

EXHIBIT 18

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

CHARLES WALEN, an individual, et al.,

Plaintiffs,

v.

Civil No. 1:22-cv-00031

DOUG BURGUM, in his official capacity as
Governor of the State of North Dakota, et al.,

Defendants,

and

MANDAN, HIDATSA AND ARIKARA NATION, et
al.,

Intervenor-
Defendants.

DECLARATION TO ACCOMPANY THE EXPERT REPORT OF DANIEL MCCOOL

Pursuant to 28 U.S.C. § 1746, I, Daniel McCool, declare that:

My name is Daniel McCool. I am an expert witness designated by Intervenor-Defendants in the above referenced case now pending in the United States District Court for the District of North Dakota.

A true and correct copy of my curriculum vitae is attached hereto as a part of my report. The following report, a true and correct copy of which is attached and incorporated herein for all purposes, is a summary of my opinions and conclusions. The materials I relied upon to develop my analyses and opinions are cited therein and/or produced herewith for all counsel.

The court testimony and publications I am required to disclose are described in my attached report and/or curriculum vitae.

My reasonable and necessary hourly rate for my time in this case is \$200.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 17th day of January, 2023

A handwritten signature in cursive script, reading "Daniel McCool". The ink is dark and the signature is fluid.

Daniel McCool, Ph.D

Expert Witness Report
In the case of
Walen v. Burgum
U.S. District Court for the District of North Dakota, Eastern Division
prepared by:
Daniel McCool, Ph.D.
Professor Emeritus
Department of Political Science
University of Utah
January 2023

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Summary of Findings:

A comprehensive analysis of the Senate factors reveals an enormous body of evidence that indicates that the Senate factors, except for two factors that are largely absent from contemporary elections, have characterized the relationship between Native Americans and the state of North Dakota for an extended time. There is a significant and prolonged history of official and *de facto* discrimination against Native Americans, racially polarized voting and a hostile political atmosphere, significant socio-economic differences between Native people and non-Native North Dakotans, and a lack of electoral success for Native Americans. The adopted redistricting plan that created House Districts 4a and 4b significantly affected one of the Senate factors—the lack of electoral success—and is a dramatic contrast to previous treatment of Native voters.

I. INTRODUCTION

1. Qualifications

I am Professor Emeritus of Political Science at the University of Utah. I received a B.A. in Sociology from Purdue University, and a Ph.D. in Political Science from the University of Arizona. I have spent my entire professional career studying the political relationship between Native Americans and the larger political context. For over thirty-five years I have conducted research on the voting rights and water rights of Native Americans. In 2007, I co-authored *Native Vote: American Indians, The Voting Rights Act, and the Right to Vote* (Cambridge University Press). In 2012, I edited a book titled *The Most Fundamental Right: Contrasting Perspectives on the Voting Rights Act* (Indiana University Press). I also have several peer-reviewed publications that focus on public policy methodology and theory. I serve as an academic advisor to the Native American Voting Rights Coalition, and co-authored the 2020 report, “Obstacles at Every Turn:

Barriers to Political Participation Faced by Native American Voters” (Tucker, De León, and McCool. 2020). I also assisted in the design of a four-state survey of Native American voters. My latest research focuses on Native American water rights in the Southwest.

I utilized “qualitative methods,” described below, for nearly all of the 10 books, 27 articles, and 20 book chapters that I have published. I have served as an expert witness in 23 voting rights cases, which are listed on my vita. Seven of those cases were filed in state courts, and the others involved federal claims under Section 2 or Section 203 of the Voting Rights Act. I applied the same methodology, described below, in all of these reports. My reports and my testimony have never been rejected by a court. I have been hired by the tribal defendants in this case and I am compensated at the rate of \$200/hour. The conclusions I present in this report are mine alone, are not related to or endorsed by the University where I have an appointment and were reached through an independent process of research and inquiry.

2. Research Question and the Senate Factors:

The fundamental research question addressed in this report is: To what extent are the Senate factors present in North Dakota and the Fort Berthold Indian Reservation, and how does the configuration of legislative districts affect those factors?

In answering such a research question, the first task of a social scientist is to establish a set of criteria or factors that guide the inquiry and allow for the systematic evaluation of a large body of data. My analysis relies on factors that have been identified in statutory law, case law, and the U. S. Constitution that are relevant to questions regarding vote denial or abridgment, equal opportunities to vote and participate in the

political process, and equal opportunities to elect candidates of choice. I have primarily based my analysis on the 1982 Senate factors, which were identified as important indices of racially troubled jurisdictions in the Senate report that accompanied the 1982 amendments to the Voting Rights Act (Senate Report. 1982: 28-29). These are:

1. A history of official voting-related discrimination in the state or political subdivision.
2. The extent to which voting in the elections of the state or political subdivision is racially polarized.
3. The extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts.
4. The exclusion of members of the minority group from candidate slating processes.
5. 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.
6. The use of overt or subtle racial appeals in political campaigns.
7. The extent to which members of the minority group have been elected to public office in the jurisdiction.
8. The responsiveness of state and local officials to the needs of minorities.
9. The tenuousness of the policy underlying voting laws, standards, and practices.

I rely on these factors because they are “for courts to use when assessing whether a particular practice or procedure results in prohibited discrimination in violation of Section 2 [of the Voting Rights Act]” (Katz. 2005: 3. Also see: *Pope v. Albany*. 2015). They represent the “‘tools,’ practices, and socio-economic and historic conditions that are indicative of problematic relationships between minority and majority populations, based on the preponderance of the evidence” (Senate Report. 1982: 29).

3. Qualitative Methods

In this report I utilize a well-recognized methodology known as “qualitative methods” (Denzin and Lincoln. 2017; Teherani, et. al. 2015). This is the same methodology I have used in nearly all my academic work, as well as all my previous expert witness reports. Qualitative methods are particularly useful to analyze information

from large bodies of print data. It is important to note that qualitative analysis does not mean non-numerical; for this report I employ many numerical measures and a large body of data to answer the research question. I employ this methodology by using data and information gleaned from multiple and overlapping sources: original research, interviews, newspapers (including editorials and letters to the editor), past court cases, interest group publications, oral histories, secondary published sources such as books and articles, online sources (websites, blogs), business advertising and business policies, campaign flyers and publicity, church records, and documents and studies created by tribal, local, state, and federal governments, including voting data and census data.¹ In some cases, it is also useful to examine photographs, videos, and other visual “data.” As Fraser and Davies point out, qualitative methods “may fruitfully draw on written documents as a resource to generate new knowledge” (2019: 213). I examine these multiple sources for significant long-term trends across multiple sources of information and data. Confidence levels increase when consistent patterns of responses appear across multiple sources over a sustained period of time. Reliability is enhanced by utilizing a large number of documents that represent many different types of sources and finding consistent patterns across these diverse sources. For this report I relied on 196 written sources, a large body of U.S. Census data, and both in-person and telephone interviews.

Qualitative methods are well recognized in the social sciences. The Consortium on Qualitative Research Methods was established in 2001 (Consortium on Qualitative Research Methods. n.d.). The American Political Science Association organized a

¹ I relied on both 2020 Census data as well as the 2017-2021 American Community Survey (ACS) data. I note that the 2020 Census was problematic: “The data collection issues experienced by the 2020 ACS severely affect the data quality of these statistics, therefore the Census Bureau decided not to release the standard ACS 1-year data for 2020” (Daily. 2021).

section titled Qualitative Methods in 2003, now called the Qualitative and Multi-Method Research section (American Political Science Association. 2021). By 2003 almost half of all peer-reviewed articles in Political Science journals utilized qualitative methods (Bennett, Barth, and Rutherford. 2003). Syracuse University, with funding from the National Science Foundation, established a “Qualitative Data Repository” to assist researchers who utilize this method (Qualitative Data Repository. n.d.). Qualitative methods are now used in a variety of fields and research settings (Lamont and White. 2009: 5; Bartolini. 2013). Qualitative methods are often employed in conjunction with quantitative methods: “A sophisticated and growing methodological literature—both qualitative and quantitative—is now concerned with the analysis of necessary causes in both individual cases and populations of many cases” (Mahoney. 2021: 103).

Qualitative methods are well-suited for expert analysis in voting rights cases because the methodology is adept at analyzing phenomena that are complex, long-term, multi-dimensional, and subject to rapid change. Furthermore, the application of the methodology is not limited to any particular social or ethnic group. Lamont and White note that qualitative methods are “particularly useful for studying timely topics such as group identities and boundaries [and] race, class, gender...” (2009: 5). It is also particularly useful to study phenomena that occur over long periods of time, due to the large number of variables and factors that change over time (see, for example: Bartolini. 2013). There are many methodology textbooks that focus on qualitative methods; most are written by political scientists, but others are by authors in fields such as public health, anthropology, sociology, and increasingly the humanities. This method has been especially relevant to the multi-methods approach of the “new history” movement and

social history (see, for example: Hoffer. 2007; Tyrrell. 2005; Limerick et. al. 1991). The use of social science methodology in history, including qualitative methods, is exemplified by journals such as *Social Science History* and the *Journal of Policy History*. The widespread use and acceptance of qualitative methods, along with the applicability to large-scale analytical problems, is why I have consistently relied on that approach for both my academic work and my expert witness reports.

II. The Senate Factors Applied to North Dakota

1. A history of official voting-related discrimination in the state or political subdivision.

a. Historical Discrimination and Vote Denial:

It is important to understand the long-term historical relationship between Native Americans and Anglos in North Dakota because that history still has a direct impact on the attitudes of Native Americans toward the dominant society, which controls the electoral process. Historical trauma—the result of centuries of warfare, grievous losses in land, autonomy, and culture—affects the contemporary ability of Native Americans to engage in the political process.

The state of North Dakota has had a long and troubled history with its American Indian citizens (See, for example: *Turtle Mountain Band of Chippewa Indians v. United States*. 1974; North Dakota Legislative Council. 1997; Richardson. 2011). The conflict between Anglos and Indians goes back to territorial days, when the *Bismarck Tribune* editorialized: “The American people need the country the Indians now occupy.... An Indian war would do no harm, for it must come, sooner or later” (quoted in Karolevitz. 1975: 99).

They got their wish; the military confrontation between Native people defending their homes, and new settlers and the U.S. Army, was long and brutal. Colonel Henry Sibley, who pursued Dakota people across what is now North Dakota following the 1862 Dakota Uprising, expressed an attitude that was typical for that era: “My heart is steeled against them [the Dakota people], and if I have the means, and can catch them, I will sweep them with the besom of death” (Minnesota Historical Society. 2022).² The war against Native people in the northern plains was largely driven by the settlers’ demand for Indian land:

...there was no general policy relative to Indian reservations prior to 1850. White land hunger, as so often happened, forced the government to develop a plan. By mid-century farmers in Iowa and Missouri coveted the rich lands occupied by the transplanted Indians west of the Missouri River and demanded that the government concentrate the Indians’ holdings so whites could move onto the vacated parcels of land. In response, the commissioner of Indian affairs in Washington developed a plan for small, well-defined Indian ‘colonies’ where the tribes would be concentrated (Risjord. 2012: 155).

North Dakota historian Elwyn Robinson explains how the tribes of the Dakotas were unilaterally deprived of their homelands with the rationalization that reservation lands were “larger than they needed to be:”

As the Indians began to live by farming and on government rations, it became obvious that some of the reservations were much larger than they needed to be. In August, 1879, the government reduced the size of the Great Sioux Reservation, taking away more than 5,000,000 acres of land east of the Missouri, mostly in South Dakota. And in 1889 the government took about half of the Great Sioux Reservation, or 11,000,000 acres of what still belonged to the Sioux west of the Missouri, and divided the remainder into six separate reservations. The Standing Rock Reservation had 2,462,000 acres (only 665,000 in North Dakota). In two

² The “Indian wars” were stunningly brutal. Here is a description of what happened at Wounded Knee, which basically ended the 400-year war between Native peoples and Euro-Americans: “...the soldiers hunted down and slaughtered all the Sioux they could find, riding them down and shooting at point-blank range as they tried to escape. One woman was murdered after she had run three miles from the camp. Soldiers shot babies in their cradle-boards. The only good Indian was a dead Indian, many of the troops had been taught, and they had just turned two hundred and fifty Sioux into good Indians.” (Richardson. 2011: 11).

cessions, the first in 1880 and the second in 1891, the government took away the greater part of the Fort Berthold Reservation, leaving the Three Tribes about 1,300,000 acres. The cession of 1891, negotiated in 1886, but, to the disappointment of the Indians, long unratified by Congress, gave the Three Tribes \$800,000 in ten annual payments and opened 1,600,000 acres to white settlement (Robinson. 1966: 252-253).

The dramatic loss of traditional homeland was especially severe on the Fort Berthold

Reservation:

On July 13, 1880, an Executive Order was issued, depriving the Mandan, Hidatsa, and Arikara of the greater part of their lands. Everything south of a line forty miles north of the Northern Pacific Railroad right-of-way was ceded. This involuntary cession also included an extensive tract of land south and west of Fort Buford. The tribes were not consulted when the Executive Order was drawn up. As compensation, the tribes were granted a parcel of land north of the Missouri River, extending to within thirty-five miles of the Canadian border. This action, viewed as bad faith on the part of the government, did not pacify the injured and angry feelings of the Mandan, Hidatsa, and Arikara. The land to the north offered in compensation to the tribes was rough and undesirable... Within twenty-five years, the government reduced more than 12 million acres of their territory to one-tenth of its original size....They [the three tribes] had never reconciled themselves to the loss of territory resulting from the Executive Orders of 1870 and 1880 for which they had not been compensated. The reductions suffered by the reservation amounted to roughly 90 percent of what the Mandan, Hidatsa, and Arikara/Sahnish had been acknowledged to own at the time of the 1851 Fort Laramie Treaty (North Dakota Studies. 2022).

Fort Berthold would lose an additional 155,000 acres of prime bottom land and most of their towns along the river when the Garrison Dam was constructed. The losses suffered by the Three Affiliated Tribes were so devastating that the tribal council chairman wept when he had to sign the document ceding so much land to the Project (Lawson. 1982: 61-62):

Chairman George Gillette, at the signing of the Garrison Dam Land Sale, 1948



Historical trauma for other tribes is often the result of war and losses suffered in the Nineteenth Century, but one the greatest calamities to befall the MHA Nation—Garrison Dam and the flooding of the heart of their reservation—happened in the lifetime of some of the people still living. For some tribal members it is still a visceral and emotional event.

Settlement of the state by Anglos was celebrated by the new-comers, but it was devastating for the Native people of the northern Great Plains—a historical trauma that still affects the relationship between Native people and Anglos today and their ability to participate in the electoral process. Incoming Anglos, especially those who settled near Indian reservations, often harbored hostility for their Native American neighbors, as explained in the U. S. Supreme Court case, *U. S. v. Kagama*: “They [Indian tribes] owe no allegiance to the states, and receive from them no protection. Because of the local ill

feeling, the people of the states where they are found are often their deadliest enemies” (1886).

By the time that the Dakota Territory was being considered for statehood, the Native population had been forcibly settled onto reservations that were a small remnant of their traditional homelands. The state constitutional convention in 1889 provided the first opportunity for the nascent state to specify the role of Indians in governing and society. The convention lasted from July 4 to August 17—a period of nearly seven weeks. Throughout the voluminous proceedings of the convention, there is virtually no mention of Native Americans; they were practically invisible. There was boilerplate language regarding Indian lands—a stipulation required by the Enabling Act, but the only discussion of Native people was to specifically exclude them from voting.³

The article on suffrage in the state Constitution originally contained language that gave the vote to “persons of Indian blood who shall be declared citizens by the laws of the United States” (Journal of the Constitutional Convention. 1889: 31). This was a broad and fairly liberal grant of suffrage to Native people; full suffrage only awaited federal legislation granting full citizenship. But that language was almost immediately replaced by a severely restrictive phrase that granted the right to vote only to “Persons of Indian blood or of mixed white and Indian blood, who shall have adopted, for not less than two years, the language, customs and habits of civilization” (p. 70). However, the reference to people of mixed white and Indian blood apparently upset some people.

³ There is one other reference to Indians. A design for the “great seal” for the state was embedded in the Constitution. In a symbolic nod to the framers’ mind-set in regard to the future of Native Americans in North Dakota, the Constitution specified that the seal include “An Indian on horseback pursuing a buffalo towards the setting sun” (*Journal of the Constitutional Convention*, 1889: 188). That image is still on the state seal.

In the next iteration of the Constitution, it was replaced by this phrase: “Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election” (p. 135). That phrase was ultimately adopted. To “sever” tribal relations in that era meant to leave the reservation, have no affiliation with a tribe, and adopt the dress, religion, and customs of white people (McCool, Olson, and Robinson. 2007: 2-12). Native Americans are the only group of citizens in U.S. history who were required to give up their home, their language, and their culture as a prerequisite to the right to vote.

Even this narrow grant of suffrage to Native individuals who had essentially become facsimiles of white people did not guarantee a right to vote. The test as to whether “civilized Indians” would actually be allowed to vote came just eight years after statehood when members of the Sisseton-Wahpeton Band of Indians on the Spirit Lake (at that time called Devils Lake) Indian Reservation petitioned the county commissioners to establish a voting precinct on the reservation (*State v. Denoyer*. 1897). The county commissioners had established precincts everywhere in the county except on the reservation. The petition was from tribal members who had followed the dictates of the Dawes Act and settled on allotments, “adopted the habits of civilized life” and had as a result been awarded U. S. citizenship (Dawes Act of 1887). The county commissioners refused, and in the subsequent court case argued that the state lacked the jurisdiction to establish precincts on Indian reservations, and that the Indians were not sufficiently civilized because on the reservation there were “three persons known as ‘chief,’ ... and that these chiefs exercise sway... in the same manner that Indian chiefs ruled in years gone by” (*State v. Denoyer*. 1897: 590). The county also argued that the Indians should

not have the right to vote because they did not pay taxes in the county—a claim that is still heard today (p. 590).

The judge first determined that the state did indeed have the power to establish a precinct on a reservation; he then determined if the Indians were qualified to vote based entirely on how “civilized” the Indians had become: “[The Indians] would not be voters unless they had entirely abandoned their tribal relations, and were in no manner subject to the authority of any Indian chief or Indian agent” (*State v. Denoyer*. 1897: 600). The judge also noted that the Indians were farmers on allotted land, and had met the requirements of the Dawes Act, and thus concluded that the Indians were sufficiently acculturated to be eligible to vote under state law. The court then forced the county to establish a precinct on the reservation.

In 1911, additional caveats were added via statute to the suffrage provision pertaining to Native Americans; voting for Native people was limited to: “Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election, provided he has complied with the provisions with any law which is now or may in the future be in force relating to the registration of voters” (North Dakota Statute, Chap. 131, approved March 3, 1911).

The cultural litmus test of a “civilized Indian” embodied in the North Dakota Constitution was applied again in 1918 when a small group of Sioux Indians from Standing Rock voted in a local election. A group of local ranchers filed a lawsuit claiming the Indians had no right to vote because they had not sufficiently severed tribal relations, even though the Sioux voters had followed the dictates of the Dawes Act, settled upon allotments, and become U.S. citizens. The lawyers for the ranchers argued

that “Indians are not a portion of the political community called the people of the United States,” and their political status “does not condition the government to protect their property” (*Swift v. Leach*. 1920: 437).

A North Dakota trial court ruled that the Indians were in fact civilized, but the ranchers appealed to the North Dakota Supreme Court. In a 1920 decision that must have come as a surprise to many Anglo people, the Court ruled in favor of the Sioux Indians. The judge based his decision solely on a finding that the Indians had become exactly like white people and had completely abandoned their tribe: “There is no evidence whatsoever... of tribal relations.... Over these Indians there are no chiefs.... The evidence sustains the findings that these Indians are civilized persons... following the customs of the white man in marriage and domestic life, in agricultural pursuit, in education, in religious life” (*Swift v. Leach*. 1920: 446).

This review of the historical relationship between Native Americans and Anglos in North Dakota is essential to an understanding of the contemporary relationship between these peoples because it results in feelings of alienation from the political system and a sense that one is not a part of, and cannot influence, that system. The traumatic history summarized above still directly affects the ability of Native Americans to participate in the political process.

In sum, the state of North Dakota deprived nearly all Native Americans of the right to vote; the franchise was extended only to a small segment of the Native population that had conformed to the rigid cultural, economic, and religious norms of the dominant society and abandoned their homeland, their culture, and their tribe.

b. Contemporary Discrimination:

In the 100 years since the *Swift* decision, Native people in North Dakota have had to deal with the continuing occurrence of discrimination in voting as well as in society as a whole, which still has a negative impact on their ability to participate in elections. The lengthy history of discrimination in North Dakota was documented in a 1999 report by the North Dakota Advisory Committee to the U. S. Commission on Civil Rights. The Committee report noted the testimony of a former state senator: "...since 1957, as a member of the North Dakota legislature and from his involvement with other organizations, 'the question of discrimination has always been one of the chief topics of...discussion'" (North Dakota Advisory Committee. 1999: 7). A member of the House at that time commented on one of the many problems confronting Native Americans in his urban district: "Within that district, about 600 people Native American, which is the largest number of Native Americans in any district in the State, except those districts that have reservations within them. There are also 1,400 mobile homes and 1,800 apartments constituting some of the poorest people in the district.... What I'm really saying is that we have a very high percentage of very vulnerable people, people who have less voice, people who have less power, people who have less mobility" (Advisory Committee. 1999: 35-36). Another member of the House noted that "discrimination occurs on a regular basis against Native Americans" (Advisory Committee. 1999: 37).

Native American leaders also gave testimony to the Advisory Committee. The chairman of the Three Affiliated Tribes noted that, "For our tribal populations, civil rights enforcement has been infrequent, at best, in North Dakota" (p 38). The President of United Tribes Technical College stated that discrimination ranged from "'we do not rent to Indians' notices that appeared over 20 years ago in a Bismarck hotel, to United

Tribes Technical College students being followed today by security personnel at the local malls and stores in Bismarck” (p. 38). The Director of the state Indian Affairs Commission spoke about a case of employment discrimination: “an individual was passed over for promotions and was subject to racial slurs in the workplace. Some comments included, ‘go back to the reservation to your squaw,’ ‘go back to the reservation and eat dog,’ and ‘all Indian women are whores’” (p. 40). A native woman who was a columnist for the *Bismarck Tribune* said that “[Native] people are angry, frustrated, and have a sense of hopelessness,” and described a recent ad referred through the state Job Service that attached instructions saying “Do not send Native Americans” (p. 64).

Additional testimony was given by a Methodist minister, who noted that “An American Indian [was] treated differently from whites at a business establishment when she attempted to write a personal check,” and an assistant U. S. Attorney who said she witnessed “discrimination toward women and other minority groups, most notably Native Americans, all the time” (p. 66). The report concluded by stating: “Many forms of discrimination have been ongoing in the State for several decades, and it appears that limited accomplishments have been realized to solve those issues.... Systemic discrimination continues to occur....” (p. 75). That report was issued 23 years ago, but as we shall see in this report, discrimination against Native American in North Dakota continues to be a problem.

In the past, overt statements of racial discrimination were common; it was an accepted practice and an accurate reflection of prevailing belief systems. More recently, discrimination has become more subtle, with certain code words or phrases used in place

of explicitly racist language (Dick and Wirtz. 2011; Hill. 2008). Political scientist Henry Flores explains that “In the current historical era, race is implied (rather than openly stated) when the law is discussed or debated and other language, a different rhetoric, is used to hide racism from the public policy realm” (Flores. 2015: xiv).

A 2012 study of the North Dakota court system reiterated this distinction: “Research has identified two kinds of bias: overt and implicit.... Most racial and ethnic bias occurs in a pervasive yet subtle manner, referred to as implicit bias” (North Dakota Commission. 2012: 3). As a tribal college administrator put it, “there is a lot of self-censoring that goes on in the mainstream media; there is no need to say something bigoted to deny service; just do it” (Neumann. 2016). Another observer described discrimination in North Dakota this way: “it’s not open and outright. I think the Native community would likely say yes. Do I hear background talk from white people about this? Sure” (Cook. 2016).

This undercurrent of racial tension became evident at Spirit Lake in 2013 when Congressman (now Senator) Kevin Cramer made controversial comments to a group called the North Dakota Council on Abused Women. This group deals with problems associated with violence against women, especially on Indian reservations. According to some of the people at the meeting, Congressman Cramer referred to all tribal governments as “dysfunctional,” disparaged tribal judicial systems, and then reportedly said: “I want to ring the Tribal Council’s neck and slam them against the wall” (Merrick. 2013; Spirit Lake Tribe. 29 Mar. 2013; Ecoffey. 2013). Congressman Cramer later claimed he had been “misunderstood,” explaining that: “This may have been the result of my tone and rhetoric, better suited for active debate in Congress rather than in addressing

the protectors of our most vulnerable citizens. I apologize, and welcome future discussion to address my meaning, and to further our common cause” (Schilling. 1 April 2013; Dickinson Press Staff. 29 Mar. 2013).

