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7 La Raza, Las Vegas Branch of the NAACP
8 (Branch 1111), Reno-Sparks Branch of
9 the NAACP (Branch 1112)

9 **IN THE UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 NATIONAL COUNCIL OF LA RAZA,
12 LAS VEGAS BRANCH OF THE NAACP
13 (BRANCH 1111), and RENO-SPARKS
14 BRANCH OF THE NAACP (BRANCH
15 1112),

15 Plaintiffs,

16 v.

17 ROSS MILLER, *in his official capacity as*
18 *Secretary of State of the State of Nevada;*
19 *and* MICHAEL WILLDEN, *in his official*
20 *capacity as Director of the Department of*
21 *Health & Human Services of the State of*
22 *Nevada,*

21 Defendants.

Case No. 3:12-cv-00316-RCJ-VPC

**PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

22 Plaintiffs, NATIONAL COUNCIL OF LA RAZA, LAS VEGAS BRANCH OF THE
23 NAACP (BRANCH 1111), and RENO-SPARKS BRANCH OF THE NAACP (BRANCH
24 1112), hereby move, pursuant to 42 U.S.C. § 1973gg-9(b)(2) and Rule 65 of the Federal Rules
25 of Civil Procedure, for a preliminary injunction requiring that Defendants, ROSS MILLER, *in*
26 *his official capacity as Secretary of State of the State of Nevada* ("Miller"); *and* MICHAEL
27 WILLDEN, *in his official capacity as Director of the Department of Health & Human*

1 *Services of the State of Nevada* (“Willden”), implement immediately and completely the
2 mandatory provisions of Section 7 of the National Voter Registration Act of 1993 (“NVRA”),
3 42 U.S.C. § 1973gg-5, and take remedial measures to correct the harm Defendants’ previous
4 violations of Section 7 have caused and continuing violations will cause. The grounds for this
5 Motion are fully set forth in the accompanying Memorandum of Law. However, in brief
6 summary:

7 Congress enacted the NVRA in order to increase the number of citizens registered to
8 vote, and thereby enhance voter participation in federal elections.

9 The NVRA mandates that states increase voter registration opportunities in several
10 ways: by making registration available by mail; by requiring that states include a voter
11 registration form as part of all driver’s license applications; and by requiring that voter
12 registration services be provided at public assistance offices, disability offices, and other
13 locations. 42 U.S.C. § 1973gg-3, 1973gg-5.

14 Section 7 of the NVRA requires, *inter alia*, that each state designate certain agencies,
15 including “all offices in the State that provide public assistance” and offices providing
16 services to persons with disabilities, as “voter registration agencies.” 42 U.S.C. § 1973gg-
17 5(a)(2). All voter registration agencies must distribute voter registration applications, assist
18 with the completion of the applications unless the applicant refuses such assistance, and
19 accept the completed applications for transmittal to the appropriate election official. 42
20 U.S.C. § 1973gg-5(a)(4)(A).

21 The NVRA became effective in 1995. The overall trend in voter registration through
22 public assistance agencies in Nevada has been negative since implementation of the NVRA.

23 In 2008, the organization Dēmos approached Nevada about problems involving the
24 state’s compliance with the NVRA. In response to these discussions, Miller’s office issued
25 guidelines intended to improve compliance with the NVRA’s strictures. *See Required Voter*
26 *Registration Services in Agency Sites – Overview of Suggested Procedures*, State of Nevada,
27 Office of the Secretary of State, dated Feb. 17, 2009. The policy guidance set forth certain

1 procedures for training, employee responsibilities, form completion, and local office
2 administrative responsibilities. It also noted “necessary policy changes” within the
3 Department of Health & Human Services (“DHHS”), in particular the establishment of an
4 Agency NVRA Coordinator for DHHS and the designation of Local NVRA Coordinators for
5 each local voter registration agency, as well as procedures for data collection and monitoring,
6 storage of voter preference forms, and maintenance of voter registration supplies. Despite this
7 policy guidance, however, DHHS has not taken serious steps to comply with the policy, and
8 the Secretary of State’s office has not taken adequate steps to ensure compliance.

