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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, v. Christi Jacobsen, in her official capacity as Montana Secretary of State, Defendant.	Consolidated Case No. DV 21-0451 Judge Michael G. Moses **AFFIDAVIT OF ALEXANDER STREET, Ph.D., IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Alexander Street, Ph.D., depose and say the following:

1. I am an Associate Professor of Political Science at Carroll College in Helena, Montana, where I have worked for the past seven and a half years. I hold a Ph.D. in Political Science from the University of California, Berkeley, conferred in 2011. I also hold an M.A. in Political Science from the University of California, Berkeley, and a First Class B.A. in Politics, Philosophy and Economics from the University of Oxford (2003). I have held postdoctoral fellowships at the European University Institute, Cornell University, and at the Max Planck Society in Germany. I have published ten peer-reviewed articles, in addition to several book chapters, reviews and reports. My published research rests on statistical analysis of data from voter files, the census bureau, election returns, web searches, and public opinion surveys. This work has appeared in leading scholarly journals in my field and I have won Best Paper and Best Article awards from organized sections of the Western Political Science Association and the American Political Science Association.

2. In this case, I was asked by Plaintiffs to assess the likely effects of HB 176 and HB 530, two bills passed during the 2021 session of the Montana state legislature. In applying the sources and methods common in my field of expertise, I examined how existing peer-reviewed research can be used as a framework for understanding the likely effects of HB 176 and HB 530, and I conducted my own analysis assessing whether data on voter registration and voting in Montana elections over recent years lend support to the claim that the changes imposed by these two bills are likely to place disproportionate barriers in the way of Native Americans living on reservations in Montana as they seek to vote.

3. Applying existing, well accepted political science literature and methods and using data from records maintained by the Montana Secretary of State's office, including lists of

registered voters, the voting history of registered voters, lists of absentee ballots issued and the status of those ballots (e.g., whether counted, or not returned, or rejected), and lists of late registrants, I have completed an analysis considering the likely effects of HB 176 and HB 530. My full analysis is included in my expert report, which is attached as Exhibit 1 to this affidavit, and to which's content I also swear.

4. Based upon my analysis of Montana voting records for federal primary and general elections from 2014 to 2020, the percentage of voters using election day registration ("EDR") is consistently higher for people living on-reservation in Montana. Additionally, relying on Census block data, I consistently demonstrated that this reliance on EDR is higher in the parts of reservations with more Native individuals, demonstrating that the reliance of on-reservation EDR is driven by Native voters, and not by non-Native voters living on reservations. This analysis is laid in Section V of my attached report. Based on this analysis, I conclude that limiting EDR will have a disproportionate negative effect on Native voters.

5. I also conducted analysis of Montana voting records to examine the reliance of on-reservation voters on requesting absentee ballots during the late registration period, after the 25-day mailing date. The plaintiffs in this case explain that the options of one-stop registration and voting during this period, or of requesting an absentee ballot that organizations such as Western Native Voice may help to return, are well-suited to the unique conditions of on-reservation Native Americans in Montana. Particularly for general elections, my analysis demonstrated that Montanans living on reservations were indeed more likely, and in some cases much more likely, to request absentee ballots during the late registration period. Additionally, relying on Census block data, I consistently demonstrated that this reliance on requesting absentee ballots during the late registration period is higher in the parts of reservations with more

Native individuals, demonstrating that the reliance is driven by Native voters, and not by non-Native voters living on reservations. This analysis is laid in Section VI of my attached report.

6. I also conducted analysis of the 2020 primary election, which is instructive for understanding the likely effects of HB 530. HB 530 is similar to an earlier law, referred to as the Ballot Interference Prevention Act (BIPA), which also prohibited ballot collection by organizations like Western Native Voice. I served as an expert in *Western Native Voice v. Stapleton*, where the court enjoined BIPA because of the burden imposed on Native voters, relying in part on my analysis. BIPA, while it was put on hold shortly before the primary, already effectively prevented organized ballot collection by Western Native Voice and others, and so analyzing the 2020 primary allows us to see the impacts of preventing organized ballot collection on Native voters. I ran statistical models of turnout in the 2020 primary, focusing on people registered to vote absentee in that election who had also been registered to vote absentee in the 2016 primary. I found that turnout fell among those living on reservations who were already listed as absentee voters for the 2016 federal primary election, and had the chance to vote absentee again in the 2020 primary, whereas turnout was steady for similar off-reservation voters. I also analyzed reasons for absentee ballot rejection between these two elections, and showed that for the 2020 primary, on-reservation voters were more likely to have their ballots rejected for reasons that could have been prevented by experienced ballot collectors. These findings are consistent with the arguments of the plaintiffs in the current case about the role that Western Native Voice, and others, play in helping Native Americans living on reservations in Montana to return their ballots. This analysis is laid in Section VII of my attached report. Based on these analyses, I conclude that limiting ballot collection under HB 530 will have a disproportionate negative effect on Native voters.

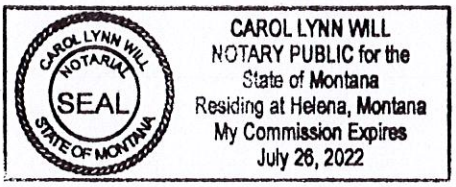
Alexander Street

Alexander Street, Ph.D.

STATE OF Montana

COUNTY OF Lewis + Clark

Signed and sworn to before me on this 11th day of January, 2022.



Carol Lynn Will

Notary Public

Report of Alexander Street, Ph.D.

in the case of

Western Native Voice v. Jacobsen

January 11, 2022

I. Background, qualifications and purpose

1. I am an Associate Professor of Political Science at Carroll College in Helena, Montana, where I have worked for the past seven and a half years. I hold a Ph.D. in Political Science from the University of California, Berkeley, conferred in 2011. I also hold an M.A. in Political Science from the University of California, Berkeley, and a First Class B.A. in Politics, Philosophy and Economics from the University of Oxford (2003). I have held postdoctoral fellowships at the European University Institute, Cornell University, and at the Max Planck Society in Germany. I have published ten peer-reviewed articles, in addition to several book chapters, reviews and reports. I am attaching a copy of my Curriculum Vitae to this report. My published research rests on statistical analysis of data from voter files, the census bureau, election returns, web searches, and public opinion surveys. This work has appeared in leading scholarly journals in my field and I have won Best Paper and Best Article awards from organized sections of the Western Political Science Association and the American Political Science Association.

2. I also served as an expert witness in the case *Western Native Voice v. Stapleton*, which was decided in 2020. One of the bills being challenged by the plaintiffs in the current case is similar to the law challenged in the earlier case. In this report, in addition to new work, I rely on relevant analysis from my earlier report. My research on the effects of voter registration deadlines has also been cited favorably in a court case in the state of Massachusetts. I was retained as an expert and submitted an expert report in *N.Y. League of Women Voters et al. v. N.Y. State Board of Elections et al*., No. 160342/2018, in New York state court concerning New York's voter registration deadline. I was also retained as an expert and submitted an expert report in *League of Women Voters of Ohio, et al., v. LaRose*, No. 2:20-cv-3843 (S.D. Ohio).

3. I have been asked by the plaintiffs Western Native Voice, *et al.*, to assess the likely effects of HB 176 and HB 530, two bills passed during the 2021 session of the Montana state legislature. I focus on the plaintiffs' claim that these two bills will "harm Native Americans in rural tribal communities by impairing access to the voter registration process and to voting by absentee ballot."[1] Specifically, in this report I provide context for the legal changes, I explain how existing peer-reviewed research can be used as a framework for understanding the likely effects of HB 176 and HB 530, and I also report results from my own analysis assessing whether data on voter registration and voting in Montana elections over recent years lend support to the claim that the changes imposed by these two bills are likely to place "disproportionate barriers"[2] in the way of Native Americans living on reservations in Montana as they seek to vote.[3] I am being compensated at a rate of $200 per hour for my work on this matter. This compensation is not in any way contingent on the nature of my findings or on the outcome of this litigation.

II. Context for HB 176 and HB 530

4. Voter registration closes in Montana 30 days before an election, but there is also a late registration period (MCA 13-2-301). Since 2005, the late registration period has included Election Day, allowing Montanans to register at a county elections office and then immediately cast a ballot (MCA 13-2-304). This practice has allowed people who recently moved to Montana, recently reached adulthood, or were newly persuaded to make use of the franchise to register for the first time, and vote, in a single convenient process, even on Election Day. Additionally, it has allowed Montanans who were already registered in the state but who needed to update their registration record, e.g., because they had moved to a different county, to update their record and vote in-person at a county elections office or at certain satellite voting offices through Election Day. For people who register or update their registration, the late registration period is effectively an early voting period, although there are also some people who request an absentee ballot during this period and receive it in the mail. Records

[1] See pages 2-3 of the plaintiffs' complaint.

[2] This phrase is also used in the plaintiffs' complaint, e.g., on page 10.

[3] In this report I used the terms "Native American" and "American Indian" interchangeably.

maintained by the Montana Secretary of State's office show that 65,927 Montanans have relied upon Election Day registration (EDR) to vote since 2008.[4] However, HB 176, passed in 2021, removes the opportunity to register and vote on Election Day.

5. Although Montana was an early mover when it introduced EDR in 2005, many other states have followed suit. At the time of writing, 18 states, plus Washington, D.C., allow EDR.[5] It has become easier to implement EDR as elections officers have been able to make greater use of computer technology to maintain and cross-reference lists of registered voters. Apart from Montana, no state has withdrawn EDR after voters had already come to rely upon it.

6. The Montana legislature of 2021 also passed HB 530, which directs the Montana Secretary of State to "adopt an administrative rule," such that, "For the purposes of enhancing election security, a person may not provide or offer to provide, and a person may not accept, a pecuniary benefit in exchange for distributing, ordering, requesting, collecting, or delivering ballots."[6] The bill makes exceptions for ballot handling by election administrators and mail workers; it is unclear whether it would apply to tribal employees on Indian reservations in Montana. The bill does not specify how the administrative rule would serve the "purposes [*sic*] of enhancing election security." Nor does the bill explain how the law would be enforced, or how those tasked with enforcing it would decide whether helping another person to register would qualify as "ordering" or "requesting" a ballot. It appears, however, that the rule called for in HB 530 would prevent Western Native Voice, and perhaps the federally recognized tribes that are also plaintiffs in this case, from helping Native Americans living on Indian reservations in Montana to receive or return absentee ballots. This is important, in part, because absentee voting has become increasingly common in Montana.[7] Furthermore, the plaintiffs in this case

[4] This number includes election-day registration for federal primary and general elections from June 2008 through November 2020. It is calculated from "late registrant reports" provided by the Secretary of State's office.
[5] See https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx (accessed December 29, 2021).
[6] See https://leg.mt.gov/bills/2021/billpdf/HB0530.pdf (accessed December 29, 2021).
[7] Montana introduced no-excuse absentee voting in 1999. It has grown in importance, from 65,523 absentee ballots (15.68% of all votes) in the 2000 general election, to 372,400 absentee ballots (73.13% of all votes) in the

maintain that tribal members living on reservations in Montana are particularly reliant on such help, and on the option of voting an absentee ballot that another person may return for them.

