Independent Redistricting commission with a partisan balance that will draw the lines of the new Congressional and Legislative Districts. Arizona did not pick up another Congressional seat as expected and experienced an undercount which was particularly impactful for Tribal communities.

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Congressional Districts

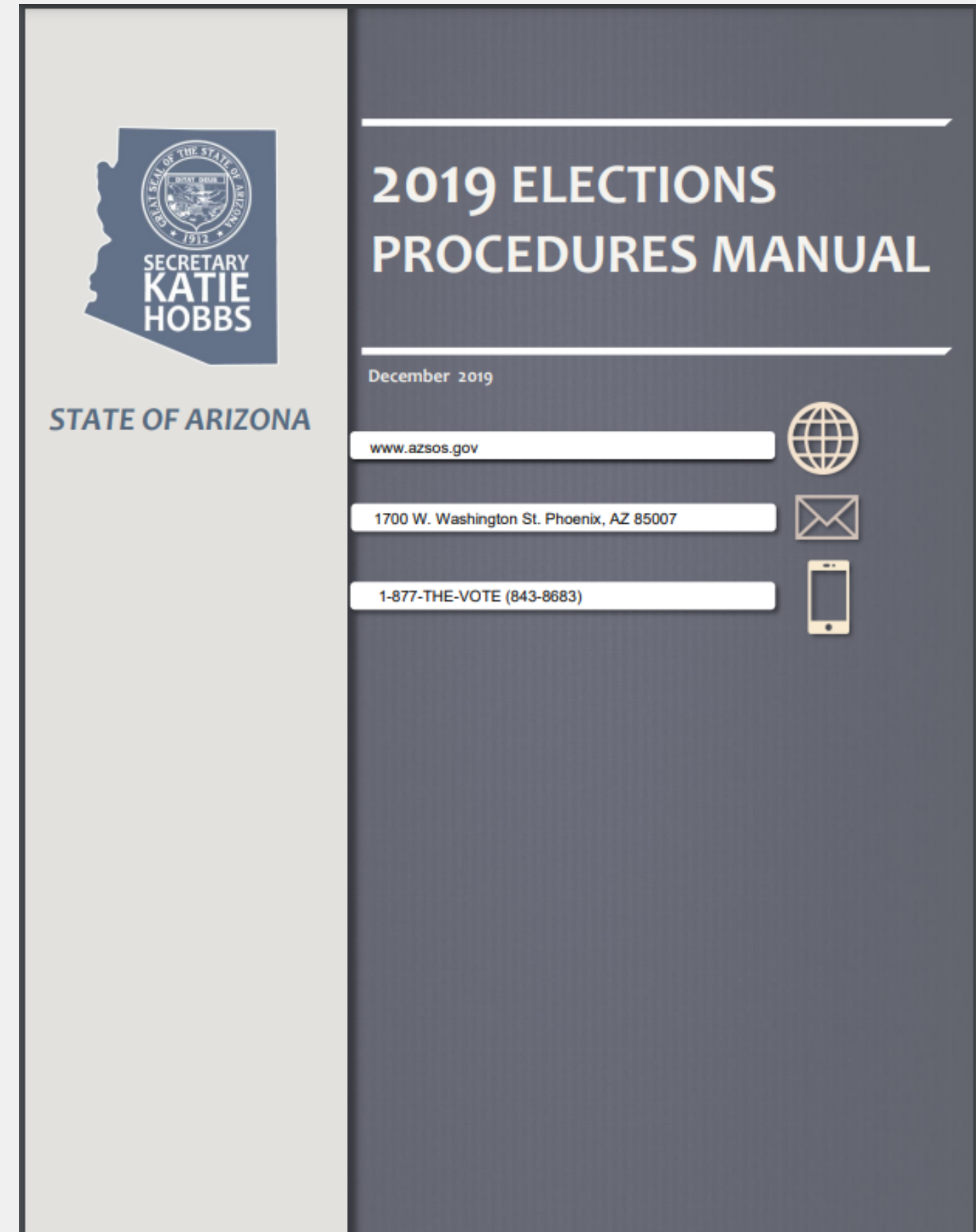
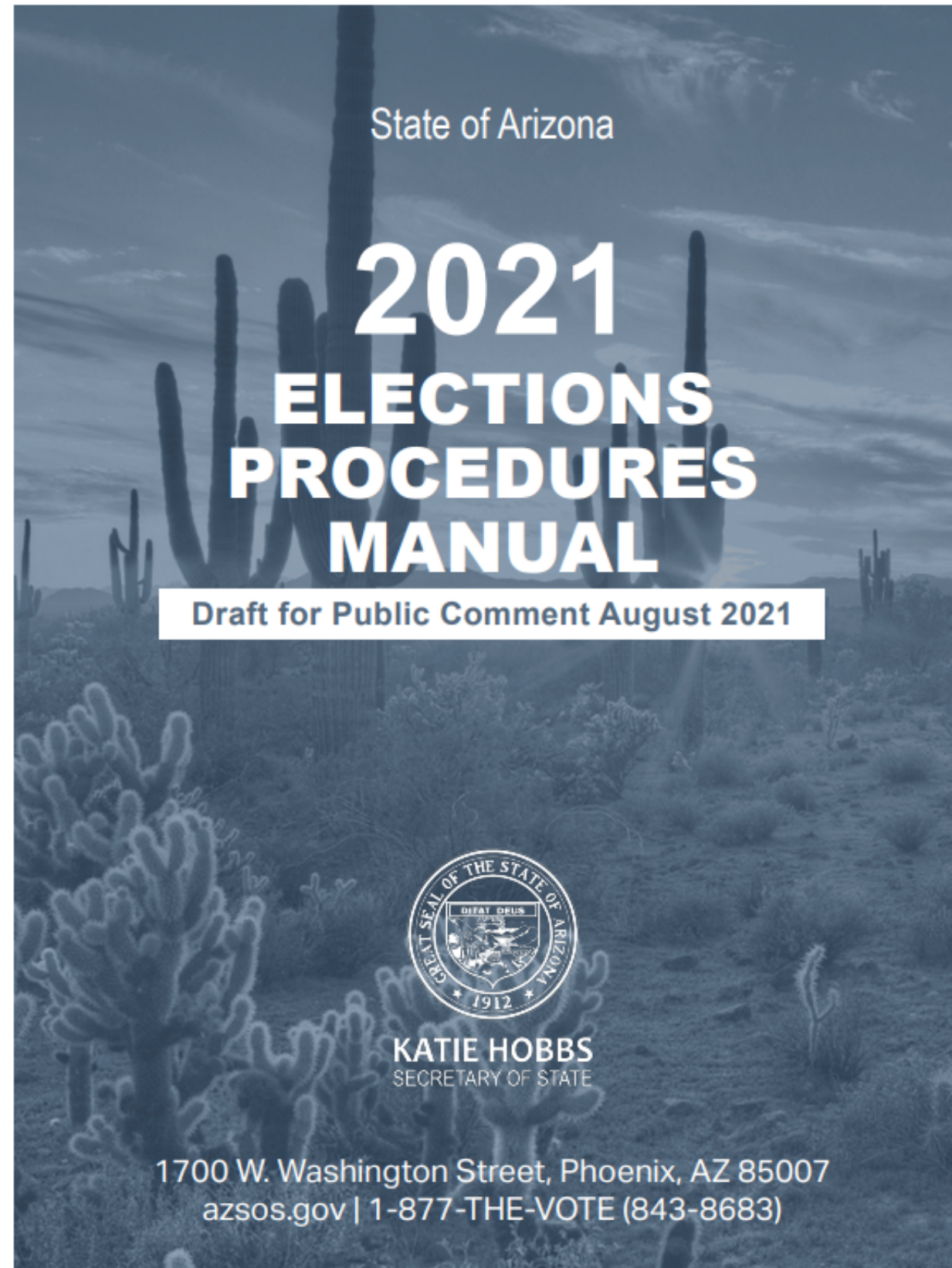


