

# STRONGER TOGETHER

*Native Americans' Fight for Fair Redistricting*



Oregon



TRIBAL DEMOCRACY PROJECT

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# EXECUTIVE SUMMARY

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Each census and redistricting cycle gives communities the opportunity to advocate for representative government districts that are responsive to their unique needs. The process of redistricting, however, continues to be weaponized to unfairly limit the political power of discrete communities. Gerrymandering, the practice of manipulating local, state, and congressional districts to hoard and hold on to power at the expense of the public will, is a common voter suppression tactic. Special interests such as political parties or incumbent candidates may seek to “crack” or “pack” voters to handpick the composition of districts and manipulate the outcome of elections.

Our report seeks to highlight the trials and triumphs of this redistricting cycle from the perspective of Native community leaders and organizers, compiling lessons learned to serve as a resource for future organizing.

This redistricting cycle saw attempts (some ardently thwarted, some successful — *for now*) to undermine the Native American vote through gerrymandering. Our report seeks to highlight the trials and triumphs of this redistricting cycle from the perspective of Native community leaders and organizers, compiling lessons learned to serve as a resource for future organizing. We explore:

- The impact of the recent redistricting cycle on Native communities,
- Policy reforms that support fair Native representation, and
- Best practices to guide future redistricting organizing.

Our research utilized a mixed-methods approach, with a particular emphasis on interviewing Native American community leaders and organizers involved in this redistricting cycle across states. Over a dozen interviews were conducted, and focused on public access to the redistricting process, public outreach and education, and the use of communities of interest (e.g. Native American and tribal communities) criteria in map drawing. We particularly focused on states with the highest population share of Native Americans based on the 2020 Census.

## Our research found the following:

- 1. Census undercounts and the data release delay (due to the COVID-19 pandemic) negatively impacted the final count of Native communities.** The undercount of people living on reservations was estimated to be 5.64%, the highest undercount of any demographic group.<sup>1</sup>
- 2. *Shelby County v. Holder* (2013) negatively impacted (retrogressed) Native voting power this cycle:** Before *Shelby County*, states and localities that had been found to have histories of discrimination in voting were required to seek approval (preclearance) from the U.S. Department of Justice or a federal court for any changes to district maps. In the absence of this protection, efforts to undermine voters in these jurisdictions significantly rose. The removal of the preclearance process affected Native communities in the states of Alaska and Arizona and in South Dakota’s Oglala Lakota (formerly called Shannon) and Todd Counties, all of whom were previously protected. Arizona was the most heavily impacted, as we saw a reduction in voting power in Congressional District 2.

**3. Native organizers were shut out of the redistricting process across many states.** Organizers faced many roadblocks, including:

- Lack of transparency in map-drawing by redistricting bodies;
- Restricted access to public input on maps;
- Superficial outreach and the subsequent lack of incorporation of Native communities' specific wishes;
- Insufficient broadband access, which impacted the public's ability to participate in redistricting hearings, especially during the COVID-19 pandemic; and
- Insufficient funding of community-based organizations. Organizations' time and money are spread thin, so direct funding to organizers who know their communities best ensures optimal outcomes.

**4. Policies and practices that respected tribal sovereignty improved the process for Native communities:** Tribes that were consulted on a government-to-government basis were more satisfied with the process. Examples of specific policies and practices that were implemented include mandating extensive outreach to tribal communities with respect to physical, digital, and language accessibility, and having tribal leaders explicitly involved in the map drawing process.

**Based on our findings, we recommend:**

- 1. Resourcing Native-led organizing** – early and often – throughout both the Census and redistricting processes.
- 2. Ensuring that the Census Bureau remedies the severe undercount of Native Americans** by engaging with Tribal Nations and Native American community leaders as early as possible to design more effective outreach.
- 3. Recognizing tribal sovereignty** by legally requiring comprehensive outreach to and input from Tribal Nations in the redistricting processes.
- 4. Ensuring tribal and Native community input** in the redistricting process.
- 5. Expanding broadband access.**

## THE 2020 CENSUS

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Fair redistricting begins with an accurate Census count to fairly and evenly allocate population across districts, and to accurately capture the size of communities of interest. Notably, the COVID-19 pandemic heavily impacted the Census Bureau's ability to collect data. Native American populations living on reservations have been classified by the Census Bureau as an Historically Undercounted Population,<sup>2</sup> and the challenges of reaching out to households while adhering to distancing protocol to fill out the Census exacerbated this disparity. Ultimately, American Indian or Alaska Native (alone or in combination) populations living on reservations were undercounted by 5.64% in 2020, considered statistically significant by the Bureau and notably the highest undercount of any racial or ethnic category.<sup>3</sup> Conversely, the Non-Hispanic White population was found to be overcounted.

