

Where’s Mr. Postman? The Struggles of Voting by Mail in Indian Country

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INTRODUCTION

Arizona held its presidential preference election on March 17, 2020.¹ Six days prior, the World Health Organization declared that COVID-19 was a global pandemic.² Election administrators scrambled to respond to the crisis while fulfilling their obligations to voters. In the most populous county, Maricopa County, 80 polling locations were closed and remaining polling locations were opened to every voter in the county as opposed to only voters in the precinct.³ To further reduce the risk, additional ballot drop off locations were opened.⁴ Adrian Fontes, then the Maricopa County Recorder, began taking steps to mail every eligible voter an early ballot in

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¹ *MARCH 17, 2020 PPE ELECTION*, CITIZENS CLEAN ELECTIONS COMM’N, <https://www.azcleanelections.gov/arizona-elections/March-17-election> [https://perma.cc/K63B-5CUD] (last visited Mar. 2, 2024).

² *CDC Museum COVID-19 Timeline*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 15, 2023), <https://www.cdc.gov/museum/timeline/covid19.html#:~:text=March%2011%2C%202020,declares%20COVID%2D19%20a%20pandemic> [https://perma.cc/9A7D-ATXN].

³ Jessica Boehm & Andrew Oxford, *How to vote in Tuesday’s Arizona Presidential Preference Election amid coronavirus concerns*, AZCENTRAL (Mar. 16, 2020, 6:00 AM), <https://www.azcentral.com/story/news/local/phoenix/2020/03/16/how-vote-tuesday-arizona-presidential-preference-election-coronavirus/5055076002/> [HTTPS://PERMA.CC/Y93Y-ML4Y].

⁴ *Id.*

response to the pandemic.⁵ Then Secretary of State and fellow Democrat, Katie Hobbs, admonished Fontes for his action as beyond the scope of what Arizona law allowed but expressed support for all-mail elections, “As you know, I fully agree with you that authority for counties to conduct all-mail elections is good policy, and certainly an appropriate contingency plan in the event of a public health emergency like this. Unfortunately, it is not currently authorized by the law.”⁶ The courts ultimately resolved the issue with respect to that election and found that Recorder Fontes was acting beyond the bounds of the law, but the spirit of Fontes’ idea remained alive in liberal circles in Arizona.⁷ There was talk in advocacy groups and among grassroots organizers of getting the legislature to pass a bill to authorize future elections in that cycle to be all-mail to mitigate the spread of COVID-19. In the Native American voting rights community, the prospect of all-mail elections presented an existential threat to the Native American franchise.⁸

The simple reality is that American postal infrastructure has left Tribal communities behind and, with expansions in voting by mail, electorally isolated. At-home mail delivery is ubiquitous off-reservation. Off-reservation, the average citizen has access to a combination of public and private services to choose from to receive, send, or collect mail. However, in much of Indian Country, the reality is starkly different.⁹ For many reservations, there is no at-home mail delivery.¹⁰ Instead, people rely on a network of post offices and contracted postal units to receive or send mail. These locations are often considerable distances away from their home.

Consequently, Native Americans have not had equal access to voting by mail because of inequitable access to postal services and state laws that fail to accommodate those realities. Since 2020, allegations of election fraud and abuse through voting by mail¹¹ have dramatically increased and states have proposed – or passed – legislation changing the nature of voting by

⁵ Wissam Melhem, *Court blocks Fontes’s plan to mail ballots to all Maricopa Dems*, ARIZ. MIRROR (Mar. 13, 2020, 5:48 PM), <https://www.azmirror.com/2020/03/13/coronavirus-covid19-court-blocks-fontes-plan-to-mail-ballots-to-all-maricopa-dems/> [https://perma.cc/QKW4-AZ9L].

⁶ *Id.*

⁷ *Id.*

⁸ This comes from my work experience as a Native Vote Fellow in the Arizona State University Indian Legal Clinic working on the Arizona Native Vote Election Protection Project.

⁹ *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2370 (2021) (Kagan, J. dissenting).

¹⁰ JAMES T. TUCKER, JACQUELINE DE LEÓN & DAN MCCOOL, OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICAN VOTERS 40 (2020), https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf [https://perma.cc/4RYR-FRUU].

¹¹ Hope Yen, *AP FACT CHECK: Yes, Trump lost election despite what he says*, ASSOCIATED PRESS (May 6, 2021, 5:46 PM), <https://apnews.com/article/donald-trump-michael-pence-electoral-college-elections-health-2d9bd47a8bd3561682ac46c6b3873a10> [https://perma.cc/Z387-FRZK].

mail.¹² The ongoing policy debates about the utility and efficacy of voting by mail has not always captured the reality nor the perspective of Tribal communities. This paper seeks to provide factual context to the issue of voting by mail and then contextualize the issue in light of recent legal developments, legislative developments and with a temporal frame of pre-2020 and post-2020 elections. While this paper is largely descriptive, it ultimately argues that the lack of equitable access to mail in Indian Country is a large-scale systemic issue that continues to isolate Native Americans electorally.

I. POSTAL ACCESS ISSUES IN INDIAN COUNTRY

Many Americans take at-home mail delivery for granted. Justice Elena Kagan stated in her dissenting opinion in *Brnovich v. Democratic National Committee*, “[M]any rural Native American voters lack access to mail service to a degree hard for most of us to fathom.”¹³ The rate at which Native Americans do not have equitable access to mail on reservations is not an issue of happenstance. Rather, it is a byproduct of the history of settler colonialism in the west and continuing governmental neglect after Native Americans became citizens. By understanding this history in tandem with the contemporary reality, it becomes clear how electoral isolation through voting by mail is a pixel of the larger picture of marginalization of Native communities.

Most of the Tribal Nations recognized by the United States are west of the Mississippi River because of the legacy of federal Indian removal policy.¹⁴ From enactment of the Indian Removal Act in 1830 to the late 1840's, the Federal Government's policy was to remove Tribes from their ancestral lands and into other territories.¹⁵ As settlers continued to expand westward, the federal government shifted its policy away from removal and towards a reservation system whereby Tribes and Indian people would be geographically contained and settlers could expand settlements in the west around these reservations.¹⁶ The United States postal service expanded in step with this process of colonizing the west.

