

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LEAGUE OF UNITED LATIN AMERICAN)	
CITIZENS KANSAS, ALEJANDRO)	
RANGEL-LOPEZ,)	
)	Civil Action No.:
Plaintiffs,)	
)	
vs.)	
)	
DEBORAH COX, FORD COUNTY CLERK,)	
in her official capacity,)	
)	
Defendant.)	
)	
)	
)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR
A TEMPORARY RESTRAINING ORDER

For the last two decades, Ford County has had only one polling location in Dodge City. While the city's single polling site at the Civic Center was overburdened due to the sheer number of voters that the location serves, it was centrally located and generally accessible to residents without vehicles. In late-September 2018, Ford County Clerk Deborah Cox decided to close the Civic Center and move the city's only polling place to the Western State Bank Expo Center a mile outside of Dodge City. Cox's decision converted Dodge City residents already inconvenient voting experience into an unmitigated burden on their fundamental rights. The Expo Center is over an hour walk from the nearest bus stop and there is no sidewalk along the route between the stop and the polling location. It is totally unacceptable as voting location for any voter who lacks personal transportation, and there are many voters in Dodge City who lack personal transportation.

Even voters who have access to vehicles must contend with misinformation. Cox has been directing newly registered voters to the city's previous polling location rather than the Expo Center. This communication failure coupled with the inaccessibility of the new polling location will severely burden Dodge City residents' rights to vote, which is a fundamental right guaranteed to all citizens by the First and Fourteenth Amendments.

Cox's decision to move the polling site outside of Dodge City is as baseless as it is burdensome. Cox purportedly moved the city's only voting location out of town because construction in the area would compromise voter safety. In the mailed notice, Cox conceded that the Expo Center was "not a convenient location" but insisted it was necessary to ensure safety. However, the construction has not stopped the Dodge City School District ("USD 443" or "District"), who owns the Civic Center, from using the building for large capacity crowd events the same week as the election. Additionally, there are an abundance of possible polling sites centrally located in Dodge City, including 12 public school buildings that District superintendent Dr. Frederick Dierksen has pledged to make available. Cox has declined to use the school buildings claiming, without any justification, that the Expo Center was the only ADA compliant site large enough to accommodate midterm votes.

Given the inaccessibility of the Expo Center and availability of less burdensome locations, including the former polling site at the Civic Center, Plaintiffs file this request for a temporary restraining order ("TRO") to be issued before the November 6, 2018 election. A TRO is necessary to ensure all residents can access the polling location and to remedy the misinformation that Cox has sent to newly registered voters. A TRO holding that reopens the polling location at the Civic Center, or another centrally located building, and leaves in place the new location at Expo Center will ensure that voters with transportation concerns are able to vote

in person on Election Day. Further, having both sites available for voting will ensure that newly registered voters who were directed to the Civic Center are not prevented from casting a ballot due to Cox's conflicting instructions.

STATEMENT OF THE FACTS

Burdens on the Right to Vote

1. The Civic Center has been the only polling location in Dodge City since 1998. The location was used most recently on August 7, 2018 for the primary elections. Cox learned that the city planned construction in the vicinity of the Civic Center in the early fall of 2018. Without consulting city administrators about the possible impact of the planned construction, Cox unilaterally determined that the polling location must be moved to the Expo Center. Cox also did not inquire into other possible ADA compliant buildings within the city that could serve as a temporary polling location.

2. The Expo Center is located at the intersection of US Route 400 and US Route 283. The location is on average twice as far away from Dodge City's largest employers¹ than the Civic Center.² The Civic Center is also closer to the home of virtually every voter in Dodge City vis-à-vis the Expo Center.³ In addition to the sheer increased distance voters must travel in order to cast a ballot at the Expo Center, they are likely to encounter significant traffic. Railways bisect the roads between the city and the Expo Center, causing heavy traffic during the lunch hour and in the late afternoon when freight trains stop in the city. The trains block off the key intersections

¹ With the exception of USD 443, which has many different locations, the 5 largest employers in Dodge City are National Beef, Cargill Meat Solutions, Walmart Super Center, Boot Hill Casino & Resort, and, West Plain Medical Complex. *See* Exhibit A, Dodge City and Ford County Retail Business and Development Guide, at 11.

