

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

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

Case No. 3:22-cv-00022

Plaintiffs,

AFFIDAVIT OF DAVID R. PHILLIPS

vs.

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

Defendant.

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


Being duly sworn, David R. Phillips, testifies:

1. I am an attorney duly licensed to practice law in the State of North Dakota and am admitted to practice before this Court.
2. I am a member of the firm of Bakke Grinolds Wiederholt, attorney for Defendant Michael Howe, in his official capacity as Secretary of State of North Dakota, in this action. I have personal knowledge of the facts stated herein.
3. This affidavit is submitted in support of *Defendant's Reply Memorandum in Support of Motion for Summary Judgment*, filed herewith.
4. Attached hereto as **Exhibit 38** is a true and correct copy of the deposition transcript of Dr. Loren Collingwood taken on March 6, 2023.
5. Attached hereto as **Exhibit 39** is a true and correct copy of the transcript of the September 15, 2021 North Dakota Legislative Assembly Redistricting Committee

Meeting.

6. Attached hereto as **Exhibit 40** is a true and correct copy of the Expert Report of Dr. Loren Collingwood dated January 17, 2023 issued for the case entitled *Charles Walen, et. al. v. Doug Burgum, et al.*, Case No. 1:22-cv-00031.

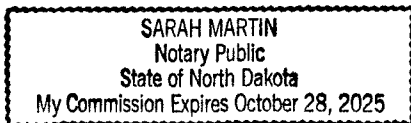
Dated this 15th day of March, 2023.

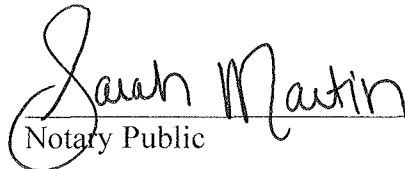
By: 
David R. Phillips
Special Assistant Attorney General
ND Bar # 06116
300 West Century Avenue
P.O. Box 4247
Bismarck, ND 58502-4247
(701) 751-8188
dphillips@bgwattorneys.com

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

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

On this 15th day of March, 2023 before me personally appeared David R. Phillips known to me to be the person described in the within and foregoing instrument, and acknowledged to me that he executed the same.




Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Affidavit of David R. Phillips** was on the 15th day of March, 2023, filed electronically with the Clerk of Court through ECF:

Michael S. Carter
OK No. 31961
Matthew Campbell
NM No. 138207, CO No. 40808
Native American Rights Fund
1506 Broadway
Boulder, CO 80301
carter@narf.org
mcampbell@narf.org

Molly E. Danahy
DC Bar No. 1643411
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
mdanahy@campaignlegal.org

Mark P. Gaber
DC Bar No. 98807
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
mgaber@campaignlegal.org

Bryan L. Sells
GA No. 635562
The Law Office of Bryan L. Sells, LLC
PO BOX 5493
Atlanta, GA 31107-0493
bryan@bryansellsllaw.com

Nicole Hanson
N.Y. Bar No. 5992326
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
nhansen@campaignlegalcenter.org

Samantha Blencke Kelty
AZ No. 024110
TX No. 24085074
Native American Rights Fund

1514 P Street NW, Suite D
Washington, DC 20005
kelty@narf.org

Timothy Q. Purdon
ND No. 05392
ROBINS KAPLAN LLP
1207 West Divide Avenue, Suite 200
Bismarck, ND 58501
TPurdon@RobinsKaplan.com

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

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IN THE UNITED STATES DISTRICT COURT
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Turtle Mountain Band of Chippewa
Indians, Spirit Lake Tribe, Wesley
Davis, Zachary S. King, and Collette
Brown,

Plaintiffs,

vs.

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

REMOTE DEPOSITION OF
Loren Collingwood
Taken March 6, 2023
Commencing at 10:00 a.m. CST

Exhibit 38

REPORTED BY: CHRISTA A. REESER, RPR, CRR, CRC

Page 2	Page 4
<p>1 Remote deposition of Loren Collingwood 2 taken on Monday, March 6, 2023, commencing at 10:00 3 a.m., CST, before Christa A. Reeser, Registered 4 Professional Reporter, Certified Realtime Reporter, 5 Certified Realtime Captioner, and Notary Public of and 6 for the State of Minnesota. 7 8 ***** 9 10 APPEARANCES 11 12 ON BEHALF OF THE PLAINTIFFS: 13 Molly E. Danahy, Esq. (via Zoom) 14 Mark Gaber, Esq. (via Zoom) 15 CAMPAIGN LEGAL CENTER 16 1101 14th Street Northwest, Suite 400 17 Washington, DC 20005 18 202-736-2200 19 mdanahy@campaignlegalcenter.org 20 mgaber@campaignlegalcenter.org 21 22 23 (APPEARANCES continued on next page) 24 25</p>	<p>1 APPEARANCES (continued) 2 3 ON BEHALF OF THE DEFENDANT: 4 David Phillips, Esq. (via Zoom) 5 SPECIAL ASSISTANT ATTORNEY GENERAL 6 300 West Century Avenue 7 P.O. Box 4247 8 Bismarck, North Dakota 58502 9 701-751-8188 10 dphillips@bgwattorneys.com 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 3	Page 5
<p>1 APPEARANCES (continued) 2 3 Michael Carter, Esq. (via Zoom) 4 Allison Neswood, Esq. (via Zoom) 5 NATIVE AMERICAN RIGHTS FUND 6 1506 Broadway 7 Boulder, Colorado 80301 8 303-447-8760 9 carter@narf.org 10 neswood@narf.org 11 12 Samantha Kelty, Esq. (via Zoom) 13 NATIVE AMERICAN RIGHTS FUND 14 950 F Street Northwest, Suite 1050 15 Washington, DC 20004-1438 16 202-785-4166 17 kelty@narf.org 18 19 20 21 22 23 (APPEARANCES continued on next page) 24 25</p>	<p>1 I N D E X 2 3 WITNESS: Loren Collingwood PAGE 4 Examination by Mr. Phillips..... 7 5 Examination by Ms. Danahy..... 187 6 Examination by Mr. Phillips..... 196 7 8 9 10 EXHIBITS PAGE 11 Exhibit 32 - CV of Loren Collingwood 10 12 Exhibit 33 - 5/22/2022 Collingwood 23 13 Research, LLC Invoice to 14 Matthew Campbell, Native 15 American Rights Fund 16 Exhibit 34 - 12/15/2022 Collingwood 23 17 Research, LLC Invoice to 18 Matthew Campbell, Native 19 American Rights Fund 20 Exhibit 35 - 12/15/2021 Handwritten 30 21 Notes 22 Exhibit 36 - 1/18/2022 Handwritten 38 23 Notes 24 Exhibit 37 - 1/17/2023 Expert Report 44 25 of Dr. Loren Collingwood</p>

<p style="text-align: right;">Page 6</p> <p>1 EXHIBITS (continued)</p> <p>2</p> <p>3 EXHIBITS PAGE</p> <p>4 Exhibit 38 - 11/30/2022 Expert Report 76</p> <p>5 of Dr. Loren Collingwood</p> <p>6 Exhibit 39 - Figures 2 and 3 - 96</p> <p>7 Plaintiffs' Demonstrative</p> <p>8 Districts</p> <p>9 Exhibit 40 - 2/16/2023 Expert Report 117</p> <p>10 of Dr. Loren Collingwood</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Thank you.</p> <p>2 Again, I'm David Phillips. We have met before,</p> <p>3 but I'm representing the defendant in this case, the</p> <p>4 Secretary of State.</p> <p>5 I assume you've had your deposition taken</p> <p>6 before?</p> <p>7 A. Correct.</p> <p>8 Q. How many times have you had it taken before?</p> <p>9 A. I think about six.</p> <p>10 Q. Super brief recitation of the rules then.</p> <p>11 We'll both try not to talk over each other. I'll wait</p> <p>12 until you finish before I start asking the next</p> <p>13 question and just ask that you wait until my question</p> <p>14 is done before you answer. Just make sure I get verbal</p> <p>15 responses instead of head shakes.</p> <p>16 And just let me know if you'd like to take a</p> <p>17 break. We'll probably take regular breaks, but if you</p> <p>18 need one, let me know, and as long as there's not a</p> <p>19 question pending, we can break.</p> <p>20 Now, because this is done by Zoom, I just want</p> <p>21 to ask a few things about your setup. Is there anyone</p> <p>22 else physically with you in the room today?</p> <p>23 A. No.</p> <p>24 Q. And you have, obviously, Zoom open right now</p> <p>25 that you're looking at me on. Do you have any other</p>
<p style="text-align: right;">Page 7</p> <p>1</p> <p>2 LOREN COLLINGWOOD,</p> <p>3 duly sworn, was examined and testifies as follows:</p> <p>4</p> <p>5 MR. PHILLIPS: And I'm David Phillips, I'm</p> <p>6 representing the defendant in this case, Secretary of</p> <p>7 State, Michael Howe.</p> <p>8 MS. DANAHY: Molly Danahy with Campaign</p> <p>9 Legal Center, and I represent the plaintiffs in this</p> <p>10 case, Turtle Mountain, et al.</p> <p>11 MR. GABER: Mark Gaber for the plaintiffs.</p> <p>12 MR. CARTER: Michael Carter for the</p> <p>13 plaintiffs.</p> <p>14 MS. KELTY: Samantha Kelty for the</p> <p>15 plaintiffs.</p> <p>16 MR. PHILLIPS: Was there one more?</p> <p>17 MS. NESWOOD: Allison Neswood for the</p> <p>18 plaintiffs.</p> <p>19</p> <p>20 EXAMINATION</p> <p>21 BY MR. PHILLIPS:</p> <p>22 Q. Dr. Collingwood, could you please state your</p> <p>23 name and address for the plaintiffs?</p> <p>24 A. Loren Collingwood, 1 Tierra Monte Drive</p> <p>25 Northeast, Albuquerque, New Mexico 87122.</p>	<p style="text-align: right;">Page 9</p> <p>1 windows open on your computer?</p> <p>2 A. No, I've shut everything down.</p> <p>3 Q. Any other tabs?</p> <p>4 A. No.</p> <p>5 Q. Okay. Do you have any chat apps open on your</p> <p>6 computer?</p> <p>7 A. No.</p> <p>8 Q. And you mentioned before we went on the record</p> <p>9 that you don't have your phone with you; is that</p> <p>10 correct?</p> <p>11 A. It's in another room.</p> <p>12 Q. Are you on any medications that would impact</p> <p>13 your ability to understand my questions or give</p> <p>14 complete and accurate testimony today?</p> <p>15 A. No.</p> <p>16 Q. Are you aware of any other factors that might</p> <p>17 make it difficult for you to understand my questions or</p> <p>18 give complete and accurate testimony today?</p> <p>19 A. No.</p> <p>20 Q. Did you bring anything with you today, any</p> <p>21 documents or materials?</p> <p>22 A. I have my initial report and rebuttal report</p> <p>23 printed with no markings, and also my ND-4 report also</p> <p>24 printed with no markings.</p> <p>25 Q. ND-4, that's referring to the Walen case?</p>

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1 A. Correct.
 2 Q. Thank you.
 3 I'm sharing a screen right now. Are you able
 4 to see what's been marked as Exhibit 32?
 5 A. Yes.
 6 Q. And this appears to be your CV that you
 7 produced in this case; is that correct?
 8 A. It looks like it.
 9 Q. The CV that you produced in -- I believe in
 10 response to our subpoena, is that a complete and
 11 accurate updated CV?
 12 A. It certainly was as of the time of the
 13 subpoena. There might have been a couple minor changes
 14 since then, but I don't think so.
 15 Q. Do you know what those minor changes might be,
 16 offhand?
 17 A. Maybe an update in one of my expert witness
 18 jobs since -- you know, I may have been deposed or
 19 written a report since then for another case. Or if
 20 you scroll down one page, I can tell you if I have an
 21 updated -- yeah, so then I also have an additional
 22 journal article for an even 40.
 23 Q. What -- what article is it that you would add
 24 to this?
 25 A. It's an article with Benjamin Gonzales O'Brien

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1 and Michael Paarlberg, the topic is on sanctuary
 2 cities.
 3 Q. Not related in any way to redistricting?
 4 A. Exactly. It's not -- not at all.
 5 Q. All right. I'm scrolling down to page 16 on
 6 your CV. And I think you had mentioned that you may
 7 have an update in the cases that you've worked on. And
 8 maybe just take a look at this page. Does this -- and
 9 I can zoom in here for you, just give me a second.
 10 Does this help you?
 11 A. Yeah, there is an additional case in Texas,
 12 Dixon -- with an X -- v. LISE. It's a Louisville
 13 Independent School District.
 14 Q. And when did you get retained to work on that
 15 case?
 16 A. I think late 2022. Yeah, so I think my report
 17 was due then I think shortly after my initial report in
 18 this case, or something.
 19 For some reason, lawyers always want to screw
 20 up my holidays, you know, so it gets kind of hectic for
 21 me around then.
 22 Q. We make the same complaint but about courts and
 23 judges.
 24 A. Right. Pass it on.
 25 Q. It's a pass-through system.

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1 Okay. And then you said -- did you say in this
 2 new case, this Texas case, that you have prepared a
 3 report?
 4 A. Correct. A report and a rebuttal report.
 5 Q. What's the nature of that case?
 6 A. It's an at large -- at an-large school
 7 district, and plaintiff is I think angling for a single
 8 member.
 9 Q. And so with the addition of that case that you
 10 just talked about and the list that you're looking at
 11 on page 16, is that a complete list of the expert work
 12 that you've done?
 13 A. I'm pretty sure. I might need to go through my
 14 notes later and get back to you, but I'm pretty sure.
 15 Q. And to be clear, is this cut off by date? It
 16 goes down -- it looks like the last -- or the earliest
 17 is in 2011. Is that the earliest work that you were
 18 serving as an expert, or is this cut off at a certain
 19 date just for space?
 20 A. That's correct, this goes to the earliest date.
 21 Q. The cases that you see here and also the
 22 additional Texas case that you told me about, is your
 23 work in those cases, in all cases, for the plaintiff?
 24 A. Well, as you know, the Walen case we were, I
 25 guess, intervener. I guess that might be qualified

Page 13

1 differently. But otherwise, yes.
 2 Q. And other than -- okay. Other than that case,
 3 are you opposed to a governmental party?
 4 A. Sorry, could you restate that?
 5 Q. Sure. So in a lot of election cases, right,
 6 there's an election official or some sort of government
 7 official that's the defendant, or the government itself
 8 is the defendant. In all cases, are you opposed to a
 9 government official or government entity?
 10 A. Well, some of the -- some of the work I've
 11 done, which is listed here and above, is maybe there
 12 wasn't litigation or it was, say, a consulting expert
 13 for -- on behalf of a governmental party. So I've done
 14 both. And as I was speaking, I -- looking at the CV
 15 here, another -- another case comes to mind, which is
 16 Soto Palmer v. Hobbs, which is Washington state in --
 17 of the most recent redistricting cycle.
 18 Q. And have you done a report in that case?
 19 A. Yes.
 20 Q. And I think you said that is a redistricting
 21 case?
 22 A. It is.
 23 Q. Of the -- so we have that one, and then in
 24 addition what other cases on this list that we're
 25 looking at on page 16 are redistricting cases?

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1 A. The first one, Lower Brule, is -- it's related
 2 to redistricting. Obviously, the Walen case; the
 3 Rivera, et al, case; the Pendergrass, Raffensperger
 4 case; Johnson, et al; also East St. Louis; and then
 5 East Ramapo.
 6 Q. Okay. Any others?
 7 A. Not that I can think of.
 8 Q. And in that -- in that other one that you did
 9 in North Dakota, we deposed him, apparently his name --
 10 everyone in the case was saying Walen all along. When
 11 we deposed him, it's Walen.
 12 A. Walen.
 13 Q. So I'm going to have to change my own state of
 14 mind on that. So anyways, thought I'd mention it.
 15 I'll know what you mean.
 16 A. So long as we get to say "gerrymandering."
 17 Q. Fair.
 18 And I believe you've already said this, but the
 19 only other case that you've worked on in North Dakota,
 20 other than the one we're here for today, would be the
 21 Walen case, correct?
 22 A. Correct.
 23 Q. I'm not going to go through your experience in
 24 detail on your CV, but just to be clear, is your CV a
 25 complete account of your education, training and

Page 15

1 experience that you're relying on as the basis of your
 2 opinions in this case?
 3 A. Yes.
 4 Q. Is there anything else you'd like to mention
 5 omitted from your CV that I should be aware of?
 6 A. No.
 7 Q. How did you originally become involved in this
 8 lawsuit, this Turtle Mountain case that we're here for
 9 today?
 10 A. NARF, Native American Rights Fund, I think I
 11 became acquainted with a couple of their attorneys
 12 maybe in 20 -- late 2020, and they were looking for
 13 someone to do racially polarized voting consulting.
 14 And I've done a lot of that. And so I started doing
 15 racially polarized voting, or RPV for short, which I'm
 16 sure you're familiar with that term. So for the
 17 record, we can just use RPV moving forward. And so
 18 there were a couple areas, I believe, that I was asked
 19 to look into, and one was this area in North Dakota. I
 20 don't know --
 21 Q. Let's back up one second. I'll get a little
 22 bit more to the specific case.
 23 Just you had mentioned that in late 2020, NARF
 24 was looking for RPV experts? Do I understand that
 25 correct?

Page 16

1 A. Yeah, I think it was, like, maybe September
 2 2020. It could have been 2021. Might have been 2021.
 3 Q. And did somebody reach out to you directly?
 4 A. Yeah, I think I got an e-mail or something. I
 5 mean, I think the way these things work is people talk
 6 to other experts that they know and they say, hey, can
 7 you do this, and they say no, I'm too busy, but check
 8 out Loren Collingwood. And then I get an e-mail.
 9 So -- or they just do research on either cases I've
 10 worked on or articles I've written that seem pertinent
 11 and then they contact me. So that happens pretty
 12 regularly.
 13 Q. Your -- being an expert isn't your only job,
 14 right?
 15 A. Right. I'm a professor.
 16 Q. How much of your time do you spend -- we'll
 17 say, you know, from late 2020 to the present, how much
 18 of your time do you spend performing services as an
 19 expert in litigation?
 20 A. Well, that's hard to put a number on it. It's
 21 certainly taken up a fair amount of nights and weekends
 22 I'd say. But quite a bit. I've been doing, you know,
 23 consulting, whether expert or other types, for 15, 20
 24 years. So I've always kind of had that work that I do
 25 in conjunction with my academic work.

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1 Q. When you initially had contact with NARF, tell
 2 me how that went. Did you have conversations with
 3 them? Did you exchange e-mails?
 4 A. I think most of it was via phone, or I think we
 5 were trying to use, you know, Zoom or something. We
 6 weren't that good at that yet. And it -- it was
 7 probably related to other -- other areas, not initially
 8 North Dakota. And then I think maybe late 2021, early
 9 2022 they asked me to begin developing a report with a
 10 response -- with respect to ND-9.
 11 Q. Did you ever attend a training seminar put on
 12 my NARF, either as a presenter or as an attendee?
 13 A. No. I was familiar that they had one I think
 14 in summer 2021. One of my associates somewhere I think
 15 might have attended one, but I didn't go.
 16 Q. Do you know which associate that is?
 17 A. I think it would be Dr. -- what's her name --
 18 Sarah Sadhwani who is a professor out in California,
 19 and she studies I think Asian Americans and potentially
 20 also, you know, Native Americans.
 21 Q. Have you ever helped prepare materials to be
 22 used by NARF in these types of presentations or
 23 seminars?
 24 A. No.
 25 Q. Are you familiar with Dr. Matt Barreto?

<p style="text-align: right;">Page 18</p> <p>1 A. Very familiar with Dr. Matt Barreto. 2 Q. How so? 3 A. He was my dissertation advisor. 4 Q. Other than that, have you had interactions with 5 Dr. Barreto? 6 A. Well, we used to play pick-up soccer when I was 7 a grad student and we -- we write articles together. 8 Yeah, I mean, I -- I'm in pretty close contact with 9 Dr. Barreto. 10 Q. What about Dr. Weston McCool? Are you familiar 11 with him? 12 A. Only through this case really. 13 Q. Have you talked to Dr. Weston McCool about this 14 case? 15 A. No. 16 Q. Have you read his report? 17 A. No. 18 Q. Are you familiar with Dr. Dan McCool? 19 A. Well, maybe I'm getting these two people 20 confused. 21 Q. I -- just to let you know, so my understanding 22 is Dr. Weston McCool is the dad and Dr. Dan McCool is 23 the son, if that helps. 24 A. Okay. Yeah, I didn't -- I didn't know that. I 25 mean, with a name like McCool, how many can there be?</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Have you ever done any work for that 2 organization? 3 A. Yes. 4 Q. In what context? 5 A. I was an expert for them. 6 Q. In which cases? 7 A. The East St. Louis Branch NAACP v. Illinois 8 State Board of Elections. 9 Q. All right. Any others? 10 A. No. 11 Q. Are you familiar with James Tucker or sometimes 12 goes by Jim Tucker? 13 A. Yeah, I think so. 14 Q. Tell me about that. How do you know him? 15 A. I think he might have been on -- I think NARF 16 might have been looking to work with him on a case that 17 I was maybe going to be an expert on. I don't know if 18 that was this case or another state. 19 Q. Do you remember actually working with him on 20 any case though? 21 A. I might have worked with him a little bit on 22 this East St. Louis case, but I -- he wasn't the main 23 point person. He might have been on a call. I truly 24 don't remember. He may have been on a call on 25 something else, but I honestly -- again, I don't</p>
<p style="text-align: right;">Page 19</p> <p>1 So -- rarely do I find a surname better than mine, and 2 that is probably one of them. So when I said that I 3 was familiar with him, I think I was -- I think it's 4 Dan McCool is the one I'm familiar with, but I -- 5 actually now at this point, I don't know. 6 Q. Do you remember reading either of their reports 7 in this Turtle Mountain case? 8 A. No, I haven't seen those. 9 Q. Have you ever worked for an organization called 10 Campaign Legal Center before? 11 A. Yes. 12 Q. And in what context? 13 A. As an expert. 14 Q. Do you know which cases that was for? 15 A. Well, this case. And I think they're involved 16 in the Walen case and the Rivera case and Johnson, et 17 al. 18 Q. Just so the record is clear, I'm showing you 19 now again that page 16 of your CV. Are there any 20 others that you can think of or that you see on this 21 list? 22 A. No. 23 Q. Are you familiar with the Lawyers Committee for 24 Civil Rights Under Law? 25 A. Yes.</p>	<p style="text-align: right;">Page 21</p> <p>1 recall. 2 Q. Did you have any involvement with -- let me 3 back up a second. 4 So North Dakota did its redistricting process 5 in late 2021, right? And there -- correct? 6 A. Oh, that sounds right. 7 Q. And there were some proposed maps and other 8 materials submitted to our legislature by witnesses. 9 Did you have any role in preparation of any exhibits, 10 testimony or anything else that was submitted to the 11 North Dakota legislature during the 2021 redistricting? 12 A. I don't think so. I'm pretty sure I did not. 13 But I can't say 100 percent, but I'm pretty sure no. 14 Q. Is there a way that you -- how would you find 15 out the answer to that if you were to look? 16 A. Well, I suppose it's possible that if -- you 17 know, there might be in the record, like, a memo from 18 me that examines racially polarized voting in some of 19 these areas. I don't think I did that. I did that in 20 a couple other states, like Montana, for example. 21 And -- or it could be that someone presented something 22 that said "and these data were prepared by Loren 23 Collingwood." So, you know, kind of looking in the 24 record. But I'm almost a hundred percent sure I was 25 just not involved in any of that.</p>

Page 22

1 Q. As we sit here today, you don't have an
 2 independent memory of it, correct?
 3 A. Not at all. Not at all.
 4 Q. Thank you.
 5 Are you being paid -- I think I wrote down 325
 6 an hour; is that correct, in this case?
 7 A. That's right.
 8 Q. And does that include all of your work
 9 including the work that you've -- the analysis that you
 10 performed and the testimony that you are performing and
 11 will perform in this case?
 12 A. Yes.
 13 Q. Is that the same rate that you charge in all of
 14 your cases that you work on as an expert?
 15 A. No.
 16 Q. Is there a reason you charge differently in
 17 different cases?
 18 A. I think NARF got me a little bit sooner than
 19 other people.
 20 Q. That's fair. So in some other cases, you do
 21 charge more?
 22 A. Yes.
 23 Q. That's another problem that lawyers have in
 24 common.
 25 All right. Can you see my screen now? I'm

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1 sharing Exhibit 33.
 2 A. Yes.
 3 Q. And this appears to be an invoice from you in
 4 this case that we're here for today; is that correct?
 5 A. Correct.
 6 Q. And I believe this was produced in response to
 7 our subpoena. And it has an invoice date of May 22,
 8 2022.
 9 Do you see that?
 10 A. Yes.
 11 Q. Is this invoice complete and accurate for
 12 everything that you did on this case, you know, on or
 13 before May 22, 2022?
 14 A. Yeah, this is -- this is what I billed, this is
 15 what I did.
 16 Q. There's nothing else that you did on this case
 17 that's not reflected in this invoice, at least up to
 18 May 22, 2022?
 19 A. Right. Up to that date, that's correct.
 20 Q. And I'm now showing you what's been marked as
 21 Exhibit 34. This is another invoice that has an
 22 invoice date of December 15, 2022. I'll ask the same
 23 question: Does this reflect everything that you did on
 24 this case I guess between the two invoice dates from
 25 May 22nd to December 15, 2022?

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1 A. Yes, it does.
 2 Q. There's nothing that you worked on in this case
 3 in that interim that is unreflected on this document?
 4 A. No.
 5 Q. Were the amounts on these two invoices paid?
 6 A. Yes.
 7 Q. And it's billed to Matthew Campbell at Native
 8 American Rights Fund. Is it your understanding that
 9 NARF is the one -- the entity paying the bills in this
 10 case?
 11 A. I think maybe when there's maybe two groups or
 12 multiple groups are splitting it, that sort of -- you
 13 know, in a sense I don't care if that happens or
 14 doesn't so long as I get paid. So, yeah, I mean,
 15 that's who I bill.
 16 Q. In this case, you don't know if anybody else is
 17 splitting the payment of your fees?
 18 A. Not a hundred percent. I can just assume it.
 19 Q. I don't believe I received any other invoices
 20 in response to our two subpoenas. Are there any other
 21 invoices in existence that you've sent out in this
 22 case?
 23 A. Not that I've sent out.
 24 Q. Presumably you've done some work on this case,
 25 just haven't billed it yet; is that fair?

Page 25

1 A. That's correct.
 2 Q. Do you know how much time you've spent on this
 3 case after December 15, 2022?
 4 A. If I had to ballpark, between probably 20 to 30
 5 hours, something like that.
 6 Q. I understand you're not going to know this
 7 entirely off the top of your head, but ballpark, that
 8 20 to 30 hours, how have you spent that time?
 9 A. Well, obviously this, the deposition; a little
 10 bit of deposition prep; reading, you know, some
 11 reports; writing -- writing the rebuttal report and
 12 doing additional analysis for that. Those types of
 13 things.
 14 Q. About how much time have you spent preparing
 15 for this deposition?
 16 A. Probably about three or four hours maybe.
 17 Q. What did you do to prepare?
 18 A. I think I had one or two calls with counsel and
 19 read some reports and reviewed some deposition
 20 transcripts. That's -- drank some coffee this morning,
 21 maybe an extra cup.
 22 Q. So you mentioned you'd read some deposition
 23 transcripts. Do you recall which ones you read?
 24 A. Yeah, I reviewed Dr. Hood's transcript.
 25 Q. Any others?

Page 26

1 A. No.

2 Q. In your work on this case, have you reviewed

3 any -- other than your preparation for this depo, have

4 you reviewed other transcripts?

5 A. No.

6 Q. And you mentioned you had one to two talks with

7 counsel. Does that mean the attorneys for NARF?

8 A. I think in this case it was CLC.

9 Q. Do you know when you had those calls? In

10 preparation for the deposition, to be clear.

11 A. Yeah, I mean, I think I had one late last week,

12 maybe Thursday or Friday, and then around the time my

13 rebuttal was due, because I think I was scheduled to

14 have a deposition in a similar time initially but then

15 that got postponed.

16 Q. And I'll back up just a second. When is the

17 first time you talked to counsel in this case?

18 A. About this case or just talked to them in

19 person -- or via Zoom or something?

20 Q. We'll just say about this case, however the

21 method.

22 A. I think in December 2021. But it might have

23 been a little bit earlier as the North Dakota maps were

24 making their way through. It might have been around

25 then. I just can't say for sure.

Page 27

1 Q. And how many times have you talked to them

2 total then since around December 2021?

3 A. About this case, maybe six -- six-ish,

4 eight-ish.

5 Q. Does that translate into a rough number of

6 hours total?

7 A. Yeah, probably. Yeah.

8 Q. Okay. Could you maybe give me your best

9 estimate of the total number of hours?

10 A. Maybe five, you know, because the calls are

11 often 30 minutes, not an hour.

12 Q. Did the plaintiffs' attorneys in this case send

13 or provide you any data or facts that you used in your

14 opinion in this case?

15 A. Yes.

16 Q. And what is -- what facts or data?

17 A. I got some shapefiles for, like, the

18 demonstrative maps, and I got a variety of, like,

19 Maptitude maps and PDFs of different district

20 configurations and things. I got a -- I think I got a

21 shapefile of some Texas maps. There's probably some

22 other things that will come to light, I just -- it

23 was -- you know, that sounds about right. And then

24 most of the data I was just collecting myself. I try

25 to do that, but sometimes I don't have the software or

Page 28

1 something.

2 Q. That's fine. And if -- I do want to make sure

3 I've got as complete a list as you have memory to day.

4 So if we move on and you think of another one to throw

5 in, do feel free to update your testimony and let me

6 know what those additional things are.

7 The -- to be clear, the shapefiles that they

8 sent you, do you know how the attorneys got those

9 shapefiles?

10 A. No. No, I don't.

11 Q. And you said as well that there are Maptitude

12 maps. Are those -- were those all in PDF form, or were

13 they in some sort of Maptitude file format?

14 A. I think they're all kind of PDF type documents

15 of kind of blown-in areas. You know, a couple

16 different configurations of different plans and stuff

17 like that. Yeah, I think -- I don't think I -- from

18 those I have any specific outcome shapefiles and stuff

19 like that.

20 Q. Do you have access to the Maptitude software

21 yourself?

22 A. Not -- not for North Dakota.

23 Q. Did you personally use Maptitude at all in your

24 analysis in this case?

25 A. Not in North Dakota.

Page 29

1 Q. So not in this case at all?

2 A. Correct.

3 Q. The -- you're -- we'll get to the details of

4 your report in a bit, but just a question here: Your

5 initial report had two demonstrative maps, correct?

6 A. Correct.

7 Q. Did you generate those maps or were those maps

8 provided to you by the attorneys?

9 A. The attorneys provided me shapefile and then I

10 generated the maps.

11 Q. And how did you generate the maps?

12 A. Oh, I just use R, which is a stats statistical

13 program.

14 Q. And that will generate an actual graphical map?

15 A. It can order you a pizza. So R can do pretty

16 much anything. Sorry.

17 Q. All right. And I'll move on, but just to make

18 sure that you haven't thought of anything else in the

19 meantime. Other than the shapefiles and the Maptitude

20 maps that were provided to you, can you think of

21 anything else that was provided to you by the attorneys

22 that you used in your opinion in this case?

23 A. I do recall one thing, which is I think a --

24 like a crosswalk file. I think it's for the LD-15

25 district.

Page 30

1 Q. Okay. And what is a crosswalk file?
 2 A. That lines up, in this case, precincts in --
 3 precincts in one format, like they have a certain name,
 4 and then precincts in another, say, database have a
 5 different name. And so in this case, manually lining
 6 them up so this precinct equals that one, even if they
 7 have different names. And then you can use that to
 8 join different types of data together that are required
 9 for conducting some of the analyses that I did.
 10 Q. I'm not a scientist, so maybe I'm using the
 11 wrong word, but the way I would think of that is
 12 reconciling two different lists. Is that a fair word
 13 to use?
 14 A. Yeah. Yeah, that's about right.
 15 Q. Just give me one moment here.
 16 A. No worries.
 17 Q. Okay. Can you see my screen again here? It's
 18 showing Exhibit 35.
 19 A. Yeah.
 20 Q. And don't worry, Dr. Collingwood, I don't have
 21 some amazing gotcha questions about this one. I just
 22 wanted to try to read the handwriting and understand
 23 what this is. So I'll just ask you right up -- what is
 24 this document that we're looking at, Exhibit 35?
 25 A. These are notes from a call that I had with

Page 31

1 counsel in late 2021. Yeah, so that's pretty much what
 2 that is.
 3 Q. You said with counsel. Who would that be?
 4 A. It -- I don't know exactly who was on the call.
 5 So I could -- my guess is Mr. Carter, Ms. Kelty, and
 6 maybe Mr. Gaber, and probably Ms. Neswood.
 7 Q. And let's -- thank you.
 8 Let's just walk -- and to be clear, it has
 9 12/15/2021 in the upper right-hand corner. Does that
 10 mean this is when the call took place?
 11 A. I hope so. If I get my dates right, yes, that
 12 would be that.
 13 Q. Now, below that, it says, I believe, Mid
 14 January. Am I reading that right?
 15 A. Ooh, that's bad writing, but, yeah, that looks
 16 correct.
 17 Q. What does that mean?
 18 A. I think the -- often with calls, there's, like,
 19 hey, can you have some initial analyses around this
 20 certain time. That's my guess is what that means.
 21 Q. And on the left-hand side on that same area,
 22 there's a red box that says NARF North Dakota and it
 23 has a list of three things under that. What are those
 24 three things?
 25 A. The first one is putting together a complaint.

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1 Q. And what is -- let's just stop right there.
 2 What does that mean?
 3 A. I think that would be plaintiffs' sort of
 4 initial filing of some sort of legal violation. It
 5 starts to get a little bit outside of my, you know,
 6 legal comfort zone, but that's my general
 7 understanding. Basically the allegations, I believe.
 8 Q. If I'm -- I believe the next line says
 9 Plaintiffs' Identified; is that accurate?
 10 A. Yes.
 11 Q. And what does that mean?
 12 A. I think for a complaint you need to have
 13 specific individuals who are bringing the complaint.
 14 So that's probably what that means is people have come
 15 forward.
 16 Q. And just to be clear, do you have an
 17 independent recollection of what this means or is this
 18 your best guess at this point?
 19 A. I mean, all of this is my best guess. You
 20 know, this was a while ago and -- yeah.
 21 Q. That's fair.
 22 What about the next line? What does that say?
 23 A. Here, is to examine 9A and 9B discretely in
 24 terms of, you know, in the analysis.
 25 Q. Now, you used the word "discretely." What does

Page 33

1 that mean?
 2 A. I think the plan here was to do a separate,
 3 basically electoral performance analysis for just the
 4 precincts in 9A and just the precincts in 9B.
 5 Q. And to be -- and to the extent you remember, is
 6 this direction that you were given by the attorneys in
 7 how to go about forming your opinion? Or is this your
 8 plan of action that you intended to put forth yourself?
 9 A. I don't recall. I mean, most of the time
 10 it's -- I hear about what's going on and I make notes
 11 as to what I want to do based on suggestions but also
 12 based on my kind of understanding of what makes the
 13 most sense. So that sort of -- most likely that --
 14 that's just me saying this is what I'm going to do.
 15 Q. Now, in the blue section below that, it looks
 16 like a calendar, but you've kind of written notes in
 17 there instead. Let's just start -- what does it say
 18 there at the top and what does it mean? It looks like
 19 emphasize, but --
 20 A. Right. I wanted to try to -- you know, in
 21 these types of analyses, if possible, you want to
 22 examine how different Native American candidates, in
 23 this case -- other cases you might look at Hispanic
 24 candidates, say you're in the southwest or something.
 25 And so you want to see if -- how they do, particularly

<p style="text-align: right;">Page 34</p> <p>1 try to maybe delve a little deeper into those contests. 2 So that's what that would be. These are -- Chase Iron 3 Eyes and Ruth Buffalo are two Native American 4 candidates that ran statewide I think in 2016. 5 Q. And the Iron Eyes and Buffalo races, did you 6 learn about those races from the attorneys for 7 plaintiff? 8 A. I can't recall. I know I always ask, you know, 9 what -- are there candidates of a particular group 10 running, and they might have told me. That's most 11 likely the case. 12 Q. Do you have a specific recollection either way? 13 A. No. 14 Q. And I think the next line says one won, the 15 other didn't; is that right? 16 A. Yeah, it looks like that. I mean, we can see 17 on my -- that's probably related to -- you know, they 18 both lost statewide, but -- so maybe me writing about 19 the particular jurisdiction that we're looking at. I 20 just can't recall. 21 Q. And it says proper remedy after that. What 22 does that mean? 23 A. Honestly, I don't know. 24 Q. The next line says, I believe, focus on two 25 subdistricts. And I think it says losses too close.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Yes. 2 Q. Why is that listed here? 3 A. Hunte-Beaubrun was another Native American 4 candidate I think that -- that is identified. So I 5 have the other two and then -- and then this 6 individual. So I think it was just, you know, 7 additional reference to another candidate, Native 8 American candidate. 9 Q. The Beaubrun, Buffalo and Iron Eyes, were all 10 of those elections or candidates that you included in 11 your analysis in this case? 12 A. Yes. 13 Q. And I recognize state house RPV, but what 14 else -- what else does it say there at the end? 15 A. Native candidates in 2011 District 15. 16 Q. Any idea what that means? 17 A. I think that means look at the -- I think there 18 maybe were some Native candidates running in the 19 previous District 15, but I don't -- I don't know for 20 sure. Like, look at -- look at how those candidates 21 might have done in the previous district, but -- I -- 22 yeah, maybe that, but I honestly don't -- don't really 23 know. 24 Q. This one, as we mentioned earlier, is from 25 December 15, 2021. Is this the first -- as far as you</p>
<p style="text-align: right;">Page 35</p> <p>1 Is that correct? So whether that's correct or not, 2 what does that mean? 3 A. That relates to the 9A, B, focusing on the 4 subdistricts. And then losses too close, loses too 5 close. I can only guess it relates to Iron Eyes in one 6 or two of those areas or the full district, I can't 7 recall. 8 Q. And -- 9 A. -- arrow. 10 Q. I'm sorry, go ahead. 11 A. Because of the arrow. 12 Q. A little bit further down, it says proposed 13 combine district. 14 Do you see that? 15 A. Yeah. 16 Q. What is that referring to? 17 A. I think that relates to the demonstrative plan. 18 Q. Is it -- again, the two demonstrative plans, 19 did you formulate those yourself or were those plans 20 provided to you by counsel? 21 A. It -- I had nothing to do with the creation of 22 the demonstratives. 23 Q. Next, it talks about the 2016 Tax Commission 24 race. 25 Do you see that?</p>	<p style="text-align: right;">Page 37</p> <p>1 know, is this the first call that you had with 2 plaintiffs' counsel, or would you have talked to them 3 earlier than this? 4 A. I think this -- it's certainly around here. At 5 least with respect to, like -- there might have been 6 another call where we were talking about another state, 7 like Montana or somewhere, and someone mentioned, hey 8 by the way, I think this is something coming down the 9 line. Could have -- could have certainly have 10 occurred. But this was a little bit more, like, okay, 11 this is -- you know, we're going to pursue this. I 12 think -- I think so. 13 Q. The -- you mentioned a moment ago that you 14 didn't have anything to do with the creation of the 15 demonstrative plans; is that a fair statement? 16 A. Yes. 17 Q. And have you -- did you have e-mails between 18 you and counsel where information about the proposed 19 maps were sent to you? 20 A. Yes, I think so. 21 Q. Have those been produced pursuant to our 22 subpoena? 23 A. That's my understanding, yes. 24 Q. Do you have anything else in terms of 25 communications with plaintiffs' counsel about the</p>

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1 proposed plans, so text messages, you know, notes, any
 2 other documentation that exists about those
 3 communications?
 4 A. No.
 5 Q. It's all been provided pursuant -- everything
 6 that exists has been provided pursuant to the subpoena;
 7 is that correct?
 8 A. Correct.
 9 Q. I'm switching over to Exhibit 36. This appears
 10 to be another call sheet. It says North Dakota call at
 11 the top.
 12 Do you see that?
 13 A. Yeah.
 14 Q. And this one says, in the upper right-hand
 15 corner, it looks like January 18, 2022. Is this call
 16 -- is this reflective of a call that took place on that
 17 date?
 18 A. Yes.
 19 Q. Do you know who was on that call?
 20 A. I can't off the top of my head, but probably
 21 the same group of attorneys I mentioned previously,
 22 Mr. Carter; maybe Ms. Kely, but I don't recall; then
 23 Ms. Neswood likely would have been there; and Mr. Gaber
 24 may or may not have been there, he might have been
 25 caught up in something else, I don't recall.

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1 Q. Now, there's a green box and a blue box in the
 2 upper right-hand corner there with some writing on
 3 this. This, I'm totally lost on the handwriting. What
 4 does that say?
 5 A. You can't read that?
 6 I think it just says star Native performance.
 7 Like, an asterisk in a table or something. Just so you
 8 can -- yeah.
 9 Q. I'm sorry, I cut you off. Go ahead and finish.
 10 A. Just so you can, like, see them in the results
 11 or something more clearly, you know.
 12 Q. That's just a note to yourself to do that?
 13 A. Yeah. And then it says numbers on plot.
 14 That's just a visual -- the visual thing in terms of
 15 graphics. 2014 into D9, 9A, 9B. I think -- yeah, so
 16 that's what that says.
 17 Q. We'll get to your report a little bit later,
 18 but on -- if memory serves, I think you have a Table 1
 19 where the Native American candidates had a little star
 20 by them. Is that what this note is referencing, this
 21 note in the green box?
 22 A. Yeah, I think in a general rule to all that.
 23 Yeah.
 24 Q. And 2014 into D9, 9A and 9B, is that in
 25 reference to what I'm going to refer to as a functional

Page 40

1 analysis? Is that a fair way to describe that note?
 2 A. That sounds right.
 3 Q. Let's make sure we're using the same
 4 terminology. What do you consider a functional
 5 analysis?
 6 A. It's -- I use the term electoral performance,
 7 but really it's just how a district or a proposed
 8 district -- what the election outcomes would look like
 9 with previous election data.
 10 Q. As we move forward, my mind is almost certainly
 11 going to go back to the term "functional analysis." If
 12 I use that term though, will you know what I mean?
 13 A. Oh, definitely, yeah. Please use that.
 14 Q. Okay. The next line down in the notes area, it
 15 says -- well, what does that say? Bold?
 16 A. Bold the contests with Indian American
 17 candidates or, in this case, Indians.
 18 Q. And the next one -- I'll let you read it. Or
 19 I'll read it, I think. Write up average Native
 20 candidate vote among whites compare to all election?
 21 Do you see that?
 22 A. Yeah.
 23 Q. Did you do that in your analysis in this case?
 24 A. I'm not sure. If I did, it -- this could also
 25 be a note to, like, setting up my code base to take all

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1 the results then pop out a number so I can quickly
 2 access that for writing purposes. You know, it could
 3 be related to that as sort of a process that I try to
 4 implement just in general. But I can't recall for
 5 whether I did.
 6 Q. Is it fair to say that your final report does
 7 not contain a chart that shows the average Native
 8 American vote compared to whites in all elections; is
 9 that fair?
 10 A. I think that's right. I mean, I'm sure when we
 11 get there, we'll be able to see. But that -- I
 12 think -- I think that's right.
 13 Q. All right. I won't belabor this much longer
 14 here. Analysis of proposed district there, and then
 15 three Native candidates, do they win. What does that
 16 mean?
 17 A. That would be to look at those 2016 Native
 18 American candidates running and see if they win in a
 19 proposed plan.
 20 Q. And then below that, Lisa Handley 3/3 average
 21 of Native candidates, what does that mean?
 22 A. Lisa Handley is another expert who does this
 23 sort of thing, and I think I had a note to try to --
 24 basically there it's like you count up how many times a
 25 type of candidate would have won in that or you take,

<p style="text-align: right;">Page 42</p> <p>1 like, the average. There's a variety of different ways 2 of presenting this data. So in my process of trying to 3 streamline everything, that was one thing I think that 4 I would have noted.</p> <p>5 Q. Did you have Lisa handily perform, like, 6 subcontract work on this case?</p> <p>7 A. No, she's not at all related. No. Actually, 8 I've never met her in person either.</p> <p>9 Q. And then it says, get shape files for Proposed 10 Districts. I assume that's referring to when you 11 talked before about how the attorneys sent you the 12 shapefiles?</p> <p>13 A. Yes.</p> <p>14 MR. PHILLIPS: All right. It's been about 15 an hour. I usually like to take a break about every 16 hour, and I need to return a message here. Is 17 everybody okay if we take a ten-minute break right now?</p> <p>18 THE WITNESS: Sounds good.</p> <p>19 MS. DANAHY: That works for us.</p> <p>20 MR. PHILLIPS: Okay. Why don't we take a 21 ten-minute break. My local time is 11:06, so we can 22 come back at 11:16 or whatever that translates to in 23 your local time.</p> <p>24 (A break was taken at 11:06 a.m.)</p> <p>25 BY MR. PHILLIPS:</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Yes.</p> <p>2 Q. Okay. I've got -- I'm sharing my screen here 3 and showing Exhibit 37. I'm going to zoom in a little 4 bit. Can you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Now, is it fair to say that your work in the 7 Walen case is limited to District 4 and its 8 subdistricts, correct?</p> <p>9 A. Correct.</p> <p>10 Q. That case does involve District 9, but your 11 opinion in that case doesn't include anything to do 12 with District 9; is that fair?</p> <p>13 A. Correct.</p> <p>14 Q. My understanding of District 4 is that they 15 elect one Senator-At-Large and then they have one House 16 member of each of the two subdistricts in 4; is that 17 correct?</p> <p>18 A. That's my understanding.</p> <p>19 Q. And that's similar to how District 9 functions 20 today, right?</p> <p>21 A. Yes.</p> <p>22 Q. So in other words, in District 9, there's one 23 Senator elected at large and then one House member 24 elected from each subdistrict, right?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. All right. I'm going to shift topics here a 2 little bit and talk about the Walen case. You 3 mentioned at the beginning of this deposition that you 4 had the Walen report there with you physically?</p> <p>5 A. I do.</p> <p>6 Q. And did you review that report before the 7 deposition today?</p> <p>8 A. Yes, I did.</p> <p>9 Q. That case also involves the most recent 2021 10 redistricting in North Dakota, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Are you planning to testify as an expert at 13 trial in the Walen case?</p> <p>14 A. I think so.</p> <p>15 Q. What's the scope of the work that you were 16 hired to perform in the Walen case?</p> <p>17 A. Effectively, a VRA, Voting Rights Act, 18 compliance analysis, which primarily includes 19 conducting an RPV analysis and then a functionality 20 analysis.</p> <p>21 Q. And that RPV was racially polarized voting?</p> <p>22 A. Correct.</p> <p>23 Q. And did I understand you to say that your work 24 in the Walen case included both an RPV analysis and a 25 functional analysis?</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. And my understanding is that Subdistrict 4A 2 encompasses the Fort Berthold Indian reservation and 3 has a high concentration of Native Americans; is that 4 accurate?</p> <p>5 A. That's also my understanding.</p> <p>6 Q. I'm just going to scroll down to page 3 of your 7 report in the Walen case. And kind of in the middle of 8 the screen here, it says, "District 4A has a Native 9 American voting age population of 67.2."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Is that a correct percentage?</p> <p>13 A. Yeah, I think so. I can't recall in this 14 particular instance whether that is Native alone or 15 Native of any -- any other configuration. So I'd have 16 to go back and sort that out. But in any event, 17 that's -- you know, of the VAP probably here Native 18 alone is 67.2.</p> <p>19 Q. If it wasn't Native alone, what other types of 20 individuals might be included in this definition of 21 Native American here?</p> <p>22 A. Anyone who checks Native plus any other race.</p> <p>23 Yeah.</p> <p>24 Q. Does your report define anywhere the term 25 "Native American"?</p>

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1 A. Not -- I don't think so. Not specifically. It
 2 might have a mention to this. This is always something
 3 that comes up in redistricting and VRA stuff. But I
 4 don't think I have a specific definition. It's just --
 5 you know, we're just using census data.
 6 Q. Is it -- where would that data come from in --
 7 did you get that data from the plaintiffs' attorneys or
 8 did you gather that census data yourself?
 9 A. I would have gathered all the census data
 10 myself. It's -- sometimes, you know, I look at the
 11 enacted plans, right, in this case and just take
 12 whatever they're using. And I think the state was
 13 using single race. And that's just a, you know, little
 14 bit easier than to go and make all the calculations
 15 myself and everything.
 16 Q. Now, my understanding is that District 4B has a
 17 high concentration of whites and a low concentration of
 18 Native Americans; is that fair?
 19 A. Yes.
 20 Q. I'm going to go to page 5 on this exhibit.
 21 Now, I counted these and there's 34, I believe, listed
 22 here. These are exogenous elections that you analyzed;
 23 is that fair?
 24 A. That's right, yeah.
 25 Q. And just so the record is clear, what's the

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1 different between an endogenous and exogenous election?
 2 A. An exogenous is both a specific boundaries of a
 3 district and then candidates running for that
 4 particular office that's under litigation. Exogenous
 5 is a different contest, usually a higher up, like a
 6 statewide. Typically, at least for what I do, subset
 7 to the new boundaries.
 8 Q. And for this report, as I mentioned, there's
 9 these 34 exogenous elections. Later in your report --
 10 I'm going to scroll down to page 13 where I believe you
 11 talk about it -- you had also analyzed an election that
 12 had a Native American candidate and the candidates were
 13 Terry Jones, Bill Oliver, Kenton Onstad and Cesar
 14 Alvarez.
 15 A. Right.
 16 Q. Between that chart above and this election, is
 17 that all of the elections that you analyzed for your
 18 Walen report?
 19 A. Let me look. Yes.
 20 Q. Incidentally, this election involving Terry
 21 Jones that we're looking at here on -- talking about it
 22 on page 13 -- this references it as a 2016 race. I
 23 looked this up and I believe that it is 2014. Is
 24 that -- is that just a mistake or any idea --
 25 A. That would -- if that were the case, that would

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1 just be a mistake or a typo.
 2 Q. I'm going to go back up to the chart -- or the
 3 table, I'm sorry, on page 5.
 4 A. So before you go, I -- I did analyze I think
 5 the 2022 State House of 4A, I think. But I didn't do
 6 the same exact type of analysis that I did in these
 7 exogenous races. So I did analyze that election, but,
 8 you know, with some caveats and stuff. So I just want
 9 to be clear about that.
 10 Q. The election that involved Terry Jones and the
 11 others in --
 12 A. I think it was Finley.
 13 Q. I'm sorry, the 2022 ones you're talking about?
 14 A. Yeah, yeah, yeah.
 15 Q. All right. I want to make sure we get clarity
 16 on that then. Which ones are you talking about that
 17 you didn't perform the same analysis on?
 18 A. The -- hold on -- yeah, the 2022 general 4A.
 19 Q. And what analysis did you perform on that
 20 election?
 21 A. I did effectively a correlation scatter plot.
 22 So it's not included in this list because it's not kind
 23 of my more traditional ecological inference RVP setup.
 24 As you go down below, you'll see I then delve into it.
 25 Q. And maybe just explain it so I can understand

