

12-35926

United States Court of Appeals
For the
Ninth Circuit

MARK WANDERING MEDICINE, HUGH CLUB FOOT, LENARD ELK SHOULDER, CHARLES BEAR COMES OUT, WINFIELD RUSSELL, JAMES DAY CHILD, WOODROW BRIEN, SARAH STRAY CALF, MARTY OTHER BULL, NEWLYN LITTLE OWL, DONOVAN ARCHAMBAULT, ED MOORE, PATTY QUISNO, MICHAEL D. FOX, FRANK JEFFERSON and PHYLLIS POND CULBERTSON,

Plaintiffs-Appellants,

- against -

LINDA McCULLOCH in her official capacity as MONTANA SECRETARY OF STATE, GERALDINE CUSTER, in her official capacity as ROSEBUD COUNTY CLERK AND RECORDER, ROSEBUD COUNTY, ROBERT E. LEE, DOUGLAS D. MARTENS, and DANIEL M. SIOUX, in their official capacity as members of the County Board of Commissioners for Rosebud County, Montana, SANDRA L. BOARDMAN, in her official capacity as BLAINE COUNTY CLERK AND RECORDER, BLAINE COUNTY, CHARLIE KULBECK, M. DELORES PLUMMAGE and FRANK DEPRIEST in their official capacity as members of the County Board of Commissioners for Blaine County, Montana, DULCE BEAR DON'T WALK, in her official capacity as BIG HORN COUNTY ELECTION ADMINISTRATOR, BIG HORN COUNTY, SIDNEY FITZPATRICK, JR., CHAD FENNER, JOHN PRETTY ON TOP, in their official capacity as members of the County Board of Commissioners for Big Horn County, Montana and KIMBERLY YARLOTT, in her official capacity as BIG HORN COUNTY CLERK AND RECORDER BIG HORN COUNTY,

Defendants-Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT FOR THE DISTRICT OF MONTANA
CASE NO. 1:12-CV-00135-RFC

APPELLANTS' EXCERPTS OF RECORD

Volume 2 of 2

Pages 175 through 270

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

MARK WANDERING MEDICINE, HUGH
CLUB FOOT, LENARD ELK SHOULDER,
CHARLES BEAR COMES OUT,
WINFIELD RUSSELL, JAMES DAY
CHILD, WOODROW BRIEN, SARAH
STRAY CALF, MARTY OTHER BULL,
NEWLYN LITTLE OWL, DONOVAN
ARCHAMBAULT, ED MOORE, PATTY
QUISNO, MICHAEL D. FOX, FRANK
JEFFERSON and PHYLLIS POND
CULBERTSON,

Plaintiffs,

v.

LINDA McCULLOCH in her official
capacity as MONTANA SECRETARY OF
STATE, GERALDINE CUSTER, in her
official capacity of ROSEBUD COUNTY
CLERK AND RECORDER, ROSEBUD
COUNTY, ROBERT E. LEE, DOUGLAS D.
MARTENS, and DANIEL M. SIOUX, in
their official capacity as members of the
County Board of Commissioners for Rosebud
County, Montana, SANDRA
L.BOARDMAN, in her official capacity of
BLAINE COUNTY CLERK AND
RECORDER, BLAINE COUNTY,

CIV No. 12-135-BLG

**PRELIMINARY INJUNCTION
APPEAL**

CHARLIE KULBECK, M. DELORES
PLUMMAGE and FRANK DEPRIEST in
their official capacity as members of the
County Board of Commissioners for Blaine
County, Montana, DULCE BEAR DON'T
WALK, in her official capacity of BIG
HORN COUNTY ELECTION
ADMINISTRATOR, BIG HORN COUNTY,
SIDNEY FITZPATRICK, JR., CHAD
FENNER, JOHN PRETTY ON TOP, in their
official capacity as members of the County
Board of Commissioners for Big Horn
County, Montana and KIMBERLY
YARLOTT, in her official capacity of BIG
HORN COUNTY CLERK AND
RECORDER BIG HORN COUNTY,

Defendants.