III. Using existing research as a framework to understand the likely effects of HB 176 and HB 530

7. The plaintiffs explain in their complaint that Native people living on the largely rural reservations in Montana are especially likely to rely on the option to register and vote during a single visit to a county elections office, which has long been possible during the late registration period, including Election Day. This reliance is due, among other factors, to the typically remote residences of many who live on-reservation, to limited access to mail services, and to higher rates of poverty and transportation difficulties. The plaintiffs also explain that Western Native Voice and other nonprofit organizations play a role in helping Native Americans who live on-reservation to vote, by helping them to register, by returning voted absentee ballots to county elections offices, and by transporting people to (registration and) voting locations, and that these activities tend to peak on Election Day. These claims suggest that Native American voters in Montana may be disproportionately affected by HB 176 and HB 530. And in fact, these claims are consistent with much existing research on the factors that make people more or less likely to register and vote. The circumstances of Native American voters and prospective voters in Montana are unique, no doubt, and Western Native Voice is also a unique organization. And yet, these circumstances, and the services provided by Western Native Voice, among other organizations, are wholly in keeping with healthy patterns of American civic behavior.

8. The likely effects of HB 176 and HB 530 on voter registration and voting behavior can best be understood in the light of existing research showing that voting is *rational*, *habitual*, and *social*.

2018 general election. In 2020, as a pandemic precaution, almost all votes in the primary and general elections were sent out (and in many cases returned) by mail. These numbers are available from the Montana Secretary of State's website. See https://sosmt.gov/Portals/142/Elections/Documents/Absentee-Turnout-2000-Present.xlsx (accessed December 29, 2021).

9. Much of the scholarship on voter registration and voting casts these actions as *rational* choices in which voters weigh the costs and benefits of electoral participation, and decide to vote if the benefits outweigh the costs.[8] Thus, turnout tends to be higher when and where citizens think their vote is more likely to be pivotal or when the stakes of the election are seen to be high.[9] Relatedly, attention to politics and interest in voting tends to peak on Election Day itself, which is when campaign activities, media coverage, and advertising all culminate. Indeed, recent research suggests that the growing area of online advertising is even more focused on the final days leading up to and including Election Day than is television advertising.[10]

10. In contrast, turnout tends to be lower in less salient elections and when voter registration, or voting itself, is inconvenient.[11] Existing research in the "rational choice" framework also shows that voters who command more resources are better able to bear the costs of voting, e.g., they are more likely to be able to take time off work if needed.[12] There is also evidence that socio-economic resources help to explain variation in rates of turnout among Native Americans.[13] If HB 176 and HB 530 prevent Native American voters in Montana from

[8] Anthony Downs, *An Economic Theory of Democracy* (New York: Harper and Row, 1957). *See* also William H. Riker and Peter C. Ordeshook, "A Theory of the Calculus of Voting," *The American Political Science Review* 62, no. 1, (March 1968), 25-42.

[9] Downs, *An Economic Theory*. See also John Duffy and Margit Tavits, "Beliefs and Voting Decisions: A Test of the Pivotal Voter Model," *American Journal of Political Science* 52, no. 3 (July 2008), 603-618. See also G. Bingham Powell, Jr., "American Voter Turnout in Comparative Perspective," *The American Political Science Review* 80, no.1 (March 1986), 17-43.

[10] See Erika Franklin Fowler, Michael M. Franz, Gregory J. Martin, Zachary Peskowitz and Travis N. Ridout, "Political Advertising Online and Offline," *American Political Science Review* 115, no. 1 (February 2021), 138.

[11] Paul Gronke, Eva Galanes-Rosenbaum, Peter A. Miller and Daniel Toffey, "Convenience Voting," *Annual Review of Political Science* 11 (June 2008), 437-455. See also Alex Street, Thomas A. Murray, John Blitzer and Rajan S. Patel, "Estimating Voter Registration Deadline Effects with Web Search Data," *Political Analysis* 23, no. 2 (2015), 225-241.

[12] Kay Lehman Schlozman, Sidney Verba and Henry E. Brady, *The Unheavenly Chorus: Unequal Political Voice and the Broken Promise of American Democracy* (Princeton University Press, 2012).

[13] Kimberly R. Huyser, Gabriel R. Sanchez and Edward D. Vargas, "Civic engagement and political participation among American Indians and Alaska natives in the US," *Politics, Groups, and Identities* 5, no. 4 (2017), 642-59. See also Rebekah Herrick, Jim Davis and Ben Pryor, "Are Indigenous Americans unique in their voting in US national elections?" *Politics, Groups, and Identities* (2020), DOI: 10.1080/21565503.2020.1782952.

participating in the ways that they find least onerous, these bills can be expected, on the basis of existing research, to reduce voter registration and turnout. Many published studies conclude that allowing EDR significantly increases turnout, which implies that eliminating EDR would significantly reduce turnout.[14] Most estimates of the effects of changes that make voting more or less onerous are in the range of a few percentage points.[15] But prior research also shows that the effects fall more heavily on certain people. Lowering the cost of participation has larger effects on marginal voters, e.g., those with less education, lower incomes, or less flexible schedules for family care.[16]

11. Existing research also implies that those living further from polling places,[17] or with less reliable access to mail services, are among the most likely to be deterred from voting by the removal of convenient options. One recent study finds that turnout was higher on rural Indian reservations that gained extra on-site voting options due to a court decision, compared to other rural reservations which did not receive extra on-site voting.[18] There is also evidence in recent research that racial minority voters, especially those who are younger or otherwise less familiar

[14] Scholars who have studied how registration and turnout changes over time have typically found that, when a jurisdiction introduces EDR, there is a turnout increase of a few percentage points. Comparing the same jurisdiction over time has the advantage of controlling for time-invariant differences across jurisdictions. Additionally, accounting for broad time trends in a "difference in differences" design also accounts for shared temporal variation. See, e.g., Matthew R. Knee and Donald P. Green, "The effects of registration laws on turnout: An updated assessment," in *Facing the challenge of democracy: Explorations in the analysis of public opinion and political participation*, eds. Paul M. Sniderman and Benjamin Highton (Princeton University Press, 2011), 312-328. On the basis of such research, a 2016 report by the Government Accountability Office surveyed many peer-reviewed studies on same day registration, including several that focused on EDR, and found that most studies estimate a positive, statistically significant effect on turnout. See https://www.gao.gov/assets/gao-16-630.pdf, especially pages 88-92 (accessed December 30, 2021).

[15] Gronke *et al.*, "Convenience Voting."

[16] See, e.g., Adam Bonica, Jacob M. Grumbach, Charlotte Hill and Hakeem Jefferson, "All-mail voting in Colorado increases turnout and reduces turnout inequality," *Electoral Studies* 72 (August 2021).

[17] Henry E. Brady and John E. McNulty, "Turning Out to Vote: The Cost of Finding and Getting to the Polling Place," *American Political Science Review* 105, no. 1 (February 2011), 115-134.

[18] Jean Schroedel, Melissa Rogers, Joseph Dietrich, Savannah Johnston and Aaron Berg, "Assessing the efficacy of early voting access on Indian reservations: evidence from a natural experiment in Nevada," *Politics, Groups, and Identities* (April 2020), DOI: 10.1080/21565503.2020.1756359.

with requirements for mail ballots, are more likely to have their absentee ballots rejected.[19] In this context, it is no surprise that some minority groups, including Native Americans, are less trusting of returning their ballots through the postal system.[20] One of the services provided by civic organizations like Western Native Voice to those living on reservations in Montana is guidance on how to meet requirements in order to avoid the ballot being rejected (e.g., reminding voters to sign the exterior return envelope but not the interior "secrecy envelope"). Together, these findings in previous research lend credence to the plaintiffs' claims that, by removing the option of EDR and by practically prohibiting organized ballot collection, HB 176 and HB 530 will have a disproportionate, negative effect on turnout among Native American voters, especially those living on reservations in remote parts of Montana with scant infrastructure.

12. People can also form the *habit* of voting. Research shows that people who are induced to vote, whether by mobilization or by the opportunity to participate in a high-stakes contest, are also more likely to vote in subsequent elections, even years later.[21] Correspondingly, when voting habits are disrupted, that tends to reduce turnout.[22] Research shows that factors alluded to by the plaintiffs, including residential instability, rural location, and racial minority status, also tend to increase the effects of such disruptions.[23]

[19] Enrijeta Shino, Mara Suttmann-Lea and Daniel M. Smith, "Determinants of Rejected Mail Ballots in Georgia's 2018 General Election," *Political Research Quarterly* (February, 2021), DOI: 10.1177/1065912921993537. See also Anna Baringer, Michael C. Herron and Daniel A. Smith, "Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus," *Election Law Journal* 19, no. 3 (September 2020), 289-320.

[20] Jean Schroedel, Aaron Berg, Joseph Dietrich and Javier M. Rodriguez, "Political Trust and Native American Electoral Participation: An Analysis of Survey Data from Nevada and South Dakota," *Social Science Quarterly* 101, no. 5 (September 2020), 1885-1904.

[21] See, e.g., Alexander Coppock and Donald P. Green, "Is Voting Habit Forming? New Evidence from Experiments and Regression Discontinuities," *American Journal of Political Science* 60, no. 4 (October 2016), 1044-1062.

[22] See Coppock and Green, "Is Voting Habit Forming." See also Mark N. Franklin and Sara B. Hobolt, "The Legacy of Lethargy: How Elections to the European Parliament Depress Turnout," *Electoral Studies* 30, no. 1 (March 2011), 67-76.

[23] See Kevin Denny and Orla Doyle, "Does Voting History Matter? Analyzing Persistence in Turnout," *American Journal of Political Science* 53, no. 1 (January 2009), 17-35. See also Jeronimo Cortina and Brandon Rottinghaus, "'The quiet revolution': convenience voting, vote centers, and turnout in Texas elections," *Politics, Groups, and Identities* (2021), DOI: 10.1080/21565503.2021.1946099

13. Alongside this research on the calculus of voting, and on voting as a habit, many scholars emphasize *social* dynamics in electoral behavior. When people vote, it is often because they have been asked to do so by friends, colleagues, or family members.[24] Americans are more likely to vote if embedded in social groups and civic organizations, from churches to bowling leagues, that adhere to the widespread norm of encouraging political participation.[25] For instance, these social patterns help to explain why, as people age and become anchored in their communities, their likelihood of voting tends to rise. For these reasons, the social and civic organizations that play a role in mobilizing voters are widely seen by scholars as the bedrock American political life.[26] There is no reason why this should be less true for Native Americans, who may be even more reliant on such social networks. Seen in this light, the idea that civic organizations in remote areas might deliver ballots for others appears quite natural.

