

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

WENDY TOWNLEY, AMY WHITLOCK, ASHLEY
GUNSON, HEATHER THOMAS, DAX WOOD,

Plaintiff

v.

STATE OF NEVADA and SECRETARY OF STATE
ROSS MILLER, in his official capacity

Defendant

Civil Action No. 3:12-cv-00310-ECR -WGC

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Secretary of State Ross Miller
101 North Carson Street, Suite 3
Carson City, NV 89701-3714

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Paul Swen Prior, Esq.
Nevada Bar No. 9324
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite #1100
Las Vegas, NV 89169

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Lance S. Wilson

June 11, 2012

Clerk

Date

Lance S. Wilson



Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

1 Paul Swen Prior
2 Nevada Bar No. 9324
3 SNELL & WILMER L.L.P.
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5 Las Vegas, Nevada 89169
6 Telephone: (702) 784.5200
7 Facsimile: (702).784.5252
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10 *Attorneys for Plaintiffs*

11 IN THE UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

13 WENDY TOWNLEY, AMY WHITLOCK,
14 ASHLEY GUNSON, HEATHER THOMAS,
15 DAX WOOD, CASJA LINFORD, WESLEY
16 TOWNLEY, JENNY RIEDL, TODD
17 DOUGAN, BRUCE WOODBURY, and
18 JAMES W. DEGRAFFENREID,
19

20 Plaintiff,

21 vs.
22

23 STATE OF NEVADA and SECRETARY OF
24 STATE ROSS MILLER, in his official
25 capacity,

26 Defendant.
27
28

Case No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

1 This is a rare case of actual voter disenfranchisement. Plaintiffs respectfully ask this
2 Court to enjoin a Nevada state law that expressly and unequivocally *requires* state officials to
3 disregard legally cast votes from properly registered and duly qualified voters, even if those votes
4 constitute a plurality or majority in the election. That statutory scheme violates the U.S.
5 Constitution and federal law.

6 Nevada is the only state in the nation that requires election officials to provide a line on
7 the ballot in each statewide and presidential race to allow a voter to affirmatively cast his vote for
8 “None of these candidates.” The governing law is codified primarily at Nev. Rev. Stat.
9 § 293.269, which has two main Subsections.

10 Subsection (1) directs election officials to include “None of these candidates” as a ballot
11 option in all statewide and presidential races. The line for “None of these candidates” must be
12 “equivalent” to the lines for each of the named candidates running in that race, and a person must
13 be permitted to cast his vote for “None of these candidates” in “the same manner” as he would for
14 one of those candidates.

15 Subsection (2) requires election officials to ignore such votes in determining the outcomes
16 of those elections, thereby disenfranchising the voters who cast them. Even if a plurality or
17 majority of the electorate were to vote for “None of these candidates,” that result would be
18 ignored, and a losing candidate—the one with the next-highest number of votes—would be
19 declared the winner (rather than declaring a vacancy in the office or conducting a new election,
20 perhaps with different candidates).

21 This statutory scheme threatens to disenfranchise voters in the November 6, 2012 general
22 election for President of the United States (*i.e.*, Nevada’s presidential electors) and U.S. Senate.
23 Having affirmatively placed “None of these candidates” on the ballot and invited voters to cast
24 their votes for it, the State is not free to treat those votes as nullities and disregard them.
25 Subsection (2) therefore is unconstitutional, both facially, and specifically as applied to federal
26 general elections. Because Subsection (2) is not severable from the rest of the statutory scheme
27 for including “None of these candidates” as a ballot choice in statewide and presidential races, *see*
28

1 1975 Nev. Stat. 475, *codified at* Nev. Rev. Stat. §§ 293.269, 293B.075, the entire statute must be
2 invalidated.

3 **JURISDICTION AND VENUE**

4 1. This Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C.
5 § 1331, because it arises under the Constitution and laws of the United States.

6 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and LR
7 IA 8-1(a), because a substantial part of the events or omissions giving rise to the claim occurred
8 within this judicial district and division.

