

**SHANNON COUNTY EARLY VOTING STUDY: A QUESTION OF  
AMERICAN INDIAN VOTE DILUTION**

PREPARED AS AN EXPERT WITNESS REPORT IN THE CASE OF  
Brooks, et al. v. Gant. et al., Case no. Civ. 12-5003

PREPARED BY

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## TABLE OF CONTENTS

<b>Contents</b>	<b>Page</b>
1. Executive Summary	4
2. Introduction	5
3. Research Methods	6
4. County Demographic Results	11
A. Research Question One	11
B. Research Question Two	12
C. Research Question Three	14
5. Racial Polarization and History of Discrimination Against American Indians in South Dakota Elections	15
A. Research Question Four	15
B. Research Question Five and Six	18
6. Shannon County Public Opinion Survey and Focus Group Results	19
A. Research Question Seven	19
B. Research Question Eight	21
C. Research Question Nine	22
7. Review of National Research on Early Voting	27
A. Research Question Ten	27
8. Discussion and Conclusions	28
9. Expert's Declaration	30
10. Appendix A: Shannon County Early Voting Public Opinion Survey	31
11. Appendix B: Public Opinion Survey Response Frequencies	33
12. Appendix C: Expert's Statement	43

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**TABLE OF TABLES**

<b>Tables</b>	<b>Page</b>
Table 3.1: Research Questions and Associated Methods	6
Table 3.2: Respondent Types	8
Table 3.3: Survey Respondent Racial Make-up	10
Table 5.1: Correlation Results for Native Population and Voter Registration	17
Table 5.2: Correlation Results for Native Population and Aggregated South Dakota Constitutional Officer Vote Margin	18
Table 6.1: Concerns about Voting in Fall River County	23
Table 8.1: Summary Conclusions for Research Questions	28

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**TABLE OF FIGURES**

<b>Figures</b>	<b>Page</b>
Figure 3.1: Responent Age	9
Figure 4.1: American Indian County Population Percentages	12
Figure 6.1: State Voting History	20
Figure 6.2: Tribal Voting History	20
Figure 6.3: Agreement with the statement “early voting is important to South Dakota voters and should be made as available as possible.”	21
Figure 6.4: Agreement with the statement, “if early voting was made available in Shannon County I would be more likely to vote in South Dakota elections.”	22

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

## **1. EXECUTIVE SUMMARY**

The following is an expert report submitted for the case of Brooks, et al. v. Gant. et. al., pending before the United States District Court, District of South Dakota, Western Division for the County of Pennington, State of South Dakota. The position of plaintiffs in this case is that the absence of early voting in Shannon County, South Dakota, violates Section 2 of the Voting Rights Act.

The report presented here is based on primary and secondary research conducted by the expert, Richard Braunstein, in June of 2012. The expert reviewed relevant national literatures on voting rights, the impact of early voting and on minority group participation in the United States. The primary or original contributions of this research were a county-wide survey of Shannon County residents and a focus group meeting with elite members of the Shannon County Native community. All survey and focus group respondents' identities are kept confidential throughout the research, which was focused on ten related research questions.

The findings from this research demonstrate that American Indians in Shannon County are a geographically compact and racially cohesive group, constituting a majority of the County's residents. The report found that elections in the state of South Dakota are racially polarized and that there is a history of both official and unofficial discrimination against American Indians in Shannon County that negatively impact their ability to participate fully in state and national elections.

Perhaps most important to the case of Brooks, et. al., v. Gant, et. al., the research found that survey respondents were supportive of the need for greater access for early voting in Shannon County and that their probability of voting would be increased if access to early voting practices were expanded for county citizens. The research also found national support for expanding early voting from the national research literature and professional associations of the National Conference of State Legislatures and the National Association of Secretaries of State.

The summary opinion of the expert here is that Shannon County is diluting the strength of American Indian citizens by limiting access to early voting and that providing an alternative option of early voting in Fall River County provides little, if any, relief of this condition.

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

## 2. INTRODUCTION

The following is the report of Richard Braunstein regarding the case of Brooks, et al. v. Gant. et al., Case no. Civ. 12-5003, pending before the United States District Court, District of South Dakota, Western Division for the County of Pennington, State of South Dakota. Braunstein was hired as an expert on voting behavior by plaintiffs' attorney, Steven D. Sandven Law Office, to assess the impact of the administration of elections in Shannon County on the County's American Indian population.

The Plaintiffs maintain that Shannon County, Fall River County, and Secretary of State Gant's current early voting practices and procedures violate Section 2 of the Voting Rights Act, which states no state or political subdivision may apply any "standard, practice or procedure . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C.A. § 1973(a)(West).

The approach to evaluating the impact that Shannon County election practices have on American Indian voting rights follows the general framework established in Thornburg v. Gingles, 478 U.S. (1986), including examination of three preconditions for Section 2 Voting Rights Act cases. Beyond discussion of these preconditions, the research investigates whether members of American Indians in Shannon County, South Dakota, have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice, as directed in Magnolia Bar Ass'n, Inc. v. Lee, 994 F.2d 1143, 1146-47 (5<sup>th</sup> Cir. 1993).

The report first lays out the research questions identified to inform Braunstein's expert opinion and the research methods designed to address each research question identified. Though a number of preliminary research questions are addressed, the design of this research culminates with the question of whether American Indians in Shannon County are uniquely disadvantaged when compared with other American Indians in South Dakota through structural constraints on voting in Shannon County?

The research includes a review of relevant literature on American Indian voting and public statistics on South Dakota county demographics and voting behavior. The research also produced original contributions in the form of a public opinion survey and focus group meeting conducted in Shannon County in June of 2012. Both the survey and focus group meeting provided keen insights into the perception of Shannon County voters on the subjects of their participation in previous state, federal and tribal elections, the importance of early voting in state and federal elections, trust in election officials in Shannon and Fall River Counties, perceptions of fair treatment on the part of election officials in the two counties, and concerns for electoral participation through Fall River County.

Through each of these research methods, conclusions are generated on the merits of the plaintiffs' claim that election practices in Shannon County result in a voting rights violation.

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

### 3. RESEARCH METHODS

The approach to evaluating the elements of Shannon County voting practices related to the case of Brooks, et al. v. Gant. et al., was, in part, determined by the need to address three preconditions established in Thornburg v. Gingles, 478 U.S. (1986). Beyond discussion of these preconditions, evidence of whether members of the minority population have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice is also important to consider.<sup>1</sup>

These legal requirements produced a set of research questions related to the case of Brooks, et al. v. Gant. et al., which is presented below in Table 3.1. Along with the research questions, the methods used to examine each of the research questions are also found in Table 3.1. The question and methods are as follows:

**Table 3.1: Research Questions and Associated Methods**

<b>Research Questions</b>	<b>Associated Methods</b>
1. Are Shannon County American Indians a sufficiently large and geographically compact group constituting a majority in Shannon County?	Examine US Census Bureau and South Dakota Secretary of State data.
2. Are Shannon County American Indians politically cohesive?	Examine South Dakota Secretary of State data and national literature on political cohesion.
3. Do Whites vote sufficiently as a bloc to enable it to usually defeat the preferred candidate of Shannon County American Indians?	Examine South Dakota Secretary of State data to examine voting behavior trends by race to generate conclusions about whether the majority group votes sufficiently as a bloc to enable it to usually defeat the minority's preferred candidate.

<sup>1</sup> Magnolia Bar Ass'n, Inc. v. Lee, 994 F.2d 1143, 1146-47 (5<sup>th</sup> Cir. 1993).

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

4. Is voting in elections of the state or political subdivision racially polarized?	Examine the correlation between American Indian population percentage and Democratic party vote margin. The hypothesis here is that as American Indian population percentage increases, the vote margin of Democratic candidates also increases.
5. Is there a history of official discrimination in state or political subdivision that touched the right of members of the minority group to register, to vote, or otherwise to participate in the democratic process?	Review research literature, conduct public opinion survey and elite interviews.
6. Do American Indians in Shannon County bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process?	Conduct literature review and examine U.S. Census Bureau and Department of Health data.
7. Are Shannon County citizens engaged in state, national and tribal elections?	Conduct survey and elite interviews of American Indians in Shannon County.
8. Do Shannon County citizens support early voting as an essential part of the electoral process in their county?	Conduct survey and elite interviews of American Indians in Shannon County.
9. Do Shannon County American Indian voters have a fear or hesitancy to vote at Hot Springs in Fall River County?	Conduct survey and elite interviews of American Indians in Shannon County.
10. Is there a statistical relationship between early voting provisions and electoral turnout?	Conduct literature review.

The initial research questions focused on county and electoral demographics utilized public data from the US Census Bureau and South Dakota Secretary of State’s office. Additionally, published literature was reviewed for the purpose of identifying what is known about the research questions from previous research.

The public opinion survey administered for this project used a convenience sampling design. The goal was to create a representative sample of Shannon County residents by accessing individuals in a wide variety of locations throughout the county. Areas surveyed included Kyle, Manderson, Oglala, Pine Ridge, Prairie Winds Casino, Red Shirt and Sharps Corner.

