

RESEARCH ARTICLE

# Beyond descriptive representation: American Indian opposition to federal legislation

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(Received 6 November 2020; revised 8 October 2021; accepted 8 December 2021)

## Abstract

This study explores how American Indians use interest group strategies to block federal legislation. Unlike other disadvantaged groups, who have influenced public policymaking through descriptive representation, American Indians have turned to interest group strategies to protect their interests in Congress. Using original data collected from American Indian testimony at congressional hearings on 266 bills during five Congresses, this study tests interest group hypotheses about how and when active opposition affects bill enactment. It finds that American Indians can block federal legislation harmful to their interests when they unify against a bill and that members of Congress frequently respond to American Indian opposition by amending bills to alleviate American Indian concerns.

**Keywords:** Advocacy; legislation; American Indians

In a representative democracy, groups have many ways to influence public policymaking. Among these, the election of representatives who will advocate for their interests and enact the policies they prefer is the most visible. Disadvantaged groups have increasingly gained influence through the election of representatives of their communities (Santoro, 1999; Preuhs, 2006, 2005, 2007), and the benefits of such descriptive representation for disadvantaged groups have been well documented (Santoro, 1999; Owens, 2005; Preuhs, 2005; Preuhs, 2007; Minta, 2009; Wallace, 2014). Latino and Black legislators, for example, have used their positions to support policies they prefer and to block legislation harmful to their groups' interests (Santoro, 1999; Preuhs, 2006, 2005, 2007; Wallace, 2014).

American Indians, Alaska Natives, and Native Hawaiians, however, have yet to experience these gains.<sup>1</sup> They have not had the same success in attaining representation through the election of tribal citizens to Congress as other disadvantaged groups (Witmer and Boehmke, 2007; Wilkins and Stark, 2010). Like other disadvantaged groups, however, American Indian and Alaska Native nations and organizations

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often seek to prevent Congress from enacting laws that harm their communities (Cowger, 2001; Wilkinson, 2006). Congress exercises plenary power over Indian affairs and can divest tribal governments and individual Native Americans of their rights at any time (U.S. Const. art. 1, sec. 8, cl. 3). Historically, Congress has enacted numerous laws that have harmed American Indians by abolishing tribal governments, dispossessing American Indians of their lands, abrogating tribal treaty rights, and undermining American Indian cultural and religious practices (Wilkins and Stark, 2010; Carlson, 2015). As a result, American Indians continually face potential congressional threats to their very existence. How do American Indians block federal legislation that abrogates their sovereignty and treaty rights? How are tribal governments able to protect their constituents, who are U.S. citizens, subject to the laws of Congress, the policies of federal agencies, and the rulings of federal courts from detrimental federal legislation? When, if ever, are they successful at blocking such legislation?

Political science scholarship infrequently mentions American Indians (Corntassel and Witmer, 1997; Witmer and Boehmke, 2007; Wilkins and Stark, 2010). Congressional scholars rarely study American Indian legislation and have yet to determine what factors influence how members of Congress vote on legislation affecting American Indians (Turner, 2005; Conner, 2014). Some have even described legislation related to American Indians as the politics of minor concerns (Turner, 2005). Similarly, interest group studies frequently overlook tribal governments and American Indian issues. For example, the random sampling of policy issues used by Baumgartner *et al.*, in their recent comprehensive study of lobbying excluded any Indian issues and while tribal governments and organizations lobbied on at least two of the bills, it is not clear that they were included in the study (2009). Other interest group studies combine American Indians with other marginalized groups. For example, in his study of the representation of public groups, Grossmann obscures the political behavior of American Indians, Alaska Natives, Cherokees, and Navajos by including them within the broader category of ethnic groups (2012). Even comparative studies of disadvantaged groups regularly omit American Indians. Many focus on more populous groups, such as Latinos and Blacks (Hero and Preuhs, 2009; Minta, 2009; Wallace, 2014; Gomez-Aguinaga *et al.*, 2019).

Some basis may exist for these limited mentions of American Indians: they make up a small proportion of the U.S. population and differ significantly from other groups in the United States. First, American Indians constitute only 2% of the U.S. population – a much smaller percentage than other groups – and are not as geographically concentrated as other disadvantaged groups. Numerically, they appear insignificant and difficult to study. Second, as separate governments, Indian nations differ from other disadvantaged groups. Their government-to-government relationship with the United States is law-based with the United States Congress exercising specific constitutional authority over Indian affairs and historically heavily regulating Indian nations and their citizens (Wilkins and Stark, 2010, xxviii). As a result, Indian nations, unlike other groups, have historically targeted their advocacy at the federal government (Viola, 1995; Hoxie, 2012; Carpenter, 2017) and pursued a more diverse range of policy interests than most interest groups (Wilkins and Stark, 2010). Moreover, Indian advocacy often focuses on the recognition of claims based on their historic government-to-government relationship with the United States rather

than inclusion in the democratic nation-state like other disadvantaged groups (Deloria, 1969; Kymlicka 1995).

But overlooking American Indians may obscure important strategies used by disadvantaged groups to block legislation. This study builds on previous studies of interest group activity by American Indians in investigating how American Indians use interest group strategies to block federal legislation (Gross 1989; Witmer and Boehmke 2007; Boehmke and Witmer 2012; Foxworth *et al.*, 2015; Carlson, 2019a, 2019b; Boehmke and Witmer, 2020). Using original data collected from American Indian testimony at congressional hearings on 266 bills during five Congresses, it tests interest group theories about how and when active opposition at the committee hearing stage of the legislative process affects bill enactment.

The findings show that American Indians, like other disadvantaged groups, can use opposition to block federal legislation harmful to them. Similar to other disadvantaged groups, American Indians experience the most success in blocking legislation when they take a unified position on an issue (Santoro, 1999; Preuhs, 2005). American Indians, however, use opposition not just to prevent a bill's enactment but also to influence the legislative texts of bills they oppose by proposing amendments that would make the bill more acceptable to them. Congress enacted very few bills with Indian opposition, but was much more likely to enact bills with Indian opposition if a committee had amended the bill in response to the Indian opposition. American Indians appear to have at least some success in using opposition to influence federal legislation.

The following sections examine opposition to federal legislation on Indian related bills at the committee hearing stage of the legislative process by American Indian and Alaska Native nations and organizations. First, I develop hypotheses regarding how American Indians may use interest group strategies to block federal legislation. Next, I analyze the collected evidence bearing on each of the hypotheses and review the findings from each of the tests of these hypotheses. The conclusion explores the implications of the findings on how disadvantaged groups gain representation and influence federal legislative policymaking, and more broadly on how information may contribute to influence in the legislative process.

### **Advocacy Strategies for Blocking Legislation**

Disadvantaged groups have long resisted governmental policies detrimental to them. Descriptive representation, or the election or appointment of public officials who will advocate for a group's interests and enact the policies it prefers, has enabled some disadvantaged groups to successfully block legislation harmful to them (Santoro, 1999; Preuhs, 2005, 2006, 2007). Studies of roll-call voting have demonstrated that Latino legislators have helped limit the enactment of English only bills in some states (Santoro, 1999; Preuhs, 2005) and Black legislators have influenced welfare policy in states when the context is not highly racialized (Preuhs, 2006).