9 **PARTIES**

10 **Voter Plaintiffs**

11 3. Plaintiff Wendy Townley is a properly registered and duly qualified elector of the
12 State of Nevada. She lives on Briggs Gully Street in Las Vegas, Nevada. She is a member of the
Democratic Party, and intends to vote in the November 6, 2012 general election.

13 4. Plaintiff Amy Whitlock is a properly registered and duly qualified elector of the
14 State of Nevada. She lives on Redbud Vine Street in North Las Vegas, Nevada. She is a member
15 of the Republican Party, and intends to vote in the November 6, 2012 general election.

16 5. Plaintiff Ashley Gunson is a properly registered and duly qualified elector of the
17 State of Nevada. She lives on Tossa de Mar Street in Henderson, Nevada. She is an independent,
18 unaffiliated with any political party, and intends to vote in the November 6, 2012 general
19 election.

20 6. Plaintiff Heather Thomas is a properly registered and duly qualified elector of the
21 State of Nevada. She lives on Diving Petrels Place in North Las Vegas, Nevada. She is a
22 registered member of the Democrat Party and a self-identified supporter of the Green Party, and
23 intends to vote in the November 6, 2012 general election.

24 7. Plaintiff Dax Wood is a properly registered and duly qualified elector of the State
25 of Nevada. He lives on Briggs Gully Street in North Las Vegas, Nevada. He is a member of the
26 Democratic Party, and intends to vote in the November 6, 2012 general election. Plaintiff Wood
27 has a substantial, direct, and personal interest in:
28

1 a. not being required to vote on a ballot in which one of the officially
2 presented options in the races for President of the United States and U.S. Senator will legally
3 nullify his vote and effectively disenfranchise him;

4 b. being able to cast his vote for any of the options listed for each race on the
5 ballot, and having that vote be given full legal effect; and

6 c. having his properly cast vote be given equal legal effect to the properly cast
7 votes of every other registered and duly qualified elector, regardless of which ballot options he,
8 and those other electors, choose.

9 8. Plaintiff Casja Linford is a properly registered and duly qualified elector of the
10 State of Nevada. She lives on Meadow Pasture Street in North Las Vegas, Nevada. She is a
11 member of the Republican Party, and intends to vote in the November 6, 2012 general election.
12 Plaintiff Linford has a substantial, direct, and personal interest in:

13 a. not being required to vote on a ballot in which one of the officially
14 presented options in the races for President of the United States and U.S. Senator will legally
15 nullify her vote and effectively disenfranchise her;

16 b. being able to cast her vote for any of the options listed for each race on the
17 ballot, and having that vote be given full legal effect; and

18 c. having her properly cast vote be given equal legal effect to the properly
19 cast votes of every other registered and duly qualified elector, regardless of which ballot options
20 she, and those other electors, choose.

21 9. Plaintiff Wesley Townley is a properly registered and duly qualified elector of the
22 State of Nevada. He lives on Briggs Gully Street in Las Vegas, Nevada. He is an independent,
23 not affiliated with any political party, and intends to vote for Governor Mitt Romney for President
24 of the United States and Senator Dean Heller for U.S. Senate in the November 6, 2012 general
25 election.

26 a. Plaintiff Townley intends to cast his vote for Governor Romney because,
27 under Nevada law, *see* Nev. Rev. Stat. §§ 281.010(1)(e), 298.025, that is the only way for him to
28 vote in favor of the designees of the Nevada Republican Party and Governor Romney, including

1 Plaintiffs Woodbury and DeGraffenreid, to become presidential electors from the State of
2 Nevada.

3 b. Plaintiff Townley reasonably believes that several properly registered and
4 duly qualified electors who will participate in the November 6, 2012 general election will select
5 "None of these candidates" when voting in the presidential election and the U.S. Senate race.

6 c. Plaintiff Townley reasonably believes that, if "None of these candidates"
7 did not appear as a choice on the ballot in the races for President of the United States and U.S.
8 Senate, a substantial number of people—such as Plaintiff Dougan—who otherwise would have
9 selected "None of these candidates" would instead cast their votes for one of the candidates
10 running for those offices, including Governor Romney and Senator Heller. Plaintiff Townley
11 therefore has a substantial, personal, and direct interest in having "none of these candidates"
12 removed from the ballot, so that his desired candidates have an increased chance of receiving
13 additional votes, thereby adding to the efficacy of his own vote and the likelihood that it will
14 prevail.