Legislative Districts

Redistricting - Grid Maps and Current Tribal Placements

Tribe	Congressional District(s)			Legislative Districts		
Pascua Yaqui Tribe	CD 6			LD 20		
Tohono O'odham	CD 6	CD 7	CD5	LD 19	LD 21	LD 16
Cocopah	CD 7			LD 23		
Quechan	CD7			LD 23		
Colorado River Indian Tribe	CD 9			LD 23		
Fort Mohave	CD 9			LD 30		
Hualapai	CD 9	CD 2		LD 30	LD 6	
Kaibab Paiute	CD 9	CD 2		LD 30	LD 6	
Havasupai	CD 2			LD 6		
Yavapai-Prescott	CD 2			LD 5		
Yavapai-Apache	CD 2			LD 5		
Hopi	CD 2			LD 6		
Navajo	CD 2			LD 6	LD 7	
White Mountain	CD 2			LD 7		
San Carlos	CD 2	CD 5		LD 7	LD 16	
Zuni	CD 2			LD 7		
Gila River	CD 5	CD 7		LD 15	LD 21	LD 13
Salt River	CD 1			LD 4		
Ft. McDowell	CD 1			LD 4		
Ak-Chin	CD 5			LD 16		

Arizona Elections Procedures Manual



Developments in New Mexico

Voting Legislation - New Mexico (enacted)

- **NM HB 231** *Native American Polling Place Protection* (2020)
 - If Tribe declares **emergency**, polling place located on Tribe "shall not be eliminated or consolidated with other polling places, nor shall the days and times of voting be modified, without the written agreement of the Indian nation..."
 - County clerk to provide at least one alternate voting or mobile alternate voting location if not previously requested; county clerk shall provide election day polling place; polling place need not be available to all voters in the county if Tribe inaccessible or borders closed.
 - **TRIBAL IMPACT**
 - In light of COVID-19, offers certain protections if Tribe declares emergency.
 - Example of Mariano Lake Chapter

New Mexico Law on Voting

- **NMSA Section 1-6-5.8.** Early voting; Native American early voting locations
 - County clerk shall provide at least one alternate voting or mobile alternative voting location on Indian land when requested by Tribe, so long as:
 - Tribe submits written request to the county clerk no later than the **first Monday in November of each odd-numbered year;**
 - location may operate for less than the full early voting period, decided upon between Tribe and county clerk;
 - any voter shall have access to and be permitted to vote at location;
 - location conforms to requirements for alternate voting locations;
 - county clerk provides **federally mandated language translators** at locations;
 - Tribe provides facility and services for location; and
 - costs of voting equipment and personnel for location reimbursed to county by Secretary of State.
 - **TRIBAL IMPACT**
 - Example: Requests for early voting/drop boxes in NM Counties.

Redistricting Legislation - New Mexico (enacted)

- **SB 304** *The Redistricting Act* (2021)
 - Created the Citizen Redistricting Committee (CRC) composed of 7 members
 - Directed to adopt **3 district plans each** for New Mexico's congressional districts; state house; state senate; and other state offices required to be redistricted (i.e. public education commission)
 - "2 Rounds" of meetings: (1) no fewer than 6 public meetings before publishing district plans for public comment and (2) no fewer than 6 public meetings for the purpose of adopting district plans
 - CRC shall hold meetings across regions of state, with at least **"one meeting on tribal lands"**
- Requirements & Prohibitions
 - equal in population as practicable
 - no plans for state office will be considered that have total deviation of more than 10%
 - census data + other reliable sources of demographic data
 - Voting Rights Act of 1965 - no dilution of protected
 - communities of interest, **including the boundaries of Indian nations, tribes and pueblos**
 - shall not consider: partisan data, voting addresses of candidates/incumbents
- Adjusting Precinct Boundaries: base map for county **shall as nearly as practical** show Indian nation, tribe and pueblo boundaries and subdivisions or chapter house boundaries.

