IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

Turtle Mountain Band of Chippewa Indians, Spirit Lake Tribe, Wesley Davis, Zachery S. King, and Collette Brown Plaintiffs, vs. Michael Howe, in his official capacity as Secretary of State of North Dakota, Defendant.	Case No. 3:22-cv-00022 **AFFIDAVIT OF DAVID R. PHILLIPS**

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF BURLEIGH)

Being duly sworn, David R. Phillips, testifies:

1. I am an attorney duly licensed to practice law in the State of North Dakota and am admitted to practice before this Court.

2. I am a member of the firm of Bakke Grinolds Wiederholt, attorney for Defendant Michael Howe, in his official capacity as Secretary of State of North Dakota, in this action. I have personal knowledge of the facts stated herein.

3. This affidavit is submitted in support of *Defendant's Memorandum in Response to Plaintiffs' Motion in Limine to Exclude Matthew Campbell and Alan Herbison from Defendant's Witness List* filed herewith.

4. Attached hereto as ***Exhibit A*** is a true and correct copy of the Transcript of the Deposition of Daniel McCool.

5. Attached hereto as ***Exhibit B*** is a true and correct copy of *Plaintiff Turtle Mountain*

Band Of Chippewa Indians Answer To Defendant's Interrogatories And Requests For Production Of Documents To Plaintiffs (Set No. 1).

6. Attached hereto as ***Exhibit C*** is a true and correct copy of *Plaintiff Spirit Lake Tribe's Answer To Defendant's Interrogatories And Requests For Production Of Documents To Plaintiffs (Set No. 1).*

7. Attached hereto as ***Exhibit D*** is a true and correct copy of referenced emails involving Campbell.

Dated this 24th day of May, 2023.

By: _____

David R. Phillips (# 06116)
Bradley N. Wiederholt (#06354)
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Attorney for Defendant Michael Howe, in his official capacity as Secretary of State of the State North Dakota

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

On this 24th day of May, 2023 before me personally appeared David R. Phillips known to me to be the person described in the within and foregoing instrument, and acknowledged to me that he executed the same.

SARAH MARTIN
Notary Public
State of North Dakota
My Commission Expires October 28, 2025

Sarah Martin
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF DAVID R. PHILLIPS** was on the 24th day of May, 2023 filed electronically with the Clerk of Court through ECF:

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By: *__/s/ David R. Phillips__*
DAVID R. PHILLIPS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

_____

Turtle Mountain Band of Chippewa
Indians, Spirit Lake Tribe,
Wesley Davis, Zachery S. King
and Collette Brown,
Plaintiffs,

v. Case No.
Michael Howe, in his official 3:22-cv-00022
capacity as Secretary of State of
North Dakota,
Defendant.

_____

VIDEOCONFERENCE DEPOSITION OF
DANIEL MCCOOL, PH.D.

DATE: Tuesday, February 21, 2023
TIME: 9:03 a.m.
LOCATION: Remote Proceeding
Bismarck, ND 58501
REPORTED BY: Mariah Bryant, Notary Public
JOB NO.: 5755641

Exhibit A

1 APPEARANCES
2 ON BEHALF OF PLAINTIFFS TURTLE MOUNTAIN BAND OF
3 CHIPPEWA INDIANS, SPIRIT LAKE TRIBE, WESLEY DAVIS,
4 ZACHERY S. KING, AND COLLETTE BROWN:
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6 videoconference)
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11
12 ON BEHALF OF DEFENDANT MICHAEL HOWE, IN HIS OFFICIAL
13 CAPACITY AS SECRETARY OF STATE OF NORTH DAKOTA:
14 DAVID R. PHILLIPS, ESQUIRE (by videoconference)
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25

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1 PROCEEDINGS
2 THE REPORTER: Good morning. My name
3 is Mariah Bryant; I am the reporter assigned by
4 Veritext to take the record of this proceeding. We
5 are now on the record at 9:03 a.m.
6 This is the deposition of Daniel McCool
7 taken in the matter of Turtle Mountain Band of
8 Chippewa Indians, et al. vs. Michael Howe in his
9 official capacity as Secretary of State of North
10 Dakota on February 21, 2023, via Zoom.
11 I am a notary authorized to take
12 acknowledgments and administer oaths to the witness.
13 Parties agree that I will swear in the witness
14 remotely.
15 Additionally, absent an objection on
16 the record before the witness is sworn, all parties
17 and the witness understand and agree that any
18 certified transcript produced from the recording of
19 this proceeding:
20 - is intended for all uses permitted
21 under applicable procedural and
22 evidentiary rules and laws in the same
23 manner as a deposition recorded by
24 stenographic means; and
25 - shall constitute written stipulation

of such.
At this time will everyone in attendance please identify yourself for the record, beginning with the witness.
DR. MCCOOL: I'm Daniel McCool.
MS. KELTY: I'm Samantha Kelty.
MR. PHILLIPS: And I'm David Phillips representing the Defendant.
THE REPORTER: Thank you.
Hearing no objection I will now swear in the witness.
Please raise your right hand.
WHEREUPON,
DANIEL MCCOOL, PH.D.,
called as a witness, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:
THE REPORTER: Okay. Thank you.
You may proceed.
EXAMINATION
BY MR. PHILLIPS:
Q Good morning, Dr. McCool.
A Good morning.
Q Can I just have you state your name and address for the record?

A My name is Daniel Craig McCool, and I live at 5468 Skyline Parkway in Ogden, Utah.
Q And as I mentioned earlier, I am the attorney representing the Defendant in this case, the Secretary of State, and my name is David Phillips.
I assume, Dr. McCool, that you have had your deposition before; is that correct?
A I have.
Q I won't go through the usual rules, we'll just both be careful not to talk over each other.
A Okay.
Q Thank you. I will just point out, though, we can take a break if you'd like, just let me know. As long as there's not a pending question we can take a break.
A Okay. Thank you.
Q Since we're taking this deposition remotely I do have a few questions to ask just about the room that you're in and the set up that you have.
Is there anyone else in the room with you?
A No, my I'm in the basement and my wife is upstairs.
Q And the computer that you're looking at right now, I assume there's a Zoom window open that you can see me on?

A That's correct.
Q Are there any other windows open on the computer right now?
A No.
Q Are there any chat apps open on the computer right now?
A No.
Q Is your phone visible to you right now?
A Yes.
Q Can I just ask you to put that away just so nobody can communicate with you during the deposition?
A Sure.
Q Thank you.
A How -- is my pocket good?
Q Yeah, that'd be just fine.
A And it's on silent, so it's not going to disturb us.
Q Just checked mine as well.
A Okay.
Q Are you on any medications that would impact your ability to understand my questions or give complete and accurate testimony today?
A No, just not quite enough coffee yet, but I -- I have a solution to that problem.
All right. Good.

Q Other than the coffee are you aware of any other factors that might make it difficult for you to understand my questions or give complete and accurate testimony today?
A No.
Q Did you bring anything with you today?
A I have my vitae, my report, and a pad of paper, and a pen, and water, and coffee.
Q The pad of paper, is that blank?
A I just wrote your name down on it. So it was when we started.
Q Fair enough.
All right. Dr. McCool, are you currently employed?
A I'm a professor emeritus at the University of Utah.
Q Is that retired or semi-retired, is that what that means?
A Emeritus means that I'm still on the faculty, I still have an active faculty position, and I still have an active research agenda. But I don't have to teach, and I don't have to go to any meetings unless they have to do with research.
So no -- no faculty meetings, no staffing meetings, no -- no budgets, no policies and

1 procedures, that -- those sort of things. All I have
2 to do now is research.
3 Q How long have you been in that role?
4 A Emeritus -- I became emeritus in 2017.
5 Q I'm going to share my screen here. Okay.
6 Please let me know if you're able to see that, it
7 should say Exhibit 22?
8 (Exhibit 22 was marked for
9 identification.)
10 A Yes.
11 Q Okay. And is this a copy of your CV?
12 A Yes. That's the -- looks like the latest
13 version I just sent, yes.
14 Q This was just sent over, I don't know, very
15 recently by opposing counsel. So this is the most
16 current version?
17 A It is.
18 Q Are there any changes that need to be made
19 to this since it was sent over?
20 A No, I don't think so.
21 Q So the information in here is accurate and
22 up to date?
23 A Yes, it is.
24 Q I'm not going to walk through your entire CV
25 here today, but let's skip down to page 6. It has a

1 list here, do you see that? Maybe I'll zoom in for
2 you.
3 A Yeah, I can see it and I have it here in
4 paper.
5 Q Okay. It shows on this page a list of
6 expert witness reports in voting cases, do you see
7 that?
8 A Yes.
9 Q Are these all cases that you've written
10 actual written expert reports in?
11 A Yes.
12 Q Are there any voting cases that have been
13 omitted from this list that you've written reports on?
14 A No.
15 Q Does this list go back for your entire
16 career or only a certain number of years?
17 A My entire career.
18 Q Have you written any expert reports in cases
19 that don't have to do with voting?
20 A No.
21 Q So these are all the expert reports you've
22 ever written for litigation?
23 A Yes.
24 Q Did you testify in a deposition or at trial
25 in each of these cases?

1 A Just some of them.
2 Q Can you recall which ones you did or recall
3 which ones you testified in?
4 A Oh boy, you want me to go through the list
5 and tell you?
6 Q If you can recall, yeah, please?
7 A U.S. v. Blaine County I testified. Bone
8 Shirt --
9 Q And I hate to cut you off there, but maybe
10 just indicate if you testified at a deposition, or
11 trial, or both?
12 A In Blaine County I believe it was both --
13 yeah, yeah, both. Bone Shirt, both. Cottier, both.
14 Koyukak, both. Not at Navajo Nation or Brakebill, or
15 Sanchez.
16 Let's see, Western Native Voice v.
17 Stapleton, both. Let's see, Western Native Voice v.
18 Jacobson -- Lower Brule Sioux Tribe I was deposed and
19 testified simultaneously because I was out of the
20 country. That's it.
21 Q Thank you.
22 A Mm-hmm.
23 Q In these cases have you always been hired by
24 the plaintiffs?
25 A I have. Well, in Walen v. Burgum I was

1 hired by the Defendant.
2 Q Would it be the intervenor defendants that
3 you were hired by in that case?
4 A Yes, yes.
5 Q Have you ever done expert work where the
6 party on your side of the case is a government entity
7 or a government official?
8 A In U.S. v. South Dakota I worked for the
9 voting section of the U.S. Justice Department, and the
10 same with Blaine County.
11 Q In all the other ones you represented
12 private parties against the government; is that
13 correct?
14 A Yes, I believe -- yes, I think so. Yes.
15 Q Okay. Now the Brakebill cases, the Walen v.
16 Burgum case, and the current Turtle Mountain case all
17 in North Dakota. Did any of these other cases have
18 anything to do with North Dakota?
19 A No, I think that's the only ones. Yeah,
20 Brakebill, and Burgum, and this case. I wrote two
21 reports in -- for the Brakebill cases. Yes.
22 Q Thank you.
23 A Mm-hmm.
24 Q How did you become involved in this case?
25 Did somebody reach out to you?

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A In this -- the Turtle Mountain case?
Q The case that we're here for today, the Turtle Mountain case.
A Yes. I received an email from one of the attorneys at the Native American Rights Fund.
Q Do you remember which attorney that was?
A It was either Samantha Kelty or Mike Carter, I believe.
Q Do you know when you received that email?
A It was over a year ago. So I'm going to -- this is just a wild estimate, I'd say December of '21, maybe January of '21. Sometime in there.
I don't -- I don't honestly recall. I -- I'm just basing that on when I started working on the report. So I'm guessing as to when a phone call came in.
Q Or an email?
A Or -- or -- I'm sorry, an email. It was probably an email.
Q Did you have a preexisting relationship with the attorneys at the Native American Rights Fund?
A I have worked for them before.
Q And if I just say "NARF" you'll know what I'm talking about?
A Sure, that's fine. Yeah.

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Q Were you working for NARF in the other cases that you've handled in North Dakota?
A Let's see. Yes, I think so, for Brakebill -- yeah, it was a different attorney at NARF, but yeah the -- was NARF that hired me there.
And -- and Turtle Mountain, yes. And -- and Walen. Uh-huh -- yes.
Q You'd mentioned it was a different attorney. Do you recall which attorney it was at NARF that you had dealt with in the -- case?
A It was Matt Campbell.
Q Have you ever attended a training seminar put on by NARF?
A I helped run one as an academic adviser.
Q Tell me about that. When was that?
A Let's see. That was sometime last summer, I believe. They had just asked me to give a presentation about being an expert witness.
Q Do you remember who reached out to you?
A I think it was Matt who put that together, Matt Campbell.
Q And you were asked to present?
A Yes.
Q Did you present at that seminar?
A I did.

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Q Tell me about that. Was it a remote, Zoom type seminar, or in person?
A It -- it was. No, it wasn't in person, it was remote. And I just gave a presentation on my experience as an expert witness.
Q Was it a presentation on expert testimony in general, or was it substantive to a legal area?
A How to be a good expert.
Q Did it involve the Voting Rights Act at all?
A I'm -- I'm sure it did, yes.
Q Did you only present at one presentation, or multiple presentations during that seminar?
A I think it was just one. I was -- oh, I watched and commented with some of the other presenters. But I believe I only made one presentation.
Q Did you prepare materials for that course?
A I -- I'd made such a presentation previously, so I -- I just got out my old file on that, and I probably -- yeah, I updated it, but basically already a -- a speech -- a talk ready to go.
Q What was your understanding of the purpose of the seminar?
A I think they were training potential expert witnesses.

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Q Did your son, Dr. Weston McCool, attend that seminar?
A He did.
Q Have you ever talked with your son, Weston McCool, about the case that we're here for today?
A We've talked about the mechanics. I have not seen his report, and I had no input on his report. He wrote that completely independent of me.
Q Maybe explain what you mean by you "talked about the mechanics"?
A Oh, when and it -- is -- how's -- what's the deposition, is it going to be in person, do we have to travel. Those -- those sorts of questions.
But we didn't talk about the substance of our reports.
Q Did you talk about the substance of any facts or assumptions that you made in your reports?
A No, I don't think so. I -- his -- he does his own thing, it -- and it's very different from what I do.
So he does his thing and I do mine, and we use completely different methodologies. So they're -- they're quite distinct.
Q I'll represent to you that he testified in his deposition discussing quantitative methods of

1 analysis that he used. Is it fair to say that you use
2 more of a qualitative method of analysis?
3 A It's fair and absolutely accurate. Yes, I
4 use a qualitative methodology.
5 Q We'll talk more about that in a little bit.
6 A Okay.
7 Q Have you ever worked with Dr. Matt Barreto?
8 A Never worked directly. Matt also presented
9 at the NARF symposium, and Matt and a colleague also
10 wrote reports in the Brakebill cases -- well -- well,
11 one report.
12 Q Have you ever worked for Campaign Legal
13 Center before?
14 A I -- I'm working with them on a case in
15 Arizona now, but I -- I believe that's the first time
16 that I've worked with them in this case.
17 Q Is that Arizona case you just mentioned one
18 of the cases on your list of expert witness reports in
19 your CV?
20 A No, I haven't written it yet.
21 Q Is that also a voting rights case?
22 A It is, yes. Mm-hmm.
23 Q Involving the Voting Rights Act?
24 A Yes.
25 Q Do you know the names of the parties to that

1 case?
2 A I can't tell you off the top of my head,
3 there's a lot of them. I just haven't -- I haven't
4 written that report yet.
5 Q It's fine. When were you retained in that
6 case?
7 A Several months ago. I -- I can't actually
8 tell you precisely. I would -- again, this is just a
9 wild guess, maybe two, three months ago.
10 Q Is it a redistricting case?
11 A No.
12 Q Do you know who the defendant is in the
13 case, a particular state official I assume?
14 A Yes.
15 Q And who is the defendant?
16 A I believe it's, at least originally, Katie
17 Hobbs.
18 Q And is that in state or federal court?
19 A It's in federal court.
20 Q And did I hear you correctly that you were
21 retained to write a report in that case?
22 A That's correct.
23 Q And to testify at deposition and trial?
24 A If it gets to that, yes.
25 Q Have you been disclosed in that case as an

1 expert witness yet?
2 A I don't know.
3 Q Are you familiar with the Lawyers' Committee
4 for Civil Rights under Law?
5 A I am.
6 Q How are you aware of them?
7 A I know one of the attorneys, James Tucker.
8 Q How do you know James Tucker?
9 A Jim was involved in the Alaska cases, so I
10 got to know him when I was working on a report and two
11 supplementals in the Alaska cases. Don't you -- those
12 are Section 203 cases.
13 And I'm working on a case in New Mexico that
14 involved Lawyers' Committee and -- and Jim Tucker.
15 Q I still have up on the screen that list of
16 expert witnesses. I see a Toyukak versus Meyer, is
17 that the Alaska case you were referencing?
18 A Yes. There's probably three different
19 entries, maybe two. Yeah, Koyukuk v. Treadwell, then
20 I wrote a follow-up supplemental in 2021, and I'm
21 completing a third -- or a second supplemental now.
22 Q And those are Alaska cases, you'd also
23 mentioned another state, which one was that that you'd
24 worked with Mr. Tucker on?
25 A Oh, New Mexico. And it's not on there

1 because I'm not done with it yet.
2 Q How many cases are you currently working on
3 that you haven't yet generated a report for?
4 A Let's see, three.
5 Q And which states are those in?
6 A New Mexico, Arizona, and Alaska.
7 Q If you can remember it I want to make sure I
8 jot down the names of the parties in those cases. Did
9 you say you couldn't remember the New Mexico?
10 A So I just have a procedural question. Am I
11 allowed to answer all of these questions because I do
12 sign a confidentiality -- I signed a contract with a
13 confidentiality clause in them.
14 THE WITNESS: Am I okay, Samantha, to
15 talk about cases that I haven't completed yet?
16 MS. KELTY: I'll object to privilege,
17 but I think it's okay for you to answer the names of
18 the parties here. So I'll make an objection for the
19 record, but I think you should go ahead and answer the
20 names of the parties if you know them.
21 THE WITNESS: Okay.
22 Now, Mr. Phillips, can I call you
23 David?
24 BY MR. PHILLIPS:
25 Q Of course.

A Is that okay?
Q Absolutely.
A Just call me Dan.
I -- I didn't really prepare for those cases this morning, so -- in New Mexico the case involves San Juan County, New Mexico, they're the defendant. And the Navajo Nation and I believe individual plaintiffs are involved.
In the Toyukak second supplemental it's Alaska Native Villages who are the plaintiffs, against the State of Alaska.
And in Arizona, as I said, there's -- that -- that's a case where multiple cases were combined into one. For my purposes I -- I'm only writing about the Native Americans involved. And the Tohono Nation is a plaintiff, San Carlos Tribe is a plaintiff, Gila River, and it's the Inner Tribal Council of Arizona is a plaintiff.
I believe there are many others, but those are the ones that -- that I'm principally concerned with.
Q Thank you. I'll turn my attention to this case, the one you did prepare for.
A Okay, good. Thank you.
Q Can you still see my screen here? Now you

should see Exhibit 23?
(Exhibit 23 was marked for identification.)
A Yes.
Q Do you recognize this?
A Yes, that's the invoice I sent for my work.
Q And have you worked any other time on this case that's not reflected on this invoice?
A Yes, I spent time preparing for this deposition.
Q How much time have you spent preparing for this deposition?
A I -- the file folder that has the case materials is on the edge of the desk over here, do you want me to look at that and tally them up? I -- I haven't -- I don't have a tally or anything.
Q Yeah, if it's right there and it won't take long.
A I would guess -- I would guess eight to ten hours, maybe.
Q Maybe go ahead and grab it, I don't have a problem with that, and just give it a quick tally.
A So it -- that -- this is basically just the -- a partial file. That piece of paper is still upstairs.

I can run up and get it or I -- I can tell you it's in the neighborhood of eight to ten hours. Probably closer to eight.
Q That's fine. Thank you.
A Sure.
Q And that extra time is only for preparation for this deposition?
A That -- that's right.
Q Now looking at Exhibit 23 there are various time entries. There aren't any descriptions, however, on this for what you did during these times; is that correct?
A That's correct.
Q Oh, I'm sorry, go ahead.
A I -- I was researching and writing the deposition. I -- I only charge for when I'm actually doing research and writing. I don't charge for travel time, or anything, just when I'm actually, literally working on the report.
Q Do you have a breakdown that's recorded anywhere of what you did during these specific time periods? For example, interviewing individuals, or writing the report?
A I -- I don't 'cause they're all -- they're all mixed together. It -- it would -- it would look

very repetitious.
Q For purposes of this case do you know about how much time you spent actually interviewing individuals?
A Oh, that'd be -- that'd be a difficult tally. I -- the names of the people I interviewed are -- my camera's doing some weird stuff.
Q I noticed that. It sounds just fine, though, I think it's just the audio as far as I can tell.
A Okay. That's not me shaking my head, that's the camera doing something strange.
So I've listed the people that I've interviewed, both telephone and in person interviews, and interviews -- telephone interviews tend to be shorter, in person interviews tend to be longer.
And they can vary -- it all depends on how much people want to talk, so they can -- they can be 15 minutes or some people talk for an hour and a half. So they -- they're wildly inconsistent in terms of the amount of time that people want to take with them.
Q And it says on this invoice $200 an hour. Is that your hourly fee for all work in this case?
A In this case, yes.
Q And if I add up all the time on this invoice

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1 plus about eight to ten hours that's all the work
2 you've done on this case in total?
3 A So far, yes.
4 Q How many times have you talked to the
5 attorneys for the plaintiff in this case?
6 A You mean talked over the phone, emailed?
7 Q Well, I would say talked over the phone?
8 A Oh, I have no idea. Again, the best I could
9 do would just be a wild guess. And just specific to
10 this case?
11 Q Yes.
12 A I -- I really have no idea. A wild guess
13 would be maybe two or three times.
14 Q Have the attorneys for the plaintiffs
15 provided you any data or facts that you used in your
16 opinion in this case?
17 A They sent me the complaint, they sent me the
18 State's motion for summary judgment, they sent me
19 professor Hood's report, and that's everything that
20 comes to mind right now.
21 There -- there may have been a little bit
22 other legal documents, but in -- they -- yeah, they
23 may have introduced me to some people to interview.
24 Again, that -- that was quite some time ago, so --
25 yeah, I believe that's it.

