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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

WESTERN NATIVE VOICE, Montana
Native Vote, Blackfeet Nation, Confederated
Salish and Kootenai Tribes, Fort Belknap
Indian Community, and Northern Cheyenne
Tribe,

Plaintiffs,

vs.

CHRISTI JACOBSEN, in her official
capacity as Montana Secretary of State,

Defendant.

)
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) Cause No. DV 21-0560
)
)
)

**AFFIDAVIT OF DANIEL CRAIG
MCCOOL, Ph.D., IN SUPPORT OF
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

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I, Daniel Craig McCool, Ph.D., depose and say the following:

1. I am Professor Emeritus of Political Science at the University of Utah. I received a B.A. in Sociology from Purdue University, and a Ph.D. in Political Science from the University of Arizona. I have spent my entire professional career studying the political relationship between Native Americans and the larger political context. For over thirty-five years I have conducted research on the voting rights and water rights of Native Americans. In 2007, I co-authored *Native Vote: American Indians, The Voting Rights Act, and the Right to Vote* (Cambridge University Press). In 2012, I edited a book titled *The Most Fundamental Right: Contrasting Perspectives on the Voting Rights Act* (Indiana University Press). I utilized “qualitative methods” for nearly all of the 10 books, 27 articles, and 19 book chapters that I have published. I have served as an expert witness in 19 voting rights cases. Those cases include *Western Native Voice v. Stapleton*; the Court cited my report extensively. I applied the same methodology in all of these reports. My reports and my testimony have never been rejected by a court.

2. My full analysis is included in my expert report, which is attached as Exhibit 1 to this affidavit.

3. Relying upon the well-established concept of “voter costs,” this report analyzes the factors that affect the cumulative voter costs for Native Americans in Montana, including the impact of HB 176 and HB 530. These laws eliminated two elements of the existing electoral system—the right to register on Election Day, and the freedom to rely on paid ballot collectors—that benefited Native voters. The findings indicate that Native American voters already faced a formidable array of voter costs due to socio-economic factors, geographic factors, efforts to deny Native Americans an equal opportunity to vote, and historical and contemporary discrimination;

those costs were further increased by the passage of HB 176 and HB 530, making it more difficult for Native people to vote.

4. It is my professional opinion, after having consulted 336 sources, that the most significant impact of HB 176 and HB 530 will be to increase voter costs and lower turnout, and the impact will be felt mostly heavily by Native Americans and other groups that share some of the socio-economic factors that are typical of Indian Country. In short, these new laws will make it harder for people to vote. Both laws are a targeted diminution in freedoms associated with elections; each law deprives citizens of an option that is helpful to Native American voters.

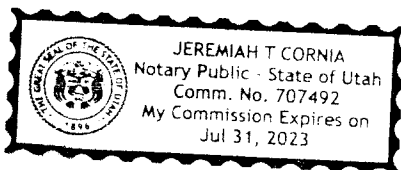
5. An analysis of the alleged benefit of these laws—to reduce fraud and increase election integrity—finds no support for such a claim.

6. HB 176 and HB 530 have a disproportionately negative impact and impose significant voter costs on Native voters, making it more difficult for them to vote, with no discernable public benefit.


Daniel Craig McCool, Ph.D.

STATE OF Utah
COUNTY OF Weber

Signed and sworn to before me on this 6 day of January, 2022.



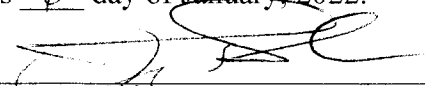

Notary Public

EXHIBIT 1

Expert Witness Report
in the case of
Western Native Voice v. Jacobsen
Montana Thirteenth Judicial District Court
County of Yellowstone
Submitted by
Professor Daniel Craig McCool
Political Science Department, University of Utah
January 2022

Organization of the Report

Summary of Findings

I. INTRODUCTION

- A. Qualifications
- B. Qualitative Methods
- C. Five Research Questions

II. RESEARCH QUESTION 1

- A. Income and Poverty
- B. Health
- C. Education
- D. Housing
- E. The Internet
- F. Crime

III. RESEARCH QUESTION 2

- A. The Voter Costs of HB 176
 - 1. Election Day Registration and Turnout
 - 2. Distance
- B. The Voter Costs of HB 530
 - 1. Vote-by-Mail and Native Americans
 - 2. The Impact of Covid

IV. RESEARCH QUESTION 3

- A. Alleged Voter Fraud in Montana
- B. The Alleged Link between Voter Fraud and Ballot Collection in the U.S.
- C. Election Integrity and the Claimed Purpose of HB 176 and HB 530

V. RESEARCH QUESTION 4

- A. Historical Discrimination Against Native Voters
- B. The Socio-Political Context of Historical Discrimination

VI. RESEARCH QUESTION 5

- A. Voting Rights Cases in Montana
- B. The Socio-Political Context of Contemporary Discrimination

VII. CONCLUSION

I, Daniel Craig McCool, Ph.D., depose and say the following

Summary of Findings:

Relying upon the well-established concept of “voter costs,” this report analyzes the factors that affect the cumulative voter costs for Native Americans in Montana, including the impact of HB 176 and HB 530. These laws eliminated two elements of the existing electoral system—the right to register on Election Day, and the freedom to rely on paid ballot collectors—that benefited Native voters. The findings indicate that Native American voters already faced a formidable array of voter costs due to socio-economic factors, geographic factors, efforts to deny Native Americans an equal opportunity to vote, and historical and contemporary discrimination; those costs were further increased by the passage of HB 176 and HB 530, making it more difficult for Native people to vote. Because of the significant accumulation of voter costs already facing Native Americans, the impact of HB 176 and HB 530 will be felt most severely by Native voters. An analysis of the alleged benefit of these laws—to reduce fraud and increase election integrity—finds no support for such a claim. In sum, HB 176 and HB 530 have a disproportionately negative impact and impose significant voter costs on Native voters, making it more difficult for them to vote, with no discernable public benefit.

I. INTRODUCTION

A. Qualifications:

1. I am Professor Emeritus of Political Science at the University of Utah. I received a B.A. in Sociology from Purdue University, and a Ph.D. in Political Science from the University of Arizona. I have spent my entire professional career studying the political relationship between Native Americans and the larger political context. For over thirty-five years I have conducted research on the voting rights and water rights of Native Americans. In 2007, I co-authored *Native Vote: American Indians, The Voting Rights Act, and the Right to Vote* (Cambridge University Press). In 2012, I edited a book titled *The Most Fundamental Right: Contrasting Perspectives on the Voting Rights Act* (Indiana University Press). I also have several

peer-reviewed publications that focus on public policy methodology and theory. I serve as an academic advisor to the Native American Voting Rights Coalition, and co-authored the 2020 report, “Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters” (Tucker, De León, and McCool. 2020). I also assisted in the design of a four-state survey of Native American voters. My latest research focuses on Native American water rights in the Southwest.

2. I utilized “qualitative methods,” described below, for nearly all of the 10 books, 27 articles, and 19 book chapters that I have published. I have served as an expert witness in 19 voting rights cases, listed on my vita, which is included as Appendix B. Six of those cases were filed in state courts, and the others involved federal claims under Section 2 or Section 203 of the Voting Rights Act. Those cases include *Western Native Voice v. Stapleton*; the Court cited my report extensively. I applied the same methodology, described below, in all of these reports. My reports and my testimony have never been rejected by a court.

3. I have been hired by the plaintiffs for this case and I am compensated at the rate of \$250/hour. The conclusions I present in this report are mine alone, are not related to or endorsed by the University where I have an appointment, and were reached through an independent process of research and inquiry.

B. Qualitative Methods:

4. In this report I utilize a well-recognized methodology known as “qualitative methods” (Denzin and Lincoln. 2000, 2011; Teherani, et. al. 2015). This is the same methodology I have used in nearly all my academic work, as well as all of my previous expert witness reports. Qualitative methods are particularly useful to analyze information from large bodies of print data. It is important to note that qualitative analysis does not mean non-numerical; for this report I employ many numerical measures and a large body of data to answer the research questions posed below. I employ this methodology by using data and information gleaned from multiple and overlapping sources: original research, interviews, newspapers (including editorials and letters to the editor), past court cases, interest group publications, oral histories, secondary published sources such as books and articles, online sources (websites, blogs), business advertising and business policies, campaign flyers and publicity, church records, and documents and studies created by tribal, local, state, and federal governments, including voting data and census data.¹ In some cases, it is also useful to examine photographs, videos, and other visual “data.” As Fraser and Davies point out, qualitative methods “may fruitfully draw on written documents as a resource to generate new

¹ The most recent Census data available for this report is 2019 American Community Survey (ACS) data. The 2020 was so problematic that the Census Bureau has not yet released it, stating: “The data collection issues experienced by the 2020 ACS severely affect the data quality of these statistics, therefore the Census Bureau decided not to release the standard ACS 1-year data for 2020” (Daily. 2021).

knowledge” (2019: 213). I examine these multiple sources for significant long-term trends across multiple sources of information and data. Confidence levels increase when consistent patterns of responses appear across multiple sources over a sustained period of time. Reliability is enhanced by utilizing a large number of documents that represent many different types of sources, and finding consistent patterns across these diverse sources. For this report I relied on 336 sources.²

5. Qualitative methods are well recognized in the social sciences. The Consortium on Qualitative Research Methods was established in 2001 (Consortium on Qualitative Research Methods. n.d.). The American Political Science Association organized a section titled Qualitative Methods in 2003, now called the Qualitative and Multi-Method Research section (American Political Science Association. 2021). By 2003 almost half of all peer-reviewed articles in Political Science journals utilized qualitative methods (Bennett, Barth, and Rutherford. 2003). Syracuse University, with funding from the National Science Foundation, established a “Qualitative Data Repository” to assist researchers who utilize this method (Qualitative Data Repository. n.d.). Qualitative methods are now used in a variety of fields and research settings (Lamont and White. 2009: 5; Bartolini. 2013). Qualitative methods are often employed in conjunction with quantitative methods: “A sophisticated and growing methodological

² My usual protocol is to conduct in-person interviews, but due to Covid I had to conduct telephone interviews for this report.

literature—both qualitative and quantitative—is now concerned with the analysis of necessary causes in both individual cases and populations of many cases” (Mahoney. 2021: 103).

6. Qualitative methods are well-suited for expert analysis in voting rights cases because the methodology is adept at analyzing phenomena that are complex, long-term, multi-dimensional, and subject to rapid change. Furthermore, the application of the methodology is not limited to any particular social or ethnic group. Lamont and White note that qualitative methods are “particularly useful for studying timely topics such as group identities and boundaries [and] race, class, gender...” (2009: 5). It is also particularly useful to study phenomena that occur over long periods of time, due to the large number of variables and factors that change over time (see, for example: Bartolini. 2013).

7. There are many methodology textbooks that focus on qualitative methods; most are written by political scientists but others are by authors in fields such as public health, anthropology, sociology, and increasingly the humanities. This method has been especially relevant to the multi-methods approach of the “new history” movement and social history (see, for example: Hoffer. 2007; Tyrrell. 2005; Limerick et. al. 1991). The use of social science methodology in history, including qualitative methods, is exemplified by journals such as *Social Science History* and the *Journal of Policy History*. The widespread use and acceptance of qualitative methods, along with the applicability to large-scale analytical problems, is why I have consistently relied on that approach for both my academic work and my expert witness reports.

C. Five Research Questions:

8. In this report I address five inter-related questions that cumulatively explain the impact of HB 176 and HB 530. The full impact of these laws cannot be fully understood without an understanding of the answers to all five questions:

1. What socio-economic factors increase voter costs for Native Americans in Montana and affect their ability to participate in elections and access voting locations?
2. Do HB 176 (the elimination of Election Day Registration) and Sec. 2 of HB 530 (the prohibition on paying ballot collectors) increase voter costs for Native voters and thus have a disproportionate and negative affect on Native American voters in Montana and deprive them of an equal opportunity to participate in elections?³
3. Do HB 176 and HB 530 render a public benefit and have a demonstrable impact on improving election integrity in Montana?
4. Historically, have Native Americans in Montana been subjected to racism and discrimination? How has that historical discrimination and associated historical trauma

³ There are no perfect terms for Native Americans and non-Native Americans. I use the terms “Native American,” “American Indian,” and “Indian” interchangeably. I use the term “Anglo” to refer to non-Native people, which avoids referring to them in the negative, even though many non-Indians are not ethnically Anglo. I occasionally use the term “White” when there is a distinction made between Anglos and other non-Native ethnicities.

impacted their current ability to participate equally in the political process and vote?

Historically, have Native Americans been subjected to efforts to deny, abridge, or dilute their voting rights?

5. Does contemporary discrimination affect the ability of Native Americans to participate equally in voting? Do Native Americans in Montana continue to face unique obstacles that prevent them from having an equal opportunity to vote and participate in the political process?

9. To answer the five research questions, I utilize a well-known concept in political science known as “the costs of voting,” or “voter costs.” A large body of research in political science has found that many variables affect voter behavior and voter turnout. One of the most important trends in that literature concerns “voter costs,” a concept that is well-defined in political science (Schraufnagel, Pomante, and Li. 2020; Li, Pomante, and Schraufnagel. 2018; Berinsky. 2005). As Brady and McNulty note, “costs do matter to voter turnout” (2011: 115). Rosenstone and Hansen put it in blunt terms: “Participation in politics...has a price, a price that is some combination of money, time, skill, knowledge, and self-confidence” (1993:12-14). As Brady, Verba and Schlozman note, “time, money and civic skills” are “essential to political activity” (1995: 271). These voter costs have a direct impact on voter behavior and turnout. Even the weather can affect the costs of voting (Hansford and Gomez. 2010). The key point is that certain attributes of an electoral system can increase, or decrease, those costs: “...changes to the legal regime [of elections] that reduce the ‘cost of voting’—that is, the burdens borne by

potential voters in registering or casting a ballot—can facilitate voter participation” (Ho. 2019: 187). Any attribute of an electoral system that increases voter costs tends to decrease voter participation and turnout. Thus, if the goal is to increase participation, inclusivity, and turnout, then voter costs should be minimized.

10. The five questions posed for this report focus on factors that have a direct impact on voter costs. Voter costs are cumulative; thus, the impact of HB 176 and HB 530 cannot be understood without a full understanding of all of the cumulative voter costs, including the socio-economic context, historical trauma, historical and contemporary discrimination, and attributes of the electoral process that create additional voter costs—such as those imposed by HB 176 and HB 530. The voter costs imposed upon Native Americans living on reservations in Montana consist of all of these factors, like adding a column of numbers to get an accurate total. The current situation regarding Native access to the electoral process is a result of these cumulative costs, and therefore a full understanding of the impact of these laws cannot be attained without understanding the answers to all five research questions. This report will devote a section to each of the five questions, followed by a concluding section.

II. QUESTION 1: What socio-economic factors increase voter costs for Native Americans in Montana and affect their ability to participate in elections and access voting locations?

11. The characteristics of individual voters, and electoral system design, both affect voter costs. If all voters had the same history, socio-economic status, health condition,

educational level, and lived the same distance from a polling place and post office, then HB 176 and HB 530 might not be such an important issue. But there is a wide disparity between Native people and Anglo people in Montana in regard to these factors, and this has dramatic implications for access to the ballot box. This section of the report will analyze the following socio-economic factors that directly affect voter costs: Income and poverty; health; education; housing; the internet; and crime. These factors are critical to understanding the impact of HB 176 and HB 530 because these factors, in addition to the two new laws, directly increase voter costs and affect the ability of Native Americans to travel and access the electoral process, resulting in a disproportionately negative impact on Native voters.

A. Income and Poverty:

12. It is a well-known fact in political science that socio-economic well-being correlates positively with political participation: “The SES [socio-economic status] model does an excellent job predicting political participation” (Verba and Schlozman. 1995: 272). This is especially true for voting (Wolfinger and Rosenstone. 1980; Brady and McNulty. 2011). In short, “It is well known that those with higher SES characteristics tend to vote at higher rates in U.S. elections” (Brians and Grofman. 1999: 161).

13. This fact has particular relevance to minorities that tend to have lower income than their white counterparts: “In general, minority participation can be suppressed by socioeconomic factors such as less education and lower income” (Lien. 2000). Another political

scientist framed the SES/participation link as “the issue of our time” (Williams. 2004). Thus, unequal resources (money, education, health, time, internet connection, knowledge of the system, a stable home, and reasonable distance to the polls and the means to get there) mean unequal opportunities to access the polls and fully participate in the electoral process.

14. If there is one word that best describes the socio-economic status of Native Americans in Montana, it is poverty. The historic poverty of American Indians, described in detail in the historical section that follows, continued unabated through the decades of the Twentieth and Twenty-first centuries. In 1960, the Blackfeet Tribal Council wrote to the Commissioner of Indian Affairs asking for assistance, noting that “Members of the Blackfeet Tribe are generally very poor. Their income is meager” (quoted in McFee. 1972: 60). Eight years later, the town of Browning, in an application for federal assistance, described the destitution on the Blackfeet Reservation:

The overall picture is one of widespread economic impoverishment which in the case of many families is shared with emotional impoverishment. As is true among most people who live in chronic poverty, the poor people of the Reservation have a feeling of hopelessness and helplessness in controlling their own destiny (quoted in McFee. 1972: 64).

By the 1990s, the picture had not improved, as shown in the Table 1 (Brod and Miller. 1998):

Table 1: Official Poverty & Deep Poverty Rates: State of Montana & Montana’s Seven Indian Reservations (1990 Census)

	100% of Poverty	50% of Poverty
State of Montana	16.1%	6.7%
Indian Reservations*		
Blackfeet	47.0	23.7

Crow	41.7	18.0
Flathead	22.9	9.1
Fort Belknap	45.3	23.3
Fort Peck	31.6	16.0
Northern Cheyenne	48.6	23.0
Rocky Boys	47.5	16.1

*Based on all residents of the Reservations, regardless of race

An analysis of data from ACS surveys from 2005-2016, presented in the following three tables, indicates the severity of Native American poverty in the nation as a whole (Wilson and Mokhiber. 2017).

Table 2: Median household income for Native Americans and total population (2016 dollars), 2005–2016

	Native Americans	Total population
	\$40,959	\$56,850
2006	\$40,198	\$57,675
2007	\$40,913	\$58,733
2008	\$42,157	\$57,879
2009	\$39,583	\$56,195
2010	\$38,595	\$55,090
2011	\$37,554	\$53,875
2012	\$36,914	\$53,697
2013	\$37,752	\$53,834
2014	\$37,745	\$54,404
2015	\$39,066	\$56,481
2016	\$39,719	\$57,617

Total population Native Americans

Source: American Community Survey data 2005-2016

Table 3: Share of people in poverty, Native Americans and total population, 2015 and 2016

	Native Americans	Total population
2015	26.6%	14.7%
2016	26.2%	14.0%

Source: American Community Survey data, 2015 and 2016

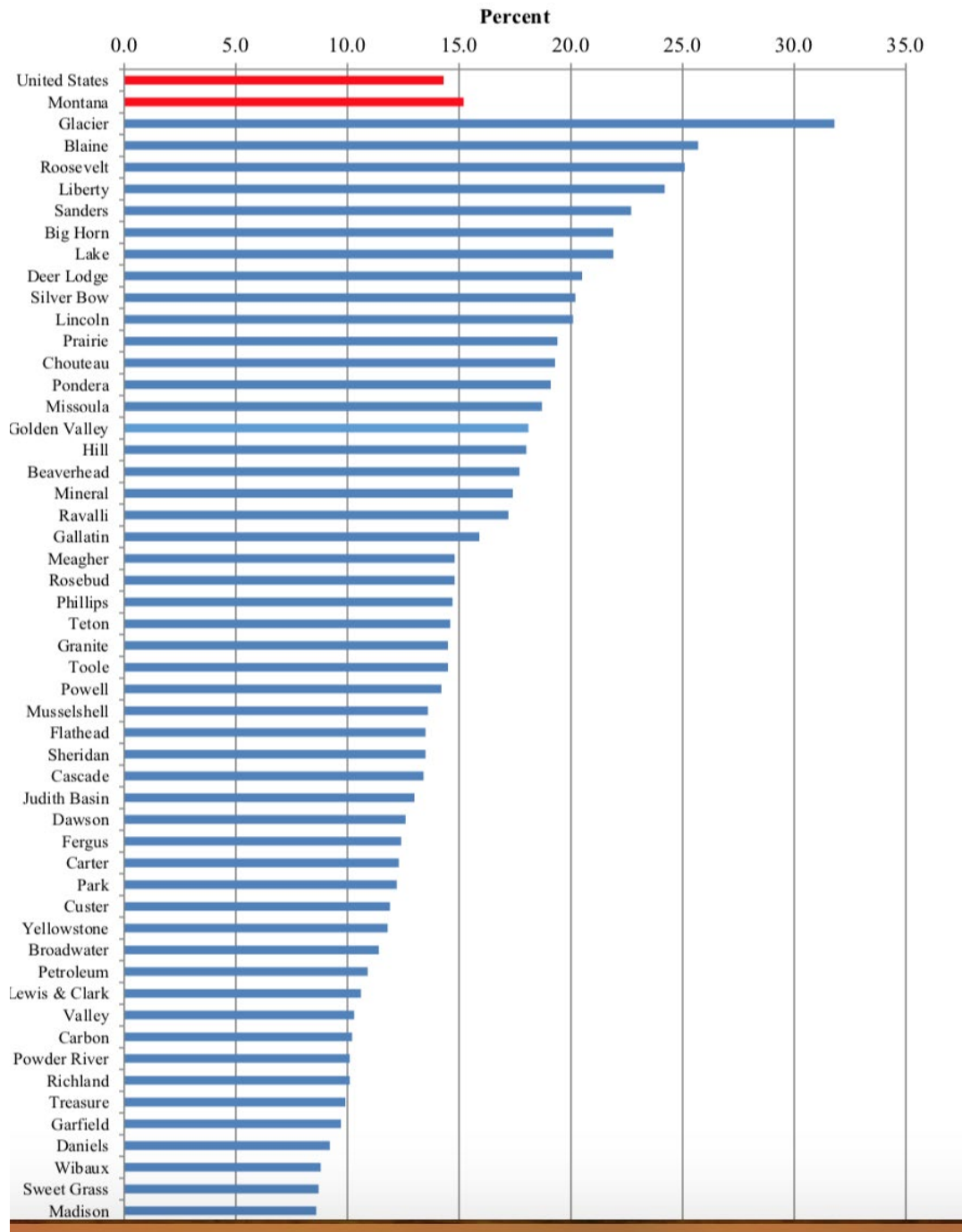
Table 4: Share of children in poverty, Native Americans and total population, 2015 and 2016

	Native Americans	Total population
2015	33.8%	20.7%
2016	33.8%	19.5%

Source: American Community Survey data, 2012 and 2013

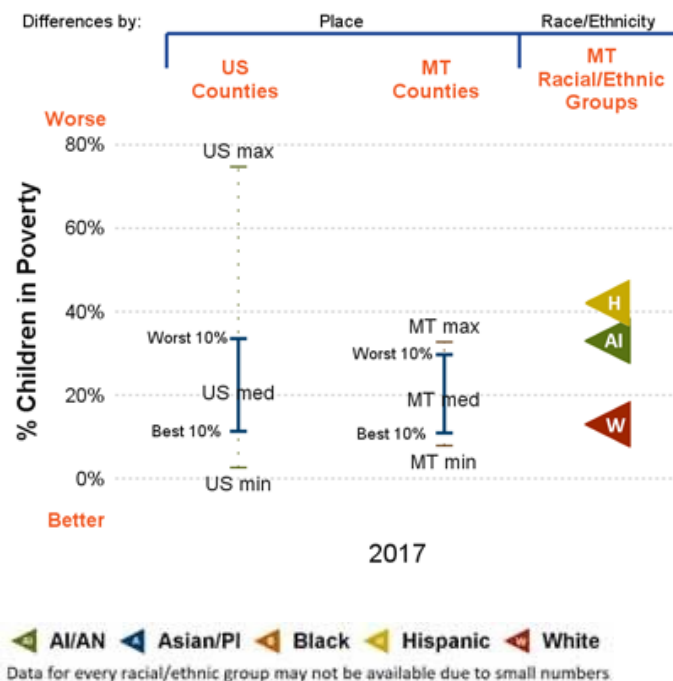
15. The data on poverty in Montana can be examined in two ways; by race, and by county. County data is useful for comparison purposes, but no county is all-Native, or all-Anglo, and that has to be taken into consideration. However, we can see, in Table 5 below, significant differences between counties that are predominantly Native, and those that are not, (Montana Poverty Report Card. 2016). Table 5 indicates the percentage of individuals, aged 18-64, living in poverty:

Table 5: Poverty in Montana, by County



16. The top three counties with the highest poverty levels (Glacier, Blaine, and Roosevelt) have substantial Native populations (Natives are a majority in Glacier and Roosevelt). Thus, the data for Montana reflect the national data, with Native people much poorer than their Anglo counterparts. This is especially true for children, as seen in Table 6 (University of Wisconsin 2019: 8), which breaks down the data, not by county, but by race:

Table 6: Children in Poverty, U.S. and Montana



17. Hispanics fare slightly worse than Native American children when it comes to poverty in Montana; Whites are much better off. This dismal picture of Native American children living in poverty in Montana was verified by another report called “Kids Count,” funded

by the Annie E. Casey Foundation. It found that, for the year 2018, 42 percent of Native children, but only 13 percent of Anglo children, lived in poverty in Montana (Kids Count. 2019).

