RAPID CITY REGIONAL HEARING
(Montana, North Dakota, South Dakota, and Wyoming)

The Journey Museum
Rapid City, South Dakota
May 1, 2014

NATIONAL COMMISSIONER
Patty Ferguson-Bohnee, Director, Arizona State University College of Law Indian Legal Clinic

GUEST COMMISSIONERS
Richard Braunstein, Professor, University of South Dakota College of Arts & Sciences
Michaelynn Hawk, Director, Indian People’s Action
A. Gay Kingman, Executive Director, Great Plains Tribal Chairman’s Association

PANELISTS
Gary Collins, former Voting Rights Litigation Plaintiff and Northern Arapaho Tribal Liaison
Pat Duffy, Voting Rights Litigator
Steve Emery, Attorney and former Voting Rights Litigation Plaintiff, Cheyenne River Sioux
Julie Garreau, Cheyenne River Sioux
Bill White Head, former Voting Rights Litigation Plaintiff, Fort Peck Assiniboine and Sioux
Bret Healy, Consultant, Four Directions
Garth Massey, Sociologist, Expert Witness in Voting Rights Litigation
Jean Schroedel, Professor of Politics and Policy, Claremont Graduate University
O.J. Semans Sr., Co-Executive Director, Four Directions
Mel Siyo, Rapid City Human Relations Commission
Libby Skarin, Policy Director, ACLU of South Dakota
William “Snuffy” Main, Voting Rights Litigation Plaintiff, Gros Ventre
Mark Wandering Medicine, Voting Rights Litigation Plaintiff, Northern Cheyenne

PUBLIC TESTIMONY
Mark Lone Hill

WRITTEN TESTIMONY
Michelle DuBray, Cheyenne River Sioux
Kevin Killer, State Senator, South Dakota State Senate
Teresa Larsen, Executive Director, North Dakota Protection & Advocacy Project
On May 1, 2014, voting rights advocates, voters and, other interested members of the public gathered at the Journey Museum in Rapid City, South Dakota, for a hearing convened by the Lawyers’ Committee for Civil Rights Under Law. The hearing covered voting rights and election administration issues in Montana, Wyoming, North Dakota, and South Dakota. Approximately 40 people attended the hearing, which included testimony on equal access to the ballot for Native Americans; language access issues; district apportionment; voting rights litigation in Wyoming, Montana, and South Dakota; and the history of discrimination against Native Americans in these states.

I. Minority Representation (South Dakota, Wyoming, Montana)

Jean Schroedel, a professor at Claremont Graduate University, presented research on the ability of Native Americans to get elected to political office in South Dakota. Historically, Schroedel testified, there was not a single Native American elected to the 105-member state
legislature prior to voting rights litigation in the 1980s; similarly, Native Americans were not elected to any of the over 300 county council seats in South Dakota prior to voting rights litigation in the 1980s. According to Schroedel, Native Americans comprise 8.9 percent of the population in South Dakota, but currently only three out of 105 members of the state legislature are Native American, and only 14 out of 322 county council seats statewide are held by Native Americans. Schroedel also testified that no Native American in South Dakota has ever been elected in an electoral district in which Native Americans did not comprise a majority of the population in that electoral district.

Gary Collins, Northern Arapaho Tribal Liaison, testified about Large v. Fremont County (Wyoming), a case in which he was a plaintiff. The case involved a claim brought by members of the Eastern Shoshone and Northern Arapaho Tribes in 2009, which alleged that the at-large method of electing the county commissioners in Fremont County violated Section 2 of the Voting Rights Act. After a bench trial, the District Court issued an opinion, which stated in pertinent part, “The evidence presented to this Court reveals that discrimination [in Fremont County] is ongoing, and that the effects of historical discrimination remain palpable. The Court rejects any attempt to characterize this discrimination as being politically, rather than racially, motivated.” The District Court concluded that the at-large system for electing county commissioners diluted Native Americans’ voting strength in violation of Section 2 of the Voting Rights Act.

William “Snuffy” Main, a voting rights litigation plaintiff and member of the Gros Ventre tribe, testified about the history of discrimination against Native Americans in Montana and about United States v. Blaine County (Montana), a case in which the United States Department of Justice (DOJ) alleged that Blaine County’s at-large system for electing county commission-

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2 See, United States Census Bureau’s State and County Quickfacts for South Dakota: http://quickfacts.census.gov/qfd/states/46000.html
4 See, Large v. Freemont, 709 F. Supp. 2d 1176, 1184 (D. Wyo. 2010).
5 Id. at 1291.
6 Id.
ers violated Section 2 of the Voting Rights Act. The District Court found in *Blaine County* that there was a history of official discrimination against Native Americans; racially polarized voting; voting procedures that enhanced the opportunities for discrimination against Native Americans; a tenuous justification for the at-large voting system; and that under the totality of the circumstances, the at-large voting system violated Section 2.

**II. Language Access (South Dakota)**

Prior to the 2010 census, South Dakota had 18 counties that were covered by Section 203 of the Voting Rights Act. Such coverage required those counties to provide election materials in certain languages other than English. Steve Emery, an attorney and former voting rights plaintiff, testified that from 1975 until the last election, Dewey and Ziebach counties did not have any bilingual voting materials. Emery offered to translate, free of charge, any materials that those two counties needed to have translated, but the counties never took him up on the offer.

**III. Access to the Ballot for Native Americans (South Dakota and Montana)**

Julie Garreau, of the Cheyenne River Sioux Tribe, and O.J. Semans, Sr., Co-Executive Director of Four Directions, testified about efforts to create satellite offices for in-person absentee voting on Indian reservations in South Dakota and Montana. Both of these states offer in-person absentee voting in the weeks leading up to elections. However, without satellite offices on the reservations, the only place to take advantage of these additional weeks of in-person absentee voting is at the county seat. According to Garreau, limiting in-person absentee voting to the county seat makes it difficult for Native Americans to take advantage of in-person absentee voting because they often lack the time and resources required to travel great distances to the county seat, whereas other residents of the county get a month or more prior to the election to vote. At the time of the Commission hearing, the litigation known as, *Wandering Medicine v. McCullough*, was pending in the United States District Court in

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7 See, United States v. Blaine County, 157 F. Supp. 2d 1145 (D. Mont. 2001)
9 See, 42 U.S.C.A. § 1973aa-1a(b)(1)
10 In South Dakota, beginning 46 days before a Primary and General Election, and at least 15 days before any other election, any registered voter may apply in person at the office of and to the person in charge of the election for an absentee ballot during regular office hours up to 5:00 p.m. on the day before the election to cast an in-person absentee ballot. See, South Dakota Secretary of State’s “Election FAQ” webpage: https://sdsos.gov/elections-voting/election-faq.aspx. In Montana, in-person absentee voting starts as soon as ballots are available – by not later than 30 days before an election, but requires the voter to submit an absentee ballot in person at the election office or by mail to the election office by noon the day before the election. See, Montana Secretary of State’s Election Frequently Asked Questions webpage: http://sos.mt.gov/elections/FAQ/index.asp.
Montana. That case sought to establish satellite offices on Indian reservations for in-person absentee voting and was settled in June 2014.\textsuperscript{11}

Some satellite offices have been established in South Dakota through the cooperative work of the county and tribes, but the first of those offices in the state were gained only through litigation (\textit{Brooks v. Gant}).\textsuperscript{12}


\begin{flushleft}\textsuperscript{12} See, \textit{Memorandum Opinion and Order Granting Defendants’ Motion to Dismiss without Prejudice, Brooks v. Gant, 5:12-cv-05003-KES (D.S.D. August 6, 2013)}.\end{flushleft}