Descriptive representation, however, has yet to be attained by American Indians and Alaska Natives, who belong to 574 federally recognized American Indian and Alaska Native nations spread across 35 states. Historically, very few tribal citizens have held congressional office (see Table 1). The election of five tribal citizens to

**Table 1.** American Indians who have served in the U.S. Senate and House of representatives<sup>a</sup>

	Tribe	State	Service years
Senate			
Robert Latham Owen	Cherokee Nation	OK	1907–1925
Charles Curtis <sup>b</sup>	Kaw Nation	KS	1907–1913, 1915–1929
Ben Nighthorse Campbell	Northern Cheyenne Tribe	CO	1993–2005
House of representatives			
Charles Curtis	Kaw Nation	KS	1893–1907
Charles Carter	Choctaw Nation	OK	1907–1927
William Hastings	Cherokee Nation	OK	1915–1921, 1923–35
Will Rogers, Jr.	Cherokee Nation	CA	1943–44
William Stigler	Choctaw Nation	OK	1944–1952
Ben Reifel	Rosebud Sioux Tribe	SD	1961–71
Clem McSpadden	Cherokee Nation	OK	1973–1975
Ben Nighthorse Campbell	Northern Cheyenne Tribe	CO	1987–1992
Brad Carson	Cherokee Nation	OK	2001–2003
Tom Cole	Chickasaw Nation	OK	2003 to present
Markwayne Mullin	Cherokee Nation	OK	2013 to present
Sharice Davids	Ho-Chunk Nation	KS	2019 to present
Deb Haaland <sup>c</sup>	Laguna Pueblo	NM	2019 to 2021
Yvette Herrell	Cherokee Nation	NM	2021 to present

<sup>a</sup>Only includes individuals that could be confirmed as members of a federally recognized American Indian or Alaska Native nation within the United States. By definition, this excludes the two Native Hawaiians elected to Congress (Senator Daniel Akaka and Representative Kai Kahele).

<sup>b</sup>Curtis served as the 31st Vice President of the United States with President Herbert Hoover from 1929 to 1933. He was the Senate Majority Leader from 1924 to 1929.

<sup>c</sup>Haaland left the House of Representatives to become the U.S. Secretary of the Interior in 2021.

Source: Author compiled this list from several others and relied on recent media accounts to ensure an updated list. Author used official tribal rolls, individual biographies, and newspapers to verify tribal citizenship. Some sources include Senator Hiram Rhodes Revels (R-MS, 1869–1871) as Lumbee and Senator Matthew Stanley Quay (R-PA, 1887–1899, 1901–1904) as Lenape or Delaware (<https://www.worldatlas.com/articles/native-american-senators-through-u-s-history.html>), but the U.S. Senate lists only the individuals in this chart (<https://www.senate.gov/senators/american-indian-senators.htm>). Other lists include additional members of the U.S. House of Representatives (<https://www.tbipac.com/news-and-events/112-native-americans-in-congress>) but the author could not confirm their tribal citizenship.

the U.S. House of Representatives in 2020 was heralded as “record breaking” by the media. Further, participation in federal and state elections remains contested among American Indians as some tribal leaders, advocates, and scholars contend that it undermines tribal sovereignty and tribes’ status as separate, sovereign governments (Porter, 1999; LaVelle, 2001; Oeser, 2010).

Lacking in descriptive representation, it is unlikely that American Indians can use the benefits of legislative office to influence roll call votes to block legislation to the same extent as other disadvantaged groups (Santoro, 1999; Preuhs, 2005, 2006, 2007). Two recent studies on roll-call voting on Indian legislation do not even hypothesize

such influence. They only consider the influence of American Indians generally as part of a member of Congress's electoral constituency (Turner, 2005; Conner, 2014). Moreover, they find that as constituents, American Indians and tribal governments have little influence on congressional policymaking. As individual constituents, American Indians do not constitute enough of a percentage of the population to have an impact on the voting behavior of members of Congress (Turner, 2005) and even the presence of a tribal government in a state does not affect roll-call voting in the Senate (Conner, 2014).

Instead of seeking public office, Indian nations have sought to influence federal governmental policies through diplomacy. Indian nations and organizations have a long history of petitioning government officials and testifying about federal legislation (Wilkinson, 2006; Hoxie, 2012, 70–71; Carpenter, 2017, 349). Anecdotes about tribal governments defeating bills seeking to terminate their government-to-government relationships with the federal government in the 1960s suggest that American Indians, despite their lack of descriptive representation and small, dispersed population, may be able to defeat federal legislation introduced to undermine their rights (Wilkinson, 2006; Carlson, 2021). These narratives along with the enactment of the pro-tribal self-determination policy, rise in tribal lobbying (Carlson, 2019a, 2019b), infusion of resources to some tribes through economic development, and conventional wisdom that it is easier to defeat legislation than enact it suggest, as some federal Indian law scholars have predicted, that American Indians may be able to block federal legislation harmful to them (Wilkinson, 1987; Berger, 2004; Washburn, 2006, 781; Wilkinson, 2006, 267).

Studies on American Indian advocacy have found that American Indians use strategies, akin to interest groups, to influence federal (Gross 1989; Witmer and Boehmke 2007; Boehmke and Witmer, 2012; Carlson, 2019a, 2019b), state (Foxworth *et al.*, 2015; Boehmke and Witmer 2020), and local policymaking (Evans 2011). Witmer and Boehmke's modified theory of political incorporation suggests that American Indians, at least in part, employ interest group activities rather than the election or appointment of public officials to gain influence over federal policymaking (2007). At the federal level, studies have documented the multiple interest group strategies used by American Indians. Previous studies have shown increases in federal lobbying expenditures (Witmer and Boehmke, 2007; Carlson, 2019a, 2019b), reported lobbying (Carlson, 2019a, 2019b), and campaign contributions made to U.S. Senators by American Indians over time (Boehmke and Witmer, 2012). This study builds on these earlier ones by demonstrating how American Indians also use interest group strategies at the committee hearing stage to block federal legislation harmful to them.

Interest group influence is highly contextual, with interest groups enjoying more success in opposing than enacting legislation. Interest group studies show that it is easier to defeat legislation than enact it because to block a bill, groups only need to prevail at one stage in the legislative process (Schlozman and Tierney, 1986; Baumgartner *et al.*, 2009; Eskridge *et al.*, 2014, 2–14:50). Any one of the multiple hurdles in the multistage legislative process can derail a bill, so groups opposing a bill have many opportunities to thwart a bill's progress toward enactment (Baumgartner *et al.*, 2009; Eskridge *et al.*, 2014).

Studies show it is easier to defeat a bill earlier in the legislative process (King *et al.*, 2005; Baumgartner *et al.*, 2009). Due to the difficulties of gaining public and legislative attention, many issues die due to lack of interest before they reach the legislative agenda or active opposition forms (Baumgartner *et al.*, 2009, 75). Active opposition, or direct mobilization by advocates on the other side of the issue, may defeat a bill before it is ever introduced, but opponents may not mobilize at all if they think the bill is a nonstarter (Baumgartner *et al.*, 2009).

Active opposition to block a bill often forms after the bill garners public or legislative attention and may arise from interest groups and/or governmental decision-makers (Burstein & Hirsh 2007; Baumgartner, *et al.*, 2009, 80; Burstein, 2014). Opposition groups frequently build coalitions with one another or coalesce into sides (Baumgartner *et al.*, 2009, 61). They seek to block legislation by disseminating research, testifying before congressional committees, and contacting public officials (Baumgartner *et al.*, 2009, 152; Burstein, 2014). Political scientists have found that groups occasionally defeat a bill by influencing roll call voting (Santoro, 1999; Preuhs, 2007), but in general, studies indicate that groups exercise less influence during the later stages of the legislative process (King *et al.*, 2005; Baumgartner *et al.*, 2009). Active opposition seems to have the most influence in the less studied, crucial steps in between agenda-setting and roll call votes in the legislative process.