18. For Native people of all ages, however, poverty is widespread. A 2019 study by the “Talk Poverty Project” found that 34 percent of Native Americans in Montana lived in poverty, but only 10.6 percent of Anglos (Talk Poverty. 2019). A more detailed analysis of poverty on Montana reservations can be obtained using data from the “Montana Poverty Report Card,” which is published by Montana State and relies upon census data from the American Community Survey of the Census Bureau. The data in the following table is for 2017 for the tribal study, and 2014-16 for the state-wide study (Montana Poverty Report Card. 2016, State of Montana; Montana Poverty Report Card. 2019, Reservations.). Table 7, below, presents data from 2014-2017, on four indicators of economic well-being: Poverty rate, unemployment rate, participation in the Supplemental Nutrition Assistance Program (SNAP), and median income:

Table 7: Indicators of Economic Well-being (2014-2017 Data)

	Poverty Rate	Unemployment Rate	SNAP*	Median Income
Blackfeet	35.8%	10.2%	19.8%	\$24,713
Crow	32.9%	18.4%	20.5%	\$48,405
Flathead	25.5%	8.7%	18.1%	\$39,936
Fort Belknap	48.2%	33.9%	34.6%	\$29,485
Fort Peck	31.6%	12.3%	18.3%	\$32,500
N. Cheyenne	36.5%	27.2%	33%	\$41,824
Rocky Boy	38.7%	13.4%	48.6%	\$30,288
Montana**	13.0%	3.9%	12.4%	\$46,020

*Supplemental Nutrition Assistance Program

There are a few factors to keep in mind when interpreting these data. First, the Montana data were included for comparison, but keep in mind that the state-wide data include the 6.7 percent of the population that is Native American; the state data would look more favorable if it did not include Native Americans. Second, the data for Indian reservations includes the Anglos who live within the exterior boundaries of those reservations. The single anomaly is the unemployment rate for Blackfeet, which dropped by half in just four years.

19. There are several significant trends that are evident in the tables above. First, the poverty rate for Indian reservations is, at a minimum, twice that of the state as a whole. Second, the unemployment rate on the reservations is much higher than for the state; the lone bright star—Blackfeet—is still more than twice as high as the state average. Third, the use of food stamps (SNAP) on the reservations is significantly higher than the state as a whole. And finally, with the exception of the Crow Reservation, Native people have much less money in their pocket—less money to spend on a vehicle, gas, car insurance, and maintenance—all of which are necessary to travel to a post office or a ballot box.⁴

20. Another way to measure economic well-being is by examining employment rates. Table 8 shows, in absolute numbers, employment status and the percentage rate of unemployment. To get a sense of the relative dimensions of the employment, I included the

⁴ Recent research indicates that these dismal poverty figures are long-term and the result of intergenerational disparities: “black Americans and American Indians have much lower rates of upward mobility and higher rates of downward mobility than whites, leading to persistent disparities across generations” (Chetty, et. al. 2019).

latest Census data for population on each reservation, which includes all residents, not just tribal members. In parentheses below that is the number of tribal members living “on or near” that reservation, based on data from the Governor’s Office of Indian Affairs

Table 8: Employment By Tribe

Tribes	Population	Employed	Unemployed	Not in Labor Force	Unemployment Rate	Poverty Rate
Blackfeet	10,629 (7,000)	3818	383	3277	9.1%	27.5
Crow	7,623 (10,000)	2396	466	2395	16.3%	24.1
Flathead	29,926 (5,000)	12,185	979	10,161	7.4%	13.7
Fort Belknap	3,204 (3,429)	785	39	934	33.2%	39.3
Fort Peck	10,376 (3,900)	3354	553	3260	14.2%	28.5
Northern Cheyenne	4,827 (5,012)	1590	252	1296	13.7%	23.6
Rocky Boy’s	3,706 (2,500)	945	103	1378	9.8%	37.5
Turtle Mountain	9,247 No reserv	3119	342	2716	9.9%	25.6

Source: U.S. Census: “My Tribal Area,” 2021.

For comparison, the rate of unemployment for the nation in 2021 was 5.2 percent. For Montana, the overall unemployment rate was 3.5 percent for Montana and the poverty rate was 12.5 percent—keeping in mind that the Montana data include Indian reservations (State of Montana Newsroom. 2021). Also keep in mind that the lower unemployment rates for Fort Peck and Flathead may be due to the large numbers of Anglos living within the exterior boundaries of the reservation.

21. The Montana Governor's Office of Indian Affairs summed up the economic condition of Native people: "Reservation unemployment, poverty, school dropout rates, and public assistance levels are significantly higher than the Montana average. Basic infrastructure on our reservations needs to be improved" (2019). Income and employment are important indicators of socio-economic well-being, which in turn directly impact the ability of Native Americans to travel and access voting sites. The negative impact of HB 176 and HB 530 are exacerbated by these variables because they require a greater investment in travel costs and means of transportation.

B. Health:

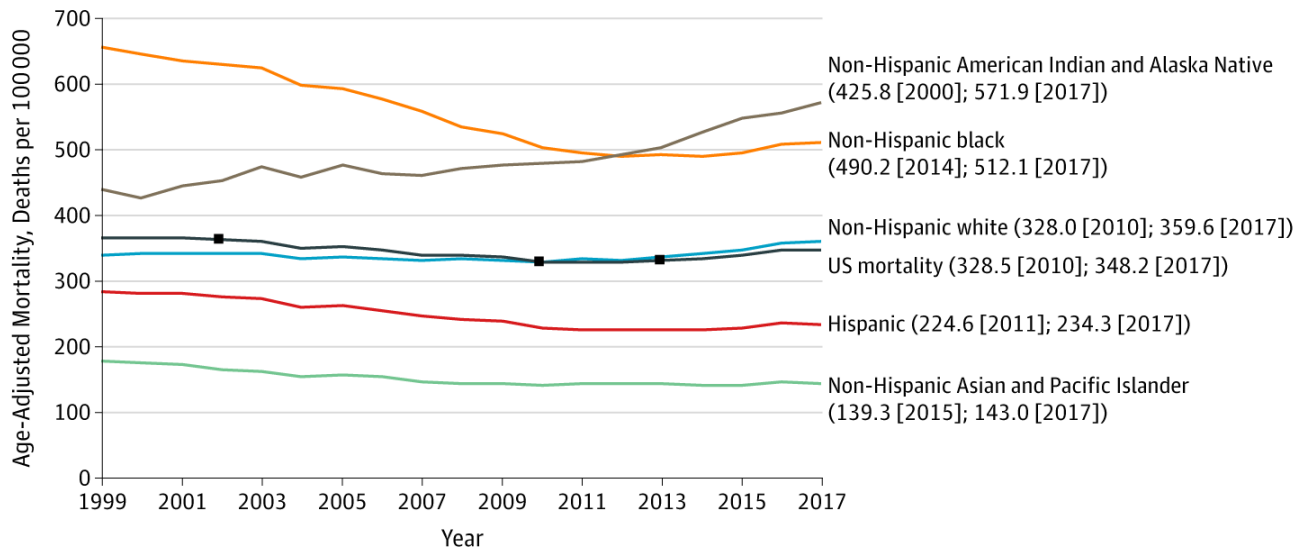
22. The dominant society does a poor job of providing adequate health care to Native Americans. The Indian Health Service explains that:

The American Indian and Alaska Native people have long experienced lower health status when compared with other Americans. Lower life expectancy and the disproportionate disease burden exist perhaps because of inadequate education, disproportionate poverty, discrimination in the delivery of health services, and cultural differences. These are broad quality of life issues rooted in economic adversity and poor social conditions. (Indian Health Service. 2021).

Another factor is that health care spending for the U. S. as a whole was \$7,649, but for Native Americans it was only \$4,692 (Dieleman, et. al. 2021: 649). A recent comprehensive study of health patterns in the U. S. documented a disturbing trend of declining life expectancy and

increasing health problems. The mortality rate among American Indians is the worst in the nation as shown in Table 9 (Woolf and Schoomaker. 2019):

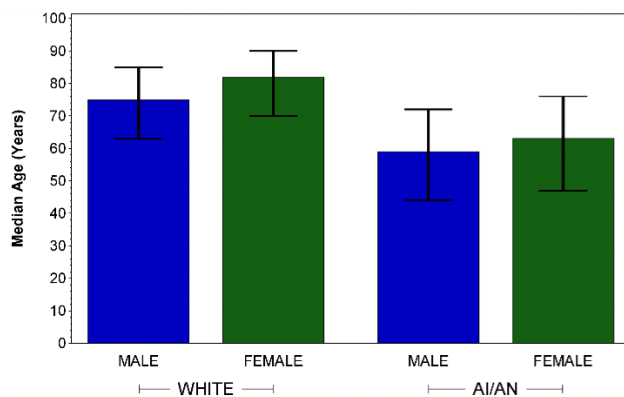
Table 9: Live Expectancy and Mortality Rates in the U. S., 1959-2017



younger age than white people, as seen in the data in Table 10 (Montana Vital Statistics.

2019: 13):

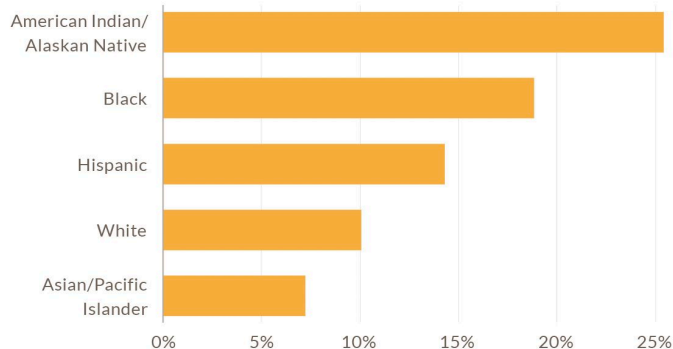
Table 10: Median Age at Death, 25th and 75th Percentiles Montana Residents, 2013-2017



Another measure of health is what is termed “youth disconnection,” defined as people aged 16-24 who are not working and are not in school. As seen in Table 11, the highest rate, by far, is among Native American youth (County Health Rankings. 2019):

Table 11: Disconnected Youth

Percentage of Disconnected Youth by Racial/Ethnic Group Ages 16–24 in 2015



www.countyhealthrankings.org

This high rate of disconnection has obvious implications for health, poverty, overall social well-being, and the ability to effectively participate in the political process.

23. Table 12, below, provides another way of examining Native American health in Montana. I have selected data for three counties—Big Horn, Glacier, and Roosevelt—because they have the highest percentage of Native Americans: Big Horn is 66.4 percent Native, Glacier is 64.7 percent Native, and Roosevelt is 60.5 percent Native (U.S. Census, Quick Facts Montana. 2021). We must be cautious in interpreting these data because they include both Native and Anglo populations in these counties; data that only included Native Americans would probably

look significantly worse. The source for this table is the “County Health Rankings and Roadmaps,” a project of the University of Wisconsin Population Health Institute (2021).

Table 12: Health Outcomes

	Roosevelt County	Big Horn County	Glacier County	Montana	Top U.S. Performers
Premature Death	21,000	21,300	16,400	7,100	5,400
Poor or fair health	25%	26%	27%	14%	14%
Poor physical health days	5.6	5.2	5.9	3.6	3.4
Poor mental health days	5.2	5.1	5.9	3.9	3.8
Low birthweight	8%	8%	9%	7%	6%

Source:

<https://www.countyhealthrankings.org/app/montana/2021/rankings/glacier/county/outcomes/overall/snapshot>

We can get a more accurate picture of the health of Native Americans in Montana by looking at a comparison of both the healthiest and least healthy counties along with race, in Table 13 (University of Wisconsin. 2019):

**Table 13: Differences in Health Outcome Measures among Counties
and for Racial/Ethnic Groups in Montana**

	Healthiest MT County	Least Healthy MT County	AI/AN	Asian/PI	Black	Hispanic	White
Premature Death (years lost/100,000)	4,900	21,000	19,400	2,900	10,000	6,800	6,600
Poor or Fair Health (%)	11%	26%	25%	N/A	N/A	18%	13%
Poor Physical Health Days (avg)	3.0	5.4	5.1	N/A	N/A	3.4	3.3
Poor Mental Health Days (avg)	2.9	4.5	5.3	N/A	N/A	4.6	3.4
Low Birthweight (%)	5%	7%	9%	10%	12%	8%	7%

American Indian/Alaskan Native (AI/AN), Asian/Pacific Islander (Asian/PI)

N/A = Not available. Data for all racial/ethnic groups may not be available due to small numbers

Source:

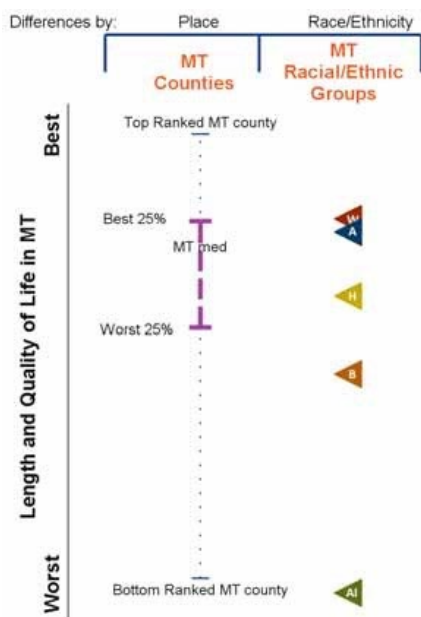
https://www.countyhealthrankings.org/sites/default/files/media/document/state/downloads/CHR2019_MT.pdf

As can be seen from these data, there is a stark difference in premature death rates, and health, for American Indians and White people in Montana.

24. Another analysis of health by race, using the same University of Wisconsin data base, is presented in Table 14 below. This graphic compares the length and quality of life by place and by race/ethnicity.

Table 14: Health Outcomes in Montana

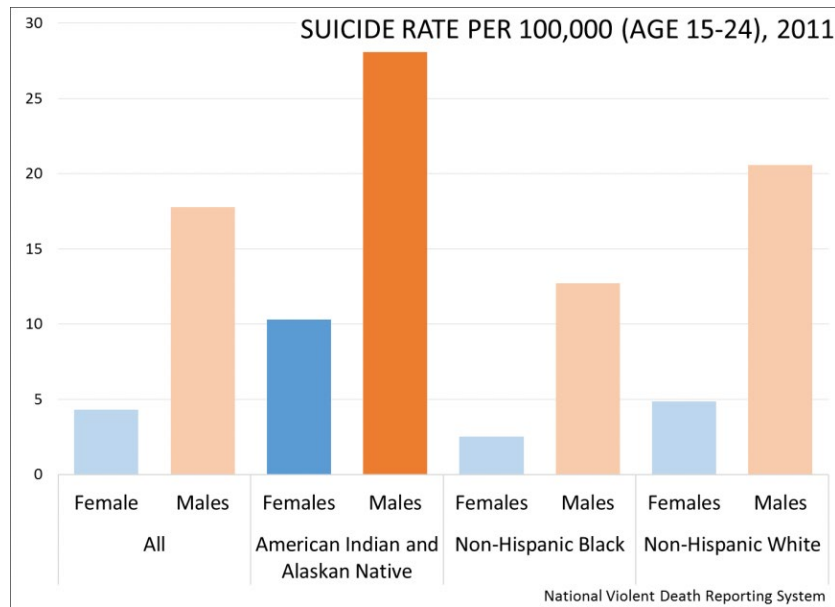
County Health Rankings 2019



25. As the report authors note: Native Americans living in Montana “are less healthy than the bottom-ranked county” (University of Wisconsin. 2019: 5). One of the reasons why life

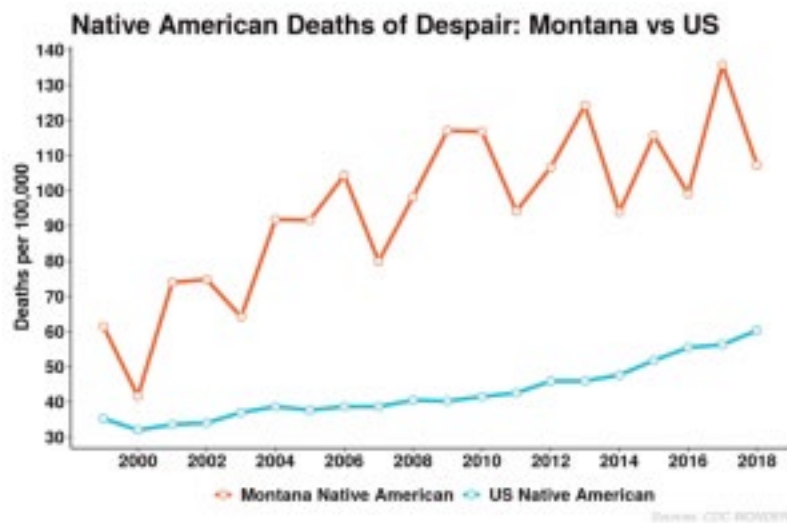
expectancy among Native people is much lower than for Anglos is because of a heartbreaking epidemic of suicide, especially among young Native American males. The national-level data is presented in Table 15 (Native Youth Report. 2014: 24):

Table 15: National Suicide Rates, by Race/Ethnicity and Gender



The national rate of suicide among Native Americans nationally is compared to the rate of Native suicide in Montana in Table 16:

Table 16: Suicide Rates Among Native Americans, Montana and U. S.



These data demonstrate that the Native suicide rate in Montana is significantly higher than in the rest of the country. There are many factors that explain such a tragic level of suicide, but for Native Americans, one of the important factors is historical trauma and the resulting emotional damage. Shane Doyle, a member of the Crow Tribe, explained: “Look at what has occurred here over the last 150 years. If you’re a kid, you think it’s normal to live in utter poverty. You think it’s normal to face a cascade of health issues. Unless you can see your way through to the issues of how we got here, you’re going to be weighed down by fatalism” (quoted in Suarez. 2021).

26. Another measure of health that is particularly relevant to the impact of HB 176 and HB 530 is the number of people with disabilities. Native Americans have the highest rate of disability for any ethnic or racial group in the nation (Thornton, Bezyak, and Blair. 2020).

Making one trip to town to register and vote (eliminated by HB 176), and utilizing the services of a ballot collector (eliminated by HB 530), are important benefits to people with physical disabilities. The data in Table 17 indicate the number of disabled people on Montana’s Indian reservations.

Table 17: Native Americans, by Tribe, With a Physical Disability (noninstitutionalized)

Tribes	Under age 18	18-64	65 and over
Blackfeet	54	478	269
Crow	21	359	274
Flathead	384	2128	2200
Fort Belknap	100	491	168
Fort Peck	114	752	398
Northern Cheyenne	41	329	193
Rocky Boy	27	157	72
Turtle Mountain	323	992	339

Source: U.S. Census: My Tribal Area, 2021

Those with disabilities under 18 cannot vote, but indicate a future and continuing need for assistance.

27. These disabilities impact Native Americans especially hard: “For Native Americans in Montana, the state’s Behavioral Risk Factor Surveillance System estimates demonstrate a ‘compounding effect’ among Native Americans who live with any disability. For example, there are significant differences between Montana Native Americans with disability having a higher prevalence of current tobacco use (49%) compared to their white counterparts

with disability (26%) and their Native American counterparts without disability (32%)” (Russette, Hill, and Goldman, 2020).

28. It is, of course, difficult to leave the house, drive a considerable distance to a polling place or post office, drop in a ballot, and then do the long return drive when you are in poor physical health, or disabled, and/or considering taking your own life.

C. Education:

29. Education, as pointed out in the section on income, is one of the best predictors of political participation. Table 18, below, is culled from 2017 American Community Survey data, and demonstrates the rates of educational attainment in the U. S. for Native Americans and the nation as a whole.

Table 18: Educational Attainment, Percentage of Population,
Native Americans and the U.S.

	<Highschool	High school	Some College	Bach	Grad/Prof
N.A.	19.8	31.0	34.5	10.0	4.7
U.S.	12.0	27.1	28.9	19.7	12.3

These national-level data indicate that Native Americans have made great strides in closing the education gap through the high school level. However, the gap opens when it comes to college graduates and advanced degrees. The educational data for the next table are for each tribe in Montana, and for the state as a whole. The data is from the latest Census.

Table 19: Educational Attainment, by Tribe, and Montana

Population	% High School Grad or Higher	Bachelor's Degree or Higher
Blackfeet	89.6	21.4
Crow	89.3	15.7
Flathead	91.0	26.8
Fort Belknap	87.6	14.6
Fort Peck	86.4	16.7
Northern Cheyenne	90.3	15.4
Rocky Boy	82.7	10.1
Turtle Mountain	85.7	17.4
All Montana residents	93.6	32.0

Source: U.S. Census: "My Tribal Area," 2021, and Montana Quick Facts, 2021.

These data are similar to national-level data, although the gap at the high school level is greater, and the gap at the college level remains significant.

30. In today's economy, one of the most important factors in economic success is a college degree. Unfortunately, there is a significant gap between Indian and Anglo success in earning a bachelor's degree, as the data in Table 20 show (Kids Count Data Center, Montana Bachelor's Degrees. 2018):

Table 20: Montana Educational Attainment by Race: Bachelor's Degree

Race	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
White	28%	28%	30%	29%	31%	30%	31%	32%	32%	33%
AIAN	14%	12%	14%	12%	13%	11%	11%	11%	15%	16%

Source: U.S. Census Bureau, American Community Survey, The Annie E. Casey Foundation Kids Count Data Center

Twice as many Whites, in percentage, graduate from college as Native Americans. Part of the reason may be that Native students are not well prepared to go to college. Due to the many

factors discussed in this report, Native Americans experience less success in public schools, as demonstrated by the low test scores in Table 21 (Montana Office of Public Instruction. 2018).

Table 21: 2017-2018 Mean ACT Test Scores by Domain and Race

	Composite	English	Math	Reading	Science	ELA
AIAN	16.1	14.3	16.4	16.7	16.3	14.5
White	20.1	18.9	20.1	20.8	20.2	18.9
College Readiness	22	18	22	21	23	-

31. The difficulties that Native American students face—poverty, isolation and long distances, poor health, infrastructure problems—combine to result in a significantly lower high school graduation rate; “Montana has a long-held achievement gap between the overall student body and Native American students, which often reflects economic status. The 18.9 percent achievement gap in 2017 is the smallest it’s been in five years” (Friesen. 2018). The latest data on high school graduation rates show that the state’s overall high school graduate rate hit a record high of 86.6 percent, but unfortunately the rate of Native graduation fell to 66.7 percent last year (Arntzen. 2020)

32. A lack of education has a direct impact on an individual’s ability to understand how the electoral system works, putting them at a disadvantage. Dulcie Bear Don’t Walk, the Elections Administrator for Big Horn County, alluded to this: “...we have a lot of voters who don’t have the level of education, who have English as a second language, and I think that, for

us, a lot of people didn't understand exactly what it was they were voting for [in reference to the vote on BIPA]" (Bear Don't Walk Deposition. 2020: 29).

33. Education, it is often said, is the key to success. It is also an important predictor of political participation, and helps determine the ability of an individual to understand complex policies, election procedures, election deadlines, the stances of candidates, and the significance of voting. The gap in educational attainment between Native and Anglo Montanans is therefore a gap in the ability to participate in elections.

D. Housing:

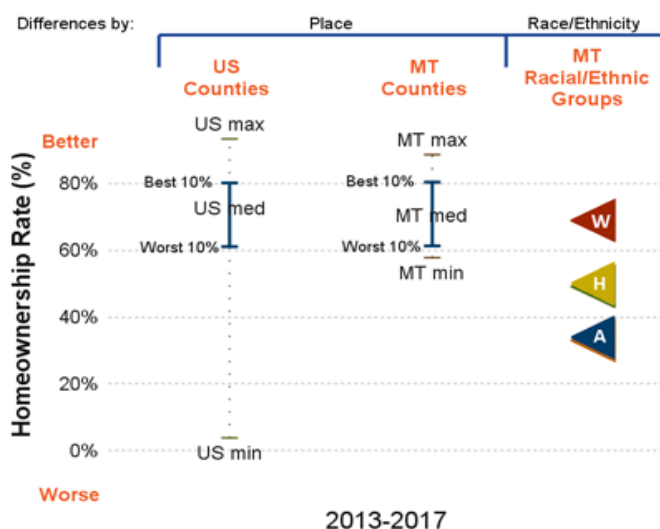
34. Native American communities and homes often lack the basic infrastructure that is commonly found off-reservation. For example, a recent study found that Native American households in the U. S. were 19 times more likely than Anglo households to not have indoor plumbing (Dig Deep. 2019: 13). Nearly half the homes on Indian reservations do not have access to reliable water sources (House Committee on Natural Resources. 2016).

35. On Indian reservations a large portion of the housing is provided by the tribe and is thus a community resource. Much of the housing is of poor quality and sub-standard. A 2016 investigation by the *Great Falls Tribune* described the housing on the Blackfeet Reservation in these terms: "It's a third-world neighborhood in America." The director of the Blackfeet Housing Authority stated that: "It's not unusual to find a grandma who has 15 people in her home" (Murray. 2016). Dulcie Bear Don't Walk described a similar situation at Crow and

Northern Cheyenne: “...there is an extreme housing shortage... you could have four different generations living within the same household. We’ve run into it where there has been 20 people—20 people—in a household” (Bear Don’t Walk, deposition. 2021: 75). This has important implications for mail-in voting.

