

Interim Judiciary Committee
August 25, 2016

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Brakebill, et. al. v. Jaeger
Case no. 1:16-cv-00008

This case was brought by seven Native American North Dakotans against Alvin Jaeger, in his official capacity as Secretary of State. In essence, the plaintiffs are alleging that the identification requirements passed by the legislature in House Bills 1332 and 1333, from the 2013 and 2015 legislative sessions, respectively, disparately disenfranchise Native American voters within North Dakota.

The legislation terminated the “fail-safe” measures of poll-worker verification (poll workers vouching that a particular voter is a qualified elector), as well as eliminating affidavits which allowed voters to swear (or affirm) that they are qualified electors. No ID of any kind was needed for either fail-safe. That alone may not have been an issue, but it must be viewed in conjunction with changes to the identification requirements which narrowed the acceptable forms of ID down to North Dakota driver’s licenses, North Dakota state ID’s, and tribal ID’s, as long as the ID’s displayed the person’s current residential address. The complaint alleges that because Native Americans are disparately rural and poverty-stricken, the requirement to travel and occasionally pay a nominal fee to obtain state-issued ID (as many tribal ID’s do not show/require residential addresses) disparately disenfranchises Native American voters within the state of North Dakota.

The State had argued that, as it is acceptable for a state to verify that a potential voter is actually a qualified elector by such means, and that there was no

law on the books requiring a fail-safe, that none was required. However, Judge Hovland disagrees. At this time, a temporary court order has been put into place requiring some form of fail-safe, which may be used by anyone who does not have or does not wish to provide adequate ID. The AG's office is working with the Secretary of State's office to implement the judge's order for the November election, as well as developing our strategy for moving forward.