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17 UNITED STATES DISTRICT COURT
18 DISTRICT OF NEVADA

19	MAKE LIBERTY WIN,)	
20)	Case No.
21	Plaintiff,)	
22)	
23	vs.)	
24)	
25	BARBARA K. CEGAVSKE, in her official)	
26	capacity as SECRETARY OF STATE OF)	
27	NEVADA,)	
28)	
	Defendant(s).)	

29 **VERIFIED COMPLAINT**

30 This is a lawsuit about blatant government censorship of truthful political speech. Make
31 Liberty Win (“Liberty”), a political action committee (“PAC”), has made independent
32 expenditures to print and distribute door hangers supporting candidate Jill Dickman for the Nevada
33 Assembly. Dickman had been elected to the Assembly in the November 2014 general election and
34 served there for one term, from 2015 through 2016. Highlighting her legislative experience,

1 Liberty’s doorhangers declare she was a “Former Assemblywoman,” list her major policy
2 positions, and exhort voters to “Re-elect Jill Dickman for State Assembly.”

3 In response to Liberty’s truthful and independent advocacy in support of this candidate,
4 Secretary of State Barbara K. Cegavske demanded Liberty immediately change its campaign
5 message. On October 1, 2020, Cegavske e-mailed a letter to Liberty explaining she had made a
6 “determination” that Liberty’s doorhangers violated Nev. Rev. Stat. § 294A.330 and, apparently,
7 § 294A.340. These statutes purport to restrict when political speakers may use the term “re-elect”
8 in their campaign literature. Cegavske threatened that, unless Liberty changed “all [its] campaign
9 signage,” a fine will “be[] assessed.”

11 Both Cegavske’s letter, as well as the statutes she is misguidedly enforcing, are
12 unconstitutional. First, on their face, they are content-based restrictions on political speech that
13 cannot survive strict scrutiny. Likewise, the statutes involve blatantly viewpoint-based
14 discrimination, since restrictions on the term “re-elect” apply only to literature “*supporting* the
15 election of a candidate.” Nev. Rev. Stat. §§ 294A.330, 294A.340 (emphasis added). Liberty faces
16 sanction for urging voters to “re-elect” Dickman, yet would have been free to urge voters *not* to
17 “re-elect” her. Moreover, as applied in this case, the provisions prohibit completely truthful
18 political speech. Liberty was urging voters to *elect Dickman again* to her former seat in the state
19 assembly—in other words, to quite literally “re-elect” her. Liberty asks this Court to bar Secretary
20 Cegavske from purporting to police the truthfulness of political speech and attempting to chill
21 truthful speech.
22

23 JURISDICTION AND VENUE

24
25 1. This Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C.
26 § 1331 because it presents federal questions arising under the U.S. Constitution.
27
28

1 2. The District of Nevada is the proper venue for this lawsuit pursuant to 28 U.S.C. §
2 1391(b)(1)-(2) because Defendant Barbara K. Cegavske resides and works in this district, and a
3 substantial part of the events giving rise to this claim occurred here.

4 **PARTIES**

5 3. Plaintiff MAKE LIBERTY WIN (“Liberty”) is an unauthorized, non-connected
6 political committee registered in the State of Nevada on or around September 1, 2020. Its primary
7 place of business is in Alexandria, Virginia. Justin Greiss is Liberty’s Executive Director.
8

9 4. Defendant BARBARA K. CEGAVSKE is the Secretary of State of the State of
10 Nevada. Among other things, she is the state’s Chief Election Officer, Nev. Rev. Stat.
11 § 293.124(1), and is charged with enforcing Nevada’s restrictions on campaign-related speech, *id.*
12 §§ 294A.380(1), 294A.410, 294A.420(2).

13 **LIBERTY’S CONSTITUTIONALLY PROTECTED POLITICAL SPEECH**

14 5. Liberty supports candidate Jill Dickman, the Republican nominee for the Nevada
15 State Assembly in District 31 in the November 2020 general election.
16

17 6. Dickman was elected to the Nevada State Assembly in the November 2014 general
18 election and served there from 2015 through 2016.

19 7. Liberty has no direct affiliation with Dickman. It is not a campaign or authorized
20 committee of Dickman, has not made any contributions to Dickman, and has not coordinated any
21 of its communications with Dickman.
22

23 8. Liberty decided to make independent expenditures to purchase literature in support
24 of Dickman’s campaign. In particular, it designed door hangers containing its political message
25 and hired an independent contractor to print and distribute them to the homes of voters throughout
26 Nevada State Assembly District 31. Distribution began on September 20 and will be continuing
27 through November 3. As of October 12, 25,485 doors had been knocked on Liberty’s behalf.
28

1 9. A true and complete copy of the front and back of the door hangers Cegavske
2 contends violate Nevada law are attached to this Complaint as Exhibit 1.

3 10. One of the main reasons Liberty supports Dickman is because of her legislative
4 experience. A core element of Liberty’s political message was that voters should re-elect Dickman
5 to the Nevada legislature to continue the important work she had begun there.

