

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

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

Plaintiffs,

vs.

Michael Howe, in his official capacity as  
Secretary of State of North Dakota,

Defendant.

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Case No. 3:22-cv-00022

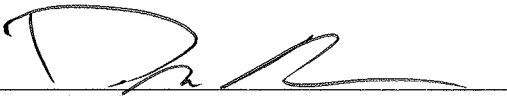
**AFFIDAVIT OF DAVID R. PHILLIPS**

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

Being duly sworn, David R. Phillips, testifies:

- 1. I am an attorney duly licensed to practice law in the State of North Dakota and am admitted to practice before this Court.
- 2. I am a member of the firm of Bakke Grinolds Wiederholt, attorney for Defendant Michael Howe, in his official capacity as Secretary of State of North Dakota, in this action. I have personal knowledge of the facts stated herein.
- 3. Attached hereto as ***Exhibit 1*** is a true and correct copy of the deposition transcript of Weston McCool taken on February 16, 2023.
- 4. Attached hereto as ***Exhibit 2*** is a true and correct copy of *Plaintiffs' Rule 26(a) Initial Disclosures* on June 23, 2022.
- 5. Attached hereto as ***Exhibit 3*** is a true and correct copy of *Plaintiffs' Second Set Of Supplemental Disclosures* dated May 10, 2023.

Dated this 12<sup>th</sup> day of May, 2023.

By: 

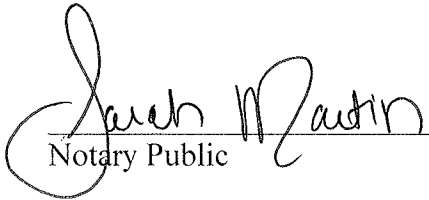
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Attorney for Defendant Michael Howe, in his  
official capacity as Secretary of State of  
North Dakota

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

On this 12<sup>th</sup> day of May, 2023 before me personally appeared David R. Phillips known to me to be the person described in the within and foregoing instrument, and acknowledged to me that he executed the same.

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

  
Notary Public

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Affidavit of David R. Phillips** was on the 12<sup>th</sup> day of May, 2023, filed electronically with the Clerk of Court through ECF:

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By: /s/ David R. Phillips  
DAVID R. PHILLIPS

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Spirit Lake Tribe, Wesley Davis,  
Zachery S. King, and Collette Brown,  
Plaintiffs,

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Michael Howe, in his official capacity as  
Secretary of State of North Dakota,  
Defendant.

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DEPOSITION OF WESTON MCCOOL

February 16, 2023

9:00 a.m.

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File # MW 5755463

**Exhibit 1**

COURT REPORTER: Christina DeGrande

Page 2	<p>1 APPEARANCES:</p> <p>2 On Behalf of Defendant:</p> <p>3 David Phillips, Esq.</p> <p>4 Special Assistant Attorney General</p> <p>5 300 West Century Avenue, P.O. Box 4247</p> <p>6 Bismarck, North Dakota 58502</p> <p>7 701-751-8188</p> <p>8 dphillips@bgwattorneys.com</p> <p>9</p> <p>10 On Behalf of Native American Rights Fund:</p> <p>11 Michael S. Carter, Esq.</p> <p>12 Native American Rights Fund</p> <p>13 1506 Broadway</p> <p>14 Boulder, Colorado 80301</p> <p>15 carter@narf.org</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	Page 4	<p>1 BE IT REMEMBERED that the deposition</p> <p>2 upon oral examination of Weston McCool was</p> <p>3 taken on February 16, 2023, at 9:00 a.m.,</p> <p>4 via Zoom remote technology, before Christina</p> <p>5 DeGrande, Professional Stenographer, Notary</p> <p>6 Public in and for the State of Minnesota.</p> <p>7 Whereupon, the following proceedings</p> <p>8 were had, to wit:</p> <p>9 THE COURT REPORTER: Counsel, I have a</p> <p>10 short statement I would like to make to help</p> <p>11 everything go as smoothly as possible.</p> <p>12 Because we are all appearing remotely,</p> <p>13 I would like to ask everyone to be more</p> <p>14 conscious than ever of not speaking over on</p> <p>15 another. If I cannot hear the end of a</p> <p>16 question or the beginning of an answer, you</p> <p>17 are going to have a poor record.</p> <p>18 If the witness could take a pause</p> <p>19 before answering to allow the attorneys to</p> <p>20 object, this will be extremely helpful. I</p> <p>21 don't want to disrupt the flow of your</p> <p>22 proceedings and will try to keep</p> <p>23 interruptions to a minimum but will</p> <p>24 interrupt if I cannot hear or understand</p> <p>25 something that is said. If I do interrupt,</p>
Page 3	<p>1 I N D E X</p> <p>2 WITNESS EXAMINATION PAGES</p> <p>3 WESTON MCCOOL DIRECT 6</p> <p>4</p> <p>5 E X H I B I T S</p> <p>6 NUMBER MARKED DESCRIPTION</p> <p>7 Exhibit 18 10 Curriculum Vitae</p> <p>8 Exhibit 19 26 Expert Report</p> <p>9 Exhibit 20 38 Invoice</p> <p>10 Exhibit 21 60 Expert Witness SES Analysis</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	Page 5	<p>1 please be patient and understand my goal is</p> <p>2 to provide you with a clear record of the</p> <p>3 proceedings.</p> <p>4 Before we get started, I would request</p> <p>5 that you move your papers and/or legal pads</p> <p>6 away from your phone or microphone to avoid</p> <p>7 distracting ambient noise.</p> <p>8 If everyone is ready, I will swear in</p> <p>9 the witness. Before I do that, I'm going to</p> <p>10 need the stipulation to allow me to swear</p> <p>11 the witness remotely. When you're ready, I</p> <p>12 will read the stipulation into the record</p> <p>13 followed by each attorney stating their</p> <p>14 appearances and anyone else in the room who</p> <p>15 is also attending and then stipulate to</p> <p>16 allow me to swear in the witness, starting</p> <p>17 with the taking attorney.</p> <p>18 Due to the need for this proceeding to</p> <p>19 take place remotely, the parties do</p> <p>20 stipulate that the court reporter may swear</p> <p>21 in the West McCool via Zoom remote</p> <p>22 technology and that the witness has verified</p> <p>23 that he is, in fact, Weston McCool.</p> <p>24 MR. PHILLIPS: This is David Phillips.</p> <p>25 I'm representing the defendant in this</p>

Page 6	<p>1 matter. I'll be taking the deposition.</p> <p>2 There is no one present in the room with me,</p> <p>3 and I agree to the stipulation.</p> <p>4 MR. CARTER: This is Michael Carter.</p> <p>5 Likewise, no one else in the room with me,</p> <p>6 and I agree to the stipulation.</p> <p>7 THE COURT REPORTER: Okay. Mr. McCool,</p> <p>8 please raise your right hand.</p> <p>9 Do you swear or affirm that the</p> <p>10 testimony you are about to provide for the</p> <p>11 cause under consideration will be the truth</p> <p>12 and the whole truth, so help you?</p> <p>13 THE WITNESS: I do.</p> <p>14</p> <p>15 WESTON MCCOOL,</p> <p>16 a witness in the above-entitled action,</p> <p>17 after having been first duly sworn,</p> <p>18 testifies and says as follows:</p> <p>19</p> <p>20 DIRECT EXAMINATION</p> <p>21 BY MR. PHILLIPS:</p> <p>22 Q. All right. Good morning, Mr. McCool. My name's</p> <p>23 David Phillips. I'm an attorney, and I represent</p> <p>24 the defendant in this case. I think you may have</p> <p>25 your mic on mute. You'll probably need to unmute</p>	Page 8	<p>1 one.</p> <p>2 A. Sure.</p> <p>3 Q. Maybe just so I make sure it's on the record, can I</p> <p>4 just have you state your name and address for the</p> <p>5 record?</p> <p>6 A. Weston McCool, 665 East 5th Avenue, Apartment 11,</p> <p>7 Salt Lake City, Utah 84103.</p> <p>8 Q. Is anyone else present with you in the room?</p> <p>9 A. No.</p> <p>10 Q. Because this is being taken remotely, I just want to</p> <p>11 ask you a few questions about your setup here.</p> <p>12 You're looking at me through a Zoom window. Do you</p> <p>13 have any other windows open on your computer right</p> <p>14 now?</p> <p>15 A. On my desktop is where I have my report open.</p> <p>16 Q. Okay. The report is open and this window that</p> <p>17 you're looking at me?</p> <p>18 A. Yeah. This window is my laptop, which has the Zoom,</p> <p>19 and I have a desktop window open which has my</p> <p>20 report.</p> <p>21 Q. Do you have any chat apps open on your computer</p> <p>22 right now where somebody could communicate with you</p> <p>23 during our deposition today?</p> <p>24 A. No, I do not.</p> <p>25 Q. Do you have your phone with you right now?</p>
Page 7	<p>1 that. Have you had your deposition taken before?</p> <p>2 A. No.</p> <p>3 Q. The court reporter gave you some instructions</p> <p>4 already, and I'll just reiterate that. Because this</p> <p>5 is being transcribed, we don't want to talk over</p> <p>6 each other. So I'll be asking you a series of</p> <p>7 questions, and I'd appreciate it if you waited until</p> <p>8 I'm done completely before you start answering, and</p> <p>9 I'll extend you the same courtesy and wait for you</p> <p>10 to finish your answer, okay?</p> <p>11 A. Okay.</p> <p>12 Q. Another little important thing to keep in mind for</p> <p>13 depositions is we'll need audible responses, so just</p> <p>14 make sure to give a "yes" or a "no" or whatever your</p> <p>15 answer is instead of a head shake or a nod, you</p> <p>16 know, or an "uh-huh" or "huh-uh" because they don't</p> <p>17 show up very well on a transcript. So nice, clear</p> <p>18 verbal responses will be useful.</p> <p>19 A. Okay.</p> <p>20 Q. We can take a break at any time if you want. Just</p> <p>21 bear in mind that if I've already asked you a</p> <p>22 question, you'll have to answer that question before</p> <p>23 we can take a break. But if you need a break at</p> <p>24 any -- and I drink a lot of coffee. I may need a</p> <p>25 break before you. Just let me know, and we can take</p>	Page 9	<p>1 A. I do.</p> <p>2 Q. Is that visible right now?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. I maybe ask that you just place your phone</p> <p>5 away, again, just because we're not in the same</p> <p>6 room. I just want to make sure that only you and I</p> <p>7 are having a conversation today. Are you on any</p> <p>8 medications that might make it difficult for you to</p> <p>9 understand my questions today or to provide truthful</p> <p>10 and accurate testimony?</p> <p>11 A. No.</p> <p>12 Q. Is there any other factors that you are aware of</p> <p>13 that will make it difficult for you to understand my</p> <p>14 questions and to provide truthful and accurate</p> <p>15 testimony today?</p> <p>16 A. No.</p> <p>17 Q. Did you bring any documents with you, or do you have</p> <p>18 documents with you at all today?</p> <p>19 A. Yes.</p> <p>20 Q. What documents do you have with you?</p> <p>21 A. I have my expert witness report and my CV.</p> <p>22 Q. And are those on the computer, or are they physical</p> <p>23 copies?</p> <p>24 A. They're on my computer.</p> <p>25 Q. Okay. I will be marking both of those as exhibits,</p>

Page 10	<p>1 and we'll be going through them. So you'll -- when</p> <p>2 I ask you questions, we'll primarily be looking at</p> <p>3 the screen share that I'm showing you for those.</p> <p>4 A. Okay.</p> <p>5 Q. In fact, let's go ahead and do that now. I'm going</p> <p>6 to share my screen. Please bear with me on the use</p> <p>7 of technology.</p> <p>8 MR. PHILLIPS: I'm getting a ding on my</p> <p>9 Zoom here. Maybe somebody trying to enter?</p> <p>10 BY MR. PHILLIPS:</p> <p>11 Q. Okay. Can you see what's been marked as Exhibit 18</p> <p>12 Dr. McCool?</p> <p>13 (Exhibit 18 was marked for</p> <p>14 identification.)</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. PHILLIPS:</p> <p>17 Q. And I'll let you know that this is the CV that you</p> <p>18 or the attorneys, I should say, for the plaintiffs</p> <p>19 sent over in response to the subpoena to you. Does</p> <p>20 that -- does this look correct in terms of your</p> <p>21 subpoena -- or your CV that you provided?</p> <p>22 A. It does.</p> <p>23 Q. Is the information in this CV current and accurate?</p> <p>24 A. Should be, yes.</p> <p>25 Q. Is there any information you need to add to this CV</p>	Page 12	<p>1 include statistical modeling?</p> <p>2 A. It can. Anthropology is quite broad. There are</p> <p>3 those that do qualitative methods. I did</p> <p>4 quantitative methods.</p> <p>5 Q. Explain that difference. What is the difference</p> <p>6 between qualitative and quantitative methods?</p> <p>7 A. The easiest way to explain that difference is</p> <p>8 quantitative analysis typically involves numbers,</p> <p>9 categories, and numbers which you'd find in an Excel</p> <p>10 spreadsheet. Qualitative analysis is statements,</p> <p>11 interviews, peoples' thoughts, ideas, stories.</p> <p>12 Q. And did you say that your focus was quantitative</p> <p>13 analysis?</p> <p>14 A. In BS, you get all of that. It's a broad liberal</p> <p>15 arts program. In graduate school, I took the</p> <p>16 quantitative emphasis.</p> <p>17 Q. Understood. For the moment, let's focus on the BS.</p> <p>18 Did you study any issues relating to Native</p> <p>19 Americans?</p> <p>20 A. Yes.</p> <p>21 Q. And maybe explain that. How -- how so?</p> <p>22 A. I mean, anthropology is the survey of humanity, so</p> <p>23 we studied indigenous or nonindigenous people all</p> <p>24 over the world. So I took classes on indigenous</p> <p>25 Americans, indigenous people in South America,</p>
Page 11	<p>1 that hasn't already been added?</p> <p>2 A. No.</p> <p>3 Q. I do want to walk through, a little bit, your</p> <p>4 background, education, experience and so forth, so</p> <p>5 let's do that now. Where did you graduate from high</p> <p>6 school?</p> <p>7 A. East High, Salt Lake City, Utah.</p> <p>8 Q. And when did you graduate?</p> <p>9 A. 2004.</p> <p>10 Q. Now, on this first page of Exhibit 18, your CV, it</p> <p>11 lists your degrees there. It lists four degrees.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Let's just walk through these briefly. It looks</p> <p>15 like the first degree you have is a Bachelor of</p> <p>16 Science in Anthropology from the University of Utah</p> <p>17 in 2009; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Fill me in. What does an anthropology degree, a BS</p> <p>20 in anthropology, involve?</p> <p>21 A. It's a survey of various anthropology courses. It</p> <p>22 often involved writing papers, doing data analysis,</p> <p>23 learning theory methods, fieldwork techniques. It's</p> <p>24 quite broad.</p> <p>25 Q. When you say, "theory and methods," does that</p>	Page 13	<p>1 indigenous people in East Asia, anthropology courses</p> <p>2 of what life is like for those populations today and</p> <p>3 in the past. So there's a long answer to that. I</p> <p>4 wrote several papers along those lines, although</p> <p>5 this is going on 14 years ago, so I'd have to pull</p> <p>6 those up to get some more details from them. But,</p> <p>7 yeah, it's common in anthropology.</p> <p>8 Q. Fair enough. Did any of those courses involve</p> <p>9 North Dakota Native Americans in particular?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Did you take any courses dealing with elections in</p> <p>12 the United States?</p> <p>13 A. I took political science courses as an undergrad.</p> <p>14 I'd have to dig into my transcripts to tell you</p> <p>15 more.</p> <p>16 Q. What about voting or voting rights?</p> <p>17 A. That was a part of those political science courses</p> <p>18 as an undergrad.</p> <p>19 Q. Let's talk next about your next degree. You have an</p> <p>20 MA in Anthropology from the University of Utah in</p> <p>21 2013; is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. What kind of coursework did you take to get that</p> <p>24 degree?</p> <p>25 A. That coursework was particularly on quantitative</p>



