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Jean Reith Schroedel

Kara Mazareas

Joseph Dietrich

Jamaica Bacus-Crawford

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YAZZIE ET AL. V. HOBBS: THE 2020 ELECTION AND VOTING BY MAIL ON- AND OFF-RESERVATION IN ARIZONA

Jean Reith Schroedel, Kara Mazareas, Joseph Dietrich, and Jamaica Baccus-Crawford*

ABSTRACT

During the 2020 election, voting by mail was touted as a way to safely vote from home and avoid the risks of contracting COVID-19. While voting by mail is definitely safer than in-person voting, it also assumes that all citizens have equal access to the mail services needed for voting by mail. Lawyers, acting on behalf of Navajo plaintiffs in Arizona, argued in Yazzie et al. v. Hobbs (2020) that voters living on the Navajo Nation faced impermissible barriers in accessing voting by mail. They provided evidence showing there was limited mail service on the reservation and that mail delivery times were much longer than in a number of off-reservation communities. Arizona District Court Judge G. Murray Snow denied the plaintiffs' request for a preliminary injunction, concluding that there was not sufficient evidence showing a disparate burden, as required by Section 2 of the Voting Rights Act. He suggested that disparities in access and delivery times might be due to rurality rather than discrimination against a protected class. In this Article, we delve deeper into the evidence presented by the plaintiffs and then provide new evidence, showing disparities between access and delivery times on the reservation and those in off-reservation locations, including the most rural areas of the same counties.

I. INTRODUCTION

Although voting by mail (VBM) was touted during the 2020 election as a means for people to vote without risking exposure to COVID-19, it has been gaining in popularity for more than a quarter of a century.¹ In the early 1990s, Oregon shifted to an all vote by mail system, and another twenty-one states subsequently moved to adopt some version of all voting by mail for at least some elections prior to COVID-19, as well as many having laws making no-excuse absentee voting easier.² Along with Oregon, three other states—Washington, Colorado, and Hawaii—prior to 2020 had passed laws

*We want to thank the American Political Science Association and Four Directions for providing grant funds that made this research possible.

1. See Olivia B. Waxman, *Voting by Mail Dates Back to America's Earliest Years. Here's How It's Changed Over the Years*, TIME MAGAZINE (Sept. 28, 2020, 12:00 PM), <https://time.com/5892357/voting-by-mail-history/>.

2. *Id.*

establishing all vote by mail elections, while other states had allowed county governments to decide whether to have all vote by mail systems.³ Interestingly, the reforms were embraced by both liberals, who viewed VBM as a way to increase access, and conservatives, who liked that it reduced the cost of elections.⁴ Support for voting by mail among conservatives dropped in the lead-up to the 2020 election when President Trump argued that fraud was rampant in voting by mail systems, even though studies showed fraud was largely non-existent.⁵ These arguments were amplified by conservative pundits and organizations.⁶ Moreover, there is a large body of academic research on the impact of VBM on turnout, none of which suggests that it harms Republicans.⁷

The most studied issue was whether voting by mail really did have a positive effect on turnout. On this question, the results were decidedly mixed, with some studies showing slight increases, others showing decreased turnout, and still others showing negligible change.⁸ Some studies found increased turnout among high propensity voters (e.g., those with high socio-economic status) but decreased turnout among low propensity voters,

3. *Id.*

4. See Pierluigi Oliviero, *Opinion: Voting by Mail in Santa Clara County Can Save Money, Increase Turnout and Speed Up Results*, MERCURY NEWS (May 3, 2017, 8:36 AM), <https://www.mercurynews.com/2017/05/03/opinion-voting-by-mail-in-santa-clara-county-can-save-money-increase-turnout-and-speed-up-results/>; David Roberts, *Voting by Mail is Fair, Safe, and Easy. Why Don't More States Use It?*, VOX (May 27, 2017, 12:16 PM), <https://www.vox.com/policy-and-politics/2017/5/27/15701708/voting-by-mail>.

5. See Linda Qui, *Fact-Checking Falsehoods on Mail-In Voting*, N.Y. TIMES, (Jan. 5, 2021), <https://www.nytimes.com/article/fact-checking-mail-in-voting.html>; Nicholas Riccardi, *Here's the Reality Behind Trump's Claims About Mail Voting*, ASSOCIATED PRESS (Sept. 30, 2020), <https://apnewa.com/articles/virus-outbreak-joe-biden-election-2020-donald-trump-elections-3e8170c3348ce3719d4bc718246b582>.

6. See, e.g., Hans A. Von Spakovsky & Kaitlynn Samalis-Aldrich, *Election Integrity: More Examples of Election Fraud Prove the Left Is in Denial About It*, HERITAGE FOUND. (Oct. 15, 2020), <https://www.heritage.org/election-integrity/commentary/more-examples-election-fraud-prove-the-left-denial-about-it>.

7. Daniel M. Thompson et al., *Universal Vote-by-Mail Has No Impact on Partisan Turnout or Vote Share*, 117 PROCEEDINGS OF THE NAT'L ACAD. OF SCI. 13851, 14052–56 (2020); Jesse Yoder et al., *How Did Absentee Voting Affect the 2020 U.S. Election?* 21–24 (Stan. Inst. for Pol'y Rsch. Working Paper No. 21-011, Mar. 2021), available at <https://siepr.stanford.edu/sites/default/files/publications/21-011.pdf>.

8. See Elizabeth Bergman & Philip A. Yates, *Changing Election Methods: How Does Mandated Vote-by-Mail Affect Individual Registrants*, 10 ELECTION LAW J. 71, 123–24 (2011); Gabrielle Elul et al., *The Effect of Mandatory Mail Ballot Elections in California*, 16 ELECTION L. J. 335: 406–07 (2017); Alan S. Gerber et al., *Identifying the Effect of All-Mail Elections on Turnout: Staggered Reform in the Evergreen State*, 1 POL. SCI. RES. AND METHODS 1, 103–04 (2013); Paul Gronke & Peter Miller, *Voting by Mail and Turnout in Oregon: Revisiting Southwell and Burchett*, 40 AM. POL. RES. 949, 987 (2012); Priscilla L. Southwell & Justin I. Burchett, *The Effect of All-Mail Elections on Voter Turnout*, 28 AM. POL. RES. 72, 74–76 (2000).

who are more likely to be minorities.⁹ Berinsky, Burns and Traugott classify voters as either “resource rich” or “resource poor” and showed that voting by mail increased turnout among the former and decreased electoral participation among the latter.¹⁰ All of which suggests that voting by mail during the pre-pandemic period had minimal effect on changing the make-up of the electorate.

