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19 **UNITED STATES DISTRICT COURT**
20 **DISTRICT OF NEVADA**

21 NORA LUNA; BILAL SHABAZZ; DIANE
22 CRUMP-RICHMOND; SUSAN FLORIAN;
and DEMI FALCON,

23 Plaintiffs,

24 v.

25 BARBARA CEGAVSKE, in her official
26 capacity as the Nevada Secretary of State; and
JOSEPH GLORIA, in his official capacity as
the Clark County Registrar of Voters,

27 Defendants.
28

Case No.

COMPLAINT

1 Plaintiffs, NORA LUNA, BILAL SHABAZZ, DIANE CRUMP-RICHMOND,
2 SUSAN FLORIAN, and DEMI FALCON (collectively, “Plaintiffs”), file this Complaint
3 for declaratory and injunctive relief against Defendants BARBARA CEGAVSKE, in her
4 official capacity as the Nevada Secretary of State, and JOSEPH GLORIA, in his official
5 capacity as the Clark County Registrar of Voters. Plaintiffs allege as follows:

6 **INTRODUCTION**

7 1. Plaintiffs, minority voters in Nevada Senate Districts 5, 6, and 8, face
8 imminent infringement of their rights under the First and Fourteenth Amendments to the
9 United States Constitution, Section 2 of the Voting Rights Act, and the Guarantee Clause
10 in Article IV, Section 4 of the United States Constitution.

11 2. In August 2017, recall notices were filed against Nevada Senators Joyce
12 Woodhouse (District 5, Democrat), Nicole Cannizzaro (District 6, Democrat), and Patricia
13 Farley (District 8, Independent). These Senators won their seats in legitimate, democratic
14 elections—in 2016, less than one year ago, in the case of Senators Woodhouse and
15 Cannizzaro, and in 2014, in the case of Senator Farley. All of these Senators are now the
16 minority candidates of choice in their respective districts. Yet, despite their undisputed
17 electoral victories and diligent service since their elections, these Senators, and voters in
18 Districts 5, 6, and 8, now face the prospect of a recall election for no stated reason other
19 than to replace the duly-elected Senators with other candidates, one of whom voters
20 rejected in favor of Senator Woodhouse less than a year ago. There are no alleged
21 irregularities in the previous election that elected Senators Woodhouse, Cannizzaro, and
22 Farley, and the Senators have not been accused of any misconduct, neglect of duties,
23 betrayal of public trust, or any other incapacity or wrongdoing.

24 3. The Nevada Constitution and state law authorize recall of any public officer
25 upon the filing of a Notice of Intent to Recall a Public Officer (“Recall Notice”) and
26 submission of a petition signed by at least 25% of voters who voted in the preceding
27 election in which the officer was elected. Nev. Const. art. 2, § 9; Nev. Res. Stat. Ann.
28 § 306.015 (2017). Accordingly, and as appears to be the case here, in Nevada, recalls can

1 be employed as a political tactic, to force a do-over election with a smaller electorate,
2 composed of fewer racial minorities, for no reason other than dissatisfaction with the
3 outcome of the prior election. Under such a recall procedure, Nevada voters are
4 perpetually at risk of: (i) having their casted votes nullified by an unjustified recall;
5 (ii) bearing the undue burden of having to vote again and again to ensure that their elected
6 officials can serve out full terms; and (iii) having the attention, time, and resources of their
7 elected officials diverted to defending against recalls rather than governing and making
8 policy, as is necessary for a functioning and efficient representative government.

9 4. By forcing an unjustified do-over, any recall elections against Senators
10 Woodhouse, Cannizzaro, and Farley would unduly burden and abridge the fundamental
11 right to vote of Nevadans in Districts 5, 6, and 8, in violation of the First and Fourteenth
12 Amendments of the United States Constitution. Further, because the resulting burdens on
13 the right to vote disproportionately impact racial and language minorities, any recall
14 elections would also result in the denial and abridgement of the right to vote on account of
15 race and language group, in violation of Section 2 of the Voting Rights Act. Finally, the
16 recall elections threaten to upend the results of legitimate, democratic elections, as well as
17 disrupt and impede a functioning republican form of government, in violation of the
18 Guarantee Clause of Article VI, Section 4 of the United States Constitution.

19 5. “No right is more precious in a free country than that of having a voice in
20 the election of those who make the laws under which, as good citizens, we must live.
21 Other rights, even the most basic, are illusory if the right to vote is undermined.”
22 *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Plaintiffs, and other Nevadans who voted for
23 Senators Woodhouse, Farley, and Cannizzaro, should not have their votes unjustifiably
24 nullified, and Plaintiffs and other Nevadans who support these three Senators should not
25 be forced to vote again and again to ensure that their duly-elected officials can effectively
26 serve and represent them. This Court should preliminarily and permanently enjoin
27 Defendants from implementing or enforcing Nevada’s recall laws in the situation here and
28 from ordering special recall elections for State Senate in Districts 5, 6, and 8. The Court

1 should declare Nevada's recall laws unconstitutional and invalid under the Voting Rights
2 Act.

3 **JURISDICTION AND VENUE**

4 6. This Court has jurisdiction to hear Plaintiffs' claims pursuant to 28 U.S.C.
5 §§ 1331, 1343(a)(3), and 1357, and 42 U.S.C. §§ 1983 and 1988.

6 7. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C.
7 §§ 2201 and 2202.

8 8. Venue in this district is proper under 28 U.S.C. § 1391(b) because a
9 substantial part of the events or omissions giving rise to the claims occurred in this
10 judicial district.

11 **PARTIES**

12 9. Plaintiff Nora Luna is a 45-year-old Hispanic woman. Ms. Luna, a Nevada
13 native, works full-time as the Director of Diversity and Grant Funding at Nathan Adelson
14 Hospice. She resides in the Silverado Ranch section of Las Vegas, where she has been
15 registered to vote for the past seven years. In the November 2016 election, Ms. Luna
16 voted to elect Senator Woodhouse as the senator for District 5. Ms. Luna wants her
17 previously-cast vote to count and for Senator Woodhouse to represent her for the
18 remainder of her term. Ms. Luna trusts Senator Woodhouse to make the right decisions for
19 District 5, especially in regards to education policy. Thus, she opposes the current recall
20 efforts against Senator Woodhouse. Ms. Luna would like to vote in an upcoming off-
21 cycle, special recall election. However, she would face significant burdens in doing so.
22 Her work requires presentations to outside organizations that are planned months in
23 advance, so she would not be able to vote in-person in an election held concurrent to her
24 work commitments. Ms. Luna serves on the Board of Directors of several non-profit
25 organizations. Her non-profit commitments require her to attend frequent meetings and
26 events that make voting in recall election scheduled within 30 days extremely difficult.
27 Even if able to vote, Ms. Luna, a volunteer in the 2016 election, will be burdened by the
28 short time frame within which she must educate herself about the logistical details of the

1 recall election. Additionally, Ms. Luna would be burdened by the time it takes to vote and
2 by transportation costs traveling to the polls.

3 10. Plaintiff Bilal Shabazz is a 69-year-old African-American. He is a retired
4 bus driver who is currently pursuing continuing education in writing and photography. He
5 resides in Henderson, Nevada, where he has been registered to vote since 2011. In the
6 November 2016 election, Mr. Shabazz voted to re-elect Joyce Woodhouse as the senator
7 for District 5. Senator Woodhouse won the election and currently serves as Mr. Shabazz's
8 senator. Mr. Shabazz wants his previously-cast vote to count, allowing Senator
9 Woodhouse to represent him for the remainder of her term. Thus, he opposes the current
10 recall efforts against her. Mr. Shabazz would like to vote in an upcoming off-cycle,
11 special recall election. However, being forced to vote again for Senator Woodhouse in a
12 special, off-cycle recall election would impose significant burdens on Mr. Shabazz.
13 Mr. Shabazz will have to spend time learning the details of the special, off-cycle recall
14 election, take time away from his classes and family, and incur transportation costs to get
15 to his polling location in order to re-cast his vote in-person for Senator Woodhouse.

16 11. Plaintiff Diane Crump-Richmond is a 73 year-old African-American. She is
17 a substitute teacher and resides in the Summerlin area of Las Vegas, where she has been
18 registered to vote for the past 8 years. In the November 2016 election, Ms. Crump-
19 Richmond voted to elect Nicole Cannizzaro as the senator for District 6. Senator
20 Cannizzaro won the election and currently serves as Ms. Crump-Richmond's senator.
21 Ms. Crump-Richmond wants her previously cast vote to count and for Senator Cannizzaro
22 to represent her for the remainder of the term. She believes that Senator Cannizzaro has
23 been a diligent, qualified, effective, and hands-on representative. Moreover, Ms. Crump-
24 Richmond believes that a Republican senator would not prioritize the issues most
25 important to her. Thus, Ms. Crump-Richmond opposes the current recall efforts against
26 Senator Cannizzaro. Ms. Crump-Richmond would like to vote in an upcoming off-cycle,
27 special recall election. However, being forced to vote again for Senator Cannizzaro in a
28 special, off-cycle recall election would impose significant burdens on Ms. Crump-

1 Richmond. For example, she will have to take a day off from work as a substitute teacher,
2 losing a day of pay, in order to vote in-person. Additionally, she will have to spend time
3 learning about the specifics of the recall election and incur transportation costs to get to
4 her polling location.

5 12. Plaintiff Susan Florian is a 22 year-old Hispanic woman. She is a full-time
6 student and works part-time for Mi Familia Vota, a nonpartisan group dedicated to Latino
7 civic engagement. She resides in the Summerlin section of Las Vegas, where she has been
8 registered to vote for the past year. In the November 2016 election, Ms. Florian voted to
9 elect Nicole Cannizzaro as the senator for District 6. Senator Cannizzaro won the election
10 and currently serves as Ms. Florian's senator. Ms. Florian wants her previously cast vote
11 to count and for Senator Cannizzaro to represent her for the remainder of the four-year
12 term. She believes that Senator Cannizzaro is effectively serving her constituents.
13 Ms. Florian opposes the current recall efforts against Senator Cannizzaro. She does not
14 believe that there is a legitimate reason to recall Senator Cannizzaro. Ms. Florian would
15 like to vote in an upcoming off-cycle, special recall election, but she would face
16 significant burdens in doing so. For example, Ms. Florian will have to miss school and
17 work to vote in-person in a recall election. She would also have to devote significant time
18 to educate herself and others about the details of the recall election. Ms. Florian would
19 also incur transportation costs to get to her polling place.