While this concentration of power might appear to concentrate the development of the Postal Service and postal routes within Congress, settlers in the West heavily influenced the development of postal services and routes

¹² *Voting Laws Roundup: October 2021*, BRENNAN CTR. FOR JUST. (Oct. 4, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021> [<https://perma.cc/3FXZ-CJLX>].

¹³ *Brnovich*, 141 S.Ct. at 2370 (Kagan, J. dissenting).

¹⁴ *President Andrew Jackson's Message to Congress 'On Indian Removal' (1830)*, Nat'l Archives (May 10, 2022), <https://www.archives.gov/milestone-documents/jacksons-message-to-congress-on-indian-removal> [<https://perma.cc/LS4T-52FA>].

¹⁵ *United States v. Erickson*, 436 F.Supp. 3d 1242, 1264-65 (D.S.D. 2020).

¹⁶ *Id.* at 1265-67.

over the course of the Nineteenth Century.¹⁷ Historian Cameron Blevins' book *Paper Trails: The US Post and the Making of the American West* details how the development of the United States Postal Service was an indispensable part of the colonization of the West. As Blevins demonstrates through geographic data, wherever settlers settled postal services would follow: "It kept western settlers connected to the people and communities they left behind, shuttling millions of letters between family and friends."¹⁸ The Postal Service emotionally and socially sustained the settler community during the process of settling. It additionally facilitated the movement of capital in the West through money orders, checks, draft mortgages, property deeds, receipts, and invoices alongside providing income to post masters themselves.¹⁹ These services were housed in government administrative headquarters, and if Native people wanted to enjoy the benefit of these services, then they had to visit offices run by government actors charged with surveilling, policing, and killing Native people for the cause of colonization.²⁰

Postal services became a tool of colonization by serving as the mechanism by which settlers and federal agents in the West kept in communication with the federal government in the East.²¹ In this process, where the military went in their wars with Indian Tribes, so too did the postal infrastructure to support the civilian settler population.²² Starting in the 1840s and up to the 1860s, the United States reformed its postal policies. Congress enacted statutes lowering postage rates irrespective of distance and standardizing them between the West and the East.²³ Without the cost differential, postal services were effectively subsidized in the West as a service to support settlers and the Country's physical expansion into Indian territories.²⁴ Because postal infrastructure served settlers and not Native people, territories and reservations with high populations of Native people were not places where postal infrastructure was established to serve the general population.²⁵ Rather, postal services were intended to serve government officials and government agents working in Indian Affairs and not the Native population.²⁶

While postal services in the nineteenth century were not meant to benefit Native people, this does not mean that Native people did not utilize the mail service. Tribal leaders used postal services to send petitions to federal officials and advocate on a range of issues such as inadequate rations,

¹⁷ See generally, CAMERON BLEVINS, *PAPER TRAILS: THE US POST AND THE MAKING OF THE AMERICAN WEST* (2021)

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ *Id.* at 44.

²¹ *Id.* at 21.

²² *Id.*

²³ *Id.* at 77.

²⁴ *Id.*

²⁵ See *id.* at 44.

²⁶ *Id.*

infrastructural needs, and settlers' illegal accessing of their land.²⁷ When Native families or communities were split apart by federal policy such as Indian Board Schools, postal services became a tool by which they could stay in touch.²⁸ It additionally became a mechanism by which intertribal coalitions and alliances could be formed across multiple reservations.²⁹ Thus, the Postal Service was used in service of colonization as well as in service of Indigenous resistance.

To be sure, Indians using postal services does not mean there was equity. In Indian Territory, a Shawnee minister named Charles Bluejacket was appointed as postmaster within the Cherokee Nation.³⁰ Bluejacket's appointment led to legal questions. Such as whether non-citizen Indians could even serve as postmasters.³¹ The question reached the United States Attorney General Office; The office issued an opinion that Indians that were members of their Tribe and subject to Tribal jurisdiction could not serve as postmasters.³²

After significant westward expansion, the Postal Service began experimenting with at-home mail delivery in urban areas.³³ Congress initially conditioned at-home mail delivery based on population, only offering the services to cities with more than 50,000 people.³⁴ In the 1890's, Congress began expanding at-home mail delivery services to cities meeting the threshold of 10,000 people.³⁵ In 1902, Congress established Rural Free Delivery as a permanent service within the United States postal service.³⁶ However, this did not mean that every rural home had at-home mail delivery. Instead, communities had to petition their member of Congress who would pass along their recommendations for postal routes to postal officials.³⁷ Upon request, an agent would assess information about the community, including roads and rates of literacy.³⁸ In order to be accepted, proposed routes had to be between 20 and 30 miles in length, be along roads passable during all seasons, and serve at least one hundred families who—without such postal road—would

²⁷ *Id.*

²⁸ *Id.* at 45.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 107.

³² A.H. Garland, Attorney General Opinion: Appointment of an Indian as Postmaster, *in* THE MISCELLANEOUS DOCUMENTS OF THE HOUSE OF REPRESENTATIVES FOR THE FIRST SESSION OF THE FIFTY-FIRST CONGRESS (Gov. Printing Press 1891), 18 Op. Att'y Gen. 181, 183, 185 (1885), <https://babel.hathitrust.org/cgi/pt?id=msu.31293012342444&seq=211&q1=Augustus&start=1> [<https://perma.cc/BK4U-F6YK>].

³³ BLEVINS, *supra* note 17, at 140.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 145.

³⁸ *Id.*

have to travel between two and 12 miles to reach a post office.³⁹ This requirement led to Congress providing funds for local road infrastructure in order to facilitate the expansion of postal services.⁴⁰ Unsurprisingly, reservations and Tribal communities often did not meet these standards.

