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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MINNESOTA

\_\_\_\_\_)  
 AMERICAN BROADCASTING COMPANIES, INC., )  
 THE ASSOCIATED PRESS, CABLE NEWS )  
 NETWORK, INC., CBS BROADCASTING INC., )  
 FOX NEWS NETWORK, L.L.C. and NBC )  
 UNIVERSAL, INC., )  
 )  
 Plaintiffs, )

Case No.

- against -

MARK RITCHIE, in his official capacity as the )  
 SECRETARY OF STATE OF THE STATE OF )  
 MINNESOTA and LORI SWANSON, in her )  
 official capacity as the ATTORNEY GENERAL )  
 OF THE STATE OF MINNESOTA, )  
 )  
 Defendants. )

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs American Broadcasting Companies, Inc., The Associated Press, Cable News Network, Inc., CBS Broadcasting Inc., Fox News Network, L.L.C., and NBC Universal, Inc. ("Plaintiffs") for their Complaint state as follows:

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SEP 29 2008

U.S. DISTRICT COURT MPLS

### JURISDICTION AND VENUE

1. This action arises under and pursuant to the Constitution of the United States and the First and Fourteenth Amendments thereof and 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. §§ 1983 and 1988. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1343.

2. Venue is proper in this district under 28 U.S.C. §§ 1391(b) because a substantial part of the harm faced by Plaintiffs is threatened in this judicial district and Defendants reside in this judicial district.

### THE PARTIES

3. Plaintiff American Broadcasting Companies, Inc. (“ABC”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 77 West 66th St, New York, New York 10023. ABC News, a division of ABC, is engaged, *inter alia*, in the gathering of news, the production of news programming, and the transmission of news programming to the public through the ABC Television Network, which consists of more than 200 owned and affiliated broadcast stations throughout the country, including its affiliated stations in Minnesota. ABC News produces multiple radio newscasts and news reports each day, disseminated via the ABC Radio Networks and owned and affiliated radio stations across the country. ABC News also produces and operates abcnews.com, a

leading internet source of news and information, and delivers video news programming through broadband and wireless transmissions.

4. Plaintiff The Associated Press (“AP”) is a mutual news cooperative formed under the New York Not-For-Profit-Law with its principal place of business at 450 West 33rd St., New York, New York 10001. The AP serves thousands of daily newspaper, radio, television and online customers with coverage in all media and news in all formats. It is a source of news for more than one billion people a day.

5. Plaintiff Cable News Network, Inc. (“CNN”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1 CNN Center, Atlanta, Georgia 30303. CNN, the first 24-hour news network, is engaged, *inter alia*, in the gathering of news, the production of news programming, and the transmission of news programming in Minnesota, throughout the country and across the world through its cable and satellite television networks, radio networks, Web sites, CNN Mobile and CNN Newsource, its syndicated news service.

6. Plaintiff CBS Broadcasting Inc. (“CBS”) is a corporation organized and existing under the laws of the State of New York with its principal place of business at 51 West 52nd Street, New York, New York 10019. CBS is engaged,

*inter alia*, in the gathering of news, the production of news programming, and the transmission of news programming to its affiliated broadcast stations in Minnesota and throughout the country.

7. Plaintiff Fox News Network, L.L.C. (“Fox News”) is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 1211 Avenue of the Americas, New York, New York 10036. Fox News, a division of News Corp., is engaged, *inter alia*, in the gathering of news, the production of news programming, and the transmission of news programming in Minnesota, throughout the country and across the world through its cable and satellite television networks, Fox News Radio, Web sites, Fox News Mobile and Fox News Edge, its syndicated news service.