20 13. Plaintiff Demi Falcon is a 21 year-old Hispanic woman. She is a full-time
21 student and a field organizer for the Nevada Conservation League and resides in the
22 Summerlin section of Las Vegas, where she has been registered to vote for the past three
23 years. In the November 2014 election, she voted to elect Patricia Farley as the senator for
24 District 8. Senator Farley won the election and currently serves as Ms. Falcon's senator.
25 Ms. Falcon wants her previously cast vote to count and for Senator Farley to represent her
26 for the remainder of the four-year term. Ms. Falcon supports Senator Farley because she
27 believes Senator Farley listens to her constituents. Ms. Falcon opposes the current recall
28 efforts against Senator Farley. Ms. Falcon would like to vote in an upcoming off-cycle,

1 special recall election. However, being forced to vote in a special, off-cycle recall election
2 would pose significant burdens on Ms. Falcon. First, she would have to miss school in
3 order to vote in-person. Second, she would have to spend time researching when and
4 where to vote in the special, off-cycle recall election. Third, Ms. Falcon would have to
5 travel from school or work to her polling place, located across the city. Fourth, if the
6 recall election occurs during the holidays, Ms. Falcon will be unable to vote in person due
7 to travel commitments to California and Mexico.

8 14. Defendant Barbara Cegavske is the Nevada Secretary of State and is named
9 as a Defendant in her official capacity. She is responsible for implementing Nevada's
10 recall laws. *See, e.g.*, Nev. Rev. Stat. Ann. §§ 306.040, 294A.250; *see also* Nev. Rev. Stat.
11 Ann. § 293.1276. Her recall responsibilities include, but are not limited to, overseeing
12 registration of recall committees, reviewing the signatures on recall petitions, accepting
13 requests to strike signatures on recall petitions, and issuing a notification of sufficiency.
14 *See* Nev. Rev. Stat. Ann. §§ 294A.250, 293.1276; 306.040. The Secretary of State,
15 personally and through the conduct of her employees and agents, acted under color of
16 state law at all times relevant to this action.

17 15. Defendant Joseph Gloria is the Clark County Registrar of Voters and is
18 named as a Defendant in his official capacity. He is responsible for implementing
19 Nevada's recall laws, and his responsibilities include, but are not limited to, receiving
20 Recall Notices, examining signatures in regards to a recall petition, and issuing a call for a
21 special election pursuant to the recall process. Nev. Rev. Stat. Ann. §§ 306.040, 306.015,
22 293.1276; Nev. Admin. Code § 306.007(2); Clark Cnty. Ord. 227 § 4, 2.20.040.

23 **FACTUAL ALLEGATIONS**

24 **I. Current Recall Efforts in Nevada Senate Districts 5, 6, and 8**

25 16. The Senators representing Nevada Senate Districts 5, 6, and 8 currently face
26 recall. Senator Joyce Woodhouse (Democrat) currently represents District 5, and Senator
27 Nicole Cannizzaro (Democrat) currently represents District 6. In November 2016, less
28 than a year ago, Senators Woodhouse and Cannizzaro won their State Senate elections

1 with 47.9% and 50.9% of the vote, respectively.¹ Senator Patricia Farley represents
 2 District 8. In November 2014, she won her State Senate election with 57.03% of the vote.²
 3 Though Senator Farley was a member of the Republican Party when she was elected, she
 4 is currently an independent legislator and caucuses with the Democratic Party.³ Absent
 5 any recall, the term of office for state senators begins the day after the election and
 6 continues for four years. Nev. Const., art. 4, § 4(1).

7 17. Despite the fact that Senators Woodhouse, Cannizzaro, and Farley won their
 8 seats through indisputably legitimate, democratic elections and have not been accused of
 9 any incapacity, nonfeasance or misconduct, recalls have been initiated against each of
 10 them under Nevada’s recall laws. A Recall Notice was filed on August 2, 11, and 16,
 11 2017, against Senators Woodhouse, Farley, and Cannizzaro, respectively.⁴

12 18. Here, the Recall Notices for Senators Woodhouse, Farley, and Cannizzaro
 13 do not specify any reason for the recall.⁵ The Recall Committee Registration Forms for
 14 each recall effort, however, state that the purpose is to recall each of the three Senators
 15 and replace her with another specified candidate—Jared Glover for Senator Farley, April
 16 Becker for Senator Cannizzaro, and Carrie Beck for Senator Woodhouse.⁶

17 ¹ *Nevada 5th District State Senate Results: Joyce Woodhouse Wins*, N.Y. TIMES,
 18 Aug. 1, 2017, <https://www.nytimes.com/elections/results/nevada-state-senate-district-5?mcubz=3>.

19 ² *Nevada State Senate Election Night Results 2014*, NEVADA SECRETARY OF
 STATE, <http://www.nvsos.gov/silverstate2014gen/NVSenate/> (last visited Sept. 26, 2017).

20 ³ Majority Leader Ford Announces Senator Farley Will Caucus with Democrats,
 Nevada Senate Democrats Press Release (Nov. 14, 2016),
 21 <http://www.nvsenatedems.com/updates/press-releases-2/317-majority-leader-ford-announces-senator-farley-will-caucus-with-democrats-in-2017>.

22 ⁴ Notice of Intent, <https://thenevadaindependent.com/article/state-sen-woodhouse-targeted-in-recall-attempt-by-former-assemblyman> (last visited Oct. 10, 2017); Notice of
 23 Intent, <https://www.scribd.com/document/356089344/Notice-of-Intent-to-Recall-State-Sen-Patricia-Farley> (last visited Oct. 10, 2017); Notice of Intent,
 24 <https://thenevadaindependent.com/article/recall-filed-against-democratic-state-sen-nicole-cannizzaro-third-senator-targeted-in-recall-efforts> (last visited Oct. 10, 2017).

25 ⁵ *See id.*

26 ⁶ *See* Recall Committee Registration Form,
<https://www.scribd.com/document/356472298/Committee-to-Recall-Senator-Nicole-Cannizzaro-Registration-Form> (last visited Oct. 10, 2017) (“The Committee is organized
 27 to recall Senator Patricia Farley and replace her with Jared Glover.”); Recall Committee
 28 Registration Form, <https://thenevadaindependent.com/article/recall-filed-against-democratic-state-sen-nicole-cannizzaro-third-senator-targeted-in-recall-efforts> (last visited
 Oct. 10, 2017) (“The Committee is organized to recall Senator Nicole Cannizzaro and

1 19. Although the recall proponents have offered no further official explanation
2 for each of the recalls at issue, they have not refuted the allegation that the reason is
3 political. Indeed, it seems obvious that the true motivation for the recall efforts against
4 Senators Woodhouse, Cannizzaro, and Farley is the desire to change the balance of power
5 in the Nevada Senate. The Nevada Senate currently has 10 Democratic members, 1
6 independent member, and 9 Republican members.

7 20. A successful recall of Senators Woodhouse, Cannizzaro, and Farley would
8 therefore lead to a new partisan balance in the Nevada Senate. Indeed, the candidate with
9 whom the recall committee seeks to replace Senator Woodhouse, Carrie Buck, is the same
10 Republican candidate Senator Woodhouse defeated mere months ago in the 2016
11 election.⁷ Further, Republican Senate Minority Leader, Michael Roberson, has publicly
12 expressed support for the three recalls as a needed partisan response to a Democratic-
13 controlled legislature, which he described as being “pro-felon and anti-business.”⁸

14 **II. Recall Procedure Under Nevada Law**

15 21. The Nevada Constitution broadly provides that “[e]very public officer in the
16 State of Nevada is subject . . . to recall from office by the registered voters of the state, or
17 of the county, district, or municipality which he represents.” Nev. Const. art. 2, § 9; *see*
18 *also* Nev. Rev. Stat. 306.020(1) (same).

19 22. Nevada’s recall laws do not require any cause or justification for a recall,
20 nor do the laws impose any limitations on the reasons for a recall. *See Batchelor v. Eighth*

21 replace her with April Becker.”); Recall Committee Registration Form,
22 <https://thenevadaindependent.com/article/state-sen-woodhouse-targeted-in-recall-attempt-by-former-assemblyman> (last visited Oct. 10, 2017) (“The Committee is organized to recall Senator Joyce Woodhouse and replace her with Carrie Buck.”).

23 ⁷ Yvonne Gonzalez, *Control of state Senate at stake in three recall petition drives*,
24 LAS VEGAS SUN, Aug. 28, 2017, <https://lasvegassun.com/news/2017/aug/28/control-of-state-senate-at-stake-in-three-recall-p/>. Senator Woodhouse’s support for a “sanctuary cities” bill has also been cited by a signature-gatherer as the reason for her recall. Riley Snyder, Michelle Rindels, & Megan Messerly, *Recall filed against Democratic state Sen. Nicole Cannizzaro; third senator targeted in recall efforts*, THE NEVADA INDEPENDENT, Aug. 16, 2017, <https://thenevadaindependent.com/article/recall-filed-against-democratic-state-sen-nicole-cannizzaro-third-senator-targeted-in-recall-efforts>.

27 ⁸ *3rd Nevada senator target of Republicans’ recall petitions*, ASSOCIATED PRESS, Aug. 17, 2017, <http://mynews4.com/news/politics/3rd-nevada-senator-target-of-republicans-recall-petitions>.
28

1 *Judicial Dist. Court*, 81 Nev. 629, 632-33 (Nev. 1965) (stating that Nevada requires only
2 “that ‘the’ reason be stated” for a recall and does not require “specificity, or the
3 appearance of a ‘good’ reason or cause for removal; nor need such statement suggest
4 misfeasance, nonfeasance or malfeasance”). Instead, “only a statement . . . of ‘the reasons
5 why. . . recall is demanded,’—the legitimacy of which the voters [in the recall election]
6 alone decide”—is required. *Strickland v. Waymire*, 235 P.3d 605, 612 (Nev. 2010)
7 (quoting Nev. Const. Art. 2, § 9).

