

1 CASE NO.: 11 000042 1B

2 DEPT. NO.: I

REC'D & FILED

2011 FEB 24 AM 9:06

ALAN OVER

BY MALE CLERK  
DEPUTY

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

7 DORA J. GUY, an individual; LEONEL  
8 MURRIETA-SERNA, an individual;  
9 EDITH LOU BYRD, an individual; and  
SAMANTHA STEELMAN; an individual,

10 Plaintiffs,

11 v.

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

13 Defendant.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

15 Plaintiffs DORA J. GUY, LEONEL MURRIETA-SERNA, EDITH LOU BYRD, and  
16 SAMANTHA STEELMAN allege the following facts and make the following claims against  
17 Defendant ROSS MILLER (the "Secretary of State" or the "Secretary"):

18 INTRODUCTION

19 1. Plaintiffs bring the present action pursuant to N.R.S. 30.030 and 33.010 to challenge the  
20 validity of Nevada's current Senate, Assembly, and Congressional districts (collectively,  
21 "Legislative and Congressional districts") on grounds that they contravene the Nevada and United  
22 States Constitutions.

23 2. Plaintiffs seek a declaration that the current Legislative and Congressional districts are  
24 invalid and an injunction prohibiting the Secretary of State from calling, holding, supervising, or  
25 taking any action regarding Senate, Assembly, or Congressional elections based on the current  
26 Legislative and Congressional districts.  
27  
28

PARTIES

3. Plaintiff Dora J. Guy is a United States citizen and registered voter in the State of Nevada. She resides in Sparks, Nevada in Washoe County. Under the current Legislative and Congressional redistricting plans, she resides in Senate District 2, Assembly District 32, and Congressional District 2.

4. Plaintiff Leonel Murrieta-Serna is a United States citizen and registered voter in the State of Nevada. He resides in North Las Vegas, Nevada in Clark County. Under the current Legislative and Congressional redistricting plans, he resides in Senate District 4, Assembly District 17, and Congressional District 1.

5. Plaintiff Edith Lou Byrd is a United States citizen and registered voter in the State of Nevada. She resides in Las Vegas, Nevada in Clark County. Under the current Legislative and Congressional redistricting plans, she resides in Senate District 8, Assembly District 13, and Congressional District 1.

6. Plaintiff Samantha Steelman is a United States citizen and registered voter in the State of Nevada. She resides in Las Vegas, Nevada in Clark County. Under the current Legislative and Congressional redistricting plans, she resides in Senate District 9, Assembly District 22, and Congressional District 3.

7. Plaintiffs have been and continue to be denied equal protection of the laws and fair representation in the Nevada Legislature and the United States House of Representatives, as further alleged below.

8. Defendant Ross Miller is the Secretary of State for the State of Nevada. In his official capacity, Secretary of State Miller is the chief elections officer for the State of Nevada and is charged with administering and enforcing Nevada election laws. The Secretary's duties include prescribing the list of all statewide offices and candidates on the ballots, accepting declarations and certificates of candidacy from candidates for certain public offices, issuing regulations and interpretations concerning Nevada election laws, receiving and canvassing election returns, and other duties necessary for the conduct of primary and general elections in the State of Nevada.

### JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to Article 6, Section 6 of the Nevada Constitution and has authority to grant declaratory and injunctive relief pursuant to N.R.S. 30.030 and 33.010, respectively. This Court also has jurisdiction to address Plaintiffs' claims regarding violation of the United States Constitution pursuant to 42 U.S.C. §§ 1983 and 1988.

10. Venue in the First Judicial District Court in Carson City, Nevada is proper pursuant to N.R.S. 13.020(2) and N.R.S. 13.040, as the cause of action arose in Carson City, where the Elections Division of the Office of the Secretary of State is located, the Secretary exercises his duties as chief elections officer, and certain Legislative and Congressional districts remain in effect in contravention of the Nevada and United States Constitutions.

**FIRST CLAIM FOR RELIEF**

## Legislative Districts: Violation of the Nevada Constitution

11. Plaintiffs restate and incorporate by reference the allegations of paragraphs 1 through 10 above as though fully set forth herein.

12. Nevada's current Legislative districts were established by the Nevada Legislature in 2001 based on the results of the 2000 Census. Nevada's current Senate districts are set forth in N.R.S. 218B.300-.390, and Nevada's current Assembly districts are set forth in N.R.S. 218B.600-.805.

13. The results of the 2000 Census revealed that, as of April 1, 2000, the population of Nevada was 1,998,257. The 2001 redistricting legislation drew district lines for 21 Senate seats and included 19 single-member Senate districts with an overall range of deviation of 9.91 percent from the ideal population of 95,155. The 2001 redistricting legislation also drew 42 Assembly districts with an overall range of deviation of 1.97 percent from the ideal population of 47,578 per district.

