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Montana voting rights case inspires national legislation



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(Photo: PHOTO COURTESY OF AUDREY HALL)

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A 120-mile round trip separates voters in Lame Deer from voting early and registering late, and Lame Deer is among the closest places on the Northern Cheyenne Reservation to Forsyth, the seat of Rosebud County.

But the asphalt on Montana Highway 39 is just one way to measure the distance.

“This journey has geographical and historical distances,” said Tom Rodgers, a tribal issues activist, member of the Blackfeet Nation and Jack Abramoff whistleblower.

As South Carolina debates Confederate symbols, Rodgers thinks of symbols in Montana that also tell a story.

“Names matter. History matters,” he said. “We have a county seat named after a man who was horribly anti-Native American, a man who killed 300 men, women and children at Wounded Knee. The fact that it hasn’t been remedied is wrong, wrong, wrong.”



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An early voter casts her ballot at the County Elections Office in Great Falls. Early voting and late registration is a snap in a county seat but a different story in remote, especially reservation, places in the state. (Photo: TRIBUNE PHOTO/RION SANDERS)

Maj. Gen. Forsyth, namesake of the Rosebud County seat, led the 7th U.S. Cavalry into Sioux Country, where they massacred a village. The county clerk and recorder was Geraldine Custer, another last name rich in meaning in Indian Country, especially to the Northern Cheyenne. Another general is represented in Rosebud County Commissioner Robert E. Lee.

Rodgers is part of a team that worked on a voting rights case that has inspired legislation brought forth in the spring by the U.S. Department of Justice and the Native American Voting Rights Act, proposed by Sen. Jon Tester, D-Mont., as well as Sens. Heidi Heitkamp, D-N.D., Tom Udall, D-N.M., and Al Franken, D-Minn.

That act could influence the 2016 election, especially in the West.

It would require each state to establish polling locations on reservations upon request from the tribe, including early voting locations in states that allow votes to be cast prior to Election Day. The bill also directs state election administrators to mail absentee ballots to the homes of all registered voters if requested by the tribe.

The basis for the legislation came from Montana, where in 2012 plaintiffs from the Crow, Northern Cheyenne and Fort Belknap Indian reservations sued Secretary of State Linda McCulloch and the elections offices in Blaine, Rosebud and Big Horn counties, arguing Indians did not have the same voting opportunities — in violation of the National Voting Rights Act.

“From Browning, Montana, where we started three years ago, we had to sue to prevail and now that case has been the basis for the most far-reaching empowerment of Native Americans since we got the right to vote in 1924,” Rodgers said.

Yet the proposed legislation may not even get to the heart of the access gap in Montana.

The lawsuit was settled, but the settlement was not entirely enacted.

“If you put up enough barriers, people are going to find something else to do on Election Day.”

Sen. Jon Tester, D-Montana

Tester said that Native Americans vote at a 17 percent lower rate than non-Natives is a red flag.

“We should try to fix that, and that’s what this bill is trying to do,” he said. “If you put up enough barriers, people are going to find something else to do on Election Day. We’re just trying to make voting user-friendly and hopefully people will get out and express their constitutional right.”

The lawsuit brought issues to the surface, Tester said, adding that Native American Voting Rights Act shouldn’t be intimidating to local election officers.

“It’s patterned after the 1964 Voting Rights Act, and that’s worked pretty well,” he said.

“There’s challenges in Indian Country we need to address, including their right to cast their votes,” he said. “Democracy works best with good voter turnout. We aren’t even close to 100 percent, and it’s worse in Indian Country.”

The act also requires states to recognize tribal IDs as valid identification and would require the U.S. attorney general to enforce tribal voting protections and provide poll observers to monitor elections.

“The bill is addressing concerns in a lot of states, but we’re just ahead of the game.”

Sec. of State Linda McCulloch

Equal polling places doesn’t mean equal to the county election offices, however.

McCulloch said the bill requires that reservations have the same provisions as other polling places, which counties already have.

“The bill is addressing concerns in a lot of states, but we’re just ahead of the game,” McCulloch said.

If early voting is allowed at polling places, it must be allowed at them all. But in Montana, early voting is only allowed at elections offices. Those election offices can be moved, such as they are to the fairgrounds in Cascade County. That’s a way for people to easily register to vote on Election Day at the same place they’ll vote, if they vote in the central location.

