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DISTRICT COURT
CLARK COUNTY, NEVADA

THE ELECTION INTEGRITY
PROJECT OF NEVADA, a Nevada
LLC; SHARRON ANGLE, an individual,

Plaintiffs,

v.

THE STATE OF NEVADA, on
relation of BARBARA CEGAVSKE, in her
official capacity as Nevada Secretary of State,

Defendants,

and

INSTITUTE FOR A PROGRESSIVE NEVADA;
and PROGRESSIVE LEADERSHIP ALLIANCE
OF NEVADA,

Intervenor-Defendants.

CASE NO. A-20-820510-C

DEPT. NO. 26

HEARING DATE:
November 20, 2020

HEARING TIME:
1:30 pm

**ORDER DENYING PLAINTIFFS' EMERGENCY APPLICATION FOR A
PRELIMINARY INJUNCTION**

On November 16, 2020, Plaintiffs the Election Integrity Project of Nevada, a Nevada limited-liability company, and Sharron Angle, an individual, by and through their counsel, Joel F. Hansen Esq., filed an application for an emergency permanent injunction (Application or App.). Plaintiffs challenge the constitutionality of Assembly Bill No. 4 of the 32nd Special Session (2020) of the Nevada Legislature (AB 4). *See* Act of August 3, 2020, ch. 3, 2020 Nev. Stat. 18, §§ 1–88. Among other things, AB 4 adopted a vote-

1 by-mail election process that was used for the 2020 general election. Plaintiffs requested
2 an order enjoining the Nevada Secretary of State from certifying the results of the general
3 election, enjoining the presidential electors from casting their votes for president, and
4 preventing any Nevada candidate from taking office. Plaintiffs also requested that the
5 Court order a new election under the law as it existed prior to AB 4's enactment.

6 On November 19, 2020, oppositions to Plaintiffs' Application were filed by
7 Defendants State of Nevada, on relation of Barbara Cegavske, in her official capacity as
8 Nevada Secretary of State; Intervenor-Defendants Institute for a Progressive Nevada and
9 Progressive Leadership Alliance of Nevada; and Proposed-Intervenor-Defendants DNC
10 Services Corporation/Democratic National Committee, and Nevada State Democratic
11 Party. On November 20, 2020, Plaintiffs filed a reply and moved to amend their
12 Application to request a preliminary injunction rather than a permanent injunction.

13 The Court held a hearing on Plaintiffs' emergency application on November 20,
14 2020. The hearing was conducted by videoconference. Joel F. Hansen, Esq., argued on
15 behalf of Plaintiffs. Deputy Solicitor General Craig A. Newby, Esq. argued on behalf of
16 Defendants. Abha Khanna, Esq. with the law firm Perkins Coie, LLP, argued on behalf
17 of Intervenor-Defendants. Felicia Ellsworth, of the law firm Wilmer Cutler Pickering
18 Hale and Dorr LLP, argued on behalf of Proposed-Intervenor-Defendants. The purpose
19 of the hearing was to address the merits of Plaintiffs' request for an emergency
20 permanent injunction. At the hearing, the Court confirmed with the parties that there was
21 no objection to treating Plaintiffs' request as one for a preliminary injunction. The Court
22 also addressed Proposed-Intervenor-Defendants' motion to intervene, and no party
23 objected to intervention. The Court further confirmed that no party objected to Ms.
24 Ellsworth's appearance prior to her filing of a motion to appear *pro hac vice*.

25 Upon review of the papers and pleadings on file herein, the arguments of counsel,
26 and good cause appearing, Plaintiffs' motion to amend their Application to request a
27 preliminary injunction is GRANTED; and Plaintiffs' Application is DENIED.

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FINDINGS OF FACT

1. Plaintiffs filed their complaint on September 1, 2020. Plaintiffs requested an order enjoining the mailing of ballots in advance of the November 3, 2020 general election. Plaintiffs’ primary argument was that AB 4 is unconstitutional because it opens Nevada’s election system to voter fraud and that voter fraud would have the effect of diluting votes of honest and legally authorized voters lawfully cast by Nevada voters.

2. Plaintiff Sharron Angle is a long-time Nevada resident, a Nevada registered voter, a former Nevada legislator, a former Republican Party nominee and candidate for U.S. Senate, and the head of Plaintiff the Election Integrity Project of Nevada, a non-profit organization which advocates for measures to protect the integrity of Nevada’s elections.

