

1 W. Chris Wicker (State Bar No. 1037)
2 WOODBURN AND WEDGE
3 6100 Neil, Road, Suite 500
4 Post Office Box 2311
5 Reno, Nevada 89511
6 Telephone: (775) 688-3000
7 Facsimile: (775) 688-3088
8 cwicker@woodburnandwedge.com

9 Attorneys for National Council of
10 La Raza, Las Vegas Branch of the NAACP
11 (Branch 1111), Reno-Sparks Branch of
12 the NAACP (Branch 1112)

13 **IN THE UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 NATIONAL COUNCIL OF LA RAZA,
16 LAS VEGAS BRANCH OF THE NAACP
17 (BRANCH 1111), and RENO-SPARKS
18 BRANCH OF THE NAACP (BRANCH
19 1112),

20 Plaintiffs,

21 v.

22 ROSS MILLER, *in his official capacity as*
23 *Secretary of State of the State of Nevada;*
24 *and* MICHAEL WILLDEN, *in his official*
25 *capacity as Director of the Department of*
26 *Health & Human Services of the State of*
27 *Nevada,*

28 Defendants.

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

PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS

Plaintiffs, NATIONAL COUNCIL OF LA RAZA ("NCLA"), LAS VEGAS
BRANCH OF THE NAACP (BRANCH 1111) ("Las Vegas NAACP"), and RENO-SPARKS
BRANCH OF THE NAACP (BRANCH 1112) ("Reno-Sparks NAACP") (collectively,
"Plaintiffs"), by and through their attorneys, WOODBURN AND WEDGE, hereby
respectfully submit this Opposition to the Motion to Dismiss filed by Defendants, ROSS

1 MILLER (hereinafter “Miller”) and MICHAEL WILLDEN (hereinafter “Willden”)
2 (collectively, “Defendants”).

3 Plaintiffs’ Complaint asserts a single claim against Defendants for past and ongoing
4 violations of Section 7 of the National Voter Registration Act of 1993 (“NVRA”). 42 U.S.C.
5 § 1973gg et seq. Section 7 mandates that public assistance agencies, *inter alia*, distribute
6 voter registration applications to their clients with each application and recertification for
7 benefits, and with each submission of a change-of-address form, and assist their clients with
8 completing the voter registration application. Defendants are responsible for the State’s
9 compliance with Section 7.

10 The Complaint alleges that Defendants’ ongoing violations of the NVRA are a result
11 of policies that violate the requirements of Section 7, as well as Defendants’ failure to ensure
12 distribution of voter registration applications to public assistance clients in the day-to-day
13 transactions that are subject to the Section 7 requirements. Nevada public assistance offices’
14 reported voter registration numbers have been dismal for years, and have been increasingly
15 so. Plaintiffs’ investigation of public assistance offices revealed obvious explanations for
16 these dismal figures; that investigation showed numerous NVRA violations – of the nine
17 offices visited, two did not even have voter registration applications on site, and not a single
18 office complied with all of the requirements of Section 7. Plaintiffs have alleged a failure to
19 take adequate steps to correct the problems that contributed to these violations and that the
20 violations are ongoing.

21 Defendants do not challenge the sufficiency of Plaintiffs’ factual allegations of
22 widespread violations, and have answered the Complaint. In fact, they acknowledge the
23 sufficiency of the allegations and the possible existence of violations when they ask that the
24 Complaint be dismissed so that they can have more time to try to fix the violations on their
25 own without being compelled to do so in advance of this year’s election. Defs.’ Mot. at 7.

1 Rather, they assert (incorrectly) that the Notice Letter¹ and Complaint do not identify any
2 violations within 120 days of the June 12 primary and, consequently, Plaintiffs did not have
3 standing to file the complaint when they did. According to Defendants, they should have until
4 August 8, 2012 (90 days after the Notice Letter was sent) to attempt to change their policies
5 and remedy their past shortcomings, even though the notice provisions of the NVRA plainly
6 shorten the applicable notice period where, as here, the violations occur shortly before a
7 federal election. Defendants' motion is premised entirely on the misguided notion that the
8 violations identified in the Notice Letter and Complaint are limited to a handful of isolated
9 incidents last December. To the contrary, Plaintiffs have unambiguously indicated, in both
10 the Notice Letter and the Complaint, that NVRA violations were ongoing and were occurring
11 well within the 120-day pre-election window (and, indeed, within 30 days of the June 12
12 primary). Thus, Plaintiffs have stated a valid claim for violation of Section 7 of the NVRA
13 sufficient to satisfy the NVRA notice requirement and confer standing to bring suit under the
14 NVRA.

