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*Attorneys for Proposed Intervenors Democratic
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**Pro hac vice to be submitted*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JILL STOKKE, CHRIS PRUDHOME,
MARCHANT FOR CONGRESS, RODIMER
FOR CONGRESS,

Plaintiffs,

v.

BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State; Clark
County Registrar of voters JOSEPH P.
GLORIA, in his official capacity,

Defendant,

Case No.: 2:20-cv-02046-APG-DJA

**MOTION TO INTERVENE AS
DEFENDANTS BY DNC AND
NEVADA STATE DEMOCRATIC
PARTY**

**EXPEDITED CONSIDERATION
REQUESTED**

For the fifth time since April, a conservative leaning entity or organ of the Republican Party has run to a Nevada state or federal court with entirely fabricated claims of voter fraud and vote dilution.¹ Each time, their claims have been unsuccessful. Indeed, *just four days ago*, in a nearly identical case, Judge Wilson from the District Court in Carson City found after an eight-hour evidentiary hearing that the same lawyers who filed this lawsuit had failed to offer evidence of “any fraudulent ballot being validated or any valid ballot invalidated” or any evidence of “debasement or dilution of a citizen’s vote” because of Clark County’s use of a signature match machine. Ex. B, Nov. 2, 2020 Order, *Kraus v. Cegavske*, No. 20-OC-00142-1B, Dept. 2, at 4, 13. Similarly, Judge Wilson found baseless Plaintiffs’ claims that public observation of the process was being in any way unlawfully impeded. *Id.* at 10-11. Now, with nearly all of the votes in the state having already been counted, a group of plaintiffs backed by President Trump’s campaign has filed a lawsuit requesting a remedy that would meaningfully slow Clark County’s ballot processing just as its votes could swing the presidential election.² The Democratic National Committee (“DNC”) and Nevada State Democratic Party (“NSDP,” together, “Proposed Intervenor”) plainly have a significantly protectable interest in this case.

For the first time in a general election, the vast majority of Nevadans cast their ballots by mail. This sea change in election administration, all done during a pandemic, has demanded

¹ *Donald J. Trump for President, Inc. v. Cegavske*, No. 220CV1445JCMVCF, 2020 WL 5626974, at *7 (D. Nev. Sept. 18, 2020) (dismissing lawsuit by Trump campaign challenging constitutionality of Assembly Bill 4 for lack of standing); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 935 (D. Nev. 2020) (denying preliminary injunction challenging Secretary Cegavske’s plan for the June primary brought by a conservative-leaning entities); Ex. C, Sep. 28, 2020 Order, *The Election Integrity Project of Nevada et. al v. State of Nevada et al.*, No. A-20-820510-C, Dept. 13 (denying preliminary injunction by conservative-leaning group challenging constitutionality of Assembly Bill 4).

² While the President’s campaign is not a party to this lawsuit, several individuals closely associated with the Trump campaign came to Nevada and held a press conference on the morning of November 5 announcing their intention to file these claims in federal court by day’s end. Kyle Wilcox & Matthew Seeman, *Trump Campaign alleges “illegal votes” in Nevada, provides no evidence*, NBC 3 News, Las Vegas, Nov. 5, 2020, <https://news3lv.com/news/local/trump-campaign-las-vegas-press-conference-nevada-election>.

significant adaptations from Nevada’s county elections officials, including in Clark County, home to nearly 75% of the state’s population. Two days after the election and after the canvass is well under way, two individual voters and two Republican congressional campaigns (“Plaintiffs”) filed this lawsuit challenging Clark County’s election procedures. Plaintiffs’ claims are too late, rife with procedural deficiencies, and meritless.

Proposed Intervenors meet the applicable requirements for intervention as of right and permissive intervention under Rule 24 of the Federal Rules of Civil Procedure. The motion to intervene is timely, submitted the morning after the complaint was filed. An unknown number of Democratic voters could be disenfranchised (and affiliated candidates harmed) if Plaintiffs are able to delay Nevada’s counting process and to challenge voters’ signatures based on no apparent knowledge or understanding of the applicable signature challenge standards. While Proposed Intervenors share with the current Defendants an interest in the smooth and orderly administration of the election, Proposed Intervenors—as active participants in the election contests—have interests that the current Defendants do not adequately represent. As required by Federal Rule of Civil Procedure 24(c), this Motion is accompanied by a Proposed Answer, which is attached hereto as Exhibit A.

Counsel for Proposed Intervenors contacted the counsel for Defendants to ascertain their position on this motion, and both Defendants assent to intervention. As of the time of this filing, Plaintiffs’ counsel has not provided their position to Proposed Intervenors’ intervention. Proposed Intervenors also respectfully request that this Court enter an expedited briefing schedule on this Motion, or, in the alternative, consider it at an expedited hearing held remotely.

ARGUMENT

I. Proposed Intervenors satisfy Rule 24(a)’s requirements for intervention as a matter of right.

Proposed Intervenors qualify for intervention as of right. Intervention as of right must be granted when (1) the motion to intervene is timely, (2) the Proposed Intervenors possess an “significantly protectable” interest in the subject matter of the action; (3) denial of the motion to

intervene would “impair or impede” the Proposed Intervenors’ ability to protect their interests, and (4) the proposed intervenor’s interests are not adequately represented by the existing parties to the lawsuit. *United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1148 (9th Cir. 2010) (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006)). “Rule 24 traditionally receives liberal construction in favor of applicants for intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003); *accord Venetian Casino Resort, LLC v. Enwave Las Vegas, LLC*, No. 2:19-CV-1197 JCM (DJA), 2020 WL 1539691, at *3 (D. Nev. Jan. 7, 2020) (noting intervention requirements “are broadly interpreted in favor of intervention”) (quoting *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006)); *see also W. Expl. LLC v. U.S. Dep’t of Interior*, No. 3:15-cv-00491-MMD-VPC, 2016 WL 355122, at *2 (D. Nev. Jan. 28, 2016) (noting Rule 24’s liberal construction and “focus[] on practical considerations rather than technical distinctions”). Proposed Intervenors satisfy each of the four requirements of Rule 24(a).

A. The motion is timely.

First, the motion is timely. This motion follows the morning after the Complaint was filed; Defendants have not yet made an appearance, and no substantive activity has taken place in the case. There has therefore been no delay, and no possible risk of prejudice to the other parties. *See League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997); *see also Nevada*, 2019 WL 718825, at *2 (granting motion to intervene filed several weeks after action commenced); *W. Expl.*, 2016 WL 355122, at *2 (granting motion to intervene filed nearly two months after action commenced).

B. Proposed Intervenors have a significant protectable interest in the outcome of the litigation.

Second, Proposed Intervenors have a significantly protectable interest in the outcome of this litigation. Proposed Intervenors are dedicated to supporting the election of Democratic candidates across Nevada. They seek to intervene as defendants in this matter to prevent Plaintiffs’ requested intrusion on the ballot processing procedures and to protect the rights of their members and affiliated candidates across Nevada. Specifically, Plaintiffs’ eleventh-hour

request to upend Clark County’s procedures for counting and verifying mail ballots carries with it the prospect of disenfranchising Proposed Intervenor’s members who have submitted ballots by mail. *See e.g., Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (agreeing with the unanimous view of the Seventh Circuit that the Indiana Democratic Party had standing to challenge a voter identification law that risked disenfranchising its members). And the threatened challenge to the verification of these ballots risks harming the electoral prospects of Democratic candidates up and down the ballot. *See Owen v. Mulligan*, 640 F.2d 1130, 1132 (holding that “the potential loss of an election” inflicts injury on political party).

C. Denial of the motion to intervene will impair Proposed Intervenor’s ability to protect their interests.

Third, disposition “of the action may as a practical matter impair or impede” Proposed Intervenor’s ability to protect their interests. Fed. R. Civ. P. 24(a)(2). Where, as here, a proposed intervenor has a protectable interest in the outcome of the litigation, courts generally have “little difficulty concluding” that their interests will be impaired. *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006); *see also Brody*, 957 F.2d at 1123 (noting that if the intervenor “can show that they possess a legal interest in this action, then it naturally follows that such an interest would be affected by this litigation”).

There can be no doubt that disposition of this matter has the potential to impair the Proposed Intervenor’s ability to protect their interests. Courts have routinely concluded that interference with a political party’s electoral prospects constitutes a direct injury that satisfies Article III standing, which goes beyond the requirement needed for intervention under Rule 24(a)(2) in this case. *See, e.g., Owen*, 640 F.2d at 1132 (holding that “the potential loss of an election” is sufficient injury to confer Article III standing). Indeed, Proposed Intervenor has intervened in several voting cases this cycle on this very theory, including twice in this very court. *See Donald J. Trump for President, Inc. v. Cegavske*, No. 220CV1445JCMVCF, 2020 WL 5229116, at *1 (D. Nev. Aug. 21, 2020) (granting intervention to DNC, DCCC, and NSDP in suit brought by President Trump’s campaign); *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-

WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention as of right to DNC, DCCC, and NSDP where “Plaintiffs’ success on their claims would disrupt the organizational intervenors’ efforts to promote the franchise and ensure the election of Democratic Party candidates”); *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (granting intervention of right to DCCC); *Republican Nat’l Comm. v. Newsom*, No. 2:20-cv-01055-MCE-CKD, slip op. at 5 (E.D. Cal. June 10, 2020), ECF No. 38 (same). There is no reason for the Court to depart from that precedent here. Accordingly, Proposed Intervenors satisfy the third requirements of Rule 24(a)(2).

