

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

NEVADA STATE DEMOCRATIC PARTY; AND ROSS MILLER, IN HIS CAPACITY AS SECRETARY OF STATE FOR THE STATE OF NEVADA,

Appellants,

vs.

NEVADA REPUBLICAN PARTY; AND DAVID BUELL, AN INDIVIDUAL,

Respondents.

No. 58404

Electronically Filed
Jun 02 2011 12:48 p.m.
Tracie K. Lindeman

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach requested documents, fill out the statement completely, or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District ^{First} _____ Department _____
County Carson City Judge Russell
District Ct. Case No. 11 OC 00147 1B

2. Attorney filing this docketing statement:

Attorney Bradley Scott Schragger, Esq. Telephone 702-862-3300
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3773 Howard Hughes Parkway, Third Floor South, Las Vegas, NV 89169

Client(s) Nevada State Democratic Party

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondent(s):

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Client(s) Nevada Republican Party; and David Buell, an individual

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Firm Parsons Behle & Latimer
Address
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Client(s) Nevada Republican Party; and David Buell, an individual

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- Judgment after bench trial
- Judgment after jury verdict
- Summary judgment
- Default judgment
- Grant/Denial of NRCP 60(b) relief
- Grant/Denial of injunction
- Grant/Denial of declaratory relief
- Review of agency determination

- Dismissal:
 - Lack of jurisdiction
 - Failure to state a claim
 - Failure to prosecute
 - Other (specify): _____
- Divorce decree:
 - Original
 - Modification
- Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following?

- | | |
|--|---|
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Termination of parental rights |
| <input type="checkbox"/> Venue | <input checked="" type="checkbox"/> Grant/Denial of injunction or TRO |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile matters |

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

This is an appeal of a grant of injunctive and declaratory relief regarding the Nevada Secretary of State's interpretation of N.R.S. 304.240, the statute setting out the procedures for nomination of candidates at special elections to fill vacancies in Nevada's congressional delegation. Below, the First Judicial District, the Hon. J. Russell, ruled in favor of Plaintiffs, and Defendant and Defendant-in-Intervention here appeal.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Was it correct—or, at the very least, reasonable—for the Secretary of State to interpret N.R.S. 304.240(1) in accordance with its plain language, to allow a candidate of a major political party to be nominated by filing a declaration or acceptance of candidacy?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

- Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- An issue arising under the United States and/or Nevada Constitutions
- A substantial issue of first impression
- An issue of public policy
- An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- A ballot question

If so, explain:

13. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? _____

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appeal from** May 23, 2011.
Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which this appeal is taken.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

16. **Date written notice of entry of judgment or order served** May 23, 2011 (faxed on 5/23/11).
Attach a copy, including proof of service, for each order or judgment appealed from.

Was service by:

- Delivery
- Mail

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- NRCP 50(b) Date served _____ By delivery or by mail Date of filing _____
- NRCP 52(b) Date served _____ By delivery or by mail Date of filing _____
- NRCP 59 Date served _____ By delivery or by mail Date of filing _____

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion _____.

Attach a copy.

(c) Date written notice of entry of order resolving tolling motion served _____.

Attach a copy, including proof of service.

Was service by:

- Delivery
- Mail

18. Date notice of appeal filed May 23, 2011

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Nevada Secretary of State filed Notice of Appeal on May 24, 2011.

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other NRAP4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

- NRAP 3A(b)(1) NRS 155.190 (specify subsection) _____
 NRAP 3A(b)(2) NRS 38.205 (specify subsection) _____
 NRAP 3A(b)(3) NRS 703.376
 Other (specify) _____

Explain how each authority provides a basis for appeal from the judgment or order:

The district court entered a final order granting Plaintiffs' request for injunctive and declaratory relief. Therefore the order is a final judgment appealable pursuant to NRAP 3A(b)(1) and it is also an order granting an injunction appealable pursuant to NRAP 3A(b)(3).

