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8 **Attorneys for Plaintiffs**

10
 11 UNITED STATES DISTRICT COURT
 12 DISTRICT OF NEVADA

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

Case No. CV-S-

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

18 Plaintiffs,

19 vs.

20 DEMOCRATIC PARTY OF NEVADA, a
 Nevada nonprofit cooperative association.

21 Defendant.

22
 23 Plaintiffs, by and through their counsel Kummer Kaempfer Bonner Renshaw & Ferrario,
 24 and as their Complaint against Defendant Democratic Party of Nevada, allege and complain as

1 follows:

2 **JURISDICTION**

3 Jurisdiction in the United States District Court for the District of Nevada is proper under
4 the fourteenth amendment of the U.S. Constitution and 28 U.S.C.A. §1331, as this case involves
5 a violation of the U.S. and Nevada constitutional guaranties of equal protection under the law.
6 The Democratic Party of Nevada has violated the principle of “one person, one vote” by creating
7 “At-Large” Precincts for certain caucus participants, based solely on the employment of such
8 participants, from which At-Large Precincts a disproportionate share of delegates to the Clark
9 County Convention will be designated. This Court also has supplemental jurisdiction over
10 related state law claims under 28 U.S.C.A. §1367(a), as the state law claims are related to the
11 federal claim within the original jurisdiction of this Court so that the claims form part of the
12 same case or controversy under Article III of the United States Constitution.

13 **VENUE**

14 Venue is proper in the District of Nevada pursuant to 28 USC §1391.

15 **GENERAL ALLEGATIONS**

16 **The Parties**

17 1. The individual Plaintiffs named herein are all residents of Nevada, registered to
18 vote as Democrats, who intend to participate in the January 19, 2008 caucus.

19 2. Plaintiff Nevada State Education Association (“NSEA”) represents Nevada’s
20 teachers and education support professionals in advocating the rights and economic security of
21 its members, and for excellence in public education in Nevada. The NSEA here represents its
22 members who are registered Democrats either intending to participate in their precinct caucuses,
23 or desirous to participate, but unable due to being scheduled to work at the time of the caucus.

24 Many of those scheduled to work must do so to facilitate precinct caucuses being held at

1 Nevada schools; but are unable to participate in such caucuses as they do not reside in the
2 precinct in which the school is located.

3 3. Defendant Nevada State Democratic Party is a Nevada nonprofit cooperative
4 association.

5 **The Facts**

6 **Background Information**

7 4. Nevada has long required “major political parties” to hold precinct caucuses in
8 order to select delegates to county conventions. NRS §§ 293.135; 293.137. Those delegates then
9 select the delegates to the state conventions, and in turn, those delegates select the delegates to
10 the national conventions. NRS § 293.410.

11 5. Nevada has set forth certain requirements for such caucuses in its Election Code
12 NRS Chapter 293, governing the creation and definition of election precincts, and mandating
13 specific notice requirements relating to the caucuses.

14 6. The Democratic Party of Nevada (the “Party”) is a “major political party,” and
15 therefore required to hold precinct caucuses in compliance with Nevada’s Election Code. NRS
16 § 293.0655.

17 7. The Party charter mandates that the Precinct caucuses comply with the Nevada
18 Revised Statutes. Exhibit 1, Charter, XVII, § 2.

19 **The 2008 Delegate Selection Process**

20 8. In 2007, the Party decided to move its 2008 precinct caucus date to a time earlier
21 in the year, in hopes of both increasing the voice of Nevadans in the selection of the National
22 Party’s presidential candidate, and also, to increase the interest and involvement of Party
23 members in the caucuses.

24

1 9. In keeping with the expectation of increased involvement, as well as requirements
2 from the Democratic National Party, the Party revamped its Plan for selecting delegates.

3 10. The Party purportedly adopted its *Nevada Delegate Selection Plan & Affirmative*
4 *Action Plan for the 2008 Democratic National Convention* (the "Plan") on or about March 31,
5 2007. However, upon information and belief, thereafter various revisions, with various dates,
6 were apparently made to the document. As of the date of this Complaint, the version published
7 online at the Nevada State Democratic Party website is dated September 24, 2008. **Exhibit 2,**
8 **Plan.** See http://www.nvdemscaucus.com/images/draftdelseupdated_oct2007l.pdf, last viewed
9 January 11, 2008.

10 11. The date the final Plan was adopted is unknown.

