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Native American Vote Suppression: The Case of South Dakota

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A basic premise of a democracy is that all citizens have an equal opportunity to participate in governance. Voting is the most common and direct form of citizen political participation. In the United States, the 14th and 15th Amendments to the Constitution and the 1965 Voting Act are fundamental in ensuring that all citizens have an opportunity to cast a meaningful vote. Americans can take justifiable pride in that legal barriers to the franchise, such as literacy tests, poll taxes, and the "white primary," are considered historical relics of a racist past. In fact, the Supreme Court in its recent *Shelby County v. Holder* (2013) decision raised questions about whether conditions in the United States had changed so much that the Voting Rights Act is no longer needed.

In *Shelby County v. Holder*, Chief Justice John Roberts, joined by four other conservative justices, ruled that Section 4(b), which established the formula for implementing the Section 5 requirement that jurisdictions with histories of discrimination pre-clear changes in their voting laws and regulations, was unconstitutional in that it violates the "equal sovereignty of the states" by treating them differently based on "40 year old facts that have no relationship to the present day." The underlying assumption in the ruling is that racially motivated abuses of voting rights is no longer a significant problem, and the Court pointed to the substantial increase in African American elected officials in Southern states as evidence of that change. What the Court ignored, however, is evidence showing that the Voting Rights Act, in particular the "pre-clearance" of covered Southern jurisdictions, has been a major factor in ensuring that black voting strength not be diluted through the adoption of voting procedures that made it more difficult for them to elect candidates of their choice.

A consensus exists among scholars that "first generation" voting rights abuses that involve outright denial of voting have largely disappeared, but that "second generation" vote dilution problems have not disappeared (Alt, 1994; Handley & Grofman, 1994; Davidson & Grofman, 1994; Bowler & Donovan, 2006; Grofman, 2006; Lien, Pinderhughes, Hardy-Fanta, & Sierra. 2007; Kousser, 2008; Bentele & O'Brien, 2013). A central point of contention in the *Shelby* ruling, as well as the academic research, is the question of whether racial minorities have an equal opportunity to elect candidates of their choice. There is a very large body of research linking increases in African American elected officials to "pre-clearance" and voting rights litigation preventing the adoption of procedures that diminish their voting strength.

A striking omission, however, from nearly all of the debates is an analysis of the impact of the Voting Rights Act on Native Americans. They received very little

attention in the 2006 re-authorization of the Act and were not mentioned in the Supreme Court's *Shelby* ruling. Schroedel and Hart (2015) found in their content analysis of more than 300 media reports about the *Shelby* ruling, there was only one substantive article that considered its effect on Native Americans. This is particularly problematic, in light of the fact that a number of jurisdictions were placed in the pre-clearance category due to their very troubling histories of vote denial and dilution with respect to Native peoples.

Academic Research

But it is not only politicians and the mainstream media that has ignored voting rights abuses towards Native Americans. Aside from several very fine studies of voting rights litigation (McCool, Olson, & Robinson, 2007; McDonald, Pease, & Guest, 2007; McDonald, 2010), academics have paid scant attention to political jurisdictions that have egregious histories of voting rights discrimination towards Native Americans. This absence is most obvious in terms of research on whether voting rights litigation has been successful in increasing opportunities for Native Americans to be elected to political office. The Gender and Multi-Cultural Leadership Project (GMCL) (2007), which conducted "the first comprehensive survey of elected officials of color," does not even include them on its interactive political map of non-white elected officials in the 50 states. This should not be taken as a major criticism of the GMLC, but rather an indication of the generalized lack of knowledge about the political status of Native Americans.

Reasons for Doing a Case Study of South Dakota

The use of a single case study is appropriate in a situation when the phenomenon being studied is new or was previously inaccessible to researchers. A case study can shed light on the "how" or "why" something occurred, and can be used in developing a broader research agenda (Yin, 1989). Given the lack of knowledge about the impact of voting rights litigation on the ability of Native Americans to be elected to political office, a case study of a state with political jurisdictions subject to Section 5 pre-clearance is an appropriate methodological choice. Since only political jurisdictions with histories of racial discrimination are subjected to "pre-clearance," any case examining a "covered" jurisdiction is likely to be an extreme case. Johnson and Joslyn (1995:146), however, argue that studying such phenomenon can be highly revelatory and contribute to our general understanding of the broader context.

