



— Native Americans  
and the Voting  
Rights Act

History and Application

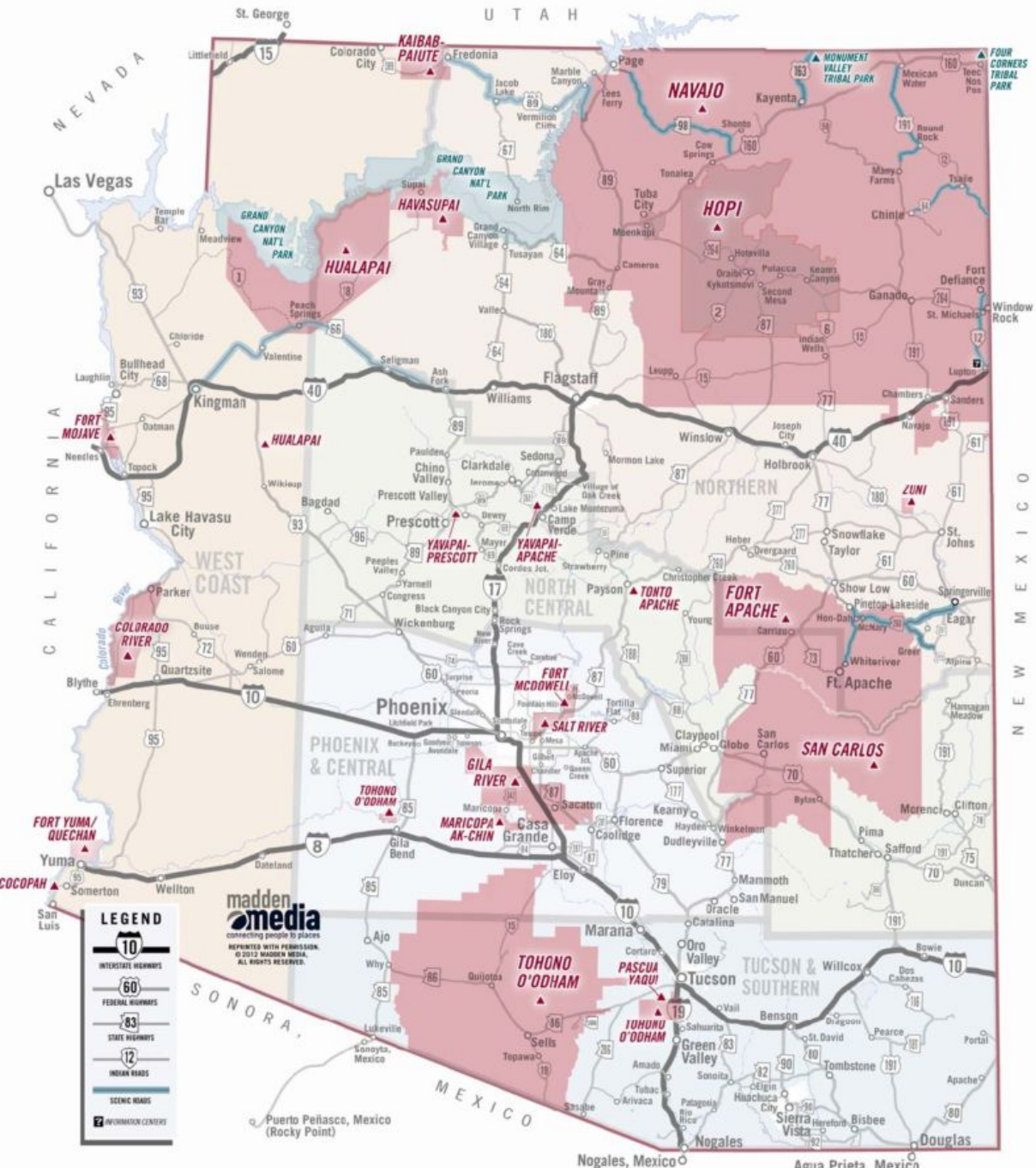
# — Introduction

# — History of discrimination

## Background

- American Indians and Alaskan Natives (“AIAN”) have lived in North America for 15,000 years
- 574 federally recognized Native American tribes
- California, Arizona, and Oklahoma have largest AIAN populations
- AZ First Congressional District has the highest AIAN population in the United States (approx. 22.64% voting-aged population)

# ARIZONA'S AMERICAN INDIAN LANDS



## Early subjugation and discrimination

- European settlers subjugated and displaced Native tribes as they expanded across the continent
- Indian Appropriations Act of 1871
- U.S. Const., Article I:
  - “Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and **excluding Indians not taxed**, three fifths of all other Persons.”



