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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

NEVADA GREEN PARTY, DR. JILL STEIN; ) Case No.: 2:16-cv-01951-JAD-CWH  
and DR. JULIA HAMMETT, as Co-Chair of )  
the Nevada Green Party, )

Plaintiffs, )

v. )

BARBARA K. CEGAVSKE, in her official )  
capacity as Secretary of State of Nevada, )  
Defendant. )

**PLAINTIFFS' REPLY TO DEFENDANT'S  
OPPOSITION TO APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE RE:  
PRELIMINARY INJUNCTION**

1           **I. Introduction**

2           The Secretary of State Barbara Cegavske’s (“Secretary”) *Opposition to Application for*  
 3 *Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction* (“Opposition”)  
 4 raises a number of issues and mischaracterizations that warrant clarification in advance of the hearing on  
 5 the temporary restraining order, scheduled for August 29, 2016. As expounded below: (1) the stipulation  
 6 entered into by the Nevada Green Party is unrelated to this current matter; (2) *Fulani v. Lau*, attached  
 7 hereto as Exhibit A, is factually similar to the matter here and should be relied upon as controlling  
 8 precedent; (3) the Nevada Green Party was more than diligent in collecting signatures before the June 3,  
 9 2016, deadline; (4) any prejudice to the State of Nevada or the Secretary—of which there actually is  
 10 none—is a fault of the Secretary’s, not the Nevada Green Party’s; and (5) the Nevada Green Party has  
 11 more than enough signatures to qualify their presidential nominee. Additionally, no security bond is  
 12 required in this case because it involves issues of overriding public concern.

13  
 14           **II. Argument**

15           **A. The 2014 Stipulation Has No Bearing On This Case**

16           The Secretary seems to think it necessary to drudge up unrelated past litigation initiated by the  
 17 Nevada Green Party. Opposition 1:26–2:28. Yet, the 2014 civil action, which sought injunctive and  
 18 declaratory relief regarding Nevada’s former statutory requirements for minor party ballot qualification,  
 19 has no relation to or bearing on this case. In that case, the Nevada legislature amended the applicable law  
 20 that required minor party qualifying petitions to be filed with the Secretary in May to then require filing  
 21 the petition to the third Friday in June. Thus, the parties stipulated that “no case or controversy remains  
 22 in *this* litigation” (emphasis added). Opposition, Ex. 4. However, that stipulation has no impact on this  
 23 matter before the court today for three reasons. First, the stipulation never mentioned nor is applicable to  
 24 any future conflict or disagreement. Second, the Nevada Green Party had not been harmed by the new  
 25 June deadline, and thus had no standing to contest it in court. And, third, if the Nevada Green Party had  
 26 not stipulated to dismiss the case, the court would have done so because the Party lacked standing as a  
 27 result of the amended law. Now, plaintiffs bring suit under the new law because the Nevada Green Party,  
 28

including its members and potential voters, have been harmed as a result of the arbitrary June 3, 2016, filing deadline and the Secretary's unreasonable refusal to consider any additional signatures.

**B. *Fulani v. Lau* Is Controlling Precedent That Is Nearly On All Fours With This Case**

The Secretary also asserts that *Fulani v. Lau*<sup>1</sup> ("*Fulani*") is distinguishable from the matter before the court today. This is false. *Fulani* should be considered controlling precedent for this Court's decision on the temporary restraining order because it is factually similar—indeed, nearly factually identical—and considered all of the same issues before the court today.

First, the relevant comparison is not, as the Secretary characterizes it, between the "65-day period allowed to the county clerks to verify the petition signatures" in *Fulani* to the "only 10 day" period for signature verification that allegedly is in place today. In reality, the Secretary today takes an extra six days than Nevada took in 1992 in *Fulani*. Back in 1992, minor party ballot qualification signatures must have been submitted to the Secretary by June 10, 1992, in order to meet a federal deadline of September 24, 1992. *Fulani*, Ex. A at 2. The State explained that deadline based upon a 65-day requirement to verify the petitions, then additional time to verify the affidavits used to check the petitions, *Fulani*, Ex. A at 12–13. By comparison, today the Secretary requires petitions to be submitted by June 3, 2016, to meet a federal deadline of September 23, 2016. The Secretary explains this deadline based on a 10-day requirement to verify signatures a 91-day requirement to create, translate, proof, print, publish, and test the ballots. Yet, it does not matter whether the deadline is allegedly to verify signatures or to print and proof the ballots, the relevant dates are nearly identical between *Fulani* and the current Nevada statutes.