There are several reasons why we have chosen to examine South Dakota as a case study. First, Native Americans comprise 8.9% of the state's population, which is one of the highest in the country (Census Bureau, 2014). Second, substantial Native populations exist in political jurisdictions, which are subject to Section 5 "pre-clearance," as well as those not subject to Section 5. Todd County and Shannon County, where Native Americans comprise 86.8% and 92.3% of their

respective populations, have been "covered" since 1975 when amendments to the Voting Rights Act which expanded Section 5's geographic reach beyond the South. Minority language provisions (primarily Section 203), which require registration and voting materials be made available in some minority languages, also were adopted in 1975, and until recently applied to eight South Dakota counties (Todd, Shannon, Bennett, Charles Mix, Corson, Lyman, Millette and Washabaugh that was later merged into Jackson County). Second, there are nine majority Native American population counties, as well as another fifteen counties with Native populations ranging from 7.2% through 39.1%. Finally, political jurisdictions in South Dakota have been the subject of more voting rights litigation charging racial discrimination against Native Americans than any other state. Since 1975 there have been at least nineteen Voting Rights Act cases where South Dakota political jurisdictions have been charged with discriminating against Native Americans. These conditions make South Dakota a very good place to identify and explore factors likely to influence the ability of Native Americans be elected to political office.

A History of Disenfranchisement

From the very earliest period of white settlement in the Dakotas, there were enormous conflicts between settlers and the indigenous inhabitants, who sought to stop encroachment into their territory. The Dakota Territorial Assembly in its initial 1862 session petitioned Congress to abrogate treaties ceding lands to the Sioux and Chippewa. They also limited jury service, voting and running for political office to "free white males." After becoming admitted as a state in 1889, the state legislature adopted similar limitations on citizenship and voting. Even after Congress passed the Indian Citizenship Act in 1924, South Dakota was one of several states that refused to comply with its provisions. Native Americans were statutorily excluded from voting and holding office anywhere in the state until the 1940s and South Dakota continued prohibiting inhabitants in Todd, Shannon and Washabaugh Counties from voting until as late as 1974 and from serving in some elected offices until 1980. These practices are chronicled in: *Little Thunder v. South Dakota* (1975); *United States v. South Dakota* (1980); *Buckanaga v. Sisseton Independent School District* (1986). In 1984, the county auditor in Fall River County, which included part of the Pine Ridge Reservation, refused to accept the registration of Native Americans, who were trying to do so as part of a registration drive on the reservation (*American Horse v. Kundert*, 1984). Other political jurisdictions have been sued for failing to provide Nativ American voters with equal access to polling stations (*Black Bull v. Dupree School District*, 1986; *Weddell v. Wagner Community School District*, 2002).

Elected Officials' Opposition

The hostility towards the Voting Rights Act among elected officials in South

Dakota far surpassed that of officials in other states with substantial Native populations. Republican attorney general, William Janklow, called for the immediate repeal of the Voting Rights Act, using language first used by Southern racists, who labeled the Act as an unconstitutional infringement on states' rights. Janklow called the Act an "absurdity" and subsequently labeled as "garbage" a U.S. Commission on Civil Rights report outlining many ways that South Dakota had violated the civil rights of Native Americans (American Civil Liberties Union, 2009:27). Between 1976 and 2002, Todd and Shannon Counties adopted more than 600 regulations and laws overseeing elections, but submitted less than ten for pre-clearance (American Civil Liberties Union, 2009:27-28).

