

1 Not only -- we not only are able to elect Indian people, but we
2 were able to elect non-Indian people of our choice.

3 Q All right.

4 In 1991, did you know it was 1.3 percent Indians in the
5 legislature?

6 A (Nods head affirmatively.)

7 That was the awakening. That was the awakening. From
8 then backwards is the awakening that we were losing; that we
9 were not getting represented; that we were not able to do
10 anything. A lot of -- this is about the time when the federal
11 government said that anything -- any federal programs that was
12 allotted to the Indian people had to go through state. Before
13 then, it was federal government and the Indian tribes. And
14 Congress made a change and said we had -- it had to be routed
15 through the state, and we were having problems there. Each
16 time these funds change from a government entity to another,
17 they take some of that money to organize the offices. I guess
18 there's a name for that, I forgot. But by the time it gets to
19 the tribe, it's very little.

20 So this is when we decided -- I said: "Let's get in
21 there. Get our people in there. Choose the people that can
22 help us if they're not Indians." And we've been able to do
23 that.

24 Q In 1989, did you know .6 percent of the legislature, the
25 state house and senate, was Indian?

1 MS. FRANKENSTEIN: Your Honor, I'd object to
2 relevancy grounds. To continue to go back farther and farther
3 in time.

4 THE COURT: Yeah. How far are we going?

5 MR. SANDVEN: That's the last year.

6 THE COURT: Okay. Then it's overruled.

7 A There's a time that I left the reservation for employment,
8 so back from there, I wasn't there. I was in California.

9 Q (BY MR. SANDVEN) Indians don't always vote for Democrats
10 in this state; do they?

11 A You know, it's kind of funny. But my uncle, Robby
12 Yellowtail, for a long time was the only Republican in the Crow
13 Tribe. And when we elected one of the governors, we converted
14 him to Democrat.

15 Q Yeah.

16 Did you look at the list of plaintiffs in this lawsuit?
17 They're Indian; did you know that?

18 A Yes.

19 Q Tribal leaders?

20 A Yes.

21 Q Six of them?

22 A I know some of them. I know some of them.

23 Q All right.

24 And they're suing the Secretary of State, and she's a
25 Democrat.

- 1 Did you know that?
- 2 A Yes. Uh-huh.
- 3 They're also suing me. I'm a Democrat, too.
- 4 Q So they're not necessarily bound to one party here in this
- 5 state; are they?
- 6 A No. No. No man is bound.
- 7 Q Indians will vote for Republicans or Democrats?
- 8 A No man is bound. They go by a party.
- 9 Q They go by what?
- 10 A A party. Democrat, Republican. We even got Tea Party
- 11 people in the tribe now.
- 12 Q Right.
- 13 But Indians don't always vote for the Democratic
- 14 candidates that you just described; do they?
- 15 A No. No. I cannot speak for other tribes. I'm a Crow. I
- 16 live on the Crow Reservation. My county is Big Horn County.
- 17 I'm a commissioner in Big Horn County. I don't know what other
- 18 tribes do, what their -- I meet a lot of people in MACO. I
- 19 know a lot of people. Those people that sat here, I know every
- 20 one of them. I've worked with them in MACO conferences. I've
- 21 been to legislative sessions in Helena with them. And we all
- 22 fight for the same cause: Help the people in our counties.
- 23 Q You talked a little earlier about the special relationship
- 24 between the United States government and Indian tribes. I
- 25 thought I heard you use the word "trust relationship"; is that

1 and register four, five, six months before an election comes.
2 We've even had that lady back there, the white-haired lady, I
3 forgot her name, she came to Crow Fair and helped register Crow
4 tribal members, when she lives in Fort Belknap. This is what
5 the Indians are doing to get the vote out. And the door was
6 opened in the Windy Boy versus State of Montana, when she won
7 that case. And we just need to take advantage of it. The
8 tribes need to take advantage of it. Like we are doing.

9 Q (BY MR. SANDVEN) So when you testified earlier, you went
10 ahead and talked about which candidates you thought, from your
11 perspective, that the Indians liked?

12 A Uh-huh. And once they take the time to come to the
13 reservation during celebrations, gatherings, that come to our
14 tribe, and we listen to them.

