

IN THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA IN AND FOR ELKO COUNTY

Shoshone-Paiute Tribes of the
Duck Valley Indian Reservation,

Plaintiffs,

v.

Elko County, Wilde Brough, in his official capacity
as Elko County Commissioner, Delmo Andrezzi, in
his official capacity as Elko County Commissioner,
Jon Karr, in his official capacity as Elko County
Commissioner, Cliff Eklund, in his official capacity
as Elko County Commissioner, Rex Steninger, in his
official capacity as Elko County Commissioner,
Kristine “Kris” Jakeman, in her official capacity as
County Clerk, Alicia Guaman, in her official capacity
as Deputy County Clerk, Becky Plunkett, in her
official capacity as Deputy County Clerk, and Brenda
Rodriguez, in her official capacity as Chief Deputy
County Clerk.

Defendants.

Case No. _____

Dept. No. _____

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

[Exempt from Arbitration:
Declaratory Relief Sought]

Plaintiff, the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation (the
“Tribes”), by and through their attorney of record, Rendal B. Miller, hereby file this Complaint
for Injunctive and Declaratory Relief against Defendants, and allege as follows:

NATURE OF THE CASE

1. This action is initiated by the Shoshone-Paiute Tribes, a federally recognized
Indian Tribe, seeking declaratory and injunctive relief compelling Defendants to establish a
polling location on November 8, 2022 (“Election Day”) on Tribal lands in accordance with NRS
§ 293.2733 and for early voting in accordance with NRS § 293.3572.

2. Specifically, the Tribes challenge Defendants' decision to establish a polling location on the Duck Valley Indian Reservation ("Reservation") for only eight (8) hours of early voting spread over two (2) days when the Tribes have requested the establishment of a polling location from 8:00 a.m. to 5:00 p.m. PST for two (2) weeks for early voting and from 7:00 a.m. to 7:00 p.m. PST on Election Day. This decision greatly diminishes the opportunity for members of the Tribes to exercise their right to vote.

3. Defendants have arbitrarily denied the Tribes' request even though they have adhered to all published and/or enacted rules and regulations justifying the establishment of a polling location on Tribal lands.

4. The need for increased access to early voting on the Reservation is paramount, particularly in light of the devastating impact of the COVID-19 pandemic on tribal communities and the high price of gasoline.

5. Because polling locations are limited to sites off-Reservation, Tribal members are required to travel approximately 100 miles (one way) from the Reservation to the Elko County Clerk's Office to cast their vote. Attached as Exhibit 1 is a true and correct copy of the Affidavit of Donna Semans dated September 9, 2022.

6. The Defendants' refusal to establish polling sites on the Reservation amid the pandemic denies Tribal members in Elko County equal access to polling locations, violates state law, and imposes unconstitutional burdens on their fundamental right to vote.

7. If such inaction is allowed, the ability of Tribal members to effectively participate in the political process will be hindered. The Tribes seek declaratory and injunctive relief, both temporary and permanent, compelling the Defendants to establish an early voting polling location on the Reservation for two (2) weeks prior to the general election from 8:00 a.m. to 5:00

p.m. PST and on Election Day from 7:00 a.m. to 7:00 p.m. PST. This relief is sought on the grounds that failure to adhere to the Tribes' request is a denial of the equal right to vote.

8. The Tribes have established that they have an ADA compliant facility with adequate occupancy, they have timely requested both an early voting and an Election Day location as outlined on the Secretary of State's request form, and the Elko County Clerk's office has confirmed that it is feasible to locate an early voting and Election Day polling location on the Reservation. Defendants have no legitimate reason for refusing the Tribes' request.

9. Accordingly, the Tribes ask this Court to grant them declaratory and injunctive relief compelling Defendants to establish polling locations in Owyhee, Nevada.

JURISDICTION AND VENUE

10. This Court has jurisdiction to hear the Tribes' claims under NRS § 33.010, NRS § 30.030, Rule 65 of Nevada's Rules of Civil Procedure, and Article 6, Section 6 of the Nevada Constitution.

11. Declaratory relief is authorized by NRS § 30.030.

12. Venue is proper in this Court pursuant to NRS § 13.020, because this is an action against public officers for acts done by them in virtue of their office, NRS § 13.030 because Elko County is included as a Defendant, and NRCP Rule 65.

PARTIES

13. Plaintiff, the Shoshone-Paiute Tribes, is a federally recognized Indian Tribe located on the Duck Valley Indian Reservation in Elko County, Nevada.

