

1)

80

=====**Start of Answer #1 (824 words)**=====

This is a breach of contract case. The measure for damages in a breach of contracts case is expectancy damages. The goal is to put the plaintiff in the position they would have been in had the defendant not breached the contract and thereby putting plaintiffs in the rightful position (Hatahley). If you can't put the plaintiff back in the rightful position compensatory damages are available as substitutionary relief to help place the plaintiff back as close to the rightful position as possible. The UCC governs contracts for the sale of goods, however, this contract was for a limited use for five years to mine coal. In addition to the usual covenants, the contract contained restorative and remedial work that defendant would need to and did agree to complete at the end of the lease period. Defendant did not complete the remedial work he had agreed to in the contract.

Injunctions are an equitable remedy provided when the legal remedy is inadequate. Injunctions are a court order to do or not to do something, they can be preventative or restorative. A plaintiff must show that there is an imminent threat, irreparable injury, that it warranted and that it wouldn't harm the public interest (Ebay). Issues with injunctions stem from propensity. The two issues stemming from propensity are ripeness and mootness. Here, the issue is ripe at defendant repudiated the contract. If an injunction were to issue in this case it would be a reparative injunction to prevent harm from past wrongs and put plaintiffs back to their rightful position. Because the plaintiffs want to be put in the rightful position, ordering the defendant to specifically perform on the contract would do that. Specific performance is an injunction whereby the defendant is ordered to do what they promised. However, specific performance is unlikely considering that the cost to defendant (\$29,000) compared to the increased value to plaintiff's land (\$300) is substantial and inproportionate. When equitable relief is warranted but would cause inequity to the defendant in the process it will not be granted (Van Wagner).

DIS-
FOR PLAIN

! 4000

Defendants do not contest that they breached the contract. An efficient breach is one where the breaching party breaches the contract for a more beneficial purpose, and makes enough money to cover costs of expectancy damages to the non-breaching

party and still come away with a profit. There is no indication that defendant breached the contract because they got a better deal elsewhere, but if they did and could cover costs to plaintiffs, it would have been an efficient breach for them to do so.

Defendants could argue that the covenant to complete the remedial work was unconscionable and thus the contract was void. But plaintiffs would counter with the fact that defendants agreed that they waived their rights. Unless there are other issues with the contract (which the facts do not indicate) defendant's argument that the contract is void would likely fail.

Plaintiffs have a duty to mitigate their damages. If they found someone else to do the work for less, then the damages would need to be offset and adjusted to reflect the steps plaintiffs took to lessen the damages.

If there was a liquidated damages clause the issue of damages would be much easier to compute. So long as the liquidated damages clause was not unreasonable in light of the circumstances and nature of the harm, liquidated damages clauses are a good default in circumstances where damages are hard to calculate.

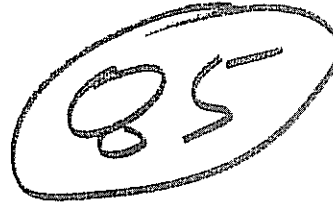
Damages can be adjusted by a judge by remittitur or additur. Judges may also defer to other verdicts when looking to maintain some consistency when determining if damages are appropriate (Levka). Remittitur is when the judges decreases the amount of damages to a plaintiff, the plaintiff has the option of taking the lower amount or retrial. In additur, a judge increases the amount of damages a defendant pays, and the defendant can either take the amount or retrial. Additur has been criticized for interfering with jurors rights and generally not allowed.

WHA
TORT? While reliance damages are usually not awarded in contracts cases, this is an instance where plaintiffs may recover in tort. Plaintiffs in this case are entitled to damages to their property- the difference between the present value of the farm and what its value would have been if defendant had done what it agreed to do. In determining these

damages jurors should balance the ratio of the harm and value of the property. The award of damages cannot be excessive, or out of proportion to the actual harm, otherwise a judge might find that it shocks the conscious and modify the damages.