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1 it. The -- what kind of analysis did you do on that
 2 election? You had mentioned a scatter plot?
 3 A. Yeah, so effectively do a correlation. So
 4 seeing, you know, in areas that are more white versus
 5 more Native American within the subdistrict, are
 6 they -- are there different preferences for different
 7 candidates.
 8 Q. Why was a different type of analysis performed
 9 on that election?
 10 A. In subdistricts, usually because there's -- I
 11 note this in the report, but there's -- number one,
 12 there's fewer precincts, and, number two, there's not
 13 as much racial homogeneity max in a given precinct for,
 14 say, white or Native respectively. So it makes the
 15 statistical ecological inference analysis effectively
 16 less reliable than when you have the full jurisdiction.
 17 Q. Am I understanding correctly that that analysis
 18 is relevant to whether there's racially polarized
 19 voting in those subdistricts?
 20 A. Correct, yeah.
 21 Q. And so in this case, there's not enough data in
 22 each individual subdistrict to perform your typical
 23 analysis to determine racially polarized voting; is
 24 that fair?
 25 A. Yeah, I mean, that was the decision I made. I

<p style="text-align: right;">Page 50</p> <p>1 think -- I wouldn't say there's not enough data, 2 because just -- I work in other contexts where maybe 3 the number of precincts is similar or something, but 4 the kind of general context and arrangement of 5 subdistricts relative to, say, other places, it's the 6 kind of thing that a lot of analysts would be, like, 7 hey, we probably should look at the fuller district to 8 do our RPV, racially polarized voting, analysis. 9 Q. And in this case, maybe -- explain it to me how 10 you looked at the full district to determine racially 11 polarized voting within the subdistricts. 12 A. Well, so I looked at the full district to 13 determine racially polarized voting in the general 14 region. So -- and then from there, you can kind of 15 infer that given where people are voting and where they 16 live, the composition of the electorate, that there's 17 almost for sure racially polarized voting within each 18 respective subdistrict. 19 Q. Can you say to a reasonable degree of 20 scientific certainty that there is racially polarized 21 voting in Subdistrict 4A? 22 A. Yeah, I think so, because you have the scatter 23 plot, and those types of analyses you see a strong 24 correlation between race and voting. And that's going 25 to replicate itself across the -- across the board.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Yes, 4, the one near the Fort Berthold 2 reservation. 3 A. With 4B, I'm a little less certain than with 4A 4 because I'd have to do a little more digging in there 5 to look specifically at the different -- the relative 6 homogeneity of the different racial populations within 7 each of the precincts. So I can't say as much because 8 I haven't done that analysis. 9 Q. And just to make sure the record is clear 10 because I'm not sure how many times I misstated that. 11 In that conversation we just had, you were talking 12 about 4A and 4B, and I was asking you about 4A and 4B, 13 and that was your understanding the questions all 14 applied -- your answers applied to 4A and 4B; is that 15 fair? 16 A. That's fair, yeah. 17 Q. And we might as well ask similar questions 18 about 9A and 9B. Did you conduct an analysis of 19 racially polarized voting in 9A in relation to your 20 work? 21 A. Right. So with 9A and B -- sorry, I'm just 22 pulling that up, too. Give me a second here. So, 23 yeah, with 9A and 9B, again, so I did racially 24 polarized voting overall because it just lends itself 25 better to a more firm statistical conclusion.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. And is the same true in 9B, that there's -- 2 A. I didn't -- I didn't do a similar 4A analysis 3 in 4B because I think there was something specific 4 about that contest. It may have been uncontested. I 5 don't fully remember. So that kind of more granular 6 look, I can't say with as much confidence because 7 either the data weren't there, you know, I couldn't 8 make the same comparison. But the overall trend is 9 certainly there. 10 Q. So when -- I want to make sure I understand. 11 Can you state to a reasonable degree of scientific 12 certainty that there is racially polarized voting in 13 9B? 14 A. Um -- 15 MS. DANAHY: David, I'm sorry, can you 16 clarify, are we talking about 9B or 4B? I think you 17 two are saying different things. 18 MR. PHILLIPS: It's a fair point. 19 THE WITNESS: Yeah. 20 BY MR. PHILLIPS: 21 Q. I think we were talking about 9, and that's 22 what I -- I realize that up on the screen we've got -- 23 which group are you talking about? Well, no, I'm 24 sorry, 4? 25 A. We're talking about 4.</p>	<p style="text-align: right;">Page 53</p> <p>1 Because -- what's kind of different between 4 and 9 is 2 that there's a decent Native American population in 9B 3 whereas there's not a decent size Native American 4 population in 4B. And so we can be a little bit more 5 confident about Native American voting patterns simply 6 by looking at where they live and who they're tending 7 to vote for. So in that case, I'm even a little bit 8 more confident that there's racially polarized voting 9 in 9A and 9B than I am in 4A and 4B, whereas I'm very 10 confident about 4A, a little less so about 4B, just 11 given the data limitations. But more so about 9A, 9B. 12 Q. I want to make sure I understand your testimony 13 here. When you did analyze -- and we're talking about 14 9 now. When you did analyze racially polarized voting 15 in 9A and 9B, which parts of your data are limited to 16 9A and 9B? In other words, do you have certain data 17 that reflects the individuals residing in 9A and 18 certain data that reflects individuals residing in 9B? 19 Or have you made some sort of inference? 20 A. No. So what I do is I look at Tables 3 and 4 21 have demographics in, for example -- well, in this 22 case, for instance, 2022 legislative results. And so 23 we can look to relative homogeneous precincts within 24 each different area and see how vote preference and 25 candidate preference is emerging. So in -- for</p>

<p style="text-align: right;">Page 54</p> <p>1 example, in Subdistrict 9A in Rolette 3, which is a 2 precinct or voting district, Marcellais -- excuse me if 3 I'm getting that incorrect -- is getting 87 percent of 4 the vote. That's not me guessing, that's the actual -- 5 you know, that's not an inference, an ecological 6 inference, that's just the actual number. And then in 7 Rolette 5, which -- where the white population is 8 disproportionately larger, it's not as homogenous as 9 one may typically see, but still it's one of the larger 10 whiter areas, you can see Marcellais is only getting 30 11 percent of the vote. And so there's this clear logical 12 connection between percent Native American, percent 13 white and candidate choice. And you can see the same 14 thing in 9B. And so that's effectively what ecological 15 inference is doing, it's just throwing -- you know, 16 it's putting it through kind of different statistical 17 algorithms, but it's relying on the same underlying 18 sort of set of data. 19 Q. We'll look at it again a little bit closer when 20 we get to that report, so I don't want to get too out 21 of order in terms of the report. So thank you for that 22 explanation. 23 A. Okay. 24 Q. I'm going to share my screen again here. Can 25 you see we're back on Exhibit 37? Are you able to see</p>	<p style="text-align: right;">Page 56</p> <p>1 experts are going to -- you know, are going to stand 2 by. It doesn't mean that one election is going to 3 swing everything in some cases, but it's certainly 4 telling and should be considered. 5 Q. What about endogenous elections v. exogenous 6 elections? Is there a higher probative value to 7 endogenous elections? 8 A. Yeah, also as a general rule, there is. 9 Q. So I had asked you about elections with Native 10 American candidates, more recent elections, and 11 endogenous elections. You indicated those are -- those 12 are factors that indicate an election is more 13 probative. Are there any other factors that, in your 14 opinion, make an election more probative in your 15 analysis? 16 A. Probably, as a general rule, general elections. 17 But I don't -- I don't think I go into that too much 18 here. But that -- it's not always clear. Usually 19 depends on where the blocking is coming from. But 20 typically, general elections I think are more 21 probative. 22 Q. General elections as opposed to special 23 elections? 24 A. Yeah, specials or primaries. 25 Q. Does that distinction between general elections</p>
<p style="text-align: right;">Page 55</p> <p>1 my screen? 2 A. Yes. 3 Q. And on page 5 here, that chart, there's a 4 little star here on some names. This is what we talked 5 about before, right, these stars on this -- on the 6 names in this chart, those denote actual Native 7 American candidates; is that fair? 8 A. Yes. 9 Q. Do you -- in your analysis in either case, the 10 Walen case or the Turtle Mountain case, do you find 11 elections involving a Native American candidate to be 12 more probative than elections involving only white 13 candidates? 14 A. Yeah, I think that's a general -- a general way 15 of analyzing these types of scenarios is looking for 16 candidates that emerge out of the community, that is, 17 you know, part of the complaint or the suit. 18 Q. And what about more recent elections? Do you 19 consider more recent elections to be more probative 20 than older elections? 21 A. Definitely as a general rule, more recent 22 elections are more probative. 23 Q. And again, this applies to both cases, the 24 Walen case and the Turtle Mountain case. Fair? 25 A. Yeah, I think these are principles that most</p>	<p style="text-align: right;">Page 57</p> <p>1 and other elections play any role in your opinion on 2 the Turtle Mountain case? 3 A. No. 4 Q. Did you look into that when conducting your 5 analysis at all? 6 A. I think I might have a little bit. And then a 7 lot of times with the primaries, there's -- especially 8 the local level, they're, you know, uncontested. So 9 it -- I think I was seeing some of that, and so I just 10 kind of made a sort of hard decision just to look at 11 generals. 12 Q. When you're conducting an analysis in a case 13 like the Turtle Mountain case or the Walen case, how do 14 you account for the probativeness of an election? Is 15 there a mathematical factor that you apply at all? 16 A. No, I would say it's -- it's certainly context 17 based. I mean, part of the challenge of all this is -- 18 it really is the case. I've worked on quite a few of 19 these now, on these cases, and realize the case that 20 every situation is a little bit different. And so 21 having a straight line mathematical formula is a little 22 bit -- I don't know if I would actually want that. You 23 know, but certainly there's a question of more recent 24 elections obviously carry more weight. And part of the 25 reason I say that is there's population changes. 2014</p>

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<p>1 is a while back, and, you know, could be -- maybe not 2 in this particular instance, but as a general rule, the 3 population could be a little different now, the 4 electorate could look a little different. So if I'm 5 seeing trends like in the Turtle Mountain case that 6 vary, you know, specific in recent years and with 7 Native American candidates, certainly that's going to 8 matter a lot more than something from 2014 or, you 9 know, earlier. 10 Q. And when you say "matter a lot more," just to 11 be clear, there's not a mathematical formula that 12 you're giving it greater weight in any sort of 13 quantitative analysis, right? 14 A. That's correct. 15 Q. You've just sort of pointed out in your report 16 that certain elections are more probative. 17 A. Correct. 18 Q. Ultimately, is it your understanding that it's 19 up to the court to decide which elections are more 20 probative than others? 21 A. Usually my understanding is that it's mostly -- 22 all the time it's up to the court to decide, so yeah. 23 Q. If you don't apply a mathematical calculation 24 to the probativeness of an election, is there some 25 tipping point where elections -- certain elections</p>	<p>1 choice wins in all but one election that you analyzed; 2 is that correct? 3 A. Also correct. 4 Q. And in 9B, it looks like -- 5 A. 4B. 6 Q. Oh, I'm sorry. Thank you. Please correct me 7 if I make that mistake. 8 In 4B, the Native American candidate of choice 9 loses in every single election analyzed, correct? 10 A. Correct. 11 Q. And in the election later in this report 12 involving Mr. Alvarez, the Native American candidate in 13 2014, he lost his election, correct? 14 A. Yeah. 15 Q. And that was a -- that was the district as it 16 was formerly drawn, but the overall district was very 17 similar to the current District 4 overall, right? 18 A. That's right. 19 Q. It's fair to say that in District 4, as it was 20 recently redrawn, the Native American candidate of 21 choice is very likely to win in Subdistrict 4A, right? 22 A. Yes. 23 Q. And the Native American candidate of choice is 24 very unlikely to win in 4B? 25 A. Correct.</p>
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<p>1 being more probative tips your opinion in one direction 2 than the other? 3 A. I -- no, I -- no, I don't think there's a clear 4 tipping point. 5 Q. This chart that we're looking at here on page 6 5, it shows -- it has a column that says D4 7 Native-Prefer Win, D4 A Native-Prefer Win, and D4 B 8 Native-Prefer Win. 9 Do you see that? 10 A. Yes. 11 Q. Is that another way of saying that Native 12 American candidate of choice either one or lost the 13 election? 14 A. That's right. 15 Q. And if I'm understanding it right, this is the 16 results of a functional analysis; is that correct? 17 A. That's correct. 18 Q. Now, in District 4 as a whole here, being this 19 column we're looking at -- I'm going to scroll down -- 20 it looks like the Native American candidate of choice 21 loses in all of the elections that you analyzed; is 22 that correct? 23 A. That's correct. 24 Q. And in subdistrict -- I'll go back up here -- 25 4A, it looks like the Native American candidate of</p>	<p>1 Q. This chart that we're looking at, this Table 1 2 in the Walen report, that lays out the Native-preferred 3 candidate, do you have a similar chart like that in 4 your report in the Turtle Mountain case? 5 A. Yeah, I usually put something like this in all 6 my reports. 7 Q. Do you have a chart that has the prefer-win 8 columns in the Turtle Mountain case? 9 A. No. 10 Q. Why not? 11 A. I don't know. Probably because I'm doing a lot 12 more -- I got D9, D15, also looking at statewide. And 13 so it's just an overall more comprehensive setup and 14 kind of the columns started to get too small. They're 15 already pretty small here, you know. 16 Q. I don't think it's in a chart form, but 17 Dr. Hood, in his report, he does provide the numbers of 18 wins and losses for Native American-preferred 19 candidates, doesn't he? 20 A. That sounds right. Yeah. 21 Q. Are you familiar with the terms "packing" and 22 "cracking"? 23 A. Yeah, I'm pretty familiar with those terms. 24 Q. I assumed so. 25 What do those terms mean?</p>

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1 A. Packing is situation where a group, typically a
 2 minority population, is placed within a single
 3 district, instead of spreading them out a bit more, to
 4 limit their elect to recall influence.
 5 Cracking is where you split a group, usually a
 6 minority group, across multiple districts and also
 7 limit their influence. So it's pretty typical
 8 redistricting scenarios that we see around the country.
 9 Q. I just want to talk about the Walen case for a
 10 moment. Do you have an opinion in the Walen case as to
 11 whether or not Native Americans are packed into
 12 Subdistrict 4A?
 13 A. Well, so part of the issue is you also -- you
 14 have packing and cracking on the one hand, but then you
 15 also need to have electoral viability for those
 16 different communities on the other hand. So --
 17 Q. Limited to my question first though, do you
 18 have an opinion on whether there is packing and
 19 cracking in -- or, sorry, packing in 4A?
 20 A. I don't think I looked specifically into
 21 packing and cracking. I just did the analysis.
 22 Q. So in that case, you don't have an opinion one
 23 way or the other, or haven't expressed one, as to
 24 whether there's packing or cracking in District 4?
 25 A. That's my -- that's my sense. I -- it's

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1 possible in the report I go into it, I just don't
 2 recall. But I don't -- I'm pretty sure I don't. I was
 3 just conducting an RVP/ performance analysis, so --
 4 Q. Fair to say --
 5 A. -- I didn't get into that.
 6 Q. I'm sorry, I didn't mean to cut you off.
 7 Go ahead.
 8 A. No, please.
 9 Q. It's fair to say though, based on your
 10 functional analysis, the Native American candidate of
 11 choice is almost guaranteed to win in Subdistrict 4A;
 12 isn't that right?
 13 A. Right.
 14 Q. And the Native American candidate of choice is
 15 almost guaranteed to lose in 4B, right?
 16 A. That's right.
 17 Q. And the Native American candidate of choice is
 18 almost guaranteed to lose the Senate seat in overall
 19 District 4, right?
 20 A. Yeah.
 21 Q. Is it fair to say it's not your opinion that --
 22 I'll reverse that.
 23 Do you have an opinion on whether the
 24 redistricting that took place in District 4 is a
 25 violation of the Voting Rights Act?

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1 A. Yeah, I have an opinion on that.
 2 Q. What's your opinion?
 3 A. It's not.
 4 Q. Let's talk about District 9 and the current
 5 Turtle Mountain case.
 6 MS. DANAHY: David, before we move on, I
 7 just want to clarify something.
 8 MR. PHILLIPS: Yes.
 9 MS. DANAHY: You refer a couple times to
 10 that election, the District 4 election, as being in
 11 2014, and I don't -- I don't think that's correct.
 12 MR. PHILLIPS: You may be right, I may
 13 have --
 14 MS. DANAHY: His report is correct, that
 15 was a 2016 election.
 16 MR. PHILLIPS: I'll look it up on a break.
 17 MS. DANAHY: I just wanted to make sure
 18 that was clear for the record.
 19 MR. PHILLIPS: You may very well be right,
 20 and I certainly -- I don't have a point on it, I just
 21 want to make sure the record is clear. So I will look
 22 it up on a break as well and make sure it's --
 23 MS. DANAHY: Thank you.
 24 BY MR. PHILLIPS:
 25 Q. In the Turtle Mountain case relating to

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1 District 9, do you have an opinion on whether there is
 2 packing or cracking?
 3 A. Yeah, I mean, I think it's cracking.
 4 Q. And where is it your opinion that there is
 5 cracking taking place?
 6 A. Well, the end result, at least based on the
 7 last round of elections, is you went from, you know,
 8 the ability to elect three Native American candidates
 9 of choice or Native American representatives, Senate,
 10 to basically just one, which is 9A.
 11 Q. Is one election cycle enough to make a
 12 determination of packing and cracking?
 13 A. I -- yeah, you do need to be careful with one
 14 election cycle in an analysis. But certainly the kind
 15 of end result here is, even looking at the 2020 round
 16 of elections, you know, there's a dilution of Native
 17 American voting capacity in and around Turtle Mountain,
 18 especially when you include, you know, Spirit Lake area
 19 as well.
 20 Q. I want to make sure I -- you get to the
 21 question that started this, which is where is there
 22 cracking taking place in your opinion?
 23 A. Well, so basically the boundaries between 9A
 24 and 9B, number one. The people in 9B, the Native
 25 American people there are no longer represented at the

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1 district level. And then the overall region, there's
 2 effectively cracking because, as my electoral
 3 performance analysis showed, the state could have
 4 easily drawn a district that's similar to -- fairly
 5 similar to a previous district, maybe not the most
 6 previous, but a previous district in the area that
 7 could have, at least based on my performance analysis,
 8 that could have elected more Native American candidates
 9 of choice.
 10 Q. We'll talk in a minute about the Spirit Lake
 11 reservation and the folks in District 15. But what --
 12 correct me if I'm wrong, what the state actually did in
 13 creating 9 was, you know, fully encompassing the Turtle
 14 Mountain reservation and surrounding lands, and then
 15 part of that is a subdistrict, or, you know, it's
 16 divided into two subdistricts, correct?
 17 A. Correct.
 18 Q. If the state were to do that, which it did, is
 19 there a -- do you have an opinion on how the state drew
 20 the subdistricts in light of the requirement to have
 21 population equality?
 22 A. If you're only focusing on --
 23 MS. DANAHY: That was a little vague.
 24 Just . . .
 25 BY MR. PHILLIPS:

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1 Q. Did you understand my question?
 2 A. I think so.
 3 Q. Let me back it up just to make sure it's clear.
 4 So is it your understanding that if the state
 5 creates subdistricts within a district in North Dakota,
 6 that each of those subdistricts has to have
 7 approximately the same population?
 8 A. Yeah, that should certainly -- every time
 9 you're districting, that's a very important principle,
 10 if not the most important principle.
 11 Q. And in this case, the state did not draw a
 12 district that combined the two reservations at issue,
 13 Turtle Mountain and Spirit Lake, correct?
 14 A. They did not do that. Yeah.
 15 Q. Instead, we have a district that has Turtle
 16 Mountain in it and we have a district that has Spirit
 17 Lake in it, right?
 18 A. That's right.
 19 Q. So with what the state did actually passed with
 20 District 9, do you have any opinion on whether there is
 21 packing in 9A in light of the requirement to have
 22 population equality?
 23 A. If you just restrict the analysis to 9 and only
 24 9, that starts to get a little bit more -- I haven't
 25 done a sort of -- and I'm not sure if I want to -- but

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1 some sort of a threshold analysis where I create
 2 different configurations of 9 such that it may be
 3 possible to get two State Representatives out of that
 4 area. I think that's possible, but it -- that's not
 5 what I did. So I can't really speak to that.
 6 Q. There are some trust lands in 9B, right?
 7 A. That's correct.
 8 Q. So the state could have drawn the lines within
 9 9 in a way that pulled in more of those trust lands,
 10 right?
 11 A. That would fulfill more of a COI type of
 12 situation, yes.
 13 Q. If they did that, they'd have to eliminate some
 14 population elsewhere by drawing the line elsewhere to
 15 cut some people out of 9A, right?
 16 A. Unless those trust lands have zero population
 17 in them, you know. But it's -- right, when you're
 18 drawing lines and stuff, it can get always difficult to
 19 make the balancing. So I understand the state's
 20 perspective with respect to balancing population, and
 21 that's an important criteria -- criterion.
 22 Q. To be clear, if I understood your testimony
 23 before, you don't have an opinion, haven't performed an
 24 opinion about the subdistricts in 9 alone in terms of
 25 whether there's packing or cracking?

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1 A. I think that's right, at least at this point.
 2 Q. I'm going to share my screen again here. Can
 3 you see my screen again?
 4 A. Yes.
 5 Q. And still on Exhibit 37. So I'm on page 21 of
 6 Exhibit 37, and it's in the conclusion paragraph, and
 7 it starts, "Therefore." And it says, "Therefore,
 8 Gingles III is present in Sub-District 4B, in District
 9 4 overall, but not in Subdistrict 4-A (which was drawn
 10 to allow Native American voters to overcome white bloc
 11 voting)."
 12 Do you see that?
 13 A. Yes.
 14 Q. Is it your opinion that Subdistrict 4A was
 15 drawn to allow Native American voters to overcome white
 16 bloc voting?
 17 A. Well, I mean, that's what I say there. It's
 18 possible in the discussion by the legislature, et
 19 cetera, that the language would be a little bit
 20 different. I don't know if the legislature conducted
 21 these very specific analyses. But this is deduced from
 22 all of my analysis. So yes.
 23 Q. In your opinion, does Subdistrict 4A allow
 24 Native American voters to overcome white bloc voting?
 25 A. Within -- yeah, it does.

<p style="text-align: right;">Page 70</p> <p>1 Q. Can the same be said about District -- 2 Subdistrict 9A? Does Subdistrict 9A allow Native 3 Americans to overcome white bloc voting? 4 A. Well, there are some caveats to that general 5 discussion, as we've noted. But in a very specific 6 sense, yes. 7 Q. It does? 8 A. Yes. 9 Q. That paragraph goes on to say, "Sub-District 4A 10 thus affords Native American voters the opportunity to 11 their candidates of choice that they otherwise lack in 12 the absence of the sub-district." 13 Do you see that part of this in the Walen 14 report? 15 A. Yes. 16 Q. Is it your opinion in the Walen case that 17 Subdistrict 4A affords Native American voters the 18 opportunity to elect the candidates of their choice? 19 A. Yes. 20 Q. It allows Native Americans to elect at least 21 one House member, right? 22 A. That's right. 23 Q. They're basically guaranteed, based on the 24 functional analysis; isn't that right? 25 A. The functional analysis provides the type of</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. We'll look when we pull up that report. 2 And my understanding is that there are a large 3 number of potential measures for compactness; is that 4 fair? 5 A. Yeah, it's a good way to make yourself stand 6 out by, you know, coming up with some new measure or 7 something. You know, statisticians or academics like 8 to be named. 9 Q. Is there a Collingwood that -- 10 A. I'm working on it, okay? I'm working on it. 11 Q. Okay. So the Reock and Polsby-Popper. Are you 12 familiar with Schwartzberg as another measure? 13 A. Yes, that's one that Dr. Hood also uses and 14 incorporates. 15 Q. You know, just so this record is clear and so 16 that I understand it, I have a basic understanding of 17 these, but maybe you could help me get a better 18 understanding. What is Reock? 19 A. So that's -- they're all basically circle to 20 area measures. So they're all pretty basic 21 mathematical formulas. But in the case of Reock, you 22 have a district and then you just draw the tightest 23 circle you can around that and then take the ratio of 24 the area of the district to the -- to the area of the 25 circle.</p>
<p style="text-align: right;">Page 71</p> <p>1 analysis that gives us as much confidence as we could 2 before a set of elections continued to progress. 3 Q. Let's go to -- I'm on page 3 of this same 4 exhibit, the Walen report. And right here in the 5 middle of the page, it looks like you're looking at 6 compactness measures with respect to District 4A; is 7 that a fair statement? 8 A. Yes. 9 Q. And in this case, you discuss Reock and 10 Polsby-Popper, right? 11 A. Yeah. 12 Q. In the Turtle Mountain case, the one that we're 13 here about today, did you run both Reock and 14 Polsby-Popper? 15 A. Yeah, I think -- I think that was in my 16 rebuttal. Yeah. 17 Q. And, let's see, in this case, 4A, it says, 18 scores very high on measures of compactness. 19 Do you see that? 20 A. Yes. 21 Q. Do you know how your demonstrative exhibits 22 compare to the compactness of 4A? 23 A. They're lower. 24 Q. Do you know how much lower? 25 A. Not off the top of my head.</p>	<p style="text-align: right;">Page 73</p> <p>1 With the Polsby-Popper -- make sure I get this 2 right -- but it's where you have the same district but 3 then you compare the ratio -- the area of that district 4 to a circle that has the same perimeter of that 5 district and then take the ratio. I think that's 6 right. 7 And then I forget what the Schwartzberg one is. 8 But what's -- what's good about these different 9 measures is that they all line up from zero to one, 10 sort of like a correlation -- zero to one where zero is 11 basically, you know, not compacted at all, one is fully 12 full circle. And so they're all relative to one 13 another. And their number is -- they're ranges that us 14 as political scientists and other, you know, social 15 scientists can -- we're very familiar and comfortable 16 with that kind of range. 17 Q. So higher is better -- 18 A. It's -- 19 Q. -- on all of these measures, and they all max 20 out at one? 21 A. That's right. 22 Q. How did you calculate compactness -- well, let 23 me ask you, did you calculate compactness differently 24 in the Walen case compared to the Turtle Mountain case 25 in terms of the tool you used?</p>

<p style="text-align: right;">Page 74</p> <p>1 A. Right. So I often use Dave's Redistricting, 2 which is -- you may be familiar, since obviously you've 3 been litigating these cases for a while now and have 4 become familiar with redistricting. Dave's is free, 5 it's pretty easy to use, you can upload some maps and 6 it just pops out these two numbers. And then I got the 7 numbers for -- I saw that Dr. Hood used Maptitude. And 8 I think in 9, some of -- maybe some of the evaluations 9 were slightly different, so I just wanted to do an 10 apples-to-apples comparison, so I got the Maptitude 11 scores, which were I think slightly different. I don't 12 know exactly why that's the case. But they're all 13 always going to be at least relatively the same, within 14 the same software. 15 Q. It's done by software. You don't have the -- 16 what is it -- a protractor? 17 A. No, that would take too long. I'd be paid a 18 lot though, so maybe I should start doing that. 19 Q. So in this case, you used Dave's Redistricting? 20 A. Right. 21 Q. Is Dave's Redistricting an app or just Dave's 22 Redistricting, is there a difference between those two? 23 A. I would say there's no difference, it's just an 24 online app you just -- anyone can use, it's free, you 25 know. So whenever we say "Dave's Redistricting," those</p>	<p style="text-align: right;">Page 76</p> <p>1 (A break was taken at 12:12 p.m.) 2 BY MR. PHILLIPS: 3 Q. Dr. Collingwood, we talked during the break a 4 little bit about the contest between Terry Jones, Bill 5 Oliver, Kenton Onstad and Cesar Alvarez in your Walen 6 report. And right now, I'm showing you page 4 of your 7 Walen report. Is that a typo where it references 2014, 8 LD-4? That should be 2016? 9 A. Correct. 10 Q. Okay. And maybe elsewhere it's correctly 11 stated as 2016, but at least on this page it's a typo? 12 A. Correct. 13 Q. Earlier today, I had asked you about materials 14 that the attorneys provided to you that you ended up 15 using in your opinion and report, and you had mentioned 16 shapefiles and Maptitude maps. Have you thought of any 17 or come upon any others that had been provided to you 18 that you neglected to mention before? 19 A. Well, I did mention the crosswalk file I think 20 for LD-15. 21 Q. Thank you. Yes. 22 Other than those? 23 A. Not that I can recall. 24 Q. Okay. All right. Can you still see my screen? 25 It should be showing Exhibit 38 now.</p>
<p style="text-align: right;">Page 75</p> <p>1 who use it, app or just the name, it's the same thing. 2 Q. And that's the tool you used to come up with 3 the compactness scores? 4 A. Yeah. I can also use R, but I just haven't -- 5 it's easy enough to use Dave's, so I just haven't yet 6 incorporated that in my code base. 7 Q. When you talk in this portion about District 4A 8 having a Reock score of .45 and then you characterize 9 that as very compact, if you went even higher, it would 10 be even better, and lower would start to get worse, 11 right? 12 A. Lower would just mean that it's less compact. 13 I mean, obviously worse is -- could be interpreted as a 14 bit of a loaded question or loaded word. So I have to 15 be a little bit careful on that. 16 Q. That's fair. Although is it also fair to say 17 that while there may be a range of acceptable 18 compactness, more compact is preferable to less compact 19 in the sense of traditional redistricting criteria? 20 A. If all you're doing is looking at compactness 21 scores and that's it, yeah, I can see that. 22 MR. PHILLIPS: I'm ready to switch topics, 23 and so now might be a good time to take another quick 24 break. 25 THE WITNESS: Sounds good.</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Yes. 2 Q. I can zoom in a little bit. 3 Is this your initial expert report in this 4 Turtle Mountain case? 5 A. Yes. 6 Q. And to be clear, you also have a rebuttal 7 report that we'll talk about in a little bit. But as 8 between this initial report and your rebuttal report, 9 do those reports state your entire opinion that you 10 intend to express in this case? 11 A. So far, yes. I don't foresee anything else 12 coming through. I would like, if I can, reserve the 13 right if something does occur between now and, you 14 know, the trial, that I'm given that opportunity to 15 voice additional opinion. 16 Q. As you sit here today, you're not aware of 17 anything else that you'll be opining on? 18 A. Correct. 19 Q. Okay. I'm going to scroll down. I'm on page 20 6, and it looks like -- 21 COURT REPORTER: I'm sorry to interrupt, 22 but with the shuffling of papers, I didn't hear 23 anything you just said, Mr. Phillips. 24 THE WITNESS: I'm sorry. 25 BY MR. PHILLIPS:</p>

<p style="text-align: right;">Page 78</p> <p>1 Q. So I'm on page 6, and there's a Table 1. And 2 if I scroll down a little bit on page 7, there's a 3 Table 2. 4 Do you see that? 5 A. Yes. 6 Q. And do these two tables together show all of 7 the elections that you analyzed in this case, the 8 Turtle Mountain case? 9 A. They show the elections that I analyzed with 10 ecological inference statistical techniques, yes. 11 Q. And similar to what we looked at in the Walen 12 case, do these little asterisks by the name denote a 13 Native American candidate? 14 A. They do. 15 Q. All right. And again, the RPV stands for 16 racially polarized voting, right? 17 A. Correct. 18 Q. Now, we looked earlier at a chart in the Walen 19 case that also included the -- whether the Native 20 American-preferred candidate wins in any given 21 election, and that's not in this chart; isn't that 22 right? 23 A. It's not in the chart. 24 Q. Remind me again, why isn't it on this chart in 25 the Turtle Mountain case?</p>	<p style="text-align: right;">Page 80</p> <p>1 of the new district configurations, you can't just look 2 at, you know, results in the previous LD-9 or LD-15 and 3 make a conclusion about -- you can draw inferences, but 4 you can't be as strong in your conclusions particularly 5 with regard to the functionality analysis. So what's 6 typical then is that -- again, you start with the 7 general elections, statewide, with the most recent 8 year and then going back. You know, how far you go 9 back is always usually a function of time and data 10 limitation. But as you can see, there's a ton of 11 elections here, you know. This is more than I think 12 what many people do. So I felt comfortable enough to 13 get kind of at least a sense of what's going on here in 14 terms of polarization. And then with 2022, I included 15 the results for the -- some of the endogenous contests, 16 so . . . 17 Q. Did you have any specific criteria that you 18 used in order for an election to be included in this 19 list? 20 A. No. If there had been more Native American 21 candidates across the board, then I would potentially 22 exclude just a Native American -- races featuring 23 Native American candidates. I sometimes do that. But 24 because there's only, you know, for -- obviously, the 25 endogenous is a little different most recently. I</p>
<p style="text-align: right;">Page 79</p> <p>1 A. I don't know exactly why, but I think it -- 2 mainly because there's the addition of multiple 3 contests here and multiple D9, D15 and, you know, 4 statewide and just started to get a little bit out of 5 control, probably. I write a lot of these reports. I 6 try to have the same setup, but it doesn't always go 7 that way. 8 Q. How many redistricting cases have you worked on 9 total? 10 A. Probably ten. 11 Q. Do you normally include that minority-preferred 12 candidate column in your reports? 13 A. Probably. I don't know -- I mean, I'd have to 14 go back and look. There's some cases I've worked on 15 where I'm looking at so many different districts and so 16 many different areas, you know, that that setup, I just 17 maybe don't have there because it's just too much, and 18 I get into it later in the context of the report. 19 Q. How did you select these specific elections to 20 include in your analysis? 21 A. Well, because of the -- you know, I started 22 this before there had been endogenous elections in the 23 district. And so I think when I initially started 24 looking at this, it was -- the 2020 elections had 25 occurred. So, you know, I started there. And because</p>	<p style="text-align: right;">Page 81</p> <p>1 wanted to broaden the -- broaden the scope so I had a 2 little more to say, little more variability, I guess. 3 Q. Did you have any specific criteria to exclude 4 an election from this list? 5 A. No. You know, the general issue is I go to the 6 secretary of state website and get all of the contests 7 that were -- statewide. The exclusion would occur by 8 definition if a result -- if a contest is uncontested. 9 I didn't look at ballot initiatives or constitutional 10 amendments or those type of things. That sometimes is 11 excluded -- or included, depending on what the ballot 12 initiative is. But here, I just excluded them 13 altogether. I think that was the main -- the main 14 method, trying to keep it consistent across the board, 15 basically. 16 Q. Did you personally decide which elections to 17 include? 18 A. I did. 19 Q. Did you have -- did you receive any input from 20 the attorneys in this case about which elections to 21 include and which elections to exclude from this list? 22 A. I think maybe with the most recent round of 23 elections, counsel let me know that there had been some 24 Native American candidates running. Sometimes it's 25 hard for to me to know who is and who isn't Native</p>

<p style="text-align: right;">Page 82</p> <p>1 American. Surnames can give it away, but not always. 2 A name like Brown, for example, is actually a very 3 common Native American surname. But, you know, people 4 of all different race or ethnicities in the United 5 States have the name Brown. So sometimes on-the-ground 6 information can -- that can help me. 7 Q. How did you determine that the individuals on 8 this list who have a star next to their name are Native 9 American? 10 A. Well, some of them I was able to look at their 11 actual picture and, you know, look at the kind of, you 12 know, the dress, sort of attire that people are 13 wearing, it's pretty obvious. You do a little research 14 on them and their political career, like Marcellais, if 15 I'm pronouncing that correctly, you know, talk about 16 that and previous representation maybe for their tribe. 17 And in other cases, counsel, you know, has done the 18 background research on that and notifies and tells me 19 which ones -- which candidates are Native American. 20 Q. My understanding is it's Marcellais is the 21 pronunciation. 22 A. Marcellais, yeah. It's that French -- 23 Marcellais sounds like a French name to me. You have a 24 bit of that, I guess, up in the northern parts of the 25 state with -- or of the U.S. with the fur trades or</p>	<p style="text-align: right;">Page 84</p> <p>1 a preferred Native American candidate? 2 A. Probably the main reason is it's just a lot 3 more work and -- but I didn't exclude them because 4 there wasn't a -- I ran it and didn't see racially 5 polarized voting, so I didn't. You know, that wasn't 6 the reason. Just it would be a lot more work. And I 7 have enough work cut out for me doing both D9 and D15 8 respectively. 9 Q. This chart, this Table 1, it looks like it goes 10 from 2014 until 2022. During that date range, are you 11 aware of any statewide elections that had a Native 12 American candidate, which is not shown on your chart? 13 A. I -- no, I'm not saying that there's not. 14 There may be, I suppose, or maybe someone ran in a 15 primary that I didn't know about. But that was my 16 understanding at least at the time. 17 Q. And I want to understand your methodology and 18 reasoning here. How are statewide elections relevant 19 to the issues in this case in Districts 9 and 15? 20 A. Yeah, that's a good question. They may be -- 21 perhaps they're not legally relevant, I guess, from 22 your perspective, given that we're looking at a 23 zoomed-in area. I think they're broadly relevant 24 because that allows me to really get a good read on 25 Native American voting in general.</p>
<p style="text-align: right;">Page 83</p> <p>1 something I think, right? 2 Q. His ears are probably tingling, so if I got it 3 wrong, I apologize. 4 A. Well, what's good is that that won't come out 5 in the transcript. 6 Q. That's a good point. 7 Now on the far -- I just want to make sure I 8 understand this table. And again, we're looking at 9 Table 1 on page 6 right now. It looks like there are 10 four statewide elections where you show racially 11 polarized voting. 12 Do you see that on the far right-hand column? 13 A. Yeah. 14 Q. Are those the only four statewide elections 15 that you reviewed for racially polarized voting? 16 A. They are. 17 Q. And why -- why just those four elections? 18 A. Those were the elections that featured a Native 19 American candidate running statewide, so I wanted to -- 20 you know, with a lot of data across the full state, 21 just get a general sense of how if there's racially 22 polarized voting just with more data, just be a little 23 more firm in my overall conclusion. 24 Q. Is there a reason you didn't include any 25 statewide races that had two white candidates but with</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. I -- I'm sorry to cut you off, but you cut off 2 just a little bit. Could I just have you re-say that 3 statement again? 4 A. They just -- they give me a little more 5 confidence in being able to make a statement about 6 Native American voting. It's kind of a -- almost like 7 a reliability check. 8 Q. In this list that we're looking at here on page 9 6, do you consider any of these elections to be of a 10 higher probative value than other -- than the rest of 11 the elections? 12 A. Yeah, I mean probably the 2022 State Senate D9 13 is the most probative. And then also the State Senate 14 D15 is also very probative. And those are probably the 15 most. 16 Q. Let's go -- let's look at those then. That 17 State Senate D9, why do you consider that to be one of 18 the most probative? 19 A. Well, it's recent and it features a Native 20 American candidate in Marcellais -- Marcellais, and 21 it's endogenous. 22 Q. Anything else when it comes to State Senate D9? 23 A. No, that's it. 24 Q. What about State Senate D15? 25 A. Similar, it's recent and features a Native</p>

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1 American candidate. It also is, at least with the
 2 context of D15, endogenous. And then the 2022 Public
 3 Service Commissioner, Moniz v. Fedorchak, is also --
 4 features a Native American candidate and so allows us
 5 to look at how the -- a district would perform, say a
 6 demonstrative would perform.
 7 Q. And that one would be more probative because it
 8 has a Native American candidate and is more --
 9 A. Correct. Right.
 10 But, again, the context of always only looking
 11 at Native American candidate versus not, in the context
 12 of the Voting Rights Act, you still -- what you
 13 ultimately care about is candidates of choice. If
 14 Moniz, for example, is not the Native-preferred
 15 candidate, then, you know, that would be telling. And
 16 so that has to be kind of taken into consideration as
 17 well. So it's not just, like, a down the line, yes,
 18 no, yes, no type situation.
 19 Q. Is that because Native Americans could prefer a
 20 white candidate?
 21 A. Yeah, yeah, it could be the case. Or it could
 22 be that white voters prefer a Native candidate and vice
 23 versa. So there -- while you don't typically see that
 24 in the context of -- I don't typically see that, at
 25 least in the context of the elections in North Dakota

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1 I've looked at, I've seen that in other places. Tim
 2 Scott, for example, in South Carolina is typically the
 3 preferred candidate of white voters in South Carolina
 4 and not the preferred candidate of black voters.
 5 Q. Now, so far you've mentioned as particularly
 6 probative the Public Service Commissioner with Moniz
 7 being the winner there, and then you mentioned the
 8 State Senate D9 with Marcellais and -- or being a
 9 candidate, and State Senate D15 with Brown. Are there
 10 any other elections on here that you consider
 11 particularly probative?
 12 A. Well, the D15 State House, there also would be
 13 in that context -- let me check that -- yeah, could be
 14 potentially probative, you know, more probative. So
 15 those are -- those are kind of the top ends here. You
 16 know, 2020 to 2022 are generally going to be more
 17 probative than 2018 and down. And then -- you know,
 18 then within that, the Native American candidate is
 19 running, as well as endogenous or not, is another
 20 separator. And then 2018 through 2014 begin to look
 21 more at whether a candidate's Native American in the
 22 context of 2016 elections, at least theoretically, Iron
 23 Eyes and Buffalo and Hunte-Beaubrun should be more
 24 probative relative to the other 2016 contests.
 25 Q. Aside from the general principle that more

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1 recent elections are more probative, are you aware of
 2 any change, demographic shifts, or any other change
 3 that's happened between 2014 and 2022 that would make
 4 2022 more probative?
 5 A. And demographic shift --
 6 Q. Or any other change that you can think of
 7 that's happened between 2014 and 2022.
 8 A. Well, I think there was a -- at least according
 9 to the census -- a population loss in parts of the old
 10 D9, which could potentially make a difference. I'd
 11 have to double check that, but I think that was right
 12 because it used to be Rolette County and now it has to
 13 take in more. So the only way that that would have
 14 happened is if there was population loss there or the
 15 state grew as a whole.
 16 Q. Are you -- are you aware of -- I mean, did you
 17 conduct any analysis on whether that population loss
 18 makes a difference in these individual elections from
 19 2014 to 2022?
 20 A. I see. I see. I did not conduct an empirical
 21 data-driven analysis on that point. There's also other
 22 things, like, you know, Trump got elected in 2016 which
 23 systemically changed American politics. You know,
 24 that's just kind of -- there's so much research on that
 25 point that that was kind of a, you know, exogenous

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1 shock to the entire political system I think that could
 2 basically make you think, okay, more recent elections
 3 are more relevant to what's going on now. He, you
 4 know, injected race into the political system in a way
 5 that we hadn't seen as much, at least by a white
 6 candidate, for a long time at the national level.
 7 Q. Is it fair to say that throughout 2014 to 2022,
 8 the white candidate of choice in the elections you've
 9 looked at would be the Republican candidate?
 10 A. Yeah, I think that's right. Yeah.
 11 Q. Would it be fair to say that the Native
 12 American candidate of choice is consistently the
 13 Democratic candidate?
 14 A. I think that's right.
 15 Q. That didn't change with Trump's election,
 16 right?
 17 A. No, it didn't. The overall changing of the
 18 guard there didn't change, that's correct.
 19 Q. I know we talked about this earlier, but I just
 20 want to make sure it also applies in this Turtle
 21 Mountain case. You don't apply any sort of
 22 mathematical formula that gives more weight to more
 23 probative elections, correct?
 24 A. No.
 25 Q. You just point out the probativeness in your

<p style="text-align: right;">Page 90</p> <p>1 report?</p> <p>2 A. Correct.</p> <p>3 Q. All of the -- when I had asked you a moment ago</p> <p>4 about which elections are more probative, the ones that</p> <p>5 you listed were in 2022. Does a single election</p> <p>6 year -- is that enough to establish a pattern?</p> <p>7 A. It's a tough call. But just focusing on one</p> <p>8 year, perhaps you have to be a little more circumspect.</p> <p>9 But I do then -- if you just look at 2022 and 2020, the</p> <p>10 results are generally pretty consistent. And what you</p> <p>11 typically see is over time you see Native-preferred</p> <p>12 candidates were doing better in 2014, 2016, and then in</p> <p>13 2018, as you know, is a bit of an outlier. And then it</p> <p>14 starts to go the other way. And so you see this</p> <p>15 overall pattern of Native American voters having a more</p> <p>16 difficult time electing candidates of choice at the</p> <p>17 full district level. So I think when you see that</p> <p>18 pattern, you look at it, you plot that over time, those</p> <p>19 are the kinds of things that while I didn't generate</p> <p>20 that specific plot in this analysis, those are types of</p> <p>21 things that show where things are likely going.</p> <p>22 And also, I should note, I've been in other</p> <p>23 contexts where, say, the 2022 election, someone looks</p> <p>24 at only one contest. And at least in this case, I</p> <p>25 looked at, you know, multiple in 2022, right, not just</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Well, to me, I'm hesitant to do a full-blown</p> <p>2 ecological inferences analysis on it. But I think</p> <p>3 there's enough to triangulate where certain perfectly</p> <p>4 comfortable making that case, yeah.</p> <p>5 Q. But you didn't include it in this analysis,</p> <p>6 right?</p> <p>7 A. Well, I didn't include it in the RPV analysis,</p> <p>8 but I have a separate subsection about that contest</p> <p>9 specifically looking at, I think, Tables 3 and 4, kind</p> <p>10 of breaking that logic down.</p> <p>11 Q. Now, if I understand your opinion correctly,</p> <p>12 you believe there is lower probative value to the</p> <p>13 elections in 2018; is that accurate?</p> <p>14 A. Yes.</p> <p>15 Q. Why?</p> <p>16 A. I mean, Dave Matthews Band showed up, you know.</p> <p>17 2018 was -- there had been some sort of state laws, I'm</p> <p>18 sure you know, that basically revolve around I think</p> <p>19 addresses and stuff, voter addresses, and so it was I</p> <p>20 think perceived by civil rights groups in the broader</p> <p>21 Native American community that was going to reduce</p> <p>22 Native American voting opportunities. And so there was</p> <p>23 a large push in places like Turtle Mountain and other</p> <p>24 areas to mobilize voters, get them to register, get</p> <p>25 them to vote. So there was this overwhelming surge of</p>
<p style="text-align: right;">Page 91</p> <p>1 one election, not just, say, the endogenous contest and</p> <p>2 let everything else alone. So that -- you know, and I</p> <p>3 did that in part because I wanted to make sure I wasn't</p> <p>4 just cherry picking, you know, one -- you know, we see</p> <p>5 that Marcellais loses so we just go and do RPV on that</p> <p>6 one and leave everything else alone and not knowing --</p> <p>7 or doing a performance analysis, right. And so that</p> <p>8 pattern was consistent across.</p> <p>9 Q. Did you include in there the race in</p> <p>10 Subdistrict 9A?</p> <p>11 A. No, 9A is not -- that one is not included, no.</p> <p>12 Q. Do you know if the Native American candidate of</p> <p>13 choice won in District 9A? Subdistrict 9A?</p> <p>14 A. Yeah, they did. The issue there is the very</p> <p>15 small precinct size that's less of an issue in D15,</p> <p>16 because D15 is the full -- you know, the full -- the</p> <p>17 full district. Doesn't have a split district. And so</p> <p>18 in D9A, the Native American-preferred candidate, you</p> <p>19 know, when I did kind of the breakdown right, you know,</p> <p>20 is winning and Native American voters are -- it looks</p> <p>21 like, at least based on the precinct data combined with</p> <p>22 the race data, you know, supportive of that winning</p> <p>23 candidate.</p> <p>24 Q. Do you have enough data to determine the Native</p> <p>25 American candidate of choice in 9A?</p>	<p style="text-align: right;">Page 93</p> <p>1 Native American voter turnout in -- specifically in</p> <p>2 Turtle Mountain area, but probably the full state and</p> <p>3 to the point that it's the kind of thing I've never</p> <p>4 seen before. It's a very, very unusual election.</p> <p>5 Q. Just to clarify, were you involved at all in</p> <p>6 those voter ID cases in that time frame?</p> <p>7 A. No.</p> <p>8 Q. The information that you have about the</p> <p>9 elections in 2018, where did you get that information</p> <p>10 from that you just recited?</p> <p>11 A. Just reading the news.</p> <p>12 Q. Did any of that information come from</p> <p>13 plaintiffs' attorneys?</p> <p>14 A. Yeah, that was part of our discussion with</p> <p>15 counsel about those specific contests -- or that</p> <p>16 specific year as well, yeah.</p> <p>17 Q. Did they provide you any written materials</p> <p>18 about the 2018 elections?</p> <p>19 A. No.</p> <p>20 Q. Do you think that the Dave Matthews Band would</p> <p>21 not come to North Dakota? No, I'm just kidding.</p> <p>22 In the -- is it your understanding that in 2018</p> <p>23 Native Americans did turn out in higher numbers?</p> <p>24 A. Yes, it is my understanding that they did.</p> <p>25 Q. And so have you accounted for that in any</p>

<p style="text-align: right;">Page 94</p> <p>1 mathematical sense in your analysis? In other words, 2 did you eliminate those 2018 elections from your 3 analysis? 4 A. I -- in this -- in this initial report, I did 5 not eliminate 2018. I discuss it, you know, rationales 6 for potentially eliminating it in a paragraph, and also 7 discuss it a little bit more in further depth in my 8 rebuttal report. But I didn't -- I wanted -- I 9 wanted -- even though I thought we should probably cut 10 it, I wanted to show it because if I didn't, we'd be 11 having that conversation right now, and I feel like 12 it -- either way you go, it's going to be a point of 13 dispute. 14 Q. You did choose to include those in the list, 15 the 2018 elections in the list on page 6, Table 1, 16 right? 17 A. Correct. 18 Q. In the year 2018, is it fair to say that the 19 Native Americans did overcome the barriers to their 20 turnout? 21 A. Well, at least in Turtle Mountain, the 2018 22 turnout among Native American voters was I think 23 around -- well, I have a number in my rebuttal report, 24 but it's the highest I've ever seen among turnout in 25 Native American voters. It's still not a hundred</p>	<p style="text-align: right;">Page 96</p> <p>1 the time you did your initial report? 2 A. After the initial report. 3 Q. That was for purposes of your rebuttal report 4 then, correct? 5 A. Yeah. 6 Q. I'm going to jump for a moment to a different 7 exhibit. I'm showing you Exhibit 39, which is a 8 two-page exhibit. And you've probably seen this. I'll 9 represent to you that this comes from Dr. Hood's 10 report. Does this look familiar? 11 A. It does. 12 Q. And it appears at least to show plaintiffs' 13 demonstrative exhibit -- or demonstrative District 1 14 with the Native American population overlaid. Does 15 that sound accurate? 16 A. Yeah, I mean, that looks broadly like -- yeah. 17 That's accurate, I guess. 18 Q. Is it your understanding that the Native 19 American population at the north side of this -- and 20 we're on the first page here of this exhibit -- that 21 the Native American population at the north side of 22 this demonstrative map, that those are individuals that 23 are living on or near the Turtle Mountain reservation? 24 A. Correct. 25 Q. And then down on the bottom, the southeast</p>
<p style="text-align: right;">Page 95</p> <p>1 percent or anything approaching that and, you know, 2 still below whites, I think, but it was -- it showed 3 that, you know, the turnout was pretty -- pretty 4 remarkable. 5 Q. Are you -- do you have any knowledge of the 6 settlement that took place in the voter ID cases that 7 were litigated around that time frame? 8 A. In terms of the outcome or the money? 9 Q. Just do you have any knowledge at all about the 10 settlement? 11 A. No. 12 Q. Do you know what steps the state agreed to take 13 to assist Native Americans to get voter IDs, as part of 14 the settlement of that case? 15 A. No, I don't know. 16 Q. Do you have knowledge of other steps that the 17 state takes to try to assist Native Americans in 18 exercising their right to vote? 19 A. I can't think of a -- can't think of anything 20 off the top of my head. 21 Q. You did a turnout analysis as part of your 22 rebuttal report, right? 23 A. Correct. 24 Q. When did you perform that analysis? Was it 25 prior to the time you did your initial report or after</p>	<p style="text-align: right;">Page 97</p> <p>1 corner there, that's individuals living on and near the 2 Spirit Lake reservation? 3 A. Yeah. 4 Q. Do I remember your testimony correctly that you 5 didn't actually draw this demonstrative map yourself? 6 A. That's correct. 7 Q. Is it fair to say that when the state was 8 conducting its redistricting, if it wanted to pull in a 9 substantial additional Native American population into 10 what was included in District 9, that the map has to be 11 drawn to extend all the way down to the Spirit Lake 12 reservation? 13 A. Yeah, that -- that's my understanding. 14 Q. There's not another substantial Native American 15 population right next to Turtle Mountain that can be 16 drawn from, other than Spirit Lake. Fair? 17 A. I think that's right. You'd have to do 18 something really funky to get another group. 19 Q. And both of your demonstrative exhibits -- I'm 20 looking at the first page here and I'm going to scroll 21 down to the second page. Both of them show almost the 22 entire Native American population from Turtle Mountain 23 and surroundings areas and Spirit Lake and surrounding 24 areas being within your new district? 25 A. Yes.</p>

25 (Pages 94 - 97)

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1 Q. Just give me 20 seconds here.
 2 In looking here at demonstrative districts
 3 number 2, it shows the entirety of Turtle Mountain plus
 4 all the surrounding trust lands and almost all of
 5 Spirit Lake and surrounding Native lands?
 6 A. Yeah.
 7 Q. Is it your expert opinion that in order for the
 8 State of North Dakota to comply with the Voting Rights
 9 Act, it has to combine Turtle Mountain and surrounding
 10 Native lands with Spirit Lake and surrounding lands,
 11 that any conceivable map has to do that?
 12 A. Yeah. The functionality analysis, et cetera,
 13 that I conducted just on District 9 and then looking at
 14 D15 discretely, you're winding up with a situation
 15 where a large share of Native Americans are not able to
 16 elect candidates of choice; when you look at these
 17 maps, they clearly can be.
 18 Q. So the only way for North Dakota to comply with
 19 the Voting Rights Act is to draw a map that combines
 20 those two reservations and surrounding areas. The
 21 parts in the middle can change, but the two ends of it
 22 have to include those green areas shown on page 2 here
 23 of this exhibit?
 24 A. I mean, there could be a way that you could,
 25 again, take potentially portions of the different

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1 areas. But I think that wouldn't make sense from a
 2 community of interest perspective and you would wind up
 3 splitting the communities. What's nice about these
 4 maps is it doesn't split the communities.
 5 Q. If North Dakota split the communities by --
 6 would it be in violation of the Voting Rights Act?
 7 A. Potentially. I mean, I'd have to run the
 8 numbers a little bit more closely.
 9 Q. You haven't conducted an analysis, in other
 10 words, that takes a portion of Turtle Mountain and a
 11 portion of Spirit Lake into a single district?
 12 A. Correct.
 13 Q. And you don't have an opinion on whether that
 14 would be a violation of the Voting Rights Act?
 15 A. Not at this point.
 16 Q. I'm going to go back to your report in this
 17 case, Exhibit 38, and scroll down to page 2. This
 18 says, in the last bullet point here, "An analysis of
 19 plaintiffs' demonstrative maps show that Native
 20 American-preferred candidates would succeed in carrying
 21 these districts. In Demonstrative 1, of the 35
 22 contests I analyzed, the Native American-preferred
 23 candidate won 32 of 35 (91 percent). In Demonstrative
 24 2, of the 28 contests I analyzed, the Native
 25 American-preferred candidate won 26 of 28 (93

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1 percent)."
 2 Do you see that?
 3 A. Yes.
 4 Q. Is that another way of saying that when you
 5 perform a functional analysis when you run past
 6 elections as if they had been under your demonstrative
 7 plans, the plan won 91 percent of the time that Native
 8 Americans would have gotten their candidate of choice
 9 and in the demonstrative 2, 93 percent of the time
 10 Native Americans would have gotten their candidate of
 11 choice?
 12 MS. DANAHY: Objection --
 13 THE WITNESS: That's correct.
 14 MS. DANAHY: -- you keep referring to this
 15 as "your demonstrative plan." I don't think that's
 16 accurate.
 17 BY MR. PHILLIPS:
 18 Q. I'll say the demonstrative plan.
 19 A. Yeah. That's correct.
 20 Q. Under the Demonstrative Plan 1 and 2 then, the
 21 Native American candidates of choice are extremely
 22 likely to win all three seats in the district; isn't
 23 that right?
 24 A. Barring kind of unforeseen circumstances,
 25 right, yeah.