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1 Q The people that you were introduced to to
2 interview, did you end up interviewing those
3 individuals?
4 A I believe I interviewed some of them.
5 Q And were those interviews included in the
6 materials you provided in response to the subpoena?
7 A Yes, if I interviewed somebody it -- it's in
8 there.
9 Q Do you recall which individuals you
10 interviewed you learned about through the attorneys?
11 A I -- I don't.
12 Q Is that designated anywhere in the materials
13 that you've disclosed or that you may have in your
14 notes?
15 A I don't think so.
16 Q Would you have been told about those
17 individuals through email or through a phone call with
18 Plaintiff's attorney?
19 A Well, it could have been either one. The
20 way I -- I set up interviews is that I keep track of
21 names I come across and legal documents in the press,
22 and those may be the same names that the lawyers
23 mention.
24 So I already have them on my interview list,
25 so it's hard to say -- well, did -- did they suggest

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1 that? Well, I -- often they're already on my list.
2 So that -- that's how I start the interview process,
3 and when I interview people I ask each of them if they
4 could introduce me to somebody else.
5 And, you know, that's called "snowball
6 interviewing". That -- that's the generic name for it
7 in political science where you interview one person
8 and they lead you to somebody else. So that's --
9 that's the basic process.
10 Q In response to the subpoena that you
11 received from my office did you search your emails for
12 emails that you might have between you and -- and
13 plaintiff's counsel that are responsive?
14 A Between me and -- and the NARF attorneys?
15 Q Yes, and specifically emails where they may
16 have told you names of individuals to interview for
17 use in your report?
18 A I think I -- I think I -- I sent to you
19 every email I could find that went to somebody I was
20 asking to interview.
21 Q Just for the record I'll just say, if there
22 are communications that exist between you and
23 Plaintiff's counsel where they gave you information
24 that you used in your report, including the identity
25 of individuals to interview, I would ask that those be

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1 produced.
2 So I'll make that request of you and your
3 counsel, and we can move on at this point.
4 A And I'm happy to look for that, and I think
5 I sent everything I could find, but I'm happy to go
6 back and look.
7 MS. KELTY: And Counsel, for the
8 record, we did produce the nonprivileged
9 communications that contain that information.
10 MR. PHILLIPS: Thank you.
11 BY MR. PHILLIPS:
12 Q I'm not sure if I've asked you this, so I'm
13 going to ask it again. Did the attorneys for the
14 plaintiffs ask you to make any assumptions that you
15 have made in your final opinion?
16 A No.
17 Q Other than the attorneys for the plaintiffs,
18 have you talked with anyone else about this case, and
19 I'll also exclude the people that you interviewed?
20 A My wife, she knows all about it. Let's see,
21 have I talked to anybody else? I -- not in a
22 professional capacity. I -- I may have told
23 colleagues about it or talked about it with friends.
24 I don't think I've communicated with -- for
25 example, other attorneys, you mean? No, I don't think

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so. There -- there have been people on, you know, Zoom meetings, I -- I couldn't list them all, but -- no, I -- I don't think so, just might have been some people in Zoom meetings.

Q There are some named plaintiffs in this case, have you spoken with those individuals?

A No.

Q I'm getting a little bit of some music in the background, I'm not sure if it's --

A Right. It's not me, I'm innocent.

Q I'm going to stop sharing. Well, I'll leave it up for now if you can still see me.

So as part of your work on this case you did conduct interviews; correct?

A Yes, that -- that's actually a small part of my -- my methodology.

Q Understood. Nevertheless we'll focus on that first for purposes of this deposition.

A Okay.

Q The interviews that you did in this case, were they all done by phone, and I'm talking about the recent ones you did in 2022?

A Yes, COVID was still an issue. I -- I did not feel safe traveling, and I did not want to in any way endanger the lives of -- of people that I would

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interview. So COVID was still a problem and -- and so I -- I had to do just in person interviews.

Q And it's my understanding for purposes of forming your opinion in this case you also relied on some interviews you did back in 2016; is that accurate?

A That -- that's correct.

Q Go ahead.

A Yeah, those were a combination of telephone interviews and in person interviews.

Q And were those related to the Brakebill case?

A They were, but I ask a lot of the same questions.

Q Can you still see my screen here, I've got Exhibit 24 up?

(Exhibit 24 was marked for identification.)

A Yes.

Q Do you recognize this?

A Yes.

Q Now this was also produced in response to our subpoena, and I'll just kind of note on the first page, and if I scroll down a bit onto the second page, there's a list of possible interviewees it says. Do

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you see that spot?

A Yes. So when -- when I'm reading through documents and doing research and I see a name I jot it down on this list -- well, I type it into this list as somebody that maybe I could interview.

Q And is that how you found all of the names that are on this list of possible interviewees?

A The attorneys may have suggested some of them. I mean, some of them, like Chase Iron Eyes, just Google Native Americans and elections in North Dakota and you'll get half those names right -- right there.

Same with Nicole Donaghy, she's -- she's easy to find.

Q Did you conduct a Google search to find some of these names?

A I'm sure I did. I -- I do lots of Google searches throughout my research.

Q And if I'm understanding your testimony correctly, you can't recall which of the names were provided to you by Plaintiff's attorneys?

A Some of these are people I interviewed in 2016, so I already had contact information. Like, Merle Boucher, I interviewed him back in 2016. LaDonna Braveboy, I interviewed her in 2016. I later

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learned that -- that she had passed away.

And then, like, Charles Walker, his -- it's easy to find his -- his name in doing the research. I look up tribal officials, state officials, county officials, you can Google all that and get names.

Cheryl Kary I think I interviewed her in 2016, I'm not -- I'm not sure. I interviewed several McClouds in 2016, I can't remember if I interviewed Valerie at that time, but she did not want to be interviewed, which -- which is just fine.

I mean, like, Lucy Harrison, auditor, Sioux County, I -- I just Googled Sioux County and the auditor and sent her an email.

Q And I think I had a question in there that you can't remember which of these names were provided by Plaintiff's attorneys; correct?

A No, and again, if they called me and described the case, like, the name of Lisa Finley De-Ville, they -- they may have mentioned her because she's very prominent. She's run for office before, she's now in office, so they may have mentioned her, but I would easily find her. That -- that would not be -- in these various Google searches it wouldn't take long at all to find her.

Twyla Baker who -- she's the president of

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1 the MHA College, so it -- she's easy to find. I --
2 and again, did they mention I talk to her, I -- I
3 honestly don't recall, but one of the first things I
4 do is look at tribal colleges and -- and see if
5 there's people there that would -- I could do an
6 interview with. So she'd -- she'd be somebody on
7 my -- on my list.
8 I -- I guess what -- David, what I'm saying
9 is they may suggest names that I would have come
10 across anyway, and that -- what I'm most interested in
11 are the names that I come up with. Sometimes they
12 give me introductions to a small number of people.
13 It -- I -- I think it's important to
14 understand that on some of these reservations some
15 people knew me because I -- I'd traveled to Turtle
16 Mountain in 2016, so they met me in person. But most
17 of these people have no idea who I am. So an
18 introductory email is important.
19 It just -- I -- you know, some random guy
20 from the University of Utah calls them up and says,
21 "There's a lawsuit, can I talk to you?" People are
22 probably not going to say yes. I've been doing this
23 for quite some time and so a few introductions is a
24 part of the strategy.
25 Q You did provide email communications between

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1 you and the potential interviewees in response to the
2 subpoena, I'm not going to mark those. But did you
3 provide copies of all of the interviewee emails that
4 you have in response to the subpoena?
5 A I -- I think so, I believe all the
6 interviews that I started with. Some people don't
7 have emails, or people say, "Oh, call so and so."
8 They -- but don't email them.
9 So I -- I'll get on the phone and call
10 somebody. And usually if it's a -- a member of the
11 tribal community and they say "call so and so" I'll
12 ask them to call them first and -- and give me an
13 introduction so that it's not just a cold call.
14 Because a cold call coming from some random -- random
15 appearing white guy from Ogden, Utah, it just doesn't
16 work very well.
17 Q Use to decide who to interview?
18 A I'm looking for people who have knowledge
19 that will help me answer the research question.
20 Q And what kind of knowledge would that be in
21 this case?
22 A Well, I -- I think you've seen the questions
23 that I ask. So I -- I'm looking for people who might
24 be able to provide answers to those questions. I
25 think they're listed right there just off the screen.

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1 Q Okay. Fair enough, we'll slide down to
2 those.
3 So I'm just sliding down onto just sort of
4 the bottom of page 2 of Exhibit 24. And that's the
5 list of questions there?
6 A Yes.
7 Q Before we move onto the questions, you had
8 mentioned outreach to, did I hear you say colleges and
9 universities as a method to try to find interviewees?
10 Did I hear that right?
11 A Yes, tribal colleges, but also if there are
12 people in the state who are academics at -- at
13 universities who are -- I see their names, or they
14 have a publication, I would call them as well.
15 Q Is there a group of people that you were
16 able to identify? So for example were you able to
17 interview various members of a particular class at a
18 tribal college, with students in a particular class?
19 A Not for this report, I didn't do any group
20 interviews. Occasionally I'll -- in 2016 I -- I
21 interviewed the McClouds together, Mr. and
22 Mrs. McCloud. That's probably the largest group was
23 just two people.
24 Sometimes people want to meet in a group, I
25 think they feel safer that way, but I -- I don't -- I

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1 don't think I -- I did any group interviews for this
2 one. Oh, there was when I met with the North Dakota
3 Association of Counties, I believe there were several
4 people present.
5 Q I'm going to scroll back up here to the
6 first page. You know, some of these say "no reply",
7 some of them say "done, refused, deceased", those all
8 seem fairly self-explanatory. Is this the end result
9 of your research?
10 So for example, there was no reply by Merle
11 Boucher, you never were able to get a reply? Is it an
12 updated telling of your contacts with these people?
13 A Yes, I didn't -- I didn't get a reply,
14 and -- these are just notes to myself; okay? And that
15 one didn't work, none -- at some point I give up.
16 I -- I don't want to pester people, so if I
17 interview them I -- I don't -- I don't want to bother
18 people. If they don't reply I assume they don't want
19 to me.
20 Q I'm going to go back down to page 2, this
21 list of questions. Is this the list of questions that
22 you asked of everybody that you interviewed in
23 relation to this case?
24 A Yes. I ask everybody the same set of
25 questions.

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Q Do you ask them any additional questions that are not listed here?
A Only if there's a -- a follow-up. If they tell me something and -- and I don't understand it, if -- if it needs clarification.
Q How did you come up with this list of questions?
A They help me answer the research question.
Q Are these questions that you've formulated entirely on your own?
A Yes.
Q To answer the research question?
A Yes.
Q I know it's in your report, but what is the primary research question that you were addressing in this case?
A I'm -- I'm going to read it to make sure I get it exactly right.
Q That's fine.
A "The current legislative redistricting plan for the North Dakota legislature -- 1304 dilute the voting strength of members of the Turtle Mountain Band of Chippewa Indians and the Spirit Lake Nation, and thus reduce their opportunity to let candidates of their choice."

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Q Now when you interviewed these interviewees did you read the questions verbatim each time?
A Yes. These questions, not the research question. These questions that I have there, yes.
Q Correct. Okay. And when we say "these questions" now we're talking about what's on the Exhibit that's being displayed?
A Yes.
Q Did you also provide these questions to the interviewees in writing or was everything verbal?
A Every once in a while I will interview somebody and they want the questions ahead of time, and that -- that's very rare.
There may have been one -- I think there was one person in North Dakota who wanted to see them ahead of time. But usually I just show up, I explain who I am, what I'm doing, and I tell them that I ask everyone exactly the same questions. And -- and then I just start through the questions.
That -- that's standard qualitative methodology procedure.
Q Did you record the interviews at all, as in an audio or video recording?
A No. No, I don't do that. It -- it's my belief that if -- if you set a tape recorder in front

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of somebody they're very intimidated by that. You're not going to get a full and honest answer. So I -- I don't do that.
I just -- I don't think people would want to talk to me. But I'm really good at very unobtrusively -- unobtrusively placing my laptop on my lap and taking notes.
Q Now I'm going to scroll down on this same Exhibit, the bottom of page 2 really through the end of the document. This appears to be, you know, your account of the responses to each of these questions from each interviewee. Did I state that accurately?
A Yes -- yes. Well, it -- it's me writing down what they say.
Q Is this what you wrote down during the interview, or did you write this down after each interview was conducted?
A So I have sort of a -- a shorthand way of abbreviating words, so I -- I write with -- with no -- or very little punctuation. I abbreviate lots of words, and then immediately after the interview I -- I go back and add the punctuation and write out the words completely.
It's kind of a shorthand that -- my own personal shorthand so that I -- I can keep up with

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them when they're talking. I'm -- I'm not as good as your court reporters who can type as fast as people talk, so I just have a shorthand method and then I -- I complete the words right after the interview.
Q Do you have prior drafts that still have that shorthand on them?
A No, I don't. No, I -- I do this immediately. Right after the interview I -- I complete all the words.
Q This document is 16 pages long, and as I said it lists all those interviewees. Are these all of the individuals that you interviewed in 2022 relating to this case?
A I believe so, yes. Yes, if I interviewed them I entered it on -- on that document.
Q I'm showing you now what's been marked as Exhibit 25. Can you see that?
(Exhibit 25 was marked for identification.)
A Yes.
Q And what is this document?
A That's the telephone interviews I did in the Brakebill case.
Q Did you use the same methodology that we just talked about for the Brakebill case?

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1 A I did, yes.
2 Q And did you use the same method of locating
3 people to interview in the Brakebill case?
4 A I -- I did.
5 Q Do you know how many people total you
6 interviewed in the Brakebill case?
7 A Well, there's telephone interviews and in
8 person interviews, they are listed at -- at the end of
9 my report. I don't -- I don't have a tally off the
10 top of my head.
11 Q Would this Exhibit that we're looking at,
12 Exhibit 25, would that list all of the telephone
13 interviews that you did in the Brakebill case?
14 A Yes.
15 Q And on the first page of this Exhibit 25
16 there's a list of questions. Are those the questions
17 that you asked the interviewees in the case?
18 A Yes.
19 Q Are any of these questions relevant to the
20 present Turtle Mountain case that we're here for
21 today?
22 A Yes.
23 Q Which ones?
24 A Well, I asked the question about racial
25 discrimination, problems in voting, that's really

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1 the -- the first two. Racial polarization, at least I
2 think that's relevant, a question about racially
3 polarized elections.
4 And number 7 is directly related to -- it's
5 a factor 5, and the one on responsiveness is directly
6 related to senefactor [ph] 8 the responsiveness
7 questions. So, yes, I think they are.
8 Q Let me ask you this: Are any of these nine
9 not relevant to the present case in your opinion?
10 A Well, Brakebill was a -- a voter ID case, so
11 I ask a question about the ID there, that's not an
12 issue here. So it -- it's just less relevant now.
13 Q That would be number 6?
14 A Yes.
15 Q I'm going to scroll down on this Exhibit 25
16 to page 16. I noticed here at the bottom of page 16
17 there are separate questions for specialists, do you
18 see that?
19 A Yes.
20 Q What are those questions?
21 A So I met with the North Dakota Association
22 of Counties, I believe that's -- that's the name, and
23 I was hoping they could answer those. I also talked
24 to a political science professor and I -- I thought a
25 political scientist might know those.

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1 Those are the kinds of super specialized
2 questions that most people you interview are not going
3 to know. I have -- very few people are going to know
4 what a hoghouse amendment or law is.
5 So I ask those of just a small group of
6 people who would have a specialized knowledge of the
7 legislative process, basically.
8 Q Are any of these questions for specialists
9 relevant to your opinion in the present case?
10 A Sure, how many Indians have been elected to
11 office in North Dakota, Indian versus Anglo racist --
12 racial polarization and discrimination. Yes.
13 I ask about studies, that was a question of
14 some of the academics. Question 8 is about racially
15 polarized elections.
16 Q I think I'll do the same, I'll ask you the
17 reverse. Are any of these not relevant by number?
18 A Again, number 6 is more oriented towards a
19 report about IDs, and that was less relevant here.
20 Q What about number 1?
21 A Oh, correct. That was not a -- an issue in
22 this case.
23 Q I'm showing you now what's been marked as
24 Exhibit 26. Is this a similar document in the
25 Brakebill case, but just for your in person

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1 interviews?
2 (Exhibit 26 was marked for
3 identification.)
4 A Yes.
5 Q Was there anything different in terms of
6 your methodology when it came to in person interviews?
7 A No.
8 Q Did you conduct any interviews of any
9 individuals that you're relying on for your opinion in
10 this case that aren't shown in the Exhibits we just
11 looked at, Exhibits 24, 25, and 26?
12 A In terms of interviews?
13 Q Correct.
14 A No. I -- I relied on 183 written sources,
15 and of course there's opinions expressed in -- in
16 written sources, but these are the interviews that I
17 conducted.
18 Q And in total your sources are those 183
19 written sources plus the interviews; correct?
20 A Yes, correct. Mm-hmm.
21 Q Did any of the individuals that you
22 interviewed sign affidavits or other signed
23 statements?
24 A I -- I have no idea. Not that I know of, so
25 they may have, but I -- I wouldn't be involved in

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that.
Q Were any of them placed under oath before you interviewed them?
A No.
Q Did you provide a copy of your notes as reflected on these various Exhibits to the interviewees after the interview?
A Some people asked me to do that, and occasionally I do that. I do not believe I had anybody in this case ask me to do that.
I have asked other people in other cases that they wanted to see the notes that I took, and -- and I sent them to them. But I don't -- I don't think I -- especially, we're going back to 2016, that -- that was quite some time ago, but it -- I don't recall anybody saying "I want to see the note."
Q Is that true for your 2022 interviews as well that you don't recall anybody wanting to see the notes?
A I -- I don't.
Q So nobody corrected any mistakes that you might have made in your notes; correct?
A No. And my head's doing that really funny thing again with my camera, I -- that -- that's a new one for me, so I -- I'm still here.

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Q It looks like a 1980s music video for some reason.
A Which looked lousy then and it looks lousy now.
Q Whosever playing music maybe you can turn on Take on Me or something.
A Right.
Q Okay.
A Was that Depeche Mode?
Q Okay. So I'm going to move on to some other topics here. Oh, I should ask, it's -- about an hour, do you want to take a break?
MS. KELTY: Yes, I was going to suggest that.
MR. PHILLIPS: Yeah, we can certainly take a ten-minute break or so.
THE WITNESS: I -- I'm good, but if other people want a break.
BY MR. PHILLIPS:
Q You know, I think it's usually good just to give the Court Reporter's fingers a rest even.
A All right.
Q If it's okay with you why don't we go ahead and take one.
A Sure. We're -- we're doing ten?

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Q Yeah, in Central Time is 10:07, so 10:17?
A 10:17, okay. I'll be back.
THE REPORTER: We are now off the record at 10:07 a.m.
(Off the record.)
THE REPORTER: We are back on the record at 10:19 a.m.
BY MR. PHILLIPS:
Q And you'd said earlier that I can call you Dan; is that okay?
A Absolutely, yes.
Q Okay. Dan, are you familiar with North Dakota Administrative Code chapter 72-06-03 relating to tribal identification for voting?
A I -- I could not tell you off the top of my head what that is.
Q It's a regulation that came into effect before the resolution of the voter ID cases in North Dakota.
A Mm-hmm.
Q So to be clear, you don't have any knowledge or understanding of those regulations?
A I -- I probably read that when I was working on the Brakebill cases. I have not looked at any of the ID issues since then.

