

Native American Participation in South Dakota's Political System

A report of the South Dakota Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the South Dakota Advisory Committee.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, religion, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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NATIVE AMERICAN PARTICIPATION IN
SOUTH DAKOTA'S POLITICAL SYSTEM

A report prepared by the South
Dakota Advisory Committee to the
U.S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the South Dakota Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

RIGHT OF RESPONSE:

Prior to publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses received have been incorporated, appended, or otherwise reflected in the publication.

LETTER OF TRANSMITTAL

THE SOUTH DAKOTA ADVISORY COMMITTEE
TO THE U.S. COMMISSION ON CIVIL RIGHTS
April 1981

MEMBERS OF THE COMMISSION

Arthur S. Flemming, Chairman
Mary F. Berry, Vice Chairman
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Louis Nunez, Staff Director

Dear Commissioners:

The South Dakota Advisory Committee, pursuant to its responsibility to advise the Commission on civil rights problems in the State, submits this report on Native American participation in South Dakota's political system.

Through its investigation, the Advisory Committee concludes that despite liberal requirements for registering and voting in South Dakota and the fact that the State has one of the highest percentages of voter participation in the Nation, Native Americans encounter problems in the political process which hamper their participation.

The South Dakota Advisory Committee initiated the present study to investigate the degree to which Indians participate in the State's political system. During the study staff and Committee members conducted interviews with a variety of knowledgeable persons throughout the State and gathered statistical data and other pertinent information. Much of the Committee's investigation centered on counties in the Southern part of the State on, or adjacent to, the Pine Ridge and Rosebud Reservations.

The Committee found a number of reasons for lack of effective Native American participation in South Dakota's political process:

- .lack of information about registration requirements, voting procedures and pending issues;
- .confusion caused by the multiplicity of overlap of voting districts in reservation counties;
- .apprehension that participation in State politics would be viewed as an acknowledgement of State jurisdiction in tribal affairs resulting in State encroachment upon tribal sovereignty;

- . a districting plan which divided the Pine Ridge and Rosebud Reservations so that no district had a majority of Indian voters; and
- . inadequate implementation of the minority provisions of the Voting Rights Act.

The Advisory Committee made recommendations to alleviate these problems to legislators, State and county officials and agencies, and to political party, community, and tribal organizations.

We urge you to consider this report and make public your reaction to it.

Respectfully,

MARY ELLEN McELDOWNEY
Chairperson

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I. INTRODUCTION

One of the most fundamental rights provided for American citizens under the United States Constitution is the right to vote. The Fifteenth Amendment guarantees that "The rights of citizens . . . to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servi-¹tude." That same amendment gives Congress the power to² enforce the mandate by appropriate legislation. Also the United States Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment demands ". . . no less than substantially equal State legislature representation for all citizens, of all places as well as of³ all races."

However, the U.S. Commission on Civil Rights in a major study completed in 1975 concluded that despite extensive Federal civil rights legislation passed by Congress⁴ through the years to implement the Constitution, "there is still hostility and resistance to the free and effective⁵ political participation by blacks, Native Americans, Puerto Ricans, and Mexican Americans." In 1966 the Supreme Court⁵ stated that the enforcement of voting rights through litigation has been ineffective because not only are voting suits very difficult to bring to trial, but also election⁶ officials in some States simply defy court orders.

South Dakota has liberal requirements which would
seem to make it relatively easy to register and to vote.⁷
Indeed, South Dakota is characterized as a "high turnout"
State. In the five successive presidential elections
through 1972 an average of 73 percent of the State's eli-
gible voters cast ballots, compared with the nationwide
average of 60 percent. In the 1976 presidential election
65 percent of those eligible voted in South Dakota, again⁸
well above the national average.

Despite South Dakota's high percentage of voter par-
ticipation, voting and registration statistics in counties
which are heavily Indian indicate that only a small propor-⁹
tion of eligible Native Americans voted in the 1976 election.
The Committee also noted that on several occasions political
participation by Indian people has been the focus of con-
troversy. For example, allegations of fraud grew out of
the 1978 voter registration drive on Indian reservations
resulting in investigations by both the South Dakota Divi-
sion of Criminal Investigation and the Federal Bureau of
Investigation.¹⁰ And more recently confusion has surrounded
the Department of Justice letter issued under Section 5¹¹
of the Voting Rights Act objecting to a State law es-
tablishing new governmental systems in the heavily Indian¹²
Todd and Shannon Counties.

These preliminary indications that Native Americans

may encounter problems in the State political process which hamper their participation resulted in the South Dakota Advisory Committee's initiation of the present study. The purpose of this project was to investigate the degree to which Indians participate in South Dakota's political system, and to identify any possible barriers to their right to do so on an equal basis with other citizens.

As a basis for this study members of the South Dakota Advisory Committee and staff from the Commission's Rocky Mountain Regional Office conducted over 65 interviews between January and July 1980 with Federal, State, county and tribal officials, community organization representatives, legislators and private citizens. Statistical data and other pertinent information were gathered as background material. Much of the Committee's investigation centered on counties in the Southern part of the State on, or adjacent to, the Pine Ridge and Rosebud Indian Reservations. Hispanic and black minority persons were not included in the project because both groups number less than one half of one percent of the total South Dakota population.

Notes to Chapter I

1. U.S. Constitution Amendment XV § 1.
2. Ibid. § 2.
3. Reynolds vs. Sims, 377 U.S. 568 (1964).
4. Civil Rights Act of 1957, Pub. L. 85-315, 71 Stat. 637; Civil Rights Act of 1960, Pub. L. 88-449, 74 Stat. 90; Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241; Enforcement Act of 1870, 16 Stat. 140.
5. U.S. Commission on Civil Rights, The Voting Rights Act: Ten Years After (1975), p. 330. See also: United States Commission on Civil Rights, The State of Civil Rights: 1979 (1980); Alan L. Clem and W. O. Farber, "Manipulated Democracy: The Multi-Member District", National Civil Review, May, 1979, pp 235-243.
6. South Carolina vs. Katzenbach, 383 U.S. 301, 314 (1966).
7. 5 South Dakota Compiled Laws 12-4-1 et seq. 1980 Supp. Chapter 12, Section 4-3 reads in part:

On the closing day of registration and on each of the five business days immediately preceding the close of registration . . . , the office of the county auditor in all counties having a population of ten thousand or more shall remain open from 8:00 a.m. to 9:00 p.m. local time.
- Section 4-5 sets the deadline for the master registration list at fifteen days preceding an election. Pursuant to 5 South Dakota Compiled Laws 12-2-3 1975 polls are open continuously from 8:00 a.m. to 7:00 p.m. See also: William O. Farber, Thomas C. Geary, and Loren M. Carlson, Government of South Dakota (Vermillion: Dakota Press, 1979), pp. 29-30.
8. Farber, Geary, and Carlson, Government of South Dakota, p. 30.
9. See Table 1.
10. "Indian Registration Probed", Sioux Falls Argus Leader, October 28, 1978, p. 3; and "Investigation Political, Voter Registration Officials Say", Rapid City Journal, October 31, 1978, p. 1.

11. 42 U.S.C. § 1973, hereafter referred to as the Voting Rights Act, or the Act.

12. See: South Dakota House Bill 1197; and letter to Mark Meierhenry from Drew S. Days III, February 1, 1980, U.S. Department of Justice Civil Rights Division files, Washington, D.C. (hereafter cited as Days letter), attached as Appendix D.

13. U.S. Department of Commerce, Bureau of the Census, General Social and Economic Characteristics: South Dakota, PC (1) - C43 (1970), Table 48.

II. DEGREE OF NATIVE AMERICAN POLITICAL PARTICIPATION

DEMOGRAPHIC STATISTICS

Native Americans living in South Dakota are far the largest minority group in the State. Bureau of the Census population statistics for 1970 showed a Native American population of 32,365 (12,876 male and 16,489 female) comprising 4.9 percent of the State's total population (665,507)¹. However, these figures for the South Dakota Indian population are generally considered to be low. Data from another source, the Bureau of Indian Affairs, indicate that in 1977 Indians living on or near South Dakota reservations numbered almost 45,000². In 1970 five counties, Ziebach, Washabaugh, Buffalo, Todd, and Shannon, had populations that were more than 50 percent³ Native American. Bureau of the Census data for 1970 also show that, statewide, 3.5 percent of the voting age population were Native Americans⁴. Projections made early in 1980 indicated that by the time the November general elections Native Americans would comprise almost 5.0 percent of the population 18 years of age and over, an estimated⁵ 25,250 potential Indian voters. At press time these 1980 statistics were not available.

There are nine Indian reservations in South Dakota: Standing Rock, Cheyenne River, Sisseton, Flandreau, Crow Creek, Lower Brule, Yankton, Rosebud, and Pine Ridge. Of

these, in terms of both land holdings and population, the Pine Ridge Reservation is the largest in the State. It contains a total of 3,161 square miles, an area nearly equal to the States of Delaware and Rhode Island combined.⁶ The boundaries at present encompass all of Shannon County and all of the former Washabaugh County which was merged with Jackson County in 1979. Bureau of Indian Affairs data show a 1977 Indian population of 12,260 for this reservation and its vicinity.⁷ In 1970 Shannon County was 86.18 percent Indian and Washabaugh County was 55.58 percent.⁸ The same year Indian land, including allotted trust and tribal trust lands, amounted to 67.3 percent of the total land base in Shannon County and 65.73 percent of the land base in Washabaugh County.⁹

In 1977 the Rosebud Reservation had an Indian population of 12,186, nearly equal to that of Pine Ridge.¹⁰ Its boundaries, which at one time included all of Todd, Tripp, Millette and Gregory Counties, were diminished to those of Todd County in 1977 by the Supreme Court decision in Rosebud v. Kneip.¹¹ The tribal government continues to maintain jurisdiction over trust land outside of those boundaries. In 1970 Todd County (now fully coextensive with the reservation) was 69.6 percent Indian in population and Indian land comprised 62 percent of the total area.¹²

PARTICIPATION IN STATE GOVERNMENT

Persons interviewed during the course of this study nearly all agreed that, for whatever reasons, Indian persons participated only to a very limited extent in the political activities in the State. Information gathered during the course of this study bears out those opinions.

There are few past or present Native American elected officials in South Dakota. Art LaCroix, Mayor of Rapid City, and former Congressman Ben Reifel, both Sioux, are two notable exceptions. One Indian is presently serving in the Legislature. Though no records are available to report how many Indians, on or off the reservation, have served in the Legislature in the past, virtually everyone agrees that if any Indians have served in the Legislature, the numbers are very small. If Native Americans were represented in proportion equal to their percentage of the State's population, five of the 105 legislators would be Indian. A few Native Americans have been elected to school boards in counties with heavy Indian population. In Todd County at the present time two school board members, Norman Knox and Ed Charging Elk, are Indian. In 1978 that county also elected, for the first time, an all Indian Highway Commission. The previous Commission was composed of five whites and one Native American.

Periodically efforts to provide for an Indian voice in the executive branch of State government have met with varying degrees of success. In 1973, the South Dakota Legislature authorized a Task Force on Indian-State Government Relations empowered to study and recommend in areas of joint State-tribal concern. Composed of tribal chairmen and an equal number of Indians and other citizens, the Task Force was to terminate after one year, but was extended for an additional year by legislative action.¹⁷ Many of the Task Force goals, objectives and recommended "material policies" to promote Indian-State relations were adopted by South Dakota's 1974 Legislature.¹⁸

In 1975 South Dakota's 16 year old State Indian Commission was reorganized to aid in ". . . coordinating Federal, State and local resources to help solve Indian problems and to serve as an advocate for Indian people."¹⁹ This 24-member Commission is composed of the tribal chairmen from the nine reservations in South Dakota, three off-reservation Indian representatives, and a number of State officials.²⁰ Current Governor William Janklow called a meeting of the Commission shortly after his inauguration in 1979 but a chairman was not chosen and there have been no meetings subsequent to that time.²¹ Provisions for the establishment of a special coordinating committee on tribal-State relations were passed by the Legislature in 1979 but

vetoed by Governor Janklow because he saw it as duplica-
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tive of the Indian Negotiating Committee. The Indian
Negotiating Committee, consisting of legislators, was
meant to provide liaison between the Legislature and Indian
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tribes. Marcella Prue, South Dakota Coordinator of Indian
Affairs, stated that this Committee has not been active
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during the present administration.

In 1960 South Dakota law provided for a Coordinator
of Indian Affairs of "Indian descent" to be appointed by
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the Governor to assist the Commission of Indian Affairs.
In 1979 an amendment removed the requirement that the Co-
ordinator be of Indian descent and deleted specific refer-
ence to responsibilities to assist the Commission of Indian
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Affairs. The present appointee to the position, Marcella
Prue, a Native American, provides liaison between tribes,
usually on an individual basis, and the Governor's Office.
Efforts by Prue to call meetings of the Commission have
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been ineffective. The State Indian Development Organ-
ization established by the Legislature in 1978 to provide
technical assistance to Native American business enterprise
has not been refunded by the Legislature and will expire
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this year. A 12-member Indian State Advisory Board on
Education, established to provide advice on Indian educa-
tion matters to policy makers, continues to meet regularly
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under Gene Fracek, State Director of Indian Education.

In the past residents of South Dakota Indian reservations have attempted to provide input on State issues. In 1952 the nine Indian reservations in the State formed a coalition called the United Sioux Tribes to work as a political and economic entity. Largely due to the concentrated efforts of this group a proposed State law, which would have provided for State assumption of jurisdiction over civil and criminal actions originating on the reservation, was defeated in a referendum vote.

Notes to Chapter II

1. U.S., Department of Commerce, Bureau of the Census, General Population Characteristics, South Dakota (1970), Table 17, hereafter cited as General Population Characteristics.
2. U.S. Department of the Interior, Bureau of Indian Affairs, "Aberdeen Area Statistical Data" as quoted in U.S. Commission on Civil Rights Staff Report: South Dakota Indian Hearing, July, 1978, Table 5.
3. South Dakota Planning Bureau, South Dakota Facts (undated), p. 59.
4. General Population Characteristics, Table 17.
5. U.S., Department of Commerce, Bureau of the Census Population Estimates and Projections, Series P-25, No. 879 (March, 1980), Tables 2 and 3.
6. South Dakota Facts, p. 8.
7. "Aberdeen Area Statistical Data," as quoted in Staff Report: South Dakota Indian Hearing, p. 30.
8. South Dakota Facts, p. 58.
9. Ibid., p. 15.
10. "Aberdeen Area Statistical Data," as quoted in Staff Report: South Dakota Indian Hearing, p. 30.
11. 430 U.S. 584 (1977).
12. South Dakota Planning Bureau, South Dakota Facts, p. 15.
13. For example, Mary Berkebile, State President of the League of Women Voters, interview in Rapid City, January 19, 1980; Rae Johnson, member of the Rapid City Indian-White Relations Council, interview in Rapid City, January 29, 1980; Tom Frederick, member of the Rosebud Sioux Tribal Council, interview near Mission, South Dakota, May 15, 1980; Severt Young Bear, Administrative Assistant to the Pine Ridge Tribal Chairman, interview in Pine Ridge, March 24, 1980.
14. See Alan L. Clem and William O. Farber, "Multimember Districting and Minorities," Public Affairs, No. 73 (University of South Dakota: Governmental Research Bureau, 1978), p. 4.

15. Norman Knox, telephone interview, July 29, 1980. 25 U.S.C. 456, commonly referred to as the Johnson-O'Malley Act, requires local school districts affected by a contract for the education of Indians to have a local school board composed of a majority of Indians, or a separate Indian school board with full participating authority "to approve or disapprove programs" or in the discretion of the tribal government an Indian advisory school board.
16. Frank LaPointe, interview in St. Francis, March 26, 1980.
17. The Final Report of the South Dakota Task Force on Indian-State Government Relations, June 30, 1975, p. 1.
18. Farber, Geary, and Carlson, Government of South Dakota, p. 210.
19. 2 South Dakota Compiled Laws 1-4-1 1979 Supp.
20. Ibid. 1-4-2 1979 Supp.
21. Marcella Prue, Coordinator of Indian Affairs, telephone interview, August 8, 1980. 2 South Dakota Compiled Laws 1-4-3 1979 Supp. makes appointment of a chairman and secretary a responsibility of the "voting members of the commission."
22. See letter to Lowell C. Hansen II, President of the Senate from Governor William Janklow, March 29, 1979 (attached as Appendix E), hereafter referred to as Janklow letter.
23. 2 South Dakota Compiled Laws 1-4-8 et seq. (1979 Supp.). See also Janklow letter.
24. Telephone interview, October 10, 1980.
25. 2 South Dakota Compiled Laws 1-4-7 1974.
26. 2 South Dakota Compiled Laws 1-4-7 1979 Supp.
27. Marcella Prue, telephone interview August 8, 1980.
28. Steve Gomez, director, telephone interview, July 24, 1980.
29. Eric LaPointe, telephone interview, July 24, 1980. 2 South Dakota Compiled Laws 1-4-14 et. seq. 1979 Supp.
30. Unpublished brochure supplied by the United Sioux Tribes Development Corporation. See also Alan L. Clem, "The 1964 Election: Has South Dakota Become a Two-Party State?", Public Affairs (University of South Dakota: Governmental Research Bureau, 1965).

III. BARRIERS TO POLITICAL PARTICIPATION

Persons interviewed during the present study described a variety of reasons why Native Americans participate to such a limited extent in State government and in political activities which would permit greater involvement in governmental decision-making processes affecting their own welfare and interests. The reasons for this limited participation fall into a number of specific categories.

A lack of understanding of the relevance of specific political positions and issues was offered by a number of persons as one major reason why Native Americans do not vote in greater numbers. Rae Johnson, former President of Rapid City's Indian-White relations Council, who in 1978 was deeply involved in a major effort to register Indian voters, found that many Native Americans in Rapid City were unaware of the need to register in order to vote or of the issues in the forthcoming election. She felt that only a well organized and intensive effort at voter education would remedy this problem.¹ Anita Remerowski, director of the South Dakota Legal Services, also underscored the difficulty Indian people have in keeping informed on current issues as a key reason why they do not vote.² Severt Young Bear, an administrative assistant to the Oglala Sioux tribal chairman, who coordinated a voter registration drive at Pine Ridge, pointed out that

like other citizens Indian people traditionally do not vote when they have not understood the issues or felt involved with them.³

A lack of understanding of registration and voting procedures was also felt to be a major reason why Indian people do not participate. Young Bear stated that when he taught a class in government to seniors at the Little Wound High School in Kyle on the Pine Ridge Reservation, he was astounded to learn how little the students knew about procedures for voting in State and Federal elections. He said that many of the older people are confused over the distinction between tribal and State elections and the different procedures required.⁴ Violet Biever, State Legislative Representative from District 25, also felt that the failure to make this distinction was a major source of confusion among tribal people.⁵

During the 1978 general elections some Native Americans who had failed to register were turned away from the polls because they mistakenly thought that being on the tribal voting list made them eligible to vote in a State election. Others who didn't realize they were required to vote at least every four years to remain registered lost their eligibility.⁶

Inordinate confusion is caused by overlapping tribal voting districts, county lines, voting precincts, legislative districts, county commissioner districts and school

districts (see maps 2 and 3). The Pine Ridge Reservation, for example, contains all of Shannon County and the portion of Jackson County lying below the White River (the former Washabaugh County which was merged with Jackson County in 1979). The reservation and adjacent areas where tribal members live are divided into nine tribal voting and governmental districts: Eagle Nest, La Creek, Pass Creek, Medicine Root, Porcupine, Wounded Knee, White Clay, Wakpami, and Pine Ridge Village. The Medicine Root District overlaps the Shannon and Jackson County boundary, the La Creek District is entirely in Bennett County (which is no longer part of the reservation), and Pass Creek District overlaps the Shannon and Bennett County boundary. Shannon County is divided by the State into seven voting areas, or precincts (Batesland, Denby-Brennan, Kyle, Manderson, Oglala, Pine Ridge, and Porcupine), none of which correspond with tribal districts. The portion of the reservation lying in Jackson County has three precincts (numbers 6, 7 and 8) which lie wholly within the reservation, and portions of three others (numbers 2, 3 and 5) which overlap the reservation boundary. None of these match tribal district boundaries.