Plaintiffs will recover the \$300 for the increase in property value to their land as if the defendants had performed on the contract and any consequential and incidental damages. Also, the jury might want to consider factoring in pre/ post judgment interest depending on how long it takes defendants to pay the damages.

=====
2) =====



=====
Start of Answer #2 (813 words) =====

This case is dealing with **de jure** and **de facto** discrimination in the State of Confusion whereby it is alleged voters were prevented access to the polls and the state did nothing about it. The facts also indicate that election results would not have changed even if there had been no intimidation or harassment.

Should voters be entitled to an injunction ordering the holding of a new election? 

First, injunctive relief, if not properly tailored can cause long lasting problems and lead to the micromanagement of beaucratic officials and government agencies by the courts. A structural injunction is the formal medium whereby the courts "do justice" and enforce compliance with the Constitution. Courts of equity sprang from the Chancery courts in England when people were not able to get adequate relief in other courts- but relying on the chancellor for equitable relief is akin to measuring length by the chancellor's foot. The notion that courts have a "roving commission to do good" (Bailey) is not in conformity to the rightful position and can be more damaging than one might realize. Prophylactic injunctions put plaintiffs a little (or a lot) better off than the rightful position, this can cause overremediation. When courts take the prophylactic approach and issue remedies untethered from the rightful position it can lead to more difficult problems in the future. Similarly, when a plaintiff is placed below the rightful position underremediation results and that is no remedy at all (VMI). So what then? The

evolution of injunctions, from **Swift**, where it was very difficult to modify an injunction, to **Rufo's** flexible standard approach which warranted changes in the injunction if there was a change in facts and law and the solution was tailored to achieve the remedy, to **Frew and Horne** which reaffirmed the flexible standard allowing injunctions to be modified- have made it easier to adjust with the times. The remedy should be tailored to address the constitutional wrong (Casey). Courts should always aim for the rightful position, otherwise, the structural injunctions that were put in place during **Brown II**, allowing District Courts to modify laws and do anything necessary to make the schools compliant, and subsequently latered through **Swann, Milliken I-II, Dailey I-II, and Jenkins III** will be the sort that haunts the State of Confusion. In fact, the fact pattern here is similar to that of **Milliken** and **Jenkins**- there the courts struck down the proposed interdistrict remedy when the scope of the harm was a limited one (intradistrict). In **Jenkins**, the segregation would have persisted even if there had been **de jure** discrimination.

The series of structural injunctions that plagued the courts above were permanent ones. I would advise against that here, and explore other options. A declaratory judgment, which determines the rights of the parties can be a good tool for enforcement. Declaratory judgments are backed by the court's power of contempt, and can be implicitly coercive. If defendant violates the declaratory judgment, they can be held to answer later and be subject to punitive damages. Otherwise, it appears that the parties already obtained a preliminary injunction. Because the outcome of the election wouldn't have been different (although that seems speculative) and the election is over, the issue is moot, a structural injunction would be an improper remedy at this time. If the voters were to hold a new election and the problem persisted, I would suggest attaining a temporary restraining order because its the fastest form of relief if the plaintiffs can show that the threat of harm is imminent and the injury irreparable. TROs do not require notice if good reason is shown why notice should not be given, they are usually not appealable and they will expire after 14 days. The TRO might be just what the Norweigan Americans need to be able to exercise their 14th and 15th Amendment rights. However, there is a reason why the TRO might not be granted and that is

because this issue is involving the first amendment. The court will need to weigh the interests at issue.

If an injunction is filed in state court regarding the violation of a Constitutional right, the federal judiciary will abstain and allow the state courts to handle it (Younger).

The 11th Amendment precludes suits brought by a citizen against the state, however a private action may be brought where there has been a constitutional violation (Bivens). The court in **Cort** established a 4 factor test, the most important being whether the plaintiffs belonged to the party that statute intended, which the court in **Touche** said the second factor was dispositive, that of whether Congress intended there to be a private cause of action? **Sandoval** stated that there can be no private cause of action unless Congress explicitly stated so. The Norwegian Americans will be able to proceed in this suit against having id in order to vote.