D. Proposed Intervenors’ interests are not adequately represented by Defendants.

Fourth, Proposed Intervenors cannot rely on the parties in this case to adequately represent their interests. “Courts consider three factors when assessing whether a present party will adequately represent the interests of an applicant for intervention”:

(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor’s arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.

W. Expl., 2016 WL 355122, at *3 (quoting *Arakaki*, 324 F.3d at 1086). “[T]he requirement of inadequacy of representation is satisfied if the applicant shows that representation of its interests ‘may be’ inadequate,” and therefore “the burden of making this showing is minimal.” *Id.* (quoting *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983)).

Defendants’ interest is defined solely by their statutory duties to conduct elections. But the Proposed Intervenors’ interests are broader: they seek to ensure that as many of their affiliated voters can cast valid ballots as possible and have them counted without improper interference by Plaintiffs. Because their interests diverge, the Defendants—all election officials—cannot adequately represent the Proposed Intervenors’ interests. *See Issa*, 2020 WL 3074351, at *3 (“While Defendants’ arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the [intervenor is]

concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures.”). Courts have “often concluded that governmental entities do not adequately represent the interests of aspiring intervenors,” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *accord Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 899 (9th Cir. 2011); *Associated Gen. Contractors of Am. v. Cal. Dep’t of Transp.*, No. 09-01622, 2009 WL 5206722, at *2–3 (E.D. Cal. Dec. 23, 2009) (granting intervention where defendant state agency’s “main interest is ensuring safe public roads and highways” and agency “is not charged by law with advocating on behalf of minority business owners” as intervenors would), including specifically in cases regarding the right to vote, *see Paher*, 2020 WL 2042365, at *3 (granting intervention as of right where Proposed Intervenors “may present arguments about the need to safeguard Nevada[ns’] right to vote that are distinct from [state defendants’] arguments”).

Accordingly, Proposed Intervenors have satisfied the four requirements for intervention as of right under Rule 24(a)(2). *See Paher*, 2020 WL 2042365, at *3 (granting DNC, DCCC, and NSDP intervention as of right in challenge to Nevada’s June Primary Plan).

II. Alternatively, Proposed Intervenors satisfy Rule 24(b)’s requirements for permissive intervention.

Even if this Court were to find Proposed Intervenors ineligible for intervention as of right, they readily satisfy the requirements for permissive intervention under Rule 24(b), which provides the Court with broad discretion “to allow anyone to intervene who submits a timely motion and ‘has a claim or defense that shares with the main action a common question of law or fact.’” *Nevada*, 2019 WL 718825, at *2 (quoting Fed. R. Civ. P. 24(b)(1)(B)).³ “Because a court

³ Although permissive intervention also generally requires that “the court has an independent basis for jurisdiction,” that finding “is unnecessary where, as here, in a federal question case the proposed intervener raises no new claims.” *Nevada*, 2019 WL 718825, at *2 (quoting *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998)).

1 has discretion in deciding whether to permit intervention, it should consider whether intervention
2 will cause undue delay or prejudice to the original parties, whether the applicant's interests are
3 adequately represented by the existing parties, and whether judicial economy favors
4 intervention." *Id.* (citing *Venegas v. Skaggs*, 867 F.2d 527, 530–31 (9th Cir. 1989)).

5 For the reasons discussed in Part I *supra*, Proposed Intervenors' motion is timely, and
6 they cannot rely on the Defendants to adequately protect their interests. Proposed Intervenors
7 also have defenses to Plaintiffs' claims that share common questions of law and fact—for
8 example, whether Plaintiffs have stated valid claims for relief.

9 Significantly, intervention will result in neither prejudice nor undue delay. Proposed
10 Intervenors have an undeniable interest in a swift resolution of this action to ensure that Nevada
11 can continue its routine ballot verification and tabulation processes without undue interference.
12 Indeed, Proposed Intervenors contend that *this action itself* threatens to cause harmful delays that
13 could stymie Nevada's efforts to tabulate mail ballots. Given the legal and factual shortcomings
14 of Plaintiffs' claims, Proposed Intervenors are confident that their intervention in this case will
15 result in expeditious resolution of this litigation.

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CONCLUSION

For the reasons stated above, Proposed Intervenor respectfully request that the Court grant their motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit them to intervene under Rule 24(b).

DATED this 6th day of November, 2020.

**WOLF, RIFKIN, SHAPIRO,
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*Attorneys for DNC and Nevada State Democratic
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**Pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on this 6th of November, 2020 a true and correct copy of **MOTION TO INTERVENE AS DEFENDANTS BY DNC AND NEVADA STATE DEMOCRATIC PARTY** was served via the United States District Court's CM/ECF system on all parties or persons requiring notice.

By: /s/ Dannielle Fresquez

Dannielle Fresquez, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

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EXHIBIT A

[PROPOSED] ANSWER TO COMPLAINT

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT A

MARC E. ELIAS, ESQ. (D.C. Bar No. 442007)*
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Democratic Party and Democratic National Committee

*Pro hac vice to be submitted

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JILL STOKKE, an individual, CHRIS
PRUDHOME, MARCHANT FOR
CONGRESS, RODIMER FOR CONGRESS,
an individual,

Plaintiffs,

vs.

SECRETARY OF STATE BARBARA
CEGAVSKE, in her official capacity, and
CLARK COUNTY REGISTRAR OF
VOTERS JOSEPH P. GLORIA, in his official
capacity

Defendants,

Case No.: 2:20-cv-02046-APG-DJA

**[PROPOSED] ANSWER TO
COMPLAINT**

Proposed Intervenor Democratic National Committee and Nevada State Democratic Party, by and through their attorneys, submit the following Answer to Plaintiffs' Complaint. Proposed Intervenor respond to the allegations in the Complaint as follows:

JURISDICTION AND VENUE

1. Paragraph 1 contains mere characterizations, legal contentions, and conclusions to which no response is required.

2. Paragraph 2 contains mere characterizations, legal contentions, and conclusions to which no response is required.

PARTIES

3. Proposed Intervenor are without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 3.

4. Proposed Intervenor are without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 4.

5. Proposed Intervenor are without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 5.

6. Proposed Intervenor are without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 6.

7. Proposed Intervenor admit the allegations contained in Paragraph 7.

8. Proposed Intervenor admit the allegations contained in Paragraph 8.

FACTUAL ALLEGATIONS

9. Proposed Intervenor admit the allegations contained in Paragraph 9.

10. Paragraph 10 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

11. Proposed Intervenor deny the allegations in Paragraph 11.

12. Proposed Intervenor are without sufficient information or knowledge with which

1 to form a belief as to the truth or falsity of the allegations contained in Paragraph 12.

2 13. Proposed Intervenor is without sufficient information or knowledge with which
3 to form a belief as to the truth or falsity of the allegations contained in Paragraph 13.

4 14. Proposed Intervenor is without sufficient information or knowledge with which
5 to form a belief as to the truth or falsity of the allegations contained in Paragraph 14.

6 15. Proposed Intervenor deny the allegations in Paragraph 15.

7 16. Paragraph 16 contains mere characterizations, legal contentions, and conclusions
8 to which no response is required. To the extent a response is required, Proposed Intervenor deny
9 the allegations.

10 17. Paragraph 17 contains mere characterizations, legal contentions, and conclusions
11 to which no response is required.

12 18. Proposed Intervenor is without sufficient information or knowledge with which
13 to form a belief as to the truth or falsity of the allegations contained in Paragraph 18.

14 **Count I**

15 19. Proposed Intervenor incorporate by reference all of its responses to allegations in
16 the preceding and ensuing paragraphs as if fully set forth herein.

17 20. Paragraph 20 contains mere characterizations, legal contentions, and conclusions
18 to which no response is required.

19 21. Paragraph 21 contains mere characterizations, legal contentions, and conclusions
20 to which no response is required. To the extent a response is required, Proposed Intervenor deny
21 the allegations.

22 22. Paragraph 22 contains mere characterizations, legal contentions, and conclusions
23 to which no response is required. To the extent a response is required, Proposed Intervenor deny
24 the allegations.

25 23. Paragraph 23 contains mere characterizations, legal contentions, and conclusions
26 to which no response is required.

Count II

24. Proposed Intervenor incorporate by reference all of its allegations in the preceding and ensuing paragraphs as if fully set forth herein.

25. Paragraph 25 contains mere characterizations, legal contentions, and conclusions to which no response is required.

26. Paragraph 26 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

27. Paragraph 27 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

28. Paragraph 28 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

Count III

29. Proposed Intervenor incorporate by reference all of its allegations in the preceding and ensuing paragraphs as if fully set forth herein.

