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

CITIZENS EQUAL RIGHTS ALLIANCE, INC.)	Case No. _____
(CERA), MONTANA CITIZENS RIGHTS)	
ALLIANCE (MCRA), CHRISTOPHER)	
KORTLANDER, TERRY A. CODDENS, and)	
DEBORAH WINBURN,)	
)	
Plaintiffs,)	
)	
v.)	COMPLAINT FOR
)	DECLARATORY AND
BRAD JOHNSON, in his official capacity as)	INJUNCTIVE RELIEF
Secretary of State for the State of Montana;)	
ELAINE GRAVELEY, in her official capacity as)	
Elections and Government Services Division)	
Deputy to the Secretary of State; and CYNDY)	
MAXWELL, in her official capacity as Clerk and)	
Recorder for Big Horn County, Montana,)	
)	
Defendants.)	
)	

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, Defendants have asserted that they cannot enforce state or federal election laws on the Reservation. Hence, numerous violations of election laws have occurred,

and are likely to continue, unless Defendants either enforce these election laws on the Reservation or cease from establishing polling places in locations where they assert that they have no enforcement authority. 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.

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 Fourteenth and Fifteenth Amendments to 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 acts and amendments. 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 of election laws and in administering elections for federal, state, county, and local district offices.

8. Defendant Elaine Graveley is the 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 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.

10. 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 and Big Horn County.

FACTUAL ALLEGATIONS

11. 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.

12. 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 an Indian candidate endorsed by the Crow Indian Tribe against a non-Indian candidate. The evidence suggests that tribal members largely votes as a cohesive bloc, making it possible to readily identify candidates that are preferred by each group.

13. The Secretary of State has informed Plaintiffs that he lacks authority to enforce Montana election laws against tribal members with respect to any federal, state, county, and local district election-related activities that occur within the exterior borders of the Crow Reservation.

14. Defendants' failures to enforce relevant election laws place 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. Such 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. On October 30, 2006, approximately one week prior to the November 2006 general election, William W. Mercer, U.S. Attorney for the District of Montana, issued a statewide press release entitled "Election Fraud Prevention." The press release exhorted Montana voters to be vigilant and report any allegations of election fraud. The press release also announced that Josh Van de Wetering, Assistant U.S. Attorney and District Election Officer for the District of Montana, would be available by telephone to receive any complaints of possible election fraud or voting rights abuses while the polls were open on Election Day.
- b. In the press release, U.S. Attorney Mercer stated, "Election fraud and voting rights abuses dilute honest votes cast. They also corrupt our representative form of government. These crimes will be dealt with promptly and aggressively. Anyone who has information suggesting electoral corruption or voting rights abuses should make that information available immediately to my Office, the FBI, or the Civil Rights Division."
- c. Among the offices up for vote during the 2006 General Election were United States Senator, United States Representative, Montana Supreme Court Justice, Montana State Senator, Montana State Representative, Big

Horn County Sheriff, Big Horn County Attorney, Big Horn County Justice of the Peace, and Big Horn County Clerk and Recorder.

- d. On November 1, 2006, the Crow Indian 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.
- e. 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.
- f. 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.
- g. 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.

- h. 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.
- i. At polling precincts 5 and 7, a non-Indian poll watcher 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.
- j. On November 9, 2006, Plaintiff Kortlander informed Defendant Maxwell by telephone that ballot boxes at precincts 5 and 7 were unlocked on Election Day. Defendant Maxwell told Plaintiff Kortlander that she interviewed the election officials at precincts 5 and 7, all of whom were enrolled tribal members. Defendant Maxwell told Plaintiff Kortlander that the election officials confirmed that the ballot boxes were unlocked all day.
- k. On November 9, 2006, Defendant Maxwell also confirmed to Plaintiff Winburn that ballot boxes at polling precincts 5 and 7 were unlocked all day.
- l. On November 10, 2006, Plaintiff Coddens, a non-tribal poll watcher at precincts 5 and 7, executed an affidavit stating that ballot boxes were unlocked at those precincts on Election Day. Plaintiff Coddens requested that boxes be locked but was told that "they could put them on if they wanted to, but just didn't get around to it." At no time did Plaintiff Coddens observe the election officials, all of whom are enrolled tribal members, secure the ballot boxes. After the polling place closed at 8:00

p.m., but before the ballots had been processed, an election judge ordered Plaintiff Coddens to leave in blatant violation of Montana Code Annotated 13-13-120 (“Poll watchers shall also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections.”). Plaintiff Coddens left the precinct at 8:13 p.m., despite his requests to watch the processing of the ballots.

- m. On November 10, 2006 Plaintiff Kortlander faxed the sworn affidavit of Plaintiff Coddens to the Secretary of State, Defendant Johnson. The affidavit attests to the events described in paragraph “k” above.
- n. 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 to leave the precinct before the processing of the ballots was completed. Plaintiff Kortlander told the Secretary that these facts had been previously reported to the Big Horn County Recorder. The Secretary’s office provided Plaintiff Kortlander with the cell phone number of Assistant U.S. Attorney Van de Wetering and told Plaintiff Kortlander that the FBI would be in Big Horn County on November 13, 2006 to initiate an investigation.
- o. On November 11, 2006, Plaintiff Kortlander called Assistant U.S. Attorney Van de Wetering and informed him of the unlocked ballot boxes in precincts 5 and 7. Assistant U.S. Attorney Van de Wetering told

Plaintiff Kortlander that he had received a phone call from the Secretary of State's Office regarding this matter and that the FBI would be in Big Horn County on November 13, 2006 to initiate an investigation.