Today's postal service is largely defined by this history. Approximately 89 percent of current post offices were established prior to 1920.⁴¹ Meaning 89 percent of current post offices were established prior to the Indian population having citizenship.⁴² Consequently, Native Americans continue to lack the basic postal infrastructure that is taken for granted in off-reservation communities, in addition to living with subpar road infrastructure.⁴³ On reservations there are more than 160,000 miles of roads; more than 60 percent of those roads are unimproved earth and gravel roads.⁴⁴ Among the downstream effects of lacking at-home mail delivery, Native Americans rely on post-office boxes to receive mail that may be a considerable distance away and lack a traditional address.⁴⁵ Further, because reservation based voters lack at-home mail delivery they often lack standardized addresses.⁴⁶ Lacking a traditional address creates barriers in registering to vote because election administrators will regularly misplace a voter – putting them in the wrong precinct or electoral district – or outright reject a voter registration form because they cannot geographically place a voter.⁴⁷ When voting, lacking at-home mail delivery and the accompanying address creates issues for Native Voters complying with voter identification laws which often require that the identification include an address.⁴⁸ Thus, the reality of lacking access to basic postal services frequently impacts every step of the voting process for Native American voters.

³⁹ *Id.* at 145–46.

⁴⁰ *Id.* at 151–52.

⁴¹ Jean Schroedel, Melissa Rogers & Joseph Dietrich, *Structural Racism, the USPS, and Voting by Mail On- and Off Reservation in Arizona*, 37 *STUD. AM. POL. DEV.* 111, 112 (2023), <https://www.cambridge.org/core/journals/studies-in-american-political-development/article/structural-racism-the-usps-and-voting-by-mail-on-and-offreservation-in-arizona/28A17B05525E28832B4D9E76C8A30BE7> [<https://perma.cc/RJD9-AYLA>].

⁴² *See id.* at 112, 118.

⁴³ TUCKER ET. AL, *supra* note 10, at 31; *see also* Alisa Wiersema, *Experts Worry Push for 2020 Mail Voting Could Leave Native American Voters Behind*, ABC NEWS (May 7, 2020), <https://abcnews.go.com/Politics/experts-worry-push-2020-mail-voting-leave-native/story?id=70411683> [<https://perma.cc/NU4X-L6DC>].

⁴⁴ NAT'L CONGRESS OF AM. INDIANS & THE LEADERSHIP CONF. EDUC. FUND, TRIBES & TRANSPORTATION: POLICY CHALLENGES AND OPPORTUNITIES 2 (2013), <https://cdn.sanity.io/files/raa5sn1v/development/8e3938b312115cea42054032b7c79de52d9b1eb0.pdf> [<https://perma.cc/XD8Y-UYMY>].

⁴⁵ Patty Ferguson-Bohnee, *How the Native American Vote Continues to be Suppressed*, ABA HUM. RTS. MAG. (Feb. 9, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/how-the-native-american-vote-continues-to-be-suppressed/ [<https://perma.cc/9Y2N-3TH8>].

⁴⁶ TUCKER ET. AL, *supra* note 10, at 40.

⁴⁷ *Id.* at 70–72.

⁴⁸ *Id.* at 76.

II. THE CURRENT LANDSCAPE OF VOTING BY MAIL

Voting by mail is peculiar as compared to other methods of voting. Unlike voting in person – where state law dictates where the voting access point is, what the procedure looks like, who staffs the location, and what machines are used – voting by mail is at least partially dependent on the United States Postal Service which is beyond state control or influence. Thus, states are responsible for printing and mailing the ballots and counting the ballots, but in between, the USPS becomes the election administrator. As such, the landscape of voting by mail is impacted by the practicalities and law of both the state and the federal government. In this section, the practical and legal context of voting by mail will be discussed in turn before moving into a discussion of the issues of voting by mail in Indian Country.

In the United States, voting by mail dates to the Civil War⁴⁹ but rose to its contemporary prominence starting in the 1980's.⁵⁰ The USPS infrastructure around voting by mail is robust. Given the hyper-federalist nature of election systems, it must be. The USPS maintains the “Election and Government Mail Services” team that “centralize[s]” election and government mail.⁵¹ The USPS maintains a system of outreach to state and local election officials are aware of USPS procedures and deadlines.⁵² USPS maintains the United States Postal Inspection Service, the law enforcement division of the USPS with dedicated personnel assigned to election mail.⁵³ USPS even ramps up its delivery procedures and processes in light of elections.⁵⁴ However, all of these efforts cannot guarantee success for a voter utilizing USPS to vote because USPS cannot alter the policy of voting by mail.

States make numerous consequential decisions in structuring how a person can vote by mail. These include by what class to send ballots, thus determining the speed of delivery.⁵⁵ States additionally decide how to maintain addresses on the voter roll, thus determining the compatibility between the voter roll and the USPS addressing system.⁵⁶ States decide whether to

⁴⁹ Virginia A. Neisler, *Voting by Mail: Issues and Resources*, 99 MICH. BAR J. 46, 46 (2020).

⁵⁰ Adrienne Marshall, *Secure and Timely*, POSTAL POSTS (Sept. 26, 2022), <https://uspsblog.com/secure-and-timely/> [https://perma.cc/Q5NM-3L7L].

⁵¹ Memorandum from U.S. Postal Serv. to Officers, PCEs, Pay Band Managers, and EAS Employees (Jan. 31, 2024), <https://about.usps.com/what/government-services/election-mail/pdf/general-election-preparedness-memorandum-fy24.pdf> [https://perma.cc/X4KH-REJF] [hereinafter USPS Memo].

⁵² Marshall, *supra* note 50; Press Release, Eric Shen, Inspector in Charge, United States Postal Inspection Service, Inspector In Charge Shen Delivers Remarks on Election Mail Security (Oct. 17, 2022), <https://www.uspis.gov/inspector-in-charge-shen-delivers-remarks-on-election-mail-security> [https://perma.cc/6ZGZ-EBT8].

⁵³ Shen, *supra* note 52.

⁵⁴ USPS Memo, *supra* note 51.

⁵⁵ U.S. POSTAL SERV., PUBL'N NO. 632, STATE AND LOCAL ELECTION MAIL: USER'S GUIDE (2024), at 4–5, <https://about.usps.com/publications/pub632.pdf> [https://perma.cc/KEM8-C76J].

⁵⁶ *Id.* at 8–10.

include prepaid return envelopes, thus determining the cost for the voter to return the ballot.⁵⁷ States are responsible for determining the timeline of voting by mail: when to mail out the ballots, when ballots must be returned, whether or not return is defined by postmarks or physical receipt of the ballot. Other factors are also determined by states: such as who can carry the ballot or where can the ballot be returned. States also decide who is eligible for voting by mail and what administrative process they must complete before receiving a ballot in the mail. All of these factors sit outside of the USPS, but nonetheless impact the USPS as part of the election system. These factors are important to voters in determining whether they can, or should, vote by mail.