15 LEGAL BACKGROUND AND STATEMENT OF FACTS

16 **A. The NVRA**

17 Congress enacted the NVRA in 1993 because "the right of citizens of the United
18 States to vote is a fundamental right," and "discriminatory and unfair registration laws and
19 procedures can have a direct and damaging effect on voter participation in elections for
20 Federal office and disproportionately harm voter participation by various groups, including
21 racial minorities." 42 U.S.C. § 1973gg(a). Thus, Congress sought in the NVRA "to establish
22 procedures that will increase the number of eligible citizens who register to vote." 42 U.S.C.
23 § 1973gg(b).

24 The NVRA includes numerous provisions aimed at reducing the burdens involved in
25 registering to vote. Among these provisions is Section 7, which requires public assistance

26 ¹ The Notice Letter was attached to and incorporated into the complaint, so the Court must consider any
27 allegations therein for the purposes of deciding Defendants' motion. FED. R. CIV. P. 10(c); *Amfac Mort. Corp. v.*
28 *Arizona Mall of Tempe, Inc.*, 503 F.2d 426, 429-30 (9th Cir. 1978).

1 agencies to distribute voter registration applications as a matter of course to clients engaging
2 in certain covered transactions, except when a client declines voter registration “in writing,”
3 and to provide assistance in completing voter registration forms. 42 U.S.C. § 1973gg-
4 5(a)(6)(A).

5 **B. The Parties**

6 Plaintiffs have committed and continue to commit time and personnel to conducting
7 voter registration drives in Nevada. Compl. ¶¶17-19. Many of Plaintiffs’ voter registration
8 efforts focus on registering voters in low-income neighborhoods, including the registration of
9 individuals who receive or apply for public assistance benefits. *Id.* Further, Plaintiffs Las
10 Vegas NAACP and Reno-Sparks NAACP have members who receive or will receive, or have
11 applied or will apply for, public assistance benefits in the state. Compl. ¶¶18-19.
12 Consequently, Plaintiffs have a strong interest in ensuring that Nevada is complying with the
13 NVRA.

14 Federal and state law recognizes that Defendants are responsible for ensuring
15 compliance with the NVRA. Compl. ¶¶22-28, 30-38. Defendant Ross Miller is the Secretary
16 of State and, as such, is the chief election official in Nevada and is responsible for conducting
17 and overseeing federal elections in the State. He is the “chief election official” responsible
18 for coordination of Nevada’s responsibilities under the NVRA. Defendant Michael Willden is
19 the Director of the Nevada Department of Health & Human Services (“DHHS”). DHHS
20 administers the provision of benefits under the Supplemental Nutrition Assistance Program
21 (“SNAP” or “food stamps”), Medicaid, Temporary Assistance for Needy Families (“TANF”),
22 and the Women, Infants, and Children (“WIC”) programs.

23 **C. Nevada’s Failure to Comply With the NVRA**

24 Contrary to Defendants’ contentions, Defs.’ Mot. at 5-7, the violations identified and
25 alleged were and are not limited to Plaintiffs’ investigation in December 2011. Rather, the
26 Complaint alleged ongoing violations and a failure to take steps necessary to ensure
27 compliance, and evidence even after the filing of the Complaint shows continuing violations

1 of Section 7 by public assistance offices in Nevada.