“Indians.-- Indians not taxed are not to be enumerated. The families of Indians who have renounced tribal rule, and who under State or Territorial laws exercise the rights of citizens, are to be enumerated. In all such cases write ‘Ind.’ opposite their names, in column 6, under heading ‘Color.’”

*1860 Census  
Instructions to the Marshals*

- AIANs often denied citizenship, let alone right to vote, unless they assimilated
- Minn. Const., art. VII, § 1(4) (1858)
  - “Cultural purity test” whether individual “adopt[ed] the language, customs, and habits of civilization.”
- *Swift v. Leach*, 178 N.W. 437 (N.D. 1920)
  - Group of AIs could vote only because they “live the same as white people,” “are Christians,” and “have severed their tribal relations.”

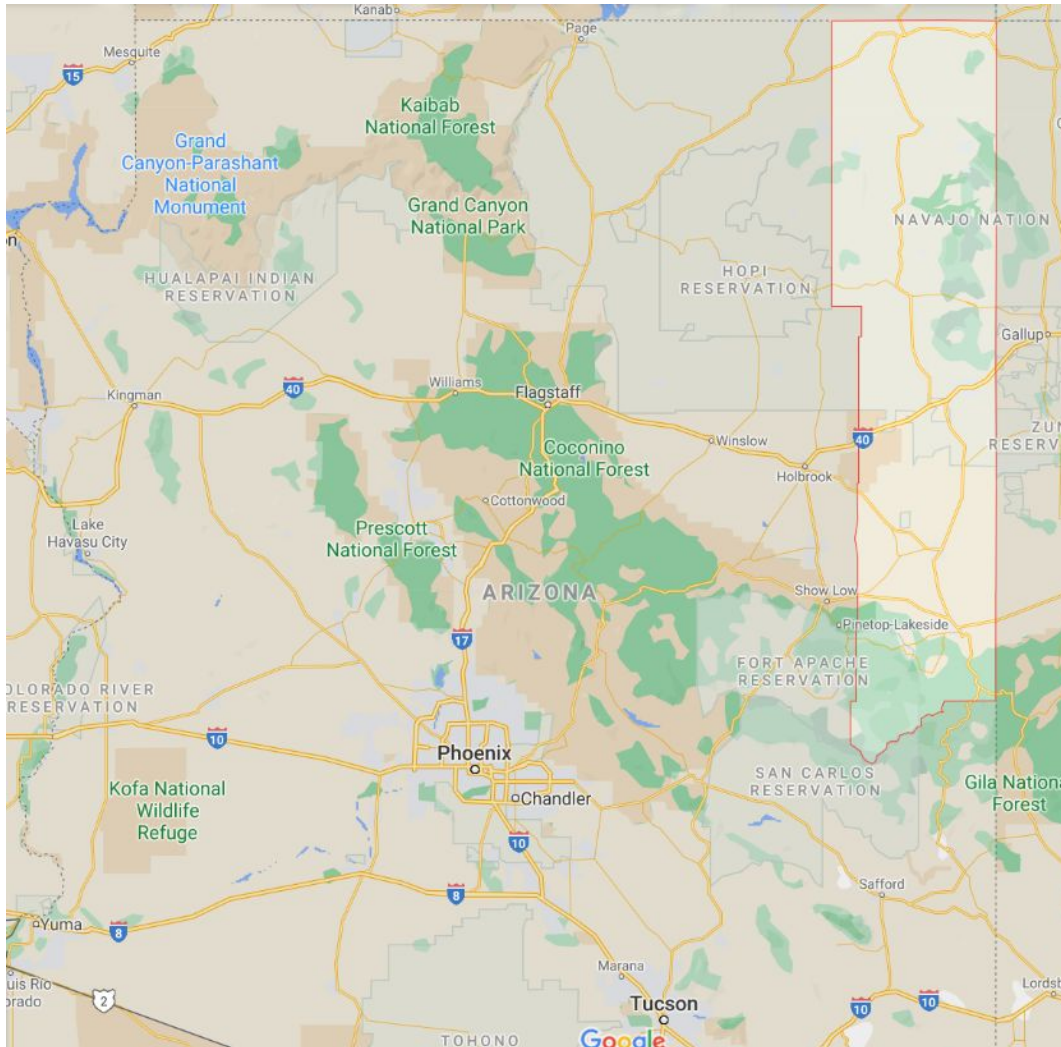
## Citizenship and struggle

- In 1924, Congress passed The Indian Citizenship Act
- *Porter v. Hall*, 34 Ariz. 308 (Ariz. 1928)
  - Court upheld rejection of Als' voting registration
  - Relied on provision in Arizona Constitution that “no person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election.”
- *Trujillo v. Garley*, Civ. No. 1353 (D.N.M. 1948)
  - Als ineligible to vote because not state residents
- *Allen v. Merrell*, 305 P.2d 490 (Utah 1956)
  - Als ineligible to vote because not subject to state law on reservation



# Discrimination and remediation in Arizona

## Apache County: A case study



- *Shirley v. Superior Court for Apache Cty.* (Ariz. 1973) – Navajo tribe member denied certification after winning election
- *Goodluck v. Apache Cty.* (D. Ariz. 1975) – Board of Supervisors redistricting challenge
- *Apache Cty. High Sch. Dist. No. 90 v. United States* (D.D.C. 1980) – Ballot access and language resources consent decree
- DOJ objections (2002) re: inconsistent legislative districts

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# Voting Rights Act

Success in Enfranchising Native Americans

## Language Assistance

- More than 25% single-race AIAN persons speak a language other than English at home.
