

PARTIAL SETTLEMENT, RELEASE AND HOLD HARMLESS AGREEMENT

This Agreement is made this _____ day of ~~Oct~~, 2010 by and among Timothy White, Allan Rosato, Linda Orgel, Arthur Grunbaum and the Green Party of San Juan County (collectively referred to as “White, et al or Releasors”) and Milene Henley and San Juan County (collectively referred to as San Juan County or Releasces).

BACKGROUND

A. In November 2006 Timothy White and Allan Rosato, pro se, filed a lawsuit in San Juan County Superior Court, Case No. 06-2-05166-2, against Si A. Stephens, then the San Juan County Auditor, regarding the use of the Mail-in Ballot Tracker auditing system by the County.

B. In January 2007 an Amended Complaint in Case No. 06-2-06166-2 for an injunction, Declaratory Judgment and Attorney Fees, was filed by Mr. Jerome Cronk, Esq. on behalf of Mr. White, Mr. Rosato and the Green Party of San Juan County, an unincorporated association, as Plaintiffs, against Milene Henley, the newly-elected County Auditor and San Juan County, as Defendants. The Amended Complaint alleged that the use of the Mail-in Ballot Tracker in six elections during the years 2005 and 2006 denied the right to vote a secret ballot and, thereby, violated certain provisions of the United States Constitution, Washington State Constitution, state statutes and state regulations and requested declaratory and injunctive relief and attorney fees pursuant to 42 USC 1988 and taxable costs as allowed by statute. For convenience, San Juan County Case No. 06-2-06166-2 is referred to as *White v. Henley*.

C. San Juan County has filed an Answer in *White v. Henley*, which Answer admits to the use of the Mail-in Ballot Tracker but, denies that the use of the Mail-in Ballot Tracker system violates the rights of White and, affirmatively, alleges that the use of the Mail-in Ballot Tracker system protects the right to vote a secret ballot, as well as other affirmative defenses.

D. In 2007 the parties exchanged documents pursuant to formal discovery requests and the County made a motion to dismiss San Juan County as a party plaintiff, which motion was denied by the Court.

E. In July 2009 Mr. White, Mr. Rosato, and the Green Party of San Juan County together with Ms. Orgel and Mr. Grunbaum, as Petitioners, through their attorney Mr. Knoll Lowney, filed with the Washington State Supreme Court pursuant to Article VI, Section 4 of the Washington Constitution and RAP 16.2, a Petition for Writ of Mandamus and/or Prohibition Against State Official (Original Action), Case No. 83342-7. Sam Reed, individually and in his capacity as Secretary of State for the State of Washington, Milene Henley in her capacity as San Juan County Auditor and San Juan County are the Respondents. The Petitioners allege that the placement of bar codes on ballots and use of the Mail-in Ballot Tracker system is contrary to law and violates the United States Constitution, Washington State Constitution, state statutes and state regulations. The Petitioners requested against San Juan County and Secretary Reed declaratory relief, injunctive relief, nominal damages, actual damages, and attorney fees pursuant to 42 USC 1988 and taxable costs as allowed by statute, and against Secretary Reed only a writ of mandamus and/or prohibition. For convenience, Case No. 83342-7 is referred to as *White v. Reed*.

F. The Respondents in *White v. Reed* have filed their respective Answers which deny that the use of the bar codes on ballots interferes with any constitutional, statutory or other rights of Petitioners and assert other affirmative defenses.

G. The Commissioner of the Supreme Court has entered a Ruling transferring the *White v. Reed* case to the San Juan County Superior Court for the purpose of developing facts and making an initial ruling for review by the Supreme Court as provided for in RAP 16.2, and the case has been referred to the San Juan County Superior Court and assigned case No. 10-2-05002-8.

H. The parties to this Agreement desire to compromise and settle all monetary claims against San Juan County and Milene Henley in the *White v. Henley* and *White v. Reed* lawsuits, including claims for nominal damages, damages, attorney fees and costs, including, specifically, attorney fees that may be payable under the Civil Rights Act, 42 USC 1988, or any other state or federal law or common law principle, while reserving unto White, et al, claims against San Juan County that do not involve payment of money including declaratory relief, injunctive relief, writ of mandamus or writ of prohibition.