2 To be sure, the results of the December 2011 visits to nine DHHS² offices in Nevada's
3 primary population centers of Carson City, Las Vegas, and Reno, including observations at
4 those offices and interviews of public assistance clients, which are alleged in the Notice Letter
5 and Complaint, provide powerful support for Plaintiffs' claim that Defendants are violating
6 the NVRA. Those allegations as explained in the Complaint are as follows:

- 7 1. *Failure to offer voter registration opportunities.* Less than half of the public
8 assistance clients interviewed had been asked by office staff whether they
9 wanted to register to vote, even though some of those clients had checked
10 "Yes" to the question asking whether they wanted to register to vote or had left
11 it blank. Some of the clients did not receive voter registration applications,
12 even though they checked "Yes."
- 13 2. *Failure to distribute voter registration applications.* Office staff indicated that
14 voter registration applications are provided only to clients who check "Yes" in
15 response to the question whether they "would . . . like to register to vote here
16 today," despite the NVRA and Nevada law requirement that all persons
17 engaging in covered transactions receive a voter registration application form
18 unless they specifically decline, in writing, to receive such an application.
- 19 3. *Failure to keep voter registration applications and materials in supply and*
20 *generally available.* Several sites visited did not have any voter registration
21 applications. One had not had voter registration forms for more than a year,
22 while another had not had them for more than two years. The failure to stock
23 voter registration forms itself is a violation of the NVRA and state law and also
24 shows a lack of attention to compliance with voter registration rules.
- 25 4. *Failure to post information and instructions about registering to vote at the*

26 ² All offices visited were either within DHHS's Division of Welfare and Supportive Services ("DWSS")—which
27 administers such programs as SNAP, Medicaid, and TANF—or the Nevada State Health Division's Bureau of
28 Child, Family, and Community Wellness, which administers the WIC Program.

1 *public assistance offices.* Only two of the nine sites had signs posted
 2 informing clients they could register to vote, and none of the sites displayed
 3 instructions on how to register to vote, despite Nevada laws and regulations
 4 requiring voter registration agencies to post such information.

5 *See* Compl. ¶46; *see also* Notice Letter at 2-3.

6 Defendants would have the Court believe that the NVRA violations identified and
 7 alleged begin and end with these specific incidents. The Notice Letter and Complaint,
 8 however, are not so limited.

9 Nevada's own reports to the U.S. Election Assistance Commission ("EAC") reveal
 10 that Nevada public assistance offices received only 1,677 voter registration applications in the
 11 2009-2010 reporting period. This represents a 95.7 percent decline since 2001-2002, when
 12 Nevada reported 39,444 registrations from public assistance offices. Further, the overall trend
 13 in voter registration through public assistance agencies in Nevada has been negative since
 14 implementation of the NVRA. The number of voter registration applications through public
 15 assistance agencies reported to the EAC during each reporting period is as follows:

Year	Public Assistance Voter Reg. Applications
1995-1996	13,200
1997-1998	No report
1999-2000	2,883
2001-2002	39,444
2003-2004	6,389
2005-2006	3,307
2007-2008	4,301
2009-2010	1,677

16
 17
 18
 19
 20
 21
 22
 23
 24
 25 Compl. ¶44; *see also* Notice Letter at 2. The figures indicate a longstanding (and increasing)
 26 problem, especially given the rise in population and applications for public assistance in the
 27 state. Compl. ¶12.

1 Moreover, the Notice Letter and Complaint also allege that the violations revealed in
2 the December 2011 investigation are part of Defendants' "ongoing" violations. Indeed, the
3 Complaint alleges "ongoing" violations in numerous places. *See* Compl. ¶¶7, 14, 42, 51; *see*
4 *also id.* ¶11 ("systemic violations of Section 7"); *id.* ¶14 ("chronic violations"). The Notice
5 Letter, meanwhile, begins by noting that Nevada is "not in compliance with Section 7 of the
6 [NVRA]." Notice Letter at 1. Further, the Notice Letter states that "Nevada's public
7 assistance offices still have not achieved compliance with their obligations under the NVRA,"
8 *id.* at 1, that Nevada is "systematically failing to provide voter registration services mandated
9 by the NVRA at its public assistance offices," *id.* at 2, and that public assistance agencies are
10 "failing to regularly distribute voter registration applications to public assistance clients." *Id.*

11 Defendants' violations of Section 7 of the NVRA continued after the Complaint was
12 filed as well, further demonstrating that the earlier surveys constituted but a snapshot of
13 Defendants' violations.³ For example, on June 19, 2012, just eight days after Plaintiffs filed
14 their Complaint, Denisha Phillips of Las Vegas visited the DWSS office at 1040 Owens
15 Avenue in Las Vegas for a covered transaction and was not asked about voter registration.
16 Declaration of Denisha Phillips, attached as Exhibit A. The next day, Kendra Hulbert of
17 Mound House visited the DWSS office at 2533 N. Carson Street in Carson City and had a
18 similar experience. Declaration of Kendra Hulbert, attached as Exhibit B.