Page 14	<p>1 data analysis, statistical modeling, theory in</p> <p>2 anthropology, and field methods.</p> <p>3 Q. Did any of that work involve elections or voting?</p> <p>4 A. No.</p> <p>5 Q. Did that work involve Native Americans in</p> <p>6 particular?</p> <p>7 A. It involved the study of pre-Columbian native</p> <p>8 populations, indigenous populations.</p> <p>9 Q. Did that study involve -- or coursework involve</p> <p>10 modern populations?</p> <p>11 A. That coursework did not.</p> <p>12 Q. I notice that your next degree is another Master's</p> <p>13 in Anthropology from the University of California at</p> <p>14 Santa Barbara in 2015; is that correct?</p> <p>15 A. It is.</p> <p>16 Q. How is that degree different from your master's that</p> <p>17 you got from the University of Utah?</p> <p>18 A. So I was accepted into UC Santa Barbara, UCSB, into</p> <p>19 their doctorate program. The UC system at that time</p> <p>20 did not accept external master's degrees, so they</p> <p>21 require that you get one along the way.</p> <p>22 Unfortunately, they're quite similar to my master's</p> <p>23 degree at the University of Utah. There's some</p> <p>24 overlap, but in this -- in the course of my master's</p> <p>25 at UCSB, I continued my education in greater detail</p>	Page 16	<p>1 degree?</p> <p>2 A. Santa Barbara, yes.</p> <p>3 Q. Santa Barbara. The -- what was your coursework like</p> <p>4 for your Ph.D. studies?</p> <p>5 A. By and large, your coursework is over by the time</p> <p>6 you advance to candidacy and graduated through the</p> <p>7 master's program. So that's largely research,</p> <p>8 although I did take some additional classes in</p> <p>9 quantitative data analysis. And that mostly</p> <p>10 involved organizing, aggregating, producing</p> <p>11 quantitative data sets, learning about and applying</p> <p>12 an appropriate statistical model to test scientific</p> <p>13 hypotheses about a whole suite of research questions</p> <p>14 that have gone into -- to my publication list on the</p> <p>15 CV.</p> <p>16 Q. And you talked earlier about that difference between</p> <p>17 the qualitative analysis and quantitative. Is it</p> <p>18 fair to say you shifted focus heavily -- more</p> <p>19 heavily towards quantitative analysis as you</p> <p>20 advanced in your degrees?</p> <p>21 A. Yeah. By the time I got into the graduate program,</p> <p>22 I was doing quantitative analysis as my principal</p> <p>23 methodology.</p> <p>24 Q. For your work on this case that we're here for</p> <p>25 today, did you do any qualitative analysis?</p>
Page 15	<p>1 in quantitative analysis, particularly in</p> <p>2 statistical modeling.</p> <p>3 Q. They find a way to get you to pay more student loans</p> <p>4 one way or another. Fair enough. So same question,</p> <p>5 I guess, with respect to the MA at the University of</p> <p>6 California at Santa Barbara, did your coursework</p> <p>7 involve elections or voting in the United States?</p> <p>8 A. It did not.</p> <p>9 Q. Did it involve modern Native Americans in the United</p> <p>10 States?</p> <p>11 A. Some of the coursework did, yeah.</p> <p>12 Q. And which coursework was that?</p> <p>13 A. There were courses -- you've got to understand, we</p> <p>14 take a broad array of courses, and so courses will</p> <p>15 talk about American Indian populations today in our</p> <p>16 North American Indians course. In our archeology</p> <p>17 courses, those courses go right up to the present</p> <p>18 day or near history. For the most part, it deals</p> <p>19 with indigenous populations of the past.</p> <p>20 Q. Did it deal with Native American populations in</p> <p>21 North Dakota?</p> <p>22 A. It did not.</p> <p>23 Q. Let's talk, next, about your Ph.D. in Anthropology</p> <p>24 from University of California at Santa Monica in</p> <p>25 2020. Is that an accurate statement of your Ph.D.</p>	Page 17	<p>1 A. I did not.</p> <p>2 Q. The entire focus was quantitative, correct?</p> <p>3 A. Correct.</p> <p>4 Q. On the same page on your CV, the first page of</p> <p>5 Exhibit 18, it lists a couple of appointments. From</p> <p>6 2020 to 2021, there's a postdoctoral researcher</p> <p>7 appointment listed there. Can you maybe explain</p> <p>8 what that involved?</p> <p>9 A. Yeah. So Dr. Kenneth hired me for a year as a</p> <p>10 postdoctoral researcher to do a number of research</p> <p>11 projects with him. Primarily, my job for</p> <p>12 Dr. Kenneth was to do statistical analysis on a</p> <p>13 number of projects he was looking at, linking</p> <p>14 environmental and demographic change and how that</p> <p>15 relates to conflict. There are other tasks as well,</p> <p>16 but that was my principal task.</p> <p>17 Q. Did that work involve Native American issues in any</p> <p>18 way?</p> <p>19 A. It involved indigenous populations in the Americas.</p> <p>20 Q. What part of the Americas?</p> <p>21 A. Mesoamerica.</p> <p>22 Q. And are we talking about populations of the past or</p> <p>23 modern-day populations?</p> <p>24 A. The populations of the past there are the ancestors</p> <p>25 of the populations of the present there. This</p>

Page 18	<p>1 particular study was of a past population.</p> <p>2 Q. Let's talk about the next one listed there from 2021</p> <p>3 to present. There's a doctoral fellow position</p> <p>4 listed. What are you doing as part of that</p> <p>5 appointment?</p> <p>6 A. Yeah. So that is the social, behavioral, and</p> <p>7 economic sciences postdoctoral research fellowship.</p> <p>8 That means I, by and large, worked for the National</p> <p>9 Science Foundation, but I have an affiliation with</p> <p>10 the University of Utah, and I worked with Dr. Kime</p> <p>11 on a whole range of research questions that are a</p> <p>12 combination of research questions from the past and</p> <p>13 several research projects. We are currently working</p> <p>14 on using modern data.</p> <p>15 Q. All right. And what -- what's the sort of -- at a</p> <p>16 high level, what's the topic of study?</p> <p>17 A. There are several. So topics of study would be</p> <p>18 community resilience. What makes a community</p> <p>19 resilient or vulnerable, things like climate shocks.</p> <p>20 One of the projects we're working on is whether</p> <p>21 there is a relationship between poverty and economic</p> <p>22 inequality and rates of homicide in the United</p> <p>23 States over the last 30 years, in particular using</p> <p>24 the recently release 2022 census data.</p> <p>25 We also have projects looking at how economic</p>	Page 20	<p>1 The 2019 was internal to my college.</p> <p>2 Q. Does your work in any of them involve issues with</p> <p>3 modern-day Native Americans in the United States?</p> <p>4 A. Fellowships aren't awarded to address specific</p> <p>5 research questions. They're awarded to give, in</p> <p>6 this case, graduate students time to focus on</p> <p>7 research rather than teaching.</p> <p>8 Q. Sure. Did you have -- during your period of</p> <p>9 education -- higher education, have you had any</p> <p>10 other paid positions in addition to getting paid for</p> <p>11 the fellowships?</p> <p>12 A. Yes. I was paid as a teaching assistant. I was</p> <p>13 also paid as a teaching associate.</p> <p>14 Q. So skipping down to the end of that page and the</p> <p>15 very -- and the next page, does this accurately list</p> <p>16 all of your teaching experience?</p> <p>17 A. Yes.</p> <p>18 Q. And you say you were paid for this work?</p> <p>19 A. Yes. That's how graduate students pay their way</p> <p>20 through grad school.</p> <p>21 Q. I won't go through these one at a time. Did any of</p> <p>22 these courses that you taught in -- that are listed</p> <p>23 here on pages 6 and 7 on your CV, are any of them</p> <p>24 courses involving modern-day Native American issues</p> <p>25 in the United States?</p>
Page 19	<p>1 intensification and demographic pressure affect</p> <p>2 health, migration, and levels of violence.</p> <p>3 Q. Does your work in that context involve any issues</p> <p>4 relating to voting?</p> <p>5 A. No.</p> <p>6 Q. Or elections in general?</p> <p>7 A. No.</p> <p>8 Q. Does it involve the study of Native Americans in the</p> <p>9 United States?</p> <p>10 A. So our study of inequality and poverty and homicide</p> <p>11 in the United States is a broad demographic swath,</p> <p>12 so it will include American Indian populations, but</p> <p>13 that's not our focal study group.</p> <p>14 Q. Just jumping down on that same exhibit to the</p> <p>15 exhibit page Internal Fellowships. There are three</p> <p>16 listed there. One in 2017. Maybe explain to me</p> <p>17 what that one involves, the 2017 fellowship.</p> <p>18 A. Sure. So an internal fellowship is where my</p> <p>19 department, the Department of Anthropology at UCSB,</p> <p>20 pays me to do research or any other task during a</p> <p>21 quarter rather than the usual job which is being a</p> <p>22 teaching assistant or a research assistant.</p> <p>23 Q. That's what all three of these internal fellowships</p> <p>24 are?</p> <p>25 A. The 2017 and the 2018 are internal to my department.</p>	Page 21	<p>1 A. Introduction to Cultural Anthropology went broadly</p> <p>2 over contemporary issues including contemporary</p> <p>3 Native American issues.</p> <p>4 Q. What -- what issues specifically?</p> <p>5 A. It's been seven years since the last time I TA'ed</p> <p>6 that, so I'd have to go back through my notes. A</p> <p>7 broad range of issues. Each time I TA'ed it, there</p> <p>8 was a different instructor. The curriculum varies</p> <p>9 by instructor, and so it was pretty broad.</p> <p>10 Q. What about in any of the other courses listed here?</p> <p>11 Did they involve modern-day Native Americans in the</p> <p>12 United States?</p> <p>13 A. Not that I can recall off the top of my head. It's</p> <p>14 possible.</p> <p>15 Q. Did any of these courses you taught involve voting</p> <p>16 issues or election issues?</p> <p>17 A. They do not.</p> <p>18 Q. Do these course involve teaching statistical</p> <p>19 modeling?</p> <p>20 A. I wouldn't say that we have particular courses to</p> <p>21 teach students statistical modeling. What we do</p> <p>22 mostly in these courses is we present the results of</p> <p>23 statistical and various quantitative scientific</p> <p>24 analyses, and then we deconstruct how they got those</p> <p>25 results and whether those hypotheses were supported</p>

Page 22	<p>1 or falsified. So we have to explain to students how</p> <p>2 scientific and statistical analysis works, but the</p> <p>3 goal of most of these classes was not to teach them</p> <p>4 from the bottom up statistical analysis.</p> <p>5 Q. Did you have any other paid position during your</p> <p>6 education that we haven't talked about today?</p> <p>7 A. Not that I can recall.</p> <p>8 Q. I'm going to slide back up to the first page of your</p> <p>9 CV on Exhibit 18. And you do list right in the</p> <p>10 middle here -- do you see? -- it says research</p> <p>11 expertise?</p> <p>12 A. Yes.</p> <p>13 Q. What is this list intended to show?</p> <p>14 A. Topical expertise, methodological expertise, and</p> <p>15 regional expertise.</p> <p>16 Q. I don't want to spend a huge amount of time on this,</p> <p>17 but I would like to go through these if you wouldn't</p> <p>18 mind. What do you mean by "environmental</p> <p>19 archeology"?</p> <p>20 A. It means we study past populations and in</p> <p>21 particular, their relationship of populations to</p> <p>22 their environment. So if you wanted to know how</p> <p>23 climate change affects food production in the 1800s</p> <p>24 or the 1500s or 15,000 years ago, you're doing</p> <p>25 environmental archeology.</p>	Page 24	<p>1 Q. Is that primarily quantitative analysis?</p> <p>2 A. Yeah. Everything I do is -- is quantitative in</p> <p>3 focus. So that's -- the demographic analysis, all</p> <p>4 of these are done through typical quantitative</p> <p>5 methods.</p> <p>6 Q. What does "dietary reconstructions" reference?</p> <p>7 A. What people ate in the past.</p> <p>8 Q. What does "geospatial modeling" reference?</p> <p>9 A. That is a form of quantitative analysis where you</p> <p>10 look at relationships between variables over space.</p> <p>11 For example, does climate change affect people more</p> <p>12 depending on where they live?</p> <p>13 Q. And "statistical modeling," what does that</p> <p>14 reference?</p> <p>15 A. That is everything under the sun that has to do with</p> <p>16 statistical analysis of quantitative data.</p> <p>17 Q. Would it be fair to say that that's the type of work</p> <p>18 you have performed in this lawsuit?</p> <p>19 A. Yes. I would say there's two parts: Data science</p> <p>20 and statistical modeling.</p> <p>21 Q. What is data science?</p> <p>22 A. Data science is quite broad, but in simplest terms,</p> <p>23 it is managing, aggregating, locating, producing</p> <p>24 organizing, cleaning data to make it available for</p> <p>25 further, often statistical analysis.</p>
Page 23	<p>1 Q. That would all be populations of the past, however,</p> <p>2 not the current populations?</p> <p>3 A. You could do current populations. It's typically of</p> <p>4 the past. We like to say we're anthropologists</p> <p>5 before we're archeologists, and so I -- I look at</p> <p>6 both past and present populations.</p> <p>7 Q. What about bioarcheology? What is that?</p> <p>8 A. Bioarcheology is the biological study of past</p> <p>9 populations, typically through human remains.</p> <p>10 Q. And what is -- what are you referencing when you</p> <p>11 talk about climate change?</p> <p>12 A. So climate change is a variable in lots of the</p> <p>13 research we do. How does climate change affect food</p> <p>14 productivity? How does it affect health? How does</p> <p>15 it affect migration? Things like that.</p> <p>16 Q. Has your study of climate change at any time</p> <p>17 involved current populations as opposed to</p> <p>18 populations of the past?</p> <p>19 A. That's a good question. I've done quite a few</p> <p>20 research projects. Let's see. Not currently, no.</p> <p>21 Q. What are you referencing when you say "conflict"?</p> <p>22 A. Human conflict, violent conflict.</p> <p>23 Q. And what are you referencing when you say,</p> <p>24 "settlement pattern in demography"?</p> <p>25 A. The size and distribution of human population.</p>	Page 25	<p>1 Q. Is that also what you mean by "big data" in the list</p> <p>2 here?</p> <p>3 A. Yes.</p> <p>4 Q. What is "isotope chemistry"?</p> <p>5 A. That's not a quick answer, unfortunately. It's a</p> <p>6 form of chemistry where you use isotopes, variants</p> <p>7 of elements, in bone, could be human, could be</p> <p>8 animal, and that tells us all sorts of information:</p> <p>9 Where people moved across the landscape, how much</p> <p>10 they moved, what they ate, where they were born, if</p> <p>11 they migrated and died someplace different than</p> <p>12 where they were born. So it's a broad category of</p> <p>13 analysis.</p> <p>14 Q. Do you yourself conduct lab work in that area, or do</p> <p>15 you only deal with data when it comes to isotope</p> <p>16 chemistry?</p> <p>17 A. I have done lab work. My postdoctoral fellowship</p> <p>18 that I'm doing now does not involve lab work. So</p> <p>19 it's part of my repertoire, but it's sort of a small</p> <p>20 component of it.</p> <p>21 Q. You next list Peruvian Andes. Why do you have that</p> <p>22 listed?</p> <p>23 A. Peruvian Andes in the North American southwest are</p> <p>24 the locations of the populations that I've primarily</p> <p>25 worked with in the past.</p>

