

Statement to the House and Senate Legislative Redistricting Committees

My name is Kevin Killer. I am the Chairman of the Oglala Sioux Tribe. I also served as a South Dakota State Representative for eight years and South Dakota State Senator for over two years.

Oglala Sioux Tribe

Also known as the Oglala Lakota and the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, the Oglala Sioux Tribe is a branch of the Lakota people, and is part of the Oceti Sakowin (Seven Council Fires). The Oceti Sakowin consists of: the Thít̚huŋwaŋ (Teton or Lakota), Bdewák̚thuŋwaŋ (Mdewakanton), Waḥpéthuŋwaŋ (Wahpeton), Waḥpékhute (Wahpekute), Sisíthuŋwaŋ (Sisseton), Iháŋkthuŋwaŋ (Yankton), and Iháŋkthuŋwaŋna (Yanktonai). The Oglala Sioux Tribe exercises powers of self-governance, self-determination, and jurisdiction over the Pine Ridge Reservation, and is a signatory to the 1851 and 1868 Fort Laramie Treaties, the latter of which established the Great Sioux Reservation.

The Oglala Sioux Tribe has approximately 46,822 enrolled members. The Pine Ridge Reservation is located in southwest South Dakota, along the border with Nebraska, and covers approximately 3.2 million acres. The Reservation was established by the Act of Mar. 2, 1889, 25 Stat 888, which partitioned the Great Sioux Reservation. Today, the Reservation encompasses Oglala Lakota County, Bennett County, and a portion of Jackson County in South Dakota, as well as a section of land in Sheridan County, Nebraska.

Poverty is common on the Reservation. Approximately 90% of families live in poverty and the unemployment rate is 85%. Due to poverty, a tank of gas can be a burden, and travelling long distances is not financially feasible for many members. Many tribal members do not often travel long distances, and usually only out of necessity. Lack of vehicle access is common, and many people share vehicles. Dependable vehicles that can manage difficult road conditions are rare and a working vehicle is difficult to come by. Due to an extreme housing shortage, it is not uncommon for there to be upwards of ten people sharing a home, and moving from home to home is common. Many homes on the Pine Ridge Reservation are physically unaddressed, meaning there is no address marked on the residence, and the process of getting assigned an address is lengthy and cumbersome. The majority of homes on the Pine Ridge Reservation do not receive residential mail delivery. Many households share post office boxes, and travel to post offices can be far. Many households do not have broadband access or cannot afford a device to access the Internet. Poverty, lack of vehicle access, lack of physical addresses on homes, lack of internet access, inequities in mail delivery service, and limited access to post offices and post office boxes make it difficult for Oglala Sioux tribal members on the Reservation to register to vote.

South Dakota laws exacerbate these problems. Oglala Lakota people have been excluded from the voter registration process for decades. Voter registration in South Dakota requires a photo ID that includes a residential mailing address, but Oglala Lakota tribal citizens often do not have traditional residential mailing addresses and instead receive mail through P.O. Boxes due to the rural and remote nature of Pine Ridge. The Tribe, along with the Rosebud Sioux Tribe and other plaintiffs, filed suit in 2018 against South Dakota's Secretary of State and other officials to

rectify their past and ongoing violations of the "Motor Voter" and agency-based voter registration requirements of the National Voter Registration Act of 1993. The case, which is pending, sets forth that South Dakota is failing to provide Native voters (and others) with legally-required voter registration opportunities and opportunities to change their voter registration addresses when they interact with state agencies.

When they are registered, Oglala Lakota people face significant barriers to absentee voting. South Dakota requires absentee voters to either submit a photocopy of an acceptable photo ID card with their absentee ballot or have a public officer notarize the application. As mentioned, our Reservation is rural and remote; businesses that offer photocopying and notary services are few and far between.