=====
3) **End of Answer #2** =====



=====
Start of Answer #3 (1006 words) =====

Is the case appropriate for one granting preliminary injunctive relief? Does Doc meet the requirements for temporary relief?

No. Preliminary injunctive relief is an equitable remedy available only when the legal remedies are inadequate. There is a problem with propensity in this case. As the event that is causing Doc so much grief is actually six months away, it would appear that the action for preliminary relief is not yet ripe. There is no imminent threat of irreparable injury or harm. Nor will Doc be able to attain a temporary restraining order as they are an even faster method of attaining relief and usually expire after 14 days. This TRO will expire long before the event even arrives. Doc is attempting to attain some preventative relief for the inevitable, but he will have to wait until the time if ripe for such relief. Doc may be able to get some declaratory relief. Declaratory relief is equitable in form. A declaratory judgment will determine the rights of the parties and lay a foundation if the

partygoers reoffend, making it easier to issue an injunction in the future or get punitive damages. Even then, I would have a hard time awarding such prospective relief since it does not seem that the legal remedies have been exhausted. Further, Doc's filing for injunctive relief will not be met by the federal judiciary, they will abstain from this issue (Younger).

The facts indicate that Doc lives next door to the annual soiree location which is a nuisance because it interrupts his "peace and quiet and enjoyment" of his neighborhood as the party creates an "earsplitting and deafening noise." He also alleges that the party trespasses onto his property causing property damages to his yard. These torts must be addressed before Doc can bring an action for injunctive ^{SPECIM?} relief. The measure of damages in a torts case is reliance damages. Reliance damages put plaintiff in the position they were in before the defendant's tortious conduct. Doc must prove these damages in order to recover for them. Doc can attain damages for costs he incurred while restoring his yard to the condition it was in before the partygoers trampled and littered it. Incidental damages, such as, replacing the lawn, or hiring someone to help repair the damages are recoverable. The unavoidable damages doctrine states that plaintiffs are only able to recover for damages that were unavoidable. Doc is required to mitigate his damages, and since the party only happens on one night during the year, his best bet might be to go somewhere else for the night. If the party puts him out, he may be able to recover the cost of the hotel room or maybe the cost to rent his house out for the night.

Doc will probably not be able to recover for noneconomic damages unless he has some unique circumstances which prohibit him from leaving his house and aggravate his medical condition. The facts are silent as to this point, but if he can prove that he suffered these damages he would be able to recover them.

Ex parte request:

Ex parte relief is appropriate when determining whether to issue a temporary restraining

order. Notice is not mandatory for a TRO. Doc will argue that he is concerned for the public backlash that will ensue if he gives notice of this TRO, especially in light of the charitable nature of the event. Doc could succeed in this argument...if he had a different judge. The facts indicate numerous paparazzi and onlookers are attracted to the event and will know where he lives since its right next to the event and this might be persuasive, but I think the length of time between the TRO and the event and the nature of harms are speculative and attenuated. I would grant him the TRO only if he gave notice himself, and Doc does not seem like the confrontational type. Even though its not necessarily required for a TRO, I would make Doc give notice as a condition and fully expect that he won't and that he will just go away.

Tailoring the injunction:

I don't believe in prophylactic relief, I am not a bleeding heart judge who is going to attempt to recitify past wrongs here. The guiding light should always be the rightful position, which is keeping people off Doc's property. The injunction against World of Wines Celebrity Soiree would be as narrowly tailored as possible so as not to create a larger mess. The injunction would be proscribed to the organizers of the event, and hold them responsible for maintaining control of their guests with the threat of firmer action and then the potential for change of venue if they fail to comply. The injunction would also be directed at the owners of the property on which the event is being held. Pressure from the owners of the venue might put pressure on the renters of the venue for the event and alleviate the problem internally. If the facts change and the nuisance and trespassing claims are no longer an issue, the injunction will need to be modified to reflect those changes. The injunction will terminate once there is no longer a need for it.