14. Defendant Elko County, Nevada, is a political and geographical subdivision of the State of Nevada.

15. Defendant Wilde Brough is a member of the Elko County Commission and is sued in his official capacity.

16. Defendant Delmo Andreozzi is a member of the Elko County Commission and is sued in his official capacity.

17. Defendant Jon Karr is a member of the Elko County Commission and is sued in his official capacity.

18. Defendant Cliff Eklund is a member of the Elko County Commission and is sued in his official capacity.

19. Defendant Rex Steninger is a member of the Elko County Commission and is sued in his official capacity.

20. Defendant Kristine “Kris” Jakeman is the County Clerk for Elko County and is sued in her official capacity.

21. Defendant Alicia Guaman is the Deputy County Clerk for Elko County and is sued in her official capacity.

22. Defendant Becky Plunkett is the Deputy County Clerk for Elko County and is sued in her official capacity.

23. Defendant Brenda Rodriguez is the Deputy County Clerk for Elko County and is sued in her official capacity.

APPLICABLE LAW

24. Article 2, Section 1 of the Constitution of the State of Nevada provides that “[a]ll citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively, resided in the state six months, and in the district or county thirty days next preceding any election, shall be

entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election.”

25. NRS § 293.2546 provides that each voter shall “have nondiscriminatory equal access to the elections system, including, without limitation, a voter who is elderly, disabled, a member of a minority group, employed by the military or a citizen who is overseas.”

26. NRS § 293.485 further defines the qualifications of eligible voters as “[e]very citizen of the United States, 18 years of age or over, who has continuously resided in this State and in the county 30 days and in the precinct 10 days next preceding the day of the next succeeding [election]”.

27. NRS § 293.2733 provides that the county clerk is not required to establish a polling place within the boundaries of an Indian reservation for the day of a primary election, presidential preference primary election or general election if the county clerk established a temporary branch polling place for early voting pursuant to NRS § 293.3572 within the boundaries of the Indian reservation for the same election.

28. NRS § 293.3561(2)(a) provides that the county clerk shall provide by rule or regulation for the criteria to be used to select permanent and temporary polling places for early voting by personal appearance.

29. NRS § 293.3572 provides for the establishment of temporary branch polling places for early voting.

SHOSHONE -PAIUTE TRIBES

30. On April 16, 1877, President Rutherford B. Hayes established the Reservation by Executive Order for the Western Shoshone and Northern Paiute.¹ The total land area of the

¹ [Duck Valley Indian Reservation | SHPO \(nv.gov\)](#)

Reservation is 450.391 square miles (1,166.5 km²) and is almost evenly divided between the states of Idaho and Nevada.²

31. The northern 50.2% of the Reservation lies in southern Owyhee County, Idaho and the southern 49.8% is situated in northwestern Elko County, Nevada.³

32. The Tribes are governed by the Business Council composed of a Chairman, Vice-Chairman and five Council Members, all of whom are elected to serve three-year terms.

33. Tribal membership is over 2,000 with approximately 1,700 members living on the Reservation.⁴

34. The only significant community on the Reservation is Owyhee, Nevada which is nearly equidistant from the two nearest major cities: 98 miles (158 km) north of Elko, Nevada, the county seat of Elko County; and 97 miles (156 km) south of Mountain Home, Idaho.⁵

35. The largest ethnic groups in Owyhee, Nevada are Indian and Alaska Native (Non-Hispanic) (86.1%), Other (Non-Hispanic) (6.25%), Indian and Alaska Native (Hispanic) (4.28%), White (Non-Hispanic) (2.63%), and White (Hispanic) (0.548%).⁶ In contrast, the Indian population in Elko, Nevada is a mere 3.31%⁷ of the entire population.

REQUEST FOR A POLLING LOCATION

36. Pursuant to NRS § 293.3572, the Tribes submitted a request for the establishment of a polling location from 8:00 a.m. to 5:00 p.m. PST for two (2) weeks prior to the general election and from 7:00 a.m. to 7:00 p.m. PST on Election Day with Defendant Jakeman on July 1, 2022 – well in advance of the August 1, 2022, deadline. Attached as Exhibit 2 is a true and

² [Tribes of Idaho - IDGenWeb](#)

³ *Id.*

⁴ [Sho-Pai Tribes - Cultural Home \(shopaitribes.org\)](#)

⁵ *Id.*

⁶ [Owyhee, NV | Data USA](#)

⁷ [Elko, NV | Data USA](#)

correct copy of the Tribes' Request for a Polling Location on Tribal Lands dated July 1, 2022. Attached as Exhibit 3 is a true and correct copy of the email sent by Sydney Cota, the Tribes' Executive Secretary, to Defendant Jakeman dated July 1, 2022.