8 23. The recall process in Nevada is initiated by filing a Recall Notice, which
9 only requires the signatures of three registered voters who voted in the election that
10 elected the public official being recalled. Nev. Rev. Stat. § 306.015; Nev. Admin. Code
11 § 306.005.

12 24. After filing the Recall Notice, proponents must collect and submit petition
13 signatures from 25% of the individuals who voted in the election that elected the public
14 official subject to recall. Nev. Const., art. 2, § 9. The deadline to acquire and submit such
15 signatures is 90 days from the filing of the Recall Notice. Nev. Rev. Stat. Ann. §
16 306.015(3). Thus, the deadline for submission of petitions containing the requisite number
17 of signatures is October 31, 2017, November 9, 2017, and November 14, 2017, for
18 Senators Woodhouse, Farley, and Cannizzaro, respectively.

19 25. After the submission of the required number of petition signatures, the
20 County Registrar counts the number of signatures on the recall petition. Nev. Rev. Stat.
21 Ann. § 293.1276. The Secretary of State then reviews the signatures to see if the required
22 number is present. *See id.* If the petition contains the required number of signatures, the
23 County Registrar verifies the signatures by examining a random sample of at least 5% (or
24 500, whichever is greater) of the signatures to verify that they are from qualified voters.
25 Nev. Rev. Stat. Ann. § 293.1277. If the requirements are met, the Secretary of State issues
26 a declaration of sufficiency, and 10 to 20 days later, the County Registrar issues a call for
27 a special election, which includes the deadline for candidates to be nominated. Nev. Rev.
28 Stat. Ann. § 306.040.

1 26. In contrast to a regularly-scheduled general election, in which candidates
2 and the public are afforded months of time to prepare, the recall election must occur
3 within 30 days of the call for a special election. Nev. Const. Art. 2, § 9.

4 **III. Nevada’s Recall Law and Any Recall Elections in Districts 5, 6, and 8 Unduly**
5 **Infringe on the Right to Vote and Undermine a Republican Form of**
6 **Government**

7 27. Any recall elections against Senators Woodhouse, Farley, and Cannizzaro
8 pursuant to Nevada’s recall laws will burden, abridge, and deny the fundamental right to
9 vote of Plaintiffs and others who voted in the elections for State Senate in Districts 5, 6,
10 and 8.

11 28. First, a recall election against these Senators would cancel out and nullify
12 the votes that Plaintiffs and others cast when they voted in the 2016 election for State
13 Senate in Districts 5 and 6 and the 2014 election for State Senate in District 8. *See, e.g.,*
14 *Bd. of Election Comm’rs v. Knipp*, 784 S.W.2d 797, 789 (Mo. 1990) (identifying that a
15 “new election tosses aside the aggregate of the citizens’ votes”); *Royster v. Rizzo*, 326
16 S.W.3d 104 (Mo. Ct. App. 2010) (holding that a new election could not be held, even
17 though there were voting issues, as it would be improper, absent fraud, to deprive the
18 voters of their votes by invalidating the original election).

19 29. When Plaintiffs and other voters in these districts voted for Senators
20 Woodhouse, Cannizzaro, or Farley, they cast their ballots to elect an official for a four-
21 year term with the full power of a State Senator. A successful recall, however, would toss
22 out the undisputed results of the prior, legitimate elections and oust voters’ duly-elected
23 officials, shortening their terms of service. Senator Woodhouse in District 5 and Senator
24 Cannizzaro in District 6 would only represent their constituents for less than one of their
25 four-year terms, while Senator Farley in District 8 would represent her constituents for
26 less than three of her four-year term.

27 30. In addition to nullifying the votes cast in the prior election, a recall election
28 *again* in an off-cycle, special election in order to remedy the nullification of their original

1 vote and maintain support for their duly-elected Senators. These burdens include: (i) the
2 informational costs of learning the details of the special election; (ii) the time each voter
3 must expend to protect a vote already cast; (iii) the economic burden of needing to be
4 excused from work, school, or other productive activities; and (iv) the need to obtain
5 transportation to the polling place for the special election, which can range from \$12.50 to
6 \$18.00 an hour.⁹

7 31. Indeed, voting is a habit and custom, and voting in an off-cycle, special
8 election imposes burdens and costs that are considerably higher than voting in a regularly-
9 scheduled, general election. “For a voter who has already turned out to vote in a
10 presidential election, for example, the marginal cost of voting in a local race held on the
11 same day is virtually zero,” but “[w]hen the local election is held on an entirely different
12 day than the presidential election, the marginal cost of voting in that local race is
13 considerably higher.”¹⁰ Thus, “[e]lections held at odd times force potential voters to bear
14 additional costs to participate in the political process.”¹¹

15 32. Any recall elections to replace the State Senators in Districts 5, 6, and 8
16 would also undermine a republican form of government by threatening to upend the
17 undisputed results of legitimate and regularly scheduled elections and forcing an ad-hoc
18 recall election, unjustified by any irregularity in the original election or allegation of

19 ⁹ Atiba Ellis, *The Cost of the Vote: Poll Taxes, Voter Identification Laws, and the*
20 *Price of Democracy*, 86 DEN. U. L. REV. 10 at 1032-33 (2009),
21 <http://www.law.du.edu/documents/denver-university-law-review/v86-3/Ellis.pdf>
22 (describing the costs associated with voting, from direct costs spent for transportation to
23 the polls, to the indirect costs of lost economic potential and psychological loss of
24 expending time to participate in the voting process); Richard Sobel, *The High Cost of*
25 *‘Free’ Voter Identification Cards*, HARVARD LAW SCHOOL INSTITUTE FOR RACE &
26 JUSTICE (June 2014), [https://today.law.harvard.edu/wp-](https://today.law.harvard.edu/wp-content/uploads/2014/06/FullReportVoterIDJune20141.pdf)
27 [content/uploads/2014/06/FullReportVoterIDJune20141.pdf](https://today.law.harvard.edu/wp-content/uploads/2014/06/FullReportVoterIDJune20141.pdf) (citing Peter Belenky,
28 “Revised Departmental Guidance on Valuation of Travel Time in Economic Analysis,”
U.S. Department of Transportation, September 28, 2011); Christopher Berry & Jacob E.
Gersen, *The Timing of Elections*, 79 U. CHI. L. REV. 37 (2010),
<http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5490&context=uclev>
 (“At a minimum, voters must bear the costs of going to and from the polls.”).

¹⁰ Sarah F. Anzia, *Election Timing and the Electoral Influence of Interest Groups*,
73 THE JOURNAL OF POLITICS 412, 414 (April 2011).

¹¹ Christopher Berry & Jacob E. Gersen, *The Timing of Elections*, 79 U. CHI. L.
REV. 37 (2010),
<http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5490&context=uclev>.

1 misconduct, neglect of duties, betrayal of public trust, or any other incapacity or
2 wrongdoing following the original election.

3 33. Such recall elections would also undermine a republican form of
4 government by impeding the ability of the recalled Senators to effectively govern on
5 behalf of their constituents and diverting their time, attention, and resources to defending
6 against an unjustified recall election.

7 34. Nevada's recall laws, as applied to the recall efforts against Senators
8 Woodhouse, Cannizzaro, and Farley, do not further any legitimate state interests that
9 justify the associated infringement of and burdens on the right vote. Though Nevada's
10 recall provision was intended as an additional check on elected officials,¹² such a check is
11 unnecessary in the absence of any irregularities in the original election nor any allegation
12 or indication of misconduct, neglect of duties, betrayal of public trust, or any other
13 incapacity or wrongdoing following the election.

14 35. Further, "[i]n Nevada. . . , 'there is no evidence to suggest that framers,
15 adopters, and early users of the recall measure saw it as a mechanism to rerun an ordinary
16 election in which there had been no dishonesty and after which there had been no
17 evidence of special interest group capture.'" *Strickland*, 235 P.3d at 612 (internal
18 quotation marks and citation omitted).

19 36. Indeed, in the absence of any cause or justification for recall, there can be no
20 state interests justifying the resulting burdens, particularly when those burdens have a
21 disproportionate impact on minority voters' ability to participate in the political process.

22 **IV. Nevada's Recall Laws and Any Recall Elections in Districts 5, 6, and 8 Will** 23 **Have a Disparate Impact on Minority Voters**

24 37. Minority voters, including Plaintiffs in this case, disproportionately voted
25 for Senators Woodhouse and Cannizzaro in their latest elections. *See* Justin Mayhew,
26 *Democrat Nicole Cannizzaro Leading Republican Challengers in SD-6*, Public Policy

27 ¹² *POLICY AND PROGRAM REPORT: Elections*, NEVADA LEGISLATIVE COUNSEL
28 BUREAU (April 2016),
<https://www.leg.state.nv.us/Division/Research/Publications/PandPReport/12-E.pdf>.

1 Polling (April 11, 2016), [https://www.scribd.com/doc/308184066/PPP-Memo-NV-SD6-4-](https://www.scribd.com/doc/308184066/PPP-Memo-NV-SD6-4-11-16-pdf)
2 11-16-pdf (“While Cannizzaro performs well across a wide range of demographic groups,
3 she does particularly well with voters of color. Cannizzaro dominates her Republican
4 opponents by at least 50 points with both Hispanic and African American voters in the
5 district.”); *see also* Section VII, *infra*. Thus, these voters are more likely than their white
6 counterparts to have their votes nullified by a recall election.

7 38. Moreover, minority voters in Districts 5, 6, and 8 are more likely to support
8 Senators Woodhouse, Cannizzaro, and Farley, respectively. Accordingly, they are more
9 likely to bear the undue burdens of having to vote in a special recall election to ensure that
10 their duly-elected Senators can serve the entirety of their four-year terms.

11 39. Further, while all voters in Districts 5, 6, and 8 would be burdened by
12 having to vote again in an off-cycle, recall election, those burdens will have a
13 disproportionately negative impact on minority groups in Nevada as a result of the
14 disparate social and economic conditions experienced by minorities in the State. As
15 detailed in Sections V-VII below, due to historic and ongoing discrimination, African
16 Americans and Latinos in Nevada experience significantly higher rates of poverty and
17 unemployment, as well as lower levels of educational attainment, home ownership, and
18 access to transportation. These factors all exacerbate the obstacles to voting, particularly
19 in off-cycle, special elections.