There are multiple methods and systems of voting by mail and methods can vary depending on election type. Currently, there are eight states that conduct elections entirely by mail (herein called “all-mail elections”).⁵⁸ Fifteen states allow certain sub-state jurisdictions to opt-in to all-mail or mostly-mail elections.⁵⁹ Among these, two states allow counties to opt-in to all-mail elections, 9 allow small elections to be conducted by mail, 4 permit mostly-mail elections for small jurisdictions. There are twenty-eight states that have “no-excuse absentee voting,” where voters can opt to vote by mail at-will.⁶⁰ Fourteen states have “excuse absentee voting” whereby voters are eligible to receive and cast a ballot by mail only if they cannot vote in person under enumerated circumstances.⁶¹ Some states allow voters to be included on a list to receive a ballot via mail in each election, some states allow this at-will, and other states allow it for cause.⁶²

⁵⁷ *Id.* at 7.

⁵⁸ These eight states are California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont and Washington. NAT’L CONF. OF STATE LEGISLATURES, VOTING OUTSIDE THE POLLING PLACE: ABSENTEE, ALL-MAIL AND OTHER VOTING AT HOME OPTIONS, Table 18 (2022), <https://www.ncsl.org/elections-and-campaigns/table-18-states-with-all-mail-elections> [<https://perma.cc/SAQ5-WHD6>].

⁵⁹ Alaska, Arizona, Florida, Idaho, Kansas, Maryland, Minnesota, Missouri, Montana, Nebraska, New Mexico, New Jersey, North Dakota, and Wyoming. *Id.*

⁶⁰ These twenty-eight states are Alaska, Arizona, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Virginia, Wisconsin, and Wyoming. NAT’L CONF. OF STATE LEGISLATURES, VOTING OUTSIDE THE POLLING PLACE: ABSENTEE, ALL-MAIL AND OTHER VOTING AT HOME OPTIONS, Table 1 (2022), <https://www.ncsl.org/elections-and-campaigns/table-1-states-with-no-excuse-absentee-voting> [<https://perma.cc/9VQE-G2CT>].

⁶¹ These fourteen states are Alabama, Arkansas, Connecticut, Delaware, Indiana, Kentucky, Louisiana, Mississippi, Missouri, New Hampshire, South Carolina, Tennessee, Texas, and West Virginia. NAT’L CONF. OF STATE LEGISLATURES, VOTING OUTSIDE THE POLLING PLACE: ABSENTEE, ALL-MAIL AND OTHER VOTING AT HOME OPTIONS, Table 2 (2022), <https://www.ncsl.org/elections-and-campaigns/table-2-excuses-to-vote-absentee> [<https://perma.cc/EK54-YF8P>].

⁶² NAT’L CONF. OF STATE LEGISLATURES, VOTING OUTSIDE THE POLLING PLACE: ABSENTEE, ALL-MAIL AND OTHER VOTING AT HOME OPTIONS Table 3 (2022), <https://www.ncsl.org/elections-and-campaigns/table-3-states-with-permanent-absentee-voting-lists> [<https://perma.cc/J7LX-7EFA>].

States diverge further in the technicalities of how and when elections are conducted by mail. The current timeline by which states mail ballots ranges from 18 days to 60 days before the election.⁶³ Nineteen states will accept a ballot received after election day if it is postmarked before or by election day.⁶⁴ States vary on whether they allot ballot drop boxes and what is required of those drop boxes.⁶⁵ Some states have a process by which to cure ballots in the event of a missing or mismatched signature.⁶⁶ Many states are very specific about who can carry a ballot that was sent through the mail.⁶⁷

As a matter of federal law, the Constitution provides that Congress has the power to establish post offices and post roads.⁶⁸ This provision has been interpreted broadly, “The power possessed by Congress embraces the regulation of the entire Postal System of the country. The right to designate what shall be carried necessarily involves the right to determine what shall be excluded.”⁶⁹ As evident by the myriad of systems of voting by mail, this power does not preclude states from legislating in a manner that incidentally impacts mail if such legislation does not attempt to materially regulate the Postal Service.⁷⁰ Preemption challenges to state laws that implicate mailed materials but do not burden or impede USPS routinely fail.⁷¹

⁶³ NAT'L CONF. OF STATE LEGISLATURES, *Table 7 When States Mail Out Absentee/Mail Ballots* (last updated Jan. 03, 2024) <https://www.ncsl.org/elections-and-campaigns/table-7-when-states-mail-out-absentee-mail-ballots> [<https://perma.cc/Z3L8-JYB3>].

⁶⁴ NAT'L CONF. OF STATE LEGISLATURES, *Table 11: Receipt and Postmark Deadlines for Absentee/Mail Ballots* (last updated July 12, 2022), <https://www.ncsl.org/elections-and-campaigns/table-11-receipt-and-postmark-deadlines-for-absentee-mail-ballots> [<https://perma.cc/KD9D-FZNE>].

⁶⁵ NAT'L CONF. OF STATE LEGISLATURES, *Table 9: Ballot Drop Box Laws* (last updated Jan. 28, 2024), <https://www.ncsl.org/elections-and-campaigns/table-9-ballot-drop-box-laws> [<https://perma.cc/V4PW-4U67>].

⁶⁶ NAT'L CONF. OF STATE LEGISLATURES, *Table 15: States with Signature Cure Processes* (last updated Dec. 28, 2023), <https://www.ncsl.org/elections-and-campaigns/table-15-states-with-signature-cure-processes> [<https://perma.cc/M8GU-5RWE>].

⁶⁷ NAT'L CONF. OF STATE LEGISLATURES, *Table 10: Ballot Collection Laws* (last updated Dec. 21, 2023), <https://www.ncsl.org/elections-and-campaigns/table-10-ballot-collection-laws> [<https://perma.cc/35SJ-5KMG>].

⁶⁸ U.S. CONST. art. I, § 8, cl. 7.

⁶⁹ *Ex parte Jackson*, 96 U.S. 727, 732 (1877).