30. Paragraph 30 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

AFFIRMATIVE DEFENSES

Proposed Intervenor set forth their affirmative defenses without assuming the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiffs. Moreover, nothing stated here is intended or shall be construed as an admission that any particular issue or subject matter is relevant to the allegations in the complaint. Proposed Intervenor reserve the right to amend or supplement their affirmative defenses as additional facts concerning defenses become known.

As separate and distinct affirmative defenses, Proposed Intervenor alleges as follows:

Plaintiffs fail to state a claim on which relief can be granted.

Plaintiffs lack standing.

Plaintiffs claims are barred by collateral estoppel.

PRAYER FOR RELIEF

WHEREFORE, Proposed Intervenor respectfully requests that this Court:

A. Deny that Plaintiffs are entitled to any relief;

B. Dismiss the complaint in its entirety, with prejudice; and

C. Grant such other and further relief as the Court may deem just and proper.

DATED this 6th day of November, 2020.

**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

By: /s/ Bradley Schrager

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Attorneys for DNC and Nevada State Democratic
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**Pro hac vice applications forthcoming*

EXHIBIT B

Order Denying Emergency Petition

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EXHIBIT B

REC'D & FILED

2020 OCT 29 PH 5:44

AUDREY HOWLANDT

BY  DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

-oOo-

**FRED KRAUS, an individual registered
to vote in Clark County, Nevada,
DONALD J. TRUMP FOR PRESIDENT,
INC., and the NEVADA REPUBLICAN
PARTY,**

Petitioners,

vs.

**BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,
JOSEPH P. GLORIA, in his official
capacity as Registrar of Voters for Clark
County, Nevada,**

Respondents.

CASE NO. 20 OC ⁰⁰¹⁴² ~~00004~~ 1B

DEPT. 2

**ORDER DENING EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR
IN THE ALTERNATIVE, WRIT OF PROHIBITION**

PROCEDURAL BACKGROUND

Before the Court is the Emergency Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition. The Court held an evidentiary hearing on October 28, 2020.

ISSUES

Do Petitioners have standing to bring these claims?

Has Registrar Joseph P. Gloria failed to meet his statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots?

Has Registrar Gloria unlawfully precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled?

Has Registrar Gloria exercised discretion arbitrarily or through mere caprice?

Has Registrar Gloria acted without or in excess of authorized powers?

Has Secretary of State Barbara Cegavske failed to meet any statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots?

Has Secretary of State Barbara Cegavske unlawfully precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled?

Has Secretary Cegavske exercised discretion arbitrarily or through mere caprice?

Has Secretary Cegavske acted without or in excess of authorized powers?

Has Secretary of State Cegavske unlawfully precluded Petitioners the use and/or enjoyment of a right to which Petitioners are entitled?

Have Petitioners proved they are entitled to a writ of mandamus on their equal protection claims?

FACTS

It is important to note the factual context in which this case arose. All of the states in the United States are attempting to hold elections under the health, political, social, and economic consequences of the COVID-19 pandemic. Nevada's state and county election officials had relatively little time to assess, plan, modify, and implement procedures that are quite different from the established election procedures in an effort

1 to provide safe, open elections that would not result in long waiting lines. The
2 modification of procedures includes fewer polling places, a very large increase in mail-in
3 voting, and long lines as a result of social distancing.

4 A second important context is that this lawsuit was filed October 23, 2020—11
5 days before the general election.

6 Every Nevada county is required to submit to the Secretary of State, by April 15,
7 2020, the county's plan for accommodation of members of the general public who
8 observe the processing of ballots. NRS 293B.354(1). Registrar Gloria did not submit a
9 plan by April 15, 2020.

10 Registrar Gloria submitted a plan to the Secretary of State on October 20, 2020.
11 A copy of the plan is attached as Exhibit 1.

12 Historically, the Secretary of State has not sent letters or other notification to the
13 counties approving the counties' plans.

14 The Secretary of State's office reviewed Registrar Gloria's plan, concluded it
15 complied with the law, and Secretary Cegavske issued a letter to Registrar Gloria on
16 October 22, 2020. The letter is attached as Exhibit 2. The Secretary did not write that
17 Registrar Gloria's plan was "approved," but it is clear from the letter that the plan was
18 approved with a suggestion to that the Registrar consider providing additional seating in
19 public viewing areas for observers to view the signature verification process to the extent
20 feasible while ensuring that no personally identifiable information is observable by the
21 public.

22 A copy of all 17 county plans were admitted as exhibits. Clark County's plan is not
23 substantially different from the plan of any of the other 16 counties, and none of the
24 plans is substantially different from the plans of previous years.

25 Clark County uses an electronic ballot sorting system, Agilis. No other Nevada
26 county uses Agilis. Some major metropolitan areas including Cook County, Illinois, Salt
27

1 Lake City, Utah, and Houston, Texas use Agilis. Some Nevada counties use other brands
2 of ballot sorting systems.

3 Registrar Gloria decided to purchase Agilis because of the pandemic and the need
4 to more efficiently process ballot signatures.

5 One of Petitioners' attorneys questioned Registrar Gloria about Agilis in earlier
6 case, Corona v. Cegavske, but never asked Registrar Gloria to stop using Agilis.

7 Clark County election staff tested Agilis by manually matching signatures. Clark
8 County election staff receives yearly training on signature matching from the Federal
9 Bureau of Investigation. The last training was in August of this year.

10 For this general election Clark County is using the same they used for the June
11 primary election. No evidence was presented that the setting used by Clark County
12 causes or has resulted in any fraudulent ballot being validated or any valid ballot
13 invalidated.

14 No evidence was presented of any Agilis errors or inaccuracies. No evidence was
15 presented that there is any indication of any error in Clark County's Agilis signature
16 match rate.

17 Registrar Gloria opined that if Clark County could not continue using Agilis the
18 county could not meet the canvass deadline which is November 15, 2020. The Court
19 finds that if Clark County is not allowed to continue using Agilis the county will not meet
20 the canvass deadline.

21 When the envelope containing mail-in ballots are opened the ballot and envelope
22 are separated and not kept in sequential order. Because they are not kept in sequential
23 order it would be difficult to identify a voter by matching a ballot with its envelope.

24 This is the first election in Registrar Gloria's 28 years of election experience in
25 Clark County that there are large numbers of persons wanting to observe the ballot
26 process.

1 Persons that observe the ballot process sign an acknowledgment and a memo
2 containing instructions to the observer. A copy of an acknowledgment and memo are
3 attached as Exhibit 3.

4 People hired by the Registrar to manage the people wanting to observe the ballot
5 process are called ambassadors. The observer acknowledgment states observers are
6 prohibited from talking to staff. The memo explains the role of ambassadors and invites
7 observers to inform their ambassador they have a question for election officials or the
8 observer may pose a question directly to an election official.

9 Registrar Gloria is not aware of any observer complaints.

10 Several witnesses supporting Petitioners and called by Petitioners testified: they
11 saw ballots that had been removed from the envelope left alone; runners handle ballots
12 in different ways, including taking the ballots into an office, taking ballots into "the
13 vault" and/or otherwise failing to follow procedure, but no procedure was identified;
14 inability to see some tables from the observation area; inability to see into some rooms;
15 inability to see all election staff monitors; inability to see names on monitors; saw a
16 signatures she thought did not match but admitted she had no signature comparison
17 training; and/or trouble getting to where they were supposed to go to observe and
18 trouble being admitted to act as observer at the scheduled time.

19 No evidence was presented that any party or witness wanted to challenge a vote
20 or voter, or had his or her vote challenged.

21 No evidence was presented that there was an error in matching a ballot signature,
22 that any election staff did anything that adversely affected a valid ballot or failed to take
23 appropriate action on an invalid ballot.

24 No evidence was presented that any election staff were biased or prejudiced for or
25 against any party or candidate.

1 One Petitioner witness did not raise issues regarding things she observed with an
2 ambassador but instead went to the Trump Campaign. No issue was ever raised as a
3 result of her observations or report to the Trump Campaign.

4 Washoe County is using cameras to photograph or videotape the ballot process.
5 No Nevada county hand-counts ballots.
6

7 LEGAL PRINCIPLES

8 9 Standing

10 Nevada law requires an actual justiciable controversy as a predicate to judicial
11 relief. *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). For a controversy to
12 exist the petitioner must have suffered a personal injury and not merely a general
13 interest that is common to all members of the public. *Schwarz v. Lopez*, 132 Nev. 732,
14 743, 382 P.3d 886, 894 (2016).
15

16 Mandamus and Prohibition

17 A court may issue a writ of mandamus “to compel the performance of an act
18 which the law especially enjoins as a duty resulting from an office . . . ; or to compel the
19 admission of a party to the use and enjoyment of a right or office to which the party is
20 entitled and from which the party is unlawfully precluded by such . . . person.” NRS
21 34.160. A court may issue a writ of mandamus “when the respondent has a clear,
22 present legal duty to act.” *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603, 637
23 P.2d 534 (1981). The flip side of that proposition is that a court cannot mandate a
24 person take action if the person has no clear, present legal duty to act. Generally,
25 mandamus will lie to enforce ministerial acts or duties and to require the exercise of
26 discretion, but it will not serve to control the discretion.” *Gragson v. Toco*, 90 Nev. 131,
27

133 (1974). There is an exception to the general rule: when discretion “is exercised arbitrarily or through mere caprice.” *Id.*

“Petitioners carry the burden of demonstrating that extraordinary relief is warranted.” *Pan v. Dist. Ct.*, 120 Nev. 222, 228 (2004).

