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 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. 2:08-cv-00046

**PLAINTIFFS' APPLICATION FOR
 TEMPORARY RESTRAINING ORDER
 AND EMERGENCY MOTION FOR
 PRELIMINARY INJUNCTION**

18 Plaintiffs,

19 vs.

EMERGENCY HEARING REQUESTED

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

21 Defendant.

22 Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Dwayne Chesnut,
 23 John Cahill, Vicky Birkland, John Birkland, Patricia Montgomery, Lynn Warne, and the Nevada
 24 State Education Association (hereinafter "Plaintiffs"), by and through their counsel, Kummer

1 Kaempfer Bonner Renshaw & Ferrario, hereby move this Court for a Temporary Restraining
2 Order and further file their Emergency Motion for a Preliminary Injunction and request a hearing
3 regarding the Emergency Motion on an expedited basis prior to January 19, 2008.

4 Plaintiffs seek a Temporary Restraining Order to prevent Defendant from implementing
5 At-Large Precinct caucuses on January 19, 2008 as part of the Nevada Democratic Presidential
6 Caucus. If the Court grants the Application for Temporary Restraining Order, Plaintiffs would
7 further request that the Court set a hearing, on an expedited basis prior to January 19, 2008, to
8 hear Plaintiffs' Emergency Motion for Preliminary Injunction, which will be duly noticed to the
9 Defendant.

10 In the alternative, if this Court will not issue a Temporary Restraining Order, Plaintiffs
11 request a hearing that will be duly noticed to the Defendant, on an expedited basis prior to
12 January 19, 2008, with respect to their Emergency Motion for Preliminary Injunction to cease the
13 further implementation of At-Large Precinct caucuses by the Defendant.

14 This Application and Emergency Motion is supported by the attached Memorandum of
15 Points and Authorities, the attached exhibits, the pleadings and papers on file herein, and such
16 oral argument as the Court may permit.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **The concept of ‘we the people’ under the Constitution visualizes no**
3 **preferred class of voters but equality among those who meet the**
4 **basic qualifications.**

5 *Gray v. Sanders*, 372 U.S. 368, 379-380 (1963).

6 INTRODUCTION

7 The Democratic Party of Nevada (the “Party”) intends to orchestrate a system of At-
8 Large Precinct caucuses that creates a preferred class of voters. The disproportionate allocation
9 of delegates to be chosen at the At-Large Precinct caucuses violates the United States
10 Constitution, the Nevada Constitution, the Nevada Election Code, and even the Party’s own
11 Charter. Plaintiffs request that this Court prevent the Party from proceeding with this unfair and
12 illegal scheme.

13 Appendix C of the Party’s (presumably) most recent Delegate Selection Plan and
14 Affirmative Action Plan lays out rules and procedures that allocate to nine At-Large Precinct
15 caucuses a grossly disproportionate number of delegates to the Party’s county convention.
16 Exhibit 1, Appendix C. Under Appendix C, At-Large Precincts are allocated delegates on the
17 basis of attendance whereas all other precincts in the State of Nevada are allocated a fixed
18 number of delegates based on the number of registered Democrats residing in the precinct. *Id.*
19 Delegates selected at the At-Large Precincts will be assigned at a rate of as much as ten times the
20 rate for all other precincts in the state. *Id.*

21 The difference in treatment of the similarly situated persons is shown in the following
22 extraordinary scenario, likely to occur on January 19:

23 John and Jane Voter, each registered Party voters living in the same home in the
24 Clark County Precinct 1001, are shift workers at a casino located on the Las
Vegas Strip. John is scheduled to work at his place of employment on January
19, 2008, with his work schedule including the time of the caucus. He makes the
necessary arrangements to attend his assigned At-Large caucus. Two hundred-
sixty other eligible shift workers also attend this At-Large caucus. The At-Large

1 caucus participants choose 52 delegates to the Clark County Convention. John's
2 voice in the At-Large caucus could be assigned a value of 0.19%.

3 Jane, by seeming good fortune, is not scheduled to work on the day of the caucus,
4 so she is able to attend her home precinct caucus. Because Precinct 1001 has 261
5 registered delegates, she and the other participants at this precinct caucus choose
6 5 delegates to the Clark County Convention. Jane's influence in her home caucus
7 could be assigned a value of 0.019%.

8 Thus, pursuant to the Plan, this couple, both of whom live in the same house and work for
9 the same employer, would have their caucus votes treated in vastly different manners. Jane's
10 voice would have *one-tenth* the value of her husband's, for no other reason than that her
11 employer did not schedule her to work during the time of the caucus.

12 Variations on this theme will occur for every participant in the At-Large Caucus. *Their*
13 caucus voices will be worth as much as ten times the caucuses voices of their *family members,*
14 *friends,* and *neighbors* who live in the *same* Precinct.

15 Since the Party's At-Large Precinct caucus rules treat one class of caucus participants
16 more favorably than all other classes of caucus participants, the At-Large Precinct caucuses
17 violate the Equal Protection clauses of the United States Constitution and the Nevada
18 Constitution. Accordingly, this Court must enjoin the Party from holding At-Large Precinct
19 caucuses.

20 In addition to violating constitutional law, the Party's attempted creation of At-Large
21 Precincts violates Nevada's Election Code. NRS Chapter 293 (the "Election Code"). The
22 Election Code requires major political parties to have precinct meetings, also known as caucuses,
23 in each year when a general election is held. NRS § 293.135. The Election Code sets forth
24 certain requirements for such caucuses, governing the creation and definition of precincts, and
mandating specific notice requirements relating to the caucuses. The Party did not, and cannot,
meet the notice requirements for holding caucuses required by the Election Code.

NRS § 293.135. Moreover, the At-Large Precincts were not created pursuant to the Election

1 Code. NRS §§ 293.205, *et seq.* Since the At-Large Precincts are not authorized by the Election
2 Code, and because the Party has not complied with the requirements of holding caucuses at the
3 At-Large Precincts pursuant to the Election Code, the Party has violated state law. Therefore,
4 the Court must enjoin the Party from holding At-Large Precinct caucuses in violation of
5 Nevada's Election Code.

6 If the Party is allowed to hold At-Large Precinct caucuses on January 19, 2008 in
7 violation of federal and state law, one class of individuals determined solely by their place and
8 time of employment will have more power in the selection process of the Party's presidential
9 candidate than all other registered Democrats in the state. The unconstitutional and illegal
10 actions of the Party implicate Plaintiffs' fundamental right to participate in the candidate
11 selection process. Since the At-Large Precincts impact the Plaintiffs' fundamental rights,
12 Plaintiffs will be irreparably harmed if an injunction is not issued. Therefore, this Court must
13 enjoin the Party from holding At-Large Precinct caucuses on January 19, 2008.