6 11. Liberty conveyed its political message by prominently declaring on the front of its
7 doorhanger that Dickman is a “Former Assemblywoman.” The doorhanger further lauds Dickman
8 as “The Proven Leader for Washoe County.” It exhorts voters to “RE-ELECT JILL DICKMAN
9 FOR STATE ASSEMBLY.” *See* Exh. 1 at 1.

11 12. The reverse side of the door hanger repeats this message. It explains Dickman is
12 “[a] small business owner with a passion for our community.” *Id.* at 2. The doorhanger further
13 notes Dickman is a “proven leader for Washoe County *running to serve* as our Assemblywoman,”
14 *id.*—not *currently serving* as an Assemblywoman. It also exhorts voters to “RE-ELECT JILL
15 DICKMAN FOR STATE ASSEMBLYWOMAN.” *Id.*

17 13. The doorhanger neither states nor implies Dickman is the current incumbent
18 assembly member.

19 14. Drawing attention to Dickman’s legislative experience, and exhorting voters to
20 return her to the state assembly, are central elements of the political message Liberty wishes to
21 convey to voters.

22 15. Liberty purchased a total of 28,000 identical door hangers at a cost of over
23 \$3,000.00. It already distributed a total of approximately 20,000 of them.

24 16. Over the upcoming weeks, Liberty will be distributing its remaining door hangers
25 throughout District 31. Liberty will purchase additional door hangers if necessary based on
26 political conditions and developments.
27
28

1 17. Liberty will also be spending approximately \$1,600 to fund a phone bank starting
2 approximately October 19, in which seven contractors will make approximately 7,000 phone calls.
3 The script for the voter outreach calls will specify Dickman is a former assemblywoman and
4 encourage voters to “reelect” her to the Nevada state assembly. This pure political expression will
5 involve “statement[s]” in violation of the Reelect Prohibition and Incumbency Prohibition.
6

7 **SECRETARY CEGAVSKE’S ATTEMPT TO**
8 **SILENCE LIBERTY’S POLITICAL SPEECH**

9 18. On October 1, 2020, Secretary Cegavske sent a letter via e-mail to Shana Weir,
10 Liberty’s registered agent, about Liberty’s door hangers. A true and complete copy of the letter is
11 attached to the Complaint as Exhibit 2 (hereafter, “Threatening Letter”).

12 19. The subject line of the Threatening Letter stated it was in reference to “Use of the
13 Term ‘re-elect’ in campaign, NRS 294A.330, NRS 294.340.”

14 20. The Threatening Letter stated the Secretary’s office had received an Election
15 Integrity Violation Report on September 24, 2020, claiming the “signage for Nevada State
16 Assembly District 31 candidate Jill Dickman incorrectly uses the term ‘re-elect’ on her campaign
17 signs sponsored by your PAC.” Exh. 2 at 1.

18 21. The Threatening Letter alleged Dickman “does not meet the qualifying standard
19 that authorizes the terms [sic] usage.” Exh. 2 at 1.

20 22. State law required Secretary Cegavske to give Liberty a copy of the administrative
21 complaint, but she failed to do so. *See Nev. Rev. Stat. § 294A.410(3)* (“As soon as practicable
22 after receiving a notice of an alleged violation . . . the Secretary of State shall provide a copy of
23 the notice and any accompanying information to the person, if any, alleged in the notice to have
24 committed the violation.”).

25 23. The Threatening Letter reprinted the text of Nev. Rev. Stat. § 294A.330, which
26 provides:
27
28

1 294A.330. Use of term “reelect” in campaign.

2 A person shall not use the term “reelect” in any material, statement or publication
3 supporting the election of a candidate unless the candidate:

- 4 1. Was elected to the identical office with the same district number, if any, in
5 the most recent election to fill that office; and
6 2. Is serving and has served continuously in that office from the beginning of
7 the term to which the candidate was elected.

8 Nev. Rev. Stat. § 294A.330 (hereafter, “Reelect Prohibition”).

9 24. The Threatening Letter’s subject line also cited Nev. Rev. Stat. § 294A.340, which
10 provides:

11 A person shall not use the name of a candidate in a way that implies that the
12 candidate is the incumbent in office in any material, statement or publication
13 supporting the election of a candidate unless:

- 14 1. The candidate is qualified to use the term “reelect” pursuant to NRS
15 294A.330; or
16 2. The candidate:
17 (a) Was appointed to the identical office with the same district
18 number, if any, after the most recent election to fill that office; and
19 (b) Is serving and has served continuously in that office since the date
20 of appointment.

21 Nev. Rev. Stat. § 294.340 (hereafter, “Incumbency Prohibition”).

22 25. The Threatening Letter then threatened, “Ms. Jill Dickman et al. must remove the
23 term ‘re-elect’ from all campaign signage, *effective immediately*. Failure to correct this issue *will*
24 *result in a fine being assessed.*” Exh. 2. at 2 (emphasis added).

25 26. The letter concluded by emphasizing Secretary Cegasvske had already made “*a*
26 *determination* in this matter.” *Id.* (emphasis added).