None of the studies, however, examined the impact of voting by mail systems on turnout among Native Americans, arguably the single most “resource poor” sector of the electorate, although there are reasons to suspect that voting by mail would disadvantage Native voters.¹¹ Along with low socio-economic status, Ferguson-Bohnee, the Faculty Director of the Indian Legal Program and the Director of the Indian Legal Clinic at Arizona State University and Dr. James Tucker, a Pro Bono Voting Rights Counsel to the Native American Rights Fund, suggested that limited access to mail service, the need for in-person language assistance, and the lack of transportation are barriers that make it harder for Native Americans to vote by mail.¹² There is also survey research showing that Native Americans have very low levels of trust that votes cast by mail actually will be counted, as well as research showing that trust is related to voting propensity.¹³

A. Native Activism on Issues Related to Voting by Mail

Well before the 2020 election, Native American activists recognized these barriers and tried to raise awareness of their potentially discriminatory impact.¹⁴ The Inter-Tribal Council of Arizona, which includes the twenty

9. See Bergman & Yates, *supra* note 8; Adam J. Berinsky et al., *Who Votes by Mail? A Dynamic Model of the Individual-Level Consequences of Voting-by-Mail Systems*, 65 PUB. OPINION Q. 157, 194–95 (2001); Jeffery A. Karp & Susan A. Banducci, *Going Postal: How All-Mail Elections Influence Turnout*, 22 POL. BEHAV. 167, 235–36 (Sept. 2000); Nathan W. Monroe & Dari E. Sylvester, *Who Converts to Vote-By-Mail? Evidence From a Field Experiment*, 10 ELECTION L. J. 1, 25 (2011).

10. Berinsky et al., *supra* note 9.

11. See Dedrick Asante Muhammad et al., *Racial Wealth Snapshot: American Indians/Native Americans*, NAT’L CMTY. REINVESTMENT COAL. (Nov. 18, 2019), <https://nrcr.org/racial-wealth-snapshot-american-indians/> (explaining that Native Americans have the highest poverty rate, the lowest median income, highest unemployment rate, and lowest level of education of any racial/ethnic group in the United States).

12. Patty Ferguson-Bohnee & James Thomas Tucker, *Voting During a Pandemic: Vote-by-Mail Challenges for Native Voters*, ARIZ. ATT’Y, July–Aug. 2020, at 29–30.

13. Dr. James Thomas Tucker et al., *Obstacles at Every Turn: Barriers to Political Participation Faced By Native American Voters*, NATIVE AM. RTS. FUND 43–46 (2020), https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf; Jean Schroedel et al., *Political Trust and Native American Electoral Participation: An Analysis of Survey Data From Nevada and South Dakota*, 101 SOC. SCI. Q. 1671, 1885–1904 (2021).

14. See Tucker et al., *supra* note 13, at 26 (quoting Travis Lane), <https://bit.ly/2CcreAc>.

non-Navajo tribes in the state, opposed all vote by mail systems.¹⁵ In 2016, the Navajo Human Rights Commission filed a lawsuit challenging actions taken by election officials in Utah's San Juan County, arguing that these actions violated Sections 2 and 203 of the Voting Rights Act and the Fourteenth Amendment.¹⁶ The county had switched to an all voting by mail system and closed precinct locations on the Navajo Nation, but continued to allow off-reservation early voting and Election Day voting in the off-reservation county clerk's office.¹⁷ A settlement agreement was reached that allowed for in-person voting assistance on the Navajo Nation for the twenty-eight-day early voting period and the establishment of three Election Day polling places on the reservation.¹⁸ The county also agreed to provide additional language assistance to voters, whose primary language was Navajo.¹⁹ After the Trump administration began suggesting that United States Postal Service (USPS) consider cutting back on mail service to rural areas in order to save money, leaders of the National Council of American Indians met with the USPS in order to make them aware of the importance of mail service for people living on reservations and how any additional cutbacks would have deleterious effects on their ability to vote by mail.²⁰

While the settlement in *Navajo Nation Human Rights Commission v. San Juan County* resolved some of the issues faced by Navajo voters in San Juan County, Utah, it did nothing to address voting by mail challenges for Navajo living in the Arizona portion of the reservation.²¹ The difficulties in voting on the Arizona portion of the reservation did figure, however, in *Democratic National Committee v. Hobbs*, which challenged Arizona's prohibitions on counting out of precinct ballots and limits on ballot collection.²² After the Ninth Circuit held for the plaintiffs, sitting *en banc*, the defense appealed to the Supreme Court, which granted *certiorari*, which is where it stands at this moment.²³ But as part of the Ninth Circuit majority opinion,

15. *Id.*

16. Navajo Nation Human Rights Comm'n v. San Juan Cnty., 281 F. Supp. 3d 1136 (D. Utah 2017); Press Release, American Civil Liberties Union Utah Chapter, Settlement Announced in Navajo Nation Human Rights Commission v. San Juan County (Feb. 21, 2018), <https://www.acluutah.org/newsroom/item/1418-settlement-announced-in-navajo-nation-human-rights-commission-v-san-juan-county>.

17. American Civil Liberties Union Utah Chapter, *supra* note 16.

18. *Id.*

19. *Id.*

20. JEAN REITH SCHROEDEL, VOTING IN INDIAN COUNTRY: THE VIEW FROM THE TRENCHES 66 (2020).

21. See generally *Navajo Nation Human Rights Comm'n*, 281 F. Supp. 1136 (2017).

22. Democratic Nat'l Comm. v. Hobbs, 948 F.3d 989, 997–98 (9th Cir.) (*en banc*), cert. granted *sub nom.* Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 222 (2020); Democratic Nat'l Comm. v. Hobbs: *Ninth Circuit Holds Two Arizona Voting Laws Are Unlawful Under Section 2 of the Voting Rights Act*, 134 HARV. L. REV. 862, 862 (Dec. 10, 2020).

23. *Hobbs*, 948 F.3d at 1014; *Brnovich*, 141 S. Ct. 222 (2020).