Another event that provoked accusations of racism and discrimination was the conflict over the “Fighting Sioux” team mascot—what the *Wall Street Journal* described as the “contentious nickname” for the University of North Dakota sports team (Futterman. 26 Mar. 2015). Numerous Native groups and other advocacy organizations conducted a prolonged campaign to stop UND from using this mascot; they met with fierce resistance, and the conflict extended over a period of more than two decades. The National Congress of American Indians, the NAACP, most of the Sioux tribes, the Mandan/Hidatsa/Arikara Affiliated Tribes, and the Turtle Mountain Band of Chippewa Tribe demanded an end to the mascot (University of North Dakota Graduates. n.d.).

The mascot controversy was an emotional issue, and some people chose to express their opinions in an overtly racist manner. According to a group of students formed to force UND to change the mascot, a local store displayed a sign reading: “Redskins, go back to the reservations, leave their name alone” (University of North Dakota Graduates. n.d.). Some of the t-shirts produced at that time displayed obscene images of Indian people engaging in sex acts with bison (the team mascot of the rival NDSU). Another t-shirt, which could be purchased on-line, read: “If they were called the drunken, lazy, welfare collecting, free cheese eating, whiny ass Sioux, then you would have something to complain about.” Another t-shirt depicted the head of an Indian in full headdress under the words: “Siouxper Drunk” (ICTMN Staff. 14 May 2014).

During the controversy, posters taped to the doors of the Indian Studies Program at UND were covered in racist insults:

- > “If the name has to go, so should your funding”
- > “Wish I could go to school for free”
- > “Go back to the res, or work @ the Casino, prairie nigga”
- > “Drink ‘em lots o’ fire water”
- > “if you get rid of the “Fighting Sioux” then we get rid of your FREE schooling!”
- > “Find something better for your time ‘like a job’”
- > “You lost the war. Sorry”

(University of North Dakota Graduates. n.d.)

The issue became so big that the state actually held a referendum on the name change; voters approved changing the mascot. This did not stop some people from filing a lawsuit in an attempt to stop the name change. The NCAA finally forced the change in 2012 because it considered the name “hostile and abusive” (Kolpack. 18 Nov. 2015; Walsh. 19 Oct. 2015; Houska. 20 Nov. 2015).

The Native people I interviewed at Fort Berthold feel that discrimination is a problem, both past and present, in North Dakota. They described many of the typical attributes of a racially polarized society.⁴ Here are some of the comments they made and incidents they discussed in response to the question: “Has discrimination had an impact on the ability of Native Americans to vote? Is there historical trauma?”

> Were more seen as an outcast, seen that way by some; some white people are very hateful toward Native people. I haven’t experienced discrimination because I’ve never been outside. There was this one time at a school basketball game and the people on the other team were saying hateful things, I don’t want to say it [does not want to repeat the insulting term] (Good Bird. 2023. In-person interview, Jan. 10).

> I have lots of stories of discrimination. We had a school board member named _____ say to a Native girl that it’s because of girls like you that we have a lot of teenage pregnancies. It was a public meeting; it got bad; we got into a verbal altercation. New Town News hired an editor. I was the school board president. This news lady put a misquote in the paper about me saying our teachers are not worth any more money; they misquoted me and would not do a correction. There were three Native people and two

⁴ Additional comments describing racism in North Dakota, made by tribal members from other reservations, were listed in my expert report for the case of *Turtle Mountain v. Jaeger* (2022).

white people on the New Town school district. I was the first Native to hold my seat on that school board.... At the next school board meeting, her husband wanted to fight me because we had barred her from the meeting as a reporter. We called law enforcement. This was in like 2003 or 4. We had another guy, a white guy, and he punched the Native school board member in the face. We hired our very first Native American superintendent; I was the board president; the two white guys wanted to hire a white guy, and all Native members on the school board voted for the Native candidate.... When I was a coach and we'd go to Watford city, as we were getting off the bus, the white kids were doing the whoop-whoop thing and calling us wagon burners. It happened a second time, but that time the coach was also the principle and he made them apologize. Dickinson is horrible if you're a minority. In Kildeer, we had a player on the opposing team call one of our players a prairie nig---. We all heard it. I went onto the court and had an altercation with the refs for allowing that to happen. Nothing came of it. One of the teachers there was an enrolled member, and he got involved and they suspended that kid and apologized. That was in 2018. Another time we were in Washburn, ND, where the fans were calling our kids dirty Indians and savages. The fans were saying that. Our fans got upset; the other side called the county sheriff and he said he'd throw us out Racism is alive and well. (White. 2023. In-person interview, Jan. 10).

> Yes. The flood alone was traumatic. Smallpox was traumatic. Then Covid, it was a nightmare trying to get vaccines (Mayer. 2023. In-person interview, Jan 10).

> The historical trauma is from dams from the federal government, and the treatment of tribal people since the formation of this country. Garrison Dam flooded intact communities and moved them to upland places where they don't have shelter and water. That trauma was experienced by my parents, and I grew up with that. I felt it when I was small, going into towns. There was a distinct feeling that we were unwanted, and we were there to buy things and contribute to their economy (Theodora Bird Bear. 2023. In-person interview, Jan. 11).

> Yes to both questions. Tribal people have mistrust of governments other than their own just because of the treatment we've receive from governments. And that's based on genocide, because they took from us, but we gave a lot for the foundation of the U.S. government. And yes, there's discrimination in outside reservation towns. Since childhood, I could see that. My parents were treated poorly, not served in cafes, and today it's still the same, it might be in subtler forms, but there are still discriminatory attitudes in these neighboring towns. Discrimination is still alive (Joletta Bird Bear. 2023. In-person interview, Jan. 11).

> Yes there is. I've seen it before I became mayor. People would look at me and not know I'm Native. But people would be joking around and say prairie nig--- and I'd almost get into a fight. They [local whites] talk sh-- about us, and talk sh-- about other races too. It's easy for me to play the race card, because of I've seen it all the time growing up, and the one thing is they always think, they think the Natives are so frickin' stupid. This was taught to me when I was growing up; if I act stupid and play dumb, you actually start to see the people's true colors. If you act dumb, they'll act like a snake and you'll get bit. They think we're weak and gullible; they mistake our kindness for weakness. We just pray for them. I had one guy say, if it wasn't for us white men you fu----' Indians would still be savages. That was in Minot (Standish. 2023. In-person interview. Jan. 11).

> Yes I have personally experienced discrimination. At an Appleby's in Bismarck, we walked in to be seated; an employee said: go help those brown people over there. We ask to speak to the manager—it turned out to be the person who'd said that. I wrote to the company. You get so used to discrimination you have to look for the humor in it, you can't let it scar you, because you can't help it how people were brought up and how they were taught. Because a lot of times with discrimination it becomes normal to you to be treated like that and you get used to it (Spotted Horse. 2023. In-person interview. Jan. 11).

> Yes. A lot. I've been called any manner of names, including prairie n---. Growing up in North Dakota its almost like you can't get away from it. It's the worst rite of passage that anyone could experience (Baker. 2023. In-person interview, Jan. 12).

> There is absolutely historical trauma. When I leave these reservation lines, in these border towns, and in all of ND, this whole state is a racist state. I've had all kinds of discriminatory things done to me. I was in Mandan in the McDonalds waiting in the drive-through lane, and this white woman, she gave me the finger and then pulled her pants down and stuck her white rear end out at me. I'm brown-skinned. There is no such thing as respect or regard. I filed a police report, this happened a couple of year ago. Even now, if I gotta go to Dickinson, now watch; they're all going to be staring me down. They let me know they're watching me. I don't respond to people putting me down. That is the discriminatory behavior we have in North Dakota.... This historical trauma, it goes way back to Columbus. We felt sorry for him. Then they raped the young Native American girls, and then they put us on reservations. It's one historical trauma after another. Our Four Bears chief died of smallpox. We haven't been able to grieve because one big thing after another has happened. Reservations, then boarding schools, our people were herded here and there. The ones that got home, they had a lot of social issues; we haven't even touched on that. Then smallpox, and then they flooded us out with Garrison Dam; my mom told me that when they flooded us out it was so devastating. The wolves got flooded out too and they attacked people. No one there to help my mom and dad. We should have places to go and talk about that. We don't have a place for historical grief. [she begins to cry]. Our people here, this trauma has been here. We need to pray. Where is the justice for our people? We don't have justice (Young Bear. 2023. In-person interview. Jan. 12).

> I experienced prejudice in a restaurant in Watford City. They wouldn't wait on us. After that I was well aware of prejudice. My Mom said; don't let this ruin anything for you; you have to fight for yourself. When I was working at Dickinson State, I was in the nursing program. They told me I had to do extra work "just like the other Native woman who works here." In Dickinson, Mexicans were more welcome than Natives. One of them said to me; white people don't like Indians because they're lazy (Muzzy. 2023. In-person interview, Jan. 12).

> Yes, it does have an impact (Donaghy. 2023. In-person interview, Jan. 12).

> In general, yes, I'm half Native and German/Irish. I've experienced it from living in Bismarck; people said: go back to your reservation. My brother is darker, he gets pulled over more (Beheler. 2023. Telephone interview. Jan. 13).

Anglo people in North Dakota may not feel that racism is a problem. During the floor debate over HB 1504, Representative Jones claimed that "I have not seen racial animus that affects our elections. I don't believe it's here" (House Floor Session. 2021. Comments by Rep. Jones). That statement appears to contradict all of the statements above made by tribal members. The Native Americans I interviewed at Fort Berthold and other reservations certainly do. Indeed, differing perceptions regarding the existence or extent of discrimination is an indicator of polarization.

Thus, there is certainly polarization in the perception of how American Indians are treated. An administrator at the United Tribes Technical College succinctly made this point: "Yes, discrimination exists in North Dakota, and it's my perception that race matters are not perceived by people in the mainstream, but they are very much in the forefront of Native people's thinking. There are all sorts of problems that come from that, both problems, and perceptions of problems" (Neumann. 2016). Perhaps this explains why, in a 2014 survey of Indians living in the Bismarck/Mandan area, nearly half of the respondents rated the friendliness of their community as "poor to fair" (Sacred Pipe Resource Center. 2014).

In sum, political scientists have consistently shown that context matters in political participation (Verba and Nie. 1971; Rosenstone and Hansen. 1993; Verba, Schlozman, and Brady. 1995; Jenkins and Andolina. 2016: 146-148; Williams. 2004). Discrimination, both official and *de facto*, creates an atmosphere that is inimical to active participation in the electoral process. The long history of discrimination described in this report directly affects the ability of Native people in North Dakota to participate equally in the electoral process. It affects their willingness to engage with the electoral process and interact with

local and state political officials. Dr. Eric Longie, a former tribal college president, expressed what this means for Native people in North Dakota:

When I leave the reservation I become a different person, I have to be if I want to be treated respectfully. I got very good at it. If we show our Indianness, the prejudice will come right out. That kind of thing is the reason why a lot of Indians don't get involved in state politics. A lot of them don't like us, and some of them have very prominent positions. We're not a part of state politics (Longie. 2022)

c. Official Discrimination in Voting Rights:

One method of evaluating the extent of official discrimination in voting rights is to survey the cases involving the voting rights of minorities. There have been eight cases in North Dakota, and the Indian plaintiffs have either won, or successfully settled, all of them.

1. *U. S. v. Benson County*. Native voters claimed that the at-large method of electing county commissioners had prevented them from having an equal opportunity to elect candidates of their choice; indeed, no American Indian had been elected to the county commission. The District Court agreed, and the resulting consent decree ordered the county to change to a district system. The consent decree noted the high degree of racial polarization and racial bloc voting:

Racially polarized voting patterns prevail in elections for the Benson County Board of Commissioners. Native American voters in Benson County are politically cohesive. In elections involving Native American candidates and white candidates for the Benson County Board of Commissioners, Native American voters vote cohesively for Native American candidates and white voters consistently vote sufficiently as a bloc usually to defeat the Native American voters' candidates of choice in at-large elections. Native American citizens within Benson County have suffered from a history of official racial discrimination in voting and other areas, such as education, employment, and housing. Social, civic, and political life in Benson County is divided along racial lines (*U. S. v. Benson County*. 2000: 4).

2. *Parshall School District*. In 2007, another voting case was threatened when the U.S. Department of Justice filed a notice letter against the school board for the town of Parshall, which is located on the Fort Berthold Reservation. The issue was at-large school board elections. After receiving the letter, the school board agreed to a district plan, which resulted in the election of two Native Americans to the school board (Porterfield. 1997). Today, there is one Native American, Mervin Packineau. Mark Fox, the Chairman of the Mandan, Hidatsa and Airikara Nation, noted that the outcome of switching to a single district system: “[It] has been beneficial to all of us” (Fox. 2021).

3. *Spirit Lake Tribe v. Benson County*. In this case the American Indian plaintiffs argued that the closure of three voting places made voting more difficult for tribal members to vote. The District Court agreed that closing two of those voting places, which were on the reservation, would create a “disparate impact,” (2010: 6) and must be kept open. The Court noted that: “The historic pattern of discrimination suffered by members of the Spirit Lake Tribe is well-documented” (2010: 5).

4. *Brakebill v. Jaeger I*. This case was in response to two restrictive voter identification (ID) laws. HB 1332, passed in 2013, and HB 1333, passed in 2015, required that each voter present an ID with a residential street address. Some tribal IDs do not have a street address because Indian reservations do not always have a street grid system with a numerical house number. The new voter ID laws also eliminated the “fail-safe” option that allowed voters without the proper ID to remedy the problem. In granting a preliminary injunction, the U.S. District Court found that “the lack of any ‘fail-safe’ provisions to be dispositive in this matter... a safety net is needed for those voters who cannot obtain a qualifying ID with reasonable effort. Accordingly, the Court enjoins the

Defendant from implementing the current voter ID laws without the existence of some form of a ‘fail-safe’ provision” (*Brakebill v. Jaeger*, Order Granting Plaintiff’s Motion for Preliminary Injunction. 2016: 1-2). The Court also found that “The undisputed evidence in the record clearly establishes that the Native American population in North Dakota bears a severe burden under the current version of [the voter ID law]” (p. 21), and concluded that “The public interest in protecting the most cherished right to vote for thousands of Native Americans who currently lack a qualifying ID and cannot obtain one, outweighs the purported interest and arguments of the State” (p. 28).

5. *Brakebill v. Jaeger II*. The North Dakota Legislative Assembly responded to the Court’s preliminary injunction by passing a new voter ID law (HB 1369) in 2017. This law also required a residential address on all forms of ID, and allowed for a limited form of fail-safe that imposed significant requirements. This law was also challenged by Native American plaintiffs. The District Court found that “the new law passed by the Legislative Assembly (House Bill 1369) in April, 2017, still requires voters to have one of the very same forms of a qualifying ID’s in order to vote that was previously found to impose a discriminatory and burdensome impact on Native Americans” (*Brakebill v. Jaeger*, Order Granting Plaintiffs’ Motion for Second Preliminary Injunction in Part. 2018: 4). The Court issued an injunction against the offending portions of the law, concluding that “common sense and a sense of fairness can easily remedy the above-identified problems to ensure that all residents of North Dakota, including the homeless as well as those who live on the reservations, will have an equal and meaningful opportunity to vote” (p. 17).

The state of North Dakota appealed the District Court’s decision to the Eighth

Circuit, claiming that a mailing address, which could be a P.O. Box, was not sufficient, and all IDs should have a residential street address (*Brakebill v. Jaeger*, Appeal. 2018: 4). This issue is important because many tribal members rely on P.O. boxes. The Eighth Circuit, in a 2 to 1 decision, issued a stay of the District Court’s injunction “pending disposition of this appeal or further order of the court” and the appeal remained “under submission, and an opinion on the merits will be filed in due course” (p. 11). The Court pointed out that the injunction affected all North Dakota voters, but the policy in question only applied to a portion of the Native American population, and suggested that the Court might entertain a narrower injunction targeted at certain voters. An appeal to the U.S. Supreme Court to vacate the Circuit Court’s decision was denied (*Brakebill v. Jaeger*. 2018. On Application to Vacate Stay). But the door was still open to further litigation.

6. *Spirit Lake Tribe v. Jaeger*. In 2018 the voter ID issue was again before the court, with Native plaintiffs claiming that “North Dakota’s proof of residential address requirement is unplanned, untested, and broken” (*Spirit Lake Tribe v. Jaeger*, Complaint. 2018: 2). Unlike the previous ID cases, the plaintiffs in this case included a tribe—the Spirit Lake Nation—in addition to individual tribal members from Spirit Lake, Turtle Mountain Chippewa, and Standing Rock Sioux. The Spirit Lake Nation could specifically identify 262 members whose tribal IDs did not have a residential street address, even after a concerted effort by the Tribe to make new IDs for tribal members (p. 6). The plaintiffs asked the Court to enjoin the requirement for a “current residential street address” for the upcoming election, but the request was denied because the election was only a week away (*Spirit Lake Tribe v. Jaeger*, Order Denying Plaintiff’s Motion for Temporary Restraining Order. 2018). This left open the possibility for further relief. In

denying the state's motion to dismiss, Judge Hovland noted that "This is a complex voting rights case" (*Spirit Lake v. Jaeger*. 2020. Opinion). At that point the parties began discussing a settlement.

The long-running conflict over voter IDs finally came to an end in 2020 when the parties reached a settlement, and a binding court decree was signed by all parties. The state agreed to financially assist tribes in generating IDs, provide free non-driver IDs, and to "accept as valid for voting purposes, a tribal ID or supplemental document issued by a Tribal Government, that locates a person's residence within a voting precinct by marking it on a map, or by another method agreed upon by the Parties, identifying the location of residence other than a numbered street address" (*Brakebill v. Jaeger*, Order, Consent Decree, and Judgment. 2020: 6).

After a settlement was reached, the North Dakota Secretary of State Alvin Jaeger issued a press release: "The Consent Decree will ensure all Native Americans who are qualified electors can vote, relieve certain burdens on the Tribes related to determining residential street address for their tribal members and issuing tribal IDs, and ensure ongoing cooperation through mutual collaboration between the State and the Tribes" (Jaeger. 2020). A less sanguine interpretation of the impact of the voter ID laws was presented recently by Roger White Owl, the CEO of the Mandan, Hidatsa, and Arikara Nation:

Most of our members have IDs that list a P.O. box as their address. The MHA Nation had to step in [after the new ID laws took effect] to take action to make sure that Tribal members' votes would be counted. As fast as we could we began issuing new Tribal IDs and created street addresses for our members and their homes. Our enrollment office had limited staff and resources to do this work. In about a month and a half, they issued 456 new IDs with new addresses. We did not get any support, any support, from the State of North Dakota or Federal trustees to do this work. Some Tribal members had to drive for hours to get a new

ID every day. There were long lines of people waiting to receive new IDs, especially during lunch breaks. I am sure many people were unable to get the new ID. Even with all this work, about one-third of our members still do not have Tribal IDs (White Owl. 2019).

7. *Spirit Lake v. Benson County*. In 2021, the Benson County Commission returned the county commission to at-large elections, despite a finding in *U. S. v. Benson County* (the first case listed above), that at-large county commissioner districts diluted Native American voting strength. The consent decree in that case permanently enjoined the county from using at-large districts. The Spirit Lake Tribe and two tribal members immediately filed suit to prevent the county from returning to at-large elections. The parties are currently in settlement negotiations.

8. *Turtle Mountain Tribe v. Jaeger*. In 2022 the Turtle Mountain Band of Chippewa Indians, the Spirit Lake Tribe, and individual tribal members sued the state of North Dakota over the 2021 redistricting law (HB 1504, the same law that is the subject of this case). The tribes had requested that they be placed in one compact district (District 9). Instead, the legislature ignored their plea and divided District 9 into two sub-districts and placed Spirit Lake voters in another district. The Complaint claims that the new redistricting plan diluted the votes of Native Americans by packing most Native American voters in District 9a, placing some Turtle Mountain land in District 4b, and placing Spirit Lake voters in another district. This case is currently under litigation.

This long litany of cases indicates a persistent effort on the part of state or local officials to dilute or abridge the voting rights of Native Americans in North Dakota. It also points to a vigorous effort on the part of Native Americans to obtain the right to vote, and then fight to get an equal opportunity to elect candidates of their choice.

One way that Native people experience voting-related discrimination in North

Dakota is access to polling places and adequate mail delivery. Native voters often face unreasonably long distances to drive to a polling place. The alternative—vote-by-mail—is often not an attractive option because mail delivery is often inadequate or non-existent, post offices are poorly staffed with limited hours, and the drive to a post office may be just as long as the drive to a polling place (Tucker, De León, and McCool. 2020: Ferguson-Bohnee. 2020; Nilson. 2020). Several of the members of MHA Nation that I interviewed explained why long distances and poor mail delivery diminished their ability to participate in elections:

> For state elections I didn't go vote because it was too far, you have to go a half-hour drive to Mandaree, or a 45-minute drive Watford city, each way (Good Bird. 2023. In-person interview, Jan. 10).

> Location of the voting polls has impacted the ability of lower income individuals to adequately get to a polling place. Prior to redistricting, in Four Bears we had to go to Watford city, a 40 plus minute drive one way, not including standing in line to vote. And most policies allow only one hour to take off to vote, so that would mean taking leave and not getting paid while you're gone. We reached out for a polling place in Four Bears, and they said no. They didn't give a reason; they didn't want us to have the convenience of voting here.... We still have to go to Mandaree to vote, still no polling place in Four Bears where we are. Have about 1,000 eligible voters here, enrolled and not enrolled.... We don't have a post office here in Four Bears; we're in McKenzie County; New Town is in Mountrail County (White. 2023. In-person interview, Jan. 10).

> If you have [tribal] members in a rural area, they have trouble getting into town, money to pay for gas, and they moved the polling sites that we had. We used to vote here but now we can't. They changed it to make long distances to drive. Poverty too much to even own a car, increased distances. Same with White Shield; now they have to go to Washburn, a long distance (Mayer. 2023. In-person interview, Jan 10).

> They closed North Fox polling place in 2018, now I have to go to Manning, ND, the county seat for Dunn County, which is 110 round-trip. Can't depend on the Mandaree post office. It's often closed, so we can't depend on the mail system. Receiving and sending ballots is time-sensitive, so there's no guarantee my ballot will get there on time. The roads are icy in November often. Our mail goes from Mandaree to New Town, to Minot, then to Bismarck where they post-mark it. The postal system used to be a good system but it's really crippled now. For tribal members, the county does not make them fully aware that there is a timeline for mailing ballots, but the delay in getting the postmark can affect whether your ballot is accepted.... They closed the North Fox precinct without notifying the voters here; we didn't find out until just before the precinct was closed. Twin Buttes is a site where we can vote, but they're even further than

Manning. We met with the county clerk, in Manning, and she said they did it to save money (Theodora Bird Bear. 2023. In-person interview, Jan. 11).

> We used to rely on the postal service but with the decline in postal service, our post office is unmanned or not open, so we make a point of voting in-person. When they closed the North Fox precinct we received no notice. The Dunn County auditor told us that the North Fox precinct didn't have our physical address; my notification was rejected as undeliverable because my address is not a physical address. All rural post offices have PO Boxes. I have a mailing address; it's a PO box in Mandaree. I have a physical address; 9120 BIA Road 12. But we should have a street address that is a unique identifier. This house is 9121 [we were across the highway at her sister's house], but we don't have a street address. Dunn County used that physical address to mail a ballot, but it is NOT a delivery point in the USPS address system; my PO box is my mail delivery address. So when the ballot notice came to my physical address it was rejected by the post office because it's not an official PO address. There is no mailbox at our house (Joletta Bird Bear. 2023. In-person interview, Jan. 11).

> The disappearance of polling places, which is a problem for elders and those who cannot afford to make a one-hour trip. It's been effective, but the tribe has done everything they can to ameliorate that; the tribe offered to pay to keep polling places in North Fox/Mandaree and Four Bears [they were turned down].... The Postal Service offices; here it's been a bit sketchy, due to the gutting of the funding (Baker. 2023. In-person interview, Jan. 12).

> It used to be that the counties come to the reservation and set up their voting thing [polling place], but they don't do that now. Now I have to go to Manning; it's about 45 minutes to an hour each way. It used to be here in the Catholic Church. They are just trying to take our votes away [by closing polling places] (Young Bear. 2023. In-person interview, Jan. 12).

> We go to Manning to vote; it's close to 50 miles each way (Muzzy. 2023. In-person interview, Jan. 12).

> The system in ND is so complex; accessing the ballot is not easy when you come from a reservation, and polling places are not available; in some cases we have to drive 50 miles to the nearest polling place (Donaghy. 2023. In-person interview, Jan. 12).

> they put up a lot of roadblocks.... They make it harder. Needing a real ID but won't take a PO Box—I have a PO box and when I put in my real address it says my address doesn't exist. For emergency services they mapped the area and that said my house had the wrong address (Beheler. 2023. Telephone interview, Jan. 13).

In addition to issues involving closed polling places and poor to non-existent mail service, there are larger conflicts between Native people and Anglos that affect voting.

Several of the people I have interviewed for this case and other cases in North Dakota talked about how discrimination still has an impact on voting:

Interviews at Fort Berthold:

> A lot of people here don't have a functioning car or truck. They can't vote unless they have a ride or someone is willing to take them. No public transportation. There is an elder bus, but it only goes to a specific segment; this is Four Bears segment (Good Bird. 2023. In-person interview, Jan. 10).

> [There is] discrimination from the North Dakota government because we are not encouraged or included in election races in the state, and we're bisected by six county governments (Joletta Bird Bear. 2023. In-person interview, Jan. 11).