27 27. State law required Secretary Cegasvske to provide Liberty with an opportunity to
28 respond to the administrative complaint filed against it. Nev. Rev. Stat. § 294A.410(3) (allowing
the target of an administrative complaint to submit a “response” containing “a short statement of

1 the grounds, if any, for objecting to the alleged violation and include any evidence substantiating
2 the objection”). Secretary Cegavske chose to completely ignore this requirement, and instead made
3 “a determination in this matter” without affording Liberty prior notice and an opportunity to be
4 heard.

5 28. Liberty is now confronted with the choice between being chilled in its political
6 expression in the days before an election, and continuing to exercise its fundamental First
7 Amendment rights despite the ongoing express threat of unspecified amounts of monetary fines.

8 29. Despite the substantial chilling effect created by the Threatening Letter as well as
9 the existence of the Reelect Prohibition and Incumbency Prohibition, Liberty will continue
10 distributing its doorhangers with its political message unchanged.

11 30. The Reelect Prohibition, Incumbency Prohibition, and Threatening Letter
12 substantially burden Liberty’s exercise of its First Amendment right to freedom of expression.

13 31. Although this lawsuit most immediately involves Liberty’s past, ongoing, and
14 future exhortations to re-elect Dickman in the 2020 general election, Liberty is reasonably likely
15 to wish to similarly persuade voters to “re-elect” Dickman in future elections (should she lose
16 either this election or some future election), as well as other candidates who previously held a
17 particular office for which they are running, but are not currently incumbents. Thus, this matter is
18 capable of repetition, yet evading review.

19
20
21 **INJUNCTIVE RELIEF IS NECESSARY**

22 32. The Reelect Prohibition, Incumbency Prohibition, and Threatening Letter inflict
23 irreparable harm by Plaintiffs by attempting to chill and substantially burdening the exercise of
24 their fundamental right to engage in political expression.

25 33. Liberty lacks an adequate remedy at law for this burden on its First Amendment
26 right to engage in free political expression.
27
28

1 34. The harm Liberty would suffer from denial of an injunction exceeds any legally
2 cognizable harm an injunction would inflict upon Secretary Cegavske.

3 35. The public interest favors enjoining unconstitutional statutes such as the Reelect
4 Prohibition and Incumbency Prohibition.

5 **CAUSES OF ACTION**

6 **COUNT ONE**

7 **42 U.S.C. § 1983:**

8 **FIRST AMENDMENT FACIAL CHALLENGE TO**
9 **THE REELECT PROHIBITION, NEV. REV. STAT. § 294A.330**
10 **(CONTENT-BASED DISCRIMINATION)**

11 36. Plaintiffs re-allege the preceding paragraphs as if set forth fully herein.

12 37. Defendant Secretary Cegavske violated 42 U.S.C. § 1983 and is poised to continue
13 violating Liberty’s rights under § 1983.

14 38. Secretary Cegavske is responsible for enforcing the Reelect Prohibition. *See Nev.*
15 *Rev. Stat. §§ 293.124(1), 294A.380(1), 294A.410, 294A.420(2).* In doing so, she acts under color
16 of Nevada law.

17 39. Secretary Cegavske issued the Threatening Letter under color of Nevada law.

18 40. Liberty is a person within the jurisdiction of the United States for purposes of
19 § 1983.

20 41. The Reelect Prohibition makes it illegal for any person to use the term “reelect” in
21 “any material, statement or publication supporting the election of a candidate unless the candidate”
22 meets a series of requirements. Nev. Rev. Stat. § 294A.330. In particular:

- 23
- 24 a. the candidate must have been elected, rather than appointed;
 - 25 b. the candidate’s election must have been “to the identical office”;
 - 26 c. if the office has a “district number,” the candidate must have been elected
27 to a position within the same district number;
- 28

1 d. the candidate must have elected in “the most recent election to fill that
2 office,” presumably including any special elections;

3 e. the candidate must currently be serving in that office; *and*

4 f. the candidate must have “served continuously in that office from the
5 beginning of the term to which the candidate was elected.”

6 *Id.* § 294A.330(1)-(2).

7
8 42. Secretary Cegavske’s Threatening Letter and enforcement of the Reelect
9 Prohibition violate Liberty’s rights under the First Amendment to the U.S. Constitution, as
10 incorporated through the Fourteenth Amendment.

11 43. The Reelect Prohibition is a content-based restriction on political speech subject to
12 strict scrutiny.

13 44. The Reelect Prohibition is not narrowly tailored to achieving compelling
14 governmental interests.

15 45. The State of Nevada does not have a compelling interest in singling out a particular
16 category of political speech and policing it for accuracy.

17 46. Numerous websites, including several associated with the State of Nevada and its
18 political subdivisions, list incumbent members of the state legislature and other public offices.

19 47. If political opponents or members of the media believe a candidate is being falsely
20 represented as an incumbent, the most constitutionally appropriate response is counterspeech
21 rather than censorship.
22

23 48. If the state wishes to eliminate uncertainty as to a candidate’s incumbency status, it
24 could follow the approach of several other states by identifying incumbents as such on the ballot.