14 **FACTUAL BACKGROUND**

15 Nevada has long required "major political parties" to hold precinct meetings, also known
16 as caucuses, in order to select delegates to county conventions. NRS §§ 293.135; 293.137. The
17 delegates selected at the caucuses attend county conventions and select the delegates to the state
18 conventions. In turn, those state delegates select the delegates to the national conventions. NRS
19 §§ 293.140; 293.163.

20 Nevada specifies requirements for such caucuses and conventions in the Election Code.
21 Among other things, these requirements govern the creation and definition of election precincts
22 and mandate specific notice requirements relating to caucuses. NRS §§ 293.205- 293.210;
23 293.135. The Party is a "major political party" as defined by the Election Code and is therefore
24 required to hold such precinct caucuses in compliance with the Nevada Revised Statutes. NRS

1 §§ 293.0655; 293.135. Further, the Party charter mandates that the Precinct caucuses comply
2 with the Nevada Revised Statutes. Exhibit 2, Charter, XVII, § 2.

3 The 2008 Delegate Selection Process

4 Generally, the Democratic National Party rules prevent states from holding primary
5 elections or caucuses for the 2008 presidential nomination until February 5, 2008. However, on
6 August 19, 2006, the Democratic National Party voted to allow Nevada to hold its 2008 precinct
7 caucuses during the “pre-window period” along with Iowa, New Hampshire, and South Carolina.
8 This puts Nevada in a unique position that has the potential to influence voters in caucuses and
9 primaries held in other states later in the year. Nevada’s position as an early caucus state
10 increases the voice of Nevadans in the selection of the Democratic National Party’s presidential
11 candidate, and has also led to an increased interest and involvement of Party members in the
12 Nevada caucuses.

13 In an effort to continue increasing the involvement of Nevada’s Democrats, the Party
14 revamped its plan for selecting delegates, allegedly in compliance with the Charter and By-Laws
15 of the Democratic Party of the United States, the Delegate Selection Rules for the 2008
16 Democratic National Convention, the Regulations of the Rules and By-Laws Committee for the
17 2008 Democratic National Convention, the rules and charter of the Party, and the Nevada
18 Election Code. The Party purportedly adopted its *Nevada Delegate Selection Plan & Affirmative*
19 *Action Plan for the 2008 Democratic National Convention* on or about March 31, 2007.

20 However, several revised versions with varying dates, including dates some nines months
21 into the future, have been circulated online. The Party posted a Plan on its caucus website dated
22 September 24, 2008. http://www.nvdemscaucus.com/images/draftdelselupdated_oct20071.pdf,
23 last viewed January 13, 2008. In contrast, the National Democratic Party has placed an undated
24 version of the Plan that differs substantially from that posted by the Party. Exhibit 3,

1 http://www.democrats.org/a/2007/07/become_a_delega_31.php, last viewed January 13, 2008.

2 This version of the Plan is labeled “Draft”

3 As a result of revisions, the date the “final” plan was adopted is unknown to Party
4 members, even those who are members of the Party’s central committee. See Affidavits of
5 Dwayne Chesnut, John Cahill, Vicky Birkland, John Birkland, and Patricia Montgomery,
6 attached hereto as Exhibits 4, 5, 6, 7, and 8.

7 The Plan was purportedly created with the intent to “assure all Democratic voters in the
8 state full, timely and equal opportunity to participate in the delegate selection process.” Exhibit
9 1, p.36. The Plan sets forth a comprehensive, step-by-step procedure for the selection of
10 delegates *it claims* is “through a proportional representation system based on a three-tier caucus
11 system, with the first determining step on January 19th (non-binding presidential preference),
12 precinct meetings in each county” of the State’s Congressional Districts. Exhibit 2, §III.B.2.

13 Both the Plan and the Nevada Election Code contemplate that the officials conducting the
14 precinct caucuses will know the number of delegates assigned to that precinct at least five days
15 prior to the caucus. *Id.* Indeed, in October 2007, the Party issued a press release stating that at
16 the January 19, 2008 caucuses, 10,446 delegates to the various county conventions would be
17 chosen at caucuses held at 1,754 locations. Exhibits 10 and 11. Of those 10,446 delegates,
18 7,224 were to be delegates to the Clark County party convention. See Exhibit 11.

19 The Party’s calculation of these numbers was based upon the delegate assignments for
20 the precincts created in accordance with Nevada law. Nevada law sets forth a system to
21 determine the number of delegates from each precinct, based upon the number of registered
22 Party voters in the precinct. NRS § 293.133. In a county where the total number of registered
23 Party voters exceeds 4,000, a precinct is entitled to one delegate for each 50 registered voters of
24 the Party residing in the precinct. Clark County has more than 4,000 registered Party voters.

1 Accordingly, under this formula, each precinct in Clark County would be assigned one delegate
2 for each 50 registered Party voters residing in the precinct. As stated by the Party, this gave
3 Clark County 7,224 delegates. Exhibit 11.

4 However, even though the Party claimed to have adopted its Plan before the date of its
5 announcement, those statements made in October failed to make any reference to the potentially
6 *hundreds* of delegates that could be chosen at the At-Large Precincts. Indeed, the statement
7 made no reference of the At-Large Precincts, failing even to include those nine new Precincts in
8 its count. In short, the public statements of the Party as to caucus participation, the number of
9 existing precincts, and the number of delegates to be selected on January 19, 2008 were
10 misleading. Exhibits 10 and 11.

11 Of course, the Party could not include the number of delegates that were to be selected at
12 each At-Large Precinct in its proud announcement, because, under the Plan, that number can
13 only be determined on the day of the caucuses. Unlike every other precinct caucus in Nevada,
14 the allocation of delegates to the At-Large Precincts is to be determined on the basis of
15 *attendance* rather than on the number of registered voters within the At-Large Precinct. The
16 creation of At-Large Precincts was done without regard to the number of registered voters in a
17 defined geographic location in violation of NRS § 293.207. Additionally, because the number of
18 delegates to be selected at the At-large Caucuses *cannot* be known until the time of the caucus,
19 the Party cannot provide the statutory required notice explaining the number of delegates as
20 required by NRS §293.135.

21 At-Large Precinct Caucuses

22 Caucuses, held at a specific hour of a specific day, inevitably lead to nonparticipation by
23 persons scheduled by their employers to work during the caucus time. Accordingly, in a
24 purported effort to facilitate participation by such persons, the Plan claims to allow participation

1 of a segment of Clark County's workforce in "At-Large Precincts." Exhibit 1, Appendix C.
2 Unfortunately, these precincts were not established in accordance with the strict procedure set
3 forth in the Election Code for precinct establishment and boundary definition, and are not based
4 upon the residence therein of registered voters. Instead, the "At-Large Precincts" were
5 arbitrarily designed based upon having "4,000 or more shift workers per site who could not
6 otherwise take the time off to go to their home precincts."¹ Exhibit 1, Appendix C, p. 52. The
7 Plan openly admits that Clark County is the only county where any such worksites exist. *Id.*
8 Recently, the Party identified nine At-Large Precincts, all clustered on or near the Las Vegas
9 Strip. Those locations are Luxor; New York, New York; the Bellagio; Paris; the Flamingo; the
10 Rio; Caesar's Palace; the Mirage; and Wynn Las Vegas. Because the Precincts were not
11 established in accordance with Nevada law, holding the At-Large Precinct Caucuses at these
12 locations violates Nevada law.