20 40. The costs of voting are already substantially higher for low-income voters,
21 who, for example, are less likely to own homes and more frequently move from one
22 residence to another, requiring updates to their registration to maintain eligibility to vote.
23 “Study after study of the American electorate has found that individuals with ample
24 resources vote much more regularly than those with fewer resources—the poor, racial and
25 ethnic minorities, the less educated.” Zoltan Hajnal, *America’s Uneven Democracy: Race,*
26 *Turnout, and Representation in City Politics* (2009); *see also* Shauna Reilly, *Language*
27 *Assistance under the Voting Rights Act: Are Voters Lost in Translation?* 27-30 (2015)
28 (recognizing the “greater socioeconomic barriers to voting” of Hispanic individuals,

1 “including but not limited to their inability to take time off work or a lack of
2 transportation to the polls”).

3 41. Low-income and minority voters are even less likely to vote in off-cycle
4 elections given the heightened obstacles associated with those elections. *See Mo. State*
5 *Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1079-
6 80 (E.D. Mo. 2016) (“Off-cycle elections [] enhance the opportunity for discrimination,”
7 because they “tend to generate unusually low voter turnout generally and
8 disproportionately low turnout among African American voters.”); *see also Harvell v.*
9 *Blytheville Sch. Dist. No. 5*, 71 F.3d 1382, 1388 (8th Cir. 1995) (recognizing that African-
10 American voters’ realization “that they faced a much lower possibility of success under
11 the present scheme” could account for low turnout).

12 42. Disparities in educational attainment also make it more difficult for minority
13 voters to overcome the heightened informational barriers to voting in an off-cycle, special
14 election, which garners less public attention and for which there may be more limited
15 resources for voter outreach than for general elections. “[H]olding local elections at a time
16 when only the most engaged and politically astute citizens—those citizens who feel the
17 most enfranchised—are likely to vote will almost certainly result in the diminished
18 influence of groups who feel generally excluded from the political fabric of the
19 community.” *See Mo. State Conference of the NAACP*, 201 F. Supp. 3d at 1080 (citations
20 omitted).

21 43. The burdens on the right to vote that Nevada’s recall laws and recall
22 elections thereunder impose interact with disparate social and economic conditions
23 experienced by Nevada’s minority population as a result of historic and ongoing
24 discrimination, leading to the denial or abridgment of equal opportunities for minority
25 voters to participate in the political process and elect candidates of their choice.

26 44. “Changing the costs of electoral participation accomplishes indirectly what
27 redistricting seeks to accomplish directly: changing the median voter in an election to
28

1 favor a preferred outcome.”¹³ Here, any recall elections against the Senators in Districts 5,
2 6, and 8 would involve a whiter, more educated, and higher-income electorate that is more
3 likely to favor Republican candidates. Such recall elections would change the costs of
4 electoral participation by nullifying previously-cast votes, particularly those of minority
5 voters, and imposing disproportionate burdens on minority voters in regards to voting
6 again in a special recall election. Indeed, Nevada’s minority voters are more likely to be
7 deterred and prevented from voting in any special recall elections, and thus have less
8 opportunity to participate in the electoral process.

9 **V. Nevada’s History of Discrimination Against Racial and Language Minorities**

10 45. Nevada has a history of discriminating against racial and language
11 minorities, which has both directly and indirectly hindered their ability to participate
12 equally in the political process.

13 46. Prior to becoming a state, the territory of Nevada prohibited African-
14 Americans and other minorities from voting. The First Territorial Legislature restricted
15 voting to white men in 1861, the same year that Nevada was organized as a territory of the
16 United States.¹⁴ This restriction did not change when Nevada became a state in 1864, as
17 African-Americans and other minorities were still denied the right to vote under the
18 Nevada Constitution.¹⁵ Even after minorities were granted the right to vote, voting
19 discrimination continued. For example, in 1987, a Republican assemblyman in the Nevada
20 legislature sponsored an “English-Only” bill that would designate English as the official
21 language of the State and limit voting rights for non-English speakers, which would
22 disproportionately impact Hispanic and Asian voters.¹⁶

23 ¹³ Christopher Berry & Jacob E. Gersen, *The Timing of Elections*, 79 U. CHI. L.
24 REV. 37 (2010),

25 <http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5490&context=uclev>.
¹⁴ Rachel J. Anderson, *Blacks and Voting Rights in Nevada*, UNLV SCHOOL OF
LAW (Winter 2013),

26 <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1855&context=facpub>.

27 ¹⁵ *Id.*

28 ¹⁶ Emily L. McIlveene, *Adelante Nevada: A Case Study of Latino Political
Incorporation in a New Immigrant Destination*, UNIVERSITY OF MIAMI 42 (2014),
http://scholarlyrepository.miami.edu/cgi/viewcontent.cgi?article=1552&context=oa_theses.

1 47. Discrimination in Nevada also manifested in restrictions on marriage and
2 court participation. In 1861, in addition to prohibiting minorities from voting, the First
3 Nevada Territorial Legislature criminalized interracial marriage and prohibited
4 “coloreds,” including blacks, Native Americans, and Chinese, from appearing as
5 witnesses against white men. This measure was adopted despite the public objection of
6 African-Americans and their demands for civil rights, suffrage, public education for
7 children, and the right to bear witness in court and serve on juries.¹⁷

8 48. The State of Nevada also has a long history of discrimination in its
9 educational institutions. After the passage of the Civil War Amendments, Nevada’s
10 Supreme Court, in 1872, endorsed racially-segregated public schools as constitutional.¹⁸
11 Institutional discrimination in the form of segregation continued in the Nevada
12 educational system into the 1970s. For example, the racially diverse Clark County School
13 District maintained segregated elementary schools until the Ninth Circuit held that the
14 practice violated substantive constitutional rights in 1972. *See Kelly v. Guinn*, 456 F.2d
15 100 (9th Cir. 1972). Educational discrimination also extended to language minorities. For
16 example, in 2008, a superintendent of Nevada’s Esmeralda County School District
17 prohibited students from speaking Spanish while riding on school buses.¹⁹

18 49. The State has also long struggled with segregation in housing. In 1959, the
19 State Advisory Committee to the U.S. Commission on Civil Rights found that public
20 housing in Las Vegas and Reno discriminated against African-Americans.²⁰ Specifically,
21 the Las Vegas Housing Authority “maintained the policy of segregation in some of the
22 authority’s projects.”²¹ Such housing segregation continued in Las Vegas and Reno up

23
24 ¹⁷ Rachel J. Anderson, *Timeline of African-American Legal History in Nevada (1861-2011)*, UNLV SCHOOL OF LAW (2012), <http://scholars.law.unlv.edu/facpub/689>.

25 ¹⁸ *Id.*
26 ¹⁹ Press Release, ACLU, ACLU Asks Esmeralda County to Stop English-Only Rule on School Bus (Jan. 31, 2008), available at <http://www.aclu.org/immigrants-rights/aclu-asks-esmeralda-county-stop-english-only-rule-school-bus>.

27 ²⁰ Rachel J. Anderson, *Timeline of African-American Legal History in Nevada (1861-2011)*, UNLV SCHOOL OF LAW (2012), <http://scholars.law.unlv.edu/facpub/689>.

28 ²¹ UNITED STATES COMMISSION ON CIVIL RIGHTS, 1959 REPORT 479 (1959), available at <https://www.law.umaryland.edu/marshall/usccr/documents/cr11959.pdf>.

1 until 1971, stopped only through legislation passed by Nevada’s legislature under the
2 threat of federal court action. *See Nev. Rev. Stat. tit. 10, Ch. 118.*

3 50. Segregation and discrimination have also historically skewed access to
4 economic opportunities in Nevada. For example, in 1931, the Nevada legislature barred
5 non-citizen foreign nationals from owning or operating machines or casinos in Clark
6 County, effectively excluding them from advancement in the gaming industry during the
7 30 years the law was in effect.²² Such economic segregation continues to the present. The
8 Nevada Advisory Committee’s 2012 report notes that *de facto* segregation persists in
9 Nevada, as employment in the dominant entertainment industry has forced African-
10 Americans and Latinos into “back house” jobs where advancement is limited.²³

11 51. Nevada’s Hispanic population has also been a target for discrimination.
12 Immigration has long been be a “serious issue for the state,” to the point that the Nevada
13 Advisory Committee advised that any legislative debate in regards to the issue may result
14 in “racial and ethnic bigotries that are advocated under the guise of protecting the nation’s
15 borders.”²⁴ The report highlighted the tenuous line that the Nevada legislature has crossed
16 in recent efforts to address concerns over illegal immigration—a debate that has permitted
17 persistent discriminatory rhetoric and legislative proposals that threaten the liberties of
18 Nevada’s Hispanic population.²⁵

19 **VI. The Ongoing Effects of Nevada’s History of Discrimination**

20 52. African-Americans, Hispanics, and language minorities in Nevada continue
21 to suffer from the effects of Nevada’s history of discrimination. Minorities in Nevada fare
22 worse than their white counterparts across key social and economic indicators in the areas
23 of income, employment, housing, education, health, and criminal justice. These disparities
24

25 ²² MALVIN LANE MIRANDA, A HISTORY OF HISPANICS IN SOUTHERN NEVADA 102
26 (1997).

27 ²³ NEVADA ADVISORY COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL
RIGHTS, CIVIL RIGHTS IN NEVADA: ISSUES AND CONCERNS MOVING INTO THE 21ST
CENTURY 4 (Jan. 2012), *available at* <http://www.usccr.gov/pubs/NV-CR-Report-ver.pdf>.

28 ²⁴ *Id.* at 11.

²⁵ *Id.* at 9.

1 interact with and exacerbate the already heightened burdens on the right to vote imposed
2 by Nevada's recall laws and any recall elections for State Senate in Districts 5, 6, and 8.

