

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

CHARLES WALEN, an individual, et al.,

Plaintiffs,

v.

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

Defendants,

and

MANDAN, HIDATSA AND ARIKARA NATION, et
al.,

Intervenor-
Defendants.

Civil No. 1:22-cv-00031

DECLARATION OF MOLLY E. DANAHY

Pursuant to 28 U.S.C. § 1746, I, Molly Elizabeth Danahy, declare as follows:

1. I am an attorney for the Campaign Legal Center, duly licensed to practice law in the state of Maryland and the District of Columbia and admitted to practice before this Court.

2. Together with co-counsel, I represent Intervenor-Defendants the Mandan, Hidatsa, and Arikara Nation, Lisa Finley-DeVille, and Cesareo Alvarez.

3. I have personal knowledge of the facts stated herein.

4. Attached hereto as Exhibit 1 is a true and correct copy of the Legislative Redistricting—Background Memorandum (“Redistricting History Memorandum,”) presented to the Redistricting Committee in August 2021, which can be found in the public record at:

<https://ndlegis.gov/files/resource/committee-memorandum/23.9105.01000.pdf>.

5. Attached hereto as Exhibit 2 is a true and correct copy of the Legislative Council Presentation on Redistricting dated August 2021 (“Legislative Council Presentation, Aug. 2021), which can be found in the public record at: https://www.ndlegis.gov/files/committees/67-2021/23_5024_03000appendixc.pdf.

6. Attached hereto as Exhibit 3 is a true and correct copy of the Presentation to the Redistricting Committee by the National Conference of State Legislators (“NCSL Presentation”), which can be found in the public record at: https://www.ndlegis.gov/files/committees/67-2021/23_5024_03000appendixb.pdf.

7. Attached hereto as Exhibit 4 is a true and correct copy of the Legislative Council Presentation to the Redistricting Committee dated September 2021 (“Legislative Council Presentation, Sept. 2021”), which can be found in the public record at: https://www.ndlegis.gov/files/committees/67-2021/23_5062_02000_1010presentation.pdf.

8. Attached hereto as Exhibit 5 is a true and correct copy of the Redistricting Committee final report regarding redistricting (“Final Redistricting Committee Report”), which can be found in the public record at: <https://ndlegis.gov/files/resource/67-2021/legislative-management-final-reports/2021ssfinalreport.pdf>.

9. Attached hereto as Exhibit 9 is a true and correct copy of the 2020 general election results for the District 4 State Senate race (“2020 Election Results”), which can be found in the public record at: <https://results.sos.nd.gov/ResultsSW.aspx?text=Race&type=LG&map=DIST&eid=313>.

10. Attached hereto as Exhibit 11 is a true and correct copy of the 2016 general election results for the District 4 State House race (“2016 Election results”), which can be found in the

public record at:

<https://results.sos.nd.gov/ResultsSW.aspx?text=Race&type=LG&map=DIST&eid=292>.

11. Attached hereto as Exhibit 12 is a true and correct copy of testimony submitted by MHA Chairman Fox to the Redistricting Committee on September 23, 2021 (“Fox Testimony, Sept. 23, 2021”), which can be found in the public record at: https://www.ndlegis.gov/files/committees/67-2021/23_5062_03000appendixe.pdf.

12. Attached hereto as Exhibit 13 is a true and correct copy of the transcription of the August 31, 2021 meeting of the Tribal and State Relations Committee (“Aug. 31, 2021 Tribal and State Relations Comm Hr’g Tr.”), produced by the State Defendants in this matter. A video recording of this meeting can be found in the public record at: <https://video.ndlegis.gov/en/PowerBrowser/PowerBrowserV2/20210831/-1/21582>.

13. Attached hereto as Exhibit 14 is a true and correct copy of testimony submitted by MHA Chairman Fox to the Redistricting Committee on September 29, 2021 (“Fox Testimony, Sept. 29, 2021”), which can be found in the public record at: www.ndlegis.gov/files/committees/67-2021/23_5063_03000appendixd.pdf.

14. Attached hereto as Exhibit 15 is a true and correct copy of testimony submitted by Lisa Finley-DeVille to the Redistricting Committee (“Finley-DeVille Testimony”), which can be found in the public record at: https://www.ndlegis.gov/files/committees/67-2021/23_5063_03000appendixb.pdf.

15. Attached hereto as Exhibit 16 is a true and correct copy of testimony submitted by North Dakota Native Votes Director Nicole Donaghy to the Redistricting Committee (“Donaghy Testimony”), which can be found in the public record at: https://www.ndlegis.gov/files/committees/67-2021/23_5061_03000appendixe.pdf.

16. Attached hereto as Exhibit 17 is a true and correct copy of testimony submitted by North Dakota Voters First Director Rick Gion to the Redistricting Committee (“Gion Testimony”), which can be found in the public record at: https://www.ndlegis.gov/files/committees/67-2021/23_5024_03000appendixf.pdf.

17. Attached hereto as Exhibit 20 is a true and correct copy of the transcription of the deposition of Plaintiff Charles Walen (“Walen Dep.”), taken in this matter on December 7, 2022.

18. Attached hereto as Exhibit 21 is a true and correct copy of the transcription of the deposition of Plaintiff Paul Henderson (“Henderson Dep.”), taken in this matter on December 7, 2022.

19. Attached hereto as Exhibit 22 is a true and correct copy of a partial transcription of the preliminary injunction hearing held in this matter on May 5, 2022 (“Prelim. Inj. Hearing Tr. Vol. 1”).

20. Attached hereto as Exhibit 23 is a true and correct copy of a partial transcription of the preliminary injunction hearing held in this matter on May 5, 2022 (“Prelim. Inj. Hearing Tr. Vol. 2”).

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Executed this 28th day of February, 2023 in Baltimore, MD.

/s/ Molly E. Danahy
Molly E. Danahy

Senior Legal Counsel, Litigation
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005
campaignlegalcenter.org
Tel: 202-736-2200
mdanahy@campaignlegalcenter.org

EXHIBIT 1



North Dakota Legislative Council

Prepared for the Redistricting Committee
LC# 23.9105.01000
August 2021

LEGISLATIVE REDISTRICTING - BACKGROUND MEMORANDUM

[House Bill No. 1397 \(2021\)](#) requires the Chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2022 primary election. The bill provides:

1. The committee must consist of an equal number of members from the Senate and the House of Representatives appointed by the Chairman of the Legislative Management.
2. The committee shall ensure any legislative redistricting plan submitted to the Legislative Assembly for consideration must be of compact and contiguous territory and conform to all constitutional requirements with respect to population equality. The committee may adopt additional constitutionally recognized redistricting guidelines and principles to implement in preparing a legislative redistricting plan for submission to the Legislative Assembly.
3. The committee shall submit a redistricting plan and legislation to implement the plan to the Legislative Management by November 30, 2021.
4. A draft of the legislative redistricting plan created by the Legislative Council or a member of the Legislative Assembly is an exempt record as defined in North Dakota Century Code Section 44-04-17.1 until presented or distributed at a meeting of the Legislative Management, a Legislative Management committee, or the Legislative Assembly, at which time the presented or distributed draft is an open record. If possible, the presented or distributed draft must be made accessible to the public on the legislative branch website such as through the use of hyperlinks in the online meeting agenda. Any version of a redistricting plan other than the version presented or distributed at a meeting of the Legislative Management, a Legislative Management committee, or the Legislative Assembly is an exempt record.
5. The Chairman of the Legislative Management shall request the Governor to call a special session of the Legislative Assembly pursuant to Section 7 of Article V of the Constitution of North Dakota to allow the Legislative Assembly to adopt a redistricting plan to be implemented in time for use in the 2022 primary election and to address any other issue that may be necessary.

REDISTRICTING IN NORTH DAKOTA North Dakota Law

Constitutional Provisions

Section 1 of Article IV of the Constitution of North Dakota provides the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members." Section 2 of Article IV requires the Legislative Assembly to "fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." The section provides districts ascertained after the 1990 federal decennial census must "continue until the adjournment of the first regular session after each federal decennial census, or until changed by law."

Section 2 further requires the Legislative Assembly to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates." This section requires the apportionment of one senator and at least two representatives to each senatorial district. This section also provides that two senatorial districts may be combined when a single-member senatorial district includes a federal facility or installation containing over two-thirds of the population of a single-member senatorial district and that elections may be at large or from subdistricts.

Section 3 of Article IV requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

Statutory Provisions

In addition to the constitutional requirements, Section 54-03-01.5 requires a legislative redistricting plan based on any census taken after 1999 must provide that the Senate consist of 47 members and the House consist of 94 members. The plan must ensure legislative districts be as nearly equal in population as is practicable and population deviation from district to district be kept at a minimum. Additionally, the total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

Sections 54-03-01.8 and 54-03-01.10 provided for the staggering of Senate and House terms after redistricting in 2001. Section 54-03-01.8, which addressed the staggering of Senate terms, was found to be, in part, an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years. House Bill No. 1473 (2011) repealed Sections 54-03-01.8 and 54-03-01.10 and created a new section regarding the staggering of terms. Section 54-03-01.13 provides senators and representatives from even-numbered districts must be elected in 2012 for 4-year terms; senators and representatives from odd-numbered districts must be elected in 2014 for 4-year terms, except the senator and two representatives from District 7 must be elected in 2012 for a term of 2 years; the term of office of a member of the Legislative Assembly elected in an odd-numbered district in 2010 for a term of 4 years and who as a result of legislative redistricting is placed in an even-numbered district terminates December 1, 2012, subject to certain change in residency exceptions; the term of office of a member of the Legislative Assembly in an odd-numbered district with new geographic area that was not in that member's district for the 2010 election and which new geographic area has a 2010 population that is more than 25 percent of the ideal district population terminates on December 1, 2012; and a vacancy caused in an odd-numbered district as a result of legislative redistricting must be filled at the 2012 general election by electing a member to a 2-year term of office.

Section 16.1-01-02.2 pertains to procedures regarding special elections. As a result of concerns regarding the timetable for calling a special election to vote on a referral of a redistricting plan, the Legislative Assembly amended Section 16.1-01-02.2 during the November 1991 special session. The amendment provided "notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan." This 30- to 50-day timetable was later amended to 90 days in 2007.

Section 16.1-03-17 provides if redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, the political parties in the newly established precincts and districts shall reorganize as closely as possible in conformance with Chapter 16.1-03 to assure compliance with primary election filing deadlines.

Redistricting History in North Dakota

1931-62

Despite the requirement in the Constitution of North Dakota that the state be redistricted after each census, the Legislative Assembly did not redistrict itself between 1931 and 1963. At the time, the Constitution of North Dakota provided:

1. The Legislative Assembly must apportion itself after each federal decennial census; and
2. If the Legislative Assembly failed in its apportionment duty, a group of designated officials was responsible for apportionment.

Because the 1961 Legislative Assembly did not apportion itself following the 1960 Census, the apportionment group (required by the constitution to be the Chief Justice of the Supreme Court, the Attorney General, the Secretary of State, and the Majority and Minority Leaders of the House of Representatives) issued a plan, which was challenged in court. In *State ex rel. Lien v. Sathre*, 113 N.W.2d 679 (1962), the North Dakota Supreme Court determined the plan was unconstitutional and the 1931 plan continued to be law.

1963

In 1963 the Legislative Assembly passed a redistricting plan that was heard by the Senate and House Political Subdivisions Committees. The 1963 plan and Sections 26, 29, and 35 of Article II of the Constitution of North Dakota were challenged in federal district court and found unconstitutional as violating the equal protection clause in *Paulson v. Meier*, 232 F.Supp. 183 (1964). The 1931 plan also was held invalid. Thus, there was no constitutionally valid legislative redistricting law in existence at that time. The court concluded adequate time was not available with which to formulate a proper plan for the 1964 election and the Legislative Assembly should promptly devise a constitutional plan.

1965

A conference committee during the 1965 legislative session consisting of the Majority and Minority Leaders of each house and the Chairmen of the State and Federal Government Committees produced a redistricting plan. In *Paulson v. Meier*, 246 F.Supp. 36 (1965), the federal district court found the 1965 redistricting plan unconstitutional. The court reviewed each plan introduced during the 1965 legislative session and specifically focused on a plan prepared for the Legislative Research Committee (predecessor to the Legislative Council and the Legislative Management) by two consultants hired by the committee to devise a redistricting plan. That plan had been approved by the interim Constitutional Revision Committee and the Legislative Research Committee and was submitted to the Legislative Assembly in 1965. The court slightly modified that plan and adopted it as the plan for North Dakota. The plan contained five multimember senatorial districts, violated county lines in 12 instances, and had 25 of 39 districts within 5 percent of the average population, four districts slightly over 5 percent, and two districts exceeding 9 percent.

1971

In 1971 an original proceeding was initiated in the North Dakota Supreme Court challenging the right of senators from multimember districts to hold office. The petitioners argued the multimembership violated Section 29 of Article II of the Constitution of North Dakota, which provided each senatorial district "shall be represented by one senator and no more." The court held Section 29 was unconstitutional as a violation of the equal protection clause of the United States Constitution and multimember districts were permissible. *State ex rel. Stockman v. Anderson*, 184 N.W.2d 53 (1971).

In 1971 the Legislative Assembly failed to redistrict itself after the 1970 Census and an action was brought in federal district court which requested the court order redistricting and declare the 1965 plan invalid. The court entered an order to the effect the existing plan was unconstitutional, and the court would issue a plan. The court appointed three special masters to formulate a plan and adopted a plan submitted by Mr. Richard Dobson. The "Dobson" plan was approved for the 1972 election only. The court recognized weaknesses in the plan, including substantial population variances and a continuation of multimember districts.

1973-75

In 1973 the Legislative Assembly passed a redistricting plan developed by the Legislative Council's interim Committee on Reapportionment, which was appointed by the Legislative Council Chairman and consisted of three senators, three representatives, and five citizen members. The plan was vetoed by the Governor, but the Legislative Assembly overrode the veto. The plan had a population variance of 6.8 percent and had five multimember senatorial districts. The plan was referred and was defeated at a special election held on December 4, 1973.

In 1974 the federal district court in *Chapman v. Meier*, 372 F.Supp. 371 (1974) made the "Dobson" plan permanent. However, on appeal, the United States Supreme Court ruled the "Dobson" plan unconstitutional in *Chapman v. Meier*, 420 U.S. 1 (1975).

In 1975 the Legislative Assembly adopted the "Dobson" plan but modified it by splitting multimember senatorial districts into subdistricts. The plan was proposed by individual legislators and was heard by the Joint Reapportionment Committee, consisting of five senators and five representatives. The plan was challenged in federal district court and was found unconstitutional. In *Chapman v. Meier*, 407 F.Supp. 649 (1975), the court held the plan violated the equal protection clause because of the total population variance of 20 percent. The court appointed a special master to develop a plan, and the court adopted that plan.

1981

In 1981 the Legislative Assembly passed House Concurrent Resolution No. 3061, which directed the Legislative Council to study and develop a legislative redistricting plan. The Legislative Council Chairman appointed a 12-member interim Reapportionment Committee consisting of seven representatives and five senators. The chairman directed the committee to study and select one or more redistricting plans for consideration by the 1981 reconvened Legislative Assembly. The committee completed its work on October 6, 1981, and submitted its report to the Legislative Council at a meeting of the Council in October 1981.

The committee instructed its consultant, Mr. Floyd Hickok, to develop a plan for the committee based upon the following criteria:

1. The plan should have 53 districts.
2. The plan should retain as many districts in their present form as possible.
3. No district could cross the Missouri River.
4. The population variance should be kept below 10 percent.

Mr. Hickok presented a report to the committee in which the state was divided into 11 blocks. Each block corresponded to a group of existing districts with only minor boundary changes. The report presented a number of alternatives for dividing most blocks. There were 27,468 different possible combinations among the alternatives presented.

The bill draft recommended by the interim committee incorporated parts of Mr. Hickok's plans and many of the plans presented as alternatives to the committee. The plan was introduced in a reconvened session of the Legislative Assembly in November 1981 and was heard by the Joint Reapportionment Committee.

The committee considered a total of 12 legislative redistricting bills. The reconvened session adopted a redistricting plan that consisted of 53 senatorial districts. The districts containing the Grand Forks and Minot Air Force Bases were combined with districts in those cities, and each elected two senators and four representatives at large.

1991-95

In 1991 the Legislative Assembly adopted House Concurrent Resolution No. 3026, which directed a study of legislative apportionment and development of legislative reapportionment plans for use in the 1992 primary election. The resolution encouraged the Legislative Council to use the following criteria to develop a plan or plans:

1. Legislative districts and subdistricts had to be compact and of contiguous territory except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
2. Legislative districts could have a population variance from the largest to the smallest in population not to exceed 9 percent of the population of the ideal district except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
3. No legislative district could cross the Missouri River.
4. Senators elected in 1990 could finish their terms, except in those districts in which over 20 percent of the qualified electors were not eligible to vote in that district in 1990, senators had to stand for reelection in 1992.
5. The plan or plans developed were to contain options for the creation of House subdistricts in any Senate district that exceeds 3,000 square miles.

The Legislative Council established an interim Legislative Redistricting and Elections Committee, which undertook the legislative redistricting study. The committee consisted of eight senators and eight representatives. The Legislative Council contracted with Mr. Hickok to provide computer-assisted services to the committee.

After the committee held meetings in several cities around the state, the committee requested the preparation of plans for 49, 50, and 53 districts based upon these guidelines:

1. The plans could not provide for a population variance over 10 percent.
2. The plans could include districts that cross the Missouri River so the Fort Berthold Reservation would be included within one district.
3. The plans had to provide alternatives for splitting the Grand Forks Air Force Base and the Minot Air Force Base into more than one district and alternatives that would allow the bases to be combined with other contiguous districts.

The interim committee recommended two alternative bills to the Legislative Council at a special meeting held in October 1991. Both of the bills included 49 districts. Senate Bill No. 2597 (1991) split the two Air Force bases so neither base would be included with another district to form a multisenate district. Senate Bill No. 2598 (1991) placed the Minot Air Force Base entirely within one district so the base district would be combined with another district.

In a special session held November 4-8, 1991, the Legislative Assembly adopted Senate Bill No. 2597 with some amendments with respect to district boundaries. The bill was heard by the Joint Legislative Redistricting Committee. The bill also was amended to provide any senator from a district in which there was another incumbent senator as a result of legislative redistricting had to be elected in 1992 for a term of 4 years, to provide the senator from a new district created in Fargo had to be elected in 1992 for a term of 2 years, and to include an effective date

of December 1, 1991. In addition, the bill was amended to include a directive to the Legislative Council to assign to the committee the responsibility to develop a plan for subdistricts for the House of Representatives.

The Legislative Council again contracted with Mr. Hickok to provide services for the subdistrict study. After conducting the subdistrict study, the interim committee recommended House Bill No. 1050 (1993) to establish House subdistricts within each Senate district except in Districts 18, 19, 38, and 40, which are the districts that include portions of the Air Force bases. In 1993 the Legislative Assembly did not adopt the subdistricting plan.

In 1995 the Legislative Assembly adopted House Bill No. 1385, which made final boundary changes to four districts, including placing a small portion of the Fort Berthold Reservation in District 33.

2001

In 2001, the Legislative Assembly budgeted \$200,000 for a special session for redistricting and adopted House Concurrent Resolution No. 3003, which provided for a study and the development of a legislative redistricting plan or plans for use in the 2002 primary election. The Legislative Council appointed an interim Legislative Redistricting Committee consisting of 15 members to conduct the study. The Legislative Redistricting Committee began its work on July 9, 2001, and submitted its final report to the Legislative Council on November 6, 2001.

The Legislative Council purchased two personal computers and two licenses for redistricting software for use by each political faction represented on the committee. Because committee members generally agreed each caucus should have access to a computer with the redistricting software, the committee requested the Legislative Council to purchase two additional computers and two additional redistricting software licenses. In addition, each caucus was provided a color printer.

The Legislative Redistricting Committee considered redistricting plans based on 45, 47, 49, 51, and 52 districts. The committee determined the various plans should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible.
3. Provide for a population variance of under 10 percent.

The interim committee recommended Senate Bill No. 2456 (2001), which established 47 legislative districts. The bill repealed the existing legislative redistricting plan, required the Secretary of State to modify 2002 primary election deadlines and procedures if necessary, and provided an effective date of December 7, 2001. The bill also addressed the staggering of terms in even-numbered and odd-numbered districts.

Under the 47-district plan, the ideal district size was 13,664. Under the plan recommended by the committee, the largest district had a population of 14,249 and the smallest district had a population of 13,053. Thus, the largest district was 4.28 percent over the ideal district size and the smallest district was 4.47 percent below the ideal district size, providing for an overall range of 8.75 percent.

In a special session held November 26-30, 2001, the Legislative Assembly adopted the 47-district plan included in Senate Bill No. 2456 (2001) with amendments, most notably amendments to the provisions relating to the staggering of terms. The bill was heard by the Joint Legislative Redistricting Committee. The term-staggering provisions provided a senator and a representative from an odd-numbered district must be elected in 2002 for a term of 4 years and a senator and a representative from an even-numbered district must be elected in 2004 for a term of 4 years. The bill further included provisions to address situations in which multiple incumbents were placed within the same district and in which there were fewer incumbents than the number of seats available. In *Kelsh v. Jaeger*, 641 N.W.2d 100 (2002), the North Dakota Supreme Court found a portion of the staggering provisions to be an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years.

2011

In 2011, the Legislative Assembly passed House Bill No. 1267 (2011), which directed the Chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2012 primary election. The Legislative Redistricting Committee consisted of 16 members and held its first meeting on June 16, 2011. The committee concluded its work on October 12, 2011, and submitted its final report to the Legislative Management on November 3, 2011.

The Legislative Council purchased a personal computer and a license for the Maptitude for Redistricting software for use by each of the four caucuses represented on the committee. In addition, because there were significantly more members of the majority party caucuses on the committee, the Legislative Council purchased an additional computer and redistricting software license for the shared use of the members of those groups. A template of the existing legislative districts was provided in the redistricting software to use as a starting point in creating districts because the committee members generally agreed potential redistricting plans should be based upon the cores of existing districts.

The committee considered increasing the number of districts and received information regarding the estimated cost of a district based on a 77-day legislative session, which amounted to approximately \$1,190,170 for the decade. The committee elected to maintain a 47-district plan and determined the plan should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible and preserve the boundaries of the Indian reservations.
3. Provide for a population variance of 9 percent or less.

The committee recommended a bill to repeal the existing redistricting plan, establish 47 legislative districts, provide for the staggering of terms of members of the Legislative Assembly, and authorize the Secretary of State to modify primary election deadlines and procedures if any delays arose in implementing the redistricting plan. Under the 47-district plan recommended by the committee, the ideal district size was 14,310. The population of the largest district was 14,897, which was 4.10 percent over the ideal district size, and the population of the smallest district was 13,697, which was 4.28 percent below the ideal district size, providing for an overall range of 8.38 percent. The plan included 33 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Indian Reservation, and 3 counties that were split only because the counties included cities that were too large for one district.

The committee also recommended a bill draft to the Legislative Management which would have required each legislative district contain at least six precincts. The Legislative Management rejected the portion of the committee's report relating to this bill draft.

In a special session held November 7-11, 2011, the Legislative Assembly adopted the committee's 47-district plan included in House Bill No. 1473 (2011) with minor amendments to legislative district boundaries and a change in the effective date from December 1 to November 25, 2011. The bill was heard by the Joint Legislative Redistricting Committee and approved by the 62nd Legislative Assembly by a vote of 60 to 32 in the House and 33 to 14 in the Senate.

FEDERAL LAW

Before 1962, the courts followed a policy of nonintervention with respect to legislative redistricting. However, in 1962, the United States Supreme Court, in *Baker v. Carr*, 369 U.S. 186 (1962), determined the courts would provide relief in state legislative redistricting cases when there are constitutional violations.

Population Equality

In *Reynolds v. Sims*, 377 U.S. 533 (1964), the United States Supreme Court held the equal protection clause of the 14th Amendment to the United States Constitution requires states to establish legislative districts substantially equal in population. The Court also ruled both houses of a bicameral legislature must be apportioned on a population basis. Although the Court did not state what degree of population equality is required, it stated "what is marginally permissible in one state may be unsatisfactory in another depending upon the particular circumstances of the case."

The measure of population equality most commonly used by the courts is overall range. The overall range of a redistricting plan is the sum of the deviation from the ideal district population--the total state population divided by the number of districts--of the most and the least populous districts. In determining overall range, the plus and minus signs are disregarded, and the number is expressed as an absolute percentage.

In *Reynolds*, the United States Supreme Court recognized a distinction between congressional and legislative redistricting plans. That distinction was further emphasized in a 1973 Supreme Court decision, *Mahan v. Howell*, 410 U.S. 315 (1973). In that case, the Court upheld a Virginia legislative redistricting plan that had an overall range among House districts of approximately 16 percent. The Court stated broader latitude is afforded to the states under the equal protection clause in state legislative redistricting than in congressional redistricting in which population is

the sole criterion of constitutionality. In addition, the Court said the Virginia General Assembly's state constitutional authority to enact legislation dealing with political subdivisions justified the attempt to preserve political subdivision boundaries when drawing the boundaries for the House of Delegates.

A 10 percent standard of population equality among legislative districts was first addressed in two 1973 Supreme Court decisions--*Gaffney v. Cummings*, 412 U.S. 735 (1973), and *White v. Regester*, 412 U.S. 755 (1973). In those cases, the Court upheld plans creating house districts with overall ranges of 7.8 percent and 9.9 percent. The Court determined the overall ranges did not constitute a prima facie case of denial of equal protection. In *White*, the Court noted, "[v]ery likely larger differences between districts would not be tolerable without justification 'based on legitimate considerations incident to the effectuation of a rational state policy'."

Justice William J. Brennan's dissents in *Gaffney* and *White* argued the majority opinions established a 10 percent de minimus rule for state legislative district redistricting. He asserted the majority opinions provided states would be required to justify overall ranges of 10 percent or more. The Supreme Court adopted that 10 percent standard in later cases.

In *Chapman v. Meier*, 420 U.S. 1 (1975), the Supreme Court rejected the North Dakota Legislative Assembly redistricting plan with an overall range of approximately 20 percent. In that case, the Court said the plan needed special justification, but rejected the reasons given, which included an absence of a particular racial or political group whose power had been minimized by the plan, the sparse population of the state, the desire to maintain political boundaries, and the tradition of dividing the state along the Missouri River.

In *Conner v. Finch*, 431 U.S. 407 (1977), the Supreme Court rejected a Mississippi plan with a 16.5 percent overall range for the Senate and a 19.3 percent overall range for the House. However, in *Brown v. Thomson*, 462 U.S. 835 (1983), the Court determined adhering to county boundaries for legislative districts was not unconstitutional even though the overall range for the Wyoming House of Representatives was 89 percent.

In *Brown*, each county was allowed at least one representative. Wyoming has 23 counties and its legislative apportionment plan provided for 64 representatives. Because the challenge was limited to the allowance of a representative to the least populous county, the Supreme Court determined the grant of a representative to that county was not a significant cause of the population deviation that existed in Wyoming. The Court concluded the constitutional policy of ensuring each county had a representative, which had been in place since statehood, was supported by substantial and legitimate state concerns and had been followed without any taint of arbitrariness or discrimination. The Court found the policy contained no built-in biases favoring particular interests or geographical areas and that population equality was the sole other criterion used. The Court stated a legislative apportionment plan with an overall range of less than 10 percent is not sufficient to establish a prima facie case of invidious discrimination under the 14th Amendment which requires justification by the state. However, the Court further concluded a plan with larger disparities in population creates a prima facie case of discrimination and must be justified by the state.

In *Brown*, the Supreme Court indicated giving at least one representative to each county could result in total subversion of the equal protection principle in many states. That would be especially true in a state in which the number of counties is large and many counties are sparsely populated and the number of seats in the legislative body does not significantly exceed the number of counties.

In *Board of Estimate v. Morris*, 489 U.S. 688 (1989), the Supreme Court determined an overall range of 132 percent was not justified by New York City's proffered governmental interests. The city argued that because the Board of Estimate was structured to accommodate natural and political boundaries as well as local interests, the large departure from the one-person, one-vote ideal was essential to the successful government of the city--a regional entity. However, the Court held the city failed to sustain its burden of justifying the large deviation.

In a federal district court decision, *Quilter v. Voinovich*, 857 F.Supp. 579 (N.D. Ohio 1994), the court ruled a legislative district plan with an overall range of 13.81 percent for House districts and 10.54 percent for Senate districts did not violate the one-person, one-vote principle. The court recognized the state interest of preserving county boundaries, and the plan was not advanced arbitrarily. The decision came after the Supreme Court remanded the case to the district court. The Supreme Court stated in the previous district court decision, the district court mistakenly held total deviations in excess of 10 percent cannot be justified by a policy of preserving political subdivision boundaries. The Supreme Court directed the district court to follow the analysis used in *Brown*, which requires the court to determine whether the plan could reasonably be said to advance the state's policy, and if so, whether the population disparities exceed constitutional limits.

Although the federal courts generally have maintained a 10 percent standard, a legislative redistricting plan within the 10 percent range may not be safe from a constitutional challenge if the challenger is able to show discrimination in violation of the equal protection clause. In *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. Ga. 2004), a federal district court in Georgia found two legislative redistricting plans adopted by the Georgia General Assembly which had an overall range of 9.98 percent violated the "one person one vote" principle. Although legislators and redistricting staff indicated they prepared the plans under the belief that an overall range of 10 percent would be permissible without demonstrating a legitimate state interest, the district court found the objective of the plan, protection of certain geographic areas and protection of incumbents from one party did not justify the deviations from population inequality, particularly in light of the fact that plans with smaller deviations had been considered. With respect to protection of incumbents, the court indicated while it may be a legitimate state interest, in this case the protection was not accomplished in a consistent and neutral manner. Although protection of political subdivision boundaries is viewed as a traditional redistricting principle, the court held regional protectionism was not a legitimate justification for the deviations in the plans. The United States Supreme Court upheld the district court opinion in *Larios*.

In *Evenwel v. Abbot*, 136 S. Ct. 1120 (2016), the Texas Legislature redrew Senate districts based on total population, rather than registered voter population. Opponents of the redistricting plan argued the use of total population, rather than voter population, gave voters in districts with a large immigrant population a disproportionately weighted vote compared to voters in districts with a small immigrant population. The Supreme Court held states may, but are not required to, use total population when drawing districts to comply with the one-person, one-vote principles under the equal protection clause.

In *Harris v. Arizona Independent Redistricting Commission*, 136 S. Ct. 1301 (2016), the Supreme Court upheld a redistricting plan with an overall deviation of 8.8 percent. The Supreme Court held even though partisanship may have played a role in developing the plan "the population deviations were primarily a result of good-faith efforts to comply with the Voting Rights Act." The plaintiffs failed to meet the burden of showing it was more probable than not that the deviation predominately resulted from the use of illegitimate redistricting factors.

Case law has established if a legislative redistricting plan with an overall range of more than 10 percent is challenged, the state has the burden to demonstrate the plan is necessary to implement a rational state policy and the plan does not dilute or eliminate the voting strength of a particular group of citizens. A plan with an overall range of less than 10 percent may be subject to challenge if the justifications for the deviations are not deemed legitimate and plans with lower deviations have been considered.

Partisan Gerrymandering

Before 1986 the courts took the position that partisan or political gerrymandering was not justiciable. In *Davis v. Bandemer*, 478 U.S. 109 (1986), the United States Supreme Court stated political gerrymandering is justiciable. However, the Court determined the challengers of the legislative redistricting plan failed to prove the plan denied them fair representation. The Court stated a particular "group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause." The Court concluded "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole." Therefore, to support a finding of unconstitutional discrimination, there must be evidence of continued frustration of the will of the majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

In 2004 a sharply divided Supreme Court addressed a challenge to a congressional redistricting plan adopted in Pennsylvania. In *Vieth v. Jubelirer*, 541 U.S. 267 (2004), four of the justices concluded partisan gerrymandering cases are nonjusticiable due to a lack of judicially discernible and manageable standards for addressing the claims. One other justice concurred in the opinion, but on other grounds, and the remaining four justices issued three dissenting opinions. Despite the challenge being dismissed, a majority of the court--the four dissenting justices and the one justice concurring in the decision to dismiss the claim--continued to maintain partisan gerrymandering cases may be adjudicated by the courts.

The Supreme Court again issued a divided opinion 2 years later in *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006). In that decision, six justices wrote opinions and five justices agreed partisan gerrymandering cases are justiciable. However, the court did not agree on a standard for addressing claims and the partisan gerrymandering claim was dismissed.

The question of whether partisan gerrymandering cases are justiciable was settled by the Supreme Court in 2019. In the consolidated case of *Rucho v. Common Cause*, 139 S. Ct. 2428 (2019), the congressional redistricting maps for North Carolina and Maryland were challenged as unconstitutional partisan gerrymanders. In *Rucho*, the Supreme Court held "partisan gerrymandering claims present political questions beyond the reach of the federal courts." The Court further stated, "the Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly." However, the Court noted state courts may look to state statutes and state constitutions for guidance and standards to apply in partisan gerrymandering cases.

Instances in which state courts have addressed partisan gerrymandering include *League of Women Voters of Florida v. Detzner*, 172 So. 3d 363 (Fla. 2015). In this case, the challengers of the plan alleged the congressional redistricting plan was drawn to favor incumbent lawmakers and the Republican Party in violation of the Fair Districts Amendment to the Constitution of Florida, which prohibits political consideration in redistricting. The Florida Supreme Court upheld the trial court's findings that the map was tainted by the unconstitutional intent alleged and the Legislature was required to redraw the boundaries of several districts.

Partisan gerrymandering also was addressed at the state level in *League of Women Voters of Pennsylvania v. Commonwealth*, 644 Pa. 287 (2018). In this case, the challengers of the plan alleged the state's 2011 congressional plan violated the Free and Equal Elections Clause of the Constitution of the Commonwealth of Pennsylvania by providing one party an unfair advantage. The Pennsylvania Supreme Court found the plan lacked compactness and split local jurisdiction boundaries to an inordinate degree. The court held application of traditional redistricting principles must be the overriding consideration when preparing a redistricting map to avoid a violation of the Free and Equal Elections Clause. The Supreme Court held the map unconstitutional and substituted the 2011 map with a remedial map drawn by a special master.

Thus, though now precluded at the federal level, partisan gerrymandering cases may be justiciable in state court.

Multimember Districts and Racial or Language Minorities

According to data compiled by the National Conference of State Legislatures, North Dakota is 1 of 10 states that have multimember districts. Section 2 of the federal Voting Rights Act prohibits a state or political subdivision from imposing voting qualifications, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group. A language minority group is defined as "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage." A violation of Section 2 may be proved through a showing that as a result of the challenged practice or standard, the challengers of the plan did not have an equal opportunity to participate in the political process and to elect candidates of their choice.

Many decisions under the Voting Rights Act have involved questions regarding the use of multimember districts to dilute the voting strengths of racial and language minorities. In *Reynolds*, the United States Supreme Court held multimember districts are not unconstitutional per se; however, the Court has indicated it prefers single-member districts, at least when the courts draw the districts in fashioning a remedy for an invalid plan. The Court has stated a redistricting plan including multimember districts will constitute an invidious discrimination only if it can be shown the plan, under the circumstances of a particular case, would operate to minimize or eliminate the voting strength of racial or political elements of the voting population.

The landmark case addressing a Section 2 challenge is *Thornburg v. Gingles*, 478 U.S. 39 (1986). In that case, the Supreme Court stated a minority group challenging a redistricting plan must prove:

1. The minority is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. The minority is politically cohesive; and
3. In the absence of special circumstances, bloc voting by the majority usually defeats the minority's preferred candidate. To prove that bloc voting by the majority usually defeats the minority group, the use of statistical evidence is necessary.

Until redistricting in the 1990s, racial gerrymandering--the deliberate distortion of boundaries for racial purposes--generally had been used in the South to minimize the voting strength of minorities. However, because the United States Department of Justice and some federal courts had indicated states would be required to maximize the number of minority districts when redistricting, many states adopted redistricting plans that used racial gerrymandering to create more minority districts or to create minority influence districts when there was not sufficient population to create a minority district. As a result, a number of redistricting plans adopted in the 1990s were

challenged by white voters on equal protection grounds and the United States Supreme Court subsequently has held several redistricting plans to be unconstitutional as a result of racial gerrymandering.

In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court invalidated a North Carolina plan due to racial gerrymandering. In that case, the Court made it clear race-conscious redistricting may not be impermissible in all cases. However, the Court held the plan to a test of strict scrutiny and required the racial gerrymander be narrowly tailored to serve a compelling state interest. The Court stated if race is the primary consideration in creating districts "without regard for traditional districting principles," a plan may be held to be unconstitutional.

Through the *Shaw* decision and subsequent decisions of the United States Supreme Court, the Court indicated unless race was the predominant factor in the creation of a district, a racial gerrymander challenge is not likely to be successful. In addition, the Court articulated seven policies that have been identified as being "traditional districting principles." Those policies are:

1. Compactness.
2. Contiguity.
3. Preservation of political subdivision boundaries.
4. Preservation of communities of interest.
5. Preservation of cores of prior districts.
6. Protection of incumbents.
7. Compliance with Section 2 of the Voting Rights Act.

Section 5 of the Voting Rights Act requires certain states and political subdivisions to submit their redistricting plans to the United States Department of Justice or the district court of the District of Columbia for review. Section 5 of the Voting Rights Act applied to states and political subdivisions that demonstrated a history of voter discrimination. However, in 2013, the formula used to determine which jurisdictions were subject to the preclearance requirements in Section 5 was held unconstitutional by the Supreme Court in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). Thus, states and jurisdictions formerly subject to review are no longer required to submit their redistricting plans for preclearance under Section 5.

POSSIBLE ISSUES TO ADDRESS

The following are issues that may have to be addressed by the committee in beginning this study:

- What parameters should be followed in preparing plans?
- Should the committee limit consideration to plans that establish a certain number of districts?
- How should the Air Force base populations be addressed?
- How should the plan effectuate the staggering of terms of members of the Legislative Assembly?
- What will be the proper procedure for submitting proposed plans for consideration by the committee?
- How often should the committee meet?
- Should the committee meet in locations other than Bismarck?

EXHIBIT 2

Redistricting Overview

Redistricting Committee
August 2021

Redistricting Plan Directive

House Bill No. 1397 (2021)

- The Chairman of the Legislative Management must appoint a committee to develop a redistricting plan.
- Districts in the plan must be of a compact and contiguous nature and conform to constitutional requirements regarding population equality.
- The committee may adopt additional guidelines and principles in preparing the plan.
- The plan must be submitted to the Legislative Management by November 30, 2021.
- The Chairman of the Legislative Management shall request the Governor call a special session so the Legislative Assembly may adopt a redistricting plan in time for use in the 2022 primary election.

Requirements of the Constitution of North Dakota

- Membership of the Senate must range between 40-54 members.
- Membership of the House must range between 80-108 members.
- The state must be divided into as many districts as there are senators and the districts must be of compact and contiguous territory.

Requirements of the Constitution of North Dakota

- The Legislative Assembly must guarantee, as nearly as practicable, that every elector is equal to every other elector in the power to cast ballots for legislative candidates.
- One senator and at least two representatives must be apportioned to each senatorial district.
- Two senatorial districts may be combined when a single member senatorial district includes a federal facility or installation containing over two-thirds of the population of a single member senatorial district and elections may be at large or from subdistricts.

Requirements of the Constitution of North Dakota

- Districts ascertained after the 1990 federal decennial census must continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.
- The Legislative Assembly must establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

Requirements of the North Dakota Century Code

- In addition to the constitutional requirements, North Dakota Century Code Section 54-03-01.5 requires a legislative redistricting plan based on any census taken after 1999 must provide the Senate consist of 47 members and the House consist of 94 members.
- Legislative districts must be as nearly equal in population as is practicable and population deviations from district to district must be kept at a minimum.

Requirements of the North Dakota Century Code

The total population variance of all districts from the average district population may not exceed recognized constitutional limitations.

- Overall range is the measure of population equality most commonly used by the courts, with a 10 percent standard first established in 1973.
- The overall range of a redistricting plan is the sum of the deviation from the ideal district population for the most and the least populous district.
 - For example, if the most populous district exceeds the ideal district population by 4.2 percent, and the least populous district falls short of the ideal district population by 4.1 percent, the overall range for the redistricting plan would be 8.3 percent.

Requirements of the North Dakota Century Code

- Section 54-03-01.13 provides for the staggering of terms.
- Section 16.1-01-02.2 outlines procedures for special elections and allows the Governor to call a special election to be held 90 days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan.
- If redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or general election, Section 16.1-03-17 requires political parties in newly established precincts and districts to reorganize as closely as possible in conformance with Chapter 16.1-03 in order to comply with primary election filing deadlines.

Redistricting History in North Dakota

1931-62

- The Legislative Assembly did not redistrict itself, despite the requirement in the Constitution of North Dakota for the Legislative Assembly to apportion itself after each federal decennial census.

1963-75

- Nearly constant state of litigation.

1981

- A 12-member interim committee used a consultant to assist in developing a 53-district plan. The redistricting plan was adopted during a reconvened session of the Legislative Assembly in November 1981.

Redistricting History in North Dakota

1991

- A 16-member interim committee contracted with a consultant for computer-related services and developed a 49-district plan. The redistricting plan was adopted during a special session of the Legislative Assembly in November 1991.

2001

- A 15-member interim committee used laptops with redistricting software to develop a 47-district plan. The redistricting plan was adopted during a special session of the Legislative Assembly in November 2001.

2011

- A 16-member interim committee used laptops with redistricting software to develop a 47-district plan. The redistricting plan was adopted during a special session of the Legislative Assembly in November 2011.

Federal Law

- 14th Amendment to the United States Constitution (1868)
 - Individuals are guaranteed equal protection under the law.
- 15th Amendment to the United States Constitution (1870)
 - “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”
- *Baker v. Carr*, 369 U.S. 186 (1962)
 - Determined the courts would provide relief in state legislative redistricting cases when there are constitutional violations.
- Voting Rights Act of 1965
 - Enacted as a tool to aid in the enforcement of the 14th and 15th Amendments.
 - Banned the use of literacy tests.
 - Provided federal oversight of voter registration in areas where less than 50 percent of the minority population had registered to vote.

Federal Law – Population Equality

Reynolds v. Sims, 377 U.S. 533 (1964)

- The equal protection clause of the 14th Amendment requires states to establish legislative districts substantially equal in population.
- Both houses of a bicameral legislature must be apportioned on a population basis.
- Overall range is the most commonly used measure of population equality.
 - Overall range equals the sum of the percentage deviation of the largest district and the percentage deviation of smallest district, disregarding plus and minus signs.

Federal Law – Population Equality

- If a legislative redistricting plan with an overall range of more than 10 percent is challenged, the state has the burden to demonstrate the plan is necessary to implement a rational state policy and the plan does not dilute or eliminate the voting strength of a particular group of citizens.
- A plan with an overall range of less than 10 percent may be subject to challenge if the justifications for the deviations are not deemed legitimate and plans with lower deviations have been considered.

Federal Law – Partisan Gerrymandering

Rucho v. Common Cause, 139 S.Ct. 2428 (2019)

- In 2019, the question of whether partisan gerrymandering cases are justiciable was settled by the Supreme Court, which stated "partisan gerrymandering claims present political questions beyond the reach of the federal courts."
- The Court further stated, "the [United States] Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly."
- However, the Court noted state courts may look to state statutes and state constitutions for guidance and standards to apply in partisan gerrymandering cases.

Federal Law – Multimember Districts and Racial or Language Minorities

- North Dakota is 1 of 10 states that have multimember districts.
- Section 2 of the federal Voting Rights Act prohibits a state or political subdivision from imposing voting qualifications, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group.
 - A language minority group is defined as "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage."

Federal Law – Multimember Districts and Racial or Language Minorities

Thornburg v. Gingles, 478 U.S. 39 (1986)

A minority group challenging a redistricting plan must prove:

1. The minority is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. The minority is politically cohesive; and
3. In the absence of special circumstances, bloc voting by the majority usually defeats the minority's preferred candidate. To prove bloc voting by the majority usually defeats the minority group, the use of statistical evidence is necessary.

Federal Law – Multimember Districts and Racial or Language Minorities

Shaw v. Reno, 509 U.S. 630 (1993)

- If race was not the predominant factor in the creation of a district, a racial gerrymander challenge is not likely to be successful.
- If race was the predominant factor in the creation of a district, the district will be evaluated under a test of strict scrutiny, where it must be shown the district was narrowly tailored to serve a compelling state interest.

Common types of gerrymandering include:

- Packing – overconcentrating a minority group into one or only a few districts.
- Cracking – splitting a geographically compact minority group into multiple districts in order to dilute the voting power of the minority group.

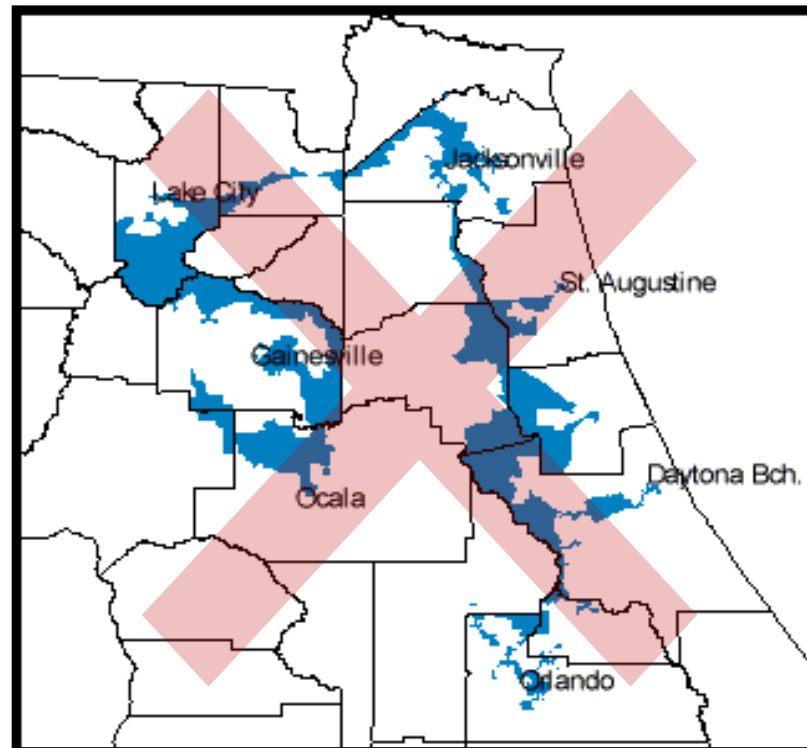
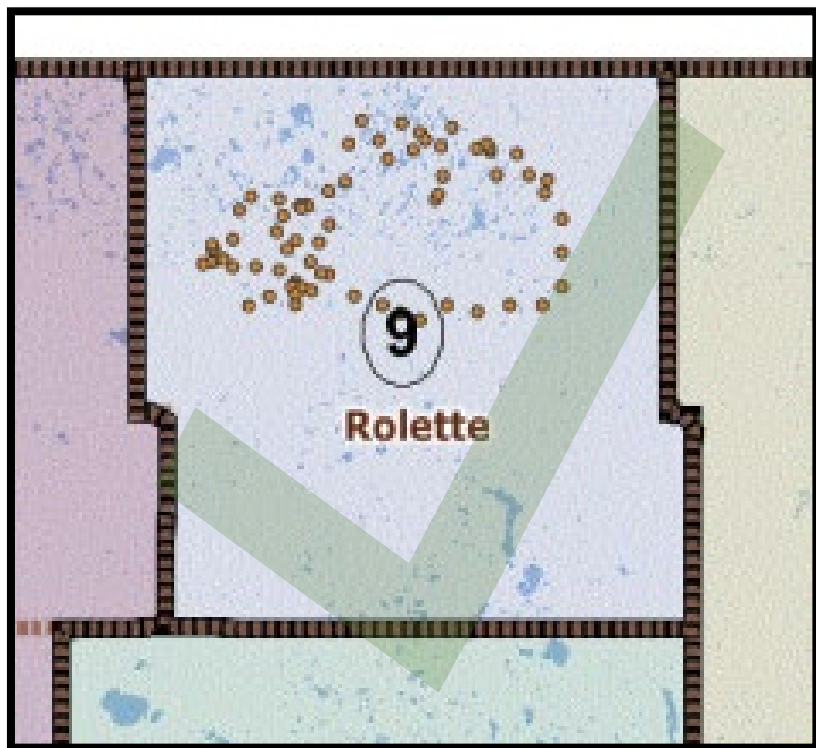
Federal Law – Traditional Districting Principles

Items identified as traditional districting principles include:

1. Compactness.
2. Contiguity.
3. Preservation of political subdivision boundaries.
4. Preservation of communities of interest.
5. Preservation of cores of prior districts.
6. Protection of incumbents.

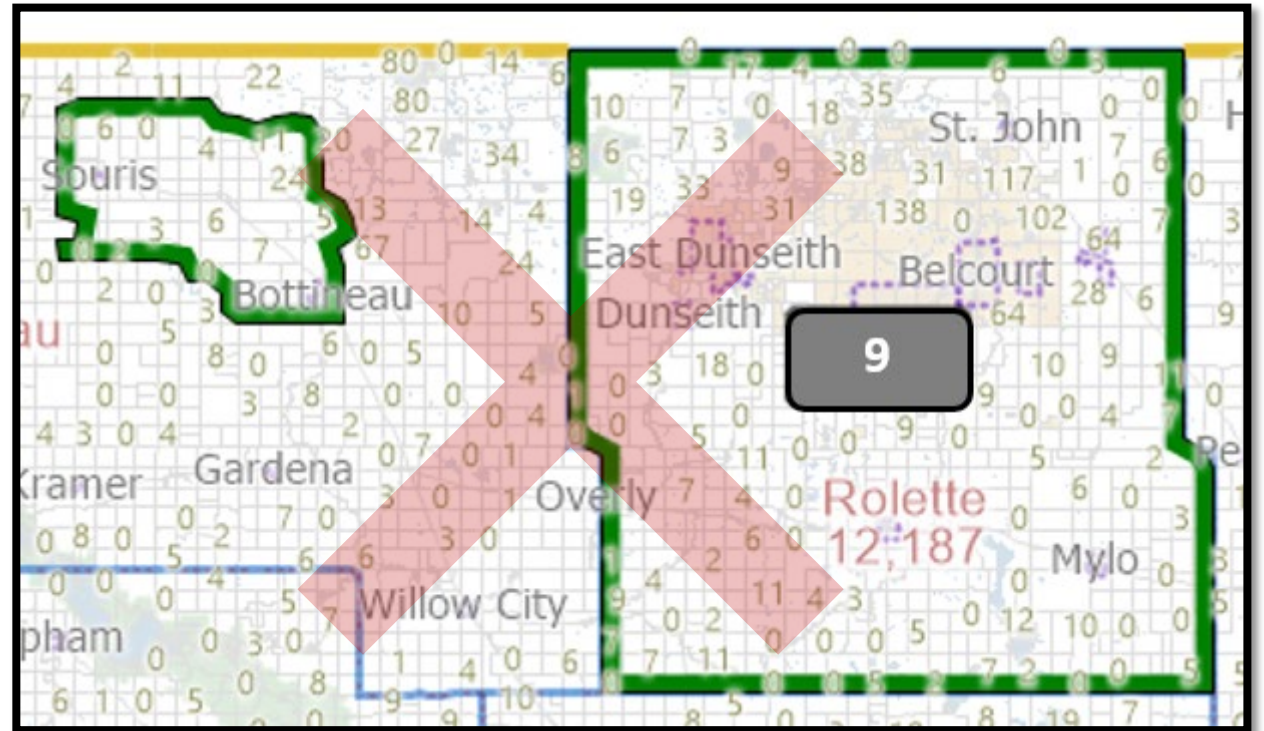
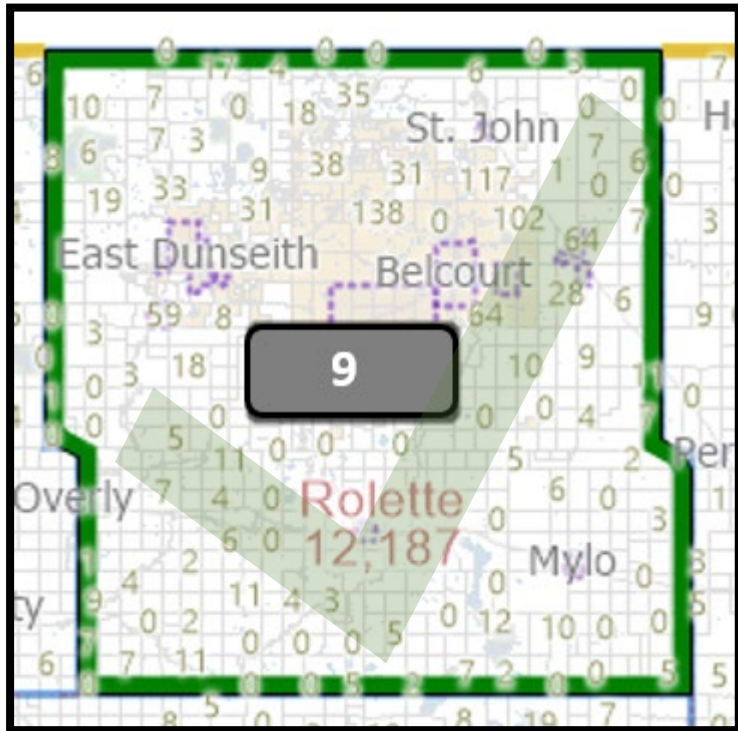
1. Compactness

Districts must be geographically compact.



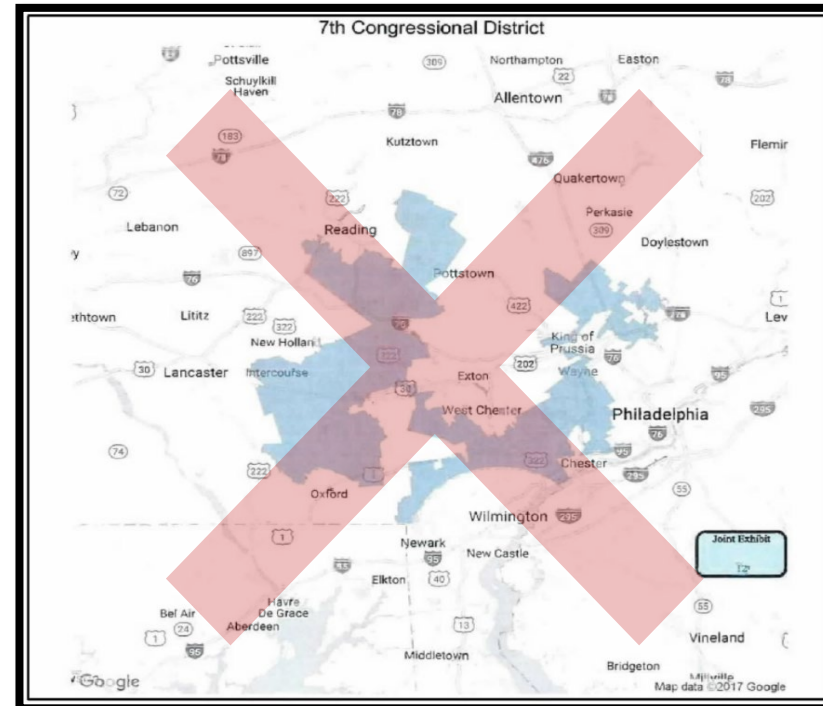
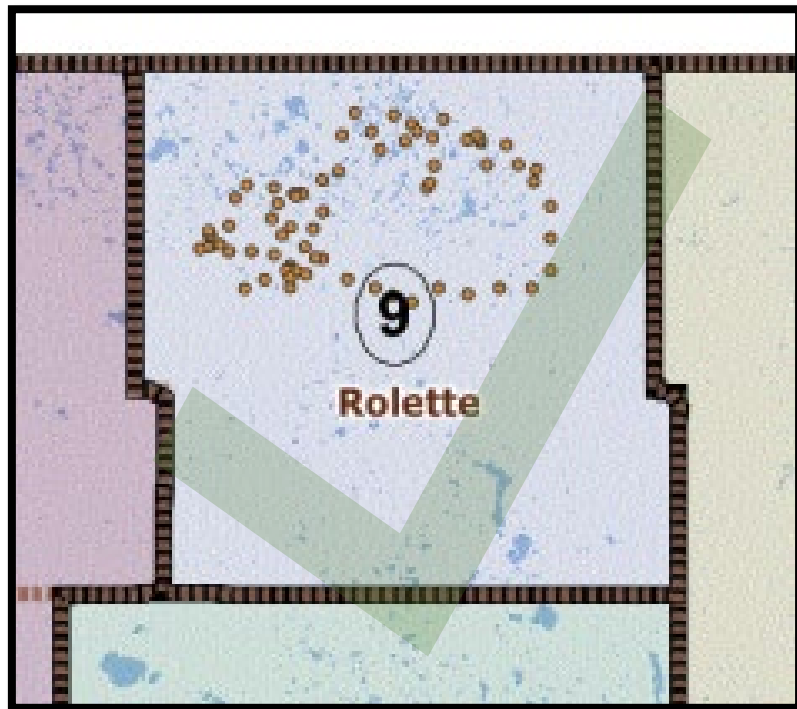
2. Contiguity

Districts must consist of a single shape with a connected boundary.



3. Preservation of Political Subdivision Boundaries

Avoid excessively splitting political subdivision boundaries.



4. Preservation of Communities of Interest

- Twenty-six states take into account preservation of communities of interest.
- Communities of interest are neighborhoods, communities, or groups of individuals who would benefit from being retained in a single district due to shared interests, policy concerns, or characteristics.
- They are often self-defined by the members of the community.
- Race and ethnicity can play a role in defining a community of interest, but cannot be the sole defining characteristic.

5. Preservation of Cores of Prior Districts

- Eleven states require prior districts to be maintained, to the extent possible after adjusting for population deviations, to maintain continuity of representation.
- One approach to preserving cores of prior districts is starting with existing boundary lines, rather than a blank map, and adjusting those boundaries to meet population equality requirements.

6. Protection of Incumbents

- Twelve states require drafters to avoid pairing incumbents.
- Placing two or more incumbents in a single district leads to one incumbent having to move, retire, or be defeated.
- The policy against pairing incumbents aims to promote continuity of representation.

Issues to Address

- What parameters should be followed in preparing plans?
- Should the committee limit consideration to plans that establish a certain number of districts?
- How should the Air Force base populations be addressed?
- How should the plan effectuate the staggering of terms of members of the Legislative Assembly?
- What will be the proper procedure for submitting proposed plans for consideration by the committee?
- How often should the committee meet?
- Should the committee meet in locations other than Bismarck?

EXHIBIT 3



Redistricting Presentation to the North Dakota Legislature

Ben Williams

Program Principal, Elections and Redistricting, NCSL

August 26, 2021



Strengthening
the legislative
institution.

Serving 7,383
legislators and
25,000 staff.

Today's Outline

Fundamentals & Census

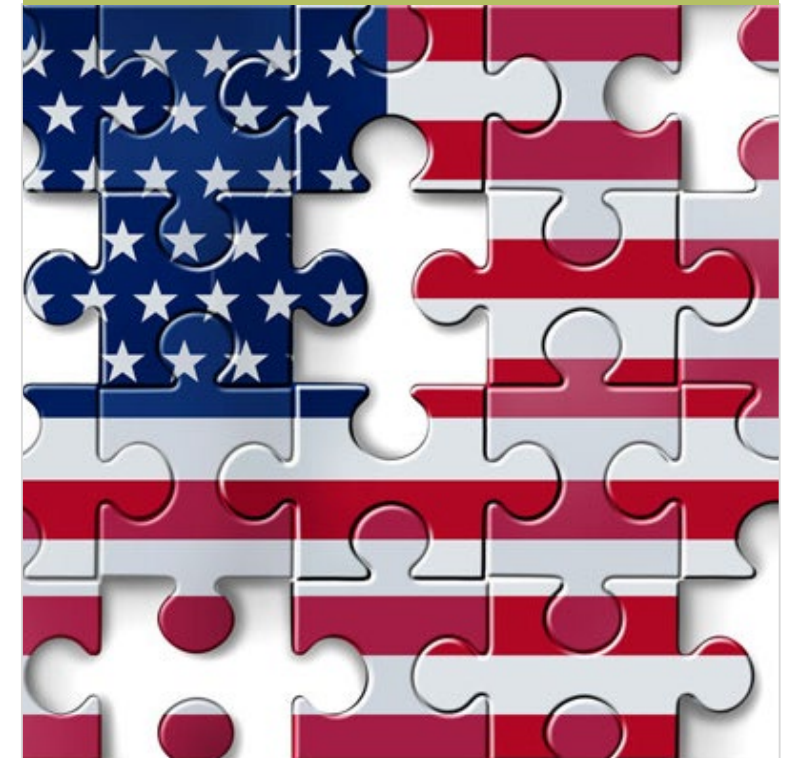


United States[®]
Census
2020

Legal Doctrines



Criteria/Principles



Why We Redistrict



Fundamentals: Who is a person?

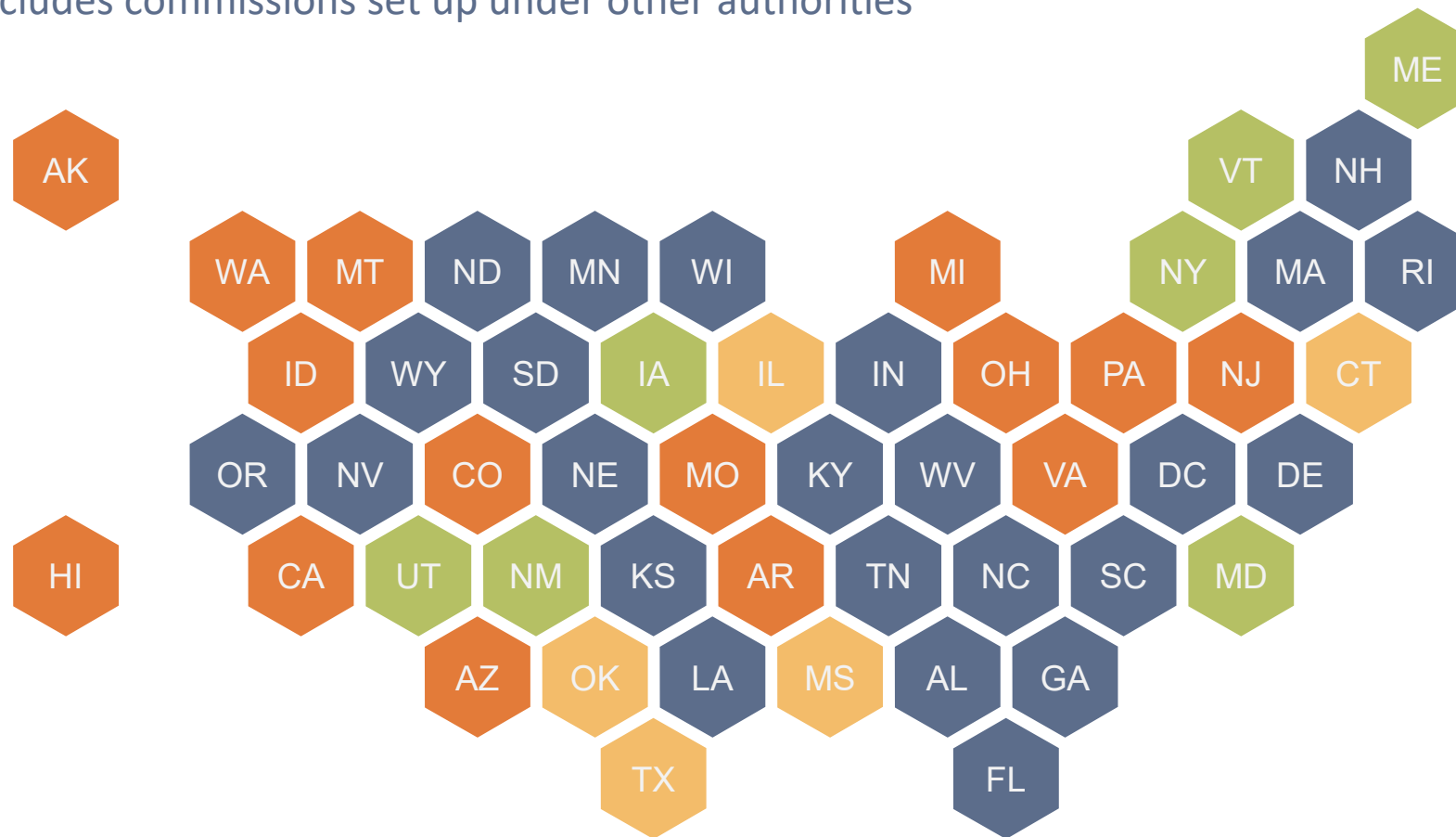


- Supreme Court has never answered definitively
- Assumption since reconstruction has been all residents of the United States
- Key Case: *Evenwel v. Abbott* (2016)
 - Person = total population, regardless of legal status or age
 - But left door open to other interpretations...

Fundamentals: Who Draws Legislative Districts

Statutory or constitutional only; excludes commissions set up under other authorities

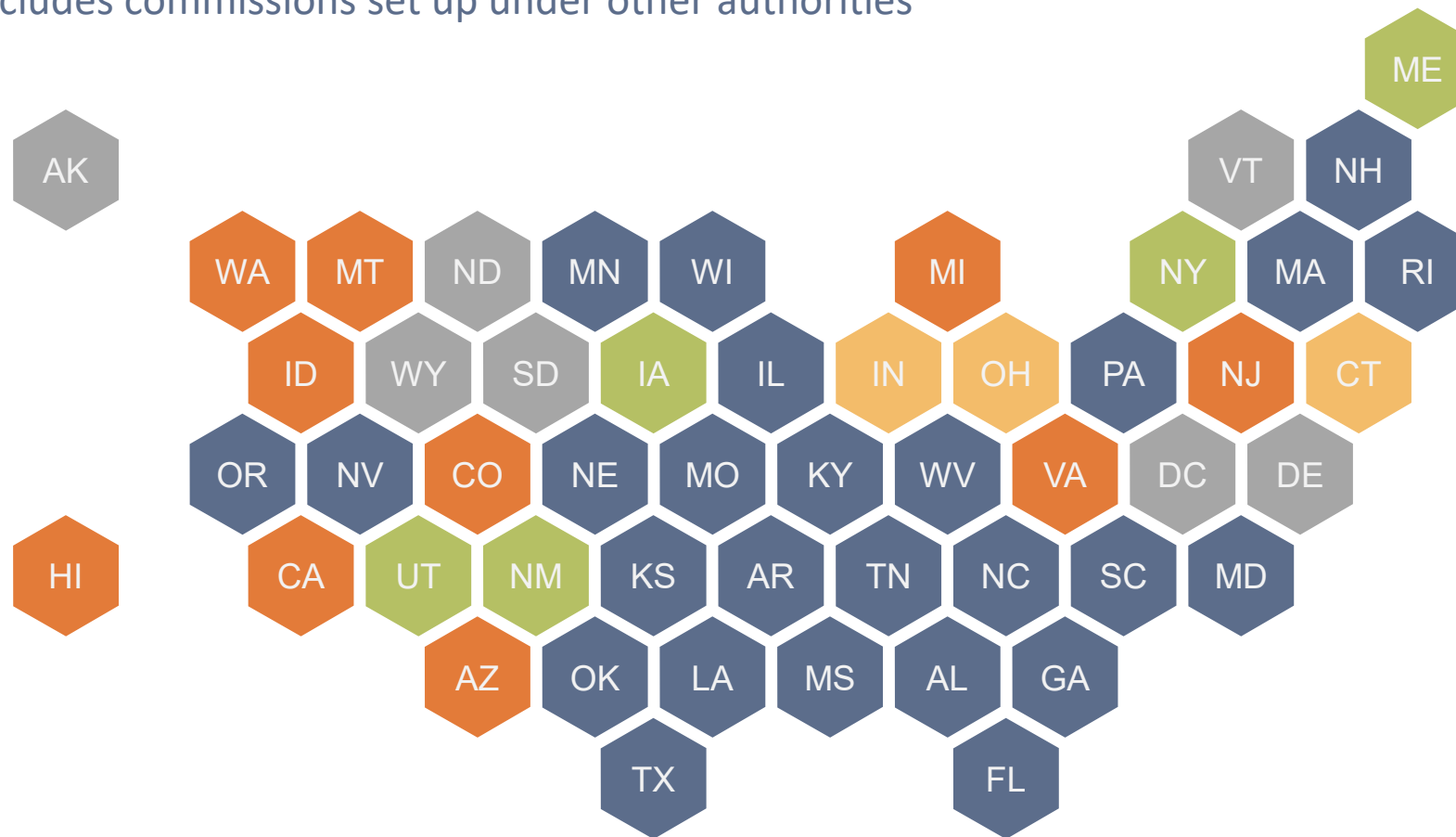
- Legislature only
- Legislature, with advisory commission
- Legislature, with backup commission
- Commission



Fundamentals: Who Draws Congressional Districts

Statutory or constitutional only; excludes commissions set up under other authorities

- Legislature only
- Legislature, with advisory commission
- Legislature, with backup commission
- Commission
- At-large district



- People living in the United States: 331,449,281
- Growth since 2010: 7.4%
- Nearly all population increase in metropolitan and micropolitan areas; ND is major exception to this!
- 47/50 states saw population growth this decade
- Only three states saw their populations shrink this decade:
 - Illinois (-0.1%)
 - Mississippi (-0.2%)
 - West Virginia (-3.2%)



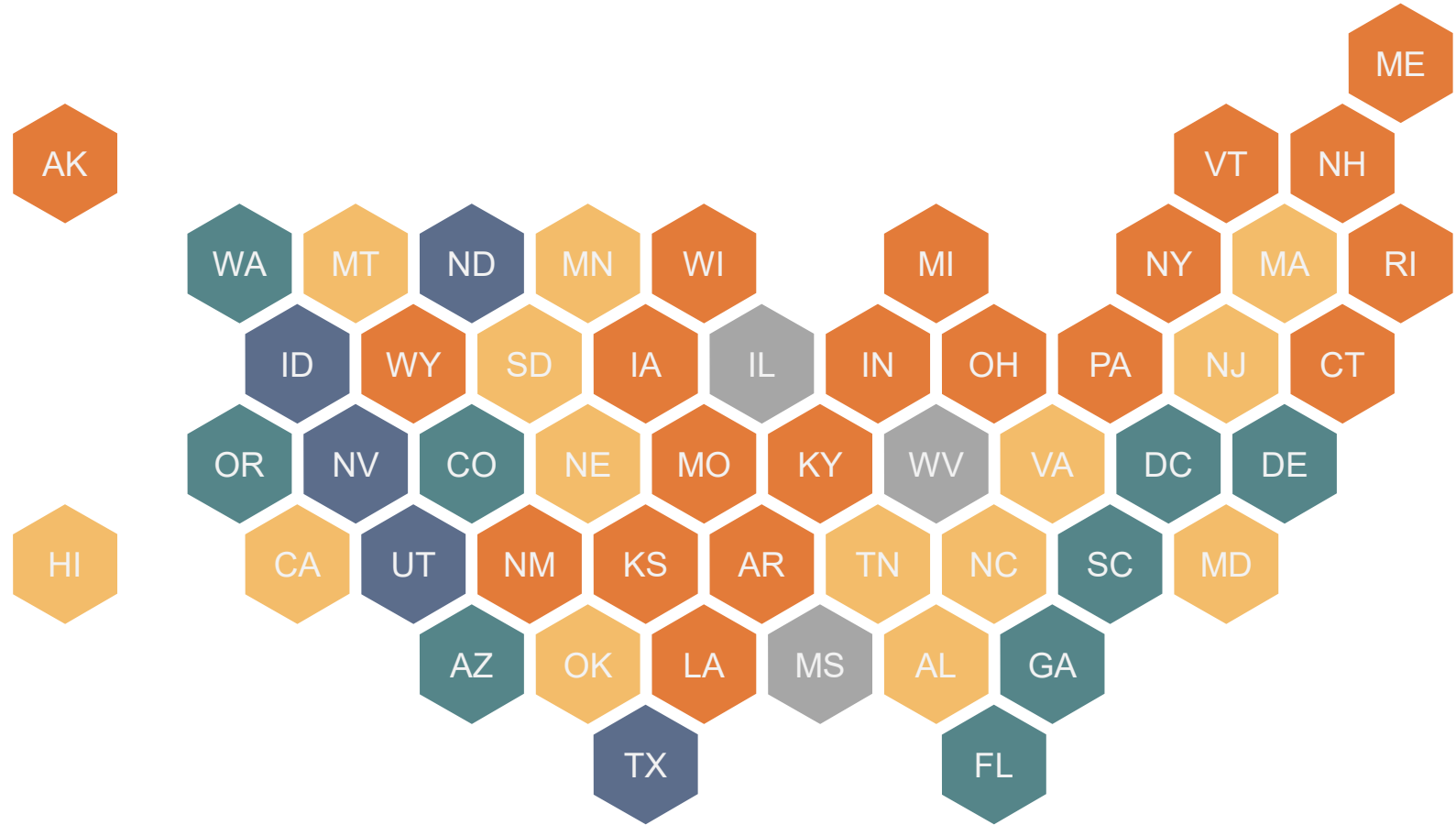
2020 Census Takeaways

2020 Census Results

Population Changes by State

North Dakota's population grew by 15.8% between 2010 and 2020.

- + > 15% (Very Fast Growth)
- + 10-15% (Fast Growth)
- + 5-10% (Moderate Growth)
- + 0-5% (Slow Growth)
- Population Decrease

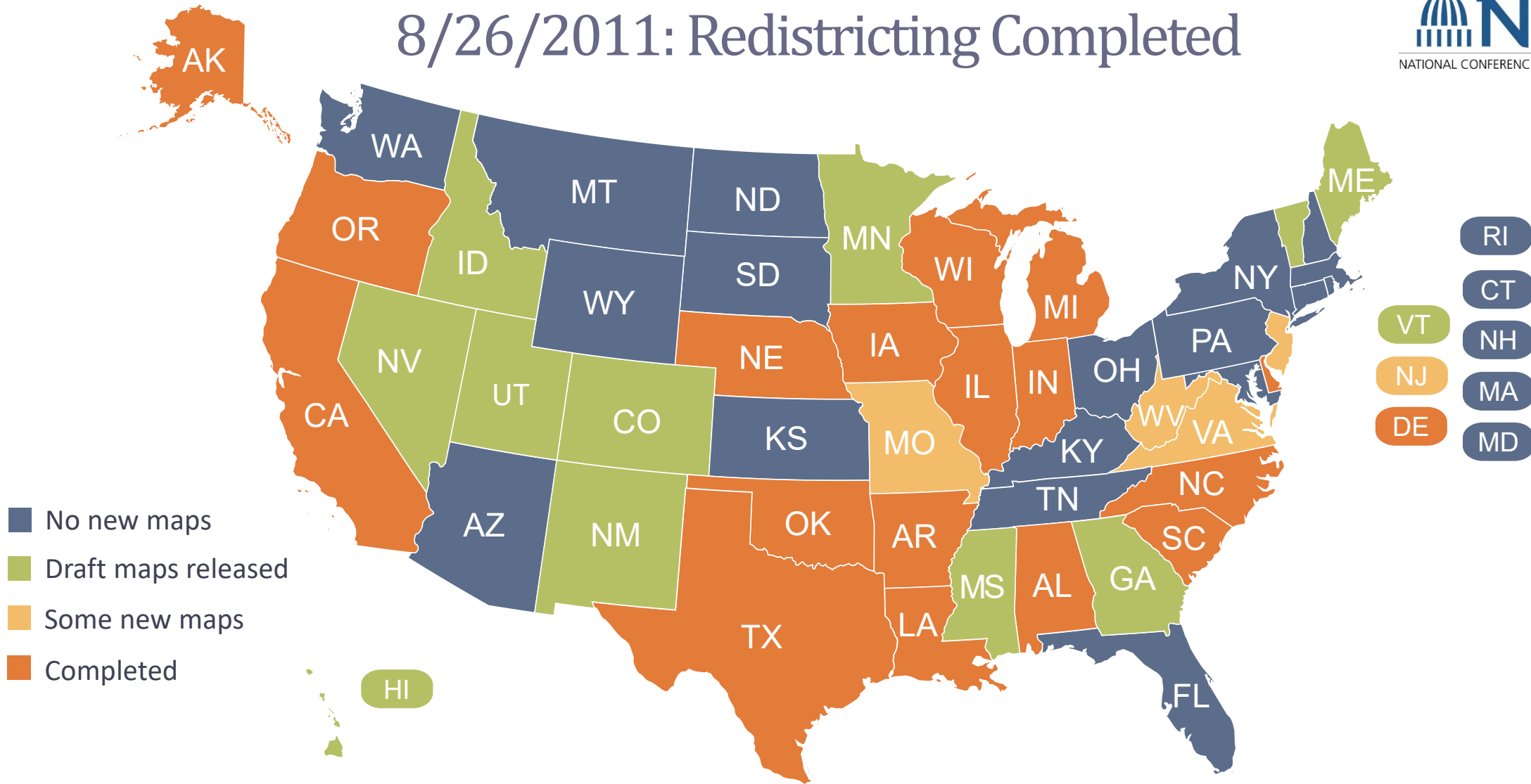




- The pandemic
- Fires
- Floods
- Policy changes

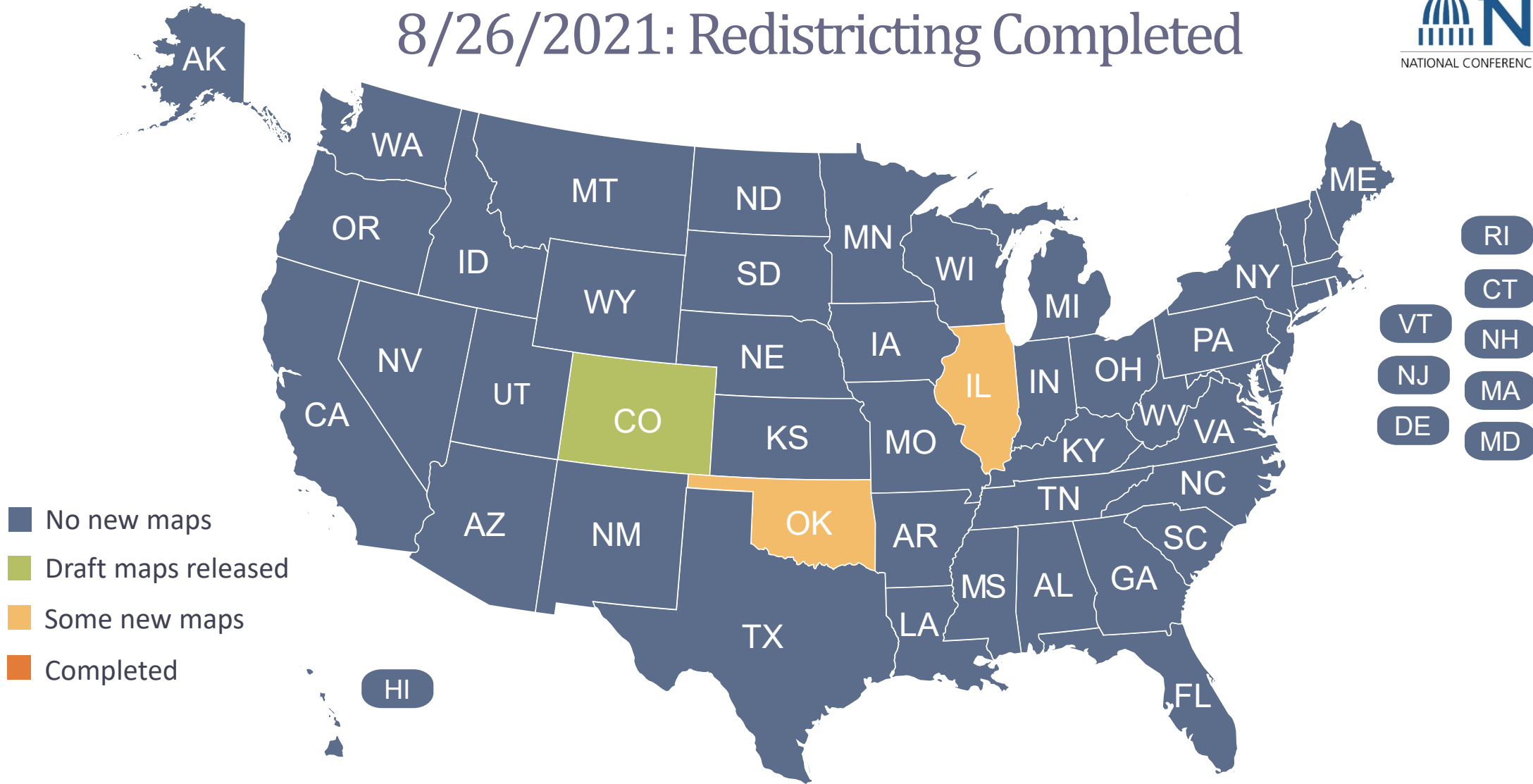
Delays

8/26/2011: Redistricting Completed



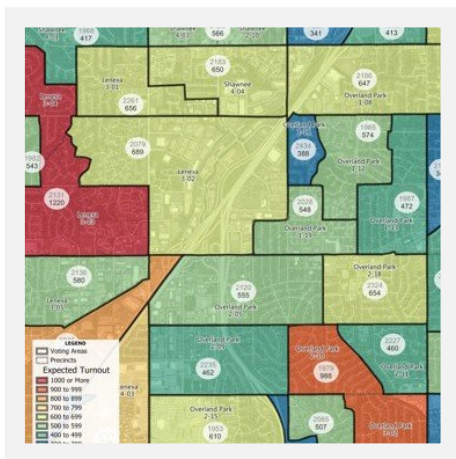
Source: All About Redistricting; Ballotpedia

8/26/2021: Redistricting Completed



The Problem With Delays: Less Time to Redistrict

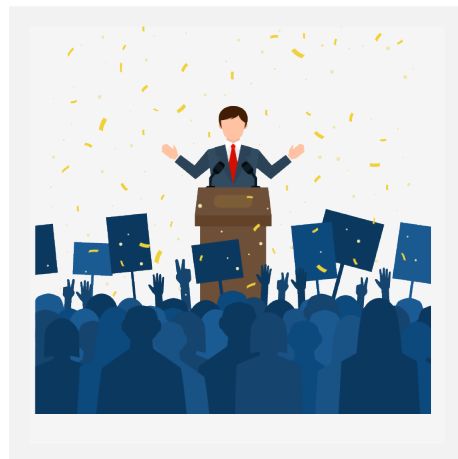
It isn't just drawing new maps



Processing



Filing Deadlines



Residency

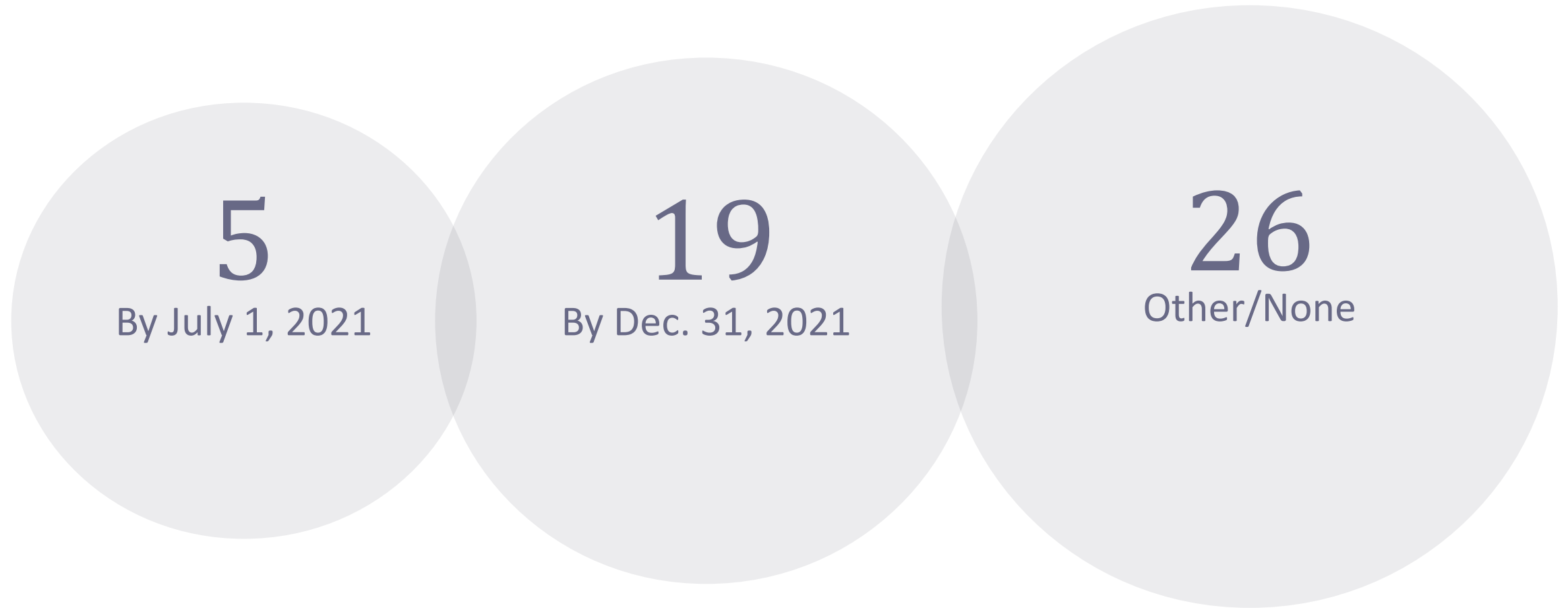


Local Prep



Primaries

State Redistricting Deadlines by Date



Disclosure avoidance

- Federal statutes require the protection of respondents' information*
- The previous system proved to be breakable
- Any system to protect privacy reduces accuracy and usability

**There's a federal requirement to provide population data at the block level too*



Data Suppression

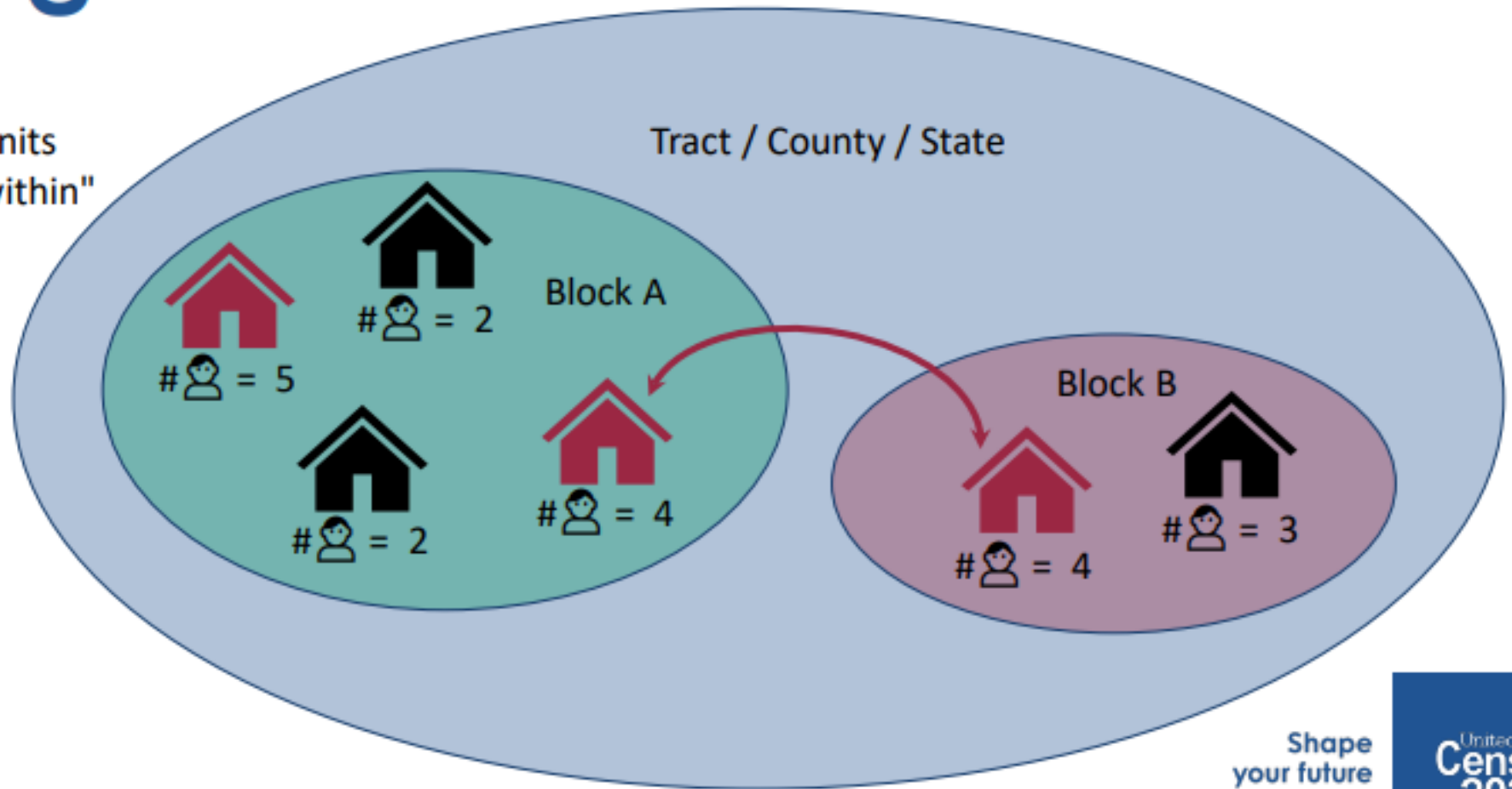
Fake Census Block Populations				
8	18	13	2	15
42	1	3	16	18
4	14	15	6	3
24	18	6	1	3
14	4	8	2	3

Fake Census Block Populations				
8	18	13	2	15
42	S	3	16	18
4	14	15	6	3
24	18	6	S	3
14	4	8	S	3

- Data that could expose personal information is simply not provided
- Used in 1980 for individual cells and for whole tables

Swapping Primer


1. Determine key to match units
2. Choose "between" and "within" geographies
3. Determine units to swap
4. Select swap rate
5. Find swap pairs



Noise

Inserting error to increase uncertainty.

14	41	50	58	65
15	24	26	30	25
52	53	66	47	51
68	6	44	17	32
38	26	33	42	64



13	41	51	58	65
15	24	25	30	24
51	54	66	48	51
68	6	44	16	32
38	25	33	42	65

Using differential privacy to protect data means...

- Only state total population will be reported without “noise”
- Distortions in rural areas are likely to be greater than in urban areas
- Distortions in small racial/ethnic groups are likely to be larger than in others

Legal Doctrines

Federal and State



United States Constitution



Federal Statutes



State Constitutions



State Statutes/Common Law



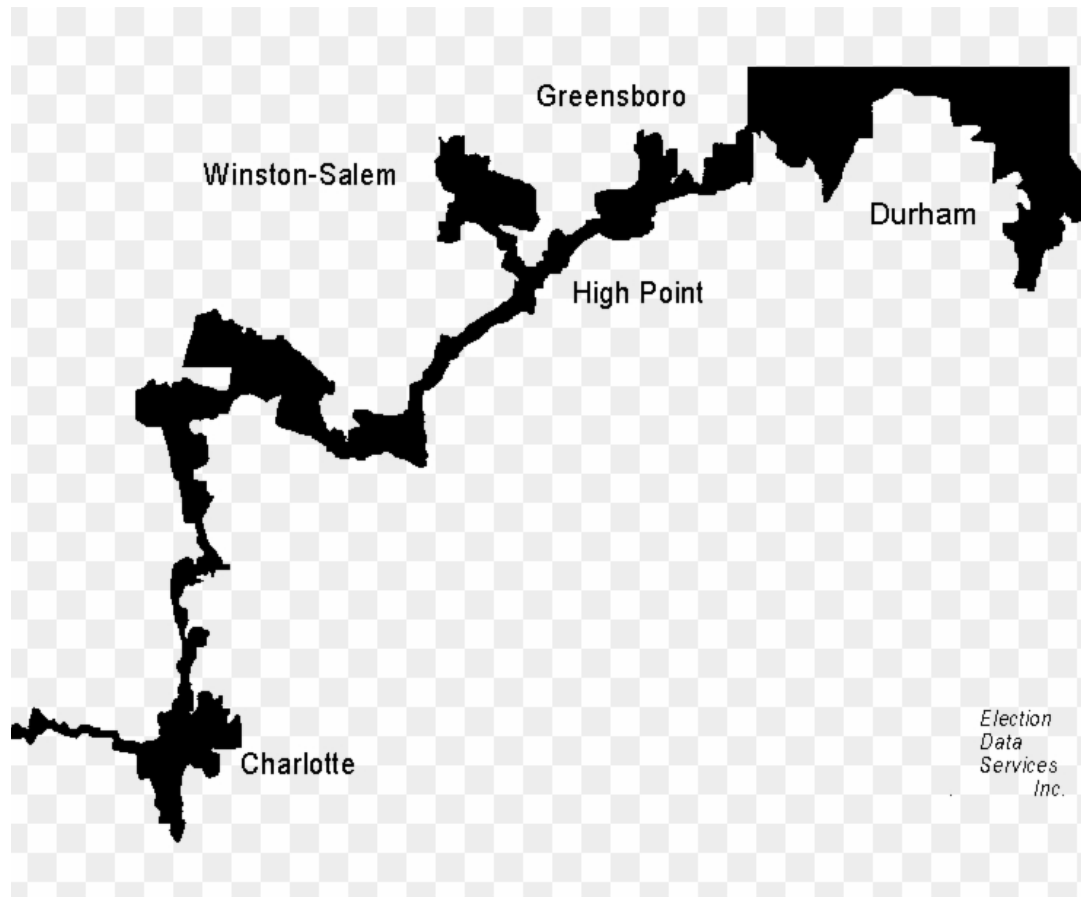
Guidelines

US Constitution: One Person, One Vote



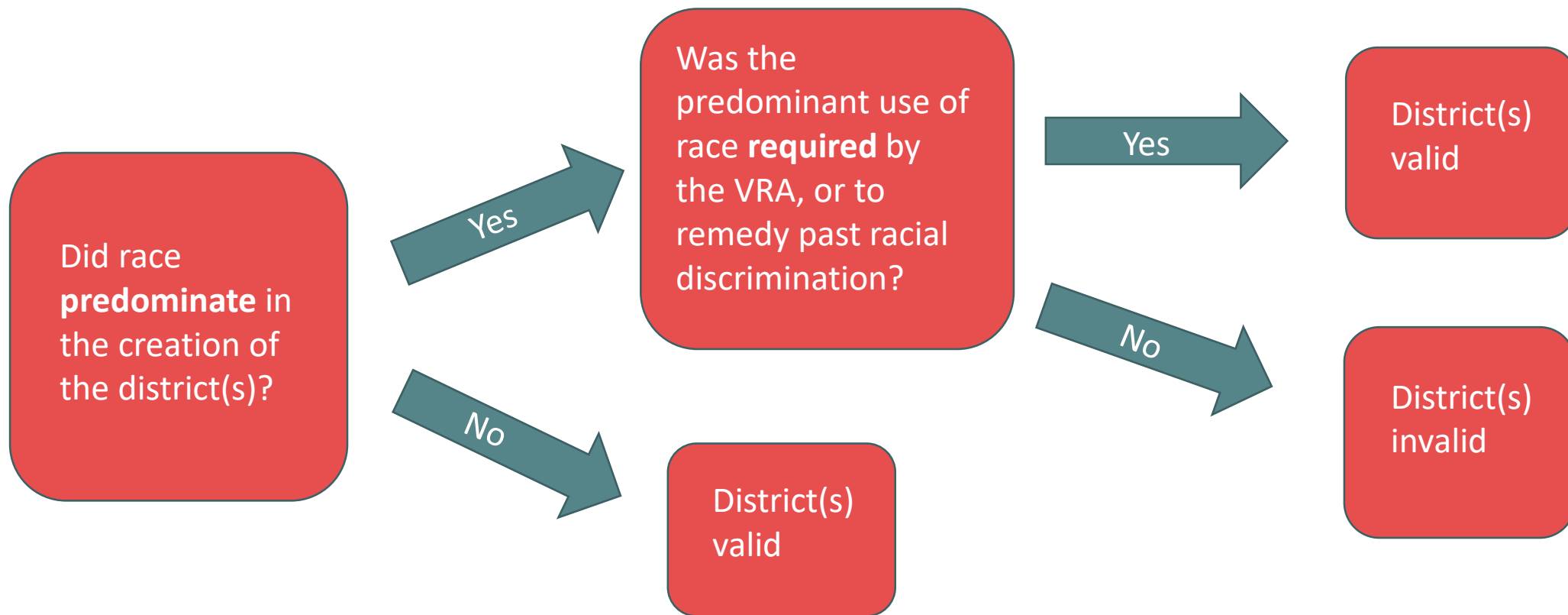
- **Principle:** Equal Protection requires that votes for legislators and congressmembers hold equal weight
 - Congressional Districts: *Wesberry v. Sanders* (1964)
 - State Legislative Districts: *Reynolds v. Sims* (1964)
- **Application:** Varies depending on district type
 - Congressional Districts: Exact numerical equality
 - State Legislative Districts: 10% deviation if justified by compliance with traditional criteria

US Constitution: Racial Gerrymandering



- Equal Protection Clause claim
- Origin: *Shaw v. Reno* (1993)
- Claim has evolved over time
- Test: **Predominance**
 - Was race the predominant factor in the construction of a particular district?

US Constitution: Racial Gerrymandering



US Constitution: Partisan Gerrymandering



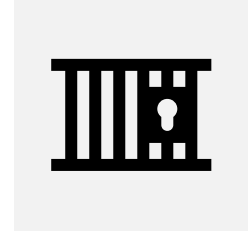
- Major focus at SCOTUS this decade
- Claims based on 1st and 14th Amendments
- No longer justiciable in federal courts
- But theories from these cases have successfully been used in state courts

Voting Rights Act of 1965



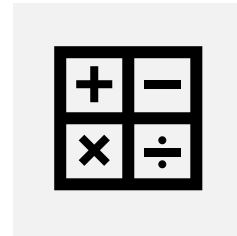
Section 2

Private and Federal
Cause of Action



Section 3

The “Bail-In” Remedy for
Violating Federal Law



Section 4

The Preclearance
Coverage Formula



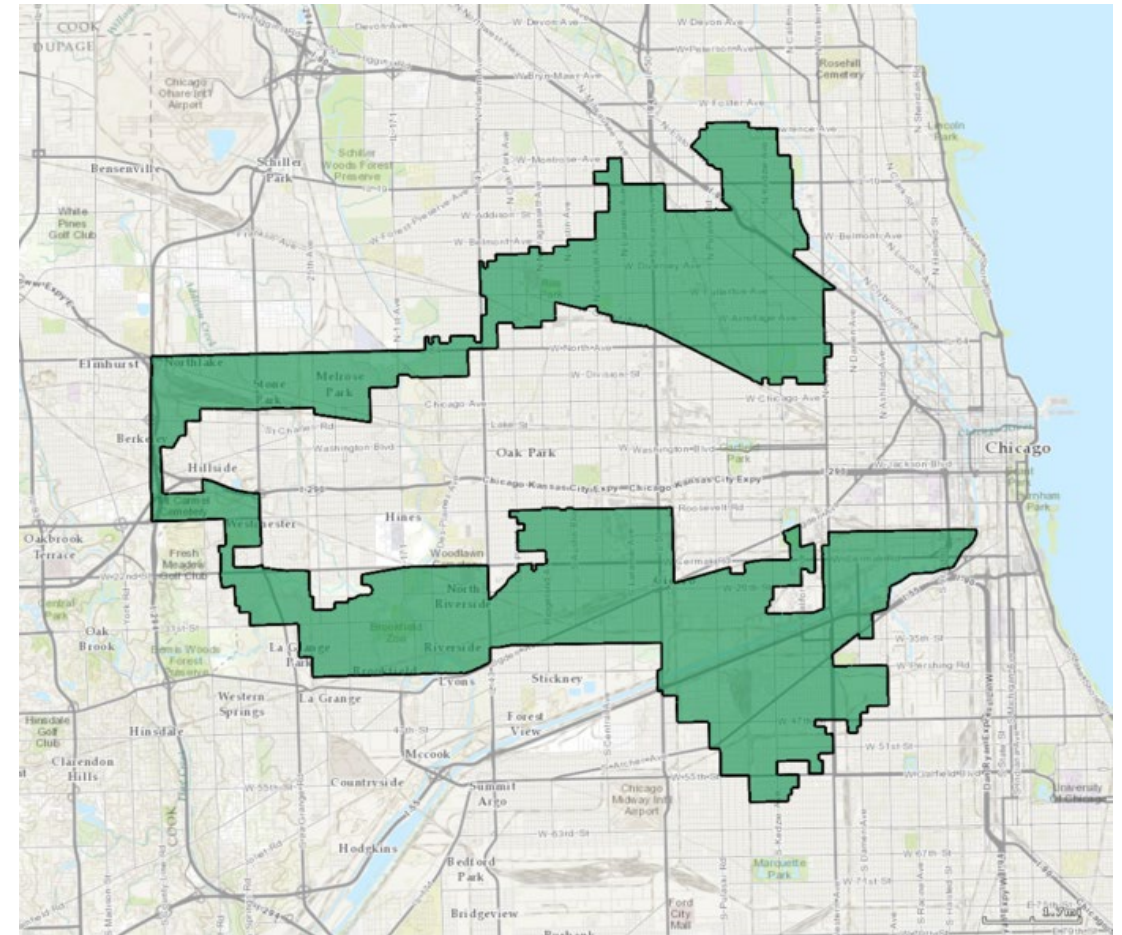
Section 5

The Preclearance
Regime

Key Sections of the VRA

Section 2: Overview

- Prohibits Vote Dilution
- Applies Nationwide
- Requires litigation (not prophylactic)
- Burden of Proof: Discriminatory Effect
 - Plaintiffs do not need to prove discriminatory intent



Section 2: When Applies

Gingles Preconditions

Sufficiently large and geographically compact to constitute majority

Minority group is **politically cohesive**

White voters act as a bloc to defeat minority group's candidate of choice

Senate Factors

- History of official discrimination
- Racially polarized voting in the state
- Minority vote diluting election procedures
- Minority exclusion from the candidate slating process
- Discrimination in health education and employment
- Subtle or overt racial appeals in campaigns
- Extent of minority success being elected to public office

Key Distinction: Vote Denial vs. Vote Dilution

Vote Denial (Elections)

- Applies to laws denying or abridging the right to vote on account of race or color
- Localized or statewide impact of challenged law on denial of right to vote
- Key Supreme Court case:
 - *Brnovich v. Democratic National Committee* (2021)

Vote Dilution (Redistricting)

- Applies to districting plans that hinder a minority group's opportunity to elect its candidate of choice
- Individual district-by-district analysis
- Some key Supreme Court cases:
 - *Mobile v. Bolden* (1980)
 - *Thornburg v. Gingles* (1986)
 - *Bartlett v. Strickland* (2009)

Section 3: “Bail-In”

- **What:** Remedy available from courts who find violation Fourteenth or Fifteenth Amendments to U.S. Constitution.
- **How:** Judge orders jurisdiction subject to preclearance for future election law changes *if* it finds proof of discriminatory intent by a defendant.
- **When:** Limited duration set by judge; not permanent like Sections 4 and 5. Judge has significant discretion in crafting remedy.
- **Prevalence:** Rare



Sections 4 and 5

SUPREME COURT OF THE UNITED STATES

Syllabus

SHELBY COUNTY, ALABAMA *v.* HOLDER, ATTORNEY
GENERAL, ET AL.

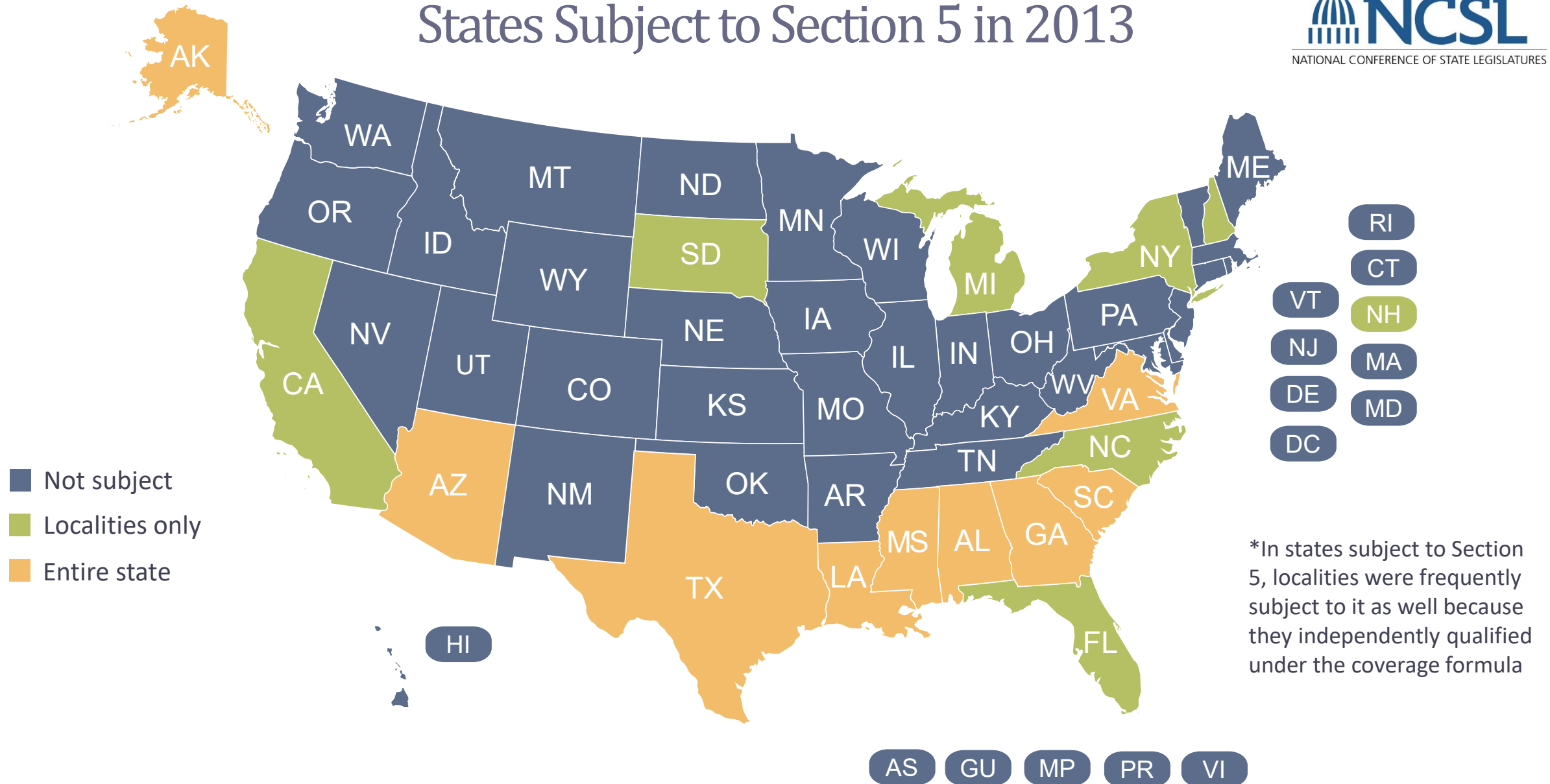
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 12–96. Argued February 27, 2013—Decided June 25, 2013

The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” *South Carolina v. Katzenbach*, 383 U. S. 301, 309. Section 2 of the Act, which bans any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen . . . to vote on account of race



States Subject to Section 5 in 2013



*In states subject to Section 5, localities were frequently subject to it as well because they independently qualified under the coverage formula

State Constitutions: Free and Equal Elections Clauses

POLITICO



The request to stay the ruling from the Pennsylvania state Supreme Court was denied without comment or recorded dissent. | Jacqueline Martin/AP Photo

Supreme Court won't block new Pennsylvania congressional map

By ELENA SCHNEIDER and STEVEN SHEPARD | 03/19/2018 03:51 PM EDT | Updated 03/19/2018

- 30 state constitutions require elections to be some combination of free, equal and fair
- PA and NC courts read this clause to include prohibition on partisan gerrymandering
- North Dakota's constitution does not contain this clause

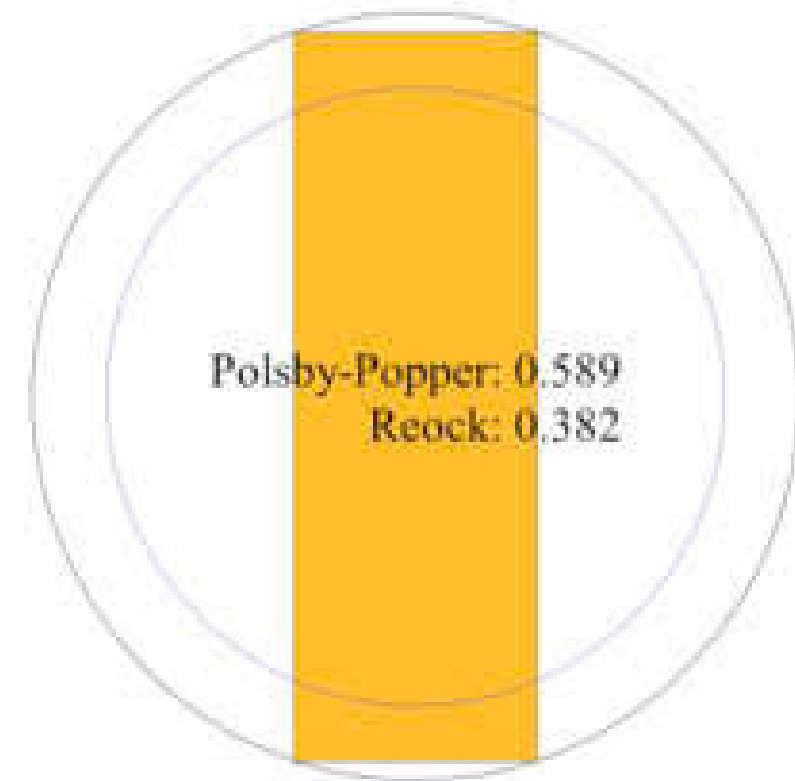
Criteria/Principles

Federal Statute: Single-Member Districts

“In each State entitled . . . to more than one Representative . . . there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative.” – 2 U.S.C. 2a

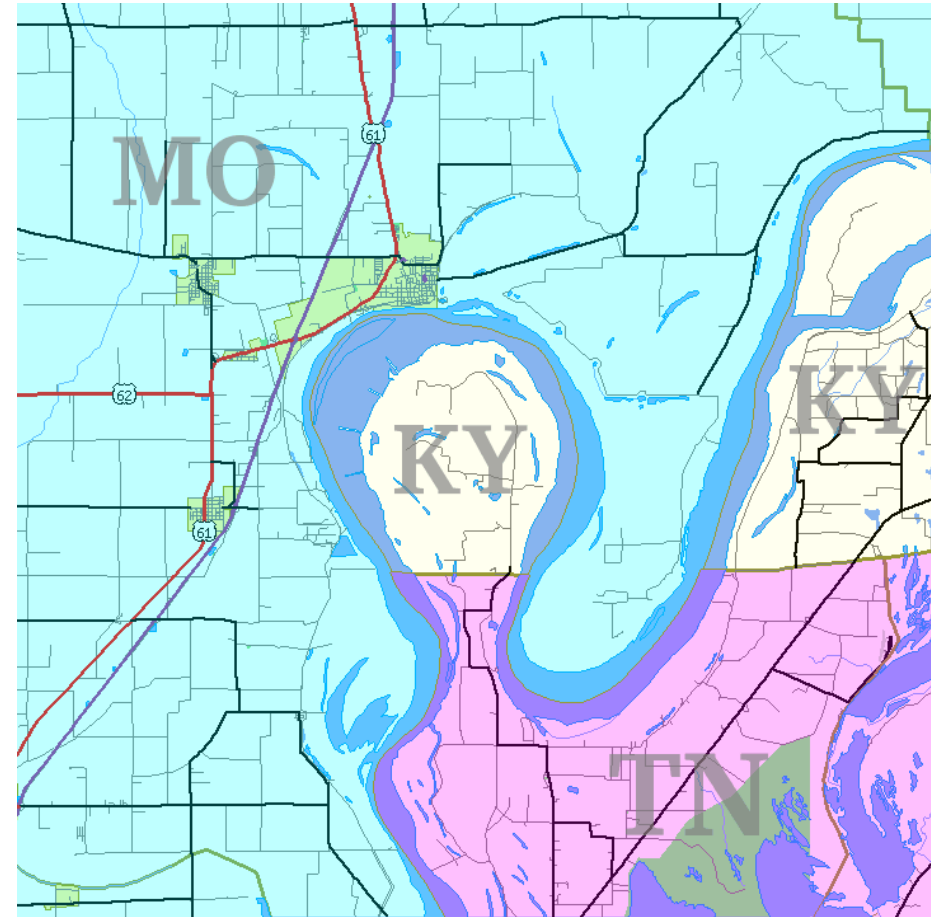
*Criteria/Principles: Compactness

- Common traditional principle (40 states)
- Two common ways to measure:
 - Polsby-Popper : $\frac{\text{Area of District}}{\text{Area of Circle with Same Perimeter as District}}$
 - Reock : $\frac{\text{Area of District}}{\text{Area of Smallest Encompassing Circle}}$



*Criteria/Principles: Contiguity

- Most common principle (all 50 states)
- **General Rule:** Must be able to go to every part of the district without leaving it
- Where issues arise:
 - Non-contiguous locality boundaries (usually arises with annexations)
 - Water



Criteria/Principles: Preserving Political Subdivisions

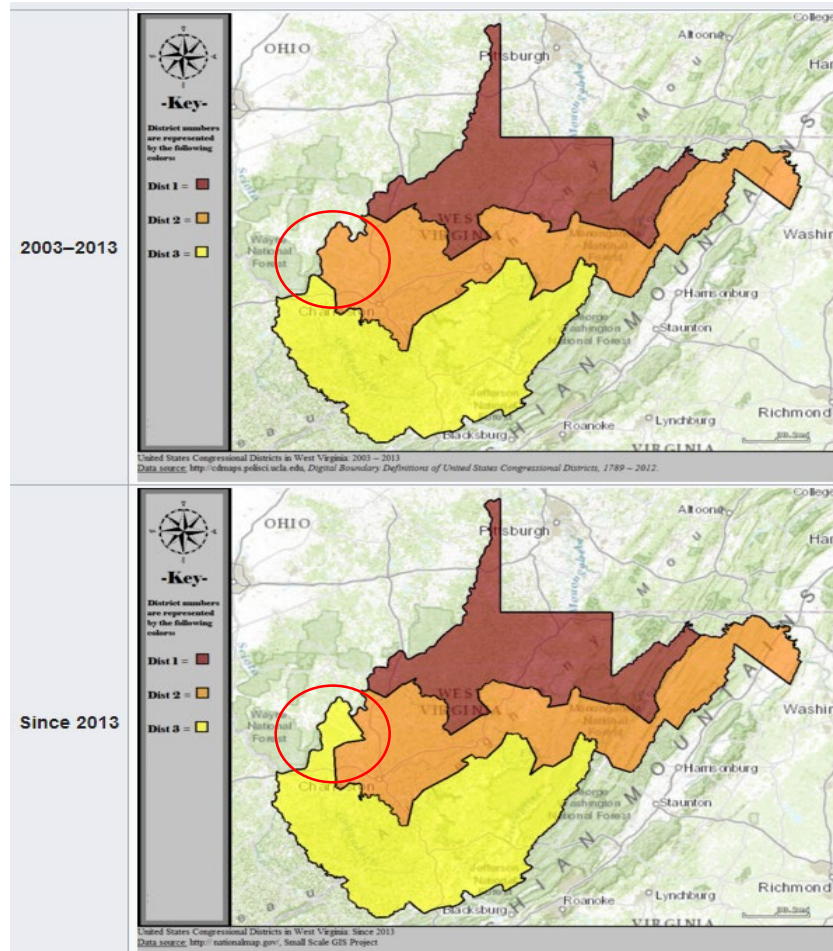
General Application

- Common traditional principle (45 states)
- Unless specified, could refer to any type of subdivision
 - County, City, School District, City Council Wards, etc.
- A stand-in for communities of interest or compactness?
- Importance of local political boundaries varies throughout the U.S.

Specific Application: Counties

- Sometimes codified (e.g., Idaho)
- Sometimes judicial (e.g., North Carolina)
- **General Idea:** keep counties or groups of counties together wherever possible. Only deviate from county borders when necessary to comply with federal laws like the Voting Rights Act or One Person, One Vote

Criteria/Principles: Preserving Cores of Prior Districts



- Somewhat infrequent traditional principle (10 states)
- Rationale: don't unnecessarily break up peoples' relationships with their representatives
- Usually permitted but not required
- Some states (e.g., Arizona) explicitly reject this principle and draw districts anew each decade

Other criteria NCSL tracks

- Preserving communities of interest (25 states)
- Prohibition on favoring/disfavoring an incumbent/party/candidate (17 states)
- Avoid pairing incumbents (11 states)
- Prohibition on using partisan data (5 states)
- Competitiveness (5 states)
- Proportionality (2 states)
- Symmetry (0 states, after repealed by Missouri voters in 2020)

All of this could change via litigation...

- Legal doctrines are always evolving; what's true today may not be tomorrow
- Already there's litigation about:
 - Census Bureau's failure to deliver redistricting data on schedule
 - Alabama
 - Ohio
 - Use of alternative data
 - Illinois
 - Predicted failure to redistrict
 - Minnesota
 - Louisiana
 - Wisconsin
 - Pennsylvania

Stay Connected

- Learn about NCSL training
- Subscribe to policy newsletters
- Read State Legislatures magazine
- Bookmark the NCSL Blog
- Listen to “Our American States” podcast
- Attend a meeting or training
- Follow @NCSLorg on social media





Ben Williams
Program Principal, Elections and Redistricting

Reach out anytime!

Email

ben.williams@ncsl.org

Phone

303.856.1648

EXHIBIT 4

Legal Considerations for Subdistricting

Redistricting Committee

September 2021

Subdistricting Multi-Member Districts into Subdistricts

- Multi-member districts are not inherently unlawful but may raise issues under federal law.
- Redistricting bodies may use multi-member or single-member districts for several reasons.
- Federal law provides additional considerations for districting decisions involving race as a factor.
- Subdistricts must comply with the one-person, one-vote principle so the populations in subdistricts must be approximately equal.

Fourteenth Amendment

- Generally, race may not be the "predominant factor" in the creation of a particular district.
- However:
 - Race may be the predominant factor if the district is "narrowly tailored" to achieve a "compelling state interest;" and
 - Race may be one factor out of multiple factors considered in the creation of a particular district.

Compelling State Interest

- Courts have said compelling state interests include:
 - Complying with Section 2 of the federal Voting Rights Act; and
 - Remediating past discrimination.

Compelling State Interest: Complying with the Voting Rights Act

- Complying with the Voting Rights Act can be a compelling state interest if there is direct evidence the votes of members of a racial minority would be diluted without a majority-minority district.
- Look to the Gingles Preconditions, which are covered in an upcoming slide, to help with this analysis.

Compelling State Interest: Remediating Past Discrimination

To show a compelling state interest in remediating past discrimination:

- The state must identify the past discrimination, which may have been public or private, with some specificity, and
- The redistricting body must have had a "strong basis in evidence" to conclude remedial action was necessary before engaging in the remedy.

Narrowly Tailored

- The remedy needs to correct the identified problem without going too far.
- To show a plan is narrowly tailored to complying with the Voting Rights Act, the state needs to show it "has good reason to think that all the Gingles preconditions were met..."
 - If the Gingles preconditions were met, courts then may consider the Senate Factors.

Gingles Preconditions

- The minority group is sufficiently numerous and compact to form a majority in a single-member district.
- The minority group is "politically cohesive" (i.e., tends to vote similarly).
- The majority group votes as a block (i.e., tends to vote similarly) so the minority group's candidate of choice usually is defeated.

Senate Factors

- History of official discrimination
- Racially polarized voting in the state
- Election procedures that diluted the minority vote
- Minority exclusion from the candidate slating process
- Effects of discrimination in health, education, and employment
- Subtle or overt racial appeals in campaigns
- Lack of elected officials' responsiveness to needs of minority
- Extent of minority success being elected to public office

Questions?

EXHIBIT 5

GOVERNMENT ADMINISTRATION COMMITTEE

The Government Administration Committee was assigned a study of space needs of the executive, judicial, and legislative branches, and the Ethics Commission.

Committee members were Senators Randy A. Burckhard (Chairman), Jerry Klein, Scott Meyer, and Erin Oban, and Representatives Rick Becker, Glenn Bosch, Jared C. Hagert, Karla Rose Hanson, Pat D. Heinert, Karen Karls, Jim Kasper, Lawrence R. Klemin, Ben Koppelman, Todd Porter, Shannon Roers Jones, and Dan Ruby.

The committee submitted this report to the Legislative Management on November 1, 2021. The Legislative Management accepted this report for submission to the Legislative Assembly.

STUDY OF SPACE NEEDS

The Government Administration Committee studied space needs of the executive, judicial, and legislative branches, and the Ethics Commission. The study included:

- A review of each branch's and the Ethics Commission's employee work location policies;
- An assessment of the space needs of each branch and the Ethics Commission to fulfill their constitutional and statutory responsibilities;
- An evaluation of state agency leases of space from private and other governmental entities in Bismarck, amounts being paid for these leases, and state agency rental payments being made to the Office of Management and Budget from special and federal funds;
- Consideration of the feasibility and desirability of the Office of Management and Budget charging rent to agencies receiving funding from the general fund; and
- The development of a space utilization plan for the Capitol complex.

The study included consideration of whether adequately sized committee rooms, appropriate accommodations under the federal Americans with Disabilities Act of 1990, and flexible meeting areas are available.

Legislative Branch Space

The committee received testimony from the Legislative Council indicating:

- The most significant changes in legislative committee rooms over the last 3 decades occurred during the 2021 legislative session due to the need for social distancing resulting from the COVID-19 emergency.
- The 2021 changes expanded the legislative presence in the judicial wing of the State Capitol through the construction of four new committee rooms.
- Most feedback from legislators and others regarding the newly constructed meeting rooms was positive and many legislators expressed interest in continuing to use the rooms.
- The legislative branch has retained control over the four new rooms since the conclusion of the 2021 legislative session; however, the long-term jurisdiction over the rooms has not been formally resolved.
- North Dakota Century Code Section 48-08-04 identifies areas of the State Capitol which may not be used without the authorization of the Legislative Council.

Recommendations

The committee recommends [Senate Bill No. 2349](#) to transfer certain space in the judicial wing of the State Capitol, including judicial wing room 216 and judicial wing rooms 327 B, C, and E, from the State Department of Health and the Department of Human Services to the legislative branch.

GOVERNMENT FINANCE COMMITTEE - SENATE BILL NO. 2290 STUDY

The Chairman of the Legislative Management directed the Government Finance Committee to study the provisions of [Senate Bill No. 2290 \(2021\)](#). The study must include a determination of the appropriateness of the bill's requirement for the Legislative Assembly to approve any Emergency Commission requests to expend funds after the aggregate amount of federal fund requests approved by the commission in a biennium has exceeded \$50 million and after the aggregate amount of other funds requests approved by the commission in a biennium has exceeded \$5 million. The committee is required to report its findings and recommendations to the Legislative Management by October 2021.

As approved by the Legislative Assembly, Senate Bill No. 2290 required the Budget Section to approve requests to receive and spend state special funds and federal funds during the interim if the request exceeds \$50,000. If the request exceeds \$50,000 but is less than \$3 million, the spending request may not be amended by the Budget Section. Requests exceeding \$3 million may be amended by the Budget Section, and any amended requests approved by the Budget Section are deemed to be approved by the Emergency Commission. The Budget Section may not approve more than \$50 million of federal funds spending requests or more than \$5 million of state special funds spending requests in aggregate during a biennium. The Legislative Assembly must approve any spending request for federal funds exceeding \$50 million, but Federal Highway Administration emergency relief funding and emergency recovery funding are exempt from the approval limits. The bill included an emergency clause and became effective April 29, 2021.

Committee members were Representatives Michael Howe (Chairman), Pamela Anderson, Jeff Delzer, Jared C. Hager, Gary Kreidt, Lisa Meier, Corey Mock, Dave Nehring, Gary Paur, Mike Schatz, Jim Schmidt, Steve Vetter, Don Vigesaa and Senators Brad Bekkedahl, Richard Marcellais, Ronald Sorvaag.

The committee submitted this report to the Legislative Management on November 1, 2021. The Legislative Management accepted this report for submission to the Legislative Assembly.

EMERGENCY COMMISSION - BRIEF HISTORY

The Emergency Commission was created in 1915 when the Legislative Assembly appropriated \$25,000 to establish a state contingencies funding pool to address state emergencies. As defined in North Dakota Century Code Section 54-16-00.1, an emergency means a calamity or an unforeseen happening subsequent to the time the appropriation was made and which was clearly not within the contemplation of the Legislative Assembly and the Governor. Initially, the Emergency Commission consisted of the Governor, the Secretary of State, and the State Auditor. Currently, the Emergency Commission consists of the Governor, the Secretary of State, the chairmen of the Appropriations Committees, and the majority leaders of the House and Senate. Until 1975, the Emergency Commission could approve any requests from the state contingencies funding pool up to the total amount appropriated by the Legislative Assembly; however, starting in 1975, Budget Section approval was required when the aggregate approvals from the state contingencies funding pool exceeded \$500,000. In Senate Bill No. 2015 (1999), the Legislative Assembly amended Section 54-16-04.1 and 54-16-04.2 requiring Budget Section approval to receive and spend state special funds or federal funds only if the request exceeded \$50,000.

During the 1989-90 interim, the Legislative Audit and Fiscal Review Committee noted various state agency audit reports included a recommendation for state agencies to comply with Section 12 of Article X of the Constitution of North Dakota, which requires public money to be spent only pursuant to an appropriation made by the Legislative Assembly. As a result, the 1991 Legislative Assembly approved Senate Bill No. 2168 to provide an appropriation of \$10 million of special funds authority to create a special funds state contingencies funding pool, which the Emergency Commission could disburse to state agencies as needed. However, the Legislative Assembly amended Section 54-16-04.2 in Section 11 of Senate Bill No. 2015 (1995) to remove the provision that limited the approvals of the Emergency Commission for state special funds to the amount appropriated by the Legislative Assembly. Therefore, the appropriation of special funds authority for a special funds state contingencies funding pool was removed from the budget in the 1995-97 biennium, and the state contingencies funding pool consisted of \$500,000 from the general fund only.

RECENT BUDGET SECTION SPENDING APPROVALS

Since the 2007-08 interim, the Budget Section approved the following requests, which also were approved by the Emergency Commission, for the acceptance and expenditure of additional state special funds and federal funds:

	Total Requests	State Special Funds	Federal Funds
2007-08 interim	33	\$20,988,584	\$70,454,427
2009-10 interim	39	\$2,130,000 ¹	\$63,413,419 ¹
2011-12 interim	28	\$546,000 ²	\$25,904,860 ²
2013-14 interim	24	\$1,987,856 ³	\$7,169,024 ³

	Total Requests	State Special Funds	Federal Funds
2015-16 interim	17	\$1,460,000 ⁴	\$1,558,365 ⁴
2017-18 interim	11	\$231,550 ⁵	\$31,124,500 ⁵
2019-20 interim	62	\$40,595,000 ⁶	\$1,883,802,474 ⁶

¹These amounts include \$50,701,861 of federal American Recovery and Reinvestment Act (ARRA) funding, but exclude \$131,418,750 related to federal disaster relief funding and \$81,750,000 of emergency transportation funding (\$6,750,000 of matching funds from the state highway fund and \$75,500,000 of Federal Highway Administration emergency relief funds).

²These amounts include \$7,000,000 of federal ARRA funding, but exclude \$386,710,411 related to disaster relief funding (\$33,610,411 from the state disaster relief fund and \$353,100,000 of federal funds) and \$387,100,000 of emergency transportation funding (\$32,400,000 of matching funds from the state highway fund and \$354,700,000 of Federal Highway Administration emergency relief funds).

³These amounts exclude \$27,332,970 from the state disaster relief fund and \$11,134,875 from federal funds related to disaster relief funding.

⁴These amounts exclude \$32,307,427 from the state disaster relief fund related to disaster relief funding.

⁵These amounts exclude \$4,512,468 from the state disaster relief fund related to disaster relief funding.

⁶These amounts include \$1,772,634,147 of federal coronavirus relief funding, but exclude \$494,915 from the state disaster relief fund related to disaster relief funding.

COMMITTEE CONSIDERATIONS
Bill Drafts

The committee considered a bill draft relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on an adjustment to the current limits. The bill draft would have increased the approval limit for federal funds by \$25 million, from \$50 million to \$75 million per biennium. The bill draft also would have increased the approval limit for state special funds by \$70 million, from \$5 million to \$75 million per biennium.

The committee considered a bill draft relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on percentage limits. The bill draft replaces the approval limit of \$50 million for federal funds with an amount based on 2 percent of the current biennial state general fund budget as approved by the Legislative Assembly. The approval limit of \$5 million for state special funds is replaced with an amount based on 1 percent of the current biennial state general fund budget as approved by the Legislative Assembly. The bill draft also includes other minor updates for clarity and consistency. Based on the 2021-23 biennium general fund budget of \$4,992,957,330, the approval limits under the provisions of this bill draft would be \$99,859,147 for federal funds and \$49,929,573 for special funds.

Recommendations

The committee recommends a bill draft [\[21.1085.01000\]](#) for consideration during a 2021 special or reconvened legislative session or during the 2023 regular legislative session relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on percentage limits. The committee also recommends the Legislative Management consider temporarily increasing the state special fund approval limit by \$15 million, from \$5 million to \$20 million, for the remainder of the 2021-23 biennium during a 2021 special or reconvened legislative session.

HUMAN SERVICES COMMITTEE

Pursuant to a Legislative Management Chairman directive, the Human Services Committee was assigned the duty to review the behavioral health bed management system authorized by the 2021 Legislative Assembly to determine if any statutory changes for the program are needed.

Committee members are Senators Judy Lee (Chairman), Howard C. Anderson, Jr., JoNell A. Bakke, Jason G. Heitkamp, Kathy Hogan, and David Hogue and Representatives Gretchen Dobervich, Clayton Fegley, Dwight Kiefert, Alisa Mitskog, Karen M. Rohr, Matthew Ruby, Mark Sanford, Mary Schneider, Randy A. Schobinger, Kathy Skroch, Michelle Strinden, and Greg Westlind.

The committee submitted this report to the Legislative Management on November 1, 2021. The Legislative Management accepted this report for submission to the Legislative Assembly.

BEHAVIORAL HEALTH BED MANAGEMENT SYSTEM

Background

North Dakota Century Code Section 50-06-41.3, as created in [House Bill No. 1012 \(2021\)](#), requires the Department of Human Services (DHS) to establish and maintain a behavioral health bed management system to improve utilization of behavioral health bed capacity. The section requires public and private providers of residential or inpatient behavioral health services to participate in and report daily to DHS the information and documentation necessary to maintain the system. The database can then be used by providers to identify available behavioral health beds in the state.

Testimony and Committee Discussion

The committee received testimony indicating many behavioral health programs managed by the Department of Corrections and Rehabilitation (DOCR) are licensed by DHS and would be included in the behavioral health bed management system. However, because behavioral health beds managed by DOCR are not available to the public, it may not be appropriate to include those beds in the database.

Committee Recommendation

The committee recommends [Senate Bill No. 2348](#) to amend Section 50-06-41.3 to exclude DOCR from participating in the behavioral health bed management system.

INTERIM HOUSE APPROPRIATIONS COMMITTEE

The Chairman of the Legislative Management appointed an Interim House Appropriations Committee and assigned the committee the following duties:

- Review proposals to use funding from the federal State Fiscal Recovery Fund established through the federal American Rescue Plan Act of 2021 and develop recommendations for the use of funds.
- Review legislative appropriations from the federal Coronavirus Capital Projects Fund and recommend any necessary changes to existing appropriations from the fund and develop recommendations regarding the use of any remaining available funding.
- Consider any other budget adjustments requiring legislation that are necessary before the 2023 regular legislative session.

Committee members were Representatives Jeff Delzer (Chairman), Bert Anderson, Larry Bellew, Tracy Boe, Mike Brandenburg, Michael Howe, Keith Kempenich, Gary Kreidt, Bob Martinson, Lisa Meier, Alisa Mitskog, Corey Mock, David Monson, Mike Nathe, Jon O. Nelson, Mark Sanford, Mike Schatz, Jim Schmidt, Randy A. Schobinger, Michelle Strinden, and Don Vigesaa.

The committee submitted this report to the Legislative Management on November 1, 2021. The Legislative Management accepted this report for submission to the Legislative Assembly.

STATE FISCAL RECOVERY FUND

Background

The American Rescue Plan Act of 2021 included \$219.8 billion for the State Fiscal Recovery Fund. Of this amount, \$195.3 billion is available to the states, \$25.5 billion will be distributed equally to the states and the District of Columbia, resulting in \$500 million allocated to each state. After an additional \$755 million is distributed to the District of Columbia, the remaining \$169 billion will be distributed to the states based on each state's share of seasonally adjusted unemployed persons for the 3-month period ending December 2020. North Dakota's allocation from the State Fiscal Recovery Fund is \$1,007,502,515. The funds have been received and are on deposit in the Bank of North Dakota.

Allowable Uses

Allowable uses of funding from the State Fiscal Recovery Fund, which must be obligated by December 31, 2024, and spent by December 31, 2026, are as follows:

- Costs related to the Coronavirus (COVID-19) pandemic, including assistance to households, small businesses, nonprofits, and affected industries, such as tourism, travel, and hospitality;
- Provide premium pay of up to \$13 per hour in addition to base pay, up to a maximum of \$25,000, to state, territory, or tribal government workers who perform essential work during the COVID-19 pandemic, or provide grants to employers with employees who perform essential work, which is defined as work needed to maintain continuity of operations of critical infrastructure and other sectors designated by the Governor as critical to protect the health and well-being of residents;
- The cost of providing government services to the extent there was lost revenue as a result of the COVID-19 pandemic; and
- Investment costs in water, sewer, and broadband infrastructure.

States may not use the funding to reduce taxes directly or indirectly between March 3, 2021, and the last day of the fiscal year in which funds received have been spent or returned. States cannot use funds to make payments to pension plans. The Office of Management and Budget submitted \$1.8 billion of revenue loss as of December 2020; therefore, the funds should be able to be used for the cost of government services.

FEDERAL CORONAVIRUS CAPITAL PROJECTS FUND

Background

The American Rescue Plan Act of 2021 appropriated \$10 billion to the United States Department of the Treasury for a Coronavirus Capital Projects Fund to provide payments to states, territories, freely associated states, and tribal governments "to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19)."

North Dakota received an initial allocation of \$112,473,563 from the Coronavirus Capital Projects Fund. North Dakota's allocation was later increased to \$113,276,228. The Legislative Assembly, based on initial information provided regarding the fund, approved using \$106,474,000 of the funding for the following projects for the 2021-23 biennium:

Agency	Project	Amount
Office of Management and Budget	Medical center construction grant	\$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Department of Career and Technical Education	Statewide area career center initiative grant program	70,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total - 2021-23 appropriations		\$106,474,000

Eligible Uses Based on September 2021 Guidance

The September 2021 guidance provides grant funds may be used for critical capital projects that directly enable work, education, and health monitoring in response to COVID-19. To be eligible for funding, a project must meet all of the following criteria:

1. The capital project invests in capital assets designed to directly enable work, education, and health monitoring;
2. The capital project is designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
3. The capital project is designed to address a critical need of the community to be served by it.

PROPOSALS RECEIVED

The committee reviewed proposals from members of the Legislative Assembly and the Governor for the use of federal American Rescue Plan Act funds and for other budget adjustments as detailed in this section.

Federal Coronavirus Capital Projects Fund

The committee reviewed a proposal to adjust the funding source of certain projects that received an appropriation from the federal Coronavirus Capital Projects Fund during the 2021 regular legislative session. The proposal would change the funding source of nine projects from the fund to federal state fiscal recovery funds.

Agency	Description	Amount
Office of Management and Budget	Medical center construction grant	\$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total		\$36,474,000

Federal State Fiscal Recovery Funds

The committee reviewed 156 proposals to use federal state fiscal recovery funds as follows:

Category	Proposals Received
Infrastructure	The committee reviewed 15 proposals to use federal state fiscal recovery funds for infrastructure projects, including natural gas pipelines, roads, water control, and other projects.
Aid to political subdivisions	The committee reviewed 33 proposals to use federal state fiscal recovery funds to provide aid to political subdivisions for road and bridge projects, local park district infrastructure projects, water and sewer projects, and other purposes.

Category	Proposals Received
Capital improvements	The committee reviewed 34 proposals to use federal state fiscal recovery funds for capital projects for state agency and institution building projects, deferred maintenance, and other purposes.
Information technology	The committee reviewed 19 proposals to use federal state fiscal recovery funds for information technology projects, including cybersecurity enhancements, state agency software projects, and other purposes.
Economic development	The committee reviewed 29 proposals to use federal state fiscal recovery funds for economic development, including research programs, workforce initiatives, business incentives, and other purposes.
Other proposals	The committee reviewed 26 proposals to use federal state fiscal recovery funds for other purposes, including human service programs, long-term care facility assistance, child care programs, and other purposes.

Other Budget Adjustments

The committee reviewed 27 proposals for other budget adjustments. The proposals included adjustments to federal spending authority for agencies, the authorization of new full-time equivalent (FTE) positions, additional authority to allow for the distribution of federal local fiscal recovery funds, and other purposes.

COMMITTEE RECOMMENDATIONS
Bill Draft 21.1104.06000

The committee recommends [House Bill No. 1505](#) to appropriate \$509,150,228 of federal COVID-19 relief funding, of which \$113,276,228 is from the federal Coronavirus Capital Projects Fund, \$383,474,000 is from the federal State Fiscal Recovery Fund, and \$12,400,000 is from the federal Coronavirus Relief Fund to various state agencies, as follows:

Federal Coronavirus Capital Projects Fund		
Agency	Description	Federal Funds
Department of Career and Technical Education ¹	Section 1 - Statewide area career center initiative grant program for career academies	\$50,000,000
Information Technology Department	Section 8 - Broadband infrastructure grants to providers to expand coverage and ensure reliable high-speed broadband Internet to all addresses in the state	63,276,228
Total		\$113,276,228

¹[House Bill No. 1015 \(2021\)](#) provided \$70 million from the federal Coronavirus Relief Fund to the Department of Career and Technical Education for career academies. Section 1 of the bill draft would provide a total of \$80 million for this purpose, of which \$50 million is from the federal Coronavirus Capital Projects Fund and \$30 million is from the federal State Fiscal Recovery Fund.

Federal State Fiscal Recovery Fund		
Agency	Description	Federal Funds
Department of Career and Technical Education ¹	Section 1 - Statewide area career center initiative grant program	\$30,000,000
Department of Public Instruction	Section 1 - Grant to a children's science center project to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	5,900,000
University of North Dakota	Section 1 - Funding to reconstruct the University of North Dakota apron at Grand Forks International Airport to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	5,000,000
Dickinson State University	Section 1 - Funding for Dickinson State University projects, including a Pulver Hall project, a meat processing laboratory remodel, and other projects to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	4,000,000
Highway Patrol	Section 1 - Funding for a Law Enforcement Training Academy Center to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	3,000,000
Office of Management and Budget	Section 1 - Medical center grant to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	500,000
Judicial branch	Section 1 - Information technology equipment to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	157,600
State Historical Society	Section 2 - Historic site deferred maintenance to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1018 (2021)	4,200,000

Federal State Fiscal Recovery Fund		
Agency	Description	Federal Funds
Parks and Recreation Department	Section 3 - State park deferred maintenance and essential infrastructure to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1019 (2021)	7,900,000
Parks and Recreation Department	Section 4 - State park capital improvements to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1019 (2021)	816,400
Parks and Recreation Department	Section 5 - Funding for the International Peace Garden to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1019 (2021)	3,000,000
Agriculture Commissioner	Section 6 - Intermodal facility construction grant program to replace funding from the federal Coronavirus Capital Projects Fund in Senate Bill No. 2245 (2021)	2,000,000
Department of Transportation	Section 7 - State road and bridge projects (\$200 million), to improve county bridges (\$50 million), for allocations to counties based on the highway tax distribution formula (\$50 million), and for allocations to townships (\$17 million), which was appropriated in House Bill No. 1395 (2021)	317,000,000
Total		\$383,474,000

¹[House Bill No. 1015 \(2021\)](#) provided \$70 million from the federal Coronavirus Relief Fund to the Department of Career and Technical Education for career academies. Section 1 of the bill draft would provide a total of \$80 million for this purpose, of which \$50 million is from the federal Coronavirus Capital Projects Fund and \$30 million is from the federal State Fiscal Recovery Fund.

Federal Coronavirus Relief Fund		
Agency	Description	Federal Funds
Department of Human Services	Section 9 - Payroll expenses	\$4,400,000
Department of Corrections and Rehabilitation Adjutant General	Section 9 - Payroll expenses	7,000,000
	Section 9 - Payroll expenses	1,000,000
Total		\$12,400,000

Bill Draft 21.1130.03000

The committee recommends [House Bill No. 1506](#) to appropriate funding to the State Treasurer, Attorney General, Department of Human Services, Retirement and Investment Office, and Department of Public Instruction; transfer Bank of North Dakota profits to the University of North Dakota; authorize 16 FTE Department of Human Services positions; provide Department of Human Services transfer authority; and authorize 6 FTE Retirement and Investment Office positions, as follows:

Federal State Fiscal Recovery Fund		
Agency	Description	Federal Funds
Department of Public Instruction	Section 16 - Information technology project upgrades in lieu of withholding state school aid from school districts not eligible for federal Elementary and Secondary School Emergency Relief (ESSER) funding allocations	\$100,000
Total		\$100,000

Other Fiscal Items			
Agency	Description	Special Funds	Federal Funds
State Treasurer	Section 1 - Provides additional appropriation authority to the State Treasurer to distribute funding from the federal Local Fiscal Recovery Fund to cities, to provide a total of \$53,174,975 appropriated to the State Treasurer for this purpose	\$0	\$3,014,975
University of North Dakota	Section 2 - Transfers Bank of North Dakota profits to the University of North Dakota for campus network upgrades	750,000	0
Attorney General	Section 3 - Funding from the Attorney General refund fund for State Crime Laboratory salary equity increases	537,297	0
Department of Human Services	Section 4 - Authorizes 16 FTE positions for the Department of Human Services	0	0

Other Fiscal Items			
Agency	Description	Special Funds	Federal Funds
Department of Human Services	Section 5 - Appropriates federal funding due to the increased federal medical assistance percentage (FMAP) and provides the department an exemption to use up to \$16 million of any general fund savings to address any decreases in the regular FMAP rate	0	79,600,000
Department of Human Services	Section 6 - Medicaid postpartum coverage	0	600,000
Department of Human Services	Section 7 - Lifespan respite care program	0	386,690
Department of Human Services	Section 8 - Vulnerable adult protection services program	0	1,936,350
Department of Human Services	Section 9 - Supplemental nutrition assistance program verification database	0	239,558
Department of Human Services	Section 10 - Children and Family Services transition program	0	1,168,347
Department of Human Services	Section 11 - Provides line item transfer authority to the Department of Human Services for House Bill Nos. 1394 and 1395 (2021)	0	0
Department of Human Services	Section 12 - Funding for the State Hospital	0	200,000
Department of Human Services	Section 13 - Money follows the person capacity program	0	5,000,000
Department of Human Services	Section 14 - Randolph Sheppard vocational rehabilitation program	0	22,663
Retirement and Investment Office	Section 15 - Authorizes 6 new FTE positions and appropriates funding for salaries and operating expenses	1,806,862	0
Department of Public Instruction	Section 16 - Funding from state school aid withholding for information technology upgrades	10,000,000	0
Total		\$13,094,159	\$92,168,583

Bill Draft 21.1137.01000

The committee recommends a bill draft [\[21.1137.01000\]](#) to appropriate \$570,035,705 from the federal State Fiscal Recovery Fund, included in Section 1 of the bill, as follows:

Federal State Fiscal Recovery Fund		
Agency	Description	Federal Funds
Industrial Commission	Pipeline infrastructure to transport natural gas from western to eastern North Dakota	\$150,000,000
Industrial Commission	Abandoned oil well conversion to water supply grant program to convert abandoned wells to livestock freshwater supply wells for permanent drought resiliency	3,200,000
Department of Water Resources	Water projects with \$50 million used to replace funding from the resources trust fund for current projects	75,000,000
Department of Corrections and Rehabilitation	Stipends to county jails for costs to house inmates sentenced to the department but deferred admission due to the pandemic	4,800,000
Parks and Recreation Department	Grants to local park districts to renovate and upgrade existing outdoor facilities with a maximum of \$1.5 million per park district and a 1-to-1 matching requirement	5,000,000
North Dakota State University Main Research Center	Capital projects, including \$446,000 for projects at the Carrington Research Extension Center (REC), \$1,963,000 at the Central Grasslands REC, \$3,420,000 at the Hettinger REC, and \$2,200,000 at the Dickinson REC	8,029,000
State Department of Health	Public health laboratory project	15,000,000
Department of Corrections and Rehabilitation	Free through recovery program for capacity increase, wait time reduction, recidivism reduction, and to improve outcomes	2,995,200
Parks and Recreation Department	State park deferred maintenance or small capital projects with each of the 13 state parks receiving a minimum of \$100,000	10,000,000
Office of Management and Budget	Critical maintenance projects	10,000,000
Office of Management and Budget	Human resources transformation initiative	

Federal State Fiscal Recovery Fund		
Agency	Description	Federal Funds
Office of Management and Budget	Heating, ventilation, and air conditioning improvements to the legislative chambers and Brynhild Haugland Room	7,000,000
State Historical Society	Essential infrastructure at historic sites	950,000
State Board of Higher Education	High performance computing at North Dakota State University	2,200,000
State Board of Higher Education	Higher education capital projects, including \$25 million for Hartnett Hall at Minot State University, \$50 million for Merrifield Hall at the University of North Dakota, and \$38 million for a polytechnic building at Bismarck State College	113,000,000
State Board of Higher Education	Equipment and personnel for hyperbaric oxygen therapy at the University of North Dakota School of Medicine and Health Sciences	2,104,121
State Board of Higher Education	Dakota Digital Academy	475,000
Attorney General	Establishment of a missing persons database	75,000
Attorney General	Replacement of the prosecuting case management system	1,000,000
Information Technology Department	Funding for radios compatible with the statewide interoperable radio network, including \$2,612,000 for the Highway Patrol and \$2,057,384 for the Department of Corrections and Rehabilitation	4,669,384
Information Technology Department	Grant to the North Dakota Stockmen's Association for the conversion of a paper-based brand inspection program to an electronic system	401,000
Adjutant General	State active-duty software replacement project	450,000
Judicial branch	Supreme Court docket system replacement project	2,020,000
Office of Administrative Hearings	Development of a web-based document management system	20,000
Department of Human Services	Retention bonuses for direct service professionals serving clients with intellectual or developmental disabilities	2,500,000
Department of Human Services	Funding for long-term care facilities, including nursing facilities (\$20.8 million), basic care facilities (\$2.95 million), and assisted living facilities (\$1.25 million)	25,000,000
Department of Human Services	Funding for western North Dakota behavioral health (\$4 million), child care services (\$17 million), Medicaid eligibility system upgrades (\$5 million), and substance use disorder treatment voucher system grants (\$3 million)	29,000,000
Department of Human Services	North Dakota Pregnancy Resource Network	1,500,000
Adjutant General	Camp Grafton housing enhancements	2,000,000
Department of Veterans' Affairs	Grant to assist in the construction of the \$8 million Fisher House at the Fargo VA Medical Center	500,000
Department of Veterans' Affairs	Improve and expand veteran medical transportation	147,000
Bank of North Dakota	Fuel production facility loan forgiveness program	21,000,000
Department of Commerce	Transfer to the innovation technology loan fund program	5,000,000
Department of Commerce	Hydrogen development grants	20,000,000
Department of Commerce	Autonomous agriculture matching grant program to accelerate innovation and research within the autonomous agriculture industry, also known as the Grand Farm Initiative	10,000,000
Department of Commerce	Local workforce development incentive grant program to support efforts to recruit, retain, or retrain workers. Requires 25 percent matching funds from local sources.	15,000,000
Department of Commerce	Technical skills training grant program for the expansion of successful workforce training programs to allow businesses to establish or expand internal training and training for new workers and workforce innovation grant programs to focus on attracting skilled workers to the state from targeted communities and regions	5,000,000
State Board of Higher Education	Establishment of a Center for Space Education and Research at the University of North Dakota	10,000,000
Aeronautics Commission	Airport grants	5,000,000
Total		\$570,035,705

Department of Transportation

The bill also includes a \$100 million appropriation in Section 2 from federal funds in excess of the regular federal funding amounts included in the Department of Transportation's 2021-23 biennium budget, to the Department of Transportation for road and bridge construction projects for the remainder of the 2021-23 biennium.

