

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

CAROLYN NEW HOLY, STEPHANIE
STAR COMES OUT, SANDRA FIRE LIGHTNING,

Civil Action No. 5:19-cv-5066

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
INTERIOR, BUREAU OF INDIAN AFFAIRS,
DANIELLE DAUGHTERY, Deputy Regional Director,
JOHN M. LONG, Acting Superintendent,

Defendants.

COMPLAINT

Plaintiffs in the above-entitled action are members of the Oglala Sioux Tribe and members of the Constitutional Reform Committee Task Force (Task Force) appointed by the Oglala Sioux Tribal Council in order to create and submit constitutional revisions to the Bureau of Indian Affairs so that a secretarial election may be held for the tribe at large. This action is being brought because the Bureau of Indian Affairs (Bureau) determined that the Task Force did not obtain the requisite signatures to move forward with the secretarial election on the revisions. The Plaintiffs assert that in the interest of fairness, and due to the extenuating circumstances that interfered with their ability to obtain signatures, among other claims, the Bureau should permit a an additional six (6) months to allow the Task Force the opportunity to obtain the necessary signatures in support of the secretarial election on the revisions, and on this basis Plaintiffs file the instant action.

THE PARTIES

Plaintiffs

1. Plaintiff CAROLYN NEW HOLY (CNH) is a Member of the Oglala Sioux Tribe (the Tribe) and currently resides in Oglala, South Dakota. In her capacity as a Member of the Tribe, she was part of the Task Force that submitted a petition for secretarial election to the Bureau of Indian Affairs Pine Ridge Agency (Bureau).

2. Plaintiff STEPHANIE STAR COMES OUT (SSCO) is a Member of the Tribe and currently resides in Oglala, South Dakota. In her capacity as a Member of the Tribe, she was part of the Task Force that submitted a petition for secretarial election to the Bureau.

3. Plaintiff SANDRA FIRE LIGHTNING (SFL) is a Member of the Tribe and currently resides in Rapid City, South Dakota. In her capacity as a Member of the Tribe, she was part of the Task Force that submitted a petition for secretarial election to the Bureau.

4. All of the above-stated, namely, CNH, SSCO and SFL are collectively referred to as Plaintiffs.

Defendants

5. The United States Department of the Interior (Interior) is an executive department charged, among other duties, with managing and administering the lands of Indian reservations.

6. The Bureau of Indian Affairs (Bureau) is an agency within the Interior that oversees programs, activities, and operations relating to Indian lands and affairs.

7. Defendant John M. Long (Long) is the Acting Superintendent of the Bureau of Indian Affairs, Pine Ridge Agency at Pine Ridge, South Dakota.

8. Defendant Danielle Daugherty (Daugherty) is the Deputy Regional Director – Indian Services, Bureau of Indian Affairs, Great Plains Regional Office in Aberdeen, South Dakota.

9. All of the above-stated, namely the Interior, the Bureau, Long and Daugherty are collectively referred to as Defendants.

JURISDICTION AND VENUE

10. The Court has jurisdiction of the subject matter pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c) because this is an action brought pursuant to 25 U.S.C. § 476.

11. This Court has jurisdiction over the subject matter herein in that the Plaintiffs have suffered a legal wrong due to an agency action pursuant to 5 U.S.C. § 702.

12. This Court has personal jurisdiction over the defendants pursuant to 18 U.S.C. § 1965(a), (b) and (d) because they reside in this District and otherwise have minimum contacts with the United States and are subject to service of process in any District in which they may be found, have an agent or transact their affairs.

13. Venue is proper in this District pursuant to 18 U.S.C. § 1965 and 28 U.S.C. §§ 1391(b)(1) & (2) because some of the Defendants reside in this District, a substantial part of the events giving rise to the claim occurred, and the Tribe that is the subject of the action herein is situated in this District.

BACKGROUND

The Tribe

14. The Tribe resides on the Pine Ridge Indian Reservation which was established by the Fort Laramie Treaty in 1868 and is comprised of approximately 2.8 million acres, making it the second largest reservation in the United States.

15. The Tribe has a tribal enrollment of approximately 38,000 members who reside within the boundaries of the Pine Ridge Reservation.

16. The Tribe is plagued by many of the same economic and social problems found in other tribes including low educational completion rates, lower education performance rates, general health problems, higher infant mortality, high rates of diabetes and life expectancy rates far below the national average, in fact life expectancy on the Pine Ridge Reservation is the second lowest in the western hemisphere – male life expectancy is 48 years and female expectancy is 52 years of age.