COMPLETE THE FOLLOWING SECTION ONLY IF MORE THAN ONE CLAIM FOR RELIEF WAS PRESENTED IN THE ACTION (WHETHER AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM) OR IF MULTIPLE PARTIES WERE INVOLVED IN THE ACTION.

Attach separate sheets as necessary.

21. List all parties involved in the action in the district court:

Nevada Republican Party, Plaintiff
David Buell, Plaintiff
Secretary of State Ross Miller, Defendant
Nevada State Democratic Party, Intervenor-Defendant

If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (i.e., order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.

Plaintiffs Nevada Republican Party and David Buell: Injunctive relief - Granted by order; Declaratory relief - Granted by order

Defendant Secretary of State asserted no cross claims or counter claims

Defendant-Intervenor Nevada State Democratic Party asserted no cross claims or counter claims.

23. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below?

- Yes
 No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

If "Yes", attach a copy of the certification or order, including any notice of entry and proof of service.

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes

No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nevada State Democratic Party

Name of appellant

June 2, 2011

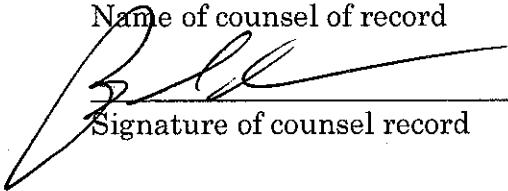
Date

Nevada, Clark County

State and county where signed

Bradley Scott Schrager, Esq.

Name of counsel of record



Signature of counsel record

CERTIFICATE OF SERVICE

I certify that on the 2nd day of June, 2011, I served a copy of this completed docketing statement upon all counsel of record:

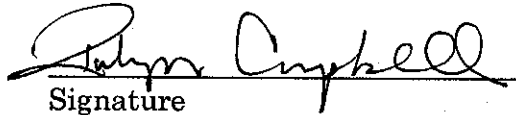
- By personally serving it upon him/her; or
- By Emailing it to the following addresses:
- By mailing it by first class mail with sufficient postage prepaid to the following address(es):

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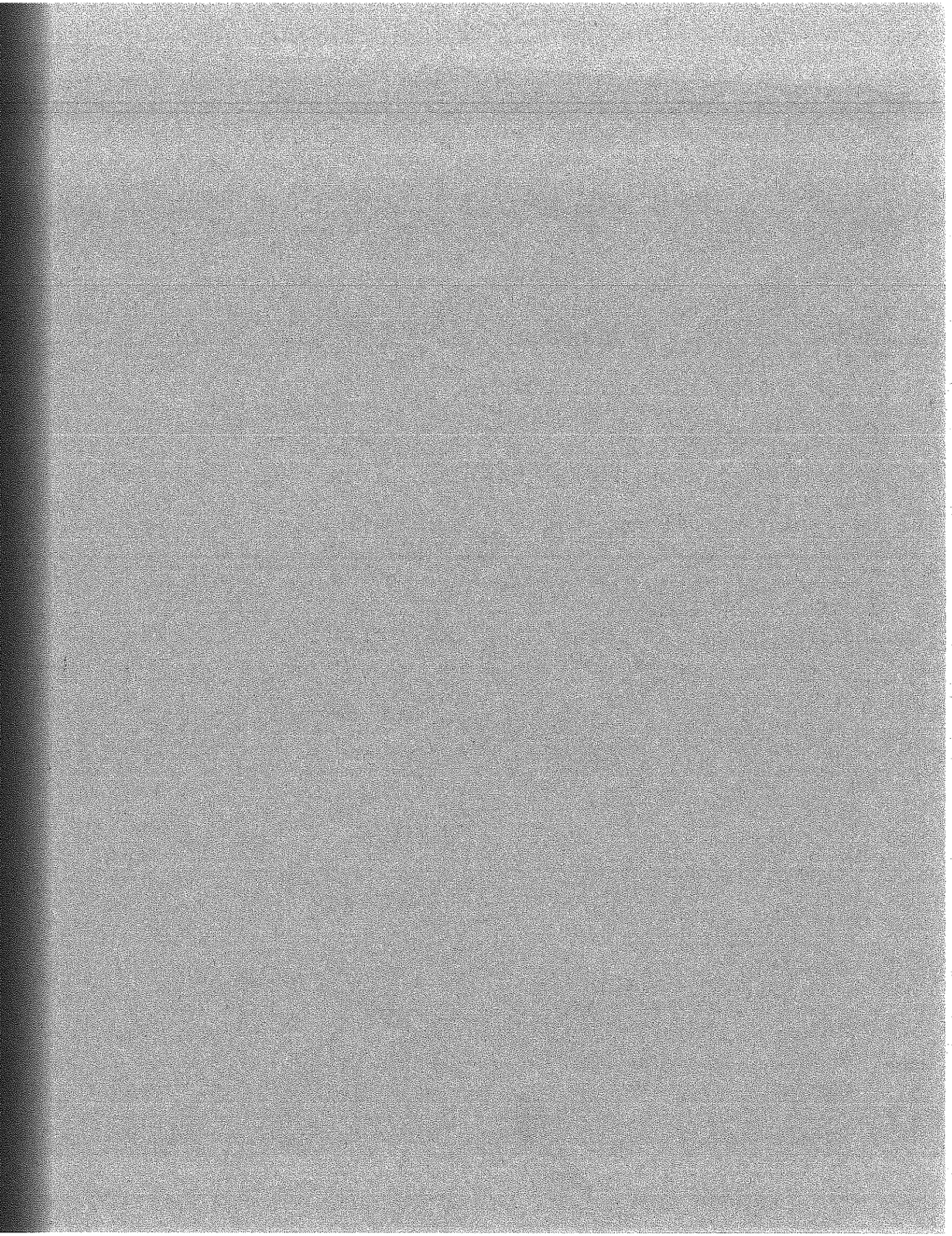
Dated this 2nd day of June, 2011.