Appropriation Recommendation Summary

The following is a summary of the committee's appropriation recommendations:

Bill Draft	Federal State Fiscal Recovery Fund	Federal Coronavirus Capital Projects Fund	Federal Coronavirus Relief Fund	Other Federal Funds	Special Funds	Total
21.1104.06000	\$383,474,000	\$113,276,228	\$12,400,000	\$0	\$0	\$509,150,228
21.1130.02000	100,000	0	0	92,168,583	13,094,159	105,362,742
21.1137.01000	570,035,705	0	0	100,000,000	0	670,035,705
Total	\$953,609,705	\$113,276,228	\$12,400,000	\$192,168,583	\$13,094,159	\$1,284,548,675

Bill Draft 21.1135.02000

The committee recommends a bill draft [\[21.1135.02000\]](#) to provide legislative intent to reduce integrated formula payments to school districts eligible to receive ESSER funds by a one-time amount of \$88 per student based on fall 2021 enrollment for information technology upgrades to the state automated reporting system and the statewide longitudinal data system. Legislative intent is provided that the Department of Public Instruction use ESSER funds appropriated to the department by the 2021 Legislative Assembly to reimburse eligible school districts for the amount of integrated formula payments withheld.

Bill Draft 21.1134.01000

The committee recommends [House Bill No. 1507](#) to amend North Dakota Century Code Chapter 15.1-21 to require school districts to offer computer science and cybersecurity courses to students.

INTERIM SENATE APPROPRIATIONS COMMITTEE

The Chairman of the Legislative Management appointed an Interim Senate Appropriations Committee and assigned the committee the following duties:

- Review proposals to use funding from the federal State Fiscal Recovery Fund established through the federal American Rescue Plan Act of 2021 and develop recommendations for the use of funds.
- Review legislative appropriations from the federal Coronavirus Capital Projects Fund and recommend any necessary changes to existing appropriations from the fund and develop recommendations regarding the use of any remaining available funding.
- Consider any other budget adjustments requiring legislation that are necessary before the 2023 regular legislative session.

Committee members were Senators Ray Holmberg (Chairman), Brad Bekkedahl, Kyle Davison, Dick Dever, Robert Erbele, Joan Heckaman, David Hogue, Karen K. Krebsbach, Tim Mathern, Dave Oehlke, Nicole Poolman, David S. Rust, Ronald Sorvaag, and Terry M. Wanzek.

The committee submitted this report to the Legislative Management on November 1, 2021. The Legislative Management accepted this report for submission to the Legislative Assembly.

STATE FISCAL RECOVERY FUND

Background

The American Rescue Plan Act of 2021 included \$219.8 billion for the State Fiscal Recovery Fund. Of this amount, \$195.3 billion is available to states, \$25.5 billion will be distributed equally to the states and District of Columbia, resulting in \$500 million allocated to each state. After an additional \$755 million is distributed to the District of Columbia, the remaining \$169 billion will be distributed to the states based on each state's share of seasonally adjusted unemployed persons for the 3-month period ending December 2020. North Dakota's allocation from the State Fiscal Recovery Fund is \$1,007,502,515. The funds have been received and are on deposit in the Bank of North Dakota.

Allowable Uses

Allowable uses of funding from the State Fiscal Recovery Fund, which must be obligated by December 31, 2024, and spent by December 31, 2026, are as follows:

- Costs related to the Coronavirus (COVID-19) pandemic, including assistance to households, small businesses, nonprofits, and affected industries, such as tourism, travel, and hospitality;
- Provide premium pay of up to \$13 per hour in addition to base pay, up to a maximum of \$25,000, to state, territory, or tribal government workers who perform essential work during the COVID-19 pandemic, or provide grants to employers with employees who perform essential work, which is defined as work needed to maintain continuity of operations of critical infrastructure and other sectors designated by the Governor as critical to protect the health and well-being of residents;
- The cost of providing government services to the extent there was lost revenue as a result of the COVID-19 pandemic; and
- Investment costs in water, sewer, and broadband infrastructure.

States may not use the funding to reduce taxes directly or indirectly between March 3, 2021, and the last day of the fiscal year in which funds received have been spent or returned. States cannot use funds to make payments to pension plans. The Office of Management and Budget submitted \$1.8 billion of revenue loss as of December 2020; therefore, the funds should be able to be used for the cost of government services.

CORONAVIRUS CAPITAL PROJECTS FUND

Background

The American Rescue Plan Act of 2021 appropriated \$10 billion to the United States Department of the Treasury for a Coronavirus Capital Projects Fund to provide payments to states, territories, freely associated states, and tribal governments "to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19)."

North Dakota received an initial allocation of \$112,473,563 from the Coronavirus Capital Projects Fund. North Dakota's allocation was later increased to \$113,276,228. The Legislative Assembly, based on initial information

provided regarding the fund, approved using \$106,474,000 of the funding for the following projects for the 2021-23 biennium:

Agency	Project	Amount
Office of Management and Budget	Medical center construction grant	\$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Department of Career and Technical Education	Statewide area career center initiative grant program	70,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total - 2021-23 appropriations		\$106,474,000

Eligible Uses Based on September 2021 Guidance

The September 2021 guidance provides grant funds may be used for critical capital projects that directly enable work, education, and health monitoring in response to COVID-19. To be eligible for funding, a project must meet all of the following criteria:

1. The capital project invests in capital assets designed to directly enable work, education, and health monitoring;
2. The capital project is designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
3. The capital project is designed to address a critical need of the community to be served by it.

PROPOSALS RECEIVED

The committee reviewed proposals from members of the Legislative Assembly and the Governor for the use of American Rescue Plan Act funds and for other budget adjustments as detailed in this section.

Coronavirus Capital Projects Fund

The committee reviewed a proposal to adjust the funding source of certain projects that received an appropriation from the Coronavirus Capital Projects Fund during the 2021 regular legislative session. The proposal would change the funding source of nine projects from the Coronavirus Capital Projects Fund to federal state fiscal recovery funds.

Federal State Fiscal Recovery Funds

The committee reviewed 156 proposals to use federal state fiscal recovery funds as follows:

Category	Proposals Received
Infrastructure	The committee reviewed 15 proposals to use federal state fiscal recovery funds for infrastructure projects, including natural gas pipelines, roads, water control, and other projects.
Aid to political subdivisions	The committee reviewed 33 proposals to use federal state fiscal recovery funds to provide aid to political subdivisions for road and bridge projects, local park district infrastructure projects, water and sewer projects, and other purposes.
Capital improvements	The committee reviewed 34 proposals to use federal state fiscal recovery funds for capital projects for state agency and institution building projects, deferred maintenance, and other purposes.
Information technology	The committee reviewed 19 proposals to use federal state fiscal recovery funds for information technology projects, including cybersecurity enhancements, state agency software projects, and other purposes.
Economic Development	The committee reviewed 29 proposals to use federal state fiscal recovery funds for economic development, including research programs, workforce initiatives, business incentives, and other purposes.
Other proposals	The committee reviewed 26 proposals to use federal state fiscal recovery funds for other purposes, including human service programs, long-term care facility assistance, child care programs, and other purposes.

Other Budget Adjustments

The committee reviewed 27 proposals for other budget adjustments. The proposals included adjustments to federal spending authority for agencies, the authorization of new full-time equivalent (FTE) positions, additional authority to allow for the distribution of federal local fiscal recovery funds, and other purposes.

COMMITTEE RECOMMENDATIONS

The committee recommends the following bill drafts:

1. A bill draft [\[21.1108.03000\]](#) to:

- Adjust the funding source of the following projects from the Coronavirus Capital Projects Fund to federal state fiscal recovery funds:

Agency	Project	Amount
Office of Management and Budget	Medical center construction grant	\$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total		\$36,474,000

- Provide for the Coronavirus Capital Projects Fund to be allocated for career and technical education center projects (\$53.3 million) and rural broadband projects (\$60 million). In addition, \$30 million is provided from state fiscal recovery funds for career and technical education projects.
- Appropriate \$317 million of state fiscal recovery funds to the Department of Transportation for state road and bridge projects (\$200 million), county bridge projects (\$100 million), and transportation funding distributions to townships (\$17 million).
- Authorize any unused federal coronavirus relief funds to be used for salary costs of the Highway Patrol, Department of Corrections and Rehabilitation, and Adjutant General.

2. A bill draft [\[21.1131.04000\]](#) to:

- Provide federal funds authorization of \$3,014,975 to the State Treasurer for additional local fiscal recovery fund allocations to political subdivisions.
- Continue the authorization for the University of North Dakota to use \$750,000 of Bank of North Dakota profits for campus network upgrades.
- Provide an appropriation of \$537,297 to the Attorney General from the Attorney General refund fund for salary equity increases for State Crime Laboratory employees.
- Provide an appropriation of \$10 million to the Department of Public Instruction from withheld integrated formula payments for information technology upgrades.
- Authorize 16 FTE positions for the Department of Human Services for the county social and human services project.
- Authorize the Department of Human Services to transfer funding between line items in House Bill Nos. 1394 and 1395 (2021).
- Provide federal funds authority of \$92,453,608 to the Department of Human Services for federal medical assistance percentage adjustments and for other various programs.
- Provide an appropriation from the Bank of North Dakota operating fund to the bank for salaries and wages.
- Provide funding of \$1,806,862 from the Retirement and Investment Office operating fund to the agency for six new FTE positions and other salary adjustments.
- Provide an appropriation of \$10 million from the Department of Public Instruction operating fund from withheld integrated formula payments and \$100,000 from the State Fiscal Recovery Fund to the department for information technology upgrades and for information technology upgrade funding in lieu of withholding from schools ineligible to receive allocations from the federal Elementary and Secondary School Emergency Relief Fund.
- Amend Section 9 of Chapter 46 of the 2021 Session Laws relating to grant requirements for the beyond visual line of sight unmanned aircraft system program.

3. [Senate Bill No. 2345](#) to:

- Appropriate federal state fiscal recovery funds to the following state agencies:

Agency	Purpose	Amount
Industrial Commission	Grants for a natural gas pipeline project to transport natural gas from western to eastern North Dakota	\$150,000,000
Industrial Commission	Abandoned oil well conversion to water supply grant program	3,200,000
Department of Water Resources	Water infrastructure projects	75,000,000
Department of Corrections and Rehabilitation	Stipends to county jails for costs to house inmates sentenced to the department but deferred admission	4,800,000
Parks and Recreation Department	Grants to local park districts to renovate and upgrade existing outdoor facilities with a \$1 to \$1 matching requirement	5,000,000
Main Research Center	Capital projects at the Carrington, Dickinson, Hettinger, and Central Grasslands Research Extension Centers	8,029,000
State Department of Health	State health laboratory project	15,000,000
Department of Corrections and Rehabilitation	Free through recovery program increase in capacity	2,995,200
Parks and Recreation Department	State park projects with a minimum of \$100,000 spent on projects at each park	10,000,000
Office of Management and Budget	State facility critical maintenance projects	10,000,000
Office of Management and Budget	Heating and cooling upgrades in the legislative wing of the Capitol	7,000,000
State Historical Society	State historic site repairs	950,000
North Dakota State University	Higher performance computing	2,200,000
Minot State University	Harnett Hall project	25,000,000
University of North Dakota	Merrifield Hall project	50,000,000
Bismarck State University	Polytechnic building project	38,000,000
University of North Dakota School of Medicine and Health Science	Hyperbaric oxygen therapy project	2,104,121
North Dakota University System	Dakota Digital Academy	475,000
Attorney General	Missing persons database	75,000
Attorney General	Prosecuting case management system replacement	1,000,000
Highway Patrol	Radios compatible with the statewide interoperable radio network	2,612,000
Department of Corrections and Rehabilitation	Radios compatible with the statewide interoperable radio network	2,057,384
Information Technology Department	Grant to North Dakota Stockmen's Association for brand inspection program software	401,000
Adjutant General	State active duty software replacement	450,000
Judicial branch	Replace docket system	2,020,000
Office of Administrative Hearings	Web-based document management system	20,000
Department of Human Services	Retention bonuses for direct service professionals	2,500,000
Department of Human Services	Funding to assist long-term care facilities	25,000,000
Department of Human Services	Funding for western North Dakota behavioral health (\$4 million), Medicaid eligibility system upgrade (\$5 million), child care services (\$17 million), and substance use disorder voucher program (\$3 million)	29,000,000
Department of Human Services	Grant to organization providing alternatives to abortion services	1,500,000
Adjutant General	Camp Grafton housing upgrades	2,000,000
Department of Veterans' Affairs	Grant to assist in Fisher House construction	500,000
Department of Veterans' Affairs	Improve and expand veterans' medical transportation	147,000
Bank of North Dakota	Fuel production facility grant program	21,000,000
Department of Commerce	Transfer to the innovation technology loan fund	5,000,000
Department of Commerce	Hydrogen development grants	20,000,000
Department of Commerce	Autonomous agriculture matching grant program	10,000,000

Agency	Purpose	Amount
Department of Commerce	Local workforce development incentive grant program with 25 percent local match requirement	15,000,000
Department of Commerce	Technical skills training grant program	5,000,000
University of North Dakota	Space education and research	10,000,000
Aeronautics Commission	Airport grants	5,000,000
Total		\$570,035,705

- Appropriate \$100 million of additional federal funds to the Department of Transportation. The funds are not subject to the excess federal funds requirements in House Bill Nos. 1015 and 1431 (2021).
4. [Senate Bill No. 2346](#) to authorize the Department of Public Instruction to withhold integrated formula payments to school districts to be used for information technology project upgrades to the state automated reporting system and the statewide longitudinal data system.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Legislative Management delegated to the Legislative Procedure and Arrangements Committee the Legislative Management's authority under North Dakota Century Code Section 54-35-11 to make arrangements for legislative sessions. Legislative rules also are reviewed and updated under this authority. The Legislative Management also delegated to the committee the Legislative Management's responsibility under Section 46-02-05 to determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws; and the power and duty under Section 54-35-02 to determine access to legislative information services and impose fees for providing such services and copies of legislative documents.

Committee members are Senators Rich Wardner (Chairman), Joan Heckaman, Ray Holmberg, Jerry Klein, Larry Luick, and Erin Oban and Representatives Joshua A. Boschee, Kim Koppelman, Scott Louser, Alisa Mitskog, and Chet Pollert.

The committee submitted this report to the Legislative Management on November 1, 2021. The Legislative Management accepted this report for submission to the Legislative Assembly.

SPECIAL OR RECONVENED SESSION ARRANGEMENTS

At the time of the committee's most recent meeting, the Governor had not committed to calling a special session for legislative redistricting. The committee approved arrangements to accommodate either a special or reconvened session. The committee reviewed four areas of consideration for the special or reconvened session--legislative rules, session employees, a bill draft regarding printing services, and miscellaneous matters.

Legislative Rules

The committee received testimony regarding the legislative rules amendments adopted during previous special sessions. The amendments primarily addressed the introduction of measures, length of time to consider a measure after it is reported from committee, length of time to reconsider a measure, and special committees during the special session. The committee recommends changes to legislative rules which are substantively similar to those rules amendments adopted during the 2001 and 2011 special sessions. The committee recommends creation of Joint Rules 303 and 304; amendment of Senate Rules 318(4), 333, 337, 347, 401(1), 402, 403, 501, 504, and 601; House Rules 318(4), 337, 347, 401(1), 402, 403, 501, 504, and 601; and Joint Rules 202, 207, 302, and 501(4); and repeal of Senate Rule 502, House Rule 502, and Joint Rule 208.

The recommended rules provide bills and resolutions, other than bills and resolutions introduced by the Legislative Management, must be introduced through the Delayed Bills Committee of the house of introduction. The requirement for approval by the Delayed Bills Committee is intended to limit introduction of measures to those measures of significant importance for consideration during the special or reconvened session, which is intended to address legislative redistricting and appropriations of certain federal funds received by the state. By requiring measures to be introduced through the Delayed Bills Committees, bills and resolutions would be screened to assure promotion of the session objectives.

The recommended rules eliminate specific meeting days for committees. Instead, the rules amendments allow the committee chairman or a majority of committee members to call a committee meeting. Specifically listing the days on which committees may meet could create misconceptions if the committees met on other than regularly scheduled days.

The recommended rules authorize a measure to be considered on the same day it is reported from committee or placed on the consent calendar. The normal time frame for consideration of a measure is shortened from the day after a measure is reported from committee or placed on the consent calendar.

The recommended rules allow an amendment made upon second reading in the Senate of a bill providing for redistricting of the Legislative Assembly to be proposed as a concept. Upon approval of the concept, the redistricting bill would be rereferred to the Joint Redistricting Committee for preparation by the Legislative Council of the exact language required for the amendment. The Joint Redistricting Committee then would report the amendment back to the Senate for action. This change is intended to limit the time taken for drafting and proofing exact legal descriptions of legislative districts to those floor amendments supported by a majority of the Senate members.

The recommended rules authorize a measure to be transmitted from one house to the other immediately after approval unless a Majority or Minority Leader gives notice of intention to reconsider. If notice is given, the measure

cannot be transmitted until the end of that day. Without this amendment, the normal procedure would be to retain the measure until the end of the next legislative day.

The recommended rules allow either house to consider receding more than once on the same day before a conference is called. Without the amendment, reconsideration could not be made until the next legislative day.

The recommended rules require the return of a fiscal note within 1 day of the request instead of 5 days. This recommendation recognizes the shortened time frames for considering bills and resolutions during the special or reconvened session.

The recommended rules establish a Joint Legislative Redistricting Committee and a Joint Technical Corrections Committee and provide for the House and Senate Appropriations Committees and procedural committees to meet during the special or reconvened session. The Joint Legislative Redistricting Committee would be responsible for all bills and resolutions relating to redistricting. The Joint Technical Corrections Committee would be responsible for all bills and resolutions relating to other substantive matters except appropriations. Voting in joint committees would be by house and would operate similarly to voting in conference committees.

Session Employees

The committee reviewed the employee positions filled during the 2011 special session. The committee determined the House Employment Committee may hire up to 11 employees and the Senate Employment Committee may hire up to 10 employees for the special or reconvened session. The rates of pay for employees during the special or reconvened session would be the compensation levels established by [Senate Concurrent Resolution No. 4003 \(2021\)](#).

Printing Services

During the 2019-20 interim, the committee authorized the Legislative Council to solicit bids for printing legislative materials for the 67th Legislative Assembly. Despite soliciting bids twice, no bids were received. Central Duplicating Services within the Office of Management and Budget provided printing for the 67th Legislative Assembly and will provide printing during the special or reconvened session. The committee received testimony noting several sections of the Century Code could be clarified to authorize Central Duplicating Services to provide legislative printing services. The committee recommends [Senate Bill No. 2347](#) providing the legislative branch the option of having legislative materials printed by Central Duplicating Services or soliciting bids for a private printing vendor. This bill is recommended for consideration during the special or reconvened session so the Legislative Assembly may consider contracting with Central Duplicating Services during the 2021-22 interim to print materials for the 68th Legislative Assembly.

Miscellaneous Matters

The committee recognizes the nature of the special or reconvened session will be limited in scope. Many services or items normally available during a regular session would not be feasible or economical during the special or reconvened session. The committee received testimony the bill and journal room has not been open to the public during special sessions. Committee hearings often are called on short notice during special or reconvened sessions, and printed schedules would become outdated quickly. Instead, measures, journals, and other documents have been made available on the legislative branch website and may be available through the North Dakota Legislative Daily application. Information on hearings also will be available on kiosks and signs throughout the Capitol. Journals typically have been printed after special sessions adjourn. The committee did not recommend any changes to these practices. The Legislator's Automated Work Station (LAWS) will be available to legislators during the special or reconvened session. Committee schedules and documents will continue to be available online, and the public may view committee meetings and floor sessions online as has been the practice since early 2020.

REDISTRICTING COMMITTEE

The Redistricting Committee was assigned the responsibility to develop a legislative redistricting plan to be implemented in time for use in the 2022 primary election. [House Bill No. 1397 \(2021\)](#) required the Chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2022 primary election. The bill provided:

1. The committee must consist of an equal number of members from the Senate and the House of Representatives appointed by the Chairman of the Legislative Management.
2. The committee shall ensure any legislative redistricting plan submitted to the Legislative Assembly for consideration must be of compact and contiguous territory and conform to all constitutional requirements with respect to population equality. The committee may adopt additional constitutionally recognized redistricting guidelines and principles to implement in preparing a legislative redistricting plan for submission to the Legislative Assembly.
3. The committee shall submit a redistricting plan and legislation to implement the plan to the Legislative Management by November 30, 2021.
4. A draft of the legislative redistricting plan created by the Legislative Council or a member of the Legislative Assembly is an exempt record as defined in North Dakota Century Code Section 44-04-17.1 until presented or distributed at a meeting of the Legislative Management, a Legislative Management committee, or the Legislative Assembly, at which time the presented or distributed draft is an open record. If possible, the presented or distributed draft must be made accessible to the public on the legislative branch website such as through the use of hyperlinks in the online meeting agenda. Any version of a redistricting plan other than the version presented or distributed at a meeting of the Legislative Management, a Legislative Management committee, or the Legislative Assembly is an exempt record.
5. The Chairman of the Legislative Management shall request the Governor to call a special session of the Legislative Assembly pursuant to Section 7 of Article V of the Constitution of North Dakota to allow the Legislative Assembly to adopt a redistricting plan to be implemented in time for use in the 2022 primary election and to address any other issue that may be necessary.

Committee members were Representatives Bill Devlin (Chairman), Larry Bellew, Joshua A. Boschee, Craig Headland, Mike Lefor, David Monson, Mike Nathe, and Austen Schauer and Senators Brad Bekkedahl, Randy A. Burckhard, Robert Erbele, Ray Holmberg, Jerry Klein, Erin Oban, Nicole Poolman, and Ronald Sorvaag.

The committee submitted this report to the Legislative Management on November 1, 2021. The Legislative Management accepted this report for submission to the Legislative Assembly.

BACKGROUND

Redistricting History in North Dakota

1931-62

Despite the requirement in the Constitution of North Dakota that the state be redistricted after each census, the Legislative Assembly did not redistrict itself between 1931 and 1963. At the time, the Constitution of North Dakota provided:

1. The Legislative Assembly must apportion itself after each federal decennial census; and
2. If the Legislative Assembly failed in its apportionment duty, a group of designated officials was responsible for apportionment.

Because the 1961 Legislative Assembly did not apportion itself following the 1960 Census, the apportionment group (required by the constitution to be the Chief Justice of the Supreme Court, the Attorney General, the Secretary of State, and the Majority and Minority Leaders of the House of Representatives) issued a plan, which was challenged in court. In *State ex rel. Lien v. Sathre*, 113 N.W.2d 679 (1962), the North Dakota Supreme Court determined the plan was unconstitutional and the 1931 plan continued to be law.

1963

In 1963 the Legislative Assembly passed a redistricting plan that was heard by the Senate and House Political Subdivisions Committees. The 1963 plan and Sections 26, 29, and 35 of Article II of the Constitution of North Dakota were challenged in federal district court and found unconstitutional as violating the equal protection clause in *Paulson v. Meier*, 232 F.Supp. 183 (1964). The 1931 plan also was held invalid. Thus, there was no constitutionally valid legislative

redistricting law in existence at that time. The court concluded adequate time was not available with which to formulate a proper plan for the 1964 election and the Legislative Assembly should promptly devise a constitutional plan.

1965

A conference committee during the 1965 legislative session consisting of the Majority and Minority Leaders of each house and the Chairmen of the State and Federal Government Committees produced a redistricting plan. In *Paulson v. Meier*, 246 F.Supp. 36 (1965), the federal district court found the 1965 redistricting plan unconstitutional. The court reviewed each plan introduced during the 1965 legislative session and specifically focused on a plan prepared for the Legislative Research Committee (predecessor to the Legislative Council and the Legislative Management) by two consultants hired by the committee to devise a redistricting plan. That plan had been approved by the interim Constitutional Revision Committee and the Legislative Research Committee and was submitted to the Legislative Assembly in 1965. The court slightly modified that plan and adopted it as the plan for North Dakota. The plan contained five multimember senatorial districts, violated county lines in 12 instances, and had 25 of 39 districts within 5 percent of the average population, four districts slightly over 5 percent, and two districts exceeding 9 percent.

1971

In 1971 an original proceeding was initiated in the North Dakota Supreme Court challenging the right of senators from multimember districts to hold office. The petitioners argued the multimembership violated Section 29 of Article II of the Constitution of North Dakota, which provided each senatorial district "shall be represented by one senator and no more." The court held Section 29 was unconstitutional as a violation of the equal protection clause of the United States Constitution and multimember districts were permissible. *State ex rel. Stockman v. Anderson*, 184 N.W.2d 53 (1971).

In 1971 the Legislative Assembly failed to redistrict itself after the 1970 Census and an action was brought in federal district court which requested the court order redistricting and declare the 1965 plan invalid. The court entered an order to the effect the existing plan was unconstitutional, and the court would issue a plan. The court appointed three special masters to formulate a plan and adopted a plan submitted by Mr. Richard Dobson. The "Dobson" plan was approved for the 1972 election only. The court recognized weaknesses in the plan, including substantial population variances and a continuation of multimember districts.

1973-75

In 1973 the Legislative Assembly passed a redistricting plan developed by the Legislative Council's interim Committee on Reapportionment, which was appointed by the Legislative Council Chairman and consisted of three senators, three representatives, and five citizen members. The plan was vetoed by the Governor, but the Legislative Assembly overrode the veto. The plan had a population variance of 6.8 percent and had five multimember senatorial districts. The plan was referred and was defeated at a special election held on December 4, 1973.

In 1974 the federal district court in *Chapman v. Meier*, 372 F.Supp. 371 (1974) made the "Dobson" plan permanent. However, on appeal, the United States Supreme Court ruled the "Dobson" plan unconstitutional in *Chapman v. Meier*, 420 U.S. 1 (1975).

In 1975 the Legislative Assembly adopted the "Dobson" plan but modified it by splitting multimember senatorial districts into subdistricts. The plan was proposed by individual legislators and was heard by the Joint Reapportionment Committee, consisting of five senators and five representatives. The plan was challenged in federal district court and was found unconstitutional. In *Chapman v. Meier*, 407 F.Supp. 649 (1975), the court held the plan violated the equal protection clause because of the total population variance of 20 percent. The court appointed a special master to develop a plan, and the court adopted that plan.

1981

In 1981 the Legislative Assembly passed House Concurrent Resolution No. 3061, which directed the Legislative Council to study and develop a legislative redistricting plan. The Legislative Council Chairman appointed a 12-member interim Reapportionment Committee consisting of seven representatives and five senators. The chairman directed the committee to study and select one or more redistricting plans for consideration by the 1981 reconvened Legislative Assembly. The committee completed its work on October 6, 1981, and submitted its report to the Legislative Council at a meeting of the Council in October 1981.

The committee instructed its consultant, Mr. Floyd Hickok, to develop a plan for the committee based upon the following criteria:

1. The plan should have 53 districts.
2. The plan should retain as many districts in their present form as possible.
3. No district could cross the Missouri River.
4. The population variance should be kept below 10 percent.

Mr. Hickok presented a report to the committee in which the state was divided into 11 blocks. Each block corresponded to a group of existing districts with only minor boundary changes. The report presented a number of alternatives for dividing most blocks. There were 27,468 different possible combinations among the alternatives presented.

The bill draft recommended by the interim committee incorporated parts of Mr. Hickok's plans and many of the plans presented as alternatives to the committee. The plan was introduced in a reconvened session of the Legislative Assembly in November 1981 and was heard by the Joint Reapportionment Committee.

The committee considered a total of 12 legislative redistricting bills. The reconvened session adopted a redistricting plan that consisted of 53 senatorial districts. The districts containing the Grand Forks and Minot Air Force Bases were combined with districts in those cities, and each elected two senators and four representatives at large.

1991-95

In 1991 the Legislative Assembly adopted House Concurrent Resolution No. 3026, which directed a study of legislative apportionment and development of legislative reapportionment plans for use in the 1992 primary election. The resolution encouraged the Legislative Council to use the following criteria to develop a plan or plans:

1. Legislative districts and subdistricts had to be compact and of contiguous territory except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
2. Legislative districts could have a population variance from the largest to the smallest in population not to exceed 9 percent of the population of the ideal district except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
3. No legislative district could cross the Missouri River.
4. Senators elected in 1990 could finish their terms, except in those districts in which over 20 percent of the qualified electors were not eligible to vote in that district in 1990, senators had to stand for reelection in 1992.
5. The plan or plans developed were to contain options for the creation of House subdistricts in any Senate district that exceeds 3,000 square miles.

The Legislative Council established an interim Legislative Redistricting and Elections Committee, which undertook the legislative redistricting study. The committee consisted of eight senators and eight representatives. The Legislative Council contracted with Mr. Hickok to provide computer-assisted services to the committee.

After the committee held meetings in several cities around the state, the committee requested the preparation of plans for 49, 50, and 53 districts based upon these guidelines:

1. The plans could not provide for a population variance over 10 percent.
2. The plans could include districts that cross the Missouri River so the Fort Berthold Reservation would be included within one district.
3. The plans had to provide alternatives for splitting the Grand Forks Air Force Base and the Minot Air Force Base into more than one district and alternatives that would allow the bases to be combined with other contiguous districts.

The interim committee recommended two alternative bills to the Legislative Council at a special meeting held in October 1991. Both of the bills included 49 districts. Senate Bill No. 2597 (1991) split the two Air Force bases so neither base would be included with another district to form a multisenator district. Senate Bill No. 2598 (1991) placed the Minot Air Force Base entirely within one district so the base district would be combined with another district.

In a special session held November 4-8, 1991, the Legislative Assembly adopted Senate Bill No. 2597 with some amendments with respect to district boundaries. The bill was heard by the Joint Legislative Redistricting Committee. The bill also was amended to provide any senator from a district in which there was another incumbent senator as a result of legislative redistricting had to be elected in 1992 for a term of 4 years, to provide the senator from a new district created in Fargo had to be elected in 1992 for a term of 2 years, and to include an effective date of December 1, 1991. In addition, the bill was amended to include a directive to the Legislative Council to assign to the committee the responsibility to develop a plan for subdistricts for the House of Representatives.

The Legislative Council again contracted with Mr. Hickok to provide services for the subdistrict study. After conducting the subdistrict study, the interim committee recommended House Bill No. 1050 (1993) to establish House subdistricts

within each Senate district except in Districts 18, 19, 38, and 40, which are the districts that include portions of the Air Force bases. In 1993 the Legislative Assembly did not adopt the subdistricting plan.

In 1995 the Legislative Assembly adopted House Bill No. 1385, which made final boundary changes to four districts, including placing a small portion of the Fort Berthold Reservation in District 33.

2001

In 2001, the Legislative Assembly budgeted \$200,000 for a special session for redistricting and adopted House Concurrent Resolution No. 3003, which provided for a study and the development of a legislative redistricting plan or plans for use in the 2002 primary election. The Legislative Council appointed an interim Legislative Redistricting Committee consisting of 15 members to conduct the study. The Legislative Redistricting Committee began its work on July 9, 2001, and submitted its final report to the Legislative Council on November 6, 2001.

The Legislative Council purchased two personal computers and two licenses for redistricting software for use by each political faction represented on the committee. Because committee members generally agreed each caucus should have access to a computer with the redistricting software, the committee requested the Legislative Council to purchase two additional computers and two additional redistricting software licenses. In addition, each caucus was provided a color printer.

The Legislative Redistricting Committee considered redistricting plans based on 45, 47, 49, 51, and 52 districts. The committee determined the various plans should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible.
3. Provide for a population variance of under 10 percent.

The interim committee recommended Senate Bill No. 2456 (2001), which established 47 legislative districts. The bill repealed the existing legislative redistricting plan, required the Secretary of State to modify 2002 primary election deadlines and procedures if necessary, and provided an effective date of December 7, 2001. The bill also addressed the staggering of terms in even-numbered and odd-numbered districts.

Under the 47-district plan, the ideal district size was 13,664. Under the plan recommended by the committee, the largest district had a population of 14,249 and the smallest district had a population of 13,053. Thus, the largest district was 4.28 percent over the ideal district size and the smallest district was 4.47 percent below the ideal district size, providing for an overall range of 8.75 percent.

In a special session held November 26-30, 2001, the Legislative Assembly adopted the 47-district plan included in Senate Bill No. 2456 (2001) with amendments, most notably amendments to the provisions relating to the staggering of terms. The bill was heard by the Joint Legislative Redistricting Committee. The term-staggering provisions provided a senator and a representative from an odd-numbered district must be elected in 2002 for a term of 4 years and a senator and a representative from an even-numbered district must be elected in 2004 for a term of 4 years. The bill further included provisions to address situations in which multiple incumbents were placed within the same district and in which there were fewer incumbents than the number of seats available. In *Kelsh v. Jaeger*, 641 N.W.2d 100 (2002), the North Dakota Supreme Court found a portion of the staggering provisions to be an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years.

2011

In 2011, the Legislative Assembly passed House Bill No. 1267 (2011), which directed the Chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2012 primary election. The Legislative Redistricting Committee consisted of 16 members and held its first meeting on June 16, 2011. The committee concluded its work on October 12, 2011, and submitted its final report to the Legislative Management on November 3, 2011.

The Legislative Council purchased a personal computer and a license for the Maptitude for Redistricting software for use by each of the four caucuses represented on the committee. In addition, because there were significantly more members of the majority party caucuses on the committee, the Legislative Council purchased an additional computer and redistricting software license for the shared use of the members of those groups. A template of the existing legislative districts was provided in the redistricting software to use as a starting point in creating districts because the committee members generally agreed potential redistricting plans should be based upon the cores of existing districts.

The committee considered increasing the number of districts and received information regarding the estimated cost of a district based on a 77-day legislative session, which amounted to approximately \$1,190,170 for the decade. The committee elected to maintain a 47-district plan and determined the plan should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible and preserve the boundaries of the Indian reservations.
3. Provide for a population variance of 9 percent or less.

The committee recommended a bill to repeal the existing redistricting plan, establish 47 legislative districts, provide for the staggering of terms of members of the Legislative Assembly, and authorize the Secretary of State to modify primary election deadlines and procedures if any delays arose in implementing the redistricting plan. Under the 47-district plan recommended by the committee, the ideal district size was 14,310. The population of the largest district was 14,897, which was 4.10 percent over the ideal district size, and the population of the smallest district was 13,697, which was 4.28 percent below the ideal district size, providing for an overall range of 8.38 percent. The plan included 33 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Indian Reservation, and 3 counties that were split only because the counties included cities that were too large for one district.

The committee also recommended a bill draft to the Legislative Management which would have required each legislative district contain at least six precincts. The Legislative Management rejected the portion of the committee's report relating to this bill draft.

In a special session held November 7-11, 2011, the Legislative Assembly adopted the committee's 47-district plan included in House Bill No. 1473 (2011) with minor amendments to legislative district boundaries and a change in the effective date from December 1 to November 25, 2011. The bill was heard by the Joint Legislative Redistricting Committee and approved by the 62nd Legislative Assembly by a vote of 60 to 32 in the House and 33 to 14 in the Senate.

NORTH DAKOTA REDISTRICTING LAW

Constitutional Provisions

Section 1 of Article IV of the Constitution of North Dakota provides the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members." Section 2 of Article IV requires the Legislative Assembly to "fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." The section provides districts ascertained after the 1990 federal decennial census must "continue until the adjournment of the first regular session after each federal decennial census, or until changed by law."

Section 2 further requires the Legislative Assembly to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates." This section requires the apportionment of one senator and at least two representatives to each senatorial district. This section also provides that two senatorial districts may be combined when a single-member senatorial district includes a federal facility or installation containing over two-thirds of the population of a single-member senatorial district and that elections may be at large or from subdistricts.

Section 3 of Article IV requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

Statutory Provisions

In addition to the constitutional requirements, Section 54-03-01.5 requires a legislative redistricting plan based on any census taken after 1999 must provide that the Senate consist of 47 members and the House consist of 94 members. The plan must ensure legislative districts be as nearly equal in population as is practicable and population deviation from district to district be kept at a minimum. Additionally, the total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

Sections 54-03-01.8 and 54-03-01.10 provided for the staggering of Senate and House terms after redistricting in 2001. Section 54-03-01.8, which addressed the staggering of Senate terms, was found to be, in part, an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years. House Bill No. 1473 (2011) repealed Sections 54-03-01.8 and 54-03-01.10 and created a new section regarding the staggering of terms. Section 54-03-01.13 provides senators and representatives from even-numbered districts must be elected in 2012 for 4-year terms; senators and representatives from odd-numbered districts must be elected in 2014 for 4-year terms, except the

senator and two representatives from District 7 must be elected in 2012 for a term of 2 years; the term of office of a member of the Legislative Assembly elected in an odd-numbered district in 2010 for a term of 4 years and who as a result of legislative redistricting is placed in an even-numbered district terminates December 1, 2012, subject to certain change in residency exceptions; the term of office of a member of the Legislative Assembly in an odd-numbered district with new geographic area that was not in that member's district for the 2010 election and which new geographic area has a 2010 population that is more than 25 percent of the ideal district population terminates on December 1, 2012; and a vacancy caused in an odd-numbered district as a result of legislative redistricting must be filled at the 2012 general election by electing a member to a 2-year term of office.

Section 16.1-01-02.2 pertains to procedures regarding special elections. As a result of concerns regarding the timetable for calling a special election to vote on a referral of a redistricting plan, the Legislative Assembly amended Section 16.1-01-02.2 during the November 1991 special session. The amendment provided "notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan." This 30- to 50-day timetable was later amended to 90 days in 2007.

Section 16.1-03-17 provides if redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, the political parties in the newly established precincts and districts shall reorganize as closely as possible in conformance with Chapter 16.1-03 to assure compliance with primary election filing deadlines.

FEDERAL REDISTRICTING LAW

Before 1962, the courts followed a policy of nonintervention with respect to legislative redistricting. However, in 1962, the United States Supreme Court, in *Baker v. Carr*, 369 U.S. 186 (1962), determined the courts would provide relief in state legislative redistricting cases when there are constitutional violations.

Population Equality

In *Reynolds v. Sims*, 377 U.S. 533 (1964), the United States Supreme Court held the equal protection clause of the 14th Amendment to the United States Constitution requires states to establish legislative districts substantially equal in population. The Court also ruled both houses of a bicameral legislature must be apportioned on a population basis. Although the Court did not state what degree of population equality is required, it stated "what is marginally permissible in one state may be unsatisfactory in another depending upon the particular circumstances of the case."

The measure of population equality most commonly used by the courts is overall range. The overall range of a redistricting plan is the sum of the deviation from the ideal district population--the total state population divided by the number of districts--of the most and the least populous districts. In determining overall range, the plus and minus signs are disregarded, and the number is expressed as an absolute percentage.

In *Reynolds*, the United States Supreme Court recognized a distinction between congressional and legislative redistricting plans. That distinction was further emphasized in a 1973 Supreme Court decision, *Mahan v. Howell*, 410 U.S. 315 (1973). In that case, the Court upheld a Virginia legislative redistricting plan that had an overall range among House districts of approximately 16 percent. The Court stated broader latitude is afforded to the states under the equal protection clause in state legislative redistricting than in congressional redistricting in which population is the sole criterion of constitutionality. In addition, the Court said the Virginia General Assembly's state constitutional authority to enact legislation dealing with political subdivisions justified the attempt to preserve political subdivision boundaries when drawing the boundaries for the House of Delegates.

A 10 percent standard of population equality among legislative districts was first addressed in two 1973 Supreme Court decisions--*Gaffney v. Cummings*, 412 U.S. 735 (1973), and *White v. Regester*, 412 U.S. 755 (1973). In those cases, the Court upheld plans creating house districts with overall ranges of 7.8 percent and 9.9 percent. The Court determined the overall ranges did not constitute a prima facie case of denial of equal protection. In *White*, the Court noted, "[v]ery likely larger differences between districts would not be tolerable without justification 'based on legitimate considerations incident to the effectuation of a rational state policy'."

Justice William J. Brennan's dissents in *Gaffney* and *White* argued the majority opinions established a 10 percent de minimus rule for state legislative district redistricting. He asserted the majority opinions provided states would be required to justify overall ranges of 10 percent or more. The Supreme Court adopted that 10 percent standard in later cases.

In *Chapman v. Meier*, 420 U.S. 1 (1975), the Supreme Court rejected the North Dakota Legislative Assembly redistricting plan with an overall range of approximately 20 percent. In that case, the Court said the plan needed special justification, but rejected the reasons given, which included an absence of a particular racial or political group whose

power had been minimized by the plan, the sparse population of the state, the desire to maintain political boundaries, and the tradition of dividing the state along the Missouri River.

In *Conner v. Finch*, 431 U.S. 407 (1977), the Supreme Court rejected a Mississippi plan with a 16.5 percent overall range for the Senate and a 19.3 percent overall range for the House. However, in *Brown v. Thomson*, 462 U.S. 835 (1983), the Court determined adhering to county boundaries for legislative districts was not unconstitutional even though the overall range for the Wyoming House of Representatives was 89 percent.

In *Brown*, each county was allowed at least one representative. Wyoming has 23 counties and its legislative apportionment plan provided for 64 representatives. Because the challenge was limited to the allowance of a representative to the least populous county, the Supreme Court determined the grant of a representative to that county was not a significant cause of the population deviation that existed in Wyoming. The Court concluded the constitutional policy of ensuring each county had a representative, which had been in place since statehood, was supported by substantial and legitimate state concerns and had been followed without any taint of arbitrariness or discrimination. The Court found the policy contained no built-in biases favoring particular interests or geographical areas and that population equality was the sole other criterion used. The Court stated a legislative apportionment plan with an overall range of less than 10 percent is not sufficient to establish a prima facie case of invidious discrimination under the 14th Amendment which requires justification by the state. However, the Court further concluded a plan with larger disparities in population creates a prima facie case of discrimination and must be justified by the state.

In *Brown*, the Supreme Court indicated giving at least one representative to each county could result in total subversion of the equal protection principle in many states. That would be especially true in a state in which the number of counties is large and many counties are sparsely populated and the number of seats in the legislative body does not significantly exceed the number of counties.

In *Board of Estimate v. Morris*, 489 U.S. 688 (1989), the Supreme Court determined an overall range of 132 percent was not justified by New York City's proffered governmental interests. The city argued that because the Board of Estimate was structured to accommodate natural and political boundaries as well as local interests, the large departure from the one-person, one-vote ideal was essential to the successful government of the city--a regional entity. However, the Court held the city failed to sustain its burden of justifying the large deviation.

In a federal district court decision, *Quilter v. Voinovich*, 857 F.Supp. 579 (N.D. Ohio 1994), the court ruled a legislative district plan with an overall range of 13.81 percent for House districts and 10.54 percent for Senate districts did not violate the one-person, one-vote principle. The court recognized the state interest of preserving county boundaries, and the plan was not advanced arbitrarily. The decision came after the Supreme Court remanded the case to the district court. The Supreme Court stated in the previous district court decision, the district court mistakenly held total deviations in excess of 10 percent cannot be justified by a policy of preserving political subdivision boundaries. The Supreme Court directed the district court to follow the analysis used in *Brown*, which requires the court to determine whether the plan could reasonably be said to advance the state's policy, and if so, whether the population disparities exceed constitutional limits.

Although the federal courts generally have maintained a 10 percent standard, a legislative redistricting plan within the 10 percent range may not be safe from a constitutional challenge if the challenger is able to show discrimination in violation of the equal protection clause. In *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. Ga. 2004), a federal district court in Georgia found two legislative redistricting plans adopted by the Georgia General Assembly which had an overall range of 9.98 percent violated the "one person one vote" principle. Although legislators and redistricting staff indicated they prepared the plans under the belief that an overall range of 10 percent would be permissible without demonstrating a legitimate state interest, the district court found the objective of the plan, protection of certain geographic areas and protection of incumbents from one party did not justify the deviations from population inequality, particularly in light of the fact that plans with smaller deviations had been considered. With respect to protection of incumbents, the court indicated while it may be a legitimate state interest, in this case the protection was not accomplished in a consistent and neutral manner. Although protection of political subdivision boundaries is viewed as a traditional redistricting principle, the court held regional protectionism was not a legitimate justification for the deviations in the plans. The United States Supreme Court upheld the district court opinion in *Larios*.

In *Evenwel v. Abbot*, 136 S. Ct. 1120 (2016), the Texas Legislature redrew Senate districts based on total population, rather than registered voter population. Opponents of the redistricting plan argued the use of total population, rather than voter population, gave voters in districts with a large immigrant population a disproportionately weighted vote compared to voters in districts with a small immigrant population. The Supreme Court held states may, but are not required to, use total population when drawing districts to comply with the one-person, one-vote principles under the equal protection clause.

In *Harris v. Arizona Independent Redistricting Commission*, 136 S. Ct. 1301 (2016), the Supreme Court upheld a redistricting plan with an overall deviation of 8.8 percent. The Supreme Court held even though partisanship may have played a role in developing the plan "the population deviations were primarily a result of good-faith efforts to comply with the Voting Rights Act." The plaintiffs failed to meet the burden of showing it was more probable than not that the deviation predominately resulted from the use of illegitimate redistricting factors.

Case law has established if a legislative redistricting plan with an overall range of more than 10 percent is challenged, the state has the burden to demonstrate the plan is necessary to implement a rational state policy and the plan does not dilute or eliminate the voting strength of a particular group of citizens. A plan with an overall range of less than 10 percent may be subject to challenge if the justifications for the deviations are not deemed legitimate and plans with lower deviations have been considered.

Partisan Gerrymandering

Before 1986 the courts took the position that partisan or political gerrymandering was not justiciable. In *Davis v. Bandemer*, 478 U.S. 109 (1986), the United States Supreme Court stated political gerrymandering is justiciable. However, the Court determined the challengers of the legislative redistricting plan failed to prove the plan denied them fair representation. The Court stated a particular "group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause." The Court concluded "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole." Therefore, to support a finding of unconstitutional discrimination, there must be evidence of continued frustration of the will of the majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

In 2004 a sharply divided Supreme Court addressed a challenge to a congressional redistricting plan adopted in Pennsylvania. In *Vieth v. Jubelirer*, 541 U.S. 267 (2004), four of the justices concluded partisan gerrymandering cases are nonjusticiable due to a lack of judicially discernible and manageable standards for addressing the claims. One other justice concurred in the opinion, but on other grounds, and the remaining four justices issued three dissenting opinions. Despite the challenge being dismissed, a majority of the court--the four dissenting justices and the one justice concurring in the decision to dismiss the claim--continued to maintain partisan gerrymandering cases may be adjudicated by the courts.

The Supreme Court again issued a divided opinion 2 years later in *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006). In that decision, six justices wrote opinions and five justices agreed partisan gerrymandering cases are justiciable. However, the court did not agree on a standard for addressing claims and the partisan gerrymandering claim was dismissed.

The question of whether partisan gerrymandering cases are justiciable was settled by the Supreme Court in 2019. In the consolidated case of *Rucho v. Common Cause*, 139 S. Ct. 2428 (2019), the congressional redistricting maps for North Carolina and Maryland were challenged as unconstitutional partisan gerrymanders. In *Rucho*, the Supreme Court held "partisan gerrymandering claims present political questions beyond the reach of the federal courts." The Court further stated, "the Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly." However, the Court noted state courts may look to state statutes and state constitutions for guidance and standards to apply in partisan gerrymandering cases.

Instances in which state courts have addressed partisan gerrymandering include *League of Women Voters of Florida v. Detzner*, 172 So. 3d 363 (Fla. 2015). In this case, the challengers of the plan alleged the congressional redistricting plan was drawn to favor incumbent lawmakers and the Republican Party in violation of the Fair Districts Amendment to the Constitution of Florida, which prohibits political consideration in redistricting. The Florida Supreme Court upheld the trial court's findings that the map was tainted by the unconstitutional intent alleged and the Legislature was required to redraw the boundaries of several districts.

Partisan gerrymandering also was addressed at the state level in *League of Women Voters of Pennsylvania v. Commonwealth*, 644 Pa. 287 (2018). In this case, the challengers of the plan alleged the state's 2011 congressional plan violated the Free and Equal Elections Clause of the Constitution of the Commonwealth of Pennsylvania by providing one party an unfair advantage. The Pennsylvania Supreme Court found the plan lacked compactness and split local jurisdiction boundaries to an inordinate degree. The court held application of traditional redistricting principles must be the overriding consideration when preparing a redistricting map to avoid a violation of the Free and Equal Elections Clause. The Supreme Court held the map unconstitutional and substituted the 2011 map with a remedial map drawn by a special master.

Thus, though now precluded at the federal level, partisan gerrymandering cases may be justiciable in state court.

Multimember Districts and Racial or Language Minorities

According to data compiled by the National Conference of State Legislatures, North Dakota is 1 of 10 states that have multimember districts. Section 2 of the federal Voting Rights Act prohibits a state or political subdivision from imposing voting qualifications, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group. A language minority group is defined as "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage." A violation of Section 2 may be proved through a showing that as a result of the challenged practice or standard, the challengers of the plan did not have an equal opportunity to participate in the political process and to elect candidates of their choice.

Many decisions under the Voting Rights Act have involved questions regarding the use of multimember districts to dilute the voting strengths of racial and language minorities. In *Reynolds*, the United States Supreme Court held multimember districts are not unconstitutional per se; however, the Court has indicated it prefers single-member districts, at least when the courts draw the districts in fashioning a remedy for an invalid plan. The Court has stated a redistricting plan including multimember districts will constitute an invidious discrimination only if it can be shown the plan, under the circumstances of a particular case, would operate to minimize or eliminate the voting strength of racial or political elements of the voting population.

The landmark case addressing a Section 2 challenge is *Thornburg v. Gingles*, 478 U.S. 39 (1986). In that case, the Supreme Court stated a minority group challenging a redistricting plan must prove:

1. The minority is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. The minority is politically cohesive; and
3. In the absence of special circumstances, bloc voting by the majority usually defeats the minority's preferred candidate. To prove that bloc voting by the majority usually defeats the minority group, the use of statistical evidence is necessary.

Until redistricting in the 1990s, racial gerrymandering--the deliberate distortion of boundaries for racial purposes--generally had been used in the South to minimize the voting strength of minorities. However, because the United States Department of Justice and some federal courts had indicated states would be required to maximize the number of minority districts when redistricting, many states adopted redistricting plans that used racial gerrymandering to create more minority districts or to create minority influence districts when there was not sufficient population to create a minority district. As a result, a number of redistricting plans adopted in the 1990s were challenged by white voters on equal protection grounds and the United States Supreme Court subsequently has held several redistricting plans to be unconstitutional as a result of racial gerrymandering.

In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court invalidated a North Carolina plan due to racial gerrymandering. In that case, the Court made it clear race-conscious redistricting may not be impermissible in all cases. However, the Court held the plan to a test of strict scrutiny and required the racial gerrymander be narrowly tailored to serve a compelling state interest. The Court stated if race is the primary consideration in creating districts "without regard for traditional districting principles," a plan may be held to be unconstitutional. However, compliance with the Voting Rights Act and other circumstances may justify or necessitate the use of race in that manner.

Through the *Shaw* decision and subsequent decisions of the United States Supreme Court, the Court indicated unless race was the predominant factor in the creation of a district, a racial gerrymander challenge is not likely to be successful. In addition, the Court articulated seven policies that have been identified as being "traditional districting principles." Those policies are:

1. Compactness.
2. Contiguity.
3. Preservation of political subdivision boundaries.
4. Preservation of communities of interest.
5. Preservation of cores of prior districts.
6. Protection of incumbents.
7. Compliance with Section 2 of the Voting Rights Act.

Section 5 of the Voting Rights Act requires certain states and political subdivisions to submit their redistricting plans to the United States Department of Justice or the district court of the District of Columbia for review. Section 5 of the Voting Rights Act applied to states and political subdivisions that demonstrated a history of voter discrimination. However, in 2013, the formula used to determine which jurisdictions were subject to the preclearance requirements in

Section 5 was held unconstitutional by the Supreme Court in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). Thus, states and jurisdictions formerly subject to review are no longer required to submit their redistricting plans for preclearance under Section 5.

TESTIMONY AND COMMITTEE CONSIDERATIONS

Redistricting Computers and Software

The Legislative Council purchased a personal computer and a license for the Maptitude for Redistricting software for use by each of the four caucuses represented on the committee. In addition, because there were significantly more members of the majority party caucuses on the committee, the Legislative Council purchased two additional computer and redistricting software licenses for the shared use of the members of those groups. The members of the committee were encouraged to use the redistricting software to develop redistricting plans to present for the review of the committee at each meeting. A template of the existing legislative districts was provided in the redistricting software to use as a starting point in creating districts.

Population Changes

The committee received the results of the 2020 Census on August 12, 2021. The data indicated the population in North Dakota increased by 15.8 percent over the past decade, which was the fourth largest percentage increase in state populations nationwide. The committee reviewed the changes in population between the 2010 to 2020 Census for legislative districts, counties, and cities. The majority of the population growth occurred in urban areas and in oil-producing counties, and the county with the largest percentage increase in population nationwide was McKenzie County, which increased in population by 131 percent over the past decade. Despite large gains in certain areas of the state, 30 of the state's 53 counties lost population. Population gains and losses in legislative districts varied dramatically, with some legislative districts increasing in population by more than 100 percent and others decreasing in population by more than 10 percent.

The committee discussed concerns regarding the accuracy of census data in smaller census units due to the application of differential privacy. The committee was mindful of the compressed time frames for completing redistricting as a result of delays in receiving census data.

Urban and Rural Considerations

The committee received testimony expressing concerns regarding the shift in urban and rural populations. Concerns included whether individuals living in primarily rural districts would be shifted to districts comprised of a majority of urban areas, leading to minimization of rural concerns, and whether primarily rural districts would be required to expand geographically due to population losses, leading to reduced direct access to legislators. Suggestions to address these concerns included creating subdistricts in rural districts or increasing the size of the Legislative Assembly as an attempt to preserve more existing district boundaries to lessen the impact of redistricting on rural areas of the state.

Size of the Legislative Assembly

Committee members debated whether to consider redistricting plans that would increase the size of the Legislative Assembly. The committee received information provided to the 2011 Redistricting Committee regarding the cost of a legislative district, which in 2011 amounted to an estimated \$1.2 million in salaries and benefits for a 10-year period. The committee received information showing the ideal district size for a 47-district plan is 16,576, while the ideal district size for a 54-district plan, which is the maximum number of constitutionally permissible districts, is 14,428. Proponents of maintaining 47 legislative districts noted South Dakota has a larger population than North Dakota but only 35 legislative districts. The committee determined it was prudent to require proposals submitted to the committee conform with a 47-district plan, rather than allowing proposals for varying numbers of districts due to the abbreviated timeline the committee had to complete its work.

Population Deviation

The committee received information regarding the overall population deviation in past redistricting plans. Because an overall range of 10 percent generally has been considered as an acceptable level of population deviation, committee members agreed any plan recommended by the committee should have an overall range of 10 percent or less. Plans submitted to the committee for consideration generally remained within plus or minus 5 percent of the ideal district size. The final plan considered by the committee had an overall deviation of 9.87 percent, with the largest district 4.88 percent over the ideal district population and the smallest district 4.99 percent below the ideal district population.

Preservation of Political Subdivision Boundaries

The committee received testimony requesting the committee avoid splitting counties whenever possible. The final plan considered by the committee included 33 counties that were not split, 4 counties that were split only to preserve the boundaries of a reservation, 8 counties that were split only because the population of each county exceeded the ideal district size, and 8 counties that were split for other reasons. By comparison, the redistricting plan adopted by the

Legislative Assembly in 2011 had 33 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Reservation, 3 counties that were split only because the counties included cities that were too large for one district, and 14 counties that were split for other reasons.

Existing Districts and Communities of Interest

Committee members were encouraged to keep traditional redistricting principles in mind when completing redistricting plans. Factors other than population and preserving political subdivision boundaries which were considered in proposed plans presented to the committee included preservation of the cores of existing districts, protection of incumbents, and preservation of communities of interest. Committee members also identified district boundaries using major streets and other easily identifiable geographic features when possible.

Native American Voters and the Creation of Subdistricts

The committee solicited and received testimony from several individuals representing tribal interests, tribal nations, and Native American rights organizations, including the Executive Director of the Indian Affairs Commission and representatives of the Spirit Lake Nation, Standing Rock Sioux Tribe, Three Affiliated Tribes, Native American Rights Fund, and North Dakota Native Vote. The testimony:

- Noted the growth of Native American populations in North Dakota;
- Urged the creation of subdistricts for Native American voters to comply with the federal Voting Rights Act and prevent dilution of votes cast by Native Americans;
- Requested tribal members be considered communities of interest;
- Urged the committee to provide equitable, more direct, and more responsive representation for Native Americans;
- Urged the committee not to split reservations into multiple districts;
- Noted multiple Native American candidates have had unsuccessful campaigns for membership in the House;
- Asserted there has been a history of discrimination in North Dakota against Native Americans; and
- Asserted a history of racial bloc voting has prevented Native American voters from electing their candidates of choice.

The committee also received updates from committee members who serve on the Tribal and State Relations Committee, which met with representatives of the Turtle Mountain Band of Chippewa, Three Affiliated Tribes, and Spirit Lake Nation on their respective reservations regarding redistricting and other matters. The updates generally were consistent with the testimony presented to the Redistricting Committee. One member of the House testified in opposition to subdistricts.

The committee reviewed the 2020 Census data for tribal reservations, including the total population, total voting-age population, American Indian population, and American Indian voting-age population for each of the five reservations in North Dakota. ("American Indian" is the official United States Census Bureau designation for Native Americans.) Committee members noted the American Indian populations on the Fort Berthold Reservation and Turtle Mountain Reservation exceeded 4,145, the number required to constitute a majority of a House subdistrict with the ideal population size of 8,288. According to the Census Bureau, 5,537 American Indians live on the Fort Berthold Reservation, and 4,767 American Indians live on the Turtle Mountain Reservation. The numbers of American Indians on the Spirit Lake Reservation and the North Dakota portions of the Lake Traverse Reservation and Standing Rock Reservation are 3,134, 56, and 3,332, respectively.

The committee received information from the Legislative Council staff and testimony from others on constitutional and statutory provisions regarding the use of race in redistricting. In particular, the committee received detailed testimony and information regarding the 14th Amendment, the federal Voting Rights Act, and caselaw applying them to multi-member and single-member districts. The testimony and information included in-depth discussions of the *Gingles* preconditions and the circumstances under which majority-minority districts or subdistricts are required under federal law. The committee also received information regarding *Grinnell v. Sinner*, a case in which Native Americans sued Governor George Sinner and other officials alleging the Voting Rights Act required North Dakota's 1991 redistricting plan to include a subdistrict for Native Americans in District 4. The plaintiffs lost the case because they were unable to meet the first *Gingles* precondition based on the Native American population in District 4 in the 1990 Census. According to the Census Bureau, 2,999 Native Americans lived on the Fort Berthold Reservation in 1990. The ideal district population for North Dakota based on the 1990 Census was 13,037, and the ideal subdistrict population was 6,518. The committee also received information regarding the creation of two Native American-majority subdistricts in South Dakota and the litigation concerning the subdistricts.

The committee engaged in several discussions regarding subdistricts. Some committee members expressed discomfort with drawing subdistrict boundaries based on race, a preference for court-directed subdistricts over legislatively initiated subdistricts, and concerns about having most citizens vote for two members of the House of Representatives while citizens residing in subdistricts vote for only one representative. Other committee members noted the creation of subdistricts might prevent a possible dilution of Native Americans' votes, provide communities of interest an opportunity to select their candidates of choice, and potentially stave off a court challenge to the redistricting map for which the committee had worked in an honest and transparent manner. Some committee members expressed a preference for legislatively drawn district boundaries over court-drawn boundaries that may result from litigation.

Staggering of Terms

The committee reviewed information regarding the procedures for staggering the terms of senators and representatives. The committee reviewed a bill draft that would maintain 4-year terms for members of the Legislative Assembly and:

- Require elections for senators and representatives in odd-numbered districts and subdistricts in 2022; and
- Require elections for senators and representatives in even-numbered districts in 2024, except in the following situations in which elections in 2022 would be required:

Three or more representatives elected from even-numbered districts in 2020 are located in an even-numbered district;

Two or more senators elected from even-numbered districts in 2020 are located in an even-numbered district;

A member of the Legislative Assembly elected from an even-numbered district is located in an odd-numbered district, and the member does not move back into the even-numbered district and provide the requisite certification of the change of residence by February 1, 2022;

The even-numbered district has been divided into subdistricts; and

The 2020 population of the geographic area added to the even-numbered district since 2010 is more than 25 percent of the ideal district population.

The bill draft also would provide a member of the Legislative Assembly is deemed to "live in" the district from which the member was elected until December 1, 2022, for purposes of Section 5 of Article IV of the Constitution of North Dakota. This provision would allow the member to continue serving the district from which the member was elected even if the member is located in a different district in the 2021 redistricting map.

RECOMMENDATIONS

The committee recommends [House Bill No. 1504](#) to establish 47 legislative districts, including subdistricts in Districts 4 and 9, and to include the provisions of the bill draft relating to the staggering of terms of members of the Legislative Assembly. The bill draft also repeals the current legislative redistricting plan, provides the Secretary of State authority to modify 2022 primary election deadlines and procedures as necessary to conduct the 2022 primary election, provides legislative intent regarding legislative district boundaries and the terms of incumbent legislators, and becomes effective upon its filing with the Secretary of State.

Under the plan recommended by the committee, the largest district has a population of 17,385 and the smallest district has a population of 15,749. Thus, the largest district is 4.88 percent over the ideal district size and the smallest district is 4.99 percent below the ideal district size, providing for an overall range of 9.87 percent. The plan includes 33 counties that were not split, 4 counties that were split only to preserve the boundaries of a reservation, 8 counties that were split because the population of each county exceeded the ideal district size, and 8 counties that were split for other reasons. Population data and maps of the proposed districts are included with this report.

EXHIBIT 6

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

CHARLES WALEN, *et al.*,

Plaintiffs,

v.

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

Defendants,

v.

MANDAN, HIDATSA AND ARIKARA NATION, *et
al.*,

Defendant-
Intervenors.

Civil No. 1:22-cv-00031-PDW-CRH

DECLARATION OF MARK N. FOX

I, Mark N. Fox, pursuant to 28 U.S.C. § 1746, based on my personal knowledge, declare that:

1. I am an enrolled member of the Mandan, Hidatsa and Arikara Nation (“MHA Nation”), also known as the Three Affiliated Tribes of the Fort Berthold Indian Reservation. I currently serve as the Chairman of the Tribal Business Council of the MHA Nation, which is the Tribe’s governing body. I live on the Fort Berthold Reservation.

2. MHA Nation is a federally recognized tribe and located on the Fort Berthold Reservation. The Tribal Headquarters are located at 404 Frontage Road, New Town, ND 58763.

3. MHA Nation has approximately 17,145 enrolled members, including approximately 11,796 members aged 18 and older. A substantial portion of these members are

eligible to vote and do vote in federal, state, and local elections on or near the Fort Berthold Reservation.

4. The Fort Berthold Reservation spans approximately 988,000 acres (or 1,543 square miles) in central North Dakota along the Missouri River. The Reservation intersects with McLean, Mountrail, Dunn, McKenzie, Mercer, and Ward Counties.

5. The Fort Berthold Reservation was established by executive order in 1870. Its present boundaries represent only a fraction of the ancestral territories of the Mandan, Hidatsa, and Sahnish (Arikara) Peoples and territories recognized by the 1851 Treaty of Fort Laramie.

6. The MHA Nation is comprised of Mandan, Hidatsa, and Sahnish (Arikara) Peoples, who have been present in North America since time immemorial. While the three Tribes have separate origins, they have commonly resided in the Missouri River Area and on the land where the Fort Berthold Reservation is located for centuries.

7. The political boundaries of the MHA Nation are defined by the borders of the Fort Berthold Reservation.

8. The political borders of the Fort Berthold Reservation have important legal implications, including those pertaining to the MHA Nation's governing authority. For instance, the MHA Nation, through its Tribal Business Council and Tribal Court, has jurisdiction to enforce its Constitution and Tribal Code within the boundaries of the Reservation. The Tribal Court of the MHA Nation has the authority to adjudicate civil disputes arising out of events occurring on the Fort Berthold Reservation.

9. Citizens of the MHA Nation have a unique political status, recognized by the MHA Nation and the United States, that goes well beyond any racial classification.

10. Because of their tribal membership, citizens of the MHA Nation have particular rights and obligations that are recognized by Tribal and Federal Governments, including the right to vote in tribal elections. Likewise, they are entitled to participate in tribal and federal programs reserved to members of federally recognized Indian tribes.

North Dakota Elections and the State Legislative Map

11. Prior to 2021, the Fort Berthold Reservation was wholly located within Legislative District 4. Residents of District 4, including citizens of the MHA Nation residing on the Fort Berthold Reservation, elected two State House Representatives, at large, and one State Senator from within the District. District 4 contained parts of six counties: McKenzie, Dunn, Mountrail, McLean, Mercer, and Ward.

12. The prior at large electoral system for District 4 prevented MHA Citizens from electing their candidates of choice to the State Legislature. No Members of the MHA Nation were elected to the North Dakota State House or State Senate from the previous District 4 under the 2011-2021 electoral map's at-large system, despite multiple Tribal Members running for the various at large seats.

13. For example, MHA Tribal Members Thomasina Mandan and Cesar Alvarez ran for the at large State House seats in District 4 in 2020 and 2016, respectively. Both candidates lost their bids, despite winning in precincts on the Reservation. Lisa Finley DeVille likewise lost her bid for State Senate in 2020 in the at large District 4.

14. The 2020 Census showed that the populations of the Fort Berthold Reservation and the former District 4 grew substantially. According to the Census population estimates, the population of the Fort Berthold Reservation increased from 6,341 in 2010 to 8,350 in 2020. Similarly, the population of former District 4 grew from 14,081 in 2010 to 16,794 in 2020. The

ideal population for an at-large legislative district during the 2021 Redistricting Cycle was 16,576 and 8,288 for a single-member house district.

15. Given this population growth, the historic failure of the at large system to allow MHA Tribal Members to elect a candidate of choice to the Legislature, and the unique needs of the MHA Nation and its Members, I testified twice in my official capacity as Chair of the Tribal Business Council regarding the MHA Nation's position in support of a State House subdistrict in District 4 that would follow the boundaries of the Fort Berthold Reservation.

16. Other MHA Tribal Members similarly testified in support of a State House subdistrict in District 4.

17. The 2021 Redistricting Plan places the Fort Berthold Reservation into a single-member State House subdistrict, House District 4A, that follows the Reservation's boundaries. House District 4A has a population of 8,350. The majority of the citizen voting age population of House District 4A are Members of the MHA Nation.

18. The MHA Nation intervened as defendant in this case on its own behalf and on behalf of its members to protect the voting rights of its members and to defend the Fort Berthold Reservation as a community of interest in which House District 4A should remain.

MHA Nation as a Community of Interest

19. The Fort Berthold Reservation is a community of interest. MHA Nation Tribal Members living on the Fort Berthold Reservation share common economic, cultural, language, demographic, and social interests that are distinct from the surrounding populations.

20. Members of the MHA Nation are united in their unique relationship with the United States government and their status as citizens of the United States and State of North Dakota as well as citizens of the MHA Nation. This relationship has particular implications for the ways in

which MHA Nation Tribal Members access certain government services, such as healthcare, emergency response services, education, and housing support.

21. Members of the MHA Nation likewise share common languages, cultures, and religious practices. The MHA Nation offers services in support of these shared interests, like the programs of our Culture and Language Center.

22. Many Members of the MHA Nation who live on the Fort Berthold Reservation also share similar socioeconomic statuses and educational backgrounds, resulting in common needs when it comes to social services and other programs and objectives of the Tribal, State, and Federal Governments.

23. The MHA Nation and its Citizens further share a common relationship with the Missouri River that is unique from residents of the surrounding areas. For centuries, the Mandan, Hidatsa, and Sahnish Peoples who comprise the contemporary MHA Nation have lived along the Missouri River and in the Missouri Riverbed, using the River for sustenance, transportation, trade, and religious and cultural practices. When the MHA Nation negotiated with the United States for the location of the Fort Berthold Reservation, ensuring that the Nation could remain on the Missouri Riverbed and on lands that included the Missouri River was crucial.

24. Today, the Missouri River remains of paramount importance to the MHA Nation. The River is critical to our shared cultural and religious practices, social interests, and our languages. Likewise, Tribal Members continue to use the Missouri River for subsistence. Because of the importance of the Missouri River to the MHA Nation, the MHA Nation and its Members have continued to defend the Nation's ownership of the Riverbed against encroachment by the State of North Dakota. In fact, the Department of Interior recognized the MHA Nation's unique relationship with the Missouri River that sets the Nation apart from the State and residents of the

surrounding areas in 2022 in an official opinion affirming the MHA Nation's ownership of the Missouri Riverbed. This relationship is distinct from residents of the surrounding areas.

25. The MHA Nation and residents of the Fort Berthold Reservation also share common economic and regulatory interests arising from the Bakken Oil Formation, which has significant reservoirs below the Fort Berthold Reservation.

26. The needs and concerns of the residents of the Fort Berthold Reservation are distinct from those of the surrounding community, including the rest of District 4 outside of the Fort Berthold Reservation. Placing the Fort Berthold Reservation into a larger at-large two seat legislative house district would threaten to subsume the interests of its residents into the interests of the broader community, leaving behind the unique needs of the Tribe and its Members.

27. Subdistrict 4A provides an opportunity for Citizens of the MHA Nation who reside on the Fort Berthold Reservation to elect a candidate of their choice in the State House, and ensures that their unique needs are represented in the Legislature.

I am competent to testify on the matters stated in this declaration. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February ___, 2023,

Mark N. Fox@adobe.com (Feb 28, 2023 21:14 CST)

Mark N. Fox
Chairman of the Tribal Business Council
Mandan, Hidatsa and Arikara Nation

EXHIBIT 7

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

CHARLES WALEN, *et al.*,

Plaintiffs,

v.

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

Defendants,

v.

MANDAN, HIDATSA AND ARIKARA NATION, *et
al.*,

Defendant-
Intervenors.

Civil No. 1:22-cv-00031-PDW-CRH

DECLARATION OF LISA FINLEY-DEVILLE

I, Lisa Finley-DeVille, pursuant to 28 U.S.C. § 1746, based on my personal knowledge, declare that:

1. I am an enrolled member of the Mandan, Hidatsa and Arikara Nation (“MHA Nation”), also known as the Three Affiliated Tribes of the Fort Berthold Indian Reservation.

2. I live on the Fort Berthold Reservation, within the town of Mandaree. I have lived at my current residence for 12 years and on the Fort Berthold Reservation for 47 years.

3. I am eligible to vote in federal, state, and local elections in North Dakota at my residence on the Fort Berthold Reservation and do so regularly. I voted in the 2022 Election and plan to continue to vote in federal, state, and local elections in North Dakota in the future, including

elections for the North Dakota State Legislature. My current state legislative districts are Senate District 4 and State House Subdistrict 4A.

4. The elimination of Subdistrict 4A would deprive me of the opportunity to elect my candidate of choice to the North Dakota State House.

5. I currently serve as the State House Representative for House District 4A. I was elected in 2022, in the first election the Subdistrict.

6. Prior to the creation of Subdistrict 4A, I ran in the at large District 4 for the State Senate seat in 2020. I ran alongside Thomasina Mandan, an MHA Citizen, who ran for the at large seat in House District 4.

7. My experiences running in the at large District 4 and in Subdistrict 4A were very different. In 2020, despite winning handily in the portion of District 4 on the Fort Berthold Reservation, I ultimately lost. During my campaign, I had strong support from other Members of the MHA Nation, but my candidacy was not as well received by non-Native voters. I remember one event in particular during a campaign event where non-Native voters complained that my candidacy was forcing them to learn about treaties. I also heard frequent comments about Native Americans not paying taxes.

8. Running in Subdistrict 4A allowed me to focus my efforts on voters in my community. My campaign was centered on issues that most impact residents of the Fort Berthold Reservation, like protecting our homelands and ensuring a safe and healthy environment on the Reservation, increasing funding for education, protecting our women and children, and supporting the business and economic development of our local communities. I received strong support from other MHA Citizens who live on the Reservation. Now, as a Representative in the State House, I

can ensure that the needs of MHA Citizens and other residents of the Fort Berthold Reservation are represented in the Legislature.

9. I am competent to testify on the matters stated in this declaration. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 27, 2023,

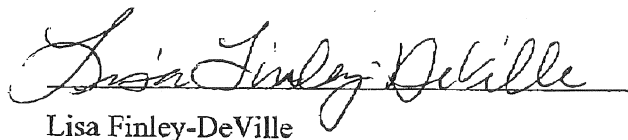

Lisa Finley-DeVille

EXHIBIT 8

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

CHARLES WALEN, an individual, et al.,

Plaintiffs,

v.

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

Defendants,

and

MANDAN, HIDATSA AND ARIKARA NATION, et
al.,

Intervenor-
Defendants.

Civil No. 1:22-cv-00031

**DECLARATION TO ACCOMPANY THE EXPERT REPORT OF LOREN
COLLINGWOOD**

Pursuant to 28 U.S.C. § 1746, I, Loren Collingwood, declare that:

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

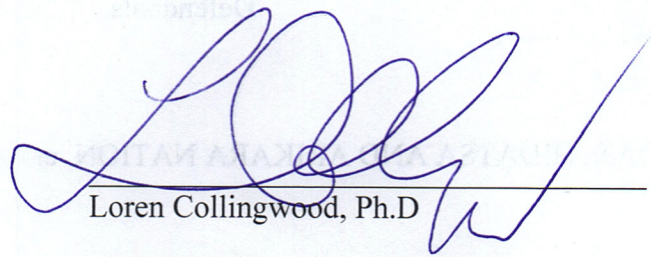
A true and correct copy of my curriculum vitae is attached hereto as a part of my report. The following report, a true and correct copy of which is attached and incorporated herein for all purposes, is a summary of my opinions and conclusions. The materials I relied upon to develop my analyses and opinions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

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

My reasonable and necessary hourly rate for my time in this case is \$325.

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

Signed this 17th day of January, 2023



Loren Collingwood, Ph.D

Expert Report of Dr. Loren Collingwood

Loren Collingwood

2023-01-17

Executive Summary

In this report, I examine past election results in North Dakota's recently enacted Legislative District 4. I do this to determine if voting is racially polarized—i.e., if Native American voters generally prefer one set of candidates, and white voters generally prefer a different set of candidates. In conducting this analysis, I analyzed 35 general elections from 2014 to 2022, and used the Ecological Inference (EI) and Rows by Columns (RxC) statistical methods to evaluate if racially polarized voting (RPV) exists. RPV is present in every election contest.

I also conducted electoral performance analyses in the following jurisdictions: The newly adopted full District 4, as well as Subdistricts 4A and 4B. An electoral performance analysis reconstructs previous election results based on new district boundaries to assess whether a Native or white preferred candidate is most likely to win in a given jurisdictions under consideration (i.e., the newly adopted legislative map).

Overall, the accumulated evidence leads me to conclude the following:

- Racially polarized voting (RPV) is present in the areas comprising the newly adopted Legislative District 4. This is particularly clear in the 2016 elections featuring three Native American candidates, and is also evident in the 2022 contest featuring a Native American candidate (Moniz).
- I used two well-known statistical methods to assess RPV, which consistently demonstrated racially polarized voting patterns between Native Americans and non-Hispanic white voters.
- Native American voters cohesively prefer the same candidates for political office in the newly adopted Legislative District 4. White voters cohesively prefer a different set of candidates for political office.
- In my reconstituted electoral performance analysis, Native American-preferred candidates lose every single race in the full District 4 for a block rate of 100%; but win handily in the newly adopted Legislative Sub-District 4A (33 of 34 contests) for a block rate of 3%. However, Native American-preferred candidates lose 34 of 34 contests in the newly adopted Legislative Sub-District 4B for a block rate of 100%.
- In the recent legislative general election held Sub-District 4A, the Native-American-preferred candidate, Lisa Finley-Deville, who is Native-American herself, won

handily in District 4A 69% to 31% for Terry Burton Jones. A correlation analysis in this contest shows a relationship between percent Native-American and percent Finley-Deville over 0.7 on a 0-1 scale – a very strong relationship.

- Native-American voters strongly backed Native-American candidate, Cesar Alvarez, in the 2016 Legislative District 4 election, whereas white voters split their votes evenly between two different candidates.

My opinions are based on the following data sources: Statewide and local North Dakota general elections from 2014-2022; 2020 U.S. Census voting age population data taken from Dave's Redistricting, and North Dakota Legislative Districts shape files.

Background and Qualifications

I am an associate professor of political science at the University of New Mexico. Previously, I was an associate professor of political science and co-director of civic engagement at the Center for Social Innovation at the University of California, Riverside. I have published two books with *Oxford University Press*, 40 peer-reviewed journal articles, and nearly a dozen book chapters focusing on sanctuary cities, race/ethnic politics, election administration, and racially polarized voting. I received a Ph.D. in political science with a concentration in political methodology and applied statistics from the University of Washington in 2012 and a B.A. in psychology from the California State University, Chico, in 2002. I have attached my curriculum vitae, which includes an up-to-date list of publications.

In between my B.A. and Ph.D., I spent 3-4 years working in private consulting for the survey research firm Greenberg Quinlan Rosner Research in Washington, D.C. I also founded the research firm Collingwood Research, which focuses primarily on the statistical and demographic analysis of political data for a wide array of clients, and lead redistricting and map-drawing and demographic analysis for the Inland Empire Funding Alliance in Southern California. I was the redistricting consultant for the West Contra Costa Unified School District, CA, independent redistricting commission in which I am charged with drawing court-ordered single member districts. I am contracted with Roswell, NM Independent School District to draw single member districts.

I served as a testifying expert for the plaintiff in the Voting Rights Act Section 2 case *NAACP v. East Ramapo Central School District*, No. 17 Civ. 8943 (S.D.N.Y.), on which I worked from 2018 to 2020. I am the quantitative expert in *LULAC vs. Pate (Iowa)*, 2021, and have filed an expert report in that case. I am the BISG expert for plaintiff in *LULAC Texas, et al. v. John Scott, et al.*, having filed one report in that case. I am the racially polarized voting expert for the plaintiff in *East St. Louis Branch NAACP, et al. vs. Illinois State Board of Elections, et al.*, having filed two reports in that case, and submitted written testimony. I am the Senate Factors expert for plaintiff in *Pendergrass v. Raffensperger (N.D. Ga. 2021)*, having filed a report in that case and submitted written testimony. I am the racially polarized voting expert for plaintiff in *Johnson, et al., v. WEC, et al., No. 2021AP1450-OA*, having filed three reports in that case and submitted written testimony. I am the racially polarized voting expert for plaintiff in *Faith Rivera, et al. v. Scott Schwab and Michael Abbott No. 2022-CV-000089*. I have filed a report in that case and provided testimony. I served as the RPV

expert in *Lower Brule Sioux Tribe v. Lyman County* where I filed a report and testified at trial. I am the RPV expert for plaintiff in *Soto Palmer et al. vs. Hobbs et al.* and have filed a report and been deposed. In each instance courts have accepted my opinion. In this case I am compensated at a rate of \$325/hour.

District 4A Characteristics

District 4A has a Native American voting age population of 67.2%. It scores very high on measures of compactness. Two common measures are the Reock and Polsby-Popper scores. District 4A has a Reock score of .45 and a Polsby-Popper score of .57. These scores reflect a very compact district.

Racially Polarized Voting

Racially polarized voting (RPV) occurs when one racial group (i.e., Native American voters) consistently votes for one candidate or set of candidates, and another racial group (i.e., non-Hispanic white voters) regularly votes for another candidate or set of candidates. I analyze multiple elections across four election years to determine whether a pattern of RPV is present in a given geography and/or political jurisdiction (i.e., statewide, Legislative District 4, etc.). In an election contest between two candidates, RPV is present when a majority of voters belonging to one racial/ethnic group vote for one candidate and a majority of voters who belong to another racial/ethnic group prefer the other candidate. The favored candidate of a given racial group is called a “candidate of choice.” However, if a majority of voters (i.e., 50%+1) of one racial group back a particular candidate and so do a majority of voters from another racial group, then RPV is not present in that contest.

Racially polarized voting does not mean voters are racist or intend to discriminate. In situations where RPV is clearly present, however, majority voters may often be able to block minority voters from electing candidates of choice by voting as a broadly unified bloc against minority voters’ preferred candidate.

I examine RPV in the context of North Dakota statewide general elections – subsetting to voting districts located inside of the newly enacted District 4.

Ecological Inference

To determine if RPV exists, experts must generally infer individual level voting behavior from aggregate data – a problem called ecological inference. We turn to aggregate data because most of the time we do not have publicly available survey data on all election contests and in particular geographic areas where we want to see if RPV is present. In general, we want to know how groups of voters (i.e., Native Americans or non-Hispanic whites) voted in a particular election when all we have to analyze are precinct vote returns and the demographic composition of the people who live in those precincts.

Experts have at their disposal several methods to analyze RPV: homogeneous precinct analysis (i.e., taking the vote average across high density white precincts vs. high density

Black precincts), ecological regression (ER), ecological inference (EI), and ecological inference Rows by Columns (RxC), which is designed specifically for the multi-candidate, multi-racial group environment, though all of these methods can be used to assess whether RPV is present in diverse election environments involving multiple candidates and multiple groups. In this report I rely on the ecological inference (EI) and RxC method to assess whether voting is racially polarized. I also focus my attention on the two top of the ticket candidates in each contest.

The R software package, eiCompare (Collingwood et al. 2020), builds upon packages eiPack (Lau, Moore, and Kellermann 2020) and ei (King and Roberts 2016) to streamline RPV analysis, and includes all of these aforementioned statistical methods. In this report I include ecological inference estimates accounting for variation in turnout by race. That is, I divide candidate vote by voting age population and include an estimate for no vote. I then calculate vote choice estimates by race for only people estimated to have voted. In this way, the method differences out non-voters and attempts to account for variation in turnout by race.

The rest of the report presents my results: 1) A list of the elections analyzed; 2) District 4 RPV analysis; 3) District 4, 4A and 4B electoral performance analysis.

List of Elections Analyzed

Table 1 presents the analyzed exogenous elections. Native-American candidates have an asterisk after their name. Overall, there are 35 elections. In the full District 4, I analyze 34 elections across five election cycles finding RPV in each contest. I also examined the most recent 4A election, taking a slightly different approach, which I discuss later in the report. In addition, I analyzed the 2014 LD-4 contest between Terry Jones, Bill Oliver, Kenton Onstad, and Cesar Alvarez (Native-American candidate). This district is very similar to the newly adopted LD-4 but has a few additional precincts.

Table 1. List of contests analyzed, between 2014-2022. Native American candidates have an asterisk after their name.

Year	Contest	Candidate 1	Candidate 2	Native Prefer	D4 RPV	D4 Native-Prefer Win	D4A Native-Prefer Win	D4B Native-Prefer Win
2022	U.S. Senate	Christiansen	Hoeven	Christiansen	YES	No	Yes	No
2022	U.S. House	Mund	Armstrong	Mund	YES	No	Yes	No
2022	Agriculture Commissioner	Dooley	Goehring	Dooley	YES	No	Yes	No
2022	Attorney General	Charles Lamb	Wrigley	Charles Lamb	YES	No	Yes	No
2022	Secretary of State	Powell	Howe	Powell	YES	No	Yes	No
2022	Public Service Commissioner	Moniz*	Fedorchak	Moniz	YES	No	Yes	No
2022	Public Service Commissioner 4yr	Hammer	Haugen-Hoffart	Hammer	YES	No	Yes	No
2020	President	Biden	Trump	Biden	YES	No	Yes	No
2020	U.S. House	Raknerud	Armstrong	Rakenrud	YES	No	Yes	No
2020	Governor	Lenz	Burgum	Lenz	YES	No	Yes	No
2020	Auditor	Hart	Gallion	Hart	YES	No	Yes	No
2020	Treasurer	Haugen	Beadle	Haugen	YES	No	Yes	No
2020	Public Services Commissioner	Buchmann	Kroschus	Buchmann	YES	No	Yes	No
2018	U.S. Senate	Heitkamp	Cramer	Heitkamp	YES	No	Yes	No
2018	U.S. House	Schneider	Armstrong	Schneider	YES	No	Yes	No
2018	Secretary of State	Boschee	Jaeger (I)	Boshee	YES	No	Yes	No
2018	Attorney General	Thompson	Stenhjem	Thompson	YES	No	Yes	No
2018	Agriculture Commissioner	Dotzenrod	Goehring	Dotzenrod	YES	No	Yes	No
2018	Public Services Commissioner	Brandt	Christmann	Brandt	YES	No	Yes	No
2018	Public Services Commissioner 2yr	Buchmann	Kroschus	Buchmann	YES	No	Yes	No
2018	Tax Commissioner	Oversen	Rauschenberger	Oversen	YES	No	Yes	No
2016	President	Clinton	Trump	Clinton	YES	No	Yes	No
2016	U.S. Senate	Glassheim	Hoeven	Glassheim	YES	No	No	No
2016	U.S. House	Iron Eyes*	Cramer	Iron Eyes	YES	No	Yes	No
2016	Governor	Nelson	Burgum	Nelson	YES	No	Yes	No
2016	Insurance	Buffalo*	Godfread	Buffalo	YES	No	Yes	No
2016	Public Services Commissioner	Hunte Beaubrun*	Fedorchak	Hunte Beaubrun	YES	No	Yes	No
2014	Attorney General	Kraus	Stenehjem	Kraus	YES	No	Yes	No
2014	Agriculture Commissioner	Taylor	Goehring	Taylor	YES	No	Yes	No
2014	Public Service Commissioner 2yr	Axness	Fedorchak	Axness	YES	No	Yes	No
2014	Public Service Commissioner	Reisenauer	Kalk	Reisenauer	YES	No	Yes	No
2014	Secretary of State	Fairfield	Jaeger	Fairfield	YES	No	Yes	No
2014	Tax Commissioner	Astrup	Rauschenberger	Astrup	YES	No	Yes	No
2014	U.S. House	Sinner	Cramer	Sinner	YES	No	Yes	No

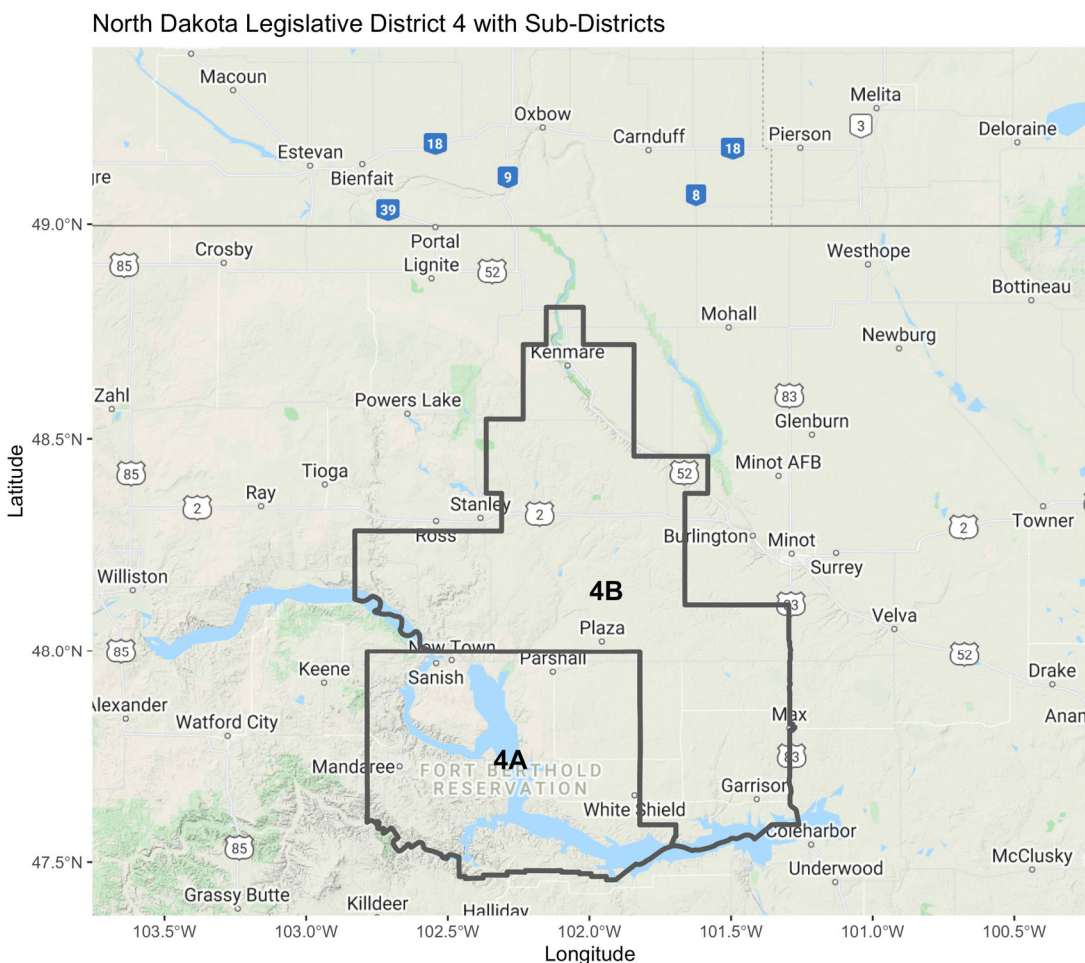
Racially Polarized Voting District 4

To conduct the analysis, I gathered precinct election returns for candidates running in each statewide contest either from the redistricting data hub¹ or the North Dakota Secretary of State, which provides precinct vote returns.² While the redistricting data hub data come formatted in precincts/VTDs and in GIS shape files, not all contests are always available. In the case where I downloaded data from the Secretary of State website I joined the data with VTD shape files based on common precinct names.

Next, I downloaded Census VTD files containing Voting Age Population (VAP) data from the 2020 U.S. Census from Dave's Redistricting – a popular website and program for redistricting. These data contain counts of VAP by race per precinct/VTD. I join precinct vote returns with VAP data using a combination of GEOID20 indicators and precinct names. Thus, I now have datasets that contain both candidate votes and racial demographics. Next, I subset the full statewide data to just the precincts found in the new District 4, which is presented in Figure 1.

¹ <https://redistrictingdatahub.org/state/north-dakota/>

² See <https://results.sos.nd.gov/ResultsSW.aspx?text=All&type=SW&map=CTY&eid=292> for 2016 example.

Figure 1. District 4 under new North Dakota map.

The last step is to develop the inputs to the ecological inference model. I convert the precinct racial estimates to a percent, generating a percent Native American by dividing the estimated number of VAP Native American individuals by the total number of VAP individuals in a precinct. To generate my estimate of percent white, I do the same for non-Hispanic white. I then collapse all other race groups into a catch-all group – which is required for statistical estimation -- although I do not substantively analyze race: other. I then calculate vote choice estimates by race for people estimated to have voted. In this way, the method attempts to difference out non-voters and accounts for variation in turnout by race.

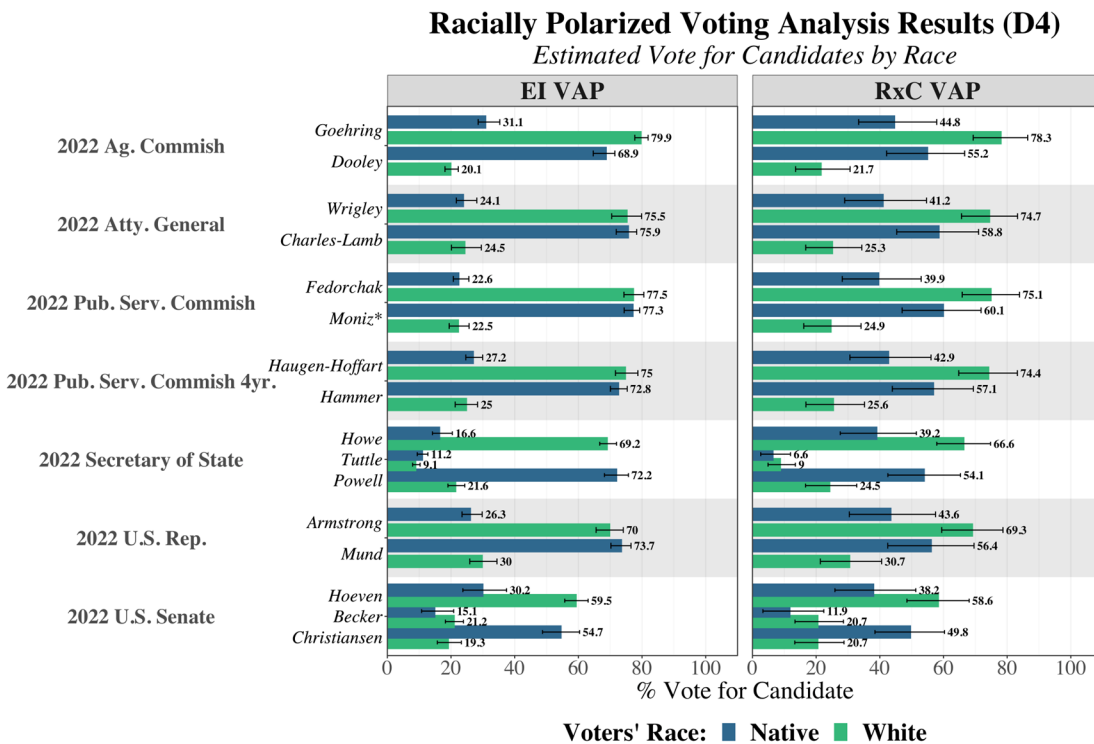
I do not conduct an ecological inference RPV analysis in Sub-Districts 4A and 4B because 1) there are relatively few precincts in each subdistrict, and 2) Sub-District 4A has a large share of Native Americans, whereas 4B does not, so locating homogeneous precincts of both racial groups in both subdistricts is challenging. Instead, I rely on the overall District 4 RPV results to assess candidate preference in the general region. However, I do conduct

performance analysis in the subdistricts to evaluate whether white votes block Native American candidates and Native-preferred candidates.

Figure 2 presents the 2022 RPV results. The left column axis shows the contest name, the middle panel the EI results, and the rightmost panel the RxC results. The results are generally consistent, showing RPV in every contest, or an RPV rate of 100%.³ I also present 95% confidence error bands showing each model’s statistical uncertainty. Finally, candidates with an asterisk are known Native-American candidates.

There are so many contests I will not enumerate the results of each one; rather I will provide one example: the 2022 Agriculture Commissioner. In the EI model, 69% of Native voters backed Dooley (55% in the RxC model); whereas 80% of whites backed Goehring (78% in the RxC model). Thus, a majority of Native voters favor one candidate, and a clear majority of white voters favor a different candidate.

Figure 2. Racially Polarized Voting assessment in statewide contests subset to the new District 4 boundaries, 2022 general election.



While I did not conduct ecological inference analyses in either subdistrict, I did conduct a correlation analysis of the most recent election in Sub-District 4A. Figure 3 presents bivariate (race and candidate vote share) scatterplots and reveals a trend consistent with an RPV analysis. For instance, in the bottom left corner, as the share of Native-American

³ The 2022 Senate race shows lower rates of RPV in the RxC model but diverging candidate preference by race is still very evident.

voters in a precinct increases, the vote share for Finley-Deville also rises. The converse occurs for Burton – who does best in the whitest precincts in Sub-District 4A (top right panel).

Figure 3. Scatterplots showing correlation/association between race and candidate choice in Sub-District 4A.

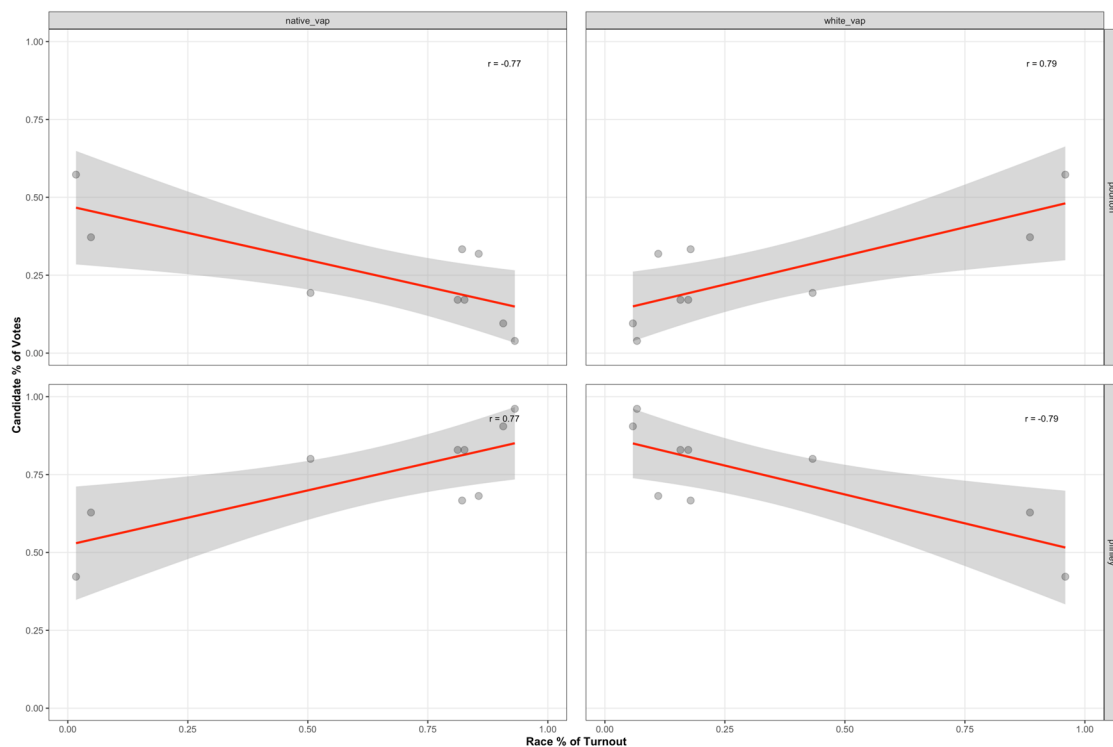


Figure 4 presents the racially polarized voting results for the 2020 contests. The results are consistent: in every single contest there is overwhelming evidence of RPV.

Figure 4. Racially Polarized Voting assessment in statewide contests subset to the new District 4 boundaries, 2020 general election.

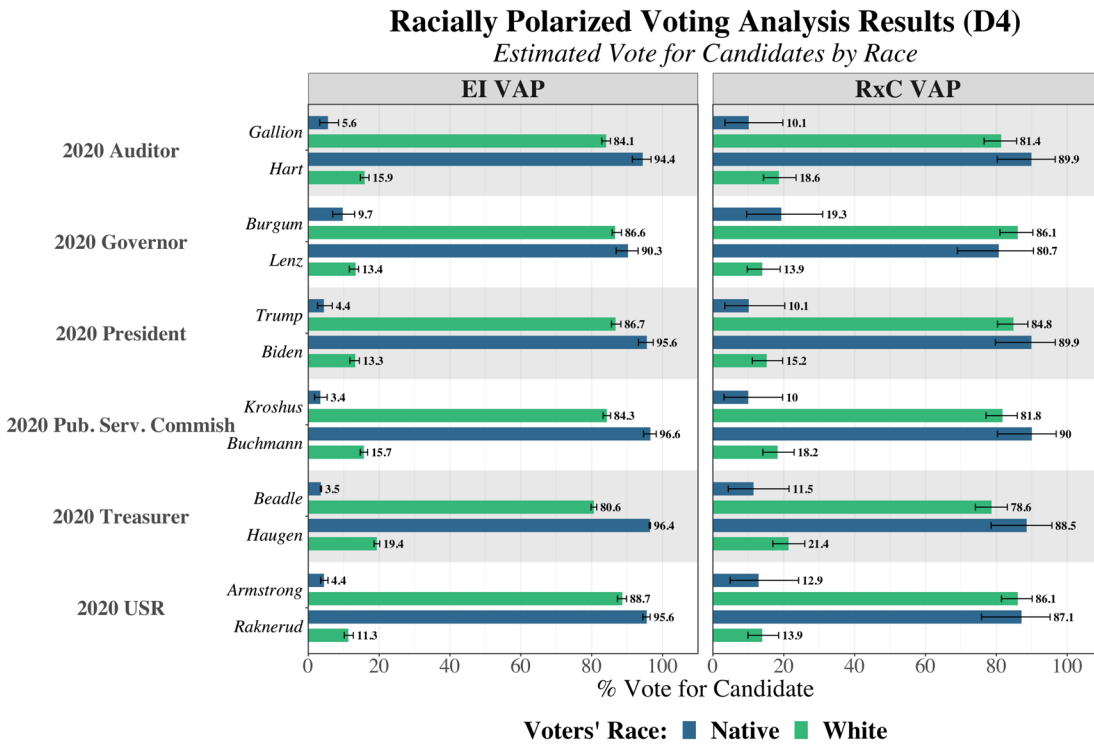


Figure 5 presents the racially polarized voting results for the 2018 contests. Again, the results show overwhelming evidence of RPV.

Figure 5. Racially Polarized Voting assessment in statewide contests subset to the new District 4 boundaries, 2018 general election.

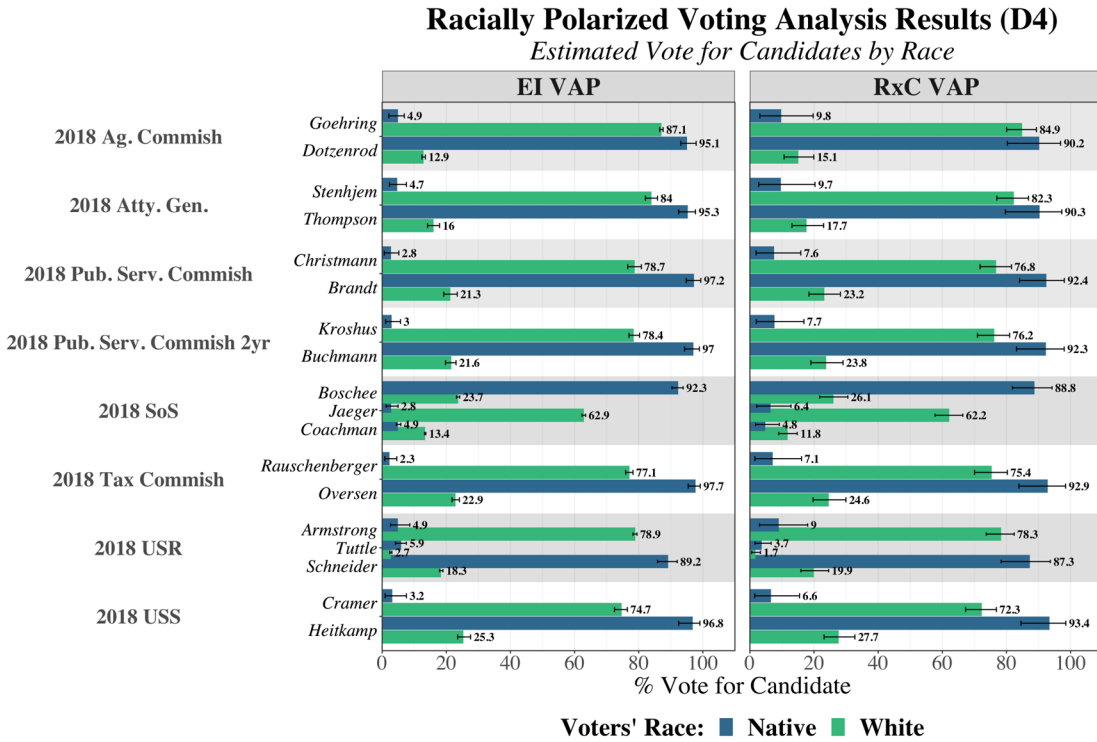


Figure 6 presents the racially polarized voting results for the 2016 contests.

Figure 6. Racially Polarized Voting assessment in statewide contests subset to the new District 4 boundaries, 2016 general election.

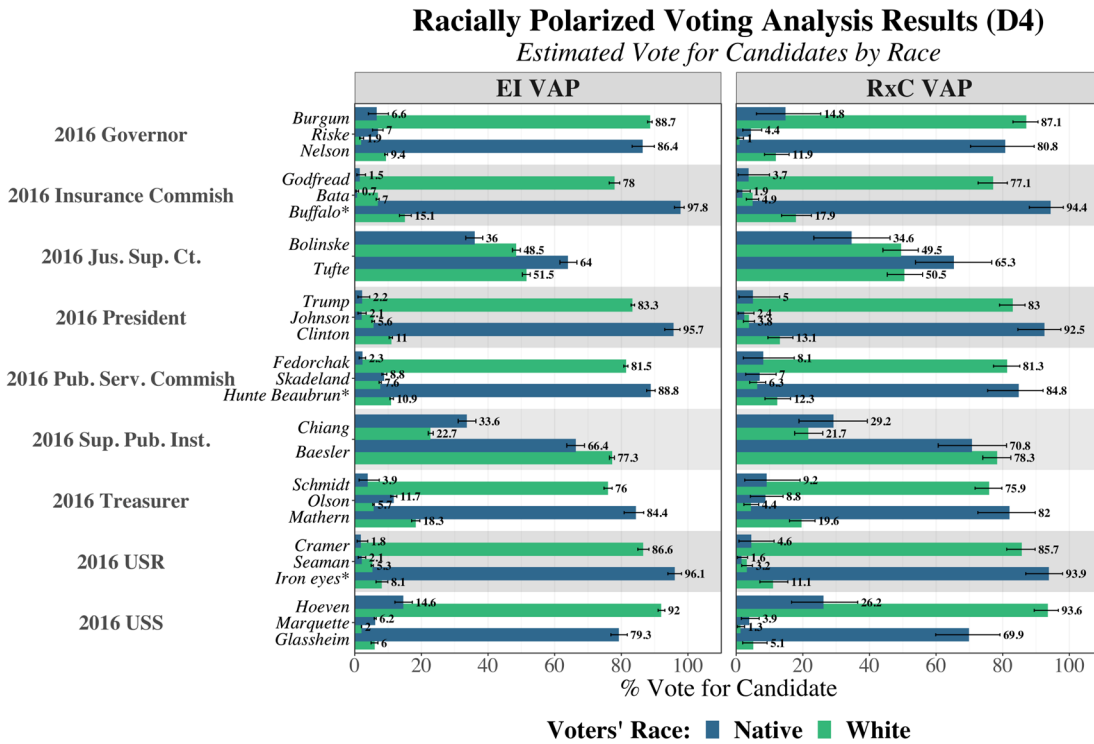


Figure 7 presents the racially polarized voting results for the 2016 Legislative District/State Representative 4 featuring Terry Jones, Bill Oliver, Kenton Onstad, and Cesar Alvarez. Mr. Alvarez is Native American while the remaining three candidates are white. Although this election was conducted under the prior version of District 4, and not the newly enacted version of the district, there were very few changes between the prior and the new district (2,364 people removed (91.4% white VAP) and 2,039 added (93.3% white VAP)). Because the district remained largely the same, with no change to the predominantly Native American portions of the district, the 2016 state legislative election is probative, especially so as an endogenous election featuring a Native American candidate. Voters could cast up to two ballots so I have normalized the results to account for overall voting behavior in preparing the RPV data. Native-American voters overwhelmingly backed Alvarez (62-65% of the vote), followed by Onstad – a white Democrat (31%). Note, that Native-American voters clearly prefer the Native-American Democrat over the white Democrat. Meanwhile, white voters cast split their ballot somewhat evenly between Oliver and Jones (34-36%) – the eventual winners. Indeed, only around 10% of white voters supported Alvarez. Notably, white voters were much more willing to vote for the white Democrat (20.3%) compared to the Native American Democrat (9.5%). This election illustrates how race, not partisanship, motivates racially polarized voting in the region.

Figure 7. Racially Polarized Voting assessment in Legislative District 4 for state representative, 2016.

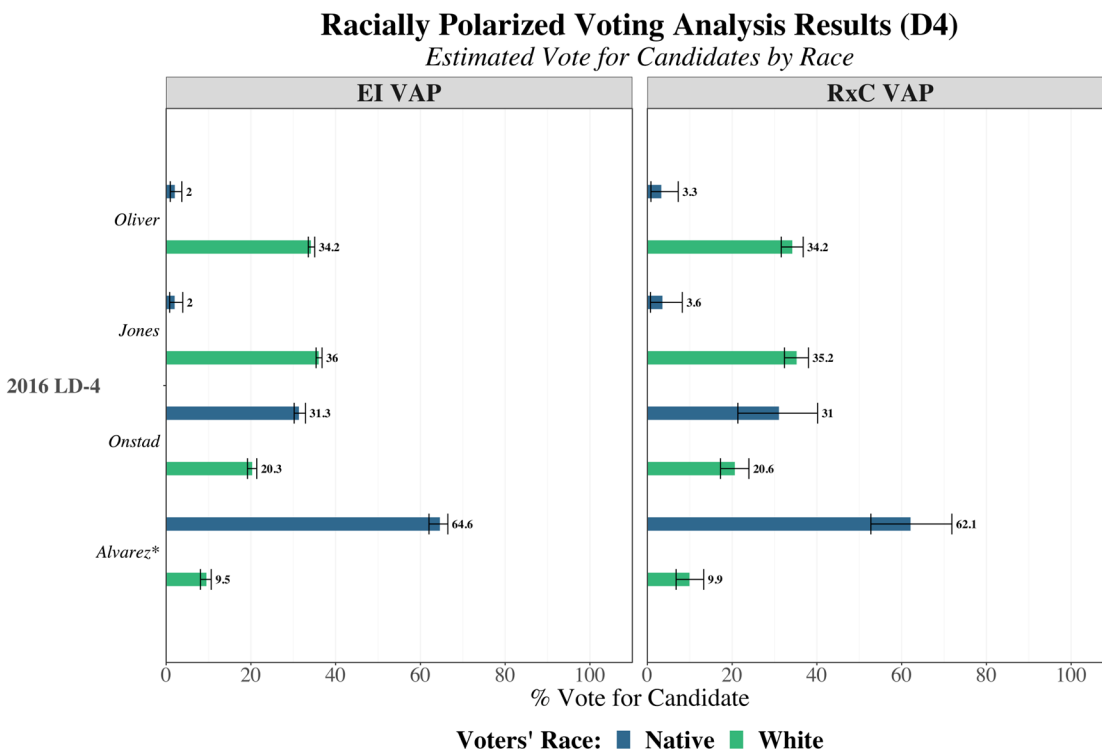
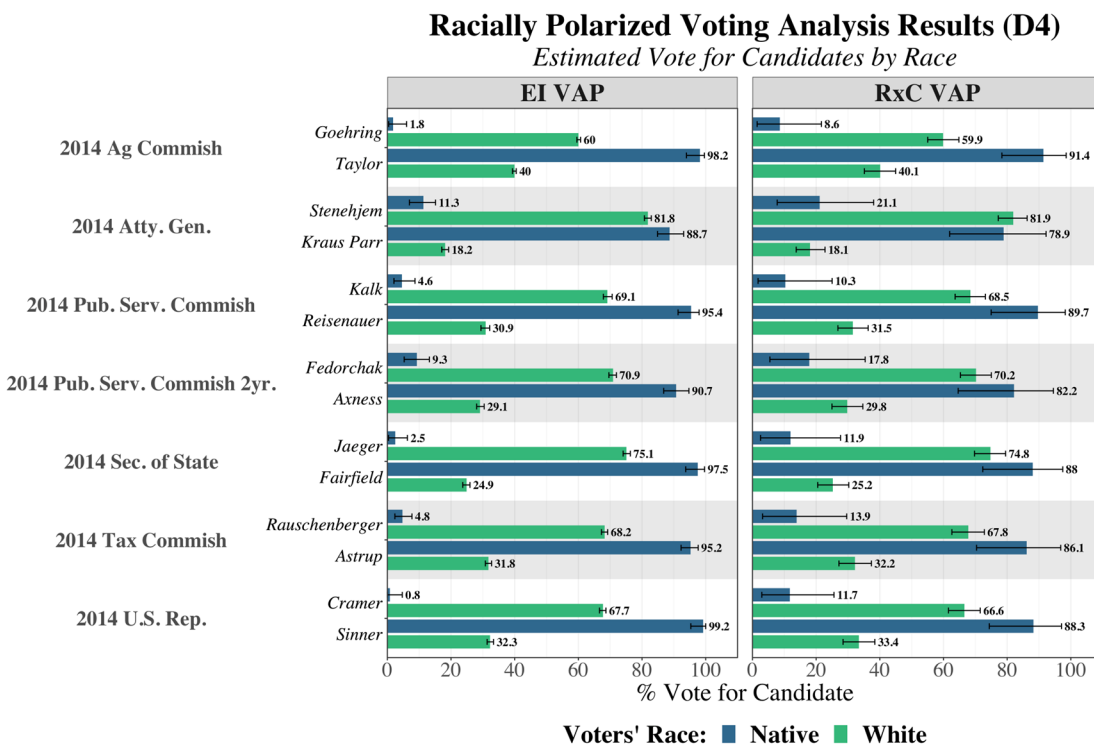


Figure 8 presents the racially polarized voting results for the 2014 contests.

Figure 8. Racially Polarized Voting assessment in statewide contests subset to the new District 4 boundaries, 2014 general election.



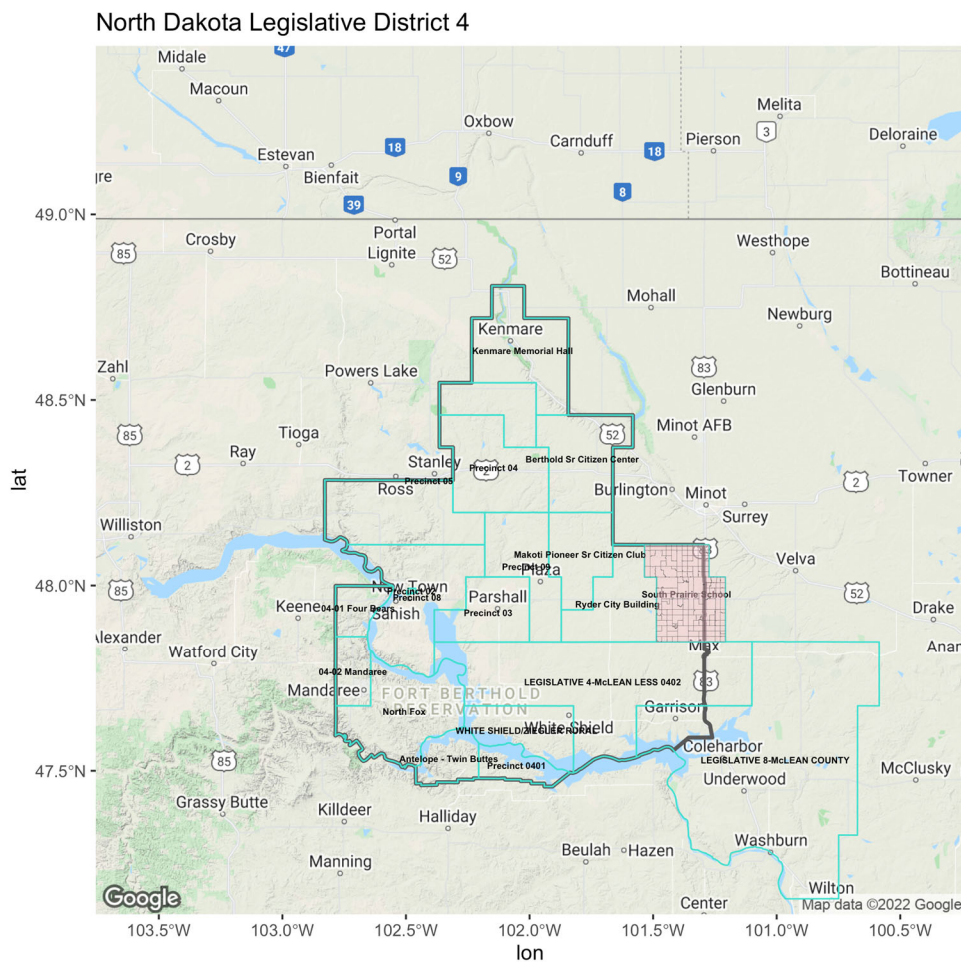
Performance Analysis District 4

To conduct the performance analysis, for 2022, I simply take the appropriate precincts falling within the full D4, then also look at D4A and D4B discretely. For the earlier contests where results are not presented by subdistrict, I take an additional step with regard to split precincts. For the full District 4, there are 3 precincts split across D4 and neighboring districts (i.e., District 8). These include South Prairie School (76.5% geographically in the district), LEGISLATIVE 4-McLEAN LESS 0402 (86.5% geographically inside the district),

and LEGISLATIVE 8-McLEAN COUNTY (7.4% geographically in the district). There are also several split precincts between D4A and D4B.

To account for these splits in my electoral performance analysis, I overlaid the precinct polygon shape file with the 2020 block polygon shape file and join population-level data including voting age population (VAP). Because blocks are fully nested inside precincts in this instance, I can make adjustments to precinct vote totals by weighting votes by total voting age population. In precincts that split between districts I take blocks on the one side of the District 4 boundary to estimate the share of the VAP that is inside/outside of the district. Figure 9 illustrates the idea. The part of the pink precinct to the left of the district boundary is included in D4, the part to the right is not.

Figure 9. Example of South Prairie School split precinct between District 4 and neighboring district, with Census blocks shaded pink.



One way to address this issue may be to turn to geographic distribution instead of population distribution. For example, a precinct might be geographically split 50-50 between District 4 and District 8. If there are 100 votes in the precinct, I could assign 50 votes to the part of the precinct in the district, and divide all candidate votes in half. If

Trump had received 70 of the precinct's initial 100 votes, and Biden 30, I would assign Trump 35 votes (70×0.5) and Biden 15 (30×0.5) totaling 50 votes.

However, another method when data are available is to take account of where the population lives within the precinct by using blocks – a much smaller and more compact geographic unit. Each block contains a tally for voting age population (VAP); therefore I can sum the VAP for all blocks for the part of the precinct falling inside of District 4, and for the part of the precinct outside of D4. This method more adequately accounts for population distribution within the precinct instead of relying on geographic area alone. It could be the case that 70% of the VAP resides in the part of the precinct falling into D4, and 30% in a neighboring district. So instead of multiplying the initial 100 votes by 0.5, for District 4, I multiply the precinct's initial 100 votes by 0.7. In this scenario, Trump would receive 49 of the 70 votes and Biden 21 votes. While the candidate vote share ratio might be the same the Trump net differential moves from plus 20 (35-15) to plus 28 (49-21).

Having accounted for the three split precincts, I combine those vote estimates with the 16 precincts fully inside D4. For each contest, I then sum votes for candidate 1 and candidate 2, respectively, and divide by total votes cast. I conduct the same procedure for the two subdistricts.

Figure 10 presents the 2022 electoral performance analysis results of the full District 4, then Sub-Districts 4A and 4B. The results show that the white-preferred candidate wins seven of seven (100%) contests in the full D4, loses all seven contests in D4A, and wins seven of seven contests in D4B. These results plainly show the need for a subdistrict in D4 – as the full district results show strong evidence of white voters blocking Native voters in their ability to elect candidates of choice at the full district level.

Figure 10. Performance analysis assessment in statewide contests subset to the new District 4 boundaries, 2022 elections.

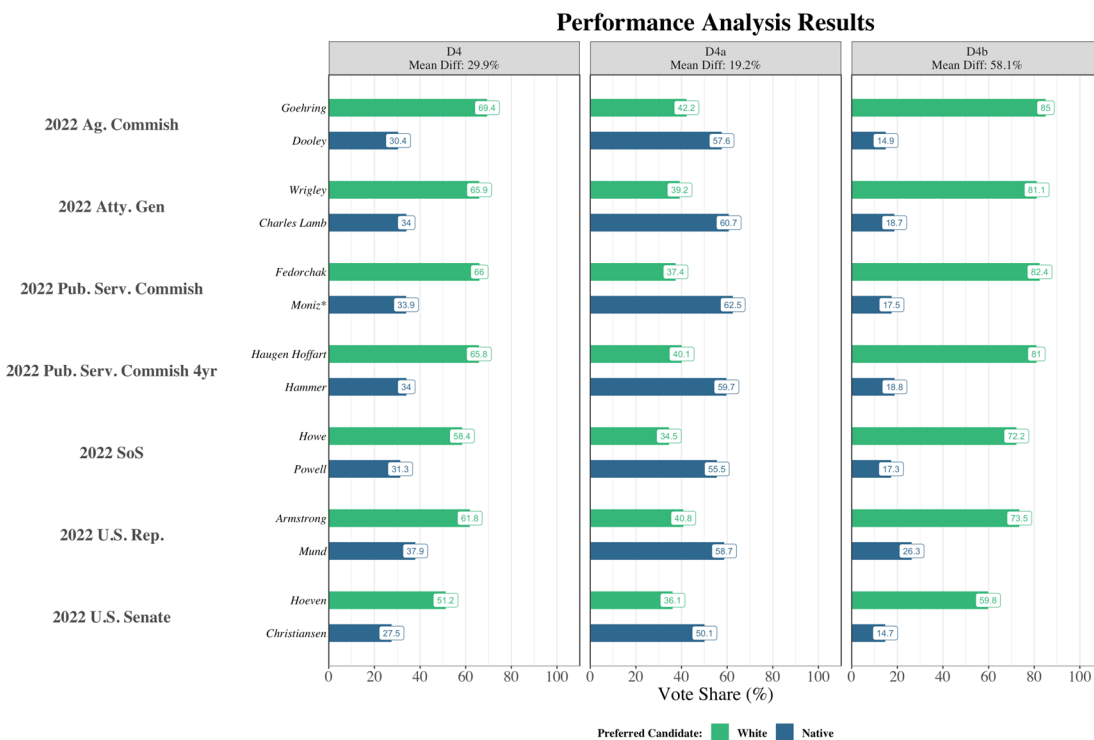


Figure 11 presents the 2020 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 6 of 6 contests for a block rate of 100%. The middle panel tells a different story though. The Native-preferred candidates wins 6 of 6 contests for a block rate of 0%.

Finally, the rightmost panel (Sub-District 4B) tells the opposite story – the Native-preferred candidates loses 6 of 6 contests for a block rate of 100%.

Figure 11. Performance analysis assessment in statewide contests subset to the new District 4 boundaries, 2020 elections.

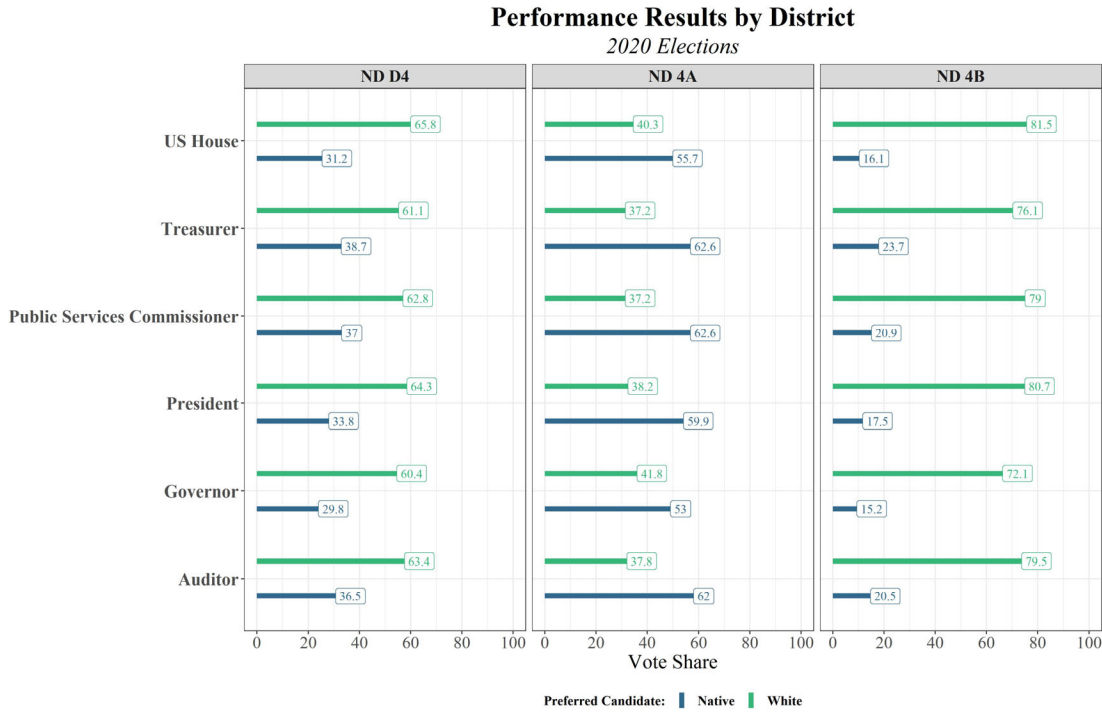


Figure 12 presents the 2018 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 8 of 8 contests for a block rate of 100%. The middle panel tells a different story though. The Native-preferred candidates wins 8 of 8 contests for a block rate of 0%.

Finally, the rightmost panel (Sub-District 4B) tells the opposite story – the Native-preferred candidates loses 8 of 8 contests for a block rate of 100%.

Figure 12. Performance analysis assessment in statewide contests subset to the new District 4, 4A, and 4B boundaries, 2018 elections.

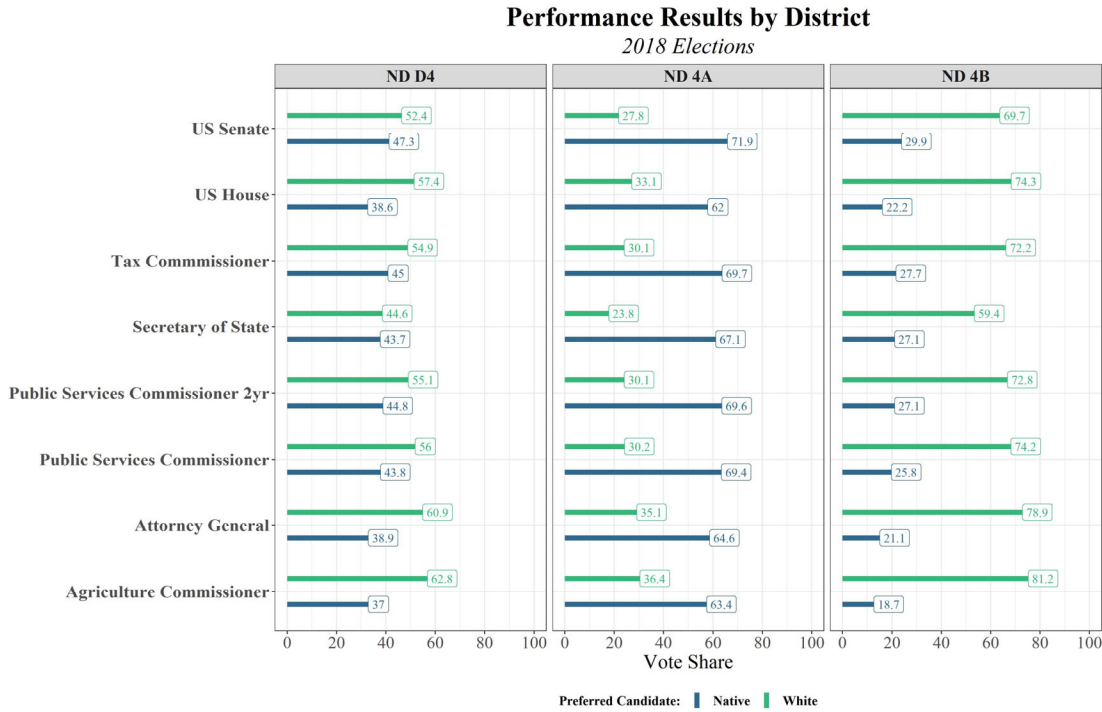


Figure 13 presents the 2016 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 7 of 7 contests for a block rate of 100%. The middle panel tells a different story though. The Native-preferred candidates wins 6 of 7 contests for a block rate of 14%.

Finally, the rightmost panel (Sub-District 4B) tells the opposite story – the Native-preferred candidates loses 7 of 7 contests for a block rate of 100%.

Figure 13. Performance analysis assessment in statewide contests subset to the new District 4 boundaries, 2016 elections.

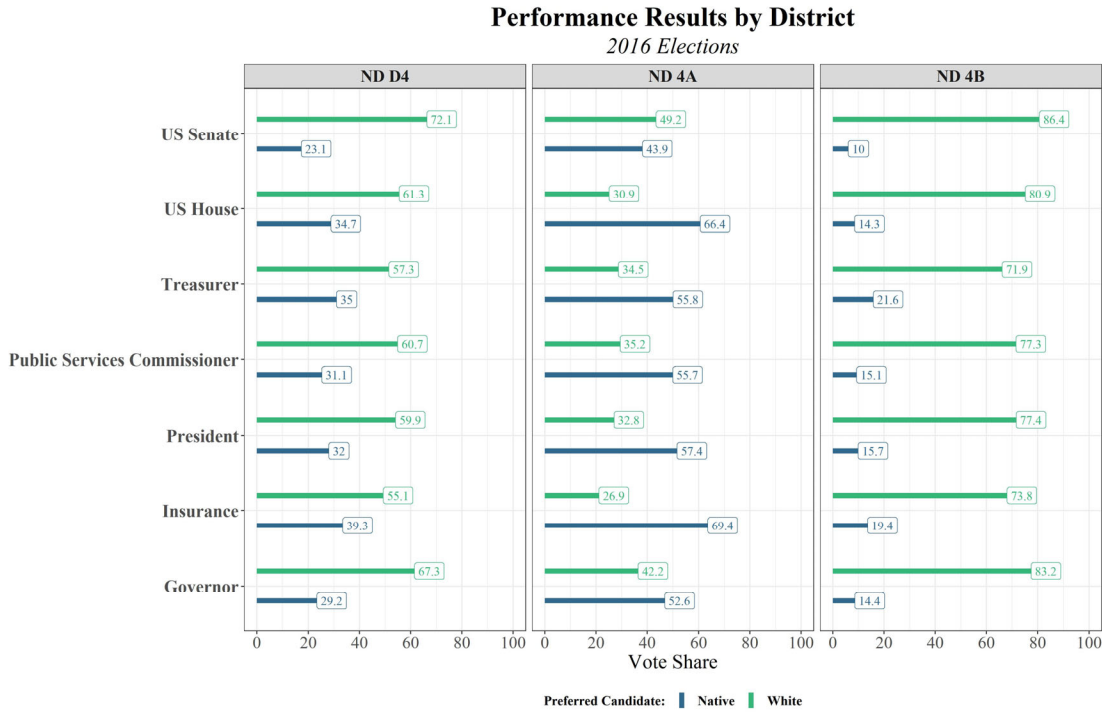
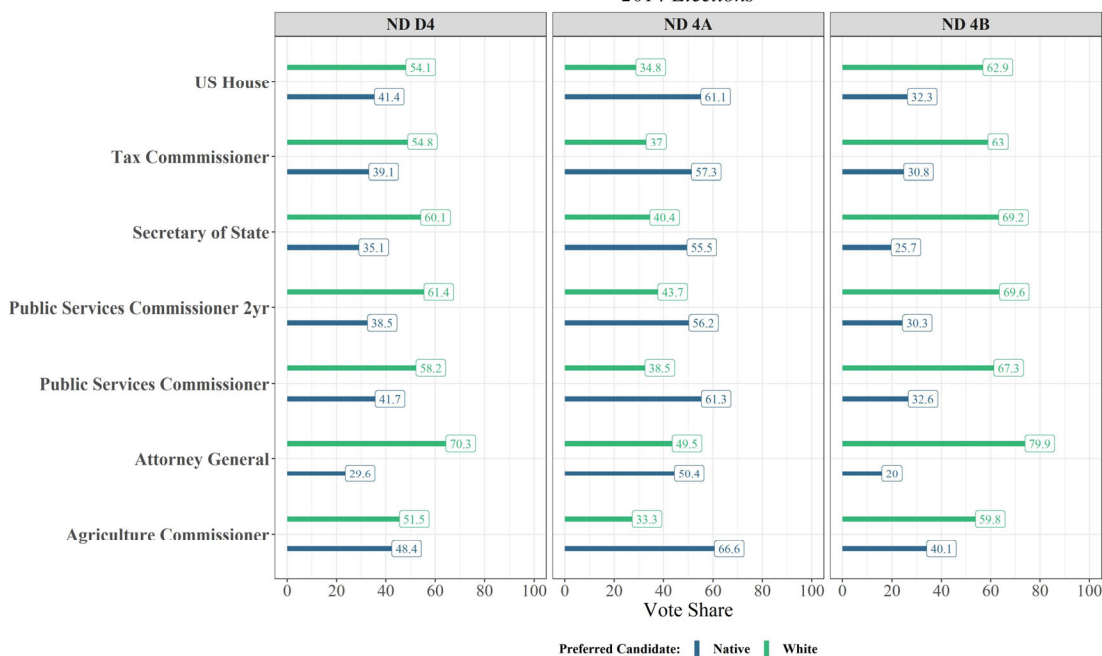


Figure 14 presents the 2014 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 7 of 7 contests for a block rate of 100%. The middle panel tells a different story though. The Native-preferred candidates wins 7 of 7 contests for a block rate of 0%.

Finally, the rightmost panel (Sub-District 4B) tells the opposite story – the Native-preferred candidates loses 7 of 7 contests for a block rate of 100%.

Figure 14. Performance analysis assessment in statewide contests subset to the new District 4 boundaries, 2014 elections.

Performance Results by District
2014 Elections



Conclusion

In conclusion, without any doubt, racially polarized voting between Native American voters and non-Hispanic whites is present in North Dakota’s recently enacted District 4. RPV is especially clear in elections featuring Native American candidates – but is present across every single election I analyzed across five election years (2014, 2016, 2018, 2020, and 2022). RPV is also present in the 2016 LD-4 election featuring a Native American candidate who ran and lost. Thus, the Gingles II threshold is clearly met. A Gingles III analysis reveals that whites vote as a bloc to block Native Americans from electing candidates of choice at the full District 4 level in 34 of 34 contests. Narrowing in on the new Sub-Districts 4A and 4B, Native-preferred candidates win 97% of the time in 4A. However, in Sub-District 4B, Native-preferred candidates win 0% of the time meaning that they are very likely to lose contests in that subdistrict. Therefore, Gingles III is present in Sub-District 4B, in District 4 overall, but not in Sub-District 4A (which was drawn to allow Native American voters to overcome white bloc voting). Sub-District 4A thus affords Native American voters the opportunity to elect their candidates of choice that they otherwise lack in the absence of the sub-district.

References

Collingwood, Loren, Ari Decter-Frain, Hikari Murayama, Pratik Sachdeva, and Juandalyn Burke. 2020. “eiCompare: Compares Ecological Inference, Goodman, Rows by Columns Estimates.” *R Package Version 3 (0)*.

King, Gary, and Molly Roberts. 2016. *Ei: Ecological Inference*. <https://CRAN.R-project.org/package=ei>.

Lau, Olivia, Ryan T. Moore, and Michael Kellermann. 2020. *eiPack: Ecological Inference and Higher-Dimension Data Management*. <https://CRAN.R-project.org/package=eiPack>.

Loren Collingwood

University of New Mexico
Department of Political Science
1 University of New Mexico
Albuquerque, NM 87131

Office: (951) 827-5590
Email: 1collingwood@unm.edu
website: <http://www.collingwoodresearch.com>

Employment

Associate Professor, University of New Mexico, 2020 - Present
Associate Professor, University of California, Riverside 2019 - 2020
Assistant Professor, University of California, Riverside 2012 - 2019
Assistant Analyst, Greenberg Quinlan Rosner, Washington DC 2005-2007
Field Associate, Greenberg Quinlan Rosner, Washington DC 2003-2005

Education

Ph.D., Political Science, University of Washington 2007 - 2012
Committee: Matt Barreto (chair), Chris Parker, Luis Fraga, Chris Adolph, Peter Hoff
M.A., Political Science, University of Washington, 2009
B.A., Psychology, California State University, Chico, 1998 - 2002
Minor: Political Science
Honors: *Cum Laude*, NCAA Scholar-Athlete in soccer

Research Fields

American Politics, Political Behavior, Methods, Race and Ethnic Politics, Immigration

Books

2. **Collingwood, Loren.** *Campaigning in a Racially Diversifying America: When and How Cross-Racial Electoral Mobilization Works.* 2020. Oxford University Press.

Featured in *Veja*, Brazil

1. **Collingwood, Loren** and Benjamin Gonzalez O'Brien. *Sanctuary Cities: The Politics of Refuge.* 2019. Oxford University Press.

Featured in *Teen Vogue*, *Seattle Times*; *Phoenix New Times*

Articles

40. Gonzalez O'Brien, Ben, **Loren Collingwood**, and Michael A. Paarlberg. "What Leads to Refugee? Sanctuary Policies and the Influence of Local Demographics and Partisanship." *Urban Affairs Review*. (Forthcoming).
39. **Collingwood, Loren**, Gabriel Martinez, and Kassra Oskooii. "Undermining Sanctuary? When Local and National Partisan Cues Diverge." *Urban Affairs Review*. (Forthcoming).
38. **Collingwood, Loren** and Benjamin Gonzalez O'Brien. "Is Distance to Drop Box an Appropriate Proxy for Drop Box Treatment? A Case Study of Washington State." *American Politics Research*. (Forthcoming)
37. Barreto, Matt, Michael Cohen, **Loren Collingwood**, Chad Dunn, and Sonni Waknin. "A Novel Method for Showing Racially Polarized Voting: The Promise of Bayesian Improved Surname Geocoding." *New York University Review of Law and Social Change*. 46(1). (Forthcoming)
36. Barreto, Matt, **Loren Collingwood**, Sergio Garcia-Rios, and Kassra Oskooii. "Estimating Candidate Support: Comparing Iterative EI & EI-RxC Methods." *Sociological Methods & Research*. (Forthcoming).
35. Morín, Jason L., Rachel Torres, and **Loren Collingwood**. 2021. "Cosponsoring and Cashing in: U.S. House Members' support for punitive immigration policy and financial payoffs from the private prison industry." *Business and Politics*. 23(4): 492-509.

Featured in KOAT-ABQ news
34. Newman, Benjamin; Merolla, Jennifer; Shah, Sono; Lemi, Danielle; **Collingwood, Loren**; Ramakrishnan, Karthick. 2021. "The Trump Effect: An Experimental Investigation of the Emboldening Effect of Racially Inflammatory Elite Communication." *British Journal of Political Science* 51(3): 1138-1159.

Featured in New York Times; Washington Post; The Times of India; Washington Post; NBC News; New York Times; Forbes; NBC News
33. **Collingwood, Loren** and Sean Long. 2021. "Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act." *Urban Affairs Review*. 57(3): 731-762.

Featured in NPR; Modesto Bee, IVN News San Diego; Woodland Daily Democrat; Silicon Valley Voice; Spectrum 1; Washington Post; Politico
32. Oskooii, Kassra, Nazita Lajevardi, and **Loren Collingwood**. 2021. "Opinion Shift and Stability: Enduring Individual-Level Opposition to Trump's 'Muslim Ban'." *Political Behavior*. 43: 301-337.

Featured in Washington Post
31. Hickel, Flavio, Rudy Alamillo, Kassra Oskooii, and **Loren Collingwood**. 2020. "When American Identity Trumps Latinx Identity: Explaining Support for Restrictive Immigration Policies." *Public Opinion Quarterly*. 84(4), 860-891.

Featured in Academic Times

30. Walker, Hannah, **Loren Collingwood**, and Tehama Lopez Bunyasi. 2020. "White Response to Black Death: A Racialized Theory of White Attitudes About Gun Control." *DuBois Review: Social Science Research on Race*. 17(1): 165-188.
29. Filindra, Alexandra, **Loren Collingwood**, and Noah Kaplan. 2020. "Anxiety and Social Violence: The Emotional Underpinnings of Support for Gun Control." *Social Science Quarterly*. 101: 2101-2120.
28. McGuire, William, Benjamin Gonzalez O'Brien, Katherine Baird, Benjamin Corbett, and **Loren Collingwood**. 2020. "Does Distance Matter? Evaluating the Impact of Drop Boxes on Voter Turnout." *Social Science Quarterly*. 101: 1789-1809.
27. Reny, Tyler, Ali Valenzuela, and **Loren Collingwood**. 2020. "'No, You're Playing the Race Card': Testing the Effects of Anti-Black, Anti-Latino, and Anti-Immigrant Appeals in the Post-Obama Era." *Political Psychology*. 41(2): 283-302.

Featured in VOX The Weeds Podcast

26. **Collingwood, Loren**, Benjamin Gonzalez O'Brien, and Joe Tafoya. 2020. "Partisan Learning or Racial Learning: Opinion Change on Sanctuary City Policy Preferences in California and Texas." *Journal of Race and Ethnic Politics*. 5(1): 92-129.
25. **Collingwood, Loren** and Benjamin Gonzalez. 2019. "Covert Cross-Racial Mobilization, Black Activism, and Political Participation Pre-Voting Rights Act." *Florida Historical Quarterly* 97(4) Spring.
24. Gonzalez O'Brien, Ben, Elizabeth Hurst, Justin Reedy, and **Loren Collingwood**. 2019. "Framing Refuge: Media, Framing, and Sanctuary Cities." *Mass Communication and Society*. 22(6), 756-778.
23. DeMora, Stephanie, **Loren Collingwood**, and Adriana Ninci. 2019. "The Role of Super Interest Groups in Public Policy Diffusion." *Policy and Politics*. 47(4): 513-541.
22. **Collingwood, Loren**, Stephen Omar El-Khatib, Ben Gonzalez O'Brien. 2019. "Sustained Organizational Influence: American Legislative Exchange Council and the Diffusion of Anti-Sanctuary Policy." *Policy Studies Journal*. 47(3): 735-773.
21. **Collingwood, Loren** and Benjamin Gonzalez O'Brien. 2019. "Public Opposition to Sanctuary Cities in Texas: Criminal Threat or Immigration Threat?" *Social Science Quarterly*. 100(4): 1182-1196.
20. Reny, Tyler, **Loren Collingwood**, and Ali Valenzuela. 2019. "Vote Switching in the 2016 Election: Racial and Immigration Attitudes, Not Economics, Explains Shifts in White Voting." *Public Opinion Quarterly*. 83(1): 91-113.

Featured in VOX; The Week; The Economist; New York Times; The Economist

19. Gonzalez-O'Brien, Benjamin, **Loren Collingwood**, and Stephen Omar El-Khatib. 2019. "The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration." *Urban Affairs Review*. 55(1): 3-40.

Featured in WaPo Monkey Cage I; and Monkey Cage II; WaPo Fact Check; InsideHigherEd; PolitiFact; The Hill; Christian Science Monitor; Pacific Standard; NBC News; Huffington Post; Seattle Times; The Denver Post; San Jose Mercury News; Chicago Tribune; San Diego Union Tribune; VOX

18. Oskooii, Kassra, Sarah Dreier, and **Loren Collingwood**. 2018. "Partisan Attitudes Toward Sanctuary Cities: The Asymmetrical Effects of Political Knowledge." *Politics and Policy* 46(6): 951-984.
17. **Collingwood, Loren**, Jason Morín, and Stephen Omar El-Khatib. 2018. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." *Race and Social Problems*. 10(4): 275-292.
Featured in CityLab; The Guardian; Mother Jones; NPR
16. **Collingwood, Loren**, Benjamin Gonzalez O'Brien, and Sarah K. Dreier. 2018. "Evaluating Public Support for Legalized Marijuana: The Case of Washington." *International Journal of Drug Policy*. 56: 6-20.
15. **Collingwood, Loren**, McGuire, Will, Gonzalez O'Brien, Ben, Baird, Katie, and Hampson, Sarah. 2018. "Do Dropboxes Improve Voter Turnout? Evidence from King County, Washington." *Election Law Journal*. 17:1.
Featured in Seattle Times; CBS News
14. **Collingwood, Loren**, Nazita Lajevardi, and Kassra Oskooii. 2018. "A Change of Heart? How Demonstrations Shifted Individual-Level Public Opinion on Trump's Muslim Ban." *Political Behavior*. 40(4): 1035-1072.
Featured in VOX; ThinkProgress; LSE Blog; Al Jazeera; San Francisco Chronicle; NPR; Business Insider; Washington Post
13. **Collingwood, Loren**, Ashley Jochim, and Kassra Oskooii. 2018. "The Politics of Choice Reconsidered: Partisanship and Minority Politics in Washington's Charter School Initiative." *State Politics & Policy Quarterly* 18(1): 61-92.
12. Newman, Ben, Sono Shah, and **Loren Collingwood**. 2018. "Race, Place, and Building a Base: Ethnic Change, Perceived Threat, and the Nascent Trump Campaign for President." *Public Opinion Quarterly*. 82(1): 122-134.
Featured in Pacific Standard; LSE Blog; Newsweek
11. Skulley, Carrie, Andrea Silva, Marcus J. Long, **Loren Collingwood**, and Ben Bishin, "Majority Rule vs. Minority Rights: Immigrant Representation Despite Public Opposition on the 1986 Immigration Reform and Control Act." 2018. *Politics of Groups and Identities*. 6(4): 593-611.
10. Alamillo, Rudy and **Loren Collingwood**. 2017. "Chameleon Politics: Social Identity and Racial Cross-Over Appeals." *Politics of Groups and Identities*. 5(4): 533-650.
Featured in WaPo's Monkey Cage; NBC News; Los Angeles Times
9. **Collingwood, Loren**, Kassra Oskooii, Sergio Garcia-Rios, and Matt Barreto. 2016. "eiCompare: Comparing ecological inference estimates across EI and EI:RxC." *The R Journal*. 8(2): 92-101.
Featured in Investigate West
8. Barreto, Matt, **Loren Collingwood**, Christopher Parker, and Francisco Pedraza. 2015. "Racial Attitudes and Race of Interviewer Item Non-Response." *Survey Practice*. 8:5.

7. Barreto, Matt and **Loren Collingwood**. 2015. “Group-based Appeals and the Latino Vote in 2012: How Immigration Became a Mobilizing Issue.” *Electoral Studies*. 40:490-499.

Featured in Latino Decisions blog

6. **Collingwood, Loren**, Matt Barreto, and Sergio Garcia-Rios. 2014. “Revisiting Latino Voting: Cross-Racial Mobilization in the 2012 Election.” *Political Research Quarterly*. 67(3): 632-645.

Featured in LSE Blog

5. Jurka, Tim, **Loren Collingwood**, Amber Boydston, Emiliano Grossman, and Wouter van Atteveldt. 2013. “RTextTools: A Supervised Learning Package for Text Classification in R” *The R Journal*. 5(1).
4. **Collingwood, Loren**. 2012. “Education Levels and Support for Direct Democracy.” *American Politics Research*, 40(4): 571-602.
3. **Collingwood, Loren** and John Wilkerson. 2012. “Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods.” *Journal of Information Technology and Politics*, 9(3).
2. **Collingwood, Loren**, Matt Barreto and Todd Donovan. 2012. “Early Primaries, Viability, and Changing Preferences for Presidential Candidates.” *Presidential Studies Quarterly*, 42(2).
1. Barreto, Matt, **Loren Collingwood**, and Sylvia Manzano. 2010. “A New Measure of Group Influence in Presidential Elections: Assessing Latino Influence in 2008.” *Political Research Quarterly*. 63(4).