14. Based on the results of the 2010 Census, the population of Nevada as of April 1, 2010 was 2,700,551.

15. The population increase in Nevada has caused several Nevada Senate and Assembly districts (collectively, "Legislative districts"), including Senate District 9, Assembly District 13, and other Legislative districts in which Plaintiffs reside, to become overpopulated relative to others.

1 16. On February 24, 2011, the United States Census Bureau released the redistricting data for  
2 the State of Nevada. This data confirms that several Legislative districts, including those in which  
3 Plaintiffs reside, are overpopulated. The 2010 redistricting data for the State of Nevada is or will  
4 be made available at [http://www.census.gov/rdo/data/2010\\_census\\_redistricting\\_data\\_pl\\_94-](http://www.census.gov/rdo/data/2010_census_redistricting_data_pl_94-171_summary_files.html)  
5 [171\\_summary\\_files.html](http://www.census.gov/rdo/data/2010_census_redistricting_data_pl_94-171_summary_files.html).

6 17. Nevada's regular Legislative session is scheduled to end on June 6, 2011.

7 18. Article 1, Section 13 of the Nevada Constitution provides: "Representation shall be  
8 apportioned according to population."

9 19. Article 4, Section 5 of the Nevada Constitution provides in relevant part:

10 It shall be the mandatory duty of the legislature at its first session  
11 after the taking of the decennial census of the United States in the  
12 year 1950, and after each subsequent decennial census, to fix by law  
13 the number of senators and assemblymen, and apportion them  
14 among the several counties of the state, or among legislative  
15 districts which may be established by law, according to the number  
16 of inhabitants in them, respectively.

17 20. Article 15, Section 13 of the Nevada Constitution provides in relevant part:

18 The enumeration of the inhabitants of this State shall be taken under  
19 the direction of the Legislature if deemed necessary . . . ; and these  
20 enumerations, together with the census that may be taken under the  
21 direction of the Congress of the United States . . . shall serve as the  
22 basis of representation in both houses of the Legislature.

23 21. Article 4, Section 21 of the Nevada Constitution provides that "all laws shall be general  
24 and of uniform operation throughout the State."

25 22. Article 1, Section 1 of the Nevada Constitution provides: "All men are by Nature free and  
26 equal and have certain inalienable rights among which are those of enjoying and defending life  
27 and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and  
28 happiness[.]"

23 23. Article 1, Section 8(5) of the Nevada Constitution provides: "No person shall be deprived  
24 of life, liberty, or property, without due process of law."

25 24. The above provisions of the Nevada Constitution require that Nevada's Legislative  
26 districts be apportioned according to the state population, as derived from the 2010 United States  
27 Census, thereby guaranteeing to Nevada residents the creation of Legislative districts of equal  
28

1 population so that votes for state senators and assemblymen cast in different Legislative districts  
2 are given equal weight.

3 25. The above provisions of the Nevada Constitution further guarantee that Nevada voters  
4 have a fair and equal opportunity to cast a meaningful ballot for state senators and assemblymen,  
5 regardless of the Legislative districts in which voters reside, and that voters in more highly  
6 populated Legislative districts will not be subject to unlawful discrimination.

7 26. The Legislative redistricting plan set forth in N.R.S. 218B.300-.390 and N.R.S. 218B.600-  
8 .805 deprives Plaintiffs and all similarly situated individuals of such rights guaranteed by the  
9 Nevada Constitution.

10 27. As a result of the malapportionment of Nevada's Legislative districts, Plaintiffs' votes for  
11 state senators and assemblymen are being diluted.

12 28. It is necessary for the Court to prepare to order, and, given the short time frame between  
13 the United States Census Bureau's release of Nevada's redistricting data on February 24, 2011 and  
14 the end of the regular Legislative session on June 6, 2011 and further factors, which preclude a  
15 redistricting plan comporting with constitutional principles from being enacted in a timely  
16 manner, to order a redistricting plan reapportioning the Nevada Senate and Assembly in  
17 accordance with the Nevada Constitution.

18 29. On information and belief, absent enactment of a new Legislative redistricting plan by the  
19 Nevada Legislature and Governor or an injunction by this Court, the Secretary of State intends to  
20 and will conduct primary and general elections for the Nevada Legislature on the basis of the  
21 Legislative districts set forth in N.R.S. 218B.300-.390 and N.R.S. 218B.600-.805.

