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

11 JOHN KOENIG, an individual, and
12 GREGORY T. HAFEN, II, an individual,

13 Plaintiffs,

Case No: 21050016619

14 vs.

Dept. No: 1

15 STATE OF NEVADA, *ex rel.*, THE
16 HONORABLE BARBARA K. CEGAVSKE,
in her capacity as Secretary of State for the
State of Nevada,

17 Defendant.

18
19 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

20 Plaintiffs, JOHN KOENIG, an individual, and GREGORY T. HAFEN, II, an individual,
21 hereby complain and allege as follows against Defendant, THE HONORABLE BARBARA K.
22 CEGAVSKE (the "Secretary of State" or the "Secretary"):

23 **INTRODUCTION**

24 1. Plaintiffs bring the present action pursuant to NRS 30.030 and 33.010 to challenge the
25 validity of Nevada's Senate, Assembly, and Congressional districts (collectively, "Legislative and
26 Congressional districts"), as drawn and identified in Senate Bill ("SB") 1 passed by the Legislature of
27 the State of Nevada (the "Legislature") on November 16, 2021 during the 33rd (2021) Special Session
28 of the Legislature, on grounds that they contravene the Nevada and United States Constitutions.

1 **JURISDICTION AND VENUE**

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

6 9. This action involves an issue of significant public and statewide importance as it seeks
7 to uphold and protect the constitutional requirements for redistricting. As provided in Article 1,
8 Section 2 of the Nevada Constitution, political power is inherent in the people. Government only has
9 power from the consent of the governed.

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

15 **GENERAL ALLEGATIONS**

16 11. This is an action to challenge the constitutionality of SB 1 as well as the
17 constitutionality of the manner in which said bill was passed into law.

18 12. The joint legislative rules adopted for the 33rd Special Session of the Nevada
19 Legislature provided "equality of representation" based upon population of congressional districts and
20 state legislative districts and that the district boundaries created by a redistricting plan must follow the
21 census geography as the only redistricting requirements. The joint legislative rules also provided the
22 redistricting committees shall seek and encourage: (a) public participation in all aspects of the
23 reapportionment and redistricting activities; and (b) the widest range of public input into the
24 deliberations relating to those activities.

25 13. At the redistricting committee hearing held on November 13, 2021 during the 33rd
26 Special Session of the Nevada Legislature, the SB 1 proponents could not answer questions about the
27 Legislative and Congressional districts proposed therein, could not explain why the maps were drawn
28 the way they were or provide a rational basis for the maps, nor could the non-partisan staff of the

1 Legislative Counsel Bureau (“LCB”) answer any questions about the basis or manner in which the
2 districts had been drawn because the LCB did not create the districts contained in SB 1 for the SB 1
3 proponents. The redistricting committees and/or the Legislature subsequently made certain changes
4 to the original SB 1 districts at the request of certain communities of interest and political subdivisions
5 (municipalities, townships, cities, counties) for the benefit of voters, but ignored and did not consider
6 the requests of other political subdivisions (municipalities, townships, cities, counties) or communities
7 of interest for changes to the SB 1 districts for the benefit of voters.

8 14. During the 33rd Special Session of the Nevada Legislature, members of the redistricting
9 committees and the Legislature had at times less than 24 hours to consider the proposals for which
10 they voted. The process was criticized for leaving legislators little time to consider the maps and in
11 the dark as to the data and process that led to the maps’ drawing.

12 15. The totality of the circumstances established that the enacted Legislative and
13 Congressional districts through the redistricting plan approved in SB 1 has the effect of denying voters
14 an equal opportunity to participate in the political process of electing candidates of their choice in
15 violation of federal and state law.

16 16. SB 1 was signed into law by Governor Sisolak on November 16, 2021.

17 17. SB 1 appears to be an intentional extreme partisan gerrymander that dilutes votes and
18 prevents voters from electing candidates of their choice.

19 18. The Nevada and federal Constitutions guarantee the opportunity for equal participation
20 by all voters in the election of legislators and congressional representatives.