14. The political status of Native Americans is unique, due to the history of westward expansion and the dispossession and persecution of indigenous Americans. Over centuries, tribes were recognized as sovereign entities by the United States government—which enshrines treaties between the federal government and the tribes as "the supreme Law of the Land" (Article VI). And yet, settlers encroached upon tribal territory, treaties were broken and unilaterally amended, and, even after reservations had been created, many of them were later fragmented through the "allotment" of some land to tribal members and the sale of the remainder to settlers.[27] As a result, Native Americans living on reservations fall under multiple, overlapping

[24] Robert M. Bond, Christopher J. Fariss, Jason J. Jones, Adam D. I. Kramer, Cameron Marlow, Jaime E. Settle and James H. Fowler, "A 61-million-person experiment in social influence and political mobilization," *Nature* 489 (September 2012), 295-298. See also Robert Huckfeldt and John Sprague, "Political Parties and Electoral Mobilization: Political Structure, Social Structure, and the Party Canvass," *The American Political Science Review* 86, no. 1 (March 1992), 70-86. See also Katherine C. Walsh, *Talking about politics: informal groups and social identity in American life* (University of Chicago Press, 2014).

[25] Robert D. Putnam, *Bowling alone: the collapse and revival of American community* (Simon and Shuster, 2000).

[26] See also Putnam 2000, drawing on a long tradition of scholarship that reaches back to the observations of Alexis de Tocqueville in the 19th century

[27] See, e.g., Vine Deloria, Jr., *Custer Died for Your Sins: An Indian Manifesto. 2nd Edition* (University of Oklahoma Press, 1988). See also Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton University Press, 2017). See also David E. Wilkins and Heidi K. Stark, *American Indian Politics and the American Political System. Fourth Edition* (Rowman and Littlefield, 2017).

jurisdictions. Indigenous Americans are citizens not only of the United States and the of states where they live but also of their tribes. In this context, tribal government has often been the first focus of political participation.[28] Furthermore, even after the Indian Citizenship Act of 1924 conferred U.S. citizenship on all U.S.-born American Indians, some state and local governments banned Native Americans from voting until the 1960s. Although outright bans are now in the past, in more recent times, courts have continued to find further cases of states and counties imposing unconstitutional burdens on tribal members seeking to vote.[29] As these court cases were resolved, and as the organizations that promote and facilitate civic participation on Indian reservations have grown, in recent decades, tribal members have generally become more likely to vote in federal elections.[30] Yet turnout in federal elections still tends to lag behind that of other ethnic and racial groups.[31]

15. Overall, the body of theory and evidence presented in previous research on *rational*, *habitual*, and *social* dynamics in electoral participation does lend credibility to the claims of the plaintiffs in this case that HB 176 and HB 530 are likely to deter some people from registering and voting by interfering with the individual decisions, the accustomed patterns of behavior, and the mutual cooperation that promote political participation, and that these effects are likely to be stronger on Indian reservations in Montana.

IV. Data sources for my analysis

16. In order to assess the likely effects of HB 176 and HB 530, I draw on several data sources that show which Montana voters rely on EDR, and which Montana voters are more likely to receive and return absentee ballots in the ways that the plaintiffs contend are less onerous for on-reservation tribal members in Montana. The primary sources for my analysis are records

[28] Wilkins and Stark, *American Indian Politics*.

[29] McCool, Daniel, Susan M. Olson and Jennifer L. Robinson, *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote* (Cambridge University Press, 2007). See also Jean Schroedel, *Voting in Indian Country: The View from the Trenches* (University of Pennsylvania Press, 2020).

[30] Wilkins and Stark, *American Indian Politics*.

[31] Huyser, Sanchez and Vargas, "Civic engagement."

maintained by the Montana Secretary of State's office based on data submitted by county elections offices. These records include lists of registered voters, the voting history of registered voters, lists of absentee ballots issued and the status of those ballots (e.g., whether counted, or not returned, or rejected), and also lists of late registrants. These records were provided by the defendant in several different files—voter files, voter history files, absentee ballot reports, and late registrant reports.[32] Each Montana registered voter has a unique ID in these files that allows cross-referencing. I use this ID to combine information, e.g., I combine evidence on voter location (from the voter file, which contains addresses) with evidence showing who registered to vote on Election Day (from the late registrant report, which does not

[32] The late registrant reports include a variable showing whether the voter registered "on Election Day" or "before Election Day" during the late registration period. By construction, everyone who appears in these reports under the former category is someone who has relied upon EDR in order to vote on Election Day. The reports also include a variable showing whether the voter was updating their record having moved "county to county," or was updating their record having moved "precinct to precinct," or whether they were registering late for some "other" reason. The Montana Secretary of State's website has a page indicating that this "other" category includes "unregistered voters registering, updated inactive voter to active, registration by cancelled voter, updated voter's name, address change within same county/precinct, administrative updates" (see https://sosmt.gov/elections/latereg/; last accessed December 30, 2021). My understanding, having spoken with elections officers in Lewis and Clark County (where I live), is that some of these categories of late registrants may still be able to vote at their assigned precinct on Election Day, even after the passage of HB 176. I understand that, under HB 176, voting on Election Day would *not* be possible for county-to-county movers, who need a new registration in their new county of residence (county-to-county make up 22% of the Election Day registrants for whom this information is available in the late registrant reports). I believe voting on Election Day *would* be possible for precinct-to-precinct movers, if they went to their old precinct, although that might not be feasible for all of them, depending on travel limitations, or the time they tried to vote (they make up 16% of the Election Day registrants for whom this information is available in the late registrant reports). For those included in the "other" category (62% of Election Day registrants), after the passage of HB 176, EDR and voting would *not* be possible for new registrants, *nor* for those whose record had been cancelled after a period of not voting in federal general elections. An additional reason to conclude that many of the Election Day registrants are first-time registrants is their young age: for the 2020 general election, the median age of Election Day registrants was 31, and for the 2018 general election the median EDR age was 29, compared to a median age of 51 for all registered voters. Under HB 176, voting might not be possible for people who thought they were correctly registered but only discovered on Election Day that an administrative error had removed them from the list of eligible voters in the relevant precinct. Formerly inactive voters would still be able to vote at their precinct. Overall, particularly since the Montana Secretary of State's office has not provided information on the proportions under each status in the large "other" category, I think it is clearest to assume that many, and probably most of the reasons that have previously caused Montanans to be listed as Election Day registrants in the late registrant reports will result in such people being unable to vote on Election Day after the passage of HB 176. For this report, I therefore think it is clearest to consider the full number of Election Day registrants as people who have relied on EDR.

contain addresses). Since these records are more complete for federal (general and primary) elections, I focus on those elections (e.g., these are the only elections for which the state provides late registrant reports). I believe that Western Native Voice and similar groups also focus their efforts on these elections. I study the years 2014 through 2020. This time period includes multiple mid-term and presidential-year elections that saw varying levels of competitiveness and varying turnout (lower turnout in 2014, moderate turnout in 2016, higher turnout in 2018 and 2020). Going back further in time would bring in evidence that is less directly relevant to the current climate for political participation in Montana (for example, Western Native Voice was established in 2011).[33]

17. The great advantage of using these state records for my analysis is that they are complete, not just samples. The files provide direct evidence on hundreds of thousands of registered voters for a given election. As such, these files provide high-quality data even on relatively small sub-sets of the state population, such as Native Americans living in rural tribal communities. The voter file (providing names and locations) is continually updated, e.g., as people move or opt to start voting absentee, and so it provides a snapshot of the electorate at a single point in time. This is also true of the voter history file—it provides voter history going back, in some cases, to the 1980s, but it only provides that information for people who were registered at the time the file was produced. The voter file and the voter history file each take a few weeks to be fully updated after an election. The defendant provided copies of the voter file and voter history file around the time of the primary and general federal elections from 2014 through 2020 (i.e., based on file names, June 16 and November 16 of each year), and also from November 2021, meaning that the files had not yet been fully updated to reflect participation in the election that had just happened. This implies that, looking back to analyze a given election, there is a small amount of data loss due, for instance, to people who have died or people who have moved and have registered in another state no longer appearing in the

[33] I opt against including the June 2017 special federal election for Montana's seat in the House of Representatives in my analysis, on the grounds that special elections, which do not fall on the regular elections schedule, may show atypical patterns of voter registration and voting.

voter file. For example, to analyze the late registrant report for the 2020 general election, which is a complete record of all late registrants, including 8,172 who registered on Election Day, I also need location data from the voter file. However, when combining the two files, I find that a few of those people (37 of the Election-Day registrants from 2020, or 0.45% of them) are no longer included in the most proximate available copy of the voter file (from November 2021). In most cases,[34] when combining data sources in this way, I confirmed that there was only minimal data loss, normally only 1 or 2 percent, and I also confirmed that the data loss was distributed across counties in proportion to population (making it extremely unlikely that differential data loss for people living on- versus off-reservation could skew my comparisons).[35]

18. Although the voter records maintained by the Montana Secretary of State's office are complete, and contain much relevant information, they do not show whether each registered voter is a Native American or whether each person resides on an Indian reservation. To address this limitation, I draw on data from other sources. First, I use addresses in the voter file and ArcGIS Pro[36] mapping software to geocode each registered voter (focusing on those who live in

[34] The exceptions are the 2016 primary and general elections, since the defendants failed to provide copies of the absentee ballot reports for those elections. However, I extracted the same information (date absentee ballot sent, date received, and ballot status) from the closest available copies of the voter history file, namely, the voter history file as of June 2018 for the 2016 general election, and the voter history file as of November 2016 for the June 2016 primary election. I also confirmed that this resulted in minimal further data loss.

[35] To ensure minimal data loss I geocoded the voter file at two different points in time. For the elections in 2020 and 2018, I used the voter file as of November 2021. For the elections in 2016 and 2014, I used the voter file as of June 2018. In general, the amount of data loss, in the range of dozens to a couple of hundred of the Election Day registrants in a given election, was quite often so small that it is arithmetically impossible for it to have big effects on my calculations (e.g., in some cases the use of EDR for on-reservation Montanans was so much higher that the difference between 750 and 770 on-reservation Election Day registrants cannot make enough of a difference to the rate of EDR on-reservation to render it similar to the rate of EDR off-reservation for that election).

[36] This commercial mapping software is widely used in scientific research in fields from ecology to geography and the social sciences. In my experience, this software returns more complete geocoded data than alternatives such as a geocoding interface provided by the U.S. Census Bureau. ArcGIS rates the accuracy of the geocoded addresses as "matched" or "tied" and for the relevant counties it yielded only a few dozen addresses with the lower "tied" rating; I checked these for plausibility. There is some variation across counties in handling the address fields in the voter file. Many of the on-reservation Montanans in the voter file provide a P.O. Box to receive ballots by mail, but in most counties, they also provide a residence address that gives me greater confidence of an on- or off-reservation location. The main exception is Big Horn County, where the residence address field often follows a different format, and the particular case of people who receive mail in Hardin, which is just off-reservation and

counties that overlap with reservations in Montana), and I cross-reference voter locations with digital maps of Indian reservation boundaries in the same mapping software.[37] This allows me to identify Montanans in state voter records who live on-reservation and to compare them to off-reservation registered voters.