25 49. The Reelect Prohibition violates the First Amendment and is invalid under 42
26 U.S.C. § 1983.
27

28

1 WHEREFORE, Plaintiff Make Liberty Win is entitled to a preliminary injunction and
2 permanent injunction from this Court enjoining enforcement of the Reelect Prohibition, 294A.330,
3 and a declaratory judgment recognizing this provision violates the First and Fourteenth
4 Amendments.

5 **COUNT TWO**
6 **42 U.S.C. § 1983:**
7 **FIRST AMENDMENT FACIAL CHALLENGE TO**
8 **THE INCUMBENCY PROHIBITION, NEV. REV. STAT. § 294A.340**
9 **(CONTENT-BASED DISCRIMINATION)**

10 50. Plaintiffs re-allege the preceding paragraphs as if set forth fully herein.

11 51. Defendant Secretary Cegavske violated 42 U.S.C. § 1983 and is poised to continue
12 violating Liberty’s rights under § 1983.

13 52. Secretary Cegavske is responsible for enforcing the Incumbency Prohibition. *See*
14 *Nev. Rev. Stat. §§ 293.124(1), 294A.380(1), 294A.410, 294A.420(2).* In doing so, she acts under
15 color of Nevada law.

16 53. Secretary Cegavske issued the Threatening Letter under color of Nevada law.

17 54. Liberty is a person within the jurisdiction of the United States for purposes of
18 § 1983.

19 55. The Incumbency Provision makes it illegal for any person to “use the name of a
20 candidate” in any way “that implies that the candidate is the incumbent in office in any material,
21 statement or publication supporting the election of a candidate,” unless the candidate meets a series
22 of requirements. *Nev. Rev. Stat. § 294A.340.* In particular, this prohibition does not apply if either
23 the candidate “is qualified to use the term ‘reelect’ pursuant to [the Reelect Prohibition], or:

- 24 a. the candidate was appointed to public office;
25 b. the candidate’s appointment must have been “to the identical office”;
26 c. if the office has a “district number,” the candidate must have been
27 appointed to a position within the same district number;
28

1 d. the appointment must have occurred after “the most recent election to fill
2 that office,” presumably including any special elections;

3 e. the candidate must currently be serving in that office; *and*

4 f. the candidate must have “served continuously in that office since the date
5 of appointment.”

6 *Id.* § 294A.340(1), (2)(a)-(b).

7
8 56. Secretary Cegavske’s Threatening Letter and enforcement of the Incumbency
9 Prohibition violate Liberty’s rights under the First Amendment to the U.S. Constitution, as
10 incorporated through the Fourteenth Amendment.

11 57. The Incumbency Prohibition is a content-based restrictions on political speech
12 subject to strict scrutiny.

13 58. The Incumbency Prohibition is not narrowly tailored to achieving compelling
14 governmental interests.

15 59. The State of Nevada does not have a compelling interest in singling out a particular
16 category of political speech and policing it for accuracy.

17 60. Numerous websites, including several associated with the State of Nevada and its
18 political subdivisions, list incumbent members of the state legislature and other public offices.

19 61. If political opponents or members of the media believe a candidate is being falsely
20 represented as an incumbent, the most constitutionally appropriate response is counterspeech
21 rather than censorship.
22

23 62. If the state wishes to eliminate uncertainty as to a candidate’s incumbency status, it
24 could follow the approach of several other states by identifying incumbents as such on the ballot.

25 63. The Incumbency Prohibition violates the First Amendment and is invalid under 42
26 U.S.C. § 1983.
27

28

1 WHEREFORE, Plaintiff Make Liberty Win is entitled to a preliminary injunction and
2 permanent injunction from this Court enjoining enforcement of the Incumbency Prohibition,
3 294A.340, and a declaratory judgment recognizing this provision violates the First and Fourteenth
4 Amendments.

5
6 **COUNT THREE**
7 **42 U.S.C. § 1983:**
8 **FIRST AMENDMENT FACIAL CHALLENGE TO**
9 **THE REELECT PROHIBITION, NEV. REV. STAT. § 294A.330**
10 **(VIEWPOINT-BASED DISCRIMINATION)**

11 64. Plaintiffs re-allege the preceding paragraphs as if set forth fully herein.

12 65. Defendant Secretary Cegavske violated 42 U.S.C. § 1983 and is poised to continue
13 violating Liberty’s rights under § 1983.

14 66. Secretary Cegavske is responsible for enforcing the Reelect Prohibition. *See Nev.*
15 *Rev. Stat. §§ 293.124(1), 294A.380(1), 294A.410, 294A.420(2).* In doing so, she acts under color
16 of Nevada law.

17 67. Secretary Cegavske issued the Threatening Letter under color of Nevada law.

18 68. Liberty is a person within the jurisdiction of the United States for purposes of
19 § 1983.

20 69. The Reelect Prohibition makes it illegal for any person to use the term “reelect” in
21 “any material, statement or publication *supporting the election of a candidate* unless the
22 candidate” meets a series of requirements. Nev. Rev. Stat. § 294A.330 (emphasis added).

23 70. The Reelect Prohibition adopts viewpoint discrimination because it does not
24 purport to prohibit or regulate use of the term “reelect” in any material, statement or publication
25 *opposing* the election of a candidate.