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1 Q. That would be one Senator and two members of
 2 the House?
 3 A. Correct.
 4 Q. Over -- in both cases for both demonstratives,
 5 over 90 percent of past elections would have come out
 6 that way?
 7 A. That's right. That's right.
 8 Q. Is it fair to say that any other conceivable
 9 map that in your opinion would comply with the Voting
 10 Rights Act would have similar levels of Native American
 11 candidate of choice being elected, we'll say 90 percent
 12 plus?
 13 A. I think the bar is more often than not.
 14 Depending on what you're -- you know, the range of
 15 waiting for, you know, appropriately rating for time,
 16 endogenous and -- or endogeneity, and the presence or
 17 absence of a Native American candidate.
 18 Q. When you say "the bar," do you mean the legal
 19 bar that needs to be passed?
 20 A. Well, I think there's some dispute, but I think
 21 at least according to Hood's article in SSQ, that's
 22 kind of the sort of level that a lot of us are
 23 operating under.
 24 Q. Do you have an opinion on that as to whether
 25 that's the bar?

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1 A. Yeah, I would say that's what I use as my bar.
 2 And then it's, you know, appropriately accounting for
 3 these other factors that we've been considering as
 4 potential trend lines and stuff like that. But a lot
 5 of -- at least my understanding is a lot of this,
 6 there's not always clear, bright lines, but try to
 7 establish the bars that is the racially polarized
 8 voting more often than not are white candidates
 9 blocking -- or white voters blocking Native Americans
 10 in this case from electing candidates of choice more
 11 often than not, at least in terms of a Gingles III.
 12 Q. Does the Voting Rights Act guarantee certain
 13 outcomes in election?
 14 A. Definitely not.
 15 Q. It provides an opportunity to elect candidates
 16 of choice, right?
 17 A. Well, there's certain ways of drawing districts
 18 that provide no opportunity, there's others that
 19 provide a very high opportunity, there's others that
 20 are somewhere in the middle.
 21 Q. Would it be fair to -- oh, I'm sorry, I didn't
 22 mean to cut you off. Go ahead and finish.
 23 A. Well, some people might say, well, an
 24 opportunity is -- 2018, look, it's possible. Native
 25 Americans voted at such high rates that it's possible.

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1 There's an opportunity if they just kept doing that,
 2 then they could continue to do that. So I think that's
 3 sort of disputed empirical point.
 4 Q. Isn't that true, that they were able to turn
 5 out in -- elect their candidate of choice in 2018?
 6 A. Right, that's -- yeah, that's what I'm saying.
 7 So some would say, well, that's an opportunity. The
 8 Voting Rights Act makes you provide an opportunity.
 9 But then when you conduct a more recent functionality
 10 analysis, you see the opportunity's really not there.
 11 Q. Based on 2022 elections?
 12 A. And 2020.
 13 Q. And we talked about how there might be
 14 different ways to describe an opportunity. Would it be
 15 fair to say that the demonstrative exhibits proposed by
 16 the plaintiff -- the demonstrative maps proposed by the
 17 plaintiffs would give an extremely high chance of
 18 Native Americans --
 19 COURT REPORTER: I'm sorry, I missed the
 20 last part of that question with the paper shuffling.
 21 THE WITNESS: Sorry. Sorry about that.
 22 BY MR. PHILLIPS:
 23 Q. I'm not sure exactly how I worded it. But the
 24 demonstrative maps submitted by the plaintiffs in this
 25 case, would it be fair to say that they give an

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1 extremely high chance Native American to elect their
 2 candidate of choice?
 3 A. Yes.
 4 Q. The Voting Rights Act doesn't require 90 plus
 5 percent odds of electing a minority's candidate of
 6 choice, does it?
 7 A. No.
 8 Q. I'm going to flip back to Exhibit 39. And on
 9 this first page, this is showing plaintiffs'
 10 demonstrative District 1. Do you know when it was
 11 first proposed to North Dakota's legislature that a way
 12 to comply with the Voting Rights Act would be to draw a
 13 single district encompassing both reservations?
 14 A. I don't.
 15 Q. You weren't involved in that legislative
 16 process?
 17 A. No.
 18 Q. Are you familiar with the testimony in front of
 19 the legislature discussing subdistricts and how
 20 subdistricts could be used to allow Native Americans to
 21 overcome white bloc voting?
 22 A. I think I knew that there was discussion and
 23 testimony around that, I just -- I'm not familiar with
 24 the specifics of it.
 25 Q. Have you read any of the transcripts from the

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1 legislative hearings?
 2 A. No.
 3 Q. All right. This will just take me a second
 4 here. I'm going to show you some exhibits that were
 5 looked at during Dr. Hood's deposition, and you may
 6 even make reference to some of these in your rebuttal
 7 report that we'll get to a little bit later. But we're
 8 looking right now at what was marked at Dr. Hood's
 9 deposition as Exhibit 9. Do you recognize this?
 10 A. Yeah.
 11 Q. Do you know what part of the state this map
 12 represents?
 13 A. Fargo.
 14 Q. That's an urban population, right?
 15 A. I mean, for North Dakota. Not that New Mexico
 16 is huge either.
 17 Q. Fargo is a city though, it's not a rural
 18 community?
 19 A. Correct. Fargo has a coffee shop. Pretty good
 20 one. I liked Fargo a lot when I went there.
 21 Q. So there are a number of sort of long, thin
 22 districts here, right? For example, District 42, you
 23 can see the area is kind of long and north to south?
 24 A. Correct.
 25 Q. Look at Exhibit 10. This has a District 18 is

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1 similarly long and skinny, right?
 2 A. Yep.
 3 Q. And Exhibit 11, I'll just point out, it looks
 4 like District 31, there's kind of a long, little finger
 5 that sticks out at the -- that northeast corner.
 6 Do you see that?
 7 A. I do.
 8 Q. Are you familiar with any of the legislative
 9 history relating to the redistricting of what's shown
 10 in this exhibit?
 11 A. I'm trying to remember. I can't -- right off
 12 the top of my head, I don't fully remember.
 13 Q. Do you know what the -- what factors the
 14 legislature took into account when it created the
 15 districts shown on these three exhibits?
 16 A. Well, I mean, they would have taken population
 17 equality into account. I know that. Just because
 18 everyone has to. In terms of various communities of
 19 interest and those types of very important features, I
 20 am not familiar with that.
 21 Q. And Exhibit 10, this is Grand Forks. And I'm
 22 going to skip over to Exhibit 11, that's Bismarck. Are
 23 you familiar with those communities, Grand Forks and
 24 Bismarck?
 25 A. I mean, I haven't lived there or anything, but

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1 I'm aware of them on the map, yeah.
 2 Q. Those are cities, too, right, they're not rural
 3 communities?
 4 A. Correct.
 5 Q. Have you -- so we looked earlier at -- I hope I
 6 don't close this. We looked earlier at Exhibit 39 that
 7 kind of overlaid that Native American population over
 8 the demonstrative maps. Going back to, you know,
 9 Exhibits 9, 10 and 11, have you seen similar overlays
 10 of minority populations within these districts?
 11 A. I don't recall if I've seen minority
 12 populations in these specific areas.
 13 Q. What about anywhere else in North Dakota, other
 14 than in Districts 4 and 9?
 15 A. I don't -- no, I've been pretty focused on 4
 16 and 9, and then my analysis of these have focused more
 17 on the compactness and things.
 18 Q. So just by way of example -- I'll just try to
 19 zoom in here. I'm showing you, it's Hood Exhibit 11.
 20 A. Right.
 21 Q. It shows 34 on there.
 22 Do you see that?
 23 A. Yeah.
 24 Q. Do you know what is in the north end of 34 in
 25 terms of white or minority populations and what's on

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1 the south end of 34?
 2 A. No, I'm not so familiar with the composition of
 3 this electoral district.
 4 Q. What about any other district in North Dakota
 5 other than 4 and 9?
 6 A. I haven't done a detailed analysis.
 7 MR. PHILLIPS: I could use a ten-minute
 8 break. Is this okay to take --
 9 THE WITNESS: Sounds good.
 10 MS. DANAHY: Yes.
 11 (A break was taken at 1:41 p.m.)
 12 BY MR. PHILLIPS:
 13 Q. Dr. Collingwood, we're back on the record and
 14 I'm showing you once again Exhibit 38. And this is
 15 your initial report in this case, correct?
 16 A. Correct.
 17 Q. I'm just going to walk through a few specific
 18 parts of it.
 19 I'm not the only one hearing that truck?
 20 A. Yeah, there's -- the county outside is doing
 21 something with the road. So there's, like, a work
 22 crew.
 23 Q. Okay. I'm okay with it, as long as the court
 24 reporter can understand you.
 25 So I'm going to go to page 2 of that exhibit

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1 and point your attention to this paragraph right here,
 2 "In my reconstituted electoral performance analysis,
 3 Native American-preferred candidates win handily in the
 4 newly adopted Legislative Sub-District 9A. However,
 5 Native American-preferred candidates disproportionately
 6 lose in the newly adopted Legislative Sub-District 9B
 7 because -- there's two because there -- because white
 8 voters cohesively vote as a bloc against Native
 9 American voters' preferred candidates."
 10 Do you see that?
 11 A. Yeah.
 12 Q. Now, we looked earlier about your -- to your
 13 conclusion in the Walen report. In that case, you did
 14 conclude that the existence of Subdistrict 4A allowed
 15 Native American voters to overcome white bloc voting;
 16 is that right?
 17 A. Yeah.
 18 Q. And in 4A, there was very high Native American
 19 population and 4B a very low Native American
 20 population, right?
 21 A. Correct.
 22 Q. And 9A, there's a very high Native American
 23 population and in 9B a very low Native American
 24 population, right?
 25 A. Relatively low. They're still, I mean -- you

<p style="text-align: right;">Page 110</p> <p>1 know, compared to most other places in the U.S., still 2 very high. 3 Q. And when I say "population," you understand I 4 mean voting age population? 5 A. Yes. 6 Q. I'm going to scroll down to page -- or jump to 7 page 15 on this exhibit. And I'll start out looking at 8 a partial sentence here, but we can look at the overall 9 page as a whole. It says here kind in the middle, "it 10 necessarily follows that voting within the two 11 subdistricts is likewise racially polarized." 12 We discussed earlier your conclusion about 13 racially polarized voting in Subdistrict 9A and 9B. I 14 want to make sure I understand your opinion on that. 15 So what is your opinion in terms of racially polarized 16 voting in 9A and 9B, and how did you reach that 17 opinion? 18 A. My opinion that there is racially polarized 19 voting in the whole region 9 and that it's very 20 difficult to come to a conclusion otherwise for 9 or 9B 21 because when you look at constituent parts and look at 22 the individual precincts and their vote patterns and 23 the type of racial demographic in those precincts at 24 the subdistrict level, it lines up with their -- it's 25 consistent with the result that you see at the full</p>	<p style="text-align: right;">Page 112</p> <p>1 extremely wide confidence intervals and most likely -- 2 again, I haven't done it. But most likely you're not 3 going to generate as useful of statistical conclusions, 4 and so you refrain from doing that, at least in this 5 case. 6 Q. Did you say earlier in your testimony that you 7 did read the deposition transcript of Dr. Hood's 8 deposition? 9 A. Yeah, I mean, at least I -- you know, I didn't 10 read the whole thing, but I went through it and tried 11 to make sense of different areas. 12 Q. Do you recall his testimony about the 13 sufficiency of the data to conclude -- or insufficiency 14 of the data to conclude racially polarized voting in 9A 15 and 9B. 16 A. Yeah, I think what he was -- he's kind of 17 saying a similar thing that I am. I mean, in general, 18 Dr. Hood and my -- at least our analysis, maybe not our 19 broader methodological approaches or interpretations, 20 at least the specifics of our analyses are pretty 21 similar, the results are pretty similar. And so I 22 think what he's saying also is that within the 23 subdistrict level, you know, it is limited data, and so 24 he's not running -- he's not executing these specific 25 statistical analyses that we do at the full district</p>
<p style="text-align: right;">Page 111</p> <p>1 district level. 2 Q. And understand that I'm definitely a 3 nonscientist. What's the difference between that 4 analysis that you conducted to conclude that there's 5 racially polarized voting in 9A and 9B different from 9 6 as a whole? 7 A. Well, as a whole because there's -- there's 8 just more data, and there's a lot more variation among 9 where the different racial populations live. By 10 combining it, we can use ecological inference, 11 statistical methods similar to, for lack of a better 12 term, similar to some sort of regression analysis that 13 social scientists use, or every scientist uses really, 14 that specifically relates how a change in the 15 independent variable relates to the dependent variable, 16 in this case race relates to vote choice. And because 17 at the subdistrict level and -- it's just a limited 18 amount of data. Conducting a racially polarized voting 19 in those cases was a little bit more unclear. You 20 could still mechanically do it. I didn't do that. One 21 could. 22 Q. In the subdistrict? 23 A. Right. Right. One potentially could, for 24 sure. You just need a couple precincts to actually 25 physically do it. It's just that you're going to get</p>	<p style="text-align: right;">Page 113</p> <p>1 level using specific type of statistical algorithms for 2 much the same reasons. I think that's what -- if my 3 memory serves correctly -- what he was saying. 4 Q. Do you disagree with his opinion on that in any 5 way? 6 A. I agree in the sense that in this case using, 7 say, a clear, statistical method, EI, ecological 8 inference, is best not done. But I -- I disagree in 9 the sense that you can -- you can logically back out 10 how these groups are almost certainly voting looking at 11 the subdistricts and looking at where people live, that 12 that's useful information and draw the conclusions that 13 voting is polarized there as well. 14 Q. Where people live, is it because -- I'm going 15 to say this in layman's terms, and please correct me if 16 I'm wrong. Is it because Native Americans tend to vote 17 for Democratic candidates and there are more Native 18 Americans in 9A, and white people tend to vote for 19 Republican candidates and there are many more whites in 20 9B? 21 A. That's the basic idea. But also then within 22 the precinct as well. Certain areas we know are very 23 high density Native American, look at that -- the vote 24 for this candidate here is either very Democratic or 25 very much for this Native candidate. In areas that are</p>

<p style="text-align: right;">Page 114</p> <p>1 -- precinct specifically not just the full subdistrict 2 -- that are very white, you see the converse trend. 3 And that again -- that's the very basic underpinning of 4 all of this ecological inference work anyways. 5 Q. I've jumped to page 32 it. It says here, I've 6 got it highlighted, "District 9 in Demonstrative Plan 1 7 has a Reock compactness score that is higher (i.e., 8 more compact) than five other districts in the plan 9 enacted by the legislature." 10 Do you see that? 11 A. Yeah. 12 Q. Now, is it your -- you've obviously read and 13 responded to Dr. Hood's expert report, correct? 14 A. Yeah. 15 Q. And is it your understanding that Dr. Hood has 16 opined that the District 9, as drawn, is more compact 17 than the Demonstrative Plans 1 and 2 submitted by the 18 plaintiffs; is that fair? 19 A. Yes. 20 Q. Do you disagree with his opinion in that 21 respect? 22 A. Not in that very specific respect. 23 Q. If I'm understanding your report here, you're 24 just pointing out that there are other districts within 25 North Dakota that have a more compact district?</p>	<p style="text-align: right;">Page 116</p> <p>1 that. 2 Q. I'm going to jump over here to Exhibit 37. 3 Now, in this one, you have included both Reock and 4 Polsby-Popper scores, correct? 5 A. Correct. 6 Q. Coming back to your Turtle Mountain report 7 here, is the -- is the Polsby-Popper score less 8 favorable in terms of compactness when you're measuring 9 the demonstrative plans than Reock? 10 A. I don't -- I'd have to look. If you're trying 11 to say that I excluded mentioning Polsby-Popper here 12 because it looked worse, the answer is no. You know, 13 it's just -- these are two independent reports. You 14 know, most of the time I try to do the same thing to 15 the extent that I can, but there's different points in 16 time you're writing these and you're on different time 17 constraints and those kinds of things. So that 18 wouldn't be the reason. 19 Q. Is there value in running different metrics for 20 compaction? 21 A. Yeah, yeah, for sure. I mean, if you had the 22 perfect world, you would have as many as humanly 23 possible in anything. But like everything, when you -- 24 the more information you have in some ways, the better, 25 the more information you have, it can maybe cloud out</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Less compact. 2 Q. I'm -- 3 A. Yeah. 4 Q. Correct. Okay. 5 Now, in this report, you do look at Reock. I 6 don't believe you looked or mentioned in this initial 7 report the Polsby-Popper score; is that fair? 8 A. Yeah, I think that's right. 9 Q. Now, and we can look at it in a little bit here 10 in terms of the rebuttal report does mention 11 Polsby-Popper in quoting what Dr. Hood found. Did you, 12 yourself, run the Polsby-Popper score for compactness 13 on any of the districts you looked at? 14 A. Well, when I looked at these Reock scores, I 15 would have looked at Polsby-Popper because it just 16 comes out, but, you know, I just didn't include it. 17 Q. Is there a reason you didn't include it? 18 A. Not that I can think of. Sort of you start at 19 1 or end at 15, it seemed to be -- the point I was 20 making is that there is -- you know, in one of -- Reock 21 is probably the number one used measure, and so it's 22 just kind of a standard. The point I'm trying to make 23 here is there's other districts in the state in the 24 enacted plan that are -- have a lower Reock measure, or 25 just a lower measure. So I just, you know, stopped at</p>	<p style="text-align: right;">Page 117</p> <p>1 the overall narrative or kind of set of results that 2 make it easier to digest for people. 3 Q. Do you recall which measures Dr. Hood looked at 4 in terms of compactness? 5 A. Yeah. Well he -- he looked at Reock, Popper 6 and the Schwartzberg, so also three, you know, common 7 measures. 8 Q. Sorry to shuffle my papers loudly there. 9 A. No worries. 10 Q. I may jump around a bit, so please bear with 11 me. And showing you Exhibit 40, which I believe is 12 your rebuttal report. 13 A. Okay. 14 Q. Do you recognize this as your rebuttal report? 15 A. Yes. 16 Q. Okay. I'll make sure that's large enough for 17 you. We'll go through some of the other details in a 18 moment, but let's look at these key findings first. It 19 looks like you've listed four key findings. Let's just 20 look at this first one. "Dr. Hood incorrectly 21 characterizes LD-9 as a Native American opportunity 22 district because he fails to account for turnout 23 differentials that make white voters a substantial 24 majority of the usual electorate in the district." 25 Do you see that?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. I do.</p> <p>2 Q. What do you mean by that?</p> <p>3 A. Well, basically the legislature is drawing a</p> <p>4 district that is majority, minority, so to speak, in</p> <p>5 terms of its voting age population. But when you</p> <p>6 actually look at who tends to vote and who doesn't tend</p> <p>7 to vote by race, you see that in District 9 that the</p> <p>8 white voting age -- sorry, white voters comprise a</p> <p>9 larger share of the electorate, actually. So it's --</p> <p>10 to that extent that there's strong racially polarized</p> <p>11 voting, as I've demonstrated, it means that this is</p> <p>12 functionally not really an opportunity district.</p> <p>13 Q. Specifically because of turnout?</p> <p>14 A. That is one of the main reasons, yeah.</p> <p>15 Specific -- yeah, I mean, you need to incorporate that,</p> <p>16 I think.</p> <p>17 Q. There are a higher percent -- or there is a</p> <p>18 higher percentage of Native American voting age</p> <p>19 population in LD-9 than there is whites, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Does the Voting Rights Act -- I may have asked</p> <p>22 you this before, but I'll ask again. Does the Voting</p> <p>23 Rights Act guarantee certain election outcomes?</p> <p>24 A. No.</p> <p>25 Q. It really just requires an opportunity to</p>	<p style="text-align: right;">Page 120</p> <p>1 different than mine. Mine looks at actual election</p> <p>2 results whereas his requires some sort of -- you know,</p> <p>3 a couple steps in the process. In this case,</p> <p>4 empirically our results I think were, at least in the</p> <p>5 same elections we looked at, were very similar. So</p> <p>6 while I would say that his way of doing it is probably</p> <p>7 acceptable and he probably is using a -- maybe a method</p> <p>8 that's somewhere in the literature, the way that I do</p> <p>9 it is a little more based on actual real results.</p> <p>10 There's -- there's not really some sort of, you know,</p> <p>11 estimate this then estimate that kind of thing. So I</p> <p>12 think it's a little cleaner.</p> <p>13 Q. Let's look at the second bullet point here. It</p> <p>14 says -- I'm on Exhibit 40 still -- "Dr. Hood's Gingles</p> <p>15 III analysis is methodologically flawed because (1) he</p> <p>16 equally weighs all elections even though some are</p> <p>17 significantly more probative than others."</p> <p>18 Do you see that part?</p> <p>19 A. Yeah.</p> <p>20 Q. Do you remember when we looked at your Walen</p> <p>21 report, you had a chart in there that showed whether</p> <p>22 the Native American candidate of choice was elected in</p> <p>23 your functional analysis for all the elections you</p> <p>24 analyzed?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 elect, right?</p> <p>2 A. I mean, that's -- that's --</p> <p>3 MS. DANAHY: I'm going to object; it calls</p> <p>4 for a legal conclusion.</p> <p>5 THE WITNESS: Yeah, I think that is still</p> <p>6 somewhat in that ballpark.</p> <p>7 BY MR. PHILLIPS:</p> <p>8 Q. Did Native Americans have an opportunity to</p> <p>9 elect their candidates of choice in 2018?</p> <p>10 A. In 2018, their preferred candidates I think did</p> <p>11 win, yeah.</p> <p>12 Q. So they had the opportunity to elect those</p> <p>13 candidates of their choice?</p> <p>14 A. Sure.</p> <p>15 Q. I want to make sure I understand this</p> <p>16 conceptually. Is turnout relevant to a Gingles</p> <p>17 analysis, any of the Gingles prongs? Or is it only</p> <p>18 part of your functional analysis?</p> <p>19 A. Gingles III. I think Dr. Hood's methods for</p> <p>20 calculating functionality I think incorporates turnout.</p> <p>21 Q. Do you disagree with the use of turnout in a</p> <p>22 functional analysis?</p> <p>23 A. Well, I mean, I was just saying that turnout</p> <p>24 isn't theoretically as incorporated. The way that</p> <p>25 Dr. Hood does his functionality analysis is certainly</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. And that chart is not in your report in this</p> <p>2 case either, your initial report or your rebuttal</p> <p>3 report, right?</p> <p>4 A. That's right.</p> <p>5 Q. Do you understand Dr. Hood's opinion that he</p> <p>6 issued in his report and in his deposition testimony to</p> <p>7 be a critique of your expert opinion?</p> <p>8 A. I'm not sure. I mean, it -- it seems --</p> <p>9 usually the way these reports go is I write a report</p> <p>10 and then an expert for the defense comes in and</p> <p>11 critiques it, just as a matter of the process. So in</p> <p>12 that sense, yeah, that's how I interpret it. But on</p> <p>13 the other hand, you know, a lot of it is his own</p> <p>14 independent analysis.</p> <p>15 Q. Dr. Hood didn't choose the elections to</p> <p>16 analyze, did he?</p> <p>17 A. You mean like -- I guess I'm not really</p> <p>18 quite --</p> <p>19 Q. So --</p> <p>20 A. -- sure what you mean.</p> <p>21 Q. So we looked at those tables that showed all</p> <p>22 the elections that you analyzed in your analysis, both</p> <p>23 in this case and in the Walen case. Dr. Hood didn't</p> <p>24 add any elections or remove any of those elections from</p> <p>25 his analysis, he just relied on the same ones you did;</p>

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1 isn't that fair?
 2 A. Well, in terms of his -- these broader tables
 3 that he's making an assessment. But I think he only
 4 conducted RPV on, like, 2018 and 2020 or something. So
 5 in that sense, he did exclude some of the ones I looked
 6 at. I think -- I think that's right.
 7 Q. Do you remember for sure which ones he
 8 excluded?
 9 A. I mean, I'd have to go and look at his report.
 10 I don't have it on me.
 11 Q. To be clear, when you conducted your analysis,
 12 you could have included any reports that you deemed
 13 appropriate -- or any elections you deemed appropriate,
 14 right?
 15 A. Yeah, I think so. I don't know of any reason
 16 why I couldn't do that.
 17 Q. And you could have excluded any election that
 18 you wanted to?
 19 A. Yeah. I guess. I mean, I would be open to
 20 critique in that response, and so that's why I included
 21 2018.
 22 Q. So number two here, reading this, it says, "Dr.
 23 Hood's Gingles III analysis is methodologically flawed
 24 because he includes election results from packed
 25 subdistrict 9A in his combined analysis but excludes

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1 election results from cracked District 15."
 2 Do you see that?
 3 A. Yeah.
 4 Q. Are you saying that the election results from
 5 Subdistrict 9A should not be included in a VRA, Voting
 6 Rights Act, analysis of District 9?
 7 A. Well, obviously I'm not saying that, because I
 8 included it in some of my analyses, so I think it's
 9 still important to look at. But in terms of coming to
 10 say that Gingles III perspective, we know that 9A is
 11 going to perform, we see that. That's the specific
 12 reason for it. What we really want to look at is the
 13 full subdistrict and then are there other Native
 14 Americans that are in the area that could be
 15 incorporated and given representation, and he doesn't
 16 look at that, i.e., 15.
 17 Q. Is it fair to say it's not error or improper
 18 methodology to consider 9A in your analysis, right?
 19 A. I don't think you would be including that in,
 20 like, the overall kind of combined analysis, like
 21 equally weighting 9A and 9B. Those are discrete
 22 analyses.
 23 Q. Did you include 4A in your analysis in the
 24 Walen case?
 25 A. No, I did them discretely, 4, 4A, 4B. With a

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1 d-i-s-c-r-e-t-e-l-y.
 2 Q. So I understand your opinion, I think, with
 3 respect to the alleged cracking of the Native Americans
 4 that are currently residing in District 15. But help
 5 me understand how 9A and 9B constitute packing in
 6 general.
 7 A. Wait, say that again.
 8 Q. Well, how -- I can understand your argument
 9 that Native Americans that currently reside in District
 10 15 were not included in 9. Is anything wrong -- or
 11 what do you see as being wrong with the creation of a
 12 subdistrict in 9 though that includes Native Americans
 13 in a single subdistrict at a high percentage?
 14 A. Well, it's not occurring in an island, per se.
 15 The result of -- I mean, you just have to look at the
 16 result. Let's just take 2022 legislative elections as
 17 an example. And, you know, I've raised this point, but
 18 you have a broader Native American community in the
 19 region that could be incorporated into a D9 that
 20 wasn't. So they don't get anything. And what that
 21 means is that the full Native American population in D9
 22 also doesn't get their elected candidate of choice at
 23 the State Senate level. And then the Native American
 24 population that's in 9B also doesn't get
 25 representation. Whereas if you effectively draw a

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1 district similar to -- doesn't have to be exact, but
 2 similar to the demonstratives, my analysis shows that
 3 you'd get three for three. Right. So you have to look
 4 at it in kind of the bigger regional perspective.
 5 Q. When it comes to District 9, it's -- there's
 6 another nearby Native American population in 15, right?
 7 So in the Spirit Lake reservation. And -- is that
 8 correct?
 9 A. Yes.
 10 Q. There's not something similar with respect to
 11 District 4, right?
 12 A. That's right.
 13 Q. So in 4, you have an opportunity and you got
 14 three seats, one Senator and two House members, and you
 15 have the ability to allow Native Americans almost a
 16 guaranteed chance to elect a House member, right?
 17 A. Correct.
 18 Q. And that complies with the Voting Rights Act,
 19 in your opinion, in the Walen case, right?
 20 A. Correct.
 21 Q. Now, over in the northeastern part of the state
 22 where we're talking about Turtle Mountain and Spirit
 23 Lake, as drawn, the District 9 and its subdistricts do
 24 something similar, right, it gets nearly -- a very high
 25 chance of Native Americans electing their candidate of

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1 choice for one House seat, right?
 2 A. Right.
 3 Q. And a nearly guaranteed chance to lose another
 4 House seat, right?
 5 A. Right.
 6 Q. And the Senate, it could go either way, right?
 7 There's a more than 50 percentage Native American age
 8 voting population in 9, right?
 9 A. No, I -- I don't think it could go either way.
 10 I mean, looking at this last election, which is the
 11 most probative, I mean, the State Senator, who is
 12 Native American, lost. He's incumbent, too.
 13 Incumbents typically win. And then also 2020. So the
 14 more recent elections show reversal of Native Americans
 15 and their ability to elect candidates of choice in that
 16 specific area off of 51 or 52 percent Native American
 17 single race VAP, voting age population.
 18 Q. In election years where Native Americans have a
 19 higher turnout, 2018 for example, they are capable of
 20 electing their candidates of choice in District 9,
 21 correct?
 22 A. In 2018, they did in that district elect
 23 candidates of choice. But, again, as I demonstrated in
 24 my rebuttal report, that is an extremely anomalous
 25 election. So it's not the trend. Unless North Dakota

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1 wants to pay for Dave Matthews to repeatedly show up on
 2 election day. No, just kidding.
 3 Q. I've seen Dave Matthews, and I want to say it
 4 was in Fargo. So I think they've come. Long, long
 5 ago.
 6 But in any event, in your opinion though, North
 7 Dakota is required to draw a district that gives Native
 8 Americans over 90 percent chance of electing all three
 9 seats to be --
 10 A. No. No, that's -- the demonstrative is really
 11 to demonstrate -- and again, I didn't draw that. But
 12 it's to demonstrate that it's very possible to draw a
 13 district that provides a very good opportunity at least
 14 for Native American voters in the region. And the
 15 legislature just didn't do that. You know, I don't
 16 know why. I don't -- I don't know why they didn't, you
 17 know, but it doesn't have to be 90 percent. There's
 18 other cases I've worked on where, you know, we're
 19 looking at more often than not, et cetera, et cetera.
 20 Q. But in this --
 21 MS. DANAHY: I lost the court reporter
 22 from my screen, I don't if she's --
 23 MR. PHILLIPS: I can still see her.
 24 COURT REPORTER: I'm here.
 25 MS. DANAHY: Okay.

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1 BY MR. PHILLIPS:
 2 Q. Now, in this case though, if I understand your
 3 earlier testimony, in order to prevent breaking up
 4 communities of interest, any VRA compliant district has
 5 to encompass both reservations, the Turtle Mountain and
 6 the Spirit Lake reservations. Isn't that what you said
 7 earlier?
 8 A. Well, we'd have to look at the transcript
 9 exactly what I said. But I think what I was trying to
 10 say is it would be better to keep these communities of
 11 interest together and that that necessarily would lend
 12 itself to putting the two reservations in the same
 13 district. And by doing so, you do result in a
 14 demonstrative that produces -- or a district that
 15 produces that 90 percent number, so whatever 91 to 93,
 16 that I had calculated.
 17 Q. Are you aware of any potential demonstrative
 18 map that's compliant with the Voting Rights Act in your
 19 opinion and which results in the Native American
 20 candidate of choice winning in less than 90 percent of
 21 the elections?
 22 A. The only demonstratives I've seen and/or looked
 23 at are the ones -- basically the ones that I've
 24 analyzed in my report that were given to me.
 25 Q. Is it your understanding that the North Dakota

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1 legislature created the subdistricts in 9, at least in
 2 part, to comply with the Voting Rights Act?
 3 A. That's my understanding.
 4 Q. And is it fair to say they essentially used the
 5 same method that they applied in District 4?
 6 MS. DANAHY: Objection --
 7 THE WITNESS: Yeah, I --
 8 MS. DANAHY: -- vague and --
 9 THE WITNESS: -- yeah --
 10 COURT REPORTER: I'm sorry, Ms. Danahy, I
 11 didn't hear your objection.
 12 MS. DANAHY: I said it was vague and calls
 13 for speculation.
 14 THE WITNESS: I don't -- I don't know if
 15 that is -- it seems likely, but I don't know.
 16 BY MR. PHILLIPS:
 17 Q. In 4, they created one subdistrict that was
 18 heavily populated with Native American voting age
 19 population and one subdistrict that was heavily
 20 populated with whites in the voting age population,
 21 correct?
 22 A. The comparisons I see are similar, yes.
 23 Q. They did something similar in 9 with one
 24 subdistrict having a heavy Native American voting age
 25 population and one subdistrict having a heavy white

<p style="text-align: right;">Page 130</p> <p>1 voting age population, right?</p> <p>2 A. Well, it's relatively heavy. You know, I mean,</p> <p>3 there's still the Native American voters who are</p> <p>4 outside of the Turtle Mountain tribal reservation lands</p> <p>5 are not getting represented. There's more of them in</p> <p>6 that 9B than there are Native Americans in 4B.</p> <p>7 Q. But you didn't conduct an analysis in 9 to</p> <p>8 determine if the state could have drawn the subdistrict</p> <p>9 differently to pull in more Native American population</p> <p>10 into 9A, right?</p> <p>11 A. I didn't do that specifically, but I would be</p> <p>12 very doubtful if they could have drawn a map that was</p> <p>13 equally performing -- or that was giving Native</p> <p>14 Americans a strong opportunity to elect candidates of</p> <p>15 choice in both districts, in both subdistricts.</p> <p>16 So that's why it's like -- while you might look</p> <p>17 at those numbers and say 9A is really packed because</p> <p>18 it's, like 80 percent Native American voting age</p> <p>19 population, and the other district is -- those voters</p> <p>20 are cracked. But in that context of just only looking</p> <p>21 at 9 by itself, and you -- you could make that</p> <p>22 statement, but it's going to be specific about the</p> <p>23 individuals who are in the different sides of the</p> <p>24 boundary, not the overall ability to elect candidates</p> <p>25 of choice. That wouldn't change, depending on how you</p>	<p style="text-align: right;">Page 132</p> <p>1 the, quote, opportunity to elect, or something like</p> <p>2 that. I think that's what he's doing. And he's not</p> <p>3 incorporating 9B. And so, you know, if he was going to</p> <p>4 include 9A, he should include 9B, although I don't -- I</p> <p>5 think he should still split them all up and look at</p> <p>6 them separately anyways, because they're different</p> <p>7 units of analysis. One's a full district, one's a</p> <p>8 subdistrict.</p> <p>9 Q. So the critique is not splitting them up and</p> <p>10 addressing them individually?</p> <p>11 A. Yeah. Because at issue is mainly the full --</p> <p>12 the full -- the full composition.</p> <p>13 Q. Is Gingles prong III present in 9B?</p> <p>14 A. Well, yeah, yeah, because, you know, the Native</p> <p>15 Americans getting blocked there from their -- electing</p> <p>16 their candidates of choice is certainly there. So</p> <p>17 there's white bloc voting of those individuals' ability</p> <p>18 to elect. Of course, if you look at 9B by itself, then</p> <p>19 you're not getting over, you know, the Gingles I</p> <p>20 criterion. That's why you need to, you know, look at</p> <p>21 the full picture.</p> <p>22 Q. What about 9A? Is Gingles prong III present in</p> <p>23 9A?</p> <p>24 A. No.</p> <p>25 Q. Similar to 4B and 4A, right?</p>
<p style="text-align: right;">Page 131</p> <p>1 drew those numbers, at least at -- you know, you could</p> <p>2 maybe potentially make it worse where you drop it down,</p> <p>3 those numbers go down -- in fact, goes down across the</p> <p>4 board in, say, Subdistrict 9A, and now you have a</p> <p>5 situation where two white-preferred candidates get in.</p> <p>6 That's probably what the legislature was concerned</p> <p>7 about.</p> <p>8 Q. You may have testified to this already, but</p> <p>9 just to make sure I'm clear, are you familiar with the</p> <p>10 testimony at all in front of the legislature where it</p> <p>11 was -- the subdistricts were discussed?</p> <p>12 MS. DANAHY: Objection; asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: No, I'm not.</p> <p>15 BY MR. PHILLIPS:</p> <p>16 Q. Looking at this second point here still,</p> <p>17 "Dr. Hood's Gingles III analysis is methodologically</p> <p>18 flawed because (3) he does not address subdistrict 9B</p> <p>19 alone."</p> <p>20 Do you see that?</p> <p>21 A. Yeah.</p> <p>22 Q. What do you mean by that?</p> <p>23 A. Well, if he's incorporating 9A into his</p> <p>24 combined analysis but not 9B, because 9B is, like, a --</p> <p>25 not an opportunity. What he's doing is he's looking at</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Correct.</p> <p>2 Q. And there's no Voting Rights Act violation in</p> <p>3 District 4, right?</p> <p>4 A. Correct. According to my opinion.</p> <p>5 Q. "Dr. Hood's Gingles III analysis is</p> <p>6 methodologically flawed because (4) he fails to account</p> <p>7 for specific circumstances that make the 2018 elections</p> <p>8 of little or no probative value."</p> <p>9 Do you see that?</p> <p>10 A. Yeah.</p> <p>11 Q. Again, who -- you chose the elections to</p> <p>12 include in your initial report, right?</p> <p>13 A. Yeah. So I see what you're saying. You're</p> <p>14 saying, well, since you included them, he should have</p> <p>15 looked at them. I get why you'd say that. But I had a</p> <p>16 paragraph in my initial report that said, hey, look,</p> <p>17 I'm including these, but still this needs, you know,</p> <p>18 caution to be interpreted, you know, from a cautious</p> <p>19 standpoint given these unique circumstances. And, you</p> <p>20 know, Dr. Hood just took that and didn't really</p> <p>21 incorporate that and just looked at them anyways.</p> <p>22 Q. Is it your opinion that the court should give</p> <p>23 no weight to the 2018 elections?</p> <p>24 MS. DANAHY: Objection; calls for a legal</p> <p>25 conclusion.</p>

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1 THE WITNESS: I think -- it's a tough
 2 call. For me, my opinion is probably include them but
 3 slightly for transparency so that the court can see the
 4 overall picture, but then also incorporate evidence
 5 about voter turnout by race that I provided so they can
 6 see the full picture that this is, you know, an extreme
 7 anomaly and to be, you know, certainly careful about
 8 weighting those at the same rate that we weight the
 9 2022 or 2020 elections at.
 10 BY MR. PHILLIPS:
 11 Q. Let's look at your third conclusion here.
 12 "Dr. Hood's conclusion that LD-15 satisfied Gingles II
 13 and III but not Gingles I because the existing LD-15 is
 14 not majority Native Voting Age Population is
 15 methodologically flawed," and so forth.
 16 Do you see that point?
 17 A. I do.
 18 Q. Dr. Hood opines that District 15, as drawn,
 19 could not function as an opportunity district.
 20 Do you agree with that statement?
 21 A. I do.
 22 Q. Do you disagree with him on that point?
 23 A. I agree as drawn with him. But the whole
 24 purpose of a Gingles III in this case is to see the
 25 broader regional context. And if we incorporated a

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1 broader regional context, those folks in D15 that are
 2 in Spirit Lake would be incorporated into a district
 3 incorporating Turtle Mountain, and so they would be
 4 clearing the Gingles I threshold.
 5 Q. And that combination district that pulls in
 6 both reservations, that gives over 90 percent chance
 7 that Native Americans elect all three candidates?
 8 A. Based on my functionality analysis, yeah, that
 9 would be correct.
 10 Q. And the state had no choice but to do that in
 11 order to comply with the Voting Rights Act?
 12 MS. DANAHY: Objection; calls for legal
 13 conclusion.
 14 THE WITNESS: Well, I guess we'll leave
 15 that to the court.
 16 BY MR. PHILLIPS:
 17 Q. Well, when the state drew District 9, it
 18 included the Turtle Mountain reservation and the
 19 surrounding trust lands, right?
 20 A. In the fuller district, yeah.
 21 Q. There's no other large Native American -- or I
 22 should say compact Native American population in the
 23 area except for the Spirit Lake reservation, right?
 24 A. That's my understanding.
 25 Q. Let's look at the fourth point here. I won't

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1 read the whole thing out loud, I'll just let you take a
 2 look at it, this fourth bullet point. I'll let you
 3 read it, so you can just let me know when you're done.
 4 A. Yeah, I'm done.
 5 Q. Dr. Hood admitted in his deposition that he
 6 made a mistake on the number of county splits, right?
 7 Did you read that in his transcript?
 8 A. Yeah, those things are understandable. It's
 9 easy to do. I certainly don't think it was done on
 10 purpose or anything like that.
 11 Q. The concluding sentence here says, "The
 12 demonstrative plan performs comparably or better on
 13 other districting criteria as well."
 14 Do you see that?
 15 A. Yeah.
 16 Q. What other criteria are you referring to in
 17 this sentence?
 18 A. Specifically the communities of interest off
 19 reservation in particular is one of them. So, you
 20 know, 9A, 9B, some off-reservation lands are getting
 21 cut, and by incorporating the full reservation and
 22 off-reservation trust lands into a demonstrative, for
 23 example, that's no longer happening.
 24 Q. When you talk about community of interest then
 25 in this context, are you only referring to the people

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1 on the Turtle Mountain reservation and in the
 2 surrounding trust lands as being a community of
 3 interest?
 4 A. I mean, in that specific statement, sure. As
 5 you know, community of interest, or COI, is, you know,
 6 incorporating of a bunch of different groups and ideas
 7 and economies and things. So it can be hard to define.
 8 Q. Is it -- do you have an opinion on whether the
 9 peoples of the Turtle Mountain reservation and the
 10 peoples of the Spirit Lake reservation constitute a
 11 single community of interest?
 12 A. I think there's certainly more of a community
 13 of interest relative to the Turtle Mountain folks than
 14 people over in Cavalier County that's just as far or
 15 farther away.
 16 Q. So it's not your opinion that the people of the
 17 Turtle Mountain reservation and the people of the
 18 Spirit Lake reservation constitute a single community
 19 of interest?
 20 MS. DANAHY: Objection; mischaracterizes
 21 his testimony.
 22 THE WITNESS: I think it's a broader
 23 community of interest. I think there's increasing work
 24 in political science and social science that shows that
 25 Native Americans have a common sense of shared identity

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1 given their differences -- or different general
 2 exclusion in American life, but that they also have
 3 their own separate identities as well depending on, you
 4 know, the tribe and the tribal region. It's just one
 5 of those things where they're broadly a community of
 6 interest, in my opinion, but then also discrete
 7 communities of interest as well.
 8 Q. Do you --
 9 A. It makes sense to combine them into a -- you
 10 know, a district when they're in the -- both in the
 11 similar region, right. I know this is rural North
 12 Dakota, so still there's some distance, but it makes
 13 sense. And previous legislatures have done that
 14 accordingly.
 15 Q. Are you familiar with -- generally speaking,
 16 familiar with local politics in either the Turtle
 17 Mountain reservation or the Spirit Lake reservation?
 18 A. I'm not familiar with the internal tribal
 19 politics and, you know, tribal elections, for example,
 20 if they have those. I'm not as intimately familiar
 21 with those.
 22 Q. Do you -- oh, I'm sorry, go ahead.
 23 A. No, yeah, so -- go ahead.
 24 Q. Do you know who's on the governing body of each
 25 tribe, Turtle Mountain and Spirit Lake?

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1 A. I don't think so.
 2 Q. Are you familiar with any specific local issues
 3 that are important to the Turtle Mountain or Spirit
 4 Lake Tribe?
 5 A. Well, I would imagine that voting
 6 representation is one issue that they share.
 7 Q. You said you can imagine. Do you have any
 8 factual basis for that statement?
 9 A. Yeah, I think in talking with counsel at one
 10 point, they were lining up discussions or there were
 11 discussions between the different tribes and the heads
 12 of the different tribes, as Spirit Lake and Turtle
 13 Mountain, to come together to try to form a district
 14 that could better represent them.
 15 Q. That's -- did I hear you right that that's
 16 based on conversations you had with counsel for
 17 plaintiffs?
 18 A. Yeah, I think so.
 19 Q. So I had asked -- we were look -- up on the
 20 screen here, we were looking at that last point and the
 21 last sentence that said the demonstrative plan performs
 22 comparatively or better on other districting criteria
 23 as well. And we talked about communities of interest
 24 as being one of the criteria that you're referencing
 25 here. Is there any other criterias that you're

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1 referencing in that sentence?
 2 A. Well, I would be getting at it later on in the
 3 report. I would -- we'd have to go there and discuss
 4 that. But I think that was the main point of that.
 5 Q. I lost track of time. Where were we -- when
 6 did we take our last break? Are we about time or no?
 7 A. We're -- yeah, I think we came back at -- we've
 8 been going for about 50 minutes, so we can take a
 9 ten-minute if you want.
 10 MR. PHILLIPS: Yeah, let's do that. Let's
 11 take ten minutes. I've found that if I don't take
 12 breaks every hour, the court reporters include all my
 13 uhs and ums.
 14 THE WITNESS: Yeah, it is tough to read
 15 yourself, you know, in the transcripts.
 16 (A break was taken at 2:47 p.m.)
 17 BY MR. PHILLIPS:
 18 Q. Dr. Collingwood, I'm going to try to streamline
 19 the rest of this to get done so I can get out of here
 20 in the next hour or so. So we'll shoot for that. In
 21 light of that, I might jump around a little bit here,
 22 so please bear with me.
 23 I'm going to share my screen again. Okay. Can
 24 you see looks like Exhibit 40 on my screen?
 25 A. Yes.