² *See* Exhibit B, Distance Between Top 5 Major Employers and Civic and Expo Centers.

³ This is abundantly clear from an examination of a map of Dodge City. *See* Exhibit C.

at Wyatt Earp Boulevard and 14th Avenue and at Central Avenue and Highway 50, preventing the flow of traffic across town for 15-20 minutes at a time.⁴

3. Ford County is a majority-minority county, largely based on the demographics of Dodge City. Hispanic residents make up approximately 53% of the county's population, nearly five times the percentage of Hispanic residents in Kansas. The poverty rate in Ford County 17.4% compared to 13.3% of people living in poverty in Kansas.⁵ Ford County residents are also overrepresented in low wage service and manufacturing industries where they have inflexible and unpredictable schedules. Hispanic residents are nearly twice as likely to be poor in Ford County compared to their white neighbors.⁶

4. While Ford County residents own vehicles at rates similar to Kansans at large,⁷ a significant number of people in Dodge City are public transit dependent because of income, age, and disability. In 2016, Dodge City Public Transportation estimated that approximately 36% of the county, or 12,556 residents, had a potential need for public transportation.⁸ Dodge City also noted that approximately 223 disabled or elderly passengers relied on the city's public transportation system each month.⁹

5. Ford County residents without age and income barriers or disabilities also have a significant need for transportation assistance. Over 40% of households in Ford County do not own a car or share a single vehicle among multiple family members.¹⁰ Many Ford County

⁴ See Exhibit D, Rangel-Lopez Declaration, at ¶ 7.

⁵ See 2016 data on Ford County from Census Reporter, available at <https://censusreporter.org/profiles/05000US20057-ford-county-ks/> (last visited Oct. 26, 2018).

⁶ Melissa Bopp *et al.*, *Conducting a Hispanic health needs assessment in rural Kansas: building the foundation for community action* (2012), at 26, available at <https://core.ac.uk/download/pdf/9402261.pdf> (last visited Oct. 26, 2018).

⁷ See DataUSA Comparison between Ford County and the State of Kansas, available at <https://datausa.io/profile/geo/ford-county-ks/?compare=kansas> (last visited Oct. 26, 2018).

⁸ See Exhibit E, Dodge City Paratransit Implementation Plan 2016, at 8.

⁹ *Id.*

¹⁰ *Id.* at 5.

residents rely on carpooling and other alternative forms of transportation to travel to work. Ford County workers carpool at double the rate of the state at large.¹¹ Moreover, Hispanic workers rely on group or public transportation solutions more often than white workers.

6. Thus, voters who do not have a vehicle or lack access to their vehicle at work will face difficulty reaching the new polling location at the Expo Center.¹² Voters were able to use public transportation to reach the Civic Center after work, as all three city bus routes make stops within a couple of blocks of the site.¹³ However, the Expo Center is 1.3 miles from the nearest bus stop at 202 E McArtor Street.¹⁴ There is no sidewalk for the majority of the distance between the McArtor Street stop and Expo Center. Additionally, the total travel time from a centrally located part of Dodge City to the Expo Center would take approximately 60 minutes each way for a voter using public transportation.¹⁵ For example, a worker employed at Western Plains Hospital would be unable to travel to and from the polling location during his two hours of voting leave if he used public transportation.¹⁶

7. Cox has increased the already significant challenges voters will face by providing inadequate and incorrect information about the polling location change. Under Kansas law, Cox was required to mail notice of a polling location change thirty days before the election. *See* K.S.A. 25-2701(d)(1). Cox purportedly mailed the notices on September 28, 2018, but a large portion of which were returned as undeliverable.¹⁷ Further, Cox's only other effort to publicize

¹¹ *See supra* note 7.

¹² *See* Exhibit F, Declarations of Guillermo Marquez, Mary H. Pineda, and Jaquan M. Graves, at ¶¶ 2-3.

¹³ *See* Exhibit G, Dodge City Fixed Route Bus Schedule.

¹⁴ *Compare* Exhibit G, *with* Exhibit H.

