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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SHARRON ANGLE, an individual,)
WE THE PEOPLE, a Nevada Ballot Advocacy)
Group, and CITIZENS IN CHARGE,)
a National Foundation,)
)
Plaintiffs,)
vs.)
)
ROSS MILLER, in his official capacity)
as Secretary of State for the State of Nevada.)
)
Defendant.)
_____)

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
A VIOLATION OF THE FIRST, FIFTH
& FOURTEENTH AMENDMENTS
TO THE U.S. CONSTITUTION

SHARRON ANGLE, an individual, WE THE PEOPLE, a Nevada Ballot Advocacy
Groups, and CITIZENS IN CHARGE, a national foundation organized in the State of
Virginia hereafter will be referred to as the Plaintiffs. Through their attorney, KERMIT L.
WATERS, ESQ., the Plaintiffs file this Complaint against Ross Miller, the Defendant in
his capacity as the Secretary of State of Nevada and allege as follows:

PRELIMINARY STATEMENT

1. Nevada is one of twenty four states that allows her citizens to engage in “direct
democracy” through the initiative and referendum process. Through the initiative

1 process, private citizens propose changes to the Nevada Statutes or to the Nevada
2 Constitution. Through the referendum power, voters can remove or repeal a statute
3 that was passed by the Legislature.
4

5 2. The voters were first given the referendum power in 1905, and seven years later in
6 1912, they were given the power to propose initiative petitions. In the last 100 years,
7 since gaining the power to amend the Nevada Constitution, and of course while
8 sharing that same power with the Legislature, only 12 constitutional amendments
9 have passed.
10

11 3. The very first citizen sponsored initiative to pass was a Prohibition Statute in 1918. It
12 was approved by 59% of the voters. In the 1920's, the legislature and citizens
13 sponsored competing initiatives regarding the divorce laws. The initiative sponsored
14 by the legislature won approval by the voters. Since then, it seems that the
15 legislature and the people have been in a tug of war as to whose ballot questions
16 would gain greater public support.
17

18 4. In the 1950's, labor unions and business groups fought over initiatives that would
19 make Nevada a "right to work" state. Business fought back by instituting changes to
20 make it more difficult to qualify an initiative petition for the ballot. Business groups
21 pushed through a constitutional amendment to require the gathering of signatures in
22 13 of the 17 counties. In 1962, the legislature sponsored a constitutional
23 amendment requiring all constitutional amendments to be approved by a majority of
24 the voters at two successive elections. Nevada is the only state in the union
25 requiring constitutional amendments to be approved by the voters twice.
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28 5. In 1962, the legislature was successful in getting the voters to approve Article 19,

1 § 5 which states: “The provisions of this article are self-executing, but the legislature
2 may provide by law for procedures to facilitate the operation thereof.” Since this
3 power was given to the Nevada Legislature, almost all of the changes to propose
4 initiative petitions have been laws passed by the legislature to make it more difficult
5 for citizens to propose initiatives, rather than enhancing the procedures to facilitate
6 the operation thereof.
7

- 8
- 9 6. Despite these efforts by the legislature making it more difficult for citizens to propose
10 initiative petitions, in the last 15 years the citizens have successfully passed the
11 Gibbons Tax Restraint Initiative, a Term Limits Amendment to prevent politicians
12 from making a career of serving in public office, the Defense of Marriage
13 Amendment to limit marriages in Nevada to people of the opposite sex, and lastly,
14 the Property Owner’s Bill of Rights restricting the power of the government to use
15 eminent domain.
16
- 17 7. In response, in 2005, the legislature has passed NRS 295.009 limiting initiative
18 petitions to a single subject.
- 19 8. In 2007, after being told by the Ninth Circuit that the 13 County Rule of Article 19 of
20 the Nevada Constitution violated the Equal Protection Clause of the Fourteenth
21 Amendment, the legislature responded by requiring signatures to be gathered in all
22 17 counties of Nevada. Just as the 9th Circuit in *ACLU v. Lomax*, 471 F. 3d 1010 (9th
23 *Cir.* 2006) held that the 13 County Rule was unconstitutional, Judge Phil Pro of
24 Nevada also ruled that the 17 County Rule was unconstitutional in *MPP v. Miller*, 578
25 *F. Supp. 3d 2d 1290 (D. Nev. 2008)*. In response to the Federal Judge’s ruling, the
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1 Nevada Legislature passed Senate Bill 212 requiring a certain percentage of
2 signatures in “all” of the congressional districts in the state.