Judge William Fletcher referenced data relevant to this discussion about differential access, including that Navajo voters live much further away from Election Day polling places than white voters and that they have travel times ranging from forty-five minutes to two hours in order to reach a mailbox.²⁴ He also noted that within Arizona as a whole, that only 18% of American Indians have access to residential mail delivery and that white people have more than 350% greater access to at-home mail delivery.²⁵

II. ACCESS TO MAIL SERVICE ON THE NAVAJO NATION

The Navajo Nation encompasses 27,425 square miles (a landmass that is slightly larger than West Virginia (24,038 sq. miles)) and includes parts of three states: Arizona, Utah, and New Mexico.²⁶ More than two-thirds of the territory is in Arizona, and that part alone is larger than nine states (Maryland, Utah, New Hampshire, Massachusetts, New Jersey, Hawaii, Connecticut, Delaware, and Rhode Island).²⁷ In Arizona, the Navajo Nation includes most of the land in two counties (Navajo and Apache Counties) and a smaller portion in Coconino County.²⁸ Of the nearly 174,000 people living on the reservation, approximately 60% reside on the Arizona portion, with an Arizona voting age population of roughly 67,000.²⁹ It is an extremely rural area with a population density of 6.33 persons per square mile compared to the U.S. per square mile average of 345 persons.³⁰ The Navajo are among the poorest population in the country, with 40% having incomes below the poverty level, and even more troubling, 21.8% classified as “severely poor,” which means their incomes are less than 50% of the poverty level.³¹

24. *Hobbs*, 948 F.3d at 1006.

25. *Id.*

26. NAVAJO DIV. OF HEALTH & NAVAJO EPIDEMIOLOGY CTR., NAVAJO POPULATION PROFILE 2010 U.S. CENSUS 3–4 (Dec. 2013) [hereinafter NAVAJO DIV. OF HEALTH], <https://www.nec.navajo-nsn.gov/Portals/0/Reports/NN2010PopulationProfile.pdf> (outlining basic demographic data about the Navajo Nation); *Quick Facts: West Virginia*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/WV> (last visited June 22, 2021).

27. NAVAJO DIV. OF HEALTH, *supra* note 26.

28. *Id.*

29. *Id.* at 13, 41–43.

30. *Id.* at 21.

31. THOMAS COMBRINK ET AL., ARIZ. RURAL POVERTY INST., DEMOGRAPHIC ANALYSIS OF THE NAVAJO NATION: 2011-2015 AMERICAN COMMUNITY SURVEY ESTIMATES CENSUS 35, <https://in.nau.edu/wp-content/uploads/sites/212/Navajo-Nation-2011-2015-Demographic-Profile-.pdf>.

A. Non-Standard Mail Service and Access to Post Offices

People living on the Navajo Nation reservation have what the USPS classifies as non-standard mail service, which means they receive far less mail service than other places across the country.³² The most important difference is the lack of residential mail delivery. Without residential mail delivery, people living on the reservation must travel to post offices and postal provider sites that are located some distance from their homes, and these places offer fewer services, shorter hours, and a limited number of post office boxes.³³ Postal provider sites are staffed by non-USPS contractors, located in places such as mini-marts and gas stations, and provide very limited hours and services. If people do not have a post office box, whether due to cost or the limited number of boxes available, they will need to rely upon “general delivery” to obtain their mail. This means the post office or postal provider holds the letter for thirty days. If it is not picked up within that time, the mail is returned to the sender or thrown out.

On the Arizona portion of the reservation, there are only eleven USPS run post offices and another sixteen postal provider sites, translating into one place for posting and receiving mail for every 687 square miles. For comparison purposes, there is one postal location for every 15.3 square miles in Scottsdale, Arizona, which has standard mail service.³⁴ And if one includes the postal locations on the whole reservation covering parts of three states, there are a total of forty places in an area larger than West Virginia,³⁵ which for comparative purposes has 725 postal locations and mostly residential mail delivery.³⁶

The State of Arizona distinguishes only between Election Day voting at polling places and early voting/voting by mail. One recent unpublished study of Arizona voting by Jason Chavez, an Elections Policy Specialist

32. Patty Ferguson-Bohnee, *How the Native American Vote Continues to Be Suppressed*, HUM. RTS. MAGAZINE, (Jan. 9, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/how-the-native-american-vote-continues-to-be-suppressed/.

33. The authors developed these data on post offices by identifying the post office locations available in October 2020 using the USPS locator website (<https://tools.usps.com/find-location.htm>) and cross-referencing those locations with the territorial boundaries for the Navajo Nation lands, Scottsdale, AZ, and the State of West Virginia as displayed on Google Maps. The number of postal locations was determined by dividing the total land area for the territory by the number of local postal facilities. We also called these facilities on the reservation to verify that their mail service was non-standard.

34. See *Quick Facts: Scottsdale City Arizona; Maricopa Cnty., Arizona*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/scottsdalecityarizona,maricopacounty-arizona,US/PST045219> (last visited June 22, 2021) (showing the square miles of the city).

35. NAVAJO DIV. OF HEALTH, *supra* note 26.

36. *Supra* note 33.

with the Arizona Secretary of State office, found that off-reservation voters were much more likely than reservation voters to utilize early voting/voting by mail. Between 2012 and 2016, the average difference was roughly thirty-five points.³⁷ While this suggests that the difference may be due to disparities in postal access, it cannot be proven given that other factors, such as SES differences, may be significant. To address those concerns, Chavez then did a micro-analysis, comparing reservation precincts with the least postal access (no post offices and only two postal provider sites in an 871 sq. mile area) and reservation precincts with the most postal access (three post offices in a 360 sq. mile area).³⁸ In each election, the early voting/voting by mail was two to four times higher in the precincts with much greater postal access.³⁹

Chavez's findings are consistent with a large body of academic research showing that accessibility to voting locations is strongly related to whether an individual chooses to vote.⁴⁰ While this literature has shown a strong correlation between the ease of access of polling places, typically operationalized as travel distance, and electoral participation, none of the studies examined the reservation populations, nor the considerable distance that voters must travel to access mail services. Interestingly, the issue of travel distances to polling locations and early voting sites was litigated in

37. Jason Chavez, *Inconvenient Voting: Native Americans and the Cost of Early Voting* 4–5, 60, 63 (May 13, 2020) (Master's thesis, Virginia Polytechnic Institute and State University) (on file with the Virginia Polytechnic Institute and State University Library).

38. *Id.* at 67–70.