Notice is hereby given that the Plaintiffs, Mark Wandering Medicine, Hugh Club Foot, Lenard Elk Shoulder, Charles Bear Comes Out, Winfield Russell, James Day Child, Woodrow Brien, Sarah Stray Calf, Marty Other Bull, Newlyn Little Owl, Donovan Archambault, Ed Moore, Patty Quisno, Michael D. Fox, Frank Jefferson, and Phyllis Pond Culbertson (hereinafter the "Plaintiffs") in the above named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from an order denying Plaintiffs' request for injunctive and declaratory relief entered in this action on the 6th day of November, 2012.

Dated this 9th day of November, 2012.

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PLAINTIFFS/APPELLANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

MARK WANDERING MEDICINE, HUGH CLUB
FOOT, LENARD ELK SHOULDER, CHARLES
BEAR COMES OUT, WINFIELD RUSSELL,
JAMES DAY CHILD, WOODROW BRIEN,
SARAH STRAY CALF, MARTY OTHER BULL,
NEWLYN LITTLE OWL, DONOVAN
ARCHAMBAULT, ED MOORE, PATTY QUISNO,
MICHAEL D. FOX, FRANK JEFFERSON and
PHYLLIS POND CULBERTSON,
Plaintiffs,

v.

LINDA McCULLOCH in her official capacity as
MONTANA SECRETARY OF STATE,
GERALDINE CUSTER, in her official capacity of
ROSEBUD COUNTY CLERK AND RECORDER,
ROSEBUD COUNTY, ROBERT E. LEE,
DOUGLAS D. MARTENS, and DANIEL M.
SIOUX, in their official capacity as members of the
County Board of Commissioners for Rosebud
County, Montana, SANDRA L. BOARDMAN, in her
official capacity of BLAINE COUNTY CLERK
AND RECORDER, BLAINE COUNTY, CHARLIE
KULBECK, M. DELORES PLUMMAGE and
FRANK DEPRIEST in their official capacity as
members of the County Board of Commissioners for
Blaine County, Montana, DULCE BEAR DON'T
WALK, in her official capacity of BIG HORN
COUNTY ELECTION ADMINISTRATOR, BIG
HORN COUNTY, SIDNEY FITZPATRICK, JR.,
CHAD FENNER, JOHN PRETTY ON TOP, in their
official capacity as members of the County Board of
Commissioners for Big Horn County, Montana and
KIMBERLY YARLOTT, in her official capacity of
BIG HORN COUNTY CLERK AND RECORDER
BIG HORN COUNTY,

Defendants.

CIV NO. 12-135-BLG

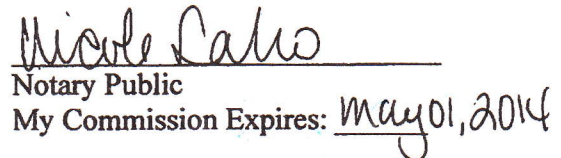
**AFFIDAVIT OF
MICHAEL DESROSIER**

)
) **SS.**
)

1. I am the Chairman of the Glacier County Commission.
2. I am a Tribal member of Blackfeet Nation.
3. We received guidance from the Secretary of State on August 28, 2012 on how to conduct in person absentee voting and late registration in a satellite office.
4. The Glacier County Commission and our Clerk and Recorder chose to conduct in person late registration and in person absentee voting in Glacier County's satellite office in Browning, Montana after the Secretary's guidance described in paragraph 3.
5. We started conducting in person late registration and in person absentee voting at the satellite location in Browning, Montana beginning on October 9, 2012.

Dated this ____ day of October, 2012.

Subscribed and sworn before me this 11th day of October, 2012.



**An Evaluation of the Effects of Adding a Second Voter Registration/Polling
Site in Three Montana Counties**

Professor Gerald R. Webster
Department of Geography
University of Wyoming

I am a professor of geography at the University of Wyoming, Laramie, Wyoming, where I also serve as the departmental chair. Prior to moving to the University of Wyoming in 2007, I was a faculty member in the Department of Geography at the University of Alabama for eighteen years, serving as chair the last seven years. My formal education includes a BA (1975) in political science from the University of Colorado-Denver, a MS (1980) in geography from Western Washington University, and a Ph.D. (1984) in geography from the University of Kentucky.