- BUT A JUDGE IS OBLIGATED TO FOLLOW THE LAW, NOT HEART

Doc could post a bond, but only if the injunctions fail. The bond would help establish that some additional action has been taken against the event coordinators.

As the plaintiffs attorney in this case I would give notice myself on behalf of Doc. I would issue notice personally to everyone we are trying to keep away from Doc's

property. The reason for personally notifying all prospective violators (as unrealistic as this may seem) is so that the court can hold them in contempt for violating the injunction when they were provided with sufficient notice of it. I would give notice to as many people as I could, even outside the people proscribed in our narrowly tailored injunction because even if they aren't specified, if we can show they had notice we can hold them accountable.

=====
===== End of Answer #3 =====

END OF EXAM

=====
===== End of Answer #1 =====

2)

85

=====
===== Start of Answer #2 (2327 words) =====

Should Norwegian American voters be entitled to an injunction ordering the holding of a new election? And, what other relief, if any, might they be entitled?

Remedies for Constitutional Violations

In shaping remedies relating to alleged constitutional violations, courts generally look to determine whether (1) there is any harm/damages, and (2) in remedying that harm, how can the moving party be placed in their rightful position, or the position they would have been but for the constitutional violation.

Standing

The threshold issue in looking at alleged constitutional violations is whether a party has standing. Standing requires that a harm actually occurred, or that a harm is likely to occur. Further, under *Bevins*, courts often permit parties to sue for constitutional violations if no other cause of action exists to address the harm.

Here, there is a question of both standing and a defense relating to the fact that there is no apparent harm. As set forth in the facts, it was concluded the election results would not have changed even if there was no intimidation or harassment. The question then becomes where the constitutional violation in and of itself constitutes a harm, or whether an actual harm be present. Some courts have held that an actual and cognizable harm is required, while others have held the violation constitutional rights in and of itself constitutes a harm. Regardless, for a structural injunction to be property, the moving party will need to meet the burden and show a harm in some sense. There is, however, a growing doctrine that a Constitutional violation, in and of itself, is presumptively treated as a harm.

Immunity

Further, the County will argue that they are protected by the public duty immunity, which sets forth that government agencies are not liable for negligently failing to perform a government function or duty. This duty has applied to, for example, child protective service agencies failure to protect children from their parents in some capacity. Here, it seems like the moving party has only set forth that the county did nothing to prevent a hate group from intimidating them. Thus, it's not entirely clear if there was any intent

on the County's part to require a stand down to not stop the hate group, or whether they merely failed, negligently, to do anything. Assuming they merely failed to do so, they could likely be protected under the immunity, and any injunction would not be granted.

Injunction (remedial decree)

Even if the court overlooks the public duty immunity and potential standing issue regarding a harm, the moving party must set forth a basis for the structural injunction (aka Remedial Decree), as well as set forth some basis for the structural injunction to be implemented narrowly. Generally speaking, injunctions will only be granted upon a showing that (1) the balance of equities weight in favor of the moving party, (2) that if the injunction is not granted an irreparable injury will result (one not characterized by monetary value), (3) that the moving party is likely to succeed on the merits, and (4) that the injunction serves the public interest. Further, assuming the above is met, remedial decrees must be narrowly tailored so as to only place the injured parties in the place that they would have been but for the constitutional violation (the rightful position). Regarding the prongs, it appears that the balance of equities weighs in favor of the voters and is in the public interest. In particular, eliminating voter intimidation is both important to the public interest so as to encourage voting and safety, which is also an equitable benefit to the moving party. Here, it appears they have also already shown a constitutional violation under the 14th and 15th Amendments; thus, they are, and have, succeeded in showing a harm. Lastly, the court would look to see whether no injunction would cause an irreparable injury. Here, again, the issue of harm is very important. It doesn't appear that the injunction will actually stop an irreparable harm because the lack of intimidation wouldn't change the outcome of the election. Thus, the moving party would have to struggle to show some sort of remedy and position that the injunction would stop an irreparable injury (i.e. The mere protection of their constitutional right to vote sans intimidation). But, because of the movement towards the presumption of harm when a constitutional violation has occurred (which is set forth in the facts), it's much more likely that some type of injunction will be granted as the prongs are met. Essentially, and in response, the voters could argue that they already have a judgment determining that the 14th and 15th Amendments were violated; thus, a harm did in fact occur. Again, the issue then rests on what remedy is proper, which it appears not to be, nor does the injunction actually prevent an irreparable injury. Just because an injunction might otherwise be proper, what it's proper to do is still in question...