17. Oglala Lakota County, a predominately Native American county in the Western Division with a population of nearly 14,000 people, is the poorest county in the United States. The county has an average annual per capita income of \$8,768.

18. Political Scientists have long-established the connection that income level and educational attainment have on political participation (Williams 2004; Lien 2000; Verba, Schlozman, and Brady 1995; Wolfinger and Rosenstone 1980). Disparities among income levels, physical health and participation in the political process are also known detractors. *Id.*

The Task Force

19. On May 31, 2017, the Oglala Sioux Tribe Tribal Council (OST Tribal Council) enacted a motion creating the Task Force. Each Plaintiff is a member of the Task Force.

20. On October 2, 2017, the Oglala Sioux Tribe Finance Committee approved a motion for support of the Task Force.

21. From November 2017 until February 2018 the Task Force solicited input from the tribal districts and on May 21, 2018 the first signature was obtained on the petition for secretarial election.

22. May 28, 2018 the Tribal Council decided to table the constitutional reform initiative until feedback was sought and obtained from the various districts within the Tribe.

23. August 10, 2018 all funding of the Task Force was suspended.

24. October 23, 2018, a determination was made to resume financial support of the Task Force.

25. On or about November 2018, the Task Force resumed the process of signature collection and proceeded forward with the petition for secretarial election.

26. From the end of May 2018 through early November 2018, it was virtually impossible for the Task Force to seek and obtain signatures on the petition for secretarial election due to the funding restriction and other decisions made by the OST Tribal Council. This delay was outside the control of the Task Force.

27. On May 8, 2019, believing that the Task Force had obtained the requisite number of signatures on the petition for secretarial election, the petition was submitted to the Bureau's Pine Ridge Agency by CNH. This petition was submitted two weeks prior to the end of the one-year anniversary of the first signature.

28. By letter dated June 17, 2019 and signed by Daugherty, the Bureau presented its final decision on Plaintiffs' petition. In that Decision, the Bureau's letter stated that it had received 4,856 signatures from the Task force however, it had determined that 1,292 of the

signatures were invalid, thus the Bureau had invalidated over 26% of the collected signatures. The final determination was that the petition was short 530 signatures and therefore the Bureau would not be proceeding with the secretarial election.

29. The Bureau failed to exercise its discretion in extending the signature collection period despite the fact that it invalidated over 26% of the collected signatures and that the outstanding signature count was less than half of the number it invalidated.

30. The Task Force was severely limited in its ability to collect signatures from May 28, 2018 through October 23, 2018 while its funding was stopped, this was nearly five months of delay, in addition, had the Task Force known it still needed signatures it would not have submitted its petition two weeks early. These time constraints exceed five (5) months, and Plaintiffs assert that the petition time limits set forth in the regulations should be tolled for a time period at least equal to this time when they were prevented from seeking signatures, and preferably a full six (6) months.

Relevant Statutes

31. The requirements for amending Tribal Constitution is set forth at 25 U.S.C. § 476 which is entitled “Organization of Indian tribes; constitution and bylaws and amendment thereof; special election.” This is known as a secretarial election. The authorizing code states in relevant part:

(a) Any Indian tribe shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when—

(1) ratified by a majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and

(2) approved by the Secretary pursuant to subsection (d) of this section.

32. The detailed requirements for holding a secretarial election are set forth at 25 C.F.R. § 81 et seq.

33. Pursuant to 25 C.F.R. § 81.58, tribal members have one year to gather signatures from the date of the first signature.

34. The specified process for requesting a secretarial election are found in 25 C.F.R. § 81.6 which states in relevant part:

To request a Secretarial election:

(a) The tribe or petitioner must submit:

(1) A duly adopted tribal resolution, tribal ordinance, other appropriate tribal document requesting the Secretary to call a Secretarial election, or, in the absence of an existing governing document or if authorized or required by the existing governing documents, a petition that has been verified by the Bureau as having the minimum number of required signatures of tribal members; and

35. The Regulations allow for broad discretion by the Secretary of the Interior in the interest of fairness. Specifically, 25 C.F.R. § 1.2 is as follows:

Applicability of regulations and reserved authority of the Secretary of the Interior.

The regulations in chapter I of title 25 of the Code of Federal Regulations are of general application. Notwithstanding any limitations contained in the regulations of this chapter, the Secretary retains the power to waive or make exceptions to his regulations as found in chapter I of title 25 CFR in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.

36. The Court has consistently applied the principle that statutes passed for the benefit of Indian tribes are to be liberally construed in favor of the Indians, and any doubt as to a statute's proper construction is to be resolved in their favor. *Bryan v. Itasca County*, 426 U.S. 373, 392 (1976); *Ashcroft v. United States Dept. of Interior*, 679 F.2d 196, 198 (9th Cir. 1982), *cert. denied*, 459 U.S. 1201 (1983).