My primary research and teaching interests are in political geography including electoral geography. I have authored or co-authored over 100 items including approximately 75 refereed journal articles and book chapters including many on electoral landscapes and redistricting. In November, 2011, I received the Outstanding Lifetime Achievement Award from the Southeastern Division of the Association of American Geographers. I have served as a consultant and expert witness on election related litigation since the mid-1990s for clients in Alabama, Mississippi, Louisiana, Florida, North Carolina, Virginia, Texas and Illinois.

On October 18th, 2012, I was contacted by the U.S. Department of Justice about potential litigation involving three counties in Montana: Big Horn, Blaine and Rosebud. Each of the three counties has a single site for voter registration and voting at their county courthouses. Each of the three counties includes all or portions of the Crow (Big Horn), Northern Cheyenne (Rosebud), and Ft. Belknap (Blaine) Indian Reservations. The tribal leaders at each of these

reservations have requested a second site for voter registration to facilitate greater access to the polls for American Indian residents in each county. I have been asked to examine three questions:

- 1) Are there significant disparities between the Anglo (white, non-Hispanic) and American Indian populations in the three counties in terms of poverty and access to vehicles that might transport them to the voter registration and polling sites?
- 2) What is the average distance for American Indians and Anglos to travel to the single voter registration and polling sites in each county?
- 3) If there are significant differences in terms of travel distances, what effect would the addition of a second voter registration and polling site on each of the reservations in the three counties have upon poll accessibility for the American Indian populations?

I personally compiled the two tables to address question 1. The GIS analysis and statistical calculations to address questions 2 and 3 were completed by the University of Alabama Cartographic Research Laboratory under my direction. I have engaged the services of the Cartographic Research Laboratory since 1989, and they have provided analysis and figures for the overwhelming majority of my litigation related consultancies during the past two decades. Given my work with the Laboratory, I am confident in the quality and accuracy of their work.

Question 1 was addressed using data from the American Community Survey tables B17001 and B25044. First, the poverty status of Anglos (white, non-Hispanic) and American Indians was compared in the three counties (Table 1). Poverty may constitute an obstacle for

potential voters to participate in the electoral process, most particularly for those residents living long distances from voter registration and polling sites. In Big Horn County 12.2% of the Anglo population had incomes in the past 12 months below the poverty level, while the rate for American Indians in the county was well over double that rate at 28.9%. In Blaine County 16.2% of the Anglo population had incomes in the past 12 months below the poverty level, while the rate for American Indians in the county was two and a half times greater at 41.5%. The greatest contrast was found in Rosebud County in which the poverty rate for American Indians (36.1%) was over four times the rate for Anglos (8.8%). In all three counties the poverty rate among American Indians is substantially greater than for the Anglo population.

Access to a motor vehicle facilitates an individual's ability to travel to a voter registration or polling site. Table 2 compares Anglo and American Indian access to motor vehicles in the three counties. In Big Horn County 1.9% of Anglos have no vehicle available, while 6.5% of the county's American Indian population have no access to a vehicle. Similarly, while 14.2% of American Indian residents in Blaine County have no vehicle available, the rate for Anglos is far less at 4.1%. Finally, while 4.0% of Anglos in Rosebud County have no vehicle available, the rate for American Indians is more than double that rate at 8.8%. In each of the three counties the availability of motor vehicles is substantially less for American Indian residents than for Anglo residents.

The second question was addressed by estimating the distance potential Anglo and American Indian voters would have to travel to reach the county courthouse in each of the three counties. The population centroid of each census block group was first calculated using the voting age population in the blocks comprising the block group. The population centroids were then employed as the beginning points to measure the straight line distance to the county

courthouse, the site for residents to register to vote and to vote. This estimate was used as the distance to the courthouse voting registration and polling site for all Anglo and American Indian voting age residents of the census block group. The same calculations were undertaken in all census block groups in each county and used as the estimated travel distance for Anglo and American Indian residents of voting age. From these calculations estimates of the mean distance for both potential Anglo and American Indian voters to register and vote at the county courthouse were determined.

