

1 Mark A. Hutchison (4639)
Jacob A. Reynolds (10199)
2 HUTCHISON & STEFFEN, LLC
Peccole Professional Park
3 10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
4 Tel: (702) 385-2500
Fax: (702) 385-2086
5 Email: mhutchison@hutchlegal.com
jreynolds@hutchlegal.com

6 Attorneys for Plaintiff-Intervenors
7 Ken King, Sancy King, Allen Rosoff,
B. Estela Moser Vaden, and Nevada Republican Party
8

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

11
12 DORA J. GUY, an individual; LEONEL
MURRIETA-SERNA, an individual; EDITH
13 LOU BYRD, an individual; and SAMANTHA
STEELMAN, an individual,

14 Plaintiffs,

15 and

16 KEN KING, an individual; SANCY KING, an
17 individual; ALLEN ROSOFF, an individual;
B. ESTELA MOSER VADEN, an individual,
18 and the NEVADA REPUBLICAN PARTY,

19 Plaintiff-Intervenors,

20 v.

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

22 Defendant.
23

) CASE NUMBER 11 OC-00042-1B
) DEPT NUMBER I

) **COMPLAINT IN INTERVENTION**
) **(Declaratory and Injunctive Relief**
) **Sought)**

24
25 Plaintiffs in intervention, Ken and Sancy King, Allen Rosoff, B. Estela Moser Vaden,
26 and the Nevada Republican Party (“Intervening Plaintiffs”), allege the following facts and make
27 the following claims against defendant Ross Miller (the “Secretary of State” or the
28 “Secretary”):

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A. Introduction

1. The Intervening Plaintiffs file this Complaint in Intervention to invalidate, enjoin the use of, and seek the redrawing of voting districts in the State of Nevada currently in place for elections of the Nevada Assembly, the Nevada Senate, and the State’s delegation to the United States House of Representatives (collectively, the “Legislative and Congressional Districts”). The current Legislative and Congressional Districts violate the Intervening Plaintiffs’ voting rights conferred by the United States Constitution and the Nevada Constitution.

2. Voting districts in the State of Nevada are drawn based on census figures determined every 10 years. The current Legislative and Congressional Districts were determined using census data from the 2000 census, when the State had a total population of 1,998,257. Census data from the year 2010 shows that the State’s population has grown to 2,700,551 residents. As a result of this population growth, the Legislative and Congressional Districts in which the Intervening Plaintiffs reside are overpopulated and their right to vote is improperly diluted. This vote dilution can be solved only by redrawing the current Legislative and Congressional Districts.

3. The Nevada Legislature currently is in regular session and is scheduled to adjourn on June 6, 2011. The Nevada Legislature has the obligation, ability, and authority to redraw the Legislative and Congressional Districts in a manner that remedies the voting rights violations at issue here. It is foreseeable, however, that the Nevada Legislature will not be able to pass a redistricting plan, or that any redistricting plan passed by the Nevada Legislature will not be signed by the Governor of Nevada. It also is foreseeable that any redistricting plan passed by the Nevada Legislature and signed by the Governor of Nevada will not satisfy the requirements of the United States Constitution and/or the Nevada Constitution.

4. Intervening Plaintiffs therefore request that the Court retain jurisdiction of this matter and declare that the current (or newly-enacted, but unlawful) Legislative and Congressional Districts violate the United States Constitution and the Nevada Constitution.

1 Intervening Plaintiffs also request that the Court establish a date certain by which the Nevada
2 Legislature must act to redress the voting rights violations caused by the current Legislative and
3 Congressional Districts, and that the Court redraw the districts in question if an acceptable plan
4 is not produced by the Nevada Legislature.

5 **B. Jurisdiction and Venue**

6 5. This Court has jurisdiction pursuant to Article 6, section 6 of the Nevada
7 Constitution, and has the authority to grant declaratory and injunctive relief pursuant to NRS
8 30.030 and 33.010, respectively. This Court also has jurisdiction to address the Intervening
9 Plaintiffs' claimed violations of the United States Constitution pursuant to 42 U.S.C. §§ 1983
10 and 1988.

11 6. Venue in the First Judicial District Court in Carson City, Nevada, is proper
12 pursuant to NRS 13.020(2) and NRS 13.040, because the cause of action arose in Carson City,
13 where the Secretary of State, the State of Nevada's chief elections officer, is located and
14 administers the Legislative and Congressional Districts that are in contravention of the United
15 States Constitution and the Nevada Constitution.