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Q Did you account for that administrative code chapter in any way in forming your opinion in this case?
A I don't -- I don't think so. I don't think I looked at ID issues other than how they're related to the costs of voting. There might have been -- some of the people I interviewed may have mentioned that.
Q Now you did discuss in your report the settlement of the voter ID cases. Do you recall that?
A Yes, there's a summary of the cases in North Dakota.
Q And the voter ID cases were resolved through a settlement and a consent decree; is that right?
A That -- that's my recollection.
Q Do you know, generally, what the terms were of the consent decree in the voter ID cases?
A I -- I wrote a summary in my report.
Q And to be clear, when I say "voter ID cases" I'm referring to the Brakebill case, and there was a case that was consolidated with it brought by Spirit Lake?
A Yes. I -- I think I mention both of those cases.
Q Are you familiar at all with the State of North Dakota's efforts to comply with the consent

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1 decree that was issued in the voter ID cases?
2 A No, I -- I didn't look at voter ID as a
3 specific issue for this case, only as it pertains to
4 the cost of voting, but that would have been
5 incidental, yes.
6 Q Are you aware of whether the implementation
7 of the consent decree in the voter ID cases has been
8 successful, since those cases, at addressing the
9 issues that were raised in those cases?
10 A Yeah, I -- I really didn't look at the ID
11 issues. That -- that wasn't part of my research
12 question here. So I -- I just focused on my research
13 question.
14 Q As part of the focus on your research
15 question did you account for the state's actual
16 implementation of the voter ID consent decree?
17 A I -- well, I have a -- a summary of those
18 cases and an explanation of the settlement decree.
19 Q And to be clear, I guess, the nature of my
20 question was not the content of the decree, but the
21 state's efforts to comply with it. Are you familiar
22 with those?
23 A No, I didn't -- I didn't focus on ID issues
24 in this case.
25 Q Informing your opinions in this case did you

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1 account for any other state efforts to assist Native
2 Americans in voting?
3 A I -- I looked at all the materials that I
4 thought would help me answer the research questions.
5 So if there was relevant state material I -- I would
6 try to find it.
7 Q Do you recall accounting for that in your
8 research in this case, state efforts to assist Native
9 Americans in voting?
10 A I would look through my -- all of my sources
11 in this case to look -- look for those. People may
12 have mentioned that or -- or the lack of that effort.
13 Q Can you recall any as you sit here today?
14 A Not without looking at my sources. There --
15 there's a lot of North Dakota material in my report.
16 Q As a specific example, you know, did you
17 account for the North Dakota transportation efforts to
18 provide free IDs to Native Americans on reservations?
19 MS. KELTY: Objection, assumes facts
20 not in evidence.
21 You can still answer, Dan.
22 THE WITNESS: Okay.
23 I did not look at ID issues because
24 this wasn't an ID case.
25 //

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1 BY MR. PHILLIPS:
2 Q In either the Brakebill case or the present
3 Turtle Mountain case did you interview any state
4 employees or state officials?
5 A No, I -- I don't interview defendants.
6 Q Did you interview any staff at the State
7 Indian Affairs Commission?
8 A No, they would be state employees. I -- I
9 don't interview defendants; I don't think that's fair
10 to them. I think that's unethical to interview
11 defendants, so I don't do it.
12 Q Did you account for any programs or
13 activities of the Indian Affairs Commission when
14 forming your opinions in this case?
15 A I -- I referenced them. I went to their
16 website, I -- I mention them in several places in my
17 report.
18 Q Would the only places you're aware of, then,
19 be mentioned in your written report?
20 A And -- and what I found on their website,
21 yeah.
22 Q If you found something about that on the
23 website would you have included it in your written
24 report?
25 A Yes, there -- there is material in my report

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1 about them.
2 Q Informing your opinions in this case did you
3 account for state outreach to Native Americans and
4 tribes during the redistricting legislation process?
5 A I -- I describe that.
6 Q Okay. One thing, and correct me if I'm
7 wrong, I don't think showed up in your report was
8 mention of the Tribal and State Relations Committee
9 that held redistricting hearings on reservations in
10 North Dakota during the legislative process. Are you
11 familiar with those hearings?
12 A I think that is mentioned in my report.
13 Q Did you watch videos of those hearings?
14 A I didn't watch -- I watched videos of the
15 hearings on HB1504.
16 Q Do you remember which hearings you saw
17 videos of?
18 A Both house and senate is my recollection.
19 Q What about any of the committee hearings, so
20 the Tribal and State Relations Committee, the Interim
21 Redistricting Committee, or the Joint Redistricting
22 Committee?
23 A The -- the ones I recall listening to were
24 the -- were the debates over HB1504.
25 Q On the actual house and senate floors?

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A Yes.
Q Have you read any transcripts of any hearing or floor debates?
A If -- if I did they would be in my report.
Q Let me share my screen here. Can you see my screen now?
A Yes.
Q I'm showing you what's been marked as Exhibit 27, and I apologize for backtracking on topics here, but I forgot to ask you about this one.
What is this Exhibit?
(Exhibit 27 was marked for identification.)
A When I did a second report regarding voter ID those are the questions.
Q Related to the Brakebill case?
A Yes.
Q Was it the same methodology used with respect to the questions on this Exhibit as we've already talked about with the others?
A It -- it was.
Q And are any of these questions irrelevant to the present case that we're here for today?
A Yeah -- the ones that deal with voter ID, I did not focus on that for this report. The effects of

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discrimination and racial hostility, that's relevant. Tenuousness and block voting racially polarized elections, I write about those in this report.
Q All right. So the only ones that would be irrelevant would be number 1, 2, 3, 4, and 5?
A Yes. I didn't -- I didn't really focus on that because this isn't an ID case.
Q And I'm now showing you what's Exhibit 28. Do you see that?
(Exhibit 28 was marked for identification.)
A Yes.
Q Now this was also produced in response to our subpoena. What's the relevance for this document in your opinion for this case?
A That -- that's a good question because I -- I don't -- I didn't use this. Nicole sent that to me, I -- I don't recall reading it.
It's not listed in my references so I -- I probably read it, said "that does not help me answer the research question" and I didn't use it.
Q Thank you for the explanation. I thought I was going crazy not realizing how this fit in.
Okay. So this document is not related to your opinion in this case; correct?

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A No, I -- I don't think I used that.
MS. KELTY: And Counsel, for the record, it was an attachment to an email -- for you.
MR. PHILLIPS: I see. I see.
BY MR. PHILLIPS:
Q So I'm going to open up another document. This is Exhibit 29. Do you see this?
(Exhibit 29 was marked for identification.)
A I do.
Q Okay. Did you provide an expert report in the Walen and Henderson versus Burgum and Jager case?
A I -- I did.
Q And is Exhibit 29, shown on the screen here, that report?
A Yes.
Q Are you planning on testifying as an expert at trial in the Walen case?
A If it goes to trial and they ask me I -- I will.
Q What's the scope of the work that you were hired to perform in the Walen case?
A The same as all the others. They ask me to answer a research question, and I answer it to the best of my ability.

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Q What's the research question that you addressed in the Walen case?
A Well, that -- once again, I didn't prepare for the Walen report this morning.
Q That's fine. That would be stated in this report, though; right?
A Yeah -- yes, it's in the report. I just didn't -- I haven't looked at it since I submitted it.
Q Now in the Walen case I understand you were retained by the intervenor defendants; correct?
A That is correct.
Q And is your opinion in that case generally supportive of the state's creation of subdistricts in legislative district 4?
A 4A and B?
Q Correct.
A Yes -- yes.
Q I'm still on Exhibit 29. I'm going to scroll way down to page 71. It's at the bottom of page 71 and the top of page 72. Do you see that paragraph that starts "In contrast"?
A Yes.
Q And it says, "In contrast the Redistricting Committee was quite responsiveness" I assume that's a typo, should say responsive?

A That's a typo, yes.
Q "In the creation of subdistricts for district 4 in response to requests from MHA tribal members. As a result, the original district 4, which had a Native population of about 38.6 percent, was split into two districts with district 4A having a Native voting age population of 67 percent.
In short, the state's redistricting process was not responsive to all Native requests, but it was responsive in the creation of district 4A." Do you see that?
A Yes.
Q Is that your opinion in that case?
MS. KELTY: I'm going to object here to the extent that this relates to the Walen case, and not this case.
And I'll ask for a standing objection here if that's okay, Counsel?
MR. PHILLIPS: Yes, I'll agree to that.
BY MR. PHILLIPS:
Q You can go ahead an answer, Dan.
A Yes. I -- well, I -- I didn't prepare for the Walen case today, and you're asking me questions about a report that I -- I haven't looked at in preparation for the deposition. But if it's in my

report I stand by it.
Q You haven't changed your opinion in that case since you issued this report?
A No, I have not.
Q And is it your opinion that North Dakota's legislature was responsive to Native American input in the creation of subdistricts in 4, but not elsewhere in the state?
A Yes. That -- that report did not deal with district 9. The focus was what was going on in -- at MHA, Fort Berthold, and district 4.
Q Now during the redistricting process other tribes besides MHA Nation requested that the legislature create subdistricts; isn't that right?
A Yes, I -- Standing Rock I think also requested a subdistrict. I'm sorry, David, is that what you asked me, were there other tribes?
Q Correct.
A Is that what you asked me, were there other --
Q Were there other tribes that requested the creation of subdistricts?
A Yes, I believe Standing Rock also requested a subdistrict.
Q What about Spirit Lake?

A Not to my knowledge.
Q I'm showing you what is marked as Exhibit 30. Do you see that?
(Exhibit 30 was marked for identification.)
A Yes.
Q Okay. And this is a portion of a transcript from the Interim Redistricting Committee, the hearing that took place on September 15, 2021, as reflected on this first page. Have you ever seen this transcript before?
A I don't think so.
Q Would you have watched the video of this proceeding at any time?
A I don't think I did.
Q I'm going to scroll down a little bit here, and show you where a Mr. Matt Campbell testified in front of this committee. Do you see that it's highlighted, I've gone through the effort to highlight it for you?
I'm not going to have you read this out loud, but I would like you to read through the highlighted text, and I can scroll down when you're ready. Can you see it okay?
A Yes.

Q You can just tell me when you're ready to scroll down.
A Oh, I'm -- I'm good. Yes, I'm -- I'm sorry, I didn't realize you were waiting, yeah. Go ahead.
Okay.
Q And I'll keep going down further.
A Okay.
Q And, let's see, I'm sorry, I'm not very good at that. I'll stop there.
A Okay. That's good.
Okay.
Q I think that might be about the end of it there.
A Okay. Okay.
Q And I think you testified earlier that you do know Mr. Campbell; correct?
A I -- I do.
Q He's an attorney with NARF?
A Correct.
Q And is it your understanding based on his testimony that he was representing Spirit Lake Nation and Standing Rock Sioux Tribe?
MS. KELTY: Objection, calls for speculation.
Dr. McCool just testified that he's not

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1 familiar with this transcript or this proceeding.
2 A Yeah, I -- I don't know the answer to that.
3 Q Mm-hmm. I'll just go back up to the top
4 here, I am looking at page 46 bottom and top of the
5 next page. And he says, "I have represented the
6 Spirit Lake Nation and the Standing Rock Sioux Tribe
7 in litigation before, I am consulting with them now so
8 I am happy to answer any questions you may have."
9 Do you see that part?
10 A Yes.
11 Q The Spirit Lake tribe is a party to this
12 current lawsuit, isn't it?
13 A Yes.
14 Q And during the redistricting process
15 multiple tribes, including Spirit Lake asked the
16 legislature to create subdistricts; isn't that true?
17 MS. KELTY: Objection.
18 Dr. McCool, again, has testified that
19 he's not familiar with this proceeding.
20 Calls for speculation.
21 A Yes, I -- I haven't seen this. The -- this
22 looks like Matt is exploring ideas about how to
23 improve representation for -- for both Standing Rock
24 and Spirit Lake.
25 Ultimately what Spirit Lake came up with was

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1 not a separate subdistrict there, but a combination
2 with Turtle Mountain in -- in a redrawn district 9.
3 That's their official position, and that's what they
4 represented in -- in the hearings that I looked at,
5 and in the correspondence that I site in my report.
6 Q Based on what you've just read in this
7 transcript here is it fair to say there was testimony
8 in the legislative record that the creation of
9 subdistricts can preserve a tribal communities of
10 interests, it takes account of shared interests,
11 cultural values, and economic values?
12 MS. KELTY: Same objection.
13 A So sometimes the creation of subdistricts
14 can accomplish that, yes, in -- in some cases. In
15 this case Spirit Lake decided not to have -- go with
16 a -- a separate subdistrict, and asked for a district
17 that combined Turtle Mountain and Spirit Lake.
18 Q There was testimony in front of this
19 committee that creation of subdistricts can provide
20 representation that's more responsive to tribal needs;
21 isn't that right?
22 A Under some conditions.
23 Q I assume you're aware of the "one person,
24 one vote" principle when it comes to voting law?
25 A I am.

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1 Q Because of that principle it's my
2 understanding that a subdistrict in North Dakota would
3 have to have about half the population of a full
4 district. Is that your understanding as well?
5 A Yes.
6 Q In light of that principle do you know how
7 many reservations there are in North Dakota where a
8 subdistrict could be created to provide Native
9 American voters with the opportunity to elect the
10 candidate of their choice?
11 A I -- I think at Spirit Lake there wasn't
12 enough.
13 Q Could be done with the Fort Berthold
14 Reservation and the Turtle Mountain Reservation,
15 though; right?
16 A Yes.
17 Q That is in fact what the North Dakota
18 Legislature did?
19 A Yes.
20 Q The testimony of Matt Campbell on September
21 15, 2021, I'll just scroll up to the top page of
22 Exhibit 30. Took place on September 15, 2021, you can
23 see that on the Exhibit?
24 MS. KELTY: Objection, still calls for
25 speculation.

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1 I'm just going to assert a standing
2 objection here to any questions about this proceeding.
3 MR. PHILLIPS: That's fine.
4 BY MR. PHILLIPS:
5 Q Do you see where it says September 15, 2021?
6 A Yes, I do. Mm-hmm.
7 Q And I'll represent to you that this was
8 during the time frame that the Redistricting Committee
9 was conducting hearings for purposes of redistricting.
10 Do you know when representatives of the
11 Turtle Mountain tribe and the Spirit Lake tribe first
12 informed the legislature that they were requesting the
13 creation of a single district that encompassed both
14 reservations?
15 A I cite their correspondence and their
16 testimony in my report. See, we could look at the
17 dates of -- of that correspondence and the testimony.
18 Q Does it sound correct if I would represent
19 to you that it was done by letter on November 1, 2021?
20 A I -- I don't know, I'd -- I'd have to go
21 back and look.
22 Q I'll just make that representation to you
23 for purposes of this deposition.
24 MS. KELTY: I'm going to object.
25 He answered he doesn't know and it's in

his report.
MR. PHILLIPS: That's fine. I'm representing that that's the date the letter is dated.
BY MR. PHILLIPS:
Q Do you know what date the Redistricting Committee submitted its final report to legislative management at the conclusion of its work?
A Not off the top of my head, no.
Q I'm going to pull up an Exhibit from a prior deposition. This is Exhibit 14 that was marked at the deposition of Dr. Hood, and I'm going to scroll down to page 19. Can you see that on the screen?
(Exhibit 14 was previously marked for identification.)
A Yes, can you make it a little bigger?
Q I can, absolutely. How's that?
A That's better, thank you.
Q Do you recognize this document?
A Well, I -- I can't see the header, so I -- I don't know.
Q I'm going to go up to the very top for you here. This is the first page of the Exhibit.
A Yeah, I don't -- I don't think I looked at that.
Q I'll represent to you that this was the

final report submitted by the Redistricting Committee to legislative management at the conclusion of their work.
I'm going to point out this sentence here, the last sentence in the section under the title "Redistricting Committee" on page 19. Do you see that?
A Yes.
Q It says, "They submitted this report to the legislative management on November 1, 2021."
A Yes.
Q Were you aware that the Spirit Lake tribe and the Turtle Mountain tribe notified the legislature of their request to have a district that combined both reservations on November 1st, the same day that the final report was issued?
MS. KELTY: Objection, calls for speculation.
A No, I -- I was not aware that they were the same date. It's before the legislation was passed. They made a proposal, and they made repeated entreaties for that proposal.
They're position struck me as being quite clear, that they wanted a combined district 9. That that was their preferred solution, I think they made

that quite clear.
Q Are you aware of any communication from anyone to the legislature before November 1, 2021, where it was made clear that somebody was seeking a district that combined both reservations, Turtle Mountain and Spirit Lake?
A I'd have to go back and -- and look at my sources and see if any of them are dated prior to that. We -- we can do that if -- if you like. I -- I don't have all the dates memorized of the -- the testimony that they gave and the correspondence then that -- that they sent, but it is in my report.
Q Okay. I'll scroll down to page 29 of this report. Do you see the section called "Native American Voters and the Creation of Subdistricts"?
A Yes.
Q Have you ever read this portion of the report before?
A I think I did read that. Yes, that -- that looks familiar. It's been a while since I looked to it, but that -- looked at it, but that does look familiar to me.
Q And this, is it fair to say, does through and lists various testimony that was heard by the Redistricting Committee during its work?

A Again, I -- I think I've seen this, and you're asking me a question, I -- I just don't think I know the answer to that.
Q Are you familiar with the terms "packing" and "cracking"?
A Yes, I am.
Q What do those terms mean to you?
A -- Virtual connectivity interruption -- where members of a minority group are packed into a single district to an extreme degree. And cracking is when members of a minority group are placed in different districts to reduce their voting power.
Q I recognize you didn't review the Walen case to prepare, but off of your memory do you have an opinion in the Walen case on whether the Native Americans are packed into subdistrict 4A?
A Again, I didn't prepare for Walen. I -- I don't believe I reached the conclusion that they were packed there.
Q Do you have any opinion in the Turtle Mountain case about whether Native Americans are packed into subdistrict 9A?
A Packing and cracking are terms of art, they're not legal terms, and there's no hard line as to when you go from a majority/minority district to a

1 packed district.
2 I think what's important is that that's not
3 what the tribes wanted. They didn't request that, and
4 they made it quite clear that what they wanted was a
5 single district 9 that included both reservations.
6 Q Is the state legislature required to do
7 exactly what's asked of by the tribes?
8 A No, they're required to abide by the law.
9 Q Is it your opinion that the percentage of
10 Native Americans residing in subdistrict 9A violates
11 the law?
12 A I -- I don't reach legal conclusions, that's
13 not my bailiwick. I just answer the research
14 question.
15 Q I just want to make sure I understand the
16 scope of that question and your work related to it. I
17 just want to know: Is it part of your opinion in the
18 answer to the research question that too many Native
19 Americans live in subdistrict 9A?
20 A I -- too many is a subjective term, and I'm
21 not prepared to answer that. That -- that's
22 conjecture.
23 Q So you don't express an opinion on that?
24 A No.
25 Q I just want to make sure I didn't miss

1 anything before I go on to Exhibit 31. This is your
2 report in the current case; correct?
3 (Exhibit 31 was marked for
4 identification.)
5 A Yes.
6 Q And we're going to walk through a few places
7 in this together, but I just want to overall have you
8 confirm whether this report contains all of the
9 opinions that you intend to express in this case?
10 A Yes.
11 Q Have you formed any new opinions that you
12 intend to express that were not yet incorporated into
13 this report?
14 A No.
15 Q In preparation for things I'm often old
16 school and I do things on paper, but we're doing this
17 depo on Zoom.
18 A Me -- me too, I'm the same way.
19 Q All right. I want to ask you various things
20 about portions of your report, and so this may jump a
21 bit around.
22 Please let me know if it's not clear to you
23 what portion of your report we're on, or if you
24 otherwise need clarification. I'd be happy to let you
25 read the report or get whatever clarification you need

1 before answering; okay?
2 A Okay.
3 Q Now I'm on Exhibit 31, and I'm going to
4 scroll down to page 3. And one thing I noticed here
5 in the middle it does say that you've been hired at
6 the rate $250 an hour; is that incorrect?
7 A That is incorrect. I should have changed
8 that to $200 an hour.
9 Q And looking further down on that page the
10 section 2 there it starts out with "The fundamental
11 research question addressed in this report." We spoke
12 about that earlier today, didn't we?
13 A Yes.
14 Q And is this a fair statement of the research
15 question that you were asked to address in this case?
16 A Yes.
17 Q Were you asked to address this specific
18 question, or did you formulate the language for this
19 question yourself?
20 A So the way I go about initiating an expert
21 witness report is attorneys contact me, and they say
22 that "We want you to write a report." I say "Fine,
23 I'm going to send you a research question. Let me
24 know if that's the job you want me to do."
25 And the research question has to be

1 objective, has to be answerable given my methodology
2 and the data at hand, and allow me to be objective,
3 and write a comprehensive and objective report. So it
4 has to be something that political science can do.
5 Q And is it your opinion that this research
6 question accomplishes that goal?
7 A Yes.
8 Q Is it fair to say your primary analysis in
9 addressing this research question is an analysis of
10 the senate factors?
11 A That is correct, yes.
12 Q What are the senate factors in your
13 understanding?
14 A Well, they're -- they're listed in my report
15 there.
16 Q And maybe not what each of them are, but in
17 general, why is there such a thing as senate factors?
18 A Well, I have a quote in there, I believe
19 from Professor Katz, as to the relevance the senate
20 factors and the indices of problematic voting
21 procedures that were pointed out in the senate report
22 accompanying the 1982 amendments to the voting rights
23 act.
24 Q And I'm going to scroll down a little bit
25 further here on the same page to the bottom where it

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1 talks about qualitative methods. Do you see that?
2 A Yes.
3 Q Bear in mind I just want to really get a
4 sense of your methodology and how you went about
5 forming your opinion.
6 So I recognize that you've kind of spelled
7 out in your report what qualitative methods are, but
8 in your own language today what are qualitative
9 methods that you've applied in forming your opinion?
10 A So qualitative methods are very well
11 established in social science, especially in the study
12 of public policy, which is what I do. And qualitative
13 methods is the preferred methodology for big picture
14 studies.
15 For studies that are both large
16 longitudinally, in other words, over time, and
17 latitudinally where there's a lot of different
18 variables. And I look for lots of different forms of
19 evidence and data, and I look for patterns of
20 agreement among all those different forms and sources
21 of -- of data and evidence.
22 And my conclusions are strongest when I see
23 consistency in the patterns of data from many
24 different sources. And that -- that's just classic
25 qualitative methodology in a nutshell.

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1 Q Scrolling down to page 5, this last sentence
2 on the page talks about those 183 written sources and
3 dozens of interviews. We talked about that earlier
4 today; correct?
5 A Yes.
6 Q Are all of those sources listed at the very
7 back end of your report?
8 A Yes.
9 Q And it says "dozens of interviews", does
10 that include all of the interviews from the Brakebill
11 case and the stuff that you did more recently?
12 A Yes, everything that's listed in the report.
13 Q And again, I'm going to jump a bit here.
14 I'm not going to ask you about everything in your
15 report, it's a lengthy report and there's only a few
16 things I want to get some clarification on.
17 A Okay.
18 Q Okay. I've jumped down to page 20, and in
19 that first full paragraph on there the third
20 sentence --
21 A Say, can you make that just a little bit
22 bigger?
23 Q Absolutely. How's that?
24 A Thank you. Yeah, that's good, thanks.
25 Q And I'm starting here where it says, "Among

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1 the people I interviewed the only people who claimed
2 that discrimination did not exist were Anglo people."
3 Do you see that?
4 A Yes.
5 Q And just for clarification, how are you
6 defining Anglo people?
7 A That's not a perfect term. I -- I don't --
8 I prefer not to prefer -- to reference people in the
9 negative. I -- I don't want to just call people
10 "non-Native", that -- that just doesn't sound like a
11 positive reference to me.
12 And sometimes it -- the census uses the term
13 "Whites", I think the term "Anglo" is more inclusive.
14 That's been used historically -- that's what the
15 historical literature tends to use, so that's the term
16 I use. But it means "non-Natives".
17 Q And the next sentence there says, "For
18 example, Barb Heddich, the former auditor for Sioux
19 County, told me that discrimination is not a problem
20 in North Dakota, and that no racial polarization
21 exists."
22 And then the next sentence says, "An Anglo
23 Sioux County commissioner told me that racial
24 polarization was a problem in other places in the
25 state and the country." Do you see that?