The estimated mean distance voting age Anglos in Big Horn County must travel to reach the county courthouse is 11.61 miles. This mean is substantially below the estimate for American Indian residents of Big Horn County who on average must travel 22.02 miles to reach the courthouse to register to vote and vote. The contrasts in Blaine and Rosebud counties are even greater. While Anglos on average must travel an estimated 9.77 miles to arrive at the Blaine County courthouse, American Indians in Blaine County must travel an estimated average of 31.45 miles to do the same. Thus, on average American Indians in Blaine County must travel an estimated 22 miles farther than Anglos to reach the courthouse. In Rosebud County Anglos on average must travel an estimated 16.79 miles to reach the county courthouse, while American Indians must travel an estimated 44.85 miles on average to reach the county courthouse, or on average over 28 miles farther.

The final question to be addressed pertained to the accessibility effects if each of the three counties added a second voter registration and voting site on the reservation in each county. The Department of Justice provided additional potential locations in each of the counties: Little Big Horn College in Big Horn County, Fort Belknap Hospital in Blaine County, and the Northern Cheyenne Tribal Building in Rosebud County (Figures 1-3). Assuming both Anglos

and American Indians in the three counties will travel to the closest voter registration and polling site whether it be the county courthouse or the new site on the reservation, the mean distances for both groups were recalculated.

The hypothetical addition of a second voter registration and polling site decreased the estimated mean travel distances to one of the two voter registration and polling sites in each of the three counties for both Anglos and American Indians (Table 4). In Big Horn County the estimated mean distance for Anglos was 9.14 miles, while the estimated mean distance for American Indians was 15.33 miles. The addition of the second site decreases the estimated mean travel distance by 6.69 miles for American Indians in Big Horn County to travel to a registration and polling site. In Blaine County the addition of a second voter registration and polling site also decreased estimated mean travel distance for both Anglos and American Indians. Most significant was the decrease of estimated mean travel distance for American Indians by well over 17 miles with the addition of the second site, though estimated mean travel distance for Anglos also decreased by 4.5 miles. In Rosebud County estimated mean travel distance for Anglos was 10.13 miles and 5.67 miles for American Indians with the addition of the second voter registration and polling site. The addition of the second site in Rosebud County had a dramatic effect on estimated mean travel distance for American Indians, decreasing the average distance by over 39 miles.

Findings

- Poverty rates among American Indians are greater than for Anglos in Big Horn, Blaine and Rosebud counties. American Indians in these three counties also on average have less access to motor vehicles than their Anglo neighbors. The academic research

literature in both political science and political geography confirms that participation in the electoral process is inhibited if not substantially reduced by both poverty and limited access to motor vehicles.

- Currently Big Horn, Blaine and Rosebud counties have a single voter registration and polling site at their county courthouses. The mean distance for American Indians in the three counties to travel to the county courthouse is significantly greater than for Anglos in the three counties.
- The addition of a second voter registration and polling site on the reservations in each of the three counties decreases estimated mean travel distance for both Anglos and American Indians. Secondly, the addition of a second voter registration and polling site in each county significantly decreases the substantial disparities between Anglos and American Indians in terms of estimated travel time to reach a voter registration and polling site.

Table 1
Anglo and American Indian Poverty Status in
Big Horn, Blaine and Rosebud Counties, Montana

County	Total Anglo	Poverty Status*	Total American Indian and AK Native	Poverty Status*
Big Horn	3,929	480(12.2%)	7,347	2,122(28.9%)
Blaine	3,017	488(28.7%)	3,181	1,320(41.5%)
Rosebud	5,464	482(8.8%)	2,839	1,025(36.1%)

*Income in the past 12 months below the poverty level.

SOURCE: U.S. Census Bureau, American Community Survey, Poverty Status in the Past 12 Months by Sex By Age, 2010, Table B17001.