3
4 9. In 2007, the legislature passed a new bill requiring an affidavit of circulator to be filed
5 by the circulators of an initiative petition. See NRS 295.0575. The affidavit requires
6 the circulator to rely on hearsay, since the circulator must rely on the oral statement
7 of the people who sign the petition as to whether they are United States Citizens or
8 even registered to vote. In the 2008 election cycle, after submitting the necessary
9 signatures on three initiative petitions, the Secretary of State disqualified the initiative
10 petitions, because the circulators had used the wrong affidavit, even though the
11 affidavit had come from the Secretary of State’s own website. The Secretary of State
12 warns circulators not to rely on the accuracy of the information posted on their
13 website.
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16 **JURISDICTION AND VENUE**

17 10. The Plaintiffs bring this action for Declaratory and Injunctive relief pursuant to 28
18 USC § 2201 and 42 USC § 1983 requesting this Honorable Court to declare Nevada
19 Revised Statute (NRS) NRS 295.0575 and Nevada Administrative Code 295.020 to be
20 in violation of the First, Fifth and Fourteenth Amendments of the United States
21 Constitution and to enjoin the statute’s enforcement by the State of Nevada.

22 11. Because this cause of action is based upon a federal constitutional claim, this
23 Court has jurisdiction pursuant to 28 USC §§1331, 1343(a)(3), (a)(4) and 1367(a).

24 12. Venue is proper in the District of Nevada pursuant to 28 USC §1391.

25 13. Because this cause of action involves no claim for damages, but only a request
26 for declaratory and prospective injunctive relief, the Eleventh Amendment does not bar
27 this civil action. See, *Culinary Workers Union v. Del Papa*, 200 F. 3rd 614, 619 (9th Cir.
28 1999).

1 14. Because these statutes have already harmed protected speech and continues to
2 affect the political speech of these parties, a case and controversy exists for which the
3 Plaintiffs have standing to bring this civil action. See *SOC v. County of Clark*, 152 F. 3rd
4 1136, 1143 (9th Cir. 1998) amended 160 F. 3rd 541 (9th Cir. 1998).

5 **THE PARTIES**

6 15. Plaintiff Sharron Angle is the Chairwoman of the We the People. Sharron Angle
7 organized We the People in 2004 for the purpose of sponsoring an initiative petition to try
8 to persuade Nevada voters to keep the Nevada Legislature from passing higher property
9 taxes. We the People attempted to propose ballot initiatives in the 2004, 2006 and 2008
10 election cycle. In 2004, We the People was not able to qualify their initiative for the
11 ballot, as they started gathering signatures only sixty days before the deadline, and they
12 did not gather enough signatures. In 2006 and 2008, they were sued pursuant to
13 Nevada Revised Statutes 295.009 and 295.061, and because of the delays caused by
14 those lawsuits, they never had enough time to gather sufficient signatures to qualify their
15 initiative for the ballot. In 2008, after being delayed by the state courts for five (5)
16 months, We the People submitted signatures, only to have a judge disqualify their
17 initiative petitions, because the signatures were bound incorrectly.

18 16. We the People has been an organization with a shoe string budget and has relied
19 heavily upon the work of citizen volunteers, many who are veterans of grass roots
20 political campaigns in Nevada. Many of these volunteers helped Sharron Angle get
21 elected to the state legislature and were instrumental in her race for Congress in 2006
22 where she came within 600 votes of being chosen as the Republican nominee. The
23 Republican nominee went on to win the race for Congress.

24 17. Although Sharron Angle and the citizens of We the People would like to circulate
25 their initiative petition in this current election cycle, they are afraid to do so, because of
26 the precedent of criminal prosecution of circulators in Oklahoma over technical violations
27 of the election laws of that state. The plaintiffs believe the state will do the same in
28 Nevada. The citizens of We the People are afraid that because of the hostility shown to

1 any initiative petition proposed by the citizens, that they too could be subject to criminal
2 prosecution. Specifically, Sharron Angle is afraid that the Attorney General and or the
3 District Attorney will prosecute their circulators who “verify” that a citizen swore that they
4 were a registered voter or a United States Citizen, if in fact they were not. If a circulator
5 does not sign the verification form attached to the gathered signatures, which must be
6 signed under penalty of perjury, the Secretary of State will not accept the signatures
7 submitted in support of the initiative petition. This “mandatory affidavit of the initiative
8 circulator rule” is found at Nevada Revised Statute, hereinafter, (NRS) 295.0575 and
9 NAC 295.020

10 18 Historically, almost 25% of the signatures submitted are of persons who in fact are
11 not registered voters.

