Winner, Best Appellate Brief in the 1997 Native American Law Student Association Moot Court Competition

Tim Reynon

Paul EchoHawk

Follow this and additional works at: https://digitalcommons.law.ou.edu/ailr

Part of the Indian and Aboriginal Law Commons, and the State and Local Government Law Commons

Recommended Citation
Tim Reynon & Paul EchoHawk, Winner, Best Appellate Brief in the 1997 Native American Law Student Association Moot Court Competition, 22 Am. Indian L. Rev. 263 (1997),
https://digitalcommons.law.ou.edu/ailr/vol22/iss1/8

This Special Feature is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.
Questions Presented

I. Whether the County or Tribal Officials can exclude people from running and voting in school board elections based on their political or racial status.

II. Whether the Tribe and the State, in their respective cases, are immune from suit.

Statement of the Case

Taylor Nine Fingers is an enrolled member of the Black Earth Band of Chippewa living within the Black Earth reservation, which is surrounded by Cass County, on land held in trust with the United States. Winthrop P. Bearstail is an enrolled member of the Sault Nation of Mohegans living within the reservation on fee land on which he pays property taxes. Cass County has a school board which has jurisdiction over all schools within the county and an election commission which has jurisdiction over all county elections. Nine Fingers filed an intent for candidacy in the Cass County's general school board election. Shortly thereafter, Bearstail's petition to remove Nine Fingers from the list of eligible candidates was granted. Thereafter, Elbert Hazel, a non-Indian county resident, filed for and obtained an injunction for the Cass County Election Commission prohibiting both Nine Fingers and Bearstail from running and voting in the election due to their Indian status. All decisions of the Election Commission are final and not subject to judicial review in courts. Nine Fingers and Bearstail filed an action in the Federal Court in the Western District of Wissotagan seeking declaratory and injunctive relief requiring the Election Commission to enable them to vote and run for office. The District Court ruled that Nine Fingers did not have the right to vote in county, state or federal elections. Nine Fingers and Bearstail appealed to the Seventh Circuit, which held that the county election commission could preclude Nine Fingers and Bearstail from running for and holding office in the county school board and

*Third-year students, J. Reuben Clark Law School, Brigham Young University. At the 1997 National Native American Law Students' Association Moot Court Competition, they received awards for the First Place Brief, Fourth Place Team Overall, and Paul EchoHawk received the Second Place Oralist award.
could preclude reservation resident Indians from voting for school board members in the election. Nine Fingers and Bearstail filed a petition for review with the United States Supreme Court.

Gertrude Anderson, a non-Indian, resides within the Fort Tribe reservation but is not a member. The Fort Tribe operates its own school system which is open to all children living within the reservation border and the Fort Tribe school board has jurisdiction over all tribal schools within the reservation boundaries. Ms. Anderson filed a petition to run in the tribe's school board election and was subsequently denied by the Tribal Election Board. In fact, the Election Board denied all non-Indian petitioners for candidacy. As a result, Ms. Anderson filed an action in the federal district court. The District Court ruled that the Fort Tribe must allow Ms. Anderson to run in the school board election. The Court of Appeals for the Eighth Circuit affirmed the District Court's order and the Fort Tribe filed a petition for review in the United States Supreme Court.

I. Summary of the Argument

In the Seventh Circuit case, Respondent Cass County improperly excluded Nine Fingers and Bearstail from running and voting in county elections because it (1) constituted state action denying Petitioners their right to vote in violation of the Fifteenth Amendment and the Voting Rights Act, and (2) violated the Equal Protection Clause of the Fourteenth Amendment which protects members of a suspect class from state infringement of the right to vote. Since the classification chosen by the county election commission was not narrowly tailored to accomplish any compelling state interest, the county action was unconstitutional.

In the case of Ms. Anderson v. Fort Tribe, the Eighth Circuit erred in ordering the Tribe to allow Ms. Anderson to run in the tribe's school board elections. Since it was within the tribe's sovereign power, as a separate and distinct people, to establish for themselves election procedures and qualifications, the tribe had the right to exclude from their school board election individuals based on race or political status. In addition, neither the Indian Civil Rights Act (ICRA), the Federal Constitution and Bill of Rights, nor the Voting Rights Act prohibits the Fort Tribe from excluding individuals from their electoral process based on race or political status. The Supreme Court found that the only federal court remedy available under the ICRA was that of habeas corpus. Since the case at hand does not involve that particular remedy, the federal courts do not have jurisdiction to hear this case. Furthermore, the Supreme Court also held that the Fifteenth, parts of the Fifth, Sixth, and Seventh Amendments, as well as portions of the Fourteenth Amendment do not apply to Indian tribes. As a result, federal courts do not obtain jurisdiction under those provisions. The same holds true for the Voting Rights Act. It is settled doctrine that absent legislation to the contrary, courts cannot imply from a statute that it will apply to Indian tribes. Since the Voting Rights Act is silent in this regard, the courts cannot
apply it to Indian tribes. Additionally, allowing non-Indians to vote in tribal elections clearly poses a threat to the tribe's welfare and political integrity.

II. Sovereign Immunity

In the Seventh Circuit case involving Nine Fingers and Bearstail, the Eleventh Amendment poses no bar to Petitioners suit against the state, county, or government officials. The Fourteenth and Fifteenth Amendments and the Voting Rights Act waive sovereign immunity. Further, the defendant government officials are not protected by Eleventh Amendment immunity where their actions exceed the scope of their legal authority.

In the Eighth Circuit case, it is also clear that Ms. Anderson's suit is barred by the Fort Tribe's sovereign immunity. Courts have continually recognized that tribes have sovereign immunity from suit similar to that of the United States — neither can be sued unless Congress expressly consents. Since Congress has not given this consent, Ms. Anderson's claim is barred by the Fort Tribe's sovereign immunity. Ms. Anderson cannot bring suit in federal court against the Fort Tribe. The Court should reverse the Seventh and Eighth Circuit decisions and hold that states and countries cannot exclude reservation Indians from state and local elections and are not immune from suit. This Court should further hold that the Fort Tribe can, absent explicit legislation to the contrary, exclude individuals from their school board elections based on race, and absent tribal or congressional consent, the Fort is barred from suit.