¹⁵ This is a conservative estimate. The Green Route bus arrives at 202 E. McArtor only once an hour, and it takes 32 minutes on the bus to get to Village Square Mall in the center of town. *See* Exhibit G. This, combined with the 23 min walk between the bus stop and the Expo Center, *see* Exhibit H, makes the travel time 55 minutes. The estimate does not include time waiting for the bus or walking from the bus stop to another location.

¹⁶ Under Kansas law, voters are entitled to up to two hours of leave from work in order to vote. *See* K.S.A. 25-418.

¹⁷ *See* Exhibit I, email correspondence from Defendant Cox to Johnny Dunlap on October 4, 2018.

the polling location change has been posting notices on the clerk website, the *Dodge City Globe*, and a couple other newspapers. Voters who get their news through radio or Facebook have no way of knowing about the polling location change.¹⁸

8. Cox's office is also still instructing voters that they are assigned to vote at the Civic Center. Voters who registered in the last several weeks have received registration cards telling them to vote at the Civic Center on November 6, 2018.¹⁹ The County Administrator, J.D. Gilbert, has since sent a letter seeking to clarify that while the Civic Center is the voter's *regular* polling place the person should vote at the Expo Center on November 6th.²⁰ Bryan Caskey, Kansas Director of Elections, has himself called Defendant Cox's notices "confusing" and has stated that she needs to "inform the voters."²¹

Cox's Justification for Limiting in Person Voting to One, Inaccessible Polling Location

9. Defendant Cox moved the polling location from the Civic Center to the Expo Center because USD 443 notified her that there would be construction taking place near the building in October.²² According to officials from USD 443, the District did not tell Defendant Cox that the Civic Center building would be unavailable for voting.²³

10. Defendant Cox has put forth three reasons why moving all polling to the Expo Center was necessary: (1) construction at the Civic Center would interfere with "voter safety";²⁴ (2) the

¹⁸ See Exhibit D, ¶ 8.

¹⁹ For one such example from last week, see Exhibit J.

²⁰ See Roxana Hegeman, *New voters get notices listing wrong Dodge City polling site*, ASSOCIATED PRESS (Oct. 25, 2018), <https://www.apnews.com/e1b4e441d4a448b98f129fcde0556a98> (last visited Oct. 26, 2018).

²¹ *Id.*

²² Mary Clarkin, *Dodge City, USD 443 say voting site wasn't their decision*, THE HUTCHINSON NEWS (Oct. 24, 2018), <http://www.hutchnews.com/news/20181024/dodge-city-usd-443-say-voting-site-wasnt-their-decision> (last visited Oct. 26, 2018).

²³ *Id.*

²⁴ Exhibit K, Letter from Debbie Cox to voters.

Expo Center is the only other ADA compliant space in Dodge City; and (3) the number of poll workers makes it difficult to operate multiple polling locations.²⁵ None of these reasons are valid.

11. First, there is no indication that the Civic Center will be unsafe or inaccessible due to the construction on Election Day since the District is hosting several high capacity events in the days before and after Election Day.²⁶ Nonetheless, Defendant Cox independently determined that the construction would potentially pose a risk to “voter safety” and decided to close the polling site in favor of the Expo Center.²⁷

12. Second, despite Cox’s report that Ford County decided to close six of Dodge City’s seven polling locations²⁸ in the late 1990’s to avoid ADA violations,²⁹ over the last two decades, virtually every government building in Dodge City, including all of the USD 443 schools, have come into compliance with the ADA. The Expo Center was not the only ADA-compliant option.³⁰

13. Finally, Defendant Cox has determined that all voting should take place at a single polling site because “it’s hard to get poll workers.”³¹ Having only one polling place does not obviate the need for a sufficient number of poll workers. Whether there are multiple polling locations or there is only one, the same number of voters will have to vote in Dodge City. But maintaining one majorly understaffed polling location for all residents is certainly no better than

²⁵ Michelle Ross, *Dodge City's one and only polling location is moving*, KSNW (Oct. 16, 2018), <https://www.ksn.com/news/elections/dodge-city-s-one-and-only-polling-location-is-moving/1529330465> (last visited Oct. 26, 2018).