21 19. SB 1 deprives citizens and voters such as Plaintiffs and all others similarly situated of
22 the right to participate equally in the political process, to join with others to advance political beliefs,
23 and to choose their political representatives.

24 20. SB 1 divides Nye County into three different Assembly Districts and divides the town
25 of Pahrump into two Assembly Districts.

26 21. Pahrump is a small Nye County rural community and the entirety of Nye County is
27 rural.

28

1 22. More than half of Pahrump is being moved into Assembly District 33 with an urban
2 area of metropolitan Las Vegas and Clark County, which has the effect of lumping rural Nye County
3 voters and metropolitan Clark County voters in one district despite sharing little to anything in
4 common.

5 23. The rural and urban voters of the new Assembly District 33 have entirely different
6 types of local government, school districts and are contained in separate valleys with separate policy
7 issues and concerns.

8 24. SB 1 splits the Pahrump community where residents live, work, raise their families,
9 gather, shop, attend school and worship together; dilutes their representation; diminishes their ability
10 to be engaged in their government; and creates additional burdens on local elected officials. This split
11 appears to be aimed at ensuring Pahrump voters do not have sufficient voting power to join together
12 and elect a candidate of their choice.

13 25. An Assemblyperson from the new Assembly District 33 elected from Elko County or
14 an Assemblyperson in the new Assembly District 36 elected from Clark County will have little
15 understanding of Pahrump's and Nye County's unique and local problems and issues and as such will
16 be unable to adequately represent the needs and interests of Pahrump's and Nye County's rural voters.

17 26. SB 1 packs and cracks voters in Nye County and Pahrump and in every district in the
18 State of Nevada.

19 27. In addition to federal requirements of one person, one vote, and those contained in the
20 Voting Rights Act, Article IV, Section 5 of the Nevada Constitution requires that Legislative districts
21 respect county boundaries. The Legislative districts created by SB 1 fail to comply with these
22 requirements.

23 28. In 2011, this Court issued additional criteria for the special masters appointed to draw
24 the Legislative and Congressional districts, ordering them to consider population, contiguity, political
25 subdivisions (municipalities, townships, cities, counties), communities of interest, compactness, and,
26 to the extent practical, contests between incumbents. SB 1 fails to comply with these and other
27 redistricting principles and requirements, such as preserving the core of a prior district, resulting in
28

1 unconstitutional Legislative and Congressional districts. There is no compelling justification nor
2 legitimate purposes that justify the Legislative and Congressional districts in SB 1.

3 29. For each claim asserted herein, Plaintiffs have been required to engage the services of
4 counsel to pursue their rights, and, as a proximate and necessary result of the State's illegal conduct
5 complained of herein, Plaintiffs are entitled to reasonable attorneys' fees and costs as special and
6 foreseeable damages, or in the alternative, as costs of suit. In addition, Plaintiffs are entitled to
7 attorneys' fees and costs under common law theories of the substantial benefit doctrine and the private
8 attorney general doctrine.

9 30. If declaratory and/or injunctive relief are granted in Plaintiffs' favor, NRS 30.100
10 allows for such further relief as is necessary and proper. Monetary damages are demanded as
11 supplemental relief in addition to declaratory and injunctive relief demanded herein and because
12 equitable relief is sought, an award of attorneys' fees is proper as an item of damages. Attorneys' fees
13 are the actual injury or damages caused to Plaintiffs by the State's constitutional violations.

14 31. Plaintiffs' rights, status, or other legal relations are affected by SB 1 and, by the claims
15 asserted herein, Plaintiffs seek declarations of their rights, status, or other relations. Declaratory relief
16 pursuant to NRS Chapter 30 is appropriate because it will effectively adjudicate the rights, status or
17 other legal relations of the parties.

18 32. Plaintiffs and Defendant have adverse interests, and an actual justiciable controversy
19 exists between them within the jurisdiction of this Court concerning the constitutionality, legality, and
20 enforceability of SB 1.

21 33. Plaintiffs have a legally protectable interest in this controversy as registered voters and
22 citizens of Pahrump, Nye County, and the State of Nevada.