Argument

I. Respondent County Officials May Not Exclude Reservation Indians from Running and Voting in County School Board Elections Based on Their Political or Racial Status, Though Tribal Officials May Do So

A. Respondent County Officials May Not Exclude Petitioners - Reservation Indians - from Voting and Running for Office in County School Board Elections

1. Reservation Indians Have All the Rights of Citizens and Residents of the Political Subdivision in Which They Live, Including a Constitutionally Protected Right To Vote in State and Local Elections

The United States Constitution guarantees and protects the right of all citizens to vote in both federal and state elections. *Ex parte Yarbrough*, 110 U.S. 651, 663-65 (1884); *Lassiter v. Northampton Election Board*, 360 U.S. 45, 51 (1959); *Smith v. Allwright*, 321 U.S. 649, 661-62 (1944). Native American Indians were generally given full United States citizenship in 1924, 8 U.S.C. § 1401 (1994), and Indians are citizens of the state and political subdivision (county) wherein their reservation is geographically located.
Indians born in the United States and subject to its jurisdiction are citizens of the United States and of the State in which they reside. As such, these citizens have all the constitutional rights, privileges, and immunities which attach thereto - including the right to vote in federal, state, and local elections in the districts in which they live. Little Thunder v. South Dakota, 518 F.2d 1253, 1258 (8th Cir. 1975); United States v. State of South Dakota, 636 F.2d 241, 243 n.1 (8th Cir. 1981); White Eagle v. Dorgan, 209 N.W.2d 621, 623 (N.D. 1973). Their right to vote is protected by the provisions of the Fourteenth and Fifteenth Amendments which apply generally to all federal and state elections as well as the actions of state officials acting under color of law. U.S. Const. amend XIV, XV; Cooper v. Aaron, 358 U.S. 1, 16 (1958) (The actions of the local government are the actions of the state); Avery v. Midland, 390 U.S. 474, 480 (1968) ("[I]t is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment"). Therefore, both Nine Fingers and Bearstail are citizens and residents of the State of Wissotagan and Cass County possessing the full voting rights as any other citizen of the county.

2. Respondent's Exclusion of Reservation Indians from Voting in County School Board Elections Is Based on Their Race as Indians in Violation of the 15th Amendment


In the instant case, Respondent's exclusion of Indians is facially based on two factors: their location on an Indian reservation and their race. Since only a small number of Indians live off-reservation, the exclusion is in essence an exclusion of Indians as a racial group from the Cass County School Board election. The Supreme Court has recognized that direct state denials of suffrage on account of race is forbidden, "that is to say, that as the command of [the Fifteenth Amendment is] self-executing and reached without legislative action the conditions of discrimination against which it was aimed .... " Guinn v. United
States, 238 U.S. 347, 363 (1915); see United States v. Amsden, 6 F. 819, 822 (D. Ind. 1881); Apache County v. United States, 256 F. Supp. 903, 906 (D.C. Cir. 1966); South Carolina v. Katzenbach, 383 U.S. 301, 324-27 (1966) (Fifteenth Amendment is self-executing and invalidates state voting qualifications or procedures which are discriminatory on their face or in practice).

It does not matter that Cass County officials acted without the mandate of a state law because county action is state action for purposes of the Fifteenth Amendment. Further:

[a] law . . . fair on its face and impartial in appearance, yet, if . . . applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.


Although the States have long been held to have broad powers to determine the conditions under which citizens might exercise the right of suffrage, States may not establish voting qualifications that discriminate on the basis of race. Morse v. Republican Party of Virginia, 116 S. Ct. 1186, 1202 (1996); Davis v. Water- Sewer and Sanitation Commission, 223 F. Supp. 902, 904 (W.D. Ky. 1963). Though the Cass County Election Commission possessed authority to institute reasonable regulations on the school board election, discriminating against Indians under the guise of drawing voting boundaries does not overcome constitutional prohibitions.

In Gomillian v. Lightfoot, 364 U.S. 339 (1960), state authorities set voting boundaries creating a twenty-eight sided district that effectively excluded the overwhelming majority of black voters in the district while not disenfranchising a single white voter. Stating the invalidity of such action, the Court noted that, 
"[a state's power to change boundaries of political subdivisions], extensive though it is, is met and overcome by the Fifteenth Amendment to the Constitution of the United States, which forbids a State from passing any law which deprives a citizen of his vote because of his race." Id. at 345. Similarly, Respondent's exclusion of reservation Indians resulted in a county school board voting district missing most of its center and containing small enclaves of white-owned fee land within the reservation area. In comparison, the twenty-eight-sided figure invalidated in Gomillion seems almost square. Permitting Respondent's action under the guise of power to set election boundaries would allow a State to impair voting rights whatever extensively so long as the action was cloaked in the garb of the realignment of political subdivisions. Frost & Frost Trucking Co. v. Railroad Commission of California, 271 U.S. 583, 594 (1926). "It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence."

Id. Respondent's
exclusion of reservation Indians on account of their race is thus a violation of the Fifteenth Amendment.

3. Cass County's Exclusion of Reservation Resident Indians from Voting and Holding Office in School Board Elections Violates Section 2 of the Voting Rights Act

Section 1973(a) of the Voting Rights Act states:

(a) No voting qualification or prerequisite to voting . . . shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race . . . .

(b) A violation of subsection (a) . . . is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) . . . .


This section establishes a general prohibition against voting procedures which result in the denial or abridgement of the right to vote on account of race or color, Voinovich v. Quilter, 507 U.S. 146, 157 (1993), and counties, cities, and school districts in the state of Texas are "political subdivisions" as defined in this section. Hereford Independent School Dist. v. Bell, 454 F. Supp. 143, 144-45 (N.D. Tex. 1978). Also, Indians are a protected class under the Voting Rights Act. 42 U.S.C. § 1973b(f)(2) (1994); Windy Boy v. Big Horn County, 647 F. Supp. 1002, 1006 (D. Mont. 1986).