The sample of respondents was selected by virtue of their presence in the areas surveyed at the time the interviewer was present in those areas. The sample did not include people



Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

in their private homes and was limited to those individuals in public spaces. Selection bias was avoided by simply asking each person within view of the interviewer at the time the survey was conducted. Each individual accessible to the interviewer was asked to participate in the survey, regardless of what they were doing at the time. Some individuals were working at the time they were solicited, some were walking in the street, some were waiting for services at tribal offices and convenience stores, and some were simply present in public spaces in the locations surveyed. This sampling technique produced a considerable mix of individuals in terms of occupation, social standing and economic capacity, which are primary indicators of socioeconomic status. Table 3.2 below lists the types of individuals who responded to the survey over the period of three days from June 22<sup>nd</sup> to June 24<sup>th</sup>, 2012.

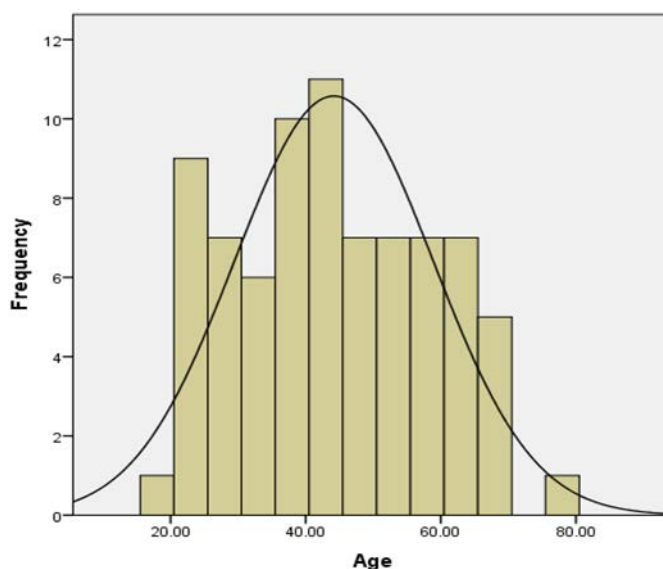
**Table 3.2: Respondent Types**

BIA employee	Laborer
CAP offer worker	Men and women on the street
Casino employees	Nonprofit executive
Casino guests	Public service recipients
Church leader	Recreation program participants
College students	School maintenance workers
Customers in convenience store	Senior meal recipients
Disabled veteran	Mothers of small children
District task force members	Store clerks
Fire fighters	Store owner
Homeless people	Tribal administrator
Hospital administrator	Village residents
Hospital workers	Women doing laundry at public facility
Hotel owner	

This sampling technique produced a wide distribution of respondent age groups. Figure 3.1 below shows a histogram of the distribution of respondent age, along with a graphic representing what would be a normal (bell-shaped) curve for this distribution. As one can see from Figure 3.1, individual respondents represent a large cross section of age groups.

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**Figure 3.1: Respondent Age**



Similarly, the gender of respondents shows good representation of people living in Shannon County. Current U.S. Census figures estimate that 50.7 percent of county residents are women.<sup>2</sup> The sample of Shannon County residents included 52 percent women.

According to the 2010 U.S. Census, there was only slight variation in the racial make-up of this sample of Shannon County residents. The current sample included 93.6 percent Native respondents and the 2010 Census suggested that 96 percent of Shannon County was Native. The underrepresentation of Native county residents in this study resulted from an overrepresentation of Black, Hispanic and Asian respondents. Still, the similarity of the two studies' observation of the county racial make-up was extremely strong (see Table 3.3 below.)

<sup>2</sup> From US Census Quick Facts website at <http://quickfacts.census.gov/qfd/states/46/46113.html> (Last accessed June 25, 2012).

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**Table 3.3: Survey Respondent Racial Make-up**

<b>Race</b>	<b>Shannon County Survey Percent</b>	<b>2010 US Census Bureau Percent<sup>3</sup></b>
White	2.6	2.9
Native	93.6	96
Black	1.3	0.1
Hispanic	1.3	0.9
Asian	1.3	0.1
Total	100.0	100

The benefits of convenience sampling include a low cost and efficient manner to collect a sample of a population. When compared with probability sampling technics, convenience sampling enables a researcher to achieve a desired sample in a relatively fast and inexpensive way. Given the distribution of respondent race, gender, age and socioeconomic standing, it is believed that the current sample of Shannon County residents is broadly representative of county residents and can be relied upon to generate accurate conclusions about voting behavior and preferences of county residents.

The survey included a balance of nominal and ordinal questions, asking respondents to report 'yes,' 'no,' or 'I don't know' to nominal questions and their degree of agreement with statements on a 5-point Likert scale, from 'strong agreement' to 'strong disagreement,' for ordinal questions. There was one open-ended question following a nominal question asking if respondents were hesitant to vote in Fall River County. Beyond this open-ended question, the survey was designed to produce descriptive statistics. The survey was designed to identify what respondents felt, not why. An understanding of why Shannon County residents felt the way they did was reserved for the more qualitative focus group research designed to supplement the survey research. The survey did not collect personal identification data for the respondents in order to maintain the anonymity of respondents. The survey, in its entirety, is presented in Appendix A of this report.

In addition to the survey, a focus group was conducted with elite members of the Oglala Sioux Tribe. Similar to the survey, the focus group research maintained the anonymity of participants, though it is possible to report that each focus group member held a position of

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<sup>3</sup> Ibid.

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

responsibility with either a tribal agency or district task force. Focus group questions were designed to add context to observations made in the survey process. In other words, the discussion attempted to explain why survey respondents felt as they did in response to the survey questions asked.

Generally, focus group research is a qualitative research method designed to ask individuals about their perceptions, opinions and beliefs toward a specific object, idea or process. Questions asked by a facilitator, and the discussions that follow, are designed to be interactive and group members are free to talk with other group members and to direct the discussion toward issues of interest to the group members. The focus group method is designed to allow researchers to study participants in a more natural setting than possible in a one-to-one interview setting, and to explore objects of study in greater depth than is possible in most quantitative survey research designs.

#### **4. COUNTY DEMOGRAPHIC RESULTS**

##### **A. Research Question One**

The first research question for this report focused on whether Shannon County American Indians are a sufficiently large and geographically compact group constituting a majority in Shannon County. The answer to that question is unequivocally yes.

According to the most recent U.S. Census Bureau estimates, the total population of Shannon County is expected to be 13,928.<sup>4</sup> That number was up 2.5 percent from the 2010 census, which estimated the county population at 13,586.<sup>5</sup> The most recent census estimates put the Native population of Shannon County at 92.4 percent, or 12,553.

The percentage of Native residents in Shannon County is the highest Native percentage of any South Dakota county. The next highest Native population percentage of any South Dakota county is Todd County at 86.6 percent. The third highest Native county population is found in Buffalo County, which has an 80.5 percent Native population. The next two highest percent Native counties, Dewey and Ziebach, were tied at 73.1 percent.

With a Native population percentage above 90 percent, Shannon County is the most compact Native county in the entire nation. In fact, there are only a few counties across the entire nation close to the Native population percentage of Shannon County. Outside of South Dakota, Sioux County in North Dakota, with 81.7 percent Native population,<sup>6</sup> is the most compact American Indian county in North Dakota. McKinley County in New Mexico,

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<sup>4</sup> 2011 population estimate for Shannon County, South Dakota as reported by the US Census Bureau, State & County QuickFacts, available at <http://quickfacts.census.gov/qfd/states/46/46113.html> (last accessed July 1, 2012).

