

1 BRADLEY SCOTT SCHRAGER, ESQ.  
 Nevada Bar # 10217  
 2 TRACY A. DIFILLIPPO, ESQ.  
 Nevada Bar # 7676  
 3 Jones Vargas, Chtd.  
 3773 Howard Hughes Parkway  
 4 Third Floor South  
 Las Vegas, Nevada 89169  
 5 Tel: (702) 862-3300  
 Fax: (702) 737-7705  
 6 [bschrager@jonesvargas.com](mailto:bschrager@jonesvargas.com)

7 ATTORNEYS FOR DEMOCRATIC  
 NATIONAL COMMITTEE

8  
 9  
 10 UNITED STATES DISTRICT COURT  
 11 DISTRICT OF NEVADA

12 DWAYNE CHESNUT, an individual;  
 13 JOHN CAHILL, an individual; VICKY  
 14 BIRKLAND, an individual; JOHN  
 BIRKLAND, an individual; PATRICIA  
 15 MONTGOMERY, an individual; LYNN  
 WARNE, an individual; NEVADA STATE  
 16 EDUCATION ASSOCIATION, a Nevada  
 nonprofit corporation;

CASE NO. 2:08-CV-00046-JCM-PAL

**DEMOCRATIC NATIONAL  
 COMMITTEE'S MOTION TO  
 INTERVENE**

17 Plaintiffs,  
 18 vs.  
 19 DEMOCRATIC PARTY OF NEVADA, a  
 Nevada nonprofit cooperative association,  
 20 Defendant.

**(Emergency Relief Requested Pursuant to  
 L.R. 6-1(a))**

21  
 22 The Democratic National Committee ("DNC") moves, by and through its attorneys, Jones  
 23 Vargas, to intervene pursuant to F.R.C.P. 24(a) and (b). The motion to intervene is filed now to  
 24 give all parties as much notice as possible, and the underlying brief representing the DNC's Answer  
 25 in Intervention (which under normal conditions unaffected by the need for emergency and expedited  
 26 briefing and hearing would be filed with this motion, pursuant to F.R.C.P. 24(c)) will be filed in as  
 27 timely a manner as is possible, given the accelerated schedule of this proceeding.

28 This Court should allow the DNC to intervene pursuant to F.R.C.P. 24 (a) for the following

1 reasons:

2 (a) The DNC's motion to intervene is timely, and no party will suffer prejudice if  
3 the DNC is added as a party defendant;


4 (b) The DNC, as the governing body of the Democratic Party of the United States of  
5 America, has a strong interest in the outcome of this litigation because Plaintiffs seek a  
6 determination that a delegate selection plan submitted to and approved by the Rules and  
7 Bylaws Committee of the DNC is contrary to the United States Constitution and certain  
8 statutory provisions.

9 (c) The DNC's interest is not already adequately represented in this case because  
10 the DNC represents a national organization whose interest is much more broad-based  
11 than the current Defendant, the Democratic Party of Nevada, and the repercussions of this  
12 litigation may sound throughout the nation and affect the impending primaries and caucuses  
13 of all those state Democratic parties that have not yet held those events.

14 Alternatively, this Court should allow the DNC to intervene pursuant to F.R.C.P. 24(b)  
15 because the DNC's defense of the lawfulness of the Nevada Delegate Selection Plan that Defendant  
16 submitted to the DNC, and the DNC's Rules and Bylaws Committee approved, shares a common  
17 question of law with the main action. Additionally, the DNC can provide unique input and special  
18 expertise with respect to the issues of this case, further supporting its request for permissive  
19 intervention under F.R.C.P. 24(b).