3 53. A disproportionate number of minorities in Nevada live in poverty. Overall,
4 25.6% of African-Americans and 20.8% of Latinos lived below the poverty line in 2015 in
5 Nevada.²⁶ In comparison, the poverty rate for white individuals was just 7% in 2016.²⁷

6 54. In Senate District 8, the percentage of African-Americans and Latinos below
7 the poverty line is 12.2% and 14.9% respectfully, compared to 7.6% of the white
8 population.²⁸ Similar disparities exist in Districts 5 and 6. In District 5, 16.5% of African-
9 Americans and 11.5% of Latinos live below the poverty line, compared to only 8.3% of
10 whites.²⁹ In District 6, 19.8% of African-Americans and 18.6% of Latinos live below the
11 poverty line, compared to only 9.1% of the white population—less than half the
12 percentage of minorities living in poverty.³⁰

13 55. The racial disparity in poverty among adolescents is even worse. According
14 to the Pew Research Center, in 2014, the poverty rate for African-Americans was 40% for
15 those 17-years-old and younger, and 25% for those between the ages of 18 and 64 in
16 Nevada. The poverty rate for Hispanics 17-years-old and younger was 29%. In contrast,
17 the poverty rate among whites in Nevada was 12% for those 17-years-old and younger as
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19
20 ²⁶ *Nevada 2015*, TALK POVERTY, <https://talkpoverty.org/state-year-report/nevada-2015-report/> (last visited Sept. 26, 2017).

21 ²⁷ *Poverty Rate by Race/Ethnicity*, THE HENRY J. KAISER FAMILY FOUNDATION,
22 <http://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Sept. 28, 2017).

23 ²⁸ *Demographic Profile: Nevada Senate District No. 8*, LEGISLATIVE COUNSEL
24 BUREAU: RESEARCH DIVISION SD8-3 (May 2017),
https://www.leg.state.nv.us/Division/Research/Districts/79th2017/Profiles/SEN2017Profile_District8.pdf.

25 ²⁹ *Demographic Profile: Nevada Senate District No. 5*, LEGISLATIVE COUNSEL
26 BUREAU: RESEARCH DIVISION SD5-3 (May 2017),
https://www.leg.state.nv.us/Division/Research/Districts/79th2017/Profiles/SEN2017Profile_District5.pdf.

27 ³⁰ *Demographic Profile: Nevada Senate District No. 6*, LEGISLATIVE COUNSEL
28 BUREAU: RESEARCH DIVISION SD6-3 (May 2017),
https://www.leg.state.nv.us/Division/Research/Districts/79th2017/Profiles/SEN2017Profile_District6.pdf.

1 well as those between 18- to 64-years-old. The poverty rate for the 18- to 64-year-old
2 demographic overall in Nevada was 17%.

3 56. There are also wide disparities in the median income of white, Latino, and
4 African-American households. According to the Pew Research Center, in 2014, the
5 median income was \$24,500 for Hispanics and \$25,000 for African-Americans in Nevada,
6 as compared to \$35,000 for whites. These disparities persisted in 2016—the Census
7 Bureau reported a median income of \$45,836 for Hispanics and \$37,296 for African-
8 Americans in Nevada, compared to \$61,165 for white individuals. Thus, African-
9 Americans earn nearly 40% less than whites and Hispanics earn nearly 25% less than
10 whites.

11 57. Household income disparities also exist in the Senate Districts at issue in
12 this case. Data from the 2010 Census and 2013 American Community Survey show
13 Hispanic and African-American households in Senate District 6 earned a median income
14 of \$50,500 and \$46,000, respectively, while white households in the district earned
15 \$60,400. In District 8, the median income for Hispanic and African-American households
16 was \$53,000 and \$49,300, respectively, while white households earned \$71,100. In
17 District 5, Hispanic households earned a median income of \$59,200 and African-
18 American households earned a median income of \$49,600, while the median income for
19 white households was \$64,100.³¹

20 58. Nevada's historically unequal treatment of minorities has earned the State a
21 place as one of the worst states for economic outcomes for Hispanic and African-
22 American individuals. The unemployment rate is the second highest in the country for
23 Hispanics and the third highest for African-Americans. According to the Bureau of Labor
24 Statistics of the United States Department of Labor, the unemployment rate for African-
25 Americans in Nevada in 2015 was 13.5%, and 8% for Latino individuals. In comparison,
26

27 ³¹ *Household Income in State Senate District 5, Nevada*, STATISTICAL ATLAS,
28 [https://statisticalatlas.com/state-upper-legislative-district/Nevada/District-5/Household-](https://statisticalatlas.com/state-upper-legislative-district/Nevada/District-5/Household-Income)
Income (last updated April 20, 2015).

1 white unemployment reached only 5%.³² The Nevada Advisory Committee's 2012 report
2 noted that "[e]qual employment opportunity continues to be a significant civil rights issue
3 in the state."

4 59. There are also great differences in the rate of home ownership. According to
5 the Pew Research Center, in 2014, 61% of whites in Nevada owned a home. In contrast,
6 only 28% of African-Americans and 43% of Hispanics in Nevada owned a home in 2014.

7 60. Educational disparities are also pronounced in Nevada. Hispanic students
8 account for 41.1% of enrollment in primary and secondary schools, above the 35.1% of
9 white student enrollment.³³ Yet in 2014, only 59.2% of Hispanic students who graduated
10 from Nevada's public high schools enrolled in college, compared to 68.8% of white
11 students.³⁴ In terms of Hispanic students who are English language learners, only one-
12 third graduate from high school.³⁵

13 61. The 2010 Census and 2013 American Community Survey data show similar
14 disparities in education in the Senate Districts at issue. In District 6, 74.2% of Hispanic
15 females and 74.5% of Hispanic males received a high school diploma, compared to 92.9%
16 of white females and 94% of white males. In District 5, 76.2% of Hispanic females and
17 74.8% of Hispanic males have a diploma, as compared to 93.9% of white females and
18 92.9% of white males. In District 8, these numbers are 75.5% for Hispanic females and
19 74.9% for Hispanic males, and 95% and 95.6% for female and male white students,
20 respectively.

21
22 ³² Valerie Wilson, *State unemployment rates by race and ethnicity at the end of*
23 *2015 show a plodding recovery*, ECONOMIC POLICY INSTITUTE (Feb. 11, 2016),
[http://www.epi.org/publication/state-unemployment-rates-by-race-and-ethnicity-at-the-
24 end-of-2015-show-a-plodding-recovery/](http://www.epi.org/publication/state-unemployment-rates-by-race-and-ethnicity-at-the-end-of-2015-show-a-plodding-recovery/).

25 ³³ UNLV COLLEGE OF EDUCATION, FAST FACTS: POLICY ISSUES IN NEVADA
EDUCATION (2017), available at [http://education.unlv.edu/policy/documents/volume-
2/2017-Policy-Papers-Summaries.pdf](http://education.unlv.edu/policy/documents/volume-2/2017-Policy-Papers-Summaries.pdf).

26 ³⁴ *Annual Reports: College-Going and College Credit Accumulation Rates*, STATE
OF NEVADA DEPARTMENT OF EDUCATION,
27 [http://www.doe.nv.gov/DataCenter/Annual_Rpts_College_Going_College_Credit_Accum-
_Rates/](http://www.doe.nv.gov/DataCenter/Annual_Rpts_College_Going_College_Credit_Accum_Rates/) (last visited Sept. 28, 2017).

28 ³⁵ *Heritage*, DATA USA, https://datausa.io/profile/geo/nevada/#category_heritage
(last visited Sept. 26, 2017).

1 62. Latino and African-American populations also face disparities in terms of
 2 access to healthcare. In 2014, 26% of Hispanics were without health insurance, compared
 3 to 14% of African-Americans, and 10% of whites. In District 8, as of 2015, 19% of
 4 African-Americans and 25.4% of Latinos were uninsured, compared to 10% of the white
 5 population.³⁶ In District 5, 18.3% of African-Americans and 21% of Latinos were
 6 uninsured, compared to 11.7% of whites.³⁷ In District 6, 12.5% of African-Americans and
 7 26.8% of Latinos were uninsured, compared to 11.8% of whites.³⁸ Additionally, there are
 8 disparities in terms of who receives prenatal care. The percentage of white mothers
 9 receiving prenatal care in their first trimester in Clark County was 81.3%, compared to
 10 only 61.3% of Hispanic mothers and 62.3% of African-American mothers.³⁹

11 63. Racial disparities in Nevada are also evident within the State's prison
 12 population. According to the Nevada Department of Corrections, in fiscal years 2014 and
 13 2015, 29% of male inmates were African-American. In comparison, in July 2016,
 14 African-Americans made up only 9.6% of Nevada's population. The disproportionate
 15 share of African-Americans in Nevada's prisons means that a disproportionate share of
 16 Nevada's African-American voters are barred from voting under its felon
 17 disenfranchisement laws,⁴⁰ which revoke the voting rights of those convicted of "category
 18 A" felonies, "category B" felonies resulting in substantial bodily harm, multiple felonies,
 19 and individuals who receive "dishonorable discharge" from parole or probation.⁴¹

20 _____
 21 ³⁶ *Demographic Profile: Nevada Senate District No. 8, supra* note 28, at SD8-23.

³⁷ *Demographic Profile: Nevada Senate District No. 5, supra* note 29, at SD5-23.

³⁸ *Demographic Profile: Nevada Senate District No. 6, supra* note 30, at SD6-23.

³⁹ THE SOUTHERN NEVADA HEALTH DISTRICT, SOUTHERN NEVADA COMMUNITY
 22 HEALTH ASSESSMENT DRAFT X (May 2016),
 23 <http://www.southernnevadahealthdistrict.org/download/news16/Southern-Nevada-CHA-20160502.pdf>.

⁴⁰ Seth Richardson, *Nevada Democrats are trying to restore the voting rights of ex-felons*, INDYSTAR, March 15, 2017,
 24 <https://www.indystar.com/story/news/politics/2017/03/15/nevada-democrats-trying-restore-voting-rights-ex-felons/99225546/> ("Minorities are disproportionately affected by incarceration and far outpace whites in terms of imprisonment and felony convictions" as well as having "a higher rate of recidivism.").

⁴¹ *Voting Rights Restoration Efforts in Nevada*, BRENNAN CENTER FOR JUSTICE
 25 (June 26, 2017), <https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-nevada>.