Addressing the impact of the 2020 undercount in a press release, Fawn Sharp, then-President of the National Congress of American Indians, stated, "Every undercounted household and individual in our communities means lost funding and resources that are desperately needed to address the significant disparities we face."<sup>4</sup> In 2021, Census data was used to allocate \$2.8 trillion in funds in federal assistance programs.<sup>5</sup> Speaking on the importance of redistricting, Lena Fowler, a Coconino County Supervisor in Arizona and member of the Navajo Nation, stated, "Tribes have treaty obligations and funding that comes directly from the federal government for education, water rights, roads – our health care is directly related to our congressional representation."<sup>6</sup> Notably, 48% of tribal homes lack access to clean and reliable water, and Native American households are 19 times less likely to have indoor plumbing compared to white households.<sup>7</sup> Further, 60% of roads on tribal lands are unpaved, and tribal communities are disproportionately affected by traffic fatalities.<sup>8</sup>

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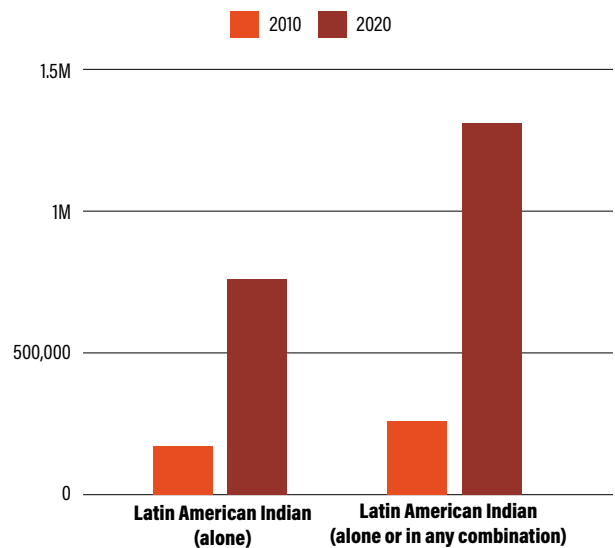
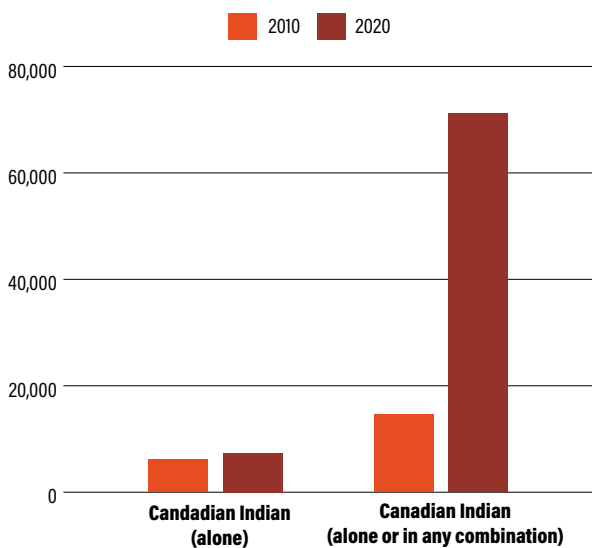
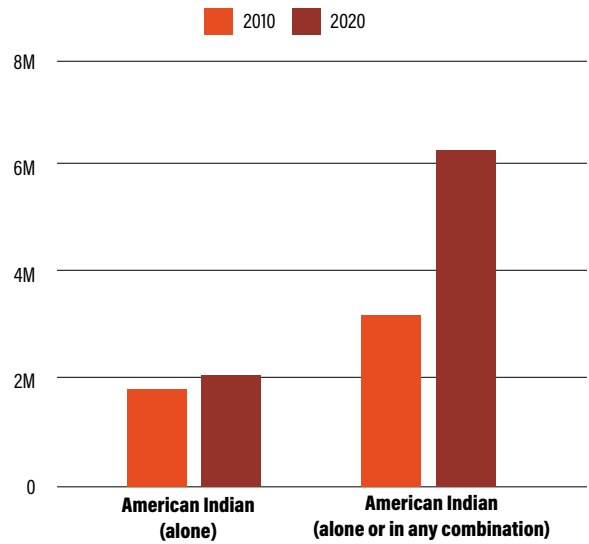
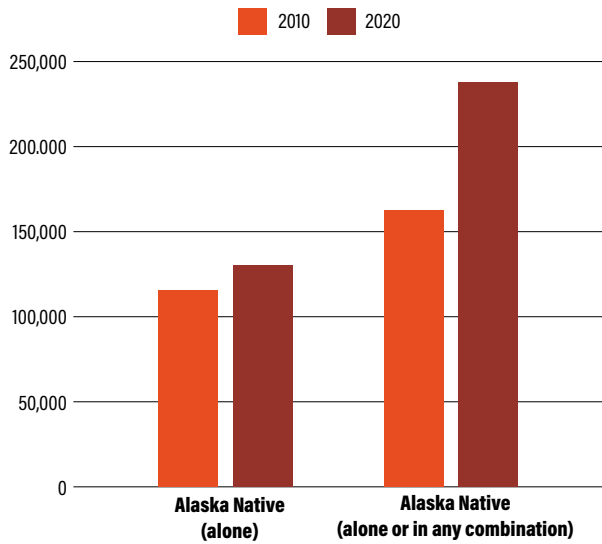
— Lena Fowler, Supervisor, Coconino County;  
Member, Navajo Nation