⁷⁰ *See, e.g., Conte & Co., Inc. v. Stephan*, 713 F.Supp. 1382, 1386 (D. Kan. 1989) (“There is little doubt that the federal statutory scheme for handling, delivering and sorting the mails is comprehensive. The United States Postal Service may determine whether matter is nonmailable under statutory guidelines, and may return any nonmailable matter to the sender. ‘But merely because the federal provisions were sufficiently comprehensive to meet the need identified by Congress did not mean that States and localities were barred from identifying additional needs or imposing further requirements in the field.’” (Internal quotations and citations omitted)).

⁷¹ *See, e.g., Roth v. United States*, 354 U.S. 476, 493-94 (1957) (California obscenity statute was not preempted by federal law prohibiting the mailing of obscene material because the state law did not burden or interfere with federal postal function); *Syndicated Pub'ns v. Montgomery Cnty.*, 921 F.Supp. 1442 (D. Md. 1996) (federal law regulating the Postal Service did not preempt state law regarding state deceptive trade practices law as applied to mail); *Knox v. Brnovich*, 336 F.Supp.3d 1063 (D. Ariz. 2018) (federal law regulating United States Postal Service carriers did not preempt state ban on third party ballot collection).

The interplay of these federal and state laws is merely the tip of the complicated iceberg. Procedures and policies around voting by mail are routinely modified or altered by states legislatures, administrative bodies, or by the judiciary. This complicated interplay of law and systems are regularly built around baseline assumptions about access to mail services. Such assumptions, as discussed below, frequently do not include voters in Indian Country.

III. VOTING BY MAIL IN INDIAN COUNTRY

Voting by mail in Indian Country is plagued by several overlapping barriers that stem from subpar postal infrastructure and election laws that fail to fully accommodate that reality. To illustrate, in *Brnovich v. Democratic National Committee*, the issue of Arizona's ban on third party ballot collection brought the issue of mail service in Indian Country to the Supreme Court's attention. Among the issues presented in the case was Arizona's ban on third party ballot collection. Under the law, a person cannot carry a completed ballot on behalf of a voter unless they are an election official, a mail carrier, a voter's family member, household member, or caregiver.⁷² The Democratic National Committee alleged that this law was enacted with racially discriminatory intent in violation of the Fifteenth Amendment of the Constitution as well as the Voting Rights Act.⁷³ In part, because the practice of third party ballot collection was utilized by Tribal communities to overcome access to mail. While these restrictions suppressed the ability of Native Americans to overcome existing barriers in mail delivery, Native Americans were remarkably absent in the opinion. The Supreme Court's majority opinion only addressed the issue of Native American mail access in a footnote and only as a retort to a dissent. The court stated,

The dissent's primary argument regarding HB 2023 concerns its effect on Native Americans who live on remote reservations. The dissent notes that many of these voters do not receive mail delivery at home, that the nearest post office may be some distance from their homes, and that they may not have automobiles. We do not dismiss these problems, but for a number of reasons, they do not provide a basis for invalidating HB 2023. The burdens that fall on remote communities are mitigated by the long period of time prior to an election during which the vote may be cast either in person or by mail and by the legality of having a ballot picked up and mailed by family or household members...Moreover, the Postal Service is required by law to 'provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns

⁷² *Brnovich v. Democratic Nat'l Comm.*, 141 S.Ct. 2321, 2330 (2021).

⁷³ *Id.* at 2334.

where post offices are not self-sustaining.’ 39 U.S.C. § 101(b); see also §403(b)(2)...An alleged failure by the Postal Service to comply with its statutory obligations in a particular location does not in itself provide a ground for overturning a voting rule that applies throughout an entire state.⁷⁴

The majority opinion’s reference to the statute instructing the USPS to provide regular and effective service rings hollow in the case of Indian Country, where postal infrastructure itself is lacking. Regardless of how “regular” service within the limited existing infrastructure is, that mandate cannot require USPS to effectuate service where postal infrastructure has never been established, like in many parts of Indian Country.

The inadequate postal infrastructure in Indian Country immediately impacts the ability of voters to receive and cast a ballot via mail. Native American voters that lack at-home mail delivery rely on post office boxes to receive and send mail.⁷⁵ Access to these post office boxes are often hindered by the need to travel to reach the post office box, the hours of operation of the office, the limitation on how many people can receive mail at a post-office box, or the cost of the post office box itself.⁷⁶ The delays in delivery, especially for very remote Indigenous communities, is a factor that often dissuades voters from even attempting to vote by mail because a delayed ballot may mean a discarded vote.⁷⁷ Issues of timeliness and general distrust in mail-systems by Native Americans are additional factors that dissuade reservation-based voters from voting by mail.⁷⁸ The lack of access to mail infrastructure also has ripple effects throughout the election system. USPS does not man many of the unpaved roads throughout Indian Country, which leaves voters residing along those roads without standardized addresses.⁷⁹ This lack of at-home mail delivery complicates the ability of Native American voters to comply with voter identification requirements.⁸⁰

Given the federal government’s monopoly on postal infrastructure, and the state’s ability to define the finer contours of what voting by mail looks

⁷⁴ *Id.* at 2348 n.21.

⁷⁵ Patty Ferguson-Bohnee, *Testimony Before the Senate Committee on Indian Affairs Hearing on Voting Matters in Native Communities*, ARIZ. STATE UNIV. 7 (Oct. 27, 2021), https://www.indian.senate.gov/wp-content/uploads/PFB_SCIA%20Voting%20Testimony%2010.27.21.pdf [<https://perma.cc/Z5S4-SFVS>].

⁷⁶ *Id.* at 8.

⁷⁷ *Id.* at 14.

⁷⁸ See NATIVE AM. VOTING RTS. COAL., *Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada, and South Dakota* 1, 4–5 (Jan. 2018), <https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-summary.pdf>. [<https://perma.cc/L9LN-F3CK>].

⁷⁹ Brief for Nat’l Cong. of Am. Indians, Navajo Nation & Agnes Laughter as Amici Curiae Supporting Petitioners at 11-12, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008) (Nos. 7–21 & 7–25), https://sct.narf.org/documents/crawford/merits/amicus_ncai.pdf [<https://perma.cc/AD48-45ZY>].

