

# Exit Polling in Nevada

*ABC, Inc. v. Heller*  
(Philip M. Pro, D. Nev. 2:06-cv-1268)

Four weeks before the 2006 general election, six news media companies filed a federal action challenging the constitutionality of Nevada's inconsistently enforced statute proscribing conversations with voters within 100 feet of a polling place.<sup>1</sup> The plaintiffs sought a preliminary injunction permitting them to conduct exit polls.<sup>2</sup> The court assigned the case to Judge Philip M. Pro,<sup>3</sup> who ordered a hearing on the motion for three weeks later.<sup>4</sup>

In setting the hearing date, Judge Pro had several factors in mind: (1) the extent to which the plaintiffs created their own emergency by filing their action so close to the election, (2) the value of careful and thorough briefing, (3) an opportunity for the parties to engage in extrajudicial conversations, and (4) the amount of time required for appellate review if necessary.<sup>5</sup>

At the hearing, Judge Pro said that he was inclined to grant the preliminary injunction,<sup>6</sup> and he did so on the following day, six days before the election.<sup>7</sup> On the next day, Nevada's deputy secretary of state for elections notified the state's county clerks and registrars of voters that they should ensure compliance with Judge Pro's injunction.<sup>8</sup>

On November 20, the parties stipulated to a permanent injunction against application of the statute to exit polling.<sup>9</sup> Judge Pro issued a permanent injunction two days later.<sup>10</sup>

On January 19, 2007, Judge Pro denied the plaintiffs attorney fees,<sup>11</sup> but the court of appeals reversed.<sup>12</sup> On remand, the attorney fee matter settled.<sup>13</sup>

---

1. [Complaint](#), *ABC, Inc. v. Heller*, No. 2:06-cv-1268 (D. Nev. Oct. 10, 2006), D.E. 1; [ABC, Inc. v. Miller](#), 550 F.3d 786, 787 (9th Cir. 2008); see [Nev. Rv. Stat. § 293.740](#) (2011); see also *Exit Polling Ban*, L.V. Rev.-J., Oct. 13, 2006, at 8B; Sam Skolnik, *Exit Polling at Center of State, National Debate*, L.V. Sun, Oct. 15, 2006, at A1.

2. [Preliminary Injunction Motion](#), *ABC, Inc.*, No. 2:06-cv-1268 (D. Nev. Oct. 11, 2006), D.E. 2.

3. [Docket Sheet](#), *id.* (Oct. 10, 2006).

Tim Reagan interviewed Judge Pro for this report by telephone on May 17, 2012.

4. [Order](#), *ABC, Inc.*, No. 2:06-cv-1268 (D. Nev. Oct. 11, 2006), D.E. 4; see Abby Goodnough, *Judge Voids Measure to Bar News Exit Polls*, N.Y. Times, Oct. 26, 2006, at A15.

5. Interview with Hon. Philip M. Pro, May 17, 2012.

6. Transcript at 48–50, *ABC, Inc.*, No. 2:06-cv-1268 (D. Nev. Oct. 31, 2006, filed Mar. 12, 2007), D.E. 37.

7. [Preliminary Injunction](#), *id.* (Nov. 1, 2006), D.E. 20, available at [2006 WL 3149365](#); *ABC, Inc.*, 550 F.3d at 787.

8. Memorandum, *filed as p.16 of Letters*, *ABC, Inc.*, No. 2:06-cv-1268 (D. Nev. Nov. 9, 2006), D.E. 21.

9. [Stipulation](#), *id.* (Nov. 20, 2006), D.E. 23.

10. [Permanent Injunction](#), *id.* (Nov. 22, 2006), D.E. 25.

11. [Order](#), *id.* (Jan. 19, 2007), D.E. 31.

12. *ABC, Inc.*, 550 F.3d 786.

13. [Order](#), *ABC, Inc.*, No. 2:06-cv-1268 (D. Nev. July 1, 2009), D.E. 56.