15 Obama was the first President to ever come to the Crow
16 Reservation and campaign. That was history. So he got the
17 votes. It's how they approach us, and what they tell us and
18 what they promise. The word of that man is what we listen to,
19 and that's how we choose.

20 Q All right.

21 So the first thing, I think I understand what you're
22 saying, is that this is a preferred candidate, or we're
23 electing people of our choice, if you come and visit our
24 reservation. That's one thing.

25 What's another thing?

1 A The other thing is we have taken the right to choose and
2 vote for whoever we want. And I think if a man comes to you
3 and campaigns to you, you listen to him, and you'll decide that
4 here is a man I need to look at. That's your choice. So we
5 practice our choice and our rights.

6 Q But when you talked about earlier that the senators that
7 were elected, I thought I heard you say that? Okay. So they
8 came to your reservation?

9 A Came --

10 Q What else makes you think that they're people that Natives
11 elected?

12 A The Crows elected. I'm saying I don't speak for the other
13 tribes. I respect them. I respect them. I cannot put words
14 into their mouth. I speak for the Crow Tribe, I speak for the
15 Big Horn County, the things that's going on that's working from
16 a case that opened the doors for us.

17 Q All right.
18 I still don't understand how you pick -- how you decided
19 that this is an Indian-friendly candidate, or you liked this
20 person besides -- I've only heard one thing that I understand:
21 That they come to the reservation?

22 A Yes.

23 I'm sure they go to other reservations.

24 Q What other variable are you utilizing to go ahead and make
25 your determining or support your testimony earlier, that all

1 these folks you named are Indian -- are the choice of Indians?

2 THE COURT: Well, I don't think that's what he said.

3 He said that -- that the Native Americans now, since that Windy

4 Boy case, in particular, but I suppose even before, more so

5 locally, but the Native Americans, at least as far as he's

6 concerned, have been able to elect candidates of their choice.

7 THE WITNESS: That was our choice. We listen. We

8 heard. And we evaluated it. And we said: "I think this is

9 the man that we should go for."

10 And in campaigning for him within our tribes, there are

11 other tribes that follow suit. And we meet them in gatherings,

12 anywhere, tribal chairman's association, we go there, we

13 present our spiel for a candidate: This is the one we want.

14 Maybe they wanted -- I know at times, they voted for other

15 people. But that is their right. We're talking about the

16 right of Indian votes.

17 Q (BY MR. SANDVEN) I understand.

18 A We are stating my right to how I feel I should vote and

19 who I should vote for. That's the right you're trying to

20 establish here. I already have that right. Our tribe already

21 has that right. We have an open-door office to the Crow Tribe,

22 any time they want something, they can come. Come into my

23 office, and they have an Indian environment there. If they

24 want something, they make a request. They come with a plan.

25 They come with documents, unlike your man. He came in and

1 said: "I want to do this. I want this. I want this. Or I'll
2 sue."

3 To this day, I haven't seen a plan or a document from him.

4 Q Still don't understand the variables on how you go ahead
5 and determine what a preferred candidate is.

6 A Do you have a candidate?

7 THE COURT: I'm telling you that the variables of why
8 a particular voters votes the way he does, is irrelevant.

9 THE WITNESS: It's our right.

10 Q (BY MR. SANDVEN) And this whole line is irrelevant,
11 Judge. If you look at Thornburg --

12 THE COURT: No. It isn't irrelevant. I'm still at a
13 loss as to how you say that this is a Section A and not -- or
14 Section 2(a), rather than a 2(b) case. I'm assuming that you
15 are referring to the Voter Rights Act, that is Section 2 of
16 that act, which is 42 U.S.C. Section 1973; correct?

17 MR. SANDVEN: No. That's only part of it.

18 THE COURT: What 2(a), then, are you talking about
19 which is 2(b)?

20 MR. SANDVEN: That 2(a) in the act, I am referring
21 to.

22 THE COURT: Okay. Well, under Section 2(a) of the
23 Voting Rights Act, it provides: "(a) no voting qualification
24 or prerequisite to voting or standard practice or procedure
25 shall be imposed or applied by any state or political

1 subdivision in a manner which results in a denial or
2 abridgement of the right of any citizen of the United States to
3 vote on account of race or color or in contravention of the
4 guarantees set forth in Section 1973(b)(F)(2) of this Title, as
5 provided in Subsection (b) of this section."