Regarding policy reforms to address the undercount, Sharp expressed, "Federal agencies must consult on a government-to-government basis with AI/AN Tribal Nations to find solutions to ensure that these 2020 Census undercounts do not lead to continued underfunding of our communities. [...] NCAI calls for immediate tribal consultation on these results and potential efforts to address and adjust for these undercounts in future census data products."<sup>9</sup>

In addition, the COVID-19 pandemic heavily impacted the Census Bureau's ability to release redistricting data on time as planned. The release of the redistricting data was delayed by five months, impeding both redistricting bodies' and community leaders' ability to conduct public outreach, research, and ultimately, pass maps by legally mandated deadlines.

Despite the undercount, Native populations were found to have significantly grown nationwide from 2010 to 2020,<sup>10</sup> as outlined below:

Census Category	Percent Growth from 2010 to 2020
Alaska Native (alone)	+10.9%
Alaska Native (alone or in any combination)	+45.6%
American Indian (alone)	+11.6%
American Indian (alone or in any combination)	+96.9%
Canadian Indian (alone)	+20%
Canadian Indian (alone or in any combination)	+390.4%
Latin American Indian (alone)	+344.7%
Latin American Indian (alone or in any combination)	+390.4%



# SHELBY COUNTY V. HOLDER

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One of the most critical legal tools to safeguard fair districts is the Voting Rights Act (VRA) of 1965, which prohibits discrimination on the basis of race, color, or membership in a protected language minority group.

In 2013, *Shelby County v. Holder* delivered a significant blow to the power of the VRA. Before *Shelby County*, states and localities that had been found to have histories of discrimination in voting were required to seek approval from the U.S. Department of Justice or a federal court for any changes to voting procedures or district maps under Section 5 of the VRA, a process known as preclearance. The *Shelby County* decision struck down the formula used to determine covered jurisdictions under Section 4(b), which functionally ended preclearance of voting changes until Congress passes a new formula. As of the writing of this report, efforts are being made to restore preclearance, such as with the proposal of the John Lewis Voting Rights Advancement Act, which, when introduced in 2021 was stalled in the Senate. It was reintroduced in September of 2023. Preclearance has been found to have a positive impact on voters, including increasing voter turnout.<sup>11</sup> In the absence of this protection, efforts to undermine voters in these jurisdictions significantly rose.<sup>12</sup> One recent study, for example, found a significant increase in voter purges in areas previously covered by preclearance in the years following *Shelby County*.<sup>13</sup>

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Without Section 5 preclearance, lawsuits that challenge discriminatory legislation rely upon Section 2, which says that “No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”

The removal of the preclearance process has particularly impacted Native communities in the states of Alaska and Arizona and in South Dakota’s Oglala Lakota (formerly called Shannon) and Todd Counties, all of which were previously protected.