Featured in Latino Decisions blog

Book Chapters

11. **Collingwood, Loren**, Stephanie DeMora , and Sean Long. “Demographic Change, White Decline, and the Changing Nature of Racial Politics in Election Campaigns.” In *Cambridge Handbook in Political Psychology*. Edited by Danny Osborne and Chris Sibley. [Forthcoming].
10. Morín, Jason L. and **Loren Collingwood**. “Contractor Politics: How Political Events Influence Private Prison Company Stock Shares in the Pre and Post Trump Era.” In *Anti-immigrant Rhetoric, Actions, and Policies during the Trump Era (2017-2019)*. [Forthcoming]
9. Parker, Christopher S., Christopher C. Towler, **Loren Collingwood**, and Kassra Oskooii. 2020. “Race and Racism in Campaigns.” In *Oxford Encyclopedia of Persuasion in Political Campaigns*. Edited by Elizabeth Suhay, Bernard Grofman, and Alexander H. Trechsel. DOI: 10.1093/oxfordhb/9780190860806.013.38
8. **Collingwood, Loren**, and DeMora, Stephanie. 2019. “Latinos and Obama.” In Jessica Lavariega Monforti (ed.) *Latinos in the American Political System: An Encyclopedia of Latinos as Voters, Candidates, and Office Holders*.
7. DeMora, Stephanie, and **Collingwood, Loren**. 2019. “George P. Bush.” In Jessica Lavariega Monforti (ed.) *Latinos in the American Political System: An Encyclopedia of Latinos as Voters, Candidates, and Office Holders*.

6. El-Khatib, Stephen Omar, and **Collingwood, Loren**. 2019. “Ted Cruz.” In Jessica Lavariega Monforti (ed.) *Latinos in the American Political System: An Encyclopedia of Latinos as Voters, Candidates, and Office Holders*.
 5. **Collingwood, Loren**, Sylvia Manzano and Ali Valenzuela. 2014. “November 2008: The Latino vote in Obama’s general election landslide.” In *Latino America: How America’s Most Dynamic Population Is Poised to Transform the Politics of the Nation*. By Matt Barreto and Gary Segura. New York: Public Affairs Press. (co-authored chapter with Matt Barreto and Gary Segura)
 4. **Collingwood, Loren**, Justin Gross and Francisco Pedraza. 2014. “A ‘decisive voting bloc’ in 2012.” In *Latino America: How America’s Most Dynamic Population Is Poised to Transform the Politics of the Nation*. By Matt Barreto and Gary Segura. New York: Public Affairs Press. (co-authored chapter with Matt Barreto and Gary Segura)
 3. Barreto, Matt, **Loren Collingwood**, Ben Gonzalez, and Chris Parker. 2011. “Tea Party Politics in a Blue State: Dino Rossi and the 2010 Washington Senate Election.” In William Miller and Jeremy Walling (eds.) *Stuck in the Middle to Lose: Tea Party Effects on 2010 U.S. Senate Elections*. Rowan and Littlefield Publishing Group.
 2. **Collingwood, Loren** and Justin Reedy. “Criticisms of Deliberative Democracy.” In Nabatchi, Tina, Michael Weiksner, John Gastil, and Matt Leighninger, eds., *Democracy in motion: Evaluating the practice and impact of deliberative civic engagement*. New York: Oxford University Press, 2010.
 1. **Collingwood, Loren**. “Initiatives.” In Haider-Markel, Donald P., and Michael A. Card. *Political Encyclopedia of U.S. States and Regions*. Washington, DC: CQ Press, 2009.
-

Software

R package: **RTextTools**. This package uses supervised learning methods to automate text classification. Coauthors include Jurka, Boydstun, Grossman, and van Atteveldt. Available on CRAN.

R package: **eiCompare**. This package compares outcomes between ecological inference (EI) estimates and EI:Rows by Columns (RxC) estimates. Primary purpose is employed in racially polarized voting analysis. Development Version available here: [eiCompare](#) or on CRAN. Coauthors include Barreto, Oskooii, Garcia-Rios, Burke, Decter-Frain, Murayama, Sachdeva, Henderson, Wood, and Gross.

R package: **Rvoterdistance**. Calculates distance between voters and multiple polling locations and/or ballot drop boxes. Ports C++ code for high speed efficiency. Available on CRAN.

R package: **Rweights**. Creates survey weights via iterative variable raking. Survey design object and weights vector are produced for use with R, Stata, and other programs. Currently in alpha form with unix tarball available here: [Rweights](#).

R package: **Rmturkcheck**. Functions for cleaning and analyzing two-wave MTurk (or other) panel studies. Available: [Rmturkcheck](#)

R package: **RCopyFind**. Functions for extracting data frames then plotting results from WCopyFind plagiarism text program. Co-authored with and Maintained by Steph DeMora. Available: [RCopyFind](#)

Under Review / Working Papers

Barreto, Matt, Michael Cohen, **Loren Collingwood**, Chad Dunn, and Sonni Waknin. “Using Bayesian Improved Surname Geocoding (BISG) to Assess Racially Polarized Voting in Voting Rights Act Challenges.” [Revise & Resubmit]

Decter-Frain, Ari, Pratik Sachdeva, **Loren Collingwood**, Juandalyn Burke, Hikari Murayama, Matt Barreto, Scott Henderson, Spencer Wood, and Joshua Zingher. “Comparing BISG to CVAP Estimates in Racially Polarized Voting Analyses.” [Revise & Resubmit]

Hickel Jr., Flavio R., Kassra A.R. Oskooii, and **Loren Collingwood**. “Social Mobility Through Immigrant Resentment: Explaining Latinx Support for Restrictive Immigration Policies and Anti-Immigrant Candidates.” [Revise & Resubmit]

Collingwood, Loren, Jason Morín, and Eitan Tzelgov. “Walls and Weed: How Threats to Local Industry Shape Economic Voting.” [Under Review]

Collingwood, Loren, Jason Morín, and Edward Vargas. “Protesting Detention: How Protests Activated Group Empathy and Party ID to Shift Attitudes on Child Detention.” [Under Review]

Paarlberg, Michael A. and **Loren Collingwood**. “Fact or Fiction: Testing the link between local immigration policy and the MS-13 ‘Threat’.” [Under Review]

Awards, Grants, and Fellowships

Matt Barreto and Loren Collingwood. Detection of Vote Dilution: New tools and methods for protecting voting rights. Data Science for Social Good project selection, University of Washington. 2020

Loren Collingwood. Measuring Cross-Racial Voter Preferences. UCR Faculty Senate. \$3,500. 2019.

Francisco Pedraza and Loren Collingwood. Evaluating AltaMed’s 2018 GOTV Efforts in Los Angeles. \$12,000. 2018-2019.

Allan Colbern, Loren Collingwood, Marcel Roman. A Mess in Texas: The Deleterious Effects of SB4 on Public Trust in Law Enforcement. Center for American Progress. \$7,100. 2018.

Karthick Ramakrishnan, Mindy Romero, Loren Collingwood, Francisco Pedraza, Evaluating California’s Voter’s Choice Act. Irvine Foundation. \$150,000, 2018-2019.

William McGuire, Loren Collingwood, Ben Gonzalez O’Brien, and Katie Baird, “Evaluating the Impact of Drop Boxes and Get-Out-The-Vote Advertising on Voter Turnout in Pierce County, WA.” MIT Election Data and Science Lab, \$16,365, 2017

Justin Freebourn and Loren Collingwood, Blum Initiative \$4,000, 2017

Hellman Fellowship Grant, UC Riverside, \$30,000, 2014-2015

Best Dissertation Award, 2013 Western Political Science Association

UC Riverside Harrison & Ethel Silver Fund, \$2,000, 2013

Best Graduate Student Paper Award State Politics section, 2012 American Political Science Association

Texas A&M Experimental Methods Winter Institute, \$800, January, 2011

UseR! 2011 Conference travel grant, \$1000, August, 2011

Center for Statistics and the Social Sciences travel grant, \$870, January, 2011

David J. Olson Research Grant, University of Washington Political Science, \$2,000, January, 2011

Warren Miller Scholarship Award, Inter-University Consortium for Political and Social Research, Summer 2009

Matthews Fellowship, University of Washington, Winter 2008 - Spring 2009

Brennan Center for Justice, New York University [with Matt Barreto]

Indiana Voter Identification Study, \$40,000 – Oct. 2007, 6 months

Teaching Experience

POSC 10 (American Politics); POSC 146 (Mass Media & Public Opinion); POSC 171 (State Politics); POSC 104S (Race and Ethnic Politics Special Topics); POSC 108 (Race and Ethnic Politics)

POLS 300: Immigration Politics with Focus on Latino Politics

POLS 300: The Voting Rights Act: Causes and Effects

POSC 202A: Introduction to Quantitative Methods (Graduate)

POSC 207: Statistical Programming and Data Science for the Social Sciences (Graduate)

POSC 207: Quantitative Text Analysis (Graduate)

POSC 220: Graduate Seminar in Race and Ethnic Politics in the U.S.

POSC 256: Graduate Seminar in Public Opinion

POSC 253: Graduate Seminar in Electoral Politics

Text Classification with R using the `RTextTools` package, UNC-Chapel Hill Workshop

Text Analysis with Political Data, Claremont Graduate School, 2019

CSSS Intermediate R Workshop 2011, Instructor (Summer)

POLS 501: Advanced Research Design and Analysis, Teaching Assistant (2 quarters)

ICPSR Summer Course: Methodological Issues in Quantitative Research on Race and Ethnicity, Teaching Assistant

POLS 202: Introduction to American Politics, Teaching Assistant

CSSS Math Camp 2011, Teaching Assistant

POLS 499D: Center for American Politics and Public Policy Undergraduate Honors Seminar (2 quarters)

Professional Service

Co-editor, *Politics of Groups and Identities*, 2020-2021

Reviewer, *Political Behavior*, *Journal of Information Technology and Politics*, *American Politics Research*, *Social Sciences Quarterly*, *Journal of Politics*, *Politics of Groups and Identities*, *American Journal of Political Science*, *Political Research Quarterly*, *State Politics and Public Policy*, *American Political Science Review*, *British Journal of Political Science*, *Journal of Race and Ethnic Politics*, *Urban Studies*, *Urban Affairs Review*; many other journals

Conference Papers and Presentations

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk California Lutheran University. (October 2020).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk California State University, Chico. (March 2020).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk Humboldt State University. (March 2020).

Collingwood, Loren. "Campaigning in a Racially Diversifying America: Whether and How Cross-Racial Electoral Mobilization Works." Invited Talk Oregon State University. (February 2020).

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of San Diego. (November 2019).

Collingwood, Loren. "Campaigning in a Racially Diversifying America: Whether and How Cross-Racial Electoral Mobilization Works." Invited Talk University of Massachusetts. (January 2020).

Collingwood, Loren. "Campaigning in a Racially Diversifying America: Whether and How Cross-Racial Electoral Mobilization Works." Invited Talk University of New Mexico. (December 2019).

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk California State University, Northridge, Los Angeles. (November 2019).

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk Occidental College, Los Angeles. (November 2019).

Collingwood, Loren (with Sean Long). "Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act." UC Irvine Critical Observations on Race and Ethnicity Conference. (November 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of Geneva, Switzerland. (November 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of Bern, Switzerland. (October 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk ETH Zurich, Switzerland. (October 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk London School of Economics, U.K. (October 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of Leeds, U.K. (October 2019).

Valenzuela, Ali, Kassra Oskooi, and Loren Collingwood. "Threat or Reassurance? Framing Midterms Results among Latinos and Whites." American Political Science Association, Washington, DC. (August 2019).

Paarlberg, Michael A. and Loren Collingwood. "Much Ado about Nothing: Local Immigration Policy and the MS-13 'Threat' ." American Political Science Association, Washington, DC. (August 2019).

Collingwood, Loren. "A Mess in Texas: The Deleterious Effects of SB4 on Public Trust in Law Enforcement." International Center for Local Democracy (ICLD) Conference on Local Democracy. Umea, Sweden (June 2019).

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." Invited Talk University of California, Irvine (May 2019).

Collingwood, Loren. "Text Analysis with R." Invited talk and presentation. Claremont Graduate University (May 2019)

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." PRIEC. UC Davis (May 2019).

Collingwood, Loren. "Data Analysis with R." Invited presentation and training Cal Poly Pomona (May 2019)

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." Invited Talk Northern Arizona University (May 2019)

Collingwood, Loren (with Jason Morín). "Contractor Politics: How Political Events Influence Private Prison Company Stock Shares in the Pre and Post Trump Era." Invited Talk Universidad Nacional Autonoma de Mexico, Distrito Federal, Mexico (February 2019).

Roman, Marcel, Allan Colbern, and Loren Collingwood. "A Mess in Texas: The Deleterious Effects of SB4 on Public Trust in Law Enforcement." PRIEC Consortium. University of Houston (December 2018)

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." Invited Talk University of Illinois Chicago (November 2018)

Collingwood, Loren. "Ongoing Research in Sanctuary Cities and Immigration Politics." Invited Talk University of Pennsylvania Perry World House (November 2018)

Collingwood, Loren. "Unfair Detention: How Protests Activated Racial Group Empathy to Shift Attitudes on Child Detention." Invited Talk Rutgers University (October 2018)

Collingwood, Loren. "Unfair Detention: How Protests Activated Racial Group Empathy to Shift Attitudes on Child Detention." UCR Alumni Research Presentation Washington and Philadelphia (October 2018)

Collingwood, Loren, Jason Morin. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." Invited Talk UCLA (October 2018).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "Opinion Shift and Stability: Enduring Opposition to Trump's "Muslim Ban". APSA (September 2018).

Collingwood, Loren, Jason Morin, and Stephen Omar El-Khatib. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." American Political Science Association Conference (August 2018).

Collingwood, Loren, Sergio Garcia-Rios, and Hannah Walker. "The Impact of Exposure to Police Brutality on Political Attitudes Among Black and White Americans." Cooperative Comparative Post-Election Survey (CMPS) Conference. (August, 2018).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "Opinion Shift and Stability: Enduring Opposition to Trump's "Muslim Ban". Politics of Race Immigration and Ethnicity Consortium (August 2018).

Collingwood, Loren, Jason Morin, and Stephen Omar El-Khatib. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." Politics of Race Immigration and Ethnicity Consortium, Michigan State University (April 2018)

Collingwood, Loren, Benjamin Gonzalez O'Brien, and Joe Tafoya. "Partisan Learning or Racial Learning: Opinion Change on Sanctuary City Policy Preferences in California and Texas." Midwest Political Science Association Conference (April 2018).

El-Khatib, Stephen Omar and Loren Collingwood. "State Policy Responses to Sanctuary Cities: Explaining the Rise of Sanctuary City Legislative Proposals." Midwest Political Science Association Conference (April 2018).

Hannah Walker, Loren Collingwood, and Tehama Lopez Bunyasi. "Under the Gun: Black Responsiveness and White Ambivalence to Racialized Black Death." Midwest Political Science Association Conference (April 2018).

Hannah Walker, Loren Collingwood, and Tehama Lopez Bunyasi. "Under the Gun: Black Responsiveness and White Ambivalence to Racialized Black Death." Western Political Science Association Conference (April 2018).

DeMora, Stephanie, Adriana Ninci, and Loren Collingwood. "Shoot First in ALEC's Castle: The Diffusion of Stand Your Ground Laws." Politics of Race Immigration and Ethnicity Consortium, ASU (February 2018).

El-Khatib, Stephen Omar and Loren Collingwood. "State Policy Responses to Sanctuary Cities: Explaining the Rise of Sanctuary City Legislative Proposals." Politics of Race Immigration and Ethnicity Consortium, UCR (September 2017).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "A Change of Heart? How Protests Shifted Individual-Level Public Opinion on Trump's Muslim Ban." APSA (September 2017).

Collingwood, Loren, McGuire, Will, Gonzalez O'Brien Ben, Hampson, Sarah, and Baird, Katie. "Do Dropboxes Improve Voter Turnout? Evidence from King County, Washington." APSA (September 2017).

Collingwood, Loren, Reny, Tyler, Valenzuela, Ali. "Flipping for Trump: In 2016, Immigration and Not Economic Anxiety Explains White Working Class Vote Switching." UCLA (May 2017).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "A Change of Heart? How Protests Shifted Individual-Level Public Opinion on Trump's Muslim Ban." UCLA (May 2017).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "A Change of Heart? How Protests Shifted Individual-Level Public Opinion on Trump's Muslim Ban." *Politics of Race Immigration and Ethnicity Consortium*, UCSB (May 2017).

Reny, Tyler, Ali Valenzuela, and Loren Collingwood. "Public Reactions to Anti-Latino Appeals in the Age of Obama: Race, Illegality and Changing Norms." Vancouver, Western Political Science Association Conference (April. 2017).

Collingwood, Loren, McGuire, Will, Gonzalez-O'Brien Ben, Hampson, Sarah, and Baird, Katie. "Do Dropboxes Improve Voter Turnout? Evidence from King County, Washington." WPSA (April 2017).

Gonzalez-O'Brien, Benjamin, Loren Collingwood, and Stephen El-Khatib. "Gimme Shelter: The Myth and Reality of the American Sanctuary City". Vancouver, Western Political Science Association Conference WPSA (April 2017).

Rush, Tye, Pedraza, Francisco, Collingwood, Loren. "Relieving the Conscience: White Guilt and Candidate Evaluation." *Politics of Race Immigration and Ethnicity Consortium*, UCI (March 2017).

Reny, Tyler, Ali Valenzuela, and Loren Collingwood. "Public Reactions to Anti-Latino Appeals in the Age of Obama: Race, Illegality and Changing Norms." Philadelphia, American Political Science Association Conference (Sept. 2016)

Barreto, Matt, Loren Collingwood, Sergio Garcia-Rios, and Kassra Oskooii. "Estimating Candidate Support: Comparing EI & EI-RxC." Chicago, Midwest Political Science Association Conference (April 2016)

Bishin, Benjamin, Loren Collingwood, and Erinn Lauterbach. "Cross-Racial Mobilization in a Rapidly Diversifying Polity: Latino Candidates and Anglo Voters" Chicago, Midwest Political Science Association Conference (April 2016)

Gonzalez-O'Brien, Benjamin, Loren Collingwood, and Stephen El-Khatib. "Gimme Shelter: The Myth and Reality of the American Sanctuary City". San Diego, Western Political Science Association Conference (April 2016)

Collingwood, Loren and Antoine Yoshinaka. *The new carpetbaggers? Analyzing the effects of migration on Southern politics.* The Citadel Conference on Southern Politics, Charleston, SC (Mar 2016)

Alamillo, Rudy and Loren Collingwood. *Chameleon Politics: Social Identity and Racial Cross-Over Appeals.* American Political Science Association Conference, San Francisco (Sept 2015)

Reny, Tyler, Ali Valenzuela, and Loren Collingwood. "Public Reactions to Anti-Latino Appeals in the Age of Obama: Race, Illegality and Changing Norms." San Francisco, American Political Science Association Conference (Sept 2015)

Alamillo, Rudy and Loren Collingwood. *Chameleon Politics: Social Identity and Racial Cross-Over Appeals.* Western Political Science Association Conference, Las Vegas (April 2015)

Barreto, Matt and Loren Collingwood. *Confirming Electoral Change: The 2012 U.S. Presidential Election OSU Conference (October, 2013).* "Earning and Learning the Latino Vote in 2008 and 2012: How the Obama Campaign Tried, Refined, Learned, and Made Big Steps in Cross-Racial Mobilization to Latinos.

Collingwood, Loren and Ashley Jochim. 2012 Midwest Political Science Association Annual Conference (April) Chicago, IL. "Electoral Competition and Latino Representation: The Partisan Politics of Immigration Policy in the 104th Congress."

Collingwood, Loren. 2012 Western Political Science Association Annual Conference (March) Portland, OR. "The Development and Use of Cross-Racial Mobilization as Campaign Strategy in U.S. Elections: The Case of Texas 1948-2010."

Collingwood, Loren. 2012 Institute for Pragmatic Practice Annual Conference (March) Seattle, WA. "Changing Demographics, Rural Electorates, and the Future of American Politics."

Collingwood, Loren. 2012 Politics of Race, Immigration, and Ethnicity Consortium (January) Riverside, CA. "The Development of Cross-Racial Mobilization: The Case of Texas 1948-2010."

Collingwood, Loren. 2011 American Political Science Association Annual Conference (September) Seattle, WA. "The Pursuit of Victory and Incorporation: Elite Strategy, Group Pressure, and Cross Racial Mobilization."

Forman, Adam and Loren Collingwood. 2011 American Political Science Association Annual Conference (September) Seattle, WA. "Measuring Power via Presidential Phone Records." (Poster)

Collingwood, Loren with (Tim Jurka, Wouter Van Atteveldt, Amber Boydston, and Emiliano Grossman). UseR! 2011 Conference. (August) Coventry, United Kingdom. "RTextTools: A Supervised Learning Package for Text Classification in R."

Jurka, Tim, Loren Collingwood, Wouter Van Atteveldt, Amber Boydston, and Emiliano Grossman. 2011 Comparative Agendas Project Conference. (June) Catania, Italy. "RTextTools: A Supervised Learning Package for Text Classification in R."

Collingwood, Loren and John Wilkerson. 2011 Journal of Information Technology & Politics Conference. (May) Seattle, WA. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren. 2011 Politics of Race, Immigration, and Ethnicity Consortium (May) Davis, CA. "The Pursuit of Victory and Incorporation: Elite Strategy, Group Pressure, and Cross Racial Mobilization"

Collingwood, Loren. 2011 Western Political Science Conference (April) San Antonio, TX. "Race-Matching as Targeted Mobilization."

Collingwood, Loren. 2011 Western Political Science Conference (April) San Antonio, TX. "The Pursuit of Victory and Incorporation: Elite Strategy, Group Pressure, and Cross Racial Mobilization"

Collingwood, Loren (with John Wilkerson). Invited Talk: Texas A&M University. (April, 2011) "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren (with John Wilkerson). Invited Talk: Rice University. (April, 2011) "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren. 2011 Midwest Political Science Association Annual Conference (April) Chicago, IL. "Race-Matching as Targeted Mobilization."

Collingwood, Loren and John Wilkerson. 2011 Text as Data Conference. (March) Evanston, IL. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren and John Wilkerson. 2011 Southern Political Science Conference. (January) New Orleans, LA. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren (with Ben Gonzalez). 2010 American Political Science Association Annual Conference. (September) Washington, DC. "The Political Process in Florida: Modeling African American Registration Rates Post *Smith v. Allwright*, 1944-1964."

Wilkerson, John, Steve Purpura, and Loren Collingwood. 2010 NSF Funded Tools for Text Workshop. (June) Seattle, WA. "Rtexttools: A Supervised Machine Learning Package in an R-Wrapper."

Collingwood, Loren and Marcela Garcia-Castanon. 2010 Western Political Science Association Annual Conference. (April) San Francisco, CA. "Negativity as a Tool: candidate poll standing and attack politics."

Collingwood, Loren. 2010 Politics of Race, Immigration, and Ethnicity Consortium. (January) Riverside, CA. "White Outreach: A spatial approach to modeling black incorporation in Florida post *Smith v. Allwright*, 1944-1965."

Collingwood, Loren. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "Levels of Education, Political Knowledge and Support for Direct Democracy."

Collingwood, Loren. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "The Negativity Effect: Psychological underpinnings of advertising recall in modern political campaigns."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "Negativity as a Tool: predicting negative responses and their effectiveness in the 2008 campaign season."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "Switching codes: analyzing Obama's strategy for addressing Latinos in the 2008 presidential campaign."

Collingwood, Loren, (with Matt Barreto and Sylvia Manzano) 2009 Shambaugh Conference. (March) University of Iowa, IA. "More than one way to shuck a tamale: Latino influence in the 2008 general election."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Midwest Political Science Association Annual Conference. (April) Chicago, IL. "Switching codes: analyzing Obama's strategy for addressing Latinos in the 2008 presidential campaign."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Pacific Northwest Political Science Conference. (October) Victoria, BC. "Negativity as a Tool: predicting negative responses and their effectiveness in the 2008 campaign season."

Collingwood, Loren and Francisco Pedraza (with Matt Barreto and Chris Parker). 2009 Center for Statistics and the Social Sciences 10th Anniversary Conference. (May) Seattle, WA. "Race of interviewer effects: perceived versus actual."

Collingwood, Loren (with Matt Barreto, Chris Parker, and Francisco Pedraza). 2009 Pacific Northwest Political Science Conference. (October) Victoria, BC. "Race of interviewer effects: perceived versus actual."

Barreto, Matt, Loren Collingwood and Todd Donovan. 2008 Midwest Political Science Association Annual Conference. (April) Chicago, IL. "Early Presidential Primaries, Viability, and Vote Switching in 2008."

Collingwood, Loren. 2008 Midwest Political Science Association Annual Conference. (April) Chicago, IL. “Levels of Education and Support for Direct Democracy: A Survey Experiment.”

Collingwood, Loren. 2008 American Political Science Association Annual Conference. (September) Boston, MA. “Levels of Education and Support for Direct Democracy: A Survey Experiment.” (Poster)

Collingwood, Loren. 2008 American Political Science Association Annual Conference. (September) Boston, MA. “Response Effects in Multi-Candidate Primary Vote Questions.” (Poster)

Computer Skills

R, Stata, Python, WinBugs/JAGS, L^AT_EX, SPSS, MySQL, Access, ArcGIS, Some C++ when interacting with R.

Reports

Collingwood, Loren. (2008). *The Washington Poll: pre-election analysis*. www.washingtonpoll.org.

Collingwood, Loren. (2008). *Democratic underperformance in the 2004 gubernatorial election: explaining 2004 voting patterns with an eye towards 2008*. www.washingtonpoll.org.

Barreto, Matt, Loren Collingwood, Francisco Pedraza, and Barry Pump. (2009). *Online voter registration in Washington State and Arizona*. Commissioned by Pew Research Center.

Collingwood, Loren, Todd Donovan, and Matt Barreto. (2009). *An assessment of ranked choice voting in Pierce County, WA*.

Collingwood, Loren. (2009). *An assessment of the fiscal impact of ranked choice voting in Pierce County, WA*. Commissioned by the League of Women Voters.

Barreto, Matt, and Loren Collingwood. (2009). *Latino candidates and racial block voting in primary and judicial elections: An analysis of voting in Los Angeles County board districts*. Commissioned by the Los Angeles County Chicano Employees Association.

Barreto, Matt, and Loren Collingwood. (2011). *A Review of Racially Polarized Voting For and Against Latino Candidates in Los Angeles County 1994-2010*. Commissioned by Los Angeles County Supervisor Gloria Molina. August 4.

Collingwood, Loren. (2012). *Recent Political History of Washington State: A Political Map*. Commissioned by the Korean Consulate.

Collingwood, Loren. (2012). *Analysis of Polling on Marijuana Initiatives*. Commissioned by Greenberg Quinlan Rosner.

Collingwood, Loren, Sean Long, and Francisco Pedraza. (2019). *Evaluating AltaMed Voter Mobilization in Southern California, November 2018*. Commissioned by AltaMed.

Relevant Work Experience

Collingwood Research, LLC

Statistical Consulting and Analysis

January 2008 - Present

Conducted over 200 projects involving political research, polling, statistical modeling, redistricting analysis and mapping, data analysis, micro-targeting, and R software development for political and non-profit clients. Clients include: Greenberg Quinlan Rosner, Latino Decisions, Pacific Market Research, Beck Research, Squier Knapp Dunn Communications, Anzalone–Lizst Research, League of Women Voters, Shelia Smoot for Congress, pollster.com, Comparative Agendas Project, Amplified Strategies, Gerstein Bocian & Agne, Strategies 360, the Korean Consulate, the California Redistricting Commission, Monterey County Redistricting Commission, ClearPath Strategies, Los Angeles County Council, Demchak & Baller Legal, Arnold & Porter LLP, JPM Strategic Solutions, National Democratic Institute (NDI) – on site in Iraq, Latham & Watkins, New York ACLU, United States Department of Justice (Demography), Inland Empire Funder’s Alliance (Demography), Perkins & Coie, Elias Law Group; Campaign Legal Center; Santa Clara County (RPV Analysis); Native American Rights Fund (NARF); West Contra Costa Unified School District (Demography); Lawyers’ Committee for Civil Rights Under Law; LatinoJustice PRLDEF, Voces de Frontera; Roswell, NM Independent School District

Expert Witness Work

Expert Witness: *LOWER BRULE SIOUX TRIBE v. LYMAN COUNTY*, 2022

Expert Witness: *Walen and Henderson v. Burgum and Jaeger No 1:22-cv-00031-PDW-CRH*, 2022

Expert Witness: *Faith Rivera, et al. v. Scott Schwab and Michael Abbott No. 2022-CV-000089*, 2022

Expert Witness: *LULAC Texas et al. v. John Scott et al (1:21-cv-0786-XR)*, 2022

Expert Witness: *Pendergrass v. Raffensperger (N.D. Ga. 2021)*,

Expert Witness: *Johnson, et al., v. WEC, et al., No. 2021AP1450-OA*, 2021

Expert Witness: *East St. Louis Branch NAACP vs. Illinois State Board of Elections*, 2021

Expert Witness: *LULAC of Iowa vs. Pate*, 2021-2022

Expert Witness: *United States Department of Justice vs. City of Hesperia*, 2021-2022

Expert Witness: *NAACP vs. East Ramapo Central School District*, New York, 2018-2019

Riverside County, Corona and Eastvale, 2015

Los Angeles County Redistricting Commission, 2011

Racially Polarized Voting analysis of Latino and Asian candidates in San Mateo County and alternative map creation, 2010-2011

State of California, Citizens Redistricting Commission, including Blythe, CA, in Riverside County, 2011

Monterey County, CA Redistricting, alternative map creation, 2011

Loren Collingwood

17

Greenberg Quinlan Rosner

Assistant Analyst, Anna Greenberg

June 2005 - May 2007

Assisted in the development of questionnaires, focus group guidelines, memos, and survey reports for political, non-profit, and corporate clients. Moderated in-depth interviews and focus groups.

Greenberg Quinlan Rosner

Field Associate

December 2003 - June 2005

Managed qualitative and quantitative data collection process in the U.S. and internationally. Provided methodological advice, including sample stratification, sampling Latino populations, and modal sampling strategies.

Congressman Adam Schiff

Database Manager

March 2003 - June 2003

Managed constituent mail and survey databases; updated and maintained Member's Congressional voting record.

Strategic Consulting Group

Field Organizer, Carol Roberts for Congress

July 2002 - November 2002

Recruited and coordinated over 100 volunteers for mailings, canvassing, phone banking, and GOTV operations. Developed internship program and managed 15 interns from local colleges and high schools.

Institute for Policy Studies

Intern, John Cavanagh

May 2001 - August 2001

Provided research assistance for projects advocating reform of the WTO, World Bank, and IMF. Worked on reports and op-ed pieces on global economic issues advocating fair trade.

EXHIBIT 9

2020 Unofficial General Election Results

State of North Dakota

Downloaded at Feb 27 2023 12:32PM

State Senator District 4	County	Number of Precincts	Jordan Kannianen	Lisa Finley-DeVille	
			Republican	Democratic-NPL	write-in
	Dunn	5	598	214	0
	McKenzie	2	76	362	0
	McLean	2	607	353	3
	Mercer	1	7	3	0
	Mountrail	6	1,558	1,024	2
	Ward	6	2,114	397	2
	TOTALS	22	4,960	2,353	7

2020 Unofficial General Election Results

State of North Dakota

Downloaded at Feb 27 2023 12:38PM

State Senator	Precinct	Jordan Kannianen	Lisa Finley-DeVillev	write-in
District 4	Antelope - Twin Buttes	44	71	0
	Collins/Halliday	179	26	0
	Dodge/Loring	72	15	0
	Dunn Center/Decorah	286	39	0
	North Fox	17	63	0
	TOTALS	598	214	0

EXHIBIT 10

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

CHARLES WALEN, *et al.*,

Plaintiffs,

v.

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

Defendants,

v.

MANDAN, HIDATSA AND ARIKARA NATION, *et
al.*,

Defendant-
Intervenors.

Civil No. 1:22-cv-00031-PDW-CRH

DECLARATION OF CESAREO ALVAREZ

I, Cesareo Alvarez, pursuant to 28 U.S.C. § 1746, based on my personal knowledge, declare that:

1. I am an enrolled member of the Mandan, Hidatsa and Arikara Nation (“MHA Nation”), also known as the Three Affiliated Tribes of the Fort Berthold Indian Reservation.
2. I live on the Fort Berthold Reservation. I have lived at my current residence for seven years and on the Fort Berthold Reservation for 25 years.
3. I am eligible to vote in federal, state, and local elections in North Dakota at my residence on the Fort Berthold Reservation and do so regularly. I voted in the 2022 Election and plan to continue to vote in federal, state, and local elections in North Dakota in the future, including elections for the North Dakota State Legislature. My current state legislative districts are Senate District 4 and State House Subdistrict 4A.

4. The elimination of Subdistrict 4A would deprive me of the opportunity to elect my candidate of choice to the North Dakota State House.

5. Prior to the creation of Subdistrict 4A, I ran in the at large District 4 for the State House seat in 2016. Despite winning handily in the portion of District 4 on the Fort Berthold Reservation, I ultimately lost. During my campaign, I had strong support from other Members of the MHA Nation, but my candidacy was not as well received by non-Native voters.

6. I am competent to testify on the matters stated in this declaration. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 24, 2023,


Cesareo Alvarez

EXHIBIT 11

2016 Unofficial General Election Results
 State of North Dakota
 Downloaded at Feb 27 2023 12:36PM

State Representative	County	Number of Precincts	Terry B Jones Republican	Bill Oliver Republican	Cesar Alvarez Democratic-NPL	Kenton Onstad Democratic-NPL	write-in
District 4	Dunn	5	379	441	240	227	0
	McKenzie	2	36	25	345	162	0
	McLean	2	393	356	330	389	6
	Mercer	1	3	3	5	6	0
	Mountrail	6	783	749	1,271	1,146	3
	Ward	6	1,497	1,410	484	777	1
	TOTALS	22	3,091	2,984	2,675	2,707	10

2016 Unofficial General Election Results

State of North Dakota

Downloaded at Feb 27 2023 12:36PM

State Representative	Precinct	Terry B Jones	Bill Oliver	Cesar Alvarez	Kenton Onstad	write-in
District 4	Antelope - Twin Buttes	14	19	101	51	0
	Collins/Halliday	129	149	20	45	0
	Dodge/Loring	43	51	19	26	0
	Dunn Center/Decorah	184	210	40	70	0
	North Fox	9	12	60	35	0
	TOTALS	379	441	240	227	0

EXHIBIT 12



MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes * Fort Berthold Indian Reservation
404 Frontage Road New Town, ND 58763
Tribal Business Council

Office of the Chairman
Mark N. Fox

67th Legislative Assembly
Redistricting Committee
September 23, 2021

Testimony of Mark N. Fox, Chairman
Tribal Business Council

Chairman Devlin and members of the Redistricting Committee, my name is Mark Fox, I am the Chairman of the Tribal Business Council of the Mandan, Hidatsa and Arikara Nation (MHA Nation) also known as the Three Affiliated Tribes of the Fort Berthold Indian Reservation (FBIR). I appreciate the opportunity to submit testimony on behalf of the MHA Nation.

Currently, FBIR is located within North Dakota District 4. District 4 consists of portions of the following six counties: McKenzie, Dunn, Mountrail, McLean, Mercer, and Ward. District 4 elects two members to the State House (at-large), and one member to the State Senate. The 2020 Census shows that the District 4 population and FBIR population increased between 2010 and 2020 to 16,794 and 8,350, respectively.

As a result of the overall 15.8% increase in North Dakota population from 672,591 residents to 779,094 residents, the ideal population for two member districts in North Dakota in 2021 is 16,576 and about 8,288 for a single-member house district. The MHA Nation urges the legislature to split the one at-large State House district to two single-member State House districts in District 4.

If single-member house districts were implemented within District 4, then House districts would have an ideal population of about 8,288. All of District 4 is currently about 38.6% Native American. The 2020 Native Voting Age Population (18 and over) is 33.9%.

Block voting is a concern for us. It has historically occurred in the state and has negatively impacted native voting and diminished native opportunities to serve in the legislature and participate in state and local elections. The current district lends itself to block voting.

This can be remedied by splitting the district into two single districts, thereby leveling the playing field for candidates. We understand that a split district is no guarantee that a tribal member would be elected, we are confident however that it will increase the representation of our issues and concerns to the legislative body.

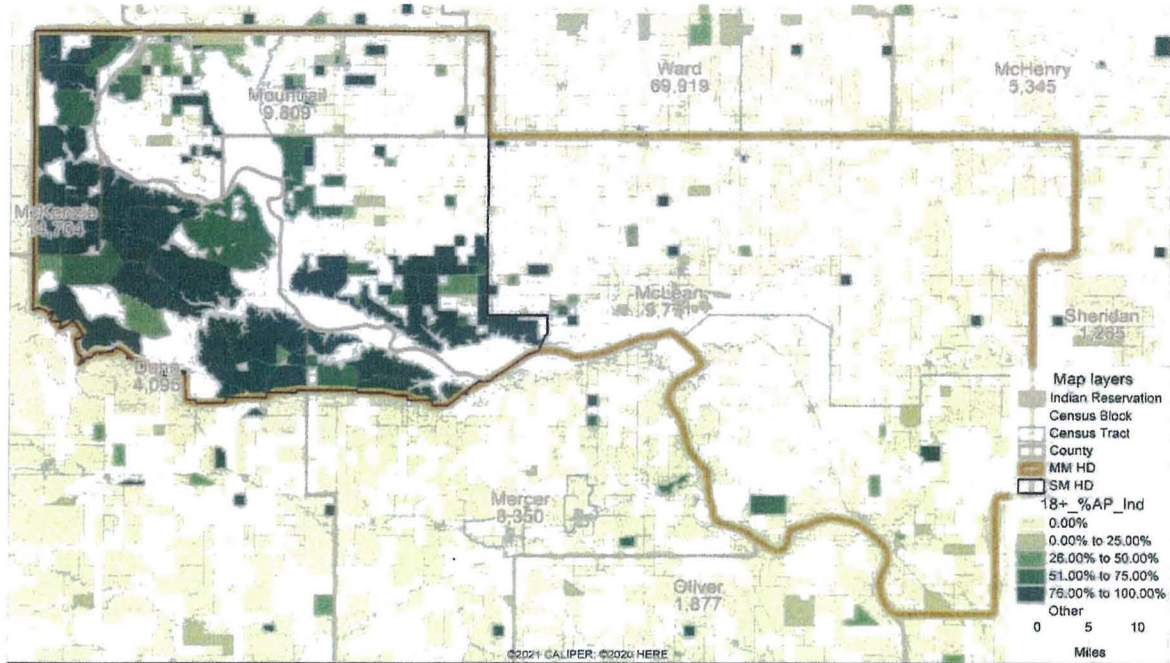
The legislature could easily draw a new single-member House district in our area that would have a Native Citizen Voting Age Population of 67% (*See Attached Proposed Map*). Using such a single-member district would give MHA a much better opportunity to elect a House representative of MHA's choice than under the current at-large system.

Second, the MHA Nation and its communities are a community of interest and should remain in a single legislative district. Splitting the reservation and our communities into multiple districts would dilute the ability of tribal members to elect the representative of their choice. I understand that certain legislators have stated that they will not split up, or crack, reservations into different districts. We can appreciate that position and respectfully request that our communities not be split as we have shared interests and deserve the same representation.

Third, tribal members who are also state citizens that are not only uniquely distinguished as minorities, but are part of a distinct political status that legally distinguishes them from other minority populations.

During the 1990s, the Parshall school district located on FBIR addressed similar concerns with block voting and addressed the issue by splitting the formerly at-large district. This allowed the election of two tribal members on the school board for the first time. The outcome has been beneficial for all of us. We were able to bridge the gap of communication and work together for the benefit of our children and families. I see the development of a single district for FBIR as another opportunity to enhance our communication and work together for a common goal of improving our communities and the lives of the people whom we represent. We ask for this Committee to support us in establishing a single district for the MHA Nation. We appreciate your support. Thank you.

Three Affiliated Tribes of the MHA Nation Proposed Sub-District



District	4 - Sub District	4A - Full District
Population	8353	17065
Deviation	65	489
% Deviation	0.007843	0.0295
18+_Pop	5712	12567
% 18+_Pop	0.683826	0.73642
NH18+_Wht	1462	7921
% NH18+_Wht	0.255952	0.630302
18+_AP_Ind	3838	4044
% 18+_AP_Ind	0.671919	0.321795

EXHIBIT 13

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF VIDEO-RECORDED
MEETING OF THE
TRIBAL AND STATE RELATIONS COMMITTEE
STATE OF NORTH DAKOTA
AUGUST 31, 2021

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 2

1 CHAIRMAN FOX: First thing we'll do is have roll
2 call and then we'll have, or, um, no, we'll have the
3 prayer first and then we'll have roll call. So, uh,
4 Mr. Chairman.

5 CHAIRMAN WARDNER: Yes. Appreciate that.
6 [Inaudible] Uh, little bit of a protocol, uh, we do --
7 we have gone back into a mask mandate effective 8:00
8 a.m. yesterday, Today's Tuesday, yesterday for all
9 tribal village facilities.

10 Um, but given that we are still not very crowded
11 at this point in time I'll leave it discretionary. If
12 you want to wear your mask at this point in time.
13 Inside it's a controlled audience at this point in
14 time. We are getting more people in here than we may
15 want to move to a mask -- mask [inaudible].

16 But right now, while the numbers alone we'll
17 leave it up to your discretion, whether you want to
18 wear a mask or not and that's where we're at. But at
19 this time, uh, I want to call forward one of our
20 elders she's also an employee which -- in our finance
21 department.

22 But whatever we call on her she always without a
23 doubt and without any hesitation, you know, comes
24 forward and helps lead us in prayer. Uh, I will make
25 this comment and welcome here of course, to -- to our

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 organization and we'll do more of that in a bit.

2 One of the -- one of the great things about the
3 Indian Civil Rights Act, um, was passed by the federal
4 government pertaining to tribes and tribe
5 reservations, how we do in government.

6 One of the main things that, uh, I think is
7 really beneficial is that, uh, there's no requirement
8 of separation of church and state. And so we do all of
9 our government proceedings, uh, with prayer.

10 We begin those all with each and every time and
11 we're -- today, we'll be no different and -- and
12 hosting your meeting here with us at MHA Nation. So at
13 this time, Jaylene [ph], if you would, please,

14 MS. JAYLENE: First of all, I want to thank you
15 for allowing me to come and take -- go to the Lord in
16 prayer. I'm always honored to do that. Um, dear
17 heavenly father, we ask that you take care of us today
18 as we have this meeting.

19 Thank you for each blessing you've given us. And
20 we ask that you go before us to be our shield against
21 evil, to go behind us, to lead us on the right path
22 and to stay beside us, to be with us every moment of
23 every day.

24 Much tragedy going on, people are crying and
25 hurting from fires to floods. We ask that you take

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 care of those people who are in sorrow, in mourning,
2 and as well as the war in Afghanistan, for those that
3 have died. We ask that you go ahead and take care of
4 us, that our minds can go ahead and do what is right.

5 Teach us that what we do affects everyone. And we
6 ask that you go ahead and bless our families. We have
7 things in our hearts that only you know father. We ask
8 that you take care of them for us today.

9 We ask that you bless all that are here, their
10 families, their homes. And we ask that we go ahead and
11 do the things we should do father and take care of us,
12 father. If there's nourishment here, ask it for the
13 nourishment of our bodies. And we ask all these things
14 in your most precious name. Amen.

15 ALL: Amen.

16 CHAIRMAN WARDNER: Thank you.

17 CHAIRMAN FOX: Well, Mr. Chairman, we'll take
18 roll on our side and then I'm going to have you, then
19 you will be able to make any welcoming comments or
20 anything like that. So --

21 MS. JAYLENE: And then after just --

22 CHAIRMAN FOX: Okay. We'll get that taken of,
23 yeah.

24 MS. JAYLENE: Thank you, chairman. Uh, Chairman
25 Warder.

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 CHAIRMAN WARDNER: Aye.

2 MS. JAYLENE: Uh, Senator Bell.

3 MS. BELL: Present

4 MS. JAYLENE: Senator Heckman.

5 MS. HECKMAN: Here.

6 MS. JAYLENE: Senator Oehlke.

7 MR. OEHLKE: Here.

8 MS. JAYLENE: Representative Boschee.

9 MR. BOSCHEE: Present.

10 MS. JAYLENE: Representative Jones.

11 MR. JONES: Here.

12 MS. JAYLENE: Representative Pollard.

13 MR. POLLARD: Aye.

14 MS. JAYLENE: Nathan Davis.

15 MR. DAVIS: Here.

16 MS. JAYLENE: Uh, Chairman Fox.

17 CHAIRMAN FOX: Here.

18 MS. JAYLENE: We have a quorum.

19 CHAIRMAN WARDNER: All right. And at this time

20 committee members, we would like to, uh, have the

21 minutes of the August 17th meeting -- committee

22 meeting, uh, considered, uh, for chairs, looking for a

23 motion.

24 ALL: So approved.

25 CHAIRMAN WARDNER: Okay. We got, uh,

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 representative Boschee, uh, made the motion. Senator
2 Oehlke seconded it. Any discussion? My only comment is
3 I thought it was an excellent, uh, meeting and, uh,
4 minutes show that. All right, if not, uh, all those in
5 favor signified by saying aye to approve them.

6 ALL: Aye.

7 CHAIRMAN WARDNER: Okay. Motion passes. At this
8 time, I would like, uh, Chairman Fox to make some
9 comments.

10 CHAIRMAN FOX: I appreciate that, uh, uh,
11 chairman, uh, Senator Wardner, uh, and commit members,
12 welcome to MHA Nation. Welcome to the lands of the
13 Mandan, Hidatsa and Arikara Nation.

14 Um, very proud to be able to host you today, host
15 the committee. Um, very proud to, uh, again,
16 reinitiate the tribal and state relations committee.
17 And, uh, it's something that we look forward to.
18 Something that we think is very important, um,
19 dialogue with the state.

20 Um, you know, it -- it is an honor to be able to
21 host this meeting and I -- I sure appreciate, um, the
22 -- the decision to go out and meet amongst the tribes
23 gives you a chance to see the reservations themselves.
24 Uh, meet, uh, the leadership and -- and -- and perhaps
25 some constituents. But, uh, it gives a chance for you

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 7

1 to really, um, see where we lives, see how we lives,
2 see what we do, see what's going on.

3 In particular, here at Fort Berthold, uh, one of
4 the things you probably noticed a lot of is that we
5 have a high traffic count and that relates to our
6 energy program and what we do here. And, um, and, uh,
7 it's been getting busier and busier, which is, uh, in
8 many respects, a good thing.

9 Uh, good thing because we -- we are proponents of
10 energy development and, uh, and re- -- but I want to
11 condition that by saying also it's very important, um,
12 for responsible development.

13 And, uh, that's I think is, uh, is the -- one of
14 the most primary, um, objectives that we have in, uh,
15 our development of energy. So very -- very important
16 that we move forward that way, but make no doubt in
17 your mind, my -- our nation, our government, uh, our
18 people, uh, support energy development and -- and --
19 and development of what we call our trust assets.

20 That's what they are; oil and gas are trust
21 assets. I want to thank [inaudible], uh, Councilwoman,
22 [inaudible] Lone Fight, uh, represents the [inaudible]
23 segment for being here as well.

24 I just got a message from Councilman Fox and he
25 would not be able to make it. His mother has a very --

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 8

1 has a very important doctor's appointment, uh, and she
2 has to take her too. And -- and the others we'll see
3 if Councilman [inaudible] or [inaudible] do make it as
4 members of the executive.

5 And perhaps, maybe Monica as well. But, um,
6 again, thank you for coming, you know, and we're very
7 proud of where you're sitting today.

8 Um, if any of you and I'm looking around the room
9 and I'm trying to remember if I hosted any tours with
10 any of you. I -- I think, uh, I don't think any of you
11 have done the tour of the actual interpretive center
12 previously.

13 Mr. Jones, did you do it already? Yeah. He did,
14 great. Yeah. Because he was at the grand opening,
15 right. He was at the grand opening. And -- and -- and
16 as our rep here in our area, he was there and I
17 appreciate him being there.

18 And -- and -- and so it's, um, it's something
19 that we're very proud of. Um, um, for two really main
20 reasons one is you'll see a lot of things going on
21 here. Um, maybe not the most important reason, but a
22 very important reason is our -- our focus on economic
23 development, uh, tourism recreation. And this plays,
24 uh, a significant role in that.

25 You cross this little bay here, this little inlet

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 9

1 that we've got here, that's the Four Bears Peninsula
2 proper, uh, you look, uh, off to our Northeast you'll
3 see, uh, the new -- and this is where I -- I can't
4 wait for you to come back, but, uh, in about three
5 months we will be finishing what we're calling our new
6 capital, our new administration building, uh, uh.
7 Elevated up the view of the council chambers will be
8 back towards this area with the earth lodges and the
9 interpretive center and to the Southwest.

10 And, uh, that will be open in a few more months.
11 Uh, we've done other things on the peninsula; the
12 water park, uh, development of a beach for the third
13 one approved by the United States, uh, Army Corps of
14 Engineers.

15 Um, uh, we also have other things that we're
16 digging in, building water didn't cooperate with us
17 this year as -- as -- as mother nature has done, uh,
18 to us. Um, we, uh, are building, um, more campsites,
19 we're building basketball courts, horseshoe, um,
20 gardens, an amphitheater for, you know, things to that
21 nature.

22 What we're trying to do is make this area on Fort
23 Berthold, a little destination resort economically.
24 And it's very critical that we do the infrastructure.
25 So you see things going on at the casino we continue

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 10

1 to reinvest in that.

2 Um, I know we're going to talk about it later,
3 uh, but we have been very heavily impacted by, uh, the
4 expansion of gaming in the state, the ETAB machines
5 with the charitables. Uh, our employment still
6 remains, uh, at about 40 percent of, uh, pre-pandemic
7 numbers, uh, for employment.

8 And so, uh, but we have taken a position to do
9 everything we can with our energy program to, uh,
10 expand our economic opportunities. And that's what
11 we've been doing since this time. So, um, again, you
12 know, welcome.

13 I'm thankful for the prayer, Jaylene. And
14 thankful that, uh, member of council. I have some
15 staff here. Monica's here, thank you, Councilwoman
16 Monica Mayer. Come on, come on, sit down with Monica.

17 And so thankful that, uh, she was able to make
18 it. And, um, like I said, I hope, uh, uh, we have a
19 couple more that might be able to make it as well. But
20 we have such a lot going on and -- and, um, uh, it's
21 very, very busy and we're very proud, but we've got a
22 lot of work to do. Um, by no means are we anywhere
23 near where we want to be? We've got, you know, more
24 recreation, more tourism to focus on.

25 We've got other economic ventures, the

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 11

1 greenhouse, for those of you who came across on 23
2 from the east, uh, near partial, you may have seen,
3 uh, we're getting the -- the phase one of the base all
4 down for that.

5 Um, when that's built, uh, we've got a little bit
6 of hiccup like everybody else who's got hiccups right
7 now with materials and costs and bid estimates coming
8 in high. And so we're working on those, uh, but we
9 will build that facility.

10 And, uh, we also have some other, uh, openings as
11 you cruise through and as Mr. Jones, the
12 representative, uh, knows full well, uh, there was a
13 time, uh, not of -- not just of, you know, not more
14 than few years ago where, uh, the explanation by those
15 visiting and those around areas that, uh, for example,
16 New Town in this area was dying.

17 It was disappearing. Well, you drive through New
18 Town and if you get that impression, then you're --
19 you're driving with your eyes closed.

20 And because we have so much going on now, it's
21 been re- -- revitalized, revamped, and -- and so much
22 more. Monica's here as well, too. And -- and, uh, so -
23 - so very proud that, uh, we're getting much done in
24 many of the segments.

25 Uh, the outline segments so no [inaudible] Four

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 12

1 Bears and partial. We got a number things going on in
2 there something we had our school did -- we actually
3 had opened it yet with the children in it?

4 Not yet. No. We're pretty close though. October
5 now, October will be the time that they'll get it
6 finalized and open.

7 And before the Snow flies, so we'll have
8 completed our third school, our third school here. So
9 I don't want to get into the -- and I'm supposed to
10 just be doing a welcome. I don't want to take up too
11 much time here and we'll get back to the issues at
12 hand here.

13 But we've got so much going on in all the
14 different segments, uh, you get a chance you're seeing
15 one segment and driving through what -- depending on
16 which direction you come through, maybe one or two of
17 the others.

18 You come up through Mandari; you saw some of
19 Mandari from a distance. You come from -- on 23, you
20 saw New Town, uh, and, and what's going on there. I
21 encourage you when you get the time and we'll be glad
22 to host you, uh, and get people lined up to take you
23 on a tour if you need to, from looking at oil and gas
24 pads from drilling pads and -- and everything else,
25 uh, operations that were going on.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 13

1 To, um, the different segment things happening,
2 uh, white shield and Twin Buttes for example, they
3 got, I think combined or were -- were [inaudible]
4 approaching a half a billion in infrastructure and
5 buildings and things done in the outline segments so
6 that they have opportunities.

7 And we've got so much more going on in -- in --
8 in the other areas as well. So again, uh, I -- I say
9 thank you, uh, for being here. And thank you for this
10 time and opportunity to -- to go over some really
11 important things as well. So, uh, with that, I defer
12 back to you, Mr. Chairman.

13 CHAIRMAN WARDNER: Thank you, Chairman Fox. Uh,
14 before we start, uh, if you don't mind, uh, Mr.
15 Chairman, I would like to welcome, uh, representative
16 Buffalo if she may sit over here at the table, uh, uh,
17 she is with us today and she is one of your, uh,
18 members here, even though she represents a different
19 district.

20 So, uh, Representative Buffalo, if you would like
21 to sit up at the table, uh, we would like to have you,
22 and you are welcome to come.

23 MS BUFFALO: Thank you. Um, [inaudible] here
24 though [inaudible].

25 CHAIRMAN WARDNER: Oh, okay. Very good. Well,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 14

1 thank you for being here. Uh, also, uh, I would,
2 before I make my couple of statements, uh, I've
3 traveled through New Town for many years.

4 I used to teach and coach in Mohal and my in-laws
5 lived in Killdeer. So we went through here and -- and
6 yes, uh, you are correct. Uh, there was a time the
7 businesses were starting to falter even in New Town,
8 but not anymore.

9 And, uh, I -- I -- I guess I think one of the
10 biggest things that we got was that bypass around, uh,
11 New Town for the trucks and stuff like that, uh, come
12 along ways.

13 And so you're at a point where now you can grow,
14 you don't have to deal with issues all the time. We do
15 appreciate, uh, many of the things that you're doing,
16 especially, uh, the treatment centers that you got in
17 -- in Bismarck I think that is, uh, tremendous.

18 You are, uh, putting money, investing money in --
19 in -- in human, uh, assets. And, uh, that is
20 appreciated. The biggest thing that I would like to
21 work on is that we do more partnerships and of course,
22 we already are doing a lot to partnerships with this
23 particular, uh, tribe and reservation.

24 We've -- we've already done a lot of things and
25 we need to continue that and, uh, work together to

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 15

1 improve the quality of life of the people.

2 And that's what our goal is. And so we're, uh,
3 we're excited to come here and, uh, and at some point
4 we'll have our members go around and, uh, they will
5 make comments about what they think and feel, uh, at
6 the end, we'll have kind of a go around.

7 And if any of your council people are here,
8 there, we will invite them to participate. So, uh, so
9 right now, uh, we're here to listen. We're here to,
10 uh, visit with you and, uh, hear your concerns. So
11 with that Chairman Fox, uh, I'm turning it over to
12 you. Okay.

13 CHAIRMAN FOX: Okay. I appreciate very much, we -
14 - we do have a -- a -- a schedule here, um. But maybe
15 perhaps before we dig into the, uh, nuts and bolts of
16 -- of the items that we have listed here, and we seem
17 to be on time.

18 I -- I would like to defer to my fellow
19 councilmembers for some brief comments as well. So
20 Sherry would like to make a few comments?

21 MS. SHERRY: Um, can I just hold that for a
22 minute?

23 CHAIRMAN FOX: Sure -- sure. Monica, would you
24 like to --

25 MS. SHERRY: This is my first meeting and I --

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 CHAIRMAN FOX: Okay.

2 MS. SHERRY: -- I just want to get the feel of
3 things.

4 CHAIRMAN FOX: Sure. That's -- that's fine.

5 MS. SHERRY: Thank you.

6 MS. MONICA: Is it on? Yeah. Um, I guess, uh, I
7 think this is my first meeting too with, uh, tribal
8 government relationships. But I just want to thank
9 everybody for coming down and to the, uh, beautiful
10 shores of MHA and our land.

11 And, uh, as a north segment council
12 representative from the New Town Shell Creek area, uh,
13 I'm in my second term and we do -- as Chairman Fox
14 said, have a lot of work to do while we can do it.
15 And, uh, very thankful and grateful for the blessings
16 from -- of the oil industry that we have, which are
17 other issues. As far as I'm concerned.

18 You know, I, as a physician, uh, background,
19 think that the health of the nation is number one and
20 what we can utilize our monies for to improve, uh, as
21 Senator Wardner said, the lives of our -- of our
22 people. Improving lives of our people.

23 And so I -- I strongly, um, really, um, invested
24 into doing what we can because for those of you who
25 don't know the life expectancy of an Indian man on

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 17

1 this reservation is 55 years of age.

2 And, uh, women is 61. And I know that because I'm
3 61. So I've hit my life expectancy and I think the
4 chairman has too.

5 CHAIRMAN FOX: Um, getting close.

6 MS. MONICA: I know. So anyway, that's just
7 atrocious to me. That's 20 years younger than the non-
8 Indian population in the state of North Dakota; 20
9 years for both males and females.

10 Yet this tribe spent \$171 million in, uh,
11 healthcare insurance premiums over a five-year period.
12 We paid \$106 million in claims, and there's something
13 wrong here when you spend so much money and have such
14 a low quality of life indicator.

15 Um, life expectancy is typically an indicator.
16 Our infant mortality is extremely high. So that just
17 doesn't make any sense to me yet we are pouring
18 millions into it.

19 So we are busy -- we're fortunate to be able to
20 have insurance for our membership, all of them, but we
21 really need to look at, um, we're building a medical
22 care campus right now to try to unify all our services
23 into, uh, one area where our clinic and our diabetes
24 building, our new KDU, um, our new community health
25 where we house all the WIC, infant, and toddler, um,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 18

1 PHNs for immunizations and, you know, unify our
2 services so it's easier for, or access to, um,
3 services.

4 One of the issues that we just -- I just met with
5 the, uh, um, Medicaid director, department of health.
6 And, uh, one of the issues we do have, that's just
7 continually, constantly going on is between McKinsey
8 and Montreal County.

9 Um, we are -- out of those premiums that we're
10 paying, we're paying for people who are eligible for
11 Medicaid, but yet we're paying their insurance
12 premiums. And one of the methodologies --
13 methodologies of the county is to try to eliminate or,
14 um, make it very difficult for those Native-Americans
15 that are eligible for Medicaid.

16 And that's a problem. And so we tried to go down
17 to get some more cooperation for our -- for our, uh,
18 MHA Nation, because as you know, there's what five or
19 six counties that surround us.

20 But -- but typically our two counties that we
21 have difficulty with is the McKinsey Montreal County
22 social services offices. So I just wanted to put that
23 on your radar, that we need better, uh, cooperation.

24 And I know Chairman Fox has talked to the
25 governor multiple times about the federal law mandates

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 19

1 that you cannot use the oil and gas, um, royalties
2 that individuals receive as the source of income when
3 applying for Medicaid.

4 Um, and, you know, suffice it to say if we, you
5 know, Indian Health Service was not doing a very good
6 job in our opinion, in taking care of our people. So
7 we 638'd it. So, uh, we are now in charge and trying
8 to partner up with experts as best as we can to -- to
9 improve those services.

10 However, if -- if we continue and this has been
11 going on for quite some years now, and I think
12 chairman with the, um, Medicaid eligibility, the
13 elders just don't want to apply for anything because
14 they don't want, uh, any harassment about their oil
15 tax and royalties.

16 However, given that that money for Medicaid comes
17 from CMS to the state and then the state distributes
18 it. Well, if we just can't come to sort of, uh,
19 negotiation and cooperation, then we may have to as
20 the case with IHS 638, the CMS monies, and have it
21 just come directly to the tribe and we'll distribute
22 it. So we don't want to have to do that, because it
23 would require a lot of, you know, a lot of work to do
24 so.

25 Uh, it took us several years before we 638 it.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 20

1 And so, you know, it gets all those lawyers involved
2 and all that other stuff so. And um, but that's one
3 area Mr. Chairman that I really feel strongly about in
4 the health of our nation.

5 And of course, uh, I was the former chief medical
6 officer for what we call the Aberdeen area for IHS
7 that's, North Dakota, South Dakota, Iowa, Nebraska, 10
8 years ago, 2010 or 15 years ago, I declared drugs and
9 alcohol as our number one healthcare issue.

10 And, uh, it still is today. It -- in out of that
11 171 million, we probably have invested at least 60
12 percent of that money into drug and alcohol treatment.
13 And that's before we even built the treatment center
14 down in, uh, Bismarck.

15 So the -- we're not talking chump change, but
16 we're not making as much headway as we should. So the
17 answer is really not to throw more and more money at
18 it, but to come up with better ways of managing it.
19 And one of the ways is we can't manage if we can't
20 measure.

21 So data is vital to our -- our way of
22 implementing change and improving, um, the lives of
23 our -- our children, our adults and our elders.

24 And so, I mean, I could go on and on, you know,
25 but I think the energy, the -- the solar, the

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 geothermal, the gas, the wind that we can capitalize
2 on should be sit into, uh, health and, uh,
3 infrastructure for the tribe. And so with that, Mr.
4 Chairman, I'll go ahead and move on.

5 CHAIRMAN FOX: Okay. Appreciate that, Monica.
6 Thank you for your comments. Any questions senator?

7 MALE: I just want to make one comment. Uh, we've
8 got some hungry people here, so at 10:00 we're going
9 to have a hard stop and take a break.

10 CHAIRMAN FOX: Sounds good. Well, we got some
11 food ready, some breakfast ready to go and I think
12 lunch after that.

13 MALE: So, so, uh, Representative Boschee.

14 MR. BOSCHEE: Thank you, Mr. Chairman. Um,
15 Councilwoman, Dr. Mayer can -- when you talk about,
16 you know, we have the federal system of Medicaid, the
17 tribe is paying for insurance premiums for members
18 there's -- we deliver Medicaid through the county-
19 based services or the zones right now.

20 What is the solution? What -- what is the state
21 not doing well or the county that is creating these
22 barriers? Um, not just for your members, but anyone to
23 access the resource -- the federal resources we could
24 be doing, we could be implementing to make people
25 healthier?

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 22

1 MS. MAYER: Well, I've got numerous examples that
2 I don't want to, um, bother you with in time. But, uh,
3 for instance, I have a home health team. We took, uh,
4 I had the home health team go over to Montreal County
5 and Stanley to get an elder, uh, signed up for
6 Medicaid.

7 And the customer service was at best, poor. They
8 were rude and disrespectful, weren't helpful until
9 they let them know who they were coming from our
10 office. And then they kind of -- but they make it very
11 difficult.

12 Oh, you didn't fill this out. Didn't notify them
13 that this was not completed or whatever. And I think
14 it boils down to customer service. And, um, so, but we
15 also have issues with like Stanley Hospital. They
16 won't accept our -- our patients from our, uh,
17 detention center.

18 They, um, won't, um, take care of those that are
19 in need, who, um, could have coverage from Stanley.
20 And so it -- it- -- it's -- it's a matter of, uh, um,
21 you know, improving that quality of life through
22 having better services and good customer services so
23 that we can understand.

24 Um, you know, and I don't want to throw that word
25 out there, but it could be a race card issue. I mean,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 23

1 uh, we'd be, ostrich's sticking our head in the sand
2 if we didn't admit that.

3 Um, but as citizens of North Dakota, uh, we find
4 it very difficult for our people to go to Stanley and
5 Walford City. One of the best places for us to go is
6 Garrison. Garrison's very, um, um, amenable to us. And
7 so, um, you know, we even have troubles over at
8 Trinity.

9 So one of the future ideas for us is when our
10 medical campus is up and we -- and the people have,
11 uh, cried about this for decades is that when we were
12 flooded out, the Elbow Woods Hospital was not, um,
13 included in rebuild.

14 And so my mother is now gone, but she used to
15 refer to Apple Woods, the hospital, very fondly. And,
16 um, so one of the areas that we're trying to do is
17 secure some more land so we could buy -- we could
18 probably look at eventually getting a critical care
19 access center right here on Fort Berthold in New Town
20 would be very tremendous for us because our -- the
21 great amount of our population lives right here in the
22 New Town area.

23 And so that would be a dream come true if we
24 could figure out ways to fund that through, uh, treaty
25 and, um, oil and gas and -- and the state cooperating

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 24

1 with us. So if -- if that's, you know, something that
2 we could put on the table, that would be very well.
3 But your answer to the question is Senator, uh, or
4 Representative Boschee is, uh, I think it's, uh, boils
5 down to customer service.

6 CHAIRMAN WARDNER: If -- if I can follow up with
7 -- thank you, Monica, follow up. I really narrowed
8 down in my mind to two things.

9 Uh, on the federal side of things, the United
10 States government has done a very poor job of
11 outreaching and getting to qualified Medicare and
12 Medicaid recipients. They have actually offices and
13 employees who are -- are tasked with doing that, but
14 rarely do they get up here, do they help, um, uh, push
15 on -- on getting, um, the enrollments up.

16 So Monica's alluding to very few of our elders
17 participate. There are many that are qualified, but we
18 just don't have them signing up. That's the primary
19 problem, I see. The secondary problem that we do have
20 is what she's alluding to is since Medicare and
21 Medicaid channels to the state, um, it's the state,
22 uh, offices that -- that deploy it out and -- and --
23 and provide the services.

24 And that means when people apply, we're getting,
25 and -- and we did one of the first things I did in

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 25

1 becoming chairman seven years ago was to sit down with
2 Medicare, Medicaid themselves over in the casino, in a
3 conference room and we had state officials and we
4 tried to hash this problem out.

5 Um, there's been some evidence back and forth
6 during that time, and I'm sure some subsequent to
7 that, but what was happening and she was alluding to
8 as one of the biggest things is -- is, um, mistakenly
9 or otherwise intentionally or mistakenly, uh, asking
10 certain questions about the elders and those that
11 would qualify.

12 Uh, taking into consideration, asking questions,
13 like, do you get royalties? And -- and -- and if so,
14 how much and using that for disqualification purposes.

15 Well, at that time, seven years ago, we made it
16 very clear as did Medicare and Medicaid that that's
17 not something that can -- trust income cannot be taken
18 to disqualify a person.

19 And -- and I remember the state officials at the
20 time representing, um, both the county level and state
21 level said, you know, certainly we don't want to do
22 that we understand.

23 And -- and if any of our intake personnel are --
24 are making those kind of mistakes, we want to correct
25 that. And there was a huge movement to do that at that

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 26

1 time, but that was seven years ago.

2 And obviously the problem has not been completely
3 resolved. So between those two situations, we get a --
4 a poor participation in -- in applying for and being
5 qualified and receiving benefits from Medicare and
6 Medicaid. And -- and it -- it is a problem.

7 So what we -- what's not provided to a person
8 because they're Medicaid, Medicare eligible we create
9 our own insur- -- we have our own insurance program
10 for our -- our people derived from our energy
11 resources.

12 Um, and so we have to pick them up on insurance,
13 but since it's our insurance, we -- we pay for it. And
14 -- and so that's a cost to us that we could use for
15 other things. So, you know, maximizing the federal
16 dollars out there is really critical and we -- we need
17 to do a better job of that.

18 So I wanted to touch on that. Uh, but thank you
19 for your question. Uh, Mr. Boschee and -- and also,
20 um, I wanted to comment briefly before we jump in on a
21 item and we kind of went by a little bit here and I
22 think we need to get at it really quick regarding to
23 redistricting because we got some -- definitely some
24 points that we want to illustrate.

25 I want to remind everybody that when you step out

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 27

1 on your break and we take a break, have something to
2 eat and you step out on the patio and the area out
3 there and you look out at that lake, uh, you've heard
4 me --

5 I was -- had the honor doing, uh, the state of
6 the tribal nations address. And you've seen
7 documentaries, you- -- you've seen a wonderful
8 documentary of -- of Elbow Woods that, uh, Mo- --
9 Monica's referencing to her grandma May, you know, and
10 her talking about that.

11 And -- and, uh, it's called basketball, you know,
12 you know, water basketball in the lost city of Elbow
13 Woods and -- and -- and -- and, uh, the DVD Prairie
14 Public did and talks about this issue. But when you
15 look out at that water today, you'll have to realize
16 that it didn't always look that way.

17 We are a victim of -- of federal policy that
18 built dams, a series of dams along the Missouri River
19 Pick-Sloan program, it's called. Pick-Sloan and all
20 the -- in congress passed this up, that built all
21 these dams and recreated the Garrison Reservoir by
22 building a dam where it's located today, uh, you know,
23 in that area to the south of -- on our river. Um, we
24 suffered greatly from that.

25 Prior to that, our people -- even though on many

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 28

1 reservations, uh, where people -- people were put on
2 Indian reservation became federally dependent, MHA
3 Nation, Mandan, Hidatsa and Arikara people were not as
4 dependent on the federal government as other tribes
5 were.

6 We grew our own crops. We -- we had our ranches.
7 We -- we -- we -- we were, you know, agriculture is
8 very important to us. We were self-sustaining. We had
9 our own sawmill, our school hospital, everything that
10 we established along the river up in our communities
11 up and down the river.

12 But that was taken away because the decision was
13 made to flood our area and then to supposedly
14 compensate us which was very poorly done as well in
15 flooding us and driving us to the high grounds,
16 separating out and New Town became a town called New
17 Town because of the flooding. But all that, when you
18 look outside today, uh, I want you to kind of try to
19 envi- -- envision what it looked like before and --
20 and what we've had to do. We've had to make lemonade
21 out of lemons now.

22 And that's why with recreation, tourism,
23 everything that we're trying to do now, and build back
24 out of -- of what was done to us. But prior to this
25 flooding, we were not situated the same as other

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 29

1 tribes in the -- in the nation. We were self-
2 sufficient.

3 We weren't wealthy or anything of that nature,
4 but we didn't depend on the federal government, like
5 most of the tribes do today, but that radically
6 changed when they flooded us out and -- and they
7 destroyed our economy. And that's what we've been
8 dealing with, rebuilding out of that.

9 Now, in that regards, Mr. Chairman, I- -- I'm
10 raising this issue because you all sitting around this
11 table all had a very important role in what we had to
12 do in developing our energy.

13 The first tax agreements that came out were not
14 equitable, but from a series of about eight years,
15 from 2013, really 2011 I was up there and Senator
16 Wardner probably remembers that.

17 But from 2013 to 2021, it took eight years to
18 make the tax agreement more equitable, so that more
19 money, hundreds of millions of dollars over time
20 additional would come to the MHA Nation so we could do
21 these things that we're doing today.

22 The schools, law enforcement centers, treatment
23 facilities, uh, insurance. Insurance, and
24 distributions to our me- -- membership three times a
25 year, two more times for elders, those distributions

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 30

1 and insurance combine for 90 percent of all the
2 royalties that the tribe collects for tribal, uh,
3 [inaudible] on tribal lands. Just those two items
4 alone. The other portions of it we use towards school
5 and -- and -- and that's where the tax comes in.

6 The royalties goes to those two items, but the
7 tax goes for schools, roads, infrastructure, all those
8 things and it eats up, you know, about 80 percent of
9 that.

10 So all that being said, you know, uh, I want to,
11 you know, remind and commend, uh, members of this
12 legislature of the North Dakota legislature and this
13 committee that it didn't happen overnight.

14 It -- it took a while. Uh, we continued to
15 negotiate, communicate through this committee and
16 otherwise governor's office, the legislative branch as
17 well, for yourselves.

18 And we were able to, um, get to where we are
19 today. And I -- I commend you for that process
20 because, uh, there was no guarantees it was going to
21 happen and, uh, got heated in your committees and got
22 heated on the floor. I -- I know that. Got heated in
23 discussion.

24 But I think what I'm asking you to do now is to
25 understand why we were so passionate, why we're so

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 31

1 driven to get these changes, because where you sit now
2 is we're rebuilding, we're rebuilding what, uh, uh,
3 against what was done to us and -- and has taken some
4 time.

5 And we've been waiting patiently for 60 years.
6 And so eight years we were able to handle as well. And
7 so you see a lot of things that we're to do in the
8 United States and, uh, we're very -- very happy with
9 that.

10 So that being said, I know we got about 12
11 minutes here. Maybe we could introduce the subject if
12 you want, Senator.

13 CHAIRMAN FOX: Well -- well, we do want to hear
14 about your thoughts on redistricting. So --

15 CHAIRMAN WARDNER: Yes.

16 CHAIRMAN FOX: -- that is a --

17 CHAIRMAN WARDNER: Can I -- can I do that now,
18 Senator?

19 CHAIRMAN FOX: Yes. Our thoughts, uh, um, you
20 know, it's kind of -- on one hand for me, it's a lot -
21 a lot similar having interacted with the legislature
22 now for 12 years or more, 9, 11, 13, I- -- I've been
23 no stranger down there to try to some things done for
24 our tribe.

25 Um, part of how I view it sometimes, uh, is -- is

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 32

1 similar to the gaming. You know, like we are sort of
2 not in a position to have influence or control
3 sometimes.

4 And because when you expanded your gaming on the
5 outside, it had a heavy impact to all our tribes, you
6 know, hurting us to the degree of -- of losing a lot
7 of jobs. And that's what our gaming represents is
8 jobs, now that's been cut down by 60 percent.

9 But again, it was difficult to say, you shouldn't
10 do that when it's your gaming, you have allowed it,
11 even though we're citizens of the State of North
12 Dakota and what you do impacts us. We all figured that
13 out in the pandemic. And -- and -- and things of that
14 nature.

15 And so part of me was kind of always like trying
16 to look at it from that perspective and -- and -- and
17 this redistricting, I -- I imagine we're going to get
18 much of the same rhetoric back or -- or same points
19 made back is that, well, you know, we hear what you're
20 saying, tribe, but, you know, really, um, really it's
21 -- it's, we're re- -- reorganizing our -- our system
22 of government to -- to vote and -- on how we set that
23 up. But if we -- if we characterize it that simply it
24 makes it problematic because here's the issue, we are
25 citizens of the state of North Dakota.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 33

1 That's not something we chose. And me and -- and
2 my background and of history and law, I can -- I can
3 argue and talk to you for hours about what we could do
4 alternatively to that in recognition -- recognition of
5 as a US to territory and things of that nature and --
6 and have our own members of congress elected straight
7 from MHA system, or -- or to be in a situ- --
8 situation at least, uh, similar to Puerto Rico,
9 surrounded by water, but no different from us.

10 They're a country we're a country. And that's the
11 reality of -- of the law, but we're not there. So the
12 only thing that we have to represent to have, uh, a
13 conduit and a mechanism means to get representation on
14 a federal level is to be citizens of the State of
15 North Dakota and cast our -- our ballots for
16 congressmen and -- and two senators as well, same as
17 you. We -- we -- we have --we have no other choice. If
18 we don't do that, we can't participate in electing
19 federal representatives.

20 And so being citizens of the state of North
21 Dakota, we also now have that opportunity to elect
22 those who represent our interest as citizens as well
23 and we are citizens, even though we have a dual
24 citizenship.

25 State and our own MHA Nation citizenship and they

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 34

1 are two different things. So that being said, we -- we
2 make these pleas that we should have a role. And --
3 and what we ask for should be strongly considered
4 because we are impacted.

5 Now specifically for MHA Nation, uh, and looking
6 at the previously -- and we've been sitting down,
7 we've had others, um, uh, there are other groups out
8 there, uh, representing native interest that have gone
9 out and met with the United tribe, met with us, uh,
10 separately. One of the things that we would ask for of
11 course is -- is -- is for opportunity Fort Berthold as
12 a whole, to -- to be part of a district, which we are.

13 Um, but one of the things that might give us even
14 more and -- and more opportunity to have, uh, our
15 voices heard is, uh, the potential of -- of splitting
16 the house, which has historically been done.

17 Um, if you split our district house in two and
18 Fort Berthold is in one or the other, uh, it might
19 give us an opportunity to, uh, have, uh, uh, to help
20 elect an individual that might carry forward our
21 concerns.

22 And that's really important to us as well. And so
23 we have, uh, formally with a letter -- a letter has
24 been submitted to that effect to the committee and
25 saying, you know, in your reconsideration of -- of

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 35

1 possible restructure of your committees to vote and
2 your districts in redistricting, uh, to take that into
3 consideration, because it very much would help us
4 participate better with your system and -- and -- and
5 -- and the state government of election. And so, uh,
6 we definitely are advocating for that as well, too,
7 so.

8 CHAIRMAN WARDNER: Okay. Well thank you, uh,
9 committee members, any questions for Chairman Fox?
10 Representative Boschee?

11 MR. BOSCHEE: Thank you, Mr. Chairman, uh,
12 Chairman Fox and then of course, any of the other
13 councilmembers, uh, I'd be curious for input. Um, I- -
14 - I'm the only one here that also serves on the
15 redistricting committee. And so we have had good
16 conversations about sub-districts specifically for
17 tribal nation.

18 So I think that's promising and -- and we'll
19 hopefully navigate that over the next month as we do
20 our work, um, specifically for MHA Nation internal
21 mountain, because of the population in which your --
22 the people that live on your reservation comprise of
23 a- -- an entire district almost equals half.

24 So the math is there on your side as well. My
25 question for you is, as we look at -- so currently

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 36

1 you're in legislative District 4, um, and comprise
2 about half of that land mass.

3 But right now the land mass generally goes north,
4 um, and almost to the -- the Canadian border. Curious
5 what your thoughts may be as we continue those
6 discussions, not just about the sub-district, but
7 about what -- are there -- are there communities near
8 you that would be -- that you would like to be a part
9 of in terms of a legislative district?

10 Uh, so would going west be better to be tied in
11 with Watford City? Would be going south to be in cold
12 country or west in the cold country, be a better
13 partnership or -- or maybe no change at all? But I'm
14 just curious what your thoughts would be. Especially
15 as we -- we talk a lot in redistricting about
16 communities of interest, and one of that is economics.

17 So that's why I frame right away thinking of
18 Waterford City from oil and gas, but certainly
19 interested. But that requires us to put a good chunk
20 of the district on the other side of the river too. So
21 --

22 CHAIRMAN FOX: Uh, we certainly wouldn't be
23 adverse. That consideration on that level is -- is, is
24 maybe, uh, what you're alluding to, you know, with our
25 energy development may have some things in common to

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 37

1 the west, possibly.

2 The only thing I -- I would say is whether it be
3 to the north, west, south or east, is that nothing
4 diminishes our ability to vote a- -- a- -- as a -- as
5 a reservation, as the native people.

6 The -- the worst thing we'd want to see in any
7 redistricting is to pull us apart, so to speak and to
8 split us and putting Twin Buttes down in a different
9 district and partial over in a different district and
10 Mandari to a different district.

11 That's what we would be most comm- --, you know,
12 diluting or diminishing our -- our -- our -- our
13 ability, uh, to -- to vote and express our concerns
14 collectively.

15 And that would be the biggest concern, but we --
16 I don't think I would have any objection to any
17 redistricting that -- that maintain those things that
18 were concerned about, but it included a different area
19 of the state. I don't think I would object to that, at
20 least looking at what you're offering. So --

21 CHAIRMAN WARDNER: Senator Heckaman.

22 MS. HECKAMAN: Thank you, Mr. Chairman. Um,
23 Chairman Fox, um, not knowing the exact outline of
24 what communities are outside the reservation
25 boundaries.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 38

1 Are there some communities where a large number
2 of your -- that have a population with a large number
3 of your members that maybe, um, just what
4 representative Boschee said, be good to integrate back
5 into, um, a drawing for your district?

6 CHAIRMAN FOX: I- -- I'd have to really look at
7 the -- the data, you know, because really, um, there
8 are some of our members that live in -- in the Stanley
9 area, I mean, simply because housing's at a shortage
10 and -- and they either live in Stanley or maybe have
11 to live in [inaudible] and make the commute down here
12 and drive.

13 Um, I don't know if Sherry knows the numbers
14 offhand, but I would think that we have similar or
15 maybe slightly more in the Watford City area, be, you
16 know, from people that gravitate from Four Bears,
17 Mandari area and move in- -- into [inaudible] and come
18 back forth.

19 But the- -- there wouldn't be a he- -- I don't
20 think -- I have to check the data. I wouldn't say
21 there'd be a significant difference.

22 MS. HECKAMAN: Okay. Thank you.

23 CHAIRMAN FOX: Yeah.

24 CHAIRMAN WARDNER: Okay. Anyone else have any
25 questions? Any more comments on redistricting?

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 Otherwise we're going to take a 20 minute break.

2 CHAIRMAN FOX: Okay. Any other further comments?

3 Ruth, do you have anything to comment in the regard- -

4 - regards here? Okay. Yeah. Thanks. Um, John and

5 Cynthia worked in getting the letters together, but

6 Cynthia, go ahead please.

7 MS. MONTEAU: Chairman Wardner. Oops.

8 CHAIRMAN WARDNER: Yeah. And then do your name

9 and stuff for the record too.

10 MS. MONTEAU: Uh, Chairman Wardner, Cynthia
11 Monteau MHA Nation. Um, Chairman and Representative
12 Boschee I just had a question on the mapping tool
13 that's available to the redistricting committee that
14 shows the numbers, um, the population and so forth
15 based on the census. Is -- is that something that we
16 could work with the committee or -- or, um, chairman
17 can, you know, contact you so we can look at those
18 numbers and see what you're looking at? Thank you.

19 CHAIRMAN FOX: Yeah.

20 CHAIRMAN WARDNER: Good. Go ahead. Thank you, Mr.
21 Chairman. Um, Ms. Monteau, uh, yes. So the limitation
22 -- the committee's made up of 16 members and the
23 limitation that the committee has right now is that,
24 um, I believe there's only six licensed laptops with
25 software.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 40

1 So only six members at any one time can have
2 that, uh, software available. But yes, um, I'd be
3 certainly willing to help and I know that we could
4 probably connect with legislative council to make sure
5 that you're getting accurate information.

6 We did receive some information at last week's
7 meeting, uh, specific to reservation communities, as
8 far as the numbers that the Census Bureau has. Um,
9 there is some, uh, conflict in what's represented
10 because we know that there's also probably an
11 undercount, um, and that's the hard part as we know
12 that the census bureau didn't necessarily take into
13 consideration of the roles that your research, uh, or
14 -- or, um, census office may have.

15 Uh, we heard that from Turtle Mountain
16 specifically that they have a lot more data on who's
17 living where, but the Census Bureau wouldn't accept
18 that, um, for purposes. So there's a challenge there
19 in recognizing those numbers, but I'd certainly be
20 able to help make sure that you guys have the
21 information we have so that we can -- we're comparing
22 apples to apples as we're drawing those lines.

23 CHAIRMAN FOX: Yeah. And -- and -- and Senator to
24 war, we talked about this not long ago why there's
25 underrepresentation, oftentimes there's deterrents to

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 41

1 that reporting.

2 Uh, many of it has to do with the housing and
3 federal rules and housing and, you know, and, uh, hard
4 -- hard rules. You know, you get, you know, we always
5 have a shortage of housing so people gravitate to come
6 home and either to work and go to schools and
7 everything else.

8 And -- but when you don't have the housing, you
9 know, there and available, and we've been building
10 over 500 homes since we've changed the tax agreement,
11 but we are still far short where we need to be. So
12 having, uh, large families, extended families in a
13 unit, a three-bedroom unit, but having 12, 14
14 individuals living in that is not uncommon.

15 But if they're in a housing unit, that's
16 [inaudible] controlled and they report that they will
17 then tell them, you're going to have to move. You're
18 not allowed to keep those people in there. Either they
19 move or you all have to move.

20 And so what you'll get is under-reporting where
21 they say, it's just us three here. And -- and -- and -
22 - and -- and because they don't want to lose their
23 housing opportunity, housing is hard to come by here.
24 Very difficult. So you're right there is drastic
25 under-reporting.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 42

1 MS. MONTEAU: Mr. Chairman, I do have one
2 question I'm not familiar with redi- -- redistricting
3 however, um, the -- the, um, is there a way that we
4 can say, okay, redistricting would give us these
5 benefits and versus, uh, risks of, you know, losses or
6 whatever, or negatives?

7 Because if we redistrict, would that make us
8 eligible for our own district health unit within the
9 reservation, because that's been a long time issue?
10 And number two, would we have representation to the
11 state, um, uh, congress legislatively and, um, making
12 sure that we don't lose our -- it might be able to,
13 um, take care of the Medicaid issue too.

14 CHAIRMAN WARDNER: Well, council, uh, member
15 Mayer, that district is a little different than the
16 redistricting for, uh, voting. So --

17 MS. MONTEAU: Oh okay.

18 CHAIRMAN WARDNER: They are different, but I did
19 write down, uh, what you had said, and I think we need
20 to visit with the, uh, department of human services
21 in, uh, the zones. We started the new zones and not
22 counties.

23 And we need to talk about this and how we provide
24 services to the, uh, tribal nation. So -- but that is
25 a different, uh, type of district.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 43

1 CHAIRMAN FOX: Representative Buffalo.

2 CHAIRMAN WARDNER: Uh, representative Buffalo.

3 MS. BUFFALO: Um, thank you. Um, Chairman Wardner
4 and members of the committee. Um, [inaudible] good
5 morning [inaudible] in the Hidatsa language. I am a
6 citizen of the Mandan, Hidatsa and Arikara nation. I
7 originally am from Mandari.

8 So I grew up here. So it's really good to be back
9 here and to be able to sleep under my mom's roof, you
10 know, last night. Uh, my family -- my entire family
11 still lives here in Mandari.

12 And so I am pretty well connected to concerns.
13 People will often share their concerns with me, even
14 though I'm proud to represent district 27 on the
15 Eastern side of the state.

16 And one of the concerns that has been brought to
17 me very consistently is given the size of land mass,
18 um, of -- that falls within the exterior boundaries of
19 Fort Berthold Indian Reservation and also the
20 population size a common theme that has come up quite
21 often is why not make Fort Berthold Indian
22 Reservation, its own legislative district?

23 Um, so I felt very -- I feel a responsibility to
24 share that, um, information that why not make Fort
25 Berthold Indian Reservation, its own legislative

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 44

1 district? Um, the other thing is, uh, question may be
2 more for representative Bo- -- Boschee, who is on the
3 redistricting committee.

4 Um, what -- what does the committee plan to do to
5 get more tribal representation? I know that there were
6 many advocates who asked for my participation, who had
7 -- had asked for my participation on that
8 redistricting committee.

9 Um, as an indigenous woman, as a citizen of the
10 Mandan, Hidatsa and Arikara Nation, who does have, uh,
11 lived experience and extensive knowledge on the gaps
12 within the system.

13 What are you going to do to get tribal comm- --
14 tribal communities more involved? Um, and then also, I
15 -- I do want to, you know, add positives to that
16 question in that I commend you for reaching out to
17 each of the tribal communities to get input.

18 That's really good. So I want to also commend you
19 in making those efforts Senator Wardner. Um, but I do
20 see a lot of work where you do have Native-American
21 indigenous legislators, but oftentimes we're not being
22 used to our fullest stability.

23 Um, I would even mention maybe having one of us
24 sit on the Indian Affairs Committee as well. Um,
25 things need to shift and change we're here. And so

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 45

1 please use us as a resource.

2 CHAIRMAN WARDNER: Representative Boschee.

3 MR. BOSCHEE: Thank you, Mr. Chairman. Uh,
4 Representative Buffalo. Uh, well, one thing that the
5 committee is doing is the tribal affairs committee has
6 been tasked with going to each nation to have the
7 conversation about redistricting, to get input for
8 normally there. And then at, um, each of the committee
9 meetings, there's open comment period, which people --
10 every citizen of North Dakota is encouraged to
11 participate in.

12 And I know North Dakota native vote has
13 participated in a couple conversations there. And as
14 we get into September, which will be the busy time.

15 So to give everyone an idea, the redistricting
16 committee will be meeting two to three days a week,
17 um, for the next four weeks to finish up the work
18 because we want to have it done by the first part of
19 October, with the hopes of having a special session
20 the week of November 8th at this point.

21 Um, so it's a really compact schedule, but during
22 those meetings to again invite, uh, tribal nations to
23 present to the committee, as we start seeing where
24 these lines might fall based on population.

25 So extensive work is being done to engage

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 46

1 specifically the tribal nations. And -- and again, I
2 think the positive, um, hearing from our -- our
3 colleague Senator Holmberg [ph], uh, who this is his
4 fourth redistricting process.

5 It happens every 10 years. So that tells you for
6 40 years, he's been doing redistricting, uh, as he's
7 the one that's really leading the conversation on
8 making sure that we look at tribal sub-districts.

9 Uh, specifically if -- where the communities --
10 where with the math certainly makes sense. I think
11 it's going to be challenging for Spirit Lake and
12 Standing Rock, but I know that there's efforts to see
13 about what a sub-district would look like for those
14 nations as well.

15 CHAIRMAN WARDNER: Yeah. Yeah. Thank you.

16 MR. BOSCHÉE: Yeah.

17 CHAIRMAN WARDNER: Right, Senator.

18 MR. BOSCHÉE: Uh, I would just like to make a
19 follow up comment and then, uh, we'll break and the --
20 the issue is the count; we need to get a count. I --
21 we know that up at Turtle Mountain the number is
22 probably double of what is down as far as the census.

23 I mean, they're between seven and eight and
24 they're probably around 14,000 to 15,000, which would
25 be one district. But we've got to get the count, and

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 47

1 we've got to figure out a way going forward to give
2 these, uh, people, the confidence that they can have
3 themselves counted.

4 And I would -- as we talk, Chairman Fox, same as
5 true here. Uh, we got to get the number up and that
6 the, uh, redistricting committee has to go with the
7 numbers they have. And so I really believe that, uh,
8 the -- the census for the MHA is probably less than
9 what it really is.

10 And, uh, that makes a difference, uh, --

11 CHAIRMAN WARDNER: Well, at a minimum, maybe the
12 committees would be willing to consider without
13 actually doing a -- a -- an actual survey again, or
14 maybe we would do that and provide additional
15 information, but that would take time and expense.

16 But maybe the US census, the reports that come
17 out, there's an assumption of under-reporting by
18 percentage. And that's a federal, you know, that's a
19 federal document and federal -- federal data.

20 So maybe they'd be willing to utilize that to --
21 to -- to buff the numbers up so to speak, uh, for
22 reconsideration. Uh, if you say the historical under
23 reporting on Indian reservations is X percent and you
24 would, you know, take that as -- as -- as what it is,
25 and then add that in to, uh, the existing, um, um,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 48

1 population and -- and -- and use that to -- to try to
2 get closer to the number.

3 MR. BOSCHEE: Okay. And then we did have the, uh,
4 you know, with the COVID, uh, the universities were
5 not there. And so we've got under-reporting in those
6 a- -- areas too. So it is a little bit of a problem
7 this time around.

8 But the redistricting committee is under the gun.
9 They got to -- they got to get their, uh, decision in
10 their districts done, you know, before the first of
11 the year, because we -- we get ready for a new cycle,
12 uh, next 10 years.

13 So they do have some issues they have to deal
14 with. But I can assure you that, uh, the -- a lot of
15 discussion in talking about tribal re- --
16 representation is being -- being done so that --

17 CHAIRMAN WARDNER: Okay.

18 CHAIRMAN FOX: All right. Committee members, if,
19 uh, I don't see anybody that wants to talk -- oh, sure
20 you may come up -- and you have to come up to the mic.
21 Sorry, I didn't see you. Uh, --

22 CHAIRMAN WARDNER: That's why I said we can
23 conduct your service [inaudible].

24 CHAIRMAN FOX: If you would state your name, uh,
25 --

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 49

1 MR. LONE FIGHT: Hello committee. My name is, um,
2 can you hear me? My name is Ted Lone Fight of Mandari.
3 I come from a, uh, the grass root people of the Four
4 Bears Indian Reservation, Mandan, Hidatsa, and Arikara
5 Nation.

6 And -- and [inaudible] effort on redistricting.
7 You know, I sat on the council 30 years ago and we had
8 the same question, why can't we get our own district
9 and be our own sovereign state and alongside of the
10 state of North Dakota? As you know we are a nation
11 within a nation.

12 So I think it's important that we be -- we be --
13 be, uh, distinguished enough to, um, to our own lives
14 on -- on where we -- on where we -- that we become
15 part of the state. And the state district you
16 understand the -- the federal government identified
17 our boundaries by -- by federal -- by federal, um,
18 legislation.

19 But I think, uh, we -- we deserve the right to --
20 to say that we are truly a sovereign nation with our
21 own jurisdiction, our own governments and -- and --
22 and --- and be able to -- to coexist along with the
23 State of North Dakota legislature and the whole
24 government -- government gamut [inaudible].

25 So I think it's really important at this time --

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 50

1 and time -- and this point in time that we as human --
2 as human beings and members of -- of citizenship of --
3 of North America in the United States, that we be
4 recognized as a separate state and given as the, uh,
5 opportunity to -- to control everything, what we want
6 to do. You know, and you understand that the oil and
7 gas package is -- is tremendous on the reservation
8 here.

9 And yet we share it with the state of North
10 Dakota without a question. I think Chairman Fox has
11 made a question, raised that issue. But what about us
12 people here that were -- that [inaudible] here.

13 And you all know what the eye of the Bakken is,
14 this is a -- a focal point of -- of the extraction of
15 -- of oil and gas, um, and in terms of money and um --
16 and we -- we -- we suffer from, um, lack of, um --
17 lack of, um, government funding, state funding, county
18 funding, and municipality fundings for our -- for our
19 own needs like you have addressed earlier.

20 The healthcare issue, it runs rampant and -- and
21 in decline in Indian country here. We can't get
22 cooperation with the -- with the state -- state, uh,
23 pharmaceuticals and -- and medical, uh, com- -- uh,
24 companies.

25 That we have to fight [inaudible] and -- and we

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 51

1 all know that the reason why we fight is that -- is
2 that our skin is different and we are from a different
3 nation. And we are recognized as a -- as a sovereign
4 independent people of -- of the state of Dakota.

5 And, um, I just want to say I support, uh,
6 Representative Buffalo here. And I'm glad she made
7 that a point. And I think it's high time, that we do
8 identify a redistrict and -- and -- and the -- the --
9 the district lines are already drawn within the state
10 of, uh, North Dakota, federal government, that we are
11 a Four Bear [inaudible] Indian reservation with
12 boundaries, exterior boundaries. And we are recognized
13 that way in -- in the -- in the federal government.
14 Thank you, [inaudible].

15 CHAIRMAN WARDNER: Thank you, uh, Mr. Lone Fight.
16 Okay. Anyone else? All right. Uh, it is about, uh, 12,
17 uh, we'll go at -- to 10:35 we will return. At 10:35
18 we're in recess. I know you're are hungry.
19 [Inaudible].

20 [recess]

21 CHAIRMAN WARDNER: Relations committee back to
22 order. And we will continue, uh, Chairman Fox, uh, you
23 are -- you've got control of the agenda now.

24 CHAIRMAN FOX: Okay. Awesome. Raises for all
25 committee members and what else? Milage? No. I kid.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 52

1 Oh. Oh. Nathan. I forgot Nathan. Give the director a
2 raise over here of the Indian Affairs Commission. I
3 think -- I think that's, uh, the governor's budget,
4 probably on that. Um, yeah, uh, I appreciate that.

5 We do have, uh, uh, a number of items. Uh, again,
6 I thank you on the redistricting. We are very much
7 interested, and in particular MHA Nation, again, uh,
8 would love to see some of the suggestions made. At
9 least some drafts to see how it might work.

10 Uh, be involved as were stated by a number of
11 individuals here in support of making sure that tribes
12 play a role and -- and have some influence on what
13 determinations are made, uh, you know, mainly for the
14 purpose -- as far as I'm concerned, members of the
15 committee, of -- of just hearing our voices and, um, I
16 really don't think, uh, honestly, uh, I -- I haven't
17 studied your politics and the state's politics, uh,
18 for a long time, and demographics and everything else.

19 And nature, uh, I don't think, uh, any radical
20 change in all you districting is going to change, uh,
21 how things sit at your level, and, Bismarck, I really
22 don't, I'll be honest with you. As far as a changing
23 from one party to the other.

24 Um, what -- what I do see is an opportunity at
25 this point in time in -- in -- in state history, uh,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 53

1 an opportunity for the voices to be, uh, of -- of
2 minority, uh, voices to be heard better. Uh, I really
3 -- I see that as, uh, as a -- as a really golden
4 opportunity to get tribes and non-tribal more involved
5 through your own legislature.

6 And I think that's a positive thing. And so, we
7 do have another other issues in relation and other
8 than that item we want to visit with you, of course.
9 As I reference back I want to commend this committee
10 here in particular the most recent committee and --
11 and the Straddle wells issues, um, your, um, energy
12 departments as well.

13 Mr. Helms and your state tax officers did an
14 awesome job coordinating with our -- our tax
15 department, coordinating with our legal counsel,
16 myself. Uh, we addressed some issues, um, we thought,
17 uh, and very cooperatively, on -- on how to, uh, break
18 the rate down on particular wells and as they sat.

19 Ownership of those -- those tracks is really key,
20 be it trust or not-trust. And we had to, um, find a
21 middle ground so that the proper assessment and then
22 the taxes could be collected, split up, and sent out
23 to the -- the state and the tribe. And so, we were
24 able to address that over the summer.

25 And I -- correct me if I'm wrong, Senator John

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 54

1 [ph], I think we've resolved it to a great degree. So,
2 they're able to now put those calculations in place
3 and get them to the treasurer and -- and get our
4 payments made; correct?

5 MR. FREDERICKS: Correct.

6 CHAIRMAN FOX: So, we're all -- we're all clear
7 from that prospective. So, again, it's been a good
8 thing and I want to commend the committee. Um, the
9 things that we didn't accomplish still really loom
10 heavy on our nation. Um, you know, I -- I -- I'll save
11 the gaming one for next, but the one right now that we
12 think really needs to be addressed and that has to do
13 with the alcohol.

14 The alcohol tax that we, um, are in position now,
15 um, we're actually got a dual taxation system going on
16 right now. We all know that dual taxation, that's why
17 we don't do it in oil and gas. If we do that, it would
18 stymie development of energy. So, collectively we
19 formulated a -- a -- a tax agreement to address energy
20 and oil and gas.

21 Well, alcohol has been a -- a -- a problem well.
22 The problem with having a dual taxation system is that
23 means that's ultimately either the tax entity, the
24 bar, or -- or the liquor shop or what have you, ends
25 up paying two taxes. Or they will move that and --

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 55

1 move the incident that tax to the consumer.

2 And -- and so, uh, people will be charged more
3 for an alcoholic drink. Which may -- may stymie some
4 of the businesses as well. So, dual taxation is -- is
5 typically not a good thing. But in our circumstances
6 because of two failed attempts to try to get something
7 though the leg- -- state legislature, in '19 and 2021,
8 uh, we had no choice but to begin.

9 We have moved in that direction for a number of
10 years now. And the only thing that's holding us back
11 in enforcement and collection at this point through
12 legal collection is -- is waiting with all the
13 greatest -- my father's a minister, but the patience
14 of Job, uh, to try to hope that some way, somehow, the
15 state will -- I thought we had it -- I thought that we
16 had locked through the committee actions, this past
17 committee, this past session.

18 And when we failed, it was very disappointing
19 because we've been holding back on enforcement. The --
20 the number of alcoho- -- of bars and -- and liquor
21 establishments that are -- are not collecting and
22 paying the taxes is -- is -- is building up.

23 The -- the -- the assessments that we have to,
24 uh, uh, assign against them is building up. So, if we
25 end up in litigation in, uh, federal court or

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 56

1 otherwise, more -- more likely first deferred to our
2 own court system.

3 Those numbers are going to come into play. And
4 it's not a good thing, uh, because this is our right.
5 We've never been able to collect one single dime of --
6 of tax directly on -- on sales of alcohol in Fort
7 Berthold for -- well, legally being sold to tribal
8 members for -- for 70 years, 75 years. Um, and alcohol
9 was in existence even prior to that.

10 Uh, ever since non-Indians have been in our area
11 alcohol has been distributed and -- and sold
12 themselves, in particular, uh, Parshall been an -- an
13 incorporated city for over 100 years. Um, so, we've
14 never collected one dime.

15 So, what we have to do typically is take from
16 Peter to pay Paul which is take our resources and
17 revenue over here and deal with alcohol related
18 treatment, saturation patrols, law enforcement,
19 domestic violence, all these things that stem, uh,
20 from the activity of alcohol being sold and all the
21 social responsibilities that come with it.

22 The regulations that come with it. The -- the
23 safety that comes with it. Same with, uh, with energy.
24 Well, how do we spend that money?

25 Well, we don't have any revenue stream. From the

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 57

1 sale of ta- -- of alcohol on our reservation and it's
2 -- it's a horrendous problem for us. And if you go
3 historically we have lost out on millions and
4 millions, tens of millions of dollars in revenue if
5 you go back to the 1950s.

6 And we have not collected any dime. So, very
7 adamant about trying to figure way and we've been even
8 more so patient hoping for the legislature to -- to
9 come to a consensus amongst yourselves to agree to
10 what we're asking for, which is really simple.

11 Have a joint tax agreement, split that equitably,
12 uh, in our eyes, you know, similar to motor fields or
13 something similar to our energy. 80/20 is what we ask
14 for in a bill and it was defeated in committee.

15 Didn't make it to the floor. I understand it came
16 an opportunity to formulate an alcohol agreement at
17 the end hours of the session under the -- the
18 appropriation side and it was struck as well. And so,
19 it's really created a -- a dire situation over here.

20 Uh, we have unregulated activity occurring now.
21 And we -- we have to be -- we have to do something
22 about it.

23 CHAIRMAN WARDNER: Chairman, I -- I just would
24 like, uh, you kind of to teach us a little bit about
25 what was, what is, and where you would like to go.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 58

1 And, uh, I think we all understand that up until
2 you've raised this question the state collected the
3 alcohol tax period. And it's \$0.07, is that what
4 they're -- what is the --

5 CHAIRMAN FOX: The -- the state can collect it on
6 -- on two levels. They -- they collect on the
7 wholesale level on certain types of alcohol --

8 CHAIRMAN WARDNER: Okay.

9 CHAIRMAN FOX: -- before it even gets to the
10 reservation. Then it's delivered to the reservation.
11 Then there's a retail tax on -- on the sale of alcohol
12 per establishment.

13 CHAIRMAN WARDNER: Okay. A retail tax. Yeah.

14 CHAIRMAN FOX: And that's at around seven
15 percent. And then the retailer generally pays that in.
16 They get their monthly proceeds, sales, beer alcohol
17 sold. They apply. They have a formula, they have forms
18 they fill out. And they submit that with their
19 payments to the state. So, it's a combination of both
20 of those things are in place.

21 And so, uh, the problem that we've got is when
22 that's paid, it goes to the state and it stays with
23 the state. There is no agreement to split that.

24 So, the only way that we can get revenue is to
25 say well, certain entities may have to pay a state tax

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 59

1 but you also have to pay a tribal tax. Now, for
2 everybody's understanding here, our ability to tax is
3 not dependent on having an agreement with you. It is a
4 lawful, federally recognized authority for the tribes
5 to apply a tax.

6 When we adopted our alcohol ordinance, that has
7 to be approved by the federal government. And John can
8 allude more to this, our -- our -- our -- our enhanced
9 what I'm saying.

10 But we had to get that alcohol agreement, uh,
11 alcohol ordinance approved. All tribes have to do
12 that. We submitted ours for approval to the United
13 States government.

14 It's included in there. The taxation of alcohol,
15 the regulation of alcohol. Both of those are in there,
16 accepted by the federal government. Certified by the
17 Department of Interior, Secretary of Interior. We
18 recognize your ordinance. You -- you have the lawful
19 authority. Not just that but case law, you know, Rice
20 versus Rehner. We can go on.

21 All the different cases at the Supreme Court
22 level, but we have the legal authority to tax. We are
23 holding back knowing that it's going to have economic
24 impact, uh, to -- to the area and it's better to have
25 a -- a joint dual tax, I mean, a joint tax together --

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 60

1 a tax agreement than to have two sets of tax, uh,
2 impacting the local economy.

3 And but, again, after two sessions now, we're
4 talking three years, um, you know, going on four years
5 of -- any longer for myself in trying to get this
6 passed, but where we've attempted bills. Now part of
7 the issues that were raised by legal counsel for some
8 of the wholesalers that sell out at the reservation
9 was they didn't want to be subject to tribal
10 regulations in particular didn't want to have to be
11 permitted or -- or licensed --

12 MS. MONTEAU: Licensed. Yeah.

13 CHAIRMAN FOX: -- and we -- we told them -- they
14 can sit up here if you want -- and we told them, and
15 we explained to them that they would not be taxed.
16 You're licensed. You have to get a license because
17 you're selling on our reservation. That's -- that's
18 pursuit of the tribal and federal law. But we're not
19 going to be charging you a -- a tax.

20 There's no wholesale tax. The tax is for the
21 alcohol sold on a reservation. And -- and so, um, we -
22 - that wasn't good enough at some point. They even
23 asked their -- their -- through their attorneys for to
24 take can you get something out of Washington D.C. that
25 says that?

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 61

1 And so, we send letters forward to the Department
2 of Interior stating our ordinance and then whether or
3 not, uh, for example, both that and the jam shop, all
4 right, about taxing.

5 And that the jam shop laws that we were reference
6 that. Would that be applied? And we interpreted our --
7 our ordinance and said to them, no. We're -- we -- we
8 would not apply -- that doesn't apply to us
9 wholesalers. Jam shop laws don't apply to us
10 wholesalers. And they said, well, get that from
11 Washington D.C.

12 So, in a letter that we sent out to D.C. and the
13 response back was, this is the tribe's ordinance. If
14 the tribe says they're not going to apply jam shop in
15 their ordinance, or they're not going to apply a tax
16 to a wholesaler, that's the law. That's the ordinance.
17 And we stand behind it. There's nothing more the
18 federal government is supposed to do.

19 And -- and that wasn't good enough. And -- and
20 so, then it boiled down to another issue. Not this
21 past -- not this past session, but the previous one,
22 where all the tribes -- it was approved by you but the
23 tribes reject it was the, uh, the, um, the
24 mathematical breakdown of how to apply the tax -- the
25 formula for applying the tax.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 62

1 What takes into consideration the percentage of
2 population in the state and -- and applies that to
3 what you can collect by sales on your reservation.
4 That creates an inequity here. As John will constantly
5 say when -- when I do my testimonies and with -- with
6 the things that when he's allowed to, uh, to speak up
7 on our behalf in committees and otherwise is, we have,
8 uh, the authority to tax non-tribal sales made on the
9 reservation.

10 Unlike the retail taxes, the argument's made if a
11 -- a -- a, you know, if a tax is sold to a non-tribal
12 member, you -- you -- you assert that. In many
13 instances they try -- may try to argue that the --
14 that tax is taxed by the state but not by the tribe.
15 And -- and -- and I disagree with that. But in our
16 situation here, is the law.

17 And -- and supported by federal law says if -- if
18 Senator Wardner goes over to the casino or goes down
19 to Sportsman's Bar on New Town, North Dakota on fee
20 property, and he buys a beer, the law, both tribal and
21 federal law says that's taxable, allowed to be taxed
22 by the -- the three affiliated tribes, MHA Nation.

23 There's no doubt about that in our minds. Now, we
24 have lawyers and they -- we have to go through the
25 elongated, expensive, time-consuming to prove that in

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 63

1 the federal court. It's not going to be good for a lot
2 of people, in particular for those who pay those
3 lawyers. Because, you know, at the end of the day
4 lawyers -- no -- no -- no slight at John here -- and
5 you got them too. All right?

6 Uh, they're going to make their money when that -
7 - when all -- all the dust clears. But the reality is
8 that somebody's going to end up paying big time. And
9 we don't believe that's us. So -- so, my point being
10 that has always been an obstacles while as how we
11 provide the formula.

12 In our bill, we address that and said, the
13 formula will be more simply applied and we think we
14 can do an 80/20 split, and with you taking an
15 administrative fee, similar to energy, and -- and
16 we'll get there. And it never got a chance to get --
17 get to that point for a vote.

18 CHAIRMAN WARDNER: So, currently in that
19 situation if you use me as an example, uh, right now
20 the state gets the tax --

21 CHAIRMAN FOX: Yep.

22 CHAIRMAN WARDNER: -- and MHA gets nothing.

23 CHAIRMAN FOX: That's correct.

24 CHAIRMAN WARDNER: And let me ask this. Currently
25 are you -- are you, uh, non, uh, native owners,

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 64

1 they're not -- they're just doing the state tax. Is
2 that, uh, correct?

3 CHAIRMAN FOX: The non-native owners on fee land
4 in general --

5 CHAIRMAN WARDNER: On fee land.

6 CHAIRMAN FOX: -- I don't think there's any
7 exception. Uh, Cynthia may know some that aren't
8 paying. But, uh, to my knowledge every one of them is
9 paying, filling out their forms, and paying those
10 taxes directly to the state. And that's it.

11 CHAIRMAN WARDNER: Okay. And then -- but for
12 your, uh, Native American owners on trust land --

13 CHAIRMAN FOX: Mm-hmm.

14 CHAIRMAN WARDNER: -- are they collecting two
15 taxes?

16 CHAIRMAN FOX: Some -- some -- some of them are.
17 There's a couple that are. That are paying both a tax
18 to the tribe and a tax to the state. But, uh, there
19 are, I believe, uh, maybe one or two, I'm not sure
20 about that, that are not paying taxes to either.

21 Uh, but, uh, and -- and there's one that might be
22 paying just to the tribe, but he's behind, is what I
23 understand. So, there's causing confusion. If we had
24 joint tax system together were we simply split it
25 80/20 split, uh, we would resolve it in many ways as

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 well.

2 MALE 1: Casino is not paying [inaudible]

3 CHAIRMAN FOX: The casino itself is not paying
4 the tax but they are paying the tribal tax.

5 MALE 1: Right.

6 CHAIRMAN FOX: They are not paying. So, they're
7 paying the tax as it comes up. So, yeah. That --
8 that's to clarify it for you.

9 CHAIRMAN WARDNER: I do know. And I did get a
10 copy. And I still have gone through it, uh, from the
11 governor's office. I know that they've been working
12 with you and I -- we need to -- we'll need to bring
13 this committee up-to-date on all of the details on
14 that at some point here when we meet again.

15 But, uh, is this my -- do I have this understood
16 correctly that you're looking for -- with the
17 wholesalers you're just saying that you have to buy a
18 license.

19 CHAIRMAN FOX: Yeah. Yeah. You have to apply for
20 a license to get approved.

21 CHAIRMAN WARDNER: To sell --

22 CHAIRMAN FOX: You don't have to buy -- you don't
23 have to pay anything.

24 CHAIRMAN WARDNER: Oh -- oh, they just have to be
25 approved --

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

1 CHAIRMAN FOX: Yeah.

2 CHAIRMAN WARDNER: -- to sell on the reservation.

3 CHAIRMAN FOX: Yeah. To --to distribute
4 wholesale, to -- to retailers so there's no money
5 exchanged.

6 MALE 2: Just a licensing fee.

7 [talking over each other]

8 CHAIRMAN FOX: Because that was a licensing fee.
9 That's it. The licensing fee was one time. Annual one
10 time; right?

11 MS. MONTEAU: Yes.

12 CHAIRMAN FOX: Annual license fee of -- what is
13 it, typically?

14 MS. MONTEAU: Depends on what they're -- what
15 they're selling.

16 CHAIRMAN FOX: But it isn't, like, tens of
17 thousands of dollar [inaudible]?

18 MS. MONTEAU: No.

19 CHAIRMAN FOX: It's, like, what? \$100 or more?

20 MS. MONTEAU: Well, the most is \$1000 if they're
21 going to get with the beer and liquor --

22 CHAIRMAN FOX: Okay.

23 MS. MONTEAU: -- license.

24 CHAIRMAN WARDNER: So, the -- the wholesaler
25 would then, for example, pay \$1000 --

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 CHAIRMAN FOX: Yep.

2 CHAIRMAN WARDNER: -- to -- for a license to sell
3 to, uh, retailers on the reservation.

4 CHAIRMAN FOX: Right.

5 CHAIRMAN WARDNER: Period. Okay.

6 CHAIRMAN FOX: And that's the most.

7 CHAIRMAN WARDNER: Okay.

8 CHAIRMAN FOX: Some would be far less.

9 CHAIRMAN WARDNER: All right. And then for the
10 retailers you're looking at any alcohol sold on the
11 reservation you're looking at a 20/80 split.

12 CHAIRMAN FOX: Yes.

13 CHAIRMAN WARDNER: Eighty to the tribe, 20 to the
14 state.

15 CHAIRMAN FOX: Yeah. That's correct.

16 MS. MONTEAU: Gross retail sales.

17 CHAIRMAN FOX: Yeah. Gross retail sales taxes.

18 CHAIRMAN WARDNER: Okay. I just wanted to make
19 sure everybody understood kind of where we were at on
20 that. Because I -- we do have the chairman of the
21 senate, uh, finance and tax, and I don't know if you
22 have any comments, uh, feel -- okay.

23 If you do, be- -- jump in. But, uh, so we
24 understand this, uh, uh, Representative Jones.

25 Question?

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 68

1 MR. JONES: Thank you Mr. Chairman, Mr. Chairman.
2 You know, we had this meeting a few years back here at
3 Fort [Bear???]. And, um, I'm one that completely
4 disagrees that you have the right to tax non-tribal
5 members inside the boundaries of the reservation. When
6 that federal law was made it did not contemplate the
7 checkerboard nature of this reservation where it's got
8 private businesses, private taxes.

9 The people that were -- that are a fee patent
10 businesses operating are paying those taxes. And I
11 like your approach of taking that tax and splitting
12 it. And am I missing something or didn't we have an
13 agreement that you guys haven't signed off on that was
14 done in 2019? Isn't there something on the table that
15 was -- that was moving that forward?

16 CHAIRMAN FOX: No. None of the tribes will sign
17 what was done in 2019. You approved it, but none will
18 sign up. Let me explain why.

19 MR. JONES: Okay. Thank you.

20 CHAIRMAN FOX: The two reasons why they will not
21 sign it is a as the -- the formula does not work for a
22 single one of our tribes. It reduces, even though you
23 disagree, our rights to tax non-tribal members if our
24 -- we have a concert and a lot more non-Indians come
25 in and, by golly, we just had Sammy Hagar and

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 69

1 whatever, come on in and everybody have a good time.

2 And alcohol sold incrementally. The more that are
3 sold to the non-Indians that are -- that are coming to
4 our facility and doing that, we would get less and
5 less of that tax. Because if -- if we followed that
6 formula, we'd be restricted on how much tax we would
7 receive. So, the ratio doesn't work for us.

8 And it -- and it -- it undermines our disregards
9 our legal federal authority as well as tribal, to tax
10 non-Indians. That has to be addressed. And then the --
11 the secondary issue was the regulation. In that, uh,
12 2019 bill and attempts made in the 2021 is that when
13 we form- -- if we formulate a joint tax agreement, the
14 regulation has to be with the state and the tribe
15 plays no role in that.

16 And we attempted to address that in our language
17 as well. We said it will be joint regulation as the
18 law provides today. In any federal case, Supreme Court
19 or otherwise. So, basically if you approved our
20 resolu- -- our -- our -- our bill, it would have
21 caused us to sit down, the state and the tribes and
22 put together a joint regulatory committee that would
23 have a uniform regulation over all alcohol
24 establishments.

25 But we couldn't get there. So, the tribes

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 70

1 themselves, based on 2019, won't sign it for that
2 reason as well. Because they're basically saying that
3 the state system usurps the tribal one when it comes
4 to regulation. And that's not joint. That is one
5 taking over the other.

6 And the tribes said, we reject that as well. So,
7 what we attempted to do from '19 to '21, was to get
8 the language changed so that not just MHA Nation,
9 because the other tribes signed on and said they'd
10 support our bill as well, is to put a bill into place
11 that the tribes would reconsider and then go into a
12 joint regulatory and taxation system. A unified one.
13 But they won't do that, uh, under the '19. '21 they
14 would have.

15 CHAIRMAN WARDNER: And if we get that set up the
16 state would collect the tax and remit back to the --

17 CHAIRMAN FOX: Sure. We -- we don't have a
18 problem. Similar to energy where they --

19 CHAIRMAN WARDNER: Okay. Right.

20 CHAIRMAN FOX: -- one percent fee, collect it to
21 offset costs. And then remit that 80 percent back and
22 20 of it -- we don't have a problem with that. And --
23 and -- and I don't think you guys have a problem with
24 that. And I -- I think most of the retailers on Fort
25 Berthold, I can't speak for them. Uh, some of them

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 71

1 have legal representation and they can do that.

2 But most of them as they told to me is we just
3 want to pay one tax. We don't care how you split it.
4 You -- we just don't want to pay two taxes. Well,
5 we're at the verge of doing that regardless. And --
6 and to avoid that we're hoping that legislature will
7 come around and say, it's best to just have one tax
8 and split it that way.

9 And I think whether or not our Representative
10 Jones believes in our legal authority or not, I think
11 he's advocating that we just have that one tax and get
12 that split into place. And that way the headaches go
13 away. Everybody's just paying one tax. And they're
14 doing it uniformly.

15 CHAIRMAN WARDNER: Representative Jones.

16 MR. JONES: Thank you, Mr. Chairman. Thank you
17 for that explanation and I understand it gets
18 complicated though, because I know I've been at a lot
19 of calls from the retail salesman, particularly on the
20 -- on the -- on the permit to sell.

21 They're concerned that, uh, there's some clauses
22 in there that they can be audited. That, uh, the tribe
23 can audit their books and do a whole bunch of other
24 stuff.

25 CHAIRMAN FOX: Just like the state can.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 72

1 MR. JONES: Yep. And, uh, with them being told by
2 those businesses that are state. They -- they're
3 traditionally North Dakota citizens paying North
4 Dakota tax. Yes. They fall within the boundary of the
5 reservation but they consider themselves, um, well,
6 for one thing they don't get -- there's not tribal
7 benefits coming back to them through the taxation
8 process.

9 CHAIRMAN FOX: But there is.

10 MR. JONES: Normally -- okay. Could you -- could
11 --

12 CHAIRMAN FOX: Police protection. For example,
13 police protection. You get police protection. You get
14 fire protection. All these benefits. Guess what? We
15 get no tax revenue to pay those things --

16 MR. JONES: To help pay for them.

17 CHAIRMAN FOX: -- but -- but those retailers they
18 get that from us. They're going to sell to non-tribal
19 members and tribal members alone. They don't pay for
20 any treatment. They don't pay for victim, uh, uh, what
21 do you call the, um --

22 MALE 2: Victim assistance.

23 CHAIRMAN FOX: -- victim assistance or the newest
24 law, uh, that was passed, uh, where non-tribal members
25 are, uh, cohabitating with a tribal member and have

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 73

1 victims that occur there as well. Uh, none of the --
2 the -- the retailers -- none of them. Some of the
3 retailers don't feel like they have any obligation to
4 pay taxes that similar to you collect that you provide
5 these services on.

6 That's unfortunate because we know what the law
7 is. John, uh, he can speak for himself as well, but I
8 promise you this. That in his 30 years of practicing
9 or more, uh, more, and -- and he is fully confident
10 that we are well within our legal right to apply the
11 tax. The unfortunate this is, is we don't get the
12 legislature to agree to -- to do this in a uniform way
13 that tribes will accept.

14 We will go there. And it will be decided. And it
15 will be shown, regardless of what they want to say.
16 Uh, you know, uh, I want to take up a whole bunch of
17 time on this, but if you study federal Indian law, the
18 history of the United States, the United States
19 federal tribal relationship, a large part of why the
20 United States government reserves this right between
21 the tribes and itself and excludes states historically
22 is that very reason.

23 People getting in, coming down and trading
24 alcohol, starting wars, starting battles, this is all
25 that occurred in United States as it was becoming a

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 74

1 young nation. Was occurring and states going in and
2 trying to assume lands and take lands away from the
3 tribes. And -- and alcohol played a big part of that,
4 you know.

5 Traders going on and selling alcohol and then
6 things occurring. Next thing you know you're fighting,
7 you know. And -- and -- and wars, you know. First war
8 declared against a tribe west of the Mississippi was
9 declared against one of our tribes in -- in -- in
10 1823. Arikara War of 1823 and it had to do with
11 trading, had to do with coming in and usurping our
12 economy and -- and doing things -- trying to do things
13 to our people that we didn't want happening.

14 And -- and so, the United States in its wisdom as
15 United States which we all belong to, you know, we're
16 all United States citizens. We are all Americans, you
17 know. Great now or making it great, whatever you
18 believe. We're all the same. And I'm a veteran who's
19 telling you, sitting here. But the federal law
20 supports and says that.

21 That in particular when it comes to alcohol
22 sales, we're -- we're going to make sure that the
23 federal oversight remains so any Indian reservation
24 whether they sold land within it to -- to immigrants
25 that came over or not, opened up areas for sale, the

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 75

1 law still says -- the law still says that that whole
2 area in which non-Indians have bought land and started
3 businesses, that remains within the boundary of the
4 reservation.

5 That's the law. That's the eight circuit court of
6 opinion that says that that reservation was not
7 disenfranchised. Checkerboard as it may be, those
8 boundaries remain. It was not the intent of Congress
9 to reduce those. That's the law. So, we don't want to
10 get heavily in the trenches. We can resolve this.

11 Rather than get into all those arguments, rather
12 than get in -- we have a simple way of proposing how
13 we get a joint tax agreement together, everybody pays
14 it. Casino pays it. The bar in New Town, non-tribal
15 owner, they pay it. Everybody pays the tax.

16 We simply collect it together, take out your fee,
17 80/20, and now we've got a source of revenue to deal
18 with domestic violence, saturation patrols, treatment,
19 all these things. And that's what we're after.

20 CHAIRMAN WARDNER: Well, Chairman, one of the
21 things that, uh, I remember coming up a lot, and that
22 was the auditing. And it wasn't -- and I didn't hear
23 about auditing the retailers, the -- the wholesalers
24 didn't want to be audited by the -- the tribal
25 government. Now, under your plan now, you wouldn't be

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 76

1 auditing the wholesalers would you? Because you -- it
2 would be the --

3 CHAIRMAN FOX: The -- I -- I don't think Cynthia
4 refers to them as audit. What they are required is to
5 submit reports. Just like you get reports. I would
6 think that under our authority if somebody doesn't
7 submit a report or if they submit a report and it
8 doesn't seem to match up with what they're saying, you
9 do the say thing.

10 You would say, we need to see further data and
11 what have you. That's the only way that we can
12 regulate, you know. And -- and the same for the state.
13 The state has the same authority somebody's selling on
14 the reservation. Uh, if you -- in this agreement when
15 we jointly do it together, we'll have a structure or
16 committee over that that says, okay.

17 Everybody turn in your reports, everybody file,
18 everybody, you know, properly fill them out, submit
19 your taxes. That will be uniform across the whole
20 reservation. But we've got to get beyond this
21 principle of certain en- -- people thinking that the
22 tribe doesn't have that kind of jurisdiction over me
23 to tell me when and when and where and how I can sell
24 an alcohol beverage within the boundaries of the
25 reservation because I'm non-Indian.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 77

1 We've got to get beyond that. The law does not
2 support that.

3 CHAIRMAN WARDNER: Well, I -- I -- well, I got to
4 do some more digging into it than and -- and some more
5 research on it but it seems to me that was one of --
6 it was -- it was the wholesalers that didn't feel that
7 the tribal governments had the authority to come and,
8 uh, look at their books.

9 Now, if what you're saying is it's simply a
10 report, you'd think that if the state and the tribal
11 governments are working together, um, I don't know
12 what the issue would be. But I'd have to ask them. I -
13 -

14 CHAIRMAN FOX: If they're -- if they're afraid --
15 if the wholesaler -- the non-tribal wholesaler or non-
16 tribal retailer on the reservation is afraid that
17 there's going to be disparate treatment of the law,
18 that what we put in to a proposal was then let's
19 jointly do it.

20 Jointly means we're both sitting at the table, we
21 both decide how it's applied. That way if that non-
22 tribal members feel I -- I -- I feel safer with the
23 state's involvement, well the state is involved. And
24 it's just not the tribe's rules alone and you're --
25 you're collecting 20 percent and saying, tribe do

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 whatever.

2 No. You're at the table. We're doing it together.
3 But what was proposed in 2019 was the state does this
4 by themselves, tribe doesn't play a role. And we said,
5 we can't do that. Okay. Now. So, needs to be
6 addressed. John?

7 MR. FREDERICKS: Chairman Wardner, I just -- I
8 want to clarify, uh, the -- the jurisdictional issues.

9 CHAIRMAN WARDNER: Pull the mic over in front of
10 you. It's [inaudible]

11 MR. FREDERICKS: Just for the record, can you
12 hear me?

13 CHAIRMAN WARDNER: Yes. Now we can.

14 MR. FREDERICKS: Um, in -- in the area of alcohol
15 sales, the federal statutes, uh, specifically prohibit
16 alcohol sales in Indian country. Uh, and there's the
17 only exception to that is where, uh, persons selling
18 alcohol in Indian country, which includes the
19 reservation. It doesn't distinguish between fee lands.

20 There are exceptions, but none of those
21 exceptions apply to us. Um, the only exception is
22 where -- when you can sell without committing a crime,
23 and it's a crime. It's an 18 -- United States Code 18
24 USC Section 1154 prohibits the sale of alcohol in
25 Indian country. There's an exception where the person

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 79

1 selling alcohol is licensed by both the state and the
2 tribe. That's by federal statute.

3 So, it's not court made law. It's Congress-made
4 law. And so, in this area it's clear. And, you know,
5 non-Indian retailers that live here on the reservation
6 might think differently, but that's what the law says.
7 It's by statute and so, um, we're -- we've been
8 extremely patient with these non-Indian retailers, um,
9 who, you know, don't want to get licensed, um, but
10 they are operating in violation of federal law.

11 And it's a crime to do it, you know. The United
12 States attorney hasn't enforced that law, yet, but
13 they have the authority to do that. And so I think if
14 we, you know, work together to get a -- a bill in
15 place a -- a -- a state law in place like we've got
16 with, uh, oil and gas, we can, uh, solve this problem.
17 Um, but we can't do it with the existing -- with the
18 existing, uh, formula.

19 It just doesn't work for us. Where you take a
20 formula and you split it based on the alcohol that
21 tribal -- our tribal members consume in the state?
22 That -- that doesn't work for us. That's -- that
23 doesn't have any type of nexus or relation to the, uh,
24 way things happen on the reservation.

25 And it also doesn't take into account, as the

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 80

1 chairman says -- said, the, uh, tribe's authority to
2 tax the non-Indians who consume alcohol on the
3 reservation. Over 70 percent of our tribal court cases
4 are alcohol related and a lot of that alcohol is
5 purchased from non-Indians selling it on the
6 reservation.

7 CHAIRMAN WARDNER: Well, Mr. Fredericks, uh, I'm,
8 uh, whether I'm, uh, a Native American or a non-Native
9 American selling, uh, alcohol on the reservation,
10 under the proposal that we're -- we're talking about
11 here that you're promoting, it wouldn't make any
12 difference to them. They would still pay their regular
13 seven percent --

14 MR. FREDERICKS: Correct.

15 CHAIRMAN WARDNER: -- and -- and the only thing
16 that would be changed is that when it came time to
17 take a look at their books, if it was so -- and then
18 the -- the tribe and the state would come in together.
19 That's the only thing.

20 MR. FREDERICKS: Right.

21 CHAIRMAN WARDNER: Whereas now it's only the
22 state. It would be adding the tribes. So -- so for
23 them the -- there shouldn't -- and I -- I'm finding it
24 hard to believe that they are concerned about that.

25 CHAIRMAN FOX: And -- and -- and -- and Cynthia

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 also showing me her data here and she's got her
2 licenses of the vendors that are licensed here and
3 those that are not. That -- that haven't submitted.
4 But there are two non-tribal on fee operators that
5 have our license and aren't paying the tax.

6 CHAIRMAN WARDNER: And aren't paying?

7 CHAIRMAN FOX: Yes.

8 CHAIRMAN WARDNER: Yeah.

9 CHAIRMAN FOX: And so all, you know, it -- it --
10 it's just not a, you know, non-Indian, Indian issue --

11 CHAIRMAN WARDNER: Right.

12 CHAIRMAN FOX: and we're aligned. They're saying
13 well, we're selling and we're going to pay.

14 CHAIRMAN WARDNER: Are they dual -- to being dual
15 tax -- are they dual taxing? Paying seven percent to
16 the tribe and seven percent to the state?

17 CHAIRMAN FOX: Yes.

18 CHAIRMAN WARDNER: Okay.

19 CHAIRMAN FOX: So, that's, you know, in their
20 minds they're saying, well, it's unfair. I -- I'm
21 trying to comply with both sets of laws. We live on
22 the reservation. I'm paying both taxes. If we rectify
23 this, then it will be one -- one tax.

24 It'll cut that in half, and we just simply split
25 it 80/20. So, the answers there. We -- we need to get

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 82

1 her done. But the worst thing we need -- and we've
2 already experienced this -- and we've been dealing
3 with it -- going back to issues on energy and
4 pipelines.

5 The last thing we need is an issue of this
6 magnitude to drive us apart. And then all of a sudden
7 we have an issue that blew up on us when we had a
8 chance to nip it at the bud. That's the last thing we
9 need.

10 Where -- where alcohol is such a -- is one of --
11 you just heard Monica, Dr. Mayer, on our council tell
12 us that the number one problem in her estimate as
13 practicing physician for how many years?

14 MS. MAYER: Thirty-five.

15 CHAIRMAN FOX: She way up there. And I know she's
16 getting up there. And -- and so, all them years, you
17 know, the practice is telling you as the leading the
18 region for -- for all these reservations that alcohol,
19 now along with drugs, is the number one problem.

20 And we spend tens of millions of dollars treating
21 people every year. Why is that not seeming to resonate
22 when we have an opportunity to at least not -- not fix
23 the problem? But do it, start addressing it with some
24 revenue to start applying towards that aspect.

25 And if I'm going to open a bar and Mark Fox

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 83

1 retires, I'm not chairman anymore, and I open a bar up
2 in New Town or Parshall, North Dakota, you know. I
3 don't think I ever would. But if I did, I would be the
4 first to say, whatever taxes you charge that's fine
5 with me. Because, you know, I -- I -- I have a
6 responsibility here as well.

7 And people that come and buy alcohol from me and
8 -- and it creates the problems that -- that I -- I
9 know -- my activity helps lend towards, I would -- I
10 would have to do that. Of course, I don't really have
11 a bar, but -- but I'm just saying. Uh, that has to be
12 accepted and we have to move above and beyond.

13 And -- and -- and -- and what we proposed before
14 legislature, and we're ready to propose again, similar
15 language that says joint regulations and we've already
16 asserted under our ordinance and we can provide you
17 that data as well.

18 You know, the jam shop laws do not apply to
19 wholesalers and -- and etc. Which they raised as well.
20 And -- and -- and we just need to have a common,
21 regulatory system together that spells it out so that
22 all parties feel comfortable with that joint
23 regulatory system.

24 CHAIRMAN WARDNER: Chairman, I -- just a comment.
25 Uh, if, uh, Dr. Mayer's getting right up there then I

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 84

1 must be really up there because it seems like
2 yesterday she was tearing around on the court for the
3 New Town Eagles. So, I -- I feel pretty old.

4 But to -- would -- would you give us, uh, remind
5 us the agreement with the, um, gasoline tax and the
6 state and the percentages and stuff. How that works.

7 CHAIRMAN FOX: The -- the -- the motor fuels tax.
8 And -- and it's limited in itself and I'll explain
9 that in a second. But the motor fuels tax was done
10 differently. We didn't take a base amount like we did
11 with energy.

12 We just said, 80/20 because economic reasons. Um,
13 the motor fuels tax is going by census based. So,
14 Standing Rock, Spirit Lake, Turtle Mountain, Fort
15 Berthold have different percentages. So, some are
16 70/30, some are 75/25, one is 80/20. And so, they're
17 different depending on the census.

18 But of course we know the problems with the
19 census. Our fix to it was, given the historical
20 problems with alcohol, just make it a flat 80/20 so
21 that we're not jumping around every 10 years trying to
22 realign it. Just do the 80/20 and then we would use
23 that. And that -- that's kind of where that come from.

24 CHAIRMAN WARDNER: I understand. So, the gas, uh,
25 the fuel tax, yeah. That's on a census thing and --

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 85

1 CHAIRMAN FOX: It -- it is on a census base so
2 but that's established. And I don't think it's every
3 changed. I know, uh, in 2010 there was a census and
4 then when we brought it up in 2011 or 2013 the
5 governor at the time, Governor Dalrymple, said, um,
6 you know, we reconsidered because of the social ills
7 on the reservation for a short period of time during
8 the session he thought about should we just
9 standardize it to every reservation, make everybody
10 the same as Standing Rock's. I can't -- Standing Rock
11 has the highest at 80/20.

12 So, let's just make everybody similar to Standing
13 Rock. And at the last moment he pulled back and said,
14 you know, we'll just leave it as is and he didn't want
15 to wrestle with it at that time. Now, Governor Burgum
16 has brought up the same thing and he seemed to be
17 willing to now take that step forward and say, make
18 them all standardized on each reservation at certain -
19 - assuming that the -- the legislature would approve
20 of it.

21 CHAIRMAN WARDNER: Well, that will be a
22 discussion point for this committee to talk about, uh,
23 whether we want to standardize these things and -- and
24 bring them forward as a proposal and stuff like that.
25 So, thank you. Uh, Representative Jones.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 86

1 MR. JONES: Thank you, Mr. Chairman. I guess I
2 have one more question for John on this. So, it's
3 illegal to sell alcohol in Indian Country unless they
4 are licensed both by the state and the reservation. Is
5 that the caveat that makes it -- makes it -- people
6 able to sell?

7 MR. FREDERICKS: Yes. Correct.

8 MR. JONES: And so, the sticking point that I'm
9 hearing from the retailers is just concern about that
10 -- that license. So, uh, you know, I hope we can focus
11 and I hope your intentions are to focus on that to
12 remedy, you know.

13 I think they're worried about creep. The greatest
14 fee right now is \$1000 a year for the retailers and
15 the wholesalers or is it just the wholesalers?

16 MS. MONTEAU: Uh, Mr. Chairman, again, it depends
17 on the type of license. But there is depends if they -
18 - are selling beer or alcohol or both. But, um,
19 roughly, right now, about \$1000. Depending if the just
20 want to sell beer, I think it's, like, \$300.

21 MALE 1: That's wholesalers. What's the
22 retailers?

23 MS. MONTEAU: Um, I can --

24 MALE 1: It's less than that.

25 MALE 2: Seven percent.

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 MS. MONTEAU: Yeah. It's --

2 MALE 1: No. No. The fee.

3 MS. MONTEAU: It depends, again --

4 MALE: Is that your question?

5 [talking over each other]

6 MS. MONTEAU: Yeah. It's about \$700. \$300 to \$700
7 depending on what they're selling. If they're selling
8 on sale, off sale. It -- it varies, you know. The
9 state has varying degrees. Uh, Mr. Chairman, Cynthia
10 Monteau, MHA Nation. Sorry.

11 CHAIRMAN FOX: I need to share this with you and
12 Cynthia made this point to me and -- and showing all
13 these things. Not all, but nearly all, of the
14 provisions we have in our alcohol ordinance mirror
15 what the state does.

16 Almost all. We're just simply doing -- carrying
17 out on our own behalf, mirroring under our own laws
18 similar provisions that you have to make it easier for
19 us to have a joint agreement.

20 CHAIRMAN WARDNER: Continue.

21 MR. JONES: I guess. Thank you, Mr. Chairman. Um,
22 I guess my concern or suggestion as we're moving
23 forward with this because I like moving forward with
24 it, is that somehow we lock it in so that the people
25 that are going to be paying these fees for permits

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 88

1 and, uh, taxes understand that it's not going to
2 change.

3 That it's going to stay consistent with what the
4 state's doing and they're not going to all of a sudden
5 get a notice that now this year we're going to double
6 the permit fee. Those types of things.

7 CHAIRMAN FOX: What will happen is it will stay
8 consistent with the agreement we've put into place.
9 So, we -- we agree to put it into place, uh, to change
10 the agreement you can either opt out of it or but to
11 change the agreement we both have to change it.

12 So, for another two years, and nothing prohibits
13 you from doing the same, is you -- you say, well,
14 we're going to change this tax agreement with the
15 tribe. What we wanted to have in place is -- is for us
16 to be at the table as well if you're going to consider
17 changing that. And -- and that's what we're asking
18 for. It's jointly changed.

19 Same with the tax agreement on oil and gas. You
20 know, we had that issue, too. That neither side is
21 supposed to have authority to unilaterally change
22 that. We have to do it jointly together. And that's
23 what we've done and accomplished in '19 and '20 and
24 '21. And -- and just recently. So, those are really
25 important as well, too.

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 89

1 CHAIRMAN WARDNER: Continue.

2 MR. JONES: Thank you, Mr. Chairman. I appreciate
3 that, Chairman. Um, what I'm talking about though, is
4 not changing the agreement. Once the agreement is --
5 is in place that --

6 CHAIRMAN WARDNER: That's what governs the
7 regulations.

8 MR. JONES: It's -- it's going to be the
9 governing document.

10 CHAIRMAN WARDNER: Yes.

11 MR. JONES: What I'm talking about is that, uh,
12 this fee schedule. Somehow I would hope that as we
13 move forward with this we can figure out how to put in
14 that fee schedule that it's going to be sensibly
15 derived.

16 That if -- if the state's paying a certain amount
17 of money for fees, for licensing, and that kind of
18 stuff, if your fees are similar or identical or
19 however it is, that we put in the agreement that it's
20 going to be consistent with the fees charged by the
21 state.

22 CHAIRMAN FOX: Which it already is, but yeah. The
23 agreement would provide for that.

24 MR. JONES: That -- that --

25 CHAIRMAN FOX: If you pass the legislative

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 90

1 agreement, it will provide for us to jointly decide
2 that. So, then when they sit down have the regulation,
3 you know, hours of operation, and -- and can't sell to
4 minors, and -- and the fee structure.

5 All that is jointly sat down and said this is how
6 we do it. So, that every entity whether it's tribally
7 -- a tribal member owns it or a non-tribal member own
8 it are under the same set of laws and the same -- same
9 type of regulation. That's all we're asking to be done
10 here.

11 MR. JONES: Thank you.

12 CHAIRMAN FOX: If we don't do that, we will
13 implement our own. They will be similar, but they will
14 be paying two. And we don't want that. Okay.

15 CHAIRMAN WARDNER: Anyone else have any comments
16 or questions for Chairman Fox? I would just like to
17 make this -- now, I'm -- this -- see? I'm -- I'm going
18 way back into my childhood now how old I'm getting. I
19 remember when, uh, it was changed when an individual
20 by the name of Joel Wicks[ph] who -- who was, uh,
21 married to a Native American on Fort -- or on, uh,
22 Standing Rock.

23 He was an outstanding auctioneer. He -- he was an
24 auctioneer that everybody loved at Kist Livestock in -
25 - in Mandan. And he became a representative. And that

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 91

1 was one of the things he accomplished was that, uh,
2 uh, alcohol could be sold on the reservations. I
3 remember that as a kid. So, it goes back to a long
4 time ago.

5 So, and we're still kicking it around. So, but he
6 was a -- he was a very influential person and
7 everybody loved him. But he had relationships with
8 people and people, uh, he could get it done. So,
9 anyway. That's just a little comment.

10 MS. MAYER: Mr. Chairman, was that about 1954?

11 CHAIRMAN WARDNER: Uh, it would have to be. Yeah.

12 MS. MAYER: I remember because my father built
13 the Snake Pit Bar up here on Sahnish in 1955 and that
14 was when the natives could buy -- go to liquor stores
15 and buy booze --

16 CHAIRMAN WARDNER: Yeah

17 MS. MAYER: -- in '56; right?

18 CHAIRMAN WARDNER: Yeah.

19 MS. MAYER: Yeah.

20 CHAIRMAN WARDNER: Well, he's the individual that
21 was the, uh, motivation and, uh, force behind it back
22 then. It was the right, you know, that they have the
23 same rights as other people, uh, the Native Americans.
24 So, anyway.

25 MS. MAYER: Mr. Chairman, I just want to say and,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 92

1 uh, Chairman Fox that, uh, I, um, you know, I see
2 things a little bit different than, you know, the --
3 your -- your -- your regular politician would, but my
4 understanding of the alcohol tax, which is a long time
5 coming for us, um, it will allow us, even though it's
6 not a, uh, very large amount of money, to deal with
7 the issues of that we have in our health care
8 disparity.

9 They link together the alcohol, the taxation, and
10 the health care. They link together because we're
11 paying for cirrhosis and domestic violence and rape
12 and, you know, Indian women are raped and beaten and
13 assaulted and missing and murdered, uh, 10 times more
14 than non-Indian woman are in the United States and
15 that's NIH's database.

16 Um, child abuse, unemployment, DUIs is the number
17 one, uh, law enforcement issue that we have here on
18 Fort Berthold and, um, of course there's jurisdiction
19 issues that go along with that. And, uh, all our
20 criminal activity, our -- our large amount of
21 ambulance, uh, costs and our ER costs that go into,
22 uh, those that are on drugs and alcohol.

23 Alcohol has been around much longer than drugs
24 but drugs is massive right now. But my understanding
25 of this alcohol code would be that we would be a joint

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 93

1 agreement with the taxation of seven percent and
2 licensed fees with MHA and the state being, um, joint
3 and that the distribution would be done, uh, by the
4 state at -- at 80/20 or wou- -- wou- -- is that what
5 the agreement would be?

6 CHAIRMAN FOX: Well, we're trying to propose
7 that.

8 MS. MAYER: Yeah. Proposing that. So, um, my
9 understanding is that if we can partner joint together
10 in this agreement, like we probably should have in
11 the, you know, decades ago, um, we would be able to
12 address some of our healthcare issues based on this
13 tax.

14 So, it's a good thing for the state and it would
15 be a really good thing for us, too. So, if my
16 understanding's correct, I'm in full support of that.
17 Thank you, Mr. Chairman.

18 CHAIRMAN WARDNER: Yes. And she brings up a point
19 that begs a question I just need to find out. When you
20 talk about the wholesalers and their licensing fee,
21 would they be paying one to the tribe and one to the
22 state or would they pay one and we would split it up
23 20/80? How do you see that?

24 CHAIRMAN FOX: On their fee?

25 CHAIRMAN WARDNER: Yeah. On their fee.

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 CHAIRMAN FOX: On their license fee?

2 CHAIRMAN WARDNER: License fee.

3 CHAIRMAN FOX: That's something that jointly
4 together we would -- we would decide, you know, what
5 kind of fee they would pay. I would assume that -- I
6 would expect that joint regulatory structure that --
7 that we pass would sit down and say, you know, either
8 defer that to the tribes, pay the tribes, or split it
9 in the same way we split the tax. It doesn't matter to
10 us that much.

11 CHAIRMAN WARDNER: Well, I would say that that
12 would take away any, uh, pushback from the wholesalers
13 if they pay one fee. Who -- who do they care if -- how
14 the state and the tribe splits it. So --

15 CHAIRMAN FOX: Agreed.

16 CHAIRMAN WARDNER: -- I, uh, I just happened to
17 think about that. Representative Jones.

18 MR. JONES: Thank you, Mr. Chairman and, uh, I
19 would refer us back to the law that John cited, too.
20 It says specifically you can't sell alcohol on the --
21 Indian Country unless you have a permit from both the
22 tribe and the state.

23 So, you don't want to combine the two. They need
24 to buy a permit from the tribe, uh, from the tribe and
25 a permit from the state. And this permit issue would

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 95

1 be separate from.

2 If you try to con- -- convolute that and say, now
3 they're just -- I don't know how you can separate
4 those two to satisfy the requirements of that law if
5 you didn't let those two permits be separate.

6 CHAIRMAN FOX: Logistics of doing that and I'm
7 sure it can be ironed out. If -- if both entities --
8 governmental entities under the law say this is the
9 way we're going to do it, jointly together, in effect
10 you are doing both of them.

11 John, I don't know if you know differently, but
12 even if we did have a scenario where we said, well,
13 you've got to have a license from the state and
14 licensed by the tribe and what kind of fee's put into
15 that. That -- that's -- you've got two licenses but
16 the fee, it can be singular. It -- it doesn't matter.

17 MR. JONES: Right.

18 CHAIRMAN FOX: The fee can be singular. The
19 licenses could be both.

20 MR. JONES: Yes.

21 CHAIRMAN WARDNER: First, uh, Representative
22 Jones, is that -- did that answer your question? So,
23 the -- the fee -- what they're talking about is you
24 get two licenses but there's one fee. And then how the
25 state -- do you have an issue with that, I guess,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 96

1 before I go to the Representative Pollert?

2 MR. JONES: You know, I don't have the expertise,
3 but I appreciate the conversation. And my goal is to
4 make sure we hash it out together and figure out how
5 we can satisfy the legal requirements. How we can
6 satisfy the convenience requirements.

7 And how to satisfy for those people that are
8 doing it that they know that they're covered and that
9 it's not going to be changed and grow and cause
10 problems going down the road.

11 CHAIRMAN WARDNER: And -- and that's a good
12 point. I -- but I think -- I think we're headed down
13 the right track here. Representative Pollert.

14 MR. POLLERT: Thank you, Mr. Chairman. So, John,
15 did -- does this take a, um, I don't want to say an
16 exemption, but a permission from the federal
17 government so the state can have one license since
18 there's a federal law on the books.

19 That's what I'm hearing. And so, Representative
20 Jones says it takes two, one from the federal state
21 unless you get an agreement. But wouldn't you have to
22 get kind of an exemption or a permission slip from the
23 federal government say yeah, you can do that and then
24 you can get it worked out?

25 MR. FREDERICKS: Um, no. The statute -- the

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 97

1 existing statute simply says that if -- if you are
2 licensed by the state and the tribe then you're not
3 violating federal law. So, we -- under, uh, a joint
4 scheme, you know, if -- if we were to get a bill that
5 both sides can live with, um, the tribe would still
6 license the facility, um, but we would do that under
7 the parameters of our agreement.

8 And so, um, there still would be a license and --
9 and, you know, how we -- how we charge fees for that,
10 we've got a lot of discretion on how we can do that.

11 MR. POLLERT: So -- so, Mr. Chairman, so then,
12 from what you just said, so the language federally is
13 pretty permissible to get that set up?

14 MR. FREDERICKS: Yes.

15 MR. POLLERT: Okay.

16 CHAIRMAN FOX: But go back to John's point. In
17 the beginning the -- he made and I did as well,
18 Cynthia, is that as he said, it requires both. That's
19 what the law says. So, you -- you -- you run a system
20 for decades that has been non-compliant with the
21 federal law.

22 Meaning you have a state license but you don't
23 have a tribal one. And some of them are still in that
24 existence today. They are continuing violating federal
25 law and they are now violating tribal law under our

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 98

1 ordinance approved by the federal government. And they
2 are accumulating fees and penalties.

3 And we don't want that to -- we need to resolve
4 that. We can deal with that, pass the law, get a joint
5 regulatory system, and get that all water under the
6 bridge, and we can get back to a joint regulatory
7 system; we're splitting the tax the way we -- we
8 advocate for and then we just move on. And I thought
9 we were there this -- this -- this session.

10 I really did based upon our tribal state tax
11 relations committee discussions. So, we were greatly
12 surprised when it didn't go forward. And it didn't
13 make it forward. Very disappointing. At some point in
14 time we got to make a decision.