Of Jackson County's five Commissioner districts, two lie wholly within the reservation and a portion of two others overlaps the reservation boundary. The reserva-

tion lies partially in two legislative districts: District 23 includes the portion of the Pine Ridge Reservation in Jackson County and a small portion of Shannon County.

The remainder of Shannon County is in Legislative District Number 25.⁹

Though the reservation itself contains only nine tribal districts it contains a geographical maze of criss-crossing boundaries for all or portions of 30 voting areas. Persons are required to vote in one location for tribal elections and in other places for State and Federal elections. That the complexities caused by this proliferation of voting places was recognized by the tribe is graphically illustrated by the attempt to alleviate it prior to the 1978 general elections by issuing coded cards and maps to voters to show its members where to vote.¹⁰

The situation on the Rosebud Sioux Indian Reservation, with boundaries which coincide with those of Todd County is nearly as complex. There are 13 tribal voting districts on the reservation: Black Pipe, Parelee, He Dog, Upper Cutmeat, Spring Creek, Grass Mountain, Soldier Creek, Ring Thunder, Rosebud, Two Strike, Saint Francis, Antelope, and Okreek. Six other tribal districts include tribal members who live off the reservation in adjacent Mellette, Tripp, and Gregory Counties which were formerly part of the reservation. Todd County is divided into 10 voting

precincts by the State: Okreek, Mission (A through I), Mission (J through Z), Rosebud, Parelee, Bordeaux, St. Francis, Lakeview, Neiss and Leanelk. None of these boundaries coincide with the tribal district boundaries although three have the same name as tribal districts. As in the case of the Pine Ridge Reservation, legislative district lines cut the reservation in two: these are Districts 23 and 24. Furthermore, the legislative district boundary cuts across a number of precinct lines and splits the town of St. Francis down the center of Main Street. Shirley Briggs, Tripp County Auditor, stated that this overlapping of district and precinct lines is a source of great confusion.

Several persons interviewed felt that many Indians feel separated from State politics. Anita Remerowski, director of the South Dakota Legal Services, observed that those Native Americans who involve themselves almost exclusively in tribal affairs do not feel touched by national or State politics. She said that this is demonstrated by a greater turnout in tribal elections than in State or Federal elections. David Volk, State Treasurer, also felt that Indian people in general are reluctant to participate in State affairs because they are more locally (tribally) and Federally oriented and have a sense of alienation toward the State government. Mark Meierhenry,

South Dakota Attorney General, agrees that many Native Americans have a greater interest in reservation affairs. He believes many have pursued work in the Federal government and have no desire to serve in State offices, thus leaving a small pool of Indian people for State positions. 15

William O. Farber, Emeritus Professor of Political Science at the University of South Dakota, felt that though a comprehensive opinion survey would be required to determine precisely why there is little political participation by Native Americans, one factor certainly is the feeling that their votes do not make any difference. 16
Anita Remerowski also believes that more Indians would run for political office in the State if they felt they would get elected. 17

Tribal sovereignty and the way in which some Indians regard the State-tribal relationship additionally inhibits full participation in State politics. Indian tribes are sovereign governments, apart from the State in which they are located; they are "unique aggregations possessing attributes of sovereignty over both their members and their territory." 18 Native Americans are thus a "separate people governed by a separate sovereign." 19 Although many Indian persons disagree, Federal law declares Native Americans to be simultaneously tribal citizens, citizens of the United States, and citizens of the State in which they reside. 20 Their status as "distinct political communities", 21 however leaves many preferring tribal political

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activity to State political involvement.

Mario Gonzalez, an attorney for the Oglala Sioux Tribe and an enrolled member, takes the position that participation in State politics is inconsistent with tribal sovereignty. He maintains that Indians are citizens of the United States and should vote in Federal elections but that to vote in State elections would be to acknowledge State jurisdiction over the reservations. Terry Pechota, U.S. Attorney for South Dakota and enrolled member of the Rosebud Sioux Tribe, disagrees with this analysis but feels that nevertheless it is a position held by a significant number of Indians. Others do not feel the concept of tribal sovereignty is a significant barrier to political participation by Native Americans.

Tom Roubideaux, a student at Sinte Gleska College at Rosebud who helped to organize the 1978 voting registration drive on the reservation, stated that any action or involvement with the State, including registration and voting, could be construed as acknowledging State jurisdiction and would meet with widespread resistance. Frank LaPointe, who has held both tribal and county offices, said that when Indians vote they are very much aware it may be taken as an indication they want to terminate Federal responsibility over the reservation. Frank Pommersheim, an attorney and former professor at the Sinte Gleska College, stated this fear is acute for many persons in tribal

government who feel that if they vote or run for elective office it will be read as acquiescence to pressures in the State to jettison tribal government.

Tom Frederick, a member of the Rosebud Sioux Tribal Council, does not feel that to vote is necessarily to acknowledge State jurisdiction. He does feel, however, that to run for State or county office while he is a member of the tribal council would create a conflict of interest for him because of the "tribal/State separation." The Council itself referred to the tension between tribal and State government in a resolution it passed disapproving a 1979 State law organizing county governments in Todd and Shannon Counties. This resolution stated that "T/his law as it currently exists is in direct conflict with tribal self determination . . .".

The Anglo-American concept of elective government was never an accepted practice in Sioux culture but was forced on the tribe by American ideas of representation in treaty making. A centralized government and a continuous delegation of authority to a legislative or council representative are foreign to the experience of the Sioux Nation. Nor was the practice of deciding issues by majority vote with peaceful acquiescence by the minority part of the political system. Since elective government does not reflect traditional Sioux practices, a certain amount of

continuing tension occurs when the old and new forms come into conflict in the political arena.

The element of tribal factionalism is another reason suggested as to why Native Americans do not participate more successfully in the State's political system. Such factionalism, wherever it may exist, can reduce opportunities to elect Indians to office. In local elections, e.g., the school board election in Todd County, several Indian candidates often run for each vacancy. Whites, on the other hand, concentrate their votes on a single candidate and thereby assure election. In June 1980, there were two positions open on the Todd County School Board. Seven Indian candidates ran for those positions in opposition to two white incumbents. The two white candidates were elected, resulting in the present five-member board, consisting of three white members and two Indians--for a school district wholly contained on the Rosebud Reservation.

Tribal factions may arise in a number of ways. One results from differing political viewpoints between "full-blood" and "mixed-blood" Indians or between "traditional" and "conservative" elements. Another can stem from the tiospaye extended family divisions of the tribe, which historically were the predominate intratribal political units. The tiospaye, a coherent, supportive social organization, remains a strong force in reservation life today.

Tom Roubideaux said that these divisions within the tribes of the Sioux Nation still have great influence on the way individuals vote. His own tiospaye is controlled by seven women who decide how members of the group will cast their vote.

Notes to Chapter III

1. Interview in Rapid City, January 29, 1980.
2. Interview in Mission, March 5, 1980.
3. Interview in Pine Ridge, March 24, 1980.
4. Ibid.
5. Interview in Oelricks, March 24, 1980.
6. Severt Young Bear, interview in Pine Ridge, March 24, 1980.
7. Information provided by David Brewer, Chairman of the Oglala Election Commission; Severt Young Bear, Administrative Assistant to the Tribal Chairman; Sherill A. Dryden, Fall River County Auditor; and Vicki D. Wilson, Jackson County Auditor.
8. The State boundaries, however, set since the reapportionment in 1971, predate the tribal. Kenneth Dewell, Fall River State's Attorney, telephone interview, October 10, 1980.
9. Information provided by David Brewer and Severt Young Bear, Pine Ridge, March 24, 1980. See Maps 2 and 3.
10. Ibid.
11. Information provided by Rosebud Tribal Offices, June 13, 1980.
12. Interview in Winner, March 25, 1980.
13. Interview in Mission, March 25, 1980. Statistics on tribal voting are not available to date. The opinion that Indians vote in greater numbers in tribal elections is not universal. Clarence Skye, Executive Director of the United Sioux Tribes Development Corporation, expressed the opposite view in an interview in Pierre on June 13, 1980. The voting level in tribal elections may well vary from reservation to reservation and from election to election.
14. Interview in Pierre, June 12, 1980.
15. Interview in Pierre, January 30, 1980.
16. Interview in Vermillion, May 13, 1980.

17. Interview in Mission, March 25, 1980.
18. United States v. Mazuri, 419 U.S. 544, 557 (1975).
See also: Fisher v. District Court, 424 U.S. 382 (1976).
19. Ibid.; United States v. Kagama, 118 U.S. 375 (1886);
United States v. Wheeler, 435 U.S. 313 (1978).
20. 8 U.S.C. 1401 (1980 Supp.).
21. United States v. New Mexico, 590 F. 2d 323, 327-28
(10th c. 1978).
22. The complexities of tribal sovereignty are not within
the scope of this report.
23. Interview in Pine Ridge, March 24, 1980. Mr. Gonzales
questions the constitutionality of the 1924 Citizenship
Act, but admits that the majority of the Indian people in
the United States now cherish United States citizenship.
He reasons that the status of Indians in the United States
Constitution, i.e., not being part of the political
community of the United States, can be changed only by a
constitutional amendment, not the 1924 Act. He states that
"/a/11 persons born or naturalized in the United States,
and subject to the jurisdiction thereof, are citizens of
the United States and of the State wherein they reside,"
applies only to blacks, not Indians, citing Elk v. Wilkins,
112 U.S. 94 (1884). Thus, Mr. Gonzalez argues that, at
the very least, it will take an Act of Congress to make
Indians State citizens.
24. Interview in Rapid City, August 5, 1980.
25. Norman Knox, interview in Mission, May 14, 1980, and
William O. Farber, interview in Vermillion, May 13, 1980.
26. Interview in Rosebud, May 15, 1980.
27. Interview in St. Francis, March 26, 1980.
28. Interview in Rosebud, May 15, 1980.
29. Interview in Carter, May 15, 1980.
30. Resolution 80-98 of the Rosebud Sioux Tribal Council,
May 15, 1980 (attached as Appendix A).
31. William O. Farber, "Representative Government: Application
to the Sioux," in The Modern Sioux: Social Systems and Reser-
vation Culture, ed. Ethel Nurge (Lincoln: University of Nebraska
Press, 1970), p. 125.

32. Ibid. p. 126.

33. Anita Remerowski, interview in Mission, November 25, 1979.

34. Norman Knox, interview in Mission, May 14, 1980, and telephone interview July 29, 1980. Frank LaPointe, at an interview in St. Francis estimated that students in the district are 80 percent Native American and 20 percent white.

35. William O. Farber, "Representative Government: Application to the Sioux," in The Modern Sioux: Social Systems and Reservation Culture, ed. Ethel Nurge (Lincoln: University of Nebraska Press, 1970), p. 125.

36. Frank Pommersheim, Broken Ground and Flowing Waters (Rosebud: Sinte Gleska College Press, 1977), p. 12.

37. Interview in Rosebud, May 15, 1980.

IV. PARTY ACTIVITY, REGISTRATION AND VOTING

Although activity in party affairs can be an effective way to make an impact on politics, with some notable exceptions South Dakota Indian participation in the affairs of either the Democratic or Republican parties at the county and State level has been minimal. In 1972, 1976 and 1980 there were Indian delegates to the Democratic National Convention. At the 1980 Democratic convention in New York, to which South Dakota sent 19 delegates and 19 alternates, three of the delegates and one alternate were Native American. None of the 22 Republican delegates or 22 alternates to the 1980 National Convention in Detroit were Indian.

The Democratic National Committee has issued affirmative action outlines directing that the Democratic Party in each State formulate a comprehensive plan detailing special efforts "to encourage minority groups, Native Americans, women and youth to participate and be represented in the delegate selection process." The affirmative action program for the South Dakota Democratic Party lists the steps to be taken to increase the participation of these constituents and to publicize the delegate selection process. The program requires, among other things, the publication of information in all the State's newspaper

and minority publications.⁶ The South Dakota Republican Party has no formal affirmative action plan. However, in 1974 the Republican Party adopted an open process of selection for National Convention delegates to encourage participation by all State residents.⁷ (See Appendix C for relevant Republican Party Bylaws.) Republican Party county organization meetings are publicized on radio,⁸ television and at least the "official" county newspapers. A brochure distributed by the Republican State Central Committee provided information on delegate selection procedures for the 1980 Republican presidential convention⁹ in Detroit.

South Dakota prides itself on its high rate of voter turnout. In 1976 only Maine and Minnesota exceeded South Dakota in the percentage of the voting age population that cast votes for the presidential electors. The percentage for South Dakota that year was 63.9 compared with 54.4 percent for the Nation as a whole.¹⁰ Indeed, as seen in Figure 9, the percentage of voters participating in South Dakota has consistently exceeded that of the United States by at least 10 points since 1960. Voting by Indians in the State has been much more limited. Table 1 gives a comparison of Todd and Shannon County registration and voting by white and Indian voters during the 1976 general election in Todd and Shannon counties. Both of these

counties have a predominately Native American population and are covered by the Voting Rights Act Amendments of 1975. In Shannon County only 30.6 percent of the Native Americans of voting age actually voted, compared to 55.6 of the white citizens of voting age. In Todd County the voting by whites in this age group was twice as high as that for Indians.

As Figure 7 shows, voter turnout in South Dakota is always greater during years when there is a presidential election. Data are not available to show comparative Indian-white voter turnout rates for an off-presidential election year. However, Figures 1-6 and Tables 2 and 3 show some contrasting voting and registration patterns in four counties of southern South Dakota, two of which have a predominately Indian population and two of which are essentially white. Todd County, which had a 1970 population of 8,171 was 94 percent white. Shannon County in 1970 had 8,198 people of whom 86 percent were Native Americans. Adjacent Fall River County with 7,505 people in 1970 was 96 percent white. Table 2 shows that Todd and Shannon, the "Indian" counties, are predominately Democratic while Tripp and Fall River, the "white" counties, have a registered voting population which is fairly evenly divided between Democrats and Republicans. However, Figures 1 and 2 show that in Todd and Shannon Counties during off presidential election years the Republican

and Democratic vote is very close, indicating a much lower voting rate for the Native American populations which registered principally Democratic. Though Shannon County has an approximately 10 percent greater population than Fall River County, the number of voters in Shannon County (Figure 6) has through the years been consistently below the number in Fall River County. The pattern of registration and voting exhibited in these four counties gives another strong indication that Native Americans through the years have participated only minimally in the voting process in South Dakota.

South Dakota registration and voting rules have been characterized by some persons as being liberal,¹² and as presenting no barriers to the registration of Indians.¹³

County auditors have charge of the registration of voters in each county.¹⁴ Prior to 1979 any notary public could get registration cards from the county auditor, or buy them directly from a printer. In 1979, to counter alleged problems which arose during a massive drive to register Indian voters in 1978, the law regarding voter registration in South Dakota was substantially amended.¹⁵ Auditors complained that cards were filled out improperly, that they could not keep track of registration cards given out, and that voters registered in the wrong precinct or in more than one precinct.¹⁶ Sherill Dryden, Fall River County Auditor, stated that 2,400 completed registration

cards, some dated in August, were brought into her office the last of October, 1978 and that she and her staff had to work nights and one weekend to verify and record them all in time for the election.

Present voter registration law, as amended in 1979, requires county auditors to give instructions in procedures and the law to any notary public wishing to register voters. Registration cards are numbered serially and must be accounted for, and must be completed and returned to the county at least 15 days prior to the time of the next election. To remain on the voter registration list a person is required to vote at least once during the preceding four consecutive years.

The 1978 Indian registration drive also resulted in allegations that some Indians who might be convicted felons were registering as voters and that Federal dollars were being used illegally by the tribes to finance the registration effort. Both the South Dakota Division of Criminal Investigation (DCI) and the Federal Bureau of Investigation investigated these allegations on the Pine Ridge and Rosebud Reservations. Officials with the State-wide Indian Voter Registration Drive labeled these investigations as politically motivated and intimidating to Indian people. William Janklow, the Attorney General at that time, denied any political motivation in the in-

investigation, saying he had eight complaints before order-
ing the DCI to investigate. The investigations were
eventually ended without any formal charges of fraud being
brought.

Concerned about the lack of political participation by Native Americans and the number of serious issues facing Indian people in South Dakota and across the country, a group representing Indian and civic organizations met on July 4, 1978, in Rapid City "To develop a plan for Indian voter registration, urban and reservation . . . /and to/ bring to Indian people issues pertinent to Indians in South Dakota." Chairmen of the Rosebud, Crow Creek, Cheyenne River, Lower Brule and Yankton Sioux tribes were present at that meeting, as were representatives from the United Sioux Tribes Development Corporation, the National Indian Lutheran Board, the South Dakota League of Women Voters, the Rapid City Indian Service Council, and a variety of other organizations. This coalition organized a voter registration drive as part of a national effort to which various Indian tribes had contributed financially. In South Dakota, the Rosebud Sioux Tribe had contributed \$12,500 and the Cheyenne River Sioux \$10,000. It was estimated there were 22,300 potential Native American voters on the reservations and in the urban areas of South Dakota. This number was set as a goal for the registration drive. Overall coordination

was provided by the United Sioux Tribes but coordinators were also appointed to work individually on each of the State's nine reservations.²⁶

Throughout the Summer and early Fall the drive was carried out with considerable intensity. After the election the Rapid City Journal characterized the drive as not a vital factor in the 1978 election. The Journal concluded that although Indians overwhelmingly voted Democratic, their votes in this instance were not decisive in electing Democratic candidates.²⁷ There are other indications, however, that the drive had a large measure of success in increasing the number of Native Americans who registered and voted. Tables 2 and 3 show that following the 1978 registration drive in Todd and Shannon Counties, the number of registered voters increased by 40.3 and 39 percent respectively over the number in 1976. In the opinion of David Volk, Republican State Treasurer, there was a corresponding white backlash to the Indian registration drive which he feels was verified by the higher Republican voter turnout than in preceding years.²⁸ Adjoining Tripp and Fall River Counties (which were not affected by the drive) suffered an actual loss of registrations, as did the State as a whole. Voting patterns in the two reservation counties also changed dramatically following the registration drive. Figures 5, 6 and 7 show that contrary to the trend in the neighboring counties

and in the State as a whole, voting in Todd and Shannon Counties increased considerably over what it had been in previous years. This was despite the fact that it was an off-presidential election when there is ordinarily less interest in politics. The Republican vote, presumably mostly white, was largely unaffected in either "Indian county". In Rapid City the drive added 650 registrations of which an estimated 75 percent were Indian.