Second, the rationale considered by the District Court in *Fulani* is very applicable to the facts of this case, as the Nevada Green Party is in nearly an identical position to one of the plaintiffs in *Fulani*, the Fulani Group. *Fulani*, Ex. A at 2. In 1992, the Fulani Group was campaigning for Lenora B. Fulani as an independent candidate for president. *Ibid.* As the Court explains:

“[t]he campaign submitted its petition on June 10, 1992, but the State rejected the petition because it lack [sic] the requisite number of valid

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<sup>1</sup> *Fulani v. Lau*, case number CV-N-92-535-ECR, was a case also from the United States Federal Court for the District of Nevada in 1992. A copy of the court's order granting the temporary restraining order from that case is attached to this Reply as Exhibit A. Declaration of Tony Nasser ¶3.

1 signatures. The campaign then circulated additional petitions and collected  
2 additional signatures which it tendered to the State on August 19, 1992, but  
3 the State refused to accept the supplement.”

4 *Fulani*, Ex. A at 2.

5 While the other two plaintiffs in *Fulani* were “newly emerging political movements or parties,”  
6 *Fulani*, Ex. A at 9, the Court nonetheless applied an entirely independent analysis to the unique  
7 circumstances presented by the Fulani Group, *Fulani*, Ex. A at 10. Through that discussion, the court,  
8 citing the Supreme Court case of *Anderson v. Celebrezze*, 460 U.S. 780, 790 (1983), noted that laws  
9 restricting ballot access “also burden candidates who decide run in advance [sic] but who must enlist  
10 volunteers and collect signatures long before the general population has begun to think about election  
11 season.” *Fulani*, Ex. A at 10. This is not simply a “suggestion” of Plaintiffs in this case, Opposition 7:16–  
12 19, but a burden recognized by the Supreme Court of the United States, *See Anderson, supra*, 460 U.S.  
13 780.

14 The Secretary attempts to explain this reasoning away by an extended mischaracterization of the  
15 Nevada Green Party’s signature collection activities. *See* Opposition 7:3–8:2, 9:23–10:14. The Secretary  
16 posits that “[a]rguably, a slightly more sincere effort on the part of this long-standing minor political  
17 party could have rustled up significant volunteers to circulate petitions in early rather than the end of  
18 May.” Opposition 9:27–10:1. However, this is a red-herring and inaccurate. Before the June 3, 2016,  
19 deadline, the Nevada Green Party collected over 8,000 signatures in anticipation of meeting a requirement  
20 of 5,431. By the very nature of the process, the minor party is unable to know which signatures the  
21 Secretary will accept as valid. It is also worth noting here that the signature verification process is fraught  
22 with errors, which means that even if the Nevada Green Party went through painstaking detail to ensure  
23 that each signature collected was accurate, even then not all signatures would be accepted. *See*  
24 Opposition, Ex. 6. Accordingly, it is impossible to know how many signatures must be collected to meet  
25 the ballot qualification requirement. Furthermore, even though the 8,000-plus signatures were submitted  
26 to the Secretary before June 3, 2016, the Nevada Green Party was not notified that it lacked the required  
27 number of valid signatures until June 22, 2016. A mere week later, the party had already filed an appeal  
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1 with the Secretary's office and offered nearly 1,000 more signatures for consideration. Yet, despite the  
2 Nevada Green Party's diligence in attempting to qualify for the ballot, the Secretary's office took over  
3 six weeks before denying the timely appeal on August 12, 2016. Opposition, Ex. 7.

4 Finally, the Secretary contends that because two other minor parties have qualified for the Nevada  
5 ballot this year, the Libertarian and Independent American Party candidates, that plaintiffs here will be  
6 unlikely to prevail on the merits of this claim. However, this should also be controlled by *Fulani*, in  
7 which three independent or minor party candidates had placed their name on the ballot, yet the court  
8 found the deadline unconstitutional. *Fulani*, Ex. A at 9.

9 Thus, the three points on which the Secretary attempts to distinguish *Fulani* from this case are  
10 not dissimilarities at all. The facts of *Fulani* are either identical or less burdensome than what this case  
11 entails. Just as the court in *Fulani* granted a temporary restraining order on those facts, this Court should  
12 reach the same conclusion.