> This case [referring to *Walen v. Burgum*] is discrimination, calling it racial gerrymandering; that's discrimination (Mayer. 2023. In-person interview, Jan 10).

> We are discriminated against. They picked a small community, the North Fox precinct [at Mandaree] to close.... The turnout varies; people are not connected to the state of ND, it's only recent that we got Lisa DeVille. We look at the tribal government and federal government; the state is a remote entity. It impacts us but the state has never encouraged us to develop an active role; you have to push your way in, you have to fight. There is not an interest in county commissions; there is no encouragement, and no county commissioner ever elected from Mandree; you are seen as an outsider there [in Manning, the county seat]. (Theodora Bird Bear. 2023. In-person interview, Jan. 11).

> As far as voting, I've heard of others that have experienced discrimination in voting, over ID or appearance. And the ability to get to a voting area, and some seek others to drive them because of the distance (Spotted Horse. 2023. In-person interview. Jan. 11).

> There's always been a cover effort to suppress the indigenous vote but it really caught fire when we got Heidi Heitkamp elected. She knew, and valued, the Native vote. Neither Berg nor Kramer ever made an appearance out here. But Heidi did a lot... I'm thinking about my aunt who lives about 45 minutes away in Mandaree... She is 80; how is she going to go vote? What about house-bound elders? (Baker. 2023. In-person interview, Jan. 12).

> We still have to go to Mandaree to vote, still no polling place in Four Bears where we are. Have about 1,000 eligible voters here, enrolled and not enrolled (White. 2023. In-person interview, Jan. 10).

> They are just trying to take our votes away [by closing polling places]; they think: them dumb Indians they ain't gonna know. If racism is shown to you on a daily basis, how many of us are going to be running to go vote. We say: I don't know them people [Anglo candidates], I don't know them. They still feel we're savages, they don't want to come into our poor houses. Racism is still playing a big part of our life (Young Bear. 2023. In-person interview, Jan. 12).

> "When you apply for candidacy [a Native running for office], it's very racist over here" (Finley-DeVille. 2022).

Interviews from Other Reservations and Statewide:

> We see the closing of polling places, being met with racial tension, we've had racial slurs thrown at our people, our people have met resistance. Every election year we monitor the polls, and we set up warming stations at the polls. In some instances we're not welcome. In Benson County and Mountrail County we were told to move. There is a lot of racial bias by these decision makers. At Mountrail County, we had a tent set up and the county auditor told us to move. We said we have every right to be there so we

refused to move. We were within our rights, so the auditor backed down (Donaghy. 2023. In-person interview, Jan. 12).

> “In several elections on my reservation, at some of our polling locations the poll workers verify IDs. Poll workers have an issue with tribal IDs, even though they are legal. Native people have been turned away. Now we see confusion as to where people vote. If an individual has driven 50 miles one way and then are told they are in the wrong place, it is discouraging. People get confused as to where the lines are for poll locations. There is a misinformation about ballot initiatives here, and I think it is purposeful misinformation. There was false information given to tribal colleges. At Spirit Lake, at New Town, and at Bismarck; they all got the same flyers from out-of-state interests” (Seminole. 2022).

> “A lot of them [tribal members] felt uncomfortable going anywhere else to vote. They changed the voting sites, and people didn’t show up then. The one in fort Totten was moved. The one in Warwick moved to Sheyenne (just off the reservation). And the postal service moved too. A lot of people don’t have a permanent address; they have a P.O. box. They shut the post office in St. Michael here. Now we have to go to Fort Totten. The people in Tokio now have to go to Sheyenne or Warwick (and that one maybe shut down). And the post office cut the hours down, from 10 to 2, and on Saturday is from 10 to 10:30am; only a half-hour. They’re trying to eliminate us from voting. Trying to limit our districts” (Pearson. 2022).

> “Our Indian people were afraid to vote because of fear and misinformation. They are afraid that they might be called for jury duty. It’s like a stigma. Those rumors start and Indians don’t like that. Nobody likes going to court; it’s a common historical fear of courts. So, fear of jury duty is used to keep Indians from voting. I’m the first Native to be a chair of a county commission in Rolette County” (Poitra. 2022).

> “Yes [discrimination has an impact on Native voting]. Laws that stifle our ability to access the ballot and polling place and to vote for candidates of our choice. Huge push to vote by mail, but that is a limitation for our communities. When I went to vote this last time, in 2018, I used my tribal ID. The voter ID was in use at that time. I updated my ID and handed it to the poll worker and he asked me for a driver’s license. He said it was harder to input that kind of ID. Some places refuse tribal IDs. There’s been intimidation tactics; a lot of people from both parties are questioning everything that is happening. And racism; people show up as a large group. We’ve seen discrimination at the polls. In 2018, in Selfridge, we had a large group [of Natives] go to vote, and the people who were there were like ‘you Indians are good for nothing but protesting. We’re going to shut the precinct.’ They [our group of tribal voters] felt threatened and heard racial slurs: ‘effing Indians, good for nothing but protesting and collecting food stamps;’ and that was from the poll worker” (Donaghy. 2022).

> “It was 2018 or 2020 and we took some young people to a poll, in a bowling alley in Mandan; a bunch of non-Native people were standing outside the door. One of the [Native] girls had a panic attack when she saw them. She couldn’t breathe. She said I don’t want to go. So three of us formed a protective barrier around her so she could go in and vote. It’s that hostile stare and posture; that’s intimidating.... They had problems with the auditor in Sioux County [who is no longer in office]; she told people she was out of ballots when she wasn’t; she would not let people hand out water. She wouldn’t let people get a chair for Native elders.” (Kary. 2022).

And some Anglos still bring up the issue that “Indians don’t pay taxes” as a reason for limiting Native participation in the electoral system:

> “They say Native Americans don’t pay taxes; I’ve heard that several times off the reservation” (Finley-DeVille. 2022).

> “a lot of stuff has come out since I got on the commission; people say I shouldn’t be on the commission because I don’t pay taxes. That came from fellow commissioners; two said that; that I shouldn’t be on the commission because I don’t pay taxes” (Poitra. 2022).

In sum, there is a long history of official and *de facto* discrimination in elections that has affected the ability of Native Americans to vote and have an equal opportunity to elect candidates of their choice.

2. The extent to which voting in the elections of the state or political subdivision is racially polarized.

The clearest test of racially polarized voting occurs when a Native candidate is pitted against an Anglo candidate. State-wide, that has rarely occurred. In 2016, three Native American candidates ran for state-wide office. Chase Iron Eyes, from Standing Rock Reservation, ran against Keven Cramer for the U. S. House of Representatives in 2016. Only two counties had a majority of votes for Mr. Iron Eyes—Sioux and Rolette, both of which are majority Native counties. Rolette County (78 percent Native) voted 2,487 for Iron Eyes and 1,195 for Cramer. Sioux County (81.4 percent Native) voted 973 for Iron Eyes and 243 for Cramer. Benson County, with 55.6 percent Native population, was close, with 857 for Iron Eyes and 1,053 for Cramer. These data indicate that Native voters strongly favored Mr. Iron Eyes. The same comparison can be made for the another race in 2016 that featured a Native American running against an Anglo. In the race for Insurance Commissioner, Ruth Buffalo, from the Mandan, Hidatsa and Arikara

Nation, ran against Jon Godfread. Like Iron Eyes, Ms. Buffalo carried both Rolette and Benson Counties, but also won Sioux County.

The most recent race to pit a Native American against an Anglo was the 2022 race for Public Service Commission. Melanie Moniz, a member of the MHA Nation, ran against incumbent Julie Fedorchak. Ms. Moniz won only two counties: Rolette (Turtle Mountain) and Sioux (Standing Rock), and she won a respectable 40 percent in Benson County (Spirit Lake).

These data make it clear that Native voters prefer the Native candidates and Anglo voters vote for the Anglo candidate in state-wide races—a stark illustration of racially polarized elections.

Another aspect of elections that is indicative of racially polarized voting is when turnout suddenly increases when there is a 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 had sponsored or co-sponsored 17 bills and resolutions dealing with Native Americans (Heitkamp, 2019). Turnout in three predominately Native counties set records:

In Sioux County, where the Standing Rock Indian Reservation is, turnout was up 105 percent from the last midterm elections in 2014 and 17 percent from the 2016 presidential election, according to data from the North Dakota Secretary of State's office. In Rolette County, home to the Turtle Mountain Band of Chippewa Indians, it was up 62 percent from 2014 and 33 percent from 2016. In Benson County, home to the Spirit Lake Nation, it was up 52 percent from 2014 and 10 percent from 2016 (Astor, 2018).

However, a high level of Native support for Senator Heitkamp could not overcome an overwhelming vote for her opponent, Representative Kevin Cramer, in predominantly Anglo counties.

Evidence of racially polarized elections at Fort Berthold was provided to the redistricting committee via testimony. Mark Fox, Chairman of the Mandan, Hidatsa and Arikara Nation, described examples of such elections in his testimony:

Proven history of bloc voting occurred on the Fort Berthold Reservation in the city of Parshall, e.g. Parshall School Board in 1990.... When I sought election to the Parshall School Board nearly five hundred votes were cast, in stark contrast to average voter turnout of less than one hundred when non-native candidates were on the ballot. Additional examples include two other tribal members running for the State House in 2020 and 2016, respectively. Both candidates, Thomasina Mandan and Cesar Alvarez easily won the precincts on the reservation but lost in the overall election (Fox. 2021).

Another member of the MHA Nation provided similar testimony: “In 2020 I challenged Senator Kannianen and unfortunately was not able to be elected even though portions of the district on the reservation strongly supported myself and House of Representatives candidate Thomasina Mandan” (Finley-DeVille. 2021). Both Ms. Finley-DeVille and Ms. Mandan are member of the MHA Affiliated Tribes.

Another method of evaluating the extent of racially polarized elections at Fort Berthold is to examine recent election data. In the 2022 election for House District 4a, Lisa Finley-DeVille, a member of MHA Nation, ran against the Anglo incumbent, Terry Jones, after the district had been divided into two sub-districts by the 2021 redistricting legislation. The new district 4a is comprised of the Fort Berthold Indian Reservation. It should be noted that a sizeable population of Anglos live on the reservation; 26.9 percent of the population is Anglo, compared to 64.5 percent Native American. That breakdown is very similar to the outcome of the election for House District 4a; Ms. Finley-DeVille won 69.02 percent of the vote, while Mr. Jones won 30.7 percent.⁵

⁵ Another expert is doing a statistical analysis of racially polarized voting.

Many of the people I have interviewed commented repeatedly about the polarized nature of voting, especially in the most probative races when an Indian and an Anglo ran against each other. These comments are divided into two segments; the first set comes from people at Fort Berthold, and the second set are in regard to polarized races involving other reservations in North Dakota state-wide races.

Interviews from Fort Berthold:

> I ran for state Senate [a Native candidate]. When we ran, who voted for us was our people. I knew that was going to happen, but you hear all the really racist remarks. When you apply for candidacy, it's very racist over here. They say we don't want to hear about treaties, but I say I had to learn about you, so you need to hear about us (Finley-DeVile. 2022).

> I'm not much political. I just think it brings up conversations that don't need to be started. We don't see what they [white people] see. We don't know what they say. They don't show up here to campaign. All you see is signs, they don't come here to talk or anything. People feel ignored. I don't even know who Jones is (Good Bird. 2023. In-person interview, Jan. 10).

> Definitely [Natives vote for Native candidates and Anglos vote for Anglo candidates]. They [Tribal members] are voting on color and race. You may not even know them [Anglo candidates], but we all vote on race (Mayer. 2023. In-person interview, Jan 10).

> Pretty much [Natives vote for Native candidates and Anglos vote for Anglo candidates]. They [Tribal members]; it's along racial lines. We vote for non-Indian candidates because there are no Indian candidates. That's a historical thing. But with Lisa we got a tribal candidate (Theodora Bird Bear. 2023. In-person interview, Jan. 11).

> Generally, there are no Native candidates. That depends on our ability to place a candidate and with the gerrymandering here in North Dakota it's almost impossible [prior to the creation of District 4a]. We have to vote for a white person, because it's important to vote.... In North Dakota its white candidates. The way the districts are supports that, until recently the districts now allow Natives to have a larger role. In our recent election, it was historical, we had our fist Native candidate in opposition to the white candidate. Jones never came to Mandaree. Fegley and Terry Jones had a session in New Town that was a Republican party thing, but they didn't come to Mandaree (Joletta Bird Bear. 2023. In-person interview, Jan. 11).

> Why would I vote for someone I don't know? If it's a buddy of mine who was non-Native, that's different. I support friends and family (Standish. 2023. In-person interview. Jan. 11).

> Tribal people are an engageable population but you have to stay engaged with them. We've been able to engage people because we've made a concerted efforts to talk to people; I've been on voting tours and talked to people about voting. It requires effort; indigenous people have no reason to trust this system whatsoever.... The majority of indigenous people are going to vote for the indigenous candidates. Terry [Jones] didn't

engage, but this time [2022] he made an effort. All those other years he made no effort (Baker. 2023. In-person interview, Jan. 12).

> Pretty much [Natives vote for Native candidates and Anglos vote for Anglo candidates]; we've never had the chance to do that [vote for a Native candidate] before now (Muzzy. 2023. In-person interview, Jan. 12). >

> It depends on their platform; it might be based on who they know or their family. They vote based on interest (Beheler. 2023. Telephone interview. Jan. 13).

Interviews from Other Reservations and Statewide:

> Yes they do [Natives vote for Native candidates and Anglos vote for Anglo candidates] (Donaghy. 2023. In-person interview, Jan. 12).

> When I ran... on a statewide ballot, I really got a flavor of that [discrimination]. People would say to me "we don't vote for Indians"..... It [being perceived as an Indian—Mr. Boucher actually is not an enrolled member] was stuck in my face quite a few times (Boucher, 2016).

> When I ran [a Lakota woman running for a House district] I took all of Sioux County and none of Morton County. I took Grant County—there are tribal members there. Whites voted for my opponent (Allard, 2016).

> Do Native Americans have a propensity to vote for their own? Yes, the same is true with whites (Boucher, 2016).

> My brother [an American Indian] ran for sheriff [of Rolette County].... He came out ahead because he got all the Indian votes. The last two sheriff races the Indians won; the Native voters elected him (J. Turcotte, 2016).

> There was discrimination against Turcotte [Native American sheriff in Rolette County]. They made it so miserable for him as sheriff that he quit.... Some of them just couldn't see an Indian being sheriff (A. McCloud, E. McCloud, 2016).

> Yes [Indians vote for Indians and Anglos vote for Anglos] in the city council races [in Rolla] (Nordmark, 2016).

> ...racism would create barriers for any non-white candidate for state office. Natives can elect Natives, but for larger offices [beyond local] I don't see a Native candidate gaining traction (Carbone, 2016).

> Mike Faith was one of our [Standing Rock] council members. He received a large vote from the Indian community when he ran [for non-tribal office] (Eagle, 2016).

> Yes they definitely do [Indians vote for Indians, Anglos for Anglos]. I can tell you we've had enrolled members run for county commissioner; there's been four or five of them. They ran against Whites that had college degrees and are well-known, and the Indian had maybe a fifth or sixth grade or high school education. But you can see the voting is so one-sided on the reservation they just put an x there. The Whites vote for the best candidates, but there's that cultural divide here. The Indians vote for Indians (anonymous1, 2016).

> "Yes, most of my votes [a Native American candidate] were from Benson County on the reservation. In Rolette County, every time they have a campaign for Senator Marcellais, the tribe turns out and makes sure that he wins" (Longie. 2022).

> "I ran for office in 2010 for district 42 for the state House. There was a lot of hatred as part of that campaign" (Seminole. 2022).

> “We had one of our members run for sheriff in Minnnewaukan. He ran against a white sheriff. Those who voted from here [on the reservation] voted for the Native” (Pearson. 2022).

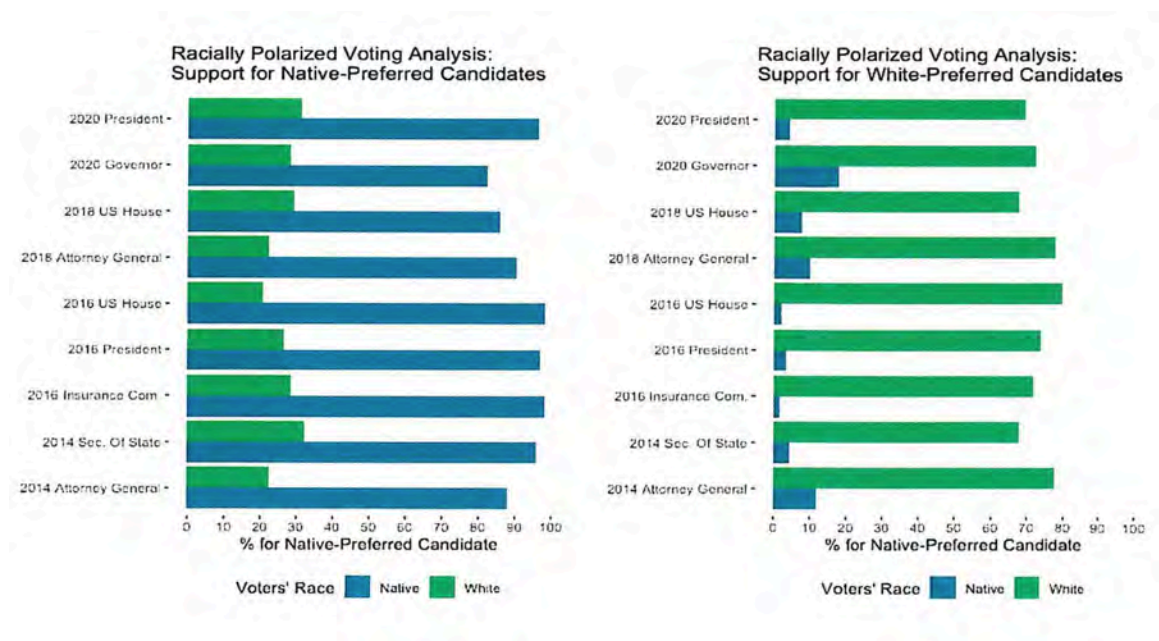
> “I ran for county commissioner [a Native candidate] in 2018; a big push, despite the ID issue. I didn’t campaign; I depended on that Indian voter to rally behind me. It was the most votes for a county commissioner ever. I got over 2,000 votes; that was a record; about 2,000 were Native voters. I benefited from the GOTV effort among Indians” (Poitra. 2022).

> “Case in point; our former chair Mike Faith; ran for district 31 legislative seat. Ran against a non-Native. The reservation people turned out for him. But we’re packed in with non-Natives” (Donaghy. 2022).

In short, in the most probative races—those that pit a Native American against an Anglo—there is a pronounced level of racially polarized voting. The interviews make it clear that, when Native voters have an opportunity to vote for a Native, they do so. The evidence also indicates that Anglo voters tend to vote for Anglo candidates rather than a Native candidate. The preference for a Native candidate was explained in an interview with Robert White, MHA Tribal Council; it is his belief that “An enrolled member would be more equal and willing to work with the betterment of everybody” (White. 2023. In-person interview, Jan. 10).

There is also a long evidentiary record of racially polarized voting. Past court decisions, such as *U.S. v. Benson County*, noted that “Racially polarized voting patterns prevail in elections for the Benson County Commission...” (*U.S. v. Benson County*. 2000). The expert witness reports that accompanied that case and some of the other cases cited above presented data on racially polarized voting. And testimony provided to the Legislative Redistricting Committee by Jamie Azure, Chairman of the Turtle Mountain Band of Chippewa Indians, and Douglas Yankton, Sr., Chairman of the Spirit Lake

Nation, included bar charts, reproduced below, starkly depict the racial polarization of elections in the state.⁶



Another presentation to the redistricting committee by Mike Faith, Chairman of the Standing Rock Sioux, also described racially polarized voting that takes place in District 31, which includes his reservation (Faith. 2021).

The election data presented above make it clear that Native people vote for Native people when the opportunity arises, and only a few Anglo voters choose to vote for the Native candidates, resulting in a history of racially polarized voting.

3. The extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts.

The 2021 redistricting process could have employed “voting practices or procedures” that discriminated against voters on the Fort Berthold Reservation, as in the past. But instead, the legislature created a split district. This avoided the past practice of an at-

⁶ The minutes of redistricting committee meetings and attached testimony can be found at: <https://www.legis.nd.gov/assembly/67-2021/committees/interim/redistricting-committee>

large two-member district that did enhance opportunities for discrimination against members of the MHA Nation.

During the debate over redistricting, several legislators claimed there was no evidence of any racial bloc voting in North Dakota. During the floor debate, Representative Jones claimed that no one had presented evidence of racial bloc voting (House Floor Session. 2021. Comments by Rep. Jones). Senator Oley Larsen also claimed that “there was no polarization study done to see if there was truly racial bias on these two areas that we’re subdividing” (Senate Floor Session. 2021. Comments by Senator O. Larsen). However, there is a large body of evidence presented in other Voting Rights Act cases in North Dakota (see cases cited above) that indicates a persistent problem with racially polarized elections in North Dakota. In addition, tribal members from MHA Nation provided evidence at the redistricting hearings of racially polarized voting. Also, at-large election jurisdictions have been the target of many Voting Rights Act cases, including many cases involving Native American voters. The North Dakota Legislative Council’s redistricting “Background Memorandum” specially alludes to that: “Many decisions under the Voting Rights Act have involved questions regarding the use of multimember districts to dilute the voting strengths of racial and language minorities” (North Dakota Legislative Council. 2021: 9). Table 1 is a list of at-large cases with Native American plaintiffs.

Table 1:
At-Large Cases with Native American Plaintiffs

WON/ SETTLED	CASE	STATE	YEAR FILED
Yes	<i>U.S. v. Thurston Co.</i>	NB	1978
Yes	<i>U.S. v. San Juan Co.</i>	NM	1979
Yes	<i>Windy Boy v. Big Horn Co.</i>	WY	1983
Yes	<i>U.S. v. San Juan Co.</i>	UT	1983

Yes	<i>Largo v. McKinley Cons. School District</i>	NM	1984
Yes	<i>Estevan v. Grants-Cibola Co. School District</i>	NM	1984
Yes	<i>Buckanaga v. Sisseton School District</i>	SD	1984
Yes	<i>Felipe & Ascencio v. Cibola Co.</i>	NM	1985
Yes	<i>Tso v. Cuba Independent School District</i>	NM	1985
Yes	<i>Kirk v. San Juan College Board</i>	NM	1986
N.A.	<i>Clark v. Holbrook Unified School District</i>	AZ	1988
Yes	<i>Bowannie v. Bernalillo School District</i>	NM	1988
Yes	<i>Cuthair v. Montezuma-Cortex School District</i>	CO	1989
No	<i>Grinnell v. Sinner</i>	ND	1992
Partial	<i>Stabler v. Thurston Co.</i>	NB	1993
Yes	<i>U.S. v. Parshall School District</i>	ND	1996
Yes	<i>Matt v. Ronan School District</i>	MT	1999
Yes	<i>U.S. v. Blaine Co.</i>	MT	1999
Yes	<i>Alden v. Board of Comm. of Rosebud Co.</i>	MT	1999
Yes	<i>U.S. v. Roosevelt Co.</i>	MT	2000
Yes	<i>U.S. v. Benson Co.</i>	CO	2000
Mooted	<i>Emery v. Hunt / U.S. v. South Dakota</i>	SD	2000
N.A.	<i>McConnell v. Blaine Co.</i>	MT	2002
Yes	<i>Weddell v. Wagner Comm. School District</i>	SD	2002
Yes	<i>Large v. Freemont Co.</i>	WY	2005
Yes	<i>Navajo Nation v. San Juan Co.</i>	UT	2012
Yes	<i>U.S. v. Chamberlain School District</i>	SD	2019
Yes	<i>Lower Brule v. Lyman Co.</i>	SD	2022
Ongoing	<i>Spirit Lake v. J</i>	ND	2023

Sources: McCool, Olson, and Robinson. 2007: 48-68; Tucker, De León, and McCool. 2020; *U.S. v. Chamberlain School District*. 2020; *Lower Brule v. Lyman Co.* 2022; *Spirit Lake v. Benson Co.* 2022

Note that three of those cases were in North Dakota, one of which involved the Parshall School District on Fort Berthold.

In sum, there was a significant body of evidence that indicated that, if the legislature did not create Districts 4a and 4b, it would lead to a Voting Rights Act case because of the impact the at-large district had on Native voters.

4. The exclusion of members of the minority group from candidate slating processes.

Candidate slating became less important after the Voting Rights Act was amended in 1982 and does not appear to relevant to this case (Katz, 2005: 33-36). The best

explanation of this factor is found in Professor Ellen Katz's voluminous analysis of cases under Section 2 of the Voting Rights Act:

Factor 4 asks whether members of the minority group have been denied access to a candidate slating process, assuming such a process exists in the jurisdiction. A denial of such access was an important component of a Section 2 claim prior to the 1982 amendments, but the factor appears to be of diminished importance under the amended provision. Sixty-four lawsuits determining Section 2 was violated did not find Factor 4.... While the term "slating" is not defined by the Senate Report, the Fifth Circuit has described it as "a process in which some influential non-governmental organization selects and endorses a group or 'slate' of candidates, rendering the election little more than a stamp of approval for the candidates selected" (Katz. 2005: 33).