Signature

2. Additional Attorneys filing this docketing statement:

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ALAN GLOVER
BY Alan Glover CLERK
DEPUTY

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

9	NEVADA REPUBLICAN PARTY, and)	
	DAVID BUELL, an INDIVIDUAL,)	
10)	FINDINGS OF FACT, CONCLUSIONS
	Plaintiffs,)	OF LAW AND ORDER
11)	
	vs.)	
12)	
	STATE OF NEVADA, SECRETARY OF)	
13	STATE ROSS MILLER)	
)	
14	Defendants.)	

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

22 On May 12, 2011, Defendant, Ross Miller, Secretary of State
23 ("State/Defendant") filed an opposition to Plaintiffs' application.
24 Additionally, on the same day, the Nevada State Democratic Party
25 ("NSDP/Intervenor") filed a motion to intervene, and Answer, and an
26 opposition to Plaintiffs' application. Plaintiffs' acknowledged
27 that they do not object to NSDP's motion to intervene and thus,
28 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 Schragger, 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.

12 ///

13 ///

14 ///

15 ///

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17 ///

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24 ///

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
27 a 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

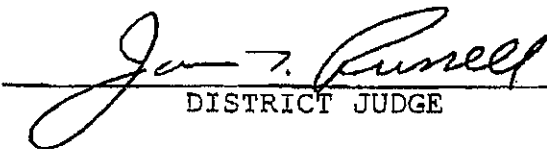
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DISTRICT JUDGE

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

Catherine Cortez Masto, Esq.
Nevada Attorney General
100 N. Carson Street
Carson City Nevada
775.684.1108

Bradley Scott Schragar
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702.737.7705

