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ATTORNEY FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Bobby D. Sanchez, Vinton Hawley, Johnny
Williams, Jr., Robert James, and Ralph Burns,
Plaintiffs,

v.

Barbara K. Cegavske, in her official capacity as
Secretary of State for the State of Nevada, The
County of Washoe, a political subdivision organized
under the laws of the State of Nevada, the County of
Mineral, a political subdivision organized under the
laws of the State of Nevada, Marsha Berkgigler, Bob
Lucey, Kitty Jung, Vaughn Hartung, and Jeanne
Herman, in their official capacities as Washoe
County Commissioners, Nancy Black, Paul MacBeth,
and Jerrie Tipton, in their official capacity as Mineral
County Commissioners, Christopher Nepper, in his
official capacity as Clerk-Treasurer of Mineral
County, Luanne Cutler, Registrar of Voters for
Washoe County.

Defendants.

**PLAINTIFFS' REPLY TO
MINERAL COUNTY DEFENDANTS'
OPPOSITION TO
PLAINTIFFS' EMERGENCY
MOTION FOR PRELIMINARY INJUNCTION**

COME NOW, Plaintiffs, by and through their undersigned counsel, and respectfully file this Reply to Mineral County Defendants' Opposition to Plaintiffs' Emergency Motion for Preliminary Injunction. In support of their argument, Plaintiffs hereby incorporate by reference their Memorandum in Support of Injunctive Relief at Docket 26, their Reply to Defendant Washoe County's Opposition to Plaintiffs' Emergency Motion for Preliminary Injunction and

their Reply to Defendant Secretary of State's Opposition to Plaintiffs' Emergency Motion for Preliminary Injunction and Declaratory Relief, and further state as follows:

I. PLAINTIFFS HAVE DEMONSTRATED UNEQUAL ACCESS.

Defendant Mineral County argues that "Plaintiffs have not met their burden to demonstrate unequal access to voter registration and in-person voting as opposed to other residents of Mineral County." Doc. 39 at ¶ 8. To the contrary, Plaintiffs have shown that Mineral County consists of 4,772 people – 3,462 are Anglo and 742 are Indian and nearly all of which are members of the WRPT. A majority of the Anglo population resides in the city of Hawthorne – 2,732 Anglos versus 104 Indians. In other words, the site in Hawthorne conveniently serves 79% of the entire Anglo community. Doc. 26 at ¶ 5. That clearly does not constitute equal access.

II. DEFENDANTS' EXCUSE FOR NOT PROVIDING AN EARLY VOTING SITE IN SCHURZ IN TENUOUS AT BEST.

Defendant argues that the additional early voting site would cost an approximate \$4,777.48, and that is something the County cannot afford. Doc. 39 at ¶ 9. Interestingly, Defendants have no financial concerns when it comes to fighting the WRPT Tribal Members in court. The County has more than likely already spent that amount in attorneys' fees.

III. SERVICE HAS BEEN MADE ON THE DEFENDANTS.

Although Plaintiffs dispute that Defendant Mineral County was not properly served¹, Defendants were re-served in accordance with NRCP Rule 4(d)(5) on October 3, 2016.

IV. PLAINTIFFS HAVE ESTABLISHED STANDING.

¹ See Affidavit of Alvin Moyle.

“[S]tanding is a question of whether a plaintiff is sufficiently adversary to a defendant to create an Art. III case or controversy.” *Davis v. Passman*, 442 U.S. 228, 239 n.18 (1979). Article III standing requires that the Plaintiffs suffer an injury in fact, causally connected to the conduct complained of, that is likely to be redressed by a favorable decision by the court. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). To determine standing in a voting rights case, the court asks whether the plaintiffs “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult issues.” *Baker v. Carr*, 369 U.S. 186, 204 (1962). Notably, “voters who allege facts showing disadvantage to themselves as individuals have standing to sue.” *Id.* 205-06.