13 In addition to the illegality of the At-Large Precincts themselves, the rules for the At-
14 Large Precinct caucuses differ from the rules of the other Party precinct caucuses to be held
15 across the state, creating inequities among caucus participants. For example, the doors to the At-
16 Large Precinct caucuses will open earlier than for other participants. Unlike other participants,
17 the attendees of the At-Large Precinct caucuses will be required to show identification proving
18 their status as a shift worker, the Party assuming that all "shift workers" (an undefined term) are
19 issued employee identification cards or badges. They will also be required to sign a declaration
20 stating they could not attend their "home caucuses" because of their work schedule.²

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24 ¹ There was no requirement that the 4,000 workers in question be registered party voters, or indeed, registered to vote at all.

² There is no provision to identify the "home" precinct of the shift worker.

Super Delegations from At-Large Precincts

1
2 Most inequitable, however, is the difference in the method of allocating the number of
3 delegates the At-Large Precinct caucuses will select. As stated above, the At-Large Precinct
4 caucuses will be assigned delegates based upon *attendance* rather than the number of registered
5 voters residing in each precinct. The mathematical formulas used to determine the number of
6 delegates from the At-Large Precinct caucuses result in a grossly disproportionate number of
7 delegates allotted to At-Large Precincts compared to other Clark County and state precinct
8 caucuses. The Party modeled the formula for the determination of delegates on NRS § 293.133.
9 However, instead of applying the formula applicable to the *county* in which these precincts exist,
10 or a “one delegate for 50 persons” standard as required in the rest of Clark County, the Party
11 treats each At-Large Precinct as though it were a *county*, rather than a precinct. Exhibit 1,
12 Appendix C, pp. 54-55. As a result, the At-Large Precincts can be assigned much higher
13 numbers of delegates per person than other caucuses in Clark County.

14 For example, Clark County Precinct 1109 has 399 registered Democrats and will receive
15 8 delegates -- even if all 399 registered Democrats participate in the caucus. Exhibit 11. In
16 contrast, if an At-Large Precinct has 399 participants, it will be entitled to one delegate for each
17 five participants, and would therefore be allotted 80 delegates. Exhibit 1. Thus, the At-Large
18 Precincts will be assigned delegates at a rate of as much as ten times the rate as other caucuses in
19 Clark County.

20 Indeed, it is likely that even a *single* At-Large Precinct would be assigned more delegates
21 to the Clark County Convention than will be selected for entire counties in other parts of the
22 state. If only 193 shift workers participate in a single At-Large Precinct, they will select 40
23 delegates. In contrast, Eureka County, with just under 200 registered Party voters, will select
24 only 39 delegates for its county convention. Exhibit 11.

At-Large Precinct Delegates Pack the County Convention

Absent the At-Large Precincts, Clark County would have a total of 7,224 delegates to attend its county convention. Exhibit 11. The At-Large Precinct process, however, creates the potential to increase the number of delegates to the county convention by 720 or more. Exhibit 1, Appendix C.³ The disproportionate assignment of delegates to the At-Large Precincts results in the dilution of the voting voice of those participants in all other caucus sites. By packing as much as 10% percent or more additional delegates into the County Convention, the At-Large Precinct caucus system substantially diminishes the voting power of delegates from the other county precinct caucuses. Moreover, the disproportionate voice assigned to At-Large Precinct caucus participants in the Clark County Convention will carry through to the selection of the Clark County delegates to the State Convention. Thereafter, that disproportionate voice will continue forward to influence the selection of the national delegates. Accordingly, this voting dilution affects all Nevada Party caucus participants, and ultimately, all Democrats across the country.

STANDARD OF REVIEW

In the Ninth Circuit, a party seeking injunctive relief needs to fulfill one of two tests: the traditional test or the alternative test. *Natural Resources Defense Council, Inc. v. Winter*, 502 F.3d 859, 862 (9th Cir. 2007). “Under the traditional test, a plaintiff must show: (1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases).” *Id.* Plaintiffs can obtain injunctive relief under the alternative test by demonstrating either: (1) a likelihood of success on the merits and

³ Because caucus participants may register to vote as a Democrat at the caucuses, the number of potential At-Large Precinct participants is limited only by the number of “shift workers” who work within 2.5 miles of the At-Large Precincts.

1 the possibility of irreparable harm, or (2) the existence of serious questions going to the merits
 2 and that the balance of hardships tips sharply in its favor. *Id.*; *Southwest Voter Registration*
 3 *Educ. Project v. Shelley*, 344 F.3d 914, 917 (9th Cir. 2003) (en banc) (per curiam); *Sardi's*
 4 *Restaurant Corp. v. Sardie*, 755 F.2d 719, 723 (9th Cir. 1985). The two “formulations represent
 5 two points on a sliding scale in which the required degree of irreparable harm increases as the
 6 probability of success decreases.” *Winter*, 502 F.3d at 862; *Idaho Sporting Congress Inc. v.*
 7 *Alexander*, 222 F.3d 562, 565 (9th Cir. 2000).

8 ARGUMENT

9 **The United States is a constitutional democracy. Its organic law**
 10 **grants to all citizens a right to participate in the choice of elected**
 11 **officials without restriction by any state because of race. This grant**
 12 **to the people of the opportunity for choice is not to be nullified by a**
 13 **state through casting its electoral process in a form which permits**
 14 **a private organization to practice . . . discrimination in the**
 15 **election. Constitutional rights would be of little value if they could**
 16 **be thus indirectly denied.**

17 *Smith v. Allbright*, 321 U.S. 649, 644 (1944)

18 Plaintiffs satisfy the requirements for both the traditional test and the alternative test for
 19 injunctive relief. Plaintiffs can demonstrate a strong likelihood of success on the merits of both
 20 their Equal Protection claims and their claims for declaratory relief. Further, Plaintiffs will
 21 unquestionably be irreparably harmed by a system that violates and dilutes their participation in
 22 the candidate selection process, and thus, their vote. Additionally, the balance of the hardships
 23 tips sharply in favor of the Plaintiffs because the failure to enjoin the At-Large Precinct caucuses
 24 would tarnish the integrity of the Party’s caucus system by preventing *all* caucus participants
 from receiving an equal opportunity to participate in the delegate selection process. Finally,
 enjoining the At-Large Precinct caucuses would advance the public interest by ensuring that all
 caucus participants are treated equally and that delegates selected during the caucuses will be
 based on a proportional representation of caucus participants.