Page 26	<p>1 Q. That would not include population in North Dakota,</p> <p>2 correct?</p> <p>3 A. It would not.</p> <p>4 Q. I apologize to the extent it looks I'm not looking</p> <p>5 at you when I'm talking to you. I have two monitors</p> <p>6 here, so I'm not trying to be deliberately rude.</p> <p>7 A. Okay.</p> <p>8 Q. Okay. Can you see what I've shown on the screen</p> <p>9 here? It's been premarked as Weston McCool</p> <p>10 Exhibit 19.</p> <p>11 A. Yes.</p> <p>12 (Exhibit 19 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. PHILLIPS:</p> <p>15 Q. And I'll represent to you that this is the expert</p> <p>16 report that we have received from you in this case,</p> <p>17 and I believe this is the one that was sent recently</p> <p>18 in response to our subpoena. Does this look like</p> <p>19 that document?</p> <p>20 A. It does.</p> <p>21 Q. Has this report changed at all? This was originally</p> <p>22 produced some time ago, and then we recently sent a</p> <p>23 subpoena, and this was produced again. Are those</p> <p>24 two documents the same?</p> <p>25 A. Yes.</p>	Page 28	<p>1 A. In an expert witness report in New Mexico in an</p> <p>2 ongoing case. Also analyzed these types of</p> <p>3 variables in scientific papers, although, not for a</p> <p>4 Senate Factor 5 Report, for research purposes.</p> <p>5 Q. Have you provided, at any time, a list of cases that</p> <p>6 you -- oh, you haven't testified before at all,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. In the case in New Mexico, then, you have not</p> <p>10 testified yet in either a deposition or at trial?</p> <p>11 A. Correct.</p> <p>12 Q. Have you been hired to provide trial testimony in</p> <p>13 that case, or are you only a consultant?</p> <p>14 A. I could give a deposition, yeah.</p> <p>15 Q. You said that's in New Mexico. Do you know the</p> <p>16 names of the parties to that case?</p> <p>17 THE WITNESS: Mike, am I permitted to</p> <p>18 share that information?</p> <p>19 MR. CARTER: Yes, you can provide --</p> <p>20 you can answer that question.</p> <p>21 THE WITNESS: Okay.</p> <p>22 The Native American Rights Fund.</p> <p>23 BY MR. PHILLIPS:</p> <p>24 Q. Native American Rights Fund is the plaintiff?</p> <p>25 A. Yes.</p>
Page 27	<p>1 Q. I'm scrolling down here to page 2 and 3. There's a</p> <p>2 portion of your report labeled "Qualifications." Do</p> <p>3 you see that?</p> <p>4 A. I do.</p> <p>5 Q. Is this an accurate summary of your qualifications</p> <p>6 that you're relying on to provide expert testimony</p> <p>7 in this case?</p> <p>8 A. It is.</p> <p>9 Q. Prior to this case, have you ever analyzed what are</p> <p>10 known as the Senate factors?</p> <p>11 A. I have.</p> <p>12 Q. And what -- when I say, "Senate factors," what does</p> <p>13 that mean to you?</p> <p>14 A. Well, there's numerous Senate Factors. This is a</p> <p>15 Senate Factor 5 Report, and it is the extent to</p> <p>16 which minority groups bear discrimination along a</p> <p>17 number of lines; economic, social, educational, and</p> <p>18 so forth.</p> <p>19 Q. You focused on that one -- on that Senate Factor in</p> <p>20 this report, but you are aware of other Senate</p> <p>21 Factors as well. Am I stating that correctly?</p> <p>22 A. Correct.</p> <p>23 Q. In what context, other than in this case, have you</p> <p>24 addressed the Senate Factors -- any of the Senate</p> <p>25 Factors?</p>	Page 29	<p>1 Q. Do you know the name of the defendant in that case?</p> <p>2 A. I'd look at my report. Not off the top of my head.</p> <p>3 It's been a few months since I looked at it.</p> <p>4 Q. Is it a -- is it a case against a state official in</p> <p>5 the state of New Mexico?</p> <p>6 A. I'd have to look that up. I'm happy to.</p> <p>7 Q. Do you have that information readily available to</p> <p>8 you today?</p> <p>9 A. Sure.</p> <p>10 Q. I'm not going to ask you to look it up right this</p> <p>11 moment, but I may -- after we take a break, I may</p> <p>12 come back and ask you that again after a break later</p> <p>13 today.</p> <p>14 A. Okay.</p> <p>15 Q. In the New Mexico case, are you -- are -- let me</p> <p>16 see. Have you communicated with the same attorneys</p> <p>17 in that case that you're communicating with in this</p> <p>18 case that we're here for today?</p> <p>19 A. There is some overlap, not entirely.</p> <p>20 Q. When were you retained to work on the case in</p> <p>21 New Mexico?</p> <p>22 A. Early 2022, February.</p> <p>23 Q. Prior to your being retained to work on the -- the</p> <p>24 case in New Mexico, were you familiar with the</p> <p>25 Senate Factors?</p>

Page 30	<p>1 A. I was familiar with the Senate Factors during a -- I</p> <p>2 was made to be familiar with them during a training</p> <p>3 session I attended through NARF.</p> <p>4 Q. When was that training session?</p> <p>5 A. Gosh, 2021 sometime. I could look it up. It was</p> <p>6 during the pandemic, so that whole era kind of</p> <p>7 clumps together.</p> <p>8 Q. Same. I understand. The training session, was that</p> <p>9 in person or was that remote?</p> <p>10 A. No. This was during the lockdown. It was remote.</p> <p>11 Q. And explain what the training session was. Is this</p> <p>12 a similar course or multiple courses? Give me a</p> <p>13 sense of what this training session was.</p> <p>14 A. It was a series of lectures to vet candidates to</p> <p>15 become expert witnesses and to provide them with</p> <p>16 some of the knowledge of what that entails.</p> <p>17 Q. To be clear, when I'm referencing NARF, I'm</p> <p>18 referring to the Native American Rights Fund. And</p> <p>19 it sounds like that's your understanding as well,</p> <p>20 Dr. McCool?</p> <p>21 A. Correct.</p> <p>22 Q. At the time that you attended this series of</p> <p>23 lectures, did you have -- exchange any written</p> <p>24 communications with NARF?</p> <p>25 A. Only about the timing of this, what it would entail,</p>	Page 32	<p>1 they didn't work for NARF.</p> <p>2 Q. When you say the academics you trained for, what do</p> <p>3 you mean?</p> <p>4 A. I mean, when I paired up with a socioeconomic expert</p> <p>5 witness, it was common that that individual was a</p> <p>6 professor or a researcher, a public institution.</p> <p>7 Q. Who did you pair up with?</p> <p>8 A. A number of people. I can look up their names.</p> <p>9 It's been a couple years.</p> <p>10 Q. There's a -- this is a slightly off-topic question,</p> <p>11 but there is a Daniel McCool disclosed in this case</p> <p>12 as well. Are you related to Daniel McCool?</p> <p>13 A. Yes. He's my father.</p> <p>14 Q. Were you paired up with your father as part of any</p> <p>15 of this work with NARF?</p> <p>16 A. Not in this case.</p> <p>17 Q. What about in the New Mexico case?</p> <p>18 A. He was tasked with writing the qualitative history</p> <p>19 of the discrimination component. I was tasked with</p> <p>20 writing the socioeconomic quantitative finding</p> <p>21 component, and we were both hired on the same case,</p> <p>22 I believe the case here as well.</p> <p>23 Q. Have you ever worked with Dr. Loren Collingwood?</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Have you worked with Dr. Barreto?</p>
Page 31	<p>1 sort of the logistics of it.</p> <p>2 Q. Did that type of communication involve a particular</p> <p>3 case or just cases in general?</p> <p>4 A. No. I was teamed up with quantitative analysts who</p> <p>5 do things like Senate Factor 5 reports, the experts</p> <p>6 who have been doing this for a very long time, and</p> <p>7 we were paired up to -- to learn from the best.</p> <p>8 Q. Did you receive any written materials as part of</p> <p>9 that course?</p> <p>10 A. We did.</p> <p>11 Q. Do you still have those in your possession?</p> <p>12 A. I should.</p> <p>13 Q. What's included in those written materials? Or</p> <p>14 we -- and just to be clear about my question here, I</p> <p>15 mean, is it PDFs or PowerPoint slideshow, kind of</p> <p>16 the -- what are these materials made of?</p> <p>17 A. The formats, yeah, some combination of Word</p> <p>18 documents, PDFs, and so forth.</p> <p>19 Q. When it comes to your knowledge of and experience</p> <p>20 with respect specifically to the Senate Factors,</p> <p>21 does all of it come from what you've learned from</p> <p>22 NARF?</p> <p>23 A. And my own additional research too, my own reading.</p> <p>24 And I should state that the expert witness that I</p> <p>25 trained for were like me, academics. They didn't --</p>	Page 33	<p>1 A. Dr. Barreto was part of the training.</p> <p>2 Q. Did Dr. Barreto present at the training?</p> <p>3 A. He did.</p> <p>4 Q. Do you remember any others, other individuals who</p> <p>5 presented during the NARF training?</p> <p>6 A. I would have to look that up. It was a number -- it</p> <p>7 was several years ago.</p> <p>8 Q. You had mentioned that in addition to the</p> <p>9 information you received from NARF, you had done</p> <p>10 some of your own reading about the Senate Factors.</p> <p>11 What materials have you read other than what you've</p> <p>12 provided by NARF?</p> <p>13 A. You can go to various public and government websites</p> <p>14 to read about the Senate Factors and -- and the</p> <p>15 actual 1982 legislation from the senate committee</p> <p>16 and so forth.</p> <p>17 Q. For example, on the Depart of Justice website, have</p> <p>18 you read any other materials other than what we've</p> <p>19 already talked about with respect to the Senate</p> <p>20 Factors?</p> <p>21 A. Materials on the census website, but not -- none</p> <p>22 that come to mind.</p> <p>23 Q. What materials have you read on the census website?</p> <p>24 A. This was a couple years ago. So the census website</p> <p>25 is more the -- the data element part, so it was</p>



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1 really combining what is written in that 1982  
 2 legislation from what's available in the census  
 3 website. So it's a combination of using those two  
 4 resources to understand what typically goes into a  
 5 Factor 5 analysis.  
 6 Q. Are you familiar with other aspects of the Voting  
 7 Rights Act aside from the Senate Factors?  
 8 A. Yes.  
 9 Q. And did you learn what you know about the Voting  
 10 Rights Act entirely from what we've already talked  
 11 about, so I'll say the NARF materials, the materials  
 12 that you've read online including various websites  
 13 and the census website?  
 14 A. That's hard to say. You learn about the Voting  
 15 Rights Act in graduate courses. You learn about it  
 16 in elementary school. You learn about it on the  
 17 news. So I don't think I can draw a line around  
 18 every single source that I've ever accessed that  
 19 falls into the details of the Voting Rights Act.  
 20 Q. I think earlier you had testified that your  
 21 coursework didn't involve voting issues or  
 22 elections. Is that accurate, or did you have  
 23 courses involved in the Voting Rights Act?  
 24 A. I believe what I said is that I took a political  
 25 science course and related courses, and we went over

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1 information broadly focused on voting issues but  
 2 that I would need to look up specific material to  
 3 see the details.  
 4 Q. Do you have any recollection of what you might have  
 5 learned specifically about the Voting Rights Act  
 6 from your formal education?  
 7 A. I don't know that I can disentangle what I've  
 8 learned there from what I've learned subsequently.  
 9 They tie into each other.  
 10 Q. In the New Mexico case that you testified about  
 11 earlier, did you also perform a Senate Factors  
 12 analysis?  
 13 A. I did.  
 14 Q. Was it the same factor that you're analyzing in this  
 15 case?  
 16 A. It is.  
 17 Q. That would be the 5th factor, correct?  
 18 A. Right.  
 19 Q. If I'm understanding or if my memory is correct,  
 20 that would be listed here on the first page of your  
 21 expert report. It's shown as number 3 in the  
 22 outline at the top of the first page of your expert  
 23 report, but that is a description of the fifth  
 24 Senate Factor, correct?  
 25 A. Correct.

