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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEVADA**

_____	)	
AMERICAN BROADCASTING COMPANIES, INC., THE	)	
ASSOCIATED PRESS, CABLE NEWS NETWORK LP,	)	
LLLP, CBS BROADCASTING INC., FOX NEWS	)	
NETWORK, L.L.C., and NBC UNIVERSAL, INC.,	)	
	)	
Plaintiffs,	)	Case No.:
	)	
- vs. -	)	
	)	
DEAN HELLER, in his official capacity as the	)	
SECRETARY OF STATE OF NEVADA,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**  
**FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs American Broadcasting Companies, Inc., The Associated Press, Cable News Network LP, LLLP, CBS Broadcasting Inc., Fox News Network, L.L.C., and NBC Universal, Inc. (“Plaintiffs”) for their Complaint state as follows:

### **JURISDICTION AND VENUE**

1. This action arises under and pursuant to the Constitution of the United States and the First and Fourteenth Amendments thereof and 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. §§ 1983 and 1988. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1343.

2. Venue is proper in this district under 28 U.S.C. §§ 1391(b) because a substantial part of the harm faced by Plaintiffs is threatened in this judicial district and Defendant resides in this judicial district.

### **THE PARTIES**

3. Plaintiff American Broadcasting Companies, Inc. (“ABC”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 77 West 66th St, New York, New York 10023. ABC News, a division of ABC, is engaged, *inter alia*, in the gathering of news, the production of news programming, and the transmission of news programming to the public through the ABC Television Network, which consists of more than 200 owned and affiliated broadcast stations throughout the country, including its affiliated stations in Nevada. ABC News produces multiple radio newscasts and news reports each day, disseminated via the ABC Radio Networks and owned and affiliated radio stations across the country. ABC News also produces and operates abcnews.com, a leading internet source of news and information, and delivers video news programming through broadband and wireless transmissions.

4. Plaintiff The Associated Press (“AP”) is a mutual news cooperative formed under the New York Not-For-Profit-Law with its principal place of business at 450 West 33rd St., New York, New York 10001. The AP serves thousands of daily newspaper,

radio, television and online customers with coverage in all media and news in all formats. It is a source of news for more than one billion people a day.

5. Plaintiff Cable News Network LP, LLLP (“CNN”) is a limited liability limited partnership registered under the laws of the State of Georgia with its principal place of business at 1 CNN Center, Atlanta, Georgia 30303. CNN, the first 24-hour news network, is engaged, *inter alia*, in the gathering of news, the production of news programming, and the transmission of news programming in Nevada, throughout the country and across the world through its cable and satellite television networks, radio networks, Web sites, CNN Mobile and CNN Newsource, its syndicated news service.

6. Plaintiff CBS Broadcasting Inc. (“CBS”) is a corporation organized and existing under the laws of the State of New York with its principal place of business at 51 West 52nd Street, New York, New York 10019. CBS is engaged, *inter alia*, in the gathering of news, the production of news programming, and the transmission of news programming to its affiliated broadcast stations in the State of Nevada and throughout the country.

7. Plaintiff Fox News Network, L.L.C. (“Fox News”) is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 1211 Avenue of the Americas, New York, New York 10036. Fox News, a division of News Corp., is engaged, *inter alia*, in the gathering of news, the production of news programming, and the transmission of news programming in Nevada, throughout the country and across the world through its cable and satellite television networks, Fox News Radio, Web sites, Fox News Mobile and Fox News Edge, its syndicated news service.

8. Plaintiff NBC Universal, Inc. (“NBC”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 30 Rockefeller Plaza, New York, New York 10112. Through the NBC Television Network, comprised of owned or affiliated broadcast stations in the State of Nevada and throughout the country, NBC News, a division of NBC, provides news and information to the public through its regularly scheduled news programs and special coverage of news of particular interest. NBC News also contributes news reports to NBC’s 24-hour business news channel, CNBC, and produces all programming for MSNBC, which delivers news to more than 75 million households on cable 24 hours a day and more than 20 million users a month on the Internet.

9. Defendant Dean Heller (“Heller”) is Secretary of State of the State of Nevada and is named herein in his official capacity as Secretary of State. As Secretary of State, Heller is the chief election officer of the State of Nevada. As Secretary of State, Heller is also responsible for obtaining and maintaining uniformity in the application, operation and interpretation of the provisions of the Nevada election laws and for instructing the county boards of election as to election procedures consistent with the law of Nevada.

#### **PLAINTIFFS’ NEWSGATHERING ACTIVITIES**

10. In order to better inform the public about voting behavior, voting trends, and voters’ reactions to important issues of the day, Plaintiffs conduct polls of voters leaving polling places on election days (sometimes referred to as “exit polls”) at selected polling places throughout the country. Plaintiffs intend to conduct such polls, as described below, on November 7, 2006 and on election days in the future at polling places in the State of Nevada.