22 30. Plaintiffs intend to and will vote in the state primary and general elections to be held in  
23 2012 and thereafter for candidates for the Nevada Senate and Nevada Assembly. If those  
24 elections are conducted by the Secretary of State on the basis of the Legislative districts set forth  
25 in N.R.S. 218B.300-.390 and N.R.S. 218B.600-.805, Plaintiffs and all similarly situated Nevada  
26 voters in overpopulated Legislative districts will be further deprived of rights guaranteed in the  
27 Nevada Constitution.

1 31. The failure to apportion Legislative districts as required by the Nevada Constitution will  
2 cause the Secretary of State to violate Plaintiffs' rights under the Nevada Constitution and the  
3 constitutional rights of all other similarly situated Nevada residents.

4 **SECOND CLAIM FOR RELIEF**

5 **Legislative Districts: Violation of the United States Constitution**

6 32. Plaintiffs restate and incorporate by reference the allegations of paragraphs 1 through 31  
7 above as though fully set forth herein.

8 33. The Fourteenth Amendment of Section 1 of the United States Constitution provides in  
9 relevant part:

10 No State shall make or enforce any law which shall abridge the  
11 privileges or immunities of citizens of the United States; nor shall  
12 any State deprive any person of life, liberty, or property, without due  
process of law; nor deny to any person within its jurisdiction the  
equal protection of the laws.

13 34. The Fifth Amendment of the United States Constitution provides in relevant part: "No  
14 person shall . . . be deprived of life, liberty, or property, without due process of law."

15 35. The above provisions of the United States Constitution guarantee that Nevada voters have  
16 a fair and equal opportunity to cast a meaningful ballot for state senators and assemblymen,  
17 regardless of the Legislative districts in which voters reside, and that voters in more highly  
18 populated Legislative districts will not be subject to unlawful discrimination.

19 36. As set forth in paragraphs 12 through 16 above, Nevada's current Legislative districts set  
20 forth in N.R.S. 218B.300-.390 and N.R.S. 218B.600-.805 are not properly apportioned according  
21 to the population of Nevada, unlawfully discriminating against Plaintiffs and other similarly  
22 situated individuals.

23 37. The Legislative redistricting plan set forth in N.R.S. 218B.300-.390 and N.R.S. 218B.600-  
24 .805 deprives Plaintiffs and all similarly situated individuals of rights guaranteed to them under  
25 the United States Constitution.

26 38. As a result of the malapportionment of Nevada's Legislative districts, Plaintiffs' votes for  
27 state senators and assemblymen are being diluted.  
28

1 39. It is necessary for the Court to prepare to order, and, given the short time frame between  
2 the United States Census Bureau's release of Nevada's redistricting data on February 24, 2011 and  
3 the end of the regular Legislative session on June 6, 2011 and further factors, which preclude a  
4 redistricting plan comporting with constitutional principles from being enacted in a timely  
5 manner, to order a redistricting plan reapportioning the Nevada Senate and Assembly in  
6 accordance with the United States Constitution.

7 40. On information and belief, absent enactment of a new Legislative redistricting plan by the  
8 Nevada Legislature and Governor or an injunction by this Court, the Secretary of State intends to  
9 and will conduct primary and general elections for the Nevada Legislature on the basis of the  
10 Legislative districts set forth in N.R.S. 218B.300-.390 and N.R.S. 218B.600-.805.

11 41. Plaintiffs intend to and will vote in the state primary and general elections to be held in  
12 2012 and thereafter for candidates for the Nevada Senate and Nevada Assembly. If those  
13 elections are conducted by the Secretary of State on the basis of the Legislative districts set forth  
14 in N.R.S. 218B.300-.390 and N.R.S. 218B.600-.805, Plaintiffs and all similarly situated Nevada  
15 voters in overpopulated Legislative districts will be further deprived of rights guaranteed in the  
16 above-quoted provisions of the United States Constitution.

17 42. The failure to apportion Legislative districts in accordance with the United State  
18 Constitution will cause the Secretary of State to violate Plaintiffs' rights under the Fifth and  
19 Fourteenth Amendments of the United States Constitution and the constitutional rights of all other  
20 similarly situated Nevada residents.

### 21 THIRD CLAIM FOR RELIEF

#### 22 **Congressional Districts: Violation of the Nevada Constitution**

23 43. Plaintiffs restate and incorporate by reference the allegations of paragraphs 1 through 42  
24 above as though fully set forth herein.

25 44. Nevada's current Congressional districts were established by the Nevada Legislature in  
26 2001 based on the results of the 2000 Census. Nevada's current Congressional districts are set  
27 forth in N.R.S. 304.100-.120. The Nevada Legislature's 2001 redistricting legislation drew three  
28

1 Congressional districts with an overall range of deviation of zero percent (six people) from the  
2 ideal population of 666,086 per Congressional district.