15 If we can't get the state legislature to have a
16 dual taxation -- taxation system to avoid the issues
17 that are coming up, then we're going to be forced --
18 we're going to be forced to enforce. And -- and I want
19 you to think about what that means. That means
20 assessing fines.

21 That means closing -- closures. Those could be
22 force closures -- closures. Now, unless a federal
23 judge says we cannot and holds us, uh, up on it while
24 it being determined, that might mean closing doors and
25 locking doors.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 99

1 That might be physically removing people. And the
2 law enforcement we have on -- on our side, our own law
3 enforcement, we don't need to go there. We can resolve
4 this. We can -- government to government. We can get
5 this resolved.

6 So -- so, my point again is -- is -- it's -- it's
7 the -- the -- the minor issues that I think arose
8 again during this legis- -- legislative session we
9 feel we have addressed them. We can, as a joint
10 system, address them and we just need to get this
11 approved so we can move forward.

12 And -- and we can avoid this. And I think we're
13 there. I think we're close.

14 CHAIRMAN WARDNER: Well, thank you. Is there
15 anyone else who would like to make any comments or
16 questions? Uh, uh, this has been a very good
17 discussion. I have learned some things that I didn't
18 know. And, uh, and have some understanding of some
19 things that I didn't understand as well.

20 So, I appreciate it. Uh, we will be discussing
21 this, uh, as a committee and going through it, uh,
22 step by step and, uh, uh, Mr. Chairman, uh, we would -
23 - we would want you there and, uh, we also know that
24 the other parties that are involved, we would want
25 them there to make sure that everything, uh, is taken

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 100

1 care of and they aren't surprised.

2 And then all of a sudden, uh, there's opposition
3 that you didn't know where it was coming from. So --

4 CHAIRMAN FOX: The -- the opposition's there, uh,
5 so I thought we resolved it [meeting of the?] issues,
6 but you're right. They need to be at the table. Those
7 impacted or affected. And I, uh, I'm sure they're not
8 wanting to in any of all our processes are public and
9 open and so they're going to want to say, how are you
10 addressing our concerns.

11 Now if their concerns are, you know, not paying
12 the extra tax, all that taxes, you know, uh, you know,
13 administered licensing and that's all resolved, then -
14 - and -- and what have you, those are doable. If you
15 have an entity that just simply says, I don't want to
16 be taxed by the tribe or have any regulatory control
17 that the tribe's a part of over me, that -- that is a
18 -- a -- that's not good.

19 There has to be an acceptance of the fact that by
20 federal law, both entities have the right to regulate.
21 And inherently, John might disagree with me a little
22 bit, I might even disagree, also comes the -- the --
23 the ability to tax with that regulation. And -- and --
24 and it's joint. So, let's just move forward because we
25 haven't been able to joint in 60, 70 years have gone

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 101

1 by. No tax revenue to the tribe.

2 CHAIRMAN WARDNER: Well, the big thing is that we
3 communicate. And, uh, a lot of times that I've found
4 in this business, uh, in the legislature, people think
5 if you don't communicate well with them, they think
6 it's something else and they, uh, they miss the point
7 and end up opposing something they really don't need
8 to oppose. So, uh, I'm, uh, I -- I appreciate the
9 conversation.

10 CHAIRMAN FOX: Cynthia --

11 CHAIRMAN WARDNER: Cynthia --

12 MS. MONTEAU: Um, yes, Mr. Chairman. I just
13 wanted to respond to Representative Jones and just
14 give him an example of the fees. So, um, the federal
15 law requires if you sell, transport, or distribute
16 alcohol on the reservation you need a tribal license.
17 So, as an example, I just did a quick comparison.
18 Um, is that for a wholesaler on the reservation it's
19 \$500 for, um, selling, and then it's \$250 for
20 transporting. So, it's \$750. And as a comparison for
21 the state, for a wholesaler for selling beer and
22 alcohol, if you sell within the first six months of
23 the year it's \$900 and if you sell, um, if you get a
24 license in the second half of the year, it's \$600.

25 So, right now we're fairly commensurate. I just

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 102

1 wanted to bring that to your attention and clarify,
2 um, previous comments. Thank you, Mr. Chairman.

3 CHAIRMAN WARDNER: No. Thank you. Uh, we need all
4 the information we can get. Any, uh, anyone else? Uh,
5 I think we'll move on to another issue and, uh, this
6 one, uh, appreciate all of the discussion. So,
7 continue, Chairman.

8 CHAIRMAN FOX: So, uh, alcohol have addressed
9 that. Sales and use tax, uh, we haven't really dug
10 into that too much, um, so to speak. Uh, it is
11 something that economically, you know, we would want
12 to probably consider at some point in time, although
13 we're not pushing hard on it.

14 Um, we do know about sales made and there was an
15 issue related to the sales made to a tribal member,
16 uh, regardless of -- of, uh, the owners of the
17 business. As long as it's done within the boundaries
18 of the reservation at this -- it's non-taxable. That
19 is an issue right now. Because the tribe doesn't have
20 a sales and use tax and the state does.

21 I bring this issue up every -- every time we have
22 these meetings and I will continue to do so. And until
23 we have a joint agreement it's going to become a
24 problem. There's an indirect collection of tax that
25 have been ongoing for more than 70 years. And it is

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 103

1 unlawful to -- for the state to collect a tax against
2 a sales tax made to a tribal member within our
3 boundaries.

4 But sometime these vendors will require and --
5 and some of them are simply trying to establish a
6 means to measure and assess. Some of them not so much.
7 Basically, uh, person getting up to the till and then
8 charging them a tax without asking. Or having a means
9 to figure out whether they're a tribal member or not.

10 Uh, I don't like the assumption being on the
11 tribal member. I'd rather have the assumption being on
12 -- on the vendor. Uh, if you have reasons to believe
13 that that -- that person is not -- if they say, are
14 you a tribal member, don't tax them. Because that's
15 what the Supreme Court law says. Uh, if you have
16 reasons to believe that they are not a tribal member,
17 reasonable suspicion or other information, then you
18 could ask them for their tribal ID.

19 Say, do you have a tribal ID. Now, some of the
20 vendors require a tribal IDs and say, if you want to
21 exert your tax exemption, you have to, before the sale
22 commences, tell us you're a tribal member and show us
23 your tribal ID. Uh, that's putting somewhat of the
24 burden on. I give the example that we had here in the
25 previous committee years, you know, you get a -- a --

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 104

1 a -- my son's eight years old.

2 We go up to the dollar store and he's happy to
3 get, you know, he does his chores and he gets his \$20
4 and he heads up to the dollar store and starts buying
5 things. And how is he supposed to stand there -- and
6 of course he would because he's my son, but how is he
7 supposed to stand there and say, you know what?

8 You're not supposed to be taxing me. And you
9 charged me a tax and he shows the receipt on his toys
10 and his candy. By law says the United States Supreme
11 Court says that -- that -- that law able. That's
12 illegal. But the vendors say, well, until you prove
13 that you're a tribal member, we're going to tax you
14 and we're going to send that to the state.

15 They'll collect it and they'll send it to the
16 state unlawfully. And that's occurring at a great
17 extent. Now tribal members say well, if I go to the
18 store I have to make sure I have my tribal ID. Even
19 though I've been in there 80 times.

20 That clerk is going to say, if you don't have an
21 ID, I'm going to charge you, even though you presented
22 it 79 times. That's an unlawful collection of tax. And
23 it's not a few hundred thousand dollars. Over time
24 that's millions and millions of dollars. That's
25 something we have to try to address someday somehow.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 105

1 Uh, joint system of collecting that tax, again,
2 getting to a split might help resolve that. But some
3 of our membership will have to, you know, put that out
4 there to them because they might not want to be
5 subject to even a joint tax.

6 So, that's something that we have to reconsider.
7 But the concern I've got is this indirect taxation
8 that is unlawful and it's occurring, but we have to do
9 something about that. I know -- without spending a lot
10 of time on that at this point in time.

11 MS. MONTEAU: Online sales are big.

12 CHAIRMAN WARDNER: Do you have any kind of idea
13 for a solution for that? Because I don't. I mean,
14 other than to tax everybody and then do like we're
15 doing with the fuel tax and stuff like that.

16 CHAIRMAN FOX: Well, the joint agreement.

17 CHAIRMAN WARDNER: I do recall one of the first
18 meetings a couple of years ago we had with this
19 committee, there were people from different -- all
20 over from Standing Rock and he said, is this what
21 they're -- you're going to do? Tax us?

22 We're -- we're not going to put up with that. So,
23 I mean, I do know that, uh, tribal people are not
24 interested in being taxed. So, I --

25 CHAIRMAN FOX: Not on the sales and use tax. We -

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 106

1 - we pay it. But, you know, I -- I'll say this is, um,
2 we still have a very important act that has to be
3 acknowledged. The majority of our people, when we
4 purchase goods, pay state sales tax.

5 Do you know why? Because most of us, and this is
6 a fact, purchase our goods off the reservation. We go
7 to Minot. We go to Watford City. And when we make --we
8 buy something, we pay the tax.

9 CHAIRMAN WARDNER: Yeah. So, that you're saying
10 they're -- they're paying it already so, it's no big
11 deal.

12 CHAIRMAN FOX: So -- so, I think inherently
13 they're going to learn to accept it over time.

14 CHAIRMAN WARDNER: Okay. Because it -- it's --
15 it's just a -- it's a -- I would say it's a principle
16 with some of the -- especially the older, uh, people
17 that, uh, live on the reservation. They, uh, no way
18 are you going to be taxing me, uh, but maybe that
19 could be changed.

20 But, uh, that's what I would see as a possible
21 solution, but there may be others. Uh, Nathan.

22 MR. DAVIS: Well, I was just --

23 CHAIRMAN WARDNER: Well, you waved your hand, so
24 --

25 MR. DAVIS: I was just kind of moving my arm

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 107

1 around, but yeah. [inaudible] No. But I -- I think too
2 just moving forward as we talk about sales use taxes.
3 We talk about, uh, the dual taxation issue with
4 alcohol. Um, we remember the words that were said over
5 and over today; the mutual consent.

6 When you speak with tribal nations you speak of
7 their agreements, their treaties with the federal
8 government. Those treaties cannot be altered without
9 mutual consent; both parties being involved. And we
10 talk about the language that was passed in '19 that
11 none of the tribes would sign on on. I was part of the
12 tribal government in Turtle Mountain at that point.

13 But what that did to us was mentioned earlier by
14 Chairman Fox, was it presented and, um, a negative
15 precedence towards tribal nations of uno- --
16 unilateral authority. The state of North Dakota coming
17 in and oppose those taxations without say, the tribe.
18 So, moving forward, we need to make sure we have that
19 mutual consent and relay that government to government
20 framework in these agreements.

21 Because now you're talking about a negative
22 impact, an adverse impact on the -- the local economy
23 here in the MHA Nation that Chairman Fox has alluded
24 to before that he does not want to impose.

25 You know, every -- every tribal nation you come

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 108

1 to do business with in the reservation there are
2 federal guidelines that no matter what entity you are,
3 even if you're a political subdivision of another form
4 of government, you pay those fees to the tribe to con-
5 -- to conduct business with their members.

6 So, I think that's just something that we need to
7 keep in mind moving forward. And then also you look
8 at, you know, tribes and how we work with the federal
9 government. And you look at past, uh, pieces of
10 legislation that were passed but a little before our
11 time even.

12 You only look at the state's admission acts that
13 were passed that allowed certain states to come to the
14 union. You know, a state's in there that all lands
15 within, um, all lands held within the fed-, uh, the
16 exterior boundaries of a reservation shall -- and I
17 don't like to use this word too much, but we -- we
18 talk about the disposition of the United States
19 government.

20 So, as tribes we're constantly dealing with not
21 only our own ordinance that are passed here, we're
22 dealing with ordinance that are passed at the state
23 level, but then ultimately we deal with the ordinance
24 that are passed at the federal level.

25 So, I think when we really talk about those

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 109

1 partnerships, we need to remember the -- the
2 uniqueness and the duality that tribal nations, uh,
3 represent in forms of government. So, I just wanted to
4 put that on the record as we move forward.

5 CHAIRMAN FOX: Appreciate that.

6 CHAIRMAN WARDNER: Yeah. Thank you.

7 CHAIRMAN FOX: Um, a related item to that, of
8 course, we don't have easy answers. I do know this is
9 -- and we may suggest some things before we get to a
10 session where we could have the alcohol agreement done
11 or a sales and use tax. Um, I'm not proposing that
12 we're -- we're going to be coming running in with
13 that, but what I'm saying is that it -- it does take
14 some work and maybe sitting down.

15 But in the meantime what we can do is -- is come
16 up with some solutions with the vendors to try to
17 encourage them not to unlawfully collect and submit
18 taxes. If they know somebody's a tribal member,
19 whether they loyally reach in their back pocket and
20 show them ID or put them on a running list or whatever
21 you need to do. And say, what's your name? Tribal
22 member?

23 Don't collect the tax. Don't collect that tax.
24 It's the unlawful collection of taxes that we're --
25 we're objecting to. And so, I think there's some

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 110

1 things that we can work with the vendors to cause them
2 to be, uh, a little bit more the onus on -- on
3 themselves than on the individual. But yeah. There
4 might be an individual saying, yeah, I'm a tribal
5 member, to avoid tax.

6 There might be. But if they, through time,
7 somebody says, you know what? That person that been
8 coming in here a couple times he say they're a tribal
9 member and they're not.

10 We have information that they're not a tribal
11 member, uh, they came up here to work and then what
12 have you. And then they can say, okay.

13 I'm sorry but we're going to have to ask you for
14 your tribal ID. Well, if they don't produce one then
15 say, well, until you do we're going to tax you. They
16 do produce the tribal ID, put them on the list or
17 whatever, on you memory or whatever it takes.

18 Quit taxing them and then collecting it and
19 sending it to the state because you guys owe us a lot
20 of money if you keep doing that, you see. So, that
21 being said, um, there is a -- a situation of sales
22 that are to be done as well, online sales. If a tribal
23 member orders it from New Town, North Dakota and they
24 do online, and it's delivered and consummated by
25 delivery on the reservation to that tribal member,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 111

1 that's non-taxable by the state as well.

2 But this vendor who's sending it to them and many
3 of those that you see online, that they have a joint
4 agreement on the standard -- a joint agreement that
5 states belong to, they're assessing that tax and
6 they're giving it to you. Again, that tax cannot be
7 collected by if it's made to a tribal member within
8 our boundaries it shouldn't be collected, etc.

9 So, we've got to figure out how to split this
10 online sales tax and that might be one that can help
11 us mature into other taxes. Maybe that's one we
12 address at the next session is how do we, or even
13 before that, how do we -- how do we get a split done
14 on that.

15 If I -- if I buy an order of, you know, uh,
16 computer online and they deliver it onto the
17 reservation and it's consummated by a delivery fee,
18 you know, I'm -- they're charging a tax on that. And
19 that tax has to either be lawfully split by agreement
20 or it can't be applied at all. It has to be exempted.

21 So --

22 CHAIRMAN WARDNER: That's interesting. I hadn't
23 thought about that. Uh, I know Senator Cook was the
24 guy that was the main negotiator to -- to get all that
25 done.

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 I don't ever remember him visit- -- talking about
2 the -- the tribes getting money -- or getting product
3 from, uh, uh, catalog store in another state and --

4 CHAIRMAN FOX: Internet -- internet sales all
5 over the place.

6 CHAIRMAN WARDNER: Internet sales. Uh, so, the
7 streamline sales tax you're not in the agreement in
8 any way.

9 CHAIRMAN FOX: Right. We --

10 MALE 1: Other tribes are.

11 CHAIRMAN WARDNER: Okay. All right. That's
12 interesting. I never thought of it.

13 CHAIRMAN FOX: Okay. So, we need to figure out a
14 way to address that down the line here as well. Two,
15 um, other related items that we've got.

16 We straddle wells, we talked about that. It's
17 going well. Um, I will say this as it did in '19. In
18 '19 we did some things. You saw with the split change.
19 Uh, and Lynn Helms will back me up on this I guarantee
20 you.

21 But I can just tell by driving on a daily basis
22 at home now that we've settled this one of the last
23 remaining major issues on -- on oil and gas tax
24 between us and you. The activities picked up again, as
25 well, too. I can tell. Uh, the overall production may

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 113

1 -- may not yet show that yet because the drilling's
2 not falling as much as the enhanced production, but it
3 will. And I mean we only have three rigs on right now
4 currently.

5 We need to get back to the days of nine and ten
6 and when that does occur and more commitment's made to
7 drilling, I know the production -- enhanced production
8 is up. But it -- it -- it's a result of us resolving
9 that. And the straddle wells lent itself towards a
10 number of -- of producers and great.

11 We supported it, they sat down with us, we meet
12 almost weekly with, uh, our major producers. We've got
13 about 10 on the reservation. Uh, and so, when we sit
14 down with them, they are all talking about reinvesting
15 capital, increasing production, helping them with
16 water, getting the fracking done, adhering to our
17 regulations, making sure they're compliant.

18 And all -- all relates to us on the state and
19 tribal level figuring out how to cooperatively move
20 together. So, I want to again commend you. Uh, so
21 there's no issues right now to really bring up with
22 straddle wells.

23 We addressed them this summer on -- on ownership
24 of the land and how we split that. Uh, and -- and
25 we've been able to do that. So, uh, the split in our

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 114

1 eyes and right now the state should -- should be as
2 equitable as we intended it to be when we approved it
3 -- approved it at, uh, the legislature.

4 CHAIRMAN WARDNER: Uh, Mr. Chairman, I'd just
5 like to make one comment then we do appreciate your
6 support at -- in keeping the, uh, dapple, the
7 pipeline, uh, going and your support to do that.

8 CHAIRMAN FOX: Well --

9 CHAIRMAN WARDNER: It was huge, not only for you,
10 but for the whole state.

11 CHAIRMAN FOX: It is and we appreciate that. And
12 we -- we've got a common interest there but I want to
13 reiterate for the record because often times, you
14 know, entities will take it from -- from a different
15 perspective.

16 What we had to do in that process is we had to
17 indicate we -- we stood back for too long, so to
18 speak, during the -- during what was occurring on in -
19 - in a federal court level. And on a -- on a national
20 regulatory level as well with the Corps of Engineers.
21 What we felt was going on was our voices were not
22 being heard.

23 We were going to be impacted. And we still may be
24 impacted, I understand it's -- it's coming up very
25 short time here that on their own, without the -- the

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 115

1 court, on their own they have to make determinations
2 about permits; the Corps does.

3 So, so to speak, that's still out there. But what
4 we did is we had to shed the truth on the process,
5 whether on the regulatory level, on a -- a adjudicated
6 level what the impacts were going to be if that
7 pipeline was discontinued. And that's simply what we
8 did.

9 What we don't want to be taking on is
10 mischaracterized as being anti-Standing Rock and their
11 rights to appeal, to not support, that impact to their
12 reservation. We've already been supportive of that.
13 You do what you got to do.

14 What we've asked in return from the government,
15 which I think we got from them, is to respect our
16 right, too, and standing up and saying, this is how it
17 would be negatively impacted our economy as you see
18 [ph] ds on that. Unfortunately that doesn't always go
19 for the population of people that are on the
20 membership don't agree.

21 And -- and -- and we've had our disagreements.
22 But for government -- government relationship, you
23 know, we respect Standing Rock's right to -- to -- to
24 want to say we don't want a pipeline going on or near
25 our reservation. And we respected their rights.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 116

1 They -- they followed the system. And the system
2 itself said, at this point in time, it's not going to
3 change the way you ask it to change. And that's just
4 all there is to it. And I -- I wanted that understood
5 though. We respect it at all times. So --

6 CHAIRMAN WARDNER: Yeah. Anyone else, uh --?

7 CHAIRMAN FOX: Okay. A couple more. Um, I'd, uh,
8 when we talked about the motor fuels tax. That is a
9 tax that we historically agreed to -- to be applied at
10 the retail level only when you go to the pump. So,
11 what happens is you have a bulk fill, you know, have a
12 vendor selling wholesale and he brings down and he
13 generally pays that tax into the state.

14 But when it comes down -- and that tax is paid
15 and that sale is made at the pump and the consumer
16 pays that tax, you'll see that tax inside there. What
17 we have agreed to do is -- is when you collect it, you
18 remit it back based on the census number, 70/30,
19 75/25. And we collect that. But that's only at the
20 pump.

21 Only when you occur to pulling up to a
22 concession, uh, to a convenience store. What it
23 doesn't apply to is bulk sales. And prior to energy
24 development we -- none of us knew what that really
25 was; right? But here's what it is. Vendors on the

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 117

1 reservation will order and tribal and non-tribal bulk
2 sales of fuel because its massive development here.

3 And when that fuel comes in on a train rail, for
4 example, or a depot type area, it will come in on a
5 wholesale bulk level. They will purchase it from them
6 and they will take that tax away. It's not going to
7 the retail pump.

8 And when we brought this detail up in decades --
9 in session past and with -- with your tax department,
10 they made a big point to say, when we agreed to that -
11 - to do that, it was retail sales only and not these
12 bulk sales coming in onto the reservation and being
13 sold on that level. So, we did ask, I believe it was
14 in '17 to have an opportunity.

15 There was some language, I believe, that was
16 approved that would get us to a point where we could
17 agree to include bulk sales along with our retail
18 sales, but we weren't able to accomplish that. It
19 remains an issue.

20 So, when those come in and they're -- they're not
21 -- they're paying a state tax because it's paid off
22 the reservation first before it's brought on. But the
23 tribes get zero for that sale made.

24 CHAIRMAN WARDNER: So, Mr. Chairman, uh, what
25 happens is the state gets that tax and then -- but

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 there's no tax collected after --

2 CHAIRMAN FOX: The tax is sent -- sent in and
3 remitted and -- and paid to the state, but it's not
4 apart of the -- the motor fuels.

5 CHAIRMAN WARDNER: Yeah. Because --

6 CHAIRMAN FOX: So, it just sits there and you
7 collect 100 and keep 100 percent.

8 CHAIRMAN WARDNER: Because it's collected ahead
9 of time before it's delivered.

10 CHAIRMAN FOX: Right. And so we've got regulatory
11 controls. We got spills that can occur. We got to
12 have, you know, our pipeline authority. We got to have
13 our environmental agencies that we pay for, you know.
14 All these relate to things like that.

15 So, we're impacted. And -- and not only that, but
16 you also have tribal members, some of them are
17 involved, in -- in purchasing bulk fuels as well and
18 they're not paying the tax as well.

19 CHAIRMAN WARDNER: Is that -- is that tax
20 collected then, uh, when they load the rail cars and
21 they remit it?

22 CHAIRMAN FOX: It's -- it's -- it's usually paid
23 off to the -- the vendor that's bringing it on a rail
24 car example. And it's usually -- that tax is paid by a
25 percentage beforehand, remitted. And then it's brought

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 119

1 down, they collect it, and they have already paid it
2 so to speak. It'd been remitted in. And so it's not
3 paid right there at that rail car.

4 It's already been pre-paid so to speak. Same way
5 with the retail sales. When they retail seller brings
6 it on they'll bring a truck down and they'll go into
7 the hole and they'll fill them up. But that's already
8 been paid by the wholesaler to the state. How they get
9 their money back is -- is by the sale. And -- and --
10 and it's the same thing.

11 Only difference is -- is -- and we were pointed
12 out by your tax department is that's your -- our
13 agreement is only for retail. If our agreement was
14 retail and wholesale, bulk sales, then we would remit
15 that to you. And they don't.

16 CHAIRMAN WARDNER: Okay. Any -- any comments? Any
17 questions on, uh, that because --

18 CHAIRMAN FOX: So, it would be real easy just
19 basically say, retail and bulk wholesales.

20 CHAIRMAN WARDNER: I, uh, I guess, Mr. Chairman,
21 what is your next, uh, is it a -- if we're going into
22 gaming we're going to wait on that one because --

23 CHAIRMAN FOX: We're -- we're waiting on the
24 gaming a little bit. I got maybe about one minute of -
25 - of -- of -- two minutes of -- of the rest of the,

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 uh, items.

2 CHAIRMAN WARDNER: Let's do that.

3 CHAIRMAN FOX: And then we'll leave the gaming
4 for the last. Then we'll take a break. And then we can
5 come back to it.

6 CHAIRMAN WARDNER: Then we'll take a break.
7 Everybody needs a break. People don't think very well
8 when they sit [inaudible]. So --

9 CHAIRMAN FOX: Okay. Here's the next one. Um, one
10 of the things that -- that Cynthia and her experience
11 in coming over from Montana. Um, she ran -- worked for
12 the Montana state tax department and made her come
13 over here and work for us and stole her away from
14 them. And, um, but she always alludes to the
15 experiences that they have between tribes and the
16 state and how they do things.

17 And one of the things that they do over there is
18 they have by action of legislature actually passed
19 laws, correct me if I'm wrong, bills and laws that
20 established a similar what we have here; state
21 relations policy. Not just a committee to sit
22 together, but policy. And you -- you -- you reiterate
23 what that policy means and what you would do
24 government to government.

25 So, a government to government policy. And the

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 state of Montana has that specifically with their
2 tribes. And I -- and -- and we're -- we're looking at
3 --

4 MS. MONTEAU: Other tribes in Nevada, Washington
5 --

6 CHAIRMAN FOX: Other tribes do as well. In
7 Nevada, Washington, they have the same thing. North
8 Dakota doesn't. So, what we're recommending is we look
9 at developing policy that you could then approve and
10 say, between our nations this is not only a committee
11 set up to talk about what we need to do, but here's
12 the policies that we recognize and want to jute --
13 jointly, um, provide and enforce together.

14 CHAIRMAN WARDNER: Okay. A -- a little more on
15 that. Could you, uh, so, are you, uh, saying that,
16 like, this particular, uh, committee would be working
17 with you and the other tribes. We would sit down and
18 we would talk about policies?

19 CHAIRMAN FOX: I -- I think -- Cynthia can
20 elaborate a little bit more but it just sort of
21 formalizes the fact that you will have, uh, establish
22 policy and not just a forum to discuss. But you would
23 actually establish, uh, uh, recognize that there is a
24 policy in existence between tribal nations and the
25 state. That, uh, have the characteristics to mutually

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 122

1 decided upon. So, Cynthia [inaudible]

2 CHAIRMAN WARDNER: Yeah. I would like, uh, expand
3 a little bit more on how this would work.

4 MS. MONTEAU: Uh, thank you, Mr., uh, thank you,
5 uh, Mr. Chairman. Cynthia Monteau, MHA Nation. Uh, so,
6 one would be basically a statutory requirement that
7 the state would -- would essentially be recognizing
8 the unique status of tribes within the state and
9 recognize all the tribes and formalize a policy in --
10 in, um, essence basically creating -- well, the
11 federal government is the government to government
12 relationship.

13 But essentially you would be establishing a
14 similar government to government relationship and
15 elevating that to a statutory level in terms of we are
16 recognizing the tribes in the state. Along with that,
17 would be a consultation policy in terms of how we are
18 going to consult with the tribes.

19 Um, in the -- in -- as Chairman Fox had mentioned
20 earlier, we do have language in agreements that we
21 have with the state that say, you know, we are going
22 to agree, mutually consent, to, um, these actions
23 within the agreement. But other issues as they, um, as
24 laws, um, for instance our propose at the state
25 legislature.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 123

1 How are those communicated to the tribes and how
2 are the tribes brought in to, um, to be able to
3 adequately respond as, um, as those proposed actions
4 may or may not affect them as individuals or as the
5 tribal government, land, resources, and so forth? So,
6 essentially developing a -- or formalizing rather a
7 policy in which tribes in the state would be
8 consulted.

9 CHAIRMAN WARDNER: Okay.

10 CHAIRMAN FOX: Basically how we experience that
11 on a federal level, is in a difference from
12 administration -- administration. But for the longest
13 time now you've had a presidential decree govern --
14 government policy on the executive side that has been
15 in existence for -- for decades now.

16 And -- and often times sometimes, too, the normal
17 course of federal bureaucracy, some of the agencies
18 kind of lose sight of that sometimes.

19 So, they'll do some things, uh, that -- that may
20 be inconsistent with -- for example, consultation,
21 like, here's -- here's what we're planning to do. We'd
22 like to sit down with you and discuss how it's going
23 to impact you, you know.

24 Uh, like, health, uh, Dave Glatt, you know, Dave
25 Glatt running your Department of Health. Sometimes you

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 124

1 have different things and waste disposals and things
2 like that. Well, you know, or -- or things of that
3 nature. I -- I -- he's one that fully understands, I
4 have to -- I have to admit that, you know. Um, but,
5 um, I'm just, you know, I'm just saying it
6 hypothetically.

7 If you had an agency that said, well, we're just
8 -- we're going to go. We got our permit to put
9 something over here. Uh, it's on Fort Berthold, but go
10 ahead and approve it and -- and -- and have something
11 to occur there. What -- what a policy would do is --
12 would -- would remind all your sub-agencies and
13 everybody else that pursuant to a policy agreement you
14 have in place, you got to sit down with them and you
15 got talk a little bit of what's going on.

16 And -- and -- and measure the impacts and get
17 agreements if they're necessary. And things of that
18 nature and -- and -- and moving forward. I see that as
19 -- as something positive to do as well. And -- and
20 it's something that the legislature, I think, uh,
21 should strongly consider working with us to establish
22 it.

23 CHAIRMAN WARDNER: Yeah. You're talking about
24 communications. Uh, that's really what you're talking
25 about.

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 CHAIRMAN FOX: Essentially.

2 CHAIRMAN WARDNER: Yeah. Okay.

3 CHAIRMAN FOX: So, other than that -- is there
4 anything else I'm missing [inaudible] I got the online
5 one.

6 MS. MONTEAU: Um, other than gaming, I guess
7 [inaudible]

8 CHAIRMAN FOX: Just the gaming that will hold
9 after lunch.

10 CHAIRMAN WARDNER: Okay. What -- okay. And then
11 what do you have planned for us at lunch? Do we break
12 for lunch [inaudible]

13 CHAIRMAN FOX: Do we have food; don't we?

14 MS. OVERLIE: It's coming. Yeah.

15 CHAIRMAN FOX: What's that?

16 MS. OVERLIE: It's coming.

17 CHAIRMAN FOX: Okay.

18 CHAIRMAN WARDNER: Well, we, uh --

19 MS. OVERLIE: [inaudible] we had a working lunch
20 [inaudible] but it's up to you guys.

21 CHAIRMAN WARDNER: Yeah. It said working --

22 CHAIRMAN FOX: So, it's going to be brought in
23 sooner otherwise I -- I hate to break and then not
24 make hay of this time while it's being set up. But if
25 you want to, it's up to you. Want to break, then take

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 a little break and then wait for it? How soon, Lovell?

2 Is it scheduled for right at noon?

3 MS. OVERLIE: [inaudible]

4 CHAIRMAN FOX: Okay.

5 MS. OVERLIE: [inaudible] be here at noon

6 [inaudible]

7 CHAIRMAN FOX: Hurry up. We're going to throw you
8 under the bus pretty soon. We're hungry.

9 CHAIRMAN WARDNER: All right. We're going to --
10 we're going to take a break. We'll take a -- what? --
11 one hour break? Uh, does that -- and, uh --

12 CHAIRMAN FOX: Come back at one o'clock?

13 CHAIRMAN WARDNER: Yeah. We'll come back at 1:00
14 o'clock.

15 CHAIRMAN FOX: I -- I would strongly, uh, I would
16 strongly encourage this, even while we're waiting for
17 the food set up, to go and, if you've got time, go use
18 the restroom, make a call, but to -- to go through on
19 a tour -- a quick tour as well. Walk through.

20 CHAIRMAN WARDNER: Very good. We will. Thank you
21 for that.

22 CHAIRMAN FOX: Great.

23 CHAIRMAN WARDNER: All right. We're in a recess
24 until 1:00 o'clock.

25 [recess]

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 127

1 CHAIRMAN WARDNER: -- to order, and we're going
2 to turn it right over to Chairman Fox to continue on.

3 CHAIRMAN FOX: And with that I appreciate that
4 Mr. Chairman, senator Wardner. [Inaudible]. I hope you
5 all join the mill you take, uh --

6 CHAIRMAN WARDNER: Yeah. I'll get my mi- -- mic
7 on. We get great, um, pleasure out of our guests and
8 visitors coming and not only seeing our facility and
9 our history and what we have to offer, but also our
10 food. We've got a lot of pride in that. And they do an
11 awesome job and as you see, you know, we have here,
12 you know, um, uh, the -- the -- the corn and beans
13 soup, you know, be -- that -- that was one of our
14 staples, you know.

15 I always brag about how we're the first -- we
16 were the first farmers of the state, you know, first
17 agriculturists. And we did, we were raised corn,
18 beans, squash, watermelon, all things. And not just
19 small little gardens that we have like I got at my
20 house right now. Right.

21 Um, not small gardening. There are major -- major
22 plots of land and major development. That's how the
23 MHA Nation and they were really divided at that time
24 there Hidatsa, Mandan, and Arikarain the beginnings.

25 Um, but along the Missouri River, we were what

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 128

1 they call Aboriginal trade centers. And you had seen
2 one of the displays if you walked by it and had enough
3 time, it shows the Aboriginal trade system in North
4 America. And we were one of two of the primary ones,
5 meaning the, uh, interaction of a lot of people, a lot
6 of different tribes.

7 So as they have on display, there's -- there's
8 seashells from the west coast, there's things from
9 Hudson Bay, there's things from Mexico that they found
10 in our villages on our old villages, archeologists
11 that demonstrate that inner tribal trade system,
12 meaning they -- they brought those things all this way
13 up as well, too. So I'm very proud of it.

14 MS. MONTEAU: Mr. Chairman, I have another
15 meeting obligation, so I just wanted to thank -- I --
16 I have another meeting obligation. I have another
17 meeting obligation, so I'm just, uh, going to make
18 sure that I attend that one.

19 And, um, I want to thank you all Senator Warden
20 and the committee members for coming to MHA and
21 working out and trying to partner and do joint
22 activities together in -- in -- for the people.
23 Because as Senator Warden said earlier today, it's all
24 about improving the life of our people.

25 So I want to thank you for coming up and -- and

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 look forward to working with you, uh, more on these
2 issues. So thank you.

3 CHAIRMAN WARDNER: Yeah. Thank you, Monica. I
4 appreciate that.

5 CHAIRMAN FOX: And Mr. Chairman, thank you for
6 the lunch it was -- it was delicious.

7 CHAIRMAN WARDNER: Great. Great. Glad you got to
8 eat -- eat some of it. Like I said, um, uh, relates to
9 our history and very proud to offer it. They also have
10 like squash and other things as well. Um, but, um,
11 that's really important to us. Aboriginal Trade
12 Centers are what we used to be in establishing North
13 Dakota long before United States or European, uh,
14 European countries or other countries as well come --
15 came to, uh, America.

16 And so, you know, we -- we are doing our best to
17 return to that. That's one of the goals of mine
18 administratively as chairman is how do we regain the
19 economy we used to have? Oil and gas is a given we
20 know that, but we want to return to our agricultural
21 roots as well with -- with, uh, you know, with, uh,
22 domesticated cattle and growing crops. And -- and we --
23 -- we plan to do that, uh, very aggressively in the
24 future. Okay.

25 So the -- the subject matter at hand that we've

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 130

1 got now that we want to focus on in the time remaining
2 that we have is to talk about the gaming and the
3 gaming impacts. Cynthia herself had another meeting
4 herself, had to go back, jump in her car and head back
5 to Bismarck. So she wrote a number of notes. And I'm -
6 - I'm glad to share these with you because this is
7 kind of what we're faced with, as I explained earlier
8 this morning.

9 But, uh, gross proceeds per quarter of \$321 in- -
10 - indicated, uh, this is the gross proceeds, not --
11 not the net, but the gross of \$377 million. Uh, the
12 next quarter from -- at \$621, \$418 million, that's an
13 increase obviously.

14 The gross -- the gross, uh, proceeds of all
15 gaming from 2019 and 2021 estimated, although we get
16 these directly from the state AGs office in particular
17 and others, um, is a 1.880. So just under \$1.9 billion
18 in revenue.

19 Billion -- and that's from 2019 to 2021. And that
20 continued to increase. The devices in, uh, in March
21 were, uh, 3,330. The devices after your legislature
22 ended in -- in 630 has now increased to 3,684.

23 That's an increase of 354 new machines out there
24 as well and that number continues to rise. We were
25 looking and she might text me to see if we can get the

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 131

1 updates from June to August or soon to be September
2 here.

3 But I have not yet rec- -- oh, oh, I lied here.
4 You have the [inaudible], um, oh but she didn't update
5 that number on new machines. So I'm going to guess
6 that it won't be very long you'll be at 4,000 machines
7 operating, uh, you know, on our -- on the, uh, the
8 pole tabs. So electronic pole tab machines.

9 Organization wise, you have 269 as of March 1.
10 Now charitable organizations that have gaming license
11 is now up to 320, that's a gain of 51 new charities
12 coming onboard. Sites, you went from 655 to now 695 so
13 nearly 700.

14 Again, a gain of about 40 all increasing. Um,
15 some of the things that, uh, needs to be understood as
16 well is the -- there are six in here. She just sent
17 the message, six manufacturers, uh, of gaming devices,
18 primarily six of them, one of those, um, and I
19 understand it and in case, you have the question to
20 it. Um, it looks like Grover Gaming. And it's a six --
21 six right now, but a seven is very close to being
22 licensed.

23 Manufacturers are as follows [inaudible] Diamond
24 Games, Grover Charitable Gaming Technology, G2, uh,
25 Powerhouse, and a new one is called Pilot Games out of

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 132

1 Minnesota. But one of those represents 60 percent of
2 all your devices one manufacturer, 60 percent, uh,
3 that's a dominating figure in our world.

4 And we deal a lot with machines because we run
5 gaming. And to have 60 percent of, uh, of a market
6 share is -- is a huge number, huge -- huge number. The
7 charitables gross proceeds from 321 to 1221, which of
8 course we're not there yet.

9 Um, but and is soon to be six to nine months that
10 so far NDAD is the leader at about 10.7 million. Um,
11 share house I think it's called Inc 8.2. American
12 Foundation for Wildlife 8.75. So one over 10 and
13 almost 11 million of the others. 8.3 and 8.- -- 8.8.
14 And uh, those are just three examples of three
15 charities, uh, from three 1221, uh, to present. Um,
16 those are really staggering numbers and -- and you
17 heard me earlier say there's an impact.

18 And as I was explaining to one of our guests this
19 morning, I wish we lived in a major area in which
20 there was darn near an unlimited, um, population that
21 had disposable income for gaming, but we don't. There
22 are limited people in this radius or in the state
23 area. We do have some visitors, you know, some
24 tourism, but it's limited.

25 So you take that times the average income of each

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 133

1 person that lives in the state, you multiply that out
2 and you get a gross figure.

3 And of that gross figure what percentage of that
4 economically is what we call income disposed to
5 gambling, income disposed to playing games and that's
6 limited. And that's -- that's a number that I know
7 you're studying. I know you need to study just like we
8 are studying heavily.

9 But that's -- that's not, uh, an unlimited
10 number. That's a limited number. And so the point in
11 raising this is that because that number, once it's
12 reached the total available dollars that can be spent
13 on gaming logistically, economically, uh, once that is
14 peaked, if one goes up, then somebody's got to go down
15 and that's what's happened to us.

16 Uh, we, you know, unless you got an influx of a
17 new million people into the state and we're not going
18 to get that, um, there's no way for us to continue to
19 slice up the pie and all grow.

20 More one grows the less the others. And today the
21 less the others is our tribes. Our incomes are
22 beginning to go down. Our -- our revenues are going
23 down. None of our tribes are positioned like, uh,
24 like, uh, Shakopee is down at Mystic where you got a
25 million people, 20, 30 minutes away. I wish we were --

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 we're not. They do very well.

2 They only have less than a thousand adult
3 members. We have 17,000 by ourselves and -- and our
4 revenue is nowhere close to that.

5 All four tribes put together now, based upon
6 what's happened both with the pandemic and with ETAB,
7 you know, we're -- we're talking less than \$100
8 million in -- in gaming revenue between all five
9 tribes.

10 Now with \$1.8 billion being a gross revenue and
11 then even the net revenue as being \$300 to \$400
12 million --

13 CHAIRMAN FOX: Is that an annual number that?

14 CHAIRMAN WARDNER: Yes.

15 CHAIRMAN FOX: Okay.

16 CHAIRMAN WARDNER: That would be an annual
17 number. And -- and so a- -- any increments are going
18 up on the billions of dollars being gamed over here,
19 gross revenue has got to come from somewhere and --
20 and unfortunately it's coming from us.

21 CHAIRMAN FOX: So a person who says, you know
22 what? I like to go down to Four Bears and I live in
23 Minot, North Dakota. They're more apt now to say well,
24 I can go right down here to this local bar.

25 And I, you know, I don't remember the local bar's

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 135

1 name used to be Blind Duck, but I don't think that's
2 that anymore. And but the names up there, but they now
3 can -- if they just want to play slot machines a- --
4 and not worried about any of the other things we have
5 to offer, they can go there.

6 And a lot of people are doing that. And -- and --
7 and -- and -- and this is never -- the -- the concerns
8 we raise have nothing to do with being in opposition
9 to the charities and nothing at all. You know, we've
10 been doing -- that's why under IGRA, we do charitable
11 -- charitable and -- and -- and government related
12 things --- programs for our people to help change our
13 [inaudible] that's why IGRA was established in -- in
14 1988, Indian Gaming Regulatory Act.

15 And it allowed for casinos to begin because there
16 was no other economic engine to give jobs and revenue
17 to start doing other things for tribes. Some tribes
18 very well, some tribes not. There are still hundreds
19 of tribes that don't have any gaming at all and -- and
20 haven't had gaming for 25 years. Um, that- -- that's
21 kind of the plight where we're at right now.

22 So I'm explaining the overall picture that, uh, I
23 understand fully in our discussions and committee and
24 sidebars and everything else. This is the state's
25 right to game. State has a right to expand or limit

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 136

1 its gaming at any given time.

2 A lot of states are expanding that seems to be
3 the trend in America today. Online gaming is taking
4 off, but what behooves you today might severely
5 undermine you in the future. And you got to remember
6 that.

7 I truly believe that of everything and I'm going
8 to bring up this point in raising this is, um, I
9 believe there's going to be a saturation with or
10 without the tribes being in -- considered here on
11 what's going on with ETAB machines in the state.

12 There's limited income out there. And if you get
13 a saturation point and only five or six charities
14 control 80 percent to 90 percent of that, that's a lot
15 of other charities organizations, 320 of them as of
16 621, that will be wondering how we got to this point
17 where they're not making any more money than what they
18 started with.

19 And the majority of that revenue, 80 percent of
20 it it's only going to six of those 320. They're going
21 to want answers from you. They're going to want
22 conditions from you. They're going to want to figure
23 out ways to -- to push that and make it more equitable
24 to them or to limit what the others do. And we're --
25 we -- we raise these issues during the session and we

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 137

1 -- we saw them as coming. Yes.

2 It would behoove us if you did limit the number
3 of licenses a charity can have, you limit the number
4 of devices at those sites you could have. We've asked
5 for those things to be in place. Um, we've also asked
6 and we want you to strongly consider the definition of
7 bar. Um, that's really a key issue as well.

8 Here's why, uh, and we all know all about
9 definitions and Indian Gaming Regulatory Act. Our
10 tribal state compact, everything that we got to do is
11 regulation. We got -- we're eight -- eight entities
12 regulating our Indian gaming here.

13 Right, if anybody's overregulated in America,
14 it's Indian gaming. And -- and so, but definitions is
15 what rules the day in -- in your establishment and
16 your core documents and -- and that's what we're
17 talking about in your century code and what's
18 applicable. The definition of bar is pretty broad.

19 And what we're seeing here more and more so where
20 you're tempted to limit it to an audience of 21 and
21 over in the beginning with bars being their primary
22 business today simply because they sell a six pack of
23 -- of twisted tea over here, now you've got convenient
24 stores who are now bars, they're selling alcohol.

25 You've got restaurants and -- and maybe that's only 10

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 138

1 percent or 5 percent of their income selling that as
2 well.

3 Um, that expansion is -- is created these sites
4 seven near -- 700 sites today. That also has an
5 incentive, uh, of -- of charities that are now hogging
6 the market so to speak, to go out and start acquiring
7 properties, uh, commercially. And you know, that's
8 going on, that's not fictitious and we're not making
9 that up.

10 You have certain charities buying properties so
11 the very fact that they could put machines in there
12 because of the dollars that they make more than the
13 business itself. So these are some of the things that
14 we're -- we're beginning to contend with and have --
15 have contended with as well. Uh, we -- we wanted to
16 see maybe some limitation.

17 I'm all about trying to limit -- limit the
18 numbers per charity. And -- and even if we can't do it
19 for the tribe's purposes of trying to salvage their
20 jobs that remain for the next decade, um, I know that
21 your other 314, 15, or soon to be 350, by that time,
22 other charities are going to say we got a problem with
23 us not being able to make money on our charity and
24 what we're trying to do because the Mandan market is
25 saturated.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 139

1 So these are some of the things I wanted to
2 raise. Um, I think maybe, you know, I can go on and on
3 and I won't, because maybe I'm better positioned to
4 answer questions that you might have chairman or
5 others might have about operating and what it means
6 for gaming and things of that nature and I'll be glad
7 to do that.

8 CHAIRMAN WARDNER: Okay. Does anyone on the
9 committee have any questions or probably, uh, some of
10 you have some comments or statements you want to make
11 about the -- the gaming in, uh, North Dakota? Hey, I
12 think it kind of got away from us. I don't think
13 that's what we intended in the beginning.

14 But so, uh, there are some of us that would like
15 to cut it back, but it's -- the horse is kind of out
16 of the barn so we got a -- we have a real, uh, issue
17 on our hands, on how to deal with it. Uh,
18 Representative Boschee.

19 MR. BOSCHEE: Thank you, Mr. Chairman. Chairman
20 Fox, um, I appreciate everything you shared about, um,
21 the impacts of the Indian gaming as we've -- and the
22 charitable gaming. I think the tough part, especially
23 with this last session in the previous two sessions as
24 we've talked about gaming there's a number of us
25 legislators that I think support all forms of gaming.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 140

1 You know, we see it as a personal choice. People
2 can spend their money, how they want. Hopefully, it
3 benefits different communities or -- or services
4 provided by different groups. The exhaustion we feel
5 and I can only imagine the exhaustion you and your,
6 um, gaming staff feel is we feel like we're always
7 refereeing them. The legislature ends up being a
8 referee around this.

9 But, you know, basically Indian gaming and
10 charitable gaming on the two sides. Have there been
11 any conversations with charitable gaming or is there
12 an opportunity that you see that in this interim,
13 there could be some sort of real good conversation
14 with charitable gaming from Indian gaming to find
15 progress that we can have a --

16 CHAIRMAN FOX: We've had some outreach --

17 MR. BOSCHEE: yeah.

18 CHAIRMAN FOX: -- and some -- some minor
19 conversations with them. And we are willing through
20 the United Tribes Gaming Association to sit down and
21 see if some of these charities would be, you know,
22 could look down the road a little bit further, like
23 I'm trying to do. And if they're willing to make some
24 concessions or some compromises towards that expansion
25 to take all things into -- into effect, I mean, we're

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 141

1 -- we're open to that discussion we really are.

2 We're not trying to hurt charitable purposes, y
3 gosh, you know. We -- we do a -- we do a ice warrior
4 plunge. Now we didn't do it last year because of the
5 pandemic this past year in 2021. But we did it for,
6 you know, five years previous. And -- and uh, I --
7 that's not the first time I jumped in water. The first
8 time I jumped in water I mean, other than being a
9 crazy kid, uh, first time I jumped in ice water to
10 raise money for a purpose was down in Jamestown.

11 I did -- I did a polar plunge in -- down in
12 Jamestown and I remember the AG was there, uh, and
13 [inaudible] and others were there and -- jumping as
14 well. But, uh, I raised more individually than any
15 person at all for special Olympics. And I went down
16 and I -- I jumped in into the -- the cold water for my
17 first formal polar plunge, you know. And uh, so from
18 my -- my own perspective, I support charities, I
19 support what they can do.

20 But that's -- in my opinion, this is just my
21 opinion. You have something that has grown beyond I
22 believe control that is no longer primarily charitable
23 gaming. You now have commercial gaming. And I say that
24 because the majority of revenue does not stay with the
25 charity. The majority of revenue leaves. You now have

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 142

1 commercial gaming.

2 We asked during the session to put conditions on,
3 if we do class 2 gaming under IGRA, which we can do
4 and have ETAB machines, similar machines and we ran
5 those here. One of the federal provisions we have to
6 adhere to under the National Indian Gaming Commission
7 in IGRA is that 60 percent of the net revenue base has
8 to be revenue. If you operate class 2 gaming, same
9 ETAB machines has to be revenue to the tribe. Has to
10 be.

11 Anything less it's unlawful they won't allow you
12 to conduct it. So that says that the majority of the
13 revenue must be revenue -- gaming revenue to the
14 tribe. You guys don't have that. We beg for bases,
15 meaning get as many machines as you're going to do
16 what you're doing now anyway. Sites are unlimited.

17 The -- the licenses are unlimited, uh, le- --
18 least demand that when these -- these organizations --
19 these manufacturers and people come in -- come in to
20 run those for charities, that the charities are the
21 ones that are winning at the end of the day. The
22 charities are making 60 percent, 70 percent of that
23 revenue. And they're using it for purposes out to the
24 people, out to the kids, out to whatever they're
25 trying to do.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 143

1 But when, uh, and you'll learn this lesson too,
2 leasing machines is bad business we know that here at
3 Four Bears. You're smarter to buy your machines, it
4 costs less over time. Yeah. You got maintenance and
5 you got things of that issue but when you lease
6 machines that cap is way up here.

7 The cost and the -- and the -- and the net
8 revenue on a purchase machine is far greater than the
9 least one, nearly almost all your machines and E- --
10 and ETAB out there under charities are lease machines.

11 That's why your revenue's leaving it's going
12 away. And -- and -- and if you said to the state said,
13 charities must be in receipt of 60 or 70, whatever
14 number you choose 60, two thirds of the revenue must
15 be revenue to the charities to use for their purposes
16 that causes that manufacturer to reconsider how they
17 come in and conduct business and not let -- their less
18 apt to just throw machines around and get that revenue
19 just rolling on a higher level.

20 They're more apt to sit down and strategize with
21 the owners with the -- with the charities and say,
22 okay, you know, we don't have a free open opportunity
23 we -- we have to learn to limit that in how we charge
24 and what we do. I'm not saying that's going to save
25 Indian gaming. It came to a point that a legislature,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 144

1 I'll be honest with you and yourselves I said it,
2 executive branch I said it, if you guys are going to
3 do anything with gaming, limiting charities, just
4 leave the tribes out of it.

5 Because the moment you put tribes in there as
6 being opposed to it or wanting this or that, it seems
7 like everything went back against us. And so I was
8 saying, if you're going to do something to limit the
9 charities, limit charitable gaming under ETAB
10 machines, do it for your reasons, not the tribes.
11 Because that's how I felt by the end by -- by -- by
12 the time April rolled around and -- and -- and we were
13 -- we were suffering the consequences.

14 Like when we advocated something, it's like,
15 there'd be that many more people pushing back against
16 us because it's the tribes asking for it. It's like
17 we're being penalized. And so I began to say, just do
18 this on your own, [inaudible] that.

19 Know where you're heading yourselves and if you
20 make these changes and limitations and we happen to
21 benefit down the long -- long -- long line and down
22 the road and -- and -- and save some jobs for our
23 people then great.

24 I already told you, we went from 450 jobs down
25 to, during the pandemic we went down to 160 when we

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 145

1 reopened, after being shut down for nearly two months,
2 we went back up to 169 I believe it was.

3 And we have never gone anymore for the summer
4 because we have a waterpark and a few other things, we
5 just barely went over 200. So you take that and now
6 we're going back collapsing those jobs, waterparks
7 shut down -- going to be shut down, everything else.

8 We're going to go into fall season. We just took
9 two losses in three months. Summertime is when we make
10 money at our casino and two out of our three summer
11 months, we took -- we're in a rut, we lost money.

12 This MHA Nation has the ability to take other
13 energy resources and throw it out that to try to
14 enhance it and we lost twice. This is the trend that
15 we're heading towards. And -- and so we're trying to
16 hang on to those jobs. What does that mean for the
17 state? If we hang on to 450 jobs at that casino, guess
18 where they shop, like I said this morning, every
19 casino worker on average spends more money in Minot,
20 Bismarck, Watford City, Williston, everywhere.

21 State benefits [inaudible] those jobs mean. So
22 gain over here and charitables means a loss to the
23 tribes, but also means a loss to you that has to be
24 equated and studied as well. You've got vendors who
25 pay taxes to the state that -- that are vendors for

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 146

1 the tribes that as the business drops, they lose
2 business and they were paying you taxes. They- --
3 they're not the vendors who were picked up under ETAB.

4 They're now out of business, they're non-tribal,
5 we have non-tribal employees. Some of the casinos like
6 -- like, uh, Dakota Magic and others, theirs is way
7 higher non-tribal. Um, ours, I think we're right
8 around 30 percent of our workers are non-tribal. This
9 closes down we lose those jobs and we lost 200 and
10 some of them already, they -- they were laid off and
11 hopefully they get another job, but they're not paying
12 you state income taxes either or any other taxes for
13 that matter.

14 So what I'm getting at people made it almost like
15 an Indian and a non-Indian issue it's an economic
16 issue. And a gain over here, meant a loss for tribes
17 over here, but it means also a loss for the state over
18 on this side in that equation as well.

19 And I don't know if you've made up with that with
20 new regulatory charges or not -- fees, but you've lost
21 over here with us as well. And that's kind of what I'm
22 trying to share with everybody.

23 CHAIRMAN WARDNER: Okay.

24 CHAIRMAN FOX: Senator Oehlke.

25 MR. OEHLKE: Uh, Mr. Chairman. I -- I, you know,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 147

1 a statement was made earlier that, uh, that there was
2 a will out there for, you know, if people want to
3 gamble, they can gamble. Um, and I- -- I'm in the
4 insurance business.

5 And I -- so when I sell a business, an insurance
6 policy, I always include fidelity coverage in case a
7 buddy absconds with their money. And here's what's --
8 what's happened and I've handled three similar claims
9 in the last year and a half.

10 Somebody in the family gets the habit, could be
11 on a pull tab machine, it could be at a -- at a local
12 casino in the -- at Spirit Lake it's not very far
13 away. And -- and they start losing, but they're so
14 afraid to ask for help from anyone, whether it's a
15 family member or -- or a counselor, or, you know, a
16 friend that they start stealing from their employer.

17 And it doesn't get caught because typically this
18 person that's doing this is in a very responsible
19 position handling money in the business. And before
20 the loss is finally discovered, it's well over
21 \$100,000, in some case is \$200,000.

22 And it doesn't get noticed till there's, you
23 know, something weird happens a bank in one case, uh,
24 the local bank called and said, you know, there's
25 something kind of weird about your last deposit that

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 148

1 came in and we just think it's funny.

2 You'll want to check on it. Then they did an
3 audit. This was a trusted employee that had worked for
4 them for over 20 years. She probably in this case, it
5 happened to be a lady it's not always a lady. But her
6 spouse had died about five years before, she started
7 gambling a little bit, probably just the social thing.
8 And one thing led to another and it was way over
9 \$100,000. And how much insurance coverage does the
10 business have? Not that much.

11 You want to know why? Well, no, we're --
12 everybody here we love everybody though \$25,000 as
13 coverage is enough. Well, it's not. And when it's
14 pointed out to even a client that, you know, maybe you
15 should get more coverage than this. No. In one case,
16 the person that was stealing was also the person in
17 charge of renewing the insurance every year.

18 So when you renew the policy with them and you
19 say, okay, well, here's the fidelity coverage in case
20 you have employee theft, you know, how -- is this
21 adequate coverage? Oh yeah. That's enough.

22 Well, they were the one that was dipping into it
23 with the idea they would never get caught. And it
24 doesn't start out that way they get in trouble
25 gambling and then they think, well, I'll just take 50

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 149

1 bucks and I'll win it back and I'll pay the boss back.

2 And then that 50 is gone and now they got to buy
3 groceries. And one thing leads to another and it just
4 \$50, \$100, \$150 at a time. And after a period of X
5 number of months, or sometimes years, it adds up to
6 lots of money. So to say that you're only hurting that
7 person, that's not true.

8 You're hurting many people, not just and think
9 about the family when it finally -- when the law
10 finally knocks at the door and puts the cuffs on a
11 person and takes them to jail how does that affect
12 that family? And how does that affect the community
13 and all the friends that they have? We were -- we were
14 advised not, you know, not just by people from Indian
15 Gaming.

16 We were advised by people that sell these pull
17 tab machines and there was a -- there was a lobby out
18 there that's said this type of machine and this
19 electronic horse racing crap is a joke. It is going to
20 hurt people.

21 But for some reason, a majority of us did not
22 have the will to stand up. And when you know what's
23 wrong -- and I'll bet as I'm talking right now, 90
24 percent of us in this room know somebody that got into
25 trouble this way.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 150

1 And they weren't kids, probably they were adults
2 that should know better. And I could tell some stories
3 about kids getting loose and wild with a credit card
4 and gambling too, but I don't need to do that. Mr.
5 Chairman, we -- we have a real problem here. We have a
6 real problem. We need to do some backtracking; we need
7 to limit these crazy pull tab machines.

8 One of the people in my office this last weekend
9 getting together with a group and they, you know,
10 pooled their money and were playing pull tabs. And --
11 and when they wanted to get out, the others are like,
12 oh no, come on you can't do that. We got to keep it
13 rolling, we're winning. Well, not me I'm not putting
14 any more money in and I want out.

15 And the next time it rolled was gone. That's what
16 happens people they can't stop. Addiction. Addiction.
17 So you will never catch me voting in favor of
18 gambling. My son is opening a craft brewery in Devils
19 Lake. He's not going to have pull tab machines in
20 there. He's not going to have any kind of machine in
21 there that -- that people can lose money on.

22 If they want to put quarters in a shuffle board
23 or a -- or a pool table, I'm all for that and so is
24 he. If they want to pay mon- -- a little bit of money
25 to throw an axe, knock yourself out, but he's not fans

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 of gambling. And there's a damn good reason why we see
2 it happening too often. I'm all done now.

3 CHAIRMAN WARDNER: Thank you.

4 CHAIRMAN FOX: M- -- Mr. Chairman, can I, uh --

5 CHAIRMAN WARDNER: Yes.

6 CHAIRMAN FOX: Really great points that were
7 raised. And if I could add in a little bit what the
8 Senator Oehlke has -- has talked about.

9 Um, especially the history, what he just talked
10 about in North Dakota and I had the privilege of being
11 involved with Indian Gaming since the beginning of the
12 compacts and the North Dakota in the Game Association
13 and the first chairman, the Great Plains in the Game
14 Association and the first chairman.

15 Kurt Luger, a director, etc. We worked on a
16 number of initiatives at that time, uh, measure two,
17 measure five, statewide measures that went out, that
18 the people voted and said, we're going to limit get
19 aiming, we're going to turn down expansion. And you
20 remember these things and as do many of you around the
21 table.

22 In those days, uh, gaming, even for tribes, like
23 I said earlier, the United States government was never
24 willing to put the capital and the dollars behind true
25 economic development.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

1 All the United States in their infinite wisdom
2 decided to do was to say we'll open up gaming then to
3 tribes in 1988, knowing that we had some sovereign
4 authority to conduct them anyway. They brought the
5 state in, say get a compact. Let -- let the -- let the
6 gamblers -- let the gaming people help fund the
7 tribes.

8 And now they won't be coming to the federal
9 government to try to get economic development. And
10 that was the whole reason of doing that. And they --
11 they allowed the state to come in on that. So what I'm
12 talking to right now is that North Dakota has changed
13 a lot of the mentality.

14 This is one of the times that I feared the most
15 going back to the 90s, because those votes were taken
16 and the people and -- that used to be [inaudible] was
17 a -- a strong factor behind that the non-expansionist
18 of gaming was very strong.

19 And there was a good following into that. And
20 then you had, believe it or not, and some of you who
21 are younger may not believe this, the charities who
22 said, don't expand gaming. Because if you expand state
23 sponsored gaming and open up commercial gaming in the
24 state, we won't make any money at the charities and
25 they were content with where they're at. You had an

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 153

1 alliance of three entities coming together.

2 You had the charities, you had tribes and you had
3 the non-expansionist in the state who said, we don't
4 want gaming to explode. We don't want to become
5 Nevada. We want to be -- North Dakota to remain North
6 Dakota. And if there's going to be gaming, it'll be on
7 Indian reservations where they need the money and it's
8 not going to be out in Bismarck or anywhere else.

9 With the three entities involved twice, we
10 defeated measures and we kept it where it was. But
11 I'll tell you what, my biggest fear I had all that
12 time, even during that time is what if North Dakota
13 ever changes?

14 What if their attitude towards gaming changes?
15 And with the advent of internet, I believe that's what
16 really has opened the door, exposure to gaming on many
17 different levels the ability to get on a [inaudible]
18 flight for less than \$100 and fly to Vegas and turn
19 around for less than \$100 back.

20 All these things have combined for the perfect
21 storm for more acceptability of gaming explosion. So
22 that day has arrived and -- and there is more
23 expansion of gaming. The only really thing is how can
24 we control the flood? How can -- how can we minimize
25 that for a number of purposes? And we're hoping that

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 154

1 the tribes will be one of those.

2 Now there's two other really important points he
3 -- that Senator, okay, uh, touched on addiction and
4 theft. Addiction and we -- we see it and we recognize
5 that problem, we funded programs in the past.

6 You know, Luther and social services beginning
7 others we would give revenue [ph]. We didn't put as
8 much of the other tribes because they were stationed
9 in Bismarck and 80 percent of what they did for other
10 -- for the tribes were at Standing Rock.

11 So the other tribes kind of said, well, we're
12 helping to fund this equally, but all their services
13 are going towards just an addiction in just one
14 locale. So we kind of backed off a little bit of that,
15 but we've always been willing to address that problem
16 we do it on our own level. Theft. You mentioned about
17 theft. You know, it isn't just gaming.

18 It can be anything in which a large is
19 circulating around and there's a lot of temptation.
20 Theft can occur. But I'll tell you where your thefts
21 going to occur more often than not. Under Indian
22 gaming, we have what's called a federal mix, minimum
23 internal control standards. You have to have these in
24 place.

25 And you -- if you do not, you do not operate.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 155

1 There's a national Indian gaming commission that
2 requires this amongst all other things that they have
3 to do as well. And it- -- it's called regulatory
4 control. I mentioned earlier, we are the most
5 regulated entity in a United States, six, seven
6 entities, regulators. We've got the state. We've got
7 BIA. We've got MIGC. We've got IRS. We got -- I can go
8 all down the line.

9 Uh, all these entities that have their hands over
10 Indian gaming say, show us your data, show us your
11 testing, show us the results, show us the reports, all
12 these things all the time. I'm not saying theft
13 doesn't occur, it does.

14 No matter how much mix you put into place, you're
15 going to get some degree of that when that much
16 money's circulating and -- and it happens.

17 And -- and -- and to the senator's point as well,
18 you know, when we catch them the most, and we do catch
19 them? It's collusion. And an individual gets access,
20 and you're trying to -- to design your mix so that
21 individuals don't have sole access, but when they do,
22 that's how they get away the money. So you design your
23 mix and your controls so that there -- it would take
24 collusion.

25 You have oversight, one watching this one, this

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 156

1 guy's watching this one, this one signs off on all
2 three of them. And somebody signs off on his. These
3 are minimum turns to control status. You don't have
4 those that -- like we have them at the tribal level.
5 When we catch somebody and they're stealing over here,
6 it's usually because there's two or three of them
7 together in collusion and somebody eventually gets mad
8 and says, I'm turning you in and h- -- here's what
9 they've been doing.

10 That's usually when we catch them and that
11 requires collusion. Otherwise they keep it secret.
12 It's hard to catch. And you've got the same problem
13 times 10. Because your minimum internal control
14 standards are not the same as ours.

15 There's another area in which you have, uh, a
16 really difficult time and that's federal compliance,
17 Title 31. Title 31 requires certain requirements it's
18 under what we call the Bank Secrecy Act, BCA -- BSA.

19 The Bank Secrecy Act requires certain things.
20 Bank Secrecy Act was created for two main reasons to
21 stop tax evasion and -- and laundering of money. We're
22 trying to stop and I know all these things I used to
23 be the gaming director for the tribe here. All right?

24 So you're trying to keep people from -- drug
25 people from coming in with \$50,000, they just sold in

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 157

1 drugs locally to come in and wash their money by
2 playing a game, printed out a -- a receipt now of a
3 sudden when they say -- and -- and if FBI investigates
4 them.

5 Where did you get all that money? Oh, I went to
6 the casino, I won it. I won on a table. I won on the
7 machine. That's how you wash your money. It's not
8 legitimized. They may have to pay taxes on that
9 eventually, but it's not coming from an illegal source
10 because they laundered it. They washed it. That goes
11 on all across the United States, in Las Vegas, in Four
12 Bears and, and Bismarck, North Dakota.

13 The problem you got is your controls can't catch
14 it as readily as we can. Your controls are not
15 required because why? IRS breathe down our back every
16 month and ask us for all these reports. All these
17 suspicious activity reports, they're called SARs. We
18 have to report those things every month. We don't
19 report them they come in and audit us. Why aren't you
20 reporting them?

21 You had to have somebody come in and cash more
22 than \$10,000 worth of -- of -- of -- of chips or
23 anything else you had to have. And then they start
24 breathing down our back.

25 The same thing in Las Vegas they got to answer

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 158

1 to them as well. So you'll see the Las Vegas
2 regulations and the Nevada regulations set up for that
3 as well.

4 Uh, that's what we noticed in the comparison
5 between Indian gaming and -- and -- and charitable
6 gaming under the ETAB explosion you don't have the
7 regulatory structure. Now I know you passed more
8 money. I know you're beefing up the gaming division of
9 the AGS office, can they get to that level and be
10 federally compliant?

11 I don't know, but in the meantime, while they're
12 trying to work towards that, that's why you're going
13 to have this things going on as laundering of money,
14 theft going on, etc. And -- and -- and I had to share
15 that with you as well. [Inaudible].

16 CHAIRMAN WARDNER: So, uh, Representative
17 Pollert.

18 MR. POLLERT: Thank you, Ms. Chairman and I'm
19 sure I'll get phone calls after I say some of this
20 stuff, so be it. The cat's out of the bag with the
21 bars. I mean, we've got tab machines, I think what is
22 a limit 10, I think for this facility, something like
23 that. My concern is -- and I had a -- a great
24 opportunity this summer to take a bucket list ride
25 with my brother over 5,000 miles on the motorcycle.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 159

1 And there's some states where gas stations,
2 restaurants -- and I don't want to see North Dakota
3 that way. Now I'm not as far as Senator Oehlke is, but
4 I think we've got to stop somewhere here. And, um,
5 like I said, the cat's out of the bag. I just don't
6 want to see gas stations, restaurants having it.

7 And then we probably got a look at a different at
8 -- at a definition of what's considered a gas station,
9 because now if you go to other states they're selling
10 off -- well, we're -- they're selling off sale in
11 North Dakota as well so does that allow that too.

12 Um, there's got to be a point where we got to
13 slow this thing down a little bit. Now my phone will
14 start ringing, but that's the way I look at it. Um,
15 because I haven't -- I'm not a big [inaudible] and,
16 uh, but I do visit a casino every now and then, but I
17 enjoy that. But at the same time, we've got to have
18 some controls, if we're going to be in this game, then
19 w

20 e better be in the game and we better regulate.
21 If we're going to regulate, we better regulate because
22 right now we're not.

23 CHAIRMAN WARDNER: Right. The -- the one thing
24 I've heard today and is that we need to take a look at
25 some definitions and, uh, Representative Pollert and

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 160

1 Chairman Fox have both brought that out.

2 And so, uh, we need to dig into this thing,
3 because what's happening I think is the tail is
4 wagging the dog in this particular situation. And, uh,
5 we got to, we got to charge. Representative Jones.

6 MR. JONES: Thank you Mr. Chairman. And thank you
7 Mr. Chairman. Um, the cat is out of the bag, but I
8 resent the fact that it was led out of the bag with a
9 bunch of misinformation and lies. I was on the
10 judiciary committee and they promised us that they
11 were not the same as a slot machine. They said that --
12 that it doesn't give you the adrenal rush because it's
13 not the same. It's just not an instant win.

14 You know, you have to -- anyway they lied to us.
15 Yes. Because in the testimony we had, uh, recently in
16 judiciary committee and then again, over at Turtle
17 Mountain, uh, the people are telling us they are slot
18 machines, period. The people that are addicted to
19 them, the people that are -- are most familiar with
20 them are saying it's a slot machine.

21 So I think the cat is out the bag, but as a
22 legislator, I want to go back and I want to address
23 this and put those sideboards on, make it so there's
24 only -- you know, when they -- when they sold them to
25 us, they were going to be a little laptop type thing

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 161

1 that was going to be kept on to the counter. And they
2 would let people check them out from the counter, use
3 them.

4 Uh, we -- I didn't understand we were going to
5 have machines that looked ju- -- just like slot
6 machines coming into our state and the -- and the
7 Attorney General's office said, we've got thousands of
8 them right now they're waiting to be approved and
9 they're planning on bringing -- bringing them in and
10 doing exactly what you're talking about, putting them
11 all across North Dakota. And I -- I don't want to see
12 that.

13 And I was one of them that supported the idea and
14 I'm rethinking my position and saying, we need to go
15 in and say, okay, we're going to only allow five or
16 three machines in a legitimate bar. We're going to
17 have to get the definition.

18 We're going to have to work together because, uh,
19 these numbers are shocking when you're looking at
20 billions of dollars and the negative impact it's
21 having on the -- on the, uh, tribes and on the
22 citizens in North Dakota.

23 I think it's time that we go back in and I think
24 we absolutely were justified to do it. Because we have
25 the record in the judiciary committee the things that

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 162

1 were said, and we can go back and say, this was a
2 false statement that we based our information on and
3 our decision to vote on this. And we're going to go
4 back and -- and trim the -- the thing back where it
5 should be.

6 CHAIRMAN WARDNER: Thank you. Anyone else have
7 any questions, comments on this issue? Okay. Thank
8 you. Uh, any, uh, any other issues?

9 I know that, uh, Representative Buffalo has some
10 individuals that would like to make comment, public
11 comment, and we welcome that. Um, if that's what would
12 be at this time, go ahead, Representative Buffalo.

13 MS. BUFFALO: Chair, um, chairman Wardner, I just
14 wanted to clarify there were individuals that, um,
15 were concerned with the new variant and live in Twin
16 Buttes and now in the country and Mandari, so those
17 are the individuals I believe that have called in and
18 primarily to discuss redistricting.

19 CHAIRMAN WARDNER: That's fine, uh, we understand
20 that and that's one of the things about technology.
21 People can participate, they don't have to be here
22 physically. So if -- if those individuals are, um,
23 available and I'm getting the thumbs up, um, I don't
24 know would you like to introduce the individual or,
25 uh, or -- or you- -- you're ready to go?

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 Okay. I remember. Okay. Tell the individual and -
2 - and who's ever on, uh, would you state your name so
3 that we have it for the record?

4 MS. MONIZ: Can you hear me?

5 CHAIRMAN WARDNER: Uh, we can hear you loud and
6 clear.

7 MS. MONIZ: Okay. I just wanted to, um,
8 greetings, um, committee members. My name is Melanie
9 Moniz, um, I am currently with my mother Cheryl
10 Benson. Uh, we reside in Twin Buttes, which is
11 district four right here in the Fort Berthold
12 reservation.

13 Um, I did want to open the floor and, um, as --
14 as you know, I'm calling in so I cannot see if there's
15 other, uh, community members on the call and if
16 there's any, uh, elders, um, I would gladly await, um,
17 for them to have the opportunity to speak before I.

18 CHAIRMAN WARDNER: No. I think you, uh, the floor
19 is yours, go ahead.

20 MS. MONIZ: Okay. Well, first of all, thank you
21 very much for giving us the opportunity to call in
22 today. Um, as I stated, my mother is an elder and, uh,
23 you know, we have, um, some family that, um, does have
24 some immune- -- uh, is immunocompromised. So we were a
25 little, um, apprehensive about coming in today.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 164

1 Um, but did want to share some of our concerns
2 and just, you know, be heard and -- and maybe -- maybe
3 hear back from you all on what you are working on. Um,
4 before we kind of get in, I would like to, um, let you
5 all know that we are in support of the sub-districts
6 when it comes to redistricting.

7 Um, as an individual who has worked on many
8 efforts with -- in political organizing and community
9 organizing, um, it's often a barrier to come to the
10 table with indigenous issues, um, and -- and get to
11 the work.

12 Because so many times we are stuck educating on
13 the issue, um, you know, creating space for important
14 conversations, meaningful, um, discourse, you know,
15 and I've worked on many efforts on both sides of the
16 table with various leaders, um, elected officials on
17 local and state, state, um, levels.

18 And so I'd just like to communicate to you all as
19 an individual who does work within the realm, it is --
20 representation is so important.

21 Um, and so that being said, I would like to just
22 state my support for sub-districts, um, and just
23 encourage you all to please, um, make sure indigenous
24 choices are at the table and that we are all equally
25 represented.

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 It will help so much to build a stronger North
2 Dakota for all of us.

3 CHAIRMAN WARDNER: Okay. Thank you.

4 MS. MONIZ: Um, another --

5 CHAIRMAN WARDNER: Oh, I'm sorry.

6 MS. MONIZ: Yes. Absolutely.

7 CHAIRMAN WARDNER: Go ahead. Go ahead.

8 MS. MONIZ: No. I have -- I did have another, uh,
9 question more so, um, is -- I would like to discuss
10 today, um, since -- since, um, since May of 2021, uh,
11 in the discovery of the 215, um, children found in
12 unmarked graves in Canada, there has been the
13 discovery, um, and this is something -- let me just
14 first state that this is something we've always known
15 about as indigenous people.

16 Um, this is not new to us, but with this
17 discovery came, you know, a lot of -- a lot of, um,
18 reopening of the wounds. And so since then, you know,
19 so many more have been discovered, so many more
20 unmarked graves have been discovered both, uh, in,
21 across the border in Canada, but also here in the
22 United States.

23 And I just wanted to bring this to the table, you
24 know, and I just share with you all a few of the
25 numbers.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 166

1 As of right now, since, um, as of August 24th,
2 there's currently been a discovery of 1,172, uh,
3 graves of -- of children in the United States. That's
4 189 in Carlisle, 50 in Rapid City, South Dakota, 103
5 in Pasco, Kansas, 227 in Mount Pleasant, Michigan, 21
6 grand junction, Colorado 200 Carson City, Nevada, 222
7 Chemawa, Oregon, 12 in Bernalillo County, New Mexico,
8 69 Kay County, Oklahoma, 1 Nez Perce County, Idaho, 66
9 in Riverside County, California, 12 Panguitch, uh,
10 Utah.

11 And these are various boarding schools throughout
12 -- throughout the United States. And the searching is
13 -- is continuing. Um, and I'm just really, you know,
14 want to share with you all the need, um, and hope that
15 this is already a discussion that you're already
16 having. As I'm aware, um, the board of United Tribes
17 as is discussing this and working on this issue as
18 well.

19 Um, and so I did want to bring this to the table
20 and ask what are -- what is North Dakota doing to
21 address this -- this need to -- to search and -- and -
22 - and locate if there's children in unmarked graves in
23 our state?

24 Uh, what's being done to ensure that at the
25 remains of our -- our ancestors are being brought back

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 167

1 to their -- to their tribal nations, to their people?

2 And what are -- what's North Dakota doing to
3 address the trauma, the intergenerational trauma that
4 is prevalent in so many indigenous communities today?

5 Um, and so that, that's really my question. Again, I'd
6 just like to -- to end with saying thank you all for
7 the work that you do. Um, thank you for allowing me
8 the opportunity to share with you my concerns and my
9 support.

10 I am, again, going to state, I -- I do support
11 the, um, sub-districts and would just again, like to
12 ask what is being done on a state level to address
13 these, uh, the investigations into the schools
14 returning remains to -- to, um, to their people and
15 addressing the need for healing? That's all I have for
16 you today.

17 CHAIRMAN WARDNER: Uh, yeah. Before you leave is
18 there anyone on our committee would have a question
19 and then would you repeat your name again for the
20 record? So, uh, you said it quite quickly and I -- we
21 just need to make sure we have it.

22 MS. MONIZ: Sure. And I apologize for speaking so
23 quickly. I just don't want to take up too much of your
24 time. I know you've all been very busy today. Um, my
25 name is Melanie Moniz. That's M-e-l-a-n-i-e. My last

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 168

1 name is Moniz, M-o-n-i-z. I am a resident of district
2 four [inaudible].

3 CHAIRMAN WARDNER: Thank you. We appreciate that.
4 Uh, does anyone have any questions? Well, thank you,
5 Melanie. We, uh, we do appreciate you calling in and,
6 uh, giving testimony, that's what we're here for today
7 to listen. And we have --

8 MS. MONIZ: Wonderful.

9 CHAIRMAN WARDNER: And we have -- and I would
10 like to -- on the comment on talking about, uh,
11 children from boarding schools and stuff and -- and,
12 uh, knowing what's happened to them.

13 Uh, he's asked to speak, but I'm going to have
14 him, uh, to tell what -- what the state historical,
15 uh, has talked to, uh, Representative Boschee. And
16 this came up -- up at our meeting up at Turtle
17 Mountain.

18 And so we are, uh, looking at records -- or
19 records are open to help, uh, find solutions to these
20 individuals that have been, uh, forgotten, so to
21 speak. Representative Boschee.

22 MR. BOSCHEE: Thank you, Mr. Chairman and members
23 of the committee and Melanie. At our meeting up in
24 Turtle Mountain, uh, this issue is raised by, uh,
25 Chairman Azure, who, as I understand, I don't -- he's

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 169

1 on the board of United Tribes Technical College, but
2 also I think has an appointment in another entity
3 related boarding schools and the recovery and -- and
4 healing associated with that.

5 But he brought up this issue and, uh, the one
6 issue that was brought up by his -- the attorney for
7 the tribe was, you know, access to records to make
8 sure that there can be reconciling of when there are
9 unmarked graves, uh, and so forth. And so what was
10 shared at that meeting was that Fort Totten, which
11 this committee will be visiting that area tomorrow.

12 Um, but Fort Totten, uh, was the only -- if I
13 understand correctly, federally, um, run boarding
14 school in the state. Uh, the other boarding schools
15 were generally through the different religious
16 organizations.

17 But so we connected with the State Historical
18 Society who is, uh, offering to help in any way that
19 they can, for anyone that is looking for information.

20 The limitation they have is that they don't
21 actually have the records. They have the history of
22 the building and the facility, but they are willing to
23 help make connections. And I think it's out of
24 Oklahoma, um, there's a federal depository through the
25 national archives that they believe would have any

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 170

1 form of records of, uh, people who lived there or
2 brought there, um, whether or not they died or lived
3 or whatnot.

4 So we did introduce the conversation, the State
5 Historical Society, and the director there Bill
6 Peterson has indicated that he's willing -- him and
7 his staff are on standby to help as best they can to
8 work through this. And then they are looking to the
9 committee if there's additional requests that we have.

10 CHAIRMAN WARDNER: Uh, Representative Buffalo.

11 MR. BUFFALO: Thank you. Um, chairman Wardner and
12 members of the committee. Um, just to kind of clarify
13 things, um, I am the newly appointed president --
14 board president for the National Native-American
15 Boarding School Healing Coalition so I think there
16 might be some confusion with, um, Representative
17 Boschee's comments.

18 Also to clarify, there is, um, a repository in
19 Kansas City, um, where a lot of records from the
20 Dakotas is located. So thank you.

21 CHAIRMAN WARDNER: So those are some things that,
22 uh, we're learning as we're doing these, uh, visits to
23 the different tribal nations and, uh, talking with
24 them. Uh, it's an issue that has now been brought up
25 at, uh, two out of two meetings.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 171

1 So anybody else have any comment question? If
2 not, uh, thank you, Melanie. Uh, do we have someone
3 else that -- we have two more? All right. Our next,
4 uh, guest state your name and, uh, you may begin.

5 MS. BIRD BEAR: Hello.

6 CHAIRMAN WARDNER: We hear you?

7 MS. BIRD BEAR: Hi, good afternoon. My name is
8 Joletta Bird Bear. I live in District 4. I am a tribal
9 member, uh, Mandan and Hidatsa of the three affiliated
10 tribes. I want to thank you for this opportunity to
11 speak to the legislative committee and the state and
12 tribal relations committee. I am, uh, speaking on the
13 need, uh, for the redistricting, um, based on the
14 census.

15 And also based on the inclusion of the native
16 votes in North Dakota to, uh, have a -- have a impact
17 -- a positive act on the functioning of the state of
18 North Dakota. I live in District 4 in rural Mandari,
19 and District 4 is very large territory within North
20 Dakota and, uh, repeatedly because of the districting
21 -- current districting, our voices, uh, are lost in
22 that voting process.

23 Uh, tribal members have a strong, uh, strong, I
24 think, uh, commitment to democracy -- a democratic
25 government. In fact, uh, founders of the concept of

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 172

1 democracy started within indigenous people and were
2 adopted into the constitution of the United States. So
3 we're very aware of our place within the decision
4 making process.

5 So as a voter of, uh, who participates not only
6 in tribal elections held here on Fort Berthold, but
7 who -- who is always voting in, uh, state held
8 elections, which also are, uh, con- -- contained the
9 federal election I believe that it's important to
10 vote. You know, I believe in a participer- --
11 participatory, uh, form of government.

12 Now, redistricting is so critical for North
13 Dakota, and I'm glad that, um, you are allowing people
14 to, uh, voice their -- bring their recommendations to
15 your committee. I want our, you know, I want my vote
16 to count in North Dakota and it is being diluted just
17 based on the districting.

18 Um, the size of the district, my vote is lost. My
19 vote is just consumed in -- in that. I would rather
20 vote in a district that where I can vote for a member
21 of my tribe from my community to carry my concerns to
22 the state legislative, um, process.

23 And that would happen if we had a district, uh,
24 representation of native voters. And maybe that is
25 that sub-district concept, as long as the legislative

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 173

1 includes additional legislative, um, state senators
2 and state representatives to represent those, uh,
3 North Dakota indigenous voters from those districts or
4 those sub-districts. Um, the other -- the other matter
5 is that population is growing here on Fort Berthold.

6 And I'm aware that in North Dakota, uh, the
7 population, uh, in some areas, mostly declines, but in
8 our area, the population is growing and it will
9 continue to grow. And primarily the reason is
10 connected to the land.

11 Please understand as where you're sitting right
12 now, um, on Berthold, uh, the land is trust land and
13 originally this land was a portion of at least 3
14 million acres, when a treaty was entered into called
15 the Fort Laramie Treaty.

16 Uh, but prior even to that, I'm sure it was a
17 bigger base, but treaties, um, treaties defined. So
18 from 3 million, we are now down to 1 million acres on
19 the Fort Berthold Indian Reservation.

20 And of that 1 million more than half of it is fee
21 patent acres, which are, um, I'm not sure, but I would
22 think they would be still under the tribal
23 jurisdiction since they're within the Fort Berthold
24 Indian Reservation, but I believe they are within the
25 state jurisdiction.

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 174

1 The other 480 some acres of that, I would say
2 400,000 acres are owned by individual Mandan, Hidatsa
3 and Arikara people such as myself. So we are voters
4 and we are the majority trust land owners of Fort
5 Berthold please, understand that.

6 The tribal government, which I have a vested
7 right to -- to have my concerns addressed on land,
8 because you know that I'm a tribal member and tribal
9 land I have a vested interest in that also.

10 But the tribal government's lands are the
11 minority of all trust property here on Fort Berthold.
12 So our vote matters and -- and that's why the
13 population will always continue growing here because
14 people will come back to their lands even if they've
15 lived a lifetime away, they will come back.

16 Um, the other, uh, thing I wanted to state that
17 is in 2018, um, we here on Fort Berthold we lost --
18 the Fort Berthold voters of, uh, the Mandan Hidatsa
19 and Arikara we lost two, uh, North Dakota county
20 precincts.

21 One is -- was the Four Bears voting precinct. And
22 the other was the -- called North Fox voting precinct
23 of rural Mandari. Now, when those precincts were
24 closed, that resulted in people from the Four Bears,
25 uh, voting community, which you're sitting in, you're

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 175

1 sitting in the Four Bears community they traveled down
2 to Mandari to cast their vote.

3 They left their community to come down here. And
4 that was [inaudible], that was anywhere from could be
5 maybe 70 miles roundtrip to cast their vote. I, on the
6 other hand, I live in Mandari, rural Mandari; my
7 precinct, the North Fox precinct was closed so I
8 traveled 120 miles to Manning, North Dakota, which is
9 the county seat for Dunn County.

10 And that is where I voted. And those two
11 particular -- well, during that time tribal members
12 did that because they wanted to make sure their ballot
13 was counted. And at that time, the USPS was under this
14 policy of slow down mail ballots, or slow down the
15 mail. So people did venture at those great distances
16 to vote.

17 That is unequal treatment, it's clearly unequal
18 treatment, uh, for, um, requiring a voter to -- to do
19 that, to go outside of their community at great
20 lengths to cast their vote. So I am asking for your
21 support and your action to restore those two county
22 precincts. One is from McKenzie County and the other
23 is the Dunn County -- from Dunn County.

24 Please understand that the North Fox voting
25 precinct historically has, uh, carried huge, um, high

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 176

1 voter turnout. Higher than some other communities that
2 are still supported and still operational. So that
3 needs to be addressed, um, we want greater voter
4 turnout in elections that's what this democratic
5 government is based upon.

6 And we will have that when our precincts are
7 returned to us and we don't have to expand, uh, funds
8 to take ourselves, uh, two -- maybe two communities
9 away to vote, in my case. Um, let's see. I think that,
10 uh, I do support the -- the redistricting, if it is
11 considered sub-districting, as long as those districts
12 also have the same equal representation in a Senate
13 and a representative.

14 Um, that's what -- that's where it will matter.
15 Um, Fort Berthold Indian Reservation is divided by six
16 North Dakota counties. And so our -- all of our, uh,
17 votes are diluted within those six counties at those,
18 uh, county offices.

19 So that is something to -- to be aware of and to
20 know that that is, uh, what impacts us here as we
21 vote. And we will -- we will continue to vote.

22 CHAIRMAN WARDNER: Well, thank you. And, uh, the
23 one thing I would say when it comes to precincts and
24 places to vote, that's not just an issue that people
25 are complaining about on the reservation. It's off the

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 177

1 reservation.

2 I'm not sure in your case and Chairman Fox, I'd
3 like you to make some comments on that. Is it the
4 county that decides that? I know that, you know, Dunn
5 County has been a Mail-in county, uh, and there were
6 20 -- well, I was told there were 33 counties that
7 were Mail-in counties before the pandemic.

8 And, uh, one of the issues, uh, well, first of
9 all, I don't know if it was tribal or a county when
10 it's on the reservation. And the other thing is, I
11 talked to Terry Traynor of the Association of
12 Counties. I said, how come we don't have more?

13 He says, we're having a hard time finding poll
14 workers. And so that's one of the issues. And so we're
15 going to have to take a look at that one. And so, uh,
16 uh, Joletta, it is -- it's -- it's, uh, it's uh --

17 MS. JOLETTA: Can I -- yes. Can I say something?

18 CHAIRMAN WARDNER: Sure. Just a second of, uh, it
19 it's a statewide issue it's not just, uh, something
20 that has to do with tribal. Go ahead.

21 MS. JOLETTA: Yeah. Well, the reason it is
22 important and it is related to districting is the --
23 the whole, uh, issue is representation. That's what it
24 boils down to your vote. It should matter.

25 It should matter when you vote, your vote should

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 178

1 count. So the -- the -- the thing of mail-in voting;
2 North Fox has always been a place to vote that's where
3 my family voted that's where I vote.

4 Uh, it's -- and when, in fact, when it was
5 changed over to this mail-in vote, we weren't even
6 notified by mail. There was such a up with 911
7 addressing that we did not receive written
8 notification. I didn't, and I know others didn't who
9 get their mail by a post office box. Okay.

10 So it w- -- it was, uh, a rough time for
11 democracy here when we found out later our -- our
12 precinct's closed, we're going to -- you're going to
13 have to go to Manning or over to Twin Buttes. Well,
14 Manning is the county seat. And the reason I asked in
15 Manning prior to going to voting at a different time,
16 I asked what was the reason? Why did -- why did you
17 close North Fox? Well, it was to save money. Save
18 money for who?

19 CHAIRMAN WARDNER: Well, we hear you and it's,
20 uh, I appreciate you bringing it up. And I -- I just
21 want to make a comment to one of the things you said
22 about being represented in Bismarck.

23 And this is a little attaboy for your, uh,
24 chairman and your councilmembers. They have been down
25 there representing you the last four or five sessions.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 179

1 Believe me, you are represented cause they're
2 there making a difference they're talking to people.
3 So you can be proud of your -- and that's not
4 answering your -- what your concern is but I just
5 wanted you to know that, uh, the council and the
6 chairman from MHA have been very active in the North
7 Dakota legislature. So your voice is being heard out
8 there.

9 MS. JOLETTA: Thank you. And I do want to add one
10 more note and that is for this community to please
11 understand that, you know, although my tribe is down
12 in -- in, uh, before the legislator, legislators in
13 North Dakota, the -- the votes are cast by individual
14 tribal members. We are the ones that vote. We are the
15 voters. Please understand that.

16 CHAIRMAN WARDNER: I understand what you're
17 saying. I'm just telling you that, uh, you have
18 elected good people here at MHA Nation to represent
19 you, uh, in all that they do. Chairman Fox, right
20 comments. Oh, I'm sorry, finish your comment and then
21 I'll --

22 MS. JOLETTA: And yeah. And that's true, but what
23 we're talking about is the right of individual voters.

24 CHAIRMAN WARDNER: Right?

25 MS. JOLETTA: The right of individuals, not of a

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 180

1 tribe, but of individuals. That's what this committee
2 has come to Fort Berthold to talk of out. And so
3 you're hearing from an individual voter. Thank you.

4 CHAIRMAN WARDNER: Right. You're welcome.

5 MS. MONIZ: With all due respect. Uh, if I may
6 just jump in, I was -- I'm still on the call. This is
7 Melanie Moniz. Um, I just would like to politely
8 address, um, a need for some understanding of cultural
9 competency. Um, you know, we all come from different
10 walks of life and have different, uh, different ways
11 of communicating.

12 And, um, as I sat and listened to my elder, uh,
13 addressed her concerns, I -- I did take note that she
14 was interrupted a -- a few times.

15 Um, and I would just like to -- to bring that to
16 the table is that, you know, um, those are things we
17 don't do when our elders are speaking. Um, those are
18 traditional -- traditional values of the MHA Nation.
19 And I'd just like to politely, uh, bring that to your
20 -- to your awareness. But with that, I will hop off
21 the call.

22 CHAIRMAN WARDNER: Okay. Chairman Fox.

23 CHAIRMAN FOX: Now just to touch on a point that
24 Joletta brought up as well. Uh, it is a concern that I
25 heard that occurred previously that, uh, the polling

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 181

1 places were limited and it had a dramatic effect. And
2 you know, whether it's a part of an overall, uh,
3 difficulty experience by the whole state or occurring
4 here, it was even more so dramatic here.

5 The -- the native vote it's -- it's very
6 difficult to get native people to vote in -- in state
7 elections to begin with. And -- and so oftentimes when
8 we make it even more difficult, if they say, well,
9 instead of going over here where you're used to going,
10 all of a sudden you've got to travel 120 miles
11 roundtrip.

12 It -- it has a really bad deterrence effect and -
13 - and -- and people are not wanting to vote. So I -- I
14 share the concern raised that, uh, we -- we have to
15 take some additional things into consideration and
16 make sure that the ability to vote is not hampered or,
17 you know, impeded by, uh, not having proper polling
18 places. We've -- we've tried our best to work through
19 the, uh, the residential address issue you as well.

20 We're done, you know, I will say this, uh, even
21 though those things were put into place and many felt
22 that even on a national level, that it was going to
23 dramatically dis- -- you know, diminish, uh, voter
24 participation by natives, uh, Fort Berthold, uh, in
25 those two chall- -- challenging situations, uh,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 182

1 actually by numbers came out and voted very high, uh,
2 kind of felt like they're being, you know, pushed out
3 and a lot of people actually went to the polls that
4 may not have otherwise. So I do want to say that --
5 that there was a good response to those conditions.

6 But we just want to make sure that we're not
7 being treated inequitably or things are not done, that
8 are dissuading our participation to vote. We want
9 people to vote this is America.

10 The United States Marine and I tell you, and you
11 know, that- -- that's what our democracy's all about.
12 Democracy is all about, is just getting people an
13 opportunity to say, this is my vote and that's what's
14 key. So --

15 CHAIRMAN WARDNER: Uh, Senator Heckaman.

16 MS. HECKAMAN: Thank you, Mr. Chairman. Um,
17 chairman Fox, this is just for my own information. Um,
18 I know that some of the, uh, native country has their
19 tribal elections the same time as the general -- the
20 state elections does, uh, MHA do that?

21 CHAIRMAN FOX: Half the time. Uh, sometimes it's
22 half it's -- it's in line with the state elections.
23 But, um, the other half, um, and so when the three
24 districts -- we have four and a three. Chairman and
25 three reps, and then we have three, so four, every --

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 183

1 every four years, but staggered by two years.

2 So one group, the three will come during the --
3 the presidential and national elections so you'll see
4 a lot of turnout because of the president's running.
5 Then the other four are on the off two years. Uh, the
6 -- the secondary years is where the non-presidential
7 national election is. So yeah they are in line though
8 with the November elections typically.

9 MS. HECKAMAN: Okay. Thanks.

10 CHAIRMAN WARDNER: Okay. We have one more, uh,
11 individual that wants to testify online and if
12 they're, uh, ready, they may begin state your name.

13 MS. DEVILLE: Hello. My name is Lisa DeVille. I'm
14 going to give comment on the, um, the support for
15 redistricting subcommittees. So we indigenous people
16 need to be at the table when decisions are being made
17 about our lives. All right, also I'm -- I'm a resident
18 of the Mandari community here on Fort Berthold.

19 So mine is short/sweet. So, um, there should be
20 no more assuming that North Dakota knows what's best
21 for us indigenous people when our culture and our
22 tradition and our beliefs are different. So again, we
23 need to be at the table and we need fair
24 representation in North Dakota. And thank you for the
25 opportunity to speak to you.

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 CHAIRMAN WARDNER: Thank you. Anyone have any
2 questions, comments, uh, for Ms. DeVille? If not,
3 thank you very much. Uh, okay. Senator Jones,
4 representative Jones. I'm sorry. I elevated you.

5 MS. JONES: Right.

6 CHAIRMAN WARDNER: Lisa, are you still online?

7 MS. DEVILLE: Yes. I'm here.

8 CHAIRMAN WARDNER: You know, I, uh, I take it
9 particularly to be an honor to serve District 4. And
10 I've read a lot of emails from you over the last few
11 years, and I've responded back to several.

12 And, uh, I can assure you that you have a seat at
13 the table because I represent District 4, whether
14 you're on the reservation or off the reservation.

15 And I've gotten in a lot of trouble because as I
16 leave my phone number, my cell number open to the
17 public so that you can find it so you can contact me
18 so that I can represent you and deal with your
19 concerns. And, uh, I take pride in doing that. And,
20 uh, I may not be native, uh, America, but I was born
21 in America and I love this country and I love North
22 Dakota. And I particularly love District 4. It's been
23 a good home for me.

24 And so I hope you'll take some comfort in knowing
25 that you have somebody at the table and you can ask

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 185

1 the, uh, my fellow representatives, I do make a lot of
2 noise. Sometimes I'm right. Sometimes I'm wrong. But I
3 try to represent District 4 and all my constituents in
4 the best way that I can. And I hope that I can hear
5 more from you in the future.

6 And, uh, we'll have a lot of discussions and you,
7 and all the other constituents who might be out there
8 listening so that I can do a better -- better job of
9 serving you and, uh, helping to move the proper things
10 forward that we need to for -- for District 4. Okay.
11 Thank you. Okay. Chairman Fox, we're, uh, kind of
12 winding down unless there is, uh, just in case, was
13 there anybody else out there that wanted to --

14 I don't want to leave anybody that, uh, may have
15 been queued up and wanted to talk and I'm getting, uh,
16 no, there isn't anyone else. So I'm going to turn it
17 over to Chairman Fox to kind of wrap things up. And
18 then, uh, well, I, uh, make a couple -- make some
19 comments. I'm going to give the committee a chance to
20 make some comments, uh, after you are done, and then
21 you can --

22 CHAIRMAN FOX: I'll -- I'll do that, that sounds
23 good to me.

24 CHAIRMAN WARDNER: Me, um, I'll just wrap up our
25 side of things, so to speak and give time for

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 186

1 committee members, uh, that may want to either ask or
2 -- a question or make a comment and I appreciate it
3 very much. Again, it was an honor to be able to host a
4 committee, thank you for coming to our homeland or a
5 country to our district.

6 And, um, we're very, very proud of what we've got
7 going on, but we've got a lot of needs. And I think
8 you're hearing in addition to the enumerated things
9 that we raised regarding taxes and other things, uh,
10 and gaming, uh, you also heard some other concerns.
11 There are always a significant number of concerns that
12 are out there that separate us or -- or -- or give us
13 contention, or we don't agree on.

14 But the good thing is though that our policy is
15 not a closed door policy, ours is an open door policy
16 to sit down government to government and to talk and -
17 - and figure out what we can do. May not always agree,
18 but the goal is to try to find some common consensus
19 and move things in the right direction. And, um,
20 that's why I appreciate this time and opportunity.

21 Everybody around the table we've got the
22 committee members, but we also have, uh, two house
23 members here as well, uh, that -- that joined us. And,
24 uh, I think it's been a good day and I think we got
25 some good information discussed, and I'm hoping that,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 187

1 uh, you know, it leads itself to -- to ways to address
2 the issues.

3 I'm -- I'm really optimistic that when you do
4 have the special sessions, that we might be able to
5 get some more critical issues quicker, and hopefully
6 resolve those instead of having to wait for another
7 year and a half before those possibilities come up.

8 So again, thank you for being here, uh, you know,
9 happy to -- anytime any of you want to come up, we're
10 happy to take you on a tour, go see a well pad. You
11 know, go see what we do. See -- see some of the things
12 that we're working on, some of the construction.

13 We have our grand opening in about two and a half
14 months on the new administration building make sure
15 you come to that as well. We've got other things that
16 are ongoing as well. Um, just always -- always feel,
17 you know, we're part of the state of North Dakota and
18 proudly so.

19 And I say that as, uh, you know, although we have
20 -- argue and we have our, you know, our jealousy that
21 goes on every two years and in between somewhat. You
22 know, I- -- I'm telling you as -- as, uh, then I was a
23 young man, I'm certainly not now.

24 But as a young man serving in the United States
25 government and -- and the Marine Corps, you know, and,

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 188

1 uh, being deployed and I got a chance to Mr. Joseph
2 here have a little brief conversation during lunch
3 break about where I served and -- and he shared some
4 of his. Um, when I went out there though, uh, I -- I -
5 - I was -- I stood out in many ways and I took pride
6 in that. My father's a World War II veteran, my
7 brother oldest brother's a Vietnam veteran.

8 My father, and his two brothers, all three of
9 them, three brothers, all joined and became World War
10 II veterans in three different branches and served
11 during World War II as well. And so I had that pride
12 in me in -- in serving when I went out. And I wanted
13 to do for my motives, uh, a number of things in -- in
14 serving this country and -- and the service as well,
15 being the Marine.

16 Um, but when I was there and -- and if I -- if
17 and when I did stand out and they would -- Marines
18 from all over the United States would be serving
19 sometimes other countries. Because you can have
20 Marines from Puerto Rico and you can have Marines from
21 Guam and you can have and were served with them too.

22 And -- and I served overseas -- and there's the
23 two things that the commonalities that they wanted
24 when they asked questions, where are you?

25 Who are you? And where do you come from? And why

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 189

1 do you do the things you do? And why are you the way
2 you are? And most of the time it was positive. Um, I
3 always told them well, I'm from North Dakota.

4 Of course I told them, um, Mandan, Hidatsa and
5 Arikara, I come from, uh, people and I would describe
6 that.

7 And many of them had not met natives before and
8 they wanted to know much about that. Korea was -- I
9 was one time share that with you some day when I got a
10 lot of time, but the South Koreans and Iraq Marines I
11 served with there and you wanting to just run up a
12 400-foot cliff just to touch a Native-American,
13 American-Indian was -- was -- was amazing to them.

14 Uh, but I always told -- I always told people how
15 proud I was, that where I come from was North Dakota
16 and well, what's that about? I said, well, as you all
17 know, it gets very cold there, but it's also where we
18 work very hard.

19 You know, we hunt, we fish, we enjoy the
20 outdoors, we're really as strong people, all North
21 Dakota people, we're not afraid of work.

22 Get up before the sun and -- and work until the
23 sun goes down if that's what we have to do. Whether
24 it's farming, ranching, anything that needs to be
25 done. Took a lot of in that when I was there. Took a

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 190

1 lot of pride in that, not just in the Marine Corps.

2 I tease John here, I used to go up and work out a
3 popular area there and -- and I used to work for a guy
4 up there in farming. I took a summer, went up there to
5 go help out on a ranch and farm up there.

6 And he said, you know what he said to me? He
7 said, I don't know what the hell it is about you North
8 Dakota guys, but you can guys can work your asses off?
9 He said, whenever somebody from North Dakota comes my
10 way, I hire them.

11 He said, I don't know, what's wrong with these
12 guys around here. I can't get them to work. You know.
13 And -- and -- and he -- he -- he represented, and I
14 was proud when he was telling me that. He said, you
15 guys really know how to work. And when I went out, I -
16 - I -- I explained that to him.

17 And we're fair minded. We're good people. We're
18 tolerant people. You know, I've been to other states.
19 I- -- I've been in Mississippi. I- -- I've been in the
20 Southern st- -- States. I've been in -- I was
21 stationed in North Carolina for a while.

22 I saw a stark contrast between, you know, white
23 and black. And there wasn't a lot of room for somebody
24 that was brown in understanding sometimes. And -- and
25 -- and not knowing things, but I've been to other

1 countries.

2 I've been treated, you know, certain ways by
3 Japanese, different from Koreans. Going on Filipinos
4 and things of nature. So being able to experience
5 that, but I've always been so proud of our state and
6 this is way before being in the trenches and -- and
7 the things that we have to work on and stuff. And I
8 still am proud. And -- and -- and -- and we all can
9 realize that we are -- we are the same in many ways,
10 but we're also different.

11 And -- and what we have to do is recognize those
12 differences. Those differences should be understood
13 and should bind -- bind us to learn more about each
14 other.

15 As much as I want you to learn about the Mandan,
16 Hidatsa and Arikara and walk through this Interpretive
17 Center, many of our own people need to learn more
18 about you too, and how you came to North Dakota and --
19 and how that evolution occurred.

20 But everybody needs to get a better understanding
21 of that. We're talking about books during the new --
22 during the -- what good books could I read about the
23 tribes in North Dakota?

24 And there are some good books out there, Mary-
25 Jane Schneiders and others that have written things. I

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 192

1 mean, one of the books that I think you should read is
2 -- is called Guns, Germs, And Steel. And if you
3 haven't read that it's by Jared Diamond, he won to
4 Pulitzer prize for it.

5 And he talks about how the true history of the
6 world developed and where we stand today when
7 civilization began and what happened and why Europeans
8 are different from the indigenous population in North
9 America. Not because one was more superior than other,
10 but because there's other factors that led to it.

11 The axis of north and south versus east and west.
12 The climate zones, uh, the domestication of plants and
13 animals, I can go on and on.

14 When I read that it opened up my eyes and I --
15 and I tell every non-Indian and every Indian read that
16 book, if you think you know about civilization and
17 where you're at today, read this book. And it opened
18 up your eyes to -- to where we're at and why things
19 occurred.

20 CHAIRMAN FOX: Um, again, thank you for coming
21 here. Thank you for -- for -- for sharing with us,
22 we'll have more opportunities to do this I'm sure in
23 the future.

24 And we got -- we're proud of what we've done so
25 far, but we need your help. Law enforcement, drug

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 193

1 addiction, treatment, um, energy development,
2 protecting our environment while we're doing it, all
3 these things we need to work together on.

4 And even if we disagree, we can find -- we can
5 find ways to do it. And, um, like I told you, during
6 my travel state relations, uh, speech, you know,
7 you're -- you're looking at, and that might work to my
8 disfavor, my arguments, but you're looking at a
9 combination of an Indian and non-Indian world.

10 You know, I am just as proud. And -- and
11 sometimes like -- like my Senator Oehlke says, I might
12 get lot of phone calls and representative Pollert
13 says, Chet says about, I might get more phone calls
14 and I do.

15 But here's the reality is, is I'm just as proud
16 of my mother's people as I am my father's. My father
17 is a full-blooded member of this tribe. My mother was
18 not. But I- -- I- -- I'm no less proud of that. I have
19 a lot of relatives up there in the [inaudible] and
20 Jones.

21 And those are my relative [inaudible] are -- are
22 -- are close relatives of mine. And -- and -- and
23 through my mother's side ranching and things of that
24 nature. So I just wanted to share that with you.

25 And -- and -- and if I can show that, uh, by my

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 194

1 sitting in front of you, that two worlds can come
2 together and -- and get something done, uh, then, uh,
3 I'm an example of that myself too. So I appreciate you
4 being here.

5 CHAIRMAN WARDNER: Well, thank you. I want to
6 start with you, uh, Representative Jones, any final
7 comments?

8 MR. JONES: I just appreciate everybody coming to
9 District 4. This is nice -- and this is a good -- I
10 mean, I might butt heads pretty hard with, uh, people
11 with different opinions, but I hope at the end of the
12 day, we come up with some really good stuff.

13 And I think we were well served by being here.
14 I've learned a bunch of things, and I look forward to
15 following through, and trying to get the solutions
16 that we need for the good of -- of everybody that's
17 involved. And so thank you for coming to District 4.

18 CHAIRMAN WARDNER: Representative Boschee.

19 MR. BOSCHEE: Thank you. Mr. Chairman. Uh,
20 Chairman Fox and fellow councilmembers just thank you
21 for your hospitality. It's always a joy to get back up
22 here growing up in Minot. And so get -- you know, I
23 share with folks, it wasn't until I ran around the
24 state in 2018, that I never realized how close MHA is
25 to Minot because we didn't come down here as people

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 195

1 from Minot. Uh, and your -- your folks came up to us
2 all the time.

3 CHAIRMAN WARDNER: Oh yeah.

4 MR. BOSCHEE: Um, so, uh, it's great to -- to be
5 here again and beautiful to see all the work that
6 you're doing and look forward to continue to partner
7 with you.

8 CHAIRMAN WARDNER: Many of us were born in Minot.

9 MR. BOSCHEE: Yeah.

10 CHAIRMAN WARDNER: Some of us grew up there. My
11 first six years, Roosevelt School in Minot went for a
12 couple months before my dad dad built the church, got
13 Indian mission and moved us into a low rent project in
14 [inaudible] and that's where way we went. And, uh, I
15 grew up there in that area. So, but mine is -- mine,
16 you know, back in the day -- I know not to
17 [inaudible].

18 I know we got to go on table, but back in the
19 day, if you got to go to Minor about once every three
20 or four months, you really got to go somewhere cool.
21 Right? When we were kids and got in the car and got to
22 go to Minot, you know, McDonald's, the zoo.

23 Today, if you don't go to Minot four times a
24 week, you- -- you're below average. You know, we go to
25 Minot every day, jumping on cars or Waterford City or

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 196

1 wherever it's every day I just want to share that with
2 you. So Senator Heckaman.

3 MS. HECKAMAN: Well, thank you, Mr. Chairman. And
4 thank you, Chairman Fox and your council for hosting
5 us today in this beautiful country.

6 Um, I'm going to bear my soul today and tell you
7 that I've had some tough times in my life and before I
8 met my husband now I had two little boys. and in '76,
9 I loaded up my two little boys having a tough time
10 that summer came out and camped over here in the park,
11 looking out towards the river and we spent two days
12 there and two nights there.

13 And it really cleared my head and made me
14 understand that I made the right decision in my life.
15 So I just wanted to let you know that it's a -- a good
16 place to come and to meditate out here.

17 CHAIRMAN WARDNER: Welcome back.

18 MS. HECKAMAN: Yeah. Um, but I do have a question
19 for you. Do you have one of your council people that
20 has a portfolio in education? Or who can I contact out
21 here? I'm looking to figure out how to serve our non-
22 beneficiary or the students that don't meet blood
23 quantum on reservation schools, who pays for those?
24 That's what I'm looking to find out.

25 CHAIRMAN WARDNER: If -- if -- if, but they --

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 like our members of, uh, a native family, but they're
2 not enrolled. Is that what you're saying?

3 MS. HECKAMAN: So let's say that you have, um, a
4 native husband and wife or man, and woman, and one of
5 them doesn't have, for example, like your mom. So now
6 as you go down in generations and the -- one of them
7 doesn't have, um, meet the qualifications and that
8 dilutes that down further, um, who pays for the
9 education of those students out here? I want to visit
10 with somebody [inaudible].

11 CHAIRMAN WARDNER: In -- in our -- in our
12 settings here at Fort Berthold, we still do.

13 MS. HECKAMAN: You still do.

14 CHAIRMAN WARDNER: Even if they're not enrolled.
15 Usually that eighth -- eighth requirement that we
16 have, uh, we do have what we call distribution direct
17 benefits. But most of what we do, uh, Sherry can speak
18 to that as can any council rep all our services that
19 we provide either through the segment for the tribe on
20 a -- on a larger scale, uh, at schools, uh, services,
21 the pandemics, big proof of that. Yeah. Emergency
22 distributions, vaccines.

23 We've vaccinated more non-Indian, and non-tribal
24 members than we did tribal members. And -- and so our
25 -- our point I'm raising with you is it's still, as

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 198

1 you -- you saw many years ago, this is still community
2 based. And so all our services nearly, almost, I won't
3 say a hundred percent of the time, but 90 percent of
4 the time or more is expanded out to non-Indians as
5 well. They're welcome to share on what we were able to
6 do and we do that all the time. Education is no
7 exception to that.

8 MS. HECKAMAN: And my -- my concern is that, um,
9 BIA, BIA doesn't pay for those students.

10 CHAIRMAN WARDNER: Yeah. Like in a partial on new
11 town setting, because those are -- are public schools.
12 We get impact aid. And they may not be counted on
13 that, but our contributions to each school's hundreds
14 of thousands of dollars each year, what we give out
15 \$500,000 a year, just to the schools alone, just to
16 spend on what they want to more than covers the -- the
17 tuition of that.

18 MS. HECKAMAN: Got it.

19 CHAIRMAN WARDNER: Non-tribal members.

20 MS. HECKAMAN: Got it. Thanks so much.

21 CHAIRMAN WARDNER: You bet. Senator Oehlke.

22 MR. OEHLKE: Um, Mr. Chairman and Chairman Fox.
23 Thank you for your service to the country.

24 CHAIRMAN WARDNER: Thank you for yours.

25 MR. OEHLKE: Certainly appreciate that. Um, yeah

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 199

1 -- I -- well, I said my piece on gambling, so I won't
2 delve into that anymore. But, uh, I think, uh, you
3 know, this committee and -- and those out there
4 listening are probably starting to understand that,
5 uh, a, uh, tribal nation has, um, a big job to do.

6 And your tribal council, uh, is no exception to
7 having to do everything that -- that we end up doing
8 at a state level as well. I -- I -- I would -- I would
9 suspect there's not a county or a city out there that
10 has as many challenges as you would do. And we -- I
11 think we appreciate that.

12 CHAIRMAN FOX: Appreciate that Senator.
13 Representative Pollert.

14 MR. POLLERT: Thank you, Mr. Chairman. We had a
15 quick tour of the Interpretive Center today and, um,
16 very informative, uh, enjoyed it immensely.

17 That's why I was late getting to my lunch, but it
18 was very good. But also at the same time and -- and I
19 had said it earlier, you know, I -- I, uh, my great-
20 grandfather was from the Rose- -- Rose Glen area.

21 And then I had an uncle and -- and my
22 grandmother's sister was married and they were from
23 White Shield.

24 So there's a little bit of history here that I
25 need to learn a little more of, but, uh, I remember us

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 taking visits out here and -- and -- and, you know
2 what, and him allowing my oldest brother to wear his
3 head dress. So, yeah. So there's more to learn. So,
4 yeah. But yeah. Thank you.

5 CHAIRMAN WARDNER: Yeah. Appreciate that very
6 much. Could Terry say a few?

7 CHAIRMAN FOX: Yeah. Well, I would, uh, I welcome
8 her and, uh, also the commissioner and, uh,
9 Representative Buffalo to make some comments too.

10 CHAIRMAN WARDNER: There you go.

11 MS. BUFFALO: Testing. Thank you. Uh, first of
12 all, I'd like to thank you Senator Wardner and all
13 your representatives, especially District 4 rep for
14 being here. And I'm very proud of our chairman for
15 everything that he does for our great MHA Nation. Um,
16 sometimes we don't tell him that enough, but, um, I am
17 very proud of you.

18 CHAIRMAN WARDNER: Thank you, Sherry.

19 MS. SHERRY: -- for everything that you do for
20 us. Um, I know I got a lot of -- I got a big line --
21 um, well, first of all, my name is, uh, Sherry
22 [inaudible]. I'm the west segment representative in
23 the Mandari area. We have the, uh, largest land base
24 area where majority of the Balkan is, majority of the,
25 um, oil industry.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 201

1 And, um, a lot of my, uh, constituents, my people
2 all have a lot of, uh, concerns and everything out
3 there. But, um, with that said, we will, um, prevail
4 and go through and work things out. We are a very
5 resilient people and we do, um, stand strong. I also
6 come from a veteran family. My husband is a veteran.
7 My grandfather's on both sides and my brother was a
8 Marine.

9 And when you grow up with that veteran kind of
10 family, um, life is more structured. Life is more, uh,
11 you always have, um, constraints and obli- --
12 obligations and things to, um, stand steady and
13 strong. And I am very proud of that.

14 And, um, with that said, the -- we really want
15 our pulling place back in, um, by our church. It's,
16 uh, it was really hard on all of us. It was hard on
17 Four Bears where they had to track people down, um,
18 bust them down to Mandari and, um, you know, we -- we
19 may do with that, but the ones that worked it was, um,
20 it was harder.

21 I was a school teacher for many years, 14, and,
22 um, at that at time I wasn't teaching, but if I was --
23 and for those that my, um, counterparts that were
24 working, when they got off work, they had to travel
25 all the way to Manning after a long hard day where

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 202

1 they could have just done it at lunch and had it over
2 with.

3 But again, thank you for all coming. It was very,
4 um, it was lot of experience for me being here for the
5 first time. I am newly elected, so I am learning a
6 lot. And again, thank you, um, chairman for all the
7 hard work you do for us.

8 CHAIRMAN WARDNER: I appreciate that, Sherry.
9 Thank you for being here today. I appreciate it very
10 much. Thank you. Yeah, Ruth?

11 MS. BUFFALO: Um, Chairman Wardner and members of
12 the committee. Um, thank you for allowing me to share
13 this -- this space with you. Um, as a citizen of the
14 Mandan, Hidatsa and Arikara nation, and originally
15 from Mandari. It's always good to come -- come back to
16 the homelands.

17 I'm super proud to represent district 27. Um, a
18 lot of the conversation I enjoyed today, um, also want
19 to remind the committee of a package of bills that
20 were introduced in now law, um, regarding human
21 trafficking prevention and awareness and addressing,
22 missing and murdered indigenous people.

23 Um, have also provided congressional testimony on
24 voting and, MMIP. So I hope that this committee will
25 use me as a resource, um, still working in the public

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 203

1 health arena, um, focusing on trying to improve the
2 quality of life for all people.

3 Um, so again, I just hope that you'll use me as a
4 resource, um, and that we can work together, um, to
5 address the needs of the people. So mods, good odds.
6 Thank you.

7 Oh, also one more thing it's important too, when
8 you travel to different communities, if somebody
9 hasn't kind of prepped you on -- or if you haven't
10 yourself kind of done the homework of the different
11 tribal communities that you -- you visit, it's kind of
12 important to note which communities are matriarchal
13 and matrilineal too.

14 Um, and -- and the differences there, or even you
15 might have noticed during prayer, you know, the women
16 sit and I -- I still do that in the house chambers. So
17 I think somebody on the phone call had mentioned
18 cultural competency.

19 So it's kind of like getting informal, uh, raised
20 awareness. So I'm just thankful that you have made the
21 effort to go to the communities. Um, so mods, good
22 odds. Thank you,

23 CHAIRMAN WARDNER: Commissioner. You have any
24 comments?

25 MALE: Uh, yes. Uh, Chairman Wardner, committee

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 204

1 members, uh, Chairman Fox, uh, council
2 representatives. Uh, thanks for the, uh, the invite
3 today. Thanks for lunch. Uh, it's not often I go to
4 work and get to eat fried bread nowadays. I'll say
5 that -- that was nice. It's always nice to come visit
6 up here in MHA. You know, I used to spend my summers
7 here as a kid, have an aunt and uncle that live here.

8 Uh, three first cousins that were born and raised
9 here. I have a -- a sister and a niece and nephew
10 they're all enrolled members. So, you know, it's
11 always nice to come visit an MHA Nation. I always tell
12 stories about the, uh, before the boom, uh, when you
13 go down main street, you know, it was a little small,
14 like so you blink, you miss it.

15 And I remember they used to have the, uh, I
16 believe it was -- I can't remember the exact name, but
17 it was, uh, down to main street and it was the youth
18 center. This like a little trailer, I think it was a
19 blue trailer with a chain link fence around it.

20 We'd go in there -- there was activities to do.
21 And I think one of my favorite times down here, um,
22 other than running the hills and riding horse was we
23 got to watch the, uh, and to us it was a treat.

24 We didn't have TV back home in Turtle Mountain so
25 we got to watch the, uh, Chicago Bulls and the Utah

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 205

1 Jazz in the finals every time they came on that
2 summer. We got to down the youth center and play games
3 and watch basketball.

4 So that's one of my highlights of my, uh, my
5 childhood was just being able to do something like
6 that here in New Town, uh, in MHA Nation. Uh, but
7 yeah, once again, like I said, it's -- it's great to
8 come visit. It's great to be a part of the
9 conversations and the partnerships moving forward. So,
10 uh, thanks for the opportunity.

11 CHAIRMAN WARDNER: Cool. Okay. Um, you have any
12 final comments? How about the quiet guy right next to
13 you?

14 CHAIRMAN FOX: I know he would say nothing. He'll
15 -- he'll bill me though. No. Go ahead.

16 MALE 2: My only comment is when, uh, Chairman
17 Fox was up in [inaudible] and he went to work for that
18 guy that was so impressed with the North Dakotans
19 because he hired me first.

20 CHAIRMAN FOX: Uh, maybe John set the standard, I
21 don't know. But I -- once I -- once the guy that he's
22 talking about last comment and they were all, I'm glad
23 that in humor is very important to all of us here.

24 And -- and I appreciate what Ruth had said and in
25 our ways, and I was -- I forgot to explain that this

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 206

1 morning when -- especially when we pray, it's
2 customary amongst many of our - our native women to
3 remain sitting and that's our -- the way we do things
4 customarily.

5 Um, but me, when I -- when I -- when I ask
6 somebody to pray and we conduct something, I always
7 tell people do -- do what you were taught. If you --
8 if you were taught to, to remain sitting and that's
9 part of your ways, then remain sitting.

10 If you -- if you were taught to stand in
11 reverence, my father was a minister. If you're taught
12 to rise then -- then rise. But everybody has to choose
13 their way of -- of, you know, paying devotion to God.

14 So -- so I -- I want to kind of throw that in
15 there a little bit. But yeah, this -- this rancher
16 that I worked for one -- one time and it was well over
17 100 degrees, got there early in the morning and my
18 other -- the other two hands show up.

19 They were there the day before they were there.
20 But that one day I did, uh, well over by myself I rode
21 a bale sled, picked it up the first time out of a bale
22 sled, pushed it off stacks of eight, uh, sometimes
23 nine but seven to nine in -- in stacks.

24 And then you come around and there's a handyman
25 and I got a flatbed semi and he drives that. And then

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Page 207

1 he comes -- gets his handyman and he scoop them up on
2 top of the flatbed and then I stack them again.

3 And so, you know, uh, when -- and one day we
4 went, you know, almost 2000 bales and one day
5 collecting them and hauling them twice. And -- and so,
6 uh, uh, that was really a hard day. Uh, a hard day it
7 was a temperature over 100 degrees, uh, and what have
8 you.

9 But -- but again, thank you for everything. Thank
10 you for -- for being here and come back, because we
11 got other things to show you and other things to talk
12 about and uh, we'll do our best to even [inaudible] a
13 little bit better. Huh? Sherry. We'll do even some
14 more things for when you come back the next time. So,
15 and Tasha back there which I asked her if she had
16 anything to -- to add in but --

17 MS. BIRD BEAR: I do, but I had to step out.

18 CHAIRMAN FOX: Okay. Go ahead please.

19 CHAIRMAN WARDNER: Would you use that mic over
20 there next to the chairman?

21 CHAIRMAN FOX: Yeah.

22 CHAIRMAN WARDNER: You know, we're recording
23 things now and people want to hear you.

24 CHAIRMAN FOX: Yeah.

25 MS. BIRD BEAR: Okay.

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 208

1 CHAIRMAN FOX: Live two.

2 MS. BIRD BEAR: Hello. My name is Lonewoman. My
3 government name is Tasha Bird Bear. I'm chicken clan.
4 I live in [inaudible]. And oh, I'm sorry. I'm not
5 really used to a bunch of people or speaking in front
6 of them.

7 CHAIRMAN WARDNER: You're doing real well,

8 MS. BIRD BEAR: But um, I am very happy with what
9 our people are doing for language revitalization. And
10 I would like to see more of our ways taught within the
11 state. I -- I lived in Minot. That's uh, I was born in
12 Stanley. I lived in Minot and during certain times
13 whenever they were going over native history, the
14 teacher would usually refer over to me. She'd say
15 [inaudible].

16 Or him. And they're like [inaudible] woman. And
17 anyways, um, it would be great to have that out there
18 like within our state so others could learn. And also
19 for voting. I really agree with a lot of the things
20 that Joletta had said. And in my own experience in
21 2012, I had gone to vote over in [inaudible] and there
22 was myself and two other -- two others.

23 Anyways, when we walked in this lady, she came
24 right to the door before we could even get in. And she
25 was asking us what we had and it seemed like she was

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 209

1 using her age and what not to stop us from going. And
2 we were well versed. We listened to what was on the
3 radio, like make sure you have these identifications,
4 make sure you have these utility bills. And the two
5 behind me, they were quick to be like, oh, well maybe
6 we shouldn't be here.

7 We all have the right to vote. And it would be
8 great if that was better represented. And for polling
9 places, I would definitely volunteer. I didn't see
10 anybody that looked like us in that voting station. I
11 just saw people trying to stop us. So anyways, thank
12 you for listening to me. Thank you for letting me on
13 that Zoom. I'm so glad I get to see elders on a daily
14 basis and learn from them. Okay.

15 CHAIRMAN WARDNER: Okay.

16 FEMALE: I'll -- I'll just, um, emphasis what she
17 -- what she meant about that. Um, I am the, uh,
18 cultural, uh, representative for the tribe. Well, I
19 sit on a chair. I'm the chairwoman of that.

20 And I am really an advocate for, um, bringing
21 back our language. And so, um, our education -- not
22 our education, our cultural depart has classes every
23 day on Zoom for anybody who wants to get on and learn
24 about our ways of the Hidatsa.

25 Um, I believe that, um, they might be doing

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Page 210

1 something in Arikara too. I'm not too sure because I
2 am Hidatsa and that's what I focus on. And I'm believe
3 they do things in Twin Buttes for the Mandan also.

4 But if any of you want to just get on Zoom, we
5 can give you the link and you can just listen, you
6 don't have to participate. But if you listen and hear
7 how things are done and spoken, it might bring more
8 cultural awareness between the bridges that we have.
9 Thank you and [inaudible].

10 CHAIRMAN FOX: Okay. Thank you.

11 CHAIRMAN WARDNER: Well, thank you. And, uh,
12 we've had a good day and we, uh, really appreciate the
13 opportunity to visit here. And, uh, yes. We will be,
14 uh, spending time on these issues. Uh, one of my goals
15 is that we are going to move things forward. And, uh,
16 with all of the, uh, tribe- -- tribal governments.

17 And so there's a -- there's a lot of work to do,
18 and we've got a long ways to go. But we're going to --
19 we're going to get -- going to keep pushing.

20 Uh, to the committee members tomorrow morning,
21 we'll be 9:00 we'll be at the Casino in, uh, Spirit
22 Lake and we will resume and we'll be listening to the
23 issues that they have in their tribal government. So
24 with that, uh, I'm asking for an, uh, motion to
25 adjourn.

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1 MR. POLLERT: Motion adjourn.

2 CHAIRMAN WARDNER: Okay. We got a motion to
3 adjourn. I, uh, from, uh, Representative Pollert.
4 Second by Representative Jones. We're -- we're
5 adjourned.

6 CHAIRMAN FOX: Thank you, everybody.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Chris Naaden, a transcriber, hereby declare under penalty of perjury that to the best of my ability the above 211 pages contain a full, true and correct transcription of the tape-recording that I received regarding the event listed on the caption on page 1.

I further declare that I have no interest in the event of the action.



March 21, 2022

Chris Naaden

(NoDak Tribal and State Relations Committee, 8-31-21)

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: \$0.07..20

	\$400	134:11	84:21	15,000	46:24
\$	\$418	130:12	92:13	16	39:22
\$0.07	58:3	\$50	149:4	113:13	160
\$1.8	134:10	\$50,000	132:12	137:25	144:25
\$1.9	130:17	156:25	156:13	169	145:2
\$10,000	\$500	101:19	158:22	17	117:14
157:22	\$500,000	10.7	132:10	17,000	134:3
\$100	66:19	198:15	100	56:13	171
134:7	\$600	101:24	118:7	17th	5:21
149:4	\$621	130:12	206:17	18	78:23
153:18,19	\$700	87:6	207:7	1823	74:10
\$100,000	\$750	101:20	103	166:4	189
147:21	\$900	101:23	10:00	21:8	19
148:9	-	11	10:35	51:17	55:7
\$1000	66:20,	11	31:22	70:7,13	70:7,13
25	86:14,	1154	78:24	88:23	88:23
19	--to	66:3	11	31:22	107:10
\$106	17:12	--we	33:17	106:7	112:17,18
\$150	149:4	106:7	12	31:10,22	1950s
\$171	17:10	1	41:13	51:16	57:5
\$20	104:3	1	166:7,9	166:7,9	1954
\$200,000	147:21	1	65:2,5	120	91:10
\$25,000	148:12	86:21,24	87:2	175:8	91:13
\$250	101:19	112:10	112:10	181:10	1988
\$300	86:20	131:9	131:9	132:7,	135:14
87:6	134:11	166:8	166:8	15	152:3
134:11	\$321	130:9	1,172	132:7,	126:13,24
\$377	130:11	10	20:7	13	31:22
		46:5	48:12	14	41:13
				14,000	46:24
				15	20:8
				138:21	205:16
				20	17:7,8

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: 20/80..75

39:1 67:13	166:5		
70:22		<u>4</u>	<u>6</u>
77:25	215 165:11		
88:23	222 166:6	4 36:1	60 20:11
133:25	227 166:5	171:8,18,	31:5 32:8
148:4		19 184:9,	100:25
177:6	23 11:1	13,22	132:1,2,5
	12:19	185:3,10	142:7,22
20/80 67:11	24th 166:1	194:9,17	143:13,14
93:23		200:13	
	25 135:20		61 17:2,3
200 145:5	269 131:9	4,000 131:6	621 136:16
146:9		40 10:6	630 130:22
166:6	27 43:14	46:6	
2000 207:4	202:17	131:14	638 19:20,
			25
2010 20:8	<u>3</u>	400,000	
85:3		174:2	638'd 19:7
2011 29:15	3 173:13,18	400-foot	655 131:12
85:4	3,330 130:21	189:12	66 166:8
2012 208:21	3,684 130:22	450 144:24	69 166:8
2013 29:15,	30 49:7	145:17	
17 85:4	73:8	480 174:1	695 131:12
2018 174:17	133:25		
194:24	146:8	<u>5</u>	<u>7</u>
2019 68:14,	31 156:17		70 56:8
17 69:12	314 138:21	5 138:1	80:3
70:1 78:3		5,000 158:25	100:25
130:15,19	320 131:11	50 148:25	102:25
	136:15,20	149:2	142:22
2021 29:17	321 132:7	166:4	143:13
55:7 69:12			175:5
130:15,19	33 177:6	500 41:10	
141:5	350 138:21	51 131:11	70/30 84:16
165:10	354 130:23	55 17:1	116:18
		56 91:17	
21 70:7,13			700 131:13
88:24			138:4
137:20			75 56:8

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: 75/25..addiction

75/25 84:16	198:3	acceptability	156:18,19,
116:19	90s 152:15	153:21	20 171:17
76 196:8	911 178:6	acceptance	action
79 104:22	9:00 210:21	100:19	120:18
		accepted	175:21
<hr/>	<hr/>	59:16	actions
8	A	83:12	55:16
<hr/>	<hr/>	access 18:2	122:22
8.- 132:13	a- 35:23	21:23	123:3
8.2 132:11	37:4 48:6	23:19	active 179:6
8.3 132:13	134:17	155:19,21	activities
8.75 132:12	135:3	169:7	112:24
8.8 132:13	a.m. 2:8	accomplish	128:22
80 30:8	Aberdeen	54:9	204:20
70:21	20:6	117:18	activity
104:19	ability	accomplished	56:20
136:14,19	37:4,13	88:23 91:1	57:20 83:9
154:9	59:2	account	92:20
80/20 57:13	100:23	79:25	157:17
63:14	145:12	accumulating	acts 108:12
64:25	153:17	98:2	actual 8:11
75:17	181:16	accurate	47:13
81:25	Aboriginal	40:5	adamant 57:7
84:12,16,	128:1,3	acknowledged	add 44:15
20,22	129:11	106:3	47:25
85:11 93:4	absconds	acquiring	151:7
8:00 2:7	147:7	138:6	179:9
8th 45:20	absolutely	acres	207:16
	161:24	173:14,18,	addicted
<hr/>	165:6	21 174:1,2	160:18
9	abuse 92:16	act 3:3	addiction
<hr/>	accept 22:16	106:2	150:16
9 31:22	40:17	135:14	154:3,4,13
90 30:1	73:13	137:9	193:1
136:14	106:13		
149:23			

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021 Index: agreements..Americans

54:19	ahead	4:3,4,	86:3,18	25:7 36:24
57:11,16		6,10 21:4	87:14 91:2	alongside
58:23		39:6,20	92:4,9,22,	49:9
59:3,10		118:8	23,25	
60:1 68:13		124:10	94:20	altered
69:13		162:12	101:16,22	107:8
75:13		163:19	102:8	alternatively
76:14 84:5		165:7	107:4	33:4
87:19		177:20	109:10	
88:8,10,		205:15	137:24	amazing
11,14,19		207:18		189:13
89:4,19,23			alcoholic	
90:1 93:1,	aid	198:12	55:3	ambulance
5,10 96:21				92:21
97:7	aiming		aligned	
102:23		151:19	81:12	Amen 4:14,
105:16				15
109:10	alcoho-		alliance	amenable
111:4,19		55:20	153:1	23:6
112:7	alcohol		allowed	America 50:3
119:13		20:9,12	32:10	128:4
122:23		54:13,14,	41:18	129:15
124:13		21 56:6,8,	62:6,21	136:3
		11,17,20	108:13	137:13
		57:1,16	135:15	182:9
agreements		58:3,7,11,	152:11	184:20,21
29:13		16 59:6,		192:9
107:7,20		10,11,14,	allowing	
122:20		15 60:21	3:15 167:7	American
124:17		67:10	172:13	64:12
		69:2,23	200:2	80:8,9
agricultural		73:24	202:12	90:21
129:20		74:3,5,21		132:11
		76:24	allude 59:8	
agriculture		78:14,16,		American-
28:7		18,24	alluded	indian
		79:1,20	107:23	189:13
agriculturists		80:2,4,9	alludes	
127:17		82:10,18	120:14	Americans
AGS 130:16		83:7 84:20	alluding	74:16
158:9			24:16,20	91:23

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: amount..Arikara

amount 23:21	apples 40:22	13:4	28:13
84:10			37:18
92:6,20	applicable	appropriation	38:9,15,17
	137:18	57:18	56:10
amphitheater	applied 61:6	approval	59:24 75:2
9:20	63:13	59:12	78:14 79:4
ancestors	77:21	approve 6:5	117:4
166:25	111:20	85:19	132:19,23
	116:9	121:9	156:15
animals		124:10	169:11
192:13	applies 62:2		173:8
annual 66:9,	apply 19:13	approved	190:3
12 134:13,	24:24	5:24 9:13	195:15
16	58:17 59:5	59:7,11	199:20
	61:8,9,14,	61:22	200:23,24
answering	15,24	65:20,25	
179:4	65:19	68:17	areas 11:15
answers	73:10	69:19 98:1	13:8 23:16
81:25	78:21	99:11	48:6 74:25
109:8	83:18	114:2,3	173:7
136:21	116:23	117:16	arena 203:1
		161:8	
anti-standing	applying	April 144:12	argue 33:3
115:10	19:3 26:4		62:13
anybody's	61:25	apt 134:23	187:20
137:13	82:24	143:18,20	argument's
			62:10
anymore 14:8	appointed	archeologists	arguments
83:1 135:2	170:13	128:10	75:11
145:3	appointment	archives	193:8
199:2	8:1 169:2	169:25	
anytime	appreciated	area 8:16	Arikara 6:13
187:9	14:20	9:8,22	28:3 43:6
apologize	apprehensive	11:16	44:10 49:4
167:22	163:25	16:12	74:10
		17:23	174:3,19
appeal	approach	20:3,6	189:5
115:11	68:11	23:22	191:16
Apple 23:15	approaching	27:2,23	202:14

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: Arikarain..back

210:1	assume 74:2	audience	aware 166:16
Arikarain	94:5	2:13	172:3
127:24	assuming	137:20	173:6
arm 106:25	85:19	audit 71:23	176:19
Army 9:13	183:20	76:4 148:3	awareness
arose 99:7	assumption	157:19	180:20
arrived	47:17	audited	202:21
153:22	103:10,11	71:22	203:20
aspect 82:24	assure 48:14	75:24	210:8
assaulted	184:12	auditing	awesome
92:13	atrocious	75:22,23	51:24
assert 62:12	17:7	76:1	53:14
asserted	attaboy	August 5:21	127:11
83:16	178:23	131:1	axe 150:25
asses 190:8	attempted	166:1	axis 192:11
assess 103:6	60:6 69:16	aunt 204:7	aye 5:1,13
assessing	70:7	authority	6:5,6
98:20	attempts	59:4,19,22	Azure 168:25
111:5	55:6 69:12	62:8 69:9	
assessment	attend	71:10	<hr/> B <hr/>
53:21	128:18	76:6,13	back 2:7
assessments	attention	77:7 79:13	9:4,8
55:23	102:1	80:1 88:21	12:11
assets 7:19,	attitude	107:16	13:12 25:5
21 14:19	153:14	118:12	28:23
assign 55:24	attorney	152:4	32:18,19
assistance	79:12	average	38:4,18
72:22,23	161:7	132:25	43:8 51:21
Association	169:6	145:19	53:9
140:20	attorneys	195:24	55:10,19
151:12,14	60:23	avoid 71:6	57:5 59:23
177:11	auctioneer	98:16	61:13 68:2
	90:23,24	99:12	70:16,21
		110:5	72:7 82:3
		await 163:16	85:13

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: backed..beautiful

90:18	background	barely 145:5	140:9
91:3,21	16:18 33:2	barn 139:16	basis 112:21
94:19	backtracking	barrier	209:14
97:16 98:6	150:6	164:9	basketball
109:19	bad 143:2	barriers	9:19
112:19	181:12	21:22	27:11,12
113:5	bag 158:20	bars 55:20	205:3
114:17	159:5	137:21,24	battles
116:18	160:7,8,21	158:21	73:24
119:9	Bakken 50:13	base 11:3	bay 8:25
120:5	bale 206:21	84:10 85:1	128:9
126:12,13	bales 207:4	142:7	BCA 156:18
130:4	Balkan	173:17	be- 67:23
139:15	200:24	200:23	beach 9:12
144:7,15	ballot	based 21:19	beans
145:2,6	175:12	39:15	127:12,18
149:1	ballots	45:24 70:1	bear 51:11
152:15	33:15	79:20	68:3
153:19	175:14	84:13	171:5,7,8
157:15,24	bank	93:12	196:6
160:22	147:23,24	98:10	207:17,25
161:23	156:18,19,	116:18	208:2,3,8
162:1,4	20	134:5	Bears 9:1
164:3	bar 54:24	162:2	12:1 38:16
166:25	62:19	171:13,15	49:4
174:14,15	75:14	172:17	134:22
184:11	82:25	176:5	143:3
194:21	83:1,11	198:2	157:12
195:16,18	91:13	bases 142:14	174:21,24
196:17	134:24	basically	175:1
201:15	137:7,18	69:19 70:2	201:17
202:15	161:16	103:7	beaten 92:12
204:24	bar's 134:25	119:19	beautiful
207:10,14,		122:6,10	16:9 195:5
15 209:21		123:10	
backed			
154:14			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: beefing..bit

196:5	beings 50:2	172:6	70:10
beefing	beliefs	173:5,12,	79:14 97:4
158:8	183:22	19,23	170:5
beer 58:16	believes	174:5,11,	205:15
62:20	71:10	17,18	billion 13:4
66:21	Bell 5:2,3	176:15	130:17,19
86:18,20	belong 74:15	180:2	134:10
101:21	111:5	181:24	billions
beg 142:14	beneficial	183:18	134:18
began 144:17	3:7	197:12	161:20
192:7	beneficiary	bet 149:23	bills 60:6
begin 3:10	196:22	198:21	120:19
55:8	benefit	beverage	202:19
135:15	144:21	76:24	209:4
171:4	benefits	BIA 155:7	bind 191:13
181:7	26:5 42:5	198:9	Bird 171:5,
183:12	72:7,14	bid 11:7	7,8
beginning	140:3	big 63:8	207:17,25
97:17	145:21	74:3 101:2	208:2,3,8
133:22	197:17	105:11	Bismarck
137:21	Benson	106:10	14:17
138:14	163:10	117:10	20:14
139:13	Bernalillo	159:15	52:21
151:11	166:7	197:21	130:5
154:6	Berthold 7:3	199:5	145:20
beginnings	9:23 23:19	200:20	153:8
127:24	34:11,18	bigger	154:9
begs 93:19	43:19,21,	173:17	157:12
behalf 62:7	25 56:7	biggest	178:22
87:17	70:25	14:10,20	bit 2:6 3:1
behoove	84:15	25:8 37:15	11:5 26:21
137:2	92:18	153:11	48:6 57:24
behooves	124:9	bill 57:14	92:2
136:4	163:11	63:12	100:22
		69:12,20	110:2

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: black..bringing

119:24	bodies 4:13	19 195:4,9	25 126:1,
121:20	boiled 61:20	Boschee's	10,11
122:3	boils 22:14	170:17	188:3
124:15	24:4	boss 149:1	breakdown
140:22	177:24	bother 22:2	61:24
148:7	bolts 15:15	bought 75:2	breakfast
150:24	book	boundaries	21:11
151:7	192:16,17	37:25	breathe
154:14	books 71:23	43:18	157:15
159:13	77:8 80:17	49:17	breathing
199:24	96:18	51:12 68:5	157:24
206:15	191:21,22,	75:8 76:24	brewery
207:13	24 192:1	102:17	150:18
black 190:23	boom 204:12	103:3	bridge 98:6
bless 4:6,9	booze 91:15	108:16	bridges
blessing	border 36:4	111:8	210:8
3:19	165:21	boundary	briefly
blessings	born 184:20	72:4 75:3	26:20
16:15	195:8	box 178:9	bring 65:12
blew 82:7	204:8	boys 196:8,	85:24
Blind 135:1	208:11	9	102:1,21
blink 204:14	Boschee 5:8,	brag 127:15	113:21
blood 196:22	9 6:1	branch 30:16	119:6
blue 204:19	21:13,14	144:2	136:8
Bo- 44:2	24:4 26:19	branches	165:23
board 150:22	35:10,11	188:10	166:19
166:16	38:4 39:12	bread 204:4	172:14
169:1	44:2 45:2,	break 21:9	180:15,19
170:14	3 46:16,18	27:1 39:1	210:7
boarding	48:3	46:19	bringing
166:11	139:18,19	53:17	118:23
168:11	140:17	120:4,6,7	161:9
169:3,13,	168:15,21,	125:11,23,	178:20
14 170:15	22 194:18,		209:20

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: brings..call

brings 93:18 116:12 119:5	budget 52:3	Bulls 204:25	butt 194:10
broad 137:18	buff 47:21	bunch 71:23 73:16 160:9 194:14 208:5	Buttes 13:2 37:8 162:16 163:10 178:13 210:3
brother 158:25 188:7 200:2 201:7	Buffalo 13:16,20, 23 43:1,2, 3 45:4 51:6 162:9,12, 13 170:10, 11 200:9, 11 202:11	burden 103:24	buy 23:17 65:17,22 83:7 91:14,15 94:24 106:8 111:15 143:3 149:2
brother's 188:7	build 11:9 28:23 165:1	bureau 40:8, 12,17	bureaucracy 123:17
brothers 188:8,9	building 9:6,16,18, 19 17:21, 24 27:22 41:9 55:22,24 169:22 187:14	Burgum 85:15	buying 104:4 138:10
brought 43:16 85:4,16 117:8,22 118:25 123:2 125:22 128:12 152:4 160:1 166:25 169:5,6 170:2,24 180:24	buildings 13:5	bus 126:8	buys 62:20
brown 190:24	built 11:5 20:13 27:18,20 91:12 195:12	busier 7:7	bypass 14:10
BSA 156:18	bulk 116:11,23 117:1,5, 12,17 118:17 119:14,19	business 101:4 102:17 108:1,5 137:22 138:13 143:2,17 146:1,2,4 147:4,5,19 148:10	<hr/> c <hr/>
bucket 158:24	businesses 14:7 55:4 68:8,10 72:2 75:3	calculations 54:2	California 166:9
bucks 149:1	bust 201:18	call 2:2,3, 19,22 7:19 20:6 72:21 126:18 128:1 133:4 156:18 163:15,21 180:6,21	
bud 82:8	busy 10:21 17:19 45:14 167:24		
buddy 147:7			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: called..centers

197:16	113:15	69:18	12 157:13
203:17	151:24	131:19	cattle
called	capitalize	147:6,21,	129:22
27:11,19	21:1	23 148:4,	caught
28:16	car 118:24	15,19	147:17
131:25	119:3	176:9	148:23
132:11	130:4	177:2	caused 69:21
147:24	195:21	185:12	causing
154:22	card 22:25	cases 59:21	64:23
155:3	150:3	80:3	caveat 86:5
157:17	care 3:17	cash 157:21	cell 184:16
162:17	4:1,3,8,11	casino 9:25	census 39:15
173:14	17:22 19:6	25:2 62:18	40:8,12,
174:22	22:18	65:2,3	14,17
192:2	23:18	75:14	46:22
calling 9:5	42:13 71:3	145:10,17,	47:8,16
163:14	92:7,10	19 147:12	84:13,17,
168:5	94:13	157:6	19,25
calls 71:19	100:1	159:16	85:1,3
158:19	Carlisle	210:21	116:18
193:12,13	166:4	casinos	171:14
camped	Carolina	135:15	center 8:11
196:10	190:21	146:5	9:9 20:13
campsites	carried	cast 33:15	22:17
9:18	175:25	175:2,5,20	23:19
campus 17:22	carry 34:20	179:13	191:17
23:10	172:21	cat 160:7,	199:15
Canada	carrying	21	204:18
165:12,21	87:16	cat's 158:20	205:2
Canadian	cars 118:20	159:5	centers
36:4	195:25	catalog	14:16
candy 104:10	Carson 166:6	112:3	29:22
cap 143:6	case 19:20	catch 150:17	128:1
capital 9:6	59:19	155:18	129:12
		156:5,10,	

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: century..chairman

century	45:2,3	9,11,12,	11 116:6,7
137:17	46:15,17	14,17,18,	117:24
Certified	47:4,11	19 82:15	118:2,5,6,
59:16	48:17,18,	83:1,24	8,10,19,22
chain 204:19	22,24	84:7,24	119:16,18,
	50:10	85:1,21	20,23
chair 162:13	51:15,21,	86:1,16	120:2,3,6,
209:19	22,24 54:6	87:9,11,	9 121:6,
chairman	57:23	20,21 88:7	14,19
2:1,4,5	58:5,8,9,	89:1,2,3,	122:2,5,19
4:16,17,	13,14	6,10,22,25	123:9,10
22,24 5:1,	60:13	90:12,15,	124:23
16,17,19,	63:18,21,	16 91:10,	125:1,2,3,
25 6:7,8,	22,23,24	11,16,18,	8,10,13,
10,11	64:3,5,6,	20,25 92:1	15,17,18,
13:12,13,	11,13,14,	93:6,17,	21,22
15,25	16 65:3,6,	18,24,25	126:4,7,9,
15:11,13,	9,19,21,	94:1,2,3,	12,13,15,
23 16:1,4,	22,24	11,15,16,	20,22,23
13 17:4,5	66:1,2,3,	18 95:6,	127:1,2,3,
18:24	8,12,16,	18,21	4,6 128:14
19:12 20:3	19,22,24	96:11,14	129:3,5,7,
21:4,5,10,	67:1,2,4,	97:11,16	18 134:13,
14 24:6	5,6,7,8,9,	99:14,22	14,15,16,
25:1 29:9	12,13,15,	100:4	21 139:4,
31:13,15,	17,18,20	101:2,10,	8,19
16,17,19	68:1,16,20	11,12	140:16,18
35:8,9,11,	70:15,17,	102:2,3,7,	146:23,24,
12 36:22	19,20	8 105:12,	25 150:5
37:21,22,	71:15,16,	16,17,25	151:3,4,5,
23 38:6,	25 72:9,	106:9,12,	6,13,14
23,24	12,17,23	14,23	158:16,18
39:2,7,8,	75:20 76:3	107:14,23	159:23
10,11,16,	77:3,14	109:5,6,7	160:1,6,7
19,20,21	78:7,9,13	111:22	162:6,13,
40:23	80:1,7,15,	112:4,6,9,	19 163:5,
42:1,14,18	21,25	11,13	18 165:3,
43:1,2,3	81:6,7,8,	114:4,8,9,	5,7 167:17

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: chairs..chicken

168:3,9, 22,25	211:2,6	90:19 96:9	158:5
170:10,11, 21 171:6	chairs 5:22	106:19	charitables
176:22	chairwoman	152:12	10:5 132:7
177:2,18	209:19	178:5	145:22
178:19,24	chall-	changing	charities
179:6,16, 19,24	181:25	52:22	131:11
180:4,22, 23 182:15,	challenge	88:17 89:4	132:15
16,17,21, 24 183:10	40:18	channels	135:9
184:1,6,8	challenges	24:21	136:13,15
185:11,17, 22,24	199:10	characteristic	138:5,10, 22 140:21
192:20	challenging	s 121:25	141:18
194:5,18, 19,20	46:11	characterize	142:20,22
195:3,8,10	181:25	32:23	143:10,13, 15,21
196:3,4, 17,25	chambers 9:7	charge 19:7	144:3,9
197:11,14	203:16	83:4 97:9	152:21,24
198:10,19, 21,22,24	chance 6:23,	104:21	153:2
199:12,14	25 12:14	143:23	
200:5,7, 10,14,18	63:16 82:8	148:17	charity
202:6,8,11	185:19	160:5	137:3
203:23,25	188:1	charged 55:2	138:18,23
204:1	change	89:20	141:25
205:11,14, 16,20	20:15,22	104:9	check 38:20
207:18,19, 20,21,22,	36:13	charges	148:2
24 208:1,7	44:25	146:20	161:2
209:15	52:20	charging	checkerboard
210:10,11	88:2,9,11, 14,21	60:19	68:7 75:7
	112:18	103:8	Chemawa
	116:3	111:18	166:7
	135:12	charitable	Cheryl 163:9
	changed 29:6	131:10,24	Chet 193:13
	41:10 70:8	135:10,11	Chicago
	80:16 85:3	139:22	204:25
	88:18	140:10,11, 14 141:2, 22 144:9	chicken