26 71. Had Liberty’s doorhanger stated, “DO NOT RE-ELECT JILL DICKMAN FOR
27 STATE ASSEMBLY,” it would not have violated the Reelect Prohibition.
28

1 72. The Reelect Prohibition is a one-sided law that targets political speech based
2 specifically on the viewpoint being expressed: only advertisements supporting a candidate are
3 censored. Candidates and political committees opposing Dickman may expressly advocate against
4 her reelection with impunity.

5 73. Secretary Cegavske’s Threatening Letter and enforcement of the Reelect
6 Prohibition violate Liberty’s rights under the First Amendment to the U.S. Constitution, as
7 incorporated through the Fourteenth Amendment.
8

9 74. The Reelect Prohibition is a viewpoint-based restriction on political speech subject
10 to strict scrutiny.

11 75. The Reelect Prohibition is not narrowly tailored to achieving compelling
12 governmental interests.

13 76. The State of Nevada does not have a compelling interest in singling out speech
14 supporting candidates and policing it for accuracy.
15

16 77. The Reelect Prohibition violates the First Amendment and is invalid under 42
17 U.S.C. § 1983.

18 WHEREFORE, Plaintiff Make Liberty Win is entitled to a preliminary injunction and
19 permanent injunction from this Court enjoining enforcement of the Reelect Prohibition, 294A.330,
20 and a declaratory judgment recognizing this provision violates the First and Fourteenth
21 Amendments.
22

COUNT FOUR
42 U.S.C. § 1983:
FIRST AMENDMENT FACIAL CHALLENGE TO
THE INCUMBENCY PROHIBITION, NEV. REV. STAT. § 294A.340
(VIEWPOINT-BASED DISCRIMINATION)

26 78. Plaintiffs re-allege the preceding paragraphs as if set forth fully herein.

27 79. Defendant Secretary Cegavske violated 42 U.S.C. § 1983 and is poised to continue
28 violating Liberty’s rights under § 1983.

1 80. Secretary Cegavske is responsible for enforcing the Incumbency Prohibition. *See*
2 Nev. Rev. Stat. §§ 293.124(1), 294A.380(1), 294A.410, 294A.420(2). In doing so, she acts under
3 color of Nevada law.

4 81. Secretary Cegavske issued the Threatening Letter under color of Nevada law.

5 82. Liberty is a person within the jurisdiction of the United States for purposes of
6 § 1983.

7 83. The Incumbency Prohibition makes it illegal for any person to “use the name of a
8 candidate in a way that implies that the candidate is the incumbent in office in any material,
9 statement or publication *supporting the election of a candidate*,” unless the candidate meets
10 certain requirements. Nev. Rev. Stat. § 294A.340 (emphasis added).

11 84. The Incumbency Prohibition adopts viewpoint discrimination because it does not
12 purport to prohibit or regulate use of the term “reelect” in any material, statement or publication
13 *opposing* the election of a candidate.
14

15 85. Had Liberty’s doorhanger stated, “DO NOT RE-ELECT JILL DICKMAN FOR
16 STATE ASSEMBLY,” it would not have violated the Incumbency Provision.
17

18 86. The Incumbency Prohibition is a one-sided law that targets political speech based
19 specifically on the viewpoint being expressed: only advertisements supporting a candidate are
20 censored. Candidates and political committees opposing Dickman may expressly advocate against
21 her reelection with impunity.

22 87. Secretary Cegavske’s Threatening Letter and enforcement of the Incumbency
23 Prohibition violate Liberty’s rights under the First Amendment to the U.S. Constitution, as
24 incorporated through the Fourteenth Amendment.
25

26 88. The Incumbency Prohibition is a viewpoint-based restriction on political speech
27 subject to strict scrutiny.
28

1 89. The Incumbency Prohibition is not narrowly tailored to achieving compelling
2 governmental interests.

3 90. The State of Nevada does not have a compelling interest in singling out speech
4 supporting candidates and policing it for accuracy.

5 91. The Incumbency Prohibition violates the First Amendment and is invalid under 42
6 U.S.C. § 1983.

7
8 WHEREFORE, Plaintiff Make Liberty Win is entitled to a preliminary injunction and
9 permanent injunction from this Court enjoining enforcement of the Incumbency Prohibition,
10 294A.340, and a declaratory judgment recognizing this provision violates the First and Fourteenth
11 Amendments.

12 **COUNT FIVE**
13 **42 U.S.C. § 1983:**
14 **FIRST AMENDMENT AS-APPLIED CHALLENGE TO**
15 **THE REELECT PROHIBITION, NEV. REV. STAT. § 294A.330**
16 **(SUPPRESSION OF TRUTHFUL POLITICAL SPEECH)**

17 92. Plaintiffs re-allege the preceding paragraphs as if set forth fully herein.

18 93. Defendant Secretary Cegavske violated 42 U.S.C. § 1983 and is poised to continue
19 violating Liberty’s rights under § 1983.

20 94. Secretary Cegavske is responsible for enforcing the Reelect Prohibition. *See Nev.*
21 *Rev. Stat. §§ 293.124(1), 294A.380(1), 294A.410, 294A.420(2).* In doing so, she acts under color
22 of Nevada law.

