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CASE NO: 11-OC001471B
DEPT NO: I

REC'D & FILED
2011 MAY 23 PM 1:20
CLERK OF SUPREME COURT

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

FILED

MAY 24 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *A. Ingerson*
DEPUTY CLERK

No. 58404

NEVADA REPUBLICAN PARTY, and
DAVID BUELL, an individual,

Plaintiffs,

vs.

ROSS MILLER, in his capacity as Secretary
of State for the State of Nevada,

Defendant,

and

NEVADA STATE DEMOCRATIC
PARTY,

Defendant-Intervenor.

NOTICE OF APPEAL

Notice is hereby given that Defendant-Intervenor the Nevada State Democratic Party
hereby appeals to the Nevada Supreme Court the Order of this Court in the above-entitled matter

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1 granting Plaintiffs' Application for Preliminary and Permanent Injunction, entered on May 23,
2 2010.

3
4 DATED this 23 day of May, 2011.

5 Submitted by,

6 GRIFFIN ROWE & NAVE

7
8 By: 
9 MATTHEW M. GRIFFIN, ESQ.
10 Nevada Bar No. 8097
11 1400 S. Virginia Street, Ste. A
12 Reno, Nevada 89502
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14 JONES VARGAS

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22 PERKINS COIE LLP

23 MARC. E. ELIAS, ESQ.
24 *Pro hac vice application pending*
25 700 Thirteenth Street N.W.
26 Washington, D.C. 20005-3960
27 Tel: (202) 654-6200
28 Facsimile: (202) 654-6211

Attorneys for Defendant-Intervenor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 23 day of May, 2011 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing postage prepaid to the addresses below. A courtesy facsimile copy was also sent on this day to the facsimile numbers below.

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David C. O'Mara, Esq.
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Fax: 775-323-4082
Attorneys for Plaintiffs

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Fax: 775-348-7250
Attorneys for Plaintiffs

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Fax: 775-684-5718
Defendant

Catherine Cortez Masto, Esq.
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701
Fax: 775-684-1108
Attorney for Defendant


An employee of GRIFFIN, ROWE & NAVE

CASE NO: 11-OC001471B
DEPT NO: I

2011-11-23 10:30 AM
FILED
CLERK OF COURT

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

NEVADA REPUBLICAN PARTY, and
DAVID BUELL, an individual,

Plaintiffs,

vs.

ROSS MILLER, in his capacity as Secretary
of State for the State of Nevada,

Defendant,

and

NEVADA STATE DEMOCRATIC
PARTY,

Defendant-Intervenor.

CASE APPEAL STATEMENT

Pursuant to N.R.A.P. 3(a)(1), Defendant-Intervenor here submits, by and through its attorneys of record, its Case Appeal Statement.

1. Name of appellant filing this case appeal statement:

The Nevada State Democratic Party

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Hon. Judge James Todd Russell, First Judicial District, Carson City, Nevada.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant:

The Nevada State Democratic Party

1 Counsel:

2 Bradley Scott Schrager, Esq.
3 Nevada Bar No. 10217
4 3773 Howard Hughes Parkway
5 Third Floor South
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7 Tel: (702) 862-3300
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13 **4. Identify each respondent and the name and address of appellate counsel, if known, for each**
14 **respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and**
15 **provide the name and address of that respondent's trial counsel):**

15 Respondent:

16 Nevada Republican Party
17 David Buell

18 Counsel:

19 William M. O'Mara, Esq.
20 David C. O'Mara, Esq.
21 311 East Liberty Street
22 Reno, NV 89501
23 Fax: 775-323-4082

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24 50 West Liberty Street
25 Suite 750
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28

1 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed
2 to practice law in Nevada and, if so, whether the district court granted that attorney
3 permission to appear under SCR 42 (attach a copy of any district court order granting such
4 permission):

5 Marc E. Elias, counsel for Appellant the Nevada State Democratic Party, is not licensed to practice
6 law in Nevada. On May 13, 2011, The Hon. Judge James Todd Russell, First Judicial District
7 Court, Carson City, Nevada, granted Mr. Elias permission to appear pursuant to S.C.R. 42, and the
8 order demonstrating such is here attached.