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1 A Yes.
2 Q So in total during all of your interviews
3 how many Anglo people did you interview?
4 MS. KELTY: Objection, calls for
5 speculation.
6 A I don't know, the -- the list is there in my
7 report. I could go through all of them and try to do
8 a race ID if you want me to.
9 Q Did you know the race of each person that
10 you were speaking to during those interviews?
11 A Usually. Not always, but usually. Of
12 course I knew the race if I met with them in person.
13 Q Now the sentence that you have in your
14 report says, "Among the people I interviewed the only
15 people who claimed that discrimination did not exist
16 were Anglo people." How can you make that statement
17 if you don't know the race of all of the people you
18 interviewed?
19 A Because there were very, very few people who
20 said there was no racism, and in the case of Mrs. --
21 Ms. Heddich and Mr. Silbernagel I knew their race
22 because they told me.
23 Q Are those two examples that you've included
24 there the only people who told you there was no
25 racism?

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A I'd have to go back and look at all my interview notes. It -- it says, "for example" so there might have been others, but again, I'd just have to go back to the interview notes and look.
Q If it was in your interview notes would that be in the Exhibits that we looked at earlier today?
A Yes.
Q Scrolling a little bit further down on the same page, kind of in the middle here, it says, "During the floor debate over house bill 1504 Representative Jones claimed that 'I have not seen racial animist that affects our elections. I don't believe it's here.'" Do you see that part?
A Yes.
Q Are you familiar with Representative Jones?
A Yes.
Q He was not supportive of the subdistricts in either 4 or 9; correct?
A I -- I believe that was his position.
Q And he's given testimony in favor of the plaintiffs in the Walen case; right?
A Oh, okay. I don't know. I didn't know that.
Q Okay. You never read the transcript of his testimony in the Walen case?

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A No, I don't think so.
Q I'm going to scroll down to page 27. There's a section here at the bottom that's titled "The Extent to which Voting in the Elections of the State or Political Subdivision is Racially Polarized." Do you see that?
A Uh-huh, yes.
Q Is your analysis on this, like all of the other issues, qualitative in nature and not quantitative?
A That -- that is correct. Now, keep in mind that qualitative doesn't mean I don't use numbers, it's not non-numerical.
The real difference between qualitative methodology and quantitative is quantitative uses measures of association, like a regression analysis, NRPV analysis, ecological inference. I don't use regression, but I use a lot of data.
My -- my report's chock full of data.
Q Did you analyze racially polarized voting specifically in and around the Turtle Mountain reservation and the Spirit Lake reservation?
A So I looked at the state as a whole, and that included information from Spirit Lake and Turtle Mountain. If we go to table 1, which is the next --

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next page, I believe.
Q Or two down on page 29?
A Yep, right. Yeah, thank you.
So you see that that table looks at county level data, and it includes Rolette County, and Benson County, home to Turtle Mountain and Spirit Lake.
Q Let's go down to page 30. Here in the middle of where the screen is it says, "Another aspect of elections that is indicative of racially polarized voting is when turnout suddenly increases when there is strongly preferred candidate by minority voters.
This happened in 2018 when Native voters turned out at record levels to support their preferred candidate for senate, Heidi Heitkamp, who also sponsored or cosponsored 17 bills and resolutions dealing with Native Americans." Do you see that?
A I do, yeah.
Q Specifically, what are your sources relating to turnout in 2018?
A I have a citation there, so I -- I have a direct quote.
Q "Heitkamp, 2019" that's your citation?
A -- 2018.
Q Oh, I see.
A Yeah.

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Q What is that source?
A We'd have to go to the references. Do you want me to look it up in the references?
Q Please, if you have a copy in front of you rather than have me scroll down?
A Yeah, I do right here.
Yeah, it's an article in the New York Times. "Meet the Native American Woman who Beat the Sponsor of North Dakota's ID Law."
Q Okay. That article in the New York Times, what is the reference to Heitkamp 2019?
A That's whether -- that's a reference to her sponsoring or cosponsoring 17 bills and resolutions dealing with Native Americans. I took that information off her website.
Q Okay. Any other sources for this turnout in 2018?
A No.
Q Scroll down to page 35. Number 5 there at the bottom, "The extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health which hinder their ability to participate effectively in the political process." Do you see that?
A I do.

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1 Q The factors that are considered in this
2 portion of your report, are they analyzed on a
3 statewide basis, or are they specific to the Turtle
4 Mountain and Spirit Lake areas?
5 A I have national level data for Native
6 Americas, I have state level data, and there's also
7 data specific to Rollette and Benson Counties.
8 Q What are your sources for the Rollette and
9 Benson County data?
10 A Almost all the data here comes from the U.S.
11 census, but there's also a variety of other sources.
12 We -- we can go through them if -- if you'd like.
13 There's national level data, there --
14 there's data from state level documents, there's data
15 from educational entities both state and national.
16 There's data from studies regarding the boarding
17 schools, there's data from the prison system in North
18 Dakota. I believe there's BIA data.
19 So once again, this is a reflection of a
20 qualitative methodology. These -- lots of different
21 sources of data and look for consistencies or patterns
22 throughout that data.
23 Q And just give me one second here.
24 A Sure.
25 Q I just want to get a sense. I understand

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1 there are many sources, and I don't want to go through
2 them all today. But I want to get a sense for the
3 various topics in here, for example, education.
4 The opinions and conclusions that you make
5 on education, do those apply broadly to the state of
6 North Dakota, or specifically to the counties at issue
7 in the case, or both?
8 A Both. So, for example, when I'm talking
9 about boarding schools, it says, "including schools on
10 the Turtle Mountain Chippewa Reservation and Spirit
11 Lake Reservation." And then there's a quote from an
12 extensive study done from boarding schools in the
13 Dakotas, and it's a very damaging and depressing
14 report as to the impact that boarding schools had on
15 Native people.
16 So the focus of that study, whose -- the
17 name of the professor who did it is hard to pronounce,
18 Eliza Madeira I think, or something of that sort, it's
19 in the next page. Her focus -- yeah, Eliza Madeira --
20 she's from Turtle Mountain.
21 And if you just read that quote you can see
22 how devastating that experience must have been, and --
23 and there's another report that just lately came out
24 on boarding schools, which is equally devastating.
25 So, yes, that includes Turtle Mountain and

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1 Spirit Lake, it's not just those two schools. This
2 happened extensively throughout the boarding school
3 system.
4 Q Thank you for the clarification. I
5 appreciate that.
6 A Sure.
7 Q I'm going to scroll down to page 58. And
8 sort of in the middle of the page here, "During the
9 redistricting process the Redistricting Committee was
10 asked repeatedly to come to Indian country for at
11 least one of their meetings." Do you see that?
12 A Yes.
13 Q Are you aware of whether the State and
14 Tribal Relations Committee [sic] went to Indian
15 country for redistricting hearings?
16 A It -- it didn't, that's in my report.
17 That's not the Redistricting Committee, they -- their
18 charge is not redistricting.
19 Q And I won't pull up the final report and try
20 to find it right now, but I'll represent to you that
21 the State and Tribal Relations Committee [sic]
22 reported back to the Redistricting Committee, and
23 those findings and testimony was incorporated into the
24 Redistricting Committee's findings.
25 A Okay. The -- the point I'm making here,

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1 David, is there were repeated requests for the
2 Redistricting Committee to come to Indian country, and
3 they didn't do it.
4 Q Are you aware of the general mission of the
5 State and Tribal Relations Committee [sic]?
6 A I believe I have a -- a quote about them in
7 there.
8 Q Do you know offhand about what their --
9 A I haven't memorized it, no. We could do a
10 Google search right now of the document and we could
11 pull up all -- all of the material on the State and
12 Tribal [sic] --
13 Q No, that's okay.
14 A Are you sure?
15 Q Is it your opinion that the state engaged in
16 wrongdoing by having the State and Tribal Relations
17 Committee [sic] hold hearings on reservation lands
18 instead of the Redistricting Committee?
19 MS. KELTY: Objection, mischaracterizes
20 the witness's testimony.
21 MR. PHILLIPS: I'm asking if he has
22 that opinion.
23 A Wrongdoing sounds like you're asking me if
24 they -- is that an ethical, a moral question, or a
25 legal question? I -- if it's any of the above I can't

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1 answer that.
2 Q Well, your report says that "during the
3 redistricting process the Redistricting Committee was
4 asked repeatedly to come to Indian Country for at
5 least one of their meetings." Why is that included in
6 your report?
7 A Because one of the senefactors [ph] is
8 responsiveness, and this is one of the ways in which I
9 think the state was not responsive. They were asked
10 repeatedly to come and hear directly from the Native
11 communities, and they didn't do it.
12 I think that's an example of lack of
13 responsiveness. So it helps me answer that particular
14 senefactor [ph].
15 Q And so it doesn't matter to you that the
16 state had multiple hearings held by the State and
17 Tribal Relations Committee [sic] on reservation lands
18 specifically for redistricting purposes and taking
19 testimony about those issues?
20 A I -- I mention that the State and Tribal
21 Committee [sic] came and -- came to Indian
22 reservations, but the Redistricting Committee never
23 did. That's what -- that's what this part of the
24 report is about.
25 And what I have there is considerable

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1 evidence of the Native American leaders asking the
2 Redistricting Committee to come to their reservations
3 and talk to people.
4 Q Are you familiar with the individual
5 legislators that sit on these two different
6 committees?
7 A Oh, I probably watched them in the hearings.
8 Q Do you have any knowledge about which
9 committee is in a better position to holding hearings
10 in tribal lands, and to take testimony from tribal
11 representatives?
12 MS. KELTY: Objection, calls for
13 speculation.
14 A Yeah, the -- that would be speculation,
15 yeah. That -- that's a subjective question for which
16 there's not an empirical answer.
17 Q Do you know how many redistricting hearings
18 were held on reservation lands during the
19 redistricting process?
20 A Redistricting hearings on reservations?
21 Q Yes.
22 A I don't believe there were any.
23 Q Not even by the State and Tribal Relations
24 Committee [sic]?
25 A Yes, I -- and if we scroll through that I

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1 think we'll see where I referenced that the State and
2 Tribal Committee [sic] did go to Indian reservations,
3 but the Redistricting Committee never did.
4 Q And State and Tribal [sic] held meetings on
5 the reservation relating to redistricting, though;
6 correct?
7 MS. KELTY: Objection, asked and
8 answered.
9 A Can we just go to the part of my report that
10 deals with this?
11 Q Sure. How can I find it most easily?
12 A Let me look. We're on page 58?
13 Q I can do a control+F if that helps?
14 A Well, I'm still looking. I was pretty sure
15 I had a reference to that in my report. I don't have
16 a -- I can't do a search?
17 Q I can do a search for you if you have a
18 search term that would be likely to get it.
19 A Yeah, can you just type in the State and
20 Tribal?
21 Q And I don't see that. It's possible I
22 misspoke and it's Tribal and State. Okay, there we
23 go.
24 Okay. Do you see my screen here on pages 50
25 and 51?

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1 A Yeah, I do. I do. We're on page 51?
2 Q Yep. And there's three results, I can skip
3 to the next one too.
4 A Yeah, what's the next one? Let's see.
5 Okay.
6 Q And then the last one is down here. I can
7 tell you, it's a long report, and so I may have missed
8 something. I don't recall your report mentioning the
9 hearings that took place by the Tribal and State
10 Relations Committee on reservations during the
11 redistricting process.
12 A I thought it was in my report, I'm still
13 looking.
14 Q In any event --
15 A Yeah. So the point of that part of my
16 report, of course, is that the redistricting committee
17 did not come to the reservations, and -- and there
18 were multiple requests.
19 So when we're talking about responsiveness,
20 I think that's a lack of responsiveness.
21 Q Does it matter to you in the formation of
22 your opinion that the Tribal and State Relations
23 Committee reported back to the Redistricting
24 Committee?
25 A Well, the part of my report deals with

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1 responsiveness, and they asked the Redistricting
2 Committee to come and they didn't do it.
3 Q Does it matter to you that the Redistricting
4 Committee considered and incorporated the testimony
5 that was heard by the Tribal and State Relations
6 Committee into its final report?
7 MS. KELTY: Objection, calls for
8 speculation.
9 A Yeah, that wouldn't change my conclusion
10 because the Redistricting Committee still failed to
11 show up at any Indian reservation despite repeated
12 requests.
13 MR. PHILLIPS: Can we take maybe a
14 small break off the record? I don't have much, if
15 anything, left, but I want to look through my notes.
16 Would that be okay with everyone, maybe five minutes?
17 THE WITNESS: Sure.
18 MS. KELTY: All right.
19 MR. PHILLIPS: Okay.
20 THE REPORTER: We are now off the
21 record at 11:23 a.m.
22 (Off the record.)
23 THE REPORTER: We are back on the
24 record at 11:32 a.m.
25 //

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1 BY MR. PHILLIPS:
2 Q Thanks for the short break there, Dan. I do
3 have a few more questions that I'd like to ask.
4 A Okay. I -- I might note that the report
5 that you put up, that's the reference to it there in
6 the references.
7 Q Say that again, I'm not sure I followed?
8 A Yeah. I -- I think you put up a hearing or
9 something earlier, and that's the reference to it that
10 you see with the -- you have tribal and -- yeah,
11 that's the reference to that.
12 Q I see.
13 A And the -- the other reference that I have
14 to the Tribal and State Relations Committee on page 51
15 just notes that there's no tribal members on the
16 Tribal and State Relations Committee. In 2022 they
17 were all Anglos.
18 Q Okay. I'm going to scroll to 51. Oh, I
19 see, the top of 51?
20 A Yes.
21 Q Thank you.
22 And I lost my page down here. The citation
23 was on page 79, this looks to be a link to a specific
24 meeting agenda, one meeting of Tribal and State
25 Relations.

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1 A Okay.
2 Q Is that correct?
3 A I -- I have to click on it to see.
4 Q That's okay. In your work on this case did
5 you read any communications, emails or other
6 communications between state officials and tribal
7 officials relating to appearance at the reservations
8 for hearings?
9 A Well, I have the -- I have several modes of
10 communication. Can we go to that section of my report
11 again?
12 Q Sure. What page should I jump to?
13 A Let's see. We're on responsiveness, page --
14 starting page 58. So you -- you can see a series of
15 different references there, which are communications
16 between tribal people and the state.
17 MS. KELTY: And Counsel, for the record
18 I think he's referring to page 59.
19 THE WITNESS: Yeah, 58 and 59.
20 MR. PHILLIPS: Got it.
21 THE WITNESS: Also --
22 BY MR. PHILLIPS:
23 Q I'm sorry I cut you off, go ahead.
24 A Page 58 and 59.
25 Q Now did you review any communications

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1 between state officials and tribal officials about
2 this issue that isn't reflected on these pages of your
3 report?
4 A I -- I don't think so. I -- I'm not privy
5 to state communications.
6 Q I'm going to go to page 68 of your report.
7 A Okay.
8 Q And towards the top here it says, "We can
9 compare the plan at HB1504 and the plan proposed by
10 the tribes on these criteria. Both plans create
11 contiguous districts with equal populations, the
12 differences arise in regard to geographic compactness
13 and protecting communities of interest."
14 Do you see that part?
15 A Yes.
16 Q Now your report goes on on the rest of this
17 page and the next to analyze that issue; is that fair?
18 A Yes, that's fair.
19 Q Please correct me if I'm wrong, it looks to
20 me like your citations in this portion are all to the
21 legislative record; is that correct?
22 A I -- I think Yankton -- Chairman Yankton and
23 Chairman Asher submitted material to the legislative
24 record. I believe -- I'd have to look up those in
25 my -- in my notes.

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1 Q And you'd mentioned earlier that your
2 qualitative analysis can sometimes involve numbers.
3 Just because it's qualitative doesn't mean it's
4 entirely without math.
5 Did this portion of your report involve any
6 sort of calculations?
7 A In -- in the --
8 Q Starting on page 68 where you're comparing
9 the plan that was enacted to the plan proposed by the
10 tribes?
11 A So I examined districts 6, 14, and 29, I
12 looked -- I looked at a map of the districts. And
13 looked to me like the proposed district 9 -- both
14 proposals were at least as compact, if not more so,
15 than some of the existing districts.
16 Now, compactness is a -- a somewhat
17 subjective term. There are almost 100 different
18 techniques or methodologies for measuring compactness,
19 almost 100. That -- that's how much disagreement
20 there is in the academic literature over measures of
21 compactness.
22 And the reason why there's so many different
23 measures, and I -- and I know Professor Hood picked 3
24 out of the nearly 100, is because it is highly
25 contextual. There are a number of other issues that

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1 have to be considered, so it's fairly complex.
2 Q And do you pick a particular method out of
3 that 100 or so options for compactness?
4 A No, I -- I just looked at some of the
5 surrounding districts, and in -- in my judgement the
6 proposed district is as compact as some of the
7 existing districts in North Dakota.
8 I mean, you -- you do have some pretty
9 squarely looking districts in North Dakota.
10 Q And it's based on just your visual
11 interpretation of the maps?
12 A Yes, which is not a bad way to -- one of the
13 techniques borrows the line from a famous Supreme
14 Court case like obscenity, "I know it when I see it."
15 I mean, that's how inexact it is under some of these
16 criteria.
17 So I -- but that -- that's not a bad
18 evaluation, "I know it when I see it."
19 Q And that criteria can be used when analyzing
20 compactness?
21 A That -- you're referring to that, you mean
22 visually?
23 Q Yes, "I know it when I see it" criteria.
24 A That's -- that's one of the nearly 100
25 different calculations or ways to approach the

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1 question of compactness in -- in the -- the jingle's
2 preconditions don't set up a sort of a compact -- a
3 contest for compactness. Whoever draws the most
4 compact district wins.
5 I think the criteria is is it compact,
6 not -- not compared to another plan, but is it
7 compact.
8 Q I'm going to scroll now to page 34 of your
9 report, and you see the sentence that starts "During
10 the legislative process Jamie Azure" and the sentence
11 continues?
12 A Yes.
13 Q I won't have you read it out loud but read
14 from that portion down to the sentence after the large
15 quote.
16 A Okay. Okay. That's a quote from Chairman
17 Azure's letter to the Redistricting Committee.
18 Q Have you finished reading that portion?
19 A Uh-huh.
20 Q Now in what you've written here you've cited
21 to testimony given by Chairman Azure and by Chairman
22 Yankton, and a presentation that was made to the
23 committee, it says, requesting that both reservations
24 be placed in the same district. Do you see that part?
25 A Yes.

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1 Q Do you know what date that presentation took
2 place on?
3 A Let's look it up. November 8th.
4 Q Do you know when the full house voted on
5 house 1504?
6 A I don't have that in -- in front of me.
7 Q I'll represent to you that it was November
8 9th, the day after. You also mention in this
9 paragraph that this proposal had been submitted to the
10 Redistricting Committee the prior week. Do you see
11 that?
12 A Yes.
13 Q Is that the letter that went out that we
14 talked about earlier today?
15 A This letter that I'm quoting from?
16 Q Well, yes, that I believe went out November
17 1st?
18 A I -- I am not sure what -- I believe the
19 quote that I have there is Chairman Azure testifying
20 and according to my information he had submitted that
21 proposal to the Redistricting Committee that prior
22 week. That's my understanding.
23 Q Do you know if it was submitted to the
24 Interim Redistricting Committee that held all of the
25 hearings on redistricting or if it was submitted to

the joint Redistricting Committee that was held immediately before the votes in the house and senate?

A I -- I don't know.

Q Were you aware of how many legislative hearings were held in the months before November 1, 2021?

A I think I -- I've -- I -- off the top of my head, no, I -- I can't give you a figure.

Q I'll represent to you that there were 11 hearings held prior to that date. Are you aware of this proposal being mentioned during any of those prior legislative hearings before November 1, 2021?

A The information that I have indicates that the letter was submitted the week prior to November 8th.

MR. PHILLIPS: I don't have any more questions for you.

THE WITNESS: Okay.

MR. PHILLIPS: Did you have any follow-up, Ms. Kelty?

MS. KELTY: No questions here.

MR. PHILLIPS: Okay. I assume he'll read and sign?

MS. KELTY: Yes, thanks.

MR. PHILLIPS: That's it.

THE WITNESS: Are we done?

THE REPORTER: All right. And I just wanted to verify, Mr. Phillips, you wanted the original transcript?

MR. PHILLIPS: Yes, please. Is there just a time frame in general for when it will be ready?

THE REPORTER: The standard time is ten days, but I can put in a request for expedited if you need it sooner.

MR. PHILLIPS: I don't think that will be necessary.

THE REPORTER: Okay.

And Ms. Kelty, did you want a copy as well?

MS. KELTY: Yes. Yeah, and we don't need a draft or a rush.

THE REPORTER: Okay, sounds good.

Then we are off the record at 11:45 a.m.

(Signature reserved.)

(Whereupon, at 11:45 a.m., the proceeding was concluded.)

CERTIFICATE OF DEPOSITION OFFICER

I, MARIAH BRYANT, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this a

MARIAH BRYANT
Notary Public in and for the
State of North Dakota

[X] Review of the transcript was requested.

CERTIFICATE OF TRANSCRIBER

I, SYDNEY KIBLER, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

SYDNEY KIBLER

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

March 8, 2023

To: Ms. Kelty

Case Name: Turtle Mountain Band Of Chippewa Indians, Et Al. v. Howe, Michael, In His Official Capacity As Secretary Of State Of North Dakota

Veritext Reference Number: 5755641

Witness: Daniel McCool , Ph.D. Deposition Date: 2/21/2023

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5755641
CASE NAME: Turtle Mountain Band Of Chippewa Indians, Et Al. v. Howe, Michael, In His Official Capacity As Secretary Of State Of North Dakota
DATE OF DEPOSITION: 2/21/2023
WITNESS' NAME: Daniel McCool , Ph.D.
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have made no changes to the testimony as transcribed by the court reporter.

