

SOUTH DAKOTA REDISTRICTING: **JUST THE FACTS**



- Districts should respect political boundaries.¹ Political boundaries **include reservations**.
- Communities of interest **should be protected**.² Native communities are communities of interest and include areas outside the reservation where tribal members are living.
- In 2006, the Eighth Circuit Court of Appeals upheld the District Court's decision in *Bone Shirt v. Hazeltine* that the South Dakota legislature **violated Section 2 of the Voting Rights Act (VRA)** by packing District 27 with Native Americans at the expense of District 26 and upheld the District Court's remedial plan to redistrict South Dakota in a manner that assured Native Americans in Districts 26 and 27 the opportunity to elect Indian-preferred candidates.³
- House Districts 26A and 28A and Senate Districts 26 and 27 are **well-established majority-minority districts**.
- The Native American Voting Age Population (VAP) in Districts 26A, 28A, 26, and 27 continues to be **sufficiently large and geographically compact** to constitute a majority pursuant to Section 2 of the VRA.
- The operative Native VAP population includes **both those who identified themselves** on the census as exclusively American Indian or Alaska Native and those who self-identified as American Indian or Alaska Native in addition to one or more other races.
- **Race will, and should, always be a consideration when drawing maps.** Section 2 of the VRA requires the consideration of race, among other factors, to ensure that Native American voters have an equal opportunity to participate in the political process and elect candidates of their choice.
- A discrete inquiry into voting practices over a period of time shows a **daunting degree of racially polarized voting** in the four majority-minority districts.
- There is a strong likelihood that the **Native population of South Dakota was undercounted** in the census overall.⁴
- 1,345 of the 3,948 **incarcerated people** in South Dakota in 2018 were Native American.⁵ Native people make up 34% of those in jail and prison despite comprising only 8.6% of our State's total population.
- Census undercounts and prison gerrymandering mean that negative deviation percentages **may not accurately reflect the population**.
- If necessary to provide Native Americans with an equal opportunity to elect their candidates of choice and participate in the political process, the overly restrictive +/-5% deviation **should be expanded**.
- Maintaining the four majority-minority districts in a manner that ensures a meaningfully effective opportunity for Native Americans to elect their preferred representatives will be both VRA-compliant and effective at **protecting the right of Native voters** to an equal voice in our democracy.

1 SD LEGIS 16 (2021), 2021 South Dakota Laws Ch. 16 (SB 80) (formerly S.D. Codified Laws § 2-2-41).

2 *Id.*

3 461 F.3d 1011, 1016 (8th Cir. 2006).

4 Empirical studies have found that a population's low self-response rate is strongly correlated with undercounting. See William P. O'Hare & Jae June J. Lee, *Who Responded in the 2020 Census?: Variation in Tract-Level Self-Response Rates in the 2020 U.S. Census*, Georgetown Center on Poverty and Inequality (2021), available at www.georgetownpoverty.org/issues/who-responded-in-the-2020-census; William P. O'Hare, *Are Self-Participation Rates Predictive of Accuracy in the U.S. Census?*, 9 Int. J. Soc. Sci. Stud. 23 (2020), available at <https://redfame.com/journal/index.php/ijsss/article/view/4967/5200>. In South Dakota, the self-response rate among American Indians/Alaska Natives in South Dakota is just under 30% (compared to a statewide self-response rate of about 65%).

5 <https://bjs.ojp.gov/content/pub/pdf/p18.pdf> at *36.