²⁶ This includes a Holiday Expo event open to the public and welcoming various vendors: <https://allevents.in/kansas/ho-ho-holiday-expo/20006196097299> (last visited Oct. 26, 2018).

²⁷ Exhibit K.

²⁸ See Exhibit L, a 1994 newspaper showing 7 polling locations for Dodge City residents.

²⁹ Mary Clarkin, *ACLU: Dodge City polling site limits voter access*, THE HUTCHINSON NEWS (Oct. 15, 2018), <http://www.dodgeglobe.com/news/20181015/aclu-dodge-city-polling-site-limits-voter-access> (last visited Oct. 26, 2018).

³⁰ In fact in October 2001, Dodge City settled with the U.S. Department of Justice after an investigation under the Americans with Disabilities Act (ADA), and was specifically required to bring several of its public buildings into compliance. The settlement agreement is available at <https://www.ada.gov/dodgecity.htm> (last visited Oct. 26, 2018).

³¹ See *supra* note 25.

having several slightly understaffed polling locations that serve fewer voters. Yet, Cox has insisted on maintaining a single polling location in Dodge City despite receiving citizen complaints that a single polling site has led to long lines and inefficiencies. USD 443 Superintendent Dr. Fred Dierksen has unequivocally stated in the media that he would be willing to work with Defendant Cox to use neighborhood schools around Dodge City to serve as polling locations.³² Cox continues to rebuff this and other appeals to add additional polling sites in response to complaints about the new polling location at the Expo Center.³³

14. As a result, Plaintiffs have filed this lawsuit and motion.

The Instant Lawsuit

15. Plaintiffs League of United Latino American Citizens (LULAC) of Kansas and Alejandro Rangel-Lopez will both be significantly burdened by the polling location change. As a Latino civil rights organization with a strong presence in Dodge City, LULAC Kansas has undertaken significant efforts in recent years to increase voter participation in Ford County. Cox's decision to move Dodge City's only polling location to an inaccessible site outside of town will make in-person voting more difficult for LULAC members and will undermine LULAC Kansas's efforts to increase Latino turnout. LULAC Kansas has worked to offset the suppressive impact they fear will result from moving the city's only polling location to the Expo Center will have on Hispanic voters by helping them apply for advance mail ballots.³⁴ LULAC has had to shift focus away from other election related efforts in order to respond to the moved polling location.

16. Plaintiff Rangel-Lopez is an eighteen year old Dodge City resident who will vote in his

³² See *supra* note 25.

³³ For nearly a month, Plaintiffs through their counsel attempted to resolve their concerns about the new polling locations without litigation. See Exhibit M. These unsuccessful advocacy attempts delayed Plaintiffs in seeking emergency redress from this court.

³⁴ Exhibit N, Madai Rivera Declaration, at ¶12.

first election on November 6th. He plans to vote in person on Election Day. He is concerned that the distance to the Expo Center and long lines may interfere with his right to vote. Rangel-Lopez is planning to miss his afterschool job so that he will be able to vote without worrying about getting back to his job on time.

17. Plaintiffs claim that Cox violated their constitutional and civil rights by placing Dodge City's only polling location outside of the city. Count One claims that the Expo Center polling location violates the right to vote found in the Firsts and Fourteenth Amendments by imposing burdens on voting that are not justified by the government's proffered interest in protecting "voter safety." Count Two claims that Ford County's limited polling locations will have a discriminatory impact on Hispanic American voters in violation of Section 2 of the Voting Rights Act. Counts Three and Four are brought in the alternative. If Cox restricted voting in Dodge City to a single polling location because of concerns about ADA compliance, then the proper remedy is to bring additional polling places into compliance with the ADA on a reasonable timeline, not limit polling locations.

18. For the purposes of this TRO motion, only Count One will be addressed.

ARGUMENT

Plaintiffs urgently seek a TRO pursuant to Fed. R. Civ. P. 65(b) that will open an additional, centrally located polling site for Dodge City voters on November 6, 2018. An additional site, ideally at the Civic Center or another USD 443 building, will protect voters faced with transportation barriers from disenfranchisement. Further, an order requiring another polling location in Dodge City will ensure that the residents who received instructions to vote at the Civic Center can cast their ballot without traversing to the Expo Center on the outskirts of town.