16 **C. Parties**

17 7. Plaintiffs who commenced this action (not the Intervening Plaintiffs) are
18 identified in paragraphs 3-7 of the Complaint for Declaratory and Injunctive Relief filed on
19 February 24, 2011 (the "Complaint"), which averment this pleading adopts by reference
20 without adopting any other averment in the Complaint except as explicitly stated herein.

21 8. Intervening Plaintiff Ken King resides at 1119 Boulder Shore Ave., North Las
22 Vegas, NV 89081. Mr. King is a registered Republican voter in the State of Nevada,
23 specifically, Clark County.

24 9. Intervening Plaintiff Sancy King resides at 1119 Boulder Shore Ave., North Las
25 Vegas, NV 89081. Mrs. King is a registered Republican voter in the State of Nevada,
26 specifically, Clark County.

27 10. Intervening Plaintiff Allen Rosoff resides at 295 E. Cactus Avenue, Las Vegas,
28

1 Nevada 89183. Mr. Rosoff is a registered Republican voter in the State of Nevada, specifically,
2 Clark County.

3 11. Intervening Plaintiff B. Estela Moser Vaden resides at 4810 Impressario Ct., Las
4 Vegas, NV 89149. Ms. Vaden is a registered Republican voter in the State of Nevada,
5 specifically, Clark County.

6 12. Intervening Plaintiff the Nevada Republican Party is the Nevada branch of the
7 national Republican Party. The Nevada Republican Party home office is 6655 S. Tenaya Way,
8 Ste. 120, Las Vegas, Nevada 89113.

9 13. Defendant Ross Miller is identified in paragraph 8 of the Complaint, which
10 averment this pleading adopts by reference without adopting any other averment in the
11 Complaint except as explicitly stated herein.

12 **D. Background Facts**

13 14. The State of Nevada's current Legislative and Congressional Districts were
14 established by the Nevada Legislature in 2001 based on data from the 2000 census. The data
15 showed that the State's total population was 1,998,257, and the State was apportioned three
16 seats in the U.S. House of Representatives.

17 15. Data from the 2010 census shows an increase in the population of the State of
18 Nevada to 2,700,551. Reapportionment is expected to add one seat to the Nevada delegation to
19 the U.S. House of Representatives, and to require an upward adjustment in the size of each of
20 the State's current Legislative and Congressional Districts.

21 16. The 76th Session of the Nevada Legislature is responsible in the first instance
22 for redrawing the current Legislative and Congressional Districts. In redrawing these districts,
23 the Nevada Legislature will have to address a number of different issues, including the growth
24 of population in the State, shifts in population within the State, and the addition of one seat to
25 the State's delegation to the U.S. House of Representatives through the reapportionment
26 process.

27 17. The Nevada Legislature has until the conclusion of the current regular session,
28

1 on June 6, 2011, to enact a redistricting plan. The Nevada courts typically defer the task of
2 redistricting to the legislative branch in recognition that the legislature is best suited to
3 undertake this highly political task. However, if no redistricting plan is enacted, then the task
4 of redrawing the current Legislative and Congressional Districts may be accomplished in
5 special session, or may fall to the courts.

6 18. Should new voting districts not be timely drawn in the State of Nevada, the
7 Intervening Plaintiffs and many Nevada citizens will suffer dilution of their votes in elections
8 held in 2012. This is because the current Legislative and Congressional Districts contain
9 significant population variances due to both growth in the population of the State and shifts in
10 State population.

11 19. Voting disparities of this magnitude in the current Legislative and Congressional
12 Districts are of great concern to Intervening Plaintiffs because of the vote dilution that the
13 disparities entail. All of the Intervening Plaintiffs would experience vote dilution in any
14 election held using current Legislative and Congressional Districts.

15 **First Claim for Relief**

16 **(Nevada's Legislative and Congressional**
17 **Districts Violate the Nevada Constitution)**

18 20. Intervening Plaintiffs restate and incorporate by reference the allegations in
19 paragraphs 1-19 as though fully set forth herein.

20 21. The population increase in the State of Nevada, as evidenced by the data from
21 the 2010 census, has caused several Nevada Senate and Assembly districts, including districts
22 in which Intervening Plaintiffs reside, to become overpopulated relative to other districts.