20 DATED this 15 day of January, 2008.

21  
22  
23  
24  
25  
26  
27  
28

By:   
BRADLEY SCOTT SCHRAGER, ESQ.  
TRACY A. DIFILLIPPO, ESQ.  
Jones Vargas, Chtd.  
3773 Howard Hughes Parkway  
Third Floor South  
Las Vegas, Nevada 89169  
Tel: (702) 862-3300  
Fax: (702) 737-7705  
[bschrager@jonesvargas.com](mailto:bschrager@jonesvargas.com)

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

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

This lawsuit involves a determination of the lawfulness and constitutionality of certain aspects of the delegate selection plan of the Democratic Party of Nevada. The DNC, the Rules and Bylaws Committee of which approved the Nevada Party's delegate selection plan for at-large caucus sites, seeks to intervene so that it may protect its interests and offer its expertise and special input into the issues of this case. The DNC believes it should be allowed to intervene as of right, given its very strong interest in the outcome of this litigation and the adequacy of representation of its interests by the current parties, or in the alternative by permission of the Court.

This Court should permit the DNC to intervene pursuant to F.R.C.P. 24(a) and (b) because the DNC, as a national organization sponsoring the quadrennial nominating convention of the Democratic Party of the United States it has a substantial interest in any determination of whether the delegate selection plans submitted by state parties and approved by the DNC Rules and Bylaws Committee are lawful and constitutional. Further, this Court should allow the DNC to intervene in this matter because no existing party represents the national political party, and no existing party would be forced to deal with the potential nationwide effects should the portions of the Democratic Party of Nevada's delegate selection plan be found unlawful or unconstitutional.

Plaintiffs in this action filed a Complaint for Declaratory and Injunctive Relief on January 11, 2008, and thereafter an Application for a Temporary Restraining Order and Emergency Motion for Preliminary Injunction on January 14, 2008. Plaintiffs seek a temporary restraining order enjoining the Democratic Party of Nevada from executing those portions of its delegate selection plan that include the use of at-large caucus sites for the January 19, 2008, Nevada Democratic Caucus. The hearing on this matter is set for Thursday, January 17, at 9:00 a.m., and the DNC, therefore, respectfully requests emergency relief as to the determination of its motion to intervene so that it may participate at that hearing.

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

II.

DISCUSSION

A. The DNC Should Be Permitted To Intervene In This Action As Of Right Because All Of The Requirements Of NRCP 24(a) Are Satisfied

Intervention as a matter of right is governed by NRCP 24(a). Rule 24(a) states as follows:

“(a) *Intervention of right.* Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” NRCP 24(a).

In this matter, the DNC meets all of the requirements for intervention of right.

First, this Motion is timely, if in need of prompt resolution.

Secondly, the DNC has a substantial interest in the outcome of this litigation. The test of whether a party seeking to intervene in the litigation has an interest “is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” MGM Grand Hotel, Inc. v. Smith-Hemion Prod., 158 F.R.D. 677, 679 (D. Nev. 1994). The DNC will be directly impacted if, days before a caucus or primary, parties may file suits challenging aspects of the delegate selection plans under which the events have been approved to proceed and those events—and their legitimacy—are placed in doubt. Therefore, the DNC's interest meets the test of an interest in the litigation under F.R.C.P. 24(a).

Finally, the Democratic Party of Nevada would inadequately represent the DNC's interests. The burden to show inadequate representation is minimal. See The Fund For Animals, Inc. v. Norton, 322 F.3d 728 (D.C. Cir. 2003). Although the DNC intends to argue certain similar positions as the Democratic Party of Nevada, the DNC is a national organization whose interests and concerns in this litigation stretch far more broadly than that of the Democratic Party of Nevada; namely, the effects that the Plaintiffs' litigation will have on the forty-five-plus more primaries and caucuses still to be held during the 2008 nominating season, and upon the abilities of the DNC to sponsor and approve the ways in which state parties assign and award delegates to particular

1 candidates in advance of the national nominating convention.