## Alaska

When the *Shelby County* decision was announced, then-Alaska Attorney General Michael Geraghty announced that the state “welcome[ed] [the] ruling, because it remov[ed] the taint of federal supervision of Alaska elections.”<sup>14</sup>

Alaska boasts the largest proportion of Native residents among the states, with nearly 22% of the state being Native.<sup>15</sup> Alaska’s five-member Redistricting Board consisted of two Alaska Natives for the first time in the state’s history. During public hearings on maps, a neighborhood of Anchorage with a large Alaska Native population called Muldoon asked to be kept together in one state senate district. Muldoon was too populous to be kept in one house district but small enough for its two house districts to be nested in one senate district. Consistent with community testimony, the two Alaska Native commissioners - Nicole Borromeo and Melanie Bahnke - proposed a map adhering to the wishes of Muldoon residents. The other three commissioners voted down that proposal and split the neighborhood between two senate districts,

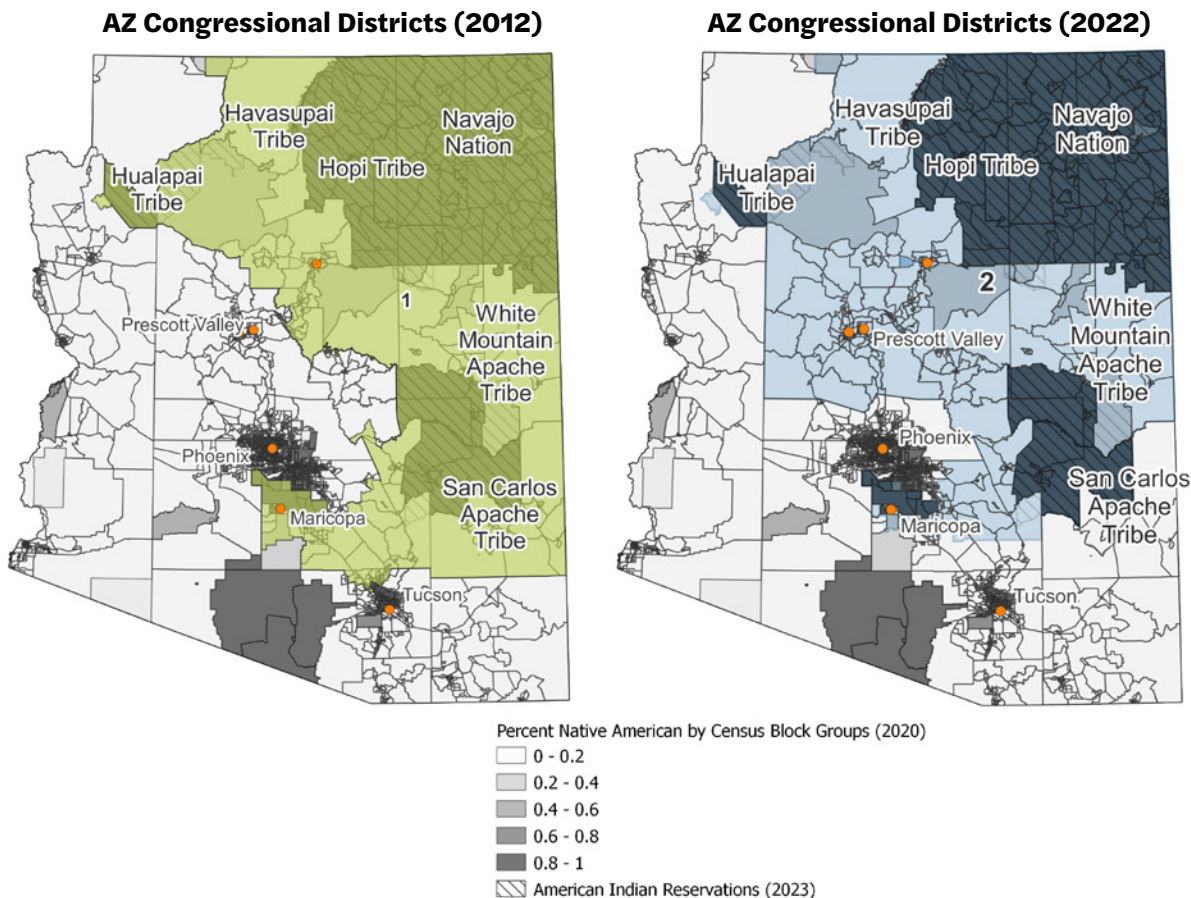


pairing the southern portion of Muldoon with the much wealthier and overwhelmingly white neighborhood of Eagle River.