The Voting Rights Act prohibits the imposition of any electoral practice or procedure that "results in a denial or abridgement of the right of any citizen to vote on account of race or color." Chisom v. Roemer, 501 U.S. 380, 383 (1991) (emphasis added). Under the "results" test for determining a violation of the Voting Rights Act, a violation exists if,

based on totality of circumstances, it is shown that political processes leading to nomination or election in state or political subdivision are not equally open to participation by members of a class of citizens protected . . . in that its members have less opportunity than other members of electorate to participate in political process and to elect representatives of their choice.


An application of these principles to Cass County's exclusion of reservation Indians from county elections clearly demonstrates a violation of the Act.¹ A
showing of unequal opportunity to participate in the county election process is clear-cut where Respondent County Election Commission has completely excluded Indians, who are a protected class, from electoral participation. This conclusion is reinforced by the long history of discrimination Indians have experienced in voting, Respondent's denial of reservation Indians' access to county school board candidacy, and the likely presence of substandard education, employment, and health services on the reservation. Therefore, Respondent's exclusion of reservation Indians from county elections is a clear violation of the Voting Rights Act in that the exclusion results in the denial of Indian citizens' voting rights.

4. Respondent's Exclusion of Indians from Voting in County School Board Election Violates the Equal Protection Clause of the Fourteenth Amendment Which Guarantees the Indians' Right to Vote

Respondent's exclusion of Indians is not a permissible restriction on the right to vote within the state's authority to regulate state and local elections because it is an over-inclusive racial classification and an unreasonable restriction of the right to vote, thereby failing to pass strict scrutiny analysis that applies to Respondent's actions in this case. Although the Constitution "reserves to the States the power to set voter qualifications in state and local elections, . . . [the States may not establish restrictions where] the people through constitutional amendments have specifically narrowed the powers of the States." Blassman v. Markworth, 359 F. Supp. 1, 4 (N.D. Ill. 1973). The Supreme Court has held on discriminatory practices are not easily distinguished on the face of the state action. Because most persons are not completely excluded from voting in these cases, satisfying the results test is much easier in the instant situation where voters of a protected class are excluded outright by the action of a state political subdivision.

2. The legislative history of section 2 sets out "typical objective factors" to guide courts in analyzing a discriminatory result of an election system or practice, although not exhaustive or conclusive of a section 2 violation, see United States v. Marengo County Comm'n, 731 F.2d 1546, 1574 (8th Cir. 1984), which include:

(1) the extent of any history of official discrimination in state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process; (2) extent to which voting in the election at issue is racially polarized; (3) extent to which the . . . political subdivision has used . . . other voting practices or procedures that may enhance the opportunity for discrimination against the minority group; (4) if there is a candidate's slating process, whether the members have been denied access to that process; (5) Extent to which the members of the minority group in their political subdivision bear the effects of discrimination in such areas as education, employment, and health, which hinders their ability to participate effectively in the political process; (6) Whether political campaigns are characterized by overt or subtle racial appeals; (7) Extent to which member of a minority group have been elected to public office in the jurisdiction.

a number of occasions that state action regulating suffrage is not immune from

This Court has held that the right to vote is tantamount to a fundamental
right in terms of equal protection analysis and state infringement of the right
must be "carefully and meticulously scrutinized." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); *see Kramer v. Union Free School Dist.*, 395 U.S. 621, 626 (1969). The Court has also recognized that "a citizen has a constitutionally
protected right to participate in elections on an equal basis with other citizens

Further, a state classification based on race is innocently suspect and
ethnic distinctions of any sort are inherently suspect and thus call for the most
exacting judicial examination . . . . This perception of racial and ethnic
Respondent's exclusion of Indians is facially a racial classification, this is an
additional ground for application of strict scrutiny to Respondent's actions in this
case.

The Supreme Court has held that a State may not restrict school board
elections to those voters who pay property taxes or have children attending
schools within the district. *See Kramer v. Union Free School District*, 395 U.S. 621, 622 (1969). The decision in *Kramer* indicated that such restrictions were
not compelling state interests. *Id.* at 633. Thus, Respondent may not rely on the
fact that reservation Indians do not pay property taxes toward school board
revenue as a reason to exclude them under strict scrutiny. On the contrary,
Indians living on reservations may have significant interests in the outcome of
the county school board elections. For example, county resident Indians are free
to send their children to county schools that are closer to their homes or
preferable for other reasons. More importantly, owners of fee land within the
reservation are fully subject to property taxes that are spent by the county school
board. Clearly, these facts establish a substantial interest of reservation Indians
in the county school board elections. In fact, in the instant case, Bearstail is a
non-tribal member who owns fee land within reservation boundaries and pays
county property taxes. Consequently, Bearstail and other similarly situated
Indians have a substantial interest in county elections.

The Eleventh Circuit has held that permitting city residents to vote in county
school board elections, despite their diminished interest, is permissible. *See Davis v. Linville*, 864 F.2d 127, 129-30 (11th Cir. 1989); *Sutton v. Escambia County Board of Education*, 809 F.2d 770, 775 (11th Cir. 1987), *reh'g en banc
denied*, 817 F.2d 761 (1987) (holding that city residents had substantial interest
in the operation of the county school systems and could vote in county board
Further, in the few instances the Supreme Court has permitted the exclusion of disinterested voters, the cases involved clearly proprietary governmental bodies. See Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 734-35 (1973) (permitting only landowners to vote for officers of a water storage district due to the extremely limited purpose of the district); Ball v. James, 451 U.S. 355, 371 (1981) (permitting similar voting restriction but stressing the importance of the narrow purpose of the district and de-emphasizing the disproportionate impact of its administration on non-landowners). Significantly, the Court has rejected the extension of this "special purpose body" exception to attempts to restrict voting in educational districts to property taxpayers. See Phoenix v. Kolodziejski, 399 U.S. 204, 214-15 (1970).