39. *Id.*

40. See Henry E. Brady & John E. McNulty, *Turning Out to Vote: The Costs of Finding and Getting to a Polling Place*, 105 AM. POL. SCI. REV. 115, 128 (2011) (“People make a decision about whether to vote based on the increased search costs from having their polling place moved, and if they decide to vote, they choose absentee or polling place voting based on both search and travel costs.”); J.G. Gimpel & J.E. Schuknecht, *Political Participation and the Accessibility of the Ballot Box*, 22 POL. GEOGRAPHY 471, 471, 481–85 (2003) (finding that even after controlling for variables involving motivation, information, and resource levels of certain populations, “accessibility does make a significant difference to turnout.”); Moshe Haspel & H. Gibbs Knotts, *Location, Location, Location: Precinct Placement and the Costs of Voting*, 67 J. OF POL. 560, 570 (2005) (establishing that in Atlanta, voters “are sensitive even to small distances” to polling places); John E. McNulty et al., *Driving Saints to Sin: Increasing the Difficulty of Voting Dissuades Even the Most Motivated Voters*, 17 POL. ANALYSIS 435, 435–55 (2009) ([T]hrough a matching analysis we find that polling consolidation decreases voter turnout substantially.”); Elizabeth Sanders, *On the Costs, Utilities and Simple Joys of Voting*, 42 J. OF POL. 854, 861–62 (1980) (finding that the “time necessary to . . . get to the polls” contributes to the cost of voting, which impacts voter turnout); Robert M. Stein & Greg Vonnahme, *When, Where and How We Vote: Does It Matter?*, 93 SOC. SCI. Q. 559, 692, 709–10 (2012) (finding that accessible and open voting places “significantly enhance voter performance and evaluation”).

Native voting rights cases in Montana, South Dakota and Nevada.⁴¹ While the two early cases were settled, Judge Miranda Du in the final case *Sanchez v. Cegavske* ruled that travel disparities—thirty-two miles round trip to vote—work in “tandem with historical, social, and political conditions to produce a discriminatory result” that is an abridgment of the right to vote, contrary to Section 2 of the Voting Rights Act.⁴² Given that the distances to vote by mail on the Navajo Nation are much greater than the impermissible distances in *Sanchez*, the issue of voting distances appears to be an area ripe for future litigation.

III. VOTING BY MAIL IN ARIZONA

Voting by mail is well established in Arizona. During the 2016 general election, 80% of all votes were designated as early/voting by mail ballots.⁴³ When tabulating votes, Arizona does not distinguish between early voting and voting by mail because the two are closely intertwined in state law and practice. Since 2007, Arizona has allowed voters to choose to be placed on the Permanent Early Voter List (PEVL), which means they will be sent a ballot by mail in every election.⁴⁴ They can either return the ballot by mail or in-person to a polling place, vote center, election official’s office, or a special drop box. Voters who do not choose to be part of the Permanent Early Voter List can still request an early vote by mail ballot, but only on an election-by-election basis.⁴⁵ Individuals must make non-PEVL voter requests for mail-in ballots to the county recorder’s offices.

For the 2020 general election, individuals were required to make non-PEVL requests by 5:00 p.m. on October 23, which was also the deadline for being added as a PEVL voter prior to the election.⁴⁶ The actual mailing of ballots is handled by county recorders.⁴⁷ For the 2020 general election, October 7 was the first date that PEVL ballots could be sent to voters.⁴⁸ While not having the force of law, Secretary of State Katie Hobbs issued a press release stating that VBM ballots should be posted no later than October 27

41. See *Wandering Medicine v. McCulloch*, 906 F. Supp. 2d 1083 (D. Mont.), *order vacated, appeal dismissed sub nom.* 544 F.App’x 699 (9th Cir. 2013); *Poor Bear v. Cnty of Jackson*, No. 5:14-CV-05059-KES, 2016 WL 3435181 (D.S.D. June 17, 2016); *Sanchez v. Cegavske*, 214 F. Supp. 3d 961 (D. Nev. 2016).

42. *Sanchez*, 214 F. Supp. 3d at 975.

43. *Democratic Nat’l Comm. v. Reagan*, 329 F. Supp. 3d 824, 839 (D. Ariz. 2018).

44. ARIZ. REV. STAT. § 16-544 (West 2020).

45. *Id.* § 16-542 (West 2020).

46. *Voting by Mail: How to Get a Ballot-by-Mail*, Katie Hobbs Secretary of State, <https://azsos.gov/votebymail> (last visited Mar. 23, 2021) (referencing the 2020 Election Timeline subsection).

47. *Id.*

48. *Id.*

to ensure the county recorder offices received the ballots by the Election Day ballot receipt deadline.⁴⁹

Arizona's ballot receipt deadline is 7:00 p.m. on Election Day.⁵⁰ Ballots received after the deadline, regardless of when they are post-marked, cannot be counted. This places Arizona within the second strictest category of ballot receipt deadlines.⁵¹ Louisiana is in the strictest category, requiring mailed ballots to arrive at the designated offices prior to Election Day.⁵² Thirty-one states, including Arizona, are in the next category, requiring arrival by Election Day.⁵³ The remaining eighteen states allow ballots received after Election Day to be counted, although there are great differences with respect to requirements that must be met for the ballots to count.⁵⁴ Texas, for example, will count a ballot received on the Wednesday after Election Day if it is post-marked before Election Day.⁵⁵ In contrast, Illinois will count ballots for up to fourteen days after Election Day if the ballot is postmarked by Election Day.⁵⁶ As state law dictates the process, there are also differences in voting laws on the Navajo Nation, as its borders extend into parts of three different states. New Mexico has the same 7:00 p.m. Election Day deadline as Arizona, but Utah counts ballots received up to fourteen days after Election Day if the ballot is post-marked prior to Election Day.⁵⁷

Political scientist Stephen Ansolabehere analyzed the impact of having a strict ballot receipt deadline on late ballot rejection rates in six Arizona counties (Cochise, Coconino, Graham, Greenlee, Maricopa and Santa Cruz Counties).⁵⁸ He found that among white voters only 0.9 votes per 1,000 were rejected due to arriving after the Election Day deadline.⁵⁹ Among Hispanic voters the rate was 7.1 per 1,000, while among Native American voters, the rate was 7.9 per 1,000.⁶⁰ While his analysis only included Coconino County,

49. Press Release, ARIZ. SEC. OF STATE, *Oct. 27 Last Recommended Day to Mail Back Early Ballots* (Oct. 26, 2020), <https://azsos.gov/about-office/media-center/press-releases-/1244>.