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: chief..collect

208:3	cirrhosis	78:8 102:1	186:15
chief 20:5	92:11	162:14	closer 48:2
child 92:16	cited 94:19	170:12,18	closes 146:9
childhood	citizen 43:6	class 142:3,	closing
90:18	44:9 45:10	8	98:21,24
205:5	202:13	classes	closures
children	citizens	209:22	98:21,22
12:3 20:23	23:3	clauses	CMS 19:17,
165:11	32:11,25	71:21	20
166:3,22	33:14,20,	clear 25:16	coach 14:4
168:11	22,23 72:3	54:6 79:4	Coalition
chips 157:22	74:16	163:6	170:15
choice 33:17	161:22	cleared	coast 128:8
55:8 140:1	citizenship	196:13	code 78:23
choices	33:24,25	clears 63:7	92:25
164:24	50:2	clerk 104:20	137:17
choose	city 23:5	client	coexist
143:14	27:12	148:14	49:22
206:12	36:11,18	cliff 189:12	cohabitating
chores 104:3	38:15	climate	72:25
chose 33:1	56:13	192:12	cold 36:11,
chump 20:15	106:7	clinic 17:23	12 141:16
chunk 36:19	145:20	close 12:4	189:17
church 3:8	166:4,6	17:5 99:13	collapsing
195:12	170:19	131:21	145:6
201:15	195:25	134:4	colleague
circuit 75:5	199:9	178:17	46:3
circulating	Civil 3:3	193:22	collect 56:5
154:19	civilization	194:24	58:5,6
155:16	192:7,16	closed 11:19	62:3
circumstances	claims 17:12	174:24	70:16,20
55:5	147:8	175:7	73:4 75:16
	clan 208:3	178:12	103:1
	clarify 65:8		

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021

Index: collected..committee

104:15	com-	50:23	179:20	commit	6:11
109:17,23			183:14	commitment	
116:17,19	combination		186:2	171:24	
118:7	58:19		205:16,22	commitment's	
119:1	193:9			113:6	
collected	combine	30:1	comments		
53:22	94:23		4:19 6:9	committee	
56:14 57:6	combined		15:5,19,20	5:20,21	
58:2	13:3		21:6 38:25	6:15,16	
111:7,8	153:20		39:2 67:22	30:13,15	
118:1,8,20	comfort		90:15	34:24	
collecting	184:24		99:15	35:9,15	
55:21	comfortable		102:2	39:13,16,	
64:14	83:22		119:16	23 43:4	
77:25	comm-	37:11	139:10	44:3,4,8,	
105:1	44:13		162:7	24 45:5,8,	
110:18	commences		170:17	16,23 47:6	
207:5	103:22		177:3	48:8,18	
collection	commend		179:20	49:1	
55:11,12	30:11,19		184:2	51:21,25	
102:24	44:16,18		185:19,20	52:15	
104:22	53:9 54:8		194:7	53:9,10	
109:24	113:20		200:9	54:8	
collectively	commensurate		203:24	55:16,17	
37:14	101:25		205:12	57:14	
54:18	comment	2:25	commercial	65:13	
collects	6:2 21:7		141:23	69:22	
30:2	26:20 39:3		142:1	76:16	
College	45:9 46:19		152:23	85:22	
169:1	83:24 91:9		commercially	98:11	
collusion	114:5		138:7	99:21	
155:19,24	162:10,11		commission	103:25	
156:7,11	168:10		52:2 142:6	105:19	
Colorado	171:1		155:1	120:21	
166:6	178:21		commissioner	121:10,16	
			200:8	128:20	
			203:23	135:23	
				139:9	

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021

Index: committee's..concert

160:10,16	communicating	comparing	concept
161:25	180:11	40:21	171:25
163:8	communications	comparison	172:25
167:18	124:24	101:17,20	concern
168:23	communities	158:4	37:15 86:9
169:11	28:10	compensate	87:22
170:9,12	36:7,16	28:14	105:7
171:11,12	37:24 38:1	competency	158:23
172:15	40:7	180:9	179:4
180:1	44:14,17	203:18	180:24
185:19	46:9 140:3	complaining	181:14
186:1,4,22	167:4	176:25	198:8
199:3	176:1,8	completed	concerned
202:12,19,	203:8,11,	12:8 22:13	16:17
24 203:25	12,21	completely	37:18
210:20	community	26:2 68:3	52:14
committee's	17:24	compliance	71:21
39:22	149:12	156:16	80:24
committees	163:15	compliant	162:15
30:21 35:1	164:8	113:17	concerns
47:12 62:7	172:21	158:10	15:10
committing	174:25	complicated	34:21
78:22	175:1,3,19	71:18	37:13
common 36:25	179:10	comply 81:21	43:12,13,
43:20	183:18	comprise	16 100:10,
83:20	198:1	35:22 36:1	11 135:7
114:12	commute	compromises	164:1
186:18	38:11	140:24	167:8
commonalities	compact	computer	172:21
188:23	45:21	111:16	174:7
communicate	137:10	con- 95:2	180:13
30:15	152:5	108:4	184:19
101:3,5	compacts	172:8	186:10,11
164:18	151:12	concert	201:2
communicated	companies	68:24	
123:1	50:24		

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021

Index: concession..continues

concession 116:22	Congress-made 79:3	consistently 43:17	39:17 184:17 196:20
concessions 140:24	congressional 202:23	constantly 18:7 62:4 108:20	contained 172:8
condition 7:11	congressmen 33:16	constituents 6:25	contemplate 68:6
conditions 136:22 142:2 182:5	connect 40:4 connected 43:12 169:17 173:10	185:3,7 201:1	contend 138:14
conduct 48:23 108:5 142:12 143:17 152:4 206:6	connections 169:23	constitution 172:2	contended 138:15
conduit 33:13	consensus 57:9 186:18	constraints 201:11	content 152:25
conference 25:3	consent 107:5,9,19 122:22	construction 187:12	contention 186:13
confidence 47:2	consequences 144:13	consult 122:18	continually 18:7
confident 73:9	consideration 25:12 35:3 36:23 40:13 62:1 181:15	consultation 122:17 123:20	continue 9:25 14:25 19:10 36:5 51:22 87:20 89:1 102:7,22 127:2 133:18 173:9 174:13 176:21 195:6
conflict 40:9	considered 5:22 34:3 136:10 159:8 176:11	consulted 123:8	
confusion 64:23 170:16	consumed 172:19	consume 79:21 80:2	
congress 27:20 33:6 42:11 75:8	consistent 88:3,8 89:20	consummated 110:24 111:17	continued 30:14 130:20
		contact	continues 130:24

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: continuing..country

continuing	conversations	correct 14:6	Councilwoman
97:24	35:16	25:24	7:21 10:15
166:13	45:13	53:25	21:15
	140:11,19	54:4,5	counsel
contrast	164:14	63:23 64:2	53:15 60:7
190:22	205:9	67:15	
contributions	convolute	80:14 86:7	counselor
198:13	95:2	93:16	147:15
control 32:2	Cook 111:23	120:19	count 7:5
50:5 51:23	cool 195:20	correctly	46:20,25
100:16	205:11	65:16	172:16
136:14	cooperate	169:13	178:1
141:22	9:16	cost 26:14	counted 47:3
153:24	cooperating	143:7	175:13
154:23	23:25	costs 11:7	198:12
155:4	cooperation	70:21	counter
156:3,13	18:17,23	92:21	161:1,2
controlled	19:19	143:4	counterparts
2:13 41:16	50:22	council 9:7	201:23
controls	cooperatively	10:14 15:7	counties
118:11	53:17	16:11 40:4	18:19,20
155:23	113:19	42:14 49:7	42:22
157:13,14	coordinating	82:11	176:16,17
159:18	53:14,15	179:5	177:6,7,12
convenience	copy 65:10	196:4,19	countries
96:6	core 137:16	197:18	129:14
116:22	corn	199:6	188:19
convenient	127:12,17	204:1	191:1
137:23	Corps 9:13	Councilman	country
conversation	114:20	7:24 8:3	33:10
45:7 46:7	115:2	councilmembers	36:12
96:3 101:9	187:25	15:19	50:21
140:13	190:1	35:13	78:16,18,
170:4		178:24	25 86:3
188:2		194:20	94:21
202:18			162:16

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: county..Dakota

182:18	115:1	crime 78:22,	customer
184:21	courts 9:19	23 79:11	22:7,14,22
186:5	cousins	criminal	24:5
188:14	204:8	92:20	cut 32:8
196:5	coverage	critical	81:24
198:23	22:19	9:24 23:18	139:15
county 18:8,	147:6	26:16	cycle 48:11
13,21	148:9,13,	172:12	Cynthia
21:21 22:4	15,19,21	187:5	39:5,6,10
25:20	covered 96:8	crops 28:6	64:7 76:3
50:17	covers	129:22	80:25
166:7,8,9	198:16	cross 8:25	87:9,12
174:19	COVID 48:4	crowded 2:10	97:18
175:9,21,	craft 150:18	cruise 11:11	101:10,11
22,23	crap 149:19	crying 3:24	120:10
176:18	crazy 141:9	cuffs 149:10	121:19
177:4,5,9	150:7	cultural	122:1,5
178:14	create 26:8	180:8	130:3
199:9	created	203:18	
county-	57:19	209:18,22	<hr/> D <hr/>
21:18	138:3	210:8	D.C. 60:24
couple 10:19	156:20	culture	61:11,12
14:2 45:13	creates 62:4	183:21	dad 195:12
64:17	83:8	curious	daily 112:21
105:18	creating	35:13	209:13
110:8	21:21	36:4,14	Dakota 17:8
116:7	122:10	current	20:7 23:3
185:18	164:13	171:21	30:12
195:12	credit 150:3	customarily	32:12,25
court 55:25	Creek 16:12	206:4	33:15,21
56:2 59:21	creep 86:13	customary	45:10,12
63:1 69:18	cried 23:11	206:2	49:10,23
75:5 79:3			50:10
80:3 84:2			51:4,10
103:15			62:19
104:11			
114:19			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: Dakotans..degree

72:3,4	dam 27:22	days 45:16	6:22 28:12
83:2	damn 151:1	113:5	48:9 98:14
107:16	dams 27:18,	151:22	162:3
110:23	21	196:11	172:3
121:8	dapple 114:6	deal 14:14	196:14
129:13	darn 132:20	48:13	decisions
134:23	data 20:21	56:17	183:16
139:11	38:7,20	75:17 92:6	declared
146:6	40:16	98:4	20:8 74:8,
151:10,12	47:19	106:11	9
152:12	76:10 81:1	108:23	decline
153:5,6,12	83:17	132:4	50:21
157:12	155:10	139:17	declines
159:2,11	database	184:18	173:7
161:11,22	92:15	dealing 29:8	decree
165:2	Dave 123:24	82:2	123:13
166:4,20	Davis 5:14,	108:20,22	defeated
167:2	15 106:22,	dear 3:16	57:14
171:16,18,	25	decade	153:10
20 172:13,	day 3:23	138:20	defer 13:11
16 173:3,6	63:3	decades	15:18 94:8
174:19	137:15	23:11	deferred
175:8	142:21	93:11	56:1
176:16	153:22	97:20	defined
179:7,13	186:24	117:8	173:17
183:20,24	189:9	123:15	definition
184:22	194:12	decide 77:21	137:6,18
187:17	195:16,19,	90:1 94:4	159:8
189:3,15,	25 196:1	decided	161:17
21 190:8,9	201:25	73:14	definitions
191:18,23	206:19,20	122:1	137:9,14
Dakotans	207:3,4,6	152:2	159:25
205:18	209:23	decides	degree 32:6
Dakotas	210:12	177:4	54:1
170:20	decision	decision	
Dalrymple			
85:5			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: degrees..difference

155:15	depart	derived	development
degrees 87:9	209:22	26:10	7:10,12,
206:17	department	89:15	15,18,19
207:7	2:21 18:5	describe	8:23 9:12
delicious	42:20	189:5	36:25
129:6	53:15	deserve	54:18
deliver	59:17 61:1	49:19	116:24
21:18	117:9	design	117:2
111:16	119:12	155:20,22	127:22
delivered	120:12	destination	151:25
58:10	123:25	9:23	152:9
110:24	departments	destroyed	193:1
118:9	53:12	29:7	devices
delivery	depend 29:4	detail 117:8	130:20,21
110:25	dependent	details	131:17
111:17	28:2,4	65:13	132:2
delve 199:2	59:3	Deville	137:4
demand	depending	detention	183:13
142:18	12:15	22:17	184:2,7
democracy	84:17	determinations	Devils
171:24	86:19 87:7	52:13	150:18
172:1	depends	115:1	devotion
178:11	66:14	determined	206:13
182:12	86:16,17	98:24	diabetes
democracy's	87:3	deterrence	17:23
182:11	deploy 24:22	181:12	dialogue
democratic	deployed	deterrents	6:19
171:24	188:1	40:25	Diamond
176:4	deposit	developed	131:23
demographics	147:25	192:6	192:3
52:18	depository	developing	died 4:3
demonstrate	169:24	29:12	148:6
128:11	depot 117:4	121:9	170:2
		123:6	difference

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021 Index: differences..disregards

38:21	diminish	disappearing	102:6
47:10	181:23	11:17	141:1
80:12	diminishes	disappointing	166:15
119:11	37:4	55:18	discussions
123:11	diminishing	98:13	36:6 98:11
179:2	37:12	discontinued	135:23
differences	dipping	115:7	185:6
191:12	148:22	discourse	disenfranchise
203:14	dire 57:19	164:14	d 75:7
differently	direct	discovered	disfavor
79:6 84:10	197:16	147:20	193:8
95:11	direction	165:19,20	disparate
difficult	12:16 55:9	discovery	77:17
18:14	186:19	165:11,13,	disparity
22:11 23:4	directly	17 166:2	92:8
32:9 41:24	19:21 56:6	discretion	display
156:16	64:10	2:17 97:10	128:7
181:6,8	130:16	discretionary	displays
difficulty	director	2:11	128:2
18:21	18:5 52:1	discuss	disposable
181:3	151:15	121:22	132:21
dig 15:15	156:23	123:22	disposals
160:2	170:5	162:18	124:1
digging 9:16	dis- 181:23	165:9	disposed
77:4	disagree	discussed	133:4,5
diluted	62:15	186:25	disposition
172:16	68:23	discussing	108:18
176:17	100:21,22	99:20	disqualificati
dilutes	193:4	166:17	on 25:14
197:8	disagreements	discussion	disqualify
diluting	115:21	6:2 30:23	25:18
37:12	disagrees	48:15	disregards
dime 56:5,	68:4	85:22	69:8
14 57:6		99:17	

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021 **Index: disrespectful..driving**

disrespectful	44:1 46:25	27:7	25
22:8	49:8,15	documentary	double 46:22
dissuading	51:9	27:8	88:5
182:8	163:11	documents	doubt 2:23
distance	168:1	137:16	7:16 62:23
12:19	171:8,18,	dog 160:4	drafts 52:9
distances	19 172:18,	dollar 66:17	dramatic
175:15	20,23	104:2,4	181:1,4
distinguish	184:9,13,	dollars	dramatically
78:19	22 185:3,	26:16	181:23
distinguished	10 186:5	29:19 57:4	drastic
49:13	194:9,17	82:20	41:24
distribute	200:13	104:23,24	drawing 38:5
19:21 66:3	districting	133:12	40:22
101:15	52:20	134:18	drawn 51:9
distributed	171:20,21	138:12	dream 23:23
56:11	172:17	151:24	dress 200:3
distributes	177:22	161:20	drilling
19:17	districts	198:14	12:24
distribution	35:2 48:10	domestic	113:7
93:3	173:3	56:19	drilling's
197:16	176:11	75:18	113:1
distributions	182:24	92:11	drink 55:3
29:24,25	divided	domesticated	drive 11:17
197:22	127:23	129:22	38:12 82:6
district	176:15	domestication	driven 31:1
13:19	division	192:12	drives
34:12,17	158:8	dominating	206:25
35:23	doable	132:3	driving
36:1,9,20	100:14	door 149:10	11:19
37:9,10	doctor's 8:1	153:16	12:15
38:5 42:8,	document	186:15	28:15
15,25	47:19 89:9	208:24	
43:14,22	documentaries	doors 98:24,	

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: drops..elections

112:21	Eagles 84:3	151:25	Eighty 67:13
drops 146:1	earlier	152:9	elaborate
drug 20:12	50:19	economically	121:20
156:24	107:13	9:23	Elbow 23:12
192:25	122:20	102:11	27:8,12
drugs 20:8	128:23	133:4,13	elder 22:5
82:19	130:7	economics	163:22
92:22,23,	132:17	36:16	180:12
24 157:1	147:1	economy 29:7	elders 2:20
ds 115:18	151:23	60:2 74:12	19:13
dual 33:23	155:4	107:22	20:23
54:15,16,	199:19	115:17	24:16
22 55:4	early 206:17	129:19	25:10
59:25	earth 9:8	educating	29:25
81:14,15	easier 18:2	164:12	163:16
98:16	87:18	education	180:17
107:3	east 11:2	196:20	209:13
duality	37:3	197:9	elect 33:21
109:2	192:11	198:6	34:20
Duck 135:1	Eastern	209:21,22	elected 33:6
due 180:5	43:15	effect 34:24	164:16
dug 102:9	easy 109:8	95:9	179:18
DUIS 92:16	119:18	140:25	202:5
Dunn 175:9,	eat 27:2	181:1,12	electing
23 177:4	129:8	effective	33:18
dust 63:7	204:4	2:7	election
DVD 27:13	eats 30:8	effort 49:6	35:5 172:9
dying 11:16	economic	203:21	183:7
	8:22	efforts	elections
	10:10,25	44:19	172:6,8
	59:23	46:12	176:4
E	84:12	164:8,15	181:7
	135:16	eighth	182:19,20,
E- 143:9	146:15	197:15	22 183:3,8

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: electronic..equally

electronic	encourage	enforce	ensure
131:8	12:21	98:18	166:24
149:19	109:17	121:13	entered
elevated 9:7	126:16	enforced	173:14
184:4	164:23	79:12	entire 35:23
elevating	encouraged	enforcement	43:10
122:15	45:10	29:22	entities
eligibility	end 15:6	55:11,19	58:25
19:12	55:25	56:18	95:7,8
eligible	57:17	92:17	100:20
18:10,15	63:3,8	99:2,3	114:14
26:8 42:8	101:7	192:25	137:11
eliminate	142:21	engage 45:25	153:1,9
18:13	144:11	engine	155:6,9
elongated	167:6	135:16	entity 54:23
62:25	194:11	Engineers	90:6
emails	199:7	9:14	100:15
184:10	ended 130:22	114:20	108:2
Emergency	ends 54:24	enhance	155:5
197:21	140:7	145:14	169:2
emphasis	energy 7:6,	enhanced	enumerated
209:16	10,15,18	59:8	186:8
employee	10:9 20:25	113:2,7	envi- 28:19
2:20	26:10	enjoy 159:17	environment
148:3,20	29:12	189:19	193:2
employees	36:25	enjoyed	environmental
24:13	53:11	199:16	118:13
146:5	54:18,19	202:18	envision
employer	56:23	enrolled	28:19
147:16	57:13	197:2,14	equal 176:12
employment	63:15	204:10	equally
10:5,7	70:18 82:3	enrollments	154:12
en- 76:21	84:11	24:15	164:24
	116:23		
	145:13		
	193:1		

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021

Index: equals..experience

equals 35:23	69:24	204:16	existing
			47:25
equated	estimate	examples	79:17,18
145:24	82:12	22:1	97:1
		132:14	
equation	estimated	excellent	expand 10:10
146:18	130:15	6:3	122:2
			135:25
equitable	estimates	exception	152:22
29:14,18	11:7	64:7	176:7
114:2	ETAB 10:4	78:17,21,	
136:23	134:6	25 198:7	expanded
equitably	136:11	199:6	32:4 198:4
57:11	142:4,9		
ER 92:21	143:10	exceptions	expanding
	144:9	78:20,21	136:2
essence	146:3	exchanged	expansion
122:10	158:6	66:5	10:4 138:3
			140:24
essentially	European	excited 15:3	151:19
122:7,13	129:13,14		153:23
123:6		excludes	
125:1	Europeans	73:21	expect 94:6
	192:7		
establish	evasion	executive	expectancy
103:5	156:21	8:4 123:14	16:25
121:21,23		144:2	17:3,15
124:21	eventually	exempted	expense
	23:18	111:20	47:15
established	156:7	exemption	expensive
28:10 85:2	157:9	96:16,22	62:25
120:20	everybody's	103:21	
135:13	59:2 71:13	exert 103:21	experience
establishing	evidence		44:11
122:13	25:5	exhaustion	120:10
129:12		140:4,5	123:10
	evil 3:21		181:3
establishment	evolution	existence	191:4
58:12	191:19	56:9 97:24	202:4
137:15		121:24	208:20
establishments	exact 37:23	123:15	
55:21			

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021

Index: experienced..federal

experienced	45:25	factor	farmers
82:2		152:17	127:16
experiences	104:17	factors	farming
120:15		192:10	189:24
expertise	43:18	failed 55:6,	190:4
96:2	51:12	18	father 3:17
experts 19:8	108:16	fair 183:23	4:7,11,12
explain	extra 100:12	190:17	91:12
68:18 84:8		fairly	188:8
205:25	50:14	101:25	193:16
explained	extremely	fall 45:24	father's
60:15	17:16 79:8	72:4 145:8	55:13
130:7	eye 50:13	falling	188:6
190:16	eyes 11:19	113:2	193:16
explaining	57:12	falls 43:18	favor 6:5
132:18	114:1	false 162:2	150:17
135:22	192:14,18	falter 14:7	favorite
explanation			204:21
11:14		familiar	FBI 157:3
71:17		42:2	fear 153:11
explode	faced 130:7	160:19	feared
153:4	facilities	families	152:14
explosion	2:9 29:23	4:6,10	fed- 108:15
153:21	facility	41:12	federal 3:3
158:6	11:9 69:4	family 43:10	18:25
exposure	97:6 127:8	147:10,15	21:16,23
153:16	158:22	149:9,12	24:9 26:15
express	169:22	163:23	27:17 28:4
37:13	fact 100:19	178:3	29:4
extended	106:6	197:1	33:14,19
41:12	121:21	201:6,10	41:3
extensive	138:11	fans 150:25	47:18,19
44:11	160:8	farm 190:5	49:16,17
	171:25		
	178:4		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: federally..finding

51:10,13	66:6,8,9,	felt 43:23	figuring
55:25	12 68:9	114:21	113:19
59:7,16	70:20	144:11	file 76:17
60:18	75:16	181:21	Filipinos
61:18	78:19 81:4	182:2	191:3
62:17,21	86:14 87:2	FEMALE	fill 22:12
63:1 68:6	88:6	209:16	58:18
69:9,18	89:12,14	females 17:9	76:18
73:17,19	90:4	fence 204:19	116:11
74:19,23	93:20,24,	fictitious	119:7
78:15	25 94:1,2,	138:8	filling 64:9
79:2,10	5,13	fidelity	final 194:6
96:16,18,	95:16,18,	147:6	205:12
20,23	23,24	148:19	finalized
97:3,21,24	111:17	fields 57:12	12:6
98:1,22	173:20	fight 7:22	finally
100:20	fee's 95:14	49:1,2	147:20
101:14	feel 15:5	50:25	149:9,10
107:7	16:2 20:3	51:1,15	finals 205:1
108:2,8,24	43:23	fighting	finance 2:20
114:19	67:22 73:3	74:6	67:21
122:11	77:6,22	figure 23:24	find 23:3
123:11,17	83:22 84:3	47:1 57:7	53:20
142:5	99:9	89:13 96:4	93:19
152:8	140:4,6	103:9	140:14
154:22	187:16	111:9	168:19
156:16	fees 87:25	112:13	184:17
169:24	89:17,18,	132:3	186:18
172:9	20 93:2	133:2,3	193:4,5
federally	97:9 98:2	136:22	196:24
28:2 59:4	101:14	186:17	finding
97:12	108:4	196:21	80:23
158:10	146:20	figured	177:13
169:13	fellow 15:18	32:12	
fee 62:19	185:1		
63:15	194:20		
64:3,5			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: fine..found

fine 16:4	163:13,18	formalize	173:5,15,
83:4	fly 153:18	122:9	19,23
162:19	focal 50:14	formalizes	174:4,11,
fines 98:20	focus 8:22	121:21	17,18
finish 45:17	10:24	formalizing	176:15
179:20	86:10,11	123:6	180:2
finishing	130:1	formally	181:24
9:5	210:2	34:23	183:18
fire 72:14	focusing	forms 58:17	fortunate
fires 3:25	203:1	64:9 109:3	17:19
fish 189:19	folks 194:23	139:25	forum 121:22
five-year	195:1	formula	forward
17:11	follow 24:6,	58:17	2:19,24
fix 82:22	7 46:19	61:25	6:17 7:16
84:19	fondly 23:15	63:11,13	34:20 47:1
flat 84:20	food 21:11	68:21 69:6	61:1 68:15
flatbed	125:13	79:18,20	85:17,24
206:25	126:17	formulate	87:23
207:2	127:10	57:16	89:13
flies 12:7	force 91:21	69:13	98:12,13
flight	98:22	formulated	99:11
153:18	forced	54:19	100:24
flood 28:13	98:17,18	Fort 7:3	107:2,18
153:24	forgot 52:1	9:22 23:19	108:7
flooded	205:25	34:11,18	109:4
23:12 29:6	forgotten	43:19,21,	124:18
flooding	168:20	24 56:6	129:1
28:15,17,	form 108:3	68:3 70:24	185:10
25	170:1	84:14	194:14
floods 3:25	172:11	90:21	195:6
floor 30:22	form- 69:13	92:18	205:9
57:15	formal	124:9	210:15
	141:17	163:11	found 101:3
		169:10,12	128:9
		172:6	165:11
			178:11

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: Foundation..funded

Foundation	20 70:17,	127:2,3	80:7,14,20
132:12	20 71:25	129:5	86:7 96:25
founders	72:9,12,	134:13,15,	97:14
171:25	17,23 76:3	21 139:20	free 143:22
fourth 46:4	77:14	140:16,18	fried 204:4
Fox 2:1	80:25	146:24	friend
4:17,22	81:7,9,12,	151:4,6	147:16
5:16,17	17,19	160:1	friends
6:8,10	82:15,25	174:22	149:13
7:24 13:13	84:7 85:1	175:7,24	front 78:9
15:11,13,	87:11 88:7	177:2	194:1
23 16:1,4,	89:22,25	178:2,17	208:5
13 17:5	90:12,16	179:19	fuel 84:25
18:24	92:1 93:6,	180:22,23	105:15
21:5,10	24 94:1,3,	182:17,21	117:2,3
31:13,16,	15 95:6,18	185:11,17,	fuels 84:7,
19 35:9,12	97:16	22 192:20	9,13 116:8
36:22	100:4	194:20	118:4,17
37:23	101:10	196:4	full 11:12
38:6,23	102:8	198:22	93:16
39:2,19	105:16,25	199:12	full-blooded
40:23 43:1	106:12	200:7	193:17
47:4	107:14,23	204:1	fullest
48:18,24	109:5,7	205:14,17,	44:22
50:10	112:4,9,13	20 207:18,	fully 73:9
51:22,24	114:8,11	21,24	124:3
54:6 58:5,	116:7	208:1	135:23
9,14 60:13	118:2,6,	210:10	functioning
63:21,23	10,22	211:6	171:17
64:3,6,13,	119:18,23	fracking	fund 23:24
16 65:3,6,	120:3,9	113:16	152:6
19,22	121:6,19	frame 36:17	154:12
66:1,3,8,	122:19	framework	funded 154:5
12,16,19,	123:10	107:20	
22 67:1,4,	125:1,3,8,	Fredericks	
6,8,12,15,	13,15,17,	54:5 78:7,	
17 68:16,	22 126:4,	11,14	
	7,12,15,22		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: funding..Glatt

funding	131:24, 25	186:10	generations
50:17, 18	133:5	gamut 49:24	197:6
fundings	205:2	gaps 44:11	geothermal
50:18	gaming 10:4	gardening	21:1
funds 176:7	32:1, 4, 7,	127:21	Germs 192:2
funny 148:1	10 54:11	gardens 9:20	get all
future 23:9	119:22, 24	127:19	111:24
129:24	120:3	Garrison	157:5
136:5	125:6, 8	23:6 27:21	give 34:13,
185:5	130:2, 3, 15	Garrison's	19 42:4
192:23	131:10, 17,	23:6	45:15 47:1
	20, 24	gas 7:20	52:1 84:4
	132:5, 21	12:23 19:1	101:14
	133:13	21:1 23:25	103:24
G	134:8	36:18	135:16
	135:14, 19,	50:7, 15	154:7
G2 131:24	20 136:1, 3	54:17, 20	160:12
gain	137:9, 12,	79:16	183:14
131:11, 14	14 139:6,	84:24	185:19, 25
145:22	11, 21, 22,	88:19	186:12
146:16	24, 25	112:23	198:14
gamble 147:3	140:6, 9,	129:19	210:5
gamblers	10, 11, 14,	159:1, 6, 8	giving 111:6
152:6	20 141:23	gasoline	163:21
gambling	142:1, 3, 6,	84:5	168:6
133:5	8, 13	general 64:4	glad 12:21
148:7, 25	143:25	182:19	51:6 129:7
150:4, 18	144:3, 9	General's	130:6
151:1	149:15	161:7	139:6
199:1	151:11, 22	generally	172:13
game 135:25	152:2, 6,	36:3 58:15	205:22
151:12, 13	18, 22, 23	116:13	209:13
157:2	153:4, 6,	169:15	gladly
159:18, 20	14, 16, 21,	Glatt	163:16
gamed 134:18	23 154:17,		
games	22 155:1,		
	10 156:23		
	158:5, 6, 8		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: Glen..greater

123:24,25	185:23	120:24,25	201:7
Glen 199:20	186:14,24, 25 190:17	122:11,14	grandma 27:9
goal 15:2	191:22,24	123:5,14	grandmother's
96:3	194:9,12,	135:11	199:22
186:18	16 196:15	151:23	grass 49:3
goals 129:17	199:18	152:9	grateful
210:14	202:15	171:25	16:15
God 206:13	203:5,21	172:11	graves
golden 53:3	210:12	174:6	165:12,20
golly 68:25	goods 106:4, 6	176:5	166:3,22
good 7:8,9	gosh 141:3	186:16	169:9
13:25 19:5	govern	187:25	gravitate
21:10	123:13	208:3	38:16 41:5
22:22	governing	210:23	great 3:2
35:15	89:9	government's	8:14 23:21
36:19 38:4	government	174:10	54:1 74:17
39:20	3:4,5,9	governmental	104:16
43:4,8	7:17 16:8	95:8	113:10
44:18 54:7	24:10 28:4	governments	126:22
55:5 56:4	29:4 32:22	49:21	127:7
60:22	35:5	77:7,11	129:7
61:19 63:1	49:16,24	210:16	144:23
69:1	50:17	governor	151:6,13
93:14,15	51:10,13	18:25	158:23
96:11	59:7,13,16	85:5,15	175:15,19
99:16	61:18	governor's	195:4
100:18	73:20	30:16 52:3	200:15
126:20	75:25	65:11	205:7,8
140:13	96:17,23	governs 89:6	208:17
151:1	98:1 99:4	grand 8:14, 15 166:6	209:8
152:19	107:8,12,	187:13	great-
171:7	19 108:4, 9,19 109:3	grandfather	199:19
179:18	115:14,22	199:20	greater
182:5		grandfather's	143:8
184:23			176:3

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: greatest..hard

greatest	growing	guys 40:20	147:19
55:13	129:22	68:13	hands 139:17
86:13	173:5,8	70:23	155:9
greatly	174:13	110:19	206:18
27:24	194:22	125:20	handyman
98:11	grown 141:21	142:14	206:24
greenhouse	grows 133:20	144:2	207:1
11:1	Guam 188:21	190:8,12,	hang
grew 28:6	guarantee	15	145:16,17
43:8	112:19	<hr/> H <hr/>	happen
195:10,15	guarantees	h- 156:8	30:13,21
groceries	30:20	habit 147:10	79:24 88:7
149:3	guess 14:9	Hagar 68:25	144:20
gross 67:16,	16:6 72:14	half 13:4	172:23
17 130:9,	86:1	35:23 36:2	happened
10,11,14	87:21,22	81:24	94:16
132:7	95:25	101:24	133:15
133:2,3	119:20	147:9	134:6
134:10,19	125:6	173:20	147:8
ground 53:21	131:5	182:21,22,	148:5
grounds	145:17	23 187:7,	168:12
28:15	guest 171:4	13	192:7
group 150:9	guests 127:7	hampered	happening
183:2	132:18	181:16	13:1 25:7
groups 34:7	guidelines	hand 12:12	74:13
140:4	108:2	31:20	151:2
Grover	gun 48:8	106:23	160:3
131:20,24	Guns 192:2	129:25	happy 31:8
grow 14:13	guy 111:24	175:6	104:2
96:9	190:3	handle 31:6	187:9,10
133:19	205:12,18,	handled	208:8
173:9	21	147:8	harassment
201:9	guy's 156:1	handling	19:14
			hard 21:9
			40:11

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: harder..higher

41:3,4,23	headway	114:22	hell 190:7
80:24	20:16	132:17	Helms 53:13
102:13	healing	159:24	112:19
156:12	167:15	164:2	helpful 22:8
177:13	169:4	179:7	helping
189:18	170:15	180:25	113:15
194:10		186:10	154:12
201:16,25	health 16:19	hearing 46:2	185:9
202:7	17:24 18:5	52:15 86:9	helps 2:24
207:6	19:5 20:4	96:19	83:9
harder	21:2 22:3,	180:3	hesitation
201:20	4 42:8	186:8	2:23
hash 25:4	92:7,10	hearts 4:7	Hey 139:11
96:4	123:24,25	heated	hiccup 11:6
hate 125:23	203:1	30:21,22	hiccups 11:6
hauling	healthcare	heavenly	Hidatsa 6:13
207:5	17:11 20:9	3:17	28:3 43:5,
hay 125:24	50:20	heavily 10:3	6 44:10
he'll	93:12	75:10	49:4
205:14,15	healthier	133:8	127:24
he- 38:19	hear 15:10	heavy 32:5	171:9
head 23:1	31:13	54:10	174:2,18
130:4	32:19 49:2	Heckaman	189:4
196:13	75:22	37:21,22	191:16
200:3	78:12	38:22	202:14
headaches	163:4,5	182:15,16	209:24
71:12	164:3	183:9	210:2
headed 96:12	171:6	196:2,3,18	high 7:5
heading	178:19	197:3,13	11:8 17:16
144:19	185:4	198:8,18,	28:15 51:7
145:15	207:23	20	175:25
heads 104:4	210:6	Heckman 5:4,	182:1
194:10	heard 27:3	5	higher
	34:15	held 108:15	143:19
	40:15 53:2	172:6,7	
	82:11		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: highest..hunt

146:7	125:8	89:12	hours 33:3
176:1	holding	127:4	57:17 90:3
highest	55:10,19	166:14	house 17:25
85:11	59:23	184:24	34:16,17
highlights	holds 98:23	185:4	127:20
205:4	hole 119:7	194:11	132:11
hills 204:22	Holmberg	202:24	186:22
hire 190:10	46:3	203:3	203:16
hired 205:19	home 22:3,4	hopes 45:19	housing
historical	41:6	hoping 57:8	41:2,3,5,
47:22	112:22	71:6	8,15,23
84:19	184:23	153:25	housing's
168:14	204:24	186:25	38:9
169:17	homeland	horrendous	Hudson 128:9
170:5	186:4	57:2	huge 25:25
historically	homelands	horse 139:15	114:9
34:16 57:3	202:16	149:19	132:6
73:21	homes 4:10	204:22	175:25
116:9	41:10	horseshoe	human 14:19
175:25	homework	9:19	42:20
history 33:2	203:10	hospital	50:1,2
52:25	honest 52:22	22:15	202:20
73:18	144:1	23:12,15	humor 205:23
127:9	honestly	28:9	hundred
129:9	52:16	hospitality	104:23
151:9	honor 6:20	194:21	198:3
169:21	27:5 184:9	host 6:14,	hundreds
192:5	186:3	21 12:22	29:19
199:24	honored 3:16	186:3	135:18
208:13	hop 180:20	hosted 8:9	198:13
hit 17:3	hope 10:18	hosting 3:12	hungry 21:8
hogging	55:14	196:4	51:18
138:5	86:10,11	hour 126:11	126:8
hold 15:21			hunt 189:19

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: Hurry..inaudible

Hurry 126:7	identical	immunocompromi	15 8:1,21,
hurt 141:2	89:18	sed 163:24	22 13:11
149:20	identification	impact 32:5	28:8 29:11
hurting 3:25	s 209:3	59:24	34:22
32:6	identified	107:22	49:12,25
149:6,8	49:16	115:11	88:25
husband	identify	123:23	106:2
196:8	51:8	132:17	129:11
197:4	IDS 103:20	161:20	154:2
201:6	IGRA	171:16	164:13,20
hypothetically	135:10,13	198:12	172:9
124:6	142:3,7	impacted	177:22
		10:3 34:4	203:7,12
	IHS 19:20	100:7	205:23
I	20:6	114:23,24	impose
		115:17	107:24
I- 29:9	II 188:6,	118:15	impressed
31:22	10,11		205:18
35:13 38:6	illegal 86:3	impacting	
147:3	104:12	60:2	impression
187:22	157:9	impacts	11:18
190:19	ills 85:6	32:12	improve 15:1
193:18	illustrate	115:6	16:20 19:9
ice 141:3,9	26:24	124:16	203:1
ID 103:18,	imagine	130:3	improving
19,23	32:17	139:21	16:22
104:18,21	140:5	176:20	20:22
109:20	immensely	impeded	22:21
110:14,16	199:16	181:17	128:24
Idaho 166:8	immigrates	implement	in- 38:17
idea 45:15	74:24	90:13	130:9
105:12	immune-	implementing	in-laws 14:4
148:23	163:24	20:22	inaudible
161:13	immunizations	21:24	2:6,15
ideas 23:9	18:1	important	7:21,22
		6:18 7:11,	8:3 11:25

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021

Index: incentive..individually

13:3,23,24	210:9	increased	155:1,10
30:3		130:22	158:5
38:11,17	incentive		173:19,24
41:16	138:5	increasing	176:15
43:4,5	incident	113:15	192:15
48:23	55:1	131:14	193:9
49:6,24	include	incrementally	195:13
50:12,25	117:17	69:2	indicator
51:11,14,	147:6	increments	17:14,15
19 65:2		134:17	
66:17	included		indigenous
78:10	23:13	independent	44:9,21
107:1	37:18	51:4	164:10,23
120:8	59:14	Indian 3:3	165:15
122:1	includes	16:25 17:8	167:4
125:4,7,	78:18	19:5 28:2	172:1
12,19,20	173:1	43:19,21,	173:3
126:3,5,6	inclusion	25 44:24	183:15,21
127:4	171:15	47:23 49:4	192:8
131:4,23		50:21	202:22
135:13	income 19:2	51:11 52:2	indirect
141:13	25:17	73:17	102:24
144:18	132:21,25	74:23	105:7
145:21	133:4,5	78:16,18,	
152:16	136:12	25 81:10	individual
153:17	138:1	86:3 92:12	34:20
158:15	146:12	94:21	90:19
159:15	incomes	135:14	91:20
168:2	133:21	137:9,12,	110:3,4
175:4		14 139:21	155:19
193:19,21	inconsistent	140:9,14	162:24
195:14,17	123:20	142:6	163:1
197:10	incorporated	143:25	164:7,19
200:22	56:13	146:15	174:2
205:17	increase	149:14	179:13,23
207:12	130:13,20,	151:11	180:3
208:4,15,	23	153:7	183:11
16,21		154:21	individually

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021

Index: individuals..investing

141:14	102:4	21:17	interim
individuals	103:17	26:9,12,13	140:12
19:2 41:14	110:10	29:23 30:1	Interior
52:11	162:2	147:4,5	59:17 61:2
123:4	169:19	148:9,17	internal
155:21	182:17	intake 25:23	35:20
162:10,14,	186:25	integrate	154:23
17,22	informative	38:4	156:13
168:20	199:16	intended	internet
179:25	infrastructure	114:2	112:4,6
180:1	9:24 13:4	139:13	153:15
industry	21:3 30:7	intent 75:8	interpreted
16:16	inherently	intentionally	61:6
200:25	100:21	25:9	interpretive
inequitably	106:12	intentions	8:11 9:9
182:7	initiatives	86:11	191:16
inequity	151:16	interacted	199:15
62:4	inlet 8:25	31:21	interrupted
infant	input 35:13	interaction	180:14
17:16,25	44:17 45:7	128:5	introduce
infinite	inside 2:13	interest	31:11
152:1	68:5	33:22 34:8	162:24
influence	116:16	36:16	170:4
32:2 52:12	instance	114:12	introduced
influential	22:3	174:9	202:20
91:6	122:24	interested	invested
influx	instances	36:19 52:7	16:23
133:16	62:13	105:24	20:11
informal	instant	interesting	investigates
203:19	160:13	111:22	157:3
information	insur- 26:9	112:12	investigations
40:5,6,21	insurance	intergeneratio	167:13
43:24	17:11,20	nal 167:3	investing
47:15	18:11		14:18

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: invite..joint

invite 15:8	94:25	177:8,14	job 19:6
45:22	95:25	187:2,5	24:10
204:2	102:5,15,	210:14,23	26:17
	19,21		53:14
involved	107:3	it- 22:20	55:14
20:1 44:14	117:19	155:3	127:11
52:10 53:4	137:7	item 26:21	146:11
77:23	139:16	53:8 109:7	185:8
99:24	143:5	items 15:16	199:5
107:9	146:15,16	30:3,6	jobs 32:7,8
118:17	162:7	52:5	135:16
151:11	164:13	112:15	138:20
153:9	166:17	120:1	144:22,24
194:17	168:24		145:6,16,
involvement	169:5,6	<hr/> J <hr/>	17,21
77:23	170:24		146:9
Iowa 20:7	176:24	jail 149:11	Joel 90:20
Iraq 189:10	177:19,23	jam 61:3,5,	John 39:4
	181:19	9,14 83:18	53:25 59:7
ironed 95:7	issues 12:11	Jamestown	62:4 63:4
IRS 155:7	14:14	141:10,12	73:7 78:6
157:15	16:17	Jane 191:25	86:2 94:19
issue 20:9	18:4,6	Japanese	95:11
22:25	22:15	191:3	96:14
27:14	48:13	Jared 192:3	100:21
29:10	53:7,11,16	Jaylene	190:2
32:24	60:7 78:8	3:13,14	205:20
42:9,13	82:3 92:7,	4:21,24	John's 97:16
46:20	19 93:12	5:2,4,6,8,	join 127:5
50:11,20	98:16 99:7	10,12,14,	joined
61:20	100:5	16,18	186:23
69:11	112:23	10:13	188:9
77:12	113:21	Jazz 205:1	joint 57:11
81:10	122:23	jealousy	59:25
82:5,7	129:2	187:20	64:24
88:20	136:25		69:13,17,
92:17	162:8		
	164:10		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: jointly..knocks

22 70:4,12	85:25	June 131:1	22:10
75:13	86:1,8	jurisdiction	25:24
83:15,22	87:21	49:21	26:21
87:19	89:2,8,11,	76:22	28:18
92:25	24 90:11	92:18	31:20
93:2,9	94:17,18	173:23,25	32:15
94:6 97:3	95:17,20,	jurisdictional	57:24
98:4,6	22 96:2,20	78:8	67:19
99:9	101:13	justified	76:22
100:24,25	160:5,6	161:24	84:23
102:23	184:3,4,5	jute 121:12	89:17 94:5
105:1,5,16	193:20		95:14
111:3,4	194:6,8		96:22
128:21	211:4		105:12
jointly	Joseph 188:1	K	106:25
76:15	joy 194:21	Kansas 166:5	123:18
77:19,20	ju- 161:5	170:19	130:7
88:18,22	judge 98:23	Kay 166:8	135:21
90:1,5	judiciary	KDU 17:24	139:12,15
94:3 95:9	160:10,16	keeping	146:21
121:13	161:25	114:6	147:25
joke 149:19	jump 26:20	key 53:19	150:20
Joletta	67:23	137:7	154:11,14
171:8	130:4	182:14	164:4
177:16,17,	180:6	kicking 91:5	170:12
21 179:9,	jumped	kid 51:25	182:2
22,25	141:7,8,9,	91:3 141:9	185:11,17
180:24	16	204:7	201:9
208:20	jumping	kids 142:24	203:9,10,
Jones 5:10,	84:21	150:1,3	11,19
11 8:13	141:13	195:21	206:14
11:11	195:25	Killdeer	Kist 90:24
67:24	junction	14:5	knew 116:24
68:1,19	166:6	kind 15:6	knock 150:25
71:10,15,			knocks
16 72:1,			149:10
10,16			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: knowing..learn

knowing	123:5	Las	157:11,	192:25
37:23	127:22	25	158:1	202:20
59:23	173:10,12,	late	199:17	lawful 59:4,
152:3	13 174:4,	laundered		18
168:12	7,9 200:23	157:10		lawfully
184:24	lands 6:12	laundering		111:19
190:25	30:3 74:2	156:21		laws 61:5,9
knowledge	78:19	158:13		81:21
44:11 64:8	108:14,15	law 18:25		83:18
Korea 189:8	174:10,14	29:22		87:17 90:8
Koreans	language	33:2,11		120:19
189:10	43:5 69:16	56:18		122:24
191:3	70:8 83:15	59:19		lawyers 20:1
Kurt 151:15	97:12	60:18		62:24
	107:10	61:16		63:3,4
	117:15	62:16,17,		le- 142:17
	122:20	20,21 68:6		lead 2:24
	208:9	69:18		3:21
lack 50:16,	209:21	72:24		leader
17		73:6,17		132:10
lady 148:5	laptop	74:19		leaders
208:23	160:25	75:1,5,9		164:16
laid 146:10	laptops	77:1,17		leadership
lake 27:3	39:24	79:3,4,6,		6:24
46:11	Laramie	10,12,15		leading 46:7
84:14	173:15	92:17		82:17
147:12	large 38:1,2	94:19		leads 149:3
150:19	41:12	95:4,8		187:1
210:22	73:19	96:18		learn 106:13
land 16:10	92:6,20	97:3,19,		143:1,23
23:17	154:18	21,25 98:4		191:13,15,
36:2,3	171:19	99:2		17 199:25
43:17	larger	100:20		200:3
64:3,5,12	197:20	101:15		208:18
74:24 75:2	largest	103:15		
113:24	200:23	104:10,11		
		149:9		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: learned..licenses

209:14,23	legally 56:7	124:20	122:15
learned	legis- 99:8	130:21	123:11
99:17	legislation	140:7	143:19
194:14	49:18	143:25	154:16
learning	108:10	179:7	156:4
170:22	legislative	legitimate	158:9
202:5	30:16	161:16	167:12
lease 143:5,	36:1,9	legitimized	181:22
10	40:4	157:8	199:8
leasing	43:22,25	lemonade	levels 58:6
143:2	89:25 99:8	28:20	153:17
leave 2:11,	171:11	lemons 28:21	164:17
17 85:14	172:22,25	lend 83:9	license
120:3	173:1	lengths	60:16
144:4	legislatively	175:20	65:18,20
167:17	42:11	lent 113:9	66:12,23
184:16	legislator	lesson 143:1	67:2 81:5
185:14	160:22	letter 34:23	86:10,17
leaves	179:12	61:12	94:1,2
141:25	legislators	letters 39:5	95:13
leaving	44:21	61:1	96:17
143:11	139:25	letting	97:6,8,22
led 148:8	179:12	209:12	101:16,24
160:8	legislature	level 25:20,	131:10
192:10	30:12	21 33:14	licensed
left 175:3	31:21	36:23	39:24
leg- 55:7	49:23 53:5	52:21 58:7	60:11,12,
legal 53:15	55:7 57:8	59:22	16 79:1,9
55:12	71:6 73:12	108:23,24	81:2 86:4
59:22 60:7	83:14	113:19	93:2 95:14
69:9 71:1,	85:19	114:19,20	97:2
10 73:10	98:15	115:5,6	131:22
96:5	101:4	116:10	licenses
	114:3	117:5,13	81:2
	120:18		95:15,19,
	122:25		24 137:3
			142:17

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: licensing..long

licensing	132:22, 24	litigation	107:22
66:6, 8, 9	133:6, 10	55:25	134:24, 25
89:17	136:12	live 35:22	147:11, 24
93:20	181:1	38:8, 10, 11	164:17
100:13	limiting	79:5 81:21	locale
lied 131:3	144:3	97:5	154:14
160:14	lined 12:22	106:17	locally
lies 160:9	lines 40:22	134:22	157:1
life 15:1	45:24 51:9	162:15	locate
16:25	link 92:9,	171:8, 18	166:22
17:3, 14, 15	10 204:19	175:6	located
22:21	210:5	204:7	27:22
128:24	liquor 54:24	208:1, 4	170:20
180:10	55:20	lived 14:5	lock 87:24
196:7, 14	66:21	44:11	locked 55:16
201:10	91:14	132:19	locking
203:2	Lisa 183:13	170:1, 2	98:25
lifetime	184:6	174:15	lodges 9:8
174:15	list 109:20	208:11, 12	logistically
limit 135:25	110:16	lives 7:1	133:13
136:24	158:24	16:21, 22	Logistics
137:2, 3, 20	listed 15:16	20:22	95:6
138:17	listen 15:9	23:21	Lone 7:22
143:23	168:7	43:11	49:1, 2
144:8, 9	210:5, 6	49:13	51:15
150:7	listened	133:1	Lonewoman
151:18	180:12	183:17	208:2
158:22	209:2	Livestock	long 40:24
limitation	listening	90:24	42:9 52:18
39:21, 23	185:8	living 40:17	91:3 92:4
138:16	199:4	41:14	102:17
169:20	209:12	load 118:20	114:17
limitations	210:22	loaded 196:9	129:13
144:20	limited 84:8	lobby 149:17	
		local 60:2	

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: longer..made

131:6	171:21	200:20	M-O-N-I-Z
144:21	172:18	201:1,2	168:1
172:25	174:17,19	202:4,6,18	machine
176:11	lot 7:4	208:19	143:8
201:25	8:20	210:17	147:11
210:18	10:20,22	lots 149:6	149:18
longer 60:5	14:22,24	loud 163:5	150:20
92:23	16:14	love 52:8	157:7
141:22	19:23	148:12	160:11,20
longest	31:7,20,21	184:21,22	machines
123:12	32:6 36:15	loved 90:24	10:4
looked 28:19	40:16	91:7	130:23
161:5	44:20	Lovell 126:1	131:5,6,8
209:10	48:14 63:1	low 17:14	132:4
loom 54:9	68:24	195:13	135:3
loose 150:3	71:18	loyally	136:11
Lord 3:15	75:21 80:4	109:19	138:11
lose 41:22	97:10	Luger 151:15	142:4,9,15
42:12	101:3	lunch 21:12	143:2,3,6,
123:18	105:9	125:9,11,	9,10,18
146:1,9	110:19	12,19	144:10
150:21	127:10	129:6	149:17
losing 32:6	128:5	188:2	150:7,19
147:13	132:4	199:17	158:21
loss	135:6	202:1	160:18
145:22,23	136:2,14	204:3	161:5,6,16
146:16,17	152:13	Luther 154:6	mad 156:7
147:20	154:19	Lynn 112:19	made 6:1
losses 42:5	165:17	_____	25:15
145:9	170:19	M	28:13
lost 27:12	182:3	_____	32:19
57:3	183:4	M- 151:4	39:22
145:11,14	184:10,15	M-E-L-A-N-I-E	50:11 51:6
146:9,20	185:1,6	167:25	52:8,13
	186:7		54:4 62:8,
	189:10,25		10 68:6
	190:1,23		69:12 79:3
	193:12,19		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: Magic..Mandari

87:12	132:19	106:7	74:17
97:17	majority	107:18	113:17
102:14,15	106:3	114:5	136:17
103:2	136:19	115:1	138:8
111:7	141:24,25	125:24	142:22
113:6	142:12	126:18	172:4
116:15	149:21	128:17	179:2
117:10,23	174:4	136:23	MALE 21:7,
120:12	200:24	138:12,23	13 65:2,5
146:14,19	make 2:24	139:10	66:6 72:22
147:1	4:19 6:8	140:23	86:21,24,
183:16	7:16,25	144:20	25 87:2,4
196:13,14	8:3 9:22	145:9	112:10
203:20	10:17,19	152:24	203:25
Magic 146:6	14:2 15:5,	160:23	205:16
magnitude	20 17:17	162:10	males 17:9
82:6	18:14	164:23	man 16:25
mail	21:7,24	167:21	187:23,24
175:14,15	22:10	169:7,23	197:4
178:6,9	28:20	175:12	manage 20:19
mail-in	29:18 34:2	177:3	managing
177:5,7	38:11	178:21	20:18
178:1,5	40:4,20	181:8,16	Mandan 6:13
main 3:6	42:7	182:6	28:3 43:6
8:19	43:21,24	185:1,18,	44:10 49:4
111:24	46:18	20 186:2	90:25
156:20	57:15 63:6	187:14	127:24
204:13,17	67:18	200:9	138:24
maintain	74:22	209:3,4	171:9
37:17	80:11	makes 32:24	174:2,18
maintenance	84:20	46:10	189:4
143:4	85:9,12,17	47:10 86:5	191:15
major 112:23	87:18	making 20:16	202:14
113:12	90:17 96:4	25:24	210:3
127:21,22	98:13,14	42:11	Mandari
	99:15,25	44:19 46:8	
	104:18	52:11	

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: mandate..Medicaid

12:18,19	201:8	146:13	means 10:22
37:10	Marines	155:14	24:24
38:17	188:17,20	173:4	33:13
43:7,11	189:10	176:14	54:23
49:2	Mark 82:25	177:24,25	77:20
162:16	market 132:5	matters	98:19,21
171:18	138:6,24	174:12	103:6,8
174:23	married	mature	120:23
175:2,6	90:21	111:11	139:5
183:18	199:22	maximizing	145:22,23
200:23	Mary- 191:24	26:15	146:17
201:18	mask 2:7,	Mayer 10:16	meant 146:16
202:15	12,15,18	21:15 22:1	209:17
mandate 2:7	mass 36:2,3	42:15	meantime
mandates	43:17	82:11,14	109:15
18:25	massive	91:10,12,	158:11
Manning	92:24	17,19,25	measure
175:8	117:2	93:8	20:20
178:13,14,	match 76:8	Mayer's	103:6
15 201:25	materials	83:25	124:16
manufacturer	11:7	Mcdonald's	151:16,17
132:2	math 35:24	195:22	measures
143:16	46:10	Mckenzie	151:17
manufacturers	mathematical	175:22	153:10
131:17,23	61:24	Mckinsey	mechanism
142:19	matriarchal	18:7,21	33:13
mapping	203:12	me- 29:24	Medicaid
39:12	matrilineal	meaning	18:5,11,15
March 130:20	203:13	97:22	19:3,12,16
131:9	matter 22:20	128:5,12	21:16,18
Marine	94:9 95:16	142:15	22:6
182:10	108:2	meaningful	24:12,21
187:25	129:25	164:14	25:2,16
188:15			26:6,8
190:1			42:13

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: medical..Milage

medical	180:7	134:3	methodologies
17:21 20:5	member 10:14	163:8,15	18:12,13
23:10	42:14	168:22	Mexico 128:9
50:23	62:12	170:12	166:7
Medicare	72:25 90:7	171:23	MHA 3:12
24:11,20	102:15	175:11	6:12 16:10
25:2,16	103:2,9,	179:14	18:18 28:2
26:5,8	11,14,16,	186:1,22,	29:20
meditate	22 104:13	23 197:1,	33:7,25
196:16	109:18,22	24 198:19	34:5 35:20
meet 6:22,	110:5,9,	202:11	39:11 47:8
24 65:14	11,23,25	204:1,10	52:7 62:22
113:11	111:7	210:20	63:22 70:8
196:22	147:15	membership	87:10 93:2
197:7	171:9	17:20	107:23
meeting	172:20	29:24	122:5
3:12,18	174:8	105:3	127:23
5:21,22	193:17	115:20	128:20
6:3,21	members 5:20	memory	145:12
15:25 16:7	6:11 8:4	110:17	179:6,18
40:7 45:16	13:18 15:4	mentality	180:18
68:2 100:5	21:17,22	152:13	182:20
128:15,16,	30:11 33:6	mention	194:24
17 130:3	35:9 38:3,	44:23	200:15
168:16,23	8 39:22	mentioned	204:6,11
169:10	40:1 43:4	107:13	205:6
meetings	48:18 50:2	122:19	mi- 127:6
45:9,22	51:25	154:16	mic 48:20
102:22	52:14 56:8	155:4	78:9 127:6
105:18	68:5,23	203:17	207:19
170:25	72:19,24	message 7:24	Michigan
Melanie	77:22	131:17	166:5
163:8	79:21	met 18:4	middle 53:21
167:25	104:17	34:9 189:7	MIGC 155:7
168:5,23	108:5	196:8	Milage 51:25
171:2	118:16		
	128:20		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: miles..Monica

miles 158:25	154:22	misinformation	mon- 150:24
175:5,8	156:3,13	160:9	money 14:18
181:10	minister	missing	17:13
mill 127:5	55:13	68:12	19:16
million	206:11	92:13	20:12,17
17:10,12	Minnesota	125:4	29:19
20:11	132:1	202:22	50:15
130:11,12	minor 99:7	mission	56:24 63:6
132:10,13	140:18	195:13	66:4 89:17
133:17,25	195:19	Mississippi	92:6
134:8,12	minority	74:8	110:20
173:14,18,	53:2	190:19	112:2
20	174:11	Missouri	119:9
millions	minors 90:4	27:18	136:17
17:18	Minot 106:7	127:25	138:23
29:19	134:23	mistakenly	140:2
57:3,4	145:19	25:8,9	141:10
82:20	194:22,25	mistakes	145:10,11,
104:24	195:1,8,	25:24	19 147:7,
mind 7:17	11,22,23,	mix 154:22	19 149:6
13:14 24:8	25 208:11,	155:14,20,	150:10,14,
108:7	12	23	21,24
minded	minute 15:22	Mm-hmm 64:13	152:24
190:17	39:1	MMIP 202:24	153:7
minds 4:4	119:24	Mo- 27:8	155:22
62:23	minutes 5:21	mods 203:5,	156:21
81:20	6:4 31:11	21	157:1,5,7
mine 129:17	119:25	Mohal 14:4	158:8,13
183:19	133:25	mom 197:5	178:17,18
193:22	mirror 87:14	mom's 43:9	money's
195:15	mirroring	moment 3:22	155:16
minimize	87:17	85:13	Monica 8:5
153:24	mischaracteriz	144:5	10:16
minimum	ed 115:10		15:23 16:6
47:11			17:6 21:5
			24:7 82:11
			129:3

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: Monica's..nation

Monica's	months 9:5,	118:4	106:25
10:15	10 101:22	motorcycle	107:2,18
11:22	132:9	158:25	108:7
24:16 27:9	145:1,9,11	Mount 166:5	124:18
monies 16:20	149:5	mountain	205:9
19:20	187:14	35:21	multiple
Moniz 163:4,	195:12,20	40:15	18:25
7,9,20	Montreal	46:21	multiply
165:4,6,8	18:8,21	84:14	133:1
167:22,25	22:4	107:12	municipality
168:1,8	morning 43:5	160:17	50:18
180:5,7	130:8	168:17,24	murdered
Montana	132:19	204:24	92:13
120:11,12	145:18	mourning 4:1	202:22
121:1	206:1,17	move 2:15	mutual
Monteau	210:20	7:16 21:4	107:5,9,19
39:7,10,	mortality	38:17	mutually
11,21	17:16	41:17,19	121:25
42:1,17	mother 7:25	54:25 55:1	122:22
60:12	9:17 23:14	83:12	Mystic
66:11,14,	163:9,22	89:13 98:8	133:24
18,20,23	193:17	99:11	<hr/>
67:16	mother's	100:24	N
86:16,23	193:16,23	102:5	<hr/>
87:1,3,6,	motion 5:23	109:4	names 135:2
10 101:12	6:1,7	113:19	narrowed
105:11	210:24	185:9	24:7
121:4	211:1,2	186:19	Nathan 5:14
122:4,5	motivation	210:15	52:1
125:6	91:21	moved 55:9	106:21
128:14	motives	195:13	nation 3:12
month 35:19	188:13	movement	6:12,13
157:16,18	motor 57:12	25:25	7:17 16:19
monthly	84:7,9,13	moving 68:15	18:18 20:4
58:16	116:8	87:22,23	28:3 29:1,

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021

Index: national..non-indians

20 33:25	170:23	35:19	nexus 79:23
34:5	native 34:8	NDAD 132:10	Nez 166:8
35:17,20	37:5 45:12	Nebraska	nice 194:9
39:11	63:25	20:7	204:5,11
42:24 43:6	64:12 80:8	necessarily	niece 204:9
44:10 45:6	90:21	40:12	night 43:10
49:5,10,	91:23	negative	nights
11,20 51:3	171:15	107:14,21	196:12
52:7 54:10	172:24	161:20	NIH's 92:15
62:22 70:8	181:5,6	negatively	nip 82:8
74:1 87:10	182:18	115:17	noise 185:2
107:23,25	184:20	negatives	non- 17:7
122:5	197:1,4	42:6	77:15,21
127:23	206:2	negotiate	196:21
145:12	208:13	30:15	non-compliant
179:18	Native-	negotiation	97:20
180:18	american	19:19	non-
199:5	44:20	negotiator	expansionist
200:15	170:14	111:24	152:17
202:14	189:12	nephew 204:9	153:3
204:11	Native-	net 130:11	non-indian
205:6	americans	134:11	76:25
national	18:14	142:7	79:5,8
114:19	natives	143:7	81:10
142:6	91:14	Nevada	92:14
155:1	181:24	121:4,7	146:15
169:25	189:7	153:5	192:15
170:14	nature 9:17,	158:2	193:9
181:22	21 29:3	166:6	197:23
183:3,7	32:14 33:5	newest 72:23	non-indians
nations 27:6	52:19 68:7	newly 170:13	56:10
45:22	124:3,18	202:5	68:24
46:1,14	139:6	navigate	69:3,10
107:6,15	191:4		
109:2	193:24		
121:10,24			
167:1			

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021 Index: non-native..objectives

75:2 80:2, 5 198:4 non-native 64:3 80:8 non- presidential 183:6 non-taxable 102:18 111:1 non-tribal 53:4 62:8, 11 68:4,23 72:18,24 75:14 77:15 81:4 90:7 117:1 146:4,5,7, 8 197:23 198:19 noon 126:2, 5 normal 123:16 north 16:11 17:8 20:7 23:3 30:12 32:11,25 33:15,20 36:3 37:3 45:10,12 49:10,23 50:3,9 51:10 62:19 72:3 83:2	107:16 110:23 121:7 128:3 129:12 134:23 139:11 151:10,12 152:12 153:5,12 157:12 159:2,11 161:11,22 165:1 166:20 167:2 171:16,18, 19 172:12, 16 173:3,6 174:19,22 175:7,8,24 176:16 178:2,17 179:6,13 183:20,24 184:21 187:17 189:3,15, 20 190:7, 9,21 191:18,23 192:8,11 205:18 Northeast 9:2 not-trust 53:20	note 179:10 180:13 203:12 notes 130:5 notice 88:5 noticed 7:4 147:22 158:4 203:15 notification 178:8 notified 178:6 notify 22:12 nourishment 4:12,13 November 45:20 183:8 nowadays 204:4 number 12:1 16:19 20:9 38:1,2 42:10 46:21 47:5 48:2 52:5, 10 55:9,20 82:12,19 92:16 113:10 116:18 130:5,24 131:5	132:6 133:6,10, 11 134:13, 17 137:2,3 139:24 143:14 149:5 151:16 153:25 184:16 186:11 188:13 numbers 2:16 10:7 38:13 39:14,18 40:8,19 47:7,21 56:3 132:16 138:18 161:19 165:25 182:1 numerous 22:1 nuts 15:15 <hr/> o <hr/> object 37:19 objecting 109:25 objection 37:16 objectives 7:14
--	---	---	---

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: obli-..operation

obli- 201:11	146:24, 25	oftentimes	136:3
obligation	151:8	40:25	183:11
73:3	159:3	44:21	184:6
128:15, 16,	193:11	181:7	onus 110:2
17	198:21, 22,	oil 7:20	Oops 39:7
obligations	25	12:23	open 9:10
201:12	offer 127:9	16:16	12:6 45:9
obstacles	129:9	19:1, 14	82:25 83:1
63:10	135:5	23:25	100:9
occur 73:1	offering	36:18	141:1
113:6	37:20	50:6, 15	143:22
116:21	169:18	54:17, 20	152:2, 23
118:11	offhand	79:16	163:13
124:11	38:14	88:19	168:19
154:20, 21	office 22:10	112:23	184:16
155:13	30:16	129:19	186:15
occurred	40:14	200:25	opened 12:3
73:25	65:11	Oklahoma	74:25
180:25	130:16	166:8	153:16
191:19	150:8	169:24	192:14, 17
192:19	158:9	older 106:16	opening
occurring	161:7	oldest 188:7	8:14, 15
57:20	178:9	200:2	150:18
74:1, 6	officer 20:6	Olympics	187:13
104:16	officers	141:15	openings
105:8	53:13	onboard	11:10
114:18	offices	131:12	operate
181:3	18:22	ongoing	142:8
October	24:12, 22	102:25	154:25
12:4, 5	176:18	187:16	operating
45:19	officials	online	68:10
odds 203:5,	25:3, 19	105:11	79:10
22	164:16	110:22, 24	131:7
Oehlke 5:6, 7	offset 70:21	111:3, 10,	139:5
6:2		16 125:4	operation

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021

Index: operational..pandemic

90:3	210:13	131:10	74:23
operational	oppose 101:8	136:15	155:25
176:2	107:17	142:18	owe 110:19
operations	opposed	169:16	owned 174:2
12:25	144:6	organizing	owner 75:15
operators	opposing	164:8,9	owners 63:25
81:4	101:7	originally	64:3,12
opinion 19:6	opposition	43:7	102:16
75:6	100:2	173:13	143:21
141:20,21	135:8	202:14	174:4
opinions	opposition's	ostrich's	ownership
194:11	100:4	23:1	53:19
opportunities	opt 88:10	outdoors	113:23
10:10 13:6	optimistic	189:20	owns 90:7
192:22	187:3	outline	
opportunity	order 51:22	11:25 13:5	P
13:10	111:15	37:23	
33:21	117:1	outreach	pack 137:22
34:11,14,	127:1	140:16	package 50:7
19 41:23	orders	outreaching	202:19
50:5 52:24	110:23	24:11	pad 187:10
53:1,4	ordinance	outstanding	pads 12:24
57:16	59:6,11,18	90:23	paid 17:12
82:22	61:2,7,13,	OVERLIE	58:22
117:14	15,16	125:14,16,	116:14
140:12	83:16	19 126:3,5	117:21
143:22	87:14 98:1	overnight	118:3,22,
158:24	108:21,22,	30:13	24 119:1,
163:17,21	23	overregulated	3,8
167:8	Oregon 166:7	137:13	pandemic
171:10	organization	overseas	32:13
182:13	3:1 131:9	188:22	134:6
183:25	organizations	oversight	141:5
186:20			144:25
205:10			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: pandemics..paying

177:7	45:13	21, 22, 24	71:3, 4
pandemics	participates	120:18	72:15, 16,
197:21	172:5	158:7	19, 20 73:4
Panguitch	participation	passes 6:7	75:15
166:9	26:4 44:6,	passionate	80:12
parameters	7 181:24	30:25	81:13
97:7	182:8	past 55:16,	93:22
park 9:12	participatory	17 61:21	94:5, 8, 13
196:10	172:11	108:9	106:1, 4, 8
Parshall	participer-	117:9	108:4
56:12 83:2	172:10	141:5	118:13
part 31:25	parties	154:5	145:25
32:15	83:22	patent 68:9	149:1
34:12 36:8	99:24	173:21	150:24
40:11	107:9	path 3:21	157:8
45:18	partner 19:8	patience	198:9
49:15 60:6	93:9	55:13	paying
73:19 74:3	128:21	patient 57:8	18:10, 11
100:17	195:6	79:8	21:17
107:11	partnership	patiently	54:25
139:22	36:13	31:5	55:22 63:8
181:2	partnerships	patients	64:8, 9, 17,
187:17	14:21, 22	22:16	20, 22
205:8	109:1	patio 27:2	65:2, 3, 4,
206:9	205:9	patrols	6, 7 68:10
partial 11:2	party 52:23	56:18	71:13 72:3
12:1 37:9	Pasco 166:5	75:18	81:5, 6, 15,
198:10	pass 89:25	Paul 56:16	22 87:25
participate	94:7 98:4	pay 26:13	89:16
15:8 24:17	passed 3:3	56:16	90:14
33:18 35:4	27:20 60:6	58:25 59:1	92:11
45:11	72:24	63:2 65:23	93:21
162:21	107:10	66:25	100:11
210:6	108:10, 13,		106:10
participated			117:21
			118:18
			146:2, 11
			206:13

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: payments..person

payments	76:21	183:15,21	118:25
54:4 58:19	82:21 83:7	189:5,14,	133:3
pays 58:15	86:5 87:24	20,21	percentages
75:13,14,	91:8,23	190:17,18	84:6,15
15 116:13,	96:7 99:1	191:17	perfect
16 196:23	101:4	193:16	153:20
197:8	105:19,23	194:10,25	period 17:11
peaked	106:3,16	196:19	45:9 58:3
133:14	115:19	201:1,5,17	67:5 85:7
penalized	120:7	202:22	149:4
144:17	128:5,22,	203:2,5	160:18
penalties	24 132:22	206:7	permissible
98:2	133:17,25	207:23	97:13
peninsula	135:6,12	208:5,9	permission
9:1,11	140:1	209:11	96:16,22
people 2:14	142:19,24	Perce 166:8	permit 71:20
3:24 4:1	144:15,23	percent 10:6	88:6
7:18 12:22	146:14	20:12	94:21,24,
15:1,7	147:2	30:1,8	25 124:8
16:22	149:8,14,	32:8 47:23	permits
18:10 19:6	16,20	58:15	87:25 95:5
21:8,24	150:8,16,	70:20,21	115:2
23:4,10	21 151:18	77:25	permitted
24:24	152:6,16	80:3,13	60:11
26:10	156:24,25	81:15,16	person 25:18
27:25	160:17,18,	86:25 93:1	26:7 78:25
28:1,3	19 161:2	118:7	91:6
35:22 37:5	162:21	132:1,2,5	103:7,13
38:16	165:15	136:14,19	110:7
41:5,18	167:1,14	138:1	133:1
43:13 45:9	170:1	142:7,22	134:21
47:2 49:3	172:1,13	146:8	141:15
50:12 51:4	174:3,14,	149:24	147:18
55:2 63:2	24 175:15	154:9	148:16
68:9 73:23	176:24	198:3	149:7,11
74:13	179:2,18	percentage	
	181:6,13	47:18 62:1	
	182:3,9,12		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: personal..point

personal	82:13	181:21	pleasure
140:1	pick 26:12	196:16	127:7
personnel	Pick-sloan	201:15	plight
25:23	27:19	places 23:5	135:21
persons	picked	176:24	plots 127:22
78:17	112:24	181:1,18	plunge
perspective	146:3	209:9	141:4,11,
32:16	206:21	Plains	17
114:15	picture	151:13	pocket
141:18	135:22	plan 44:4	109:19
pertaining	pie 133:19	75:25	point 2:11,
3:4	piece 199:1	129:23	12,13
Peter 56:16	pieces 108:9	planned	14:13 15:3
Peterson	Pilot 131:25	125:11	45:20
170:6	pipeline	planning	50:1,14
ph 3:13	114:7	123:21	51:7 52:25
46:3 54:1	115:7,24	161:9	55:11
115:18	118:12	plants	60:22
154:7	pipelines	192:12	63:9,17
pharmaceutical	82:4	play 52:12	65:14
s 50:23	Pit 91:13	56:3 78:4	85:22 86:8
phase 11:3	place 54:2	135:3	87:12
PHNS 18:1	58:20	205:2	93:18
phone 158:19	70:10	played 74:3	96:12
159:13	71:12	playing	97:16
184:16	79:15	133:5	98:13 99:6
193:12,13	88:8,9,15	150:10	101:6
203:17	89:5 112:5	157:2	102:12
physically	124:14	plays 8:23	105:10
99:1	137:5	69:15	107:12
162:22	154:24	pleas 34:2	116:2
physician	155:14	Pleasant	117:10,16
16:18	172:3	166:5	133:10
	178:2		136:8,13,
			16 143:25
			155:17

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: pointed..precious

159:12	92:3	115:19	pouring
180:23		132:20	17:17
197:25	politics	173:5,7,8	Powerhouse
	52:17	174:13	131:25
pointed	poll 177:13	192:8	practice
119:11		portfolio	82:17
148:14	Pollard	196:20	practicing
points 26:24	5:12,13	portion	73:8 82:13
32:18	Pollert	173:13	Prairie
151:6	96:1,13,14	portions	27:13
154:2	97:11,15	30:4	pray 206:1,
polar	158:17,18	position	6
141:11,17	159:25	10:8 32:2	prayer 2:3,
pole 131:8	193:12	54:14	24 3:9,16
police	199:13,14	147:19	10:13
72:12,13	211:1,3	161:14	203:15
policies	polling	positioned	pre-paid
121:12,18	180:25	133:23	119:4
policy 27:17	181:17	139:3	pre-pandemic
120:21,22,	209:8	positive	10:6
23,25	polls 182:3	46:2 53:6	precedence
121:9,22,	pool 150:23	124:19	107:15
24 122:9,	pooled	171:17	precinct
17 123:7,	150:10	189:2	174:21,22
14 124:11,	poor 22:7	positives	175:7,25
13 147:6	24:10 26:4	44:15	precinct's
148:18	poorly 28:14	possibilities	178:12
175:14	popular	187:7	precincts
186:14,15	190:3	possibly	174:20,23
politely	population	37:1	175:22
180:7,19	17:8 23:21	post 178:9	176:6,23
political	35:21 38:2	potential	precious
108:3	39:14	34:15	4:14
164:8	43:20		
politician	45:24 48:1		
	62:2		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: premiums..proof

premiums	103:25	18:16	produce
17:11	139:23	24:19 25:4	110:14,16
18:9,12	141:6	26:2,6	producers
21:17	previously	48:6	113:10,12
prepped	8:12 34:6	54:21,22	product
203:9	180:25	57:2 58:21	112:2
present 5:3,	pride 127:10	70:18,22,	production
9 45:23	184:19	23 79:16	112:25
132:15	188:5,11	82:12,19,	113:2,7,15
presented	190:1	23 102:24	program 7:6
104:21	primarily	138:22	10:9 26:9
107:14	131:18	150:5,6	27:19
president	141:22	154:5,15	programs
170:13,14	162:18	156:12	135:12
president's	173:9	157:13	154:5
183:4	primary 7:14	problematic	progress
presidential	24:18	32:24	140:15
123:13	128:4	problems	prohibit
183:3	137:21	83:8	78:15
pretty 12:4	principle	84:18,20	prohibits
43:12 84:3	76:21	96:10	78:24
97:13	106:15	proceedings	88:12
126:8	printed	3:9	project
137:18	157:2	proceeds	195:13
194:10	prior 27:25	58:16	promise 73:8
prevail	28:24 56:9	130:9,10,	promised
201:3	116:23	14 132:7	160:10
prevalent	173:16	process	promising
167:4	178:15	30:19 46:4	35:18
prevention	private 68:8	72:8	promoting
202:21	privilege	114:16	80:11
previous	151:10	115:4	proof 197:21
61:21	prize 192:4	171:22	
102:2	problem	172:4,22	
		processes	
		100:8	

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: proper..put

proper 9:2	protocol 2:6	142:5	141:10
53:21	proud 6:14,	public 27:14	purposes
181:17	15 8:7,19	100:8	25:14
185:9	10:21	162:10	40:18
properly	11:23	184:17	138:19
76:18	43:14	198:11	141:2
properties	128:13	202:25	142:23
138:7,10	129:9	Puerto 33:8	143:15
property	179:3	188:20	153:25
62:20	186:6	Pulitzer	pursuant
174:11	189:15	192:4	124:13
proponents	190:14	pull 37:7	pursuit
7:9	191:5,8	78:9	60:18
proposal	192:24	147:11	push 24:14
77:18	193:10,15,	149:16	136:23
80:10	18 200:14,	150:7,10,	pushback
85:24	17 201:13	19	94:12
propose	202:17	pulled 85:13	pushed 182:2
83:14 93:6	proudly	pulling	206:22
122:24	187:18	116:21	pushing
proposed	prove 62:25	201:15	102:13
78:3 83:13	104:12	pump	144:15
123:3	provide	116:10,15,	210:19
proposing	24:23	20 117:7	put 18:22
75:12 93:8	42:23	purchase	24:2 28:1
109:11	47:14	106:4,6	36:19 54:2
prospective	63:11 73:4	117:5	69:22
54:7	83:16	143:8	70:10
protecting	89:23 90:1	purchased	77:18
193:2	121:13	80:5	88:8,9
protection	197:19	provided	89:13,19
72:12,13,	provided	26:7 140:4	95:14
14	202:23	purchasing	105:3,22
provisions	provisions	purpose	109:4,20
87:14,18	87:14,18	52:14	110:16

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: puts..ratio

124:8	quarters	209:5	127:17
134:5	150:22	quicker	141:14
138:11	question	187:5	151:7
142:2	24:3 26:19	quickly	168:24
144:5	35:25	167:20,23	181:14
150:22	39:12 42:2	quiet 205:12	186:9
151:24	44:1,16	Quit 110:18	203:19
154:7	49:8	quorum 5:18	204:8
155:14	50:10,11		Raises 51:24
160:23	58:2 67:25	<hr/> R <hr/>	raising
181:21	86:2 87:4		29:10
puts 149:10	93:19		133:11
putting	95:22	race 22:25	136:8
14:18 37:8	131:19	racing	197:25
103:23	165:9	149:19	rampant
150:13	167:5,18	radar 18:23	50:20
161:10	171:1	radical	ran 120:11
<hr/> Q <hr/>	186:2	52:19	142:4
	196:18	radically	194:23
	questions	29:5	ranch 190:5
qualifications	21:6	radio 209:3	rancher
197:7	25:10,12	radius	206:15
qualified	35:9 38:25	132:22	ranches 28:6
24:11,17	90:16	rail 117:3	ranching
26:5	99:16	118:20,23	189:24
qualify	119:17	119:3	193:23
25:11	139:4,9	raise 52:2	rape 92:11
quality 15:1	162:7	135:8	raped 92:12
17:14	168:4	136:25	Rapid 166:4
22:21	184:2	139:2	rarely 24:14
203:2	188:24	141:10	rate 53:18
quantum	queued	raised 50:11	ratio 69:7
196:23	185:15	58:2 60:7	
quarter	quick 26:22	83:19	
130:9,12	101:17		
	126:19		
	199:15		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: re-.redistricting

re- 7:10	194:24	26:5	reconsideratio
11:21			n 34:25
32:21	realm 164:19	recent 53:10	47:22
48:15	reason 8:21,	recently	reconsidered
reach 109:19	22 51:1	88:24	85:6
	70:2 73:22	160:15	record 39:9
reached	149:21	recess	78:11
133:12	151:1	51:18, 20	109:4
reaching	152:10	126:23, 25	114:13
44:16	173:9	recipients	161:25
read 184:10	177:21	24:12	163:3
191:22	178:14, 16	recognition	167:20
192:1, 3,	reasonable	33:4	recording
14, 15, 17	103:17	recognize	207:22
readily	reasons 8:20	59:18	records
157:14	68:20	121:12, 23	168:18, 19
ready 21:11	84:12	122:9	169:7, 21
48:11	103:12, 16	154:4	170:1, 19
83:14	144:10	191:11	recovery
162:25	156:20	recognized	169:3
183:12	rebuild	50:4 51:3,	recreated
real 119:18	23:13	12 59:4	27:21
139:16	rebuilding	recognizing	recreation
140:13	29:8 31:2	40:19	8:23 10:24
150:5, 6	rec- 131:3	122:7, 16	28:22
208:7	recall	recommendation	rectify
realign	105:17	s 172:14	81:22
84:22	receipt	recommending	redi- 42:2
reality	104:9	121:8	redistrict
33:11 63:7	143:13	reconciling	42:7 51:8
193:15	157:2	169:8	redistricting
realize	receive 19:2	reconsider	26:23
27:15	40:6 69:7	70:11	31:14
191:9	178:7	105:6	32:17
realized	receiving	143:16	

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: reduce..remember

35:2,15	regard-	39:3	118:10	6:16 51:21
36:15	region	82:18	135:14	98:11
37:7,17	regular		137:9	120:21
38:25		80:12 92:3	146:20	171:12
39:13	regulate		155:3	193:6
42:2,4,16			158:7	relationship
44:3,8		76:12	Rehner 59:20	73:19
45:7,15		100:20	reinitiate	115:22
46:4,6		159:20,21	6:16	122:12,14
47:6 48:8	regulated		reinvest	relationships
49:6 52:6		155:5	10:1	16:8 91:7
162:18	regulating		reinvesting	relative
164:6		137:12	113:14	193:21
171:13	regulation		reiterate	relatives
172:12		59:15	114:13	193:19,22
176:10		69:11,14,	120:22	relay 107:19
183:15		17,23 70:4	reject 61:23	religious
reduce 75:9		90:2,9	70:6	169:15
reduces		100:23	relate	remain 75:8
68:22		137:11	118:14	138:20
refer 23:15	regulations		related	153:5
94:19		56:22	56:17 80:4	206:3,8,9
208:14		60:10	102:15	remaining
referee		83:15 89:7	109:7	112:23
140:8		113:17	112:15	130:1
refereeing		158:2	135:11	remains 10:6
140:7	regulators		169:3	74:23 75:3
reference		155:6	177:22	117:19
53:9 61:5	regulatory		relates 7:5	166:25
referencing		69:22	113:18	167:14
27:9		70:12	129:8	remedy 86:12
refers 76:4		83:21,23	relation	remember 8:9
regain		94:6 98:5,	53:7 79:23	25:19
129:18		6 100:16	relations	75:21
		114:20		
		115:5		

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021 Index: remembers..requirement

90:19	165:18	42:10 44:5	200:9,22
91:3,12	reorganizing	48:16 71:1	209:18
107:4	32:21	164:20	211:3,4
109:1		172:24	representative
112:1	rep 8:16	176:12	s 33:19
134:25	197:18	177:23	173:2
136:5	200:13	183:24	185:1
141:12	repeat	representative	200:13
151:20	167:19	5:8,10,12	204:2
163:1	repeatedly	6:1 11:12	represented
199:25	171:20	13:15,20	40:9
204:15,16	report 41:16	16:12	164:25
remembers	76:7 77:10	21:13 24:4	178:22
29:16	157:18,19	35:10 38:4	179:1
remind 26:25		39:11	190:13
30:11 84:4	reporting	43:1,2	209:8
124:12	41:1 47:23	44:2 45:2,	representing
202:19	157:20	4 51:6	25:20 34:8
remit 70:16,	reports	67:24	178:25
21 116:18	47:16	71:9,15	represents
118:21	76:5,17	85:25	7:22 13:18
119:14	155:11	90:25	32:7 132:1
	157:16,17	94:17	reps 182:25
remitted	repository	95:21	
118:3,25	170:18	96:1,13,19	requests
119:2		101:13	170:9
removing	represent	139:18	require
99:1	33:12,22	158:16	19:23
renew 148:18	43:14	159:25	103:4,20
	109:3	160:5	required
renewing	173:2	162:9,12	76:4
148:17	179:18	168:15,21	157:15
rent 195:13	184:13,18	170:10,16	
	185:3	176:13	requirement
reopened	202:17	184:4	3:7 122:6
145:1	representation	193:12	197:15
reopening	33:13	194:6,18	
		199:13	

Charles Walen, et al. vs Doug Burgum, et al.

Committee Meeting on 08/31/2021

Index: requirements..resume

requirements	85:7,9,18	resolu-	101:13
95:4 96:5,	86:4	69:20	123:3
6 156:17	101:16,18	resolve	responded
requires	102:18	64:25	184:11
36:19	106:6,17	75:10 98:3	response
97:18	108:1,16	99:3 105:2	61:13
101:15	110:25	187:6	182:5
155:2	111:17	resolved	responsibiliti
156:11,17,	113:13	26:3 54:1	es 56:21
19	115:12,25	99:5	responsibility
requiring	117:1,12,	100:5,13	43:23 83:6
175:18	22 163:12	resolving	responsible
research	173:19,24	113:8	7:12
40:13 77:5	176:15,25	resonate	147:18
resent 160:8	177:1,10	82:21	rest 119:25
reservation	184:14	resort 9:23	restaurants
14:23 17:1	196:23	resource	137:25
28:2 35:22	reservations	21:23 45:1	159:2,6
37:5,24	3:5 6:23	202:25	restore
40:7 42:9	28:1 47:23	203:4	175:21
43:19,22,	82:18 91:2	resources	restricted
25 49:4	153:7	21:23	69:6
50:7 51:11	reserves	26:11	restroom
57:1 58:10	73:20	56:16	126:18
60:8,17,21	Reservoir	123:5	restructure
62:3,9	27:21	145:13	35:1
66:2 67:3,	reside	respect	result 113:8
11 68:5,7	163:10	115:15,23	resulted
72:5 74:23	resident	116:5	174:24
75:4,6	168:1	180:5	results
76:14,20,	183:17	respected	155:11
25 77:16	residential	115:25	resume
78:19	181:19	respects 7:8	210:22
79:5,24	resilient	respond	
80:3,6,9	201:5		
81:22			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: retail.rules

retail	72:15	68:23	roles 40:13
58:11,13	75:17	91:23	roll 2:1,3
62:10	82:24	115:11,25	4:18
67:16,17	101:1	rigs 113:3	rolled
71:19	130:18	ringing	144:12
116:10	134:4,8,	159:14	150:15
117:7,11,	10,11,19	rise 130:24	rolling
17 119:5,	135:16	206:12	143:19
13,14,19	136:19	risks 42:5	150:13
retailer	141:24,25	river 27:18,	roof 43:9
58:15	142:7,8,9,	23 28:10,	room 8:8
77:16	13,23	11 36:20	25:3
retailers	143:8,14,	127:25	149:24
66:4 67:3,	15,18	196:11	190:23
10 70:24	154:7	Riverside	Roosevelt
72:17	revenue's	166:9	195:11
73:2,3	143:11	road 96:10	root 49:3
75:23	revenues	140:22	roots 129:21
79:5,8	133:22	144:22	Rose 199:20
86:9,14,22	reverence	roads 30:7	Rose- 199:20
rethinking	206:11	Rock 46:12	rough 178:10
161:14	revitalization	84:14	roughly
retires 83:1	208:9	85:10,13	86:19
return 51:17	revitalized	90:22	roundtrip
115:14	11:21	105:20	175:5
129:17,20	rhetoric	115:10	181:11
returned	32:18	154:10	royalties
176:7	Rice 59:19	Rock's 85:10	19:1,15
returning	Rico 33:8	115:23	25:13
167:14	188:20	rode 206:20	30:2,6
revamped	ride 158:24	role 8:24	rude 22:8
11:21	riding	29:11 34:2	rules 41:3,4
revenue	204:22	52:12	
56:17,25	rights 3:3	69:15 78:4	
57:4 58:24			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: run..Section

77:24	119:9	saturated	41:6
137:15	159:10	138:25	166:11
run 97:19	sales 56:6	saturation	167:13
132:4	58:16	56:18	168:11
142:20	62:3,8	75:18	169:3,14
169:13	67:16,17	136:9,13	196:23
189:11	74:22	save 54:10	197:20
running	78:15,16	143:24	198:11,15
109:12,20	102:9,14,	144:22	scoop 207:1
123:25	15,20	178:17	search
183:4	103:2	sawmill 28:9	166:21
204:22	105:11,25	scale 197:20	searching
runs 50:20	106:4	scenario	166:12
rural 171:18	107:2	95:12	seashells
174:23	109:11	schedule	128:8
175:6	110:21,22	15:14	season 145:8
rush 160:12	111:10	45:21	seat 175:9
rut 145:11	112:4,6,7	89:12,14	178:14
Ruth 39:3	116:23	scheduled	184:12
202:10	117:2,11,	126:2	secondary
205:24	12,17,18	scheme 97:4	24:19
	119:5,14	Schneiders	69:11
	salesman	191:25	183:6
	71:19	school 12:2,	seconded 6:2
S	salvage	8 28:9	Secrecy
	138:19	30:4	156:18,19,
safer 77:22	Sammy 68:25	169:14	20
safety 56:23	sand 23:1	170:15	secret
Sahnish	SARS 157:17	195:11	156:11
91:13	sat 49:7	201:21	Secretary
sale 57:1	53:18 90:5	school's	59:17
58:11	113:11	198:13	Section
74:25	180:12	schools	78:24
78:24 87:8	satisfy 95:4	29:22 30:7	
103:21	96:5,6,7		
116:15			
117:23			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: secure..sessions

secure 23:17	137:24	send 61:1	24:5 48:23
segment 7:23	138:1	104:14,15	188:14
12:15 13:1	159:9,10	sending	198:23
16:11	semi 206:25	110:19	services
197:19	senate 67:21	111:2	17:22
200:22	176:12	sense 17:17	18:2,3,22
segments	senator 5:2,	46:10	19:9 21:19
11:24,25	4,6 6:1,11	sensibly	22:22
12:14 13:5	16:21 21:6	89:14	24:23
self- 29:1	24:3 29:15	separate	42:20,24
self-	31:12,18	50:4 95:1,	73:5 140:3
sustaining	37:21	3,5 186:12	154:6,12
28:8	40:23	separately	197:18,20
sell 60:8	44:19	34:10	198:2
65:21 66:2	46:3,17	separating	servicing
67:2 71:20	53:25	28:16	185:9
72:18	62:18	separation	187:24
76:23	111:23	3:8	188:12,14,
78:22	127:4	September	18
86:3,6,20	128:19,23	45:14	session
90:3 94:20	146:24	131:1	45:19
101:15,22,	151:8	series 27:18	55:17
23 137:22	154:3	29:14	57:17
147:5	159:3	serve 184:9	61:21 85:8
149:16	182:15	196:21	98:9 99:8
seller 119:5	184:3	served	109:10
selling	193:11	188:3,10,	111:12
60:17	196:2	21,22	117:9
66:15 74:5	198:21	189:11	136:25
76:13	199:12	194:13	139:23
78:17 79:1	200:12	series 35:14	142:2
80:5,9	senator's	service 19:5	sessions
81:13	155:17	22:7,14	60:3
86:18 87:7	senators	serves	139:23
101:19,21	33:16	service	178:25
116:12	173:1		187:4

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: set..similar

set 32:22	196:1	short/sweet	sideboards
70:15 90:8	198:5	183:19	160:23
97:13	202:12	shortage	sides 97:5
121:11	shared	38:9 41:5	140:10
125:24	139:20	show 6:4	164:15
126:17	169:10	103:22	201:7
158:2	188:3	109:20	sight 123:18
205:20	sharing	113:1	sign 68:16,
sets 60:1	192:21	155:10,11	18,21 70:1
81:21	she'd 208:14	193:25	107:11
setting	shed 115:4	206:18	signed 22:5
198:11	shell 16:12	207:11	68:13 70:9
settings	sherry	showing 81:1	significant
197:12	15:20,21,	87:12	8:24 38:21
settled	25 16:2,5	shown 73:15	186:11
112:22	38:13	shows 39:14	signified
severely	197:17	104:9	6:5
136:4	200:18,19,	128:3	signing
Shakopee	21 202:8	shuffle	24:18
133:24	207:13	150:22	signs 156:1,
share 43:13,	shield 3:20	shut 145:1,	2
24 50:9	13:2	7	similar
87:11	199:23	side 4:18	31:21 32:1
130:6	shift 44:25	24:9 35:24	33:8 38:14
132:6,11	shocking	36:20	57:12,13
146:22	161:19	43:15	63:15
158:14	shop 54:24	57:18	70:18 73:4
164:1	61:3,5,9,	88:20 99:2	83:14
165:24	14 83:18	123:14	85:12
166:14	145:18	146:18	87:18
167:8	shores 16:10	185:25	89:18
181:14	short 41:11	193:23	90:13
189:9	85:7	sidebars	120:20
193:24	114:25	135:24	122:14
194:23			142:4

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: simple..soul

147:8	203:16	sleep 43:9	67:10
simple 57:10	209:19	slice 133:19	69:2,3
75:12	sites 131:12	slight 63:4	74:24 91:2
simply 32:23	137:4	slightly	117:13
38:9 63:13	138:3,4	38:15	156:25
64:24	142:16	slip 96:22	160:24
75:16 77:9	sits 118:6	slot 135:3	sole 155:21
81:24	sitting 8:7	160:11,17,	solution
87:16 97:1	29:10 34:6	20 161:5	21:20
100:15	74:19	slow 159:13	105:13
103:5	77:20	175:14	106:21
115:7	109:14	small	solutions
137:22	173:11	127:19,21	109:16
single 56:5	174:25	204:13	168:19
68:22	175:1	smarter	194:15
singular	194:1	143:3	solve 79:16
95:16,18	206:3,8,9	Snake 91:13	somebody's
sister	situ- 33:7	Snow 12:7	63:8 76:13
199:22	situated	social 18:22	109:18
204:9	28:25	56:21 85:6	133:14
sit 10:16	situation	148:7	someway
13:16,21	33:8 57:19	154:6	104:25
21:2 25:1	62:16	Society	son 104:6
31:1 44:24	63:19	169:18	150:18
52:21	110:21	170:5	son's 104:1
60:14	160:4	software	sooner
69:21 90:2	situations	39:25 40:2	125:23
94:7	26:3	solar 20:25	sorrow 4:1
113:13	181:25	sold 56:7,	sort 19:18
120:8,21	size 43:17,	11,20	32:1
121:17	20 172:18	58:17	121:20
123:22	skin 51:2	60:21	140:13
124:14	sled	62:11	soul 196:6
140:20	206:21,22		
143:20			
186:16			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: sounds..standards

sounds 21:10	197:17	133:12	squash
185:22	speaking	196:11	127:18
soup 127:13	167:22	spills	129:10
source 19:2	171:12	118:11	st- 190:20
75:17	180:17	Spirit 46:11	stability
157:9	208:5	84:14	44:22
south 20:7	special	147:12	stack 207:2
27:23	45:19	210:21	stacks
36:11 37:3	141:15	split 34:17	206:22,23
166:4	187:4	37:8 53:22	staff 10:15
189:10	specific	57:11	140:6
192:11	40:7	58:23	170:7
Southern	specifically	63:14	staggered
190:20	34:5	64:24,25	183:1
Southwest	35:16,20	67:11	staggering
9:9	40:16	71:3,8,12	132:16
sovereign	46:1,9	79:20	stand 61:17
49:9,20	78:15	81:24	104:5,7
51:3 152:3	94:20	93:22	149:22
space 164:13	121:1	94:8,9	188:17
202:13	speech 193:6	105:2	192:6
speak 37:7	spells 83:21	111:9,13,	201:5,12
47:21 62:6	spend 17:13	19 112:18	206:10
70:25 73:7	56:24	113:24,25	splits 94:14
102:10	82:20	splitting	standard
107:6	140:2	34:15	111:4
114:18	198:16	68:11 98:7	205:20
115:3	204:6	spoken 210:7	standardize
119:2,4	spending	sponsored	85:9,23
138:6	105:9	152:23	standardized
163:17	210:14	Sportsman's	85:18
168:13,21	spends	62:19	standards
171:11	145:19	spouse 148:6	154:23
183:25	spent 17:10		156:14
185:25			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: standby..stated

standby	starts 104:4	81:16 84:6	143:12
170:7	state 3:8	86:4 87:9,	145:17,21,
standing	6:16,19	15 89:21	25 146:12,
46:12	10:4 17:8	93:2,4,14,	17 152:5,
84:14	19:17	22 94:14,	11,22,24
85:10,12	21:20	22,25	153:3
90:22	23:25	95:13,25	155:6
105:20	24:21	96:17,20	161:6
115:16,23	25:3,19,20	97:2,22	163:2
154:10	27:5	98:10,15	164:17,22
Stanley	32:11,25	101:21	165:14
22:5,15,19	33:14,20,	102:20	166:23
23:4 38:8,	25 35:5	103:1	167:10,12
10 208:12	37:19	104:14,16	168:14
	42:11	106:4	169:14,17
staples	43:15	107:16	170:4
127:14	48:24	108:22	171:4,11,
stark 190:22	49:9,10,	110:19	17 172:7,
	15,23	111:1	22 173:1,
start 13:14	50:4,9,17,	112:3	2,25
45:23	22 51:4,9	113:18	174:16
82:23,24	52:25	114:1,10	181:3,6
135:17	53:13,23	116:13	182:20,22
138:6	55:7,15	117:21,25	183:12
147:13,16	58:2,5,19,	118:3	187:17
148:24	22,23,25	119:8	191:5
157:23	62:2,14	120:12,16,	193:6
159:14	63:20	20 121:1,	194:24
194:6	64:1,10,18	25 122:7,	199:8
started	67:14	8,16,21,24	208:11,18
42:21 75:2	69:14,21	123:7	
136:18	70:3,16	127:16	state's
148:6	71:25 72:2	130:16	52:17
172:1	76:12,13	132:22	77:23 88:4
starting	77:10,23	133:1,17	89:16
14:7 73:24	78:3 79:1,	135:25	108:12,14
199:4	15,21	136:11	135:24
	80:18,22	137:10	stated 52:10

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: statement..studying

163:22	stating 61:2	207:17	street
statement	station	sticking	204:13,17
147:1	159:8	23:1 86:8	strong
162:2	209:10	stole 120:13	152:17,18
statements	stationed	stood 114:17	171:23
14:2	154:8	188:5	189:20
139:10	190:21	stop 21:9	201:5,13
states 9:13	stations	150:16	stronger
24:10 31:8	159:1,6	156:21,22	165:1
50:3 59:13	status 122:8	159:4	strongly
73:18,20,	156:3	209:1,11	16:23 20:3
21,25	statute	store 104:2,	34:3
74:1,14,	79:2,7	4,18 112:3	124:21
15,16	96:25 97:1	116:22	126:15,16
78:23	statutes	stores 91:14	137:6
79:12	78:15	137:24	struck 57:18
92:14	statutory	stories	structure
104:10	122:6,15	150:2	76:15 90:4
108:13,18	stay 3:22	204:12	94:6 158:7
111:5	88:3,7	storm 153:21	structured
129:13	141:24	straddle	201:10
136:2	stays 58:22	53:11	stuck 164:12
151:23	steady	112:16	students
152:1	201:12	113:9,22	196:22
155:5	stealing	straight	197:9
157:11	147:16	33:6	198:9
159:1,9	148:16	stranger	studied
165:22	156:5	31:23	52:17
166:3,12	Steel 192:2	strategize	145:24
172:2	stem 56:19	143:20	study 73:17
182:10	step 26:25	stream 56:25	133:7
187:24	27:2 85:17	streamline	studying
188:18	99:22	112:7	133:7,8
190:18,20			
statewide			
151:17			
177:19			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: stuff..system

stuff 14:11	109:17	Summertime	Supreme
20:2 39:9		145:9	59:21
71:24 84:6	submitted		69:18
85:24	34:24	sun 189:22,	103:15
89:18	59:12 81:3	23	104:10
105:15	subsequent	super 202:17	
158:20	25:6	superior	surprised
168:11	sudden 82:6	192:9	98:12
191:7	88:4 100:2		100:1
194:12	157:3	support 7:18	surround
	181:10	51:5 52:11	18:19
stymie 54:18		70:10 77:2	
55:3	suffer 50:16	93:16	surrounded
		114:6,7	33:9
sub-agencies	suffered	115:11	survey 47:13
124:12	27:24	139:25	
		141:18,19	suspect
sub-district	suffering	164:5,22	199:9
36:6 46:13	144:13	167:9,10	suspicion
172:25	suffice 19:4	175:21	103:17
sub-	sufficient	176:10	suspicious
districting	29:2	183:14	157:17
176:11			
	suggest	supported	system 21:16
sub-districts	109:9	62:17	32:21 33:7
35:16 46:8		113:11	35:4 44:12
164:5,22	suggestion	161:13	54:15,22
167:11	87:22	176:2	56:2 64:24
173:4	suggestions		70:3,12
	52:8	supportive	83:21,23
subcommittees		115:12	97:19
183:15	summer 53:24		98:5,7,16
	113:23	supports	99:10
subdivision	145:3,10	74:20	105:1
108:3	158:24		116:1
	190:4	supposed	128:3,11
subject	196:10	12:9 61:18	
31:11 60:9	205:2	88:21	
105:5		104:5,7,8	
129:25	summers		
	204:6	supposedly	
submit 58:18		28:13	
76:5,7,18			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: ta--tax

	63:14	112:1	61:15, 24,
T	68:11 70:5	113:14	25 62:8,
	115:9	124:23, 24	11, 14
ta- 57:1	136:3	134:7	63:20
tab 131:8	200:1	137:17	64:1, 17,
147:11	talk 10:2	149:23	18, 24
149:17	21:15 33:3	152:12	65:4, 7
150:7, 19	36:15	161:10	67:21
158:21	42:23 47:4	168:10	68:4, 11, 23
table 13:16,	48:19	170:23	69:5, 6, 9,
21 24:2	85:22	179:2, 23	13 70:16
29:11	93:20	191:21	71:3, 7, 11,
68:14	107:2, 3, 10	205:22	13 72:4, 15
77:20 78:2	108:18, 25	talks 27:14	73:11
88:16	121:11, 18	192:5	75:13, 15
100:6	124:15	Tasha 207:15	80:2 81:5,
150:23	130:2	208:3	15, 23
151:21	180:2	tasked 24:13	84:5, 7, 9,
157:6	185:15	45:6	13, 25
164:10, 16,	186:16	taught	88:14, 19
24 165:23	207:11	206:7, 8,	92:4 93:13
166:19	talked 18:24	10, 11	94:9 98:7,
180:16	40:24	208:10	10 100:12,
183:16, 23	112:16	tax 19:15	23 101:1
184:13, 25	116:8	29:13, 18	102:9, 20,
186:21	139:24	30:5, 7	24 103:1,
195:18	151:8, 9	41:10	2, 8, 14, 21
tabs 131:8	168:15	53:13, 14	104:9, 13,
150:10	177:11	54:14, 19,	22 105:1,
tail 160:3	talking	23 55:1	5, 14, 15,
takes 62:1	20:15	56:6 57:11	21, 25
96:20	27:10	58:3, 11,	106:4, 8
110:17	48:15 60:4	13, 25	109:11, 23
149:11	66:7 80:10	59:1, 2, 5,	110:5, 15
taking 19:6	87:5 89:3,	22, 25	111:5, 6,
25:12	11 95:23	60:1, 19, 20	10, 18, 19
	107:21		112:7, 23
			116:8, 9,

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: taxable..thing

13,14,16	100:12	179:17	200:11
117:6,9,	107:2	187:22	text 130:25
21,25	109:18,24	190:14	thankful
118:1,2,	111:11	tells 46:5	10:13,14,
18,19,24	145:25	temperature	17 16:15
119:12	146:2,12	207:7	203:20
120:12	157:8	temptation	that- 135:20
156:21	186:9	154:19	182:11
taxable	taxing 61:4	tempted	the- 38:19
62:21	81:15	137:20	theft 148:20
taxation	104:8	ten 113:5	154:4,16,
54:15,16,	106:18	tens 57:4	17,20
22 55:4	110:18	66:16	155:12
59:14	tea 137:23	82:20	158:14
70:12 72:7	teach 4:5	term 16:13	thefts
92:9 93:1	14:4 57:24	terms 36:9	154:20
98:16	teacher	50:15	theme 43:20
105:7	201:21	122:15,17	there'a 64:6
107:3	208:14	territory	there'd
taxations	teaching	33:5	38:21
107:17	201:22	171:19	144:15
taxed 60:15	team 22:3,4	Terry 177:11	They- 146:2
62:14,21	tearing 84:2	200:6	thing 2:1
100:16	tease 190:2	testify	7:8,9
105:24	Technical	183:11	14:20
taxes 53:22	169:1	testimonies	33:12
54:25	technology	62:5	37:2,6
55:22	131:24	testimony	44:1 45:4
62:10	162:20	160:15	53:6 54:8
64:10,15,	Ted 49:2	168:6	55:5,10
20 67:17	telling	202:23	56:4 72:6
68:8,10	74:19	testing	74:6 76:9
71:4 73:4	82:17	155:11	80:15,19
76:19	160:17		82:1,5,8
81:22 83:4			
88:1			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: things..time

84:25	58:20 62:6	180:16	104:23
85:16	72:15	181:15,21	134:2
93:14,15	74:6,12	182:7	thousands
101:2	75:19,21	185:9,17,	66:17
119:10	79:24	25 186:8,	161:7
121:7	85:23	9,19	198:14
148:7,8	87:13 88:6	187:11,15	three-bedroom
149:3	91:1 92:2	188:13,23	41:13
153:23	99:17,19	189:1	throw 20:17
157:25	104:5	190:25	22:24
159:13,23	109:9	191:4,7,25	126:7
160:2,25	110:1	192:18	143:18
162:4	112:18	193:3,23	145:13
174:16	118:14	194:14	150:25
176:23	120:10,16,	201:4,12	206:14
177:10	17 123:19	206:3	thumbs
178:1	124:1,2,17	207:11,14,	162:23
186:14	127:18	23 208:19	tied 36:10
203:7	128:8,9,12	210:3,7,15	till 103:7
things 3:2,6	129:10	thinking	147:22
4:7,11,13	131:15	36:17	time 2:11,
7:4 8:20	135:4,12,	76:21	12,14,19
9:11,15,	17 137:5	thirds	3:10,13
20,25 12:1	138:13	143:14	5:19 6:8
13:1,5,11	139:1,6	Thirty-five	10:11
14:10,15,	140:25	82:14	11:13
24 16:3	143:5	thought 6:3	12:5,11,21
24:8,9,25	145:4	53:16	13:10
25:8 26:15	151:20	55:15 85:8	14:6,14
29:21 30:8	153:20	98:8 100:5	15:17 22:2
31:7,23	155:2,12	111:23	25:6,15,20
32:13 33:5	156:19,22	112:12	26:1 29:19
34:1,10,13	157:18	thoughts	31:4 40:1
36:25	158:13	31:14,19	42:9 45:14
37:17	161:25	36:5,14	47:15 48:7
44:25	162:20	thousand	
52:21 54:9	170:13,21		
56:19	178:21		

Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021 Index: time-consuming..town

49:25 50:1	162:12	204:21	72:1
51:7	167:24	208:12	144:24
52:18,25	175:11,13	Title 156:17	177:6
63:8 66:9,	177:13	today 3:11,	189:3,4,14
10 69:1	178:10,15	17 4:8	193:5
73:17	182:19,21	6:14 8:7	tolerant
80:16	185:25	13:17	190:18
85:5,7,15	186:20	20:10	tomorrow
91:4 92:4	189:2,9,10	27:15,22	169:11
98:14	195:2	28:18	210:20
102:12,21	196:9	29:5,21	tool 39:12
104:23	198:3,4,6	30:19	top 207:2
105:10	199:18	69:18	total 133:12
106:13	201:22	97:24	Totten
108:11	202:5	107:5	169:10,12
110:6	205:1	128:23	touch 26:18
114:25	206:16,21	133:20	180:23
116:2	207:14	136:3,4	189:12
118:9	210:14	137:22	touched
123:13	time-consuming	138:4	154:3
125:24	62:25	159:24	tough 139:22
126:17	times 18:25	163:22,25	196:7,9
127:23	29:24,25	165:10	tour 8:11
128:3	92:13	167:4,16,	12:23
130:1	101:3	24 168:6	126:19
136:1	104:19,22	192:6,17	187:10
138:21	110:8	195:23	199:15
141:7,8,9	114:13	196:5,6	202:9,18
143:4	116:5	204:3	tourism 8:23
144:12	123:16	Today's 2:8	10:24
149:4	132:25	toddler	28:22
150:15	152:14	17:25	132:24
151:16	156:13	told 60:13,	tours 8:9
153:12	164:12	14 71:2	town 11:16,
155:12	180:14		
156:16	195:23		
159:17	196:7		
161:23			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: toys..tribal

18 12:20	204:18,19	72:20	97:23,25
14:3,7,11	train 117:3	75:18	98:10
16:12		77:17	101:16
23:19,22	transport	175:17,18	102:15
28:16,17	101:15	193:1	103:2,9,
62:19	transporting	treaty 23:24	11,14,16,
75:14 83:2	101:20	173:14,15	18,19,20,
84:3			22,23
110:23	trauma 167:3	tremendous	104:13,17,
198:11	travel	14:17	18 105:23
205:6	181:10	23:20 50:7	107:6,12,
toys 104:9	193:6	trenches	15,25
track 96:13	201:24	75:10	109:2,18,
201:17	203:8	191:6	21 110:4,
tracks 53:19	traveled	trend 136:3	8,10,14,
trade 128:1,	14:3	145:14	16,22,25
3,11	175:1,8	tribal 2:9	111:7
129:11	Traynor	6:16 16:7	113:19
Traders 74:5	177:11	27:6 30:2,	117:1
trading	treasurer	3 35:17	118:16
73:23	54:3	42:24	121:24
74:11	treat 204:23	44:5,13,	123:5
tradition	treated	14,17	128:11
183:22	182:7	45:5,22	137:10
traditional	191:2	46:1,8	156:4
180:18	treaties	48:15 56:7	167:1
traditionally	107:7,8	59:1 60:9,	170:23
72:3	173:17	18 62:20	171:8,12,
traffic 7:5	treating	65:4 69:9	23 172:6
trafficking	82:20	70:3 72:6,	173:22
202:21	treatment	19,25	174:6,8,10
tragedy 3:24	14:16	73:19	175:11
trailer	20:12,13	75:24	177:9,20
	29:22	77:7,10,	179:14
	56:18	16,22	182:19
		79:21 80:3	197:24
		90:7	199:5,6
			203:11

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: tribally..Twin

210:16,23	193:17	140:20	174:4,11
tribally	197:19	144:4,5,	trusted
90:6	209:18	10,16	148:3
tribe 3:4	tribe's	145:23	truth 115:4
14:23	61:13	146:1,16	Tuesday 2:8
17:10	77:24 80:1	151:22	tuition
19:21	100:17	152:3,7	198:17
21:3,17	138:19	153:2	turn 76:17
30:2 31:24	tribe-	154:1,8,	127:2
32:20 34:9	210:16	10,11	151:19
53:23	tribes 3:4	161:21	153:18
61:14	6:22 28:4	166:16	185:16
62:14	29:1,5	169:1	turning
64:18,22	32:5 52:11	171:10	15:11
67:13	53:4 59:4,	191:23	156:8
69:14	11 61:22,	trim 162:4	turnout
71:22 74:8	23 62:22	Trinity 23:8	176:1,4
76:22	68:16,22	trouble	183:4
77:25 78:4	69:21,25	148:24	turns 156:3
79:2 80:18	70:6,9,11	149:25	Turtle 40:15
81:16	73:13,21	184:15	46:21
88:15	74:3,9	troubles	84:14
93:21	80:22 94:8	23:7	107:12
94:14,22,	107:11	truck 119:6	160:16
24 95:14	108:8,20	trucks 14:11	168:16,24
97:2,5	112:2,10	true 23:23	204:24
100:16	117:23	47:5 149:7	TV 204:24
101:1	120:15	151:24	Twin 13:2
102:19	121:2,4,6,	179:22	37:8
107:17	17 122:8,	192:5	162:15
108:4	9,16,18	trust 7:19,	163:10
142:9,14	123:1,2,7	20 25:17	178:13
156:23	128:6	53:20	210:3
169:7	133:21,23	64:12	
172:21	134:5,9	173:12	
179:11	135:17,18,		
180:1	19 136:10		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: twisted..unlawfully

twisted 137:23	undermines 69:8	understands 124:3	unit 41:13, 15 42:8
type 42:25 79:23 86:17 90:9 117:4 149:18 160:25	underrepresent ation 40:25 understand 22:23 25:22 30:25 49:16 50:6 57:15 58:1 64:23 67:24 71:17 84:24 88:1 99:19 114:24 131:19 135:23 161:4 162:19 168:25 169:13 173:11 174:5 175:24 179:11,15, 16 196:14 199:4	understood 65:15 67:19 116:4 131:15 191:12 unemployment 92:16 unequal 175:17 unfair 81:20 unfortunate 73:6,11 unified 70:12 uniform 69:23 73:12 76:19 uniformly 71:14 unify 17:22 18:1 unilateral 107:16 unilaterally 88:21 union 108:14 unique 122:8 uniqueness 109:2	United 9:13 24:9 31:8 34:9 50:3 59:12 73:18,20, 25 74:14, 15,16 78:23 79:11 92:14 104:10 108:18 129:13 140:20 151:23 152:1 155:5 157:11 165:22 166:3,12, 16 169:1 172:2 182:10 187:24 188:18 universities 48:4 unlawful 103:1 104:22 105:8 109:24 142:11 unlawfully 104:16
<hr/> U <hr/>			
ultimately 54:23 108:23			
uncle 199:21 204:7			
uncommon 41:14			
under- reporting 41:20,25 47:17 48:5	understanding 59:2 92:4, 24 93:9 99:18 180:8 190:24 191:20		
undercount 40:11			
undermine 136:5	understanding' s 93:16		

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: Unlike..vote

109:17		versed 209:2	159:16
Unlike 62:10	v	versus 42:5	197:9
unlimited	vaccinated	59:20	203:11
132:20	197:23	192:11	204:5,11
133:9	vaccines	vested	205:8
142:16,17	197:22	174:6,9	210:13
unmarked	values	veteran	visit- 112:1
165:12,20	180:18	74:18	visiting
166:22	variant	188:6,7	11:15
169:9	162:15	201:6,9	169:11
uno- 107:15	varies 87:8	veterans	visitors
unregulated	varying 87:9	188:10	127:8
57:20	Vegas 153:18	victim 27:17	132:23
up-to-date	157:11,25	72:20,22,	visits
65:13	158:1	23	170:22
update 131:4	vendor	victims 73:1	200:1
updates	103:12	Vietnam	vital 20:21
131:1	111:2	188:7	voice 172:14
USC 78:24	116:12	view 9:7	179:7
USPS 175:13	118:23	31:25	voices 34:15
usurping	vendors 81:2	village 2:9	52:15
74:11	103:4,20	villages	53:1,2
usurps 70:3	104:12	128:10	114:21
Utah 166:10	109:16	violating	171:21
204:25	110:1	97:3,24,25	volunteer
utility	116:25	violation	209:9
209:4	145:24,25	79:10	vote 32:22
utilize	146:3	violence	35:1 37:4,
16:20	venture	56:19	13 45:12
47:20	175:15	75:18	63:17
ventures	10:25	92:11	162:3
verge 71:5	visit 15:10	42:20 53:8	172:10,15,
			18,19,20
			174:12
			175:2,5,

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: voted..Wardner

16,20	208:19	162:14	46:15,17
176:9,21,	209:10	163:7	47:11
24 177:24,		165:23	48:17,22
25 178:2,	<hr/> w <hr/>	174:16	51:15,21
3,5 179:14		175:12	57:23
181:5,6,	w- 178:10	179:5	58:8,13
13,16	wagging	185:13,15	62:18
182:8,9,13	160:4	188:12,23	63:18,22,
208:21		189:8	24 64:5,
209:7	wait 9:4	193:24	11,14
voted 151:18	119:22	196:15	65:9,21,24
175:10	126:1		66:2,24
178:3	187:6	wanting	67:2,5,7,
182:1	waiting 31:5	100:8	9,13,18
voter 172:5	55:12	144:6	70:15,19
175:18	119:23	181:13	71:15
176:1,3	126:16	189:11	75:20 77:3
180:3	161:8	war 4:2	78:7,9,13
181:23	Walford 23:5	40:24	80:7,15,21
voters	walk 126:19	74:7,10	81:6,8,11,
172:24	191:16	188:6,9,11	14,18
173:3	walked 128:2	Warden	83:24
174:3,18	208:23	128:19,23	84:24
179:15,23	walks 180:10	Warder 4:25	85:21
votes 152:15	wanted 18:22	Wardner 2:5	87:20
171:16	26:18,20	4:16 5:1,	89:1,6,10
176:17	67:18	19,25 6:7,	90:15
179:13	88:15	11 13:13,	91:11,16,
voting 42:16	101:13	25 16:21	18,20
150:17	102:1	24:6 29:16	93:18,25
171:22	109:3	31:15,17	94:2,11,16
172:7	116:4	35:8 37:21	95:21
174:21,22,	128:15	38:24	96:11
25 175:24	138:15	39:7,8,10,	99:14
178:1,15	139:1	20 42:14,	101:2,11
202:24	150:11	18 43:2,3	102:3
		44:19 45:2	105:12,17
			106:9,14,

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: warrior..white

23 109:6	183:10	watching	205:25
111:22	184:1,6,8	155:25	206:9
112:6,11	185:24	156:1	208:10
114:4,9	194:5,18	water 9:12,	209:24
116:6	195:3,8,10	16 27:12,	210:18
117:24	196:17,25	15 33:9	wealthy 29:3
118:5,8,19	197:11,14	98:5	wear 2:12,
119:16,20	198:10,19,	113:16	18 200:2
120:2,6	21,24	141:7,8,9,	week 45:16,
121:14	200:5,10,	16	20 195:24
122:2	12,18	Waterford	week's 40:6
123:9	202:8,11	36:18	weekend
124:23	203:23,25	195:25	150:8
125:2,10,	205:11	watermelon	weekly
18,21	207:19,22	127:18	113:12
126:9,13,	208:7	waterpark	weeks 45:17
20,23	209:15	145:4	weird
127:1,4,6	210:11	waterparks	147:23,25
129:3,7	211:2	145:6	welcoming
134:14,16	warrior	Watford	4:19
139:8	141:3	36:11	wells 53:11,
146:23	wars 73:24	38:15	18 112:16
151:3,5	74:7	106:7	113:9,22
158:16	wash 157:1,	145:20	west 36:10,
159:23	7	waved 106:23	12 37:1,3
162:6,13,	washed	ways 14:12	74:8 128:8
19 163:5,	157:10	20:18,19	192:11
18 165:3,	Washington	23:24	200:22
5,7 167:17	60:24	64:25	whatnot
168:3,9	61:11	136:23	170:3
170:10,11,	121:4,7	180:10	white 13:2
21 171:6	waste 124:1	187:1	190:22
176:22	watch	188:5	199:23
177:18	204:23,25	191:2,9	
178:19	205:3	193:5	
179:16,24			
180:4,22			
182:15			

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: wholesale..wrestle

wholesale	winding	45:17, 25	workers
58:7 60:20	185:12	52:9 68:21	146:8
66:4	winning	69:7	177:14
116:12	142:21	79:14, 19,	working 11:8
117:5	150:13	22 108:8	65:11
119:14	wisdom 74:14	109:14	77:11
wholesaler	152:1	110:1, 11	121:16
61:16	wise 131:9	120:13	124:21
66:24	woman 44:9	122:3	125:19, 21
77:15	92:14	158:12	128:21
101:18, 21	197:4	161:18	129:1
119:8	208:16	164:11, 19	164:3
wholesalers	women 17:2	167:7	166:17
60:8 61:9,	92:12	170:8	187:12
10 65:17	203:15	181:18	201:24
75:23 76:1	206:2	189:18, 21,	202:25
77:6 83:19	won 157:6	22 190:2,	works 84:6
86:15, 21	192:3	3, 8, 12, 15	world 132:3
93:20	wonderful	191:7	188:6, 9, 11
94:12	27:7 168:8	193:3, 7	192:6
wholesales	wondering	195:5	193:9
119:19	136:16	201:4, 24	worlds 194:1
WIC 17:25	Woods 23:12,	202:7	worried
Wicks [ph	15 27:8, 13	203:4	86:13
90:20	word 22:24	204:4	135:4
wife 197:4	108:17	205:17	worst 37:6
wild 150:3	words 107:4	210:17	82:1
Wildlife	work 10:22	worked 39:5	worth 157:22
132:12	14:21, 25	96:24	wou- 93:4
Williston	16:14	120:11	wounds
145:20	19:23	148:3	165:18
win 149:1	35:20	151:15	wrap
160:13	39:16 41:6	164:7, 15	185:17, 24
wind 21:1	44:20	201:19	wrestle
		206:16	
		worker	
		145:19	

**Charles Walen, et al. vs Doug Burgum, et al.
Committee Meeting on 08/31/2021**

Index: write..Zoom

85:15	55:10	
write 42:19	56:8,13	<hr/> Z <hr/>
	60:4 68:2	
written	73:8	zones 21:19
178:7	82:13,16	42:21
191:25	84:21	192:12
wrong 17:13	88:12	zoo 195:22
53:25	100:25	
120:19	102:25	Zoom
149:23	103:25	209:13,23
185:2	104:1	210:4
190:11	105:18	
wrote 130:5	135:20	
	141:6	
	148:4,6	
<hr/> Y <hr/>	149:5	
	183:1,5,6	
year 9:17	184:11	
29:25	187:21	
48:11	195:11	
82:21	198:1	
86:14 88:5	201:21	
101:23,24		
141:4,5	yesterday	
147:9	2:8 84:2	
148:17		
187:7	you- 27:7	
198:14,15	162:25	
	195:24	
years 11:14	young 74:1	
14:3 17:1,	187:23,24	
7,9 19:11,		
25 20:8	younger 17:7	
25:1,15	152:21	
26:1	youth 204:17	
29:14,17	205:2	
31:5,6,22		
46:5,6		
48:12 49:7		

EXHIBIT 14



MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes * Fort Berthold Indian Reservation
404 Frontage Road New Town, ND 58763
Tribal Business Council

Office of the Chairman
Mark N. Fox

67th Legislative Assembly
Redistricting Committee
September 29, 2021

Testimony of Chairman Mark Fox

Chairman Devlin and members of the Redistricting Committee, I am Mark Fox, Chairman of the Tribal Business Council of the Mandan, Hidatsa, and Arikara Nation. I am respectfully submitting this written testimony as follow-up to the in-person testimony I provided to the Committee on September 23, 2021. During my testimony on September 23rd, I advocated for the creation of a single-member (or sub-district) for the State House district that encompasses the Fort Berthold Reservation. I am resubmitting the proposed district map for District 4, which includes a proposed sub-district line for a single-member House district that would provide the MHA Nation, its members, and the surrounding communities of interest with the best opportunity to elect the representative of their choice.

The proposed sub-district follows the boundaries of the Fort Berthold Reservation; the creation of such a majority-minority sub-district is required under Section 2 of the Voting Rights Act. Section 2, as interpreted by the United States Supreme Court in *Thornburg v. Gingles*, 470 U.S. 30 (1986), requires the establishment of a majority-minority district when: 1) the minority group “is sufficiently numerous and compact to form a majority in a single-member district; 2)

the minority group is “politically cohesive; and 3) the “majority votes sufficiently as a bloc to . . . defeat the minority’s preferred candidate.”

Based on the Committee’s prior discussion, the Committee is aware already from the 2020 Census that the number of tribal members on the Fort Berthold Reservation is sufficiently numerous and compact to form a majority in a single-member district, and that a sub-district following the lines of the reservation would form a perfectly populated sub-district. There is also ample evidence of voting history in District 4 to show that tribal member candidates and tribal member candidates of choice are routinely outvoted by the majority vote in the district.

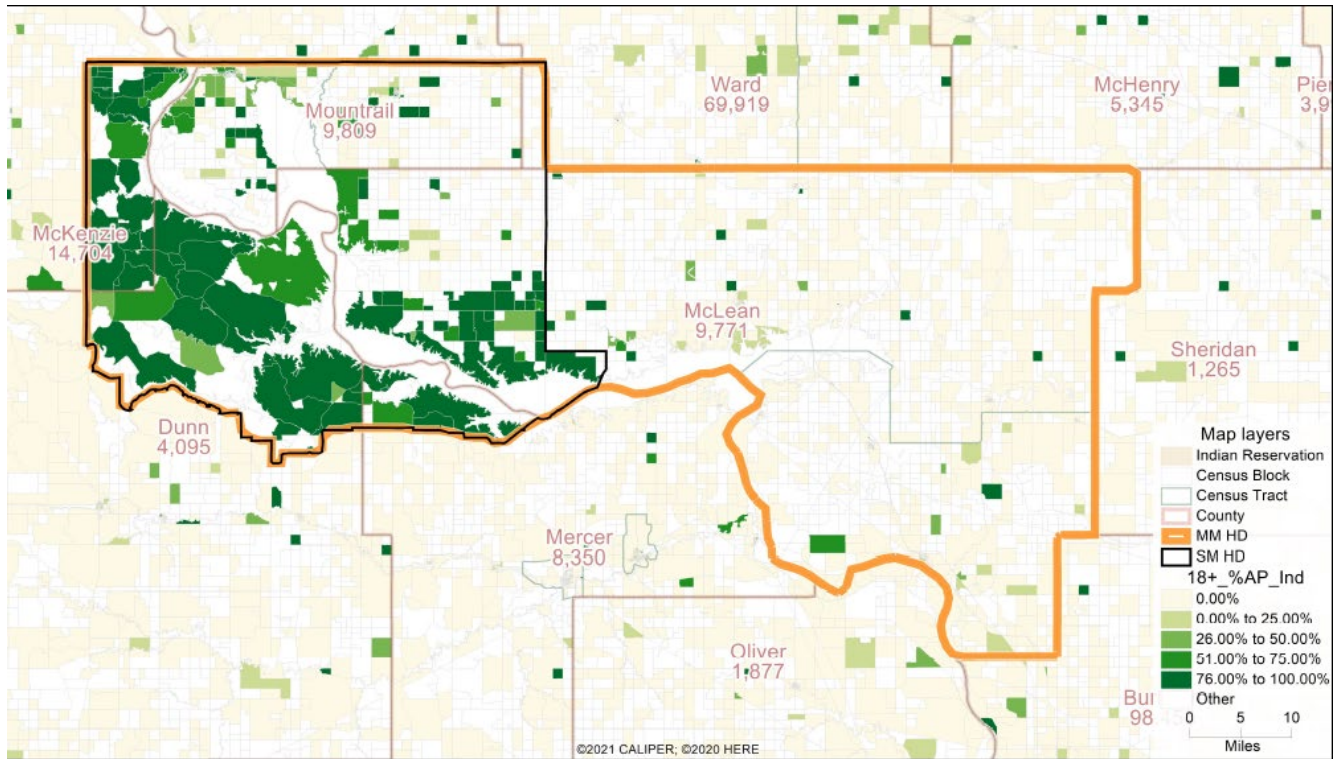
Proven history of bloc voting occurred on the Fort Berthold Reservation in the City of Parshall, e.g., Parshall School Board in 1990. I shared in prior testimony my personal experience when I sought election to the Parshall School Board that nearly five hundred votes were cast, in stark contrast to average voter turnout of less than one hundred when non-native candidates were on the ballot. Additional examples include two other tribal members running for the State House in 2020 and 2016, respectively. Both candidates, Thomasina Mandan and Cesar Alvarez easily won the precincts on the reservation but lost in the overall election. If single member districts were utilized, it is likely both of those candidates would have won. The MHA Nation seeks this Committee’s support of Section 2 of the Voting Rights Act in creating a sub-district for District 4 that includes the Fort Berthold Reservation.

Below is the proposed district and sub-district map. The proposed sub-district contains a Native American VAP of over 67%. The creation of such a district would improve the representation of the MHA Nation’s members within the state, and the adoption of this proposed sub-district would satisfy the Legislature’s requirements under the Voting Rights Act. I strongly

encourage the Committee and the Legislature to follow the law and adopt this proposed sub-district.

Thank you for your consideration of this additional testimony.

MHA Proposed District and Sub-District Map



District	4 - Sub District	4A - Full District
Population	8353	17065
Deviation	65	489
% Deviation	0.007843	0.0295
18+_Pop	5712	12567
% 18+_Pop	0.683826	0.73642
NH18+_Wht	1462	7921
% NH18+_Wht	0.255952	0.630302
18+_AP_Ind	3838	4044
% 18+_AP_Ind	0.671919	0.321795

EXHIBIT 15

September 28, 2021

North Dakota Legislative Redistricting Committee

Testimony of Lisa DeVille

Mandaree, ND

Mandan, Hidatsa, Arikara Nation

Chairman Devlin and members of the legislative redistricting committee,

Dosha, my name is Lisa DeVille and I am a citizen of the Mandan, Hidatsa, and Arikara Nation in Fort Berthold. I grew up in Mandaree where I and my family are lifelong residents of our ancestral lands. Thank you for the opportunity to testify today.

The Mandan, Hidatsa, and Arikara Nation is a federally recognized tribe in the state of North Dakota, located in the counties of Dunn, Mountrail, McKenzie, Mercer, Ward and McLean. The Mandan, Hidatsa, and Arikara Nation is a sovereign nation governed by its Tribal Business Council. We have an enrollment of nearly 17,000 members. Under the 2020 Census, the population of the reservation was 8,350. The total population in North Dakota increased overall between 2010 and 2020 from 672,591 residents to 779,094, representing a 15.8% increase. The Native American population outpaced the state, and grew by 29.7% in the last decade. The Fort Berthold Reservation is within North Dakota State District 4, which elects two members to the State House (at-large), and one member to the Senate.

Currently, District 4 is represented by three Republicans: Senator Jordan Kannianen, Representative Clayton Fegley, and Representative Terry B. Jones. Prior to the 2016 election, the District had a Democratic senator and one Democratic representative for several years. In 2020 I challenged Senator Kannianen and unfortunately was not able to be elected even though portions of the district on the reservation strongly supported myself and House of Representatives candidate Thomasina Mandan.

Every decade new district lines are drawn that give each of our votes equal weight, each of our voice's equal stature, and each of our communities equal resources. Voters pick our leaders, and our leaders should not pick their voters. To determine how we will be represented and how funds for schools, hospitals, and other essential services will be allocated we need legislators that work with tribal citizens as well as government.

Representation at state, county, and federal level is not all about oil and gas. We Native American/Indigenous people have our own voice. The Non-Native American have been speaking for us since they landed here.

Recently, I gave a short comment on redistricting during the ND and MHA Tribal relations meeting. I support implementation of subdistricts. We need to be at the table when decisions are made that impact our lives and possibly the lives of future generations. There should be no assumption that ND knows what is best for us Indigenous people when our culture, tradition, and beliefs are different and often not taken into account when decisions are made.

Again, we need to be at the table and we need fair representation in North Dakota.
Maacagiraac-Thank you for this opportunity to speak to you.

EXHIBIT 16



North Dakota Native Vote
PO Box 226
Bismarck, North Dakota
58502
info@ndnativevote.org

9/15/2021

North Dakota Legislative Redistricting Committee

Testimony of Nicole Donaghy North Dakota Native Vote, Executive Director

Chairman Devlin and members of the Redistricting Committee,

My name is Nicole Donaghy, I'm a citizen of the Standing Rock Nation and a descendant of the Turtle Mountain Band of Chippewa and the Mandan, Hidatsa, and Arikara people. I live in Lincoln, North Dakota and I'm the Executive Director of North Dakota Native Vote.

North Dakota Native Vote is a non-profit, non-partisan grassroots organization that initially formed in response to the 2018 US Supreme Court decision to uphold the voter identification law that had the potential to disproportionately adversely affect over 5,000 Native voters in North Dakota. Our mission is to create and affect policy to promote equitable representation for the Native people of North Dakota.

I joined North Dakota Native Vote in 2018 because the imbalance of power in our state was very apparent to me after being a community organizer for years. I've worked on education issues, protection of land, air, and water, and now civic engagement. I soon realized that the issues that I was working on often stem from a lack of inclusion and representation in the decision making processes.

In North Dakota, the Native American population grew by 29.7% in the last decade, it is North Dakota Native Vote's ask that the Committee take into consideration the perspectives of each of the Tribes as well as tribal members in the redistricting process.

We are asking the Committee to adopt single-member House districts to prevent the dilution of Native American votes. Tribes and tribal members in North Dakota have had to fight for the right to vote, whether by defeating voter I.D. laws, opposing district lines that dilute the Native American vote, or by demanding on reservation polling locations. As we have seen in our early beginning as an organization, tribal citizens in North Dakota have been overburdened by policy that is created by decision makers with little input from their tribal constituents. At-large voting systems, like the current one used for the North Dakota State House, violate the Voting Rights Act when they dilute minority voting power by preventing tribal members from electing the candidate of their choice.

Our State Constitution in Article IV subsection 2, paragraph 2 states "The legislative assembly may... provide for the election of senators at large and representatives at large or from subdistricts from those districts." North Dakota Century Code 54-03-01.5 Legislative subsection 2 also



North Dakota Native Vote
PO Box 226
Bismarck, North Dakota
58502
info@ndnativevote.org

provides that “Representatives may be elected at large or from subdistricts.” North Dakota law allows for the creation of sub-districts and that is what should be done. Single-member House districts, or sub-districts, within districts containing reservations would allow tribal members to elect the candidate of their choice as required under the Voting Rights Act.

Candidates are able to run, but not get elected because of the dilution of their vote by being grouped in with adjacent communities that do not share similar interest.

One example is my home lands in Sioux County on the Standing Rock Reservation. Data from elections for legislative seats over the past decade indicate that Native American residents of District 31 are not currently able to elect representatives of their choice.

For example, in 2014 two Standing Rock Tribal members, Mike Faith and LaDonna Allard, ran for the State House but were out-voted in the at-large system. In 2010, another Standing Rock Tribal member ran for the State House, but was likewise outvoted in the at-large system. Chase Iron Eyes, another Standing Rock member and candidate for U.S. House, earned 78% of the vote in Sioux county, but was defeated in each of the other counties in District 31. This shows that the Native American voters have not been able to elect the candidate of their choice.

We recommend that a “Community of Interest” standard should be used by this Committee, which takes into consideration communities that have similar language, culture, and identity, to keep those communities together within a single legislative district. Splitting the reservation or our communities into multiple districts would dilute the ability of tribal members to elect the representative of their choice.

Lastly, this Committee should be holding hearings on or near reservations so that tribal members who are unable to travel to Bismarck, and who lack internet access, are able to participate in the redistricting process. There are high levels of poverty and a lack of access to transportation and broadband internet on our reservations. This Committee would be doing itself and this state a disservice by failing to provide an opportunity for all of this state’s citizens to take part in this important discussion. All voices must be heard.

North Dakota Native Vote was founded to ensure the inclusion of Native voices in the political discourse of our State. We support and encourage our Native people to engage in the political process that is not always inclusive of our people for various reasons. I thank the Redistricting Committee for its time today and will stand for any questions the Committee may have. Thank you.

EXHIBIT 17



Redistricting Committee Testimony - Thursday, August 26, 2021

To: Chairman Devlin and members of the Redistricting Committee:

My name is Rick Gion, and I live in Fargo, ND. I'm the director of North Dakota Voters First. We are a non-partisan, grassroots organization dedicated to strengthening democracy. Our organization focuses on educating and engaging North Dakota citizens to make elections and public policy more accountable, ethical, and transparent.

Thank you for the opportunity to submit testimony regarding the 2021 North Dakota legislative districting process. Our organization is urging fairness and transparency with this process. We are hopeful that you will be posting draft legislative maps on the legislative website as is alluded to in House Bill 1397 of the 2021 legislative session.

Re-drawing boundaries of legislative districts is one of the most important tasks required to maintain a well-functioning and representative government in our state. It only happens every 10 years. I believe that the goal of districting should be to work as much as we can to ensure that everyone's vote matters. That means districts are compact and contiguous, the number of people in each district is almost identical, existing boundaries are respected, and communities of interest are represented. I'd also suggest taking a look at splitting districts for the state House of Representatives. This would help give better representation in rural areas and with the state's Native American reservations.

One of the major problems to avoid is gerrymandered districts that are designed to produce electoral advantages for incumbents or the political party in power. Biased legislative districts favor powerful special interests instead of voters. Every vote no longer counts, because the system is rigged.

As a proud North Dakotan, I'm urging fairness in the 2021 districting process. Let's avoid gerrymandering and make sure that we have the best and most representational state government in the nation. Thank you for your time.

Sincerely,

Rick Gion (lobbyist #
Director, North Dakota Voters First
rick@northdakotavotersfirst.org

EXHIBIT 18

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

CHARLES WALEN, an individual, et al.,

Plaintiffs,

v.

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

Defendants,

and

MANDAN, HIDATSA AND ARIKARA NATION, et
al.,

Intervenor-
Defendants.

Civil No. 1:22-cv-00031

DECLARATION TO ACCOMPANY THE EXPERT REPORT OF DANIEL MCCOOL

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

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

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

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

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

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

Signed this 17th day of January, 2023

A handwritten signature in black ink, appearing to read "Daniel McCool". The signature is written in a cursive style with a large initial 'D' and 'M'.

Daniel McCool, Ph.D

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

OUTLINE OF THE REPORT

Summary of Findings

I. Introduction

1. Qualifications
2. Research Question and the Senate Factors
3. Qualitative Methods

II. The Senate Factors Applied to North Dakota

1. A history of official voting-related discrimination in the state or political subdivision.
 - a. Historical Discrimination and Vote Denial:
 - b. Contemporary Discrimination:
 - c. Official Discrimination in Voting Rights:
2. The extent to which voting in the elections of the state or political subdivision is racially polarized.
3. The extent to which the state of political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts.
4. The exclusion of members of the minority group from candidate slating processes.
5. The extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process.
 - a. Income
 - b. Education
 - c. Health
 - d. Internet Access
6. The use of overt or subtle racial appeals in political campaigns.
7. The extent to which members of the minority group have been elected to public office in the jurisdiction.
 - a. The Legislature and
 - b. State Administrative Positions
 - c. County Elective and Appointed Offices
 - d. School Boards
 - e. Civil Service/Boards

- f. Urban Government
 - 8. The responsiveness of state and local officials to the needs of minorities.
 - a. Redistricting
 - b. The controversy over DAPL
 - 9. The tenuousness of the policy underlying voting laws, standards, and practices.
- III. Conclusion

Summary of Findings:

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

I. INTRODUCTION

1. Qualifications

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

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

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

2. Research Question and the Senate Factors:

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

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

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

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

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

3. Qualitative Methods

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

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

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

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

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

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

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

II. The Senate Factors Applied to North Dakota

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

a. Historical Discrimination and Vote Denial:

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

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

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

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

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

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

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

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

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

Reservation:

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Contemporary Discrimination:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Official Discrimination in Voting Rights:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Interviews at Fort Berthold:

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

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

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

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

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

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

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

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

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

Interviews from Other Reservations and Statewide:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Another aspect of elections that is indicative of racially polarized voting is when turnout suddenly increases when there is a strongly preferred candidate by minority voters. This happened in 2018 when Native voters turned out at record levels to support their preferred candidate for Senate, Heidi Heitkamp, who had sponsored or co-sponsored 17 bills and resolutions dealing with Native Americans (Heitkamp, 2019). Turnout in three predominately Native counties set records:

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

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

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

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

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

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

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

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

Interviews from Fort Berthold:

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

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

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

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

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

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

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

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

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

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

Interviews from Other Reservations and Statewide:

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

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

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

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

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

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

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

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

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

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

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

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

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

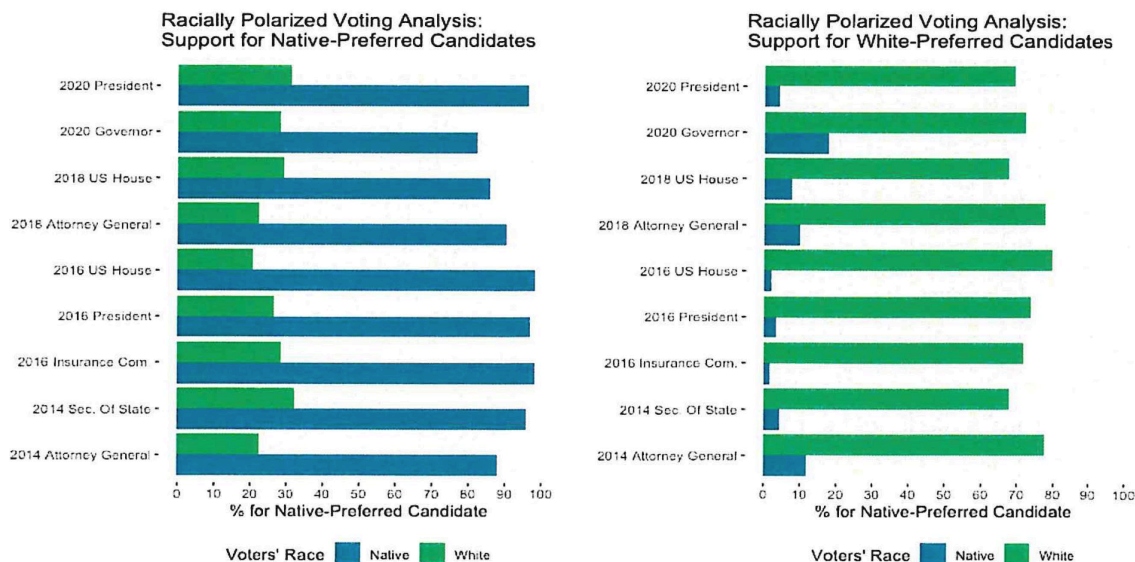
> “I ran for county commissioner [a Native candidate] in 2018; a big push, despite the ID issue. I didn’t campaign; I depended on that Indian voter to rally behind me. It was the most votes for a county commissioner ever. I got over 2,000 votes; that was a record; about 2,000 were Native voters. I benefited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

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

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

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

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



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

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

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

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

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

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

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

Table 1:
At-Large Cases with Native American Plaintiffs

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

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

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

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

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

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

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

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

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

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

5. The extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process.

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

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

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

a. Income:

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

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

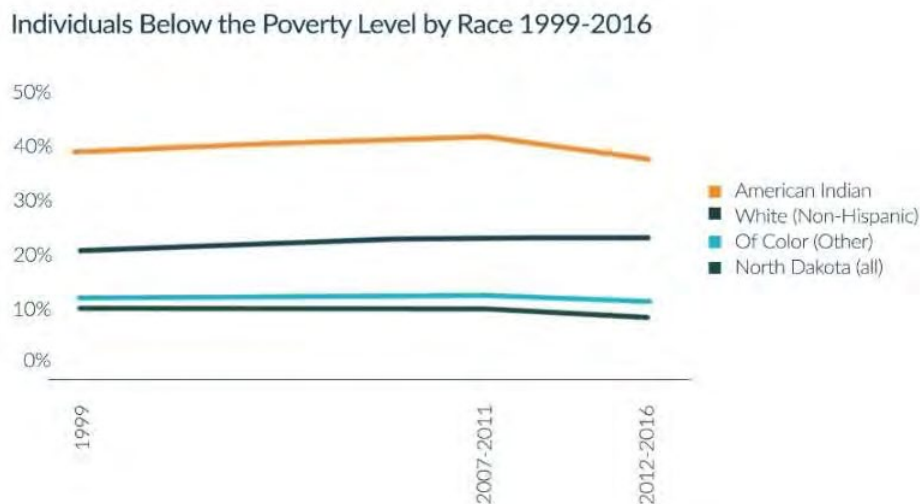
2004: 52). American Indians in the Dakotas were “the poorest of the poor” (Lawson. 1982:38). This legacy of long-term poverty continued into the contemporary era.

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

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

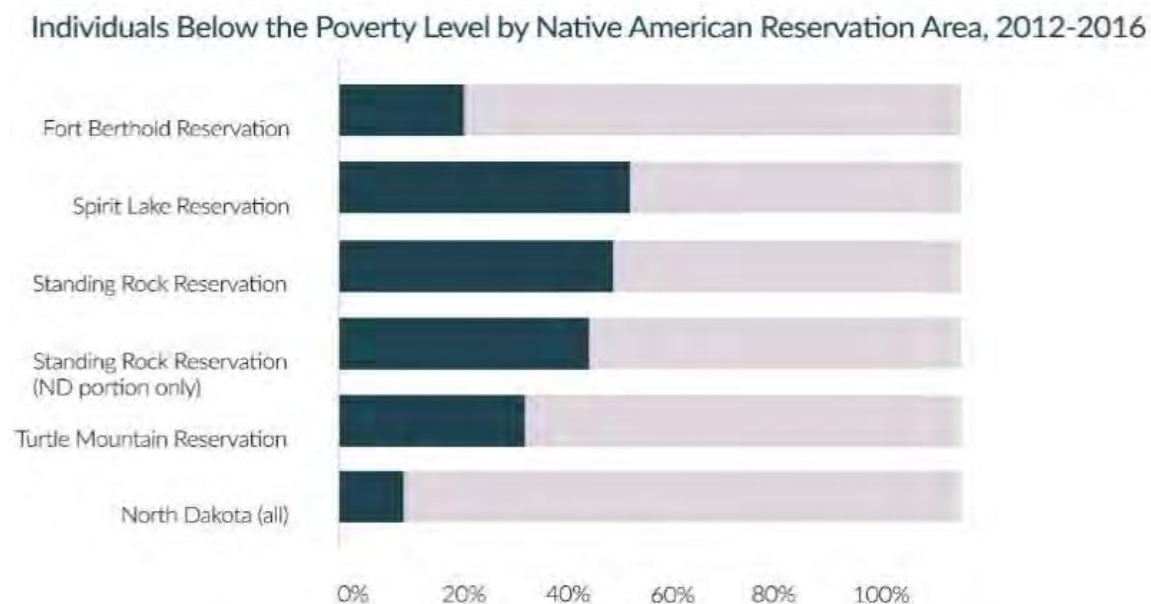
poverty line was 13 percent; for Indians it was 39.8 percent—over three times as high (North Dakota Department of Health 2016, Table 12).

The data described above can be represented in a graph:



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

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



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

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

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

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

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

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

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

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

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

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

Unemployment and Income on Indian Reservations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Education:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Health Care:

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

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

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

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

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

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

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

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

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

d. Internet Access:

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

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

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

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

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

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

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

⁸ These data do not include access to a cellphone.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The Legislature:

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

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

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

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

b. State Administrative Positions:

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

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

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

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

c. County Elective and Appointed Offices:

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

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

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

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

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

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

d. School Boards:

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

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

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

e. Civil Service and Commissions/Boards:

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

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

f. Urban Government:

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

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

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

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

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

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

Interviews from Fort Berthold:

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

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

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

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

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

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

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

Interviews from Other Reservations and Statewide:

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

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

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

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

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

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

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

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

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

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

a. Redistricting:

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

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

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

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

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

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

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

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

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

In contrast, the redistricting committee was quite responsiveness in the creation of sub-districts for District 4, in response to requests from MHA tribal members. As a result,

the original District 4, which had a Native population of about 38.6 percent, was split into two districts, with District 4a having a Native voting age population of 67 percent (Fox. 2021). In short, the state's redistricting process was not responsive to all Native requests but it was responsive in the creation of District 4a.