The current attorney general has continued these efforts. Like most states, South Dakota had a law prohibiting felons from voting while incarcerated, but the law allowed felons on probation to vote. However Shannon County election officials in 2008 removed two Native American women on probation from the voting rolls. After the women filed suit, the county was forced to re-register them (*Janis v. Nelson,* 2009), but Attorney General Gant refused to acknowledge that felons on probation had the right to vote. He went so far as to change the language on the state's website to include language explicitly stating that all felons could not vote. Then he encouraged the state legislature to pass legislation revising the law so that all felons are now disenfranchised (Schroedel & Hart, 2015)

South Dakota law allows counties to provide citizens with 46 days of early voting prior to the election date, but Shannon County only provided six days of early voting during the 2012 election. Residents, who wanted to vote early on other days, had to travel to a neighboring county to vote. This involved driving for one to three hours, which constitutes a severe hardship for low income reservation inhabitants, many of whom lack access to cars. Results from a survey conducted among county residents showed that a majority would not travel outside of the county to vote with most citing distance and expense as major hurdles (Braunstein, 2012:22-23). Secretary of State Gant refused to either use federal funding through the Help America Vote Act available or have the state run elections (*Brooks v. Gant* 2012). Just prior to the court hearing, Shannon County officials discovered they did have sufficient funds to allow full early voting in the county (Woodard, 2012).

Gant, however, continued his campaign against Native American voting. One week after the *Shelby* ruling, which was applauded by politicians in the state capitol, the South Dakota Board of Elections denied a request from tribes that federal government Help America Vote Act funds be used to establish satellite voting stations on reservations for the 2014 elections. The deciding vote in the 4-3 decision was cast by Gant. State and county officials, however, capitulated a few months later and agreed to provide satellite early voting and registration offices on reservations for the 2014 election (Woodard, 2013).

We recognize South Dakota is what is described in the scholarly literature as an "extreme" case (Johnson & Joslyn, 1995). In fact, some Native Americans have gone so far as to label it as the "Mississippi of the North" (Warm Water, 2013). Yet if one takes seriously, the core provision of Section 2 of the Voting Rights Act, which prohibits rules and practices that "deny or abridge" the right to vote, then one must understand the nature of "extreme" cases, such as South Dakota.

Data and Methodological Considerations

We believe that a mixed methods approach, which integrates qualitative materials that provide contextual understandings of conditions in South Dakota and quantitative data analyzing the representation of Native Americans in elected offices in the state, is the most appropriate approach. One of the advantages of a mixed methods approach is that it allows greater flexibility, such that the researcher can employ methods that vary according to what is most useful in different contexts (Brannen, 2005; Hesse-Biber, 2010). In this project we analyze quantitative data about the numbers of Native Americans serving in political offices, but place that within broader contextual discussions of the political jurisdictions. Much of the contextual material is gleaned from secondary sources and legal rulings. See the Appendix for a summary of court cases.

Quantitative Data

As noted earlier, no one has collected information about the numbers of Native Americans serving in elected office. Just compiling such a list for even South Dakota is a daunting task. There are more than 500 incorporated municipal entities (towns and cities) in South Dakota, as well as 66 counties and many other local governmental entities. None of the local government associations, such as the South Dakota Association of County Commissioners, have such data.

We were able to obtain a list of current and former state legislators from B. Nickolas, a reference librarian in the state library, but getting data about the make-up of county commissioners turned out to be more challenging. The web site of the South Dakota Association of County Commissioners includes the names of all county commissioners, as well as telephone numbers for each. Most of our data on the history and make-up of the county commissioners was obtained through telephone calls to those offices. In cases, where we were unable to get information through this means, we followed up by asking representatives of Four Directions, the major non-profit group involved in voting rights issues in the state, to help us.

Although very labor intensive, we believe this has resulted in a comprehensive listing. We chose not to try to get information from the more than 500 incorporated town and cities and other local government entities. The effort involved in collecting this information would have been enormous and unlikely to turn up anything different from what we have found with respect to representation in state legislative and county council seats.