6 Then Subsection (b) says: "A violation of Subsection (a)
7 of this section is established if, based on the totality of the
8 circumstances, it is shown that the political processes leading
9 to nomination or election in the state or political
10 subdivision, are not equally open to participation by members
11 of a class of citizens protected by Subsection (a) of this
12 section, in that members have less opportunity than other
13 members of the electorate to participate in the political
14 process and to elect representatives of their choice. The
15 extent to which members of a protected class have been elected
16 to office in the state or political subdivision is one
17 circumstance which may be considered, provided that nothing in
18 this section establishes a right to have members of a protected
19 class elected in numbers equal to their proportion in the
20 population."

21 B -- Subsection 2(b) is simply how a violation of
22 Subsection (a) occurs.

23 So when you say that this is a Subsection (b) as opposed
24 to (a) or a Subsection 2(a) as opposed to (b), I have no idea
25 what you're talking about.

1 THE WITNESS: Your Honor, he wants to know why we
2 make these choices. Why do you make your choices when you go
3 to the ballots?

4 THE COURT: Well, I've already ruled that that's
5 nobody's business in this courtroom why you vote the way you
6 do, or anybody else.

7 THE WITNESS: Now, a week from Saturday is election
8 time. I've got an Election Administrator that needs to do a
9 lot of work. So does Sandy Boardman. We're here arguing over
10 something that was established way back when Windy Boy sued the
11 State of Montana. And if you take that and process it and use
12 it, these tribes can use that.

13 And I was surprised to hear that the Blackfeet are the
14 poorest human beings on Earth.

15 THE COURT: We don't want -- let's not get into this.

16 THE WITNESS: Yes. It surprises me.

17 THE COURT: Let's not get into it.

18 THE WITNESS: I love Blackfeet. They're proud
19 people.

20 THE COURT: Right.

21 THE WITNESS: So, are we going to stay here and argue
22 over this?

23 THE COURT: No. We're --

24 THE WITNESS: We got work to do.

25 THE COURT: I know you do. Let's get on with it.

1 DIRECT EXAMINATION

2 BY MS. FRANKENSTEIN:

3 Q Geraldine, what's your position?

4 A I'm the Rosebud County Clerk and Recorder and Election
5 Administrator.

6 Q How long have you held those positions?

7 A This is my 34th year.

8 Q Are you familiar with elections in Rosebud County?

9 A Yes.

10 Q Are Native Americans in Rosebud County able to elect their
11 candidates of choice?

12 A I feel they are.

13 Q Tell us about your three county commission districts. Do
14 you have a majority Indian district in Rosebud County?15 A Yes. We have our District Number 3 is majority Indian
16 district.

17 Q And who's the current commissioner in that district?

18 A My current commissioner, his name is Daniel Sioux, and he
19 was elected in 2006.

20 Q Is Mr. Sioux a Native American man?

21 A Yes, he is. I believe he's a member of the Northern
22 Cheyenne Tribe.23 Q Which state legislative representatives are Native
24 Americans that encompass some part of Rosebud County?

25 A Yeah. Our county is split into three senate and three

1 house districts. And the lower part of our county, or the
2 southern part, is -- the district is Northern Cheyenne, and
3 with the Crow -- the Crow Tribe. And so my representative from
4 there is a Native American. And his name is Sterling Small.
5 And before him, we had Norma Bigsby, which was also a Native
6 American woman, which was really nice. She was elected before
7 him, so she held the office probably till she was termed out.
8 And then he's been in for two years and he's running again.
9 And then he also has an opponent that's a Native American
10 woman.

11 So for sure, another Native American will represent our
12 lower part of our county in the house district.

13 And the Senator is Sharon Peregoy, I don't know if I said
14 that right. And before that, there was another Native American
15 that was a senator also that represented the lower part of our
16 county.