1 64. Nevada’s elections have also been marred by subtle and overt racial appeals.
 2 For example, in 2010, Republican U.S. Senate candidate Sharron Angle’s campaign ran a
 3 political advertisement featuring Latino men carrying weapons and appearing in mug
 4 shots, spurring allegations of appeals to racism.⁴² In 2016, former aides of Republican
 5 U.S. Senate candidate Joe Heck attacked the Latina heritage of the Democratic candidate
 6 and now Senator Catherine Cortez-Masto.⁴³ For example, former adviser Tom McAllister
 7 stated that Senator Cortez-Masto “is about as Mexican as I am.”⁴⁴ Another former adviser,
 8 Mark Ciavola, described the Senator’s reference to her heritage as “Hispandering at its
 9 finest.”⁴⁵ Also in 2016, the Chairman of the Republican Party of Nevada criticized the
 10 decision to keep a polling station legally opened after hours when most of the individuals
 11 in line were Hispanic, taking issue with allowing “*a certain group*” to vote.⁴⁶

12 65. Nevada’s elected officials themselves have also made racial appeals. In
 13 2014, the Republican Assembly Speaker-Elect Ira Hansen resigned due to a prior editorial
 14 he had written, which expressed his support for the Confederate flag and described
 15 African-Americans as having a “lack of gratitude” for the end of slavery.⁴⁷ In 2015,
 16 Nevada Assemblywoman Michele Fiore referred to one of her African-American
 17 colleagues as “colored.”⁴⁸ She also described opposition to a restrictive voter

20 ⁴² Peter Grier, *Sharron Angle Ad: Is it Racist?*, CHRISTIAN SCIENCE MONITOR, Oct. 26, 2010, <https://www.csmonitor.com/USA/Politics/The-Vote/2010/1026/Sharron-Angle-ad-Is-it-racist>.

21 ⁴³ Alexandra Jaffe, *Nevada Race Heats Up with Potential First Latina U.S. Senator*, NBC NEWS (Oct. 4, 2016), <https://www.nbcnews.com/news/latino/nevada-race-heats-potential-1st-latina-u-s-senator-n656421>.

22 ⁴⁴ *Id.*

23 ⁴⁵ *Id.*

24 ⁴⁶ Ben Kamisar, *Nevada GOP Official: Polls Staying Open Too Late to Help ‘Certain Group,’* THE HILL (Nov. 5, 2016), <http://thehill.com/blogs/ballot-box/presidential-races/304522-nevada-gop-official-polls-staying-open-too-late-to-help> (emphasis added).

25 ⁴⁷ Jane C. Timm, *Nevada Republican Steps Down After Racist History Uncovered*, MSNBC, Nov. 24, 2014, <http://www.msnbc.com/msnbc/nevada-republican-steps-down-after-racist-history-uncovered>.

26 ⁴⁸ Casey Morell, *Michele Fiore’s Use of the Term “Colored” Insensitive?*, KNPR, Mar. 20, 2015, <https://knpr.org/knpr/2015-03/michele-fiores-use-term-colored-insensitive>.

1 identification bill as playing “the race issue”⁴⁹ and “declared the end of racism in
2 America.”⁵⁰

3 **VII. Recent Demographic and Political History of Nevada**

4 66. In line with the social and economic disparities resulting from Nevada’s
5 historic and ongoing discrimination towards racial and language minorities, shifting
6 demographics and increasing diversification in Nevada have not translated into increased
7 representation of minority groups among elected officials in the State.

8 67. Nevada’s population has become significantly more diverse over the past
9 several decades.⁵¹ Indeed, Nevada has been described as the “fastest growing Latino
10 population in the West.”⁵² And from 2000 to 2010, “the Latino population grew
11 appreciably,” increasing by around 82%.⁵³ The minority population in Clark County,
12 where Districts 5, 6, and 8 lie, increased 1.5% from the 2010 figure to 30.6% in 2015.⁵⁴
13 This growing diversity within Clark County is significant for electoral outcomes, as Clark
14 County holds more than two-thirds of Nevada’s “active” voters.⁵⁵

15 ⁴⁹ Christopher Hooks, *The Lady is a Trump*, POLITICO (June 14, 2016),
16 <http://www.politico.com/magazine/story/2016/06/michele-fiore-congress-las-vegas-nevada-213960>.

17 ⁵⁰ Joe Schoenmann & Casey Morell, *Is Racism Really Over* (Mar. 26, 2015),
18 <https://knpr.org/knpr/2015-03/racism-really-over>.

19 ⁵¹ See John P. Tuman et al., *Immigration and the Contours of Nevada’s Latino*
20 *Population*, BROOKINGS MOUNTAIN WEST 1 (June 2013),
21 <https://www.unlv.edu/sites/default/files/24/BrookingsReport-ImmigrationAndContours.pdf> (“Since the early 1980s, Nevada has experienced significant demographic change,” becoming “considerably more diverse,” with “Nevada’s Latino population. . . account[ing] for much recent demographic and social change.”).

22 ⁵² *Nevada Results*, N.Y. TIMES (Aug. 1, 2017),
23 <https://www.nytimes.com/elections/results/nevada?mcubz=3>.

24 ⁵³ Tuman et al., *supra* note 51 at 1.

25 ⁵⁴ Adam Candee, *Racial diversity in L.V. neighborhoods among best in the country*,
26 LAS VEGAS SUN (Dec. 28, 2016),
27 <https://lasvegassun.com/news/2016/dec/28/racial-diversity-in-lv-neighborhoods-among-best-in/>.

28 ⁵⁵ Daniel Politi, *Trump Has “Almost Certainly” Lost Nevada, as Latino Turnout Surges in Key States*, SLATE (Nov. 5, 2016),
http://www.slate.com/blogs/the_slatest/2016/11/05/trump_has_almost_certainly_lost_nevada_amid_surge_of_latino_votes.html; see also Micah Cohen, *In Nevada, Obama, Ryan and Signs of a New (Democratic-Leaning) Normal*, N.Y. TIMES (Nov. 1, 2012),
<https://fivethirtyeight.blogs.nytimes.com/2012/11/01/in-nevada-obama-ryan-and-signs-of-a-new-democratic-leaning-normal/?mcubz=3> (attributing Nevada’s status as the fastest growing state in the nation as fueled by “Democratic-leaning demographic groups: Hispanics, Asians and African-Americans,” with Nevada’s African-American population

1 68. The Senate Districts at issue in this case have also seen an increase in
2 minority populations. District 5, by 2015, was 20% Hispanic,⁵⁶ an increase from 19.3% in
3 2013⁵⁷ and from 17.35% in 2011.⁵⁸ District 6’s Hispanic population increased from
4 19.06% in 2011⁵⁹ and 20.5% in 2013⁶⁰ to 21.4% in 2015.⁶¹ By 2013, District 8 was
5 composed of 15.3% Hispanic individuals and 6.8% African-American individuals;⁶² by
6 2015, this number increased to 15.9% and 7.3%.⁶³

7 69. Alongside its shifting demographics, Nevada is widely considered to be a
8 “battleground” or “swing” state that can reasonably be won by candidates of both the
9 Democratic and Republican Parties.⁶⁴ For example, the Nevada legislature has often
10 switched party control. In particular, the Nevada Senate has changed party control four
11 times in the past decade. In 2016, the Democratic Party regained control of the State
12 Assembly,⁶⁵ after Republicans captured both legislative houses in the 2014 election.⁶⁶ In

13 growing by 58 percent and Hispanic population growing by 82 percent from 2000 to
14 2010).

14 ⁵⁶ *Demographic Profile: Nevada Senate District No. 5*, *supra* note 29, at SD5-3.

15 ⁵⁷ *Id.*

15 ⁵⁸ *Nevada State Senate - 2011 Districts, Racial Data Report*, LEGISLATIVE
16 COUNSEL BUREAU: RESEARCH DIVISION,
16 https://www.leg.state.nv.us/Division/Research/Districts/Reapp/2011/Final/Senate/SEN2011_Tables.pdf (last visited Sept. 28, 2017).

17 ⁵⁹ *Id.*

18 ⁶⁰ *Demographic Profile of Nevada Senate District No. 6*, LEGISLATIVE COUNSEL
18 BUREAU: RESEARCH DIVISION 2 (May 2015),
19 https://www.leg.state.nv.us/Division/Research/Districts/78th2015/Profiles/SEN2015Profile_District6.pdf.

20 ⁶¹ *Demographic Profile: Nevada Senate District No. 6*, *supra* note 30, at SD6-3.

20 ⁶² *Demographic Profile of Nevada Senate District No. 8*, *supra* note 28.

21 ⁶³ *Id.*

21 ⁶⁴ Meghan Keneally, *Battleground Breakdown: Where Nevada Stands in the 2016*
22 *Presidential Race*, ABC NEWS (Sept. 29, 2016),
22 <http://abcnews.go.com/Politics/battleground-breakdown-nevada-stands-2016-presidential-race/story?id=42432811> (“Nevada has been on something of a winning streak, having
23 picked the president for the last nine elections.”); Peter Hamby, *Harry Reid’s retirement*
24 *sets Nevada up as 2016 battleground*, CNN (March 27, 2015),
24 <http://www.cnn.com/2015/03/27/politics/election-2016-harry-reid-nevada/index.html>
25 (noting Nevada is “playing host to a key leadoff presidential caucus for both parties and
25 will almost certainly maintain its status as a swing state in the coming presidential race”).

26 ⁶⁵ *Blog: Democrats retake majority in Nevada Assembly*, LAS VEGAS SUN (Nov. 8,
26 2016), <https://lasvegassun.com/news/2016/nov/08/live-blog-voting-underway-in-southern-nevada/>.

27 ⁶⁶ Sean Whaley, *Blue Wave hands Democrats reins of Nevada Legislature*, LAS
28 VEGAS REVIEW-JOURNAL (Nov. 9, 2016), <https://www.reviewjournal.com/news/politics-and-government/blue-wave-hands-democrats-reins-of-nevada-legislature/>.

1 2014, the Senate seat in District 5 remained in Democratic incumbent Senator
 2 Woodhouse's control, but Senator Cannizzaro won a previously Republican-held seat in
 3 District 6.⁶⁷ Senator Farley's seat in District 8 had also been a Republican-occupied seat
 4 prior to her election in 2014 and her subsequent party change.⁶⁸

5 70. Between 2011 and 2015, Nevada's white voting age population declined
 6 from 58.2% to 54.9%, "the biggest drop in the nation."⁶⁹ This decline has resulted in a
 7 1.5% increase in the share of the voting age population by Hispanic individuals within the
 8 state, *id*, where Hispanic voters currently make up approximately 17% of eligible voters.⁷⁰
 9 The growing minority population has substantially supported Democratic candidates. The
 10 Democratic presidential candidate won Nevada in the 2008, 2012, and 2016 elections. In
 11 general elections, the Democratic Party candidate received 55.1% of the Nevada vote in
 12 2008,⁷¹ 52.3% in 2012,⁷² and 47.9% in 2016.⁷³ The Republican presidential candidate in

16 ⁶⁷ Ben Botkin, *State Senate District 6*, LAS VEGAS REVIEW-JOURNAL (May 27,
 17 2016), <https://www.reviewjournal.com/news/politics-and-government/nevada/state-senate-district-6/>.