In short, candidate slating within a political party is an extreme rarity these days and is almost never an important political roadblock for minority candidates, especially in states that have party primaries (as does North Dakota).⁷ I found no evidence of parties in North Dakota engaging in an overt race-conscious candidate slating process.

5. 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.

In North Dakota, there are significant differences between Anglos and American Indians in income and poverty, level of education, and health. Limited internet access, which is a largely a function of poverty and poor education, also hinders the ability to participate. Each of these will be analyzed in detail, using both historical and recent data. A comprehensive statistical analysis of current socio-economic factors is being completed by another expert, however the qualitative methodology I employ reveals a

⁷ The only contemporary case I could find that included a slating claim was the 2011 Texas redistricting case, *Perez v. Perry* (835 F. Supp.2d 209 (2011)). That case included a claim that "Slating was the act of controlling, through secret ballot, who could be a candidate for city offices, thus limiting the choices available to voters" (Flores. 2015: 160).

persistent gap in socio-economic status between Native Americans and Anglo in North Dakota.

a. Income:

It is well-recognized in political science that income correlates positively with political participation (Lien. 2000; Verba, Schlozman and Brady. 1995; Wolfinger and Rosenstone. 1980). Klobstad notes: “The strength of the SES [socio-economic status] model is that it is well grounded empirically. For example, countless studies show that factors such as income and education are correlated strongly with voter turnout, making campaign donations, participating in civil organizations, and the like” (Klobstad. 2016: 4). This section presents past data as well as contemporary data to demonstrate changes in data over time.

The tribes of North Dakota were once rich in land and other resources. That changed with the reservation system: “The effect on Indian culture was devastating. Deprived of their primary source of food and housing, the Dakotas became dependent on government handouts” (Risjord. 2012: 157). Black Elk, the famous Teton Sioux, described the reservation in the 1880s: “Hunger was among us often now, for much of what the Great Father in Washington sent us must have been stolen by Washichus [white Indian agents] who were crazy to get money. There were many lies, but we could not eat them” (quoted in Risjord. 2012: 157). A century later, they were still living in desperate poverty: “The late 1950s found us [Lakota people] living in square houses in scattered communities across the reservations. Our lifestyle was largely indefinable and on the dole of the United States government... We were virtually powerless politically” (Marshall.

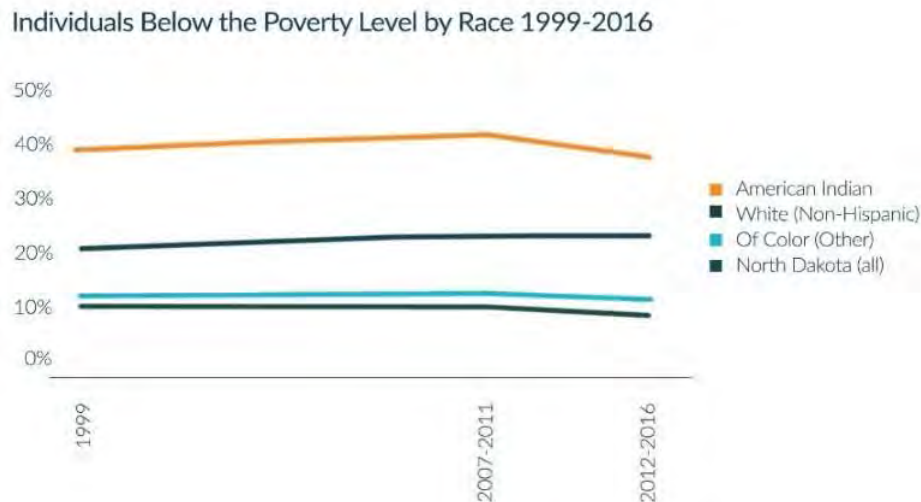
2004: 52). American Indians in the Dakotas were “the poorest of the poor” (Lawson. 1982:38). This legacy of long-term poverty continued into the contemporary era.

American Community Survey data from 2011-2013 showed the sharp contrast between the social and economic well-being of Anglos and that of American Indians in North Dakota (ACS. 2011-2013). The rate of employment in the labor force for Anglos was 71 percent; for Indians it was 58 percent (ACS. 2011-2013: 5). Another indicator of potential economic difficulties was the percentage of households headed by a female with no husband present. For Anglos, that rate was only 6.7 percent, but for Indians it was 29.5 percent (ACS: 2). Also, Indians were employed in the lowest-paying jobs; 30.5 percent worked in service occupations while only 16 percent of Anglos were in service jobs. At the other end of the spectrum, 35.2 percent of Anglos worked in “management, business, science and arts,” but only 25.6 percent of Indians had such jobs (ACS: 6). It is not surprising then, that there is a big difference in income. The median annual household income for Anglos in 2011-2013 was \$56,566; for Indians it was not much more than half of that—\$29,909 (ACS: 7). The data for “mean earnings” also reflected a large gap; For Anglos it was \$73,313, for Indians it was \$48,763 (ACS: 7). The low pay, lack of jobs, and inadequate education, led to stark differences in poverty rates. Only 5.3 percent of Anglos families live below the poverty line at that time, but for Indians it was 37.7 percent (ACS: 7).

In 2016, the median household income for American Indians in the state was \$25,255; the state as a whole earned nearly twice that amount--\$48,670 (North Dakota Department of Health. 2016, Table 11). The state average for people living below the

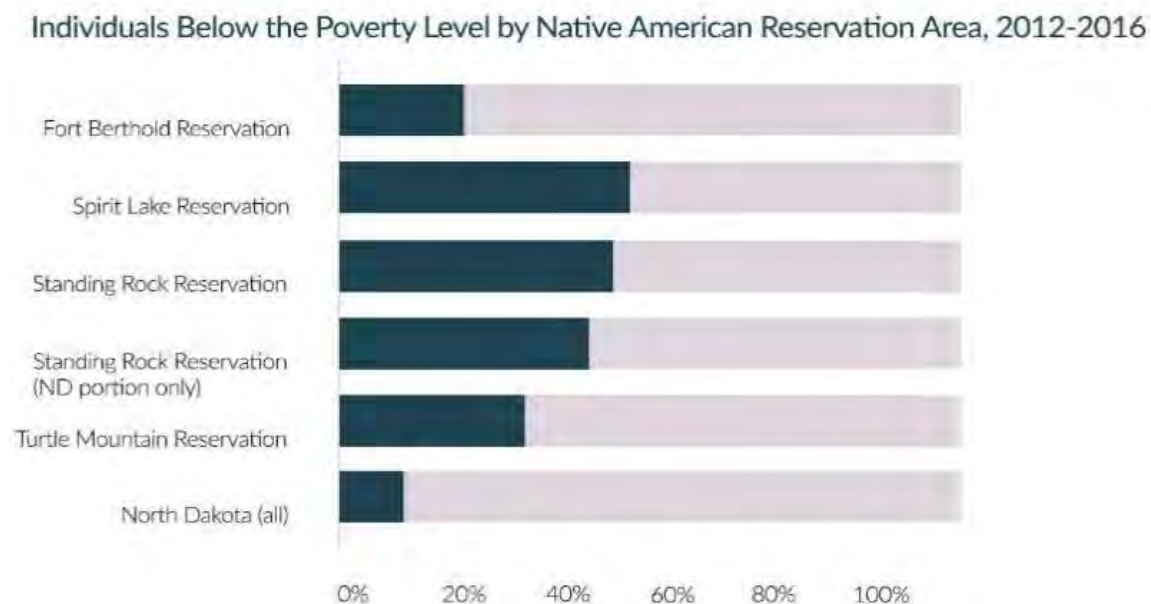
poverty line was 13 percent; for Indians it was 39.8 percent—over three times as high (North Dakota Department of Health 2016, Table 12).

The data described above can be represented in a graph:



Source: <https://www.ndhfa.org/wp-content/uploads/2020/07/HomelessPlan2018.pdf>

The 2012-2016 data on poverty can be broken down by reservation:



Source: <https://www.ndhfa.org/wp-content/uploads/2020/07/HomelessPlan2018.pdf>

These data indicate that the highest levels of poverty during the period 2012-2016 was on the Standing Rock Sioux Reservation and the Spirit Lake Reservation, but Turtle

Mountain and Fort Berthold were also very high. The poverty rate at Fort Berthold would be even higher if the data did not include the 30 percent of the population on the reservations that is Anglo.

These differences in economic circumstances are reflected in differential rates of home ownership versus rentals. The 2011-2013 data reveal that 76.2 percent of Anglos lived in owner-occupied housing, compared to just 46.3 percent for Indians. Conversely, only about a third of Anglos (32.8 percent) lived in rentals, compared to over half (53.7 percent) of the Indian people in the state (ACS: 8). Also, the value of these homes was quite different. The average value of a home for Anglos at that time was \$144,400; the same figure for Indians was about half of that--\$74,700 (ACS: 9). Home ownership among urban Indians was also low. According to a 2014 study of Native Americans in the Bismarck/Mandan area, 46 percent of Indians lived in a rented apartment, and 18 percent lived in a rented trailer; this means that their residential address may change more frequently than people who own their own homes (Sacred Pipe Resource Center. 2014). Indeed, this population appeared to be fairly transitory; the same survey found that 12 percent of the respondents had lived in the Bismarck/Mandan area for less than one year; and 31 percent for one-to-five years.

At least those people had a roof over their heads. Native Americans are over-represented in the homeless population. According to 2013-2017 data, Native people represented 18.2 percent of the homeless population, but they were less than six percent of the total population (North Dakota Interagency Council on Homelessness. 2018). Native Americans also face housing problems associated with their over-representation in the prison population:

According to the North Dakota Department of Corrections and Rehabilitation, Black and Native Americans are four times more likely to be incarcerated, on parole, or on probation than their white counterparts. Overall, North Dakota's population is 84 percent white, three percent Black, six percent Native American, three percent other, and four percent Hispanic. This contrasts with the North Dakota prison population which is five percent Hispanic, 19 percent Native American, and 65 percent white, clearly reflecting the disproportionate numbers of communities of color incarcerated in the state. Individuals with criminal backgrounds have difficulty securing housing and often results in homelessness (North Dakota Advisory Committee to the U. S. Commission on Civil Rights. 2021: 10).

Another result of low income and lack of jobs is the inability to afford vehicles and phone service. The 2011-2013 data showed that 13 percent of Indians did not have a vehicle; only 5.1 percent of Anglos lacked a vehicle. There is virtually no public transportation on Indian reservations in North Dakota, so lacking a vehicle makes it extremely difficult to travel to register and vote. A 2014 survey of urban Indians in Bismarck/Mandan found that 19 percent of respondents did not own a vehicle (Sacred Pipe Resource Center. 2014). And 3.6 percent of Indians did not have a phone, compared to 2.2 percent for Anglos (ACS: 8).

Poverty also results in less access to the legal system, and the need to rely on assistance: "Minorities constitute disproportionately large percentages of those using Legal Services North Dakota compared to minority populations in the state" (North Dakota Commission. 2012: 169). In one way, however, Native Americans have too much representation in the legal system—in prison. One-quarter of the people incarcerated in federal prisons in North Dakota are American Indian (U.S. Sentencing Commission. 2013), and 24 percent of the population in state prisons is Native (Spotlight North Dakota. 2022).

The most recent Census survey data indicate that low income and unemployment are still prevalent on North Dakota's Indian reservations. The following table examines

unemployment rates and median income for all five reservations in North Dakota and the state as a whole. The table also indicates the percentage of the population on each reservation that is Native American.

Unemployment and Income on Indian Reservations

RESERVATION/ N. Dakota	UNEMPLOY. RATE	MEDIAN HOUSEHOLD INCOME	PERCENT NATIVE
Fort Berthold	4.9	60,929	64.5
L. Traverse	5.4	53,309	40.3
Spirit Lake	3.9	43,824	81.8
Standing Rock	21.9	39,516	78.3
Turtle Mt.*	9.5	45,885	94.5
North Dakota	2.3	68,131	5.7

Source: U.S. Census, American Community Survey, 2017-2021

*Includes lands in Montana as well as the main reservation in North Dakota

The relationship between poverty, and the ability to vote was a theme in many of the interviews on Fort Berthold:

> Poverty and insolation have a huge economic impact on voting. If you're living, let's say 15 miles from a grocery store. Every day is a long drive. Say from Thunder Butte to New Town, it's about 15 miles from that subdivision. All of us go to New Town to pick up our mail (White. 2023. In-person interview, Jan. 10).

> Just basic survival, not voting, has been more important... If you have members in a rural area, they have trouble getting into town, money to pay for gas, and they moved the polling sites that we had. We used to vote here but now we can't. They changed it to make long distances to drive. Poverty so much to even own a car, increased distances. Same with White Shield; now they have to go Washburn, a long distance (Mayer. 2023. In-person interview, Jan 10).

> Definitely [poverty has an impact on voting]. That's why we need this precinct here. We have to travel to Manning, especially bad in November. A lot of people have used cars, not good tires for winter (Theodora Bird Bear. 2023. In-person interview, Jan. 11).

> Yes it does if your precinct, which we had just three miles down the road, is closed. My 3 miles became 100 miles. I will be making that trip to make sure my ballot reaches that box.... There are so many layers of barriers to voting for Native people. It requires time and money for voters to go to their precinct. When they're closed, that sends a big message that we're unwanted. Historically, North Fox precinct had high turnout; we're rural but we voted. In comparison in Dunn County, precincts that are white, we had higher turnout. They kept some precincts open in Dunn County (Joletta Bird Bear. 2023. In-person interview, Jan. 11).

> Yes, of course. It makes it tough for people to get out and do things. If they are sitting there worried about basic survival, running water, food in the house, the last thing they're

going to worry about is voting. Back in the day, some Natives tried to vote with tribal IDs, but they got kicked when they were already down (Standish. 2023. In-person interview. Jan. 11).

> Yes I believe so. Because of a person's living conditions, poverty, education, they're not going to worry about a person running for office. Unless they are directly affected, they're not going to vote; they would rather find the means of getting food or assistance. They don't have time to go vote, it's a survival thing for them; I need this now and a vote isn't going to get it for me (Spotted Horse. 2023. In-person interview. Jan. 11).

> Everything I'm talking about; it's like a poverty tax. It costs money to be poor (Baker. 2023. In-person interview, Jan. 12).

> Absolutely. We have this oil. We have billions, but you look around, we look like we're still in the third world. You look around and you see the devastation of poverty, ten families in a home.... But the oil money is not benefiting our people, a lot of our people are dying off. We're still living under this poverty, look at my house. With these billions of dollars, we shouldn't be living like this (Young Bear. 2023. In-person interview. Jan. 12).

> Yes, before the oil. They say 40% of the people get oil payments. Some people get some money. There is still poverty here. The ones that don't have anything, they're always hoping the tribe would give more (Muzzy. 2023. In-person interview, Jan. 12).

> Yes. People don't have money to drive 50 miles in one direction to vote. They are unaware of who they're being ask to vote for because candidates do not enter the reservation boundaries; they don't go and talk to our people. Even voting by mail is not a good option because our people come from very little income, and with ND's complex election system, you need a PO box, you need wifi and a printer to apply for an absentee ballot. There's ID issues, if it's not updated you need to pay for updating it or driving to a DOT office; there are no satellite offices on reservations. Minot might be the closest to Fort Berthold. People don't have child care, they don't have the ability to travel, they don't have IDs because the consent decree was not followed (Donaghy. 2023. In-person interview, Jan. 12).

In sum, low income means less access to the internet, more frequent changes of address, less money for a car, gas, insurance, and fewer opportunities to travel to polling sites, the post office, or county and state electoral facilities. These factors combine to make accessing the electoral system more difficult; they present very real barriers to Native American voters.

b. Education:

Educational level is an important determinant of political participation. As political scientists Verba, Scholzman, and Brady explain:

Education has a significant direct role with respect to each of the participation factors. It affects the acquisition of skills; it channels opportunities for high levels of income and education; it places individuals in institutional settings where they can be recruited to political activity; and it fosters psychological and cognitive engagement with politics (1995: 433).

But the history of Indian education is one long, dismal tale of tragedy and failure. First among stories of failure is the boarding school system (Adams. 2020). The principal focus of that system was forced assimilation, not education, with traumatic effects. A Department of the Interior report in 2022 concluded that:

Further review is required to determine the reach and impact of the violence and trauma inflicted on Indian children through the Federal Indian boarding school system. The Department has recognized that targeting Indian children for the Federal policy of Indian assimilation contributed to the loss of the following: (1) life; (2) physical and mental health; (3) territories and wealth; (4) Tribal and family relations; and (5) use of Tribal languages (Newland. 2022: 94).

There were twelve boarding schools in North Dakota, three of them on the Fort Berthold Reservation (Newland. 2022, Appendix A). Denise Lajimodiere, Ph.D., a citizen of the Turtle Mountain Reservation, extensively studied the survivors of boarding schools in the northern plains. This is the summary of her findings:

Five major themes emerged.... First, the survivors experienced loss, which can be subdivided into five sub-elements: loss of identity, language, culture, ceremonies, and tradition; loss of self-esteem; loneliness due to loss of parents and extended family; feeling of abandonment by parents; and feeling lost and out of place when they returned home. Second, survivors attending boarding school experienced abuse, subdivided into corporal punishment and forced child labor; the Outing program; hunger/malnourishment; and sexual and mental abuse. Third, survivors experienced unresolved grief, mental health issues, relationship issues, and alcohol abuse. Fourth, survivors express that they felt they had an inferior education at the boarding schools (Lajimodiere. 2019: 13).

This legacy of oppression, intolerance, and sub-standard education has led to significant differences between Anglos and Indians regarding educational levels and quality of education: “Only 17 percent of Native American students enroll in college after high school,

while the national average for all students is about 70 percent. Of the Native American students who start college, 82 percent drop out before they finish. This staggering number is mostly due to the lack of academic and financial resources available to many Native American students” (Accredited Schools Online. 2022). The data for North Dakota reflect these national trends.

For the years 2006-2010, 17.8 percent of Indians in North Dakota did not graduate from high school; the state average at that time was 10.6 percent (North Dakota Department of Health. 2016, Table 11). Data from the American Community Survey of 2011-13 also demonstrated a significant difference. Only 8 percent of Anglos had less than a high school education, but the figure for Indians was 18.1 percent, and 20.2 percent of Anglos had a Bachelor’s degree, while only 10.6 percent of Indians had that degree (ACS: 3). By 2020, the Native graduation rate was still significantly lower than that of Whites. The state school superintendent noted that, when she was first elected, the Native graduation rate was a dismal 57 percent, but it had increased to 72 percent, which was still below the White graduation rate of 89 percent (Thompson. 2020).

The lack of top-quality educational resources is reflected in grades and test scores. A 2011 analysis found that, while 38 percent of White students performed at the advanced level in reading, only 15 percent of Native students performed at that level. In 8th grade math, 47 percent of White students were at the proficient level, but only 15 percent of Native students made that level, and 46 percent scored at the “below basic” level (Education Trust. 2011).

A 2015 survey of middle school children found that 78 percent of white kids “made mostly A’s or B’s,” but the comparable figure for Indians was 50.8 percent (North Dakota Middle School Survey 2015, QN49). In a 2000 survey of ACT scores, white high

school students in North Dakota scored an average of 21.6 (which is above the national average), but the state's Indian students scored an average of 17.1 (Nicholson 16 Aug. 2001). Inadequate education has made it necessary for Native students to seek assistance or qualify for special education programs. In a 2015 survey, 32.3 percent of Indian students in middle school received such assistance; less than half that—14.8 percent—of white students needed assistance (North Dakota Middle School Survey 2015, QN68).

Perhaps part of the reason for such problems is the paucity of Native American teachers. Indian students constitute 10.7 percent of the student body in public schools, but only 2.9 percent of the teachers are Native (Nowatzki. 22 Jul. 2014).

There are also Bureau of Indian Education (BIE) schools in North Dakota. A 2014 assessment of those schools found little progress on goals; indeed, the BIE schools in North Dakota performed even worse than most of the BIE schools in other states (Bureau of Indian Education. 2014: 40, 41, 56, 57).

The most recent data on educational levels is presented in the following table.

Education Level		
RESERVATION	% HIGH SCHOOL/ HIGHER	% BACHELORS/ HIGHER
Ft. Berthold	85.9	22.3
L. Traverse	88.5	17.0
Spirit Lake	83.1	15.8
Standing Rock	85.4	14.6
Turtle Mt.	85.3	15.2
N. Dakota	93.3	31.1

Source: U.S. Census, American Community Survey, 2017-2021

c. Health Care:

The health status of citizens also affects their ability to participate. Registering to vote, and voting, often require travel, which is directly affected by the health and ambulatory ability of an individual. Those with disabilities, and those who are

chronically ill, face extra hurdles to exercising their right to vote. The dominant society does a poor job of providing adequate health care to Native Americans. The Indian Health Service explains that “The American Indian and Alaska Native people have long experienced lower health status when compared with other Americans. Lower life expectancy and the disproportionate disease burden exist perhaps because of inadequate education, disproportionate poverty, discrimination in the delivery of health services, and cultural differences” (Indian Health Service 2016). As a result, in 2016, the mortality rate for Indians in the U.S. was 943/10,000; the average for all races was 774/10,000 (Indian Health Service 2016). Infant mortality was especially high among Indians (13.5) compared to Anglos nationally (7.5) (North Dakota Department of Health 2016, Table 14B). Data on the “disproportionate disease burden” is presented in Appendix A.

One of the problems that affect health care for American Indians is a presumption sometimes made by states that the Indian Health Service can provide for all the health care needs of Indian people. But in North Dakota, there are only two IHS hospitals (among the total of 50 hospitals), one at Fort Yates and one at Belcourt, so Native people must rely on other sources of health care (North Dakota Department of Health 2016, Table 22).

The health of Native people in North Dakota is also threatened by environmental variables. On the Standing Rock Reservation, “Problems with water quality and inadequate supply are common throughout the reservation and have a detrimental effect on health and quality of life” (Standing Rock Environmental Profile. 2016). Tribal members at Fort Berthold are dealing with the negative health impacts of the massive drilling boom in that area (Konkel. 2016; Lauer, Harkness, and Vengosh. 2016; Deaton.

2021; Simonelli, Leachman and Onodera. 2022). There “have been leaking pipelines, fires and trucking accidents that spilled oil and wastewater” (Opatz. 2022). The oil boom, while quite profitable, has also resulted in an increase in crime, which also has an impact on the health of a community (Ruddell, et. al. 2014; Horwitz. 2014; FBI. 2016).

Another aspect of health is mental health. A 2015 survey of high school students found that 8.2 percent of white students had attempted suicide; the figure for Indians is nearly twice that--14.3 percent (North Dakota High School Survey. 2015, QN29). The data are even more depressing for middle school kids; 5.2 percent of white students have tried to kill themselves, while 18.7 percent of Indian kids have done so (North Dakota Middle School. 2015, QN17).

These demographic variables---inadequate education, poverty, and poor health care---tend to combine in a vicious cycle. The University of North Dakota’s Center for Rural Health noted that “People in poverty tend to have a lower health status. Poor housing, sanitation, and water supply can contribute to disease and ill health. Access to adequate and quality food sources is limited. Poverty is associated with greater rates of illness and shorter life spans” (Center for Rural Health 2014: 8). When people are dealing with survival, they are much less likely to have the time, energy, expertise, and desire to expend those resources on civic affairs. This is a very clear demonstration of Abraham Maslow’s famous “hierarchy of needs.” At the most basic level are physiological/biological needs—food, shelter, warmth. The next level is safety, including economic security and health. These needs must be met before the individual can aspire to higher levels of needs, such as political participation and civic engagement (Maslow 1954). It is clear from the data cited above that many Indian people in North

Dakota are struggling desperately to achieve their most basic needs; this condition automatically reduces their opportunities to vote and elect candidates of their choice.

In sum, low income and poverty, less education, and poor health conspire to make it difficult for tribal members at Fort Berthold and the other reservations in North Dakota to vote.

d. Internet Access:

One of the most important components of infrastructure in terms of accessing government services—including registering to vote and receiving information about voting, candidates, and elections services—is the internet. The internet requires having, not just broadband service, but the economic means to buy a computer or smart phone, pay a monthly service fee, and if one wants to print government permits or registration forms, a printer and paper.

But Native Americans are the least connected people in the U. S. An analysis conducted by the Government Accountability Office (GAO) found that 35 percent of households on Indian reservations did not have broadband service, compared to 8 percent for the nation as a whole (U.S. Government Accountability Office. 2018). Having broadband service is only part of the equation; the other part is the ability to pay for a subscription service. Recent data from the American Community Survey show that the internet subscription rate for Native Americans is 67 percent, compared to 82 percent for non-Natives (Wang. 2018). The reasons for poor internet access are some of the same reasons why Native people have less access to the electoral process:

Tribal lands often present significant obstacles to deploying broadband and are expensive to serve. These challenges to deployment on Tribal lands include rugged terrain, complex permitting processes governing access to Tribal lands, jurisdictional issues involving states and sovereign Tribal

governments, lack of necessary infrastructure, and a predominance of residential, rather than business customers. High poverty rates and low-income levels on Tribal lands, as well as cultural and language barriers, further inhibit the widespread availability of broadband to Tribal residents (Federal Communications Commission. 2019: 2).