⁸⁰ Ferguson-Bohnee, *supra* note 75, at 7.

like, this leads to a gap in readily available solutions. Even worse, it creates a storm that is prime for exploitation. Take Montana. In 2018, Montana voters passed a referendum called the Ballot Interference Protection Act (“BIPA”).⁸¹ The law directly implicated the third-party ballot campaigns that Native American organizers conducted to help voters overcome barriers to mail.⁸² Before the bill was officially referred to the ballot and while it was being considered in the legislature, a Tribal member of the Confederated Salish and Kootenai Tribes testified,

This bill does not align with how many of us in my community vote. There are a lot of barriers for us tribal people. Many Tribal members live in remote areas. Many have limited resources making transportation and even the ability to get stamps difficult. This already makes [it] difficult enough for many of us, however SB-352’s limit to who can pick up a ballot and the limit of picking up six ballots creates even more obstacles to voting for us. While there are exceptions for who can pick up ballots, that includes acquaintances and family members, this ignores how many Native people vote. Groups like Western Native Voice goes out and collects ballots for Natives. This bill could eliminate that vital service for Native people. The limit to six collected ballots does not align with how many of our Indian families are structured...Families are structured differently and we take care of each other, especially our elders. If I am collecting ballots for my family, I don’t want to leave any of my cousins out when I am taking ballots in for them. To pass this bill would be to ignore many of the votes of Montana citizens in my community.⁸³

Tribes in Montana, along with Western Native Voice, filed a lawsuit against BIPA and successfully had the law struck down.⁸⁴ A year later, Montana passed a law to prohibit third-party ballot collectors from being paid in connection with returning ballots.⁸⁵ What BIPA, its progeny, and the lawsuits demonstrate is that voting by mail in Indian Country is practically complicated. This reality represents a microcosm of how the federal

⁸¹ Commissioner of Political Practices, *Promoting confidence, transparency, and accountability in Montana’s democratic processes*, STATE OF MONT. (last accessed Mar. 3, 2024), <https://politicalpractices.mt.gov/Featured-Online-Services/Montana-Ballot-Interference-Prevention-Act> [<https://perma.cc/84LX-LW8Y>].

⁸² Complaint for Declaratory and Injunctive Relief at 4-5, *Western Native Voice v. Stapleton*, No. DV 20-0377 (Mont. Dist. Ct. Mar. 12, 2020), <https://www.aclu.org/cases/western-native-voice-v-stapleton?document=complaint-western-native-voice-v-stapleton> [<https://perma.cc/YK74-CJDL>].

⁸³ *Id.* at 29.

⁸⁴ *Western Native Voice v. Stapleton*, No. DV 20-0377 (Mont. Dist. Ct. Sept. 25, 2020), <https://narf.org/nill/documents/20200925mt-ballot-order.pdf> [<https://perma.cc/464T-TXLY>].

⁸⁵ HARVARD L. SCH. ELECTION L. CLINIC, *Western Native Voice v. Jacobsen* (last updated Oct. 1, 2022), <https://www.hlselectionlaw.org/western-native-voice-v-jacobsen> [<https://perma.cc/5ZYE-QR56>].

government's neglect of Indian Country leads to material inequality that electorally isolates Native American people. Tribal Nations, and even their allies in state government, cannot unilaterally solve this problem by creating more postal infrastructure. Instead, Tribes and Native organizers are left with only the option to continually litigate in defense of their communities' right to vote.

Montana is certainly not alone. Look to Arizona. There, Native Voters experience similar barriers in access to mail but Arizona's policies around voting by mail exacerbate those barriers even further. Under state law, ballots can be first mailed between 24 to 27 days before the election.⁸⁶ Ballots must be received by 7:00 P.M. on election day by the county election officials.⁸⁷ Post-marking the ballot does not ensure a ballot will be counted if it is not received.⁸⁸ Under this system, Native Voters feel the weight of the lack of adequate postal infrastructure. For voters that live in the urban area of Scottsdale, it takes a mere 18 hours in order for a ballot to travel from the county seat to their mailbox.⁸⁹ In contrast, for a voter living on the Navajo Nation, it can take 10 days.⁹⁰ This disparity truncates the early voting window for on-reservation voters in a manner distinct from off-reservation voters. If a ballot is mailed 27 days before the election, the earliest it can be mailed, that means a voter on the reservation has effectively seven days to fill out and return their ballot because it takes 10 days for the ballot to travel one way. For ballots that are mailed 24 days before the election, that window is dwindled to four days. In contrast, a voter living in Scottsdale would have 22 to 25 days to fill out and return their ballot. This additional time is not only convenient, it gives the voter a greater opportunity to research the candidates and policies on their ballot as they complete the ballot. As such, no matter how facially neutral these laws are, Native American voters face the disproportionate weight of them because of the lack of adequate postal infrastructure.

While many Native American voters opt out of voting by mail because of present difficulties, that does not mean that we should accept these inequalities. There are many benefits to voting by mail that reservation-based voters should be able to fully enjoy. Voting by mail provides elderly voters safety in light of contagious diseases, like COVID-19. Voting by mail allows disabled voters the comfort and independence of voting from home, without the indignity of traveling to inaccessible voting sites, using broken or outdated accessibility technology, or being dependent on poll workers for assistance. Voting by mail allows monolingual speakers to receive ballot

⁸⁶ ARIZ. REV. STAT., §§16-544(F), 16-542(C), 16-545(B)(1).

⁸⁷ ARIZ. REV. STAT., §§16-547(D), 16-551(C).

⁸⁸ *Id.*

⁸⁹ Complaint at 5, *Yazzie v. Hobbs*, No. 3:20-cv-08222-GMS (D. Ariz. Aug. 26, 2020), <https://clearinghouse.net/doc/110158/> [<https://perma.cc/7EYB-QCHZ>].

⁹⁰ *Id.*

translations from trusted persons as opposed to poll workers. But ultimately, this inequality is repugnant to base democratic principles and should not be tolerated.