Opposition makes the enactment of a bill more difficult (Baumgartner *et al.*, 2009, 232). Interest group scholars agree that groups influence legislative decision-making by providing members of Congress with information (Berry, 1977; Wright, 1996; Burstein and Hirsh, 2007; Baumgartner *et al.*, 2009; Burstein, 2014). Committee hearings provide advocates with an opportunity to engage in targeted advocacy on specific, proposed laws, and advocates often use hearings to provide legislators with information (Burstein, 2014, 104). Information provided by opponents significantly reduces the likelihood of a policy's enactment (Burstein, 2014). Opposition testimony arguing that the policy will not have the intended consequences reduces the odds of enactment when compared to testimony that does not provide similar information (Burstein, 2014).

The conventional wisdom that it is easier to defeat a bill than enact it suggests that American Indians, like interest groups, will use opposition to block federal legislation harmful to them. This expectation is consistent with previous studies, which document the wide range of interest group strategies used by American Indians to influence federal policymaking (Gross, 1989; Witmer and Boehmke, 2007; Boehmke and Witmer, 2012; Carlson, 2019a, 2019b). It also suggests that opposition by American Indians to a bill will decrease its likelihood of enactment.

*Hypothesis 1:* American Indians will actively oppose bills at the committee hearing stage.

*Hypothesis 2:* Indian opposition to a bill should increase its likelihood of failure.

Scholars have also identified a few factors that may increase the likelihood that opposition will prevent legislative enactment. Some studies have shown that disadvantaged groups have blocked state legislation on issues that their communities uniformly oppose, such as English-only laws and certain welfare reforms (Santoro, 1999;

Preuhs, 2005, 2006, 2007). These studies suggest that strength of opposition may affect the ability of disadvantaged groups to derail legislation harmful to them but they have not tested that hypothesis. Other factors associated with the successful blocking of legislation include coalition building with other groups, especially Executive Branch officials (Baumgartner *et al.*, 2009, 232), and the appointment of members of the disadvantaged group to leadership positions in a legislative chamber (Preuhs, 2005). The success of other disadvantaged groups in blocking legislation through unified opposition suggests that the likelihood that a bill will fail should increase if American Indians unify in their opposition toward it.

*Hypothesis 3:* The likelihood that a bill will fail should increase if Indians are unified in their opposition toward it.

In addition to providing legislators with information about the negative consequences of the proposed bill (Baumgartner *et al.*, 2009; Burstein, 2014), opponents may also suggest changes to the bill and advocate for its amendment. A recent study documents that Indian advocates frequently seek modifications to bills in their congressional testimony (Carlson, 2021). It indicates that members of Congress often negotiate with Indian advocates over a bill's text. Because Congress may amend a bill in response to Indian opposition, it is more likely to enact bills that faced Indian opposition at the hearing stage if it has amended the bill in response to Indian opposition during the committee mark up.

*Hypothesis 4:* Congress is more likely to enact bills with Indian opposition if a committee amended the bill in response to Indian opposition.

### **American Indian Opposition at the Committee Hearing Stage: Hypothesis 1**

I use witness testimony on Indian related bills at congressional hearings to examine whether and how American Indians engaged in interest group strategies to oppose federal legislation. I use congressional hearings because they are early in the legislative process, when group influence is at its highest (King *et al.*, 2005), widely used by advocates to gain access to and influence lawmakers (Schlozman and Tierney, 1986, 295–6; Berry, 1999), provide advocates with an opportunity to engage in targeted advocacy on specific, proposed laws (Burstein, 2014, 104), and enable groups to shape legislation (Hero and Preuhs, 2009). Committee hearings also allow for investigation into how advocates provide members of Congress with information and how members of Congress respond to that information (Burstein and Hirsh, 2007). The committee hearing and mark up stages of the legislative process allow for analysis during the crucial yet understudied middle stages in the legislative process (King *et al.*, 2005).

The main drawback of using committee hearings is that the data may underrepresent opposition by American Indians. Testimony given at congressional hearings reflects only a small part of advocacy. Congressional committees do not hold hearings on most bills, including five-sixth of all bills introduced in Congress (Eskridge *et al.*, 2014, 25) and three-fourths of the bills in the dataset of all Indian related bills used in

this study. Advocates may block an idea before it is ever drafted into a bill, reaches the legislative agenda, or gets a committee hearing (Baumgartner *et al.*, 2009) but such opposition is not easily observable (Berry, 1999). My data may, at best, only represent a conservative estimate of American Indian efforts to block federal legislation.

I analyze testimony given by American Indians on Indian related bills, on which a congressional committee held a referral hearing in the 97th, 100th, 103th, 106th, and 109th Congresses, to determine American Indian opposition. To identify the testimony given by American Indians on specific Indian related bills, I searched a database of all Indian related legislation introduced in Congress from 1975 to 2012 for all bills in these five Congresses with a referral hearing held by any congressional committee, including committees that do not normally exercise jurisdiction over Indian affairs (Carlson, 2015). The database used defines Indian related bills to include any bill proposed in the House or the Senate, which includes reference to Indians, tribes, a specific Indian tribe, nation, pueblo, or organization, or Native Americans in the United States. It includes 7799 bills introduced in Congress from 1975 to 2012, with 2270 introduced in the five Congresses studied. These numbers, however, may underrepresent all federal legislation affecting American Indians as bills not explicitly mentioning Indians, tribes, or Native Americans may still impact them.<sup>2</sup> 558 of the 2270 Indian related bills in the Congresses studied had referral hearings. The referral hearings for 530 of these bills were located by bill number and title on Proquest Congressional.

The hearings were reviewed to determine whether any Indian witnesses testified. I defined an Indian witness as any witness explicitly identifying as an Indian, Alaska Native, or Native Hawaiian, or testifying on behalf of an Indian tribe, an Indian non-profit organization, a tribal consortium, a tribal business, and/or an Alaska Native for-profit or nonprofit corporation.<sup>3</sup> When a hearing included at least one Indian witness, I coded all the testimony in the hearing. If the hearing did not include any Indian witnesses, it was not coded because it did not include any Indian advocacy. Of the 530 bills, 266, or 50%, had hearings that included testimony from at least one Indian witness.<sup>4</sup>

I coded each legislative hearing with an Indian witness, including the oral statements, responses to questions, and written statements, by the witness's affiliation (e.g., tribe, tribal consortium, state, etc.); the witness's position on the bill (e.g., for, against, no position); and the committee holding the hearing (Burstein, 2014, 134–43). I aggregated the American Indian testimony on the bills into three categories: no opposition, when no Indian witnesses testified in opposition to the bill; unified opposition, when all the Indian witnesses on the bill testified against it at the hearing; and some opposition, when some Indian witnesses testified against the bill but others supported it. Each bill had been previously coded by bill number, Congress, title, date of introduction, bill progress, enactment, type of legislation, and subject matter (Carlson, 2015). I then compared the rate of American Indian opposition and arguments made by American Indian opponents to active opposition by interest groups in previous studies to see if American Indians act like interest groups.