- 2/3 speakers of AIAN languages live in a predominantly Native community, often geographically isolated.
- VRA Section 2 offers protection:
  - *Harris v. Graddick*, 593 F. Supp. 128 (M.D. Ala. 1984) – VRA Section 2 requires jurisdictions to recruit poll workers who speak minority languages.

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## Language Assistance – Section 203

- 1975 Amendments to VRA
- Requires “covered jurisdictions” to provide bilingual written materials and oral language assistance
- For “historically unwritten” language, the covered jurisdiction must provide “oral instructions, assistance, or other information relating to registration and voting.”
- Must take “all reasonable steps” to ensure that sufficient information is available to allow the minority group to “participate effectively in voting-connected activities.”
  - “Substantial compliance,” not perfection

# Language Assistance – Section 203 cont.

## “Covered Jurisdiction”

the purposes of the preceding sentence, are members of a single language minority group, do not “speak or understand English adequately enough to participate in the electoral process,” and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade, any political subdivision, such as a county, which contains all or any part of that American Indian Area, is covered by the minority language

Designated Statistical Areas (DASA), State Designated Tribal Statistical Areas (SDTSA), and Alaska Native Village Statistical Areas (ANVSA). Pursuant to Section 203, the Census Bureau Director has the responsibility to determine which states and political subdivisions are subject to the minority language assistance provisions of Section 203. The state and political subdivisions obligated to comply with the requirements are listed in the attachment to this Notice.

the Act. In the cases where a state is covered, those counties or county equivalents not displayed in the attachment are exempt from the obligation. Those jurisdictions subject to Section 203 of the Act previously, but not included on the list below, are no longer obligated to comply with Section 203.