Rightful Position

The characteristic as to rightful position, then, presents a huge issue, in part because there appears to be no cognizable harm other than the violation itself. In other words, the court would likely be over stepping its bounds politically and in the way of fulfilling rightful position by ordering a new election (what does it accomplish?). Further, in crafting some other type of injunction (even if granted), the court would only be likely to give the voters their rightful position by requiring the county to stop voter intimidation. Such an injunction, however, would likely be considered to seriously overstep legislative and judicial boundaries.

Thus, even if they're entitled to an injunction, any injunction they might get would be practically pointless or meritless based on the narrowly tailoring to provide their rightful position, but would merit careful litigation and conversation between the parties and the court.

Thus, based on the foregoing, issuance of an injunction requiring the County to hold a new election is possible, given the prongs are likely met; however, fashioning an injunction which is proper is much more difficult. It is possible a differently tailored injunction could be issued, so as to prevent future voter intimidation and placing the moving party in their rightful position. Again, however, such a remedy must be narrowly tailored and balance the powers of the branches of government. Perhaps something along the lines of requiring the County to supervise and call authorities upon notification of perceived voter intimidation might be such a remedy. Regardless, the requested injunction for a new election is unlikely, even if some type of structural injunction is issued to remedy the harm/wrong.

Voters vs. Hate Group

Nominal and Punitive Damages

Lastly, outside of an injunction against the County, the voters could seek relief against the private parties in the form of a request (1) federal prosecution for violation of voter rights against the private parties (a trend we've seen the media take on, perhaps), and (2) monetary damages for the wrong/crime. Monetary damages for voter intimidation, however, would be nominal—at best (and, unless some independent damages can be shown)—while federal prosecution is discretionary. It's quite possible that a willing court might consider punitive damages, which can be awarded along with nominal damages, should the voters sue the intimidators. Under *BMW*, court's may award punitive damages to punish or deter wrongful behavior. They balance the amounts based on (1) the reprehensibility of the actions (i.e. willfulness, etc.), (2) ration of damages to compensatory damages, and (3) a comparison of the damages to those assessed for like criminal conduct. Here, because, the conduct is also criminal, there is a comparative law for the assessment, and it shows the willfulness and reprehensibility of the actions by the hate group. They might argue that they are protected under the first amendment in defense of such a civil action; however, their actions are considered felonies and voter intimidation is an exception to the first amendment. Thus, it is possible that they could obtain substantial punitive damages against the hate group. They would also want to show compensatory damages, which would be more difficult, and those relating to, potentially, severe emotional distress. Such facts are not present to show remedies for such wrongs, however. Thus, punitives are much more likely. The main carveout for punitives, other than what has been set forth above, would be that they hurt, without financially alienate the defendants.