11. As they have in past elections, Plaintiffs have retained two highly respected polling organizations, Edison Media Research and Mitofsky International, to assist them in conducting their exit polls.

12. The exit polls are conducted as follows: Typically one polling reporter is assigned to each of the polling places randomly selected for the polls. For the reasons discussed below, polling reporters stand near the exit of the building in which the polling place is located unless otherwise instructed by election officials. Polling reporters are directed to be courteous and businesslike and not to obstruct any voter or interfere with the election process in any way. The polling reporters approach voters after they leave the polling place in a scientifically pre-determined pattern (*i.e.*, every fourth voter, every fifth voter, etc.) and ask if they would be willing to fill out a brief, anonymous questionnaire. The typical questionnaire solicits voters' views on various political topics of the day and requests demographic information from each participating voter. Each participating voter is also asked how he or she voted. Polling reporters do not engage in electioneering activities of any kind.

13. Exit polls provide accurate data about voter behavior because of the near certainty that the persons interviewed have actually voted. The greater the distance from the polling place that the polling reporter is required to stand, however, the less reliable is the information gathered. There are several reasons for this. As a polling reporter moves farther and farther away from the polling place, the likelihood of a voter getting into his or her car and driving away, or of melding into a crowd of non-voters, increases. Second, as distance increases, it becomes harder to discern those who are voters from those who are not. Third, as distance increases, the statistical reliability of the sample itself de-

creases because it becomes impossible to interview in the scientifically selected pattern (e.g., every fourth voter, every fifth voter, etc.). A distance restriction will have a different impact on exit polling at any particular precinct depending on the particular layout of the area – for example, how close the parking lot is to the polling place. Requiring polling reporters to stand at least 100 feet from the place where voters exit the polling place substantially impairs their ability to conduct their exit polling activities and, accordingly, substantially reduces the statistical reliability and accuracy of their exit polls.

#### **USE OF EXIT POLL DATA BY PLAINTIFFS AND OTHERS**

14. Each of the Plaintiffs, and other members of the public, use the information obtained from exit polls in a variety of ways. The results of these polls are used by Plaintiffs, *inter alia*, to analyze and report upon how and why people have voted and to identify and comment on social and political trends. For example, in 1980, exit polls provided the information from which the “gender gap” was first clearly identified and from which all subsequent analyses of this phenomenon have begun. During the 1988 presidential primaries, exit polls provided information that indicated that the gender gap was a continuing phenomenon and provided invaluable insights on voters’ views concerning the first Black-American presidential candidate. In the 1992 Republican primary, exit polls showed the populist issues that led to Pat Buchanan’s near-success in certain primaries and the reasons for President Bush’s ultimate defeat in the general election. In 1996, the exit polls revealed that the gender gap was less striking than it had been in previous elections and that, while President Clinton won re-election, voters maintained their more conservative stance on the role of government, consistent with the results of the 1994 mid-term election. In the 2000 Presidential election, exit polls demonstrated how deep the divisions ran between vot-

ers for Bush and voters for Gore, noting that of all the major social categories (such as rich/poor, single/married, gay/straight, rural/urban, high school drop out/college graduate), only age did not show a significant difference in voting behavior. The results of the exit polls conducted in 2000 also showed that the gender gap was the largest then on record. President Bush made strong gains in the Latino vote and the urban vote according to the exit polls from the 2004 election, without correspondingly large drops among any other particular social category. Views on the Iraq war were also a strong predictor of the vote in 2004. These examples illustrate the unique value of exit polls in permitting analysis of the voting patterns of various groups according to sex, age, income, race and religion. The information gathered from exit polls has also been used by Plaintiffs in their election coverage and in formulating projections of the outcome of certain election contests.

15. The data obtained through exit polls is also used by scholars in many disciplines including, *inter alia*, political science, sociology, and history to analyze and comment upon how and why people have voted and to identify and comment on social and political trends. The exit poll data collected by Plaintiffs is archived after each election at the Roper Center at the University of Connecticut and at the Inter-University Consortium at the University of Michigan. The information is available through those archives to historians, social scientists, and others worldwide.

16. Exit polls are the most reliable and accurate method for gathering information from voters themselves on election day about how and why they have voted.

#### **PLAINTIFFS' ACTIVITIES IN NEVADA**

17. Plaintiffs have jointly conducted exit polls within 100 feet of polling places in the State of Nevada as part of their coverage of past elections. As recently as the

November 2004 election, Plaintiffs were permitted to conduct exit polls at some Nevada polling places within 100 feet of polling places. These polls were conducted without incident and without any complaint by the Secretary of State or any other election official.