The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal . . . or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal . . . or person. NRS 34.320.

A writ of prohibition “may be issued . . . to a person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.330.

Voting Statutes

NRS 293B.353 provides in relevant part:

1. The county . . . shall allow members of the general public to observe the counting of the ballots at the central counting place if those members do not interfere with the counting of the ballots.

2. The county . . . may photograph or record or cause to be photographed or recorded on audiotape or any other means of sound or video reproduction the counting of the ballots at the central counting place.

3. A registered voter may submit a written request to the county . . . clerk for any photograph or recording of the counting of the ballots prepared pursuant to subsection 2. The county . . . clerk shall, upon receipt of the request, provide the photograph or recording to the registered voter at no charge.

NRS 293B.354 provides in relevant part:

1. The county clerk shall, not later than April 15 of each year in which a general election is held, submit to the Secretary of State for approval a written plan for the accommodation of members of the general public who observe the delivery, counting, handling and processing of ballots at a polling place, receiving center or central counting place.

...

3. Each plan must include:

- (a) The location of the central counting place and of each polling place and receiving center;
- (b) A procedure for the establishment of areas within each polling place and receiving center and the central counting place from which members of the general public may observe the activities set forth in subsections 1 and 2;
- (c) The requirements concerning the conduct of the members of the general public who observe the activities set forth in subsections 1 and 2; and
- (d) Any other provisions relating to the accommodation of members of the general public who observe the activities set forth in subsections 1 and 2 which the county . . . considers appropriate.

AB 4 section 22 provides in relevant part:

1. For any affected election, the county . . . clerk, shall establish procedures for the processing and counting of mail ballots.

2. The procedures established pursuant to subsection 1:

- (a) May authorize mail ballots to be processed and counted by electronic means; and
- (b) Must not conflict with the provisions of sections 2 to 27, inclusive, of this act.

AB 4 section 23 provides in relevant part:

1. . . . for any affected election, when a mail ballot is returned by or on behalf of a voter to the county . . . clerk . . . and a record of its return is made in the mail ballot record for the election, the clerk or an employee in the office of the clerk shall check the signature used for the mail ballot in accordance with the following procedure:

- a. The clerk or employee shall check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk.

AB 4 section 25 provides in relevant part:

1. The counting procedures must be public.

ANALYSIS

Petitioners failed to prove they have standing to bring their Agilis, observation, ballot handling or secrecy claims.

As set forth above for a justiciable controversy to exist the petitioner must have suffered a personal injury and not merely a general interest that is common to all members of the public. Petitioners provided no evidence of any injury, direct or indirect, to themselves or any other person or organization. The evidence produced by Petitioners shows concern over certain things these observers observed. There is no evidence that any vote that should lawfully be counted has or will not be counted. There is no evidence that any vote that should lawfully not be counted has been or will be counted. There is no evidence that any election worker did anything outside of the law, policy, or procedures. Petitioners do not have standing to maintain their mandamus claims.

Likewise, Petitioners provided no evidence of a personal injury and not merely a general interest that is common to all members of the public regarding the differences between the in-person and mail-in procedures. Petitioners provided no evidence of any injury, direct or indirect, to themselves or any other person or organization as a result of the different procedures. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting in person and voting by mailing in the ballot are different and so the procedures differ. There is no evidence that anything the State or Clark County have done or not done creates two different classes of voters. There is no evidence that anything the State or Clark County has done values one voter's vote over another's.

1 There is no evidence of any debasement or dilution of any citizen's vote. Petitioners do
2 not have standing to bring their equal protection claims.

3
4 **Petitioners failed to prove Registrar Gloria failed to meet his**
5 **statutory duty under NRS 293B.353(1) to allow members of the general**
6 **public to observe the counting of ballots?**

7
8 Petitioners argued they have a right to observers having meaningful observation
9 under NRS 293B.353(1) and AB 4 sec. 25. NRS 293B.353(1) provides in relevant part,
10 "[t]he county . . . shall allow members of the general public to observe the counting of
11 the ballots" AB 4 sec. 25 provides in relevant part "[t]he counting procedure must
12 be public." The statutes do not use the modifier "meaningful."

13 The Nevada Legislature codified the right of the public to observe the ballot
14 counting procedure in NRS 293B.353 and 293B.354, and AB 4 section 25(1). NRS
15 293B.354(1) requires each county to annually submit a plan to the Secretary of State.
16 NRS 293B. 354(3) states the requirements of the plan. The statutory requirements of
17 the plan are very general. The legislature left to the election professionals, the Secretary
18 of State and the county elections officials, wide discretion in establishing the specifics of
19 the plan. Petitioners failed to prove either Secretary Cegavske or Registrar Gloria
20 exercised their discretion arbitrarily or through mere caprice.

21
22 The fact that Registrar failed to timely submit a plan was remedied by submitting
23 the plan late and the Secretary of State approving the plan.

24 Petitioners seem to request unlimited access to all areas of the ballot counting
25 area and observation of all information involved in the ballot counting process so they
26

1 can verify the validity of the ballot, creating in effect a second tier of ballot counters
2 and/or concurrent auditors of the ballot counting election workers. Petitioners failed to
3 cite any constitutional provision, statute, rule, or case that supports such a request. The
4 above-cited statutes created observers not counters, validators, or auditors. Allowing
5 such access creates a host of problems. Ballots and verification tools contain confidential
6 voter information that observers have not right to know. Creating a second tier of
7 counters, validators, or auditors would slow a process the Petitioners failed to prove is
8 flawed. The request if granted would result in an increase in the number of persons in
9 the ballot processing areas at a time when social distancing is so important because of
10 the COVID-19 pandemic.

11
12 Petitioners have failed to prove Registrar Gloria has interfered with any right they
13 or anyone else has as an observer.

14 Petitioners claim a right to have mail-in ballots and the envelopes the ballots are
15 mailed in to be kept in sequential order. Petitioners failed to cite Constitutional
16 provision, statute, rule, or case that creates a duty for Nevada registrars to keep ballots
17 and envelopes in sequential order. Because they failed to show a duty they cannot
18 prevail on a mandamus claim that requires proof a duty resulting from office. Because
19 there is no duty or right to sequential stacking the Court cannot mandate Registrar
20 Gloria to stack ballots and envelopes sequentially.

21
22 Because there is not right to sequential stacking the Court cannot mandate the use and
23 enjoyment of that "right."

24 Plaintiffs want the Court to mandate Registrar Gloria allow Petitioners to
25 photograph of videotape the ballot counting process. The legislature provided in NRS
26

1 293B.353(2) the procedure for photographing or videotaping the counting of ballots.

2 The county may photograph or videotape the counting and upon request provide a copy
3 of the photographs or videotapes.

4 Petitioners failed to cite any constitutional provision, statute, rule, or case that
5 gives the public the right to photograph or videotape ballot counting.

6 Petitioners failed to prove Secretary Cegavske or Registrar Gloria exercised her or
7 his discretion arbitrarily or through mere caprice in any manner. Therefore, the Court
8 cannot mandate Registrar Gloria to require sequential stacking of ballots and envelopes.
9

10 Petitioners requested the Court mandate Registrar Gloria provide additional
11 precautions to ensure the secrecy of ballots. Petitioners failed to prove that the secrecy
12 of any ballot was violated by anyone at any time. Petitioners failed to prove that the
13 procedures in place are inadequate to protect the secrecy of every ballot.

14 Petitioners also request the Court mandate Registrar Gloria stop using the Agilis
15 system. Petitioners failed to show any error or flaw in the Agilis results or any other
16 reason for such a mandate. Petitioners failed to show the use of Agilis caused or resulted
17 in any harm to any party, any voter, or any other person or organization. Petitioners
18 failed Registrar Gloria has a duty to stop using Agilis.
19

20 AB 4 passed by the legislature in August 2020 specifically authorized county
21 officials to process and count ballots by electronic means. AB 4, Sec. 22(2)(a).
22 Petitioners' argument that AB 4, Sec. 23(a) requires a clerk or employee check the
23 signature on a returned ballot means the check can only be done manually is meritless.
24 The ballot must certainly be checked but the statute does not prohibit the use of
25 electronic means to check the signature.
26

Equal Protection

There is no evidence that in-person voters are treated differently than mail-in voters. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting in person and voting by mailing in the ballot are different and so the procedures differ. Nothing the State or Clark County have done creates two different classes of voters. Nothing the State or Clark County has done values one voter's vote over another's. There is no evidence of debasement or dilution of a citizen's vote.

CONCLUSIONS OF LAW

Petitioners do not have standing to bring these claims.

Registrar Joseph P. Gloria has not failed to meet his statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots.

Registrar Gloria has not precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled.

Registrar Gloria has not exercised discretion arbitrarily or through mere caprice.