19 Finally, the Complaint alleges the existence of "flawed practices and policies," Compl.
20 ¶11, and that DHHS "has not taken serious steps to comply" with the policy guidance the
21 Secretary of State's office issued in 2009, which called for "necessary policy changes" within
22 DHHS to bring the agency into compliance with the NVRA. Compl. ¶45; *see also* Notice
23 Letter at 2 ("systematically failing to provide voter registration services . . .").

24 As a result of Defendants' violations, in 2010 only 47.6% of eligible Nevada citizens
25 living in a household with a yearly income of less than \$25,000 were registered to vote

26 _____
27 ³ If the Court deems post-Complaint conduct necessary for the Complaint to survive dismissal, Plaintiffs
28 respectfully request leave to amend the Complaint to add those allegations.

1 compared to 72.4% of eligible citizens living in a household with a yearly income of more
2 than \$100,000 – a “voter registration gap” of 24.8%. Compl. ¶43.

3 **D. Notice of NVRA Violations**

4 On May 10, 2012, a letter was sent to Defendant Miller on behalf of the “National
5 Council of La Raza, Las Vegas Branch of the NAACP (Branch 1111), and Reno-Sparks
6 Branch of the NAACP (Branch 1112), persons eligible to register to vote who they represent,
7 and others similarly situated” to “provide written notice that the State of Nevada is not in
8 compliance with Section 7 of the National Voter Registration Act of 1993 (“NVRA”), 42
9 U.S.C. § 1973gg-5.” In addition to the statements quoted above, the Notice Letter stated that,
10 unless Nevada implemented a plan to remedy the violations of the NVRA within 20 days, the
11 National Council of La Raza (“NCLR”), the Las Vegas NAACP, and the Reno-Sparks
12 NAACP would commence litigation. Notice Letter at 3. Defendant Willden was sent a copy
13 of the notice on the same day. Compl. ¶47.

14 On May 22, 2012 a representative from the Nevada Secretary of State’s Elections
15 Division contacted a representative of Plaintiffs, seeking an extension of time in which to
16 respond to the May 10 notice letter and seeking to delay initial meetings between the parties’
17 representatives until after the June 12 primary. In a May 24 e-mail response to this request,
18 Plaintiffs’ representatives asked the State to (1) provide a current organizational chart for the
19 DHHS, the DWSS, and WIC, as well as any management evaluation forms for those
20 Departments/Divisions, and (2) arrange a meeting with the person or persons within DHHS
21 with the most knowledge regarding NVRA implementation on or before the first week in
22 June. On June 5, the Nevada Secretary of State’s Elections Division responded to the May 24
23 proposal, indicating that they would not comply with the request. Compl. ¶48. This litigation
24 followed.

25 ///

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STANDARD OF REVIEW

On a motion to dismiss, in accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure, the facts must be viewed in the light most favorable to the non-moving party. A claim may be dismissed only if “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* (citations & quotations omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* The same standard applies to challenges to a plaintiff’s standing as well as to challenges to the substantive violations alleged. *See Witte v. United States*, No. CV 99-02513 DDP (RNBx), 1999 U.S. Dist. LEXIS 17590, *4, n.1 (C.D. Cal Oct. 18, 1999).

POINTS AND AUTHORITIES

As an initial matter, Defendants’ motion nowhere asserts that Plaintiffs are not aggrieved parties, and thus Defendants’ motion does not raise issues of constitutional standing. The only issue raised is whether Plaintiffs provided sufficient notice to give them statutory standing.