13 **C. The Nevada Green Party Did Not Lack Diligence In Collecting Signatures Before**  
14 **The June 3, 2016, Deadline**

15 Throughout the Opposition, the Secretary asserts that had the Nevada Green Party been more  
16 diligent and started to collect signatures earlier, it would have been able to avoid this whole conflict, and  
17 any resulting prejudice from granting this temporary restraining order is solely the fault of the plaintiffs'  
18 laziness. Yet, again, this couldn't be further from the truth.

19 As touched on in Section B, *supra*, plaintiffs collected more than 2,500 signatures *more than* the  
20 5,431 required by the Secretary. It is impossible to know how many of those signatures will be considered  
21 to be valid by the Secretary in advance of filing. Moreover, the Secretary's office did not notify the  
22 Nevada Green Party that it lacked the required number of signatures until June 22, 2016, to which  
23 plaintiffs responded in a mere week appealing the decision and offering nearly 1,000 more signatures for  
24 consideration, which more than likely would have made up for the 647 missing signatures.

25 Moreover, it should be noted that the huge amount of signatures collected in only "two weeks  
26 before they were due to be filed," as the Opposition emphasizes, is strong evidence that the Nevada Green  
27 Party was very diligent in collecting signatures and there is widespread support for the Nevada Green  
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1 Party to be on the ballot. To deny this temporary restraining order and prevent the Nevada Green Party  
 2 from placing Dr. Stein on the ballot as a presidential nominee silences the voices of all of these thousands  
 3 of voters. Even using the Secretary's number of verified signatures, and ignoring the additional signatures  
 4 collected since June 22, 2016, over 4,000 voters will have their First Amendment Rights quashed if the  
 5 Nevada Green Party is forbidden from exercising its right to associate. More than adequate support for  
 6 the Nevada Green Party's presidential nominee, Dr. Stein, exists.

7 **D. The Secretary Of State Should Be Estopped From Bemoaning Prejudice As A Result**  
 8 **Of This Temporary Restraining Order Because The Secretary Unreasonably Took**  
 9 **Over Six Weeks Before Denying The Nevada Green Party's Appeal Under NRS**  
 10 **293.12793, And There Is No Actual Prejudice If This Temporary Restraining Order**  
 11 **Is Granted**

12 The Secretary's entire argument relating to prejudice to the State is based upon increased costs  
 13 associated with "rush" printing services to meet the federal deadline of September 23, 2016, and the  
 14 potential of errors on the ballots as a result. Opposition 11:9–13:17. However, unlike the Secretary would  
 15 like to assert, this is not the fault of the Nevada Green Party, which has been extraordinarily diligent in  
 16 attempting to meet the State's requirements for ballot qualification and resolve the issues that resulted.  
 17 The deadline to submit signatures for verification was June 3, 2016; the Nevada Green Party met this  
 18 deadline. Although the Opposition explains how it took six days to verify the signatures submitted by  
 19 plaintiffs, Opposition 14:3–5, the Nevada Green Party was not notified that it lacked 647 valid signatures  
 20 until June 22, 2016. A mere week later, on June 29, 2016, plaintiffs had already timely submitted an  
 21 appeal to the Secretary and offered nearly 1,000 additional signatures to rectify the insufficiency. Yet,  
 22 the Secretary inexplicably denied the additional signatures and then took more than six weeks to issue a  
 23 three and one-half page letter denying the appeal, dated August 12, 2016. Opposition, Ex. 7. A mere four  
 24 days later, plaintiffs filed the current complaint and request for temporary restraining order as they now  
 25 had standing to bring suit following the denial of the appeal.

26 Thus, as the above timeline represents, almost the entirety of any delay in bringing this civil action  
 27 was caused solely by the Secretary's office. Even if that were not the case, whether a state law passes  
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1 constitutional muster outweighs mere concerns of financial burden and convenience. *See Fulani*, Ex. A.