Registrar Gloria has not acted without or in excess of authorized powers.

Secretary of State Barbara Cegavske has not failed to meet any statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots.

Secretary of State Barbara Cegavske has not unlawfully precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled.

Secretary Cegavske has not exercised discretion arbitrarily or through mere caprice.

1 Secretary Cegavske has not acted without or in excess of authorized powers.

2 Secretary of State Cegavske has not precluded Petitioners the use and/or
3 enjoyment of a right to which Petitioners are entitled.

4 Petitioners failed to prove they are entitled to a writ of mandamus on any of their
5 claims.

6
7 **ORDER**

8 The Petition for Writ of Mandamus or in the Alternative for Writ of Prohibition is
9 denied.
10

11 October 29, 2020.

12
13 
14 _____
15 James E. Wilson, Jr.
16 District Judge
17
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25
26
27

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 2 day of November 2020, I served a copy of this document by placing a true copy in an envelope addressed to:

Brian R. Hardy, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
bhardy@maclaw.com

MaryAnn Miller
Office of the District Attorney
Civil Division
500 S. Grand Central Parkway
Las Vegas, NV 89106
Mary-Anne.Miller@clarkcountyda.com

Daniel Bravo, Esq.
3556 E. Russell Road
Second Floor
Las Vegas, NV 89120
dbravo@wrslawyers.com

David O'Mara, Esq.
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Reno, NV 89501
david@omaralaw.net

Bradley Schrager, Esq.
3556 E. Russell Road
Second Floor
Las Vegas, NV 89120
Bschrager@wrs.awyers.com

Gregory L. Zunino, Esq.
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701
Gzunino@ag.nv.gov

the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.


Billie Shadron
Judicial Assistant



Election Department

965 Trade Dr • Ste A • North Las Vegas NV 89030
Voter Registration (702) 455-8683 • Fax (702) 455-2793

Joseph Paul Gloria, Registrar of Voters
Lorena Portillo, Assistant Registrar of Voters

October 20, 2020

The Honorable Barbara K. Cegavske
Secretary of State
State of Nevada
101 N. Carson St., Suite 3
Carson City, Nevada 89701-4786

Attention: Wayne Thorley
Deputy Secretary of State for Elections

RE: Accommodation of Members of the General Public at Polling Places, Mail Ballot Processing, and at the Central Counting Place

Dear Secretary Cegavske:

In accordance with NRS 293B.354, I am forwarding to you the following guidelines which are provided to our polling place team leaders and our election staff to ensure we accommodate members of the general public who wish to observe activities within a polling place and/or at the central counting facilities.

Polling Places (Early Voting and Election Day)

Designated public viewing areas are established in each polling place, both early voting and Election Day vote centers, where individuals may quietly sit or stand and observe the activities within the polling place.

Observation guidelines:

- Observers may not wear or display political campaign items
- Observers may not photograph, or record by any other means, any activity at any early voting or Election Day polling place
- Use of cell phones is prohibited in the polling place
- Observers may not disrupt the voting process
- If observers have questions, they must direct them to the polling place team leader

Page 2

Secretary of State Barbara K. Cegavske

March 14, 2018

Mail Ballot Processing (Warehouse & Flamingo-Greystone Facility)

The general public is allowed, according to the NRS, to observe the counting of mail ballots. In addition, as a courtesy, members of the general public are also being allowed to observe our mail ballot processing procedures, which occur prior to tabulation.

Due to space limitations we are processing our mail ballots in two different facilities:

- 965 Trade Dr., North Las Vegas, NV 89030
 - AGILIS mail ballot processing
 - Signature audit team
 - Tabulation
 - Ballot duplication
- 2030 E. Flamingo Road, Las Vegas, NV 89119
 - Counting Board
 - Ballot duplication

Observation guidelines:

- Observers may not wear or display political campaign items
- Observers may not photograph, or record by any other means, any activity at any early voting or Election Day polling place
- Use of cell phones is prohibited in the polling place
- Observers may not disrupt the voting process
- If observers have questions, they must direct them to the polling place team leader

Election Night (Warehouse Tabulating)

In front of our tabulation area an area is provided for any observer who wishes to observe our counting activity. Reports are provided after each update to the general public and are also available on our website for review. The general public may access the website through our free county wi-fi access on their personal devices should they choose to do so.

The public viewing area allows the general public to view the tabulation room, where the processing of election night results may be observed through windows that provide full view of all counting activity. Observers are not allowed inside the room because of congestion and COVID restrictions.

The Registrar is available to answer questions, although it should be noted that very few

Page 3

Secretary of State Barbara K. Cegavske

March 14, 2018

individuals from the public have been at the Election Center Warehouse on election night since 2000. This will probably be different this year due to increased interest in observing our activities.

In accordance with NRS 293B.354, at link provided here is a link to the vote center polling places that will be used in the General Election on November 3, 2020 in Clark County. <https://cms8.revize.com/revize/clarknv/Election%20Department/VC-Web-20G.pdf?t=1602940110601&t=1602940110601>. An electronic copy is also attached to the e-mail.

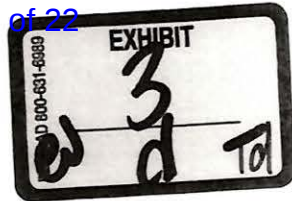
Sincerely,

A handwritten signature in black ink, appearing to read "Joseph P. Gloria". The signature is fluid and cursive, with a prominent loop at the end.

Joseph P. Gloria
Registrar of Voters

Enclosures

RETRIEVED FROM DEMOCRACYDOCKET.COM



OBSERVATION OF POLLING PLACE OR CLARK COUNTY ELECTION DEPARTMENT LOCATIONS ACKNOWLEDGEMENT

In accordance with NAC 293.245 (full text included in page 2):

I, VIRGINIA STEWART, by signing this form, hereby acknowledge that during the time I observe the conduct of voting or of any election related process, I am prohibited from the following activities:

1. Talking to voters or staff within the polling place or Election Department location;
2. Using any technical devices within the polling place or Election Department location;
3. Advocating for or against a candidate, political party or ballot question;
4. Arguing for or against or challenging any decisions of the county or city election personnel and;
5. Interfering with the conduct of voting or any election related process.

I further acknowledge that I may be removed from the polling place by the county or city clerk for violating any provisions of Title 24 of the Nevada Revised Statutes or any of the restrictions described herein.

Representing Group/Organization:

Republican Party

Contact Information:

6196568405

Signature:

[Handwritten Signature]

Print Name:

VIRGINIA STEWART

Date:

10/27/20

Polling Place or Election Department Location:

TRAD

October 21, 2020

Memo to Election Observers in the Greystone or County Election Department buildings:

Thank you for choosing to observe our voting process.

The department brought in additional staff to provide adequate supervision and security for observation areas. These staff, whom we call ambassadors, will accompany you while you are in our facilities.

Our ambassadors are not permanent Election Department employees and receive no training in our election processes, and so they are not able to accurately answer your questions about elections.

If you have any questions about the processes you are observing or other election-related questions, please inform the ambassador that you have a question for County Election Department officials. (The ambassador will create a list of questions from observers to relay to Election officials.) Or, you may choose to wait and pose their question to the Election official directly.

At this time, we plan to make Election Department officials available to observers around 9 a.m. and 3 p.m. daily to respond to any questions or concerns. These meetings will occur at both the Greystone and Election Department buildings

Thank you for our understanding.

Sincerely,

Joe Gloria

Clark County Registrar of Voters

BARBARA K. CEGAVSKE
Secretary of State

STATE OF NEVADA

SCOTT W. ANDERSON
Chief Deputy Secretary of State

MARK A. WLASCHIN
Deputy Secretary for Elections



**OFFICE OF THE
SECRETARY OF STATE**

October 22, 2020

Mr. Joe Gloria, Registrar of Voters
965 Trade Drive, Suite A
North Las Vegas, NV 89030-7802
jpg@ClarkCountyNV.gov
via Email

Re: Revision of Observation Plan

Mr. Gloria,

Over the last few days, a potential opportunity for improvement to your elections process observation plan have come to light that the Secretary of State believes to be worth considering. We have received Clark County's plan for accommodating election observers. In addition to the items detailed in your plan, we would request that you consider implementing the following:

Provide additional seating in the public viewing area for observing the signature verification process to the extent feasible while ensuring that no Personally Identifiable Information (PII) is observable to the public. This increase in seating should ensure meaningful observation.

If you have any questions regarding this letter and my determination in this matter, please contact me at (775) 684-5709.

Respectfully,

A handwritten signature in black ink that reads "Barbara K. Cegavske".

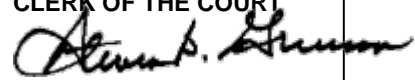
Barbara K. Cegavske
Secretary of State

EXHIBIT C

Order Denying Plaintiffs' Motion for Preliminary
Injunction

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT C

**ORDER**

AARON D. FORD

Attorney General

Gregory L. Zunino (Bar No. 4805)

Deputy Solicitor General

Office of the Attorney General

100 N. Carson Street

Carson City, NV 89701

(775) 684-1237 (phone)

(775) 684-8000 (fax)

gzunino@ag.nv.gov

*Attorneys for Defendant***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,

Proposed Intervenor-Defendants.