23 95. Secretary Cegavske issued the Threatening Letter under color of Nevada law.

24 96. Liberty is a person within the jurisdiction of the United States for purposes of
25 § 1983.

26 97. The Reelect Prohibition makes it illegal for any person to use the term “reelect” in
27 “any material, statement or publication supporting the election of a candidate unless the candidate”
28 meets a series of requirements. Nev. Rev. Stat. § 294A.330. In particular:

- 1 a. the candidate must have been elected, rather than appointed;
- 2 b. the candidate’s election must have been “to the identical office”;
- 3 c. if the office has a “district number,” the candidate must have been elected
4 to a position within the same district number;
- 5 d. the candidate must have elected in “the most recent election to fill that
6 office,” presumably including any special elections;
- 7 e. the candidate must currently be serving in that office; *and*
- 8 f. the candidate must have “served continuously in that office from the
9 beginning of the term to which the candidate was elected.”
10

11 *Id.* § 294A.330(1)-(2).

12 98. Secretary Cegavske’s Threatening Letter and enforcement of the Reelect
13 Prohibition violate Liberty’s rights under the First Amendment to the U.S. Constitution, as
14 incorporated through the Fourteenth Amendment.

15 99. The Reelect Prohibition is unconstitutional as applied to speech concerning any
16 candidate who has ever previously been elected to the office at issue.

17 100. As applied to Liberty’s communications about Jill Dickman, the Reelect
18 Prohibition is a content-based prohibition on truthful and accurate political speech.

19 101. Dickman was elected to the Nevada Assembly in 2014 and served there from 2015
20 through 2016.

21 102. The core of Liberty’s political message is to persuade voters to literally elect
22 Dickman to the Assembly again—to re-elect her to the office she had previously held.

23 103. The doorhangers do not reasonably give rise to the erroneous perception Dickman
24 is the incumbent or otherwise currently serving in the Nevada legislature. To the contrary, the
25 doorhanger expressly declares she is a “Former Assemblywoman,” and she is “running to serve as
26
27
28

1 our Assemblywoman.” No reasonable person reading the flyer—or even glancing quickly at the
2 front—could come away with the false belief she is the incumbent.

3 104. As applied in this case, the Reelect Prohibition is not narrowly tailored to achieving
4 compelling governmental interests. Rather than promoting accurate political communications, the
5 Reelect Prohibition is suppressing accurate political expression and legitimate political advocacy.

6 105. The Reelect Prohibition violates the First Amendment and is invalid under 42
7 U.S.C. § 1983.

8
9 WHEREFORE, Plaintiff Make Liberty Win is entitled to a preliminary injunction and
10 permanent injunction from this Court enjoining enforcement of the Reelect Prohibition, 294A.330,
11 and a declaratory judgment recognizing this provision violates the First and Fourteenth
12 Amendments as applied to communications about candidates who previously have been elected to
13 the office at issue.

14
15 **COUNT SIX**
16 **42 U.S.C. § 1983:**
17 **FIRST AMENDMENT AS-APPLIED CHALLENGE TO**
18 **THE INCUMBENCY PROHIBITION, NEV. REV. STAT. § 294A.340**
19 **(SUPPRESSION OF TRUTHFUL POLITICAL SPEECH)**

20 106. Plaintiffs re-allege the preceding paragraphs as if set forth fully herein.

21 107. Defendant Secretary Cegavske violated 42 U.S.C. § 1983 and is poised to continue
22 violating Liberty’s rights under § 1983.

23 108. Secretary Cegavske is responsible for enforcing the Reelect Prohibition. *See Nev.*
24 *Rev. Stat. §§ 293.124(1), 294A.380(1), 294A.410, 294A.420(2).* In doing so, she acts under color
25 of Nevada law.

26 109. Secretary Cegavske issued the Threatening Letter under color of Nevada law.

27 110. Liberty is a person within the jurisdiction of the United States for purposes of
28 § 1983.

1 111. The Incumbency Provision makes it illegal for any person to “use the name of a
2 candidate” in any way “that implies that the candidate is the incumbent in office in any material,
3 statement or publication supporting the election of a candidate,” unless the candidate meets a series
4 of requirements. Nev. Rev. Stat. § 294A.340. In particular, this prohibition does not apply if either
5 the candidate “is qualified to use the term ‘reelect’ pursuant to [the Reelect Prohibition], or:

- 6 a. the candidate was appointed to public office;
7 b. the candidate’s appointment must have been “to the identical office”;
8 c. if the office has a “district number,” the candidate must have been
9 appointed to a position within the same district number;
10 d. the appointment must have occurred after “the most recent election to fill
11 that office,” presumably including any special elections;
12 e. the candidate must currently be serving in that office; *and*
13 f. the candidate must have “served continuously in that office since the date
14 of appointment.”
15

16 *Id.* § 294A.340(1), (2)(a)-(b).
17

18 112. Secretary Cegavske’s Threatening Letter and enforcement of the Incumbency
19 Prohibition violate Liberty’s rights under the First Amendment to the U.S. Constitution, as
20 incorporated through the Fourteenth Amendment.