19. However, not everyone who lives on a reservation in Montana is a Native American tribal member. This is due to the history of allotment. Much of the Flathead reservation, in particular, was sold to non-Indian settlers. This raises the possibility that apparent differences in voter registration and voting behavior between on- and off-reservation residents may not be (entirely) due to the actions of tribal members. In order to assess that possibility, I also draw upon another data source, the 2020 redistricting file from the U.S. Census Bureau.[38] This file includes information on the racial composition of census blocks, which are the smallest available demographic units (typically, in the relevant parts of Montana, these census blocks each cover a number of residents ranging from a dozen to about 120).[39] By appending this

also has a large Native American population. I cross-referenced those people with precinct locations and found that most do indeed appear to live off-reservation, so they are not included in my analysis of on-reservation voters, who are the focus of the plaintiffs' complaint. In general, as I show in some detail in the Appendix, the patterns that I describe in this report are not driven by the Crow reservation. For this reason, I am confident that the challenges for geocoding in Big Horn County have little bearing on my overall conclusions in this report.

[37] I also use off-reservation trust lands since several hundred tribal members live on trust lands near to the Rocky Boy's reservation (there are not significant populations on the smaller amounts of trust land held by some other tribes). I use digital maps ("shapefiles") of reservation and trust land borders from the Montana State Library; see https://mslservices.mt.gov/Geographic_Information/Data/DataList/datalist_Details.aspx?did=%7B341205DA-7668-4119-9D21-0D1C8AFCF5F1%7D (accessed September 9, 2021).

[38] In particular, I used digital maps containing locations and attributes from 2020 decennial census redistricting data as provided by the Montana State Library. See https://mslservices.mt.gov/Geographic_Information/Data/DataList/datalist_Details.aspx?did={330101fe-8e3f-4e9f-8ac3-47f18e019590} (accessed December 5, 2021).

[39] For the 2020 decennial census data, the U.S. Census Bureau is using "differential privacy" methods to prevent the data being misused to identify individual census respondents. This involves adding random noise to the data. Because of this, the Census Bureau recommends aggregating block-level demographic information to include at least 450-499 people, at which point any discrepancies due to the randomly added noise are very likely to cancel out. I follow this advice and do not report evidence on block composition for subsets of fewer than 500 registered voters (since there are fewer voters than total residents, my approach is extra-cautious). See particularly page 19 of the following document: https://www2.census.gov/library/publications/decennial/2020/2020-census-disclosure-avoidance-handbook.pdf (accessed December 17, 2021).

information on census block demographics to the voter records data I am able to test whether certain patterns, such as heavier used of EDR, are especially prevalent in the parts of Indian reservations in Montana that are predominantly (or even entirely) Native American.[40]

V. Assessing whether Native American voters on Indian reservations in Montana are more reliant on Election Day Registration

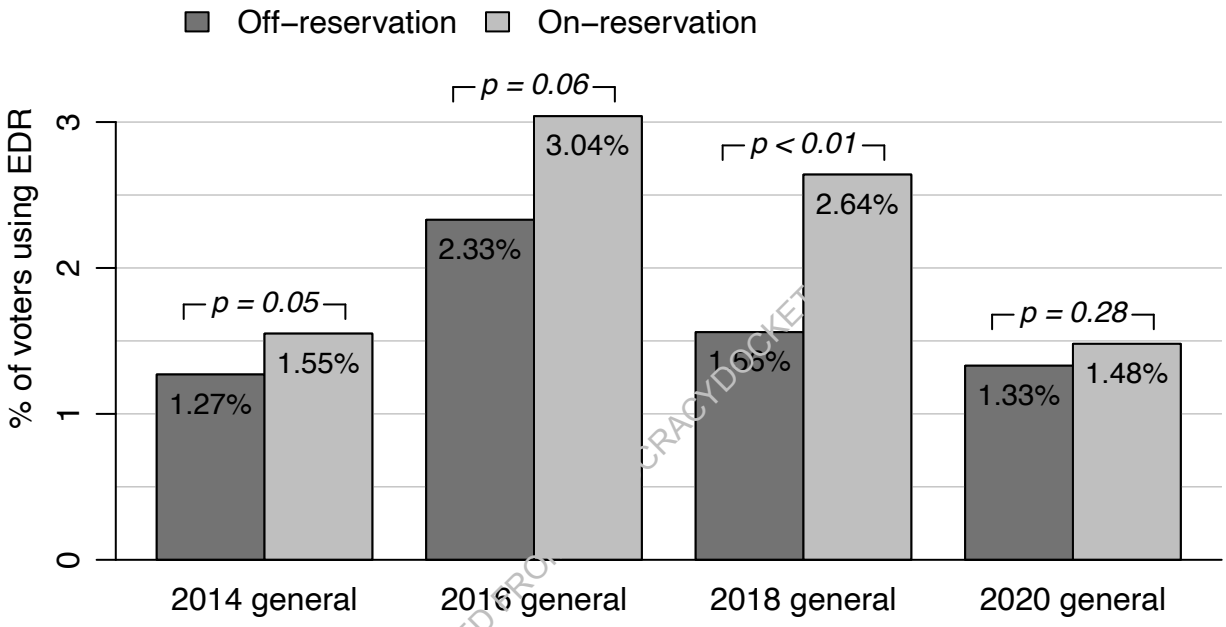
20. I identified 2,530 Montanans living on Indian reservations who registered and voted on Election Day in the federal primary or general elections of 2014-2020. I also tested whether Native Americans living in rural tribal communities on the seven Indian reservations located in Montana are particularly reliant on EDR. The results of my calculations for general elections are shown in Figure 1. The vertical axis shows the percentage of all voters in the respective elections who relied upon EDR, with pairs of adjacent bars for those living off- and on-reservation. The percentage using EDR is consistently higher for people living on-reservation. I also show *p*-values from statistical tests of whether those who live on-reservation are more reliant upon EDR, calculated using standard errors clustered at the precinct level.[41] Low *p*-values indicate that the observed difference is unlikely to be due merely to chance. For

[40] The 2020 census asked, for each person in the residence, "What is this person's race?" and instructed respondents to mark one or more boxes. The options included "White," "Black" and "American Indian or Alaska Native" (AIAN), among others. I calculate racial demographics by dividing the block total adult AIAN number by the block total adult population. In Montana for the 2020 census, 44,531 people aged 18 or above checked AIAN only (5.3% of all adults), and an additional 19,438 identified as both White and AIAN, plus a few hundred more identified as AIAN and one or more other races. In this report, I include those who reported AIAN plus one or more other races as Native American; I also checked that I obtained similar results when calculating using AIAN-alone. Some Montanans with both Native American and other ancestry qualify as tribal members. I opt to use 2020 census numbers for calculations using voter data from the 2020, 2018, 2016, and even the 2014 voter files. This has the drawback of using non-contemporaneous evidence for the less recent elections. One alternative would be to use other Census Bureau estimates, such as five-year compilations of evidence from the American Communities Survey (ACS), but I think that the decennial data, even though they don't align so well on time, are more reliable because they aim for a full count rather than relying on a survey (surveys of small populations, such as Montana Native Americans, risk imprecision). I did compare ACS estimates from earlier years at the reservation level with the subsequent 2020 decennial census estimates and I found them to be similar.

[41] This accounts for possible correlations in turnout between people voting at the same precinct, and, given the possibility of shared circumstances or social influence, this approach is more appropriate than treating each voter's behavior as independent of the behavior of others. For the statewide comparisons in this report, I consistently report *p*-values based on cluster-robust standard errors at the precinct level.

example, as shown toward the left of Figure 1, I find a marginally significant difference at p = 0.05 for on- versus off-reservation Montanans for the 2014 general election. I also find a marginally significant difference for 2016, and a clearly significant difference for 2018. The difference for the 2020 election, which was run largely by mail, is less clear-cut (p = 0.28).[42]

Figure 1. Montanans who live on reservations are more reliant upon EDR, in general elections



21. In further analyses, I also tested whether these patterns are consistent across the 7 Indian reservations in Montana. And I tested whether these patterns are driven (in part) by the large non-Native population on the Flathead reservation, or whether they tend, instead, to be more pronounced in parts of the reservations that have greater Native populations, according to 2020 census data.[43] See the Appendix for further details. In general, I find that the patterns are

[42] The late registrant report for the 2020 general election also features an unusually low number of Election Day registrants in Big Horn County, which overlaps with the Crow and Northern Cheyenne reservations: just a single 1. That is much lower than previous years (125 in 2018, 113 in 2016). I suspect this may reflect unique circumstances, or perhaps an error in data entry or management. If I exclude Big Horn County from the analysis, I find that EDR was significantly more common on-reservation than off-reservation for the 2020 general election (rising to 1.63% of on-reservation voters; difference vs. off-reservation EDR rate significant at p = 0.04).

[43] For the within-reservation analysis, throughout, I used cluster-robust standard errors at the census block level.

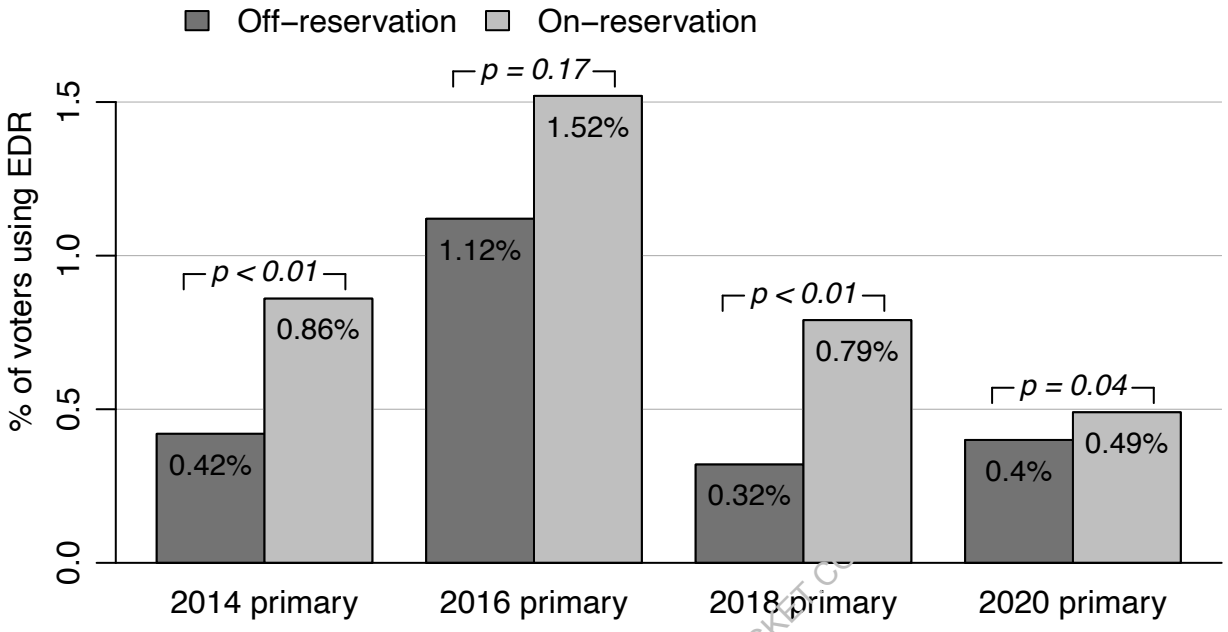
quite consistent across Montana's reservations, with some evidence of higher reliance on EDR on the Blackfeet reservation, in particular. I also find that the patterns are clearly stronger in more-Native parts of the reservations, including significant numbers from people living on census blocks that are 100% American Indian. This corroborates the interpretation that it is, indeed, tribal members who are more reliant on EDR.

