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Federal Court Allows Civil Rights Lawsuit Challenging Violations at Standing Rock

Thunderhawk v. County of Morton, North Dakota

Media Contact: Fonda Shen at (240) 274-6230 or cccct@law.columbia.edu.

New York, September 3, 2020 — In a significant victory for critics of governmental overreach, Judge Daniel M. Traynor (U.S. District Court for North Dakota) denied motions to dismiss filed by state and county law enforcement defendants and the private security firm, TigerSwan LLC. As a result, the *Thunderhawk v. County of Morton* civil rights lawsuit, brought by plaintiffs Cissy Thunderhawk, Wašté Win Young, the Reverend John Floberg, and José Zhagñay against North Dakota government officials and TigerSwan, will move forward on the claim that the plaintiffs and the class were denied their constitutional rights to Free Speech.

The *Thunderhawk* case arises from the five-month closure of Highway 1806 during the height of the NoDAPL movement in 2016-2017. Tens of thousands of Water Protectors had gathered on the northern border of the Standing Rock Reservation in opposition to the construction of the Dakota Access Pipeline. Seeking to suppress this movement, law enforcement closed a nine-mile stretch of the region’s primary public right of way so as to effectively cut the Tribe and its supporters off from Bismarck, the state capital and the location of the nearest airport, shopping, and major population center.



Highway 1806 south side blockade in Morton County, North Dakota

In his [101-page opinion](#), Judge Traynor rejected the primary arguments raised by the law enforcement defendants, finding that the facts in the complaint “plausibly show the Defendants may not have had a compelling interest in closing the road.” Indeed, Judge Traynor added that “[t]he Plaintiffs here allege facts which a fact-finder could depend upon to find the closure was . . . motivated by a discriminatory purpose or pretextual reason.”

Judge Traynor’s opinion allows plaintiffs Cissy Thunderhawk, Wašté Win Young, the Reverend John Floberg, and José Zhagñay to proceed on their Free Speech claims against each of the named law enforcement defendants in full. Judge Traynor also [dismissed the counterclaims](#) asserted by TigerSwan and certain additional claims raised in the amended complaint arising from the same set of facts.

“We appreciate Judge Traynor’s careful approach to these issues, and we are pleased that this case will proceed,” said plaintiffs’ attorney, Noah Smith-Drelich. “This decision ultimately brings us one significant step closer to obtaining redress for the many folks injured by this unconstitutional road closure.”

The *Thunderhawk* plaintiffs are represented by [Noah Smith-Drelich](#) (Assistant Professor of Law at Chicago-Kent) and Professor [Bernard E. Harcourt](#) of Columbia Law School. Prior to joining Chicago-Kent, Smith-Drelich was a Lecturer in Law at Columbia Law School, and before that the ACLU's Staff Attorney for their North Dakota, South Dakota, and Wyoming affiliates. Harcourt is the founding director of the [Columbia Center for Contemporary Critical Thought](#), which actively engages in *pro bono* public-interest representation.

The plaintiffs in this case, Cissy Thunderhawk, Wašté Win Young, the Reverend John Floberg, and José Zhagñay are, respectively, a small-business owner, a former Historic Preservation Officer of the Standing Rock Sioux Tribe, Standing Rock’s Episcopalian Minister, and a school volunteer. The plaintiffs, and the class they seek to represent, allege violations of their constitutional rights. Through the suit, the plaintiffs hope to recover damages for the substantial harms inflicted on the community and movement by this unnecessary and overbroad road closure.

The litigation forms part of the [Practical Engagements](#) initiative of the [Columbia Center for Contemporary Critical Thought](#). In 2018, the Center organized a [seminar on Standing Rock](#) that explored many of the legal issues and civil rights violations associated with the Standing Rock protest movement.

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More information and documents here: <https://cccct.law.columbia.edu/content/standing-rock-litigation>

Amended Complaint, *Thunderhawk v. County of Morton*, filed February 1, 2019, here: <https://cccct.law.columbia.edu/sites/default/files/content/Pleading%2044%20-%20Amended%20Complaint.pdf>

Horn, Steve. "[TigerSwan, County Sheriff Sued Over Road Blockade During Dakota Access Pipeline Protests](#)," *DeSmog*, October 26, 2018.

Gosztola, Kevin. "[Counterinsurgency on Steroids: Interview with Bernard Harcourt on Trump, Cesar Sayoc, and the Counterrevolution](#)," *Shadowproof*, October 29, 2018.

["Standing Rock defendants move to dismiss on basis of factual disputes,"](#) *Indian Country Today*, February 17, 2019.