50. *VOPP: Table 11: Receipt and Postmark Deadlines for Absentee Ballots*, NAT'L CONFERENCE OF STATE LEGISLATURES (Sept. 29, 2020) [hereinafter Table 11], <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-11-receipt-and-postmark-deadlines-for-absentee-ballots.aspx>.

51. *See id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. Table 11, *supra* note 50.

57. *Id.*

58. Expert Rep. of Stephen Ansolabehere at 20, *Voto Latino, et al. v. Hobbs*, No. 2:19-cv-19-05685-DWL (D. Ariz. Feb. 20, 2020).

59. *Id.* at 21.

60. *Id.*

which includes part of the Navajo Nation, there is little reason to think it would not apply equally in the other two reservation counties.

IV. ISSUES IN *YAZZIE v. HOBBS*

Unlike previous voting rights cases involving Native Americans, *Yazzie et al. v. Hobbs* focused solely on voting by mail, more specifically, on whether Navajo, living on the Navajo Nation in Arizona, have fewer days to cast mail-in ballots due to slower postal service, have less access to voting by mail and are harmed by the strict ballot receipt deadline.⁶¹ Plaintiffs' attorneys requested a preliminary injunction to require the counties to count mail-in ballots from Tribal members living on the reservation if they were post-marked on or before Election Day.⁶² Not allowing the ballots to be counted would deny Tribal members an equal opportunity to vote in the 2020 election compared to other Arizona voters, in violation of Section 2 of the Voting Rights Act.⁶³ They further argued that the First, Fifth and Eighth Senate Factors were relevant to their Section 2 abridgment claim, and made arguments based on Section 1983, the Fourteenth Amendment, and the Arizona State Constitution.⁶⁴

The plaintiffs' attorneys presented evidence showing that individuals living on the Navajo Nation had substantially less access to mail service (e.g., lack of residential mail services, fewer post offices, and much shorter hours of access to post office boxes) than individuals living in urban Scottsdale in Maricopa County and Holbrook, Flagstaff and St. Johns, which are the county seats in Navajo, Coconino and Apache Counties respectively.⁶⁵ They also used USPS tracking to follow the routes of letters posted from the Navajo Nation and those posted from Scottsdale, Holbrook, Flagstaff, and St. Johns, showing that the former traveled long distances, up to 917 miles before delivery while the latter followed short distances and followed direct routes.⁶⁶ They also showed that all of the letters posted from the off-

61. Emergency Mot. For Preliminary Inj. & Decl. Relief & Mem. of Point & Authorities in Supp. Thereof at 2, *Yazzie et al. v. Hobbs*, No. 3:20-CV-08222-PCT-GMS (D. Ariz. Sept. 2, 2020) Doc. 9.

62. *Id.* at 1.

63. *Id.*

64. *Id.*

65. Expert Rep. of Jean Schroedel & Bret Healy at 16–19, *Yazzie et al. v. Hobbs*, No. 3:20-CV-08222-PCT-GMS (D. Ariz. Sept. 2, 2020); Addendum to Expert Rep. of Jean Schroedel & Bret Healy at 7–13, *Yazzie et al. v. Hobbs*, No. 3:20-CV-08222-PCT-GMS (D. Ariz. Sept. 18, 2020).

66. Emergency Mot. For Preliminary Injunction & Declaratory Relief and Mem. Of Point and Authorities in Supp. Thereof, *supra* note 61, at 4; Expert Rep. of Jean Schroedel & Bret Healy, *supra* note 65, at 16–20; Addendum to Expert Rep. of Jean Schroedel & Bret Healy, *supra* note 65, at 5–7.

reservation post offices arrived within the one to three days specified by the USPS for first-class letters, while those mailed from the Navajo Nation took much longer, in some cases six to ten days.⁶⁷

Plaintiffs' attorneys argued that the differences in mail delivery times make it much harder for voters on the Navajo Nations to meet Arizona's strict ballot receipt deadline.⁶⁸ All voters could still request a ballot on October 23 as it was the last day someone could sign up for PEVL or request an absentee ballot for the 2020 election (eleven days prior to the ballot receipt deadline). Voters living in Scottsdale, Holbrook, Flagstaff and St. Johns could request that ballot on October 23 and know they would get it within a couple days and have plenty of time to complete it before they had to return it so it would arrive by the Election Day deadline. However, voters on the Navajo Nation requesting the same ballot on the same day likely would find it impossible to receive that same ballot let alone return it before the Election Day deadline. As mail takes longer to arrive on the reservation, they also would have far less time to consider their vote choices compared to their off-reservation counterparts before needing to return the ballot in order to make the Election Day deadline as mail also takes longer to travel from the reservation.

A. Rurality as a Possible Explanation for Disparities

Arizona District Court Judge G. Murray Snow denied the request for a preliminary injunction, ultimately concluding that a disparate burden to voting was not sufficiently shown.⁶⁹ In part, he wrote that the plaintiffs' claims did not demonstrate a violation of Section 2 because "Plaintiffs only compare mail delivery times and distance to ballot drop-off locations on the reservation to cities, not to other rural areas of Arizona."⁷⁰ Therefore, it is not clear whether Plaintiffs' evidence shows disparities to Navajo voters, a protected class, versus rural voters, a non-protected class.⁷¹ A Ninth Circuit Court panel subsequently affirmed the district court ruling stating that the six individual Navajo bringing suit had failed to show "a concrete and particularized harm" to themselves, which was necessary since the suit was not being filed on behalf of the Navajo Nation.⁷²

67. *Supra* note 66.

68. Emergency Mot. for Preliminary Inj. & Decl. Relief & Mem. of Point & Authorities in Supp. Thereof, *supra* note 61, at 3–4.

69. Yazzie et al. v. Hobbs, No. CV-20-08222-PCT-GMS, 2020 U.S. Dist. LEXIS 184334 at *8 (D. Ariz. Sept. 25, 2020).

70. *Id.*

71. *Id.* at *8–9.