8. Plaintiff NBC Universal, Inc. (“NBC”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 30 Rockefeller Plaza, New York, New York 10112. Through the NBC Television Network, comprised of owned or affiliated broadcast stations in Minnesota and throughout the country, NBC News, a division of NBC, provides news and information to the public through its regularly scheduled news programs and special coverage of news of particular interest. NBC News also contributes news reports to NBC’s 24-hour business news channel, CNBC, and produces all programming for

MSNBC, which delivers news to more than 75 million households on cable 24 hours a day and more than 20 million users a month on the Internet.

9. Defendant Mark Ritchie (“Ritchie”) is Secretary of State of the State of Minnesota and is named herein in his official capacity as Secretary of State. As Secretary of State, Ritchie is the chief election officer of the State of Minnesota. As Secretary of State, Ritchie is also responsible for obtaining and maintaining uniformity in the application, operation and interpretation of the provisions of the Minnesota election laws and for instructing the county boards of election as to election procedures consistent with the laws of Minnesota.

10. Defendant Lori Swanson (“Swanson”) is the Attorney General for the State of Minnesota and is named herein in her official capacity as Attorney General. As Attorney General, Swanson is the State's chief lawyer and law enforcement officer. She serves as legal advisor to the Governor and other constitutional officers in the State, as well as Defendant Ritchie, the State Election Board, and Minnesota’s county auditors.

#### Plaintiffs’ Newsgathering Activities

11. In order to better inform the public about voting behavior, voting trends, and voters’ reactions to important issues of the day, Plaintiffs conduct polls of

voters leaving polling places on election days (sometimes referred to as “exit polls”) at selected polling places throughout the country. As described below, Plaintiffs intend to conduct such polls in Minnesota on November 4, 2008, the day of the 2008 general election, and on election days in the future.

12. As they have in past elections, Plaintiffs have retained two highly respected polling organizations, Edison Media Research and Mitofsky International, to assist them in conducting their exit polls.

13. The exit polls are conducted as follows: One polling reporter is assigned to each of the polling places randomly selected for the polls. For the reasons discussed below, polling reporters generally stand near the exit of the building in which the polling place is located unless otherwise instructed by election officials. Polling reporters are instructed to be courteous and businesslike and not to obstruct any voter or interfere with the election process in any way. The polling reporters approach voters after they leave the polling place in a scientifically pre-determined pattern (*i.e.*, every fourth voter, every fifth voter, etc.) and ask if they would be willing to fill out a brief, anonymous questionnaire. The typical questionnaire solicits voters’ views on various political topics of the day and requests demographic information from each participating voter. Each participating voter is also asked how he or she voted. Polling reporters do not engage in electioneering activities of any kind.

14. Exit polls provide accurate data about voter behavior because of the near certainty that the persons interviewed have actually voted. The greater the distance from the polling place that the polling reporter is required to stand, however, the less reliable is the information gathered. There are several reasons for this. As a polling reporter moves farther and farther away from the polling place, the likelihood of a voter getting into his or her car and driving away, or of melding into a crowd of non-voters, increases. Second, as distance increases, it becomes harder to discern those who are voters from those who are not. Third, as distance increases, the statistical reliability of the sample itself decreases because it becomes impossible to interview in the scientifically selected pattern (*e.g.*, every fourth voter, every fifth voter, etc.). A distance restriction will have a different impact on exit polling at any particular precinct depending on the particular layout of the area – for example, how close the parking lot is to the polling place. Requiring polling reporters to stand at least 100 feet from the place where voters exit the building that houses the polling place substantially impairs their ability to conduct their exit polling activities and, accordingly, substantially reduces the statistical reliability and accuracy of their exit polls.