23 22. The data from the 2010 census also shows that the three congressional districts
24 and a number of the legislative districts in the State of Nevada are malapportioned and
25 overpopulated.

26 23. The Nevada Constitution requires that the Legislative and Congressional
27 Districts be apportioned according to the State's population, as derived from the 2010 census
28

1 data, thereby guaranteeing to Nevada voters the creation of districts of equal population so that
2 votes for state legislative and congressional representatives in different districts are given equal
3 weight.

4 24. The Nevada Constitution also guarantees to Nevada voters an equal, fair, and
5 effective opportunity to cast a meaningful ballot for state legislative and congressional
6 representatives regardless of in which Legislative or Congressional District a voter resides, and
7 that voters in a more highly populated district will not be subject to unlawful discrimination.

8 25. The current Legislative and Congressional Districts are not properly apportioned
9 according to the population of the State of Nevada, unlawfully discriminating against
10 Intervening Plaintiffs.

11 26. A justiciable controversy exists among the parties and Intervening Plaintiffs are
12 entitled to declaratory judgment pursuant to NRS 30.010 et. seq. that the current Legislative and
13 Congressional Districts are invalid because they fail to comply with the requirements of the
14 Nevada Constitution.

15 27. Intervening Plaintiffs are likely to succeed on the merits of their allegations
16 contained herein, would suffer irreparable harm in the absence of equitable relief, and the
17 balance of hardships favors the Intervening Plaintiffs. Thus, they are entitled to injunctive
18 relief enjoining the Defendant from using the current Legislative and Congressional Districts in
19 any future primary or general election(s).

20 28. Because of the declaratory and injunctive relief Intervening Plaintiffs seek, this
21 Court should retain jurisdiction to (1) redraw the current Legislative and Congressional
22 Districts should the Nevada Legislature fail to enact a redistricting plan, and (2) determine the
23 validity of any redistricting plan enacted by the Nevada Legislature.

24 29. Intervening Plaintiffs have had to employ the services of legal counsel to pursue
25 their interest and to protect their legal and constitutional rights and are thereby entitled to an
26 award of attorneys' fees and costs associated with this action.

27
28 ///

Second Claim for Relief

(Nevada's Legislative and Congressional Districts Violate the United States Constitution)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

30. Intervening Plaintiffs restate and incorporate by reference the allegations in paragraphs 1-29 as though fully set forth herein.

31. The population increase in the State of Nevada, as evidenced by the data from the 2010 census, has caused several Nevada Senate and Assembly districts, including districts in which Intervening Plaintiffs reside, to become overpopulated relative to other districts.

32. The data from the 2010 census also shows that the three congressional districts and a number of the legislative districts in the State of Nevada are malapportioned and overpopulated.

33. Article I, section 2 of the United States Constitution guarantees to Nevada voters a equal, fair, and effective opportunity to cast a meaningful ballot for state legislative and congressional representatives regardless of in which Legislative or Congressional District a voter resides, and that voters in a more highly populated district will not be subject to unlawful discrimination.

34. The Equal Protection Clause of the United States Constitution guarantees to Nevada voters a right to equal representation in the United State Congress and the Nevada Legislature.

35. The current Legislative and Congressional Districts are not properly apportioned according to the population of the State of Nevada, unlawfully discriminating against Intervening Plaintiffs and denying them equal representation in both the United States Congress and the Nevada Legislature.

36. A justiciable controversy exists among the parties and Intervening Plaintiffs are entitled to declaratory judgment pursuant to NRS 30.010 et. seq. that the current Legislative and Congressional Districts are invalid because they fail to comply with the requirements of the United States Constitution.

1 37. Intervening Plaintiffs are likely to succeed on the merits of their allegations
2 contained herein, would suffer irreparable harm in the absence of equitable relief, and the
3 balance of hardships favors the Intervening Plaintiffs. Thus, they are entitled to injunctive
4 relief enjoining the Defendant from using the current Legislative and Congressional Districts in
5 any future primary or general election(s).

6 38. Because of the declaratory and injunctive relief Intervening Plaintiffs seek, this
7 Court should retain jurisdiction to (1) redraw the current Legislative and Congressional
8 Districts should the Nevada Legislature fail to enact a redistricting plan, and (2) determine the
9 validity of any redistricting plan enacted by the Nevada Legislature.