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1 Q. Other than what we've talked about today and what  
 2 appears on Exhibit 18, your CV -- sorry. I can't  
 3 flip back. I can't flip back to it. Exhibit 18,  
 4 your CV, other than that, do you have any other  
 5 qualifications, education, or experience, that make  
 6 you qualified to be an expert in this case?  
 7 A. Other than my -- my formal education, no.  
 8 Q. You've probably already said this. My apologies if  
 9 I'm repeating myself, but when did you say you took  
 10 the NARF training?  
 11 A. 2021.  
 12 Q. And when did you first get retained to be an expert  
 13 in this case?  
 14 A. In this case, it would have been winter 2022. I  
 15 want to say February.  
 16 Q. Did an attorney from NARF reach out to you at that  
 17 time?  
 18 A. Yes. So several attorneys did. It was a team of  
 19 attorneys that reached out to me.  
 20 Q. Do you remember which attorneys those were?  
 21 A. I wouldn't feel confident in naming all of them.  
 22 Q. Can you name some of them?  
 23 A. Yeah. Just a sec. Mike Carter. I'm so bad with  
 24 names. You'll have to forgive me. Who else was it?  
 25 I want to say Tamara was on the call.

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1 THE WITNESS: Are you able to help me  
 2 with that, Mike?  
 3 BY MR. PHILLIPS:  
 4 Q. I'll just -- you'll have to answer the questions  
 5 yourself.  
 6 A. I'd have to look --  
 7 Q. If you don't remember more, that's okay.  
 8 A. I'd have to look that up. Jim was on the call.  
 9 Q. But to be clear, I don't want you to tell me  
 10 anything you talked about with these attorneys, but  
 11 how many times have you met with the attorneys from  
 12 NARF about this case?  
 13 A. A handful, maybe three, two or three.  
 14 Q. In addition to NARF, have you ever worked with  
 15 attorneys from an entity called Campaign Legal  
 16 Center?  
 17 A. It's possible but not to my knowledge. Again, when  
 18 we have calls, sometimes there are lawyers from a  
 19 number of organizations.  
 20 Q. I -- if I understand correctly from the materials  
 21 you've produced, you're being paid \$200 an hour for  
 22 your work on this case; is that accurate?  
 23 A. It is.  
 24 Q. Does that include -- is that your rate for  
 25 everything including the work you've done and

Page 38	<p>1 including testimony?</p> <p>2 A. It is.</p> <p>3 Q. I'm showing you what's been marked as Exhibit 20.</p> <p>4 (Exhibit 20 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. PHILLIPS:</p> <p>7 Q. Can you see that?</p> <p>8 A. Yes.</p> <p>9 Q. This was also produced in response to our subpoena.</p> <p>10 Is this an invoice that you've prepared for your</p> <p>11 work on this case?</p> <p>12 A. It is.</p> <p>13 Q. Have -- is this invoice complete and accurate for</p> <p>14 the work you've performed?</p> <p>15 A. Thus far, yes.</p> <p>16 Q. And it says, "Paid" in two spots there. Is it fair</p> <p>17 to say you have been compensated for all of your</p> <p>18 work to date?</p> <p>19 A. Yes.</p> <p>20 Q. Have you spent any time preparing for this</p> <p>21 deposition today?</p> <p>22 A. Yes.</p> <p>23 Q. How much time did you spend preparing for the</p> <p>24 deposition today?</p> <p>25 A. Oh, I spent roughly two hours.</p>	Page 40	<p>1 other than our attorneys.</p> <p>2 Q. I'm going to go back to Exhibit 19, which is your</p> <p>3 report in this case. Are all of the opinions that</p> <p>4 you intend to express in this case contained in this</p> <p>5 report, this Exhibit 19?</p> <p>6 A. Yes.</p> <p>7 Q. You don't have any new opinions since you prepared</p> <p>8 this report?</p> <p>9 A. No.</p> <p>10 Q. Now, based on my reading of your report, it's my</p> <p>11 understanding that your opinion is limited to the</p> <p>12 application of that fifth Senate Factor to three</p> <p>13 specific counties in North Dakota: Rolette, Benson,</p> <p>14 and Ramsey Counties. Is that an accurate statement?</p> <p>15 A. Yes.</p> <p>16 Q. That is the limits of your opinion in this case?</p> <p>17 A. Yes.</p> <p>18 Q. And in particular, you have analyzed 7 factors, and</p> <p>19 they're shown on that first page of Exhibit 19;</p> <p>20 Income, poverty, education, health insurance</p> <p>21 coverage, computer ownership, internet access,</p> <p>22 housing, and employment. Is that accurate?</p> <p>23 A. It is.</p> <p>24 Q. I'm going to scroll down on this Exhibit 19 to page</p> <p>25 3, and in Section 2, very first sentence there lists</p>
Page 39	<p>1 Q. In preparation for the deposition today, did you</p> <p>2 speak with any of the attorneys from NARF?</p> <p>3 A. No. Excuse me, not today. I did speak with a NARF</p> <p>4 team last week just to prepare me for the</p> <p>5 deposition.</p> <p>6 Q. How many hours did you spend with the NARF team?</p> <p>7 A. Less than an hour.</p> <p>8 Q. Other than what's shown on Exhibit 20 and your</p> <p>9 preparation for the deposition today, have you</p> <p>10 performed any work on this case?</p> <p>11 A. No.</p> <p>12 Q. Did the attorneys in this case provide to you any</p> <p>13 facts or data that you incorporated into your</p> <p>14 opinion and you actually used in your opinion?</p> <p>15 A. Absolutely not.</p> <p>16 Q. Did the attorneys in this case, the NARF attorneys,</p> <p>17 ask you to make any assumptions in your opinions?</p> <p>18 A. No.</p> <p>19 Q. Other than the attorneys, have you spoken with</p> <p>20 anyone else about this case?</p> <p>21 A. No.</p> <p>22 Q. Have you spoken to your father about the case?</p> <p>23 A. When we got hired, we asked, essentially, where our</p> <p>24 parts were. Once we got started, I haven't spoken</p> <p>25 to him nor anybody about the contents of the report</p>	Page 41	<p>1 2 data sources that you relied on. Do you see that</p> <p>2 on this page?</p> <p>3 A. I do.</p> <p>4 Q. And those 2 sources are the 2015 to 2019 5-year</p> <p>5 American Community Survey for North Dakota and the</p> <p>6 Kaiser Family Foundation Health Facts Report; is</p> <p>7 that accurate?</p> <p>8 A. It is.</p> <p>9 Q. Did you -- did you gather the data from these</p> <p>10 sources yourself, or was it provided to you by the</p> <p>11 attorneys?</p> <p>12 A. I gathered these data myself.</p> <p>13 Q. Did you rely on any data sources in forming your</p> <p>14 opinion other than these two?</p> <p>15 A. No.</p> <p>16 Q. I want be clear. Your opinion doesn't cover any</p> <p>17 other counties in North Dakota other than those</p> <p>18 three that I mentioned before, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And reading your report, it's broken down by county,</p> <p>21 so we have -- if I'm just at a high level, it's --</p> <p>22 it shows each county and those seven factors for</p> <p>23 each county. Is that a fair statement of the</p> <p>24 structure of your report?</p> <p>25 A. Yes.</p>

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1 Q. It's not broken down by legislative district in  
 2 North Dakota, correct?  
 3 A. No.  
 4 Q. It's not broken down by Native American reservation?  
 5 A. No, because much of the American Indian population  
 6 lives off the reservation within those counties.  
 7 Q. Let's talk specifically about these two data  
 8 sources. The first one that you listed, the  
 9 American Community Survey for North Dakota, what is  
 10 that survey?  
 11 A. American Community Survey, or the ACS, is an  
 12 extension of the Census Bureau, and it is an  
 13 organization that goes through and collects a number  
 14 of demographics, social, economic data and certain  
 15 periodicity and aggregates those data into detailed  
 16 tables that are accessible by the public online.  
 17 Q. Does the information contained in that survey come  
 18 from the census, or is it separate from the census?  
 19 A. American Community Survey is an extension of the  
 20 census.  
 21 Q. Who gathers the data that's included in the ACS?  
 22 A. The American Community Survey researchers.  
 23 Q. Is that a government entity or a private entity?  
 24 A. The Census Bureau is a government entity.  
 25 Q. And it's an extension of the Census Bureau? You'll

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1 just have to answer audibly.  
 2 A. Correct.  
 3 Q. What's your understanding of how the data is  
 4 gathered? How does ACS go about gathering the data  
 5 that it includes?  
 6 A. They take a sample of households within a determined  
 7 population center. They go to those households and  
 8 either get surveys to fill out or ask questions and  
 9 enumerate those results.  
 10 Q. Do you know how many households they went to in the  
 11 three counties that you've analyzed?  
 12 A. The number, no, that's not necessary to understand  
 13 the data tables. We have the samples, and so it's  
 14 possible to collect that data, but it's not part of  
 15 the analysis.  
 16 Q. The data set here, is that freely available online?  
 17 Could I go to that website and download the data  
 18 tables myself?  
 19 A. Yes.  
 20 Q. Is that also true of the other data source you've  
 21 listed, the Kaiser Family Foundation State Health  
 22 Facts Report?  
 23 A. It is.  
 24 Q. Have you relied on this ACS data for any other  
 25 research that you've done or work that you've done?

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1 A. Yes.  
 2 Q. And how many times?  
 3 A. On several research papers, on my New Mexico report.  
 4 Q. Does this ACS include data for all 50 states?  
 5 A. Yes.  
 6 Q. Can you please correct me if I'm wrong about this.  
 7 In my understanding of your report, all of your  
 8 opinions are derived from the data in that ACS  
 9 dataset with the exception of your opinion with  
 10 respect to healthcare avoidance due to the cost  
 11 variable, which you've attributed to your other data  
 12 source. Have I stated that correctly?  
 13 A. Well, my opinions are derived from the statistical  
 14 tests, and statistical tests are used with these  
 15 data.  
 16 Q. That's fair. I would say -- so let me reword that.  
 17 The statistical tests that you performed to derive  
 18 your opinion in this case with respect to all of the  
 19 issues -- the underlying data set is ACS with the  
 20 exception of one issue attributable to the other  
 21 data source. Is that an accurate statement?  
 22 A. It is.  
 23 Q. I just want clarity. I just want to make sure I  
 24 understand your report correctly.  
 25 A. Sure.

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1 Q. And just by way of example, the second dataset that  
 2 you have listed here, the Kaiser Family Foundation  
 3 State Health Facts Report, you didn't use that in  
 4 any way to derive or form an opinion in this case  
 5 when it comes to income, for example?  
 6 A. No. Kaiser Family Foundation was only used for the  
 7 healthcare avoidance due to cost variable.  
 8 Q. Let's talk about that Kaiser Family Foundation.  
 9 What is that?  
 10 A. Kaiser Family Foundation, I believe, is a  
 11 non-profit. I haven't looked under the hood to see  
 12 if there's any private component to it. They  
 13 compile health data from various states throughout  
 14 the U.S.  
 15 Q. Do you know where the Kaiser Family Foundation  
 16 obtains the data that it compiles?  
 17 A. They compile the data.  
 18 Q. Correct. And so where do they get that data from?  
 19 How do they get their data?  
 20 A. I don't know.  
 21 Q. Do you know if they -- if the Kaiser Family  
 22 Foundation does door-to-door surveys?  
 23 A. I do not.  
 24 Q. Or phone surveys?  
 25 A. I don't know where they get their data.



Page 46	<p>1 Q. Have you -- have you relied on the Kaiser Family 2 Foundation in any prior research or work that you've 3 ever done? 4 A. I have not. 5 Q. How did you come upon that dataset to incorporate it 6 into your opinion in this case? 7 A. When meeting with the attorneys, they stated that it 8 would be nice to get additional health data if 9 possible. I then did some sleuthing. 10 Q. Is it fair to say that based on your first statement 11 that you located the Kaiser Family Foundation that 12 the attorneys didn't provide that source to you? 13 A. I don't remember. I want to say that I did some 14 sleuthing. I honestly don't remember. 15 Q. Was your communications with the attorneys about 16 this issue in writing or by phone? 17 A. I believe it was a Zoom. 18 Q. Did you also have email communications with the 19 attorneys? 20 A. Not in regard to this report. 21 Q. Since your memory on this issue is vague, I'm not 22 sure if the information was provided to you by the 23 attorneys or not. I would just say to the extent 24 there is any written communications from the 25 attorneys to you where that data was provided, that</p>	Page 48	<p>1 the U.S. census? 2 A. I don't know. 3 Q. Is the data from the Kaiser Family Foundation freely 4 available online? 5 A. It is. 6 Q. How would I get to that dataset? Do you have a 7 website? 8 A. I could find it for you. If you Google "the Kaiser 9 Family Foundation State Health Facts Report," you 10 can follow several links to those data. It's 11 intuitive. 12 Q. Thank you. That's fair. Apologies if you said this 13 already. Is the Kaiser Family Foundation a 14 non-profit organization or a government entity? 15 A. I believe it's non-profit. 16 Q. Are you not sure? 17 A. I'd have to double-check. 18 Q. Is the data contained in the Kaiser Family 19 Foundation State Health Facts Report reliable? 20 A. I believe so, yes. 21 Q. What leads you to believe that? 22 A. My understanding is, while I don't know the source 23 of the publicly available data, it is publicly 24 available data that they compile. 25 Q. What do you mean when you say they compile the data?</p>
Page 47	<p>1 would be included in the subpoena that we served, 2 and so I would request it be provided now. Go 3 ahead. I'm sorry, Dr. McCool. 4 A. Important clarification there. No data was provided 5 to me. No data was provided to me. I have not 6 received a single number from any legal counsel. 7 Q. I would -- I would still request, if there are 8 written communications relating to or advising you 9 to rely on the Kaiser Family Foundation in your 10 opinion, if there are written communications between 11 you and the attorneys about that, I would request 12 that they be provided after the deposition today. I 13 don't know if they exist, but, if they do, I would 14 request that they be provided. I think that would 15 fall within the applicable rules and within our 16 subpoena. 17 MR. PHILLIPS: Is that fair, 18 Mr. Carter, that you could look for that? 19 Do you have any objection to providing that 20 if it exists? 21 MR. CARTER: No. That's understood. 22 We'll double-check. 23 MR. PHILLIPS: Thank you. 24 BY MR. PHILLIPS: 25 Q. Is the Kaiser Family Foundation tied in any way to</p>	Page 49	<p>1 A. Meaning that they aggregate it. 2 Q. And do you know -- and, again, I apologize if you've 3 already said this. I just want to make sure I ask 4 the question correctly and clearly. Do you know 5 whether the Kaiser Family Foundation obtains the 6 data that it uses to aggregate? 7 A. I'm not 100 percent sure. My understanding is that 8 they aggregate the data from publicly available 9 sources. I'd have to double-check. 10 Q. And do you know what those publicly-available 11 sources are? 12 A. I do not. 13 Q. I'm actually okay to continue, but it's been about 14 an hour. I usually give folks an opportunity for a 15 brief break. Do you want to take a quick break here 16 at this time, or would you like to keep going? 17 A. Sure. I'm also a coffee drinker. 18 MR. PHILLIPS: Why don't we go off the record? 19 (A recess was had from 10:12 a.m. until 20 10:26 a.m.) 21 MR. PHILLIPS: Are we back on. 22 THE WITNESS: I'd like to make a quick 23 amendment to a prior statement. The 24 New Mexico case does actually not involve 25 NARF, the Native American Rights Fund. It</p>