Notes to Chapter IV

1. Thomas M. Katus, director of the Rural Ethnic Institute in Rapid City, June 11, 1980.
2. Ibid.
3. Douglas Cole, Democratic Party Headquarters, August 8, 1980.
4. Jeff Stingley, Executive Director, Republican State Central Committee of South Dakota, telephone interview, August 7, 1980.
5. Democratic National Committee, Final Call for the 1980 Democratic National Convention (Washington, D.C. May, 1979), pp. 19ff.
6. Affirmative Action Program: Democratic Party of South Dakota, attached as Appendix B.
7. Stanford M. Adelstein statement to the Advisory Committee, Rapid City, September 27, 1980.
8. Jeff Stingley, interview in Pierre, June 11, 1980, and telephone interview, September 9, 1980.
9. Republican State Central Committee, Become a Republican Delegate to the National Presidential Convention (Pierre, South Dakota 1980).
10. U.S. Department of Commerce, Bureau of the Census, Population Estimates and Projections, series p-25, No. 879 (1980), Table 4.
11. South Dakota Planning Bureau, South Dakota Facts, pp. 48 and 59.
12. Farber, Geary, and Carlson, Government of South Dakota, pp. 29 and 30.
13. Joseph H. Cash, interview in Vermillion, May 13, 1980.
14. South Dakota Compiled Laws, 12-4-2 1980 Supp.
15. 5 South Dakota Compiled Laws 12-4-1 et seq. 1975 and 12-4-2 et seq. 1980. See also, "Indian Voter Registration Battle Likely," Rapid City Journal, February 15, 1979, p. 2

16. Helen Daughenbaugh, Pennington County Auditor, interview in Rapid City, January 19, 1980 and Sherill Dryden, Fall River County Auditor, interview in Hot Springs, March 24, 1980.

17. Interview in Hot Springs, March 24, 1980.

18. South Dakota Compiled Laws, 12-4-2.3 1980 Supp.; 12-4-7.2 1980 Supp.; and 12-4-19 1980 Supp.

19. "State Investigating Voter Registration Fraud Charges," Rapid City Journal October 30, 1978, and "Indian Registrations Probed", Sioux Falls Argus Leader, October 28, 1978

20. "Investigation Political, Voter Registration Officials Say," Rapid City Journal, October 31, 1978, p. 1.

21. Ibid.

22. In a telephone interview on October 3, 1980, Doyle Estes, who one month before the election was appointed as one of the special assistant attorney generals to investigate the allegations of fraud, said that though he believed that some improprieties occurred he had insufficient evidence to constitute criminal fraud.

23. "All Tribal and Urban Organizations Statewide Voter Registration Plan", July 24, 1978, mimeographed minutes provided by Rae Johnson, Director of the United Sioux Tribes in Rapid City.

24. Ibid, and United Effort Trust, A Campaign for the Survival of Indian Tribal Government (undated).

25. "All Tribal and Urban Organizations Statewide Voter Registration Plan", July 24, 1978.

26. Tom Katus, interview in Rapid City, June 11, 1980.

27. Rapid City Journal, November 8, 1978, p. 15. William Decker, a Democratic Legislator from District 23, in an interview in Pierre on January 30, 1980, attributed his election by a narrow margin to the turnout of Indian voters.

28. Report to the South Dakota Advisory Committee to the U.S. Commission on Civil Rights at its meeting in Rapid City, September 27, 1980.

29. Rae Johnson, letter to William F. Muldrow, received March 3, 1980, files of the Rocky Mountain Regional Office of the U. S. Commission on Civil Rights, Denver, Colorado.

V. LEGISLATIVE REAPPORTIONMENT
AND MULTI-MEMBER DISTRICTS

The State Constitution requires that the South Dakota Legislature must reapportion its districts in the 1981 session, following the 1980 decennial Federal census as a result of the change in the size and distribution of the State's population.¹ In this reapportionment the State must follow principles laid down by the United States Supreme Court which interpreted the Federal Constitution to require apportionment on the basis of population rather than geography, the "one-man-one-vote principle".² The court held that the Equal Protection Clause of the Fourteenth Amendment requires every State to make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as its practicable.³ The court emphasized that "every citizen has an inalienable right to full and effective participation in the political processes of his State's legislature bodies".⁴ Even though in a recent case the U.S. Supreme Court did not fully agree,⁵ John F. Banzhaf, III, in a much quoted article points out:

One must be ever aware that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination". . . . However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant under-

evaluation of the weight of the votes
of certain of a State's citizens
merely because of where they happen to
reside.⁶

The South Dakota Constitution outlines the duties
of the legislature in reapportioning legislative dis-
tricts.⁷ Federal and State courts and the Voting Rights
Act of 1965 have established ad hoc standards and review
procedures for various State laws and plans including
legislative apportionment plans.⁸ The South Dakota Con-
stitution provides that if the legislature fails to
approve a 1981 reapportionment plan, a special commission,
including the Governor, the Superintendent of Public
Instruction, the presiding Justice of the South Dakota
Supreme Court, the Attorney General, and the Secretary
of State, is required to reapportion pursuant to its own
plan within 30 days after the Legislature's adjournment.⁹
Since the Governor has power to veto legislative enact-
ments, he has the opportunity to place apportionment be-
fore the special commission if his veto is not overridden¹⁰
or the Legislature fails to enact a compromise plan.

Certain limits are provided, however, on actions by
both the Governor and the Legislature. The U.S. Supreme
Court decision in Baker v. Carr made reapportionment a
justiciable issue; any aggrieved citizen may file an
action in court. The Voting Rights Act of 1965, as am-
mended in 1975, also restricts South Dakota's reapportion-

ment by requiring the State to submit its plan for Shannon and Todd Counties to the U.S. Department of Justice for review and preclearance.¹¹

Legal challenges to legislature apportionment have involved two issues: alleged denial of equal protection through multi-member districts and gerrymandering of districts along artificial lines.¹² Both issues are of concern in South Dakota where Indian voting strength might be diminished in either of two ways:

(1) breaking up the "Indian" counties so as to weaken the concentration of voting strength by attaching parts of the county to areas with less proportion of Indian voters, or (2) resort to the multi-member districts system so that the impact of the minority voters would be "diluted".¹³

Either may constitute a disadvantage for Indian voters and both can be argued, ipso facto, to be practiced in South Dakota.¹⁴

The question of gerrymandering has been raised with regard to the way present legislative district lines were drawn in establishing districts 23, 24 and 25.¹⁵ Gerrymandering is usually defined as the establishment of election districts in an artificial manner. The greatest concentration of Native Americans in South Dakota is in the four counties of Todd, Bennett, Shannon, and the former Washabaugh County, now part of Jackson. These counties contain the Rosebud and Pine Ridge Reservations.¹⁶

In 1970 the four counties had a Native American popula-
tion of 13,334 out of the total 19,281.¹⁷ This area, the
only one in the State with Indian population sufficient
to carry a legislative district, was split by the 1971
apportionment into Districts 23, 24 and 25. None of these¹⁸
have a potential majority of Indian voters. The Task
Force on Indian-State Government Relations made it clear
that with this arrangement of legislative districts
Indian people in South Dakota have had their voting po-
tential diluted.¹⁹ Concomitantly no members of the legis-
lature from these three districts are residents of Todd,²⁰
Bennett, Shannon, or the former Washabaugh Counties.

South Dakota currently is divided into 28 multi-
member legislative districts, 25 of which have one senator
and two representatives. The remaining three districts
elect varying numbers of legislators. District 11 (Min-
nehaha County) has five senators and 10 representatives,
District 27 (which includes the portion of Pennington
County containing Rapid City) elects three senators and six
representatives; and District 2 (Brown County) has two
senators and four representatives.²¹ Though in 1970 five
counties in South Dakota had a Native American population
greater than 50 percent of the total, Table 4 shows that
none of the legislative districts had an Indian majority.

Clem and Farber contend that the use of this multi-

member legislature district system in South Dakota presents
another possibility for diluting minority votes.²² This
type of districting, where more than one representative
is chosen from a single district, is not uncommon and
at present is found in 13 senates and 22 lower chambers²³
throughout the Nation.

The use of multi-member districts makes the job of
reapportionment much easier for two reasons: fewer dis-
tricts need be constructed, and the use of fewer districts²⁴
permits larger deviations in raw population totals. But
John Banzhaf noted that ". . .no mixed system of single
and multi-member districts. . .can provide substantially²⁵
equal representation or voting power for all citizens".

In 1973 the U.S. Supreme Court voided two multi-
member legislative districts in Texas on the grounds that
they were invidiously discriminatory against members of²⁶
racial minority groups. The Supreme Court, however, has
not held multi-member districts to be unconstitutional
per se. In a recent case the Court declared that the dis-
proportionate or discriminatory effects of an at-large
system were not sufficient to establish a claim of un-
constitutional vote dilution without proof of an intention²⁷
to discriminate.

Multi-member districts may diminish the voting power
of minority groups because they usually have a larger number
of voters than a single member district. They inherently

discriminate against Native Americans in South Dakota who might be able to elect one legislator in a single-member district, but have insufficient votes to elect their proportionate share of legislators in a multi-member district. However, it should be noted that discrimination by gerrymandering is possible in single-member districts as well.

Based on the 1970 Census, in South Dakota the ideal population for a multi-member district with two representatives was 19,035 and for a single-member district it was 9,518. Preliminary Census data for 1980 indicate that the figures will be upped to 19,663 for a multi-member district and 9,832 for a single-member district. In 1970, Shannon County and the portion of Jackson County that was formerly Washabaugh had a total population of 9,507, sufficient to constitute one single-member district. Clem and Farber point out that if Shannon County, with 7,091 Native Americans, had been left as a unit in a single-member voting district, the majority Indian population could well have controlled one legislative seat. Also Todd and Mellette Counties, if combined into a single-member district, could have provided a majority Indian population of 5,422 out of a total 9,026. The use of single-member districts would have made it possible for Indian people to gain a majority of votes in at least

31
two districts.

Clem and Farber conclude that use of multi-member districts for State legislative elections greatly diminishes³³ the opportunities for political and ethnic minorities to elect State legislators in proportion to the State's minority population. In South Dakota some suggest that a preferable apportionment system would be the conversion of senate districts to single-member constituencies, and the division of each senate district³⁴ into two house districts. Representative Julian Cheney sponsored House Bill 1179 in the 1980 legislature with those provisions. He believed that single-member districts would have the added advantage of enabling representatives to establish closer contact with their constituents in³⁵ the interest of making them more effective legislators. The bill was defeated by a House Committee.

South Dakota's 1980 legislature created an Interim State Affairs Committee to do background study and analysis for a 1981 apportionment plan. During the Fall of 1980 this Committee held three public meetings, two in Pierre and one in Sioux Falls, to provide opportunity for public³⁵ input to the apportionment process. As working principles the Committee determined to attempt to stay within a six percent population variance between districts as well as to stay within county lines. It became evident, however,

that the distribution of the State's population made it
impossible to comply with both principles. Dr. W. W.
Farber, Professor Emeritus of Political Science at the
University of South Dakota, testified before the Committee
that, on the basis of previous court decisions, he be-
lieved a 16 percent variance would be acceptable.

Representatives from the Oglala and Rosebud Sioux
Tribes testified in favor of a plan which would group
Shannon, Todd and Bennett Counties together into a single
district to avoid diluting the votes of Native Americans
in that area of the State. One such apportionment plan
allowing the grouping of these three counties which was
presented to the Committee entailed a 12.8 percent deviation
from the ideal population. This was thought to fall with-
in acceptable Federal standards.

In January, 1981, the Interim State Affairs Committee
was replaced by an 11 member Joint Select Committee on
Reapportionment chosen by the majority and minority leaders
of the South Dakota House and Senate. All members of the
former State Affairs Committee were carried over into the
Joint Select Committee. The new Committee will be re-
sponsible for presenting an apportionment plan which will
be considered by the legislature in the form of a bill
during its 1981 session.

Notes to Chapter V.

1. Article III, Section 5.
2. Baker v. Carr, 369 U.S. 186 (1962).
3. Reynolds v. Sims, 377 U.S. 533 (1964). A comprehensive legal analysis of the requirements for legislative reapportionment is provided in April Staff Report of the Task Force on Indian-State Government Relations (April 19, 1974) pp. 3-11.
4. Ibid.
5. City of Mobile v. Bolden, 48 U.S.L.W. 4436 (April 22, 1980).
6. "Multimember Electoral Districts -- Do They Violate the 'One-Man, One-Vote' Principle?" 75 Yale Law Journal, 1309 (1966).
7. Article III, Section 5.
8. Baker v. Carr, 369 U.S. 186 (1962); Reynolds v. Sims, 377 U.S. 533 (1964), and 42 U.S.C. § 1973-1973p; 42 U.S.C. 1973aa-bb-4. For an overview of the procedures and review provisions for legislature reapportionment in South Dakota see South Dakota Legislative Research Council, "Background Paper" (undated, unpublished document hereafter referred to as "Background Paper"). The following synopsis of these procedures draws heavily on that paper.
9. Article III, Section 5.
10. Ibid, Article IV, Section 4.
11. 42 U.S.C. § 1973c.
12. E.g.: Fortson v. Dorsey, 379 U.S. 437 (1965); Burns v. Richardson, 384 U.S. 73 (1966); Whitcomb v. Chavis, 403 U.S. 124 (1971); White v. Regester, 412 U.S. 755 (1973); Gomillion v. Lightfoot, 364 U.S. 339 (1960); and Wright v. Rockerfeller, 376, U.S. 52 (1964).
13. Alan L. Clem and William O. Farber, "Manipulated Democracy: The Multimember District", National Civic Review (May 1979) p. 242.
14. Ibid.

15. April Staff Report of the Task Force on Indian-State Government Relations, (1974), pp. 16, 17; Anita Remerowski, interview in Mission, March 25, 1980; Frank Pommersheim, interview in Rosebud, May 15, 1980; Terry Pechota, interview in Rapid City, August 5, 1980.
16. In 1979 Jackson County and Washabaugh County were merged to form the present Jackson County. South Dakota Compiled Laws § 7-2.
17. South Dakota Planning Bureau, South Dakota Facts, (undated), pp. 48 and 58.
18. Task Force on Indian-State Government Relations, p. 16. See also Map 4 and Table 4.
19. April Staff Report of the Task Force on Indian-State Government Relations (April 19, 1974), p. 17.
20. "Listing of Members of South Dakota Legislature, 1970-80", provided by the South Dakota Legislative Research Council; Task Force on Indian-State Government Relations, p. 17.
21. Farber, Geary, and Carlson, Government of South Dakota, p. 47.
22. Clem and Farber, "Manipulated Democracy", p. 235.
23. Ibid., p. 242.
24. Clem and Farber, "Multimember Districts and Minorties", p. 1.
25. Banzhaf, "Multimember Electoral Districts", p. 1310; and Clem and Farber, "Manipulated Democracy", p. 235.
26. White v. Regester, 412 U.S. 755 (1973).
27. City of Mobile v. Bolden, 48 U.S.L.W. 4436 (April 22, 1980).
28. Clem and Farber, "Manipulated Democracy", p. 242.
29. The "ideal district population" of 19,035 was determined by dividing the State's total population (666,257 in 1970 according to South Dakota Planning Bureau, South Dakota Facts, p. 58), divided by the total number of senators in the legislature (35). This goal was given high priority for fear that greater deviation would cause the apportionment to be overturned by court order. The 1971 apportionment came very

close to meeting this objective, with maximum variances from the ideal of +2.3 percent and -3.32 percent as shown in Map 1. Preliminary 1980 Census data (U.S. Department of Commerce, Bureau of the Census, 1980 Census of Population and Housing: South Dakota, PHC 80-P-43 (1980), (Table 1) put the State's total population at 688,217 which results in an ideal district population of 19,663 for the 1981 reapportionment (see Map 5).

30. Ibid.

31. April Staff Report on the Task Force of Indian-State Government Relations (April 9, 1974), p. 19.

32. "Multi-member Districting and Minorities", p. 4.

33. Clem and Farber, "Manipulated Democracy", p. 242

34. Julian Cheney, interview in Pierre, January 30, 1980.

35. "Minutes of the Committee on State Affairs," November 19, 1980 (available from the South Dakota Legislative Research Council, State Capitol, Pierre).

36. Ibid., p. 2.

37. Ibid.

38. Ibid., pp. 5-8.

39. Ibid., p. 3.

40. Reuben P. Bezpaletz, telephone interview, January 21, 1981.

VI. THE VOTING RIGHTS ACT AND SOUTH DAKOTA

PROVISIONS OF THE VOTING RIGHTS ACT AFFECTING SOUTH DAKOTA

The Voting Rights Act, enacted in 1965 and amended in 1970 and 1975, has been termed "one of the milestones on the path toward full civil rights for minorities in the United States." It has been used throughout the United States to correct unfair practices in the election system and in some States has led to greatly increased registration and voting, and the election of minorities to public office. The Act contains permanent or general provisions which affect jurisdictions (States, counties, towns or precincts) meeting certain criteria where minority citizens may have difficulty exercising their right to vote.

Section 5 of the Act provides for Federal review of specified State and local actions which affect the right to vote. In South Dakota, Todd and Shannon Counties are covered by the provisions which include the use of Federal examiners and observers, and Federal clearance of changes in a covered jurisdiction's election laws and practices. Covered jurisdictions are required to submit all changes in laws, practices, and procedures affecting voting to either the U.S. Attorney General or the U.S. District Court for the District of Columbia for a determination that the changes do not discriminate against racial or language minorities.

In addition to Shannon and Todd Counties, South Dakota's Bennett, Charles Mix, Carson, Lyman, Mellette and Jackson Counties are covered by special minority language provisions, part of the 1975 amendments to the Act. These provisions require that covered jurisdictions must take the necessary steps to enable language minority citizens to exercise their voting rights as effectively as English-speaking voters exercise theirs. Where the predominate language of the applicable minority group is unwritten the jurisdiction is only required to furnish oral instructions, assistance, or other information related to registration and voting.

PROPOSED ORGANIZATION OF TODD AND SHANNON COUNTIES

Until 1976 the State of South Dakota was divided into 67 counties, three of which were unorganized, Todd, Shannon and Washabaugh. For purposes of county administration each unorganized county was attached to an organized county. Todd County has been attached to Tripp County and Shannon to Fall River. Washabaugh County was consolidated with Jackson County on January 1, 1977 as a result of a vote in both counties. The organization of Todd and Shannon Counties under House Bill 1197 passed by the 1979 South Dakota Legislature, is presently in question. On October 22, 1979, the U.S. Department of Justice, pursuant to the provisions of Section 5 of the Voting Rights Act, issued a

letter of objection to the establishment of governmental
11
systems in Todd and Shannon Counties. The issuance of
this letter, which has generated a considerable amount
of controversy, is one of a series of legal actions which
have affected the political participation of the residents
in those two counties as explained below.

