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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

CITIZENS EQUAL RIGHTS ALLIANCE, INC.
(CERA), MONTANA CITIZENS RIGHTS
ALLIANCE (MCRA), CHRISTOPHER
KORTLANDER, TERRY A. CODDENS, and
DEBORAH WINBURN,

Plaintiffs,

v.

BRAD JOHNSON, in his official capacity as
Secretary of State for the State of Montana;
DUANE WINSLOW, in his official capacity as
Interim Elections and Government Services
Division Deputy to the Secretary of State for the
State of Montana; DENNIS UNSWORTH, in his
official capacity as Commissioner of Political
Practices for the State of Montana; CYNDY
MAXWELL, in her official capacity as Clerk and
Recorder for Big Horn County, Montana; BIG
HORN COUNTY COMMISSION; DIRK
KEMPTHORNE, in his official capacity as
Secretary of the United States Department of
Interior; and EDWARD PARISIAN, in his official
capacity as Rocky Mountain Regional Director of
the Bureau of Indian Affairs,
Defendants.

) Case No. CV07-74-BLG-RFC

) **AMENDED COMPLAINT FOR**
) **DECLARATORY AND**
) **INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

1. This is an action to ensure the equal application of election laws to all citizens of Big Horn County, Montana. In recent years, Defendants have established polling places for federal, state, county, and local district elections within the exterior boundaries of the Crow Indian Reservation (“Reservation”). Despite the critical importance of fair elections to the operation of our democracy, as a matter of official policy and actual practice Defendants have asserted that they cannot administer or regulate elections on the Reservation or ensure compliance with applicable elections laws. Hence, numerous violations of election laws have occurred, and are likely to continue, unless Defendants either regulate elections on the Reservation or cease from establishing polling places in locations where state and federal election laws cannot be administered. Defendants’ actions and omissions have deprived voters in Big Horn County of their fundamental, constitutionally-protected rights to participate in the political process on an equal basis and undermine the constitutional guarantee of a republican form of government.

JURISDICTION

2. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the action arises under the Voting Rights Act, 42 U.S.C. § 1973; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the United States Constitution. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1343(a)(3) because the action seeks to redress the deprivation of Plaintiffs’ rights, privileges and immunities under the aforementioned laws. This Court is empowered to issue a declaratory judgment in this action, as well as any necessary or proper relief incident thereto, pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

3. Venue is proper in the District of Montana pursuant to 28 U.S.C. § 1391(b) because all Defendants reside in the District of Montana and a substantial part of the events giving rise to this action occurred in the District of Montana. Venue is proper in the Billings Division pursuant to Local Rule 1.11(a)(1) because the Billings Division contains a county – Big Horn County – in which venue would be proper under the laws of the State of Montana. Venue would be proper in Big Horn County pursuant to Montana Code Annotated 25-2-125 because this is an action against public officers of the State of Montana and Plaintiffs' claims or some part thereof arose in Big Horn County. *See also* Mont. Code Ann. 25-2-115, -117, and -118.

PARTIES

4. Plaintiff Citizens Equal Rights Alliance, Inc. (CERA) is a nonprofit organization incorporated in the State of South Dakota. One of CERA's missions is to ensure the equal treatment of all citizens in the exercise of their rights, including the right to vote. CERA's membership includes registered voters in Big Horn County, Montana.

5. Plaintiff Montana Citizens Rights Alliance (MCRA) is a nonprofit organization incorporated in the State of Montana. One of MCRA's missions is to ensure the equal treatment of all Montana citizens in the exercise of their rights, including the right to vote. MCRA's membership includes registered voters in Big Horn County, Montana.

6. Plaintiffs Christopher Kortlander, Terry A. Coddens, and Deborah Winburn are registered voters in Big Horn County, Montana. Plaintiffs Kortlander and Winburn are members of CERA. In addition, Plaintiff Winburn was a candidate for Sheriff of Big Horn County in the 2006 General Election. Plaintiffs are not members of any Indian Tribe.

7. Defendant Brad Johnson is the Secretary of State for the State of Montana. As such, Defendant is the chief election officer for the State, and is responsible for obtaining and maintaining uniformity in the application, operation, and interpretation of election laws and in administering elections for federal, state, county, and local district offices.

8. Defendant Duane Winslow is the Interim Elections and Government Services Division Deputy to the Secretary of State for the State of Montana. As such, Defendant is responsible for obtaining and maintaining uniformity in the application of election laws and in administering elections for federal, state, county, and local district offices.

9. Defendant Dennis Unsworth is the Commissioner of Political Practices for the State of Montana. As such, Defendant is responsible for investigating all alleged violations of the election laws contained in Chapters 35 and 37 of Title 13 of the Montana Code.