36. Given the high rates of poverty and the shortage of housing, owning a home on the reservation is difficult. Table 22 demonstrates that Native Americans have a considerably lower rate of home ownership (University of Wisconsin. 2019):

Table 22: Home Ownership, by Race/Ethnicity, in Montana



The “A” indicates American Indian; “H” is Hispanic, and “W” is White.

37. Another aspect of the housing situation on reservations is the need to move often. Native people have a high rate of mobility within the reservation. This may be due to

the housing shortage or simply lack of income for rent. Table 23 shows, in absolute numbers, how many people changed domiciles in recent years.

Table 23: Mobility, by Reservation

Tribe	Moved in 2017 or later	Moved in 2015 to 2016
Blackfeet	93	386
Crow	63	140
Flathead	1269	1798
Fort Belknap	57	67
Fort Peck	249	377
Northern Cheyenne	106	122
Rocky Boy	23	97
Turtle Mountain	159	314

Source: U.S. Census: "My Tribal Area," 2021

38. The lower rate of home ownership can cause problems with mail-in ballots because people who do not own homes or move often may not have a current physical address where they can receive a ballot. If voter registration requires a current address in order to vote, many tribal members will have to repeatedly go through the process of changing these documents before they vote. This could mean repeated lengthy trips into a border town. The registration form is available on-line:

Fill out a [voter registration form](https://app.mt.gov/voterinfo/) if your name or address information has changed and has not yet been updated with the county election office (Secretary of State's website: <https://app.mt.gov/voterinfo/>)

But that requires internet service, which is a problem for many Native Americans (see data below).

39. If tribal members want to escape poor housing on the reservation, and move to an urban area, they may have difficulty finding a landlord who will rent to them:

In 2003, the U.S. Department of Housing and Urban Development (HUD) conducted a study in Montana, Minnesota, and New Mexico. This was the “first time that HUD has included Native Americans in a study of housing discrimination,” according to Gary Gordon, the executive director of the National American Indian Housing Council. The study sent test applicants of different ethnicities to multiple locations to apply for housing. The study was conducted in metropolitan areas, and Native American participants were members of various tribes who make up the largest populations in each region. The results determined that Native Americans are discriminated against more often than any other ethnic minority on the basis of rental housing. Of those surveyed, discrimination against American Indians occurred 28.5% of the time when families or individuals applied for rental housing (YWCA. 2017: 35).

Of course, inferior housing is better than no housing; 20 percent of Montana’s homeless population is Native American, even though they are only 6.7 percent of the population (YWCA. 2017: 34).

40. Poverty, discrimination, inadequate tribal housing budgets, and remoteness all contribute to the housing problems on Indian reservations in Montana. It is difficult to vote, especially with mail-in ballots, when you do not have a decent roof over your head or no home at all, or no viable mailing address.

E. The Internet:

41. One of the most important components of infrastructure in terms of accessing government services—including registering to vote and receiving information about voting,

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

Tribal lands often present significant obstacles to deploying broadband and are expensive to serve. These challenges to deployment on Tribal lands include rugged terrain, complex permitting processes governing access to Tribal lands, jurisdictional issues involving states and sovereign Tribal governments, lack of necessary infrastructure, and a predominance of residential, rather than business customers. High poverty rates and low-income levels on Tribal lands, as well as cultural and language barriers, further inhibit the widespread availability of broadband to Tribal residents (Federal Communications Commission. 2019: 2).

The data on computer and internet connections in Montana are presented in Table 24:

Table 24: Computer and Internet Use in Montana and on Reservations

Geographic Unit	% Households w/ Computer	% Household w/ internet subscription
Montana	88.9	80.7
Blackfeet Reservation	65.4	60.3
Crow Reservation	71.9	59.3
Flathead Reservation	86.8	75
Fort Belknap	74.2	62.7
Fort Peck Reservation	74	60.6

N. Cheyenne Reservation	71.7	52.8
Rocky Boy's Reservation	58.8	47.9
Turtle Mt. Reservation	77.3	65.6

Source: U.S. Census, Montana Quick Facts, and My Tribal Area, SCS data, 2021

The same caveats apply to these data as the other tables in this report that compare the state to each reservation; the state data includes Native Americans, and would look appreciably better if that data was not included; and, some reservations, such as Flathead and Fr. Peck, contain significant numbers of non-Natives, which probably improves the data for those areas.

42. The lack of an internet connection is only part of the problem. A potential user must have the requisite computer, and if they are printing government forms, they need a printer. Assuming a Native voter has all of these components, it may be possible to access all of the services listed below provided by the Secretary of State's Office of Election and Voter Services (<https://sosmt.gov/elections/vote/#how-to-register-to-vote>)

- [Voter Registration Application](#)
- [Application for Absentee Ballot](#)
- [Check Your Voter Registration Status](#)
- [Reactivating Your Registration If You Are on the Inactive List](#)
- [Military and Overseas Voter](#)
- [Individuals With a Disability, click here for more information](#)

If an individual wants to, for example, register to vote via the application mentioned above, it requires a printer with paper and a postage stamp and access to postal services. If a Native voter wants to take advantage of the innovative services provided on the "My Voter Page,"

they will need an active internet connection, had paid their monthly bill to a subscription service, and a computer or smartphone (<https://app.mt.gov/voterinfo/>). Then, they can access:

Welcome to My Voter Page, the Secretary of State's voter information service.

Use this service to check

- If you are registered to vote
- Your voter registration address
- Location and directions to your county election office*
- If you are on the list to have ballots mailed to you
- The status of your mailed ballot*
- A sample ballot*

If a citizen wants to register to vote, they have three choices:

- Visit your county election office Monday through Friday between the hours of 8 a.m. and 5 p.m. and complete a registration form. **Late registration closes at noon on the day before an election.**
- Fill out and sign a voter registration application and drop it off at your county election office, or mail it to the county election administrator. ID numbers provided on the voter registration card are kept confidential and are not available for public inspection.
- Fill out and sign a registration form when you apply for or renew your driver's license or Montana ID.

If a citizen lives in one of the many areas of a reservation without broadband service, or has service but cannot afford the monthly bill for a service provider, and does not have a working computer with printer, they cannot download the forms. The other option is to drive to the nearest county election office or a driver's license office, which are often in a border town. That drive, as described in the section above on distance, could present a significant investment in time, money, and risk.

43. If the Native voter wishes to renew their driver's license, which they will need if they have to drive to a polling place or post office, they can do that on-line:

1. For a standard Class D license, download the instructions page and Mail-in Renewal Standard License (form 25-0100).

2. Enclose a check or money order payable to MVD: Please use the age you will be on the expiration date. (<https://dojmt.gov/driving/driver-licensing/#DLID3>).

However, they will need the requisite on-line computer. To obtain a driver's license, they must do that in-person and travel to a driver's license station, but first they must schedule an appointment on-line. Many of these are in county courthouses, most are a long distance from reservation communities, and some are in border towns (see discussion below regarding discrimination in border towns). But without internet and a computer, they cannot access the map that shows the location of these stations (<https://dojmt.gov/driving/driver-exam-stations/>) and they cannot schedule an appointment.

44. The fee for getting a state ID card is \$16.48 if the applicant is over 21. The fee for obtaining a driver's license—necessary to drive to a polling place if ballot collection is not offered—varies with age, and ranges from \$5.67 (if the applicant is 74 years old) to \$71.59. The expenses to vote start to pile up. Even obtaining a tribal ID card can be challenging. A member of the Crow Tribe explained: "IDs are so hard to get; Big Horn County has only one location to get an ID, the county courthouse, by appointment only, and takes about 3-6 months based on personal experience. Everyone needs an ID. Tribal IDs are a form of federal ID, but they were hard to get, so people had outdated IDs. The machine that makes them broke down" (Kindness. 2021).

45. It is clear that the state of Montana relies heavily on the internet to convey information that is critical to the process of registering to vote, and finding information

regarding the location of driver's license offices and polling places. These on-line services are very convenient for people with internet; for those who do not, they are burdened with significant information costs. And it is not just state offices that depend on the internet to convey information to voters; counties also rely on the internet. One county clerk indicated recently that Facebook was a principal method of sharing information (Scribner. 2020: 83). Another indicated that "we communicate through our website" (Moore. 2020: 17).

46. The Data in Table 24 above clearly demonstrate a marked difference in internet accessibility between the state as a whole and Indian reservations. Many Native people cannot access the "My Voter" page, cannot register to vote on-line, and cannot access the basic information that is needed to register, get a driver's license, and vote. In short, to participate equally in the electoral process in Montana, it is very helpful if not a necessity to live in an area that has broadband service, the ability to pay the monthly bill for service, and have access to a computer and a printer. This leaves out a substantial portion of the Native American community.

F. Crime:

47. It is difficult to focus on civic duties when one is worried about being raped and/or murdered. Native people in Montana are four times more likely to be murdered than the population as a whole. The rate of violence against Native people, especially women, is stunning:

In Montana, Native Americans make up about 7 percent of the population, but they account for about 26 percent of missing persons. Between 2017 and 2019, nearly 80 percent of those reported missing were teenagers younger than 18 years of age. Native American Women face a murder rate 10 times higher than the national average, and 84 percent experience some form of violence in their lifetime (State Tribal Relations Report. 2021: 9).

Former Attorney General William Barr visited the Flathead Indian Reservation in 2019 to announce a new initiative to combat missing and murdered Native Americans called the “Missing and Murdered Indigenous Persons Initiative (Balsamo and Fonseca. 2019). He noted: “American Indian and Alaska Native people suffer from unacceptable and disproportionately high levels of violence, which can have lasting impacts on families and communities” (Reilly. 2019). Two statutes have been passed by Congress in an attempt to deal with this plague (Savanna’s Act. 2020; Not Invisible Act. 2020; Biden. 2021).

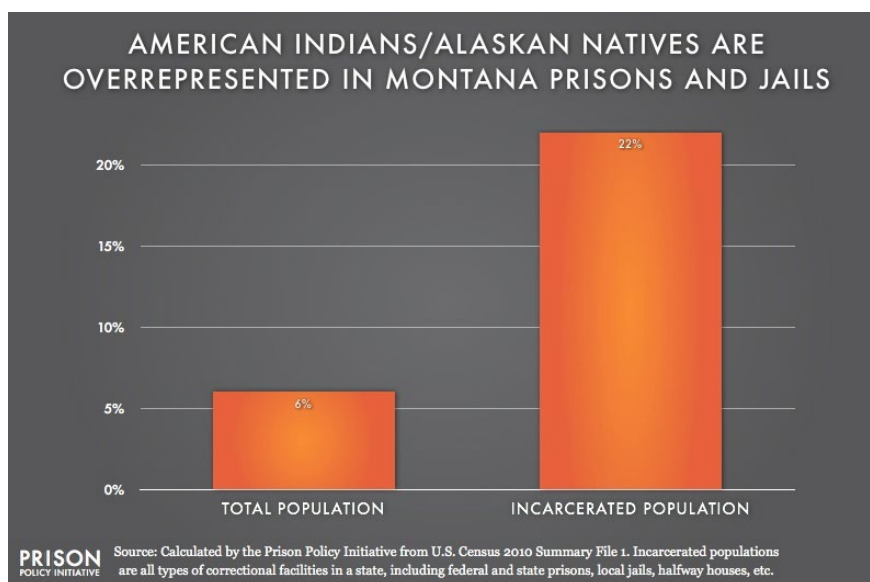
48. Unfortunately, Montana has become ground zero for crimes against Native women (Speier. 2019). Native women are only about 3 percent of the state’s population but they are about 30 percent of the people on the missing persons list (*Missoulia*. 2019). One out of every three Native women report being raped (YWCA 2017: 15). The problem became so severe that the state passed a law titled “Hanna’s Act” to fund a new position called a “missing persons specialist.” The bill was named after a Native woman who went missing on the Northern Cheyenne Reservation and was later found murdered (Woodel. 2019; Baker. 2019).

49. This stunning rate of rape and murder necessitate a different kind of voter calculus when voting. A Native American woman has to decide if it’s worth the risk to leave the

house and drive a long distance to the poll/post office and back, just to vote. The drive may be in the dark and she may have to do it alone. None of the rest of us carry a burden like that. Or, she can give her ballot to a paid ballot collector she trusts.

50. Native people in Montana are not only over-represented as victims of crime, they are over-represented in the criminal justice system (Tollefson. 2017). As a report from the Montana Budget and Policy Center states, “American Indians... are arrested and incarcerated at a disproportionately higher rate than white Montanans” (2018). Table 25 shows the disparity, according to data from the 2010 Census:

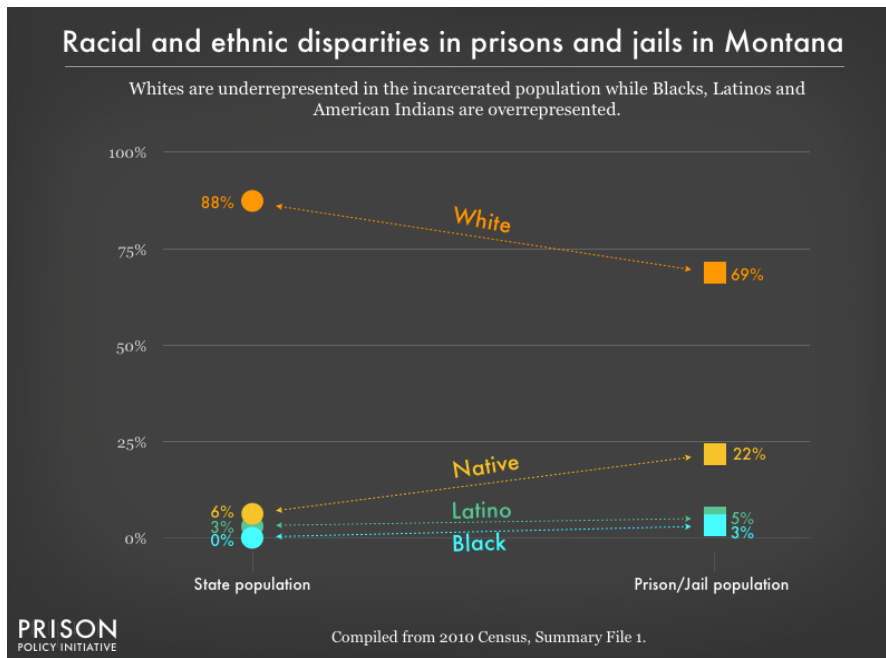
Table 25:



Source: https://www.prisonpolicy.org/graphs/2010percent/MT_American_Indian_2010.html

In contrast, White Montanans are under-represented, as the data in Table 26 demonstrate:

Table 26:



Source: https://www.prisonpolicy.org/graphs/2010percent/MT_American_Indian_2010.html

51. The data in the two tables above are based on the 2010 Census. Data from 2017 indicate that the problem had grown worse. The incarceration rate for Native women is especially high, as shown in Table 27, below, which is from a report by the Montana Tribal Relations Committee:

Table 27: Percent of Montana's offenders that are American Indian by gender*

	American Indian Women	American Indian Men
Prison	33%	20%
Alternate location+	31%	22%
MT parole and probation	20.5%	14.5%
Other jurisdiction custody or supervision^	9%	8%

All of state custody by gender	22%	16%
Percent of Montana's total population	~3.32%	~3.38%

*As of 6/30/17

+Interstate compact supervision, federal custody, other state jail or prison

^ Prerelease, chemical dependency/alcohol treatment, assessment/revocation center, county jail

The most recent data available is from the 2021 biennial report of the Montana Department of Corrections; it indicates that 18 percent of the prison population is Native American; that is more than twice their proportion of the state's total population (Montana Department of Corrections. 2021: 7-8).

52. In Montana, there is a perception that the state's criminal justice system is not fair to Native people, and some people do not trust law enforcement off the reservation. Marci McLean said in an interview that: "[We are] not treated equally, and the criminal justice system is not good; a lot of racial profiling. The system is not set up for us culturally" (McLean. 2020). Ta'jin Perez reiterated that point: "There's the 'DWI' thing—driving while Indian. It's predatory, and that causes a lot of stress when tribal people leave the reservation" (Perez. 2020). Robert McDonald made a similar observation: "I work in a building of about 100 people, tribal employees, and almost everyone has a story about being followed in a store, or being stopped by cops for a low tire under suspicious circumstances, even my own son. He was stopped for swerving on a corner. That is not uncommon" (McDonald. 2020).

53. In sum, people who are living in poverty, less educated, unhealthy, poorly housed or homeless, concerned with being raped or murdered, and intimidated about traveling to a border town that may be hostile (see section on border town discrimination below), may have difficulty prioritizing voting; they face a daunting set of voter costs. They may, instead, be focused on survival. These socio-economic voter costs were succinctly summarized by Andy Werk, the President of the Fort Belknap Indian Community: "...the higher unemployment, higher poverty, lack of working vehicles, lack of money for gasoline or car insurance, lack of a driver's license, lack of childcare, makes the long travel to the voting site off-reservation simply impossible for many" (quoted in Montana Advisory Committee Hearing Transcript. 2021: 12). In other words, it's a personal calculation—a "calculus of voting"—that every voter must make (Riker and Ordershook. 1968). For some Native people, these voter costs are so overwhelming that they do not vote.

54. Voter costs are cumulative, so these socio-economic disadvantages must be added to any additional voter costs that are incurred due to design features of the electoral process—such as those imposed by HB 176 and HB 530. "The logic is straightforward. People weigh the benefits of voting against the costs, and the higher the costs the lower the participation rate" (Ansolabehere and Konisky. 2006: 83). For a voter with high socio-economic voter costs, assistance from someone who is willing to deliver their ballot for them, which dramatically lowers their procedural voter costs, may be the only way they can participate in elections. HB 176 and HB 530 have a direct impact on these procedural voter costs; those

increased costs must be added to the socio-economic voter costs addressed in this section, as well as the historical factors and the long-standing problems with discrimination analyzed via research questions 4 and 5, below.

III. QUESTION 2: Do HB 176 (the elimination of Election Day Registration), and Sec. 2 of HB 530 (the prohibition on paying ballot collectors) increase voter costs for Native voters and thus have a disproportionate and negative affect on Native American voters in Montana and deprive them of an equal opportunity to participate in elections?

55. Every public policy creates both costs and benefits. Policy analysts evaluate public policies by comparing what is gained to what is lost to assess the impact of a particular policy. This balancing of costs and benefits is actually recognized in Montana law:

...sound public policy concerning the conduct of elections often requires the balancing of various elements of the public interest that are sometimes in conflict. Among these factors are the public's interest in fair and accurate elections, the election of those who will govern or represent, and cost-effective administration of all functions of government, including the conduct of elections (Mont. Code, 13-19-101. 2021).

Thus, the public policy advantages that accrue from HB 176 and HB 530 must be weighed against the disadvantages—the increases in voter costs for many voters, especially Native Americans. I will first analyze the voter costs associated with HB 176 and HB 530, and then analyze the claimed benefit.

A. The Voter Costs of HB 176:

56. HB 176 excised the freedom to register on Election Day. This has significant ramifications for voter costs for all voters. However, those ramifications are felt most severely by Native American voters because of the distance they must travel to register and vote and because of the difficulties they face in securing transportation. In this section I will first review the political science literature on Election Day Registration (EDR), and then provide an analysis of the distances Native voters must travel to access voting sites. The issue of distance is exacerbated by the socio-economic factors analyzed in the previous section.

1. Election Day Registration and Turnout:

57. The political science literature is amazingly consistent in regard to the relationship between Election Day Registration (EDR), the costs of voting, and the consequent impact on turnout. Findings from numerous studies indicate that EDR lowers voter costs and increases turnout:

> “Indeed, it is well established that a substantial reduction in registration barriers such as a state's adoption of election day registration (EDR) increases turnout...” (Brians and Grofman. 1999: 162).

> “The evidence on whether EDR augments the electorate is remarkably clear and consistent. Studies finding positive and significant turnout impacts are too numerous to list. Estimates of the size of this impact vary, but the most convincing studies—those incorporating a time-series dimension—produce estimates of three (Rhine, 1995) to five (Fenster, 1994) percentage points” (Knack and White. 2000: 30).

- > “We find that the very groups who would be expected to find election day registration an easier process, those who are younger, more residentially mobile, lower on the socioeconomic ladder, nonwhite, and newly naturalized citizens of the US would benefit in important ways from election day registration.... Groups with the lowest turnout rates see the most substantial gains under our national election day registration scenario” (Alvarez, Ansolabehere, and Wilson. 2002: 3, 16).
- > “Studies of voter turnout across states find that those with more facilitative registration laws have higher turnout rates. Eliminating registration barriers altogether is estimated to raise voter participation rates by up to 10%” (Ansolabehere and Konisky. 2006: 83).
- > “Election Day registration has a consistently positive effect on turnout... The only consistent way to increase turnout is to permit Election Day registration” (Burden, Canon, Mayer, and Moynihan. 2014: 95,108).
- > “Many studies conducted since the mid-1970s—when EDR was introduced in Wisconsin, Maine, and Minnesota—have produced varying and often sizable estimates of the increases in voter turnout attributable to EDR ” (Neiheisel and Burden. 2012: 637).
- > “We estimate that an additional 3-4 million Americans would have registered in time to vote, if deadlines had been extended to Election Day” (Street, Murray, Blitzer, and Patel. 2017: 225).
- > “Political scientists generally agree that EDR boosts turnout significantly; indeed, there is broader consensus among social scientists about the effect of EDR on turnout than there is with respect to any other voting reform” (Ho. 2019: 185-86).
- > “Reforms such as Online Voter Registration, Election Day Registration, youth pre-registration, as well as Automatic Voter Registration decrease the burden for prospective voters” “Merivaki and Smith. 2020: 59).
- > “Our analysis suggests that the most effective reforms are those that make registration easier” (Holbein and Hillygus. 2020: 156).
- > “Studies find that same day registration (SDR) laws increase turnout” (Grumbach and Hill. 2021).
- > “There is strong evidence that same-day and Election Day registration increases voter turnout” (National Conference of State Legislatures. 2021).

58. The reason why EDR directly affects voter costs, and thus turnout, is because it converts two processes—registration and voting—into one act: “registration and voting can be one essentially continuous act.” Otherwise, “participation in an American election requires two actions that are separate in time and space” (Wolfinger, Highton, and Mullin. 2005: 2). EDR also allows eligible voters who have not registered, or have been culled from registration lists, to register and have their vote count. Merivaki and Smith conclude: “Innovations by states, including Same Day and Election Day registration... directly resolve the voter registration deadline problem” (2020: 62). EDR is especially appealing to voters who have to travel long distances, have limited transportation options, do not have reliable internet, and have an income level that inhibits multiple trips to a distant location, i.e., Native Americans. As of 2021, 20 states offer same-day registration; of those, 18 offer Election Day Registration (National Conference of State Legislatures. 2021). There is no evidence that EDR in any of these states has led to voter fraud.

59. During the House hearings on HB 176, six people spoke in favor of the bill, including the sponsor and the Secretary of State, but 15 people spoke against it, arguing that the bill diminished the freedom to vote for Native Americans, people with disabilities, students, the elderly, low-income women, rural voters, and all citizens. In the Senate hearings, three people spoke in favor of the bill, including the sponsor, but 17 spoke against it, again pointing out the increased voter costs and the loss of the freedom to register on election day (HB 176. 2021. House Hearings, Jan. 21; HB 176. 2021. Senate Hearings, Feb. 15)

60. Election Day Registration has been quite popular in Montana since it was initiated in 2005, when it passed the legislature with overwhelming bipartisan support. It was the subject of a referendum in 2014, and again received wide support (Ballotpedia. n.d.). Table 28 indicates the number of people who have utilized this time-saving and cost-reducing feature of the Montana electoral system:

Table 28: Election Day Registrations

YEAR	Election Day Registrations
2020	8,172
2018	8,053
2016	12,055
2014	4,677
2012	8,053
2010	3,735
2008	7,547
2006	4,351

Source: Montana Secretary of State (<https://sosmt.gov/elections/latereg/>)

61. For the 2020 General Election, in the 16 counties that contain Indian reservations, nearly 3,000 people registered on Election Day. Most of these counties are sparsely populated, and a pandemic was raging. As a percentage of people who voted in-person on Election Day, that number is significant. Given the popularity of EDR, and the consistency in the political science research regarding the impact of EDR, it is obvious that the biggest result from passing this legislation will be to increase voter costs and depress turnout, especially among Native Americans. With limited travel options over long distances (see next section), making one trip to town to both register and vote is a way for Native voters to reduce their

voter costs. EDR also allows Native voters who did not realize they were not registered, perhaps because they don't have access to the internet or they are unfamiliar with state requirements, to register and vote on Election Day.