15 10. Plaintiff Jenny Riedl is a properly registered and duly qualified elector of the State
16 of Nevada. She lives on Briggs Gully Street in Las Vegas, Nevada. She is unaffiliated with
17 either political party. Plaintiff Riedl wishes to exercise her fundamental constitutional right to
18 vote in the November 6, 2012 general election for President of the United States and U.S. Senate.
19 She intends to vote for "None of these candidates" in the race for President of the United States.
20 Plaintiff Riedl's vote will therefore be treated as a legal nullity, and she will be effectively
21 disenfranchised.

22 11. Plaintiff Todd Dougan is a properly registered and duly qualified elector of the
23 State of Nevada. He lives on Havkin Court in Las Vegas, Nevada. He is a member of the
24 Republican Party. Plaintiff Dougan wishes to exercise his fundamental constitutional right to
25 vote in the November 6, 2012 general election for President of the United States and U.S. Senate.

26 a. If "None of these candidates" appears as a ballot option in the race for
27 President of the United States, he intends to select that choice. Plaintiff Dougan's vote will
28 therefore be treated as a legal nullity, and he will be effectively disenfranchised.

1 b. If “None of these candidates” did not appear as a ballot option in the race
2 for President of the United States, he would cast his vote in that election for Mitt Romney, rather
3 than failing to exercise his fundamental right to vote in that race by refraining from casting his
4 vote for any of the ballot options.

5 **Candidate Plaintiffs**

6 12. Plaintiff Bruce Woodbury is one of the Republican designees for the statewide
7 office of presidential elector in the November 6, 2012 general election.

8 a. Plaintiff Woodbury is a legally registered member of the Nevada
9 Republican Party. Pursuant to Nev. Rev. Stat. § 298.020(1), he was nominated and chosen by the
10 delegates to the 2012 Nevada Republican state convention to serve as one of the Party’s
11 presidential electors in the November 6, 2012 general election. The chairman and secretary of the
12 convention certified Plaintiff Woodbury’s name and address to the Nevada Secretary of State, as
13 required by Nev. Rev. Stat. § 298.020(1).

14 b. Plaintiff Woodbury is one of the nominees for presidential elector of
15 Republican presidential candidate Mitt Romney under Nev. Rev. Stat. § 298.025. Pursuant to
16 Nev. Rev. Stat. § 298.025, in the event Mitt Romney “receive[s] the highest number of votes at
17 the general election,” Plaintiff Woodbury will “thereby become [an] official presidential
18 elector[.]” A vote for Mitt Romney for the office of President of the United States in the
19 November 6, 2012 general election is, by virtue of Nevada law, effectively a vote for Plaintiff
20 Woodbury for the office of presidential elector.

21 c. Plaintiff Woodbury therefore has a substantial, direct, and personal interest
22 in not having “None of these candidates” appear as an option on the ballot for President of the
23 United States in the November 6, 2012 general election.

24 13. Plaintiff James W. DeGraffenreid is one of the Republican designees for the
25 statewide office of presidential elector in the November 6, 2012 general election.

26 a. Plaintiff DeGraffenreid is a legally registered member of the Nevada
27 Republican party. Pursuant to Nev. Rev. Stat. § 298.020(1), he was nominated and chosen by the
28 delegates to the 2012 Nevada Republican state convention to serve as one of the Party’s

1 presidential electors in the November 6, 2012 general election. The chairman and secretary of the
 2 convention certified Plaintiff DeGraffenreid's name and address to the Nevada Secretary of State,
 3 as required by Nev. Rev. Stat. § 298.020(1).