11 12. The Plan sets forth a comprehensive, step-by-step procedure for the selection of
12 delegates "through a proportional representation system based on a three-tier caucus system,
13 with the first determining step on January 19th (non-binding presidential preference), precinct
14 meetings in each county" of the State's Congressional Districts. **Exhibit 2, Plan, §III.B.2.**

15 13. Both the Plan and the Nevada Election Code contemplate that the officials
16 conducting the precinct caucuses know the number of delegates assigned to that precinct at least
17 five days prior to the caucus.

18 14. In October 2007, the Party announced that at the January 19, 2008 caucuses,
19 10,446 delegates to the various county conventions would be chosen at caucuses held at 1,754
20 locations.

21 15. Of those 10,446 delegates, 7,224 were to be delegates to the Clark County Party
22 convention.

23 16. The Party was able to determine that number because Nevada law requires the
24 precincts to be defined in a certain way, making such precincts identifiable in advance.

1 17. Nevada law also sets forth a system to determine the number of delegates from
2 each precinct, based upon the number of registered party voters in the precinct. NRS § 293.133.

3 18. In a county where the total number of registered party voters exceeds 4,000, a
4 precinct is entitled to one delegate for each 50 registered voters of the party residing in the
5 precinct.

6 19. Clark County has more than 4,000 registered Party voters. Accordingly, under
7 this formula, each precinct in Clark County would be assigned one delegate for each 50
8 registered Party voters residing in the precinct.

9 **At-Large Precinct Caucuses**

10 20. During the process of drafting the Plan, the party members tasked with that duty
11 were cognizant of a substantial drawback of the caucus system required by Nevada law. The
12 requirement that Party members meet at one time inevitably leads to nonparticipation by persons
13 scheduled by their employers to work during the caucus time.

14 21. Accordingly, in a no doubt well-intentioned effort to allow participation by such
15 persons, the plan sets forth a scheme that would purportedly allow participation of a segment of
16 Clark County's workforce in "At-Large Precincts." Exhibit 2, Plan, Appendix C.

17 22. Unfortunately, these precincts were not established in accordance with the strict
18 procedure set forth in Nevada's election code for precinct establishment and boundary definition,
19 and are not based upon the residence therein of registered voters.

20 23. Instead, the "At-Large Precincts" were designed based upon having "4,000 or
21 more shift workers per site who could not otherwise take the time off to go to their home
22 precincts." Plan, Appendix C, p. 52.

23 24. Recently, the party identified nine At-Large Precincts, all of which are located in
24 Clark County. Those locations are Las Vegas Strip hotels: the Bellagio; Luxor; the Mirage; the

1 Rio; Caesar's Palace; the Paris; the Flamingo; Wynn Las Vegas; and New York, New York.

2 25. Because the Precincts were not established in accordance with Nevada law,
3 holding the At-Large Caucuses at these locations violates Nevada law.

4 26. In addition to the illegality of the At-Large Precincts themselves, the rules for the
5 At-Large Precinct caucuses differ from the rules of the other Party precinct caucuses to be held
6 across the state, creating inequities among caucus participants.

7 27. For example, the doors to the At-Large Caucuses will open earlier than for other
8 participants. Unlike other participants, the attendees of the At-Large Precincts will be required
9 to show identification proving their status as a shift worker. They will also be required to sign a
10 declaration stating they could not attend their "home caucuses" because of their work schedule.

11 28. Only shift workers employed by entities that have at least 4,000 employees
12 scheduled to work on January 19, 2008 will be able to caucus away from their home precincts.

13 29. Other registered Party members scheduled to work at that time in locations away
14 from their home precincts will have no ability to caucus at another precinct.

15 30. Most inequitable, however, is the difference in the method of allocating the
16 number of delegates the At-Large Precincts caucuses will select.

17 **Super Delegations from At-Large Precincts**

18 31 The At-Large Precinct caucuses will be assigned delegates based upon
19 participation, whereas, other precincts have had their delegates determined by the number of
20 registered voters residing within the confines of the precinct.

21 32. Moreover, the mathematical formulas used to determine the number of delegates
22 from the At-Large Precinct caucuses result in a grossly amplified number of delegates for such
23 caucuses compared to other Clark County precinct caucuses.

24

1 33. The Party disingenuously adopted the same numeric formulas for determination
2 of delegates set forth in NRS § 293.133.

3 34. However, instead of applying the formula applicable to the *county* in which these
4 precincts exist, or a “one delegate for 50 persons” standard, the Party treats each At-Large
5 Precinct as though it were *a separate county*. **Exhibit 2, Plan, Appendix C**, pp. 54-55.