A. Plaintiffs Have Suffered an Injury In Fact.

As to the first factor required to establish standing— injury in fact, decades of jurisprudence expanding and protecting the right to vote demonstrate Plaintiffs’ injury in fact and establish that a case or controversy exists. Plaintiffs are citizens, residents and/or voters in their respective Counties who are also enrolled members of the Walker River Paiute Tribe and the Pyramid Lake Paiute Tribe. As individual voters it cannot be denied that they have individual standing to challenge discriminatory election practices. *LULAC v. Clements*, 999 F.2d 831, 845-46 (5th Cir. 1993)(“We agree that the standing of voters in a voting rights case cannot be gainsaid.”) Racial discrimination by a government creates a substantial “stigmatic harm” that constitutes an injury in fact and establishes a case or controversy. *See United States v. Hays*, 515 U.S. 737, 744 (1995)(noting that racial classifications threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility.”) The concrete harm of this stigma, and a case or controversy, exists whenever a government acts with a racially

discriminatory purpose against a particular plaintiff or class of plaintiffs. This is especially so when the racial discrimination is directed towards voting, a “fundamental political right, because [it is] preservative of all rights. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Accordingly, vote denial in any government run election is not a “hypothetical injury.” It is precisely the sort of government action Section 2 of the Voting Rights Act was intended to reach.

Based upon the fundamental nature of the right to vote, Plaintiffs have demonstrated that an injury in fact is present in this case. Specifically, Plaintiff Bobby Sanchez is an enrolled member of the Walker River Paiute Tribe and is Chairman. He lives approximately 30 miles from Hawthorne, which means he must drive for 60 miles round trip to cast an in-person early vote or to update his registration at an in-person voter registration site. Finally, 35.4% of Tribal members residing on or near the WRPT reservation are unemployed. A number of these same Tribal members must drive 34 miles one way in order to register in-person or cast an in-person early ballot. Johnny Williams, Jr. is also an enrolled member of the Walker River Paiute Tribe and is a United States Army combat veteran, serving his country in the Vietnam War. He also resides 30 miles from Hawthorne, and so, must travel a long distance in order to cast an early vote. Vinton Hawley, Robert James and Ralph Burns are all members of the Pyramid Lake Paiute Tribe. They all reside a great distance from any in-person early voting and registration site.

To counter Plaintiffs’ assertions of injury, Defendant claims that Plaintiffs cannot claim an injury-in-fact, because they are already registered. Doc. 39 at ¶ 13. Clearly, the Defendant misunderstands what the Plaintiffs are requesting – in-person registration and early voting sites that that would allow them to cast an early vote or update their registration without travelling an hour simply to do so. Accordingly, the injuries to these Plaintiffs are that they do not have in-

person registration and early voting sites that would allow them to cast an early vote or update their registration.

Finally, contrary to Defendants' arguments, every "citizen has a constitutionally protected right to participate in elections on an *equal basis with other citizens in the jurisdiction*." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972)(Emphasis added). *See Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665-70 (1966). Accordingly, where a governmental entity provides access to the ballot on unequal terms, the "discriminatory treatment must be justifiable." *Hunter v. Hamilton County Board of Elections*, 635 F.3d 219, 238 n.16 (6th Cir. 2011). Put differently, the decision of the Defendants to turn Plaintiffs and not others away from an early voting and registration site itself constitutes a serious burden to the exercise of the franchise. *See League of Women Voters*, 548 F.3d at 476 (emphasizing the "equal weight accorded to each vote and the equal dignity owed to each voter").

B. Plaintiffs' Injury is Traceable to the Challenged Conduct.

The second *Lujan* factor requires the Plaintiffs to show that the injury is fairly traceable to the challenged conduct. Article III causation "at least require proof of a substantial likelihood that the defendant's conduct caused plaintiff's injury in fact." *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1156 (10th Cir. 2005) (internal quotation marks and citations omitted). Here, Plaintiffs allege that the Defendants have failed to establish an in-person registration and in-person early voting site on the Reservations in violation of the VRA, Fourteenth Amendment to the United States Constitution and the Constitution of the State of Nevada. Defendants have readily admitted that they make the decision whether or not to establish such a site. Clearly, this admission plausibly shows a line of causation between the Defendants' conduct and prospective injuries to the Plaintiffs.