4 b. Plaintiff DeGraffenreid is one of the nominees for presidential elector of
 5 Republican presidential candidate Mitt Romney under Nev. Rev. Stat. § 298.025. Pursuant to
 6 Nev. Rev. Stat. § 298.025, in the event Mitt Romney "receive[s] the highest number of votes at
 7 the general election," Plaintiff DeGraffenreid will "thereby become [an] official presidential
 8 elector[.]" A vote for Mitt Romney for the office of President of the United States in the
 9 November 6, 2012 general election is, by virtue of Nevada law, effectively a vote for Plaintiff
 10 DeGraffenreid for the office of presidential elector.

11 c. Plaintiff DeGraffenreid therefore has a substantial, direct, and personal
 12 interest in not having "None of these candidates" appear as an option on the ballot for President
 13 of the United States in the November 6, 2012 general election.

14 **Defendants**

15 14. Defendant State of Nevada is a sovereign state of the United States of America.

16 15. Defendant Ross Miller is the Secretary of State of Nevada. Pursuant to Nev. Rev.
 17 Stat. § 293.124(1), he serves as the "chief officer of elections for the state," and "is responsible
 18 for the execution and enforcement of the provisions of Title 24 of NRS and all other provisions of
 19 state and federal law relating to elections in this state."

20 **NEVADA'S "NONE OF THESE CANDIDATES" PROVISION**

21 16. The law governing the "None of these candidates" ballot option, 1975 Nev. Stat.
 22 475, is codified at Nev. Rev. Stat. §§ 239.269, 239B.075. Most of the pertinent provisions are set
 23 forth in Nev. Rev. Stat. § 239.269, which is comprised of two main subsections.

24 17. Subsection (1) provides that every ballot listing the names of candidates for
 25 statewide office or presidential elections must contain an "additional line" reading "None of these
 26 candidates," immediately after the lines containing the candidates' names. Nev. Rev. Stat.
 27 § 293.269(1). A separate, related provision likewise requires that "[a] mechanical voting system
 28

1 must permit the voter to vote for any person for any office for which he or she has the right to
2 vote . . . or indicate a vote against all candidates.” *Id.* § 293B.075.

3 18. Subsection (1) specifies that the “additional line” on ballots for “None of these
4 candidates” must be “equivalent to the lines on which the candidates’ names appear.” Nev. Rev.
5 Stat. § 293.269(1).

6 19. Subsection (1) further states that the “additional line” on ballots for “None of these
7 candidates” shall “contain a square in which the voter may express a choice of that line in the
8 same manner as the voter would express a choice of a candidate.” Nev. Rev. Stat. § 293.269(1).

9 20. A person may not vote for “None of these candidates” in a particular race if he is
10 casting his vote for one of the named candidates running in that race.

11 21. Subsection (2) of the statute provides, “Only votes cast for the named candidates
12 shall be counted in determining nomination or election to any statewide office or presidential
13 nominations or the selection of presidential electors.” Nev. Rev. Stat. § 293.269(2).

14 22. Under Subsection (2), if a plurality or majority of voters in a statewide or
15 presidential election votes for “None of these candidates,” their votes are disregarded, and one of
16 the losing candidates—the one with the next-highest number of votes—is determined to be, and
17 certified as, the winner of the election.

18 23. A vote for “None of these candidates” is legally null and void, and there is no set
19 of circumstances in which the State will count it in determining the outcome of an election.

20 24. The number of votes for “None of these candidates” is included in “every posting,
21 abstract and proclamation of the results of the election.” Nev. Stat. Stat. § 293.269(2). This
22 figure, however, is given no legal effect, and Nevada officials ignore it in determining and
23 certifying the winners of elections.

24 25. It would have been reasonably possible for the legislature to provide that, if a
25 plurality or majority of people casts their votes for “None of these candidates” in a particular race,
26 the office at issue must be deemed vacant at the commencement of its term. That is how Nevada
27 law treats votes that are cast for candidates who die shortly before Election Day. *See* Nev. Rev.
28 Stat. §§ 293.165(4); 293.368.