6 35. As a result, the At-Large Precincts can be assigned much higher numbers of
7 delegates per person than other caucuses in Clark County. For example, if an At Large Precinct
8 has 400 participants, it will be entitled to one delegate for each five participants, and would
9 therefore be assigned 80 delegates. In contrast, a precinct anywhere else in Clark County in
10 which 400 Party voters reside will receive one delegate for each 50 such registrants, and
11 therefore, receive only 8 delegates – even if all 400 party voters participate in the caucus.

12 36. Thus, the At-Large Precincts will be assigned delegates at a rate of as much as ten
13 times the rate as other caucuses in Clark County.

14 **At Large Precinct Delegates Pack the County Convention**

15 37. Absent the At-Large Precincts, Clark County would have a total of 7,224
16 delegates to attend its county convention.

17 38. The At-Large Precinct process, however, creates the potential to increase the
18 number of delegates to the county convention by 720 or more.

19 39. The disproportionate assignment of delegates to the At-Large Precincts results in
20 the dilution of delegate assignment, and therefore, the dilution of the voice of participants of all
21 other Clark County Party caucus participants.

22 40. By packing as much as 10% percent or more additional delegates into the County
23 Convention, the At-Large Precinct caucus system substantially diminishes the voting power of
24 delegates from the other county precinct caucuses.

1 41 Moreover, the disproportionate voice assigned to At-Large Caucus participants in
2 the Clark County Convention will carry through to selection of the 2,372 Clark County delegates
3 to the State Convention. Thereafter, that disproportionate voice will continue forward to
4 influence the selection of the national delegates. Accordingly, this voting dilution affects all
5 Nevada Party caucus participants, and ultimately, all Democrats across the country.

6 **First Cause of Action**
7 **Violation of Equal Protection**

8 42. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1
9 through 41 as though fully incorporated herein.

10 43. The Party's adoption of the Plan and participation in the caucus system as a whole
11 constitutes state action, as Nevada mandates that the Party hold such caucuses, and Nevada
12 governs the precinct establishment process. NRS § 293.135

13 44. Moreover, systems used to determine the U.S. presidential candidates constitute a
14 public function.

15 45. The Plan's incorporation of an At-Large Precinct caucus system creates classes of
16 similarly situated persons: caucus participants, and treats one class more favorably than the other
17 by assigning a disproportionate number of county convention delegates to those who participate
18 in the At-Large Precincts.

19 46. The Plan affects a fundamental right, that of voting, and accordingly, the Plan
20 would be required to satisfy strict scrutiny, in that it would have to be narrowly tailored to serve
21 a compelling state interest. The Plan's disproportionate allocation of delegates cannot satisfy
22 that test.

23 47. The Plan's method of assignment of delegates from the At-Large Precincts cannot
24 satisfy even the rational relationship test, as there is no rational relationship between the

1 purported goal of increasing the opportunity of participation by shift workers and such
2 disproportionate allocation of delegates.

3 48. Accordingly, the Party's adoption of the At-Large Precinct allocation of delegates
4 violates the Equal Protection clauses of the U.S. Constitution, Amendment XIV, and Nevada
5 Constitution, Article 4, § 1.

6
7 **Second Cause of Action**
Declaratory Relief

8 49. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1
9 through 48 as though fully incorporated herein.

10 50. The At-Large Precincts were not established in accordance with the requirements
11 of Nevada law.

12 **The Plan Violates Article 1, § 13 of the Nevada Constitution.**

13 51. The Plan sets forth a scheme for the creation of election precincts on the basis of
14 the place and time of employment of the anticipated voters in those precincts.

15 52. Such a scheme violates the Nevada Constitutional requirement that all
16 representation be apportioned according to population. Nevada Constitution, Art. 1, § 13.

17 **The Plan Violates NRS § 293.135**

18 53. Nevada's Election Code sets forth specific requirements with respect to caucuses
19 and the formation of precincts.

20 54. NRS § 293.135 requires that, five days prior to the caucus date, the Party post a
21 notice at each caucus location.

22 55. That notice must include specific information regarding the caucus, including the
23 number of delegates to the county convention to be selected at the caucus.
24

1 56. The Plan does not allow the Party to comply with this statute, as the number of
2 delegates to be selected at the At-Large Precincts cannot be known until the number of
3 participants is known and the appropriate formula set forth in Appendix C is applied.

4 57. Thus, the delegate allocation methods set forth in Appendix C results in a
5 violation of NRS § 293.135.