Voters vs. Hate Group

Injunction

Further, its possible they could seek an injunction against the hate group under the same 4 factors as set forth above. Because their actions are criminal, again, the first amendment defense fails. Further, such an injunction would be far more likely than the one against the county (for the reasons discussed herein above). Courts might be unwilling to issue the injunction in light of the ongoing requirement to monitor the hate group's behavior, and because there are other monetary damages (at least potentially). There is also the question of, again, preventing an irreparable injury should the injunction not be issued. They could show that, potentially, future voter intimidation might (unlike the present election) change the outcome. This would be their best argument. Based on the foregoing, it is possible a court might issue such an injunction against the hate group, further enjoining them from continued voter intimidation. Any violation might then be met with a motion for contempt of the court's order, which would forgo having to rest the case on the federal prosecutor's discretion to prosecute; whereas, any violation of the court's order would subject the hate group to sanctions and additional damages (possible jail).

Ultimately, there are other remedies for the voters should they not be able to obtain an injunction (see above) against the county such as an action against the hate group.

Assume a state exists requiring a government issued identification card to be shown prior to voting. Based on such, what relief, equitable or legal, if any, should they be entitled•

The voters are now seeking to enjoin the government from enforcing its new voter ID law. As set forth above, the basis for remedial decrees (supra), as well as the issue of standing (supra) are all in question. The voters must first and foremost show a harm. Here, the showing of a harm seems much more likely than above. In particular, the voters might argue that the requirement of ID's is unduly burdensome to those in the inner-cities, the elderly, or out of state students (all of whom might have a more difficult time obtaining ID's and are less likely to have them). Thus, on first blush, a cognizable harm is present, at least enough to show standing and get them in the door.

In terms of crafting a remedy, however, the issue is more murky. Generally speaking, thus far, courts have been reluctant to strike down voter ID requirements. This relates to numerous issues, including the political implications in involving the judiciary, as well as the balancing of equities (i.e whether voter ID's prevent voter fraud, as compared to whether they are more likely to hurt and disenfranchise voters who may not have ID's).

In particular, the court would essentially look to determine whether or not the statute could be struck down for violating voter's rights, and/or whether a structural injunction should be issued to enjoin the government

from requiring ID's at the polling places. As to the latter, the Court must weight the general 4 prongs, supra, to determine whether such an injunction is proper, while also considering rightful position of the parties in crafting any injunction, so as to place the moving party(ies) in the position they would be without any constitutional violation (i.e. voting without an ID). Here, there is the potential that an injunction would prevent an irreparable harm and serves the public interest. In particular, should the moving party show that the requirement actually disenfranchises voters and discourages them from voting, an injunction would both serve the public interest and prevent voter disenfranchisement (preventing an irreparable injury). Most certainly, you cannot place a monetary value on the loss of a right to vote, or constitutional infringement thereof.

The better argument for the government is to show competing interests in the way of the balance of equities. In particular, that the law is in place to prevent voter fraud and like issues relating to voting. This goes both to the balance of equities relating to the injunction, as well as the legal issue in determining whether a constitutional violation has actually occurred. As to the former (the remedy, which we are focused), it is a question of fact that would be left to the judge, and we are not presented with the necessary facts to reasonably determine and outcome. Nevertheless, if voter fraud was a problem, and recognizably so, it's possible the balance of equities would fall in favor of the government and the injunction would be granted, and that the underlying cause of action regarding the law's alleged violation of the Constitution would be equally moot.

Thus, the issue appears to fall squarely on the congressional intent, as well as any cognizable harm that might actually exist as to potential disenfranchisement of voters, etc. Depending on the facts, a structural injunction requiring the government to not enforce the law might be warranted. The question then turns to enforcement and any political questions and overreaching that might be present as to such injunctions and determining the rightful position. It would appear that the rightful position would most likely be fulfilled, however (assuming the underlying injunction might be warranted), by merely setting forth that other types of ID are proper, or firm declarations of one's name might be proper, etc.

Outside of potentially enjoining the government from enforcement or finding the statute invalid, there are not as many remedies under this issue as the previous issue, mostly because we are not dealing with a private actor for whom other damages and remedies might be shown.

===== End of Answer #2 =====

3)