Until residents of the unorganized counties brought
suit against the State in Little Thunder v. State of South
Dakota they were prevented by South Dakota law from voting
for officials in the organized counties to which they
12
were attached. In that case the Eighth Circuit Court of
Appeals ruled that the State could not disenfranchise
residents of unorganized counties from their right to vote
for elected officials in the organized counties to which
13
they were attached. In the 1976 general elections one
Commissioner was elected from Tripp's Third District by
the combined vote of the residents in that district and
voters in Todd County.

After the 1976 elections Tripp County Commissioners
sued the State alleging that the attachment of Todd and
Shannon Counties was illegal without the consent of the
14
counties' residents. The South Dakota Supreme Court af-
firmed that the attachment was legal, but held that there
was no legal basis for the scheme which allowed Tripp
residents to vote only for the Commissioner in the
district where they resided, and Todd County residents

15

to vote for all three commissioners in Tripp County. The Court held that neither the successful candidate for commissioner in the 1976 election nor his opponent could
16
be seated. Based upon that decision the County Commissioners reapportioned the three Tripp County commissioner districts prior to the 1978 general election by making Todd County a separate district as well as shifting the boundaries of the two remaining districts. This reapportionment was based upon the number of registered voters in both counties rather than by population based upon 1970 census
17
data.

Pursuant to authority granted under the Voting Rights Act the U.S. Department of Justice objected to the redistricting on basis that there was a 65 percent deviation in the population distribution among the three districts and that the predominately Indian district which lay wholly
18
in Todd County would be substantially underrepresented. The election of County commissioners in Tripp and Todd Counties was held during the 1978 general election by virtue of a consent decree between the State and the Department of Justice. The decree, however, prohibited the three elected commissioners from taking office until either the U.S. Attorney General withdrew the voting rights objection or county officials obtained a declaratory judgment from the U.S. District Court for the District of

Columbia that the redistricting plan was not discrimin-
19
atory. Neither action took place within the 30 day
period allowed nor within a 30 day extension period, and
20
the election was declared null and void. One of the
three county commissioners elected in 1978 was Frank
LaPointe, a Native American resident of the Rosebud
Reservation. Because of the conditions of the consent
21
decree he was never seated on the Commission.

The present Tripp County Commissioners were elected
in 1974 solely by the voting residents of Tripp County.
Because of the continued controversy they continue to
hold office despite the 1975 Little Thunder decision
22
and two subsequent elections. The present U.S. Attorney,
who was the plaintiff's counsel in the Little Thunder case,
stated he was disappointed that

. . .nothing has changed to improve the
franchisement of Todd and Shannon County
residents in the five years since the
mandate was handed down by the Eighth
Circuit. [in effect] no one from those
counties has been allowed to vote or
run for office in their administrative
counties.²³

In its 1979 session the South Dakota Legislature
passed House Bill 1197, known as the Unorganized Counties
Act, providing for the organization of both Todd and
Shannon Counties permitting those counties to elect their
own governing officials. However, according to the Justice

Department if this law is implemented the lack of financial revenue in the newly organized counties will require continued dependance upon Tripp and Fall River Counties for governmental services.²⁴ The Department's letter of objection thus contended that the return of Todd and Shannon Counties to a position of dependance on Tripp and Fall River Counties, without electoral participation in their governing bodies, would negate the rights of access won in Little Thunder with resulting discriminatory purpose²⁵ and effect.

Several Native American leaders also expressed opposition to the organization of Todd and Shannon Counties. A resolution passed by the Rosebud Sioux Tribal Council (22 members in favor and one abstaining) claimed that the attempted organization was in conflict with tribal self-determination, and that the Rosebud Sioux Tribe was the sole government in Todd County.²⁶ Al Trimble, former president of the Oglala Sioux Tribe said that if State government were implanted on the reservations the Federal government would take it more seriously than the tribal government and that the resulting channeling of Federal funds through State government would reduce the power and influence of tribal governments.²⁷ When the letter of the U.S. Department of Justice objecting to the organization of the two counties was issued, the Rapid City Journal

quoted other Sioux leaders as viewing the establishment of county government on the reservation as an infringement on tribal government.

Residents of the neighboring Tripp and Fall River Counties appeared to be strongly in favor of the establishment of separate governments in Todd and Shannon Counties. The 1975 Little Thunder court decision, in which Shannon and Todd County residents won the right to vote for officials in Tripp and Fall River Counties, was alarming to some residents of those counties. An article in the Hot Springs Star in Fall River County summed up the concern this way:

. . .A situation is arising in Fall River County which has far-reaching implications and alarming possibilities for the future of our county and its government. That of the increased numbers of registered voters in Shannon County.

. . .A court decision of 1975 dictated that voters of an unorganized county have the right in determining the county officials by whom they are governed. Shannon County is an unorganized county attached to Fall River.

. . .With the total of registered voters in Shannon County reported to be in excess of 4,000, the implication of their effect on an election of county governmental offices becomes a potential ominous force.

. . .Admittedly we would not want to, nor are we trying to, imply that Fall River should have complete control over Shannon County affairs, but on the other hand neither should Shannon residents have control of our government.

. . .We think separation of the two counties is the only just answer to the question of government for the two land masses. It is our responsibility as the voters of Shannon and Fall River Counties to send to our State Legislature elected representatives who will bring just that separation between Shannon and Fall River. 29

The passage of House Bill 1197 was seen as an apparent attempt to end what was perceived as outside influence upon Tripp and Fall River Counties. 30

ORAL INTERPRETERS

In South Dakota the minority provisions of the Voting Rights Act are implemented by providing oral interpreters at polling places in covered jurisdictions. 31

In some counties these interpreters also serve as members of election boards. All interpreters are paid the minimum hourly wage by the State. Despite comments about "extraordinary expense", wages for 1978 election interpreters at the seven polling places in Shannon County, as one example, amounted to a total of \$260.00 for 12 hours work. 32 33

County auditors are responsible for recruiting and hiring interpreters. Those auditors interviewed were of the opinion that oral interpreters were not necessary and not used by Indian voters. Sherill Dryden, auditor for Fall River County, said she knew of no case where they were used and Norman Cihak, auditor of Charles Mix 34

County which provides interpreters for four precincts,
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said that to his knowledge they were not used. Other
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auditors reported the same situation.

However, Indians interviewed were unanimous in their
opinion that oral interpreters were useful at the polls,
especially for older persons with little understanding
37
and reading ability in English. Nancy White Horse, who
serves on a regular basis as an oral interpreter in Todd
County stated that many Indians do not communicate in
English well enough to understand how to vote without
help. She assisted over 40 persons in the last presidential
38
election at the poll where she was stationed.

Field investigation revealed no indication that in-
formation about election procedures, issues or candidates
was provided in covered jurisdictions other than that
given by oral interpreters at the polls. However, reg-
ulations of the U.S. Department of Justice setting stand-
ards for measuring compliance with the Voting Rights Act
seem to require more than the mere presence of oral in-
terpreters at the polls. These regulations establish
two basic standards by which compliance will be measured:

- (1) That materials and assistance should
be provided in a way designed to al-
low members of applicable language
minority groups to be effectively in-
formed of and participate effectively
in voting connected activities; and

- (2) that an affected jurisdiction should take all reasonable steps to achieve that goal.³⁹

A Department of Justice memorandum issued to U.S. Attorneys in States affected by the minority language provisions interprets these regulations as requiring provision of oral information through a variety of channels, including radio, as may be necessary to reach local minorities.⁴⁰

United States Attorneys in affected States have primary enforcement responsibility for jurisdictions covered by Section 203 minority language provisions of the Voting Rights Act.⁴¹ Terry Pechota, U.S. Attorney for South Dakota, acknowledges this responsibility but explains it is perceived policy of the office not to become involved in the enforcement of the minority language provisions of the Act unless there is a complaint alleging non-compliance. Though Pechota believes both State and Federal enforcement of voting rights is necessary, he states that he has never received a voting rights complaints.⁴² The U.S. Department of Justice acknowledges an absence of complaints about many existing civil rights violations, including discriminatory voting practices.⁴³ The official position of the Department, however, is that the minority language provisions of the Voting Rights Act must be vigorously enforced and thus the Department encourages seeking out violations.⁴⁴

Notes to Chapter VI

1. David H. Hunter, Federal Review of Voting Changes, (Second Edition), Washington: Joint Center for Political Studies, (1975), p. 5.
2. U.S. Commission on Civil Rights, Using the Voting Rights Act, (Clearinghouse Publication No. 53), (April 1976), p. 1.
3. See U.S. Commission on Civil Rights, Using the Voting Rights Act, for a full discussion of the Act and a complete copy of the text. See U.S. Commission on Civil Rights, The Voting Rights Act: Ten Years After (January 1975), for an evaluation of the status of minority voting rights in jurisdictions covered under the Voting Rights Act.
4. U.S. Commission on Civil Rights, Using the Voting Rights Act, pp. 7-10, 20.
5. Ibid.
6. 42 U.S.C. 1973(b).
7. Ibid.
8. 42 U.S.C. §§ 1973b(f)(4), § 1973aa-1a(c) (1976). 5 South Dakota Compiled Laws 12-3-9 1980 Supp. recognizes the Sioux languages as "historically" unwritten.
9. South Dakota Compiled Laws § 7-1-2 through 7-1-68 et seq. 1967.
10. South Dakota Compiled Laws 7-2.
11. Days letter, referring to South Dakota House Bill 1197. 3 South Dakota Compiled Laws 7-1-2 et seq. 1967.
12. 518 F. 2nd 1253 (8th Cir. 1975).
13. Ibid.
14. County of Tripp v. State of South Dakota, 264 N.W. 2nd 213, 215.
15. 264 N.W. 2nd at 219.
16. 244 N.W.

17. Donald Mason, Wesley Frantz and Roger Pochor, Office of the Tripp and Todd Counties State's Attorney, letter to Drew S. Days III, U.S. Department of Justice, October 31, 1978.
18. U.S. Department of Justice, press release, November 1, 1978.
19. Ibid.
20. Frank LaPointe, interview in St. Francis, March 26, 1980.
21. Ibid.
22. United States v. State of South Dakota, 79-3039, pending in the United States District of South Dakota, Rapid City.
23. Terry Pechota, U.S. Attorney for South Dakota, interview in Rapid City, August 5, 1980.
24. Days letter.
25. Ibid.
26. "Resolution 80-98 of the Rosebud Sioux Tribal Council", May 15, 1980, attached as Appendix A.
27. Telephone interview, June 25, 1980.
28. "Unorganized Counties Ruling Viewed by Indians as Victory", Rapid City Journal, October 10, 1979, p. 1.
29. "We think. . .Fall River County Voters Beware!" Hot Springs Star, October 24, 1978, p. 4.
30. "Unorganized Counties Ruling. . .", Rapid City Journal, October 30, 1972, p. 2.
31. 5 South Dakota Compiled Laws 12-3-6 through 12-3-13 1980 Supp.
32. "Minority Languages Costly Election Item", Rapid City Journal, May 28, 1980.
33. 5 South Dakota Compiled Laws 12-3-11 1980 Supp. See also: Rapid City Journal, May 28, 1980: "Minority Languages Costly Election Item".
34. Interview in Hot Springs, March 24, 1980.

35. Interview in Lake Andes, May 13, 1980.
36. "Minority Languages Costly Election Item", Rapid City Journal, May 28, 1980.
37. Severt Young Bear, interview in Pine Ridge, March 24, 1980; Norman Knox, interview in Mission, May 14, 1980; Tom Frederick, interview in Carter, May 15, 1980; Tom Roubideaux, interview in Rosebud, May 15, 1980.
38. Nancy White Horse, interview in Rosebud, June 12, 1980.
39. 28 CFR 55.2(b).
40. Benjamin R. Civiletti, Acting Deputy Attorney General, memorandum to all affected U.S. Attorneys on the Subject "Department Policy for Enforcing Section 203 of the Voting Rights Act", May 15, 1978.
41. U.S.C. See also: Gerald W. Jones, Chief, Voting Section, Civil Rights Division of the U.S. Department of Justice, memorandum to all affected U.S. Attorneys on the subject "Department Policy for Enforcing Section 203 of the Voting Rights Act", May 17, 1978.
42. Terry Pechota, interview in Rapid City, August 5, 1980; letter to the Rocky Mountain Regional Office from Terry Pechota October 15, 1980. It should be noted that Mr. Pechota took office on October 15, 1979.
43. Civiletti memorandum to U.S. Attorneys, May 15, 1979.
44. Ibid.

VII. FINDINGS AND RECOMMENDATIONS

Finding:

In South Dakota Native Americans do not participate in the State and Federal political process except to a limited degree for several reasons:

1. Lack of information about registration requirements, voting procedures and pending issues.
2. Confusion caused by the multiplicity and overlap of voting districts in reservation counties.
3. Apprehension that participation in State politics would be viewed as an acknowledgement of State jurisdiction in tribal affairs resulting in State encroachment upon tribal sovereignty.
4. Little opportunity to voice opinions on State issues or to make an impact upon decisions in State affairs.

Recommendations:

The League of Women Voters, Common Cause, the Democrat and Republican parties, and local public interest groups should extend voter registration efforts to reach greater numbers of Indian people.

Community colleges and secondary schools should be utilized as centers for voter education efforts.

The Governor and the State Legislature should revitalize, expand and support the activities of the State Indian Affairs

Commission and the Indian Negotiating Committee. Reasons for not refunding the State Indian Development Organization should be carefully reconsidered.

The State Department of Personnel should take every opportunity to search out qualified Native American candidates and encourage them to apply for management and decision-making positions in State government.

Formal and informal Indian organizations should select and encourage Native Americans for State, county and local political candidacies; and both political parties should adopt an aggressive campaign to recruit and encourage Indian candidates.

Legislators having Indian constituencies should regularly hold meetings on or near the reservations to seek Indian viewpoints on State issues.

The Republican and Democratic parties should encourage County Commissions to assume responsibility for assuring that designated polling places for Federal, State county and local elections are identically located.

By formal action the State Commission on Indian Affairs should support use of the State-tribal Compact allowing for written agreements between tribes and the State and should develop and publish official jurisdictional statements. These written statements should be a product negotiated by tribal and State representatives for the purpose of diminishing present jurisdictional controversies and defining

the extent of State jurisdiction exercisable in Indian country.

Finding:

South Dakota's present districting plan divides counties with substantial Indian populations in the Pine Ridge and Rosebud reservation areas into three legislative districts leaving no district with a majority of Indian voters.

Recommendation:

South Dakota's 1981 reapportionment plan should respect the integrity of tribal entities and reservations boundaries. The Joint Select Committee on Reapportionment charged with recommending a reapportionment plan to the legislature, should continue discussions with the Oglala and Rosebud Tribal Councils which were begun by the Interim State Affairs Committee regarding the setting of district lines to accomplish this objective. The South Dakota Advisory Committee to the U.S. Commission on Civil Rights supports the plan now under consideration which would place Shannon, Bennett and Todd Counties in a single legislative district.

Finding:

Indian participation in political party activities is minimal.

Recommendations:

The Democratic and Republican parties should initiate or intensify efforts to involve Indians at all levels of party politics. This should include developing local contacts and educational programs.

The State Committee Chairs of the Democratic and Republican parties should launch outreach programs to keep the Native American population informed about pending issues.

Finding:

Indians register and vote at a lesser proportion than do non-Indians.

Recommendations:

Tribal Councils should establish voter registration offices on the reservation in multiple locations. Tribal officials should take full responsibility for ensuring proper registration procedures.

Lists of persons to be expunged from voter rolls should be forwarded for posting to tribal headquarters by the auditors responsible for Shannon, Jackson, Bennett, Todd, Mellette, Charles Mix, Buffalo, Lyman, Ziebach, Dewey, Corson, Roberts, and Hughes Counties.

Finding:

Political participation by some South Dakota Indian voters requires implementation of the minority provisions of the Voting Rights Act because in some precincts a high

minority population evidences difficulty with written and spoken English. Although oral interpreters are provided at some polling places, other interpretive services to facilitate an understanding of the voting process are not provided.

Compliance with the minority language provisions of the Voting Rights Act is not monitored by any State or Federal office. The present U.S. Attorney has received no complaints of failure to comply with this provision of the Act without which Federal enforcement is not invoked.

Recommendations:

County auditors should continue the use of oral interpreters at designated polling places. Interpretative services in the Sioux languages should be extended to include provision of information through public media regarding candidates, issues, and election procedures.

Fuller use of radio and television public service broadcast time should be employed by citizen committees and tribal organizations to provide information in both the English and Sioux languages and urging citizens to register and vote.

The United States Attorney and county auditors in counties affected by the minority provisions of the Voting Rights Act should inform Indian people through tribal councils of interpretive services to be provided for full compliance with the Act.

The United States Attorney should provide clear instructions for the filing of complaints alleging discriminatory voting practices or failure to comply with minority language requirements. Tribal councils should be encouraged to work with the office of the U.S. Attorney and aggrieved individuals to help individuals file complaints.