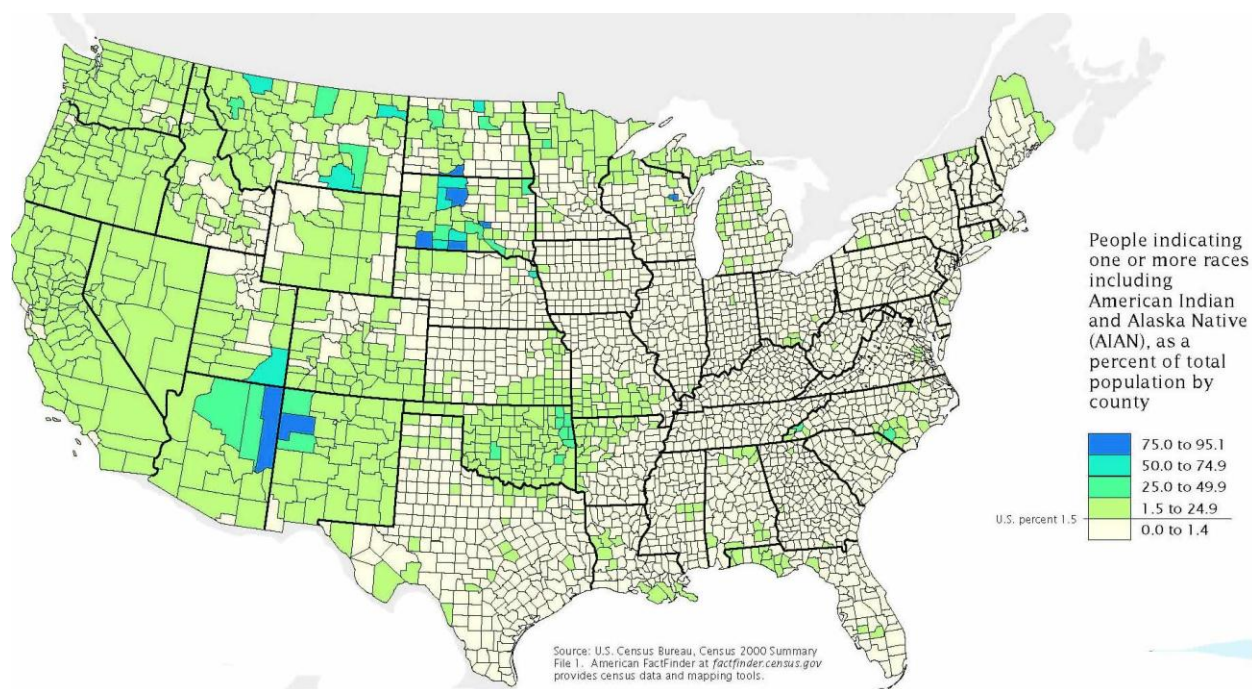
<sup>5</sup> *Ibid.*

<sup>6</sup> From "The American Indian and Alaska Native Population: 2000," issued in February 2002 by the US Census Bureau, available at <http://www.census.gov/prod/2002pubs/c2kbr01-15.pdf> (last accessed July 1, 2012).

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

with a Native population of 74.6,<sup>7</sup> is the highest percent Native county in New Mexico. The next highest percent Native county in New Mexico is Cibola County at 41 percent.<sup>8</sup> In Arizona, Apache County (81.7% Native<sup>9</sup>) is the most compact Native county, with the next highest American Indian county (Navaho) reaching only 43.4 percent (See Figure 4.1 below.)

**Figure 4.1: American Indian County Population Percentages**



## B. Research Question Two

The second research question for this project is whether Shannon County American Indians are politically cohesive. Again, the answer to that question is yes.

According to South Dakota Secretary of State 2010 general election results, Shannon County had the highest percent voter registration for the Democratic party of all South

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

Dakota counties. This percentage was 77.52 percent.<sup>10</sup> Shannon County was followed by other Native counties of Buffalo (75.48%), Todd (71.70%), Dewey (68.19%) and Ziebach (61.01%) as the counties with the highest percentage of Democratic Party voter registration.<sup>11</sup>

Similar findings were observed for general election results in 2010 and in previous election years. In the 2010 race for Governor and Lt. Governor, Shannon County delivered the highest percentage vote for the Democratic Party candidates in the state. Out of the 2,382 votes cast by Shannon County citizens, 82.24 percent were cast for Democrats Heidepriem and Arndt.<sup>12</sup>

The support for the Democratic candidate for U.S. House of Representatives was even higher among Shannon County voters. In 2010, 90.29 percent of Shannon County citizens voted for Democrat Stephanie Herseth. Again, this was the highest percentage support of any county in the state. The next highest percentage vote for the Democratic House candidate was 77.48 percent in Brown County.<sup>13</sup>

These findings are consistent with the last decade of South Dakota elections. There is little doubt that American Indians in Shannon County are politically cohesive in state and national elections. In fact, Shannon County had the highest percentage of Democratic Party votes for U.S. President in both the 2004 and 2008 elections.<sup>14</sup> From the comparative county voting statistics within South Dakota elections and its voting behavior in U.S. Congressional and Presidential elections, it is clear that Shannon County voters are politically cohesive.

Moreover, they are cohesive in their opposition to majority voters in the state of South Dakota who, in a large majority of state-wide elections, are far more likely to elect Republican candidates for Governor, Attorney General, State Auditor and State Treasurer. While the majority of American Indians present in Shannon County are able to prevail in district elections, including state legislators from the current District 28 and previous constructions of Shannon County voters, they are typically opposed to the dominant majority of South Dakota voters who are approximately 87 percent White and 63 percent Republican.

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<sup>10</sup> From "South Dakota Official Election Returns and Registration Figures," at page 14. Report is available at <http://sdsos.gov/content/html/elections/electvoterpdfs/2011/South%20Dakota%20Official%20Election%20Returns%20and%20Registration%202010.pdf> (Last accessed June 26, 2012)

<sup>11</sup> *Ibid.*

<sup>12</sup> *Id.* at page 16

<sup>13</sup> *Id.* at page 15.

<sup>14</sup> From [http://en.wikipedia.org/wiki/Shannon\\_County,\\_South\\_Dakota](http://en.wikipedia.org/wiki/Shannon_County,_South_Dakota) (last accessed June 25, 2012).

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

### C. Research Question Three

The answer to the third research question, “Do Whites in Shannon County vote sufficiently as a bloc to enable it to usually defeat the preferred candidate of American Indians?” is best answered in two distinct ways. First, with a focus on county elections, the answer is no. Second, with a focus on state-wide elections, the answer is yes. White residents in Shannon County constitute approximately 5.4 percent of the county population. While Whites in the state of South Dakota typically register to vote in larger numbers than American Indians in the state, it is unlikely that White voters in Shannon County would account for more than 10 percent of the county’s voting population. As such, it is not expected that Whites, as members of the majority racial group in the state, would be able to defeat the preferred candidate of American Indians. This may be why the State Legislature has attempted to further compact this community into a single voting district so that other bordering districts will be more competitive for candidates preferred by non-Indians.<sup>15</sup>

When we focus on the impact of Shannon County voters, particularly the majority of American Indian voters in the county, we see that there is a consistent record of White voters able to sufficiently as a block the preferred candidate of American Indians. In short, because of their small numbers in state-wide elections, Shannon County Native voters are not able to direct the outcome of elections for U.S. House, U.S. Senate, U.S. President or South Dakota state-wide offices. In the past decade of state and national elections, the preferred candidate of Native voters for U.S. House has obtained a majority of the state vote twice in five elections (2004 and 2006.) For U.S. Senate, the preferred candidate has prevailed once in three elections (2002.) For U.S. President, the preferred candidate has not obtained a majority of the state vote in two elections. At the state level, the preferred candidates of Shannon County voters for state-wide office have not been successful in the past decade. Again, this is a function of Shannon County’s strongly concentrated Democratic vote. In the past ten years, only Republican Party candidates have held state-wide office.

American Indians have had success electing preferred candidates to the state legislature. This is an expected result given the highly compact nature of their electoral district. Recent history has suggested that the compact nature of South Dakota’s 27<sup>th</sup> district is not to the benefit of Native voters. Many advocates of American Indian voting rights have maintain that the state over packed District 27 for the purpose of diluting Native voting in adjacent districts. Though it is possible for Native voters in Shannon County to advance their preferred candidates to the state legislature, there has been great frustration over nature of how that district was drawn under recent districting plans. The concerns for over packing Native voters in District 27 resulted in three separate lawsuits in the early part of the past decade (2001 and 2002). These voting rights cases were won by plaintiffs arguing that the 2001 districting plan by the state had diluted Native voting rights in districts adjacent to District 27. In 2005, the federal courts ordered changes that redrew Districts 27, 26 and 21 to balance out District 27’s overly concentrated Native demographic.

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<sup>15</sup> As suggested in the report “Voting Rights in South Dakota: 1982-2006,” March 2006, RenewtheVRA.org.

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

The South Dakota Legislature once again altered District 27 in 2011, adding a rural part of eastern Pennington County to the recently reconstituted district grouping of Shannon, Bennett, Jackson and Haakon counties. The intent of this change was to bring the population of the district up to within 10 percent of the ideal district size, which increased slightly in the wake of growth in the eastern part of the state. In 2001, the ideal district size was 21,567, which had grown to 23,262 in 2011. This change was submitted for preclearance to the US Department of Justice, which subsequently approve the change.

In summary, it is clear that there is great tension in South Dakota's districting of Native voting blocks. One can only surmise that this has been done for the purpose of lessening the political influence of Democratic voters in the largely Republican state. Given that Shannon County is the most compact and cohesive Native and Democratic Party county, it is not surprising that it has been tied up in this conflict for some time. In the series of recent cases involving Alfred Bone Shirt (et., al.) against Joyce Hazeltine, in her official capacity as Secretary of State of South Dakota, (et., al.), the federal courts determined that the plaintiffs had met the burden of the third Gingles precondition. Based on that finding, and the public history of Shannon County voting behavior and South Dakota redistricting plans, one is compelled to agree that each of the three Gingles preconditions are satisfied in the case of Brooks, et al. v. Gant. et al.

## **5. RACIAL POLARIZATION AND HISTORY OF DISCRIMINATION AGAINST AMERICAN INDIANS IN SOUTH DAKOTA ELECTIONS.**

### **A. Research Question Four**

The fourth research question for this project asks whether voting in South Dakota elections are racially polarized. The expectation, or hypothesis, for this portion of the analysis is that as American Indian population percentage increases, the vote margin of Democratic candidates also increases.