1 **I. PLAINTIFFS HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE**
2 **MERITS OF EACH OF THEIR CLAIMS.**

3 Plaintiffs can show a strong likelihood of success on their constitutional and state law
4 claims. Plaintiffs will show that, acting under color of law, the Party created a scheme that treats
5 similarly situated persons differently, affecting rights fundamental to the election process.
6 Additionally, Plaintiffs will show that the Plan violates numerous provisions of the Nevada
7 Election Code with its unauthorized creation of precincts that do not conform to state
8 requirements.

9 **A. Plaintiffs have a Strong Likelihood of Success on their Constitutional Claims.**

10 Plaintiffs have a strong likelihood of success on their U.S. and Nevada constitutional
11 claims. The Party blatantly intends to treat one group of Party members more favorably than
12 those similarly situated. U.S. Const., Amendment XIV; Nevada Const. Art. 4, § 21. Moreover,
13 by assigning representation through a proportional means unrelated to population, the Party has
14 violated the Nevada Constitutional requirement for population-based proportional
15 representation. Nevada Const., Art. 1, § 13.

16 The Party created an enhanced class of Party members comprised of “shift workers” who
17 are employed within 2.5 miles of the nine At-Large Precinct sites located on the Las Vegas Strip
18 (“Enhanced Caucus Class”). The Enhanced Caucus Class is afforded greater per person
19 representation as they will receive a proportionally higher number of delegates to the Party’s
20 Clark County Convention than will all other Clark County caucus participants (“Devalued
21 Caucus Class”).

22 **1. *The creation of two classes of caucus participants treats similarly***
situated persons differently.

23 Plaintiffs will easily prevail on the issue of different treatment of similarly situated
24 persons. Here, all registered Party voters in Nevada (plus those persons willing to register as

1 Democrat at the time of the caucus) constitute the similarly situated class. Yet, solely on the
2 basis of time and location of employment, the party seeks to assign greater voting power to some
3 of the registered party voters. A clearer violation of equal protection could hardly be imagined.

4 Malapportionment—or unequal assignment of voting power—violates the equal
5 protection guarantee, particularly when based upon location:

6 If a State in a statewide election weighted the male vote more heavily than the
7 female vote or the white vote more heavily than the Negro vote, none could
8 successfully contend that that discrimination was allowable. How then can one
9 person be given twice or 10 times the voting power of another person in a
10 statewide election merely because he lives in a rural area or because he lives in
11 the smallest rural county? Once the geographical unit for which a representative is
12 to be chosen is designated, all who participate in the election are to have an equal
13 vote—whatever their race, whatever their sex, whatever their occupation, whatever
14 their income, and wherever their home may be in that geographical unit. This is
15 required by the Equal Protection Clause of the Fourteenth Amendment.

16 *Gray v. Sanders*, 372 U.S. 368, 379-380 (1963)(citations omitted). Here, the Enhanced Caucus
17 Class will have their voting power more heavily weighted than their fellow caucus participants
18 on the basis of *location* of employment. Thus, the Plan's allocation of delegates violates the
19 equal protection clauses of both the U.S. and Nevada Constitutions. *Rico v. Rodriguez*, 121 Nev.
20 695, 120 P.3d 812 (2005)(question in equal protection analysis is whether a conduct effectuates
21 dissimilar treatment of similarly situated persons).

22 Voting power dilution also violates Nevada's constitutional requirement that
23 representation be proportional on the basis of populations. Nev. Const., Art. 1, § 13; *Clark*
24 *County v. City of Las Vegas*, 92 Nev. 323, 550 P.2d 779 (1976)(where basis of apportionment or
reapportionment does not reasonably assure adequate protection of the integrity of the
individual's vote, the "one man, one vote" concept is violated).

It makes no difference that the voting power here is exercised through a caucus, rather
than primary election. See, e.g., *Morse v. Republican Party of Virginia*, 517 U.S. 186, 187
(1996)(applying protections of Voting Rights Act to non-primary nomination methods), citing

1 *U.S. v. Board of Com'rs of Sheffield.*, 435 U.S. 110, (1978)(noting that Voting Rights Act was
 2 intended to vindicate Fourteen and Fifteenth Amendments, and therefore applies to “to those
 3 political units that may exercise control over critical aspects of the voting process.” The Party
 4 here is exercising control over a critical aspect of the voting process: selection of candidates. Its
 5 control must be applied fairly, employing the one man, one vote concept at the precinct level.
 6 *See Irish v. Democratic-Farmer-Labor Party of Minn.* 399 F.2d 119 (8th Cir. 1968)(assuming
 7 that malapportionment of delegates at precinct level would violate one man, one vote principal).

8 **2. *The disparate values given to the voices of the caucus participants***
 9 ***cannot survive strict scrutiny.***

10 Because Plaintiffs can show differing treatment, to survive Plaintiffs’ constitutional
 11 challenges, the Party would need to show that the apportionment scheme set forth in the Plan is
 12 narrowly tailored to serve a compelling state interest. *Burdick v. Takushi*, 504 U.S. 428, 434
 13 (1992)(“Where fourteenth amendment rights are subject to severe restrictions, the regulation
 14 must be narrowly drawn to advance a state interest of compelling importance.”). The Plan’s
 15 *apportionment* scheme is not narrowly tailored to serve the stated purpose of the At-Large
 16 Precinct caucuses—increased participation in the caucuses by workers. Moreover, although the
 17 Plaintiffs believe the stated purpose of the scheme – increased participation of eligible voters
 18 who are workers—is highly laudable, a recent U.S. Supreme Court decision holds that an interest
 19 in increased voter participation is not compelling. *California Democratic Authority v. Jones*, 530
 20 U.S. 567, 584-85 (2000).

21 **a. *Strict Scrutiny Applies to the Plan’s Apportionment Scheme.***

22 The Party gains its authority for its unbalanced apportionment of delegates to the County
 23 convention from NRS § 293.133, an apportionment statute. “[S]tate apportionment statutes,
 24 which may dilute the effectiveness of some citizens' votes, receive close scrutiny from this
 Court.” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). The *Reynolds* court stated, “[S]ince the

1 right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil
2 and political rights, any alleged infringement of the right of citizens to vote must be carefully and
3 meticulously scrutinized.” Here, the right of the Devalued Caucus Class to participate has been
4 impaired.

5 The Plan limits membership in the Enhanced Caucus Class to those Party members who
6 satisfy certain qualifications regarding time and place of employment. Otherwise eligible voters
7 who do not meet those qualifications are precluded from voting at the At-Large Caucuses, and
8 thereby, are precluded from obtaining a superior voice in choosing county delegates. Limitations
9 on the franchise is also subject to a strict scrutiny analysis. *Kramer v. Union Free School Dist.*
10 *No. 15*, 395 U.S. 621, 630-631 (1969).