3. On September 3, 2020, Plaintiffs filed an application for an emergency preliminary injunction requesting an order enjoining the implementation of AB 4. The Court held a hearing on Plaintiffs’ initial application on September 17, 2020, and issued an order denying the application on September 29, 2020, but finding that Plaintiffs had standing to bring their suit.

4. Plaintiffs challenged the denial by filing an emergency petition for a writ of mandamus or prohibition with the Nevada Supreme Court. The Nevada Supreme Court denied Plaintiffs’ writ relief request by order dated October 7, 2020. *Election Integrity Project of Nevada, LLC v. Eighth Judicial Dist. Ct.*, No. 81847, 2020 WL 5951543 (Nev. Oct. 7, 2020) (unpublished disposition).

5. The 2020 general election was held on November 3, 2020. Mail-in ballots were sent to Nevada voters beforehand pursuant to AB 4. Votes were cast in the 2020 general election in Nevada via mail-in ballots as well as in-person early and day-of voting.

6. On November 16, 2020, Plaintiffs filed their Application. Together with their reply brief, Plaintiffs argue that AB 4 is unconstitutional under Article 4, Section 21 of the Nevada Constitution because it resulted in voter fraud, thereby impermissibly diluting

1 the lawful votes of Nevada residents. Plaintiffs acknowledge that the equal protection
2 guarantees of the Nevada Constitution are coextensive with the guarantees of the Equal
3 Protection Clause of the Fourteenth Amendment. Plaintiffs contend that if the Court
4 finds AB 4 is unconstitutional, the results of the 2020 general election are void and a new
5 election must be held.

6 7. In support of their argument of voter fraud stemming from AB 4, Plaintiffs rely
7 principally on declarations they contend establish that votes were cast unlawfully. In the
8 November 11, 2020 declaration of Ellen Swensen, Ms. Swensen describes an analysis she
9 conducted based on a comparison of voter registration rolls from Nevada and California.
10 Ms. Swensen contends that that she potentially identified 1,411 individuals who
11 registered in California after having registered in Nevada. Plaintiffs assert that these
12 1,411 individuals cast votes in Nevada in the 2020 general election but should not have
13 been able to based on their subsequent California registrations. Plaintiffs did not submit
14 a copy of the list of 1,411 individuals with their filings.

15 8. In the November 16, 2020 declaration of Plaintiff Sharron Angle, Ms. Angle
16 represents that she is coordinating with a team of canvassers to conduct an ongoing
17 investigation of 8,027 voters who Plaintiffs contend should have been listed as inactive
18 on the voter rolls. The canvassers prepared declarations of their findings based on field
19 investigations that included going to the addresses listed in these voters' registrations and
20 reporting what witnesses said about the voters.

21 9. In the November 20, 2020 declaration of Ms. Swenson, Ms. Swenson represents
22 that she worked on the initial list of voters who purportedly should have been listed as
23 inactive, and she summarizes her conclusions about potential improper votes based on
24 canvasser declarations she has reviewed. Ms. Swenson opines that she has identified 127
25 unlawful votes. Plaintiffs did not submit the 127 declarations purportedly supporting this
26 analysis with their filings.

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1 10. To the extent any finding of fact is more appropriately characterized as a
2 conclusion of law, it is incorporated as such.

3 4 **CONCLUSIONS OF LAW**

5 **A. Preliminary Injunction Standard of Review**

6 A preliminary injunction is extraordinary relief to which no party is entitled as a
7 matter of right. *Dep't of Conservation & Nat. Res., Div. of Water Res. v. Foley*, 121 Nev.
8 77, 80, 109 P.3d 760, 762 (2005). To obtain a preliminary injunction, Plaintiffs must
9 show “(1) a likelihood of success on the merits; and (2) a reasonable probability that the
10 non-moving party’s conduct, if allowed to continue, will cause irreparable harm for
11 which compensatory damage is an adequate remedy.” *Univ. & Cmty. Coll. Sys v.*
12 *Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). “In
13 considering preliminary injunctions, courts also weigh the potential hardships to the
14 relative parties and others, and the public interest.” *Id.* Plaintiffs have failed to meet
15 their burden to be entitled to the truly extraordinary relief—the overturning of the Nevada
16 2020 general election—that they seek.