When residents challenged the maps in court, they brought with them a clear record of community support for keeping Muldoon together and maps from two Alaska Native commissioners showing that it could easily be done. The Alaska Supreme Court struck the map that split Muldoon down and, when the Redistricting Board again split Muldoon by pairing part of it with Girdwood, the court struck it down again. The court ruled that the map splitting Muldoon was an unconstitutional partisan gerrymander, creating that legal claim for the first time in Alaska’s history, and approved a map keeping the Alaska Native community in one senate district. The successful fight to keep an Alaska Native community together demonstrates how the combination of organizing, representation on a redistricting body, and litigation can produce wins for communities.

## Arizona

After *Shelby County*, Native communities in the state were especially worried about vote dilution in Arizona’s 2nd Congressional District, formerly District 1 represented by Tom O’Halloran and encompassing the Hualapai, Havasupai, Hopi, Navajo, San Carlos Apache, and White Mountain Apache reservations.<sup>16</sup> Concerns were well-founded, as O’Halloran, who had garnered near unanimous votes from tribal communities and who had fought for more funding in critical areas such as health services and broadband access, was defeated by challenger Eli Crane.<sup>17</sup> Previously, the district was paired with similarly-voting Latino and white voters in the southern area of the district, below the Fort Apache Indian Reservation. After redistricting, this area was removed and the district was instead paired with a conservative white majority to the west, including the cities of Prescott and Prescott Valley.



While O'Halleran worked to address tribal community issues, newly elected Crane campaigned on enacting stronger voter identification laws, fighting against mask and vaccine mandates, and banning critical race theory from Arizona schools.<sup>18</sup> Voter ID laws disproportionately affect Native voters,<sup>19</sup> and Native Americans, particularly those on reservations, experienced the highest mortality rates from COVID-19 among all racial groups; these are two examples of disparities due to systemic racial discrimination that critical race theory seeks to examine.<sup>20</sup>

Notably, the Arizona Independent Redistricting Commission did have one Native American commissioner. However, the commission overall was criticized for failing to make the outreach process accessible to Native American communities - for example, the meetings that were "slated to occur" on tribal lands were canceled at the last minute<sup>21</sup> - and, ultimately, Native voters lost political power.

## South Dakota

Oglala Lakota and Todd Counties are 89.5% and 84.5% Native American, respectively, according to the 2020 Census.<sup>22</sup> As they were previously protected by preclearance, there was significant concern about retrogression in this redistricting cycle. Native communities hoped to sustain their voting power and, at minimum, keep district lines the same. OJ Semans Sr., Co-Executive Director of Four Directions, stated, "One of our main strategies was to be present. To ensure that every time a sentence is given talking about tribes, sovereignty, and rights as a citizen of that state - that Native people were present."<sup>23</sup> Despite the threat of increased voter suppression spurred by the gutting of the VRA, Native organizers placed significant pressure on the legislature, and succeeded in fighting for more hearings with tribes. Ultimately, their goals were largely met as the final districts strongly resembled those favored by Native American communities. South Dakota offers an example demonstrating that organizers do not always need to resort to litigation. Beyond Oglala Lakota and Todd Counties, due to extensive advocacy, the Crow Creek and Lower Brule reservations were united in a single state legislative district as requested to preserve voting power. The legislature's responsiveness may have been aided by the recent memory of *Bone Shirt v. Hazeltine (2002)*, in which the state was found to have discriminated against Native South Dakotans during the 2000 redistricting cycle in violation of

Section 2 of the Voting Rights Act.<sup>24</sup> The *Shelby County* decision did not impact Section 2, which empowers plaintiffs to challenge discriminatory voting practices in federal court after they are implemented. Around the time of the case, Alfred Bone Shirt, the named plaintiff, stated, "We must hold the state's nose to the grindstone so future compliance is guaranteed and Indian empowerment ensured."<sup>25</sup>

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## ORGANIZING & CAPACITY BUILDING

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Several factors may impede or bolster the ability of organizers to successfully mobilize their communities.