17 Q Of those three state legislative districts, are they
18 majority Indian?

19 A The southern district is majority Indian.

20 Q How about as far as senate races, do you believe Native
21 Americans in Rosebud County are able to elect their U.S.
22 Senator?

23 A The U.S. Senator Tester and Baucus, from my results that I
24 had to produce for the plaintiffs, the canvass sheet, if they
25 would look at those, they could tell that in my Native -- my

1 entire Native American precinct of Number 15, Lame Deer, they
2 can see that they always pretty much go for the Democratic
3 candidates, and so Tester and Baucus should love Precinct 15 in
4 our county, because they get a lot of votes. So should
5 Governor Schweitzer, Superintendent Juneau, Auditor Lynn --
6 Monica Lindeen, Steve Bullock, the current Attorney General.
7 All of those people were elected very nicely in that precinct.

8 Q All right.

9 Are you indicating that of the precincts that are within
10 the Northern Cheyenne Reservation portion of your county, that
11 a majority of those Native Americans vote for those Democratic
12 candidates, which did, in fact, obtain office?

13 A Yes. And even for the county offices in our county, we
14 have 11 elected offices, and all the officers except for four
15 are Democrat.

16 Q How about the President?

17 A And the President, they definitely went majority for him.

18 Q Based on your knowledge and experience in reviewing the
19 election returns, are Rosebud County Native Americans able to
20 elect candidates of their choice?

21 A I feel they are, because like I say, we have a
22 commissioner. And he's the first time -- he's the first Native
23 American that ever ran as commissioner, and he did get elected,
24 so, you know, that shows, too.

25 Q Thank you.

1 Q Have you ever talked to anybody and find out why?

2 A I think they're not excited about the candidates, because
3 when we do get a candidate, like when we had Danny Sioux
4 running, or if it's the presidential, when they are excited for
5 something, then we have a better turnout. But when it's the
6 off-year election, if it's not somebody they're excited about,
7 not a turnout. But if it's somebody they like, and we get a
8 better turnout on presidential years, when there's also a
9 tribal election at the same time, there's no excitement in
10 town, it's more like -- it's a party-like atmosphere, there's
11 the feed, there's people going through the town yelling out to
12 get out and vote. I mean, people know it's election day. And
13 it's fun. And It's -- you know, it's a social thing. So, if
14 there's something to go vote for that they're excited about,
15 they'll turn out. But otherwise, not so much.

16 Q All right.

17 So they were excited about Danny Sioux. What are the
18 factors behind that statement?

19 A I would say they were excited, because he was the first
20 Native American that ever sought public office on the local
21 level.

22 Q But he's getting outvoted on the voting rights issue on
23 this satellite location here?

24 A That's how the county commission works. It's majority
25 rules, and there's three of them, and they each represent a

1 different district. And that's how it works. Sometimes he
2 doesn't get outvoted. I mean, it just depends on what the
3 issue is.

4 Q But when it came to putting a voting location on the
5 reservation, Danny Sioux was outvoted?

6 MS. FRANKENSTEIN: Objection.

7 Asked and answered.

8 THE COURT: Yeah. It's sustained. It's asked and
9 answered.

10 MR. SANDVEN: No further questions, Judge.

11 MS. FRANKENSTEIN: Your Honor, at this time, I'd like
12 to make my motion to dismiss.

13 THE COURT: Well, it's going to take some time. I'm
14 going to have to hear arguments from both, and I'm not going to
15 get it done before five o'clock, I don't think. Do you?

16 MS. FRANKENSTEIN: Well, I'm just moving to dismiss
17 on the second requirement of the Voting Rights Act, minority
18 class members' inability to elect representatives of their
19 choice. That's the second prong. And my argument's fairly
20 short, because I think it's evident based on the last --

21 THE COURT: And you're moving to dismiss what?

22 MS. FRANKENSTEIN: The Voting Rights Act claim for
23 failure to prove that second requirement. We haven't seen any
24 evidence to the contrary that Native Americans in the three
25 counties sued have been unable to elect the candidates of their

1 choice.

2 THE COURT: Okay.

3 Now I understand what you're moving for.

4 MS. FRANKENSTEIN: And I can certainly give you more
5 argument, but I think the court's well-versed on Section 2 of
6 the Voting Rights Act and recognizes that second requirement.