22. Additionally, I tested whether similar patterns hold for federal primary elections. Figure 2 shows the results.[44] In general, fewer people rely on EDR for primary elections. This is no great surprise since primary elections tend to see lower turnout and tend to draw in people with strong intra-party preferences who also are also more likely to be habitual voters (rather than new registrants). However, I do find that reliance on EDR is higher in recent primary elections, for Montanans living on-reservation. Pairs of adjacent bars in Figure 2 reveal differences between those living off- and on-reservation, for each election, and the *p*-values above each pair of bars show results from tests of statistical significance.[45] Figure 2 shows that people living on reservations were more likely to rely on EDR in all four of these elections, although, using the conventional threshold of $p < 0.05$ for statistical significance, that finding is less clear-cut for the 2016 primary. Again, I also tested whether these patterns are consistent across reservations, and whether they are more pronounced in the more-Native parts of the reservations, and the results once again support the interpretation that tribal members are more reliant on EDR (see the Appendix).

[44] Note, also, that the 2020 primary election was held mainly by mail, as a pandemic precaution.

[45] As before, I report cluster-robust standard errors, to account for non-independence of voters within precincts.

Figure 2. Montanans who live on reservations are more reliant upon EDR, in primary elections



23. Taken together, the results shown in Figures 1 and 2, along with the additional tests that I report in the Appendix, do support the argument of the plaintiffs that, by removing the option of EDR, HB 176 is likely to have a disparate negative impact on registration and voting for Native Americans living on reservations in Montana. It cannot be entirely ruled out that some of the people facing the circumstances that, to date, have made certain Montanans more reliant on EDR, would, in the future, be able to register and vote earlier instead. But certainly not all of them. Many Montanans have relied on EDR in the past, and this is disproportionately true for Native Americans living on reservations. As I explained earlier, research shows that disrupting voting habits has a negative effect on turnout. For example, one careful study found a negative effect of requiring pre-registration of voters for the first time, which is equivalent to taking away the option of voting without pre-registration.[46] No other state has taken away EDR, but I expect a parallel negative effect of removing this option, other things equal, and my

[46] Scholars who studied this in two states found a negative effect on turnout of three to five percentage points. The authors note that this estimate is smaller than estimates from cross-sectional comparisons, but it is similar to other estimates from statistical methods (e.g., "difference in differences") that use change over time to control for longstanding differences between jurisdictions. See Stephen Ansolabehere and David M. Konisky, "The Introduction of Voter Registration and Its Effect on Turnout," *Political Analysis* 14, no. 1 (Winter 2006), 83-100.

analysis suggests that this effect would be stronger for Native Americans living on reservations in Montana.

VI. Assessing whether Native American voters on Indian reservations in Montana are more likely to request absentee ballots during the late registration period

24. As I noted earlier, in Montana, the period for "regular registration" ends 30 days before any election (MCA 13-2-301). The subsequent period of "late registration" effectively allows in-person same-day registration and voting. Additionally, during that time, people registered to vote absentee may go to the county elections office, request their ballot and vote in-person (MCA 13-13-222). The plaintiffs in this case explain that these options have benefits for many Native Americans living in rural tribal communities across the Indian reservations in Montana, especially those who lack regular and secure access to the mail or who face barriers to travel, and that Western Native Voice and other plaintiffs help tribal members to participate during this period. One way to assess the number of people making use of this option is to count requests for absentee ballots made after the main date on which the bulk of absentee ballots are sent out to registered absentee voters with mail addresses, 25 days before each election.[47] I therefore calculate the number of absentee ballots requested during this period for Montanans living on- and off-reservation.[48]

25. I identify 18,699 Montanans living on Indian reservations who requested an absentee ballot during the late registration period, after the main absentee ballot mailing date, for federal primary and general elections in 2014, 2016, 2018, and 2020. I also test whether Native Americans living in rural tribal communities on the seven Indian reservations located in

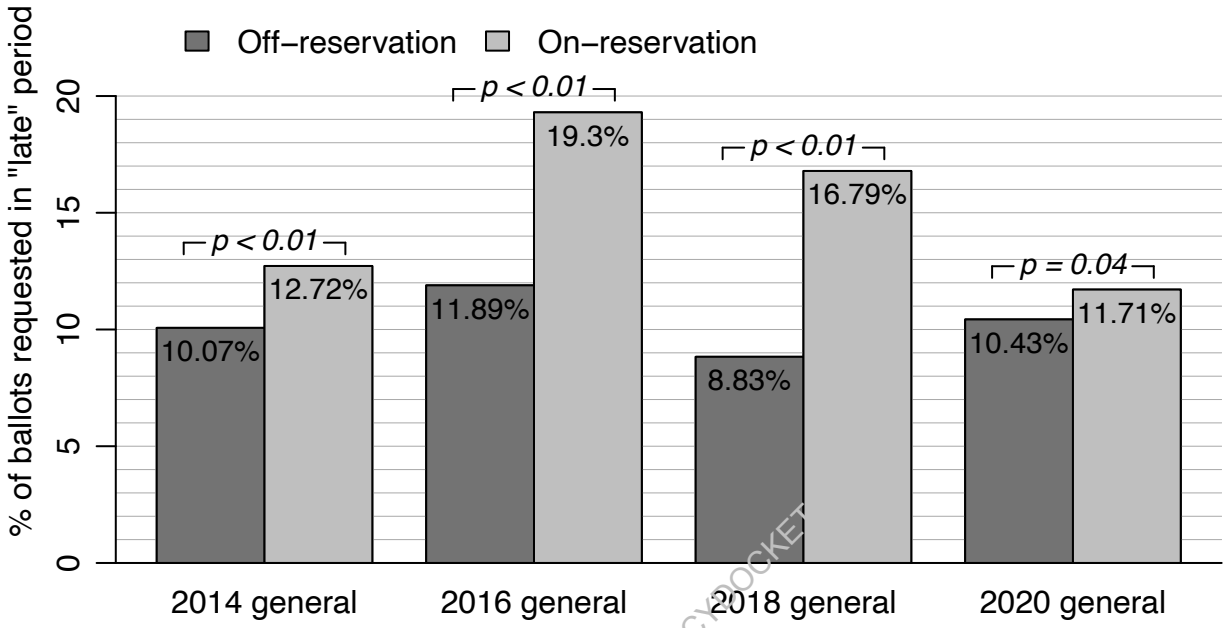
[47] People whose ballot was already sent out in the mail may also go to the elections office and request to vote in-person during this time, in which case the original ballot is voided and a new absentee ballot issued, with an updated "sent date" showing the date of this request.

[48] Note that, since many Montanans who use EDR also cast absentee ballots, my calculations for "late requests" also include many Election Day registrants. The "late requests" calculations add substantial information beyond the results I have already presented, however. Election Day registrants make up only a fraction of all late requests. For example, in the 2018 general election, there were 8,053 Election Day registrants, compared to 46,998 total late requests for absentee ballots.

Montana are especially reliant on access to absentee ballots during this time. The results of these comparisons are illustrated in Figure 3, for federal general elections. The vertical axis shows the number of absentee ballots requested "late" in each election as a percentage of all votes cast in that election.[49] As before, pairs of adjacent bars show differences between those living off- and on-reservation, and the *p*-values above each pair of bars show results from statistical tests of whether the observed differences are greater than would be expected due to chance alone. For each of these elections, Montanans living on reservations were more likely, and in some cases much more likely, to request absentee ballots during the late registration period, after the 25-day mailing date. This is consistent with the argument of the plaintiffs about the registration and voting behavior of tribal members. Additionally, I test whether these patterns were consistent across the 7 Indian reservations in Montana, and whether late absentee ballot requests were more common in the parts of reservations that have the highest Native American populations, according to 2020 census data.[50] See the Appendix for further details. In general, I find that the patterns are quite consistent across reservations in Montana. I also find that the patterns are clearly stronger in more-Native parts of the reservations, which supports the interpretation that it is, indeed, tribal members who are driving these results.

[49] An alternative approach would be to use the total number of absentee ballots cast by similarly-placed Montanans in the respective elections as the denominator in each case. That would have the disadvantage, however, of hindering comparison of other years with 2020, when the election was almost entirely by mail ballot.
[50] For the within-reservation analyses, throughout, I used cluster-robust standard errors at the census block level.

Figure 3. Montanans who live on reservations more often request absentee ballots during the late registration period, in general elections

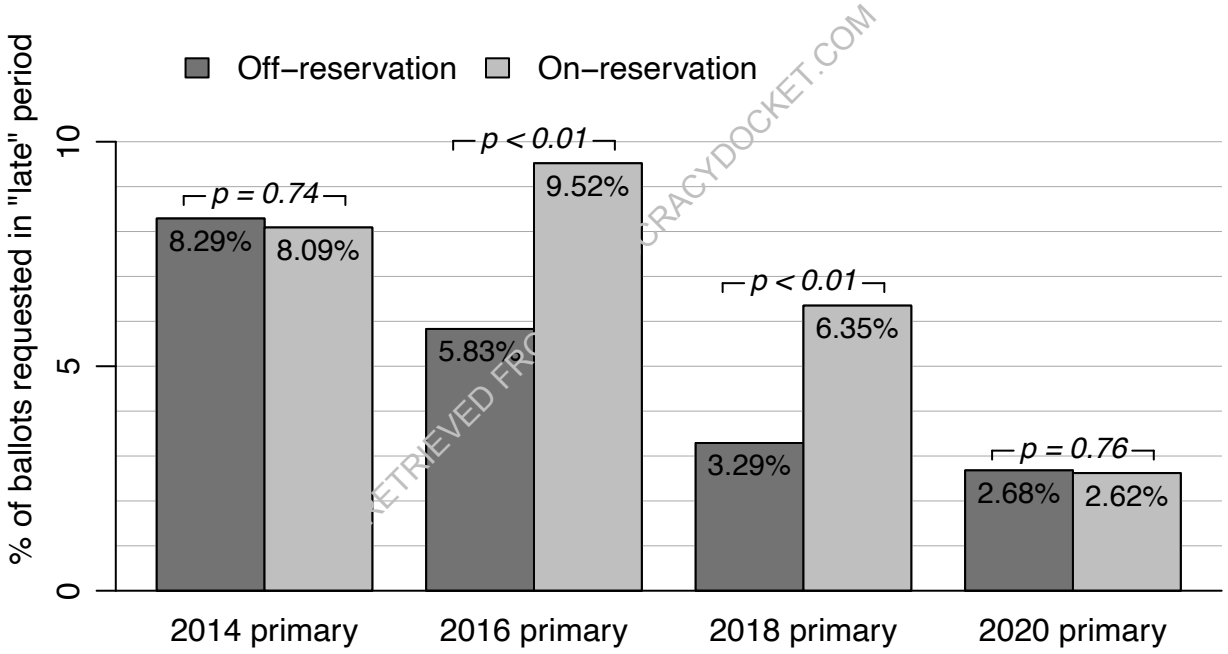


26. I made parallel calculations for federal primary elections from 2014 to 2020. The key results are shown in Figure 4. Late absentee ballot requests were less common for the primaries than for the general elections. There was no significant difference in the proportions of on- versus off-reservation Montanans requesting absentee ballots during the late registration period, after the main date for mailing, for the 2014 primary election.[51] There were clear differences in 2016 and 2018, when Montanans living on reservations were much more likely to request ballots in this way. In further analyses, I confirmed that these patterns were quite consistent across reservations (once again, the Blackfeet reservation stood out for high reliance), and that this behavior was more common among those living in the parts of these reservations with the highest concentrations of people who identified themselves in census data as American Indians (see the Appendix for details). Figure 4 also shows that, for the 2020 primary election, there were far fewer requests for absentee ballots during the late registration period, and there was