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

b. The Conflict over DAPL:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

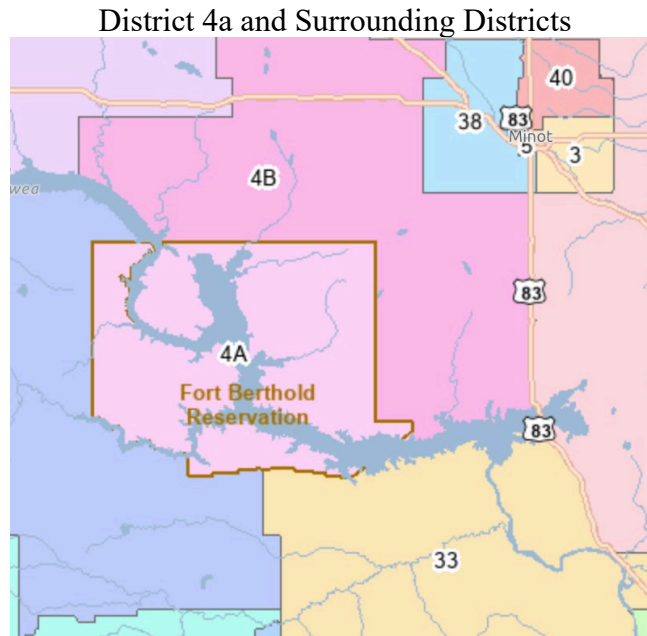
The criteria for traditional principles of redistricting can be found in many sources, including a Congressional Research Service report, the *Gingles* preconditions, and the North Dakota Constitution.¹⁴ The Congressional Research Service summarized existing law and policy and focused primarily on four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

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

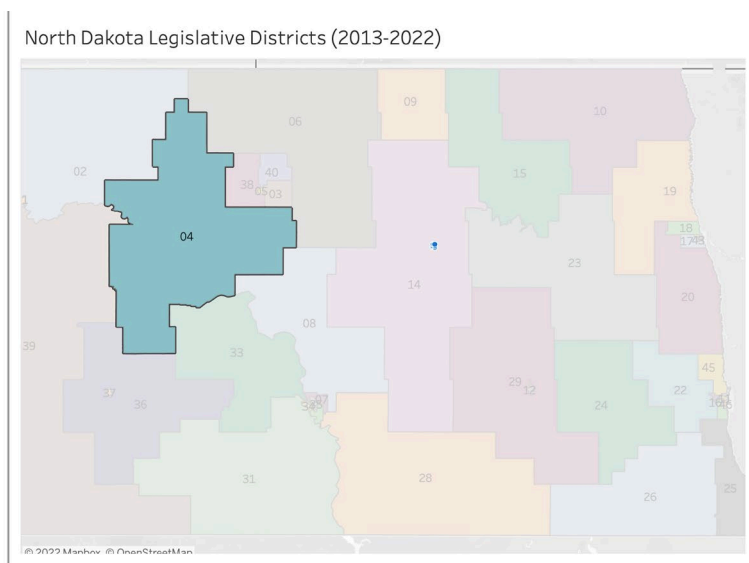
¹⁴ These traditional districting principles and others were presented to the redistricting committee by a speaker from the National Conference of State Legislatures. See: https://www.legis.nd.gov/files/committees/67-2021/23_5024_03000appendixb.pdf They were also presented to the redistricting committee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

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

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



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



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

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

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

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

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

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

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

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

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

III. Conclusion

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

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

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

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



Daniel Craig McCool, Ph.D.

SOURCES

Accredited Schools Online. 2022.

<https://www.accreditedschoolsonline.org/resources/native-american-scholarships-resources/>

Adams, David Wallace. 2020. *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928*. University Press of Kansas.

Administration and Staff. 2022. Governor of the State of North Dakota. (<https://www.governor.nd.gov/cabinet-members/erica-thunder>).

American Community Survey (ACS). 2011-2013. "Selected Population Profile in the United States, 3-Year Estimates, North Dakota. U. S. Census Bureau.

American Political Science Association. n.d. Section on Qualitative Methods (http://www.apsanet.org/content_57139.cfm).

Archambault, David. 2016. "Taking a Stand at Standing Rock." *The New York Times*. Aug. 24.

Askvig, Josh. 2013. Testimony to the Senate Government and Veterans Affairs Committee, in opposition to HB 1332. 21 Mar.

Assoc. Press. 2016. "North Dakota Democrats Endorse Chase Iron Eyes for Congress." April 2.

Astor, Maggie. 2018. "Meet the Native American Woman Who Beat the Sponsor of

North Dakota's ID Law." *The New York Times*, Nov. 13.

Azure, Jamie. 2021. "Testimony of Turtle Mountain Band of Chippewa Indians Chairman Jamie Azure Before the North Dakota Legislative Redistricting Committee, Nov. 8.

Barreto, Matt, Gabriel Sanchez, and Hannah Walker. 2022. "Battling the Hydra: the Disparate Impact of Voter ID Requirements in North Dakota." *Journal of Race, Ethnicity, and Politics*. 7 (1).

Bartolini, Stefano. 2013. "The Temporal Dynamics of the Franchise Expansion: Timing, Tempo, and Reversals." *Qualitative & Multi-Method Research* 11 (Fall, No. 2): 3-7.

Beaumont, Elizabeth. 2011. "Promoting Political Agency, Addressing Political Inequality: A Multilevel Model of Internal Political Efficacy." *The Journal of Politics* 73 (No. 1, Jan.): 216-231.

Bennett, Andrew, Aaron Barth, and Kenneth Rutherford. 2003. "Do We Preach What We Practice? A Survey of Methods in Journals and Graduate Curricula." *PS: Political Science and Politics*, 36 (3), 372-376.

Bentele, Keith, and Erin O'Brien. 2013. "Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies." *Perspectives on Politics*. 11 (04) Dec: 1088-1116.

Brady, Henry, Sidney Verba, and Kay Schlozman. 1995. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review* 89 (June): 272.

Brians, Craig, and Bernard Grofman. 1999. "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice* 99: 161-76.

Brakebill v. Jaeger. 2016. Order Granting Plaintiffs' Motion for Preliminary Injunction. Case No. 1:16-cv-008. U.S. Dist. Ct. for the Dist. of North Dakota. August 1.

_____. 2018. Order Granting Plaintiffs' Motion for Second Preliminary Injunction in Part. Case No. 1:16-cv-008. U.S. Dist. Ct. for the Dist. of North Dakota. April 3.

_____. 2018. Appeal, U.S. Court of Appeals for the Eighth Circuit. No. 18-1725. September 24.

_____. 2018. Supreme Court of the United States. On Application to Vacate Stay. No. 18A335. October 9.

Brakebill and Spirit Lake Tribe v. Jaeger. 2020. Order, Consent Decree, and Judgment. Case No. 1:18-cv-00222-DLH-CRH. U.S. Dist. Ct. for the Dist. of North Dakota. April 27.

Brown, Collette. 2021. Testimony of the Spirit Lake Nation Regarding Legislative Redistricting, North Dakota Legislative Council Redistricting Committee. Aug. 26, Sept. 15.

Bureau of Indian Education. 2014. "Report on Student Achievement and Growth: 2009-10 to 2012-13." Northwest Evaluation Association. Feb.

Carrero, Nikiya. 2020. "North Dakota Native American Turnout Not as High Compared to the Rest of the Country's Native Populations." KX News.
<https://www.kxnet.com/your-local-election-headquarters/north-dakota-native-american-voter-turnout-is-not-as-high-compared-to-the-rest-of-the-country/>

Center for Rural Health. 2014. "Health Status Assessment Report for North Dakota." University of North Dakota School of Medicine. Feb.

North Dakota Statute Chap. 131, approved March 3, 1911. Available at:
<https://www.ndstudies.gov/gr8/content/unit-iii-waves-development-1861-1920/lesson-4-alliances-and-conflicts/topic-8-suffrage/section-5-swift-vs-leach>

Congressional Research Service. 2021. "Congressional Redistricting Criteria and Considerations." IN11618. Updated Nov. 15.

Consortium on Qualitative Research Methods. n.d.
<http://www.maxwell.syr.edu/moynihan/programs/cqrm/>

Daily, Donna. 2021. "ACS Research and Evaluation Report Memorandum Series # ACS21-RER-04. U.S. Census Bureau.

Dawes Act of 1887. P.L. 49-105. 24 Stat. 388.

Deaton, Jeremy. 2021. "A Tribal Nation Dependent on Fossil Fuels was Left in the Cold when the Pandemic Hit." *The Hill*. April 22.

Denzin, Norman, and Yvonna Lincoln. 2017. *The SAGE Handbook of Qualitative Research*, 1st ed., 5th ed. SAGE Publications.

Dick, Hilary, and Kristina Wirtz. 2011. "Racializing Discourses: A Special Issue of the *Journal of Linguistic Anthropology*." *Journal of Linguistic Anthropology* 21 (S1).

Dickinson Press Staff. 2013. "Spirit Lake Tribe Denounces Remarks by Representative Kevin Cramer." *The Dickinson Press*. Mar. 29.

Dictionary.com. n.d. <http://www.dictionary.com/browse/tenuous?s=t>

Ecoffey, Brandon. 2013. "Rep. Cramer Verbally Attacks Indian Woman." *Native Sun News*. April 4.

Education Trust. 2011. Ed Watch, State Reports: North Dakota.

Estes, Nick. 2019. *Our History is our Future*. Verso Press.

Faith, Mike. 2021. "Testimony of Standing Rock Sioux Tribe Chairman Mike Faith Regarding Legislative Redistricting, North Dakota Legislative Council Redistricting Committee." Sept. 15.

FBI (Federal Bureau of Investigation). 2016. "Oil and Crime in Indian Country." June 7. <https://www.fbi.gov/news/stories/fbi-director-visits-reservation-in-north-dakota-to-discuss-rising-threat>

Federal Communications Commission. 2019. Report on Broadband Deployment in Indian Country. Submitted to the Senate Committee on Science, Commerce, and Transportation, House of Representatives, Committee on Energy and Commerce. May.

Faulx, Nadya. 2014. "General Election Will Bring New Voters: Officials Fear Regulation Will Deter Participation." *The Dickinson Press*. Nov. 1.

Ferguson-Bohnee, Patty. 2020. "How the Native American Vote Continues to be Suppressed." *The Human Rights Magazine of the American Bar Association*. Vol. 45 (No. 1).

Finley-DeVile, Lisa. 2021. Testimony of Lisa Finley-DeVile, Mandaree, ND, Mandan, Hidatsa, Arikara Nation, to the North Dakota Legislative Redistricting Committee. Sept. 28.

Fiscal Note. 2013. North Dakota Legislative Council. Amendment to HB 1332. Feb. 12.

Flores, Henry. 2015. *Latinos and the Voting Rights Act*. Lexington Books.

Fox, Mark. 2021. Testimony of Mark N. Fox, Chairman, Tribal Business Council of the Mandan, Hidatsa and Arikara Nation, to the Redistricting Committee, Sept. 23.

Fraser, Alec, and Huw Davies. 2019. "Systematic Approaches to Generating Evidence." In: *What Works Now?* Edited by Annette Boaz, Huw Davies, Alec Fraser and Sandra Nutley. Bristol, England: Policy Press.

Futterman, Matthew. 2015. "North Dakota Needs a Nickname (And No, 'Fighting Sioux' Won't Do)." *Wall Street Journal*. Mar. 26.

Heitkamp, Heidi. 2019. Congress.gov. Official Senate website. <https://www.congress.gov/member/heidi-heitkamp/H001069?q=%7B%22sponsorship%22%3A%22cosponsored%22%7D&pageSize=100&page=1>

Hill, Jane. 2008. *The Everyday Language of Racism*. Wiley-Blackwell.

Hoffer, Peter C. 2007. *Past Imperfect*. Public Affairs Publications.

Horwitz, Sari. 2014. "Attorney General Eric Holder Talks with Native American Teenage Boys in North Dakota." *The Washington Post*. June 5.

_____. 2014. "Dark Side of the Boom: North Dakota's Oil Rush Brings Cash and Promise to Reservation, Along with Drug-fueled Crime." *The Washington Post*. Sept. 28.

House Floor Session. 2017. North Dakota Legislative Assembly. HB 1193.

House Floor Session. 2021. North Dakota State Legislative Assembly. HB 1504. Nov. 9. <https://video.legis.nd.gov/en/PowerBrowser/PowerBrowserV2/20220204/-/1/22663?startposition=20211109133803>

House Standing Committee. 2013. "Minutes." House Government and Veterans Affairs Committee. HB 1332, Job # 19351. North Dakota State Legislature. Feb. 2.

_____. 2013. "Minutes." House Government and Veterans Affairs Committee. HB 1332, HB 18506. North Dakota State Legislature. Feb. 7.

_____. 2013. "Minutes." House Government and Veterans Affairs Committee. HB 1332, HB 18629. North Dakota State Legislature. Feb. 8.

_____. 2013. "Minutes." House Appropriations Committee. HB 1332, 18984. North Dakota State Legislature. Feb. 14.

Houska, Tara. 2015. "Legislation, Litigation, and the Kitchen Sink, But the Fighting Sioux Mascot is Done." *Indian Country Today*. Nov. 20.

ICTMN Staff. 2014. "Super Dumb at UND: It's Hard to Shake the Racism You've Enabled for So Long." *Indian Country Today Media Network*. May 14.

Indian Affairs Commission. n.d. "About Us." North Dakota State Government. <http://www.nd.gov/indianaffairs/?id=38>

Indian Health Service. 2016. "Indian Health Disparities." <http://www.ihs.gov/aboutihs>

Jaeger, Alvin. 2020. Press Release: "Agreement in Principle Related to Tribal IDs for Voting." Issued Feb. 13.

Jenkins, Krista, and Molly Andolina. 2016. "From Motivation to Action." In: *New Advances in the Study of Civil Volunteerism*. Ed. by Casey Klofstad. Temple University Press, pp. 145-164.

Journal of the Constitutional Convention for North Dakota. 1889. Held at Bismarck, Thursday, July 4 to Aug. 18, 1889.

<https://www.ndcourts.gov/Media/Default/History/journal-of-the-constitutional-convention.pdf>

Karolevitz, Robert. 1975. *Challenge: The South Dakota Story*. Sioux Falls: Brevet Press.

Katz, Ellen. 2005. "Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982." Final Report of the Voting Rights Initiative, University of Michigan Law School.

Keeler, Jacqueline. 2021. *Standoff: Standing Rock, the Bundy Movement, and the American Story of Sacred Lands*. Torrey House Press.

Kolpack, Dave. 2015. "Fighting Hawks: New Mascot for UND." Associated Press, reported in *U. S. News and World Report*. Nov. 18.

Klofstad, Casey. 2016. "Introduction: Resources, Engagement, and Recruitment." In: *New Advances in the Study of Civil Volunteerism*, Ed. by Casey Klofstad. Temple University Press, pp. 1-21.

Konkel, Lindsey. 2016. "Salting the Earth: The Environmental Impact of Oil and Gas Wastewater Spills." *Environmental Health Perspectives* 124 (No. 12).

Lajimodiere, Denise. 2021. *Stringing Rosaries: The History, the Unforgivable, and the Healing of Northern Plains American Indian Boarding School Survivors*. North Dakota State University Press.

Lamont, Michèle, and Patricia White. 2009. Workshop on Interdisciplinary Standards for Systematic Qualitative Research. Washington, DC: National Science Foundation, Cultural Anthropology, Law and Social Science, Political Science, and Sociology Programs. www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf.

Laurer, Nancy, Jennifer Harkness, and Avner Vengosh. 2016. "Brine Spills Associated with Unconventional Oil Development in North Dakota." *Environmental Science and Technology* 50 (10): 5389-5397.

Lawson, Michael. 1982. *Damned Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944-1980*. University of Oklahoma Press.

Lerner, Kira. 2021. "They Don't Include Native Voices: Tribes fight to Ensure their Votes Count." *The Guardian*. Oct. 2.

Levine, Carrie. 2018. "What Stands in the Way of Native American Voters?" The Center for Public Integrity. Oct. 12. <https://apps.publicintegrity.org/abandoned-in-america/ballot-box-barriers/>

Lien, Pei-te. 2000. "Who Votes in Multiracial America? An Analysis of Voting Registration and Turnout by Race and Ethnicity, 1990-1996." In *Black Politics in Multiracial America*, edited by Yvette Alex-Assensoh and Lawrence Hanks. New York: New York University Press.

Limerick, Patricia Nelson, Clyde Milner II, and Charles E. Rankin. 1991. Edited. *Trails: Toward A New Western History*. Lawrence: University Press of Kansas.

LJP & Associates. 2008. "Preliminary Ten-Year Strategic Plan to End Homelessness." Prepared for the Turtle Mountain Housing Authority. Feb.

Lower Brule v. Lyman Co. 2022. 3:22-cv-3008-RAL. U.S. Dist. Ct. of South Dakota, Central Division.

Luger, Chelsey. 2014. "Turned Away from Voting with a Tribal ID: Why This Matters." *Indian Country Today*. Nov. 6.

Mack, Kristen. 2007. "In Trying to Win, has Dewhurst Lost a Friend?" *Houston Chronicle*. May 18.

MacPherson, James. 2017. "North Dakota Casino Proposal Risks Angering Tribes." Assoc. Press.

_____. 2021. "North Dakota House Oks New Legislative Redistricting map. ApNews. Nov. 9.

Mahoney, James. 2021. *The Logic of Social Science*. Princeton University Press.

Marshall, Joseph. 2004. *The Journey of Crazy Horse*. Penguin Books.

Maslow, Abraham. 1954. *Motivation and Personality*. Harper and Brothers.

McCool, Daniel, Susan Olson, and Jennifer Robinson. 2007. *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote*. Cambridge University Press.

McCool, Daniel. 2012. *The Most Fundamental Right: Contrasting Perspectives on the Voting Rights Act*. Indiana University Press.

Merrick, Melissa. 2013. "North Dakota Congressman Kevin Cramer Verbally Attacks Native Victims' Assistance Program Director at State Meeting, Threatens to Ring Spirit Lake Tribal Council's Necks." *Grand Forks Herald*. Mar. 29.

<https://www.grandforksherald.com/newsmd/cramers-apology-not-accepted-spirit-lake-tribal-council-denounces-remarks-by-congressman>

MHA Nation. n.d. "MHA History." Mandan, Hidatsa & Arikara Nation. Home of the Three Affiliated Tribes. <http://mhanation.com/main2/history/html>

Minnesota Historical Society. 2022. "Dakota War: Henry H. Sibley." <https://www.usdakotawar.org/history/henry-h-sibley>

Moen, Mike. 2021. "Push to Include Native Voices in ND Redistricting." *Devil's Lake Journal*. June 4.

Morrell, Michael. 2003. "Survey and Experimental Evidence for a Reliable and Valid Measure of Internal Political Efficacy." *Public Opinion Quarterly* 67 (Winter, No. 4): 589-602.

National Conference of State Legislatures. 2021. "Redistricting Criteria." July 16. <https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx>

Newland, Bryan, Assistant Secretary for Indian Affairs. 2022. "Federal Indian Boarding School Initiative Investigative Report." https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf

Neumann, Dennis. 2016. "Student Voters Turned Away at UTTC Polling Site." *United Tribes News* (Winter): 26.

Niemi, Richard, Stephen Craig, and Franco Mattei. 2014. "Measuring Internal Political Efficacy in the 1988 National Election Study." *American Political Science Review* 85 (Issue 4): 1407-1413.

Nicholson, Blake. 2001. "American Indians Lag Behind Whites on ACT Exam." Associated Press. Aug. 16.

Nilsen, Ella. 2020. "For Native Americans, Voting Rights Were Hard-Won. Mail-in Voting Could Undo Gains." *The Highlight*. June 15.

North Dakota Advisory Committee to the U. S. Commission on Civil Rights. 1999. "Civil Rights Enforcement Efforts in North Dakota." November.

North Dakota Advisory Committee to the U. S. Commission on Civil Rights. 2021. "Civil Rights and Fair Housing in North Dakota." July.

North Dakota Commission to Study Racial and Ethnic Bias in the Courts. 2012. "Final Report and Recommendations." June.

North Dakota Constitution. Article IV. "Legislative Branch."

North Dakota Department of Health. 2016. “Community Health Profiles.” Health Data Resources. April 10.

North Dakota High School Survey. 2015. Summary Tables—Weighted Data. 2015 Youth Risk Behavior Survey Results.

North Dakota Indian Affairs Commission. 1999. “1949-1999: 50 Years of Tribal/State Relations, Anniversary Report.

https://www.indianaffairs.nd.gov/sites/www/files/documents/pdfs/50_yr_anniversary-NDIA.pdf

North Dakota Indian Affairs Commission, Media and Publications. 2023.

<https://www.indianaffairs.nd.gov/indian-commission/media-and-publications>

North Dakota Indian Affairs Commission, Administration and Staff. 2022.

North Dakota Indian Affairs Commission, “About Us.” 2023.

<https://www.indianaffairs.nd.gov/indian-commission>

North Dakota Interagency Council on Homelessness. 2018. “Housing the Homeless: North Dakota’s 10-Year Plan to End Long-Term Homelessness.” Oct. 31.

North Dakota Legislative Council. 1997. “Discrimination in North Dakota—Background Memorandum.” Prepared by the North Dakota Legislative Council for the Judiciary Committee. July.

North Dakota Legislative Council. 2021. “Legislative Redistricting—Background Memorandum.” Prepared for the Redistricting Committee. August.

North Dakota Legislative Assembly, Tribal and State Relations Committee. 2022.

<https://www.legis.nd.gov/assembly/67-2021/interim/23-5119-02000-meeting-agenda.pdf>

North Dakota 67th Legislative Assembly. 2021. “House Bill No. 1397. Jan. 5.

North Dakota Middle School Survey. 2015. Summary Tables—Weighted Data. 2015 Youth Risk Behavior Survey Results.

North Dakota Statute, Chap. 131, approved March 3, 1911.

North Dakota Secretary of State. n.d. Voter Turnout (North Dakota). Precincts Reporting: 427/427—Total Ballots Cast: 255128. 2014 General Election—Official Results.

North Dakota Studies. 2022. “The Mandan, Hidatsa, Sahnish.”

<https://www.ndstudies.gov/mandan-hidatsa->

[sahnish#:~:text=Tribal%20Historical%20Overview&text=Historians%20document%20th e%20first%20tribe,moving%20up%20the%20river%20later.&text=One%20theory%20is %20that%20the,the%20plains%20in%20South%20Dakota.](#)

Nowatzki, Mike. 2014. “North Dakota Superintendent Wants to Replicate Montana ‘Indian Education for All’ Program.” *Grand Forks Herald*. July 22.

Opatz, Izaak. 2022. “Oil and Water.” *Native News*.
<https://nativenews.jour.umd.edu/projects/oil-and-water/>

Pearson, Myra. 2019. “Field Hearing on Voting Rights and Election Administration in the Dakotas.” Hearing before the Committee on House Administration, House of Representatives, 116th Congress, 1st sess. April 16.

Politico. 2012. <http://www.politico.com/2012-election/results/president/north-dakota/>.

Pope v. Albany. 2015. 1:11-cv-0736 (LEK/CFH). Memorandum Decision and Order (Dist. Ct. N. Dist. NY) Mar 24.

Porterfield, Marie. 1997. “North Dakota School District Elects Two American Indians.” *Indian Country Today*. July 14.

Public New Service. 2021. “ND Activists: Lack of Tribal Inclusion in Redistricting Runs Deep.” June 3.

Qualitative Data Repository. n.d. <https://qdr.syr.edu>

Redistricting Committee, North Dakota Legislative Assembly, Meeting Notes with attached testimony. 2021. <https://www.legis.nd.gov/assembly/67-2021/committees/interim/redistricting-committee>

Richardson, Heather Cox. 2011. *Wounded Knee: Party Politics and the Road to an American Massacre*. Basic Books.

Risjord, Norman. 2012. *Dakota: The Story of the Northern Plains*. University of Nebraska Press.

Robinson, Elwyn. 1966. *History of North Dakota*. University of Nebraska Press.

Rosenstone, Steven, and Mark Hansen. 1993. *Mobilization, Participation and Democracy in America*. MacMillan.

Ruddell, Rick, Dheeshana Jayasundara, Roni Mayzer, and Thomasine Heitkamp. 2014. “Drilling Down: An Examination of the Boom-Crime Relationship in Resource-Based Boom Counties.” *Western Criminology* 15 (1): 3-17.

Sacred Pipe Resource Center. 2014. Project Guide Survey. Mandan, ND. Principle author: Cheryl Kary.

Schilling, Vincent. 2013. "North Dakota Congressman Kevin Cramer Allegedly Verbally Attacks Abused Native Women's Advocate." *Indian Country Today*. April 1. <http://indiancountrytodaymedianetwork.com/2013/04/01/north-dakota-congressman-kevin-cramer-allegedly-verbally-attacks-abused-native-womens>

Schraufnagel, Scot, Michael Pomante, and Quan Li. 2020. "Cost of Voting in the American States: 2020." *Election Law Journal* 19 (4): 503-509.

_____. 2022. "Cost of Voting in the American States: 2022." *Election Law Journal* 21 (No. 3): 220-228.

Senate Floor Session. 2021. North Dakota Legislative Assembly. HB 1504. <https://video.legis.nd.gov/en/PowerBrowser/PowerBrowserV2/20220205/-1/22672?startposition=20211110131542>

Senate Report. 1982. No. 97-417, accompanying the Voting Rights Act Amendments of 1982.

Senate Standing Committee. 2013. "Minutes." Senate Government and Veterans Affairs Committee. HB 1332, Job Number. North Dakota State Legislature. Mar. 21.

_____. 2013. "Minutes." Senate Appropriations Committee. HB 1332, Job # 20748. North Dakota State Legislature. April 2.

Simonelli, Isaac, Maya Leachman, and Andrew Onodera. 2022. "How One Native American Tribe is Battling for Control over Flaring." *Inside Climate News*. Feb. 26.

Spirit Lake Tribe. 2013. Press Release, "Spirit Lake Nation Official Response to Kevin Cramer (ND Congressman)." Mar. 29.

Spirit Lake v. Benson County. 2010. 2:10-cv-095. U.S. Dist. Ct. for the Dist. of North Dakota, Northeastern Div.

Spirit Lake v. Benson County. 2022. 322-cv-00161-ARS. U.S. Dist. Ct. for the Dist. of North Dakota, Eastern Div.

Spirit Lake Tribe v. Jaeger. 2018. Complaint for Declaratory and Injunctive Relief. Case No. 1:18-cv-00222-DLH-CSM. U.S. Dist. Ct. for the Dist. of North Dakota, Western Div. October 30.

_____. 2018. Order Denying Plaintiffs' Motion for Temporary Restraining Order. Case No. 1:18-cv-00222-DLH-CSM. U.S. Dist. Ct. for the Dist. of North Dakota. Nov. 1.

_____. 2020. Opinion. U.S. District Court. February 10. Case No. 1:18-cv-222. U.S., Dist. Ct. for the Dist. of North Dakota. February 10.

Spotlight North Dakota. 2022. <https://dashboard.docr.nd.gov/us-nd>

Spotted Bear, Jodi Rave. 2016. "Ruth Buffalo Forges New Path on North Dakota's Campaign Trail." Buffalo's Fire. <https://www.buffalofire.com/ruth-buffalo-clears-new-path-on-north-dakotas-campaign-trail-nativevote16/>

Stambaugh, Hannah. 2019. "America's Quiet legacy of Native American Voter Disenfranchisement: Prospects for Change in North Dakota After *Brakebill v. Jaeger*." *American University Law Review* 69 (1, Issue 7): 295-323.

Standing Rock Environmental Profile. 2016. April. 11.
<http://standingrock.org.environmental-profile>

Standing Rock Sioux Tribe. n.d. Brochure available at tribal headquarters. Prepared by LaDonna Brave Bull Allard.

Standing Rock Statistics. n.d. "Bureau of Indian Affairs Labor Force Data for Tribal Members, Standing Rock Sioux Tribe-1999." <http://standingrock.org/statistics/>

State ex rel Arthur Tompton v. David Denoyer. 1897. North Dakota Reports, pp. 586-601. Filed Nov. 1.

Stenehjem, Wayne. 2015. <http://www.ag.ag.nd.gov/Opinions/2015/Letter/2015-L-08.pdf>.

Swift v. Leach. 1920. Supreme Court of North Dakota. 178 N. W. 437. Filed May 26.

Tanberk, Julia, and Tyler Cooper. 2020. "82% of Residents in Tribal Zip Codes have Broadband Internet Access, Compared to 94% of Non-Tribal Residents." Broadband Research. <https://broadbandnow.com/research/tribal-broadband>

Teherani, Arianne, et. al. 2015. "Choosing A Qualitative Research Approach." *Journal of Graduate Medical Education*. 2015 Dec; 7(4): 669-670.

Thompson, Dave. 2020. "Graduation Rates for Native American Students Rising in ND." *The Bismarck Tribune*. Jan. 21.

Thornburg v Gingles. 1986. 478 U. S. 30.

Tokaji, Daniel. 2006. "The New Vote Denial: Where Election Reform Meets the Voting Rights Act." *South Carolina Law Review* (Summer): 689-733.

Tribal Leaders. 2021. Letter addressed to Governor Burgrum, Speaker Koppleman, and Leaders Pollert, Boschee, Wardner, and Heckaman. Signed by Jamie Azure, Chairman,

Turtle Mountain Band of Chippewa Indians, and Douglas Yankton, Sr., Chairman, Spirit Lake Nation. Nov. 1.

Tribal and State Relations Committee. 2022. North Dakota Legislature.
<https://www.ndlegis.gov/assembly/67-2021/committees/interim/tribal-and-state-relations-committee>

Tucker, James, Jacqueline De León, and Daniel McCool. 2020. “Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters.”
https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf

Turley, Jeremy. 2022. “North Dakota Tribes Sue State over New Legislative Districts.” *Grand Forks Herald*. Feb. 8.

Turtle Mountain Tribe. n.d. “Turtle Mountain Band of Chippewas.”
<http://turtlemountaintribe.businesscatalyst.com/idex.html>.

Turtle Mountain Band of Chippewa Indians v. United States. 1974. 490 F.2d 935, 938 (Ct. Cl. 1974).

Turtle Mountain Tribe v. Jaeger. 2022. 3:22-cv-00022-PDW-ARS. U.S. Dist. Ct. for the Dist. of North Dakota, Eastern Div.

Tyrrell, Ian. 2005. *Historians in Public*. University of Chicago Press.
United Tribes Network. 2013. “Native People as Public Employees.” June/July. The original data can be found at: <http://www.nd.gov/hrms/managers/presentations.html>.

United Tribes Network. 2013. “Survey of State Employees.”

University of North Dakota Graduates. n.d. “The UND Fighting Sioux.” Presented by the UND Graduates from Standing Rock.” Powerpoint presentation provided by Kelly Morgan, Tribal Archaeologist, Standing Rock Sioux Tribe.

U. S. Census. 2010a. “2010 Census: North Dakota Profile.” U. S. Department of Commerce, Economics and Statistics Administration.

U. S. Census. 2010b. “Race and Hispanic or Latino Origin.” 2010 Summary File 1, for Bismarck, ND, and Mandan, ND. Files QT-P3, and QT-P7.

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

U.S. Census Quick Facts. 2020. Quick Facts, North Dakota.
<https://www.census.gov/quickfacts/ND>

U.S. Census. 2022. “My Tribal Area.”

U. S. v. Benson County. 2000. United States District Court for the District of North Dakota, Northeastern Division. Civ. No. A2-00-30.

U. S. Government Accountability Office. 2018. “Tribal Broadband: Few Partnerships Exist and the Rural Utilities Service Needs to Identify and Address Any Funding Barriers Tribes Face.” GAO-18-682. September.

U. S. v. Kagama. 1886. 118 U. S. 375.

U.S. Sentencing Commission. 2013. “Quick Facts: Native Americans in the Federal Offender Population.”

Verba, Sidney, and Norman Nie. 1971. *Participation in America*. University of Chicago Press.

Verba, Sidney, Kay Schlozman, and Henry Brady. 1995. *Voice and Equality: Civic Volunteerism in American Politics*. Harvard University Press.

Walker, Charles. 2021. Testimony of Standing Rock Sioux Tribe Councilman Charles Walker Regarding Legislative Redistricting, North Dakota Legislative Council Redistricting Committee. Sept. 15.

Walsh, Paul. 2015. “As Voting Begins for UND Nickname, ex-Sioux Zach Parise Weighs In.” *The Minneapolis Star-Tribune*. Oct. 19.

Wang, Hansi. 2018. “Native Americans on Tribal Land Are ‘the Least Connected’ to High-Speed Internet.” National Public Radio. Dec. 6.
<https://www.npr.org/2018/12/06/673364305/native-americans-on-tribal-land-are-the-least-connected-to-high-speed-internet>

White Owl, Roger. 2019. Testimony, Field Hearing on Voting Rights and Election Administration in the Dakotas. Hearing before the Comm. on House Administration, House of Representatives, 116th Cong, 1st. sess. April 16.

Williams, Linda Faye. 2004. “The Issue of Our Time: Economic Inequality and Political Power in America.” *Perspectives on Politics*. 2 (4): 683-89.

Willis, Adam. 2020. “Why Vote-by-Mail Could Depress Native American Turnout on North Dakota Reservations.” PBS. Oct. 21.

Wolfinger, Raymond, and Steven Rosenstone. 1980. *Who Votes?* Yale University Press.

Wootson, Cleve. 17 Jan. 2017. “How a Mother-in-Law Inspired a Bill to Protect Drivers who Accidently Run Over Protesters.” *The Washington Post*.

2023 Interviews at Fort Berthold

Baker, President Twyla. 2023. In-person interview, Jan. 12.

Marie Beheler, Jessica. 2023. Telephone interview. Jan. 13.

Bird Bear, Joletta. 2023. In-person interview, Jan. 11.

Bird Bear, Theodora. 2023. In-person interview, Jan. 11.

Donaghy, Nicole. 2023. In-person interview, Jan. 12.

Good Bird, Alize. 2023. In-person interview, Jan. 10.

Mayer, Dr. Monica. 2023. In-person interview, Jan 10.

Muzzy, Arline. 2023. In-person interview, Jan. 12.

Spotted Horse, Mylo Scott. 2023. In-person interview. Jan. 11.

Standish, Jay, Mayor, New Town. 2023. In-person interview. Jan. 11.

White, Robert. 2023. In-person interview, Jan. 10.

Young Bear, Katherine. 2023. In-person interview. Jan. 12.

2022 Interviews

Donaghy, Nicole. 2022. Telephone interview, Feb. 11.

Finley-DeVille, Lisa. 2022. Telephone interview, Feb. 23.

Kary, Cheryl. 2022. Telephone interview, Feb. 11.

Longie, Eric. 2022. Telephone interview, Feb. 28.

McDonald, Leander. 2022. Telephone interview, Feb. 24.

Pearson, Myra. 2022. Telephone interview, Feb. 19.

Poitra, Craig. 2022. Telephone interview, Feb. 18.

Seminole, Prairie Rose. 2022. Telephone interview, Feb. 24.

2016-2018 Interviews

Agard, Jamie. 2016. Tribal Enrollment Technician for the Standing Rock Sioux Tribe. Telephone interview. 14 Mar. 2016.

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

Anonymous1. 2016. Interview.

Anonymous2. 2016. Interview

Anonymous3. 2016. Interview.

Askvig, Josh. 2016. Director AARP of North Dakota. In-person interview, Bismarck, ND. 3 March.

Bauroth, Nicholas. 2016. Professor of Political Science. Telephone interview. 8 Mar.

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

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

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

Cook, Jennifer. 2016. North Dakota Director of the American Civil Liberties Union. Telephone interview. 7 Mar.

Davis, Carol. 9 Feb. 2018. Telephone interview.

Doherty, Steven. 2016. Professor of Political Science, Dickinson State University. Telephone interview. 1 Mar.

Eagle, John, Sr. 2016. Director, Tribal Historic Preservation Office, Standing Rock Sioux Tribe. In-person interview, Fort Yates, ND. 3 Mar.

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

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

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

Johnson, Mark. 2016. Director, North Dakota Association of Counties. In-person interview, Bismarck, ND. 4 Mar.

- Kary, Cheryl. 2016. Executive Director, Sacred Pipe Resource Center. Telephone interview. 21 Mar.
- McCloud, Alvin. 2016. Former Poll worker. In-person interview, Belcourt, ND. 5 Mar.
- McCloud, Ella. 2016. In-person interview, Belcourt, ND. 5 Mar.
- McCloud, Matthew. 2016. In-person interview, Sky Dancer Casino, 5 Mar.
- Morgan, Kelly. 2016. Tribal Archaeologist. In-person interview, Fort Yates, ND. 3 Mar.
- Nordmark, Jason. 2016. Owner and Editor, *Turtle Mountain Star*. In-person interview, Rolla, ND. 4 Mar.
- Nelson, Barry. 2016. Organizer for the North Dakota Human Rights Coalition. Telephone interview. 14 Mar.
- Nelson, Kjersten. 2016. Professor of Political Science, North Dakota State University. Telephone interview. 8 Mar.
- Neumann, Dennis J. 2016. Public Information Director at United Tribes Technical College, Bismarck. Telephone interview. 15 Mar.
- Silbernagel, Larry. 2016. County Commissioner, Sioux County. Telephone interview. 15 Mar.
- Stromme, Renee. 2016. Director, North Dakota Women's Network. In-person interview, Bismarck, ND. 3 Mar.
- Taft, Sevant. 2016. Enrollment Director, Three Affiliated Tribes. Telephone interview. 23 Mar.
- Traynor, Terry. 2016. Assistant Director, North Dakota Association of Counties. In-person interview, Bismarck, ND. 4 Mar.
- Turcotte, John. 2016. Retired policeman. In-person interview, St. John, ND. 5 Mar.
- Turcotte, Catherine. 2016. Small business owner. In-person interview, Rolla, ND. 5 Mar.
- Weed, Shelly. 2016. Deputy Auditor, Benson County. Telephone interview (brief). 22 Mar.

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

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

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

* Unintentional injuries include motor vehicle crashes.

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

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

VITA

Daniel Craig McCool

Political Science Department
University of Utah
Gardner Commons, Suite 3345
260 S. Central Campus Dr.
Salt Lake City, UT 84112
(801) 476-2088
email: dan.mccool@poli-sci.utah.edu

December, 2022

EDUCATION

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

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

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

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

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

Language Training: Spanish

WORK EXPERIENCE

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

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

PUBLICATIONS

Books:

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

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

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

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

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

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

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

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

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

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

Journal Articles:

"Collaboration and the Criteria for Success: A Case Study, and a Proposed Framework for Analysis." With Marian L. Rice. *The Journal of Administration & Society*, 2021. <https://doi.org/10.1177/009539972111042564>

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

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

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

"The Power of the Woods: A Memoir." *The Trumpeter: Journal of Ecosophy*. 32, No. 2 (2016).

"Social Science Expert Witness Testimony in Voting Rights Cases," with Richard Engstrom, Jorge Chapa, and Gerald Webster. *National Political Science Review*. 17, No. 1 (2015).

"Institutionalizing Interdisciplinary Sustainability Curriculum at a Large, Research-intensive University: Challenges and Opportunities," with M. Ward, A. Cachelin, B. Bowen, and S. Burian. *Journal of Environmental Studies and Sciences* (Aug. 2015).

"Creating a "Water BRAC" Commission to Evaluate Existing Water Projects." *Water Resources Impact* (Vol. 17, No. 5, 2015).

"Campus Sustainability in the U. S.: A Comparison of a Research and a Teaching University" with Janet Winniford. *International Journal of Environmental, Cultural, Economic, and Social Sustainability* (Vol. 6, No. 4, 2010).

"Rivers of the Homeland: River Restoration on Indian Reservations." *Cornell Journal of Law and Public Policy* 16 (Summer 2007 No. 3): 539-561.

"The River Commons: A New Era in U. S. Water Policy." *University of Texas Law Review*. 83 (June 2005): 1903-1927.

"Two Cultures, One County: Devolution and Indian Sovereignty," with F. Ted. Hebert and Doug Goodman *American Indian Culture and Research Journal* 29 (No. 2, 2005): 15-34.

"Grand Staircase-Escalante National Monument: Lessons for a Public Lands Peace Process in Utah." *Journal of Land, Resources, and Environmental Law* 21 (No. 2b, 2001): 613-618.

"Field Essay: The Subsystem Family of Concepts: A Critique and A Proposal," *Political Research Quarterly* 51 (Number 2, 1998): 551-570.

- "Indian Water Settlements: Negotiating Tribal Claims to Water." *Water Resources Update* (Spring, 1997): 28-32.
- "Implementing Public Action: Populist Bureaucracy and Program Politicians," *International Journal of Public Administration* 20 (4&5, 1997): 935-937.
- "Indian Water Settlements: The Prerequisites of Successful Negotiation," *Policy Studies Journal* 21 (#2, 1993): 227-247.
- "Intergovernmental Conflict and Indian Water Rights: An Assessment of Negotiated Settlements," *Publius* 23 (Winter, 1993): 85-101.
- "Water Welfare, Green Pork, and the 'New' Politics of Water," *Halcyon* 14 (1992): 85-102.
- "Subgovernments: Determinants of Political Viability," *Political Science Quarterly* 105 (Summer, 1990): 269-93.
- "Marketing of Water from Indian Lands," *Forum for Applied Research and Public Policy* 5 (Spring, 1990): 73-78.
- "Subgovernments and the Impact of Policy Fragmentation and Accommodation," *Policy Studies Review* 8 (Winter, 1989): 264-87.
- "Precedent for the Winters Doctrine," *Journal of the Southwest* 29 (Summer, 1987): 164-78.
- "Voting Patterns of American Indians in Arizona," *The Social Science Journal* 19 (July, 1982): 101-13.
- "Federal Indian Policy and the Sacred Mountain of the Papago Indians," *Journal of Ethnic Studies* 9 (Fall, 1981): 58-69.
- "Indian Water Rights, The Central Arizona Project and Water Policy in the Lower Colorado River Basin," *Journal of Energy Law and Policy* 2 (1981): 107-22.
- "Indian Water Rights: The Bureaucratic Response," *Hydrology and Water Resources in Arizona and the Southwest* 2 (May, 1981).

Book Chapters:

- "Searching for Equity, Sovereignty, and Homeland." In *Cornerstone at the Confluence: Navigating the Colorado River Compact's Next Century*." Edited by Jason Robison. University of Arizona Press, 2022.
<https://uapress.arizona.edu/book/cornerstone-at-the-confluence>
- "We Must Either Protect Him or Destroy Him." With Weston C. McCool. In *Vision and Place: John Wesley Powell & Reimagining the Colorado River Basin*. University of California Press, 2020.
- "The Politics of Dam Removal and River Restoration." In *Environmental Politics and Policy in the West*, rev. ed. Edited by Zachary Smith and John Freemuth. University Press of Colorado, 2016.
- "A New Water Ethic." In *Desert Water: The Future of Utah's Water Resources*, ed. by Hal Crimmel. University of Utah Press, 2014.
- "Voting Rights and Electoral Representation in the United States." *The Oxford Handbook of Indigenous Peoples' Politics*, Oxford University Press, 2014.
- "Meaningful Votes." Chapter One of *The Most Fundamental Right: Contrasting Perspectives of the Voting Rights Act*, 2012, Indiana University Press.
- "Accomplishing the Impossible: Implementing River Restoration Projects." In *Greening History: The Presence of the Past in Environmental Restoration*, edited by Marcus Hall. Routledge Press, 2010.

“As Dams Fall, A Chance for Redemption.” *Water in the 21st Century West*, edited by Char Miller. Oregon State University Press, 2009: 65-70.

“The Development of the Geographic Information System at Tohono O’odham Nation, Arizona,” with Phoebe B. McNeally and Barry Biediger. In *The U. S.-Mexican Border Environments: Tribal Environmental Issues of the Border Region*, edited by Michael Wilken-Robertson. SCERP Monograph No. 9. 2004.

“Evolving Political Institutions: A New Water Policy and Its Impact on the Border Region.” In *The U. S. Mexican Border Environment*, edited by Suzanne Michel. San Diego State University Press, 2003: 363-394

Atlas of U. S. and Canadian Environmental History. Chap. 4: “Winters v. U. S. and the Development of the Doctrine of Reserved Water Rights.” Chap. 6: “Contemporary Indian Land and Resource Rights in the U. S.” Chap. 7: “River Restoration: The New Era in Federal Water Policy.” New York: Moschovitis Publishing Group, 2002.

"Negotiated Water Settlements: Environmentalists and American Indians," with Laura Kirwan. In *Trusteeship in Change: Toward Tribal Autonomy in Resource Management*, edited by Richmond Clow and Imre Sutton. University Press of Colorado (2001): 265-280.

“Native Americans, Who Were Forced to Give Up Most of their Land, Should Exercise Jurisdictional Sovereignty over Their Reservations.” In *History in Dispute: Water and the Environment Since 1945*, edited by Char Miller. Manly, Inc. (2001): 171-173.

“The CUP: A Project in Search of a Purpose,” “Welcome, Floaters, to River City,” and “The Northern Utes Long Water Ordeal.” In *Water in the West*, edited by Char Miller. Oregon State University Press (2001).

“Contemporary Treaties: Indian Water Settlements.” In *Fluid Arguments: Water in the American West*, edited by Char Miller. University of Arizona Press (2001): 120-138.

"Negotiating Water Settlements: Ten Common Themes," in *Indian Water in the New West*, edited by Thomas McGuire, William Lord, and Mary Wallace. University of Arizona Press (1993): 88-102.

"The Watering of the Reservation: Native Americans and their Water," in *Environmental Politics and Policy in the West*, edited by Zachary Smith. Kendall-Hunt Publishers (1993): 219-236.

"Water and the Future of Non-Indian Federal Lands in the Southwest," in *Water and the Future of the Southwest*, edited by Zachary Smith. University of New Mexico Press (1989): 113-32.

"Indian Voting," in *American Indian Policy in the Twentieth Century*, edited by Vine Deloria, Jr. University of Oklahoma Press (1985): 105-134.

"The Relevance of Management Information Systems to Policy Choices: Lessons for the Bureau of Land Management" with Helen Ingram, in *Developing Strategies for Rangeland Management*, edited by the National Research Council and the National Academy of Science, Westview Press, Boulder, Colorado (1984): 1785-1809.

Report:

“Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters,” with James Tucker and Jacqueline De León. Published by the Native American Rights Fund. 2020.
https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf

Encyclopedia Articles:

“American Indians, 1975-Present.” *Encyclopedia of US Political History*, CQ Press, 2011.

“Dam Removal and River Restoration.” *Encyclopedia of Water Politics and Policy in the United States*. CQ Press, 2011.

"Applied Behavioral Science." *The International Encyclopedia of Public Policy and Administration*, edited by Jay Shafritz. Westview Press (1997).

EXPERT WITNESS REPORTS IN VOTING CASES

- > *U. S. v. South Dakota*. 615 NW 2d 590 U.S. Dist. Ct. SD (2000)
- > *U.S. v. Blaine County*. 157 F. Supp. 2d 1145 U.S. Dist. Ct. MT (2001)
- > *Bone Shirt v. Hazeltine*. 336 F. Supp.2d 976 U.S. Dist. Ct. SD (2004)
- > *Cottier v. City of Martin*. No. CIV. 2002-5021 U.S. Dist. Ct. SD (2005)
- > *Koyukak v. Treadwell*. Case No. 3:13-cv-00137-JWS U.S. Dist. Ct. AK (2014)
- > *Navajo Nation v. San Juan County, Utah*. Case No. 2:12-cv-00039-RJS-DPB. U.S. Dist. Ct. UT (2016)
- > *Brakebill v. Jaeger*. I. Civ. 1: 16-CV-08 U.S. Dist. Ct. ND (2016)
- > *Brakebill v. Jaeger*. II. Civ. 1: 16-CV-08 U.S. Dist. Ct. ND (2018)
- > *Sanchez et. al. v. Cegavske*. Case No. 3:16-cv-00523-MMD-WGC U.S. Dist. Ct. NV (2016)
- > *Navajo Nation Human Rights Commission v. San Juan County, Utah*. Case No. 2:16-cv-00154-JNP-BCW U.S. Dist. Ct. UT (2017)
- > *Voto Latino v. Hobbs*. CV-05685-PHX-DWL. U.S. Dist. Ct. AZ (2019)
- > *DSCC v. Simon*. 2nd Jud. Dist. Minn. (Jan. 2020, Supp Rept. April, 2020)
- > *Western Native Voice v. Stapleton*. Mont. 13th Jud. Dist. (March, 2020, Supp. Rept. Aug. 2020)
- > *Corona et. al. v. Cegavske et. al.* I. 1st Jud. Ct. in and for Carson City, NV (April, 2020)
- > *Crossey v. Boockvar*. In the Commonwealth Court of Pennsylvania (May, 2020)
- > *LaRose v. Simon*, 2nd Jud. District of Minnesota (July, 2020)
- > *Corona et. al. v. Cegavske et. al.* II. 1st Jud. Ct. in and for Carson City, NV (July, 2020)
- > *League of Women Voters v. LaRose*. U.S. Dist. Ct. Southern Dist., Eastern. Div. OH (Aug., 2020)
- > *A. Philip Randolph Institute of Ohio v. LaRose*. U.S. Dist. Ct. Northern Div. OH (September 2020)
- > *Toyukak v. Meyer*. U.S. Dist. Ct. for the Dist. of Alaska, AK (April, 2021),
- > *Western Native Voice v. Jacobsen*. Montana. 13th Jud. Ct., MT (Jan., 2022)
- > *Lower Brule Sioux Tribe v. Lyman County, SD*. U.S. Dist. Ct. SD (May 2022, November 2022)
- > *Turtle Mountain v. Jaeger*, U.S. Dist. Ct. ND (November 2022)

MEDIA PUBLICATIONS

“As Climate Changes Parches the Southwest, Here’s a Better Way to Share Water from the Shrinking Colorado River.” *The Conversation*, Nov. 17, 2021. <https://theconversation.com/as-climate-change-parches-the-southwest-heres-a-better-way-to-share-water-from-the-shrinking-colorado-river-168723>

“I Thought I Knew a Lot: Contemplations on SCREE.” In: *A River Out of Time*, edited by Thomas Minckley, Patrick Kikut, and Jessica Flock. <https://www.blurb.com/b/10871283-a-river-out-of-time> 2021.

Utah’s Outstanding Rivers Deserve Recognition,” with Tim Palmer. *The Salt Lake Tribune* (Sept. 9, 2017). <http://www.sltrib.com/opinion/commentary/2017/09/09/commentary-utahs-outstanding-rivers-deserve-recognition/>

“Choose to Be Powerful.” *Field Report*, Southwest Region, National Parks Conservation Association (Summer/Fall 2017). <https://www.npca.org/resources/3094-southwest-regional-office-field-reports>

“Op-Ed: We’ve Been Here Before, and the Result Was Devastating.” *The Salt Lake Tribune* (Oct. 30, 2016). <http://www.sltrib.com/opinion/4515090-155/op-ed-weve-been-here-before-and>

“The Solution to Utah’s Water Problems.” Op-Ed, *Deseret News* (Jan. 5, 2016). <http://www.deseretnews.com/article/865646997/The-solution-to-Utahs-water-problems.html>

“Utah Rules of the Road.” *Salt Lake City Weekly* (Oct. 28, 2015). <http://www.cityweekly.net/utah/utah-rules-of-the-road/Content?oid=3047281>

“3 Myths Power Effort to Give Federal Lands to Utah.” Op-Ed, *Salt Lake Tribune* (July 3, 2014) <http://www.sltrib.com/csp/cms/sites/sltrib/pages/printerfriendly.csp?id=58143192>

“What Gettysburg Means to America Today.” Op-Ed, *Salt Lake Tribune* (July 12, 2013).

"The Big Shakeout and a New Water Ethic. *RMS Journal* 26, No. 3 (Fall, 2013): 18-19.
<http://www.river-management.org/assets/Journals-Newsletters/2013fall.pdf>

"A Coalition to Stop Water Grab." Op-Ed, *Salt Lake Tribune* (April 2, 2013).

"Saving for the Future: Making a Commitment Now to Preserve Great Salt Lake." *Friends of Great Salt Lake Newsletter* (Fall, 2011, # 4): 7.

"Warning: Water Policy Faces an Age of Limits." *High Country News* (April 22, 2010), Reprinted in the *Salt Lake Tribune*, the *Summit Daily News*, the *Aspen Times*, and the *Cortez Journal*.

"Fall Creek." *American Rivers* (Fall, 2009): 13.

"If I Were President...." *The Canyon Country Zephyr* vol. 20, no. 4 (Oct/Nov 2008): 18.

"Native Vote in 2008." ACLU Blog of Rights, Voting Rights Symposium, October 17, 2008.

"Perfect Moments." *The Canyon Country Zephyr*, vol. 19, no. 5 (Dec/Jan): 14.

"A Walking Tour of Washington's Civil War Statuary." *Civil War Historian* 3 (March/April 2007): 20-25.

"As Dams Fall, a Chance for Redemption." *High Country News* (June 21, 2004): 12.

"Funding the Water System with Property Taxes Is Unfair." *Salt Lake Tribune*, editorial (Sept. 2, 2001): AA2.

"Indian Reservations: Environmental Refuge or Homeland?" *High Country News* (10 April 2000): 10.

"Learning Vision." *Continuum* (Winter, 1998-99): 54.

"Want Less Government and Lower Taxes? Stop the Spanish Fork-Nephi Irrigation Project." *The Salt Lake Observer* (July 17-30, 1998): 6.

"Wasteful Irrigation Subsidies Are All Wet." *Salt Lake Tribune*, editorial (February 15, 1998): AA8.

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

"Salt Lake's Water Needs are Real, but Let's Think Before Paying More." *Salt Lake Tribune*, editorial (August 3, 1997): AA6.

"Indian Water Settlements: Negotiating Tribal Claims to Water." *Red Ink* (Spring, 1996): 10-14.

"Utah and the Ute Tribe are at War." *High Country News* (June 27, 1994): 12. Reprinted in the *Ute Bulletin* (July 26, 1994): 5, and again (September 5, 1995): 4.

"Return to Bittersweet Memories: A Family Vacation to WWII." *The Purdue Alumnus*, (Summer, 1993): 24-29.

"Welcome Floaters, to River City." *High Country News* (Dec. 30, 1991): 15.

"The Northern Utes' Long Water Ordeal." *High Country News* (July 15, 1991): 8-9. Reprinted in the *Ute Bulletin* (Aug. 13, 1991): 6.

"The New Politics of the Environment and the Rise of 'Green Pork'," *Free Perspectives IV* (Dec., 1990): 5-7.

"Indians Defend Tribes from Attack," *High Country News* (May 21, 1990): 14. Reprinted in the *Ute Bulletin* (June 27, 1990): 4.

"New Coalition Lobbies for Indians," *High Country News* (Feb. 26, 1990): 3.

"Pilgrimage to the Sacred Mountain," *Ascent: The Mountaineering Experience in Word and Image*, Sierra Club Books, 1989.

"Let Taxpayers Devise Budget," *Salt Lake Tribune*, Common Carrier column (Mar. 26, 1989): A18.

"Who's to Blame for \$3.12 Trillion Debt Limit? Look in Mirror," *Salt Lake Tribune*, editorial (Dec. 16, 1989): A14. Also published in *The Park Record* as "The Debt-Makers: Who Are Those Guys?" (Dec. 28, 1989): A20.

"To Save a Sacred Mountain," *The Canyon Echo* (April, 1982): 4.

"Climbing Tongue-in-Cheek," *Summit* (April-May, 1980).

"Baboquivari Endures as Center of World," with Richard Harding, *The Indian Trader* (Aug., 1979): 3, 16.

"Orizaba: The Other Side of the Mountain," *Summit* (June-July, 1979).

BOOK REVIEWS

Public Waters: Lessons from Wyoming for the American West, by Anne MacKinnon. *New Mexico Historical Review*, 2021.

Unredeemed Land: An Environmental History of Civil War and Emancipation in the Cotton South, by Erin Stewart Mauldin. *Journal of American History*, 2020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INVITED TALKS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Debate on Public Lands. Speaker of the House Rebecca Lockhart and Representative Ken Ivory vs. Robert Keiter and Daniel McCool. Southern Utah University, Sept. 18, 2014.
<https://www.youtube.com/watch?v=Im631pbW6iU&feature=youtu.be>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONFERENCE PAPERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTHER CONFERENCE ROLES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PUBLIC COMMUNICATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Salt Lake Tribune, featured column, Oct. 4, 2012 (topic: *River Republic*)
<http://www.sltrib.com/sltrib/entertainment2/54996363-223/rivers-america-mccool-utah.html.csp>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GRANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AWARDS

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

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

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

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

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

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

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

ADMINISTRATIVE INITIATIVES

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

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

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

As Director of the Environmental and Sustainability Studies Program:

Created a new Environmental and Sustainability Studies Minor

Directed the administration of an extensive program assessment and evaluation

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

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

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

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

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

As Director of the American West Center:

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

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

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

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

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

As Associate Dean:

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

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

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

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

As Director of Public Administration Education:

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

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

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

COMMUNITY SERVICE AND CONSULTING

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

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

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

Co-author, *amicus* brief, in *Northwest Austin Municipal Utility District Number One v. Holder*, U. S. Supreme Court, No. 08-322, 2009.

Volunteer Tutor, Guadalupe Schools, 2007-2009.

Advisor, Rocky Mountain American Indian Economic and Education Foundation, 2003-2006.

Member, National Council of Scholars, Presidents Park, Williamsburg, VA. 2002-2004.

Consultant, National Oceanic and Atmospheric Administration, research project investigating the use of long-range weather data in water management planning for water conservancy districts and Indian reservations, 1999-2002.

Participating author and consultant, contract to facilitate meetings and research a proposal to divide San Juan County, UT. Final Report titled: "San Juan County Division Study," Prepared by the Center for Public Policy and Administration, University of Utah, 1997.

Member, Board of Directors, the Indian Walk-In Center, Salt Lake City, Utah, 1994-2000.

Advisory Committee for the American Indian Resource Center, University of Utah, 1990-2000.

EXHIBIT 19

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

CHARLES WALEN, an individual, et al.,

Plaintiffs,

v.

DOUG BURGUM, in his official capacity as
Governor of the State of North Dakota, et al.,

Defendants,

and

MANDAN, HIDATSA AND ARIKARA NATION, et
al.,

Intervenor-
Defendants.

Civil No. 1:22-cv-00031

DECLARATION TO ACCOMPANY THE EXPERT REPORT OF KATE MAGARGAL

Pursuant to 28 U.S.C. § 1746, I, Kate Magargal, declare that:

My name is Kate Magargal. I am an expert witness designated by Intervenor-Defendants in the above referenced case now pending in the United States District Court for the District of North Dakota.

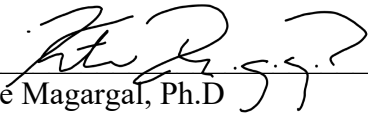
A true and correct copy of my curriculum vitae is attached hereto as a part of my report. The following report, a true and correct copy of which is attached and incorporated herein for all purposes, is a summary of my opinions and conclusions. The materials I relied upon to develop my analyses and opinions are cited therein and/or produced herewith for all counsel.

The court testimony and publications I am required to disclose are described in my attached report and/or curriculum vitae.

My reasonable and necessary hourly rate for my time in this case is \$200.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 17th day of January, 2023



Kate Magargal, Ph.D

Expert Witness Report

In the case of

Walen & Henderson v. Burgum & Jaeger

U.S. District Court for the District of North Dakota, Eastern Division

prepared by:

Kate Magargal, Ph.D.

Department of Environmental and Sustainability Studies

University of Utah

January 2023

OUTLINE OF THE REPORT

Summary of Findings

I. Introduction

1. Qualifications
2. Quantitative Socioeconomic Methods

II. The Senate Factors Applied to North Dakota

3. The extent to which minority group members bear the effects of discrimination which hinder their ability to participate effectively in the political process, by county
 - a. Income
 - b. Poverty
 - c. Educational Attainment
 - d. Computer Ownership and Internet Access
 - e. Home Ownership
 - f. Health Insurance Coverage
 - g. Employment

III. Conclusion

Summary of Findings:

Eight socioeconomic variables were selected for this analysis: income, poverty, educational attainment, computer ownership and internet access, home ownership, health insurance coverage, and employment (see results in Table 1). The data for these variables were compared for: (1) AIAN residents of Dunn County versus White residents of Dunn County, (2) AIAN residents of McLean County versus White residents of McLean County, (3) AIAN residents of McKenzie County versus White residents of McKenzie County, and

(4) AIAN residents of Mountrail County versus White residents of Mountrail County for a total 32 separate quantitative socioeconomic tests. Figure 1 shows the geographic extent of this analysis.

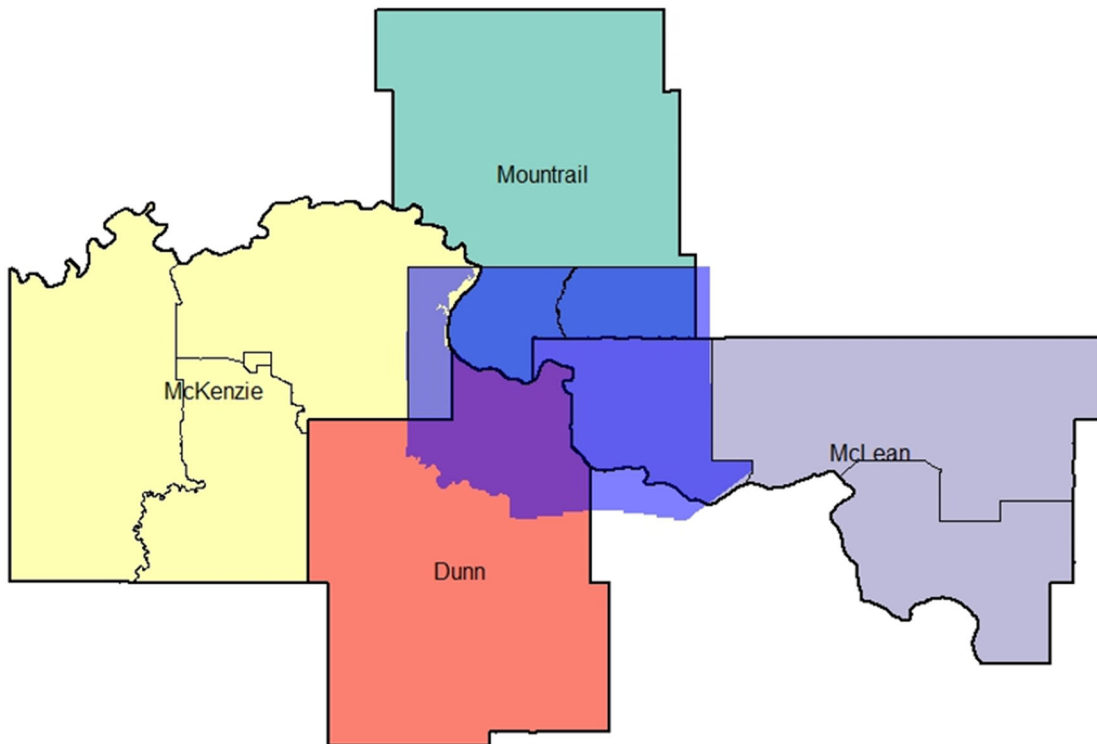


Figure 1: The geographical extent of this analysis includes the four counties that overlap significantly with the Ft. Berthold reservation (shaded dark blue). These four counties are Dunn, McLean, McKenzie, and Mountrail. County boundaries are drawn in bold black lines and represent the units of analysis in this report. Gray lines indicate US Census tracts.

In most cases where statistics were compiled, the AIAN population is at a statistically significant disadvantage when compared to Whites. This includes all statistics examined for McKenzie and Mountrail Counties, and the majority of statistics examined in Dunn and McLean Counties. Overall, AIAN residents earn substantially less household income compared to Whites, are significantly more likely to earn an income under the poverty line compared to Whites, have lower levels of educational attainment, have less access to broadband internet at home compared to Whites, are less likely to own their home, less likely to have health insurance coverage, and more likely to be unemployed. These race-based disparities are, in a word, systemic. AIAN populations are systemically and

significantly at a socioeconomic disadvantage compared to their White neighbors, which hinders their ability to participate in the political process (Senate Report 1982).

I. INTRODUCTION

1. Qualifications

I am a Postdoctoral Research Associate in the Environmental Studies & Sustainability Program at the University of Utah. My formal education includes a BS (2004) in Anthropology from the University of Arizona, an MS in Anthropology from the University of Utah, and a Ph.D in Anthropology from the University of Utah.

I have extensive experience in quantitative methods, including spatial, environmental, socioeconomic, demographic, and statistical modeling including the use of geospatial (GIS) methods. My formal research program focuses on investigating the relationship between changing social and environmental conditions and human decision making, particularly as it relates to traditional landscape uses, diets, and energy. My primary research program has produced 5 published articles in the following major peer reviewed scientific journals; *The Journal of Human Evolution*, *The Journal of Archaeological Science*, *Environmental Archaeology*, *Frontiers in Earth Science*, and the *American Journal of Human Biology*. All of my publications involve social, demographic, and/or spatial modeling. I use publicly available data from the Census in analyses for my work as well, which is included in a forthcoming paper in the journal *Human Ecology*. I also taught quantitative methods at a university level to both undergraduate and graduate students, including the methods used in this report. I have been hired by the plaintiffs for this case and I am compensated at the rate of \$200/hour. The results and conclusions I reach in this report are mine alone, are not related to or endorsed by the University where I have an appointment and were reached through an independent process of research and inquiry.

2. Quantitative Socioeconomic Methods

All data used for the quantitative socioeconomic analysis were collected from the 2017-2021 five-year American Community Survey (ACS) for North Dakota by accessing data tables on the Census Bureau website (data.census.gov). Supplementary data is presented from the 2020 redistricting file dataset (generated via Public Law 94-171) and the Kaiser Family Foundation's State Health Facts Report (for the healthcare avoidance

due to cost variable). The two latter datasets are drawn on to provide context to the quantitative analyses. ACS racial variables in the socioeconomic analysis are American Indian and Alaskan Native-alone (henceforth, AIAN) and non-Hispanic White-alone (henceforth, White). Estimates in this analysis incorporate the margin of errors (MOE) given in the ACS detailed tables. All variable estimates include the MOE by listing the upper and lower estimates, the MOE range, and the differences in the MOE ranges between AIAN and White estimates. This “MOE difference” variable compares errors between AIAN and White estimates to determine whether the comparative errors wash out. All statistical analyses were conducted in the R programming environment (R Core Team 2020), which is an open-source programming language used as a statistical software and data analysis tool.

The quantitative methods in this report rely on descriptive and inferential statistics to present data findings and assess whether observed differences in socioeconomic factors are statistically significant and not due to the vagaries of data sampling or random error. The descriptive and inferential statistics used here are standard practice in quantitative analysis and common in every introductory statistics course.

Statistical tests are warranted for the socioeconomic analysis because they evaluate whether the census survey data (samples) are representative of the population at large – the demographic we are interested in evaluating. Without statistical tests we cannot determine whether the observed differences or similarities between the sampled data are representative of some characteristic of the population as a whole and not due to sampling error. Statistical significance is defined here using the established social science alpha parameter of $\alpha < 0.05$ (McKillup 2006). In other words, for a test to be considered statistically significant it must have less than a 5% probability that the observed effect is the result of sampling error. When a statistical test used in this report yields a p-value (the probability of attaining the observed results) of < 0.05 , we can conclude that the observed effect is representative of the population as a whole and reject the null hypothesis. For each of the tests in this report, the null hypothesis is that there are no differences in the socioeconomic variables based on race.

In the analyses, I use a single inferential statistical test: The Chi Squared Test of Independence, which produces a statistic that measures the difference between the observed and expected frequencies of an outcome for a set of variables to determine whether they are independent of one another. For example, if a county consists of 50

White residents and 50 AIAN residents, and unemployment is 50%, we expect 25 White residents (50%) and 25 AIAN residents (50%) to be unemployed, these are our “expected” values. If in fact only 10 White residents (10%) are unemployed while 40 AIAN residents (80%) are unemployed (or vice-versa), we can see that the “observed” values do not match our expected values. The Chi Square Test of Independence tests whether the differences between expected and observed values are statistically significantly different, and what the probability is that the difference is due to sampling error.

II. THE FIFTH SENATE FACTOR APPLIED TO NORTH DAKOTA

3. Socioeconomic Analysis

3.1. Dunn County

Eight variables are evaluated in this socioeconomic analysis for Dunn County. As the MOE difference between AIAN population and the Dunn County White population is small for each of the eight analyses (Table 1), we conduct statistical tests only on the primary variable estimates, rather than the lower and upper estimates.

The total estimated population of Dunn County is 4,195. There are 458 AIAN residents and 3,515 White residents (Figure 1).

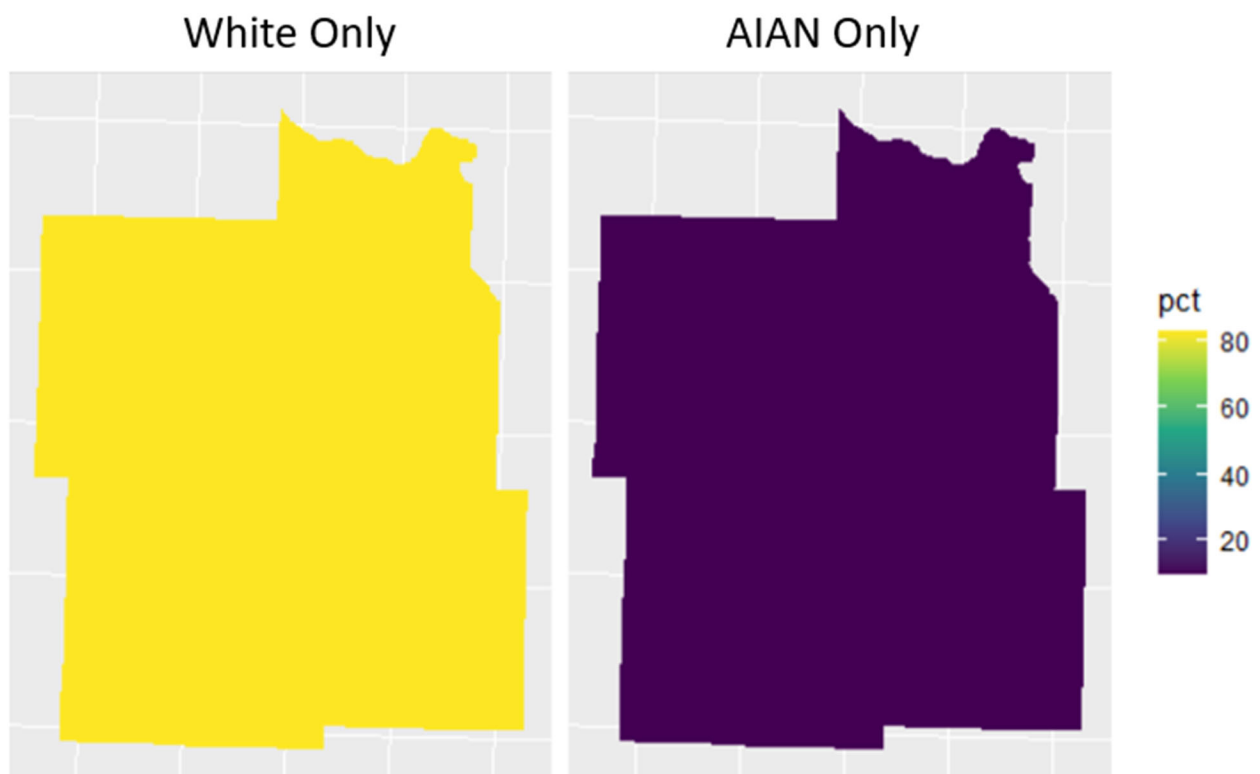


Figure 1. A Census Tract map of the 2021 5-year ACS racial distribution of AIAN and White population in Dunn County, North Dakota. The map includes the Ft. Berthold Reservation population.

3.1a. Median Household Income

The median income for AIAN households in Dunn County is \$53,149, while median household income for Whites is \$87,250. These data show a large race-based discrepancy in income, with White households earning substantially more than AIAN households.

3.1b. Poverty

In Dunn County, 14.3% of AIAN households are below the poverty line compared to 6.2% of White households. This difference is statistically significant ($X^2 = 40.164$, p-value <0.001), with AIAN households significantly overrepresented below the poverty line compared to Whites. Put another way, we have greater than 99.9% confidence that that the sample of income data is representative of the population as a whole and that the null hypothesis (no relationship between race and poverty) can be rejected. A similar degree of confidence is present in all subsequent statistical tests.

3.1c. Educational Attainment

For the AIAN population, 37.9% of adults 25-years and older have a high school diploma or less as the highest level of educational attainment, compared to 44.9% of Whites. 33.9% of the AIAN population attended some college, and 27.9% finished a college degree. This is compared to 35.2% of Whites who attended some college and 19.9% who finished a college degree. There are statistically significant differences in educational attainment by race, with the AIAN population significantly ($X^2 = 19.582$, p-value <0.001) overrepresented in lower educational attainment categories although similar in higher educational attainment categories when compared to Whites.

3.1d. Computer Ownership and Broadband Internet Access

In the AIAN community, 95.7% of households own a computer, while 86% of households have broadband internet. For Dunn White households, 97.5% own a computer and 92.6% have broadband internet. Both differences are statistically significant (computer ownership

$X^2 = 4.5932$, $p\text{-value} = <.05$; Internet Access $X^2 = 20.834$, $p\text{-value} <0.001$), with AIAN households having reduced access to computers and the internet compared to Whites.

3.1e. Home Ownership, Value and Rent Payments

Home ownership in Dunn county does not show substantial bias, as 79.6%% of the AIAN population owns a home and 78.2% of the White population. There is no statistical difference ($X^2 = 0.0795$, $p\text{-value} >.05$).

3.1f. Health Insurance Coverage

In Dunn County, 39.4% of AIAN residents do not have health insurance coverage, compared to 17.1% of Whites in Dunn County. This difference is statistically significant ($X^2 = 125.35$, $p\text{-value} <0.001$), with AIAN residents significantly less likely to have health insurance coverage relative to Whites. Native Americans can also access free or reduced cost healthcare without health insurance through Indian Health Service (IHS) programs. But statewide data from North Dakota suggest that IHS is not making up for disparate access to health insurance coverage among Native Americans and Whites. Despite access to IHS services, AIAN in North Dakota, who are over nearly four times more likely than whites to be uninsured, are also over three times more likely than whites to report that they avoided care due to cost, with 3.9% of Whites reporting not seeing a doctor because of cost, compared to 13.9% of AIAN according to the Kaiser Family Foundation's State Health Facts report (KFF 2022). While these are state-wide data, they are the best available data on health care avoidance due to cost.

3.1g. Employment

Of those in the labor pool, 9.2% of AIAN population is unemployed compared to .5% of the Dunn County White population. This difference is statistically significant ($X^2 = 143.05$, $p\text{-value} <0.001$), with AIAN residents more likely to be unemployed relative to the White population. This difference is especially salient given the lack of difference between AIAN and White education levels.

3.2. McLean County

Eight variables are evaluated in this socioeconomic analysis for McLean County. As the MOE difference between AIAN population and the McLean County White population is

small for each of the eight analyses (Table 1), we conduct statistical tests only on the primary variable estimates, rather than the lower and upper estimates.

The total estimated population of McLean County is 9,788. There are 679 AIAN residents and 8,608 White residents (Figure 1).

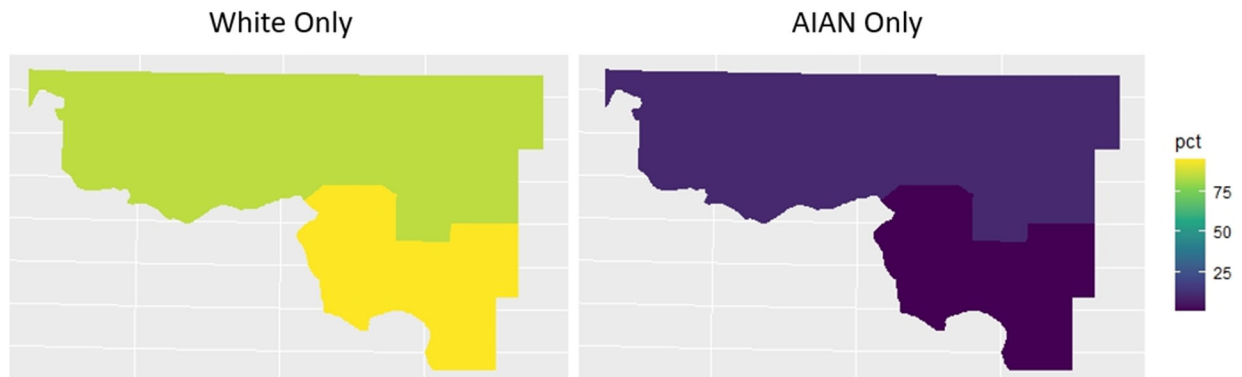


Figure 1. A Census Tract map of the 2021 5-year ACS racial distribution of AIAN and White population in McLean County, North Dakota. The map includes the Ft. Berthold Reservation population.

3.2a. Median Household Income

The median income for AIAN households in McLean County is \$58,625, while median household income for Whites is \$72,526. These data show a large race-based discrepancy in income, with White households earning substantially more than AIAN households.

3.2b. Poverty

In McLean County, 8.5% of AIAN households are below the poverty line compared to 7.6% of White households. This difference is not statistically significant ($X^2 = 0.576$, p -value $>.05$). AIAN and White households do not experience different levels of poverty in McLean County.

3.2c. Educational Attainment

For the AIAN population, 36.7% of adults 25-years and older have a high school diploma or less as the highest level of educational attainment, compared to 40.1% of Whites. 55% of the AIAN population attended some college, and 45% finished a college degree.

This is compared to 39.1% of Whites who attended some college and 20.7% who finished a college degree. There are statistically significant differences in educational attainment by race ($X^2 = 14.172$, $p\text{-value} < 0.05$). Both populations have similar attainment of primary education and AIAN is overrepresented in higher educational attainment categories when compared to Whites.

3.2d. Computer Ownership and Broadband Internet Access

In the AIAN community, 96.4% of households own a computer, while 71.2% of households have access to broadband internet. For McLean White households, 96% own a computer and 86.9% have access to broadband internet. Computer ownership is equivalent between the two groups ($X^2 = 0.2996$, $p\text{-value} = >.05$). Access to internet at home, however, is significantly different ($X^2 = 193.54$, $p\text{-value} < 0.001$), with AIAN households having reduced access to the internet compared to Whites.

3.2e. Home Ownership, Value and Rent Payments

57% of the AIAN population owns a home compared with 84.6% of the White population. Home ownership is statistically different between the two groups ($X^2 = 130.5$, $p\text{-value} < .001$), with a significant lower portion of AIAN renting rather than owning their home.

3.2f. Health Insurance Coverage

In McLean County, 6.2% of AIAN residents do not have health insurance coverage, compared to 4.7% of Whites. There is no statistically significant difference between AIAN and White levels of health insurance coverage in McLean County. ($X^2 = 3.1355$, $p\text{-value} > 0.05$).

3.2g. Employment

Of those in the labor pool, 3% of AIAN population is unemployed compared to .8% of the McLean County White population. This difference is statistically significant ($X^2 = 29.564$, $p\text{-value} < 0.001$), with AIAN residents more likely to be unemployed relative to the White population. This difference is especially salient given the lack of difference between AIAN and White education levels.

3.3. McKenzie County

Eight variables are evaluated in this socioeconomic analysis for McKenzie County. As the MOE difference between AIAN population and the McLean County White population is small for each of the eight analyses (Table 1), we conduct statistical tests only on the primary variable estimates, rather than the lower and upper estimates.

The total estimated population of McKenzie County is 14,704. There are 1,894 AIAN residents (12.9% of the total population) and 10638 White residents (72.4% of the total population, see Figure 4).

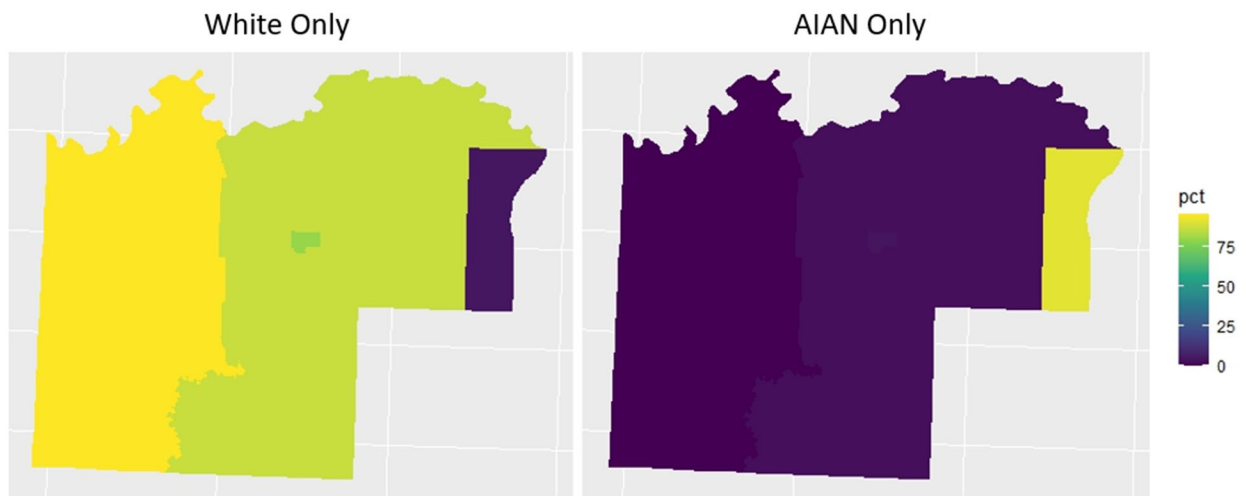


Figure 4. A Census Tract map of the 2021 5-year ACS racial distribution of AIAN and White population in McKenzie County, North Dakota. The map includes the Ft. Berthold Reservation population.

3.3a. Median Household Income

The median income for AIAN households in McKenzie County is \$76,607, while median household income for Whites is \$81,538. These data show a large race-based discrepancy in income, with White households earning substantially more than AIAN households.

3.3b. Poverty

In McKenzie County, 31% of AIAN households are below the poverty line compared to 7.5% of White households. This difference is statistically significant ($X^2 = 758.43$, p-value $<.001$) with AIAN households experiencing higher levels of poverty than White households.

3.3c. Educational Attainment

For the AIAN population, 13.7% of adults 25-years and older have a high school diploma or less as the highest level of educational attainment, compared to 5.7% of Whites. 49% of the AIAN population attended some college, and 20% finished a college degree. This is compared to 34.4% of Whites who attended some college and 27.4% who finished a college degree. There are statistically significant differences in educational attainment by race ($X^2 = 152.95$, p-value <0.001). AIAN have lower educational attainment than Whites.

3.3d. Computer Ownership and Broadband Internet Access

In the AIAN community, 98.3% of households own a computer, while 86.7% of households have access to broadband internet. For McKenzie White households, 96% own a computer and 92.1% have access to broadband internet. Computer ownership is statistically higher among AIAN ($X^2 = 17.994$, p-value = $<.001$), however access to internet at home, significantly lower for AIAN than Whites ($X^2 = 151.32$, p-value <0.001).

3.3e. Home Ownership, Value and Rent Payments

36.3% of the AIAN population owns a home compared with 66.8% of the White population. Home ownership is statistically different between the two groups ($X^2 = 138.5$, p-value $<.001$), with home ownership significantly lower among AIAN compared to Whites.

3.3f. Health Insurance Coverage

In McKenzie County, 44.4% of AIAN residents do not have health insurance coverage, compared to 13.2% of Whites. A statistically significant portion of AIAN in McKenzie County lack health insurance coverage as compared to Whites ($X^2 = 887.53$, p-value $<.001$).

3.3g. Employment

Of those in the labor pool, 5% of AIAN population is unemployed compared to .6% of the McKenzie County White population. This difference is statistically significant ($X^2 = 155.44$, p-value <0.001), with AIAN residents more likely to be unemployed relative to the White

population.

3.4. Mountrail County

Eight variables are evaluated in this socioeconomic analysis for Mountrail County. As the MOE difference between AIAN population and the Mountrail County White population is small for each of the eight analyses (Table 1), we conduct statistical tests only on the primary variable estimates, rather than the lower and upper estimates.

The total estimated population of Mountrail County is 9,809. There are 2,840 AIAN residents (29% of the total population) and 5,706 White residents (58% of the total population, see Figure 5).

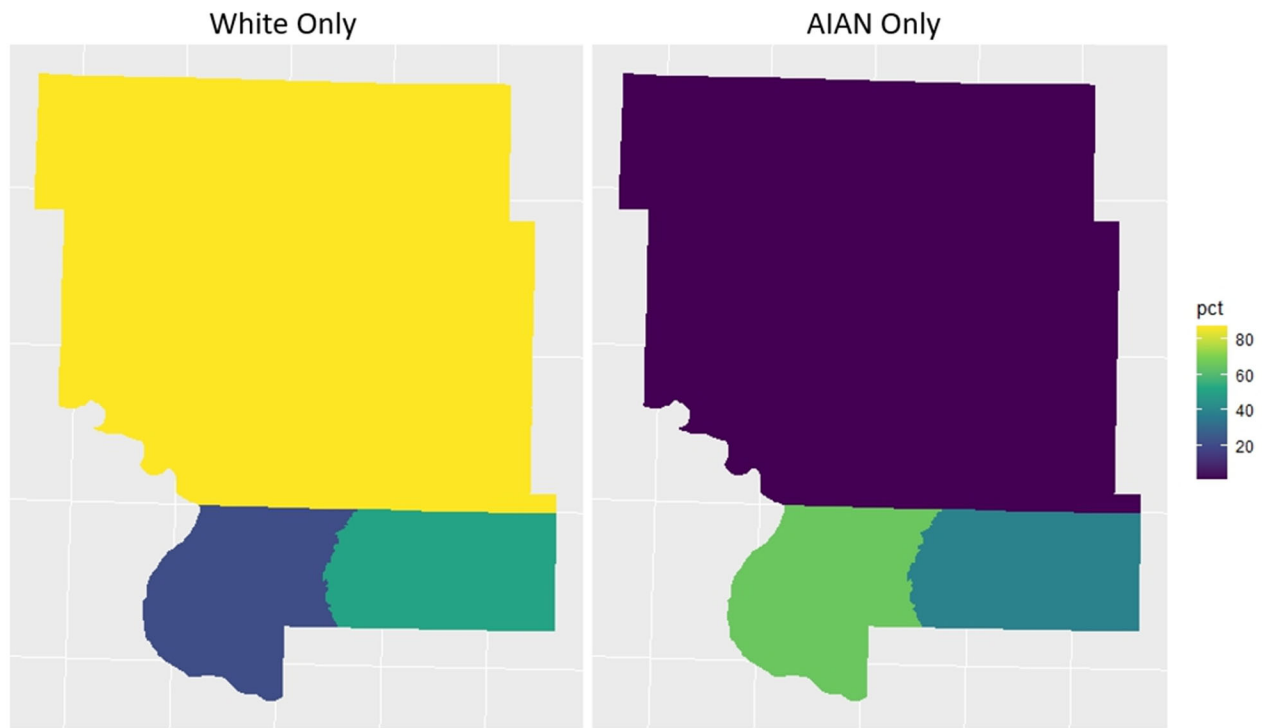


Figure 5. A Census Tract map of the 2021 5-year ACS racial distribution of AIAN and White population in McKenzie County, North Dakota. The map includes the Ft. Berthold Reservation population.

3.4a. Median Household Income

The median income for AIAN households in Mountrail County is \$54,271, while median household income for Whites is \$89,677. These data show a large race-based discrepancy in income, with White households earning substantially more than AIAN

households.

3.4b. Poverty

In Mountrail County, 26.8% of AIAN households are below the poverty line compared to 6.7% of White households. This difference is statistically significant ($X^2 = 656.81$, p-value $<.001$) with AIAN households experiencing higher levels of poverty than White households.

3.4c. Educational Attainment

For the AIAN population, 44.5% of adults 25-years and older have a high school diploma or less as the highest level of educational attainment, compared to 40.1% of Whites. 35.4% of the AIAN population attended some college, and 20.1% finished a college degree. This is compared to 36.9% of Whites who attended some college and 23% who finished a college degree. There are statistically significant differences in educational attainment by race ($X^2 = 1224.5$, p-value <0.001). AIAN have lower educational attainment than Whites.

3.4d. Computer Ownership and Broadband Internet Access

In the AIAN community, 93.8% of households own a computer, while 74.1% of households have access to broadband internet. For Mountrail White households, 96.4% own a computer and 88.1% have access to broadband internet. Both computer ownership ($X^2 = 30.718$, p-value = $<.001$) and access to internet at home ($X^2 = 259.03$, p-value <0.001) are statistically lower among AIAN than Whites. AIAN in Mountrail county have lower access to computers and internet at home.

3.4e. Home Ownership, Value and Rent Payments

51.9% of the AIAN population owns a home compared with 67.9% of the White population. Home ownership is statistically different between the two groups ($X^2 = 64.555$, p-value $<.001$), with home ownership significantly lower among AIAN compared to Whites.

3.4f. Health Insurance Coverage

In Mountrail County, 29.1% of AIAN residents do not have health insurance coverage,

compared to 12.5% of Whites. A statistically significant portion of AIAN in Mountrail County lack health insurance coverage as compared to Whites ($X^2 = 320.79$, p-value $<.001$).

3.4g. Employment

Of those in the labor pool, 4% of AIAN population is unemployed compared to 1.9% of the Mountrail County White population. This difference is statistically significant ($X^2 = 46.4$, p-value <0.001), with AIAN residents more likely to be unemployed relative to the White population.

III. CONCLUSION

For the majority of analyses (24 out of 28), there is race-based bias that disadvantages the AIAN population when compared to Whites. Table one provides a complete overview of the descriptive and inferential statistics for more quantitative context. These disparities are systemic – meaning they reach into multiple aspects of day-to-day life – and hinder the ability of AIAN tribal members to participate effectively in the North Dakota political process (Senate Report 1982).

13

REFERENCES

McKillup, S. (2011). *Statistics explained: An introductory guide for life scientists*. Cambridge University Press.

Kaiser Family Foundation (2022). *State Health Facts*. <https://Kff.org/statedata>

R Core Team, (2020). *R: A Language and Environment for Statistical Computing*. R Foundation for Statistical Computing, Vienna, Austria.

Senate Report (1982), No. 97-417, accompanying the Voting Rights Act Amendments of 1982.

County: Dunn										
Variable	AIAN	upper estimate	lower estimate	MOE range	White	upper estimate	lower estimate	MOE range	MOE difference	p-value
Total population	11.2				80					
Median household income (\$)	53149	54114	52184	965	87250	96857	77643	9607	-8642	
Below Poverty Line (%)	14.4	20.7	8	12.7	6.2	8.6	3.8	4.8	7.9	<.001
Education: lower than High school (%)	12.1	21.8	2.3	19.5	8.7	12.6	4.9	7.7	11.8	<.001
Education: High School (%)	25.8	39.6	12.1	27.5	36.2	43.4	29	14.4	13.1	
Education: Some College (%)	33.9	46.3	21.5	24.8	35.2	41.5	28.8	12.6	12.2	
Education: College degree (%)	27.9	40.3	15.4	24.8	19.9	25.2	14.6	10.6	14.3	
Owns a computer (%)	95.7	104.5	86.9	17.7	97.5	100	95	5	12.7	<.05
Broadband internet (%)	86	97.5	74.5	23	92.6	95.9	89.4	6.5	16.5	<.001
Owns a home (%)	79.6	99.3	59.9	39.5	78.2	86.5	69.9	16.6	22.9	>.05
No health insurance (%)	39.4	55.4	23.4	32	17.1	22.8	11.3	11.5	20.6	<.001
Unemployed (%)	9.2	23.7	-5.3	29	0.5	1.5	-0.5	2	26.9	<.001

County: McLean										
Variable	AIAN	upper estimate	lower estimate	MOE range	White	upper estimate	lower estimate	MOE range	MOE difference	p-value
Total population	8.3				86					
Median household income (\$)	58625	79026	38224	20401	72526	77460	67592	4934	15467	
Below Poverty Line (%)	8.5	14.3	2.7	11.6	7.6	9.2	6.1	3	8.5	>.05
Education: lower than High school (%)	10.8	18.8	2.8	16	7.3	9.4	5.3	4.1	11.9	<.01
Education: High School (%)	25.9	38.9	13	25.9	32.8	36.4	29.2	7.2	18.7	
Education: Some College (%)	42.1	54	30.2	23.8	39.1	42.7	35.6	7.1	16.7	
Education: College degree (%)	21.2	30.9	11.4	19.4	20.8	23.5	18.1	5.3	14.1	
Owns a computer (%)	96.4	108.6	84.1	24.5	95.9	96.9	94.9	2	22.5	>.05
Broadband internet (%)	71.2	84.6	57.7	27	86.9	89	84.7	4.3	22.7	<.001
Owns a home (%)	57	71.3	42.6	28.7	84.6	87.6	81.6	5.9	22.8	<.001
No health insurance (%)	6.2	12.3	0.1	12.2	4.7	6.6	2.8	3.9	8.3	>.05
Unemployed (%)	3	12.1	-6.1	18.2	0.8	1.7	0	1.7	16.5	<.001

County:

McKenzie

Variable	AIAN	upper estimate	lower estimate	MOE range	White	upper estimate	lower estimate	MOE range	MOE difference	p-value
Total population	12.9				72.3					
Median household income (\$)	76607	106420	46794	29813	81538	97786	65290	16248	13565	
Below Poverty Line (%)	31	44.3	17.8	26.5	7.5	11	4	7.1	19.4	<.001
Education: lower than High school (%)	13.7	25	2.4	22.6	5.7	8.5	2.9	5.7	16.9	<.001
Education: High School (%)	16.8	25.6	7.9	17.7	32.5	37.9	27.1	10.8	6.9	
Education: Some College (%)	48.9	67.5	30.2	37.3	34.4	39.9	28.8	11.1	26.2	
Education: College degree (%)	20.6	32.4	8.9	23.5	27.4	33.4	21.5	11.9	11.6	
Owns a computer (%)	98.3	113.2	83.4	29.8	96	97.7	94.3	3.4	26.4	<.001
Broadband internet (%)	86.7	103.3	70.2	33.1	92.1	94.4	89.8	4.7	28.4	<.001
Owns a home (%)	36.3	51.1	21.6	29.5	66.8	71.9	61.7	10.2	19.3	<.001
No health insurance (%)	44.4	62.2	26.6	35.7	13.2	18.3	8.1	10.2	25.5	<.001
Unemployed (%)	5	13.7	-3.8	17.4	0.6	1.5	-0.4	1.9	15.5	<.001

County: Mountrail										
Variable	AIAN	upper estimate	lower estimate	MOE range	White	upper estimate	lower estimate	MOE range	MOE difference	p-value
Total population	29				58.2					
Median household income (\$)	54271	68845	39697	14574	89677	100794	78560	11117	3457	
Below Poverty Line (%)	26.8	33.7	19.8	13.9	6.7	9.2	4.1	5.1	8.8	<.001
Education: lower than High school (%)	18.5	26.2	10.9	15.4	5.8	7.5	4	3.5	11.9	<.001
Education: High School (%)	26	33.8	18.3	15.5	34.3	39.6	29	10.6	4.9	
Education: Some College (%)	35.4	43.7	27	16.6	36.9	42.5	31.4	11.1	5.6	
Education: College degree (%)	20.1	26.6	13.5	13.1	23	28.4	17.7	10.7	2.4	
Owns a computer (%)	93.8	98.9	88.7	10.2	96.4	97.7	95.2	2.5	7.7	<.001
Broadband internet (%)	74.1	82.3	65.9	16.4	88.1	90.7	85.6	5.1	11.3	<.001
Owns a home (%)	51.9	60.7	43.1	17.6	67.9	73.1	62.6	10.5	7.1	<.001
No health insurance (%)	29.1	35.5	22.7	12.7	12.5	17.1	7.9	9.2	3.5	<.001
Unemployed (%)	4	8	-0.1	8.1	1.9	4.4	-0.6	5	3	<.001

Table 1. Descriptive and inferential statistics for all eight socioeconomic variables including primary estimates and margin of errors (MOE) for the three counties.

Kate Magargal

Curriculum Vitae

Environmental Studies & Sustainability
University of Utah
260 S. Central Campus Drive, RM 4540
Salt Lake City, UT 84112

Email: kate.magargal@utah.edu
Phone: 435-491-0036
Web:<http://faculty.utah.edu/~kmagargal>
ORCID: 0000-0002-7444-7847

I am an environmental anthropologist focused on human ecology in western North America with expertise in ethnography, archaeology, botany, mathematical modeling, and inter- and trans- disciplinary approaches to teaching. My goal is to produce research and train students to understand the past in a way that addresses contemporary social and environmental issues with a focus on current and ancient land management and Traditional Ecological Knowledge.

Appointments

Associate Instructor Environmental & Sustainability Studies, UU. August 2022 - present.

Associate Instructor Honors College, UU. August 2022 - present.

Postdoctoral Research Associate Environmental and Sustainability Studies, University of Utah (UU), Salt Lake City (SLC), UT. July 2022 - present.

Postdoctoral Research Associate Department of Anthropology, UU. February 2019 - June 2022.

Associate Instructor City and Metropolitan Planning, UU. January 2020-May 2022.

Associate Instructor Department of Anthropology, UU. January 2020 - May 2022.

Assistant Director UU Archaeological Center, UU. August 2015-May 2016.

Education

Ph.D. Anthropology, UU, 2019, Salt Lake City, UT. Thesis: *Subsistence Fires Mediate Human Ecological Relationships*; Committee: Brian Coddling (chair), Duncan Metcalfe, James F. O'Connell, Lisbeth Louderback, Andrea Brunelle, Joan Brenner-Coltrain.

M.S. Anthropology, UU, 2014, Salt Lake City, UT

B.A. Anthropology, University of Arizona, 2004, Tucson, AZ

Summary

Teaching/Mentoring: 2 M.S./M.A., and 13 B.S./B.A. students since 2015 (students noted with * below).

Courses: 7 courses taught, incl. topics in basic science, community engaged approaches, and synthetic approaches to scientific themes.

Publications: 7 published peer-reviewed articles, 3 in prep, 2 technical reports.

Citations: 39 citations, h-index of 3, i10-index of 1 (Google Scholar, accessed 11/9/22).

Field Experience: >2 years working, directing, and teaching field methods in Utah, Nevada, and California.

External Funding: Staff on 2 federal research grants, 2 private foundation grants, and 1 teaching fellowship totaling >\$2 million since 2012.

Internal Funding: PI/Staff on 8 research grants and 2 fellowships totaling >\$100,000 since 2012.

Teaching

Teaching Interests: Community engaged learning, applied behavioral and ecological sciences, quantitative data analysis and research methods, human ecology, Native North America (ethnography and archaeology), cultural resource management, Pleistocene and Holocene archaeology of the world, conservation & sustainability, ethnoarchaeology, GIS/spatial analysis, teaching in non-conventional environments such as in the field.

Courses as Instructor/TA

Instructor, ENVST5000 Undergraduate Research (Independent Study). UU Environmental Studies & Sustainability.

Instructor, HONOR2285 Energy. UU Honors College.

Instructor, ENVST2100 Introduction to Environment & Sustainability. UU Environmental Studies & Sustainability.

Instructor, ANTH1030 Prehistoric Archaeology. Spring 2022. UU Anthropology.

Instructor, CMP3851 Nightscapes. Spring 2022. UU City & Metropolitan Planning.

Co-Instructor, ANTH1030 World Prehistory. Fall 2021. UU Anthropology.

Co-Instructor, CMP3851 Nightscapes. Spring 2021. UU City & Metropolitan Planning.

Instructor, ANTH5850 Quantitative Analysis of Archaeological Data. Spring 2020. UU Anthropology.

Co-Instructor, CMP3851 Nightscapes. Spring 2020. UU City & Metropolitan Planning.

Co-Instructor, ANTH4341 Fundamentals of Archaeology. Fall 2016. UU Anthropology.

Instructor, ANTH 1030-009 World Prehistory: An Introduction (online section of the course). Spring 2016. UU Anthropology.

Teaching assistant, ANTH 1030-001 World Prehistory: And Introduction. Spring 2016. UU Anthropology. Supervisor: Brian Codding 801-581-8663

Instructor, ANTH 5711, Student Individual Research Group (guiding undergraduates in the compilation of data and report writing of an archaeological field project). Fall 2015. UU Anthropology.

Guest Lecturer

Guest Lecturer & course co-developer, CMP 3850 Dark Sky Studies 1: Lightscapes. Fall 2019 & Fall 2020. UU City and Metropolitan Planning. Instructor: Vellachi

Ganesan 801-696-6108.

Guest Lecturer, UU School of Architecture Design Build Bluff Program, Fall 2019 and Spring 2020.

Guest Lecturer, ENVST 3365 Environmental Justice. Fall 2018, 2020. UU Environmental and Sustainability Studies. Instructor: Adreinne Cachelin 801-213-1013.

Pedagogical Training/Experiences

Trainee, UU Undergraduate Mentoring Program, Spring 2020. Instructor: Elizabeth Archuleta 801-581-5499.

Project Mentor, ENVST 3365 Environmental Justice. Fall 2017 - present. UU Environmental and Sustainability Studies. Instructor: Adrienne Cachelin 801-213-1013

Lecturer and Field Guide, Bonderman Field Station at Rio Mesa, Fall 2012-Spring 2019. UU Office of the Vice President of Research. *Developed and conducted on-site field experiences in archaeology and astronomy for a variety of visiting student groups.* Director: Zach Lundeen 801-585-3177.

Course development team member, Fall 2019 - present. UU Honors College. *Work with a team of instructors to develop new tracks of study and courses for honors students.* Supervisor: Sylvia Torti, 801-581-7383.

Dark Sky Scholar, Spring 2018-present. UU School of City and Metropolitan Planning. *Develop curricula and associated outreach efforts as part team of new Minor in Dark Sky Studies (approved by the UU Academic Senate in Spring 2020).* PI: Stacy Harwood, 801-581-8255.

Student, CTLE 6000 Teaching in Higher Education. Spring 2017. UU Center for Teaching & Learning Excellence. *A course focused on implementing pedagogy in college courses.*

Teaching Assistant. UU Wasatch Experience 2016-2017. *A year-long workshop seminar focused on incorporating topics of sustainability into teaching content and practices.*

Fellow, "Think Globally, Learn Locally" NSF-GK12 Fellowship. 2012-2014. *Classroom Science Mentor in AP Environmental Science and 8th Grade Integrated Science.* Supervisor: Holly Godsey, 801-587-7865.

Wilderness Field Instructor, 2009-2010. Aspen Achievement Academy, Loa, UT. *Teach high school curricula to teenage clients of an at-risk youth program in the outdoors.*

Publications

Published peer-reviewed works

Magargal, K. (2022). The cost of cooking for foragers. *Journal of Human Evolution*, 162, 103091. <https://doi.org/10.1016/j.jhevol.2021.103091>

L. Brock James*, Kaley Joyce*, **Kate Magargal**, Brian Coddling. (2022). A stone in the hand is worth how many in the bush? Applying the Marginal Value Theorem to understand optimal toolstone transportation, processing, and discard decisions. *Journal of Archaeological Science*. <https://doi.org/10.1016/j.jas.2021.105518>

Brian F. Coddling, Joan Brenner Coltrain, Lisbeth Louderback, Kenneth Blake Vernon, **Kate E. Magargal**, Peter M. Yaworsky, Erick Robinson, Simon C. Brewer, and Jerry D. Spangler. (2021). Socioecological Dynamics Structuring the Spread of Farming in the North American Basin-Plateau Region. *Environmental Archaeology*. <https://doi.org/10.1080/14614103.2021.1927480>

Matthew N. Goodell*, Takara E. Truong*, Stephanie R. Marston*, Brett J. Smiley*, Elliot R. Befus*, Alex Bingham*, Kent Allen*, Joseph R. Bourne*, Yi Wei, **Kate E. Magargal**, Vellachi Ganesan, Daniel L. Mendoza, Anil C. Seth, Stacy A. Harwood, Marc Bodson, Tucker Hermans, and Kam K. Leang. (2020). Autonomous light assessment drone for dark skies studies. Paper accepted to *Proceedings of Dynamic Systems and Control Conference 2020*, American Society of Mechanical Engineers. <https://doi.org/10.1115/DSCC2020-3205>

Power, M. J., Coddling, B. F., Taylor, A. H., Swetnam, T. W., **Magargal, K.E.**, Bird, D. W., & O'Connell, J. F. (2018). Human Legacies on Ecological Landscapes. *Frontiers in Earth Science*, 6, 151. <https://doi.org/10.3389/feart.2018.00151>

Magargal, K.E., Parker, A.K., Vernon, K.B., Rath, W*., and B.F. Coddling. (2017) The ecology of population dispersal: Modeling alternative Basin-Plateau foraging strategies to explain the Numic Expansion. *American Journal of Human Biology*, 29.4. e23000. <https://doi.org/10.1002/ajhb.23000>

Holberg, J.B., **Magargal, K.** and P. Bergeron. (2003) Finding the Cool Companions to the DA White Dwarfs in the Palomar-Green Survey. American Astronomical Society Meeting 203, #54.06; *Bulletin of the American Astronomical Society*, Vol. 35, p.1294. <https://ui.adsabs.harvard.edu/abs/2005ASPC..334..419H/abstract>

Articles under review

Kate Magargal, Jonah Yellowman, Shaniah Morning Star Chee*, Molly Wabel*, Shane Macfarlan, Brian Coddling. Firewood and energy sovereignty on Navajo Nation. Targeted for *Under review at Human Ecology*.

Articles in prep

Kate Magargal, Mickey Campbell, Phil Dennison, William Anderegg, Brian F. Coddling. (in prep) How far to go for the good stuff? Trade-offs between travel cost and biomass availability for Diné woodhaulers. Targeted for *Nature Climate Change*

Kate Magargal, Shaniah Chee*, Jonah Yellowman, Brian Coddling, Adrienne Cachelin. The impacts of climate change, energy policy, and traditional ecological practices on firewood availability for Diné (Navajo) People. Targeted for *Philosophical Transactions of the Royal Society B*.

Other written works

Magargal, Kate. (2021) Review of *Spirit Lands of the Eagle and Bear: Numic Archaeology and Ethnohistory in the Rocky Mountains and Borderlands*. Robert H. Brunswig, ed. Louisville: University Press of Colorado, 2020. *Journal of Archaeological Research* 77(4). <https://doi.org/10.1086/716755>

Coddling, Brian F., **Kate E. Magargal**, Kenneth Blake Vernon, Paul E. Allgaier, Jesse Valdez, and Ron Goode (2018) *Preliminary Archaeological Investigations at the Jack Kirk Site, Mariposa Creek, California*. Submitted to the North Fork Mono Tribe.

Louderback, L., Herzog, N., Baker, M., **Magargal, K.**, and B. Pavlik. (2016) *Archaeobotany of the Sigurd to Red Butte Data Recovery Project, Utah*. Report prepared for SWCA Environmental Consultants.

Conference presentations

Papers

2022 **Kate Magargal** & Brian Coddling. (2022, September). Indigenous Woodland Management and Energy Sovereignty on Cedar Mesa, Utah. 16th Biennial Conference of Science & Management on the Colorado Plateau & Southwest Region, Flagstaff, AZ.

2022 **Kate Magargal** & Brian Coddling. (2022, March). Political Ecology of Energy Sovereignty on Navajo Nation. 82nd Annual Meeting of the Society for Applied Anthropology, Salt Lake City, UT.

2021 **Magargal, K.E.** (2021, April). Seasonality and a risk trade-off in the firewood harvest on northern Navajo Nation, Utah. Paper presented at the 86th Annual Meeting of the Society for American Archaeology, held virtually.

2021 **Magargal, K.E.** (2021, March). Forests of Fuel: Firewood harvest as a driver of social and ecological change. Paper presented at the 2021 Society of California Archaeology Annual Meeting, held virtually.

2020 **Magargal, K.E.** (2020, October). *Forests of fuel: Firewood harvest as a driver of social and ecological change*. Paper presented at the 2020 Society of California Archaeology Data Sharing Meeting, held virtually.

2019 **Magargal, K.E.** (2019, April). *How Firewood Access Structures Settlement Patterns*. Paper presented at the 84th Annual Meeting of the Society for American Archaeology, Albuquerque, New Mexico

2018 **Magargal, K.E.** (2018, October). *Variation in Numic adaptations across the Great Basin*. Paper presented at the Great Basin Archaeological Conference, Salt Lake City, UT.

Magargal, K.E. (2018, April). *The ecology of cooking with firewood*. Paper presented at the 83rd Annual Meeting of the Society for American Archaeology, Washington D.C.

Parker, Ashley, Lisa Johnson, **Kate Magargal**, Marianna Di Paolo and Brian F. Coddling (2018, April) When Is a Horse Not a Horse? It Depends on Your Local Ecology. Paper Presented at the 83rd Annual Meeting of the Society for American Archaeology, Washington D.C.

2016 Coddling, Brian F., Rebecca Bliege Bird, **Kate E. Magargal** and Douglas W. Bird (2016, December). *Modeling Country: How economic decisions by Aboriginal foragers produce complex emergent phenomena*. Presented at the 115th Annual Meeting of the American Anthropological Association, Minneapolis, Minnesota.

Coddling, Brian F. and **Kate E. Magargal**. (2016, May) *Numic Fires: Ethnography, Biogeography, and Archaeology of Anthropogenic Disturbance in the Intermountain West*. Paper presented at the Human Ecological Dynamics Workshop, SMU in Taos, New Mexico, USA

Posters

2018 **Magargal, K.E.**, and Brian F. Coddling. (2018, October). *Foraging for energy in the forest : Modeling ecosystem dynamics between firewood economics and woodland health*. Poster presented at Northwest Evolution Ecology and Human Behavior 5th Annual Symposium, October 19-21, 2018, Boise, ID.

Vernon, Kenneth Blake, **Kate Magargal**, D. Craig Young, David Zeanah and Brian F. Coddling (2018, April) Prearchaic Land Use in Grass Valley, NV: A Novel Statistical Implementation of Optimal Distribution Models. Poster Presented at the 83rd Annual Meeting of the Society for American Archaeology, April 11-15, Washington D.C., USA.

2017 **Magargal, K.E.** (2017, February). *Did prehistoric people affect fire regimes in southern Utah?* Poster presented at Global Change and Sustainability Annual Research Symposium, University of Utah, Salt Lake City.

2016 **Magargal, K.E.**, Parker, A.K., Vernon, K.B., Rath, W.*, & B.F. Coddling. (2016, October). *Food, Fire, and Free Space: New Tests of the Numic Expansion*. Poster presented at the Great Basin Anthropological Conference, Reno, Nevada.

Parker, A. K., Johnson L., **Magargal K. E.**, Rath, W.*, Di Paolo M., & Coddling, B. F. (2016, October). *When is a horse not a horse? It depends on your local ecology*. Poster presented at the Great Basin Anthropological Conference, Reno, Nevada.

Magargal, Kate E., Ashley K. Parker, Will Rath*, Kenneth B. Vernon, and Brian F. Coddling (2016, April) *Food, fire, and free space: New tests of the Numic Expansion*. Poster presented at the 85th Annual Meeting of the American Association of Physical Anthropologists, Atlanta, GA.

Magargal, Kate E., Ashley K. Parker, Will Rath*, Kenneth B. Vernon, and Brian F. Coddling (2016, February) *Numic Fires: Modelling the Effects of Anthropogenic Fire on Foraging Decisions in the Great Basin*. Poster presentation at the Global Change and Sustainability Center Symposium, SLC, UT.

Agardy, Savanna*, Brock James*, Anna Roberts*, Anastasia Rath*, Will Rath*, Kate E. Magargal, Tom Flanigan, & Brian F. Coddling (2016) Archaeological Investigations of Red Butte Canyon. Poster presented at the Environment and Sustainability Interdisciplinary Research Symposium, February 2, University of Utah; also presented at the Utah Professional Archaeological Council (Student Poster Award Winner), March 4-5, Rio Grande, Utah Division of State History; the University of Utah Undergraduate Research Symposium, April 12, Olpin Union; and the College of Social and Behavioral Science Student Research Day, April 22, Orson Spencer Hall, University of Utah, UT, USA.

2015 **Magargal, Kate E.** (2015, April) *Fetching Firewood: Access to fuels as a constraint for prehistoric settlement*. Poster presentation at the Society for American Archaeology 80th Annual Meeting, San Francisco, CA.

Magargal, Kate E. (2015, March) *A Fire History of Upper Valley near Escalante, Utah*. Poster presentation at the 27th Pacific Climate Workshop. Pacific Grove, CA.

Magargal, Kate E. (2015, February) *Fetching Firewood: Access to fuels as a constraint for prehistoric settlement*. Poster presentation at the Global Change and Sustainability Center Symposium, SLC, UT.

Parker, Ashley, Kate E. Magargal, & Brian F. Coddling (2015) Numic Fires: Biogeography of Foragers and Fire in the Great Basin. Poster presented at the 80th Annual Meeting of the Society for American Archaeology, San Francisco, CA, USA.

Vernon, Kenneth B., Kate E. Magargal, Ashley Parker, Will Rath*, & Brian F. Coddling (2015) Numic Fires: Modeling the Effects of Anthropogenic Fire on Foraging Decisions in the Great Basin. Poster presented at the 80th Annual Meeting of the Society for American Archaeology, San Francisco, CA, USA.

Parker, A. K., **Magargal, K. E.**, & Coddling, B. F. (2016, February). *Burning the West: Biogeography of Foragers and Fire in the Great Basin*. Poster presented at the Global Change and Sustainability Center Symposium, Salt Lake City, Utah. And presented at (2015) the College of Social and Behavioral Science Student Research Day, Salt Lake City, Utah. And presented at (2015) the the Society for American Archaeology Annual Meeting, San Francisco, California. And presented at (2014) the Great Basin Anthropological Conference, Boise, Idaho.

2014 **Magargal, Kate E.** (2014, April) *Fetching Firewood: Exploring the Relationship Between Site Locations and Fuel Sources*. Poster presentation at the Society for American Archaeology 79th Annual Meeting, Austin, TX.

Magargal, Kate E. *Firewood Collecting and Diet Breadth*. (2014, March) Poster presentation at the Northwest Evolution, Ecology, and Human Behavior Symposium, Boise State University.

2007 Moore, Chad, Dan Duriscoe and **Kate Magargal**. (2007, March) *A Ground-Based Photometric System of Detecting Artificial Light*. National Park Service Night Sky Team Methods and Results exhibit at the International Dark Sky Association General Meeting, Tucson, AZ.

Grants & Awards

- 2020 Bureau of Land Management Award L20AC00267. “Archaeological Survey of Cottonwood Wash, San Rafael Desert, Emery County, Utah”. Brian F. Coddling (PI), Jerry Spangler (Co-PI), **Kate Magargal (Post-Doc Researcher)**, Kenneth B. Vernon (PhD Researcher), Peter M. Yaworsky (PhD Researcher), Paul E. Allgaier (PhD Researcher), Kurt M. Wilson (PhD Researcher), Louis Brock James (MS Researcher), Roxanne-Lois Lamson (MS Researcher) (\$18,698)
- 2018 Keck Foundation. “Illuminating Dark Sky Studies’: A transdisciplinary focus on the disappearing dark.” Stephen Goldsmith (PI, UU City & Metropolitan Planning), Bryan Boulanger (Senior Personnel [SP], UU Civil and Environmental Engineering), Cord Bowen (SP, UU Multi-disciplinary Design Program), Kelly S. Bricker (SP, UU Department of Parks, Recreation, and Tourism), Amy Bronson (SP, UU Film and Media Arts), Erin Carraher (SP, UU Architecture), Katharine Coles (SP, UU English), David Kieda (SP, UU Physics & Astronomy), **Kate Magargal (SP, UU Anthropology)**, Daniel Mendoza (SP, UU Atmospheric Sciences), Anil Chandra Seth (SP, UU Physics & Astronomy), Amanda Smith (SP, UU Mechanical Engineering), Gregory Smoak (SP, UU History), Elpitha Tsoutsounakis (SP, UU Mult-disciplinary Design), Jim Vanderslice (SP, UU Family and Preventive Medicine). (\$450,000)
- 2017 National Science Foundation, “CNH-L: Dynamic Impacts of Environmental Change and Biomass Harvesting on Woodland Ecosystems and Traditional Livelihoods”,

- Dynamics of Coupled Natural and Human Systems, DEB-1714972. Brian F. Codding (PI, UU Anthropology), William Anderegg (Co-PI, UU Biology), Courtenay Strong (Co-PI, UU Atmospheric Sciences), Philip E. Dennison (Co-PI, UU Geography), Simon Brewer (SP, UU Geography), Shane Macfarlan (SP, UU Anthropology), **Kate Magargal (Postdoc, UU Anthropology)**, in collaboration with Ramesh Shrestha (PI, University of Houston, National Center for Airborne Laser Mapping), and Gavin Noyes (PI, Utah Diné Bikéyah) (\$1,470,534)
- 2017 Resources Legacy Fund. “Firewood Research in Bears Ears National Monument”, collaboration between Utah Diné Bikéyah (UDB) staff Gavin Noyes (Executive Director), Kevin Madalena, Woody Lee, Nizhone Meza, Cynthia Wilson, and UU researchers **Kate Magargal (PhD Student, UU Anthropology)**, and Brian F. Codding (Faculty, UU Anthropology) (\$40,000)
- 2017 Society, Water, and Climate Seed Funding Program, UU, “Can we predict the next Syria: Quantifying the climate-agriculture-conict nexus”, William Anderegg (PI, Biology), Brian F. Codding (Co-PI, Anthropology), Courtenay Strong (Co-PI, Atmospheric Sciences), Shane Mcfarlan (Co-PI, Anthropology), Adrian Bell (Co-PI, Anthropology), and **Kate Magargal (PhD Researcher)** (\$5,000, plus \$4,000 matching funds from the College of Science and Department of Biology)
- 2016 Global Change and Sustainability Center Graduate Research Grant. *People and Fire in Prehistory in the Upper Escalante Watershed, Utah*. Brian F. Codding (Faculty Sponsor), **Kate Magargal (PhD Researcher, Project Supervisor)**(\$2500)
- 2015 CSBS Herbert W. Gustafson Graduate Fellowship, UU. (\$7,000)
- 2015 Global Change & Sustainability Center and the Friends of Red Butte Creek, UU, “Archaeology and Prehistoric Human Ecology of Red Butte Creek”. Tom Flanigan (Co-PI), **Kate Magargal (Field Director)** and Brian F. Codding (PI) (\$5,000)
- 2015/16 Don Currey Research Grant, UU Geography. *Bramble Valley Fire History*. (\$950, \$450)
- 2015 Global Change and Sustainability Center Travel Grant, UU. (\$500 x 2)
- 2014 Funding Incentive Seed Grant, UU Research Foundation, *Burning the Basin: Ethnoecology and Paleoecology of Anthropogenic Fire in the Intermountain West*. Brian F. Codding (PI), **Kate Magargal (PhD Researcher)** (\$33,000)
- 2014 Global Change and Sustainability Center Graduate Research Grant. UU. *Fetching Firewood: Access to fuels as a constraint for prehistoric settlement*. Brian F. Codding (Faculty Sponsor), **Kate Magargal (PhD Researcher, Project Supervisor)**(\$2500)
- 2014 Rio Mesa Young Scholar Grant, UU Bonderman Field Station at Rio Mesa. *Fetch-*

ing Firewood: Access to fuels as a constraint for prehistoric settlement. Brian F. Coddling (Faculty Sponsor), **Kate Magargal (PhD Researcher, Project Supervisor)**(\$2500)

- 2012/13 *Think Globally, Learn Locally* NSF-GK12 Fellowship. UU. (\$30,000x2)
- 2003 President's Award for Undergraduate Research. University of Arizona. (\$500)
- 2003 1st Place Award for Student Research in Agriculture. University of Arizona. (\$200)
- 2003 Janet Upjohn Stearns Foundation Scholarship. University of Arizona.
- 2003 Honors College Undergraduate Research Grant. University of Arizona. (\$1000)

Research & Field Experience

- 2019-present Postdoctoral Research Associate. "Dynamic Impacts of Environmental Change and Biomass Harvesting on Woodland Ecosystems and Traditional Livelihoods." PI: Brian Coddling. (10 months of ethnographic fieldwork)
- 2017 Research Associate, Utah Diné Bikéyah. "Firewood Research in Bears Ears National Monument." Resources Legacy Fund Grant Award. (3 months of ethnographic fieldwork)
- 2015-2017 Archaeological Field Supervisor and Project Coordinator. Lower Dolores River Watershed Archaeology project. PI: Brian Coddling 801-581-8663 (4 weeks archaeological fieldwork)
- 2017 Archaeology Intern. Project: Archaeological Site Impact Assessment along Moab Travel Routes. Bureau of Land Management, Moab Field Office. PI: M. Jared Lundell 435-259-2137. (11 weeks archaeological fieldwork)
- 2017 Research Assistant, University of Utah Anthropology Department. "Can we predict the next Syria: Quantifying the climate-agriculture-conflict nexus." Funding Incentive Seed Grant, University of Utah Research Foundation. (4 weeks computational data analysis)
- 2017 Field Director. Grass Valley, NV. Project Title: "Prearchaic foraging adaptations in the convergence of women's and men's foraging decisions," University of Utah. (NSF #1632522) PI: Brian Coddling 801-581-8663 (10 days archaeological fieldwork)
- 2017 Research Assistant, University of Utah Anthropology Department. "Collaborative Research: Prearchaic foraging adaptations in the convergence of women's and men's foraging decisions." (NSF #1632522, 2 semesters)

- 2016 PhD Researcher, University of Utah Anthropology Department. Ethnographic and ecological data collection in collaboration with members of the Pyramid Lake Paiute Tribe quantifying piñon (*Pinus monophylla*) pine nut harvest yields relative to natural abundance as part of a long-term project coordinated with PI Brian Coddling (University of Utah) and PhD. researcher Ashley K. Parker (University of Utah), Toiyabe National Forest, Nevada. (4 days ethnographic fieldwork)
- 2015/16 Archaeological Technician. Preliminary Excavations at Grass Valley, NV. University of Utah. PI: Brian Coddling 801-581-8663 (3 weeks archaeological fieldwork)
- 2015 Research Assistant, University of Utah/Utah Museum of Natural History. *Archaeobotany of the Sigurd to Red Butte Data Recovery Project, Utah*. PI: Lisbeth Louderback 801-585-2634. (1 semester palynology lab work)
- 2015 Field Director, University of Utah Archaeological Center. “Archaeology and Prehistoric Human Ecology of Red Butte Creek.” Archaeological survey in Red Butte Canyon, Wasatch Front, Utah with Brian Coddling (PI, 801-581-8663) and Tom Flanigan (Co-PI, USFS & University of Utah). Pilot research project designed to provide graduate and undergraduate field experience and test feasibility for local, place-based archaeological education (1 week archaeological fieldwork)
- 2015 Archaeological Crew Lead. Cattle EIS Archaeological survey and revisit project. Grand Staircase-Escalante National Monument/Colorado Plateau Archaeological Alliance. PI: Matt Zweifel, mzweifel@blm.gov, 435-644-1218. (2.5 months archaeological fieldwork)
- 2015 Archaeological Technician. Excavation project at CA-SLO-51, Diablo Canyon Lands, San Luis Obispo County, California. California Polytechnic Field School. PI: Brian Coddling 801-581-8663 (1 week archaeological fieldwork)
- 2014/15 Research Assistant, University of Utah Anthropology Department. *Burning the Basin: Ethnoecology and Paleoecology of Anthropogenic Fire in the Intermountain West*. PI: Brian Coddling 801-581-8663. (2 semesters)
- 2014 PhD Researcher, University of Utah Anthropology Department. Pilot ethnographic work and outreach with Nevada Paiute and Shoshone Tribes (South Fork, Duck Valley, Duck Water, Yomba and Stillwater) in collaboration with Brian Coddling (PI, 801-581-8663) M. Di Paolo (Shoshoni Language Project PI, University of Utah), and Ashley K. Parker (PhD Student, University of Utah) (1 week ethnographic fieldwork)
- 2013 Archaeological Technician. Excavation project at CA-SLO-5, Diablo Canyon Lands, San Luis Obispo County, California. California Polytechnic Field School. PI: Brian Coddling 801-581-8663 (1 week archaeological fieldwork)

- 2013 Archaeological Technician, Red Canyon Survey Project, St. George, UT. Colorado Plateau Archaeological Alliance. 2529 Jackson Ave. Ogden, Utah 84401. Supervisor: Jerry Spangler 801-392-2646 (1 week archaeological fieldwork)
- 2013 Archaeological Technician, Johnson Canyon Survey Project, Colorado Plateau Archaeological Alliance. 2529 Jackson Ave. Ogden, Utah 84401. Supervisor: Jerry Spangler 801-392-2646 (1 week archaeological fieldwork)
- 2012 Archaeological Technician, Bureau of Land Management, Moab Field Office. 82 East Dogwood, Moab, Utah 84532. Supervisor: Don Montoya, dmontoya@blm.gov, 435-259-2149. (3 months archaeological fieldwork)
- 2010/11 Archaeological Technician, Capitol Reef National Park. HC 70 Box 15, Torrey, UT 84775. Supervisor: Dava McGahee (retired) (2 months archaeological fieldwork)
- 2006-2009 Physical Science Technician, National Park Service Night Sky Program. *Full time employment focused where primary duties were fieldwork planning for 4 person team and data management and analysis.*
- 2003 Undergraduate Research Experience and Primate Ecology at La Suerte Biological Research Station, Costa Rica. University of Arizona Anthropology Dept. Mentor: Dr. M.E. Morbeck (Emeritus), morbeck@email.arizona.edu (1 month primatological fieldwork)
- 2002-2005 Lab Aide, University of Arizona Lunar and Planetary Laboratory. *Part-time student position in data management and analysis.*

Service, Outreach, and Other Activities

- 2021 Co-chair of 86th Annual Meeting of the Society for American Archaeology, “Life is Risky: Human behavioral ecological approaches to variable outcomes”.
- 2019 Guest Lecturer, Four Corners Lecture Series, hosted by the Crow Canyon Archaeological Center, Cortez, CO.
- 2019 Guest Lecturer, Far Westerns Occasional Speaker Series, Davis, CA.
- 2018/19 Scientist Pen Pal. Letters to a Pre-Scientist. <http://www.prescientist.org/>.
- 2018/20 Article Referee, Journal of Hunter Gatherer Research.
- 2016/17 Education and Outreach specialist. Bonderman Field Station at Rio Mesa, UU. Supervisor: Zachary Lundeen: 801-585-3177
- 2016 Host, UU Archaeological Center, Archaeology Open House public outreach event, Utah Archaeology Week, Utah State History, May 7, 2016.

- 2016 Presenter with Brian Coddling, Savanna Agardy* and Brock James* on “Engaging Students in Research on Human Ecosystem Dynamics”, UU College of Social and Behavioral Science Advancement Board Meeting, September 16.
- 2015 Host, UU Archaeological Center, Archaeology Open House public outreach event, Utah Archaeology Week, Utah State History, May 2, 2015.
Article Referee, Journal of Archaeological Science.
- 2014 Field Trip Guide, Salt Lake Center for Science Education, AP Environmental Science Fire Ecology Field Trip. October 23, 2014.
Host, UU Archaeological Center, Archaeology Open House public outreach event, Utah Archaeology Week, Utah State History, May 3, 2014.
Host, Outreach with Project Youth Day, hands-on tour of REDlab, sponsored by UU. April 10, 2014.
Host, Outreach with Bennion Elementary school students, hands-on tour of the Archaeological Center, Sponsored by the College of Social and Behavioral Sciences, UU, March 4, 2014.
- 2011–2019 Instructor, Astronomy and Archaeology, UU Bonderman Field Station at Rio Mesa.
- 2009–2013 Chapter Leader (Volunteer), International Dark Sky Association.

Professional Affiliations

- 2021-pres. Society for Applied Anthropology, Member.
- 2012-pres. Society for American Archaeology, Member
- 2018-2020 American Anthropological Association, Member
- 2017-2019 500 Women Scientists, Moab Pod Member.

Skills and Certificates

Programs and program languages: R and RStudio, ArcGIS, GitHub, NetLogo

FAA UAS (drone) Pilot certificate

EXHIBIT 20



Planet Depos[®]
We Make It *Happen*[™]

Transcript of Charles Leander Walén

Date: December 7, 2022

Case: Walén, et al. -v- Burgum, et al.

Planet Depos

Phone: 888-433-3767

Fax: 888-503-3767

Email: transcripts@planetdepos.com

www.planetdepos.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

- - - - - x
CHARLES WALEN, an individual; :
and PAUL HENDERSON, an :
individual, :
Plaintiffs, :
v. : Case No.
DOUG BURGUM, in his official : 1:22-CV-00031-CRH
capacity as Governor of the :
State of North Dakota; and :
ALVIN JAEGER, in his official :
capacity as Secretary of :
State of North Dakota, :
Defendants, :
- - - - - x

(Caption continued on next page)

Deposition of CHARLES LEANDER WALEN
Conducted Virtually
Wednesday, December 7, 2022
2:02 p.m. EST

Job No.: 473885
Pages 1 - 37
Reported by: Debra A. Whitehead

1 (Caption continued from previous page)

2 - - - - - x

3 and :

4 MANDAN, HIDATSA AND ARIKARA :

5 NATION, CESAR ALVAREZ, and :

6 LISA DEVILLE, :

7 Intervenor-Defendants. :

8 - - - - - X

9 Deposition of CHARLES LEANDER WALEN, conducted
10 virtually.

11

12

13 Pursuant to notice, before Debra Ann Whitehead,
14 E-Notary Public in and for the State of Maryland.

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

PAUL R. SANDERSON, ESQUIRE

RYAN J. JOYCE, ESQUIRE

EVENSON SANDERSON

1100 College Drive, Suite 5

Bismarck, North Dakota 58501

(701) 751-1243

ON BEHALF OF DEFENDANTS:

DAVID R. PHILLIPS, ESQUIRE

BAKKE GRINOLDS WIEDERHOLT

300 West Century Avenue

Bismarck, North Dakota 58503

P.O. Box 4247

Bismarck, North Dakota 58502-4247

(701) 751-8188

1 A P P E A R A N C E S C O N T I N U E D

2 ON BEHALF OF INTERVENOR-DEFENDANTS:

3 MARK P. GABER, ESQUIRE

4 MOLLY E. DANAHY, ESQUIRE

5 NICOLE HANSEN, ESQUIRE

6 CAMPAIGN LEGAL CENTER

7 1101 14th Street, NW, Suite 400

8 Washington, DC 20005

9 (202) 716-2200

10 - and -

11 ALLISON NESWOOD, ESQUIRE

12 MICHAEL S. CARTER, ESQUIRE

13 NATIVE AMERICAN RIGHTS FUND

14 1506 Broadway

15 Boulder, Colorado 80301

16 (303) 447-8760

17 - and -

18 SAMANTHA B. KELTY, ESQUIRE

19 NATIVE AMERICAN RIGHTS FUND

20 1514 P Street, NW, Suite D

21 Washington, DC 20005

22 (202) 785-4166

23

24

25

1 A P P E A R A N C E S C O N T I N U E D

2 ALSO PRESENT:

3 KRISTIN HOERTER, Paralegal, NARF

4 LAURIE STIRLING, Paralegal, NARF

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S

EXAMINATION OF CHARLES LEANDER WALEN	PAGE
By Mr. Gaber	7
By Mr. Phillips	25

E X H I B I T S

(none)

1 P R O C E E D I N G S

2 CHARLES LEANDER WALEN,

3 having been duly sworn, testified as follows:

4 EXAMINATION BY COUNSEL FOR

5 INTERVENOR-DEFENDANTS

6 BY MR. GABER:

7 Q Mr. Walen, my name is Mark Gaber. I'm a
8 lawyer for the intervenor-defendants in this case,
9 and I will be asking you some questions.

10 I'll start, can you state your name, for
11 the record.

12 A Charles Walen.

13 Q And have you been deposed before?

14 A Yes.

15 Q How many times?

16 A One time that I can remember, and it was
17 for a work-related reason.

18 Q About how long ago was that?

19 A Fifteen-plus years ago.

20 Q All right. So I'll spend just a couple
21 of minutes here with some ground rules since it's
22 been a while since you've done this. The main one
23 is to be cognizant that we have a court reporter
24 who is taking down all of our words. So that
25 makes it important that we endeavor to talk slowly

1 and that we not talk over each other. That, you
2 know, can be awkward sometimes because that's not
3 how one has a normal conversation. But for her
4 benefit please keep that in mind, and I'll also do
5 my best not to talk over you when you're giving an
6 answer.

7 Does that make sense?

8 A Yes, that does.

9 Q And then another is that you have to give
10 verbal responses to my questions. She can't take
11 down, you know, head nods and the like. And since
12 we're doing this remotely, that's even harder, I
13 imagine, than it might be if we were in the same
14 room with one another. So do try, though again at
15 times it can be awkward to give a verbal response
16 to each question. Okay?

17 A Understand.

18 Q I will assume that you understand my
19 questions unless you say something. So, you know,
20 if I ask you a question and you don't understand
21 it or I do a poor job of asking it, please just
22 let me know, and I will clarify so that we are
23 both on the same page.

24 Okay?

25 A I will do so.

1 Q I don't anticipate us taking much of your
2 time today. But if we do need a break or if you
3 need a break, please let me know, and we can go
4 ahead and take one. The only thing that I ask is
5 if that's the case, that you answer any question
6 that is pending, and then we can go ahead and take
7 a break.

8 Does that sound good?

9 A That sounds good. And I am at work, so
10 just bear that in mind.

11 Q Okay.

12 A I'm in a private office.

13 Q All right. Well, I'll try not to keep
14 you too long from your job.

15 Someone, one of the other attorneys might
16 object to a question that I ask. If they do, you
17 know, let them state that objection, but then you
18 can go ahead and answer my question.

19 Does that make sense?

20 A Yes.

21 Q And is there any reason that you can't
22 answer my questions today truthfully and fully?

23 A No.

24 Q Now, you mentioned you're at your office.
25 Is there anyone else in the room there

1 with you?

2 A No.

3 Q And did you bring any notes with you
4 today?

5 A Yes.

6 Q What's the nature of those notes?

7 A They were from the deposition this
8 morning with Paul. I just took some notes then so
9 that any questions that might be similar, I'll
10 have the answer.

11 Q Well, I would -- it's probably best if --
12 I know you were present this morning. You know, I
13 don't know, maybe I'll direct this to your
14 counsel. Typically if someone has notes, you
15 know, we are entitled to see those. I don't know
16 if you would rather he not have those notes or if
17 you're fine producing them.

18 THE WITNESS: The only thing that's on
19 the notes are names and dates.

20 MR. GABER: So then it sounds like you
21 may be fine producing them.

22 I don't know, Paul, if you have a
23 preference.

24 MR. SANDERSON: I don't -- doesn't
25 matter. You can make a request. Shouldn't be a

1 problem.

2 MR. GABER: Okay. That sounds good.

3 Q And, Mr. Walen, other than the Zoom
4 screen that's open, are there any other screens,
5 e-mail, anything like that, that are open on your
6 computer?

7 A My company e-mail is open because I
8 cannot -- I'm not supposed to close it.

9 Q That's fine with me. I just ask that you
10 not, like, e-mail someone to get answers to
11 questions during the deposition. But I don't want
12 to get you in trouble with your job.

13 What did you do to prepare for today's
14 deposition?

15 A I read through the interrogatories that I
16 had before, and then I watched the deposition this
17 morning.

18 Q Did you meet with your counsel before
19 today's deposition?

20 A By phone only.

21 Q And when was that?

22 A Yesterday and today.

23 Q Did you meet with your counsel after this
24 morning's deposition?

25 A For one question only.

1 Q And I don't want to know what the
2 question and answer were.

3 Did you review any documents in
4 preparation for the deposition?

5 A Yes.

6 Q And when were those documents?

7 A I -- as because of this morning's
8 deposition I looked at my e-mail and my text
9 messages so that I could answer that question.

10 Q And can you just be a little bit more
11 specific. What in particular were you looking
12 for?

13 A To see if I had anything in those areas
14 that pertained to this case.

15 Q And what did you do to make that
16 determination? Did you run a search, or what was
17 your process?

18 A I did a -- just I did a search based on
19 lawsuit and I did a search based on redistricting.

20 Q And that was in your personal e-mail?

21 A Correct.

22 Q What's that e-mail address?

23 A ChuckWalen@Gmail.com.

24 Q And did you find documents?

25 A The only documents that are in there are

1 between my attorney and myself.

2 Q And what about with respect to your text
3 messages?

4 A There was only one outside of the
5 attorney.

6 Q And what was that text message?

7 A Paraphrasing, it said, I understand that
8 you're -- that we redistricted, there may be a
9 lawsuit, I'm willing to help.

10 Q Who was that communication with?

11 A Jay Sandstrom.

12 Q Jay Sandstrom?

13 A Yes.

14 Q And who is he?

15 A He is a member of our district.

16 Q Did you say a member of your district?

17 A Yes. Or constituent of our district.

18 Q You reached out to him?

19 A No; he reached out to me.

20 Q When you say a constituent of your
21 district, is he like -- is he affiliated with the
22 Republican party, or is he -- what's his role?

23 A He is a member of the Republican party.

24 Q Does he hold any official position with
25 the party?

1 A No.

2 Q When was that text message? Or when was
3 that text exchange?

4 A I don't know the date. I'd have to look
5 back at the records.

6 Q Okay.

7 A It was after the redistricting.

8 Q And for both your texts and your e-mail,
9 that was by searching for the word "lawsuit" and
10 searching for the word "redistricting"?

11 A Correct.

12 Q Besides those two search terms, did you
13 search for anything else?

14 A No.

15 Q What kind of cellphone do you use?

16 A Smartphone, Samsung.

17 Q Samsung? Okay.

18 So other than looking through and
19 searching through your e-mail and your text
20 messages, did you review any other documents to
21 prepare for today?

22 A Other than the deposition, no. The
23 interrogatories that were asked.

24 Q And where do you live?

25 A 422 Eagle Drive, New Town.

1 Q And what county is that in?

2 A Mountrail.

3 Q How long have you lived there?

4 A Eleven years.

5 Q Did you say seven or 11?

6 A Eleven.

7 Q Where did you live before that?

8 A West Fargo, North Dakota.

9 Q And do you have any other residences
10 besides the House in New Town?

11 A No.

12 Q And you're registered to vote at that
13 address?

14 A We're not required to register in North
15 Dakota.

16 Q I'm sorry, I actually knew that. That is
17 the address you use to vote?

18 A Yes.

19 Q And that -- am I right that that's in
20 Legislative District 4 for the state Senate and in
21 District 4A for the State House?

22 Is that right?

23 A Correct.

24 Q What do you do for work?

25 A I am an accountant.

1 Q And where do you work?

2 A At United Quality Cooperative.

3 Q And what's the nature of that business?

4 A Restate question.

5 Q What's the nature of that business?

6 A It is a truck stop, fuel, bulk fuel,
7 grocery store, lumberyard, elevator. It's a Cenex
8 place.

9 Q And how long have you worked there?

10 A Eleven years.

11 Q What's your educational background?

12 A High school graduate and come college.

13 Q Do you hold any positions with any
14 political parties?

15 A Yes.

16 Q And what are those?

17 A I'm the District chair for District 4,
18 I'm the Northwest regional chair for the state
19 party, Republican party.

20 Q How long have you been the District 4
21 Republican chair?

22 A Approximately ten years.

23 Q And that's a position elected by the
24 local party members?

25 A Yes.

1 Q And how long have you been the Northwest
2 regional chair for the party?

3 A Four years.

4 Q Is that also elected?

5 A Yes.

6 Q Do you have any other positions with the
7 North Dakota Republican party?

8 A No.

9 Q What about the national Republican party;
10 do you have any involvement there?

11 A No, none.

12 Q And any other political organizations?

13 A No.

14 Q Have you worked on political campaigns?

15 A Yes; in my district.

16 Q And which types of campaigns?

17 A The legislative for Senator and for
18 Congress for North Dakota.

19 Q I'm going to circle back to your
20 conversation that you had with Mr. Sandstrom.

21 What did he say on that conversation?

22 A I don't -- he just asked if there's any
23 way he could help.

24 Q Did you speak with him by phone in
25 addition to the text exchange?

1 A Other than his reaching out to me by his
2 text, I talked to him by phone.

3 Q And what did you discuss in that
4 conversation?

5 A I don't remember. That's over a year
6 ago.

7 Q Have you run for office other than the
8 party positions?

9 A Yes.

10 Q What offices?

11 A West Fargo School Board. I won.

12 Q Anything else?

13 A No.

14 Q How did you become involved in this
15 lawsuit?

16 A I did not like the fact that I lost a
17 representative to represent me, so talking with
18 people within my district, we decided that I
19 should be the one to represent the people of
20 District 4.

21 Q And did someone -- I know you had this
22 text exchange with Mr. Sandstrom.

23 He reached out to you.

24 Is that right?

25 A He reached out to me after seeing the

1 redistricting process, yes.

2 Q I guess did you generate the idea or did
3 someone come to you as a group or, you know --
4 kind of just give me the sort of your explanation
5 of who talked to who and who was involved and how
6 that came about, please.

7 A Myself, Terry Jones, Donita Bye, and
8 Jordan Kannianen were the executive committee of
9 District 4. We discussed what options would be.

10 Q So I think it would be helpful for the
11 court reporter if you could spell those, the last
12 two names at least. I think Terry Jones, and then
13 I believe there were two other names of the
14 executive committee folks?

15 A Donita Bye is D-O-N-I-T-A, B-Y-E. Jordan
16 Kannianen is J-O-R-D-A-N, K-A-N-N-I-A-N-E-N. He's
17 also my son-in-law.

18 Q Well, it's good that you got his name
19 spelled right.

20 So the four of you -- was this while
21 redistricting was still ongoing in the
22 legislature, or was this after the bill had been
23 passed?

24 A It would be after the bill was passed.

25 Q And aside from Representative Jones and

1 the other two folks you mentioned, was anyone else
2 involved in conversations about the potential to
3 file a lawsuit?

4 A No.

5 Q And Jordan, is it Kannianen?

6 A Kannianen.

7 Q Jordan K, is he a member of the state
8 legislature?

9 A He is the state Senator.

10 Q Okay.

11 A District 4.

12 Q When did you first get in touch with your
13 attorneys in this case?

14 A I will defer to them on that question.
15 Don't remember the date exactly.

16 Q So if you don't know exactly, sort of
17 roughly when would that have been? Was it during
18 the legislative process or afterwards, this year,
19 last year?

20 A It would be short -- very shortly after
21 the redistricting.

22 Q And did you reach out to them or did they
23 reach out to you?

24 MR. SANDERSON: Object to the form, to
25 the extent it calls for attorney-client

1 communications.

2 And, Charles, I'd instruct you not to
3 discuss or testify to any communications you've
4 had with counsel in this deposition.

5 Q And just to be clear, I only mean -- I
6 don't want you to tell me what was said or
7 anything like that. I just mean, you know, who
8 generated the -- who initiated the contact?

9 A I don't remember.

10 Q Who is paying for your legal counsel?

11 A I'm not sure who is all paying. I know a
12 few that are.

13 Q Who can you identify?

14 A Paul Henderson, Terry Jones, Jay
15 Sandstrom. Those are the ones I remember.

16 Q And is there an agreement among that
17 group of people to split, it's like an equal
18 share, or what's the arrangement?

19 A I don't know what the arrangement is.

20 Q Are you aware of -- whether or not you
21 know the name, are you aware that if there are
22 other people or groups who are contributing?

23 A I don't know if there are or not.

24 Q What members of the legislature have you
25 discussed this litigation with?

1 A Terry Jones, Jordan Kannianen
2 and (inaudible.)

3 Q We missed the third one.

4 A Clayton Fegley, who is the 4B
5 representative currently.

6 Q And what have you -- I guess roughly when
7 have you spoken with those three people?

8 A I talk to them regularly, as I'm the
9 District chair.

10 Q And what form does that communication
11 take? Do you ever text with those folks?

12 A All -- it's always verbal. Terry lives
13 one -- about three houses away from me, and
14 Jordan, I see him very often.

15 Q Makes sense. Family.

16 A Right.

17 Q Any other legislators that you have
18 spoken with about this lawsuit?

19 A No.

20 Q Why did you decide to become a plaintiff?

21 A Decide to become a what?

22 Q Why did you decide to become a plaintiff?

23 A Because I feel that someone needs to
24 represent District 4.

25 Q And you're cutting out a little bit. It

1 looks like you said something after "someone needs
2 to represent District 4."

3 A No. That was the end.

4 Q So your objection is that you have -- you
5 get to vote for one state representative rather
6 than two state representatives.

7 Is that correct?

8 A Correct. And now I'm not -- I'm not
9 being represented by two, like I have been in the
10 past. When the rest of the state gets two, I only
11 get one.

12 Q So that's your complaint, that you think
13 you should be able to have two representatives,
14 not just one?

15 A Yes, that is the complaint.

16 Q Is there anything else about the
17 redistricting plan that you object to?

18 A No.

19 Q And the extent of the unequal treatment
20 that you think the plan has is that you're
21 represented by one person rather than two?

22 A Correct.

23 Q And that's the sole reason why you'd like
24 to see the district changed to be one full
25 district?

1 A Correct.

2 Q Would you also like to see the district
3 be represented by two Republicans in the State
4 House?

5 A I would like that personally, yes.

6 Q Did you vote in the 2022 election?

7 A Yes.

8 Q And do you regularly vote in elections?

9 A Yes; every election since I was 18.

10 Q Where does -- so you said that -- I think
11 you said Terry Jones has a house down the street
12 from you.

13 Is that right?

14 A Yes.

15 Q How frequently does he stay there?

16 A All the time. He lives there.

17 MR. GABER: I'm going to take a short
18 break, if that's okay. Maybe ten minutes.

19 THE WITNESS: Okay.

20 (A recess was taken.)

21 MR. GABER: Well, Mr. Walen, I don't have
22 any further questions for you. Thank you for your
23 time. Mr. Phillips, representing the Governor and
24 the Secretary of State, I think will have some
25 questions.

1 THE WITNESS: Okay.

2 EXAMINATION BY COUNSEL FOR DEFENDANTS

3 BY MR. PHILLIPS:

4 Q Thank you, Mr. Walen. I'm -- did we lose
5 him? Oh.

6 A Yeah.

7 Q Mr. Walen, I am David Phillips. I'm the
8 attorney representing the defendants in this case,
9 Governor Burgum and Secretary Jaeger. And I have
10 just a few followup questions for you and we'll
11 get you out of here.

12 Mr. Walen, what is your race or
13 ethnicity?

14 A American, Caucasian.

15 Q I think the very beginning of there cut
16 off. I'm sorry, could you just repeat your
17 answer?

18 A I'm American, Caucasian.

19 Q And white would be another way to
20 describe you?

21 A Yes.

22 Q Do you consider yourself to be Native
23 American?

24 A I am an American native. I was born in
25 this country.

1 Q Would it be fair to say you don't
2 consider yourself to be an American Indian?

3 A Correct.

4 Q I may jump around here a little bit, my
5 apologies in advance. I just wanted to clarify a
6 few things that you testified to earlier.

7 You had talked earlier about running and
8 winning a seat on the West Fargo School Board.

9 Is that correct?

10 A Yes.

11 Q I just want to follow up briefly.

12 What years were you on the school board?

13 A Approximately -- well, it would be in the
14 1990s.

15 Q For how many years?

16 A Four years.

17 Q And a few other clarifications.

18 If I recall correctly, did you say you
19 voted in every election since you were 18?

20 A Yes.

21 Q Were all of those elections in the State
22 of North Dakota?

23 A Yes.

24 Q And would that include all state
25 legislative elections?

1 A Yes.

2 Q And all other state-wide elections?

3 A Yes.

4 Q The home that you're in in New Town, do
5 you own or rent that home?

6 A Own.

7 Q And do you live there all year round, or
8 do you leave for part of the year?

9 A I live here all year round.

10 Q The home that you live in now, is that in
11 the subdistrict that's known as Subdistrict 4A?

12 A Correct.

13 Q Have you ever lived in the subdistrict
14 that's known as Subdistrict 4B?

15 A No.

16 Q In this case the defendants and the
17 intervenors have served what's known as written
18 discovery. Those are interrogatories and requests
19 for production of documents.