- p. On November 11, 2006, Plaintiff Kortlander's telephone logs indicate four telephone conversations with Assistant U.S. Attorney Van de Wetering.
- q. On November 12, 2006, Plaintiffs Winburn, Kortlander, and CERA National Chair, Elaine Willman, spoke by teleconference with Elaine Graveley, Elections and Government Services Division Deputy to the Secretary of State. Plaintiffs were informed by Deputy Graveley that the FBI and U.S. Attorney's Office for Montana had been notified of the improprieties by the Secretary of State and that the FBI would respond immediately.
- r. On November 13, 2006, Plaintiff Kortlander faxed the affidavit of Plaintiff Coddens to Assistant U.S. Attorney Van de Wetering. Plaintiff Kortlander also spoke with Assistant U.S. Attorney Van de Wetering on at least four other occasions to discuss why the FBI was not responding to reported allegations of election violations.
- s. Plaintiff Kortlander also had numerous telephone conversations with Deputy Graveley about the status of a pending FBI investigation. Deputy Graveley reported that the Secretary of State had made repeated requests to the Montana U.S. Attorney's Office, and that the U.S. Attorney's Office told her that the FBI would be investigating immediately.

- t. On or about November 21, 2006, Plaintiff Kortlander again contacted Assistant U.S. Attorney Van de Wetering who informed Plaintiff that he was still looking into the matter and would get back with Plaintiff.
- u. 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 Crow Tribal government 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.
- v. On or about November 28, 2006, Plaintiff Kortlander contacted Assistant U.S. Attorney Van de Wetering again, and was informed by Van de Wetering that the matter was “out of his hands” and that a decision whether to investigate allegations of election fraud would be made at Justice Department headquarters in Washington, D.C. Subsequent to this telephone call, Plaintiff Kortlander made three other calls to Assistant U.S. Attorney Van de Wetering and did not receive return calls.
- w. On information and belief, no investigation of Plaintiffs’ allegations has occurred as of the filing of this complaint.

15. Plaintiffs contend that not only does Defendant Secretary of State have the authority to enforce constitutional, statutory, and administrative laws regulating the conduct of federal, state, county, and local district elections, but that the Defendant is required to enforce those laws equally, regardless of where said conduct occurs. In the event that the Secretary of State lacks authority to enforce said election laws inside the exterior boundaries of any particular Indian reservation, Plaintiffs alternatively contend that polling places for federal, state, county, and local district elections cannot be located within such boundaries. Plaintiffs do not contend that any of these election laws apply to elections for tribal offices.

**FIRST CAUSE OF ACTION
VOTING RIGHTS ACT**

16. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 15 and incorporate them herein by reference.

17. 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).

18. 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).

19. 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.

**SECOND CAUSE OF ACTION
FIFTEENTH AMENDMENT**

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

21. The Fifteenth Amendment to the United States Constitution provides that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.” U.S. CONST. amend. XV.

22. Defendants’ failure to enforce applicable election laws have been maintained for the discriminatory purpose of diluting, minimizing, and canceling out non-tribal member voting strength, depriving the named Plaintiffs of their rights secured by the Fifteenth Amendment.

23. Unless enjoined by this Court, Defendants will continue to violate the Fifteenth Amendment by failing to enforce applicable election laws and denying non-tribal voters an opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

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

24. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 23 and incorporate them herein by reference.

25. 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.

26. Defendants have disparately enforced applicable election laws to tribal and non-tribal citizens. This disparate enforcement deprives the named Plaintiffs of their rights secured by the Fourteenth Amendment.

27. Unless enjoined by this Court, Defendants will continue to violate the Fourteenth Amendment by participation in actions or omissions that deny non-tribal voters an opportunity to participate in the political process on an equal basis with other members of the electorate.

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

28. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 27 and incorporate them herein by reference.

29. 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...”

30. Defendants in their official capacities are persons for purposes of 42 U.S.C. § 1983.

31. All of defendants’ actions complained of herein have been taken under color of state law.

32. Defendants have violated plaintiffs’ civil rights under the Fourteenth and Fifteenth Amendments as set forth above and as protected by 42 U.S.C. § 1983.

33. 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.

34. 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, the Fourteenth and Fifteenth Amendments to the United States Constitution; and 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 enforcing election laws to tribal members and non-tribal members;
3. Declare that Defendants must regulate all polling places and election-related practices to the full extent of the law;
4. Award Plaintiffs reasonable costs and attorney's fees under 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 22nd day of May, 2007.

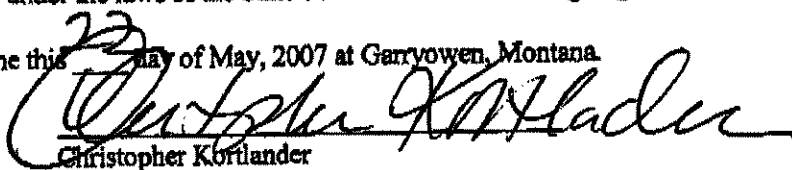
WITTICH LAW FIRM, P.C.

By: Arthur V. Wittich
Arthur V. Wittich
Attorney for Plaintiffs

STATEMENT OF VERIFICATION

I am one of the Plaintiffs above-named; I have read the Complaint in this case, know the contents thereof, and believe the same to be true.

I declare under penalty of perjury under the laws of the State of Montana that the foregoing is true and correct and was executed by me this ²³ day of May, 2007 at Garryowen, Montana.


Christopher Kortlander