I. PLAINTIFFS HAVE STANDING TO BRING THIS ACTION

Plaintiffs served proper notice and have standing to pursue this litigation because their May 10, 2012 letter (the “Notice Letter”) notified Defendants of ongoing violations of Section 7 of the NVRA. Plaintiffs therefore properly filed their Complaint after the 20-day notice period had expired without Defendants correcting their violations of Section 7 of the NVRA.⁴ Defendants’ violations have continued through and beyond the Nevada primary election held on June 12, 2012. Compl. ¶¶7, 14, 42, 51; Phillips Decl. (Ex. A); Hulbert Decl. (Ex. B).

⁴ Indeed, because Defendants’ violations of Section 7 of the NVRA were ongoing in the thirty-day period prior to the primary election, no notice was required prior to filing the Complaint. 42 U.S.C. § 1973gg-9(b)(3); *see also infra* at pp. 12-13.

1 Thus, Plaintiffs have statutory standing to bring the instant action.

2 **A. Plaintiffs Have Standing Under 42 U.S.C. § 1973gg-9(b)(2)**

3 Defendants' only argument for dismissal of the Complaint is that, because the specific
4 violations identified in the Notice Letter occurred in December 2011, Plaintiffs should have
5 given notice sooner and allowed Defendants a longer, 90-day period, to cure the violations
6 prior to filing suit. *See* 42 U.S.C. § 1973gg-9(b)(2). Defendants' argument misses the point.
7 As the Complaint alleges and Notice Letter indicates, Defendants' violations of Section 7 of
8 the NVRA are ongoing and continuous.

9 Plaintiffs had standing to file the Complaint when they did, which follows from a
10 straightforward application of the statutory language. Persons who are aggrieved by a
11 violation of the NVRA may provide written notice of the violation to the chief election
12 official of the State. 42 U.S.C. 1973gg-9(b)(1). Plaintiffs did so here when they sent a Notice
13 Letter to the Secretary of State, informing him of Nevada's ongoing violations of Section 7.
14 The December 2011 investigation results were included in the Notice Letter—as well as data
15 from the Election Assistance Commission and the Census Bureau—as concrete examples of
16 the ongoing violations.

17 If the violation occurred within 120 days before the date of an election for Federal
18 office, the State has 20 days after receipt of the notice to correct the violation. If the violation
19 is not corrected within 20 days after receipt, then the aggrieved person may bring a civil
20 action in district court. 42 U.S.C. 1973gg-9(b)(2). Here, the relevant federal election was the
21 June 12, 2012 federal primary election. Thus, in order for Plaintiffs to benefit from the 20
22 day provision, violations must have occurred between February 13, 2012 and June 11, 2012.

23 Plaintiffs' Notice Letter of May 10, 2012 informed Defendants of violations occurring
24 between those dates. Specifically, it indicated the existence of violations as of May 10,
25 stating in its very first sentence that “the State of Nevada *is not in compliance* with Section
26 7.” Notice Letter at 1 (emphasis added). That statement, buttressed by reasonable inferences
27 to be drawn from the alleged concrete results of the December 2011 investigation finding

28

1 widespread non-compliance, triggered the 20-day notice period, as it indicated violations of
 2 the NVRA as of May 10. *See* 42 U.S.C. § 1973gg-9(b)(2). The Notice Letter, of course, went
 3 further to note, among other things, that the state “is systematically failing” to provide
 4 required voter registration services. Notice Letter at 2. Those further statements also
 5 indicated present violations.

6 Moreover, the Complaint alleges “flawed practices and policies,” Compl. ¶11, as well
 7 as a failure to follow a policy directive noting “necessary policy changes” to bring DHHS into
 8 compliance with Section 7. Compl. ¶45. Again, these allegations are supported by
 9 reasonable inferences that the Court must draw from the alleged December 2011 investigation
 10 results. On its face, a flawed policy constitutes an ongoing violation until remedied.⁵ It
 11 follows from these allegations that NVRA violations were occurring at the time of the
 12 Complaint, which is sufficient in itself allow plaintiffs to file suit at that time, without
 13 providing any notice at all. 42 U.S.C. § 1973gg-9(b)(3).⁶ Thus, Plaintiffs’ notice was
 14 gratuitous, and Defendants cannot contend that the timing of that notice was a problem.