Table 2
Vehicle Availability by Housing Type for Big Horn, Blaine and Rosebud Counties, Montana

County	Housing Type	Total Anglo	No Vehicle Available	American Indian and AK Native	No Vehicle Available
Big Horn	Owner				
	Occupied	1,285	23 (1.8%)	915	50(5.5%)
	Renter				
	Occupied	381	9(2.4%)	663	53(8.0%)
	<u>Total</u>	<u>1,666</u>	<u>32(1.9%)</u>	<u>1,578</u>	<u>103(6.5%)</u>
Blaine	Owner				
	Occupied	1,090	10(0.9%)	371	28(7.5%)
	Renter				
	Occupied	325	48(14.8%)	524	99(18.9%)
	<u>Total</u>	<u>1,415</u>	<u>58(4.1%)</u>	<u>895</u>	<u>127(14.2%)</u>
Rosebud	Owner				
	Occupied	1,770	27(1.5%)	439	15(3.4%)
	Renter				
	Occupied	613	69(11.3%)	313	51(16.3%)
	<u>Total</u>	<u>2,383</u>	<u>96(4.0%)</u>	<u>752</u>	<u>66(8.8%)</u>

SOURCE: U.S. Census Bureau, American Community Survey, Tenure by Vehicles Available, 2010, Table B25044.

Table 3
Average Distance to the County Court House for Anglo and American Indian
Voting Age Residents in Three Montana Counties

<u>County</u>	<u>Mean Distance For Anglos*</u>	<u>Mean Distance For American Indians*</u>	<u>Absolute Difference</u>
Big Horn	11.61 miles	22.02 miles	10.41 miles
Blaine	9.77 miles	31.45 miles	21.68 miles
<u>Rosebud</u>	<u>16.79 miles</u>	<u>44.85 miles</u>	<u>28.06 miles</u>

*In this case I am attempting to demonstrate that the mean distances for American Indians are greater than for Anglos to travel to the county courthouse. As a result, a one-tailed T test is appropriate. The one-tailed T tests for the three counties confirmed the differences in travel distance for American Indians and Anglos are statistically significant at the 0.01 level.

SOURCE: Calculated by the University of Alabama Cartographic Research Laboratory using data secured from the Bureau of the Census.

Table 4
Average Distance to the Voter Registration and Voting Sites When a Second Hypothetical
Site is Added to Each County for Anglo and American Indian
Voting Age Residents in Three Montana Counties*


<u>County</u>	<u>Mean Distance For Anglos**</u>	<u>Mean Distance For American Indians**</u>	<u>Absolute Difference</u>
Big Horn	9.14 miles	15.33 miles	6.19 miles
Blaine	5.31 miles	13.88 miles	8.57 miles
Rosebud	10.13 miles	5.67 miles	4.46 miles

*The hypothetical second sites are Little Big Horn College in Big Horn County, Fort Belknap Hospital in Blaine County, and the Northern Cheyenne Tribal Building in Rosebud County.

**Two-tailed T tests indicated the differences in the mean distances for Anglos and American Indians were statistically significant at the 0.01 level.

SOURCE: Calculated by the University of Alabama Cartographic Research Laboratory using data secured from the Bureau of the Census.

I declare under penalty of perjury the foregoing is true and correct. Executed this 23
day of October.


Gerald R. Webster

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SCANNED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

OCT 10 2012

Clerk, U.S. District Court
District Of Montana
Billings

MARK WANDERING MEDICINE, HUGH CLUB
FOOT, LENARD ELK SHOULDER, CHARLES
BEAR COMES OUT, WINFIELD RUSSELL,
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Plaintiffs,

v.

LINDA McCULLOCH in her official capacity as
MONTANA SECRETARY OF STATE,
GERALDINE CUSTER, in her official capacity of
ROSEBUD COUNTY CLERK AND RECORDER,
ROSEBUD COUNTY, ROBERT E. LEE,
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County, Montana, SANDRA L. BOARDMAN, in her
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AND RECORDER, BLAINE COUNTY, CHARLIE
KULBECK, M. DELORES PLUMMAGE and
FRANK DEPRIEST in their official capacity as
members of the County Board of Commissioners for
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WALK, in her official capacity of BIG HORN
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CHAD FENNER, JOHN PRETTY ON TOP, in their
official capacity as members of the County Board of
Commissioners for Big Horn County, Montana and
KIMBERLY YARLOTT, in her official capacity of
BIG HORN COUNTY CLERK AND RECORDER
BIG HORN COUNTY,

Defendants.