Cass County has jurisdiction over all schools within the county. The Court has never permitted a school board district to exclude otherwise qualified voters within the district's jurisdiction based on the level of interest excluded voters had in the operation of the school board. In Sutton v. Escambia County Board of Education, 809 F.2d 770 (11th Cir. 1987), the court stated that parties seeking to exclude city residents from voting in a county election have the burden of demonstrating that the resident city voters do not have a substantial interest in the operation of the county school district. Id. at 772. There is no showing by Respondents that reservation Indians do not have a substantial interest in the operation of the county school board. On the contrary, there is evidence that a number of Indians living on the reservation may have children attending county schools and/or pay property taxes on fee land for county school board revenue.

Even assuming, arguendo, that restricting the vote to interested voters is a compelling state interest where Indian residents far outnumber non-Indians, the exclusion of Reservation resident Indians is a classification that is not sufficiently tailored to accomplish a legitimate state purpose and thus fails equal protection analysis. Classifications that "disadvantage a 'suspect class,' or that impinge upon the exercise of a 'fundamental right'" are treated as presumptively invidious and the state must demonstrate "that its classification has been

3. But see Hogencamp v. Lee County Board of Educ., 722 F.2d 720, 722-23 (11th Cir. 1984) (holding that city contribution of 2.74% of county's budget did not create substantial enough interest entitling city residents to vote for county board members); Phillips v. Andress, 634 F.2d 947, 952 (5th Cir. 1981), Creel v. Freeman, 531 F.2d 286, 289 (5th Cir. 1976), cert. denied, 429 U.S. 1066 (1977) (both upholding challenges to an Alabama statute permitting city residents to vote for county school board members); Hosford v. Ray, 806 F. Supp. 1297, 1307-08 (S.D. Miss. 1992) (holding that allowing city electors to vote in county election of county school superintendent where city had its own school district, contributed no money to county school budget and where there was little or no student crossover was a dilution of county vote in violation of equal protection). These cases are distinguishable in that they all involve little or no student crossover and completely separate funding schemes. In the instant case, it is possible that there is a large amount of student crossover and property tax funding from Indian fee land within the reservation.

The classification by Respondents of reservation Indians is both over- and under-inclusive in that it excludes interested voters and includes voters with attenuated interest in the operation of the county school board. The County Election Commission classification is over-inclusive in that reservation Indians who may have children attending county schools and reservation Indians who may pay property taxes to fund the county school, like Bearstail, are excluded form voting. The classification excluding reservation Indians is under-inclusive in that, while forbidding interested citizens like Bearstail to vote, it allows all whites in the county to vote where they may neither have children attending county schools nor pay property taxes. It is, therefore, not sufficiently narrowly tailored to survive strict scrutiny analysis. See *Kramer v. Union Free School Dist.*, 395 U.S. 621, 627 (1969).

5. **Respondent's Exclusion of Indians from Running in County School Board Elections Also Violates the Equal Protection Clause of the 14th Amendment**

The Eighth Circuit has held "that the principles applicable to state election voting qualifications apply with equal force to cases involving qualifications for state offices." *Blassman v. Markworth*, 359 F. Supp. 1, 6 (N.D. Ill. 1973). A number of courts have held that the right to run for office is similarly protected by the constitution and restrictions on candidacy access are also subject to strict scrutiny. See *Mancuso v. Taft*, 476 F.2d 187, 195-96 (1st Cir. 1973); *Johnson v. Cushing*, 483 F. Supp. 608, 612-14 (D. Minn. 1980).

In *Mancuso*, the court recognized that "whenever a state regulates the right to become a candidate for public office, it also regulates the citizens' right to vote." *Id.* at 193. Consequently, any state action that substantially restricts the right to candidacy must be given strict scrutiny and meet the test that the restriction is justified by a compelling state interest. *Id.* at 195. Although the right to be a candidate is not a per se "fundamental right" for purposes of the Equal Protection Clause, courts will "strictly scrutinize" restrictions on a candidacy which has a substantial and invidiously discriminatory effect on the voters. See *Blassman v. Markworth*, 359 F. Supp. 1, 6 (1973); *Bullock v. Carter*, 405 U.S. 134, 149 (1972). Accordingly, the same principles and conclusions of law apply with equal force to the Respondent's exclusion preventing reservation Indians from running for county office.

B. **Tribal Officials Can Exclude People from Running and Voting in School Board Elections Based on Their Political or Racial Status**

1. **Tribes Are Distinct, Independent Political Communities Retaining Their Sovereign Powers of Regulating Their Internal Affairs**

From the earliest cases involving disputes between Indians and non-Indians, the Supreme Court has repeatedly recognized some form of tribal sovereignty.
In *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), the Court stated that "Indian tribes are 'distinct, independent political communities, retaining their original natural rights' in matters of local self-government." *Id.* at 55-56 (quoting *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832) and citing *United States v. Maze*, 419 U.S. 544, 557 (1975); Felix Cohen, *Handbook of Federal Indian Law* 122-23 (1945)). Later, the Court observed that "[a]lthough no longer 'possessed of the full attributes of sovereignty,' they remain a 'separate people, with the power of regulating their internal and social relations.'" *Id.* (quoting *United States v. Kagama*, 118 U.S. 375, 381-82 (1886) and citing *United States v. Wheeler*, 435 U.S. 313 (1978)). In elaborating on this concept of tribal sovereignty, the Court cited to Felix Cohen, whom had previously explained that this sovereign power included the right to define how tribal leaders are elected. Cohen wrote:

The first element of sovereignty . . . is the power of the tribe to determine its own form of government. Such power includes the right to define the powers and duties of its officials, the manner of their appointment or election, the manner of their removal, the rules they are to observe in the capacity as officials and the forms and procedures which are to attest the character of acts done in the name of the tribe.

Felix Cohen, *Handbook of Federal Indian Law* 126 (Univ. of N.M. photo. reprint 1971) (1942). Thus, in citing Cohen, the Supreme Court recognized the right of tribes to determine for themselves the manner in which tribal leaders are elected.