IV. RECENT CHANGES TO VOTING BY MAIL

Between 2004 and 2016, the number of voters that voted by mail nearly doubled.⁹¹ In 2020, the COVID-19 pandemic led to a surge in voting by mail given the risk of voting in-person.⁹² Voting by mail received so much attention in 2020 that it drew political ire⁹³ and praise.⁹⁴ In the aftermath of the 2020 election cycle, states introduced numerous types of legislation that changed voting.⁹⁵ Including bills that would make voting by mail harder.⁹⁶

Among the states with significant Native populations, Montana and Arizona both enacted laws post-2020 that decreased existing access to voting by mail for Tribal communities. Montana adopted House Bill 530 (“HB 530”).⁹⁷ This law states “a person may not provide or offer to provide, and a person may not accept, a pecuniary benefit in exchange for distributing, ordering, requesting, collecting, or delivering ballots.”⁹⁸ This bill was essentially a way to achieve the aims of BIPA—to severely curtail third party ballot collection campaigns—after BIPA’s defeat in court.⁹⁹ The Montana Supreme Court ultimately struck down HB 530 under state law in part for the same reasons BIPA was struck down: Native Americans increasingly rely on ballot collection services to overcome the lack of access to mail services in Tribal communities and the state’s interest in preventing ballot

⁹¹ Adrienne Marshall, *Secure and Timely*, U.S. POSTAL SERV. (Sept. 26, 2022), https://uspsblog.com/secure-and-timely/#_ftn1 [<https://perma.cc/N3W7-CCJH>].

⁹² Drew Desilver, *Mail-in voting became much more common in 2020 primaries as COVID-19 spread*, PEW RSCH. CTR. (Oct. 13, 2020), <https://www.pewresearch.org/short-reads/2020/10/13/mail-in-voting-became-much-more-common-in-2020-primaries-as-covid-19-spread/> [<https://perma.cc/VT5T-DEZ8>].

⁹³ Nicholas Riccardi, *Here’s the reality behind Trump’s claims about mail voting*, ASSOCIATED PRESS (Sept. 30, 2020), <https://apnews.com/article/virus-outbreak-joe-biden-election-2020-donald-trump-elections-3e8170c3348ce3719d4bc7182146b582> [<https://perma.cc/J4K5-SHKV>].

⁹⁴ Anthony Izaguirre & Christina A. Cassidy, *After voters embraced mail ballots, states tighten rules*, ASSOCIATED PRESS (Sept. 2, 2021), <https://apnews.com/article/health-coronavirus-pandemic-voting-rights-election-2020-2caf9b85bec73c807ecea15775f6da63> [<https://perma.cc/4BRD-YDTQ>].

⁹⁵ BRENNAN CTR. FOR JUST., *Voting Laws Roundup: October 2021* (Oct. 4, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021> [<https://perma.cc/WX4K-G2ME>].

⁹⁶ Izaguirre & Cassidy, *supra* note 94.

⁹⁷ Alex Sakariassen, *Lawsuit challenges new election laws*, MONT. FREE PRESS (May 18, 2021), <https://montanafreepress.org/2021/05/18/montana-election-laws-challenged-in-court/> [<https://perma.cc/N7V6-QATL>].

⁹⁸ H. 530, 67th Leg. (Mont. 2021) <https://www.democracydocket.com/wp-content/uploads/2021/10/HB0530.pdf> [<https://perma.cc/XE3P-UNBW>].

⁹⁹ Montana Democratic Party v. Jacobsen, 545 P.3d 1074, 1101 (2024).

fraud could not outweigh the right to vote.¹⁰⁰ The challenge was brought by multiple plaintiffs, including Tribal plaintiffs.¹⁰¹ As part of the court record, expert witnesses testified that BIPA, HB 530's predecessor, led to a dramatic decrease in turnout for reservation-based voters as opposed to those living off reservation.¹⁰² In light of this history, HB 530 reads as a particularly transparent attempt to exploit the existing postal infrastructure inequality on reservations.

In contrast, for Arizona, the Supreme Court upheld Arizona's ban on third party ballot collection.¹⁰³ Since the ban on third party ballot collection was already in effect, the post 2020 laws introduced sought to burden voting by mail in other ways. For example, in 2021, Arizona passed Senate Bill 1003 ("SB 1003"). The bill changed the ballot curing procedures for mail-in ballots whereby ballots missing a signature would have to be cured by 7:00 P.M. on election day and ballots with a mismatched signature would have to be cured within five business days after the election.¹⁰⁴ While the provisions seem relatively benign on the surface, the effect of the law was to undo gains made by the Navajo Nation in their 2018 settlement agreement with the three counties that cross the reservation and the Secretary of State.¹⁰⁵ Within those settlement agreements, the Secretary of State agreed to introduce guidance in the election procedures manual about subjecting unsigned ballots to the same curing process as ballots with mismatched signatures and the counties agreed to follow such procedures.¹⁰⁶ The distinction is significant considering that for monolingual Navajo voters, prior to the lawsuit oral translations were not provided to those voting by mail.¹⁰⁷ Therefore, monolingual Navajo voters opting to vote by mail were not instructed to sign the back of their envelope.¹⁰⁸ The bill sponsor stated that she introduced the bill in response to litigation with "some of the Tribal Nations."¹⁰⁹

SB 1003 ultimately became law despite the vocal objections of the Navajo Nation.¹¹⁰ The Navajo Nation President, Jonathan Nez, vocalized the frustration that many Navajo people felt,

¹⁰⁰ *Id.* at 1102, 1103–04.

¹⁰¹ *Id.* at 1082.

¹⁰² *Id.* at 1102.

¹⁰³ *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2343–44, 2346 (2021).

¹⁰⁴ S. 1003, 55th Leg., 1st Reg. Sess. (Ariz. 2021) <https://www.azleg.gov/legtext/55leg/1R/laws/0343.pdf> [<https://perma.cc/DE3Q-78DJ>].

¹⁰⁵ Matthew Campbell, *Materials in Navajo Nation et al. v. Reagan – Voting Rights Litigation*, TURTLE TALK (Nov. 27, 2019), <https://turtletalk.blog/2019/11/27/materials-in-navajo-nation-et-al-v-reagan-voting-rights-litigation/> [<https://perma.cc/9VM5-82XA>].

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Statement of Rep. Michelle Urgenti-Rita, *Regular Meeting of Arizona House Government & Elections Committee*, ARIZ. STATE LEGIS. (Mar. 17, 2021), <https://www.azleg.gov/videooplayer/?eventID=2021031084> [<https://perma.cc/GV83-6BLN>].

¹¹⁰ Ferguson-Bohnee, *supra* note 75, at 18–19.