2. Distance:

62. Montana is sometimes referred to the "Big Sky" state, but it could just as accurately be called the "Big Reservation" state. Some of the largest Indian reservations in the nation are in Montana, and some of them are located in large, sparsely populated counties. For example, the U. S. Court of Appeals in *U. S. v. Blaine County* noted: "Blaine County, located in north central Montana, is vast and sparsely populated. Its 7,009 residents are spread out over 4,638 square miles, which places the County in the top 5 percent of counties nationwide in terms of size" (363 F.3d 897, 2004: 900). There is a substantial body of academic literature that demonstrates that long distances and difficult travel reduce voter turnout even for groups that have a high turn-out rate (Brady and McNulty. 2011; McNulty, Dowling and Ariotti. 2009; Dyck and Grant. 2005; Gimpel, Dyck, and Shaw. 2005). Stein, Mann, and Stewart note: "Previous research on polling places has identified access to the polling place, the quality of polling place facilities, and polling place operations as consequential to the voting experience" (2020: 84). This literature is succinctly summarized by Gimpel and Shucknecht: "Even after controlling for variables that account for the motivation, information and resource levels of local precinct populations, we find that accessibility does make a significant difference to turnout" (2003: 471). The effect of difficult access is mitigated somewhat by the choice of switching to mail-in

voting, but that assumes that the nearest post office is nearby and easily accessible, which is often not the case on Indian reservations (Tucker, De León, and McCool. 2020).

63. Most Montana reservations are sparsely populated and are characterized by large amounts of open space. Donovan Archambault from the Fort Belknap Reservation made this statement in the “Barriers to American Indian Voting in Montana” study conducted by the Montana State Tribal Relations Committee: “The barriers to access to voting places are basically long distances from the reservation and financial hardship” (2019). Mark Wandering Medicine is quoted in that same report: “My people can’t make it. Many of us don’t have cars, or don’t have gas money. In my village we don’t have a gas station. We can’t vote by mail because we don’t have a post office.” During the hearings on SB 352 in 2017, Senator Lea Whitford, from the Blackfeet Reservation, said to the sponsor of the bill: “I don’t know that you’re very familiar with the Native American communities [but being] able to get to the Post Office is kind of a difficult thing” (Committee on State Administration. 2017: 36). Another tribal member talked about the poor quality of some reservation roads: “I’ve been to places where you need a 4x4 pickup to get to some of these homes. Sometimes even then you can’t get to these places. All throughout this reservation getting access to transportation, especially with the distances, it’s really bad” (Yawakie. 2020).

64. Table 29, below, indicates the number of enrolled members for each reservation, how many of those enrolled members live on or near the reservation, the size of the reservation, and the Native population density per square mile.

Table 29: Native Population, Density

	Enrolled Members	On-Reservation	Acreage	Square Miles	Population Density
Blackfeet	15,560	7000	1.5 mil	2343.7	2.98
Crow	10,000	7500	2.2 mil	3437.5	2.18
Flathead	7753	5000	1.2 mil	1875.0	2.67
Fort Belknap	6693	3429	650,000	1015.6	3.38
Fort Peck	11,786	6000	2 mil	3125.0	1.92
N. Cheyenne	11,266	5012	444,000	693.7	7.22
Rocky Boy	6177	2500	122,000	190.6	13.11

Source: Montana Governor's Office of Indian Affairs, 2019

This table reflects only tribal members living on their reservations, not Anglos, and not tribal members living off the reservation. Due to the Dawes Act, reservation lands were allotted and the "surplus" land sold to settlers (1887). As a result of that policy, a substantial number of Anglos live on reservations, as shown in Table 30 (Tribal Nations in Montana. 2016:12). The totals are different than the table above because these data are from the 2010 Census, not the more recent American Community Survey data.

Population in Montana by Reservation, 2010

Reservation	American Indian/Alaska Native Population	Total Population	Percentage American Indian/Alaska Native
Blackfeet	8,944	10,405	86%
Crow	5,322	6,847	78%
Flathead	7,042	28,359	25%
Fort Belknap	2,704	2,851	95%
Fort Peck and Trust Lands	6,715	10,021	67%
Northern Cheyenne	4,402	4,785	92%
Rocky Boy's and Trust Lands	3,221	3,323	97%

Source: 2010 U. S. Census, Tribal Areas

65. The significant point is that tribal voters are dispersed over a large area, requiring significant driving distances to get to a post office, tribal offices, and election offices. To gain a better understanding of the distances across reservations, Table 31 presents a sample of distances that a hypothetical voter on a reservation would have to drive to get to either the tribal agency or the county courthouse. This is not a comprehensive listing of all possible driving distances—that would be nearly as numerous as there are tribal members. However, it does illustrate how far one must drive to cross a reservation. The mileage is for a roundtrip between the points listed. The source is Google maps.

Table 31: Sample Distances on Montana Reservations

Reservation/Town	Reservation Agency	County Seat
Blackfeet 1	Browning	Cut Bank, Glacier Co.
Babb	70	139
Big Sky	65	75
Heart Butte	52	117
Piegan	36	91
Blackfeet 2	Browning	Conrad, Pondera Co.
Heart Butte	52	115
Crow	Crow Agency	Hardin, Big Horn Co.
Pryor	148 mi	120 mi
Ft. Smith	86 mi	86 mi
Aberdeen	84 mi	108 mi
Flathead 1	Pablo	Polson, Lake Co.
Arlee	70	86
Ravalli	52	68
Flathead 2	Pablo	Thompson Falls, Sanders Co.
Lonepine	94	104
Perma	85	89

Fort Belknap Lodgepole Hays	Fort Belknap Agency 82 72	Chinook, Blaine Co. 131 121
Fort Peck 1 Biem Bredette	Poplar 75 67	Wolf Point, Roosevelt Co. 118 93
Fort Peck 2 Larslan Frazer Lustre	Poplar 179 80 110	Glasgow, Valley Co. 102 60 110
Fort Peck 3 Pleasant Prairie	Poplar 78	Scobey, Daniels Co. 60
N. Cheyenne 1 Ashland	Lame Deer 42	Forsyth, Rosebud Co. 157
N. Cheyenne 2 Muddy Cr. Church Busby	Lame Deer 22 33	Hardin, Big Horn Co. 115 82
Rocky Boy's 1 Azure St. Pierre	Rocky Boy's Agency 10 7	Havre, Hill Co. 52 60
Rocky Boy's 2 Boneau	Rocky Boy's Agency 9	Ft. Benton, Chouteau Co. 114

66. If a voter has to work on election day, that means making this drive in the dark; the sun sets on Election Day in Montana about 6pm (5pm if DST has ended)—just when many people get off work (Time and Date. 2021). The drive may be in a snowstorm, which is what happened for the 2018 elections (KXLH Helena. 2019). If a Native voter lives in a high-crime area, traveling lonely country roads after dark could be very risky. At some point personal safety is compromised if the only way to vote is to deliver your own ballot.

67. Another method of assessing driving distances was utilized by Professor Gerald Webster for an expert witness report in the *Wandering Medicine* case. That case involved three counties: Big Horn (Crow), Blaine (Fort Belknap), and Rosebud (Northern Cheyenne). Using census data and a statistical directional test, he compiled the following table (Webster, 2012):

Table 32: Average Distance to the County Court House for Anglo and American Indian Voting Age Residents in Three Montana Counties

County	Mean Distance for Anglos	Mean Distance for American Indians	Absolute Difference
Big Horn	11.61 miles	22.02 miles	10.41 miles
Blaine	9.77 miles	31.45 miles	21.68 miles
Rosebud	16.79 miles	44.85 miles	28.06 miles

There is an obvious difference between how far Indians have to drive compared to Anglos. That means that the poorest people in the county have to drive the furthest to the county courthouse. Because they are poor, they often do not have a working vehicle, insurance, and gas money to get to the polls. Table 33, below, demonstrates the difference in vehicle availability between Indians and Anglos in three counties: Big Horn, Blaine, and Rosebud. The data is from the Census but this table was compiled by Professor Webster for his report in the *Wandering Medicine* case (Table 2, p. 80).

Table 33: Vehicle Availability by Housing Type for Big Horn, Blaine, & Rosebud Counties

County	Housing Type	Total Anglo	No Vehicle Available	American Indian & AK Native	No Vehicle Available
Big Horn	Owner Occupied	1285	23 (1.8%)	915	50 (5.5%)
	Renter Occupied	381	9 (2.4%)	663	53 (8.0%)
	Total	1666	32 (1.9%)	1578	103 (6.5%)
Blaine	Owner Occupied	1090	10 (0.9%)	371	28 (7.5%)
	Renter Occupied	325	48 (14.8%)	524	99 (18.9%)
	Total	1415	58 (4.1%)	895	127 (14.2%)
Rosebud	Owner Occupied	1770	27 (1.5%)	439	15 (3.4%)
	Renter Occupied	613	69 (11.3%)	313	51 (16.3%)
	Total	2383	96 (4.0%)	752	66 (8.8%)

SOURCE: U.S. Census Bureau, American Community Survey, Tenure by Vehicles Available, 2010, Table B25044.

68. Another method of documenting long distances, and the difficulties associated with lengthy travel, is through testimonials and public statements made by people who live or work on reservations:

> “My cousin, who is 12 miles north in Valley Creek is in Sanders County and she has a one hour 20 minute drive, 74 miles away to Thompson Falls, the Sanders County seat” (Shelley Fyant [Flathead], quoted in Montana Advisory Committee Hearing Transcript. 2021: 2).

> “...a lot of people were told, you got to go to Heart Butte to vote. And some people don’t have transportation. Some people don’t.....they decide, do we pay lights? Do they buy food? Do they go to town to pick up essentials, or do they go spend 130 mile round trip for casting their ballot?” (Timothy Davis [Blackfeet], quoted in Montana Advisory Committee Hearing Transcript. 2021: 8).

> “Poll ground registration services are only available in Chinook, at the County seat in Blaine County. For some of our members, that is over 120 mile round trip to get to Chinook. I do not know of any non-native person not living on a reservation, no matter how rural they are living, that has to travel 120 miles to get to registration services. 120 miles is not just a lot of time to travel, it is also a lot of gas. It requires a working car, it is expensive. That distance also sends a

message to all of our members that Native people are not welcome to vote” (Andy Werk [Ft. Belknap], quoted in Montana Advisory Committee Hearing Transcript. 2021: 12).

> “I think that our biggest barriers [in Big Horn County] are our distance. Our distance is a huge barrier for a lot of people, because some places are so far out from each other... some of our ballots have to come from over an hour away” (Bear Don’t Walk, deposition. 2021: 72).

> “We have these drop boxes but there are reservations with 30 to 120 mile trips, and for a lower income person, that is a financial barrier. The drop boxes are good, but we need access to ballot services. [Long distances require] gas, child care, days off work for people with hourly jobs. So, you’re losing money at work, losing money to pay for the trip. EDR meant you could just do one trip” (Sunchild. 2021).

> “Rocky Boy’s is split into two counties, and it takes a long time getting to the county election office; there’s definitely some barriers. Havre is 30 miles from my mom’s house, and Fort Benton, Choteau County, is about 45 miles.... Reservations don’t have a county election office, they have satellite voting offices, which are not permanent and don’t offer the same services and are not open as much.... There’s not a traditional residential address, and the post office is in Box Elder, which is 10-12 miles from Rocky Boy’s agency. There’s no post office at the agency” (Vazquez. 2021).

> “If you take Pryor to Hardin, it’s 60 to 70 miles; we went out to locations deep into the country to collect ballots for people who couldn’t make it to the polls. A call would come in for help, and we go. A lot of people didn’t want to be exposed to Covid. We were dispatching people to Pryor, and find the location, then receive the ballot, and time was the essence” (Kindness. 2021).

> “This has been why ballot collection is such an essential service to our communities. A lot of people don’t have transportation, even in the more urban areas. I’ve heard of people driving an hour away, and they have to figure out childcare and the cost of gas. That can be a deterrent. We have villages that are still miles away from the satellite site. Some people don’t have a driver’s license. And there’s systemic reasons too, like poverty” (Killsback. 2021).

In sum, long distances have a direct impact on voter costs, especially for remote Native

Americans with lower income and less access to transportation. This underscores the

importance of the location of polling sites. Political scientists Brady and McNulty, in an

important study of precisely that issue, concluded that the outcome of elections could be

changed by the “extensive manipulation of polling place locations” (2011: 115). That is, in effect, what HB 530 did by effectively eliminating the service of paid ballot collection; the polling place was effectively changed from someone’s front doorstep to a location that might be a considerable distance away and difficult to reach. This makes voting harder for the people in Montana who experience difficulty in accessing ballot boxes, and, for the reasons explained in this report, American Indians are disproportionately in that group.

69. In sum, Election Day registration provided a freedom to voters so they can more easily access the electoral system. HB 176 eliminated that freedom, and that loss will be most severely felt by Native voters living on distant reservations.

B. The Voter Costs of HB 530:

70. In states that allow unfettered ballot collection, an individual voter may, at their discretion, opt to have someone collect their ballot and deliver it to a mailbox or polling place. Thus, it is a voluntary act on the part of each voter as to whether they want to accept the services of a ballot collector. If a voter chooses to have their ballot collected by another person, they do not have to travel to a mailbox or polling site; this eliminates travel costs, and during a pandemic, protects them from potential exposure to Covid. Because ballot assistance has been effectively used in Hispanic neighborhoods and Indian reservations, there have been claims that ballot assistance bans or limitations are discriminatory (Re. 2020; *Los Angeles Times*. 2018; *Arizona Independent News Network*. 2014; *Democratic National Committee v. Hobbs*. 2020: 102; *Brnovich v. Democratic National Committee*. 2020; *Western Native Voice v. Stapleton*.

2020; *Driscoll v. Stapleton*. 2020). Ballot assistance in Montana and other states has also been utilized in low-income areas where people lack the time and financial resources to take time off work and travel to a polling place or post office because it lowers their voter costs (Hendley. 2014; Nevarez. 2016; *Democratic National Committee v. Hobbs*. 2020; Daley. 2020; *Western Native Voice v. Stapleton*. 2020; *Driscoll v. Stapleton*, 2020).

71. Ballot collection takes place on Indian reservations to help voters overcome long distances, poor roads, and limited ability to travel, as explained in the previous section on distance (Tucker, De León, and McCool. 2020: 113). One tribal member, from the Flathead Reservation, described the value of this service for tribal members, especially the elders: “We did ballot collection since 2016. Everyone appreciates the ability to not have to pay for postage and still get their voice counted. In some places we were the only people to visit them in nine months, and that included a lot of older people, and that promoted their engagement in the elections, so it is an appreciated service” (Yawakie. 2020). Marci McLean made a similar point: “Picking up ballots is a way of building community and helping others. A lot of elders, people who don’t have cars, or stamps, we help them. No one has stamps. Having someone pick up ballots is important for people in our communities” (McLean. 2020).

72. For example, the Blackfeet Reservation’s website informs voters that they should call Western Native Voice if they need help, and provides their number. It also advertises a “Ballot Drop Off” administered by Western Native Voice at the Babb Fire Hall (Blackfeet. 2021). If an employee of Western Native Voice picks up the ballots in that drop-off, it appears now

that they would be violating HB 530 and subject to a \$100 fine for each ballot, given that they are paid for their work. Another example comes from Big Horn County: "...a lot of our elderly voters who lived in the nursing homes, the staff there, one person would collect all the ballots, then just come and drop off all of the ballots. So they made sure that their vote was counted" (Bear Don't Walk deposition. 2020: 53). This staff person would be fined \$100 for each of those ballots under HB 530.

73. The importance and efficacy of ballot assistance on Indian reservations are affected by two additional factors: the challenges of vote-by-mail (VBM), especially on Indian reservations; and the impact of the Covid pandemic.

1. Vote-By-Mail and Native Americans

74. Understanding the relationship between VBM and Native Americans requires a brief review of the political science literature on VBM. This review is especially important because absentee voting, or VBM,⁵ has become quite popular in Montana. In 2020, all but 10 counties opted for VBM. According to the Secretary of State's website, out of 612,075 votes cast, 604,042 were by absentee ballots (<https://sosmt.gov/elections/>). VBM offers significant advantages to many voters. During a pandemic, it has the added advantage of avoiding social

⁵ In the voting literature, these two terms are used interchangeably, but an absentee ballot or a mail-in ballot can be delivered in-person by the voter or a ballot collector, so in some cases, the mail is only involved in delivering the ballot to the voter.

contact and reducing the spread of the virus.⁶ However, there is considerable variation in how mail-in voting systems are designed (Mann. 2014; Hassell. 2017; CALTECH. n.d.) Those design features affect two aspects of voting: turnout, and variation in voter costs across different groups of voters.

75. Research on the impact of VBM on turnout is decidedly mixed; some studies demonstrate an increase in turnout, some found it was neutral, and some studies indicate a decrease in turnout (Dyck and Gimpel. 2005; Baretto et. al. 2006; Kousser and Mullin. 2007; Gronke et.al. 2008; Hernandez. 2014; Menger, Stein, and Vonnahme. 2017). As Gerber, Huber and Hill note, “the effects of all-mail elections on turnout are ambiguous” (2013:91. Also see: Bergman and Yates. 2011; Burden, et. al. 2014; Gronke. 2008: 447). The most comprehensive review of the research on the relationship between mail-in voting and turnout was conducted by the U.S. Government Accountability Office in 2016. The GAO reviewed 400 sources and found that, in some cases, turnout increased with the advent of mail-in voting, but numerous studies found no impact or a negative impact on turnout (p.35). Of course, all of these studies were conducted prior to the pandemic, and the results from the 2020 election indicate an increase in turnout, part of which may be due to widespread use of VBM.

76. The reason why the impact of VBM varies dramatically is because for most voters it decreases voter costs, but for a minority of voters it increases voter costs. The latter is

⁶ Utah is one of eight states that use VBM state-wide. In 2020, the primary ballots contained a flyer headlined: “Stay Home—Stay Safe—Vote by Mail.” The flyer advises: “Due to COVID we are asking all voters to VOTE FROM HOME.”

especially true for low-income people, people with less education, and voters who live in remote areas with poor mail service. Native Americans reflect all of those demographic and geographic attributes at a rate far higher than the general population. In short, the advantages and disadvantages of VBM are not distributed equally across voting populations, and certain procedural aspects of VBM affect sub-populations of voters in different ways (See: Haspell and Knotts. 2005; Gronke, et. al. 2008; McNulty, Dowling, and Ariotti. 2009; Meredith and Malhotra. 2011; Brady and McNulty. 2011; Bergman and Yates. 2011; Burden and Neiheisel. 2013; Burden, et. al. 2014). One of those procedural aspects is the HB 530 prohibition against paying ballot collectors; it is a design feature of the VBM process that increases voter costs, decreases turnout, and has a disproportionate impact on Native voters and other groups of voters with similar demographic and geographic characteristics.

77. If VBM systems are designed without regard to the potential disadvantages, it can create a bias in the distribution of voter costs and thus affect turnout. In other words, VBM can disadvantage some groups of voters even while creating significant advantages for others: “VBM can advantage those groups that are advantaged in other elections” (Karp and Banducci. 2000: 234. Also see: Gronke. 2008; Leighley and Nagler. 2014; Berinsky. 2005; Stein and Vonnahme. 2008; Stewart. 2011; Suo. 2000). One analysis concluded: “[voting by mail] reinforces the stratification of the electorate” (Slater and James 2007: 4). The point is not that VBM works poorly—it works very well for most voters. But for the remaining voters who experience increased voter costs and less access to the electoral system, the negative and

unfair impacts of VBM can be reduced by designing the electoral system to reduce other voter costs and increase access. An effective way to do that, with virtually no cost to the state, is to allow for paid ballot delivery assistance.

78. There are a number of reasons why VBM is often ineffective on Indian reservations and reduces turnout in some situations. Native Americans face unique problems in accessing their mail and participating in elections via VBM (See: Tucker, De León, and McCool. 2020: 70-72, 93-102). That is why tribes in Montana fought to gain satellite polling locations (See: *Wandering Medicine v. McCulloch*. 2012). As a result of these difficulties, many Native Americans have preferred in-person voting in the past, but the health benefits of voting by mail may change that. However, the potentially negative impact on turnout caused by such a major shift in voting procedure can be ameliorated by eliminating the design features that increase voter costs and typically reduce turnout—features such as HB 176 and HB 530.

79. To fully understand the problems created by VBM on Indian reservations, it is necessary to understand changes that have happened to the USPS in recent years that have exacerbated the situation on reservations. In the last fifteen years, the volume of first-class mail has decreased so dramatically that the USPS was forced to downsize. The USPS downsizing and restructuring was referred to as network or plant “rationalization” (Bipartisan Policy Center. 2016: 6). As a result, mail takes longer to deliver, especially in rural areas, and it becomes more difficult to predict how long it takes for a mailed ballot to arrive at the county recorder’s office.

80. Starting in 2011, the USPS began closing post offices and processing centers, and in 2012 closed three processing centers in Montana (Assoc. Press. 2013; Scott. 2012). These cutbacks came at a time when VBM and absentee voting were growing dramatically in popularity, resulting in a potential mis-match between demand and capacity. This can result in a back-up in mail processing (Bipartisan Policy Center. 2016: 13). A Caltech/MIT study noted: “The closure of mail processing facilities will only serve to increase these numbers [of ballots rejected for being late]” (CALTECH. n. d.: 39). The Republican Secretary of State in Colorado explained: “The Postal Service is cutting back services for cost-cutting measures. You’re seeing some disenfranchisement of voters where the post office is just so slow” (Wilson. 2014).

81. The issues regarding USPS delivery times were exacerbated by the pandemic in 2020—precisely at a time when the USPS was unprepared to handle a sudden increase in demand. The Postmaster General noted this problem: “At a time when America needs the Postal Service more than ever, the reason we are so needed is having a devastating effect on our business” (quoted by Fandos and Tankersley. 2020). Due to these long-standing funding problems, the USPS has faced dramatic budgetary shortfalls, and some postal workers have been infected with Covid (Bogage. 2020; Goodkind. 2020; Pecorin. 2020). The issue is not whether the mail and VBM ballots will be delivered; the Post Office is not throwing away bags of mail. Rather, the issue is that it is more difficult than in the past to judge when a ballot must be placed in a mailbox so that it arrives on-time. This is especially true on Indian reservations.

82. Concern over the timely delivery of ballots led to a lawsuit filed by the NAACP in 2021. The NAACP accused the Postal Service of “failing to timely implement measures required to ensure timely and reliable mail delivery.” The parties settled, with the Postal Service committing to “good faith efforts to prioritize monitoring and timely delivery of Election Mail” in future election years (National Association for the Advancement of Colorado People. 2021: 1-2). This may resolve some of the problems in the U.S. generally, but that remains to be seen given the Postal Service’s funding problems. I note that paid ballot collectors have the option of taking ballots directly to an election office or drop box, and thus do not have to rely on the Postal Service.

83. Thus far I have been discussing problems associated with slow mail delivery to the general public, but those problems grow exponentially on Indian reservations. It is an understatement to say that mail service is often poor on Indian reservations; in places it is non-existent. Many reservation homes do not have physical addresses, and the Postal Service does not deliver mail to those homes. Most Native people do not have home mail delivery, and must use a PO box that may be a considerable distance from their home (Ferguson-Bohnee. 2020; Nilsen. 2020; Native American Rights Fund 2020b). Dulcie Bear Don’t Walk described this situation in Big Horn County:

There’s a limit of post offices. A very small amount of our communities are actually able to get rural mail, because we don’t have rural mail carriers. We have limited hours because of funding cuts to the post office.... I live down near Lodge Grass. I live a mile out. There’s a post office. I can’t check my post—my mail there. I can’t get a box, because there’s not one available. They don’t do

rural mail to my house, which is only a mile out. And I can't—even if I could get a box, I can't check it, because it's got, like, very limited hours, like 11:00 to 3:00. Just really odd hours. And so I actually have to check my mail 19 miles away in Crow Agency. And that's just the reality of what it is on the reservation (Bear Don't Walk, deposition. 2020: 76).

Daliyah Killsback made a similar observation: "There are less polling places and ballot boxes on reservations, and there's the issue with PO boxes rather than street addresses; a lot of houses don't have street names and they can't get a ballot mailed to them" (Killsback. 2021).

84. Another aspect of using PO boxes on reservations is that, due to costs and an inadequate number of available PO boxes, often several tribal members will use the same box, and pick up all the mail in the box. Marci McLean described how tribal members share PO boxes: "Some people have shared PO boxes; a relative may pick it up and they may not give you your mail quick; it may sit at someone at someone's house, or on their dashboard, until they can get to your house or you can get to theirs" (McLean. 2020). Shelly Fyant described the same situation on the Flathead Reservation: "A lot of people have a PO Box; Natives are all about extended families; sometimes there are two or three generations that get their mail at the same PO box or rural route box" (Fyant. 2020). This saves some tribal members from doing the long drive to a post office, and saves the money it takes to rent a box, but it adds an additional step to the delivery process and can slow the delivery of mail and make it even more unpredictable (Bear Don't Walk, deposition. 2020: 76; Tucker, De León, and McCool. 2020: 70-72, 93-102). The cost of PO boxes can also create problems. Marci McLean related this story in an interview: "My co-worker went to a satellite office on Fort Peck. The election worker

wouldn't give him a replacement ballot because he was locked out of his PO box and couldn't access the original ballot. He couldn't get into his PO box, where the ballot was, because he didn't have enough money to pay the fee for the PO box. So, she said she would not give him a replacement" (McLean. 2020).