9 6. Indicate whether appellant was represented by appointed or retained counsel in the district
10 court:

11 Retained counsel

12 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

13 Retained counsel

14 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of
15 entry of the district court order granting such leave:

16 n/a

17 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
18 indictment, information, or petition was filed):

19 May 5, 2011.

20 10. Provide a brief description of the nature of the action and result in the district court,
21 including the type of judgment or order being appealed and the relief granted by the district
22 court:

23 The present appeal regards the grant of Plaintiff's Application for Preliminary and Permanent
24 Injunction enjoining the Nevada Secretary of State from placing the names of major or minor party
25 candidates on the ballot for the September 13, 2011 special election to fill the vacant seat in
26 Nevada's 2nd Congressional District until such time as the candidate is determined by the respective
27 party central committees pursuant to N.R.S. 293.165.

28 11. Indicate whether the case has previously been the subject of an appeal to or original writ
proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of
the prior proceeding:

No.

12. Indicate whether this appeal involves child custody or visitation:


No.

1 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:
2 No.

3
4 DATED this 23 day of May, 2011.

5 Submitted by,

6 GRIFFIN ROWE & NAVE

7
8 By: 
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Attorneys for Defendant-Intervenor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 27 day of May, 2011 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing postage prepaid to the addresses below. A courtesy facsimile copy was also sent on this day to the facsimile numbers below.

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Secretary for the State of Nevada
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Defendant

Catherine Cortez Masto, Esq.
Nevada Attorney General
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Fax: 775-684-1108
Attorney for Defendant


An employee of GRIFFIN, ROWE & NAVE

ORIGINAL

REC'D & FILED ✓

2011 MAY 13 AM 10:08

ALAN GLOVER

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

NEVADA REPUBLICAN PARTY, and
DAVID BUELL, an individual,

Plaintiffs,

vs.

ROSS MILLER, in his capacity as Secretary
of State for the State of Nevada,

ORDER ADMITTING TO PRACTICE

Defendant,

and

NEVADA STATE DEMOCRATIC
PARTY,

Defendant-Intervenor.

Marc Erik Elias, having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a Certificate of Good Standing for the District of Columbia bar, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the court being fully apprised in the premises, and good cause appearing, it is hereby:

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ORDERED, that said application is hereby granted, and Marc Erik Elias, Esq., is hereby admitted to practice in the above entitled Court for the purposes of the above entitled matter only.

DATED this 12th day of May, 2011.

John T. Runney
DISTRICT JUDGE

Submitted by:

Bradley Scott Schrager, Esq.
Nevada Bar No. 12017
Jones Vargas
3773 Howard Hughes Parkway
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Telephone: (702) 862-3300
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Attorneys for Plaintiffs

Judge: RUSSELL, JUDGE JAMES
TODD

Case No. 11 OC 00147 1B

Ticket No.
CTN:

NEVADA REPUBLICAN PARTY

By:

STATE OF NEVADA

DRSPND

-vs-

By:

Dob: Sex:
Lic: Sid:

Plate#: Make:
Year: Accident:
Type: Venue:
Location:

NEVADA DEMOCRATIC PARTY IVNR
NEVADA REPUBLICAN PARTY PLNTPET

Bond: Set:
Type: Posted:

