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**FILED**

OCT 25 2012

Clerk, U.S. District Court  
District Of Montana  
Missoula

Attorney for Amicus Curiae

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

MARK WANDERING MEDICINE, et al, )

Plaintiffs, )

v. )

LINDA McCULLOCH in her official )  
capacity as Montana Secretary of )  
of State, et al., )

Defendants. )

Case No: 1:12-cv-00135-RFC

**MOTION OF AMERICAN  
CIVIL LIBERTIES UNION  
FOR LEAVE TO FILE AN  
AMICUS BRIEF**

The American Civil Liberties Union (ACLU) moves the Court for leave to file an *amicus curiae* brief and shows as follows:

Disclosure Statement

The ACLU is a non-profit corporation and does not issue shares of stock to the public, and accordingly there is no parent corporation or any publicly held corporation owning 10% or more of its stock.

### The Interest of the ACLU in This Litigation

The ACLU is a nationwide, nonprofit, nonpartisan organization with over 500,000 members dedicated to defending the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. In support of that goal, the ACLU has long been active in defending the equal right of racial and language minorities to participate in the electoral process. The ACLU has represented American Indians in numerous voting rights cases in Montana, South Dakota, Wyoming, Colorado, and Nebraska, *e.g.*, *Stabler v. County of Thurston*, 129 F.3d 1015 (8<sup>th</sup> Cir. 1997); *Bone Shirt v. Hazeltine*, 461 F.3d 1011 (8<sup>th</sup> Cir. 2006); *Emery v. Hunt*, 615 N.W.2d 590 (S.D. 2000); *Quick Bear Quiver v. Nelson*, 387 F.Supp. 2d 1027 (D. S.D. 2005); *Windy Boy v. County of Big Horn*, 647 F.Supp. 1002 (D. Mont. 1986); *Large v. Fremont County, Wyoming*, 670 F.3d 1133 (10<sup>th</sup> Cir. 2012); *Cuthair v. Montezuma-Cortez School District No. RE-1*, 7 F.Supp.2d 1152 (D. Colo. 1998); *Janis v. Nelson*, 2009 WL 5216898 (D. S.D. Dec. 30, 2009). The ACLU is interested in this litigation because it is an effort to protect and advance the ability of American Indians to participate in the electoral process.

### Reasons an Amicus Curiae Brief Is Desirable and Relevant

An *amicus curiae* brief is desirable and relevant because it would focus on

the standards for proving a violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, emphasizing the history of discrimination against Indians in voting in Montana, and more specifically in Big Horn, Blaine, and Rosebud Counties. The Defendants cannot reasonably be expected to establish the factors probative of minority vote dilution, while Plaintiffs have not have the extensive litigation experience in Montana that the ACLU has had. Under the circumstances, the ACLU will be able to provide the Court with a special perspective on the abridgement and dilution of Indian voting strength in Montana.

The ACLU would also focus on the larger importance of full and effective Indian participation in the political process, and the increasing beneficial impact of the Indian vote on local, state, and national elections. The Supreme Court has long recognized that the right to vote is “fundamental” because it is “preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Those denied the right to vote are not merely deprived of the benefits of government but become its victims. Insuring that Indians participate effectively in the political process will not only help ameliorate the continuing effects of past discrimination, but will bring the Indian and non-Indian communities closer together so that they can work together to advance their common interests and welfare.

All Parties Have Been Contacted

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing to be mailed and e-mailed to the following:

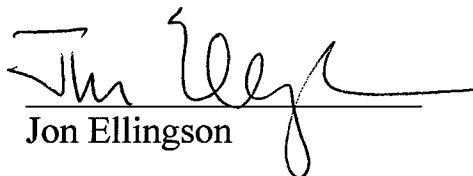
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This 25<sup>th</sup> day of October, 2012.

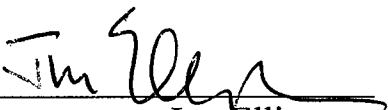
  
Jon Ellingson

The ACLU has contacted counsel for all existing parties to determine whether they object to the filing of an amicus brief. Counsel for Plaintiffs do not object, and counsel for Defendants have not granted consent to the filing of an amicus brief.

Conclusion

Wherefore, the ACLU moves the Court to grant its motion for leave to file an *amicus curiae* brief.

Respectfully submitted,

  
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