A TRO is warranted if the movant demonstrates: (1) a substantial likelihood of success on the merits; (2) irreparable harm in the absence of an injunction; (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that an injunction would not disserve the public interest. *Winter v. Nat. Res. Ef. Council, Inc.*, 555 U.S. 7, 20 (2008); *See Heideman v. South Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003) (issuance of a TRO are essentially the same as a preliminary injunction.).

As discussed below: (1) Plaintiffs are substantially likely to succeed on the merits of their *Anderson-Burdick* claim (Claim One), because the burden Defendant Cox imposed by limiting in-person voting to a single inconvenient location outside of Dodge City cannot be justified by Ford County’s proffered interest protecting voter safety and complying with the ADA; (2) the remaining factors weigh in favor of granting a TRO; and (3) even if Defendants’ alleged concerns about voter safety and ADA compliance are legitimate, a proposition Plaintiffs contest, the TRO requested is still warranted. Because Plaintiffs likelihood of success on the merits is so clear on Claim One there is no need to address Plaintiffs’ other claims at this stage.

I. PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THE MERITS OF THEIR *ANDERSON-BURDICK* CLAIM.

The Supreme Court has repeatedly reaffirmed, most notably in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S.428 (1992), that the right to vote is protected by the First and Fourteenth Amendments of the United States Constitution. That is because “[i]t is beyond cavil that voting is of the most fundamental significance under our constitutional structure,” “that is “preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

“The Supreme Court has rejected a ‘litmus-paper test’ for ‘[c]onstitutional challenges to specific provisions of a State’s elections laws’ and instead has applied a ‘flexible

standard.” *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009)(citing *Anderson* and *Burdick*). Under this flexible standard: “courts must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the [c]ourt must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights.”

Anderson, 460 U.S. at 789. “However slight the burden [imposed on voters] may appear, it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Common Cause/Georgia*, 554 F.3d at 1352 (quoting *Crawford v. Marion County Election Bd.* 553 U.S. 181, 211 (2008)). Indeed, the government must be able to substantiate its interests in imposing a voting restriction even if “99%” of all voters are able to easily overcome that restriction. *Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016).

A. Defendant’s Decision to Limit In-Person Voting to a Single Polling Location Outside of Dodge City Imposes a Significant Burden on Marginalized Voters in Ford County.

Defendant Cox imposed a substantial injury on all Dodge City voters by restricting their Election Day polling locations to a single inaccessible site on the outskirts of town. Cox conceded that the location was “not convenient.” However an inconvenience to Cox is a severe burden for the thousands of voters who lack transportation or have mobility limitations.

As a preliminary matter, the injury impacts every voter in Dodge City. While wealthier voters with access to vehicles can drive to the Expo Center, they still must on average travel twice the distance to vote than if they were voting at the Civic Center or another polling location

in town. The additional travel distance, coupled with the wait time caused by an overburdened polling site, will make voting substantially more burdensome for all Dodge City voters.

Even if only individuals with limited transportation access were burdened by the new location, it would still constitute an unconstitutional burden under the First and Fourteenth Amendment. *Anderson*, 460 U.S. at 784 (finding constitutional violation where the rights of only 5.9% of voters were affected); *Ohio NAACP v. Husted*, 768 F.3d 524 (6th Cir. 2014)(voting restrictions unconstitutional where 1.6% of all Ohio voters were impacted), *vacated as moot*, 2014 WL 10384647 (6th Cir. Oct. 1, 2014).

With respect to the character of the injury, the burden imposed by limited access to polling locations is significant and particularly severe for voters who lack transportation access to locations outside of the city. For voters who rely on public transportation, the new polling location increases the time they must spend travelling to and from the voting location by at least three hours. The additional time accessing the polling location makes it effectively impossible for a person to vote on Election Day if they also are scheduled to work on November 6, 2018. This is particularly true for voters who work in low wage industries and may not be able to leave their shift for longer than the two hours of job-protected voting leave guaranteed under K.S.A. §25-418. Low income voters who do not have work conflicts on Election Day will likely find it difficult to travel as well. Time and transportation burdens fall more heavily on lower-income voters, who disproportionately lack the resources or the flexible schedules (*e.g.*, to arrange for child or family care) necessary to travel the considerable extra distance or allot additional time to cast a ballot on Election Day. These burdens are particularly pronounced amongst Dodge City's Hispanic voters who are particularly impacted by poverty and other socioeconomic factors that create barriers to voting.