The data on internet availability on North Dakota reservations reflects the national trend. A 2020 study of tribal internet analyzed the provision of low-cost wired broadband (defined as less than \$60/month). For Spirit Lake, the rate was 54 percent, for Standing Rock it was 69 percent, Fort Berthold was 29 percent, and Turtle Mountain was 75 percent. High-priced internet was more widely available, but low income levels limit access to that (Tanberk and Cooper. 2020). These data indicate the availability of broadband, but not actual prescription rates.⁸ The latest data for Fort Berthold indicates that 75.7 of households have an internet subscription; this compares to 84.2 percent for the state as a whole (U.S. Census, 2017-2021).

Moving to a more urban environment does not necessarily solve the problem of access. A 2014 survey of Indians in the Bismarck/Mandan area found a low proportion with connectivity; only 61 percent owned their own computers, and only half had their own internet access (Sacred Pipe Resource Center 2014).

In sum, these four socio-economic factors (income, education, health care, and internet access) combine to form a barrier to political participation. There is a large literature in political science on the “costs of voting,” and how increased costs reduce turnout and overall rates of political participation (Schraufnagel, Pomante, and Quan. 2020, 2022). The factors discussed above increase the cost of voting for Native voters and, combined with historical trauma and political polarization, create a formidable array

⁸ These data do not include access to a cellphone.

of obstacles to Native voters. In addition, these factors interact with one another to create a multiplier effect. Low income makes it difficult to contribute to political campaigns or take time off work to vote or participate in a campaign. Lower education levels lead to less understanding of the political system and the myriad rules regarding registration, voting, and running for office. Poor health and lack of information via the internet exacerbate these trends (see: Tucker, De León, and McCool. 2020: 27-47. Also see: Barreto, Sanchez, and Walker. 2022). A member of the Turtle Mountain Tribe alluded to these multiple factors in a 2019 hearing:

Because of this high poverty rate, the community's access remains limited. Limited because of those living below poverty do not have vehicles, driver's license, or other means of public transportation to various government service providers.... And as many of the Congressional delegation may be aware we are not a wealthy Tribe. We have scraped and scraped and survived these past 200 years. Every time I come before one of these hearings, I start crying (Pearson. 2019).

A summary of these data, focusing specifically on Fort Berthold Reservation is helpful. However, these data must be interpreted with caution because 30 percent of the population on the reservation is White (My Tribal Area, U.S. Census. 2022). The data from the reservation can be compared to state data; however, that data must also be considered carefully because it includes the 5.7 percent of the state's population that is Native American. All data is from 2021-2022, provided by the U.S. Census:

- Unemployment: On the Fort Berthold Reservation, the unemployment rate is 4.9 percent; for the state as a whole the rate is 2.3 percent.
- Income: Median household income on the reservation is 60,929; for North Dakota, it is \$68, 131.
- Education: On the reservation, 85.9 of the people have graduated high school or higher; for the state as a whole 93.3 percent have achieved that level of education. On the reservation, 22.3 percent have a bachelor's degree or higher; at the state level it is 31.1 percent.

-- Broadband Subscription: 75.7 of households on the reservation have a subscription; in the state as a whole the subscription rate is 84.2 percent.

The dismal statistics cited for the Senate factor 5 analysis in this report help explain why voter turnout has traditionally been so low among Native Americans (Carrero. 2020). That historically low turnout rate has hardly improved. For the 2020 election, state-wide turnout was 42.9 percent. For Sioux County it was 21.45 percent; for Rolette County it was 29.34 percent; and for Benson County it was 33.39 percent (data from North Dakota Secretary of State website). I cannot determine Native turnout rates for Fort Berthold because Native Americans are a small proportion of population in all of the six counties that contain parts of the reservation.

6. The use of overt or subtle racial appeals in political campaigns.

Overt racial appeals are rare in contemporary politics; most political candidates are aware of the problems that can accompany overtly race-based appeals. However, Native people certainly make reference to the role of race in elections with a Native candidate. Chase Iron Eyes, when he ran for the U. S. House of Representatives, fully realized he needed the Native vote as a base. According to the AP, “Iron Eyes says he plans on defeating Cramer by mobilizing the Native American vote like ‘never before’” (Assoc. Press, April 2, 2016). He expected—and received—a very high percentage of the Native vote over Representative Cramer. Implicit in Mr. Iron Eyes’ comment is an assumption that Anglo people might not vote for him in any appreciable numbers.

Another Native candidate, Ruth Buffalo, who ran for Insurance Commissioner in 2016, also pointed out how Native candidates, and Native-favored candidates, need a bloc-vote from Native Americans: “‘Heidi Heitkamp was put into office because of the Native vote,’ said Buffalo, of the Democratic underdog senator elected in 2012.

‘Wouldn’t it be great if the Native vote put Native people into office’” (Spotted Bear, 2016).

The extent of racial appeals in elections is difficult to determine. The interviews I did at Fort Berthold are mixed; some people have not heard any racial appeals and others have. Several interviewees mentioned that Anglo candidates seldom come to the reservation or directly communicate with tribal members, so they have no way of knowing if they are making racial appeals. Below are responses to the question: “In those races that pit a Native American against an Anglo, are there racial appeals in the campaign? Do candidates try to appeal chiefly to members of their own racial group?”

> They don’t come here, so I don’t know (Good Bird. 2023. In-person interview, Jan. 10).

> White people say: “We can’t have that Indian in there.” That is the attitude of some (Mayer. 2023. In-person interview, Jan 10).

> Talking about Lisa, she did outreach to non-Indians. That was only this year. This was the first time that the white candidate put his poster in Mandaree, first time. They never reach out to the Indian communities, Fegley and Jones, and Kannianen (Theodora Bird Bear. 2023. In-person interview, Jan. 11).

> Jones never came to Mandaree (Joletta Bird Bear. 2023. In-person interview, Jan. 11).

> I’m not aware of hearing anything like that (Spotted Horse. 2023. In-person interview. Jan. 11).

> It’s slightly veiled, it’s in this language of danger, hinting at “she’s not right for ND because....” [a phrase used against Rep. Ruth Buffalo, who lost her seat in the state House]. That is just pure racism and fear mongering. And that’s on the ads and billboards (Baker. 2023. In-person interview, Jan. 12).

> We don’t hear anything from white candidates they are too scared to come to our houses (Young Bear. 2023. In-person interview. Jan. 12).

> As far as I know, Terry Jones has never campaigned in this area. So I don’t know what he was saying to white people; and they aren’t going to tell us (Muzzy. 2023. In-person interview, Jan. 12).

> I’ve never heard of that, said in open spaces (Donaghy. 2023. In-person interview, Jan. 12).

> Have not seen that. With Lisa, it was “From here, for here.” That statement was part of her campaign (Beheler. 2023. Telephone interview. Jan. 13).

In sum, overt racial appeals are very rare in contemporary politics; most candidates know that such language can cause problems for them. The interviews I conducted at Fort Berthold indicate that there may be some veiled racial appeals in elections, but it appears to be limited.

7. The extent to which members of the minority group have been elected to public office in the jurisdiction.

In a state where 5.7 percent of the population is American Indian alone (this figure is higher if people of mixed heritage are included), and much of that population is concentrated in specific geographic areas, we would expect Native people to be elected to office and be appointed to serve government in other ways. Yet this is not the case; indeed, it is very rare to find American Indians holding any kind of public office in the state other than in tribal government.⁹ The election of Lisa Finley-DeVille is an exception to this long-term trend, and that only occurred because of the creation of District 4a.

a. The Legislature:

One of the most basic elements of representative government is the right to be represented by people who are “like-minded.” This, in many situations, means people from similar socio-economic, cultural, and racial backgrounds. But the American Indian people of North Dakota are almost exclusively represented in the state legislature by Anglos, with just two exceptions. The legislature has a “Tribal and State Relations

⁹ The most reliable and widely accepted methodology to “race ID” candidates or office-holders—with a high degree of certainty—is to create a panel of local people with extensive knowledge of the local population and ask them to identify the race of each candidate or office-holder. This is an extremely cumbersome, expensive, and time-consuming process. I have either relied on available evidence or information gleaned from interviews. For school board members and county sheriffs, there was very limited information available.

Committee.” It has seven members—all of them Anglos (Tribal and State Relations Committee. 2022). The state’s website for the Indian Affairs Commission contains a list of 24 representatives from districts that contain Indian reservations. The list has not been updated since the 2023 election, so it is out-of-date. The only legislator on the list who is Native American is Senator Richard Marcellais from Turtle Mountain (North Dakota Indian Affairs 2022). However, he was defeated in 2022 after the boundary lines of his district were changed. When the list is updated, it will include two House members who are Native American: Representative Lisa Finley-DeVille, from MHA Nation and representing the new District 4a, and Jayme Davis from Turtle Mountain representing the new District 9a.

Senator Marcellais’s defeat means that there are no Native Americans in the North Dakota Senate now. Until 2022, only one Native American had been elected to the state House from a tribal area, Dawn Marie Charging, from MHA Nation, who represented District Four (the Fort Berthold area) from 2005 to 2008. The only other Native American from a North Dakota Tribe to serve in the state House was Ruth Buffalo, who is an enrolled member of the MHA Nation, but represented a district in Fargo until she lost re-election in 2022 due to changes in the boundary lines of her district.¹⁰ The election of Lisa Finley-DeVille and Jayme Davis in 2022 is a dramatic exception to this past record; both were elected in sub-districts.

b. State Administrative Positions:

¹⁰ Representative Oley Larsen’s website indicates he is a member of the Kluane First Nation in Canada. He represents Minot. See: <https://www.legis.nd.gov/assembly/66-2019/members/senate/senator-oley-larsen>

The governor's "administration and Staff" website lists twenty people in the governor's cabinet. One of them is Native: Nathan Davis was appointed Executive Director of the Indian Affairs Commission in 2021. Tribal member Erica Thunder was the Commissioner of the Department of Labor and Human Rights, but she was replaced in November 2022 (North Dakota Indian Affairs Commission, Administration and Staff. 2023).

The only unit of the state government with significant tribal membership is the Indian Affairs Commission. That commission operates a North Dakota Indian Affairs website that addresses the "state of the Tribal-State Relationship." The last entry on that website is from 2013 (North Dakota Indian Affairs Commission, Media and Publications. 2023). It should be noted that, when the state legislature created the Indian Affairs Commission in 1949, it stated that the official policy of North Dakota was forced assimilation: "Indians should be assimilated into the general citizenry of the state by a process of association with non-Indians in their day-by-day business and social relationships" (North Dakota Indian Affairs Commission. 1999: 3).

There is also a state Committee on Tribal and State Courts. By statute that committee includes tribal judges and tribal court administrators (I was unable to determine what percentage of state judges, if any, are Native American).

c. County Elective and Appointed Offices:

Native Americans are also rare among elected officials at the county level. There are three counties with Indian populations in excess of 50 percent: Rolette, Benson, and Sioux. Rolette County (78 percent American Indian) has five county commissioners; members of the Turtle Mountain Chippewa Tribe now have a majority on the county

commission with the appointment of Alice Lunday to fill a vacancy, and with the election of Craig Poitra and Henry LaRoque (and one of the commissioners is married to a Native woman). And Native people hold two positions in county administration: tax equalization, and the veterans service office. There are no enrolled members holding the following elective and administrative positions in the county: auditor's office, coroner's office, district court, emergency management, extension, highway department, human service zone, public health, recorder's office, risk management, sheriff's office, state's attorney's office, superintendent of schools' office, veterans service office, weed control, and 911 communications.

Sioux County (81.4 percent American Indian) has three county commissioners; one is an enrolled member at Standing Rock. The new sheriff, Michael Crow Feather, is Native American. Vernetta Iron Eyes is the district court administrator, and the county recorder, and the treasurer. The county auditor, Angela Eagle, is Native American. All of the remaining county offices are held by Anglos: coroner's office, emergency management, extension, highway department, human service zone, public health, risk management, state's attorney's office, superintendent of schools' office, tax equalization, and weed control.

Benson County (55.6 percent American Indian) has five county commissioners. David Davidson is the only Native American; the other four are Anglo. All of the following elected and appointed county officials are Anglo: the auditor, deputy auditor, coroner's office, district court, emergency management, extension, highway department, human service zone, public health, recorder's office, risk management, sheriff's office,

state's attorney's office, superintendent of schools office, tax equalization, treasurer's office, deputy treasurer, veteran's service office, weed control, and 911 communications.

The Fort Berthold Reservation is spread out across six counties; none of them has a Native American county commissioner, and there has never been a Native American serving as clerk/auditor or magistrate judge in any of those counties. The lone exception to this pattern of all-Anglo office holders is Jerry Kerzmann, a Native American county sheriff in McLean County (which includes part of the Fort Berthold Reservation). In response to the question of whether any Native Americans had been elected, appointed, or employed by Dunn County (one of the six counties that include Fort Berthold), an interviewee told me: "in Dunn County, are you crazy? That is unheard of...it shouldn't be crazy in 2023, but no way. Nope. They'd hire a black person before they'd hire a Native American" (Young Bear. 2023. In-person interview. Jan. 12).

d. School Boards:

I also attempted to assess the extent to which American Indians have been elected to school boards in the state. There are some American Indians serving on school boards for districts on or near reservations. In the case of Parshall, that was made possible by the threat of a Voting Rights Act lawsuit, and today there is one tribal member serving on the Parshall School Board. The New Town School District, which is on the Fort Berthold Reservation and is nearly all Native American, has four out of five school board members who are Native, and the lone Anglo on the board is married to a Native.

In other reservation areas of the state, there are Native Americans on school boards at Belcourt and St. John at Turtle Mountain, Minnewakan School District at Spirit

Lake, and Fort Yates and Solen at Standing Rock. One Native person, Lorraine Davis, was elected to the Mandan School Board, but quit after a short period of time.

e. Civil Service and Commissions/Boards:

Many important decisions in government are made by civil service administrators. Although data is difficult to obtain, there are some relevant examples. A 2012 analysis of state employees found that only 1.23 percent of state employees identify themselves as American Indians (United Tribes Network 2013). A 2012 analysis discovered that minorities, including American Indians, were “not proportionally represented in North Dakota’s legal profession or as state court employees” (North Dakota Commission. 2012: ix, 149).¹¹

There also appears to be very few Indian people serving as appointed members of advisory boards and commissions. According to one source, “There is so much segregation we don’t have representation on boards and advisory commissions. Just ask anybody and they’ll know; they can’t name a single Native American board member (Kary, 2016). There are 137 commissions and boards listed on the state’s website, and the race of the members is not denoted, so I have no way of independently verifying Ms. Kary’s statement. The obvious exception is the state Indian Affairs Commission. The only other Indian commission I could find was for the city of Fargo, which has a Native American Commission composed almost entirely of American Indians. Apparently, Fargo is the only city in North Dakota with such a commission.

f. Urban Government:

¹¹ In 2012, American Indians were 5.4 percent of the population, but only 0.8 percent of the state bar (North Dakota Commission (2012): 127.

The largest community on the Fort Berthold Reservation is New Town, which is about 75 percent Native. In 2022, for the first time, a member of the MHA Nation was elected mayor (Jay Standish). The City Council is all-Native, except for one.

Off-reservation, there is a considerable American Indian population in Bismarck, which is 4.3 percent Indian (with a total population of 74,138). The city is governed by a commission consisting of four commissioners and a mayor; none is American Indian. Mandan is 4.2 percent Native, and has a similar governing structure; but no one on the city commission is American Indian. Fargo is 1.2 percent Native, and has an all-white city commission (with a total population of 126, 748) (U.S. Census Quick Facts. 2022, city websites).

It is clear that a Native American running for public office faces tremendous hurdles—unless the electorate is composed of a majority of Native voters. An Indian woman who ran for a House district was told by a more experienced politico that she would do much better if she changed her name to “something sounding Scandinavian” (Jones. 2016). Merle Boucher ran for state-wide office; he is not an enrolled member of any tribe, but has Indian/Metí blood and an Indian-sounding name, and thus was mistaken for being Native. When handing out campaign literature he was told by one man: “You f-----g Indians are all communists” (Boucher, 2016). Another interviewee tried to explain why there are so few American Indians involved in governance: “It’s systemic. We are not really a part of the system; it has been built around us (Kary, 2016).

This lack of representation, and the long history of Native disenfranchisement and discrimination related to voting, have a direct impact on what political scientists refer to as *political efficacy*: “the ‘feeling that individual political action does have, or can have,

an impact upon the political process, that is, that it is worthwhile to perform one's civic duties.' ... Simply put, efficacy is citizens' perceptions of powerfulness (or powerlessness) in the political realm" (Morrell. 2003: 589. Also see: Niemi, Craig, and Mattei. 2014). Political efficacy is a "a crucial component of political agency and democratic participation" (Beaumont. 2011:216). Native people have repeatedly expressed a low sense of political efficacy, which in turn reduces rates of political participation; here is a stark example, expressed by a Native American: "There is an inherent level of distrust between Native people and the government. Many Natives avoid state elections altogether because we've been screwed over by both Democrats and Republicans, at every point in history, on just about every issue. So when we do choose to participate, we should at least be treated with the same level of respect as our non-Native counterparts" (Luger 6 Nov. 2014). This sense of a lack of political efficacy was expressed by several people I interviewed, with a change in attitude due to the creation of District 4a:

Interviews from Fort Berthold:

> A lot of people don't think our vote counts because our population is so little. Native people think this, that our vote doesn't count, their vote doesn't matter. Were more seen as an outcast (Good Bird. 2023. In-person interview, Jan. 10).

> Is the redistricting to 4a a good thing? It's an extremely good thing because it gives us a voice (White. 2023. In-person interview, Jan. 10).

> Regarding her relatives, my Mom said; I'm not voting because it won't make any difference, there's never been anybody [Native American] in North Dakota that's held office. We just don't have a strong enough presence in North Dakota to make a difference (Mayer. 2023. In-person interview, Jan 10).

> no outreach from that county [Dunn] to encourage people to run. We're made to feel like we don't belong in those county offices, but we have a right to be in there (Joletta Bird Bear. 2023. In-person interview, Jan. 11).

> A lot of people say; what's the use to go vote. I don't know those people, but they never come here to talk to me (Young Bear. 2023. In-person interview. Jan. 12).

> We haven't had any representation because there's not enough of us voting to make it into the ballot, and some don't even make on the ballot. We're a minority, and they made us an even smaller minority (Muzzy. 2023. In-person interview, Jan. 12).

> People would say; it doesn't matter any way because our vote doesn't count. It's usually the younger people say that (Beheler. 2023. Telephone interview, Jan. 13).

Interviews from Other Reservations and Statewide:

> Historical trauma does impact elections because voter confidence is impacted by adverse experiences at the polling places, and after that our people don't want to go back.... Also, the limited experience our people have had since we were allowed to vote. There's a low turnout because people say; we've never been asked to vote and they're not welcoming to us (Donaghy. 2023. In-person interview, Jan. 12).

> Cheryl Kary, the executive director of the Sacred Pipe Resource Center in Mandan claimed that reservations in the past "have been gerrymandered many times" and as a result, "a number of tribal nations feel they don't have elected officials who are aligned with their concerns" (Public News Service. 2021).

> "Leaving us out of that kind of thing [consideration of funding for economic development] does not give us much incentive to vote, doesn't make us feel part of the state" (Longie. 2022).

> "Native apathy; we don't vote because we've been left out of the process for so long that we haven't engaged in the process.... The dominant culture does not really care about the reservations. The election of Ruth Buffalo and Senator Marcellais have helped [both have been defeated]. But there's this disassociation from the candidates and Native people" (Seminole. 2022).

> "I didn't vote because I couldn't see how I could impact anything happening out there" (McDonald. 2022).

> "We took a lady to the poll and she was 50 and had never voted. It was never taught that the vote would make a difference. It was never modeled for me. A lot of people never think about it. Native people feel like we are such a small group that we'll never make a difference. It's not going to do any good, and the people that get in don't represent them anyway.... Historically, I don't think people understand the ideological barriers when you have long-term disenfranchisement. Discrimination is not in-your-face, not a Klansman thing, but there might as well be, because they [tribal members] see the system doesn't work for them. So it's a tradition to not go vote, and it's not going to make a difference" (Kary. 2022).

Standing Rock tribal member Chase Iron Eyes, who ran for Congress in 2016, explained the resulting sense of alienation: "We don't see ownership in our political futures" (quoted in: Levine. 2018).

American Indians in North Dakota are citizens of the county in which they reside, and the state, and for urban Indians, the city. Yet they only participate in the governance and administration of these institutions in a very marginal way. They are rarely elected to office, and when they are elected, it is because they have sufficient support among Native voters to overcome their Anglo opponents. The election of Lisa Finley-DeVille is an extreme rarity among electoral politics in North Dakota. The lack of electoral success and representation in the state has left some Native people with a low sense of political efficacy.

8. The responsiveness of state and local officials to the needs of minorities.

One of the hallmarks of “good” government is its ability to serve the needs of the people—all the people. “Responsiveness” is the ability—and willingness—of a government to respond to perceived problems of its citizens. However, responsiveness is difficult to achieve in an atmosphere of animosity and conflict. The first part of this section looks at requests made by tribal members during the redistricting process. The second part of this section examines the highly controversial issue of DAPL and its impact on state/tribal relations.

a. Redistricting:

During the redistricting process, the state had a mixed record in responsiveness to Native Americans. The committee was unresponsive in two ways but responsive in the case of Fort Berthold. The first example of unresponsiveness concerned the location of committee meetings. The redistricting committee held six meetings; all of them were held in Bismarck, except the final meeting, which was held in Fargo. During the redistricting process, the redistricting committee was asked repeatedly to come to Indian Country for

at least one of their meetings, because many reservations are a long distance from the capital. For example, the drive from New Town on the Fort Berthold Reservation to Bismarck is 2.5 hours. At the August 26th meeting, Collette Brown, from Spirit Lake Reservation, asked the redistricting committee to “listen to tribal input and hold redistricting meetings and tribal consultations on reservations” (Brown. 2021. Aug. 26). Councilman Charles Walker from Standing Rock also requested that the redistricting committee “listen to tribal input and hold redistricting meetings and tribal consultations on reservations... [But] this committee has chosen to only hold hearings in Bismarck or Fargo. Holding hearings in far-away communities has a disproportionately negative impact on tribal communities” (Walker. 2021).

The committee chose to not travel to any reservations. In a second meeting with the redistricting committee, Ms. Brown expressed dismay that the committee had not responded to tribal requests: “Tribes have continued to advocate for more inclusivity in the redistricting process, and that advocacy has largely been ignored by this Committee” (Brown. 2021. Sept. 15).¹² Tribal Chairman Jamie Azure from Turtle Mountain and Douglas Yankton from Spirit Lake also noted the lack of responsiveness:

Throughout the redistricting process, the Tribes of North Dakota made numerous requests to the Legislature’s Redistricting Committee to hold redistricting hearings on and near reservations to allow tribal members an opportunity to be heard on how their state legislative representation will be guided for the next ten years. Those requests fell on deaf ears.... Despite repeated requests, the only outreach from the Redistricting Committee was the e-mailing of a hearing notice to the Tribes with one day’s notice (Tribal Leaders. 2021).

Another tribal chairman, Mike Faith from Standing Rock Sioux, also chastised the redistricting committee for not being responsive to the needs of Native people:

¹² The committee sent a representative from the North Dakota Indian Affairs Commission to reservations, but no one from the committee.

I am extremely disappointed that the Committee has failed to formally consult with the tribes to take Tribal input into account in the redistricting process. Sending an informal invite to tribal leaders to testify a day before a hearing is highly disrespectful. North Dakota Native Vote requested formal govern-to-government consultation on redistricting months ago. Failing to reach out to Tribal leaders for months, and then waiting for the last minute to invite us to provide this important information is unacceptable. Many other states began holding redistricting hearings months ago to get feedback directly from citizens and tribal governments. Our tribal governments, just like other governments all across the country, are dealing with the rising impact of the Delta Variant. The actions by the Committee send the message that the Committee is not interested in hearing what we have to say and that it is not important at all (Faith. 2021).

Nicole Donaghy, the executive director of North Dakota Native Vote, made a similar claim during the redistricting process: “They don’t include Native voices in the process. They don’t reach out to the tribes” (quoted in Lerner. 2021).

A second way that the committee was unresponsive was in regard to District 9 and requests from the Turtle Mountain and Spirit Lake tribes. The Turtle Mountain Chippewa specifically asked the committee not to divide District 9 into two subdistricts: “The Committee...decided to create subdistricts in the Turtle Mountain reservation area, even though no subdistricts were ever requested by Turtle Mountain to the Redistricting Committee” (Tribal Leaders. 2021). In a statement before the redistricting committee, Chairman Azure of Turtle Mountain pointed out that the proposed division of District 9 “would dilute the Native American vote, would not provide our tribal members with the ability to elect candidates of their choice. On the other hand, a single district with Turtle Mountain and Spirit Lake together would allow the tribal members from both Tribes to elect their preferred candidates” (Azure. 2021). The committee proceeded with its plan to divide District 9 into subdistricts anyway.

In contrast, the redistricting committee was quite responsiveness in the creation of sub-districts 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 (Fox. 2021). In short, the state's redistricting process was not responsive to all Native requests but it was responsive in the creation of District 4a.