26. Alternatively, the legislature could have required that, if “None of these candidates” receives a plurality or majority of votes for a particular office, a follow-up election must be held for that office. States that require candidates to win elections by a majority (rather than plurality) of votes often hold run-off elections after Election Day for races in which none of the candidates received more than 50% of the vote. The legislature also could devise a procedure for barring any candidates who lost to “None of these candidates” from running in the follow-up election.

27. Rather than devising some way for votes cast for “None of these candidates” to even potentially have any legal effect, the State of Nevada has decided to disenfranchise people who select “None of these candidates” by literally ignoring their votes.

28. Subsection (2), the disenfranchisement provision of the statute, is not severable from the other provisions in the act—particularly Subsection (1)—that require “None of these candidates” to be included as a ballot option in certain races, *see* 1975 Nev. Stat. 475. It would be inappropriate for this Court to decide what legal effect votes for “None of these candidates” should have and effectively re-write state law to implement that view. Furthermore, the legislature did not include a severability clause in the underlying statute, *see* 1975 Nev. Stat. 475, and the legislative history is clear that the legislature wanted only to provide citizens with a way of expressing “nonconfidence” in their candidates for elected office and telling the prevailing candidate to “clean up your act.” There is no indication that the legislature intended, or would have been willing, to change the fundamental rules governing the electoral process.

IMPACT, AND POTENTIAL IMPACT, OF THE “NONE OF THESE CANDIDATES” PROVISION

29. Since the enactment of Nev. Rev. Stat. § 293.269, there have been several general elections in which “None of these candidates” has received enough votes to have potentially affected the election’s outcome. Additionally, “None of these candidates” even has received the plurality of votes in primary elections.

30. In the 1998 general election for U.S. Senate, Democratic candidate Harry Reid received 208,650 votes (47.88%) and Republican candidate John Ensign received 208,222 votes

(47.78%). The margin between the candidates was 428 votes (0.1%), far less than the 8,125 votes (1.86%) that "None of these candidates" received.

31. In the 2004 general election for Nevada Supreme Court Justice (Seat A), prevailing candidate Jim Hardesty received 359,089 votes (48.08%), and candidate Cynthia "Dianne" Steele received 260,625 votes (34.9%). The margin between the candidates was 98,464 votes (13.18%), far less than the 125,787 votes (16.84%) that "None of these candidates" received.

32. In the 2006 general election for State Controller, prevailing candidate Kim Wallin received 257,790 votes (45.16%), and candidate Steve Martin received 250,885 votes (43.95%). The margin between the candidates was 6,905 votes (1.21%), far less than the 31,656 votes (5.55%) that "None of these candidates" received.

33. In the 2008 general election for Nevada Supreme Court Justice (Seat B), prevailing candidate Mary "Kris" Pickering received 353,873 votes (41.99%), and candidate Deborah Schumacher received 329,058 votes (39.05%). The margin between the candidates was 24,815 votes (2.94%), far less than the 159,736 votes (18.96%) that "None of these candidates" received.

34. In the 1976 election cycle, Nevada had only one seat in the U.S. House of Representatives, so the congressional race was a statewide election. In the Republican primary election, Walden Charles Earhart received 8,992 votes (29.3%), Dart Anthony received 7,213 votes (23.5%), and "None of these candidates" received 14,499 votes (47.2%). Despite receiving less votes than "None of these candidates," Earhart was certified as the winner of the primary and was the Republican candidate in Nevada's 1976 general election for the U.S. House of Representatives.

35. In the 1978 Republican primary election for Secretary of State, Walden Earhart received 16,599 votes (37.6%), George Cotton received 9,168 votes (20.8%), and "None of these candidates" received 18,383 votes (41.6%). Despite (again) receiving less votes than "None of these candidates," Earhart was certified as the winner of the primary and was the Republican candidate in Nevada's 1978 general election for Secretary of State.

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COUNT ONE—DUE PROCESS
U.S. Const., amend XIV, § 1
(Against both Defendants)

36. Plaintiffs re-allege and incorporate by reference the foregoing Paragraphs.

37. The Due Process Clause of the U.S. Constitution provides, “No state shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const., amend. XIV, § 1.