Page 50	<p>1 involves the Lawyers' Committee, primarily</p> <p>2 through Jim Tucker.</p> <p>3 BY MR. PHILLIPS:</p> <p>4 Q. Okay. The Lawyers' Committee. I'm not familiar</p> <p>5 with that. What do you mean by that? Is that an</p> <p>6 entity organizational name?</p> <p>7 A. Yes.</p> <p>8 Q. The Lawyers' Committee. And did you say that</p> <p>9 Jim Tucker is the individual you dealt with?</p> <p>10 A. Yeah.</p> <p>11 Q. Do you know where that entity is based out of, what</p> <p>12 state?</p> <p>13 A. I do not.</p> <p>14 Q. How did you -- how did you come to work on a case</p> <p>15 for the Lawyers' Committee?</p> <p>16 A. Jim Tucker, who was the point person, was involved</p> <p>17 with the training.</p> <p>18 Q. And did you know Jim Tucker prior to your</p> <p>19 involvement in that case?</p> <p>20 A. Only through the training.</p> <p>21 Q. So Jim Tucker, am I understanding this correctly,</p> <p>22 was involved in the NARF training that you'd had</p> <p>23 earlier?</p> <p>24 A. Correct.</p> <p>25 Q. And Jim Tucker. Understood. So when you say -- or</p>	Page 52	<p>1 ranged, but my communications would be through Jim</p> <p>2 Tucker, so more information on that team could be</p> <p>3 provided freely by him.</p> <p>4 Q. Do you know who the plaintiff is in that case, the</p> <p>5 New Mexico case?</p> <p>6 A. The New Mexico case plaintiff -- one sec. The</p> <p>7 Navajo Nation Human Rights Commission.</p> <p>8 Q. Navajo Nation Human Rights Commission. And do you</p> <p>9 know who the defendant is in that case?</p> <p>10 A. The defendant is San Juan County, New Mexico.</p> <p>11 Q. What's the nature of that case? Do you know what</p> <p>12 the lawsuit is about?</p> <p>13 THE WITNESS: Am I permitted to answer</p> <p>14 that question? It's an ongoing case.</p> <p>15 MR. CARTER: Yeah, you can answer</p> <p>16 generally what the lawsuit's about.</p> <p>17 THE WITNESS: The lawsuit generally is</p> <p>18 about history of discrimination in voting</p> <p>19 rights in that county and particularly the</p> <p>20 ability of the Navajo Nation voting block to</p> <p>21 elect officials.</p> <p>22 BY MR. PHILLIPS:</p> <p>23 Q. And if I remember -- pardon me. If I remember your</p> <p>24 testimony correctly from earlier, you performed a</p> <p>25 similar analysis in that case on the fifth Senate</p>
Page 51	<p>1 when you agreed that Jim Tusker was involved in the</p> <p>2 NARF training, what was Jim Tucker's role in the</p> <p>3 training that you received through NARF?</p> <p>4 A. Jim Tusker's role was organizational to some extent</p> <p>5 and to provide his expertise on a whole range of</p> <p>6 issues relating to the law.</p> <p>7 Q. Was he a presenter at the sessions you went to with</p> <p>8 NARF?</p> <p>9 A. He was.</p> <p>10 Q. Is he -- to your knowledge, is he employed in any</p> <p>11 way by NARF?</p> <p>12 A. I don't know.</p> <p>13 Q. Did you speak with the NARF attorneys during our</p> <p>14 break?</p> <p>15 A. Yes, for that reason.</p> <p>16 Q. You don't have to tell me the -- what you talked</p> <p>17 about. Earlier, I had asked you if you remembered</p> <p>18 the names of the parties to the New Mexico case. Do</p> <p>19 you have any -- any clarity or new information on</p> <p>20 who the party names are to that case?</p> <p>21 A. I've got them here. Jim Tucker is the point person</p> <p>22 there, and so -- who was on a Zoom call. It would</p> <p>23 range depending on -- who they think on their side</p> <p>24 is pertinent or non-pertinent, which doesn't have</p> <p>25 anything to do with me as an expert witness. So it</p>	Page 53	<p>1 Factor?</p> <p>2 A. Correct.</p> <p>3 Q. Did your -- has your work on that case involved any</p> <p>4 other analysis other than the fifth Senate Factor?</p> <p>5 A. No.</p> <p>6 Q. In the New Mexico case, did you rely on the American</p> <p>7 Community Survey data?</p> <p>8 A. I did.</p> <p>9 Q. In that case, did you rely on the Kaiser Family</p> <p>10 Foundation data?</p> <p>11 A. I did not.</p> <p>12 Q. Why not?</p> <p>13 A. I wrote that report first. To my knowledge, I</p> <p>14 wasn't aware of the dataset.</p> <p>15 Q. I'm going to share my screen here again or attempt</p> <p>16 to. Can you see that?</p> <p>17 A. Yes.</p> <p>18 Q. All right. And what you're looking at is -- I'm</p> <p>19 just going to scroll up to the top page. This is</p> <p>20 Exhibit 19. Again, it is your expert report, and</p> <p>21 I'm going to scroll down to the third page where it</p> <p>22 has the heading "Quantitative Socioeconomic</p> <p>23 Methods." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. You have reference here in a number of places to</p>

Page 54	<p>1 American Indian and Alaskan Native alone. Do you</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. What is that reference?</p> <p>5 A. So that's a census racial designation that includes</p> <p>6 all American Indians and Alaskan Natives. Those are</p> <p>7 lumped into a variable, alone meaning it's not race</p> <p>8 in combination.</p> <p>9 Q. What do you mean by "race in combination"?</p> <p>10 A. They aren't -- for example, they don't, for example,</p> <p>11 have an Alaskan Native mom and a white dad.</p> <p>12 Q. I naturally say "Native American." If I say "Native</p> <p>13 American" in the context of our conversation today,</p> <p>14 will you understand what I mean?</p> <p>15 A. Yes. I might ask for clarification if we're talking</p> <p>16 specifically about these categorical variables, but</p> <p>17 yes.</p> <p>18 Q. Did you -- I'm sorry if I interrupted. Did you</p> <p>19 analyze any group other than American Indian and</p> <p>20 Alaskan Native alone and non-Hispanic white alone?</p> <p>21 A. In the formal analysis, I did not. Preliminarily, I</p> <p>22 looked at race in combination which, as stated in</p> <p>23 the report, is a problematic variable for</p> <p>24 quantitative analysis. And so these are the two</p> <p>25 categories that are ideal for this type of analysis.</p>	Page 56	<p>1 null hypothesis throughout this entire report, and</p> <p>2 determining whether we can reject the null</p> <p>3 hypothesis. The null hypothesis -- in this part,</p> <p>4 the null being the baseline hypothesis that the</p> <p>5 statistical test tried to prove wrong that race and</p> <p>6 any particular socioeconomic status and variable are</p> <p>7 unrelated.</p> <p>8 Q. How would you describe or define a null hypothesis?</p> <p>9 A. Null hypothesis is that if you're trying to see</p> <p>10 whether two variables are unrelated and is</p> <p>11 independent of each other, the null hypothesis is</p> <p>12 that they are related and they are non-independent.</p> <p>13 A statistical test attempts to falsify that.</p> <p>14 Q. What software do you use to perform your analysis?</p> <p>15 A. So the data come from the detailed tables themselves</p> <p>16 directly. They then go into the R programming</p> <p>17 environment where the statistical tests are written.</p> <p>18 Q. I believe a link to that R programming environment</p> <p>19 was provided a few days ago. Is that -- am I</p> <p>20 thinking of the right thing?</p> <p>21 A. Yes. That code is from the R program environment.</p> <p>22 Q. Do you use any other software, or did you use any</p> <p>23 other software?</p> <p>24 A. No.</p> <p>25 Q. How would you define in your report a margin of</p>
Page 55	<p>1 Q. And it -- the American Indian and Alaskan Native</p> <p>2 alone has the acronym listed AI/AN. Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. Is there a way to pronounce that, or is it just</p> <p>6 AI/AN?</p> <p>7 A. AI/AN. I mean, I could give it a go.</p> <p>8 Q. I don't want to be confusing here today. If I say,</p> <p>9 "Native American," in the context of this</p> <p>10 conversation, I mean AI/AN. And if I say, "white,"</p> <p>11 I mean non-Hispanic white alone; is that fair?</p> <p>12 A. Yes.</p> <p>13 Q. Now, you've given, in this portion of your report, a</p> <p>14 -- a description of your method -- your methodology.</p> <p>15 Is that a fair way to say it?</p> <p>16 A. Yes.</p> <p>17 Q. And can I just have you explain it to me today?</p> <p>18 I've read your report certainly, but, generally</p> <p>19 speaking, what was your methodology applied in this</p> <p>20 case to come up with the results you did?</p> <p>21 A. Assessing the 5-year, 2015 to 2019, American</p> <p>22 Community Survey detailed tables freely available</p> <p>23 online, aggregating the data therein for each one of</p> <p>24 the variables, using those data in the code that I</p> <p>25 provided to conduct statistical analysis to test the</p>	Page 57	<p>1 error?</p> <p>2 A. So I defined margin of error the same way margin of</p> <p>3 error is roughly defined in the American Community</p> <p>4 Survey which is that because these estimates come</p> <p>5 from samples of populations but we're interested in</p> <p>6 the populations themselves, there is some error</p> <p>7 around the estimate in each one of these measures,</p> <p>8 which they call MOE.</p> <p>9 Q. Are you aware of the margin of error with respect to</p> <p>10 the data you received from the Kaiser Family</p> <p>11 Foundation?</p> <p>12 A. No.</p> <p>13 Q. In your report, you talked about statistical</p> <p>14 significance. What does that mean to you?</p> <p>15 A. As written in the report, statistical significance</p> <p>16 is at the very core of statistical science, and it</p> <p>17 is a threshold that we establish by which we can</p> <p>18 safely reject the null hypothesis. "Safely" meaning</p> <p>19 we have some certain percentage of confidence that</p> <p>20 the trend we're seeing is real and not due to the</p> <p>21 vagaries of sampling error.</p> <p>22 Q. Is there a certain percentage of confidences that is</p> <p>23 sufficient to make something statistically</p> <p>24 significant?</p> <p>25 A. The social sciences widely agreed upon Alpha</p>

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1 parameter, which is the degree of significance, is  
 2 .05.  
 3 Q. Is that the standard you applied in -- in this case?  
 4 A. It is.  
 5 Q. Your report also talks about chi-squared test of  
 6 independence. That's C-H-I squared test of  
 7 independence. What is that?  
 8 A. As it states in there, chi-squared test is a  
 9 statistical test that determines the independence or  
 10 nonindependence of two samples. So, for example,  
 11 are there differences in a percentage of poverty  
 12 based on some categorical variable?  
 13 Q. Did you use the same methodology to derive your  
 14 ultimate opinions on all of the issues in the  
 15 report?  
 16 A. All of the statistical tests were chi-squared  
 17 analysis.  
 18 Q. Any portion of your opinion that is not based on a  
 19 chi-squared analysis?  
 20 A. Yes. Median household income, because it's only a  
 21 single measure and because it's not a proportion.  
 22 It's a count. It's a number: 35,000, 50,000. To  
 23 conduct the statistical test on that, we'd need a  
 24 large sample of different incomes that we could test  
 25 to see if there are significant differences in

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1 median. So, unfortunately, the way the data are  
 2 distributed and the demographics of interest, it's  
 3 simply not possible to conduct and rely the  
 4 statistical analysis on median household income. On  
 5 all other variables, we applied the chi-squared  
 6 test.  
 7 Q. With respect to the median household income, if I'm  
 8 understanding that correctly, there just is no data  
 9 that's more granular?  
 10 A. It's not a matter of granularity. It's a matter of  
 11 sample size. So, for example, let's imagine that in  
 12 a county we have 30 voting tracks. That's not  
 13 representative of the three counties of interest.  
 14 Let's just imagine we do. In that case, each one of  
 15 those would have a separate calculation of median  
 16 household income. In that case, we'd have 30 median  
 17 household incomes for categorical variable, say,  
 18 based on race for each category. It can then take  
 19 the median of those medians and compare them  
 20 statistically. But since we just have, say, a  
 21 couple tracks, well, less than 30, which is the  
 22 minimum sample size required for a reliable  
 23 statistical test, and this means a statistical tests  
 24 are not appropriate for those data.  
 25 Q. When it comes to median household income, then, did

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1 you actually provide any analysis or aggregation of  
 2 data, or does your report simply list the median  
 3 household incomes provided by the data sources?  
 4 A. It lists the median household income. No  
 5 statistical test is possible with the current data.  
 6 Q. Can you see this screen that I'm sharing?  
 7 A. Yes.  
 8 Q. I'm showing you what's been marked as Exhibit 21.  
 9 (Exhibit 21 was marked for  
 10 identification.)  
 11 BY MR. PHILLIPS:  
 12 Q. Do you recognize this?  
 13 A. Yes.  
 14 Q. And I'll represent to you that you had provided a  
 15 file in response to the subpoena and the link that  
 16 we talked about earlier to -- remind me the type of  
 17 software?  
 18 A. R programming.  
 19 Q. R programming. I will represent to you that our  
 20 office took that file, and for lack of a better  
 21 word, extracted it, and this is the result that we  
 22 came up with. Does this look accurate in terms of  
 23 the data that you provided to my office in response  
 24 to the subpoena?  
 25 A. So far, it looks like an accurate printout.