Charges:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	05/23/11	CASE APPEAL STATEMENT	1BCCOOPER		0.00
2	05/23/11	NOTICE OF APPEAL Receipt: 17297 Date: 05/23/2011	1BCCOOPER	24.00	0.00
3	05/23/11	CASE APPEAL STATEMENT	1BCCOOPER		0.00
4	05/23/11	NOTICE OF APPEAL	1BCCOOPER	24.00	0.00
5	05/23/11	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	1BCCOOPER		0.00
6	05/19/11	SUMMONS & ADD'L SUMMONS	1BCCOOPER	0.00	0.00
7	05/18/11	MEDIA REQUEST & ORDER ALLOWING CAMERAS IN THE COURTROOM	1BMKALE	0.00	0.00
8	05/17/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
9	05/17/11	ORDER GRANTING MOTION TO INTERVENE	1BJHIGGINS	0.00	0.00
10	05/16/11	REPLY IN SUPPORT OF PLAINTIFF'S APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTION	1BCCOOPER	0.00	0.00
11	05/13/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
12	05/13/11	ORDER ADMITTING PRACTICE	1BCCOOPER	0.00	0.00
13	05/13/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
14	05/13/11	ORDER SHORTENING TIME	1BCCOOPER	0.00	0.00
15	05/12/11	DEFENDANTS OPPOSITION TO PLAINTIFFS' APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTION	1BCCOOPER	0.00	0.00
16	05/12/11	MOTION TO INTERVENE	1BCCOOPER	0.00	0.00
17	05/12/11	EX PARTE MOTION FOR ORDER SHORTENING TIME FOR PLAINTIFFS AND DEFENDANT TO RESPOND TO THE MOTION TO INTERVENE AND PROPOSED ORDER SHORTENING TIME	1BCCOOPER	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
18	05/12/11	OPPOSITION TO APPLICATION FOR PRELIMINARY INJUNCTION AND DECLARATORY JUDGMENT	1BCCOOPER	0.00	0.00
19	05/12/11	MOTION TO ASSOCIATE COUNSEL	1BCCOOPER	0.00	0.00
20	05/12/11	EX PARTE MOTION FOR ORDER SHORTENING TIME FOR PLAINTIFFS AND DEFENDANT TO RESPOND TO THE MOTION TO ASSOCIATE COUNSEL AND PROPOSED ORDER SHORTENING TIME	1BCCOOPER	0.00	0.00
21	05/12/11	RESPONSE TO PLAINTIFF INTERVENOTS' MOTION TO INTERVENE PURSUANT TO NRCF 24	1BCCOOPER	0.00	0.00
22	05/12/11	ANSWER IN INTERVENTION Receipt: 17175 Date: 05/13/2011	1BCCOOPER	218.00	0.00
23	05/09/11	TRIAL DATE MEMO	1BJHIGGINS	0.00	0.00
24	05/06/11	NOTICE OF ENTRY OF ORDER SHORTENING TIME	1BMKALE	0.00	0.00
25	05/06/11	CERTIFICATE OF SERVICE	1BMKALE	0.00	0.00
26	05/06/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BMKALE	0.00	0.00
27	05/06/11	ORDER SHORTENING TIME	1BMKALE	0.00	0.00
28	05/05/11	REQUEST FOR SUBMISSION OF EX PARTE MOTION FOR AN ORDER SHORTENING TIME FOR DEFENDANTS TO RESPOND TO THE APPLICATION FOR A PRELIMINARY AND PERMANENT INJUNCTION	1BMKALE	0.00	0.00
29	05/05/11	EX-PARTE MOTION FOR AN ORDER SHORTENING TIME FOR DEFENDANTS TO RESPOND TO THE APPLICATION FOR A PRELIMINARY AND PERMANENT INJUNCTION	1BCCOOPER	0.00	0.00
30	05/05/11	APPLICATION FOR A PRELIMINARY AND PERMANENT INJUNCTION	1BCCOOPER	0.00	0.00
31	05/05/11	CREDIT CARD PROCESSING FEE Receipt: 17047 Date: 05/05/2011	1BCCOOPER	2.50	0.00
32	05/05/11	ADDITIONAL PLAINTIFF (DAVID BUELL) Receipt: 17047 Date: 05/05/2011	1BCCOOPER	30.00	0.00
33	05/05/11	VERIFIED COMPLAINT Receipt: 17047 Date: 05/05/2011	1BCCOOPER	265.00	0.00
Total:				563.50	0.00
Totals By: COST				563.50	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

Case No. 11 OC 00147 1B

REC'D & FILED

Dept. No. I

2011 MAY 23 AM 11:25

ALAN GLOVER

Alan Glover
BY *Alan Glover* CLERK

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

NEVADA REPUBLICAN PARTY, and)
DAVID BUELL, an INDIVIDUAL,)
Plaintiffs,)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

vs.)

STATE OF NEVADA, SECRETARY OF)
STATE ROSS MILLER)
Defendants.)

On Thursday, May 5, 2011, Plaintiffs, the Nevada Republican Party ("NRP") and Mr. David Buell ("Mr. Buell") (collectively, "Plaintiffs") filed a Verified Complaint and Application for a Preliminary and Permanent Injunction. Additionally, Plaintiffs filed an ex parte motion for an order shortening time to respond to Plaintiffs' application. This Court granted Plaintiffs ex parte motion and heard the matter in an expedited manner.