Use of Exit Poll Data by Plaintiffs and Others

15. Each of the Plaintiffs, and other members of the public, use the information obtained from exit polls in a variety of ways. The results of these polls are used by Plaintiffs, *inter alia*, to analyze and report upon how and why people have voted and to identify and comment on social and political trends. For example, in 1980, exit polls provided the information from which the “gender gap” was first clearly identified and from which all subsequent analyses of this phenomenon have begun. During the 1988 presidential primaries, exit polls provided information that indicated that the gender gap was a continuing phenomenon and provided invaluable insights on voters’ views concerning the first African-American presidential candidate. In the 1992 Republican primary, exit polls showed the populist issues that led to Pat Buchanan’s near-success in certain primaries and the reasons for President George H. W. Bush’s ultimate defeat in the general election. In 1996, the exit polls revealed that the gender gap was less striking than it had been in previous elections and that, while President Clinton won re-election, voters maintained their more conservative stance on the role of government, consistent with the results of the 1994 mid-term election. In the 2000 Presidential election, exit polls demonstrated how deep the divisions ran between voters for Bush and voters for Gore, noting that of all the major social categories (such as rich/poor, single/married, gay/straight, rural/urban, high school



drop out/college graduate), only age did not show a significant difference in voting behavior. The results of the exit polls conducted in 2000 also showed that the gender gap was the largest then on record. President George W. Bush made strong gains in the Latino vote and the urban vote according to the exit polls from the 2004 election, without correspondingly large drops among any other particular social category. Views on the Iraq war were also a strong predictor of the vote in 2004.

16. Each of the Plaintiffs reports on and presents extensive analyses of the results of exit polls as part of their election night reporting. The following example is excerpted from the transcript of ABC News' election night coverage on November 2, 2004:

PETER JENNINGS, ABC NEWS: Let's go to our political director, Mark Halperin, to see what else you can contribute on the state of Ohio or for that matter on any other issue.

MARK HALPERIN, ABC NEWS: Well, Peter, the exit poll matches up what you found when you went to Cincinnati, it's nice when that works out that the reporting matches up with what we've managed to talk to voters [about]. In Ohio today, . . . [a] gay marriage ban on the ballot, it passed by a decisive margin. They asked Ohio voters if they supported banning gay marriage, and that passed decisively. And of the people who voted for the gay marriage ban, the President won 66 percent to 34 percent for Senator Kerry. Pretty decisive. Also, that issue was, we thought would be a key motivator for a key group, that strong vote for the president amongst White protestant churchgoers. They voted overwhelmingly for the president. And a key group not just in Ohio but in almost all the battleground states. That group voted 70 percent for the

President, 30 percent for Mr. Kerry. They voted in about the same proportions as they did four years ago.

And then one other number from Ohio, Peter. Kerry supporters, their top issue, 42 percent said it was the economy. For Bush supporters, moral values was cited by 38 percent. And obviously, a lot of those voters I'm sure were concerned with that gay marriage ban.

PETER JENNINGS: So 40 percent to 38 percent of the economy vis-a-vis the so-called moral character issues?

MARK HALPERIN: Again, for, for Kerry supporters the top issue for almost half of them, 42 percent was the economy. For Bush voters it was moral values 38 percent was their top issue.

PETER JENNINGS: Okay. Many thanks, Mark.

17. This example, and many other examples Plaintiffs will present, illustrates the unique value of exit polls in permitting analysis of the voting patterns of various groups according to sex, age, income, race, religion and other categories. The information gathered from exit polls has also been used by Plaintiffs in formulating projections of the outcome of certain election contests on election nights and in their post-election night coverage.

18. The data obtained through exit polls is also used by scholars in many disciplines including, *inter alia*, political science, sociology, and history to analyze and comment upon how and why people have voted and to identify and comment on social and political trends. The exit poll data collected by Plaintiffs is archived after each election at the Roper Center at the University of Connecticut and at

the Inter-University Consortium at the University of Michigan. The information is available through those archives to historians, social scientists, and others worldwide.

19. Exit polls are the most reliable and accurate method for gathering information from voters themselves on election day about how and why they have voted.

