IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

LARGE, *et al.*, Plaintiffs, vs. FREMONT COUNTY, *et al.*, Defendants.	Case No. 05-CV-270

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter having come before the Court on defendant's Motion for Summary Judgment, and the Court, having carefully considered the materials filed in support thereof and in opposition thereto, **FINDS** and **ORDERS** as follows:

Defendants' Motion for Summary Judgment sought this Court's declaration that Section 2 of the Voting Rights Act, as amended in 1982, is beyond the power of Congress and unconstitutional as applied to counties that are not covered by Section 5 of the Voting Rights Act and that are located in States that are not covered by Section 5. The core of the Defendants' argument is that the Fourteenth and Fifteenth Amendments prohibit only intentional racial discrimination, and that prophylactic legislation is constitutionally

permissible only if it is congruent and proportionate to the unconstitutional conduct.

This Court finds defendants' arguments to be unavailing, and is not persuaded that the recent line of cases on this matter, starting with *City of Boerne v. P.F. Flores*, 521 U.S. 507 (1997), should be read as the defendants urge. In light of the numerous cases cited by both the plaintiffs and the interveners which have applied Section 2 to counties not covered by Section 5, and in light of the cases that have entertained and rejected challenges to the constitutionality of Section 2 that are virtually identical to the challenge presented here, this Court denies defendants' Motion for Summary Judgment.

This Court instead joins the United States District Court for the District of Colorado, which in rejecting a similar challenge, held that, "both the Supreme Court and the Tenth Circuit Court of Appeals have affirmed the constitutionality of Section 2 . . . In light of binding precedent, this Court declines to reexplore the issue." *United States v. Alamosa County*, 306 F.Supp.2d 1016, 1026 (D. Colo. 2004). Notably, defendants fail to mention this case, despite the fact that the very attorneys who brought this motion for summary judgment brought the motion there.

This Court also declines defendants' invitation to depart from the Ninth Circuit's decision in *United States v. Blaine County*, 363 F.3d 897 (9th Cir. 2004), in which the Ninth Circuit exhaustively, systematically and categorically considered and rejected, again, the very

argument brought by the attorneys who brought the present motion in this Court. Buoying this Court's determination that the Ninth Circuit's decision in *Blaine County* is sound is the fact that the Supreme Court denied the Petition for Writ of Certiorari which made similar arguments to the ones presented here.

In short, this Court declines to take the road never traveled, and therefore denies defendants' Motion for Summary Judgment.

Dated this Twenty-sixth day of January, 2007.

ALAN B. JOHNSON

UNITED STATES DISTRICT JUDGE