C. Plaintiffs' Injury is Redressable.

Finally, as to the last factor, Plaintiffs' injury is able to be redressed because they are seeking a court order to direct the Defendants to provide an in-person early voting and an in-person registration site within the boundaries of their reservations which the Defendants have the statutory authority to do. As such, Plaintiffs' injury would be redressed by a favorable court decision.

V. LIKELIHOOD OF SUCCESS ON THE MERITS.

Defendant argues that Plaintiffs are only being "inconvenienced" in having to travel a long distance in which to cast an early vote. Doc. 39 at ¶ 16. In making this assertion, Defendant overlooks all the additional factors that make it impossible for many members of the two Tribes to participate in the electoral process.

First, PLPT and WRPT Tribal members have a limited understanding of election processes in Nevada, especially getting registered to vote. In the independent survey, only 24% of WRPT Tribal members said they knew how to use the on-line voter registration system, but less than 7% of the members could correctly identify what website to use.² Affidavit of Bret Healy ("Healy Aff."), Exhibit 1 at ¶ 1. This problem is not an inconvenience.

Second, for mailed in or paper registration applications, 46% of WRPT members³ said they knew how (still less than half), but less than 13% of WRPT members⁴ knew that in Nevada, a person assisting someone to vote (like a granddaughter helping a grandmother) and forgetting to sign the application, is guilty of committing a Class E felony under Nevada law. *Id.* The potential for WRPT members to be charged with a Class E felony is not an "inconvenience" – it

² Of PLPT members, nearly 28% said they knew how, but less than 2% could identify the correct website.

³ 39% of PLPT members.

⁴ Percentage is same for PLPT Tribal members.

is an effective deterrent to asking for help from fellow Tribal members or offering fellow Tribal members to register to vote with the mail in option. After knowing of a potential felony (in the September 2016 surveys), less than 20% of WRPT members⁵ would be willing to ask for assistance in voter registration from their family members or other Tribal members. *Id.* And less than 20% of WRPT members⁶ would be willing to offer assistance in voter registration to other Tribal members. *Id.*

To further complicate matters, Mr. Healy could not get a straight answer from individuals in charge exactly what “assist” entails. For example, the Lyon County Clerk-Treasurer’s office first stated it meant if you filled out the application for the potential voter and forgot to sign you’d be in jeopardy. *Id.* at ¶ 1-2. There is nothing in writing that corroborated her understanding of the term “assist”. *Id.* Defendant Cutler suggested that one would be in jeopardy of this provision only if one put pen to paper. *Id.* But, in further discussion, Defendant Cutler indicated she would not put something in writing officially on this matter without further research. *Id.* Not being sure what could conceivably impose a felony conviction is way more than just an “inconvenience.”

Defendants counter that field registrars are the answer to Plaintiffs’ requests for in-person voter registration. However, due to the lack of outreach by the Defendants, less than 18% of WRPT members⁷ were aware they could request a field registrar to come to their home and register them. *Id.* Of course, there are no field registrars available (according to Deputy Cutler) unless the Tribes can find someone who will work for free and secure field registrar training which occurred in August. *Id.*

⁵ Percentage is the same for PLPT Tribal Members.

⁶ Percentage is the same for PLPT Tribal Members.

⁷ 15% of PLPT Tribal Members.

Most importantly, economic restraints on Tribal Members registering to vote is way more than just an “inconvenience.” An overwhelming majority of WRPT Tribal members do not possess the economic, transportation, and technological resources to utilize on-line voter registration or to travel to register to vote in-person. *Id.* at ¶ 2. Use of on-line voter registration in Nevada requires either a Nevada Driver’s license or a Nevada ID. *Id.* For WRPT members, this requires a trip to the DMV which is a 70 mile round-trip to Hawthorne and \$22.25 to pay for the Nevada ID. *Id.* Only 24% of WRPT members said they could afford the travel and funds needed.⁸ *Id.*

In order to travel, one needs reliable transportation. *Id.* at ¶ 2-3. Of WRPT members, over 18% do not own a car, the average age of cars owned by WRPT members is 16 years, and only 35% of WRPT members own a car reliable enough to travel 100 miles without concern.⁹ *Id.*

Another resource needed to utilize on-line voter registration is a computer and an internet connection. *Id.* at ¶ 2. Less than 40% of WRPT members¹⁰ said they owned a computer. *Id.* Less than 10% of WRPT members¹¹ have high-speed internet in their homes. *Id.* This compares to 90% of Nevadans who own a computer and 79.40% of Nevadans who have high-speed internet in their homes. *Id.*

⁸ For PLPT members, this requires a trip to the DMV (closest site in Fallon, NV) of a 93 mile round-trip and \$22.25 to pay for the Nevada ID. Only 32% of PLPT members said they could afford the travel and funds needed.