Developments in Utah

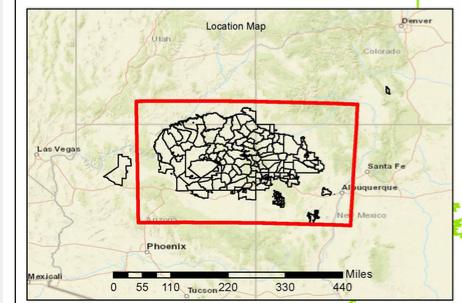
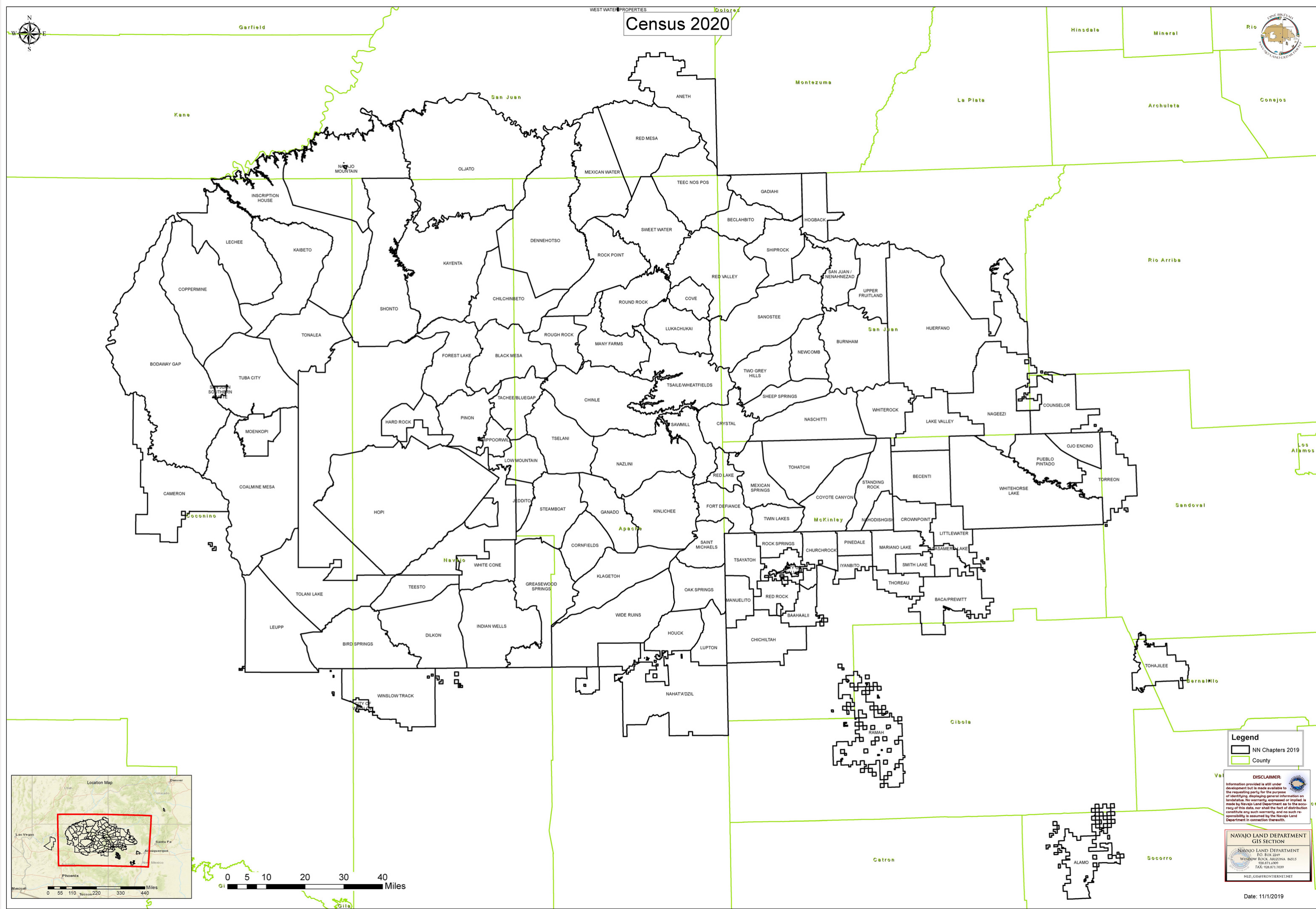
Redistricting in Utah