Similar to interest groups, American Indians regularly testified against bills that they opposed, but testified more frequently in support of bills that they favored



**Table 2.** Witness affiliation by opposition to Indian related bills with Indian Testimony

	Indian witnesses	Non-Indian witnesses
No opposition	54.8% (146)	31.2% (83)
Some opposition	33.5% (89)	57.1% (152)
Unified opposition	11.7% (31)	11.7% (31)
<i>n</i> = 266		

Source: author's data.

(Baumgartner *et al.*, 2009; Burstein, 2014). Comparatively, tribal governments and organizations appear to oppose legislation less frequently than other groups. Previous studies have found active opposition on the majority of issues studied (Berry, 1999; Baumgartner *et al.*, 2009), but Indians only testified against 45% of the Indian related bills in the study. As Table 2 shows, non-Indian witnesses, in contrast, more closely resembled the findings in previous studies. In the aggregate, non-Indians testified against close to 70% of the Indian related bills with Indian testimony in the study.<sup>5</sup> This finding suggests that American Indians may testify against federal legislation less often than interest groups.

American Indians rarely unified in opposition to a bill with Indian advocates only testifying against 11.6% of the Indian related bills in the study. Unified opposition was also uncommon among non-Indians in the dataset. These low rates of unified opposition to a bill appear consistent with earlier studies finding that the majority of issues have at least two sides (Baumgartner *et al.*, 2009).

Similar to previous studies, I found that some issues generated more opposition than others (Baumgartner *et al.*, 2009; Burstein, 2014, 105). Indian advocates opposed bills covering a range of issues, including claims, health care, gaming, environmental regulation, education, culture, energy development, housing, hunting and fishing, lands, natural resources, taxation, transportation, and welfare. This finding is consistent with Boehmke and Witmer's recent study documenting the multiplicity of issues that American Indians lobby on in CA (2020). In this respect, American Indians resemble Latino and Black groups, which also testify on a range of issues, albeit not the same ones (Hero and Preuhs, 2009). American Indians, like other groups, also reacted more strongly to some issues than others (Hero and Preuhs, 2009; Wallace, 2014). The majority of Indian related bills, 61%, that Indian witnesses united in opposition against were more narrowly focused, dealing with either lands or natural resources.

American Indians made arguments similar to other opponents. As previous studies have shown, opponents attack the proposed law, claiming that the bill would be ineffective, cost too much, or lead to consequences unforeseen by its supporters (Burstein and Hirsh, 2007; Baumgartner *et al.*, 2009, 138; Burstein, 2014). Similarly, Indian advocates opposing a bill discredited the proponent's arguments, emphasized how these bills would violate existing federal laws and tribal rights, and raised fears about the bills' potential impacts on tribal communities. For example, Indian nations and organizations opposing the Steelhead Trout Protection Act

(S. 874, 97th Cong. 1981), which would have decriminalized steelhead trout, designated it as a national game fish, and made commercial interstate transportation of the fish illegal, testified that the bill would unilaterally abrogate their treaty rights to fish commercially even though the Supreme Court had repeatedly upheld these rights<sup>6</sup> and discredited the misleading statistics and arguments relied on by the state of WA and other supporters of the bill.<sup>7</sup>

### American Indian Opposition and Enactment: Hypotheses 2 & 3

I used Indian related bills with Indian testimony as the unit of analysis to test the hypotheses that the relative strength of Indian opposition (none, some, unified) affected a bill's enactment. I used a logistic regression model with the enactment of the bill as the dependent variable.<sup>8</sup> The independent variable in the analysis is the strength of Indian opposition to the bill based upon Indian testimony at the congressional hearing and statements made in the committee report about Indian positions on the bill.<sup>9</sup> I then used the logistic regression model to run predicted probabilities for the enactment of bills with no, some, and unified Indian opposition.

The results are mixed. The data provide support for only one of the hypotheses. As expected, Congress rarely enacted a bill over unified Indian opposition. As Table 3 shows, less than 1% of all Indian related bills with Indian testimony were enacted over unified Indian opposition. In four of the five Congresses studied, Congress never enacted a bill over unified Indian opposition (Appendix). The logistic regression model also lends some weak support for this hypothesis (Table 4). As expected

**Table 3.** Enactment rate of Indian related bills with Indian Testimony by Indian opposition

	Enacted	Not enacted
Bills with no opposition	14% (38)	86% (229)
Bills with some opposition	7.9% (21)	92.1% (245)
Bills with unified opposition	.08% (2)	99.2% (264)
<i>n</i> = 266		

*p* = .085 (Fisher's exact two-tailed test).

Source: author's data.

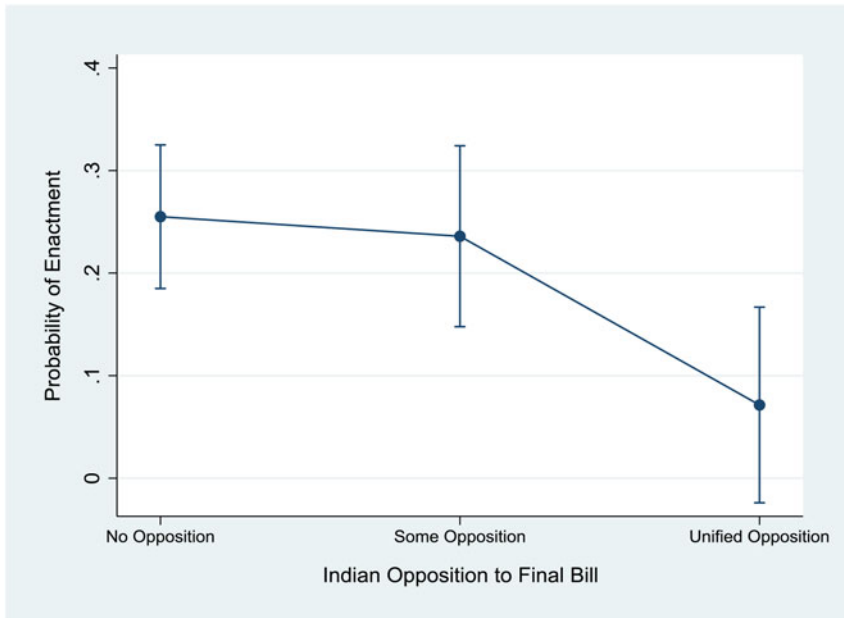
**Table 4.** Logistic regression analysis of whether Indian opposition at the referral hearing affects the enactment of 266 Indian related bills with Indian testimony

	Bill enactment
Unified Indian opposition	-1.49* (.75)
Some Indian opposition	-.103 (.31)
Number of cases	266

Note: Cell entries are logit coefficients (standard errors in parentheses).

\* indicates *p* < .05.

Source: author's data.



**Figure 1.** Nomogram of logistic regression analysis of whether Indian opposition affects bill enactment. *Source:* author's data.

and consistent with earlier studies (Burstein, 2014), Indian testimony against a bill decreased the likelihood of the bill's enactment. The coefficient for unified Indian opposition is negative, and statistically significant at the .05 level. This means that as Indian opposition for a bill increases, the likelihood of the bill's adoption may decline somewhat. The predicted probabilities generated from the logit model confirmed that unified Indian opposition decreased the likelihood of enactment when compared to no Indian opposition or some Indian opposition (Figure 1). Other things being equal, the likelihood of enactment of a bill without Indian opposition was 25.5% [18.5 to 32.5%]. That likelihood decreased to 7.1% [0 to 16.7%] when Indians unified in opposition to a bill. This finding extends earlier studies suggesting that interest groups may gain influence through mobilization to American Indians (Schneider & Ingram, 1993; Baumgartner *et al.*, 2009) and indicates that American Indians, like other disadvantaged groups, may be able to defeat legislation harmful to them when they unify in opposition to the policy (Santoro, 1999; Preuhs, 2007).