While we can surmise from the above discussion of racial and political cohesion in Shannon County that American Indians in Shannon County constitute a substantial opposition to the majority political group, which is dominantly White and Republican in the State, we cannot generalize from this observation that elections in South Dakota are racially polarized. To gain insight on state-wide electoral practices and polarization, it is necessary to look more broadly at the state as a whole. This led the research to study the correlation between Native population demographics and Democratic party voting at the county level. It is well known that South Dakota is a dominantly Republican state. This is particularly the case in state-wide elections and less the case in elections for members of the U.S. Congress where Democrats have been far more successful in the past several decades than their state level counterparts. Thus, the research first considered the correlation between Native population percentages at the county level and state-wide voter registration. Then, the research continued to examine the correlation between Native population percentages at the county level and vote margins between Democratic and Republican candidates for



Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

state-wide offices. To simplify this analysis, outcomes in state-wide races for South Dakota constitutional offices were indexed to create a single measure of state office partisan vote margin.

The results of the initial correlation between Native county population percentages and county level voter registration were as expected. As Table 5.1 shows, the correlation coefficient for this relationship was very strong and statistically significant. Correlation coefficients are interpreted on a scale of 0-1. Correlations in the range of 0 to .2 are considered quite weak. Correlations in the range of .21-.4 are considered moderate and correlations in the .41-.6 range are considered strong. Correlations that exceed .6 are quite noteworthy. They can be described as extremely strong and are not common in social science research. The correlation observed here, between county Native population percentage and county voter registration, was .752. Another way to understand this correlation value is that 75.2 percent of the variation in both of these measures is shared between county native population and party identification.

We understand that, nationally, race has been observed to be strongly correlated with political behavior, including voter registration, but it is necessary for there to be a considerable insularity of an individual racial group to have such a high correlation between the county of the state that group lives in and the political party they are registered for. That insularity exists in the state of South Dakota given the history and demographics of the reservation system in the state (and nation.) This works to polarize voting behavior more than one would expect in the average geographic community. It may also be a function of historic tensions of Native and White communities in South Dakota, which are well noted for their lack of collaboration in a wide-range of public and private affairs. One would expect these historic tensions to contribute to ongoing insularity of the American Indian community in the state – a condition that is regrettable to many in both Native and White communities.

The fact that this relationship is statistically significant at the .000 level suggests that this relationship is extremely stable. Given the significance of this relationship, one would not expect this correlation to have results from chance or, given its strength, from a non-race-related factor. It seems clear that voter registration is racially polarized in South Dakota politics.

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**Table 5.1: Correlation Results for Native Population and Voter Registration**

		Native Population Percentage	Democratic Party Registration
Native Population Percentage	Pearson Correlation	1	.752**
	Sig. (2-tailed)		.000
	N	66	66
Democratic Party Registration	Pearson Correlation	.752**	1
	Sig. (2-tailed)	.000	
	N	66	67

\*\* . Correlation is significant at the 0.01 level (2-tailed).

The second correlation test examined the association between Native population percentage at the county level and aggregate candidate performance in state constitutional races (i.e., Governor/Lt. Governor, Secretary of State, Attorney General, State Auditor, State Treasurer, Commissioner of School and Public Lands, and Public Utilities Commission). The indexed measure of aggregate candidate performance combined each of these races for the 2010 South Dakota election, focusing on the percent support of Democratic candidates. Studying the support for Republican candidates would have had the same statistical impact on the correlation values observed for this relationship.

Here, the relationship was even stronger than observed in the area of party identification, with a correlation coefficient of .770 that was significant at the .000 level (See Table 5.2 below). This was expected given the strong relationship between party identification and vote choice of individuals. This national phenomenon was not expected to be different in South Dakota elections. Still, it was important to extend the evaluation of correlations to actual vote choice to provide additional evidence of what we now understand is an extremely strong relationship between American Indian county demographics and county-level vote choice.

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**Table 5.2: Correlation Results for Native Population and Aggregated South Dakota Constitutional Officer Vote Margin**

		Native Population Percentage	Democratic Candidate Performance
Native Population Percentage	Pearson Correlation	1	.770**
	Sig. (2-tailed)		.000
	N	66	66
South Dakota Candidate Performance	Pearson Correlation	.770**	1
	Sig. (2-tailed)	.000	
	N	66	66

\*\* . Correlation is significant at the 0.01 level (2-tailed).

This type of relationship (i.e., extremely strong correlation and significance) would not be expected for the White community in the state. Given the fact that Whites make up a large majority of county residents throughout the state, with the exception of a handful of majority-minority counties (i.e., Shannon, Buffalo, Dewey, Ziebach, Todd,) we would expect the vote choice and partisanship of Whites to be a function of factors well beyond their race. These factors would include variations in socioeconomic standing, education, cultural experience, religion and others. As a result, race would not be as strong a predictor of partisanship or vote choice for Whites. Given the history of American Indians as a discrete and insular minority in the State of South Dakota, their racial identity and compact location within Indian County counties uniquely polarizes their participation in the political process.

#### B. Research Questions Five and Six

This speaks also to the fifth and sixth research questions for this research, which focused on whether there is a history of official discrimination against American Indians in the State of South Dakota and if that history has negatively impacted their capacity to participate in the political process. The unfortunate responses to these questions have been well documented and will not be presented again in detail here. Suffice it to say that there is a plethora of evidence to support the fact that American Indians have been subjected to official and unofficial forms of discrimination in South Dakota and other states in the nation. The negative experience of American Indians in South Dakota was recently presented in the case of *Bone Shirt v. Hazeltine*<sup>16</sup> and does not need to be recounted here. Clearly, there are ongoing tensions between Native and White communities that contribute to the polarization of South Dakota politics. This is a condition that we all must aspire to correct before another generation is lost to the ill will of our shared history.

<sup>16</sup> *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d.

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

We understand that this history has resulted in American Indians in South Dakota being one of the poorest groups of all Americans. This record is well documented. It is evident in employment statistics, health and mortality rates, educational achievement and feelings of self-worth that plague reservation communities in South Dakota and are particularly troubling to members of the Oglala Sioux Tribe (OST) in Shannon County. Each of these measures of personal and community deficits negatively impacts a minority group's capacity to productively engage in the political process and weighs heavily on their capacity to use the political process to direct laws in a way that their condition might be improved. The avenue of advancement through the democratic process seems closed to the native citizens of Shannon County and elsewhere throughout the State and nation.

The question before us now is whether the discrimination that American Indians in Shannon County and their ancestors have experienced results in a hesitancy to participate in contemporary elections. In particular, it is our concern to better understand how history and resulting contemporary conditions interact with the administration of elections in Shannon County. We understand that Shannon County has considerable economic challenges before it and that it is not always able to "keep up." Further, we understand that Shannon County has chosen to contract with Fall River County for the administration of state and national elections for its citizens. These conditions in and decisions by Shannon County result in differences in the way elections are conducted. These differences have produced less optimum access to the ballot than are present in most other counties in the state. The fact that early voting is only sporadically available in Shannon County, and only in limited locations when it is available, presents questions as to whether the absence of consistent and full access to early (or convenience) voting dilutes the voting rights of American Indians. This and related questions were addressed, in person, with Shannon County residents over the course of three days in June of 2012. The results of that effort are shared in the following section of this report.

## **6. SHANNON COUNTY PUBLIC OPINION SURVEY AND FOCUS GROUP RESULTS**

### **A. Research Question Seven**

Survey respondents had a high level of participation in the electoral process. A large majority of those surveyed reported voting in the last South Dakota election. Compared with a state-wide report of a 62.27 percent voter turnout in the 2010 election,<sup>17</sup> 69.2 percent of respondents to the current survey reported voting. Even more, 76.9 percent reported voting in the last tribal election.

Of all respondents, 64 percent reported voting either 'always' or 'most of the time,' while only 14 percent reported voting 'rarely' or 'never' (see Figure XX below). A larger percent of 78 percent of respondents reported voting 'always' or 'most of the time' in tribal elections, while a smaller percentage of 10 percent reported voting 'rarely' or 'never' (see

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<sup>17</sup> From South Dakota Secretary of State website at [http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_general2010\\_turnout.shtm](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_general2010_turnout.shtm) (Last accessed June 26, 2012).