- *Proposition 4* (2018)
 - Created the Utah Independent Redistricting Commission (UIRC)
 - 7-member commission
- UIRC must submit maps to the state legislature no later than November 1, 2021
 - congressional
 - state senate
 - state house
 - state school board districts
- 3 plans for each type of map

Developments in the Navajo Nation



Census 2020



Legend

- NN Chapters 2019
- County

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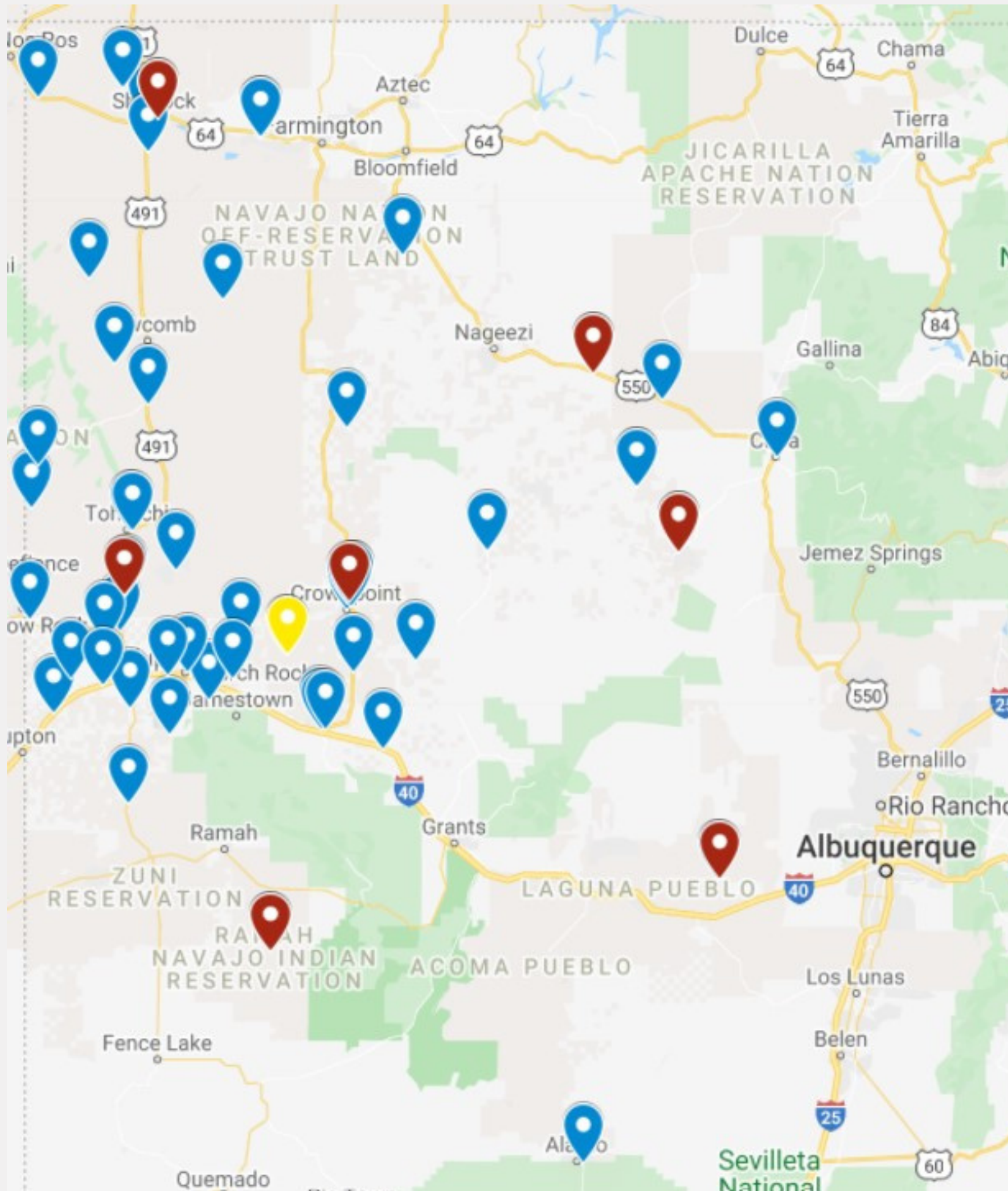
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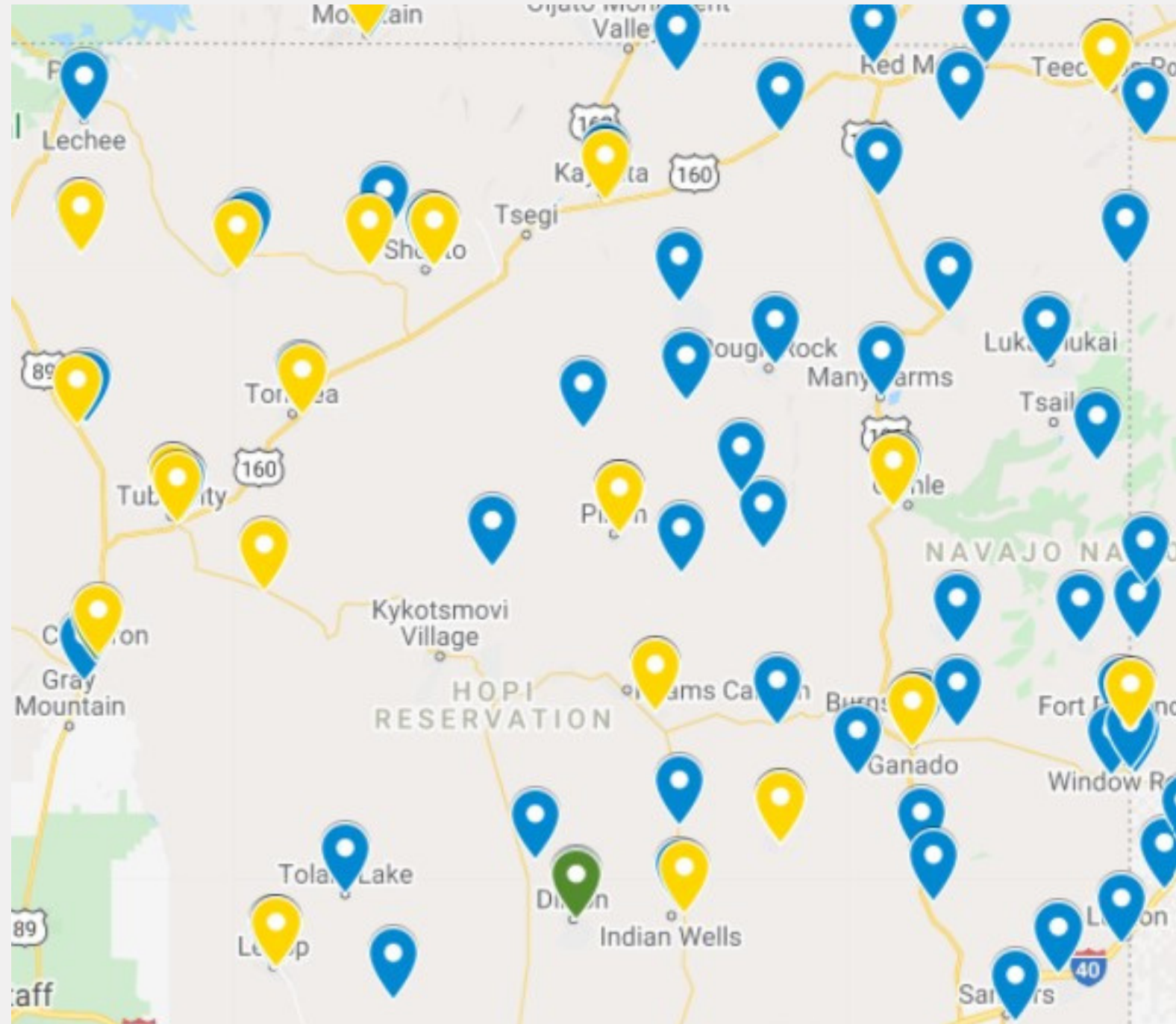
Voting on the Navajo Nation