11 **b. The Apportionment Scheme is not Narrowly Tailored to the**
12 **Party’s Interest.**

13 As noted above, the U.S. Supreme Court does not recognize the goal of increasing voter
14 participation as a compelling interest. However, even if it were a compelling interest, the party’s
15 method of assigning delegates in an enhanced fashion is not narrowly tailored to suit that
16 purpose.

17 Regardless of the opinion of the U.S. Supreme Court, Plaintiffs believe the concept of
18 creating precincts via the At-Large scheme is unquestionably well-intentioned, and indeed, an
19 idea worth pursuing. However, an enhanced allocation of delegates to such At-Large Precincts
20 does not promote increased participation. To the contrary, the corresponding devaluation of the
21 voice of all other participants could only serve to *discourage and frustrate* participation by
22 voters.

23 In contrast, in determining delegate allocation, there was no need to deviate from the
24 delegate allocation formula assigned on the basis of county population. The Clark County
formula of one delegate for each 50 voters would have likely resulted in precinct delegations

1 comparable to that of existing precincts.⁴ The Party's creation of an Enhanced Caucus Class and
 2 a Devalued Caucus Class was not narrowly tailored to serve a compelling interest. Accordingly,
 3 it violates equal protection.

4 **3. The Party's Creation of an Enhanced Caucus Class was state**
 5 **action.**

6 The Party cannot evade the consequences of constitutional violations by claiming that its
 7 delegate allocation is not state action because it is a private organization. The Party has acted in
 8 concert with the state, and is essentially performing a state function in its conduct of the
 9 candidate selection process.

10 The U.S. Supreme Court has long maintained that a state, whether acting on its own, or
 11 through delegation of authority to a political party, may not violate equal protection rights with
 12 respect to the candidate selection process. *Nixon v. Herndon*, 273 U.S. 536, (1927)(striking down
 13 statute precluding participation in nominating process); *Nixon v. Condon*, 286 U.S. 73
 14 (1932)(striking down statute delegating determination of eligibility to participate in nominating
 15 process to party that precluded participation of class of otherwise eligible voters).⁵ The
 16 candidate selection process is subject to regulation by federal law where such process "is by law
 17 made an integral part of the election machinery." *United States v. Classic*, 313 U.S. 299, 318
 18 (1941)(corruption by election officials in primary elections subject to Congressional sanctions).

19 [A] "statutory system for the selection of party nominees for inclusion on the
 20 general election ballot makes the party which is required to follow these
 21 legislative directions an agency of the state in so far as it determines the
 22 participants in a primary election. The party takes its character as a state agency
 23 from the duties imposed upon it by state statutes; the duties do not become
 24 matters of private law because they are performed by a political party."

23 ⁴ Obviously, such a solution is not perfect, as it still results in the At-Large caucus participant being counted twice
 24 for determination of number of delegates – once for residence in the home precinct, and once for participation the
 At-Large precinct. But the participant's actual *vote* would not be so dramatically enhanced.

⁵ These two cases, the first of the so-called "White Primary" cases, are often grouped with their later progeny as
 having been decided under the 15th Amendment. However, these cases were decided under the Fourteenth
 Amendment, without reference to the Fifteenth Amendment.

1 *Smith v. Albright*, 321 U.S. 649, 643 (1944).

2 Some years ago, the U.S. Supreme Court expressly declined to answer the question of
3 whether the decisions of a political party in the area of delegate selection constitute state action.
4 *Cousins v. Wigoda*, 419 U.S. 477, 483 n. 4 (1975). However, more recently, the Court found
5 state action in a party's nonprimary nominating procedures, noting, *inter alia*, the state's
6 automatic placement of the party's candidate on the ballot. *Morse v. Republican Party of*
7 *Virginia*, 517 U.S. 186, 187 (1996)("[T]he [political] parties act under authority of Virginia
8 when they decide who will appear on the general election ballot.")(internal quotations omitted).
9 Other forms of state entanglement with party actions may also render the party conduct acts of
10 the state. *Ammond v. McGahn*, 532 F.2d 325, 327 n. 3 (3d Cir.1976) (state involvement in party
11 senate caucus was state action where sessions were conducted on state property, serviced by state
12 employees, and advertised by the state.)

13 State action exists where there is extensive government entanglement with the process.
14 *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996). State action also exists where the
15 state cedes the candidate selection process to a political party. *Smith v. Albright, supra*.
16 Additionally, the Ninth Circuit recognizes four different criteria, or tests, used to identify state
17 action. *Kirtley v. Rainey*, 326 F.3d 1088 (2003). These tests are:

- 18 (1) "public function," where state action is found when private individuals or groups are
19 endowed by the State with powers or functions traditionally governmental in nature;
20 (2) "joint action," where state action exists when state has so far insinuated itself into a
21 position of interdependence with the private entity that it must be recognized as a joint
22 participant in the challenged activity.;
- 23 (3) "governmental compulsion or coercion," where a private action is rendered state
24 action due to the coercive influence or "significant encouragement" of the state.

1 (4) governmental nexus, where a close nexus between the challenged action and the
2 State allows the action to be fairly treated as that of the State.

3 *Id.*, 326 F. 3d at 1093-96. Satisfaction of *any one* of the tests is sufficient. *Id.* The facts of this
4 case satisfy *each* of these tests.

5 The State of Nevada is required under the U.S. Constitution to choose Presidential
6 Electors. To that end, Nevada has set forth a scheme that cedes certain aspects of that selection
7 process to its recognized major political parties, a status enjoyed by the Party. As a major
8 political party, the Party is entitled to have its candidates automatically placed upon the Nevada
9 ballot for the November general election. NRS § 298.020.

10 Nevada also extensively regulates the candidate selection proceedings that occur at the
11 precinct level in the major political parties' caucuses. Nevada's Election Code *requires* major
12 political parties to hold precinct caucuses. NRS § 293.135. Nevada regulates the creation and
13 definition of precincts. NRS §§ 293.205-210. Nevada also imposes specific requirements upon
14 the conduct of caucuses, including limiting the locations in which they may be held and
15 mandating specific form and content of notice of such precincts. NRS §293.135. Until 2007,
16 Nevada mandated the allocation of delegates from the precincts to the county conventions; in
17 2007, Nevada delegated that duty to the major political parties. NRS § 293.133; 2007 Nevada
18 Laws Ch. 523 (S.B. 573).