7 MR. QUINTANA: And Your Honor, state defendants would
8 join in that motion.

9 THE COURT: All right.

10 Mr. Sandven, you can respond.

11 Oh, you can step down.

12 (Witness excused from the witness stand.)

13 MR. SANDVEN: Your Honor knows the test for
14 preliminary injunction in this circuit very well.

15 Getting to those elements: We're dealing with one element
16 on the likelihood of success. I think, what was raised.

17 There's a disproportionate education, employment, income
18 level, and living conditions that tend to depress minority
19 political participation.

20 In other words, Your Honor, distance plus poverty equals
21 unequal access.

22 You're hearing -- this is from tribal members from their
23 tribal nation that you've heard testify. You've heard about
24 the prerequisite under 2(a) of excessive driving distances
25 abridges their right to vote.

1 Are we, number one, likely to go ahead and succeed on our
2 claim? Section 2 of the Voting Rights Act, 42 U.S.C. Section
3 1973, prohibits voting practices and procedures that result in
4 discrimination on the basis of race, color, or membership in a
5 language-minority group. See 42 U.S.C. Section 1973(a). It
6 prohibits, for example, unequal vote -- unequal access to voter
7 registration sites. See Operation PUSH v. Allain, 674 F. Supp.
8 1245, Spirit Lake Tribe versus Benson County, 2010, W.L.
9 4226614, Brown versus Dean, 555 F. Supp. 502, Jacksonville
10 Coalition for Voter Protection v. Hood, 351 F. Supp. 2d 1326,
11 Brown v. Post, 279 F. Supp. 60.

12 You've got the Wyoming expert report where I think I heard
13 even the court say that it's undisputed some of these travel
14 distances that are attached to the U.S. Attorney General's
15 brief, Document Number 45. It shows that there is unequal
16 access. The travel is much farther for the plaintiffs. And in
17 the report, the Big Horn disparity was 189 percent. The
18 disparity in Blaine County was 322 percent. The Rosebud County
19 disparity was 267 percent. They were higher poverty rates in
20 all 300 counties, 400 percent higher.

21 There was a -- in the U.S. Attorney General's brief, he
22 talked about the court taking judicial notice on the history of
23 discrimination. They went ahead and talked about U.S. v.
24 Blaine County, Old Person v. Cooney, Windy Boy v. Big Horn
25 County. And all the cites are in their brief, Document 45.

1 Difference on causation: There's an argument that
2 plaintiffs must demonstrate that the lack of driving and
3 poverty causes lack of voting. The 1982 Senate Report that
4 lays out the totality of circumstances test for Section 2
5 Voting Rights Act states as follows: "Disproportionate
6 educational, employment, income level, and living conditions
7 rising from past discrimination tend to depress minority
8 political participation."

9 I don't know how there can be clearer examples of that
10 with the plaintiffs and their affidavits and everything in the
11 record here.

12 Where these conditions are shown, citing Senate Report
13 Number 97 dash 417, 97th Congress, 2nd session, 1982 at 29,
14 Note 114, it states that "where the levels of black
15 participation in politics is depressed, plaintiffs need not
16 prove any further causal nexus between their disparate
17 socioeconomic status and the depressed level of political
18 participation."

19 The totality of circumstances test is not necessary to
20 prove a Section 2(a) violation. Section 2(a) states: "No
21 voting qualification or prerequisite to voting or standard
22 practice or procedure shall be imposed or applied by any state
23 or political subdivision in a manner which results in a denial
24 or abridgement of the right of any citizen of the United States
25 to vote on the account of race or color."

1 Plaintiffs only have to show that the alleged standard
2 practice and procedure, the denial of satellite offices, denies
3 the right to vote.

4 If it's considered denial of the right to vote, it
5 violates Section 2(a).

6 THE COURT: What are you reading?

7 MR. SANDVEN: Say again.

8 THE COURT: What are you reading that says the denial
9 of the right to vote without showing an inability to elect your
10 representatives is all you have to show? What are you reading?
11 Are you looking at this legislative history in the 1982 Senate?