23 34. The controversy before this Court is ripe for judicial determination because SB 1 was
24 passed into law by the Legislature and signed by the Governor on November 16, 2021.

25 **FIRST CLAIM FOR RELIEF**

26 **Legislative District: Violation of the Nevada Constitution**

27 35. Plaintiffs restate and incorporates by reference all allegations of this Complaint as
28 though fully set forth herein.

1 36. Nevada’s most recent Legislative districts were established pursuant to an Order
2 Adopting and Approving Special Masters’ Report and Redistricting Maps as Modified by the Court
3 entered by this Court on October 27, 2011 in *Guy, et al v. Miller*, Case No. 11 OC 00042 1B (the
4 “2011 Redistricting Order”), based on the results of the 2010 Census. Nevada’s current Senate and
5 Assembly districts are set forth in the 2011 Redistricting Order, which is currently codified in the
6 Appendix to NRS Chapter 218B.

7 37. The results of the 2010 Census revealed that the population of Nevada was 2,700,551.
8 The 2011 Redistricting Order drew district lines for 21 Senate districts and 42 Assembly districts.

9 38. Based on the results of the 2020 Census, the population of Nevada is 3,104,614.

10 39. On August 25, 2021, the United States Census Bureau released the redistricting data
11 for the State of Nevada. The 2020 redistricting data for the State of Nevada is or will be made available
12 at <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html>.

13 40. Article 1, Section 13 of the Nevada Constitution provides: “Representation shall be
14 apportioned according to population.”

15 41. Article 4, Section 5 of the Nevada Constitution provides in relevant part:
16
17 It shall be the mandatory duty of the legislature at its first session
18 after the taking of the decennial census of the United States in the
19 year 1950, and after each subsequent decennial census, to fix by law
the number of senators and assemblymen, and apportion them
among the several counties of the state, or among legislative districts
which may be established by law, according to the number of
inhabitants in them, respectively.

20 42. Article 15, Section 13 of the Nevada Constitution provides in relevant part:
21
22 The enumeration of the inhabitants of this State shall be taken under
23 the direction of the Legislature if deemed necessary . . . ; and these
enumerations, together with the census that may be taken under the
direction of the Congress of the United States . . . shall serve as the
basis of representation in both houses of the Legislature.

24 43. Article 4, Section 21 of the Nevada Constitution provides that “all laws shall be general
25 and of uniform operation throughout the State.”

26 44. Article 1, Section 1 of the Nevada Constitution provides: “All men are by Nature free
27 and equal and have certain inalienable rights among which are those of enjoying and defending life
28

1 and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and
2 happiness[.]”

3 45. Article 1, Section 8(5) of the Nevada Constitution provides: “No person shall be
4 deprived of life, liberty, or property, without due process of law.”

5 46. Article 2, Section 1 A of the Nevada Constitution provides for Rights of Voters,
6 including equal access to the election system without discrimination.

7 47. The above provisions of the Nevada Constitution require that Nevada’s Legislative
8 districts be apportioned according to the state population, as derived from the 2020 United States
9 Census, thereby guaranteeing to Nevada residents the creation of Legislative districts of substantially
10 equal population so that votes for state senators and assemblymen cast in different Legislative districts
11 are given equal weight.

12 48. The above provisions of the Nevada Constitution further guarantee that Nevada voters
13 have a fair and equal opportunity to cast a meaningful ballot for state senators and assemblymen,
14 regardless of the Legislative districts in which voters reside, and that voters in more sparsely populated
15 Legislative districts will not be subject to unlawful discrimination.

16 49. The Legislative redistricting plan set forth in SB 1 deprives Plaintiffs and all similarly
17 situated individuals of such rights guaranteed by the Nevada Constitution.

18 50. As a result of the malapportionment of Nevada’s Legislative districts, Plaintiffs’ votes
19 for state senators and assemblymen will be diluted.

20 51. It is necessary for the Court to order a redistricting plan reapportioning the Nevada
21 Senate and Assembly in accordance with the Nevada Constitution.