Another aspect of state responsiveness came up during the debate over HB 1504. Senator Oley Larsen argued against creating subdistricts in Districts 4 and 9, and then made an argument that sounded remarkably similar to early provisions of the state constitution that limited voting only to Indians who had severed tribal relations. He argued that tribal members should not have representation in the state legislature: "Indians have their own sovereign nation constitution... You cannot come to another nation's country and say okay I want representation even though I have my own constitution on my own sovereign nation.... [In creating sub-districts in Districts 4 and 9] we're going to give representation to an individual to represent individuals that do not follow the Constitution of the United States. They have their own tribal sovereignty constitution that they follow first" (Senate Floor Session. 2021. Comments by Senator O. Larsen).

b. The Conflict over DAPL:

The bitter conflict over the Dakota Access Pipeline (DAPL) contributed to the long history of tension between Native Americans and Anglos in North Dakota.¹³ This hostility was expressed in the state legislature by several bills that were interpreted by some as "anti-Indian" or punitive legislation. As one legislator put it, "these bills are really coming at us really out of anger" (House Floor Session, Representative Vetter 6

¹³ For an account of this conflict from the Native perspective, see: Keeler. 2021; Estes. 2019.

Feb. 2017: 1). Several of the bills were aimed at the DAPL protesters. Strong language was used on the floor of the House to describe them: “riots” and “ecoterrorism” (Representative Porter 6 Feb. 2017); “thugs” and “ecoterrorists” (House Floor Session, Representative R. C. Becker 6 Feb. 2017); “If we want to protect our society and continue to have a free country, we better get these protesters taken care of” (House Floor Session, Representative R. S. Becker 6 Feb. 2017). My point is not to agree or disagree with these characterizations, but to point out just how hostile and polarized the situation in North Dakota had become.

The following eight bills were a direct response to the DAPL protests:

- HB 1193 would make it a felony to cause economic harm while committing disorderly conduct. It did not pass.
- HB 1383 would criminalize loitering; “An individual may not loiter and prowl in a place at a time or in an unusual manner that warrants justifiable or reasonable alarm or immediate concern for the safety of other individuals or property in the vicinity.” It did not pass.
- HB 1426 increased the penalties for riot offenses for riots that involve 100 or more people. This bill passed both houses by wide margins and became law.
- HB 1281 requested that the federal government return lands and mineral rights under Lake Oahe to cover “the costs borne by the state to ensure public safety in relation to protests against the placement of an oil pipeline under the Missouri River.” It did not become law.
- HB 1203 was aimed at protesters who blocked traffic, and held: “Notwithstanding any other provision of law, a driver of a motor vehicle who, while exercising reasonable care, causes injury or death to an individual who is intentionally obstructing vehicular traffic on a public road, street, or highway may not be held liable for any damages.” This bill did not become law.
- HB 1332 (not the same bill as the voter ID bill with the same number) provided that anyone convicted of trespass had to pay an additional \$1,000 to the county sheriff. It did not pass.
- HB 1304 made it illegal to wear a mask on public property. This bill was introduced by Representative Carlson—the same legislator who introduced HB 1369. It became law after passing both the House and Senate by wide margins.
- HB 1293 increased penalties for trespassing. It passed.
- SB 2246 made it unlawful not to vacate an area, even on public property, if ordered to do so by police; the fine was set at \$5,000. This bill did not pass.

This raft of bills provoked strong reactions on both sides. The legislator who introduced the bill to waive liability for someone running over a protester in the road saw it this way: “...what we are dealing with was terrorism out there” (House Floor Session, Wootson 17 Jan. 2017). Ladonna Brave Bull Allard, a protester and member of the Standing Rock Sioux Tribe, had a different view: “I have never seen so many people frightened in all my life. My recommendation for the legislature would be to pray harder. I think people are living on rumor and gossip more than they do the truth” (Wootson 17 Jan. 2017). Nancy Greene-Robertson described the tension this way: “It’s not peaceful. There’s a lot of rebuilding that needs to take place” (Greene-Robertson 5 Feb. 2018). Carol Davis of the Turtle Mountain Reservation also made reference to the high level of hostility: “The people who are in leadership don’t have a good attitude toward tribal members” (C. Davis 2018).

These bills were a direct response to the DAPL protests, which were clearly polarizing and confrontational. But another bill appeared to be aimed squarely at Native American tribes in the state. HB 3033 proposed to build six state-regulated private casinos; this was a transparent bid to run Indian casinos out of business (MacPherson 2 Mar. 2017). This bill was introduced by Representative Carlson—the same legislator who sponsored the voter ID bill (see the *Brakebill v. Jaeger* and *Spirit Lake v. Jaeger* cases). Tribal leaders considered it “retaliatory” (McDonald 5 Feb. 2018). One of the legislators who considered this bill in committee noted “...there were concerns among the committee members that the introduction of the resolution has the appearance of being a response to the recent issues being faced by the state with regard to the protest” (House Floor Session, Roer Jones, Representative 23 Mar. 2017). One of the few Native

American legislators, Senator Richard Marcellais, had a much more adamant response to Representative Carlson's casino bill: "It's racist. I feel like going over there and knocking him through the window" (MacPherson 2 Mar. 2017).

For Native people, the DAPL was part of the long and bitter legacy of land loss and the state ignoring their interests:

It's a familiar story in Indian Country. This is the third time that the Sioux Nation's lands and resources have been taken without regard for tribal interests. The Sioux peoples signed treaties in 1851 and 1868. The government broke them before the ink was dry. When the Army Corps of Engineers dammed the Missouri River in 1958, it took our riverfront forests, fruit orchards and most fertile farmland to create Lake Oahe. Now the Corps is taking our clean water and sacred places by approving this river crossing. Whether it's gold from the Black Hills or hydropower from the Missouri or oil pipelines that threaten our ancestral inheritance, the tribes have always paid the price for America's prosperity (Archambault. 2016).

The intensity and depth of the racial polarization that is evident surrounding DAPL was summarized by Senator Dever: "I think that... there have been damages done to the relationships between our general population and the population south of here through recent events. But it needs to be made clear that that is a two-sided thing. That we're going to have to work together to repair some of those things that have come together over the last 30, 40, 50 years to the positive and now have been challenged" (Senate Floor Session, Dever 14 Feb. 2017). Regardless of the merits of the proposed pipeline, it became a flash-point of contention for Native Americans who felt the state was not responding to their needs.

Most of the people I interviewed at Fort Berthold felt that there are long-standing problems with the responsiveness of state and local governments. One of the problems encountered by people on the reservation is that it is spread out across six counties, making any kind of coordination difficult. Here are some of their responses to the

question: “Is the state of North Dakota, and the six counties where the reservation is located, responsive to the needs of Native Americans?”

> As a former employee at the casino, getting [non-tribal] law enforcement here was like pulling teeth. We’d have non-tribal members acting a fool, and they don’t want to come and arrest them, or it would take an extremely long time to get here. When we have events there’s always a strong tribal police presence, but there’s no county police presence; they are invited but they don’t come (White. 2023. In-person interview, Jan. 10).

> Absolutely not. There are conflicting issues with guardianship. They won’t help with ambulance, and we have to pay for that. They will help with fire. The oil trucks have torn up the highways and the state has not helped us with that. The counties will do as little as possible, but they use our data and then not include us in the disbursements. In health care, the most important and most expensive of services, these counties have been told by the state not to include the surrounding counties’ social services to Natives. They are utilizing enrolled members royalties and then denying tribal members’ eligibility. So we have to pay for tribal medical insurance; we pay \$41 million annually to Sanford Health for health insurance. Unemployment rates are high; we have a lot that should get Medicaid, they should be eligible, but the state distributes it through the counties and they have our people fill out eligibility forms, but then they deny us. They don’t get Medicaid so we have to pay huge payments for health insurance because the counties don’t provide.... We’ve begged the state to work on the road outside of New Town because of the trucks, but they wouldn’t listen. We’re getting the short end of the stick out of the state. We have alcohol on this reservation; the state taxes that, but we never get any of it back to help with our alcohol and drug programs. The state also gets 20 percent of the oil royalties from wells on the reservation. But we don’t see that. The six counties; they include our data to get federal funding, but then don’t share that funding; that is a problem (Mayer. 2023. In-person interview, Jan 10).

> I think it’s important to vote in both federal and state elections and we need to have a voice in the process, and I’ve believed that all my life. That’s why I traveled over 100 miles to vote. Manning [Dunn County seat] has a brand-new county courthouse; they spent millions. But then they said they didn’t have the money to keep our precinct open (Theodora Bird Bear. 2023. In-person interview, Jan. 11).

> No. the state receives a big portion of funds from the federal government, especially in human services. There is the need for medical services, drug and alcohol treatment, and food. There’s also a need for transportation funding; that comes from the federal government to the state. Our highways, 22 and 23 and 73, are all state highways. They need funding to redesign and repair those because they are the pathway for the oil industry. Public safety is at stake; you’re at high risk on the highways here because of the trucks. There is a need for the state to consider addressing those issues....There are so many layers of barriers to voting for Native people. It requires time and money for voters to go to their precinct. When they’re closed, that sends a big message that we’re unwanted (Joletta Bird Bear. 2023. In-person interview, Jan. 11).

> No. I’ve worked CPS (child protection services). When it comes to a Native American child, they tend to just let it be. It’s a Native child, they just say leave, or let it

linger. But for a non-enrolled kid, they are right there. I just think there are places that are not treated fairly. On roads, White Shield roads were so beat up it took forever to fix them. Even around here in New Town, the roads are bad with the traffic (Standish. 2023. In-person interview. Jan. 11).

> It depends on the time of the year, if it's election year they want Native support and they show up for pow-wows or Native conferences or presentations, but always within a year or two of an election. In White Shield, growing up, there was a county road, but there's issues; the county will only go to the reservation, and then won't go the last two miles on the reservation for maintenance and snow plowing. Then the tribe has to do it (Spotted Horse. 2023. In-person interview. Jan. 11).

> In the past, we attempted to establish a public health unit because Mountrail and others would count our population as part of their numbers, but not use the benefits of that to service our people. There is a fair amount of people who have to work with the state, say food stamps. The county seat is 30 miles away from here. It can be difficult (Baker. 2023. In-person interview, Jan. 12).

> I doubt it because, I raised two sons by myself. There were times I needed county welfare, and when I'd go to them and ask for help. They are rude, they are disrespectful. People don't want to apply for welfare when they are mistreated, and their kids go without. I'm sure our young people are still being mistreated at these county welfare places (Young Bear. 2023. In-person interview. Jan. 12).

> The state, no, they were going to put a pipeline through. They don't consider us a whole lot. Just listening to the legislative assembly, I don't hear a lot of discussion of how issues will affect tribes. We're left out of a lot of the lot discussion where we should be included. They don't really consider us (Beheler. 2023. Telephone interview. Jan. 13).

In sum, the state of North Dakota was not responsive to Native concerns in many ways, with the obvious exception that the legislature created District 4a on the Fort Berthold Reservation. Recent conflicts over DAPL and the voter ID issue exacerbated tensions between tribes and the state. As a University of North Dakota law professor explained: "There's an animosity between tribal communities and the state here in the Dakotas" (quoted in Willis. 2020). These recent developments, combined with the historical legacy of discrimination and outright racism, have resulted in a state government that is only rarely responsive to tribal needs.

9. The tenuousness of the policy underlying voting laws, standards, and practices.

“Tenuous” is defined as “having little substance or strength” (Merriam-Webster Dictionary). Tenuousness in re-districting can be assessed in two ways: First, by examining the extent to which districts conform to the traditional criteria for proper districts; and second, by the rationale for redistricting decisions.

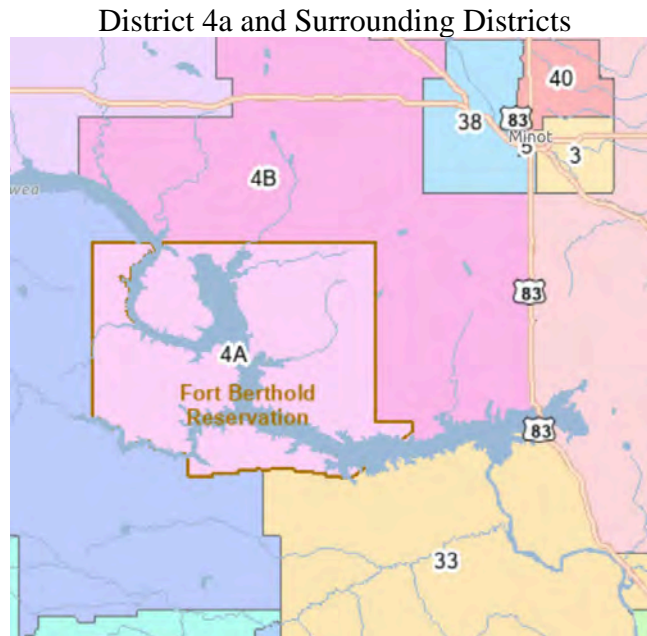
The criteria for traditional principles of redistricting can be found in many sources, including a Congressional Research Service report, the *Gingles* preconditions, and the North Dakota Constitution.¹⁴ The Congressional Research Service summarized existing law and policy and focused primarily on four criteria: equal population; geographic compactness, contiguity, and protecting communities of interest (Congressional Research Service. 2021). Equal population is required under federal law, and compactness and contiguity are required by Article IV of the North Dakota Constitution. These principles were also emphasized in the legislation that authorized the redistricting process: “[The redistricting committee] shall ensure any legislative redistricting plan submitted to the legislative assembly for consideration must be of compact and contiguous territory and conform to all constitutional requirements with respect to population equality. The committee may adopt additional constitutionally recognized redistricting guidelines and principles” (North Dakota 67th Legislative Assembly. 2021).

To help prepare the legislature for redistricting in 2021, the North Dakota Legislative Council prepared a “Background Memorandum” that listed seven traditional

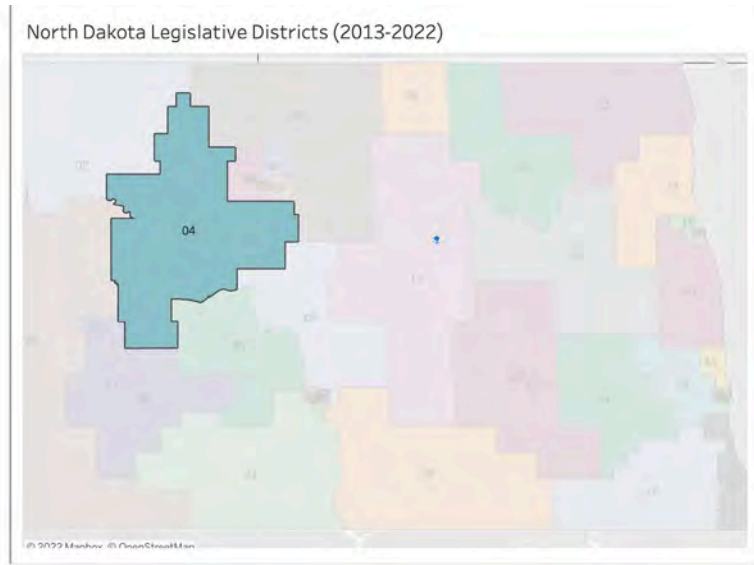
¹⁴ These traditional districting principles and others were presented to the redistricting committee by a speaker from the National Conference of State Legislatures. See: https://www.legis.nd.gov/files/committees/67-2021/23_5024_03000appendixb.pdf They were also presented to the redistricting committee by their counsel. See: <https://www.legis.nd.gov/files/resource/committee-memorandum/23.9105.01000.pdf>

redistricting principles (Legislative Council. 2021: 10). We can compare these principles to District 4a to assess the extent to which it reflects these principles.

1. Geographic Compactness. District 4a could not be more compact; it is nearly a square, as shown in the map below. It is more compact than the previous single District 4 (see below).



2. Contiguity. District 4a is not only contiguous, but it contains no bizarre shapes, narrow corridors, or isolated areas. It is more regular in shape than the old single District 4, which is seen in the map below.



3. Preservation of Political Subdivision Boundaries. District 4a follows the boundaries of the Fort Berthold Indian Reservation.

4. Preservation of Communities of Interest. District 4a encompasses the Fort Berthold Reservation, home to the Mandan, Hidatsa, and Arikara people—clearly a community of interest.

5. Preservation of Cores of Prior Districts. The new District 4a was carved out of the old District 4.

6. Protection of Incumbents. District 4a did not protect the incumbent, who was not from Fort Berthold and not a member of the MHA Nation. The National Conference of State Legislatures (NCSL) does not list this as a traditional redistricting principle. Instead, NCSL lists “avoiding pairing incumbents,” which District 4a accomplished. NCSL also notes “emerging criteria” starting in 2020 that include “prohibition on favoring or disfavoring an incumbent” (National Conference of State Legislatures. 2021). In addition,

protection of incumbents is not listed as a core redistricting principle by either the Congressional Research Service or Article IV of the North Dakota Constitution.

7. Compliance with Section 2 of the Voting Rights Act. The creation of District 4a avoided a lawsuit filed by the MHA Nation because it provided, for the first time, an opportunity for tribal members to elect a candidate of their choice.

In short, the new District 4a meets all but one of the traditional redistricting principles listed in the Legislative Council's memorandum, and that single exception is generally not regarded as a traditional redistricting principle by most authorities.

A second measure of tenuousness is the rationale or justification provided for a law. The new sub-districts for District 4 were created in response to a request by the MHA Nation. The tribal chairman Mark Fox as well as four additional tribal members from MHA testified at a Tribal and State Relations Committee in August 2021 and requested that District 4a be created. Chairman Fox also submitted written testimony to the Redistricting Committee on September 28, and tribal member Lisa Finley-Deville also testified before the Redistricting Committee. Their message was clear; the MHA Nation wanted a sub-district consisting of the reservation. In other words, the legislature was responding to input from citizens (Fox. 2021; Finley-DeVile. 2021).

In sum, there is nothing tenuous about the creation of Districts 4a and 4b. The new district complies with all the normal procedures of a redistricting process and was created in response to a request from constituents. In contrast, the failure to create District 4a would have exhibited the traits of a tenuous policy because it lacked the attributes described above.

III. Conclusion

In the *Spirit Lake v. Benson County* case, cited above, the judge noted that “there simply is no more essential duty of a democratic government than to provide open, fair elections that are accessible to all eligible voters” (2010: 7). But Native Americans attempting to access the electoral system have faced daunting challenges and an often hostile political environment, as outlined in this report. The singular exception to this long-term condition is the creation of District 4a on the Fort Berthold Reservation.

This report consists of a comprehensive analysis of the Senate factors and how they affect the ability of Native Americans in North Dakota to elect candidates of their choice. The analysis found that the Senate factors, except for two factors that rarely have a role in contemporary elections, have characterized the relationship between Native Americans and the state of North Dakota for an extended period of time. There is a significant and prolonged history of official and *de facto* discrimination against Native Americans, racially polarized voting and a hostile political atmosphere, significant socio-economic differences between Native people and non-Native North Dakotans, and a lack of electoral success for Native Americans. The creation of Sub-District 4a on the Fort Berthold Reservation is a stark exception to this list of factors; it was clearly a response by the legislature to provide members of the MHA Nation with an equal opportunity to elect candidates of their choice. The creation of the new District 4a was not tenuous by any reasonable measure.

In my professional opinion, the creation of District 4a is a significant departure from previous conditions that are reflected in the Senate factors; it has already led to the opportunity of MHA members to elect a candidate of their choice. In contrast, the failure to create District 4a would have exhibited the Senate factors analyzed in this report. This

conclusion is based on evidence gathered from 196 written sources, dozens of interviews, and a large volume of U.S. Census data; it is well-supported. This large body of evidence indicates a strong presence for nearly all of the Senate factors, which stand in contrast to the responsive actions of the North Dakota Legislature to create District 4a.



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Allard, LaDonna. Section 106 Coordinator for Tribal Preservation, Tribal Historian, and Tribal Genealogist. Telephone interview. 22 Mar. 2016.

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Birst, Aaron. 2016. Legal Counsel, North Dakota Association of Counties. In-person interview, Bismarck, ND. 4 Mar.

Boucher, Merle. 2016. Rolette County Commissioner. In-person interview, Rolette, ND. 5 Mar.

Carbone, Michael. 2016. Director, North Dakota Coalition for Homeless People. In-person interview, Bismarck, ND. 4 Mar.

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Greene-Robertson, Nancy. 5 Feb. 2018. Telephone interview.

Hettich, Barb. 2016. Sioux County Auditor. Telephone interview. 14 Mar. 2016.

Hushka, Donnell. 2016. Legislative Liaison, North Dakota Association of Counties. In-person interview, Bismarck, ND. 4 Mar.

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- Morgan, Kelly. 2016. Tribal Archaeologist. In-person interview, Fort Yates, ND. 3 Mar.
- Nordmark, Jason. 2016. Owner and Editor, *Turtle Mountain Star*. In-person interview, Rolla, ND. 4 Mar.
- Nelson, Barry. 2016. Organizer for the North Dakota Human Rights Coalition. Telephone interview. 14 Mar.
- Nelson, Kjersten. 2016. Professor of Political Science, North Dakota State University. Telephone interview. 8 Mar.
- Neumann, Dennis J. 2016. Public Information Director at United Tribes Technical College, Bismarck. Telephone interview. 15 Mar.
- Silbernagel, Larry. 2016. County Commissioner, Sioux County. Telephone interview. 15 Mar.
- Stromme, Renee. 2016. Director, North Dakota Women's Network. In-person interview, Bismarck, ND. 3 Mar.
- Taft, Sevant. 2016. Enrollment Director, Three Affiliated Tribes. Telephone interview. 23 Mar.
- Traynor, Terry. 2016. Assistant Director, North Dakota Association of Counties. In-person interview, Bismarck, ND. 4 Mar.
- Turcotte, John. 2016. Retired policeman. In-person interview, St. John, ND. 5 Mar.
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- Weed, Shelly. 2016. Deputy Auditor, Benson County. Telephone interview (brief). 22 Mar.

APPENDIX A
MORTALITY DISPARITY RATES
American Indians and Alaska Natives (AI/AN) in the IHS Service Area
2009-2011 and U.S. All Races 2010
(Age-adjusted mortality rates per 100,000 population)

	AI/AN Rate 2009-2011	U.S. All Races Rate - 2010	Ratio: AI/AN to U.S. All Races
ALL CAUSES	999.1	747.0	1.3
Diseases of the heart (Heart Disease)	194.7	179.1	1.1
Malignant neoplasm (cancer)	178.4	172.8	1.0
Accidents (unintentional injuries)*	93.7	38.0	2.5
Diabetes mellitus (diabetes)	66.0	20.8	3.2
Alcohol-induced	50.0	7.6	6.6
Chronic lower respiratory diseases	46.6	42.2	1.1
Cerebrovascular diseases (stroke)	43.6	39.1	1.1
Chronic liver disease and cirrhosis	42.9	9.4	4.6
Influenza and pneumonia	26.6	15.1	1.8
Drug-induced	23.4	15.3	1.5

	AI/AN Rate 2009-2011	U.S. All Races Rate - 2010	Ratio: AI/AN to U.S. All Races
Nephritis, nephrotic syndrome (kidney disease)	22.4	15.3	1.5
Intentional self-harm (suicide)	20.4	12.1	1.7
Alzheimer's disease	18.3	25.1	0.7
Septicemia	17.3	10.6	1.6
Assault (homicide)	11.4	5.4	2.1
Essential hypertension diseases	9.0	8.0	1.1

* Unintentional injuries include motor vehicle crashes.

NOTE: Rates are adjusted to compensate for misreporting of American Indian and Alaska Native race on state death certificates. American Indian and Alaska Native age-adjusted death rate columns present data for the 3-year period specified. U.S. All Races columns present data for a one-year period. Rates are based on American Indian and Alaska Native alone; 2010 census with bridged-race categories.

Source: Indian Health Service. <https://www.ihs.gov/newsroom/factsheets/disparities/>

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EDUCATION

Ph.D. (1983) University of Arizona (Political Science)
Dissertation: "Indian and Non-Indian Water Development."

Independent Doctoral Minor: Latin American Studies, University of Arizona.

M.A. (1978) University of Arizona (Political Science)
M.A. Thesis: "The Budgeting Problems of the National Park Service."

B.A. (1973) Purdue University (Sociology).

Major Fields of Research: voting rights, water resources, American Indian policy

Language Training: Spanish

WORK EXPERIENCE

2017-present	Professor Emeritus, Political Science, University of Utah
1996-2017	Professor of Political Science, University of Utah
2003-2015	Director, Environmental and Sustainability Studies Program
2011-2014	Co-Director, University of Utah Sustainability Curriculum Development
1998-2007	Director, American West Center
1989-1996	Associate Professor of Political Science, University of Utah
1990-1993	Associate Dean, College of Social and Behavioral Science
1987-1990	Director of Public Administration Education, Center for Public Policy and Administration, University of Utah
1987-1989	Assistant Professor of Political Science, University of Utah
1983-1987:	Assistant Professor, Texas A&M University
1982-1983:	Visiting Lecturer, Texas A&M University
Spring, 1981:	Lecturer for the American Indian Education Program, University of Arizona

1978-1982:	Research and Teaching Associate, Political Science Department, University of Arizona
June--Oct., 1978:	Volunteer English Instructor for Project Ayuda in Cunen, Guatemala (7th, 8th, and 9th grade Mayan Indian students).
1976-1978:	Research Assistant, Political Science Department, University of Arizona.
1973-1974:	Research Assistant, Southwest Indian Youth Center, Tucson, Arizona.