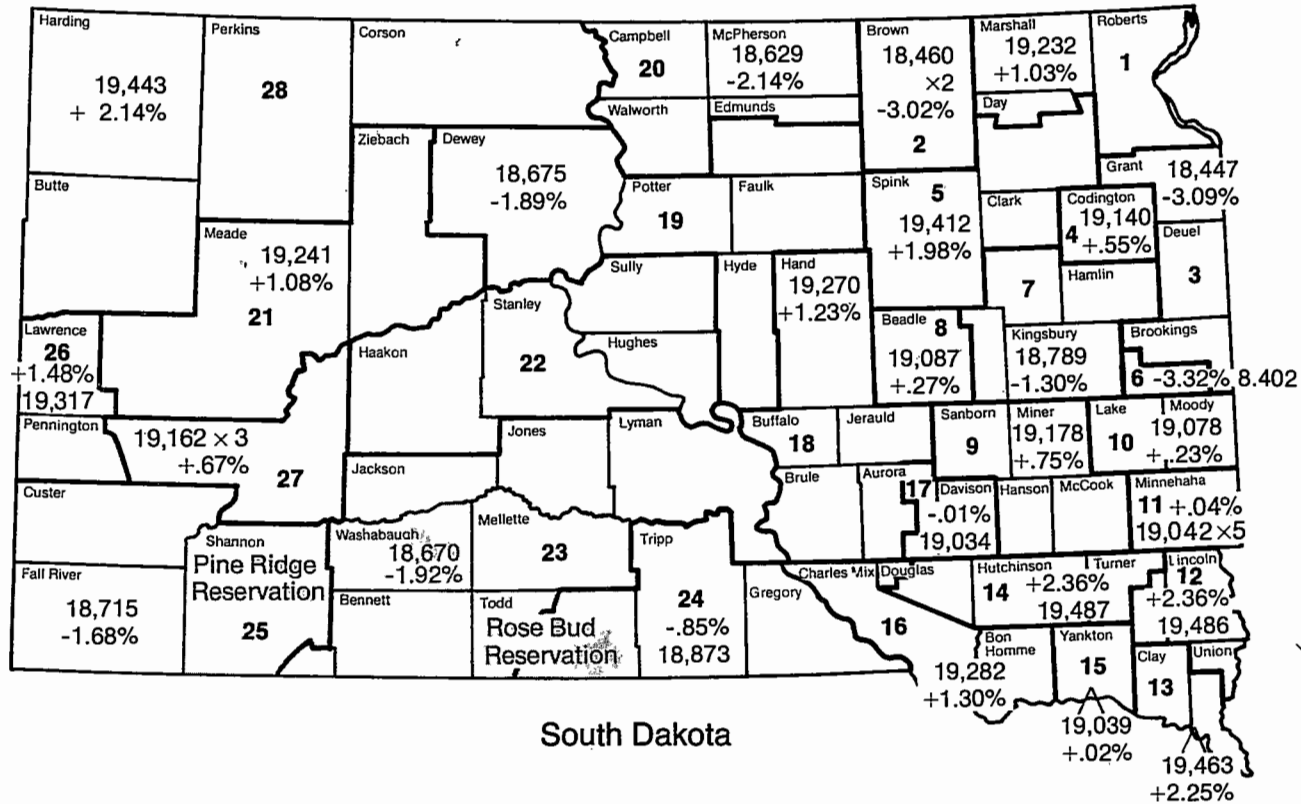
Map 1

1971, Apportionment of South Dakota

Legislative Districts

Total State Population—666,257

Ideal "One-Man, One-Vote" Senate District Population 19,035

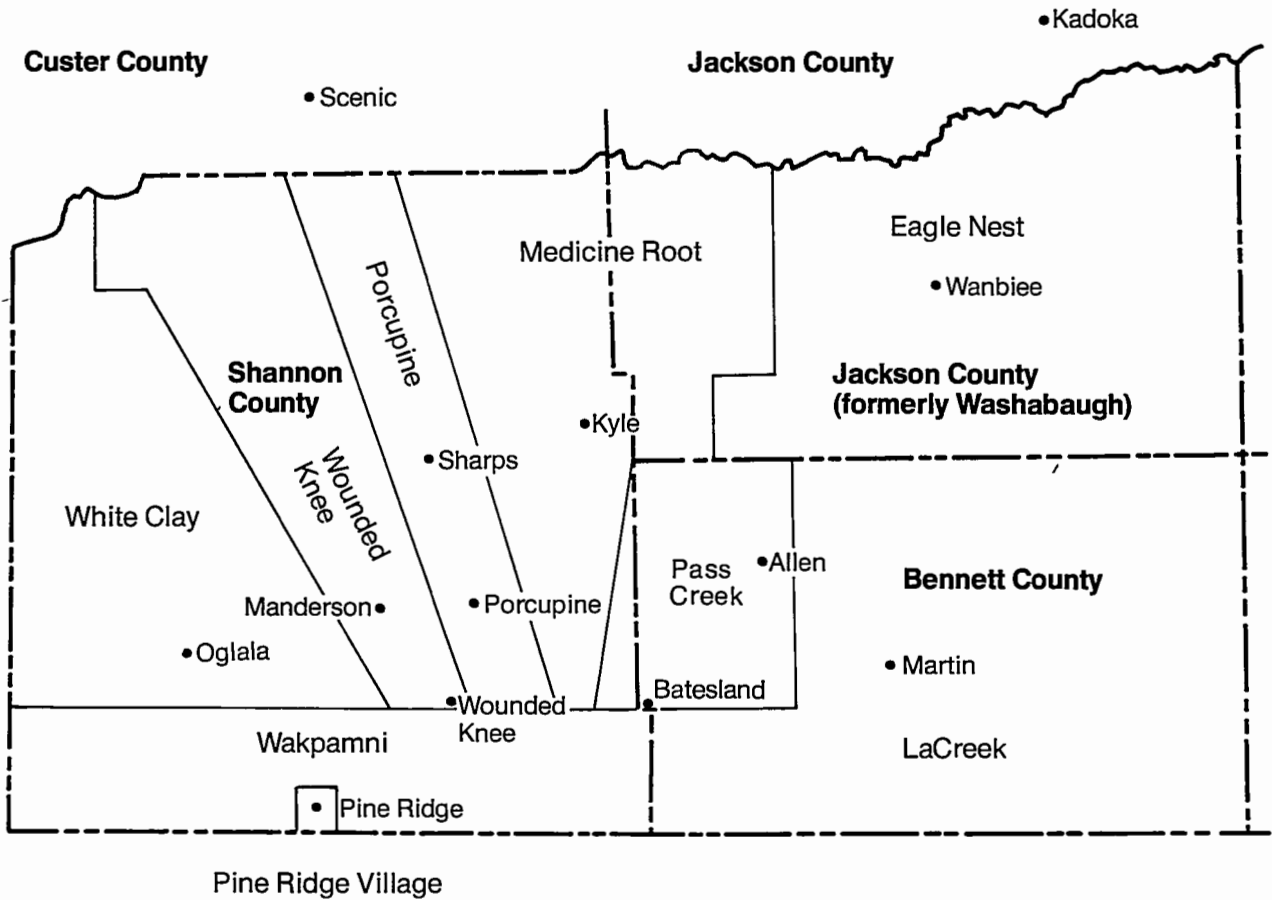


Boldface numbers indicate No. of each Senate District. Typed numbers indicate population of each District and variance from ideal maximum variances: +2.36% and -3.32%, or total high to low variance of 5.68%. Each Senate District would have representatives at a ratio of two for each Senator. The Legislative Districts are uniform for both houses.

Map 2

Pine Ridge Reservation Districts

South Dakota 1980

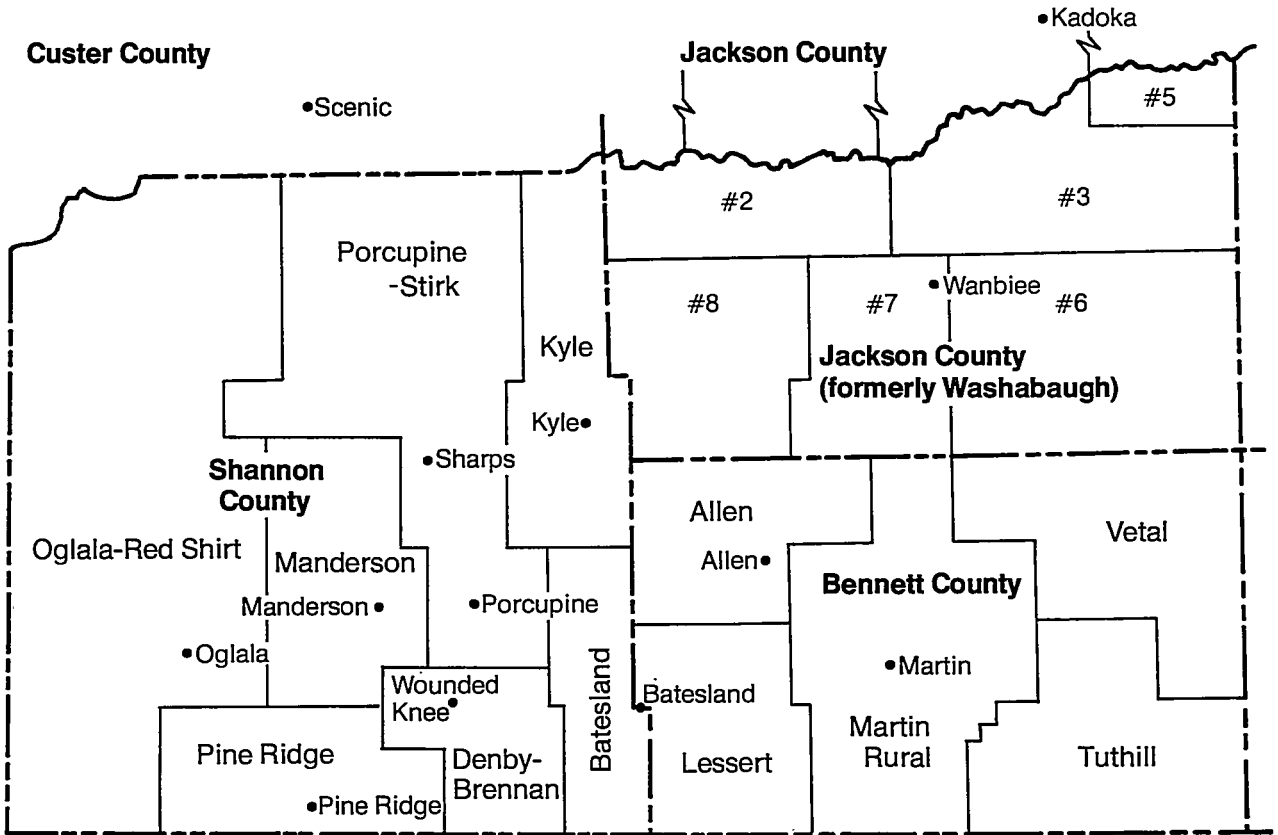


Source: Oglala Sioux Tribal Offices, March 24, 1980.

Map 3

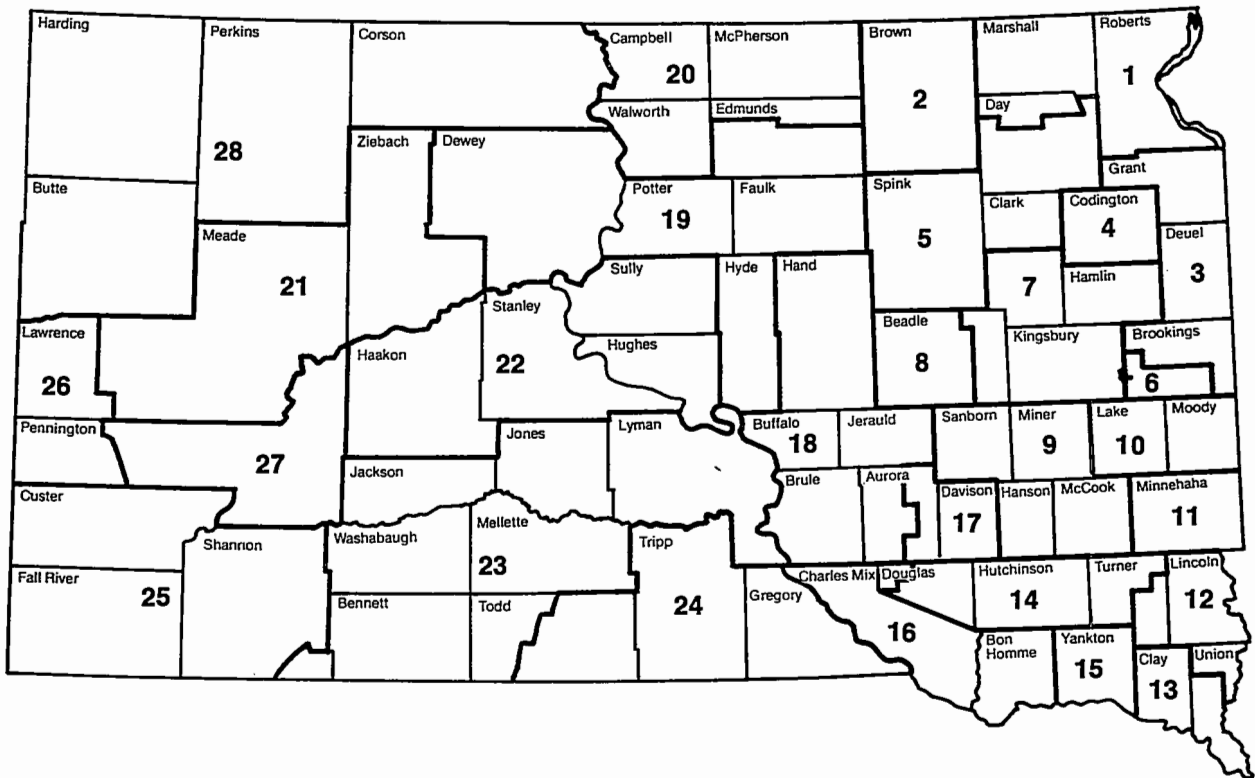
Voting Precinct Boundaries

Shannon, Bennett and Jackson Counties 1980



Source: Fall River, Jackson and Bennett County Auditors.

Map 4
Legislative District Boundaries
South Dakota 1980

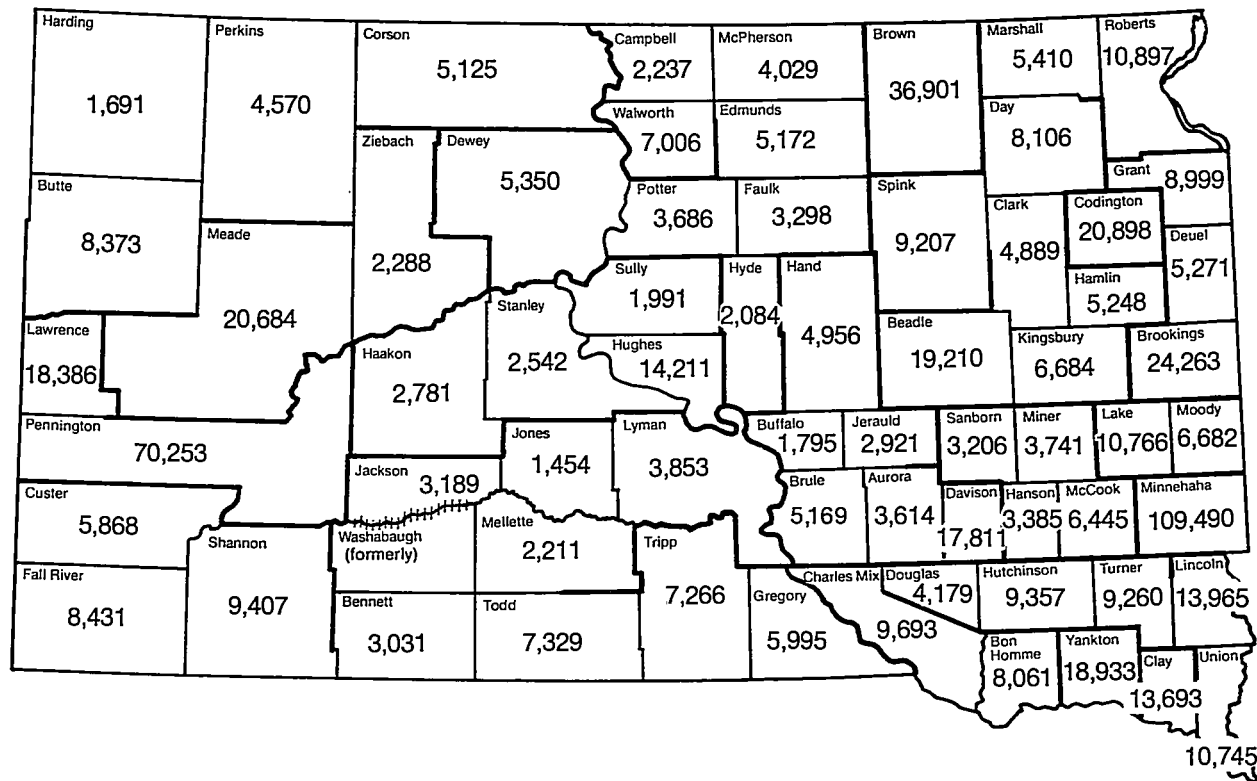


Source: South Dakota Legislative Research Council.

Map 5

South Dakota
1980 Census Figures

Total State Population 688,217
Ideal Senate District Population 19,663



Source: South Dakota Legislative Research Council.

TABLE 1
 Citizens 18 Years Old and Over Reported Voting
 and Registered in the November 1976 Election

Jurisdiction	Total Citizens	Reported Voting		Reported Registered	
		Total	Percentage	Total	Percentage
Shannon County, SD	4,493	1,510	33.6	2,294	51.1
White	552	307	55.6	354	64.1
Native American	3,886	1,191	30.6	1,922	47.5
Todd County, SD	3,745	1,726	46.1	2,204	58.9
White	1,169	758	64.8	845	72.3
Native American	2,509	937	37.3	1,319	52.6

Source: U.S. Department of Commerce, Bureau of the Census, Registration and Voting in November 1976 - Jurisdictions Covered by the Voting Rights Act Amendments of 1975, (Washington, D.C.: Government Printing Office, 1978), p. 29.

TABLE 2
 Voter Registration in Four South Dakota
 Counties: 1976 & 1978

County	1976				1978				Percent Change			
	Dem	Rep	Other	Total	Dem	Rep	Other	Total	Dem	Rep	Other	Total
Todd	1750	826	263	2839	2424	913	346	3983	+128.0%	+10.5%	+31.4%	+40.3%
Tripp	2465	2391	469	5325	2377	2342	420	5139	-3.2	-2.0	-10.5	-3.5
Shannon	1759	485	226	2470	2945	505	418	3868	+67.4	+4.1	+84.9	+36.0
Fall River	2166	2970	464	5600	2131	2769	444	5344	-1.1	-6.7	-4.3	-4.5

Source: Official Election Returns by Counties for the State of South Dakota, General Elections 1976 and 1978, compiled by the South Dakota Secretary of State.

TABLE 3
Voter Registration in South Dakota: 1976 & 1978

	1976				1978				Percent Change			
	Dem	Rep	Other	Total	Dem	Rep	Other	Total	Dem	Rep	Other	Total
No. of Registra- tion x 1000	191	197	38	425	193	192	36	421	+1.0%	-2.5%	-5.3%	-0.7%

Source: Official Election Returns by Counties for the State of South Dakota, General Elections, 1976 and 1978, compiled by the South Dakota Secretary of State.

TABLE 4
Legislative Districts With Sizeable Indian Population

	<u>Total Population</u>	<u>Total Indian Population</u>	<u>Percent Indian Population</u>	<u>Total Non-Indian Population</u>
District No. 1 (Includes a portion of the Sisseton Reservation)	19,232	1,918	4.8%	17,314
District No. 19 (Includes a portion of the Cheyenne River Reservation)	18,675	2,541	13.6	16,134
District No. 21 (Includes a portion of the Cheyenne River Reservation)	19,241	1,364	7.1	17,877
District No. 28 (Includes a portion of the Standing Rock Reservation)	19,443	1,603	8.2	17,840
District No. 23 (Includes a portion of the Pine Ridge and Rosebud Reservations)	18,670	3,826	20.5	14,844
District No. 24 (Includes a portion of the Rosebud Reservation)	18,873	4,837	25.6	14,036
District No. 25 (Includes a portion of the Pine Ridge Reservation)	18,715	7,542	40.3	11,173
District No. 27 (Includes Rapid City)	57,486	2,827	4.9	54,659

Source: April Staff Report of the /South Dakota/ Task Force on Indian State
Government Relations, 1974.