The data do not support the hypothesis that any Indian opposition makes it harder for Congress to enact Indian related legislation. Congress regularly enacted Indian related bills over some Indian opposition. Each Congress studied enacted at least one bill with Indians on both sides, both supporting and opposing the same bill. Congress enacted almost 8% of all Indian related bills with Indian testimony despite some Indian opposition (Table 3). In the logistic regression model, the coefficient for bills with some Indian opposition was negative but it was statistically indistinguishable from zero. This means that when there is some Indian opposition to a

bill but there is also Indian support for the bill, the likelihood of the bill's adoption stays constant at best and may in fact decrease only slightly. The predicted probabilities reiterate this finding. When some Indian witnesses opposed enactment of a bill, the likelihood of enactment decreased minimally, from 25.5% [18.5 to 32.5%] for bills with no Indian opposition to 23.5% [14.7 to 32.4%] for bills with some Indian opposition. As expected, the predicted probabilities show that unified Indian opposition decreases the likelihood of enactment more than some opposition does (Figure 1). These findings indicate that Congress does enact legislation over some Indian opposition, and that the likelihood of enactment increases when Indians do not unify in opposition to a bill.

### Indian Opposition and Amendments to Federal Legislation: Hypothesis 4

I used several measures to explore the relationships among Indian opposition, amendments, and bill enactment. First, to examine whether American Indians use opposition to influence legislation by encouraging members of Congress to amend the bill during the mark up stage of the legislative process, I reviewed congressional testimony at referral hearings, committee reports, and the texts of the 120 bills with Indian opposition at the referral hearing to determine whether Indian advocates sought amendments and whether the committee amended the bill in response to Indian opposition before reporting it out. Comparing the text of amendments proposed by American Indians in their testimony opposing a bill to the language adopted in the final bill provided a direct means of matching Indian opposition to policy outcomes (Burstein, 2014; McKay, 2018). If the committee made amendments to the bill that responded to the testimony of Indian opponents, the bill was coded as amended in response to Indian opposition. I compared how often American Indian opponents requested amendments with how frequently congressional committees adopted their proposed suggestions by amending the bill during mark up.

Second, to test the hypothesis that the amendment of the bill in response to Indian opposition increased the likelihood of the bill's enactment, I used a logistic regression model with the enactment of a bill with Indian opposition as the dependent variable. I shifted the unit of analysis from bills with Indian opposition at the hearing to bills with Indian opposition at the time of enactment for the regression model. This allowed me to exclude the three bills that had Indian opposition at the hearing stage but not after the committee mark up.

The primary independent variable in the regression analysis is an amendment of the bill in response to Indian opposition to the bill at the referral hearing. The model also includes several control variables. The type of bill is included to assess whether it is easier for Indian advocates to block legislation that targets them specifically rather than society more generally. Bill type is coded into three categories: (1) pan-tribal bills, which have an overriding purpose of developing federal Indian policy by addressing an issue faced by all Indian nations or Indians; (2) tribe specific bills, which address a specific issue for one or a few but not all tribes; and (3) general bills, which have a main substantive focus other than Indians (such as health, education, employment, etc.) but specifically include Indians (Wilkinson, 1987; Carlson,

2015). The expectation was that tribe specific bills were easier to defeat because they are narrower and less salient to the general public (Carlson, 2015). Party control of Congress may be related to the enactment of Indian-related legislation because Democrats are thought to be more supportive of Indian interests (Cornell and Kalt, 2010) and thus, less likely to enact bills over Indian opposition. Party in control identified the party in control of Congress, as unified Democrat control, unified Republican control, and divided control. Federal agency opposition examines whether, Indians, like interest groups, are more likely to succeed in blocking a bill when Executive Branch officials also oppose the bill (Baumgartner *et al.*, 2009). Non-Indian opposition assesses whether Indians are more likely to succeed in blocking a bill when they ally with non-Indians (Baumgartner *et al.*, 2009).

The results show that Indian opponents regularly attempt to influence legislation by advocating for amendments to bills they oppose at committee hearings, that Congress frequently amends bills in response to Indian opposition, and that Congress is more likely to enact bills with Indian opposition that have been amended in response to that opposition. Each of these findings merits more discussion.

As expected, Indian opponents frequently requested changes and/or proposed specific amendments as part of their advocacy strategy. Indian opponents sought amendments to 85% of the Indian related bills they opposed (Table 5). Sometimes Indian opponents' requests for amendments responded to members of Congress specifically asking witnesses for recommendations about how to improve the draft bill but the majority appeared to be unsolicited.<sup>10</sup> Indian opponents sought amendments both on bills that directly affected them and on general policy bills that did not target them. Recommended amendments included proposed increases to funding available to Indians for programs, refinements to existing or new programs to better serve Indians, deletions of sections of bills harmful to them, and improvements in the oversight and/or implementation of existing programs. For example, the National Indian Education Association (NIEA) requested several amendments in its testimony on the Improving America's School's Act of 1994. NIEA prepared a detailed list of requested changes, including, *inter alia*, needs-based budgeting for Bureau of Indian Affairs (BIA) schools, improved demographic data collection for BIA schools, enhanced programs to preserve Native languages, removal of the requirement that states' review local Indian Education Act grant applications, and reauthorization of Indian Education Technical Assistance Centers.<sup>11</sup> The NIEA's testimony demonstrates

**Table 5.** Actions taken on Indian related bills with Indian opposition during various stages of the legislative process

Action taken	Percent of bills
Bills on which Indian opponents sought amendment at hearing ( <i>n</i> = 120)	85% (102)
Bills Amended in Response to Indian opposition ( <i>n</i> = 102)	50% (51)
Bill Amended in Response to Indian opposition and enacted ( <i>n</i> = 51)	41% (21)

Source: author's data.

both the breadth of amendments requested by Indian opponents and how Indian opponents perceived opposition as a way to raise concerns about and influence the content of general legislation even when they were considered minor players in a bill's negotiations. It confirms the earlier finding that Indian opponents, like Blacks and Latinos, advocate on and seek to influence legislation governing a wide range of issues.

Previous studies have not looked at requests for amendments in witness testimony (Baumgartner *et al.*, 2009; Burstein, 2014), but the finding that American Indians frequently seek changes to bills is consistent with earlier research suggesting that advocates, including Black and Latino advocacy groups, use the hearing process to affect the substantive content of legislation (Schlozman and Tierney, 1986; Hero and Preuhs, 2009; Burstein, 2014). Moreover, this behavior was not unique to Indian opponents. Other witnesses, both for and against a bill, regularly suggested textual changes and even provided specific language to improve a bill before its enactment.

Comparing requests by Indian opponents for amendments to bills with Indian opposition amended by congressional committees at the mark up stage shows that Indian related bills were frequently amended to address the concerns of Indian opponents. As Table 5 shows, members of Congress amended half of the bills, on which Indian opponents proposed amendments.