10. Defendant Cyndy Maxwell is the Clerk and Recorder for Big Horn County. As such, Defendant is responsible for planning and conducting elections for federal, state, county, and local district candidates for office in Big Horn County, Montana.

11. Defendant Big Horn County Commission is the governing body of Big Horn County. As such, Defendant is responsible for establishing the location of polling places, among other election-related responsibilities.

12. Defendant Dirk Kempthorne is the appointed Secretary of the United States Department of the Interior (“DOI”). DOI is an agency of the United States that is responsible for, and has the administrative authority over, Indian lands by and through its various bureaus, agents, and agencies including the Bureau of Indian Affairs (“BIA”), and is the trustee of Indian lands for the government of the Crow Tribe and its members.

13. Defendant Edward Parisian is the Rocky Mountain Regional Director of the BIA. As such, Defendant is directly responsible for implementing the DOI's trust responsibilities to the government of the Crow Tribe.

14. Each of the above-named Defendants has been sued in his or her official capacity. At all relevant times, Defendants have acted under the color of statutes, ordinances, regulations, customs and usages of the State of Montana, Big Horn County, and/or the United States.

FACTUAL ALLEGATIONS

15. According to the data from the 2000 Census of Population, Big Horn County has a total population of 12,671 persons. Specifically, Big Horn County's population is comprised of 7,560 Native Americans (or 59.7% of the County's total population) and 4,638 Caucasians (36.6% percent of the County's total population), among others.

16. Elective offices in Big Horn County are non-partisan. However, voting in Big Horn County is racially polarized, especially in those elections in which tribal members and non-tribal members oppose each other. During the 2006 election, nearly every contested County race posited a tribal member candidate endorsed by the government of the Crow Tribe against a non-Indian candidate. The evidence suggests that tribal members largely vote as a cohesive bloc, making it possible to readily identify candidates that are preferred by each group.

17. The Secretary of State has informed Plaintiffs that he lacks authority to obtain and maintain uniformity in the application and operation of election laws with respect to any federal, state, county, and local district election-related activities that occur within the exterior borders of the Reservation.

18. Defendants' asserted inability to enforce relevant election laws places Plaintiffs at a clear disadvantage in federal, state, county, and local district elections processes. Non-Indian voters

in Big Horn County have recently endured significant and substantial voting-related racial discrimination as a result of Defendants' failures to enforce relevant election laws. In addition, they suffered dilution of their votes. Defendants' failures have opened the door to election fraud and/or voting rights abuses, as evidenced by the following events surrounding the 2006 General Election.

- a. The Crow Tribe of Montana is a federally recognized tribe that is eligible for, and receives, funding from the federal government. On November 1, 2006, the government of the Crow Tribe adopted Legislative Resolution No. 06-05, entitled: "A Legislative Resolution of the Crow Tribal Legislature: An Endorsement of Crow Tribal Members Running for Big Horn County Offices in the November 2006 Election." The Resolution expressly encouraged bloc voting based on race, stating that the Tribe "hereby approves, and decrees an endorsement of the Crow Members of the Crow Nation..." for elected office in Big Horn County.
- b. The Resolution was published in the *Big Sky Briefs*, prior to the General Election, on November 3rd and 6th, 2006. The Resolution was also published in the same newspaper on Election Day, November 7, 2006. *Big Sky Briefs* is an off-reservation daily news organization with a daily circulation of approximately 2,000. Copies are also distributed electronically via email and on a web site.
- c. Similarly, on November 6, 2006, just one day prior to the General Election, the Resolution was published in *The Original Briefs*, an off-reservation news publication with a daily circulation of approximately 7,500.

- d. Aggregate contributions for each election in a campaign by a political committee to a candidate are limited from \$130 to \$500, depending upon the candidate's particular office. Although the federally-funded government of the Crow Tribe endorsed a slate of tribal candidates for non-tribal offices and expended sums in excess of applicable limits, Defendants have not required the Tribe to register as a political action committee or report its expenditures.
- e. On Election Day, November 7, 2006, Plaintiffs witnessed and/or became aware of election fraud and/or voting rights abuses at polling precincts 5 and 7, located within the exterior boundaries of the Crow Indian Reservation, Big Horn County, Montana.
- f. Specifically, ballot boxes at polling precincts 5 and 7 on the Crow Indian Reservation were unsecured on Election Day, both during and after polling hours. In contrast, ballot boxes were secured at polling places off the Reservation.
- g. After the polling places at precincts 5 and 7 closed at 8:00 p.m., but before the ballots had been processed, a non-Indian poll watcher, Plaintiff Coddens, was ordered to leave by Big Horn County election officers at the close of polling hours. These Big Horn County election officials were Crow tribal members. Plaintiff Coddens left the precinct at 8:13 p.m., despite his requests to watch the processing of the ballots.
- h. On November 9, 2006, Defendant Maxwell also confirmed to Plaintiffs Winburn and Kortlander that ballot boxes at polling precincts 5 and 7 were unlocked all day.