On May 12, 2011, Defendant, Ross Miller, Secretary of State ("State/Defendant") filed an opposition to Plaintiffs' application. Additionally, on the same day, the Nevada State Democratic Party ("NSDP/Intervenor") filed a motion to intervene, and Answer, and an opposition to Plaintiffs' application. Plaintiffs' acknowledged that they do not object to NSDP's motion to intervene and thus, this Court granted such request, on Tuesday, May 17, 2011.

1 On Monday, May 16, 2011, Plaintiffs' filed a reply in support
2 of their application for preliminary and permanent injunction.¹
3 Before the hearing, the parties met and set the date of Thursday,
4 May 19, 2011, for this Court to conduct an evidentiary hearing.
5 The parties both consented to consolidate the preliminary
6 injunction hearing with a trial on the merits. See NRCP 65(a)(2).

7 On May 19, 2011, the matter of Plaintiffs' request for a
8 preliminary and permanent injunction came on for hearing.
9 Plaintiffs appeared by and through their respective counsel, David
10 O'Mara, Esq., of The O'Mara Law Firm, P.C. and Rew R. Goodenow,
11 Esq., of Parsons Behle & Latimer. Defendant Secretary of State
12 Miller appeared by and through his counsel Kevin Benson, Esq.,
13 Deputy Attorney General, and Scott F. Gilles, Deputy Secretary of
14 the Elections for the State of Nevada. Defendant Nevada State
15 Democratic Party appeared by and through its counsel Marc E. Elias,
16 Esq., Matthew M. Griffin, Esq., and Bradley Scott Schrager, Esq.

17 **ISSUE**

18 Plaintiffs have filed this action seeking declaratory and
19 injunctive relief in order to require the Secretary of State to
20 construe NRS 304.240(1) in a manner that provides for full
21 compliance with NRS Chapter 293 and to prevent the Secretary of
22 State from placing on the special election ballot the names of
23 individuals that have not been designated by their respective major

24
25
26 ¹Attached to the respective parties' briefs were various exhibits.
27 There were no objections by any of the three parties to the filing
28 of these exhibits or the evidence introduced at the hearing. As
such, the Court has reviewed and considered such exhibits in its
findings.

1 or minor political party as the specific party's candidate for the
2 special election.²

3 As such, the issue before this Court is whether or not the
4 nomination of a major political party candidate or minor political
5 party candidate is governed by the Secretary's interpretation of
6 one sentence contained in NRS 304.240, or if a correct reading of
7 the statutory language in Chapter 304, incorporating by reference
8 the election laws contained in Chapter 293, including NRS 293.165,
9 provides that each major or minor political party is entitled to
10 designate its respective candidate that is placed on the special
11 election ballot.

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25 _____

26 ² Even though the general election laws of this State apply to a
27 special election, the term "general election" is used to describe
28 the normal election process, while the term "special election" is
used to describe the pending election process, unless otherwise
stated.

1 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW³**

2 After reviewing the respective parties' briefs, the relevant
3 statutes governing elections, reviewing case law, and having heard
4 extensive oral argument, and good cause appearing, this Court finds
5 as follows:

6 This Court finds that Plaintiffs are entitled to declaratory
7 relief. See Kress v. Corey, 65 Nev. 1, 26, 189 P.2d 352, 264
8 (1948).⁴ **First**, a justiciable controversy, that is, a controversy
9 in which a right is asserted against one who has an interest in
10 contesting it. In this case, Plaintiffs' interest are adverse to
11 the Secretary of State and Intervenor NSDP regarding the procedure
12 for the designation and nomination of major/minor party candidates
13 for the pending special election. **Second**, the parties are adverse
14 and the controversy is ripe for judicial determination because all
15 parties have an interest in the manner in which the Secretary of

16 _____
17 3 In light of the Court's decision today, it is unnecessary for
18 the Court to address the constitutional issues raised by
19 Plaintiffs in this case. Indeed, under the Court's decision
20 today, NRS 304.240 can be interpreted in a way that is
21 constitutional. However, if the Court were to reach the
22 constitutional issues, then the Secretary's interpretation would
23 present challenges. For example, the Court is troubled by the
24 Secretary of State's interpretation that provides for different
25 treatment by the Secretary that allows the minor political
26 parties and independents to designate their respective
27 candidates, while denying the major political parties any access
28 or involvement in the process of designating their candidates.