38. The Due Process Clause protects, among other things, a person’s fundamental constitutional right to vote.

39. Nevada’s “None of these candidates” statute, *see* 1975 Nev. Stat. 475, *codified at* Nev. Rev. Stat. §§ 293.269, 293B.075, denies voters due process of the laws. “None of these candidates” appears on the ballot in statewide and presidential races as an option “equivalent” to the names of the candidates running for that office, and a person may cast his vote for “None of these candidates” in the “same manner” as he would select any of those candidates. Nev. Rev. Stat. § 293.269(1). In determining the outcome of the election, however, the State simply ignores all votes cast for “None of these candidates,” thereby disenfranchising all properly registered and duly qualified electors who cast those votes. *Id.* § 293.269(2).

40. When a duly registered and qualified elector selects from among the legally available ballot options and casts his vote in accordance with all applicable laws and procedures, it is a denial of due process and that person’s fundamental right to vote for the State to simply ignore his or her vote in determining the outcome of the election, refuse to count it, or treat it as a nullity.

41. Defendants’ refusal to count or give legal effect to votes cast for “None of these candidates” in determining the outcomes of statewide and presidential races therefore violates the Due Process Clause, both facially and as applied to federal elections, and Plaintiffs are entitled to injunctive and declaratory relief.

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COUNT TWO—EQUAL PROTECTION CLAUSE,
U.S. Const., amend XIV, § 1
(Against both Defendants)

42. Plaintiffs re-allege and incorporate by reference the foregoing Paragraphs.

43. The Equal Protection Clause of the U.S. Constitution provides, “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., amend. XIV, § 1.

44. Construing the Equal Protection Clause, the U.S. Supreme Court has held, “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam).

45. Nevada’s “None of these candidates” statute, *see* 1975 Nev. Stat. 475, *codified at* Nev. Rev. Stat. §§ 293.269, 293B.075, denies voters equal protection of the laws because, in statewide and presidential elections, whether a person’s vote is counted and given legal effect depends on the particular option on the ballot the person selects.

46. “None of these candidates” appears on the ballot in statewide and presidential races as an option “equivalent” to the names of the candidates running for that office, and a person may cast his vote for “None of these candidates” in the “same manner” as he would select any of those candidates. Nev. Rev. Stat. § 293.269(1). When the state determines the outcome of the election, however, a registered and qualified elector who chooses to cast his vote for a named candidate is entitled to have his vote counted, while a registered and qualified elector who chooses to cast his vote for “None of these candidates” has his vote disregarded. *Id.* § 293.269(2).

47. When a duly registered and qualified elector selects from among the legally available ballot options and casts his vote in accordance with all applicable laws and procedures, the Equal Protection Clause prohibits the government from determining whether to count and give legal effect to that vote based solely on which of those ballot options the voter selects.

48. Defendants’ refusal to count or give legal effect to votes cast for “None of these candidates” in determining the outcomes of statewide and presidential races therefore violates the

Equal Protection Clause, both facially and as applied to federal elections, and Plaintiffs are entitled to injunctive and declaratory relief.

COUNT THREE—VOTING RIGHTS ACT

42 U.S.C. § 1973i

(Against both Defendants)

49. Plaintiffs re-allege and incorporate by reference the foregoing Paragraphs.

50. The Voting Rights Act of 1965 provides that “[n]o person acting under color of law” may either:

a. “fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote,” *or*

b. “willfully fail or refuse to tabulate, count, and report such person’s vote.”

42 U.S.C. § 1973i.

51. Nevada’s “None of the above” statute, *see* 1975 Nev. Stat. 475, *codified at* Nev. Rev. Stat. §§ 293.269, 293B.075, violates the Voting Rights Act because it requires election officials, acting under color of law, to “willfully fail [and] refuse to tabulate, count, and report” the votes of electors who are qualified to vote, but choose to cast their votes for “None of these candidates.”

52. Defendants’ refusal to count or give legal effect to votes cast for “None of these candidates” in determining the outcomes of statewide and presidential races therefore violates the Voting Rights Act, and Plaintiffs are entitled to injunctive and declaratory relief.