85. Postal delivery on Indian reservations can be amazingly convoluted and inefficient; here's an example from Fort Belknap: "tribal members who get their mail through post office boxes in Lodge Pole have to use the address 'Lodge Pole Route,' their box number, followed by 'Dodson, Montana,' which is located in Philips County. However, the locations of their residences are in Precinct 15, which is in Blaine County" (Montana Advisory Committee. 2021: 9). The length of time it takes for a mailed ballot to arrive is critically important because Montana has a receipt deadline, not a postmark deadline for mailed ballots. The only advice they get as to how long that might take is an admonition in the instructions on their ballot to "if you mail your ballot make sure there is enough time for it to reach the election office" (Mail Ballot Written Plan, Timetable and Instructions. Accessed 2021).

86. One of the advantages of using the voluntary services of a paid ballot collector is that, first, they understand the deadline regarding when ballots must be delivered, and second, they can make sure the ballots are delivered to a post office in time to ensure that they will arrive on-time and be counted. Or, they can take the ballots directly to a drop box or election office. This helps ameliorate the problems that are being experienced by the USPS.

87. However, Native people often do not trust the Postal Service or visit the post office often (Schroedel. 2021: 66-67). A recent poll of Native voters in four western states revealed the low level of trust Native people have in the mail; about 89 percent of Native respondents in the four-state survey somewhat trusted that their in-person ballot would be counted: “Vote by mail, in contrast, garnered much lower levels of trust. Only 24 percent had complete trust. And the same percentage, 24 percent, had no trust in voting by mail” (Tucker, De León, and McCool. 2020: 94).⁷ Dulcie Bear Don’t Walk, the Elections Administrator for Big Horn County, noted this: “And a lot of our people will—literally don’t trust the post office, and so they—or they don’t want to waste money when they live... two blocks away, and they want to come in and turn in their ballots.... In our county people distrust the mail-balloting system” (Bear Don’t Walk, deposition. 2020; 63). The same point was made by a member of the Gros Ventre Tribe of Fort Belknap: “A lot of Indians do not trust mail.” (Nilsen. 2020). As a result, many Native voters prefer in-person voting.

88. This is part of the reason why many Native people prefer to vote in-person, but that presents a problem during a pandemic and because of long distances. In short, Native people are in a double-bind; they don’t trust the post office and there are significant problems with postal delivery, but to vote in-person they must absorb the significant voter costs caused by traveling long distances. These problems can be partially alleviated by allowing a paid ballot

⁷ The author of this report helped design the survey instrument for this survey. The four states are: South Dakota, Nevada, Arizona, and New Mexico. See: Native American Rights Fund (2020a): <https://vote.narf.org/wp-content/uploads/2018/10/2017NAVRCsurvey-full.pdf>.

collector, who is a trusted tribal member, to collect ballots for their fellow members, and take them directly to a county drop box or election office, bypassing the Postal Service. This also means that only a ballot collector has to intermingle with people at county offices, which has important implications during a pandemic and also means that tribal members do not have to interact with people that may harbor negative feelings for them (see section on discrimination below).

2. The Impact of Covid:

89. It is impossible to predict what impact Covid may have on future elections, but the rise of new variants such as Omicron could mean that the problem will persist for some time and impact voting. Slightly more than half of Montana's population is fully vaccinated (vaccination rates are slightly higher on Indian reservations), so the potential for continuing problems is significant (Mayo Clinic. 2021a; Lutz. 2021). As of December, 2021, the state is experiencing numerous hot spots and the fatality rate has actually increased (Mayo Clinic. 2021b).

90. Ballot delivery assistance has an obvious advantage during a pandemic; it eliminates the need to come in contact with people at a post office or a polling place. In effect, the risk of coming in contact with infected individuals is transferred from the voter to the ballot collector. The voter only has to hand a signed and sealed envelope, from a safe distance, to the ballot collector, who is outside, and then retreat into the safety of their home. It is the ballot

collector who then bears the risk of mixing with people as ballots are delivered (perhaps another reason why they should get paid). But HB 530 effectively eliminates the advantage of using the services of a paid ballot collector, and forces all Native voter to travel to a point that may be quite distant and inaccessible, and potentially contaminated with coronavirus.

91. Avoiding risky contact is even more important on Indian reservations, where Covid has occurred at a higher rate than in the population as whole and has been characterized as “Smallpox 2020” (Mabie. 2020a). Research at the Centers for Disease Control and Prevention found that the Covid infection rates among Native Americans and Alaska Natives was 3.5 times higher than for non-Hispanic Whites; the mortality rate was 1.5 times higher. Many of the factors that led to these high rates are the same as those that inhibit participation in elections: “Long-standing inequities in public funding; infrastructure; and access to health de, education, stable housing, healthy foods, and insurance coverage have contributed to health disparities” (CDC Reports. Aug. 28, 2020, and Dec. 11, 2020). Other factors include:

...lack of access to clean water, overcrowded homes, intergenerational families living together, high rates of disease (diabetes, hypertension), remotely located communities, lack of access to health care, economic challenges, and more, Native People living on reservations in the intermountain west (Northern Rockies, Great Basin and Southwestern US) are especially vulnerable to the impacts of COVID (Native Waters. 2020).

In Montana, these conditions have created high-risk environments: “On reservations in the Dakotas and Montana where good housing is scarce, extended families have been forced to shelter together in tiny homes with no clean water and no internet.... [these conditions] have

prompted Native American leaders to warn that serious havoc may be ahead” (Romero and Healy. 2020).

92. One factor that has protected Montana tribes from a higher rate of infection is their isolation. Tribes have worked diligently to protect that advantage; they stayed closed longer than the state as a whole, and the Blackfeet Tribe closed the east gate to Glacier National Park for a year (Assoc. Press. 2021a). This was driven in part by tribes placing a priority on protecting tribal elders: “[Montana Natives’] protective attitudes toward elders and cultural heritage have shaped a pandemic response around defending the most vulnerable rather than prioritizing economics” (McLaughlin. 2020).

93. Perhaps most significantly in this pandemic, the co-morbidity factors that increase the mortality of Covid, such as diabetes, obesity, and substance abuse, are already elevated on Indian reservations, making them even more vulnerable to infection. These health factors are presented in Appendix A. It is clear from these data that Native people suffer from these debilitating conditions at a much higher rate than Whites, leaving them more vulnerable to Covid. These disparities in health “have existed among American Indian and Alaska Native populations since the time of first contact” (Sarche and Spicer. 2008). But now the differences are magnified by Covid, as a Native American explained: “COVID has highlighted the inequalities that persist in Indian Country today” (Benally. 2020).

94. In addition, the pandemic has had a significant impact on reservation economies, especially those that depend on tourism and casinos. There are ten Indian casinos in Montana,

operated by seven tribes (500 Nations. 2021). The drastic reduction in casino visits in 2020 had a dramatic impact on tribal incomes with enormous repercussions for the economic well-being and health of Indian people. Nationally, Indian casinos experienced a 19.5 percent decline in revenues in 2020 (National Indian Gaming Commission. 2021). This decline costs tribes an estimated \$10 billion dollars in lost income (500 Nations.2021). In an interview, the director of the Harvard University Project on American Indian Economic Development explained how this reduced revenue affects nearly every aspect of reservation life:

You shut the doors of that casino, and you basically are cutting off all your tax revenue. And so many tribes are now facing lay-offs, not just of the casino employees, but in the various programs that the revenues that the gambling business supports. So we're having people get unemployed, both Indian and non-Indian, in large numbers across the country. Second, you're having to in many cases cut way back or shut down basic programs ranging from health clinics to housing support to education programs (Kalt. 2020).

This stressed fragile reservation economies. On the other hand, open casinos represent a possible health threat to tribal members as long as the pandemic lasts (Siegler. 2020; Mabie. 2020a). And of course, all of these difficulties take place in an environment of mistrust and continued discrimination (Mabie. 2020b; Benally. 2020; Mabie. 2020c; Schontzler. 2020).

95. In sum, the pandemic has been something of a perfect storm for Native voters. They have poor to non-existent mail delivery, but must take a great risk if they vote in their usual way by going to an in-person poll. Their economic situation, already dire, is worse. Traveling long distances, which has always been a challenge for some, is dangerous during

Covid. Their poor health, already stressed by significant rates of life-threatening diseases, makes them a prime target for Covid mortality. And now state law prevents paid tribal workers from helping their neighbors by delivering their ballots. In the face of such dire health threats, the absence of ballot assistance becomes a daunting voter cost. Indeed, requiring all voters to deliver their own ballots could spread a disease that has so far killed over 817,000 Americans, including 2,899 in Montana (CDC. 2021).

96. And finally, HB 530's prohibition on paid ballot collection may make it impossible for counties to have unmanned drop-off locations—just as BIPA did (Moore. 2020:74, 80-81). At each drop-off location, an election official will have to be there to see who is dropping off more than one ballot. That election official must then assess whether that person has the requisite paperwork, and somehow determine if they have been paid. That is a tremendous burden to place on local election officials.

97. The voter costs of the prohibition on paid ballot assistance imposes a direct cost on the voters that desire assistance. As a ballot collector noted in an interview, “For a lot of people, that [ballot assistance] is the only way they can vote” (Sunchild. 2021). In addition, the costs of HB 530 will be born, not just by voters who would like to have their ballot delivered, but also by those who work to deliver those ballots. HB 530 sets up a situation where people are expected to work without pay. No one else in society is expected to do that. HB 530, like HB

176, took away a freedom that existed in Montana prior to enactment; the freedom to be remunerated for work performed. This places a tremendous burden on any individual who would like to work for an organization that offers ballot assistance. All of the people I interviewed for this report described the “typical” ballot collector as a tribal member who works more than one job, is employed to do ballot assistance for only part of the year, and is not independently wealthy. These individuals cannot afford to work for weeks at a time without pay; a prohibition on paying ballot collectors effectively destroys ballot assistance in Montana, especially on reservations.

98. In the future, there may be other groups interested in offering ballot assistance, including both parties (this has already happened in California, where both parties engage in ballot assistance). However, all civic, advocacy, and partisan groups will be severely constrained in offering this service, and will have to rely on people who are independently wealthy or the rare individual who can afford, and is willing, to work for several weeks without pay. The net result is that engagement in the electoral process is significantly curtailed.

IV. QUESTION 3: Do HB 176 and HB 530 render a public benefit and have a demonstrable impact on improving election integrity in Montana?

A. Alleged Voter Fraud in Montana:

99. HB 176 and HB 530 are targeted diminutions of freedom associated with the electoral process. The usual rationale provided for requiring burdensome voting requirements such as these laws is to prevent voter fraud (Chaffetz. 2020; Blood and Ohlemacher. 2018;

Morefield. 2018; *The Federalist*. 2018; Eggers. 2018). And indeed, that is precisely how these bills were presented. The Secretary of State characterized these bills, and other new limitations on voting, as part of a promise of “improved election integrity” (Secretary of State Jacobsen, quoted in Wilson. 2021a). Thus, the only possible “benefit” from these laws is a demonstrable impact on reducing voter fraud and other illegal activities that impinge upon the integrity of the electoral process. To assess the benefits, it is necessary to know if there are substantial and verifiable threats to election integrity in Montana, and whether those threats are a result of permitting Election Day Registration and paid ballot assistance.

100. The issue of alleged voter fraud in Montana came to the forefront in 2012 when a strict voter ID bill was being considered. The Secretary of State at that time, Linda McCulloch, noted in an op-ed for the *Billings Gazette* that there was no voter fraud in Montana: “Voter fraud — votes knowingly cast by ineligible individuals — does not exist in Montana” (McCulloch. 2012). She cited a recent state audit that found no evidence of voter fraud (see: Tokerud. 2013). The issue re-surfaced in the 2016 election when the chairman of the Montana Republican Party claimed that Democrats might be collecting ballots and then throwing out the ballots that voted for Republicans, even though it is not possible to ascertain how the voter voted by looking at the envelope of a mail-in ballot (Cates-Carney. 2017). No evidence was presented that this actually happened.

101. The issue came up again in 2017 when a different Secretary of State, Cory Stapleton, issued a press release alleging that voter fraud occurred in the special election to

replace Congressman Ryan Zinke, who had resigned to become Secretary of the Interior. The *Great Falls Tribune* headlined; “Voter Fraud Allegations Roils Montana Elections Officials” (Associated Press. 2017). Stapleton claimed that “We had some issues last fall of the integrity of some of these mail ballots. In that case, it was a matter of people knocking on people’s doors and collecting them and there was [sic] issues of whether those actually got delivered” (Cates-Carney. June 16, 2017). Again, no evidence was offered to support that allegation. Also, it is worth noting that the state has a hot-line, and a website, that voters can contact to verify if their ballot was received and counted (<https://app.mt.gov/voterinfo/>; “call the Secretary of State’s toll free voter hotline at 888-884-VOTE (8683)”). A voter can even send them an email (email soselections@mt.gov). I am unaware of any allegations or evidence that a voter contacted the Secretary of State’s office and discovered her/his ballot, which had been collected by another person, was subsequently not delivered.

102. Stapleton’s allegations were challenged by county election officials, and he later retracted that claim (Hasen. 2017). News sources then reported that:

- > “Montana does not have issues of coordinated voter fraud” (ABCFoxMontana. 2017).
- > “Montana does not have widespread voter fraud in its elections system” (Montana Public Radio, Cates-Carney. Dec. 5, 2017).
- > “Montana has no voter fraud issue” (*Great Falls Tribune*. Dec. 6, 2017).
- > “Montana does not have issues of coordinated voter fraud” (*The Spokesman-Review*. Dec. 6, 2017).

In a correction, instead of claiming there was voter fraud, Secretary Stapleton said there was “voter misconduct.” The issue was that the signatures on 360 ballots appeared to not match the signature on file. Stapleton’s elections director explained that it may simply be a case of people signing “too quickly” or having an injury that affected their signatures” (*The Spokesman-Review*. Dec. 6, 2017). There was no indication that any of the suspected ballots were collected by a third party through “ballot harvesting” and subsequently altered. The only issues in the 2018 election were long lines and bad weather. Secretary Stapleton said he was not aware of any malicious voter fraud occurring (King. 2018).

103. Despite the complete absence of any evidence of voter fraud, it is not uncommon to hear such accusations when Native Americans vote—especially when they do so in sufficient numbers to actually affect the outcome of an election. For an example from a neighboring state, when the Native vote in South Dakota helped Senator Tom Daschle win re-election in 2002, the *National Review* ran a story titled: “the Democrats Stole a Senate Seat.” (York 2002). The state’s attorney general (a Republican) investigated the charges and proclaimed *The National Review* article to be “shoddy, irresponsible, sensationalistic garbage.” (Woster and Ross, 2002). He stated emphatically: “There was no widespread fraud and the election results are valid. No one stole the election.” (Associated Press. 2002).

104. The same thing happened in Montana; accusations were made that “suspicious voter fraud” occurred on Indian reservations in the 2006 senatorial election. The article claimed that Senator Tester is “notoriously a great friend of ‘Indian Country,’” and that “Hundreds of

absentee ballots are gathered every election, statewide and in tribal areas, often door to door by Democrat operatives, and bundled for counting. Many of these ballots have falsified names, whereabouts unknown, or using names of the deceased. This is called Voter Harvesting” (Whitelight and O’Neil. 2019). The article presented no evidence to substantiate those claims.

105. This raises the central question: is there any evidence whatsoever that voter fraud has occurred in Montana, especially fraud that is calculated and organized to give one party or candidate an advantage over another via “ballot harvesting”? The most complete compendium of actual voting fraud convictions is maintained by the conservative think-tank, the Heritage Foundation. They keep a running account of actual cases, and their data bank covers all local, state, and federal elections back to the early 1980s. Out of hundreds of millions of ballots cast, they have discovered 1,334 cases of “proven instances of voter fraud.” That list includes one case from Montana; a man mailed in his ex-wife’s ballot without her permission. Thus, it was more of a marital problem than a voter fraud problem (Heritage Foundation. 2021).

106. In each election in Montana, about a half-million people vote (more in presidential years, less in off-year elections). Thus, out of dozens of elections, with millions of votes cast, one guy has actually been convicted of voter fraud, and that case had nothing to do with ballot collection (Heritage Foundation. 2021). In 2020, Western Native Voice and Montana Native Vote collected 555 ballots on Indian reservations using paid ballot collectors (Sunchild. 2021). In 2018, nine percent of the absentee ballots returned from Indian reservations were through paid ballot collectors. There is no evidence of any voter fraud associated with that

effort. In 2020, the Secretary of State completed the required post-election audit, and concluded: “No discrepancies were found during the Post-Election Audit that exceeded the statutory limits as set by Sec. 13-17-507 MCA” (Stapleton. 2020).

107. Obviously, “voter fraud” has never changed the outcome of an election in the state, and there is no evidence of any systematic partisan scam. Existing safeguards are quite effective at preventing any significant problems. This point was made succinctly by the Cascade County Clerk/Auditor last year; when asked in a deposition how she would become aware of voter fraud, she replied:

Well, if there was voter fraud going on, number one, believe me, there is a thousand watchdogs out there that watch every move that we make and every move that the voters make in all of these counties. You can’t even breathe without somebody finding something wrong with what you’re doing. When we’re verifying signatures, we’re not seeing tons and tons of signatures that have mismatches on them, and on the occasion that we have found mismatches, those voters have come in and rectified the situation with us. Just because it’s a mismatched signature doesn’t mean that it is voter fraud, it just means that perhaps the voter changed his signature, added a stroke. I have three peoples’ names behind me on my desk, that they’ve already called to inform us that they’ve broken their right arm or wrist and that their signatures aren’t going to look similar when the ballots come in November, and so we follow up with those folks. But when you’re verifying signatures, we’re not seeing this huge amount of people that are trying to steal someone else’s ballot, sign it like they sign it and then turn it in because there’s always a challenged signature (Moore. 2020: 140-41).

108. When asked in her deposition if there was fraud in other counties, Clerk Moore replied: “No. None of us has ever had any cases of voter fraud” (Moore. 2020; 27). Her response was echoed by another county clerk, Nichol Scribner from Sanders County. When

asked in a deposition: “Are you aware of any instances of voter fraud related, in Sanders County, related to somebody bringing in another person’s ballot?” She answered: “No” (Scribner. 2020: 169). Sanders County includes part of the Flathead Indian Reservation. Similar views were shared with me by people who have worked as ballot collectors:

Question: Are you aware of any voter fraud that has taken place when ballots are collected?
Answer:

> “I just laugh at that question; that’s ludicrous. I’m a person of integrity. My team has a core value to do what is right. No one wants to defy the law; we’re worried about surviving day to day. To pick up these ballots is a huge process. No one says; oh let’s commit fraud. Integrity is vital to our process” (Kindness. 2021).

> “I have never heard of any voter fraud, other than people saying it exists. I have never encountered one instance of voter fraud” (Killsback. 2021).

B. The Alleged Link between Voter Fraud and Ballot Collection in the U.S.:

109. It is clear that voter fraud is not a problem in Montana.⁸ But is it a problem in other states, and is it associated with ballot assistance? A recent analysis of the total votes cast in the elections covered by the Heritage Foundation data set calculated that the occurrence of voter fraud was “about 0.00006 percent of the total votes cast” (McReynolds and Stewart.

⁸ This near-total absence of voter fraud is not limited to Montana. For complete nation-wide analyses see: Eggers, et. al. (2021); Chapter 1 of *Election Meltdown*, by Richard Hasen (2020); McReynolds and Stewart (2020); Barreto, et. al. (2020); Chapter 2 of *The Voting Wars*, by Richard Hasen (2012); chapter 6 of *Stealing Democracy*, by Spencer Overton (2006); and *The Myth of Voter Fraud*, by Lorraine Minnite (2010). Also see: Urbina (26 Oct. 2010) and Levitt (2007). Even the U. S. Justice Department under President George W. Bush could not find evidence of significant voter fraud; see: Lipton and Urbina (12 April 2007). One legal scholar calculated that the likelihood of voter fraud was more than 12 times less likely than being struck by lightning (Sobel 2014: 7)

2020). Another recent analysis of three states with all-VBM elections calculated that the number of “possible cases” of voter fraud was 0.0025 percent of all votes cast (Viebeck. 2020). The same conclusion was reached in an extensive review conducted by the Associated Press of voter fraud claims in six battleground states in the 2020 election, which found a total of 475 possible cases of individuals violating election laws (Associated Press. 2021). Is it possible that these exceedingly rare cases are associated with ballot assistance?

110. If permitting ballot assistance actually increased voter fraud, we would expect to see a dramatic difference in levels of fraud in those states that permit ballot assistance, compared to those that do not. To answer that question, I divided all 50 states into three categories:

1. Most Restrictive: Only the voter, a family member, or caregiver can deliver a ballot. There are 19 states in this category.
2. Restrictive: Only family, friends, or a designee can deliver a ballot, but there are additional requirements such as a signature, or a strict limit on the number of ballots an individual can deliver. There are nine states in this category.
3. Permitted: Ballot delivery assistance is permitted. This is the only category where third-party ballot assistance can effectively take place. There are 22 states in this category.

If the claim that ballot assistance leads to voter fraud is true, then we would expect to see a dramatic difference in levels of fraud between the first and third category. To test that, I used two data sets on voter fraud; the Heritage Foundation data described above, corroborated with another data base on voter fraud compiled by News21, a project of the Cronkite School of Journalism at Arizona State University. Their data includes a looser category of “alleged

election fraud,” and covers all elections from 2000 to 2012. Their total is 2,069 cases of alleged fraud out of the hundreds of millions of votes cast during that time period (News21. 2020). These data are presented in Tables 34 and 35. To effectively compare different states, I noted the population of each state, then calculated the number of fraud cases per 100,000 people. In reviewing these data, there are three important caveats to keep in mind. First, the Heritage Foundation data is for actual convictions, and the News21 data is for alleged fraud, so the latter is sometimes significantly higher than the former. That difference indicates that a lot of alleged cases do not actually result in a conviction. Second, these data include cases of registration fraud; we do not know from the data if people who were fraudulently registered actually voted or attempted to vote. If the data only included cases of actual voting fraud, the numbers would be significantly smaller.⁹ Third, I provided the state population data for comparison purposes only. Population figures do not indicate how many people voted over the time period covered by the two data sets; that total would only include actual turnout but would have to be multiplied by the number of elections in the time period covered by the data, which varies according to the data set—the Heritage Foundation data covers all elections from the 1980s to present; the News21 data covers all elections from 2000 to 2012.¹⁰

⁹ Registration fraud is not the same as voter fraud. The *Washington Examiner* explained that “Trump seems to conflate voter fraud with voter registration fraud. They are different things” (Feb. 6, 2017).

¹⁰ In 2016, News21 updated their data by looking at five states where there were widespread claims of voter fraud. For elections between 2012 and 2016, they found 38 cases out of the tens of millions of votes cast (Edge and Holstege. 2016).

111. Table 34 presents data for the 19 states that do not allow ballot collection, and Table 35 presents data for the 22 states that permit ballot collection. “H.F. Convict’s” is the number of convictions in that state according to the Heritage Foundation data. “H.F./100kPop” is the number of convictions per 100,000 thousand population. “N21Alleged” is the number of alleged cases according to the News21 data set, and “N21/100kPop” is the number of alleged cases per 100,000 population.

Table 34: States That Prohibit Ballot Collection (19)

State	Population	H.F. Convict’s	H.F./100kPop	N21 Alleged	N21/100kPop
Alabama	4,859,000	16	.32	16	.32
Arizona	6,828,000	20	.29	7	.10
Connecticut	3,590,000	26	.80	196	5.45
Georgia	10,215,000	20	.19	301	2.94
Indiana	6,619,000	43	.64	62	.93
Louisiana	4,671,000	4	.08	4	.08
Massachusetts	6,794,000	4	.05	1	.05
Michigan	9,922,000	11	.11	17	.17
Mississippi	2,992,000	31	1.03	74	2.47
Missouri	6,084,000	19	.31	17	.28
Nevada	2,891,000	6	.20	2	.07
N. Hampshire	1,330,000	15	1.12	20	1.50
N. Mexico	2,085,000	8	.38	10	.48
N. Carolina	10,043,000	31	.30	22	.22
Ohio	11,613,000	52	.44	77	.66
Oklahoma	3,911,000	3	.07	1	.02
Pennsylvania	12,802,000	22	.17	23	.18
Texas	27,469,000	86	.31	104	.37
Virginia	8,383,000	20	.23	35	.41
AVERAGE		23	.37	52	.87

Table 35: States That Permit Ballot Collection (22)

State	Population	H.F. Convict’s	H.F./100kPop	N21 Alleged	N21/100kPop
Alaska	739,000	3	.40	9	1.21
California	39,145,000	42	.10	56	.14
Delaware	946,000	0	0	1	.10

Florida	20,271,000	37	.18	39	.19
Hawaii	1,431,000	2	.14	NA	NA
Idaho	1,655,000	10	.60	12	.72
Illinois	12,860,000	45	.35	23	.17
Iowa	3,124,000	17	.54	49	1.56
Kansas	2,911,000	12	.41	216	7.42
Kentucky	4,425,000	30	.67	69	1.56
Nebraska	1,896,000	2	.10	2	.10
New York	19,796,000	20	.10	18	.09
N. Dakota	757,000	3	.39	3	.39
Oregon	4,029,000	15	.37	33	.82
R. Island	1,056,000	0	0	5	.47
S. Dakota	859,000	5	.58	1	.11
Tennessee	6,600,000	10	.15	14	.21
Utah	2,996,000	1	.03	51	1.70
Vermont	625,000	0	0	NA	NA
Washington	7,170,000	12	.16	270	3.76
Wisconsin	5,771,000	46	.79	57	.98
Wyoming	586,000	3	.51	4	.68
AVERAGE		14.3	.29	42.3	1.01

Two basic conclusions can be reached by examining the data in Tables 34 and 35. First, the number of cases of actual voter fraud, or even alleged voter fraud, is infinitesimally small compared to the number of votes cast. Second, there is no significant difference in the rate of voter fraud in states that prohibit ballot collection and states that permit ballot collection.

