

# 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

A. Gay Kingman, Executive Director, Great Plains  
Tribal Chairman's Association

Michaelynn Hawk, Director, Indian People's Action

## PANELISTS

---

Gary Collins, former Voting Rights Litigation  
Plaintiff and Northern Arapaho Tribal Liaison

Jean Schroedel, Professor of Politics and Policy,  
Claremont Graduate University

Pat Duffy, Voting Rights Litigator

O.J. Semans Sr., Co-Executive Director, Four  
Directions

Steve Emery, Attorney and former Voting Rights  
Litigation Plaintiff, Cheyenne River Sioux

Mel Siyo, Rapid City Human Relations  
Commission

Julie Garreau, Cheyenne River Sioux

Libby Skarin, Policy Director, ACLU of South  
Dakota

Bill White Head, former Voting Rights Litigation  
Plaintiff, Fort Peck Assiniboine and Sioux

William "Snuffy" Main, Voting Rights Litigation  
Plaintiff, Gros Ventre

Bret Healy, Consultant, Four Directions

Mark Wandering Medicine, Voting Rights Litigation  
Plaintiff, Northern Cheyenne

Garth Massey, Sociologist, Expert Witness in  
Voting Rights Litigation

## 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

## SUPPORTING ORGANIZATIONS (NOT EXHAUSTIVE)

ACLU of Montana	Montana Voice
ACLU of North Dakota	North Dakota Protection & Advocacy Project
ACLU of South Dakota	North Dakota Women's Network
ACLU of Wyoming	South Dakota Coalition of Citizens with Disabilities
Four Directions, Inc.	Western Native Voice

## RAPID CITY REGIONAL HEARING HIGHLIGHTS



*Rapid City commissioners (left) panel of witnesses (right) at the NCVR Rapid City regional hearing.*

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.<sup>1</sup> 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,<sup>2</sup> 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<sup>3</sup>.

Gary Collins, Northern Arapaho Tribal Liaison, testified about *Large v. Fremont County (Wyoming)*, a case in which he was a plaintiff.<sup>4</sup> 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.”<sup>5</sup> 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.<sup>6</sup>



Mark Wandering Medicine, lead plaintiff in case *Wandering Medicine v. McCulloch*, sharing his experience with voter intimidation.

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-

<sup>1</sup> See, *Expert Report of Professor Jean Reith Schroedel, Wandering Medicine v. McCulloch*, No. CV 12-135-BLG-DWM (D. Mont. 2014).

<sup>2</sup> See, *United States Census Bureau’s State and County Quickfacts for South Dakota*: <http://quickfacts.census.gov/qfd/states/46000.html>

<sup>3</sup> See, *Expert Report of Professor Jean Reith Schroedel, Wandering Medicine v. McCulloch*, No. CV 12-135-BLG-DWM (D. Mont. 2014).

<sup>4</sup> See, *Large v. Fremont*, 709 F. Supp. 2d 1176, 1184 (D. Wyo. 2010).

<sup>5</sup> *Id.* at 1231.

<sup>6</sup> *Id.*

ers violated Section 2 of the Voting Rights Act.<sup>7</sup> 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.<sup>8</sup> Such coverage required those counties to provide election materials in certain languages other than English.<sup>9</sup> 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.<sup>10</sup> 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

---

<sup>7</sup> See, *United States v. Blaine County*, 157 F. Supp. 2d 1145 (D. Mont. 2001)

<sup>8</sup> See, *Voting Rights Act Amendments of 1992, Determinations Under Section 203*, 67 Fed. Reg. 48,871 (July 26, 2002)

<sup>9</sup> See, 42 U.S.C.A. § 1973aa-1a(b)(1)

<sup>10</sup> 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.<sup>11</sup>

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 (*Brooks v. Gant*).<sup>12</sup>

---

<sup>11</sup> See, *Order, Wandering Medicine v. McCullough, et al., No. 1:12-cv-00135-DWM (D.Mont. June 16, 2014)*.

<sup>12</sup> See, *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)*.