Representation in the State Legislature

South Dakota has a bicameral legislature, comprised of a 35 member Senate and a 70 member House. Since gaining statehood in 1889, a grand total of 13 Native Americans have served in state legislative office—all within the past three decades. The following is a listing of the thirteen and their tribal affiliations: Richard Hagen

(Oglala Sioux), Thomas Shortbull (Oglala Sioux), Ronald Volesky (Cheyenne River Sioux), Paul Valandra (Rosebud Sioux), James Bradford (Oglala Sioux), Thomas Van Norman (Cheyenne River Sioux), Michael LaPointe (Rosebud Sioux), Theresa Two Bulls (Oglala Sioux), Eldon Nygaard (Choctaw Nation), Ed Iron Cloud III (Native Lakota), Kevin Killer (Native Lakota) and Troy Heinart (Rosebud Sioux) (B. Nickolas personal communication, 2014, January 16). The current legislature only includes James Bradford in the Senate and Kevin Killer and Troy Heinart in the House. Given that Native Americans make up roughly 9% of the state's population, it is hard not to view this as prima facie evidence of massive under-representation. But the numbers tell only part of the story.

History and Context

The struggle to achieve representation in the state legislature dates back to the 1970s, shortly after the 71 day Wounded Knee confrontation between members of the American Indian Movement and federal law enforcement officers at the Pine Ridge Reservation. The chairs of the nine federally recognized tribes in the state, four members of the state legislature, and five lay people were appointed to a state commission to make recommendations about ways to improve relations. The commission made a series of recommendations, most of which the state legislature adopted with minimal dissent. The commission, however, did not even bother presenting its findings about the gerrymandering of electoral districts that split up the Pine Ridge and Rosebud reservations. The commission's recommendation that Shannon and Todd Counties, home to the reservations, be combined into a single legislative district was too much of a "political hot potato" (McDonald, 2010:128; Shortbull, 2013).

Following the 1980 census, the South Dakota Advisory Commission to the U.S. Commission on Civil Rights also recommended the creation of a majority Native American legislative district. The committee's report stated that the division of the reservation voters into three districts was "inherently" discriminatory, preventing Native Americans from an opportunity to elect a legislator of their choice and the Department of Justice advised the state that any redistricting plan that did create such a majority Native American district would not be pre-cleared as required by Section 5 of the Voting Rights Act. The state legislature acquiesced, creating District 28, which included Shannon County, Todd County and half of Bennett County. Thomas Shortbull, an Oglala Sioux, was elected to the State Senate from the new district (District, 28). Another Oglala Sioux, Richard Hagen, was elected to one of two District 28 House seats.

Although Shortbull and Hagen were elected as Democrats from the heavily Native American 28th district, a Standing Rock Sioux tribal member, Ron Volesky, was elected in the same year as a Republican from a district that had very few Native Americans. Volesky subsequently switched his party affiliation and served many terms in both the House and the Senate. Then in 1985, Jim Emery, from the Cheyenne River Sioux, also was elected as a Republican from the mainly white 30th district and in 2007 another Native American Republican, Eldon Nygaard, was

elected from another white district, the 17th district. Michael LaPointe, who was appointed to finish out a state senate term after the elected Democratic member from the 27th district died, was the only other Republican. He was strongly attacked by Native American groups for co-sponsoring a voter identification bill and lost in the next election (Karaff, 2003).

After the 1990 census, the state legislature adopted a redistricting plan that divided the state into 35 legislative districts; each of which would elect one state senator and two house members, but with one exception. District 28 would have at large elections for its state senator, but there would be two state sub-districts house seats (28A and 28B) in order to "protect minority voting rights." District 28A, which included the Cheyenne River Sioux Reservation and part of the Standing Rock Sioux Reservation, had a voting age population that was 60% Native American. In contrast, District 28B had less than 4% of its voting age population comprised of Native Americans. Even though the state did not normally redistrict except following the decennial census, the state legislature in 1995 decided to abolish the two sub-districts. The proportion of Native Americans in the voting age population in the reconstituted 28th district was only 29%, which meant they would not have a reasonable chance of electing one of their own to the state legislature (McDonald, 2010:129). In the first election after the abolition of 28A and 28B, all of the candidates running for the House seat were white, and the candidate with the least support from Native American voters (8%) got the highest amount of support from white voters (70%) and was elected (*Emery v. Hunt*, 2000, Table 3 from Report by Steven Cole).

