

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

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

Plaintiffs,

vs.

**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.

Cause No: DV-2020-377

Judge: Jessica T. Fehr

**ORDER GRANTING PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER
AND ORDER SETTING HEARING ON
PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION.**

This matter comes before the Court pursuant to Plaintiffs' Motion for and Memorandum in Support of a Temporary Restraining Order, filed on May 1, 2020. Defendants' filed their Response in Objection to Plaintiffs' Motion on May 4, 2020. Plaintiffs' filed their Reply Brief on May 5, 2020. As such, this matter is fully briefed and ready for decision.

IT IS HEREBY ORDERED that Plaintiffs' Motion for a Temporary Restraining Order is **GRANTED** as set forth below.

MEMORANDUM

Plaintiffs – five Tribal governments and two Native American voting rights organizations – seek an order enjoining the Montana Ballot Interference Prevention Act (hereinafter “BIPA”), M.C.A. § 13-35-701 *et seq.* Plaintiffs allege that BIPA violates the constitutional rights of the Tribal members and Native American's generally in Montana. Plaintiffs applied for the Temporary Restraining Order pursuant

1 to M.C.A. § 27-19-314, pending a ruling on their Motion for a Preliminary Injunction to prevent the
2 enforcement of BIPA. Plaintiffs incorporate by reference the evidence and arguments presented in their
3 Motion for Preliminary Injunction, including the declaration and seven affidavits presented in conjunction
4 with their Motion for Preliminary Injunction, which Plaintiffs state were made upon personal knowledge.
5 Plaintiffs have attached the documents and exhibits contained in their Motion for Preliminary Injunction
6 to their Motion for Temporary Restraining Order. Plaintiffs state that they provided notice of this
7 application to the Defendants on May 1, 2020, and duly served this application upon them on May 1,
8 2020.

9 In the Motion for a Temporary Restraining Order, Plaintiffs contend that BIPA violates their rights
10 under the Montana Constitution, including the right to vote, freedom of speech, freedom of association,
11 and due process; specifically, that the evidence the Plaintiffs present in the Motion for a Preliminary
12 Injunction, and subsequently their Motion for a Temporary Restraining Order, demonstrates that Native
13 American voters on rural reservations in Montana face multiple barriers to voting; and that Native
14 American voters often must rely on third-party assistance to collect and convey their ballots to elections
15 officials or the post office. Plaintiffs assert that many Native Americans in Montana face disproportionate
16 access to voting opportunities that most Montanans enjoy. Plaintiffs assert that non-traditional addresses,
17 scarcity of post offices, P.O. Boxes and mail drop-off boxes, coupled with geographic isolation and higher
18 rates of poverty, create barriers to Native Americans being able to exercise their right to vote in Montana.
19 Plaintiffs contend that Native Americans who live on reservations and experience the described barriers
20 often rely on pooling their ballots with family and community members to vote, or by relying on organized
21 ballot collectors, such as those trained by Plaintiffs Western Native Voice and Montana Native Vote.
22 Plaintiffs argue that BIPA penalizes and discourages the collection of ballots from Native American
23 Communities, creating an undue hardship on Native American voters and leading to Native American
24 disenfranchisement.

1 Defendants argue that Plaintiffs' Motion for a Temporary Restraining Order should be denied due
2 to Plaintiffs "wait[ing] until the eve of the election to file, after their preliminary injunction motion was
3 fully briefed." Defendants argue that the Plaintiffs could have filed their Motion for a Temporary
4 Restraining Order in conjunction with their Complaint or with their Motion for a Preliminary Injunction.
5 Defendants state that by waiting to file their Motion for a Temporary Restraining Order, the equities lie
6 strongly against granting the Plaintiffs' Motion for a Temporary Restraining Order.

7 DISCUSSION

8 Where an application for an injunction is made upon notice or an order to show cause, either before
9 or after answer, the court or judge may enjoin the adverse party, until the hearing and decision of the
10 application, by an order, which is called a temporary restraining order. M.C.A. § 27-19-314. Montana law
11 permits a court to issue a temporary restraining order or a preliminary injunction as follows:

- 12 (1) when it appears that the applicant is entitled to the relief demanded;
- 13 (2) when it appears that the commission or continuance of some act during the litigation
14 would produce a great or irreparable injury to the applicant; or
- 15 (3) when it appears during the litigation that the adverse party is doing or threatens or is
16 about to do or is procuring or suffering to be done some act in violation of the applicant's
17 rights, respecting the subject of the action and tendering to render the judgment
18 ineffectual.

19 M.C.A. § 27-19-201. A finding by the Court that one subsection is satisfied is sufficient to demonstrate
20 the requirements of the statute are satisfied. *Mont. Cannabis Indus. Ass'n v. State*, 2012 MT 201, ¶ 14,
21 366 Mont. 244.