Most of the time, Congress amended the bill in response to the Indian opposition but could not satisfy all the Indian opponents. In some cases, it may have been unlikely, or even impossible, for members of Congress to alter the bill to satisfy all Indian advocates. The Indian Tribal Economic Development and Contract Encouragement Act of 2000 illustrates how members of Congress responded when Indian advocates presented multiple arguments in opposition to a bill. Some Indian advocates objected to the bill because it required tribes either to waive their tribal sovereign immunity or inform businesses about tribal sovereign immunity before entering into contracts.<sup>12</sup> Other tribes wanted 25 U.S.C. § 81, requiring the Secretary of the Interior's approval of certain contracts with Indian tribes, repealed entirely.<sup>13</sup> Realizing that they could not please everyone, Congress amended the bill, but retained the provisions requiring either notification or waiver of tribal sovereign immunity (S. Rep. No. 106-150 1999). These amendments satisfied some but most likely not all Indian opponents. Ultimately, Congress enacted the bill over some Indian opposition, but it attempted to reduce Indian opposition first. This result—that the bill was amended to satisfy at least some Indian concerns and build consensus among Indian advocates for the bill—was by far the most common outcome to Indian opposition.

Occasionally, Congress amended the bill to satisfy fully the concerns raised by Indian opponents. But this was rare. Congress amended only three bills with unified Indian opposition to the complete satisfaction of the Indian opponents. The House Committee on Interior and Insular Affairs' amendment of H.R. 4926, which authorized the Secretary of the Army to acquire interests in mineral rights owned by the Osage Indians to complete the construction of Skiatook Lake, in response to the Osage Tribal Council's opposition to the bill in the 97th Congress is an example of members of Congress amending a bill to gain Indian support for it. The Osage Tribal Council opposed the bill because it did not clearly state what lands the

Tribe had to cede or the amount of compensation the U.S. Army Corps of Engineers had to pay the Tribe for the land to be ceded.<sup>14</sup> The House Committee amended the bill after the Tribe negotiated an agreement with the U.S. Army Corps of Engineers to resolve these issues, and the Osage Tribal Council passed a resolution agreeing to the amended bill. By the time, the committee reported out the bill, the Tribe no longer opposed it. The two other bills that Congress amended to satisfy Indian opposition were also bills targeting specific tribes. Congress enacted the bills after all the tribal governments impacted by the bill agreed to it. The amendment of these three bills to satisfy the Indian nations’ concerns suggests that these bills were not really enacted over Indian opposition. Rather, the amendment of each of these bills indicates how members of Congress respond to opposition by tribal governments when a bill targets their community.

The amendment of bills with Indian opposition was not limited to committees with jurisdiction over Indian affairs, certain types of bills (pan-tribal, tribe specific, or general), or the strength of opposition (some, unified). Chi-square tests showed no significant statistical differences in the amendment of bills with Indian opposition by committees with and without jurisdiction over Indian affairs, bill type, or strength of opposition. This finding suggests that members of varying committees amended bill texts to satisfy, at least in part, Indian opponents. Moreover, committees amended both bills that directly targeted Indians and general bills devising broader policies for the public as a whole when they were opposed by Indians. Indian influence, thus, may extend beyond the committees and issues normally associated with Indian affairs policy.

Congress frequently enacted Indian related bills with Indian opposition that were amended in response to Indian opposition. Congress amended the majority—81%—of the bills with Indian opposition that it enacted and did not

**Table 6.** Indian related bills with Indian testimony amended in response to Indian opposition by enactment and strength of opposition

	Unified opposition	Some opposition	All bills with opposition
<b>Not enacted</b>			
Amended in response to opposition	10	21	31
Not amended	15	47	62
<b>Total</b>	<b>25</b>	<b>68</b>	<b>93</b>
<b>Enacted</b>			
Amended in response to opposition	5	16	21
Not amended	0	5	5
<b>Total</b>	<b>5</b>	<b>21</b>	<b>26</b>

*n* = 119 (one bill with unified Indian opposition was not coded due to missing data). The difference in an amendment in response to opposition by the strength of opposition (none, some, unified) is not statistically significant. The difference in the enactment by the strength of opposition (none, some, unified) is not statistically significant. Source: author’s data.

enact any bill with unified Indian opposition without amending the bill first (Table 6). This high rate of amendment before enactment suggests that members of Congress tried to make the bill less objectionable to Indian opponents before moving forward on it. Table 7<sup>15</sup>

The regression analysis confirms that Congress is more likely to enact a bill that Indians oppose if the committee amends the bill in response to Indian opposition first. As expected, the amendment of a bill in response to Indian opposition increased the likelihood of the bill's enactment. The coefficient for amended in response to Indian opposition is positive, and statistically significant at the .00 level. This means that the amendment of the bill in response to Indian opposition increases the likelihood of the bill's adoption. The predicted probabilities generated from the logit model show that, other things being equal, the likelihood of enactment of a bill without amendment in response to Indian opposition was 7.8% [1.8–13.9%]. That likelihood increased dramatically to 39.6% [25.2–54%] when the committee amended the bill in response to the Indian opposition. The regression analysis and predicted probabilities, thus, reiterate the finding that Congress frequently responded to Indian opponents by amending bills with Indian opposition before enacting them Figure 2.

Contrary to my expectations, none of the control variables affected the likelihood of enactment for bills with Indian opposition. None of the measures of bill type, party in control, federal agency opposition, and non-Indian opposition was statistically significant. Most notably, it was not easier for Indian advocates to

**Table 7.** Logistic regression analysis of 117 Indian related bills with Indian opposition at enactment

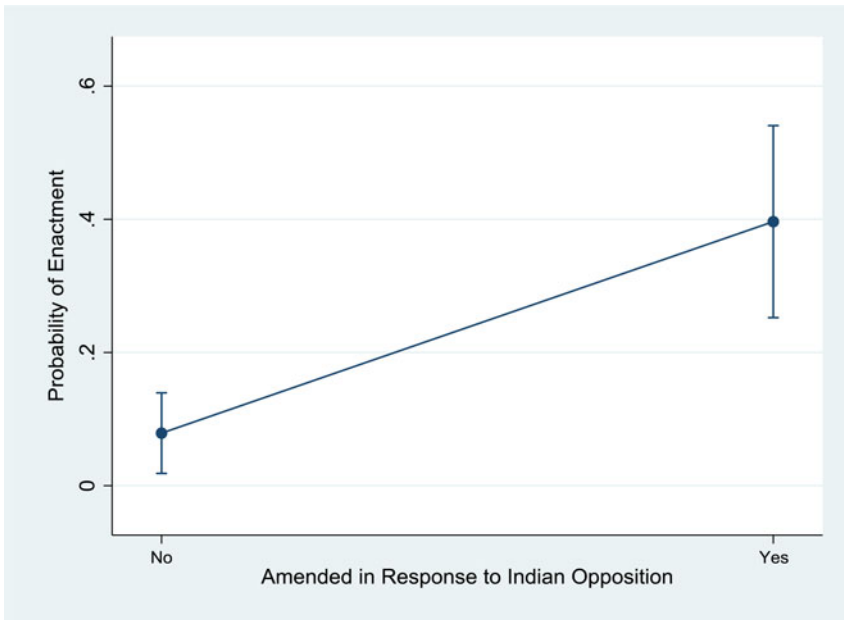
	Bill enactment
Amended in response to Indian opposition	2.19* (.62)
Type of bill	
Pan-tribal bill	-.899 (.645)
General bill	-.762 (.79)
Party in control	
Republican control	-.260 (.625)
Split	-.737 (.705)
Federal agency position	
Unified federal agency opposition	.701 (.76)
Some federal agency opposition	1.41 (.92)
Non-Indian opposition	
Unified non-Indian opposition	-1.537 (1.113)
Some non-Indian opposition	-1.422 (.837)
Number of cases	117

Note: Cell entries are logit coefficients (standard errors in parentheses).