Members of the Cheyenne River Sioux went to court and challenged the state's merging of District 28A and 28B as a violation of Section 2 of the Voting Rights Act, as well as a violating the state constitution's mandating that redistricting occur following the decennial census (*Emery v. Hunt*, 2000). Before the Section 2 claim could be heard in federal court, the South Dakota Supreme Court ruled that the legislature's actions had violated the state constitution and reinstated District 28A and District 28B as specified in the 1991 redistricting plan. A special election was ordered and Tom Van Norman from the Cheyenne River Sioux Reservation was elected to the state house.

Following the 2000 census, the state legislature continued the basic framework established by the 1991 plan. Each of the 35 districts elected one senator and two representatives to the house with District 28 still divided into sub-districts (28A and 28B). The electoral clout of Native Americans, however, was undermined by the "packing" them into District 27, which includes Shannon and Todd Counties. Under the 2001 plan, District 27 became one of the most over-populated districts in the state, which allowed the adjacent District 26 to continue as a white dominated district. Proposals from James Bradford, an Ogala who represented the 27th District in the state assembly, to reconfigure the boundaries between his district and District 26, and divide the latter district into two sub-districts as was the case with District 28 was voted down.

South Dakota did not attempt to "pre-clear" these changes. Three voters from District 26 and District 27 sued, claiming the new plan was in violation of Section 5 for failure to pre-clear and Section 2 in that it denied them an equal opportunity

to elect representatives of their choice. In *Bone Shirt v. Hazeltine* (2006), the 8th Circuit Court ruled there was "substantial evidence that South Dakota officially excluded Indians from voting and holding office." This resulted in District 26 also being divided into two sub-districts. The division of District 26 into sub-districts did not result in a Native American being elected, but it did allow them to form a coalition with some whites in District 26A and elect Democrat. District 26 B has continued to elect white Republicans.

The 2011 redistricting round made few changes to the legislative districts that included the main South Dakota reservations. There were changes to fast growing urban districts (Sioux Falls and Rapid City). Not surprisingly, the re-districting was done in a manner that benefitted Republicans. For example, Rapid City was split into three safely Republican districts (29, 30 and 35), even though there are strong pockets of Democratic and Native American voters (Eagle, 2011). None of these changes, however, triggered Voting Rights Act litigation.

Assessing Native American Representation in the State Legislature

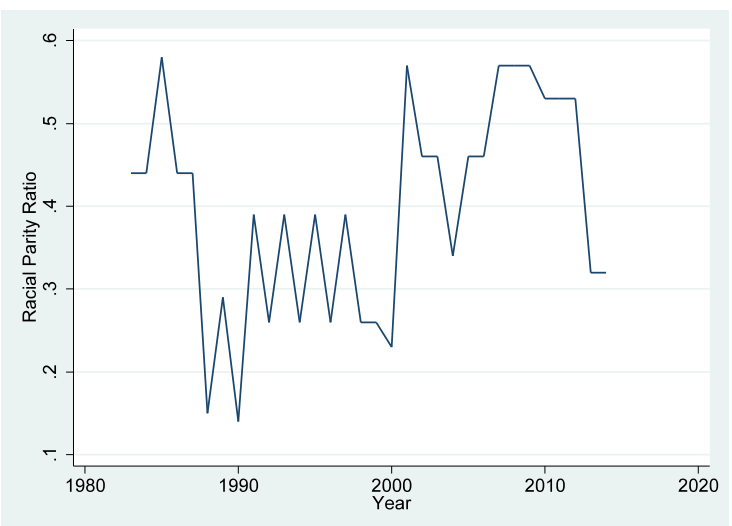
The most obvious fact that stands out from the aforementioned history is the depth of entrenched political leaders' opposition to providing equal opportunities for Native Americans to elect their own members to positions within the state legislature. Prior to voting rights litigation, there had not been a single Native American elected to the state legislature. Over the past three decades, the number serving in the legislature never exceeded five members and twice has dropped to only one member. During the 1980s and 1990s, the numbers ranged from one to three. After 2000, every legislative session has included at least three tribal members. State leaders also have been very aware of the costs of voting rights litigation, as is evidenced by their reaching out to tribal leaders for input during the 2011 round of re-districting (Walking Bull, 2012).