37. The Tribes designated their Human Development Center located at 1284 OPD Road in Owyhee, Nevada as the proposed polling location. *Id.*

38. The Human Development Center has a capacity of 250 people and is compliant with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101. *Id.*

39. On July 7, 2022, Defendant Jakeman informed Defendants Guaman, Plunkett and Rodriguez that a polling location had been requested for Owyhee and plans should be made for the additional location. *Id.*

40. On July 28, 2022, Defendant Guaman informed the Tribes that Elko County would provide polling locations in Owyhee for early voting on October 28, 2022, and November 4, 2022, but would not provide any locations for Election Day. Attached as Exhibit 4 is a true and correct copy of the email from Defendant Alicia Guaman to Brian Thomas dated July 28, 2022.

41. On August 4, 2022, Defendant Guaman reiterated to former Chairman Thomas that early voting would only be allowed in Owyhee on October 28, 2022, and November 4, 2022 from 8:00 a.m. to 6:00 p.m. PST. Attached as Exhibit 5 is a true and correct copy of an email dated August 4, 2022, from Defendant Alicia Guaman to former Chairman Kevin Thomas.

42. On August 18, 2022, Defendant Guaman notified the Tribes that the hours for the early voting location were reduced to 10:00 a.m. until 2:00 p.m. PST on October 28, 2022, and on November 4, 2022. Attached as Exhibit 6 is a true and correct copy of an email dated August 18, 2022, from Defendant Alicia Guaman to Sydney Cota.

43. On September 6, 2022, Sydney Cota informed Defendant Guaman that the Human Development Center was a multipurpose building and the actual voting would occur in the gymnasium. *Id.* Defendant Guaman responded “[p]erfect”. Attached as Exhibit 7 is a true and correct copy of an email dated September 6, 2022, from Defendant Alicia Guaman to Sydney Cota.

CLAIMS

44. In *Spirit Lake Tribe v. Benson County, et al.*, CIV 2:10-cv-095 (D.N.D. 2010), the Court noted the following:

The County asserts that no right to vote in person has ever been recognized under the Constitution. Additionally, the County asserts that the mail-in procedure actually solves the transportation problems and will increase voter participation. While such an argument is tenable in communities with stable housing arrangements, poverty and transience of the Reservation makes mail balloting more difficult for tribal members. The evidence suggests that Indians are more likely to have not received a ballot application, which when coupled with a decreased ability to vote in person, creates a disparate impact. (internal citations omitted)

45. In *Sanchez v. Cegavske*, 214 F. Supp. 3d 961 (D. Nev. 2016), the Court noted:

The Nevada Legislature, the Secretary of State, and the Counties themselves all make clear that the point of in-person early voting is to make it easier for Nevadans to cast their ballots and thereby increase participation in elections. If the ability to cast an in-person early vote is distributed in such a way as to only make it easy in places that are majority White, then Plaintiffs face an abridgement that is not faced by the majority. Section 2 requires that political processes be "equally open" to minority voters. Unequal access can be achieved by giving only majority voters preferred access to the polls just as it can be achieved by giving only minority voters extra burdens. In other words, if the county is going to adopt a practice making it easier for its residents to vote, protected classes under the VRA must share in the benefit of that practice. (Internal citations omitted).

46. NRS § 293.3572(1) authorizes the county clerk to establish temporary branch polling places for early voting.

47. NRS § 293.3572(2) provides that if an Indian reservation is located in whole or in part within a county, the Indian tribe may submit a request to the county clerk for the

establishment of a temporary branch polling place for early voting within the boundaries of the Indian reservation. The Reservation is partially located in Elko County, and so, on July 1, 2022, the Tribes submitted a formal request with Elko County for a polling place in Owyhee, Nevada.

48. The Tribes' formal request for polling locations was submitted using an official form provided by the Elko County Clerk's office which provides:

Any proposed location must satisfy the criteria established by the county clerk for the selection of a ballot drop box or polling place pursuant to NRS 293.3561. To confirm your location meets those requirements, please contact your county Clerk prior to submission of this form. In addition, pursuant to NRS 293.3572 and NRS 293C.3572, a county and city clerk is not required to establish a temporary branch polling place within the boundaries of the Indian reservation or Indian colony if the county Clerk determines that it is not logistically feasible. Please ensure that an adequate number of Tribal personnel are identified to support this request.