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1 Q. Would this set of -- of information look different  
 2 if you were to put it on your computer?  
 3 A. Yes. It would open in the R software. But it would  
 4 be in that program. But none of the code, the  
 5 lingo, as you will, printed on there would be  
 6 different.  
 7 Q. Is all of the analysis that you performed, the  
 8 statistical analysis contained within this file, and  
 9 I'll scroll down here just so you can see the scope  
 10 of it. This is the first page, and you tell me if  
 11 you want me to slow down, but I'll just scroll down  
 12 to the bottom. There are five pages. Is this a  
 13 complete set of -- of the data that you analyzed?  
 14 A. For the statistical analysis, yes, I believe so.  
 15 Q. You will almost certainly word every statement  
 16 better than I would, so I appreciate the  
 17 clarification.  
 18 A. Yeah.  
 19 Q. If I'm understanding it correctly, then, you would  
 20 have input the information from your data source  
 21 into your software, conducted your own statistical  
 22 analysis, and what's shown on Exhibit 21 are the  
 23 results of that analysis?  
 24 A. Yes.  
 25 Q. I am switching back to what's been marked as

Page 62	<p>1 Exhibit 19. And I'm going to -- and this is your</p> <p>2 expert report. I'm going to slide down to page 5 of</p> <p>3 your expert report. But bear with me. I tend to</p> <p>4 write things on paper, and so Zoom depositions are always</p> <p>5 interesting for me. Now, in kind of the middle of</p> <p>6 page 5 here, please correct me if I'm wrong, this</p> <p>7 looks like your analysis of Rolette County, and you</p> <p>8 have a paragraph in the middle that's numbered 1,</p> <p>9 Rolette County, and the end of that paragraph says,</p> <p>10 "We conduct statistical tests only on the primary</p> <p>11 variable estimates rather than the lower and upper</p> <p>12 estimates." Do you see that part?</p> <p>13 A. Yes.</p> <p>14 Q. Just hoping for clarification. What does that mean?</p> <p>15 A. That means that we conduct statistical analysis on</p> <p>16 the principal estimate provided by the American</p> <p>17 Community Survey, and then we do a subsequent</p> <p>18 analysis to look at comparative margins of errors.</p> <p>19 Q. What do you mean by "lower and upper estimates"?</p> <p>20 A. So a margin of error is going to have -- let's say a</p> <p>21 margin of error is 40 to \$50,000. The lower is 40.</p> <p>22 The upper is 50.</p> <p>23 Q. I'm going to scroll down a little bit further here.</p> <p>24 At the top of page 6, there's a Figure 1. Do you</p> <p>25 see that?</p>	Page 64	<p>1 A. I believe that's Rolette County. Yes, it is.</p> <p>2 Q. The first paragraph -- or the first sentence of that</p> <p>3 paragraph dealing with poverty says that 31.5</p> <p>4 percent of AI/AN households are below the poverty</p> <p>5 line compared to 6 percent of white households. Do</p> <p>6 you see that?</p> <p>7 A. I do.</p> <p>8 Q. What is the poverty line referenced there?</p> <p>9 A. So the American Community Survey establishes locally</p> <p>10 what is considered to be individuals that are</p> <p>11 impoverished and establishes a formal line and then</p> <p>12 estimates the percentage of households based on</p> <p>13 various categories that are above and below that</p> <p>14 line.</p> <p>15 Q. You -- thank you. You discuss a little bit later in</p> <p>16 that same paragraph having 99.9 percent confidence.</p> <p>17 I'll just read. "99 percent -- greater than 99.9</p> <p>18 percent confidence that the sample of income data is</p> <p>19 representative of the population as a whole and that</p> <p>20 the null hypothesis, no relationship between race</p> <p>21 and poverty, can be rejected." Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. The next sentence says, "A similar degree of</p> <p>24 confidence is present in all subsequent statistical</p> <p>25 tests."</p>
Page 63	<p>1 A. Yes.</p> <p>2 Q. Did you generate the image in figure 1?</p> <p>3 A. Yes.</p> <p>4 Q. How did you generate that image?</p> <p>5 A. That's in the code in the exhibit you showed</p> <p>6 earlier.</p> <p>7 Q. That would be part of the R programming software?</p> <p>8 A. Yes.</p> <p>9 Q. And so the data source for this image is the same as</p> <p>10 we've already discussed, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Is that true of -- there's other figures in this</p> <p>13 report as well. Were those figures' images</p> <p>14 generated in the same manner?</p> <p>15 A. Yes.</p> <p>16 Q. That R programming software that you'd sent a link</p> <p>17 to, is that -- would it be possible for someone to</p> <p>18 download and run that software for free, or is it a</p> <p>19 paid service?</p> <p>20 A. It's for free. It's called open-source software</p> <p>21 which means anybody can download it for free.</p> <p>22 Q. I'm on page 6 of your report now, and we are looking</p> <p>23 at a section on poverty that -- correct me if I'm</p> <p>24 wrong is -- is related to Rolette County in this</p> <p>25 portion of your report; is that accurate?</p>	Page 65	<p>1 A. Correct.</p> <p>2 Q. What does that last sentence mean?</p> <p>3 A. That means that the statistically significant level</p> <p>4 while being .05, which is -- we need to have greater</p> <p>5 than a 95 percent confidence to successfully and</p> <p>6 safely reject the null hypothesis, that actually, we</p> <p>7 have more confidence than that, which that P value</p> <p>8 there is telling you in the parentheses in the</p> <p>9 report that we have more than a 99.9 percent</p> <p>10 probability that we can safely reject the null</p> <p>11 hypothesis. I put that statement there so I didn't</p> <p>12 need to repeat that statement in every single</p> <p>13 subheading. That would have needed to repeat it 21</p> <p>14 times or thereabouts.</p> <p>15 Q. The statement?</p> <p>16 A. A similar degree of confidence is present in all</p> <p>17 subsequent statistical tests.</p> <p>18 Q. The portion --</p> <p>19 A. -- significant.</p> <p>20 Q. The portion of the sentence prior to that could have</p> <p>21 been copied and pasted in every paragraph, in other</p> <p>22 words, but you put this in instead?</p> <p>23 A. So the "greater than 99 percent similar, not</p> <p>24 identical," meaning they're all significant.</p> <p>25 Q. Statistically significant?</p>



Page 66	<p>1 A. Yes, correct.</p> <p>2 Q. If I'm understanding correct, then, greater than</p> <p>3 95 percent confidence?</p> <p>4 A. Correct.</p> <p>5 Q. I'm going to scroll down to page 7 of your report.</p> <p>6 There's a section dealing with home ownership value</p> <p>7 and rent payments. Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And there would be a similar section for the other</p> <p>10 two counties that you analyzed; is that right?</p> <p>11 A. Correct.</p> <p>12 Q. Are you familiar with which lands in these three</p> <p>13 counties are held in trust for Native Americans by</p> <p>14 the federal government?</p> <p>15 A. I am not.</p> <p>16 Q. Are you familiar with the laws or treaties the</p> <p>17 government -- the laws or treaties that govern trust</p> <p>18 lands?</p> <p>19 A. That is not a part of my expertise nor was it what I</p> <p>20 was hired to do.</p> <p>21 Q. Are you familiar with what lands in these three</p> <p>22 counties are owned by the tribes themselves?</p> <p>23 A. Not the exact numbers, no.</p> <p>24 Q. Are you familiar with the laws or treaties that</p> <p>25 govern Native American ownership of lands on the</p>	Page 68	<p>1 programs?</p> <p>2 A. I am not.</p> <p>3 Q. I believe you say in your report that Native</p> <p>4 Americans can also access free or reduced healthcare</p> <p>5 without health insurance through IHS programs. Do</p> <p>6 you see that?</p> <p>7 A. I do.</p> <p>8 Q. Is that your understanding of what IHS programs do?</p> <p>9 A. Partially, yes.</p> <p>10 Q. How did you come to that understanding?</p> <p>11 A. Indian Health Services -- this was something that</p> <p>12 was talked about, I believe, in a NARF training, and</p> <p>13 I believe I've seen these data in previous reports</p> <p>14 that I've been shown.</p> <p>15 Q. Am I correct that this analysis involves access to</p> <p>16 health insurance coverage?</p> <p>17 A. American Indians can access health -- healthcare</p> <p>18 through the IHS, not the same as typical American</p> <p>19 health insurance.</p> <p>20 Q. All right. So you have a sentence that says -- and</p> <p>21 I'm just going to read this to you. "Statewide data</p> <p>22 from North Dakota suggests that IHS is not making up</p> <p>23 for disparate access to health insurance coverage</p> <p>24 among Native Americans and whites." Do you see</p> <p>25 that?</p>
Page 67	<p>1 Spirit Lake Reservation or the Turtle Mountain</p> <p>2 Reservation or the surrounding areas?</p> <p>3 A. That's not my job.</p> <p>4 Q. Do you know what percentage of Native Americans in</p> <p>5 the three counties you analyzed are legally allowed</p> <p>6 to own the property on which they live?</p> <p>7 A. I do not.</p> <p>8 Q. You didn't take any of that into account in your</p> <p>9 analysis, correct?</p> <p>10 A. Those data are not available through the census nor</p> <p>11 the American Community Survey.</p> <p>12 Q. I'm going to direct your attention towards the</p> <p>13 bottom of page 7 of your report. Starting with --</p> <p>14 with "AI/AN residents significantly less likely to</p> <p>15 have health insurance coverage relative to whites."</p> <p>16 Do you see that portion of the paragraph?</p> <p>17 A. I do.</p> <p>18 Q. And it continues to the end of that page and on to</p> <p>19 the next page. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Can I just -- I'll just have you read that, not</p> <p>22 necessarily out loud. But just read that, and I'll</p> <p>23 ask you some questions about it.</p> <p>24 A. Okay.</p> <p>25 Q. Are you familiar with Indian Health Service</p>	Page 69	<p>1 A. I do.</p> <p>2 Q. Is it your understanding that IHS programs provide</p> <p>3 access to healthcare, not health insurance?</p> <p>4 A. That is correct. Healthcare, to my knowledge -- so</p> <p>5 it would be healthcare often for people who are</p> <p>6 uninsured.</p> <p>7 Q. One -- is it fair to say one would not expect IHS</p> <p>8 programs to increase access to health insurance?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. They would increase access to healthcare, correct?</p> <p>11 A. Correct.</p> <p>12 Q. In that same paragraph -- just give me one moment</p> <p>13 here. In that same paragraph, it says, "Despite</p> <p>14 access to IHS services, AI/AN in North Dakota, who</p> <p>15 are over nearly four times more likely than whites</p> <p>16 to be uninsured, are also over three times more</p> <p>17 likely than whites to report they avoided care due</p> <p>18 to cost." Then that sentence continues. Do you see</p> <p>19 that part?</p> <p>20 A. Yes.</p> <p>21 Q. Is that sentence derived entirely from the Kaiser</p> <p>22 Family Foundation data?</p> <p>23 A. No. AI/AN are four times more likely to be</p> <p>24 uninsured. That is the ACS data.</p> <p>25 Q. Now, just after that portion of the sentence, the</p>

Page 70	<p>1 remainder of the sentence beginning with, "are also</p> <p>2 three times more likely." Is the remainder of that</p> <p>3 sentence all based on the Kaiser Family Foundation</p> <p>4 data?</p> <p>5 A. Yes. As we stated earlier, the Kaiser Family</p> <p>6 Foundation was used to look at cost.</p> <p>7 Q. When it says "three times more likely than whites to</p> <p>8 report that they avoided care due to cost with 3.9</p> <p>9 percent of whites reporting not seeing a doctor</p> <p>10 because of cost compared to 13.9 percent of AI/AN</p> <p>11 according to the Kaiser Family Foundation's state --</p> <p>12 state health facts report," where it says that, did</p> <p>13 you do any calculation to generate that opinion, or</p> <p>14 is that simply reciting the percentages that are</p> <p>15 reported by the Kaiser Family Foundation?</p> <p>16 A. Yeah. 3.9 times three is less than 13.9.</p> <p>17 Q. And does the Kaiser Family Foundation directly</p> <p>18 report that percentage of whites and that percentage</p> <p>19 of, I'll say, American -- Native Americans. Are</p> <p>20 those numbers straight reported in Kaiser Family</p> <p>21 Foundation data?</p> <p>22 A. Those are the numbers from the Kaiser Foundation</p> <p>23 data.</p> <p>24 Q. That you're reciting here?</p> <p>25 A. Yes.</p>	Page 72	<p>1 A. Not that I looked at.</p> <p>2 Q. Or the surrounding areas?</p> <p>3 A. Not that I looked at.</p> <p>4 Q. Or any specific county?</p> <p>5 A. My primary analysis stuck to the American Community</p> <p>6 Survey, so the secondary analysis of the Kaiser</p> <p>7 Foundation were to get more context on it.</p> <p>8 Q. The data is not broken down by county in</p> <p>9 North Dakota, correct?</p> <p>10 A. Not for deferment.</p> <p>11 Q. So if I'm understanding that correctly, that means</p> <p>12 that wherever the data came from that the Kaiser</p> <p>13 Family Foundation, I'll use the word "aggregated,"</p> <p>14 it includes everybody in the State of North Dakota</p> <p>15 or --</p> <p>16 A. Yes.</p> <p>17 Q. That would include Native Americans living in and</p> <p>18 around the Fort Berthold Indian reservation?</p> <p>19 A. It's the whole state.</p> <p>20 Q. Let's go down to page 12 of your report. In the</p> <p>21 middle there on page 12, there's a section on</p> <p>22 computer ownership and broadband internet access.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. I believe this portion of the report deals with</p>
Page 71	<p>1 Q. Do you know how they calculated those percentages?</p> <p>2 A. I believe using publicly available data, but, again,</p> <p>3 not 100 percent sure the total sources of those</p> <p>4 data.</p> <p>5 Q. And you say in the last sentence here that "These</p> <p>6 are statewide data. They are the best available</p> <p>7 data on healthcare avoidance due to cost." Do you</p> <p>8 see that sentence?</p> <p>9 A. Yes.</p> <p>10 Q. Is that sentence referring only to the -- the Kaiser</p> <p>11 Family Foundation data?</p> <p>12 A. Yes. These types of data are not available in the</p> <p>13 census or the American Community Survey. They're</p> <p>14 very hard to come by. So the Kaiser Family</p> <p>15 Foundation is one of the only places that presents</p> <p>16 and accurately presents these data.</p> <p>17 Q. Is it fair to say that there is no data on avoidance</p> <p>18 of healthcare due to cost specifically in the three</p> <p>19 counties that you analyzed?</p> <p>20 A. Not in the census data.</p> <p>21 Q. Or in any data that you reviewed, correct?</p> <p>22 A. Not in any data that I reviewed.</p> <p>23 Q. Is there any data on avoidance of healthcare due to</p> <p>24 cost specifically with respect to the Spirit Lake</p> <p>25 Reservation or the Turtle Mountain Reservation?</p>	Page 73	<p>1 Ramsey County; is that accurate?</p> <p>2 A. I have to see the top heading.</p> <p>3 Q. I'll scroll up here.</p> <p>4 A. Okay. Thank you.</p> <p>5 Q. Now, I won't have you read this whole paragraph</p> <p>6 aloud, but please take a look at this paragraph 3E,</p> <p>7 and I'll direct your attention specifically to the</p> <p>8 last sentence. "High MOEs, however, render these</p> <p>9 results somewhat tentative." Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. MOE -- does that refer to margins of error?</p> <p>12 A. Yes.</p> <p>13 Q. What do you mean by that sentence?</p> <p>14 A. Population sizes in Ramsey County are small. That</p> <p>15 means our sample sizes are small. When sample sizes</p> <p>16 are small, there's more error. This is the best</p> <p>17 possible statistical inference we can have from</p> <p>18 these data. It doesn't get better than this. But</p> <p>19 until more households are sampled, which we can't</p> <p>20 control, there is somewhat of a tentative nature to</p> <p>21 these statics.</p> <p>22 Q. Is your opinion with respect to this paragraph,</p> <p>23 then, tentative?</p> <p>24 A. My opinion is not tentative. My opinion is based</p> <p>25 off the best possible existing data.</p>