9 Recent interviews with clients and workers at public assistance offices indicate that
10 Nevada public assistance offices regularly fail to offer voter registration. In December 2011,
11 interviews of public assistance clients and state workers at nine DHHS and Women, Infants
12 and Children (“WIC”) program offices in Nevada’s primary population centers of Carson
13 City, Las Vegas, and Reno, as well as observations at those offices, confirmed that Nevada is
14 violating Section 7 of the NVRA.

15 On May 10, 2012, a letter was sent to Miller, on behalf of the “National Council of La
16 Raza (“NCLR”), Las Vegas Branch of the NAACP (Branch 1111), and Reno-Sparks Branch
17 of the NAACP (Branch 1112), persons eligible to register to vote who they represent, and
18 others similarly situated” to “provide written notice that the State of Nevada is not in
19 compliance with Section 7 of the National Voter Registration Act of 1993 (“NVRA”), 42
20 U.S.C. § 1973gg-5.” The notice stated that, unless Nevada implemented a plan to remedy the
21 violations of the NVRA within 20 days, NCLR, the Las Vegas NAACP, and the Reno-Sparks
22 NAACP would commence litigation. A copy of the May 10, 2012 notice letter is attached to
23 the Complaint as Exhibit A. Willden was sent a copy of the notice on the same day. The
24 violations of the NVRA described in the notice letter have not been remedied.

25 Voter registration agencies designated under Section 7 (public assistance agencies)
26 have additional voter registration obligations during specific transactions, called “covered
27 transactions,” with clients and potential clients. Paragraph 6 of Section 7 defines a covered

1 transaction as “each application for such services or assistance, and . . . each recertification,
2 renewal or change of address.” Section 7 requires that during each covered transaction, the
3 agency:

4 A. Distribute [a voter registration form] with each application for such service or
5 assistance, and with each recertification, renewal, or change of address form
6 relating to such service or assistance . . . unless the applicant, in writing,
declines to register to vote;

7 B. Provide a form [referred to as a “voter preference form”] that includes –

8 (i) The question [referred to as a “voter preference question”], “If you are
9 not registered to vote where you live now, would you like to apply to
register to vote here today?”

10 (ii) If the agency provides public assistance, the statement, “Applying to
11 register or declining to register to vote will not affect the amount of
assistance that you will be provided by this agency.”;

12 (iii) Boxes for the applicant to check to indicate whether the applicant
13 would like to register or declines to register to vote (failure to check
14 either box being deemed to constitute a declination to register for
15 purposes of subparagraph (C)), together with the statement (in close
proximity to the boxes and in prominent type) “IF YOU DO NOT
CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE
DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.”

16 (iv) The statement, “If you would like help in filling out the voter
17 registration application form, we will help you. The decision whether
to seek or accept help is yours. You may fill out the application form
in private.”; and

18 (v) The statement, “If you believe that someone has interfered with your
19 right to register or to decline to register to vote, your right to privacy in
20 deciding whether to register or in applying to register to vote, or your
right to choose your own political party or other political preference,
21 you may file a complaint with _____.”, the blank being filled by
the name, address, and telephone number of the appropriate official to
whom such a complaint should be addressed; and

22 C. Provide to each applicant who does not decline to register to vote the same
23 degree of assistance with regard to the completion of the registration form as is
24 provided by the office with regard to the completion of its own forms, unless
the applicant refuses such assistance.

25 Thus, public assistance agencies are required with each covered transaction to provide
26 a voter preference form that asks whether the client wishes to register and informs the client
27 of certain specified information. If the client declines in writing - such as by checking the

1 “no” box on the voter preference form - then nothing further is required. If the client does not
2 check either box, then the agency must provide the client with a voter registration application,
3 but need not assist the client in completing the application. If the client checks the “yes” box,
4 then the agency must provide a voter registration application and assistance in completing it,
5 unless the client declines the assistance. In short, clients must affirmatively “opt out” of
6 receiving a voter registration application; the provision of the application is not contingent
7 upon an affirmative request, either written or verbal, from the client.

