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OFFICE CLERK OF DISTRICT COURT  
VALLEY COUNTY  
FILED

SEP 30 2024

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MONTANA SEVENTEENTH JUDICIAL DISTRICT COURT  
COUNTY OF VALLEY

SARIAH RED EAGLE, TERRY THOMPSON,  
JOSEPH DOLEZILEK, ANGIE TOCE, DELANE  
BLOUNT and BRANDI LONG-WHITE,

Plaintiffs,

v.

CHRISTI JACOBSEN, in her official capacity as  
Montana Secretary of State, ROOSEVELT  
COUNTY, GARY MCDONALD, in his official  
capacity as ROOSEVELT COUNTY  
COMMISSIONER, ROBERT TOAVS in his official  
capacity as ROOSEVELT COUNTY  
COMMISSIONER, GORDON OELKERS, in his  
official capacity as ROOSEVELT COUNTY  
COMMISSIONER, TRACY MIRANDA, in her  
official capacity as ROOSEVELT COUNTY CLERK  
AND RECORDER, VALLEY COUNTY, MARK  
ARMSTRONG, in his official capacity as VALLEY  
COUNTY COMMISSIONER, PAUL TWETON, in  
his official capacity as VALLEY COUNTY  
COMMISSIONER, JOHN FAHLGREN, in his  
official capacity as VALLEY COUNTY

Consolidated Case No. DV-2024-101

Hon. Laird

**PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF MOTION  
FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

COMMISSIONER, and MARIE PIPPEN, in her  
official capacity as VALLEY COUNTY CLERK  
AND RECORDER.

Respondents.

Plaintiffs, Sariah Red Eagle, Terry Thompson, Joseph Dolezilek, Angie Toce, Delane Blunt, and Brandi Long-White, enrolled members of Fort Peck Assiniboine and Sioux Tribes ("Plaintiffs"), by and through their undersigned counsel, hereby move this Court for the entry of a preliminary injunction requiring the Defendants to establish satellite offices in Frazer and Poplar, Montana. This Motion for a Temporary Restraining Order is made pursuant to MCA §27-19-314 and the motion for Preliminary Injunction is made and based upon Plaintiffs' Complaint for Declaratory and Injunctive Relief; the exhibits attached thereto; the Points and Authorities that follow; and the exhibits attached hereto. Plaintiffs respectfully request that this motion be heard on an emergency basis and that the Court establish an expedited briefing schedule so that this motion may be resolved prior to October 4, 2024.

Undersigned counsel provided notice of this application to Defendants, on September 30th, 2024, and will duly serve this application contemporaneously with its filing on September 30, 2024.

## INTRODUCTION

Plaintiffs' complaint alleges, among other things, that by arbitrarily failing to establish satellite offices in Frazer and Poplar on the Fort Peck Indian Reservation, Defendants have violated the Constitution of the State of Montana by depriving Tribal members of their free exercise of the right of suffrage as guaranteed by Article II, Section 13 of the Constitution of the State of Montana. Currently, Tribal members who want to register to vote or cast a ballot in-

person must travel approximately 56 miles round trip, or 70 miles round trip from Oswego, to the only satellite office established in Valley County - the Courthouse in Glasgow, Montana. Tribal members in Roosevelt County travel up to 90 miles round trip from Fort Kipp to Wolf Point to exercise their rights to equal access.

Based upon difficulties associated with the extended travel, Plaintiffs submitted timely requests to both Valley and Roosevelt County for establishment of satellite offices in Frazer and Poplar. Additionally, both Counties were notified that the Fort Peck Tribes supported Plaintiffs' requests. Valley County responded by offering only 4.5 hours of late registration and in-person absentee balloting at a satellite location in Frazer, Montana for the 2024 election cycle. Roosevelt County would offer no late registration and early voting outside of the county seat.

The result of the Counties' decisions will constitute an unjustifiable burden on the voting rights of Tribal members residing on the Fort Peck Indian Reservation. These burdens fall particularly and disproportionately on these voters, who are far less likely to have reliable, accessible transportation to the nearest satellite office. The result is a startling imbalance that specifically harms those Tribal members who live and work on the Reservation. This disparity is borne out by expert analysis, demonstrating that the burden on impacted voters is severe. These burdens cannot be justified by legitimate governmental interests.