12 MR. SANDVEN: Yes. And the Thornburg information.
13 The Thornburg citation earlier.

14 THE COURT: Well --

15 MR. SANDVEN: In the event --

16 THE COURT: Well, Thornburg and all the cases
17 thereafter hold, including the U.S. Supreme Court in that early
18 case of Chisom versus Roemer, R-O-E-M-E-R, that you have to
19 establish, based on the totality of the circumstances, "early
20 voting and late registration in Montana is not equally open to
21 participation by Indians in that Indians have less opportunity
22 than non-Indians to vote early and register late, and that they
23 are unable to elect representatives of their choice."

24 I mean, there's two prongs there.

25 MR. SANDVEN: Chisom v. Roemer, 501 U.S. 380, 397, on

1 page 397 states: "Causation is presumed so long as the
2 plaintiffs demonstrate abridgement." It states verbatim: "Any
3 abridgement of the opportunity of members of a protected class
4 to participate in a political process, inevitably, inevitably,"
5 Your Honor, "impairs their ability to influence the outcome of
6 an election."

7 THE COURT: Keep reading.

8 MR. SANDVEN: The closest case to what we have here
9 today that's been completely decided by a federal circuit that
10 I can find is Operation PUSH versus Mabus, 932 F.2d 400, a
11 Fifth Circuit decision in 1991.

12 Where the voter registration system was similar to
13 Montana. Basically, the most -- Mississippi prohibited
14 satellite voter registration offices in the 1980s. All right?
15 It looked at the history of racial discrimination, racial
16 polarization, disparate impact, and socioeconomic statistics.

17 THE COURT: Well, they couldn't even absentee vote in
18 that Operation PUSH case; could they? They couldn't mail in a
19 registration in the Operation PUSH case.

20 MR. SANDVEN: Unequal -- these tribal members don't
21 have equal access. They don't have -- I mean, driving --

22 THE COURT: Does Operation PUSH involve a case where
23 they couldn't mail in their registration, like you can in
24 Montana?

25 MR. SANDVEN: It's a different procedure, Your Honor.

1 And it's a procedure that people like the lead plaintiff, Mark
2 Wandering Medicine, who has to drive a hundred and eighty-two
3 miles to his county seat, who doesn't have a post office, who
4 goes ahead, and he's a military veteran, a hundred percent
5 disabled from Vietnam, his wife is a hundred percent disabled,
6 where the majority of the folks in his village of 300 people,
7 don't have a hardline telephone, where cell service doesn't
8 exist, folks like that, it is not equal access that they have
9 to go ahead and drive, if they want to in-person absentee vote,
10 all the way. He has to drive to the tribal headquarters just
11 to check the mail.

12 THE COURT: I'm not saying that it is equal access.

13 But there are two prongs. Aren't there?

14 MR. SANDVEN: All right.

15 THE COURT: Aren't there two prongs?

16 MR. SANDVEN: Footnote 114: "The causal element is
17 inferred" --

18 THE COURT: Hold it. Hold it. I've got this right
19 in front of me. Are you looking at -- which footnote are you
20 looking at?

21 MR. SANDVEN: One fourteen, Your Honor, where it
22 talks about disproportionate educational, employment --

23 THE COURT: Are you quoting from the Senate Report
24 again?

25 MR. SANDVEN: Yes.

1 THE COURT: Let's talk about the cases that construe
2 the senate factors, because you don't look at legislative
3 history. Chisom versus Roemer says you have to prove both
4 prongs.

5 MR. SANDVEN: Chisom versus Roemer says that -- on
6 page 397, that any abridgement of the opportunity of a member
7 of a protected class to participate in the political process
8 inevitably impairs.

9 THE COURT: And the case also says: "The statute
10 requires all claims must allege an abridgement of the
11 opportunity both to participate in the political process and to
12 elect representatives of one's choice. Thus, rather than
13 creating two separate and distinct rights, the statute
14 identifies two inextricably linked elements of a plaintiff's
15 burden of proof."