3 45. Based on the results of the 2010 Census, the population of Nevada as of April 1, 2010 is  
4 2,700,551. On December 21, 2010, the United States Census Bureau announced that the State of  
5 Nevada will receive one more Congressional seat, for a total of four Congressional districts.

6 46. The results of the 2010 Census confirm that Nevada's Congressional districts are  
7 malapportioned and that all three districts set forth in N.R.S. 304.100-120 are overpopulated.

8 47. On February 24, 2011, the United States Census Bureau released the redistricting data for  
9 the State of Nevada. This data again confirms that all three Congressional districts are  
10 overpopulated. The 2010 redistricting data for the State of Nevada is or will be made available at  
11 [http://www.census.gov/rdo/data/2010\\_census\\_redistricting\\_data\\_pl\\_94-171\\_summary\\_files.html](http://www.census.gov/rdo/data/2010_census_redistricting_data_pl_94-171_summary_files.html).

12 48. Article 1, Section 13 of the Nevada Constitution provides: "Representation shall be  
13 apportioned according to population."

14 49. Article 4, Section 21 of the Nevada Constitution provides that "all laws shall be general  
15 and of uniform operation throughout the State."

16 50. Article 1, Section 1 of the Nevada Constitution provides: "All men are by Nature free and  
17 equal and have certain inalienable rights among which are those of enjoying and defending life  
18 and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and  
19 happiness[.]"

20 51. Article 1, Section 8(5) of the Nevada Constitution provides: "No person shall be deprived  
21 of life, liberty, or property, without due process of law."

22 52. The above provisions of the Nevada Constitution, both individually and in conjunction  
23 with the Constitution read as a whole, guarantee that votes for members of the United States  
24 House of Representatives cast in different Congressional districts throughout the State of Nevada  
25 will be given equal weight.

26 53. They further guarantee that Nevada voters will have a fair and equal opportunity to cast a  
27 meaningful ballot for the United States House of Representatives, regardless of the Congressional  
28



1 districts in which voters reside, and that voters in more highly populated Congressional districts  
2 will not be subject to unlawful discrimination.

3 54. The Congressional redistricting plan set forth in N.R.S. 304.100-.120 deprives Plaintiffs  
4 and all similarly situated individuals rights guaranteed to them under the Nevada Constitution.

5 55. As a result of the malapportionment of Nevada's Legislative districts, Plaintiffs' votes for  
6 members of the United States House of Representatives are being diluted.

7 56. It is necessary for the Court to prepare to order, and, given the short time frame between  
8 the United States Census Bureau's release of Nevada's redistricting data on February 24, 2011 and  
9 the end of the regular Legislative session on June 6, 2011 and further factors, which preclude a  
10 redistricting plan comporting with constitutional principles from being enacted in a timely  
11 manner, to order a redistricting plan drawing four new Congressional districts in accordance with  
12 the Nevada Constitution.

13 57. On information and belief, absent enactment of a new Congressional redistricting plan by  
14 the Nevada Legislature and Governor or an injunction by this Court, the Secretary of State intends  
15 to and will conduct primary and general elections for the United States House of Representatives  
16 on the basis of the Congressional districts set forth in N.R.S. 304.100-.120.

17 58. Plaintiffs intend to and will vote in the state primary and general elections to be held in  
18 2012 and thereafter for candidates for the United States House of Representatives. If those  
19 elections are conducted by the Secretary of State on the basis of the Congressional districts set  
20 forth in N.R.S. 304.100-.120, Plaintiffs and all other similarly situated Nevada voters in the three  
21 current Congressional districts will be further deprived of rights guaranteed in the Nevada  
22 Constitution.

23 59. The failure to apportion Congressional districts in accordance with the 2010 Census will  
24 cause the Secretary of State to violate Plaintiffs' rights under the Nevada Constitution and the  
25 constitutional rights of all similarly situated individuals.

**FOURTH CLAIM FOR RELIEF**

**Congressional Districts: Violation of the United States Constitution**

60. Plaintiffs restate and incorporate by reference the allegations of paragraphs 1 through 59 above as though fully set forth herein.

61. Article I, Section 2 of the United States Constitution provides in relevant part:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States . . . .

Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers . . . .

62. The Fourteenth Amendment of Section 1 of the United States Constitution provides in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

63. The Fifth Amendment of the United States Constitution provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

64. The above provisions of the United States Constitution guarantee that Nevada voters will have a fair and equal opportunity to cast a meaningful ballot for the United States House of Representatives, regardless of the Congressional districts in which voters reside, and that voters in more highly populated Congressional districts will not be subject to unlawful discrimination.