### Public Access and Input

In North Dakota, interviewees noted several barriers to public participation in the redistricting process. Though the legislature provided proposed maps to the public ahead of a vote, the public was not given adequate time to review them. Furthermore, though the legislature held public redistricting meetings on tribal lands, it was not clearly advertised to residents that the meetings were about redistricting. In addition, inter-

viewees expressed dismay that outreach did not extend to urban tribal districts. One interviewee expressed that the legislature “did not honor anything [Native communities] requested.” A federal court ultimately ruled that the state house map violated Section 2 of the Voting Rights Act by packing the Turtle Mountain Band of Chippewa Indians and cracking the Spirit Lake Tribes. The Turtle Mountain Band of Chippewa Chair Jamie Azure said in a statement, “The court properly recognized the voting strength of our tribal members must not be diluted. When I testified in favor of a fair redistricting plan to the members of the Legislature during the 2021 redistricting process, my words were ignored. It is unfortunate that litigation was required in order for a lawful plan to be put in place.”<sup>26</sup> Speaking to the power of tribal organizing, Azure stated, “Working together, tribes can accomplish anything. This decision shows the impact tribal nations can make when they unite

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— Jaime Azure, Chair, Turtle Mountain Band of Chippewa

to stop the cycle of exclusion and underrepresentation that has for generations prevented too many Native people from voting and from having a say in state-level decision-making.”<sup>27</sup>

In lieu of adequate official outreach, organizations banded together to create a robust outreach plan in Minnesota. Tribal Nations and community organizations representing communities of color organized their redistricting advocacy through a coalition called the Minnesota Alliance for Democracy. The coalition engaged with 21 organizations in a joint mapping effort involving 400 community members representing 10 self-identified racial and ethnic groups. The coalition held 11 community meetings located in eight target counties that were conducted in five languages. Jolene Jones of the Native American Community Development Institute collaborated with Making Voting a Tradition to lead redistricting efforts among Tribal Nations.

The resulting unity maps were essential to wins in the final districts. When divided partisan control of the Minnesota legislature led to a stalemate and the appointment of a special judicial panel to draw districts, Common Cause Minnesota, OneMN.org, Voices for Racial Justice, Leonard Fineday of the Leech Lake Band of Ojibwe, and other individual plaintiffs joined the lawsuit to advocate on behalf of Tribal Nations and communities of color. As a result of this advocacy, the judicial panel kept the three largest Ojibwe reservations in Minnesota – Red Lake, White Earth, Leech Lake Band – together in Congressional District 8 and Senate

District 2. Although the coalition was disappointed that the reservations were also not combined in one Minnesota House district, keeping them together in one congressional district and a Minnesota Senate district had never been achieved until this past redistricting cycle.

## Broadband Access

Another significant challenge to public outreach this cycle, exacerbated by the COVID-19 pandemic, was access to reliable internet on tribal land. Due to distancing requirements and the concern over the spread of COVID-19, many redistricting bodies increasingly relied on internet-based public comment. This included submission of comments via online portals and/or through video conference calls on platforms such as Zoom. However, tribal communities are significantly more likely to have limited reliable internet access compared to the average American. Only 82% of tribal households have internet access,<sup>28</sup> compared to 95% of the general population.<sup>29</sup> Further, 33% of tribal households rely on cell phones for internet at home,<sup>30</sup> compared to 15% of the general population.<sup>31</sup>

However, tribal communities are significantly more likely to have limited reliable internet access compared to the average American. Only 82% of tribal households have internet access, compared to 95% of the general population.

Large-scale efforts are currently underway to address this disparity, often referred to as the “digital divide.” The Tribal Broadband Connectivity Program, funded through The Infrastructure Investment and Jobs Act (2021), has so far issued over \$1B in funding for 183 broadband access projects on tribal lands across the country.<sup>32</sup> As of the writing of this report, applications are being collected for the second round of funding.<sup>33</sup>

## Organizer Funding

Many organizers described capacity issues due to insufficient funding. Jaylyn Suppah of the Tribal Democracy Project expressed the importance of directly funding Native organizers who know and have the trust of their communities: “We need to... be a vein of information and resources for things our communities are not part of, where the systems [were] not built for us and sometimes [were built] against us.”