6 **The Plan Violates NRS § 293.205, § 293.206, § 293.207 and § 293.208**

7 58. NRS § 293.205 requires each County Clerk to define the election precincts, which
8 definition must “follow visible ground features or extensions of visible ground features, except
9 where the boundary coincides with the official boundary of the state or a county or city.”
10 “Visible ground features” includes a “street, road, highway, river, stream, shoreline, drainage
11 ditch, railroad right of way or any other physical feature which is clearly visible from the
12 ground.” § 295.204(4).

13 59. The At-Large Precincts were not established in accordance with this method.

14 60. Indeed, Appendix C boldly states that the At-Large Precincts were “created
15 working with employers who have more than 4,000 employees in a contiguous area working on
16 Saturday morning January 19, 2008.” **Exhibit 2, Plan, Appendix C.**

17 61. NRS § 293.206 requires the County Clerk to provide to the Secretary of State and
18 the Director of the Legislative Counsel Bureau a map identifying the boundaries of election
19 precincts contained in the county.

20 62. The map last provided by the Clark County Clerk to these officials does not
21 contain the At-Large Precincts. **Exhibit 3, Map of Precincts.** See
22 <http://gisgate.co.clark.nv.us/gismo/mapprod.htm>, last viewed January 11, 2007.

23 63. Nevada Revised Statute § 293.207 requires that election Precincts must be
24

1 established on the basis of the number of registered voters therein, with a maximum of 1,500
2 registered voters. (Prior to 2007, the maximum was 600.)

3 64. The At-Large Precincts were not established on the basis of registered voters
4 therein, but instead, on a basis of having more than 4,000 employees working at the site on a
5 Saturday.

6 65. Nevada Revised Statute §293.208 prohibits the creation of any new precinct
7 during the period between the third Wednesday in May of any year whose last digit is 6 and the
8 time when the Legislature has been redistricted in a year whose last digit is 1, unless certain
9 exceptions apply.

10 66. The At-Large Precincts were created in 2007 or 2008, which is during the period
11 of prohibition. None of the exceptions set forth in § 293.208 apply.

12 67. Additionally, the Charter of the Party requires that the Precinct meetings comply
13 with Nevada Law.

14 68. Operation of caucuses at the At-Large Precincts does not comply with Nevada
15 law.

16 69. Accordingly, adoption of the Plan with such provisions was *ultra vires*.

17 70. An *ultra vires* act is void under Nevada law.

18 71. Plaintiffs are entitled to declaratory relief that:

19 1) the Party's scheme to conduct At-Large Precinct Caucuses, and to assign a
20 grossly disproportionate number of delegates to such At-Large Caucuses is contrary to
21 the U.S. and Nevada's constitutional guaranties of equal protection under the law;

22 2) the Party's scheme to conduct At-Large Precinct Caucuses, and to assign
23 a grossly disproportionate number of delegates to such At-Large Caucuses violates the
24

1 Nevada Constitutional requirement that all representation be apportioned according to
2 population;

3 3) the Party's scheme to conduct At-Large Precinct Caucuses violates
4 Nevada's Election Code; and

5 4) the Party's adoption of a scheme to conduct At-Large Precinct Caucuses
6 was an *ultra vires* act, and therefore, void.

7 **Third Cause of Action**
8 **Injunctive Relief**

9 72. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1
10 through 71 as though fully incorporated herein.

11 73. This Court should enjoin the illegal actions of the Party in conducting caucuses at
12 any At-Large Precincts, which caucuses would violate Plaintiffs' rights to equal protection under
13 the law, and also violate Nevada constitutional and statutory law.

14 74. Plaintiffs can show a likelihood of success on the merits.

15 75. If the conduct of the At-Large Precinct caucus are not enjoined, Plaintiffs face
16 irreparable injury, including the violation of their constitutional rights, through, *inter alia*, the
17 dilution of their voting rights.

18 WHEREFORE, Plaintiffs pray for judgment against Defendant Democratic Party of
19 Nevada as follows:

20 1. For a declaration that the Party's scheme to conduct At-Large Precinct Caucuses,
21 and to assign a grossly disproportionate number of delegates to such At-Large Caucuses is
22 contrary to the U.S. and Nevada constitutional guaranties of equal protection under the law;

23 2. For a declaration that the Party's scheme to conduct At-Large Precinct Caucuses
24 violates Nevada's Election Code;

1 3. For a declaration that the Party's adoption of a scheme to conduct At-Large
2 Precinct Caucuses was an *ultra vires* act, and therefore, void;

3 4. For an order enjoining the Party from conducting At-Large Precinct Caucuses;

4 5. For such other relief as this Court deems just and proper.

5 Respectfully submitted this 11th day of January, 2008.

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7
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