24 ⁴ In the case of Kress v. Corey, supra, the requirements for
25 declaratory relief were summarized as follows: "(1) there must be
26 a justiciable controversy; that is to say, a controversy in which a
27 claim of right is asserted against one who has an interest in
28 contesting it; (2) the controversy must be between persons whose
interests are adverse; (3) the party seeking declaratory relieve
must have a legal interest in the controversy, that is to say, a
legally protectable interest; and (4) the issue involved in the
controversy must be ripe for judicial determination."

1 State conducts the special election under Nevada law and the issue
2 is ripe for review because the election process has already begun.

3 Additionally, injunctive relief is appropriate in this case in
4 aid of the declaratory judgment sought. See Nevada Management
5 Company v. Jack, 75 Nev. 232, 236, 338 P.2d 71 (1959) citing, Kress
6 v. Corey, 65 Nev. 1, 189 P.2d 352, 364 (1948); see also, Woods v.
7 Bromley, 69 Nev. 96, 241 P.2d 1103 (1952).

8 The evidence presented in this case leads this Court to
9 conclude that Plaintiffs have met their burden and are entitled to
10 permanent injunctive relief because they have shown that they are
11 not only successful on the merits, but would suffer irreparable
12 harm if the conduct was allowed to continue. See University and
13 Community College Systems of Nevada v. Nevadans for Sound Gov't.,
14 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); Dangberg Holdings v.
15 Douglas County, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999).

16 The Secretary of State and NSDP assert that the Secretary of
17 State's interpretation deserves deference while Plaintiffs contend
18 that the Secretary of State erred because he went beyond the plain
19 meaning of the statute in construing the statute. This Court
20 agrees with Plaintiffs.

21 Additionally, in this case, resolution of the issue rests
22 solely on statutory construction principles, a question of law, and
23 deference to the Secretary of State's interpretation is not
24 absolute. See State v. State Farm, 116 Nev. 290, 293, 995 P.2d 482
25 (2000) ("[A] court will not hesitate to declare a regulation invalid
26 when the regulation violates the constitution, conflicts with
27 existing statutory provisions or exceeds the statutory authority of
28 the agency or is otherwise arbitrary and capricious.") Even

1 reasonable agency interpretation of an ambiguous statute may be
2 stricken by a court when a court determines that the agency
3 interpretation conflicts with legislative intent. Id.

4 While this Court has considered the Secretary of State's
5 interpretation for its persuasive value, this Court does not find
6 the Secretary of State's interpretation to be controlling, and thus
7 because the matter is purely a legal question, will not give
8 deference to the Secretary of State's interpretation, and has
9 undertaken an independent review of the construction of Nevada's
10 election statutes. See Bacher v. State Engineer, 122 Nev. 1110,
11 1117, 146 P.3d 793 (2006).

12 The Nevada laws that are at issue in the case are Chapter 304
13 and Chapter 293 of the Nevada Revised Statutes. Unfortunately, the
14 cross-referencing of these two chapters has resulted in some
15 confusion.

16 In discerning the meaning of the statutory provisions
17 regarding the special election for Nevada's Representative to the
18 United States House of Representatives, the Court has relied on
19 well-established precepts of statutory construction. "Unless
20 ambiguous, a statute's language is applied in accordance with its
21 plain meaning." See, e.g. We the People Nevada v. Miller, 124 Nev.
22 874, 881, 192 P.3d 1166, 1170 (2008). However, if the statute "is
23 ambiguous, the plain meaning rule of statutory construction" is
24 inapplicable and the drafter's intent "becomes the controlling
25 factor in statutory construction." See Harvey v. District. Ct. 117
26 Nev. 754, 770, 32 P.3d 1263, 1274 (2001). An ambiguous statutory
27 provision should also be interpreted in accordance "with what
28 reason and public policy would indicate the legislature intended."