COUNT FOUR—HELP AMERICA VOTE ACT (“HAVA”)

42 U.S.C. § 15481

(Against both Defendants)

53. Plaintiffs re-allege and incorporate by reference the foregoing Paragraphs.

54. The Help America Vote Act (“HAVA”) provides, “Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.” 42 U.S.C. § 15481.

55. Nevada’s “None of these candidates” statute, 1975 Nev. Stat. 475, *codified at* Nev. Rev. Stat. §§ 293.269, 293B.075, violates this provision of HAVA. The Nevada statute requires “None of these candidates” to appear on the ballot in statewide and presidential races as an option

“equivalent” to the names of each of the candidates running for that office, and a person may cast his vote for “None of these candidates” in the “same manner” as he would select any of those candidates. Nev. Rev. Stat. § 293.269(1). When the state determines the outcome of the election, however, a registered and qualified elector who chooses to cast his vote for a named candidate is entitled to have his vote counted, while a registered and qualified elector who chooses to cast his vote for “None of these candidates” has his vote disregarded. Nev. Rev. Stat. § 293.269(2).

56. The State of Nevada lacks uniform and nondiscriminatory standards concerning whether an elector’s selection from among the ballot options in statewide and presidential races “will be counted as a vote.”

57. Defendants’ refusal to count or give legal effect to votes cast for “None of these candidates” in determining the outcomes of statewide and presidential races therefore violates HAVA, and Plaintiffs are entitled to injunctive and declaratory relief.

COUNT FIVE—CIVIL RIGHTS ACT

42 U.S.C. § 1983

(Against both Defendants)

58. Plaintiffs re-allege and incorporate by reference the foregoing Paragraphs.

59. The federal Civil Rights Act provides,

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

60. Voting in general, and in particular for President of the United States and U.S. Senate, is a fundamental right, privilege, or immunity secured by the U.S. Constitution and federal law.

61. Defendant Miller, along with other state, county, and local election officials, act under color of law when they:

a. create, configure, program, or otherwise arrange for paper ballots, mechanical voting machines, and electronic voting systems that present “None of these

1 candidates” as an option in statewide and presidential races “equivalent” to each of the candidates
2 running for that office, and allow a person to cast his vote for “None of these candidates” in the
3 “same manner” as he would select any of those candidates, Nev. Rev. Stat. § 293.269(1), and

4 b. refuse to count, canvass, tabulate, or give any legal effect to votes cast for
5 “None of these candidates” in determining the outcomes of statewide and presidential elections.

6 62. The acts of Defendant Miller and other State of Nevada election personnel violate:

7 a. the Equal Protection Clause of the U.S. Constitution, U.S. Const.,
8 amend XIV, § 1;

9 b. the Due Process Clause of the U.S. Constitution, U.S. Const.,
10 amend XIV, § 1;

11 c. the Voting Rights Act, 42 U.S.C. § 1973i; and

12 d. the Help America Vote Act, 42 U.S.C. § 15481.

13 63. Defendants’ refusal to count or give legal effect to votes cast for “None of these
14 candidates” in determining the outcomes of statewide and presidential races therefore violates the
15 federal Civil Rights Act, and Plaintiffs are entitled to injunctive and declaratory relief.

16 **PRAYER**

17 **WHEREFORE**, Plaintiffs pray for judgment as follows:

18 1. An Order temporarily and permanently enjoining and restraining Defendants, their
19 agents, employees, affiliates, and all those acting in concert with them, from allowing “None of
20 these candidates” to appear on any paper, mechanical, or electronic ballots, voting machines, or
21 other voting systems, in any future elections, including but not limited to the November 6, 2012
22 general election;

23 2. A declaration that Defendants’ inclusion of “None of these candidates” as a ballot
24 option in statewide and presidential elections, considered in light of their refusal to count or give
25 any legal effect to votes that duly registered and qualified electors cast for “None of these
26 candidates” in determining the outcomes of such races, violates the Equal Protection Clause of
27 the U.S. Constitution, U.S. Const., amend XIV, § 1; the Due Process Clause of the U.S.
28

1 Constitution, U.S. Const., amend XIV, § 1; the Voting Rights Act, 42 U.S.C. § 1973i; the Help
2 America Vote Act, 42 U.S.C. § 15481; and the Civil Rights Act, 42 U.S.C. § 1983;

3 3. Attorneys' fees, expert fees, and other costs of suit; and

4 4. Any other relief this Court deems just and equitable under the circumstances.