As a remedy, the Plaintiffs seek a preliminary injunction requiring the Defendants to open official satellite offices in Frazer and Poplar that will provide Tribal members with equal access to the political process. If this relief is not granted, members of the Tribes will have less opportunity to participate in the upcoming general election than other members of the electorate in violation of the Constitution of the State of Montana.



## BACKGROUND

The Fort Peck Indian Reservation is home to two separate Tribes, the Assiniboine Sioux and the Yanktonai Sioux, each composed of numerous bands and divisions.<sup>1</sup> The modern boundaries of the Fort Peck Indian Reservation were ratified by the Congressional Act of May 1, 1888. *Id.* After adoption of the *Fort Peck Allotment Act* which called for the allotment of lands and the sale of all surplus lands, approximately 1,348,408 acres of land was declared available for settlement by non-Indian homesteaders, thereby reducing the Reservation to its current size of 2,094,000 acres. The expansive Reservation spreads across parts of Roosevelt, Valley, Daniels, and Sheridan Counties.

On January 31, 2024, Justin Gray Hawk, Sr., Chairman of the Fort Peck Tribes, notified the Valley County Clerk of Court Recorder's Office, that the Tribes had identified a potential satellite office in Frazer. Affidavit of Bret Healy ("Healy Aff."), Ex. 1. On that same day, the Tribes notified the Secretary of State and the Valley County Commission that a satellite office was identified in Frazer. *Id.* Ex. 19.

In response to the Tribe's request, Defendant Pippin notified the Tribes on September 11, 2024, that her office could not provide more than one day in Frazer, because Valley County only contains a small part of the Reservation and her office is operated by herself and two part-time employers. *Id.* Ex. 8. Her office was too busy to be run by one person. *Id.*

On September 16, 2024, Plaintiffs submitted letters to both Counties requesting the establishment of satellite offices in Frazer and at the Tribal headquarters in Poplar. *Id.* Ex. 2 and 3. Defendant Pippin responded four days later that she could only open a satellite office in Frazer for one day. *Id.* Ex. 12. On September 23, 2024, the Roosevelt County attorney declared that no action was being taken at this time, because they were waiting for a response from the Tribes. *Id.* Ex. 19. The Tribes responded to Defendant Miranda that it required equal access to a

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<sup>1</sup> [Fort Peck Tribes | Tribal History](#)

satellite office in Poplar. *Id.* Ex. 18 and 20. A place in Poplar was identified meeting all the standards referenced in Election Directive #01-2015. *Id.* The following day, the Fort Peck Tribes notified the Defendants that it supported the Plaintiffs' requests for satellite offices and asked for copies of the analysis required by the Secretary of State's Election Directive. *Id.* Ex. 9 and 10.

### LEGAL STANDARD

The purpose of a temporary restraining order is to preserve the status quo until a hearing can be held to determine whether the injunction should be granted. *Montana Tavern Assn v. State By& Through Department of Revenue*, 224 Mont. 258, 264, 729 P.2<sup>nd</sup> 1310, 1314-15 (Mont. 1986) (citations omitted) A district court has the discretion "to grant or deny a TRO Application without first holding a hearing. *Flying T Ranch, LLC v. Catlin Ranch, LP* (2020) 99, pp 14. To obtain a TRO, the moving party must present a prima facie case with a "probable right."

Pursuant to recent legislation (2023 Senate Bill 191 or "SB 191"), as of March 2, 2023, "[a] preliminary injunction order or temporary restraining order may be granted when the applicant establishes that: (a) the applicant is likely to succeed on the merits; (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief; (c) the balance of equities tips in the applicant's favor; and (d) the order is in the public interest." *See* SB 191, 2023 Leg. Reg. Sess. (Mont. 2023) (amending §27-19-201, MCA); *see also* *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Montana Legislature intended for this standard to "mirror the federal preliminary injunction standard," and "closely follow United States supreme court case law." SB 191, § 1. The new standard replaces Montana's statutory standards for preliminary injunctions and temporary restraining orders. The standard for issuing either now operates on the same four-part, federal-style test. *See* SB 191, §§ 1, 3.<sup>2</sup>

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### ARGUMENT

<sup>2</sup> Although House Bill 695 alters the standard for seeking temporary restraining orders issued without notice, that law does not specify an effective date and as such, became effective on October 1, 2023. *See* § 1-2-201, MCA. Likewise, changes to certain dates related to temporary restraining orders in Senate Bill 134 also do not specify an effective date and will thus also become effective on October 1, 2023.