1 See McKay v. Bd. of Supervisors, 102 Nev. 644, 649, 730 P.2d 438
2 (1986). Additionally, the Court construes statutes to give meaning
3 to all of their parts and language and has read each sentence,
4 phrase, and word to render it meaningful within the context of the
5 purpose of the legislation. See Coast Hotels v. State, Labor
6 Comm'n, 117 Nev. 835, 841, 34 P.3d 546 (2001). Further, no part of
7 the statute should be rendered meaningless and its language "should
8 not be read to produce absurd and unreasonable results." See
9 Banegas v. SIIS, 117 Nev. 222, 228, 19 P.3d 245 (2001).

10 NRS 304.240 is ambiguous. The Court has reviewed the scant
11 legislative history and finds that it does not assist the Court in
12 resolving the particular matter. NRS 304.230 clearly states that
13 the Nevada Legislature was concerned with a special election, yet,
14 it is clear that the Nevada Legislature intended for the election
15 to be conducted pursuant to the provisions of Chapter 293 of NRS.
16 See NRS 304.240.

17 Thus, the Nevada Legislature's intentions and the reasons and
18 public policy indicate that the general election laws of the State
19 of Nevada, Chapter 293 of NRS, apply to this election.

20 When possible, the interpretation of a statute or
21 constitutional provision will be harmonized with other statutory or
22 provisions to avoid unreasonable or absurd results. See Nevada
23 Power Co. v. Haggerty, 115 Nev. 353, 364, 989 P.2d 870 (1999).
24 Additionally, all statutes are to be read *in pari materia*. See
25 Farm Mut. v. Comm'r of Ins., 114 Nev. 535, 541, 958 P.2d 733, 737
26 (1998). When this is done, in this instance, the result is that a
27 major or minor political party designates its candidate to be
28 placed on the special elections ballot.

1 The Secretary of State's reliance on a single sentence within
2 NRS 304.240 without considering other statutes within Chapter 293
3 produces an unreasonable and absurd result. Indeed, the Secretary
4 of State has provided argument that the general election laws apply
5 in every case, yet it is clear that the Secretary of State is
6 picking and choosing from different portions of the general
7 election statutes to support its interpretation. The Court is
8 troubled by this method. Indeed, even under the Secretary of
9 State's own Interpretation, he has chosen not to apply the general
10 election laws such as NRS 293.165 and NRS 293.260, yet the
11 Interpretation makes reference to NRS 293.1715(2) in paragraphs 3
12 and 4; NRS 293.1276 through NRS 293.1279 in paragraphs 3, 4 and 5;
13 and incorrectly makes reference to NRS 193.200, which should be NRS
14 293.200. Each of these statutes referenced in his Interpretation
15 is specifically excluded under the provisions of NRS 293.175 in
16 special elections.

17 If the Court were to follow the Secretary of State's
18 arguments, it would allow any individual to file under a major
19 political party, yet limit the same individual from filing as a
20 minor party candidate or an independent candidate because that
21 individual would either have to be placed on the minor party's list
22 or file a petition of candidacy supported by 100 registered voters.
23 This is an unreasonable and absurd result; and results in unfair
24 treatment.

25 Further, the State's argument that NRS 304.240 supercedes the
26 provisions of Chapter 293 of NRS because NRS 304.240 is a specific
27 statute while NRS 293.165 is a general statute is incorrect.
28 Indeed, "when statutes are potentially conflicting, [the Court]

1 will attempt to construe both statutes in a manner to avoid
2 conflict and promote harmony." See Beazer Homes Nevada, Inc. v.
3 Eighth Judicial Dist., 120 Nev. 575, 587, 97 P.3d 1132 (2004).

4 The Nevada Legislature adopted the statutory provision at
5 issue in this case during the 2003 legislative session. See AB 344
6 (Statutes of Nevada 2003). The legislative history cited by
7 Plaintiffs evidences an intent to adjust the election timeframes
8 required by NRS Chapter 293, not to adopt a new election process.
9 There are two steps in regards to the process for an individual to
10 be nominated and then placed on the ballot as a candidate for the
11 position. **First**, under NRS 304.240, the language sets forth that:

12 [e]xcept as otherwise provide in this subsection, **a**
13 **candidate** must be nominated in the manner provided in
14 Chapter 293 of NRS and must file a declaration or
15 acceptance of candidacy within the time prescribed by the
Secretary of State pursuant to NRS 293.204, which must be
established to allow a sufficient amount of time for the
mailing of election ballots."