18. On September 21, 2006, Plaintiffs' representative contacted the Secretary of State's Office to inquire as to whether Plaintiffs would be permitted to conduct exit polls in Nevada on November 7, 2006. In response to Plaintiffs' inquiry, on September 29, 2006 Plaintiffs were advised that the Secretary of State would not permit Plaintiffs to conduct exit polling activities within 100 feet of polling places in Nevada citing Nevada Revised Statutes § 293.740(1)(a).

19. Nevada Revised Statutes § 293.740 states in relevant part:

Soliciting votes and electioneering inside polling place or within certain distance from polling place prohibited; penalty.

1. Except as otherwise provided in subsection 2, it is unlawful inside a polling place or within 100 feet from the entrance to the building or other structure in which a polling place is located:

(a) For any person to solicit a vote or speak to a voter on the subject of marking his ballot.

(b) For any person, including an election board officer, to do any electioneering on election day.

The county clerk or registrar of voters shall ensure that, at the outer limits of the area within which electioneering is prohibited, notices are continuously posted on which are printed in large letters "Distance Marker: No electioneering between this point and the entrance to the polling place."

\* \* \* \*

3. Any person who violates any provision of this section is guilty of a gross misdemeanor.

4. As used in this section, "electioneering" means campaigning for or against a candidate, ballot question or political party by:

\* \* \* \*

(e) Polling or otherwise soliciting from a voter information as to whether the voter intends to vote or has voted for or against a particular political party, candidate or ballot question; . . .

**COUNT I**

20. Plaintiffs repeat, reallege, and incorporate the allegations of paragraphs 1 through 19 hereof as though fully set forth herein.

21. To the extent the Statute prohibits Plaintiffs from conducting exit polls or from asking voters for whom they voted within 100 feet of Nevada polling places, the Statute impermissibly restricts Plaintiffs' speech and commentary about the political process and thus violates Plaintiffs' rights under the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

22. To the extent the Statute prohibits Plaintiffs from conducting exit polls or from asking voters for whom they voted within 100 feet of Nevada polling places, the Statute impermissibly restricts Plaintiffs' opportunities to gather and receive information about the political process and thus violates Plaintiffs' rights under the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

23. To the extent the Statute prohibits Plaintiffs from conducting exit polls or from asking voters for whom they voted within 100 feet of Nevada polling places while simultaneously permitting other activities within that zone, the statute is underinclusive in violation of the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

24. Plaintiffs seek to conduct exit polls within 100 feet of polling places in the State of Nevada on November 7, 2006 and on election days in the future. If Plaintiffs

are prohibited from doing so, Plaintiffs will be significantly restricted in their efforts to gather and report truthful and significant information about the political process to the public, thus causing Plaintiffs irreparable harm for which there is no adequate remedy at law.

## **COUNT II**

25. Plaintiffs repeat, reallege, and incorporate the allegations of paragraphs 1 through 24 hereof as though fully set forth herein.

26. By directing that exit polling is to be prohibited within 100 feet of Nevada polling places, Secretary Heller has impermissibly restricted Plaintiffs' speech and commentary about the political process and has thus violated Plaintiffs' rights under the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

27. By directing that exit polling is to be prohibited within 100 feet of Nevada polling places, Secretary Heller has impermissibly restricted Plaintiffs' opportunities to gather and receive information about the political process and has thus violated Plaintiffs' rights under the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

28. By directing that exit polling is to be prohibited within 100 feet of Nevada polling places while permitting other activities within that zone, Secretary Heller has violated Plaintiffs' rights under the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

29. Plaintiffs seek to conduct exit polls within 100 feet of polling places in the State of Nevada on November 7, 2006 and on election days in the future. If Plaintiffs are prohibited from doing so, Plaintiffs will be significantly restricted in their efforts to

gather and report truthful and significant information about the political process to the public, thus causing Plaintiffs irreparable harm for which there is no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

1. That this Court declare that to the extent the Statute prohibits Plaintiffs from conducting exit polls or from asking voters for whom they voted within 100 feet of Nevada polling places, the Statute violates Plaintiffs' rights under the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

2. That this Court declare that by directing that exit polling is to be prohibited within 100 feet of Nevada polling places, Secretary Heller has violated Plaintiffs' rights under the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

3. That this Court preliminarily enjoin Defendant and all those acting in concert with him from prohibiting Plaintiffs from conducting exit polls within 100 feet of polling places in the State of Nevada on November 7, 2006 and pending the entry of a final judgment in this action.

4. That this Court permanently enjoin Defendant and all those acting in concert with him from prohibiting Plaintiffs from conducting exit polls within 100 feet of polling places in the State of Nevada.

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