South Dakota officials have also undermined candidates' efforts to engage with our communities in a culturally-appropriate manner. In 2010, Democratic Representative Stephanie Herseth Sandlin honored our tradition by serving food at her early voting rallies on reservations in South Dakota in an effort to show respect and align with the traditions of the Native communities she visited. Republican Attorney General of South Dakota Mike Barnett later issued a letter barring politicians from providing meals to voters who attend early voting rallies.

The Redistricting Process Must Be Transparent and Inclusive

First, I am concerned about the Committees' lack of transparency and inclusivity in the redistricting process. I urge the Committees to ensure the redistricting cycle is inclusive of our tribal communities and to hold public hearings that are accessible to all residents of South Dakota, including those living on reservations. I ask that public hearings be scheduled on my Reservation and the other eight reservations.

I am willing to work with the Subcommittee to locate appropriate spaces for these hearings and to advertise them to community members. By working together, we hope to achieve fair representation for Native Americans. These hearings would allow tribal members and other residents of the reservations to explain the unique challenges our communities face and how they might best be represented not just in the redistricting process, but in other areas as well.

I also respectfully request that the Committees and Subcommittee engage in meaningful and robust consultation with the tribes about the redistricting process. This consultation will enable discussion, consideration and input from the tribal governments before maps are adopted to ensure they are inclusive of tribal nations' priorities and recommendations. Consultation with tribes will have the added benefit of building the relationship between the tribes and the State, which will lead to more respect and trust.

As Communities of Interest, Tribal Communities Should Be Kept Together

Second, the Redistricting Committees must ensure the “protection of communities of interest by means of compact and contiguous districts.”¹ A community of interest is a geographically cohesive area, like a neighborhood or region, whose residents tend to have similar interests. These shared interests might be political, social, economic, cultural or otherwise. Essentially, a community of interest is a group of contiguous people who would benefit from shared representation.

My Native community is a community of interest. However, that community might not be exactly the same as the geographic boundaries of my Reservation. There may be tribal members or other community members living off the reservation, but geographically near, who are also a part of that community. In order to make these decisions fairly and accurately, the Committees need to hear directly from South Dakota’s residents, including members of my Tribe and other Native Americans.

The Committees Must Adhere to the Voting Rights Act – District 27.

Finally, I am concerned that the Committees may be considering electoral changes to District 27 that would have the effect of denying or abridging Native Americans’ right to vote on account of race. The Pine Ridge Reservation lies entirely within District 27² and it has a majority Native American voting age population. I urge the Committees to ensure full compliance with the Voting Rights Act (VRA) by maintaining District 27’s current boundaries in its new redistricting plan.

We ask that you consider the undercount in 2020 Census. Please note that with the ARP Act relief package, the Tribe’s enrollment numbers have increased.

District 27 was drawn by the federal courts specifically to ensure South Dakota’s compliance with the Voting Rights Act. The South Dakota District Court, later affirmed on appeal by the Eighth Circuit, redrew Districts 26 and 27 after determining that South Dakota legislature had violated Section 2 of the Voting Rights Act by packing District 27 with Native Americans at the expense of District 26’s would-be Native majority.³ This District 27 was drawn to assure Native Americans in Districts 26 and 27 the opportunity to elect Indian-preferred candidates.⁴

Section 2 of the VRA remains applicable to District 27, as the Native American voting-age population there continues to be a majority. This means that Native Americans in District 27 must have an opportunity to elect representatives of their choice. I urge the Committees to adhere to their responsibilities under the VRA and leave District 27’s boundaries as they currently are.

¹ SD LEGIS 16 (2021), 2021 South Dakota Laws Ch. 16 (SB 80) (formerly S.D. Codified Laws § 2-2-41)

² Except for the portion of the Reservation in Nebraska.

³ *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1016 (8th Cir. 2006).

⁴ *Id.*

Conclusion

Redistricting is a difficult task and it is impossible to please every interested party, but a fair process can at least assure us that our concerns are heard and carefully considered. I respectfully and humbly appreciate your consideration and look forward to working with you to ensure fair representation for everyone.

Sincerely,

President Kevin Killer

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