Additionally, Congress also recognized this tribal right of self-determination in tribal elections. The legislative history behind the enactment of the Indian Civil Rights Act (ICRA), 25 U.S.C. §§ 1301-1341 (1994), demonstrated Congress' intent "to protect the individual rights of Indians, while fostering tribal self-government and cultural identity." *Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation*, 507 F.2d 1079, 1082 (8th Cir. 1975) (citing 1968 U.S.C.C.A.N. 1837, 1863-67; Note, 82 Harv. L. Rev. 1343, 1353-60 (1969); 9 Harv. J. Legis. 556 (1972)). Congress recognized that tribes, being quasi-sovereign entities, were not subject to all of the provisions of the Bill of Rights, and consequently, Indians, and those within tribal jurisdiction, would not have the same protections as those living outside tribal jurisdiction. *Santa Clara Pueblo*, 436 U.S. at 56; *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 880-81 (2nd Cir. 1996); *Wounded Head*, 507 F.2d at 1082. As a result, Congress enacted the ICRA. The history behind this statute shows that in addition to protecting individual rights, both Congress and the President were very concerned with protecting the tribes' right to self-government. In fact, one month prior to the passage of the ICRA, President Johnson urged "its enactment as part of a legislative and administrative program with the overall goal of furthering 'self-determination,' 'self-help,' and...
'self-development' of Indian tribes." *Santa Clara Pueblo*, 436 U.S. at 63 n.11 (citing 114 Cong. Rec. 5518, 5520 (1968)). As the Court in *Wounded Head* stated, "[i]n thus creating a statute with twin, and possibly conflicting, goals, the form of government and the qualifications for voting and holding office were left to the individual tribes." *Wounded Head*, 507 F.2d at 1082.

In *Wounded Head*, the petitioners filed a class action suit seeking a declaratory judgment that the 26th Amendment to the United States Constitution was applicable to tribal elections and an injunction enjoining tribal council from preventing 18 to 21-year-old members of the tribe from voting in tribal elections. The petitioners relied on two cases, *White Eagle v. One Feather*, 478 F.2d 1311 (8th Cir. 1973), and *Daly v. United States*, 483 F.2d 700 (8th Cir. 1973), that held that tribes were required to treat votes equally in accordance with *Baker v. Carr*, 369 U.S. 186 (1962) (one-man, one-vote). *Wounded Head*, 507 F.2d at 1083. They cited these cases to support their claim that the scope of the ICRA's equal protection clause was the same as the Fourteenth Amendment's equal protection clause. The Eighth Circuit Court, in dismissing petitioners contention, stated:

> We agree that it is not a significant interference with any important tribal values to require that a tribe treat equally votes cast by members of the tribe already enfranchised by the tribe itself. But we suggest that employing the ICRA to require a tribe to enfranchise a new class of the tribal population would present a real question of whether, to some extent, this court was 'forcing an alien culture . . . on this tribe.' Certainly it can be argued that, *given the quasi-sovereign status of the Indian tribes, they should be permitted to determine the extent to which the franchise to vote is to be exercised in tribal elections*, absent explicit Congressional legislation to the contrary.

*Id.* (emphasis added); see also *Daly*, 483 F.2d at 704-05 (Indians, in designing their own apportionment plan and election rules, are entitled to set those requirements they find appropriate so long as they are uniformly applied); *McCurdy v. Steele*, 353 F. Supp. 629, 656 (D. Utah 1973) (Inherent in the authority to govern itself is the authority of the tribe to determine the manner in which differences are resolved and the manner in which its leaders are selected). Thus, *Wounded Head* and similar cases stand for the notion that, "federal courts should not, absent explicit legislation to the contrary, interfere with the internal governmental affairs of Indian tribes." *Wounded Head*, 507 F.2d at 1082; see *Wheeler v. Swimmer*, 835 F.2d 259, 261-62 (10th Cir. 1987).

Applying these principles to the case at hand, it is clear that allowing non-Indians to vote in tribal elections, interferes with the internal governmental affairs of the Fort Tribe, as well as forces an alien culture on this tribe. As the Court in *Swimmer* recognized,"[t]he right to conduct an election without federal interference is essential to the exercise of the right to self-government."
Swimmer, 835 F.2d at 262. The Tribe, in exercising this right, decided to exclude all non-Indians from their school board election, including Ms. Anderson. While the complainant charges the Tribe with discrimination, the Tribe merely exercised its recognized sovereign rights.

Looking at the decision of the Eighth Circuit in this case, the Court erred in ordering the Fort Tribe to allow Ms. Anderson to participate in the tribe's school board election. Because Ms. Anderson resides on the reservation and her children may attend a school under the direct supervision of the tribal school board, it is easy to see why Ms. Anderson wanted to participate in the tribe's school board elections. Arguably Ms. Anderson has an interest in the Fort Tribe's school board elections. Despite these facts, however, Ms. Anderson is neither a member of the Fort Tribe nor an Indian. The tribe, by means of its sovereign powers, has the right, absent congressional legislation stating otherwise, to exclude her. The Supreme Court, in Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982), noted that "Indian sovereignty is not conditioned on the assent of a nonmember; to the contrary, the nonmember's presence and conduct on Indian lands are conditioned by the limitations the Tribe may choose to impose." Id. at 147. In the case at hand, the Tribe chose to limit their school board elections to members of the Tribe. Furthermore, the Supreme Court, in United States v. Mazurie, 419 U.S. 544, 558 (1975), rejected respondents claim that Congress could not subject them to Tribal Council authority since they were non-Indians. Id. (citing Williams v. Lee, 358 U.S. 217 (1959) which stated, "It is immaterial that respondent is not an Indian. . . . The cases in this Court have consistently guarded the authority of Indian governments over their reservations . . . . If this power is to be taken away from them, it is for Congress to do it.").) Since Congress has yet to abrogate the authority of tribes to determine for themselves their election requirements and procedures, the Fort Tribe retains their power to exclude non-Indians from tribal elections. Thus it is clear that the Eighth Circuit's decision, ordering the Fort Tribe to allow Ms. Anderson to run, clearly violates the Supreme Court's findings in Merrion, Mazurie, and Williams. Consequently, this Court should reverse the Eighth Circuit's decision and hold that Indian tribes have the right, based on their sovereign powers, to exclude individuals based on race or political status. To hold otherwise would "eviscerate the tribe's sovereign power to define itself, and thus would constitute an unacceptable interference "with a tribe's ability to maintain itself as a culturally and politically distinct entity." Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 (1978).