15 The Court need not look any further than this straightforward application of the
 16 statutory language to determine that the Defendants’ argument lacks merit. Nonetheless, the
 17 case law on the issue of ongoing violations as applied to the facts of this case confirms the
 18 sufficiency of the notice and allegations to confer standing.

19 ///

20 ///

22 ⁵ The alleged existence of “flawed practices and policies,” Compl. ¶11, has the added benefit of being verifiable
 23 at least in part through Defendants’ publicly available documents, as DHHS’s own policy manuals indicate that,
 24 in at least one respect – the treatment of voter preference forms that are left blank – DHHS’s policies violate
 25 Section 7 of the NVRA. *See* “Nevada DWSS TANF and SNAP Application Processing Policy,” attached as
 Exhibit C, at § 146(7); “Nevada DWSS Child Care Policy Manual, Child Care Program Overview,” Dec. 1,
 2009, attached as Exhibit D, at § 123.4. *Cf. Valdez v. Squier*, 676 F.3d 935, 947 (10th Cir. 2012) (holding that
 when an applicant does not answer the voter preference question, the agency must provide the applicant with a
 voter registration form).

26 ⁶ When violations occur within 30 days before an election for Federal office, such as the primary that occurred
 27 on June 12, 2012, aggrieved persons, such as Plaintiffs, need not provide any notice before filing a complaint.
 42 U.S.C. § 1973gg-9(b)(3).

1 do not even assert that the violations specifically identified by Plaintiffs in the Notice Letter
2 did not occur or were remedied on or shortly after December of 2011.⁷

3 (ii) *The May 10 Letter Gave Proper Notice to Defendants*

4 The Notice Letter properly put Defendants on notice of their ongoing violations of
5 Section 7 of the NVRA. Defendants could not credibly assert that they believed that the
6 December 2011 violations were isolated incidents that would not recur; instead, they argue
7 only that “[n]othing in the letter or the Complaint identifies any violation that occurred later
8 than December 2011.” Defs.’ Mot. at 5. But Plaintiffs are not required to identify separate
9 incidents that violate the NVRA, only to give notice of the violations sufficient for
10 Defendants to correct them.⁸ The Notice Letter sufficiently expresses that the Defendants’
11 violations of the NVRA are not limited to the specific transactions identified in December
12 2011 and are ongoing.

13 When infractions are ongoing, “as long as a notice letter is reasonably specific as to
14 the nature and time of the alleged violations, the plaintiff has fulfilled the notice requirement.”
15 *S.F. BayKeeper*, 309 F.3d at 1155. The notice letter need not describe all details of each
16 violation; instead, it must be descriptive enough that the defendant can identify the issue and
17 correct the problem. *See Waterkeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 918 (9th Cir.
18 2004).

19 The Notice Letter here advised Defendants of ongoing violations in multiple offices,
20 noting that “Nevada is systematically failing to provide voter registration services mandated
21 by the NVRA at its public assistance offices” and that Defendants’ offices “are failing to
22

23 ⁷ Instead, Defendants attempt to argue that if they had been given 90 days to respond the “Court’s intervention
24 would not be necessary at all.” However, this statement is belied by the fact that Plaintiffs’ counsel, Démos,
25 raised issues concerning the agencies’ Section 7 compliance with Defendants as early as 2008, Compl. ¶13, and
26 although well over three years have passed, Nevada’s violations of Section 7 of the NVRA are still ongoing.
27 Functionally, the State has been on notice of its failures for that entire time. Any implication that the State
28 would have remedied its violations if given another 58 days strains credulity.

⁸ Under Defendants’ theory, the only “violations” that one could insert in a valid notice letter would be violations
that arise in specific transactions, as Defendants discount or ignore all other violations. If that were the case,
states could escape litigation simply by remedying the violations that occurred in those specific transactions,
hardly advancing the NVRA’s stated goal of promoting voter registration.