72. Yazzie et al. v. Hobbs, 977 F.3d 964, 967 (9th Cir. 2020).

Since the court denied the plaintiffs' request for a preliminary judgment, it never resolved the question of whether Navajo voters had less access to voting by mail. The district court speculated that disparities may be due to the rural character of the reservation but did so without presenting any evidence to show poor mail service is common in other rural parts of the state.⁷³ The Ninth Circuit did not take up the actual question of whether there was disparate access to voting by mail; instead, it ruled that the plaintiffs lacked standing for a class action suit on behalf of the Navajo Nation because they failed to show any personal injury.⁷⁴

V. MOVING BEYOND *YAZZIE*

Since the core question in *Yazzie* was left unresolved, we decided to undertake a much more in-depth analysis of mail service on and off the Navajo Nation, to address Judge Snow's contention that disparities might be due to rurality. The analysis has two main components: 1. A comparison of postal hours in Coconino, Navajo, and Apache Counties, controlling for the degree of rurality, and 2. A comparison of mail delivery times to county recorder offices, controlling for rurality. When the Census Bureau provides population numbers for communities, it typically provides figures for the census tract and the city/town. In some cases, the census tract number is higher, but in most cases, the higher number is the one provided for the city/town. For this research, we are using the city/town figures except where those numbers are not listed, but we also include population density, when available, to get a better understanding of the areas outside of the immediate community.

The United States government uses three different definitions in determining whether a location is considered rural.⁷⁵ These are census places with populations up to 2,500, populations up to 10,000, and populations up to 50,000.⁷⁶ Even using the most stringent definition of 2,500 or fewer people, nearly all of Coconino, Apache, and Navajo Counties are defined as rural.⁷⁷ Of the counties' three off-reservation communities, cited in *Yazzie*, only Flagstaff, with a population of 71,202, would not be considered rural by one

73. *Yazzie et al.*, No. CV-20-08222-PCT-GMS at 11.

74. *Yazzie et al.*, 977 F.3d at 966.

75. U.S. DEP'T OF AGRIC. ECON. RES. SERV., ARIZONA: THREE RURAL DEFINITIONS BASED ON CENSUS PLACES 7, https://www.ers.usda.gov/webdocs/datafiles/53180/25557_A-Z.pdf?v=0.

76. *Id.*

77. *Id.*

of the definitions.⁷⁸ St. Johns and Holbrook, with populations of 3,500 and 5,037 respectively, are far smaller and more rural.⁷⁹

In what follows, we evaluate access in the county seats, as well as a mix of other off-reservation postal locations: Fredonia, Marble Canyon, Grand Canyon, Williams, Nutrioso, Springerville, Concho, Taylor, Pinedale, Overgaard, Joseph City, and Sedona, which aside from Sedona, fall within the different definitions of rurality. Sedona was included because its population was the closest match to Tuba City. We also examine access in eight reservation locations (Chinle, Many Farms, Teec Nos Pos, Rock Point, Dennehotso, Shonto, Tonalea, and Tuba City), again all rural, although Tuba City, which is the largest reservation community, is notably less rural than the others. Finally, for comparison purposes, we consider the availability of postal services in a mix of off-reservation urban locations (Tempe, Phoenix, Mesa, Glendale, Phoenix, and Scottsdale). This allows us to generalize about the quality of mail services in a broad cross-section of Arizona communities.

A. Rurality and Postal Service Hours

With respect to determining access to voting by mail, both the hours available for conducting postal business (e.g., retail hours) and those available for people to access their post office boxes are relevant.⁸⁰ While most individuals without residential mail service will try to have post office boxes, not everyone will be able to do so due to a shortage of post office boxes at a location or the inability to pay the fees required to rent a box.⁸¹ This is why the retail hours matter, as well as the hours of post office box access. See Table 1 for the weekly hours of mail access and the population and population density for each of the designated Navajo Nation communities.

78. *Flagstaff, AZ*, DATAUSA, <https://datausa.io/profile/geo/flagstaff-az> (last visited Mar. 23, 2021).

79. *St. Johns, AZ*, DATAUSA, <https://datausa.io/profile/geo/st-johns-az> (last visited Mar. 23, 2021); *Holbrook, AZ*, DATAUSA, <https://datausa.io/profile/geo/holbrook-az> (last visited Mar. 23, 2021).

80. The retail hours and post office box hours were verified by telephone in Oct. 2020. Some of these differed from the hours posted on websites.

81. The cost to rent a post office box at the Leupp, AZ Post Office on the Navajo Reservation is \$136 per year, along with a \$6.00 key fee for a new box and a \$9.00 for a replacement key if the original one is lost. Expert Rep. of Jean Schroedel & Bret Healy, *supra* note 65, at 18.

TABLE 1: MAIL SERVICES IN COMMUNITIES ON THE NAVAJO NATION IN ARIZONA⁸²

Location	Weekly Retail Hours	Weekly PO Box Hours	Population	Population Density ⁸³
Tonalea	72	72	549	55.3
Rock Point	20	20	642	45.3
Shonto	17.5	17.5	591	129.6
Teec Nos Pos	42.75	42.75	730	51.1
Dennehotso	15	15	746	75
Many Farms	35	35	1348	165.4
Chinle	27.5	53.5	4518	281.8
Tuba City	40	98	8611	960

All of the Navajo Nation communities are rural and most fall within the strictest definition of rurality (up to a maximum of 2,500 population), but that is because there are no non-rural communities on the reservation. There are several points worth noting about the level of mail service on the Navajo Nation. First, the hours of access to both retail service and post office boxes appear to be only loosely related to population size/density. Tuba City, which has a relatively large population, has the best hours for post office box access, but it has fewer retail hours than Teec Nos Pos and Tonalea, which have small populations and low population density. The reasons for the idiosyncratic hours of service appear to be due to all the communities', aside from Tuba City, having non-USPS contractors providing the services. Many of the postal providers, when reached by telephone, claim to offer mail services for all of the hours that their other businesses are open. This, of course, cannot be independently verified. Second, the hours of access provided in most of the locations are low, particularly for people living in Dennehotso and Shonto. Finally, none of the locations, even Tuba City, has the USPS standard of twenty-four hour a day access to post office boxes. Their average is 44.2 hours per week.

Since Judge Snow suggested that the limited service on the Navajo Nation was due to its rural character, we included some of the most rural locations in Coconino, Apache and Navajo Counties, as well as other less rural locations. Sedona falls just outside of the parameters to be classified as rural but is the closest match in size to Tuba City on the reservation. See Table 2

82. U.S. CENSUS BUREAU, ARIZONA: 2010 POPULATION AND HOUSING UNIT COUNTS 10–19 (2012), <https://www.census.gov/library/publications/2012/dec/cph-2.html>.

83. Population density is the average number of people per square mile.

for a summary of the weekly hours of mail access and the population and population density in non-reservation communities in the three counties.