Indeed, the rate of voter fraud cases is slightly higher in states that ban ballot assistance. Claims that ballot assistance leads to voter fraud are not supported by the data.

112. It is important to make a distinction between *claims* of fraud, and actual *evidence* of fraud. The gap between evidence and claim is common. For example, Former Secretary of State “Stapleton acknowledged that no one in Montana has ever been convicted of voter fraud, but he *suggested* it routinely happens...” (Calvan. 2017). As Professors Hood and Gillespie note: “In contemporary U.S. elections there is no shortage of allegations concerning election fraud. These claims are, however, based in large part on anecdotal evidence, unsubstantiated assertions, or the study of reported complaints” (Hood. 2012: 76). A recent statistical analysis of the 2020 election reached the same conclusion: “For each claim, we find that what is purported to be an anomalous fact about the election result is either not a fact or not anomalous” (Eggers, Garro, and Grimmer. 2021:1).

113. The extremely rare cases of voter fraud occur in all types of voting systems, including traditional in-person polls, and sometimes involve election officials and not voters. There are numerous laws that can be used to prosecute these extremely rare cases of registration fraud and voter fraud. Voter fraud is a serious crime—a felony for most offenses—and should be fully and energetically prosecuted, but the data presented in this report reveal that there are many safeguards in place to protect the integrity of the electoral process without incurring the additional voter costs created by restrictive laws such as HB 176 and HB 530.

C. Election Integrity and the Claimed Purpose of HB 176 and HB 530:

114. Given the extreme rarity of voter fraud in Montana and the U. S., it is worth examining the legislative history of HB 176 and HB 530 to determine the motivation and claimed objectives of these new laws. The 2021 legislative session saw multiple bills introduced that were billed as “election integrity” bills. Many of them increased voter costs for Native American voters. The Montana Advisory Committee to the U.S. Commission on Civil Rights noted in a 2021 report that “Members of the Montana Legislature introduced several bills during the 2021 legislative session that are likely to impact voting rights for Native Americans.” It then listed those bills:

1. HB 176 which eliminates election day registration;
 2. SB 169 which limits voter IDs;
 3. HB 406 which bans the practice of ballot collection and conveyance;
 4. HB 325 which divides up tribal reservations when creating seven districts across the state;
 5. HB 455 which eliminates the ability to receive a ballot at a PO box;
 6. HB 506 which allows an individual not yet eligible to vote to register if they will become eligible on or before Election Day;
 7. SB 196 which expands a range of low population polling locations that may open noon on election day instead of 7:00 AM;
 8. SB 335 which prohibits certain funding to be used for state or local elections;
- (Montana Advisory Committee, 2021: 11).

115. One of these bills, HB 406, would have effectively outlawed ballot assistance by requiring a long list of actions on the part of every ballot collector, and limited ballot collection to only a family member, narrowly defined (HB 406. 2021). HB 406 was the predecessor to HB 530 and was justified by the then Attorney General Tim Fox who claimed: “ballot harvesting [is a] large source of potential voter fraud” (Wilson. 2021b). This bill was titled as a revision of the

Ballot Interference Protection Act, which was found to violate the state’s constitution last year (*Western Native Voice v. Stapleton*. 2020; *Driscoll v. Stapleton*. 2020). It passed the House by a substantial margin (67 to 33), but failed narrowly in the Senate (23 to 27) (HB 406. 2021). The sponsor of the bill reiterated the arguments made on behalf of BIPA—that ballot collection could lead to voter fraud (Michels. 2021).

116. The purpose of HB 530 was quite clear; it is stated right in the bill: “for the purposes of enhancing election security” (HB 530, Sec. 2(a)). At the beginning of the House hearings on HB 530, Representative McKamey characterized the bill as being about the “security of our elections” (HB 530. 2021. House Hearings, at 8:05).

117. HB 176 was also claimed to be an anti-fraud measure. When Representative Sharon Greef introduced it in the House, she billed it as “the first of election integrity bills,” and then claimed its purpose is “to mitigate [sic] against voter fraud” (HB 176. 2021. House Hearing, Jan. 21, at 8:03 and 8:04). The next speaker at the hearing that day was Secretary of State Christi Jacobsen, who claimed the bill would “strengthen the integrity of elections” (House Hearing, Jan. 21, at 8:06). The next speaker, Director of Voter Services Dana Corson, claimed it would curtail “people waiting in line,” but provided no evidence that EDR has caused such a problem (House Hearing, Jan. 21, at 8:08). Then Senator Mike Cuff said the new law would “reduce the likelihood of errors,” but gave no evidence that errors had indeed been caused by EDR (House Hearing, Jan. 21, at 8:10). Another speaker billed herself as a poll watcher trainer,

and said EDR creates “chaos,” but provided no examples or evidence (House Hearing, Jan. 21, at 8:12).

118. During the Senate hearings, Representative Greef again claimed that HB 176 would “mitigate [sic] against voter fraud”, “ensure voter integrity,” and “reduce the opportunity for mistakes” (HB 176. 2021. Senate Hearings, Feb. 15, at 16:49). She provided no evidence of fraud, no threats to voter integrity associated with EDR, and no evidence of “mistakes.” During the question period, she was asked to provide an example of voter fraud; she replied: “When I talked about voter fraud I wasn’t talking about Montana specifically” (Senate Hearing, Feb. 15, at 17.35). She then claimed that voter fraud was a national problem, but provided no evidence to support that contention.

119. It is quite clear that HB 176 and HB 530 were passed based on a claim to reduce voter fraud, but there is zero evidence of a link between EDR, paid ballot collection, and voter fraud. Predictions of future behavior are always predicated on past trends, and there is no evidence in the past to support an assertion that paid ballot collection and EDR has any significant potential to lead to fraud in the future. Election integrity is certainly important, but is in no way threatened by Election Day Registration or having paid ballot collectors. Any element or procedure in the electoral process could conceivably result in the extremely rare case of voter fraud. Could the potential for voter fraud be reduced to absolute zero? Yes, but only by canceling all elections.

120. In sum, there are no demonstrable public benefits that accrue from HB 176 and HB 530. The entire *raison d'être* for these laws—to prevent fraud—is specious because voter fraud is not a problem. There is no evidence that associates either Election Day Registration or paid ballot collection to voter fraud, or even the potential for voter fraud; they are not in any way a threat to “election integrity.” The electoral system in Montana is sound; it abounds with election integrity without the imposition of laws such as HB 176 and HB 530.

V. RESEARCH QUESTION 4: Historically, have Native Americans in Montana been subjected to racism and discrimination? How has that historical discrimination and associated historical trauma impacted their current ability to participate equally in the political process and vote? Historically, have Native Americans been subjected to efforts to deny, abridge, or dilute their voting rights?

A. Historical Discrimination against Native Voters:

121. It is important to understanding the historical relationship between Native Americans and Anglos in Montana because it is part of the larger context of discrimination, ill feelings, and historical trauma that still impact Native people today. HB 176 and HB 530 are simply the latest in a long series of actions by the state that make it difficult if not impossible for Native Americans to vote. As one of the Native people I interviewed put it, “A lot of native people don’t vote, even in my own family, because there’s a lot of distrust with government and governmental functions because of the history. You hear; my vote doesn’t matter, what have they ever done for me?” (Vazquez. 2021).

122. Montana has a long history of denying, abridging, or diluting the right of Native Americans to vote. The 15th Amendment did not ensure the right to vote, or guarantee that Native Americans and other minorities have an equal opportunity to participate in the electoral process (Grofman and Davidson. 1992; Keyssar. 2000). Nor did it automatically prevent states and local jurisdictions from engaging in election practices—what the U.S. Supreme Court recently labelled “a variety of notorious methods”—that “heavily suppressed” the Black vote (*Brnovich v. Democratic National Committee*. 2020: 2). Many of the same methods were also used in western states to suppress the votes of American Indians (McCool, Olson, and Robinson. 2007; McCool. 2012; McDonald. 2011; Schroedel. 2020).

123. The territory of Montana was no exception in discriminating against potential Indian voters. As soon as the Territory of Montana was created it passed a law limiting voting to “white male citizens” (First Legislative Assembly of the Territory of Montana. 1864: 875-76). Territorial law in 1871 prohibited establishing precincts “On any Indian reservations whatsoever” (Svinden. 2002: 269). The 1889 Montana Enabling Act specified that the state’s constitution must be “republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed” (Montana Enabling Act. 1889: 677). This gave the state the imprimatur it needed to prevent Indians from voting. The new state immediately passed a law that limited voting rights to “resident freeholders,” or in other words, only men who owned property (Montana Laws. 1889: 124). This effectively excluded Indians living on reservations from voting. In 1897 the Montana Legislature prohibited Indians from

voting unless they were employed by the government or owned property outside the reservation (*U. S. v. Blaine County*. 2004: 913). In 1912, the Montana Attorney General issued an opinion that anyone who takes part in tribal affairs and receives tribal funds is not eligible to vote in general or school elections (*U. S. v. Blaine County*, Defendants' Finding of Fact. 2002: 64; *U. S. v. Blaine County*. 2004: 913). In 1919, the state forbade the creation of any precinct within an Indian reservation (*U. S. v. Blaine County*. 2004: 913). Professor Arlan Svingen succinctly summarized the state's actions: "Although certain American Indians could become citizens under the Dawes and Burke Acts of 1887 and 1906, Montana systemically denied voting rights to Indian people" (Svingen. 2002: 269-70).

124. After the passage of the Indian Citizenship Act in 1924 it became more difficult to prevent Indians from voting due to citizenship requirements. So, states found other ways to keep Native people away from the polls. The Montana Constitution was amended in 1932 to limit voting to taxpayers, unless those not paying taxes were state citizens at the time of statehood (Montana Constitution, Art. IX, Sec. 2). Indians living on reservations were not regarded as taxpayers and were not considered citizens in Montana in 1889, so this provision effectively excluded them from the electoral process. And the state maintained its prohibition against establishing voting precincts "within or at the premises of any Indian agency or trading post" (Revised Code of Montana. 1921, Sec. 552). As summarized by the 9th Circuit in *U. S. v. Blaine County*, "beginning in 1932 and continuing through 1963, the Montana legislature enacted various laws limiting voting to taxpayers, which served to disenfranchise many

reservation residents who were exempt from property taxes” (2004: 913). Professor Richmond Clow explains: “By eliminating non-taxpaying citizens’ names from the poll books for specific elections, the state’s voter eligibility law disenfranchised more tribal residents from all elections” (Clow. 2019: 53). This provision in the law was not repealed until 1971 (Clow. 2019: 54).

125. These efforts to deny or abridge Native voting rights still affect attitudes today. Native people in Montana had to start their quest for equal voting rights from a position of disadvantage and in the face of systemic resistance. With the passage of the 1965 Voting Rights Act (VRA), jurisdictions that wanted to deny or abridge the right of Native Americans to vote had to become more creative in inventing devices that impeded Indians from voting. These contemporary impediments, and the litigation they inspired, will be discussed in a subsequent section.

B. The Socio-Political Context of Historical Discrimination:

126. Contemporary issues of voting access have not occurred in an historical vacuum; the past is part of the present. This is especially for Native peoples with such a conflictual and difficult history with the dominant Anglo society; historical trauma, a deep distrust, and a sense of injustice still affect the attitudes and behaviors of Native Americans. The resulting impact on Native people sometimes creates barriers to equal participation in the electoral process. Thus,

it is necessary to understand the larger socio-political historical context in which the electoral process takes place.

127. Montana was the setting for some of the most dramatic military clashes between Native peoples attempting to protect their homelands, and incoming white settlers who coveted that land. Most of the battles of the Great Sioux War were fought in Montana (Greene. 1993). The most famous battle of the Indian wars--Custer's debacle on the Little Bighorn, occurred in Montana. Another battle in Montana that took place six years earlier was one of the worst atrocities committed by U. S. troops against Native people. Historian Peter Cozzens described what happened when troops under Major Eugene Baker attacked an innocent and unsuspecting group of Piegan (Blackfeet) Indians on the Marias River:

128. In thirty minutes of madness, women and children were shot or burned alive in their lodges.... Baker laughed as he walked through the smoldering wreckage and gazed upon the charred corpses.... Baker reported 173 Piegans killed and 140 captured at the cost of one man dead. He claimed that nearly all the Indian casualties had been warriors, when in fact he had murdered 90 women and 50 children (Cozzens. 2016: 116).

129. The war against Indians was a long, bitter, and bloody struggle, and it was not uncommon for Anglos in the western states to advocate for the total annihilation of Native people. General William T. Sherman, who was the commander of the U. S. Army at that time, opined: "we must act with vindictive earnestness against the Sioux, even to their extermination, men, women, and children" (quoted in Connell 1985: 132). That was not an uncommon sentiment. Colonel John Chivington, the officer responsible for the massacre of Arapahos and Cheyennes at Sand Creek, ordered: "Kill and scalp all, big and little; nits make

lice” (quoted in Svaldi. 1989: 9). The prevailing sentiment in the region was captured by a newspaper in North Dakota, just east of Montana: “The American people need the country the Indians now occupy.... An Indian war would do no harm, for it must come, sooner or later” (*Bismarck Tribune*. 1874: 99). After hundreds of Sioux, mostly women, children, and elderly were massacred at Wounded Knee in 1890, many western newspapers blamed the Indians and called for their removal or annihilation.¹¹ A truly vicious headline appeared in *The Union County Courier* in South Dakota: “300 Indians killed; Many Bad Redskins Made Good in a Very Few Moments” (Dec. 31, 1890). The *Argus-Leader* in Sioux Falls, South Dakota argued that “the rapid extinction of the Indians during the past century has been of great benefit to the American people,” but then admonished other western newspapers that had published sensational and inaccurate accounts of the massacre: “The papers have been filled lately with bitter denunciations of the Indians, with bloodthirsty wishes for their massacre and with threats of confiscations and annihilation” (Jan. 15, 1891). One of those Anglos making the argument for extermination was L. Frank Bauman (ironically, the famous author of *The Wizard of Oz*), who, in an editorial in the *Aberdeen Saturday Pioneer*, made this argument: “... our only safety depends upon the total extirmination [sic] of the Indians. Having wronged them for centuries

¹¹ For an accurate account of the massacre and its political ramifications, see: Heather Cox Richardson, *Wounded Knee: Party Politics and the Road to an American Massacre* (2010). Her account of what happened is quite succinct: “...the soldiers hunted down and slaughtered all the Sioux they could find, riding them down and shooting at point-blank range as they tried to escape. One woman was murdered after she had run three miles from the camp. Soldiers shot babies in their cradle-boards. The only good Indian was a dead Indian, many of the troops had been taught, and they had just turned two hundred and fifty Sioux into good Indians.” P. 11.

we had better, in order to protect our civilization, follow it up by one more wrong and wipe these untamed and untamable creatures from the face of the earth” (Giago. 2014; Hines. 2010).

130. By the end of the Indian wars, Native people in Montana had endured decades of war with incoming settlers. Atrocities had been committed by both sides, and the animosity between the races was at a fever pitch. Perhaps no one captured that sense of mutual hatred better than the famous Lakota chief Sitting Bull: “The white man never lived who loved an Indian, and that no true Indian ever lived that did not hate the white man” (quoted in Cozzens. 2016: 283).

131. It was in this deeply troubled milieu that Native people entered into treaties with the federal government and were confined to the small remnants of their traditional homelands that are known today as reservations. According to the *Montana Post*, a treaty negotiated with the Blackfeet and Gros Ventre gave to the territory of Montana “all those portions of our territory that have proved to be of any worth,” and squeezed these tribes into successively smaller reservations (quoted in Ewers. 1958: 240). But even a reservation that severely restricted Native people provoked animosity from local Anglos. When a reservation was proposed in eastern Montana in 1867, the territorial assembly fiercely opposed it: “[This reservation] would be valueless to the barbarian excepting in so far as it would enable him to glut his vengeance upon the pioneers of the border settlements and arrest the *tide of empire*”

[emphasis mine] (Hoxie. 2000: 12).¹² Other Montanans wanted Native people removed entirely. The cry of “the Indians must go” (a headline in the *Yellowstone Journal* in 1884) was a common refrain. *The Yankton Press and Dakotan* opined that the only way to achieve a permanent peace was “to remove the Indians from their reservation altogether” (Jan. 2, 1891). The Northern Cheyenne, after returning to their homeland after several miserable years in Oklahoma, “lived under the constant threat of removal between 1884 and 1900” (Svingen. 1993: 157). In 1899, the Montana state legislature requested that the federal government pass a law that prohibited Indians from leaving their reservations, effectively turning them into open-air prisons (*U. S. v. Blaine County*. 2004: 913).

132. The “tide of empire” alluded to above and the resulting reservation policy were disastrous for Native peoples; broken treaties, corrupt Indian agents, and vociferous anti-Indian agitation from locals left Indians starving, destitute, and hopeless. For example, Granville Stuart, the Montana State Historian, described what happened to the Salish Tribe: “Without a shadow of right or justice and without warning or provocation these kindly peaceable Indians were to be driven from the home that had been theirs since the beginning of time” (quoted in Kittredge and Smith, 1988:385). Chief Eneas, a resident of the Flathead Reservation, complained bitterly in 1882 about broken promises:

¹² Ironically, a year later the territorial assembly asked the government to create a reservation for the Blackfeet so that settlers could take the land the Blackfeet currently occupied, but they admitted that the Blackfeet had turned to war only because their 1855 treaty had been “utterly disregarded” by the government, and so the Blackfeet “accepted the alternative of war; their choice under the circumstances no one doubts, and but few can blame” (Indian and Aboriginal Law Commons. n.d.).

There are things that the government promised me in that treaty that I have never seen.... This is the reason we want that country [the northern half of Flathead Lake] back... we did not get one-half of the annuities that belonged to us. It was divided among yourselves. You told us that after a while we would be intelligent and rich and like white men. We are poor now. We try to have whites to assist us, and they won't because we are Indians. That is the reason we want to have the whites kept out of that Flathead Lake country (quoted in Kittredge and Smith. 1988: 357).

133. On the Fort Peck Reservation that same period of time was known as the "starving years," and the agent in charge tried to prevent "the hunger and deprivation which the Assiniboines and Sioux at the chronically underfunded agency faced almost every winter" (Smith. 2008: 111). On the Blackfeet Reservation a similar state of desperation existed: "The United States government had acknowledged responsibility for the Blackfeet in the 1855 and subsequent treaties, but agency supplies were inadequate to meet famine conditions. Up to one-quarter of the Piegan perished during the winter of 1883-1884" (McFee. 1972: 48). For the Northern Cheyenne, "reservation life proved difficult and degrading... they had great difficulty reorienting themselves" (Malone and Roeder. 1976: 108). In 1885 the Northern Cheyenne were described as "half-starved" (quoted in Svingen. 1993: 54). On the Fort Belknap Reservation, the Indian agent in 1884 described the Assiniboine and Gros Ventre people living there as a "horde of half-fed women and children" and demanded that the government "alleviate their suffering" (Hoxie. 2000: 9). In 1910, when yet again the government wanted more land excised from the reservation, a tribal leader protested: "We are dying off nearly every day, and the cause of it is that we are starving to death" (quoted in McCool. 1987: 65). In 1884 the Indian agent at the

Crow agency described the Crows as “pretty hungry,” but then added “A little starving will be good for them” (Hoxie. 1995: 139).

134. By the time Montana became a state in 1889, the relationship between Anglos and Native Americans was, to be charitable, extremely troubled. I quote from a history of the state of Montana that succinctly describes that relationship:

Except for perhaps black slavery, the white conquest of the Indian forms the most sordid chapter of American history. Historians have focused much attention upon the defeat of the Indians, but they have stressed too much the blood and thunder involved, too little the broader aspects of the question. From the Indians’ point of view, it was a genuinely tragic story, punctuated by war, disease, and fraud. But from the emotionless perspective of regional history, Indian removal marked a major turning point in the development of this area. The Indian’s loss became the white man’s gain. As the Indian lost the best of their lands, the vast reaches of Montana opened abruptly to white settlement and “development” (Malone and Roeder. 1976; 87).

135. Discrimination against American Indians in Montana would continue to be a recurrent theme throughout the state’s history, even if the Native was a war veteran. Timothy Davis, Blackfeet, described what happened to his grandfather: “My grandfather fought in World War One without even having that right to vote” (quoted in Montana Advisory Committee Hearing Transcript. 2021: 5). In 1945, U. S. Marine and code-taker Gilbert Horn returned to his home on the Fort Belknap Reservation, after fighting for his country in the Pacific. He was “treated like dirt” (Native American Code Talker. 2016). Donovan Archambault, from Fort Belknap, described what happened when he and Mark Wandering Medicine entered Judge Lynch’s chambers in an effort to settle the *Wandering Medicine* case:

Mark Wandering Medicine and I were proud to serve in our country's military. Mark saw combat as a Marine veteran in Vietnam and I was stationed with the army in Germany during the Cold War. We walked into the settlement conference as proud military veterans.... There was no respect. The judge bullied us and we got next to nothing. I thought the judge was supposed to be impartial. I thought we could get justice; instead, it appears discrimination is still alive and well in Montana and couched in the robes of justice. As soldiers and citizens we deserve better (quoted in: Schroedel. 2021: 217-219).

Laurie Kindness, a member of the Crow Tribe and currently serving in the U.S. Army, made a similar point: "when I returned from the military, I was shocked by it [the level of discrimination] and seeing what has happened.... Being a veteran, it bothers me. We Natives sacrificed our lives; we have a tradition of service and sacrifice, and this is the thanks we get? I'm going into my 21st year of service. It's [the discrimination] gotten worse recently" (Kindness. 2021).

136. In the 1970s, as Native people began to exercise their newly-won franchise, there was an "anti-Indian backlash against tribal members participating in elections... [leading to] a firestorm from Montanans who harbored anti-Indian sentiments" (Clow. 2019: 54). Timothy Davis of the Blackfeet Reservation experienced that first-hand: "They're saying there's not that racism in Montana. I recall, as a young boy going to Conrad, where it said no Indians or dogs allowed" (quoted in Montana Advisory Committee Hearing Transcript. 2021: 9). Janine Windy Boy, the President of Little Big Horn College, also experienced such treatment: "You just don't go where you aren't wanted... [being called a] "pagan, heathen, savage, or a blanket-assed Indian" (quoted in Svingen. 2002: 274). When Native voters on the Crow Reservation

filed a lawsuit in 1986, relying on the Voting Rights Act, a county commissioner made this comment: “The Voting Rights Act is a bad thing... things were fine around here, now they [Indians] want to vote. What next?” (quoted in the *San Francisco Examiner*. Oct. 5, 1986, and *The New York Times*. July 5, 1986). Timothy Davis, the chairman of the Blackfeet Nation, alluded to this: “We’ve always liked to vote in person, take it as our right, Native, first Americans, last Americans to get the right to vote” (quoted in Montana Advisory Committee Hearing Transcript. 2021: 5).

137. The 9th Circuit, in *Old Person v. Cooney*, noted: “There was a history of discrimination by the federal government and the State of Montana from the 1860s until as recently as 1971. American Indians have a lower socio-economic status than whites in Montana; these social and economic factors hinder the ability of American Indians in Montana to participate fully in the political process. These two findings are not contested by the State” (*Old Person v. Cooney*. 2000: 1129). In fact, as detailed in the next section, that discrimination did not magically stop in 1971, and continues to this day. It is a long-standing problem: “Historically, the Indian residents of eastern Montana have, individually or collectively, suffered from what has become the standard litany of abuses that may be found in most accounts of Indian history.... Discrimination and abuse are not just phenomena of the Old west---they have been and continue to be part of the Modern West” (Weber. 1989: 111).

138. This history of violent oppression, discrimination and the denial of voting rights is directly relevant to consideration of HB 176 and HB 530 because it forms the context for

contemporary voting rights and the socio-economic relationship between Native people and Anglos today. Historian Margaret Jacobs notes how the traumas of the past still shape attitudes and behaviors: “What would it be like to lose so much over so many generations? How would it feel to fear that there is no safe place, that one must always be on-guard against violence and abuse?... Many Indigenous people speak of ‘intergenerational trauma,’ as well as a fierce resilience, that passes down through the generations” (Jacobs. 2021: 9). This historical trauma, and the systemic resistance to Native voting rights, add to the long list of voter costs that Native Americans must confront to participate equally in the electoral process. These costs must be added to the socio-economic costs and the voter costs imposed by HB 176 and HB 530.

VI. QUESTION 5: Does contemporary discrimination affect the ability of Native Americans to participate equally in voting? Do Native Americans in Montana continue to face unique obstacles that prevent them from having an equal opportunity to vote and participate in the political process?