## **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.**

To establish a likelihood of success on the merits, Plaintiffs “must show ‘a fair chance of success.’” *In re Focus Media Inc.*, 387 F.3d 1077, 1086 (9th Cir. 2004) (quoting *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (en banc)). Plaintiffs have more than a fair chance of success here for at least two reasons. Plaintiffs have made a prima facie showing that Defendants’ failure to establish satellite offices on the Fort Peck Indian Reservation impermissibly infringes upon their fundamental right to suffrage and equal protection of laws. These rights are enshrined in Montana’s Declaration of Rights and therefore are analyzed under strict scrutiny. *Mont. Cannabis Indus. Ass’n*, ¶ 16 (“Legislation that implicates a fundamental constitutional right is evaluated under a strict scrutiny standard, whereby the government must show that the law is narrowly tailored to serve a compelling government interest.”); *see also Wadsworth v. State* (1996), 275 Mont. 287, 302, 911 P.2d 1165, 1174 (“The most stringent standard, strict scrutiny, is imposed when the action complained of interferes with the exercise of a fundamental right”).

## **II. APPLICANT IS LIKELY TO SUFFER IRREPARABLE HARM ABSENT A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Failure to establish satellite offices in Poplar and Frazer will cause irreparable harm to Plaintiffs. Montana courts look to federal precedent when determining whether a constitutional violation will cause irreparable harm. *See Mont. Cannabis Indus. Ass’n*, ¶ 15 (citation omitted). As state courts have explained, a party need not establish a prima facie case for a preliminary injunction, but rather must simply show “that it is at least doubtful whether or not he will suffer irreparable injury before his rights can be fully litigated.” *See, e.g., Sandrock v. DeTienne*, 2010 MT 237, ¶ 16, 358 Mont. 175, ¶ 16, 243 P.3d 1123, ¶ 16 (quoting *Porter v. K & S P’ship* (1981), 192 Mont. 175, 181, 627 P.2d 836, 839). Further, the Montana Supreme Court recently found, based on



federal case law, that a violation of First Amendment rights would lead to irreparable injuries. *Weems*, ¶ 25.

Denial or abridgment of the equal right to vote constitutes irreparable harm. See *Obama for America ("OFA") v. Husted*, 697 F.3d 423 (6th Cir. 2012); *Williams v. Salerno*, 792 F.2d 323, 330 (2nd Cir. 1986) (voters "would certainly suffer irreparable harm if their right to vote [was] impinged upon."). And, at least two federal courts have specifically found that burdening the right to vote by providing less access to early voting to some voters than others constitutes irreparable injury. See *OFA*, 697 F.3d at 436, 437; *Common Cause Ind. v. Marion Cty. Election Board*, 311 F.Supp.3d 949, 975 (S.D. Ind. 2019). See also *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live."). Thus, denial of equal access to voting constitutes irreparable harm because "[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed." *OFA*, 697 F.3d at 436; *Planned Parenthood*, 558 F.2d 861, 867 (Plaintiff's "showing that the ordinance interfered with the exercise of its constitutional rights and the rights of its patients supports a finding of irreparable injury.") "Because there can be no 'do-over' or redress of a denial of the right to vote after an election, denial of that right weighs heavily in determining whether plaintiffs would be irreparably harmed absent an injunction." *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016); see also *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (noting that once an election comes and goes, "there can be no do-over and no redress. The injury to these voters is real and completely irreparable"). "A restriction on the fundamental right to vote therefore constitutes irreparable injury." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012).

Here, Plaintiffs' and other Fort Peck Tribal members' right to vote will be severely burdened by the Defendants' refusal to establish satellite offices in Frazer and Poplar on the Fort Peck Indian Reservation causes unacceptable and irreparable harm.

