

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

WESTERN NATIVE VOICE, Montana
Native Vote, Assiniboine and Sioux Tribes of)
Fort Peck, Blackfeet Nation, Confederated)
Salish and Kootenai Tribes, Crow Tribe, Fort)
Belknap Indian Community,)

Cause No. DV 20-0377

Hon. Jessica Fehr

Plaintiffs,)

vs.)

**COURTS FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

COREY STAPLETON, in his official)
capacity as Montana Secretary of State, TIM)
FOX, in his official capacity as Montana)
Attorney General, JEFF MANGAN, in his)
official capacity as Montana Commissioner)
of Political Practices,)

Defendants.)

INTRODUCTION

The Court finds itself in an unprecedented time of divisiveness in all matters – including questions of equality under the law. The questions presented in this matter are broader than a simple referendum and perceived insecurity in the voting process in Montana. The questions presented relate back to the basic, and fundamental rights set forth by those intrepid Montana pioneers that convened Montana’s Constitutional Convention and arrived at a document that protects all Montanans – irrespective of race, color or creed. This case and the facts presented at trial turn a spot light to our fellow citizens that still live below the poverty line with limits to health care, government services, mail services and election offices – those citizens are the Native Americans that reside on reservations within Montana’s borders. The questions presented cannot be viewed through the lens of our own upbringings or own life experiences, but through the lens

of the cold, hard data that was presented at trial about the clear limitations Native American communities in Montana face, and how the costs associated with the Ballot Interference and Protection Act (“BIPA”) are simply too high and too burdensome to remain the law of the State of Montana.

PROCEDURES AND PRELIMINARY MATTERS

This matter was tried before this Court on September 8, 2020 to September 10, 2020, sitting without a jury. Plaintiffs Western Native Voice, Montana Native Vote, Assiniboine and Sioux Tribes of Fort Peck, Blackfoot Nation, Confederated Salish and Kootenai Tribes, Crow Tribe and Fort Belknap Indian Community appeared and were represented by Natalie Landreth, Jacqueline De León, Samantha Kelty, and Megan Condon of the Native American Rights Fund, Alora Thomas, Ihaab Syed and Theresa Lee of ACLU’s Voting Rights Project, and Alex Rate and Lillian Alvernaz of the ACLU of Montana. Defendants Corey Stapleton, Tim Fox and Jeff Mangan appeared and were represented by Aislinn Brown, Hannah Tokerud and Stuart Segrest from the Montana Attorney General’s office. Numerous exhibits were offered, admitted and referenced in separate court filings. The issue at trial was whether the Ballot Interference Prevention Act (“BIPA”) violates Plaintiffs’ constitutional right to vote, right to freedom of speech, right to freedom of association and right to due process. Having heard the evidence and reviewed the proposed Findings of Fact and Conclusions of Law of both parties, the Court now makes the following:

FINDINGS OF FACT

A. Voting in Montana.

1. In-person voting in Montana is logistically challenging due to the state’s large size and rural nature. Agreed Fact No. 48, 69, 70.

2. Montana is the fourth-largest state in terms of land size. Agreed Fact No. 48.
3. As of 2010, Montana is the third-least densely populated state in the nation. Agreed Fact No. 48.
4. Thus, the vast majority of Montana voters who cast a vote utilize the absentee voting process: in the 2018 general election, of 509,213 votes, 372,400 were absentee votes (73.13%); in the 2018 primary election, of 282,704 votes, 222,190 were absentee votes (78.59%); in the 2017 special election, of 383,301 votes, 280,269 were absentee votes (73.12%). Agreed Fact No. 49.
5. Montana law allows certain elections to be conducted entirely by mail. Mont. Code Ann. § 13-19-104(2). For example, municipal-level elections in the state may be conducted entirely by mail. Agreed Fact No. 50.
6. Ballots may be dropped off at county election offices during the early voting period. Agreed Fact No. 51.
7. Voters can cast an absentee ballot, by mail or in-person, or vote in-person at their polling place on Election Day. Mont. Code Ann. §§ 13-13-201, -222; Ex. S001 at 19.
8. For those electors who choose to vote absentee, a range of return options is available, including delivery through the mail or another common carrier (e.g., FedEx) or in person to the county election office or satellite office, any polling location within the voter's county of residence, or a designated place of deposit. Mont. Code Ann § 13-13-201; Ex. S001 at 19; Tr. Trans. 532:7–14 (Sept. 10, 2020).
9. Montana's elections overall are very accessible. For example, Montana is among a minority of states that allow election-day registration, allowing voters to show up,