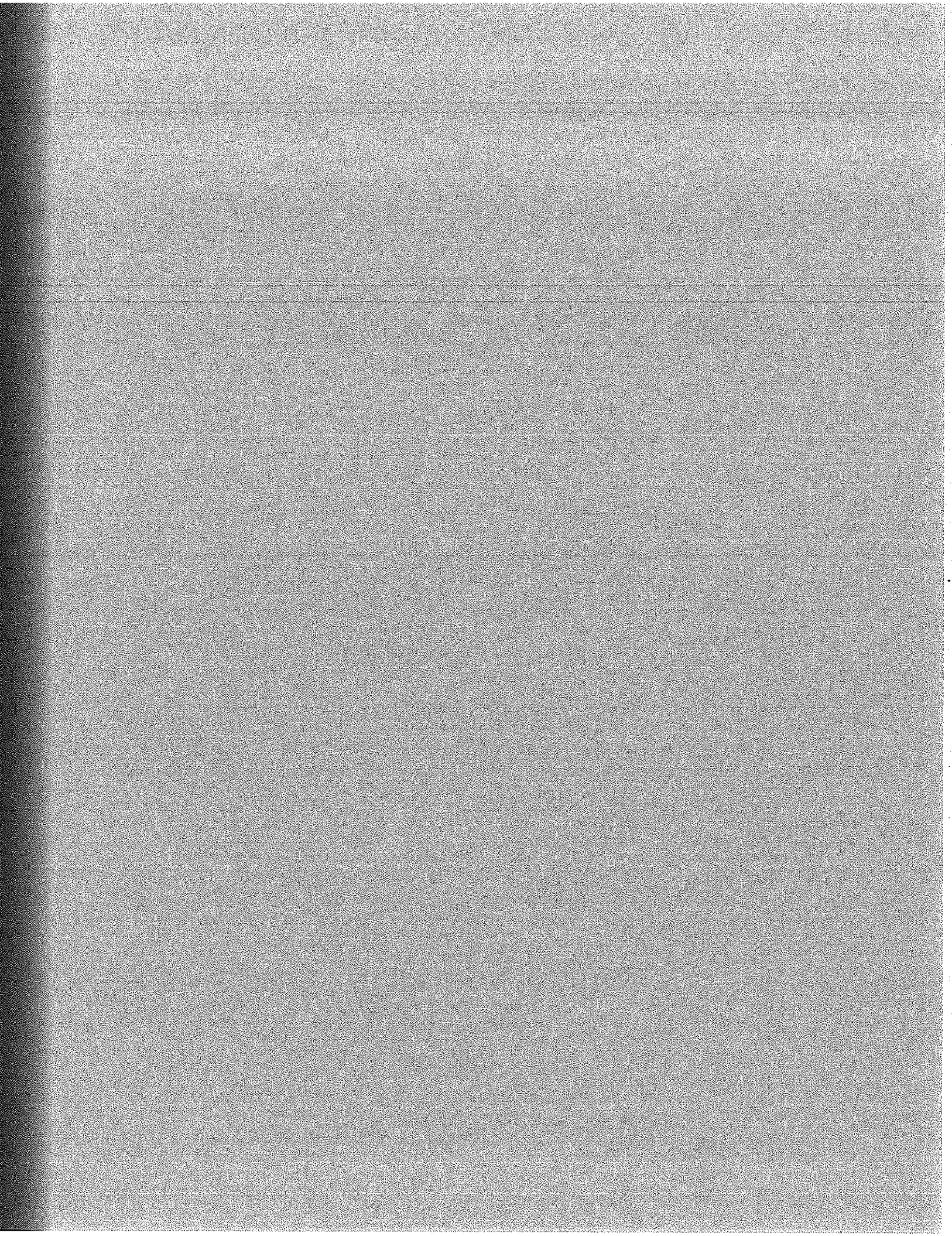
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Reno, NV 89501

DATED: May 23, 2011.





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Attorneys for Plaintiffs

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

NEVADA REPUBLICAN PARTY, and)
DAVID BUELL, an individual.)
Plaintiff,)
vs.)
STATE OF NEVADA, SECRETARY OF)
STATE ROSS MILLER)
Defendant.)

Case No. 1100 00147 1B
Dept No. 7

VERIFIED COMPLAINT

COMES NOW, Plaintiff, the Nevada Republican Party, ("Plaintiff" and/or "NRP") by and through its counsel, The O'Mara Law Firm, P.C., through David C. O'Mara, Esq., and Parson, Behle & Latimer, through Rew Goodenow, Esq, and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Nevada Republican Party, is and at all times relevant hereto, is a qualified major part pursuant to NRS 293.128. At all times mentioned hereto, members of Plaintiff's organization

1 reside within each and ever County of the State of Nevada,
2 including within the Nevada's 2nd Congressional District.