A. Voting Rights Cases in Montana:

139. One of the most effective ways to gage the fairness of elections is to examine the number of cases under the Fifteenth Amendment, the Voting Rights Act, and state law, especially those that were won by, or settled to the satisfaction of, the Native plaintiffs. Montana has a long string of such cases that reveal the continuing efforts by local Anglos to abridge or dilute the voting rights of Native Americans. This section lists 12 such cases.

a. *Simenson v. Bell* (1976). Certain counties in Montana have come under the coverage of the Voting Rights Act's Section 203, the language assistance provision (Tucker. 2009: 80, 339). Coverage is determined by the extent of non-English language use and the illiteracy rate. In *Simenson*, Roosevelt County, home of the Fort Peck Reservation, requested bail-out from Section 203 language coverage. Bailout is a provision in the VRA that allows a jurisdiction to escape coverage. In this case, the judge ruled that Roosevelt County failed to prove that illiteracy rates among Native people in Roosevelt were under the required standard, and denied bail-out.

b. *Windy Boy v. Big Horn County* (1986). Plaintiffs charged that Big Horn County, the location of the Crow Reservation and part of the Northern Cheyenne Reservation, violated Section 2 of the VRA by diluting the voting rights of Native American voters. The county used an at-large method of electing three county commissioners, so that the entire county voted for all three commissioners. This meant that, although Native voters were 41 percent of the population, they could never elect a county commissioner to represent them. The case also included two school districts. The district judge found in favor of the plaintiffs, and ordered the county to develop a district-based system of elections. He found that the evidence presented "tends to show an intent to discriminate against Indians," found evidence of discrimination against Indians, and concluded that elections in Big Horn County were "race conscious" and "racially polarized." Most importantly, he ruled that "official acts of discrimination... have interfered with the rights of Indian citizens [in Big Horn County] to register and vote." As a

result of the case, three new single-member districts were created and the county elected its first Native American to the Big Horn County Commission.

c. *Alden v. Rosebud County Board of Supervisors* (2000). Plaintiffs argued that the at-large districts for the county commission violated Section 2 of the VRA. The county agreed to a settlement that created three single-member districts.

d. *U.S. v. Roosevelt County* (2000). Plaintiffs from the Fort Peck Reservation argued that the at-large districts for the county commission violated Section 2 of the VRA. The county agreed to a settlement that created three single-member districts. In the settlement, the parties agreed that the plaintiffs “could present evidence sufficient to establish a *prima facie* showing the Indian citizens in Montana and Roosevelt County have suffered from a history of racial discrimination in voting and other areas” (Consent Decree. 2000: 3).

e. *Matt v. Ronan School District* (2000). Plaintiffs from the Flathead Reservation argued that the local school board’s at-large election system violated Section 2. The school board agreed to a settlement that created single-member districts.

f. *Old Person v. Brown* (2000, 2002). This case involved actions by the state’s Districting and Apportionment Commission. This was a very complex case that lasted six years, and the 9th Circuit began its decision with this statement: “We enter again the turbulent and at times turbid waters of voting rights litigation.” In 1990 the Commission consisted of five Anglos; no Native person had ever served on the Commission. The Commission’s deliberations included anti-Indian banter, and one of the commissioners issued a threat to the demographer who

developed a proposal on behalf of Native voters (*Old Person v. Clooney*, Plaintiffs Exhibit. 1992). The dispute was over whether the Commission should create additional Indian-majority districts in the state legislature. The Commission had adopted a redistricting plan “that ‘cracked’ the population from five different reservations,” including splitting the Flathead Reservation into eight legislative districts (Schroedel. 2020: 56).

140. The plaintiffs from the Flathead and Blackfeet Reservations claimed that the 1992 re-districting plan diluted Native voting strength. One of the commissioners admitted that voters were racially polarized: “There is polarization in almost everything we do” (Plaintiffs Exhibit 46, p. 10). The District Court dismissed the complaint, but noted that there was a “history of official discrimination against American Indians during the 19th century and early 20th century by both the state and federal government” (*Old Person*. 1998. Slip Op. p. 39). The 9th Circuit reversed much of the District Court’s decision and remanded it for further consideration. The District Court again dismissed the complaint, but noted the presence of official discrimination, and also noted that racial appeals in elections had occurred: “in at least two recent elections in Lake County, which is within the four districts challenged on appeal, there had been overt or subtle racial appeals” (*Old Person II*: 1129). This time the District Court’s decision was upheld by the 9th Circuit. However, the case was effectively rendered moot when a new Commission was seated in 1999 that included one Native member who was chosen by the Montana Supreme Court.

g. *U.S. v. Blaine County* (2004). This was a Section 2 case against the county's at-large voting system for county commissioners. Even though each of the three commissioners represented specific geographical areas, each had to stand for county-wide election. In an initial ruling on a request for summary judgment, the judge noted that "there is ample evidence that American Indians have historically been the subject of discrimination in the area of voting" (*U.S. v. Blaine County* 2001: 1152). In the Court's final ruling, which found in favor of the plaintiffs, the judge cited "extensive testimony at trial relating to the history of official discrimination" (*U. S. v. Blaine County* 2002: 15). The county appealed the verdict, claiming that Section 2 is unconstitutional. The Appeals Court rejected that argument and quoted Supreme Court Justice Sandra Day O'Connor: "[It] is the sad reality that there still are some communities in our Nation where racial politics do dominate the electoral process" (*U. S. v. Blaine County* 2004; 907). The case resulted in the county adopting a single-member district system, and the county's first Native American was elected soon thereafter.

h. *Wandering Medicine v. McCullough* (2014). This case arose from a request to the Montana Secretary of State to open one satellite voting office on three reservations (Fort Belknap, Crow, and Northern Cheyenne) to facilitate late in-person registration and early voting. The request was denied, and the Native plaintiffs filed suit in an effort to force the state to provide satellite offices. The plaintiffs based their claim on the 14th Amendment's equal protection clause, the Montana Constitution's Article II, which guarantees that "all elections shall be free and open," and the Voting Rights Act's Section 2 that prohibits the "denial or

abridgement of the right of any citizen of the United States to vote on account of race or color” (*Wandering Medicine v. McCullough*. 2012. Complaint). This case focused on the unique difficulties faced by Native Americans in accessing voting sites and thus is especially relevant to the case at-hand.

141. The U. S. Justice Department’s Voting Section filed a “Statement of Interest” in this case, pointing out that the Voting Rights Act prohibits “unequal access to voter-registration sites” (*U.S. v. Wandering Medicine* 2012: 5). Their brief quoted the 1982 Senate Report: “...the question whether the political processes are ‘equally open’ depends upon a searching practical evaluation of the ‘past and present reality’” (Statement of Interest, p. 6), and emphasized: “Native American voters in the three counties are *much* farther from the late registration and voting sites than their white peers, and they are *much* less likely to have the resources necessary to bridge the gap” (Statement of Interest, p.8).

142. District Court Judge Richard Cebull denied the plaintiff’s motion, but admitted that “It is undisputed that it [sic] Native Americans living on the three Indian Reservations face greater hardships to in-person absentee voting than residents of the three counties who do not live on the reservations” (*Wandering Medicine v. McCullough*. 2012. Order Denying, p. 2), and that “it is well established that there has been a history of official discrimination in Montana” (Order Denying, p. 9). The Court also found that “it is well-established... that poverty, unemployment, and limited access to vehicles render it difficult for residents of the three reservations to travel to the county seats to register late and cast in-person absentee ballots”

(Order Denying, p. 11). However, Judge Cebull denied the motion because “there is insufficient evidence of discriminatory intent” (Order Denying, p. 3), the fact that Native Americans had been elected to office, and the satellite offices would impose “great cost” on the defendants (Order Denying, pp. 18-19). The plaintiffs successfully appealed Judge Cebull’s decision to the 9th Circuit.

143. Not long after Judge Cebull issued his opinion he was forced to retire when it was discovered he had sent hundreds of racist and inappropriate emails to people using his court email address (*In Re: Complaint of Judicial Misconduct*. 2013; *In Re: Complaint of Judicial Misconduct*. 2014). Before the case could be re-tried in the District Court, the defendants in 2014 agreed to open an “alternate election administration office” on each of the three reservations involved in the litigation, for two days a week. These offices “will provide in-person late registration and in-person absentee voting” (*Wandering Medicine v. McCullough*. 2014).

i. *Jackson v. Wolf Point School District Board of Trustees* (2014). The principle of “one person, one vote” requires a roughly equal number of residents in each voting unit to achieve an equitable distribution of voting power. The Wolf Point High School District 45A, which is on the Fort Peck Reservation, deviated wildly from this standard. This deviation tended to favor that portion of the school district with a larger percentage of Anglo voters. The plaintiffs in the case were all American Indians (Plaintiff’s Complaint 2013). The defendants admitted the school district was malapportioned, and agreed to a settlement that reduced the deviation to

within a legally permissible 1.54 percent. This settlement eliminated two existing seats on the board, created one trustee position elected at-large, and five trustees elected from single-member districts (*Jackson*, Consent Decree. 2014).

j. *Western Native Voice v. Stapleton* (2020). This case, like the case for which this report is offered, concerned a state law that placed significant limits on ballot assistance via the “Ballot Interference and Protection Act” (BIPA). Native plaintiffs argued that BIPA violated the Montana state Constitution. The Thirteenth Judicial District Court noted that “reservations are home to thousands of Montana voters who lack equal access to the ballot and who experience greater barriers to casting mail ballots (both absentee and ballots in mail-only election) than do other Montanans” (2020: 6). The Court further noted that the plaintiff organizations collected 853 ballots on Indian reservations, which was “fully 9-10% of total absentee ballots cast in precincts targeted by Organizational Plaintiffs” (2020: 23-23). BIPA was passed based on the claim that it would prevent ballot fraud, but the Court found that “Voter fraud has historically been rare, if not nonexistent in Montana,” and noted that the Montana Commissioner of Political Practices, Jeff Mangan, only knew of one instance of voter fraud and that one case involved a signature, not ballot collection (2020: 28-29).

144. In finding for the plaintiffs, the Court found that “the facts presented at trial clearly demonstrate that the limitations, burdens and voter costs imposed by BIPA on Native American and rural voters in Montana are not reasonable, are discriminatory and are not justified by any documented regulatory interests” (2020: 47). The Court also found that BIPA

“violates Organizational Plaintiffs’ and Plaintiff CSKT’s fundamental right to freedom of speech” (2020: 48) and their “right to due process of law” (2020:61). The Court concluded: “BIPA is unconstitutional and is hereby permanently enjoined” (2020:61).

k. *Driscoll v. Stapleton* (2020). This case also involved BIPA, and was brought by the Montana Democratic Party, but included claims regarding Native American voters. The plaintiffs won in district court and the Secretary of State appealed to the Montana Supreme Court. In its ruling, the Supreme Court provided a succinct summary of the barriers to voting faced by Native Americans in Montana:

Democrats also presented evidence to demonstrate that the importance of absentee ballots and ballot-collection efforts is more significant for Native American voters than for any other group. Disregarding BIPA’s possible impact, Native American voters as a group face significant barriers to voting: many live far away from county elections offices and postal centers; many have limited access to transportation; many have limited access to postal services, lacking residential mailing services and using Post Office boxes instead, which brings associated costs and travel; mail for those living on reservations may take longer to reach its destination than for other voters in the state; some reservations lack a uniform and consistent addressing system, which makes it difficult for residents to register to vote; and many experience higher rates of poverty. Further, despite satellite voting locations on some reservations, this requires tribes to submit annual written requests, a significant administrative hurdle, and typically those locations still are located quite far from many Native American voters. (2020: 4-5).

The Court then noted that Secretary Stapleton “has pointed to no evidence in the preliminary injunction record that would rebut the District Court’s finding of a disproportionate impact on Native American voters, and he leaves the contention largely undisturbed in his briefing on appeal” (2020: 14).

145. The Montana Supreme Court also investigated the claim that BIPA was justified due to concerns about voter fraud: “The Secretary asserts on appeal, as he did before the District Court, that the State has important interests to ensure voter confidence in the electoral process and to guard against abuses of that process. But he did not present evidence in the preliminary injunction proceedings of voter fraud or ballot coercion, generally or as related to ballot-collection efforts, occurring in Montana” (2020: 14).

146. The Supreme Court concluded that the “District Court did not err in finding prima facie evidence that BIPA may unconstitutionally burden the right of suffrage, particularly with respect to Native American communities” (2020: 14).

I. *Blackfeet v. Stapleton* (2020). The Blackfeet Nation sued the Montana Secretary of State because of “Defendants’ refusal, despite timely requests, to establish a site that provides in-person voter registration, in-person early voting, and Election Day voting (hereinafter “satellite office”) on the Blackfeet Indian Reservation” (Complaint, 2020: 2). Pondera County only offered in-person voting at the county seat in Conrad, a drive that can be quite lengthy and dangerous for some reservation voters. Three days after the suit was filed, the defendants agreed to the plaintiffs’ request to place a satellite office on the reservation, and the case was dismissed (Justia Oct. 14, 2020; Bolton. 2020).

147. Together, these cases demonstrate that Montana has a long history of discrimination against American Indians that continues to this day, and that discrimination has

a direct impact on their right to vote and participate in the political system. Discriminatory laws and actions, by design, make it harder for Native people to vote. This history of institutional discrimination is part of the political milieu that Native voters must enter when they visit border towns and other off-reservation sites to register and vote. The freedoms that were eliminated by HB 176 and HB 530—making one trip to town to both register and voter, and the use of a paid ballot collector—were effective ways for tribal members to reduce their interaction with a system that has not always treated them fairly or with open arms. These cases also demonstrate that tribal members often have to resort to litigation to make elections fair for all voters, including Native Americans.

B. The Socio-Political Context of Contemporary Discrimination:

148. Today, racism is often expressed in a much more subtle way than in the past (Dick and Wirtz. 2011; Hills. 2008). However, there are exceptions--Judge Cebull's emails, for example (Adams. 2014). And some overt expressions of racism, such as a swastika painted on a historic sign about Native people, or a man costumed in a KKK robe at a bar in a border town, may seem trivial, but each one sends a message, and those messages accumulate over time (Mabie. Nov. 2, 2020d; Maki. 2021).

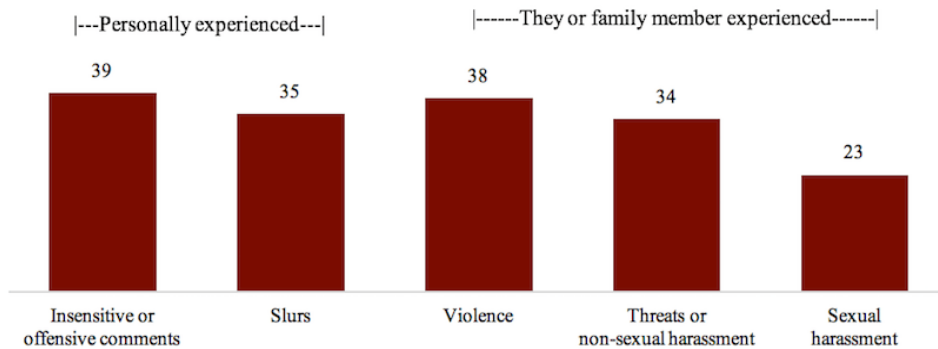
149. There is a long and troubling history of Native Americans being exposed to racism in "border towns"—Anglo communities that are in, or near, Indian reservations. This is not a new problem. The U. S. Supreme Court made note of this in the famous case of *U. S. v.*

Kagama: “They [Indian tribes] owe no allegiance to the states, and receive from them no protection. Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies” (1886). The 1961 U. S. Commission on Civil Rights Report, “Justice,” noted that: “The degree of hostility in communities adjoining Indian reservations is usually in inverse proportion to the distance of the locality from reservation boundaries” (U. S. Commission on Civil Rights 1947: 135). In 1994, anthropologist David Brugge also commented on border towns: “The role of prejudice as a political weapon derives, of course, from its potency in society at large.... In the present century, in the reservation border towns, such stereotypes are especially pervasive....” (Brugge. 1994: 252).

150. A recent national opinion survey confirmed the claim regarding border towns; it found that, the closer non-Indians live to Indian reservations, the less sympathy they have for positive Native narratives: “Proximity to Indian Country is also an indicator of attitude and perception. In focus groups, people living near Indian Country freely admitted their biases” (Reclaiming Native Truth. 2018: 23). Support for a positive narrative regarding Native people was fairly even across the U. S., except western regions: “People living in the Plains and the Southwest region were least likely to report recognizing that Native Americans face ongoing discrimination and ranked as least supportive of issues facing Native Americans.... [V]oters in rural parts of a state with a relatively high percentage of Native Americans showed less respect for tribal sovereignty and rights than did voters in more urban parts of the same state” (2018: 49-50).

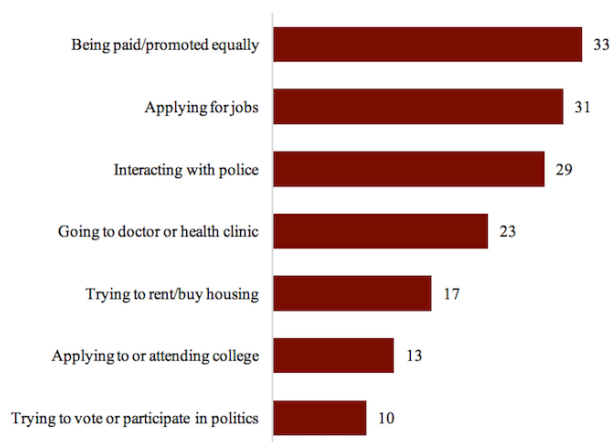
151. A recent study conducted by the Harvard School of Public Health found that one in three Native Americans has experienced racism (Harvard. 2017). The results of that study are presented in the following two charts:

Chart 1:
Percent of Native Americans Reporting Various Forms of
Individual Discrimination Because of Their Race or Ethnicity



The Harvard study also examined specific situations where discrimination occurs, including voting (Harvard. 2017):

Chart 2:
Percent of Native Americans Saying They Have Ever Been Personally
Discriminated Against In Each Situation Because They Are Native



This study indicates that 10 percent of Native people have experienced discrimination when attempting to vote or participate in political activities; that is a substantial number that could affect the outcome of local and state races where there is a significant number of Native voters and the elections are competitive.

152. Montana is not an exception to this phenomenon. A 2019 report by the Montana Advisory Committee to the U.S. Commission on Civil Rights documented border town discrimination. The Commission hearings revealed “anecdotal evidence suggesting continued disparity and or discrimination in the area of education, health care, voting, and the administration of justice.... The perception of unfairness among Native Americans is so pervasive that it negatively affects Native Americans’ experiences in border towns” (Montana Advisory Committee. 2019: 1). A subsequent report by the Montana Advisory Committee, which focused specifically on voting, found that “Relationships between tribal governments and county government agencies range from good to contemptuous” (Montana Advisory Committee. 2021: 13). These county government are often in border towns.

153. This is critically important because border towns are where Native people go to register to vote, to pick up election materials, and to cast in-person absentee ballots. This could have a suppressive effect on voters who are reluctant to enter social spaces where they feel unwelcome or unwanted. One tribal member described how hostility in border towns suppresses Native participation in elections: “The native population turns its back on systems that are hostile to it. It’s incredibly hard to get them engaged” (McDonald. 2020). Overcoming

such hostility is an additional burden of voting in such circumstances. Tribal members have expressed their frustration, and poor relations with, county government in border towns:

> “some border towns are still not friendly and welcoming and they slander. Politics is now very tense. We still have that judgment placed upon us. If you see the comments on news articles [about Native people], they’re negative” (Sooktis. 2020).

> “And border towns are unfriendly. An example was when we were doing GOTV, the way the county people treated people who are Native” (McLean. 2020).

> “I believe that the elected administrator in Glacier County, who refused to provide drop boxes and the County commissioners in Pondera County, who refused to engage with us and who tried to obstruct our access to the means of our vote, were very discriminatory” (Timothy Davis, quoted in Montana Advisory Committee Hearing Transcript. 2021: 9).

> “Lake County, which is the majority of the reservation, ultimately we have a pretty contemptuous relationship.... The counties, in my opinion, it’s kind of a hostile environment there” (Shelley Fyant, quoted in Montana Advisory Committee Hearing Transcript. 2021: 21, 24).

> “...in our county [Big Horn], yes. And that’s... just a reality [racial tension]. We’re—you know, this is a border town. Hardin’s a border town. There’s been a lot of racial tension since people were put on reservations. So, yeah, there is racial tension here still to this day” (Bear Don’t Walk, deposition. 2021: 71).

154. Every Native person I interviewed indicated that discrimination is a persistent problem, including its impact on voting, and it is not limited to border towns. The president of Lane Deer College, when interviewed for the Montana Advisory Committee, said that all of Montana is a border town because “discrimination and profiling happens from one end of the state to the other” (Montana Advisory Committee. 2017: 5). Mark Wandering Medicine, the lead plaintiff in the eponymous lawsuit, said, “The intimidation I faced as a lead plaintiff, I

wouldn't want to wish it on anybody" (Montana State Tribal Relations Committee. 2019). And complaints have been filed regarding discrimination in Montana's public schools (Waldman. 2018; Title VI Complaint Fort Peck Tribes. 2017).

155. It is not always easy to judge who is a racist and what organizations are racist, given the more nuanced language that is employed by many groups these days. Often racist groups develop a patina of respectability by couching their prejudice in language that incorporates social ideals such as equality and freedom. Rebecca Anderson, the former president of the First Nations Development Institute, wrote that: "Indian hatred nowadays is faceless, oblique, bureaucratic. It comes at us from strange angles, the edges rounded with reasonability" (Quoted in Montana Human Rights Network. 2000: 10). A case in point is a group called Citizens for Equal Rights Alliance (CERA), which organized a conference in 2019 in the small Montana town of Whitefish. They pointedly claim they are not racist, but advocate to "change federal Indian policies that threaten or restrict the individual rights of all citizens living on or near Indian reservations" (Citizens for Equal Rights Alliance. 2021). The group is associated with far-right conspiracy theories. For example, Elaine Willman, a board member and former chair of the group claimed that the proposed water settlement for the Flathead Indian Reservation is a "template for implementing communalism and socialism consistent with Agenda 21, and that it is intentionally aligned to spread tribalism as a governing system while eliminating State authority.... It is my belief that Montana is Ground Zero for test-driving this

model” (Southern Poverty Law Center. 2016; Montana Human Rights Network. 2000: 7).¹³

Despite the group’s disavowal of racism, it is certainly *perceived* to be racist by the Native American community, and the group has had a long and controversial presence in Montana (see: Smith. 2018; Tanner. 2016; Devlin. 2015; Native News Online. 2015; Chavers. 2011).

156. The presence of groups that are overtly racist, or at least perceived to be anti-Indian, has been documented for nearly three decades. In 1994, the Montana Advisory Committee to the U. S. Commission on Civil Rights published a report titled “White Supremacist Activity in Montana” (1994). The Report lists 22 organizations it identifies as white supremacist. That list includes CERA, All Citizen’s Equal (ACE), and Protect American Rights and Resources (PARR), which the report described as “alleged to have specifically engaged in anti-Indian activities” (1994: 2). The report contains a section titled “The Native American Perspective,” which begins with this claim: “Indian nations located in the Pacific Northwest have been the target of increased challenges from right-wing and extremist groups. They have had to contend with racial attacks, organized efforts at political destabilization, and increasing incidents of individual harassment, destruction of property, and public misinformation” (1994: 30). On page 30, the report introduces a new group that it considers anti-Indian: Montanans Opposed to Discrimination (MOD).

¹³ The Confederated Salish and Kootenai Tribes Compact can be viewed at: <http://dnrc.mt.gov/divisions/reserved-water-rights-compact-commission/confederated-salish-and-kootenai-tribes-compact>

157. Six years later another report on anti-Indian groups was published by the Montana Human Rights Network (2000). Titled “Drumming Up Resentment,” it begins with a story about a woman attending a class at a technical college. When the subject of American Indians came up, she said, according to the author of the report, “Why is it that we taxpayers have to give Indians money just for being Indians?.... They’re all lazy drunks anyway.” (Montana Human Rights Network. 2000: 3). This report also refers to CERA and MOD as anti-Indian groups, along with the Interstate Congress for Equal Rights and Responsibilities (ICERR), and a group called Totally Equal Americans (TEA) (2000: 7). The remainder of the report details the establishment, growth and multiple name-changes of several groups it labels anti-Indian. Montanans Opposed to Discrimination (MOD) was particularly active around the Flathead Reservation, and then opened a chapter near Fort Peck (2000: 16). The report quoted a letter (from May 10, 1990) to the *Ronan Pioneer* to illustrate some of the attitudes: “The Indians are conquered people and I don’t owe any of you anything” (2000: 17).

158. Another study was published in 2018 by the Montana Human Rights Network. It makes the argument that groups such as CERA, and a similar Montana-based group called All Citizens Equal, are hate groups and should be declared as such. To make their point, the report includes statements made by members of CERA and other groups they perceive to be racist. I include a few them in this report with the disclaimer that I cannot independently verify them:

> “When you compare the characteristics of an addictive organization to the characteristics of tribal government, they are the same: confusion, dishonesty, control, and abnormal thinking processes.” CERA News, Feb. 2001.