TABLE 2: RURALITY AND MAIL SERVICE IN OFF-RESERVATION APACHE, NAVAJO AND COCONINO COUNTIES⁸⁴

Location	Weekly Retail Hours	Weekly PO Box Hours	Population	Population Density
Nutrioso	10 hrs.	168 hrs.	26	83.9
Concho	38.75 hrs.	168 hrs.	38	84.4
Pinedale	22 hrs.	168 hrs.	487	50.3
Marble Canyon	13.5 hrs.	168 hrs.	767 (est.)	
Fredonia	35 hrs.	168 hrs.	1314	179.5
Joseph City	32.5 hrs.	78 hrs.	1366	187.3
Springerville	41.25 hrs.	168 hrs.	1433	242.1
Grand Canyon	35 hrs.	119 hrs.	2004	149.6
Overgaard	37.5 hrs.	91 hrs.	2542 (est.)	215.51 (est.)
Williams	35 hrs.	168 hrs.	3023	69.6
St. Johns	37.5 hrs.	168 hrs.	3480	134.3
Taylor	40 hrs.	168 hrs.	4112	125.9
Holbrook	32 hrs.	78 hrs.	5063	291.4
Sedona	38.75	168 hrs.	2842	454.7
Flagstaff	45 hrs.	168 hrs.	65,870	1031.3

As shown in Table 2, slightly more than half of the off-reservation post offices serve communities that fit within the strictest U.S. government rural classification, and Overgaard obviously would if its population/density figures were not combined with Heber. While some of the small population communities (Nutrioso, Pinedale, and Marble Canyon) have low retail hours, Concho (population thirty-eight and population density of 84.4) has as many retail hours as Sedona, which is not rural. Moreover, Concho's population is lower than all of Navajo Nation postal locations. Even more striking are the hours of access to post office boxes. Nearly three-quarters (73%) of the post offices allow twenty-four hour a day access to post office boxes as opposed to none of the reservation locations' doing so. The average number of post office box hours is three times larger on the non-reservation locations: 147.6 hours per week as opposed to 44.2 hours per week. Also, if

84. U.S. CENSUS BUREAU, ARIZONA: 2010 POPULATION AND HOUSING UNIT COUNTS 10–19 (2012), <https://www.census.gov/library/publications/2012/dec/cph-2.html>. The Census Bureau combines the population and density statistics of Overgaard with those from nearby Heber and Marble Canyon with those from nearby Page, both of which have additional postal facilities. *Id.*

one considers only the most rural locations (up to 2,500 population), the disparity is even greater, given they all have full twenty-four hour a day access.

Although not directly relevant to *Yazzie*, we also examined postal access in urban Maricopa County. Our rationale is that it makes sense to examine access in the county because nearly two-thirds of state residents live in urban Maricopa County. We considered access in five cities with different populations: Phoenix (1,353,019), Mesa (437,126), Scottsdale (207,215), Glendale (180,954), Tempe (153,797).⁸⁵ All of the cities have multiple post offices, as well as residential mail delivery. None of the post offices offer less than forty hours per week of retail service, and all provide 168 hours a week of access to post office boxes.

B. Rurality and Mail Delivery Times

While hours of access to postal services—retail and post office boxes—is important, the central element disputed in *Yazzie* was whether differences in mail delivery times that appeared to disadvantage Navajo voters were due to their belonging to a protected class or were simply the result of living in a rural area. Judge Snow, in his decision, suggested the latter, albeit without presenting evidence and discounting that St. Johns and Holbrook, which did not have these disparities, were considered rural by some U.S. government designations. While one could argue about definitions of rurality, it is true there are non-reservation communities that are more rural than St. Johns and Holbrook, so we decided to undertake a more in-depth examination of mail delivery times.

Although there is robust academic literature on voting by mail, to the best of our knowledge, none of the extant research has considered the question of delivery times as raised in *Yazzie*. As such, this study can be considered exploratory research, which tests alternative explanations for the purported differences in mail delivery times found in *Yazzie*. Since we cannot run laboratory experiments to test mail delivery times, the data must be collected using observational research, where the observations are collected in a “systematic and purposeful way” that allows for causal relationship to be tested.⁸⁶ As Davis De Vaus, noted expert on research design from the University of Queensland in Australia, points out, “Establishing causal relationships is at the heart of explanatory research design.”⁸⁷ We can observe

85. U.S. CENSUS BUREAU, ARIZONA: 2010 POPULATION AND HOUSING UNIT COUNTS 13–14 (2012), <https://www.census.gov/library/publications/2012/dec/cph-2.html>.

86. Lynne McKechnie, *Observational Research*, THE SAGE ENCYCLOPEDIA OF QUALITATIVE RESEARCH METHODS 573–75 (Lisa M. Given ed., 2008).

87. DAVID A. DE VAUS, RESEARCH DESIGN IN SOCIAL RESEARCH 34 (2001).

whether the mail delivery times are different, controlling for rurality. If so, then we can infer whether there is a causal relationship between living on the Navajo Nation and slowness in mail delivery times. If, on the other hand, the mail delivery times for the very rural non-reservation communities are like that of the reservation communities, we can infer that the disparities found in *Yazzie* are due to rurality.

We took steps to ensure that the conditions, under observation, conformed as closely as possible to those faced by Arizona's mail-in voters in the 2020 election. For the test, we mailed certified first-class letters from the previously designated postal locations and then used USPS tracking to measure the time to reach county recorder offices. Since the Secretary of State had recommended that ballots be mailed by October 27 to ensure their arrival by the November 3 ballot receipt deadline, we mailed the letters from Apache, Navajo, and Coconino Counties on October 27. Due to logistical limitations, we mailed the Maricopa County letters on October 26.⁸⁸ The observations for the reservation mailings are presented in Table 3, while Table 4 summarizes those from all of the off-reservation communities. As was true in Tables 1 and 2, the communities are ordered from lowest population to highest population to facilitate comparisons.

TABLE 3: TRACKING MAIL DELIVERY ON THE NAVAJO NATION IN ARIZONA

Location/Tracking Number	Location/Tracking Number	Total Hours/Outcomes
Tonalea #70192970000188027142	Posted 10/27	Out for delivery after 65 hours and 58 minutes
Rock Point #70113500000115304308	Posted 10/27	Delivered after 164 hours and 45 minutes
Shonto #70192970000188027425	Delivered after 68 hours and 35 minutes	Delivered after 68 hours and 35 minutes.
Teec Nos Pos #70150640000637473058	Posted 10/27	Delivered after 98 hours and 50 minutes
Dennehotso	Unable to post due to limited hours	Failed
Many Farms #70150640000514411296	Posted 10/27	Failed/return to sender 11/5

88. In addition to the authors, the following three people assisted with the mailing of letters: Greg Swanson, Bret Healy and John Peretz. This was necessary to cover the great distances and deal with poor road conditions and adverse weather. We appreciate their assistance.