⁹ Nearly 13% of PLPT members do not own a car, the average age of cars owned by PLPT members is 10 years, and only 32% of PLPT members own a car reliable enough to travel 100 miles without concern.

¹⁰ Less than 56% of PLPT members.

¹¹ Less than 34% of PLPT members.

Lastly, the only other option to on-line registration during the last 10 days of Nevada's voter registration period is to travel to the county election office to register to vote in person. This requires a reliable car and the economic resources to travel off-reservation. For the 70 mile round-trip to Hawthorne for WRPT members, IRS 2016 rates (\$0.54/mile) indicate the cost at \$37.80.¹² *Id.* at ¶ 3. But no more than 1/3 of WRPT members¹³ can afford to spend \$35 to vote in the upcoming general election. *Id.*

Similar issues are involved with early voting. In fact, an overwhelming majority of WRPT Tribal members do not possess the economic and transportation resources to mitigate the travel distance to cast an early vote. Because there is no early voting site on the Walker River Paiute Reservation¹⁴, it requires a 70 mile round-trip to Hawthorne from the WRPT Tribal Capitol to cast an early vote. *Id.* Of WRPT members, over 18% do not own a car, the average age of cars owned by WRPT members is 16 years, and only 35% of WRPT members own a car reliable enough to travel 100 miles without concern.¹⁵ *Id.*

Again, this requires a reliable car and the economic resources to travel off-reservation. For the 70 mile round-trip to Hawthorne for WRPT members, IRS 2016 rates (\$0.54/mile) indicate the cost at \$37.80.¹⁶ *Id.* But no more than 1/3 of WRPT Tribal Members¹⁷ can afford to spend \$35 to vote in the upcoming general election. *Id.*

¹² For the 96 mile round-trip for PLPT members, this calculated rate is \$51.84.

¹³ Less than ¼ of PLPT members

¹⁴ There also is no early voting site located in the Pyramid Lake Paiute Tribe Reservation, and so, these members must travel a 96 mile round trip to Reno from the Tribal Capital to cast an early vote.

¹⁵ Nearly 13% of PLPT members do not own a car, the average age of cars owned by PLPT members is 10 years, and only 32% of PLPT members own a car reliable enough to travel 100 miles without concern.

¹⁶ For the 96 mile round-trip for PLPT members, this calculated rate is \$51.84.

¹⁷ Less than ¼ of PLPT members.

Finally, and most importantly, there is the “inconvenience” of being discriminated against when conducting business off Reservation. 25% of WRPT members¹⁸ state they have felt discriminated against or intimidated as a Native American when attempting to register to vote or to vote. *Id.* A strong majority of WRPT members (2/3)¹⁹ have felt discriminated against when conducting business off Reservation. *Id.* An overwhelming majority (greater than 90%) WRPT members²⁰ are more comfortable conducting business in the Tribal Capitol than in the County courthouse. *Id.*

So, if the Tribal member is able to locate a reliable vehicle and the necessary funds in which to travel to an early voting site, they still get to feel discriminated against when casting their vote. This is more than an “inconvenience” – it is a complete deterrent to exercising one’s Constitutional right to cast a ballot.

CONCLUSION

Based upon the foregoing, Plaintiffs’ Request for Injunctive Relief should be granted.

Dated this 3rd day of October, 2016.

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and

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¹⁸ Same percentage for PLPT members.

¹⁹ PLPT members (3/5).

²⁰ Same percentage for PLPT members.

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, Rendal B. Miller, hereby certify that on the 3rd day of October 2016, I electronically filed the foregoing Reply to Mineral County Defendants' Opposition to Plaintiffs' Emergency Motion for Preliminary Injunction with the Clerk of Courts for the United States District Court for the District of Nevada by using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

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