Page 74	<p>1 Q. Sometimes there just isn't existing data on a</p> <p>2 particular issue; isn't that right?</p> <p>3 A. It's possible.</p> <p>4 Q. Can you reach conclusions if insufficient data is</p> <p>5 available for you to analyze?</p> <p>6 A. It depends. Is it missing entirely? What are the</p> <p>7 sample sizes? And this is, to some degree, why we</p> <p>8 do statistical tests. Even though we have a small</p> <p>9 sample, we still have statistically significant</p> <p>10 results which give us a confidence interval, the</p> <p>11 likelihood that this is due to sampling error. The</p> <p>12 margins of errors in any statistically scientific</p> <p>13 paper, when high, it is the duty of the scientific</p> <p>14 analysis to note that. Nonetheless, we did</p> <p>15 statistical tests that tell us what is the</p> <p>16 probability that this is simply a result of the</p> <p>17 vagaries of sampling error. And in this case, the</p> <p>18 probability of that is less than 99 -- is less than</p> <p>19 one percent.</p> <p>20 Q. The conclusion that -- that the difference is</p> <p>21 statistically significant -- is that a tentative</p> <p>22 conclusion?</p> <p>23 A. Not at all.</p> <p>24 Q. Even though there's a high margin of error?</p> <p>25 A. There is a high margin of error. That is absolutely</p>	Page 76	<p>1 Q. The -- there's a sentence in the paragraph above</p> <p>2 that. It's in 3F, "Home Ownership." It says,</p> <p>3 "While the MOEs are large, they are not overlapping,</p> <p>4 indicating these results are valid." Do you see</p> <p>5 that?</p> <p>6 A. Yeah.</p> <p>7 Q. What does that sentence mean?</p> <p>8 A. Means the lower estimates are almost the same. The</p> <p>9 upper estimates are almost the same. Medium</p> <p>10 estimates are almost the same.</p> <p>11 Q. Are the opinions that -- all of the opinions that</p> <p>12 you've listed in your report -- do you hold them all</p> <p>13 to a reasonable degree of certainty?</p> <p>14 A. I hold them all to the social science widely</p> <p>15 accepted statistical standard, so I don't have a</p> <p>16 personal standard. I have one that is supported by</p> <p>17 the scientific community.</p> <p>18 Q. I recognize that the language of attorneys is</p> <p>19 sometimes different than the language of a</p> <p>20 scientist, so sometimes there's nothing we can do</p> <p>21 about that. I'll represent to you that courts often</p> <p>22 analyze whether an expert's opinion is held to a</p> <p>23 reasonable degree of certainty. Do you have an</p> <p>24 answer to that question? Are your opinions all held</p> <p>25 to a reasonable degree of certainty?</p>
Page 75	<p>1 true. These estimates, though, are statistically</p> <p>2 significant at a P value threshold. So for social</p> <p>3 scientists doing statistics, the standard, when</p> <p>4 dealing with these sample sizes, when a statistical</p> <p>5 test is significant, is to safely reject the null</p> <p>6 hypothesis, and that's what I've done here.</p> <p>7 Q. Is that true also with respect to the next paragraph</p> <p>8 you have a -- or I'm sorry -- the -- the paragraph</p> <p>9 after that at the bottom of 12 and the top of page</p> <p>10 13? There's a sentence that says, "Large MOEs</p> <p>11 render this result somewhat tentative." Do you see</p> <p>12 that?</p> <p>13 A. Yeah. So it's all the same. There are large MOEs</p> <p>14 in Ramsey County because the populations are very</p> <p>15 small. But in each case, each one of these</p> <p>16 statistical analyses are statistically significant</p> <p>17 making it safe for us to reject the null hypothesis.</p> <p>18 But the MOEs do vary by test, so I simply state</p> <p>19 that.</p> <p>20 Q. Could the margin of error be high enough that you</p> <p>21 would reject the conclusion that it's statistically</p> <p>22 significant?</p> <p>23 A. That's what a statistical test would tell me.</p> <p>24 That's the beauty of statistics. They tell you</p> <p>25 whether or not it's safe to reject it or not.</p>	Page 77	<p>1 A. They are.</p> <p>2 Q. Are -- what about your opinion with respect to</p> <p>3 avoidance of healthcare due to cost? Is that</p> <p>4 opinion held to a reasonable degree of certainty?</p> <p>5 A. It is.</p> <p>6 Q. And that's true even though you don't know the</p> <p>7 manner in --</p> <p>8 A. It's a widely respected foundation whose data is</p> <p>9 used in a number of scientific analyses. So it's</p> <p>10 used throughout the scientific community. So while</p> <p>11 I might not have a very thorough grounding in the</p> <p>12 exact sources of their data aggregate, the</p> <p>13 scientific community is confident in those numbers.</p> <p>14 Q. Did you say you used the Kaiser Family Foundation</p> <p>15 data in other matters?</p> <p>16 A. No. This was the time that I've been aware of it.</p> <p>17 Q. I move the screen down here to the bottom of page 13</p> <p>18 of your report, and this is your conclusion. I'd</p> <p>19 like you to read that first and second sentence, and</p> <p>20 I'll just read it aloud. It says, "For all</p> <p>21 analyses, there is race-based bias that</p> <p>22 disadvantages the AI/AN population when compared to</p> <p>23 whites. These differences are statistically</p> <p>24 significant across the board and systemic in</p> <p>25 nature." Do you see that?</p>



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1 A. I do.

2 Q. I believe you've already testified earlier in terms

3 of what you mean by "statistically significant

4 across the board," correct?

5 A. Yes. So it's -- when a statistical test is

6 conducted, is it or is it not significant.

7 Q. What do you mean by "systemic in nature"?

8 A. That means -- "systemic in nature" meaning that

9 across all variables, the outcomes are the same.

10 They are statistically significant in ways that

11 disadvantaged the AI/AN population when compared to

12 whites. So Senate Factor 5 is analyzing a system.

13 In this case, that system is socioeconomic status.

14 The results are significant and in one direction.

15 Q. Understood. Is there -- so, for example, if -- if

16 you're findings found that whites in a particular

17 county had a lower income than Native Americans,

18 that would maybe lead you to a different conclusion

19 with respect to the systemic nature?

20 A. It might. That would be a different type of

21 analysis, but that's a hypothetical.

22 Q. I just want to make sure I understand. When you say

23 "systemic in nature," you mean that the Native

24 Americans in all of the topics you've analyzed come

25 out on the worst side of the equation than their

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1 comparative whites?

2 A. Correct.

3 Q. The last sentence of your report says, "These

4 systemic disparities hinder the ability of AI/AN

5 tribal members to participate effectively in the

6 North Dakota political process, Senate Report 1982."

7 Do you see that?

8 A. I do.

9 Q. What are you basing this opinion on?

10 A. The 1982 publication of the Senate Committee of the

11 Judiciary issued its report. It suggested factors

12 for courts to consider when determining whether

13 there has been voting practices or procedures that

14 discriminate based on race. In this report, they

15 list a number of factors including Senate 5 Factors

16 that collectively represent obstacles, barriers that

17 prevent people from participating fully in the

18 democratic process.

19 Q. Are you familiar with North Dakota's political

20 processes?

21 A. That is not my job.

22 Q. Are you familiar with it?

23 A. You would have to be more specific.

24 Q. Are you familiar with North Dakota's election laws?

25 A. Oh, that's not a part of my analysis. I wasn't

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1 hired to do that.

2 Q. And are you familiar with it -- with North Dakota's

3 election laws generally, whether or not you were

4 hired to do that?

5 MR. CARTER: I'll just object to it's a

6 bit of a vague question, being familiar with

7 election laws in general.

8 BY MR. PHILLIPS:

9 Q. Are you familiar with North Dakota's election laws

10 in general?

11 MR. CARTER: Same objection.

12 And, Dr. McCool, you can still answer.

13 THE WITNESS: Okay. In general, no.

14 That's not my hired purpose, and it does not

15 bear -- does not bear any weight on this

16 report.

17 BY MR. PHILLIPS:

18 Q. Are you familiar with how elections are carried out

19 in North Dakota?

20 A. That's not my job.

21 Q. So the answer is, no, you're not familiar with it?

22 A. No.

23 Q. I'll -- I'll state it again, and I think this is a

24 yes-or-no question. Feel free to add clarification

25 if you need to, but I think -- the question is, are

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1 you familiar with how elections are carried out in

2 North Dakota?

3 MR. CARTER: And I'll object also as

4 being irrelevant to the report.

5 But please go ahead and answer,

6 Dr. McCool.

7 THE WITNESS: That is quite vague. If

8 I have to give a yes-or-no, I'd give a "no."

9 BY MR. PHILLIPS:

10 Q. Are you familiar with any of the elections that were

11 held in 2022 in the three counties that you

12 analyzed?

13 A. That's not my job.

14 MR. CARTER: Again, object as being

15 outside the scope of the report.

16 BY MR. PHILLIPS:

17 Q. Are you familiar with any of the elections held in

18 2022 in the three counties you analyzed?

19 A. That was not part of my report so that -- I am not.

20 MR. CARTER: And, David, I'll just --

21 if we can agree to a standing objection to

22 questions regarding elections in North

23 Dakota being outside the scope of the

24 report?


25 MR. PHILLIPS: We can agree to that.

Page 82	<p>1 BY MR. PHILLIPS:</p> <p>2 Q. As part of your analysis, did you review any data on</p> <p>3 election results?</p> <p>4 A. I did not.</p> <p>5 Q. Did you review any data on voter turnout?</p> <p>6 A. I did not.</p> <p>7 Q. Did you review any election data at all?</p> <p>8 A. These are not part of the Senate 5 Factors, so I did</p> <p>9 not as I was not hired to do that.</p> <p>10 Q. If I'm understanding your opinion correctly -- I'm</p> <p>11 going to scroll back up to the top of your report</p> <p>12 here. If I'm understanding your opinion correctly,</p> <p>13 you're opining on these seven factors listed on the</p> <p>14 first page of your report. Those would be income,</p> <p>15 poverty, education, health insurance coverage,</p> <p>16 computer ownership and internet access, housing, and</p> <p>17 employment; is that correct?</p> <p>18 A. Those are the seven variables I analyzed, correct.</p> <p>19 Q. Did you conduct any analysis on whether those seven</p> <p>20 categories present a hindrance to Native Americans'</p> <p>21 ability to participate in the political process?</p> <p>22 A. That's what the Senate Judiciary Report is intended</p> <p>23 to support. These types of data are analyzed with</p> <p>24 the standing knowledge produced in this report that,</p> <p>25 depending on the results of these, they very much</p>	Page 84	<p>1 A. The Senate Report talks about what type of</p> <p>2 disparities qualify as obstacles.</p> <p>3 Q. But it would be a fair statement to say that you</p> <p>4 didn't conduct any analysis of whether these factors</p> <p>5 actually create obstacles in North Dakota, correct?</p> <p>6 A. I did not do that. The report shows that when you</p> <p>7 see results in these directions, that's when</p> <p>8 obstacles occur.</p> <p>9 Q. Let's go down to the 14th page of your report.</p> <p>10 There's a chart there. Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Does this fully summarize your conclusions above in</p> <p>13 terms of the -- your analysis of the data?</p> <p>14 A. For the most part, all the ACS data is in there.</p> <p>15 Q. What is missing from this chart?</p> <p>16 A. Kaiser Report data.</p> <p>17 Q. And I know we talked about this earlier, but I just</p> <p>18 want to confirm my understanding is correct. The</p> <p>19 portion of this chart where it says, "Median</p> <p>20 household income," and the P Value is N/A?</p> <p>21 A. Can you zoom in?</p> <p>22 Q. Yes, I think.</p> <p>23 A. Thank you.</p> <p>24 Q. Yes. Do you see that where I'm talking about</p> <p>25 "median household income P Value N/A"?</p>
Page 83	<p>1 either help or hinder certain groups of people in</p> <p>2 their participation in the democratic process. So</p> <p>3 those two things cannot be separated, and that's why</p> <p>4 the 1982 report was issued.</p> <p>5 Q. You didn't conduct any analysis of whether Native</p> <p>6 Americans were actually prevented from voting based</p> <p>7 on these factors listed in your report; is that</p> <p>8 correct?</p> <p>9 A. That's not relevant to this report, no.</p> <p>10 Q. But I'll ask you to answer the question.</p> <p>11 A. No, I did not.</p> <p>12 Q. And did you consider as part of your analysis, the</p> <p>13 location of polling places relative to Native</p> <p>14 American populations?</p> <p>15 A. No. That's not part of a typical socioeconomic</p> <p>16 analysis.</p> <p>17 Q. Did you consider North Dakota's programs or</p> <p>18 regulations relating to Native American voter IDs?</p> <p>19 A. That's not part of a typical socioeconomic analysis.</p> <p>20 Q. I'm going to scroll back down to the end of your</p> <p>21 report. On page 13 again, the conclusion, the last</p> <p>22 sentence. You please correct me if I'm wrong, and</p> <p>23 restate it if I am wrong. The basis of this last</p> <p>24 sentence is the Senate Report itself, the 1982</p> <p>25 Senate Report?</p>	Page 85	<p>1 A. I do.</p> <p>2 Q. Again, I believe you testified to this earlier, but</p> <p>3 I just want to make sure. What is the reason it's</p> <p>4 an N/A there?</p> <p>5 A. There's not a sufficient sample size with the</p> <p>6 current data to conduct a statistical test. So I</p> <p>7 wasn't able to. And if you can't conduct a</p> <p>8 statistical test, you, of course, don't get any</p> <p>9 outputs, the P value being one of them.</p> <p>10 Q. Do you have any other opinions that you plan to</p> <p>11 assert in this case that we haven't talked about</p> <p>12 today and that are not in your report that we are</p> <p>13 looking at right now?</p> <p>14 A. All of my opinions are contained in the report.</p> <p>15 MR. PHILLIPS: Go off the record for</p> <p>16 just a few moments. I'm going to review my</p> <p>17 notes. And we may be done, but just give me</p> <p>18 a few minutes.</p> <p>19 MR. CARTER: Do we just want to take a</p> <p>20 five-minute break or something?</p> <p>21 MR. PHILLIPS: That works for me.</p> <p>22 (A recess was had from 11:21 a.m. until</p> <p>23 11:26 a.m.)</p> <p>24 MR. PHILLIPS: Dr. McCool, I think</p> <p>25 you're on mute. Thank you, Dr. McCool. I</p>