17 18 **B. Likelihood of Success on the Merits**

19 1. Plaintiffs have little likelihood of success on the merits of their equal protection
20 vote dilution claim.

21 2. Plaintiffs likely lack standing. In connection with Plaintiffs’ September 2020
22 request for a preliminary injunction, the Court found that Plaintiffs had standing. The
23 Nevada Supreme Court, however, declined to reach the issue on appeal. *Election*
24 *Integrity Project of Nev., LLC*, 2020 WL 5951543, at *2. Given the change in posture
25 since Plaintiffs’ September 2020 request, the Court concludes that it is appropriate to
26 revisit the question of Plaintiffs’ standing. This Court concludes that the Plaintiffs’ lack
27 standing because Plaintiffs do not identify any election result that would have changed as

1 a consequence of the alleged illegal votes which they identified. For example, President-
2 Elect Joe Biden won the presidential election in Nevada by more than 33,000 votes, but
3 Plaintiffs have alleged substantially fewer potentially improper votes. And many
4 candidates ran unopposed. Plaintiffs fail to explain how overturning any election result
5 would remedy their supposed vote dilution injury when they do not suggest that absent
6 the vote dilution they allege, the results would have been different.

7 3. Plaintiffs have failed to identify any case in which their vote dilution based on
8 mail-in ballots theory has succeeded. Mail-in ballots are used throughout the United
9 States, and Nevadans wishing to vote during a pandemic were entitled to choose the best
10 option for them to promote safety. With the variety of methods available for voting,
11 Nevadans made their individual choices on how to vote, and voted in record numbers on
12 Election Day. Given these circumstances, there is a low likelihood that Plaintiffs can
13 succeed on their equal protection claim.

14 4. There was no reasonable ground to believe that the Plaintiffs would succeed on
15 the merits.

16
17 **C. Irreparable Harm**

18 Plaintiffs contend that they have suffered irreparable harm due to improper
19 voting. Even if this were true, Plaintiffs have not exhausted the appropriate remedy for
20 this harm: providing all evidence they gather to the Secretary of State and the Attorney
21 General, who can pursue civil and (if warranted) criminal actions against any fraudsters.

22
23 **D. Balance of the Hardships and the Public Interest**

24 Plaintiffs have identified several thousand *potentially* improper votes. This is out
25 of a total of over 1.4 million votes cast in Nevada. Rather than promote democracy, on
26 this record devoid of concrete evidence of fraud, Plaintiffs' requested relief would
27 undermine it instead. The harms to the state and the public's interest cannot be
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overstated. It is not in the interest of Nevadan voters to have their votes tossed out. If this election is declared void, unless another election is held before the end of the year, no candidate will be able to assume office come January 1, 2021.

The harms of declaring the election void, with no concrete plan for how to bridge the gap come January 1, 2021, far outweigh any purported harm to Plaintiffs, who can have their assertions of fraud investigated civilly and, if warranted, prosecuted criminally.

To the extent any conclusion of law is more appropriately characterized as a finding of fact, it is incorporated as such above.

NOW THEREFORE, the Court **GRANTS** Plaintiffs' motion to amend their Application to request a preliminary injunction; and **DENIES** Plaintiffs' Application for a preliminary injunction.

Dated this 11th day of December, 2020



DISTRICT COURT JUDGE

9F9 8AB 62DF F320
Gloria Sturman
District Court Judge

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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 The Election Integrity Project of
Nevada LLC, Plaintiff(s)

CASE NO: A-20-820510-C

7 vs.

DEPT. NO. Department 26

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9 The State of Nevada on Relation
of Barbara Cegavske,
10 Defendant(s)

11
12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/11/2020

16	Bradley Schrager	bschrager@wrslawyers.com
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17 If indicated below, a copy of the above mentioned filings were also served by mail
18 via United States Postal Service, postage prepaid, to the parties listed below at their last
19 known addresses on 12/14/2020

20 Bradley Schrage Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
21 3556 E. Russell Rd.
22 Las Vegas, NV, 89120
23
24 Joel Hansen Hansen & Hansen, LLC
25 Attn: Joel Hansen, Esq
26 9030 W. Cheyenne Ave. #210
27 Las Vegas, NV, 89129
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LTJG Gregory Zunino Naval Legal Svc. Ofc. Detach.
NAS Lemoore, CA, 93246-5015