



SECRETARY OF STATE
STATE OF NORTH DAKOTA
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Summary and Responses to Comments Regarding New Emergency Rules N.D. Admin. Code Chapter 72-06-03 Tribal Identification for Voting

The North Dakota Secretary of State's office held a public hearing on April 2, 2020, in Bismarck, ND, concerning the new emergency rules N.D. Admin. Code Chapter 72-06-03.

Written comments on the emergency rules were accepted through Friday, April 17, 2020.

One comment was received at the public hearing.

- **Comment from David Phillips, Assistant Attorney General**

"I would like to comment on Administrative Rule 72-06-03-02. I suggest removing the following language from the first sentence: ", or to any tribal member whose tribal identification does not include the member's current residential street address"

For any tribal member whose tribal identification does not include the member's current residential street address, the appropriate remedy is already found in the Supplemental Documentation section of the rules, 72-06-03-04."

- **Response from the Secretary of State**

The suggestion is valid and the wording has been removed.

The following are the comments received during the public comment period.

- **Comment from Nicole Donaghy, Executive Director of North Dakota Native Vote**

The full letter submitted from Ms. Donaghy dated April 20, 2020, is included with this Summary of Comments, however, the following paragraphs from the letter express the one comment offered.

"We have concern with the proposed rule section 72-06-03-03 the provision to create Central voter file and tribal identification, which creates a memorandum of agreement between the State of North Dakota and the Tribal Nations of North Dakota. The agreement will provide the State the ability to acquire tribal identification numbers or tribal enrollment numbers to be stored in the Central Voter File.

Tribal enrollment numbers are federally issued and are protected under the authority of the respective tribe and/or Department of Interior. Tribal enrollment numbers are similar to federally issued social security numbers that also serve multiple purposes. Each respective Tribal Nation's Enrollment Department maintains and protects the tribal membership roll and the documentation provided for and by tribal members and applicants. Tribes as sovereign nations have the authority and responsibility to protect the confidentiality of their enrolled citizens, and the United States Department of Interior has the duty to protect the trust responsibility of all tribal citizens. The State has provided no reasonable justification for obtaining that information to be stored on an accessible database. North Dakota Native Vote urges the State of North Dakota to respect our tribal sovereignty and not intake enrollment numbers for their purposes."

- **Response from the Secretary of State**

We do not dispute that tribal identification numbers can be issued by the federal government through its Bureau of Indian Affairs or that a tribal member's ID number should be protected. However, the comment should have no impact on the emergency rules for the following reasons:

- The first sentence of section 72-06-03-03 clearly states that the individual tribes are in control as to whether or not the data sharing will occur. It says, "To expedite the use of tribal identification for tribal members residing in North Dakota, the secretary of state shall enter into a memorandum of agreement at the request of any tribal government located in North Dakota for the purposes of receiving tribal identification information regarding tribal members for entry and secure storage in the central voter file." (Underline for emphasis only.) If a tribe does not wish to enter into a data sharing agreement, none will occur.
 - Under the law, tribal ID numbers would not be provided to anyone the law allows to purchase the data maintained in the Central Voter File. NDCC § 16.1-02-15 lists the data elements that may be purchased by candidates, political parties, and political committees for election related purposes and the voter's ID number, regardless of the form of ID provided, is not one of the data elements that may be made available.
 - Therefore, the Secretary of State did not make a change to the emergency rules.
- **Question from Ms. Nicole Donaghy**
 - "We also inquire if the tribes of North Dakota are in agreement with this process."
 - **Response from the Secretary of State**
 - As of April 24, 2020, the Secretary of State has not received any requests from tribal governments located in North Dakota asking to enter into a data sharing agreement.
 - **Comment from Tawny "Trottier" Cale on April 20, 2020**
 - "I am writing in regards to Article 72-06, specifically with the proposed collection of tribal enrollment numbers. I would strongly discourage the state from partaking in this unnecessary practice. Tribal enrollment numbers should be left to the protection and care of individual tribes whose authority is granted by their sovereignty status. Please continue to work towards building a healthy relationship with North Dakota's tribal nations and not one that is built upon the remains of historical tyranny and subjugation."
 - **Response from the Secretary of State**
 - Since the comment listed in the first two sentences is nearly identical to the comment received from Ms. Donaghy, the Secretary of State did not make a change to the emergency rules for the same reasons as listed for Ms. Donaghy.
 - With respect to the last sentence, it has been and will continue to be the desire of the Secretary of State to build strong and healthy relationships with the tribes and tribal members of North Dakota.

Prepared by:

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April 24, 2020