49. Pursuant to NRS § 293.3572(3), the Tribes' request for a polling location had to be submitted to the county clerk by August 1, 2022. The Tribes' request was submitted on July 1, 2022.

50. NRS § 293.3572(3) also provides that “[a]ny proposed location must satisfy the criteria established by the county clerk for the selection of temporary branch polling places pursuant to NRS § 293.3561.”

51. NRS § 293.3561 provides that the temporary polling place must satisfy the criteria to be used to select permanent and temporary polling places for early voting by personal appearance provided by the county clerk pursuant to subsection 2. Instead of supplying those criteria, Subsection 2 states that the clerk will provide by “rule or regulation for the criteria to be used to select permanent and temporary polling places for early voting by personal appearance.” Upon information and belief, no such rules or regulations exist.

52. The Tribes informed Defendants that they had set aside an ADA-compliant building with a capacity of 250 people for the temporary location. *See Exhibit 3.* The

Defendants did not point out any shortcomings with the proposed location but simply replied “perfect”. *See* Exhibit 9.

53. NRS § 293.3572(4) provides that if the county clerk receives a request that satisfies the requirements set forth in subsection 3, the county clerk must establish at least one temporary branch polling place for early voting within the boundaries of the Indian reservation. And, the location and hours of operation of such a temporary branch polling place for early voting must be approved by the Indian tribe. The Tribes have not approved the hours of operation proffered by the Defendants.

54. The county clerk is not required to establish a temporary branch polling place within the boundaries of the Indian reservation or Indian colony if the county clerk determines that it is not logistically feasible to establish a temporary branch polling place within the boundaries of the Indian reservation. NRS § 293.3572(4). Upon information and belief, Defendants have not made a determination that it is not logistically feasible to establish a polling place as requested by the Tribes.

55. Defendants’ failure to obtain the Tribes’ approval as required by NRS § 293.3572(4) and adopt uniform standards as required by NRS § 293.3561 violates the Nevada Constitution and Nevada statutes and exceeds the Defendants’ legal authority because it does not provide a uniform, statewide standard for establishing temporary polling locations. "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). It is therefore unconstitutional for states to "accord[] arbitrary and disparate treatment to voters in ... different counties," and for counties to "use[] varying standards to determine what was a legal vote." *Id.* at 107.

56. The failure to adopt regulations violates the Equal Protection Clause because it authorizes Nevada counties to establish temporary polling locations in grossly divergent ways, and even authorizes individual counties to use different criteria, or in this case, no criteria.

57. Currently, Elko County has established polling locations in the following seven (7) locations⁸:

- (i) Elko, Nevada - 98.3 miles from Owyhee;⁹
- (ii) Spring Creek, Nevada – 106.59 miles from Owyhee;¹⁰
- (iii) Carlin, Nevada – 117.15 miles from Owyhee;¹¹
- (iv) Wells, Nevada- 147.56 miles from Owyhee;¹²
- (v) West Wendover, Nevada – 204.99 miles from Owyhee;¹³
- (vi) Lamoille, Nevada – 117.77 miles from Owyhee;¹⁴ and
- (vii) Jiggs, Nevada -131.22 miles from Owyhee.¹⁵

58. Defendants' failure to establish temporary polling locations on the Reservation as requested threatens the health and safety of the Tribes' members who must travel at least 98 miles one-way to Elko County to cast their vote. These members must set aside one hour and 47 minutes during a pandemic to travel poorly-maintained roads that wind through the hills while dodging open range livestock and falling rock to exercise their right to vote. *See* Exhibit 1. After casting their vote, these same individuals must make the one hour and 47-minute trip back home to the Reservation. Coupled with the high cost of gasoline, these hurdles will be insurmountable unless a temporary polling location is established.

59. The legitimate interests of the Defendants will not be undermined in the event that the Court grants the relief prayed for herein.

⁸ [Welcome to Elko, Nevada \(elkocountynevada.net\)](http://www.elkocountynevada.net)

⁹ www.mapquest.com/directions/list/1/from/us/nv/owyhee-282033677/to/us/nv/elko

¹⁰ [Owyhee to Elko, Directions - MapQuest](http://www.mapquest.com/directions/list/1/from/us/nv/owyhee-282033677/to/us/nv/elko)

¹¹ <https://www.mapquest.com/directions/list/1/from/us/nv/carlin/to/us/nv/owyh>

¹² [Owyhee, NV to Wells, NV - MapQuest](http://www.mapquest.com/directions/list/1/from/us/nv/owyhee-282033677/to/us/nv/elko)

¹³ www.mapquest.com/directions/list/1/from/us/nv/owyhee-282033677/to/us/nv/elko

¹⁴ www.mapquest.com/directions/list/1/from/us/nv/owyhee-282033677/to/us/nv/elko

¹⁵ www.mapquest.com/directions/list/1/from/us/nv/owyhee-282033677/to/us/nv/elko

60. The Tribes have no adequate remedy at law.

61. The Tribes will suffer irreparable harm as a result of the violations complained of herein, and that harm will continue unless Defendants' failure to establish temporary polling locations and issue regulations as mandated by NRS §293.3561 is declared unlawful and enjoined by this Court.