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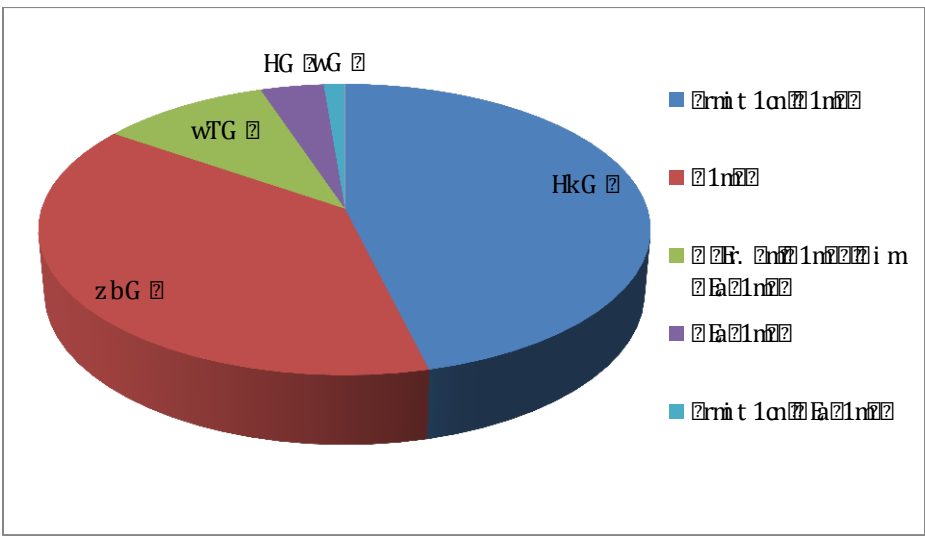
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Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

vote in Fall River County, it was observed that 74 percent of respondents were hesitant to vote in Fall River County under any conditions – early voting or Election Day voting. Although 23.4 percent of respondents were willing to vote in Fall River County and 2.6 were not sure, the large majority of respondents were not. Clearly, the majority of survey respondents are not interested in traveling to Fall River County to vote.

Interestingly, of all the communities surveyed, the highest percentage of those willing to vote in Fall River County was observed from Red Shirt (50% willing), which is relatively near to Hot Springs, the voting center in Fall River County. Red Shirt respondents are easily contrasted on this point with respondents from Manderson, Kyle or even Pine Ridge. Each of these communities had lower numbers of those willing to vote in Fall River County – 0% of Manderson respondents, 25% of Kyle respondents and 26.1% of Pine Ridge respondents.

The reasons given for not wanting to vote in Fall River County were varied, but the largest percentage of stated concern was for a combination of the difficulty of traveling that far and the expense associated with a trip to Fall River County for voting. Table 6.1 below reports the frequencies of individual opinions about voting in Fall River County. The many individual reasons given by respondents were collapsed into four general categories of concern, including (1) the distance and expense, (2) distrust, (3) perceived prejudice against Native voters, and (4) the principal of local voting.

**Table 6.1: Concerns about Voting in Fall River County**

Distance and Expense	36	61.02%
Distrust of Fall River County Officials	9	15.25%
Perceived Prejudice Against Native Voters	11	18.64%
Principal of Local Voting	3	5.08%
Total	59	100.00%

Though the clear majority of respondents were concerned about costs associated with traveling to Fall River County to vote, there were strong views about the way American Indians from Shannon County are treated by the neighboring Fall River County. Many of the individuals who reported being hesitant about voting in Fall River County communicated intense negative opinions about distrust and prejudice from the dominantly White neighboring county.<sup>18</sup>

<sup>18</sup> According to 2010 US Census estimates, Shannon and Fall River Counties are nearly opposites in terms of racial composition, poverty and employment rates, as seen in <http://census-statistics.findthedata.org/1/2460/Shannon-County-Sd> and <http://census-statistics.findthedata.org/1/2427/Fall-River-County-Sd> (last accessed 6/27/ 2012)



Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

This does not mean, however, that trust for election officials in Shannon County was much higher. In fact, the difference in trust levels for election officials in both counties were quite small -- just over 10 percent more trust for Shannon County election officials than Fall River election officials.

The expectation leading into this survey research was that trust would be much higher for Shannon County election officials. Even though technically, Shannon County contracts this work out to Fall River County, it was expected that Shannon County residents would have reported higher levels of trust for "officials" from their own county. This expectation was narrowly supported by this research. While 51.28 percent of respondents reported trusting Fall River County election officials, 61.54 percent noted trust for Shannon County election officials. Given that trust levels are only slightly higher than distrust levels, and that the gap in trust for both the counties was only 10.25 percent, it is reasonable to conclude that trust for both counties' election processes should be higher.

In sum, the observations that lower levels of trust exist for Fall River County Election officials, that 66.1 percent of respondents would not be willing to cast early ballots in Fall River County, and that 74 percent of respondents were hesitant to vote in Fall River County under any circumstances, leads to the conclusion that there is serious concern for Shannon County voters casting ballots in Fall River County. The question remains, however, if that hesitancy is due to perceived racism towards American Indians in Fall River County.

Again, when given the opportunity to report reasons for hesitation with voter participation in Fall River County in an open-ended question, without any priming or direction from the interviewer, 34.9 percent of respondents reported hesitation due to distrust of or prejudice from Fall River County administrators. Distrust and prejudice were also themes introduced by focus group meeting participants.

Observations from the focus group meeting offered greater detail than was possible through the relatively short survey delivered in Shannon County in June of 2012. When compared with the 2 minute survey, designed to be brief to maintain high response rates, the 90 minute focus group meeting with 6 political elites from the region allowed for far more in-depth discussion.

As expected, the qualitative discussion of related issues in the focus group produced a range of insights into why Shannon County residents have low levels of trust for the administration of the state and federal elections they participate in. Still it was not possible to discern from this discussion why participation is higher in tribal elections than state and federal elections because that was not the emphasis of this discussion. The focus group meeting's emphasis was squarely on why Shannon County voters might be concerned about how elections are conducted in Shannon County.

The dominant concern among those participating in the focus group was not racial bias. It was, however, poor levels of accountability for and effective administration of South Dakota elections in Shannon County. Focus group participants reported that they need better support for electoral participation in the county. It was discussed that many people

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

don't know that early voting exists, that clarity about the location of Election Day polling locations is poor, and that the support they get from poll workers is extremely poor.

One participant related a story of an election where half of her family had to vote in Oglala and half in Pine Ridge even though the family lives in the same neighborhood. Another added to this frustration by noting that in one election officials split the polling locations for family members residing in the same household. All agreed that the splitting of households and neighborhoods negatively impacts Native voters' capacity to share rides to the polls, which was unanimously agreed to as an important resource for many reservation community members.

This concern was further supported by a general comment offered by one survey respondent who noted that she did not vote in the last election because she could not find the correct precinct. She was quoted as stating:

*"They sent us all over but no one could tell me where my voting location was. In the end, I went to three locations, none of them correct and was not able to vote. This was extremely frustrating."*

This theme was echoed by a focus group member who had a similar experience. The person stated:

*"The last time I went to vote I went to the regular polling location and it had moved so I was pissed off and did not vote."*

Focus group members believe that these experiences are illustrative of the larger problems associated with the voting experience in Shannon County. Group members unanimously agreed that not enough education and training goes into the election process in Shannon County. They felt this was true of both education for poll workers and of citizen voters.

There was particularly strong concern noted about the lack of information and assistance available from poll workers and about the apparent instability of the entire system. One focus group member noted that there are many interested people available to work at the polls, but that they are not given sufficient training to make them a strong resource for the community. According to focus group members, the lack of training and interest in the success of poll workers makes the voting process less accessible to Shannon County citizens. It was noted that this is particularly concerning for those who need assistance because of lower levels of education or familiarity with the process. In short, those most at risk of having their voice marginalized are not receiving the support they need to become effective citizens.

One focus group member noted that it is not sufficient to just show up and become contributing citizens. In her view, some voters need support to cast their vote. On whole, the focus group members did not feel that many poll workers in the county are informed or helpful. To illustrate this point, one focus group member brought up an example where a voter she was with who was well known to poll workers was not allowed to vote because of

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

inadequate identification. Rather than helping that person overcome the challenge of inadequate identification, that person was sent away from the polls without voting. In response to this story, another focus group member suggested that the poll worker should have known that citizens can sign an affidavit attesting to their identity and then be allowed to vote without adequate identification. The group agreed that this was a frustrating example of poor training and assistance offered to and by poll workers in the county.

The cumulative effect of these experiences has been a great reduction of trust in Shannon County and South Dakota politics. Focus group members believed that Shannon County had lost the trust of some voters because of bad behavior in the past. According to the group, this results from more than just poor training of poll workers and extends to sometimes nasty behavior on the part of powerful groups or individuals in the county.

One of the focus group members who grew up in Shannon County had moved away for 20 years to Tempe, Arizona. She had been back in the county for 8 years to accept a prominent position in the community. She believed that nothing had changed or improved in the years she was gone. She continued to note two concerns related to this view:

*“When compared with Tempe, Arizona, voting in Shannon County is extremely disorganized. There is not good information on where to go to vote or how to work through the details of voting once you are there.”*

*“The culture of this state is not welcoming to Native people or voters. It has been like this for decades. There is simply no customer service ethic or effort to overcome many of the barriers to effective participation. That has existed for decades.”*

Fall River County was not free of many of these concerns. Among focus group members and some survey respondents, it was believed that a strong prejudice exists against Native community members. One survey respondent made it clear in stating that she would not travel to Fall River County because police there target “65 license plates” for traffic stops. She, and others, did not believe that American Indians are treated equally in the eyes of the county and law enforcement officials. One focus group member added that she had to insist that a Fall River County employee be nice to her after she experienced what she described as extremely rude treatment on the part of the employee.