_____ _____
Date Daniel McCool , Ph.D.
Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this _____ day of_____, 20____.

_____
Notary Public
_____
Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5755641
CASE NAME: Turtle Mountain Band Of Chippewa Indians, Et Al. v. Howe, Michael, In His Official Capacity As Secretary Of State Of North Dakota
DATE OF DEPOSITION: 2/21/2023
WITNESS' NAME: Daniel McCool , Ph.D.
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.
I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).
I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ _____
Date Daniel McCool , Ph.D.

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:
They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.
I have affixed my name and official seal
this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
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Date Daniel McCool , Ph.D.
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____ .

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Notary Public

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Commission Expiration Date

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, SPIRIT LAKE TRIBE, WESLEY DAVIS, ZACHARY KING AND COLLETTE BROWN. Plaintiffs, v. ALVIN JAEGER, in his official capacity as Secretary of State of North Dakota, Defendant.	**PLAINTIFF TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS ANSWER TO DEFENDANT'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFFS (SET NO. 1)** Case No. 3:22-cv-00022-PDW-ARS

Pursuant to Rules of the Federal Rules of Civil Procedure, Plaintiff TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS (the "Plaintiff" or "Turtle Mountain Band"), by and through their undersigned counsel, objects and responds as follows to Defendant's Interrogatories and Requests For Production Of Documents To Plaintiffs (Set No. 1):

GENERAL OBJECTIONS

Plaintiff makes the following general objections ("General Objections"), which are expressly incorporated into each of the Responses and Objections to Interrogatories below as though set forth in full without waiving these General Objections:

1. Plaintiff objects to the extent that to these Interrogatories seek to impose a burden or obligation beyond those required by North Dakota law, the North Dakota Rules of Civil Procedure, local rules of this Court, other applicable law, or any orders of this Court.
2. Plaintiff objects to the extent that these Interrogatories seek discovery of information or documents protected by the attorney-client privilege or work product doctrine, or concern actions taken, or materials prepared by or for counsel in anticipation of or for trial. Plaintiff

Exhibit B

does not intend to divulge any information protected by any applicable privilege or to waive any such privilege. Any such disclosure is inadvertent and shall not be deemed a waiver of any applicable privilege.

3. Plaintiff objects to the extent that these Interrogatories seek confidential or personal information of a third party, the disclosure of which is not permitted by reason of contract, privacy laws or other binding legal obligation.
4. Plaintiff objects to the Interrogatories to the extent they are overly broad, unduly burdensome or seek information that is not relevant to the claims or defenses asserted by the parties in this litigation nor proportional to the needs of the case or are otherwise outside the scope of discovery permitted by the North Dakota Rules of Civil Procedure.
5. Plaintiff objects to the Interrogatories to the extent that responding to them would cause annoyance, harassment, embarrassment, oppression, and/or undue burden, delay or expense.
6. Plaintiff objects to the Interrogatories to the extent that they seek information already available to Defendants or that can be obtained from some other source that is more convenient, less burdensome, or less expensive, or that is unreasonably cumulative or duplicative.
7. Plaintiff objects to the Interrogatories to the extent they do not state with required specificity and particularity what information is being sought, and are therefore vague, indefinite, ambiguous and not susceptible to easily discernible meaning.
8. Plaintiff objects to the Interrogatories to the extent they assume facts not in evidence or are premised on Defendants' characterization of applicable law, documents, or facts. Plaintiff's objections and responses do not constitute agreement with or admission of any of the allegations or statements contained in the Interrogatories.
9. Plaintiff objects to the Interrogatories to the extent they purport to require production of documents outside Plaintiff's possession, custody, or control. Some of the persons who may

have knowledge of the particular facts, events, or subject matters inquired in discovery requests cannot be located. There are others, not currently in the employ or under the control of the Plaintiff who cannot be compelled to assist in the preparation of responses to these requests.

10. To the extent these requests call for or may be read to encompass work performed by or information received from experts retained by Plaintiff in this or other litigation, Plaintiff object to such requests. Plaintiff will make appropriate disclosures regarding expert witnesses in accordance with applicable rules and orders.
11. Plaintiff objects to the Interrogatories to the extent that they call for a legal conclusion.
12. Plaintiff objects to the Interrogatories to the extent that they impinge on legislative privilege.
13. Plaintiff objects to the Interrogatories to the extent that they seek information not reasonably available at this time and/or because they are premature in that they seek information not yet available at this early stage of litigation.
14. Plaintiff objects to the Interrogatories to the extent that they necessitate the preparation of a compilation, abstract, audit or summary from documents or information in Plaintiff's possession because such preparation would be unduly burdensome and/or expensive.
15. Plaintiff expressly reserves the right to supplement or amend these responses if and when any additional information is discovered. These responses are made by Plaintiff subject to and without waiving Plaintiff's right to introduce, use, or refer to information that Plaintiff presently has, but has not yet had sufficient time to analyze and evaluate, as well as Plaintiff's right to amend. These responses are made without in any way waiving or intending to waive (i) any objections as to the competency, relevancy, materiality, privilege or admissibility as evidence, for any purpose, of any information provided in the response to the Interrogatories or the subject matter thereof; and (ii) the right to object on any ground to use the information

provided in response to the Interrogatories or subject matter thereof at any trial, hearing, or other stage of the proceedings.

16. Plaintiff reserves all rights, remedies and objections, including the right to object on any ground to any request for further responses to the Interrogatories

DISCOVERY RESPONSES

INTERROGATORIES

INTERROGATORY NO. 1: State the full name, address, present occupation, employer, Tax I.D. Number (if applicable), of the person(s) preparing and giving answers to these interrogatories and the requests for production of documents on your behalf.

ANSWER:

Full Name: Douglas Yankton Sr.
Address: P. O. Box 359 Ft. Totten, MD, 58335
Occupation: Tribal Chairman Spirit Lake Tribe
Employer: Turtle Mountain Band of Chippewa Indians

INTERROGATORY NO. 2: With respect to each of the Individual Plaintiffs, state the residential addresses during the past twenty years to present, including dates each Individual Plaintiff resided at each residence.

ANSWER: Interrogatory not applicable to Plaintiff Turtle Mountain Band.

INTERROGATORY NO. 3: With respect to each of the Individual Plaintiffs, if he/she has ever been known by any other name, or if the name has ever been spelled otherwise than at present, state each such other name or spelling and the approximate dates during which each was used.

ANSWER: Interrogatory not applicable to Plaintiff Turtle Mountain Band.

INTERROGATORY NO. 4: State the name and present address of each person who possesses or claims to possess knowledge or information of any fact or information relating to the allegations contained in the Subject Complaint, including but not limited to any information regarding Plaintiffs' allegations, Plaintiffs' alleged damages, and/or other relief sought by Plaintiffs, and state the substance of the knowledge or information.

ANSWER: Names previously provided to Defendant in Plaintiffs' initial and supplemental disclosures, which may be further supplemented as additional information becomes available.

INTERROGATORY NO. 5: If it will be claimed that at any time that Defendant Jaeger or his agents, representatives, and/or employees, have been heard to make any statements or admissions against interest concerning the issues in the Subject Complaint, please provide the substance of each such statement or admission, the time and place when made, the person who made it, the person to whom it was made, and state who was present when the statement or admission was made.

ANSWER: No such claim has been made. Based on the information presently available, it is not anticipated that such a claim will be made.

INTERROGATORY NO. 6: Please provide the name and address of any persons who have made any statements, written, oral, or otherwise, while being interviewed or questioned by you, your attorneys, agents, employees, or anyone else on your behalf in connection with the Subject Complaint or the allegations therein.

ANSWER: Subject to the General Objections, Plaintiff further objects to the extent Defendant requests privileged information. Plaintiff has no responsive information related to this Interrogatory.

INTERROGATORY NO. 7: Please describe in detail any and all posts, messages, status updates, web updates, or any other comments and/or information from any "networking" or social media, online or Internet services in which Plaintiffs participated, posted on, and/or placed an ad or content at any time relating to the allegations in the Subject Complaint.

ANSWER: See response to Request for Production No. 8 below, which contains related social media posts.

INTERROGATORY NO. 8: Has **any Plaintiff** at any time, filed any other claim and/or lawsuit for injunctive relief, damages for any personal injury, illness, disability, property damage, any other legal claim or any other damages whatsoever. If so, please provide the following information:

(a) When the claim and/or lawsuit was filed;
(b) the name of the court in which the claim and/or lawsuit was filed;
(c) the names of all the parties thereto;
(d) the civil number of said suit;
(e) the nature and extent of the injury, illness, disability or damages for which damages were sought;
(f) the circumstances in which the injury, illness, disability or damages occurred;
(g) the ultimate disposition of such suit, including the amount of any settlement or judgment; and
(h) if such action is still pending, the present status thereof.

ANSWER: In addition to the General Objections, Plaintiff objects that this request is unduly broad.

INTERROGATORY NO. 9: Has any other person and/or entity filed a claim and/or any other lawsuit **against any Plaintiff** at any time for injunctive relief, damages for any personal injury, illness, disability, property damage, any other legal claim or any other damages whatsoever. If so, please provide the following information:

(a) When the lawsuit was filed;
(b) the name of the court in which the lawsuit was filed;

(c) the names of all the parties thereto;
(d) the civil number of said lawsuit;
(e) the nature and extent of the injury, illness, disability or damages for which damages were sought;
(f) the circumstances in which the injury, illness, disability or damages occurred;
(g) the ultimate disposition of such suit, including the amount of any settlement or judgment; and
(h) if such action is still pending, state the present status thereof.

ANSWER: In addition to the General Objections, Plaintiff objects that this request is unduly broad.

INTERROGATORY NO. 10: Identify by name, address, employer, and field of expertise of each and every person whom you expect to call as an expert witness at trial, and also provide his or her field of expertise, the subject matter on which he or she is expected to testify, a summary of the grounds for each of the above stated opinions, and the title and date of any treatise, book, article, essay, or other writing by the expert relating to the subject matter on which he is expected to testify.

ANSWER: Expert witnesses and their curriculum vitae were provided by Plaintiffs to Defendant on November 30, 2022.

INTERROGATORY NO. 11: Please state the names, addresses, job titles or capacities, and places of employment of all persons known to you, your attorneys, agents, or employees, who may have any photographs, videos, recordings, transcripts, electronic data, etc., which were taken in regard to, relevant to, or relating to any allegations in the Subject Complaint, and/or which were taken with regard to the subject litigation?

ANSWER: Subject to the General Objections, Plaintiff has no responsive information related to this Interrogatory.

INTERROGATORY NO. 12: State with particularity the facts and circumstances Plaintiffs are relying on to support its allegations set forth in paragraph 126 in the *Subject Complaint*.

ANSWER: **Subject to the foregoing General Objections, Plaintiffs respond as follows. The Native American population in northeastern North Dakota is split across Legislative District 15 and subdistricts 9A and 9B. According to the 2020 U.S. Census, Native Americans account for 23.1% of the voting age population of Legislative District 15, 79.8% of the voting age population of subdistrict 9A, and 32.2% of the voting age population of subdistrict 9B. The configuration of the district borders results in the Native American population in the region being packed into subdistrict 9A with the remaining population cracked apart from the population in subdistrict 9A and further cracked between subdistrict 9B and District 15. For further information related to this Interrogatory, Plaintiffs refer Defendant to the expert report of Dr. Loren Collingwood and publicly available Census figures.**

INTERROGATORY NO. 13: State with particularity the facts and circumstances Plaintiffs are relying on to support its allegations set forth in paragraph 127 in the *Subject Complaint*.

ANSWER: **Subject to the foregoing General Objections, Plaintiffs respond as follows. The location of the district lines in northeastern North Dakota results in the dilution of Native Americans' voting strength. Under the enacted plan, Native American voters only have an opportunity to elect their candidates of choice to a single state house seat in subdistrict 9A. Under the prior plan, Native American voters in northeastern North Dakota were able to elect their candidates of choice in two state house seats and one state senate seat. The 2022 elections demonstrated that the enacted plan has diluted Native American voting strength in the region by packing subdistrict 9A and cracking the sizeable remaining Native American population in the area between subdistrict 9B and District 15. Alternative configurations exist that would remedy the packing and cracking, and reconstituted election result data subset to those alternative districts show that Native American voters in the area would have an equal opportunity to elect their candidates of choice to two state house seats**

and one state senate seat—as they did prior to the latest redistricting law. Moreover, the totality of the circumstances indicate that the enacted plan has a dilutive effect. For further information, Plaintiffs refer Defendant to the experts reports of Dr. Loren Collingwood, Dr. Daniel McCool, and Dr. Weston McCool.

INTERROGATORY NO. 14: State with particularity the facts and circumstances Plaintiffs are relying on to support its allegations set forth in paragraph 128 in the *Subject Complaint*.

ANSWER: Subject to the foregoing General Objections, Plaintiffs respond as follows. Plaintiffs refer Defendant to the expert report of Dr. Loren Collingwood and the accompanying map files, which set forth two proposed demonstration plans that would afford Native American voters in northeastern North Dakota an equal opportunity to elect their candidates of choice to the legislature.

INTERROGATORY NO. 15: State with particularity the facts and circumstances Plaintiffs are relying on to support its allegations set forth in paragraph 129 in the *Subject Complaint*.

ANSWER: Subject to the foregoing General Objections, Plaintiffs respond as follows. Plaintiffs refer Defendant to the expert report of Dr. Loren Collingwood, which sets forth voting pattern analysis for subdistricts 9A and 9B, District 9, and District 15, and shows that voting in the area is racially polarized, that Native American voters are politically cohesive, and that white bloc voting usually defeats Native voters' preferred candidates such that Native American voters in the region can only elect one state representative rather than two state representatives and one state senator.

INTERROGATORY NO. 16: State with particularity the facts and circumstances Plaintiffs are relying on to support its allegations set forth in paragraph 130 in the *Subject Complaint*.

ANSWER: Subject to the foregoing General Objections, Plaintiffs respond as follows. Plaintiffs refer Defendant to the expert reports of Dr. Loren Collingwood for racially polarized voting analysis, and the expert reports of Dr. Daniel McCool and Dr. Weston McCool for information related to the totality of circumstances analysis.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please produce copies of any and all written reports, memorandums, notes, emails, including non-privileged documents and communications related thereto, prepared by any expert or individual with knowledge regarding the facts and allegations outlined in the Subject Complaint.

RESPONSE: Subject to the foregoing General Objections, Plaintiffs further object to this request to the extent that it requests privileged information. Plaintiffs' expert reports were provided to Defendant on November 30, 2022. Plaintiff has no further responsive information related to this request.

REQUEST NO. 2: Please produce copies of the curriculum vitae or resume of each expert retained by you relating to this lawsuit, whether or not you intend to call that expert at the trial of this matter

RESPONSE: Expert witnesses and their curriculum vitae were provided by Plaintiffs to Defendant on November 30, 2022.

REQUEST NO. 3: Please produce copies of any and all documents which support your claims in this action.

RESPONSE: Subject to the General Objections, Plaintiffs further object to this request as unduly broad and vague, as failing to identify with particularity the requested

documents, and not proportional to discovery needs. Plaintiff refers to all disclosures and filings made by both parties in this case.

REQUEST NO. 4: Other than by Plaintiffs' attorneys, consider this a request for copies of any reports or memorandums prepared in conjunction with any investigations, examinations, tests, or other studies in relation to the allegations in Subject Complaint, in connection with any other matter at issue in this lawsuit, and/or Defendants' defenses in this lawsuit.

RESPONSE: Subject to the General Objections, Plaintiff has no responsive information to provide regarding this request.

REQUEST NO. 5: Consider this a request for photographic quality or digital copies of all photographs, videos, slides, audio recordings, transcripts, and the like, in the possession of Plaintiffs and/or its agents and/or representatives regarding or relating to the issues in the subject lawsuit.

RESPONSE: Subject to the General Objections, Plaintiff has no responsive documents to provide regarding this request beyond what has already been disclosed by Plaintiff, including publicly available recordings of the Redistricting Committee meetings and the Tribal and State Relations Committee meetings.

REQUEST NO. 6: Please provide copies of any and all documents supporting any and all damages and losses you claim you sustained as a result of the alleged wrongdoing as asserted in Subject Complaint.

RESPONSE: Subject to the General Objections, Plaintiff has no responsive documents to provide regarding this request. Plaintiffs allege violation of their civil rights and unlawful dilution of their voting strength under the Voting Rights Act.

REQUEST NO. 7: Please provide copies of all statements, written, oral, or otherwise, given and/or taken in relation to the allegations in and/or issues identified in the Subject Complaint and/or in connection with the issues concerned in this lawsuit.

RESPONSE:

Subject to the General Objections, Plaintiff further objects to the extent Defendant requests privileged information. See Privilege Log and documents Bates No. Plaintiffs_000005-000012 and 000022- 000030; and

- Indigenous nations sue North Dakota over 'sickening' gerrymandering | US voting rights | The Guardian
- Letter: A new day for Native American representation in North Dakota - InForum | Fargo, Moorhead and West Fargo news, weather and sports
- ND Redistricting (Turtle Mountain Band of Chippewa Indians v. Alvin Jaeger) - Native American Rights Fund (narf.org)

REQUEST NO. 8: Please produce copies of any and all posts, messages, status updates, web updates, or any other comments and/or information from any "networking" or social media, online or Internet services in which you have participated, posted and/or placed any ad or content at any time regarding the allegations in the Subject Complaint.

RESPONSE: Subject to the General Objections, see documents Bates No. Plaintiffs_000045 -000050.

REQUEST NO. 9: Please provide copies of any and all emails, texts, correspondence, audio recordings, or any other documents and/or communications by, between, to, or from any of the Plaintiffs regarding the allegations in the subject Complaint. This request includes documents and communications between Plaintiffs as well as with any third parties, including but not limited to representatives of the Native American Rights Fund and North Dakota Native Vote.

RESPONSE:

Overly broad, **Subject to the General Objections, Plaintiff further objects to the extent Defendant requests privileged information. See Privilege Log and documents Bates No. Plaintiffs_000005-000012 and 000022- 000030.**

REQUEST NO. 10: Please provide copies of any Summons and Complaint, Answer, any Court Orders, and any jury verdicts with regard to any other lawsuit filed against any Plaintiff at any time based upon any legal claim or cause of action. Be sure the documents provided include the following information:

(a) When suit was filed;
(b) the name of the court in which suit was filed;
(c) the names of all the parties thereto;
(d) the civil number of said suit;
(e) the nature and extent of the damages were sought;
(f) the circumstances in which the damages occurred;
(g) the ultimate disposition of such suit, including the amount of any settlement or judgment; and
(h) if such action is still pending, state the present status thereof.

RESPONSE: **In addition to the General Objections, Plaintiff objects that this request is unduly broad and vague.**

REQUEST NO. 11: Please provide copies of any Summons and Complaint, Answer, any Court Orders, and any jury verdicts with regard to any other lawsuit filed by any Plaintiff at any time based upon any legal claim or cause of action. Be sure the documents provided include the following information:

(a) When suit was filed;
(b) the name of the court in which suit was filed;
(c) the names of all the parties thereto;
(d) the civil number of said suit;
(e) the nature and extent of damages sought;
(f) the circumstances in which the damages occurred;
(g) the ultimate disposition of such suit, including the amount of any settlement or judgment; and
(h) if such action is still pending, the present status thereof.

RESPONSE: **In addition to the General Objections, Plaintiff objects that this request is unduly broad and vague.**

REQUEST NO. 12: Please produce copies of any and all documents reviewed, referred to, or relied upon in your responses to the Interrogatories herein.

RESPONSE: **The documents reviewed and relied upon are those that have been provided or referred to in Plaintiffs' responses to these interrogatories and requests for production, previously disclosed to Defendant, and those that have been filed with the Court in this case.**

REQUEST NO. 13: Please produce copies of any and all documents relating to paragraph 49 in the *Subject Complaint* including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication.

RESPONSE: **Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged communications. Plaintiffs will conduct a reasonable search and will produce responsive, nonprivileged documents, if any, in their custody and control.**

REQUEST NO. 14: Please provide a copy of the "proposed draft of a district encompassing their two Tribal Nations as well as a draft map" referenced in paragraph 52 of the *Subject Complaint*.

RESPONSE:

See ECF No. Doc. 001-2 Exhibit 1 to Complaint [TMBC v Jaeger] 2022.02.07.pdf

REQUEST NO. 15: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any

other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 61-66 claiming "Native American Voters Form a Geographically Compact Majority in an Alternative District with Two State House Seats".

RESPONSE: **Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents and communications. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs refer Defendant to the expert report of Dr. Collingwood.**

REQUEST NO. 16: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 67-69 claiming "Voting in the Region is Racially Polarized, with Native American Voters Demonstrating Political Cohesion".

RESPONSE: **Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs refer Defendant to the expert report of Dr. Loren Collingwood as well as publicly available Census Data and election results within the custody and control of Defendant. Plaintiffs will conduct a reasonable search and produce any additional responsive, nonprivileged documents and communications, if any, in their custody and control.**

REQUEST NO. 17: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any

other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 70-72 claiming "White Bloc Voting Usually Defeats Native American Preferred Candidates".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs refer Defendant to the expert report of Dr. Loren Collingwood as well as publicly available election results within the custody and control of Defendant. Plaintiffs will conduct a reasonable search and produce any additional responsive, nonprivileged documents and communications, if any, in their custody and control.

REQUEST NO. 18: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraph 73 claiming "The Totality of Circumstances Demonstrates that Native American Voters Have Less Opportunity than Other Members of the Electorate to Participate in the Electoral Process and Elect Representatives of Their Choice".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs further object that the request is not reasonably time limited. Plaintiffs refer Defendant to the expert reports of Dr. Collingwood, Dr. Daniel McCool, and Dr. Weston McCool as well as the documents and materials produced or cited therein.