2. Neither ICRA, the Fourteenth and Fifteenth Amendments, Nor the Voting Rights Act Prohibit the Tribe from Excluding People from Participating in the Political Process Based on Race

As previously aforementioned, the legislative history of the ICRA, as well as numerous other cases demonstrate that neither ICRA, nor the Fifteenth Amendment and some aspects of the Fourteenth Amendment apply to Indian
In *Santa Clara Pueblo*, the Court took an extensive look into the history behind the adoption of the Indian Civil Rights Act. The Court noted that "[a]s separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority." *Id.* at 56. To illustrate this point, the *Santa Clara Pueblo* Court mentioned the case of *Talton v. Mayes*, 163 U.S. 376 (1896), where the *Talton* Court held that "the Fifth Amendment did not 'operat[ ]e upon' 'the powers of local self-government enjoyed' by the tribes." *Santa Clara Pueblo*, 436 U.S. at 56 (quoting *Talton*, 163 U.S. at 384). The *Santa Clara Pueblo* Court went on to cite several cases where lower federal courts had "extended the holding of *Talton* to other provisions of the Bill of Rights, as well as to the Fourteenth Amendment." *Id.* (citing *Martinez v. Southern Ute Tribe of the Southern Ute Reservation*, 249 F.2d 915, 919 (10th Cir. 1957), *cert denied*, 356 U.S. 960 (Due Process Clause of Fifth Amendment); *Native American Church v. Navajo Tribal Council*, 272 F.2d 131, 134 (10th Cir. 1959) (free exercise of religious beliefs under First and Fourteenth Amendments); *Twin Cities Chippewa Tribal Council v. Minnesota Chippewa Tribe*, 370 F.2d 529, 533 (8th Cir. 1967) (Due Process Clause of Fourteenth Amendment)). The Court continued its examination of the ICRA's legislative history by pointing out that Title I of the ICRA, 25 U.S.C. §§ 1301-1303 (1994), represented a congressional attempt to limit the power of tribal self-government. They noted that in section 1302 "Congress acted to modify the effect of *Talton* and its progeny by imposing certain restrictions upon tribal governments similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment." *Santa Clara Pueblo*, 436 U.S. at 57. The Court further explained:

Section 1302, rather than providing in wholesale fashion for the extension of constitutional requirements to tribal governments, as had been initially proposed, selectively incorporated and in some instances modified the safeguards of the Bill of Rights to fit the unique political, cultural, and economic needs of tribal governments.

*Id.* at 62-63. Thus, by enacting the ICRA without including certain provisions from the Bill of Rights and the Fourteenth Amendment, Congress intentionally chose to preclude the application of those provisions to Indian tribes, and consequently, tribes are not held to the same standard as federal and state governments. As a result, nothing in the ICRA prevents a tribe from excluding individuals from participating in tribal elections based on race or political status.

In addition to the Supreme Court's examination of ICRA's legislative history in *Santa Clara Pueblo*, numerous other cases indicate that neither ICRA, nor the Fifteenth or parts of the Fourteenth Amendments prohibit tribes from excluding non-Indians from elections. In *Wheeler v. Swimmer*, 835 F.2d 259 (10th Cir. 1987), disappointed candidates in the tribal election of the Cherokee Nation brought an action alleging violations of the ICRA and civil
rights statutes, as well as the Cherokee Nation's treaty, constitution, and ordinances. The Court, in denying complainants, claimed that the Cherokee Nation had surrendered some aspects of its sovereignty to the federal government and consequently had different standing from other tribes with respect to the policy against federal government intrusion into matters of tribal self-government and tribal administration of civil rights disputes, looked to the history surrounding the ICRA and concluded that, "Congress, in the Indian Civil Rights Act . . . elected to impose less supervision on tribal administration of civil rights disputes than it imposes on federal and state governments. The Act's legislative history indicates that this reflects a deliberate choice by Congress to limit intrusion into traditional tribal rights." Id. at 261 (quoting Wheeler v. United States Dept. of Interior, 811 F.2d 549, 551 (10th Cir. 1987) (emphasis added)). Here, the Tenth Circuit recognized Congress' intent to place greater weight on protecting tribal sovereignty rights over that of protecting individual rights.

Additionally, the purpose of the ICRA was to "impose upon Indian governments restrictions applicable to federal and state governments", there were some specific exceptions, namely, "the Fifteenth Amendment, certain procedural provisions of the Fifth, Sixth, and Seventh Amendments, and in some respects the equal protection requirement of the Fourteenth Amendment." Groundhog v. Keeler, 442 F.2d 674, 682 (10th Cir. 1971). In accordance with that notion, the Court noted that, "the equal protection clause of the ICRA is not coextensive with the equal protection clause of the Fourteenth Amendment to the United States Constitution", and concluded that this holding "embodies the concept that the federal courts should not, absent explicit legislation to the contrary, interfere with the internal governmental affairs of Indian tribes." Id. As a result of these and similar cases, tribes are free to set election qualification and procedures in any way they deem appropriate.

Furthermore, the Voting Rights Act, 42 U.S.C. § 1973 (1994), does not prohibit tribes from using race to exclude people from participating in the political process since that Act does not apply to Indian tribes. The Wounded Head Court made that clear when it stated:

42 U.S.C. §§ 1973bb-1 and 1973bb-2 [of the Voting Rights Act] applies by its terms to states and political subdivisions, and provides enforcement against states and political subdivisions for violation of the Act. . . . Indian tribes are not states or political subdivisions, and the legislative history of the Voting Rights Act is silent as to whether the Act was intended to affect the voting age [or voter qualifications] of Indians in tribal elections.

Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation, 507 F.2d 1079, 1084 (8th Cir. 1975). Thus it is clear, that
since tribes are not states nor political subdivisions, and because the statute is silent as to its application to Indian tribes, the Voting Rights Act does not implicate nor apply to Indian tribes. Therefore, it is inapplicable in this case.