21 113. The Incumbency Prohibition is unconstitutional as applied to speech concerning
22 any candidate who has ever previously been elected to the office at issue.
23

24 114. As applied to Liberty’s communications about Jill Dickman, the Incumbency
25 Prohibition is a content-based prohibition on truthful and accurate political speech.

26 115. Dickman was elected to the Nevada Assembly in 2014 and served there from 2015
27 through 2016.
28

1 116. The core of Liberty’s political message is to persuade voters to literally elect
2 Dickman to the Assembly again—to re-elect her to the office she had previously held.

3 117. The doorhangers do not reasonably give rise to the erroneous perception Dickman
4 is the incumbent or otherwise currently serving in the Nevada legislature. To the contrary, the
5 doorhanger expressly declares she is a “Former Assemblywoman,” and she is “running to serve as
6 our Assemblywoman.” No reasonable person reading the flyer—or even glancing quickly at the
7 front—could come away with the false belief she is the incumbent.

8
9 118. As applied in this case, the Incumbency Prohibition is not narrowly tailored to
10 achieving compelling governmental interests. Rather than promoting accurate political
11 communications, the Reelect Prohibition is suppressing accurate political expression and
12 legitimate political advocacy.

13 119. The Incumbency Prohibition violates the First Amendment and is invalid under 42
14 U.S.C. § 1983.

15
16 WHEREFORE, Plaintiff Make Liberty Win is entitled to a preliminary injunction and
17 permanent injunction from this Court enjoining enforcement of the Incumbency Prohibition,
18 294A.340, and a declaratory judgment recognizing this provision violates the First and Fourteenth
19 Amendments as applied to communications about candidates who previously have been elected to
20 the office at issue.

21 **COUNT SEVEN**
22 **42 U.S.C. § 1983:**
23 **FIRST AMENDMENT OVERBREADTH CHALLENGE TO**
THE REELECT PROHIBITION, NEV. REV. STAT. § 294A.330

24 120. Plaintiffs re-allege the preceding paragraphs as if set forth fully herein.

25 121. Defendant Secretary Cegavske violated 42 U.S.C. § 1983 and is poised to continue
26 violating Liberty’s rights under § 1983.
27
28

1 122. Secretary Cegavske is responsible for enforcing the Reelect Prohibition. *See Nev.*
2 Rev. Stat. §§ 293.124(1), 294A.380(1), 294A.410, 294A.420(2). In doing so, she acts under color
3 of Nevada law.

4 123. Secretary Cegavske issued the Threatening Letter under color of Nevada law.

5 124. Liberty is a person within the jurisdiction of the United States for purposes of
6 § 1983.

7 125. The Reelect Prohibition makes it illegal for any person to use the term “reelect” in
8 “any material, statement or publication supporting the election of a candidate unless the candidate”
9 meets a series of requirements. Nev. Rev. Stat. § 294A.330.

11 126. The Reelect Prohibition does *not* prohibit only potentially misleading statements
12 about a non-incumbent candidate. Rather, if any “material” or “publication” “support[s] the
13 election” of a candidate who does not satisfy the Reelect Prohibition’s requirements, that material
14 or publication may not “use the term ‘reelect’” at all, in any capacity, anywhere.

15 127. The Reelect Prohibition would prohibit a flyer or doorhanger that “support[s] the
16 election of a candidate” who does not satisfy the Reelect Prohibition’s requirements from saying
17 things like:
18

19 a. “Vote for Jill Dickman! Don’t continue to reelect people who will raise
20 taxes!”

21 b. “Some politicians only care if you reelect them. Not Jill Dickman – she’ll
22 do what’s right! Vote Dickman!”

23 c. “Whenever you elect or reelect a candidate, it’s important to consider their
24 values. Vote Dickman!”

25 d. “Dickman has promised to lower taxes—a commitment to which you can
26 hold her when it comes time to reelect her two years from now!”
27

28 e. “Vote for Jill Dickman now and continue to reelect her for years to come!”

1 f. “You elected Jill Dickman once back in 2016. She’s no longer in office.
2 It’s time to reelect her.”

3 g. “You can elect Dickman or reelect someone who will raise taxes. The
4 choice is clear; vote Dickman!”

5 128. The Reelect Prohibition is an overbroad prohibition that unnecessary sweeps in
6 broad swaths of unobjectionable, non-misleading political advocacy.

7
8 129. The Reelect Prohibition violates the First Amendment and is invalid under 42
9 U.S.C. § 1983.

10 WHEREFORE, Plaintiff Make Liberty Win is entitled to a preliminary injunction and
11 permanent injunction from this Court enjoining enforcement of the Reelect Prohibition, 294A.330,
12 and a declaratory judgment recognizing this provision violates the First and Fourteenth
13 Amendments on overbreadth ground.

14
15 **COUNT EIGHT**
16 **42 U.S.C. § 1983:**
17 **FIRST AMENDMENT VAGUENESS CHALLENGE TO**
18 **THE INCUMBENCY PROHIBITION, NEV. REV. STAT. § 294A.340**

19 130. Plaintiffs re-allege the preceding paragraphs as if set forth fully herein.