12 19. CITIZENS IN CHARGE is a national foundation based in Virginia. Citizens in
13 Charge works with activists, legislators, media, opinion leaders and voters to protect the
14 initiative and referendum process where it exists in 24 states and to expand the process
15 to the 26 states where voters currently lack the initiative. Citizens in Charge works to
16 educate the public on the benefits of citizen initiative, referendum and recall and also
17 litigates to protect and expand those rights. Citizens in Charge provided almost half the
18 funding to gather signatures for the Nevada Property Owners’ Bill of Rights which
19 became Question 2 on the 2006 and 2008 Nevada Ballot. They also intend to help
20 circulate initiative petitions in Nevada for the 2010 election cycle.
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22

23 **FACTUAL ALLEGATIONS**

24 20. Plaintiffs enjoy the First and Fourteenth Amendment rights to peaceably assemble
25 and engage in free speech by proposing initiative petitions to change the law. The State
26 of Nevada has imposed additional burdens on these First Amendment rights by requiring
27 a mandatory Affidavit of the Circulator which must be signed in front of a notary and also
28

1 must be signed under penalty of perjury, and the circulator is basing their affidavit based
2 on the oral statements of the people who sign the petition.

3
4 21. The Secretary of State will not accept for circulation any initiative with signatures
5 gathered unless the circulator “swears” under penalty of perjury that all the signers were
6 in fact registered voters in the County where the registered voters claims they live. The
7 acts and practices of the Defendant and his agents, are performed under color of state
8 law, and therefore constitute actions of the state within the meaning of the Fourteenth
9 Amendment to the United States Constitution and 42 USC 1983.

10
11 22 NRS 295.0575 and Nevada Administrative Code (NAC) 295.020 provide that any
12 person submitting signatures to the Secretary of State must fill in the number of
13 signatures on the petition. NAC 295.020, a regulation created by the Secretary of State,
14 further requires that the circulator must sign this same mandatory Affidavit form. This
15 mandatory form requires the circulator to sign under penalty of perjury and it must be
16 notarized.
17

18 23 Furthermore, the mandatory form requires the circulator to sign under penalty of
19 perjury that he believes that all of the signatures they are submitting are of registered
20 voters in the county of the voter’s residence. There are no reasonable, practical or
21 economical ways for a circulator to know, while gathering signatures in the field, whether
22 or not, a person signing the initiative petition is in fact a registered voter in that county.

23
24 24. The Plaintiffs and the We the People volunteers have encountered resistance by
25 their petition circulators who are entirely a volunteer force. The circulators are “chilled”
26 and afraid of signing these affidavits. They are worried, because they might unknowingly
27 allow individuals to sign who are not registered voters in Nevada, since there is no
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1 practical way to verify the voter's status while working in the field. They are chilled
2 because they are aware of the fact that the 112,000 signatures gathered by another
3 group in 2008 were thrown out, because the circulators used the wrong affidavit form.

4 They are chilled because they are aware that the signatures gathered by We the People
5 were not counted, because the signatures were not bundled as the Secretary of State
6 wanted.

7
8 25. As volunteers, they are aware that the Secretary of State is requiring strict
9 compliance with the signature and affidavit requirements, rather than substantial
10 compliance and they do not want to have their signatures tossed out, nor do they want to
11 have problems with criminal prosecutions. They are aware that one of their co-plaintiffs,
12 Paul Jacob of Citizens in Charge, was indicted criminally in Oklahoma for a conspiracy to
13 violate the election laws that require a similar affidavit that all signature gatherers are in
14 fact residents of Oklahoma.

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17 26. The circulators for We the People understand that even though they can accept
18 signatures from registered voters, statistically, over 25% of the signatures gathered will
19 be from individuals who are not validly registered. These circulators are chilled because
20 NRS 199.120 warns that individuals who sign an affidavit under penalty of perjury can be
21 prosecuted for perjury, if they affirm a fact, yet know that it is impossible for that fact to
22 be true for all the signatures. Although the circulators cannot determine which individual
23 signatures may not be from registered voters, statistically, they are aware that a large
24 number will in fact not be registered voters. The circulators for We the People are
25 chilled, because the hearsay affidavit required by NRS 295.0575 and NAC 295.020 in
26 essence is requiring them to commit subornation of perjury.
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1 27. Paul Jacob and Citizens in Charge also want to circulate initiative petitions in
2 Nevada for the 2010 election cycle, but are also afraid of criminal prosecution. Because
3 of their experience in Oklahoma in the past, these plaintiffs are afraid that the same thing
4 can happen to them here, if any of the affidavits contain the signatures of voters who are
5 registered at the wrong address, or mention the wrong congressional district, or are not
6 in fact residents of Nevada or even United States Citizens.
7

8 **FIRST CLAIM FOR RELIEF**

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10 **42 U.S. C. § 1983/First, Fifth, and Fourteenth Amendment**
11 **(NRS 295.0575 and Nevada Administrative Code 295.020)**

12 Plaintiffs repeat and re-allege each and every allegation contained in the foregoing
13 paragraphs as if the same were fully set forth at length herein.