In sum, since neither ICRA, the Fourteenth and Fifteenth Amendments, nor the Voting Rights Act prohibit the tribe from excluding people from participating in the political process based on race, the Eighth Circuit erred in ordering the Fort Tribe to allow Ms. Anderson to run in the Tribe's school board elections. Such decision clearly runs counter to congressional intent, as well as the majority of judicial decisions. It is clear that the Fort Tribe may exclude non-Indians from their school board elections.

3. Allowing Non-Indians To Vote in Tribal Elections Poses Serious Threats to the Political Integrity, Economic Security or Health or Welfare of the Tribe

The Supreme Court, in Montana v. United States, 450 U.S. 544, 566-67 (1981), held that the Crow Indian Tribe had no power to regulate non-Indian fishing and hunting on reservation land owned in fee by nonmembers of the Tribe. In so holding, the Court relied on the case of Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 205 (1978) (tribes do not have authority to exercise criminal jurisdiction over non-Indians), to support its proposition that "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." Montana, 450 U.S. at 565. The Court concluded, however, that there were two exceptions to this general rule. The court explained:

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservation, even on non-Indian fee lands. A tribe may regulate ... the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Id. at 565-66. Thus, the Court articulated two exceptions when a tribe could exercise civil authority over non-Indians. It is the second exception that has particular relevance to the case at hand.

In examining the first exception, it is possible Ms. Anderson has entered into a consensual relationship with the tribe, but the facts are somewhat vague. Since Ms. Anderson lives within the reservation boundaries, it is possible that she leases her home from the Tribe or has some kind of
employment contract with the Tribe. If either of these circumstances are substantiated, then she has most likely entered into a consensual relationship with the Tribe, and the Tribe would have some civil authority over her.

However, even if no consensual relationship exists, the facts clearly demonstrate a threat to tribal political integrity and possibly the welfare of the tribe, giving the tribe civil authority over Ms. Anderson under the second exception. If non-Indians are allowed to vote in tribal elections, the tribe will surely lose its identity as a separate and distinct people. Should non-Indians gain a majority status within the reservation, as is the case with a number of reservations throughout the country, non-Indians could redefine membership qualifications, granting membership status to non-Indians. This ability to define membership requirements has been recognized as a fundamental part of a tribe's sovereignty. The Tenth Circuit in *Nero v. Cherokee Nation of Oklahoma*, 892 F.2d 1457, 1463 (10th Cir. 1989), explained that "no right is more integral to a tribe's self-governance than its ability to establish its membership. 'A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.'” *Id.* (quoting *Santa Clara Pueblo*, 436 U.S. at 72 n.32 and citing *Montana*, 450 U.S. at 564 and *United States v. Wheeler*, 435 U.S. 313, 322 n.18 (1978)). Thus, interference with a tribe's right to determine its own membership is clearly a threat to the tribe's political integrity, as well as its overall welfare.

Although the case at hand deals only with school board elections, as opposed to general Tribal Council elections, the threat remains the same. If non-Indians ever gain a majority of the school board seats, they could very easily decide to do away with language and other cultural education programs. Worse yet, they could pass laws that would punish anyone practicing their language or culture, as was the case of the old boarding schools in the early days of assimilation. While these may not appear as immediate threats, the mere "possibility of these occurrences clearly constitutes a major threat to the future welfare of the Tribe, as well as its political integrity. As the *Nero* Court concluded:

Applying the statutory prohibitions against race discrimination to a tribe's designation of tribal members [as well as eligibility requirements for tribal office] would in effect eviscerate the tribe's sovereign power to define itself, and thus would constitute an unacceptable interference "with a tribe's ability to maintain itself as a culturally and politically distinct entity."

*Nero*, 892 F.2d at 1463 (quoting *Santa Clara Pueblo*, 436 U.S. at 72). Clearly, allowing the non-Indian complainant to vote in the Fort Tribe's school board elections constitutes a threat to the Tribe's political integrity and welfare. Since this clearly falls within *Montana's* second exception, the Eighth Circuit erred by ordering the Tribe to allow Ms. Anderson to run in
the school board elections. This being the case, this Court should reverse
the lower court's decision allowing Ms. Anderson the opportunity to
participate in the tribe's school board election.

II. Tribal Government Officials Are Immune from Suit for Excluding
People from Tribal School Board Elections Based on Their Political
Status or Race, Though Respondent State and County Actors Are Not

A. Respondent Cass County, Cass County Election Commission and Its
Members as a Board and Individually, and the State of Wissotagan Are Not
Immune from Suit for Excluding Reservation Indians from Voting in County
School Board Elections

1. The Voting Rights Act Abrogates the State's Eleventh Amendment
Sovereign Immunity

The Fourteenth and Fifteenth Amendments confer upon Congress the
power to abrogate sovereign immunity. Thus, the Voting Rights Act
"trump[s] the eleventh amendment" since it was passed under Section 2 of
the Fifteenth Amendment. South Carolina v. Katzenbach, 383 U.S. 301, 325
(1966) (fifteenth amendment "supercedes contrary exertions of state
power"); see also Dupree v. Mabus, 776 F. Supp. 290, 297 (S.D. Miss.
1991) (holding that plaintiffs asserting violations of Voting Rights Act are
not barred by Eleventh Amendment).

2. Cass County and Cass County Election Commission Are Not
Covered by Eleventh Amendment Immunity

In the case at hand, the County Election Commission, Cass County, and
County officials in their respective capacities do not enjoy sovereign
Edelman, the Court noted that where county officials act not in pursuance
of state law or policy but on county policies they are subject to the
commands of the Fourteenth Amendment and unable to invoke the
protection of the Eleventh Amendment. Id. (recognizing "the long-
established rule that while county action is generally state action for
purposes of the Fourteenth Amendment and a county defendant is not
necessarily a state defendant for purposes of the Eleventh Amendment.").
It follows that the Cass County officials and governmental bodies are not
immune from suit in federal court since there are no facts showing they
acted in pursuance of state law. Rather, they adopted an independent county
policy in excluding reservation Indians from county elections. Therefore,
Eleventh Amendment protections are unavailable to defendants. Both Nine
Fingers and Bearstail are thus not barred from asserting section 1983 Civil
Rights Actions against Cass County and its officials. 42 U.S.C. 1983
(1994).
If a state subdivision is adjudged as an administrative agency, rather than a governmental subdivision, then the Eleventh Amendment could apply. However, given that the State of Wissotagan in this case has adopted the Administrative Procedure Act, 5 U.S.C. § 702 (1994), sovereign immunity is waived. Congress enacted such a waiver in the 1976 amendment to the APA, which provides:

a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein denied on the ground that it is against the United States or that the United States is an indispensable party . . . .