[51] This election fell before the settlement agreement in *Wandering Medicine v. McCulloch*, No. 1:12-CV-135-RFC (D. Mont.), which led to the establishment of satellite locations for registration, voting and ballot return, open during (parts of) the late registration period, on reservations in Montana.

no significant difference in the percentage making these requests between Montanans living on- versus off-reservation. This might be partly because a previous law with similarities to HB 530, known as BIPA (the "Ballot Interference Prevention Act") deterred Western Native Voice (and others) from organizing to return absentee ballots for tribal members in that election. BIPA was put on hold by a court a few days before the 2020 primary but, as the court found in the *Western Native Voice v. Stapleton* case, that happened so close to the election that it was not possible to organize ballot collecting.

Figure 4. Montanans who live on reservations more often request absentee ballots during the late registration period, in some primary elections



27. The results of my analyses, as presented in Figures 3 and 4, and the additional tests confirming that these patterns are driven by Native American residents of reservations in Montana, tend to support the complaint of the plaintiffs. By prohibiting paid workers from returning absentee ballots on behalf of tribal members, and perhaps also by interfering in other ways with the assistance that Western Native Voice and the other plaintiffs provide in

"distributing, ordering, requesting, collecting, or delivering ballots,"[52] there is a risk that HB 530 will disproportionately burden Native Americans who make absentee ballot requests in distinctive ways that reflect their distinctive circumstances. Again, while it cannot be entirely ruled out that that some of the people affected would, in the future, be able to find other (more onerous) ways to vote, methods of voting are habitual so changes are likely to have a negative effect on turnout. Moreover, the other bill at issue in this case, HB 176, makes compensating responses to this disruption substantially less likely, since EDR and voting on Election Day was previously a failsafe for people who had difficulty when trying to vote, but that failsafe has now been removed.

VII. Further analysis of patterns in absentee ballot returns: learning from the 2020 primary

28. The final set of results in this report are based on my analysis of the 2020 primary, which is instructive for understanding the likely effects of HB 530. As I noted earlier, HB 530 is similar to an earlier law, referred to as BIPA, which also prohibited ballot collection by Western Native Voice and others. When challenged, a Montana court found that the costs that BIPA imposed on Native American voters were too high, and too burdensome, for that law to remain in force. Courts Findings of Fact, Conclusions of Law, and Order, *Western Native Voice v. Stapleton*, No. DV 20-0377 (Mont. Dist. Ct. Sept. 25, 2020). That court decision was based partly on the fact that BIPA did impact the 2020 primary election—it was put on hold, but only a few days beforehand, effectively preventing organized ballot collection by Western Native Voice and others (as they testified in that case). It turns out that this short period in which BIPA affected Montana elections provides another way to assess the likely effects of HB 530. This can be seen by comparing the behavior of people registered to vote absentee in the 2020 primary with the behavior of the same people in earlier elections. For such people, ballot collection by Western Native Voice and other groups was no longer an option in the 2020 primary, and informal ballot collection may also have been chilled by the BIPA requirements.[53]

[52] See https://leg.mt.gov/bills/2021/billpdf/HB0530.pdf (accessed December 29, 2021).

[53] BIPA required people returning someone else's ballot to fill out a form, which included a warning of a $500 per ballot fine for returning ballots that did not meet certain exceptions (additionally, the exceptions were not clearly defined, e.g., the definition of "acquaintance" on the form was short and vague).

29. Specifically, I ran statistical models of turnout in the 2020 primary, focusing on people registered to vote absentee in that election who had also been registered to vote absentee in the 2016 primary (chosen for comparability, as a primary in a presidential election year). Studying the same people, over time, has the advantage of controlling for many of the factors that vary across individuals and that help to explain why some people are more likely to vote than others. In this instance, too, I geocoded voter records in order to compare those living on- versus off-reservation (using the 2020 primary absentee ballot report, and the voter history file as of late June, 2020). I used statistical models to test for a *differential* on-reservation effect of the conditions affecting the 2020 primary, including BIPA, while controlling for an overall change in turnout between the two elections that affected everyone in the analysis. Table 1 shows turnout in this subset of voters for both the 2016 and 2020 primaries. As noted above, those who are registered to vote absentee tend to be habitual voters, so turnout was generally high. Among these people, turnout was similar from 2016 to 2020 among those living off-reservation, but actually fell by around three percentage points for those living on-reservation.

Table 1. Statistical comparisons of individual-level turnout on and off-reservation, for those registered to vote absentee in 2016 and still in the voter history file as of 2020

	2016 turnout	2020 turnout	Change, 2016 to 2020
Absentee voters living off-reservation (*N*=212,843)	82.5%	82.3%	- 0.2%
Absentee voters living on-reservation (*N*=6,125)	83.7%	80.3%	- 3.5%*
**Decrease in turnout is significantly larger for those living on-reservation, consistently p<0.05 across alternative model specifications.*			

30. The finding that turnout actually fell among those living on reservations who were already listed as absentee voters for the 2016 federal primary election, and had the chance to vote

absentee again in the 2020 primary, is robust across modeling specifications.[54] It is consistent with the claim that BIPA had a disparate, negative impact on turnout for Native American voters living on reservations in Montana. This finding is also consistent with the claims of the plaintiffs in the current case that, by preventing people and groups, including Western Native Voice, from helping voters to return absentee ballots, HB 530 would have a disparate, negative effect on turnout among voters living on rural reservations in Montana. In further analysis, I also corroborated the differential effect of the BIPA-impacted 2020 primary election using county-level turnout data.[55]

31. Another way in which the prohibitions under BIPA and HB 530 might affect Native voters is by preventing the trained mobilizers and ballot collectors who work for Western Native Voice and other groups from checking absentee ballots as they are completed for return. This may result in more ballots being rejected. Again, the fact that the 2020 primary was affected by BIPA's prohibition provides an opportunity to learn about the likely effects of HB 530. In fact, voter records show that a higher number of ballots were rejected in the 2020 primary, for problems that ballot collectors might have helped to fix, for on-reservation voters, compared to other primaries in 2016 and 2018. This was not true for Montanans living off-reservation. I find that, for those who returned absentee ballots, there was a higher rate of ballot rejections for

[54] I estimated several models with different assumptions and alternative ways of measuring change in turnout—as a binary outcome, as count data, and on a linear scale—using negative binomial, logit and OLS models, respectively. I also accounted for ballots that were rejected or undeliverable in alternative ways, either treating them as non-votes or treating them as missing data, but found that this made little difference to the results. The results were consistently negative and statistically significant for those living on reservations vs. other Montanans.

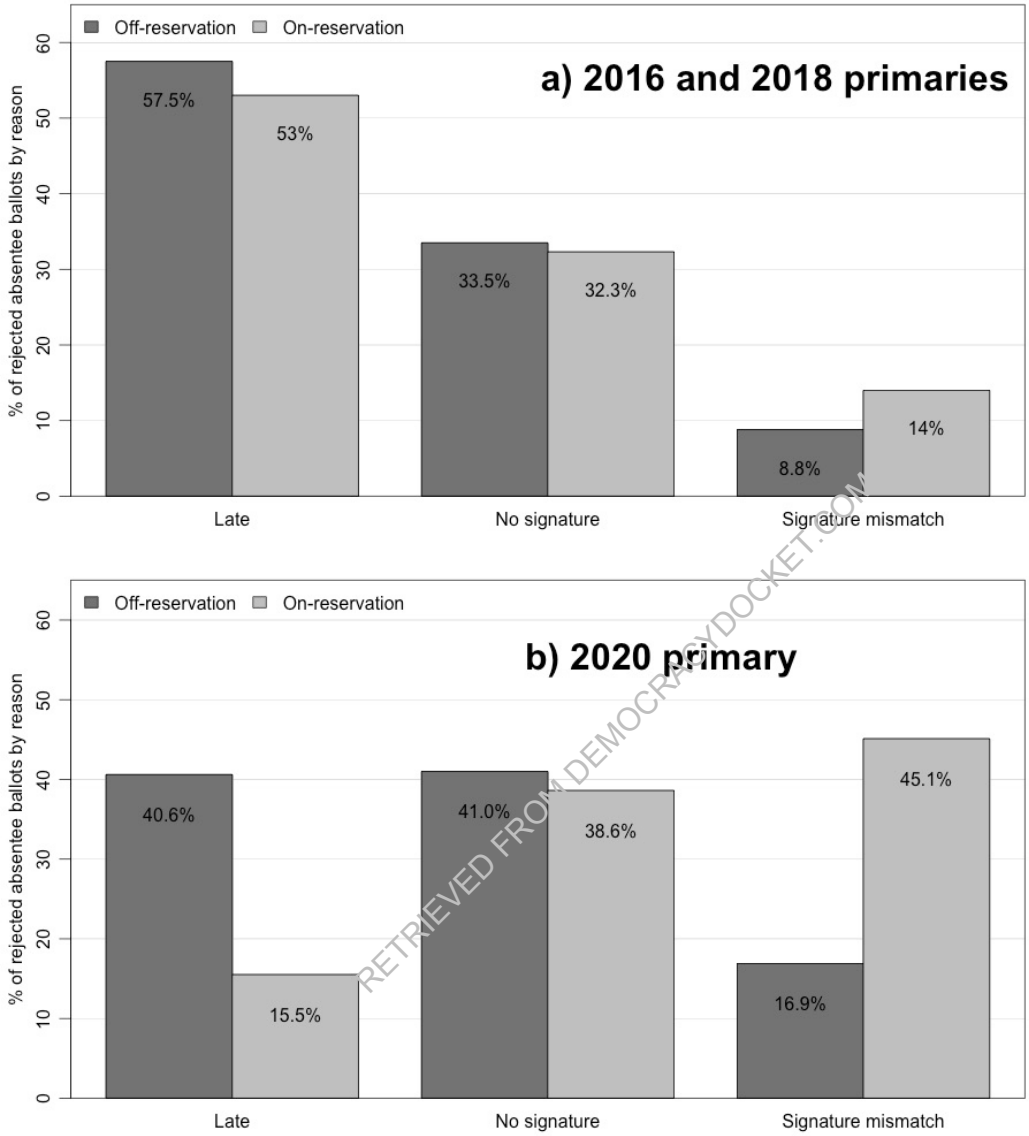
[55] This approach has the advantage of including all voters, rather than just the sub-set that I selected for the sake of comparability in the individual-level analysis. It has the disadvantage that county borders do not always align with reservation borders and that not all on-reservation voters are Native American, each of which introduces noise into the comparison. Nonetheless, I obtain comparable results. Again, comparing each county with itself four years earlier helps to control for other factors that may affect turnout. Doing this, I find that turnout rose overall by 10.6 percentage points, but by only 5.2 percentage points in the counties that substantially overlap with large reservations (namely, Blaine, Big Horn, Glacier and Roosevelt counties). This difference is statistically significant at $p = 0.05$ (with heteroskedasticity-consistent standard errors). I also find a significantly smaller average increase in turnout using an expanded range of counties with some reservation overlap (e.g., turnout increase was 3% smaller in counties with any reservation overlap than in the remainder of the state, $p = 0.02$). There is no sign that this pattern is driven by the counties with the large non-native populations living on the reservation such as Lake County. Overall, these results do tend to corroborate the findings in Table 1.

people living on reservations, at 0.91% on-reservation versus 0.55% off-reservation. A statistical test of difference in proportions indicates that this difference is highly unlikely to be due to chance alone ($p < 0.01$).