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1 Q. All right. And this is your rebuttal report in
 2 this case?
 3 A. Yes.
 4 Q. Let's go down to page 6. And here at the end
 5 of this last paragraph, it talks about statewide total
 6 Native voting age population grew from 5.1 percent to
 7 5.9 percent from 2010 to 2020. Do you see that part?
 8 And then it says proportionally that would equate to
 9 three State Senate seats and six State House seats?
 10 A. Yes.
 11 Q. The -- does the voting act -- or Voting Rights
 12 Act require or guarantee proportionality?
 13 MS. DANAHY: Objection; calls for a legal
 14 conclusion.
 15 THE WITNESS: It's my understanding,
 16 through some case law, that it does not.
 17 BY MR. PHILLIPS:
 18 Q. And it doesn't require -- am I correct that the
 19 statistics here in this paragraph are talking about
 20 statewide voting age population?
 21 A. That's statewide, yeah.
 22 Q. I mean, that's not necessarily true in the
 23 districts at issue, correct?
 24 A. Correct.
 25 Q. On to the next page, it says -- it's talking

<p style="text-align: right;">Page 142</p> <p>1 about the most recent elections here on page 7. And it 2 says, "Native American candidates of choice lost all 8 3 elections in 2022 in District 9." And it says, "This 4 is 100 percent block rate." 5 Do you see that? 6 A. Yes. 7 Q. That doesn't include the election in 9A, right? 8 A. That's just full District 9. 9 Q. Remind me -- and you didn't include the 10 election in 9A in your analysis at all, correct? 11 A. That -- that's not -- that's not true. I 12 included 9A in my initial report. But in terms of the 13 overall picture of making the VRA claim, 9A is not 14 really relevant to the -- to the claimants here. 15 Q. Thank you for that clarification. 16 This is the part of the day, Dr. Collingwood, 17 where my fatigue sets in. So please feel free to 18 correct me. 19 The -- did you -- please explain that once more 20 though in terms of how 9A -- the ways in which 9A are 21 not relevant to your analysis in this case. 22 A. The claim is -- really pertains to the full 23 District 9 and whether that is diluting Native 24 Americans' ability to elect candidates of choice in 25 specifically the full region. So that's why I</p>	<p style="text-align: right;">Page 144</p> <p>1 trend going from, say, an ability to elect to an 2 ability not to elect, especially in context where 3 districts could be drawn that provided a better 4 opportunity, that certainly lines up with vote 5 dilution, yes. 6 Q. And you disagree with those other experts who 7 do it differently? 8 A. I mean, it's just -- it's context specific, it 9 really is. You have to look at all the different 10 aspects to each one of these cases. 11 Q. I'm going to scroll down here a little bit on 12 to page 7. It says, "Dr. Hood's approach of simply 13 summing together all the election contests and equally 14 weighing them," and so forth. 15 Do you see that paragraph? 16 A. Yeah. 17 Q. It's fair to say that you criticize Dr. Hood 18 for doing that, summing up the election contests and 19 equally weighing them? That's a poor methodology in 20 your opinion; is that correct? 21 A. In this particular case, I think it is, 22 because, first of all, you have 2018 that's a totally 23 anomalous election. And then you see a very distinct 24 pattern kind of in more recent elections. I can see 25 why he did that, because it's easy to just, like, get</p>
<p style="text-align: right;">Page 143</p> <p>1 incorporated D15 as well in that area. When you look 2 at the full region and do, say, a Gingles III analysis 3 on 9 and 15 combined, you can see that Native Americans 4 really do not have -- in those separate districts, 5 they're definitely under represented relative due to 6 their ability to elect candidates of choice. So 9A is 7 effectively producing one out of three possible seats. 8 So that's the issue, right? 9 Q. Nine -- collectively when you consider 9 and 10 its subdistricts, it has essentially one guaranteed 11 seat? 12 A. In a nutshell, sure, yes. 13 Q. Do Native Americans have an opportunity to 14 elect the candidate of their choice for Senate in the 15 overall District 9 as drawn? 16 A. Well, based on the most recent available data, 17 no. Based on some earlier elections, we see that there 18 are sometimes -- they do -- when turnout is very, very 19 high or certain circumstances, their preferred 20 candidate does get in. 21 Q. In the context of vote dilution, is it fair to 22 say that you're interested in a pattern? 23 A. I think that is potentially a -- different 24 experts might have a different approach on that, but 25 certainly over time is something that if you see a</p>	<p style="text-align: right;">Page 145</p> <p>1 the result, take the average, weigh it or whatever, 2 treat them all the same, sum them up and be, like, 3 here's a number. In other context, that might make, 4 you know, fine sense because the conclusion wouldn't 5 necessarily be different whether you treat them all the 6 same or weigh more recent elections as more probative. 7 This election circumstance is one such that you 8 see that disjuncture, and so that needs to be taken 9 into consideration, in my opinion. 10 Q. I think you testified -- and correct me if I'm 11 wrong, you testified earlier that some experts would 12 consider the 2018 results as evidence that Native 13 Americans do have an opportunity to elect candidates of 14 their choice if they turn out to vote. 15 Do you recall that testimony? 16 A. I can see how someone would. I mean, someone 17 who's a defense expert obviously would say that. So 18 those are the experts I would have in mind, they would 19 naturally because that's in the interest of their 20 client. And they are empirical -- these things did -- 21 did occur, right, so I can't -- you know, it's 22 empirical, it's data. Dr. Hood can look at it, I can 23 look at it, we see the same thing, right, these things 24 occurred, so have to agree to some extent that this -- 25 in that context, there is an opportunity. But, you</p>

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1 know, how much to weigh or discount that relative to
 2 overall trend line, you know, that's where there's, you
 3 know, differences of opinion in approaches.
 4 Q. Ultimately, it's up to the court to decide,
 5 right?
 6 A. It seems like that's an approach in life in
 7 this type of work that we all face, yes.
 8 Q. Scrolling down here to this Section B on page 7
 9 of your report. I'll just read the title here,
 10 "Including Subdistrict 9A in the Gingles III Analysis
 11 is Methodologically Incorrect."
 12 Do you see that?
 13 A. Yeah.
 14 Q. Just to be clear, too, in the overall context
 15 of this, your rebuttal report is solely targeted at
 16 rebutting Dr. Hood's report, right?
 17 A. I believe that was the point of it, yeah.
 18 Q. Just clarifying for the record.
 19 A. Yeah.
 20 Q. Is it your opinion that including Subdistrict
 21 9A in the Gingles III analysis is incorrect
 22 methodologically?
 23 A. Yeah, I just -- I don't know why you would
 24 treat that as, like, equally weighted relative to the
 25 overall district and situation that's more part of the

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1 dispute really, at least that's my understanding.
 2 Because what it's going to do is it's going to say, oh,
 3 look, we include 9A, Native Americans win every single
 4 time, so, boom, there you go. There is -- you know,
 5 the state has done its due diligence or what have you
 6 and provided an opportunity for these voters to elect
 7 candidates of choice.
 8 Q. Did you include a Gingles III analysis of
 9 District 4A in your Walen report?
 10 A. Well, again, so what I do is I do do a
 11 performance analysis for each one just for the record,
 12 but I don't then combine it altogether into one
 13 aggregate number.
 14 Q. Are you saying -- help me understand. Why
 15 isn't it relevant to include a subdistrict that has a
 16 high chance of Native Americans electing a candidate of
 17 their choice in the overall analysis of District 9?
 18 A. Because the -- there's no dispute that drawing
 19 a subdistrict in 9A -- if we're only looking at 9A, you
 20 got to draw a subdistrict. The state -- and I would
 21 imagine the plaintiffs would agree on that point. But
 22 the fact that that then leaves out an additional
 23 representative -- likely Representative and a State
 24 Senator, that's the broader issue under discussion.
 25 And so given that, you need to look at the -- how the

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1 full district and/or proposed district operates under a
 2 Gingles III environment.
 3 Q. Native Americans have a very high percentage
 4 chance of electing a candidate of their choice in one
 5 of the subdistricts in 9, right?
 6 A. Yeah, 9A.
 7 Q. And in 2018, under the functional analysis in
 8 2018, Native Americans had the opportunity to elect the
 9 candidate of their choice in the overall district,
 10 which would be a Senate seat, right?
 11 A. Right.
 12 Q. I'll skip over a few things that just don't
 13 matter. Let's go down to page 9. Generally speaking,
 14 so we have Plaintiffs' Demonstrative Districts and then
 15 you've got some subsections here. Let's talk first
 16 about population deviation. This is a rebuttal report
 17 of Dr. Hood's opinion, correct?
 18 A. Correct.
 19 Q. What's your understanding of Dr. Hood's opinion
 20 with respect to population deviation?
 21 A. I think my sense would be the closer to zero,
 22 you know, that would be the goal. That's -- yeah.
 23 Q. Do you disagree with that?
 24 A. I mean, in all else equal, no. But when
 25 there's other factors, especially voting rights

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1 factors, that come into play, so that exact zero
 2 population deviation potentially becomes a little less
 3 relevant.
 4 Q. Is it fair to say that the Demonstrative Plans
 5 1 and 2 deviate from the ideal population more than the
 6 enacted LD-9?
 7 A. Yeah, I mean, you can see the numbers. I've
 8 got them there.
 9 Q. Looking at compactness next, Dr. Hood had
 10 analyzed Reock, Polsby-Popper and Schwartzberg. What's
 11 Schwartzberg-Adjusted adjusted, by the way? It says
 12 there in that sentence.
 13 A. I'd have -- I'd have -- I'd have to look.
 14 These are -- it's the same thing -- you know, this
 15 would be what he did. I read about it, but I'm sort
 16 of, you know, forgetting at the moment the very
 17 specific component. I think it has to do also with a
 18 perimeter of -- I think it's the relative to a circle
 19 that has the perimeter of the same length as the map,
 20 or something like that.
 21 Q. I believe it's Dr. Hood's opinion that --
 22 A. And then he adjusted that because it doesn't
 23 always go from zero to one, so he normalized it. I
 24 think that was what they adjusted, which is -- which
 25 is, like, a reasonable, you know, thing to do.

<p style="text-align: right;">Page 150</p> <p>1 Q. I believe it's Dr. Hood's opinion that LD-9 as 2 drawn is more compact than the Demonstrative Plans 1 3 and 2 submitted by plaintiffs. Is that your 4 understanding as well? 5 A. I don't think it's his opinion. I just think 6 it's an empirical fact. 7 Q. That's -- you don't disagree with that? 8 A. No, you can see the numbers. 9 Q. There's a section here addressing the effect of 10 water boundaries next at the bottom of page 9 and page 11 10. 12 Do you see that? 13 A. Yeah. 14 Q. Explain that, please, in layman's terms. What 15 is the effect of a water boundary on a compactness 16 level? 17 A. It basically grows the overall area of the 18 perimeter or the space of the perimeter, even though, 19 like, as the bird flies, if you went right across that, 20 it's not too -- it's not -- it's not that long, but 21 because it's going in and out and in and out, you can 22 see that if you actually take the total perimeter size, 23 it's really going to grow the perimeter of the map. 24 And so then when you go to make your compactness 25 calculation, it's going to reduce the overall</p>	<p style="text-align: right;">Page 152</p> <p>1 be effected? 2 A. I haven't come across a -- or I didn't conduct 3 an analysis. What you'd have to do is kind of, you 4 know, cut out those water boundaries and put in a 5 straight line and then take the difference. And so I 6 didn't do that. That's -- that -- I don't think that 7 that kind of analysis is built in. It might be, and I 8 just don't know, to, like, Maptitude. So I'd probably 9 have to do that, you know, like, program it myself. 10 And, you know, that's fairly complicated to do. 11 Q. What's the reason for -- I think you testified 12 earlier that it's preferable to run multiple 13 compactness measures. Am I -- is that a fair 14 characterization of your testimony previously? 15 A. I think in general, when it comes to, you know, 16 scientific analysis and expert reports and social 17 science, that, you know, the more is generally better. 18 The downside is that that can be too much, it can be 19 overbearing. 20 Q. Now, on the next page, you've got some examples 21 here of other districts, 18, 46, and, you know, like 34 22 here. You've got examples of other river-bounded 23 districts, right? 24 A. Correct. Or just areas -- districts that have 25 a similar or lower compactness scores as a</p>
<p style="text-align: right;">Page 151</p> <p>1 compactness score. And you can see that because, you 2 know, we have these other demonstratives that -- or 3 these other districts that you showed earlier, and some 4 of the other districts with relatively lower 5 compactness scores also have, you know, large water 6 boundaries. 7 Q. If I'm understanding the Reock score, you start 8 out by drawing the smallest possible circle around the 9 district, right? 10 A. That's right. 11 Q. And how is that impacted by the -- by a river 12 boundary? For example, what we're looking at on page 13 10, Plaintiffs' Demonstrative Plan 1, how would the 14 Reock score change based on that river boundary there? 15 A. That may not change as much, but the other two 16 would. 17 Q. Reock score wouldn't be impacted by river 18 boundaries, just Schwartzberg and Polsby-Popper, right? 19 MS. DANAHY: Objection; mischaracterizes 20 the testimony. 21 THE WITNESS: I wouldn't say that. I'd 22 have to go double check on the numbers. But certainly 23 more with the other ones. 24 BY MR. PHILLIPS: 25 Q. Do you know how much more the other ones would</p>	<p style="text-align: right;">Page 153</p> <p>1 demonstration that -- the argument about compactness is 2 sort of not -- it only works in isolation, but not with 3 these other kind of features of geography and other 4 landscapes and things. 5 Q. Just as an example, in 18, for example, the 6 river dominates the entire eastern side of that 7 district, right? 8 A. Yes. 9 Q. Same thing for 46, it runs along the entire 10 side of the district? 11 A. Right. But you can go inland instead, 12 potentially. 13 Q. I'm not sure I follow that. 14 A. Well -- I mean, I'd have to look at the 15 population, but theoretically those districts could go 16 east to west instead of north to south, you know. 17 Q. Understood. Now, this district we're looking 18 again at page 10 of plaintiffs' demonstrative plan. 19 The river does not run along the entire side of the 20 district, does it? 21 A. That would be one -- one right-angled river if 22 it did. 23 Q. Yeah. The reason this demonstrative exhibit -- 24 or, sorry, demonstrative plan runs north, south is 25 specifically to connect the two reservations, right?</p>

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1 A. I mean, that's the -- that's my understanding.
 2 I don't want to use language that says that's the only
 3 reason. But that's -- that's my understanding.
 4 Q. Is it your opinion that any district that
 5 complies with the Voting Rights Act would have to run
 6 in a sort of north-south direction like this?
 7 MS. DANAHY: Objection; calls for legal
 8 conclusion.
 9 THE WITNESS: Well, based on my empirical
 10 statistical analysis, yes, but -- given the Gingles
 11 criteria.
 12 BY MR. PHILLIPS:
 13 Q. Let's come down to the bottom of page 11 here.
 14 You talk about a Supreme Court case. Is this a case
 15 that you worked on, this Perry case?
 16 A. No, but it's a fairly -- it comes up, you know,
 17 from time to time in different cases I've worked on.
 18 Q. And what's the purpose for including this map
 19 on page 12 in your report?
 20 A. Basically, the idea is to show, first of all,
 21 there's north to south districts and that, you know,
 22 different communities of color, in this case Hispanic
 23 communities, are being connected and fairly wide
 24 regions -- sorry, wide -- long regions and that the
 25 scores, you know, Reock scores, are similar or lower

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1 than the demonstratives in the Turtle Mountain Spirit
 2 Lake area and that these are effectively compliant with
 3 the Voting Rights Act.
 4 Q. And, just to be clear, is it your understanding
 5 that Dr. Hood's opinion is that the compactness scores
 6 for the District 9, as enacted, are better than the
 7 compactness scores for the demonstrative plans?
 8 A. I don't think it's an opinion. It's the scores
 9 for those specific districts are higher. I guess --
 10 you know, I get sometimes these legal opinion ways of
 11 being, it's just -- it's an empirical reality.
 12 Q. Compactness is something that legislatures do
 13 need to account for when they're doing redistricting,
 14 right?
 15 A. Yeah, it's a pretty commonly examined measure,
 16 one way that we evaluate or they evaluate maps.
 17 Q. Is it fair to say that redistricting analyses
 18 are highly local?
 19 A. I guess -- I think I know where you're going
 20 with that, but maybe you could specify a little bit
 21 more.
 22 Q. Well, this map is in Texas, right?
 23 A. I thought that's where you were going.
 24 Right. But under the Voting Rights Act, it's
 25 still a national kind of interpretation as applied

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1 across the country. So that's why I think it's
 2 relevant.
 3 Q. I am correct though that it is a map of a
 4 portion of Texas?
 5 A. Yes, this is Texas. Yeah.
 6 Q. I mean, the North Dakota legislature didn't
 7 consider this Texas map when it did its redistricting
 8 in North Dakota, did it?
 9 A. I'm --
 10 MS. DANAHY: Objection; calls for a legal
 11 conclusion.
 12 THE WITNESS: My guess -- yeah, they might
 13 have. I don't know. I don't know.
 14 BY MR. PHILLIPS:
 15 Q. Is it your opinion that they were required to
 16 account for this map in the redistricting process?
 17 A. I don't know.
 18 MS. DANAHY: Objection; that calls for a
 19 legal conclusion. I'm not sure the . . .
 20 MR. PHILLIPS: Any further objection?
 21 BY MR. PHILLIPS:
 22 Q. Let's look at the next case down towards the
 23 bottom of that page 12, and there's a map on 13.
 24 Abbott v. Perez. Did you work on that case?
 25 A. No.

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1 Q. Now, this map that is shown here on page 13 is
 2 kind of a, say, long, skinny district; is that fair?
 3 Fair characterization?
 4 A. It has some interesting characteristics to it,
 5 yes.
 6 Q. What are those interesting characteristics?
 7 A. A lot of little jut outs and certainly a thin
 8 connector -- long, thin connector in the middle with
 9 some more jut outs presumably to gather different
 10 communities, some areas where, you know, the -- it
 11 almost looks like the district is only a street wide or
 12 something.
 13 Q. It generally follows the interstate there, I
 14 think, right? I can't -- I mean, I think that's 35.
 15 A. Yeah.
 16 Q. Do you -- and it's my understanding this case
 17 involved Hispanic populations; is that accurate?
 18 A. Yeah.
 19 Q. Do you know the percentage of Hispanic voting
 20 age population down there in the San Antonio end of
 21 this district?
 22 A. I don't know off the top of my head, but it
 23 would be high. San Antonio is one of the larger Latino
 24 Hispanic populations in the U.S. for a big city.
 25 Q. What about the Hispanic population up in the

<p style="text-align: right;">Page 158</p> <p>1 Austin portion of this district?</p> <p>2 A. Right, so that would be -- Austin overall is</p> <p>3 not as large of Hispanic population, but certainly</p> <p>4 there's Hispanic Latino areas. So I think that's where</p> <p>5 -- other than some additional pockets, that's where</p> <p>6 this district's connecting those populations together.</p> <p>7 Q. Now, there are other cities along the way in</p> <p>8 this case, right, there's New Braunfels, San Marcos,</p> <p>9 Caldwell. I don't know if I can see otherwise or</p> <p>10 remember what else is there. But there are communities</p> <p>11 along the way, right, in this --</p> <p>12 A. Yeah.</p> <p>13 Q. Do you know the -- do you know the Hispanic</p> <p>14 population in these various communities along that</p> <p>15 strip in the middle?</p> <p>16 A. I don't know exactly. You know, I think those</p> <p>17 communities are all relatively small and, you know, I</p> <p>18 don't know exactly where the Hispanic populations are</p> <p>19 located, you know, kind of, quote, along the way.</p> <p>20 Q. Looking at Exhibit 39, do you know the</p> <p>21 population of Native Americans in the sort of white</p> <p>22 area between the two reservations on page 1?</p> <p>23 A. No, it doesn't -- I mean, it's probably not</p> <p>24 huge. I haven't done a block-by-block sort of closer</p> <p>25 examination here.</p>	<p style="text-align: right;">Page 160</p> <p>1 exist and that they're much smaller than what the</p> <p>2 demonstrative connecting area, as it were, is. That</p> <p>3 was the point.</p> <p>4 Q. The land bridge in Demonstrative Plans 1 and 2</p> <p>5 is longer than what you're seeing here with District</p> <p>6 23; is that -- that's fair?</p> <p>7 A. That's what I -- yeah. And, I mean, I don't</p> <p>8 really like using the term "land bridge." I'm using</p> <p>9 that term with respect to that term used by Dr. Hood.</p> <p>10 Q. Well, in this case, what we're looking at there</p> <p>11 with -- in the image here on page 14, do you know if</p> <p>12 anything is being connected? So, you know, we looked</p> <p>13 earlier at the demonstrative plans and how they're</p> <p>14 essentially connecting the two reservations. Are you</p> <p>15 aware of what, if anything, the districts here shown on</p> <p>16 page 14 are connecting?</p> <p>17 A. I'm sure they are connecting things because</p> <p>18 that's, you know, why the district is like that</p> <p>19 probably. Could be a population balancing issue.</p> <p>20 Again, I just -- I'm looking at the maps, I see</p> <p>21 something that's, you know, in line with this argument</p> <p>22 that's being proffered and simply demonstrating that</p> <p>23 the line is smaller than what we have in demonstrative.</p> <p>24 I don't know the reasons and rationale behind all that.</p> <p>25 Q. Is the same true with respect to the next -- or</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. It's small though, right? The Native American</p> <p>2 population between the Turtle Mountain reservation and</p> <p>3 the Spirit Lake reservation is small; is that a fair --</p> <p>4 A. That's my -- yeah, I think that's right.</p> <p>5 Q. Scrolling down a little bit further on your</p> <p>6 rebuttal report on Exhibit 40, there's an LD-23 graphic</p> <p>7 here.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. What's the purpose of including this image?</p> <p>11 A. This is mainly to document that there are,</p> <p>12 quote, land bridges, as written by Dr. Hood, in other</p> <p>13 areas of the state. So even if we did concede that</p> <p>14 that's a, quote, land bridge, and so therefore because</p> <p>15 it's a land -- so the argument is there's a land bridge</p> <p>16 so therefore we shouldn't have that district, well,</p> <p>17 there's land bridges, quote, unquote, in other areas in</p> <p>18 other districts and that those, quote, land bridges are</p> <p>19 even smaller.</p> <p>20 Q. Are you familiar with the legislative history</p> <p>21 relating to the creation of this area here with</p> <p>22 District 23 and District 1?</p> <p>23 A. No. I'm not intimately familiar with the</p> <p>24 reasons why there's these different types of shorter,</p> <p>25 smaller connecting areas. All I know is that they</p>	<p style="text-align: right;">Page 161</p> <p>1 page 15 here? There's an image here of enacted LD-31.</p> <p>2 I assume it's on here because of this little --</p> <p>3 northeast corner?</p> <p>4 A. Yes.</p> <p>5 Q. Again, do you have any legislative reasons that</p> <p>6 went into creation of the District 31?</p> <p>7 A. No.</p> <p>8 Q. The -- down here on page 16, there's discussion</p> <p>9 of the distance between the reservations, and Dr. Hood</p> <p>10 had talked about the distance between 77 miles apart</p> <p>11 centroid to centroid, and I believe you put a shorter</p> <p>12 distance here.</p> <p>13 Do you see that part?</p> <p>14 A. Yes.</p> <p>15 Q. I understand that you want to use a different</p> <p>16 measure, but do you disagree with Dr. Hood that</p> <p>17 centroid to centroid the distance is 77 miles if you</p> <p>18 were to use that measure?</p> <p>19 A. I didn't calculate centroid, but I -- I don't</p> <p>20 see why he would be making that up. I'm sure his</p> <p>21 numbers are reliable. And so I took it at face value</p> <p>22 and, you know, just wanted to show that there was</p> <p>23 different methods of showing distance, and this is one</p> <p>24 of them.</p> <p>25 Q. How did you determine your distance of 55</p>

<p style="text-align: right;">Page 162</p> <p>1 miles? What are you measuring?</p> <p>2 A. The boundaries of the two reservations.</p> <p>3 Q. That's still 55 miles, correct?</p> <p>4 A. 54.69.</p> <p>5 Q. If we go down to page 18 of your report, you</p> <p>6 say, "Moreover as the statewide map of Plaintiffs'</p> <p>7 Demonstrative Plan 1 shows, a number of the enacted</p> <p>8 plan's districts are larger in geographic size than</p> <p>9 Plaintiffs' demonstrative LD-9."</p> <p>10 What's the significance of smaller or larger</p> <p>11 districts?</p> <p>12 A. I think the point is to show that this district</p> <p>13 is not particularly unique. So it's showing that</p> <p>14 there's other districts that are less compact on</p> <p>15 various measures that there's other districts that have</p> <p>16 much, much smaller connection -- quote, connection</p> <p>17 areas and then that the configuration of this district</p> <p>18 is wholly visually within the bounds of what the state</p> <p>19 is doing already. And so -- and you can visually see</p> <p>20 that, and this is what occurs in, you know, very rural</p> <p>21 areas is you can get these large district</p> <p>22 configurations and that our demonstratives here, the</p> <p>23 ones that we've looked at, you -- they're not</p> <p>24 particularly stand out in any way.</p> <p>25 Q. Do any other districts in North Dakota have two</p>	<p style="text-align: right;">Page 164</p> <p>1 district is certainly -- has precedent here.</p> <p>2 Q. Did the 1993 to 2002 version of LD-12 connect</p> <p>3 the Turtle Mountain and Spirit Lake reservations?</p> <p>4 A. That is the difference here. And so because</p> <p>5 the Turtle Mountain's in Rolette county, and so it</p> <p>6 is -- you know, that's the main difference. But if</p> <p>7 we're on this, you know, land bridge, quote, unquote</p> <p>8 argument, again, you can see that there's a similar</p> <p>9 north to south through I think that's Pierce County.</p> <p>10 And so there's precedent for doing that.</p> <p>11 Q. Scrolling down to page 19, it discusses</p> <p>12 communities of interest, I know we talked about this a</p> <p>13 little earlier, I just want to make sure I understand</p> <p>14 your testimony. Do you have knowledge of the history</p> <p>15 of each of the tribes that are located in the Turtle</p> <p>16 Mountain and Spirit Lake?</p> <p>17 A. Only through speaking with counsel. But I</p> <p>18 don't have, like, a deep historical knowledge of the</p> <p>19 two tribes and, you know, that kind of thing.</p> <p>20 Q. I'm sorry to cut you off there. Were you done?</p> <p>21 A. Yes.</p> <p>22 Q. Are you incorporating into your opinion any of</p> <p>23 the information that you obtained from counsel in that</p> <p>24 regard?</p> <p>25 A. Well, yeah, I think to the extent that the --</p>
<p style="text-align: right;">Page 163</p> <p>1 reservations within them, other than, you know, the</p> <p>2 demonstrative plan?</p> <p>3 A. I don't think so. I don't know for sure. The</p> <p>4 issue is that this is the large -- I think the largest</p> <p>5 area of Native American concentration in the state.</p> <p>6 And then of course the MHA Nation, which I</p> <p>7 think is in 4A and B is kind of a combination of</p> <p>8 different tribal groups, but I think it's within the</p> <p>9 same overall boundary of one reservation.</p> <p>10 Q. Is there any other district in North Dakota</p> <p>11 that has a high Native American voting age population</p> <p>12 at each end of a, we'll say, long district?</p> <p>13 A. I don't know. I don't think so.</p> <p>14 Q. You talk here in this paragraph at the bottom</p> <p>15 of page 18 about the 1993 to 2002 version of LD-12.</p> <p>16 Do you see that?</p> <p>17 A. Yeah.</p> <p>18 Q. What's the significance of that?</p> <p>19 A. Well, it's to show that the -- it's not unusual</p> <p>20 for the district in this case to go north to south.</p> <p>21 You know, just because the state drew east to west</p> <p>22 doesn't mean it's some sort of natural configuration in</p> <p>23 that while Rolette County isn't in that initial 1993,</p> <p>24 2002 district, it's still a similarly configured map.</p> <p>25 And so you can visually show that a north to south</p>	<p style="text-align: right;">Page 165</p> <p>1 the heads of the two tribes and communities were very</p> <p>2 much open to having a shared district speaks to a</p> <p>3 community of interest. If they -- if they didn't see a</p> <p>4 shared commonality, they would not want to create a</p> <p>5 north-to-south district.</p> <p>6 Q. The proposed districts would give the Native</p> <p>7 Americans in both reservations over 90 percent chance</p> <p>8 of electing all three candidates within the district,</p> <p>9 right?</p> <p>10 A. Yeah. I mean, according to my performance</p> <p>11 analysis. I mean, in reality, the number could be a</p> <p>12 little lower, it could be a little higher.</p> <p>13 Q. And certainly a reason why the, you know,</p> <p>14 individuals representing those two tribes would want a</p> <p>15 combined district, right?</p> <p>16 A. There could be a variety of motivations for</p> <p>17 individuals who are wanting that, that I don't know</p> <p>18 about.</p> <p>19 Q. Other than that motivation, are you aware of</p> <p>20 any reasons the two tribes would want to be connected</p> <p>21 in a single district?</p> <p>22 A. I don't know all the detailed reasons about</p> <p>23 that.</p> <p>24 Q. In the 2021 redistricting, did the state break</p> <p>25 up any individual reservations? I mean, does any</p>

<p style="text-align: right;">Page 166</p> <p>1 district or -- split reservation into two? 2 A. I haven't done a state by -- a 3 district-by-district analysis on splits, so I don't 4 know. 5 Q. The districts, as drawn, 15 and 9, they don't 6 split either the Turtle Mountain reservation or the 7 Spirit Lake reservation into individual reservations, 8 correct? 9 A. That's -- I'm pretty sure that's right, yeah. 10 Q. The governing body of the Turtle Mountain 11 tribe, do you know if its jurisdiction extends beyond 12 the boundaries of the reservation into the trust lands? 13 A. I don't know how the trust lands and the 14 jurisdiction works. I was -- I think that might be a 15 case-by-case basis from one tribe to the next. I think 16 it's somewhat of a complicated issue that, you know, 17 lawyer -- lawyers in that area would know a lot about. 18 Q. Please correct me if my understanding is wrong, 19 but I under -- my understanding is that 9A has the 20 Turtle Mountain reservation and some trust lands and 21 that there are additional trust lands in 9B; is that 22 fair? 23 A. That's what I think, too. 24 Q. Do you have any opinion as to whether that 25 splits up communities of interest, or a community of</p>	<p style="text-align: right;">Page 168</p> <p>1 about core retention. 2 Do you see that? 3 A. Yeah. 4 Q. There's a sentence in here that -- initially, 5 you talk about Dr. Hood's opinion and then you say, 6 "The more salient question is how much additional 7 disturbance to actual voters would Plaintiffs' 8 demonstrative plan cause compared to the enacted plan." 9 Help me understand why comparing the 10 demonstrative plans to the enacted plan is a more 11 salient question than what Dr. Hood addressed. 12 A. Well, you're trying to look at people who are 13 getting moved around, because there's people that were 14 getting moved around from the previous map to the 15 enacted map, and that's what -- for example, if you 16 look at the next map, this one, so the purple, blue 17 area down to the right, they are getting moved into a 18 different -- in a new district in both the 19 demonstratives and the enacted. So in a sense, you're 20 taking them off the table. And then it's really just 21 the people in the blue -- or the pink who are kind of 22 moved who otherwise wouldn't be moved. And that's 23 only, like, 13 percent. So it's not -- you know, it's 24 not this huge number. 25 Q. When the legislature did its redistricting in</p>
<p style="text-align: right;">Page 167</p> <p>1 interest? 2 A. Well, it splits up communities of interest 3 across 9A and 9B. I mean, it just makes sense to keep 4 the tribal off-reservation trust lands with the tribe. 5 I think here in this case, the legislature was focused 6 on potentially population equality within, you know, 7 this higher area, and so that's why they did that. But 8 it certainly, you know, is splitting that up. 9 Q. Population equality is a constitutional 10 mandate, right? 11 A. Yeah. 12 Q. The legislature can't violate that population 13 equality principle, correct? 14 A. Well, yeah, but they could have drawn the 15 district north to south instead and they wouldn't have 16 this issue. 17 Q. And in your opinion, that's the only option the 18 state could have taken and still be in compliance with 19 the Voting Rights Act? 20 MS. DANAHY: Objection; calls for a legal 21 conclusion. 22 THE WITNESS: Yeah, I think in -- you 23 know, based on my analysis, I think that's right. 24 BY MR. PHILLIPS: 25 Q. Let's scroll down here to page 21. It talks</p>	<p style="text-align: right;">Page 169</p> <p>1 2021, they would have compared the prior districting to 2 the new -- to the enacted district, right? 3 A. Yeah, I think what they probably would have 4 done is for each -- each district, they're going to 5 look at, you know, the share of the population that's 6 still in that district from the previous year, like at 7 a block-by-block level I think is usually how it's 8 done. 9 Q. Is it your opinion that the legislature should 10 have drawn a map similar to Demonstrative Plan 1 or 11 Demonstrative Plan 2 that connects the two 12 reservations, that they should have done that in 2021? 13 A. Well, I don't know how -- I mean, obviously I 14 would say that, you know, I mean, given kind of what 15 we've been discussing. It's possible that the key 16 decision makers -- it just didn't -- they didn't even 17 though, they didn't think about it. Sometimes you get 18 stuck in a particular map format and, you know, there's 19 only so many maps you can make, et cetera, et cetera. 20 It could have gone down that sort of path dependence. 21 But it's also logical to -- and -- yeah, I guess I'm 22 sort of starting to speculate a little bit, so I don't 23 want to -- I don't want to do that. 24 Q. The -- apologies, just give me 20 seconds here. 25 If the legislature had gone with a plan that --</p>

<p style="text-align: right;">Page 170</p> <p>1 in which LD-9 connected the Turtle Mountain reservation 2 and the Spirit Lake reservation and they wanted to 3 analyze core retention, they would have compared the 4 old districting in the last ten years to the new plan, 5 right? They -- right? 6 A. Yeah, but it's just not that simple, because, I 7 mean, when you break it down a little bit more into 8 detail, you start to paint a different picture. It's 9 just that with core retention, you kind of have this -- 10 it's something you would do on a whole map and so you 11 can get a sense all over the place. And so -- but then 12 when you start to break it down into potential areas 13 like this, usually that should require a more detailed 14 analysis. And for a variety of reasons, legislatures 15 or other motivations, there's time constraints, they -- 16 capacity limitations, they -- they just -- they maybe 17 just don't do this right. 18 Q. So under what circumstances should the -- would 19 the legislature have compared LD-9 as it was drawn with 20 the plaintiffs' proposed plans? That's what I don't 21 understand that we have -- why would the legislature 22 compare those two maps? 23 A. Well, they -- suppose -- well, I don't actually 24 know, but they wouldn't have had a demonstrative, 25 right? But they could have -- in the areas -- well,</p>	<p style="text-align: right;">Page 172</p> <p>1 that to the new LD-9 as enacted and find out what 2 percentage of the people who voted in the old LD-9 are 3 still voting in the new LD-9, and that percentage is 4 your core retention. 5 A. That's correct. 6 Q. Okay. And so when the legislature did this 7 analysis, they may have compared the old LD-9 to what 8 ultimately they passed, or they could have compared it 9 to the -- compared the old LD-9 to, for example, 10 plaintiffs' demonstrative plans or to the map submitted 11 as part of the Marcellais amendment? 12 MS. DANAHY: I'm going to -- 13 MR. PHILLIPS: Go ahead. 14 MS. DANAHY: Sorry to interrupt. I'm just 15 going to object. I think this assumes facts not in 16 evidence about what the legislature did or did not do. 17 BY MR. PHILLIPS: 18 Q. Well, I guess the -- am I wrong that in all 19 cases the legislature would be comparing the old 20 enacted LD-9 to some new map, not comparing two new 21 maps? 22 A. That's probably what they did. I mean, I can 23 see why -- I mean, I can -- I can -- I understand why 24 Dr. Hood is doing this analysis, it's common analysis. 25 So I just -- there's other analyses that can be done</p>
<p style="text-align: right;">Page 171</p> <p>1 they know this area has VRA consideration because they 2 drew the subdistricts. And so in areas where there's a 3 possible VRA claim, it's in my experience usually there 4 becomes more detailed types of analyses. That's part 5 of the issues with these redistrict criteria, core 6 retention, compactness and things like this. They're 7 good in the sense they provide an overall picture of 8 the whole plan, the whole map, the whole state 9 legislature, make sure things look good at least kind 10 of at face value. But more detailed specific areas 11 where there's possible claims, VRA claims, they 12 would -- I mean, they would just need -- [technical 13 disruption] -- be more creative at individual level. 14 COURT REPORTER: I'm sorry, you broke up 15 in the last part of your answer. Can you restate that 16 last sentence? 17 THE WITNESS: They would have to do 18 analysis more kind of at an individual case-by-case 19 analysis. Something like that. 20 BY MR. PHILLIPS: 21 Q. If -- I'll give you my understanding of what 22 core retention is, and you please correct me if your 23 understanding is different. My understanding is that 24 core retention would look at the people who previously 25 resided in, voted in the old LD-9, and then you compare</p>	<p style="text-align: right;">Page 173</p> <p>1 that maybe not -- it's not as cookie cutter 2 straightforward. 3 Q. In 2021, before the state passed its 4 redistricting plan, the -- you know, the -- what was 5 ultimately enacted was just a proposed map, right? I 6 mean, it wasn't -- it was just a proposal? 7 A. I don't -- yeah, there's usually a bunch of 8 proposals and they choose one and vote it in. 9 Q. So there was one proposal that ended up 10 becoming the enacted plan. There was another proposal 11 that connected the two reservations. Are you aware of 12 that proposal? 13 A. Not in detail. But I'm sure it would be 14 somewhat similar to what we have here. 15 Q. When the legislature was considering core 16 retention as part of the traditional redistricting 17 criteria -- 18 MS. DANAHY: I'm going to object again. I 19 don't know that there's -- 20 MR. PHILLIPS: Let me finish my question 21 though, please. 22 BY MR. PHILLIPS: 23 Q. If the legislature was analyzing core retention 24 as a traditional redistricting criteria, is there any 25 reason why they would compare two proposed maps instead</p>

<p style="text-align: right;">Page 174</p> <p>1 of the old map with a proposed map?</p> <p>2 MR. PHILLIPS: Now you can make your</p> <p>3 objection.</p> <p>4 MS. DANAHY: I think by the time you</p> <p>5 finished that question, it resolved my objection.</p> <p>6 THE WITNESS: There's -- yeah, I mean,</p> <p>7 that's pretty common to do that. I don't know if they</p> <p>8 did it, but that's pretty common to do.</p> <p>9 BY MR. PHILLIPS:</p> <p>10 Q. Are you of an opinion one way or the other as</p> <p>11 to whether the legislature was required to do that</p> <p>12 comparison?</p> <p>13 A. I don't --</p> <p>14 MS. DANAHY: Objection; calls for a legal</p> <p>15 conclusion.</p> <p>16 THE WITNESS: I don't know if they're</p> <p>17 required to do it. It's just -- it's something that's</p> <p>18 commonly done all over when it comes to redistricting.</p> <p>19 It -- but whether it's, like, required, I don't know.</p> <p>20 That's probably case by case or not required.</p> <p>21 MR. PHILLIPS: I do have some more</p> <p>22 questions, by I do need to take a short break. Should</p> <p>23 we just come back in ten minutes?</p> <p>24 THE WITNESS: Sounds good.</p> <p>25 MS. DANAHY: Yeah.</p>	<p style="text-align: right;">Page 176</p> <p>1 your data. Did this 2020 census VTD file and the data</p> <p>2 that it contained, did that originate from Dave's</p> <p>3 Redistricting?</p> <p>4 A. No, it -- it originates in Dave's</p> <p>5 Redistricting, it is pulled directly from census</p> <p>6 products. So you could download the exact same file</p> <p>7 from, like, census redistricting, it's just that the</p> <p>8 workflow in this case is easier for me because I've</p> <p>9 become very familiar with Dave's.</p> <p>10 Q. And do you know what source Dave's</p> <p>11 Redistricting has for the data that it has?</p> <p>12 A. Well, it uses census data, for population and</p> <p>13 demographic counts for voting age population. It does</p> <p>14 also provide American Community Survey data, which is,</p> <p>15 like, similar to census data. It's available at</p> <p>16 different units, like blocks -- block routes and stuff.</p> <p>17 Q. That American -- oh, I'm sorry, go ahead.</p> <p>18 A. Yeah, American Community Survey. And then it</p> <p>19 also has election results that are taken from the</p> <p>20 respective secretaries of state and provides that data.</p> <p>21 It kind of links it all together when it's not always</p> <p>22 linked together in its raw forms. So that's why a lot</p> <p>23 of people like it, and it's free, unlike Maptitude.</p> <p>24 Q. Did you include in your analysis any of the</p> <p>25 data from the American Community Survey?</p>
<p style="text-align: right;">Page 175</p> <p>1 (A break was taken at 4:01 p.m.)</p> <p>2 BY MR. PHILLIPS:</p> <p>3 Q. Dr. Collingwood, I'm showing you Exhibit 38</p> <p>4 again, which is your initial expert report, and I'm</p> <p>5 going to scroll down to the bottom of page 2 and top of</p> <p>6 page 3. This lists some data sources.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Is this a comprehensive list of all of the data</p> <p>10 sources you relied on in forming your opinion in this</p> <p>11 case?</p> <p>12 A. Yes.</p> <p>13 Q. The -- I'm going to direct your attention to</p> <p>14 this Dave's Redistricting 2020 census VTD file. What</p> <p>15 is that?</p> <p>16 A. That's that Dave's Redistricting free software</p> <p>17 that you can draw maps and compare map plans and</p> <p>18 compactment scores that I referenced earlier. You can</p> <p>19 also download, like VTD or precinct files -- sorry, the</p> <p>20 unit of analysis is the precinct or the voting</p> <p>21 tabulation district, VTD, and that also includes, like,</p> <p>22 census data and American Community Survey data,</p> <p>23 aggregated to the VTD, which is used in racially</p> <p>24 polarized voting analysis.</p> <p>25 Q. And I just want to understand the sources of</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Not in the reports. Not in the reports.</p> <p>2 Q. So does that data inform any of your opinions</p> <p>3 in this case? I'm talking about the American Community</p> <p>4 Survey data.</p> <p>5 A. No, I think I'm using strictly census voting</p> <p>6 age -- sorry, census data.</p> <p>7 Q. And I think you had mentioned election outcome</p> <p>8 data is contained within Dave's Redistricting as well?</p> <p>9 A. Yes, but I didn't use that, I -- my general</p> <p>10 process is to go to the Redistricting Data Hub, which</p> <p>11 is kind of a clearinghouse, you might be familiar with</p> <p>12 it. And it's got data on all the states and stuff, and</p> <p>13 it's a pretty good resource. And there's an</p> <p>14 organization, I think it's, like, based out of</p> <p>15 University of Florida, maybe Harvard, it's called VEST,</p> <p>16 I think it's like Voting and Election Science Team.</p> <p>17 And they compile VTD data sets, usually going back</p> <p>18 three cycles or so, like 2020 to 2016, and they -- they</p> <p>19 take data from secretaries of state and then -- and</p> <p>20 usually that data is coming in from, like, you know,</p> <p>21 precinct and precinct and VTD, the boundaries are</p> <p>22 slightly different. It's a little bit confusing, but</p> <p>23 they make minor adjustments. And so I like that data</p> <p>24 because it comes in a shapefile format, I can map if I</p> <p>25 need to. And VTDs and blocks line up, so I can do</p>

<p style="text-align: right;">Page 178</p> <p>1 spatial lagging for precinct analysis -- or performance 2 analysis. Like, that's not always available. 3 Sometimes they have, like, topic ticket contests, but 4 they might not have down ballot ones, or they didn't 5 have, like, 2022 data yet posted. In that case, I 6 just -- I gather data from the actual secretary of 7 state and, you know, use actual election returns. So 8 that's my general process when I do these things. 9 Q. I'm going to talk in a moment about the 10 specific feature that you might have used in 11 redistricting, but I just want to be clear I understand 12 which data you relied on in forming your opinion 13 originated to you from Dave's Redistricting. 14 A. From Dave's, if memory serves, it's only the 15 census voting age population data is what I'm using 16 from Dave's. 17 Q. Right. And then voting age population data. 18 Okay. And let's talk about the features. What 19 features within Dave's Redistricting app would you use 20 in forming your opinion in this case? 21 A. Mainly the -- the compact -- the compactness 22 scores. Let me think. 23 Q. So when we talked earlier about calculating 24 Reock, for example -- 25 A. Yeah.</p>	<p style="text-align: right;">Page 180</p> <p>1 within your report, was that information gathered from 2 Dave's Redistricting? 3 A. Except for block -- the block data. So there's 4 two types of -- there's the VTD, which is the -- you 5 know, sort of the census's version of the precinct. 6 And Dave's makes that -- compiles that data, so I use 7 that. But then when I use, like, electroperformance 8 analysis and deal with split precincts, I just read in 9 a file off the Internet -- that sounds -- off the 10 census website that contains blocks, say, for North 11 Dakota, spatial blocks, and then that is -- so that's 12 not from Dave's directly, that's directly from the 13 census, but it's the same underlying data. 14 Q. But then you import that data into Dave's; is 15 that correct? 16 A. No, that would be -- I would do that in R. 17 Q. Got it. 18 A. Yeah. 19 Q. Do you know what company created Dave's 20 Redistricting? 21 A. Trying to remember. It might be just like a -- 22 like an academic researcher, someone who's interested 23 in redistricting, I assume Dave. But I -- I think -- 24 so I don't know that, you know, the -- kind of 25 origination story of Dave's.</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. Anything else besides compactness scores that 2 you use Dave's Redistricting to calculate? 3 A. No, I don't think so. 4 Q. Did you generate any images through Dave's 5 Redistricting? 6 A. I don't think so. The images are either 7 generated through Maptitude, straight up Google maps, 8 or via R. 9 Q. What was the last thing you said? 10 A. Or via R. 11 Q. The -- anything that was generated with 12 Maptitude, would that have been done by plaintiffs' 13 counsel? 14 MS. DANAHY: Objection; mischaracterizes 15 testimony. 16 THE WITNESS: I -- well, yeah, I would 17 have said, okay, I want this type of map and then 18 they'd generate it. I'm just going to have to look at 19 it, et cetera, et cetera. I would have -- you know, 20 the problem with Maptitude is you need a -- if you're 21 just going to use it everywhere, you need, like, it's a 22 fairly expensive license. So typically it's, like, a 23 case-by-case situation, like, if I'm drawing the maps. 24 BY MR. PHILLIPS: 25 Q. Whenever you reference voting age population</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Do you know who owns it today? 2 A. No. I assume Dave, but I don't know for sure. 3 Q. Have you reviewed any documentation from the 4 Dave's Redistricting website about the app and how it 5 works? 6 A. Yeah, there -- I mean, when I started using it 7 more, maybe a year or two ago, there were times when I 8 tried to read a lot of documentation. I don't, you 9 know, obviously recall that all off the top of my head. 10 But it all makes sense and totally was above board. 11 Q. Do you remember documentation explaining how 12 Dave's calculates compactness scores? 13 A. Vaguely. But, yeah, I can't site it directly, 14 but I -- I have looked at that. 15 Q. How does Dave's calculate compactness scores? 16 A. Like I said, I mean, I just sort of vaguely 17 recall looking at it, so I'd have to go and actually 18 look and then re-read it and look at the formula. 19 Q. You don't know it as you sit here today? 20 A. I couldn't recite it back to you. 21 Q. Have you ever double checked Dave's 22 Redistricting compactness results with some other 23 source or some other tools for measuring compactness? 24 A. There's other cases I've been in where I have 25 used it and someone else has used something else, and</p>

<p style="text-align: right;">Page 182</p> <p>1 the results were very comparable. So it was a little 2 surprising to me that there might have been some slight 3 variance between here and Maptitude. So, I mean, I 4 had -- I had had external -- like, I haven't sat and, 5 like, you know, done the analysis prior -- you know, 6 here's this and here's, like, using, say, R and then 7 Maptitude and then Dave's and maybe another venue. I 8 hadn't done that.</p> <p>9 Q. Have you ever attempted to compare the voting 10 age population data from Dave's to some other source to 11 verify the --</p> <p>12 A. Yeah. Yeah, I've done that. I've done that 13 with -- I've looked at, I think, their VTD production 14 and then -- in some state, I can't remember where -- 15 and compared it against the VTD production in, like, 16 just the regular redistricting file that you get off 17 the census, and it was the same.</p> <p>18 Q. Did you do that in this case?</p> <p>19 A. No, I don't think so.</p> <p>20 Q. When you calculated compactness scores in this 21 case, did you use any method other than Dave's 22 Redistricting? Or any tool, I should say, instead 23 of --</p> <p>24 A. Well, like, with Maptitude with -- I think with 25 the rebuttal, the reference is there from that or from</p>	<p style="text-align: right;">Page 184</p> <p>1 don't know if this is -- I think in the Plaintiffs' 2 Demonstrative Plan 1, LD-9, that discussion, I don't 3 know if I have -- yeah, that -- those are coming out of 4 Maptitude.</p> <p>5 Q. You talked about the Texas matters coming out 6 of Maptitude, and then what were you just referencing, 7 the --</p> <p>8 A. I don't know, the Plaintiffs' Demonstrative 9 Plan 1, LD-9, page 10 of the rebuttal report.</p> <p>10 Q. Hold on one second. Let me go to page 10 of 11 the rebuttal report.</p> <p>12 A. So, you know, talking about LD-35 and LD-46 13 have Reock scores that are .01 and .02 higher than 14 Plaintiffs' districts, that's coming out of Maptitude.</p> <p>15 Q. And how did you get that information from 16 Maptitude? Were you running the Maptitude program, or 17 was that information provided to you by somebody else?</p> <p>18 A. That was provided by plaintiffs. So we did a 19 variety of analyses, I wanted to look at these, you 20 know, different things and comparisons and said give me 21 those Reock scores, that type of thing.</p> <p>22 Q. For LD-35 and LD-46 and 34, I believe, right?</p> <p>23 A. That's right.</p> <p>24 Q. Did you use any Maptitude data relating to 25 compactness in District 9 or 15?</p>
<p style="text-align: right;">Page 183</p> <p>1 using just to line it up with what Dr. Hood did. 2 Q. Are you saying that Dr. Hood used Maptitude? 3 A. Oh, that was my -- maybe he didn't. But I 4 thought that's what he did, yeah.</p> <p>5 Q. So -- but your only references to Maptitude 6 data would be reciting what Dr. Hood found if he used 7 Maptitude, which my understanding is he did.</p> <p>8 A. No, like the sort of any unique analyses I did 9 in the rebuttal report, revolving maps and things like 10 this, would have incorporated -- well, not all of them, 11 but, you know, the compactness and things like that 12 would have incorporated the analysis or the output from 13 Maptitude, because, you know, given that Dr. Hood kind 14 of arrived at a different conclusion on a few of the 15 minor points on compactness, I wanted to just use what 16 he had used so that we at least had an even comparison.</p> <p>17 Q. Just to make sure I'm clear then, when you say 18 -- when you're talking about reliance on Maptitude, 19 you're talking about reliance on Dr. Hood's findings. 20 You didn't independently use Maptitude in calculating 21 compactness, correct?</p> <p>22 A. No, no, no. No. The reports that I had 23 generated -- let me see -- in, like, you know, in Texas 24 and stuff, that would have been coming out of 25 Maptitude. And then the -- well, just a discussion, I</p>	<p style="text-align: right;">Page 185</p> <p>1 A. I think the initial -- I think not. 2 Q. We talked before -- or you had testified before 3 about what a Reock score is, and I won't repeat all of 4 it today. It involved the drawing of the smallest 5 possible circle around the district, right?</p> <p>6 A. Yeah.</p> <p>7 Q. Do you know if Dave's Redistricting does that, 8 if its algorithm involves drawing a circle around the 9 district?</p> <p>10 A. Yeah, that's my -- that's my understanding. 11 One way that it could be different is that Maptitude is 12 really finicky, and I've had it, like, totally backfire 13 on me in certain situations in other context. And so, 14 like, it reads in a shapefile and it kind of misplaces 15 where the boundary was or very small things you can't 16 really see that might effect some internal rankings. 17 And so if there's a discrepancy between the two, it's 18 just as likely that that discrepancy is actually coming 19 from Maptitude. It's, to be honest with you, one of 20 the worst possible programs anyone has ever invented. 21 It's so hard to use. And I think they do that by 22 design so that once you spend thousands of hours 23 learning how to do something basic, you, like, have 24 committed so much time to it that you have to keep 25 using it.</p>

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1 Q. Aside from ease-of-use concerns, are you saying
 2 that the calculations performed by Maptitude are not
 3 reliable?
 4 A. When everything is just right and all the data
 5 read in and all that is done correctly, then it's, you
 6 know, very reliable. It's just that in my experience
 7 dealing with the program in other contexts -- not here,
 8 but in other contexts, I have generated numbers that
 9 were certainly -- I could tell were not right. And so
 10 that made me sort of a little bit -- after that, I
 11 started trying to use Dave's more. It's just a lot
 12 easier to use.
 13 Q. Are you aware of any federal court cases where
 14 Maptitude or work product generated in Maptitude was
 15 excluded by the court?
 16 A. No, no, I'm not. I'm -- my -- my -- my
 17 complaint here is mostly editorial. It's on, like,
 18 user ease. It's not on the actual technical capacity
 19 of Maptitude. It is a good program in that regards.
 20 It's just I don't know why you'd develop a program
 21 that's so hard to use, other than you're doing it
 22 because of what I, you know, stated.
 23 Q. Are you aware of any federal court cases where
 24 the court has excluded product generated by Dave's
 25 Redistricting?