10 39. Intervening Plaintiffs have had to employ the services of legal counsel to pursue
11 their interest and to protect their legal and constitutional rights and are thereby entitled to an
12 award of attorneys' fees and costs associated with this action.

Third Claim for Relief

**(Nevada's Legislative and Congressional Districts
Violate the Equal Protection Clause of the Nevada Constitution)**

13 40. Intervening Plaintiffs restate and incorporate by reference the allegations in
14 paragraphs 1- 39 as though fully set forth herein.

15 41. The population increase in the State of Nevada, as evidenced by the data from
16 the 2010 census, has caused several Nevada Senate and Assembly districts, including districts
17 in which Intervening Plaintiffs reside, to become overpopulated relative to other districts.

18 42. The data from the 2010 census also shows that the three congressional districts
19 and a number of the legislative districts in the State of Nevada are malapportioned and
20 overpopulated.

21 43. Hispanic voters, including certain of the Intervening Plaintiffs, reside in these
22 malapportioned and overpopulated Legislative and Congressional Districts.

23 44. Article IV, section 21 of the Nevada Constitution requires that "all laws" enacted
24 by the Nevada Legislature, including redistricting plans, "shall be general and of uniform
25
26
27
28

1 operation throughout the State,” guaranteeing voters equal protection under the laws of Nevada.

2 45. The current Legislative and Congressional Districts dilute the voting rights of
3 Intervening Plaintiffs who are Hispanic, and thus impermissibly discriminate against voters on
4 the ground of race and/or Hispanic origin in contravention of the Nevada Constitution.

5 46. A justiciable controversy exists among the parties and Intervening Plaintiffs are
6 entitled to declaratory judgment pursuant to NRS 30.010 et. seq. that the current Legislative and
7 Congressional Districts are invalid because they fail to comply with the requirements of the
8 Nevada Constitution.

9 47. Intervening Plaintiffs are likely to succeed on the merits of their allegations
10 contained herein, would suffer irreparable harm in the absence of equitable relief, and the
11 balance of hardships favors the Intervening Plaintiffs. Thus, they are entitled to injunctive
12 relief enjoining the Defendant from using the current Legislative and Congressional Districts in
13 any future primary or general election(s).

14 48. Because of the declaratory and injunctive relief Intervening Plaintiffs seek, this
15 Court should retain jurisdiction to (1) redraw the current Legislative and Congressional
16 Districts should the Nevada Legislature fail to enact a redistricting plan, and (2) determine the
17 validity of any redistricting plan enacted by the Nevada Legislature.

18 49. Intervening Plaintiffs have had to employ the services of legal counsel to pursue
19 their interest and to protect their legal and constitutional rights and are thereby entitled to an
20 award of attorneys’ fees and costs associated with this action.

21
22 **Prayer for Relief**

23 Accordingly, Intervening Plaintiffs respectfully request that the Court:

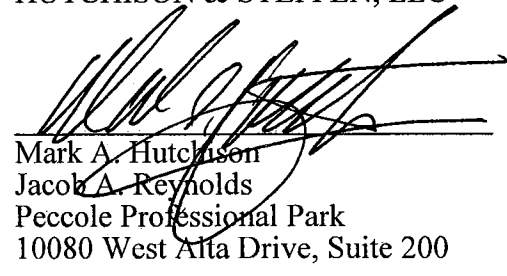
- 24 1. Declare the current Legislative and Congressional Districts invalid for failure to comply
25 with the requirements of the Nevada Constitution and the United States Constitution;
26 2. Enjoin the Defendant from using the current Legislative and Congressional Districts in
27 any future primary or general election(s);
28 3. Retain jurisdiction to redraw the current Legislative and Congressional Districts should

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- the Nevada Legislature fail to enact a redistricting plan;
4. Retain jurisdiction to determine the validity of any redistricting plan enacted by the Nevada Legislature;
 5. Grant Intervening Plaintiffs reasonable attorney's fees and costs in this action, including but not limited to attorney's fees, expert witness fees, and other costs and expenses; and
 6. Provide such other and further relief as the Court may deem proper.

DATED this 31st day of March, 2011.

HUTCHISON & STEFFEN, LLC



Mark A. Hutchison
Jacob A. Reynolds
Peccole Professional Park
10080 West Alta Drive, Suite 200

Attorneys for Plaintiff-Intervenors
Ken King, Sancy King, Allen Rosoff, B. Estela
Moser Vaden, and Nevada Republican Party