One way of assessing the degree of representation in an elected body is to examine the "racial parity ratio"—the percentage of a group within the legislative body divided by their percentage in the population (Lien, Pinderhughes, Hardy-Fanta, & Sierra, 2007:490). Perfect representation would be 1.0 and numbers below that indicate under-representation, while those above 1.0 indicate over-representation. In calculating this, we use Census Bureau data on the percentage of Native Americans in the population from the 1980, 1990 and 2000, and 2010 censuses (Gibson & Jung, 2002; Census Bureau, 2014).

The racial parity ratios for Native Americans in the South Dakota state legislature range from a low of 0.14 in 1990 to a high of 0.57 in 2007 through 2009. Given the very small numbers, one is hesitant to describe a pattern since a switch in the race of a single member results in substantial changes in the racial parity ratio. However, the situation did appear to be slowly improving over time, but the most recent couple years have shown a decrease with the racial parity ratios dropping to .032 for 2013 and 2014. While it is unclear whether this most recent drop is an anomaly or the start of a downward trend, there can be no disputing the

fact that Native Americans have been and continue to be massively under-represented within South Dakota's state legislature. To illustrate this we can examine the three legislative districts with the largest portion of Native American voters, Districts 26, 27 and 28. Voters in Districts 26 and 28 elect their senators from their entire districts, but have representatives elected from sub-districts A and B. This has resulted in District 26 electing a white Democrat to the state senate seat, as well as a white Democrat to the District 26A seat in the House. As expected, a white Republican was elected to the House from District 26B. In District 28, the senate seat is occupied by a white Republican, as is the House seat from 28B. The representative from House seat 28A is a white Democrat. The 27th District is not sub-divided and has one white Republican House member, as well as Native Americans occupying the Senate and the other House seat. See Figure 1 for a graph of the racial parity ratios for each year.

Figure 1: *Racial Parity Ratios Over Time for the State Legislature*



Representation at the County Level

As noted earlier, Shannon and Todd are Section 5 "covered" counties and eight counties until recently were subject to the minority language provisions (Sells, 2102:192). Voting rights litigation has taken place in at least eleven South Dakota counties. In some cases, the counties are the subject of litigation. In other cases, the defendants are sub-government entities, such as school districts.

History and Context

One of the most egregious examples of denying an equal opportunity to meaningfully participate in elections took place in Buffalo County. The population is more than 80% Native American, but the electoral districts for electing the three county council seats were mal-apportioned, such that nearly all of the Native Americans were lumped into a single district while whites were split between the other two districts. This meant that Native Americans could elect only one council member. In 2003, tribal members brought suit and the case was settled after the county admitted to mal-apportioning the boundaries in violation of the "one person, one vote principle" (*Kirkie v. Buffalo County*, 2003).

A few years later Charles Mix County admitted to mal-apportioning its three electoral districts, such that the county's 30% Native American population were never able to elect a council member (*Blackmoon v. Charles Mix County*, 2007). After being forced to create a Native American majority district, Sharon Drapeau, a Yankton Sioux, was elected. White voters in the county responded by circulating a petition to increase the number of council seats to five. This plan was adopted, but eventually was dis-allowed.

Although the urban areas have experienced an increase in the numbers of Native American residents, most tribal members still live on or near the reservations. There are nine tribal nations in the state. These nine tribal nations have their reservation lands split among 13 different counties, such that their voting clout in county elections is much diminished. Furthermore, only three tribal nations (Flandreu Santee Sioux, Yankton Sioux, and Standing Rock Sioux) have their tribal lands within a single county. The reservations of the remaining six are included within multiple counties, and the Sisseton Wahpeton Oyate nation's lands are within five counties (South Dakota Department of Tribal Relations, 2014).