- i. On November 10, 2006 Plaintiff Kortlander faxed the sworn affidavit of Plaintiff Coddens to Defendants Brad Johnson, Secretary of State and Cyndy Maxwell, Clerk and Recorder for Big Horn County. The affidavit attests to the events described above.
- j. On November 11, 2006 Plaintiff Kortlander called Defendant Johnson, Secretary of State, and informed the Secretary that there were unlocked ballot boxes at precincts 5 and 7 located within the exterior of boundaries of the Crow Indian Reservation, and that Plaintiff Coddens, a non-tribal poll watcher was ordered by enrolled Crow tribal members serving as Big Horn County election judges to leave the precinct before the processing of the ballots was completed.
- k. On November 22, 2007, Plaintiff Winburn spoke with Kim Trujillo, an official at the Office of the Commissioner of Political Practices. Ms. Trujillo told Plaintiff Winburn of a telephone complaint received from a Crow tribal member. The complainant stated that, prior to Election Day, the government of the Crow Tribe issued multiple tribal identification cards to both herself and others, with separate cards in both their Crow and American names. The complainant further stated that she had been encouraged to use the identifications cards to vote under both her Crow and American name at different voting precincts. The complainant stated that she did indeed vote twice and now felt guilty. Plaintiffs are informed and believe there was no investigation into this or other complaints of multiple voting at the behest of the government of the Crow tribe.

19. Plaintiffs contend that not only do Defendants have the authority to apply election laws to polling places located within the Reservation for all federal, state, county, and local district elections, but that Defendants are required to apply, operate, and interpret those laws uniformly, regardless of where said polling places are located. Alternatively, in the event that Defendants lack such authority, Defendants must necessarily be enjoined from establishing polling places in which state and federal election laws cannot be administered. Plaintiffs do not contend that any of these election laws apply to elections for tribal offices.

**FIRST CAUSE OF ACTION
VOTING RIGHTS ACT**

20. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 19 and incorporate them herein by reference.

21. Section 2 of the Voting Rights Act prohibits Defendants from imposing any “voting qualification or prerequisite to voting or standard, practice, or procedure” which results in a denial or abridgement of the right to vote on account of race or color. 42 U.S.C. § 1973(a). As a matter of official policy and actual practice, Defendants have established polling places for federal, state, county, and local district elections within the exterior boundaries of the Crow Indian Reservation while simultaneously asserting that they cannot administer or regulate state or federal elections on the Reservation to ensure compliance with federal and state elections laws.

22. The totality of circumstances of Defendants’ actions, as described above, has resulted in non-tribal voters having “less opportunity than other members of the electorate to participate in the political process and to elect the representatives of their choice.” 42 U.S.C. § 1973(b). Similarly, the official policy and actual practice of establishing polling places where

Defendants contend state and federal elections laws cannot be administered is a permanent and structural barrier that dilutes the ability to elect representatives of non-tribal members' choice.

23. Unless enjoined by this Court, Defendants will continue to violate Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by following standards, practices, or procedures that deny non-tribal member voters the opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

24. As an incident of bringing and maintaining this action, plaintiffs have incurred and will incur litigation costs and are entitled under 42 U.S.C. § 1973l(e) to an award of reasonable attorneys' fees and costs.

**SECOND CAUSE OF ACTION
FOURTEENTH AMENDMENT – EQUAL PROTECTION**

25. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 24 and incorporate them herein by reference.

26. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits Defendants from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1. The right to vote is a fundamental right.

27. Defendants have disparately applied election laws to tribal and non-tribal citizens. In addition, Defendants have disparately regulated off-Reservation and on-Reservation polling places for federal, state, local, and district elections. This disparate treatment deprives the named Plaintiffs of their rights secured by the Fourteenth Amendment.

28. By establishing polling places in precincts where elections cannot be regulated and/or election laws administered, Defendants have created irrational and arbitrary voting classes. Allowing voting at polling places where elections cannot be regulated and election laws cannot be

applied disadvantages all voters at those polling places, and within the jurisdiction, regardless of race. This disparate treatment deprives the named Plaintiffs and all Big Horn County residents, including tribal members, of their rights secured by the Fourteenth Amendment.