20 Do you remember participating in
21 answering those?

22 A Yes.

23 Q And did you sign at the bottom of those
24 answers?

25 A Yes.

1 Q Earlier today you talked about some
2 searching that you did today on your phone and
3 your e-mail.

4 Did you do any searching of electronic
5 records before today for purposes of responding to
6 discovery requests?

7 A No.

8 Q Have you reviewed the legislative record
9 about the 2021 redistricting that's found on the
10 website of our state legislature?

11 A Only to the extent to know what the
12 boundaries were.

13 Q In other words, looking at the boundary
14 maps?

15 A Correct.

16 Q Have you watched any of the videos in the
17 legislative record dealing with the 2021
18 redistricting?

19 A No.

20 Q Other than the maps, have you looked at
21 any other documents in the legislative record?

22 A Yes. I try to look at them when they're
23 in session.

24 Q Which documents would those have been?

25 A Daily -- it would be the videos of the

1 sessions, and then I just watch bits and pieces.

2 Q Those videos, did you watch those live as
3 they were taking place during the redistricting
4 process?

5 A No.

6 Q Other than the videos, have you reviewed
7 any documentation, either before or after the
8 commencement of this lawsuit, generated at the
9 legislature relating to redistricting?

10 A No.

11 Q You had testified earlier about some
12 conversations that you had with North Dakota
13 legislators. And you had mentioned Terry Jones,
14 Clayton Fegley. My handwriting is horrible and
15 the spelling was difficult. Who were the other
16 names again?

17 A Jordan Kannianen.

18 Q And if I --

19 A (Inaudible.)

20 Q Say that one more time?

21 A Senator Jordan Kannianen.

22 Q And was there one more?

23 A No; it was just those three.

24 Q Correct me if I'm wrong. If I remember
25 your testimony, I believe you said that those

1 conversations all took place after the
2 redistricting was completed at the state in 2021.

3 Is that correct?

4 A I talk with them regularly as the
5 district chair.

6 Q Did you talk with them --

7 A Only related to this lawsuit, it would be
8 after.

9 Q Related to the lawsuit, after.

10 What conversations did you have with
11 Terry Jones during the redistricting process?

12 A Just discussed bound -- you know, asking
13 what our boundaries would be.

14 Q Did you have any discussions about the
15 issues you're raising in this lawsuit?

16 A Yes, we could have.

17 Q Do you know how many times you talked to
18 Terry Jones during the redistricting process?

19 A I talked to him almost four or five times
20 a week.

21 Q What about Clayton Fegley; how many times
22 did you talk to Clayton during the redistricting
23 process?

24 A Two, three times, maybe four at most.

25 Q And what did you talk about with Clayton?

1 A How the process was going.

2 Q Do you remember anything that Clayton
3 told you about how the process was going?

4 A No.

5 Q Do you remember anything that you told to
6 Clayton during those conversations?

7 A Yes.

8 Q What did you tell Clayton, that you can
9 recall?

10 A That depending on how the redistricting
11 turned out, that we'd look at what legal action we
12 could take to keep it together, if they decided to
13 split it.

14 Q When you say "keep it together," do you
15 mean not subdistricted?

16 A Correct.

17 Q How many conversations during the
18 redistricting process did you have with Jordan,
19 and I won't attempt the last name.

20 A Regarding the lawsuit, not that many. He
21 is my son-in-law, so I communicate with him daily.

22 Q And during the redistricting process you
23 had multiple conversations with him?

24 A Yes.

25 Q And do you remember anything that he told

1 you in those conversations during the
2 redistricting process about the redistricting
3 process?

4 A No.

5 Q Do you remember anything that you told
6 him during the redistricting process about the
7 redistricting process?

8 A That if -- that if the district got
9 split, that we'd look at what legal actions we
10 could take to keep it together.

11 Q Did you have any conversations with any
12 of those three individuals during the
13 redistricting process about the Voting Rights Act?

14 A No.

15 Q Have you ever had a conversation with
16 anyone employed with the North Dakota Legislative
17 Council about the 2021 redistricting process?

18 A No.

19 Q Have you ever had a conversation with
20 anyone else who's employed by or is an agent of
21 the State of North Dakota about the 2021
22 redistricting process?

23 A No.

24 Q Did you, personally, attend or provide
25 any testimony at any of the committee hearings or

1 debates on redistricting in 2021?

2 A No.

3 Q Have you hired an expert to testify at
4 trial about the Voting Rights Act in this case?

5 A I have not.

6 Q Were you aware of whether or not the
7 plaintiffs have done so, including you or your
8 co-plaintiffs?

9 A You'll have to ask the attorneys.

10 MR. PHILLIPS: Let's take a short break.
11 We'll go off the record for just a few minutes.

12 (A recess was taken.)

13 BY MR. PHILLIPS:

14 Q You testified earlier about going through
15 and searching your e-mails and texts today.

16 Since the commencement of this lawsuit,
17 have you deleted any texts that have been deleted
18 and wouldn't have shown up in your results?

19 A No.

20 Q Do you keep all of your text messages
21 without ever deleting them?

22 A They're -- after a period of time they're
23 automatically deleted. I don't know what that
24 time frame is.

25 Q From your Samsung phone?

1 A Correct.

2 Q And what about your e-mails; are they --
3 have they been deleted either automatically or by
4 you since the commencement of this lawsuit?

5 A Not that I'm aware of.

6 Q So we will likely be making a followup
7 request in this case. And so I would ask that you
8 preserve and don't make any deletions, to the
9 extent it's already happened don't do any further
10 deletions of any texts on your phone or any
11 e-mails so that we can make that request and that
12 they don't get inadvertently deleted.

13 And additionally, I would also ask, we'll
14 likely make a request for the notes that you
15 discussed earlier that you took in the last
16 deposition today, the first deposition today, I
17 should say. I'd request that you keep those and
18 hold on to them, too, because we'll likely be
19 making a request for a copy of those.

20 A I will send those to the attorney, to our
21 attorneys.

22 Q Perfect.

23 MR. PHILLIPS: Thank you. I have no
24 further questions.

25 Mr. Gaber?

1 MR. GABER: Nothing further from me.

2 Thank you, Mr. Walen, I appreciate it.

3 MR. SANDERSON: And, Chuck, you have the
4 right to read and sign your deposition or you can
5 waive that right. It's up to you. Paul waived
6 his earlier, if that's what you want to do.

7 THE WITNESS: I can waive it.

8 MR. SANDERSON: All right. Chuck, thank
9 you for your time.

10 COURT REPORTER: Mr. Phillips, same order
11 as earlier?

12 MR. PHILLIPS: Yes.

13 COURT REPORTER: Mr. Sanderson, same
14 order as earlier?

15 MR. SANDERSON: Same order, please.

16 COURT REPORTER: Thank you.

17 (Off the record at 2:57 p.m. EST.)

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ACKNOWLEDGMENT OF DEPONENT

I, CHARLES LEANDER WALEN, do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true,
correct and complete transcription of the
testimony given by me, and any corrections appear
on the attached Errata sheet signed by me.

(DATE)

(SIGNATURE)

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Debra A. Whitehead, the officer before whom the
3 foregoing proceedings were taken, do hereby certify
4 that the foregoing transcript is a true and correct
5 record of the proceedings; that said proceedings
6 were taken by me stenographically and thereafter
7 reduced to typewriting under my supervision; that
8 reading and signing was not requested; and that I am
9 neither counsel for, related to, nor employed by any
10 of the parties to this case and have no interest,
11 financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my hand and
13 affixed my notarial seal this 16th day of December,
14 2022.

15
16 My commission expires:

17 April 30, 2023

18

19

Debra A. Whitehead



20 -----

21 E-NOTARY PUBLIC IN AND FOR THE

22 STATE OF MARYLAND

23

24

25

A			
able	23:1, 29:7,	another	areas
23:13	30:1, 30:8,	8:9, 8:14,	12:13
about	30:9, 33:22	25:19	arikara
7:18, 13:2,	afterwards	answer	2:4
17:9, 19:6,	20:18	8:6, 9:5, 9:18,	around
20:2, 22:13,	again	9:22, 10:10,	26:4
22:18, 23:16,	8:14, 29:16	12:2, 12:9,	arrangement
26:7, 28:1,	agent	25:17	21:18, 21:19
28:9, 29:11,	32:20	answering	aside
30:14, 30:21,	ago	27:21	19:25
30:25, 31:3,	7:18, 7:19,	answers	asked
32:2, 32:6,	18:6	11:10, 27:24	14:23, 17:22
32:13, 32:17,	agreement	anticipate	asking
32:21, 33:4,	21:16	9:1	7:9, 8:21,
33:14, 34:2	ahead	any	30:12
accountant	9:4, 9:6, 9:18	9:5, 9:21,	assume
15:25	all	10:3, 10:9,	8:18
acknowledge	7:20, 7:24,	11:4, 12:3,	attached
36:3	9:13, 21:11,	13:24, 14:20,	36:7
acknowledgment	22:12, 24:16,	15:9, 16:13,	attempt
36:1	26:21, 26:24,	17:6, 17:10,	31:19
act	27:2, 27:7,	17:12, 17:22,	attend
32:13, 33:4	27:9, 30:1,	21:3, 22:17,	32:24
action	33:20, 35:8	24:22, 28:4,	attorney
31:11	allison	28:16, 28:21,	13:1, 13:5,
actions	4:11	29:7, 30:14,	25:8, 34:20
32:9	almost	32:11, 32:25,	attorney-client
actually	30:19	33:17, 34:8,	20:25
15:16	already	34:9, 34:10,	attorneys
addition	34:9	36:6, 37:9	9:15, 20:13,
17:25	also	anyone	33:9, 34:21
additionally	5:2, 8:4, 17:4,	9:25, 20:1,	automatically
34:13	19:17, 24:2,	32:16, 32:20	33:23, 34:3
address	34:13	anything	avenue
12:22, 15:13,	alvarez	11:5, 12:13,	3:13
15:17	2:5	14:13, 18:12,	aware
advance	alvin	21:7, 23:16,	21:20, 21:21,
26:5	1:13	31:2, 31:5,	33:6, 34:5
affiliated	always	31:25, 32:5	away
13:21	22:12	apologies	22:13
affixed	american	26:5	awkward
37:13	4:13, 4:19,	appear	8:2, 8:15
after	25:14, 25:18,	36:6	<hr/> B <hr/>
11:23, 14:7,	25:23, 25:24,	appreciate	b-y-e
18:25, 19:22,	26:2	35:2	19:15
19:24, 20:20,	among	approximately	back
	21:16	16:22, 26:13	14:5, 17:19
	ann	april	
	2:13	37:17	

<p>background 16:11</p> <p>bakke 3:12</p> <p>based 12:18, 12:19</p> <p>bear 9:10</p> <p>because 8:2, 11:7, 12:7, 22:23, 34:18</p> <p>become 18:14, 22:20, 22:21, 22:22</p> <p>been 7:3, 7:13, 7:22, 16:20, 17:1, 19:22, 20:17, 23:9, 28:24, 33:17, 34:3</p> <p>before 2:13, 7:13, 11:16, 11:18, 15:7, 28:5, 29:7, 37:2</p> <p>beginning 25:15</p> <p>behalf 3:2, 3:10, 4:2</p> <p>being 23:9</p> <p>believe 19:13, 29:25</p> <p>benefit 8:4</p> <p>besides 14:12, 15:10</p> <p>best 8:5, 10:11</p> <p>between 13:1</p> <p>bill 19:22, 19:24</p> <p>bismarck 3:7, 3:14, 3:16</p> <p>bit 12:10, 22:25,</p>	<p>26:4</p> <p>bits 29:1</p> <p>board 18:11, 26:8, 26:12</p> <p>born 25:24</p> <p>both 8:23, 14:8</p> <p>bottom 27:23</p> <p>boulder 4:15</p> <p>bound 30:12</p> <p>boundaries 28:12, 30:13</p> <p>boundary 28:13</p> <p>box 3:15</p> <p>break 9:2, 9:3, 9:7, 24:18, 33:10</p> <p>briefly 26:11</p> <p>bring 10:3</p> <p>broadway 4:14</p> <p>bulk 16:6</p> <p>burgum 1:10, 25:9</p> <p>business 16:3, 16:5</p> <p>bye 19:7, 19:15</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calls 20:25</p> <p>came 19:6</p> <p>campaign 4:6</p> <p>campaigns 17:14, 17:16</p>	<p>can't 8:10, 9:21</p> <p>cannot 11:8</p> <p>capacity 1:11, 1:14</p> <p>caption 1:18, 2:1</p> <p>carter 4:12</p> <p>case 1:9, 7:8, 9:5, 12:14, 20:13, 25:8, 27:16, 33:4, 34:7, 37:10</p> <p>caucasian 25:14, 25:18</p> <p>cellphone 14:15</p> <p>cenex 16:7</p> <p>center 4:6</p> <p>century 3:13</p> <p>certificate 37:1</p> <p>certify 37:3</p> <p>cesar 2:5</p> <p>chair 16:17, 16:18, 16:21, 17:2, 22:9, 30:5</p> <p>changed 23:24</p> <p>charles 1:5, 1:19, 2:9, 6:2, 7:2, 7:12, 21:2, 36:2</p> <p>chuck 35:3, 35:8</p> <p>chuckwalen@gmail 12:23</p> <p>circle 17:19</p>	<p>clarifications 26:17</p> <p>clarify 8:22, 26:5</p> <p>clayton 22:4, 29:14, 30:21, 30:22, 30:25, 31:2, 31:6, 31:8</p> <p>clear 21:5</p> <p>close 11:8</p> <p>co-plaintiffs 33:8</p> <p>cognizant 7:23</p> <p>college 3:6, 16:12</p> <p>colorado 4:15</p> <p>com 12:23</p> <p>come 16:12, 19:3</p> <p>commencement 29:8, 33:16, 34:4</p> <p>commission 37:16</p> <p>committee 19:8, 19:14, 32:25</p> <p>communicate 31:21</p> <p>communication 13:10, 22:10</p> <p>communications 21:1, 21:3</p> <p>company 11:7</p> <p>complaint 23:12, 23:15</p> <p>complete 36:5</p> <p>completed 30:2</p> <p>computer 11:6</p>
---	--	---	---

<p>conducted 1:20, 2:9</p> <p>congress 17:18</p> <p>consider 25:22, 26:2</p> <p>constituent 13:17, 13:20</p> <p>contact 21:8</p> <p>continued 1:18, 2:1</p> <p>contributing 21:22</p> <p>conversation 8:3, 17:20, 17:21, 18:4, 32:15, 32:19</p> <p>conversations 20:2, 29:12, 30:1, 30:10, 31:6, 31:17, 31:23, 32:1, 32:11</p> <p>cooperative 16:2</p> <p>copy 34:19</p> <p>correct 12:21, 14:11, 15:23, 23:7, 23:8, 23:22, 24:1, 26:3, 26:9, 27:12, 28:15, 29:24, 30:3, 31:16, 34:1, 36:5, 37:4</p> <p>corrections 36:6</p> <p>correctly 26:18</p> <p>could 12:9, 17:23, 19:11, 25:16, 30:16, 31:12, 32:10</p> <p>council 32:17</p>	<p>counsel 7:4, 10:14, 11:18, 11:23, 21:4, 21:10, 25:2, 37:9</p> <p>country 25:25</p> <p>county 15:1</p> <p>couple 7:20</p> <p>court 1:1, 7:23, 19:11, 35:10, 35:13, 35:16</p> <p>currently 22:5</p> <p>cut 25:15</p> <p>cutting 22:25</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d-o-n-i-t-a 19:15</p> <p>daily 28:25, 31:21</p> <p>dakota 1:2, 1:12, 1:15, 3:7, 3:14, 3:16, 15:8, 15:15, 17:7, 17:18, 26:22, 29:12, 32:16, 32:21</p> <p>danahy 4:4</p> <p>date 14:4, 20:15, 36:10</p> <p>dates 10:19</p> <p>david 3:11, 25:7</p> <p>day 37:13</p> <p>dc 4:8, 4:21</p>	<p>dealing 28:17</p> <p>debates 33:1</p> <p>debra 1:25, 2:13, 37:2</p> <p>december 1:21, 37:13</p> <p>decide 22:20, 22:21, 22:22</p> <p>decided 18:18, 31:12</p> <p>defendants 1:16, 3:10, 25:2, 25:8, 27:16</p> <p>defer 20:14</p> <p>deleted 33:17, 33:23, 34:3, 34:12</p> <p>deleting 33:21</p> <p>deletions 34:8, 34:10</p> <p>depending 31:10</p> <p>deponent 36:1</p> <p>deposed 7:13</p> <p>deposition 1:19, 2:9, 10:7, 11:11, 11:14, 11:16, 11:19, 11:24, 12:4, 12:8, 14:22, 21:4, 34:16, 35:4</p> <p>describe 25:20</p> <p>determination 12:16</p> <p>deville 2:6</p> <p>difficult 29:15</p>	<p>direct 10:13</p> <p>discovery 27:18, 28:6</p> <p>discuss 18:3, 21:3</p> <p>discussed 19:9, 21:25, 30:12, 34:15</p> <p>discussions 30:14</p> <p>district 1:1, 1:2, 13:15, 13:16, 13:17, 13:21, 15:20, 15:21, 16:17, 16:20, 17:15, 18:18, 18:20, 19:9, 20:11, 22:9, 22:24, 23:2, 23:24, 23:25, 24:2, 30:5, 32:8</p> <p>division 1:3</p> <p>documentation 29:7</p> <p>documents 12:3, 12:6, 12:24, 12:25, 14:20, 27:19, 28:21, 28:24</p> <p>doing 8:12</p> <p>done 7:22, 33:7</p> <p>donita 19:7, 19:15</p> <p>doug 1:10</p> <p>down 7:24, 8:11, 24:11</p> <p>drive 3:6, 14:25</p> <p>duly 7:3</p> <p>during 11:11, 20:17,</p>
--	--	--	---

<p>29:3, 30:11, 30:18, 30:22, 31:6, 31:17, 31:22, 32:1, 32:6, 32:12</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-mail 11:5, 11:7, 11:10, 12:8, 12:20, 12:22, 14:8, 14:19, 28:3</p> <p>e-mails 33:15, 34:2, 34:11</p> <p>e-notary 2:14, 37:21</p> <p>each 8:1, 8:16</p> <p>eagle 14:25</p> <p>earlier 26:6, 26:7, 28:1, 29:11, 33:14, 34:15, 35:6, 35:11, 35:14</p> <p>eastern 1:3</p> <p>educational 16:11</p> <p>either 29:7, 34:3</p> <p>elected 16:23, 17:4</p> <p>election 24:6, 24:9, 26:19</p> <p>elections 24:8, 26:21, 26:25, 27:2</p> <p>electronic 28:4</p> <p>elevator 16:7</p> <p>eleven 15:4, 15:6,</p>	<p>16:10</p> <p>else 9:25, 14:13, 18:12, 20:1, 23:16, 32:20</p> <p>employed 32:16, 32:20, 37:9</p> <p>end 23:3</p> <p>endeavor 7:25</p> <p>entitled 10:15</p> <p>equal 21:17</p> <p>errata 36:7</p> <p>esquire 3:3, 3:4, 3:11, 4:3, 4:4, 4:5, 4:11, 4:12, 4:18</p> <p>est 1:22, 35:17</p> <p>ethnicity 25:13</p> <p>even 8:12</p> <p>evenson 3:5</p> <p>ever 22:11, 27:13, 32:15, 32:19, 33:21</p> <p>every 24:9, 26:19</p> <p>exactly 20:15, 20:16</p> <p>examination 6:2, 7:4, 25:2</p> <p>examined 36:3</p> <p>exchange 14:3, 17:25, 18:22</p> <p>executive 19:8, 19:14</p> <p>expert 33:3</p>	<p>expires 37:16</p> <p>explanation 19:4</p> <p>extent 20:25, 23:19, 28:11, 34:9</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 18:16</p> <p>fair 26:1</p> <p>family 22:15</p> <p>fargo 15:8, 18:11, 26:8</p> <p>feel 22:23</p> <p>fegley 22:4, 29:14, 30:21</p> <p>few 21:12, 25:10, 26:6, 26:17, 33:11</p> <p>fifteen-plus 7:19</p> <p>file 20:3</p> <p>financial 37:11</p> <p>find 12:24</p> <p>fine 10:17, 10:21, 11:9</p> <p>first 20:12, 34:16</p> <p>five 30:19</p> <p>folks 19:14, 20:1, 22:11</p> <p>follow 26:11</p> <p>follows 7:3</p>	<p>followup 25:10, 34:6</p> <p>foregoing 36:4, 37:3, 37:4</p> <p>form 20:24, 22:10</p> <p>found 28:9</p> <p>four 17:3, 19:20, 26:16, 30:19, 30:24</p> <p>frame 33:24</p> <p>frequently 24:15</p> <p>fuel 16:6</p> <p>full 23:24</p> <p>fully 9:22</p> <p>fund 4:13, 4:19</p> <p>further 24:22, 34:9, 34:24, 35:1</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gaber 4:3, 6:3, 7:6, 7:7, 10:20, 11:2, 24:17, 24:21, 34:25, 35:1</p> <p>generate 19:2</p> <p>generated 21:8, 29:8</p> <p>give 8:9, 8:15, 19:4</p> <p>given 36:6</p> <p>giving 8:5</p> <p>go 9:3, 9:6, 9:18,</p>
---	---	--	--

<p>33:11 going 17:19, 24:17, 31:1, 31:3, 33:14 good 9:8, 9:9, 11:2, 19:18 governor 1:11, 24:23, 25:9 graduate 16:12 grinolds 3:12 grocery 16:7 ground 7:21 group 19:3, 21:17 groups 21:22 guess 19:2, 22:6</p> <hr/> <p style="text-align: center;">H</p> <p>hand 37:12 handwriting 29:14 hansen 4:5 happened 34:9 harder 8:12 head 8:11 hearings 32:25 help 13:9, 17:23 helpful 19:10 henderson 1:6, 21:14 here 7:21, 25:11,</p>	<p>26:4, 27:9 hereby 36:2, 37:3 hereunto 37:12 hidatsa 2:4 high 16:12 hired 33:3 hoerter 5:3 hold 13:24, 16:13, 34:18 home 27:4, 27:5, 27:10 horrible 29:14 house 15:10, 15:21, 24:4, 24:11 houses 22:13</p> <hr/> <p style="text-align: center;">I</p> <p>idea 19:2 identify 21:13 imagine 8:13 important 7:25 inadvertently 34:12 include 26:24 including 33:7 indian 26:2 individual 1:5, 1:7 individuals 32:12</p>	<p>initiated 21:8 instruct 21:2 interest 37:10 interrogatories 11:15, 14:23, 27:18 intervenor-defen- dants 2:7, 4:2, 7:5, 7:8 interveners 27:17 involved 18:14, 19:5, 20:2 involvement 17:10 issues 30:15</p> <hr/> <p style="text-align: center;">J</p> <p>j-o-r-d-a-n 19:16 jaeger 1:13, 25:9 jay 13:11, 13:12, 21:14 job 1:23, 8:21, 9:14, 11:12 jones 19:7, 19:12, 19:25, 21:14, 22:1, 24:11, 29:13, 30:11, 30:18 jordan 19:8, 19:15, 20:5, 20:7, 22:1, 22:14, 29:17, 29:21, 31:18 joyce 3:4</p>	<p>jump 26:4</p> <hr/> <p style="text-align: center;">K</p> <p>k-a-n-n-i-a-n-e-n 19:16 kannianen 19:8, 19:16, 20:5, 20:6, 22:1, 29:17, 29:21 keep 8:4, 9:13, 31:12, 31:14, 32:10, 33:20, 34:17 kelty 4:18 kind 14:15, 19:4 knew 15:16 know 8:2, 8:11, 8:19, 8:22, 9:3, 9:17, 10:12, 10:13, 10:15, 10:22, 12:1, 14:4, 18:21, 19:3, 20:16, 21:7, 21:11, 21:19, 21:21, 21:23, 28:11, 30:12, 30:17, 33:23 known 27:11, 27:14, 27:17 kristin 5:3</p> <hr/> <p style="text-align: center;">L</p> <p>last 19:11, 20:19, 31:19, 34:15 laurie 5:4 lawsuit 12:19, 13:9,</p>
--	--	--	--

<p>14:9, 18:15, 20:3, 22:18, 29:8, 30:7, 30:9, 30:15, 31:20, 33:16, 34:4 lawyer 7:8 leander 1:19, 2:9, 6:2, 7:2, 36:2 least 19:12 leave 27:8 legal 4:6, 21:10, 31:11, 32:9 legislative 15:20, 17:17, 20:18, 26:25, 28:8, 28:17, 28:21, 32:16 legislators 22:17, 29:13 legislature 19:22, 20:8, 21:24, 28:10, 29:9 let's 33:10 likely 34:6, 34:14, 34:18 lisa 2:6 litigation 21:25 little 12:10, 22:25, 26:4 live 14:24, 15:7, 27:7, 27:9, 27:10, 29:2 lived 15:3, 27:13 lives 22:12, 24:16</p>	<p>local 16:24 long 7:18, 9:14, 15:3, 16:9, 16:20, 17:1 look 14:4, 28:22, 31:11, 32:9 looked 12:8, 28:20 looking 12:11, 14:18, 28:13 looks 23:1 lose 25:4 lost 18:16 lumberyard 16:7</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>main 7:22 make 8:7, 9:19, 10:25, 12:15, 34:8, 34:11, 34:14 makes 7:25, 22:15 making 34:6, 34:19 mandan 2:4 many 7:15, 26:15, 30:17, 30:21, 31:17, 31:20 maps 28:14, 28:20 mark 4:3, 7:7 maryland 2:14, 37:22 matter 10:25</p>	<p>maybe 10:13, 24:18, 30:24 mean 21:5, 21:7, 31:15 meet 11:18, 11:23 member 13:15, 13:16, 13:23, 20:7 members 16:24, 21:24 mentioned 9:24, 20:1, 29:13 message 13:6, 14:2 messages 12:9, 13:3, 14:20, 33:20 michael 4:12 might 8:13, 9:15, 10:9 mind 8:4, 9:10 minutes 7:21, 24:18, 33:11 missed 22:3 molly 4:4 more 12:10, 29:20, 29:22 morning 10:8, 10:12, 11:17 morning's 11:24, 12:7 most 30:24 mountrail 15:2 much 9:1</p>	<p>multiple 31:23 myself 13:1, 19:7</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name 7:7, 7:10, 19:18, 21:21, 31:19 names 10:19, 19:12, 19:13, 29:16 narf 5:3, 5:4 nation 2:5 national 17:9 native 4:13, 4:19, 25:22, 25:24 nature 10:6, 16:3, 16:5 need 9:2, 9:3 needs 22:23, 23:1 neither 37:9 neswood 4:11 new 14:25, 15:10, 27:4 next 1:18 nicole 4:5 nods 8:11 none 6:8, 17:11 normal 8:3 north 1:2, 1:12,</p>
--	--	---	--

<p>1:15, 3:7, 3:14, 3:16, 15:8, 15:14, 17:7, 17:18, 26:22, 29:12, 32:16, 32:21 northwest 16:18, 17:1 notarial 37:13 notary 37:1 notes 10:3, 10:6, 10:8, 10:14, 10:16, 10:19, 34:14 nothing 35:1 notice 2:13 nw 4:7, 4:20</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object 9:16, 20:24, 23:17 objection 9:17, 23:4 office 9:12, 9:24, 18:7 officer 37:2 offices 18:10 official 1:10, 1:13, 13:24 often 22:14 oh 25:5 okay 8:16, 8:24, 9:11, 11:2, 14:6, 14:17,</p>	<p>20:10, 24:18, 24:19, 25:1 one 7:16, 7:22, 8:3, 8:14, 9:4, 9:15, 11:25, 13:4, 18:19, 22:3, 22:13, 23:5, 23:11, 23:14, 23:21, 23:24, 29:20, 29:22 ones 21:15 ongoing 19:21 only 9:4, 10:18, 11:20, 11:25, 12:25, 13:4, 21:5, 23:10, 28:11, 30:7 open 11:4, 11:5, 11:7 options 19:9 order 35:10, 35:14, 35:15 organizations 17:12 other 8:1, 9:15, 11:3, 11:4, 14:18, 14:20, 14:22, 15:9, 17:6, 17:12, 18:1, 18:7, 19:13, 20:1, 21:22, 22:17, 26:17, 27:2, 28:13, 28:20, 28:21, 29:6, 29:15 otherwise 37:11 out 13:18, 13:19,</p>	<p>18:1, 18:23, 18:25, 20:22, 20:23, 22:25, 25:11, 31:11 outcome 37:11 outside 13:4 over 8:1, 8:5, 18:5 own 27:5, 27:6</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>page 1:18, 2:1, 6:2, 8:23 pages 1:24 paralegal 5:3, 5:4 paraphrasing 13:7 part 27:8 participating 27:20 particular 12:11 parties 16:14, 37:10 party 13:22, 13:23, 13:25, 16:19, 16:24, 17:2, 17:7, 17:9, 18:8 passed 19:23, 19:24 past 23:10 paul 1:6, 3:3, 10:8, 10:22, 21:14, 35:5 paying 21:10, 21:11 pending 9:6</p>	<p>people 18:18, 18:19, 21:17, 21:22, 22:7 perfect 34:22 period 33:22 person 23:21 personal 12:20 personally 24:5, 32:24 pertained 12:14 phillips 3:11, 6:4, 24:23, 25:3, 25:7, 33:10, 33:13, 34:23, 35:10, 35:12 phone 11:20, 17:24, 18:2, 28:2, 33:25, 34:10 pieces 29:1 place 16:8, 29:3, 30:1 plaintiff 22:20, 22:22 plaintiffs 1:8, 3:2, 33:7 plan 23:17, 23:20 please 8:4, 8:21, 9:3, 19:6, 35:15 political 16:14, 17:12, 17:14 poor 8:21 position 13:24, 16:23 positions 16:13, 17:6,</p>
--	--	--	---

<p>18:8 potential 20:2 preference 10:23 preparation 12:4 prepare 11:13, 14:21 present 5:2, 10:12 preserve 34:8 previous 2:1 private 9:12 probably 10:11 problem 11:1 proceedings 37:3, 37:5 process 12:17, 19:1, 20:18, 29:4, 30:11, 30:18, 30:23, 31:1, 31:3, 31:18, 31:22, 32:2, 32:3, 32:6, 32:7, 32:13, 32:17, 32:22 producing 10:17, 10:21 production 27:19 provide 32:24 public 2:14, 37:1, 37:21 purposes 28:5 pursuant 2:13</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quality 16:2</p>	<p>question 8:16, 8:20, 9:5, 9:16, 9:18, 11:25, 12:2, 12:9, 16:4, 20:14 questions 7:9, 8:10, 8:19, 9:22, 10:9, 11:11, 24:22, 24:25, 25:10, 34:24</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>race 25:12 raising 30:15 rather 10:16, 23:5, 23:21 reach 20:22, 20:23 reached 13:18, 13:19, 18:23, 18:25 reaching 18:1 read 11:15, 35:4, 36:3 reading 37:8 reason 7:17, 9:21, 23:23 recall 26:18, 31:9 recess 24:20, 33:12 record 7:11, 28:8, 28:17, 28:21, 33:11, 35:17, 37:5 records 14:5, 28:5 redistricted 13:8</p>	<p>redistricting 12:19, 14:7, 14:10, 19:1, 19:21, 20:21, 23:17, 28:9, 28:18, 29:3, 29:9, 30:2, 30:11, 30:18, 30:22, 31:10, 31:18, 31:22, 32:2, 32:6, 32:7, 32:13, 32:17, 32:22, 33:1 reduced 37:7 regarding 31:20 regional 16:18, 17:2 register 15:14 registered 15:12 regularly 22:8, 24:8, 30:4 related 30:7, 30:9, 37:9 relating 29:9 remember 7:16, 18:5, 20:15, 21:9, 21:15, 27:20, 29:24, 31:2, 31:5, 31:25, 32:5 remotely 8:12 rent 27:5 repeat 25:16 reported 1:25 reporter 7:23, 19:11,</p>	<p>35:10, 35:13, 35:16, 37:1 represent 18:17, 18:19, 22:24, 23:2 representative 18:17, 19:25, 22:5, 23:5 representatives 23:6, 23:13 represented 23:9, 23:21, 24:3 representing 24:23, 25:8 republican 13:22, 13:23, 16:19, 16:21, 17:7, 17:9 republicans 24:3 request 10:25, 34:7, 34:11, 34:14, 34:17, 34:19 requested 37:8 requests 27:18, 28:6 required 15:14 residences 15:9 respect 13:2 responding 28:5 response 8:15 responses 8:10 rest 23:10 restate 16:4 results 33:18 review 12:3, 14:20</p>
--	--	---	--

<p>reviewed 28:8, 29:6</p> <p>right 7:20, 9:13, 15:19, 15:22, 18:24, 19:19, 22:16, 24:13, 35:4, 35:5, 35:8</p> <p>rights 4:13, 4:19, 32:13, 33:4</p> <p>role 13:22</p> <p>room 8:14, 9:25</p> <p>roughly 20:17, 22:6</p> <p>round 27:7, 27:9</p> <p>rules 7:21</p> <p>run 12:16, 18:7</p> <p>running 26:7</p> <p>ryan 3:4</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>said 13:7, 21:6, 23:1, 24:10, 24:11, 29:25, 37:5</p> <p>samantha 4:18</p> <p>same 8:13, 8:23, 35:10, 35:13, 35:15, 36:4</p> <p>samsung 14:16, 14:17, 33:25</p> <p>sanderson 3:3, 3:5, 10:24, 20:24, 35:3, 35:8, 35:13, 35:15</p>	<p>sandstrom 13:11, 13:12, 17:20, 18:22, 21:15</p> <p>say 8:19, 13:16, 13:20, 15:5, 17:21, 26:1, 26:18, 29:20, 31:14, 34:17</p> <p>school 16:12, 18:11, 26:8, 26:12</p> <p>screen 11:4</p> <p>screens 11:4</p> <p>seal 37:13</p> <p>search 12:16, 12:18, 12:19, 14:12, 14:13</p> <p>searching 14:9, 14:10, 14:19, 28:2, 28:4, 33:15</p> <p>seat 26:8</p> <p>secretary 1:14, 24:24, 25:9</p> <p>see 10:15, 12:13, 22:14, 23:24, 24:2</p> <p>seeing 18:25</p> <p>senate 15:20</p> <p>senator 17:17, 20:9, 29:21</p> <p>send 34:20</p> <p>sense 8:7, 9:19, 22:15</p>	<p>served 27:17</p> <p>session 28:23</p> <p>sessions 29:1</p> <p>set 37:12</p> <p>seven 15:5</p> <p>share 21:18</p> <p>sheet 36:7</p> <p>short 20:20, 24:17, 33:10</p> <p>shorthand 37:1</p> <p>shortly 20:20</p> <p>should 18:19, 23:13, 34:17</p> <p>shouldn't 10:25</p> <p>shown 33:18</p> <p>sign 27:23, 35:4</p> <p>signature 36:10</p> <p>signature-mig2k 37:18</p> <p>signed 36:7</p> <p>signing 37:8</p> <p>similar 10:9</p> <p>since 7:21, 7:22, 8:11, 24:9, 26:19, 33:16, 34:4</p> <p>slowly 7:25</p> <p>smartphone 14:16</p>	<p>sole 23:23</p> <p>some 7:9, 7:21, 10:8, 24:24, 28:1, 29:11</p> <p>someone 9:15, 10:14, 11:10, 18:21, 19:3, 22:23, 23:1</p> <p>something 8:19, 23:1</p> <p>sometimes 8:2</p> <p>son-in-law 19:17, 31:21</p> <p>sorry 15:16, 25:16</p> <p>sort 19:4, 20:16</p> <p>sound 9:8</p> <p>sounds 9:9, 10:20, 11:2</p> <p>speak 17:24</p> <p>specific 12:11</p> <p>spell 19:11</p> <p>spelled 19:19</p> <p>spelling 29:15</p> <p>spend 7:20</p> <p>split 21:17, 31:13, 32:9</p> <p>spoken 22:7, 22:18</p> <p>start 7:10</p> <p>state 1:12, 1:15, 2:14, 7:10,</p>
---	---	---	---

Transcript of Charles Leander Walen

December 7, 2022

47

<p>9:17, 15:20, 15:21, 16:18, 20:7, 20:9, 23:5, 23:6, 23:10, 24:3, 24:24, 26:21, 26:24, 28:10, 30:2, 32:21, 37:22 state-wide 27:2 states 1:1 stay 24:15 stenographically 37:6 still 19:21 stirling 5:4 stop 16:6 store 16:7 street 4:7, 4:20, 24:11 subdistrict 27:11, 27:13, 27:14 subdistricted 31:15 suite 3:6, 4:7, 4:20 supervision 37:7 supposed 11:8 sure 21:11 sworn 7:3</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take 8:10, 9:4, 9:6, 22:11, 24:17,</p>	<p>31:12, 32:10, 33:10 taken 24:20, 33:12, 37:3, 37:6 taking 7:24, 9:1, 29:3 talk 7:25, 8:1, 8:5, 22:8, 30:4, 30:6, 30:22, 30:25 talked 18:2, 19:5, 26:7, 28:1, 30:17, 30:19 talking 18:17 tell 21:6, 31:8 ten 16:22, 24:18 terms 14:12 terry 19:7, 19:12, 21:14, 22:1, 22:12, 24:11, 29:13, 30:11, 30:18 testified 7:3, 26:6, 29:11, 33:14 testify 21:3, 33:3 testimony 29:25, 32:25, 36:4, 36:6 text 12:8, 13:2, 13:6, 14:2, 14:3, 14:19, 17:25, 18:2, 18:22, 22:11, 33:20 texts 14:8, 33:15, 33:17, 34:10</p>	<p>th 4:7, 37:13 thank 24:22, 25:4, 34:23, 35:2, 35:8, 35:16 thereafter 37:6 thing 9:4, 10:18 things 26:6 think 19:10, 19:12, 23:12, 23:20, 24:10, 24:24, 25:15 third 22:3 three 22:7, 22:13, 29:23, 30:24, 32:12 through 11:15, 14:18, 14:19, 33:14 time 7:16, 9:2, 24:16, 24:23, 29:20, 33:22, 33:24, 35:9 times 7:15, 8:15, 30:17, 30:19, 30:21, 30:24 today 9:2, 9:22, 10:4, 11:22, 14:21, 28:1, 28:2, 28:5, 33:15, 34:16 today's 11:13, 11:19 together 31:12, 31:14, 32:10 told 31:3, 31:5,</p>	<p>31:25, 32:5 took 10:8, 30:1, 34:15 touch 20:12 town 14:25, 15:10, 27:4 transcript 37:4 transcription 36:5 treatment 23:19 trial 33:4 trouble 11:12 truck 16:6 true 36:4, 37:4 truthfully 9:22 try 8:14, 9:13, 28:22 turned 31:11 two 14:12, 19:12, 19:13, 20:1, 23:6, 23:9, 23:10, 23:13, 23:21, 24:3, 30:24 types 17:16 typewriting 37:7 typically 10:14</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>under 37:7 understand 8:17, 8:18,</p>
---	--	---	--

<p>8:20, 13:7 unequal 23:19 united 1:1, 16:2 unless 8:19 use 14:15, 15:17</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>verbal 8:10, 8:15, 22:12 videos 28:16, 28:25, 29:2, 29:6 virtually 1:20, 2:10 vote 15:12, 15:17, 23:5, 24:6, 24:8 voted 26:19 voting 32:13, 33:4</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waive 35:5, 35:7 waived 35:5 walen 1:5, 1:19, 2:9, 6:2, 7:2, 7:7, 7:12, 11:3, 24:21, 25:4, 25:7, 25:12, 35:2, 36:2 want 11:11, 12:1, 21:6, 26:11, 35:6 wanted 26:5 washington 4:8, 4:21 watch 29:1, 29:2</p>	<p>watched 11:16, 28:16 way 17:23, 25:19 we'll 25:10, 33:11, 34:13, 34:18 we're 8:12, 15:14 website 28:10 wednesday 1:21 week 30:20 west 3:13, 15:8, 18:11, 26:8 whereof 37:12 whether 21:20, 33:6 white 25:19 whitehead 1:25, 2:13, 37:2 wiederholt 3:12 willing 13:9 winning 26:8 within 18:18 without 33:21 witness 10:18, 24:19, 25:1, 35:7, 37:12 won 18:11 word 14:9, 14:10 words 7:24, 28:13 work 9:9, 15:24,</p>	<p>16:1 work-related 7:17 worked 16:9, 17:14 wouldn't 33:18 written 27:17 wrong 29:24</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yeah 25:6 year 18:5, 20:18, 20:19, 27:7, 27:8, 27:9 years 7:19, 15:4, 16:10, 16:22, 17:3, 26:12, 26:15, 26:16 yesterday 11:22 yourself 25:22, 26:2</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zoom 11:3</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>00031 1:10 02 1:22</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>11 15:5 1100 3:6 1101 4:7 1243 3:8</p>	<p>14 4:7 1506 4:14 1514 4:20 16 37:13 18 24:9, 26:19 1990 26:14 1:-cv--crh 1:10</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 1:22, 35:17 20005 4:8, 4:21 202 4:9, 4:22 2021 28:9, 28:17, 30:2, 32:17, 32:21, 33:1 2022 1:21, 24:6, 37:14 2023 37:17 22 1:10 2200 4:9 25 6:4</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>30 37:17 300 3:13 303 4:16 37 1:24</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>400 4:7</p>
--	--	--	---

<p>4166 4:22 422 14:25 4247 3:15, 3:16 447 4:16 473885 1:23 4a 15:21, 27:11 4b 22:4, 27:14</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>57 35:17 58501 3:7 58502 3:16 58503 3:14</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>701 3:8, 3:17 716 4:9 751 3:8, 3:17 785 4:22</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>80301 4:15 8188 3:17 8760 4:16</p>	
--	--

EXHIBIT 21



Planet Depos[®]
We Make It *Happen*[™]

Transcript of Paul Henderson

Date: December 7, 2022

Case: Walen, et al. -v- Burgum, et al.

Planet Depos

Phone: 888-433-3767

Fax: 888-503-3767

Email: transcripts@planetdepos.com

www.planetdepos.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

- - - - - x
CHARLES WALEN, an individual; :
and PAUL HENDERSON, an :
individual, :
Plaintiffs, :
v. : Case No.
DOUG BURGUM, in his official : 1:22-CV-00031-CRH
capacity as Governor of the :
State of North Dakota; and :
ALVIN JAEGER, in his official :
capacity as Secretary of :
State of North Dakota, :
Defendants, :
- - - - - x

(Caption continued on next page)

Deposition of PAUL HENDERSON
Conducted Virtually
Wednesday, December 7, 2022
9:15 a.m. EST

Job No.: 473885
Pages 1 - 47
Reported by: Debra A. Whitehead

1 (Caption continued from previous page)

2 - - - - - x

3 and :

4 MANDAN, HIDATSA AND ARIKARA :

5 NATION, CESAR ALVAREZ, and :

6 LISA DEVILLE, :

7 Intervenor-Defendants. :

8 - - - - - X

9 Deposition of PAUL HENDERSON, conducted
10 virtually.

11

12

13 Pursuant to notice, before Debra Ann Whitehead,
14 E-Notary Public in and for the State of Maryland.

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

PAUL R. SANDERSON, ESQUIRE
RYAN J. JOYCE, ESQUIRE
EVENSON SANDERSON
1100 College Drive, Suite 5
Bismarck, North Dakota 58501
(701) 751-1243

ON BEHALF OF DEFENDANTS:

DAVID R. PHILLIPS, ESQUIRE
BAKKE GRINOLDS WIEDERHOLT
300 West Century Avenue
Bismarck, North Dakota 58503
P.O. Box 4247
Bismarck, North Dakota 58502-4247
(701) 751-8188

1 A P P E A R A N C E S C O N T I N U E D

2 ON BEHALF OF INTERVENOR-DEFENDANTS:

3 MARK P. GABER, ESQUIRE

4 MOLLY E. DANAHY, ESQUIRE

5 NICOLE HANSEN, ESQUIRE

6 CAMPAIGN LEGAL CENTER

7 1101 14th Street, NW, Suite 400

8 Washington, DC 20005

9 (202) 716-2200

10 - and -

11 ALLISON NESWOOD, ESQUIRE

12 MICHAEL S. CARTER, ESQUIRE

13 NATIVE AMERICAN RIGHTS FUND

14 1506 Broadway

15 Boulder, Colorado 80301

16 (303) 447-8760

17 - and -

18 SAMANTHA B. KELTY, ESQUIRE

19 NATIVE AMERICAN RIGHTS FUND

20 1514 P Street, NW, Suite D

21 Washington, DC 20005

22 (202) 785-4166

23

24

25

1 A P P E A R A N C E S C O N T I N U E D

2 ALSO PRESENT:

3 LAURIE STIRLING, Paralegal, NARF

4 CHUCK WALEN

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S

EXAMINATION OF PAUL HENDERSON	PAGE
By Mr. Gaber	7
By Mr. Phillips	34

E X H I B I T S

(none)

1 P R O C E E D I N G S

2 PAUL HENDERSON,

3 having been duly sworn, testified as follows:

4 EXAMINATION BY COUNSEL FOR

5 INTERVENOR-DEFENDANTS

6 BY MR. GABER:

7 Q Good morning, Mr. Henderson. My name is
8 Mark Gaber. I am one of the attorneys for the
9 defendant-intervenors in this case.

10 And could you just please state your
11 name, for the record.

12 A Yes. It's Paul Henderson.

13 Q And have you been deposed before?

14 A I have not.

15 Q So I'll go over a couple of the ground
16 rules, in that case.

17 The deposition is a little bit different
18 than a normal conversation because we have a court
19 reporter here. She is transcribing everything
20 that we say. So it's important that we both talk
21 slowly so that she can get the words down, but
22 also that we not interrupt each other. And that
23 can sometimes be hard, because in a normal
24 conversation you would anticipate what someone is
25 saying, and maybe interject?

1 In this case I just ask, I will do my
2 best not to interrupt you. I will probably
3 violate that rule more than you will. But we both
4 should try to be cognizant of the fact that she is
5 here and taking our words down, and that that's
6 not an easy task if we talk over each other.

7 Is that okay with you?

8 A Yeah, very good.

9 Q Another is that it's important to give
10 verbal responses. Nodding of the head or uh-huh
11 is hard for the court reporter to take down and
12 get a clear transcript. So please do give verbal
13 answers.

14 And those are, you know, I think for our
15 court reporter, those are the two most important
16 things. I'd also say that if at any point you
17 need a break, please let me know. I would just
18 ask that if there is a question pending, that you
19 give the answer to that question and then, you
20 know, we can go ahead and take that break, if
21 necessary.

22 I don't anticipate that we're going to be
23 taking a whole lot of your time this morning. And
24 so hopefully the break issue won't be as much of
25 one as it can be when these things go on for seven

1 hours. So just let me know if you need that,
2 though.

3 A Very good.

4 Q I will assume that you understand my
5 question unless you say otherwise. So if you
6 don't understand please say so, and I'll do my
7 best to clarify.

8 Does that work for you?

9 A Yes.

10 Q And you have counsel here. There's
11 counsel for the state here. If folks don't like
12 the way I have asked my question, they may object
13 after I ask it. Unless you're instructed by your
14 counsel not to answer for attorney-client
15 privilege reasons, which I don't anticipate
16 needing to get into that issue, you should just
17 wait for the objection and then go ahead and
18 answer my question.

19 Does that make sense?

20 A Yes.

21 Q Is there any reason that you can't answer
22 my questions fully and truthfully today?

23 A No.

24 Q Now, obviously we're doing this
25 deposition remotely. And so I'm going to ask you

1 a couple of questions that I wouldn't if I were in
2 the room with you.

3 I gather you are at your counsel's law
4 office.

5 Is that right?

6 A That's correct.

7 Q And who is in the room with you?

8 A It's Paul Sanderson and Ryan Joyce.

9 Q Anyone else in the room?

10 A No.

11 Q And Mr. Sanderson and Mr. Joyce, are they
12 seated to the side of you or across from you?

13 A Ryan is seated across from me, and Paul
14 is seated to my right.

15 Q And do you have any notes in front of
16 you?

17 A I will be taking notes, yes.

18 Q But do you have any notes in front of you
19 now?

20 A No, I do not.

21 Q And on the computer screen, are there any
22 windows open, other than this Zoom screen?

23 A I don't know.

24 Q None that you're looking at on the
25 screen?

1 A I guess not. I don't know how to -- I'm
2 not a tech guy, so I don't know that.

3 Q I just want to make sure there's not,
4 like, e-mail or some sort of messaging software or
5 anything.

6 But it sounds like if it were there, you
7 wouldn't even know what to do with it.

8 Am I right?

9 A That's correct.

10 Q What, if anything, did you do to prepare
11 for this deposition?

12 A Not really anything. I knew that it was
13 coming, and I'm confident in my ability to answer
14 any questions. I didn't --

15 Q Did you have any meetings with your
16 counsel, for example?

17 A I did, yeah. Just because I've never
18 done this before.

19 Q And when did that meeting occur?

20 A We met yesterday for a small period of
21 time.

22 Q And that was in person or over the phone?

23 A It was in person.

24 Q Who was present for that meeting?

25 A Ryan.

1 Q Anyone else?

2 A No.

3 Q Did you review any documents to assist
4 you in getting ready for today?

5 A I did not.

6 Q Did you talk to Mr. Walen at all in
7 preparing for today?

8 A I did not.

9 Q What was your -- what do you do for work?

10 A I own and operate a farm here in North
11 Dakota.

12 Q And where in North Dakota is that?

13 A It's in a small village of Calvin, on the
14 edge of the small village of Calvin.

15 Q And that's --

16 A In North Dakota.

17 Q Is that in Cavalier County?

18 A It is.

19 Q And how long have you had that farm?

20 A My entire life.

21 Q Was that passed down from family, or did
22 you start that?

23 A Not relevant. But, yeah, it was passed
24 down.

25 Q Do you have any -- what sort of roles in

1 the community do you play? Are you involved in
2 local government at all?

3 A Yeah. I mean, I'm on my township board.
4 I'm on the county zoning board. I'm a volunteer
5 fire department volunteer. I've been an EMT
6 for -- in the past. And I've also been involved
7 in local politics as a -- participated in all the
8 Republican side of the meetings. And I was the
9 chairman in District 10 for about nine years.

10 Q Are the town board and the -- well, the
11 town board position, is that an elected position?

12 A The township board is elected, yes. The
13 zoning board is an appointed position.

14 Q How long have you been on the town board?

15 A Twenty-five years probably.

16 Q And how frequently are those elections?

17 A They're every year. But there's --

18 Q Are they partisan or --

19 A They're staggered.

20 No, they're not partisan. They're
21 nonpartisan.

22 Q And what is the -- I know you said
23 Calvin, but that's the city that is nearby. Is
24 the township different?

25 A Yeah, the township would be Glen Isle

1 Township, but the down is, kind of for reference
2 point, we only live a couple blocks away from that
3 town, so that's kind of what we say we're from.

4 Q Right. And who appointed you to the city
5 zoning -- or I'm sorry, to the county zoning
6 board?

7 A One of the commissioners.

8 Q Now, you said you were the chair of the
9 District 10 Republican party.

10 Is that right?

11 A That's correct.

12 Q And that was obviously prior to
13 redistricting.

14 Do you hold a position within your
15 current district for the Republican party?

16 A I do not. I do not.

17 Q Did you run for a position for the -- for
18 your current district party?

19 A No. There was no reorganization after
20 the redistricting, so that was not available.

21 Q Now, I know there was some controversy, a
22 meeting of the Republican party related to
23 redistricting and the positions.

24 Is this along the lines of that issue
25 that happened?

1 A Yeah. I mean, that -- there was some
2 controversy because we weren't allowed to reorg.

3 Q Do you know why that was the case?

4 A Yeah. The leadership of the Republican
5 party in the state interpreted a law that was
6 passed in November saying that you -- if you had
7 more than 25 percent population change in your
8 district, because of redistricting, you were --
9 mandatorily you had to -- you had to reorganize at
10 that point.

11 But there was really nothing -- this was
12 a new law. And historically if you changed the
13 boundaries, you were allowed to reorganize. So
14 there was some controversy there.

15 Q There was a meeting where folks walked
16 out.

17 Is that right?

18 A That was a different meeting. That was a
19 state meeting that was in, I want to say December
20 of last year. So that --

21 Q And was that also related to the
22 boundaries of the district chairs and whatnot?

23 A Yes.

24 Q And what was your -- you were one of the
25 participants that walked out.

1 Is that right?

2 A I was.

3 Q And what was your view on what was
4 happening there?

5 A It was very unprofessional, and we were
6 not allowed to get our views across to the body
7 that were there. And so at some point we decided
8 that we would, as a block we would remove
9 ourselves.

10 Q And you were attending as a proxy for
11 District 9.

12 Is that right?

13 A I was, yeah.

14 Q Whose proxy did you have?

15 A Tim Litvin's.

16 Q And is he the current chair for the
17 Republicans for District 9?

18 A He's not.

19 Q Who is that?

20 A That's a good question. I'm kind of
21 terrible with names, so ...

22 It may come to me; it may not.

23 Q Okay. When will be the sort of election
24 for those positions?

25 A They will come due in the new year, from

1 January to April, I believe, is the time slot for
2 reorganizations in North Dakota.

3 Q And do you intend to run for a position
4 when that happens?

5 A I haven't decided yet, but it's possible.

6 Q Other than that position as the chair of
7 the District 10 for the Republicans, have you held
8 any other positions within the state Republican
9 party?

10 A Yeah. I was on the executive board as a
11 regional chairman for a couple of terms, which
12 gave me the ability to be on the executive
13 committee.

14 Q And when was that?

15 A Again, I think it was probably a
16 four-year stint. But it was probably five years
17 ago.

18 Q What about on the national Republican
19 party?

20 A I was available to the national
21 Republican party for a couple of conventions. I
22 served as the resolution committeeman in 2012 in
23 Tampa.

24 Q What does the resolution committeeman do?

25 A He takes the resolutions that are in the

1 national Republican party and reviews them and
2 brings forth any relevant new resolutions that
3 might be relevant to the party in the new election
4 cycle.

5 Q Did you work on the party platform as
6 part of --

7 A That's what it is, yes.

8 Q Aside from your official roles in the
9 state and national Republican party, are you a
10 part of any other political organizations?

11 A No.

12 Q Have you worked on any political
13 campaigns?

14 A Certainly.

15 Q And how many, would you say?

16 A Twenty-five.

17 Q So whenever there's an election, are you
18 pretty actively involved --

19 A Yeah.

20 Q -- and working on --

21 A Yes.

22 Q And has that been exclusively for
23 Republican candidates?

24 A It has.

25 Q Never worked for a Democratic candidate?

1 A No.

2 Q What about an independent candidate?

3 A No, I haven't.

4 Q Now, I understand that your wife is Donna
5 Henderson.

6 Is that right?

7 A Correct.

8 Q And she ran for and was elected as the
9 new representative for House District 9B, as in
10 boy.

11 Is that right?

12 A That's correct.

13 Q Had she run for office before this
14 election?

15 A Not the State House.

16 Q What other office had she run for?

17 A She ran for a position at the state party
18 a couple of years ago.

19 Q Did she get elected to that position?

20 A She did not.

21 Q And I should ask, aside from the elected
22 position you have on the county -- or, sorry, the
23 town board, have you held any other elected
24 office?

25 A No.

1 Q Just the -- I guess the District 10 for
2 the Republican party.

3 That's elected. Right?

4 A That is elected, correct. And so is the
5 regional chairmanship. That's an election as
6 well.

7 Q But you have never run for the state
8 legislature?

9 A No. I was -- I did in -- I ran in our
10 endorsing convention in 2018, but I was
11 unsuccessful.

12 Q And can you just explain for me the
13 endorsing convention versus -- I know you all have
14 primary elections as well.

15 What is the role of the endorsing
16 convention?

17 A The endorsing convention is a political
18 party function. And so all the constituents that
19 want to declare that they're Republicans go to an
20 endorsing convention in the district and vote on
21 who they want to run as a candidate.

22 Q And if you don't get the endorsement, can
23 you still run, you know, with the state, on the
24 primary?

25 A Certainly.

1 Q It's just a matter of who, you know, gets
2 the official endorsement of the local party.

3 Is that the idea?

4 A Yes.

5 Q In the most recent election for your
6 wife, did she have the endorsement at the
7 convention for District 9B?

8 A She did.

9 Q And was that over an incumbent state
10 representative?

11 A Correct.

12 Q What was that person's name?

13 A Charles Damschen.

14 Q And had he been the incumbent for what
15 was formerly District 10?

16 A Correct.

17 Q Do you know how long he was in that
18 position?

19 A I want to say 12 years.

20 Q Okay.

21 A I think he served 12 years.

22 Q What motivated your wife to run this
23 time?

24 A Well, we had talked about running, you
25 know. It's kind of a personal choice. And our

1 time of life was ready for a -- to take a run at
2 the State -- a State House position.

3 Q Did she have any issue with the incumbent
4 that was part of the motivation?

5 A Well, I don't think that was -- that
6 wasn't -- any time you run against an incumbent,
7 there's that. But that wasn't the primary reason,
8 I believe.

9 Q Did the redistricting play a role in her
10 decision?

11 A Well, only reason that that would play a
12 role is that, again with Donna and I, just our
13 personal conversations, when they dissolved
14 District 10 and moved us into District 9, she had
15 worked in the Town of Rolla for 14 years, and so
16 she was better positioned, I think, to run against
17 an incumbent, you know, district-wide than I would
18 have been.

19 Q So you guys were sort of deciding as
20 between the two of you who should run.

21 Is that correct?

22 A Yeah. I think so. I think we would have
23 ran. If all things would have stayed the same,
24 you know, one of us would have ran in District 10.

25 Q And given her work in Rolla, you guys

1 decided that she probably would have a better
2 chance with the name recognition.

3 Is that the idea?

4 A Correct. And she's better looking as
5 well.

6 Q And from my experience in Wisconsin, the
7 State House races are more on the radio than they
8 are on the televisions.

9 A True. True.

10 Q I see on her website she says that, you
11 know, with the recent redistricting process, our
12 district border has changed, and now I'm very
13 excited about the new District 9B. And she
14 mentions having worked in Rolla.

15 Did you share her sort of view and
16 excitement about the new boundaries for 9B?

17 A We did.

18 Q What in particular did you like about
19 them?

20 A I think the opportunity was that by
21 moving a great portion of District 10, and
22 combining it with Rollette and Towner Counties,
23 that it gave -- it gave a Republican a chance to
24 win.

25 Q And that in your view was an improvement?

1 A It was the reality. I don't know if it
2 was an improvement, but it was a reality of what
3 we saw as far as the --

4 Q And -- I'm sorry. Continue.

5 A I mean, that's -- we looked at the
6 numbers, and we felt that it was a good
7 possibility that we could pull it off and she
8 could win.

9 Q Your former district, District 10, that
10 was a district that also favored Republicans.

11 Is that right?

12 A Correct. Correct.

13 Q And your view is that 9B does as well?

14 A It's a lot closer to 50/50, but it is --
15 there is a slight advantage I think to the
16 Republicans. It just depends on who comes out to
17 vote. I mean, I can't -- I can't sit here and
18 tell you what the vote percentages are, because
19 we've only had one election cycle.

20 Q Donna won by a large margin. Right?

21 A She ran -- I mean, she won handily, yes.

22 Q I think she -- 56.5 percent against an
23 incumbent. Right?

24 A Correct.

25 Q The incumbent, Marvin Nelson, he had run

1 for governor before. Right?

2 A He did.

3 Q What was your impression in Cavalier
4 County of folks' thoughts on him?

5 A I don't really know that. I mean, I --
6 it's not something I had conversations with people
7 about more than.

8 Q I gather from the vote totals, they liked
9 your wife better?

10 A Yeah. Yeah. Well, we worked hard, too,
11 so there's that.

12 Q So how did you become a plaintiff in this
13 case?

14 A Well, I became aware that the split was
15 going to happen. And I think I had a conversation
16 with Terry Jones on the phone one day, and we
17 talked about it. And, you know, this was
18 something that was brand-new, and that raised red
19 flags for me right away. And I just latched onto
20 the constitutional argument that's -- that I will
21 stick with, that in District 9, during our
22 election I got to vote for one representative, and
23 the rest of the 47 -- or 45 districts in the state
24 got to vote for two representatives. So I felt
25 like that was probably not equal application of

1 constitutional law.

2 Q So I just want to -- to clarify for the
3 record. When you say "the split," you mean
4 District 9 being split into two subdistricts?

5 A Correct.

6 Q And you said you had a conversation with
7 Terry Jones. Mr. Jones was an incumbent state
8 representative from District 4.

9 Is that correct?

10 A That's correct.

11 Q And did he reach out to you?

12 A He did.

13 Q How do you know Representative Jones?

14 A I don't really know him.

15 I mean, I know of him because he was in
16 the House. But I didn't -- I don't have a
17 personal relationship with Terry.

18 Q What was the -- did he call you, did he
19 e-mail you? How did he reach out?

20 A I believe he called me.

21 Q And what did you talk about?

22 A Just the -- just the split of the
23 district and how that -- how that was going to
24 affect us going forward.

25 Q When was that conversation?

1 A Oh, I would say November, December of
2 last year, somewhere in that area.

3 Q And did he ask you if you would be
4 willing to be a plaintiff?

5 A No.

6 Q What did he say?

7 A We just generally talked about the split
8 and how both him and I picked up on the fact that
9 it was probably unconstitutional. And that was
10 pretty general. Pretty general conversation.

11 Q Do you know how he got your name or why
12 he reached out to you?

13 A I don't.

14 Q He didn't tell you who had said that he
15 should call you?

16 A He did not. But you've got to realize
17 that it's a small state, and I've been in the --
18 politics for 25 years. So it's not like I'm
19 unknown.

20 Q And you were the -- at the time you were
21 the Republican chair for what was District 10,
22 which covered this part of this territory. Right?

23 A Correct.

24 Q And just I think we -- I think this was
25 implied, but you live in the Subdistrict 9B.

1 Is that right?

2 A That's correct.

3 Q And I think you explained it a little
4 bit, but make sure I'm right.

5 Your concern is that you're unable to
6 vote for two state representatives at large; but,
7 rather, you vote for one that's dedicated to your
8 subdistrict.

9 Is that your concern?

10 A That's correct.

11 Q And in terms of, you know, you mentioned
12 that you thought it was unconstitutional. I
13 gather that your complaint is that it's unequal
14 for you to get one when other voters in the state
15 get two representatives that they vote for.

16 Is that correct?

17 A Yeah. I'm not a lawyer, but I know
18 enough to know that that's my experience.

19 Q And when you say you thought it was
20 unconstitutional, is that the unequal treatment
21 that you were concerned about?

22 A Correct.

23 Q Do you have any other objections or
24 complaints about the redistricting plan?

25 A I guess I don't. I just -- that's what

1 I'm basing my participation in, is that it's
2 unconstitutional, in my view.

3 Q And would you like to see the map
4 changed?

5 A I would like to have the opportunity to
6 vote for two representatives, yeah.

7 Q If that change made it harder for
8 Republicans to win the district, would you like to
9 see that?

10 A It wouldn't matter.

11 Q And aside from the fact that you cast
12 your ballot for just one rather than two
13 representatives, is there any other way in which
14 you were affected by the way the map lines are
15 drawn?

16 A No. I guess that would be the height of
17 my complaint.

18 Q Did you cast a ballot in the 2022
19 election? I assume your wife would have made you.

20 A Yes, that is a correct statement.

21 Q Do you regularly vote?

22 A I do.

23 Q Is there an election you've missed?

24 A Not since I was 18. That's a long time
25 ago.

1 Q Do you recall that you were -- the
2 parties in the case were sent some document
3 requests?

4 A I don't understand that question. Go
5 ahead.

6 Q Sorry, that's the way we talk to each
7 other.

8 Did you look at any sort of document that
9 had been sent by me or my colleagues or for the
10 state for requests for production of the documents
11 that you might have?

12 A Yes. Yes, I perused those. Yes.

13 Q What did you do, what was your process
14 for determining whether you had material that
15 would respond to those requests?

16 A Just my memory.

17 Q Did you look through any e-mail or look
18 through your phone at all to see whether you had
19 text messages or other materials that might
20 respond?

21 A I didn't. I just -- I don't text much
22 and I don't e-mail much, so I didn't do any of
23 those things.

24 Q So you just thought about it, and that
25 was basically the extent of it?

1 A Yeah.

2 Q During the course of the campaign with
3 your wife, did you guys text message each other?

4 A I don't think so. We just talked.

5 Q What kind of phone do you have?

6 A Well, I had a Google phone, but I lost
7 it. And I have an Apple phone now.

8 Q Is that an iPhone?

9 A Yeah. Don't ask me what flavor it is,
10 though, because I couldn't tell you.

11 Q Well, they're very expensive. I just had
12 to get a new one. Not great.

13 In your role as the Republican party
14 chair for when it was for District 10, how did
15 people, how did your sort of constituents or
16 colleagues or party folks, how did they reach out
17 to you? How do you all communicate?

18 A Normally it was on -- by phone.

19 Q Do you sometimes share text messages or
20 back and forth over written communication with
21 those folks?

22 A No.

23 Q Never?

24 A I don't believe so.

25 Q Who is paying for your attorneys in this

1 matter?

2 A That would be me and a few others.

3 Q Is that like an hourly rate, or is that
4 sort of a lump sum, capped amount? What is the
5 arrangement there?

6 A I believe it's an hourly rate.

7 Q And who are -- you said you and some
8 others. Who are the other people?

9 A I don't actually have that in front of
10 me. I mean, I know that Chuck is -- Chuck Walen
11 has signed on to this complaint. I haven't really
12 asked him how much money that he's put into the
13 kitty.

14 Q Any other people that you can identify?

15 A I'm sorry to say I don't -- I don't know
16 that.

17 Q Do you know whether there are other
18 people and you just don't know who, you can't
19 think of who they are? Is that the case?

20 A Yeah. I think there's -- there's some
21 other donors, but I don't have their names in
22 front of me.

23 Q And what do you know about them? Are
24 they individuals or are they any sort of entities
25 or organizations?

1 A I think they're all people.

2 Q Is the Republican party contributing any
3 funds to pay for the case?

4 A No. No, they're not.

5 Q Have you discussed this lawsuit with any
6 legislators?

7 A Besides Terry, I don't believe I have.

8 Q I suppose -- when is your wife sworn in?
9 Is that January?

10 A They actually got sworn in yesterday.

11 Q Oh.

12 A And, so, but this is all preliminary
13 stuff. The actual session starts in January.

14 MR. GABER: I am going to have us take a
15 short break, if you don't mind. I don't think I
16 have a ton more questions for you, but I want to
17 think a little bit and talk to some folks. So
18 maybe just a ten-minute break. Ten- or 15-minute
19 break sound good?

20 MR. SANDERSON: Yeah, that's fine.

21 MR. GABER: Thank you.

22 (A recess was taken.)

23 MR. GABER: I do not have any further
24 questions for you.

25 I am going to pass the witness to

1 Mr. Phillips.

2 MR. PHILLIPS: Thank you.

3 EXAMINATION BY COUNSEL FOR DEFENDANTS

4 BY MR. PHILLIPS:

5 Q Still good morning, Mr. Henderson. I'm
6 doing the questioning second today, so I will do
7 my best not to repeat any of the questions you've
8 already been asked. But if I do ask something
9 you've already answered, please just bear with me.

10 I am David Phillips. I'm not sure if we
11 have met before specifically, but I represent the
12 Governor in this case and the Secretary of State.
13 And I will be doing the followup questions today.

14 A Hello.

15 Q I wanted to do just a few followups to
16 clean up some of the matters that I heard you
17 testify to earlier and to add a little bit more
18 detail.

19 I want to start with your background.

20 Where did you go to high school?

21 A I went to a now defunct high school
22 called Border Central.

23 Q Border Central. Where is that located?

24 A In Calvin. Or it was.

25 Q What year did you graduate?

1 A 1980.

2 Q After high school did you attend any
3 college?

4 A Yeah. I took two years of -- at NDSU,
5 and then I did one semester at NDSCS in Wahpeton.

6 Q What did you study at NDSU?

7 A Agronomy.

8 Q And did that result in a degree?

9 A It did not.

10 Q What about in Wahpeton? You took one
11 semester. Did you have any degree at the
12 conclusion of that?

13 A I did not.

14 Q What did you study in Wahpeton?

15 A Well, my wife was going there for dental
16 hygiene, so I studied her quite a bit. Actually,
17 it was an agronomy, it was an agronomy semester as
18 well.

19 Q Have you had any other education since
20 high school in terms of technical training or any
21 other formal education?

22 A I just, I went through the EMT basic
23 course. You know, that's probably 20 years ago.

24 I was an EMT for seven years.

25 Q Where did you do the EMT course?

1 A In Rolla.

2 Q What do you do currently for a living?

3 A I'm in agriculture.

4 Q And are you employed or self-employed?

5 A As the owner and operator of a farm.

6 Q What's the name of the operation?

7 A There is no technical name. It's all
8 under my name.

9 Q How long have you been doing that?

10 A Since I was 18.

11 Q And you just farm the property around
12 your residence in Calvin?

13 A Yeah. I mean, there's -- it's spread out
14 a little bit. But, yeah, it's around.

15 Q I'm at a point where I'm likely to jump
16 around between topics just because I've crossed
17 things off my list that Mr. Gaber already covered
18 with you. So please bear with me on that.

19 What do you consider to be your race or
20 ethnicity?

21 A White, I guess.

22 Q Do you consider yourself to be Native
23 American?

24 A No.

25 Q And what's the race or ethnicity of your

1 wife?

2 A I believe she would be white as well.

3 Q Is she Native American?

4 A She is not.

5 Q I believe you had said in your testimony
6 earlier that you voted in all of the elections
7 since you were 18.

8 Am I remembering that correctly?

9 A That's correct.

10 Q Would that include all state-wide
11 elections in North Dakota?

12 A As to the best of my recollection, yes.

13 Q And all state legislative elections?

14 A Correct.

15 Q What's your current address?

16 A 7980 99th Street, Northeast, Calvin with
17 a C, C-A-L-V-I-N, North Dakota, 58323.

18 Q And do you live there all year round?

19 A I do.

20 Q Do you own any other homes at all?

21 A I don't.

22 Q Some people spend part of the year down
23 south. Are you that type of person, or do you
24 live --

25 A Haven't got there yet. We will be

1 renting a place here in Bismarck for the duration
2 of the session.

3 Q Have you already found a place to rent?

4 A We have.

5 Q And have you signed a lease?

6 A No.

7 Q So I take it you have not yet moved to
8 Bismarck?

9 A We have not.

10 Q Your current address, is that in what's
11 currently districted as Subdistrict 9B?

12 A That's correct.

13 Q Have you ever lived in the area that's
14 subdistricted as Subdistrict 9A?

15 A No.

16 Q Has your wife lived with you the entire
17 time you've been married?

18 A She has.

19 Q How long have you been married?

20 A Changes every year. I think it's 39, but
21 don't quote me on that, because I could get in
22 trouble.

23 Q That's fair.

24 And has she lived there continuously that
25 whole 39 years?

1 A Yeah.

2 I mean, we may have taken some vacations
3 and that type of thing, but our residency has
4 always been Calvin.

5 Q In this lawsuit, is it correct to say
6 that you're seeking to eliminate the subdistrict
7 seat in District 9?

8 A That would be the end result, yes.

9 Q Are you concerned in terms of what that
10 would mean for your wife's current seat in the
11 legislature?

12 A I mean, obviously it's a concern, but I
13 don't -- it doesn't raise itself to the level of
14 overcoming my principles for the
15 unconstitutionality of the process here.

16 Q Do you know what the effect would be if
17 the subdistricts were eliminated on your wife's
18 seat?

19 A I don't. I mean, it's never been done
20 before. We don't know what's the court going to
21 rule. I mean, that's, we don't know. If -- we
22 could talk about what-ifs, I guess. But, I mean,
23 I don't know.

24 I don't know. I just -- I mean, it's
25 possible that they would require a new election in

1 2024 over the whole district. And if that
2 happens, I guess we will work hard for
3 re-election.

4 Q Mr. Gaber had asked you earlier about
5 your written discovery responses.

6 Do you remember those questions?

7 A Yeah. I mean, I looked at them.

8 Q And did you sign those written discovery
9 responses?

10 A Yes. Yes.

11 Q Did you look for documents to produce in
12 response to those discovery requests that were
13 made in this case?

14 A No. I didn't really look a lot because I
15 don't text and I don't e-mail a lot. I don't do
16 that. Most of my communication is in person or
17 over the phone.

18 Q Did you look for any physical paper
19 documents?

20 A I don't have those, so I didn't look. I
21 mean, I just -- I know I didn't write any letters
22 or correspond with anybody in that vein, so ...

23 Q Have you looked at the legislative record
24 in this case on the legislative assembly website?

25 A I --

1 Q I'm sorry, I cut you off. Go ahead.

2 A I have not.

3 Q You haven't looked at any of the
4 documents or other materials on the legislative
5 website relating to redistricting?

6 A I have not.

7 Q Did you look at those in preparing the
8 answers to the written discovery?

9 A No.

10 Q Earlier I believe you had testified about
11 a conversation that you had with Terry Jones.

12 Do you recall that?

13 A Vaguely. I mean, it was a year ago, so I
14 don't -- I can't get specific what we exactly
15 talked about. Generally, though, we talked about
16 this, the unconstitutionality of the split.

17 Q You had mentioned the discussion of the
18 split.

19 Do you have any recollection of any
20 specific statement that you made during that call?

21 A I don't.

22 Q And do you have any recollection of any
23 specific statement that Mr. Jones made during that
24 call?

25 A Specifically, no.

1 Q Do you remember any details at all from
2 that call, other than it involved the split of the
3 districts?

4 A No.

5 Q Have you ever had any conversation with
6 any other North Dakota legislator about the 2021
7 redistricting?

8 A No. Not to my recollection.

9 Q Have you ever had a conversation with
10 anyone employed with the North Dakota Legislative
11 Council about the 2021 redistricting?

12 A No.

13 Q And that would include Claire Ness. If
14 you had a conversation with her?

15 A I don't know who that is.

16 Q What about Emily Thompson?

17 A No.

18 Q And also Samantha Kramer; have you had a
19 conversation with her?

20 A Not that I'm aware of, no.

21 Q Other than the conversation with Terry
22 Jones, have you had any conversation with any
23 other employee or agent of the State of North
24 Dakota about the 2021 redistricting?

25 A No.

1 Q Did you, personally, attend or provide
2 any testimony at the redistricting hearings at the
3 legislature?

4 A I did not.

5 Q Did you, personally, attend the House or
6 Senate floor debate on the redistricting?

7 A I did not.

8 Q Have you ever reviewed the videos of any
9 of those hearings or debates of the redistricting
10 that took place in 2021?

11 A No.

12 Q Have you ever reviewed transcripts of
13 those proceedings?

14 A I have not.

15 Q Have you reviewed any documentation at
16 all during the course of this litigation?

17 A Just the -- I signed the complaint and
18 I've read that. And of course we had meetings
19 with counsel.

20 Q I don't want you to tell me about
21 anything that you talked about with your counsel.
22 But anything else that you've reviewed? Documents
23 you've reviewed or materials you've reviewed?

24 A No.

25 Q Have you retained an expert to testify at

1 trial in this case regarding the Voting Rights
2 Act?

3 A I would have to defer to counsel on that.
4 I don't know.

5 MR. PHILLIPS: Can we take just a
6 few-minute break. I want to review a few things.
7 I may be done, but I just want to check my notes.

8 Let's go off the record briefly.

9 (A recess was taken.)

10 MR. PHILLIPS: I don't have any further
11 questions, Mr. Henderson.

12 THE WITNESS: Okay.

13 MR. PHILLIPS: Thank you.

14 MR. SANDERSON: Any further questions,
15 Mark?

16 MR. GABER: No, nothing from me.

17 Thank you for your time, sir.

18 MR. SANDERSON: All right. I have no
19 questions.

20 Mr. Henderson, you have the right to read
21 and sign your deposition, or you can waive that
22 right. It's your choice. What would you like to
23 do?

24 THE WITNESS: I will waive today.

25 COURT REPORTER: Mr. Phillips, do you

1 need a copy of the transcript?

2 MR. PHILLIPS: Yes.

3 COURT REPORTER: Mr. Sanderson, do you
4 need a copy of the transcript?

5 MR. SANDERSON: Yeah. Electronic
6 condensed, please.

7 MR. PHILLIPS: I'll second that,
8 electronic condensed is fine.

9 (Off the record at 10:36 a.m. EST.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ACKNOWLEDGMENT OF DEPONENT

I, PAUL HENDERSON, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any corrections appear on the attached Errata sheet signed by me.

(DATE)

(SIGNATURE)

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Debra A. Whitehead, the officer before whom the
3 foregoing proceedings were taken, do hereby certify
4 that the foregoing transcript is a true and correct
5 record of the proceedings; that said proceedings
6 were taken by me stenographically and thereafter
7 reduced to typewriting under my supervision; that
8 reading and signing was not requested; and that I am
9 neither counsel for, related to, nor employed by any
10 of the parties to this case and have no interest,
11 financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my hand and
13 affixed my notarial seal this 16th day of December,
14 2022.

15
16 My commission expires:

17 April 30, 2023

18

19

Debra A. Whitehead



20 -----

21 E-NOTARY PUBLIC IN AND FOR THE

22 STATE OF MARYLAND

23

24

25

A			
ability	35:2	always	anyone
11:13, 17:12	again	39:4	10:9, 12:1,
about	17:15, 22:12	american	42:10
13:9, 17:18,	against	4:13, 4:19,	anything
19:2, 21:24,	22:6, 22:16,	36:23, 37:3	11:5, 11:10,
23:13, 23:16,	24:22	amount	11:12, 43:21,
23:18, 25:7,	agent	32:4	43:22
25:17, 26:21,	42:23	ann	appear
27:7, 28:21,	ago	2:13	46:6
28:24, 30:24,	17:17, 19:18,	another	apple
32:23, 35:10,	29:25, 35:23,	8:9	31:7
39:22, 40:4,	41:13	answer	application
41:10, 41:15,	agriculture	8:19, 9:14,	25:25
42:6, 42:11,	36:3	9:18, 9:21,	appointed
42:16, 42:24,	agronomy	11:13	13:13, 14:4
43:20, 43:21	35:7, 35:17	answered	april
acknowledge	ahead	34:9	17:1, 47:17
46:2	8:20, 9:17,	answers	area
acknowledgment	30:5, 41:1	8:13, 41:8	27:2, 38:13
46:1	all	anticipate	argument
across	12:6, 13:2,	7:24, 8:22,	25:20
10:12, 10:13,	13:7, 20:13,	9:15	arikara
16:6	20:18, 22:23,	any	2:4
act	30:18, 31:17,	8:16, 9:21,	around
44:2	33:1, 33:12,	10:15, 10:18,	36:11, 36:14,
actively	36:7, 37:6,	10:21, 11:14,	36:16
18:18	37:10, 37:13,	11:15, 12:3,	arrangement
actual	37:18, 37:20,	12:25, 17:8,	32:5
33:13	42:1, 43:16,	18:2, 18:10,	aside
actually	44:18	18:12, 19:23,	18:8, 19:21,
32:9, 33:10,	allison	22:3, 22:6,	29:11
35:16	4:11	28:23, 29:13,	asked
add	allowed	30:8, 30:17,	9:12, 32:12,
34:17	15:2, 15:13,	30:22, 32:14,	34:8, 40:4
address	16:6	32:24, 33:2,	assembly
37:15, 38:10	along	33:5, 33:23,	40:24
advantage	14:24	34:7, 35:2,	assist
24:15	already	35:11, 35:19,	12:3
affect	34:8, 34:9,	35:20, 37:20,	assume
26:24	36:17, 38:3	40:18, 40:21,	9:4, 29:19
affected	also	41:3, 41:19,	attached
29:14	5:2, 7:22,	41:22, 42:1,	46:6
affixed	8:16, 13:6,	42:5, 42:6,	attend
47:13	15:21, 24:10,	42:22, 43:2,	35:2, 43:1,
after	42:18	43:8, 43:15,	43:5
9:13, 14:19,	alvarez	44:10, 44:14,	attending
	2:5	46:6, 47:9	16:10
	alvin	anybody	attorney-client
	1:13	40:22	9:14

<p>attorneys 7:8, 31:25</p> <p>available 14:20, 17:20</p> <p>avenue 3:13</p> <p>aware 25:14, 42:20</p> <p>away 14:2, 25:19</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back 31:20</p> <p>background 34:19</p> <p>bakke 3:12</p> <p>ballot 29:12, 29:18</p> <p>basic 35:22</p> <p>basically 30:25</p> <p>basing 29:1</p> <p>bear 34:9, 36:18</p> <p>became 25:14</p> <p>because 7:18, 7:23, 11:17, 15:2, 15:8, 24:18, 26:15, 31:10, 36:16, 38:21, 40:14</p> <p>become 25:12</p> <p>been 7:3, 7:13, 13:5, 13:6, 13:14, 18:22, 21:14, 22:18, 27:17, 30:9, 34:8, 36:9, 38:17, 38:19, 39:4, 39:19</p>	<p>before 2:13, 7:13, 11:18, 19:13, 25:1, 34:11, 39:20, 47:2</p> <p>behalf 3:2, 3:10, 4:2</p> <p>being 26:4</p> <p>believe 17:1, 22:8, 26:20, 31:24, 32:6, 33:7, 37:2, 37:5, 41:10</p> <p>besides 33:7</p> <p>best 8:2, 9:7, 34:7, 37:12</p> <p>better 22:16, 23:1, 23:4, 25:9</p> <p>between 22:20, 36:16</p> <p>bismarck 3:7, 3:14, 3:16, 38:1, 38:8</p> <p>bit 7:17, 28:4, 33:17, 34:17, 35:16, 36:14</p> <p>block 16:8</p> <p>blocks 14:2</p> <p>board 13:3, 13:4, 13:10, 13:11, 13:12, 13:13, 13:14, 14:6, 17:10, 19:23</p> <p>body 16:6</p> <p>border 23:12, 34:22, 34:23</p> <p>both 7:20, 8:3, 27:8</p>	<p>boulder 4:15</p> <p>boundaries 15:13, 15:22, 23:16</p> <p>box 3:15</p> <p>boy 19:10</p> <p>brand-new 25:18</p> <p>break 8:17, 8:20, 8:24, 33:15, 33:18, 33:19, 44:6</p> <p>briefly 44:8</p> <p>brings 18:2</p> <p>broadway 4:14</p> <p>burgum 1:10</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>c-a-l-v-i-n 37:17</p> <p>call 26:18, 27:15, 41:20, 41:24, 42:2</p> <p>called 26:20, 34:22</p> <p>calvin 12:13, 12:14, 13:23, 34:24, 36:12, 37:16, 39:4</p> <p>campaign 4:6, 31:2</p> <p>campaigns 18:13</p> <p>can't 9:21, 24:17, 32:18, 41:14</p> <p>candidate 18:25, 19:2,</p>	<p>20:21</p> <p>candidates 18:23</p> <p>capacity 1:11, 1:14</p> <p>capped 32:4</p> <p>caption 1:18, 2:1</p> <p>carter 4:12</p> <p>case 1:9, 7:9, 7:16, 8:1, 15:3, 25:13, 30:2, 32:19, 33:3, 34:12, 40:13, 40:24, 44:1, 47:10</p> <p>cast 29:11, 29:18</p> <p>cavalier 12:17, 25:3</p> <p>center 4:6</p> <p>central 34:22, 34:23</p> <p>century 3:13</p> <p>certainly 18:14, 20:25</p> <p>certificate 47:1</p> <p>certify 47:3</p> <p>cesar 2:5</p> <p>chair 14:8, 16:16, 17:6, 27:21, 31:14</p> <p>chairman 13:9, 17:11</p> <p>chairmanship 20:5</p> <p>chairs 15:22</p> <p>chance 23:2, 23:23</p>
--	---	---	--

<p>change 15:7, 29:7</p> <p>changed 15:12, 23:12, 29:4</p> <p>changes 38:20</p> <p>charles 1:5, 21:13</p> <p>check 44:7</p> <p>choice 21:25, 44:22</p> <p>chuck 5:4, 32:10</p> <p>city 13:23, 14:4</p> <p>claire 42:13</p> <p>clarify 9:7, 26:2</p> <p>clean 34:16</p> <p>clear 8:12</p> <p>closer 24:14</p> <p>cognizant 8:4</p> <p>colleagues 30:9, 31:16</p> <p>college 3:6, 35:3</p> <p>colorado 4:15</p> <p>combining 23:22</p> <p>come 16:22, 16:25</p> <p>comes 24:16</p> <p>coming 11:13</p> <p>commission 47:16</p> <p>commissioners 14:7</p> <p>committee 17:13</p>	<p>committeeman 17:22, 17:24</p> <p>communicate 31:17</p> <p>communication 31:20, 40:16</p> <p>community 13:1</p> <p>complaint 28:13, 29:17, 32:11, 43:17</p> <p>complaints 28:24</p> <p>complete 46:5</p> <p>computer 10:21</p> <p>concern 28:5, 28:9, 39:12</p> <p>concerned 28:21, 39:9</p> <p>conclusion 35:12</p> <p>condensed 45:6, 45:8</p> <p>conducted 1:20, 2:9</p> <p>confident 11:13</p> <p>consider 36:19, 36:22</p> <p>constituents 20:18, 31:15</p> <p>constitutional 25:20, 26:1</p> <p>continue 24:4</p> <p>continued 1:18, 2:1</p> <p>continuously 38:24</p> <p>contributing 33:2</p> <p>controversy 14:21, 15:2, 15:14</p> <p>convention 20:10, 20:13,</p>	<p>20:16, 20:17, 20:20, 21:7</p> <p>conventions 17:21</p> <p>conversation 7:18, 7:24, 25:15, 26:6, 26:25, 27:10, 41:11, 42:5, 42:9, 42:14, 42:19, 42:21, 42:22</p> <p>conversations 22:13, 25:6</p> <p>copy 45:1, 45:4</p> <p>correct 10:6, 11:9, 14:11, 19:7, 19:12, 20:4, 21:11, 21:16, 22:21, 23:4, 24:12, 24:24, 26:5, 26:9, 26:10, 27:23, 28:2, 28:10, 28:16, 28:22, 29:20, 37:9, 37:14, 38:12, 39:5, 46:4, 47:4</p> <p>corrections 46:6</p> <p>correctly 37:8</p> <p>correspond 40:22</p> <p>could 7:10, 24:7, 24:8, 38:21, 39:22</p> <p>couldn't 31:10</p> <p>council 42:11</p> <p>counsel 7:4, 9:10, 9:11, 9:14, 11:16, 34:3,</p>	<p>43:19, 43:21, 44:3, 47:9</p> <p>counsel's 10:3</p> <p>counties 23:22</p> <p>county 12:17, 13:4, 14:5, 19:22, 25:4</p> <p>couple 7:15, 10:1, 14:2, 17:11, 17:21, 19:18</p> <p>course 31:2, 35:23, 35:25, 43:16, 43:18</p> <p>court 1:1, 7:18, 8:11, 8:15, 39:20, 44:25, 45:3</p> <p>covered 27:22, 36:17</p> <p>crossed 36:16</p> <p>current 14:15, 14:18, 16:16, 37:15, 38:10, 39:10</p> <p>currently 36:2, 38:11</p> <p>cut 41:1</p> <p>cycle 18:4, 24:19</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>dakota 1:2, 1:12, 1:15, 3:7, 3:14, 3:16, 12:11, 12:12, 12:16, 17:2, 37:11, 37:17, 42:6, 42:10, 42:24</p> <p>damschen 21:13</p>
---	--	---	---

<p>danahy 4:4 date 46:10 david 3:11, 34:10 day 25:16, 47:13 dc 4:8, 4:21 debate 43:6 debates 43:9 debra 1:25, 2:13, 47:2 december 1:21, 15:19, 27:1, 47:13 decided 16:7, 17:5, 23:1 deciding 22:19 decision 22:10 declare 20:19 dedicated 28:7 defendant-interv- enors 7:9 defendants 1:16, 3:10, 34:3 defer 44:3 defunct 34:21 degree 35:8, 35:11 democratic 18:25 dental 35:15 department 13:5</p>	<p>depends 24:16 deponent 46:1 deposed 7:13 deposition 1:19, 2:9, 7:17, 9:25, 11:11, 44:21 detail 34:18 details 42:1 determining 30:14 deville 2:6 different 7:17, 13:24, 15:18 discovery 40:5, 40:8, 40:12, 41:8 discussed 33:5 discussion 41:17 dissolved 22:13 district 1:1, 1:2, 13:9, 14:9, 14:15, 14:18, 15:8, 15:22, 16:11, 16:17, 17:7, 19:9, 20:1, 20:20, 21:7, 21:15, 22:14, 22:24, 23:12, 23:13, 23:21, 24:9, 24:10, 25:21, 26:4, 26:8, 26:23, 27:21, 29:8, 31:14, 39:7, 40:1 district-wide 22:17</p>	<p>districted 38:11 districts 25:23, 42:3 division 1:3 document 30:2, 30:8 documentation 43:15 documents 12:3, 30:10, 40:11, 40:19, 41:4, 43:22 doing 9:24, 34:6, 34:13, 36:9 done 11:18, 39:19, 44:7 donna 19:4, 22:12, 24:20 donors 32:21 doug 1:10 down 7:21, 8:5, 8:11, 12:21, 12:24, 14:1, 37:22 drawn 29:15 drive 3:6 due 16:25 duly 7:3 duration 38:1 during 25:21, 31:2, 41:20, 41:23, 43:16</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-mail 11:4, 26:19,</p>	<p>30:17, 30:22, 40:15 e-notary 2:14, 47:21 each 7:22, 8:6, 30:6, 31:3 earlier 34:17, 37:6, 40:4, 41:10 eastern 1:3 easy 8:6 edge 12:14 education 35:19, 35:21 effect 39:16 elected 13:11, 13:12, 19:8, 19:19, 19:21, 19:23, 20:3, 20:4 election 16:23, 18:3, 18:17, 19:14, 20:5, 21:5, 24:19, 25:22, 29:19, 29:23, 39:25 elections 13:16, 20:14, 37:6, 37:11, 37:13 electronic 45:5, 45:8 eliminate 39:6 eliminated 39:17 else 10:9, 12:1, 43:22 emily 42:16 employed 36:4, 42:10,</p>
--	---	--	--

<p>47:9 employee 42:23 emt 13:5, 35:22, 35:24, 35:25 end 39:8 endorsement 20:22, 21:2, 21:6 endorsing 20:10, 20:13, 20:15, 20:17, 20:20 enough 28:18 entire 12:20, 38:16 entities 32:24 equal 25:25 errata 46:7 esquire 3:3, 3:4, 3:11, 4:3, 4:4, 4:5, 4:11, 4:12, 4:18 est 1:22, 45:9 ethnicity 36:20, 36:25 even 11:7 evenson 3:5 ever 38:13, 42:5, 42:9, 43:8, 43:12 every 13:17, 38:20 everything 7:19 exactly 41:14 examination 6:2, 7:4, 34:3</p>	<p>examined 46:3 example 11:16 excited 23:13 excitement 23:16 exclusively 18:22 executive 17:10, 17:12 expensive 31:11 experience 23:6, 28:18 expert 43:25 expires 47:16 explain 20:12 explained 28:3 extent 30:25</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 8:4, 27:8, 29:11 fair 38:23 family 12:21 far 24:3 farm 12:10, 12:19, 36:5, 36:11 favored 24:10 felt 24:6, 25:24 few 32:2, 34:15, 44:6 few-minute 44:6</p>	<p>financial 47:11 fine 33:20, 45:8 fire 13:5 five 17:16 flags 25:19 flavor 31:9 floor 43:6 folks 9:11, 15:15, 25:4, 31:16, 31:21, 33:17 follows 7:3 followup 34:13 followups 34:15 foregoing 46:3, 47:3, 47:4 formal 35:21 former 24:9 formerly 21:15 forth 18:2, 31:20 forward 26:24 found 38:3 four-year 17:16 frequently 13:16 front 10:15, 10:18, 32:9, 32:22 fully 9:22</p>	<p>function 20:18 fund 4:13, 4:19 funds 33:3 further 33:23, 44:10, 44:14</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gaber 4:3, 6:3, 7:6, 7:8, 33:14, 33:21, 33:23, 36:17, 40:4, 44:16 gather 10:3, 25:8, 28:13 gave 17:12, 23:23 general 27:10 generally 27:7, 41:15 getting 12:4 give 8:9, 8:12, 8:19 given 22:25, 46:5 glen 13:25 go 7:15, 8:20, 8:25, 9:17, 20:19, 30:4, 34:20, 41:1, 44:8 going 8:22, 9:25, 25:15, 26:23, 26:24, 33:14, 33:25, 35:15, 39:20 good 7:7, 8:8, 9:3,</p>
---	---	--	---

<p>16:20, 24:6, 33:19, 34:5 google 31:6 government 13:2 governor 1:11, 25:1, 34:12 graduate 34:25 great 23:21, 31:12 grinolds 3:12 ground 7:15 guess 11:1, 20:1, 28:25, 29:16, 36:21, 39:22, 40:2 guy 11:2 guys 22:19, 22:25, 31:3</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hand 47:12 handily 24:21 hansen 4:5 happen 25:15 happened 14:25 happening 16:4 happens 17:4, 40:2 hard 7:23, 8:11, 25:10, 40:2 harder 29:7</p>	<p>head 8:10 heard 34:16 hearings 43:2, 43:9 height 29:16 held 17:7, 19:23 hello 34:14 henderson 1:6, 1:19, 2:9, 6:2, 7:2, 7:7, 7:12, 19:5, 34:5, 44:11, 44:20, 46:2 here 7:19, 8:5, 9:10, 9:11, 12:10, 24:17, 38:1, 39:15 hereby 46:2, 47:3 hereunto 47:12 hidatsa 2:4 high 34:20, 34:21, 35:2, 35:20 historically 15:12 hold 14:14 homes 37:20 hopefully 8:24 hourly 32:3, 32:6 hours 9:1 house 19:9, 19:15, 22:2, 23:7, 26:16, 43:5</p>	<p>hygiene 35:16</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 21:3, 23:3 identify 32:14 implied 27:25 important 7:20, 8:9, 8:15 impression 25:3 improvement 23:25, 24:2 include 37:10, 42:13 incumbent 21:9, 21:14, 22:3, 22:6, 22:17, 24:23, 24:25, 26:7 independent 19:2 individual 1:5, 1:7 individuals 32:24 instructed 9:13 intend 17:3 interest 47:10 interject 7:25 interpreted 15:5 interrupt 7:22, 8:2 intervenor-defen- dants 2:7, 4:2, 7:5 involved 13:1, 13:6, 18:18, 42:2 iphone 31:8</p>	<p>isle 13:25 issue 8:24, 9:16, 14:24, 22:3 itself 39:13</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>jaeger 1:13 january 17:1, 33:9, 33:13 job 1:23 jones 25:16, 26:7, 26:13, 41:11, 41:23, 42:22 joyce 3:4, 10:8, 10:11 jump 36:15</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>kelty 4:18 kind 14:1, 14:3, 16:20, 21:25, 31:5 kitty 32:13 knew 11:12 know 8:14, 8:17, 8:20, 9:1, 10:23, 11:1, 11:2, 11:7, 13:22, 14:21, 15:3, 20:13, 20:23, 21:1, 21:17, 21:25, 22:17, 22:24, 23:11, 24:1,</p>
---	---	--	---

25:5, 25:17, 26:13, 26:14, 26:15, 27:11, 28:11, 28:17, 28:18, 32:10, 32:15, 32:17, 32:18, 32:23, 35:23, 39:16, 39:20, 39:21, 39:23, 39:24, 40:21, 42:15, 44:4 kramer 42:18 <hr/> <p style="text-align: center;">L</p> <hr/> large 24:20, 28:6 last 15:20, 27:2 latched 25:19 laurie 5:3 law 10:3, 15:5, 15:12, 26:1 lawsuit 33:5, 39:5 lawyer 28:17 leadership 15:4 lease 38:5 legal 4:6 legislative 37:13, 40:23, 40:24, 41:4, 42:10 legislator 42:6 legislators 33:6 legislature 20:8, 39:11, 43:3	let's 44:8 letters 40:21 level 39:13 life 12:20, 22:1 liked 25:8 likely 36:15 lines 14:24, 29:14 lisa 2:6 list 36:17 litigation 43:16 little 7:17, 28:3, 33:17, 34:17, 36:14 litvin's 16:15 live 14:2, 27:25, 37:18, 37:24 lived 38:13, 38:16, 38:24 living 36:2 local 13:2, 13:7, 21:2 located 34:23 long 12:19, 13:14, 21:17, 29:24, 36:9, 38:19 look 30:8, 30:17, 40:11, 40:14, 40:18, 40:20, 41:7	looked 24:5, 40:7, 40:23, 41:3 looking 10:24, 23:4 lost 31:6 lot 8:23, 24:14, 40:14, 40:15 lump 32:4 <hr/> <p style="text-align: center;">M</p> <hr/> made 29:7, 29:19, 40:13, 41:20, 41:23 make 9:19, 11:3, 28:4 mandan 2:4 mandatorily 15:9 many 18:15 map 29:3, 29:14 margin 24:20 mark 4:3, 7:8, 44:15 married 38:17, 38:19 marvin 24:25 maryland 2:14, 47:22 material 30:14 materials 30:19, 41:4, 43:23 matter 21:1, 29:10, 32:1 matters 34:16	maybe 7:25, 33:18 mean 13:3, 15:1, 24:5, 24:17, 24:21, 25:5, 26:3, 26:15, 32:10, 36:13, 39:2, 39:10, 39:12, 39:19, 39:21, 39:22, 39:24, 40:7, 40:21, 41:13 meeting 11:19, 11:24, 14:22, 15:15, 15:18, 15:19 meetings 11:15, 13:8, 43:18 memory 30:16 mentioned 28:11, 41:17 mentions 23:14 message 31:3 messages 30:19, 31:19 messaging 11:4 met 11:20, 34:11 michael 4:12 might 18:3, 30:11, 30:19 mind 33:15 minute 33:18 missed 29:23 molly 4:4 money 32:12
---	---	---	--

<p>more 8:3, 15:7, 23:7, 25:7, 33:16, 34:17 morning 7:7, 8:23, 34:5 most 8:15, 21:5, 40:16 motivated 21:22 motivation 22:4 moved 22:14, 38:7 moving 23:21 much 8:24, 30:21, 30:22, 32:12</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name 7:7, 7:11, 21:12, 23:2, 27:11, 36:6, 36:7, 36:8 names 16:21, 32:21 narf 5:3 nation 2:5 national 17:18, 17:20, 18:1, 18:9 native 4:13, 4:19, 36:22, 37:3 ndscs 35:5 ndsu 35:4, 35:6 nearby 13:23 necessary 8:21 need 8:17, 9:1,</p>	<p>45:1, 45:4 needing 9:16 neither 47:9 nelson 24:25 ness 42:13 neswood 4:11 never 11:17, 18:25, 20:7, 31:23, 39:19 new 15:12, 16:25, 18:2, 18:3, 19:9, 23:13, 23:16, 31:12, 39:25 next 1:18 nicole 4:5 nine 13:9 nodding 8:10 none 6:8, 10:24 nonpartisan 13:21 normal 7:18, 7:23 normally 31:18 north 1:2, 1:12, 1:15, 3:7, 3:14, 3:16, 12:10, 12:12, 12:16, 17:2, 37:11, 37:17, 42:6, 42:10, 42:23 northeast 37:16 notarial 47:13</p>	<p>notary 47:1 notes 10:15, 10:17, 10:18, 44:7 nothing 15:11, 44:16 notice 2:13 november 15:6, 27:1 numbers 24:6 nw 4:7, 4:20</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object 9:12 objection 9:17 objections 28:23 obviously 9:24, 14:12, 39:12 occur 11:19 office 10:4, 19:13, 19:16, 19:24 officer 47:2 official 1:10, 1:13, 18:8, 21:2 oh 27:1, 33:11 okay 8:7, 16:23, 21:20, 44:12 one 7:8, 8:25, 14:7, 15:24, 22:24, 24:19, 25:16, 25:22, 28:7, 28:14, 29:12, 31:12,</p>	<p>35:5, 35:10 only 14:2, 22:11, 24:19 open 10:22 operate 12:10 operation 36:6 operator 36:5 opportunity 23:20, 29:5 organizations 18:10, 32:25 other 7:22, 8:6, 10:22, 17:6, 17:8, 18:10, 19:16, 19:23, 28:14, 28:23, 29:13, 30:7, 30:19, 31:3, 32:8, 32:14, 32:17, 32:21, 35:19, 35:21, 37:20, 41:4, 42:2, 42:6, 42:21, 42:23 others 32:2, 32:8 otherwise 9:5, 47:11 ourselves 16:9 out 15:16, 15:25, 24:16, 26:11, 26:19, 27:12, 31:16, 36:13 outcome 47:11 over 7:15, 8:6, 11:22, 21:9, 31:20, 40:1, 40:17</p>
--	--	---	--

<p>overcoming 39:14</p> <p>own 12:10, 37:20</p> <p>owner 36:5</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>page 1:18, 2:1, 6:2</p> <p>pages 1:24</p> <p>paper 40:18</p> <p>paralegal 5:3</p> <p>part 18:6, 18:10, 22:4, 27:22, 37:22</p> <p>participants 15:25</p> <p>participated 13:7</p> <p>participation 29:1</p> <p>particular 23:18</p> <p>parties 30:2, 47:10</p> <p>partisan 13:18, 13:20</p> <p>party 14:9, 14:15, 14:18, 14:22, 15:5, 17:9, 17:19, 17:21, 18:1, 18:3, 18:5, 18:9, 19:17, 20:2, 20:18, 21:2, 31:13, 31:16, 33:2</p> <p>pass 33:25</p> <p>passed 12:21, 12:23, 15:6</p>	<p>past 13:6</p> <p>paul 1:6, 1:19, 2:9, 3:3, 6:2, 7:2, 7:12, 10:8, 10:13, 46:2</p> <p>pay 33:3</p> <p>paying 31:25</p> <p>pending 8:18</p> <p>people 25:6, 31:15, 32:8, 32:14, 32:18, 33:1, 37:22</p> <p>percent 15:7, 24:22</p> <p>percentages 24:18</p> <p>period 11:20</p> <p>person 11:22, 11:23, 37:23, 40:16</p> <p>person's 21:12</p> <p>personal 21:25, 22:13, 26:17</p> <p>personally 43:1, 43:5</p> <p>perused 30:12</p> <p>phillips 3:11, 6:4, 34:1, 34:2, 34:4, 34:10, 44:5, 44:10, 44:13, 44:25, 45:2, 45:7</p> <p>phone 11:22, 25:16, 30:18, 31:5, 31:6, 31:7, 31:18, 40:17</p>	<p>physical 40:18</p> <p>picked 27:8</p> <p>place 38:1, 38:3, 43:10</p> <p>plaintiff 25:12, 27:4</p> <p>plaintiffs 1:8, 3:2</p> <p>plan 28:24</p> <p>platform 18:5</p> <p>play 13:1, 22:9, 22:11</p> <p>please 7:10, 8:12, 8:17, 9:6, 34:9, 36:18, 45:6</p> <p>point 8:16, 14:2, 15:10, 16:7, 36:15</p> <p>political 18:10, 18:12, 20:17</p> <p>politics 13:7, 27:18</p> <p>population 15:7</p> <p>portion 23:21</p> <p>position 13:11, 13:13, 14:14, 14:17, 17:3, 17:6, 19:17, 19:19, 19:22, 21:18, 22:2</p> <p>positioned 22:16</p> <p>positions 14:23, 16:24, 17:8</p> <p>possibility 24:7</p>	<p>possible 17:5, 39:25</p> <p>preliminary 33:12</p> <p>prepare 11:10</p> <p>preparing 12:7, 41:7</p> <p>present 5:2, 11:24</p> <p>pretty 18:18, 27:10</p> <p>previous 2:1</p> <p>primary 20:14, 20:24, 22:7</p> <p>principles 39:14</p> <p>prior 14:12</p> <p>privilege 9:15</p> <p>probably 8:2, 13:15, 17:15, 17:16, 23:1, 25:25, 27:9, 35:23</p> <p>proceedings 43:13, 47:3, 47:5</p> <p>process 23:11, 30:13, 39:15</p> <p>produce 40:11</p> <p>production 30:10</p> <p>property 36:11</p> <p>provide 43:1</p> <p>proxy 16:10, 16:14</p> <p>public 2:14, 47:1, 47:21</p> <p>pull 24:7</p>
--	--	---	---

<p>pursuant 2:13</p> <p>put 32:12</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 8:18, 8:19, 9:5, 9:12, 9:18, 16:20, 30:4</p> <p>questioning 34:6</p> <p>questions 9:22, 10:1, 11:14, 33:16, 33:24, 34:7, 34:13, 40:6, 44:11, 44:14, 44:19</p> <p>quite 35:16</p> <p>quote 38:21</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>race 36:19, 36:25</p> <p>races 23:7</p> <p>radio 23:7</p> <p>raise 39:13</p> <p>raised 25:18</p> <p>ran 19:8, 19:17, 20:9, 22:23, 22:24, 24:21</p> <p>rate 32:3, 32:6</p> <p>rather 28:7, 29:12</p> <p>re-election 40:3</p> <p>reach 26:11, 26:19, 31:16</p>	<p>reached 27:12</p> <p>read 43:18, 44:20, 46:3</p> <p>reading 47:8</p> <p>ready 12:4, 22:1</p> <p>reality 24:1, 24:2</p> <p>realize 27:16</p> <p>really 11:12, 15:11, 25:5, 26:14, 32:11, 40:14</p> <p>reason 9:21, 22:7, 22:11</p> <p>reasons 9:15</p> <p>recall 30:1, 41:12</p> <p>recent 21:5, 23:11</p> <p>recess 33:22, 44:9</p> <p>recognition 23:2</p> <p>recollection 37:12, 41:19, 41:22, 42:8</p> <p>record 7:11, 26:3, 40:23, 44:8, 45:9, 47:5</p> <p>red 25:18</p> <p>redistricting 14:13, 14:20, 14:23, 15:8, 22:9, 23:11, 28:24, 41:5, 42:7, 42:11, 42:24, 43:2, 43:6, 43:9</p> <p>reduced 47:7</p>	<p>reference 14:1</p> <p>regarding 44:1</p> <p>regional 17:11, 20:5</p> <p>regularly 29:21</p> <p>related 14:22, 15:21, 47:9</p> <p>relating 41:5</p> <p>relationship 26:17</p> <p>relevant 12:23, 18:2, 18:3</p> <p>remember 40:6, 42:1</p> <p>remembering 37:8</p> <p>remotely 9:25</p> <p>remove 16:8</p> <p>rent 38:3</p> <p>renting 38:1</p> <p>reorg 15:2</p> <p>reorganization 14:19</p> <p>reorganizations 17:2</p> <p>reorganize 15:9, 15:13</p> <p>repeat 34:7</p> <p>reported 1:25</p> <p>reporter 7:19, 8:11, 8:15, 44:25, 45:3, 47:1</p> <p>represent 34:11</p>	<p>representative 19:9, 21:10, 25:22, 26:8, 26:13</p> <p>representatives 25:24, 28:6, 28:15, 29:6, 29:13</p> <p>republican 13:8, 14:9, 14:15, 14:22, 15:4, 17:8, 17:18, 17:21, 18:1, 18:9, 18:23, 20:2, 23:23, 27:21, 31:13, 33:2</p> <p>republicans 16:17, 17:7, 20:19, 24:10, 24:16, 29:8</p> <p>requested 47:8</p> <p>requests 30:3, 30:10, 30:15, 40:12</p> <p>require 39:25</p> <p>residence 36:12</p> <p>residency 39:3</p> <p>resolution 17:22, 17:24</p> <p>resolutions 17:25, 18:2</p> <p>respond 30:15, 30:20</p> <p>response 40:12</p> <p>responses 8:10, 40:5, 40:9</p> <p>rest 25:23</p> <p>result 35:8, 39:8</p> <p>retained 43:25</p>
--	--	--	---

<p>review 12:3, 44:6</p> <p>reviewed 43:8, 43:12, 43:15, 43:22, 43:23</p> <p>reviews 18:1</p> <p>right 10:5, 10:14, 11:8, 14:4, 14:10, 15:17, 16:1, 16:12, 19:6, 19:11, 20:3, 24:11, 24:20, 24:23, 25:1, 25:19, 27:22, 28:1, 28:4, 44:18, 44:20, 44:22</p> <p>rights 4:13, 4:19, 44:1</p> <p>role 20:15, 22:9, 22:12, 31:13</p> <p>roles 12:25, 18:8</p> <p>rolla 22:15, 22:25, 23:14, 36:1</p> <p>rollette 23:22</p> <p>room 10:2, 10:7, 10:9</p> <p>round 37:18</p> <p>rule 8:3, 39:21</p> <p>rules 7:16</p> <p>run 14:17, 17:3, 19:13, 19:16, 20:7, 20:21, 20:23, 21:22, 22:1, 22:6,</p>	<p>22:16, 22:20, 24:25</p> <p>running 21:24</p> <p>ryan 3:4, 10:8, 10:13, 11:25</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>said 13:22, 14:8, 26:6, 27:14, 32:7, 37:5, 47:5</p> <p>samantha 4:18, 42:18</p> <p>same 22:23, 46:4</p> <p>sanderson 3:3, 3:5, 10:8, 10:11, 33:20, 44:14, 44:18, 45:3, 45:5</p> <p>saw 24:3</p> <p>say 7:20, 8:16, 9:5, 9:6, 14:3, 15:19, 18:15, 21:19, 26:3, 27:1, 27:6, 28:19, 32:15, 39:5</p> <p>saying 7:25, 15:6</p> <p>says 23:10</p> <p>school 34:20, 34:21, 35:2, 35:20</p> <p>screen 10:21, 10:22, 10:25</p> <p>seal 47:13</p> <p>seat 39:7, 39:10, 39:18</p> <p>seated 10:12, 10:13,</p>	<p>10:14</p> <p>second 34:6, 45:7</p> <p>secretary 1:14, 34:12</p> <p>see 23:10, 29:3, 29:9, 30:18</p> <p>seeking 39:6</p> <p>self-employed 36:4</p> <p>semester 35:5, 35:11, 35:17</p> <p>senate 43:6</p> <p>sense 9:19</p> <p>sent 30:2, 30:9</p> <p>served 17:22, 21:21</p> <p>session 33:13, 38:2</p> <p>set 47:12</p> <p>seven 8:25, 35:24</p> <p>share 23:15, 31:19</p> <p>sheet 46:7</p> <p>short 33:15</p> <p>shorthand 47:1</p> <p>should 8:4, 9:16, 19:21, 22:20, 27:15</p> <p>side 10:12, 13:8</p> <p>sign 40:8, 44:21</p> <p>signature 46:10</p> <p>signature-plkal 47:18</p>	<p>signed 32:11, 38:5, 43:17, 46:7</p> <p>signing 47:8</p> <p>since 29:24, 35:19, 36:10, 37:7</p> <p>sir 44:17</p> <p>sit 24:17</p> <p>slight 24:15</p> <p>slot 17:1</p> <p>slowly 7:21</p> <p>small 11:20, 12:13, 12:14, 27:17</p> <p>software 11:4</p> <p>some 11:4, 14:21, 15:1, 15:14, 16:7, 30:2, 32:7, 32:20, 33:17, 34:16, 37:22, 39:2</p> <p>someone 7:24</p> <p>something 25:6, 25:18, 34:8</p> <p>sometimes 7:23, 31:19</p> <p>somewhere 27:2</p> <p>sorry 14:5, 19:22, 24:4, 30:6, 32:15, 41:1</p> <p>sort 11:4, 12:25, 16:23, 22:19, 23:15, 30:8, 31:15, 32:4,</p>
---	--	---	---

<p>32:24 sound 33:19 sounds 11:6 south 37:23 specific 41:14, 41:20, 41:23 specifically 34:11, 41:25 spend 37:22 split 25:14, 26:3, 26:4, 26:22, 27:7, 41:16, 41:18, 42:2 spread 36:13 staggered 13:19 start 12:22, 34:19 starts 33:13 state 1:12, 1:15, 2:14, 7:10, 9:11, 15:5, 15:19, 17:8, 18:9, 19:15, 19:17, 20:7, 20:23, 21:9, 22:2, 23:7, 25:23, 26:7, 27:17, 28:6, 28:14, 30:10, 34:12, 37:13, 42:23, 47:22 state-wide 37:10 statement 29:20, 41:20, 41:23 states 1:1</p>	<p>stayed 22:23 stenographically 47:6 stick 25:21 still 20:23, 34:5 stint 17:16 stirling 5:3 street 4:7, 4:20, 37:16 studied 35:16 study 35:6, 35:14 stuff 33:13 subdistrict 27:25, 28:8, 38:11, 38:14, 39:6 subdistricted 38:14 subdistricts 26:4, 39:17 suite 3:6, 4:7, 4:20 sum 32:4 supervision 47:7 suppose 33:8 sure 11:3, 28:4, 34:10 sworn 7:3, 33:8, 33:10</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take 8:11, 8:20, 22:1, 33:14,</p>	<p>38:7, 44:5 taken 33:22, 39:2, 44:9, 47:3, 47:6 takes 17:25 taking 8:5, 8:23, 10:17 talk 7:20, 8:6, 12:6, 26:21, 30:6, 33:17, 39:22 talked 21:24, 25:17, 27:7, 31:4, 41:15, 43:21 tampa 17:23 task 8:6 tech 11:2 technical 35:20, 36:7 televisions 23:8 tell 24:18, 27:14, 31:10, 43:20 ten 33:18 ten-minute 33:18 terms 17:11, 28:11, 35:20, 39:9 terrible 16:21 territory 27:22 terry 25:16, 26:7, 26:17, 33:7, 41:11, 42:21 testified 7:3, 41:10</p>	<p>testify 34:17, 43:25 testimony 37:5, 43:2, 46:4, 46:5 text 30:19, 30:21, 31:3, 31:19, 40:15 th 4:7, 37:16, 47:13 thank 33:21, 34:2, 44:13, 44:17 thereafter 47:6 thing 39:3 things 8:16, 8:25, 22:23, 30:23, 36:17, 44:6 think 8:14, 17:15, 21:21, 22:5, 22:16, 22:22, 23:20, 24:15, 24:22, 25:15, 27:24, 28:3, 31:4, 32:19, 32:20, 33:1, 33:15, 33:17, 38:20 thompson 42:16 thought 28:12, 28:19, 30:24 thoughts 25:4 through 30:17, 30:18, 35:22 tim 16:15 time 8:23, 11:21,</p>
--	---	--	---

<p>17:1, 21:23, 22:1, 22:6, 27:20, 29:24, 38:17, 44:17 today 9:22, 12:4, 12:7, 34:6, 34:13, 44:24 ton 33:16 took 35:4, 35:10, 43:10 topics 36:16 totals 25:8 town 13:10, 13:11, 13:14, 14:3, 19:23, 22:15 towner 23:22 township 13:3, 13:12, 13:24, 13:25, 14:1 training 35:20 transcribing 7:19 transcript 8:12, 45:1, 45:4, 47:4 transcription 46:5 transcripts 43:12 treatment 28:20 trial 44:1 trouble 38:22 true 23:9, 46:4, 47:4 truthfully 9:22</p>	<p>try 8:4 twenty-five 13:15, 18:16 two 8:15, 22:20, 25:24, 26:4, 28:6, 28:15, 29:6, 29:12, 35:4 type 37:23, 39:3 typewriting 47:7</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>uh-huh 8:10 unable 28:5 unconstitutional 27:9, 28:12, 28:20, 29:2 unconstitutional- ity 39:15, 41:16 under 36:8, 47:7 understand 9:4, 9:6, 19:4, 30:4 unequal 28:13, 28:20 united 1:1 unknown 27:19 unless 9:5, 9:13 unprofessional 16:5 unsuccessful 20:11</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacations 39:2 vaguely 41:13</p>	<p>vein 40:22 verbal 8:10, 8:12 versus 20:13 videos 43:8 view 16:3, 23:15, 23:25, 24:13, 29:2 views 16:6 village 12:13, 12:14 violate 8:3 virtually 1:20, 2:10 volunteer 13:4, 13:5 vote 20:20, 24:17, 24:18, 25:8, 25:22, 25:24, 28:6, 28:7, 28:15, 29:6, 29:21 voted 37:6 voters 28:14 voting 44:1</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wahpeton 35:5, 35:10, 35:14 wait 9:17 waive 44:21, 44:24 walen 1:5, 5:4, 12:6, 32:10 walked 15:15, 15:25</p>	<p>want 11:3, 15:19, 20:19, 20:21, 21:19, 26:2, 33:16, 34:19, 43:20, 44:6, 44:7 wanted 34:15 washington 4:8, 4:21 way 9:12, 29:13, 29:14, 30:6 we're 8:22, 9:24, 14:3 we've 24:19 website 23:10, 40:24, 41:5 wednesday 1:21 went 34:21, 35:22 weren't 15:2 west 3:13 what-ifs 39:22 whatnot 15:22 whenever 18:17 whereof 47:12 whether 30:14, 30:18, 32:17 white 36:21, 37:2 whitehead 1:25, 2:13, 47:2 whole 8:23, 38:25,</p>
--	--	---	---

Transcript of Paul Henderson

December 7, 2022

<p>40:1 wiederholt 3:12 wife 19:4, 21:6, 21:22, 25:9, 29:19, 31:3, 33:8, 35:15, 37:1, 38:16 wife's 39:10, 39:17 willing 27:4 win 23:24, 24:8, 29:8 windows 10:22 wisconsin 23:6 within 14:14, 17:8 witness 33:25, 44:12, 44:24, 47:12 won 24:20, 24:21 words 7:21, 8:5 work 9:8, 12:9, 18:5, 22:25, 40:2 worked 18:12, 18:25, 22:15, 23:14, 25:10 working 18:20 wouldn't 10:1, 11:7, 29:10 write 40:21 written 31:20, 40:5, 40:8, 41:8</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yeah 8:8, 11:17,</p>	<p>12:23, 13:3, 13:25, 15:1, 15:4, 16:13, 17:10, 18:19, 22:22, 25:10, 28:17, 29:6, 31:1, 31:9, 32:20, 33:20, 35:4, 36:13, 36:14, 39:1, 40:7, 45:5 year 13:17, 15:20, 16:25, 27:2, 34:25, 37:18, 37:22, 38:20, 41:13 years 13:9, 13:15, 17:16, 19:18, 21:19, 21:21, 22:15, 27:18, 35:4, 35:23, 35:24, 38:25 yesterday 11:20, 33:10 yourself 36:22</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zoning 13:4, 13:13, 14:5 zoom 10:22</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>00031 1:10</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>10 13:9, 14:9, 17:7, 20:1, 21:15, 22:14, 22:24, 23:21, 24:9, 27:21, 31:14, 45:9</p>	<p>1100 3:6 1101 4:7 12 21:19, 21:21 1243 3:8 14 4:7, 22:15 15 1:22, 33:18 1506 4:14 1514 4:20 16 47:13 18 29:24, 36:10, 37:7 1980 35:1 1:-cv--crh 1:10</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>20 35:23 20005 4:8, 4:21 2012 17:22 2018 20:10 202 4:9, 4:22 2021 42:6, 42:11, 42:24, 43:10 2022 1:21, 29:18, 47:14 2023 47:17 2024 40:1 22 1:10</p>	<p>2200 4:9 25 15:7, 27:18</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>30 47:17 300 3:13 303 4:16 34 6:4 36 45:9 39 38:20, 38:25</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>400 4:7 4166 4:22 4247 3:15, 3:16 447 4:16 45 25:23 47 1:24, 25:23 473885 1:23</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>50 24:14 56.5 24:22 58323 37:17 58501 3:7 58502 3:16 58503 3:14</p>
---	--	--	---

7	
701 3:8, 3:17	
716 4:9	
751 3:8, 3:17	
785 4:22	
7980 37:16	
8	
80301 4:15	
8188 3:17	
8760 4:16	
9	
9 1:22	
99 37:16	
9a 38:14	
9b 19:9, 21:7, 23:13, 23:16, 24:13, 27:25, 38:11	

EXHIBIT 22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

- - - - -

Charles Walen and Paul)
Henderson,)

Plaintiffs,)

vs.)

FILE NO. 1:22-cv-31

Doug Burgum and Alvin)
Jaeger,)

Defendants,)

and)

Mandan, Hidatsa & Arikara)
Nation, Lisa DeVille,)
and Cesareo Alvarez, Jr.,)

Intervenor Defendants.)

- - - - -

PARTIAL

T R A N S C R I P T

O F

P R O C E E D I N G S

(Testimony of Terry B. Jones)

MOTION FOR PRELIMINARY INJUNCTION

May 5, 2022

Pages 1-37

HELD AT: QUENTIN BURDICK UNITED STATES COURTHOUSE
655 FIRST AVENUE NORTH
FARGO, NORTH DAKOTA 58102

BEFORE: THE HONORABLE RALPH R. ERICKSON, PETER D. WELTE
AND DANIEL L. HOVLAND

COURT REPORTER: KELLY A. KROKE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

MR. PAUL R. SANDERSON **COUNSEL FOR PLAINTIFFS;**
MR. RYAN J. JOYCE
Attorneys at Law
1100 College Drive, Ste. 5
Bismarck, ND 58501

AND

MR. ROBERT W. HARMS
Attorney at Law
815 North Mandan Street
Bismarck, ND 58501

MR. DAVID R. PHILLIPS **COUNSEL FOR DEFENDANTS;**
Attorney at Law
300 West Century Avenue
Bismarck, ND 58502

AND

MR. MATTHEW A. SAGSVEEN
Attorney at Law
500 North 9th Street
Bismarck, ND 58501

MS. SAMANTHA KELTY **COUNSEL FOR INTERVENOR DEFENDANTS;**
Attorney at Law
1514 P Street NW, Ste. D
Washington, DC 20005

AND

MR. MICHAEL S. CARTER
Attorney at Law
1506 Broadway
Boulder, CO 80302

AND

MR. MARK GABER (Via Video)
Attorney at Law
1101 14th Street NW, Ste. 400
Washington, DC 20005

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

W I T N E S S E S

<u>PLAINTIFFS'</u> :	<u>PAGE NO.</u>
<u>TERRY B. JONES</u>	
Direct Examination by Mr. Sanderson	7
Cross-Examination by Ms. Kelty	16
Redirect Examination by Mr. Sanderson	30
Cross-Examination by Mr. Phillips	35

E X H I B I T S

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>OFR'D</u>	<u>REC'D</u>
	(See Clerk's Minutes - ECF Doc.#36)		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(May 5, 2022: The following proceedings commenced at 9:00 a.m.):

JUDGE ERICKSON: We'll go on the record in a case entitled Charles Walen, et al. Versus Doug Burgum, et al. It's File No. 1:22-cv-31. The record should reflect that -- well, all counsel are here. And why don't we go ahead and do this: Why don't we have counsel for the plaintiffs go ahead and identify themselves for the record.

MR. SANDERSON: Good morning, Your Honor. My name is Paul Sanderson. I represent the plaintiffs, Charles Walen and Paul Henderson. At counsel table with me is Attorney Ryan Joyce and Attorney Robert Harms.

JUDGE ERICKSON: All right. And for the defendants Burgum and Jaeger, Mr. Wrigley, do you wish to speak first?

MR. WRIGLEY: Speak first?

JUDGE ERICKSON: Well, no, I mean, I just want to -- you are the Attorney General. Excuse me, I'm sorry. You are the Attorney General. I thought I'd ask you first.

MR. WRIGLEY: I keep forgetting to -- nice to see you this morning.

JUDGE ERICKSON: All right. And do you want

1 to identify other counsel appearing on behalf of the
2 State employees, State defendants?

3 MR. PHILLIPS: David Phillips, Your Honor,
4 Special Assistant Attorney General. The Solicitor
5 General Matt Sagsveen is also present and the Deputy
6 Secretary of State Jim Silrum is present today.

7 JUDGE ERICKSON: All right. And then we
8 have -- who's appearing by video? I'm sorry.

9 MR. GABER: Mark Gaber for the intervenors,
10 Your Honor.

11 JUDGE ERICKSON: All right. Okay. And who
12 else -- is anyone else appearing on behalf of the
13 intervenors? Oh, I'm sorry, there you are. I kept
14 looking around saying I can't see where everybody is.

15 MR. CARTER: Good morning, Your Honor.
16 Michael Carter on behalf of the intervenors along with
17 Samantha Kelty and Emily deLisle assisting.

18 THE COURT: Thank you. All right. I am a
19 United States Circuit judge and so obviously this whole
20 presiding over a real proceeding is a little complicated
21 for me. But now that we've got the hard part done and
22 that is have all of the attorneys identified for the
23 record, I think I'll lay out just kind of in general
24 order the way that I see the proceedings.

25 I believe that the parties do have some

1 additional evidence or cross-examinations that they wish
2 to present and so we'll take up all evidence from any
3 party who wishes to present evidence at this hearing
4 first. Following that we'll likely take a short recess
5 and then come back and take argument on the legal
6 matters. I presume that we'll not -- that we will not
7 be in a position to rule from the bench so we'll
8 probably take it under advisement and look to get
9 something out in writing shortly thereafter.

10 The issue before the Court obviously is
11 we're here on the motion for a preliminary injunction
12 and the factors that we need to consider both the
13 substantive law relating to the Voting Rights Act and to
14 the issuance of preliminary injunctions is well-known
15 and so I won't summarize the law for you because I'm
16 pretty confident that you've got that piece of it down
17 so far.

18 All right. I say "so far" because we all
19 know that Courts have a tendency to, you know, get to a
20 place that is somewhat unexpected and so we'll see where
21 we go from there. All right. So at this point it's the
22 movants' case to present any additional evidence that
23 they wish.

24 A couple of general rules. I would like
25 whoever is going to examine the witness to examine from

1 the podium or the lectern so that they're closer to the
2 witness and so that the line of sight for the court
3 reporter is straight and because we have people sitting
4 over here on the left it just will be a problematic
5 otherwise, okay?

6 And so I don't know who's going to speak
7 first for the movants but they may call their first
8 witness.

9 MR. SANDERSON: Thank you, Your Honor. The
10 movants would call Representative Terry Jones.

11 JUDGE ERICKSON: Representative Jones, if
12 you would please come forward, stand before the clerk,
13 raise your right hand and take the oath.

14 (Witness sworn.)

15 THE COURT: Representative Jones, the
16 microphone in front of you is directional so it would be
17 helpful if you talk directly into it. It'll pick you up
18 a little bit better.

19 Thank you. You may proceed.

20 MR. SANDERSON: Thank you, Judge.

21 **TERRY B. JONES,**

22 **HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE**
23 **WHOLE TRUTH, AND NOTHING BUT THE TRUTH, RELATIVE TO**
24 **SAID CAUSE, TESTIFIED AS FOLLOWS:**

24 **DIRECT EXAMINATION**

25 **BY MR. SANDERSON:**

1 Q. Good morning, Representative Jones. Could you
2 please state your full name and address for the record.

3 A. Terry Burton Jones, 413 Eagle Drive in New Town,
4 North Dakota, 58763.

5 Q. And, Representative Jones, are you currently one
6 of the elected North Dakota House of Representatives
7 from District 4?

8 A. Yes.

9 Q. What year were you first elected to the
10 Legislative Assembly?

11 A. 2016.

12 Q. And could you just briefly explain the areas --
13 the geographical areas that District 4 covers.

14 A. It's a huge district. It goes all the way from
15 Kenmare up against the Canadian border down to Halliday
16 and Dunn Center. It reached clear over just underneath
17 Minot. They've changed it here just recently and
18 shrunked it a little bit but it's a huge district,
19 covers a lot of country.

20 Q. And does District 4 also include the Fort
21 Berthold Indian Reservation?

22 A. It does.

23 Q. When was your most recent election in District 4?

24 A. We just were reelected in 2020.

25 Q. How long a term were you elected for in 2020?

1 A. I was elected for a four-year term.

2 Q. And currently are you up for election in 2022?

3 A. Yes. Because of the subdistricts, we had to run
4 again this year.

5 Q. Now, Representative Jones, I want to ask you a
6 few questions. You're aware that the Redistricting
7 Committee of the legislature met in 2021?

8 A. Yes.

9 Q. Were you a member of the Redistricting Committee?

10 A. No, I was not.

11 Q. Did you attend Redistricting Committee meetings?

12 A. I did.

13 Q. How many Redistricting Committee meetings did you
14 attend?

15 A. I believe I attended either two or three towards
16 the end of the redistricting work.

17 Q. Why would you as a representative of District 4
18 attend the Redistricting Committee meetings in 2021?

19 A. There was information coming to me from members
20 on the Redistricting Committee that they were
21 considering subdistricts in Districts 4 and District 9.
22 At first I wasn't too concerned about it but towards the
23 end the members on the committee were telling me that it
24 was getting very serious. It looked like it was going
25 to move forward.

1 Q. Did you testify before the Redistricting
2 Committee?

3 A. I did.

4 Q. And what was the purpose of your testimony before
5 the Redistricting Committee?

6 A. I'm a representative from District 4 and I
7 represent members, the district members. And the
8 information I was getting as I was studying was that
9 what was happening was not appropriate, was
10 unconstitutional. So in order to both uphold my oath to
11 support the Constitution of North Dakota and my job to
12 represent and serve the District 4 people, I attended
13 those meetings to try to make sure that we didn't do
14 something that was wrong.

15 Q. In addition to attending meetings, did you
16 discuss with members of the Redistricting Committee your
17 concerns about the redistricting process and
18 subdistricts in Districts 4 and 9?

19 A. Yes, I did.

20 Q. Based on your attendance in the meeting and your
21 testimony at the Redistricting Committee hearings, do
22 you have an understanding of why the Redistricting
23 Committee recommended subdistricts in Districts 4 and 9?

24 A. I do.

25 Q. And based on your observations, why did the

1 Redistricting Committee recommend subdistricts in their
2 maps for Districts 4 and 9?

3 A. Redistricting is a complex thing and there's been
4 some history with this particular issue here in
5 District 4. Previous redistricting attempts ended up
6 causing a lawsuit to occur and that lawsuit when it was
7 tried it was discovered that the first prong of the
8 Gingles case criteria had not been met. And so the
9 judge in that case said because the first prong hasn't
10 been met he dismissed it.

11 Somehow the members of the committee that
12 had been involved with that got the interpretation that
13 if the numbers were ever met that it was inevitable that
14 you would have to have a subdistrict. Somehow in my
15 discussions with them and in the stuff that I was
16 watching them discuss they missed the point that you had
17 to meet all three of those things, and so I was
18 desperately trying to explain to them that there's more
19 than just one criteria that had to have been met. And
20 so that's what was my main focus for attending the
21 meetings and visiting them with.

22 Q. And, Representative Jones, you indicated that
23 there was a prior lawsuit the State of North Dakota was
24 involved in. Was it your understanding that prior
25 lawsuit involved the Voting Rights Act claim?

1 A. Yes, it was.

2 Q. And based on your observations and attendance at
3 the subdistricting committee -- or the districting --
4 Redistricting Committee meetings, was race a predominant
5 factor the committee determined in creating the
6 subdistricts in Districts 4 and 9?

7 MR. PHILLIPS: Objection. Calls for a legal
8 conclusion.

9 JUDGE ERICKSON: It does call for a legal
10 conclusion in part. However, I think his understanding
11 of what the process was as a member of the legislature
12 is relevant, and I'll hear it for what it's worth. I
13 mean, this is a bench proceeding. We understand that
14 ultimately we'll be the people drawing that legal
15 conclusion.

16 You may answer.

17 THE WITNESS: Thank you, Your Honor.

18 A. It was my understanding that their concern was
19 based almost entirely on race of the group inside the
20 boundaries.

21 Q. (Mr. Sanderson continuing) Now one of the things
22 you testified a moment ago to, Representative Jones, was
23 the Gingles factor and you're referring to U. S. Supreme
24 Court case Thornburg v. Gingles; is that correct?

25 A. That is correct.

1 Q. Okay. Based on your observations and attendance
2 at the Redistricting Committee meetings, did the
3 Redistricting Committee ever retain or consult an expert
4 regarding voting patterns in Districts 4 and 9 during
5 the redistricting process?

6 A. They did not.

7 Q. Based on your observations and attendance at the
8 redistricting hearings, did the Redistricting Committee
9 ever review any previous election results in Districts 4
10 or District 9?

11 A. To my knowledge they did not.

12 Q. Now again based on your observations and
13 attendance at the Redistricting Committee hearings, did
14 the Redistricting Committee do any studies analyzing
15 voting results in Districts 4 and 9?

16 A. They did not.

17 Q. And along those same lines based on your
18 observation and attendance at those meetings, was there
19 ever any discussion regarding precinct voting analysis
20 in District 4 or District 9?

21 A. There was no discussion that I'm aware of.

22 Q. Now you're aware that the Redistricting Committee
23 passed maps that included subdistricts for Districts 4
24 or 9 and sent that to the House floor, correct?

25 A. That is correct for recommendation -- or with a

1 recommendation.

2 Q. As a member of the North Dakota Legislative
3 Assembly and the House of Representatives, were you
4 present on the House floor on November 9, 2021 when the
5 Redistricting Committee's proposed maps containing
6 subdistricts in District 4 and District 9 were debated?

7 A. Yes, I was.

8 Q. During the floor debates was the topic of
9 subdistricts in Districts 4 and 9 addressed?

10 A. Yes, it was.

11 Q. When the topics of subdistricts in Districts 4
12 and 9 were addressed that day, did you speak on the
13 floor?

14 A. Yes, I did.

15 Q. At this point we'd like to show a video to
16 Representative Jones.

17 JUDGE ERICKSON: You may.

18 (Unidentified video played.)

19 JUDGE WELTE: Counsel, could you pause the
20 video?

21 Are you able to do anything about the
22 volume? I believe Lori has it maxed out here.

23 MR. SANDERSON: I don't know why our
24 computer's not going through the Court's system.

25 JUDGE WELTE: And I would not be a good

1 person to answer that either but thank you.

2 (Unidentified video played.)

3 Q. (Mr. Sanderson continuing) Representative Jones,
4 following your floor testimony on November 9, 2021, did
5 the House vote on the Redistricting Committee's proposed
6 redistricting maps which includes subdistricts in
7 Districts 4 and 9?

8 A. Yes, they did.

9 Q. And what was the result of the House floor vote?

10 A. We passed the redistricting bill with
11 subdistricts included.

12 Q. Now following the passage of that bill and it
13 being signed into law by Governor Burgum in this case,
14 what district are you currently located in?

15 A. District 4.

16 Q. And what subdistrict are you currently located
17 in?

18 A. I'm in district -- Subdistrict 4A.

19 Q. And does your Subdistrict 4A, is it -- does it
20 contain the entire boundary of the Fort Berthold
21 Reservation?

22 A. Yes, it does. The boundary is the boundary of
23 Subdistrict 4A.

24 Q. Okay. And when you say that, 4A is comprised
25 solely of the Fort Berthold Indian Reservation?

1 A. That is correct.

2 Q. Okay. Now, Representative Jones, are you opposed
3 to the idea of subdistricts in North Dakota?

4 A. Absolutely not.

5 Q. If you felt the Gingles factors had been
6 demonstrated by the Redistricting Committee and the
7 evidence required, would you support the creation of
8 subdistricts in Districts 4 and 9?

9 A. Yes, I would.

10 MR. SANDERSON: I have no further questions
11 of this witness.

12 JUDGE ERICKSON: Thank you. Cross by the
13 State defendants?

14 MR. PHILLIPS: No questions, Your Honor.

15 JUDGE ERICKSON: Thank you. Cross by the
16 intervenors?

17 MS. KELTY: Yes, Your Honor.

18 **CROSS-EXAMINATION**

19 **BY MS. KELTY:**

20 Q. Hi, how are you?

21 A. Fine, thank you.

22 Q. Representative Jones, I'm Samantha Kelty. I
23 represent the Defendant Intervenors MHA Nation, Lisa
24 DeVille and Cesareo Alvarez.

25 Representative, you did not sit on the

1 Redistricting Committee, did you?

2 A. I did not.

3 Q. And how would the new map of District 4 affect
4 you in your election?

5 A. It changes the representation for District 4
6 subdistricts divided into two groups, 4A and 4B, and the
7 concerning part for me is that it leaves those people
8 that are in District 4 with only one representative
9 where previously they had two representatives
10 representing them.

11 Q. Are you aware of the testimony submitted to the
12 committees describing past election results and the
13 presence of racial bloc voting?

14 A. Could you repeat the question?

15 Q. Sure. Are you aware of the testimony that was
16 submitted to the Redistricting Committee describing past
17 election results and the presence of racial bloc voting?

18 A. No, I'm not aware of it. I heard the discussion
19 in the committee meetings that I was in but I was not
20 aware of the testimony in its entirety.

21 Q. So you did hear some of the discussion, correct?

22 A. Yes.

23 Q. Are you aware of North Dakota's recent voter ID
24 law that discriminates against Native American voters?

25 A. Could you explain how the new law discriminates

1 against Native American voters?

2 Q. Are you aware of the law that I'm referring to?

3 A. I'm not aware of any law that we've passed that
4 discriminates against Native American voters so I would
5 like you to explain how it discriminates so I can
6 understand which law you're referring to.

7 Q. Sure, Representative Jones. I'm just going to
8 ask you the questions here, okay?

9 Are you aware of the voter ID law,
10 Representative?

11 A. Yes.

12 Q. And did you vote for that?

13 A. Yes.

14 Q. Let's talk about the MHA Nation. In the House
15 you served on the Tribal and State Relations Committee,
16 didn't you?

17 A. Yes.

18 Q. Since 2021?

19 A. Yes.

20 Q. And part of that committee studies -- an
21 assignment was to study tribal/state issues, correct?

22 A. Yes.

23 Q. And you're familiar with the MHA Nation?

24 A. Yes.

25 Q. The Three Affiliated Tribes?

1 A. Yes.

2 Q. And the MHA Nation has a unique political status,
3 doesn't it?

4 A. I don't know what you mean "unique."

5 Q. Is the MHA Nation a sovereign entity?

6 A. MHA Nation is a sovereign entity, yes.

7 Q. And you're familiar with the MHA people?

8 A. Yes.

9 Q. The MHA people have a distinct history, right?

10 A. Yes.

11 Q. And MHA people have unique economic interests as
12 well, don't they?

13 A. No.

14 Q. Well, some of their economic interests arise from
15 the Nation's location on the Bakken Oil Formation,
16 correct?

17 A. Correct.

18 Q. And MHA people have their own languages; is that
19 right?

20 A. Yes.

21 Q. And they have a distinctive culture, correct?

22 A. Yes.

23 Q. The MHA people are a distinct population, right?

24 A. Yes.

25 Q. And as a representative during the redistricting

1 process, you learned about redistricting?

2 A. I missed the question. What did you say?

3 Q. Did you learn about redistricting during the
4 redistricting process?

5 A. Yes, I did learn more about it.

6 Q. And one of those trainings was from the National
7 Conference of State Legislatures, correct?

8 A. I'm not even sure if I attended that. I'm not
9 sure which training you're referring to. There's a lot
10 of stuff going on. I assume it's during session and I
11 can't recall exactly any particular training from that
12 organization.

13 Q. I understand. I sometimes can't remember last
14 month.

15 So if we could, Your Honor, I'd like to pull
16 up a copy of the NCSL PowerPoint.

17 JUDGE ERICKSON: You may.

18 MS. KELTY: Thank you. And let the record
19 reflect I've previously provided a copy to the other
20 counsel and we're looking here, this is ECF doc 21-1 and
21 it's starting at page 50 of the ECF doc 21-1.

22 Q. (Ms. Kelty continuing) Representative, do you
23 recognize this?

24 A. It looks familiar, yes.

25 Q. Okay. What is this?

1 A. It's a presentation to the North Dakota
2 legislature on redistricting.

3 Q. By who?

4 A. NCSL.

5 Q. Were you shown this?

6 A. I believe so, yes.

7 Q. Okay. When?

8 A. Beginning of the session in the Brynhild Haugland
9 Room if I recall correctly.

10 Q. And it says there August 26, 2021; is that
11 correct?

12 A. Correct.

13 Q. Does that sound about when you were shown this?

14 A. No.

15 Q. So when were you shown it?

16 A. If I recall it was the beginning of the session,
17 which would have been closer in the December time.

18 Q. Okay, understood. And for what purpose were you
19 shown this?

20 A. To assist us as legislators in understanding the
21 redistricting process.

22 Q. Okay. Let's take a look at page 85 of the ECF,
23 85 of the PDF.

24 JUDGE ERICKSON: Before we do that I wonder
25 if we should not either stipulate that the exhibits that

1 have been filed and attached can be received and
2 considered by the Court or have an offer. And I think
3 we should have done the same thing with the video;
4 although the video I think we could have let in for
5 refreshing recollection. But it just seems to me that
6 if we're going to try and get this record so it's clean,
7 you know, if an appeal is taken we should know what
8 we're able to consider.

9 So let's start with the movants. First of
10 all, have you talked amongst yourselves about what you
11 would want in or not want in as evidence or should we
12 handle each exhibit just as being in an exhibit?

13 MS. KELTY: We did not, Your Honor. We
14 arrived a little late. If we had a few seconds that
15 would be great.

16 JUDGE ERICKSON: Why don't we take a couple
17 minutes, five minutes, and let's see if we can't hammer
18 out how we want to handle the exhibits, all right?
19 Because at this point what we've got in the record are a
20 bunch of things that haven't been marked and -- but we
21 do know where they are in the record so, I mean, it's
22 not a complete lost cause but I think we ought to arrive
23 at some consensus. We'll stand in recess for five
24 minutes.

25 (Recess taken; 9:25 a.m. to 9:40 a.m.)

1 JUDGE ERICKSON: We'll go back on the
2 record. All counsel of record are present. They've had
3 a chance to discuss the -- a potential stipulation on
4 the exhibits.

5 Have the parties reached an agreement?

6 MS. KELTY: We have, Your Honor, and we
7 appreciate that time to do so. We've stipulated to the
8 admission of all exhibits that have been submitted into
9 the record in addition to Intervenors' Exhibit 1 that
10 we've marked, which is an updated copy Dr. Loren
11 Collingwood's CV.

12 JUDGE ERICKSON: All right. And so --

13 MS. KELTY: And the video, excuse me.

14 JUDGE ERICKSON: We'll receive Intervenors'
15 Exhibit No. 1. I should have confirmed that the
16 stipulation has been accurately stated.

17 On the part of the movants?

18 MR. SANDERSON: Yes, Your Honor, other than
19 we talked about the video we showed. That's a public
20 record taken off the North Dakota legislature's website
21 and we do have a couple others we intend to show but our
22 understanding is that we have an agreement that those
23 will be admissible. That's our understanding.

24 JUDGE ERICKSON: All right. Thank you. And
25 does the State agree with the stipulation as noted?

1 MR. PHILLIPS: Yes, Your Honor.

2 JUDGE ERICKSON: All right. The Court will
3 receive all of the previously marked exhibits. I have
4 received Intervenors' 1. We will receive every video
5 that is shown during the course of this proceeding. The
6 other videos of the Redistricting Committee hearings are
7 a matter of public record. And I should note for the
8 record that I know that I've reviewed them and I suspect
9 my fellow judges on the panel have reviewed them as
10 well. And so that's where we're at on this.

11 And Representative Jones remains on the
12 stand and now we can go back to asking him some
13 questions.

14 MS. KELTY: Thank you, Judges, and thanks
15 for that clarification.

16 Q. (Ms. Kelty continuing) Before we took a break we
17 were taking a look at what is in the record as document
18 21-1 and I believe we were looking at page 50 of 109 of
19 that document. As reflected in the record the parties
20 have stipulated to the admission of the entirety of
21 document 21-1. Is it not displaying? Okay. For some
22 reason it's not connecting. Thank you, Lori.

23 And, Representative Jones, I have a hard copy
24 here. Would you like to take a look at that or -- in
25 addition to the video?

1 A. This will be fine, thank you.

2 Q. Great. We'll save some paper here. So does this
3 refresh your recollection as you stated that you did
4 receive a PowerPoint presentation from NCSL on
5 redistricting, Representative?

6 A. Yes.

7 Q. And so during this training you learned that
8 maintaining a community of interest is a traditional
9 redistricting principle, correct?

10 A. Correct.

11 Q. And let's take a look at page 85 of 109 of this
12 document. And here, Representative, this is the first
13 part of the presentation that speaks to the
14 criteria/principles. What does that say there in the
15 top left-hand corner of the screen?

16 A. "Criteria/Principles: Compactness."

17 Q. And let's scroll down to page 89 of 109 and what
18 is the topic -- what is the topic of this slide,
19 Representative?

20 A. It says, "Other critical (sic) NCSL tracks."

21 Q. "Other criteria NCSL tracks?"

22 A. "Other criteria," sorry.

23 Q. I know. I forgot my glasses so I'm having a hard
24 time seeing that. And what is the first bullet point
25 there?

1 A. "Preserving communities of interest."

2 Q. Okay, great. And we can take this down. Thank
3 you.

4 Representative, let's talk about the Fort
5 Berthold Reservation. You live here in North Dakota,
6 correct?

7 A. I live on the reservation in fact.

8 Q. Oh, okay, good to know. So how long have you
9 lived on the reservation?

10 A. I've been close to or onto it for 11 years.

11 Q. Wow, that's incredible. So you're familiar with
12 the reservation?

13 A. Yes.

14 Q. And that's the reservation on which the MHA
15 Nation is located, correct?

16 A. Yes, the Three Affiliated Tribes.

17 Q. And it's a community there, right?

18 A. Yes.

19 Q. An independent community?

20 A. Several communities actually.

21 Q. Right. Several distinct communities within the
22 reservation, correct?

23 A. Yes.

24 Q. And it's governed by its own government?

25 A. Several governments.

1 Q. And can you please explain your answer there?

2 A. Yes. There seems to be some confusion here about
3 the reservation. There's several towns in there that
4 are including my town which is New Town. There's
5 Parshall. There's several other towns included in the
6 reservation. The reservation boundary was moved up in
7 about 1972 six miles to include those towns. So you're
8 asking me to say that there's one form of government on
9 the reservation when in fact we have North Dakota
10 citizens, North Dakota property, taxpayers of North
11 Dakota, all of that represented within the boundaries of
12 that reservation as well as the tribal nation, the Three
13 Affiliated Tribes, and their government.

14 So you're asking a very complicated question
15 in a very simplistic way.

16 Q. I think you did reply to my question so, yeah, I
17 appreciate that. I was referring to the tribal
18 government so thanks for clarifying.

19 That tribal government has a Tribal Business
20 Council, correct?

21 A. Correct.

22 Q. And a chairman?

23 A. Correct.

24 Q. And MHA Nation is a federally recognized tribe?

25 A. Yes.

1 Q. And the Nation exercises sovereign authority,
2 right?

3 A. Yes.

4 Q. And you live on the reservation so you're
5 familiar with the reservation's boundaries?

6 A. I am.

7 Q. Its geographical boundaries?

8 A. Yes.

9 Q. And its boundaries are different from state
10 boundaries, right?

11 A. They're included in the state boundaries.

12 Q. But they are different. They are distinct from
13 the state boundaries; is that right?

14 A. Yes.

15 Q. And they are distinct from county boundaries,
16 right?

17 A. Correct.

18 Q. And they are also different from municipal
19 boundaries, right?

20 A. Correct.

21 Q. And, Representative, during redistricting the
22 Redistricting Committee created a policy to not split
23 reservations; is that right?

24 A. That has been a standing policy for many years.

25 Q. And during this year's redistricting at least the

1 committee chairman repeated this policy?

2 A. Yes.

3 Q. Numerous times?

4 A. Yes.

5 Q. And you're familiar with House Subdistrict 4A as
6 you testified in your direct, right?

7 A. Yes.

8 Q. And Subdistrict 4A follows the reservation's
9 boundaries, right?

10 A. Correct.

11 Q. In fact, it precisely follows the reservation's
12 boundaries, right?

13 A. Yes.

14 Q. The lines of HD 4A do not deviate from the lines
15 of the reservation, right?

16 A. Correct.

17 Q. And as a representative during the redistricting
18 process you also learned about other redistricting
19 principles, correct?