When discussed further, other focus group members agreed that there is an imbedded culture in South Dakota of disliking and disrespecting American Indians. While the group was, on whole, interested in seeing this condition changed, none argued that it does not exist currently. There is at least a strong perception that historic forms of discrimination are still palpable to Native voters and community members outside of Shannon County. While they felt frustrated with the quality of Shannon County elections administration, it was clear that there are greater challenges, in their minds, to voting in Fall River County.

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

## 7. REVIEW OF NATIONAL RESEARCH ON EARLY VOTING

### A. Research Question Ten

The research now addresses the question of whether the findings in the Shannon County public opinion survey are generalizable. As in all survey research, the goal is to be able to generalize from the sample of respondents drawn from the population. To gain insight on the generalizability of this survey, it is helpful to consider how other studies of early voting have come out on the question of voter turnout and representation in contemporary elections.

To be clear, the reliability of the current study is not in question. The results here are reliable when considering the opinions, values and concerns of Shannon County residents. The question is, more broadly, about the general impact early voting has on elections throughout the United States.

The research on early voting, particularly early in-person voting, is encouraging in terms of the effects it has had on voter turnout and the procedural integrity of elections. Previous scholarly research has found that early voting has a positive impact on voter turnout, though individual studies vary from a negligible impact to a nearly 10 percent increase in the context of voting by mail.<sup>19</sup> Early in-person voting has been observed to stimulate participation,<sup>20</sup> and is clearly supported by citizens.<sup>21</sup> It has also been observed to result in more accurate vote counting by election officials.<sup>22</sup> As a result, election officials are generally strong advocates of early voting, and the process has been endorsed by the National Conference of State Legislatures and the National Association of Secretaries of State.<sup>23</sup> None of this has been lost on voters. Researchers have observed that early voting produces an overall increase in citizen satisfaction with electoral systems, which has an independent impact increasing voter turnout.

The story is quite clear from the voting behavior literature. The sum of this work has demonstrated that the capacity of voters to cast an early ballot increases turnout because of the convenience and increased access to the ballot. Moreover, the increased legitimacy and attention early voting offers have unique effects on the perceptions of voters who are more engaged and satisfied as a result. To summarize, early voting has substantive, procedural and psychological benefits to voting in the United States.

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<sup>19</sup> See generally, Paul Gronke, Eva Galanes-Rosenbaum and Peter Miller (2007) "Early Voting and Turnout," *PS: Political Science and Politics* 40(4): 639-645; Michael P. McDonald and Samuel L. Popkin (2001), "The Myth of the Vanishing Voter," *American Political Science Review*, 95, 963-974; Neeley, Grant W. and Lilliard E. Richardson, Jr. (2001), "Who is early voting? An individual level examination". *The Social Science Journal*, 38.

<sup>20</sup> Grant and Richardson, *supra* note 19.

<sup>21</sup> Southwell, Priscilla. (2004). "Five Years Later: A Re-assessment of Oregon's Vote by Mail Electoral Process." *PS: Politics and Political Science* 98(1).

<sup>22</sup> Alvarez, R. M. and Hall, T. E. (2006), "Controlling Democracy: The Principal-Agent Problems in Election Administration," *Policy Studies Journal*, 34: 491-510.

<sup>23</sup> Gronke (et. al), *supra* note 19, at page 642.

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

Given the support early voting enjoys from Shannon County survey respondents, national scholarly research, election officials and their professional associations, it is surprising that we are still questioning whether this is an essential practice for the administration of elections in Shannon County. One researcher has gone so far as to say that “(e)lection day in the United States is rapidly turning into an anachronism: waiting in line to cast our ballots will become the quaint notion of a bygone era.”<sup>24</sup> The evidence is clear. The question now is whether Shannon County is ready to face these conclusions and revise their election practices.

## 8. DISCUSSION AND CONCLUSIONS

Given the observations of this research and research conducted by prominent scholars in the field of American voting behavior, it is difficult to conclude anything other than the following: The absence of a fully developed early voting system in Shannon County dilutes the impact of voting preferences of Shannon County voters.

When we consider the racial and political cohesion of Shannon County voters, the racial polarization of South Dakota elections more generally, we are compelled to expand this conclusion to include the concern for the dilution of voting preferences of enrolled members of the Oglala Sioux Tribe who reside in Shannon County.

Each of the ten research questions addressed in this study has shed light on the disadvantaged conditions American Indian face in Shannon County elections. The summary conclusions for each of those ten questions are presented in Table 8.1 below.

**Table 8.1: Summary Conclusions for Research Questions**

Research Questions	Summary Conclusion
1. Are Shannon County American Indians a sufficiently large and geographically compact group constituting a majority in Shannon County?	Yes.
2. Are Shannon County American Indians politically cohesive?	Yes.
3. Do Whites vote sufficiently as a bloc to enable it to usually defeat the preferred candidate of Shannon County American Indians?	No at county level. Yes at state level.
4. Is voting in elections of the state or political subdivision racially polarized?	Yes.

<sup>24</sup> Gronke, Paul. 2004. “Early Voting Reforms and American Elections.” Paper presented at the Annual Meeting of the American Political Science Association.

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

5. Is there a history of official discrimination in state or political subdivision that touched the right of members of the minority group to register, to vote, or otherwise to participate in the democratic process.	Yes.
6. Do American Indians in Shannon County bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process?	Yes.
7. Are Shannon County citizens engaged in state, national and tribal elections?	Yes.
8. Do Shannon County citizens support early voting as an essential part of the electoral process in their county?	Yes.
9. Do Shannon County American Indian voters have a fear or hesitancy to vote at Hot Springs in Fall River County?	Yes.
10. Is there a statistical relationship between early voting provisions and turnout in minority communities?	Yes.

Given that Shannon County is only one of two counties in the state that contract out election services to another county, there is reason to increase the scrutiny of how its elections are administered. The other county is Todd County, which contracts with Tripp County for the administration of their elections. According to administrators in the South Dakota Secretary of State's Office, Todd County elections are conducted "more smoothly" than elections in Shannon County. In short, there are fewer problems communicated to the state's main elections office from Todd County. Perhaps it is because Winner, South Dakota, is a more proximate county seat to more residents in Todd County than Hot Springs, South Dakota is to residents in Shannon County. Perhaps also it is because the racial and socioeconomic make-up of Todd and Tripp counties is more similar than the racial and socioeconomic make-up of Shannon and Fall River Counties. Unfortunately, the underlying cause of increased tensions in Shannon County elections is outside the scope of this report.


Still, we know from the current research that Native voters in Shannon County desire greater access to early voting practices than they currently have. We know that Shannon County residents feel that enhanced access to early voting would likely increase their participation in state and federal elections, and we know that these citizens are not comfortable casting their ballots in Fall River County. Many are hesitant to vote because of the time and financial cost associated with a trip to Hot Springs, while others feel they are

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

subject to discrimination and generally poor treatment by officials in Fall River County. The combined effect of lesser resources, distance from alternative resources, and a historic sense of mistreatment simply do not provide acceptable conditions for American voters to cast their ballot.

**EXPERT'S DECLARATION**

I confirm that the contents of this report are true to the best of my knowledge and belief and that I make this report knowing that, if it is tendered in evidence, I would be liable to prosecution if I have willfully stated anything which I know to be false or that I do not believe to be true.

Signature:  \_\_\_\_\_

Date: July 2, 2012

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**APPENDIX A: SHANNON COUNTY EARLY VOTING PUBLIC OPINION SURVEY**

1. Did you vote in the last national/state-wide election?

- yes
- no
- don't know

2. Did you vote in the last tribal election?

- yes
- no
- don't know

3. How often do you vote in national/state-wide elections?

- always
- most of the time
- sometimes
- rarely
- never

4. How often do you vote in tribal elections?

- always
- most of the time
- sometimes
- rarely
- never

5. South Dakota allows the use of early voting, which is a system whereby voters can cast early ballots at a county elections office or satellite locations such as community centers, churches, or even grocery stores. Have you ever used early voting to cast your vote in federal/state-wide elections?

- yes
- no
- don't know



Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

FOR THE NEXT FEW QUESTIONS, PLEASE USE A 5-POINT SCALE TO LET US KNOW HOW MUCH YOU AGREE WITH THE FOLLOWING STATEMENTS (5= STRONGLY AGREE, 4 = AGREE, 3 = NEITHER AGREE NOR DISAGREE, 2= DISAGREE, 1= STRONGLY DISAGREE)

	5 Strongly agree	4 Agree	3 Neither agree nor disagree	2 Disagree	1 Strongly Disagree
6. Early voting is important to South Dakota voters and should be made as available as possible.					
7. If early voting was made available in Shannon County I would be more likely to vote in South Dakota elections.					
8. I trust election officials in Shannon County.					
9. I trust election officials in Fall River County.					
10. I trust election officials in Fall River County as much as I trust election officials in Shannon County.					
11. If early voting was not available in Shannon County I would travel to Fall River County to cast an early ballot.					