22 In the Motion for a Temporary Restraining Order, Plaintiffs contend that they are entitled to relief
23 based on the merits of their claims; that they will suffer irreparable injury that outweigh any potential
24 damage to the Defendants, and that balancing of the equities favors them. Defendants did not provide the
25 Court with any substantive argument as to why Plaintiffs' Motion for a Temporary Restraining Order

1 should not be granted. Defendants simply direct the Court to the timeline of the proceedings and argue
2 that caselaw disfavors rewarding untimely filing. Upon review, the cases cited by Defendants are
3 distinguishable from the current matter before the Court. For example, In *Oakland Tribune, Inc. v.*
4 *Chronical Publ'g Co.*, 762, F.2d 1374, 1377 (9th Cir. 1985), the plaintiff had waited the course of several
5 years before initiating litigation to protect their rights. In *Doe v. State*, 2010 LEXIS 365, No. BDC-2009-
6 1163 *5 (Mont. First Jud. Dist. June 2, 2010), the plaintiff allowed his underlying matter to proceed for
7 six months before filing for a Motion for a Temporary Restraining Order. In the present matter, Plaintiffs
8 filed their Motion for Preliminary Injunction in March of 2020, approximately two months before they
9 filed their Motion for a Temporary Restraining Order. The Court is not persuaded by the Defendants'
10 assertion that Plaintiffs waited until the eleventh hour to request relief, when in fact, although a hearing
11 on the Petition for Preliminary Injunction had yet to be set when the Petition for a Temporary Restraining
12 Order was filed, the Defendants had at least two months' notice that the Plaintiffs were seeking an
13 injunction as to BIPA. Further, the Plaintiffs seek an interim legal remedy in the form of a Temporary
14 Restraining Order, which Montana law empowers them to do and is often done in conjunction with a
15 request for injunctive relief. As referenced in the Plaintiffs' Reply Brief, additional authority cited by the
16 Defendants is distinguishable from this matter on numerous grounds; that individual's motions for
17 temporary restraining orders failed on grounds subsequent to or in conjunction with late filings (*Dahl v.*
18 *Swift Distribution, Inc.*, No. CV 10-0055, 2010 U.S. Dist. LEXIS 35938, *8, 11 (C.D. Cal. Apr. 1, 2010);
19 *Chapman v. Merch Mart Props.*, No. 2:07-CV-61, 2007 U.S. Dist. LEXIS 21549 *8, (D. Vt. Mar. 23,
20 2007); *In re. Fister*, 2014 U.S. Dist. LEXIS 121306, *6); and that, because the instant action relies
21 exclusively on the Montana Constitution, federal authority is not binding (*Purcell v. Gonzalez*, 549 U.S.
22 1, 4, 127 S. Ct. 5, 7, 166 L. Ed. 2d1 (2006)).

23 Based on the information to date, including a review of the pleadings, the Court finds that the
24 continued application of BIPA in Montana, pending a hearing on the requested preliminary injunction,
25

1 shall be halted immediately to ensure Plaintiffs do not suffer irreparable injury in the interim as permitted
2 by M.C.A. § 27-19-314(2).

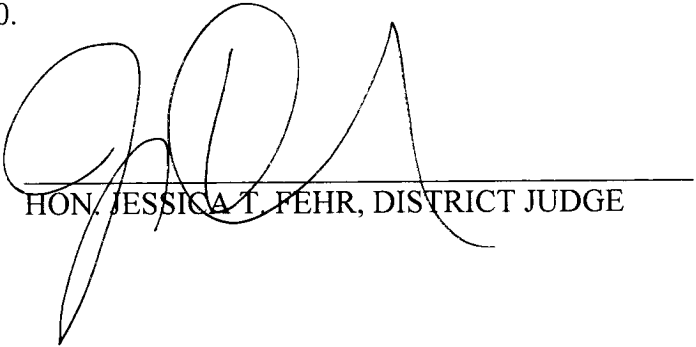
3 **ORDER**

4 **THEREFORE, IT IS HEREBY ORDERED** that Plaintiffs' Motion for a Temporary Restraining
5 Order is **GRANTED** and Defendants shall be restrained until further order of this Court from
6 applying and enforcing the Montana Ballot Interference Prevention Act, M.C.A. § 13-35-701 *et seq.*

7 **IT IS FURTHER ORDERED** that a Hearing on Plaintiffs' Motion for a Preliminary Injunction shall
8 be held on **Friday, May 29, 2020 at 9:00 A.M.** in Courtroom 506 of the Yellowstone County Courthouse,
9 Billings, Montana. Should they so desire, the parties may participate in the hearing by video and shall
10 inform the Court of their decision to do so by contacting the Court's Law Clerk, Bradley Kneeland, at
11 Bradley.Kneeland@mt.gov, by the end of business on **Tuesday, May 26, 2020**, so that video
12 arrangements can be made.

13 Additionally, the Court would direct the parties to Rule 5 of the Local Rules of Practice of the District
14 Court of the Thirteenth Judicial District, which requires, in an effort to ensure the Court is aware of all
15 time sensitive filings, that a courtesy copy of any motion for which a hearing is requested or other
16 immediate action by the Court is sought, is provided directly to the Court in chambers. Parties may provide
17 courtesy copies to the Court by emailing the Court's Law Clerk at the previously stated address.

18 **DATED** this 20th day of May, 2020.

19
20
21 
22
23
24 HON. JESSICA T. FEHR, DISTRICT JUDGE

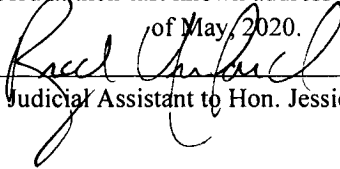
24 cc: Alora Thomas-Lundborg, ACLU
25 Dale Ho, ACLU
Lilian Alvernaz, ACLU of Montana
Alex Rate, ACLU of Montana

1 Natalie Landreth, Native American Rights Fund
2 Jacqueline De Léon, Native American Rights Fund
3 Timothy C. Fox, Montana Attorney General
4 J. Stuart Segrest, Chief, Civil Bureau
5 Aslinn W. Brown, Assistant Attorney General
6 Hannah Tokerud, Assistant Attorney General

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served
by U.S. mail or by hand the parties or their attorneys
of record at their last known address this 20th day
of May, 2020.

By 
Judicial Assistant to Hon. Jessica T. Fehr