\* $p < .00$ .

Source: author's data.





**Figure 2.** Nomogram of logistic regression analysis of whether the amendment in response to Indian opposition affects bill enactment.

Source: author's data.

block federal legislation by building alliances with federal agencies. This finding diverges from Baumgartner *et al.*, which found that interest groups were more likely to prevent challenges to the status quo when they gained the support of the Executive Branch (2009). In the logistic regression model, federal agency opposition to a bill with Indian opposition did not affect the likelihood of the bill's adoption. Moreover, if there were a statistically significant relationship between federal agency opposition to bills with Indian opposition, the coefficients in the logistic regression model indicate that it would be in the wrong direction. Rather than decreasing the likelihood of enactment of a bill with Indian opposition, federal agency opposition may, in fact, increase it slightly. The difference between my findings and earlier studies may be attributable to the divergence in interests among federal agencies, especially the BIA and Indian Health Service, and tribal governments during the time period studied. Previous studies on federal Indian law and policy have described considerable conflicts among tribal governments and federal agencies during the era of Tribal Self-Determination (McClellan, 1990; Johnson and Hamilton, 1995; Dean and Webster, 2000; Washburn, 2010; Carlson, 2016; Carlson, 2019a, 2019b). Under the Tribal Self-Determination Policy, Congress has recognized the authority of tribal governments and organizations to administer federal programs to their communities. Federal agencies have frequently resisted the passage and implementation of statutes furthering the Tribal Self-Determination Policy (McClellan, 1990; Johnson and Hamilton, 1995; Dean and Webster, 2000). These conflicts may contribute to my finding

that allying with federal agencies does not increase the likelihood that American Indians can block federal legislation harmful to them.

## Conclusion

The conventional wisdom of legislative and race and ethnicity scholars alike is that disadvantaged groups gain influence over federal policymaking through descriptive representation. The foregoing evidence points to another option: several different indicators show that American Indians have used interest group strategies to oppose federal legislation harmful to them. Despite a lack of descriptive representation, American Indians undermined the enactment of 99% of the federal bills related to Indians that they uniformly testified against in the five Congresses studied. But they did not just try to block legislation they opposed. In case they could not defeat the bill, American Indians sought to influence the legislative text of almost all—85% of—the Indian related bills they opposed by proposing amendments that would make the bill more acceptable to them. Surprisingly, Congress amended 50% of the bills that Indian opponents sought to change to satisfy at least some of the concerns Indians raised. Congress enacted very few bills with Indian opposition, but was much more likely to enact bills with Indian opposition if a committee had amended the bill in response to Indian opposition.

The results of this analysis have implications for the study of American Indian politics, information as a source of influence in the legislative process, and more broadly, understandings of race, ethnicity, and representation. First, my findings contribute to a growing literature on the use of interest group strategies by American Indians (Witmer and Boehmke, 2007; Boehmke and Witmer 2012; Carlson, 2016, 2019a, 2019b, 2021). They demonstrate how American Indians employ congressional testimony as well as lobbying and campaign contributions to influence federal policymaking. Like previous studies, this one shows how interest group theories may provide some insights into the political behavior of American Indians. It also recognizes the potential limits of interest group theories for American Indians and tribal governments by uncovering ways in which American Indian influence diverges from interest groups more generally. For example, the unique government-to-government relationship between tribal governments and federal agencies may explain why allying with the Executive Branch does not increase the likelihood that a bill that Indians oppose will not be enacted.

Moreover, the results suggest one way that American Indians may use interest group strategies, in this case, opposition to federal legislation at the committee hearing stage, to influence federal lawmaking. Like other groups, American Indians sought to block legislation harmful to them. But they also engaged in a more nuanced and incremental strategy by proposing amendments that would make the legislation more acceptable to them. This strategy was not only largely effective, but seems consistent with Evans' finding that tribal governments have successfully shifted federal laws and programs over time through subtle, persistent, and often incremental strategies (2011).

This study has left open many important questions about how American Indians gain representation and influence in federal policymaking. For example, it has not

considered the ability of American Indians to influence the legislative process through the initiation of and advocacy for legislation beneficial to them. The finding, however, that some opposition may not significantly decrease the likelihood of bill enactment may indicate that American Indian support matters more to members of Congress than American Indian opposition. It may lend support to Burstein's finding that arguments made in favor of a bill during congressional hearings may affect enactment (2014). Future research should investigate the conditions, if any, under which American Indians can influence federal legislation that they initiate and support.

Another significant question for understanding American Indian representation is whose interests the results reflect. Since the data aggregate tribal governments and American Indian organizations, this study does not address which tribes and organizations are opposing federal legislation or how successfully they are doing so. Previous studies have suggested that non-federally recognized Indian groups differ in the strategies they use seeking federal recognition (Carlson, 2016, 2017). Similar differences exist among tribal governments and American Indian organizations. For example, the Navajo Nation maintains a tribal embassy in Washington, D.C. (<https://www.nnwo.org>), while most other tribal governments do not. Tribal governments and American Indian organizations may also vary in how successful they are at influencing federal policymaking. Future studies should explore the differences that may exist among tribal governments and organizations in their advocacy efforts.

Second, my findings provide new insights into the role of information as a source of influence in the federal legislative process. Legislative scholars have long hypothesized that advocates influence legislators by providing them with information (Berry, 1977; Wright, 1996; Burstein, 2014), but scholars have struggled to figure out precisely how information influences legislators. My findings reiterate the centrality of information to influence in the legislative process. They expand on Burstein's finding that advocacy against a policy decreases the likelihood of bill enactment (2014) by suggesting that requests for amendments may also provide legislators with important information that influences their decisionmaking on a bill. American Indians sought to influence legislation they opposed by proposing amendments that would make the bill more acceptable to them. More often than not Congress amended the bill to satisfy at least some of the Indian concerns prior to enacting it. My findings confirm that arguments provided at the hearing stage may influence a bill's markup and ultimate enactment. Designs like this one that allow for direct comparison of a group's attempts to influence and evidence of that influence in enacted laws are likely to reveal the mechanisms by which advocates use information and arguments to influence legislative texts (Burstein, 2014; McKay, 2018). Additional research should continue to explore ways to examine texts, including amendments, as a way of assessing how interest groups use the information to influence federal lawmaking.

Finally, my finding that American Indians employ interest group strategies to block federal legislation illustrates the broader potential value of examining American Indian political activities through the lens of interest group theories. It may suggest that disadvantaged groups may not have to rely exclusively on descriptive representation to exert influence over democratic institutions. Scholars continue to debate how descriptive representation relates to substantive representation and policy outcomes (Owens, 2005; Preuhs, 2005; Preuhs, 2007; Minta, 2009; Wallace, 2014).

Could scholars have overstated the potential role of descriptive representation and overlooked ways that disadvantaged groups may influence policy outcomes? Can other disadvantaged groups use interest group strategies to block legislation harmful to them? Or is there something unique about American Indians as separate sovereigns with a distinct legal relationship with the U.S. government? Research along these lines could supplement existing research into legislative advocacy by disadvantaged groups (Perry, 1984; Pinderhughes, 1995; Strolovitch, 2007; Hero and Preuhs, 2009) and investigate how disadvantaged groups can use interest group strategies to augment their influence in areas over which Black and Latino legislators are already affecting policy development and outcomes (Preuhs, 2005, 2006, 2007; Minta, 2009). In light of the importance of representation to democracy, future studies along these or other lines may be able to provide political scientists and advocates with more complete pictures of advocacy and representation in legislative institutions – not just for American Indians and other disadvantaged groups, but for all U.S. citizens.