18 ⁶⁸ Jane Ann Morrison, *Three Republicans, two Democrats want Cegavske's seat in*
 19 *District 8*, LAS VEGAS REVIEW-JOURNAL (May 25, 2014),
<https://www.reviewjournal.com/uncategorized/three-republicans-two-democrats-want-cegavskes-seat-in-district-8/>.

20 ⁶⁹ David Wasserman, *Trump's Uphill Fight: The States Where The White*
 21 *Population Has Declined The Most*, FIVETHIRTYEIGHT (July 7, 2016),
 22 <https://fivethirtyeight.com/features/trumps-uphill-fight-the-states-where-the-white-population-has-declined-the-most/> (noting "[o]f particular concern to Republicans [in the 2016 election] should be the rapid declines in the non-Hispanic white share of the voting age population in two battleground states: Florida and Nevada").

23 ⁷⁰ Leila Fadel, *For Some Latino Voters, DACA Is Just The Latest Blow From*
 24 *Trump*, NPR (Sept. 6, 2017), <http://www.npr.org/2017/09/06/548840541/president-trump-runs-the-risk-of-alienating-latino-voters-in-nevada>.

25 ⁷¹ *Nevada 2008 Results*, N.Y. TIMES,
<https://www.nytimes.com/elections/2008/results/states/nevada.html?mcubz=3> (last visited
 26 Sept. 26, 2017).

26 ⁷² *Nevada 2012 Results*, N.Y. TIMES,
<https://www.nytimes.com/elections/2012/results/states/nevada.html?mcubz=3> (last visited
 27 Sept. 26, 2017).

28 ⁷³ *2016 Nevada Presidential Election Results*, POLITICO,
<http://www.politico.com/2016-election/results/map/president/nevada/> (last visited
 Sept. 26, 2017).

1 each year received 42.7% of the vote in 2008,⁷⁴ 45.7% of the vote in 2012,⁷⁵ and 45.5% of
 2 the vote in 2016.⁷⁶

3 71. These electoral results stem in large part from the high percentage of
 4 minorities supporting Democratic candidates. “Racial minorities were responsible for
 5 winning. . . Western states designated as ‘battlegrounds’ in 2008,” including Nevada.⁷⁷ In
 6 2012, President Obama won Nevada by seven points with “a huge assist from the increase
 7 in voters of color, a group that grew by 5 points to 36 percent of the state’s voters,” which
 8 was “enough to offset a 4-point decline in white support.”⁷⁸ In particular, in 2012,
 9 President Obama “won the votes of 80% of Nevada’s Latinos.”⁷⁹ In 2016, Secretary
 10 Clinton’s victory in the State over the Republican candidate is attributed to her Hispanic
 11 base in the state.⁸⁰ In particular, Secretary Clinton “overwhelmingly won Nevada’s Latino
 12 vote by a 2-to-1 margin over Donald Trump, according to exit polls conducted during the
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 16

17 ⁷⁴ *Nevada 2008 Results*, *supra* note 71.

18 ⁷⁵ *Nevada 2012 Results*, *supra* note 72

19 ⁷⁶ *2016 Nevada Presidential Election Results*, *supra* note 73.

20 ⁷⁷ Audrey Wall, *How America’s Diversity Explosion Is Changing the Political Landscape*, THE COUNCIL OF STATE GOVERNMENTS (July 1, 2016),
<http://knowledgecenter.csg.org/kc/content/how-americas-diversity-explosion-changing-political-landscape>.

21 ⁷⁸ Ruy Teixeira & John Halpin, *THE OBAMA COALITION IN THE 2012 ELECTION AND BEYOND*, CENTER FOR AMERICAN PROGRESS 15 (Dec. 2012),
<https://cdn.americanprogress.org/wp-content/uploads/2012/12/ObamaCoalition-5.pdf>.

22 ⁷⁹ David F. Damore et al., *A Political Profile of Nevada’s Latino Population*, BROOKINGS: UNLV (June 2013),
<https://www.unlv.edu/sites/default/files/24/BrookingsReport-ProfileNVLatinPop.pdf>.

23 ⁸⁰ See Joel Kotkin, *The Improbable Demographics Behind Donald Trump’s Shocking Presidential Victory*, FORBES, Nov. 9, 2016,
<https://www.forbes.com/sites/joelkotkin/2016/11/09/donald-trumps-presidential-victory-demographics/#5a12df593b96> (“Latinos may be the one group in the ‘new America’ that made a difference for Clinton, not only in Colorado, but also in Nevada.”); Steven Shepard, *Latino Voting Surge Rattles Trump Campaign*, POLITICO (Nov. 6, 2016),
<http://www.politico.com/story/2016/11/latino-vote-surge-donald-trump-campaign-230804> (“In Nevada, Latino turnout propelled Democrats in Clark County — the population center that’s home to Las Vegas — to a record-breaking close on Friday, driving up the Democratic lead in early ballots cast to 72,000.”).

1 Nov. 8 election.”⁸¹ Hillary Clinton won the state by 2.4% of the overall vote, but with
2 60% of the Hispanic vote.⁸²

3 72. Nevada’s African-American population is also heavily Democratic.⁸³ In
4 2012, the majority of the state’s African-American population were members of the
5 Democratic Party.⁸⁴ In the most recent presidential election, 81% of African-Americans
6 voted for Secretary Clinton.⁸⁵

7 73. In contrast, members of minority groups in Nevada are significantly
8 underrepresented among elected officials. “[T]he number of Latinos elected to office
9 remains well below the community’s share of Nevada’s population.”⁸⁶ In 2013, “only one
10 Latino. . . serving in the Nevada Legislature represent[ed] a district with a Latino voting
11 age population that is less than 20%.”⁸⁷ In 2015, according to the National Association of
12 Latino Elected and Appointed Officials (NALEO), there were only 9 Latino members of
13 the state legislature.⁸⁸ According to the Associated Press, in 2016, Nevada ranked third in
14 the nation for underrepresentation of Hispanics in the state legislature and in Congress,
15 with 14% of the state legislature being Hispanic and 10% African-American.⁸⁹

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17
18 ⁸¹ Colton Lochhead, *Hispanic Support for Hillary Clinton in Nevada Fell Short of*
19 *Obama’s Total*, LAS VEGAS REVIEW-JOURNAL, Nov. 19, 2016,
20 [https://www.reviewjournal.com/news/politics-and-government/hispanic-support-for-](https://www.reviewjournal.com/news/politics-and-government/hispanic-support-for-hillary-clinton-in-nevada-fell-short-of-obamas-total/)
21 [hillary-clinton-in-nevada-fell-short-of-obamas-total/](https://www.reviewjournal.com/news/politics-and-government/hispanic-support-for-hillary-clinton-in-nevada-fell-short-of-obamas-total/).

22 ⁸² *Exit polls*, CNN, <http://www.cnn.com/election/results/exit-polls/nevada/president>
23 (last updated Nov. 9, 2016).

24 ⁸³ See Claytee D. White, *Black Politics in Las Vegas in the Twentieth and Twenty-*
25 *first Centuries*, UNLV SCHOOL OF LAW 17 (2012) (“In 2012, the majority of blacks in
26 Nevada are still members of the Democratic Party.”).

27 ⁸⁴ Rachel J. Anderson, *Blacks and Voting Rights in Nevada*, UNLV SCHOOL OF
28 LAW (2013), <http://scholars.law.unlv.edu/facpub/832>.

⁸⁵ *Exit polls*, CNN, <http://www.cnn.com/election/results/exit-polls/nevada/president>
(last updated Nov. 9, 2016).

⁸⁶ Damore et al., *supra* note 79.

⁸⁷ *Id.*

⁸⁸ LATINOS IN STATE LEGISLATURES, NALEO EDUCATIONAL FUND,
<http://www.s143989.gridserver.com/downloads/2015/Latinos-StateLegislatures.pdf> (last
updated Feb. 27, 2015).

⁸⁹ Sandra Chereb, *Data Show Minorities Missing in State Legislature, Congress*,
LAS VEGAS REVIEW JOURNAL, June 17, 2016,
[https://www.reviewjournal.com/uncategorized/data-show-minorities-missing-in-state-](https://www.reviewjournal.com/uncategorized/data-show-minorities-missing-in-state-legislature-congress/)
[legislature-congress/](https://www.reviewjournal.com/uncategorized/data-show-minorities-missing-in-state-legislature-congress/).

1 74. African-Americans have also been underrepresented in the state legislature.
2 Up until 2006, eleven African-Americans had served in the Nevada Assembly, with only
3 four such representatives in the Nevada Senate.⁹⁰ In 2009, the Nevada Assembly was 11%
4 African-American, and the Nevada Senate was 14%.⁹¹ No minority legislator has ever
5 held a Senate seat in Districts 5, 6, or 8.

6 75. Hispanic and African-American individuals are also underrepresented in
7 government employment. Hispanic individuals make up just 9% of Nevada's teachers
8 despite a state student body that is 39% Hispanic.⁹² By 2013, minority students as a whole
9 comprised 63% of Nevada's schools, but only 19% of teachers were minorities.⁹³
10 Hispanics and African-Americans are similarly underrepresented in local policing, making
11 up 11.6% and 6.6% of the Las Vegas Metro Police force, respectively, despite being a
12 combined 41.5% of Clark County's population.⁹⁴

CAUSES OF ACTION

COUNT I

(Violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment - Undue Burden on the Right to Vote – *Anderson-Burdick*)

17 76. Plaintiffs re-allege and incorporate by reference all prior paragraphs of this
18 Complaint and the paragraphs in the counts below as though fully set forth herein.
19

20 ⁹⁰ See NEVADA SECRETARY OF STATE & RESEARCH DIVISION OF THE LEGISLATIVE
21 COUNSEL BUREAU, POLITICAL HISTORY OF NEVADA 170 (11th ed. 2006),
http://nsla.nv.gov/Archives/Political_History_of_Nevada_2006/.