Figure 1
Votes for Governor in Todd County by Political Party

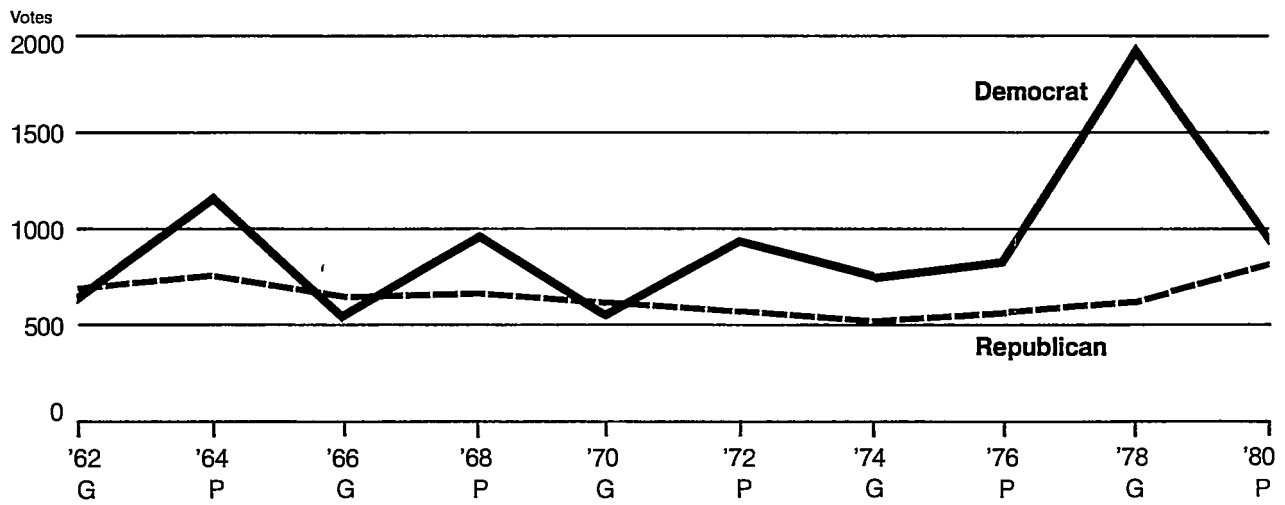
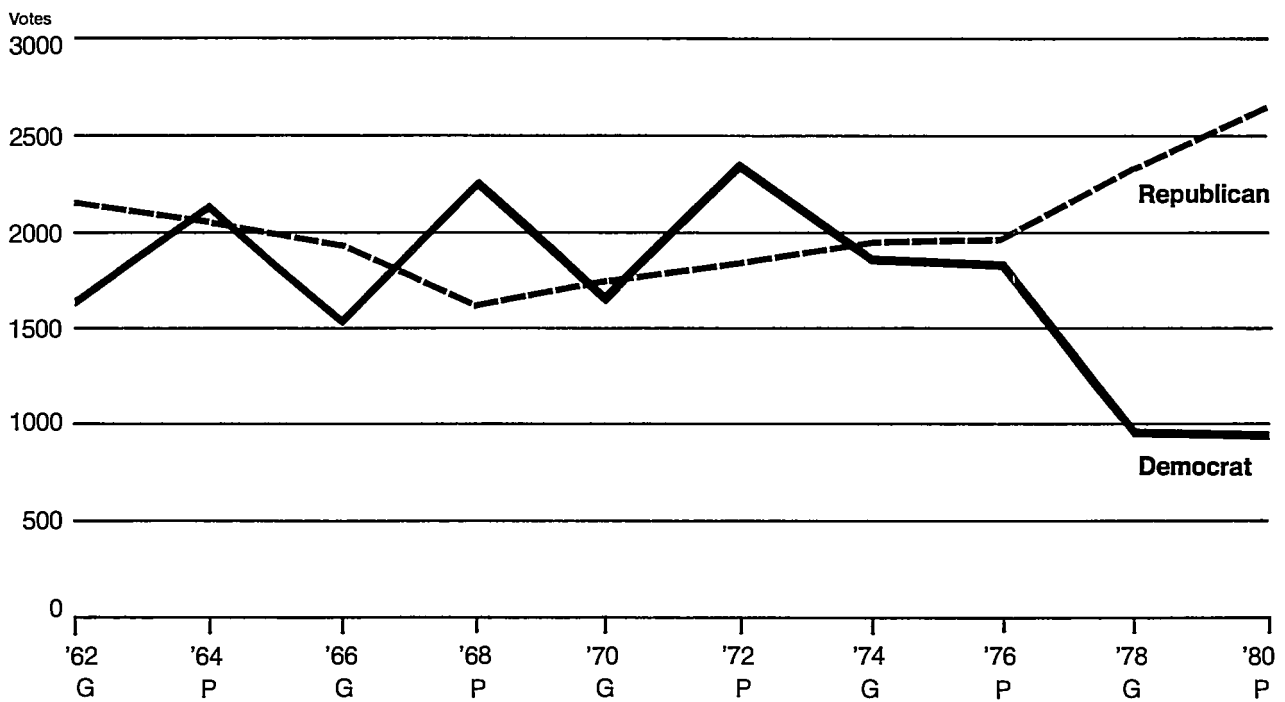


Figure 2
Votes for Governor in Tripp County by Political Party



See Source and Notes Following Figure 8.

Figure 3
Votes for Governor in Shannon County by Political Party

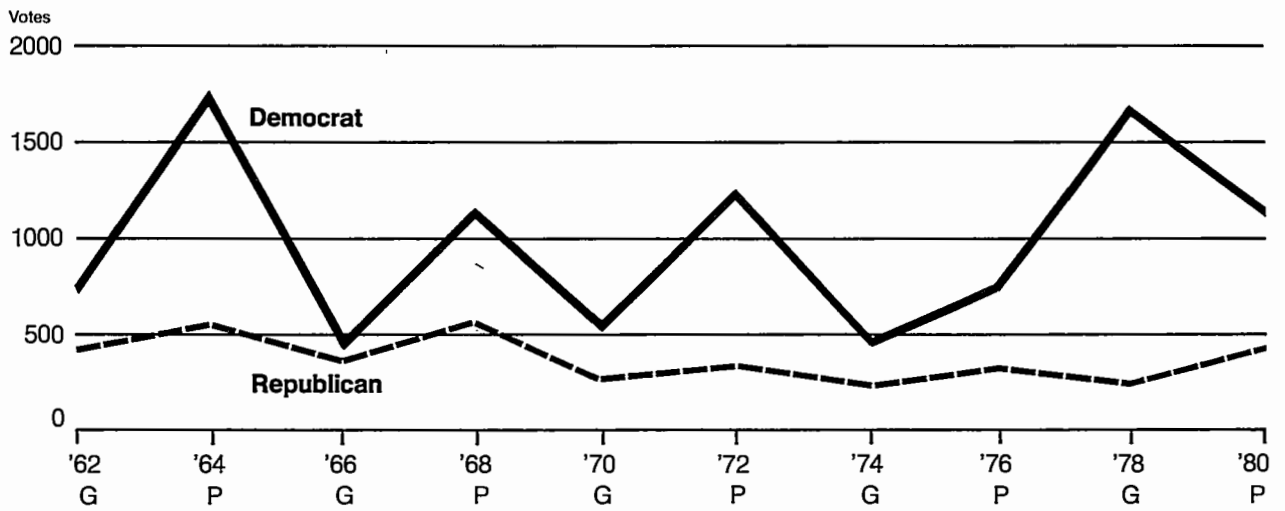
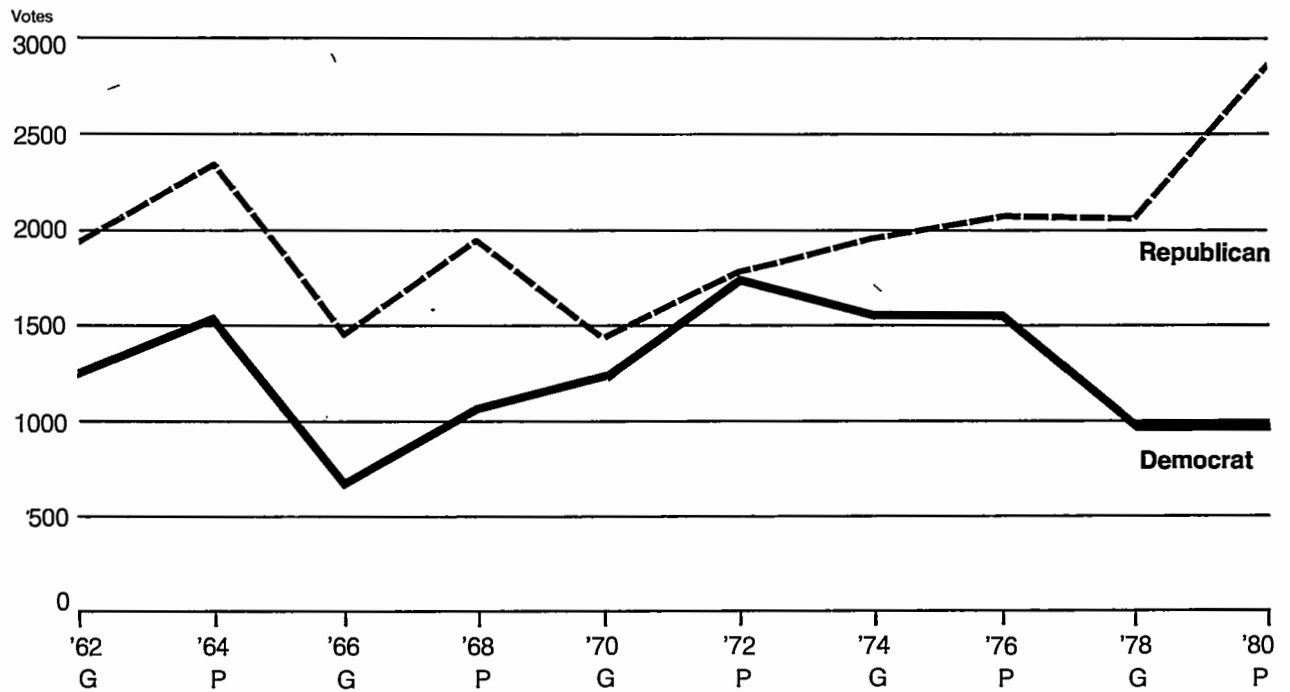
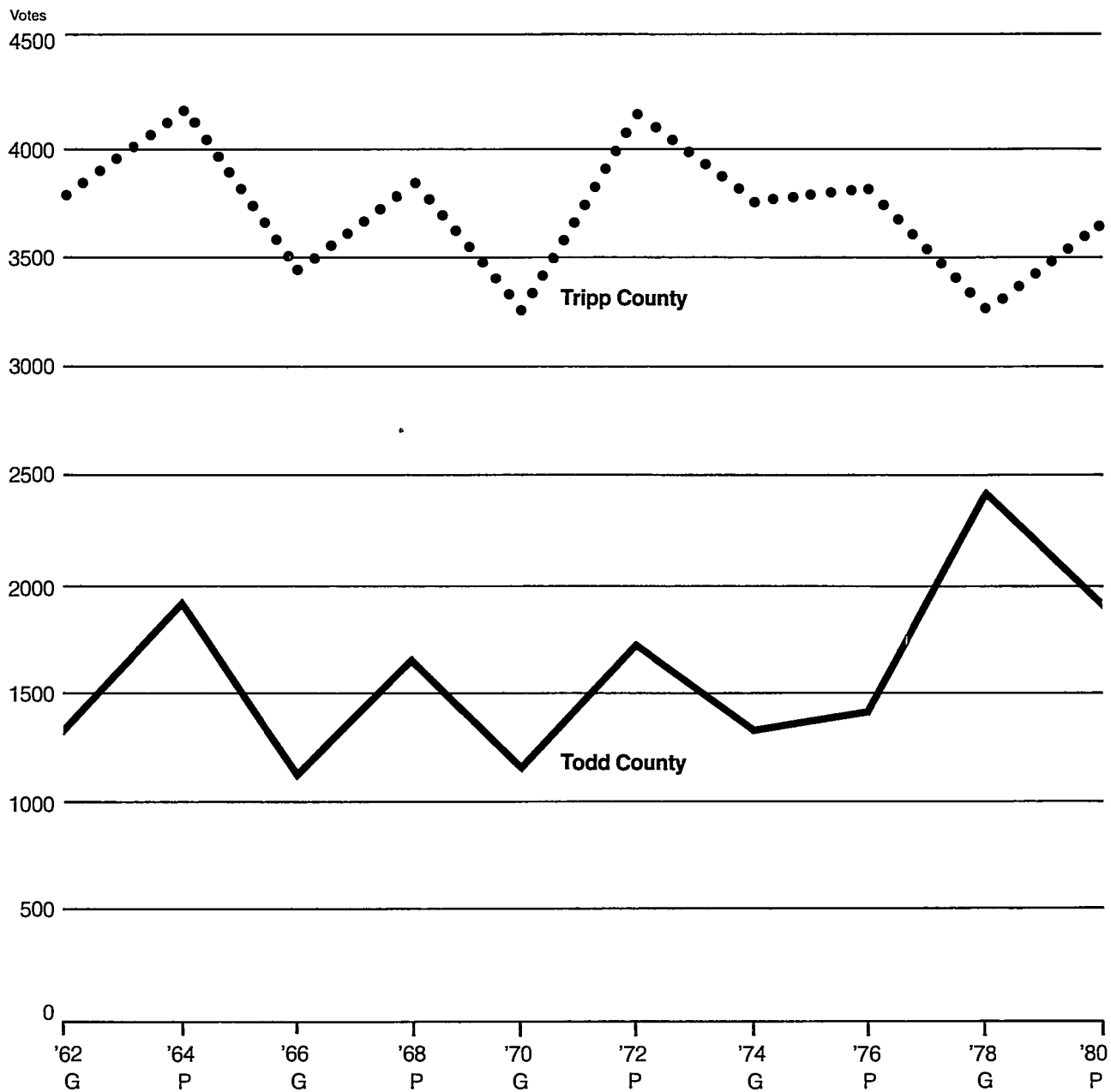


Figure 4
Votes for Governor in Fall River County by Political Party



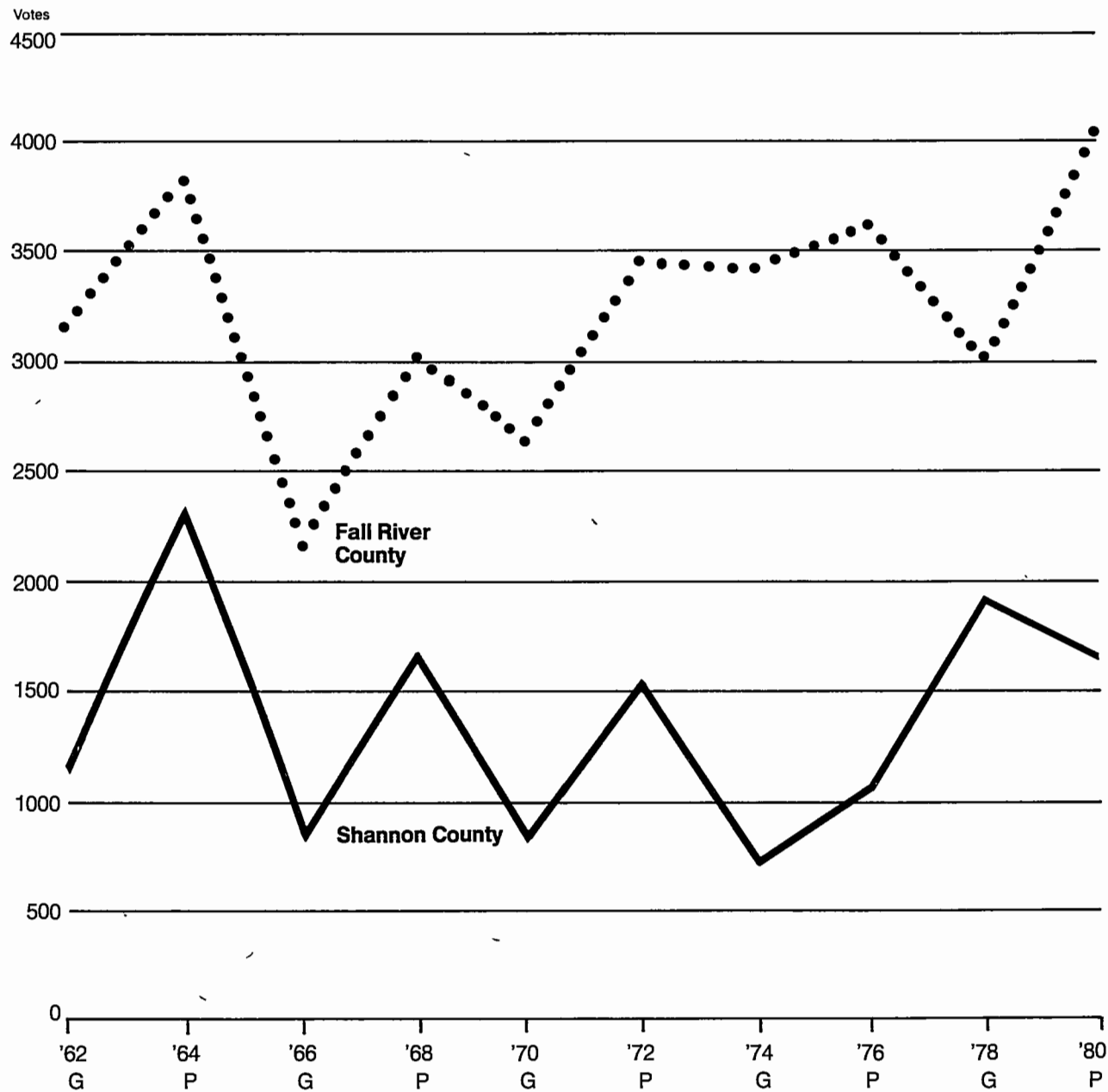
See Source and Notes on Figure 8.