1 regularly distribute voter registration applications to public assistance clients, as the NVRA
2 requires.” Notice Letter at 2. Notifying defendants of their systematic failures and that they
3 were failing to regularly comply with their obligations under the NVRA, accompanied by
4 examples demonstrating the specific nature of the failures, Notice Letter at 2-3, was sufficient
5 to put Defendants on notice of ongoing violations. These statements, made in the May 10
6 notice letter, indicated present violations as of May 10, well within the 120-day window for a
7 shortened notice period. As the Ninth Circuit has held, “[i]ntermittent or sporadic violations
8 do not cease to be ongoing until the date when there is no real likelihood of repetition.”
9 *Union Oil*, 853 F.2d at 671 (quoting *Gwaltney*, 844 F.2d at 172) (emphasis added in *Union*
10 *Oil*). Because the violations are ongoing, and Defendants have not even attempted to show
11 otherwise, Plaintiffs’ Notice Letter was sufficient.

12 (iii) *Plaintiffs Timely Filed the Complaint*

13 Third, Plaintiffs filed the Complaint within the valid statutory time period. Violations
14 of the NVRA occurring within 120 days of an election require giving the Defendants notice
15 and a 20-day period to cure the violations before bringing a civil action, *see* 42 U.S.C. §
16 1973gg-9(b)(2), and violations occurring within thirty days of an election require no notice.
17 *See* 42 U.S.C. § 1973gg-9(b)(3). Here, the Plaintiffs’ Notice Letter and Complaint allege
18 ongoing violations of the NVRA, supported by facts leading to a reasonable inference of such
19 violations. Defendants have not provided evidence that such violations were cured prior to
20 the conclusion of the notice period or the filing of the Complaint.⁹ Therefore, Plaintiffs had
21 standing to file the instant Complaint.

22 Because Plaintiffs complied with the notice requirements of 42 U.S.C § 1973gg-9(b)
23 and have alleged ongoing violations of the NVRA, Defendants’ Motion to Dismiss should be
24 denied.

25 ///

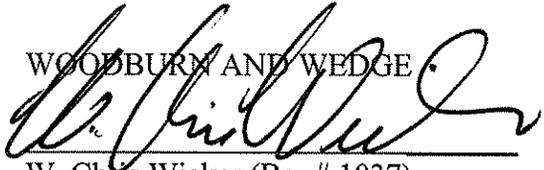
26 ⁹ Even if Defendants did provide such evidence, the Court would not consider it in the context of the present
27 motion to dismiss.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that this Court deny Defendants' Motion to Dismiss the Complaint in this action, and such other and further relief as the Court believes is just and proper.

DATED this 20th day of July, 2012.

By: 
WOODBURN AND WEDGE
W. Chris Wicker (Bar # 1037)
wwicker@woodburnandwedge.com

Neil Steiner*
neil.steiner@dechert.com

David Rubino*
Dēmos
drubino@demos.org

Robert A. Kengle*
bkengle@lawyerscommittee.org
Alan Martinson*
amartinson@lawyerscommittee.org
Lawyers' Committee for Civil Rights
Under Law

Sarah Brannon*
sbrannon@projectvote.org
Michelle Rupp*
mrupp@projectvote.org
Project Vote

Kim Keenan*
kkeenan@naacpnet.org
Anson Asaka*
aasaka@naacpnet.org
National Association for the
Advancement of Colored People, Inc.

*Attorneys of Record for Plaintiffs
National Council of La Raza, Las Vegas
Branch of the NAACP, and Reno-Sparks
Branch of the NAACP*

*pro hac vice admission to be sought

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS to:

Kevin Benson
Office of the Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
kbenson@ag.nv.gov

DATED this 20th day of July, 2012.

By: 
Kelly N. Weaver

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**EXHIBITS TO PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

- Exhibit A: Declaration of Denisha Phillips, dated July 6, 2012, 2 pages.
- Exhibit B: Declaration of Kendra Hulbert, dated July 6, 2012, 2 pages.
- Exhibit C: Nevada DWSS TANF and SNAP Application Processing Policy, 37 pages.
- Exhibit D: Nevada DWSS Child Care Policy Manual, Child Care Program Overview, 29 pages.