#### Plaintiffs' Activities In Minnesota

20. Plaintiffs have jointly conducted exit polls at polling places in Minnesota as part of their coverage of past elections, including the general elections in 2004 and 2006. In 2004 and 2006 a substantial number of plaintiffs' exit poll reporters conducted their exit polls immediately outside buildings where polling took place or within 25 feet of the entrance to those buildings. Plaintiffs are not aware of any complaint from Defendants or any other election official that any of the reporters conducting those exit polls – or any other exit poll reporters – interfered with the voting process or hindered any voters in any manner.

21. However, in April 2008 the Minnesota legislature enacted and Governor Pawlenty signed into law, 2008 Minnesota Laws Chapter 244, which, among other things, amended Minn. Stat. § 204C.06(1) effective June 1, 2008. The section now provides in relevant part that:

No one except an election official or an individual who is waiting to register or to vote shall stand within 100 feet of the building in which a polling place is located.

The amendment's principle change was to alter the 100-foot zone, so that it is now to be measured from the outside door of the building in which a polling place is located, rather than the inside room where polling takes place, substantially expanding the restricted zone.

22. Earlier this month, Plaintiffs' representatives contacted the Secretary of State's Office to urge that Plaintiffs' constitutionally protected activities should be permitted within the 100 foot zone. Plaintiffs' representatives were informed that Plaintiffs' exit poll reporters will not be permitted to conduct exit polls within 100 feet of any building in which a polling place is located while Section 204C.06(1) remains in effect.

#### COUNT I

23. Plaintiffs repeat, reallege, and incorporate the allegations of paragraphs 1 through 22 hereof as though fully set forth herein.

24. Minn. Stat. § 204C.06(1) impermissibly restricts Plaintiffs' speech and commentary about the political process and thus, as applied to those activities, violates Plaintiffs' rights under the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

25. Minn. Stat. § 204C.06(1) impermissibly restricts Plaintiffs' opportunities to gather and receive information about the political process and thus, as applied to those activities, violates Plaintiffs' rights under the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

26. Plaintiffs seek to conduct exit polls within 100 feet of polling places in the State of Minnesota on November 4, 2008, and on election days in the future. If Plaintiffs are prohibited from doing so, Plaintiffs will be significantly restricted in their efforts to gather and report truthful and significant information about the political process to the public, thus causing Plaintiffs irreparable harm for which there is no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

1. That this Court declare that Minn. Stat. § 204C.06(1) is unconstitutional, as applied to Plaintiffs' exit polling activities, in that it violates Plaintiffs' rights under the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment.

2. That this Court preliminarily enjoin Defendants and all those acting in concert with them from enforcing Minn. Stat. § 204C.06(1) as against Plaintiffs' exit polling activities or from otherwise restricting Plaintiffs from conducting exit polls

within 100 feet of buildings in which polling places are located on November 4, 2008, and pending the entry of a final judgment in this action.

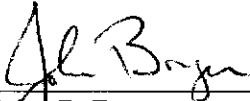
3. That this Court permanently enjoin Defendants and all those acting in concert with them from enforcing Minn. Stat. § 204C.06(1) as against Plaintiffs' exit polling activities or from otherwise restricting Plaintiffs from conducting exit polls within 100 feet of buildings in which polling places are located.

4. That this Court order such further or different relief as it may deem just and proper, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and the costs of this action.

DATED this 29th day of September, 2008

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September 29, 2008

Clerk of Court  
United States District Court  
U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

**BY MESSENGER**

**Re: American Broadcasting Companies, Inc., et al. v. Mark Ritchie and Lori Swanson**

Dear Clerk of Court:

Enclosed for filing in the above-referenced matter please find an original of the following documents:

1. Summons and Complaint;
2. Civil Cover Sheet;
3. Statement Pursuant to Fed.R.Civ.P.7.1; and
4. Certificate of Representation and Parties.

Also enclosed is a check in the amount of \$350 for the filing fee.

Please return the signed and sealed Summons and the file stamped Complaint to our messenger. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Borger".

John P. Borger

BORJP:beesa

Enclosures

cc: Susan Buckley (w/encl.)

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