32. Figure 5 shows that on-reservation voters are more likely to have their ballots rejected due to "signature mismatch" and that this was especially true in the 2020 primary.[56] As noted above, for those living on reservations, more ballots were rejected in 2020 than in 2016/2018. The absolute number of on-reservation ballots rejected because they were late, summing 2016 and 2018, was 56, whereas 47 on-reservation ballots were rejected because they were late in 2020. So, the reason for the difference between panels a) and b) of Figure 5 is that there were large increases in the numbers of ballots rejected because of problems with signatures in the 2020 primary election. The number of on-reservation ballots with no signature rose from 34 in 2016/2018 combined to 107 in 2020. And the number of on-reservation ballots rejected for signature mismatch rose from 15 in 2016/2018 to 125 in 2020. It is not possible to infer all of the possible reasons for these changes, using the information available in the voter files. Election workers are trained on signature recognition, but do have some discretion, and their decisions may vary from county to county (or across individual workers). The key point for this case, as was testified in the earlier case, is that some of these problems might have been prevented by experienced ballot collectors working for groups such as Western Native Voice and Forward Montana, who could remind voters to sign with the exact same name that they used on their original form, for instance. The fact that BIPA prevented organized ballot collecting for the 2020 federal primary may help account for this pattern.

[56] There is also an "other" category for ballot rejections but this includes just a handful of cases, so I omit it.

Figure 5. Reasons for ballot rejections, on and off reservations, for federal primary elections in 2016/18 versus 2020



VIII. Conclusion

33. The findings in this report largely align with the concerns of the plaintiffs in this case that HB 176 and HB 530 will "harm Native Americans in rural tribal communities by impairing access to the voter registration process and to voting by absentee ballot."[57] I have shown that, across recent federal elections under varying levels of turnout and competitiveness, Native Americans

[57] See pages 2-3 of the plaintiffs' complaint.

living on reservations in Montana were quite consistently more likely to rely on Election Day Registration and were also more likely to request absentee ballots during the "late registration" period that allows one-stop registration and voting. This was less true for the 2020 elections which, as a public health precaution, were run largely by mail, but I do not expect such precautions to affect all future elections in Montana. I have also shown that the 2020 primary election, which was affected by an earlier law quite similar to HB 530, did show evidence of disparate effects on Native voters. These findings are based on my analysis of high-quality data across several elections, using relevant tools of statistical analysis including alternative modeling specifications, and further analyses consistently show that the patterns are driven by Native American voters. In short, the patterns are robust. As I have explained, the claims of the plaintiffs also align with a great deal of research on the factors that promote or impede registration and voting, for Americans in general and for Native Americans in particular. For these reasons, my considered opinion is that HB 176 and HB 530 will disproportionately reduce rates of registration and voting among Native Americans living on the largely rural Indian reservations in the state of Montana.

Alexander Street, Ph.D.

STATE OF Montana

COUNTY OF Lewis + Clark

Signed and sworn to before me on this 11th day of January, 2022.

CAROL LYNN WILL
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
July 26, 2022

Notary Public

Appendix: further details of EDR and late period absentee ballot requests, on- and off-reservation

2020

Table A1. 2020 EDR as a percentage of all votes cast in election

General election		Primary election	
Location	% using EDR	*Location*	% using EDR
Off-reservation	1.33%	Off-reservation	0.4%
Blackfeet reservation	1.62%	Blackfeet reservation	1.15%
Crow reservation	0.02%	Crow reservation	0.19%
Flathead reservation	1.48%	Flathead reservation	0.52%
Fort Belknap reservation	1.87%	Fort Belknap reservation	0.43%
Fort Peck reservation	2.21%	Fort Peck reservation	0.46%
Northern Cheyenne reservation	1.17%	Northern Cheyenne reservation	0%
Rocky Boy's reservation	1.27%	Rocky Boy's reservation	2.29%

Table A2. 2020 EDR as a percentage of all votes cast in election, by % Native American of census block where voter lives (on-reservation Montanans only)

General election		Primary election	
	% using EDR		% using EDR
0-24% Native American in block	1.16%	0-24% Native American in block	0.27%
25-49% Native American in block	1.56%	25-49% Native American in block	0.85%
50-74% Native American in block	2.31%	50-74% Native American in block	0.81%
74-100% Native American in block	1.79%	74-100% Native American in block	0.91%

Note: for general election, linear model of % EDR as a function of % Native American in voter's census block is positive and statistically significant at $p = 0.03$ (standard errors clustered at the block level). For primary election, linear model of % EDR as a function of % Native American in voter's census block is positive and statistically significant at $p < 0.01$ (standard errors clustered at the block level).

Table A3. 2020 late registration period absentee requests as a percentage of all votes cast in election

General election		Primary election	
Location	% late requests	*Location*	% late requests
Off-reservation	10.43 %	Off-reservation	2.68 %
Blackfeet reservation	11.52%	Blackfeet reservation	3.54%
Crow reservation	14.27%	Crow reservation	3.32%
Flathead reservation	10.46%	Flathead reservation	2.86%
Fort Belknap reservation	11.63%	Fort Belknap reservation	2.02%
Fort Peck reservation	14.09%	Fort Peck reservation	0.81%
Northern Cheyenne reservation	10.88%	Northern Cheyenne reservation	1.29%
Rocky Boy's reservation	16.59%	Rocky Boy's reservation	2.11%

Table A4. 2020 late registration period absentee requests as a percentage of all votes cast in election, by % Native American of census block where voter lives (on-reservation Montanans only)

General election		Primary election	
	% late requests		% late requests
0-24% Native American in block	8.76%	0-24% Native American in block	2.5%
25-49% Native American in block	12.07%	25-49% Native American in block	2.6%
50-74% Native American in block	12.68%	50-74% Native American in block	2.67%
74-100% Native American in block	14.1%	74-100% Native American in block	2.71%

Note: for general election, linear model of % late requests as a function of % Native American in voter's census block is positive and statistically significant at $p < 0.01$ (standard errors clustered at the block level). For primary election, linear model of % late requests as a function of % Native American in voter's census block is not statistically significant at conventional levels, $p = 0.54$ (standard errors clustered at the block level).

2018

Table A5. 2018 EDR as a percentage of all votes cast in election

General election		Primary election	
Location	% using EDR	*Location*	% using EDR
Off-reservation	1.56%	Off-reservation	0.32%
Blackfeet reservation	4.33%	Blackfeet reservation	1.41%
Crow reservation	2.62%	Crow reservation	1.37%
Flathead reservation	2.56%	Flathead reservation	0.65%
Fort Belknap reservation	1.08%	Fort Belknap reservation	1.16%
Fort Peck reservation	2.47%	Fort Peck reservation	0.08%
Northern Cheyenne reservation	1.31%	Northern Cheyenne reservation	0%
Rocky Boy's reservation	0.63%	Rocky Boy's reservation	1.29%

Table A6. 2018 EDR as a percentage of all votes cast in election, by % Native American of census block where voter lives (on-reservation Montanans only)

General election		Primary election	
	% using EDR		% using EDR
0-24% Native American in block	1.75 %	0-24% Native American in block	0.58%
25-49% Native American in block	2.84%	25-49% Native American in block	0.56%
50-74% Native American in block	3.82%	50-74% Native American in block	0.96%
74-100% Native American in block	3.17%	74-100% Native American in block	1.2%

Note: for general election, linear model of % EDR as a function of % Native American in voter's census block is positive and statistically significant at $p < 0.01$ (standard errors clustered at the block level). For primary election, linear model of % EDR as a function of % Native American in voter's census block is positive and statistically significant at $p = 0.03$ (standard errors clustered at the block level).

Table A7. 2018 late registration period absentee requests as a percentage of all votes cast in election

General election		Primary election	
Location	% late requests	*Location*	% late requests
Off-reservation	8.83%	Off-reservation	3.29%
Blackfeet reservation	29.7%	Blackfeet reservation	11.23%
Crow reservation	12%	Crow reservation	4.68%
Flathead reservation	11.8%	Flathead reservation	4.98%
Fort Belknap reservation	33.57%	Fort Belknap reservation	15.06%
Fort Peck reservation	16.71%	Fort Peck reservation	6.25%
Northern Cheyenne reservation	24.49%	Northern Cheyenne reservation	8.02%
Rocky Boy's reservation	20.5%	Rocky Boy's reservation	8.13%

Table A8. 2018 late registration period absentee requests as a percentage of all votes cast in election, by % Native American of census block where voter lives (on-reservation Montanans only)

General election		Primary election	
	% late requests		% late requests
0-24% Native American in block	10.85%	0-24% Native American in block	5.06%
25-49% Native American in block	13.15%	25-49% Native American in block	4.58%
50-74% Native American in block	16.41%	50-74% Native American in block	4.85%
74-100% Native American in block	23.49%	74-100% Native American in block	9.57%

Note: for general election, linear model of % late requests as a function of % Native American in voter's census block is positive and statistically significant at $p < 0.01$ (standard errors clustered at the block level). For primary election, linear model of % late requests as a function of % Native American in voter's census block is positive and statistically significant at $p < 0.01$ (standard errors clustered at the block level).

