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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 AMERICAN BROADCASTING)
COMPANIES, INC., THE ASSOCIATED)
11 PRESS, CABLE NEWS NETWORK LP,)
LLP, CBS BROADCASTING INC., FOX)
12 NEWS NETWORK, LLC, and NBC)
UNIVERSAL, INC.,)
13)
Plaintiffs,)
14)
vs.)
15)
DEAN HELLER, in his official capacity as)
16 the SECRETARY OF STATE OF NEVADA,)
17)
Defendant.)
18)

2:06-cv-01268-PMP-RJJ

EMERGENCY MOTION FOR
ENLARGEMENT OF TIME PURSUANT
TO FRCP 6(b)

19 COMES NOW the Honorable Dean Heller, Secretary of State of Nevada, through his
20 attorney George J. Chanos, Attorney General, by his deputy Joshua J. Hicks, and files this
21 Emergency Motion for an Enlargement of Time pursuant to FRCP 6(b). This Motion is based
22 on the following points and authorities, the attached exhibits, and all papers and pleadings on
23 file herein.

24 **BACKGROUND**

25 On October 10, 2006, Plaintiffs filed a complaint for declaratory and injunctive relief,
26 alleging that NRS 293.740(1)(a), as applied to exit polling, is unconstitutional. Plaintiffs also
27 requested an expedited briefing schedule, apparently on the basis that they wish to conduct
28 exit polling at the upcoming November 7, 2006 general election.

1 On October 11, 2006, this Court entered an order setting an expedited briefing
2 schedule, ordering the Secretary of State to file his brief by October 20, 2006, and setting this
3 matter for a hearing on October 31, 2006. On October 12, 2006, the Secretary of State was
4 served with the complaint, a motion for emergency relief, and voluminous exhibits.

5 **DISCUSSION**

6 Pursuant to FRCP 6(b), when “by order of court an act is required or allowed to be
7 done within a specified time, the court for cause shown may at any time in its discretion (1)
8 with or without motion or notice order the period enlarged if request therefor is made before
9 the expiration of the period originally prescribed . . .” The Secretary of State requests that the
10 standard briefing schedule set forth in Local Rule 7-2 be reinstated because Plaintiffs have
11 deliberately chosen to file their lawsuit at a time that would prevent the Secretary of State and
12 this Court from having a full and fair opportunity to address the issues therein.

13 On October 5, 2004, a law firm representing each of the Plaintiffs sent the Secretary of
14 State a letter threatening to sue if the Secretary of State would not renounce
15 NRS 293.740(1)(a) as applied to exit polling. (Exhibit 1). On October 15, 2004, the Secretary
16 of State responded to Plaintiffs that he would not renounce the statute. (Exhibit 2).
17 Accordingly, it is undisputable that Plaintiffs have been aware for at least two years that the
18 Secretary of State was unwilling to renounce the statute.¹

19 Yet, despite the clear opportunity and wherewithal to file a lawsuit in 2004, or even in
20 2005 or earlier in 2006, Plaintiffs chose to wait until the eleventh hour to file their lawsuit
21 against the Secretary of State. Plaintiffs are also clearly aware that State and Local election
22 resources are stretched thin in the time before an election (early voting starts on October 21,
23 2006). The obvious inference to be drawn is that the Plaintiffs want to preclude the Secretary
24 of State from having a full and fair opportunity to respond to the allegations of the complaint.

25 The Plaintiffs, in their pleadings, make much of *Daily Herald Co. v. Munro*, 838 F.2d
26 380 (9th Cir. 1988). However, what the Plaintiffs fail to tell this Court in their attempt to rush

27 _____
28 ¹ NRS 293.740(1)(a) was enacted in 1997. Presumably, and given Plaintiffs lengthy dissertation on exit
polling restrictions in other states, Plaintiffs have been aware, or should have been aware, of the Nevada
prohibition since that time.

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1 this case to judgment is the full history of that case. The 1988 opinion was the second trip to
2 the Ninth Circuit. Previously, in 1985, the Ninth Circuit had remanded the case to the District
3 Court to conduct detailed findings of fact. See *Daily Herald Co. v. Munro*, 758 F.2d 350, 351-
4 352 (9th Cir. 1985). Specifically, the Ninth Circuit ordered the District Court to make such
5 determinations as: what is an exit poll; whether exit polling is disruptive; whether exit polling
6 can reliably be conducted outside of a 300' radius; what is the minimum non-disruptive radius
7 for exit polling; does exit polling discourage voters from voting; what was Washington's true
8 motive behind the exit polling prohibition; and were there less restrictive means to prevent
9 voter disruption. *Id.* Of critical importance here is the fact that while Washington banned exit
10 polling within 300' of a polling place, Nevada prohibits certain activities, which would include
11 exit polling, only within 100' of a polling place – less than one-third of the distance in
12 Washington. Ultimately, the Washington district court and the Ninth Circuit concluded, based
13 upon evidence, that precluding exit polling within 300' of a polling place was unconstitutional.
14 *Daily Herald Co.*, 838 F.2d at 388.

15 What is evident from the first *Daily Herald* case is that certain facts must be developed
16 to accurately analyze a constitutional challenge to an exit polling restriction. At the very least,
17 Plaintiffs must provide evidence that exit polling cannot be reliably conducted within 100' of a
18 polling place, and the Secretary of State must have a reasonable amount of time to rebut that
19 evidence. At present, the Secretary of State has been given seven calendar days to refute
20 allegations and evidence provided by Plaintiffs. Moreover, Plaintiffs have clearly spent a
21 considerable amount of time and effort planning and preparing for this lawsuit. In fact,
22 Plaintiffs compliant, motion, and exhibits easily goes into the hundreds of pages. It is unfair
23 and prejudicial to the Secretary of State to allow him one week to review and respond to this
24 mountain of motions and exhibits when the only reason for the so-called "emergency" is
25 Plaintiffs' decision to file this lawsuit at the last possible minute.

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