Figure 5
Total Votes for Governor in Todd and Tripp Counties



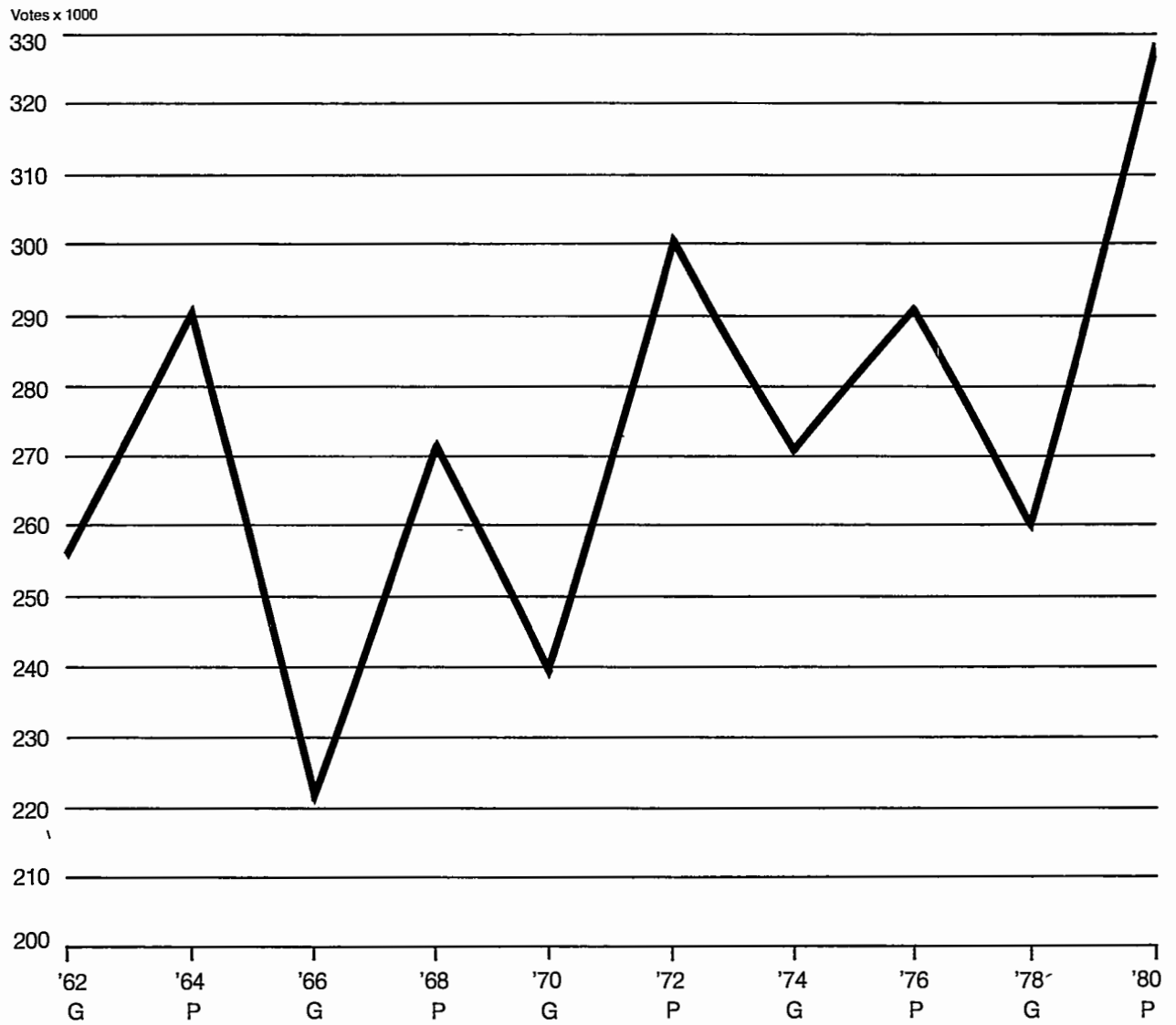
See Source and Notes on Figure 8.

Figure 6
Total Votes for Governor in Fall River and Shannon Counties



See Source and Notes on Figure 8.

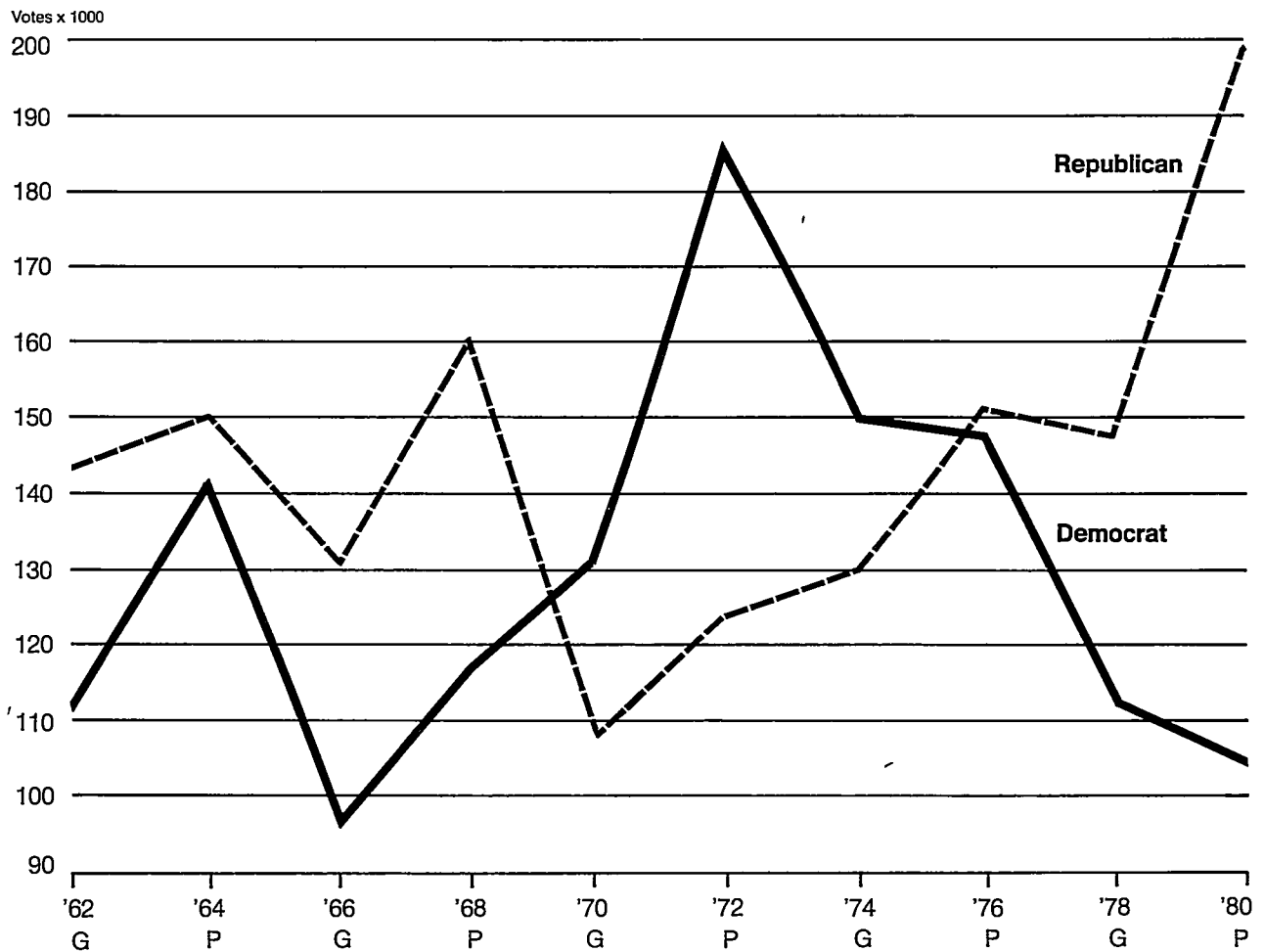
Figure 7
Total Votes for Governor in South Dakota



See Source and Notes on Figure 8.

Figure 8

**Official Election Returns by County for the State of South Dakota,
General Elections 1962-1980, Compiled by the South Dakota Secretary of State.**



Notes for Figures 1-8:

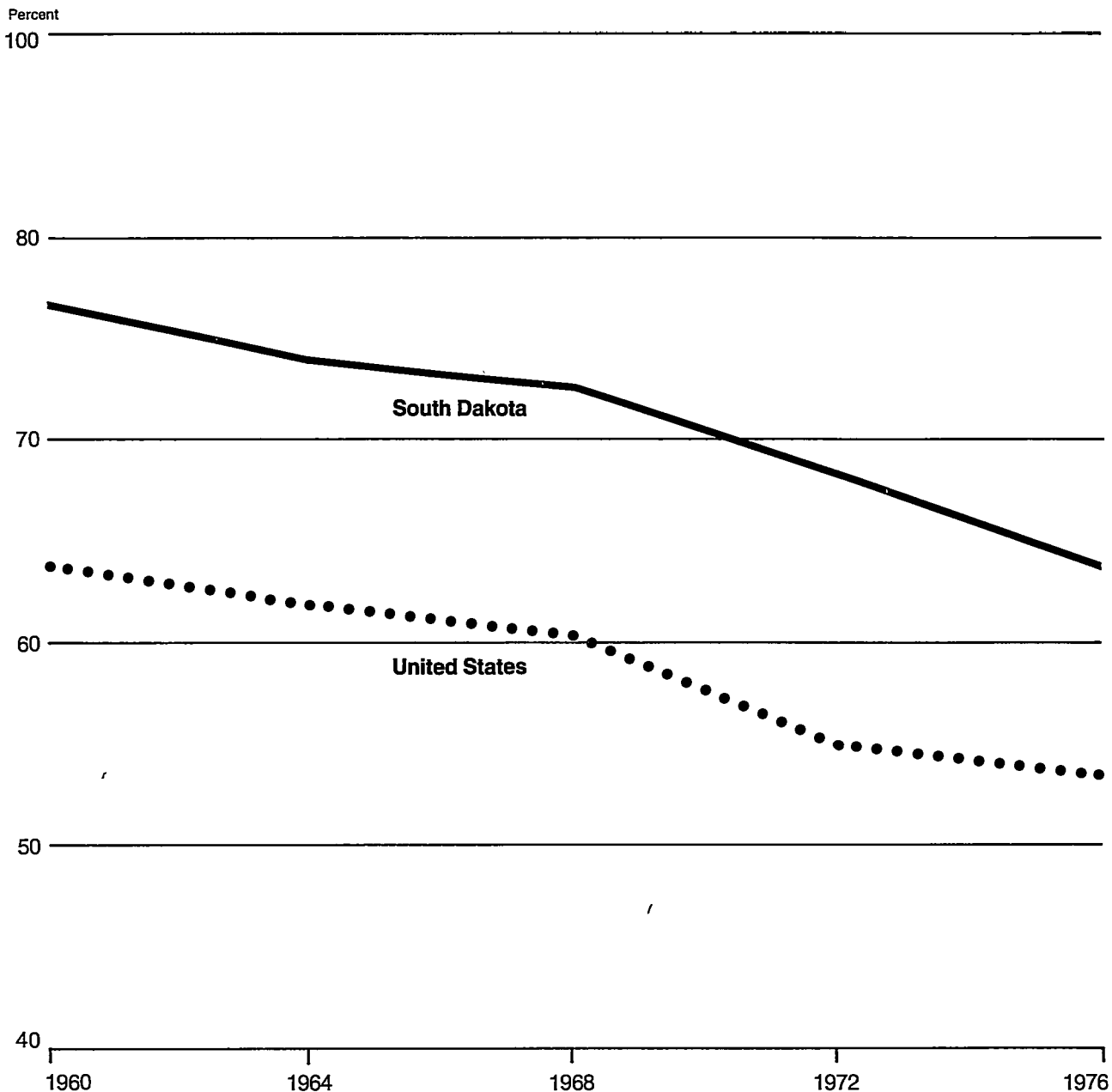
Figures represent votes cast for governor in all years except 1976 and 1980 when votes cast for president were used. There were no gubernatorial elections in those two years. In most years votes cast for governor and for president were approximately the same.

P—Indicates years in which there was a presidential election as well as a gubernatorial election except for 1976 and 1980.

G—Indicates years in which there was a gubernatorial election but no presidential election.

Figure 9

Estimates of Percent of Voting Age Population Casting Votes for Presidential Electors: November 1960-1976



SOURCE: U. S. Department of Commerce, Bureau of the Census, *Population Estimates and Projections*, Series P-25, No. 879 (1980), Table 4.

APPENDIX A
RESOLUTION 80-98 OF THE
ROSEBUD SIOUX TRIBAL COUNCIL

WHEREAS: The 1979 South Dakota state law which attempts to organize Todd County and Shannon County is currently involved in federal litigation to declare the law unconstitutional, and

WHEREAS: This law as it currently exists is in direct conflict with tribal self-determination, and

WHEREAS: The current Board of County Commissioners for Todd County and Shannon County which were appointed by the Governor of South Dakota continue to carry out their duties pending the resolution of this litigation, and

WHEREAS: Primary and general elections are scheduled for this year to elect county commissioners in these counties, and

WHEREAS: The United States Justice Department has recently filed a proceeding for an injunction to prohibit these elections from going forward, and

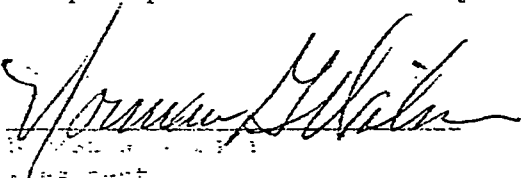
BE IT THEREFORE RESOLVED: that the Rosebud Sioux Tribal Council supports the effort of the United States Justice Department to obtain an injunction to prohibit these elections from going forward, and


BE IT FURTHER RESOLVED: that the Rosebud Sioux Tribe continues its support of the United States Justice Department in its efforts to have the 1979 state legislation declared unconstitutional, and

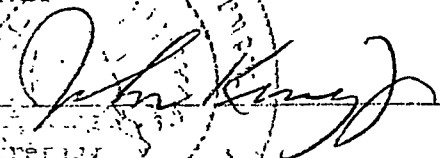
BE IT FURTHER RESOLVED: that the Rosebud Sioux Tribe continues its claim to be the sole government that exists on the Rosebud Sioux Reservation and in Todd County.

CERTIFICATION

This is to certify that the above Resolution 80-98 was duly passed by the Rosebud Sioux Tribal Council in session May 15, 1980 by a vote of twenty-two (22) in favor and one (1) not voting. The said Resolution was adopted pursuant to authority vested in the Council. A quorum was present.


 Norman M. White
 President
 Rosebud Sioux Tribe


 Secretary
 Rosebud, Sioux Tribe



DATE SUBMITTED 5/21/80
TO ROSEBUD AGENCY SUPT.

APPENDIX B

AFFIRMATIVE ACTION PROGRAM

DEMOCRATIC PARTY OF SOUTH DAKOTA

Box 668
Pierre, South Dakota 57501
(605) 224-8638

To ensure full participation and fair representation for all Democrats in all party affairs with particular concern for minorities, Native Americans, women and youth, the South Dakota Democratic Party shall take the following steps. This Affirmative Action Plan will be targeted toward increasing the participation of traditionally under-represented Democratic constituencies such as the ones listed above.

1. All public meetings at all levels of the Democratic Party in each state should be open to all members of the Democratic Party regardless of race, sex, age, color, creed, national origin, religion, ethnic identity, economic status, or philosophic persuasion.
2. No test for membership in, nor any oaths of loyalty to, the Democratic Party in any State should be required or used which has the effects of requiring prospective or current members of the Democratic Party to acquiesce in, condone or support discrimination on the grounds of race, sex, age, color, creed, national origin, religion, ethnic identity or economic status.
3. The time and place for all public meetings of the Democratic Party on all levels should be publicized fully and in such a manner as to assure timely notice to all interested persons. Such meetings must be held in places accessible to all Party members and large enough to accomodate all interested persons.
4. The Democratic Party, on all levels, should support the broadest possible registration without discrimination on grounds of race, sex, age, color, creed, national origin, religion, ethnic identity or economic status.
5. The Democratic Party in South Dakota should publicize fully and in such a manner as to assure notice to all interested parties, a full description of the legal and practical procedures for selection of Democratic Party Officers and representatives on all levels. Publication of these procedures should be done in such fashion that all prospective and current members of each State Democratic Party will be fully and adequately informed of the pertinent procedures in time to participate in each selection procedure at all levels of the Democratic Party Organization.
6. The Democratic Party in South Dakota should publicize fully and in such a manner as to assure notice to all interested parties a complete description of the legal and practical qualifications of all officers and

representatives of the State Democratic Party. Such publication should be done in timely fashion so that all prospective candidates or applicants for any elected or appointed position within the State Democratic Party will have full and adequate opportunity to compete for office.

PUBLICITY

- A. A comprehensive publicity campaign, utilizing all press outlets, and media, will begin immediately upon approval of South Dakota's Delegate Selection Plan, and in any event, no later than September 15, 1979. The purpose of the publicity campaign shall be to inform the people of South Dakota of the process of delegate selection, how it works, when it starts; who is eligible, etc., where to get additional information.

In so doing:

1. Information and regular news releases shall be provided to each daily newspaper, electronic media, and weekly newspaper. (See Appendix B for list.) The State Democratic Party will prepare and distribute to all Democratic County officers (six in each county responsible for the overall operation of the Democratic Party) a manual for implementation of affirmative action to achieve the goals of outreach and wider participation in Party affairs. The proposed manual shall be printed by the State Office, shall contain the Affirmative Action and Delegate Selection process, suggested methods of political outreach by the County political unit, including sample advertisements and press releases.
 - a. News releases publicizing the legislative district slatemaking meetings shall begin no later than two weeks prior to the meetings on January 18, 1980.
 - b. All Democrats will be invited to participate in the delegate selection process through public statements of the Chairman and by resolution of the State Central Committee.
 - c. A special effort will be made to educate all political reporters on all aspects of South Dakota's delegate selection process.
 - d. Rules and explanations of the delegate selection process shall be available for public distribution no later than 90 days prior to the beginning of the legislative district meetings.
2. The State Party shall place paid advertising, inviting Democrats to participate in the legislative district and state convention delegate selection meetings, in all South Dakota dailies, college campus and reservation tribal newspapers and any minority publication to appear the week previous to delegate selection meetings. The ads will be 3.X 5 display ads at an estimated cost of \$1,500.00 and will be prepared by the State Party Headquarters.
3. Posters shall be prepared in the Lakota language for distribution to all Indian Reservations. These posters will announce meetings and delegate selection information.

4. Counties and legislative districts in which significant numbers of Native Americans reside will be informed that although no quotas may be used in the delegate selection process, the State Central Committee recommends that a strong effort be made to encourage Native Americans to participate in the delegate selection process.
5. All legislative districts shall be informed that they should encourage young people to participate in the delegate selection process; and that steps should be taken to ensure that facilities used to hold meetings should not preclude handicapped persons from participating. Where such facilities are not available at the legislative district level, alternate means must be taken to ensure participation by handicapped persons.
6. Copies of the Preliminary Call for the 1980 National Convention shall be made available to all county organizations for distribution within their respective counties.
7. A Brochure explaining how to become a delegate to the National Convention will be prepared and made available for general circulation.
8. Follow up publicity will be utilized urging full participation by all Democrats as the beginning of the process approaches.

EDUCATION

- A. At regular meetings of the State Central Committee, which includes three representatives from each county, the members of that committee will be fully informed on the delegate selection process and affirmative action plan so that they will be able to implement them in the counties. Information given to these party officers at state and regional meetings shall be supplemented with fact and information sheets mailed periodically as the delegate selection process proceeds.
- B. County and legislative district officers will be urged to hold regular meetings with special emphasis given to public notice of the scheduled delegate selection meetings.
- C. The Democratic State Central Committee shall make available to county organizations, requesting an explanation of the delegate selection process, a speaker who will explain the procedure, guidelines, and importance of the delegate selection process for the National Party Convention.
- D. The South Dakota Democratic Chairman shall issue written invitations and information to the formal and informal organizations of Native Americans, women, youth, workers and physically handicapped. This will include invitations to the nine tribal councils of the Sioux Nations and other Native American political groups, women's interest groups, and youth groups, labor unions and physically handicapped.
(See Appendix A)

1. The Chairman shall issue invitations to a public informational meeting to be held no later than December 1, 1979, at which time the process for the delegate selection will be reviewed and questions answered.
2. The State Party will work with the United Sioux Tribes (representing all Native American tribes in South Dakota). Arrangements will be made for speakers to attend meetings of the United Sioux Tribes to discuss delegate selection with them.
3. Information on delegate selection will be made available to the United Sioux Tribes through Wayne Amott, Director of South Dakota Indian Education Association.