20 A. Yes.

21 Q. And so respecting political boundaries is a
22 redistricting principle, right?

23 A. Yes.

24 Q. A traditional redistricting principle.

25 A. Yes.

1 MS. KELTY: I have no further questions.

2 JUDGE ERICKSON: Thank you. Redirect from
3 the movants?

4 MR. SANDERSON: Yes. We're going to need to
5 show a video here for a second.

6 **REDIRECT EXAMINATION**

7 **BY MR. SANDERSON:**

8 Q. Representative Jones, you were asked about
9 document 21-1 and that was a presentation on
10 redistricting to the North Dakota Legislature by Ben
11 Williams from the National Council of State
12 Legislatures, correct?

13 A. Yes.

14 Q. And that was on August 26, 2021, correct?

15 A. The document is dated that and I just don't
16 recall meeting in August to go over that. I thought
17 maybe it was presented closer in the December time frame
18 but I could be -- I could be off on that.

19 Q. Representative Jones, I'm going to show you
20 briefly a video from the presentation Attorney Williams
21 presented to the Redistricting Committee on August 26,
22 2021, and then I want to ask you a few questions about
23 it.

24 (Unidentified video played.)

25 Q. (Mr. Sanderson continuing) Now, Representative

1 Jones, I just played to you a portion of Attorney
2 Williams' presentation to the Redistricting Committee
3 regarding the Gingles factors and you heard him discuss
4 the Gingles factors and the need for regression studies
5 based on precinct data. You heard that testimony?

6 A. I did.

7 Q. And again, Representative Jones, are you aware of
8 the Redistricting Committee ever performing any
9 regression studies based on precinct data to meet the
10 Gingles criteria?

11 A. No.

12 Q. Are you aware of any outside parties presenting
13 any regression study analysis to the Redistricting
14 Committee during their deliberations for creation of
15 subdistricts in Districts 4 and 9?

16 A. No.

17 MR. SANDERSON: Representative Jones, I have
18 no further questions. Thank you.

19 JUDGE ERICKSON: Thank you. From the State
20 defendants?

21 MR. PHILLIPS: Your Honor, I would like to
22 consult with my client.

23 JUDGE ERICKSON: You may.

24 MR. SANDERSON: Your Honor, before we move
25 on to the State may I ask another question of

1 Representative Jones? I know I rested and passed but
2 would ask the Court's permission to briefly address one
3 other topic that I overlooked.

4 JUDGE ERICKSON: Any objection from the
5 State defendants?

6 MR. PHILLIPS: No objection.

7 JUDGE ERICKSON: From the intervenors?

8 MS. KELTY: No objection.

9 JUDGE ERICKSON: You may.

10 Q. (Mr. Sanderson continuing) Representative Jones,
11 you also attended -- during the time you attended the
12 subdistricting committee meetings, were you also aware
13 that North Dakota Legislative counsel was present at
14 those meetings?

15 A. Yes.

16 Q. Okay. And during one of the meetings Legislative
17 Council Attorney Clair Ness spoke to the committee about
18 the Gingles factors. Were you present during that?

19 A. Yes.

20 Q. I'd like to play a brief video for you from a
21 Redistricting Committee hearing in this matter.

22 (Unidentified video played.)

23 MS. KELTY: Just asking for a bit of
24 foundation to verify who's speaking in this video.

25 JUDGE ERICKSON: Just a second. Okay. I

1 think the objection is it's not clear who was speaking.
2 I suspect I know but it's not my position to make that
3 finding so do you want to clarify who was actually
4 asking the question of Miss Ness?

5 Q. (Mr. Sanderson continuing) And, Representative
6 Jones, do you recognize the representative that asked
7 the question of Legislative Council Attorney Clair Ness?

8 A. Yes, I do.

9 Q. And who was that individual?

10 A. Representative Austen Schauer.

11 Q. And was Representative Schauer a member of the
12 Redistricting Committee in 2021?

13 A. Yes.

14 Q. And the video we're seeing, is that a legislative
15 Redistricting Committee meeting that occurred in 2021?

16 A. Correct.

17 Q. Okay. And so we'll replay the video from the
18 start for clarification but the video's going to show
19 Representative Schauer asking a question regarding the
20 Gingles factors to Legislative Council Attorney Clair
21 Ness.

22 (Unidentified video played.)

23 Q. (Mr. Sanderson continuing) And, Representative
24 Jones, my follow-up question there, are you aware of
25 Legislative Council ever performing any analytical data

1 on prior voting or precinct voting in Districts 4 and 9
2 and presenting that to the Redistricting Committee at
3 any time?

4 A. No. I'm not aware of any of that being
5 presented. And I asked multiple times if that had been
6 done and I was assured it had not been done.

7 Q. And when you say you'd asked, who did you request
8 whether voting data had been compiled for the
9 Redistricting Committee?

10 A. Members of the Redistricting Committee.

11 Q. Okay. And when you said had that been done, were
12 you referring to whether Legislative Council had
13 performed those analyses for the Redistricting
14 Committee?

15 A. Correct.

16 Q. And your understanding is Legislative Council
17 never performed any past voting data or precinct data
18 historical elections in Districts 4 and 9 for the
19 Redistricting Committee?

20 A. Correct.

21 MR. SANDERSON: I have no further questions.
22 Thank you.

23 JUDGE ERICKSON: Thank you. From the State
24 defendants?

25 MR. PHILLIPS: Your Honor, if we could?

1 JUDGE ERICKSON: You may.

2 MR. PHILLIPS: Thank you. Your Honor, I do
3 have a few questions.

4 JUDGE ERICKSON: You may.

5 MR. PHILLIPS: Just a few questions.

6 **RECROSS-EXAMINATION**

7 **BY MR. PHILLIPS:**

8 Q. Did you attend all three public meetings of the
9 Interim Tribal and State Relations Committee?

10 A. I assume you're asking about this year 2021-2022?
11 Yes, I have.

12 Q. You attended all three?

13 A. Yes.

14 Q. Did you attend all six public meetings of the
15 Interim Redistricting Committee?

16 A. No.

17 Q. Did you attend both meetings of the Joint
18 Redistricting Committee?

19 A. I believe I did towards the end, the two of them
20 that I did attend.

21 Q. Do you know which ones?

22 A. I do not other than it was the last two at the
23 end of the process.

24 Q. There was some discussion in your testimony
25 earlier and a video where Clair Ness was speaking. Do

1 you remember that?

2 A. Yes.

3 Q. Have you ever talked to Clair Ness about analyses
4 that she may have run?

5 A. Yes.

6 Q. You have spoken with her?

7 A. Yes.

8 Q. When did you speak with her?

9 A. I can't say exactly the time but it was during
10 this time when we were working on this stuff to find out
11 what had been done.

12 Q. You don't remember the time that you spoke with
13 her?

14 A. I believe I already said no, I do not know
15 specifically the time.

16 Q. You'd indicated earlier that someone told you
17 that Legislative Council did not perform a data
18 analysis; is that correct?

19 A. Yes.

20 Q. Who told you that?

21 A. I was talking to Austen Schauer and I was talking
22 to the chairman of the committee.

23 Q. Did they tell you whether they had spoken with
24 Clair Ness or anyone else with Legislative Council?

25 A. I don't recall.

1 MR. PHILLIPS: Thank you. No further
2 questions.

3 JUDGE ERICKSON: From the intervenors?

4 MS. KELTY: Could I have one moment, Your
5 Honor?

6 JUDGE ERICKSON: You may.

7 MS. KELTY: Thank you. No further
8 questions, thank you.

9 JUDGE ERICKSON: Thank you. You may step
10 down, Representative Jones.

11 MR. JONES: Thank you.

12 * * *

13 (Further proceedings reported but not
14 transcribed herein.)

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Kelly A. Kroke, a duly appointed
Registered Professional Reporter;

DO HEREBY CERTIFY that I reported in
shorthand the foregoing proceedings had and made a
record at the time and place indicated.

I DO HEREBY FURTHER CERTIFY that the
foregoing and attached (37) typewritten pages contain an
accurate partial transcript of my shorthand notes then
and there taken.

Dated this 29th day of November, 2022.

/s/ Kelly A. Kroke
KELLY A. KROKE - RPR, RMR
United States District Court Reporter
District of North Dakota
Eastern Division

EXHIBIT 23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

- - - - -
Charles Walen and Paul)
Henderson,)
)
Plaintiffs,)
)
vs.)
)
Doug Burgum and Alvin)
Jaeger,)
)
Defendants,)
)
and)
)
Mandan, Hidatsa & Arikara)
Nation, Lisa DeVille,)
and Cesareo Alvarez, Jr.,)
)
Intervenor Defendants.)
- - - - -

FILE NO. 1:22-cv-31

**T R A N S C R I P T
O F
P R O C E E D I N G S
MOTION FOR PRELIMINARY INJUNCTION (VOL. 2)
May 5, 2022
Pages 39-176**

HELD AT: QUENTIN BURDICK UNITED STATES COURTHOUSE
655 FIRST AVENUE NORTH
FARGO, NORTH DAKOTA 58102

BEFORE: THE HONORABLE RALPH R. ERICKSON, PETER D. WELTE
AND DANIEL L. HOVLAND

COURT REPORTER: KELLY A. KROKE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

MR. PAUL R. SANDERSON **COUNSEL FOR PLAINTIFFS;**
MR. RYAN J. JOYCE

Attorneys at Law
1100 College Drive, Ste. 5
Bismarck, ND 58501

AND

MR. ROBERT W. HARMS
Attorney at Law
815 North Mandan Street
Bismarck, ND 58501

MR. DAVID R. PHILLIPS **COUNSEL FOR DEFENDANTS;**

Attorney at Law
300 West Century Avenue
Bismarck, ND 58502

AND

MR. MATTHEW A. SAGSVEEN
Attorney at Law
500 North 9th Street
Bismarck, ND 58501

MS. SAMANTHA KELTY **COUNSEL FOR INTERVENOR DEFENDANTS;**

Attorney at Law
1514 P Street NW, Ste. D
Washington, DC 20005

AND

MR. MICHAEL S. CARTER
Attorney at Law
1506 Broadway
Boulder, CO 80302

AND

MR. MARK GABER (Via Video)
Attorney at Law
1101 14th Street NW, Ste. 400
Washington, DC 20005

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

W I T N E S S E S

DEFENDANTS' :

PAGE NO.

IRWIN JAMES NARUM SILRUM

Direct Examination by Mr. Phillips	43
Cross-Examination by Mr. Sanderson	60
Redirect Examination by Mr. Phillips	77
Recross-Examination by Mr. Sanderson	80

INTERVENOR DEFENDANTS' :

LOREN COLLINGWOOD

Direct Examination by Ms. Kelty	82
Cross-Examination by Mr. Sanderson	101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

* * *

(Further proceedings reported but not transcribed herein: May 5, 2022, the following proceedings continued at 9:59 a.m.):

JUDGE ERICKSON: The movants will call their next witness.

MR. SANDERSON: And, Your Honor, at this time the movants have no further witnesses for the hearing.

JUDGE ERICKSON: Thank you. The State will call its first witness.

MR. PHILLIPS: Yes, Your Honor, I'd call Jim Silrum.

THE COURT: If you would please step forward, stand before the clerk, raise your right hand and take the oath.

(Witness sworn.)

JUDGE ERICKSON: I'll once again remind you that the microphone is directional. When you get seated in the witness stand, if you would please state your full name for the record and spell your last name, sir.

THE WITNESS: Good morning. My name is Irwin James Narum Silrum. My last name is spelled S-i-l-r-u-m.

1 JUDGE ERICKSON: You may.

2 MR. PHILLIPS: Thank you.

3 **IRWIN JAMES NARUM SILRUM,**

4 HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE
5 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, RELATIVE TO
6 SAID CAUSE, TESTIFIED AS FOLLOWS:

7 **DIRECT EXAMINATION**

8 **BY MR. PHILLIPS:**

9 Q. Mr. Silrum, are you employed by the State of
10 North Dakota?

11 A. I am.

12 Q. And what is your position?

13 A. Deputy Secretary of State.

14 Q. How long have you served at deputy secretary of
15 state?

16 A. Eighteen and a half years.

17 Q. Were you appointed by the North Dakota Secretary
18 of State Alvin Jaeger?

19 A. Yes.

20 Q. With respect to elections, what is the role of
21 the North Dakota secretary of state?

22 A. The secretary of state is the chief election
23 official for the State of North Dakota.

24 Q. And what are your duties specifically as the
25 deputy?

A. With just two exceptions, I have all the same

1 responsibilities as the secretary of state.

2 Q. Is it fair to refer to you as a state election
3 official?

4 A. Absolutely, as opposed to a local election
5 official.

6 Q. From your perspective as a state election
7 official, when did the 2022 primary election begin?

8 A. We normally say that an election begins on
9 January 1st of an election year because state law
10 requires that precincts be established by December 31st
11 of the year prior. However, this year with the
12 redistricting bill that was signed by the governor and
13 the secretary of state on November 12th, we began in
14 earnest on the redistricting work at that time to
15 associate all the voters in the state to their correct
16 legislative districts, and then the precincts were
17 established after that.

18 Q. Are you generally aware of what the plaintiffs
19 are asking the Court to order in this preliminary
20 injunction motion?

21 A. I believe I am.

22 Q. What's your understanding of what the plaintiffs
23 are asking for?

24 A. The removal of subdistricts in Districts 4 and 9.

25 Q. Is it your understanding they're asking that to

1 be done prior to the conclusion of the 2022 elections?

2 A. It's my understanding they're asking for it to be
3 done before the 2022 elections begin or occur.

4 Q. As a state election official, do you have any
5 concerns about that?

6 A. I do.

7 Q. Did you express some of those concerns in your
8 Affidavit that was filed in this case?

9 A. I did.

10 Q. I'm going to refer to your Affidavit which was
11 already filed in this case as document 19 with attached
12 exhibits documents 19-1 through 19-5. Do you recognize
13 that document?

14 A. I do.

15 Q. Is this the Affidavit that you prepared and
16 signed in this case?

17 A. It is.

18 Q. When did you sign this Affidavit?

19 A. I believe it was April 7th.

20 Q. Of 2022?

21 A. Yes.

22 Q. Before we get into some of the specifics on your
23 Affidavit, I'd like you to give the Court a bit of an
24 update on things that might have changed since you
25 signed this Affidavit.

1 Have any election deadlines passed since you
2 signed this on April 7th?

3 A. For the June 14th primary election nearly all of
4 them have passed because voters are already voting in
5 the election. So therefore the candidate filing
6 deadline, which was 64 days before the election which
7 occurred at 4 p.m. on April 11th, has passed. Last
8 Friday military and overseas voters were sent ballots
9 according to federal law and just today all those people
10 who have requested absentee ballots, people like you and
11 me, would receive our absentee ballots. They're being
12 sent in the mail today.

13 Prior to that legislative districts have all
14 met to endorse their candidates and then the candidates
15 who were not endorsed were given the opportunity to
16 circulate their petitions and gather enough valid
17 signatures to gain ballot access that way. So nearly
18 all of the deadlines have passed except for election day
19 itself.

20 Q. Aside from those legal deadlines, what else have
21 state and county election officials already completed
22 with respect to the June primary?

23 A. In March we held a legally required state-wide
24 election official training and as a part of that we
25 conducted the first of the mock elections that we

1 conduct for prior to every election because elections
2 are an absolute. You need to get it 100 percent correct
3 or you don't -- if you receive a failure you don't let
4 it go forward. So we have to make sure that everything
5 is going to be working seamlessly before election day
6 occurs and the votes are tallied.

7 Q. Let's talk about some of the specific deadlines
8 that are mentioned in your Affidavit. The deadline for
9 candidates to file petitions with signatures, has that
10 deadline passed?

11 A. Yes. That was at 4 p.m. on April 11, 2022.

12 Q. Would it be too late today under North Dakota law
13 for a candidate to submit additional petition
14 signatures?

15 A. Absolutely.

16 Q. What about the deadline to -- and you mentioned
17 this before but I'll ask you a few follow-ups. The
18 deadline to send out ballots to military and overseas
19 voters, has that deadline passed?

20 A. Yes. Last Friday was the deadline for military
21 and overseas ballots.

22 Q. Have the ballots actually been mailed out then?

23 A. Yes, and the last I looked ballots had actually
24 been returned.

25 Q. Would this include ballots being mailed to

1 military and overseas voters who were voting in
2 Districts 4 and 9 and their subdistricts?

3 A. Yes.

4 Q. Are there both federal and state laws that affect
5 military and overseas voters?

6 A. Yes.

7 Q. What does federal law specifically require with
8 respect to military and overseas voters?

9 A. Federal law requires that for every military or
10 overseas voter who applies prior to the 45th day before
11 an election they must be sent a ballot on that day. So
12 therefore ballots must be -- must be prepared prior to
13 that deadline. In North Dakota we say the 46th day.
14 The law says 46th day because the 45th always occurs on
15 a Saturday, and so we wanted to be far more generous to
16 military and overseas voters.

17 Q. And did that date pass on April 29th?

18 A. Yes.

19 Q. What about the deadline to send ballots to other
20 absentee voters, has that passed?

21 A. That's actually today. So anyone who has applied
22 for an absentee ballot prior to today is being sent an
23 absentee ballot today.

24 Q. Have ballots already been mailed out then to
25 those absentee voters?

1 A. I would assume so, yes.

2 Q. Would that include being mailed to voters who are
3 voting in Districts 4 and 9 and the subdistricts?

4 A. The entire state, yes.

5 Q. For the ballots that have already been mailed to
6 voters, to date do those ballots reflect the current
7 subdistricts contained within Districts 4 and 9 and the
8 candidates running for office in those subdistricts?

9 A. Yes.

10 Q. Are the ballots that are sent to voters in one
11 subdistrict different than the ballots that are sent to
12 voters in a different subdistrict?

13 A. Absolutely.

14 Q. How are they different?

15 A. In one subdistrict there would be a contest for
16 the House candidate for that subdistrict and in another
17 subdistrict they would have a different contest for the
18 House candidate in that subdistrict. But aside from
19 that ballots are different in every precinct because of
20 the changes that exist. So, yes, they are very
21 different.

22 Q. Would those other differences be, for example,
23 city elections or school board elections?

24 A. City, school, vector districts, ambulance
25 districts, library districts. There's a whole myriad of

1 reasons why ballots change from one jurisdiction to
2 another.

3 Q. I'm going to ask you some questions about
4 paragraph 12 in your Affidavit. That starts on page 5
5 of document 19. I'm not going to ask you to read it but
6 maybe you can explain to the Court what you were talking
7 about in this paragraph in your Affidavit.

8 A. There are two means by which candidates can gain
9 access to the ballot for a political party office and
10 that would be either being endorsed by the local
11 district party of the candidate's choice or else
12 circulating petitions to gather enough signatures to
13 gain ballot access that way.

14 North Dakota law requires that the number of
15 signatures required for a district, a legislative
16 district, is one percent of the resident population of
17 that district. And so we do a calculation -- secretary
18 of state I should say does a calculation of what all
19 those numbers are across the state so that candidates
20 will know how many signatures they would need. Because
21 Districts 4 and 9 were subdivided, those who are running
22 for the House are only running in approximately half of
23 the district so, therefore, they would only be required
24 essentially half the number of signatures that let's say
25 the Senate candidate from the same district would need

1 to gain ballot access. And those signatures must be
2 valid signatures from electors of that district,
3 qualified electors of that district.

4 Q. Was there a concern that if this Court were to
5 eliminate the subdistricts that some candidates might no
6 longer qualify to be on the ballot if they didn't
7 collect sufficient signatures for a whole district?

8 A. That was my concern expressed in paragraph 12,
9 yes.

10 Q. In paragraph 12 you didn't identify any specific
11 candidates, correct?

12 A. Correct, because the time that I submitted this
13 was prior to the candidate filing deadline.

14 Q. Since you signed this Affidavit, have there been
15 any developments with respect to any specific
16 candidates?

17 A. Yes. In Districts 9, 9A and 9B, two candidates
18 who did not get the endorsement of their district party,
19 one a Republican and the other a member of the
20 Democratic NPL, submitted signatures on their petitions
21 to qualify for the ballot in those districts.

22 A woman by the name of Jayme Davis from
23 District 9A, if she had needed to submit for the entire
24 district I believe I remember that would have been 161
25 valid signatures. She submitted less than that because

1 it -- she was only required to do half of that.

2 Another individual currently seated
3 legislator, Charles Damschen, submitted signatures in 9B
4 and he also submitted less than the number needed for
5 the entire district but enough for the subdistrict.

6 Q. Do you recall how many signatures he needed --
7 would have needed for a full district?

8 A. For a full district it would be the same, 161
9 valid signatures.

10 Q. Do you recall how many signatures he actually
11 submitted?

12 A. I do not remember the exact numbers but I could
13 provide that to the Court if it's needed.

14 Q. If I represented to you that it was 98, does that
15 sound correct to you?

16 A. Yes.

17 Q. Are candidates Jayme Davis and Chuck Damschen
18 currently qualified to be on the ballot in the June
19 primary?

20 A. Yes.

21 Q. Have they been certified for the June primary
22 ballot?

23 A. Yes.

24 Q. How does that certification work?

25 A. When the paperwork comes in from any candidate

1 for offices that must file their candidate paperwork
2 with the secretary of state, our staff reviews those
3 thoroughly to make sure that all of the paperwork is
4 filed and complete, for example, the statement of
5 interests is filed and complete. The Affidavit of
6 candidacy is filed and complete. And then for those
7 that are endorsed that the proper endorsements were made
8 on the endorsing paperwork. For those that filed by
9 petition the signatures are all reviewed to make sure
10 that they are indeed residents of that subdistrict or
11 district as the case may be to make sure that they are
12 valid signatures.

13 Q. Have Jayme Davis and Chuck Damschen's names
14 already been printed on the ballots for the June
15 primary?

16 A. Yes, they have. And they were -- they along with
17 every other candidate that filed with the secretary of
18 state received certification paperwork from our office
19 that said that they were certified for the ballot.

20 Q. Have these printed ballots with their names on it
21 been mailed to voters yet?

22 A. Yes.

23 Q. Which voters?

24 A. Well, all voters across the state but certainly
25 in Districts 4 -- 4A, 4B, 9A, 9B.

1 Q. And that would include the military and overseas
2 and absentee voters, correct?

3 A. Yes.

4 Q. If this Court issues an order eliminating the
5 subdistricts in District 4 and District 9 at this time
6 as the plaintiffs have requested, would candidates Jayme
7 Davis and Chuck Damschen be qualified to be on the June
8 primary ballot?

9 A. In my opinion not according to state law because
10 if the subdistricts cease to exist their valid
11 signatures that they submitted would be considered
12 insufficient because they were -- there were not enough
13 for the entire district.

14 Q. Would their names need to be removed from the
15 ballot?

16 A. It's unclear at this point because state law does
17 not -- does not cover that but it would certainly enter
18 into the complicated election procedure a number of
19 problems that would be hard to -- hard to address.

20 Q. If this Court issues an order eliminating the
21 subdistricts in District 4 and District 9, would ballots
22 need to be reprinted?

23 A. Yes.

24 Q. Why?

25 A. Well, because the -- currently the -- those

1 voters who live in let's say, for example, 4A receive a
2 ballot that has the House candidate in the two political
3 parties that are represented on the ballot for just that
4 House subdistrict. So if the -- if the subdistricts
5 were removed the ballots would have to be reprinted so
6 that there would be a single contest that is a vote for
7 two for the House districts -- House district.

8 Q. What efforts would election officials have to
9 undertake to get the ballots reprinted now?

10 A. They would have to essentially recycle all the
11 ballots that they've already received, create new
12 ballots. They would have to adjust the programming that
13 is for the voting system tabulators that tabulates the
14 votes correctly. And then for all people who have been
15 sent ballots they would need to be sent brand new
16 ballots along with a notice saying the election has
17 changed. You need to -- you need to vote this new
18 ballot. If you haven't already sent in your previous
19 ballot, please discard that and send in the new one.

20 It would -- there would also have to be some
21 sort of a mechanism put in place so that the local
22 election officials could tell the envelope of a revised
23 ballot from the envelope -- return envelope of the
24 initial ballot because there's no way that they could
25 look at the ballot itself because privacy of voting is

1 sacred in this situation so somehow the ballot
2 envelopes, return envelopes would have to be different.

3 And then we would have to make sure that the
4 programming is correct. We would have to indeed conduct
5 another mock election as a part of our logic and
6 accuracy testing. So the list goes on. It's a very
7 time-consuming process.

8 Q. If you were to resend ballots to voters along
9 with a note that you mentioned, as an election official
10 do you have any concerns about voter confusion?

11 A. Absolutely. I would have no idea if they're
12 going to make sense of that note. Some -- for example,
13 some voters might think: Well, the rest of my ballot
14 must have been okay so on this new ballot I will just
15 vote the contest in question. And then you would have a
16 situation where only one ballot from a voter can be
17 counted in the election and so presumably the second
18 ballot would have to be counted, but that would
19 disenfranchise them if they had only voted for the House
20 contest in thinking that their other votes would be
21 counted on the prior ballot that they already returned.
22 There's just a whole number of reasons why voters could
23 be confused over this.

24 Q. Could that result in voter disenfranchisement?

25 A. Yes.

1 Q. How so?

2 A. As I said, if they -- if the voter misunderstands
3 the communication and only votes for the House contest
4 thinking that's the only thing that's changed from the
5 other one, then all of their other votes would be --
6 would not be counted. So therefore they would not have
7 the chance to express their opinions in the primary for
8 offices like attorney general or secretary of state or
9 all of the other -- and more seriously, because it's the
10 June election, cities and schools, this is their general
11 election. There is not a primary election so
12 essentially you would be eliminating those people from
13 their ability to express their opinions on who should be
14 their mayor, their city council members, their school
15 board members if they make a mistake in this process.

16 Q. Is there also a concern that a voter might not
17 receive or be able to send back the second ballot?

18 A. Yes. Actually for military and overseas voters
19 there is something that is referred to as the federal
20 write-in absentee ballot and primarily that is for those
21 individuals who are in harm's way who are just not able
22 to receive or return their ballot as needed.

23 For example, someone who is serving on the
24 USS North Dakota may have -- which is a submarine, may
25 have requested and received their absentee ballot and

1 returned that and they did so simply because they know
2 that they're currently headed underwater for the next
3 three to six months. If they are not able to receive
4 their secondary ballot, they would be -- they would be
5 disenfranchised because their original ballot coming
6 back in would -- decisions would have to be made that
7 are not clear at this point as to how those votes from
8 that contest -- those contests would be counted.

9 Q. Are there any other steps that election officials
10 would have to take if the Court were to eliminate the
11 challenged subdistricts in this case?

12 A. Yes. Just like after the redistricting session
13 was over in which election officials across the state
14 reviewed all -- more than 47,000 street files that exist
15 in the state's central voter file to make sure that the
16 voters are associated to their correct legislative
17 district, correct precinct, correct split of a precinct,
18 that sort of thing. Those would all have to be done
19 again in Districts 9 and Districts 4.

20 The other concern that I would have there is
21 the simple elimination of the districts -- subdistricts.
22 I would wonder how they would be interpreted by the
23 counties that make up districts that are a part of
24 Districts 9 and 4 simply because they -- those district
25 county commissions might say to themselves: You know,

1 we established the precincts for the county based on the
2 fact that subdistricts existed. Now that subdistricts
3 don't exist they might change -- decide to change those
4 precinct boundaries and then Katy bar the door, we have
5 all kinds of problems that would exist there. There's
6 just no controlling rule or law over that that would
7 prevent that from happening.

8 Q. If this Court didn't make any changes at all with
9 respect to the June primary but instead eliminated the
10 subdistricts in advance of the general election in
11 November, would you have any concerns about that?

12 A. I do.

13 Q. What are your concerns?

14 A. Simply because the individuals who are given the
15 chance to vote for the nomination of their party's
16 candidates in Districts 4A, 4B, 9A, 9B would suddenly be
17 expanded to the entire district. So the people who
18 nominated them in the primary would possibly have their
19 votes diluted because of the entire district voting.

20 Additionally, in -- I believe it is in 4A
21 there are presently -- well, there are two Democratic
22 NPL candidates whose names are on the ballot. As it
23 stands right now, only one of those will move forward to
24 the general election. If subdistricts were eliminated
25 then -- especially since there isn't a Democratic NPL

1 candidate running in 4B, that would mean the Democratic
2 NPL party would be at a disadvantage because they would
3 only have one candidate on the ballot. However, in the
4 Republican district party of 4, there are candidates in
5 4A and 4B and they would presumably both go forward. So
6 I think it would be unfair to a political party but also
7 unfair to the voters of those subdistricts.

8 Q. Does North Dakota law provide any guidance in how
9 to handle a situation like that?

10 A. None whatsoever.

11 MR. PHILLIPS: Thank you, deputy secretary.
12 I have no further questions.

13 JUDGE ERICKSON: Thank you. Cross from the
14 intervenors?

15 MS. KELTY: No, Your Honor.

16 JUDGE ERICKSON: Thank you. From the
17 plaintiffs?

18 MR. SANDERSON: Yes. Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 **BY MR. SANDERSON:**

21 Q. Good morning, Mr. Silrum. My name's Paul
22 Sanderson. I represent the plaintiffs in this case.

23 Now you began your testimony if I'm correct
24 that you said normally a primary election begins on
25 January 1st, correct?

1 A. Correct.

2 Q. You said, however, for the upcoming 2022
3 elections the primary election began on November 12th.
4 Was that your testimony?

5 A. That is correct.

6 Q. Okay. And just to be clear the bill we're here
7 talking about that was signed by the governor on
8 November 11th was then filed with the secretary of state
9 on November 12th, correct?

10 A. Correct.

11 Q. And so it became law. The law creating the
12 subdistricts went into effect on November 12th, correct?

13 A. Correct.

14 Q. The same day your office began the primary
15 election process, correct?

16 A. Correct.

17 Q. And you would agree then, Mr. Silrum, that
18 Plaintiffs Charles Walen and Paul Henderson would not
19 have had any opportunity to file an action between the
20 time the bill -- or the law went into effect creating
21 the subdistricts and the time your office began primary
22 election proceedings.

23 A. Correct.

24 Q. Okay. I want to start with Exhibit D of your
25 Affidavit. Do you recall that where you've listed out

1 the 47 districts, including the population of each of
2 the districts?

3 A. I believe I recall that, yes.

4 Q. I'm going to put it on the Elmo (indicating). Do
5 you recognize this as Exhibit D to your Affidavit?

6 A. Yes.

7 Q. And is this a document you prepared?

8 A. Yes.

9 Q. And you've -- to be clear I want to start with
10 District 4. The total population of the newly designed
11 District 4 as part of the 2021 redistricting was 16,469;
12 is that correct?

13 A. Correct.

14 Q. And would you agree generally, Mr. Silrum, that
15 that 16,469 generally fell close to the middle of the
16 population of the 47 districts?

17 A. I have not analyzed that completely but I would
18 suspect that legislative counsel made sure of that.

19 Q. And I think we could go -- then I did -- there
20 are a number of districts such as District 3 that have
21 15,000 plus members in their district and there are
22 other districts such as we see District 6 that have
23 17,000 plus members. You see that?

24 A. I do.

25 Q. By my calculation, I went through your Exhibit D,

1 I had -- nine of the 47 districts had in the 15,000
2 population and I believe 17 districts had 17,000
3 population.

4 Would that kind of coincide with your
5 understanding of where the population base was?

6 A. I'll take your word for it.

7 Q. And certainly we would agree --

8 JUDGE WELTE: Mr. Sanderson, if I may
9 interrupt, do you have a lapel mic you could use?

10 MR. SANDERSON: I don't. I can put one on,
11 Judge.

12 JUDGE WELTE: Thank you very much.

13 Q. (Mr. Sanderson continuing) And, Mr. Silrum, the
14 population district in District 4 of 16,469 is certainly
15 not an outlier in the 47 districts, correct?

16 A. It is not.

17 Q. Okay. And similarly with respect to District 9
18 of 16,158 residents, that also is not an outlier in the
19 total population of the 47 districts.

20 A. Correct.

21 Q. Okay. And you would agree, Mr. Silrum, that the
22 subdistricts in Districts 4A and 4B do not change the
23 exterior boundaries of District 4, correct?

24 A. I agree.

25 Q. Okay. And if the Court were to remove the

1 subdistrict boundaries, the exterior boundaries of
2 District 4 would remain the same, correct?

3 A. Correct.

4 Q. And District 4 again would then have a total
5 population of 16,469.

6 A. Correct.

7 Q. And, Mr. Silrum, I want to ask you about
8 specifically District 9 -- or, excuse me, District 4.
9 When was the last election in District 4 for the House
10 of Representatives?

11 A. Even numbered districts were on the ballot in
12 2020.

13 Q. Okay. And we're correct the only race election
14 that's affected by the subdistricts is the House of
15 Representatives in Districts 4 and Districts 9, correct?

16 A. In District 4 that would be true but in
17 District 9 there are -- so, yes. The answer -- if I
18 understand your question correctly now, the answer would
19 be yes.

20 Q. Okay. Out of all the different election options
21 on the ballot, the only one that the subdistrict applies
22 to in Districts 4 and 9 are to the House of
23 Representatives election in those two districts,
24 correct?

25 A. Correct.

1 Q. Okay. Now one of the things we see on your
2 Exhibit D is you have the last column "District
3 Political Parties Must Reorganize." And am I correct in
4 understanding that certain districts the population
5 changed to a significant amount that that district had
6 to have a new election?

7 A. That is correct.

8 Q. Okay. And we see in District 4 that you have
9 highlighted in green that their population did not
10 change to a significant enough extent where they would
11 have had to have a new election in District 4, correct?

12 A. I would -- I would clarify that by saying the
13 district parties did not need to reorganize in 4.

14 Q. Okay. Am I correct the reason that District 4 is
15 up for election in 2022 is because of the creation of
16 subdistricts in District 4?

17 A. Yes.

18 Q. Okay. And if this Court were to remove the
19 subdistricts in District 4, the two House of
20 Representative members that were elected in 2020 could
21 finish their four-year -- constitutional four-year term,
22 correct?

23 A. I would have to address my legal counsel on that.

24 Q. Okay. Well, they certainly don't -- they're
25 certainly not one of the districts such as District 8

1 that had to have a new election because of political
2 party or reorganization, correct?

3 A. I believe you're misunderstanding the point of
4 this particular chart. This was not a particular chart
5 determining which of the districts needed to have
6 reelections. It was specifically created so that
7 district political parties would need to know whether or
8 not they needed to reorganize, which means they needed
9 to have a publically-noticed meeting to determine who
10 would be their chairman, who would be their
11 vice-chairman, vice-chairwoman, secretary, treasurer,
12 and the board because state law specifically speaks to
13 that in Chapter 16.1-03, I believe the section is 17 and
14 subsection 2.

15 Q. And maybe the easier way -- and I probably could
16 have asked you a more direct question. The only reason
17 that District 4 is up for election is because of the
18 creation of the two subdistricts, correct, on the House
19 of Representatives side?

20 A. That is the reason it is on the ballot, yes.

21 Q. Okay. Now I want to talk about you -- you
22 mentioned some of the impacts that would occur if the
23 subdistricts are removed and kind of leading to the
24 voter confusion and voter disenfranchised that you
25 testified to earlier.

1 I want to ask you: If the subdistricts are
2 removed by this Court in District 9, there's no
3 requirement that the exterior boundaries of District 9
4 would need to be redrawn; is that correct?

5 A. Correct.

6 Q. And if the exterior boundaries of District 9 do
7 not need to be redrawn, there would be no need to redraw
8 the precincts in District 9, correct?

9 A. I cannot say that, no.

10 Q. Well, every person that would vote at a precinct
11 in District 9 currently, whether in 9A or 9B, would then
12 be voting for just District 9 as a total, correct?

13 A. As I stated earlier, county commissions are given
14 responsibility under law to establish precincts, and
15 precincts were more than likely established simply
16 because of the subdistrict boundaries as well.
17 Therefore, there is no guarantee that a county wouldn't
18 change its precinct boundaries because those
19 subdistricts no longer exist.

20 Q. Every voter in District 9 or 9A or 9B belongs to
21 a precinct, correct?

22 A. Currently, yes.

23 Q. And every voter in that precinct, whether in 9A
24 or 9 -- the total 9 with the subdistricts removed their
25 vote would count. Changing the subdistricts wouldn't

1 remove a voter from being able to vote in a precinct.

2 Is that fair?

3 A. As long as the precincts don't change.

4 Q. Now I want to ask you a little bit about in
5 your -- you set forth a timeline in your Affidavit,
6 correct?

7 A. Yes.

8 Q. And Governor Burgum signed House Bill 1397 on
9 April 21, 2021, correct?

10 A. If you say so.

11 Q. And House Bill 1397 established the Interim
12 Legislative Management Redistricting Committee, correct?

13 A. I believe so.

14 Q. And the purpose of that Redistricting Committee
15 was to draw and implement the redistricting plan based
16 on the 2020 census, correct?

17 A. Correct.

18 Q. The -- certainly there was no -- there's no law
19 or rule in North Dakota that would prevent Governor
20 Burgum from signing and appointing -- signing a bill and
21 appointing the Redistricting Committee earlier than
22 April 21, 2021, correct?

23 A. I suppose it could have been done at any time --

24 Q. Okay.

25 A. -- during the session.

1 Q. The interim -- and according to your Affidavit
2 the Interim Redistricting Committee did not begin
3 holding its first meetings until July 29th of 2021,
4 correct?

5 A. That sounds correct.

6 Q. And the Redistricting Committee met six times
7 during the redistricting process according to your
8 Affidavit, correct?

9 A. Correct.

10 Q. There was no provision in North Dakota law that
11 would have prevented the Redistricting Committee from
12 meeting earlier than July 29, 2021, correct?

13 A. There was no provision except for the fact that
14 the census data was not available by that earlier date.

15 Q. Certainly. And the full census data came
16 available in August of 2021, correct?

17 A. Correct.

18 Q. Yet the Redistricting Committee had already begun
19 meeting in July before the full census data had taken
20 place, correct?

21 A. Okay.

22 Q. I mean, you're aware they began meeting July 29th
23 of 2021 before the full census data, correct?

24 A. Okay, yes.

25 Q. Okay. And October 29, 2021 Governor Burgum

1 signed his bill appointing a special session, correct?

2 A. Yes.

3 Q. There was -- there's no law or regulation under
4 North Dakota law that would have prevented Governor
5 Burgum from calling the special session and signing that
6 bill prior to October 29, 2021, correct?

7 A. Not that I'm aware of.

8 Q. Okay. And the special session began on
9 November 8, 2021, correct?

10 A. Correct.

11 Q. And again there's no law or rule in North Dakota
12 that would have prevented that special session from
13 occurring earlier than November 2021.

14 A. No. Precedence is that that's when it usually
15 happens.

16 Q. And you're not aware of any statute that would --
17 under North Dakota law that would prevent an earlier
18 special session?

19 A. No.

20 Q. Now I want to talk about you testified to some of
21 the things that would be very time consuming for your
22 office if another election had to be held. One of them
23 you said ballots would have to be reprinted.

24 A. Correct.

25 Q. Could ballot -- that's something your office can

1 do is reprint ballots, correct?

2 A. Actually that's done by the individual counties.
3 We assist the counties in the preparation of their
4 ballots but that is their responsibility.

5 Q. Okay. And certainly you believe that counties
6 could reprint ballots for a House election in District 9
7 if requested?

8 A. Yes, they can, but not as quickly as one might
9 think.

10 Q. Okay. You said notice would need to be sent with
11 the ballots. That's something that could be done by
12 either your office or the county for District 9,
13 correct?

14 A. It would have to be done by the county because
15 our office does not send out a single ballot.

16 Q. So the county certainly has the ability to send
17 out a notice for a special election in District 9 if so
18 requested?

19 A. We would not refer to it as a special election
20 but, yes, they would have to be the ones to send out a
21 notice.

22 Q. Well, let's talk about special elections. You're
23 familiar with the state election code obviously,
24 correct?

25 A. A little bit.

1 Q. And are you aware that North Dakota election code
2 has provisions for holding special elections?

3 A. Yes.

4 Q. Has your office taken any steps to look at
5 holding a special election in District 9?

6 A. No.

7 Q. You're aware in the past North Dakota has held
8 special elections, correct?

9 A. Yes.

10 Q. And on multiple occasions North Dakota has held
11 special elections?

12 A. Yes.

13 Q. And included in the power under the North Dakota
14 election code would be the ability to hold a special
15 election for a primary election, correct?

16 A. I would have to check on that to be honest
17 because generally a special election is considered a --
18 in the same regards as a general election. So I could
19 not answer the Court honestly on that based on my
20 knowledge.

21 Q. Okay. Now if a special election was going to be
22 held, new ballots issued and a notice prepared by the
23 counties, that's something that can be done, correct?

24 A. Yes.

25 Q. And your office could assist counties in

1 preparing a notice explaining to voters for the House of
2 Representatives election in District 9 what the
3 requirements were of that ballot?

4 A. Yes.

5 Q. Okay. Local election officials would need to
6 revise the ballot and programming would be done to
7 correct and tabulate the results of that ballot,
8 correct?

9 A. Correct.

10 Q. And that's something that could be done by local
11 election officials with the help of your office?

12 A. With the help of our office and also with the
13 assistance of a number of others, yes.

14 Q. Now one of the things you mentioned was voter
15 confusion. Would you agree that a properly written
16 notice would help cure any voter confusion with respect
17 to a special election for a House race in District 9?

18 A. I would argue that it could but based on my
19 experience with the way people read and do not read
20 instructions I would say there's a good question that
21 they would not.

22 Q. Has your office taken a look at any potential
23 notices if a special election were needed for a House
24 race in District 9?

25 A. No.

1 Q. Now one of the things you testified to earlier is
2 the problem with issuing new ballots would be there were
3 a number of other elections that took place on that
4 ballot other than just House race in District 4 and
5 District 9, correct?

6 A. Yes.

7 Q. Would not -- would a simple solution not be
8 simply to accept all the election results in Districts 4
9 and 9 other than House race and issue a special election
10 for that? Would that not solve your concerns with
11 respect to those other elections?

12 A. I have not given that any thought so I -- I could
13 not answer the Court honestly.

14 Q. Well, as you sit here today one of the things you
15 mentioned I believe was that in District 9 there would
16 be school board elections, correct?

17 A. Correct.

18 Q. Wouldn't a solution to this be accepting the
19 results of the school board election and just having a
20 special election solely on the House of Representatives
21 race in District 9?

22 A. As I stated earlier, I cannot explain to the
23 Court with all honesty that I know that a special
24 election can be held for a primary. Therefore, I would
25 need to consult to know whether or not that could even

1 happen.

2 Q. Okay. Well, one of the things you talked about
3 was -- one of the big issues is a 64-day candidate
4 filing deadline, correct?

5 A. (Nods head.)

6 Q. Is that a yes?

7 A. Yes.

8 Q. And not to be rude but just to make sure we have
9 a record with a verbal response. And you said for the
10 June primary the 64-day filing notice was April 11th I
11 believe, correct?

12 A. That is correct.

13 Q. So just kind of throwing out -- and I know you
14 probably don't have these. I'll just kind of ask you to
15 take my word. But let's say a primary election was
16 going to be held. Special primary election in District
17 9 was going to be held on August 9th. The 64-day
18 candidate filing for that would be June 6th. Does that
19 kind of seem right that you'd meet that by June 6th?

20 A. Yes.

21 Q. Another issue you said was 46-day overseas and
22 military ballots. That's a deadline that's important,
23 correct?

24 A. Correct.

25 Q. And for an August 9th primary special election

1 primary in District 9 the 46-day overseas and military
2 ballot would be June 24th.

3 A. I'll take your word for it.

4 Q. So it's possible to meet those deadlines by
5 pushing out a primary election to a later date such as,
6 let's say, August, correct?

7 A. Provided that a special election can be a primary
8 election.

9 Q. Okay. Now I know you're in North Dakota. You
10 specialize in North Dakota election law. But are you
11 aware of other states and when their primaries are held?

12 A. Yes. Some have already occurred, some will occur
13 after ours, and some occur right around the same time as
14 ours.

15 Q. And, for example, in the state of Wisconsin are
16 you aware that their primary's in August of 2022?

17 A. That sounds right.

18 MR. SANDERSON: Okay. Mr. Silrum, I have no
19 further questions. Thank you.

20 JUDGE ERICKSON: For the state defendants,
21 redirect?

22 MR. PHILLIPS: Yes, thank you. I have a few
23 questions.

24 JUDGE ERICKSON: How long do you expect this
25 to go? I think we probably are close to where we need

1 to take a break.

2 MR. PHILLIPS: I don't expect to take long
3 for this portion.

4 JUDGE ERICKSON: All right.

5 **REDIRECT EXAMINATION**

6 **BY MR. PHILLIPS:**

7 Q. Mr. Silrum, remind me again when the
8 redistricting became law in North Dakota in this 2020
9 round.

10 A. It became law when filed with the secretary of
11 state on November 12th.

12 Q. Are you familiar with the past redistrictings
13 that have taken place every 10 years?

14 A. Yes. I've been fortunate to be involved in them
15 as an election official.

16 Q. Is the completion of redistricting in North
17 Dakota following the 2020 census consistent with the
18 historical trend for when the redistricting was
19 completed?

20 A. Yes.

21 Q. This is even though the state did not receive
22 census data until late this year, correct?

23 A. Yes. I would actually say it was a miracle that
24 it happened in November because of the lateness of the
25 data.

1 Q. Did that data come late from the federal
2 government because of COVID issues?

3 A. Absolutely.

4 Q. Can redistricting be completed without census
5 data from the federal government?

6 A. No.

7 Q. The opposing counsel asked you some questions
8 about elimination of the subdistricts. If this Court
9 sends this matter back to the state legislature to do
10 the redistricting, do we know whether or not the state
11 legislature would simply remove the subdistricts?

12 A. I'm not a member of that branch of government.
13 I'm in the executive branch so I wouldn't even hazard a
14 guess.

15 Q. When the subdistricts were created, does
16 substantial population equality have some impact on the
17 shape and size of the larger districts around it?

18 A. That is my understanding but you would need to
19 ask that of legislative -- the legislative branch who's
20 responsible for redistricting.

21 Q. If we went back to the legislature they may make
22 a different decision if the subdistricts are no longer
23 allowed with respect to the shape and size of the larger
24 district, correct?

25 A. I suppose.

1 Q. The county officials make decisions with respect
2 to creation of precincts, correct?

3 A. County commissions specifically.

4 Q. And the counties print the ballots?

5 A. Correct.

6 Q. You're not testifying today as a county official,
7 correct?

8 A. I am not.

9 Q. As we sit here today and stand here today, people
10 have already voted in the elections being held in the
11 subdistricts that are being challenged, correct?

12 A. Correct.

13 Q. And they've been sent ballots?

14 A. Yes.

15 Q. If a special election is held, will those same
16 people receive a second ballot?

17 A. They would have to, yes.

18 Q. Is there any risk of voter confusion in that
19 scenario?

20 A. I believe so.

21 Q. How so?

22 A. For the reasons previously stated. If you'd like
23 I can reiterate them.

24 JUDGE ERICKSON: That's fine.

25 MR. PHILLIPS: Thank you. No further

1 questions.

2 JUDGE ERICKSON: Thank you. Ms. Kelty?

3 MS. KELTY: No questions, Your Honor.

4 JUDGE ERICKSON: Mr. Sanderson?

5 **RECROSS-EXAMINATION**

6 **BY MR. SANDERSON:**

7 Q. Mr. Silrum, the ballots you talked about that
8 were sent out to voters, were the ballots for voters in
9 Districts 4 and Districts 9 different with respect to
10 the election of the House representatives than every
11 other voter in other districts in the state?

12 A. Yes.

13 Q. And was that because voters in the subdistricts
14 in Districts 4 and Districts 9 only got to submit a vote
15 for one representative?

16 A. Yes.

17 Q. With the ballots that went out to the voters in
18 Districts 4 and Districts 9, did the secretary of state
19 or the county election officials send any notice
20 explaining to voters in Districts 4 and Districts 9 why
21 they're only voting for one representative?

22 A. Not to my knowledge.

23 Q. Why was that not done?

24 A. I don't have an answer for that.

25 Q. Now the North Dakota secretary of state's office

1 has the resources to assist with a special election if
2 one needs to be done in District 9, correct?

3 A. Correct.

4 Q. You could assist with preparing a notice to
5 voters as to why a special election has to be held in
6 District 9 for the House of Representatives seat?

7 A. As I already answered, yes.

8 Q. You could make postings and put notice on your
9 website as to why a special election in District 9 for
10 the House of Representatives would need to occur?

11 A. Yes.

12 Q. Your office could perform local training of
13 election officials to assist them in understanding and
14 explaining to voters why a special election for the
15 House in District 9 would need to occur?

16 A. Yes, we could.

17 Q. Your office could assist in publishing notices in
18 local newspapers as to the reasons why a special
19 election in District 9 for the House of Representatives
20 needed to occur?

21 A. Yes, we could.

22 MR. SANDERSON: I have no further questions.
23 Thank you.

24 JUDGE ERICKSON: Thank you. You may step
25 down, Mr. Silrum.

1 SAID CAUSE, TESTIFIED AS FOLLOWS:

2 **DIRECT EXAMINATION**

3 **BY MS. KELTY:**

4 Q. Thank you, Dr. Collingwood. And what do you do
5 for a living?

6 A. I'm a political scientist. I'm an associate
7 professor of political science at University of New
8 Mexico.

9 Q. Do you have any experience with voting rights and
10 redistricting in the United States?

11 A. Yes. I've probably worked in 15 or 17 states
12 doing that.

13 Q. All right. Let's talk about that experience.
14 What are your general fields of academic expertise?

15 A. The overriding field I work in is American
16 politics and political behavior, voting, elections. I
17 also do a lot of research in race and ethnicity as well
18 as applied statistics and so racially polarized voting
19 is a subset of that discipline.

20 Q. Have you published on these topics?

21 A. Yes.

22 Q. Can you tell us about some of those publications?

23 A. Well, I've published 39 articles, peer-reviewed
24 articles, two books with Oxford University Press. Most
25 of my publications do revolve around race and ethnicity

1 in the United States to some degree.

2 Q. And any chapters, Dr. Collingwood?

3 A. About a dozen book chapters.

4 Q. Have you served as an expert witness on voting
5 rights or redistricting in other cases?

6 A. Yes.

7 Q. What are you typically asked to do as an expert
8 in voting or redistricting cases?

9 A. Probably most of the time people ask me to
10 evaluate the Voting Rights Act, what's known as the
11 Gingles criteria.

12 Q. And just broadly what does that look like?

13 A. Well, there's three prongs. Some of that has
14 been discussed today. One is the presence or absence
15 and the ability to draw a majority-minority district in
16 a certain area. And then Gingles prongs two and three
17 revolve around the concept of racially polarized voting.
18 That -- in a layperson's perspective that effectively
19 means if a particular group of voters or racial or
20 ethnic group is voting generally for one set of
21 candidates and a different group of voters, another
22 racial group, is voting for another set of candidates
23 consistently we see that pattern. We can establish the
24 presence of racially polarized voting.

25 Q. And over the course of your entire career so far,

1 how many times would you say you've performed an
2 analysis similar to the one that you performed in this
3 case?

4 A. Thousands.

5 MS. KELTY: Dr. Collingwood, let's take a
6 look at your CV, if we could pull that up. And for the
7 record we have marked this as Intervenors' Exhibit 1.

8 JUDGE ERICKSON: Yes. One has been
9 received. We have it.

10 MS. KELTY: When all else fails we have
11 paper. So may I approach?

12 JUDGE ERICKSON: You may. Why don't we get
13 a lapel mic on you too if you're going -- you're going
14 to have him testify from there or are you going to have
15 it on the Elmo?

16 MS. KELTY: I'm just going to hand it to him
17 and walk right back.

18 JUDGE ERICKSON: Oh, okay. That's fine.

19 MS. KELTY: Thank you, Your Honor. I'll
20 stay stationary for you.

21 Q. (Ms. Kelty continuing) Do you recognize this,
22 Dr. Collingwood?

23 A. Yes.

24 Q. What is this?

25 A. This is my CV.

1 Q. Is this current?

2 A. Yes.

3 MS. KELTY: And, Your Honor, the parties
4 have stipulated to the admission of Intervenor
5 Defendants' Exhibit 1.

6 Q. (Ms. Kelty continuing) Dr. Collingwood, does
7 this include your current experience and qualifications
8 in entirety?

9 A. Yes.

10 MS. KELTY: And at this time, Your Honor, I
11 would like to offer Dr. Collingwood as an expert in the
12 field of American politics, voting behavior, race and
13 ethnicity including racially polarized voting and
14 political methodology. And I'll note that the
15 plaintiffs have agreed to stipulate to the
16 qualifications of Dr. Collingwood.

17 JUDGE ERICKSON: I don't ordinarily receive
18 experts anymore. What I'll do is I'll say I'll receive
19 the testimony and he is qualified to testify on the
20 matters under consideration in this case.

21 MS. KELTY: Thank you, Your Honor.

22 Q. (Ms. Kelty continuing) Dr. Collingwood, could
23 you briefly summarize what the defendant intervenors
24 asked you to analyze in this case.

25 A. Well, my task here was to evaluate effectively

1 Gingles two and three. So the first prong is to
2 establish whether there is or is not racially polarized
3 voting in District 4. The second task that I was asked
4 to do was to evaluate how the different districts
5 perform for different types of candidates.

6 And so what I generally found was in the
7 first analysis of racially polarized voting that voting
8 is very racially polarized in District 4 and that when
9 you take the preferred candidates of, say, the Native
10 American population versus the white population, in the
11 full district the white preferred candidate is going to
12 win in every single election I looked at except for
13 maybe one or two and that the subdistricts are
14 necessary.

15 Q. And did you prepare a report setting forth your
16 analyses?

17 A. Yes.

18 MS. KELTY: And let's take a look at your
19 report, Dr. Collingwood. I assume technology is still
20 MIA.

21 May I approach, Your Honor?

22 JUDGE ERICKSON: You may.

23 Q. (Ms. Kelty continuing) Dr. Collingwood, do you
24 recognize this (indicating)?

25 A. Yes. This is my report.

1 Q. And again the parties have stipulated to the
2 admission of Dr. Collingwood's report here.

3 Dr. Collingwood, did you reach any
4 conclusions here?

5 A. Yes, I did. Again the main conclusion is that of
6 all the elections I looked at this is a very clear-cut
7 case of racially polarized voting present in District 4
8 between the Native American population and the
9 non-Native primarily white population. They prefer
10 different types of candidates routinely.

11 Q. And are those conclusions set forth in your
12 report?

13 A. They are.

14 Q. Let's talk first about your racially polarized
15 voting analysis. I want to focus first on your
16 conclusion that voting in North Dakota is racially
17 polarized.

18 Before we get there can you help us -- for
19 the Court help us define "racially polarized voting"?

20 A. Yes. It's a very simple concept. From a
21 numerical perspective we could begin with, say, 50 plus
22 one percent of voters of, say, the Native American
23 population. If you get at least 51 percent of voters
24 voting one way and 51 percent of voters of another
25 racial population voting another way, obviously it can

1 go all the way up to a hundred on either side, that's
2 the basic way that we think about racially polarized
3 voting.

4 But I should note we also want to consider
5 many elections, not just one election for various
6 specific campaign dynamics that could occur sometimes
7 that are, say, at odds with what you see in the overall
8 pattern. So it's -- we try to establish this with a lot
9 of elections.

10 Q. So what sort of analysis do you do to arrive at
11 your conclusions about racially polarized voting and
12 what sort of analysis did you do here to arrive at your
13 conclusion that voting in North Dakota is racially
14 polarized?

15 A. So the general process is to gather precinct vote
16 returns either from the secretary of state's office or
17 some other -- some other entity that produces those and
18 then that data is joined with demographic data, in this
19 case census or American community survey data but
20 there's other types of data so that in every precinct we
21 at least have a sense of the share of the racial
22 distribution in that area and we can conduct a variety
23 of different statistical analyses. One people have
24 referred to as regression analysis. That's one common
25 method. But there's many methods and the method that I

1 use is typically seen as an improvement upon what's
2 known as the Goodman Regression, which is the ecological
3 inference method of conducting racially polarized voting
4 analysis.

5 Q. And what is "ecological inference"?

6 A. So again it's this idea -- the key with a lot of
7 this is to try to take as much information we can from
8 every precinct. So you might have a precinct or a
9 voting tabulation district that has -- 80 percent is a
10 racial minority population, 20 percent white and we see,
11 okay, look, that precinct is tending to vote for a
12 democratic candidate or for Biden, for example.

13 We have another situation where we might
14 have it more mixed, fifty-fifty, or another situation
15 that's predominantly white, Anglo white as we would
16 maybe saying in New Mexico. And in that situation we
17 might see a different set of voting patterns, and
18 putting all of that together using these different
19 estimation techniques we can arrive at a reliable
20 estimate as to how different groups of voters vote.

21 Q. And is this racial bloc voting analysis standard
22 in voting cases?

23 A. Yes. This is the exact method that we use.

24 Q. Have you done racial bloc voting analysis before
25 in other cases?

1 A. Yes.

2 Q. About how many times would you say you've done
3 that analysis?

4 A. Well, I've done ecological inference analysis,
5 like I said, thousands of times and several other cases
6 this year recently and in previous years.

7 Q. All right. Let's talk a little bit more about
8 ecological inference, otherwise known as EI. Has EI
9 been approved by the Courts?

10 A. Yes. It's one of the predominantly approved
11 methods that Courts use to evaluate the efficacy of
12 these analyses.

13 Q. And you mentioned earlier the regression analysis
14 as well. Can you just give us a little bit of a
15 comparison between regression versus EI?

16 A. Well, EI is built specifically for this type of
17 phenomenon generally where you're dealing with
18 ecological data where you don't actually know: Is it
19 that specific white person that voted that specific way?
20 We don't know that as we've discussed earlier.

21 Goodman's Regression or regression analysis
22 is built just kind of as a general linear model. It's
23 not specific to ecological data or precinct data. And
24 so given that the assumptions of data distribution on
25 race in different precincts and geographic units here,

1 ecological inference would be the more appropriate
2 method.

3 Q. And let's talk about data a bit. Earlier you
4 said that you use data from election precincts from the
5 secretary of state's office and the American Community
6 Survey.

7 Are those data standard for this kind of
8 analysis?

9 A. Yes.

10 Q. Okay. Let's talk about the elections that you
11 analyzed here and turning now to page 8 of 39 of your
12 report. What elections did you consider in your racial
13 bloc voting analysis?

14 A. I looked at all top-of-the-ticket candidate
15 elections that were located on the secretary of state's
16 website from 2020 to 2014.

17 Q. And why did you look at state-wide elections?

18 A. The predominant reason is districts and precincts
19 might change over time and so I also conduct what's
20 known as an electoral performance analysis. So one of
21 the general approaches that I do is to use the same set
22 of elections that allow me to look at both racially
23 polarized voting and then also move into the electoral
24 performance analysis which deals with precinct changes
25 and stuff like that that makes it harder to, say, look

1 at just a little smaller election or something like
2 that.

3 Q. Is it common in your field for state-wide
4 elections to be used in this kind of analysis?

5 A. Yes.

6 Q. And do you find the use of state-wide elections
7 to be reliable indicators of future voting patterns?

8 A. Yes, especially in this case where there's 27
9 contests, it allows us to really get a full picture of
10 voting in this area.

11 Q. Which state-wide elections did you consider here?

12 A. Well, again we have examples ranging from the
13 2020 presidential contest, U.S. House, governor,
14 auditor, treasurer, public services commissioner, and
15 then in 2018 some of the same types of contests
16 including U.S. Senate, attorney general, secretary of
17 state, agricultural commissioner. There's also a public
18 service commission either two term -- or two-year, tax
19 commissioner. So these are the types of offices that
20 really does capture a range of different elections.

21 Q. And what election cycles did you review?

22 A. 2020, 2018, 2016, 2014.

23 Q. Why those election cycles?

24 A. Well, in general I want to capture elections that
25 are most proximate to the time period, which is going to

1 be 2020. And as I started moving down the pattern is so
2 consistent of the establishment of racially polarized
3 voting in this area that, say, moving down to 2012 or
4 2010 elections that are going back farther the data is
5 getting a bit more challenging to work with because
6 changes to county precincts and stuff like that can
7 introduce more challenges. That's -- 27 elections is
8 definitely enough to -- as an analyst to know kind of
9 what's going on here.

10 Q. All right. Dr. Collingwood, let's talk about
11 your findings and the results of your racial bloc voting
12 analysis. Turn to page 12 of 39 of your report. What
13 conclusions, if any, did you draw?

14 A. As you can see or not but hopefully the Court can
15 see the report here just to quickly walk through these
16 findings and we really only need to go over one contest
17 and maybe a couple sidebars to that because the results
18 are just so consistent.

19 In general I am finding that the non-Native,
20 which is primarily the -- almost overwhelmingly the
21 white population in this area is tending to vote for the
22 Republican candidate or in this case Donald Trump, we're
23 looking at the first one, around 80 percent of the time,
24 okay? So what does that mean? I'm estimating here that
25 81.3 percent of white voters who live in District 4 are

1 supporting Donald Trump. Meanwhile, just 18.2 percent
2 of Native American voters are backing that same
3 candidate.

4 Drop down to support for the Biden here.
5 You can see the pattern is almost identically reversed
6 where 18.7 percent of non-Native voters in this area are
7 backing Biden. Meanwhile 81.8 percent of Native
8 American voters are backing Biden. Okay. So this is
9 clearly passing on both sides the 50 percent plus one
10 threshold. The error bars as you can see those kind of
11 error bands, confidence bands, are never crossing the
12 threshold at 50 percent. This is a very clear-cut case.

13 MS. KELTY: And, Your Honor, I would draw
14 your attention now that we have technology to the screen
15 because it shows the colors here. It might be a little
16 easier to review.

17 Q. (Ms. Kelty continuing) Can you explain a little
18 bit more, Dr. Collingwood, about the confidence
19 intervals?

20 A. So these methods do require a -- there's a margin
21 of error. We're looking at a set of precincts, right?
22 We're joining data together and we're effectively
23 conducting simulations to arrive at this 80 percent and
24 so what we can do with that simulation approach is each
25 time we make a simulation or an estimate as to what the

1 vote is and we can build that up over time and generate
2 what's known as a -- effectively called as a posterior
3 distribution. And the point that's the most likely
4 estimate here is what we call the point estimate and
5 that is the end of that bar, right?

6 So in the case of the first election it's
7 81.3 but we know that there's some statistical error
8 around that and so here we can sort of make the
9 assessment that that range of the kind of likely
10 outcomes as, say, 77 to 85, okay? So that's kind of the
11 confidence that we can have in that. And this is a wide
12 discussion that we have in my field but that's the
13 general -- the point of that.

14 Q. And now let's look at the figure here that deals
15 with the 2016 election. I believe it would be Figure 4
16 a few pages down. And here I want to draw your
17 attention to three races that featured Native American
18 candidates: Iron Eyes for U.S. House, Beaubrun for
19 public services commissioner and Buffalo for insurance
20 at the bottom. What are your findings here?

21 A. Well, I do a lot of racially polarized voting in
22 a variety of places and one thing that is -- that can
23 tell you something is the race or ethnicity of the
24 particular candidate, and these three candidates are
25 Native American candidates. And so what you can

1 identify here with these three candidates, take Iron
2 Eyes for example, the Native population -- I'm
3 estimating the native vote is 97 to 98 percent in
4 support of I believe Chase Iron Eyes. That's higher
5 than what you typically see among even the Native
6 American vote for, say, non-Native candidates.

7 And then you see a very similar pattern when
8 you go down to Hunte Beaubrun, around the same
9 percentage. Fully 95 percent plus I'm estimating of
10 Native American voters are backing this candidate.
11 Finally down on Ruth Buffalo you see a very similar
12 trend.

13 And so it does appear that the Native
14 American vote, when there is a Native American candidate
15 running, the support is going to be even a little bit
16 higher than what we might typically anticipate if it's a
17 white candidate or a non-Native candidate running.

18 Q. And overall, Dr. Collingwood, how does this level
19 of racial polarization you found here compare to other
20 jurisdictions you've been involved in?

21 A. I've worked in many jurisdictions and this is on
22 the very high end, particularly in the case when there's
23 a Native American candidate that is running. There's
24 just strong support within that community for that type
25 of candidate it does appear at least based on this. And

1 so I would say this is on the very high end of what we
2 tend to see on racially polarized voting.

3 Q. Now let's talk about your performance analysis,
4 turning now to page 18 of your report and looking at
5 Figure 7. Can you explain for us just at a high level
6 what you're trying to do with a performance analysis?

7 A. So the first analysis that I conducted
8 establishes the presence of racially polarized voting.
9 But under the Voting Rights Act if there's racially
10 polarized voting but that you can't draw a district, you
11 say there is white bloc voting but say it's fairly
12 small. And basically there's -- the whites are not
13 blocking the Native vote enough of the time, what that
14 might mean is that the Native-preferred candidate might
15 still be able to win some of the time, okay? So that's
16 the test on the Gingles three.

17 And so what we do with an electoral
18 performance analysis is we look at different district
19 configurations and how the Native-preferred or the
20 non-Native or white-preferred candidate does because we
21 already know how they have -- we already know under
22 Gingles test two how they tend to vote.

23 And so take, for example, the U.S. House
24 contest -- or let's stick with the presidential
25 election. Cruising down to line 4 there we see

1 "President." The green line, that's support for Donald
2 Trump. That's the white-preferred candidate. And then
3 the blue line or navy blue line is the Native-preferred
4 candidate, which in this case is Joe Biden. So what
5 we're estimating here under the full district is that
6 Donald Trump would win that district almost two to one
7 if the subdistricts were removed. The Native population
8 would not be able to elect their preferred candidate
9 because you can see that green bar going down. Each
10 time it's further to the right, okay?

11 Then when we move over to "ND 4A," the
12 middle panel, that's the panel my understanding that is
13 surrounding the Native American reservation. There we
14 actually see the efficacy of the subdistrict in action.
15 You can see there that the Native-preferred candidate,
16 those blue lines, are winning every single time under my
17 reconstituted performance analysis.

18 Switching over to "ND 4B," the second
19 subdistrict, you can see it's basically a blowout
20 victory here for the white-preferred candidates in every
21 single election. It's not close at all.

22 Q. So how do you go about making this analysis?

23 A. So we have the precincts and voter tabulation
24 districts. We know what the shape file is like, what
25 the map is like for the different configurations. So we

1 have the full ND 4, we have 4A, 4B. We can determine
2 where the voters live based on the precincts that
3 they're located in and then once we have that
4 established we simply sum down the vote for Trump, sum
5 down the vote for Biden. That's the general process.
6 And so you can do this with any election.

7 Q. Did you make any conclusions here?

8 A. The clear conclusion, based on my performance
9 analysis, is that the subdistricts are necessary in this
10 case to effectively clear Gingles three of the Voting
11 Rights Act.

12 Q. And so, Dr. Collingwood, based on your analysis
13 in this case, your training as a political scientist and
14 your experience with redistricting, have you formed any
15 opinion on whether Native Americans are politically
16 cohesive?

17 A. They're absolutely politically cohesive. That's
18 incontrovertible.

19 Q. And have you formed an opinion on whether whites
20 vote sufficiently as a bloc to block Native Americans
21 from electing candidates of their choice at the full
22 District 4 level?

23 A. Yes. As you can see here on the panel on the
24 left, that's a very consistent finding. The white
25 majority will block the Native American minority in this

1 particular voting context of being able to elect
2 candidates of choice at the full district level.

3 Q. And in your opinion would eliminating the
4 subdistricts violate Section 2 of the Voting Rights Act?

5 A. That's my professional opinion.

6 Q. How so?

7 A. As I've just stated, there's a presence -- the
8 subdistrict creates an ability to draw a
9 majority-minority seat. That's Subdistrict 4A. As I've
10 demonstrated here previously also in the full area,
11 there's racially polarized voting. That's Gingles two.
12 And Gingles three, which is this analysis, effectively
13 shows that the Voting Rights Act will not be violated if
14 this 4A is in place but it will be if it's taken away.

15 MS. KELTY: No further questions.

16 JUDGE ERICKSON: Thank you.

17 Mr. Sanderson?

18 MR. SANDERSON: Yes. Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 **BY MR. SANDERSON:**

21 Q. Dr. Collingwood, my name is Paul Sanderson. I
22 represent the plaintiffs in this case. I just have a
23 couple quick questions for you.

24 The report and opinions you prepared in this
25 case are limited to Legislative District 4, correct?

1 A. That's correct.

2 Q. Okay. You're not offering any opinions on
3 voting -- racial polarized voting in District 9,
4 correct?

5 A. Not in this report.

6 Q. Okay. And looking at the report you offered into
7 evidence in this case, it is dated April 7, 2022,
8 correct?

9 A. That's correct.

10 Q. And your April 7, 2022 report regarding racial
11 polarized voting was not presented to the North Dakota
12 Redistricting Committee during the 2021 redistricting
13 process, correct?

14 A. Correct.

15 Q. And you did not testify at any redistricting
16 hearings regarding your opinions on racially polarized
17 voting in 2021, correct?

18 A. That's correct.

19 Q. And you've not reviewed any expert reports on
20 racially polarized voting presented to the Redistricting
21 Committee in 2021, correct?

22 A. Correct.

23 Q. And just to be clear your expert report on coming
24 up with the conclusions and the elections you evaluated
25 in forming your opinions do not contain any prior

1 District 4 House of Representative election results,
2 correct?

3 A. That's correct.

4 MR. SANDERSON: No further questions.

5 JUDGE ERICKSON: Thank you.

6 MR. PHILLIPS: No questions, Your Honor.

7 JUDGE ERICKSON: All right. Thank you,
8 Mr. Phillips.

9 Did you have any redirect, Miss Kelty?

10 MS. KELTY: No, Your Honor.

11 JUDGE ERICKSON: All right. You may step
12 down, sir. Thank you for your time.

13 THE WITNESS: Thank you.

14 JUDGE ERICKSON: All right. Do you have any
15 further witnesses to call, Miss Kelty?

16 MS. KELTY: No, Your Honor. We rest.

17 JUDGE ERICKSON: All right. Here's the
18 story. We have a couple of commitments over noon
19 from -- on the part of a couple of judges so what we'll
20 do is we'll break at this point. We'll go ahead and
21 reconvene at 1:30 to take argument on all the legal
22 issues, okay? All right. Thank you.

23 (Recess taken; 11:50 a.m. to 1:35 p.m.)

24 JUDGE ERICKSON: We're back on the record in
25 a case entitled Walen versus Burgum. It's File

1 No. 1:22-cv-31. The record should reflect that all
2 counsel are present. That's not quite true.
3 Mr. Wrigley has -- is no longer with us but otherwise
4 everyone else is present.

5 When we broke we were about to take the
6 closing arguments. Mr. Sanderson, are you going to
7 argue on behalf of the plaintiff/movants?

8 MR. SANDERSON: Yes, I am, Your Honor.

9 JUDGE ERICKSON: You may proceed.

10 MR. SANDERSON: Thank you. May it please
11 the Court, counsel: I'm here today on behalf of Charles
12 Walen, a representative of District 4, and Paul
13 Henderson, a representative of District 9, who are
14 seeking -- who filed this lawsuit seeking an injunction
15 and declaratory action against the defendants, Governor
16 Doug Burgum and Secretary of State Al Jaeger, regarding
17 the newly created subdistricts in Districts 4 and
18 Districts 9.

19 The plaintiffs in this case assert that the
20 newly created subdistricts are -- constitute racial
21 gerrymandering in violation of the Equal Protection
22 Clause of the Fourteenth Amendment. And currently we're
23 here today on the plaintiffs' motion for a preliminary
24 injunction under Rule 65 seeking to enjoin the
25 defendants from conducting any elections in the

1 subdistricts until a final determination on the merits
2 can be made.

3 In this case with respect to our preliminary
4 injunction there are four factors that the plaintiffs
5 must prove: substantial likelihood of success,
6 irreparable harm absent the injunction, public interest
7 and balance of the equities. And I'll address each of
8 these. But as this Court has recently ruled while no
9 one factor is controlling certainly the substantial
10 likelihood of success on the merits is the most
11 important factor of these four.

12 So with respect to the merits of this case
13 under the Fourteenth Amendment Equal Protection Clause
14 states are prohibited from separating citizens into
15 voting districts on the basis of race absent sufficient
16 justification. Now again plaintiffs have brought a
17 racial gerrymandering case and to prove racial
18 gerrymandering first plaintiffs bear the burden to
19 establish that race was a predominant factor motivating
20 the decision to place voters within a particular
21 district. If the plaintiffs meet that burden the burden
22 then shifts for element No. 2 to the state that the
23 drawing of the districts were narrowly tailored to
24 achieve a compelling government interest, otherwise
25 known as strict scrutiny.

1 Now following the filing of our preliminary
2 injunction motion in this case at the beginning of March
3 the United States Supreme Court issued a decision which
4 is directly on point to the issues you're presented with
5 in this case. The Wisconsin Legislature case was issued
6 by the U. S. Supreme Court on March 23, 2022, and the
7 issues and basically the facts are identical to what
8 were presented here today.

9 In that case the governor argued that
10 race-based districts in Wisconsin were required by
11 Section 2 of the Voting Rights Act. The U. S. Supreme
12 Court found that the evidence presented by the governor
13 failed to meet the Gingles -- the Thornburg v. Gingles
14 three preconditions that we've talked about. And in
15 that case the Court walked through the framework that
16 the State must show it had a strong basis in evidence in
17 order to pass such racial gerrymandering in compliance
18 with their compelling interest in complying with the
19 Voting Rights Act.

20 But most importantly on March 23, 2022,
21 United States Supreme Court remanded that issue back to
22 Wisconsin to fix the issues before the upcoming
23 elections in 2022. And we'll talk about -- and I
24 certainly am going to address the State's Purcell
25 arguments later but one thing to remember and that we'll

1 discuss in much more detail towards the end of my
2 closing argument, at no point -- Purcell principle was
3 not applicable in the Wisconsin Legislature case because
4 the Supreme Court would not allow an unconstitutional
5 election to proceed. So we'll address that like I said
6 in more detail.

7 So we bear the burden in this motion to show
8 that race was the predominant factor in the
9 legislature's determination. And the United States
10 Supreme Court has set forth the ways that a plaintiff
11 can go about showing or proving that race was a
12 predominant factor.

13 First, No. 1, it can be established through
14 circumstantial evidence regarding the district's shape
15 or demographic makeup. This Court needs to look no
16 further than Subdistrict 4A and Subdistrict 9A. The
17 boundaries of those subdistricts are completely
18 following the outer boundaries of two reservations. And
19 let's not forget the state of North Dakota has 47
20 legislative districts. Only two such districts were
21 selected for subdistricts because they contained the
22 Turtle Mountain Reservation and the Fort Berthold
23 Reservation, and --

24 JUDGE ERICKSON: Does it matter at all that
25 in the long history of the United States we have

1 traditionally said that being an Indian is a political
2 status as opposed to a racial classification? And when
3 we're looking at a reservation, it's a tribal entity
4 that has inherent attributes of sovereignty and it also
5 is a dependent domestic nation in a guardian/ward
6 relationship with the United States government.

7 And so is it -- is it necessarily so that
8 the classification is race-based as opposed to, you
9 know, political status-based?

10 MR. SANDERSON: And, Judge, I think that's
11 one of the arguments asserted by the intervenors and
12 both the State is that this is more a traditional
13 redistricting purpose trying to keep this community
14 together.

15 JUDGE ERICKSON: Yeah. They've argued
16 mostly culture, right? They've not really argued as
17 much that the independent status of the tribe as being a
18 different entity. It's not -- the intervenors have
19 argued that.

20 But, I mean -- but at the end of the day my
21 question is: Does that matter and, if not, why not?

22 MR. SANDERSON: It doesn't matter for
23 purposes of the analysis that the Supreme Court has set
24 forth. Whether the community would be Native American,
25 whether the community would be black, whether it would

1 be a religious community that you wanted to keep
2 together, the fact that it's being done on the basis of
3 race is the most important factor.

4 JUDGE ERICKSON: But I think that's the
5 question. Is it actually being done on the basis of
6 race or is it being done on the basis of Indian status?

7 MR. SANDERSON: And the uncontroverted
8 evidence, as I'm going to get to here momentarily,
9 Judge, will show that race was the predominant factor.
10 And this factor that the North Dakota Legislative
11 Assembly relied upon solely was they wanted to avoid a
12 Section 2 voting rights claim made by the tribes in this
13 case. And the evidence submitted by the State in
14 support with their Affidavit from Miss Thompson contains
15 testimony, written testimony submitted at some hearings.
16 And in there the tribes threaten a voting rights claim
17 case.

18 Not only, I mean, as the Court is aware
19 Judge Welte's sitting on a voting rights case from the
20 Turtle Mountain Tribe regarding the subdistricts in
21 District 9. So, you know, to your point whether it was
22 done that way or not or whether it was considered, that
23 wasn't the predominant factor. The predominant factor
24 was solely race and solely on the basis to avoid a
25 Section 2 voting rights case because South Dakota just

1 got hit with a voting rights case and the legislature
2 wanted to avoid that.

3 So with respect to -- I want to go to the
4 demographic makeup because you're going to hear some
5 testimony here momentarily about that. But not only
6 were the boundaries drawn specifically on the
7 reservation borders, they were drawn specifically in
8 that -- with respect to Turtle Mountain Tribe and Fort
9 Berthold Tribe because the demographic makeup of those
10 two tribes was sufficient in number to constitute a
11 majority in those districts. Again showing why race was
12 done that way.

13 The legislature didn't draw subdistricts
14 around the Standing Rock Tribe. They didn't draw
15 subdistricts around the Spirit Lake Tribe because again
16 those tribes do not have sufficient population or
17 demographic makeup to support a majority in the
18 subdistrict. So those factors -- this Court needs to
19 look no further than that circumstantial evidence to
20 know that race was a predominant factor in this.

21 But also the second point of how we meet our
22 burden in this case is that through legislative history
23 statements by elected officials. And that legislative
24 history is used by Courts throughout and that's what we
25 attempt and will show here. The legislative history in

1 this case shows race was a predominant factor. This
2 morning you heard the testimony of Representative Terry
3 Jones, the House representative from District 4, who
4 attended the subdistrict -- or the Redistricting
5 Committee meetings regarding the subdistricts. He
6 testified at those. He spoke to the Legislative
7 Council. He testified on the floor. And Mr. Jones --
8 Representative Jones' testimony, as you heard today,
9 race was the predominant factor.

10 Now in our motion we submitted some
11 hyperlinks to various testimony to support race was a
12 predominant factor and, you know, we were criticized by
13 the intervenors and the State as to being cherry-picking
14 random comments from certain legislators out of context.
15 Following is a video from Joint Redistricting Chairman
16 Representative Devlin where he will state unequivocally
17 race was the predominant factor.

18 (Unidentified video played.)

19 MR. SANDERSON: Our burden's met. The
20 chairman of the Joint Redistricting Committee testified
21 on the floor of the House: We are putting in
22 subdistricts because it is the requirement of the Voting
23 Rights Act.

24 We've met our burden with respect to
25 condition one. And let's not forget, complying with the

1 Voting Rights Act is a compelling state interest and
2 they can do that. They can do that based on race. But
3 if they do that they have to meet the Gingles factors
4 that we'll talk about.

5 (Unidentified audio/video played.)

6 MR. SANDERSON: Two of the tribes in the
7 state of North Dakota meet the criteria and the criteria
8 he's referring to is being sufficiently large enough to
9 comply with the first requirement of Gingles for a
10 Voting Rights Act claim.

11 Now again you're going to hear from
12 Redistricting Committee Member Headland who states the
13 subdistricts were drawn on the basis of race.

14 (Unidentified audio/video played.)

15 MR. SANDERSON: I have issues dividing
16 subdistricts on the basis of race and I can't support
17 this subdivision. Redistricting Committee Monson in a
18 committee hearing, Representative Monson admitting the
19 subdistricts are being drawn on the basis of race.

20 JUDGE WELTE: Counsel, before you play this
21 could you do something about the volume because I'm not
22 able to hear it? Thank you.

23 MR. SANDERSON: I apologize, Judge. Thank
24 you.

25 (Unidentified audio/video played.)

1 MR. SANDERSON: Committee Representative
2 Monson just said: We gerrymandered to give Native
3 American populations the opportunity to win elections.
4 And this is what's referred to in the Courts as
5 affirmative racial gerrymandering, but it's still racial
6 gerrymandering and it still must meet the statutory and
7 constitutional framework set down by the U.S. Supreme
8 Court.

9 Finally another committee member,
10 Representative Schauer, a Redistricting Committee
11 member, admitting that race is a predominant factor and
12 the reason we did this is because they now meet the
13 population requirements to meet the first prong of
14 Gingles.

15 (Unidentified audio/video played.)

16 MR. SANDERSON: These are not cherry-picked
17 testimony from random legislators taken out of context.
18 These are committee members. This is a committee member
19 on the floor advocating for the passage of this bill and
20 the sole reason is to comply with Section 2 of the
21 Voting Rights Act and that's race based.

22 The argument that Representative Schauer
23 just made regarding the sufficient population was
24 directly addressed on March 23rd by the U. S. Supreme
25 Court. Arguments that minority population was now

1 sufficiently large and compact to meet the Voting Rights
2 Act, Section 2, is just the sort of uncritical
3 majority-minority district maximization that we have
4 expressly rejected.

5 The governor -- to go on the governor of
6 Wisconsin provided almost no other evidence or analysis
7 supporting the voting rights claim. Strict scrutiny
8 requires much more. We've met our burden to show race
9 was a predominant factor. So now the burden switches to
10 the State to show that they have met the -- if race is a
11 predominant factor and complying with the Voting Rights
12 Act is a predominant factor, then the burden now shifts
13 to the State to withstand strict scrutiny. And to do
14 that the U. S. Supreme Court has set forth the framework
15 in Thornburg v. Gingles, the three conditions that must
16 be met.

17 Now we're going to address the Gingles
18 factors or preconditions but let's not forget that's
19 just the starting point. That's not the end of the
20 analysis. Now our position in this case those clearly
21 aren't met. There's absolutely no evidence. But even
22 if they were met there were additional factors that need
23 to be taken care of.

24 So the three Gingles preconditions, first,
25 the minority group is large and geographically compact

1 to constitute a majority in the district. There's
2 nobody here arguing that Subdistrict 4A and Subdistrict
3 9A meet the first Gingles factors. What we're here
4 today and the basis of -- the entire basis of this
5 racial gerrymandering case are the next two factors.

6 Factor No. 2 of Gingles, the minority group
7 is politically cohesive and, factor No. 3, the
8 district's majority vote must vote as a bloc to defeat
9 the minority's preferred candidate. Unless these three
10 factors are established there neither has been a wrong
11 nor can there be a remedy created by the legislature.

12 And one thing that's very important when
13 considering whether the factors two and three of Gingles
14 were met is they must be met at the time the districts
15 were drawn, meaning they must be met at the time the
16 Redistricting Committee created those subdistricts back
17 in November 2011. And again this was just again
18 confirmed a month and a half ago by the Wisconsin
19 Legislature. The determination of whether there's
20 substantial evidence must be done at the time of
21 imposition. Attempting to rewrite the legislative
22 history or rejustify what or why it was done doesn't
23 count.

24 Most telling this is going to be from the
25 floor debate and one of the Redistricting Committee

1 members is Representative Nathe and he is asked a
2 question by Representative Hoverson following
3 Representative Jones' testimony that you heard this
4 morning saying this is what is required. A racial
5 polarization study must be done.

6 (Unidentified audio played.)

7 MR. SANDERSON: Committee Member Nathe
8 admits they did not do any polarization studies.
9 Instead they relied on -- and what he's referring to the
10 Tribe, Chairman Fox says -- it's again attached to the
11 exhibits of Miss Thompson in this case, submitted some
12 written testimony that he lost a school board election
13 in 1990 and that the two intervenors in this case lost
14 the election in 2020. That is the extent of past
15 historical evidence that was provided to the committee.
16 And, as we've cited in our briefs, lay testimony from a
17 party seeking racial gerrymandering is not sufficient.
18 There has to be substantial evidence.

19 Not only on the House floor was this
20 discussed but Senator David Hogue testified that the
21 Gingles preconditions had not been met in the Senate.

22 (Unidentified audio/video played.)

23 JUDGE HOVLAND: So, Mr. Sanderson, I've got
24 a question. I'm just curious why you would not have
25 hired an expert witness in this case and I'll have the

1 same question for the State. I think these cases cry
2 out for some expertise.

3 MR. SANDERSON: And, Judge, I respectfully
4 disagree with -- you know, with the assumption that this
5 case is prime for expert testimony. This is a
6 sufficiency of the evidence case. What was presented to
7 the legislature at the time? We don't get to come in
8 and back door in sufficient evidence and say: Oh, but
9 the legislature could have considered this. It's what
10 they considered at the time. And the record is
11 absolutely void of any evidence to meet factors two and
12 three of Gingles.

13 Had they done that, had there been
14 sufficient evidence we wouldn't be here. But they
15 didn't follow the statutory framework. And this was --

16 JUDGE ERICKSON: There are some cases that
17 say that you don't necessarily need a scientific study
18 but it still has to get to substantial evidence, right?

19 And so the question is: If we listen to
20 what was presented to the Redistricting Committee -- and
21 there's a lot of things that were said, there's some
22 testimony that was received, there's a number of written
23 statements that were received. The question is: Are
24 they merely anecdotes or are they sufficiently detailed
25 to constitute substantial evidence? And I know what

1 your answer is. I want to know why it is that.

2 MR. SANDERSON: The Supreme Court has been
3 very clear on what is required to be substantial
4 evidence for -- to meet the Gingles factors, and I think
5 Dr. Collingwood is Exhibit A for our case.
6 Dr. Collingwood's report, that racial polarization
7 study, is exactly the type of evidence that the
8 legislature needs to rely on to support this. But it
9 wasn't.

10 And we're not here to -- we're not here,
11 nobody's here arguing whether or not there's racial
12 animus in District 4 or District 9. That's not the
13 issue. The issue is: Did the legislature have evidence
14 in front of it to support that? I'm not here -- while I
15 disagree with the methodology, some of the methodology
16 Dr. Collingwood used, that's not an issue for us and the
17 intervenors would not have had to go out and hire
18 Dr. Collingwood if there was any evidence they could
19 rely on.

20 Let's talk about -- we've pointed
21 out Representative Nathe admitting there was no evidence
22 to meet those. So let's look at -- this case was filed
23 on February 16th. The State submitted its brief -- and
24 they know our main argument. The entire purpose of this
25 case is: Have the two Gingles factors been met? Page

1 19 of the State's brief, here is their response to the
2 Gingles factors: The Court has identified three
3 preconditions, the Gingles preconditions which are
4 necessary to proceed under Section 2 of the Voting
5 Rights Act, citing the Cooper Supreme Court case that we
6 rely on heavily. One sentence: "If a State has good
7 reason to think that all the 'Gingles preconditions' are
8 met, then so too it has good reason to believe that
9 Section 2 requires drawing a majority-minority
10 district."

11 That is the only evidence the State of North
12 Dakota is presenting to you that they've met sections
13 two and three of Gingles. Where's the citation in the
14 record to any evidence, any study, any voting rights?
15 And one of the things when we cite the Abbott case --
16 and U.S. Supreme Court Abbott opinion is really clear on
17 what is necessary and they -- they're very clear about
18 making sure that not only do you have to look at past
19 historical voting data, you specifically need to look at
20 past voting data with respect to the districts at issue.
21 And that's where we take issue with Dr. Collingwood on
22 it but again that's not here.

23 But there's no district data. There's no
24 precinct data that the legislature relied on.

25 JUDGE ERICKSON: Is there any requirement

1 that the precinct data be specifically analyzed and
2 reported on?

3 MR. SANDERSON: Absolutely, Judge. And
4 there's just case after case both from the Supreme Court
5 and, you know, more detailed from some of the federal
6 district courts that have analyzed this. They said --

7 JUDGE ERICKSON: There's no question that
8 there's a lot of data in these cases and there's a lot
9 of studies in these cases. The question is -- and those
10 studies are by and large analyzed and Courts determine
11 whether or not that is sufficient evidence.

12 Is there a requirement in any case, however,
13 that says that that sort of granular analysis precinct
14 by precinct is necessary?

15 MR. SANDERSON: Yes, absolutely.

16 JUDGE ERICKSON: And so which case is that?

17 MR. SANDERSON: The Abbott case we cited, I
18 believe the Wisconsin Legislature case we cited, they
19 both say that. You have to look at specific precinct
20 data. Generalizations about election results are not
21 sufficient. And it just wasn't done.

22 And again Dr. Collingwood's expert report is
23 Exhibit A to that fact. There would be no need to hire
24 an expert in April of 2022 if the legislature had that
25 in front of it. The intervenors or the State would be

1 putting that up right in front of you showing this is
2 what the legislature relied upon to meet that. But that
3 wasn't done, and certainly not in District 9.
4 Absolutely no evidence in District 9 and, in fact, we
5 have the tribe opposing the subdistrict in District 9.
6 Senator Richard Marcellais, an enrolled member of the
7 tribe who has won the last six elections in District 9,
8 voted against this subdistrict and spoke against the
9 subdistricts on the floor.

10 The undisputed evidence before you shows the
11 Gingle factors have not been met by the North Dakota
12 Legislature in creating the subdistricts in order to
13 comply with Section 2 of the Voting Rights Act and for
14 that reason the plaintiffs will prevail on the merits
15 just as the plaintiffs in the Wisconsin case prevailed
16 earlier.

17 Just quickly with the remaining injunction
18 factors, the second factor, irreparable harm absent the
19 injunction. This Court has recently said: An injury
20 regarding constitutional right to vote is irreparable
21 because there is no redress once the election occurs.
22 And in this case if my clients are not entitled to their
23 two representatives like everyone else in the state,
24 they'll miss an entire policy-making, an entire
25 legislative session that only occurs once every two

1 years. That is irreparable harm sufficient to meet
2 these factors.

3 And then the public interest and balance of
4 equities, with respect to the public interest the public
5 has a huge interest in a right to fair constitutional
6 elections and their right to vote in those elections.
7 And then we get to -- and this is taking us into the
8 Purcell argument here but the balance of equities.
9 We're talking about a deprivation of my clients'
10 constitutional rights to vote, a violation of the
11 Fourteenth Amendment Equal Protection Clause against the
12 State's argument that it's a significant impact to the
13 election process and those workers and it would be a
14 hassle.

15 JUDGE HOVLAND: So tell me how you get
16 around Purcell and the most recent pronouncement of the
17 Supreme Court in Alabama.

18 MR. SANDERSON: You're referring to the
19 Merrill case and I'll get there. The State's argument
20 in this is six months is not enough time to fix the
21 unconstitutional election.

22 JUDGE ERICKSON: Well, really what they
23 might be arguing is that people have already started
24 voting and, you know, if you look around the country and
25 you look at election law challenges that have been

1 brought everywhere for all sorts of reasons over the
2 last, you know, five or six years, the one cardinal
3 bright shining light, the cardinal rule is when they
4 start voting we quit deciding.

5 And so why should we decide that issue
6 rather than letting at least the primary play out?

7 MR. SANDERSON: And, Judge, I'll respond to
8 it this way and we'll address it Purcell. We are unable
9 to find a single case where a Court has applied Purcell
10 to let an unconstitutional election proceed. They've
11 applied Purcell to stop voting rights changes, you know,
12 statutory changes, rules. But not once -- and neither
13 the State nor the intervenors have cited one case in
14 their briefs where an unconstitutional election is
15 allowed to go forward. And what they're asking --

16 JUDGE ERICKSON: Do you have a case where
17 after people have started voting a Court has entered an
18 order to stop an unconstitutional election that's been
19 affirmed on appeal?

20 MR. SANDERSON: Judge, I -- we cited a
21 number of cases and mostly federal court cases where
22 three, four, five months is sufficient time. I'm not
23 sure -- I can't stand in front of you right now and say
24 whether the voting process had started at that time. I
25 would suspect, you know, just knowing the timelines it

1 likely had.

2 But Purcell is not an absolute bar on an
3 injunction. It is just one factor that this Court must
4 weigh against others. And in this case you're weighing
5 the Purcell timing and inconvenience against a party's
6 constitutional rights.

7 And one thing that's lost in this, and I
8 want to make sure the framework of this is really clear,
9 the State is arguing we're coming in trying to change
10 election laws. We're not. We're asking -- my clients
11 are asking that the status quo be maintained. Voters in
12 North Dakota have elected two representatives in their
13 district for decades as far as back as we can possibly
14 find, if not a hundred years but for decades. The State
15 of North Dakota attempted to change that on
16 November 12th of 2021 and they want to change that
17 process. It's them asking for a change close to the
18 timing within a year of the election. So this Court's
19 Self-Advocacy Solutions v. Jaeger decided in 2020
20 Purcell does not apply when injunction would not
21 fundamentally alter elections and there's no risk of
22 voter confusion.

23 The concerns that trouble the Court in
24 Purcell are not present in this instance. There's no
25 voter confusion. There's no dissuasion from voting.

1 All these things -- all those issues remain the same
2 when weighing the impact of the threat to the
3 constitutional fundamental right to vote outweighs the
4 inconvenience to voters. In this case if this Court
5 were to remove the subdistricts every person in District
6 4 would get to vote. Every person in District 9 would
7 get to vote. The precincts don't have to change. The
8 outer boundaries don't have to change. There would be
9 no confusion because this is how voters have voted for
10 the last hundred years in this state.

11 JUDGE WELTE: It isn't just confusion, and
12 certainly whether or not there's confusion is still at
13 issue here, but isn't it also cost or hardship
14 amongst -- upon the voters as well? Shouldn't those be
15 considerations?

16 MR. SANDERSON: And certainly those can be
17 considerations. I haven't heard any testimony nor seen
18 any in this case of what the cost of printing additional
19 ballots would be, what the cost of holding another
20 special election. But I would really contend that
21 those -- that monetary cost is far outweighed by the
22 16,000 voters in District 9 who are going to have their
23 constitutional rights violated if an election on
24 unconstitutional subdistricts proceeds. The State's
25 entire Purcell argument is based on an erroneous

1 assumption also that this Court does not have the power
2 to go in and change it. A big piece of their argument
3 is you have to remand this back to the legislature.
4 They could change everything. They could change the
5 districts. It could throw the whole state off. That is
6 simply not correct.

7 Courts -- and this is the Covington case
8 which they actually cite, a 2018 U.S. Supreme Court
9 opinion. The District Court has its own duty to cure
10 illegally gerrymandered districts through an orderly
11 process in advance of elections. Courts have a duty to
12 make sure an unconstitutional election does not proceed.
13 We are six months out from the November election. There
14 is sufficient time to fix this.

15 And again although -- the U. S. Supreme
16 Court said in the Upham case, although Courts must refer
17 to the legislative judgments on these issues as much as
18 possible, it's forbidden to do so when the legislative
19 plan will not meet the special stands of population
20 equity or racial fairness that are applicable to
21 Court-ordered plans. This Court has every power and
22 authority to go in and fix this election and there are a
23 number of ways that that can be done.

24 But, Judge Hovland, to your point I want to
25 address the Merrill case you brought up. Merrill was

1 decided on February 7, 2022, a month and a half before
2 the Wisconsin Legislature case. And one of the very
3 important things in Merrill was in Merrill Justice
4 Kavanaugh outlined four factors which if established
5 would overcome the Purcell doctrine: One, the
6 underlying merits favor the plaintiff; two, the
7 plaintiff would suffer irreparable harm absent
8 injunction; three, the plaintiff is not unduly delayed
9 bringing the Complaint; and four, the changes in
10 question are feasible before the election.

11 And in Merrill Judge Kavanaugh said the
12 plaintiffs had failed to meet at least two of those and
13 he said in the Merrill opinion in February that the
14 plaintiffs haven't even shown that they would prevail on
15 the merits let alone a substantial likelihood they would
16 prevail on the merits. And then too the changes are
17 feasible before the election. One of the things -- this
18 was -- Merrill was completely redrawn the entire state
19 of Alabama and one of the things Justice Kavanaugh
20 pointed out in that opinion is we're in a situation
21 where candidates don't even know what district they're
22 in. Incumbents don't know what -- they don't even know
23 what district they live in at this stage. And they said
24 that is not sufficient and Purcell would apply to that.
25 And that again was a voting rights claim.

1 JUDGE WELTE: Mr. Sanderson, you mentioned
2 before the status quo and you just spoke to the factor
3 about the changes being feasible before the election.

4 When you talk about District 4 and you talk
5 about District 9, District 4 and District 9 in 2022, are
6 they the same as they were in 2020? Because that's not
7 the status quo. If they aren't the same, if District 4
8 in 2022 is not the same as it was in 2020, is that the
9 status quo?

10 MR. SANDERSON: I think your point, Judge,
11 has the outer boundaries changed somewhat on District 4?
12 I can't answer that completely. I expect that there may
13 be some sort of change. But what hasn't changed is
14 their fundamental right to vote for two representatives
15 as every other person in the 47 districts in North
16 Dakota. That has not changed.

17 So we talked about Merrill here. That was
18 in February. A month and a half later the Wisconsin
19 Legislature case goes in front of the U. S. Supreme
20 Court and the difference -- the critical difference is
21 the Wisconsin Legislature case is a constitutional
22 challenge. The Wisconsin Legislature case a month and a
23 half later on March 23rd does not mention Purcell at
24 all. The dissent doesn't even raise Purcell as a
25 reason, and they said: You have time, in March 23 of

1 2022 before the August primary, to go back and fix this
2 because they're not going to allow an unconstitutional
3 election to proceed.

4 So when looking at the Merrill case, Judge,
5 and looking at what just came down in Wisconsin, I think
6 you can draw a clear line. And so with respect to the
7 Merrill exception to Purcell in this case we meet all
8 four of these. Again we've talked about the merits.
9 They're clear-cut. There's no dispute on this. They
10 suffer irreparable injury if they're not entitled to the
11 same equal rights that all other voters have.

12 I want to address the undue delay argument
13 briefly but you heard the testimony of Jim Silrum here
14 today. They began primary election work on
15 November 12th, the same day the law went into effect.
16 If we would have -- on November 12th. If we would have
17 filed on November 13th they'd be making the same
18 argument that this is -- this process -- it would take
19 three months to get here just like it did. We filed 96
20 days after the law went into effect. And let's not
21 forget it was the State that asked for a 44-day
22 extension to answer so they could prepare transcripts in
23 this case. The plaintiff has not delayed in bringing
24 this case.

25 So the changes -- then it comes down to

1 this. We've met the first three factors of the Merrill
2 exception to Purcell. So then it comes down to the
3 fourth factor. The changes in question are feasible
4 before the election. One thing that I hope was
5 perfectly clear if this Court finds that the
6 subdistricts were drawn unconstitutionally in Districts
7 4 and 9, District 4 does not need to have another
8 election. They would not be up for election in 2022
9 but for the unconstitutional subdistrict as Mr. Silrum
10 mentioned. Their population didn't change enough that
11 they needed to go through reorganization.

12 So we take District 4 off. The
13 representatives from District 4 who were
14 constitutionally elected to a four-year term get to
15 finish out their four-year term. So all we are dealing
16 with is one election in District 9, a House of
17 Representatives election, if you remove the subdistrict.
18 And all this talk about having to redo the entire
19 election, every other election issue or contest on that
20 ballot could stay the same. Those results could be
21 tabulated just like that. All that has to be done --
22 well, there's infinite -- numerous possibilities but
23 just looking at holding a special election.

24 JUDGE ERICKSON: You know, the problem is
25 that as I look at 16.1-13 I'm not seeing any basis

1 statutorily to call a special election in the absence of
2 a vacancy. And so you're asking us to as a federal
3 court do something that's quite extraordinary and that
4 is you're asking us to direct a state to conduct an
5 election that does not seem to be authorized by the
6 statute. And there seems to be a federalism issue there
7 that's a little troubling to me.

8 MR. SANDERSON: I disagree. I don't think
9 it is troubling, Your Honor. I think this Court
10 instructing the State to not proceed with an
11 unconstitutional election should be exactly what this
12 Court should be doing. There are six months to ensure
13 that my clients and 16,000 other voters' constitutional
14 rights are not violated and they don't miss out on two
15 years of representation, an entire legislative session
16 where all kinds of policy decisions will be made where
17 they don't have an equal footing at the table. That far
18 exceeds any inconvenience that's being asserted.

19 I believe -- and I also disagree that it's
20 unprecedented. Federal courts routinely order
21 elections, redraw districts. Federal court's job is to
22 ensure that unconstitutional elections do not proceed
23 and that should be the driving force here, our
24 constitutional rights. We have six months to fix this,
25 nine months from the day we filed our Complaint. To

1 argue that nine months is not sufficient time and your
2 constitutional rights should be buried for two years, it
3 just doesn't make sense; nor can they cite a single
4 Purcell case that has upheld the Purcell principle over
5 a plaintiff's constitutional right to a fair election.

6 So I disagree that this Court does not have
7 the power to do that. There's all kinds of remedies
8 that could be done. The Court could allow -- the Court
9 could strike the 64-day candidate. The Court could
10 strike the requirement -- the biggest one is that the --
11 those two individuals in District 9 that did not get the
12 party endorsement that went out and required signatures
13 to get on the ballot do not have sufficient signatures
14 to run in the entire district. The State's saying we
15 should put those two candidates' rights over the 16,000
16 members of District 9 and their constitutional rights,
17 and that's just absurd. That just should not be what
18 this Court endorses when we have six months to fix that
19 problem.

20 So there are a number of ways this Court
21 could say for the House election in November the
22 requirement that they meet the 164 signatures is not
23 necessary. They can get on the ballot. The parties can
24 go back and renominate. There's all kinds of things
25 that can be done. There's an infinite number of

1 possibilities to rectify this situation without
2 violating my clients' constitutional rights. And
3 special elections have been held and I believe there's
4 statutory authority and this Court certainly has the
5 inherent power to ensure that an unconstitutional
6 election does not proceed.

7 Members of the Court, my clients believe
8 they have met their burden on the merits. They have
9 established that the sole reason or predominant reason
10 for the legislature's creation of subdistricts in
11 District 4 and District 9 was to comply with the Voting
12 Rights Act, which was a race-based decision. And
13 Courts -- or the legislature certainly has the right.
14 That's a compelling reason. But when they exercise that
15 justification they are subject to strict scrutiny, and
16 they failed to meet the strict scrutiny because the
17 failed to meet the Gingles factors. My clients will
18 prevail on the merits of this case if it moves forward,
19 and the -- certainly the inequities between the
20 plaintiffs' constitutional rights and the State's claim
21 of the inconvenience it faces in the election certainly
22 favor granting an injunction in this case.

23 And for those reasons the plaintiffs ask
24 that an injunction be granted, the status quo be
25 maintained, that members of District 9 and District 4

1 are allowed to elect two representatives to the House in
2 North Dakota and that a full determination of the merits
3 can be heard before the State implements the race-based
4 subdistricts.

5 And again we believe the Purcell doctrine
6 does not apply. Ample time exists through the cases
7 we've cited for an election that's not unconstitutional
8 to take place within the next six months.

9 So with that I thank you for your attention
10 and we ask that the injunction be granted in this case.

11 JUDGE ERICKSON: Thank you.

12 Mr. Phillips?

13 MR. PHILLIPS: May it please the Court:
14 First and foremost the State defendants are requesting
15 that this Court apply the Purcell principle and refuse
16 to issue the preliminary injunction that's requested
17 because the 2022 election cycle has already started.

18 Regardless of the merits of the plaintiffs'
19 case, the State defendants have introduced the testimony
20 of Deputy secretary of state Jim Silrum both by
21 Affidavit and by live testimony today explaining the
22 problems with making a change to the districts right now
23 and this would include either just eliminating the
24 subdistricts or potentially having the districts redrawn
25 altogether by the state legislature.

1 Some of these problems have very significant
2 implications for the rights of nonparties, including
3 candidates and including voters. For example, as
4 Mr. Silrum testified there are two candidates who
5 collected enough signatures to be on the ballot for the
6 House in their subdistricts. They don't have enough
7 signatures to be on the ballot in a whole district.
8 Those candidates are Jayme Davis in Subdistrict 9A and
9 Chuck Damschen in Subdistrict 9B. These two candidates
10 have already been certified to get onto the ballot in
11 North Dakota. Their names are printed on the ballots
12 and those ballots have been mailed to voters, some of
13 who have returned those ballots. This election is
14 currently underway as we sit here today.

15 JUDGE HOVLAND: So do you agree with
16 Mr. Sanderson that a federal court can waive those
17 requirements?

18 MR. PHILLIPS: I think that -- I wouldn't
19 deny that the federal court has significant power.
20 However, in this case it's not even really a waiver of a
21 requirement. There is no state law that accounts for
22 the elimination of subdistricts in the middle of an
23 election. We have a scenario where the districts were
24 created by the legislature. The election started and
25 what's being contemplated by the plaintiffs is that the

1 boundaries of the districts are going change in the
2 middle of the election.

3 So it's tricky because I'm not entirely sure
4 even what North Dakota law this Court might waive as I
5 don't know that there is a process or procedure to deal
6 with this situation.

7 JUDGE ERICKSON: Well, their argument is
8 that the election's going to be unconstitutional and
9 that because it's failed to meet the Gingles
10 preconditions that there's still time to fix this,
11 right? And I think their argument essentially is -- I
12 think that if you listen to the testimony they really
13 think that we can strike the subdivision line, leave the
14 districts as they are, and that we can compel a
15 compacted voting process by compelling a special
16 election, right? And, you know, I asked them whether or
17 not there was any statutory authorization and they're
18 basically arguing that it's within the inherent powers
19 of the Court to call this special election because it is
20 necessary to protect the constitutional rights of the
21 citizens of Districts 4 and 9.

22 And why are they wrong?

23 MR. PHILLIPS: I don't deny that the Court
24 has significant power to correct violations of the
25 constitution. I would ask this Court to consider the

1 constitutional rights of the voters who risk
2 disenfranchisement if they're confused in this election.
3 I would ask the Court to consider the voters as well in
4 terms of sort of upending an election as it's
5 proceeding.

6 Mr. Silrum testified to the importance of
7 elections being as perfect as possible. The Purcell
8 doctrine exists for a reason and it's to not make
9 last-minute changes in an election that must go on sort
10 of regardless of what happens. And so there are other
11 rights at stake here besides just the plaintiffs' and
12 those should be considered. It's why the Purcell
13 doctrine exists, which is to say that the Court's will
14 enforce constitutional law and will protect
15 constitutional rights but it will not throw out the
16 rights of all voters in pursuit of that immediately
17 before an election.

18 JUDGE ERICKSON: Thank you.

19 MR. PHILLIPS: With respect to these
20 candidates that are problematic in District 9, it's not
21 really clear what should be done. They could be kept on
22 the ballot. If that happens then there's a violation of
23 North Dakota law with respect to signatures. Certainly
24 other candidates may cry foul who did receive enough
25 signatures. There are candidates in North Dakota who

1 submitted signatures but didn't have enough valid
2 signatures to be on the ballot. They were rejected.

3 Leaving these candidates on the ballot while
4 having rejected others is problematic because the
5 contrary is true as well. Removing these candidates
6 from the ballot will be removing them from the ballot by
7 changing a rule after it's too late for these candidates
8 to comply.

9 JUDGE ERICKSON: What I'm hearing you argue
10 is there's an equal protection problem with the people
11 that have circulated petitions in a subdistrict,
12 acquired enough signatures to be on the ballot in that
13 subdistrict, and that somehow if you were to say that,
14 yeah, we changed the rules and now you're going to run
15 in the whole district and that you allow them to remain
16 on the district that that would somehow violate equal
17 protection with all the other people who failed to
18 acquire enough signatures to get on the ballot, which by
19 the way is a number we usually don't know because they
20 don't file anything and tell us anything about it.

21 But in order for that to be a real problem,
22 don't they have to be equally situated? And they're not
23 because on one hand you have people that have made a de
24 jure signature gathering attempt and have filed the
25 correct number of signatures to get on the ballot as it

1 existed and on the other you have people who just were
2 de facto short of the number of signatures they needed.

3 And drawing a distinction between those two
4 classes of people, wouldn't that pass just any kind of
5 rational analysis? And since none of these are based on
6 a protected class that's what we'd be doing, right?

7 MR. PHILLIPS: It's problematic because
8 voters have a right to select and nominate their
9 candidate of choice, and this series of events and
10 what's being asked for by the plaintiffs is a series of
11 events that they're asking to lead towards the removal
12 of candidates from the ballot. That has obvious
13 implications to voter rights. We're talking about
14 kicking -- we're not talking about just who were
15 certified. We're talking about candidates that are in
16 ballots in the hands of voters today and removing them.

17 JUDGE ERICKSON: Well, either that or
18 saying: We're going to waive the signature requirement
19 and they stay on. I mean, in this world where we're
20 talking about -- we're exercising rather extraordinary
21 federal powers, right? And wouldn't it seem far more
22 reasonable to say everybody stays on the ballot than
23 saying, okay, everybody's off?

24 MR. PHILLIPS: Yeah, it's -- it also
25 implicates, you know, which candidates ran in the first

1 place. You know, we have some candidates that are
2 nominated by the parties. We have others that are
3 seeking petitions. If you are actually running by
4 petition, you're limited to the signatures of the people
5 in your subdistrict.

6 There are a myriad of factors that might
7 have come into play had this change been made early on
8 in terms of where they could seek those signatures,
9 whether they could get nominated by the party for the
10 district-at-large instead of moving forward by petition.
11 As I said, there are so many unknowns we just don't know
12 the problems that may have existed. And the Purcell
13 doctrine is what guides the Court not to jump in and
14 make massive changes with so many unknowns that -- while
15 we don't know all of the harmful effects there will be,
16 there will be many known harmful effects and many
17 unknown harmful effects both to candidates and to
18 voters.

19 I don't want to downplay the risk to voter
20 confusion by sending second ballots to the same voters
21 or by holding a second special election for the same
22 election that was already held. I'm not really aware of
23 legal authority to order that special election anyway
24 that's being asked for. But all of the issues that
25 Mr. Silrum talks about and testified to in terms of

1 voter confusion apply in that scenario. We're at a
2 stage where voters are voting and the plaintiffs are
3 asking to have those voters revote.

4 Mr. Silrum also testified in his Affidavit
5 to numerous other actions that have taken place since
6 the redistricting. It is important that, you know, this
7 is a redistricting year. It's not a normal election in
8 the sense that there is a huge machinery in any election
9 that kicks into gear many months before an election. It
10 kicks into gear even earlier in a redistricting year.
11 And in his Affidavit and his testimony I hope we've
12 established the many interrelated factors that are
13 impacted by a change of districting now. And all of
14 those actions that had to be taken by county officials,
15 by state officials since the redistricting was done,
16 many of those may have to be redone. They took months.
17 This law was passed in November.

18 In addition, Your Honors, the claims of the
19 plaintiff in this case or the plaintiffs shouldn't be
20 looked at in a vacuum. We are asking this Court to take
21 into account that there are multiple redistricting cases
22 in North Dakota at the moment. As a quick update I have
23 spoken with counsel for the other parties and a joint
24 motion to consolidate we think will be entered into and
25 filed by all parties except for the plaintiffs in the

1 Walen case asking to consolidate these two cases at
2 least for purposes of scheduling.

3 What's important here is that the current
4 Walen case involves a constitutional challenge. The
5 other case, the Turtle Mountain case, involves only a
6 Voting Rights Act challenge. One of those cases the
7 plaintiffs have moved for preliminary injunction and so
8 the only thing before the Court is the issue relating to
9 the constitutional violation. And the plaintiffs are
10 pushing to move forward as fast as possible regardless
11 of the consequences to the election to remedy that
12 alleged violation of the constitution.

13 As far as these two cases, I certainly am
14 not going to concede that the plaintiff is likely to be
15 successful in either of them but I have to acknowledge
16 that there's a risk that one or more of these plaintiffs
17 may be successful. If that's the case we have argued
18 that this Court should send the matter back to the state
19 legislature as the appropriate body to redo a
20 redistricting. It's nonsensical to send the case
21 back -- send it back to the State to do an entire
22 redistricting, you know, numerous hours of legislative
23 hearings and everything else that goes into that process
24 only to address the constitutional issue and only
25 because the Court hasn't yet gotten to the Voting Rights

1 Act claims that have been brought in the other case.

2 This sort of piecemeal decision-making with
3 respect to the constitutional claims and the Voting
4 Rights Act claims has the potential to send the matter
5 back for redistricting to remedy an alleged violation of
6 the constitution. A later order of the Court in the
7 other case may turn -- may show the results that that
8 map that was drawn violates the Voting Rights Act.

9 So we have a situation where if this is
10 going to be sent back to the State at any point, and I'm
11 not conceding that it should be, but if it is the
12 legislature should have the benefit of the Court's
13 orders with respect to the alleged constitutional
14 violation and with respect to the Voting Rights Act so
15 that any redistricting that is redone would comply with
16 all applicable laws and all orders of the Court.
17 There's no reason to push this case through well in
18 advance of the other case just to remedy this alleged
19 constitutional violation, which that remedy may turn out
20 to be a violation of federal law for all we know. That
21 issue hasn't yet been adjudicated.

22 JUDGE ERICKSON: Well, obviously I'm not
23 part of the Voting Rights Act case but as I'm sitting
24 here thinking about it it's like if the problem in this
25 particular case is a Gingles problem, a pre-conditional

1 constitutional problem, well, there's a Voting Rights
2 Act problem kind of by definition at that point, right?
3 It's going to have to be thought about.

4 And if we look at what the Gingles
5 pre-conditional findings are that we're concerned with,
6 the Gingles factors if you prefer, you know, the first
7 thing we've got to figure out is like, well, what
8 legislative facts were ever found, right? And as I look
9 at this record there's all kinds of anecdote. There's
10 all kinds of testimony. There's all kinds of things
11 that are in the record. There's no report from any
12 expert that ties that evidence plus the elections
13 together, right? And then there are no legislative
14 Findings of Fact. And it's not even one of those cases
15 where, you know -- we can find cases where a single
16 legislator stands up in either the Redistricting
17 Committee or on the floor of the House or Senate and
18 they go through and they say: Here are the Gingles
19 factors as we considered and found them. And federal
20 courts have said that's a sufficient finding.

21 And I've kind of looked through this record
22 and combed through it and I'm not seeing anything where
23 anybody actually ever made a finding legislatively that
24 we can defer to, right? And so what you're asking us to
25 do in a case that requires the application of strict

1 scrutiny is to examine the whole record and by inference
2 draw that the findings were made. And if -- you know,
3 on the other side here they keep showing clips of people
4 saying: It's not in the record. It's not in the
5 record. It's not in the record, you know, which may
6 undermine that argument.

7 So, you know, how are we supposed to go
8 about doing that without any specific fact finding on
9 the part of this committee?

10 MR. PHILLIPS: To be clear, Your Honor, I am
11 not conceding that race was the predominant factor in
12 this redistricting and so I don't concede that the
13 Gingles factors should have been analyzed by the
14 legislature or was required to.

15 JUDGE ERICKSON: I get that piece. I mean,
16 I'm not -- I mean, I understand that we were contesting
17 every single piece. What I'm looking at is there are no
18 fact findings legislatively.

19 MR. PHILLIPS: I would suggest, Your Honor,
20 that that actually may be evidence that race was not the
21 predominant factor and we actually have significant data
22 in the record and requests in the record to treat the
23 reservations as communities of interest and to respect
24 the political boundaries of the tribal lands.

25 JUDGE ERICKSON: I get that and then the

1 question becomes: What about this imprecise language
2 that's being used by any number of members of the
3 Legislative Assembly, which do tend to indicate that
4 decisions were being made based on a racial
5 classification as opposed to the Indian status and the
6 nature of the tribal status as an independent political
7 community with a cultural cohesiveness that ought to be
8 kept together when possible?

9 MR. PHILLIPS: Your Honor, our position is
10 that the plaintiff has not met its burden of
11 establishing the legislative record. He made the
12 comment that our position is that they've cherry-picked
13 and that is our position. You know, if I was to submit
14 a deposition transcript to this Court in support of a
15 motion, I would submit the whole transcript because, you
16 know, if you have a snippet of a transcript or a
17 30-second video we don't know what was said before, we
18 don't know what was said after.

19 And in this case there were, I believe it
20 says in the Affidavit, over 40 hours of testimony,
21 debate and so forth. And so was race discussed?
22 Clearly. There are some videos of that. Was race the
23 predominant factor? Our argument is that, no, and the
24 plaintiffs have not established that it was.

25 And by the way discussion of race and

1 discussion of the Voting Rights Act is to be expected of
2 legislatures. They have to account for it and they even
3 talk about whether or not it applies, whether they
4 conclude it does or doesn't.

5 So snippets that mention race are not
6 convincing that race was the predominant factor. These
7 40 hours of hearings are public records. They're all
8 online. There's no reason we don't -- that the
9 plaintiffs didn't submit a transcript or other
10 sufficient information for this Court to be able to
11 parse out whether it was the predominant factor as
12 opposed to random comments from legislators.

13 In this case they also presented a single
14 legislator in terms of his memory of the events and of
15 these hearings. He clearly was not present at all of
16 them and got some of his information by talking to
17 others. This is not a sufficient record. So I want to
18 be clear that our position is that the record isn't
19 complete and that's -- that would have been the
20 responsibility of the plaintiffs and we deny that
21 they've met that initial hurdle of showing race was the
22 predominant factor. And so they are not likely to
23 succeed for that reason alone.

24 And nothing else springs from that. I mean,
25 if there's not a finding that race was a predominant

1 factor, then the Gingles factors are not relevant.
2 Those only become relevant to meet the strict scrutiny
3 test once race was used as the predominant factor.

4 JUDGE HOVLAND: I realize, Mr. Phillips, you
5 came into this probably late in the game as an outside
6 counsel, Special Assistant attorney general, but do you
7 know why the State or Legislative Assembly, the
8 Legislative Council, the secretary of state would not
9 have hired an expert witness, would not have done -- had
10 some statistical analysis done? I mean, it could have
11 easily been done.

12 MR. PHILLIPS: I would say that I'm not
13 convinced the record is complete enough to say that it
14 didn't exist. I don't know the answer to that question
15 but I'm not going to concede that more data and analysis
16 doesn't exist in the legislative record or --

17 JUDGE HOVLAND: Well, counsel for the
18 Legislative -- or the legislative counsel that spoke at
19 that hearing said there hadn't been any statistical
20 analysis done, hadn't hired an expert witness.

21 MR. PHILLIPS: Again I would fall back on a
22 cherry-picked --

23 JUDGE HOVLAND: Sure, fair enough.

24 MR. PHILLIPS: I don't know the answer to
25 that. But I would say again it does fall in line with

1 our main argument with respect to the merits, which is
2 that the plaintiffs haven't proved that race was the
3 predominant factor, in which case there's discussion of
4 race certainly but not enough to establish that that was
5 the predominant factor that triggered the further
6 analysis under Gingles.

7 JUDGE ERICKSON: You've suggested that the
8 plaintiffs had an obligation to come forward with the
9 full record, sufficient transcripts for us to review it.
10 The committee hearings are all online. They're all
11 residing on the State's website.

12 Is it improper in your world for the Court
13 to go back and to do its independent review of the
14 Redistricting Committee hearing recordings and make its
15 own decision, or is that outside the record such that it
16 at this point needs to be ignored?

17 MR. PHILLIPS: I believe that it is outside
18 the record. It's the plaintiffs' burden to establish
19 the record in this court of law, and they've failed to
20 do so.

21 JUDGE ERICKSON: And we could take judicial
22 notice of things like the law or a fact that can't
23 reasonably be computed or -- or in fact it can be. You
24 know, what was the temperature on August 4, 2021?

25 But are we free to go back and just review

1 the entire legislative process and make our own
2 independent findings? I know you're going to say no,
3 you can't do that. But if that's true how is it that we
4 look at all sorts of legislative history to inform our
5 decisions elsewhere?

6 MR. PHILLIPS: This is a key issue in the
7 case, Your Honor. If something is in the record that is
8 important and that the Court finds important, that the
9 parties might have found important, we should have been
10 arguing about it today. We had witnesses on the stand
11 today. We're having oral argument today.

12 The plaintiffs didn't meet their burden. As
13 the North Dakota Supreme Court often says: Judges are
14 not ferrets that go looking for the evidence on behalf
15 of parties, and that's what I would suggest in this
16 case.

17 JUDGE ERICKSON: So essentially you would
18 say failing to argue those facts would constitute a
19 waiver of that factual argument?

20 MR. PHILLIPS: Correct, Your Honor.

21 JUDGE ERICKSON: Very good.

22 MR. PHILLIPS: I will point out, Your Honor,
23 as well Judge Hovland asked a question about retaining
24 of experts and one thing to bear in mind is that in this
25 matter my client is the secretary of state and the

1 governor and they actually aren't members of the
2 legislature and so some of that information might not be
3 available to my client in terms of their own files.
4 Although, I would suggest that all of the evidence
5 that's there is public record that the plaintiffs could
6 have obtained and presented to the Court.

7 JUDGE WELTE: Mr. Phillips, would you agree
8 that if the Court needs to make a determination as to
9 whether race was a predominant factor then the Court
10 should know all of the factors that were considered to
11 determine if one was predominant or if they were equally
12 considered?

13 MR. PHILLIPS: The Court should know that.
14 I don't think this record is sufficient though for this
15 Court to make that determination.

16 JUDGE WELTE: You don't believe that the
17 record's sufficient to determine all of the factors that
18 were actually considered --

19 MR. PHILLIPS: Correct.

20 JUDGE WELTE: -- and that that's just simply
21 the plaintiffs' burden?

22 MR. PHILLIPS: We were not going to meet the
23 plaintiffs' burden of the initial factor and so we
24 didn't introduce an entire record. That entire record
25 would have included that as well.

1 JUDGE WELTE: Thank you.

2 MR. PHILLIPS: And I do want to be clear
3 that there is a record in this case of testimony
4 introduced by the defendants of specific requests,
5 numerous specific requests for the reservation lands to
6 be treated as communities of interest and for the
7 political boundaries to be respected. That is in the
8 record. Are those predominant factors? You know --

9 JUDGE ERICKSON: Would have been nice if
10 somebody in the legislature would have told us that.

11 MR. PHILLIPS: Importantly it doesn't
12 trigger a constitutional analysis. The plaintiffs argue
13 that they're deprived of representation by having one
14 representative in the House instead of two. This
15 argument has been made a couple of times in passing in
16 the briefing and in the oral argument, and just to be
17 clear legislative subdistricts are permitted by the
18 North Dakota Constitution, explicitly in Article IV,
19 Section 2, and the plaintiffs haven't cited any case law
20 suggesting that that's impermissible under the federal
21 constitution. Those subdistricts have, as much as
22 practicable, the same population as half of the full
23 district and so representation is proportional. It is
24 half the number of people voting for half the number of
25 representatives. So that fact alone does not establish

1 a violation of the constitution.

2 Overall, Your Honors, balancing the harm to
3 voters, to candidates, to election officials, the harm
4 that would come in upending an election right now we
5 would argue that even if there was a constitutional
6 violation with respect to the plaintiffs, it weighs in
7 favor of denying the preliminary injunction.

8 The plaintiffs have referenced the recent
9 Wisconsin Legislature case at the U. S. Supreme Court.
10 I would like to point out a couple of important
11 distinguishing factors between this case and that one.
12 In that case it was a situation where the governor and
13 the legislature had reached an impasse in terms of
14 districting maps. It went to the Court to choose the
15 appropriate map.

16 That is not the situation in North Dakota
17 where the political process did come to a resolution on
18 districting maps, enacted them into law, and then county
19 and state election officials sprung into action to
20 implement that law. It makes a certain amount of sense
21 that a Court needs to step in and make last-minute
22 changes when the political process failed to timely
23 create districting maps. It's a different situation
24 where a plaintiff is coming in after the political
25 process worked and asking for a last-minute change in an

1 election.

2 I will also point out that that case did go
3 up to the United States Supreme Court in March for an
4 August primary and the Court found that under the law in
5 Wisconsin that was sufficient time. There's less time
6 in this case and we've presented significant evidence as
7 to why in North Dakota based on North Dakota's unique
8 requirements it would be harmful to upend the election
9 right now and that there isn't sufficient time to make
10 changes. People have voted and are voting today.

11 In addition, Your Honors, I would argue and
12 as we have argued in the briefs that this Court should
13 not simply erase the subdistrict lines. That is a map
14 that the state legislature never approved. The
15 legislature has never had a map that looks like it does
16 today just without the subdistricts. In this case if
17 the matter were sent back to the State we don't know how
18 the legislature would respond. We don't know what maps
19 they would draw. I mean, an important factor in
20 redistricting is population equality, substantial
21 population equality. If the political bodies made the
22 decision that the reservations constitute a community of
23 interest and they want to draw a subdistrict line around
24 that reservation, that naturally constrains how the line
25 can be drawn in the larger district because you have to

1 have half the population in that subdistrict and so your
2 outer boundary is going to change if you didn't make the
3 political decision to do subdistricts.

4 So if we sent it back to the state
5 legislature, we don't know that that's the remedy they
6 would impose. They may decide something different. I
7 would ask that this Court defer and allow the State to
8 exercise its duties if it was going to take action
9 rather than imposing a map that was never vetted through
10 the political process. And if our state legislature did
11 make a decision to alter the outer district lines and
12 not just the subdistricts, that would have cascading
13 effects throughout North Dakota. It would change
14 basically every district in the state in order to
15 maintain that population equality. Making that kind of
16 a change would require substantial work at the county
17 and state level, everything from redesignating the
18 precincts and beyond.

19 I'd be happy to answer any questions.
20 Otherwise I will rest.

21 JUDGE HOVLAND: I have none, thank you.

22 MR. PHILLIPS: Thank you.

23 JUDGE ERICKSON: Miss Kelty? Oh, I'm sorry.

24 Mr. Carter, you may proceed.

25 MR. CARTER: May it please the Court: Good

1 afternoon, Your Honors. I am Michael Carter appearing
2 today on behalf of the defendants-intervenors MHA Nation
3 as well as individual MHA tribal members Lisa DeVille
4 and Cesareo Alvarez. From the outset I just want to
5 reiterate something that has been made clear in our
6 briefing to this point which is that intervenors'
7 interest in this case is only limited to District 4 and
8 so my arguments will be limited to such.

9 I have three main points that I want to make
10 to the Court this afternoon and first is that
11 District 4 -- the formation of District 4 follows
12 traditional redistricting principles; second, that the
13 district's formation is justified and required under
14 Section 2 of the Voting Rights Act; and, third, that the
15 plaintiffs are requesting an unlawful remedy of this
16 Court.

17 So our first two arguments focus on the
18 two-step analysis that was provided in the Cooper v.
19 Harris case saying that the plaintiffs must first prove
20 that race was the predominant factor motivating the
21 legislature's decision to draw a particular district
22 and then second if racial decisions did predominate
23 whether the district is still nevertheless required
24 under -- to ensure compliance with Section 2 of the
25 Voting Rights Act.

1 For the first step plaintiffs have failed to
2 meet their burden to prove that District 4 was drawn
3 predominantly based on race. As our brief contends,
4 Subdistrict 4A follows traditional redistricting
5 principles of compactness and respect for political
6 boundaries and respect for the MHA Nation as a community
7 of interest. Those were all types of traditional
8 redistricting principles that were provided in the slide
9 show earlier I think in the PowerPoint.

10 And so I want to impress upon the Court the
11 burden that is on the plaintiffs in order to prove that
12 traditional redistricting principles were subordinated
13 by notions of race. In the Abbott v. Perez case that
14 plaintiffs cite to, the Supreme Court stated that
15 plaintiffs have the burden to overcome the presumption
16 of legislative good faith and show that the legislature
17 acted in bad faith to racially gerrymander. In the
18 Cooper v. Harris case, the Supreme Court stated that the
19 plaintiffs' burden here is a demanding one here and that
20 a Court must be very cautious about imputing racial
21 motive to a state's redistricting plan.

22 So that is the background for the burden
23 that plaintiffs have to meet in order to prove racial
24 motive was predominant in a redistricting plan. This
25 burden cannot be met by showing that the legislature was

1 aware of race or that the legislature considered race in
2 its decision-making. In fact, those types of
3 considerations I think are probably present in most
4 redistricting analyses and decision-making that
5 legislatures have to make, but that does not mean that
6 race predominated the decision-making.

7 The record before this Court does not
8 establish such predominance. The cases plaintiffs rely
9 on involve districts that were bizarrely shaped, not
10 compact, including land bridges and appendages sometimes
11 over a hundred miles long. Those characteristics are
12 not met in this case and in fact it's quite the
13 opposite.

14 As you can see on the screen, we provided a
15 picture of District 4. You can see the darker-shaded
16 area to the south is the Subdistrict 4A which
17 directly -- or precisely follows the reservation
18 boundaries, which I think is possibly the most compact
19 district in the state or subdistrict.

20 And so as I said the Subdistrict 4A
21 precisely follows the political boundaries of the Fort
22 Berthold Reservation that is home to the MHA Nation.
23 The district is geographically compact and the district
24 respects the MHA as a community of interest. In fact,
25 it was a stated goal, as was testified to earlier, of

1 the Redistricting Committee to respect the political
2 boundaries of the reservations in the state, and that's
3 what the Redistricting Committee and the legislature did
4 here, similar to the way that county lines have been
5 respected throughout the redistricting map whenever
6 feasible based on population.

7 The legislature received testimony regarding
8 how these traditional redistricting principles apply to
9 MHA. Specifically MHA Chairman Mark Fox testified how
10 the reservation is a community of interest with shared
11 customs and traditions that distinguish it from the
12 surrounding area. The lack of evidence from plaintiffs
13 on this issue, being unable to rebut the fact that these
14 factors are present, the compactness, the respect for
15 political boundaries and the respect for the community
16 of interest, should leave this Court with no other
17 option but to determine that plaintiffs have failed to
18 meet their burden.

19 And the second step of the Harris analysis
20 if this Court is inclined to believe that race
21 predominated the decision-making of the legislature when
22 adopting District 4, even if that is so plaintiffs do
23 not meet the burden -- I'm sorry, the subdistricts are
24 justified regardless and required under the Voting
25 Rights Act, Section 2. So compliance with Section 2 of

1 the Voting Rights Act has been held -- as was stated
2 previously, has been held by the Supreme Court as a
3 basis for drawing districts predominantly based on race.

4 The Court has ample evidence showing the
5 necessity for the Subdistrict 4A in this case as
6 required by the Voting Rights Act through application of
7 the Gingles analysis. Our brief details the testimony
8 that was provided to the legislature during the
9 redistricting process. Experts testified -- election
10 experts testified regarding the VRA and Gingles
11 requirements generally. Tribal members and tribal
12 leaders testified before the Redistricting Committee
13 describing the application of the Gingles preconditions
14 to the proposed subdistrict. Specifically MHA Chairman
15 Mark Fox testified to the Gingles preconditions and the
16 existence of racial bloc voting in the area regarding
17 school districts, House elections across multiple
18 elections.

19 JUDGE ERICKSON: Are you suggesting that
20 because a presumption that the legislature acts in good
21 faith and given the evidence in the record that the
22 absence of any specific legislative findings -- I mean,
23 even something as simple as just a summary by the chair
24 saying: Here's the factor that we considered. Here's
25 how we got there. In the absence of that if we have

1 that presumption of good faith we can look at the record
2 and say these facts support the conclusions here and
3 that -- you know, that this is therefore required.

4 MR. CARTER: Well, Your Honor, I would say
5 that there was a finding by the Redistricting Committee
6 and the legislature that --

7 JUDGE ERICKSON: Because they drew the map,
8 right, or more than that?

9 MR. CARTER: Well, it was stated by the
10 Redistricting Committee that the -- that regardless the
11 map would be required as is because of the Voting Rights
12 Act. Because of the Gingles requirements, that was
13 specifically stated.

14 THE COURT: Yeah, that part is -- and that's
15 a conclusion but there's no -- there's actually no
16 specific findings that relate to the factors themselves,
17 I mean, and it may be because I'm a judge who looks at
18 other judges' work all the time. I'm used to seeing
19 specific factual findings and that legislative fact
20 finding is inherently different, right?

21 MR. CARTER: That's correct, Your Honor.
22 And I would -- my response to that is to say that they
23 were provided with the testimony from the tribe
24 regarding the Gingles factors and then came to the
25 conclusion based on that testimony that the VRA required

1 the subdistrict. So they had the legislative background
2 they needed to make that conclusion and then made that
3 conclusion on the record.

4 I'd also say that plaintiffs reliance on the
5 Wisconsin Legislature case that was recently decided by
6 the Supreme Court is misplaced. Besides the timing
7 issues that counsel for the State discussed and the
8 differences in the timing that go to the Purcell type
9 arguments, plaintiffs also use that case to say it's
10 analogous to our case regarding legislative findings or
11 Gingles analysis under the VRA.

12 However, in that case the Court was
13 considering a map that was submitted to it by the
14 Wisconsin governor, and as I think was in the slide show
15 by plaintiffs there was no -- there was nothing in the
16 record regarding VRA analysis or requirements unlike
17 what we have here. And so based on essentially no
18 evidence regarding Voting Rights Act given by the
19 governor to the Court, then that was what distinguishes
20 our case, why that case was remanded.

21 And just quickly to respond to something
22 that was stated by plaintiffs, it was stated as though
23 there was some kind of a rule saying that it's -- you
24 cannot meet Gingles requirements unless you analyze
25 precinct level data. I've not seen that held by a Court

1 saying that's a specific rule. In fact, the Supreme
2 Court in the Abbott case did approve one of the
3 districts they were reviewing that did not have any kind
4 of hypertechnical analysis done on precinct level data.
5 But even in that case the district was not compact. It
6 was -- there was a land bridge connecting two minority
7 populations within different metropolitan areas and that
8 district was still upheld.

9 As well regarding the Abbot v. Perez case
10 that the plaintiffs have used I think stated this in
11 both their initial motion and their reply stating the
12 proposition that lay testimony cannot be used to go
13 toward a Section 2 analysis. That again is also not
14 something that is a holding in any case that I'm aware
15 of. The Abbott-Perez case did not say that. In that
16 case what the Court was referring to was the fact that
17 an outside group was demanding that the subdistrict --
18 I'm sorry, that the district be established, be drawn.
19 It was simply a demand without any further analysis.
20 They were saying that simply a demand cannot meet the
21 requirements of the VRA, and that again is not what we
22 have in our case.

23 In our case besides requesting that the
24 district be created by those who testified, though as I
25 said before there was VRA specific testimony that was

1 provided to and considered by the legislature so
2 therefore the record shows that the creation of the
3 subdistrict is warranted under Section 2 of the Voting
4 Rights Act.

5 And that gets into my final point, Your
6 Honor, is that what the plaintiffs have asked for in
7 their -- as a remedy in their briefing is unlawful.
8 What they have asked for is for this Court to dissolve
9 the subdistrict lines and then proceed with the
10 elections as what they call status quo. We contend that
11 this is a crucial issue for this Court to consider
12 before issuing any order in this case. Again the remedy
13 they're asking for is essentially for this Court to
14 dissolve the subdistrict lines in B4. That's really the
15 only remedy request that I've seen in the pleadings.
16 Today I've heard about sending it back to the
17 legislature and those kinds of things, which were not
18 briefed as far as I can tell.

19 I would also say that plaintiffs have
20 dismissed Dr. Collingwood's report and testimony as
21 irrelevant because the legislature did not have that
22 information, did not have his report or testimony when
23 adopting their redistricting map. However, given both
24 the legislative record that I've already discussed as
25 well as Dr. Collingwood's report, it has been shown to

1 this Court that the subdistrict is in fact required
2 under the Voting Rights Act. Plaintiffs did not contest
3 the report. Dr. Collingwood stated unequivocally that
4 the Subdistrict 4A is required under the Voting Rights
5 Act and went through the analysis why it is required,
6 how it meets every Gingles precondition, and none of
7 that was questioned by any party here today.

8 Therefore, granting plaintiffs' requested
9 remedy to dissolve the subdistrict lines would create a
10 new map not approved by the legislature that would
11 dilute the voting strength of the MHA tribal members in
12 violation of Section 2 of the Voting Rights Act. The
13 Court would essentially be performing a line item veto
14 to the redistricting bill that the legislature approved
15 creating a new district that the legislature did not
16 approve that has been shown to violate the Voting Rights
17 Act.

18 Even if the Court is inclined to agree with
19 that, that the plaintiffs have overcome all of the
20 hurdles to get to the point of the remedy, the remedy
21 they've requested would violate the Voting Rights Act
22 and cannot be put into place. So we contend that a
23 holding by this Court consistent with this premise would
24 negate the need to even get to the merits of plaintiffs'
25 motion because their requested remedy is unlawful on its

1 face.

2 In conclusion, Your Honors, plaintiffs again
3 have failed to show that District 4 was drawn
4 predominantly based on race, failed to show that the
5 subdistrict is not required under the Voting Rights Act
6 and have requested an unlawful remedy. Therefore, we
7 request that the motion for preliminary injunction be
8 denied and I'm happy to address any questions the judges
9 may have.

10 JUDGE HOVLAND: Has there been any discovery
11 undertaken in this case to date?

12 MR. CARTER: No, Your Honor.

13 JUDGE HOVLAND: And when did MHA Nation
14 intervene and when was Collingwood retained and hired in
15 this case to prepare a report?

16 MR. CARTER: Your Honor, I don't have the
17 dates off the top of my head as far as intervention.
18 Obviously after the case was filed for intervention and
19 for the completion of the report, I think it was early
20 April I believe that the report was completed.

21 JUDGE HOVLAND: Thank you.

22 JUDGE ERICKSON: No further questions.
23 Thank you.

24 MR. CARTER: Thank you, Your Honor.

25 JUDGE ERICKSON: Do you have rebuttal,

1 Mr. Sanderson?

2 MR. SANDERSON: Yes, I do briefly, Your
3 Honor.

4 JUDGE ERICKSON: How long will it take?

5 MR. SANDERSON: I don't think this is --
6 five to ten minutes.

7 JUDGE HOVLAND: Brief is always in the eyes
8 of the beholder.

9 JUDGE ERICKSON: Is that okay, Kelly?

10 THE REPORTER: Yes.

11 MR. SANDERSON: You know me too well.

12 Judge Erickson, I'd like to start with the
13 question you'd asked me before. You'd asked me what
14 provisions under North Dakota law allow for special
15 elections? And I believe you -- special elections to
16 fill a vacancy, 16.1-13-14, that's certainly one of
17 them. But special elections, that's a specific special
18 election. If you go to 16.1-13-12 --

19 THE REPORTER: Please slow down.

20 MR. SANDERSON: Now I'll probably be eight
21 minutes, Judge. I gotta slow down.

22 JUDGE ERICKSON: That's okay.

23 MR. SANDERSON: It talks about special
24 elections in other context and that. But more
25 importantly, Judge, and what I should have referred you

1 to when you asked that question, is specifically
2 Chapter 16.1-11, primary elections. And that's most --
3 the special election we need here would be a primary
4 election to rectify this.

5 But before I get into that I want to make
6 one thing clear. Mr. Phillips said, you know, part of
7 the remedies that we're -- the series of events that
8 we're asking for, the only event that the plaintiffs are
9 asking for in this case is their constitutional rights
10 not be violated by an unconstitutional racial
11 gerrymandering. So I want to be clear we were just
12 proposing with the special election the idea of remedies
13 that this Court could order, not that this is what we're
14 demanding. We're demanding the -- our clients'
15 constitutional rights not be violated.

16 So back to the issue of primary elections,
17 16.1-11, specifically 16.1-11-01, primary elections,
18 it's when held nomination of candidates and nominations
19 for special elections and the last sentence of that
20 says: "In special elections nominations for the
21 officers enumerated in this section must be made as
22 provided in this title."

23 So clearly the North Dakota Legislature
24 contemplated that special elections can be held for
25 primaries. And then I next turn your attention to

1 16.1-11-15, "Nominating petition not to be circulated
2 prior to January first - Special Election." And that's
3 the statute, Judge, that says, you know, for a normal
4 primary you can't begin collecting signatures before
5 January 1st. But the last -- again the last sentence
6 says: "A nominating petition for a special election may
7 not be circulated or signed more than thirty days before
8 the time when a petition for the special election must
9 be filed."

10 So that statute alone indicates the
11 legislature has contemplated that special elections for
12 primaries may be held and that different rules could
13 apply for them. Now again I don't think the statute
14 goes further to explain all the situations that were
15 raised by Mr. Silrum. But it does show to your
16 question, Judge Erickson, that there is a statutory
17 process in place for a special election for a primary
18 and the North Dakota Legislature certainly has
19 contemplated it. So you do have that.

20 One of the most troubling things that was --
21 was indicated by the State in this is the election
22 process has already started. We don't have a remedy.
23 And Mr. Silrum's talked about the day this law went into
24 effect the election process started. What they're
25 essentially hiding behind Purcell is my clients have

1 absolutely no remedy for the constitutional violation.
2 There's just not enough time. That cannot be what this
3 Court stands for. It's a -- because the election
4 process has started, yup, sorry, your constitutional
5 rights no longer apply and you have no remedy until the
6 next election.

7 We filed this case nine months before the
8 November election. Ample time exists. The holding of a
9 special primary election is not insurmountable. It's
10 not some cascading events that can't be accomplished.
11 We are talking about one election for the House of
12 Representatives in District 9. That can be done.
13 Certainly some deadlines have to be moved. Some things
14 have to be complicated. Ballots have to be printed,
15 other things. But again comparing that to the
16 constitutional rights of the plaintiffs and 16,000 other
17 voters in that district is not insurmountable.

18 One of the interesting things Mr. Phillips
19 mentioned was that the plaintiffs have been pushing this
20 forward as fast as possible. Yes, we have. Their
21 constitutional rights are at stake. And let's be very
22 clear, the constitutional right that was asked of
23 Mr. Phillips is not that we have -- the constitutional
24 issues and right is not that we have two elected
25 representatives. It's that we are not subjected to

1 reside in a racially gerrymandered district and that's
2 the constitutional issue. And the effect of that is
3 that we would have equal protection with everyone else
4 but the remedy and the harm is being subject to a
5 racially gerrymandered district that has no
6 justification.

7 Now the State and the intervenors have both
8 argued that we didn't meet -- race wasn't the
9 predominant factor. It wasn't an issue. Yet they turn
10 to the Gingles factors and start talking about the
11 legislative -- you know, counsel's presentation on
12 Gingles, all the testimony on Gingles. If race wasn't
13 the predominant factor you would never get to Gingles.
14 Yet the legislative history of this bill on the
15 subdistricts is replete with testimony on Gingles and
16 there's only one reason you get to Gingles. Because
17 race was a predominant factor for a Section 2 voting
18 rights claim and that's why Gingles is there. That's
19 why they hired an expert to talk about the Gingles
20 factor. So, you know, this argument that race wasn't
21 there, there would be no need to be discussing the
22 Gingles factor if this was traditional redistricting
23 principles.

24 On the traditional redistricting principles,
25 we cited in our reply brief the U.S. Supreme Court case

1 Bethune-Hill v. Virginia State Board of Elections, the
2 2017 case, noting that traditional redistricting
3 principles are numerous and malleable. A state cannot
4 escape the consequences of unconstitutional racial
5 gerrymandering by arguing after the fact that
6 gerrymandered districts complied with traditional
7 redistricting principles.

8 And I simply ask you: What evidence was
9 presented here by either the State or the intervenors to
10 show traditional redistricting principles were applied
11 by the North Dakota Legislature in creation of the
12 subdistricts? There was none because that wasn't. It's
13 an after-the-fact attempt to rewrite the history to
14 avoid the voting rights claim in this case.

15 Now both the State and the intervenors want
16 to talk that we have failed to meet our burden that race
17 was a predominant factor and again saying we
18 cherry-picked legislative history. But again as we've
19 pointed out that is not the only way to show race is a
20 predominant factor, the circumstantial evidence showing
21 the boundaries of the subdistricts and the composition
22 of the demographics. There's no other inference you can
23 draw than the creation of the subdistricts around two
24 reservations to allow for them to both have majority
25 population on this, and that alone shows race is a

1 predominant factor.

2 Now if they want to bring up District 4,
3 let's not forget the Turtle Mountain -- excuse me, the
4 Fort Berthold Indian Reservation has been in District 4
5 for decades. At no other point in time have they
6 attempted to draw a subdistrict to preserve the cultural
7 identity of that. Why was it done now? For one reason
8 after this census: to avoid a voting rights claim.

9 The Turtle Mountain Reservation has been
10 within District 9 for decades. Again no attempt to
11 subdistrict -- subdivide that was done before until the
12 tribe showed up and threatened voting rights actions.
13 So the circumstantial evidence alone, what witness did
14 you hear evidence from today regarding race as a
15 predominant factor? We called Representative Terry
16 Jones. It was undisputed. He said race was the
17 predominant factor for this decision. What evidence did
18 the State or the intervenors present that contradicted
19 that? None.

20 So then third -- the third step, we've shown
21 you the legislative history. And when -- again the
22 cherry-picking argument, when the chairman of the
23 Redistricting Committee says on the floor these
24 subdistricts were created because of the Voting Rights
25 Act, there's nothing more you need. Creating

1 subdistricts under the Voting Rights Act is inherently
2 based on race as courts throughout this country
3 including the Wisconsin court just said.

4 So this argument that we have not met our
5 burden, we've presented all the evidence to show that.
6 What witness, what testimony, what piece of legislative
7 history have they shown -- has either party shown to
8 rebut the evidence we've presented?

9 There was also a question -- and, Judge
10 Erickson, this goes back to a question you asked me and
11 I think was kind of responded to. And I know I referred
12 you to the Abbott case and your question specifically
13 was: Well, what specific evidence do we need to meet
14 the Gingles factors? In the Abbott case, and it's 138
15 Supreme Court 2305 starting right after -- on page 2332.
16 The Court says: "We have made clear that redistricting
17 analysis must take place at the district level," citing
18 the Bethune-Hill case. "In failing to perform that
19 district-level analysis, the District Court went
20 astray." They go on on the next page: "North Carolina
21 pointed to two expert reports on 'voting patterns
22 throughout the State,' but we rejected that evidence as
23 insufficient. Texas has pointed no actual 'legislative
24 inquiry' that would establish the need for its
25 manipulation of the racial makeup of the district."

1 The Supreme Court in Abbott -- and we've
2 cited numerous other cases that have established what is
3 necessary to meet the Gingles preconditions, and lay
4 testimony that the intervenors argue is sufficient is
5 simply not enough. And there's numerous cases in our
6 brief citing that as Abbott has also cited that.

7 So with that again on behalf of Mr. Walen
8 and Mr. Henderson we ask the Court protect their
9 constitutional right of equal protection in the upcoming
10 election. Sufficient time exists to prevent an
11 unconstitutional election for moving forward and we
12 would ask that the preliminary injunction motion be
13 granted. Thank you for your time.

14 JUDGE ERICKSON: Thank you. Does the State
15 have anything? I'd give you three minutes if you feel
16 like there's something you have to say.

17 MR. PHILLIPS: Very briefly, Your Honor,
18 there is -- was discussion of state law respecting
19 special elections. There's no state law that accounts
20 for stopping an ongoing election in the middle of it,
21 for changing the boundaries of districts in the middle
22 of an election, for changing names on the ballots that
23 have already been printed and sent to voters, for
24 essentially starting over a current election that's
25 ongoing with a second election that's a special

1 election.

2 So broad, you know, powers to have a special
3 election does not give the State or this Court the
4 authority to order the State to hold a special election
5 that's being asked for by the plaintiffs in this case.
6 Thank you.

7 JUDGE ERICKSON: Thank you. Anything from
8 the intervenors?

9 MR. CARTER: No, Your Honor.

10 JUDGE ERICKSON: Thank you very much. The
11 matter is taken under advisement. I want to thank you
12 very much for your time here today. The evidence and
13 the arguments have been helpful. We'll get something
14 out as soon as possible.

15 (Adjourned at 3:30 p.m.)

16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Kelly A. Kroke, a duly appointed
Registered Professional Reporter;

DO HEREBY CERTIFY that I reported in
shorthand the foregoing proceedings had and made a
record at the time and place indicated.

I DO HEREBY FURTHER CERTIFY that the
foregoing and attached (138) typewritten pages contain
an accurate transcript of my shorthand notes then and
there taken.

Dated this 18th day of January, 2023.

/s/ Kelly A. Kroke
KELLY A. KROKE - RPR, RMR
United States District Court Reporter
District of North Dakota
Eastern Division