CASE NO. A-20-820510-C
DEPT. NO. XXXIIHEARING DATE: September 17, 2020
HEARING TIME: 11:00 a.m.**ORDER DENYING PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

On September 3, 2020, Plaintiffs the Election Integrity Project of Nevada, a Nevada limited-liability company, and Sharron Angle, an individual (Plaintiffs), by and through their counsel, Joel F. Hansen, Esq., filed an application for an emergency preliminary injunction, followed on September 4, 2020, by an application for an emergency temporary

1 restraining order. Plaintiffs requested an order enjoining the implementation of Assembly
2 Bill No. 4 of the 32nd Special Session (2020) of the Nevada Legislature. *See* Act of August
3 3, 2020, ch. 3, 2020 Nev. Stat. 18, §§ 1–88 (AB 4). AB 4 adopts vote-by-mail election
4 processes for the 2020 general election.

5 The Court held a hearing on September 17, 2020. The hearing was conducted by
6 videoconference. Joel F. Hansen, Esq., appeared for Plaintiffs. Gregory L. Zunino, Deputy
7 Solicitor General, appeared for Defendants State of Nevada, on relation of Barbara
8 Cegavske, in her official capacity as Nevada Secretary of State (Defendants). Abha
9 Khanna, Esq., with the law firm of Perkins Coie, LLP, and Bradley Schrager, Esq., and
10 Daniel Bravo, Esq., both with the law firm of Wolf, Rifkin, Shapiro, Schulman & Rabkin,
11 LLP, appeared for Proposed Intervenor-Defendants Institute for a Progressive Nevada and
12 Progressive Leadership Alliance of Nevada. The purpose of the hearing was to address
13 the merits of Plaintiffs' request for an emergency preliminary injunction in advance of the
14 2020 general election. The Court treated Plaintiffs' separate applications for injunctive
15 relief as a single motion for a preliminary injunction. The Court heard arguments from
16 Mr. Hansen, Mr. Zunino, and Ms. Khanna. The Court also addressed Proposed Intervenor-
17 Defendants' motion to intervene. The Court heard arguments from Mr. Hansen and Ms.
18 Khanna. Defendants did not object to Proposed Intervenor-Defendants' motion to
19 intervene. Lastly, the Court addressed Ms. Khanna's motion to appear *pro hac vice*. No
20 party objected to Ms. Khanna's motion.

21 Upon review of the papers and pleadings on file herein, the arguments of counsel,
22 and good cause appearing, Ms. Khanna's motion to appear *pro hac vice* is GRANTED;
23 Proposed Defendant-Intervenor's motion to intervene is GRANTED; and Plaintiffs' motion
24 for a preliminary injunction is DENIED.

25 FINDINGS OF FACT

26 1. Plaintiffs filed their complaint on September 1, 2020, less than one month
27 before the first ballots are scheduled to be mailed to voters in Douglas, Elko, Esmeralda,
28 Lander, and Lincoln Counties. Ballots are scheduled to be mailed to the voters in Nevada's

1 other counties during the first two weeks in October. Plaintiffs requested an order
2 enjoining the mailing of the ballots in advance of the November 3, 2020 general election.
3 Plaintiffs argue that AB 4 is unconstitutional for a variety of reasons, principally because
4 it makes Nevada's election system vulnerable to voter fraud.

5 2. Plaintiff Sharron Angle is a longtime Nevada resident, a Nevada registered
6 voter, a former Nevada legislator, a former Republican Party nominee and candidate for
7 the U.S. Senate, and the head of Plaintiff the Election Integrity Project of Nevada, a
8 nonprofit organization which advocates for measures to protect the integrity of Nevada's
9 elections.

10 3. Together, Plaintiffs challenge various provisions of AB 4 on the ground that
11 they make Nevada's election system vulnerable to voter fraud, thus diluting the value of
12 the "honest" votes lawfully cast by Nevada's qualified electors. Plaintiffs cite *Bush v. Gore*,
13 531 U.S. 98, 121 S. Ct. 525 (2000) (*per curiam*), and *Reynolds v. Sims*, 377 U.S. 533, 84 S.
14 Ct. 1362 (1964), as support for the proposition that the alleged injury of "vote dilution"
15 suffices to establish a person's standing to bring an equal protection challenge to a state's
16 election laws. Plaintiffs bring their challenge under Article 4, Section 21 of the Nevada
17 Constitution. Plaintiffs acknowledge that the equal protection guarantees of the Nevada
18 Constitution are coextensive with the guarantees of the Equal Protection Clause of the
19 Fourteenth Amendment. Accordingly, Plaintiffs cite federal case law in support of their
20 position that AB 4 violates the Nevada Constitution.

21 4. Plaintiffs represent that they are especially concerned about AB 4 because it
22 directs local election officials to mail ballots, unsolicited, to all of Nevada's active registered
23 voters. AB 4's directive to mail ballots to all active, registered voters is in addition to its
24 directive to establish a specified minimum number of physical polling places in each county.
25 Plaintiffs allege that this significantly increases the risk of voter fraud by distributing a
26 large number of ballots to persons whose identities cannot be properly verified. According
27 to Plaintiffs, vote-by-mail processes increase the probability that ballots will be intercepted
28 by fraudsters.

1 5. Plaintiffs further allege that Defendants' alleged failure to properly conduct
2 list maintenance exacerbates the problem. "List maintenance" refers to the process of
3 removing the names of ineligible voters from the voter rolls. This includes removing the
4 names of deceased persons, persons who have moved out of state, persons who have
5 duplicated their voter registration status by filing two or more registration forms, and
6 others who, for a variety of reasons, may be legally ineligible to vote or legally ineligible to
7 receive an unsolicited ballot in the mail.

8 6. Additionally, Plaintiffs allege that certain provisions of AB 4 contribute to the
9 disparate treatment of voters. These include provisions of AB 4 that direct local election
10 officials to establish a minimum number of physical polling locations within each of their
11 respective counties. *See* §§ 11 and 12. Plaintiffs argue that the minimum number of
12 polling locations in each county is not proportional, on a per-capita basis, to the minimum
13 number of polling locations in each of the other counties. According to Plaintiffs, this
14 results in the disparate treatment of voters from one county to the next. Moreover,
15 Plaintiffs argue that vote counting procedures and postmark presumptions improperly
16 extend traditional time frames for processing and counting votes, thus increasing the
17 probability that unlawful votes will be counted during these extended time frames. *See*
18 §§ 20, 22–27, 39, 48–49, 69 and 79.

19 7. Finally, Plaintiffs allege that AB 4: (1) repealed a criminal prohibition against
20 "ballot harvesting" and replaced it with new provisions that fail to adequately deter voter
21 intimidation, *see* § 21; (2) is not otherwise complemented by sufficiently robust anti-fraud
22 statutes, including signature verification requirements, *see* §§ 29, 39 and 69; and
23 (3) operates in tandem with in-person voting provisions that are similarly vulnerable to
24 voter fraud. These latter provisions of the statute authorize same-day voter registration,
25 *see* NRS 293.5772–5792, and provide for "vote centers" where voters can appear in person
26 outside of traditional precinct boundaries to cast their ballots, *see* NRS 293.3072–3075.

27 8. In support of their arguments, Plaintiffs rely upon anecdotes from other states
28 and public reports purporting to identify a correlation between increased instances of voter

1 fraud and mail-in voting. They also rely upon public data concerning the 2020 primary
2 election in Nevada. This data indicates that a significant percentage of mail-in ballots were
3 returned to Nevada's local election officials as undeliverable. The largest percentage of
4 returned ballots, roughly 17%, was attributable to Clark County, where election officials
5 mailed ballots to both active and inactive registered voters. As AB 4 pertains to the 2020
6 general election, the bill directs election officials to mail ballots to active registered voters
7 only. *See* § 15.

8 9. Finally, in terms of providing support for their allegations, Plaintiffs rely on
9 a self-conducted analysis of public records indicating that voter rolls contain names that
10 should not appear on the rolls because the named persons are deceased, "inactive" or
11 otherwise ineligible to vote or receive an unsolicited ballot in the mail. The Secretary of
12 State's office responds that when conducting list maintenance, it uses different records
13 than those evaluated by Plaintiffs, and makes a diligent effort to maintain accurate voter
14 registration lists.

15 10. In addition to their election-related allegations, Plaintiffs allege that AB 4
16 contains an "unfunded mandate" to Nevada's local governments. More specifically,
17 Plaintiffs allege that the Nevada Legislature did not appropriate sufficient funds to cover
18 the local costs of mailing ballots to voters. Plaintiffs allege that this violates NRS 354.599.

19 11. The Nevada Legislature adopted AB 4 on the basis of its finding that "[t]he
20 State of Nevada faces a substantial and continuing danger that the occurrence or existence
21 of an emergency or disaster in this State will adversely affect the public's health, safety
22 and welfare and the ability of elections officials to prepare for and conduct an affected
23 election safely and securely under such circumstances." § 2. Sections 2 to 27 of AB 4 apply
24 to any election occurring during a declared state of emergency or disaster, including the
25 2020 general election. *See* §§ 5 and 8. Section 10(1) of AB 4 states that the legislation
26 "must be liberally construed and broadly interpreted" to achieve its goal of enfranchising
27 voters during the COVID-19 pandemic. § 10(1).