20 131. Defendant Secretary Cegavske violated 42 U.S.C. § 1983 and is poised to continue
21 violating Liberty’s rights under § 1983.

22 132. Secretary Cegavske is responsible for enforcing the Incumbency Prohibition. *See*
23 Nev. Rev. Stat. §§ 293.124(1), 294A.380(1), 294A.410, 294A.420(2). In doing so, she acts under
24 color of Nevada law.

25 133. Secretary Cegavske issued the Threatening Letter under color of Nevada law.

26 134. Liberty is a person within the jurisdiction of the United States for purposes of
27 § 1983.

28

1 135. The Incumbency Prohibition makes it illegal for any person to “use the name of a
2 candidate” in any way “that implies that the candidate is the incumbent in office in any material,
3 statement or publication supporting the election of a candidate,” unless the candidate meets a series
4 of requirements. Nev. Rev. Stat. § 294A.340.

5 136. The Incumbency Prohibition creates a substantial chilling effect because, as the
6 statute is interpreted and applied by Secretary Cegavske, a person of ordinary intelligence is unable
7 to determine whether a political communication “implies that the candidate is the incumbent.”
8

9 137. For example, the doorhanger at issue in this case specified Jill Dickman is a “former
10 assemblywoman” and she is “running to serve as our assemblywoman.” It urged leaders to
11 “reelect” her to the Nevada state assembly. Secretary Cegavske somehow interpreted this to imply
12 Dickman was an incumbent, citing the Incumbency Prohibition in the Threatening Letter.

13 138. If a political communication can “impl[y] that [a] candidate is the incumbent”
14 despite prominent, expressly, and unambiguously labeling the candidate a “former
15 assemblywoman,” then it is impossible for a layperson to determine what words will be deemed
16 to violate the Incumbent Provision and trigger Secretary Cegavske’s wrath.
17

18 139. The Incumbency Prohibition is unconstitutionally vague, subjective, and fails to
19 provide adequate notice of the proscribed political speech.

20 140. Secretary Cegavske’s Threatening Letter and enforcement of the Incumbency
21 Prohibition violate Liberty’s rights under the First Amendment to the U.S. Constitution, as
22 incorporated through the Fourteenth Amendment. The Incumbency Prohibition is invalid under 42
23 U.S.C. § 1983.
24

25 WHEREFORE, Plaintiff Make Liberty Win is entitled to a preliminary injunction and
26 permanent injunction from this Court enjoining enforcement of the Incumbency Prohibition,
27 294A.340, and a declaratory judgment recognizing this provision is unconstitutionally vague in
28 violation of the First and Fourteenth Amendments.

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiffs pray for the following relief:

3 1. A declaratory judgment pursuant to 28 U.S.C. § 2201 that:

4 a. the Reelect Prohibition, Nev. Rev. Stat. § 294A.330, is facially
5 unconstitutional under the First and Fourteenth Amendments;

6 b. the Reelect Prohibition, Nev. Rev. Stat. § 294A.330, is unconstitutional
7 under the First and Fourteenth Amendments as applied to speech about candidates who have ever
8 previously been elected to the office at issue;

9 c. the Reelect Prohibition, Nev. Rev. Stat. § 294A.330, is unconstitutionally
10 overbroad in violation of the First and Fourteenth Amendments;

11 d. the Incumbency Prohibition, Nev. Rev. Stat. § 294A.340, is facially
12 unconstitutional under the First and Fourteenth Amendments;

13 e. the Incumbency Prohibition, Nev. Rev. Stat. § 294A.340, is
14 unconstitutional under the First and Fourteenth Amendments as applied to speech about candidates
15 who have ever previously been elected to the office at issue; and

16 f. The Incumbency Prohibition, Nev. Rev. Stat. § 294A.340, is
17 unconstitutionally vague in violation of the First and Fourteenth Amendments.

18 2. A preliminary injunction and permanent injunction:

19 a. prohibiting Defendants from enforcing the Reelect Prohibition, Nev. Rev.
20 Stat. § 294A.330, and the Incumbency Prohibition, Nev. Rev. Stat. § 294A.340, against anyone
21 or, in the alternative,
22

23 b. prohibiting Defendants from enforcing the Reelect Prohibition, Nev. Rev.
24 Stat. § 294A.330, and the Incumbency Prohibition, Nev. Rev. Stat. § 294A.340, against Plaintiff
25 or any other similarly situated groups or entities;
26
27
28

VERIFICATION

I, JUSTIN GREISS, under penalty of perjury, state as follows:

Plaintiff MAKE LIBERTY WIN ("Liberty") is an unauthorized, non-connected political committee registered in the State of Nevada on or around September 1, 2020. Its primary place of business is in Alexandria, Virginia.

That I am the Executive Director of Liberty which is the Plaintiff in the foregoing action; that I have read the above and foregoing Complaint, and know the contents thereof; that the same is true to the best of my knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe the same to be true.

I do hereby affirm the aforesaid under penalty of perjury of the laws of the State of Nevada.

DATED: October 19, 2020



JUSTIN GREISS