16 And they cite to White versus Register.

17 MR. SANDVEN: In dealing with the causal connection
18 then, Your Honor, if we're not going to go by Footnote 114 --

19 THE COURT: Well, we're not. We're going by the
20 cases that have ruled on the matter.

21 MR. SANDVEN: All right.

22 The evidence that has been received in this preliminary
23 injunction hearing is Social Science Quarterly Volume 86, Issue
24 3, 531, 548, where it talks about distance plus poverty equals
25 unequal access.

1 We also offer the expert report from Doctor Braunstein,
2 who did a specific survey, specific to absentee balloting in
3 Pine Ridge, South Dakota, on the Pine Ridge. We also went
4 ahead and submitted American Journal of Political Science,
5 Volume 26, Issue 1, pages 25 through 47, that talked about
6 economic adversity reduces voter turnout. "Poverty, finally,
7 like the unemployed and those worse off financially, the poor,
8 are also likely to vote than the rest of the population."

9 THE COURT: Well, Mr. Sandven, I'm not really arguing
10 with you as to whether or not early voting and late
11 registration in these three counties, or other places, probably
12 in Montana with Indian reservations, I'm not arguing that that
13 -- that the opportunity is as equal to Indian persons as it is
14 to non-Indians. I agree with the position that -- just from
15 the proof that has been produced at this preliminary injunction
16 hearing, that because of poverty, because of the lack of
17 vehicles, and that sort of thing, that it's probably not equal.

18 However, you still have to prove the second prong. And
19 that is, that they are unable to elect representatives of their
20 choice. You didn't plead it. And you haven't proved it.

21 MR. SANDVEN: This is a preliminary injunction
22 hearing, as you stated, Judge. Plaintiffs only have to show
23 that they are more likely than not to show causation and
24 succeed on the merits of the case.

25 THE COURT: Yes.

1 MR. SANDVEN: And plaintiffs will have discovery to
2 firm up the research by hiring expert witnesses.

3 THE COURT: Okay.

4 When I rule on the motion for a preliminary injunction, as
5 I made clear before we started or at the time we started this
6 hearing, I am not ruling on the merits of whether the Voting
7 Rights Act, Section 2, requires satellite offices. That is the
8 issue. My point is that at this preliminary injunction
9 hearing, this is not a ruling on the ultimate merits raised by
10 your complaint. You have not produced sufficient evidence at
11 this preliminary injunction hearing upon which I can base a
12 finding that you are likely to succeed on the merits. But I'm
13 not ruling, because I haven't heard the entire case, there
14 hasn't been any discovery, whether you will or not, I don't
15 know. What I'm ruling now, is that you don't satisfy the
16 requirements for the issuance of a preliminary injunction. I
17 don't believe, at this time, I can conclude on the basis of
18 what has been introduced that you are likely to succeed on the
19 merits in establishing both -- in satisfying the how you
20 establish a violation of 2(a) of Section 2 of the Voting Rights
21 Act. You go to Section 2(b), and I don't believe you have
22 produced the evidence sufficient for me to find not only that
23 the members have less opportunity than other members of the
24 electorate to participate in the political process, I think
25 probably that the proof on that first element is arguably

1 there. But it certainly isn't as to the second: "And to elect
2 representatives of their choice."

3 So, at this time, I am denying the motion to grant the
4 preliminary injunction. And we proceed from here in the
5 future. I'm just refusing the preliminary injunction on that
6 basis.

7 MR. SANDVEN: It's been an honor appearing in front
8 of you, Chief Judge. Thank you.

9 THE COURT: Well, thank you. And we will be -- we
10 will schedule -- we'll get together, we'll schedule this case
11 to its final conclusion. And we're at least two years from
12 another election. And there will be resolution on the merits
13 one way or another that somebody can take to a higher court.

14 Now, you can take the denial of the motion for a
15 preliminary injunction to a higher court. You have every right
16 to. But I'm talking about the decision on the merits.

17 Thank you.

18 (The proceedings in this matter were adjourned at
19 5:05 p.m.)

20 C E R T I F I C A T E

21

22 I certify that the foregoing is a correct transcript from
23 the record of proceedings in the above-entitled matter.

24 /s/ Tina C. Brilz, RPR, FCRR

25 Dated this 6th day of November, 2012.