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1 A. No.
 2 Q. Just give me just a moment. I think we may be
 3 done. Go off the record for just a few minutes here.
 4 (A break was taken at 4:33 p.m.)
 5 MR. PHILLIPS: That's all the questions
 6 that I have for you right now, Dr. Collingwood. I'm
 7 not sure if --
 8 COURT REPORTER: I'm sorry, I can't hear
 9 with the shuffling of papers again.
 10 MS. DANAHY: Dr. Collingwood, can you --
 11 THE WITNESS: I'm sorry. I was closing
 12 the bag. I was starving, I just had to eat them.
 13 MR. PHILLIPS: I was just saying that I
 14 don't have any questions right now. I was asking if
 15 plaintiffs' counsel had follow-up questions for you.
 16 MS. DANAHY: I have a few questions, but
 17 it should be quick, so hopefully we'll get on the way
 18 soon.
 19 THE WITNESS: All right. Thank you.
 20
 21 EXAMINATION
 22 BY MS. DANAHY:
 23 Q. Dr. Collingwood, you --
 24 MS. DANAHY: David, do you mind taking
 25 down the exhibit, if you can?

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1 MR. PHILLIPS: Oh, yes, I'm sorry. I
 2 always . . .
 3 MS. DANAHY: Thank you.
 4 BY MS. DANAHY:
 5 Q. Dr. Collingwood, you were asked earlier about
 6 your opinion that for a Gingles III analysis it makes
 7 sense to exclude the packed 9A district but include
 8 cracked District 15 results. Do you recall that part
 9 of the conversation?
 10 A. Yes.
 11 Q. Okay. I'm going to focus in a little bit on
 12 the concept of packing. Is packing determined solely
 13 by demographic percentage of a district, or are there
 14 other considerations?
 15 A. I think a lot of kind of the way that it's
 16 taught either in the literature, like in some of the
 17 redistricting books I've used to teach, or Voting
 18 Rights Act classes I've taught, it does focus -- it
 19 tends to focus on demographics, so, like, just look at
 20 a district that's 80 percent minority, like, that's
 21 packed. But for me, I tend to also incorporate whether
 22 that district or the broader region is producing
 23 outcomes that are -- that the minority community
 24 basically are better able to elect candidates of
 25 choice. So I think you need to have both of those

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1 things, because sometimes in a certain area, like a 70
 2 percent district might be packed, you know, and that
 3 kind of very negative sense, and another area 70
 4 percent may be -- you know, if we're strictly only, you
 5 know, focused on numbers, might be required because of
 6 different voter turnout instances. So in those cases,
 7 while you would say they're both, quote, packed, one
 8 might be required to produce an outcome that's
 9 favorable for the minority population whereas another
 10 one might actually be vote dilutions. It's kind of
 11 context dependent.
 12 Q. Can a district have a higher minority
 13 percentage but not be packed?
 14 A. Yeah, yeah, for sure.
 15 Q. Is that because it -- there may be reasons why
 16 it's not possible to draw a district with a lower
 17 minority percentage?
 18 A. Yeah, there's a couple examples that I -- often
 19 come to mind in places that I've either worked or
 20 looked into, and one is, say, Little Havana. It's
 21 almost impossible to draw districts down there that are
 22 not 80 percent Hispanics unless you draw these very
 23 narrow connectors that probably wouldn't, you know,
 24 kind of suffice. And so while they're, again,
 25 technically packed, there's not a lot you can do about

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1 that. And same thing with, like, areas of New Mexico,
 2 you know, where I live, there's regions of the state
 3 that -- like in McKinley and San Juan County that's
 4 over on the border of Arizona, those -- some of those
 5 districts are, like, 80 percent Native American. And
 6 while they're packed in this great numeric sense,
 7 there's just -- there's no other population of where to
 8 go to, quote, unpack it or do something different.
 9 Q. With respect to District 9A, you report that
 10 its Native VAP is 79.8 percent on page 5 of your
 11 rebuttal report.
 12 MS. DANAHY: And I don't know if I have
 13 sharing permission, but maybe we can pull that up.
 14 MR. PHILLIPS: I can pull that up. You
 15 said page 5?
 16 MS. DANAHY: Page 5, yeah.
 17 MR. PHILLIPS: Am I in the right place?
 18 MS. DANAHY: Yes.
 19 BY MS. DANAHY:
 20 Q. I think it's down in the fourth paragraph.
 21 A. Yeah.
 22 Q. It says, "Meanwhile, subdistrict 9A has the
 23 fifth highest NVAP percentage in the nation."
 24 A. Yeah.
 25 Q. So is that unusually high compared to other

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1 Native American majority districts?
 2 A. That's definitely on the higher end, yeah. I
 3 think there's a couple others, but I think the mean
 4 was, like, yeah, 66, around there. So, yeah, it's --
 5 you know, that's very high.
 6 Q. And you talked about earlier, like, reasons why
 7 it might not be possible to draw a district with a
 8 lower minority percentage, you talked about districts
 9 in New Mexico, for example, that are on the border and
 10 there's no -- that means there's no place to go in
 11 order to pick up additional population; is that right?
 12 A. That's right.
 13 Q. Would, like, a water boundary be another
 14 example where you're not able to go past a certain
 15 place to pick up?
 16 A. Yeah, definitely. Like, places in Alaska and
 17 stuff like that.
 18 Q. Is District 9A completely bounded by state or
 19 country border or body of water or any other kind of
 20 geographical limit on where you can pick up population?
 21 A. Not -- not that I can recall. I think maybe a
 22 portion of it goes up to the Canadian border, but just
 23 a very small portion. I don't think anyone really
 24 lives up there.
 25 Q. Um --

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1 A. Different context.
 2 Q. So is District 9A the type of district where
 3 it's just not possible to draw a configuration with a
 4 lower Native VAP because of sort of these other factors
 5 that we've been discussing?
 6 A. No, you can definitely draw a lower population
 7 NVAP in 9A if you wanted to.
 8 Q. So in that sense, does determining whether
 9 District 9A is packed depend on whether an alternative
 10 type of district could be drawn that would increase the
 11 number of legislators that needed --
 12 A. Yeah, I think -- yeah, that -- that certainly
 13 makes a lot of sense.
 14 Q. And do plaintiffs' demonstrative districts
 15 illustrate such an alternative configuration?
 16 A. I've testified that they do.
 17 Q. And how does that -- how does that work?
 18 A. Basically by incorporating land to the south
 19 and bringing in the Spirit -- Spirit Lake reservation,
 20 it effectively increases folks living in 9A, but also
 21 9B, representation not only at the State House level,
 22 but also the State Senate level --
 23 Q. And --
 24 A. -- to much more greater degree.
 25 Q. And the folks currently in 15 as well that

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1 would be in --
 2 A. Of course. Yes, of course. Who are
 3 currently -- who are currently -- their candidates of
 4 choice, as I demonstrated, just never, never win.
 5 Q. So in that sense, where you can pick up
 6 additional population from surrounding areas, that
 7 would change the demographics of 9A and increase
 8 electoral opportunity, is that -- in that sense, could
 9 you fairly characterize District 9A as packed?
 10 A. Yes.
 11 Q. I think you were asked earlier whether Gingles
 12 III was present in District 9A. Do you recall that?
 13 A. Yes.
 14 Q. And did you understand that to mean just with
 15 respect to the State House elections in District 9A?
 16 A. I did, yeah.
 17 Q. And with respect to the State Senate, Gingles
 18 III is present for Native voters in District 9A; is
 19 that your opinion?
 20 A. Yeah, because they're not -- they're not able
 21 to elect candidates of choice in especially endogenous
 22 and most recent elections.
 23 Q. And is that why you emphasized the importance
 24 of having a regional analysis?
 25 A. That -- that's correct.

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1 Q. Did you -- did you hear me?
 2 A. Oh, I said, "that's correct."
 3 Q. Sorry, I must have missed your answer.
 4 A. Oh, did I phase out? Maybe she phased out. I
 5 don't know. Is it me or her?
 6 COURT REPORTER: It looks like maybe she's
 7 frozen.
 8 MR. PHILLIPS: She looks frozen.
 9 (Discussion held off the record.)
 10 BY MR. PHILLIPS:
 11 Q. So the question I was asking is if you look at
 12 District 4, is there any way to draw a district in that
 13 region that would allow Native American voters the
 14 opportunity to elect a second House Rep or a State
 15 Senator?
 16 A. Right, so that's the key difference is that
 17 there's just not that many other Native American areas
 18 there. So while, you know, kind of cursorily looking
 19 at just 4 and 9, one could maybe draw the conclusion
 20 that they're analogous, but the broader picture is such
 21 that 4 you can't expand at all whereas 9 you can. So
 22 that changes the dynamics of a VRA claim.
 23 Q. So Native American voters in the Fort Berthold
 24 area are differently situated than Native American
 25 voters in the northeastern North Dakota?

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1 A. Right. And that's why a lot of this analysis
 2 is very contextual.
 3 Q. And part of that is that the Native American
 4 population in northeast North Dakota is sufficiently
 5 large to elect candidate of choice in two State House
 6 seats and a State Senate seat?
 7 A. That's right.
 8 Q. Is that your opinion?
 9 A. Yeah, that's right.
 10 Q. And then you were also asked whether you
 11 conducted a Gingles III analysis in District 4A. Do
 12 you recall that?
 13 A. Yes.
 14 Q. And is the purpose there to show that Gingles
 15 III exists in District 4 as a whole and then to
 16 ascertain whether District 4A is overcoming white bloc
 17 voting to allow the election of a Native-preferred
 18 State Representative?
 19 A. Yes.
 20 MS. DANAHY: Can we take just a quick,
 21 like, two-minute break?
 22 MR. PHILLIPS: Yes.
 23 MS. DANAHY: Hopefully we should be able
 24 to wrap up.
 25 (A break was taken at 4:44 p.m.)

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1 BY MS. DANAHY:
 2 Q. Dr. Collingwood, earlier you testified about
 3 which cases you worked with Campaign Legal Center on,
 4 and I think you may have omitted one. You worked with
 5 CLC on the Soto Palmer case; is that right?
 6 A. Yes.
 7 Q. Okay. I just wanted to clarify that for the
 8 record.
 9 A. Thank you.
 10 MS. DANAHY: I don't have anything
 11 further.
 12 MR. PHILLIPS: I just have a couple or
 13 maybe one follow up.
 14
 15 EXAMINATION
 16 BY MR. PHILLIPS:
 17 Q. I believe you just testified that the big
 18 difference between 4 and 9 is that there is another
 19 Native American population nearby 9 that could be
 20 brought into the district to increase the voting age
 21 population in 9; is that fair?
 22 A. Yes.
 23 Q. Does the Voting Rights Act require that a state
 24 maximize the number of candidates who are Native
 25 American preferred?

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1 MS. DANAHY: Objection; that calls for a
 2 legal conclusion.
 3 THE WITNESS: Right. Yeah. I think no.
 4 BY MR. PHILLIPS:
 5 Q. If there's a nearby population of additional
 6 minorities, the state isn't always required to bring
 7 that into the district to bump up the numbers, correct?
 8 MS. DANAHY: Objection; calls for a legal
 9 conclusion.
 10 THE WITNESS: Well, I think I've
 11 demonstrated that there are ways when you look at the
 12 Gingles test to show how what the state did is clearly
 13 diluting the Native American vote opportunity
 14 structure. When it comes down to what is and isn't
 15 required through the VRA, I mean, there's a lot of case
 16 law around the VRA, so different courts make different
 17 decisions. So I'll leave it to the courts to make that
 18 call.
 19 MR. PHILLIPS: I won't drag this out
 20 anymore.
 21 I suppose he'll read and sign?
 22 MS. DANAHY: Yeah, we'll read and sign.
 23
 24 (The deposition was concluded at 4:48 p.m. CST)
 25

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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF MINNESOTA)
) ss.
 4 COUNTY OF CLAY)
 5 I hereby certify that I reported the remote
 deposition of Loren Collingwood on Monday, March 6,
 6 2023, and that the witness was by me first duly sworn
 to tell the whole truth;
 7
 8 That the testimony was transcribed by me and is
 a true record of the testimony of the witness;
 9 That the cost of the original has been charged
 to the party who noticed the deposition, and that all
 10 parties who ordered copies have been charged at the
 same rate for such copies;
 11
 12 That I am not a relative or employee or
 attorney or counsel of any of the parties, or a
 relative or employee of such attorney or counsel;
 13
 14 That I am not financially interested in the
 action and have no contract with the parties,
 attorneys, or persons with an interest in the action
 15 that affects or has a substantial tendency to affect
 my impartiality;
 16
 17 That the right to read and sign the deposition
 by the witness was preserved.
 18
 19 WITNESS MY HAND AND SEAL THIS 13th day of
 March, 2023.
 20
 21
 22 Christa Dugan
 23 Christa Dugan, Notary Public, CRC
 Notary Public, Clay County, Minnesota
 24 My commission expires January 31, 2027
 25

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1 Veritext Legal Solutions
 2 1100 Superior Ave
 Suite 1820
 3 Cleveland, Ohio 44114
 Phone: 216-523-1313
 4
 5 March 13, 2023
 To: Molly E. Danahy, Esq.
 6
 7 Case Name: Turtle Mountain Band Of Chippewa Indians, et al. v.
 Howe, Michael, etc.
 8 Veritext Reference Number: 5780636
 9 Witness: Loren Collingwood Deposition Date: 3/6/2023
 10
 11 Dear Sir/Madam:
 12 Enclosed please find a deposition transcript. Please have the witness
 13 review the transcript and note any changes or corrections on the
 14 included errata sheet, indicating the page, line number, change, and
 15 the reason for the change. Have the witness' signature notarized and
 16 forward the completed page(s) back to us at the Production address
 shown
 17 above, or email to production-midwest@veritext.com.
 18
 19 If the errata is not returned within thirty days of your receipt of
 20 this letter, the reading and signing will be deemed waived.
 21
 22 Sincerely,
 23
 24 Production Department
 25 NO NOTARY REQUIRED IN CA

Page 200

1 DEPOSITION REVIEW
 CERTIFICATION OF WITNESS
 2
 3 ASSIGNMENT REFERENCE NO: 5780636
 CASE NAME: Turtle Mountain Band Of Chippewa
 Indians, et al. v. Howe, Michael, etc.
 DATE OF DEPOSITION: 3/6/2023
 4 WITNESS' NAME: Loren Collingwood
 5 In accordance with the Rules of Civil
 Procedure, I have read the entire transcript of
 6 my testimony or it has been read to me.
 7 I have made no changes to the testimony
 as transcribed by the court reporter.
 8
 9 Date Loren Collingwood
 10 Sworn to and subscribed before me, a
 Notary Public in and for the State and County,
 11 the referenced witness did personally appear
 and acknowledge that:
 12
 13 They have read the transcript;
 They signed the foregoing Sworn
 Statement; and
 14 Their execution of this Statement is of
 their free act and deed.
 15
 16 I have affixed my name and official seal
 17 this _____ day of _____, 20____.
 18
 19 Notary Public
 20
 21 Commission Expiration Date
 22
 23
 24
 25

Page 201

1 DEPOSITION REVIEW
 CERTIFICATION OF WITNESS
 2
 3 ASSIGNMENT REFERENCE NO: 5780636
 CASE NAME: Turtle Mountain Band Of Chippewa
 Indians, et al. v. Howe, Michael, etc.
 DATE OF DEPOSITION: 3/6/2023
 4 WITNESS' NAME: Loren Collingwood
 5 In accordance with the Rules of Civil
 Procedure, I have read the entire transcript of
 6 my testimony or it has been read to me.
 7 I have listed my changes on the attached
 Errata Sheet, listing page and line numbers as
 8 well as the reason(s) for the change(s).
 9 I request that these changes be entered
 as part of the record of my testimony.
 10
 11 I have executed the Errata Sheet, as well
 as this Certificate, and request and authorize
 that both be appended to the transcript of my
 12 testimony and be incorporated therein.
 13
 14 Date Loren Collingwood
 15 Sworn to and subscribed before me, a
 Notary Public in and for the State and County,
 16 the referenced witness did personally appear
 and acknowledge that:
 17 They have read the transcript;
 They have listed all of their corrections
 18 in the appended Errata Sheet;
 They signed the foregoing Sworn
 19 Statement; and
 Their execution of this Statement is of
 20 their free act and deed.
 21 I have affixed my name and official seal
 22 this _____ day of _____, 20____.
 23
 24 Notary Public
 25
 26 Commission Expiration Date

1 ERRATA SHEET
 2 VERITEXT LEGAL SOLUTIONS MIDWEST
 3 ASSIGNMENT NO: 5780636
 4 PAGE/LINE(S) / CHANGE /REASON
 5 _____
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 19 _____
 20 Date Loren Collingwood
 21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
 22 DAY OF _____, 20____.
 23 _____
 24 Notary Public
 25 _____
 Commission Expiration Date

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TRANSCRIPTION OF VIDEO FILE
NORTH DAKOTA LEGISLATIVE ASSEMBLY
REDISTRICTING COMMITTEE
SEPTEMBER 15, 2021

Exhibit 39



1 SEPTEMBER 15, 2021

2 CHAIRMAN DEVLIN: We'll call the
3 Redistricting Committee to order.

4 Emily, if you would take the roll, I
5 would appreciate that.

6 MS. THOMPSON: And Chairman Devlin.

7 CHAIRMAN DEVLIN: Here.

8 MS. THOMPSON: Representative Bellew.

9 REPRESENTATIVE BELLEW: Here.

10 MS. THOMPSON: Representative Boschee.

11 REPRESENTATIVE BOSCHEE: Here.

12 MS. THOMPSON: Representative Headland.

13 REPRESENTATIVE HEADLAND: Here.

14 MS. THOMPSON: Representative Lefor.

15 REPRESENTATIVE LEFOR: Here.

16 MS. THOMPSON: Representative Monson.

17 REPRESENTATIVE MONSON: Here.

18 MS. THOMPSON: Representative Nathe.

19 REPRESENTATIVE NATHE: Here.

20 MS. THOMPSON: Representative Schauer.

21 REPRESENTATIVE SCHAUER: Here.

22 MS. THOMPSON: And Senator Holmberg.

23 VICE CHAIR HOLMBERG: Here.

24 MS. THOMPSON: Senator Bekkedahl.

25 SENATOR BEKKEDAHL: Here.



1 MS. THOMPSON: Senator Burckhard.

2 SENATOR BURCKHARD: Here.

3 MS. THOMPSON: Senator Erbele.

4 SENATOR ERBELE: Here.

5 MS. THOMPSON: Senator Klein.

6 SENATOR KLEIN: Here.

7 MS. THOMPSON: Senator Oban.

8 SENATOR OBAN: Here.

9 MS. THOMPSON: Senator Poolman.

10 SENATOR Poolman: Here.

11 MS. THOMPSON: And Senator Sorvaag.

12 SENATOR SORVAAG: Here.

13 MS. THOMPSON: Mr. Chairman, we have a
14 quorum.

15 CHAIRMAN DEVLIN: Thank you.

16 Representative Monson, as we can see, is
17 joining us by Teams today.

18 We will -- what are your wishes for the
19 minutes from our September 8th meeting?

20 UNIDENTIFIED MEMBER: Motion to approve,
21 Your Honor.

22 UNIDENTIFIED MEMBER: Second.

23 CHAIRMAN DEVLIN: Motion has been moved
24 and approved. Motion has been moved and seconded
25 to approve the minutes.



1 Any discussion?

2 Seeing none, all those in favor of the
3 minutes, say aye.

4 (Unanimous ayes)

5 CHAIRMAN DEVLIN: Nay?

6 (No audible response)

7 Motion carries.

8 Well, we are going to start today with
9 the -- some comments from representatives of the
10 Tribal Nations. I think Commissioner Davis is
11 maybe going to lead this off, and I may be wrong
12 on that.

13 Are you going to introduce tribal
14 members that are here today, or what is your
15 wishes?

16 COMMISSIONER DAVIS: Yes, I can.

17 CHAIRMAN DEVLIN: Okay. Thank you very
18 much.

19 COMMISSIONER DAVIS: Chairman, Committee
20 members. Just for the record, my name is Nathan
21 Davis. I'm the commissioner of North Dakota
22 Indian Affairs.

23 As was discussed the last meeting that
24 was here, I had reached out to the Tribal Nations
25 to ensure that there is that conversation, that



1 back and forth. And I think it will be a nice
2 build up with some of them on the Travel State
3 Relation Committee meetings that we touched on
4 some of the redistricting issues to really start
5 that conversation on that front as well.

6 But with me today we have some
7 representative from NARF. We do have Chairman
8 Faith. We do have Collette Brown, who is here
9 representing Spirit Lake. And we also have
10 Mr. Charles Walker from Standing Rock here as
11 well today.

12 So just to put on the record as well,
13 too, Chairman Fox sends his apologies. He was
14 not able to be here today due to a prior
15 commitment, but a testimony will be forthcoming
16 to the Committee. So I just want to put that on
17 the record, and I will let the -- I will let the
18 tribes give their testimonies; and I will just
19 hand it off. Thank you.

20 CHAIRMAN DEVLIN: Thank you,
21 Commissioner.

22 Was there any questions for Commissioner
23 Davis?

24 Seeing none, thank you.

25 COMMISSIONER DAVIS: Thank you.



1 CHAIRMAN DEVLIN: It was our intent, as
2 you know, Commissioner, to have the Tribal
3 Relations Committee members meet with the each of
4 the tribes and discuss redistricting, and then we
5 wanted also to have an opportunity for them to
6 address us directly in this Committee members.
7 And I thank you for helping to facilitate that.
8 I appreciate that very much.

9 COMMISSIONER DAVIS: Yes. Thank you,
10 Chairman. And I do what to reciprocate that
11 thanks for you making that a point to consult
12 with the tribes on this matter.

13 CHAIRMAN DEVLIN: Yeah.

14 COMMISSIONER DAVIS: So, thank you.

15 CHAIRMAN DEVLIN: So who is going to
16 speak first; do you know?

17 COMMISSIONER DAVIS: I will call
18 Chairman Faith to the stand to speak first.
19 Thank you.

20 CHAIRMAN FAITH: (Indiscernible) My
21 friends, relatives, (Indiscernible) Buffalo
22 soldier, studied law, Chairman, Mike Faith. I
23 just greeted everybody as a relative and friend.

24 I want to take this time to thank you
25 for very, very short notice to come up and



1 testify. I think it's so important that we get
2 our point across, and again, I can't speak for
3 other tribal nations, but again, everybody, good
4 morning (indiscernible).

5 I just want -- I'm going to be brief. I
6 probably will have Matthew Campbell come up, one
7 of our legals to broaden the picture of what our
8 ask is. And again, the census does show a growth
9 in Native, but again, unfortunately, in Sioux
10 County, will contest that every time, that the
11 other county is there. For whatever reasons, we
12 run into that.

13 Again, this one, COVID. You try to get
14 a true count up there with numbers, and you have
15 a pandemic going on. It's pretty hard to do
16 anything.

17 So the concern today is the
18 redistricting. And I want to thank the Committee
19 for allowing us to throw some ideas out, you
20 know. One of them would be -- I'm going to speak
21 on behalf of District 31, again, which is right
22 south of us, part of -- it splits Mandan, I
23 guess, the train tracks south to Sioux County,
24 Grant County, and I see there's addition of a
25 little bit of Hettinger County on there.



1 But our ask is pretty simple today, and
2 we know it is allowable. But a lot of the issue
3 at hand depend on percentages, and what we're
4 going to do is just ask for special understanding
5 of the uniqueness. You know, when you turn
6 around over the years we're at court. We're
7 challenging this, challenging that. I think a
8 lot of that could be curved with a Committee such
9 as yours understanding the uniqueness.

10 I know Chairman Fox has five segments up
11 there. Of course, ours runs into North and South
12 Dakota - Corset County of South Dakota and Sioux
13 County of North Dakota, consist of 2.3 million
14 acres of identified Standing Rock.

15 And I'll just get to the point today of
16 why I ask this. We ask that you seriously look
17 at sub-districting District 31. The purpose of
18 it is this: is that Morton County along, Mandan
19 even using the train tracks splitting Mandan,
20 North Dakota to the south is part of District 31.

21 And you'll hear from the other
22 reservations or the other Native countries that
23 we have to also -- we want a voice in there. And
24 we're not looking at affiliate of if you're
25 Republican or Democrat or independent. If you



1 ask that, I think more so a lot of people are
2 looking at being independents.

3 With our structure and uniqueness, we
4 have to work with the federal, state, county,
5 townships, so many jurisdictions, that looking at
6 a favorable party. I think the tribe over the
7 years worked with Republicans, Democrats, alike,
8 both.

9 So I guess I'm not here today to try to
10 push any party. I'm here today to do an ask, and
11 I know you're -- it's going to be difficult
12 because you -- sentry code sometimes goes off of
13 policies of percentages.

14 But over the years, like I said, I don't
15 want to be seeing us going at each other in court
16 or challenging each other. I think working
17 together and getting representation with the
18 state structure -- you know, North Dakota is a
19 beautiful place. It's got a lot, a lot of
20 history. We have a lot of different areas from
21 German Russians, you know it. It's here. The
22 heritage is here. It's a strong, good heritage
23 of hard workers.

24 So again, working together and
25 understanding each other's ask, you know. We



1 don't want it to be a one-way street. There's
2 times where the State comes down in our county.
3 We have a multi-hazard mitigation plan at
4 Standing Rock. Sioux County signed off on that
5 right away.

6 The county commissioners, the townships
7 of South Ridge, Solen, and Fort Yates, the
8 federal government, the Bureau of Indian Affairs,
9 the colleges, the schools, the tribe. So the
10 state emergency manager down there would be our
11 county sheriff. Again, opens the door for state
12 need.

13 So we do things working together for the
14 protection of all. Unfortunately, you can't
15 prepare for all of them under that, you know. We
16 do have pandemic on there, but who would think
17 that we would have this kind of pandemic. It's
18 something that we have to fight something that's
19 not there; we can't see. So it's pretty touch
20 sometimes.

21 But here's what I'm going to ask today,
22 and I'll get right to the point. We're going to
23 talk about sub-districting District 31 is that --
24 just for the house. I'm only talking about the
25 House now because there's two positions there.



1 And looking at the sub-districting would be Grant
2 and Sioux, Grant and Sioux Counties. And maybe
3 making the southern part of Morton the other sub-
4 district A and B.

5 So you'll have one representative from A
6 and one representative from B. I guess I can't
7 get any simpler than that. You have the
8 authority to sub-district. Like I said, I think
9 we're all probably tired of challenging each
10 other, and going to court, and getting opinions.
11 I think today our ask is pretty simple. It's to
12 ask you that in a good way.

13 Look at 31, just the House, where you
14 would have sub A and sub B. Morton County alone
15 numbers outweigh. You could probably put three
16 counties together and still outweigh the number-
17 wise.

18 So again, I know the question of
19 percentage is going to come up, but it's a true
20 and honest ask from Standing Rock. We would
21 definitely have different numbers if we could use
22 South Dakota Corset County in ours. We're
23 unique. So you know, it is what it is. We're
24 only discussing Sioux County today along with
25 Grant.



1 Back in the day in 2014, I did run, and
2 again, I truly believe that portion of 31, the
3 northern part of it, which is the Mandan and
4 Morton County, it is playing a factor. It will
5 continue to play a factor on date of votes and
6 the local farmer/rancher adjoining that we have
7 and also Grant County.

8 So you know, it would be great if they
9 have -- competition is good, but all we want is
10 an equal chance to have representation in the
11 House of 31, District 31.

12 So again, the sub-district that I'm
13 talking about is A and B, which would be -- if
14 you want to put A as the Morton County portion of
15 it. We do have draft maps. It actually just
16 took out Mandan, but I think in talking with our
17 legal counsel, I think just taking out Morton and
18 making it a sub-district of District 31 would be
19 more favorable to us. And hopefully --

20 Again, we're throwing this out at you
21 knowing that it does state, you know, 50 percent.
22 I think we're around close to 40. But again,
23 it's this Committee that could recommend it. And
24 I think the purpose of the whole thing is
25 representation and better communications for the



1 Native nations within our state.

2 And keep in mind, we are citizens of the
3 state of North Dakota from Sioux County. We're
4 also citizens of the United States, but we're
5 unique by treaty. So we're here today as
6 government to government asking a Committee to
7 seriously look at giving us that opportunity.
8 And it's no guarantee that we would get a Native
9 in there, but at least to give us a better
10 fighting chance to get representation into the
11 state.

12 And I think right now with my
13 administration -- you know, after 21 years of
14 being on the council, vice chairman and chairman
15 on and off since 1984, I decided not to run this
16 year. I don't wish this pandemic on anybody, any
17 administration, any nation. And of course, my
18 back kind of helped me. I got to go into surgery
19 on the 28th, finally.

20 But that's my ask today, Committee,
21 please. You're going to have some other
22 testimony behind me, but it's pretty simple and
23 to the point. We're not going to try to mislead
24 you, do any deception tactics. It's just getting
25 straight to the point of, you know, it's okay to



1 do that, to recommend a sub-district. And again,
2 it's just a House. We're not looking at the
3 Senate. So again, that would be my ask from
4 Standing Rock, and I ask for your blessing for it
5 to look at it seriously. It's not about party,
6 but it's true representation from within our
7 state of North Dakota.

8 So again, I wish you a good morning.
9 And any comments or questions?

10 Go ahead.

11 CHAIRMAN DEVLIN: Mr. Chairman, if I
12 could. The population you gave us of, I think,
13 Grant and Sioux is about, say, 6200. So you
14 would need another 2300 people roughly to make,
15 you know, the district that's required under the
16 Constitution, one person, one vote. Where would
17 you see that other 2300 people coming from? Is
18 there a certain area that you're looking at?

19 CHAIRMAN FAITH: Well, again, thank you,
20 sir. The area that we did map out actually had
21 Morton, and again, maybe not. It's still going
22 to probably come up to close to 40 percent, and
23 that's what I mentioned earlier. Our percentages
24 are what they are.

25 CHAIRMAN DEVLIN: Yeah.



1 CHAIRMAN FAITH: But it's a special ask
2 today for the purpose of representation. So
3 you're looking at -- if the map that we
4 originally put out was just taking Mandan out of
5 the picture. But realistically, it doesn't
6 really make sense to make just a half a city a
7 sub-district. Taking out Morton, that part that
8 we just talked about, does drop our percentages,
9 our numbers.

10 Hettinger County, there's a portion of
11 that that's still on there. Number wise I don't
12 know what that would come up to, but right now if
13 you look at the map, it shows a portion of
14 Hettinger, Grant, Sioux, and then, of course,
15 Morton and not total, but a portion of Morton.

16 And again, I knew that when I did my
17 discussion that percentage is going to come up.
18 The other tribes are going to be probably maybe
19 asking. I heard Chairman Fox on a news statement
20 last week I believe it was. He was looking at
21 five segments.

22 Again, it's an ask. We know that
23 there's -- it says 50 percent. We know that, but
24 we're here today in a good way to seriously ask,
25 take a look at that. I mean, are you going to



1 get recalled if you go below 50? I doubt it.
2 The people leave it up to you to do -- to make
3 the right decision, and I know sometimes the
4 rules or policy are questions of -- you know,
5 again, like I said, that's why we're here today.
6 We're asking in a good way, knowing in advance
7 that percentage is going to be the question. But
8 true representation from all the nations
9 within North Dakota, I think, is what we want to
10 look at into the future.

11 Any others?

12 CHAIRMAN DEVLIN: Representative Schauer
13 has a question.

14 REPRESENTATIVE SCHAUER: Thank you,
15 Mr. Chairman.

16 Chairman Faith, thank you for being here
17 today, and hopefully your back heals properly and
18 quickly. The question is for you: you mentioned
19 a couple times, true representation and better
20 communication, but when I look at this sub-
21 district idea, I'm thinking to myself, well,
22 okay, 31A has one representative and one senator.
23 That's two people. In the past they would have
24 three people; 31B would have one representative
25 and one senator. That would be two people.



1 So in my mind -- and I'm not familiar
2 with your area -- how does that make for better
3 representation when you're losing 33 percent of
4 your representation?

5 CHAIRMAN FAITH: I guess I look at this
6 this way: the A and B is still two people.
7 You're not gaining or losing. You're still going
8 to have two House and one Senate. So I don't --
9 I guess looking at true representation, I guess
10 standing here today as a chairman and a leader of
11 a nation, tribal, I guess that's what I'm
12 referencing is that we also would like to have an
13 advantage.

14 And again, I don't want to get into
15 party affiliate. I just want to stay to the
16 point of the ask, which is a sub-district of just
17 the House. So it's still two people, but it's
18 also -- it's not adding or deleting any. But I
19 think tribal representation needs to be given a
20 good honest chance.

21 If you look at back in the past of '14,
22 I myself, I did run. But I don't want to get
23 into the party affiliated areas from Republican,
24 Democrat, or independent. So I want to leave it
25 at -- pretty much open as that. And other



1 statements coming up may have a different outlook
2 of you're thinking, but it's -- when Mr. Campbell
3 gets up, he could probably explain a little more.

4 But I think what we're asking from a
5 Native point of view is at least give us that
6 fighting chance. When you got a heavy party
7 affiliate in the northern part of 31, it doesn't
8 really make sense for us. We just -- we want to
9 have true representation on the state level also.
10 So again, it's an ask. It's not --

11 I guess I'm saying that we're tired of
12 going to court and challenging the State or the
13 counties. I think we're working well in a good
14 way for the betterment of all our people within
15 the state of North Dakota, and I'll leave it at
16 that. But thank you. But true representation, I
17 guess I speak it from the tribal perspective.
18 That's why I'm here today, that the Native voice
19 should be also within the great state of North
20 Dakota.

21 CHAIRMAN DEVLIN: Mr. Chairman, I
22 believe Representative Nathe had a question.

23 REPRESENTATIVE NATHE: Thank you,
24 Mr. Chairman.

25 Chairman Faith, that's for coming today.



1 CHAIRMAN FAITH: Sure.

2 REPRESENTATIVE NATHE: Appreciate it.

3 So you had mentioned in your testimony talking
4 about we just want to have an opportunity. We
5 just want to have a chance. So when we discussed
6 some of this in Fargo last week, sir, are you
7 saying the current system right now doesn't give
8 you the opportunity or chance?

9 CHAIRMAN FAITH: The word chance is
10 this: the percentage is there. We know that in
11 black and white. And we're asking face to face
12 to be given a chance to Redistrict 31 in a good
13 way.

14 REPRESENTATIVE NATHE: But that's a good
15 way that would benefit the reservation.

16 CHAIRMAN FAITH: It will represent -- it
17 will benefit southern, rural North Dakota better,
18 I think, because of the farmer/rancher areas.
19 When you got a population of Mandan, which isn't
20 a city, you know, you don't really see those
21 people until time comes for voting. The rural
22 area of Sioux and Grant Counties, excuse me. But
23 I'm just saying that the farmer/rancher and
24 citizens of the southern part of District 31 need
25 a chance of representation, especially with --



1 you know, with the drought conditions being what
2 they are now, you got city people that are -- I
3 don't know -- are they boots on the ground out
4 there, fighting for water for cattle operators
5 and farmers? I don't -- to be honest with you, I
6 don't think that so.

7 REPRESENTATIVE NATHE: If I may,
8 Mr. Chairman.

9 CHAIRMAN DEVLIN: You may condition.

10 REPRESENTATIVE NATHE: I know that
11 representatives of 31 have been elected three or
12 four times, so obviously, the people out there
13 think they're representing that.

14 So I mean, you're saying right now the
15 representation they have in that district or,
16 say, any of the other districts, they're not
17 properly representing the reservation?

18 CHAIRMAN FAITH: I guess, you know, you
19 could take it from our point of view. We want
20 true representation like I'm saying. And we just
21 want -- we want to look at the redistricting
22 here. We're looking at a sub-district, which is
23 allowable.

24 But again, like I said earlier, the
25 percentages are going to be what they are. You



1 guys are going to look at it and say, well,
2 here's what it says, 50 percent. It's already
3 been brought up. It's just something that we
4 want to bring forth, and I think that -- I don't
5 want to get into the affiliate of where those
6 individuals, which party they're on.

7 REPRESENTATIVE NATHE: Well, this whole
8 thing is politics. I know you mentioned that
9 several times, Chairman.

10 CHAIRMAN FAITH: Yeah.

11 REPRESENTATIVE NATHE: But it's politics
12 on both sides of the aisle.

13 So I have one other question, if I may,
14 Mr. Chairman.

15 CHAIRMAN DEVLIN: You may continue.

16 REPRESENTATIVE NATHE: And I had
17 mentioned this in Fargo. And my question is to
18 you: why wasn't this brought up, say, last
19 redistricting or the last other redistricting?
20 Because I had never heard anything about this
21 until July, until some national group from D.C.
22 started kicking this up. We haven't heard from
23 anything from the reservations the previous 10
24 years. I was on the committee back in 2011,
25 never once came up, and these districts have not



1 really changed in the last probably 10 to 20
2 years. So why all of a sudden now we need
3 subdivisions, other than it being pushed by a
4 national group by the D.C.?

5 CHAIRMAN FAITH: Well, you know, again,
6 you talk about '11. That's quite a while back.
7 I think I was vice chairman with Murphy then.
8 But you know, like we just got this meeting
9 information here, when I'm standing here today,
10 probably a day or two ago. I can't answer
11 anybody, any other tribes why it's just now
12 coming up today. But when we got the invite, it
13 talked about redistricting. I can't speak for
14 former administrations, but I would say this:
15 that it's time to be brought up and asked if it's
16 a possibility. That's why we're here today.

17 And as far as meetings at Fargo and
18 wherever, you know, with this pandemic going on,
19 we're not traveling as much as probably a lot
20 are, and the numbers are skyrocketing again.
21 They're spiking here and there. So safety, not
22 only for myself but for the people that -- the
23 council people and whoever else comes up.

24 So I can't answer for previous years,
25 but right now it's an ask today. We're looking



1 for the Committee to actually take a look at it
2 and give us a true response one way or the other.
3 Because like I said, under my administration, I
4 think we've been working well with the State, the
5 counties of both states, trying to come to a
6 positive future for who we represent, the people
7 of North Dakota in this case. Thank you.

8 CHAIRMAN DEVLIN: Couple more questions,
9 Mr. Chairman.

10 Senator Holmberg.

11 VICE CHAIR HOLMBERG: First of all, I'll
12 put just a little correction on what
13 Representative Nathe said. This has always been
14 part of it. In fact, back in 1991, the bill that
15 came to the legislature had some division of some
16 Native populations, and I can't remember. I know
17 Fort Berthold was divided in that particular
18 bill. That was taken out. That was a
19 legislative decision.

20 But, yeah, it has been there. It has
21 been discussed. The legislature has,
22 historically, been somewhat -- obviously,
23 somewhat reluctant. They have never passed it,
24 but this has to balance between what the justice
25 department of the federal government says is



1 required, et cetera.

2 But we have such a huge division amongst
3 the reservations. I mean, you have Fort
4 Berthold, which 50 percent of a subdivided
5 district lives on the reservation. So that,
6 clearly, is different than if you get -- and I'll
7 just go to Lake Travis. Of course, that's 206
8 people in North Dakota. And that would be pretty
9 tough to do anything with it. Then you have the
10 other three with Turtle Mountain with 31 percent
11 of an ideal.

12 So we are faced with a vastly different
13 geography on each one of those reservations that
14 we have to deal with too. But thank you for
15 bringing that and having some suggestions as far
16 as how those lines could be drawn.

17 CHAIRMAN FAITH: And thank you.

18 CHAIRMAN DEVLIN: Chairman, I think
19 Representative Monson is online with us today and
20 had a question, and then Representative Headland
21 had a question.

22 CHAIRMAN FAITH: Sure.

23 REPRESENTATIVE MONSON: Yeah.

24 Mr. Chairman, thank you.

25 Senator Holmberg pretty much brought up



1 what I was going to mention. But you know, one
2 person, one vote means that those subdistricts,
3 if we were to do it, really to be constitutional,
4 have to be relatively even, and 6000 in one sub-
5 district and 10,000 in another sub-district
6 really doesn't make it constitutional.

7 So you understand that we have to go by
8 the percentages and numbers. You brought that
9 up, but you know, we'd have to add some other
10 people in order to make it roughly equal, one
11 person, one vote. And it would mean some of
12 Morton County and probably Hettinger County would
13 end up in that sub-district with Grant and Sioux
14 County. So not really a question there, just a
15 comment, but it was already mentioned pretty much
16 by Senator Holmberg.

17 CHAIRMAN FAITH: And thank you for that.
18 I think I did say our original map does still
19 keep that percentage of Morton and, again,
20 Hettinger County, just taking out the city
21 portion of Mandan, which our original map looked
22 like. So again, thank you.

23 And I said from the start, it's going to
24 be questioned as far as percentages, and we knew
25 that. But you know, we want to be heard, for the



1 record.

2 CHAIRMAN DEVLIN: Representative
3 Headland had a question.

4 REPRESENTATIVE MONSON: If I might
5 continue, just one comment, if I could.

6 You brought up that rural, the ranchers
7 and issues with water were not probably always
8 addressed. And I chair the education and
9 environment section of House appropriations. And
10 my vice chairman, actually, is your
11 representative, and he is an advocate for water
12 like you would not believe. So when it comes to
13 representation dealing with water, you probably
14 have the best in the state.

15 CHAIRMAN DEVLIN: Representative
16 Headland.

17 REPRESENTATIVE HEADLAND: Thank you,
18 Mr. Chairman.

19 Mr. Chairman, a couple of things. You
20 had mentioned earlier that after the comment by
21 representative Schauer, you feel you would still
22 have two representatives, even though you would
23 be supportive of other districts.

24 I wonder if you understand. I just want
25 to be clear. That when you divide districts into



1 sub-districts, you only vote in the sub-
2 districts. So you don't get the vote in the
3 other. So, in fact, it is true that you will be
4 losing one representative.

5 And the other thing that I -- you know,
6 I have my interpretation of what I believe you're
7 talking about when you talk about true
8 representation. But for the Committee, so we all
9 understand exactly what you're talking about, can
10 you define what you mean as true representation.

11 CHAIRMAN FAITH: I guess -- and I'll be
12 upfront with you. You know, we're here as a
13 trial nation, and as far as the vote, I
14 understand that you'd only vote in A or B
15 depending on your location, if there's a sub-
16 district.

17 But as far as true representation, I
18 think on a sub-district, it's up to the people.
19 Let's just say we did the division or the -- the
20 people of Grant, Sioux, and southern Morton would
21 have that opportunity. I'm just saying that a
22 city added onto a rural district like 31 does
23 make a heck of a difference number wise. And if
24 you want to look at it realistically -- party
25 wise.



1 So I think just taking out the Mandan
2 portion and letting them be their own Sub-
3 district 31 would be fine with us. But it's
4 just -- like the numbers he's talking about, to
5 me is -- if you look at our map, it does just
6 take out Mandan, the southern part of Mandan. It
7 still leaves that portion of 31 on there. I was
8 just throwing out ideas, but also Hettinger, a
9 portion of Hettinger County.

10 So that would -- it's not going to bring
11 it up to what we want. Like I said, it would be
12 very close to 40 percent, and knowing coming up
13 here 50 percent is the bottom line. So it's just
14 an ask for the Committee, and we'll take it at
15 that.

16 CHAIRMAN DEVLIN: Further questions from
17 the Committee?

18 (No audible response)

19 Thank you, Chairman, for making time to
20 participate.

21 CHAIRMAN FAITH: And again, I'll thank
22 everybody for the opportunity for this and, you
23 know, the very short notice. We appreciate that.
24 Thank you.

25 CHAIRMAN DEVLIN: Who is going to



1 present next? I'm sorry. I missed it.

2 CHAIRMAN FAITH: Councilman Walker.

3 CHAIRMAN DEVLIN: Councilman Walker.

4 COUNCILMAN WALKER: Chairman Devlin,
5 members of the Redistricting Committee, good
6 morning. My name is Charles Walker, councilman
7 at large, Standing Rock Sioux Tribe.

8 I do have written testimony. I'll read
9 directly from that, but I know that there is a
10 question about true representation. I'll get
11 straight to it. I'll say that part of it. When
12 we talk about representation, from what I have
13 heard, responses and comments from the Committee
14 is that, yes, it is politics. Is there a
15 workaround? I guess in my experience, in my
16 opinion, first and foremost I would say, the
17 representation isn't adequate because there is no
18 -- what's the word I want to say without being
19 disrespectful or being misinterpreted? There is
20 no -- I'll just say. There's no communication
21 between them, the representatives that are in
22 there in the past years.

23 And I'll say that -- and even though I'm
24 on the record, everything -- to me the party
25 lines, they do matter. The Democrats do cater to



1 the Native vote. We all know that. That's a
2 fact. The Republicans, not so much.

3 And I will say that because,
4 understandably, I would consider myself a
5 centrist, maybe a little bit more right leaning.
6 But I do believe in the Republican ideals that in
7 a republic you have a nation of laws. And in
8 democracy, whoever gets the majority wins, and I
9 don't think that's always the right decision.

10 What I say in a republic -- the reason
11 I'm saying that -- is that we live in these
12 states that exist here, North and South Dakota,
13 probably some of the deepest red states we know
14 in this nation. And one of the things that
15 really is dumbfounding to me is the lack of
16 respect and the lack of acknowledgment of our
17 Constitution when comes to that. It's always
18 paraphrased, taken out of context, not taken
19 straightforward.

20 But within that we talk about
21 Constitution. We talk about rules, laws. We
22 talk about republics. We talk about all these
23 different things. But yet when it comes to being
24 equal, doing all these other things, you know, it
25 doesn't count, and it does matter.



1 And I'll say it right now - the factor
2 in this is race, and we don't think of ourselves
3 as being a race. In our language, we are wicha
4 (phonetic) is the word, wicha. Those titles have
5 come across from the federal government. All the
6 way back to the Constitution we are identified
7 as, you know, noble savages, those types of
8 things. We're also only two-thirds human being.
9 And the black population is only three-fifths
10 human being, you know, that type of stuff.

11 Those are tangible things you can go
12 into the Federal Registry. You can go in and you
13 can see those things.

14 So it is. It's politics. It's race.
15 I'll say it. I won't dance around the subject.

16 But I do understand. I would say the
17 fix, the easiest way to do it is if we had some
18 Republican representation that would engage with
19 the communities in Sioux County. And I do know
20 they're probably over in South Ridge. They're
21 probably over in Solen. I don't think they're in
22 Cannonball. I know they're not in Porcupine, and
23 I know they're not in Fort Yates, maybe a bit.
24 But you know, beyond that, the Republican ideals
25 shouldn't go against their own beliefs also, I



1 believe.

2 That's why I call myself a centrist. If
3 I didn't see the hypocrisy in the party, I myself
4 would be registered Republican.

5 The state of South Dakota is where I
6 reside. And you guys are probably scratching
7 your head, but I'm elected at large on Standing
8 Rock. I was a North Dakota resident, eight
9 years, and in that time I have never been engaged
10 by a Republican representation for the state.

11 You know, at one point I was a citizen
12 of North Dakota, but yet we had the Democrats
13 pounding on our door every time there's an
14 election, you know, coming. But there's never
15 any engagement, so the representation isn't
16 there. That's a fact.

17 And speaking of national groups, I
18 agree. When these outside entities come into our
19 local affairs, it does disrupt and does cause
20 disruptions. But you have a new -- and I'm -- I
21 guess I would say in comparison to some of you
22 who have been in politics for decades, you know,
23 I'm getting my feet wet. I'm going on six years
24 now.

25 You have individuals like myself,



1 critical thinkers, who want to take a step back
2 and say, let's look at all the facts. Let's just
3 tell it how it is. Let's deal with it that way,
4 but also we need to be straightforward. That --
5 those are some of the reasons why this hasn't
6 been brought up in the past.

7 You know, it would be -- it would be
8 better just to have an engagement of those -- of
9 those officials who are elected. And you know, I
10 know there was a statement saying one of the best
11 representatives, but you could ask probably 99
12 percent of the people in Sioux County who is
13 their representative. They wouldn't even know,
14 and that's a cold hard fact right there.

15 So I'll read my testimony. I guess I'm
16 not here to debate. I'm not here to argue. I'm
17 not trying to persuade anybody anything. I'm
18 here to speak for the record, and I know that we
19 -- understandably, we would probably agree on
20 more things than what you probably think.

21 Let me see. Standing Rock Sioux Tribe,
22 federally recognized tribe located in the states
23 of North Dakota and South Dakota. In North
24 Dakota the reservation makes up Sioux County and
25 has 4373 residents, 3644 of whom are Native



1 American. Sioux County has a Native American
2 border age population of 86 percent. That's a
3 pretty high percentage right there.