22 ⁹¹ *African-American Legislators 2009*, NATIONAL CONFERENCE OF STATE
LEGISLATURES (Jan. 10, 2008), [http://www.ncsl.org/research/about-state-
legislatures/african-american-legislators-in-2009.aspx](http://www.ncsl.org/research/about-state-legislatures/african-american-legislators-in-2009.aspx).

23 ⁹² Ulrich Boser, *Teacher Diversity Revisited*, CENTER FOR AMERICAN PROGRESS
24 (May 4, 2014),
[https://www.americanprogress.org/issues/race/reports/2014/05/04/88962/teacher-
diversity-revisited/](https://www.americanprogress.org/issues/race/reports/2014/05/04/88962/teacher-diversity-revisited/).

25 ⁹³ Katrina Liu et al., *Recruit, Prepare, and Retain Teachers of Color in Nevada*,
26 UNLV COLLEGE OF EDUCATION 1 (2017),
[http://education.unlv.edu/policy/documents/volume-2/Recruit-Prepare-and-Retain-
Teachers-of-Color.pdf](http://education.unlv.edu/policy/documents/volume-2/Recruit-Prepare-and-Retain-Teachers-of-Color.pdf).

27 ⁹⁴ Ana Ley, *After federal intervention, Metro's diversity still lags Las Vegas*, LAS
28 VEGAS SUN (Sept. 28, 2014), [https://lasvegassun.com/news/2014/sep/28/after-federal-
intervention-metros-diversity-lags-1/](https://lasvegassun.com/news/2014/sep/28/after-federal-intervention-metros-diversity-lags-1/).

1 77. Under the First Amendment and the Equal Protection Clause of the
2 Fourteenth Amendment, a court considering a challenge to a state election law must
3 carefully balance the character and magnitude of injury to the First and Fourteenth
4 Amendment rights that the plaintiff seeks to vindicate against the justifications put
5 forward by the State for the burdens imposed by the rule. *See Burdick v. Takushi*, 504
6 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). “However slight
7 th[e] burden may appear, . . . it must be justified by relevant and legitimate state interests
8 sufficiently weighty to justify the limitation.” *Crawford v. Marion Cnty. Election Bd.*, 553
9 U.S. 181, 191 (2008) (Stevens, J., controlling opinion) (internal quotation marks omitted).

10 78. Nevada’s recall laws infringe on Plaintiffs’ right to vote by effectively
11 cancelling-out and nullifying the votes they cast in the original election for state senator in
12 their districts with a new, off-cycle special recall election. *See Curry v. Baker*, 802 F.2d
13 1302, 1317 (11th Cir. 1986) (recognizing that, even “a new election would violate the
14 rights of those who voted for the rightful victor”).

15 79. Such nullification also renders Plaintiffs’ votes ineffective by denying them
16 full representation of the official they elected for the entire four-year term. *See Cartagena*
17 *v. Crew*, No. CV-96-3399 (CPS), 1996 WL 524394, *27-28 (E.D.N.Y. Sept. 5, 1996)
18 (holding plaintiffs adequately stated a claim for a violation of the right to vote because a
19 chancellor “denied [voters] full representation of elected officer”); *see also Reynolds v.*
20 *Sims*, 377 U.S. 533, 565 (1964) (“Full and effective participation by all citizens in state
21 government requires, therefore, that each citizen have an equally effective voice in the
22 election of members of his state legislature.”).

23 80. Nevada’s recall laws also impose significant, unjustified burdens on
24 Plaintiffs’ right to vote by requiring that they re-cast their ballots in a subsequent, off-
25 cycle special election in order to remedy the cancellation of their votes through recall and
26 to maintain and protect their candidate choice. The burdens and costs of voting again in an
27 off-cycle recall election are considerably higher than voting once in a regularly-scheduled,
28

1 general election. Those burdens and costs also disproportionately impact low-income and
2 minority voters, including African Americans and Latinos.

3 81. As applied to the recall efforts against Senators Woodhouse, Farley, and
4 Cannizzaro, where there has been no allegation or indication of any misconduct, neglect
5 of duties, betrayal of public trust, or any other incapacity or wrongdoing, and indeed no
6 indication of any cause for the recall except to force a do-over of a legitimate, democratic
7 election, Nevada’s recall laws do not plausibly further any permissible state interest. The
8 denial of and burdens imposed upon the fundamental right to vote by such a recall
9 outweigh the benefits of the laws.

10 82. The Court should invalidate Nevada’s recall laws under the First and
11 Fourteenth Amendments in situations like this one and enjoin Defendants from issuing a
12 call for a special election to recall Senators Joyce Woodhouse, Nicole Cannizzaro, or
13 Patricia Farley or otherwise implementing, enforcing, or giving effect to Nev. Const. art.
14 2, § 9 or Nev. Rev. Stat. Ann. tit. 24, Ch. 306.

15 **COUNT II**

16 **(Violation of Section 2 of the Voting Rights Act)**

17 83. Plaintiffs re-allege and incorporate by reference all prior paragraphs of this
18 Complaint and the paragraphs in the counts below as though fully set forth herein.

19 84. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, prohibits the
20 enforcement of any “voting qualification or prerequisite to voting or standard, practice, or
21 procedure” that has either the purpose or result of denying or abridging the right to vote
22 on account of race, color, or membership in a language minority group.

23 85. Here, Nevada’s recall laws and the impending special recall elections for the
24 seats currently held by Senators Woodhouse, Cannizzaro ,and Farley constitute voting
25 “standard[s], practice[s], or procedure[s]” subject to Section 2 of the Voting Rights Act. In
26 the context of the “totality of the circumstance of the local electoral process,” any recall
27 elections to replace the State Senators in Districts 5, 6, and 8 will result in minorities
28 having “less opportunity than other members of the electorate to participate in the political

1 process and to elect representatives of their choice.” *League of Women Voters of N.C. v.*
2 *North Carolina*, 769 F.3d 224, 240 (4th Cir. 2014) (internal citation and quotation marks
3 omitted).

4 86. The current recall efforts against Senators Woodhouse, Cannizzaro, and
5 Farley threaten to nullify voters’ previously-cast votes and force a do-over of a legitimate,
6 democratic election. Because minority voters, including Plaintiffs in this case,
7 disproportionately voted for and/or currently support Senators Woodhouse, Cannizzaro,
8 and Farley, a recall is more likely to nullify their votes than the votes of their white
9 counterparts and minority voters are more likely to bear the undue burdens of having to
10 vote in a special recall election to ensure that their duly-elected Senators can serve the
11 entirety of their four-year terms.

12 87. Minority voters will be disproportionately burdened by recall elections for
13 State Senate in Districts 5, 6, and 8 and any other enforcement of Nevada’s recall laws.
14 Indeed, the costs of voting again are already higher for low-income, minority voters in
15 general. The heightened burdens associated with having to vote yet again in an off-cycle,
16 special election will result in an even greater disparate impact on minority voters. *See Mo.*
17 *State Conference of the NAACP*, 201 F. Supp. 3d at 1079 (holding that the “off-cycle
18 feature of [school] Board elections have a disproportionately suppressive impact on
19 African American voters”).

20 88. Viewed in the totality of the circumstances, any recall elections to replace
21 the State Senators in Districts 5, 6, and 8 will interact with historic and ongoing economic
22 and social disparities in Nevada and the districts at issue to result in the denial or
23 abridgment of equal opportunities for minority voters to participate in the political
24 process. The disparate social and economic conditions experienced by minority voters
25 include higher rates of poverty and unemployment, and lower levels of home ownership,
26 educational attainment and access to transportation, all of which make it more difficult for
27 minority voters to overcome the heightened barriers to voting in an off-cycle, special
28 election.

1 also impede the functioning of a representative government by interfering with the ability
2 of elected officials to effectively govern following the election, including diverting their
3 time, attention, and resources to defending against unjustified recall elections and, if
4 successful, cutting short their terms in office.

5 94. The Court should invalidate Nevada's recall laws under Article IV, Section
6 4 of the United States Constitution and enjoin Defendants from issuing a call for a special
7 election to recall Senators Joyce Woodhouse, Nicole Cannizzaro, or Patricia Farley or
8 otherwise implementing, enforcing, or giving effect to Nev. Const. art. 2, § 9 or Nev. Rev.
9 Stat. Ann. tit. 24, Ch. 306 in the situation at bar.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiffs respectfully request that this Court:

- 12 A. Declare that Nev. Const. art. 2, § 9 and Nev. Rev. Stat. Ann. tit. 24, Ch. 306
13 as applied to the current recall efforts against Nevada Senators Joyce
14 Woodhouse (District 5, Democrat), Nicole Cannizzaro (District 6,
15 Democrat), and Patricia Farley (District 8) violate the First and Fourteenth
16 Amendments to the United States Constitution, Section 2 of the Voting
17 Rights Act, and Article IV, § 4 of the United States Constitution;
- 18 B. Issue a preliminary injunction enjoining Defendants, their agents, officers
19 employees, and successors from issuing a call for a special election to recall
20 Senators Joyce Woodhouse, Nicole Cannizzaro, or Patricia Farley or
21 otherwise implementing, enforcing, or giving effect to Nev. Const. art. 2,
22 § 9 or Nev. Rev. Stat. Ann. tit. 24, Ch. 306 until the Court determines the
23 legality of those provisions as applied here;
- 24 C. Issue a permanent injunction enjoining Defendants, their agents, officers
25 employees, and successors from issuing a call for a special election to recall
26 Senators Joyce Woodhouse, Nicole Cannizzaro, or Patricia Farley or
27 otherwise implementing, enforcing, or giving effect to Nev. Const. art. 2,
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§ 9 or Nev. Rev. Stat. Ann. tit. 24, Ch. 306 until the Court determines the legality of those provisions as applied here; and

D. Grant such other or further relief as the Court deems just and proper, including, but not limited to, fees incurred in bringing this action pursuant to 42 U.S.C. §1988 and 52 U.S.C. § 10310.

Dated: October 16, 2017

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