16 See NRS 304.240(1) (emphasis added).

17 NRS 293.165 provides,

18 [e]xcept as otherwise provided in NRS 293.166, a vacancy
19 occurring in a major or minor political party nomination
20 for a partisan office may be filled by **a candidate**
21 **designated by the party central committee** of the county
or State, as the case may be, of the major political
party or by the executive committee of the minor
political party...

22 See NRS 293.165(1) (emphasis added). Here, in reading the two
23 statutes in harmony with each other, the important words in each
24 particular statute are, NRS 304.240, "a candidate of a major
25 political party" and NRS 293.165, "a candidate designated by."
26 Further, there is no language in NRS 304.240 that conflicts with
27 the right of a major political party to designate its candidate.
28 Thus, NRS 293.165 is applicable.

1 Under the Secretary of State's Interpretation, he would
2 eliminate any involvement of the major political parties in the
3 nomination process, while allowing the minor political party to
4 preclude an individual from nominating themselves for this office,
5 which is unreasonable. The language of NRS 304.240 does not state,
6 "a member of a major political party." The language specifically
7 states, "a candidate of a major political party." Additionally,
8 Black's Law Dictionary, Seventh Edition, defines the word,
9 "nominate" to mean, "1. [t]o propose (a person) for election or
10 appointment"; or, "2. [t]o name or designate (a person) for a
11 position." This language sets forth that an action must be taken
12 for a designation or nomination of a candidate, which in this case,
13 is pursuant to NRS 293.165 for major and minor party candidates.
14 Every member of a major party is certainly not a candidate of that
15 party. There must be a process to designate a candidate, namely
16 NRS 293.165.

17 **Second,** in reading the statutory laws in harmony, it is clear
18 that the language in the third, fourth and fifth sentences of NRS
19 304.240 sets forth the process of how the major/minor party
20 candidate is placed on the ballot after being designated. Indeed,
21 the provisions in respect to the minor party candidate indicates
22 placement on the ballot. The language in regards to independent
23 candidates indicates an appearance on the ballot. In order to give
24 effect to the third sentence regarding major party candidates, the
25 language provides the method for placing a major party candidate on
26 the ballot.

27 This process conforms with the general election statutes
28 regarding placement of candidates on the ballot and that in most

1 cases, only one candidate per major or minor party is placed on the
2 ballot for each position. See NRS 293.260; see also, State ex rel.
3 Cline v. Payne, 59 Nev. 127, 86 P.2d 32 (1939); NRS
4 293.1714(4) ("The name of only one candidate of each minor political
5 party for each partisan office may appear on the ballot for a
6 general election.")

7 Finally, the resignation of former Congressman Dean Heller
8 created a vacancy in the nomination. Indeed, like Nevada's
9 election in 1954, which did not allow for a primary, a vacancy was
10 created. At the time, a similar Nevada law provided,

11 The provisions of § 25 of the primary election law, as
12 amended 1947 p. 478, § 2429 N.C.L. 1943-1949 Supp.,
13 relate to the filling of a vacancy where a person
14 nominated at the preceding primary election has died,
resigned or for some other reason ceased to be a
candidate.

15 See Brown v. Georgetta, 70 Nev. 500, 507, 275 P.2d 376, 380 (1954).
16 In citing State ex inf. Barrett ex rel. Shumard v. McClure, 299 Mo.
17 688, 253 S.W. 743, the Nevada Supreme Court rejected the contention
18 that the death of Senator McCarran created only a vacancy in the
19 office and not a vacancy in the nomination. Like Brown, NRS
20 293.165 is broad enough to permit the designation and nomination of
21 a candidate in this situation, and thus, there is a vacancy in the
22 nomination.

23 As such, had this Court allowed the Secretary of State's
24 Interpretation to stand, Plaintiffs would suffer irreparable harm.
25 Indeed, under the Secretary's Interpretation, the major parties
26 would be specifically excluded from any involvement in the
27 designation and nomination process, for which compensatory relief
28 is inadequate.

1 Based upon the foregoing findings, and good cause appearing,

2 **IT IS HEREBY ORDERED** as follows:

3 1. This Court finds in favor of Plaintiffs' and against
4 Defendant and Intervenor.