REQUEST NO. 19: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 74-81 claiming "Exclusion of Native Americans from the 2021 Redistricting Process".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs refer Defendant to the expert report of Dr. Daniel McCool as well as to the legislative hearing videos cited in the Complaint. Plaintiffs will conduct a reasonable search and produce any additional responsive, nonprivileged documents and communications, if any, in their custody and control.

REQUEST NO. 20: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 82-95 claiming "Discrimination in Voting Against Native Americans".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs further object that the request is not reasonably time limited. Plaintiffs further object that the request for documents and communications related to prior, terminated litigation is not proportional to the needs of this case and not within the scope of discovery of Rule 26. Plaintiffs direct Defendant to the materials cited in paragraphs 82-95 of the Complaint and to any discovery materials produced by parties to the litigation related

to the voter ID law references in the relevant paragraphs, to which Defendant was a party and which are in Defendant's custody and control. Plaintiffs further direct Defendant to the expert report of Dr. Daniel McCool, as well as the materials cited therein.

REQUEST NO. 21: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 96-106 claiming "Historic Discrimination Against Native Americans in Other Areas".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs further object that the request is not reasonably time limited. Plaintiffs further direct Defendant to the expert report of Dr. Daniel McCool, as well as the materials cited therein.

REQUEST NO. 22: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 107-116 claiming "Modern Effects of Discrimination".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs further object that the request is not reasonably time limited. Plaintiffs direct Defendant to the materials cited in the relevant paragraphs of the complaint.

Plaintiffs further direct Defendant to the expert report of Dr. Daniel McCool, as well as the materials cited therein.

REQUEST NO. 23: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 117-123 claiming "Racially Polarized Voting and the Limited Success of Native American Candidates".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs further object that the request is not reasonably time limited. Plaintiffs refer Defendant to publicly available election results in his custody and control. Plaintiffs further refer Defendant to the expert report of Dr. Collingwood and the materials produced therewith.

Dated this 15th day of December, 2022

Respectfully submitted,

/s/ Michael S. Carter

/s/ Michael S. Carter
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on December 15, 2022, I served the foregoing document by email on Defendant's counsel of record.

/s/ Michael S. Carter
Michael S. Carter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, SPIRIT LAKE TRIBE, WESLEY DAVIS, ZACHARY KING AND COLLETTE BROWN. Plaintiffs, v. ALVIN JAEGER, in his official capacity as Secretary of State of North Dakota, Defendant.	**PLAINTIFF SPIRIT LAKE TRIBE'S ANSWER TO DEFENDANT'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFFS (SET NO. 1)** Case No. 3:22-cv-00022-PDW-ARS

Pursuant to Rules of the Federal Rules of Civil Procedure, Plaintiff SPIRIT LAKE TRIBE (the "Plaintiff"), by and through their undersigned counsel, objects and responds as follows to Defendant's Interrogatories and Requests For Production Of Documents To Plaintiffs (Set No. 1):

GENERAL OBJECTIONS

Plaintiff makes the following general objections ("General Objections"), which are expressly incorporated into each of the Responses and Objections to Interrogatories below as though set forth in full without waiving these General Objections:

1. Plaintiff objects to the extent that to these Interrogatories seek to impose a burden or obligation beyond those required by North Dakota law, the North Dakota Rules of Civil Procedure, local rules of this Court, other applicable law, or any orders of this Court.
2. Plaintiff objects to the extent that these Interrogatories seek discovery of information or documents protected by the attorney-client privilege or work product doctrine, or concern actions taken, or materials prepared by or for counsel in anticipation of or for trial. Plaintiff does not intend to divulge any information protected by any applicable privilege or to waive

Exhibit C

any such privilege. Any such disclosure is inadvertent and shall not be deemed a waiver of any applicable privilege.

3. Plaintiff objects to the extent that these Interrogatories seek confidential or personal information of a third party, the disclosure of which is not permitted by reason of contract, privacy laws or other binding legal obligation.
4. Plaintiff objects to the Interrogatories to the extent they are overly broad, unduly burdensome or seek information that is not relevant to the claims or defenses asserted by the parties in this litigation nor proportional to the needs of the case or are otherwise outside the scope of discovery permitted by the North Dakota Rules of Civil Procedure.
5. Plaintiff objects to the Interrogatories to the extent that responding to them would cause annoyance, harassment, embarrassment, oppression, and/or undue burden, delay or expense.
6. Plaintiff objects to the Interrogatories to the extent that they seek information already available to Defendants or that can be obtained from some other source that is more convenient, less burdensome, or less expensive, or that is unreasonably cumulative or duplicative.
7. Plaintiff objects to the Interrogatories to the extent they do not state with required specificity and particularity what information is being sought, and are therefore vague, indefinite, ambiguous and not susceptible to easily discernible meaning.
8. Plaintiff objects to the Interrogatories to the extent they assume facts not in evidence or are premised on Defendants' characterization of applicable law, documents, or facts. Plaintiff's objections and responses do not constitute agreement with or admission of any of the allegations or statements contained in the Interrogatories.
9. Plaintiff objects to the Interrogatories to the extent they purport to require production of documents outside Plaintiff's possession, custody, or control. Some of the persons who may have knowledge of the particular facts, events, or subject matters inquired in discovery requests cannot be located. There are others, not currently in the employ or under the control

of the Plaintiff who cannot be compelled to assist in the preparation of responses to these requests.

10. To the extent these requests call for or may be read to encompass work performed by or information received from experts retained by Plaintiff in this or other litigation, Plaintiff object to such requests. Plaintiff will make appropriate disclosures regarding expert witnesses in accordance with applicable rules and orders.
11. Plaintiff objects to the Interrogatories to the extent that they call for a legal conclusion.
12. Plaintiff objects to the Interrogatories to the extent that they impinge on legislative privilege.
13. Plaintiff objects to the Interrogatories to the extent that they seek information not reasonably available at this time and/or because they are premature in that they seek information not yet available at this early stage of litigation.
14. Plaintiff objects to the Interrogatories to the extent that they necessitate the preparation of a compilation, abstract, audit or summary from documents or information in Plaintiff's possession because such preparation would be unduly burdensome and/or expensive.
15. Plaintiff expressly reserves the right to supplement or amend these responses if and when any additional information is discovered. These responses are made by Plaintiff subject to and without waiving Plaintiff's right to introduce, use, or refer to information that Plaintiff presently has, but has not yet had sufficient time to analyze and evaluate, as well as Plaintiff's right to amend. These responses are made without in any way waiving or intending to waive (i) any objections as to the competency, relevancy, materiality, privilege or admissibility as evidence, for any purpose, of any information provided in the response to the Interrogatories or the subject matter thereof; and (ii) the right to object on any ground to use the information provided in response to the Interrogatories or subject matter thereof at any trial, hearing, or other stage of the proceedings.

16. Plaintiff reserves all rights, remedies and objections, including the right to object on any ground to any request for further responses to the Interrogatories

DISCOVERY RESPONSES

INTERROGATORIES

INTERROGATORY NO. 1: State the full name, address, present occupation, employer, Tax I.D. Number (if applicable), of the person(s) preparing and giving answers to these interrogatories and the requests for production of documents on your behalf.

ANSWER:

Full Name: Douglas Yankton Sr.
Address: P. O. Box 359 Ft. Totten, MD, 58335
Occupation: Tribal Chairman Spirit Lake Tribe
Employer: Spirit Lake Tribe

INTERROGATORY NO. 2: With respect to each of the Individual Plaintiffs, state the residential addresses during the past twenty years to present, including dates each Individual Plaintiff resided at each residence.

ANSWER: Interrogatory not applicable to Plaintiff Spirit Lake Tribe.

INTERROGATORY NO. 3: With respect to each of the Individual Plaintiffs, if he/she has ever been known by any other name, or if the name has ever been spelled otherwise than at present, state each such other name or spelling and the approximate dates during which each was used.

ANSWER: Interrogatory not applicable to Plaintiff Spirit Lake Tribe.

INTERROGATORY NO. 4: State the name and present address of each person who possesses or claims to possess knowledge or information of any fact or information relating to the allegations contained in the Subject Complaint, including but not limited to any information

regarding Plaintiffs' allegations, Plaintiffs' alleged damages, and/or other relief sought by Plaintiffs, and state the substance of the knowledge or information.

ANSWER: Names previously provided to Defendant in Plaintiffs' initial and supplemental disclosures, which may be further supplemented as additional information becomes available.

INTERROGATORY NO. 5: If it will be claimed that at any time that Defendant Jaeger or his agents, representatives, and/or employees, have been heard to make any statements or admissions against interest concerning the issues in the Subject Complaint, please provide the substance of each such statement or admission, the time and place when made, the person who made it, the person to whom it was made, and state who was present when the statement or admission was made.

ANSWER: No such claim has been made. Based on the information presently available, it is not anticipated that such a claim will be made.

INTERROGATORY NO. 6: Please provide the name and address of any persons who have made any statements, written, oral, or otherwise, while being interviewed or questioned by you, your attorneys, agents, employees, or anyone else on your behalf in connection with the Subject Complaint or the allegations therein.

ANSWER: Subject to the General Objections, Plaintiff further objects to the extent Defendant requests privileged information. Plaintiff has no responsive information related to this Interrogatory.

INTERROGATORY NO. 7: Please describe in detail any and all posts, messages, status updates, web updates, or any other comments and/or information from any "networking" or social

media, online or Internet services in which Plaintiffs participated, posted on, and/or placed an ad or content at any time relating to the allegations in the Subject Complaint.

ANSWER: Plaintiff has no responsive information related to this Interrogatory.

INTERROGATORY NO. 8: Has **any Plaintiff** at any time, filed any other claim and/or lawsuit for injunctive relief, damages for any personal injury, illness, disability, property damage, any other legal claim or any other damages whatsoever. If so, please provide the following information:

(a) When the claim and/or lawsuit was filed;
(b) the name of the court in which the claim and/or lawsuit was filed;
(c) the names of all the parties thereto;
(d) the civil number of said suit;
(e) the nature and extent of the injury, illness, disability or damages for which damages were sought;
(f) the circumstances in which the injury, illness, disability or damages occurred;
(g) the ultimate disposition of such suit, including the amount of any settlement or judgment; and
(h) if such action is still pending, the present status thereof.

ANSWER: In addition to the General Objections, Plaintiff objects that this request is unduly broad. Plaintiff has been a party to countless cases in tribal, federal and state court. Election and voting related cases are provided below, for which their respective court documents are publicly available:

- Spirit Lake Tribe, et. al. v. Jaeger (No. 1:18-cv-222).
- Spirit Lake Tribe v. Benson County (No. 3:22-cv-00161)
- Spirit Lake Tribe v. Benson County (No. 2:10-cv-095)

INTERROGATORY NO. 9: Has any other person and/or entity filed a claim and/or any other lawsuit **against any Plaintiff** at any time for injunctive relief, damages for any personal injury, illness, disability, property damage, any other legal claim or any other damages whatsoever. If so, please provide the following information:

(a) When the lawsuit was filed;

(b) the name of the court in which the lawsuit was filed;
(c) the names of all the parties thereto;
(d) the civil number of said lawsuit;
(e) the nature and extent of the injury, illness, disability or damages for which damages were sought;
(f) the circumstances in which the injury, illness, disability or damages occurred;
(g) the ultimate disposition of such suit, including the amount of any settlement or judgment; and
(h) if such action is still pending, state the present status thereof.

ANSWER: In addition to the General Objections, Plaintiff objects that this request is unduly broad and vague.

INTERROGATORY NO. 10: Identify by name, address, employer, and field of expertise of each and every person whom you expect to call as an expert witness at trial, and also provide his or her field of expertise, the subject matter on which he or she is expected to testify, a summary of the grounds for each of the above stated opinions, and the title and date of any treatise, book, article, essay, or other writing by the expert relating to the subject matter on which he is expected to testify.

ANSWER: Expert witnesses and their curriculum vitae were provided by Plaintiffs to Defendant on November 30, 2022.

INTERROGATORY NO. 11: Please state the names, addresses, job titles or capacities, and places of employment of all persons known to you, your attorneys, agents, or employees, who may have any photographs, videos, recordings, transcripts, electronic data, etc., which were taken in regard to, relevant to, or relating to any allegations in the Subject Complaint, and/or which were taken with regard to the subject litigation?

ANSWER: Subject to the General Objections, Plaintiff has no responsive information related to this Interrogatory.

INTERROGATORY NO. 12: State with particularity the facts and circumstances Plaintiffs are relying on to support its allegations set forth in paragraph 126 in the *Subject Complaint*.

ANSWER: **Subject to the foregoing General Objections, Plaintiffs respond as follows. The Native American population in northeastern North Dakota is split across Legislative District 15 and subdistricts 9A and 9B. According to the 2020 U.S. Census, Native Americans account for 23.1% of the voting age population of Legislative District 15, 79.8% of the voting age population of subdistrict 9A, and 32.2% of the voting age population of subdistrict 9B. The configuration of the district borders results in the Native American population in the region being packed into subdistrict 9A with the remaining population cracked apart from the population in subdistrict 9A and further cracked between subdistrict 9B and District 15. For further information related to this Interrogatory, Plaintiffs refer Defendant to the expert report of Dr. Loren Collingwood and publicly available Census figures.**

INTERROGATORY NO. 13: State with particularity the facts and circumstances Plaintiffs are relying on to support its allegations set forth in paragraph 127 in the *Subject Complaint*.

ANSWER: **Subject to the foregoing General Objections, Plaintiffs respond as follows. The location of the district lines in northeastern North Dakota results in the dilution of Native Americans' voting strength. Under the enacted plan, Native American voters only have an opportunity to elect their candidates of choice to a single state house seat in subdistrict 9A. Under the prior plan, Native American voters in northeastern North Dakota were able to elect their candidates of choice in two state house seats and one state senate seat. The 2022 elections demonstrated that the enacted plan has diluted Native American voting strength in the region by packing subdistrict 9A and cracking the sizeable remaining Native American population in the area between subdistrict 9B and District 15. Alternative configurations exist that would remedy the packing and cracking, and reconstituted election result data subset to those alternative districts show that Native American voters in the area**

would have an equal opportunity to elect their candidates of choice to two state house seats and one state senate seat—as they did prior to the latest redistricting law. Moreover, the totality of the circumstances indicate that the enacted plan has a dilutive effect. For further information, Plaintiffs refer Defendant to the experts reports of Dr. Loren Collingwood, Dr. Daniel McCool, and Dr. Weston McCool.

INTERROGATORY NO. 14: State with particularity the facts and circumstances Plaintiffs are relying on to support its allegations set forth in paragraph 128 in the *Subject Complaint*.

ANSWER: Subject to the foregoing General Objections, Plaintiffs respond as follows. Plaintiffs refer Defendant to the expert report of Dr. Loren Collingwood and the accompanying map files, which set forth two proposed demonstration plans that would afford Native American voters in northeastern North Dakota an equal opportunity to elect their candidates of choice to the legislature.

INTERROGATORY NO. 15: State with particularity the facts and circumstances Plaintiffs are relying on to support its allegations set forth in paragraph 129 in the *Subject Complaint*.

ANSWER: Subject to the foregoing General Objections, Plaintiffs respond as follows. Plaintiffs refer Defendant to the expert report of Dr. Loren Collingwood, which sets forth voting pattern analysis for subdistricts 9A and 9B, District 9, and District 15, and shows that voting in the area is racially polarized, that Native American voters are politically cohesive, and that white bloc voting usually defeats Native voters' preferred candidates such that Native American voters in the region can only elect one state representative rather than two state representatives and one state senator.

INTERROGATORY NO. 16: State with particularity the facts and circumstances Plaintiffs are relying on to support its allegations set forth in paragraph 130 in the *Subject Complaint*.

ANSWER: **Subject to the foregoing General Objections, Plaintiffs respond as follows. Plaintiffs refer Defendant to the expert reports of Dr. Loren Collingwood for racially polarized voting analysis, and the expert reports of Dr. Daniel McCool and Dr. Weston McCool for information related to the totality of circumstances analysis.**

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please produce copies of any and all written reports, memorandums, notes, emails, including non-privileged documents and communications related thereto, prepared by any expert or individual with knowledge regarding the facts and allegations outlined in the Subject Complaint.

RESPONSE: **Subject to the foregoing General Objections, Plaintiffs further object to this request to the extent that it requests privileged information. Plaintiffs' expert reports were provided to Defendant on November 30, 2022. Plaintiff has no further responsive information related to this request.**

REQUEST NO. 2: Please produce copies of the curriculum vitae or resume of each expert retained by you relating to this lawsuit, whether or not you intend to call that expert at the trial of this matter.

RESPONSE: **Expert witnesses and their curriculum vitae were provided by Plaintiffs to Defendant on November 30, 2022.**

REQUEST NO. 3: Please produce copies of any and all documents which support your claims in this action.

RESPONSE: Subject to the General Objections, Plaintiffs further object to this request as unduly broad and vague, as failing to identify with particularity the requested documents, and not proportional to discovery needs. Plaintiff refers to all disclosures and filings made by both parties in this case.

REQUEST NO. 4: Other than by Plaintiffs' attorneys, consider this a request for copies of any reports or memorandums prepared in conjunction with any investigations, examinations, tests, or other studies in relation to the allegations in Subject Complaint, in connection with any other matter at issue in this lawsuit, and/or Defendants' defenses in this lawsuit.

RESPONSE: Subject to the General Objections, Plaintiff has no responsive information to provide regarding this request.

REQUEST NO. 5: Consider this a request for photographic quality or digital copies of all photographs, videos, slides, audio recordings, transcripts, and the like, in the possession of Plaintiffs and/or its agents and/or representatives regarding or relating to the issues in the subject lawsuit.

RESPONSE: Subject to the General Objections, Plaintiff has no responsive documents to provide regarding this request beyond what has already been disclosed by Plaintiff, including publicly available recordings of the Redistricting Committee meetings and the Tribal and State Relations Committee meetings.

REQUEST NO. 6: Please provide copies of any and all documents supporting any and all damages and losses you claim you sustained as a result of the alleged wrongdoing as asserted in Subject Complaint.

RESPONSE: Subject to the General Objections, Plaintiff has no responsive

documents to provide regarding this request. Plaintiffs allege violation of their civil rights and unlawful dilution of their voting strength under the Voting Rights Act.

REQUEST NO. 7: Please provide copies of all statements, written, oral, or otherwise, given and/or taken in relation to the allegations in and/or issues identified in the Subject Complaint and/or in connection with the issues concerned in this lawsuit.

RESPONSE:

Subject to the General Objections, Plaintiff further objects to the extent Defendant requests privileged information. See Privilege Log documents Bates No. Plaintiffs_ 000013-000021, 000031 – 000033, 000036-000038 and 000039-000043;

- Indigenous nations sue North Dakota over 'sickening' gerrymandering | US voting rights | The Guardian
- Letter: A new day for Native American representation in North Dakota - InForum | Fargo, Moorhead and West Fargo news, weather and sports
- ND Redistricting (Turtle Mountain Band of Chippewa Indians v. Alvin Jaeger) - Native American Rights Fund (narf.org)

REQUEST NO. 8: Please produce copies of any and all posts, messages, status updates, web updates, or any other comments and/or information from any "networking" or social media, online or Internet services in which you have participated, posted and/or placed any ad or content at any time regarding the allegations in the Subject Complaint.

RESPONSE: Subject to the General Objections, Plaintiff has no responsive information to provide regarding this request.

REQUEST NO. 9: Please provide copies of any and all emails, texts, correspondence, audio recordings, or any other documents and/or communications by, between, to, or from any of

the Plaintiffs regarding the allegations in the subject Complaint. This request includes documents and communications between Plaintiffs as well as with any third parties, including but not limited to representatives of the Native American Rights Fund and North Dakota Native Vote.

RESPONSE:

Subject to the General Objections, Plaintiff further objects to the extent Defendant requests privileged information. See Privilege Log and documents Bates No. Plaintiffs_ 000013-000021, 000031 – 000033, 000036-000038 and 000039 -000043.

REQUEST NO. 10: Please provide copies of any Summons and Complaint, Answer, any Court Orders, and any jury verdicts with regard to any other lawsuit filed against any Plaintiff at any time based upon any legal claim or cause of action. Be sure the documents provided include the following information:

(a) When suit was filed;
(b) the name of the court in which suit was filed;
(c) the names of all the parties thereto;
(d) the civil number of said suit;
(e) the nature and extent of the damages were sought;
(f) the circumstances in which the damages occurred;
(g) the ultimate disposition of such suit, including the amount of any settlement or judgment; and
(h) if such action is still pending, state the present status thereof.

RESPONSE: In addition to the General Objections, Plaintiff objects that this request is unduly broad and vague. Plaintiff incorporates here the Response to Interrogatory 8.

REQUEST NO. 11: Please provide copies of any Summons and Complaint, Answer, any Court Orders, and any jury verdicts with regard to any other lawsuit filed by any Plaintiff at any time based upon any legal claim or cause of action. Be sure the documents provided include the following information:

(a) When suit was filed;
(b) the name of the court in which suit was filed;

(c) the names of all the parties thereto;
(d) the civil number of said suit;
(e) the nature and extent of damages sought;
(f) the circumstances in which the damages occurred;
(g) the ultimate disposition of such suit, including the amount of any settlement or judgment; and
(h) if such action is still pending, the present status thereof.

RESPONSE: In addition to the General Objections, Plaintiff objects that this request is unduly broad and vague.

REQUEST NO. 12: Please produce copies of any and all documents reviewed, referred to, or relied upon in your responses to the Interrogatories herein.

RESPONSE: The documents reviewed and relied upon are those that have been provided or referred to in Plaintiffs' responses to these interrogatories and requests for production, previously disclosed to Defendant, and those that have been filed with the Court in this case.

REQUEST NO. 13: Please produce copies of any and all documents relating to paragraph 49 in the *Subject Complaint* including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication.