Id. Therefore, regardless of how the county government is characterized, there is no immunity from suit under the facts of the Seventh Circuit case.

B. Suits Against Indian Tribes Are Barred by Tribal Sovereign Immunity

1. Suits Against Indian Tribes Under the ICRA Are Barred by the Tribe's Sovereign Immunity from Suit

The United States Supreme Court, in Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58-59 (1978), made it very clear that suits brought against Indian tribes under the ICRA were barred by the tribe's sovereign immunity from suit. In Santa Clara Pueblo, respondent sought declaratory and injunctive relief against the enforcement of a tribal ordinance that denied tribal membership to children of female members who married non-tribal members but allowed membership to children of male members who married non-tribal members. One contention raised by respondent was that Congress had waived the tribe's sovereign immunity when it enacted the ICRA and consequently, the tribe was amenable to suit. In disagreeing with this contention, the Court stated:

It is settled that a waiver of sovereign immunity "cannot be implied but must be unequivocally expressed." United States v. Testan, 424 U.S. 392, 399 (1976), quoting, United States v. King, 395 U.S. 1, 4 (1969). Nothing on the face of Title I of the ICRA purports to subject tribes to the jurisdiction of the federal courts in civil actions for injunctive or declaratory relief. Moreover . . . the provisions of § 1303 can hardly be read as a general waiver of the tribe's sovereign immunity. In the absence here of any unequivocal expression of contrary legislative intent,
we conclude that suits against the tribe under the ICRA are barred by its sovereign immunity from suit.

Id. at 58-59; see Nero v. Cherokee Nation of Oklahoma, 892 F.2d 1457, 1459 (10th Cir. 1989); Gold v. Confederated Tribes of the Warm Springs Indian Reservation, 478 F. Supp. 190, 196 (D. Or. 1979) (Indian tribe is protected by sovereign immunity unless Congress has unequivocally consented to waiver of such immunity); Parker Drilling Co. v. Metlakatla Indian Community, 451 F. Supp. 1127, 1136 (D. Alaska 1978) (Any waiver of sovereign immunity by Indian corporation must be clear and explicit). Thus the Supreme Court made it very clear that the ICRA did not serve as a waiver of tribal sovereign immunity and absent a clear legislative intent to waive this immunity, tribes maintain their sovereign immunity against suits brought under the ICRA.

Furthermore, the Supreme Court, in examining the dual objectives promoted by Congress in the passage of the ICRA, i.e., protecting the interests of tribal members against the tribe while at the same time trying to further Indian self-government, stated:

Creation of a federal cause of action for the enforcement of rights created in Title I, however useful it might be in securing compliance with § 1302, plainly would be at odds with the congressional goal of protecting tribal self-government. Not only would it undermine the authority of tribal forums . . . but it would also impose serious financial burdens on already "financially disadvantaged" tribes.4

Santa Clara Pueblo, 436 U.S. at 64. The Court then concluded that "Congress, aware of the intrusive effect of federal judicial review upon tribal self-government, intended to create only a limited mechanism for such review, namely, that provided for expressly in § 1303 [habeas corpus]." Id. at 70. Thus, the Court recognized that the only relief available to individuals complaining of ICRA violations was habeas corpus.

Courts also recognize that Indian tribes possess "the common-law immunity from suit traditionally enjoyed by sovereign powers." Id. at 58 (citing Turner v. United States, 248 U.S. 354, 358 (1919); United States v. United States Fidelity & Guaranty Co. 309 U.S. 506, 512-13 (1940);

Puyallup Tribe, Inc. v. Washington Dept. of Game, 433 U.S. 165, 172-73 (1977); New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 332 (1983). Similarly, the Ninth Circuit, in deciding whether or not a tribe was immune from suit brought by the California Department of Fish and Game seeking declaratory judgement that the Department could apply California laws to fishing and hunting activities on the Quechan Tribe's reservation, stated, "[t]he sovereign immunity of Indian tribes is similar to the sovereign immunity of the United States; neither can be sued without the consent of Congress." People of State of California ex rel. California Dept. of Fish and Game v. Quechan Tribe of Indians, 595 F.2d 1153, 1155 (9th Cir. 1979).

Thus, it is unequivocally clear that tribes possess sovereign immunity from suit similar to that of the United States. As a result, the claims brought against the Fort Tribe are barred by the Tribe's sovereign immunity and the court should dismiss for lack of federal court jurisdiction. Furthermore, since the issues in the case at bar do not involve habeas review; the complainants clearly do not have a cause of action against the tribe under the ICRA. Hence, this Court should dismiss the matter for failure to state a claim upon which relief might be granted.


As discussed previously, the Fifteenth Amendment and some aspects of the Fourteenth Amendment, as well as other provisions of the Constitution, do not apply to Indian tribes. Consequently, the only arguable source of relief for complainants in the case at hand is under the ICRA. Since relief under the ICRA is also unavailable to complainants, as discussed in the preceding section, this case must be dismissed. Federal courts clearly do not have jurisdiction in this case. The only forum available to complainants in this case is tribal courts. Consequently, the settlement of this dispute should occur in tribal court.

In addition, the Voting Rights Act does not give Ms. Anderson a source upon which to base her claim. As discussed previously, the Court in Wounded Head made it clear that since tribes are not states nor political subdivisions, the Voting Rights Act does not apply to them. Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation, 507 F.2d 1079, 1084 (8th Cir. 1975). Therefore, Ms. Anderson cannot rely upon the Voting Rights Act as the basis for a claim in this case. Consequently, this Court must dismiss Ms. Anderson's case for failure to state a claim.

Conclusion

For the foregoing reasons, the petitioner respectfully requests this Court to reverse the courts below.