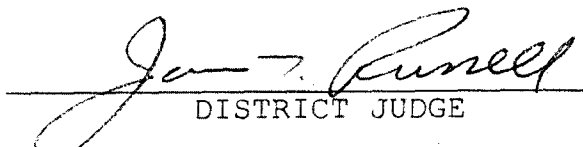
5 2. Plaintiffs' claim for a permanent injunction is granted
6 and the Secretary of State is enjoined from placing the names of
7 members of a majority political party or a minority political party
8 on the ballot until the candidates are designated by their
9 respective major or minor political party pursuant to NRS 293.165.

10 3. The time frames established by the Secretary of State
11 regarding the designation of a party's candidate and the filing of
12 the declaration or acceptance of candidacy shall be extended up to,
13 and including, June 30, 2011,⁵ so as to allow the respective
14 political parties an opportunity to comply with NRS 293.165.

15 4. This Order is nunc pro tunc to the date the Court issued
16 its Order from the bench on May 19, 2011.

17 5. Each party shall bear their own attorney's fees and costs
18 in respect to this matter.

19
20 DATED: May 23, 2011

21
22 
23 DISTRICT JUDGE
24
25
26

27 ⁵ The Secretary of State acknowledged that the Registrar of Voters
28 would need to submit the ballot to the printers by July 8, 2011
which is after the June 30, 2011, date requested by Plaintiffs.

CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

Depositing for mailing, in a sealed envelope, U.S. Postage prepaid, at Reno, Nevada

Personal delivery

X Facsimile

Messenger Service

Federal Express or other overnight delivery

Email

addressed as follows:

Honorable Ross Miller
Attn: Scott Gilles
Secretary of State of Nevada
101 N. Carson Street #3
Carson City, Nevada 89701
775.684.5718

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Rew R. Goodenow Bar No. 3722
Parsons Behle & Latimer
50 West Liberty Street
Reno, NV 89501

DATED: May 23, 2011.



FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 11 OC 00147 1B

TITLE: NEVADA REPUBLICAN PARTY VS
STATE OF NEVADA

05/19/11 – DEPT. I – HONORABLE JAMES T. RUSSELL
C. Franz, Clerk – J. Forbes, Reporter

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Present: Petitioner, David Buell with counsel, Reu Goodenow and David Omara. Scott Gillis, Secretary of State with counsel Kevin Benson, Deputy A.G.; Marc Elias, Bradley Schrager and Matt Griffin Deputy A.G., counsel for the Democratic Party

Statements were made by Court and Goodenow. Omara, Goodenow, Benson and Elias argued matter.

Evidence marked and admitted in accordance with the Exhibit Sheet.

Upon inquiry by the Court, Goodenow and Bensen agreed this matter can be construed on its merits pursuant to Rule 65(2) of the Nevada rules of civil procedure.

COURT ORDERED: Court made findings of fact, It grants permanent injunction to the Plaintiff's and it enjoins the Secretary of State from placing the names of members of a majority political party or a minority political party on the ballot until a candidate is determined pursuant to NRS 293.165. The time frame established by the Secretary of State shall be extended until NRS 293.165 can be complied with so that a majority political party and a minority party can nominate their candidates as indicated in that statute, thereby It extends the Secretary of State deadline until June 30, 2011. Goodenow and Omar to prepare the Order and provide it to the Court no later than May 23, 2011, by email, additionally provide it to the other parties as well. Each party are to bear their own attorney's fees and costs.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

LIST OF EXHIBITS

CASE NAME: NEVADA REPUBLICAN PARTY and DAVID BUELL

CASE NO.: 11 OC 00147 1B

DATE: 5/19/11

HEARING: COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

[illegible]

CIVIL COVER SHEET

Carson County, Nevada

Case No. 11000014718 **REC'D & FILED**
(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Nevada Republican Party and David Buell

Attorney (name/address/phone): David C. O'Mara, 311 E. Liberty Street, Reno, Nevada 89501 (775) 323-1321

Defendant(s) (name/address/phone): State of Nevada and Secretary of State Ross Miller

Attorney (name/address/phone): BY [Signature] CLERK

2011 MAY -5 AM 8:41

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input checked="" type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

5/4/11
Date

David O'Mara
Signature of initiating party or representative

See other side for family-related case filings.