CIV NO. _____

CV 12-135-BLG

AFFIDAVIT OF
TOM RODGERS

State of _____)
) ss.
County of _____)

COMES NOW, Tom Rodgers in his capacity as an advocate for Native Americans and having been first duly sworn upon his oath, deposes and states as true and correct under penalty of perjury the following:

1. I am a Blackfeet Nation tribal enrolled member. I grew up in Glasgow, Montana. I am currently the Principal owner of the Carlyle Consulting in Alexandria, VA where I primarily represent Native American tribes in front of Congress.
2. Attached is **Exhibit 1** a true and correct copy of Blackfeet Nation Councilman Woodrow Wells June 13, 2012 letter acknowledging my contribution to pay for the funeral expenses of deceased veteran and Blackfeet Nation tribal member Anthony Burnside.
3. Attached is **Exhibit 2** a true and correct copy of Blackfeet Nation Chief Earl Old Person Sr.'s July 3, 2012 letter acknowledging my contribution to pay for the funeral expenses of deceased veteran and Blackfeet Nation tribal member Anthony Burnside.
4. Attached is **Exhibit 3** a true and correct copy of the Blackfeet Tribal Business Council Resolution No. 113-2012 endorsing the efforts of Four Directions and myself to increase voter participation on the Blackfeet Reservation.
5. Attached is **Exhibit 4** a true and correct copy of Blackfeet Nation Tribal Business Council Chairman TJ Snow's March 8, 2012 letter expressing the Blackfeet Nation's unqualified support of my and Four Directions' "journey for justice" to increase Native American voter participation that will "empower our people."

6. I first became involved in this issue in 2011 when I contacted the Montana Wyoming Tribal Leaders Council about increasing Native American voting participation in the 2012 Montana election.
7. In April 2012, I began to discuss the establishment of an absentee voting location in Browning, Montana with Tribal members. These conversations led to Blackfeet Chairman T.J. Snow's May 2, 2012 letter.
8. After learning that Glacier County had a satellite office in Browning where residents could pay property taxes, but could not in-person absentee vote, I contacted the Montana Attorney General's office. The Attorney General's office put me in touch with Secretary of State Director of Special Projects Anna O'Brien.
9. Attached is **Exhibit 5** a true and correct copy of my May 12, 2012 email to Anna O'Brien providing information on my professional background and role as the whistleblower against Jack Abramoff.
10. Attached is **Exhibit 6** a true and correct copy of a May 14, 2012 email exchange between Anna O'Brien and myself where Anna O'Brien states she received my message and suggested a meeting time for us to talk that I accepted.
11. Attached is **Exhibit 7** a true and correct of my May 15, 2012 email to Anna O'Brien with Chairman TJ Snow's request for an in-person absentee voting location in Browning, Montana attached.
12. Ms. O'Brien responded to my email by phone. She stated that she was overwhelmed with preparation for the June 5th primary and that they were unsure

if the Blackfeet Nation's request for an in-person absentee voting location in Browning, Montana was possible, but she was having staff research this issue.

13. Attached is **Exhibit 8** a true and correct copy of my May 24, 2012 email to Anna O'Brien where I state that I left a voicemail in the previous week and ask her if there are any updates. I also attached Chairman TJ Snow's request for an in-person absentee voting location again to this email.
14. Anna O'Brien contacted me by phone on May 25, 2012. During this conversation, she asked me if I would wait to discuss an in-person absentee voting location in Browning, Montana until after the June 5, 2012 primary. I responded, "We are losing precious time and continued delay is putting Indian Country at a severe disadvantage" but would allow a grace period given the demands on her schedule until after the June 5, 2012 primary.
15. During the Secretary of State's grace period, I felt that if the Secretary of State's office did not want to utilize the time or resources, I would move forward in order to provide a legal memorandum to support the opening of an in-person absentee voting locations on the reservations. I engaged Sandler, Reiff, Young & Lamb PC to draft a legal memorandum detailing the requirements by Montana law necessary to implement an in-person absentee voting location in Browning, Montana in order avoid losing precious time.
16. Attached is **Exhibit 9** a true and correct copy of my June 24, 2012 email to Anna O'Brien and Kevin O'Brien informing them I had obtained a memorandum in support of the Blackfeet tribe's efforts.