But it still means Native and other rural voters have to travel to the county seat to vote absentee in person or to register on the same day they vote without the satellite offices.

The bill says: “In states that provide for early voting, a State or local election official shall provide at least one early voting location on an Indian reservation upon the request of the applicable Indian tribe.”

For many Natives, voting means marshaling resources they don’t have to travel a long distance to go to a community that can be hostile, said Bret Healy, a Native voting rights and a consultant for Four Directions in South Dakota.

“They say Indians can use (mail-in) absentee ballots, but that’s like saying as long as Indians have two hours to vote and everyone else has 12 that is still OK because we haven’t prevented them voting,” he said. “You should have equal voting opportunities.”



Mark Wandering Medicine, lead plaintiff in a Native American voting case, poses for a photo at a courthouse in Portland, Ore. The 9th U.S. Circuit Court of Appeals declined to settle a voting rights case in which American Indians in Montana sued to establish satellite voting offices on three reservations. The case was settled in Montana and inspired proposed federal legislation. *(Photo: AP)*

Mark Wandering Medicine of the Northern Cheyenne and 11 other plaintiffs sued to force the Montana secretary of state and three counties to set up satellite election offices.

The case settled a year ago, with Blaine, Big Horn and Rosebud counties agreeing to set up satellite offices on reservations and splitting plaintiff's legal costs with the state.

Beginning on Oct. 7, 2014, satellite offices were supposed to be open on the reservations two days a week for tribal members to register late and cast absentee ballots in person.

Of the three counties, only Big Horn County set up a satellite office on the reservation.

In Rosebud County, Northern Cheyenne tribal officials faxed a letter formally requesting a satellite office more than a month late. In Blaine County, on behalf of the Fort Belknap Tribe, President Mark Azure sent a letter requesting a satellite office.

The Blaine County commissioners responded with a letter that because the tribe missed the deadline, sending the letter Aug. 5 instead of Aug. 1, the county was relieved of its obligation to set up a satellite office for the election.

"We do not choose to avail ourselves of the offer made by the Montana Secretary of State for the purchase of the ballot on demand machines. We prefer to rely on the clear and

unambiguous terms of our settlement agreement. In the interim, we would be happy to host a meeting with you and/or the council to discuss arrangements for future elections,” the commissioners wrote.

Officials in both counties said the tribal officials seemed unaware of the deadline.

GREAT FALLS TRIBUNE

Tribes miss increased early voting access opportunity

Glacier County was not part of the lawsuit, but commissioners opened a satellite voting office in Browning before the election.

McCulloch visited Browning and Crow Agency to see the satellite offices and said they worked well.

Glacier County’s satellite office was so successful McCulloch expects a repeat for the next general election. In fact, Glacier and Big Horn counties both affected voter turnout. The two counties saw 100 new voter registrations and 100 updates to registrations in the 2014 election, as well as 500 absentee ballots issued from the satellite office.

“In the 2014 election, it sure made a difference,” she said.

With a stroke of her pen, McCulloch could make history and establish the satellite offices, Healy said.

In a March 2014 order in the case, Judge Donald Molloy of the U.S. District Court in Missoula wrote: “The Secretary had, and has, the ability to issue a directive telling the counties that they *must* establish satellite voting offices for in-person absentee voting and late voter registration. If a directive had been issued, it would have been binding on election administrators and they would have had to take the directed action.”

“In Montana, you’ve got a situation where a federal judge has laid out authority and McCulloch could make it so,” he said. “Local officials don’t seem to be moved by our arguments, and unless they’ve been directed to do so, they won’t. It’s unfortunately the history of voting in general for minorities. The folks who have power don’t go out of their way to open access to the ballot box. Inertia is a powerful force.”



The experiences of voting vary in Indian Country across the United States. (Photo: Audrey S Hall)

McCulloch sees Molloy's order in a more narrow sense, limited to the counties in the lawsuit and dependent on the terms of the settlement. She maintains that the county government has the power to open the satellite offices, not her.

"It's still a local control issues," she said. "Those three counties still have to do it if the tribes request it in time. If the tribal governments don't want it, they won't receive it."

Counties already can decide to set up satellite offices on reservations, as Glacier County did. She said she's encouraged the establishment of satellite offices on reservations.

"I think more counties would have satellite offices now were it not for the Wandering Medicine lawsuit. Counties were waiting to see regulations that would come from that lawsuit," she said. "A lot of county elections offices have one or two people. It's a matter of resources."

