

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

RANDY V. ROBERTS,)	CV-05-153-BLG-RFC
)	
Plaintiff,)	
)	
vs.)	
)	ORDER
JEFF HAGENER, Director, Montana)	
Department of Fish, Wildlife & Parks;)	
VICTOR WORKMAN, TIM)	
MULLIGAN, STEVE DOHERTY, JOHN)	
BRENDEN, and SHANE COLTON,)	
Commissioners, Montana Fish, Wildlife)	
& Parks Commission; MONTANA)	
DEPARTMENT OF FISH, WILDLIFE)	
& PARKS; MONTANA FISH,)	
WILDLIFE & PARKS COMMISSION;)	
BRIAN A. SCHWEITZER, Governor,)	
State of Montana, and the STATE OF)	
MONTANA)	
)	
Defendants.)	
)	

On August 4, 2006, this Court entered an order notifying the parties that it was converting Defendants’ Fed.R.Civ.P. 12(b)(6) motion to dismiss into a motion for summary judgment (*Doc. #18*). In that Order, the Court recognized both the sound reasoning behind Plaintiff’s equal protection argument and the reality of contrary Supreme Court authority. In light of that clear authority, the Court concluded the regulation promulgated by the State of Montana prohibiting those who are not tribal members from hunting big game on land within Indian Reservations must be reviewed under the highly deferential rational basis standard. Under rational basis review, it is

Plaintiff's burden to prove the disparity of treatment caused by the regulation is not rationally related to a legitimate governmental interest. *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1279 (9th Cir. 2004) (citing *Heller v. Doe*, 509 U.S. 312, 319-20 (1993)). Plaintiff's burden requires it to negate every conceivable basis which might support the regulation. *Id.* Accordingly, the Court allowed Plaintiff the opportunity to prove there was no rational basis for the regulation at issue.

The Court has reviewed the briefs submitted in response to the August 4, 2006 Order. The State asserts the regulations further two legitimate governmental interests: (1) preserving big game species in general, and (2) avoiding the regulatory and law enforcement difficulties of attempting to regulate nonmember hunting on a checker-boarded reservation, while avoiding interfering with tribal members who may be lawfully hunting on that land. It is clear that precluding nonmembers from hunting big game on land within the exterior boundaries of Indian Reservations furthers both of those interests. For that reason, Plaintiff has failed to show how the regulation is not rationally related to a legitimate governmental interest.

Accordingly, **IT IS HEREBY ORDERED** that Defendants are entitled to judgment as a matter of law.

The Clerk of Court shall notify the parties of this Order and enter judgment for Defendants.

Dated this 2d day of February, 2007.

/s/ Richard F. Cebull
RICHARD F. CEBULL
U. S. DISTRICT JUDGE