17. I attended a July 31, 2012 “Equal Access to Voting for MT Native Americans Meeting” hosted by Secretary of State Linda McCulloch. At this meeting, Secretary of State McCulloch would not allow our attorneys to participate in any form or fashion via conference call. She further stated that she could not support the Blackfeet’s request for an in-person absentee voting location in Browning, Montana.
18. During the July 31, 2012 meeting, she suggested that I return in the spring and introduce a bill in the Montana legislature on this issue. I informed her that the Super Bowl was November 6th and I do not watch the Pro Bowl. She responded, “Tom the threat of a lawsuit is threatening to me.” I informed her that she should not regard it as personal for it was not an issue of ego, but rather, she should view it as providing equal access to Native Americans and empowering the Native people of Montana who, after all, were the poorest of the poor.
19. I additionally informed her that three days after the November 6th election would be the 100th anniversary of Carlisle Indians versus Army and that the greatest American athlete of all time was a Sac and Fox Indian, Jim Thorpe, who defeated Dwight Eisenhower’s Army football team in that game. I noted to her that the men in the Army locker room were the sons of the men who killed the fathers of the Carlisle Indian men on the field of battle, and given that, she should seek to honor Native Americans by honoring the spirit of that occasion and this election.
20. I further reminded her that there is no greater quality than courage and it is never too late to do right.

21. I concluded that if she was unable to honor our request which had been
outstanding for over 70 days, we would have to make our stand in federal court.

YOUR AFFIANT FURTHER SAYETH NOT

Dated this 9th day of October, 2012.

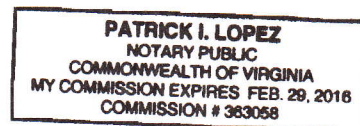
By: _____

Tom Rodgers

Subscribed and sworn before me this 9th day of October, 2012.

Patrick I. Lopez
Notary Public

My Commission Expires: 02/29/2016



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

MARK WANDERING MEDICINE, HUGH CLUB
FOOT, LENARD ELK SHOULDER, CHARLES
BEAR COMES OUT, WINFIELD RUSSELL,
JAMES DAY CHILD, WOODROW BRIEN,
SARAH STRAY CALF, MARTY OTHER BULL,
NEWLYN LITTLE OWL, DONOVAN
ARCHAMBAULT, ED MOORE, PATTY QUISNO,
MICHAEL D. FOX, FRANK JEFFERSON and
PHYLLIS POND CULBERTSON,
Plaintiffs,

v.

LINDA McCULLOCH in her official capacity as
MONTANA SECRETARY OF STATE,
GERALDINE CUSTER, in her official capacity of
ROSEBUD COUNTY CLERK AND RECORDER,
ROSEBUD COUNTY, ROBERT E. LEE,
DOUGLAS D. MARTENS, and DANIEL M.
SIOUX, in their official capacity as members of the
County Board of Commissioners for Rosebud
County, Montana, SANDRA L. BOARDMAN, in her
official capacity of BLAINE COUNTY CLERK
AND RECORDER, BLAINE COUNTY, CHARLIE
KULBECK, M. DELORES PLUMMAGE and
FRANK DEPRIEST in their official capacity as
members of the County Board of Commissioners for
Blaine County, Montana, DULCE BEAR DON'T
WALK, in her official capacity of BIG HORN
COUNTY ELECTION ADMINISTRATOR, BIG
HORN COUNTY, SIDNEY FITZPATRICK, JR.,
CHAD FENNER, JOHN PRETTY ON TOP, in their
official capacity as members of the County Board of
Commissioners for Big Horn County, Montana and
KIMBERLY YARLOTT, in her official capacity of
BIG HORN COUNTY CLERK AND RECORDER
BIG HORN COUNTY,

Defendants.