NOW, THEREFORE, the Parties agree as follows:

1. Partial Compromise and Settlement. For and in consideration of a check payable to Knoll Lowney Trust Account in the amount of TEN THOUSAND DOLLARS and no/100 (\$10,000.00), the plaintiffs in *White v. Henley and White v. Reed*, (hereinafter collectively referred to as "Releasors") do hereby release and forever discharge Milene Henley and San Juan County, and their agencies, appointed and elected officials and deputies, departments, agents, employees, representatives, assigns, insurers, attorneys and successors (hereinafter collectively referred to as "Releasees"), from all monetary claims against Releasees in *White v. Henley*. Further, Releasors agree to drop all monetary claims against Releasees in *White v. Reed* and to take no action to pursue such claims in any manner against Releasees. Such payment shall be made by check and received by Knoll Lowney within 14 days of the execution of this agreement.

2. Known and Unknown Claims. This is a settlement of those claims against the Releasees for monetary payment as described in Paragraph 1, above, whether such claims are known or unknown, suspected or unsuspected.

3. Rights Reserved by Releasors. Releasors reserve all rights to pursue against Releasees the claims asserted in *White v. Henley* and *White v. Reed* in which non-monetary relief is requested including, but not limited to, injunctive relief, declaratory relief, writ of mandamus or writ of prohibition. Further, Releasors do hereby reserve all rights and monetary and non-monetary claims which have been asserted or may be asserted against the non-settling parties.

4. Rights Reserved by Releasees. Releasees do hereby specifically reserve all rights, defenses and affirmative defenses that have been asserted or might be asserted to the non-monetary claims which remain or might be asserted in the future in the case of *White v. Henley* and *White v. Reed*, and, notwithstanding any provision of this Agreement, Releasees may assert that this Agreement provides a defense to claims of indemnity or contribution that might be asserted by asserted by Releasors or Secretary Reed or the State of Washington pursuant to any statute, common law, or agreement.

5. Partial Compromise and Settlement Not Admission of Liability or Evidence of Actual Damages. This Settlement Agreement is a compromise of a doubtful disputed claim and the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released and the said Releasors deny liability therefore. Further the parties agree that such payment and this Agreement is not admissible evidence as provided by ER 408 and this Agreement and the payment made pursuant hereto may not be the basis for claims for indemnity, contribution or breach of contract pursuant to any statute, common law or agreement.

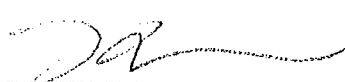
6. Conclusive Agreement. The undersigned declare that the terms of this Settlement Agreement are for the express purpose of precluding forever the monetary claims against Releasees that have been made or might have been made arising out of the use of the Mail-in Ballot Tracker or bar codes on ballots as described, or might have been described, in *White v. Henley* and *White v. Reed*, but Releasers expressly reserve unto themselves monetary claims arising out of statutory or common law rights such as access to public records.

7. Entire Agreement. This Partial Settlement and Release contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital.

8. Miscellaneous. Each of the parties certify and declare that they have read the foregoing Agreement and had an opportunity to review it with their lawyer and know the contents thereof and sign the same as their free act and deed, and with respect to entities as the free act of deed of the entity. Knoll Lowney is authorized to sign on behalf of Releasers.

FOR RELEASORS:

**KNOLL LOWNEY
SMITH & LOWNEY, PLLC**



Date 10/25/2010

SAN JUAN COUNTY:

SAN JUAN COUNTY AUDITOR
Milene Henley, Auditor

FINAL APPROVAL
Pete Rose
County Administrator

By: _____ Date _____

PLAINTIFFS:

TIMOTHY WHITE

ALLAN ROSATO

Date _____

GREEN PARTY OF SAN JUAN
COUNTY

By: _____
Date _____