PUBLICATIONS

Books:

Vision and Place: John Wesley Powell & Reimagining the Colorado River Basin (edited), with Jason Robison and Thomas Minckley. University of California Press, 2020. This book is divided into three parts: water, public lands, and Native Americans. Each chapter is divided into three sections: historic, contemporary, and prospective. The editors wrote an introductory chapter to the book and an introduction to each of the three parts.

River Republic: The Fall and Rise of America's Rivers. Columbia University Press, 2012 (paperback 2014). This book tells the story of America's rivers and the movement to bring them back to health and vigor. I develop the theme of a "river republic" by focusing on citizens who become politically active to save a local river. Runner-up, Science Category, Green Book Festival.

The Most Fundamental Right: Contrasting Perspectives on the Voting Rights Act (edited). Indiana University Press, 2012. The book is a "debate in print" over the future of the Voting Rights Act. The chapter authors are the leading voices in that debate.

Native Vote: American Indians, the Voting Rights Act, and the Right to Vote, with Susan Olson and Jennifer Robinson. Cambridge University Press, 2007. This book provides a history and analysis of Indian voting rights, with emphasis on cases brought under the Voting Rights Act. Three case studies are used to illustrate the legal issues in such cases. The final chapter describes contemporary efforts by American Indians to participate in the political system.

Native Waters: Contemporary Indian Water Settlements and the Second Treaty Era. University of Arizona Press, 2002. This book analyzes the first fourteen negotiated settlements that attempted to resolve conflicts over Indian water rights. I argue that these water settlements constitute a second treaty era, analogous to the first treaty era of the Nineteenth Century.

Contested Landscape: The Politics of Wilderness in Utah and the West, with Doug Goodman. University of Utah Press, 1999. This edited book consists of chapters written by graduate and undergraduate students from the University of Utah. My contributions include the Preface, co-authorship of the final chapter ("The Community Context Approach"), and an introduction to each of the four sections of the book.

Staking Out the Terrain: Power Differentials Among Natural Resource Management Agencies, second edition, with Jeanne Nienaber Clarke. SUNY Press, 1996. This book formulates a model of agency power focusing on the ability of agencies to expand resources and jurisdiction. A detailed analysis of seven federal agencies provides support for the model. They are: the Army Corps of Engineers, the Forest Service, the Bureau of Reclamation, the National Park Service, the Fish and Wildlife Service, the Natural Resource Conservation Service, and the Bureau of Land Management. We are currently working on a third edition.

Public Policy Theory, Concepts, and Models: An Anthology. Englewood Cliffs, NJ: Prentice Hall, 1995. This semi-edited book provides a comprehensive overview of the most influential theories, concepts, and approaches in policy studies. It is an anthology of previously published work arranged into conceptual categories. My contributions include: Section One: "The Theoretical Foundation of Policy Studies;" Section 6: "Conflict and Choice in Policy Theory;" and an "Introduction" and "Discussion" to accompany Sections Two through Five.

The Waters of Zion: The Law, Policy, and Politics of Water in Utah. University of Utah Press, 1995. This edited book consists of chapters written by graduate and undergraduate students from the University of Utah. My contributions include: Chapter One: "Politics, Water And Utah;" Chapter Nine: "The CUP Completion Act of 1992;" and an "Introduction" to each of the four sections of the book.

Command of the Waters: Iron Triangles, Federal Water Development, and Indian Water. University of California Press, 1987, re-issued in paperback with a new chapter, 1994, by the University of Arizona Press. This book is concerned with differential rates of water development on Indian and non-Indian lands. Chapter one identifies factors that affect the political viability of iron triangles. The book then examines a traditionally weak iron triangle -- the water development program of the Bureau of Indian Affairs, and a traditionally powerful iron triangle-- the federal water development program.

Journal Articles:

"Collaboration and the Criteria for Success: A Case Study, and a Proposed Framework for Analysis." With Marian L. Rice. *The Journal of Administration & Society*, 2021. <https://doi.org/10.1177/00953997211042564>

"Evolution of Water Institutions in the Indus River Basin: Reflections from the Law of the Colorado River." With Erum Sattar and Jason Robison. *Michigan Journal of Law Reform* 51 (Issue 4 Summer 2018): 715-776 (ranked #94 out of 1,549 law journals).

"Indigenous Water Justice." With Jason Robison, Barbara Cosens, Sue Jackson, and Kelsey Leonard. *Lewis and Clark Law Review*: 22 (No. 3, 2018): 841-922 (ranked #40 out of 1,549 law journals).

"Integrated Water Resources Management and Collaboration: The Failure of the Klamath Water Agreements." *Journal of Policy History*. 30, Issue 1 (Jan. 2018): 83-104.

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- > *U.S. v. Blaine County*. 157 F. Supp. 2d 1145 U.S. Dist. Ct. MT (2001)
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- > *Brakebill v. Jaeger*. I. Civ. 1: 16-CV-08 U.S. Dist. Ct. ND (2016)
- > *Brakebill v. Jaeger*. II. Civ. 1: 16-CV-08 U.S. Dist. Ct. ND (2018)
- > *Sanchez et. al. v. Cegavske*. Case No. 3:16-cv-00523-MMD-WGC U.S. Dist. Ct. NV (2016)
- > *Navajo Nation Human Rights Commission v. San Juan County, Utah*. Case No. 2:16-cv-00154-JNP-BCW U.S. Dist. Ct. UT (2017)
- > *Voto Latino v. Hobbs*. CV-05685-PHX-DWL. U.S. Dist. Ct. AZ (2019)
- > *DSCC v. Simon*. 2nd Jud. Dist. Minn. (Jan. 2020, Supp Rept. April, 2020)
- > *Western Native Voice v. Stapleton*. Mont. 13th Jud. Dist. (March, 2020, Supp. Rept. Aug. 2020)
- > *Corona et. al. v. Cegavske et. al.* I. 1st Jud. Ct. in and for Carson City, NV (April, 2020)
- > *Crossey v. Boockvar*. In the Commonwealth Court of Pennsylvania (May, 2020)
- > *LaRose v. Simon*, 2nd Jud. District of Minnesota (July, 2020)
- > *Corona et. al. v. Cegavske et. al.* II. 1st Jud. Ct. in and for Carson City, NV (July, 2020)
- > *League of Women Voters v. LaRose*. U.S. Dist. Ct. Southern Dist., Eastern. Div. OH (Aug., 2020)
- > *A. Philip Randolph Institute of Ohio v. LaRose*. U.S. Dist. Ct. Northern Div. OH (September 2020)
- > *Toyukak v. Meyer*. U.S. Dist. Ct. for the Dist. of Alaska, AK (April, 2021),
- > *Western Native Voice v. Jacobsen*. Montana. 13th Jud. Ct., MT (Jan., 2022)
- > *Lower Brule Sioux Tribe v. Lyman County, SD*. U.S. Dist. Ct. SD (May 2022, November 2022)
- > *Turtle Mountain v. Jaeger*, U.S. Dist. Ct. ND (November 2022)

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Water: Abundance, Scarcity, and Security in the Age of Humanity, by Jeremy Schmidt. *The American Historical Review*, 2018.

The Blue, The Gray, and the Green, edited by Brian Allen Drake. *Journal of American History*, 2015.

Integrating Climate, Energy, and Air Pollution Policies, by Gary Bryner with Robert Duffy. *Perspectives in Politics*, 2013.

The New Politics of Indian Gaming, by Kenneth Hansen and Tracey Skopek. *American Review of Politics*. 2012.

Stealing the Gila, by David DeJong. *Pacific Historical Review*, Vol. 80, No. 1, 2010.

Dividing Western Waters, by Jack August. *Western Historical Quarterly*, 2009.

The Silver Fox of the Rockies: Delphus E. Carpenter and the Western Water Compacts, by Daniel Tyler. *The Journal of American History*. June 2004.

Fuel for Growth: Water and Arizona's Urban Environment, by Douglas Kupel. *The Journal of American History*. June 2004.

Indian Reserved Water Rights: The Winters Doctrine in Its Social and Legal Context, by John Shurts. *Pacific Historical Review* (Nov. 2001).

The Struggle for Water: Politics, Rationality, and Identity in the American Southwest, by Wendy Nelson Espeland. In *The American Political Science Review*, (Fall, 1999).

A Sense of the American West: An Anthology of Environmental History. Edited by James E. Sherow. In *Utah Historical Quarterly*, (1999).

The Weber River Basin: Grass Roots Democracy and Water Development, by Richard Sadler and Richard Roberts. In *The Journal of American History*, (Sept., 1995).

The Last Water Hole in the West, by Daniel Tyler. In *Western Historical Quarterly*, (Aug., 1993).

Senate Elections and Campaign Intensity, by Mark Westlye. In *Political Studies*, (1993).

Water Resources Management, by David Feldman. In *Policy Currents* (Aug., 1992).

American Indian Water Rights and the Limits of Law, by Lloyd Burton. In *Pacific Historical Quarterly* (May, 1992).

The Logic of Congressional Action, by R. Douglas Arnold. In *Political Studies* (1992).

Breaking the Iron Bonds, by Marjane Ambler. In *Natural Resources and Environmental Administration* (June, 1991): 6-7.

Environmental Politics and Policy: Theories and Evidence, edited by James P. Lester. In *Journal of Politics* (Aug., 1991): 889.

A Budget Quartet: Critical Policy and Management Issues, by Donald Axelrod. In *Western Governmental Researcher* (1990).

Envisioning a Sustainable Society, by Lester Milbrath. In *Rivers*, (1991).

Native American Estate: The Struggle Over Indian and Hawaiian Lands, by Linda S. Parker. In *The National Political Science Review* (1992).

A Life of Its Own: The Politics and Power of Water, by Robert Gottlieb. In *American Political Science Review* (Dec., 1989): 1382-83.

As Long as the Rivers Run: Hydroelectric Development and Native Communities in Western Canada, by James B. Waldrum. In *Western Historical Quarterly* (Feb., 1989): 87-88.

Controversies in Environmental Policy, edited by Sheldon Kamieniecki, Robert O'Brien, and Michael Clarke. In *The American Review of Public Administration* (June, 1988).

Water in New Mexico, by Ira G. Clark. In *New Mexico Historical Review* (1989).

INVITED TALKS

Invited Speaker, Confluence: The Colorado River at the Compact's Centennial. University of Arizona, Dec. 6, 2022.

Invited Speaker, Healthy Public Lands Conference, University of Utah, June, 2022.

Invited Speaker, Duke University Law School, Discussion on Race and Voting, September 7, 2021. Zoom.

Invited Speaker, Pacific Summit, "Water in the West" Symposium sponsored by the Waterkeeper Alliance, April 28, 2021. Zoom.

Invited Speaker, Symposium on John Wesley Powell and the Future of the Colorado River Basin, Stegner Center, University of Utah, Feb. 18, 2021. Zoom.

Invited Speaker, "Fighting for the Franchise: Native American Voting Rights in Arizona and Beyond." Arizona Historical Society Conference. Oct. 29, 2020. Zoom.

Invited Participant, "Colorado River Conversations: Integrating Science and Identifying Solutions Conference." University of Arizona, Oct. 28-30, 2019.

Invited Speaker, "The Arid Lands and the Legacy of John Wesley Powell." The Biennial Conference on the Science and Management of the Colorado Plateau & Southwest Region, Flagstaff, AZ, Sept. 9, 2019.

Invited Speaker, "John Wesley Powell Sesquicentennial Symposium." Page, AZ, July 10, 2019.

Invited Speaker, "John Wesley Powell Sesquicentennial Symposium." Moab, UT, June 21, 2019.

Invited Speaker, Groundwater Management Districts Association, Summer Conference, Salt Lake City, June 6, 2019.

Keynote Speaker, "John Wesley Powell Sesquicentennial Symposium." Green River WY, May 23, 2019.

Invited Speaker, "Native American Participation in U. S. Elections." The Carter Center, Atlanta, GA, Dec. 11-12, 2018.

Invited Testimony, The Native American Voting Rights Coalition, public hearing, Phoenix, AZ, Jan. 11, 2018.

Participating Scientist, "The Colorado River Basin Workshop: Building a Science Agenda" Funded by the National Science Foundation and the Janet Quinney Lawson Foundation, Tucson, AZ, Oct. 12-14, 2017.

Keynote Speaker, Constitution Day, East Central University, Ada, OK, Sept. 17, 2017.

Invited Speaker, Symposium on Native Voting Rights, the Carter Center, Atlanta, GA, Dec. 4-5, 2016.

Speaker, Restoring the West Conference, Utah State University, October 18, 2016.

Speaker, Martz Summer Conference, panel on Indigenous Water Justice, University of Colorado, June 9, 2016.

Moderator, Indigenous Water Justice Symposium, University of Colorado, June 6, 2016.

Participant, "Upstream Downstream Voices: Protecting the Colorado River, Moab, UT, May 24, 2016.

Speaker, Utah History Symposium, Salt Lake City, UT, May 12, 2016.

Speaker, Great Salt Lake Issues Forum, Salt Lake City, UT, May 11, 2016.

Speaker, Interagency Regional Wilderness Stewardship Training, St. George, UT, April 26, 2016.

Speaker, Spring Runoff Conference, Utah State University, Logan, UT, April 5, 2016.

Speaker, State of the Rockies Annual Speaker Series, Colorado College, Colorado Springs, CO, Mar. 28, 2016.

Speaker, Intermountain Sustainability Summit, Weber State University, Nov. 24, 2016.

Keynote speaker, Salt Lake County Water Symposium, Nov. 18-19, 2015.

Speaker, Native Symposium, Weber State University, Ogden UT. Nov. 4, 2015.

Plenary Speaker, National Congress of American Indians, National Conference, San Diego, CA. Oct. 2015.

Keynote Speaker, Indian Voting Rights Symposium. Washington, D.C. May 27-28, 2015.

Debate on Public Lands. Speaker of the House Rebecca Lockhart and Representative Ken Ivory vs. Robert Keiter and Daniel McCool. Southern Utah University, Sept. 18, 2014.

<https://www.youtube.com/watch?v=1m631pbW6iU&feature=youtu.be>

Debate on "Who Should Manage Utah's Public Lands?" Speaker of the House Rebecca Lockhart and Representative Ken Ivory vs. Pat Shea and Daniel McCool. Salt Lake City, May 14, 2014.

<https://www.youtube.com/watch?v=GEOEgBkotvA>

Speaker, National Commission on Voting Rights, Las Vegas, NV, April 26, 2014.

Speaker, River Rendezvous, Moab, UT Nov. 9, 2013.

Speaker, Upper Colorado River Conference, Colorado Mesa University, Nov. 7, 2013.

Guest Speaker, Texas Tech University, Lubbock, TX, April 17, 2013.

Keynote Speaker, River Management Society annual conference, Grand Junction, CO, Mar. 12, 2013.

Guest Speaker, the Wild and Scenic Film Festival, Nevada City, CA. Jan. 11-13, 2013.

Guest Lecturer, Carleton College, April 19-20, 2011.

Speaker, League of Women Voters, Panel on the proposed Las Vegas Pipeline, Salt Lake City, UT, Sept. 15, 2010

Speaker, Utah State History Conference, panel on Oral History, Salt Lake City, UT, Sept. 10, 2010.

Speaker, Redistricting Institute, Duke University, July 28, 2010.

Census and Redistricting Institute, Participating Scholar, Atlanta, GA, July 20, 2009

Spring Runoff Conference, Keynote Speaker, Utah State University, April 3, 2009.

Law and Justice Center, Salt Lake City, UT, Feb. 5, 2009.

Special Collections Omnibus Lecture, Brigham Young University, Provo, UT, Nov. 5, 2008

Salt Lake Countywide Watershed Symposium, Salt Lake City, Oct. 29, 2008.

The *Winters* Centennial, Tamaya Resort, Santa Ana Pueblo, NM June 11, 2008.

Panel on Indian voting rights, National Indian Gaming Association, annual conference, San Diego, CA, April 22, 2008.

Panel on "Voting Rights in Indian Country," at the Indigenous Law and Policy Center, Michigan State University College of Law, Jan. 31, 2008.

Conference, "Overview of the Reauthorization and Amendment of the Federal Voting Rights Act." University of California, Los Angeles, Jan. 25-26, 2008.

Symposium on the future of the Colorado River, College of Law, University of Utah, Oct. 25, 2007

Water Resources Seminar, Oregon State University, Corvallis, OR, Oct. 10, 2007.

American Comenius, University of Groningen, the Netherlands, U. S. program, Oct. 2, 2007.

"Native Water Law & Public Policy: Critical Issues in the Great Lakes and St. Lawrence Watersheds." Keynote Speaker, Cornell University, School of Law, Ithaca, NY, Nov. 17-18, 2006.

American Comenius, University of Groningen, the Netherlands, U. S. program, 2006.

Harvard University Law School symposium, "Preserving and Promoting the Native American Vote: A New Look at the Voting Rights Act Renewal Process." Cambridge, MA, April 5, 2006.

American Comenius, University of Groningen, the Netherlands, U. S program, 2005.

Testimony before the National Committee for the Voting Rights Act, Rapid City, SD, September 9, 2005.

River Management Society, annual conference, Keynote speaker, Salt Lake City, UT May 10, 2005.

Colorado Plateau River Guides, annual conference. Cataract Canyon, May 2-5, 2005.

Invited speaker, National Congress of American Indians, national convention, panel on Native Voting Rights, Tulsa, OK, November 2005.

Invited speaker, Biannual Symposium on the Colorado River, sponsored by the Water Education Foundation. Bishop's Lodge, Santa Fe, NM. Sept. 29, 2005.

Symposium: "Changing Directions in Water Law." University of Texas School of Law. Feb. 4-5, 2005.

Mni-Sose Intertribal Water Coalition, board of directors meeting, Rapid City, SD. September 2004

"Water in Utah," sponsored by the Utah Science Center, Public Dialogue Series, September 2004 (aired on KCPW radio, September 20, 2004).

BLM Recreation/Wilderness/Cultural/VRM Workshop, Moab, Utah. September 2004.

Utah State Historical Society, annual meeting, panel on Lake Powell. September 2004.

Mni-Sose Intertribal Water Coalition, Annual conference, Denver, CO. January 2004.

The Utah Environmental Symposium, Salt Lake City, UT, Nov. 2003.

Utah State University, Natural Resources and Environmental Policy Program, November 28, 2001.

U. S. Department of the Interior, Office of Indian Water Rights, annual negotiation teams meeting, Seattle, WA, November, 2000.

Conference on "Rivers, Dams and the Future of the West." Sponsored by the Utah Wetlands and Riparian Center, Salt Lake City, UT, November, 1999.

Symposium on "Where the Rivers Flow," sponsored by the Wallace Stegner Center, Salt Lake City, Utah, April, 1999.

Symposium on Tribal Survival, sponsored by Dine' College, Flagstaff, Arizona, April, 1999.

Symposium on "Changing Water Regimes in Drylands," sponsored by the Desert Research Institute. June 10-12, 1997, Lake Tahoe, CA.

Indian Water Rights Symposium sponsored by the All-Indian Pueblo Council, Indian Pueblo Cultural Center, Albuquerque, NM, April, 1994.

Symposium on the Future of the Colorado River Plateau, University of Utah School of Law, Sept., 1993.

"Arizona Water 2000," sponsored by the Commission on the Arizona Environment, Sedona, Arizona, Sept. 1992.

Invited Speaker, conference titled "A River Too Far: Water in the Arid West." Sponsored by the Nevada Humanities Committee, Reno, Nevada, 1991.

Symposium on "Water in the 20th Century," Phoenix, Arizona, 1990.

Bureau of Land Management, "Image Enhancement Seminar," Park City, Utah, 1989.

Workshop on Indian Land and Water Rights sponsored by the American Indian Lawyer Training Program, Albuquerque, N. M., 1987.

CONFERENCE PAPERS

“Integrated Water Resources Management: A Typology of Collaborative Processes, Applied to the Utah Governor’s Water Strategy Advisory Team.” International Conference on Interdisciplinary Social Science, Hiroshima, Japan, July 2017.

“Indigenous Water Justice in the Colorado, Columbia, and Murray-Darling Basins.” With Jason Robison and Kelsey Leonard. The Waterkeeper Alliance, Park City, UT, June 2017.

“The Voting Rights Act and the Potential for “Bail-in” After *Shelby County v. Holder*.” The Midwest Political Science Association, Chicago, IL, April 2016.

“Pockets of Discrimination: The Voting Rights Act and the Role of ‘Bail-in’ After *Shelby County v. Holder*.” The International Social Sciences Conference, Split, Croatia, June 2015.

“Creating a ‘Water BRAC’ Commission to Evaluate Existing Water Projects.” American Water Resources Association, Vienna, VA, November, 2014.

“River Policy in Crisis: the Klamath River.” American Political Science Association, Washington, D. C. August, 2014.

“Social Science Expert Witness Testimony in Voting Rights Act Cases.” With Richard Engstrom, Jorge Chapa, and Gerald Webster. Eighth International Conference on Interdisciplinary Social Science, Charles University, Prague, The Czech Republic, August, 2013.

“Campus Sustainability in the U. S.: A Comparison of a Research and a Teaching University,” with Janet Winniford. 2010 Conference on Environmental, Cultural, Economic and Social Sustainability University of Cuenca, Cuenca, Ecuador January 5-7.

“Rivers of the Homeland: River Restoration on Indian Reservations.” International Congress of Americanists, Sevilla, Spain, July, 2006.

“From Insanity to Enlightenment: Changing Perceptions of River Restoration and River Restorationists.” Transatlantic Workshop on “Restoring or Renaturing.” Zurich, Switzerland, July, 2006.

“The Community Context Approach: Cross-Boundary Management and the Protection of Parks and Wild Lands.” International Symposium on Society and Resource Management, Sardinia, Italy, 2002.

“The Wilderness Debate in Utah: Using Community Values and Education to Resolve Conflict.” International Symposium on Society and Resource Management. Indiana University, 2002.

“Evolving Political Institutions: A New Water Policy and its Impact on the Border Region” Southwest Center for Environmental Research and Policy, Bi-National Water Program. Rio Rico, AZ, 2002.

“Indian Water Rights in the Settlement Era.” American Political Science Association, Washington, D. C. 2000.

“Land Use, Borders, and Environmental Policy: Tribal Autonomy and Ecosystem Management.” International Conference on “Nature, Society and History,” Vienna, Austria, 1999.

“Two Cultures, Two Communities, One County: Devolution and Retrenchment in Indian Country.” With F. Ted Hebert and Doug Goodman. American Political Science Association, 1998.

“Subsystem Theory and the Hierarchy of Conflict.” Western Political Science Association, 1997.

"Environmentalists, Tribes, and Negotiated Water Settlements," with Laura Kirwan. American Political Science Association, 1995.

"Successes and Failures of Policy Theory." Western Political Science Association, 1992.

"Indian Water Rights: The End of the Negotiation Era?" Western Political Science Association, 1991.

"Indian Water Rights: Negotiation; Agreement; Legislative Settlement." American Water Resources Association, 1989.

"Using Measures of Budgetary Success to Evaluate Subgovernment Theory: The Case of Federal Water Resource Development." Western Political Science Association, 1988.

"Policy Theory, Policy Typologies, and Decision-making." Midwestern Political Science Association, 1987.

"Federal Water Development: Changing Theoretical Assumptions." Western Political Science Association, 1987.

"Subgovernments, Political Viability, and Budgetary Constraints." Western Political Science Association, 1986.

"Subgovernments, Autonomy, and Stability: The Case of Federal Water Resource Development." Western Social Science Association, 1986.

"Western Water Policy and Federalism: Two Conflicting Doctrines." Southwestern Social Science Association, 1984.

"Contemporary Federal Water Policy: The Battle Over Water Project Expenditures During the Carter and Reagan Administrations." Western Social Science Association, 1983.

"Indian and Non-Indian Water Development: Competition for Water and Water Projects." Western Social Science Association, 1983.

"The Theoretical Origins of the *Winters* Doctrine." Southwestern Social Science Association, 1982.

"For Richer or for Poorer: A Comparative Approach to the Study of Bureaucracy," with Jeanne Nienaber. Western Political Science Association, 1981.

"Indian Water Rights: The Bureaucratic Response." Arizona Section of the American Water Resources Association, 1981.

"Indian Water Rights, The Central Arizona Project, and Water Policy in the Lower Colorado River Basin." Western Social Science Association, 1980.

"Federal Indian Policy and the Sacred Mountain of the Papago Indians." Southwestern Social Science Association, 1980.

OTHER CONFERENCE ROLES

Roundtable participant, "John Wesley Powell and the Colorado River Basin." Western History Association, Las Vegas, October, 2019.

Discussant, panel on "The Most Fundamental Right: Voting Now and Then, Here and There." The Midwest Political Science Association, Chicago, IL, April 2016.

Moderator, panel on "Flood Management." American Water Resources Association, Vienna, VA, November 2014.

Delegate, NASPA Exchange Program with Deutsches Studentenwerk (Germany), February 2014, focusing on campus sustainability.

Presenter, American Water Resources Association, annual meeting, panel on dam removal and river restoration, Seattle, WA, November 2005.