**Financial support.** I wish to acknowledge the support of the National Science Foundation, No. SES 1353255.

## Notes

**1** I use American Indian broadly throughout the article to include American Indians, Alaska Natives, and Native Hawaiians. The data include each of these groups, but the majority of the witnesses represented American Indian nations or organizations.

**2** In comparison, the Indigenous Affairs subcategory of the Comparative Bills Project database is much more limited with only 2909 bills for the same time period.

**3** Representatives of state, local, or federal agencies (e.g., the Bureau of Indian Affairs) were not counted as Indian witnesses even if the witness identified as Indian and spoke to the Indian issues in the bill because the witness was not representing Indians. For similar reasons, I also excluded friends of the Indians, e.g., non-profits that seek to assist Indians but are not made up of Indians such as the Friends Committee on National Legislation.

**4** Of the 266 Indian related bills with Indian testimony, 263 also had non-Indian witnesses.

**5** My findings may underestimate the amount of non-Indian opposition to Indian related bills because I did not code bills without Indian testimony.

**6** Hearing before the S. Comm. on Indian Affairs on S. 874, Part II, 97th Cong. (September 28, 1981); Hearing before the Senate Committee on Indian Affairs on S. 874, Part I, 97th Cong. (June 29, 1981).

**7** Hearing before the S. Comm. on Indian Affairs on S. 874, Part II, 97th Cong. (September 28, 1981); Hearing before the S. Comm. on Indian Affairs on S. 874, Part I, 97th Cong. 66 (June 29, 1981).

**8** I ran the logistic regression model on Indian related bills with Indian testimony rather than all bills with hearings in the dataset. I only coded the bills with Indian testimony because I wanted to determine and compare the relative strength of Indian opposition. The inclusion of all bills with hearings in the regression model would have not added any information on Indian (or any other) opposition. I could not find a way to measure opposition outside of the hearing stage in a consistent manner across all the bills in the dataset.

**9** Indian witnesses changed their positions from unified opposition to no opposition on three bills during the committee markup. These changes in Indian positions were clearly recorded in the committee report on the bill. The Indian witnesses changed their positions because Congress amended the bill to satisfy their concerns with the draft presented in the hearing. These bills were recoded to reflect the change because by the time of enactment, the Indian witnesses no longer opposed the bill. This decreased the number of bills with opposition from 120 bills with opposition at the hearing stage to 117 bills with opposition after the committee mark up stage.

**10** See, e.g., Hearing before the S. Comm. on Indian Affairs on S. 1587, 106th Cong. (September 22, 1999); Hearing before the S. Comm. on Indian Affairs on S. 2052, 106th Cong. (September 27, 2000).

**11** Hearing before the Senate Committee on Indian Affairs on S. 1513, 103 Cong. (May 4, 1994).

- 12 Hearing before the Senate Committee on Indian Affairs on S. 613, 106th Cong. 23-25 (May 19, 1999) (testimony of David Tovey, Executive Director, Confederated Tribes of the Umatilla Indian Reservation).
- 13 Hearing before the Senate Committee on Indian Affairs on S. 613, 106th Cong. 7 (May 19, 1999) (testimony of Harold D. Salway, President, Oglala Sioux Tribe).
- 14 Hearing Before the H. Comm. on Interior and Insular Affairs on H.R. 4926, 97th Cong. 17 (December 1, 1981) (Testimony of Ralph Adkisson, Attorney, Osage Tribal Council); William J. Broad, *Despite Feds, a Tribe Keeps Its Oil Flowing*, Washington Post (June 8, 1980).
- 15 Several of the bills that Congress amended but did not enact were enacted later.

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## Appendix

**Table A1.** Enactment rate by Indian related bills

	Enacted	Not enacted	Total
Bills without hearings	10.1% (164)	89.9% (1459)	100% (1623)
Bills with hearings <sup>a</sup>	19.4% (108)	80.6% (450)	100% (558)
Bills with Indian witnesses at hearing <sup>b</sup>	22.6% (60)	77.4% (206)	100% (266)

<sup>a</sup>Difference in enactment between bills with hearings and bills without hearings is statistically significant at  $p > .01$ .

<sup>b</sup>Difference in enactment between bills with Indian witnesses at the hearing and bills without Indian witnesses at the hearing is statistically significant at  $p < .01$ .

Source: author's data.

**Table A2.** Testimony of Indian witnesses on Indian related bills by enactment and congress

	No Indian opposition		Some Indian opposition		United Indian opposition		Total	
	Enacted	All	Enacted	All	Enacted	All	Enacted	All
97 <sup>th</sup>	16% (8)	52% (26)	16% (5)	34% (17)	0	14% (7)	26% (13)	100% (50)
100 <sup>th</sup>	13% (7)	46% (24)	12% (6)	46% (24)	0	8% (4)	25% (13)	100% (52)
103 <sup>rd</sup>	15% (10)	57% (39)	9% (6)	34% (23)	0	9% (6)	24% (16)	100% (68)
106 <sup>th</sup>	17% (10)	60% (36)	5% (3)	28% (17)	3% (2)	12% (7)	25% (15)	100% (60)
109 <sup>th</sup>	8% (3)	67% (24)	3% (1)	22% (8)	0	11% (4)	11% (4)	100% (36)
Combined	14% (38)	56% (149)	8% (21)	25% (68)	1% (2)	11% (28)	23% (61)	100% (266)

Source: author's data.



**Table A3.** Amendment in response to Indian opposition by bill type

	Amended	Not amended
Tribe specific bills ( <i>n</i> = 40)	30% (12)	70% (28)
Pan-tribal bills ( <i>n</i> = 56)	50% (28)	50% (28)
General bills ( <i>n</i> = 23)	48% (11)	52% (12)
Total ( <i>n</i> = 119 <sup>a</sup> )	43% (51)	57% (68)

Source: author's data.

<sup>a</sup>one bill with unified Indian opposition was not coded due to missing data.  
*p* = .129.

**Table A4.** Amendment in response to Indian opposition by committee

	Amended	Not amended
Committees with primary jurisdiction over Indian affairs ( <i>n</i> = 90)	44% (40)	56% (50)
Committees without primary jurisdiction over Indian affairs ( <i>n</i> = 29)	38% (11)	62% (18)
Total ( <i>n</i> = 119 <sup>a</sup> )	43% (51)	57% (68)

The Senate Committee on Indian Affairs and the House Committee on Natural Resources were coded as committees with primary jurisdiction over Indian affairs.

Source: author's data.

<sup>a</sup>one bill with unified Indian opposition was not coded due to missing data.  
*p* = .538.

**Table A5.** Amendment in response to Indian opposition by the strength of opposition

	Amended	Not amended
Some opposition ( <i>n</i> = 89)	40% (36)	60% (53)
Unified opposition ( <i>n</i> = 30)	50% (15)	50% (15)
Total ( <i>n</i> = 119*)	43% (51)	57% (68)

Source: author's data.

<sup>a</sup>one bill with unified Indian opposition was not coded due to missing data.  
*p* = .361.

**Cite this article:** Carlson KM (2022). Beyond descriptive representation: American Indian opposition to federal legislation. *The Journal of Race, Ethnicity, and Politics* 7, 65–89. <https://doi.org/10.1017/rep.2021.38>