

Early Voting on Indian Reservations

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

Members of three American Indian tribes sought the establishment of satellite county clerk-and-recorder offices for voter registration and in-person absentee voting. The first judge assigned to the case denied relief for lack of discriminatory intent and because reservation residents had successfully elected candidates of their choice. After the first judge retired, a second judge determined that the plaintiffs had alleged plausible equal-protection and voting-rights claims. The case was resolved by stipulation.

Subject: Absentee and early voting. *Topics:* Poll locations; equal protection; section 2 discrimination; early voting; absentee ballots.

Sixteen members of three American 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.¹ With their complaint, the plaintiffs filed a motion for a preliminary injunction,² but they did not move for expedited briefing.³

Judge Richard F. Cebull set the matter for hearing on October 29.⁴ After a two-day hearing, he denied the plaintiffs immediate relief,⁵ because the plaintiffs had not shown a discriminatory intent.⁶ “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.”⁷ Although the Voting Rights Act provides relief without a showing of intent, it was unavailing here because residents of the reservations had successfully elected candidates of their choice.⁸

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

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. *Wandering Medicine v. McCulloch*, 906 F. Supp. 2d 1083, 1086 (D. Mont. 2012), *vacated as moot*, 544 F. App’x 699 (9th Cir. 2013); Transcript at 6–7, *Wandering Medicine*, No. 1:12-cv-135 (D. Mont. Oct. 29, 2012, filed Nov. 6, 2012), D.E. 76.

4. Order, *Wandering Medicine*, No. 1:12-cv-135 (D. Mont. Oct. 22, 2012), D.E. 31.

5. Transcript at 362, *Wandering Medicine*, No. 1:12-cv-135 (D. Mont. Oct. 30, 2012, filed Nov. 6, 2012), D.E. 77.

6. *Wandering Medicine*, 906 F. Supp. 2d 1083.

7. *Id.* at 1086.

8. *Id.* at 1086, 1089–91.

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*

Because of Judge Cebull's May 3, 2013, retirement,¹⁰ 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.¹¹ Judge Molloy signed a stipulated dismissal on July 11: "each party to pay its own fees and costs."¹²

Medicine v. McCulloch, No. 12-35926 (9th Cir. Nov. 9, 2012).

10. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges

11. Opinion, *Wandering Medicine v. McCulloch*, No. 1:12-cv-135 (D. Mont. Mar. 26, 2014), D.E. 153, 2014 WL 12588302.

12. Order, *id.* (July 11, 2014), D.E. 223.