2016

Table A9. 2016 EDR as a percentage of all votes cast in election

General election		Primary election	
Location	% using EDR	*Location*	% using EDR
Off-reservation	2.33%	Off-reservation	1.12%
Blackfeet reservation	5.6%	Blackfeet reservation	4.22%
Crow reservation	2.04%	Crow reservation	1.73%
Flathead reservation	2.42%	Flathead reservation	0.81%
Fort Belknap reservation	0.59%	Fort Belknap reservation	2.92%
Fort Peck reservation	4.92%	Fort Peck reservation	0.81%
Northern Cheyenne reservation	0.61%	Northern Cheyenne reservation	0.37%
Rocky Boy's reservation	1.54%	Rocky Boy's reservation	1.42%

Table A10. 2016 EDR as a percentage of all votes cast in election, by % Native American of census block where voter lives (on-reservation Montanans only)

General election		Primary election	
	% using EDR		% using EDR
0-24% Native American in block	1.85%	0-24% Native American in block	0.69%
25-49% Native American in block	2.59%	25-49% Native American in block	1.03%
50-74% Native American in block	4.21%	50-74% Native American in block	0.84%
74-100% Native American in block	4.02%	74-100% Native American in block	2.84%

Note: for general election, linear model of % EDR as a function of % Native American in voter's census block is positive and statistically significant at $p < 0.01$ (standard errors clustered at the block level). For primary election, linear model of % EDR as a function of % Native American in voter's census block is positive and statistically significant at $p < 0.01$ (standard errors clustered at the block level).

Table A11. 2016 late registration period absentee requests as a percentage of all votes cast in election

General election		Primary election	
Location	% late requests	*Location*	% late requests
Off-reservation	11.89%	Off-reservation	5.83%
Blackfeet reservation	30.92%	Blackfeet reservation	15.03%
Crow reservation	14.73%	Crow reservation	7.53%
Flathead reservation	15.28%	Flathead reservation	7.35%
Fort Belknap reservation	38.37%	Fort Belknap reservation	18.37%
Fort Peck reservation	17.99%	Fort Peck reservation	8.4%
Northern Cheyenne reservation	25.1%	Northern Cheyenne reservation	16.01%
Rocky Boy's reservation	13.74%	Rocky Boy's reservation	16.82%

Table A12. 2016 late registration period absentee requests as a percentage of all votes cast in election, by % Native American of census block where voter lives (on-reservation Montanans only)

General election		Primary election	
	% late requests		% late requests
0-24% Native American in block	14.11%	0-24% Native American in block	7.88%
25-49% Native American in block	15.59%	25-49% Native American in block	6.69%
50-74% Native American in block	17.19%	50-74% Native American in block	8.50%
74-100% Native American in block	25.32%	74-100% Native American in block	12.86%

Note: for general election, linear model of % late requests as a function of % Native American in voter's census block is positive and statistically significant at $p < 0.01$ (standard errors clustered at the block level). For primary election, linear model of % late requests as a function of % Native American in voter's census block is positive and statistically significant at $p < 0.01$ (standard errors clustered at the block level).

2014

Table A13. 2014 EDR as a percentage of all votes cast in election

General election		Primary election	
Location	% using EDR	*Location*	% using EDR
Off-reservation	1.27%	Off-reservation	0.42%
Blackfeet reservation	1.59%	Blackfeet reservation	0.49%
Crow reservation	2.01%	Crow reservation	1.12%
Flathead reservation	1.53%	Flathead reservation	0.58%
Fort Belknap reservation	0.57%	Fort Belknap reservation	0.4%
Fort Peck reservation	1.79%	Fort Peck reservation	2.09%
Northern Cheyenne reservation	0.74%	Northern Cheyenne reservation	0.71%
Rocky Boy's reservation	0.48%	Rocky Boy's reservation	0%

Table A14. 2014 EDR as a percentage of all votes cast in election, by % Native American of census block where voter lives (on-reservation Montanans only)

General election		Primary election	
	% using EDR		% using EDR
0-24% Native American in block	1.3%	0-24% Native American in block	0.61%
25-49% Native American in block	1.82%	25-49% Native American in block	0.81%
50-74% Native American in block	0.81%	50-74% Native American in block	1.27%
74-100% Native American in block	1.93%	74-100% Native American in block	1.11%

Note: for general election, linear model of % EDR as a function of % Native American in voter's census block is positive and marginally significant at $p = 0.06$ (standard errors clustered at the block level). For primary election, linear model of % EDR as a function of % Native American in voter's census block is positive and statistically significant at $p = 0.04$ (standard errors clustered at the block level).

Table A15. 2014 late registration period absentee requests as a percentage of all votes cast in election

General election		Primary election	
Location	% late requests	*Location*	% late requests
Off-reservation	10.07%	Off-reservation	8.29%
Blackfeet reservation	16.88%	Blackfeet reservation	5.44%
Crow reservation	21.74%	Crow reservation	5.45%
Flathead reservation	11.14%	Flathead reservation	8.34%
Fort Belknap reservation	6.21%	Fort Belknap reservation	4.39%
Fort Peck reservation	13.31%	Fort Peck reservation	12.68%
Northern Cheyenne reservation	4.04%	Northern Cheyenne reservation	4.14%
Rocky Boy's reservation	2.64%	Rocky Boy's reservation	4.76%

Table A16. 2014 late registration period absentee requests as a percentage of all votes cast in election, by % Native American of census block where voter lives (on-reservation Montanans only)

General election		Primary election	
	% late requests		% late requests
0-24% Native American in block	11.26%	0-24% Native American in block	8.99%
25-49% Native American in block	12%	25-49% Native American in block	9.33%
50-74% Native American in block	11.1%	50-74% Native American in block	8.56%
74-100% Native American in block	14.87%	74-100% Native American in block	6.7%

Note: for general election, linear model of % late requests as a function of % Native American in voter's census block is positive and marginally significant at $p = 0.07$ (standard errors clustered at the block level). For primary election, linear model of % late requests as a function of % Native American in voter's census block is negative and statistically significant at $p = 0.03$ (standard errors clustered at the block level).

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[19] "Mass deportations are alienating young Latino voters from the Democratic Party." *Latino Decisions blog*, May 19 2014.

[20] "The Political Effects of Becoming a Citizen: Solution or Selection?" *Max Weber Programme working paper 2012/19*.

Awards

Prizes for scholarship

- 2017 Best article award, Migration and Citizenship section, American Political Science Association, for *Political Effects of Having Undocumented Parents*
- 2016 Best paper prize, Latino Politics section, Western Political Science Association, for *Political Effects of Having Undocumented Parents*

Grants for research and infrastructure

- Berberet Summer Research Grant, Carroll College, 2021, PI *$1,500*
- Montana PBS grant for Carroll College Exit Poll, 2020, PI *$2,000*
- Montana PBS grant for Carroll College Exit Poll, 2018, PI *$2,000*
- USB Renewable Energy, 2018, PI with J. Rowley *$48,000*
- Russell Sage Foundation, 2013, PI with C. Zepeda-Millán *$30,000*
- Cornell Institute for the Social Sciences, 2013, PI with M. Jones-Correa *$12,000*

Grants for classes and speaker series

- Diversity and Civil Discourse, Charles Koch Foundation, 2019-21 *$18,000*
- Mallette grant support for collaboration with Tribal Colleges, 2016 *$4,700*
- Mallette grant support for collaboration with Tribal Colleges, 2015 *$1,300*
- Speaker Series, Cornell Institute for European Studies, 2012-13 *$9,000*
- Course Development Grant, European Studies, UC Berkeley, 2010 *$2,000*

Data for scholarly use

Latino Second Generation Study, 2012-2013 [United States] (ICPSR 36625). *Link to dataset via ICPSR.*

Carroll College Exit Polls 2014, 2016, 2017, 2018, 2020. *Link to datasets via Carroll College institutional repository.*

Expert witness testimony

ACLU of Montana, expert witness on voter registration, *Western Native Voice vs. Stapleton*, Montana Thirteenth Judicial District Court (no. DV 20-0377), 2020.

ACLU of Ohio, expert witness on voter registration and mail voting, *League of Women Voters of Ohio vs. LaRose*, United States District Court Southern District of Ohio Eastern Division (no. 2:20-cv-3843), 2020.

ACLU of New York, expert witness on voter registration deadlines, *League of Women Voters v. New York State Board of Elections*, United States District Court Southern District of New York (no. 1:20-cv-05238-MKV), 2018-2020.

ACLU of Massachusetts, advisor on voter registration deadlines, *Chelsea Collaborative v. Galvin*, Commonwealth of Massachusetts Supreme Judicial Court (no. SJC-12435), 2017-2018.

Conference presentations, invited talks

American Political Science Association (APSA) annual meeting 2021, 2019, 2017, 2013, 2011.

The University of Toronto, 2016.

The Ohio State University, 2015.

Pacific Northwest Political Science Association annual meeting 2015.

Western Political Science Association (WPSA) annual meeting 2015, 2014.

Council for European Studies (CES) annual meeting 2015, 2010.

Cornell University, 2012.

Midwest Political Science Association (MPSA) annual meeting 2012, 2011.

Harvard University, 2011.

Panel organizer/chair/discussant: APSA (2019), CES (2015, 2010), MPSA (2012).

Teaching

Assistant and Associate Professor, Carroll College *2014-*

Introduction to Comparative Politics; *Political Economy*; *State and Nation in World Politics*; *Democracy and Autocracy*; *Political Research Methods*; *Citizenship, Global and Local*; *Elections, Political Parties and Public Opinion*; *Senior Seminar.*

Instructor, University of Göttingen. *Spring 2014*

Migration and International Relations

Instructor, Prison Education Project, Auburn Correctional Facility. *Spring 2013*

Introduction to Comparative Politics

Instructor, Prison University Project, San Quentin State Prison. *2010-11*

Math tutoring

Teaching assistant, University of California, Berkeley. *2006-2009*

Comparative Political Economy; *Intro. to Quantitative Methods*; *Intro. to Comparative Politics*; *Immigrants, Citizenship and the State*; *The Welfare State in Comparative Perspective.*

Teacher training

Future-proofing your courses, Carroll College, Summer 2020.

Indigenous Studies Network short course, Washington, D.C., September 2019.

MiClassroom technology pilot projects, Carroll College, Spring 2016 & Spring 2018.

Service Learning training, Carroll College, Fall 2015.

Fundamental Principles of Online Teaching, Carroll College, Summer 2015.

Academic Service

Strategic Planning Task Force, Carroll College, 2019-21.

Chair, Best Conference Paper selection committee, Migration and Citizenship organized section of the American Political Science Association, 2019.

Political Science internships coordinator, Carroll College, 2018-19.

Equal Opportunity Policy investigation team, Carroll College, 2017-.

International Relations program director, Carroll College, 2015-.

Institutional Review Board member, Carroll College, 2015-.

Referee for academic journals: *American Politics Research*, *American Journal of Political Science*, *American Political Science Review*, *British Journal of Political Science*, *Canadian Journal of Political Science*, *Comparative Political Studies*, *Ethnic and Racial Studies*, *Ethnicities*, *International Migration Review*, *Journal of Ethnic and Migration Studies*, *Journal of International Migration and Integration*, *Journal of Politics*, *Party Politics*, *West European Politics*, *World Politics*.

Referee for funding proposals: Russell Sage Foundation, Social Science and Humanities Research Council of Canada.

(CV last updated January 2022)