Ten thousand three-fold flyers explaining "How to become a delegate to the Democratic National Convention" will be printed. They will be distributed in all State Party mailings to County Central Committees, Democratic Forums throughout the State, Young Democrat groups, Women's Federation Clubs, and offered to the public, special interest and minority groups for distribution no later than the end of 1979.

REPRESENTATION GOALS

- A. To ensure full participation and fair representation for all Democrats in all Party affairs, with particular concern for Hispanics, Blacks, Native Americans, women and youth, the South Dakota State Democratic Party shall utilize the demographic study done by the South Dakota Planning Bureau. These constituency percentages shall be established as goals for representation of each constituency group of the National Convention Delegates.
- B. In order to implement the goal of this Affirmative Action plan of increasing the participation of traditionally under-represented Democratic constituencies in the delegate selection process, when electing the at-large portion of each delegation, the state Conference Delegation's composition shall be compared with the State Party's goals in order to assure an at-large election process which helps to achieve sexual balance and guarantees fair representation for Blacks, Hispanics, and Native Americans.
- C. Qualified applicants, unable to participate in the convention because of financial need, may apply to the Affirmative Action Committee for consideration for financial assistance.

ORGANIZATION

- A. An Affirmative Action Committee has been appointed by the Party Chairman with the consent of the State Central Committee. This group is broadly representative of the Democratic electorate. The committee members are as follows:

Norma Brick, Box 607, Sioux Falls, South Dakota 57101

Art Zimiga, Batesland, South Dakota 57716

Doug Cole, 308 S. Lincoln, Pierre, South Dakota 57501

JoAnne Oaks, 106 E. Wynoka, Pierre, South Dakota 57501

Linda Lea Miller, 201 Main, Suite G, Rapid City, South Dakota 57701

- B. The Affirmative Action Committee will be responsible for the implementation of this Affirmative Action Plan. Such staff and financial assistance as is necessary, will be provided by the State Democratic Office's personnel staff and time shall be devoted to carrying out affirmative action and delegate selection goals.

COMPLIANCE

A State Compliance Committee will be appointed by the State Chairman with the concurrence of the Executive Board of the State Central Committee. This committee will administer and enforce affirmative action requirements, evaluate Affirmative Action complaints, recommend solutions and serve as a preliminary Credentials committee to hear delegate complaints and propose remedies.

NON IMPLEMENTATION AFFIRMATIVE ACTION CHALLENGES

- A. At any time up to thirty days prior to the initiation of the State's delegate selection process, any group of not less than fifteen (15) Democrats in that state can challenge the Affirmative Action Program on the basis of non-implementation of a specific requirement of a state plan, including reasonable documentation of alleged violations. In such challenges, the burden of proof shall rest with the challenged party. In the absence of any such challenge, the implementation of any such program shall be presumptively in compliance. If challenged and upheld, the compliance of such implementation programs shall be conclusive but not as to compliance or non-compliance that may occur after the date of the challenge.
- B. Any challenge to a State Party Organization in respect to its status as the body entitled to sponsor a delegation from that State, must be presented to the Democratic National Committee at this stage and within this time limit.
- C. Challenges to Affirmative Action Plan Implementation are governed by the Regulations of the Compliance Review Commission (CRC Regs.) Section VII and the Rules of Procedure of the Credentials Committee of the 1980 Democratic National Convention. A challenge may be brought before the CRC at any time up to 30 days before the initiation of the delegate selection process, and thereafter may be brought before the Credentials Committee. A written Challenge must be filed with the State Compliance Committee, Box 668, Pierre, South Dakota 57501 and the CRC at the Democratic National Committee, 1625 Massachusetts Avenue, NW, Washington, D.C. 20036, within 10 days after 1) the first step in the delegate selection process or 2) the discovery of the failure to implement, whichever first occurs, and must conform to the requirements of the Regs. and Rules of procedure, to which a challenger should refer for a further explanation of the challenge procedure.

- D. Challenges alleging violation of an approved Delegate Selection Plan are governed by the Regulations of the Compliance Review Commission (CRC Regs.) Section VII and the Rules of Procedure of the Credentials Committee of the 1980 Democratic National Convention. A challenge brought to the State Compliance Committee, must be served on the CRC at the Democratic National Committee, 1625 Massachusetts Avenue, NW, Washington, D.C. 20036, within 10 days after 1) the alleged violation or 2) the selection of the delegate challenged, whichever first occurs, and must conform to the requirements of the Regs. and Rules of Procedure, to which a challenger should refer to a fuller explanation of the challenge procedure. The State Compliance Committee must render its decision within 10 days thereafter to the CRC. Up to three weeks before the commencement of the Democratic National Convention, Delegate Selection Challenges are within the jurisdiction of the CRC, and thereafter, are within the jurisdiction of the National Democratic Credentials Committee.
- E. The Regulations of the Compliance Review Commission (CRC Regs.) Section IV govern challenges to Delegate Selection or Affirmative Action Plans for failure to comply with the Delegate Selection Rules of the 1980 Democratic National Convention. Any 15 Democrats with standing to challenge by filing a written Notice of Intent to Challenge with the State Party Chair, the State Compliance Committee and with the CRC at the Democratic National Committee, 1625 Massachusetts Avenue, NW Washington, D.C. 20036, within 10 days of the receipt by the CRC of the Plan to be challenged. Anyone who intends to challenge the approval of a Plan should refer to the CRC Reg. Section IV for further explanation of the challenging procedure.

SOUTH DAKOTA DEMOGRAPHIC STUDY

SOURCE: SOUTH DAKOTA PLANNING BUREAU

DEMOGRAPHIC STUDY RESULTS

POPULATION BREAKDOWN BY RACE

<u>RACE</u>	<u>ACTUAL COUNT</u>	<u>PERCENTAGE OF TOTAL</u>
Native American	32,369	4.871%
Black	1,627	.245%
Caucasian	630,333	94.884%

VOTING POPULATION AGE BREAKDOWN

<u>AGE GROUP</u>	<u>ACTUAL COUNT</u>	<u>PERCENTAGE OF TOTAL</u>
18 to 34	140,942	49.789%
35 & up	142,135	50.211%

APPENDIX C

BY LAWS OF THE STATE REPUBLICAN COMMITTEE OF SOUTH DAKOTA

SECTION VI

SELECTION OF NATIONAL CONVENTION DELEGATES

1. This bylaws section is adopted pursuant to a Resolution of the South Dakota Republican Convention, dated July 13, 1974, and in compliance with the rules as set down by the 1972 Republican National Convention.
2. Delegates and alternates to all Republican National Conventions shall be elected by proportional representation pursuant to SDCL 12-5-3.3(3).
3. Three delegates and alternates shall be elected from the First Congressional District, and three delegates and alternates shall be elected from the Second Congressional District. Each such delegate and alternate shall be a qualified voter and resident of the district from which elected and shall be voted upon only by qualified electors residing in that district.
4. All other delegates and alternates to which South Dakota may be entitled under the National Convention membership formula shall be elected at large.
5. Convention delegates and alternates shall be elected from slates of delegates on the primary election ballot. Each slate shall be designated as uncommitted or committed to a named presidential candidate as required by the South Dakota election laws. Each slate must designate each member as seeking First District, Second District or at large delegate or alternate positions.
6. Any slate of delegates receiving at least 20% of the popular vote in the primary election shall be deemed to have received a significant number of votes indicating candidate support, and each such slate shall be entitled to the number of delegates and alternates its augmented proportion of the

vote (hereinafter defined in paragraph 8) shall bear to the total number of delegates to be elected. Such proportional representation formula shall apply separately to each of the three designations of delegate and alternate, i.e. First District, Second District and at large, based on the vote cast in the area they are running in.

7. In the event that one or more slates fails to receive at least 20% of the vote, each such slate shall be deemed not to have received sufficient votes to indicate significant support and shall not be entitled to any delegates. In the event no slate receives at least 20% of the vote, the Republican State Central Committee shall name the full delegation by dividing the allotted positions among the top four vote gathering slates on a proportional basis.
8. The apportionment of delegates among the various slates entitled to representation (as set down in paragraph 6) shall be accomplished by taking the total vote of all such slates entitled to representation as the denominator and the specific vote total of each such slate entitled to representation as the numerator, and dividing this figure into the total number of delegates to be allocated in that grouping, i.e. First District, Second District, and at large. A like number of alternates shall be assigned to each slate.
9. In the event of fractional shares the delegate positions shall be awarded to the slate with the larger popular vote, or in the case of a tie in popular vote shall be decided by a toss of the coin.
10. Delegates shall be deemed to have been elected in order. In the event that a slate shall be entitled to some number of delegates less than its full list, the first name on the list shall be chosen, and the remainder of the delegates to which the slate is entitled shall be taken from the list of names consecutively and in the order in which the names appear on the petition as originally presented to the Secretary of State. Alternates shall be designated in a like manner.
11. In keeping with South Dakota Election Laws 12-5-1.1, 12-5-2 and 12-5-3, slates of delegates and alternates to the National Convention, both uncommitted and committed to a particular candidate for president, shall be chosen in accordance with the provisions set down in these bylaws.
12. The Republican County Chairmen shall cause to be held at 8:00 p.m. at the county seat a special National Convention Delegate Selection meeting on the second Tuesday of March of each year in which a National Convention of the Republican Party is to be held for the purpose of nominating a candidate for president and vice president. Such county meeting shall be open to all registered Republicans residing in the county; public notice, including publication in the official county newspaper, of such meeting must be given at least 15 days in advance, and all appropriate means of providing notice of such meeting shall be used. It shall be the responsibility of the Republican County Chairman to notify the Secretary of the Republican State Central Committee of the date, time and location of the County National Convention Delegate Selection meeting and in said notice

to explain briefly the efforts being made to provide adequate public notice. Such notification must be received by the Secretary of the Republican State Central Committee at least 15 days prior to the meeting. If the County GOP organization fails to hold the required County National Convention Delegate Selection meeting, the State Republican Chairman may authorize some other method of selecting state caucus delegates from that county subject to the approval of the Executive Committee of the Republican State Central Committee.

13. At the County National Convention Delegate Selection meeting the County Chairman shall, after conducting any general business he deems appropriate, cause to be held one or more individual caucuses to be attended by those supporting the various candidates for president wishing to have a slate entered in their behalf or a caucus of those wishing to form an uncommitted slate. Such caucuses shall be presided over by an individual designated by the candidate's statewide chairman provided such designation is made in writing to the County GOP Chairman at least 5 days before the meeting. In the absence of such designation the County GOP Chairman may designate a method for selecting a caucus chairman.
14. Each such caucus shall elect three persons to attend a statewide National Convention Delegate Selection meeting to be held at the call of the Republican State Chairman within 45 days following the county meetings. Call to the state meeting shall be in writing to the delegates selected at the county meetings.

The reading of such a call at the County National Convention Delegate Selection meetings shall be deemed sufficient notice. The County GOP Chairman, shall, within 48 hours of the completion of the county meeting certify to the Secretary of the Republican State Central Committee a complete list of all delegates selected for the state meetings including their names, full addresses, and the candidate to whom they are pledged.

15. At the statewide National Convention Delegate Selection meeting the State Republican Chairman shall, after conducting any general business he may deem appropriate, cause to be held individual caucuses for each candidate or uncommitted slate wishing to be represented for the purpose of electing an appropriate number of delegates and alternates to the National Convention to appear on the ballot in support of said candidate or as an uncommitted slate. Each caucus shall be presided over by an individual designated by the candidate's statewide chairman, providing such designation is made in writing to the State Republican Chairman at least 5 days before the meeting. In the absence of such designation the State Republican Chairman may designate a method for selecting a caucus chairman. Each caucus shall be attended by the delegates elected in the county caucuses and pledged to that presidential candidate.
16. Delegates at the individual state caucuses shall cast a number of votes equal to the vote received by the Republican candidate for governor in the last general election. The delegates from each county may divide said vote equally among themselves. In the event that not all delegates

are present and voting, the delegates who are present shall be entitled to cast the entire vote of that county.

17. The state chairman of any presidential candidate's campaign seeking to offer a slate of delegates and alternates shall be entitled to the first petition position on the at-large slate of delegates without being required to submit himself to the election process at the state caucus and without having to be an elected caucus delegate from his county. Selection of delegates for the at-large and two congressional district slates shall be on a single ballot for each slate with petition position determined by the number of votes received by each individual. A like ballot shall be held for alternate petition positions.

Such selection of delegates and alternates shall be accomplished by a cumulative voting procedure. The Republican State Central Committee Executive Committee may designate the specific methods for conducting such cumulative vote.

18. Slates of delegates and alternates must be chosen from among those elected as caucus delegates for the state caucus except for the state chairman of the presidential campaign who may serve in the first delegate position on the at-large slate pursuant to paragraph 17 above.
19. Following the statewide National Convention Delegate Selection meeting it shall be the duty of the chairman of each of the caucuses to cause to be circulated a petition containing the names of the delegates and alternates selected at that caucus and it shall be the caucus chairman's responsibility to see that such petition is filed, together with a certification from the Republican State Chairman that the delegate and alternate names thereon were arrived at in keeping with the Bylaws of the Republican State Central Committee, at the office of the Secretary of State in a timely manner to meet the requirements of state law for the inclusion of such state delegates and alternates in the primary election where the citizens of South Dakota may cast their votes. It shall also be the duty of the chairman of each caucus to certify in writing to the Secretary of the Republican State Central Committee within 48 hours of the close of said caucus a complete list including full names and full addresses and candidate to whom they are pledged, of each delegate and alternate who shall appear on said petition and such list shall be submitted in order of election and appearance on the petition.
20. The Secretary of State shall not accept any petition in behalf of a candidate containing the names of delegates and alternates pledged to a Republican candidate for President of the United States nor shall he accept such a petition containing the names of uncommitted delegates unless it is accompanied by a certificate from the Republican State Chairman indicating that such slates were selected in accordance with the Bylaws of the Republican State Central Committee.

APPENDIX D

Honorable Mark Meierhenry
Attorney General
State of South Dakota
State Capitol Building
Pierre, South Dakota 57501

Dear Mr. Attorney General:

This is in reference to the Laws of South Dakota, Chapter 45 (House Bill 1197 of the 1979 Session), entitled "An Act to Provide for the Organization of Unorganized Counties", which establishes new governmental systems for Todd and Shannon Counties, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 23, 1979.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In order to determine whether the State of South Dakota has carried that burden in this instance we have given careful consideration to the information you have furnished, as well as to the comments of other interested parties and information gathered through our own research.

Our analysis reveals that the proposed change finds its impetus in Little Thunder v. State of South Dakota, 518 F. 2d 1253 (8th Cir. 1975). For many years prior to this decision the predominantly Indian residents of unorganized Todd and Shannon Counties were not permitted to vote for the officials of organized and predominantly white Tripp and Fall River Counties, who provided them with governmental services. The Little Thunder decision invalidated this restriction on the basis of the Equal Protection Clause of the Fourteenth Amendment. In response to this decision, which provided government for the first time, residents of Tripp and Fall River Counties and others began a process which resulted in the passage of House Bill 1197 in 1979. The preponderance of evidence suggests that one of the reasons for the passage of House Bill 1197 is to nullify the effects of the Little Thunder decision.

This legislation would sever Tripp County from Todd County, and Fall River County from Shannon County. While these newly organized counties would each have their own governmental bodies, these bodies would be severely and uniquely limited in their ability to carry out governmental functions. The evidence indicates that the county governments of Todd and Shannon Counties provided for in House Bill 1197 would not have sufficient revenues to carry on the normal affairs of county government. In fact House Bill 1197 contemplates contracting by the county governments of the newly organized counties with neighboring counties, but not with Indian tribes, in contrast to other South Dakota counties. The newly organized counties' interim appointed commissions have indeed contracted for these services with the counties to which they were previously attached. These commissions were appointed by the Governor of South Dakota pursuant to House Bill 1197, replacing the elected representatives of Todd and Shannon Counties. The net effect of House Bill 1197, therefore, is to return Todd and Shannon Counties to a position of dependence on Tripp and Fall River Counties for governmental services, while being without electoral participation in either of those counties with respect to both the interim and permanent county governing bodies. The rights of access won in Little Thunder would thus be negated.

Under these circumstances I cannot conclude that the submitting authority has carried its burden of proving that House Bill 1197 will have neither the proscribed discriminatory purpose nor effect. Therefore, on behalf of the Attorney General, I must object to the proposed change.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (38 C.F.R. 51.21(b) and (e), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make House Bill 1197 (1979) legally unenforceable.

Sincerely

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

CC: Tom B. Tobin
State's Attorney for Tripp County

Kenneth R. Newell
State's Attorney for Fall River

David A. Mustone



APPENDIX E

Office of the Governor

STATE OF SOUTH DAKOTA

William J. Janklow
GOVERNOR

March 28, 1979

The Honorable Lowell C. Hansen II
President of the Senate
State Capitol Building
Pierre, South Dakota 57501

Dear President Hansen:

I herewith return Senate Bill No. 160 and VETO the same.

This Act creates a 13 member coordinating committee to deal with tribal-State governmental relationships and repeals the Indian Negotiating Committee.

SDCL 1-4-2 creates an Indian commission consisting of 17 members including Legislators. Its functions, as found in SDCL 1-4-1 are to:

- (1) Serve as an agency which will be responsible for securing assistance such as resources and services or to secure assistance from other agencies, particularly in the areas of education, health, welfare (child and old age), legal problems and small businesses. In essence, to match the needs and problems with resources and services available;
- (2) Give equal opportunity to Indian people to solve their educational, economic, and social problems and at the same time, encourage them to retain as much of their culture and background as they desire to retain;
- (3) Serve as an advocate of the Indian citizen;
- (4) Coordinate federal-state-local resources to help solve Indian problems;
- (5) Validate needs recognized by Indian people;
- (6) Create awareness to citizens by Indian people;
- (7) Report needs and recommendations to the Legislature;
- (8) Consider and study factors involving the promotion of the general welfare of the South Dakota Indian population; and
- (9) Review the problems and suggested solutions to the problems as presented to the commission by groups requesting action on a specific issue and serve in a liaison capacity to specific activity areas.

The Honorable Lowell C. Hansen II
Page 2
March 28, 1979

It clearly appears from a reading of existing law that this commission is authorized to do all those things that this Act seeks to accomplish. I question the need of additional governmental entities that are duplicative of those already in existence.

In addition, SDCL 1-4-8 created an Indian Negotiating Committee to provide an even closer liaison with the Legislature and the Indian tribes. This committee, which consists of Legislators, adequately fills any areas not covered by the commission established by SDCL 1-4-2.

The negotiating committee has not been given a fair chance to perform the functions intended by the Legislature. For some reason the previous Governors have not utilized the committee to the extent it was needed. I fully intend to utilize this committee during my administration and feel it should be given an opportunity to prove itself.

Also, I signed Senate Bill No. 144 creating a water task force. The authority granted the task force would be broad enough to include dealing with Indian tribes.

Signing this bill would create yet another committee to work with Indian tribes with respect to water. This would create a potential conflict between the task force and the coordinating committee. I am convinced that the intent of the Legislature can be fulfilled under existing law.

I respectfully request your concurrence with my action.

Sincerely,



William J. Janklow

WJJ:bj

cc: The Honorable Alice Kundert
Secretary of State

cc: The Honorable George S. Mickelson
Speaker of the House of Representatives