12. Would you say that you are hesitant to vote in Fall River County?

- Yes
- No
- Don't Know

13. IF YES TO #10: Why are you reluctant to vote in Fall River County?

OPEN ENDED RESPONSE:

13. Age:	14. Gender: M / F	15. Race: White / Native / Other	16. Town of Residence: Town =
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Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

APPENDIX B: PUBLIC OPINION SURVEY RESPONSE FREQUENCIES

**Did you vote in the last national/state-wide election?**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	54	70.1	70.1	70.1
Valid No	23	29.9	29.9	100.0
Total	77	100.0	100.0	

**Did you vote in the last tribal election?**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	60	77.9	77.9	77.9
Valid No	17	22.1	22.1	100.0
Total	77	100.0	100.0	

**How often do you vote in national/state-wide elections?**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Always	33	42.9	43.4	43.4
Valid Most of the time	16	20.8	21.1	64.5
Valid Sometimes	17	22.1	22.4	86.8
Valid Rarely	4	5.2	5.3	92.1
Valid Never	6	7.8	7.9	100.0
Total	76	98.7	100.0	
Missing System	1	1.3		
Total	77	100.0		

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**How often do you vote in tribal elections?**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Always	50	64.9	64.9	64.9
Most of the time	10	13.0	13.0	77.9
Sometimes	9	11.7	11.7	89.6
Rarely	4	5.2	5.2	94.8
Never	4	5.2	5.2	100.0
Total	77	100.0	100.0	

**Have you ever used early voting to cast your vote in federal/state-wide elections?**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	15	19.5	19.5	19.5
No	62	80.5	80.5	100.0
Total	77	100.0	100.0	

**Early voting is important to South Dakota voters and should be made as available as possible.**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	1	1.3	1.3	1.3
Disagree	3	3.9	3.9	5.2
Neither Agree Nor Disagree	8	10.4	10.4	15.6
Agree	30	39.0	39.0	54.5
Strongly Agree	35	45.5	45.5	100.0
Total	77	100.0	100.0	

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**If early voting was made available in Shannon County I would be more likely to vote in South Dakota elections.**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	1	1.3	1.3	1.3
Disagree	9	11.7	11.7	13.0
Neither Agree Nor Disagree	6	7.8	7.8	20.8
Agree	27	35.1	35.1	55.8
Strongly Agree	34	44.2	44.2	100.0
Total	77	100.0	100.0	

**I trust election officials in Shannon County.**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	10	13.0	13.0	13.0
Disagree	10	13.0	13.0	26.0
Neither Agree Nor Disagree	10	13.0	13.0	39.0
Agree	29	37.7	37.7	76.6
Strongly Agree	18	23.4	23.4	100.0
Total	77	100.0	100.0	

**I trust election officials in Fall River County.**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	9	11.7	11.7	11.7
Disagree	11	14.3	14.3	26.0
Neither Agree Nor Disagree	18	23.4	23.4	49.4
Agree	28	36.4	36.4	85.7
Strongly Agree	11	14.3	14.3	100.0
Total	77	100.0	100.0	

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**I trust election officials in Fall River County as much as I trust election officials in Shannon County.**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	6	7.8	7.8	7.8
Valid Disagree	16	20.8	20.8	28.6
Valid Neither Agree Nor Disagree	21	27.3	27.3	55.8
Valid Agree	23	29.9	29.9	85.7
Valid Strongly Agree	11	14.3	14.3	100.0
Total	77	100.0	100.0	

**If early voting was not available in Shannon County I would travel to Fall River County to cast an early ballot.**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	24	31.2	31.2	31.2
Valid Disagree	27	35.1	35.1	66.2
Valid Neither Agree Nor Disagree	3	3.9	3.9	70.1
Valid Agree	15	19.5	19.5	89.6
Valid Strongly Agree	8	10.4	10.4	100.0
Total	77	100.0	100.0	

**Would you say that you are hesitant to vote in Fall River County?**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	57	74.0	74.0	74.0
Valid No	18	23.4	23.4	97.4
Valid Don't Know	2	2.6	2.6	100.0
Total	77	100.0	100.0	

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**Why hesitant to vote in Fall River County?**

	Frequency	Percent	Valid Percent	Cumulative Percent
	18	23.4	23.4	23.4
distance	1	1.3	1.3	24.7
Distance	1	1.3	1.3	26.0
Distance, work schedule.				
Can't work it. Too much time away from home and work.	1	1.3	1.3	27.3
Distance, cost, not familiar with people.	1	1.3	1.3	28.6
Don't like to travel	1	1.3	1.3	29.9
Don't want to drive	1	1.3	1.3	31.2
Don't want to take the time	1	1.3	1.3	32.5
Dont trust Fall River County	1	1.3	1.3	33.8
Have not used early voting in districts but want to. FRC is too far.	1	1.3	1.3	35.1
Valid hesitant against natives	1	1.3	1.3	36.4
I dont want to	1	1.3	1.3	37.7
I wouldn't go, would wait until election day.	1	1.3	1.3	39.0
Im not from there	1	1.3	1.3	40.3
Natives are not treated well	1	1.3	1.3	41.6
never been	1	1.3	1.3	42.9
no transportation	2	2.6	2.6	45.5
No transportation	5	6.5	6.5	51.9
no trust	1	1.3	1.3	53.2
No trust	1	1.3	1.3	54.5
not convenient. too far. don't agree with principles. need liberty and justice for all.	1	1.3	1.3	55.8
Not familiar with the area	1	1.3	1.3	57.1
not from there	2	2.6	2.6	59.7

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

Not receptive or nice to Indians. They are rude.	1	1.3	1.3	61.0
Distance, too far.				
Not sure about a ride, too far.	1	1.3	1.3	62.3
Out of the way. Cops profile '65' license plates or if you look Indian.	1	1.3	1.3	63.6
prejudice against women. police pull me over	1	1.3	1.3	64.9
Racist town and county.				
Don't tell the truth. Not honest	1	1.3	1.3	66.2
should be able to vote at home	1	1.3	1.3	67.5
Takes too much time and costs too much.	1	1.3	1.3	68.8
There is conflict among election officials and they dont get along with everyone.	1	1.3	1.3	70.1
There is prejudice against native voters. I don't believe they count my vote.	1	1.3	1.3	71.4
they are full of shit	1	1.3	1.3	72.7
Too busy and it takes too much time.	1	1.3	1.3	74.0
too far	8	10.4	10.4	84.4
Too far	2	2.6	2.6	87.0
Too Far	1	1.3	1.3	88.3
Too far and too expensive	1	1.3	1.3	89.6
Too far, too expensive.	1	1.3	1.3	90.9
Too far. No transportation.	1	1.3	1.3	92.2
too far. not convenient	1	1.3	1.3	93.5
Too long of a ride. No car.	1	1.3	1.3	94.8
travel is too much	1	1.3	1.3	96.1

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

When you go to Hot springs, they are not always nice. They need to be forced to be nice.	1	1.3	1.3	97.4
Why should we have to travel too far? Need gas money to travel for voting.	1	1.3	1.3	98.7
Work schedule. Too far.	1	1.3	1.3	100.0
Total	77	100.0	100.0	

Age

	Frequency	Percent	Valid Percent	Cumulative Percent
18.00	1	1.3	1.3	1.3
21.00	5	6.5	6.5	7.8
22.00	1	1.3	1.3	9.1
23.00	1	1.3	1.3	10.4
24.00	2	2.6	2.6	13.0
26.00	2	2.6	2.6	15.6
27.00	1	1.3	1.3	16.9
28.00	2	2.6	2.6	19.5
29.00	1	1.3	1.3	20.8
30.00	1	1.3	1.3	22.1
Valid 31.00	1	1.3	1.3	23.4
32.00	1	1.3	1.3	24.7
33.00	3	3.9	3.9	28.6
35.00	1	1.3	1.3	29.9
37.00	3	3.9	3.9	33.8
38.00	1	1.3	1.3	35.1
39.00	3	3.9	3.9	39.0
40.00	3	3.9	3.9	42.9
41.00	1	1.3	1.3	44.2
42.00	2	2.6	2.6	46.8
43.00	2	2.6	2.6	49.4



Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

44.00	2	2.6	2.6	51.9
45.00	4	5.2	5.2	57.1
46.00	1	1.3	1.3	58.4
47.00	1	1.3	1.3	59.7
48.00	3	3.9	3.9	63.6
49.00	2	2.6	2.6	66.2
51.00	1	1.3	1.3	67.5
53.00	3	3.9	3.9	71.4
54.00	2	2.6	2.6	74.0
55.00	1	1.3	1.3	75.3
56.00	1	1.3	1.3	76.6
58.00	1	1.3	1.3	77.9
59.00	1	1.3	1.3	79.2
60.00	3	3.9	3.9	83.1
61.00	3	3.9	3.9	87.0
62.00	1	1.3	1.3	88.3
63.00	2	2.6	2.6	90.9
64.00	1	1.3	1.3	92.2
66.00	1	1.3	1.3	93.5
67.00	2	2.6	2.6	96.1
69.00	1	1.3	1.3	97.4
70.00	1	1.3	1.3	98.7
79.00	1	1.3	1.3	100.0
Total	77	100.0	100.0	