Organizers expressed the importance of securing funding early in the process, citing both the need to connect census outreach with redistricting and to ensure adequate preparation to engage in the redistricting cycle. Interviewees noted the importance of being proactive rather than reactive.

## REDISTRICTING POLICY & PROCEDURES

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Native organizers and community leaders identified several legal and procedural requirements, such as mandating consultations with Tribal Nations, that are essential to success in redistricting.

Washington State implemented a consultation mandate modeled after a 2019 policy passed by Attorney General Bob Ferguson, which requires the AG's office to obtain "free, prior and informed consent" before starting any program or project that affects tribes, tribal lands, tribal rights, and/or sacred sites.<sup>34</sup> This policy required government-to-government consultation with any Federally Recognized Tribe that requested one. Over the course of several months, the commissioners held virtual or in-person consultations with eight tribes to hear their feedback.<sup>35</sup>

In New Mexico, the State Tribal Collaboration Act, passed in 2009, requires state agencies to collaborate with tribal governments and to designate tribal liaisons.<sup>36</sup> The Redistricting Act of 2021, establishing the Citizen Redistricting Committee, required at least six meetings with the public in each of the four quadrants of the state, with at least one on tribal land.<sup>37</sup> One interviewee expressed that the commission did a "fabulous" job, and that a great effort was made to do outreach in every region of the state. Furthermore, the Citizen Redistricting Committee was praised for effectively addressing and accommodating broadband access disparities.

In contrast, in Oregon, organizers were dissatisfied with what they found to be superficial outreach by the state legislature to Native communities. Native Americans across the state worked to keep their communities, located on and off reservations, together in the final redistricting maps through extensive community outreach. However, the legislature ultimately ignored this request. Maps kept reservations whole but split apart Native communities of interest on and off reservations, such as dividing the residents of Warm Springs Reservation from the nearby city of Madras, where many Warm Springs residents attend school.

**Oregon State Senate (2022)**



# LOOKING FORWARD

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**Based on our findings, we recommend:**

- 1. Resourcing Native-led organizing — early and often — throughout both the Census and redistricting processes.** Ensuring that Native organizers are well-funded is essential to maximizing organizers' capacity to conduct outreach and mobilize their communities.
- 2. Ensuring that the Census Bureau remedies the severe undercount of Native Americans by engaging with Tribal Nations and Native American community leaders as early as possible to design more effective outreach.** To establish effective protocols for reaching Native communities and achieving an accurate count, the Census Bureau must consult early in the process with Native communities both on and off reservations. Further, opportunities to engage with the Census Bureau must be posted well in advance to ensure the maximum amount of participation.
- 3. Recognizing tribal sovereignty by legally enshrining the following in redistricting processes:**
  - Conduct extensive outreach to Tribal Nations with regard to physical, digital, and language accessibility.
  - Facilitate and provide resources for a process that gives Tribal Nations the option of selecting at least one commissioner, OR,
  - Require a representative from Tribal Nations in the decision-making room and/or require Tribal Nations' input as to the selection of redistricting commissioners.
- 4. Ensuring tribal and Native community input in the redistricting process.** Native communities must define their own community boundaries, not have those boundaries defined for them.
- 5. Expanding broadband access.** Having limited or no broadband access limits people's ability to be civically engaged.

An accurate census and fair redistricting process are critical for ensuring that Native communities obtain effective political representation and proper funding for essential health and safety needs. Over 1.5 million eligible Native voters are unregistered<sup>38</sup> and Native voter turnout is the lowest among all racial and ethnic groups.<sup>39</sup> Historical trauma and discrimination have generated distrust in the electoral process.<sup>40</sup> Nevertheless, Native communities are significantly growing in size, and Native organizers are working diligently to harness the collective power of their communities - a force with the ability to sway key elections.<sup>41</sup> As former Navajo Nation Attorney Ethel Branch succinctly stated, “[W]e need to ensure that those dollars from those governments are flowing here, just like they are anywhere else, and the way we can ensure that is by showing up at the polls and voting, holding our elected leaders accountable.”<sup>42</sup> A crucial step to ensure these outcomes is for Tribal Nations and Native Americans to have a voice in shaping their own representation through redistricting. We hope that our recommendations and the powerful stories of people demanding and winning a seat at the table provide a roadmap for securing more victories in the next redistricting cycle.

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