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11 Attorneys for Plaintiffs

12 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
13 IN AND FOR CARSON CITY

14 JOHN KOENIG, an individual, and  
15 GREGORY T. HAFEN, II, an individual,

16 Plaintiffs,

17 vs.

18 STATE OF NEVADA, *ex rel.*, THE  
19 HONORABLE BARBARA K. CEGAVSKE,  
20 in her capacity as Secretary of State for the  
21 State of Nevada,

22 Defendant.

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Case No: 21050016619  
Dept. No: 1

23 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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

27 **INTRODUCTION**

28 1. Plaintiffs bring the present action pursuant to NRS 30.030 and 33.010 to challenge the  
validity of Nevada's Senate, Assembly, and Congressional districts (collectively, "Legislative and  
Congressional districts"), as drawn and identified in Senate Bill ("SB") 1 passed by the Legislature of  
the State of Nevada (the "Legislature") on November 16, 2021 during the 33<sup>rd</sup> (2021) Special Session  
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 33<sup>rd</sup> 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 33<sup>rd</sup>  
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 33<sup>rd</sup> 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                   It shall be the mandatory duty of the legislature at its first session  
17 after the taking of the decennial census of the United States in the  
18 year 1950, and after each subsequent decennial census, to fix by law  
19 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                   The enumeration of the inhabitants of this State shall be taken under  
22 the direction of the Legislature if deemed necessary . . . ; and these  
23 enumerations, together with the census that may be taken under the  
24 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 17<sup>th</sup> day of November, 2021.

**ALLISON MacKENZIE, LTD.**  
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Attorneys for Plaintiffs

4872-1304-9860, v. 1