3 2. Plaintiff, David Buell, individually, and as a properly
4 elected member of the Nevada Republican Party Central Committee, is
5 and at all times a resident of the County of Washoe, State of
6 Nevada.

7 3. Defendant, Secretary of State Ross Miller, ("Defendant"
8 and/or "SOS"), is, and at all times relevant hereto, was the duly
9 elected Secretary of State of Nevada. In his capacity as the State
10 of Nevada's chief elections officer, the Secretary of State must
11 obtain and maintain consistency in the application, operational and
12 interpretation of Nevada's election laws.

13 4. This action is brought pursuant to the Uniform
14 Declaratory Judgments Act, specifically NRS 30.040, for the purpose
15 of requesting the Court to construe a statute and the rules and
16 regulations set forth by the Secretary of State, as well as other
17 claims for relief. Jurisdiction and venue are proper in this Court
18 under NRS 30.030.

19 5. The true names and capacities, whether individual,
20 corporate, partnership, association, or otherwise of the Defendant
21 named herein as DOES I through X, inclusive, are unknown to
22 Plaintiff at this time, who therefore sues said Defendant by
23 fictitious name and will ask leave of the Court to amend this
24 Complaint when the same are ascertained; said Defendant is sued as
25 a principal, and all of the acts performed by them are within the
26 course and scope of their authority of employment; Plaintiff is
27 informed and believes, and thereupon alleges, that the said
28 Defendant is legally responsible in some manner for the events and

1 happenings referred to herein, and directly and proximately caused
2 the damages and injuries to the Plaintiff as hereinafter alleged.

3 **FACTS**

4 6. The political party has a fundamental interest, under the
5 first and fourteenth amendment to the United States Constitution in
6 ensuring that party members have an effective role in determining
7 who will appear on a special election ballot as their candidate.

8 7. On or about May 2, 2011, the SOS announced rules and
9 regulations regarding the method of placing a candidate on the
10 ballot for a special election for the 2nd Congressional District
11 seat that is believed to become vacant when now Congressman Dean
12 Heller resigns his seat and is appointed as Nevada's Senator.

13 8. The rules were not promulgated in accordance with the
14 Nevada Administrative Procedures Act, NRS Chapter 2338.

15 9. The election of Nevada's representative to the U.S. House
16 of Representative is a partisan election and as such, the election
17 is contested by candidates nominated by political parties and
18 independent candidates.

19 10. A fundamental principle of Nevada's electoral statutes is
20 that in a partisan election there shall be only one nominee from
21 each political party.

22 11. Nevada law recognizes the difference between partisan and
23 non-partisan nomination for elections and such a recognition is in
24 accord with the long-established party political system which has
25 existed throughout most the history of the United States. A
26 political party's selection of nominees for an election plays a
27 crucial role in the electoral process, in which the nomination of

28

1 candidates by the major parties has been called the most critical
2 state of the electoral process.

3 12. Nevada's Legislature has expressed a strong preference
4 for conducting elections by the narrowing of the field of
5 candidates placed on the ballot in which all qualified Nevadan's
6 are entitled to vote. A similar, but distinct legislative policy
7 favors the meaningful participation of the political party system
8 and recognizes the importance of preserving the participation of
9 the major and minor political parties in the election process.

10 13. NRS 304.250 instructs the Secretary of State to adopt
11 regulations to implement NRS Chapter 304, the Secretary of State
12 has never done so, until now, and cannot do so for the current
13 special election without violating the Administrative Procedure Act

14 14. Nevada law provides as follows:

15 (a) NRS 304.240 provides

16 NRS 304.240. Issuance by Governor of election
17 proclamation precludes holding of primary election;
18 nomination of candidates; placement of names of
19 candidates on ballot; conduct of election; application of
20 general election laws; exception.