2 To contrast this situation with that in *Fulani*, in *Fulani* the motion for temporary restraining order  
3 was filed on September 2, 1992—nearly two months after the filing deadline of June 10, 1992—an  
4 opposition was filed on September 21, 1992, the federal deadline in 1992 was September 24, 1992, and  
5 the court did not enter the order until October 1, 1992. *Id.* at 1–2. Here, plaintiffs here have filed their  
6 pleadings earlier, on August 16, 2016, defendants filed a response earlier, on August 25, 2016, plaintiffs  
7 initiated a stipulation to advance the hearing to an earlier date, on August 29, 2016, and the federal  
8 deadline is the same, on September 23, 2016. There is less prejudice to the state here than in the  
9 circumstances present in *Fulani*, and that court nonetheless ordered a preliminary injunction in that case,  
10 explaining that:

11 “The Court realizes that the imposition of this injunction will cause the State  
12 inconvenience, additional expense and possibly delay the distribution of  
13 ballots. These hardships are a price worth paying to protect the First and  
14 Fourteenth Amendment rights which are at issue in this case.”

15 *Fulani*, Ex. A at 15.

16 Furthermore, there is no actual prejudice to the defendant if this Court grants the temporary  
17 restraining order on August 29, 2016, four days after the alleged last day to begin printing. The August  
18 25, 2016, printing date that the Opposition describes as the “last date for the Clark County Election  
19 Department to provide the mail/absentee ballot files to [the printing company] for normal production  
20 mode printing in order to ensure delivery of all mail/absentee ballots to the Election Center by September  
21 16, 2016,” gives the State one week before the federal deadline of September 23, 2016. Opposition 12:28–  
22 13:1. Yet, the Opposition says the Secretary needs only three days after the last delivery of ballots to  
23 finalize the printed ballots for mailing overseas, per the federal requirements. Opposition 13:10–11. Thus,  
24 the State has four days of extra time built into its already unnecessarily burdensome schedule that it seems  
25 to be overlooking.

26 Additionally, the assertion that it would require eight days to verify plaintiffs’ signatures if a  
27 temporary restraining order is granted is unsupported and unreasonable. The Opposition inexplicably  
28



1 states that the Secretary's "system does not allow add on signatures after the verification process has  
2 begun." Opposition 14:2-3. This is a nonsensical suggestion. *Arguendo*, if that is the case, it took only  
3 six days to verify nearly 8,000 signatures the first time, therefore verification of approximately 1,200  
4 more would take 1/8 of that time. Additionally, plaintiffs are informed and believe that the verification  
5 process actually only took four days, and two days were utilized in administrative cleaning up, not  
6 substantive verification.

7 Finally, the Opposition takes the position that the only remaining possibility to expedite  
8 processing the ballots to meet the September 23, 2016, deadline is by expediting the printing of the ballots  
9 at unreasonable expense. As the preceding discussions indicate, such is not the case. Indeed, the Secretary  
10 has a full week, with four days of leeway, following the printing process that is not even considered. One  
11 hundred thousand dollars per day in excess printing fees is exorbitant and unreasonable when an available  
12 alternative is not even considered.

13 **E. The Nevada Green Party Has More Than Enough Signatures To Qualify Their**  
14 **Nominee, Dr. Stein**

15 Since being notified of the lack of valid signatures, plaintiffs have collected in excess of 1,200  
16 additional signatures for validation, and counting. These are prepared and ready to be submitted to the  
17 Secretary immediately following an order from this Court. Even calculated at the low verification rate  
18 offered by the Opposition of 55.9%, plaintiffs will exceed the 647 signatures missing from their earlier  
19 petition.

20 **F. No Security Is Required In This Case Under FRCP 65(c)**

21 "Generally, when granting a preliminary injunction a court must require the moving party to post  
22 a security bond." *Fulani*, Ex. A at 16. "However, courts may waive the security requirement when the  
23 litigation involves issues of overriding public concern." *Ibid*, citing Wright & Miller § 2954 p.529 (1973).  
24 Here, no security bond is required because the issues presented involve issues of overriding public  
25 concern. "The survival of strong and vigorous constitutional rights and political freedoms is one of the  
26 most important public concerns." *Fulani*, Ex. A at 16.



PLAINTIFFS' REPLY TO DEFENDANT'S OPPOSITION TO TEMPORARY RESTRAINING ORDER

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, TONY NASSER, am a citizen of the United States and am at least 18 years of age. My business address is 601 South Figueroa Street, Suite 4050, Los Angeles, California 90017.

I am not a party to the above titled action. I have caused service of this Reply on the following parties by electronically filing the foregoing using the Court's CM/ECF system:

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DATED: August 29, 2016

Respectfully submitted,

/s/ Tony Nasser  
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