Chinle #70200640000043359917	Posted 10/27	Delivered after 95 hours, 46 minutes
Tuba City #70192970000188027166	Posted 10/27	Out for delivery after 63 hours and 25 minutes

Out of the eight attempts to mail a first-class letter from reservation postal locations, only six actually resulted in letters appearing to reach the county recorder offices—four listed as delivered and two as out for delivery in USPS tracking. If this were an actual attempt to vote by mail, two (one quarter) would not have even succeeded in getting a ballot posted and delivered to the county recorder offices. Thus, if success is defined as simply mailing the ballot and having it arrive at county recorder offices, the success rate is 75%. But if success is meeting the USPS standard of delivery within one to three days (seventy-two hours), only the letters posted from Tonalea, Shonto, and Tuba City did so, assuming that Tonalea and Tuba City letters actually were delivered.⁸⁹ The remaining letters took from four to seven days to arrive. This is similar to the *Yazzie* plaintiffs' data, showing six to ten days for some letters mailed from the Navajo Nation, but the underlying question is whether similar results occur when letters are mailed from rural off-reservation locations. See Table 4 below for the off-reservation outcomes.

TABLE 4: TRACKING MAIL DELIVERY OFF-RESERVATION IN ARIZONA

Location/Tracking Number	Posted	Total Hours/Outcomes
Nutrioso #70191120000074953049	Posted 10/27	Delivered after 47 hours and 40 minutes
Concho #70192970000033407310	Posted 10/27	Delivered after 47 hours and 4 minutes
Pinedale #70173040000064181255	Posted 10/27	Delivered after 42 hours and 18 minutes
Marble Canyon #70150640000488088517	Posted 10/27	Delivered after 48 hours and 49 minutes
Fredonia #70191640000066485878	Posted 10/27	Delivered after 47 hours and 50 minutes
Joseph City #70171070000071712951	Posted 10/27	Delivered after 42 hours and 25 minutes
Springerville #70200090000148693481	Posted 10/27	Delivered after 48 hours and 42 minutes

89. We continued to check on the USPS tracking website, but Tonalea and Tuba City were never updated to show an actual delivery.

Grand Canyon #70191640000167840125	Posted 10/27	Out for delivery after 64 hours and 15 minutes
Overgaard #70200090000142117716	Posted 10/27	Delivered after 43 hours and 40 minutes
Williams #70192280000214421948	Posted 10/27	Delivered after 44 hours and 35 minutes
St. Johns #70200090000048261285	Posted 10/27	Delivered after 47 hours and 35 minutes
Taylor #70192280000073255128	Posted 10/27	Delivered after 65 hours and 25 minutes
Holbrook #70190160000114559591	Posted 10/27	Delivered after 47 hours and 2 minutes
Sedona #70192970000188027159	Posted 10/27	Delivered after 49 hours and 37 minutes
Flagstaff #70192970000188027135	Posted 10/27	Delivered after 48 hours and 22 minutes
Tempe #70201810000058084068	Posted 10/26	Delivered after 23 hours and 14 minutes
Glendale #70192970000188027128	Posted 10/26	Delivered after 44 hours and 32 minutes
Scottsdale #70201810000058084044	Posted 10/26	Delivered after 23 hours and 58 minutes
Mesa #70201810000058084051	Posted 10/26	Delivered after 46 hours and 22 minutes
Phoenix #70192970000188027111	Posted 10/26	Delivered after 45 hours and 10 minutes

Unlike the letters mailed from the Navajo Nation, all of the letters mailed from off-reservation locations safely arrived at their designation. Even though there is enormous variance in the population sizes, there is very little variance in the delivery times for the letters from the 20 off-reservation postal locations. The seven locations that fall within the most stringent U.S. government classification of rurality (populations of 2,500 or fewer) had delivery times ranging from forty-two hours and eighteen minutes to forty-eight hours and forty-nine minutes—basically taking roughly two days to reach county recorder offices. Only letters from two locations, Grand Canyon and Taylor, were much beyond the two-day mark, but again well within the USPS one to three days standard. Two of the urban locations, Tempe and Scottsdale, had deliveries in less than one day.

There is very little difference between the letters mailed from the most rural locations and those posted in communities with populations that do not meet any of the U.S. government classifications of rurality. Based on these observations, it is clear that off-reservation voters can have a high degree of certainty that ballots mailed, as late as the Saturday prior to Election Day

(October 31 in 2020), will arrive at county recorder offices prior to the 7:00 p.m. Election Day ballot receipt deadline. In contrast, voters on the Navajo Nation cannot have any confidence in their ballots' even arriving, and certainly not within the USPS standard of one to three days for first-class letters.

VII. CONCLUDING THOUGHTS

Quite simply, the evidence does not support Judge Snow's contention that rurality is the reason for slow and poor mail delivery on the Navajo Nation, which supports the position of the plaintiffs in *Yazzie* that the inequalities in voting by mail do constitute impermissible discrimination against a protected class, Native Americans. In short, Judge Snow's contention, while plausible, is not supported.

While most western post offices were established in the late 1800s,⁹⁰ disparities in service that exist in the present period cannot be excused simply because they are rooted in the past. As this research shows, these inequities have very real impacts on the daily lives of the Navajo people, as well as negatively impacting their ability to receive and post ballots in ways that are different from rural non-Navajo voters. We would argue this research has implications, not only for Navajo and non-Navajo voters in Arizona but also as a reminder that even the most benign of government entities, in this case, the USPS, may have ingrained inequities that require redress, not simply amelioration. Only then will the Post Office live up to the words in its mission statement "to bind the Nation together through the personal, educational, literary, and business correspondence of the people. [The Postal Service] shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities."⁹¹

90. Cameron Blevins, *The Postal West: Spatial Integration and the American West, 1865–1902* (2015) (Ph.D. dissertation, Stanford University) (on file with the Stanford University Library).

91. *Chapter 1: Mission and Strategy*, U.S. POSTAL SERVICE, https://about.usps.com/strategic-planning/cs10/CSPO_12_2010_FINAL_003.htm (last visited Mar. 23, 2021); 39 U.S.C. § 101(a) (2011).