Courts have routinely found such disproportionate burdens on disadvantaged populations to be significant in the *Anderson-Burdick* analysis. *See, e.g., Common Cause Indiana v. Marion Cty. Election Bd.*, 311 F. Supp. 3d 949, 956, 969 (S.D. Ind. 2018) (shutting down 4 out of 5 early voting locations imposes more “severe” burdens on “voters who lack the financial means or flexible schedules (i.e., those with little power over their own conditions of work, study, or travel) to surmount the obstacles of time and expense” imposed by the shutdowns, and were unjustified); *One Wisconsin Institute, Inc. v. Thomsen*, 198 F. Supp. 3d 896, 932 (W.D. Wis. 2016) (shut down of all but one early voting location and limiting early voting hours imposed a “moderate” burden due to impact on “populations of voters who disproportionately lack the resources, transportation, or flexible work schedules,” and was unjustified); *Ohio NAACP*, 768 F.3d at 539-42 (upholding district court finding that burdens imposed by eliminating early voting days was “significant” given impact on “lower income and homeless individuals,” and was unjustified); *Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 666 (6th Cir. 2016) (increasing the time needed to vote for mainly African-American communities imposed a burden that, while “not severe,” was also “not slight,” and was unjustifiable).

Defendant will likely argue that voters can surmount these obstacles simply by casting an absentee ballot by mail in advance of the election, but this argument is routinely rejected by the courts in voting rights cases. That is because voting by mail is reasonably seen by many voters as a separate-but-unequal procedure that is inferior to voting in person, because it involves additional complex steps and requires committing to a candidate before Election Day has even arrived. As the Fifth Circuit *en banc* court has explained: [Though mail-in voting] represents an important bridge for many who would otherwise have difficulty appearing in person, . . . it is not the equivalent of in-person voting for those who are able and want to vote in person. Mail-in

voting involves a complex procedure that cannot be done at the last minute. It also deprives voters of the help they would normally receive in filling out ballots at the polls Elderly [voters] may also face difficulties getting to their mailboxes . . . , the increased risk of fraud because of people who harvest mail-in ballots from the elderly, [and] with mail-in voting, voters lose the ability to account for last-minute developments, like candidates dropping out of a primary race, or targeted mailers and other information disseminated right before an election. *Veasey v. Abbott*, 830 F.3d 216, 255-56 (5th Cir. 2016) (en banc); *see also Ohio NAACP*, 768 F.3d at 542 (6th Cir. 2014) (“associated costs and more complex mechanics of voting by mail” do not make voting by mail a “suitable alternative for many voters,” especially “African Americans, lower income individuals, and the homeless”); *League of Women Voters of N.C. v. N.C.*, 769 F.3d 224, 243 (4th Cir. 2014) (rejecting argument that restrictions on voting mitigated by the option of voting by mail).

In sum, by limiting Dodge City voters to a single polling location outside of town, Cox has imposed a widespread burden on all voters. However, the burden is uniquely severe for low-income, disabled, and elderly voters who lack the transportation options and time needed to reach a polling location. Hispanic voters represent a large percentage of voters who will be marginalized by the single, inaccessible polling location. Additionally, the conflicting notices about the change in polling location given by Defendant Cox are a significant burden on voting. *See Purcell v. Gonzalez*, 549 U.S. 1, 4- 5 (2007) (“voter confusion” can result in “consequent incentive to remain away from the polls”). The government’s interests in restricting access to voting sites must be especially weighty and substantial. As discussed below, they are not.

B. The Significant Burden Is Not Justified By the Government’s Proffered Interests.

After assessing the burdens, this Court must then consider the “precise interests advanced by [the government] in justification of its action, not only determining the legitimacy and strength of each of those interests, but also considering the extent to which those interests make it necessary to burden Plaintiffs’ rights.” *Common Cause Indiana*, 311 F. Supp. 3d at 971 (citations and internal quotations and alterations omitted).