29. Defendants have also conducted an election characterized by arbitrary and disparate treatment of ballots that lacks uniformity. This lack of uniformity is evidenced by varying degrees of ballot box security, or lack thereof, during polling hours, among other manifestations of lack of uniformity. This lack of uniformity deprives the named Plaintiffs and all Big Horn County residents, including tribal members, of their rights secured by the Fourteenth Amendment.

30. Defendants have also disparately applied campaign finance laws to tribal and non-tribal political interests. For example, under Montana law, aggregate contributions for each election in a campaign by a political committee to a candidate are limited from \$130 to \$500, depending upon the candidate's particular office. Although the government of the Crow Tribe endorsed a slate of tribal candidates for non-tribal offices and expended sums in excess of applicable limits, Defendants have not required the Tribe to register as a political action committee. This disparate treatment deprives the named Plaintiffs and all Big Horn County residents, including tribal members, of their rights secured by the Fourteenth Amendment.

31. State and Local Defendants have a duty to investigate allege violations of the election laws. On information and belief, State and Local Defendants investigate alleged violations occurring at polling places throughout the State except on the Reservation. This disparate treatment deprives the named Plaintiffs and all Big Horn County residents, including tribal members, of their rights secured by the Fourteenth Amendment.

32. Unless enjoined by this Court, Defendants will continue to violate the Fourteenth Amendment by participation in actions or omissions that deny tribal and non-tribal voters an

opportunity to participate in the political process on an equal basis with other members of the electorate.

**THIRD CAUSE OF ACTION
GUARANTEE CLAUSE**

33. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 32 and incorporate them herein by reference.

34. The Guarantee Clause to the United States Constitution provides that “[t]he United States shall guarantee to every state in this union a republican form of government...” U.S. CONST. art. IV, § 4.

35. Inasmuch as the preservation of a republican form of government necessarily requires protecting against corruption of the voting process, Defendants (despite their representations to the contrary) have the authority and duty to administer and regulate elections on the Reservation.

**FOURTH CAUSE OF ACTION
42 U.S.C. §§ 1983 and 1988**

36. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 35 and incorporate them herein by reference.

37. The Civil Rights of 1871, 42 U.S.C. § 1983, provides that any person acting under color of state law who deprives a citizen of the United States of any federal right, privilege or immunity “shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”

38. Defendants Brad Johnson, Duane Winslow, and Dennis Unsworth (hereinafter “State Defendants”), in their official capacities are persons under 42 U.S.C. § 1983 for purposes of declaratory and injunctive relief. Defendants Cyndy Maxwell and the Big Horn County

Commission (hereinafter “Local Defendants”) in their official capacities are persons for purposes of 42 U.S.C. § 1983.

39. All State and Local Defendants’ actions complained of herein have been taken under color of state law.

40. State and Local Defendants have violated plaintiffs’ civil rights under the Fourteenth Amendment and the Guarantee Clause as set forth above and as protected by 42 U.S.C. § 1983.

41. Plaintiffs are entitled to a declaration that their civil rights have been violated and to an injunction prohibiting defendants from continued violation of Plaintiffs’ civil rights.

42. As an incident of bringing and maintaining this action, plaintiffs have incurred and will incur litigation costs and are entitled under 42 U.S.C. § 1988 to an award of reasonable attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court:

1. Declare that Defendants have violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and the Fourteenth Amendment and Guarantee Clause of the United States Constitution. In addition, declare that State and Local Defendants have violated 42 U.S.C. § 1983;
2. Preliminarily and permanently enjoin Defendants, their agents, and successors in office, and all persons acting in concert with them, from implementing practices and procedures which have the result of denying non-tribal members an opportunity to participate effectively in the political process on an equal basis with other members of the electorate, or from disparately applying election laws to tribal members and

non-tribal members and disparately regulating polling places on-Reservation and off-Reservation;

3. Declare that Defendants have the authority and duty to administer or regulate elections on the Reservation. Alternatively, in the event that the court determines that Defendants do not have said authority absent tribal consent, and the Tribe does not enter into an agreement with the State granting such consent, enjoin Defendants from establishing polling places at precincts in which elections laws cannot be administered;
4. Award Plaintiffs reasonable costs and attorney's fees under 42 U.S.C. § 19731(e) and 42 U.S.C. § 1988; and
5. Award such further equitable and other relief as the Court deems just and proper to ensure that elections in Big Horn County are held in a fair and lawful manner.

DATED this 19th day of November, 2007.

GROEN STEPHENS & KLINGE LLP

By: /s/Richard M. Stephens
Richard M. Stephens
Attorney for Plaintiffs