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1 do not have any further questions for you.  
 2 You're -- I'm sorry. Mr. Carter may. And  
 3 then, if he does, I may have some  
 4 follow-ups. But for the moment, I'm  
 5 finished.  
 6 MR. CARTER: And I have no questions.  
 7 Thank you.  
 8 MR. PHILLIPS: Thank you.  
 9 Thank you, Dr. McCool, for your -- hey,  
 10 your first deposition. So, Dr. McCool, you  
 11 have a right to read your deposition and  
 12 sign that it's accurate and correct, or you  
 13 can waive that right.  
 14 MR. CARTER: We'll read and sign.  
 15 MR. PHILLIPS: Yes, I certainly would  
 16 order the copy.  
 17 (The foregoing proceeding concluded at  
 18 11:27 a.m.)  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 STATE OF MINNESOTA )  
 2 ) ss  
 3 COUNTY OF ANOKA )  
 4 BE IT KNOWN THAT I, Christina M. De Grande,  
 5 the undersigned professional stenographic court  
 6 reporter took the proceedings on February 16, 2023.  
 7 I do hereby certify that I was then and there a  
 8 notary public in and for the County of Anoka, State  
 9 of Minnesota, and by virtue thereof, I am duly  
 10 authorized to administer an oath;  
 11 That before testifying, the witnesses were  
 12 first duly sworn under oath by me to testify to the  
 13 whole truth relative to the cause under  
 14 consideration.  
 15 The foregoing 86 pages are a true and accurate  
 16 copy of my original stenotype notes as transcribed  
 17 by computer-aided transcription taken relative to  
 18 the aforementioned matter.  
 19 I am not related to any of the parties hereto  
 20 nor am I interested in the outcome of the action.  
 21 WITNESS MY HAND AND SEAL this 27th day of  
 22 February, 2023.  
 23   
 24 CHRISTINA M. DE GRANDE  
 25 Professional Stenographic Court Reporter  
 And Notary Public  
 Commission expires January 31, 2027

Page 88

1 Veritext Legal Solutions  
 2 1100 Superior Ave  
 3 Suite 1820  
 4 Cleveland, Ohio 44114  
 5 Phone: 216-523-1313  
 6  
 7 March 1, 2023  
 8 To: Michael S. Carter  
 9  
 10 Case Name: Turtle Mountain Band Of Chippewa Indians, et al. v. Howe,  
 11 Michael, In His Official Capacity As Secretary Of State Of North  
 12 Dakota  
 13 Veritext Reference Number: 5755463  
 14 Witness: Weston McCool Deposition Date: 2/16/2023  
 15  
 16 Dear Sir/Madam:  
 17 Enclosed please find a deposition transcript. Please have the witness  
 18 review the transcript and note any changes or corrections on the  
 19 included errata sheet, indicating the page, line number, change, and  
 20 the reason for the change. Have the witness' signature notarized and  
 21 forward the completed page(s) back to us at the Production address  
 22 shown  
 23 above, or email to production-midwest@veritext.com.  
 24 If the errata is not returned within thirty days of your receipt of  
 25 this letter, the reading and signing will be deemed waived.  
 Sincerely,  
 Production Department  
 NO NOTARY REQUIRED IN CA

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1 DEPOSITION REVIEW  
 2 CERTIFICATION OF WITNESS  
 3 ASSIGNMENT REFERENCE NO: 5755463  
 4 CASE NAME: Turtle Mountain Band Of Chippewa Indians, et al.  
 5 v. Howe, Michael, In His Official Capacity As Secretary Of State Of  
 6 North Dakota  
 7 DATE OF DEPOSITION: 2/16/2023  
 8 WITNESS' NAME: Weston McCool  
 9 In accordance with the Rules of Civil  
 10 Procedure, I have read the entire transcript of  
 11 my testimony or it has been read to me.  
 12 I have made no changes to the testimony  
 13 as transcribed by the court reporter.  
 14  
 15 Date \_\_\_\_\_ Weston McCool  
 16 Sworn to and subscribed before me, a  
 17 Notary Public in and for the State and County,  
 18 the referenced witness did personally appear  
 19 and acknowledge that:  
 20 They have read the transcript;  
 21 They signed the foregoing Sworn  
 22 Statement; and  
 23 Their execution of this Statement is of  
 24 their free act and deed.  
 25 I have affixed my name and official seal  
 this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.  
 \_\_\_\_\_  
 Notary Public  
 \_\_\_\_\_  
 Commission Expiration Date

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1 DEPOSITION REVIEW  
 CERTIFICATION OF WITNESS

2 ASSIGNMENT REFERENCE NO: 5755463

3 CASE NAME: Turtle Mountain Band Of Chippewa Indians, et al.  
 v. Howe, Michael, In His Official Capacity As Secretary Of State Of  
 North Dakota

4 DATE OF DEPOSITION: 2/16/2023

5 WITNESS' NAME: Weston McCool

6 In accordance with the Rules of Civil  
 Procedure, I have read the entire transcript of  
 my testimony or it has been read to me.

7 I have listed my changes on the attached  
 Errata Sheet, listing page and line numbers as  
 8 well as the reason(s) for the change(s).

9 I request that these changes be entered  
 as part of the record of my testimony.

10

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

13 \_\_\_\_\_  
 Date Weston McCool

14 Sworn to and subscribed before me, a  
 15 Notary Public in and for the State and County,  
 the referenced witness did personally appear  
 and acknowledge that:

16 They have read the transcript;  
 17 They have listed all of their corrections  
 18 in the appended Errata Sheet;  
 19 They signed the foregoing Sworn  
 Statement; and  
 20 Their execution of this Statement is of  
 their free act and deed.

21 I have affixed my name and official seal  
 22 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

23 \_\_\_\_\_  
 Notary Public

24 \_\_\_\_\_  
 25 Commission Expiration Date

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 VERITEXT LEGAL SOLUTIONS MIDWEST

2 ASSIGNMENT NO: 5755463

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20 Date Weston McCool

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_

22 DAY OF \_\_\_\_\_, 20\_\_\_\_.

23 \_\_\_\_\_  
 Notary Public

24 \_\_\_\_\_  
 25 Commission Expiration Date

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

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

(A) to review the transcript or recording; and

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

(2) Changes Indicated in the Officer's Certificate.

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

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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

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

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).



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

Turtle Mountain Band of Chippewa  
Indians, *et al.*,

Plaintiffs,

v.

Alvin Jaeger, in his official capacity as  
Secretary of State of North Dakota,

Defendant.

Case No. 3:22-cv-00022-PDW-ARS

**PLAINTIFFS' RULE 26(a) INITIAL  
DISCLOSURES**

Pursuant to Fed. R. Civ. P. 26(a)(1), the Parties' agreed scheduling order, and this Court's Order of June 1, 2022 (ECF No. 27), Plaintiffs the Turtle Mountain Band of Chippewa Indians, The Spirit Lake Tribe, Wesley Davis, Zachery S. King, and Collette Brown make the following initial disclosures. These disclosures are based upon information reasonably available to Plaintiffs at this time. Plaintiffs anticipate that discovery and other pretrial preparation will lead to additional, relevant information, and reserve the right to supplement these disclosures as appropriate and necessary to the comply with applicable rules.

**INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION**

Plaintiffs disclose the following individuals as likely to have discoverable information that they may use to support their claims or defenses in this case. Any expert

**Exhibit 2**

witnesses will be disclosed in accordance with the Scheduling Order and Fed. R. Civ. P. 26(a)(2).

NAME / CONTACT INFORMATION	SUBJECTS OF INFORMATION
Representative Bill Devlin Phone: 701-524-2303 Mailing Address: P.O. Box 505, Finley, ND 58230-0505	Served as Chairman on the Legislative Redistricting Committee.
Senator Ray Holmberg (Resigned)	Served as a Vice Chairman on the Legislative Redistricting Committee.
Representative Larry Bellew Phone: 701-852-5786 Mailing Address: 812 Bel Air Place, Minot, ND 58703-1751	Served as a Member on the Legislative Redistricting Committee.
Representative Joshua A. Boschee Phone: 701-367-3513 Mailing Address: 517 First Street North, Fargo, ND 58102-4540	Served as a Member on the Legislative Redistricting Committee, and served as Vice Chairman on the Tribal and State Relations Committee.
Representative Craig Headland Phone: 701-489-3184 Mailing Address: 4950 92 <sup>nd</sup> Avenue SE, Montpelier, ND 58472-9630	Served as a Member on the Legislative Redistricting Committee.
Representative Mike Lefor Phone: 701-290-0539 Mailing Address: P.O. Box 564, Dickinson, ND 58602-0564	Served as a Member on the Legislative Redistricting Committee.
Representative David Monson Phone: 701-496-3394 Mailing Address: P.O. Box 8, Osnabrock, ND 58269-0008	Served as a Member on the Legislative Redistricting Committee.
Representative Mike Nathe Phone: 701-250-0645 Mailing Address: 1899 Bonn Boulevard, Bismarck, ND 58504-7019	Served as a Member on the Legislative Redistricting Committee.
Representative Austen Schauer Phone: 701-730-4474 Mailing Address: 110 West Beaton Drive, West Fargo, ND 58078-2657	Served as a Member on the Legislative Redistricting Committee.

Senator Brad Bekkedahl Phone: 701-570-1879 Mailing Address: P.O. Box 2443, Williston, ND 58802-2443	Served as a Member on the Legislative Redistricting Committee.
Senator Randy A. Burckhard Phone: 701-838-1509 Mailing Address: 1837 15 <sup>th</sup> Street SW, Minot, ND 58701-6158	Served as a Member on the Legislative Redistricting Committee.
Senator Robert Erbele Phone: 701-378-2272 Mailing Address: 6512 51 <sup>st</sup> Avenue SE, Lehr, ND 58460-9149	Served as a Member on the Legislative Redistricting Committee.
Senator Jerry Klein Phone: 701-547-3517 Mailing Address: P.O. Box 265, Fessenden, ND 58438-0265	Served as a Member on the Legislative Redistricting Committee.
Senator Erin Oban (Resigned)	Served as a Member on the Legislative Redistricting Committee.
Senator Nicole Poolman Phone: 701-250-9195 Mailing Address: 3609 Bogey Drive, Bismarck, ND 58503-9195	Served as a Member on the Legislative Redistricting Committee.
Senator Ronald Sorvaag Phone: 701-361-2156 Mailing Address: 3402 Birdie Street North, Fargo, ND 58102-1201	Served as a Member on the Legislative Redistricting Committee.
Representative Marvin E. Nelson Phone: 701-550-9731 Mailing Address: P.O. Box 577, Rolla, ND 58367-0577	Member of the 67 <sup>th</sup> Legislative Assembly who testified before the Redistricting Committee.
Senator Richard Marcellais Phone: 701-477-8985 Address: 301 Laite Loop NE, Belcourt, ND 58316-3877	Member of the 67 <sup>th</sup> Legislative Assembly who testified before the Redistricting Committee.
Secretary of State Alvin Jaeger Can be contacted through defense counsel.	The North Dakota redistricting process and of North Dakota election administration.
Chairman Jaime Azure Can be contacted through Plaintiffs' counsel.	The injury the Turtle Mountain Band of Chippewa Indians and its members have suffered by the State's use of a redistricting plan that dilutes their vote.

Chairman Douglas Yankton, Sr. Can be contacted through Plaintiffs' counsel.	The injury the Spirit Lake Tribe and its members have suffered by the State's use of a redistricting plan that dilutes their vote.
Wesley Davis Can be contacted through Plaintiffs' counsel.	The injury he has suffered as a voter by the State's use of a redistricting plan that dilutes his vote.
Zachery S. King Can be contacted through Plaintiffs' counsel.	The injury he has suffered as a voter by the State's use of a redistricting plan that dilutes his vote.
Collette Brown Can be contacted through Plaintiffs' counsel.	The injury she has suffered as a voter by the State's use of a redistricting plan that dilutes her vote.
All persons named in defendant's initial disclosures.	

**DOCUMENTS, ESI, AND TANGIBLE THINGS IN PLAINTIFFS' POSSESSION, CUSTODY, OR CONTROL**

The following documents or categories of documents may be potentially used to support Plaintiffs' claims and defenses in this case.

- a. Publicly available legislative history of the North Dakota Legislative Redistricting Committee, including video and audio recordings of Redistricting Committee meetings.
- b. Publicly available legislative history of the North Dakota 67<sup>th</sup> General Assembly a related to redistricting, including video and audio recordings related to redistricting.
- c. Publicly available legislative history of the Tribal and State Relations Committee, including video and audio recordings of committee meetings.

- d. Publicly available North Dakota voting and election data.
- e. All documents attached to any pleadings filed in this matter.
- f. All documents named or described in defendant's initial disclosures.

#### **COMPUTATION OF DAMAGES**

Not applicable.

#### **INSURANCE POLICIES**

Not applicable.

Dated this 23rd day of June, 2022.

/s/ Michael S. Carter

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*Attorney for Spirit Lake Tribe and Turtle  
Mountain Band of Chippewa Indians*



**CERTIFICATE OF SERVICE**

I hereby certify that on June 23, 2022, I served a true and correct copy of **PLAINTIFFS'**

**RULE 26(a) INITIAL DISCLOSURES** via email to the following people:

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

Turtle Mountain Band of Chippewa Indians,  
*et al.*,

Plaintiffs,

v.

Alvin Jaeger, in his official capacity as  
Secretary of State of North Dakota,

Defendant.

Case No. 3:22-cv-00022-PDW-ARS

**PLAINTIFFS' SECOND SET OF  
SUPPLEMENTAL DISCLOSURES**

Pursuant to Fed. R. Civ. P. 26(a)(1), the Parties' agreed scheduling order, and this Court's Order of June 1, 2022 (ECF No. 27), Plaintiffs the Turtle Mountain Band of Chippewa Indians, The Spirit Lake Tribe, Wesley Davis, Zachery S. King, and Collette Brown make the following supplemental disclosures. These disclosures are based upon information reasonably available to Plaintiffs at this time. Plaintiffs anticipate that discovery and other pretrial preparation will lead to additional, relevant information, and reserve the right to supplement these disclosures as appropriate and necessary to the comply with applicable rules.

**INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION**

In addition to individuals previously disclosed, Plaintiff discloses the following individuals likely to have discoverable information—along with the subjects of that information—whom the disclosing party may use to support their claims or defenses, unless it would be used solely for impeachment.

**Exhibit 3**

NAME / CONTACT INFORMATION	SUBJECTS OF INFORMATION
Lonna Jackson Street Can be contacted through Plaintiffs' counsel	Ms. Jackson Street is the newly elected chair of the Spirit Lake Nation and has information regarding the Tribe, its voters and local election conditions, and the needs and interests of the Tribe and Tribal residents with respect to the state legislature.

Dated this 10th day of May, 2023.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 10, 2023, I served a true and correct copy of the foregoing  
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