14 27. The affidavit required by NRS 295.0575 and NAC 295.020 violates the First and
15 Fourteenth Amendment in that it chills free speech.
16

17 28. The affidavit required by NRS 295.0575 and NAC 295.020 violates the Fifth and
18 Fourteenth Amendment because it potentially requires the affidavit circulator to
19 “incriminate” themselves in order to exercise their right to circulate a petition.
20

21 29. The plaintiffs, Citizens in Charge and the We the People circulators have no plain,
22 adequate or speedy remedy at law for such deprivation of their rights. By reasons of the
23 foregoing, Defendant Ross Miller, acting under color of state law, is depriving plaintiffs of
24 the rights, privileges, and immunities secured to them under the First, Fifth and
25 Fourteenth Amendments to the United States Constitution.
26

27 30. The Plaintiffs will suffer irreparable harm and injury if the Secretary of State is not
28 enjoined from enforcing NRS 295.0575 and NAC 295.020. The Secretary of State

1 mandates that no initiative petition with signatures will be counted unless the
2 constitutionally infirm affidavit is included.

3 31. There is an actual controversy between the parties. A substantial loss or
4 impairment of freedom of expression has already occurred and will continue to occur as
5 long as Defendant's enforcement of NRS 295.0575 and Nevada Administrative Code
6 295.020 continue.

7
8 32. Any other remedy to which Plaintiffs might receive would be attended by such
9 uncertainties and delays as to deny substantial relief, involve a multiple lawsuits, and
10 cause further irreparable injury, damage, and inconvenience to the Plaintiffs and to those
11 similarly situated. The award of damages is not adequate to protect them from the
12 continuing abuse of the state judicial process and the "chilling effect" it has upon the
13 exercise of Plaintiff's constitutional rights.
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17 **SECOND CLAIM FOR RELIEF**
18 **42 U.S.C § 1983/First Amendment "chilling core political speech"**
19 **NRS 295.0575 and NAC 295.020**
20 **The Mandatory Affidavit of Initiative Circulator Rule**

21 33. Plaintiffs repeat and re-allege each and every allegation contained in the
22 foregoing paragraphs as if the same were fully set forth at length herein.

23 34. The Mandatory Affidavit of the Initiative Petition Circulator as required by NRS
24 295.0575 and NAC 295.020 severely impacts the power of the people to initiate
25 legislation by initiative petition and thereby burdens the right to vote. The right of the
26 citizens to circulate an initiative petition is core political speech and is a severe burden
27 on their ability to exercise their free speech rights.
28

1 35. The denial or abridgement of the right of any citizen to vote is subject to exacting
2 scrutiny.

3 36. When a state's rule imposes severe burdens on requirements for certifying ballot
4 initiatives, those restrictions must be narrowly tailored to serve a compelling state
5 interest.

6 37. Defendant Miller cannot show that there is a compelling state interest in requiring
7 these affidavits, especially since the county registrars independently verify the signatures
8 of the registered voters and do their own independent count.

9 38. By reason of the foregoing, Defendant Miller, acting under color of state law, has
10 deprived Plaintiffs of the rights, privileges, and immunities secured to them under the
11 First and Fourteenth Amendment to the United States Constitution, specifically the right
12 to Free Speech, specifically, core political speech, the right to freedom of association,
13 and the right to petition the government for a redress of grievances.

14 39. Plaintiffs have no plain, adequate, or speedy remedy at law for such deprivation of
15 their rights, privileges and immunities.

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19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs respectfully pray that this Court:

- 21
- 22 a. Assume jurisdiction over this action.
 - 23 b. Declare that NRS 295.0575 and NAC 295.020, the Mandatory Affidavit of the
24 Initiative Circulator Rule, is unconstitutional on its face and violates the rights
25 of the Plaintiffs by abridging their First Amendment right of free speech and the
26 right to petition the government contrary to the First and Fourteenth
27 Amendments to the United States Constitution.
- 28

- 1 c. Declare that NRS 295.0575 and NAC 295.020, the Mandatory Affidavit of the
2 Initiative Circulator Rule, is unconstitutional and violates the Fifth and
3 Fourteenth Amendment Self Incrimination Clause to the United States
4 Constitution.
5
6 d. Enter a preliminary and permanent injunction against Defendant Ross Miller,
7 their successors and assigns, and all persons acting in concert therewith and
8 all persons subject to Federal Rule of Civil Procedure 65”s scope from
9 enforcing the above statutes and removing the proposed initiative on their face
10 and as applied.
11
12 e. Grant leave to amend the pleadings to add additional parties if this Court later
13 deems are necessary for complete relief.
14
15 f. Award Plaintiffs’ attorney’s fees, costs, and such other and further relief as
16 may be just and equitable.
17
18 g. Order such additional relief as the Court may deem just and proper.

18 DATED: October 12, 2009

19
20 By: _____
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