But the lack of representation on county councils cannot simply be explained by the fracturing of the reservation populations into different counties, because none of the three tribal nations that are within a single county have tribal members serving on county councils. Moody County, which includes the lands of the Flandreu Santee Sioux, is only 13.2% Native American, so it is not surprising in a racially polarized environment that they have no representation on the five person county council. Corson County, where Native Americans make up nearly two-thirds of the population and the county includes all of the tribal lands of the Standing Rock Sioux, also has none on its county council. The outcome in Charles Mix County, however, points to the continuing challenges faced, even after successful voting rights litigation. Charles Mix County is the home of the Yankton Sioux, which comprise 31.5% of the county's population. They are concentrated in a single electoral district, so one might expect them to have a representative on the three person county council, but there are none at this time.

Yet it would be a mistake to think that voting rights litigation has no effect on Native American representation. The make-up of the Buffalo County council shifted immediately after their lawsuit. The council is no longer dominated by white Republicans, but now has all Democrats including two Native Americans,

Donita Loudner and Ronald Petersen. Also the partisan composition of the council in Charles Mix County shifted following their voting rights challenge and the ensuing controversy over the number of electoral districts. Although all of the council members currently are white, a Native American woman was elected shortly after the court case.

Assessing Native American Representation

Although Native Americans comprise roughly 9% of the state's population, many counties within the state are nearly all white. There are, however, 24 counties, where Native Americans make up over 7% of their population. We initially thought that 7% might be a large enough portion of the population that there might be Native Americans elected to council seats. To some extent this was premised on the fact that we had uncovered a couple instances of tribal members, who were Republicans, being elected to the state legislature from heavily white districts in the past. This did not turn out to be the case. Not only did we not uncover any instances of Native Americans being elected in the heavily white counties, there were no records of their being elected at any time in a county without a least 30% of its population comprised of Native Americans.

The election of Sharon Drapeau in Charles Mix County right after the county was forced to change its mal-apportioned districts is baseline for the lowest percentage Native American population (31.5%) required to be elected to council seats. Roberts County with 35.9% is noteworthy. This is the only county where Native American representation on the council exceeds their percentage in the population. Two of the five council members or 40% are Native American. In contrast, Lyman County, which has a slightly larger proportion of Native Americans in its population (39.1%), has no Native Americans on the council. There are nine counties (Jackson, Mellette, Bennett, Corson, Ziebach, Dewey, Buffalo, Todd and Shannon), where over 50% of the population is Native American. Three of these majority Native counties do not have any tribal members on their county councils. What this suggests is that achieving a majority in electoral districts, whether as the result of voting rights litigation or not, is an important factor in whether Native Americans gain representation in these bodies, but it is not sufficient.

The quantitative data on Native American representation on county council seats is quite similar to what we found when examining the representation within the state legislature. There are no records of any Native Americans serving in any county council seats prior to Voting Rights Act litigation. There are 66 counties in the state; most of which have five elected members. This translates into a total of 322 county council members in the state. For Native Americans to achieve parity on the council seats (e.g., hold the same proportion of seats as they have in the population), they would need to be elected to 29 county council seats. Instead only fourteen or 3% of the 322 county council members from across the state are Native American. The statewide racial parity ratio for their representation on county councils is .48, and like what we found for state legislative seats, white majority

jurisdictions do not elect Native Americans to political office. Out of the 57 majority white counties, only Roberts County that is 35.9% Native American has a council that includes them. In contrast, every one of the counties, with a majority Native population, has at least one white serving in their county councils.

As noted above, three of the majority Native American counties have councils with no Native American members. The racial parity ratios for county council representation for the Native American majority counties range from 0.0 to .83. Table 1 shows the population percentages, the numbers of Native Americans serving on these county councils and their racial parity ratios.