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged communications. Plaintiffs will conduct a reasonable search and will produce responsive, nonprivileged documents, if any, in their custody and control.

REQUEST NO. 14: Please provide a copy of the "proposed draft of a district encompassing their two Tribal Nations as well as a draft map" referenced in paragraph 52 of the *Subject Complaint*.

RESPONSE:

See ECF No. Doc. 001-2 Exhibit 1 to Complaint [TMBC v Jaeger] 2022.02.07.pdf

REQUEST NO. 15: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 61-66 claiming "Native American Voters Form a Geographically Compact Majority in an Alternative District with Two State House Seats".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents and communications. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs refer Defendant to the expert report of Dr. Collingwood.

REQUEST NO. 16: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 67-69 claiming "Voting in the Region is Racially Polarized, with Native American Voters Demonstrating Political Cohesion".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs refer Defendant to the expert report of Dr. Loren Collingwood as well as publicly available Census Data and election results within the custody and control of Defendant. Plaintiffs will conduct a reasonable search and produce any

additional responsive, nonprivileged documents and communications, if any, in their custody and control.

REQUEST NO. 17: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 70-72 claiming "White Bloc Voting Usually Defeats Native American Preferred Candidates".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs refer Defendant to the expert report of Dr. Loren Collingwood as well as publicly available election results within the custody and control of Defendant. Plaintiffs will conduct a reasonable search and produce any additional responsive, nonprivileged documents and communications, if any, in their custody and control.

REQUEST NO. 18: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraph 73 claiming "The Totality of Circumstances Demonstrates that Native American Voters Have Less Opportunity than Other Members of the Electorate to Participate in the Electoral Process and Elect Representatives of Their Choice".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object

to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs further object that the request is not reasonably time limited. Plaintiffs refer Defendant to the expert reports of Dr. Collingwood, Dr. Daniel McCool, and Dr. Weston McCool as well as the documents and materials produced or cited therein.

REQUEST NO. 19: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 74-81 claiming "Exclusion of Native Americans from the 2021 Redistricting Process".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs refer Defendant to the expert report of Dr. Daniel McCool as well as to the legislative hearing videos cited in the Complaint. Plaintiffs will conduct a reasonable search and produce any additional responsive, nonprivileged documents and communications, if any, in their custody and control.

REQUEST NO. 20: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 82-95 claiming "Discrimination in Voting Against Native Americans".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs further object that the request is not reasonably time limited.

Plaintiffs further object that the request for documents and communications related to prior, terminated litigation is not proportional to the needs of this case and not within the scope of discovery of Rule 26. Plaintiffs direct Defendant to the materials cited in paragraphs 82-95 of the Complaint and to any discovery materials produced by parties to the litigation related to the voter ID law references in the relevant paragraphs, to which Defendant was a party and which are in Defendant's custody and control. Plaintiffs further direct Defendant to the expert report of Dr. Daniel McCool, as well as the materials cited therein.

REQUEST NO. 21: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 96-106 claiming "Historic Discrimination Against Native Americans in Other Areas".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs further object that the request is not reasonably time limited. Plaintiffs further direct Defendant to the expert report of Dr. Daniel McCool, as well as the materials cited therein.

REQUEST NO. 22: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 107-116 claiming "Modern Effects of Discrimination".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs

further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs further object that the request is not reasonably time limited. Plaintiffs direct Defendant to the materials cited in the relevant paragraphs of the complaint. Plaintiffs further direct Defendant to the expert report of Dr. Daniel McCool, as well as the materials cited therein.

REQUEST NO. 23: Please produce copies of any and all documents including but not limited to any written communications including emails, text messages, instant messaging, or any other forms of communication and documents in relation to the allegations in the *Subject Complaint* at paragraphs 117-123 claiming "Racially Polarized Voting and the Limited Success of Native American Candidates".

RESPONSE: Plaintiffs incorporate the General Objections set forth above. Plaintiffs further object to the extent this Request seeks privileged documents. Plaintiffs further object to the Request as unduly broad and vague, and as failing to identify with particularity the requested documents. Plaintiffs further object that the request is not reasonably time limited. Plaintiffs refer Defendant to publicly available election results in his custody and control. Plaintiffs further refer Defendant to the expert report of Dr. Collingwood and the materials produced therewith.

Dated this 15th day of December, 2022

Respectfully submitted,

/s/ Michael S. Carter

/s/ Michael S. Carter
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CERTIFICATE OF SERVICE

I certify that on December 15, 2022, I served the foregoing document by email on Defendant's counsel of record.

/s/ Michael S. Carter
Michael S. Carter

Laurie Stirling

From: Matthew Campbell
Sent: Wednesday, April 14, 2021 5:40 PM
To: Jamie S. Azure
Cc: Nicole Donaghy; Cheryl Ann Kary; Samantha Kelty; Jacqueline De Leon; Chloe Cotton
Subject: Redistricting Presentation at UTTC
Attachments: 2021 North Dakota Redistricting Guide (00220153x9D7F5).pdf

Chairman Azure,

It is great to reach out to you again. NARF has kicked off our first ever Indian Country redistricting project and we will be working closely with North Dakota Native Vote and Sacred Pipe in North Dakota on our redistricting efforts. We are really just getting started, and of course we want to touch base with the North Dakota tribes about redistricting as you all are instrumental to this discussion and the process.

Our project will focus on several things – educating Tribal leaders and the public, assisting through the redistricting process, and helping to ensure that Native people have equal representation. Attached you will see a North Dakota Redistricting Guide that provides a lot of great information about the process in North Dakota. You can also see more general information on our website at vote.narf.org/redistricting/.

We were hoping to do an introductory presentation for Tribal leaders at the next United Tribes meeting. Can we work with you to get on the agenda for the next meeting?

I hope you and your family are doing well, and I look forward to hearing back from you.

Regards,

Matthew Campbell
Staff Attorney
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Boulder, CO 80302-6296
mcampbell@narf.org
P:303-447-8760
Direct: 720-647-9636
F:303-443-7776

Exhibit D

THIS MESSAGE IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL, PRIVILEGED, AND EXEMPT FROM DISCLOSURE. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE DELETE IT FROM YOUR SYSTEM WITHOUT COPYING, PRINTING OR FORWARDING IT, AND NOTIFY US BY REPLY EMAIL OR BY CALLING 303-447-8760. THANK YOU.

REDISTRICTING IN INDIAN COUNTRY

NORTH DAKOTA

#ShapingNativeFutures

Published by The Native American Rights Fund
and North Dakota Native Vote

REDISTRICTING IN INDIAN COUNTRY: NORTH DAKOTA

WHAT IS REDISTRICTING?

Redistricting is the redrawing of the geographic lines that divide districts for state legislatures, county boards of commissioners, city councils, school boards and other local bodies. It is required by the U.S. Constitution to account for population shifts within the state. It takes place every ten years, after the United States conducts the decennial Census to determine how many people live in the United States and its territories. This guide is focused on redistricting in North Dakota, specifically redistricting of the state legislative districts.

By redrawing district lines every ten years, redistricting takes into account where populations have increased or decreased. The main goal of redistricting is to ensure that all districts have approximately the same number of people. This protects the constitutional right to have a vote that is equal to any other person's vote.

It is crucial that Native Americans have an equal voice in redistricting to protect their ability to elect candidates of their choice. How can your Native community participate in this process? How can you ensure that your community's political power is protected? This guide explains the redistricting process and how we can all participate.

WHY IS REDISTRICTING IMPORTANT?

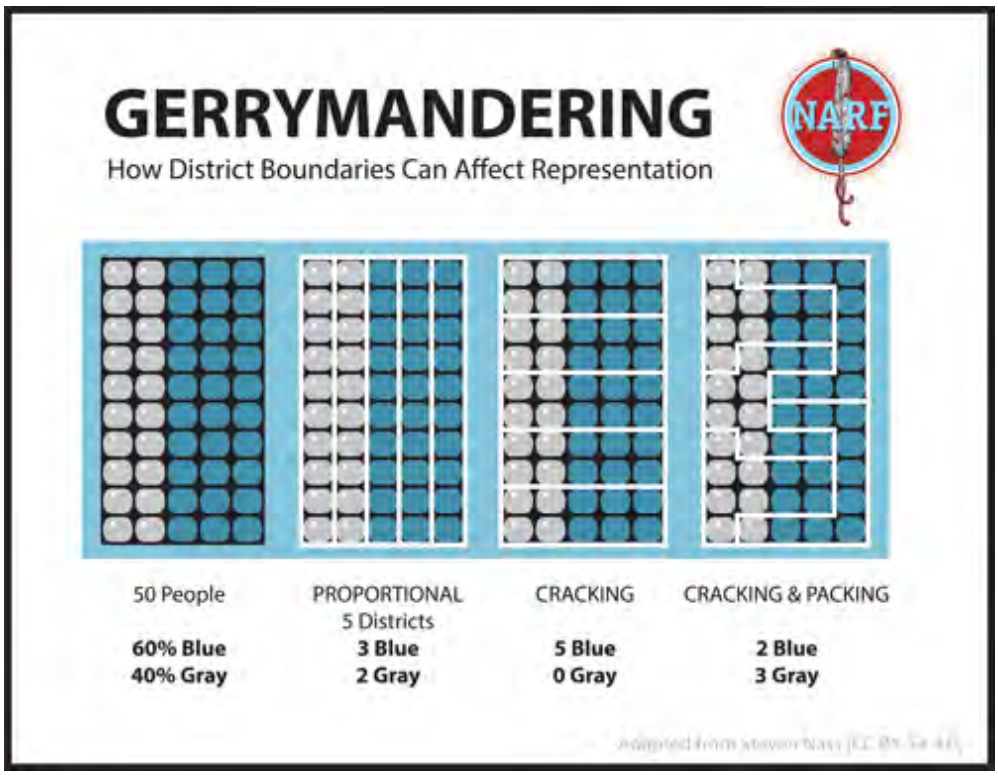
Redistricting matters because it controls access to political representation. It influences who runs for office and who is elected. Elected representatives make many decisions that influence our daily lives, from acknowledging tribal sovereignty to honoring treaties to protecting the land. Residents of a district should be able to hold their representative accountable and be sure that their representative is truly representing the interests of the people. And the maps that are created this year will be used for the next ten years. This is our chance to impact what they look like.

When people are represented through districts, the U.S. Constitution requires that those districts have roughly equal populations. This requirement ensures that each person's vote is worth the same as any other person's. Because populations change over time, districts must be redrawn. Otherwise, the voting power of a particular community would be diluted. For example, one state legislator might represent 40,000 people, while another represents only 25,000. The people in the smaller district would have disproportionately more representation, making the system unfair.

WHAT ABOUT GERRYMANDERING?

Even when districts have nearly equal populations, a particular map can still limit a certain group's political power. This abuse of redistricting is called *gerrymandering*. Often it is used to exclude minority communities from political power. Even in an election with one hundred percent voter turnout, gerrymandering can still prevent communities from electing their candidates of choice.

Maps often dilute votes in two ways. First, a map can "crack" minority voters into many districts, where they are only a small percentage of the population in each. This leaves them unable to elect their representative of choice, despite having enough votes to do so. In the image below, gray voters have been cracked in the third map, leaving them without control of any districts, even though they represent forty percent of the population. Second, a map might "pack" minority voters into one district, when if they were spread out in multiple districts they would have more political power. In the final map in the image below, most of the blue voters have been packed into two districts, and the rest of the blue voters have been cracked up in the other districts. This leaves the blue voters with forty percent of the districts, even though they are sixty percent of the population.



When voters are unfairly "packed" or "cracked," even turning out every eligible voter usually will not be enough to win an election. This is why redistricting is so important. It is our chance to create a fair system that will stay in place for the next ten years.

WHO IS IN CHARGE OF DRAWING THE LINES?

Each state has its own rules about who is responsible for drawing new lines. In North Dakota, redistricting is done by the state Legislative Assembly. The Legislative Assembly appoints a chair to select a smaller group of legislators called the Redistricting Committee. This Committee will be responsible for creating draft maps for the State House and State Senate. The members of this committee are:

- Chairman, Chet Pollert (R-D29) – Carrington – Chairperson
- The committee members are still to be determined.

Once the Committee has created a proposal, the full Legislative Assembly will vote on whether to approve the maps and pass them into law.

WHEN WILL REDISTRICTING HAPPEN?

Redistricting takes place at least every ten years after the census is completed. Every state has its own timeline for when maps should be finalized, but most are in 2021 and 2022. The COVID-19 pandemic has delayed the process of reporting the Census results, which pushed back when states can start the redistricting process. Data is currently expected August or September 2021. Even though the process may be behind schedule, you and your community can start learning about the process now.

The North Dakota Redistricting Committee is directed to finalize its proposed map by November 30, 2021. This means that the map will probably be officially passed by the full Legislative Assembly in December 2021. The map will be used for the first time in the June 2022 Primary Election, assuming that it is fair.

WHAT ARE THE RULES FOR DRAWING THE LINES?

Each state has its own rules about how to draw maps. But there are some federal rules that have to be followed when redistricting in any state. These take priority over North Dakota's own rules.

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people to be a majority of eligible voters in at least one district. When considering whether it is possible to draw a majority-Native district, determine the percentage of people of voting age who are Native, not just the overall percentage of Native people in the district. Fifty percent of the total population may not be enough.

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Laurie Stirling

From: Matthew Campbell
Sent: Friday, May 14, 2021 11:20 AM
To: douglasy@spiritlakenation.com
Cc: Nicole Donaghy; Cheryl Ann Kary; Jacqueline De Leon; Samantha Kelty; Chloe Cotton
Subject: North Dakota Redistricting - Spirit Lake Meeting
Attachments: redistricting-nd.pdf; Redistricting Organizing Guide (00219850-2x9D7F5).pdf

Chairman Yankton,

Per our discussion at United Tribes last week, we would like to set up a time to meet with the Spirt Lake Nation to discuss redistricting in North Dakota. Is there a time in the next few weeks that the Council, or designated representatives for this issue, are available to continue this discussion and create a plan for next steps? If you have a GIS or Geography department, they may be good folks to invite to the meeting as well.

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Matthew Campbell
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REDISTRICTING IN INDIAN COUNTRY

NORTH DAKOTA

#ShapingNativeFutures

Published by The Native American Rights Fund
North Dakota Native Vote and Sacred Pipe

REDISTRICTING IN INDIAN COUNTRY: NORTH DAKOTA

WHAT IS REDISTRICTING?

Redistricting is the redrawing of the geographic lines that divide districts for state legislatures, county boards of commissioners, city councils, school boards and other local bodies. It is required by the U.S. Constitution to account for population shifts within the state. It takes place every ten years, after the United States conducts the decennial Census to determine how many people live in the United States and its territories. This guide is focused on redistricting in North Dakota, specifically redistricting of the state legislative districts.

By redrawing district lines every ten years, redistricting takes into account where populations have increased or decreased. The main goal of redistricting is to ensure that all districts have approximately the same number of people. This protects the constitutional right to have a vote that is equal to any other person's vote.

It is crucial that Native Americans have an equal voice in redistricting to protect their ability to elect candidates of their choice. How can your Native community participate in this process? How can you ensure that your community's political power is protected? This guide explains the redistricting process and how we can all participate.

WHY IS REDISTRICTING IMPORTANT?

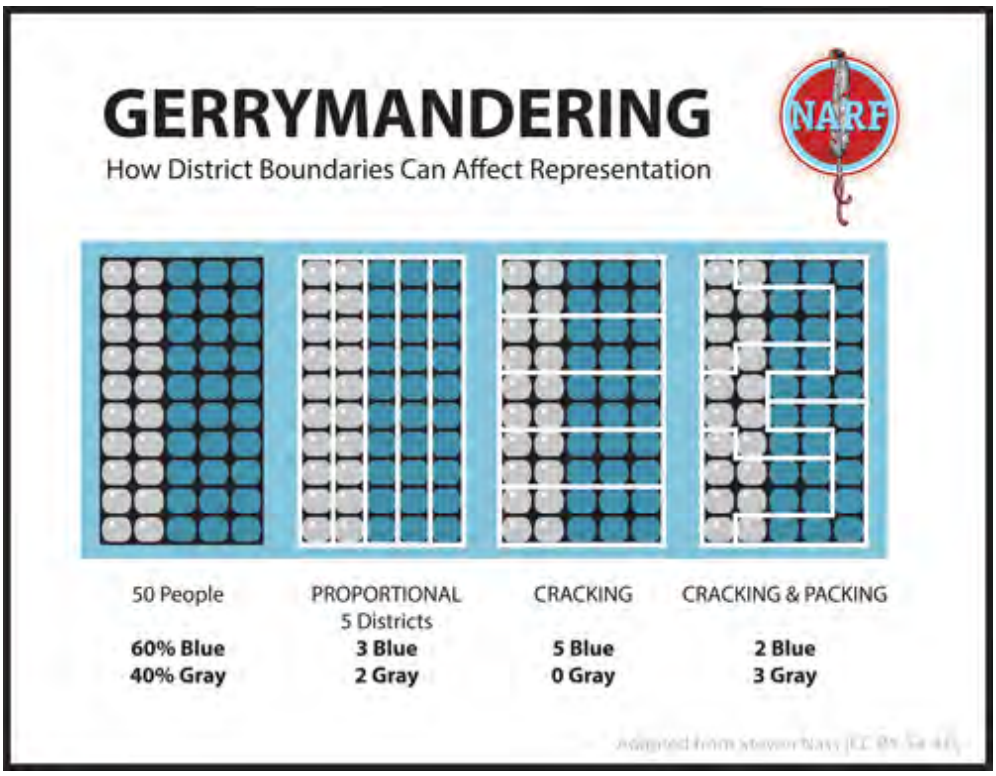
Redistricting matters because it controls access to political representation. It influences who runs for office and who is elected. Elected representatives make many decisions that influence our daily lives, from acknowledging tribal sovereignty to honoring treaties to protecting the land. Residents of a district should be able to hold their representative accountable and be sure that their representative is truly representing the interests of the people. And the maps that are created this year will be used for the next ten years. This is our chance to impact what they look like.

When people are represented through districts, the U.S. Constitution requires that those districts have roughly equal populations. This requirement ensures that each person's vote is worth the same as any other person's. Because populations change over time, districts must be redrawn. Otherwise, the voting power of a particular community would be diluted. For example, one state legislator might represent 40,000 people, while another represents only 25,000. The people in the smaller district would have disproportionately more representation, making the system unfair.

WHAT ABOUT GERRYMANDERING?

Even when districts have nearly equal populations, a particular map can still limit a certain group's political power. This abuse of redistricting is called *gerrymandering*. Often it is used to exclude minority communities from political power. Even in an election with one hundred percent voter turnout, gerrymandering can still prevent communities from electing their candidates of choice.

Maps often dilute votes in two ways. First, a map can "crack" minority voters into many districts, where they are only a small percentage of the population in each. This leaves them unable to elect their representative of choice, despite having enough votes to do so. In the image below, gray voters have been cracked in the third map, leaving them without control of any districts, even though they represent forty percent of the population. Second, a map might "pack" minority voters into one district, when if they were spread out in multiple districts they would have more political power. In the final map in the image below, most of the blue voters have been packed into two districts, and the rest of the blue voters have been cracked up in the other districts. This leaves the blue voters with forty percent of the districts, even though they are sixty percent of the population.



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- Chairman, Chet Pollert (R-D29) – Carrington – Chairperson
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HOW TO ORGANIZE FOR A FAIR REDISTRICTING MAP

1. **LEARN THE RULES**
   • There are federal and state rules that control the redistricting process. Broad definitions and some state-specific guides are available at https://vote.narf.org/redistricting/.
   • Make sure you know who draws the lines, when they must complete the maps, and what rules they have to follow.
2. **ORGANIZE YOUR COMMUNITY**
   • Contact fellow tribal members, nearby tribes, or other members of your community. Explain the importance of redistricting and how you can make a difference.
   • Consider building a larger coalition. Talk to groups outside of your community who might share interests.
3. **DEFINE YOUR COMMUNITY ... OR SOMEONE ELSE WILL**
   • Work together to determine what area of land defines your community. A reservation's geographic border aren't necessarily the border of the community. There could be relevant voters outside the reservation or even multiple tribes who see themselves as a community.
   • To define your community, you'll want to show that residents have common political, social, tribal, economic, or other interests, and would benefit from having a shared representative.
   • Once defined, document your community's demographics and how past redistricting has affected or harmed you.
   • You may want to prepare a proposed district map of your area or the whole state. Some redistricting organizations will accept maps drawn by the public.
   • "Full maps" have the district lines for a significant area or the entire state. They are harder to develop but show how your community can be respected alongside other communities. Find mapping tools at https://vote.narf.org.
4. **SPREAD THE WORD**
   • Circulate a petition or letter addressed to redistricting officials. Include a specific ask. Share with local media.
   • Submit a letter to the editor at local and regional newspapers. Work with local media. Offer to be interviewed.
   • If a discriminatory map is being considered, call attention to it! Share information with your community, media, social media, and groups like NARF that can help with a legal fight against such maps.
5. **ATTEND PUBLIC HEARINGS**
   • Someone (or many people) from your community should attend redistricting meetings and hearings, when they are public. This allows you to stay informed and to demonstrate that your community is paying attention.
   • Take notes and save meeting materials. If there is a court case challenging the maps, your notes could become public evidence, so write down only what is discussed and who talks, without comment.
   • "Attend" through the internet, television, or radio if you cannot be there in person.
   • Urge the redistricting officials to hold a meeting near your community so that community members can attend more easily. Make sure that language barriers are not limiting people's ability to participate.
6. **TESTIFY AT HEARINGS**
   • Speak at public hearings and meetings. Sign up in advance when it is required. Stay within the time limit and focus on your most important points.
   • Explain why you proposed a particular district and why it matters—the people making decisions may not be familiar with your community. Use statistics and stories to help them understand. Remember to be original and tell your story.
   • Respectfully correct inaccurate statements if needed.
   • Submit written testimonies about your community—the more the better. Present maps, community demographics, and redistricting impact stories. (Find guides at https://vote.narf.org/redistricting/.)