4 Standing Rock is a sovereign nation
5 governed by its tribal council. Our tribal
6 members are the Dakota and Dakota Nations. I'm
7 here to advocate on behalf of the tribe and its
8 members, and that's straightforward right there.
9 It is. We're here as part of membership, the
10 Native vote. It does matter. It does have an
11 effect. Otherwise, we wouldn't have the whole ID
12 issue that had come up, and that's a fact. That
13 is politics. There's no ifs, ands about it. I'm
14 not reading in between lines. The information is
15 there, and anybody with a logical half a brain
16 would see it.

17 Our tribal use of single member
18 districts elect representatives to State House.
19 Tribe's communities to be considered a community
20 of interest that should not be split into
21 multiple legislative districts.

22 We request North Dakota Redistricting
23 Committee listen to tribal input and hold
24 redistricting meetings in tribal consultations on
25 reservations.



1 That right there is a -- it's a request.
2 And I will say this: there was a question of why
3 hasn't this been -- why now?

4 Chairman Faith did let you know the
5 situation, and I will tell you. I served as a
6 councilperson under Chairman Orshambel (phonetic)
7 administration and Chairman Faith. Under
8 Chairman Faith, we have communication, and we
9 have working relationships in both states. And
10 that right there is -- we catch a lot of pushback
11 from our own membership, you know. And trying to
12 move forward in way that we address these issues
13 because if you just sit on the sidelines and
14 throw rocks and jabs and talk about the way other
15 places are governing where you basically don't
16 have a say anyway, it's going to be something
17 that -- it doesn't do anything. It's not a way
18 to move forward in any type of way, good, bad,
19 right or wrong.

20 Recent history - tribes fight for voting
21 rights, like I mentioned, the tribal IDs.
22 Physical street address, those types of things
23 come up.

24 Native American population grew by 29.7
25 percent the last decade, and that rate there is a



1 jump. You can take a look at it by referencing
2 our public school districts. You look at the
3 areas which are basically higher populations.
4 They have a growth. We have so many co-opts
5 within the state, within the schools because of
6 declining populations. But yet on the Indian
7 reservations you have the exploding population
8 for the school. You have that growth within
9 there.

10 You know, a lot of that I've taken out
11 of context and added my own point of view of the
12 information I have gathered, and I do have a
13 written testimony. And that's all I have for you
14 today, Committee.

15 CHAIRMAN DEVLIN: Thank you, Councilman.
16 Can we have a copy of your written testimony?

17 COUNCILMAN WALKER: Yes.

18 CHAIRMAN DEVLIN: I had just a follow-up
19 question of what you said. You mentioned
20 splitting up the reservations, and to my
21 knowledge in my lifetime, that has not been done
22 in North Dakota. And I'm wondering, being you
23 live in South Dakota, is that something that -- I
24 mean, that would be unconstitutional. So I'm
25 just wondering why they could split up a



1 reservation. Where did that happen?

2 COUNCILMAN WALKER: Split up a
3 reservation?

4 CHAIRMAN DEVLIN: Yeah.

5 COUNCILMAN WALKER: What do you mean?

6 CHAIRMAN DEVLIN: You said you'd split a
7 reservation to go to various districts is a
8 comment you made.

9 COUNCILMAN WALKER: Oh, gerrymandering.

10 CHAIRMAN DEVLIN: No.

11 COUNCILMAN WALKER: That's the
12 reference.

13 CHAIRMAN DEVLIN: Yeah. But you're not
14 -- we're not -- nobody is splitting any
15 reservation in the state of --

16 COUNCILMAN WALKER: No, no.

17 CHAIRMAN DEVLIN: Okay. We're on the
18 same page.

19 COUNCILMAN WALKER: Yeah.

20 CHAIRMAN DEVLIN: I just misunderstood.
21 Thank you.

22 COUNCILMAN WALKER: Yeah.

23 CHAIRMAN DEVLIN: Misinterpreted it.

24 COUNCILMAN WALKER: This copy?

25 CHAIRMAN DEVLIN: Just hand it down.



1 Thank you very much, Councilman.

2 REPRESENTATIVE MONSON: Mr. Chairman, I
3 had a question for Mr. Walker.

4 CHAIRMAN DEVLIN: I apologize,
5 Representative Monson. I didn't -- I didn't see
6 the note. I apologize, Representative Monson.

7 Go ahead.

8 REPRESENTATIVE MONSON: Thank you,
9 Mr. Chairman.

10 Mr. Walker, you used the word
11 communicate, communication, and communication
12 goes two ways. Have you tried to communicate
13 with your present representatives? You say you
14 don't see them, except when they are looking for
15 a vote. But have you reached out, or has the
16 tribe reached out to try to communicate with
17 them?

18 COUNCILMAN WALKER: Oh, yes. And we can
19 get that documentation if you need it. If you
20 need something -- if you can't take my word for
21 what it is, we'll get you the documentation.

22 REPRESENTATIVE MONSON: Beyond that, I
23 guess -- so what do you think would be different
24 if you had a Native representative in District 31
25 if it was subdivided. Do you think the results



1 from the legislature as a whole would be
2 significantly different?

3 COUNCILMAN WALKER: I believe that you
4 would have a representation that would be -- that
5 I would say it would not be along party lines.
6 We would have to take that party system on and
7 have an individual run as a total independent,
8 not independent ideals as in policy, but somebody
9 who is going to come in as a representative that
10 would gather all the information.

11 See if you're going to -- if you want to
12 quantify it and say, oh, yeah, well, this
13 information here; this is logical. This shifted
14 out. Bring it forward. There would be a voice,
15 which wouldn't be upon a certain set of ideals.
16 It would be a true representation of what
17 people's needs are.

18 CHAIRMAN DEVLIN: Thank you. We
19 appreciate it.

20 COUNCILMAN WALKER: And I'm not talking
21 socialism or communism.

22 CHAIRMAN DEVLIN: Thank you for being
23 here today, sir.

24 COUNCILMAN WALKER: Yeah.

25 MS. COLLETTE BROWN: Hi. Good morning,



1 Redistricting Committee. I was here last month.

2 Chairman Devlin and the members of the
3 Committee members, thank you for having me here
4 today. I am Collette Brown, Gaming Commission
5 Executive Director at Spirit Lake Casino and
6 Resort and will be testifying today on behalf of
7 the Spirit Lake Nation.

8 I previously testified before this
9 Committee on August 26th and appreciate the
10 Committee members allowing me this additional
11 opportunity to speak on behalf of the Spirit Lake
12 Nation.

13 As I informed during my prior testimony,
14 the Spirit Lake Nation is a federally recognized
15 tribe located in the state of North Dakota with
16 an enrolled membership of 7559 as of January
17 2021, according to the American Community Survey.
18 There are almost 4000 Native Americans currently
19 living on our reservation, and most of our
20 reservation is located within Benson County.

21 I'm here to advocate on behalf of the
22 tribe and its members for the single-use member
23 districts to elect representatives to the State
24 House, for this Committee members to account for
25 our voters in spite of the census undercount in



1 tribal communities, and to demand the North
2 Dakota Redistricting Committee members listen to
3 tribal input and hold redistricting meetings and
4 tribal consultations on reservations.

5 As I previously testified to, it is
6 critical that the legislature comply with the
7 Voting Rights Act. This includes moving away
8 from at-large districts for the state of the
9 House representatives, which has dilutive effect
10 on minority votes.

11 The Spirit Lake Reservation is located
12 in District 23. The voters on Spirit Lake
13 Reservation tend to support candidates who are
14 outvoted and opposed by voters in other districts
15 -- areas of the district.

16 In order to provide the Native American
17 voters residing in District 23 a better
18 opportunity to elect the representative of their
19 choice, the Spirit Lake Nation requests the
20 legislature create two single-member districts
21 for the state of the House of Representatives.
22 Failure to draw single-member districts can
23 dilute the Native vote and may violate the Voting
24 Rights Act.

25 Second, Spirit Lake Nation requests that



1 legislature consider a historical census
2 undercount among the tribal communities in North
3 Dakota. If this Committee members only looks at
4 the recorded number from the 2020 census, it will
5 be blinding itself to the true population of
6 these communities.

7 In a 2010 census, Native Americans
8 living on the reservation were undercounted by
9 almost five percent, much higher than any groups.

10 Given the coronavirus pandemic, we can
11 expect this undercount to be given higher for
12 2020 census. Only using the currently recorded
13 2020 census numbers in the redistricting process
14 disproportionately impacts Native American votes.
15 These undercounts should be accounted for by the
16 legislature, this Committee, and future
17 districting committees. The American Community
18 Survey may provide a more accurate number.

19 Third, given the extremely short notice
20 of the invitation to this hearing, which was sent
21 out on Monday night, Spirit Lake Nation Chairman,
22 Douglas Yankton, Senior, was unable to attend
23 this meeting. The Spirit Lake Nation considered
24 this notice to be far from adequate and shows a
25 lack of good faith on part of this Committee to



1 sincerely take the tribe's perspective into
2 account.

3 Additionally, failing to hold hearings
4 near tribal communities silences those tribal
5 member voters who lack resources to travel to
6 Bismarck or to attend these hearings online.

7 Tribes have continued to advocate for
8 more inclusivity in redistricting process, and
9 that advocacy has largely been ignored.

10 As I informed the Committee in my prior
11 testimony, the Spirit Lake Nation and its members
12 have fought hard for the right to vote, which has
13 included successful voting rights cases against a
14 state and county. Spirit Lake Nation will
15 continue to do so when necessary to protect the
16 rights of its members to vote.

17 I thank the Committee members for your
18 time today, and I'm happy to address any
19 questions or concerns with my best notice that I
20 have.

21 CHAIRMAN DEVLIN: I believe you said you
22 had 7759 enrolled members or something to that
23 effect but only 3787 live on the Spirit Lake
24 Reservation, so that's all the votes -- or the
25 count that we can look at. And I'm sure you



1 understand that. We can't pull in population
2 from outside of the reservation to move your
3 numbers up. Or am I misunderstanding what you're
4 saying?

5 MS. COLLETTE BROWN: I understand your
6 question, Chairman. However, I think our number
7 that was considered by the census is
8 undercounted.

9 CHAIRMAN DEVLIN: Yeah. I understand
10 that from you, and I've also heard that from some
11 college towns as well. But we have no choice but
12 to go by the numbers that were given.

13 So my question is, I guess: if you have
14 3700 people roughly out of 16,000, even if you
15 sub-districted, you're not going to have half of
16 the sub-district. Does that matter?

17 MS. COLLETTE BROWN: I am going to refer
18 your question to Native American Rights Fund
19 Representative Matt Campbell.

20 CHAIRMAN DEVLIN: Okay.
21 Any questions?

22 SENATOR BURCKHARD: Mr. Chairman. Over
23 here.

24 CHAIRMAN DEVLIN: Oh, I'm sorry.
25 Senator Burckhard.



1 SENATOR BURCKHARD: Collette, greetings.
2 You made reference to a short notice for this
3 meeting. How much notice do you think would be
4 more appropriate?

5 MS. COLLETTE BROWN: Chairman and
6 Senator Burckhard, I would consider a week's
7 notice because you're dealing with tribal
8 nations, who deal with the federal government and
9 the county and other tribal nations.

10 So currently right now my chairman is
11 Saskatoon handling a delicate situation. As you
12 all know, we've -- Canada, they have exhumed
13 bodies, and Saskatoon are bringing those people
14 home today and giving them the proper burial that
15 they need.

16 So a week at least would be considered
17 ample time, I believe.

18 SENATOR BURCKHARD: Okay. Thanks.

19 MS. COLLETTE BROWN: Thank you.

20 CHAIRMAN DEVLIN: Collette, I just want
21 to follow up on that a little bit. You know, it
22 was our hope that the tribal relations committee
23 would get to meet with every tribe because that's
24 the leadership of the House and Senate. And I
25 don't know if they completed all that, but that



1 was our understanding. They were going to
2 discuss redistricting.

3 When we met last Wednesday, we agreed we
4 wanted to give you an opportunity this week to
5 speak. According to our thing, we send our -- or
6 made the call to Commissioner Davis' office on
7 Friday with this invitation. Well, he was
8 apparently tied up with something else. So you
9 may have not got it from his office until Monday.
10 But our intent was to make it last week, and I
11 apologize if you got it late. Because our intent
12 wasn't to make it as quickly as possible, and we
13 did that.

14 MS. COLLETTE BROWN: Thank you,
15 Chairman.

16 Any questions?

17 Seeing none, thank you.

18 MR. MATT CAMPBELL: Good morning,
19 Mr. Chairman, members of the Committee members.
20 My name is Matt Campbell. I'm a staff attorney
21 at the Native American Rights Fund.

22 And I know Collette referred some
23 questions over to me. I have represented the
24 Spirit Lake Nation and the Standing Rock Sioux
25 Tribe in litigation before. I'm consulting with



1 them now, so I'm happy to answer any questions
2 you may have.

3 You know, I think what I've heard from
4 the tribal leaders today is they are certainly
5 very interested in sub-districting for their
6 districts to improve their opportunities for
7 representation. I've heard that they are
8 interested in being treated as communities of
9 interest that should not be divided, and I'm glad
10 to hear the Committee is not looking to do that
11 because that's something that's important. I
12 think they are communities of interest that have
13 shared cultural values, economic, political, and
14 there values as well within their reservation
15 area but also in the surrounding communities as
16 well.

17 And I would also recommend that the
18 Committee reach out to the tribal nations and
19 formally consult with them after you have a draft
20 plan to get their feedback on any draft plans you
21 may have. So I think that's a great opportunity
22 to provide that formal type of communication,
23 like Chairman Faith mentioned. Opening those
24 lines of communication, I think, is a wonderful
25 thing, to have that discussion and get feedback



1 from the tribal nations on that.

2 So you know, those are some of the main
3 points I've heard. I'm happy to answer any
4 questions that were raised as well.

5 CHAIRMAN DEVLIN: Representative Nathe.

6 REPRESENTATIVE NATHE: Thank you,
7 Mr. Chairman. I could have waited.

8 Thank you, Mr. Campbell for coming. One
9 of the speakers had mentioned earlier about their
10 frustration with their current representation,
11 and I get it. And he was really honest, and I
12 really did appreciate the -- it was refreshing to
13 hear. It came down between Republican and
14 Democrat, and they're not happy with the
15 Republican representation.

16 Is that enough reason to go down the
17 road of subdivision? I mean, we hear that in
18 other districts too. By the way, hey, there's
19 too many Democrats here. There's too many
20 Republicans here. It's kind of the same thing.
21 They're frustrated with the current leadership.
22 But is that a reason why we should go down the
23 road of subdivision because they're unhappy with
24 the current representation that's not been in
25 contact with them?



1 MR. MATT CAMPBELL: Well, I don't think
2 that alone is enough reason. I think what I've
3 heard today is, you know, we've heard a lot about
4 representation and true representation or
5 equitable representation.

6 As it stands right now, I think,
7 essentially, the way the system is set up is
8 there are three Senators for every district, and
9 I think, you know, historically when you're
10 looking at House of Representatives, it's a more
11 local form of representation. And you know, the
12 lack of hearing from your representative is one
13 aspect of that in terms of why having a sub-
14 district would be more beneficial and have that
15 more equitable representation.

16 REPRESENTATIVE NATHE: But from a legal
17 --

18 MR. MATT CAMPBELL: Because you would
19 have a representative that may be more responsive
20 to your local needs because it's a more local
21 view of things because you're not considering,
22 you know, voters the entire district. You're
23 considering voters within that sub-district as
24 your -- you know, who you are representing.

25 REPRESENTATIVE NATHE: But from a legal



1 standpoint, would that be enough to -- I mean, a
2 reason to have sub-districts because you're upset
3 with your current representation; you feel
4 they're not being in contact from a legal
5 standpoint?

6 MR. MATT CAMPBELL: Well, I think from a
7 legal standpoint, the North Dakota statutes
8 certainly allow the legislature to draw sub-
9 districts. So I don't think there's any question
10 about whether or not the legislature can draw
11 subdistricts in North Dakota.

12 REPRESENTATIVE NATHE: I guess I'm
13 looking at the reasoning, you know. The previous
14 speaker basically said, hey, they're not
15 listening to us. We want sub-districts because
16 we want to get people from our side of the aisle
17 in there. So it's almost like we're rigging the
18 system so they can at least get a better chance
19 of getting in there. There's no guarantee they
20 would get in there, but I guess I'm looking from
21 a legal angle. I mean, is that -- with your
22 experience, is that reason enough to have to do a
23 sub-district?

24 MR. MATT CAMPBELL: Well, I think there
25 are many considerations to look at when you're



1 thinking about sub-districts and, you know,
2 thinking about communities that are indicating
3 that they have shared interests in terms of their
4 identity, their cultural values, their economic
5 values. That they believe that they are entitled
6 to have a representative that's more responsive
7 to their needs. It's certainly a reason to
8 advocate for single-member districts. And of
9 course, the North Dakota statutes allow for that.

10 You know, I think under the Voting
11 Rights Act you can also consider things like
12 racially polarized voting, whether minorities --
13 the minority vote has been diluted, the history
14 of discrimination in the area, and things of that
15 nature as well.

16 But, you know, I think the North Dakota
17 statutes allow for single-member districts, and
18 you know, there are several criteria you can
19 consider in that consideration.

20 CHAIRMAN DEVLIN: Representative
21 Schauer, I believe.

22 REPRESENTATIVE SCHAUER: Thank you,
23 Mr. Chairman.

24 Mr. Campbell, do you have data to show
25 that the minority vote has been diluted in North



1 Dakota? And do you have data to show that if we
2 split a district, it improves representation?
3 And if so, can you provide this Committee members
4 with that data?

5 MR. MATT CAMPBELL: Yeah. We can
6 certainly provide that information. I think you
7 heard from Chairman Faith that, you know, he ran
8 for the House in 2014 and was unsuccessful. We
9 also know there was another Standing Rock member
10 that has run for the House as well, LaDonna
11 Allard, and was unsuccessful.

12 I think previously to 2014, we saw other
13 Standing Rock members that were also unsuccessful
14 in running for the House. And I think we've also
15 seen that for the three affiliated areas.
16 They've had several members in the last decade
17 run for the House of Representative that were
18 unsuccessful. And I think we also see that in
19 the Spirit Lake Nation region as well. So we can
20 certainly provide that information to the
21 committee.

22 CHAIRMAN DEVLIN: Representative Monson
23 had a question online, I believe.

24 REPRESENTATIVE MONSON: Thank you,
25 Mr. Chairman.



1 Mr. Campbell, you brought up the Voting
2 Rights Act. You did and so did the Chairman.
3 But you know, you're advocating, I believe, that
4 no matter what we should be having sub-districts,
5 but we still need to look at the one voter/one
6 vote, which I mean, the Constitution trumps
7 whatever they want to bring up in a Voting Rights
8 Act.

9 But are you advocating that we would
10 have sub-districts that would be not equal in
11 numbers just because -- I mean, we're talking
12 6000 versus 10,000. That's not constitutional
13 the way I understand it. And in the case of
14 Spirit Lake, it would be even farther off.

15 So what are you advocating here?

16 MR. MATT CAMPBELL: Yeah. Thank you for
17 the question, Representative Monson.

18 You're right. I think one person/one
19 vote is, of course, the top criteria that you
20 look at when thinking about redistricting. And I
21 don't think we're advocating to deviate from, you
22 know, certainly not more than 10 percent in
23 looking at the districts.

24 And what we can do is work with, you
25 know, Standing Rock and Spirit Lake to develop



1 some maps that they may prefer and provide those
2 to the Committee. But I do think they certainly
3 wouldn't deviate more than 10 percent, and they
4 would be much more equitable in terms of looking
5 at sub-districts that are around, I think, 8288
6 people within each sub-district.

7 So that's certainly not something we're
8 looking to abdicate the Constitution. I think,
9 you know, as communities that have shared
10 interests, that have shared valued, you know,
11 advocating for representation at the more local
12 level is what they're looking at.

13 CHAIRMAN DEVLIN: I know there's a
14 couple more questions, but I did want to -- you
15 know, I think it was Ms. Brown that brought up
16 the meetings. But we had a state Tribal
17 Relations Committee, which is leadership to the
18 legislature. We met with the Spirit Lake Nation
19 on September 1st, and Ms. Brown was there. So I
20 mean, there has been input before this. There
21 was input at that meeting as well.

22 And you know, we're kind of dealing with
23 the hand we were dealt. We were expecting
24 population figures in March, early April. We got
25 them in the middle of August. So there was



1 really, you know, nowhere to go at that point.
2 But we are trying everything we can to reach out
3 to the tribes, and like I said, they were on the
4 Spirit Lake Nation and had that meeting. And
5 then we still wanted to follow up with another
6 meeting. So that's what we're here today.

7 Representative Headland.

8 REPRESENTATIVE HEADLAND: Thank you, Mr.
9 Chairman.

10 CHAIRMAN DEVLIN: Thank you.

11 REPRESENTATIVE HEADLAND: You know, back
12 to the question that was referred to you by the
13 prior speaker and knowing that when you
14 subdivide, you lose the opportunity to vote for
15 two representatives. You will only be allowed to
16 vote for one. If the sub-district would still
17 constitute a minority for the reservation
18 population, does it still make sense in your mind
19 to subdivide that district? And I think that's
20 the question that she referred to you. Do you
21 still advocate for subdividing that district?

22 MR. MATT CAMPBELL: Well, I think -- the
23 question she had may have been more specific to
24 the numbers. But I do think that it is
25 beneficial to have sub-districts because when



1 you're thinking about communities at a local
2 level, having a greater opportunity to elect
3 representatives of your choice from your area is
4 much improved when you have sub-districts,
5 whether it's -- you know, we're talking about
6 reservations or other rural areas across the
7 state. Having sub-districts can be beneficial to
8 those local areas. And so I do think when you're
9 looking at that and when communities come
10 together and are advocating for their interest
11 and asking for subdistricts, it's certainly
12 something that is beneficial to them because you
13 would have representatives that are more
14 responsive to their needs when they're only
15 worried about votes from their areas.

16 CHAIRMAN DEVLIN: You may continue.

17 REPRESENTATIVE HEADLAND: Thank you,
18 Mr. Chairman.

19 So if I understand you correctly, you
20 believe it's advantageous and more beneficial to
21 only have the opportunity to vote and be
22 responsive from one representative versus being
23 represented and having the opportunity to vote
24 for two representatives? You think it's more
25 beneficial just to vote for one?



1 MR. MATT CAMPBELL: I can't --

2 (Cross talk)

3 I appreciate your question,
4 Representative Headland. I, obviously, can't
5 speak for the entire state. I can't speak for
6 all the tribal nations. What I've heard from the
7 Spirit Lake Nation today and the Standing Rock
8 Sioux Tribe is that they, specifically, are
9 interested in having single-member districts, and
10 they believe it would be beneficial to their
11 communities.

12 And so I think that's what we're seeking
13 and what we're talking about.

14 CHAIRMAN DEVLIN: Senator Poolman.

15 SENATOR POOLMAN: Thank you,
16 Mr. Chairman.

17 Mr. Campbell, you keep using the word
18 "equitable." And so as I think about Chairman
19 Faith's request that they have their own sub-
20 district, even though they only have 37 percent
21 of what would be necessary of that district, is
22 that really the request here that we're not
23 looking for equal representation, but we're
24 looking for equitable representation? Because as
25 we know, that's two different things.



1 MR. MATT CAMPBELL: And maybe you could
2 just clarify the question a little bit. Maybe
3 I'm not understanding. I can be dense. So I
4 apologize for that.

5 SENATOR POOLMAN: Mr. Chairman and
6 Mr. Campbell, you keep using the word
7 "equitable," which doesn't mean equal, right.
8 And so I'm just wanting to clarify that the
9 request of your organization and most likely
10 Chairman Faith is that we're setting up equitable
11 districts not equal ones.

12 MR. MATT CAMPBELL: Thank you, Senator
13 Poolman. I think what we're requesting is that
14 they're -- you know, what Standing Rock has
15 requested is that their district be divided into
16 sub-districts. And they believe that it gives
17 them a better opportunity to have representation
18 that better represents them. And so I think
19 that's what we're talking about.

20 CHAIRMAN DEVLIN: Was there any further
21 questions for Matt?

22 Again, thank you very much for being
23 here. We appreciate it.

24 MR. MATT CAMPBELL: Thank you,
25 Mr. Chairman.



1 MS. DONAGHI: Good morning, Committee.
2 Good morning, Chairman Delvin -- Devlin, sorry,
3 and members of the Redistricting Committee. My
4 name is Nichole Donaghi (phonetic). I am a
5 citizen of the Standing Rock Sioux Tribe. I'm
6 also a descendant of the Turtle Mountain Band of
7 Chippewa and also a descendant on my grandpa's
8 side from the Manda (indiscernible) and people.

9 I live in Lincoln, North Dakota, and I'm
10 the executive director for North Dakota Native
11 Vote. And I understand you heard a lot about me
12 at the last hearing.

13 North Dakota Native Vote is a nonprofit
14 nonpartisan grassroots organization that
15 initially formed in response to the 2018 U.S.
16 Supreme Court decision to uphold the voter
17 identification law that had the potential to
18 disproportionately adversely affect over 5000
19 Native American voters in North Dakota. Our
20 mission is to create and effect policy to promote
21 equitable representation for the Native people in
22 North Dakota.

23 I joined North Dakota Native Vote in
24 2018 because of the imbalance of power in our
25 state that was very apparent to me after being a



1 community organizer for years. I work on
2 education issues, protection of land and water,
3 and now civic engagement.

4 I soon realized that the issues I was
5 working on often stemmed from a lack of inclusion
6 and representation in the decision-making
7 processes.

8 In North Dakota the Native American
9 population grew by 29.7 percent in the last
10 decade. It is North Dakota Native vote's ask
11 that the Committee take into consideration the
12 per perspectives of each of the tribes as well as
13 tribal members in the redistricting process, and
14 that is two different things. I'd like the
15 Committee to understand that we have a tribal
16 nation government, and then we have the tribal
17 citizens.

18 We are asking the Committee to adopt
19 single-member House districts to prevent the
20 dilution of Native American votes. Tribes and
21 tribal members in North Dakota have had to fight
22 for the right to vote, whether by defeating voter
23 ID laws, opposing district lines that dilute the
24 Native American vote, or by demanding on
25 reservation polling locations. And those are



1 things that we all -- we have advocated in the
2 past as North Dakota Native Vote.

3 As we have seen in our early beginning
4 as an organization, tribal citizens in North
5 Dakota have been overburdened by policy that is
6 created by decision makers with little input from
7 their tribal constituents. At large voting
8 systems like the currently one used for North
9 Dakota State House may violate the Voting Rights
10 Act when they dilute minority voting power by
11 preventing tribal members from electing
12 candidates of their choice.

13 Our state constitution in article 4,
14 subsection 2, paragraph 2, states -- and I'm
15 paraphrasing, the legislative assembly may
16 provide for the election of senators at large and
17 representatives at large or from sub-districts
18 from those districts.

19 North Dakota Sentry Code 55-301.5 states
20 that -- in subsection 2 that, "Representatives
21 may be elected at large or from sub-districts."
22 North Dakota law allows for the creation of sub-
23 districts, and that is what should be done.
24 Single-member House districts or sub-districts
25 within districts containing reservations would



1 allow tribal members to elect the candidate of
2 their choice, somebody that is more accessible.

3 And I heard the term "better
4 representation" being thrown out before. We
5 don't consider it better representation. It
6 would be somebody that's more accessible, that
7 knows the communities, that knows the issues, and
8 is in tune with the people that they represent.

9 Candidates are able to run but not get
10 elected because of the dilution of their vote by
11 being grouped in with adjacent communities that
12 do not share similar interests. One example is
13 in my homelands in Sioux County on the Standing
14 Rock Reservation.

15 Data from elections for legislative
16 seats over the past decade indicate that Native
17 American residents of District 31 are not
18 currently able to elect representatives of their
19 choice. For example, in 2014, two Standing Rock
20 tribal members, Mike Faith, Chairman Mike Faith,
21 and LaDonna Allard ran for the State House but
22 were outvoted in the at-large system.

23 In 2010, another Standing Rock tribal
24 member -- I believe it was Chad Harrison -- ran
25 for the State House, but was likewise outvoted in



1 the at-large system. Chase Aaronize (phonetic),
2 another Standing Rock member and candidate for
3 U.S. House earned 78 percent of the vote in Sioux
4 County but was defeated in each of the other
5 counties in District 31. This shows that the
6 Native American voters have not been able to
7 elect the candidate of their choice.

8 We also recommend that a community of
9 (indiscernible) be adopted by this Committee,
10 which takes into considerations communities that
11 have similar language, culture, an identity to
12 keep those communities together within a single
13 legislative district. And I understand that the
14 community has never split up reservations.

15 Lastly, the Committee should be holding
16 hearings on or near reservations so that tribal
17 members who are unable to travel to Bismarck, who
18 lack internet service, which is an issue on our
19 reservation, are able to participate in the
20 redistricting process. There are high levels of
21 poverty and a lack of access to transportation
22 and broadband internet on our reservations. This
23 Committee would be doing itself and the state a
24 disservice by failing to provide an opportunity
25 for all the state citizens to take part in this



1 important discussion. All voices must be heard.

2 North Dakota Native Vote was founded to
3 ensure that inclusion of Native voices in the
4 political discourse of our state. We support and
5 encourage our native people to engage in the
6 political process that is not always inclusive of
7 our people.

8 I thank you Redistricting Committee for
9 your time today and will stand for any questions.
10 Thank you.

11 CHAIRMAN DEVLIN: Senator Holmberg.

12 VICE CHAIR HOLMBERG: Yes, ma'am. Thank
13 you very much for your testimony, first of all.

14 Secondly, this -- I'm up here.

15 MS. DONAGHI: Yeah.

16 VICE CHAIR HOLMBERG: First of all, this
17 Committee is very sensitive to our duties under
18 the Voting Rights Act. We know that. We get
19 that. There are things we have to do, and there
20 are things we can do. And we certainly will take
21 care of the half to do, I believe, but there are
22 also, within that particular legislation, there
23 are certain thresholds; and I don't have them in
24 front of me. I mean, if you have a district that
25 has 50 percent -- if you subdivided a district



1 and the Native population was 50 percent, that's
2 pretty easy to argue. When you get down to 23
3 percent, that's less arguable. So in other
4 words, we know what -- I believe what we should
5 do, but there are also those thresholds that we
6 also have to consider.

7 MS. DONAGHI: Thank you, Senator
8 Holmberg. I would also like to refer back to
9 Matthew Campbell from NARF when he stated that
10 we're not asking for a deviation from the
11 criteria, you know. We would like you to
12 consider where it is doable, especially coming
13 from Standing Rock. I grew up in Standing Rock,
14 you know. My father was involved in the
15 political process, you know. He never ran for
16 office, but I think that was something that was
17 -- that he would have liked to do.

18 Our people are not prevented from
19 running for office. We just can't get elected,
20 and we do have -- we do have names of people over
21 the last decade at least. This past election,
22 Lisa DeBill (phonetic) in Fort Berthold ran for
23 Senate. Tomasina Mandan (phonetic) ran for House
24 this past election and was not able to get
25 elected. So there are cases that we see that our



1 people want to engage in the process but are
2 unable to.

3 VICE CHAIR HOLMBERG: What happens,
4 ma'am -- and this is a hypothetical. What
5 happens if you have a reservation that has a
6 quarter of the population, and they would like to
7 elect someone from that particular reservation,
8 who is of one political party. And one can look
9 up, you know, where the districts are, yet that
10 particular area is surrounded by areas that vote
11 70 percent in another way, shall we say,
12 politically. What do you think?

13 MS. DONAGHI: Well, I mean I --

14 VICE CHAIR HOLMBERG: Makes it tough.

15 MS. DONAGHI: That does make it tough.
16 I do agree, Senator Holmberg. I do think that is
17 something that has been thought about, and we
18 don't have an answer to at this point.

19 VICE CHAIR HOLMBERG: Yeah. We don't
20 have an answer either.

21 MS. DONAGHI: I understand.

22 CHAIRMAN DEVLIN: Senator Sorvaag.

23 SENATOR SORVAAG: Mr. Chairman.

24 Expanding a little, my question was: we
25 had an earlier speaker who said that he's a



1 centrist. That he doesn't really agree with what
2 Republicans do, and it should be about Democrats
3 present the data.

4 You said in your opening, you're
5 nonpartisan. So do you agree with this statement
6 or disagree? Is it about backing a certain
7 party, or are you truly nonpartisan; and it's
8 about just getting representation for the
9 members?

10 MS. DONAGHI: Senator Sorvaag, Chairman
11 Devlin. I thank you for that question.
12 Personally, I'm a moderate, you know. I don't
13 align with any political party. We all know that
14 the Native American population does lean toward
15 the left. We do support Native American
16 candidates, and so our organization is a
17 501(c)(4) organization. We do have the ability
18 to endorse -- represent our people that are
19 running for office. And we do support any Native
20 American as running for any office at any level.
21 And so Lisa Dabill was one of our candidates that
22 ran up in Fort Berthold, and we did support her.

23 SENATOR SORVAAG: Mr. Chairman, may I
24 continue?

25 CHAIRMAN DEVLIN: You may continue.



1 SENATOR SORVAAG: So you're for any
2 Native American, no matter what party they would
3 represent; you would support?

4 MS. DONAGHI: I would. We've sent
5 questionnaires this last election to all of the
6 candidates in the areas that we work in, that we
7 focus on. Our priority is reservation areas.

8 SENATOR SORVAAG: Thank you.

9 CHAIRMAN DEVLIN: Representative Monson
10 had another question.

11 REPRESENTATIVE MONSON: Thank you, Mr.
12 Chairman.

13 And, ma'am, I'm not sure I got your name
14 exactly, Bonabi; is that it?

15 MS. DONAGHI: Donaghi.

16 REPRESENTATIVE MONSON: You brought up
17 the lack of computer access to get input at the
18 meetings here and that they should be held
19 actually on the reservation.

20 Are you aware that every school and
21 every courthouse in the whole state has access to
22 computers, which people that I'm sure at those
23 locations would allow for folks on the
24 reservations to give input at these meetings,
25 just as I am doing from my home right now because



1 I'm a farmer, and I'm hoping to get some
2 combining done this afternoon. But there are
3 local access places where people on the
4 reservation can go, and I'm sure they would not
5 be turned down to get access to this. So I think
6 if you're not aware of it, you should become
7 aware of it, and the tribal leaders should be
8 reaching out in that regard.

9 MS. DONAGHI: Representative Monson,
10 thank you for that. I am aware that there is
11 public access to Wi-Fi systems at the
12 courthouses, the colleges on our reservations.
13 Those are only accessible during working hours,
14 and I know this because when we were working the
15 2018 election, we were outside of the Sioux
16 County Courthouse, which shuts their Wi-Fi off at
17 4 o'clock.

18 And so there's limited access. I would
19 also take into account the risk of contracting or
20 spreading COVID-19. Those offices usually do not
21 allow people in their office unless they have an
22 appointment because of the pandemic. Thank you.

23 CHAIRMAN DEVLIN: Representative Nathe.

24 REPRESENTATIVE NATHE: Thank you,
25 Mr. Chairman.



1 Thanks for coming today. So I think
2 there's some assumptions in some of the
3 discussion that, well, we haven't been able to
4 elect the people that we want who are on our side
5 of the aisle. And the assumption, at least I'm
6 getting -- correct me if I'm wrong -- is that
7 everybody -- all enrolled members are going to
8 vote for that Democrat.

9 I mean, there's been Republican enrolled
10 members in Standing Rock, Charlie Murphy and
11 others who have ran and lost. So wouldn't you
12 agree that even though some of your favorable
13 candidates, the members, also voted for the
14 Republicans and not them also. So it's not 100
15 percent voted for the Democrat, and they lost;
16 and they're upset? Would you agree that some of
17 the enrolled members also supported Republican
18 Democrats -- I mean, Republican candidates?

19 MS. DONAGHI: I think I was in high
20 school when Charlie Murphy ran, so I really
21 wouldn't recall that.

22 REPRESENTATIVE NATHE: That was --

23 MS. DONAGHI: Yes. So that may be the
24 case. I couldn't speculate.

25 REPRESENTATIVE NATHE: But I think the



1 assumption -- I mean, just from the discussions
2 -- that everybody on the reservation will vote
3 Democrat, and it's not. And I think a lot of
4 them do, as one of the previous speakers says,
5 hey, we agree on more things than you realize.

6 So my impression -- you can correct me
7 -- is that there is a number of people on all the
8 reservations that will vote for a Republican
9 candidate. Just the opposite, there is a Native
10 American with Buffalo who won in Fargo.

11 MS. DONAGHI: Uh-huh (affirmative).

12 REPRESENTATIVE NATHE: Not on the
13 reservation, and they voted her in along with her
14 Republican seatmate. So it goes both ways.

15 MS. DONAGHI: I do agree with that,
16 Representative Nathe. So I think that is
17 something that is, you know, calls for
18 speculation. Yes. That could be the assumption.
19 But, you know, having the choice whether they run
20 as a Republican or a Democrat, you know, at least
21 we would have the choice of somebody that knows
22 the community is what we're talking about. And
23 it's not -- it doesn't come down to, you know,
24 for lack of better word, a temper tantrum of not
25 being able to elect people we want. It comes



1 down to having the access to elect somebody or
2 the ability to elect somebody that comes from our
3 community.

4 REPRESENTATIVE NATHE: But you had that
5 access with Charlie Murphy when he ran, and yet
6 he lost.

7 MS. DONAGHI: He did lose. He did lose.

8 REPRESENTATIVE NATHE: He was
9 Republican.

10 MS. DONAGHI: He was Republican. And I
11 think that if we look back at the data, we could
12 see, you know, which communities did vote for
13 him.

14 REPRESENTATIVE NATHE: But they do have
15 the opportunity -- on either side of the aisle,
16 they do have the opportunity to put their name on
17 a ballot to run. So nothing that we do right now
18 is stopping any of that, correct?

19 MS. DONAGHI: Thank you. Yes. Nothing
20 is stopping that. It's just getting people
21 elected is the issue.

22 REPRESENTATIVE NATHE: Thank you.

23 CHAIRMAN DEVLIN: Any further questions?
24 Who am I listening to?

25 REPRESENTATIVE MONSON: Representative



1 Monson.

2 CHAIRMAN DEVLIN: Oh, Representative
3 Monson. I'm sorry.

4 REPRESENTATIVE MONSON: I would like to
5 point out that it has been a number of years now,
6 but there was a Republican Native American in the
7 House that I served with for several sessions,
8 Dawn Charging from District 4.

9 I mean, she was quite effective too as a
10 representative. So I mean, it's both sides of
11 the aisle. It's been a while, but it's possible.

12 MS. DONAGHI: Thank you for that. I do
13 believe as well that it is possible, whether
14 they're Republican or Democrat, you know. We
15 should be crossing that aisle more often as
16 people rather than thinking along party lines.

17 CHAIRMAN DEVLIN: Anyone else?

18 Thank you for being here.

19 MS. DONAGHI: Thank you for your time.

20 CHAIRMAN DEVLIN: I apologize. Nicole,
21 did you have written testimony? We would have a
22 copy for our record. We would appreciate that.

23 (Pause)

24 COMMISSIONER DAVIS: I do believe that
25 concludes our testimony and conversations with



1 tribal leadership. So I do, once again, thank
2 you for the opportunity to continue those
3 conversations that we also begin with the Tribal
4 State Relations Committee, and MHA, Turtle
5 Mountain, and in Spirit Lake the last few weeks.

6 One thing to just keep in mind, you
7 know, I think that just to really drive home -
8 Mr. Walker had said, you know, this shouldn't be
9 a matter of party as he said. It should be maybe
10 an independent.

11 We do know that Representative Nathe
12 made a good point that, you know, there is
13 Republican and there is Democrat representative
14 on each side. And I think just moving forward,
15 you know, as we continue to build those tribal
16 state relations that we have, I think, done so in
17 leaps and bounds in the last several years. I
18 will speak that from a tribal perspective as well
19 as now being a state representative, as I come
20 from a position of leadership on the tribal side.

21 And I think, you know, we're talking to
22 representation. We're talking equitability, you
23 know. A lot of times it gets lost in the
24 shuffle. It gets lost in the translation, the
25 true meaning of what a tribe is trying to bring



1 forward. I'm sure Mr. Boschee is very familiar
2 with a comment that was made by Chairman Yankton
3 during our time up in Spirit Lake. We were
4 talking about agreements and partnerships moving
5 forward, and one of the conversations led into
6 improved law enforcement presence within the
7 exterior boundaries of the Spirit Lake Nation.

8 And so Chairman Yankton had very clearly
9 said that historically -- and I think all tribes
10 can agree with this -- there has been a severe
11 underrepresentation and communication with the
12 federal government. There has been serious
13 issues with bureaucracy blocking progress and the
14 ability to serve constituents. So Chairman
15 Yankton openly said that, as a chosen leader of
16 his people, he is going to work with the form of
17 government that is going to best serve his
18 people, and that is the State of North Dakota to
19 build partnerships and to move forward.

20 So I think keeping that in mind that
21 tribal nations do have a duality. They are
22 recognized federally, but they have also
23 integrated into the state as citizens of the
24 state of North Dakota, largely in part to make
25 sure that they have access to congressional



1 representation at the federal level.

2 So keeping that in mind moving forward
3 too should be key. And if we're looking for, you
4 know -- how can I say it -- recommendations to
5 potentially explore our study moving forward. We
6 talk about equitable representation that was
7 alluded to earlier, you know, true understanding
8 of tribal issues, open lines of communication.

9 I will say this as a tribal leader
10 formerly: there are great champions in his
11 legislature on both sides of the aisle. I will
12 say that, and I've made many great partnerships
13 and friendships through the bienniums that I have
14 served.

15 But if you look at -- one example may
16 able to explore in the future is what happens in
17 Maine. So each tribal nation is allowed a
18 representation within the legislator of the state
19 of Maine, and that is within their constitution
20 that was passed into their code. And how it
21 works is there are four tribes, and I do believe
22 they are called, collectively, the Wabanaki
23 people of Dawnland.

24 So each tribe does have representation
25 within the state legislator, specifically to



1 their tribe. They do have all these same
2 incentives. They can sponsor, co-sponsor. They
3 can speak on the floor, so they are equal
4 partners in the way they conduct business. So I
5 think maybe moving forward, one thing to explore
6 would be maybe the composition that the State of
7 Maine uses in regards to tribal partnerships and
8 state representation.

9 And just with that, once again, I would
10 like to thank you for your time today, and I will
11 stand for any questions. If not, I will gladly
12 take my leave.

13 CHAIRMAN DEVLIN: Any questions for
14 Commissioner Davis?

15 Seeing none, thank you.

16 COMMISSIONER DAVIS: Thank you.

17 CHAIRMAN DEVLIN: Thank you for helping
18 to facilitate this. We appreciate it.

19 Was there anybody else from one of the
20 tribes to speak today?

21 Senator Oban has something she would
22 like to show the Committee at this time. I think
23 it's related.

24 SENATOR OBAN: It is, Mr. Chairman.

25 So the former math teacher in me can't



1 help but sit here and figure out how can we
2 remove -- because I think all of us sitting here
3 get a little bit tied up in the is this about
4 Republican versus Democrat? Is this about you
5 can't win, and you're throwing a fit, whatever?

6 So all I did was pull together the
7 election results from 2018 in District 31 as an
8 example of what subdivided districts might do.
9 So along the top -- and I took away the names of
10 the candidates, so we aren't distracted by that.
11 The person running for position A won District 31
12 --

13 I don't know if you can make that
14 bigger, Emily, for everybody

15 -- with 59 percent of the vote. In the
16 second, a different position race, they won 65
17 percent of the vote. In the next position, they
18 won 65 percent of the vote. This is all in
19 District 31.

20 You can see current District 31 is made
21 up of parts of Morton, and then Hettinger, Grant,
22 and Sioux.

23 So let's, for example, since we were all
24 distracted by Chairman Faith's suggestion of just
25 doing Sioux and Grant together. Let's add



1 Hettinger in there as well because we get closer
2 to half then.

3 Now given this is not total population.
4 This is the number of people who voted because
5 that's what I had easy access to. You can see if
6 Sioux, Grant, and Hettinger were a subdivided
7 district, position A election winner would have
8 actually gotten 49 percent of the vote in that
9 sub-district. But the other two elections
10 winners would have still won.

11 If you can't see how Sioux County's vote
12 is diluted by having this all be at-large, then
13 I'm not confident you understand numbers
14 generally. That is what the concept is. If you
15 take away partisanship, if you take away, you
16 know, the fact that our friends are serving, and
17 they might feel like the folks on Standing Rock
18 are being critical of our current friends, if you
19 take away all of that, you can still see that in
20 two of the three races, the person who won the
21 entire district, still won that sub-district. It
22 did change the outcome in one.

23 So that was just what I wanted to show
24 in numbers, and this was, you know, three races
25 in one year in one district. So just for



1 purposes of trying to get a better understanding
2 of how that changes things. It doesn't always
3 change the results, but it certainly dilutes the
4 vote of Sioux County.

5 That's it, Mr. Chairman.

6 CHAIRMAN DEVLIN: Thank you.

7 Were there any questions?

8 REPRESENTATIVE MONSON: Yes,
9 Mr. Chairman. Representative Monson.

10 CHAIRMAN DEVLIN: Representative Monson.

11 REPRESENTATIVE MONSON: Thank you,
12 Mr. Chairman.

13 And thank you for that very, very
14 interesting statistics.

15 Sioux, Grant and Hettinger still don't
16 come up to 40 percent when we start looking at
17 our expanded population overall in the state, you
18 know. So if you were to take even a sliver of
19 Morton County, probably all of the representation
20 would be the same, and we have to work within the
21 boundaries of our census. And the fact that
22 we've got to add an extra 3000 people per
23 district, that's going to skew that some. Are
24 you aware of that?

25 SENATOR OBAN: Representative Monson, I



1 made clear that this was not even based on
2 population. This is what numbers is had easy
3 access too, and it isn't even based on the most
4 recent census. It was just trying to show that
5 at least it gives them the opportunity to elect
6 the candidate of their choice. It doesn't mean
7 that candidate always wins. In fact, in two of
8 the three races, they still got 56 and 57 percent
9 of the vote.

10 REPRESENTATIVE NATHE: I'm thankful that
11 you brought this up. I'm actually surprised that
12 it was that -- at these numbers, but thank you
13 for that. It's very interesting.

14 SENATOR OBAN: Yep.

15 CHAIRMAN DEVLIN: Was there a question
16 for Senator Oban? I didn't see any other ones.

17 Committee, I think -- I greatly
18 appreciate the representatives from all the
19 tribes being here. We thank you. And,
20 Commissioner Davis, again, I thank you for
21 helping to facilitate this. I hope that members
22 of the tribes give the legislative committee
23 involving leadership, Tribal Relations Committee
24 hasn't been to a certain nation yet or
25 reservation. I hope that there's good



1 representation there. I looked at the numbers of
2 the people that were at the one at Spirit Lake.
3 I mean, it wasn't a big turnout, but certainly
4 the opportunity was there. So I hope you'll --

5 Committee, we're going to break for an
6 hour for noon. It's a little early, but that
7 would be easier, I think, than trying to start
8 something else at 20 too. So see you back
9 roughly at 20 to 1:00, quarter to 1:00, quarter
10 to 1:00 exactly.

11 (Recess taken)

12 CHAIRMAN DEVLIN: We'll call the
13 Committee back to order. I believe we're going
14 to take some time now and look at some different
15 concepts.

16 Representative Lefor are you ready with
17 yours first?

18 REPRESENTATIVE LEFOR: I am.

19 CHAIRMAN DEVLIN: Okay. Representative
20 Lefor is presenting a concept developed there in
21 Districts 39, 37, 36, and a new district, I
22 believe.

23 (Pause)

24 REPRESENTATIVE LEFOR: Good afternoon,
25 Chair Devlin, members of the Redistricting



1 Committee. For the record, my name is Mike
2 Lefor, and I serve in the House from District 37.

3 As we all know, redistricting is an
4 interesting experience, to say the least. I
5 think that, led by this Chairman, that this
6 Committee has been working very hard to be
7 transparent, open, and fair throughout this
8 process. And we have unique challenges in
9 different parts of the state.

10 As I have stated twice publicly, as have
11 other members of the Committee, we have a short
12 window of opportunity to discuss this subject due
13 to getting the census numbers later than normal,
14 which increases the challenges associated with
15 serving on this Committee.

16 We truly seek public input in this
17 process and, again, would urge you to contact
18 members of this Committee if you have to voice
19 any ideas or concerns. In directing this
20 conversation to southwest North Dakota, I wanted
21 to start with what our Committee vice chair
22 stated at a previous meeting, "This is not rocket
23 science. This is simply arithmetic." And that's
24 exactly what we've done here.

25 With that, I will give the Committee the



1 arithmetic. In existing boundaries of this area
2 is a population of nearly -- just over 61,000
3 people, which at the target rate of 16,576 people
4 per district would give us three full districts
5 for a total of 49,728, which would leave 12,000
6 individuals without a district.

7 So in order to form a fourth district,
8 you simply lower the populations of some
9 districts and add individuals to the new
10 district. I will start with District 39. And if
11 you take a look at the handout, you will note
12 that what was done there was to take the portions
13 of McKenzie and Dunn Counties, which are not,
14 excuse me, on the reservation and took a little
15 portion of Mercer County to the west.

16 And again, that was arithmetic. So if
17 you look at what's been done here, the population
18 would be 15,829.

19 REPRESENTATIVE MONSON: Mr. Chairman,
20 can I get you to have Emily turn on the sound for
21 teams members?

22 CHAIRMAN DEVLIN: Sorry. We will get
23 that right on.

24 Okay. We're with you now.

25 REPRESENTATIVE LEFOR: Start over?



1 Okay. No. Okay. So with even adding that
2 portion of Mercer County puts us at -4.51 percent
3 in population. Moving on to District 37,
4 Dickinson has 25,700 some people. And so
5 District 37 is contained within the city limits
6 of the city of Dickinson, although in a more
7 compressed way. And I am shedding some
8 population in north Dickinson.

9 I believe, if my memory serves me, it's
10 21stStreet, and then you'll see a little jog up
11 on Highway 22 and over. And the reason for that,
12 again, is population. So when you look at the
13 boundaries -- I'm looking at 18th Avenue East --
14 and then in some areas it does come out because
15 that's where the city comes out.

16 And if you look at some of those census
17 blocks, that open area in the -- is a census
18 block that would extend with too much population
19 for what I'm trying to accomplish with other
20 districts.

21 Next, in District 36, due to the tight
22 -- the tight boundary restrictions, because --
23 what I -- we had to do is twofold. Again, add
24 4000 people to a new district for a new districts
25 and compress the 36, 37, and 39 populations.



1 With District 36, you will see that
2 Counsel has it at a -0.95 percent. Mine
3 indicated -3.25. So I'm going to -- and so we --
4 this was -- the information I have is from last
5 week. Obviously, very preliminary, there's some
6 other work that -- that I think we need to take a
7 look at.