22 52. On information and belief, absent enactment of a new Legislative redistricting plan by
23 the Nevada Legislature and Governor or an injunction by this Court, the Secretary of State intends to
24 and will conduct primary and general elections for the Nevada Legislature on the basis of the
25 Legislative districts set forth in SB 1.

26 53. Plaintiffs intend to and will vote in the state primary and general elections to be held
27 in 2022 and thereafter for candidates for the Nevada Senate and Nevada Assembly. If those elections
28 are conducted by the Secretary of State on the basis of the Legislative districts set forth in SB 1,

1 Plaintiffs and all similarly situated Nevada voters in malapportioned Legislative districts will be
2 further deprived of rights guaranteed in the Nevada Constitution.

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

6 **SECOND CLAIM FOR RELIEF**

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

8 55. Plaintiffs restate and incorporate by reference all allegations of this Complaint as
9 though fully set forth herein.

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

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

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

19 58. The above provisions of the United States Constitution guarantee that Nevada voters
20 have a fair and equal opportunity to cast a meaningful ballot for state senators and assemblymen,
21 regardless of the Legislative districts in which voters reside, and that voters in more sparsely populated
22 Legislative districts will not be subject to unlawful discrimination.

23 59. As set forth herein, the Legislative districts set forth in SB 1 are not properly
24 apportioned, unlawfully discriminating against Plaintiffs and other similarly situated individuals.

25 60. The Legislative redistricting plan set forth in SB 1 deprives Plaintiffs and all similarly
26 situated individuals of rights guaranteed to them under the United States Constitution.

27 61. As a result of the malapportionment of Nevada's Legislative districts, Plaintiffs' votes
28 for state senators and assemblymen will be diluted.

62. It is necessary for the Court to order a redistricting plan reapportioning the Nevada
Senate and Assembly in accordance with the United States Constitution.

1 candidate who shares their views. The State has unconstitutionally burdened speech where it renders
2 disfavored speech *less effective*, even if it does not ban such speech outright.

3 70. SB 1 violates Article 1, Sections 9 and 10 of the Nevada Constitution because it
4 severely burdens – if not outright precludes – the ability of Republican and Independent voters to
5 associate by eroding their ability to instruct and obtain redress from their members of the Nevada
6 Legislature and Congress on issues important to them.

7 71. SB 1 violates Article 1, Sections 9 and 10 of the Nevada Constitution by retaliating
8 against Plaintiffs and other Republican and Independent voters based on their exercise of political
9 speech. SB 1 takes adverse action against Plaintiffs and other Republican and Independent voters,
10 retaliates against their protected speech and conduct, and would not have taken the adverse action but
11 for SB 1’s intent to pack and crack Republican and Independent voters because of their prior political
12 speech and associations.

13 72. There is no legitimate state interest in discriminating and retaliating against Plaintiffs
14 because of their political viewpoints, voting histories, and affiliations. Nor can SB 1 be explained or
15 justified by Nevada’s geography or any legitimate redistricting criteria.

16 **PRAYER FOR RELIEF**

17 Accordingly, Plaintiffs request that this Court:

- 18 1. Declare that the Legislative and Congressional districts set forth in SB 1 are invalid for
19 failure to comply with the requirements of the Nevada and United States Constitutions;
- 20 2. Enjoin the Secretary of State from calling, holding, supervising, or taking any action
21 regarding Senate, Assembly, or Congressional elections based on the Senate, Assembly, and
22 Congressional districts set forth in SB 1;
- 23 3. To order a redistricting plan drawing new Legislative and Congressional districts in
24 accordance with the Nevada and United States Constitutions;
- 25 4. Award damages, including attorneys’ fees and costs as damages, and/or for attorneys’
26 fees as special and foreseeable damages in the amount to be proven at trial; and
- 27 5. Grant such other or further relief the Court deems to be appropriate, including but not
28 limited to an award of Plaintiffs’ attorneys’ fees and reasonable costs.

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AFFIRMATION

The undersigned does hereby affirm that the preceding document **DOES NOT** contain the social security number of any person.

DATED this 17th day of November, 2021.

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4872-1304-9860, v. 1