Dated: November 22, 2016.  
**John H. Thompson,**  
 Director, Bureau of the Census.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2015

State and political subdivision	Language minority group
<b>Alaska:</b>	
Aleutians East Borough .....	Filipino.
Aleutians East Borough .....	Hispanic.
Aleutians East Borough .....	Yup'ik.
Aleutians West Census Area .....	Aleut.
Aleutians West Census Area .....	Filipino.
Bethel Census Area .....	Inupiat.
Bethel Census Area .....	Yup'ik.
Bristol Bay Borough .....	Yup'ik.
Dillingham Census Area .....	Yup'ik.
Kenai Peninsula Borough .....	Yup'ik.
Kodiak Island Borough .....	Yup'ik.
Lake and Peninsula Borough .....	Yup'ik.
Nome Census Area .....	Inupiat.
Nome Census Area .....	Yup'ik.
North Slope Borough .....	Inupiat.
Northwest Arctic Borough .....	Inupiat.
Southeast Fairbanks Census Area .....	Alaskan Athabaskan.
Valdez-Cordova Census Area .....	Alaskan Athabaskan.
Wade Hampton Census Area .....	Inupiat.
Wade Hampton Census Area .....	Yup'ik.
Yukon-Koyukuk Census Area .....	Alaskan Athabaskan.
Yukon-Koyukuk Census Area .....	Inupiat.
<b>Arizona:</b>	
Apache County .....	American Indian (Navajo).
Coconino County .....	American Indian (Navajo).
Gila County .....	American Indian (Apache).
Graham County .....	American Indian (Apache).
Maricopa County .....	Hispanic.
Navajo County .....	American Indian (Navajo).
Pima County .....	Hispanic.
Pinal County .....	American Indian (Apache).
Santa Cruz County .....	Hispanic.
Yuma County .....	Hispanic.
<b>California:</b>	
State Coverage .....	Hispanic.
Alameda County .....	Chinese (including Taiwanese).
Alameda County .....	Filipino.
Alameda County .....	Hispanic.
Alameda County .....	Vietnamese.
Colusa County .....	Hispanic.
Contra Costa County .....	Chinese (including Taiwanese).
Contra Costa County .....	Hispanic.

- Single-language minority population who are “limited-English proficient”
- Literacy rate
- Determined by Director of the Census
- Not affected by *Shelby County v. Holder* (2013)

# Election Procedures Generally

- Unique geography, culture, and access to infrastructure or other resources present enfranchisement pitfalls
- *Navajo Nation et. al. v. Hobbs, et. al.* (D. Ariz. 2019) – to settle VRA litigation, state agreed:
  - additional in-person early voting polling places;
  - voter registration plan to maximize voter registration;
  - radio advertisements and election information in the Navajo language;
  - Navajo translators at each polling place;
  - allow voters an opportunity to cure unsigned ballots.
- *Brnovich v. DNC* (U.S. 2021)

## — Voter ID

- Recent high-profile cases
- *Brakebill* and *Spirit Lake Tribe* litigation in North Dakota (2018)
- No address on tribal ID cards
- Quarter of tribal residents lacked documentation to obtain ID
- Remote geography with unreliable internet access
- Settlement: voter could mark on map to show where they lived

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## Redistricting and Malapportionment

- AIAN voters have won vote dilution claims under Section 2
- *Large v. Fremont Cty.* (D. Wyo. 2010) – Eastern Shoshone and Northern Arapaho Tribes challenged at-large elections for County Commissioners.
  - *Thornburg v. Gingles* factors:



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## Redistricting and Malapportionment, cont.

- *Nation v. San Juan Cty.*, 266 F. Supp. 3d 1341 (D. Utah 2017)
  - “The focus in the design of the County's Plan was to create districts, consistent with other redistricting principles (including maintaining traditional communities of interest and precinct boundaries), that reflected the overall composition of the County's population, thereby affording both Native Americans and non-Hispanic whites the opportunity to have a reasonable opportunity to elect candidates of their choice . . . .”
  - “Because the County's attempt at compliance with Section 2 of the Voting Rights Act entailed nothing more than proportionality (meaning the establishment of racial targets for the resulting districts); and because compliance with the Voting Rights Act was the County's highest priority, save one-person, one-vote; the court concludes San Juan County adopted a countywide policy of prioritizing racial targets above all other traditional redistricting criteria.”

# — Recommendations

# Native Americans and Redistricting

- Recognize history of discrimination against AIANs
- AIANs form unique communities with distinctive culture, language, and traditions
- Native communities and reservations may constitute communities of interest to be preserved in redistricting





Thank you.