8 Counsel did update this to make sure all
9 the boundaries are correct and so forth, but
10 again, before I would submit this as an, you
11 know, official proposal, there's some more work
12 that needs to be done in my mind in District 36,
13 in District Y, to take a look at other potential
14 options.

15 But basically, District 36 -- and
16 understanding the need for population in District
17 Y, and really with not any many directions to go
18 other than east, I moved District 36 -- or we did
19 in this rendering to and including the city of
20 New Salem. And even with that, you still have
21 under the ideal size district.

22 And so then with District Y, which is
23 what I call this proposed new district, we have
24 five -- excuse me, yes, five counties: Bowman,
25 Adams, Slope, Golden Valley, Billings, that have



1 a total population of 8500. So we had to find
2 7000 more people, and you'll find that in
3 utilizing parts of Dunn that were not utilized
4 for District 39, a big chunk of western Stark
5 County and also a portion of Hettinger County to
6 get to the population that was needed.

7 So obviously, in this sector, you don't
8 have many options as you obviously can't go west,
9 you cannot go south, and there are -- you know,
10 you're budding up against other districts as
11 well. So I see -- there's been a tremendous
12 amount of time that's been spent on this.

13 I wanted to give a special shout out to
14 Samantha Cramer, Clair Ness, Emily Thompson, and
15 Carl Kuzman [phonetic]. Without their expertise,
16 this process would have been made much more
17 difficult.

18 And so, again, when we looked at this,
19 we had to compress some population in order --
20 and move to the -- mark further east than we were
21 before because of the limitations that we were
22 faced with, and for me this is still a
23 preliminary look at this part of the state.
24 There's still some things that I want to take a
25 further look at in District Y and District 36.



1 So it's a plan in progress, and I would
2 reiterate that if there is anyone, again, that
3 would like to talk about this part of the state
4 or anything else, to please give me a call. And
5 I'd be happy to discuss why those districts were
6 laid out in the fashion that they were. And if
7 there are other ideas out there, I certainly want
8 to hear those.

9 So that is -- and Representative Nathe
10 will be talking about Districts 31 and 33. And
11 with that, I would stand for any questions you
12 would have.

13 VICE CHAIR HOLMBERG: Mr. Chairman.

14 CHAIRMAN DEVLIN: Senator Holmberg.

15 VICE CHAIR HOLMBERG: Is Mandan going to
16 be someone else's purview because I didn't notice
17 a Mandan map here.

18 REPRESENTATIVE LEFOR: Representative
19 Nathe.

20 VICE CHAIR HOLMBERG: Oh, okay.

21 REPRESENTATIVE LEFOR: Or Senator
22 Poolman.

23 VICE CHAIR HOLMBERG: Okay.

24 REPRESENTATIVE LEFOR: And Senator Oban.

25 VICE CHAIR HOLMBERG: And then the --



1 one of the questions always comes up is that
2 fishhook on the north side in 31, that -- I can't
3 see it, but I'm assuming that's still there.

4 REPRESENTATIVE LEFOR: Are you -- you're
5 referring to District 31?

6 VICE CHAIR HOLMBERG: 31, yeah.

7 REPRESENTATIVE LEFOR: Okay. That --
8 Representative Nathe will be discussing.

9 VICE CHAIR HOLMBERG: Okay.

10 CHAIRMAN DEVLIN: Senator Bekkedahl.

11 SENATOR BEKKEDAHL: Good day,
12 Mr. Chairman.

13 And thanks for all the work here,
14 Representative Lefor. I can see it's been a lot
15 of work because I've looked at this as well.

16 The only concern I have with the map, I
17 think things out west really fit together pretty
18 well. But my concern is in District 33. You've
19 kept the reservation intact. If we are going to
20 keep District 4 similar to its current existing
21 boundaries, taking that section of Dunn County
22 that's south of the reservation, I think that's
23 fine. But it's about 1100 people that you're
24 moving from District 4 into that District with
25 39, I guess you tally it now.



1 REPRESENTATIVE LEFOR: You -- oh, you're
2 referring to 39?

3 SENATOR BEKKEDAHL: Yeah. Yeah.

4 REPRESENTATIVE LEFOR: Okay.

5 SENATOR BEKKEDAHL: So this is -- the
6 whole of 39 and 33 are impacting District 4.

7 REPRESENTATIVE LEFOR: Okay.

8 SENATOR BEKKEDAHL: Okay. And so --
9 just so you know, District 4 at its current
10 boundaries, the reservation is about 8300
11 population. The full District 4 is a little --
12 about 16,700. So it's essentially a perfect
13 district the way that it is right now.

14 REPRESENTATIVE LEFOR: Okay. Maybe we
15 can meet on this Senator.

16 SENATOR BEKKEDAHL: So, yeah -- so
17 you're carving into it.

18 And my point is if we -- if we were to
19 sub-district the reservation, the area of Dunn
20 County south to the reservation that you take
21 into District 39 makes perfect sense because it
22 would no longer be contiguous with the other sub-
23 districts. You couldn't get around the
24 reservation and have that contiguous sub --

25 REPRESENTATIVE LEFOR: I understand



1 that. Yes.

2 SENATOR BEKKEDAHL: That makes sense,
3 but then there has to be some changes moving
4 eastward or northward for District 4 to get back
5 those numbers, and you've taken some out here.
6 So if we can meet individually, that's fine.

7 REPRESENTATIVE LEFOR: I'd be happy to.

8 SENATOR BEKKEDAHL: I just want to bring
9 it up as everything looks good here, except I
10 think you're making some impacts on District 4,
11 which is already a perfect district that we have
12 to discuss as a Committee.

13 REPRESENTATIVE LEFOR: Sounds good.
14 Thank you.

15 CHAIRMAN DEVLIN: Representative
16 Schauer.

17 REPRESENTATIVE SCHAUER: Thank you,
18 Mr. Chairman.

19 Representative Lefor, what was the
20 biggest issue that you had with District 36?

21 REPRESENTATIVE LEFOR: I would say that
22 moving some people that were currently in
23 District 36 to District Y. And when I looked at
24 the math, looked at the geography, if you were to
25 take more and leave District 36 in the fashion



1 that it is currently, I don't know how you make
2 the math work.

3 I've looked at it a few different times.
4 I intend to continue to look at that, but I would
5 say that some of the people from that area would
6 like to remain in that district. And that's why
7 I'm saying if there's other ideas or thoughts out
8 there or potential mockups they would like us to
9 look at, I would love to do that.

10 CHAIRMAN DEVLIN: Senator Oban.

11 SENATOR OBAN: Mr. Chairman and
12 Representative Lefor, was there any consideration
13 -- and I realize once you do something, it
14 changes everything else. But Stark County itself
15 divides perfectly almost into two districts.

16 REPRESENTATIVE LEFOR: It does.

17 SENATOR OBAN: And then, in one of your
18 districts you're encompassing parts of three
19 counties. And so that's where I'm always like --
20 I am -- as I'm doing this, I'm wondering what my
21 fellow colleagues on this Committee are doing.
22 And it seems to go back and forth depending on
23 where you are.

24 If you are prioritizing current
25 legislative lines, if you are prioritizing



1 current county lines. And I'm finding it
2 difficult for how we're going to eventually come
3 together. So I'm asking if there was any
4 consideration given to making Stark just two
5 districts.

6 REPRESENTATIVE LEFOR: That was my
7 initial inclination. However, if you do that,
8 then you are making what would be District Y go
9 further south and which would be budding up
10 against District 31. And so we looked at that,
11 and that would have been very nice, very easy.

12 But to me, the math doesn't add up.
13 Because even -- you know, if you look at District
14 37 on the latest rendering is a -- is 4.84
15 percent under. I've got District 39 4.5 percent
16 under. District 36, Counsel has it 0.95. I had
17 it at -3.25, so I'm going to have to research
18 what the differences there. In District Y, -2.
19 So I mean, could it be done? We had difficulty
20 making that happen.

21 CHAIRMAN DEVLIN: Further questions?

22 REPRESENTATIVE MONSON: Mr. Chairman,
23 Representative Monson.

24 CHAIRMAN DEVLIN: Representative Monson.

25 REPRESENTATIVE MONSON: Thank you,



1 Mr. Chairman.

2 So, Representative Lefor, I'm seeing
3 that you added a District Y, correct?

4 REPRESENTATIVE LEFOR: That's correct.

5 REPRESENTATIVE MONSON: And if I recall
6 from our last meeting, to the north of what
7 you've been working on in Williams and Divide and
8 those counties, they also would be adding a new
9 district, correct?

10 REPRESENTATIVE LEFOR: That's correct.

11 REPRESENTATIVE MONSON: And if I recall,
12 Cass County, are they adding a new district as
13 well?

14 UNIDENTIFIED MEMBER: Yeah.

15 REPRESENTATIVE LEFOR: I'm seeing
16 nodding head that -- that it's yes.

17 REPRESENTATIVE MONSON: So there's 3 new
18 districts, and the math tells us that we have --
19 if we're going to do 47 districts, that means a
20 couple of other ones are going to go away. and
21 I've -- I'm just wondering what's happening in
22 the middle. And this isn't a question for you
23 necessarily, but we have to look at the big
24 picture as Senator Oban just stated.

25 And I'm wondering what happens when we



1 fill in the middle part, and we need to have 47
2 districts in the end. We've added 3. That means
3 we got to take away 3, and this is just something
4 for us all to think about before we get all the
5 edges done and we get to the middle and we got
6 not enough people or not enough districts,
7 whatever.

8 REPRESENTATIVE LEFOR: Representative
9 Monson, I would agree with that statement. Each
10 one of us has basically taken a portion of the
11 state, and I had a conversation with other
12 legislators that are bordering what I'm doing and
13 working to make those mesh.

14 You heard that Senator Bekkedahl and I
15 will be meeting on District 39/District 4, and we
16 do need to have those discussions. However, it
17 does come down to population. The simple fact of
18 the matter is the existing boundaries of the --
19 the boundaries of existing district areas is
20 61,000 people.

21 So that's why I did what I did, because
22 you would -- you'd still have 12,000 people too
23 many after you have three full districts. So at
24 the end of the day, you're going to have to have
25 a partial new district even if you move things



1 further east. And so I thought by adding that
2 district, you're making the challenge less than
3 if you didn't add a fourth district -- I mean a
4 new district. And that's what the number showed
5 to me.

6 CHAIRMAN DEVLIN: Senator Holmberg?

7 VICE CHAIR HOLMBERG: Representative
8 Monson, I think that as other plans and other
9 concepts come forth, you will see that there are
10 other areas that are under populated where a
11 legislative district may disappear, including in
12 our area, just not to make you scared or
13 anything.

14 But -- so some of it's going to fit
15 together, and then it'd be interesting to see
16 what some of these other plans have. But there
17 clearly is a lack of population for the number of
18 districts in the north east. And, at least, in
19 one of the proposals that will come forth, you
20 will see where a district does, shall we say,
21 ascend away from the map.

22 CHAIRMAN DEVLIN: Any -- anyone else for
23 Representative Lefor?

24 Representative Nathe, are you next or
25 Senator Poolman? Okay. I'm guessing



1 Representative Nathe is.

2 (Pause)

3 REPRESENTATIVE NATHE: Are we ready,
4 Mr. Chairman?

5 CHAIRMAN DEVLIN: I am ready. Thank
6 you.

7 REPRESENTATIVE NATHE: All right. Thank
8 you, Mr. Chairman, members of Committee. For the
9 record, Representative Mike Nathe, District 30,
10 Bismarck.

11 I'm going to speak today about the five
12 districts in Bismarck. I'll speak to District 8.
13 And then I will show you District 33, how we worked
14 and how that meshes in and into Representative
15 Lefor's plan.

16 We also covered Mandan, which is 31 and 34,
17 and how that works again and what that Representative
18 Lefor just talked about. So on behalf of myself and
19 Nicole and Aaron, I want to say thanks to Sam,
20 Claire, and Emily for all the help they've been doing
21 with this. The two Senators and I have been talking,
22 and we've been working on this a bit.

23 And again, Mr. Chairman and members of the
24 Committee, this is just a general overview of the
25 plan right now. Some of this has changed a little



1 bit since this has been imprinted, but just a little
2 bit on the edges, nothing majorly. But when we have
3 a final plan, we'll see it.

4 So with that, Mr. Chairman, if it's okay
5 with you, let's go into Bismarck. Our biggest
6 challenge in Bismarck, quite frankly, was District 7.
7 It had experienced a huge amount of growth, one of
8 the biggest districts in the state at the end of the
9 census, almost 6000 people over the limit.

10 The other challenge we had in Bismarck were
11 two districts in the inner-city Bismarck, District 32
12 and District 35, who were deep in the hole with
13 numbers. So we had a dichotomy there, too high and
14 too low, and we had to try to balance that. And
15 that's what we've been trying to work on, and I think
16 you'll see where we're at.

17 So the first thing we did with -- well,
18 let's just go after the elephant in the room here,
19 District 7. So we had to push District 7 numbers out
20 and get them into districts that needed it. So what
21 we did was we pushed part of District 7, gave that to
22 District 8. And as you see, brings it down into
23 Lincoln. Lincoln was part of District 28.

24 Lincoln is roughly about 4500 people,
25 somewhere in that area. So you could see that number



1 right there helped us get pretty close to getting out
2 of the hole. So we wrapped -- we took 7's numbers
3 down there and put that into 8. The reason why I put
4 it into 8 is we already have a representative there
5 already in District 8, a couple of miles away from
6 Lincoln.

7 People around Lincoln identify with
8 Bismarck, identify with Bismarck politics. We have a
9 Bismarck public school in Lincoln. 10 years ago,
10 when some of these areas were pushed into a rural
11 district, we heard a lot of complaining about that,
12 so I was trying to be sensitive to the residents in
13 that general area.

14 So you'll see, we put it in there and went
15 down along 52nd on the west side, and then South
16 Lincoln, and then Lincoln road going to the east.
17 And we'll have Emily show that map, and you can kind
18 of see how far east that goes right there. So I'll
19 talk about District 8 in more detail a little bit
20 later.

21 But that's what we did with 7 first. 7 was
22 still a little bit over the number, so what we also
23 did is give District 47 some numbers because they
24 were low after what we had did previously. So we
25 gave them to Misty Waters area, which is on the west



1 side along the river. And you'll see that over
2 there. I think Emily can show you that. So that got
3 District 4 to -14.6 -- 0.16, excuse me.

4 The reason why 47 was so low is they had a
5 piece in 35 which was -- it wasn't in 35, but it was
6 just south in 94. It was -- it is currently in 47.
7 We put that block in District 35. And that got
8 District 5 roughly from -4 to +4.5, but yet shorted
9 47. So that was the reason why we gave Misty Waters
10 back to 47 to get them within the range 32.

11 UNIDENTIFIED MEMBER: Where is Misty
12 Waters?

13 REPRESENTATIVE NATHE: Misty Waters is --
14 You want to show them that, Emily, with the
15 pointer? Yeah.

16 District 32 was another one in the inner
17 core of Bismarck that was suffering -- did not grow.
18 Because let's face it, it's inner-city, and there's
19 not a whole lot of development going on. They needed
20 numbers badly.

21 So District 30, where I reside, we were on
22 the high plus number, so we gave them a piece of
23 District 30, which runs along 26th. Quite frankly,
24 goes from 9th Street north, over towards, 26 past --
25 if you're familiar with Bismarck, Richholt and Saxvik



1 and kind of goes through those streets to help get 32
2 within the range.

3 After doing that, District 30 was a bit
4 low, so what we did is we brought -- in the lower
5 part of District 30, you'll see there. We grabbed
6 everything south of Lincoln Road there, which is
7 known as Copper Ridge and went all the way down to
8 the river. And by doing that, it's a nice clean
9 line, got us some numbers, and we're able to get
10 Bismarck able to get District 30 up to a +1.97.

11 So like I said, there are some things on
12 here that we're still working on, just some of the
13 edges, Mr. Chairman. And we'll talk about that when
14 we get there. But that's where we're at when we made
15 this.

16 If Emily will go to District 8 again so I
17 can finish that off and work our way up.

18 Maybe zoom up there, Emily. Yeah. Yeah.
19 Perfect. And can you show 33, Emily, alongside too?
20 So they can see that.

21 So as she's doing that, Mr. Chairman, with
22 District 8, we brought it up. I did not touch any of
23 the eastern lines that are currently District 8 right
24 now. So that is -- we left that alone.

25 Going up past Winger up on 418th Street



1 over the 461st Avenue going west and then north on
2 4th Avenue north west. So we brought it up there.
3 And again, because of the numbers from District 7
4 that we brought in, 8 was way over and that was done
5 on purpose. So what we did is take the top half of 8
6 off.

7 And you can see up there, District 6, there
8 was -- 8 got townships, not a whole lot of
9 population, but we put those into 6. And then what
10 we did is currently take Garrison, Underwood, and
11 Coal Harbor which resides in 8 right now, and we put
12 those communities in that area into District 33. And
13 by doing so, we got -- we were able to get District
14 8's numbers down to the 3.33.

15 And again, that's changed a little bit
16 since we tweaked it. But you'll see 33. And we were
17 able to get that number up. Because of the new
18 district in the west side, 33 was then, all of a
19 sudden, low in numbers. So we were able to transfer
20 some of the population from the north west part of 8
21 into 33. And then we were also able to get some
22 numbers into Mandan.

23 So Emily, if you're going to Mandan, and we
24 can address Senator Holmberg's --

25 CHAIRMAN DEVLIN: Representative Boschee



1 has a question.

2 REPRESENTATIVE NATHE: Sure.

3 REPRESENTATIVE BOSCHEE: Thank you,
4 Mr. Chairman.

5 Representative Nathe, as you talk about
6 adding those communities at the other side of the
7 river to District 33, can you also talk at least
8 specific for people outside to hear -- I mean, what
9 kind of connectivity happens because of the river.

10 REPRESENTATIVE NATHE: Yeah. I know
11 exactly.

12 Emily, if you want to go up there.

13 Emily and I talked about that yesterday.
14 So what we did is we worked on taking some more sub-
15 districts up there and worked our way over to Highway
16 83. Because as you know, we have to be contiguous,
17 and we have to have access to do that.

18 So yes, we're on the south side of the lake
19 and then we worked it over till we got to 83 so they
20 will have access to Garrison up in those communities
21 up there. And I think Emily is going to show that.

22 In that general area right there, correct?

23 REPRESENTATIVE BOSCHEE: Yeah.

24 REPRESENTATIVE NATHE: Okay. Any questions
25 on that area?



1 CHAIRMAN DEVLIN: Senator Bekkedahl.

2 SENATOR BEKKEDAHL: Thank you,
3 Mr. Chairman.

4 So, Representative Nathe, does Mercer
5 County and Oliver County both stay intact then in
6 this line? Because I don't see the full lines.

7 REPRESENTATIVE NATHE: Mercer County does
8 not. No. Because some of Mercer, I believe, is
9 going into the -- I don't know, what was the other --
10 what was that other -- 39.

11 SENATOR BEKKEDAHL: But does Oliver County
12 stay intact then? Those lines are --

13 REPRESENTATIVE NATHE: I do not believe
14 so, because some of that is going into the new
15 district, I believe. Is that true? Oliver.

16 SENATOR BEKKEDAHL: Oliver?

17 MS. THOMPSON: Yes. Oliver does stay
18 intact.

19 (Cross talk)

20 If I turn the district layer off now, you
21 can see just the blue lines and Oliver County. If I
22 turn those districts back on, you can see that all of
23 Oliver is, in fact, yellow.

24 REPRESENTATIVE NATHE: So, Emily, if you
25 want to get down to Mandan there.



1 So you can see, Mr. Chairman, again what we
2 tried to do is push the numbers up to -- from 7 out
3 to 8, load up 8, and then transfer those numbers from
4 8 over to 33. So we're able to move those numbers,
5 kind of bleed those numbers over to get these
6 districts to where we need to be.

7 As we come down in 33, and Senator Holmberg
8 had alluded to it, it kind of fingers into North
9 Mandan. Currently, 33 has --

10 If you want to get closer to 94 there,
11 Emily.

12 33 has quite a bit north of 94. It shares
13 it with 31. Again, after what we did up north, it
14 was still low in numbers, so we took some of 31,
15 that's northern 94 and gave that to District 33 to
16 make sure we got those numbers to where they are
17 right now. That make sense?

18 So, Senator Holmberg, do you question about
19 33 coming into Mandan? We looked at different ways
20 to maybe try to get that to a 33. But it just blew
21 those numbers out of the water. And I agree. It
22 kind of -- it comes around there. It's apparently
23 been around there for a long time. And we tried to
24 work at a couple different ways. It just didn't work
25 out because there are so many people down in that



1 area. So we just -- I just thought for the time
2 being, leave it there, and let's see how it works.

3 And then getting into District 31.
4 District 31, again there is -- they have a number of
5 -- parts of their district north of 94. And as I
6 said we gave certain parts of that to 33. They still
7 have spots northern 94 that are in their district.

8 And then as you go down across the highway,
9 again 34 was in the hole. We had to get some more
10 population. So we went into the City of Mandan.

11 And if you go deeper into there, Emily.

12 We took some population from District 34.
13 And we took it from the north -- northwest side,
14 right where you see -- right where you see the number
15 34 on the screen, we took it from there in that
16 general area, and then we also went down a little bit
17 and took some more in the west side of there and gave
18 that to 31.

19 34 was above the number. 34 had a
20 population to give. So we gave that northwest part
21 of the 34's district and the far west of 34's
22 district to 31 to get them in better shape. As we go
23 west --

24 SENATOR BEKKEDAHL: Question, Mr. Chairman.

25 CHAIRMAN DEVLIN: I'm sorry. Senator



1 Bekkedahl.

2 SENATOR BEKKEDAHL: Thank you so much.

3 So, Representative Nathe, the little finger
4 going down on the south end of 34, the 4th Lincoln
5 Road that just butts up against river, there can't be
6 much population there, is there?

7 REPRESENTATIVE NATHE: Emily, can you zip
8 there?

9 SENATOR BEKKEDAHL: Is that a voting
10 district or a census block? Is that why it's that
11 way? Because --

12 REPRESENTATIVE NATHE: Senator Bekkedahl,
13 I have to get on my computer and take a look on that.
14 I can answer that question --

15 SENATOR BEKKEDAHL: I just wondered if
16 there was a logical point north of there to just give
17 that to 31 and not have that figure extension, but
18 just because it looks strange on the map to me.

19 REPRESENTATIVE NATHE: Okay. Is there
20 anything there, Emily? I mean, is that just -- is
21 this just a matter of a shape we're looking at?

22 MS. THOMPSON: I can check the population
23 really quick.

24 REPRESENTATIVE NATHE: Okay.

25 MS. THOMPSON: The population of the red



1 highlighted district you see is only 37 people. But
2 there are some very odd-shaped census blocks in this
3 area. You can see if I click that, turn it back
4 white. That's one census block odd shaped.

5 SENATOR BEKKEDAHL: I guess if I could
6 continue, Mr. Chairman, what I was looking at was: is
7 there a logical point where it could be cut off north
8 where you're had it there that -- so that you don't
9 have that finger going south? My point is, could we
10 take 31 all the way to the river there and not just
11 have that little extension coming down blocking the
12 river? Is that what I'm seeing?

13 MS. THOMPSON: This is as good as our
14 census blocks get for these three individual census
15 blocks. You can see that. Okay. That would be
16 possible. This one?

17 SENATOR BEKKEDAHL: No.

18 MS. THOMPSON: Unfortunately, it's -- no,
19 not contiguous.

20 UNIDENTIFIED MEMBER: (Indiscernible)

21 MS. THOMPSON: It will get very small once
22 you hit a larger population area.

23 REPRESENTATIVE NATHE: And then, I think
24 you strand part of 34, don't you?

25 MS. THOMPSON: Uh-huh (affirmative).



1 That's 34. Yes.

2 SENATOR BEKKEDAHL: Okay. Yeah. You can
3 see that where it goes on the right-hand side that --
4 up there. that doesn't go away then at any point.
5 right?

6 MS. THOMPSON: You can take that out.

7 SENATOR BEKKEDAHL: Okay. That's -- but
8 again. If there's not a logical road or something
9 there to block it off. I understand what you're
10 doing there. I just -- to me, it just made sense to
11 go all the way to the river into 31 and not have that
12 little extension.

13 MS. THOMPSON: Not a very pretty break
14 point with the census blocks in this particular area.

15 REPRESENTATIVE NATHE: And, Senator
16 Bekkedahl, we'll take a look at that. Okay.

17 So going down that line, so we did not
18 change anything along the river. Anything that goes
19 down to Standing Rock down to the South Dakota border
20 going west on the border, that is all left untouched.
21 You'll see --

22 Emily, go up by 94 there.

23 In the blue area there, that was all -- see
24 here. So that's all 31 still.

25 So we went over to the west on that. Those



1 borders are pretty much the same as you go along.
2 Really, the big difference as we go out west was the
3 far western part of 31. When you get out to
4 Hettinger County, just west of Mot, we added, I
5 believe, three new townships to square that off.
6 There were some -- wasn't a whole lot of numbers out
7 there just to do that.

8 The northern part of that boundary, I
9 believe -- Representative Lefor, did we give any of
10 that to the new district and 31 there, the stair
11 steps there?

12 REPRESENTATIVE LEFOR: We gave a portion of
13 31 to 39.

14 REPRESENTATIVE NATHE: Yeah. So you kind
15 of see the two stair steps there. We gave some of
16 that to 39 to help them out with their number there.

17 And again, Mr. Chairman, we've tweaked some
18 of this since then. So we'll -- the numbers will --
19 should be a little bit better than what you see right
20 now in front of you. With that, Mr. Chairman, that
21 concludes --

22 CHAIRMAN DEVLIN: Representative Schauer?
23 I'm sorry.

24 MR. SCHAUER: Thank you, Mr. Chairman.
25 Representative Nathe, in light of this



1 morning's discussion, if we can take a look at
2 District 31 and the Sioux nation. Are you
3 comfortable with those numbers? And are you
4 comfortable that that voting block has not been
5 disrupted for any purposes, including race?

6 REPRESENTATIVE NATHE: Mr. Chairman,
7 Representative Schauer. I am. I'm very comfortable
8 with it. This is what we basically drew 10 years
9 ago. It worked very well 10 years ago. 31 was
10 represented by two representatives on the other side
11 of the aisle. We left it alone 10 years ago.

12 And really, other than tweaking some of the
13 lines out west or into the north a little bit, we've
14 left pretty much everything else the same in that
15 southeast corner of the -- down by -- down by
16 Cannonball in that area, we have not touched any of
17 that at all.

18 CHAIRMAN DEVLIN: I believe Representative
19 Monson had a question.

20 REPRESENTATIVE MONSON: Mr. Chairman, along
21 the same lines as Representative Schauer asked and in
22 light the discussion this morning, you know, I
23 brought up this morning that part of the problem that
24 we're facing is that the state's population has
25 grown, and we have to add 3000 plus people to every



1 district. And that further exacerbates the problem
2 in 31 if they wanted to have a sub-district. Because
3 you've added more of the city of Mandan out of
4 necessity to get the numbers to match up; is that
5 correct?

6 REPRESENTATIVE NATHE: Mr. Chairman,
7 Representative Monson, we have. We had -- the one in
8 the northwest part, I do not believe, is in the city
9 limits. If it is, it's partial. And the one on the
10 west side that we did is in the city limits. But,
11 yes. We have done that.

12 And as you can see when you look at the
13 map, when you go west in 31, it's really hard to get
14 numbers. You got one here, five there, seven there.
15 You could cover a lot of ground and not gain a whole
16 lot of population. So yes. And it's the same method
17 that we use with Bismarck, with District 8 and other
18 -- and we've done around the state. Some of these
19 counties -- districts, excuse me, have to come into
20 the big city to get those numbers, to get them up to
21 where we need them to be.

22 CHAIRMAN DEVLIN: Anything else for
23 Representative Nathe? Thank you.

24 Senator Poolman, were you going to present
25 or not today?



1 SENATOR POOLMAN: I think after we see the
2 eastern half of the state, that's when I should go.

3 CHAIRMAN DEVLIN: Senator Holmberg is going
4 to present a little more in the city of Grand Forks;
5 is that correct?

6 VICE CHAIR HOLMBERG: I guess. I mean, I
7 guess.

8 CHAIRMAN DEVLIN: Would you prefer that you
9 wait?

10 VICE CHAIR HOLMBERG: No, no. That's fine.
11 I mean, we've got to skin the skunk. Someone has to.

12 Is there enough copies? These are all the
13 same. right? Okay. This one seems thicker. This
14 one seems thicker than this one. I've got two of
15 them. Okay. That would mean it was thicker. This
16 is the old -- this would be the one that was
17 presented last week that the Yana was having
18 conniption over. Thank you.

19 VICE CHAIR HOLMBERG: Change plans. I took
20 over.

21 CHAIRMAN DEVLIN: There's been a coup of
22 some type here. And I will present some of the
23 concepts we laid out for the eastern part of the
24 state. and then send -- then I think the Grand Forks
25 thing will be clearer to what was done. So --



1 VICE CHAIR HOLMBERG: Right. We'll see.

2 Okay.

3 (Pause)

4 CHAIRMAN DEVLIN: Another coup.

5 Apparently, the Vice Chairman has now been abducted.

6 So we're -- no. But thank you for offering.

7 VICE CHAIR HOLMBERG: Sorry about that. I
8 had to tell them that, yes, I had gotten the bulb for
9 the outside light.

10 Okay. Representative Devlin has something
11 called Eastern Proposal 2.

12 CHAIRMAN DEVLIN: Right. Thank you,
13 Mr. Chairman. And the smaller breakdown of each of
14 these is in the packet. But essentially what we
15 worked on was trying to get something that would work
16 all the way from the Minnesota, South Dakota,
17 Canadian border, all the way to essentially Bismarck
18 or through District 14.

19 So if you look at just the top on District
20 9, Rolette County, of course, doesn't have room for
21 -- or doesn't have enough population for their own
22 district any longer. So part of Towner and Cavalier
23 County were added to District 9.

24 District 10 now includes part of Cavalier
25 and part of Walsh.



1 District 20 would run from the Cass County
2 line up through the area of Grand Forks they had
3 before up to just south or north of Minto. So when
4 you do that with district 20, that eliminates
5 District 19.

6 Cass County did not change at all or did
7 not change. It's within their borders as little four
8 things that's marked Dallas down there, that should
9 be in Cass County. That was my mistake.

10 District 29 essentially would pick up
11 Nelson -- under this concept under -- would pick up
12 Nelson, Greg Steel, Foster, and part of Stutsman and
13 the area around Jamestown that rural townships,
14 because 12 needed more people, the rural townships
15 would kind of be split there between 29 and 12.

16 And that area, we just did it by the
17 number. Somebody else would maybe use different
18 townships that was immaterial to us. District 14 is
19 essentially what it is now except Eddy County was
20 added to meet the population. There's part of the
21 Spirit Lake Reservation in Eddy County that has been
22 added to the rest of the reservation, and all of that
23 is now in 15.

24 So 15 would now include the Spirit Lake
25 Reservation, part of Towner County, and all of 15.



1 And that essentially eliminated District 23.

2 There's part of Benson County but none of
3 the reservation is also 14, and that's the way it
4 exists today. Really, the only change in 14 was the
5 addition of Eddy County and taking out that little
6 bit of the reservation because we want it to all be
7 together.

8 Then when you get down to 24. 24, if you
9 take Barnes and Ransom County, they make a perfect
10 district, so that's what was done here. Richland
11 County, we discussed the other day. Richland County
12 is another one that makes perfect district. So that
13 was what was done here.

14 There's a little bit of the reservation
15 from South Dakota done, and right now it's in the
16 bottom of Sargent. It can go into either county
17 there, but we just happen to put in the bottom of
18 Sargent.

19 Then the other counties, Logan, LaMoure,
20 McIntosh, Dickey, and Sargent, without the
21 reservation or with the reservation, would make
22 up 28. And Emmons County would stand alone and
23 go up into, we believe, Burleigh County.

24 Now, let me see if I got the other one
25 here so you can see the difference. I had some



1 requests that maybe we wouldn't have to put all
2 of 23 into 29. So we have a proposal where we
3 took Steele County out of it.

4 Let me see here, I can do this easy. So
5 if you look -- you look at the main map -- it'd
6 probably be a little easier to do it.

7 What this map does is puts a part of
8 LaMoure County back into 29 where it is now. It
9 takes Steele County out of 29, moves it in with
10 Barnes and part of Ransom. And the part showing
11 here, the townships in Cass County should not be
12 there. The Cass County border is whole.

13 So, you know, obviously, the county
14 lines don't stay whole under this, but this does
15 give that part of LaMoure County that was back --
16 was in 29 originally back into 29. And Steele
17 County moves south into Barnes. It still Nelson
18 and Griggs, which are new additions to 29.

19 Emmons County is still standalone, and
20 it will go up, I think, I believe into Burleigh
21 County. The colors are the same with -- kind of
22 the same with Kidder County, but it is not part
23 of 14. It will be part of Burleigh County. So
24 that was where we left it.

25 Everything works, like I said, from



1 Minnesota through District 14, to Burleigh County
2 based on either one of these maps you want to
3 start from. Or I know that some people are
4 either going to start over, and I'm fine with
5 that. We were charged with laying out a concept,
6 and we have done that, that makes Eastern North
7 Dakota.

8 VICE CHAIR HOLMBERG: And I believe when
9 you count -- I tried to count fast -- it was like
10 25 counties that are whole.

11 CHAIRMAN DEVLIN: Yeah.

12 VICE CHAIR HOLMBERG: And last time
13 there was a total of, I think, of 30 counties
14 whole, and we do at least ostensibly genuflect
15 whenever we hear the word county lines being
16 whole, but we don't always genuflect.

17 Representative Boschee.

18 REPRESENTATIVE BOSCHEE: Thank you,
19 Mr. Chairman.

20 Chairman Devlin, I was confused at
21 first. My initial question was going to be why
22 are we doing all the way from the South Dakota
23 border near the Canadian border, but now as I
24 look, there is a differentiation between Emmons
25 County and Southern Burleigh. So are you just



1 leaving that up to some place that can be used
2 elsewhere where it needs to be used?

3 CHAIRMAN DEVLIN: Yeah. Because
4 essentially, if you look at this line, you're
5 essentially getting rid of three districts in the
6 eastern part of the state.

7 REPRESENTATIVE BOSCHEE: Yeah.

8 CHAIRMAN DEVLIN: You're essentially
9 getting rid of 19, because 20 takes all of that
10 area in 19 between there and 10 in the city of
11 Grand Forks. So 19 would be gone.

12 23 would be gone, because the
13 reservation and the other counties that are in 23
14 either went into 15, 19, or under this one, 24;
15 so that would be gone. And 26 would be gone,
16 just because that was part of Richland County
17 originally. So those would be the three.

18 And somebody asked that question
19 earlier, where you would find three districts,
20 and there's going to be three, I'm convinced, in
21 Eastern North Dakota. Because every county
22 around or every county or every district around
23 us needs 3000 people and, you know, as like --
24 much as I'd like to take them all from Grand
25 Forks and Fargo, that isn't just realistic.



1 VICE CHAIR HOLMBERG: You found you
2 might to mention that one of the struggles as we
3 dealt, or as you worked and dealt with Rolette
4 County is finding where do you get the people.
5 If you go to the south, then you'll make a big
6 difference into District 14. You want to stay
7 away from going east, because that -- I mean,
8 west, excuse me.

9 If you go east across there, it solves
10 the number problem, not the political -- I mean,
11 there is a political problem and there's a
12 numbers problem. It solves the numbers problem
13 clearly, and it also allows Traill your county to
14 find a home, otherwise, they were boxed in and
15 would have been out over close to Foster County.
16 So it's an alternative, right?

17 CHAIRMAN DEVLIN: Yeah. It's an
18 alternative, Senator. That's correct. And every
19 way we lay these things out, we would come up
20 with Nelson and Steele being the only two
21 counties left in the middle of the state. They
22 didn't fit anywhere. So that's how we got to
23 this.

24 Now somebody else may come up with a
25 better a better concept by tomorrow or next week.



1 I'm fine with that. But all I'm telling you that
2 -- sent you -- the first one I gave you, that was
3 the most -- or the least damaged to any of the
4 county lines, makes everything work. I think
5 just adding the Spirit Lake Reservation to Ramsey
6 County makes a better community of interest to
7 just because it's right along Devils Lake.

8 They have students and school there.
9 They have -- they do a lot of their business
10 together and so on. So if you have a reservation
11 at Ramsey County, I think it works better.

12 You certainly can -- whether there's any
13 interest in sub-districts or not, you could
14 certainly look at one up in that district tying
15 area that took part of District 10, but --

16 VICE CHAIR HOLMBERG: You might want to
17 mention too that the southern part of Towner
18 County has been with Ramsey County, that's Cando.

19 CHAIRMAN DEVLIN: Yeah, yeah. It
20 absolutely has. Yeah.

21 VICE CHAIR HOLMBERG: And Towner County
22 in the past, years ago, was part of Rolette
23 County when they needed people.

24 CHAIRMAN DEVLIN: And District 23, I can
25 tell you from experience, we used to have all the



1 way to Western Walsh County up to Edinburg, you
2 know. And each time, you lose more people out in
3 some of these rural districts. They have to go
4 somewhere. They cannot be anywhere else.

5 CHAIRMAN: Are there any -- yes.
6 Senator Oban and then Representative Nathe.

7 SENATOR OBAN: Mr. Chairman, how very
8 generous of you to sacrifice yourself. That's
9 rare.

10 CHAIRMAN DEVLIN: Rare for me, Senator
11 or rare for everyone?

12 SENATOR OBAN: Rare for legislators,
13 generally.

14 CHAIRMAN DEVLIN: Okay. I just wanted
15 to clarify.

16 SENATOR OBAN: A good clarification,
17 yes. Certainly not targeting you.

18 Was there any consideration to just
19 leaving 23 alone and adding in Foster, which
20 makes it pretty much spot on?

21 CHAIRMAN DEVLIN: It would make it
22 pretty much spot on if you -- I think you had to
23 use Eddy too, but I'm not sure. But it had a
24 real negative effect to 29 if you did that. You
25 know, it just wasn't the way to make it work.



1 And we played with this forever.

2 You know, a big share of the population
3 in 23 was on the reservation, you know. That now
4 is going into 15, and I think after the
5 presentation we heard this morning, that is the
6 place for it because those communities should be
7 together.

8 SENATOR OBAN: Okay.

9 VICE CHAIR HOLMBERG: Representative
10 Nathe?

11 REPRESENTATIVE NATHE: Thank you,
12 Mr. Chairman and Representative Devlin.

13 I know we've talked about this. So
14 what's the thought process? I'm leaving Lincoln
15 out and putting him with Emmons. I think you
16 heard some of my comments about the Lincoln area
17 from 10 years ago, and now, from this we have it
18 in Emmons. What was the thought process on that?
19 What were you guys thinking?

20 SENATOR OBAN: I'm going to talk about
21 that next when he's done.

22 CHAIRMAN DEVLIN: Yeah. That was not
23 part of what we did.

24 REPRESENTATIVE NATHE: Okay.

25 CHAIRMAN DEVLIN: We ended it at the



1 Burleigh County border where just Emmons is
2 sitting out there when we left it, so.

3 REPRESENTATIVE NATHE: Okay. All right.

4 VICE CHAIR HOLMBERG: If you recall when
5 I presented the northeast a couple of week --
6 well, the other week, what that was, was all of
7 Cavalier, all of Pembina, the western half of
8 Walsh County and Nelson County. But that
9 presented problems with Steele, Traill, and the
10 Rolette County, kind of leaving both of them. So
11 I believe that Representative Devlin worked to
12 try to solve the problems, not only of that area,
13 but also of the other orphans that were hanging
14 around. Okay

15 CHAIRMAN DEVLIN: Okay. Thank you.

16 VICE CHAIR HOLMBERG: Now, should I do
17 the internals?

18 CHAIRMAN DEVLIN: Yes.

19 VICE CHAIR HOLMBERG: Okay. I will do
20 the internals.

21 REPRESENTATIVE MONSON: Before we move
22 on from there.

23 VICE CHAIR HOLMBERG: I don't know who's
24 talking.

25 CHAIRMAN DEVLIN: Representative Monson.



1 VICE CHAIR HOLMBERG: Yes.

2 Representative Monson.

3 REPRESENTATIVE MONSON: So, just for
4 fun, the other day when I was coming back from
5 Bismarck, I was basing it on Senator Holmberg's
6 plan where District 10 included Nelson County.
7 And I somewhat like that idea, except that it was
8 -- sorry, I get a phone call.

9 I somewhat liked it, except that it is a
10 long district. I started checking the odometer
11 when I crossed into Nelson County, and if you
12 went all the way up to Pembina, that's a long
13 district. It keeps the counties much more whole,
14 which I liked. I don't have a problem
15 necessarily with splitting. I mean Cavalier
16 County was split once before.

17 At one time, District 10 included most
18 of Towner County as well. So I mean, it's been
19 all over the board, but this is a compact one. I
20 don't know how many counties are intact, but I
21 mean Nelson County on Senator Holmberg's last
22 plan was part of District 10; and it did keep the
23 counties more whole. So just to comment, I --
24 you know, I'm not leaning one way or the other.

25 VICE CHAIR HOLMBERG: Okay. One of the



1 things, Representative Monson, was that was
2 extremely compact, et cetera, et cetera, but then
3 it leaves on its edges the question of Traill
4 County and the question of Rolette County. And
5 what do you do? So the --

6 CHAIRMAN DEVLIN: Senator Holmberg will
7 now present the inner workings of the city.

8 REPRESENTATIVE HEADLAND: Mr. Chairman,
9 while he's (indiscernible), can I ask a question?

10 CHAIRMAN DEVLIN: Certainly.

11 REPRESENTATIVE HEADLAND: Mr. Chairman,
12 when we're drawing out these districts and we
13 have tasks that we're supposed to try to follow,
14 like does one task have more leverage than the
15 next task? Like, we've been looking at trying to
16 keep counties whole.

17 Is that more important than trying to
18 keep existing districts the way they are?
19 Because that's -- in my mind, it's an equal task.
20 And I think at least some of the plans that I've
21 seen give more credence to keeping counties whole
22 than keeping existing legislative districts
23 whole.

24 CHAIRMAN DEVLIN: Representative, I
25 don't know that I rank one ahead of the other. I



1 just -- whenever we looked at this and worked
2 through it, you always ended up with one or two
3 counties that were orphans until you got to this.
4 I prefer to keep county lines whole if it's
5 possible, but I certainly understand down in 28
6 and some of that area that maybe not be possible.
7 And I believe you're going to have the computer,
8 so I look forward to next week.

9 UNIDENTIFIED MEMBER: Chairman, if I
10 may.

11 CHAIRMAN DEVLIN: Senator, yes.

12 UNIDENTIFIED MEMBER: I mean, in my
13 view, the county -- those governments, are set.
14 They've been there since statehood, and so I
15 think you ought to honor that.

16 We've changed these lines every 10
17 years. We're more fluid with this redistricting.
18 So I think counties, if possible, should have
19 precedence. Just my thought.

20 CHAIRMAN DEVLIN: Senator Bekkedahl.

21 SENATOR BEKKEDAHL: Thank you, Mr.
22 Chairman.

23 Just to follow up on that, I've had with
24 our area county officials and our auditors up in
25 the northwest, and they consistently remind me



1 that elections -- this is all for elections and
2 the prosecution elections. And they prefer
3 keeping county lines consistent because that's
4 easier and less chance for anything to go wrong
5 in their election processes. So just -- they
6 want me to pass law and that they prefer county
7 lines as well.

8 CHAIRMAN DEVLIN: Senator Bekkedahl,
9 just from past history, I can tell you that was
10 what I heard repeatedly, because we at one time
11 lived -- I lived in a split county, and I heard
12 that repeatedly from the county officials that it
13 was very, very difficult to work with that, but
14 they made it work.

15 VICE CHAIR HOLMBERG: And if you recall,
16 Mr. Chairman, 10 years ago, when we were in
17 Devils Lake, we still carry some scars from the
18 discussions from Walsh County.

19 CHAIRMAN DEVLIN: Senator Holmberg, I'm
20 not sure, but Representative Monson had a
21 question, and I don't know if it was to you or to
22 me. So let us have him ask that first, and then
23 we'll start.

24 VICE CHAIR HOLMBERG: Okay.

25 REPRESENTATIVE MONSON: Thank you,



1 Mr. Chairman.

2 I was just going to say the same thing
3 as Senator Bekkedahl just brought up. Keeping
4 the county lines are much preferable to the
5 county officials, especially the auditors that
6 are responsible for election because they really
7 don't like split counties when it comes to
8 elections.

9 So to me, that's a very important thing
10 to keep the counties full, much more so than our
11 lines of districts, although, you know, I like
12 keeping districts as stable as they can because
13 it keeps the continuity between the population
14 and the people. But so much -- so much has to
15 change when we have redistricting. Keeping
16 counties full are very high on the county's
17 priority.

18 REPRESENTATIVE HEADLAND: Well,
19 Mr. Chairman, since I asked the question, if I
20 can just respond.

21 CHAIRMAN DEVLIN: Yes, go ahead.

22 REPRESENTATIVE HEADLAND: You know,
23 that's easy to look at when you don't live in a
24 county that is too big for two districts. It's
25 too big for one district, but not big enough for



1 two. So you're dealing with split counties.

2 VICE CHAIR HOLMBERG: That has always
3 been the trouble in the northeast, for example
4 Pembina County and Wells County work fine, but
5 they're too big, the two of them together. So
6 someone's going to have to divide it up there.
7 So it kind of just bookends along.

8 Okay. The northeast -- this was
9 essentially presented last week. What we did is
10 took the current borders, boundaries, of the four
11 districts that are in Grand Forks, the city of
12 Grand Forks, and added a few people because we
13 needed a few people, but we wanted to keep that
14 addition to a minimum.

15 Therefore, we did not go over and add
16 the city of Thompson. That was a little too big,
17 and we added the other half of the Grand Forks
18 Air Force Base. A total of 2002 people live on
19 the base, total. And we added the city of
20 Manvel. And the other city one could look at
21 would have been Emerado, but in Emerado, they're
22 connected with the LaMoure School District.
23 That's where their high school students go
24 whereas -- most of them go, whereas in Manvel,
25 they all go to Central High School in Grand



1 Forks. So there is a commonality there along the
2 Manvel area.

3 The District 42 was short quite a few
4 folks, and the internal borders within the city
5 of Grand Fork on District 42 are identical to
6 what they are today.

7 The addition, as I mentioned, was
8 Brainerd Township, which used to be in 17. 17
9 had an excess population. And then, they took
10 over the Grand Forks Air Force Base because they
11 needed the people. They needed the population.
12 So that's why that looks kind of interesting with
13 that indentation into the city of Grand Forks.
14 That indentation is what has been there for a
15 number of years.

16 In fact, that indentation is identical
17 going back to 1993 with the exception of in 2003
18 the border was moved out to Washington Street and
19 then back 10 years later to 17th Street. So that
20 has been quite stable within the city of Grand
21 Forks.

22 District 43 is our landlocked district,
23 and it has no rural areas.

24 The only changes in District 43 were
25 addition of an area by the Alaris center, a



1 removal of some folks that were over by the
2 library, which is by Washington. They went up to
3 District 18, which was short of population, and
4 then they picked up Walmart. And then they got
5 that particular area down to 40th Avenue South.
6 So that squared off.

7 District 17 -- we used to go up to 8th,
8 but we were too big, and we now are on 17th.
9 When you look at that line across, it says Sunset
10 and Chestnut Place, but the line is on 17th
11 Avenue South, which is a very -- a big zero fare
12 going across.

13 And then 18 has the rest -- 17 also has
14 the Walle Township, which is south of Grand
15 Forks, and it is over to the interstate. We use
16 the interstate as a boundary. Very identifiable.
17 And District -- forget about that. The one I'm
18 here on 19, we don't -- we don't look at that.

19 And you have the map of 43 and of 42.
20 There was a suggestion of making a slight
21 adjustment, and it was a slight adjustment, in
22 the borders of District 42, which would have
23 moved the -- would have taken some from 42 and
24 put it into 18, and then taken the city of Manvel
25 and put that in 42.



1 But I just wanted you to know there was
2 that presentation, but personally, I like the
3 fact that if we can keep these borders the way
4 they were, it -- I like the continuity, but
5 that's essentially what it is. We did a minimal
6 amount of change within the districts, and that's
7 all I can say.

8 CHAIRMAN DEVLIN: Senator Bekkedahl has
9 a question.

10 SENATOR BEKKEDAHL: Thank you,
11 Mr. Chairman and Senator Holmberg.

12 So relative to Grand Forks Air Force
13 Base, I like to call it one district now, but,
14 you know, just south of there, that -- does that
15 have not any common interest ties to the base
16 with its population? I understand you said the
17 school district is in a different school
18 district, but I just want to -- I don't know -- I
19 don't know if there's base people living in there
20 that have a common interest with the base, so --

21 VICE CHAIR HOLMBERG: There's a lot of
22 base people that live there, a lot in Weimer.
23 And there is a community of interest out there.
24 The school district in Emerado and the school
25 district in Grand Forks has an interesting



1 history of competition, because many, many years
2 ago, of course Grand Forks got the air base as
3 part of their school district, and Emerado
4 didn't. So there has been -- and I'm not saying
5 there is bad blood or anything like that, but
6 maybe some bad blood back in the day.

7 SENATOR BEKKEDAHL: Well, if I could --
8 Mr. Chairman?

9 CHAIRMAN DEVLIN: You may continue.

10 SENATOR BEKKEDAHL: It just makes sense
11 to me where you have the line right now. I just
12 -- I just didn't know the dynamics about who
13 lives in Emerado. I just know it's really close
14 to the base.

15 VICE CHAIR HOLMBERG: There's a Dairy
16 Queen, and the strip club closed years ago. I'm
17 told. I'm told. Club Emerado, but I'm told.

18 CHAIRMAN DEVLIN: On that note, Senator
19 Oban had a question.

20 SENATOR OBAN: Yeah. Let's change that
21 one real quick.

22 CHAIRMAN DEVLIN: Yes, thank you.

23 SENATOR OBAN: So I -- since you showed
24 this, you know, changes to District 42 and Fargo,
25 I'm just struggling to understand how the



1 university -- the district is essentially like
2 half the university, a fourth rural, and a fourth
3 the base, and maybe, you know, a population
4 that's not exactly. That seems like many
5 different communities of interest, when 42 could
6 be cut in a way where it is more like central
7 Grand Forks, sort of main -- I'm just wondering
8 the thought process of essentially doing the
9 university population rural and --

10 VICE CHAIR HOLMBERG: Well, first of
11 all, a large part of the population is of a
12 younger age at the university. And that is the
13 same kind of metric that you'll see at the air
14 force base.

15 SENATOR OBAN: Okay.

16 VICE CHAIR HOLMBERG: They are younger
17 population, you know, the -- 18- to 30-year olds,
18 a lot of them are out there. So there's that
19 commonality. But there -- part of it is they are
20 -- like I said, 2002 people that live on the
21 base, but air base folks live throughout the city
22 of Grand Forks as do university students and
23 university folks.