**Gender**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Male	35	45.5	45.5	45.5
Valid Female	42	54.5	54.5	100.0
Total	77	100.0	100.0	

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**Race**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid White	1	1.3	1.3	1.3
Valid Native	72	93.5	93.5	94.8
Valid Other	4	5.2	5.2	100.0
Valid Total	77	100.0	100.0	

**Name of "Other" Race from previous question**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid	73	94.8	94.8	94.8
Valid Asian	1	1.3	1.3	96.1
Valid native and black	1	1.3	1.3	97.4
Valid Native and hispanic	1	1.3	1.3	98.7
Valid native and white	1	1.3	1.3	100.0
Valid Total	77	100.0	100.0	

**recoded race to include other categories in main values**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid White	2	2.6	2.6	2.6
Valid Native	72	93.5	93.5	96.1
Valid Black	3	3.9	3.9	100.0
Valid Total	77	100.0	100.0	

Braunstein Expert Report  
 Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

**Town of residence**

	Frequency	Percent	Valid Percent	Cumulative Percent
Pine Ridge	23	29.9	29.9	29.9
Manderson	18	23.4	23.4	53.2
Porcupine	16	20.8	20.8	74.0
Kyle	4	5.2	5.2	79.2
Oglala	6	7.8	7.8	87.0
Valid Slim Butte	1	1.3	1.3	88.3
Wakpamni	1	1.3	1.3	89.6
Thunder Valley	1	1.3	1.3	90.9
Red Shirt	6	7.8	7.8	98.7
Other	1	1.3	1.3	100.0
Total	77	100.0	100.0	

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

APPENDIX C: EXPERT'S DISCLOSURE

To: Ryan Cwach  
From: Richard Braunstein  
Re: Expert's Disclosure in the case of Brooks, et. al., v. Gant, et. al.  
Date: July 2, 2012

My name is Rich Braunstein and I have been asked by the Steven D. Sandven Law Office as an independent professional to write a report in relation to the questions at issue in the case of Brooks, et al. v. Gant. et al., Case no. Civ. 12-5003, pending before the United States District Court, District of South Dakota, Western Division for the County of Pennington, State of South Dakota.

The goals for my expert report include the following:

1. Consider the relevance of the Gingles Preconditions at issue in the instance case.
2. Consider whether of a history of discrimination impacting American Indian voting behavior in Shannon County elections exists.
3. Consider whether elections in Shannon County and the State of South Dakota are racially polarized
4. Consider whether American Indians in Shannon County are hesitant to vote in Fall River County and, if so, why.
5. Consider any other facts, circumstances or conclusions that I find relevant to the case of Brooks (et.al.) v. Gant (et.al.).

I have completed my research and written a detailed report of the methods used and conclusions generated. The report, attached here, provides a complete statement of all my opinions in this matter and the basis for them.

My qualifications for this work include the following:

1. I hold a PhD in Political Science from the University of Colorado at Boulder.
2. I have been employed at the University of South Dakota's Political Science Department since 1999, where I was promoted in 2004 to the rank of Associate Professor and again in 2010 to the rank of Full Professor.
3. I am a Research Associate with the Government Research Bureau (GRB) at the University of South Dakota, conducting research on state, tribal and nonprofit organizations since 2001. As a GRB researcher, I have produced reports for the South Dakota Governor's Office, South Dakota Department of Health, Sisseton Wahpeton Oyate, South Dakota Community Foundation, Wakpamni District Community Development Corporation, and South Dakota Department of

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

Transportation. Currently, I am working on a project for the City of Rapid City, South Dakota.

4. My teaching and research interests include American government, state politics, American Indian criminal justice, nonprofit administration, research methods and conflict resolution.
5. I am a member of the South Dakota Advisory Committee to the US Commission on Civil Rights, since 2009.
6. I am board chair for the South Dakota Nonprofit Association, since 2010.
7. I received an executive appointment to the South Dakota Service Commission by Governor Daugaard in 2011.

My publications over the past ten years include the following:

1. "Evaluation of Driver Education and Licensing in South Dakota." Prepared for the South Dakota Department of Transportation. With Shane Nordyke. September 2011.
2. "Sisseton-Wahpeton Oyate Tax Survey and Analysis." Prepared for Sisseton-Wahpeton Oyate. With Wayne Booze and Nina Bullhead. April 2009.
3. "American Indian Criminal Justice System Improvements in North and South Dakota: Recommendations in Response to SA 4021 of S. 1200." Prepared for US Senator John Thune. With Patrice H. Kunesh, Frank Pommersheim, and William D. Anderson. April, 2008.
4. "Understanding Contextual Differences in American Indian Criminal Justice." In *American Indian Culture and Research Journal*, volume 32, no. 4 (2008). With William D. Anderson
5. "A Research Note on American Indian Criminal Justice." In *American Indian Culture and Research Journal*, volume 32, no. 4 (2008). With William D. Anderson
6. "Promoting Student Political Engagement and Awareness at the University of South Dakota." In *Peer Review*, Volume 10, Number 2/3. With Anthony DeForest Molina, Elizabeth Theiss-Smith (2008).
7. "Controversies in Ballot Issue Politics." In Kenneth F Warren and J. Geoffrey Golson, eds. "Encyclopedia of Campaigns, Elections, and Electoral Behavior" Sage Publications, Thousand Oaks, CA (2007).
8. "The Nationalization of Local Politics: The South Dakota U.S. Senate Race." in David B. Magleby, J. Quin Monson, and Kelly Patterson, eds. *Electing Congress: New Rules for an Old Game.* New York: Pearson-Prentice Hall. With Elizabeth T. Smith, 2007.
9. "Explaining Race Disparities in South Dakota Sentencing and Incarceration."\* In *South Dakota Law Review*, Volume 50, May 2005. With Amy Schweinle.  
\*Symposium on Sentencing & Punishment lead article, with individual review articles by, Duane Champagne and Carole Goldberg, and Danelle J. Daugherty.
10. "The Nationalization of Local Politics: South Dakota's 2004 U.S. Senate Race." In *Dancing Without Partners: How Candidates, Parties and Interest Groups Interact in the New Campaign Finance Environment*, David B. Magleby, J. Quin Monson and Kelly D. Patterson, eds. Pew Charitable Trusts, 2005. With Elizabeth Theiss Smith

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003

11. "A Blue Candidate Wins in a Red State: South Dakota's 2004 At-Large House Race." In *Dancing Without Partners: How Candidates, Parties and Interest Groups Interact in the New Campaign Finance Environment*, David B. Magleby, J. Quin Monson and Kelly D. Patterson, eds. Pew Charitable Trusts, 2005. With Elizabeth Theiss Smith
12. "The Role of Public Opinion in Initiative and Referendum Elections." In *Polling America: An Encyclopedia of Public Opinion*. Ben Radcliff and Samuel Best, eds. Greenwood Press. 2005.
13. *Initiative and Referendum Voting: Governing Through Direct Democracy in the United States*. LFB Scholarly Publishing. American Legal Institutions Series edited by Eric Rise, University of Delaware. New York, 2004.
14. "Governance Groups." In *The Guide to Political Science Literature and Research on Interest Groups*, Clive S. Thomas, ed. Greenwood Press. 2004.
15. "Interest Group Involvement in Direct Democracy." In *The Guide to Political Science Literature and Research on Interest Groups*, Clive S. Thomas, ed. Greenwood Press. 2004.
16. "An Institution in its Own Right: Understanding Ballot Issue Politics in the Larger Context." *Journal of Politics*, Volume 65, Number 3. August 2003.
17. "Examining Racial Disparities in American Indian Criminal Justice." *South Dakota Law Review*, Volume 48, Number 2, 2003. With Steve Feimer.
18. "Big Money and Ballot Issues: Do Voters Care Where the Money Comes From?" In *Progressive Reforms & the 21st Century: The "New Progressivism"*. David McCuan and Steve Stambough, eds. Carolina Academic Press, 2003.

I have served as an expert witness in only once case in the past five years. I was hired as an expert witness by the South Dakota Attorney General's Office in the case of "SECRETARY OF STATE, Chris Nelson, Plaintiff, vs. PROMISING FUTURE, INC. and ROGER W. HUNT, Defendants. I was paid \$27,818.85 for the expert report. No deposition or testimony was required for this case.

My compensation for the case of Brooks, et al. v. Gant. et al., including expenses, is \$22,563.96. This includes 87.6 research hours at an hourly rate of \$250 per hour and \$663.96 in expenses. I agreed to charge an hourly rate of \$150 per hour for testimony at deposition and trial, if such testimony is necessary in this case.

If you request any further information than was provided in this disclosure, please do not hesitate to contact me. I can be reached best by telephone at 605-670-0117.

Sincerely,

A handwritten signature in black ink that reads "Rich Braunstein". The signature is written in a cursive, flowing style.

Rich Braunstein, PhD

Braunstein Expert Report  
Brooks, et. al., v. Gant, et. al., Case no. Civ 12-5003