8 The evidence demonstrates that Nevada’s written policies run afoul of this
9 requirement. In addressing the voter preference question, Section A-146(7) of the Nevada
10 TANF and SNAP Application Processing policy states that, “If there is no response on the
11 form, it is treated as a declination.” This runs contrary to both the plain language of the
12 NVRA and the interpretation it has been given by all courts addressing the issue. The 10th
13 Circuit’s decision in *Valdez v. Squier*, 676 F.3d 935 (10th Cir. 2012), specifically holds that
14 the NVRA requires states to provide voter registration applications to individuals who leave
15 the voter preference question blank. Similarly, while not reaching the issue directly, the U.S.
16 District Court for the Northern District of Georgia stated that if the state interprets a blank
17 response as a no and does not offer a voter registration application, that “likely runs afoul of
18 Section 7.” *Georgia NAACP v. Kemp*, 2012 U.S. Dist. LEXIS 14326 (N.D. Ga. Jan. 30,
19 2012).

20 Defendants, who are collectively charged with responsibility for Nevada’s compliance
21 with the NVRA, have failed to ensure that the State is fulfilling its duties as mandated by
22 Section 7. Public assistance agencies are not providing applicants, or those re-certifying,
23 renewing, or changing an address for public assistance benefits, the opportunity to register to
24 vote as the NVRA requires.

25 Accordingly, Plaintiffs seek injunctive relief to ensure that the State of Nevada
26 complies with Section 7, and that the fundamental right to vote of every citizen is protected in
27 Nevada.

1 implement immediately and completely the mandatory provisions of Section 7 of the National
2 Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-5, and to take remedial
3 measures to correct the harm Defendants' previous violations of Section 7 have caused and
4 continuing violations will cause.

5 Preliminary injunctive relief is necessary as time is of the essence because of the
6 upcoming presidential election in November and the State's October cutoff for registration to
7 vote in that election. Thus, Plaintiffs request that the Court convene a hearing on this matter at
8 its earliest convenience.

9 Plaintiffs' counsel have attempted to negotiate with opposing counsel regarding an
10 expedited discovery¹ and briefing schedule, however opposing counsel was not amenable to
11 stipulating to such an arrangement. As such, plaintiffs are herewith filing a separate motion
12 requesting that the Court order an expedited discovery schedule and hearing date on this
13 motion.

14 DATED this 6 day of July, 2012.

15 WOODBURN AND WEDGE

16 By:



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27 ¹ Plaintiffs believe that limited expedited discovery would materially assist the Parties and the Court in deciding
28 the instant motion. Plaintiffs have proposed to the Defendants an approximately one month initial discovery
period, including the following: 1) requests for production of highly relevant documents, drafts of which have
already been provided to Defendants' counsel, including correspondence, training manuals, policy documents
and voter preference forms, focusing on documents and information covering the last four years; 2) a limited
number of depositions of state-level and local-level Nevada officials and employees, including depositions
noticed pursuant to Fed.R.Civ.P. 30(b)(6); and 3) a limited number of written interrogatories, drafts of which
have already been provided to Defendants' counsel, including interrogatories relating to the parties' contentions.

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**pro hac vice* admission to be sought, will
comply with LR IA 10-2 within 45 days

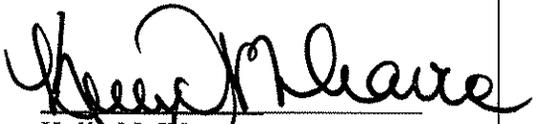
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Woodburn and Wedge and that on this date, I caused to be sent via electronic mail, a true and correct copy of the PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION to:

Kevin Benson
OFFICE OF THE NEVADA ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717
kbenson@ag.nv.gov

DATED this 6 day of July, 2012.

By: 
Kelly N. Weayer