The Secretary of State's Office offered grants for ballot machines to use in satellite offices. Grants Glacier and Bighorn counties used. The grants will have to go through the budget process, McCulloch said.

"The technology is in place now, but the three counties in the lawsuit couldn't use that as a reason anyway. Whether by ballot-on-demand or hand number in the ballots, they had to make it work," she said.

Except for the missed deadline.

“They’re willing to spend a lot of money to prevent making it easier for Indians to vote.”

William “Snuffy” Main, Fort Belknap

Even if it had been fully implemented, the settlement wasn’t ideal, Healy said. The satellite offices would only be open a few days a week with limited hours and not on Election Day.

“The Wandering Medicine settlement was a model for the DOJ legislation given that it highlighted that the law requires equality for Native voters,” he said. “There’s not equality across Indian Country. Montana is not a unique situation. There is inequality across the West.”

Officials seem to look for loop holes, William “Snuffy” Main said.

“They find every obstacle they can to prevent it rather than supporting it,” he said. “They’re willing to spend a lot of money to prevent making it easier for Indians to vote.”

Main knows firsthand the hurdle distance can be to access. His mother lived on the Fort Belknap’s southeastern border, 75 miles from the county seat, some of it along a terrible road.



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Voting is a different experience depending on proximity to county seats. (Photo: TRIBUNE FILE PHOTO)

Since the case, he's learned about similar problems on other reservations.

If the settlement was fully implemented "it would be a good thing," he said.

A vote is a voice, a chance to influence decisions.

Rodgers said in the Wandering Medicine case, "what we were requesting is equal staffing, equal technology and an early voting system on the reservation not the border town. It was too onerous, they said.

"I offered to pay the money to staff the facility and provide the technology and the tribes donate the facilities, and they still said no," he said. "I slowly came to realize they just didn't want to do it. And what was the only reason left? And I didn't want to say that about my home state."

"This has nothing to do with anything but voter access to the polls, and that's the bottom line."

Sen. Jon Tester, D-Montana

Tester said sponsors aim to add the Native American Voting Rights Act to a larger bill.

"I want to put it up for a vote. This is about a fundamental right in our democracy, and do people want to vote against that?" he said. "If we can get it up for a vote, I think it's going to pass. The challenge is getting it up for a vote."

In close political races in Western states with high Indian populations, the Indian vote have proved to be significant, and Natives tend to vote heavily for Democratic candidates.

When Tester upset three-term Republican Sen. Conrad Burns in 2006, he won by 3,562 votes in one of the tightest U.S. Senate races in the country that year. Voters in Indian Country cast their ballots overwhelmingly in Tester's favor.

Heitkamp saw the same support in North Dakota, and in Arizona, Democratic Congresswoman Ann Kirkpatrick spent the final days of her 2012 campaign traveling across the White Mount Apache reservation, where voters cast ballots heavily in her favor.

Tester said the Native American Voting Rights Act isn't about one political party.



Flowers bloom in a Fort Peck Indian Reservation cemetery that is the final resting place for some from the reservation who fell in the Iraq/Afghanistan wars. Activist Tom Rodgers said a voting rights case that shaped proposed federal legislation he was inspired — and furious — after the death of fellow Blackfeet Antonio “Tony” C. Burnside (Many Hides), who was killed in Afghanistan on Friday, April 6, 2012. Burnside, like other Native veterans, left behind a family on the reservation without the same ease of voting as people across the reservation in the Glacier County seat of Cut Bank. By the 2014 election, Glacier County had established a satellite voting office on the reservation. *(Photo: PHOTO COURTESY OF AUDREY HALL)*

“If I was a Native, I would take exception to someone saying that” it is about giving the Democrats a political advantage, he said.

“Folks go to the polls and vote on what a candidate stands for, and Natives aren’t any different,” he said. “Things ebb and flow in politics. This has nothing to do with anything but voter access to the polls, and that’s the bottom line.”

An “ancestral Democrat,” Healy said he didn’t expect Wandering Medicine to be such a difficult case in Montana with two of the three counties led by Democrats, a Democratic secretary of state and the Democratic party platform calling for engagement with Indian Country.

“I was shocked at the resistance. We’re used to having knock-down-drag-out fights in Republican South Dakota,” he said. “Folks don’t want to change.”

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