Table 1: *Representation on Councils in Majority Native American Counties*

County	% Native American	Number on Council	Racial Parity Ratio
Jackson	51.6%	1/5	.39
Mellette	52.4%	0/3	.00
Bennett	60.4%	1/5	.33
Corson	65.8%	0/5	.00
Ziebach	71.8%	0/5	.00
Dewey	73.8%	2/5	.54
Buffalo	80.5%	2/3	.83
Todd	86.8%	3/5	.69
Shannon	92.3%	3/5	.65

The top figure in the Number on Council column is the number of Native Americans on the council. The bottom figure is the number of council members.

Discussion

The initial aim of this project was to discover whether the Voting Rights Act has significantly improved the chances of Native Americans in South Dakota to be elected to political office. We chose to study South Dakota, an admittedly extreme case, because those are exactly the political jurisdictions that have been the locus of voting rights controversies. What we found was troubling for those who believe it is important for a democratic government to be representative of the people within its political jurisdiction. Although the Voting Rights Act has increased opportunities for Native Americans to be elected, this case study shows they are still massively under-represented. We were not able to find any records of a single Native American being elected to the state legislature or a county council prior to voting rights litigation in the 1980s. Yet today, thirty years later, they continue to be a miniscule portion of elected officials in South Dakota. Despite comprising roughly nine percent of the population, currently there are only three serving in the 105 member state legislature for a racial parity ratio of 0.32 and their representation at the county level is equally nearly as low.

Rather than finding that conditions have changed so dramatically that the

Voting Rights Act is no longer essential as the Court was suggesting in *Shelby*, the opposite appears to be the case in South Dakota. At every juncture, the dominant political power structure in the state has sought to undermine the ability of Native Americans to be full participants in governance. We would argue that if anything, the Justice Department needs to heighten the scrutiny of electoral laws and procedures in South Dakota. After so many years of being excluded, it may be the case that Native Americans in the state are reluctant to run for political office because they feel their voices will always be drowned out, but this is a question that future researchers should be encouraged to explore.

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Appendix

List of South Dakota Voting Rights Cases involving American Indians

- *Little Thunder v. South Dakota,* 518 F. 2d 1253 (1975)
- *U.S. v. South Dakota.* 1979. Civ. No. 79-3039 (D. S.D.)
- *U.S. v. South Dakota,* 1980. 636 F. 2d. 241 (8th Cir.)
- *South Dakota v. U.S.,* No. 80-1976 (D.D.C. Dec. 1, 1981)
- *American Horse v. Kundert* , No. 84-5159. (D.S.D. Nov. 5, 1984)
- *Fiddler v. Sieker* , No. 85-3050 (DSD Oct.24, 1986)
- *Black Bull v. Dupree School District* , No. 86-. 3012 (D.S.D. May 14, 1986)
- *Buckanaga v. Sisseton School District* 804 F. 2d 469 (8th Cir. 1986)
- *U.S. v. Day County, Enemy Swim Sanitary District*, Civ. No. 99-1024 (D. SD) (1999)
- *Weddell v. Wagner Community School District*, Civ. No. 02-4056-KES (D.S.D. 2002)
- *Kirkie v. Buffalo County* Civ. No. 03-CV-3011-CBK (D. S.D.) (2003)
- *Daschle v. Thune*, Civ. No. 04-4177 (D.S.D. 2004)
- *Quiver v. Nelson*, 387 F. Supp 2d 1027 (D. SD 2005)
- *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1024 (8th Cir. 2006)
- *Blackmoon v. Charles Mix County,* 505 F.Supp.2d 585 (2007)
- *Janis v. Nelson,* No. CR 09-5019-KES, 2009 U.S. Dist. LEXIS 109569 (D.S.D. Nov. 24, 2009)
- *Cottier v. City of Martin*, Case No. 07-1628 (C.A. 8, May 5, 2010) (originally *Wilcox v. Martin*)
- *U.S. v. Shannon County* 2010
- *Brooks v. Gant*, Case No. Civ. 12-5003 (2012)