> “The UN is using tribes as pawns to facilitate the dismantling of our country, and of course, tribes are ever so willing....” Elaine Willman, former CERA chair, Jan. 27, 2017.

> “We have 270 sanctuary cities fully infiltrated by the Muslim Brotherhood. We now have 340 Indian reservation targets, soft quiet spaces, to further infiltrate this country with Muslims.” Elaine Willman, in a video posted by the Montana chapter of Oath Keepers.

> “When is White History Month? 100% White. 100% Proud.” The Facebook page of Skip Palmer (for verification, see: Martin. 2016).

It is beyond the scope of this report to determine conclusively who is right in the conflict between tribes and CERA and other “citizen rights” organizations. But it is relevant that such conflict creates an environment of mutual hostility and polarization between Anglos and Indians. As Dulcie Bear Don’t Walk explained, “...distrust of the system is a big thing” (Bear Don’t Walk, deposition. 2021: 68). And Native Americans, like all people of color, are potential victims of white nationalists; the state of Montana’s official “Brief History of Montana” noted that, while the state has “experienced the building of bridges with Indian communities,” it also has to deal with “the emergence of white-supremacist cells” (Montana Brief History. n. d.).

159. Another method of assessing the extent of discrimination is to simply ask Native people:

> “It [the HB 530 prohibition on paying ballot collectors] makes us feel sad, makes us feel like we’re missing out.... I almost feel like we’re going back into a century where, next thing they’re going to say is, ‘Indians can’t vote’” (Laura Roundine, quoted in Trevellyan. 2021).

> “Like when you go into a store and they follow you around to see if you’re going to shoplift, that’s the way I felt when I went to vote. I prefer to vote absentee ballot because of that reason” (Rhonda Sweeney, quoted in Montana Advisory Committee Hearing Transcript. 2021: 4).

> “Voter suppression is alive and well in Montana. Montana has long been resistant to protecting the rights of Native Americans to vote” (Andy Werk, President of Fort Belknap Indian Community, quoted in Montana Advisory Committee Hearing Transcript. 2021: 12).

> From Dulcie Bear Don’t Walk, Elections Administrator for Big Horn County: “I had Native voters who refused to give their ballots to my deputy because she wasn’t Native. And I had non-Native voters who refused to give their ballots to me because I was Native. So it’s...sad to say that that’s still something that exists here, but it does. That is a difficulty in rural Montana that there’s distrust between everybody” (Bear Don’t Walk, deposition. 2020:70).

> “There’s just a lot of discrimination here, let’s be honest [on the Flathead Indian Reservation]” (Fyant. 2020).

> “Since 1910, we became a minority on our own reservations. We have a long history of being pushed around and being powerless.... My son is a senior in that school district [on the Flathead Indian Reservation]; he hears the n----- word every day. He also hears prairie n-----; the teachers don’t acknowledge a problem.... The ether of this community that surrounds Polson is racially tinged; Indian people believe there is tons of racism in Polson. That affects attitudes; very few Native people feel comfortable there.” (McDonald. 2020).

> “Discrimination is heavily prevalent, especially on this reservation. We have a history of KKK and white nationalists. But it’s also in government and policy and local county commissioners” (Yawakie. 2020).

> “The political system, the benefit system, has taken more of a discriminatory turn; it’s getting worse.... When I ran for state legislature, in Great Falls, I was having a conversation with a guy on his front porch; he said: I can’t vote for you because your Native and I only vote for white people. I know there are people where I’m from, Rocky Boy’s, that when they go into Havre and the border towns, they make them prepay at gas stations, they follow them in stores, even in Great Falls when Native people come to town there, they run into hotel managers who say they don’t rent rooms to Natives, or they’ll set higher rates” (Sunchild. 2021).

> “Yes, there is discrimination. There’s systemic and structural racism, not very blatant, but the laws discriminate. Border towns, there is some awful types of discrimination that take place.... It’s just the general interactions that make them [Native Americans] feel uncomfortable. For example, people don’t trust the hospital in Havre, so they go to Great Falls” (Vazquez. 2021).

> “Without a shadow of a doubt, discrimination is still prevalent in Montana. I live it every time I step out of the reservation lines.... Especially during my service to my people for voting [as a ballot collector and in election services] I’d see it, and store attendants following me, racial

slurs at basketball games. We have a Lodge Grass team and a Hardin time of Crow people; the fans on the other side will make fun and say things such as prairie n-----. That is heard often. That hurts me; we're supposed to be living in a place on one plane, equal. Things are worse in the border towns. We've had issues, we call them the sundown towns—like Hardin; you don't want to go there at night, especially if you have 22 plates; you might be profiled. I got stopped for a cracked tail light, a hairline crack.... Going into the legislative session, the environment is hard to deal with; you can feel it, the discrimination" (Kindness. 2021).

> "During high school games that my cousins told me about, when a Native team is playing and the other team is white, they would be called prairie n-----. Billings is kind of a border town, although it's an hour away because a lot of people from the reservations shop there because the reservation is a food desert. I was heckled in a park there while walking my dog. A lot of those people are feeling emboldened. I've heard some negative encounters at the satellite offices. I think some of that is racially motivated" (Killsback. 2021).

160. What is clear is that racial polarization, discrimination, and racism work against the goal of equitable access to the political process. Voting requires Native people to interact with non-Native people who may be prejudiced, either overtly or subtly. The goal of fair elections that offer an equal opportunity for all citizens, regardless of race, to participate and elect candidates of their choice are affected by the history and discriminatory attitudes analyzed in this report; they add to the calculus of voter costs. Those costs must be added to the additional voter costs imposed by HB 176 and HB 530 to gain a full understanding of their full impact. By adding together all of these costs, it becomes obvious why these new laws have a disproportionately negative impact on Native American voters.

VII. CONCLUSION

161. Native peoples have inhabited the region that is now known as Montana for "six hundred generations" (Davis. 2019). But for the last 130 years they have been forced to "adopt

the habits of civilized life” (Dawes Act, 1887). One of those “habits” is participation in a republican form of government, including voting for one’s choice of candidates. A central pillar of our way of life, the “habit” of participating equally in elections, would prove to be extremely difficult for Native people to adopt because of resistance from the white community. However, with the passage of the Fifteen Amendment, the equal protection offered by the Fourteenth Amendment, and legislation such as The Voting Rights Act, Native people have worked to gain an equal right to vote and elect candidates of their choice. This report chronicles the difficulties of that effort.

162. In the famous case of *Reynolds v. Sims*, the U. S. Supreme Court noted the significance of the right to vote in free and fair elections: “The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government” (*Reynolds v. Sims*. 1964: 555).¹⁴ It is obvious from the materials gathered for this report that an important element in that “vote freely” concept is the right to freely choose how one’s ballot gets delivered. The freedom to choose to rely on a paid ballot collector who comes to a voter’s door is part of that freedom. Depriving a ballot collector of their income makes that exchange nearly impossible.

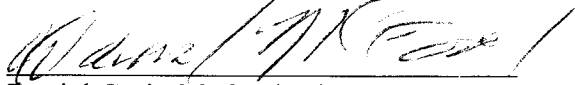
¹⁴ Montana case law also recognizes the centrality of the right to vote in our way of life, referring to the right to vote as a “fundamental right” (Johnson, 271 Mont. at 4, 894 P.2d at 273-74). Indeed, many states recognize that “free and open” elections are a fundamental right; see: Douglas (2014).

163. At the heart of the issue being considered here is the nexus between *access* to the ballot box and the denial of the right to vote. This connection has long been at the center of the struggle for equal voting rights. In the 1950s and early 1960s, Black citizens in the South technically had the right to vote, but when they went to the polls they encountered hostile law enforcement, violent mobs, and racist election officials. They had the technical *right* to vote, but they could not *access* that right to vote. Native Americans in Montana face a daunting list of voter costs when they attempt to vote and overcome problems of access; the state legislature just added two more with HB 176 and HB 530.

164. The evidence that I have compiled for this report leads me to conclude that Native Americans in Montana have the right to vote, but they face significant problems of *access* due to distance, poverty, racism, discrimination, and electoral design features such as HB 176 and HB 530. These are very real barriers. If a voter cannot take his/her ballot to a mailbox or an election office, and others are effectively prohibited from assisting them by collecting and delivering that ballot, they effectively cannot vote; a ballot that is not delivered is a ballot that does not count. A person who is eligible to vote but faces significant barriers to registration and voting is effectively denied the right to vote.

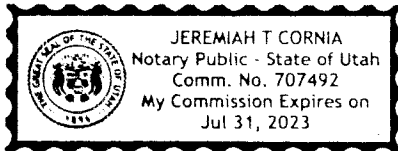
165. It is my professional opinion, after having consulted 336 sources, that the most significant impact of HB 176 and HB 530 will be to increase voter costs and lower turnout, and the impact will be felt mostly heavily by Native Americans and other groups that share some of the socio-economic factors that are typical of Indian Country. In short, these new laws will

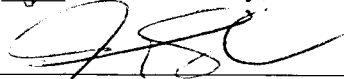
make it harder for people to vote. Both laws are a targeted diminution in freedoms associated with elections; each law deprives citizens of an option that is helpful to Native American voters. The claimed benefit is a chimera; there is absolutely no evidence that these laws improve election integrity or reduce voter fraud. In terms of traditional policy analysis, the voter costs of HB 176 and HB 530 are significant and the benefits are zero. The costs of these laws will also be felt by the elderly, students, people with disabilities, and all people who live in remote rural areas. However, it is the Native American citizens of Montana who will bear the greatest burden created by HB 176 and HB 530, due to the factors outlined in this report.


Daniel Craig McCool, Ph.D.

STATE OF Utah
COUNTY OF Weber

DATE: Signed and sworn to before me on this 6 day of January, 2022.




Notary Public

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

	AI/AN Rate 2009-2011	U.S. All Races Rate - 2010	Ratio: AI/AN to U.S. All Races
ALL CAUSES	999.1	747.0	1.3
Diseases of the heart (Heart Disease)	194.7	179.1	1.1
Malignant neoplasm (cancer)	178.4	172.8	1.0
Accidents (unintentional injuries)*	93.7	38.0	2.5
Diabetes mellitus (diabetes)	66.0	20.8	3.2
Alcohol-induced	50.0	7.6	6.6
Chronic lower respiratory diseases	46.6	42.2	1.1
Cerebrovascular diseases (stroke)	43.6	39.1	1.1
Chronic liver disease and cirrhosis	42.9	9.4	4.6
Influenza and pneumonia	26.6	15.1	1.8
Drug-induced	23.4	15.3	1.5
Nephritis, nephrotic syndrome (kidney disease)	22.4	15.3	1.5
Intentional self-harm (suicide)	20.4	12.1	1.7
Alzheimer's disease	18.3	25.1	0.7
Septicemia	17.3	10.6	1.6
Assault (homicide)	11.4	5.4	2.1
Essential hypertension diseases	9.0	8.0	1.1

	AI/AN Rate 2009-2011	U.S. All Races Rate - 2010	Ratio: AI/AN to U.S. All Races
<p>* Unintentional injuries include motor vehicle crashes.</p> <p><i>NOTE: Rates are adjusted to compensate for misreporting of American Indian and Alaska Native race on state death certificates. American Indian and Alaska Native age-adjusted death rate columns present data for the 3-year period specified. U.S. All Races columns present data for a one-year period. Rates are based on American Indian and Alaska Native alone; 2010 census with bridged-race categories.</i></p>			

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

Appendix B

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EDUCATION

Ph.D. (1983) University of Arizona (Political Science)

Dissertation: "Indian and Non-Indian Water Development."

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

M.A. (1978) University of Arizona (Political Science)

M.A. Thesis: "The Budgeting Problems of the National Park Service."

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

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

Language Training: Spanish

WORK EXPERIENCE

2017-present	Professor Emeritus, Political Science, University of Utah
1996-2017	Professor of Political Science, University of Utah
2003-2015	Director, Environmental and Sustainability Studies Program
2011-2014	Co-Director, University of Utah Sustainability Curriculum Development
1998-2007	Director, American West Center
1989-1996	Associate Professor of Political Science, University of Utah
1990-1993	Associate Dean, College of Social and Behavioral Science
1987-1990	Director of Public Administration Education, Center for Public Policy and Administration, University of Utah

1987-1989	Assistant Professor of Political Science, University of Utah
1983-1987:	Assistant Professor, Texas A&M University
1982-1983:	Visiting Lecturer, Texas A&M University
Spring, 1981:	Lecturer for the American Indian Education Program, University of Arizona
1978-1982:	Research and Teaching Associate, Political Science Department, University of Arizona
June--Oct., 1978:	Volunteer English Instructor for Project Ayuda in Cunen, Guatemala (7th, 8th, and 9th grade Mayan Indian students).
1976-1978:	Research Assistant, Political Science Department, University of Arizona.
1973-1974:	Research Assistant, Southwest Indian Youth Center, Tucson, Arizona.

PUBLICATIONS

Books:

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

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

Runner-up, Science Category, Green Book Festival.

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

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

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

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

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

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

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

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

Journal Articles:

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

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

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

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

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“Social Science Expert Witness Testimony in Voting Rights Cases,” with Richard Engstrom, Jorge Chapa, and Gerald Webster. *National Political Science Review*. 17, No. 1 (2015).

“Institutionalizing Interdisciplinary Sustainability Curriculum at a Large, Research-intensive University: Challenges and Opportunities,” with M. Ward, A. Cachelin, B. Bowen, and S. Burian. *Journal of Environmental Studies and Sciences* (Aug. 2015).

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“Campus Sustainability in the U. S.: A Comparison of a Research and a Teaching University” with Janet Winniford. *International Journal of Environmental, Cultural, Economic, and Social Sustainability* (Vol. 6, No. 4, 2010).

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"As Dams Fall, A Chance for Redemption." *Water in the 21st Century West*, edited by Char Miller. Oregon State University Press, 2009: 65-70.

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"The Relevance of Management Information Systems to Policy Choices: Lessons for the Bureau of Land Management" with Helen Ingram, in *Developing Strategies for Rangeland Management*, edited by the National Research Council and the National Academy of Science, Westview Press, Boulder, Colorado (1984): 1785-1809.

Report:

“Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters,” with James Tucker and Jacqueline De León. Published by the Native American Rights Fund. 2020. https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf

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MEDIA PUBLICATIONS

"As Climate Changes Parches the Southwest, Here's a Better Way to Share Water from the Shrinking Colorado River." *The Conversation*, Nov. 17, 2021. <https://theconversation.com/as-climate-change-parches-the-southwest-heres-a-better-way-to-share-water-from-the-shrinking-colorado-river-168723>

"I Thought I Knew a Lot: Contemplations on SCREE." In: *A River Out of Time*, edited by Thomas Minckley, Patrick Kikut, and Jessica Flock. <https://www.blurb.com/b/10871283-a-river-out-of-time> 2021.

Utah's Outstanding Rivers Deserve Recognition," with Tim Palmer. *The Salt Lake Tribune* (Sept. 9, 2017). <http://www.sltrib.com/opinion/commentary/2017/09/09/commentary-utahs-outstanding-rivers-deserve-recognition/>

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"Utah Rules of the Road." *Salt Lake City Weekly* (Oct. 28, 2015). <http://www.cityweekly.net/utah/utah-rules-of-the-road/Content?oid=3047281>

"3 Myths Power Effort to Give Federal Lands to Utah." Op-Ed, *Salt Lake Tribune* (July 3, 2014) <http://www.sltrib.com/csp/cms/sites/sltrib/pages/printerfriendly.csp?id=58143192>

"What Gettysburg Means to America Today." Op-Ed, *Salt Lake Tribune* (July 12, 2013).

"The Big Shakeout and a New Water Ethic. *RMS Journal* 26, No. 3 (Fall, 2013): 18-19. <http://www.river-management.org/assets/Journals-Newsletters/2013fall.pdf>

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"Saving for the Future: Making a Commitment Now to Preserve Great Salt Lake." *Friends of Great Salt Lake Newsletter* (Fall, 2011, # 4): 7.

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"Perfect Moments." *The Canyon Country Zephyr*, vol. 19, no. 5 (Dec/Jan): 14.

"A Walking Tour of Washington's Civil War Statuary." *Civil War Historian* 3 (March/April 2007): 20-25.

"As Dams Fall, a Chance for Redemption." *High Country News* (June 21, 2004): 12.

"Funding the Water System with Property Taxes Is Unfair." *Salt Lake Tribune*, editorial (Sept. 2, 2001): AA2.

"Indian Reservations: Environmental Refuge or Homeland?" *High Country News* (10 April 2000): 10.

"Learning Vision." *Continuum* (Winter, 1998-99): 54.

"Want Less Government and Lower Taxes? Stop the Spanish Fork-Nephi Irrigation Project." *The Salt Lake Observer* (July 17-30, 1998): 6.

"Wasteful Irrigation Subsidies Are All Wet." *Salt Lake Tribune*, editorial (February 15, 1998): AA8.

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

"Salt Lake's Water Needs are Real, but Let's Think Before Paying More." *Salt Lake Tribune*, editorial (August 3, 1997): AA6.

"Indian Water Settlements: Negotiating Tribal Claims to Water." *Red Ink* (Spring, 1996): 10-14.

"Utah and the Ute Tribe are at War." *High Country News* (June 27, 1994): 12. Reprinted in the *Ute Bulletin* (July 26, 1994): 5, and again (September 5, 1995): 4.

"Return to Bittersweet Memories: A Family Vacation to WWII." *The Purdue Alumnus*, (Summer, 1993): 24-29.

"Welcome Floaters, to River City." *High Country News* (Dec. 30, 1991): 15.

"The Northern Utes' Long Water Ordeal." *High Country News* (July 15, 1991): 8-9. Reprinted in the *Ute Bulletin* (Aug. 13, 1991): 6.

"The New Politics of the Environment and the Rise of 'Green Pork'." *Free Perspectives* IV (Dec., 1990): 5-7.

"Indians Defend Tribes from Attack," *High Country News* (May 21, 1990): 14. Reprinted in the *Ute Bulletin* (June 27, 1990): 4.

"New Coalition Lobbies for Indians," *High Country News* (Feb. 26, 1990): 3.

"Pilgrimage to the Sacred Mountain," *Ascent: The Mountaineering Experience in Word and Image*, Sierra Club Books, 1989.

"Let Taxpayers Devise Budget," *Salt Lake Tribune*, Common Carrier column (Mar. 26, 1989): A18.

"Who's to Blame for \$3.12 Trillion Debt Limit? Look in Mirror," *Salt Lake Tribune*, editorial (Dec. 16, 1989): A14. Also published in *The Park Record* as "The Debt-Makers: Who Are Those Guys?" (Dec. 28, 1989): A20.

"To Save a Sacred Mountain," *The Canyon Echo* (April, 1982): 4.

"Climbing Tongue-in-Cheek," *Summit* (April-May, 1980).

"Baboquivari Endures as Center of World," with Richard Harding, *The Indian Trader* (Aug., 1979): 3, 16.

"Orizaba: The Other Side of the Mountain," *Summit* (June-July, 1979).

EXPERT WITNESS REPORTS IN VOTING CASES

- > *U. S. v. South Dakota*. 615 NW 2d 590 U.S. Dist. Ct. SD (2000)
- > *U.S. v. Blaine County*. 157 F. Supp. 2d 1145 U.S. Dist. Ct. MT (2001)
- > *Bone Shirt v. Hazeltine*. 336 F. Supp.2d 976 U.S. Dist. Ct. SD (2004)
- > *Cottier v. City of Martin*. No. CIV. 2002-5021 U.S. Dist. Ct. SD (2005)
- > *Koyukak v. Treadwell*. Case No. 3:13-cv-00137-JWS U.S. Dist. Ct. AK (2014)
- > *Navajo Nation v. San Juan County, Utah*. Case No. 2:12-cv-00039-RJS-DPB. U.S. Dist. Ct. UT (2016)
- > *Brakebill v. Jaeger*. I. Civ. 1: 16-CV-08 U.S. Dist. Ct. ND (2016)
- > *Brakebill v. Jaeger*. II. Civ. 1: 16-CV-08 U.S. Dist. Ct. ND (2018)
- > *Sanchez et. al. v. Cegavske*. Case No. 3:16-cv-00523-MMD-WGC U.S. Dist. Ct. NV (2016)
- > *Navajo Nation Human Rights Commission v. San Juan County, Utah*. Case No. 2:16-cv-00154-JNP-BCW U.S. Dist. Ct. UT (2017)
- > *Voto Latino v. Hobbs*. CV-05685-PHX-DWL. U.S. Dist. Ct. AZ (2019)
- > *DSCC v. Simon*. 2nd Jud. Dist. Minn. (Jan. 2020, Supp Rept. April, 2020)
- > *Western Native Voice v. Stapleton*. Mont. 13th Jud. Dist. (March, 2020, Supp. Rept. Aug. 2020)
- > *Corona et. al. v. Cegavske et. al.* I. 1st Jud. Ct. in and for Carson City, NV (April, 2020)
- > *Crossey v. Bookckvar*. In the Commonwealth Court of Pennsylvania (May, 2020)
- > *LaRose v. Simon*, 2nd Jud. District of Minnesota (July, 2020)
- > *Corona et. al. v. Cegavske et. al.* II. 1st Jud. Ct. in and for Carson City, NV (July, 2020)
- > *League of Women Voters v. LaRose*. U.S. Dist. Ct. Southern Dist., Eastern. Div. OH (Aug., 2020)
- > *A. Philip Randolph Institute of Ohio v. LaRose*. U.S. Dist. Ct. Northern Div. OH (September 2020)

BOOK REVIEWS

Public Waters: Lessons from Wyoming for the American West, by Anne MacKinnon. *New Mexico Historical Review*, 2021.

Unredeemed Land: An Environmental History of Civil War and Emancipation in the Cotton South, by Erin Stewart Mauldin. *Journal of American History*, 2020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INVITED TALKS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Debate on Public Lands. Speaker of the House Rebecca Lockhart and Representative Ken Ivory vs. Robert Keiter and Daniel McCool. Southern Utah University, Sept. 18, 2014.
<https://www.youtube.com/watch?v=1m631pbW6iU&feature=youtu.be>

Debate on "Who Should Manage Utah's Public Lands?" Speaker of the House Rebecca Lockhart and Representative Ken Ivory vs. Pat Shea and Daniel McCool. Salt Lake City, May 14, 2014.
<https://www.youtube.com/watch?v=GEoEgBkotvA>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conference Papers

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

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

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

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

"Creating a 'Water BRAC' Commission to Evaluate Existing Water Projects." American Water Resources Association, Vienna, VA, November, 2014.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTHER CONFERENCE ROLES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PUBLIC COMMUNICATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New Books in Political Science, blog, interview with Heath Brown. Feb. 26, 2012 (topic: *The Most Fundamental Right*).

<http://newbooksinpoliticalscience.com/2013/02/27/daniel-mccool-the-most-fundamental-right-contrasting-perspectives-on-the-voting-rights-act-indiana-up-2012/>

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

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

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

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

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

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

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

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

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

Salt Lake Tribune, featured column, Oct. 4, 2012 (topic: *River Republic*).
<http://www.sltrib.com/sltrib/entertainment2/54996363-223/rivers-america-mccool-utah.html.csp>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GRANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AWARDS

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

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

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

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

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

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

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

ADMINISTRATIVE INITIATIVES

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

- Created, with my co-directors, the Undergraduate Certificate in Sustainability
- Created, with my co-directors, the Graduate Certificate in Sustainability
- As Director of the Environmental and Sustainability Studies Program:
 - Created a new Environmental and Sustainability Studies Minor
 - Directed the administration of an extensive program assessment and evaluation
 - Redesigned the Introductory course, ENVST 2100, required of all majors
 - Designed a new introductory field course, ENVST 2000, now required of all majors
 - Initiated the first Study Abroad program (Costa Rica) for Environmental and Sustainability Studies
- Developed a new teaching curriculum, the Red Rock Institute, which explores environmental issues in the West.
- Led the development of five new courses that focus on: sustainability science, environmental justice, global sustainability, leadership, and a senior capstone course

As Director of the American West Center:

- Organized the 2006 Siciliano Forum. Topic: The Reauthorization of the Voting Rights Act
- Negotiated numerous contracts for studies of Indian hunting and fishing rights and tribal archives.
- Organized an annual conference called "Women at War," that featured female veterans.
- Initiated a new oral history project of Utah's WWII veterans, "Saving the Legacy," with over

500 interviews completed.

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

As Associate Dean:

- Initiated the effort that led to the establishment of the American Indian Resource Center on campus.
- Created a new College grants program, the Proposal Initiative Grant, to help generate externally funded grants for College faculty.
- Implemented a computerized search process to help College faculty find potential sources of external funding.
- Created a Faculty Research Compendium that identified the major research activities of college faculty.

As Director of Public Administration Education:

- Executive MPA: designed a new MPA program for middle- and upper-level administrators.
- Public Administration Workshop for the Ute Indian Tribe: designed and implemented an annual intensive-session workshop for Ute tribal administrators.
- Conference for Minority Public Administrators: designed and implemented Salt Lake City's first conference for minorities in the public sector work force.

COMMUNITY SERVICE AND CONSULTING

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

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

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

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

Volunteer Tutor, Guadalupe Schools, 2007-2009.

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

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

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

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

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

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