19 Additionally, Nevada has advertised the January 19, 2008 caucus, using state resources to
20 inform voters regarding the caucus proceedings and to locate their precinct. *See* Nevada
21 Secretary of State, 2008 Presidential Caucus,
22 <http://sos/state/nv/us/elections/nvelection/caucus.asp>, last viewed January 13, 2008. On its
23 website, the Nevada Secretary of State promises:

24 The Secretary of State's office will provide both parties with the official
registration file for the allocation of delegates, assist both of the parties in

1 ensuring that any applicable federal and state election laws are enforced, and
2 insure that all eligible voters who qualify pursuant to the respective political party
rules have the ability to participate.

3 *Id.* Indeed, Nevada’s promise to provide access to voter registration records indicates Nevada’s
4 concern that allocation of delegates at the precinct level be in accordance with voter registration.

5 Nevada provides that caucuses should, preferentially, occur in public buildings. NRS §
6 293.135. As Ms. Warne’s affidavit makes clear, employees of public agencies are expected to
7 service the caucuses by opening the public building – even when such duty interferes with the
8 employee’s own right to caucus. Exhibit 9.

9 These facts also satisfy each of the tests approved by the Ninth Circuit.

10 The public function test is satisfied as the Party was endowed with the power to allocate
11 delegates to the county conventions, a role traditionally undertaken by statutory formula. The
12 joint action and nexus tests are each satisfied by the cooperation between Nevada and the Party
13 in the conduct of the caucuses. The government coercion test is satisfied as Nevada requires the
14 Party to conduct the precinct caucuses.

15 Nevada’s extensive entanglement in the caucus process, coupled with its ceding to the
16 Party the allocation of delegates from the precincts, renders the Party’s caucuses, and its
17 allocation of delegates to the county conventions from those caucuses, state action. The Party
18 has abused the authority granted it by the state. Plaintiffs have shown they are likely to succeed
19 in establishing that the party’s creation of an Enhanced Caucus Class with precinct voting rights
20 superior to those granted all other Nevada Party voters, violates both the U.S. and Nevada
21 Constitutions.

22 **B. Plaintiffs Have A Strong Likelihood of Success of Prevailing on the Merits**
23 **of Their Claims for Declaratory Relief.**

24 This Court has jurisdiction to hear requests for declaratory relief if there is a “substantial
controversy, between parties having adverse legal interests, of sufficient immediacy and reality

1 to warrant the issuance of a declaratory judgment. *Biodiversity Legal Foundation v. Badgley*,
2 309 F.3d 1166, 1173 (9th Cir. 2002). Here, there is a substantial controversy between the
3 parties as to whether the Plan violates the federal guarantee of equal protection. Since the At-
4 Large Precinct caucuses are set to take place in a matter of days, the dispute is ripe for judicial
5 decision and this Court should exercise its discretion to grant declaratory relief.

6 This Court has jurisdiction to grant declaratory relief for Plaintiffs' state law claims under
7 Chapter 30 of the Nevada Revised Statutes. As the court of record, this Court has the "power to
8 declare rights, status and other legal relations whether or not further relief is or could be
9 claimed." NRS § 30.030. Under Nevada law, the declaratory relief powers of the Court "are
10 declared to be remedial; their purpose is to settle and to afford relief from uncertainty and
11 insecurity with respect to rights, status and other legal relations; and are to be liberally construed
12 and administered." NRS § 30.140. Declaratory relief is appropriate where (1) a justiciable
13 controversy exists between persons with adverse interests; (2) the party seeking declaratory relief
14 has a legally protectable interest in the controversy; and (3) the issue is ripe for judicial
15 determination. *County of Clark v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998). The
16 determination of whether an action is appropriate for declaratory relief is left to the discretion of
17 the deciding judge whose decision will not be overturned unless the appellate court finds an
18 abuse of discretion. *Upchurch*, 114 Nev. at 752, 961 P.2d at 756.

19 A justiciable controversy exists between the Plaintiffs and the Party as to whether the
20 creation and implementation of At-Large Precincts violates state law and contradicts the Party's
21 own charter and rules. Since the Party failed to comply with federal and state law and its own
22 charter, the Party committed an illegal, *ultra vires*, act that is void under both state and federal
23 law. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006); *Miller Bros. Co. v.*
24 *State of Md.*, 347 U.S. 340 (1954). The parties' interests are also adverse since the Party has an

1 interest in validating its own rules while the Plaintiffs have an interest in voiding the illegal At-
2 Large Precinct caucus system, to ensure that all caucus participants will be given an equal voice
3 in selecting the Party's presidential nominee.

4 Plaintiffs also have a legally protectable interest in their right to participate in the
5 delegate selection process granted under the federal and state law and by the Party's Charter.
6 Exhibit 2. Finally, this issue is ripe for review since the unconstitutional At-Large Precinct
7 caucuses are set to take place in just a matter of days, on January 19, 2008.

8 **2. The Plan Violates Federal and State Law**

9 As shown in Part I-A above, the At-Large Precinct Caucus system, violates the equal
10 protection clauses of the U.S. and Nevada constitutions. Additionally, the malapportionment
11 violates Nevada's constitutional requirement of proportional representation based upon
12 population. The Plan also violates the Nevada Election Code.

13 The Charter of the Democratic Party of Nevada requires the Party to adopt rules for
14 precinct meetings in conformance with the Nevada Revised Statutes. Section 2. Charter, Article
15 XVII. Additionally, Section III (2) of the Plan states it is governed by the Nevada Election
16 Code. Exhibit 1. However, despite these admonitions to conform to state law, the Plan fails to
17 live up to these expectations.

18 The Election Code sets forth specific requirements with respect to caucuses and the
19 formation of precincts. The Plan's creation of At-Large Precincts violates provisions of the
20 Election Code related to conducting caucuses as well as provisions defining the proper manner in
21 which to establish a precinct. As such, the Appendix C of the Plan is an illegal, *ultra vires* act
22 and void as a matter of law.

23 The Party will necessarily violate the Election Code's requirement of notice at the At-
24 Large Precinct caucuses. Pursuant to NRS § 293.135, the Party's county central committee is

1 required to provide notice of all precinct meetings in a prescribed manner. Under NRS §
2 293.135(5)(b), the notice must provide “the number of delegates to the county convention to be
3 chosen at the meeting.” Indeed, such notice is required to be posted at the precincts sites on the
4 very day this Motion is being filed.

5 However, the Party cannot comply with this requirement. The Party intends to determine
6 the number of delegates selected to the county convention from each At-Large Precinct on the
7 basis of attendance the day of the caucus. Accordingly, absent the use of highly proficient
8 prognosticators, it is impossible for the Party to meet the statutory notice requirements of the
9 Election Code. The failure of the Party to meet the statutory notice requirements will violate the
10 Election Code. Appendix C is thus illegal and *ultra vires* as a result.