65. As set forth in paragraphs 44 through 47 above, Nevada's current Congressional districts set forth in N.R.S. 304.100-.120 are malapportioned on the basis of the 2010 Census results, unlawfully discriminating against Plaintiffs and other similarly situated individuals.

66. The Congressional redistricting plan set forth in N.R.S. 304.100-.120 deprives Plaintiffs and all similarly situated individuals of rights guaranteed to them under the United States Constitution.

67. As a result of the malapportionment of Nevada's Legislative districts, Plaintiffs' votes for members of the United States House of Representatives are being diluted.

1 68. It is necessary for the Court to prepare to order, and, given the short time frame between  
2 the United States Census Bureau's release of Nevada's redistricting data on February 24, 2011 and  
3 the end of the regular Legislative session on June 6, 2011 and further factors, which preclude a  
4 redistricting plan comporting with constitutional principles from being enacted in a timely  
5 manner, to order a redistricting plan drawing four new Congressional districts in accordance with  
6 the United States Constitution.

7 69. On information and belief, absent enactment of a new Congressional redistricting plan by  
8 the Nevada Legislature and Governor or an injunction by this Court, the Secretary of State intends  
9 to and will conduct primary and general elections for the United States House of Representatives  
10 on the basis of the Congressional districts set forth in N.R.S. 304.100-.120.

11 70. Plaintiffs intend to and will vote in the state primary and general elections to be held in  
12 2012 and thereafter for candidates for the United States House of Representatives. If those  
13 elections are conducted by the Secretary of State on the basis of the Congressional districts set  
14 forth in N.R.S. 304.100-.120, Plaintiffs and all other similarly situated individuals in the three  
15 current Congressional districts will be further deprived of rights guaranteed in the above-quoted  
16 provisions of the United States Constitution.

17 71. The failure to apportion Congressional districts in accordance with the 2010 Census will  
18 cause the Secretary of State to violate Plaintiffs' rights under the United States Constitution and  
19 the constitutional rights of all similarly situated individuals.

20 **PRAYER FOR RELIEF**

21 Accordingly, Plaintiffs request that this Court:

22 1. Declare that the current Legislative districts as set forth in N.R.S. 218B.300-.390 and  
23 N.R.S. 218B.600-.805 are invalid for failure to comply with the requirements of the Nevada and  
24 United States Constitutions;

25 2. Declare that the current Congressional districts as set forth in N.R.S. 304.100-.120 are  
26 invalid for failure to comply with the requirements of the Nevada and United States Constitutions;

1 3. Enjoin the Secretary of State from calling, holding, supervising, or taking any action  
2 regarding Senate, Assembly, or Congressional elections based on the current Senate, Assembly,  
3 and Congressional districts;

4 4. Retain jurisdiction of this action to:

5 a. determine if the Nevada Legislature has passed and the Governor has signed into  
6 law legislation drawing new Legislative and Congressional districts for the State of Nevada in  
7 accordance with the Nevada and United States Constitutions;

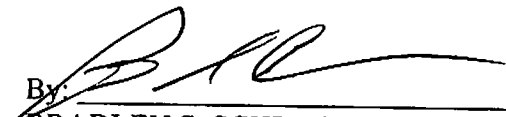
8 b. determine the validity of any legislation drawing new Legislative and  
9 Congressional districts for the State of Nevada pursuant to the Nevada and United States  
10 Constitutions; or,

11 c. in the event no such legislation is enacted during the 2011 Legislative session, hold  
12 hearings, consider briefing and evidence, and otherwise take actions necessary to determine and  
13 order valid plans for new Legislative and Congressional districts for the State of Nevada; and

14 5. Grant such other or further relief the Court deems to be appropriate, including but not  
15 limited to an award of Plaintiffs' attorneys' fees and reasonable costs.

16  
17 DATED this 24 day of February, 2011

18 JONES VARGAS

19  
20 By:   
21 BRADLEY S. SCHRAGER, ESQ.  
22 Nevada Bar No. 10217  
23 3773 Howard Hughes Parkway  
24 Third Floor South  
25 Las Vegas, Nevada 89169  
26 Telephone: (702) 862-3300  
27 Facsimile: (702) 737-7705

28 GRIFFIN, ROWE & NAVE, LLP

MATTHEW M. GRIFFIN, ESQ.  
Nevada Bar No. 8097  
1400 S. Virginia Street, Suite A  
Reno, Nevada 89502  
Telephone: (775) 323-1240  
Facsimile: (775) 314-1439