Plaintiffs satisfy the requirements for a preliminary injunction under Montana law. "[A] party need establish only a prima facie violation of its rights to be entitled to a preliminary injunction - even if such evidence ultimately may not be sufficient to prevail at trial." *Driscoll v. Stapleton*, 2020 MT 247, ¶ 16, 401 Mont. 405, 414, 473 P.3d 386, 392 (internal citations omitted). Under Montana law, "[p]rima facie' means literally 'at first sight' or 'on first appearance but subject to further evidence or information.'" *Weems v. State by & through Fox*, 2019 MT 98, ¶ 18, 395 Mont. 350, 359, 440 P.3d 4, 10 (internal citation omitted).

Montana law entitles Plaintiffs to an injunction when "it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;" or "it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant," or "it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual." Mont. Code Ann. § 27-19-201. A request "for preliminary injunctive relief require[s] some demonstration of threatened harm or injury, whether under the 'great or irreparable injury' standard of subsection (2), or the lesser degree of harm implied within the other subsections." *BAM Ventures, Ltd. Liab. Co. v. Schifferman*, 2019 MT 67, ¶ 16, 395 Mont. 160, 167, 437 P.3d 142, 146. Finally, the "loss of a constitutional right constitutes irreparable harm for the purpose of determining whether a preliminary injunction should be



issued.” *Mont. Cannabis Indus. Ass’n v. State*, 2012 MT 201, ¶ 15, 366 Mont. 224, 229, 296 P.3d 1161, 1165; *see also Driscoll*, ¶ 15. Here, issuance of a temporary restraining order and preliminary injunction is necessary to protect Plaintiffs from irreparable injury to their constitutional rights, and rests well within this Court’s discretion.

### **III. THE BALANCE OF EQUITIES TIPS IN THE APPLICANT’S FAVOR**

The balance of equities tips sharply in Plaintiffs’ favor. In contrast to the severe and irreparable ongoing constitutional injuries that Plaintiffs face under Defendants’ refusal to adhere to Election Directives issued by the Secretary of State, Defendants will suffer no harm if they are required to establish satellite offices on the Fort Peck Indian Reservation. In fact, the relief that the Plaintiffs seek here is appropriately tailored to the Defendants’ violation of constitutional law. They seek an immediate temporary restraining order requiring the Defendants to open satellite offices on the Reservation in Poplar and Frazer that are accessible to members of the Tribes. Whatever burden there might be is easily outweighed by the risk of harm to Plaintiffs and other members of the Tribes.

### **IV. TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION WOULD NOT BE ADVERSE TO THE PUBLIC INTEREST**


Injunctive relief serves the public interest in this case because “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002 (internal citation omitted). Indeed, “[t]he vindication of constitutional rights . . . serve[s] the public interest almost by definition,” including specifically when at issue is the right to vote. *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) (“The vindication of constitutional rights . . . serve[s] the public interest almost by definition,” and “making it easier for citizens to register and vote - promotes democracy”). Further, the

public interest “is best served by favoring enfranchisement and ensuring that qualified voters’ exercise of their right to vote is successful” and “favors permitting as many qualified voters to vote as possible,” including specifically in the context of early voting. *OFA*, 697 F.3d at 437; *Common Cause Ind.*, 311 F.Supp.3d at 976. Thus, ensuring that all voters in Valley and Roosevelt Counties have equal access to the electoral system would clearly serve the public interest. *See also Summit Cnty. Democratic Cent. and Exec. Comm. v. Blackwell*, 388 F.3d 547, 551 (6th Cir. 2004) (“There is a strong public interest in allowing every registered voter to vote freely.”). Establishing a polling location in Poplar and Frazer would ensure that members of the Tribes have the same in-person registration and voting opportunities as other non-Indian citizens, thereby serving the public interest.

**V. PLAINTIFFS SHOULD NOT BE REQUIRED TO POST A BOND**

This Court should exercise its discretion to not require a bond with issuance of a temporary restraining order or preliminary injunction. *See* Mont. Code Ann. § 27-19-306(1). Here, any bond requirement should be minimal because the Defendants will not be damaged in having to adhere to Constitutional requirements. The proposed injunction simply requires the Defendants to do what they should be doing already – granting equal access to the election system. Further, Defendants stand to suffer no pecuniary harm as a result of a preliminary injunction, and because the injunction would serve the interest of justice.

Respectfully Submitted,



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