12. Proposed Intervenor-Defendants filed their motion to intervene on September 10, 2020. Proposed-Intervenor Defendants argue that they are entitled to intervene as of right pursuant to NRCP 24(a), and alternatively, request that the Court grant permissive intervention pursuant to NRCP 24(b).

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

CONCLUSIONS OF LAW

A. Intervention Standard of Review

1. To intervene as of right under NRCP 24(a)(2), an applicant must meet four requirements:

(1) that it has a sufficient interest in the litigation's subject matter, (2) that it could suffer an impairment of its ability to protect that interest if it does not intervene, (3) that its interest is not adequately represented by existing parties, and (4) that its application is timely.

Am. Home Assurance Co. v. Eighth Jud. Dist. Ct. ex rel. County of Clark, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006). "In evaluating whether Rule 24(a)(2)'s requirements are met," courts "construe the Rule 'broadly in favor of proposed intervenors' . . . because '[a] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.'" *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (second alteration in original) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397–98 (9th Cir. 2002)).

2. Under NRCP 24(b), the Court may grant permissive intervention if the applicant "has a claim or defense that shares with the main action a common question of law or fact." NRCP 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." NRCP 24(b)(3); accord *Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180, 186–88, 368 P.3d 1198, 1202–03 (2016).

3. Because NRCP 24 and Federal Rule of Civil Procedure 24 are “equivalent,” *Lawler v. Ginocchio*, 94 Nev. 623, 626, 584 P.2d 667, 668 (1978), “[f]ederal cases interpreting [Rule 24] ‘are strong persuasive authority.’” *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

B. Intervention as of Right

4. Proposed Intervenor-Defendants (Intervenor-Defendants) satisfy NRCP 24(a)’s requirements for intervention as a matter of right. First and second, Intervenor-Defendants have significantly protectable interests in this lawsuit that might be impaired by Plaintiffs’ causes of action. “A ‘significantly protectable interest’ . . . is protected under the law and bears a relationship to the plaintiff’s claims.” *Am. Home Assurance Co.*, 122 Nev. at 1239, 147 P.3d at 1127 (quoting *Donaldson v. United States*, 400 U.S. 517, 531, 91 S. Ct. 534, 542 (1971)). In assessing whether such an interest is sufficiently “impair[ed] or impede[d],” NRCP 24(a)(2), courts “look[] to the ‘practical consequences’ of denying intervention.” *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (quoting *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967)). “Once an applicant has established a significantly protectable interest in an action, courts regularly find that disposition of the case may, as a practical matter, impair an applicant’s ability to protect that interest.” *Venetian Casino Resort, LLC v. Enwave Las Vegas, LLC*, No. 2:19-CV-1197 JCM (DJA), 2020 WL 1539691, at *3 (D. Nev. Jan. 7, 2020) (citing *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006)).

5. Plaintiffs’ challenge to AB 4 would impair Intervenor-Defendants’ legally protected interests. If Plaintiffs succeed in their suit, then the various provisions of AB 4 designed to help Nevadans vote—such as the use of third-party ballot collection, reforms to the election code’s signature matching rules, and proactive distribution of mail ballots during the November Election—will be struck down. The result would be potential disenfranchisement for those Nevada voters who are unable, due to the ongoing pandemic

1 and other issues, to safely cast ballots. This would implicate and impair Intervenor-
2 Defendants' interests in improving voter turnout in Nevada.

3 6. Intervenor-Defendants possess organizational interests that are threatened
4 by Plaintiffs' lawsuit. They are nonpartisan organizations dedicated to promoting civic
5 engagement and expanding the franchise. If AB 4 were enjoined, then Intervenor-
6 Defendants would divert resources from their other activities to remedy restricted voting
7 opportunities.

8 7. Third, Intervenor-Defendants have demonstrated that they cannot rely on the
9 parties in this case to adequately represent their interests. While the Secretary of State
10 has an undeniable interest in defending the actions of state government, Intervenor-
11 Defendants have a different focus: upholding the specific measures in place in AB 4, which
12 they advocated for by testifying in support of AB 4. AB 4 furthers Intervenor-Defendants
13 mission to ensure that every voter in Nevada has a meaningful opportunity to cast a ballot
14 and have that ballot counted, both in November and in future elections. In other words,
15 while the Secretary of State has an interest in defending Nevada's election laws generally,
16 Intervenor-Defendants have a specific interest in upholding *this* newly enacted law.

17 8. Fourth, the motion is timely. Plaintiffs filed their complaint on September 1,
18 2020. Intervenor-Defendants filed their motion to intervene less than two weeks later,
19 before any substantive activity in the case. There has therefore been no delay, and no
20 possible risk of prejudice to the other parties.

21 **C. Preliminary Injunction Standard of Review**

22 9. Plaintiffs request a preliminary junction against the implementation of AB 4.
23 Plaintiffs specifically request an injunction against AB 4's directive to local election officials
24 that they mail ballots to all active, registered voters in the state of Nevada. *See* § 15. To
25 obtain a preliminary injunction, Plaintiffs must show (1) a likelihood of success on the
26 merits and (2) a reasonable probability that the alleged conduct on the part of state and
27 county election officials, if allowed to continue, will cause irreparable harm for which
28 compensatory damage is an inadequate remedy. *Univ. & Cmty. Coll. Sys. v. Nevadans for*

1 *Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). “In considering preliminary
2 injunctions, courts also weigh the potential hardships to the relative parties and others,
3 and the public interest.” *Id.*, 100 P.3d at 187.

4 **D. Standing**

5 10. Defendants and Intervenor-Defendants argue that Plaintiffs do not have
6 standing to bring their claims. To establish jurisdiction, generally, a party must show a
7 personal injury and not merely a general interest that is common to all members of the
8 public to have standing to file suit. *See Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886,
9 894 (Nev. 2016). In the context of challenging the constitutionality of a statute, the Nevada
10 Supreme Court has held that a party must suffer harm fairly traced to the statute that
11 invalidating it would redress. *Elley v. Stephens*, 104 Nev. 413, 416–17, 760 P.2d 768, 770
12 (1988).

13 11. In *Schwartz*, however, the Nevada Supreme Court recognized a “public-
14 importance” exception to the injury requirement of Nevada’s standing doctrine. 132 Nev.
15 at 743, 382 P.3d at 894. “Under this public-importance exception, [the Court] may grant
16 standing to a Nevada citizen to raise constitutional challenges to legislative expenditures
17 or appropriations without a showing of a special or personal injury.” *Id.*, 382 P.3d at 894.
18 To qualify for the exception, a case must involve an issue of significant public importance,
19 it must involve a challenge to a legislative expenditure or appropriation as violating a
20 specific provision of the Nevada Constitution, and it must be commenced by a plaintiff who
21 is in an ideal position to bring the action and who is capable of fully advocating that position
22 in court. *Id.*, 382 P.3d at 894–95.

23 12. The Court finds that Plaintiffs satisfy the first and the third parts of the three-
24 part inquiry stated above. The topics of election integrity and voting rights are vitally
25 important to the public, and Plaintiffs are qualified to represent the interests of voters who
26 are concerned about the integrity of Nevada’s election system. The second part of the
27 inquiry is also satisfied. AB 4 requires an expenditure of public funds in excess of
28 that which would ordinarily be required to conduct an election. Plaintiffs have challenged

1 AB 4 for that reason, among others. Therefore, the Court finds that Plaintiffs have
2 standing to bring their challenge pursuant to the public-importance exception.

3 **E. Speculative Injuries**

4 13. Defendants argue that Plaintiffs' claims are not ripe for review. Nevada
5 requires litigated matters to present an existing controversy, not merely the prospect of a
6 future problem, for them to be ripe for judicial determination. *Resnick v. Nev. Gaming*
7 *Comm'n*, 104 Nev. 60, 65–66, 752 P.2d 229, 232 (1988). To demonstrate ripeness, Plaintiffs
8 must demonstrate that “harm is likely to occur in the future because of a deprivation of a
9 constitutional right.” *Id.* at 66, 752 P.2d at 233.

10 14. In a pre-election challenge to election laws, the “harm alleged by the party
11 seeking review [must be] sufficiently concrete, rather than remote or hypothetical, to yield
12 a justiciable controversy.” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224,
13 1231 (2006). “Alleged harm that is speculative or hypothetical is insufficient: an existing
14 controversy must be present.” *Id.*, 131 P.3d at 1231. Though well taken, the concerns
15 raised by Plaintiffs here are insufficiently concrete to yield a justiciable controversy as
16 required by Nevada's ripeness doctrine. The Court agrees with Defendants that Plaintiffs
17 election-related claims are not ripe for review.