11 The Party also violated the Election Code by attempting to establish precincts that do not
12 satisfy the requirements of the Election Code. The only individual authorized by the Election
13 Code to establish precincts is the county clerk whose decisions must be approved by the
14 Secretary of State who is to ensure precinct boundaries comply with the Election Code. Each
15 county clerk must establish election precincts and define the boundaries of each election
16 precinct. NRS § 293.205. No political party is granted the authority to establish, create, or alter
17 precinct boundaries. Yet the Party boldly admits that it created the precincts “working with
18 employers who have more than 4,000 employees in a contiguous area working on Saturday
19 morning January 19th 2008.” Exhibit 1, Appendix C.. Since the county clerk and the Secretary
20 of State did not play a role in establishing the At-Large Precincts and because the Election Code
21 does not authorize the Party to establish or alter precincts, the At-Large Precincts violate the
22 Election Code.

23 Moreover, NRS § 293.208 expressly prohibits the creation of any new precincts by any
24 authorized individual during the period between the third Wednesday in May of any year whose

1 last digit is six and the time when the Legislature has been redistricted in a year whose last digit
2 is one, unless certain exceptions apply. The At-Large Precincts were created in either 2007 or
3 2008, during the prohibited period. NRS § 293.208. None of the exceptions set forth in the
4 Election Code that would allow for the creation of new precincts apply to the At-Large Precincts.
5 As a result, the At-Large Precincts violate the Election Code, are illegal, *ultra vires*, and void as
6 a matter of law.

7 Furthermore, the boundaries of an election precinct must “follow visible ground features
8 or extensions of visible ground features, except where the boundary coincides with the official
9 boundary of the state or a county or city.” NRS § 293.205(2). “Visible ground features” are
10 defined by the Election code as “a street, road, highway, river, stream, shoreline, drainage ditch,
11 railroad right-of-way or any other physical feature which is clearly visible from the ground.”
12 NRS § 293.205(4). Here, the Party has attempted to establish At-Large Precincts that have no
13 boundaries established by visible ground features. Exhibit 1, Appendix C. Instead, the At-Large
14 Precincts are defined by an imaginary circle with a 2.5 mile radius around each individual At-
15 Large Precinct location. ⁶ *Id.*

16 The Party determined that only shift workers employed within this imaginary circle, who
17 are scheduled to work within one hour of 11:30 a.m., would be eligible to participate in these At-
18 Large Precinct caucuses. This system violates the Election Code. As a matter of law, precinct
19 boundaries *must* be established on the basis of visible ground features, not on the basis of an
20 imaginary circle around a central location. NRS § 293.205. As such, the At-Large Precincts
21 cannot be classified as precincts authorized by the Election Code and they are invalid.

22
23
24 ⁶ Strangely, given the purported goal of increasing worker participation in the caucuses, *most, if not all* of the At-
Large precinct locations are themselves located within 2.5 miles of each other. Several are across the street from
each other.

1 Additionally, the At-Large Precinct caucuses violate the Election Code because they were
2 not established based on the number of registered Democrats in a geographic location. Under
3 NRS § 293.207, “election precincts must be established on the basis of the number of registered
4 voters therein...” The At-Large Precincts are composed of an unascertainable number of people
5 who will be working within a given location on the morning of January 19, 2008 around 11:30
6 a.m. Exhibit 1, Appendix C. The Party clearly did not even attempt to establish At-Large
7 Precincts “on the basis of the number of registered voters therein,” in violation the Election
8 Code.

9 Further still, the At-Large Precinct caucuses violate the Election Code because they could
10 include more than 1,500 registered voters. NRS § 293.207 creates a maximum of 1,500
11 registered voters within the boundaries of any one precinct. Since the Party admits that the At-
12 Large Precincts were located at sites of employers with more than 4,000 shift workers scheduled
13 to work at that time, it is obvious that the At-Large Precincts could easily violate the 1,500
14 person limitation.

15 Finally, the At-Large Precinct caucuses violate the Election Code because their
16 boundaries are not defined on the election precinct map as required by NRS § 293.206. The
17 maps produced by the Clark County Election Department do not chart and define the boundaries
18 of the At-Large Precincts. The last precinct boundary map provided by the Clark County
19 Department of Elections contains no indication of the At-Large Precincts. Exhibit 12; *see* the
20 interactive version at <http://gisgate.co.clark.nv.us/gismo/mapprod.htm>, last viewed January 12,
21 2008. Since the At-Large Precincts are not provided on the maps prepared by the county clerk,
22 the locations of the At-Large Precincts could not have been approved by the Secretary of State as
23 required by the election code. NRS § 293.206. The failure of the Party to obtain approval of the
24 boundaries of the At-Large Precincts and to have such boundaries placed on the map submitted

1 by the county clerk and approved by the Secretary of State violates the Election Code.

2 Given the multitude of violations of the Election Code and the Nevada Constitution on
3 behalf of the Party and its Plan, Plaintiffs have a strong likelihood of success on the merits of its
4 claim for declaratory relief.

5 **II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF THE PARTY IS NOT**
6 **ENJOINED FROM HOLDING AT-LARGE PRECINCT CAUCUSES.**

7 Plaintiffs face irreparable injury if the At-Large Precinct Caucuses, with their unfair
8 allocation of delegates, are not enjoined. Generally, irreparable harm is an injury that cannot be
9 adequately compensated by monetary damages. *Zepeda v. United States Immigration and*
10 *Naturalization Service*, 753 F.2d 719, 727 (9th Cir. 1983). If this Court does not enjoin the Party
11 from holding At-Large Precinct caucuses, the individual Plaintiffs' constitutional right to Equal
12 Protection under the law will be infringed by the dilution of their voice in the delegate selection
13 process. Furthermore, the NSEA's substantial efforts to educate its members so they could
14 advance the NSEA's favored resolutions at the caucuses will be diluted as well. Monetary
15 damages can not compensate these losses.

16 Where a colorable claim of a constitutional violation is shown, no further showing of
17 irreparable injury is necessary. *Warsoldier v. Woodford*, 418 F.3d 989 (9th Cir. 2005), *citing*,
18 *inter alia*, 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and
19 Procedure, § 2948.1 (2d ed. 2004).

20 Allowing unconstitutional At-Large Precincts to move forward would allow a small
21 percentage of the Democratic voting population to control a disproportionate share of the
22 delegates to the Clark County Democratic Convention. The influence of those unfairly
23 apportioned delegates would then travel up to each subsequent level of the Party convention
24 system, continuing the effect of the voter dilution. Since At-Large Precinct caucuses will receive
delegates at a rate of nearly ten to one when compared to all other precincts throughout the state,

1 Plaintiffs' constitutional right to Equal Protection under the law is diluted and infringed.
2 Plaintiffs will not be able to participate in the delegate selection process on equal footing with
3 the participants in the At-Large Precincts even though they are similarly situated. Monetary
4 damages would be wholly inadequate to compensate Plaintiffs for the loss of exercising their
5 voice in the democratic process. As such, Plaintiffs will suffer irreparable harm if this Court
6 does not grant injunctive relief.