CLAIMS FOR RELIEF

COUNT I – FAIRNESS DICTATES AN EXTENSION OF TIME

37. Plaintiffs restate and incorporate by reference every allegation in the preceding paragraphs.

38. Defendants have the authority and the duty to make an exception to the one-year rule to permit the Plaintiffs a six (6) month extension of time to obtain the requisite signatures to qualify their petition for a secretarial election.

39. The Plaintiffs have provided evidence that circumstances beyond their control necessitated the halting of their petition drive at various points throughout the signature collection period. Had they been able to continue collecting signatures, it is likely that they would have successfully obtained the necessary number of signatures to proceed with secretarial election.

40. In the interest of fairness, and to give Plaintiffs the full and complete opportunity to move forward in their efforts to reform the Tribe's constitution, the Secretary should permit an extension of time equal to the time period they were delayed during the collection period.

41. The Defendants have a duty to act in the best interest of the Indians pursuant to 25 C.F.R. § 2.1 and should therefore make a waiver or exception to the rule and permit the Plaintiffs a short extension of time to complete their task.

COUNT II – THE ONE YEAR TIME LIMIT IS ARBITRARY

42. Plaintiffs restate and incorporate by reference every allegation in the preceding paragraphs.

43. Plaintiffs contend that the one-year requirement for collecting signatures contained in 25 C.F.R. § 81.58 is arbitrary, simplistic, unnecessary and has no meaningful basis for the regulatory restriction.

44. Plaintiffs further contend that the one-year limitation for collecting signatures should not be adhered to in cases such as the instant action where the Tribe is exceedingly large, poverty stricken and has poor infrastructure and therefore adherence to the rule is not in the best interest of the Tribe or fair.

COUNT THREE – BREACH OF TRUST RESPONSIBILITY

45. Plaintiffs restate and incorporate by reference every allegation in the preceding paragraphs.

46. Plaintiffs allege that Defendants acted arbitrarily, capriciously, and in direct violation of federal law and their trust responsibility to Plaintiffs by failing to exercise their discretion pursuant to 25 C.F.R. § 1.2 and unreasonably failing to proceed with the secretarial election under the 25 U.S.C. § 461 *et seq.*

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully request this Court to enter judgment as follows:

1. For an Order directing the Bureau to extend the time limit for Plaintiffs to collect signatures in support of the secretarial election by a minimum of six (6) additional months;
2. Award Plaintiffs reasonable costs, including reasonable attorneys fees incurred in this action;
3. Award such other and further relief the Court deems just and proper.

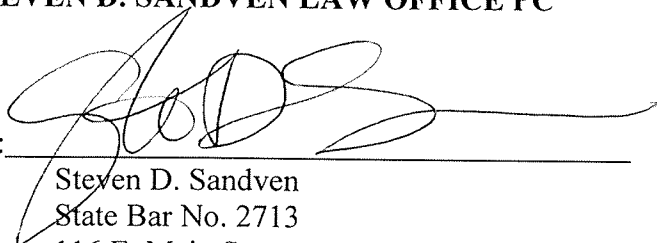
JURY DEMAND

Pursuant to FED.R.CIV.P. 38 Plaintiff respectfully demands a trial by jury on all claims so triable.

Dated: September 13, 2019

STEVEN D. SANDVEN LAW OFFICE PC

By: _____



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ATTORNEY FOR PLAINTIFFS

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS CAROLYN NEW HOLY, STEPHANIE STARR
COMES OUT, SANDRA FIRE LIGHTNING

DEFENDANTS UNITED STATES DEPARTMENT OF THE
INTERIOR, BUREAU OF INDIAN AFFAIRS, JOHN M. LONG
ACTION SUPT., DANIELLE DAUGHERTY DEPUTY
REGIONAL DIRECTOR

(b) County of Residence of First Listed Plaintiff **SHANNON**
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant **SHANNON**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (If Known) (Attorney Telephone Number)
STEVEN D. SANDVEN, STEVEN D. SANDVEN LAW OFFICES, P.C.
116 E. MAIN STREET, BERESFORD, SD 57004 605-763-2015
sdsandven@gmail.com

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395m) Act <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
25 USC 476

Brief description of cause:
Petition for secretarial election matter under 25 USC 476.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

DATE 9-13-19

JUDGE

SIGNATURE OF ATTORNEY OF RECORD

DOCKET NUMBER

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____