21 (1) If the Governor issues and election proclamation
22 calling for a special election pursuant to NRS 304.230,
23 no primary election may be held. Except as otherwise
24 provided in this subsection, a candidate must be
25 nominated in the manner provided in chapter 293 of NRS
26 and must file a declaration or acceptance of candidacy
27 within the time prescribed by the Secretary of State

28 15. NRS Chapter 293 requires a party nomination for each
major or minor party pursuant to NRS 293.165, NRS 293.167, NRS
293.175, and NRS 293.260.

()

**FIRST CLAIM FOR RELIEF
(Declaratory Relief)**

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3 16. Plaintiff reallege paragraphs 1 through 14 of the
4 Complaint as if set out in haec verba.

5 17. There exists a justiciable controversy concerning whether
6 the Secretary of State's interpretation of Nevada's election
7 statutes and the rules and regulations asserted conflict with, and
8 violate Nevada's election statutes.

9 18. The controversy concerning the effect of the Secretary of
10 State's rules and regulation as the rules and regulations do not
11 provide for the nomination process for a major and/or minor party
12 candidate to be nominated through its respective central committee
13 or executive committee.

14 19. Plaintiff NRP and Mr. Buell have a legally protectable
15 interest in the controversy at issue in this case, because NRP is a
16 major party and Mr. Buell is a Nevada resident within the 2nd
17 Congressional District and a member of the Nevada Republican
18 Party's central committee.

19 20. The controversy at issue is ripe for judicial
20 determination, because the Secretary of State's rule and regulation
21 allow for the acceptance of declarations and acceptance of
22 candidacy from individuals who do not qualify for the ballot for
23 the anticipated September 13, 2011, special election, and because
24 at this time, there is no special election and the Secretary of
25 State's actions are outside his authority.

26 21. Plaintiffs have been required to retain counsel and incur
27 expenses and costs for legal services, filing fees and research,
28

1 all of which could have been avoided by the Secretary of State
2 comply with Nevada Law.

3 22. The Secretary of State should be required to compensate
4 Plaintiffs for its costs incurred in prosecuting this action.

5 23. The Court may award Plaintiffs its costs under the
6 authority given to grant supplemental relief in NRS 30.100.

7 **SECOND CLAIM FOR RELIEF**
8 **(Injunctive Relief)**

9 24. Plaintiffs reallege paragraphs 1 through 24 of the
10 Complaint as if set out in haec verba.

11 25. Plaintiffs will sustain irreparable harm if the Court
12 does not enjoin the Secretary of State from placing the names of
13 candidates that have not been nominated in accordance with NRS
14 Chapter 293, on the special election ballot.

15 26. Plaintiffs have no other plain speedy or ordinary remedy
16 to obtain the relief they seek.

17 WHEREFORE, Plaintiff prays for judgment against Defendant, as
18 follows:

19 1. For Declaratory Relief.

20 2. Preliminary and permanent injunction preventing the
21 Secretary of State from placing names of candidates not nominated
22 pursuant to NRS 293 on the special election ballot and to extend
23 the timeframe for major party candidates to file their necessary
24 declarations or acceptance of candidacy forms.

25 3. Further relief as may be just, and

26 4. Attorneys fees and costs as an item of special damages
27 pursuant to the Uniform Declaratory Judgment Act, NRS Chapter 30.

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AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above referenced matter does not contain the social security number of any person.

DATED: May 4, 2011.

THE O'MARA LAW FIRM, P.C.



DAVID C. O'MARA, ESQ.

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VERIFICATION

STATE OF NEVADA)
 : ss
COUNTY OF WASHOE)

DAVID BUELL, being first duly sworn, deposes and says:

That I am the Plaintiff, and I have read the foregoing Verified Complaint, and know the contents thereof; that the same is true to the best of my knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe the same to be true.

I do hereby affirm the aforesaid under penalty of perjury.

David Buell
DAVID BUELL

SUBSCRIBED AND SWORN to before me
this 4th day of May, 2011.

David Almaraz
NOTARY PUBLIC