24 So trying to get the numbers, it just
25 made sense to put them together with that



1 particular district. If we left 18 connected to
2 the Grand Forks Air Force Base, then where do we
3 get the population for District 42? There are --
4 some legislators from District 42 option was to
5 divide 43 in half and they take the northern half
6 of 43.

7 And I had little interest in dividing a
8 district that really didn't need to be divided,
9 because they'd have to get their people some
10 place. And again, sometimes its -- I don't want
11 to say the people are ugly, but sometimes it's
12 ugly what you have to do in order to worship at
13 the altar of one person one lord.

14 CHAIRMAN DEVLIN: Any further questions?

15 Seeing none. Thank you.

16 Senator Poolman.

17 SENATOR POOLMAN: Mr. Chairman, as they
18 are passing out the version of this district --
19 it's labeled District X, but it would really be
20 District 8 is what we would be calling it. As
21 you notice, both of the maps that came from the
22 eastern half of the state honored county lines.
23 And even though they were slightly different in
24 the way they did that, both of those maps left
25 Emmons County as an orphan.



1 And so what I'm starting to realize on
2 this Committee is that we're coming in from the
3 east and the west and that everything in the
4 middle is now going to be squished. And so we
5 better start looking for some solutions in terms
6 of making whole districts in the middle as well.
7 And so I just drew the lines as far north as it
8 needed to go to have a population and have a nice
9 straight line. And so you'll see that it goes right
10 under Wilton there.

11 And so that's the district. It's the right
12 size. I didn't include the rest of them there. But
13 I will tell you that then I took what would have been
14 the rest of District 8 as it is now, and it absorbed
15 into 33, into 6 and into 14. And so that's why this
16 will be considered the new 8.

17 And so I don't have any dog in this fight
18 or anything. I just wanted to start looking for some
19 solutions. I'm really supportive of the concept of
20 the following county lines. And so I think we need
21 to start to figure it out in the middle here if we're
22 going to try to do that on each side of the state.

23 CHAIRMAN DEVLIN: Representative Headland,
24 I'm sorry.

25 MR. HEADLAND: Thank you, Mr. Chairman.



1 Senator, I'm just curious if we're keeping
2 counties whole and -- as a task, and another one of
3 our tasks is to keep an existing district as whole as
4 it was, what would be the point of pulling a full
5 county like Emmons out of District 28 when it
6 actually, there's ways to make it fit in with 28?

7 SENATOR POOLMAN: Mr. Chairman and
8 Representative Headland, I am happy to see any maps
9 where you're still honoring county lines, and you
10 keep the districts together. I think that's great.
11 I'm just saying the two maps I've seen left Emmons
12 County as an orphan, and so this is a proposal. If
13 people like those two versions of the map, it's a
14 proposal to do that.

15 CHAIRMAN DEVLIN: Representative Nathe?

16 REPRESENTATIVE NATHE: Thank you,
17 Mr. Chairman.

18 I appreciate Senator Poolman's work on
19 this, and I'm all for looking at different options
20 and I think that's good. But I just want to speak to
21 Lincoln. I spoke to it earlier when I presented.
22 That's going to be a big problem.

23 And I know we're having some people
24 tomorrow coming from Lincoln. They want to be
25 represented by somebody local. Like as I said



1 earlier, they have a Bismarck public school in their
2 city, they relate to Bismarck politics. Something
3 like this, you know now you've put them into a rural
4 district.

5 And we heard this complaint 10 years ago
6 and it was very loud at the end. And we just need to
7 keep that in mind when we're taking a look at this.
8 So thank you.

9 SENATOR POOLMAN: Mr. Chairman, if I may
10 speak to that?

11 CHAIRMAN DEVLIN: You may.

12 SENATOR POOLMAN: As the person who
13 represents Lincoln now, what I love about having
14 Lincoln in this district is that they become the
15 largest voting block and the most influential
16 community in the district. And what I like as a
17 parent through Bismarck public schools and has
18 dedicated my life's work to working for Bismarck
19 public schools, I like that you have an entire
20 district now, that you have three more legislators
21 that need to consider what is good for Bismarck
22 public schools.

23 And so I like the idea that you really
24 created a district where Lincoln has significantly
25 more influence than it has today.



1 CHAIRMAN DEVLIN: Senator, if I believe --
2 and you know obviously with the 200 pieces of paper
3 I've now accumulated, your vision of District 8 is
4 entirely different than what Representative Nathe
5 presented. And so exactly what are you going to do
6 with the balance of McLean County so to speak, what
7 did you do with that?

8 SENATOR POOLMAN: Correct. And I didn't
9 want to show that. I will just tell you that I
10 absorbed it into 33 and 6 and 14. But I haven't
11 spoken to anybody from those areas.

12 CHAIRMAN DEVLIN: Okay.

13 SENATOR POOLMAN: And I'm not familiar with
14 those areas. And so I wanted to have some time to
15 meet with people and to see what the other maps had
16 already done with 31 and 33 and to see what was
17 already planned for those districts. So they were
18 just absorbed into those three other districts.

19 CHAIRMAN DEVLIN: Okay. Thank you. Was
20 there any comments from any interested persons on
21 what we've discussed today? Nothing online? No.

22 MR. HANE BUTT: Mr. Chairman, Members of the
23 Committee, I'm Pete Hanebutt from Farm Bureau. I
24 haven't commented before, but a lot of the discussion
25 today lends to what our policy says, which Policy



1 40909 says, "We believe the legislative district
2 should consider geographical areas as well as
3 population to more equally represent the rural areas
4 of North Dakota."

5 What that means in the discussion of our
6 delegates is what you've discussed today; keeping
7 communities of interest together. Keeping counties
8 together is important, but that is balanced by
9 communities of interest, meaning school districts
10 that cross county lines, urban areas that cross
11 county lines, and those kinds of things. That was
12 the general discussion of our delegates last
13 December, and they were very interested in this.

14 Obviously, we want to maximize the impact
15 of rural North Dakota and the rural people in
16 Agriculture. And so I'll leave it at that. It's a
17 little bit up to your own interpretation. I've seen
18 the discussion today was healthy, all the way round
19 for our interests and so we appreciate all your work,
20 so --

21 CHAIRMAN DEVLIN: Questions, Mr. Hanebutt?

22 MR. HANEBUTT: No, sir.

23 CHAIRMAN DEVLIN: Senator Oban?

24 SENATOR OBAN: I do have -- you know, I'm
25 just looking at the existing district lines or



1 legislative district lines. For example, the Minot
2 area essentially split the City of Minot into four
3 districts making each of those districts, maybe with
4 the exception of 5 -- and I'll probably ask Senator
5 Burckhard if that's about accurate, part rural and
6 part Minot. Considering we will be probably
7 eliminating a few rural districts, you could cut
8 Minot to be three districts that encompass Minot and
9 then you would gain one rural district.

10 MR. HANE BUTT: Uh-huh (affirmative).

11 SENATOR OBAN: Can you speak to that
12 thought process?

13 MR. HANE BUTT: Well, I would be speaking
14 for Ward County Farm Bureau.

15 SENATOR OBAN: Sure.

16 MR. HANE BUTT: And I probably shouldn't
17 speak for them specifically. The general consensus
18 of our members is to maximize rural districts, which
19 is great. We also understand that a district or two
20 here and there is going to go away. The fact that
21 the numbers have gone away, for example, the
22 Chairman's district number going away doesn't mean
23 that that rural district goes away. Those rural
24 people are still well represented in some of the maps
25 represented today.



1 SENATOR OBAN: Of course.

2 MR. HANE BUTT: So it's a little bit of
3 horse trading. I think our folks would like to see a
4 growth in districts in the west obviously, because
5 they see that part of the state expanding. So it's a
6 half a horse a piece, and I don't know that there's a
7 fair way to say it. We know that some -- what we
8 would consider city districts are going to go out
9 into the countryside. And we know that some country
10 sides are going to capture a little bit of suburbia.

11 I'm happy for, you know -- one of the
12 renderings today was my district in rural Morton
13 County. Catching New Salem with Dickinson makes
14 sense. And I think you know, there's a lot of things
15 that makes sense and how we draw these things. It's
16 just a matter of you guys aren't wrestling over it.

17 CHAIRMAN DEVLIN: Senator Sorvaag.

18 SENATOR SORVAAG: Mr. Chairman, Pete, and
19 this isn't as much a question but a statement to
20 that. You may want to respond back to it, but --
21 Cass County, I have one of those urban rural, and I
22 think they gained. If we make all of rural Cass
23 County one district, they got one senator, two
24 representatives.

25 If you take what I'll be showing tomorrow



1 where I take a fourth of the rural, and I have it
2 now. Rural Cass County's got two senators and four
3 representatives. When the Cass County township
4 officers have their annual meeting, they've got two
5 senators sitting there, not one. That completely --
6 I can see a little edge, but it completely baffles me
7 how that can be called deluding the representation.

8 Now, still at the end of the day, it's
9 incumbent of every legislature to realize we're
10 responsible for all our constituents, whether you're
11 living in the country or living in the city, wherever
12 my house is. I'm responsible for them all. So I
13 struggle with that. I know there's unique things
14 where it's deluding, but because of the losing of the
15 rural districts, this is one way to keep
16 representation.

17 And you can respond to that. But I don't
18 think what you'll see in my map is hurting those
19 people. Well, I've had most of them already for
20 eight years. And I'm in a unique situation. I grew
21 up out in that rural, and I'm connected. But when I
22 look, at least in Cass County, it's enhancing the
23 rural part of Cass County to have connections to
24 multiple districts than if we wrap that. And we
25 could wrap it all in one, and that's all they'd



1 represent.

2 So I think there's two sides to it, and
3 that's why everyone needs to stand really on its own
4 merits. But I think a blanket statement that there
5 shouldn't be an urban rural and it's only been done
6 solely because of numbers might be missing some
7 opportunities for additional rural representation.

8 MR. HANE BUTT: Senator, I appreciate the
9 comment, and I cannot disagree with your ideology on
10 that at all. I mean, it is a horse-trading process.
11 I will add an editorial comment that as a former
12 lobbyist from another state, we do a much better job
13 here. And God bless you all because I wouldn't move
14 back to Indiana the way they draw gerrymander
15 districts there. So across the board, this is
16 better.

17 CHAIRMAN DEVLIN: Thank you, Pete. We
18 appreciate that.

19 MR. HANE BUTT: Thank you.

20 CHAIRMAN DEVLIN: So I know tomorrow, we're
21 doing Cass County. I don't know if some of the folks
22 from western North Dakota might be able to get
23 together here today and at least discuss a little
24 bit, you know, what you're doing. I know that --

25 Representative Lefor, do you have the --



1 one of the computers?

2 REPRESENTATIVE LEFOR: (Indiscernible)

3 CHAIRMAN DEVLIN: Okay.

4 REPRESENTATIVE LEFOR: I gave it to
5 Counsel.

6 CHAIRMAN DEVLIN: Okay. Well, one of them
7 is going to Representative Headland, and I'm not sure
8 where the other one was. It was going to go to
9 Minot, but it isn't now. So I'm not sure who has the
10 other one, but that's fine. But Representative
11 Headland will need one.

12 REPRESENTATIVE LEFOR: I was offered
13 (indiscernible).

14 CHAIRMAN DEVLIN: From both? You're going
15 to get both of that?

16 VICE CHAIR HOLMBERG: Where is that going?

17 CHAIRMAN DEVLIN: Well, whatever. However
18 you three want to work it out.

19 VICE CHAIR HOLMBERG: We don't have to --

20 CHAIRMAN DEVLIN: That will be fine.

21 What else is there for today, Committee?

22 Tomorrow may be a short meeting, unless you come up
23 with a bunch of solutions overnight.

24 Representative Boschee, are you presenting
25 anything else on your plan? Okay.



1 You did get a letter from a gentleman in
2 Beulah. I think it was circulated earlier that said
3 that reservations have been split in different
4 districts that happened, he said, back in the 70's
5 and 80's and as late as 92 or maybe 2002. And the
6 statement I made is we have never done it you know,
7 when I was -- that I could remember.

8 But apparently, it was done years back.
9 But in all the years I've been working with it, we
10 have never split an Indian reservation, and I'm sure
11 we're not going to this year. But I stand corrected
12 because he said it was done in some of the earlier
13 years.

14 I don't know if anybody was on in any of
15 those Redistricting Committees that far back or not.

16 Is there anything else for today,
17 Committee?

18 So nothing. We'll stand in recess until
19 tomorrow morning at 9:00 a.m.

20 (END OF VIDEO FILE)

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Julie Thompson, CET-1036

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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	Stenhjem	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

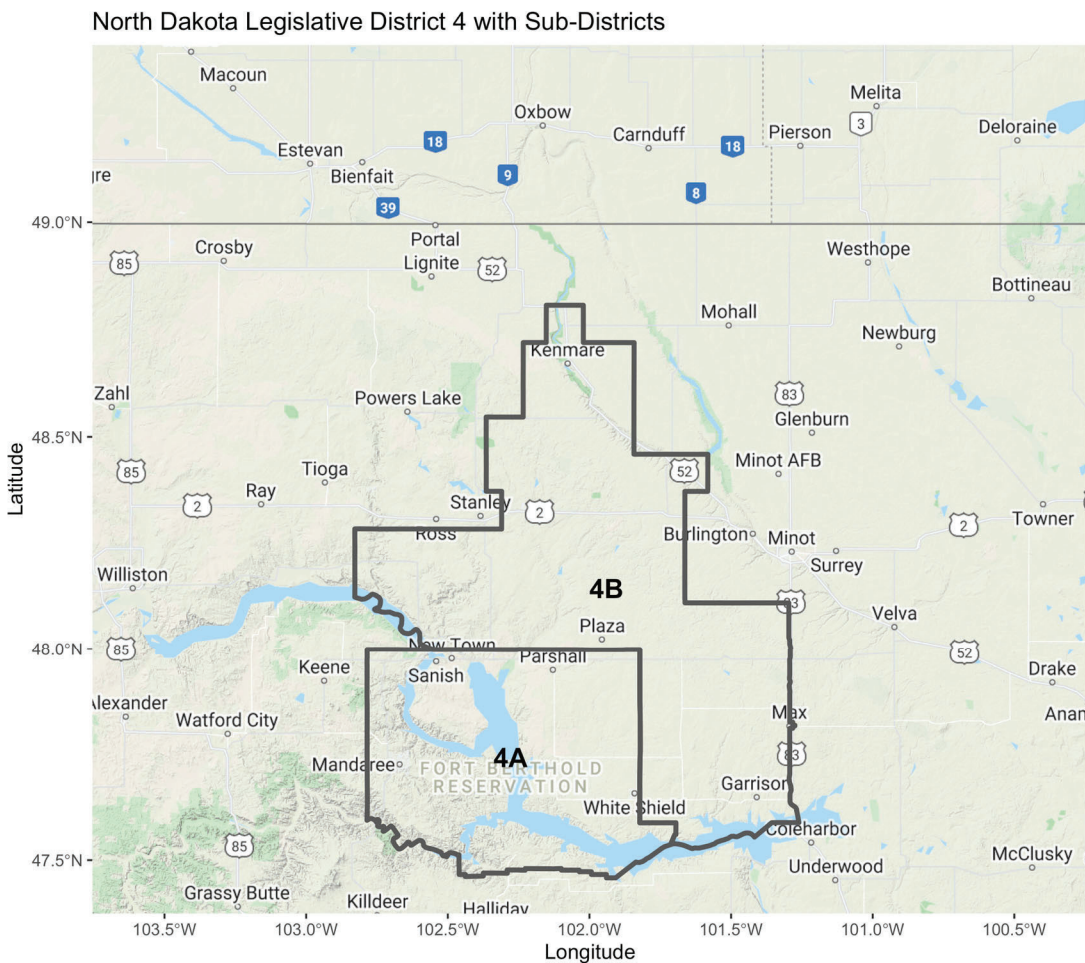
Racially Polarized Voting District 4

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.

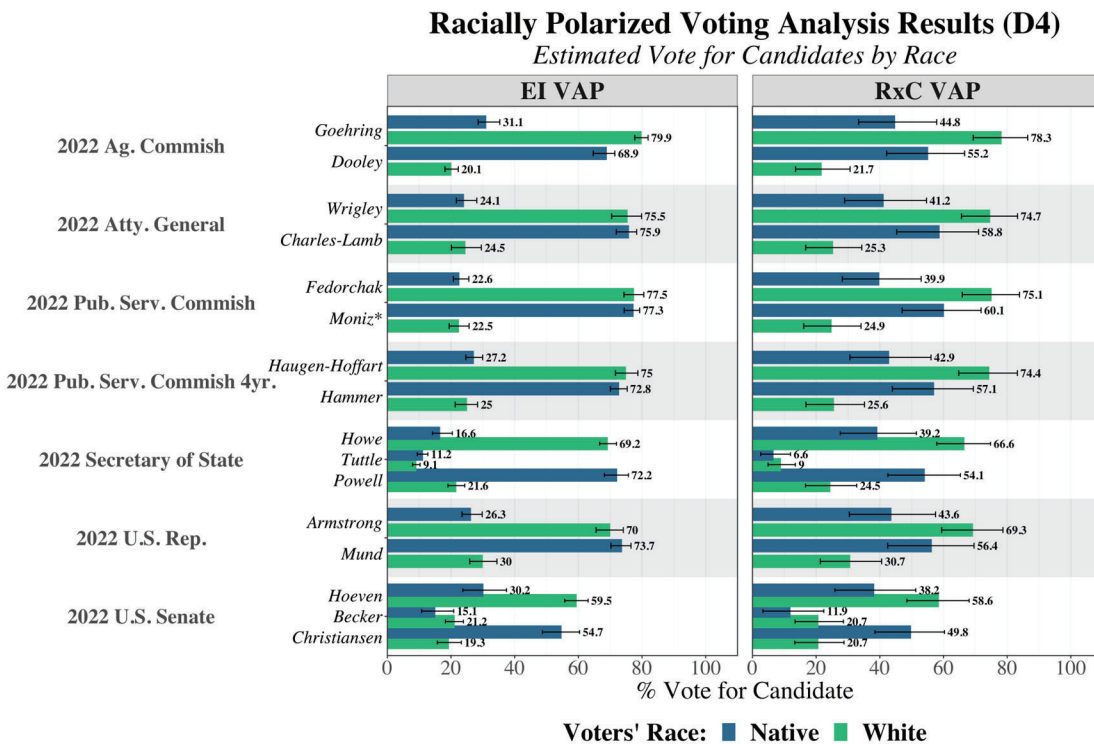
I do not conduct an ecological inference RPV analysis in Sub-Districts 4A and 4B because 1) there are relatively few precincts in each subdistrict, and 2) Sub-District 4A has a large share of Native Americans, whereas 4B does not, so locating homogeneous precincts of both racial groups in both subdistricts 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.

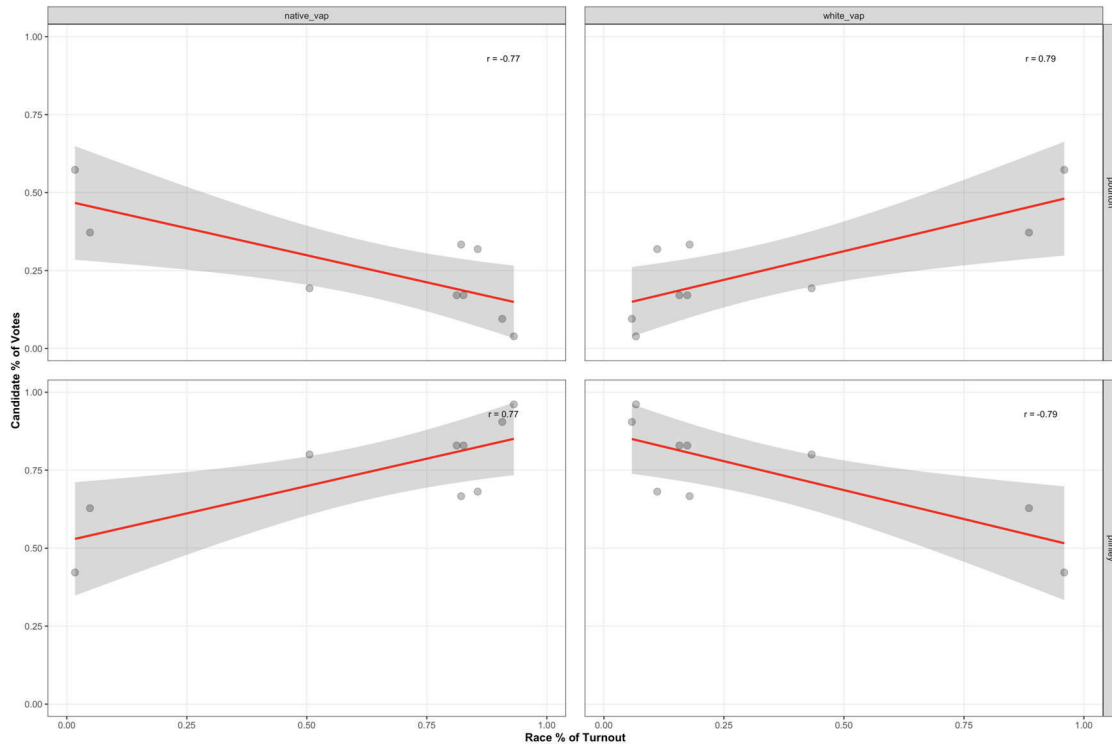


Figure 4 presents the racially polarized voting results for the 2020 contests. The results are consistent: in every single contest there is overwhelming evidence of RPV.

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

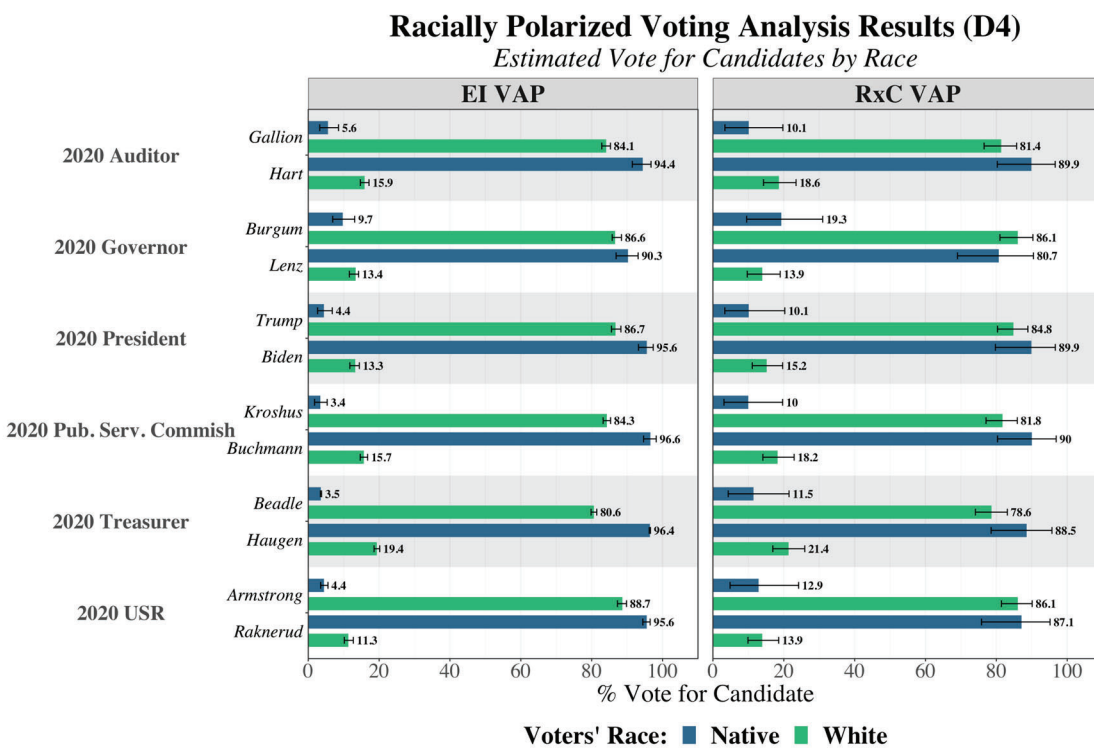


Figure 5 presents the racially polarized voting results for the 2018 contests. Again, the results show overwhelming evidence of RPV.

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

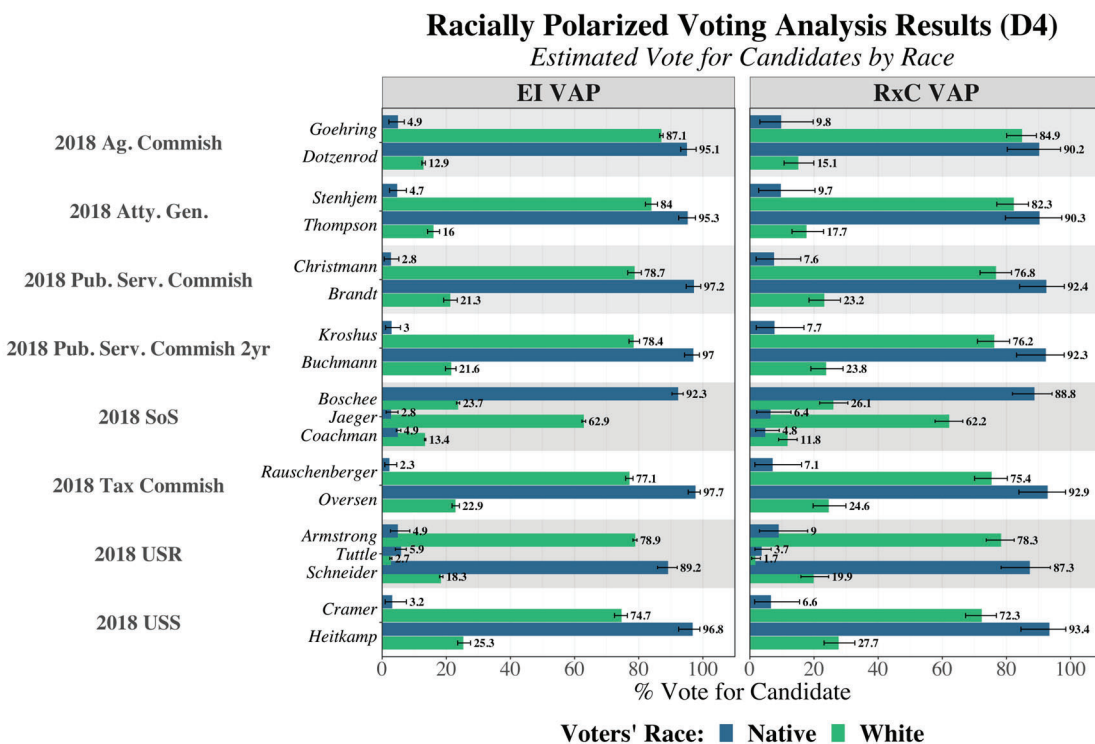


Figure 6 presents the racially polarized voting results for the 2016 contests.

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

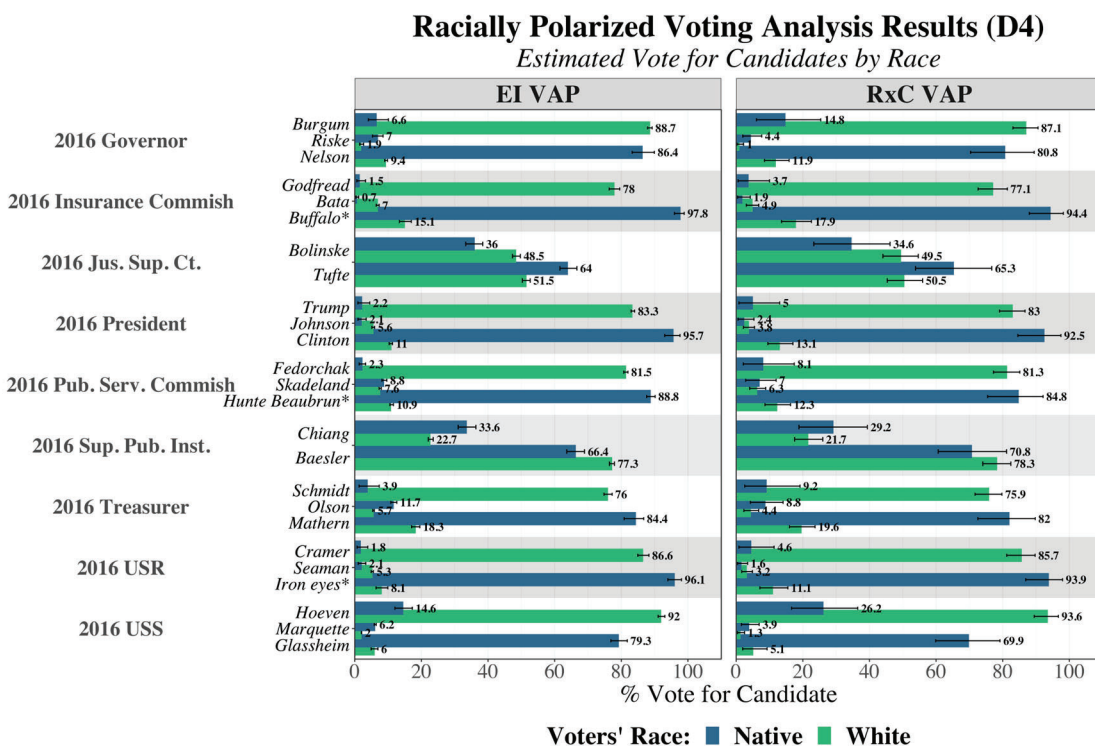


Figure 7 presents the racially polarized voting results for the 2016 Legislative District/State Representative 4 featuring Terry Jones, Bill Oliver, Kenton Onstad, and Cesar Alvarez. Mr. Alvarez is Native American while the remaining three candidates are white. Although this election was conducted under 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.

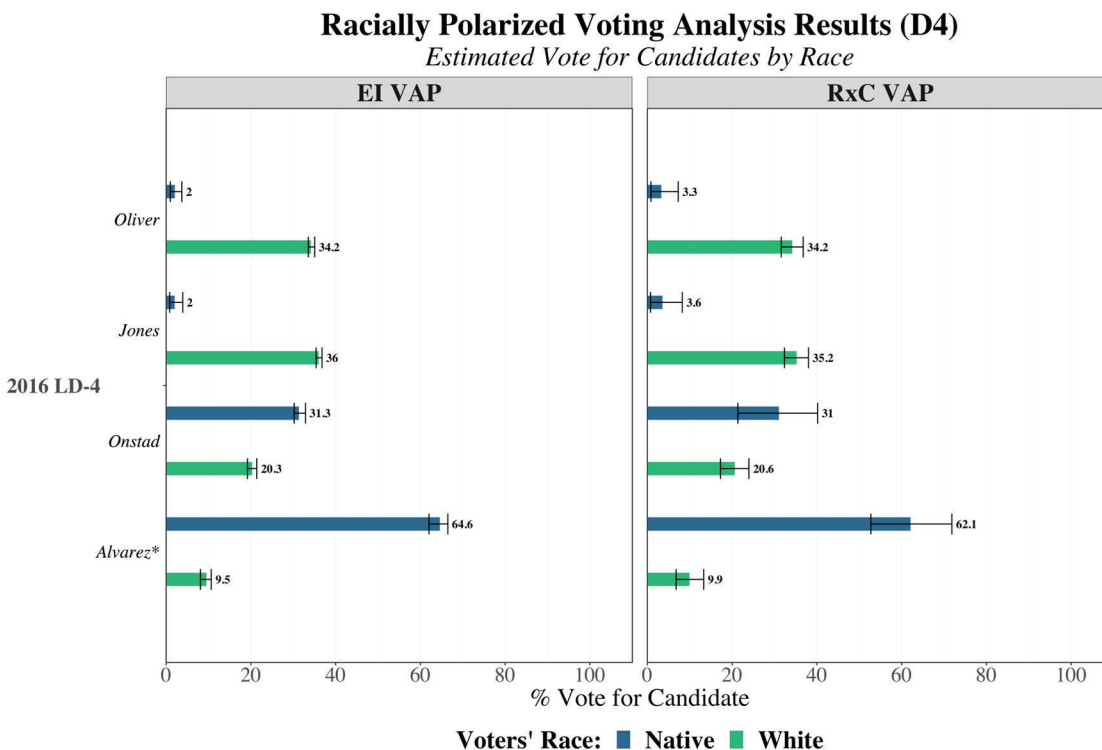
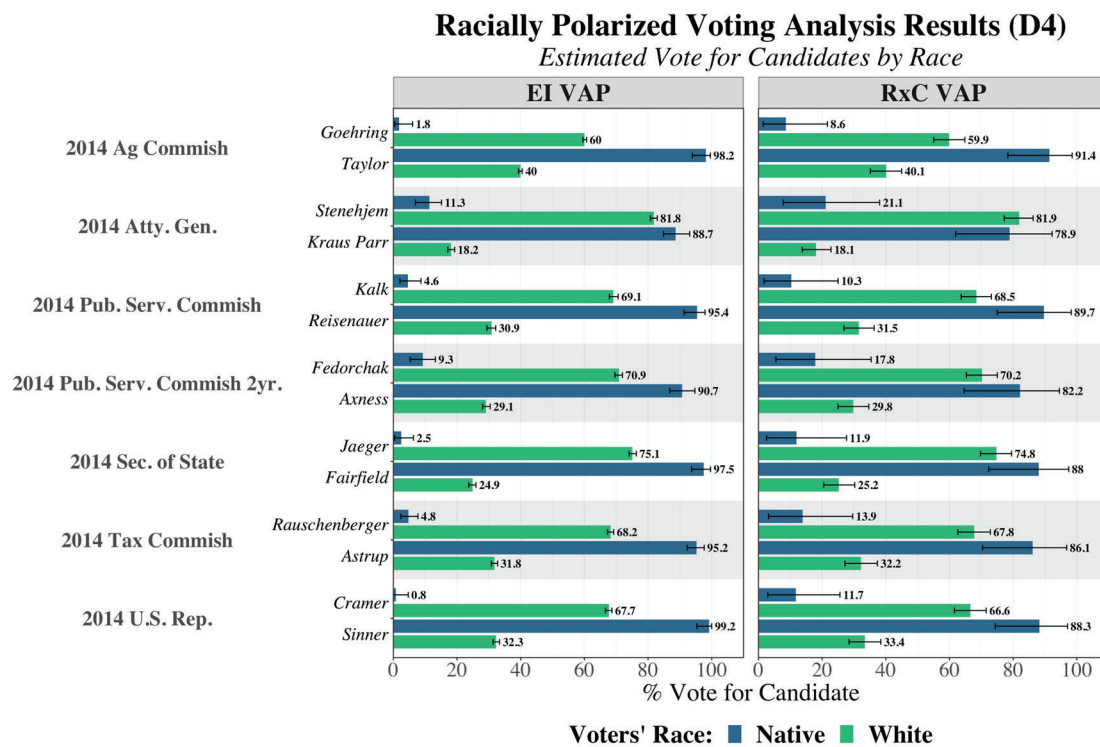


Figure 8 presents the racially polarized voting results for the 2014 contests.

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



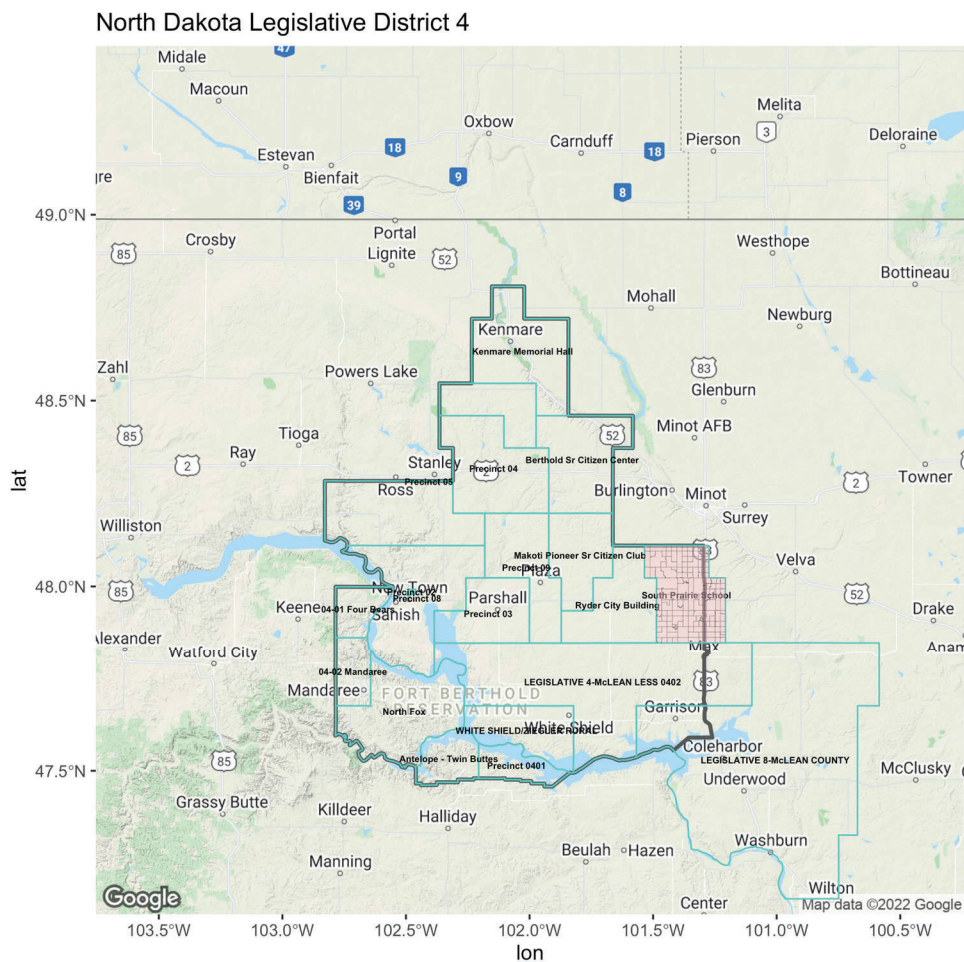
Performance Analysis District 4

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.

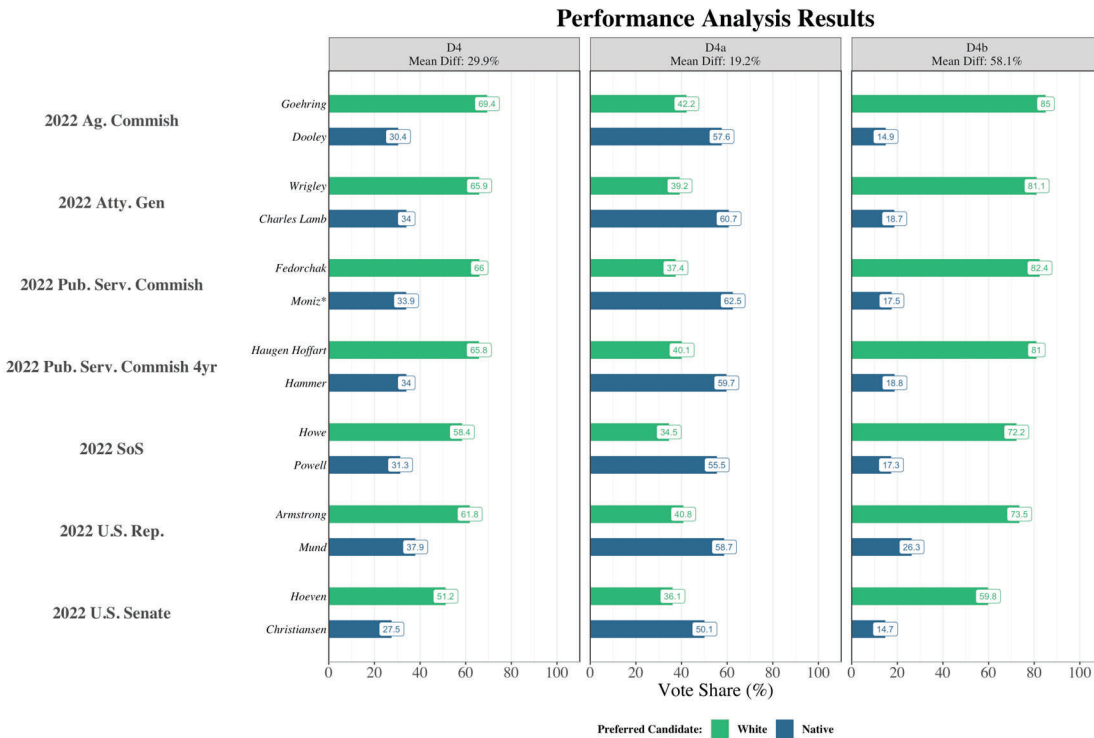


Figure 11 presents the 2020 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 6 of 6 contests for a block rate of 100%. The middle panel tells a different story though.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

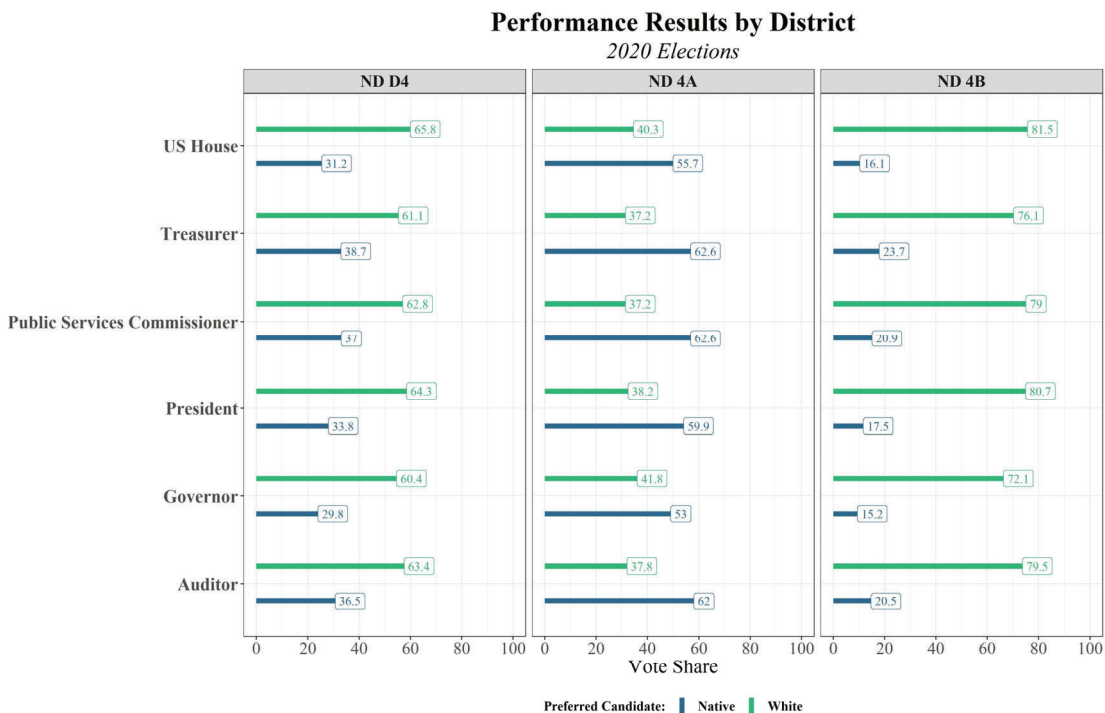


Figure 12 presents the 2018 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 8 of 8 contests for a block rate of 100%. The middle panel tells a different story though.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

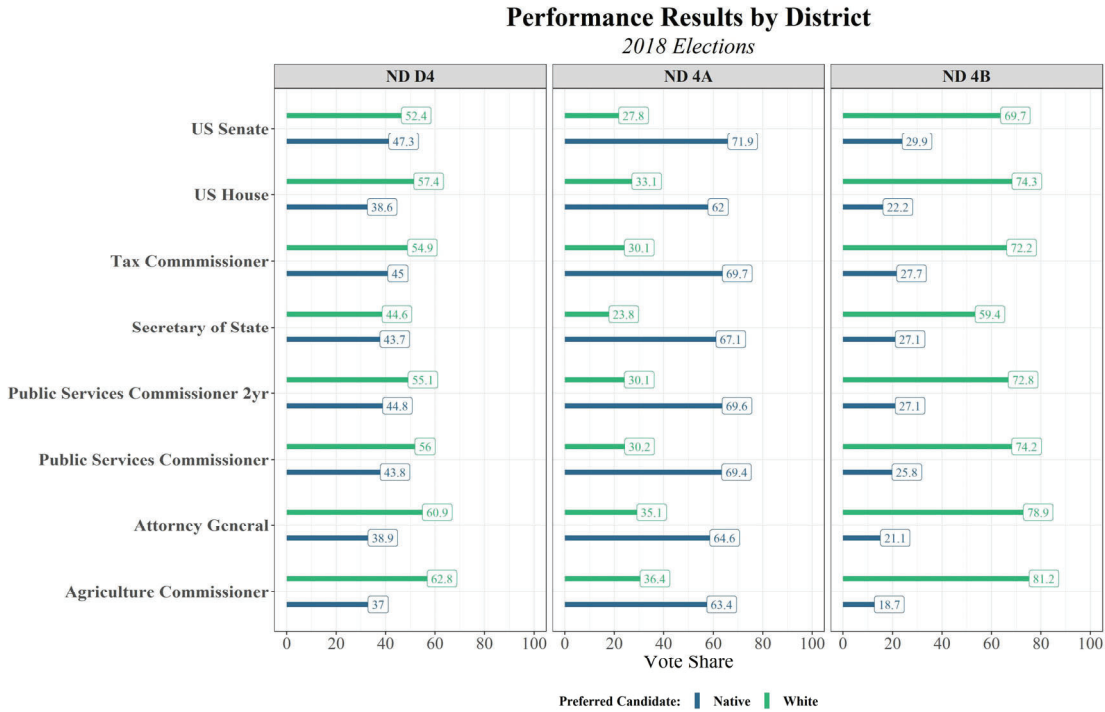


Figure 13 presents the 2016 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 7 of 7 contests for a block rate of 100%. The middle panel tells a different story though.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

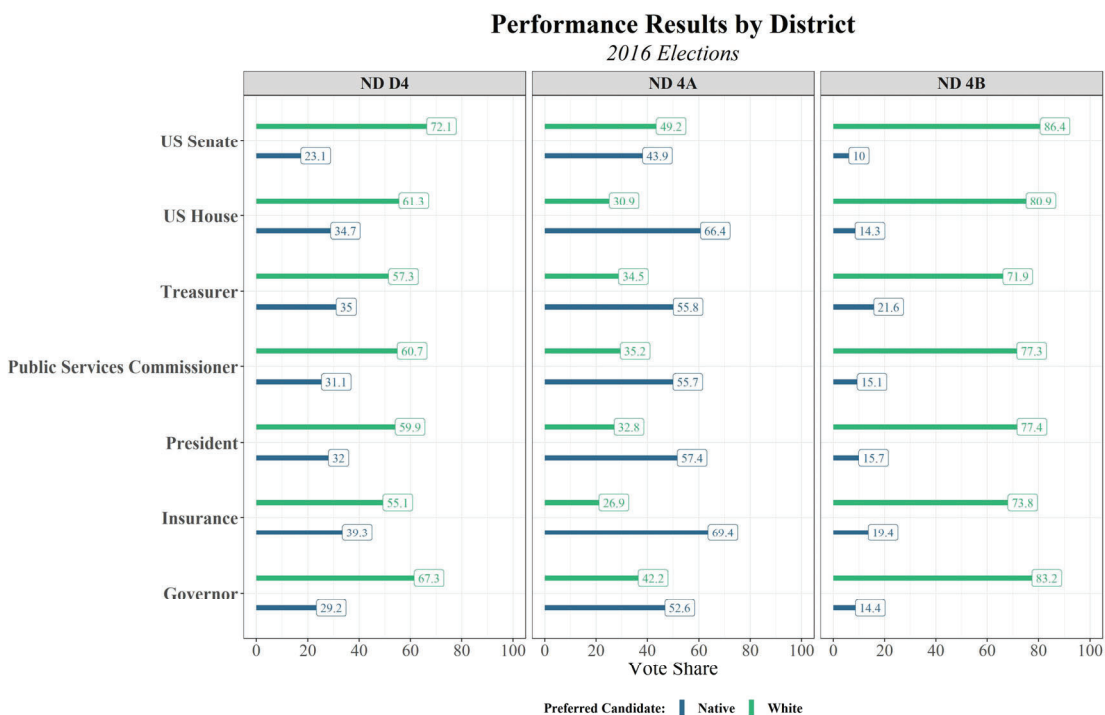
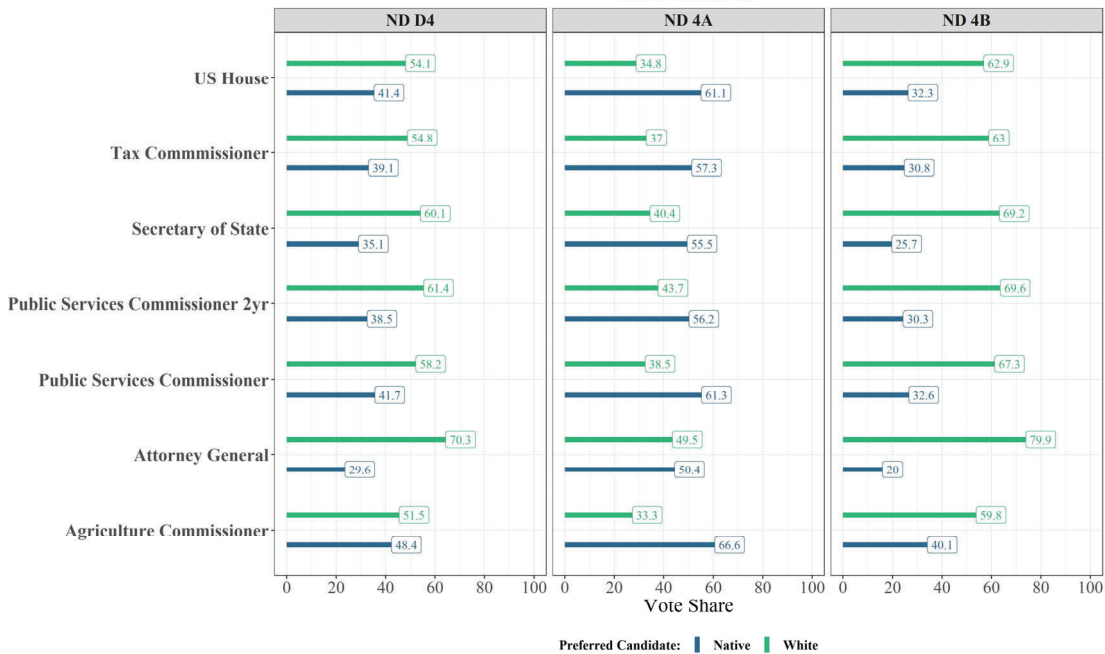


Figure 14 presents the 2014 election performance analysis results of the full District 4, then Sub-Districts 4A and 4B. Beginning with the leftmost panel – the full District 4 – the Native-preferred candidates loses 7 of 7 contests for a block rate of 100%. The middle panel tells a different story though.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

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