- *Brnovich v. DNC* Amicus Brief
 - 1. Arizona has a long history of voter discrimination against and disenfranchisement of Native Americans
 - 2. Navajo voters do not have the same opportunities to participate in county, state and federal elections as other Arizona electors
 - 3. Ballot collection limitations impose undue burden on Navajo voters
 - 4. Arizona's out-of-precinct policy makes it overly burdensome for Navajo voters to vote
- Native American Voting Rights Act (NAVRA)
 - addressing barriers to voting
 - **NABIS-32-21**: Council Resolution supporting NAVRA



Voting on the Nation (continued)

- NN Council State Task Force Sub-Committee
- Coordination with Counties & S.O.S.
 - AZ vs. NM
 - Section 203 of VRA: language minority group, covered jurisdiction
- USPS
- Federal observers
- Voter confusion: Chapter vs. State election
- Effects of COVID-19
 - Early voting v. election day
 - Election Day PHEO No. 2020-027



Voting on the Nation (continued)

- Looking Forward
 - Preparation for 2022 Elections
 - Providing comments to the Arizona Elections Procedure Manual
 - Coordination with Counties & S.O.S.
 - Requests to Counties

Redistricting on the Navajo Nation

President Nez speaks in support of Native American voting rights before the New Mexico Citizen Redistricting Committee



<https://bit.ly/3oKLQWo>

- **NABIJN-15-21:** Council Resolution
 - Authorizes the Office of the Navajo Nation Human Rights Commission (NNHRC) to represent the Navajo Nation in the 2021-2022 Congressional and State Redistricting Activities and Recommending Redistricting Plans
 - Participation in 2011 redistricting
- Navajo Nation Representation
 - Mr. Derrick Watchman, Arizona Independent Redistricting Commission (IRC)
 - Lack of cultural and geographic diversity on NM CRC
- Meetings on the Navajo Nation
 - AZ Public Hearings: Window Rock, Tuba City, and Kayenta
 - NM CRC Meeting: Navajo Technical University in Crownpoint
 - Utah Public Hearing: Mexican Water Chapter

Redistricting on the Navajo Nation (continued)

- **Additional Considerations**

- NM Native Redistricting Working Group
 - 2011 Working Group
 - Redistricting Principles
 - Tribal self-determination
 - No retrogression
 - House Districts 4, 5, 6, 9, 65, 69
 - Senate Districts 3, 4, 22
 - NAVAP 65%
 - Native voting strength shall not be diluted
- Census undercount in Indian Country
 - Effects of COVID-19

Census Tribal Land	2010 Census Total Population	2020 Census Total Population	Change in Total Population from 2010 to 2020 (± #)	Percent Gain or Loss from 2010 to 2020 (± %)
Navajo Nation Reservation and Off-Reservation Trust Land	173,667	165,158	-8,509	-4.9%

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Redistricting on the Navajo Nation (continued)

- Looking Forward
 - NM: CRC deadline to submit maps to legislature by October 30, 2021
 - UT: UIRC deadline to submit maps to legislature by November 1, 2021
 - AZ: AIRC deadline to approve final maps by December 22, 2021 (may be extended)