

MONTANA VOTING RIGHTS CASE (CIV 12-135)

In 2012, we filed suit in Montana federal court asking that the State be ordered to open satellite voting offices at tribal headquarters in Fort Belknap, Lake Deer and Crow Agency. The suit alleged that, without the access to early, absentee and late voting that a satellite office could provide, Tribal Members are being denied equal voting opportunities as required by the United States Constitution and the Voting Rights Act. Although the lawsuit was brought on behalf of several individual Tribal Members, and against numerous Montana state and local officials, it is known by its shorthand name, *Mark Wandering Medicine et al v. McCulloch et al.*

Blackfeet Nation was the first to request a satellite voting office at their headquarters. In response to that request, the Montana Attorney General issued a Letter of Advice to the Secretary of State stating his opinion that satellite offices were allowed under Montana law. Secretary McCulloch followed up with an Election Advisory to local election officials, telling them that they had the ability to open satellite locations, and providing them with the procedures to be followed when doing so. Soon after, Crow Nation and Northern Cheyenne Reservation joined in with their requests for satellite offices.

Although Montana's Attorney General and Secretary of State had initially found no legal barrier to satellite voting, local election officials were not receptive to the idea, nor were they cooperative. The county officials either voted to deny the requests outright, or delayed taking a vote or any other action on the requests, which had the effect of a denial. It quickly became apparent that a lawsuit was the only option to secure equal voting rights for Tribal Members in Montana.

Following a hearing in October 2012, the federal district judge assigned to the case ruled that the State was not required to establish or permit satellite voting offices on the Reservations for early registration or late voting, because despite the hardships and the long-distance travel required for tribal members to register and vote at county courthouse locations, they had in the past had some success in electing Tribal Members to office and, therefore, could not prove that they were denied the right to vote and elect representatives of their choice.

Because the legal standard applied by the district court judge was wrong, and because his decision, if upheld, would mean that Tribal Members could be required to travel as much as 100 or more miles roundtrip just to register early or vote late, while non-Indians had the convenience of voting locations near their homes, we appealed to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit's jurisdiction includes Indian country in Montana, Idaho, Washington, Oregon, Alaska, California, Arizona and Nevada.

The Ninth Circuit heard oral argument on October 10, 2013, and on October 27, 2013, issued its order: (i) dismissing the appeal as moot, (ii) vacating Judge Cebull's orders, and (iii) stating its understanding that the District Court will act expeditiously in dealing with Plaintiffs' request for a permanent injunction.