

## Early Voting on Indian Reservations

### *Wandering Medicine v. McCulloch (Richard F. Cebull and Donald W. Molloy, D. Mont. 1:12-cv-135)*

Sixteen members of three Indian tribes living on three Indian reservations filed a federal complaint in the District of Montana on October 10, 2012, seeking the establishment of satellite county clerk and recorder offices for voter registration and in-person absentee voting.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a preliminary injunction,<sup>2</sup> but they did not move for expedited briefing.<sup>3</sup>

Judge Richard F. Cebull set the matter for hearing on October 29.<sup>4</sup> After a two-day hearing, Judge Cebull denied the plaintiffs immediate relief,<sup>5</sup> because the plaintiffs had not shown a discriminatory intent.<sup>6</sup> “It is undisputed that Native Americans living on the three Indian Reservations face greater hardships to in-person absentee voting than residents of the three counties who do not live on the reservations.”<sup>7</sup> Although the Voting Rights Act provides relief without a showing of intent, it was unavailing here because residents of the reservations have successfully elected candidates of their choice.<sup>8</sup>

An appeal was heard on October 10, 2013, and dismissed on October 30 as moot.<sup>9</sup>

Because of Judge Cebull’s May 3, 2013, retirement,<sup>10</sup> the court assigned the case to Judge Donald W. Molloy, who decided on March 26, 2014, that the plaintiffs had alleged plausible equal protection and voting rights claims.<sup>11</sup>

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1. [Complaint](#), *Wandering Medicine v. McCulloch*, No. 1:12-cv-135 (D. Mont. Oct. 10, 2012), D.E. 1; *see Indians Sue Over Voting*, Great Falls Trib., Oct. 12, 2012, at A1.

2. [Preliminary Injunction Motion](#), *Wandering Medicine*, No. 1:12-cv-135 (D. Mont. Oct. 10, 2012), D.E. 3.

3. [Opinion](#) at 2, *id.* (Nov. 6, 2012), D.E. 79, *available at* [2012 WL 5414022](#); [Transcript](#) at 6–7, *id.* (Oct. 29, 2012, filed Nov. 6, 2012), D.E. 76.

4. [Order](#), *id.* (Oct. 22, 2012), D.E. 31.

Judge Cebull retired on May 3, 2013. Federal Judicial Center Biographical Directory of Federal Judges, <http://www.fjc.gov/history/home.nsf/page/judges.html>.

5. [Transcript](#) at 362, *id.* (Oct. 30, 2012, filed Nov. 6, 2012), D.E. 77.

6. [Opinion](#), *supra* note 3.

7. *Id.* at 2.

8. *Id.* at 3, 10, 12, 14.

9. [Wandering Medicine v. McCulloch](#), 544 F. App’x 699, 700 (9th Cir. 2013) (“Although plaintiffs’ complaint requested ‘preliminary and permanent injunctive relief . . . for the 2012 primary election and . . . for all future elections,’ plaintiffs’ motion for a preliminary injunction included no such language . . .”) (first two ellipses in original); Docket Sheet, [Wandering Medicine v. McCulloch](#), No. 12-35926 (9th Cir. Nov. 9, 2012).

10. Federal Judicial Center Biographical Directory of Federal Judges, <http://www.fjc.gov/history/home.nsf/page/judges.html>.

11. [Opinion](#), *Wandering Medicine v. McCulloch*, No. 1:12-cv-135 (D. Mont. Mar. 26, 2014), D.E. 153.