18 15. Defendants and Intervenor-Defendants argue that Plaintiffs have failed to
19 demonstrate that AB 4 will result in irreparable harm. For the same reasons that this case
20 is not ripe for review, Plaintiffs fail to demonstrate irreparable harm as a necessary
21 predicate for obtaining a preliminary injunction. Plaintiffs' unfounded speculations
22 regarding voter fraud fall short of the “substantial evidence” required to obtain injunctive
23 relief. *Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 507, 422 P.3d 1238, 1242
24 (2018). Although Plaintiffs argue that certain provisions of AB 4 will make Nevada's voting
25 system susceptible to illegitimate votes, Plaintiffs present no concrete evidence that such
26 events will occur. For example, Plaintiffs allege that Defendants' failure to properly
27 conduct list maintenance exacerbates the problem, but cite no authority or evidence to
28

support their ultimate conclusion that these alleged failures will lead to voter fraud.¹ It is not enough for Plaintiffs to simply identify problems with Defendants' list maintenance; Plaintiffs bear the burden of demonstrating that these alleged problems will indeed likely lead to voter fraud.

16. The Court also finds that existing criminal prohibitions against voter fraud, voter intimidation and related offenses, *see* NRS 293.700–800, provide an adequate deterrent to election-related crime. For these reasons, Defendants have not put forth sufficient evidence to demonstrate that AB 4 will result in irreparable harm.

F. Probability of Success on the Merits

17. Just as they must show irreparable harm as a condition of obtaining a preliminary injunction, Plaintiffs must show a reasonable probability of success on the merits. As a general proposition, Plaintiffs allege that AB 4 violates the equal protection guarantees of Article 4, Section 21 of the Nevada Constitution. Plaintiffs allege that AB 4 violates equal protection because it increases the risk of voter fraud, thus diluting honest votes. The Court finds that Plaintiffs' challenge is governed by a rational basis standard of review.

18. "Under the rational basis standard, legislation will be upheld so long as it is rationally related to a legitimate governmental interest." *Williams v. State*, 118 Nev. 536, 542, 50 P.3d 1116, 1120 (2002). Applying the rational basis standard here is consistent with the federal standard governing elections: "[W]hen a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S. Ct. 2059, 2063 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S. Ct. 1564, 1570 (1983)).

¹ In addition, the Secretary of State's office uses different records than those evaluated by Plaintiffs, calling into question the accuracy of Plaintiffs' findings.

19. Given the COVID-19 pandemic, the Nevada Legislature was faced with the daunting challenge of fully enfranchising voters while maintaining the integrity of the election process. Under current circumstances, AB 4 reflects a reasonable decision to adopt vote-by-mail processes as a means of enfranchising voters who might have justifiable health concerns if they vote at in-person polling locations. The full text of AB 4 reveals that Nevada's legislators acted reasonably and in good faith to strike an appropriate balance between election integrity concerns, public health concerns, and voter access concerns. This decision is particularly reasonable considering the record voter participation in the June 2020 primary election in Nevada, with 491,654 Nevadans participating—and 98.4 percent of those voters returning their ballots by mail.² At the same time, the Nevada Legislature kept in place the numerous fail-safes embedded in Nevada law to prevent and detect voter fraud and ensure the integrity of Nevada's elections. AB 4 largely incorporates and supplements the State's existing election code to safeguard the franchise in November and during future crises.

20. With respect to Plaintiffs' claims about specific provisions of AB 4, Sections 11 and 12 reasonably allocate polling locations based on each county's population. The Nevada Legislature had numerous plausible policy reasons to allocate polling places in AB 4 according to each county's total population—including long lines experienced in the State's most populous counties during the June Primary, and the fact that Nevada's same-day registration law means that polling locations serve all potential voters, not just those who are registered. See NRS 293.5842. Additionally, Sections 11 and 12 require only that a *minimum* number of physical polling locations be placed in each of Nevada's counties. Sections 11 and 12 do not preclude local election officials in rural or urban counties from

² 2020 Primary Election Turnout, Nev. Sec'y of State, <https://www.nvsos.gov/sos/home/showdocument?id=8686> (June 19, 2020). By comparison, the 2016 primary election—the last to be held in a presidential election year—saw 240,213 Nevadans participate, with just 10.5 percent of voters returning their ballots by mail. 2016 Primary Election Turnout: In Person Early Voting, Absent, and Mailing Precincts, Nev. Sec'y of State, <https://www.nvsos.gov/sos/home/showdocument?id=4310> (June 23, 2016).

1 establishing a greater number of physical polling places than the required minimums. Far
 2 from discriminating against the voters in any particular county, Sections 11 and 12 give
 3 local election officials the flexibility to adapt to local needs and conditions based upon
 4 historical trends and projected in-person turnout for the 2020 general election.³ Sections
 5 11 and 12 do not, as Plaintiffs contend, constitute “arbitrary and capricious action” on the
 6 part of the Legislature, *Reynolds*, 377 U.S. at 557, 84 S. Ct. at 1379 (quoting *Baker v. Carr*,
 7 369 U.S. 186, 226, 82 S. Ct. 691, 715 (1962)), or fail to meet the “rudimentary requirements
 8 of equal treatment and fundamental fairness.” *Bush*, 531 U.S. at 109, 121 S. Ct. at 532.
 9 Therefore, there is a rational basis for the provisions of Sections 11 and 12.

10 21. Likewise, there is a rational basis for Section 20(2) of AB 4. Section 20(2)
 11 establishes a presumption that a mailed ballot received within three days after the election
 12 was cast on or before the date of the election if the ballot envelope bears no postmark or an
 13 illegible postmark. Plaintiffs argue that Section 20(2) effectively pushes back the date of
 14 the election, as mandated by federal law, thus diluting timely cast votes with late-cast
 15 votes. The Court accepts Defendants’ representation that the U.S. Postal Service has
 16 adopted a policy of affixing postmarks to all election-related mail, including ballots, even
 17 though it generally does not affix postmarks to prepaid mail. This makes it highly unlikely
 18 that a late-cast ballot will be counted. For a late-cast ballot to be counted, the ballot would
 19 have to be mailed on November 4 or later, and arrive by November 6 without a legible
 20 postmark, or with no postmark at all. This is highly improbable. On the other hand, it is
 21 reasonably likely that a timely mailed ballot will arrive without a legible postmark during
 22 the window of time between November 4 and November 6. Section 20(2) ensures that such
 23 votes will be counted.

24
 25
 26 ³ In fact, several smaller rural counties have already announced their plans to open
 27 additional polling places for election day. Elko County, for example, intends to provide
 28 seven polling locations on election day, while Nye County will have at least five locations
 open. See *2020 General Election & Polling Locations*, Nev. Sec’y of State,
<https://www.nvsos.gov/sos/elections/election-day-information> (last visited Sept. 21, 2020).

22. Plaintiffs are also unlikely to succeed on their challenges to the other sections of AB 4, specifically, Sections 22 through 27, 39, 48 through 49, 69, and 79 through 80. As explained, Plaintiffs have failed to provide evidence of any injury resulting from these provisions of AB 4. NRS 33.010 (injunctive relief only available when the challenged action “would produce great or irreparable injury to the plaintiff”).

23. For these reasons, Plaintiffs are unlikely to prevail upon their merits of their challenge to AB 4.

G. Public Interest

24. Plaintiffs must also demonstrate that the public interest would be served if AB 4 were enjoined. “By definition, [t]he public interest . . . favors permitting as many qualified voters to vote as possible.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (alteration in original) (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012)). Nevada’s Legislature enacted AB 4 to ensure that all eligible Nevadans can “safely and securely” access the franchise during the COVID-19 pandemic. § 2(1). The Court accepts Defendants’ representation that the Secretary of State has already begun notifying Nevadans about how to vote in the November Election pursuant to the provisions of AB 4. Granting Plaintiffs’ request to upend AB 4 at this late date would negatively impact and disrupt the election process that is already under way and would disenfranchise voters who have relied on the notices of an all-mail election.

F. Unfunded Mandate

25. Policy choices and value determinations that are constitutionally committed to other branches are political questions outside the purview of judicial review. *N. Lake Tahoe Fire Prot. Dist. v. Washoe Cnty. Bd. of Cnty. Comm’rs*, 129 Nev. 682, 687, 310 P.3d 583, 587 (2013). Plaintiffs challenge AB 4 on the ground that it contains an unfunded mandate to local governments. The challenge seeks to alter the allocation of public funds, and ultimately the cost burdens, between state and local units of governments. The manner of allocating funds and cost burdens between state and local units of government is a legislative function, not a judicial function. Therefore, the Court finds that Plaintiffs’

claim concerning the alleged unfunded mandate of AB 4 is not justiciable. For the same reason, the Court finds that NRS 354.599 does not confer a private right of action upon Plaintiffs.

26. 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** the motion to appear *pro hac vice* filed by Abha Khanna, Esq.; **GRANTS** Intervenor-Defendants' motion to intervene; and **DENIES** Plaintiffs' motion for a preliminary injunction preventing the implementation of AB 4.

DATED this 28th day of September, 2020.


DISTRICT COURT JUDGE

ROB BARE HGL

Submitted by:

AARON D. FORD

Attorney General

By: /s/ Gregory L. Zunino

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Abha Khanna - *Pro hac vice granted*

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