Defendant’s justification for limiting in-person voting on November 6 to a single, inaccessible polling location outside of Dodge City is three-fold. First, Defendant Cox was concerned that construction near the Civic Center would create safety risks for voters. It is unclear what risks she feared. Second, the Expo Center was purportedly the only ADA-compliant building large enough to accommodate voting on Election Day. Third, Defendant Cox claims she does not have enough poll workers to operate multiple polling places. None of these proffered interests are accurate and even if they were, they would not justify closing the polling location.

Cox’s concern that construction would threaten voter safety is flat out asinine. A number of public events are being held at the Civic Center in the days directly before and after the election. For instance, a recycling event is planned for November 2nd, the District’s teacher appreciation dinner was scheduled for November 8th, and a Ho, Ho Holiday Expo is scheduled for November 18th with 50+ vendors. The construction near the Civic Center does not impose a risk of harm to voters. Cox’s assertion that the move was prompted by genuine concerns for voter safety is absurd.

Additionally, Cox’s ADA compliance concerns are without any factual basis. All of the school district buildings in USD 443 are ADA accessible. While Cox is correct that these buildings may not have been ADA compliant two decades ago, they certainly are now. Cox has

dozens of ADA accessible buildings available to her in addition to the Civic Center and Expo Center, including buildings that USD 443 has publicly offered to make available for voting on Election Day. Therefore, Cox's ADA justification is twenty years too late.

Even if Cox had a strong basis for believing that more convenient polling locations were not ADA-accessible, that necessitates curing the ADA problem or finding an alternative ADA-compliant polling place. *See* 28 C.F.R. § 35.130(b)(7)(i) (to comply with ADA, public entity must "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability"); *Tennessee v. Lane*, 541 U.S. 509, 532 (2004) (ADA's implementing regulations provide a "number of ways" to satisfy the "reasonable modification requirement."); *Disabled in Action v. Bd. of Elections of City of N.Y.*, 752 F.3d 189, 201-04 (2d Cir. 2014) (affirming remedial order requiring, among other things, barrier removal and other reasonable modifications, not closure, to ensure meaningful access to polling places on Election Day). Cox's concerns would not warrant moving locations further away and making it harder for people with disabilities to vote in person.

Finally, having a limited number of poll workers does not logically relate to whether or not an election can be conducted at multiple polling places. Regardless of how many locations poll workers are divided between on election day, the same number of voters will need to be accommodated.

II. THE REMAIIING FACTORS WEIGH IN FAVOR OF A TEMPORARY RESTRAINING ORDER.

The remaining factors also weigh in favor of a TRO. A brief TRO, would allow voters to choose between the polling site that has been serving the city for years (maintaining the status quo) or the new location. Additionally, if machines and poll workers were divided between the

two sites, voters should have adequate resources to cast their ballot at either polling location. Moreover, an additional polling location would not impose harm on Defendant especially since Cox has already inadvertently directed a number of voters to the Civic Center. The public interest also weighs in favor of increasing access to voters and redressing the confusion created by Defendant Cox's misleading registration notices. For these reasons, this Court should enter a TRO enjoining Defendant to open an additional polling location in Dodge City.

CONCLUSION

The use of a remote an inaccessible voting location will impose additional and substantial burdens on low income, elderly, disabled, and Hispanic voters. These burdens will result in many eligible voters simply deciding not to vote and cause the ultimate denial of the most fundamental right in our civilized society. Surely that cannot Defendant's intent, but it will be the effect of her decision. The Court should not countenance that result, and it is within the Court's power to prevent it.

For the reasons stated above, this Court should enter a temporary restraining order.

Respectfully submitted, this 26th of October, 2018

/s/ Lauren Bonds

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. On that date, I also served a copy of the Complaint, Plaintiffs' Motion for a Temporary Restraining Order, and accompanying Memorandum of Law on the Ford County Clerk's Office. Copies will also be e-mailed to the law firm who may represent Defendant in this instant matter.

Date: October 26, 2018

/s/ Zal Shroff