Discussant, panel on "Native Americans in the Twenty First Century." Western Social Science Association. April 2005.

Chair, panel on "Revisions in Policy Subsystem Theory." Western Political Science Association, 1997.

Invited Participant, Moscow State University Symposium on Training Public Administrators, Moscow, Russia, March 1993.

Chair, panel on "Public Policy Theory: Past, Present, Future." Western Political Science Association, 1992.

Invited Discussant, conference on "Innovation in Western Water Law and Management," University of Colorado School of Law, 1991.

Delegate, Citizen Ambassador Program, Environmental Technology Delegation to the Soviet Union, 1990.

Organizer and Moderator, panel on "Hosting the Olympics," National Association of Schools of Public Affairs and Administration, 1990.

Invited Discussant, Symposium on "Indian Water Rights," University of Colorado School of Law, 1990.

Invited Discussant, Arizona Historical Society, symposium on Water, Tucson, Arizona, 1989.

Chair, panel on "Executive MPA Programs," National Association of Schools of Public Affairs and Administration, 1989.

Discussant, Sixth Annual Women in Public Administration Conference, Salt Lake City, Utah, 1989.

Chair, panel on "Models of Policy Analysis." Western Political Science Association, 1989.

Discussant, panel on "Natural Resource Management in the Post-Reagan Era." American Society for Public Administration, 1989.

Convener and discussant, panel on "Administrative Practice and Organization Theory." Public Administration Theory Symposium, American Society for Public Administration, 1989.

Participant, Minnowbrook II Conference on the Future of Public Administration, Syracuse University, Sept., 1988.

Discussant, panel on "Limited Perspectives: Traditional Methods and Models and the Study of Native American Political Participation." American Political Science Association, 1988.

Chair, panel on "Alternative Models of Environmental Policy Formulation and Implementation." Western Political Science Association, 1988.

Chair, panel on "Policy Models and Theories." American Political Science Association, 1986.

Chair, panel on "Environmental Policy," Western Political Science Association, 1986.

Chair, panel on "Subsystems and Natural Resource Policy." Western Social Science Association, 1986.

Discussant, panel on "Environmental Politics and Policy: A Synthesis and Critique." Western Political Science Association, 1985.

Discussant, panel on "The Political Context of Environmental Policy." Western Political Science Association, 1984.

Chair, panel on "Indian Water Rights and Water Development." Western Political Science Association, 1982.

PUBLIC COMMUNICATIONS

On-air guest, Radio West, KUER, Dec. 23, 2022 (topic: Native Americans and the Colorado River Compact)
<https://radiowest.kuer.org/show/radiowest/2022-12-22/a-more-equitable-colorado-compact>

Quoted interview, *Deseret News*, Dec. 19, 2022 (topic: Native American water rights in the Colorado River Basin)

On-air guest, Radio West, KUER, July 21, 2022 (topic: the Bluff Principles and Native American water)
<https://radiowest.kuer.org/show/radiowest/2022-07-21/indigenous-ways-of-knowing-water>

On-air guest, Radio West, KUER, June 9, 2022 (topic: Water in the American West)
<https://radiowest.kuer.org/show/radiowest/2022-06-09/its-not-too-late-yet-for-a-new-water-policy>

Quoted interview, *The Arizona Daily Star*, Nov. 27, 2021 (topic: The Colorado River)

Quoted interview, *Gizmodo*, November, 2021 (topic: The Colorado River)
<https://gizmodo.com/its-time-to-drain-lake-powell-1848003413>

On-air guest, Radio West, KUER, Sept. 3, 2021 (topic: Drought in the American West)

Quoted interview, *Science Magazine*, July 1, 2021 (topic: The Colorado River)

Quoted interview, *Salt Lake Tribune*, April 11, 2021 (topic: Bears Ears National Monument).

Quoted interview, *Inside Climate News*, April 11, 2021 (topic: Bears Ears National Monument).

Quoted interview, *High Country News*, Jan. 8, 2021 (topic: public land extremists).

Quoted interview, *The Washington Post*, Nov. 1, 2020 (topic: Native American voting rights).

On-air interview, Native America Calling. Oct. 6, 2020 (topic: Native American voting rights).

On-air interview, KCPW radio, Sept. 9, 2019 (topic: Colorado River Basin).
<http://kcpw.org/blog/in-the-hive/2019-09-12/unquenchable-3-the-fate-of-the-colorado-river/>

Quoted interview, Utah Public Radio, Aug. 21, 2018 (topic: Lake Powell Pipeline).
<http://www.upr.org/post/loving-our-lands-thirsty-cities-and-lake-powell-pipeline>

Quoted interview, *Outside Magazine*, Aug. 14, 2018 (topic: Lake Powell Pipeline).
<https://www.outsideonline.com/2333236/utah-pipeline-water-shortage-st-george>

On-air interview, Native America Calling Radio Program, Aug. 14, 2018 (topic: Native American voting rights).

Quoted interview, *ThinkProgress*, June 20, 2018 (topic: Native American voting rights).

Quoted interview, *Arizona Republic*, Jan. 24, 2018 (topic: public lands).

On-camera interview, America Divided TV show, Jan. 19, 2018 (topic: San Juan County, UT).

Quoted interview, *The New York Times*, Jan. 4, 2018 (topic: American Indian voting rights).
<https://www.nytimes.com/2018/01/04/us/native-american-voting-rights.html>

Quoted research, *Governing Magazine*, July 2017 (topic: Navajo water development).

Quoted interview, *High Country News*, Sept. 4, 2017 (topic: The Bear River Project).

Quoted interview, *Salt Lake Tribune*, April 28, 2017 (topic: American Indians and the Census).
<http://www.sltrib.com/news/5216761-155/does-the-us-census-undercount-utah>

Quoted Interview, Colorado Public Radio, Feb. 23, 2017 (topic: public lands).

Quoted interview, *Mother Jones*, Mar. 25, 2016 (topic: Indian voting rights).

NPR, All Things Considered, recorded interview, Jan. 18, 2016 (topic: Marketing Indian water).
<http://www.npr.org/2016/01/18/463503934/arizona-tribes-wade-into-the-water-business>

Market Place, Oregon Public Broadcasting, quoted interview, Jan. 4, 2016 (topic: public lands).
<http://www.marketplace.org/2016/01/04/world/how-feds-came-own-west>

KRCL, Radioactive Show, on-air interview, Sept. 20, 2015 (topic: Navajo water).
<http://www.krcl.org/tag/dan-mccool/>

CBS Sunday Morning, on-camera interview Aug. 15, 2015 (topic: Navajo water).
<http://www.cbsnews.com/news/the-water-lady-a-savior-among-the-navajo/>

BYU Radio, on-air interview. May 15, 2015 (topic: river restoration and water management).
<http://www.byuradio.org/episode/b98b846e-feeaa-4401-a14f-c288370763f4/top-of-mind-with-julie-rose-the-river-republic-straight-talk-parenting>

KSRW Radio, Santa Monica, CA. on-air guest, April 3, 2015 (topic: western water).
<http://kcrw.com/news-culture/shows/to-the-point-a-parched-west-struggles-to-adapt-to-the-realities-of-drought>

Trib Talk, on-air interview. Mar. 10, 2015 (topic: Utah water policy).
<http://www.sltrib.com/blogs/tribtalk/2270151-155/trib-talk-is-bear-river-project>

Quoted interview, *Salt Lake Tribune*, March 9, 2015 (topic: The Bear River Project).
<http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=2230808>

Quoted interview, *Environment*, Dec. 11, 2014 (topic: Utah water).

KSUB, Cedar City, UT, Sept. 18, 2014 (topic: public lands).

KUER, Radio West, Salt Lake City, on-air guest, April 23, 2014 (topic: public lands grazing).
<http://radiowest.kuer.org/post/cliven-bundys-range-war>

On-film interview for movie, "Black Hawk." Mar. 2014.
<https://www.youtube.com/watch?v=liLXujigjPY>

KUER, Radio West, Salt Lake City, on-air guest, Sept. 3, 2013 (topic: Colorado River).
<http://radiowest.kuer.org/post/sharing-colorado>

Quoted interview, *Anchorage Press*, July 18, 2013 (topic: The Voting Rights Act).

Blog post for Indiana University Press, June 28, 2013 (topic: The Voting Rights Act).
<http://iupress.typepad.com/blog/2013/06/how-does-shelby-county-v-holder-impact-the-voting-rights-act.html>

Indian Country Today, quoted interview, June 28, 2013 (topic: The Voting Rights Act).

Quoted interview, *DebtWire*, May 1, 2013 (topic: Las Vegas pipeline).

Quoted interview, *Huffington Post*, April 8, 2013 (topic: Las Vegas pipeline).
http://www.huffingtonpost.com/mobileweb/2013/04/08/utah-nevada-water-deal-colorado-river_n_3038477.html

KUER, Radio West, Salt Lake City, on-air guest, April 4, 2013 (topic: Las Vegas pipeline).
<http://radiowest.kuer.org/post/protecting-snake-valley>

New York Times, quoted interview, Mar. 26, 2013 (topic: the Pecos River and western drought).
<http://www.nytimes.com/2013/03/27/us/new-mexico-farmers-push-to-be-made-a-priority-in-drought.html?pagewanted=all&r=0>

New Books in Political Science, blog, interview with Heath Brown. Feb. 26, 2012 (topic: *The Most Fundamental Right*).
<http://newbooksinpoliticalscience.com/2013/02/27/daniel-mccool-the-most-fundamental-right-contrasting-perspectives-on-the-voting-rights-act-indiana-up-2012/>

Albuquerque Journal, quoted interview, Feb. 10, 2013 (Topic: Navajo water settlement).

River Management Society Journal, book review of *River Republic*, Winter, 2012 (Topic: *River Republic*).
<http://www.river-management.org/assets/Journals-Newsletters/2012%20winter.pdf>

Suburban Wildlife Magazine Blog, interview, January 13, 2013. (topic: *River Republic*).
<http://blog.suburbanwildlifemagazine.com/2013/01/13/daniel-mccool.aspx>

KDVS Radio, Davis, CA, interview, Jan. 5, 2013 (topic: The Wild and Scenic Film Festival).

Western Water, quoted interview, Nov/Dec 2012 (topic: the Colorado River).

Salt Lake Tribune, Editorial, "Protect our Rivers." Dec. 22, 2012.

KSFR Radio, interview with Diego Mulligan on the "Journey Home" Show, Albuquerque, NM, Dec. 11, 2012 (topic: *River Republic*).

KCPW Radio, interview, Oct. 23, 2012 (topic: *The Most Fundamental Right*).
<http://redthread.utah.edu/take-a-longer-view-of-election-day/7780>

The King's English Bookstore, reading, Oct. 18, 2012 (topic: *River Republic*).

Salt Lake Tribune, featured column, Oct. 4, 2012 (topic: *River Republic*)
<http://www.sltrib.com/sltrib/entertainment/2/54996363-223/rivers-america-mccool-utah.html.csp>

On-air Interview, Radio West, KUER Radio, Sept. 10, 2012 (topic: *River Republic*).
<http://www.kuer.org/post/u-professor-optimistic-about-americas-rivers>

Interview, The Park Visitor, Sept. 10, 2012 (topic: *River Republic*).
<http://parkvisitor.com/blog/2012/09/10/daniel-craig-mccools-outdoor-adventure-and-conservation-tips/>

Page 99 Blog, September, 2012 (topic: *River Republic*).
<http://page99test.blogspot.com/2012/09/daniel-mccools-river-republic.html>

KCPW Radio, interview, Aug. 20, 2012 (topic: *River Republic*).

Indian Country Today, quoted interview, June 15, 2012 (topic: Indian voters).

Salt Lake City Weekly, quoted interview, May 9, 2012 (topic: Las Vegas Pipeline).

The New York Times, quoted interview, April 11, 2011 (topic: Indian water rights).

KSL TV News, interview, April 1, 2011 (topic: Colorado River).

Associated Press, quoted statement, Sept. 29, 2010 (topic: Navajo water settlement).

Salt Lake Tribune, quoted statement, Sept. 17, 2010 (topic: proposed Green River pipeline).

Tooele Transcript Bulletin, quoted statement, Sept. 16, 2010 (topic: proposed Las Vegas pipeline).

USA Today, quoted statement, Aug. 24, 2010 (topic: Grand Canyon). This article was picked up by 75 newspapers.

The Salt Lake Tribune, quoted statement, Aug. 24, 2010 (topic: Grand Canyon).

KUER Radio, quoted statement, Aug. 23, 2010 (topic: Grand Canyon).

KSL TV news, interview. April 21, 2010 (topic: reservoirs in Utah).

Fox News Utah, news coverage, Feb. 14, 2010 (topic: climate change).

Indian Country Today, quoted interview, Feb. 4, 2010 (topic: Indian voting rights).

Indian Country Today, quoted interview, Oct. 20, 2009 (topic: Indian voting rights).

High Country News blog, quoted interview. Oct. 15, 2009 (topic: Indian voting rights).

KUED "Utah Now" television program, August 21, 2009 (topic: western water policy).

Salt Lake Tribune, quoted interview, Nov. 28, 2008 (topic: Navajo water rights).

Indian Country Today, quoted interview, Oct. 26, 2008 (topic: American Indian voting).

KCPW Radio, interview, Oct. 22, 2007 (topic: western water policy).

KUER Radio, interview, Oct. 2, 2007 (topic: water policy in Utah).

Calibre, quoted interview, June 11, 2007 (topic: Indian voting rights).

Los Angeles Times, quoted interview, April 22, 2007 (topic: federal public lands)

The New Standard (national on-line news publication), quoted interview, January 22, 2007 (topic: American Indian water rights).

Salt Lake Tribune, quoted interview, Oct. 30, 2006 (topic: global warming and water).

KUSU Radio interview, August 31, 2006. (topic: Utah water).

Salt Lake Tribune, quoted interview, August 8, 2006. (topic: Utah water).

KUER, Radio West program, live interview, March 7, 2006 (topic: Women war veterans).

KCPW Radio, live interview, March 7, 2006 (topic: Women war veterans).

Salt Lake Tribune, quoted interview, February 16, 2006 (topic: American Indian voting rights).

Native American Times, secondary quote, November 1, 2005 (topic: American Indian voting).

Time Magazine, quoted interview, July 18, 2005 (topic: dam removal).

Salt Lake Tribune, quoted interview, June 23, 2005 (topic: river restoration).

Los Angeles Times, quoted interview, April 26, 2005 (topic: National Park Service).

Associated Press, quoted interview, October 25, 2004 (Nov. 2 in *Tri-Valley Central*) (topic: dam removal).

Deseret Morning News, quoted interview, Aug. 8, 2004 (topic: the law of the river).

East Valley Times (Arizona Tribune), secondary quote, June 4, 2004 (topic: the drought).

Los Angeles Times, quoted interview, May 22, 2004 (topic: American Indian voting rights).

Weather Notebook, Public Radio program, Boise, ID, interview, May 24, 2004 (topic: the impact of drought on western water policy).

Airtalk, KPCC Southern California Public Radio, interview, May 6, 2004 (topic: western water policy).

New York Times, quoted interview, May 2, 2004 (Topic: western water policy).

Rapid City Journal, quoted interview, April 12, 2004 (Topic: Indian voting rights).

High Country News, quoted interview, March 2004 (Topic: Indian water settlements).

Fox News, interview, Sept. 2, 2003 (Topic: Leavitt's appointment to EPA).

KUED Public Affairs Television presentation, "The Price of Water," April 22, 2003.

AP Wire Service, interview, Aug. 29, 2003 (Topic: Leavitt's appointment to EPA).

KSL TV News, interview, Aug. 28, 2003 (Topic: water use in Salt Lake City).

City Weekly, interview, Feb. 13, 2003 (Topic: water policy).

High Country News Radio, interview, Aug. 19, 2002 (Topic: wilderness policy).

Associated Press, June 1, 2002, feature story (Topic: irrigation subsidies).

KSL TV News, May 6, 2002, interview (Topic: water use in Salt Lake City).

KUED Radio interview, April 17, 2002 (Topic: water policy in the Salt Lake Valley).

KUED Radio interview, Nov. 19, 2001 ("Radio West" special program on water policy in Utah).

KRCL Radio interview, Sept. 13, 2001 (topic: Utah water policy).

KCPW Radio interview, Aug. 23, 2001 (topic: Utah water policy).

KCPW Radio interview, August 27, 1999 (topic: BLM wilderness policy).

KUER Radio interview, August 20, 1999 (topic: Utah water policy).

KUED, Civic Dialogue, televised interview, June 20, 1997 (topic: Utah water policy).

ABC Evening News, televised interview, June 4, 1997 (topic: The CUP).

KUER Radio interview, May 23, 1997 (topic: Poverty on Indian reservations).

KRCL Radio interview, January 8, 1996 (topic: Utah water policy).

KCPW Radio interview, January 2, 1996 (topic: Utah water policy).

KRCL Radio interview, August 20, 1995 (topic: American Indian Resource Center).

KUER Radio interview, August 14, 1995 (topic: Northern Ute tribal government).

KTALK Radio interview, May 6, 1995 (topic: taxes).

KCPW Radio interview, July 6, 1994 (topic: the Northern Ute jurisdiction case).

KUER Radio interview, Feb. 16, 1994 (topic: the Northern Ute jurisdiction case).

Special Feature article in the *Utah Government Connection* titled: "The Moscow Kremlin: Closed for Cleaning." Oct., 1993.

Deseret News, quoted interview. April 18, 1993 (topic: Russia).

The Public's Capital, quoted interview, April, 1993 (topic: federal water policy).

Las Vegas Review -Journal, quoted interview, Oct. 31, 1992 (topic: Western Water Policy).

Testimony before the State and Local Affairs Interim Committee of the Utah State Legislature, Jan. 8, 1992 (topic: Utah Navajo Royalty Trust Fund).

Los Angeles Times, quoted interview, Aug. 27, 1990 (topic: Navajo voting rights).

Congressional Quarterly Weekly Report, quoted interview, Jan. 13, 1990 (topic: federal Indian policy).

High Country News, quoted interview, July 30, 1990 (topic: Navajo voting rights).

"The Central Utah Project: A Legacy of Promise and Controversy." *Public Policy Perspective* (newsletter of the Center for Public Policy and Administration, University of Utah), Spring, 1990.

"Recent Events in Treaty Rights." *Native American Policy Network Newsletter*, July, 1990.

KRCL Radio interview, June 5, 1990 (topic: The Central Utah Project).

KSL Radio interview, Sept. 5, 1989 (topic: Indian water rights).

KTKT Radio interview, Dec. 27, 1989 (topic: taxes).

KUED Television, "Civic Dialogue," Dec. 19, 1989 (topic: Indian water rights).

GRANTS

Co-Principle Investigator, U. S. Geological Survey, Small Grants Program. 2015-18. \$31,480.

Senior Consultant, USAID-funded Pakistan Centers for Advanced Studies in Water, 2014-2016. \$10,000.

Faculty Consultant, "The Western Waters Digital Library: The Foundations of American Water Policy." National Endowment for the Humanities, 2007-2009. Funding = 5% time

Tanner Humanities Center, University of Utah. Research Interest Group grant to create a "Nuclear Utah" educational forum, 2006-07. Funding = \$1,200.

Applied Ethics and Human Values, University of Utah. 2005-06. Grant proposal: "Environmental Ethics and the Costa Rican Model of Ecotourism." \$6,200. With Professor Anya Plutynski.

National Endowment for the Humanities, program to create and preserve access to Humanities Collections, to digitize and archive 1,814 oral history interviews of American Indians, 2005-06. \$127,518 matching grant.

Quality Initiative Grant, University of Utah. To perform a complete program assessment of the Environmental Studies Program. 2003-2004. Funding = \$14,200.

Southwest Center for Environmental Research and Policy, Border Tribes Program. Co-P.I. This federally funded project developed a GIS Environmental Baseline for the Tohono O'odham Nation. 1999-2002. Funding = \$140,000.

Quality Initiative Grant, University of Utah. To create a new curriculum and program for the Red Rock Institute. 2001-2002. Funding = \$17,000.

U.S. Geological Survey, Water Resources Research Act Grant Program. Principle Investigator. "Negotiating Indian Water Rights Settlements: The Efficacy of Negotiation as a Dispute Resolution Strategy." 1992-1995. Funding = \$189,394.

University of Utah Teaching Committee. Awarded in 1996 to fund field trip for Wilderness Policy Class, \$1,200.

College of Social and Behavioral Science, University of Utah. Proposal Initiative Grant. \$4,000. Awarded summer, 1995.

University of Utah Research Committee. Grant to facilitate research on Indian Water Settlements: \$4,409. Awarded 1992.

Rural Utah Grant Program, Center for Public Policy and Administration, University of Utah. Project Title: "Ute and Navajo Water Rights: The Impact on Rural Utah." \$10,000. Awarded 1992-1993.

National Institute for Dispute Resolution, Higher and Professional Education Program, research grant for comparing negotiation and litigation as dispute resolution forums for Indian water rights: \$4,000. Awarded 1990.

University Teaching Grant to develop new course on water policy. University of Utah. Awarded 1989.

The Dean's R&D Fund. Project Title: "Conflict over Western Water: The Impact of 'Landmark' Decisions." College of Social and Behavioral Science, University of Utah. Awarded 1988.

Texas A&M University, Summer Research Grant, for project entitled "Water on the Hill: Subcommittees, Subgovernments, and Federal Water Development": \$5,000. Awarded 1986.

AWARDS

Runner-up, Science Category, Green Book Festival, for *River Republic: The Fall and Rise of America's Rivers*, 2013.

Finalist, College of Social and Behavioral Science, Superior Research Award, 2008, 2009

Finalist, College of Social and Behavioral Science Superior Teaching Award, 2011

Indigenous Day Dinner, Annual Awards, 2007, for "providing leadership for the American West Center on behalf of American Indians in the State of Utah."

University of Utah 2004 Diversity Award, presented to the American West Center.

Second place, "Excellence in Journalism Award," by the Utah Society of Professional Journalists, 1998 for "A River Between Two Cultures." *Catalyst* (August, 1997): 14-15.

Superior Research Award for Junior Faculty, College of Social and Behavioral Science, University of Utah, 1989.

ADMINISTRATIVE INITIATIVES

As co-Director of Sustainability Curriculum Development at the University of Utah:

Created, with my co-directors, the Undergraduate Certificate in Sustainability

Created, with my co-directors, the Graduate Certificate in Sustainability

As Director of the Environmental and Sustainability Studies Program:

Created a new Environmental and Sustainability Studies Minor

Directed the administration of an extensive program assessment and evaluation

Redesigned the Introductory course, ENVST 2100, required of all majors

Designed a new introductory field course, ENVST 2000, now required of all majors

Initiated the first Study Abroad program (Costa Rica) for Environmental and Sustainability Studies

Developed a new teaching curriculum, the Red Rock Institute, which explores environmental issues in the West.

Led the development of five new courses that focus on: sustainability science, environmental justice, global sustainability, leadership, and a senior capstone course

As Director of the American West Center:

Organized the 2006 Siciliano Forum. Topic: The Reauthorization of the Voting Rights Act

Negotiated numerous contracts for studies of Indian hunting and fishing rights and tribal archives.

Organized an annual conference called “Women at War,” that featured female veterans.

Initiated a new oral history project of Utah’s WWII veterans, “Saving the Legacy,” with over 500 interviews completed.

Wrote a successful NEH grant application to digitize the entire oral history collection of the Center—approximately 3,000 tapes.

As Associate Dean:

Initiated the effort that led to the establishment of the American Indian Resource Center on campus.

Created a new College grants program, the Proposal Initiative Grant, to help generate externally funded grants for College faculty.

Implemented a computerized search process to help College faculty find potential sources of external funding.

Created a Faculty Research Compendium that identified the major research activities of college faculty.

As Director of Public Administration Education:

Executive MPA: designed a new MPA program for middle- and upper-level administrators.

Public Administration Workshop for the Ute Indian Tribe: designed and implemented an annual intensive-session workshop for Ute tribal administrators.

Conference for Minority Public Administrators: designed and implemented Salt Lake City's first conference for minorities in the public sector work force.

COMMUNITY SERVICE AND CONSULTING

Regional Council, National Parks Conservation Association, Southwest Regional Council, 2009-present.

Member, Governor's Water Strategy Advisory Team, 2013-2017.

http://www.envisionutah.org/images/FINAL_Recommended_State_Water_Strategy_7.14.17_5b15d.pdf

Co-author, *amicus* brief, in *Northwest Austin Municipal Utility District Number One v. Holder*, U. S. Supreme Court, No. 08-322, 2009.

Volunteer Tutor, Guadalupe Schools, 2007-2009.

Advisor, Rocky Mountain American Indian Economic and Education Foundation, 2003-2006.

Member, National Council of Scholars, Presidents Park, Williamsburg, VA. 2002-2004.

Consultant, National Oceanic and Atmospheric Administration, research project investigating the use of long-range weather data in water management planning for water conservancy districts and Indian reservations, 1999-2002.

Participating author and consultant, contract to facilitate meetings and research a proposal to divide San Juan County, UT. Final Report titled: "San Juan County Division Study," Prepared by the Center for Public Policy and Administration, University of Utah, 1997.

Member, Board of Directors, the Indian Walk-In Center, Salt Lake City, Utah, 1994-2000.

Advisory Committee for the American Indian Resource Center, University of Utah, 1990-2000.