FILED

OCT 10 2012

Clerk, U.S. District Court
District Of Montana
Billings

CV 12-135-BLL

**AFFIDAVIT OF
OLIVER J. SEMANS**

State of Montana)
) ss.
County of)

COMES NOW, Oliver J. Semans, Jr., in his capacity as Executive Director for Four Directions, Inc. and having been first duly sworn upon his oath, deposes and states as true and correct under penalty of perjury as follows:

1. I have been working with Montana Tribes to establish satellite in-person absentee voting and in-person late registration offices on Montana Reservations since July 31, 2012.
2. On July 31, 2012, I met with the Secretary of State Linda McCulloch to discuss the use of satellite county clerk and recorder offices on the Blackfeet Reservation so Blackfeet Nation Tribal members could early vote within the boundaries of their reservation.
3. During this meeting, the Secretary of State stated she did not believe the law allowed for satellite offices and that she would not approve any requests for satellite offices on the Blackfeet Nation reservation. During this meeting, she encouraged the Tribes to introduce legislation to change the law to allow for satellite locations for future elections on Montana reservations.
4. At the request of Four Directions and Montana Tribal leaders, the Secretary of State stated she would request a letter of advice on satellite county office locations from the Attorney General's office by the end of the business day at 5:00 pm upon the conclusion of this meeting.
5. The Secretary of State did not request a letter of advice on satellite county office locations from the Attorney General's office until August 15, 2012.

6. On August 17, 2012, the Attorney General's office issued a letter of advice that stated satellite county office locations could be used upon approval of a County Clerk and Recorder.
7. On August 28, 2012, the Secretary of State issued guidelines for in-person satellite voting to all Montana County Clerk and Recorders.
8. A satellite county office for in-person absentee voting is currently available at Browning, Montana on the Blackfeet Reservation. Four Directions has offered to pay for any additional expenses that the county may accrue from operating this satellite location.
9. Crow Nation Chairman Cedric Black Eagle sent a written request for a satellite county office at Crow Agency, Montana to Big Horn Clerk and Recorder Kimberly Yarlott and County Commissioner Chairman John Pretty On Top on September 18, 2012. I drafted this letter on behalf of Chairman Black Eagle.
10. Northern Cheyenne President Leroy Sprang sent a written request for a satellite county office at Lame Deer, Montana within the Northern Cheyenne Indian Reservation to Rosebud Clerk and Recorder Geraldine Custer and County Commissioner Chairman Robert E. Lee on September 18, 2012. I drafted this letter on behalf of President Sprang.
11. On September 18, 2012, the Clerk Reporters Office directed me to Dulce Bear Don't Walk who was recently appointed as the Big Horn Election Administrator. I spoke to Dulce Bear Don't Walk about the Crow Nation's request for a satellite county office location in Crow Agency, Montana. Dulce said she would contact the Commissioners on the request and that I should contact her the next day. I left

Dulce my card with my contact information included my phone number and asked her to contact me once she had any information.

12. On September 18, 2012, I also called Rosebud County Clerk and Recorder Geraldine Custer to discuss opening a satellite location at Lame Deer, Montana. She did not answer and she did not return my call.
13. On September 19, 2012 I attempted to talk with Dulce around 11:00am and was told she was out of the office but would return at 1:00pm. When I went to Dulce's office at 1:00pm, she still had not returned. At around 2:00pm, Dulce returned. She told me she was late because she had to have her nails done. She stated that the Big Horn County Commissioners would not be able to hear the Tribe's request for a county satellite office until October 1, 2012. However, Dulce Bear Don't Walk stated she had a pre-plan prepared for a satellite county office location for in-person absentee voting at the Crow Agency if the Commissioners agreed. Dulce Bear Don't Walk also stated as the Election Official authorized to approve this request she was still undecided.
14. On September 20, 2012, Geraldine Custer informed me that she was denying the Northern Cheyenne Tribe's request for a satellite county office. She told me that they denied the request to protect the integrity of the ballot and because they have a very complex voting system and lack staff because of vacations during this time.
15. During this September 20, 2012 conversation, she further stated that Northern Cheyenne Tribal members have equal access to voting because they can get on the Internet, print a request for absentee ballot form, mail or fax the form, and then vote by mail.