**CLAIM ONE
VIOLATION OF THE NEVADA CONSTITUTION**

62. The Tribes incorporate by reference all preceding paragraphs as if fully set forth herein.

63. The Defendants have acted under color of state law to deprive Tribal members equal elections by arbitrarily failing to establish polling locations on the Reservation in violation of the Constitution of the State of Nevada.

**CLAIM TWO
DECLARATORY RELIEF**

64. The allegations contained in the preceding paragraphs of this Complaint are incorporated herein by this reference.

65. A dispute has arisen, and actual controversy now exists between the Tribes and Defendants, and each of them, as to their rights and liabilities with respect to the Tribes' rights protected under Nevada law. Based on the lack of response or actions to address these issues to date, Defendants dispute the Tribes' claims. Therefore, an actual controversy exists relative to the legal duties and rights of the respective parties, which the Tribes request the Court resolve.

66. The Defendants' actions and/or inactions have created an actual justiciable controversy ripe for judicial determination between the Tribes and the Defendants with respect to the construction, interpretation, and implementation of NRS § 293.3572 and NRS § 293.3561.

All of the rights and obligations of the parties arise out of one series of events or happenings, all of which can be settled and determined in a judgment in this one action. The Tribes allege that an actual controversy exists between the parties under the circumstances alleged. A declaration of rights, responsibilities and obligations of the parties is essential to determine their respective obligations in connection with Tribes' rights to participate in the decision as to the establishment of a temporary polling location and to have such a site established. The Tribes have no true and speedy remedy at law of any kind.

67. Further, the Tribes are entitled to an award of reasonable attorney fees and costs for having to obtain counsel in this matter to protect their rights and prosecute this matter.

**SECOND CLAIM FOR RELIEF
INJUNCTIVE RELIEF**

68. The allegations contained in the preceding paragraphs of this Complaint are incorporated herein by this reference.

69. Defendants' refusal to establish an early voting polling location for two (2) weeks prior to the general election from 8:00 a.m. to 5:00 p.m. PST and from 7:00 a.m. to 7:00 p.m. PST on Election Day in the absence of a determination that establishment of such a site is not logistically feasible, failure to adopt criteria for the establishment of a temporary polling location, and the failure to obtain the Tribes' approval as to the location and hours of operation of a temporary polling location in accordance with Nevada law constitutes irreparable harm to the Tribes with no adequate remedy at law.

70. The Tribes have a reasonable probability of success on the merits of their underlying claims. Public interest favors the Tribes because absent injunctive relief, the inconsistent and unlawful practices that prevent individuals such as the Tribes' members from

participating in the election will negatively impact the integrity of the election process and ultimately result in harm to the general public.

71. Due to the immediate and ongoing damages that the Tribes will sustain by virtue of the Defendants' actions and/or inactions, immediate injunctive relief is necessary and appropriate.

72. Therefore, the Tribes are entitled to preliminary injunctive relief, requiring the Defendants to establish a temporary early voting polling location in Owyhee, Nevada for two weeks from 8:00 a.m. to 5:00 p.m. PST and on Election Day from 7:00 a.m. to 7:00 p.m. PST in accordance with the laws of the State of Nevada.

RELIEF

WHEREFORE, the Tribes pray for judgment as follows:

1. For a declaration of rights and obligations as between the Tribes and Defendants;
2. For preliminary injunctive relief requiring the Defendants to establish an early voting polling location in Owyhee, Nevada for two weeks prior to the general election from 8:00 a.m. to 5:00 p.m. PST and on Election Day from 7:00 a.m. to 7:00 p.m. PST;
3. For entry of an order compelling Defendants to pay the Tribes' costs and attorneys' fees; and
4. For such other and further relief as the Court may deem just and proper

Dated this 16th day of September, 2022.

ATTORNEY FOR PLAINTIFF

Rendal B. Miller
Bar No. 12257
Miller Law, Inc.
115 West 5th Street, Box 7
Winnemucca NV 89445
Telephone: 775 623-5000