2 **B. In the Alternative, The Court Should Grant the DNC's Motion to Intervene**  
3 **Under NRCF 24(b)**

4 As is argued above, the DNC meets all of the requirements for intervention as a matter of  
5 right. However, in the event that the Court determines that the DNC does not meet the requirements  
6 of FRCP 24(a), permissive intervention under FRCP 24(b) is proper in the alternative. Rule 24(b)  
7 states as follows:

8 “(b) *Permissive Intervention.* Upon timely application anyone may be permitted to  
9 intervene in an action: (1) when a statute confers a conditional right to intervene; or  
10 (2) when an applicant’s claim or defense and the main action have a question of law  
11 or fact in common. In exercising its discretion the court shall consider whether the  
intervention will unduly delay or prejudice the adjudication of the rights of the  
original parties.” NRCF 24(b).

12 Whether a party is allowed to intervene is left to the sound discretion of the Court. See MGM  
13 Grand Hotel, Inc., 158 F.R.D. at 680.

14 Here, permissive intervention is proper in that the DNC's defense of the lawfulness of the  
15 Nevada Delegate Selection Plan that Defendant submitted to the DNC, and the DNC's Rules and  
16 Bylaws Committee approved, shares a common question of law with the main action. The question,  
17 in effect, can be termed as whether the DNC's actions in approving the Democratic Party of  
18 Nevada's delegate selection plan were, in and of themselves, lawful and constitutional. The  
19 Plaintiffs' Complaint asserts, inter alia, that the plan violates the equal protection clauses of the  
20 United States Constitution. The DNC's proposed defense argues that the Democratic Party of  
21 Nevada and the DNC each have the right to determine through their own rules and bylaws how the  
22 delegates to the national nominating convention will be awarded and apportioned, and that the  
23 current plan challenged by Plaintiffs was submitted, approved, and implemented in full accordance  
24 with those rules and bylaws, as well as with the pertinent statutory and constitutional requirements.  
25 Therefore, the DNC's defense of the lawfulness of the Democratic Party of Nevada's delegate  
26 selection plan shares a common question of law with the main action. Accordingly, this Court  
27 should permit the Association to intervene pursuant to F.R.C.P. 24(b).

28 Additionally, the DNC offers unique input and special expertise into the issues that will



1 decide the present litigation. Only the DNC can offer the Court the wider perspective of the  
2 national party and the impact of the questions at stake here, and the expertise of the DNC in  
3 sponsoring the national nominating convention and the delegate apportionment process that  
4 accompanies it cannot be understated. See General Motors Corp. v. Burns, 50 F.R.D. 401, 405  
5 (D.Haw. 1970) (permissive intervention granted where automobile-industry case intervenor  
6 possessed unique knowledge of the pertinent industry that "will help to fully present to the Court all  
7 of the facts in this case); see also Nat. Res. Def. Council v. Tennessee Valley Auth., 340 F.Supp.  
8 400, 408-409 (S.D.N.Y. 1971), *rev'd on other grounds*, 459 F.2d 255 (2d Cir. 1972)(permissive  
9 intervention granted where Audubon Society demonstrated "long-standing interest in and familiarity  
10 with strip-mining, expertise that may be helpful in clarifying facts and issues.") The DNC submits  
11 that it brings expertise and helpful clarification of facts and issues in the present case sufficient to  
12 warrant the granting of its request for permissive intervention under F.R.C.P. 24(b).

13 **III.**

14 **CONCLUSION**

15 "As a general matter, Rule 24 'is construed broadly in favor of intervention and [the Court] is  
16 guided primarily by practical considerations.'" MGM Grand Hotel, Inc., 158 F.R.D. at 679  
17 (brackets in original). The DNC's intervention is proper under F.R.C.P. 24 and the Court should  
18 grant the DNC's Motion.

19 DATED this 15 day of January, 2008.

20  
21  
22 By:   
23 BRADLEY SCOTT SCHRAGER, ESQ.  
24 TRACY A. DIFILLIPPO, ESQ.  
25 Jones Vargas, Chtd.  
26 3773 Howard Hughes Parkway  
27 Third Floor South  
28 Las Vegas, Nevada 89169  
Tel: (702) 862-3300  
Fax: (702) 737-7705  
[bschrager@jonesvargas.com](mailto:bschrager@jonesvargas.com)