7 **III. THE BALANCE OF THE HARDSHIPS TIPS STRONGLY IN FAVOR OF THE**
8 **PLAINTIFFS.**

9 The Party's actions violate Plaintiffs' constitutional right to equal protection under the
10 law by preventing them from participating in the delegate selection process on equal footing with
11 similarly situated individuals, namely, the At-Large Precinct participants. The very purpose of a
12 preliminary injunction is to preserve rights. *Big Country Foods, Inc. v. Bd. of Educ.*, 868 F.2d
13 1085, 1087 (9th Cir.1989). Absent injunctive relief, Plaintiffs rights to a fair and equal voice in
14 the upcoming caucus will be forever lost.

15 "The District Court has no discretion to deny relief by preliminary injunction to a person
16 who clearly establishes by undisputed evidence that he is being denied a constitutional right."
17 *Henry v. Greenville Airport Com'n*, 284 F.2d 631, 633 (4th Cir. 1960). Plaintiffs' hardship will
18 be immeasurable if this Court fails to enjoin the At-Large Precincts. The Plan allocates a
19 disproportionate number of delegates to the At-Large Precincts, potentially as much as ten times
20 as many delegates as another similarly situated precinct in Clark County. As such, Plaintiffs
21 voice and participation in the delegate selection process will be diluted and marginalized.
22 "When the harm claimed is a serious infringement on core expressive freedoms, a plaintiff is
23 entitled to an injunction even on a lesser showing of meritoriousness." *Sammarto v. First*
24 *Judicial Dist. Ct.*, 303 F.3d 959, 973-74 (9th Cir. 2002); *quoting San Diego Committee v.*
Governing Board, 790 F.2d 1471, 1473 n. 1 (9th Cir. 1986). Infringement of such a core

1 expressive freedom as the participation in the democratic process as a result of a violation of
2 Plaintiffs' right to equal protection would cause Plaintiffs immense hardship and they are entitled
3 to an injunction.

4 On the other hand, the hardship to the Party if the At-Large Precincts were enjoined
5 would be minimal. The injunction would not prevent the Party from conducting its caucus.
6 Rather, it would simply require the Party to hold the caucus in a way that did not violate the
7 Equal Protection Clause by treating one group of similarly situated individuals differently than
8 another group. Further, enjoining the At-Large Precinct caucuses would not create a substantial
9 hardship to the individuals they are meant to serve. If the shift workers are not allowed to caucus
10 at the At-Large Precincts, their voice is not diluted at all. They still have the same opportunity to
11 attend the caucus at their home precinct as does every other caucus participant in the state. No
12 greater burden is placed on the potential members of the Enhanced Caucus Class than that placed
13 on every other caucus participant in the state to whom the At-Large Precinct rules do not apply.
14 Accordingly, no hardship will be suffered if injunctive relief is granted.

15 Since Plaintiffs would suffer immeasurable hardship by the infringement of their
16 constitutional rights under the Equal Protection clause, and because the Defendant would not
17 suffer hardship by being forced to follow the law, the balance of hardships tips strongly in favor
18 of Plaintiffs and an injunction should issue.

19 **IV. GRANTING INJUNCTIVE RELIEF ADVANCES THE PUBLIC INTEREST.**

20 The State of Nevada is in the relatively unique position of being an early caucus state for
21 the first time in its history. The outcome of the January 19, 2008 caucus will influence voters
22 throughout the nation. The public has a legitimate interest in ensuring the fairness, equality,
23 accuracy, and integrity of the Party's delegate selection process. The Supreme Court recognizes
24 the important public interest in conducting fair elections. "States certainly have an interest in

1 protecting the integrity, fairness, and efficiency of their ballots and election processes as means
2 for electing public officials.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364
3 (1997); *citing Bullock v. Carter*, 405 U.S. 134, 145 (1972). States have a compelling interest in
4 maintaining the integrity of its elections. *See Bates v. Jones*, 127 F.3d 870, 872-73 (9th Cir.
5 1997). “[I]t is always in the public interest to prevent violation of a party’s constitutional rights.”
6 *Déjà vu of Nashville, Inc. v. Metro. Gov’t of Nashville*, 274 F.3d 377, 400 (6th Cir. 2001); *citing*
7 *G & V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

8 The Plan awards At-Large Precincts a grossly disproportionate number of delegates that
9 will create an overrepresented class of At-Large Precinct caucus participants. Every caucus
10 participant throughout the state will suffer from this disproportionate allotment of delegates the
11 Party seeks to give the At-Large Precincts. Depending on the attendance of the At-Large
12 Precincts, they may be unfairly awarded 10% or more of the total delegates to the Clark County
13 convention. The inequities in this system are undeniable. The public has a strong interest in
14 maintaining a fair and balanced caucus. As a result, an injunction would advance the public
15 interest.

16 **V. A BOND SECURING THE TEMPORARY RESTRAINING ORDER AND/OR**
17 **PRELIMINARY INJUNCTION SHOULD BE MINIMAL.**

18 Rule 65(c) of the Federal Rules of Civil Procedure requires the posting of security for the
19 issuance of a temporary restraining order or a preliminary injunction. The purpose of the bond is
20 to protect the parties enjoined from the costs and damages that may result if the injunction is
21 improper. Fed. R. Civ. P. 65(c). The Defendant will not suffer any damages if this injunction is
22 later deemed improper. This injunction protects the interests of all registered Democrats in
23 having their voices heard on an equal basis with all other registered Democrats in the state during
24 the Nevada Democratic Presidential Caucus on January 19, 2008. The requested injunctive relief
will not prevent any eligible Party member from participating in the caucus at his or her assigned

1 home precinct. As such, the Party would not suffer any damages if this injunction is later
2 deemed improper. Accordingly, any injunction bond should be minimal.

3 **CONCLUSION**

4 Wherefore, Plaintiffs request that this Court enter a Temporary Restraining Order
5 preventing Defendant from implementing At-Large Precinct Caucuses on January 19, 2008 as
6 part of the Nevada Democratic Presidential Caucus pursuant to the Nevada Delegate Selection
7 Plan and Affirmative Action Plan. Plaintiffs further request that the Court set a hearing, which
8 will be duly noticed to Defendant, on an expedited basis prior to January 19, 2008, to hear
9 Plaintiffs' Emergency Motion for Preliminary Injunction.

10 In the alternative, if this Court will not grant a Temporary Restraining Order, Plaintiffs
11 request a hearing, which will be duly noticed, on an expedited basis prior to January 19, 2008, so
12 that their Emergency Motion for Preliminary Injunction may be heard.

13 DATED this 14th day of January, 2008.

14 KUMMER KAEMPFER BONNER RENSCHAW & FERRARIO

15
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