5 Dated: June 8, 2012

SNELL & WILMER LLP.

6
7
8 By: 

Paul Swen Prior

Nevada Bar No. 9324

3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169

Michael T. Morley

(motion for *pro hac vice* admission forthcoming)

616 E. Street, N.W. #254

Washington, D.C. 20004

Telephone (860) 778-3883

Attorneys for Plaintiffs

Snell & Wilmer

LLP
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

15228728.2

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Wendy Townley, Amy Whitlock, Ashley Gunson, Heather Thomas, Dax Wood, Casja Linford, Wesley Townley, Jenny Riedl, Todd Dougan, Bruce Woodbury

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Paul Swen Prior #9324 Snell & Wilmer L.L.P. 3883 Howard Hughes Pkwy #1100 Las Vegas, NV 89169 702-784-5200

DEFENDANTS

State of Nevada and Secretary of State Ross Miller, in his official capacity

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
Defend Constitutionality of "None Of The Above" On Voter Ballots.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

June 7, 2012

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

WENDY TOWNLEY, AMY WHITLOCK, ASHLEY
GUNSON, HEATHER THOMAS, DAX WOOD,

Plaintiff

v.

STATE OF NEVADA and SECRETARY OF STATE
ROSS MILLER, in his official capacity

Defendant

)
)
)
) Civil Action No.
)
)
)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Secretary of State Ross Miller
101 North Carson Street, Suite 3
Carson City, NV 89701-3714

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Paul Swen Prior, Esq.
Nevada Bar No. 9324
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite #1100
Las Vegas, NV 89169

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Rudnick, Wendy

From: cmecf@nvd.uscourts.gov
Sent: Friday, June 08, 2012 3:39 PM
To: cmecfhelpdesk@nvd.uscourts.gov
Subject: Activity in Case 3:12-cv-00310 Townley et al Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered by Prior, Paul on 6/8/2012 at 3:38 PM PDT and filed on 6/8/2012

Case Name: Townley et al
Case Number: 3:12-cv-00310
Filer: Bruce Woodbury
Wendy Townley
Amy Whitlock
Ashley Gunson
Heather Thomas
Dax Wood
Casja Linford
Wesley Townley
Jenny Reidl
James W Degraffenreid

Document Number: 1

Docket Text:

COMPLAINT for Injunctive and Declaratory Relief against State of Nevada, Ross Miller (Filing fee \$ 350 receipt number 0978-2399403), filed by Casja Linford, Amy Whitlock, Heather Thomas, Dax Wood, Bruce Woodbury, Jenny Reidl, Wendy Townley, James W Degraffenreid, Wesley Townley, Ashley Gunson. Certificate of Interested Parties due by 6/18/2012. Proof of service due by 10/6/2012. (Attachments: # (1) Civil Cover Sheet, # (2) Summons) (Prior, Paul)

3:12-cv-00310 Notice has been electronically mailed to:

Paul Swenson Prior sprior@swlaw.com, DOCKET_LAS@swlaw.com, wrudnick@swlaw.com

3:12-cv-00310 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1101333072 [Date=6/8/2012] [FileNumber=5756311-0]
[b3b0ca06606449f412e54d4ec755894905fa594bacd6cb154ffcc0ae36b10452d8d4
0e2025379256ca37f92b7b08bfc506d4dd3de8a1b3e15e1a75eacef5fc90]]

Document description:Civil Cover Sheet

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1101333072 [Date=6/8/2012] [FileNumber=5756311-1]
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b5406c8c45095a092c3c853f7292a1816a28d3fce73c3a26d744125a09a0]]

Document description:Summons

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1101333072 [Date=6/8/2012] [FileNumber=5756311-2]
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