A project of the Native American Rights Fund
https://vote.narf.org :: vote@narf.org #ShapeNativeFutures
Guide adapted from materials prepared by Common Cause, Mexican American Legal Defense and Educational Fund, and State Voices in collaboration with other organizations.

Laurie Stirling

From: Matthew Campbell
Sent: Friday, May 14, 2021 11:15 AM
To: Jamie Azure
Cc: Jacqueline De Leon; Samantha Kelty; Nicole Donaghy; Cheryl Ann Kary; Chloe Cotton
Subject: North Dakota Redistricting - Turtle Mountain Meeting
Attachments: redistricting-nd.pdf; Redistricting Organizing Guide (00219850-2x9D7F5).pdf

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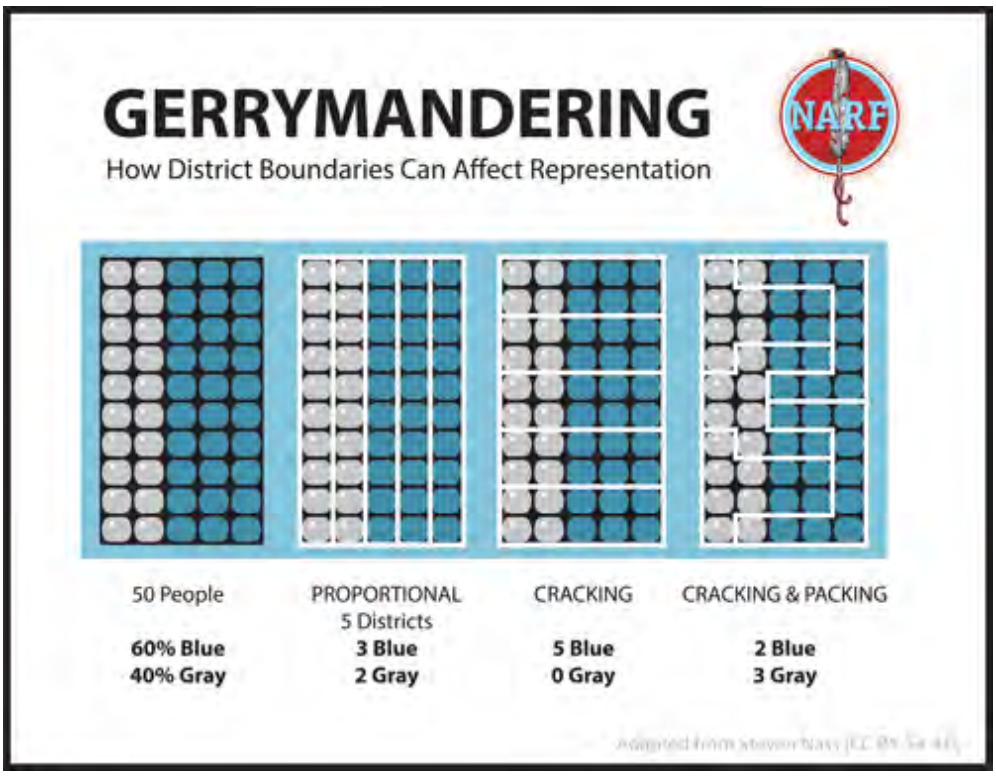

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   • Circulate a petition or letter addressed to redistricting officials. Include a specific ask. Share with local media.
   • Submit a letter to the editor at local and regional newspapers. Work with local media. Offer to be interviewed.
   • If a discriminatory map is being considered, call attention to it! Share information with your community, media, social media, and groups like NARF that can help with a legal fight against such maps.
5. **ATTEND PUBLIC HEARINGS**
   • Someone (or many people) from your community should attend redistricting meetings and hearings, when they are public. This allows you to stay informed and to demonstrate that your community is paying attention.
   • Take notes and save meeting materials. If there is a court case challenging the maps, your notes could become public evidence, so write down only what is discussed and who talks, without comment.
   • "Attend" through the internet, television, or radio if you cannot be there in person.
   • Urge the redistricting officials to hold a meeting near your community so that community members can attend more easily. Make sure that language barriers are not limiting people's ability to participate.
6. **TESTIFY AT HEARINGS**
   • Speak at public hearings and meetings. Sign up in advance when it is required. Stay within the time limit and focus on your most important points.
   • Explain why you proposed a particular district and why it matters—the people making decisions may not be familiar with your community. Use statistics and stories to help them understand. Remember to be original and tell your story.
   • Respectfully correct inaccurate statements if needed.
   • Submit written testimonies about your community—the more the better. Present maps, community demographics, and redistricting impact stories. (Find guides at https://vote.narf.org/redistricting/.)

A project of the Native American Rights Fund
https://vote.narf.org :: vote@narf.org #ShapeNativeFutures
Guide adapted from materials prepared by Common Cause, Mexican American Legal Defense and Educational Fund, and State Voices in collaboration with other organizations.

Laurie Stirling

From: Matthew Campbell
Sent: Sunday, August 15, 2021 7:39 PM
To: Douglas Yankton; Charmayne Bohanon
Cc: Michael Carter; Chloe Cotton; Samantha Kelty; Jacqueline De Leon; ndonaghy@ndnativevote.org
Subject: Spirit Lake Redistricting Talking Points
Attachments: 2021-08-12 Spirit Lake Talking Points.docx

Chairman Yankton,

As we discussed a few weeks ago, please find attached some proposed talking points for your meeting with the North Dakota Tribal and State Relations Committee on August 18, 2021. Please let us know if you have any questions.

Regards,

Matthew Campbell
Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302-6296
mcampbell@narf.org
P:303-447-8760
Direct: 720-647-9636
F:303-443-7776

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Legislative redistricting talking points for Spirit Lake Tribe's testimony before the North Dakota Tribal and State Relations Committee on August 18, 2021.

Overview/Introduction:

- May wish to note tribal enrollment and reservation population numbers, as well as brief description of the Tribe.
- Tribes across the nation have had to fight for their right to vote, and the Spirit Lake Tribe has been at the forefront of that fight.
    - In 2016, the Tribe, on behalf of its members sued the North Dakota Secretary of State over the state's illegal voter identification requirements that would make it impossible for many tribal members to vote. In 2020, the parties entered into a consent decree that would allow for the recognition of tribal ID's and allow tribal voters to identify their residence on a map due to many tribal members lacking a physical street address.
- The Tribe continues to fight for the voting rights of its members by advocating
    - (1) for fair and legal voting systems;
    - (2) for the reservation to be considered a community of interest that should not be split into multiple legislative districts, and for the use of single-member districts to elect representatives to the State House; and
    - (3) to demand that the state redistricting committee listen to tribal input and hold redistricting meetings and tribal consultations on reservations.

Benson County Redistricting:

- In 2000, the United States sued Benson County due to the fact that the county maintained an at-large election system, which diluted the voting power of Spirit Lake Tribe members in violation of the Voting Rights Act.
- To settle the case, the county entered into a consent decree, agreeing to abolish the at-large system and adopt five (5) single member districts with at least two (2) Native American minority majority districts.
- Despite entering into the consent decree, Benson County has gone back to implementing an at-large election system.
- As Native American population has increased in Benson County in every census since at least 1990, this election system must be reviewed to determine whether the county continues to violate the Voting Rights Act.

State Legislative Redistricting:

- As the state of North Dakota undertakes its redistricting process, the Legislature should take several steps.
- First, the Legislature should comply with the Voting Rights Act.
    - This may include moving away from at-large districts for the State House of Representatives. Where there are tribal communities, there should be single member House districts to ensure tribal communities have equitable representation. Failure to draw single-member House districts dilutes the Native vote and may violate the Voting Rights Act.

- Second, a "Community of Interest" standard should be utilized in redistricting, which will take into consideration groups of similar language, culture and identity, to keep them together within legislative districts.
    - Spirit Lake is its own community of interest and should remain in a single legislative district. Splitting the reservation into multiple districts would dilute the ability of tribal members to elect the representative of their choice.
- Third, even though the redistricting schedule is abbreviated, there is no excuse for failing to consult with the tribes and take tribal input into account in the redistricting process. Many other states have already begun holding redistricting hearings to get feedback directly from citizens and tribes. This process is far too important to ignore the perspective of tribal communities.
    - While we are thankful for your attendance here today, and your commitment to improving the state's relationship with the Tribe, we also expect and demand the same courtesy from the redistricting committee.

Closing:

- We thank you for your consideration of these important issues. We hope that this committee will be an ally and advocate for the tribes through the redistricting process and beyond. We are happy to address any questions or discuss these issues further.

Laurie Stirling

From: Collette Brown <cbrown@spiritlakecasino.com>
Sent: Monday, September 13, 2021 7:06 PM
To: Matthew Campbell; Michael Carter; Nicole Donaghy
Subject: Re: Redistricting Committe

I am available to attend let's set up a call tomorrow

Collette Brown, SLGC Executive Director

From: Matthew Campbell <mcampbell@narf.org>
Sent: Monday, September 13, 2021 7:39:14 PM
To: Collette Brown <cbrown@spiritlakecasino.com>; Michael Carter <Carter@narf.org>; Nicole Donaghy <ndonaghy@ndnativevote.org>
Subject: Re: Redistricting Committe
Hi Collette, it feels pretty disrespectful to tell the tribes of a hearing in less than two days. Are you available to attend? I would like to meet with you and the Chairman to discuss what we have learned from the census numbers.

Matthew Campbell
Staff Attorney
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On Sep 13, 2021, at 4:28 PM, Collette Brown <cbrown@spiritlakecasino.com> wrote:

Collette Brown, SLGC Executive Director

From: Davis, Nathan <nathan.davis@nd.gov>
Sent: Monday, September 13, 2021 5:08:52 PM
To: Collette Brown <cbrown@spiritlakecasino.com>; Cynthia Monteau <cynthia.monteau@Tax-MHANation.com>; Kimberly Iron Road <kimberly.ironroad@standingrock.org>; Jacey L. Trottier <jacey.trottier@tmbci.org>
Subject: Re: Redistricting Committe
My apologies as I forgot to list the time. The meeting will begin at 10am and there will be 30 minutes reserved for each tribe, starting at the beginning of the meeting.

Get Outlook for iOS

From: Davis, Nathan
Sent: Monday, September 13, 2021 4:58:44 PM
To: Collette Brown <cbrown@spiritlakecasino.com>; Cynthia Monteau <cynthia.monteau@Tax-MHANation.com>; Kimberly Iron Road <kimberly.ironroad@standingrock.org>; Jacey L. Trottier <jacey.trottier@tmbci.org>
Subject: Redistricting Committe
Sorry for such late notice but I was just informed of the upcoming committee session. I'm reaching out to ensure that Tribal Nations can provide input if they deem it necessary. Feel free to reply individually, input can be written, provided virtually, or in person by tribal leadership or a designee. Please forward this message to your leadership.

Wednesday Sept. 15, 2021
Roughrider Room
State Capitol
Bismarck ND

Get Outlook for iOS

Laurie Stirling

From: Matthew Campbell
Sent: Friday, September 24, 2021 3:04 PM
To: Douglas Yankton; Collette Brown
Cc: ndonaghy@ndnativevote.org
Subject: Re: Spirit Lake testimony

Chairman Yankton, I have a New York Times reporter interested in speaking to tribal leaders about Redistricting in North Dakota. Do you or Collette want to give her a call? If so her name is Maggie Astor and her number is 862-371-7897. Let me know.

Hope you are well.

Matthew Campbell
Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302-6296
mcampbell@narf.org
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On Aug 25, 2021, at 9:11 AM, Matthew Campbell <mcampbell@narf.org> wrote:

Ok, thanks, Mr. Chairman.
Collette, do you need us to revise the testimony to be from you, or do you want to handle that?
Matthew Campbell
Staff Attorney

Native American Rights Fund
1506 Broadway
Boulder, CO 80302-6296
mcampbell@narf.org
P:303-447-8760
Direct: 720-647-9636
F:303-443-7776
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From: Douglas Yankton [mailto:douglasy@spiritlakenation.com]
Sent: Wednesday, August 25, 2021 9:06 AM
To: Matthew Campbell <mcampbell@narf.org>; Collette Brown <cbrown@spiritlakecasino.com>
Cc: ndonaghy@ndnativevote.org
Subject: RE: Spirit Lake testimony

Collette will be going on my behalf.

From: Matthew Campbell [mailto:mcampbell@narf.org]
Sent: Wednesday, August 25, 2021 8:50 AM
To: Douglas Yankton <douglasy@spiritlakenation.com>; Collette Brown <cbrown@spiritlakecasino.com>
Cc: ndonaghy@ndnativevote.org
Subject: RE: Spirit Lake testimony

Chairman Yankton,

Attached is a draft of testimony for Thursday. Please let me know if you have questions or would like to discuss. It generally tracks the talking points we sent previously, which also remain relevant here too.

Matthew Campbell
Staff Attorney
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F:303-443-7776
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From: Douglas Yankton [mailto:douglasy@spiritlakenation.com]
Sent: Wednesday, August 18, 2021 9:14 AM

To: Collette Brown <cbrown@spiritlakecasino.com>; Matthew Campbell <mcampbell@narf.org>
Subject: RE: Spirit Lake testimony
Good Morning Matt and Collette,
I will after all be able to attend the hearing next week as plans have changed.
Chairman Yankton.

From: Collette Brown [mailto:cbrown@spiritlakecasino.com]
Sent: Tuesday, August 17, 2021 11:28 AM
To: mcampbell@narf.org
Cc: Douglas Yankton <douglasy@spiritlakenation.com>
Subject: Spirit Lake testimony
Hello Matt:
I hope this email finds you well. Chairman Yankton will unable to attend the ND State Redistricting Committee hearing, I have testimonial experience with ND legislative committees and will be available to give testimony on behalf of Chairman who is unavailable to attend on the 26th of August in Bismarck.
He asked me to reach out to you for his testimony. Please send it to us at your earliest convenience. Thank you for your time.
Collette Brown, SLGC Executive Director

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Laurie Stirling

From: Collette Brown <cbrown@spiritlakecasino.com>
Sent: Wednesday, September 29, 2021 8:22 AM
To: Boschee, Joshua A.; bdevlin@nd.gov; claireness@nd.gov
Cc: Chairman Yankton
Subject: Spirit Lake Tribe Testimony 9-29-2021
Attachments: 2021-09-29 Spirit Lake Follow-Up Testimony.pdf

Importance: High

Hello Mr. Devlin, Mr. Boschee, and Ms. Ness,

Good Morning, we are respectfully requesting to add our attached testimony to todays agenda if still possible or please consider for discussion. Thank you for your time.

Collette Brown
SLGC Executive Director
701-766-4747 ext. 252
701-766-4054 fax
701-230-5723 cell

Testimony of the Spirit Lake Nation Regarding Legislative Redistricting
North Dakota Legislative Council Redistricting Committee
September 29, 2021

Chairman Devlin and members of the Redistricting Committee, I am Douglas Yankton, Sr., Chairman of the Spirit Lake Nation ("Nation"), and I submit this testimony on behalf of the Nation. The Nation has taken part in the state's redistricting process by providing testimony to the Committee at two prior hearings. At those hearings, the Nation advocated for the creation of a sub-district that would provide the Nation's members with a better opportunity to elect the candidate of their choice. As the Committee is considering the issue of sub-districts, I am submitting this testimony to once again urge the Committee to approve the creation of a sub-district encompassing the Spirit Lake reservation.

The Spirit Lake reservation is located in state Legislative District 23 primarily in Benson County; and as the Committee has been previously informed, the voters on the Spirit Lake reservation tend to support candidates who are outvoted and opposed by voters in other areas of the district. According to the 2020 Census data, Benson County has a Native American population of 56.1%. Since 2010, in every election for the State House in District 23, the two candidates who were heavily supported in Benson County ended up losing their respective elections by being heavily outvoted by the rest of the district.

A sub-district would provide several advantages: 1) it would give our community a strong constituency representation because each voter would have a single, easily identifiable, district representative; 2) it would maximize accountability because a single representative can be held responsible and can be re-elected or defeated in the next election; and 3) it would ensure geographic representation. A sub-district system would provide the benefits of localized democracy, allowing legislators to be intimately aware of the issues of the local community. This

allows the elected member to focus on the needs of their localized constituency rather than the interests of all.

Below is a proposed district map, which also includes a proposed sub-district. The proposed sub-district contains a Native American Voting Age Population of over 41%. The creation of such a district would improve the representation of the Spirit Lake Nation our surrounding communities that have shared interests, and I strongly encourage the Committee to consider adopting this map.

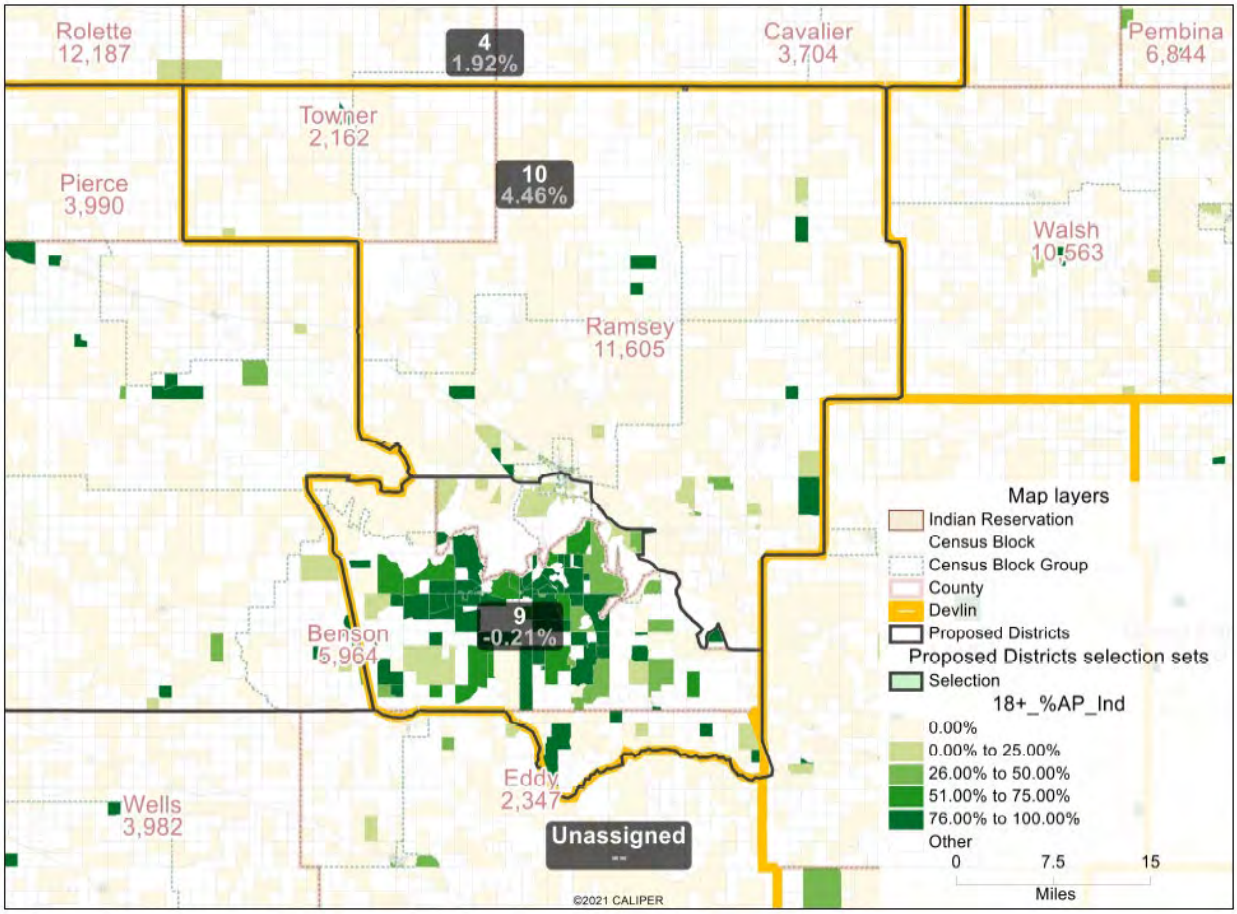
Approval of the below proposed district and sub-district would be legally sound and well within the authority of the Committee and Legislature. Sub-districts are specifically contemplated and authorized under the North Dakota Constitution. Article 4, Section 2 of the North Dakota Constitution states: "A senator and at least two representatives must be apportioned to each senatorial district and be elected at large <u>or from subdistricts from those districts</u>." (emphasis added).

The proposed sub-district would also fit within the standards established by the United States Supreme Court in *Shaw v. Reno*, 509 U.S. 620 (1993) and *Miller v. Johnson*, 515 U.S. 900 (1995). The *Shaw* and *Miller* cases, and their related cases, have generally held that districts are constitutional if race is not the predominant factor in drawing its lines. The *Shaw* case focused on the fact that the proposed district in that case was bizarrely shaped and not compact. The proposed sub-district here would be established based on maintaining the Spirit Lake reservation and its surrounding areas as communities of interest, with similar economics, culture, language, and political affiliation. Moreover, the Spirit Lake Nation and its members represent a sovereign Indian nation, which maintains a political relationship with the state of North Dakota and the

United States of American. The proposed sub-district would not be established predominately on race, and is sufficiently compact to withstand any potential legal scrutiny.

I hope the Committee will strongly consider the creation of a sub-district encompassing the Spirit Lake reservation. As the Nation has requested in all its prior testimony, I continue to urge the Committee to work with the Nation to hold a hearing on the reservation to allow tribal members a meaningful opportunity to participate in the redistricting process.

Proposed District and Sub-District



District	9	10
Population	8271	8658
Deviation	-17	370
% Deviation	-0.00205	0.044643
18+_Pop	5516	6797
% 18+_Pop	0.666908	0.785054
NH18+_Wht	3090	5999
% NH18+_Wht	0.560189	0.882595
18+_AP_Ind	2291	544
% 18+_AP_Ind	0.415337	0.080035