[T]o undermine the Nation's settlement with the state. The teachings of our elders tell us that the words we speak are sacred and have power. The actions of the Legislature undermine the words the state agreed to in its settlement with the Navajo Nation. This goes not only against Navajo teachings, but against the values of all Arizona citizens who should be able to trust the words of their government.¹¹¹

Against this backdrop, SB 1003 not only poses an increased burden on voting by mail by shortening the cure period for unsigned ballots, but it does so in a manner that disproportionately impacts Navajo voters.

Contemporaneous with SB 1003, was another bill impacting voting by mail, Senate Bill 1485 ("SB 1485"). SB 1485 transformed Arizona's "permanent early voting list" (whereby voters that opted to be on the list were automatically mailed a ballot each election cycle) to the "active early voting list."¹¹² Now, voters in Arizona must maintain their place on the list by continuing to vote. If a voter fails to vote an early ballot for two consecutive election cycles, then they will no longer be on the "active early voting list."¹¹³ If SB 1485 had been enacted in 2019, it is estimated that 126,686 voters that cast a ballot in 2020 would have been removed from the permanent early voter list.¹¹⁴ While not targeted at Native people perse, SB 1485 did target the most popular method of voting in Arizona and seek to further limit the accessibility of voting by mail.

In 2022, the state legislature sought to further decrease access to voting by mail in Arizona by imposing a voter identification requirement for absentee ballots and increasing voter identification requirements for in-person voting.¹¹⁵ This change was proposed by Senate Concurrent Resolution 1012 ("SCR 1012") which resulted in a ballot referral as "Proposition 309."¹¹⁶ Arizona voters narrowly rejected the proposal.¹¹⁷

In contrast to Arizona and Montana, some states have increased access to voting by mail for Tribal communities and continue to do so. Leading the way is Washington state. In 2019, Washington passed the Native American

¹¹¹ *Id.*

¹¹² S. 1485, 55th Leg., 1st Reg. Sess. (Ariz. 2021) <https://www.azleg.gov/legtext/55leg/1R/bills/SB1485H.pdf> [<https://perma.cc/8P86-DP3N>].

¹¹³ Ariz. Revised Statute § 16-554(H)(4).

¹¹⁴ Georgia Lyon, *Arizona Governor Signs Bill Into Law Limiting Freedom to Vote Early*, CAMPAIGN LEGAL CTR. (May 11, 2021), <https://campaignlegal.org/update/arizona-governor-signs-bill-law-limiting-freedom-vote-early> [<https://perma.cc/LS3K-SWUZ>].

¹¹⁵ S. Con. Res. 1012, 55th Leg., 2nd Reg. Sess. (Ariz. 2022) <https://www.azleg.gov/legtext/55leg/2R/bills/SCR1012S.htm> [<https://perma.cc/7N98-497X>].

¹¹⁶ *Arizona Proposition 309, Voter Identification Requirements for Mail-In Ballots and In-Person Voting Measure (2022)*, BALLOTPEdia, [https://ballotpedia.org/Arizona_Proposition_309_Voter_Identification_Requirements_for_Mail-In_Ballots_and_In-Person_Voting_Measure_\(2022\)](https://ballotpedia.org/Arizona_Proposition_309_Voter_Identification_Requirements_for_Mail-In_Ballots_and_In-Person_Voting_Measure_(2022)) [<https://perma.cc/S8UP-CRK7>].

¹¹⁷ *Arizona Proposition 309 Election Results: Changes to Voter ID Laws*, N.Y. TIMES <https://www.nytimes.com/interactive/2022/11/08/us/elections/results-arizona-proposition-309-changes-to-voter-id-laws.html> [<https://perma.cc/GA5A-GB5R>].

Voting Rights Act.¹¹⁸ Among the many provisions in the bill, it accommodates nonstandard addresses on reservation, allows Tribal governments to designate Tribal buildings as the residential and/or mailing address for people living on the reservation, and allows for the use of Tribal identification for voter registration.¹¹⁹ Building upon prior expansive legislation, in 2023, Washington enacted its 2018 Voting Rights Act to increase protections for voters.¹²⁰ Among the provisions, the law allows for unique remedies for vote dilution claims brought on behalf of members of Indian Tribes.¹²¹ Oregon passed House Bill 3291 in 2021. Among the provisions, the bill allows for ballots postmarked by the election day deadline and received within seven days of the election to be counted.¹²² This expands access to voting by mail by ensuring that voters in rural areas with slower postal routes, such as Tribal communities, are not unduly disadvantaged when voting by mail.

CONCLUSION

The majority opinion in *Brnovich* was not forced to grapple with the history of the USPS, nor its contemporary reality. Justice Kagan's dissent is right: most Americans cannot fathom the extent to which Tribal communities lack basic postal infrastructure. Historically, this lack of access to postal infrastructure is a byproduct of colonization, the long road to citizenship for Native people, and inequality. Today, contemporary conversations about the Voting Rights Act, state law, and public policy cannot be held in earnest without understanding this nuance. Until the federal government brings Native Americans closer to equity in accessing postal infrastructure, such realities should not be glibly downplayed as minor inconveniences. Instead, this history and the continuing infrastructural barriers should be understood as conditions that need to be accommodated in the law in the short term. In the long term, the infrastructure should be built. Such considerations are necessary to prevent further impingement on the fundamental right to vote. Without such adjustments, the United States falls well below the standards of a free, fair, and equitable democracy.

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¹¹⁸ Engrossed Substitute S. 5079, 66th Leg., Reg. Sess. (Wash. 2019) <https://lawfilesexst.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5079-S.SL.pdf?cite=2019%20c%206%20%A7%205> [<https://perma.cc/3T4V-WAPR>].

¹¹⁹ *Id.*

¹²⁰ H. REP. ESHB 1048, at 2 (2023) <https://lawfilesexst.leg.wa.gov/biennium/2023-24/Pdf/Bill%20Reports/House/1048-S.E%20HBR%20FBR%2023.pdf?q=20240511012424> [<https://perma.cc/LCQ5-C6WQ>].

¹²¹ *Id.*

¹²² H. 3291, 81st Leg. Assembly, Reg. Sess. (Or. 2021) <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3291/Enrolled> [<https://perma.cc/3XXM-ETXR>].

