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**IN THE FIRST JUDICIAL DISTRICT COURT
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JESSE LAW, an individual; MICHAEL
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 DURWARD JAMES HINDLE III, an
 individual; EILEEN RICE, an individual;
 SHAWN MEEHAN, an individual, as
 candidates for presidential electors on behalf of
Donald J. Trump.

Case No.: 20 OC 00163 1B

Dept.: 1

**DEFENDANTS' MOTION TO
 DISMISS STATEMENT OF CONTEST
 OF THE NOVEMBER 3, 2020
 PRESIDENTIAL ELECTION**

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Case No.: 20 OC 00163 1B

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**DEFENDANTS' MOTION TO
DISMISS STATEMENT OF CONTEST
OF THE NOVEMBER 3, 2020
PRESIDENTIAL ELECTION**

1 Contestants,

2 vs.

3 JUDITH WHITMER, an individual; SARAH
4 MAHLER, an individual; JOSEPH
5 THRONEBERRY, an individual; ARTEMISA
6 BLANCO, an individual; GABRIELLE
7 D'AYR, an individual; and YVANNA
8 CANCELA, an individual, as candidates for
9 presidential electors on behalf of Joseph R.
10 Biden, Jr.,

11 Defendants.

12 The people of Nevada have spoken. On November 3, 2020, more than 1.3 million
13 Nevadans cast their votes in races up and down the ballot. And once the ballots were counted,
14 President-elect Joe Biden prevailed by a decisive margin of 2.4 percent. Dissatisfied with this
15 result and unwilling to accept it, Contestants—elector candidates pledged to support President
16 Donald Trump—now attempt to sow doubts about the results of the election. Contestants seek
17 extraordinary and unprecedented relief: they ask this Court to either shift Nevada's six electoral
18 votes to President Donald Trump, who lost the State by more than 33,000 votes, or void the
19 election results altogether, thereby disenfranchising all 1.3 million Nevadans who sought to
20 make their voices heard in this election.

21 Contestants' vehicle for this improper and inequitable relief, Nevada's statute for election
22 contests, contains carefully delineated categories of challenges into which Contestants have
23 clumsily attempted to shoehorn their tall tales of fraud and misconduct. The gambit fails
24 completely. None of the purported irregularities identified in their statement is cognizable under
25 the statute, and they have not outlined their claims with even the minimum specificity needed to
26 allow Defendants to respond to their claims and defend President-elect Biden's victory.
27 Moreover, Contestants' inexcusable delay in challenging long-standing policies and procedures
28 for processing mail ballots has prejudiced not only Defendants, but voters and election officials
as well, all of whom relied on these procedures in preparing for, conducting, and participating in

1 this election. And both the allegations Contestants assert and the legal theories on which they
2 rely have already been addressed by Nevada courts—and roundly rejected. Clark County’s use of
3 the Agilis vote-processing machine is lawful; observers were granted sufficient access to the
4 tabulation process; and there is no evidence of widespread fraud or malfeasance. Both before and
5 after election day, courts throughout Nevada reached these conclusions after carefully
6 considering the law and the facts. While Contestants might not like the results, they must accept
7 them.

8 Ultimately, this lawsuit is just one more attempt to disrupt the timely and orderly
9 completion of the democratic process, the latest salvo in an increasingly desperate campaign to
10 overturn the will of the people. Contestants’ claims rest on mere intrigue and fantasy, divorced
11 from reality and the successful administration of this election by Nevada officials operating
12 under intense scrutiny in the midst of a public health crisis. The State’s efforts were aided by the
13 reforms made in July by Assembly Bill 4 (“AB 4”), which afforded state and local officials
14 greater flexibility to serve Nevada voters during an unprecedented pandemic.

15 Contestants’ kitchen-sink approach to election contestation fails as a matter of law. This
16 Court should therefore dismiss their statement, and the certification of Nevada’s returns should
17 not be disturbed.

18 **BACKGROUND**

19 **I. Assembly Bill 4**

20 This past summer, in response to the ongoing pandemic, the Nevada Legislature passed
21 AB 4 during a special session. *See* Statement of Contest of the November 3, 2020 Presidential
22 Election (“Statement”) ¶¶ 13–14. The Legislature’s goal was to ensure that “[e]lection officials
23 have certainty concerning the procedures to prepare for and conduct” elections held during states
24 of emergency—so-called “affected elections”—and that “voters have faith and confidence that
25 they can participate in [an] affected election and exercise their right to vote without fear for their
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1 health, safety and welfare under such circumstances.” AB 4 § 2.¹ The rules for affected elections
2 applied during the November 3 election.

3 Contestants’ challenge to the election implicates various provisions of AB 4 and
4 Nevada’s election laws, particularly the processing and counting of mail ballots.

5 Because this election took place during the COVID-19 pandemic, every active registered
6 voter was mailed a ballot by October 14, 2020. *See* Nevada Revised Statutes (“NRS”) 293.8844.
7 When a mail ballot is received by the county clerk, the counting board is required to check the
8 signature on the ballot return envelope against the signature in the registration records. *See* NRS
9 293.8874(1)(a) (“The clerk or employee shall check the signature used for the mail ballot against
10 all signatures of the voter available in the records of the clerk.”). The statute does not require that
11 either a manual or an electronic process be used except to say that a ballot cannot be flagged for
12 rejection unless “at least two employees in the office of the clerk believe there is a reasonable
13 question of fact as to whether the signature used for the mail ballot matches the signature of the
14 voter.” NRS 293.8874(1)(b). AB 4 specifically allows the clerk to “establish procedures for the
15 processing and counting of mail ballots.” NRS 293.8871(1). Those procedures “[m]ay authorize
16 mail ballots to be *processed and counted by electronic means*.” NRS 293.8871(2)(a) (emphasis
17 added).

18 **II. Previous Lawsuits**

19 Even before election day, the lawfulness of AB 4 and Clark County’s actions under it
20 were challenged—and upheld—in both state and federal courts.

21 Immediately after the Governor signed AB 4 into law, Donald J. Trump for President,
22 Inc. (the “Trump Campaign”), the Republican National Committee, and the Nevada Republican
23 Party sued to challenge the new law. *See* Compl. for Declaratory & Injunctive Relief, *Donald J.*
24

25 ¹ The full text of AB 4 can be found on the Legislature’s website. *See* AB 4, Nev. Elec. Legis.
26 Info. Sys., <https://www.leg.state.nv.us/App/NELIS/REL/32nd2020Special/Bill/7150/Text> (last
27 visited Nov. 23, 2020).
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1 *Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF) (D. Nev. Aug. 4, 2020),
2 ECF No. 1 (attached as Ex. 1). One of their claims specifically targeted Section 22 of AB 4,
3 which authorizes Clark County to use the Agilis machine to process ballots. *See id.* ¶¶ 122–35.
4 The court dismissed their lawsuit, including their challenge to Section 22, after concluding that
5 these plaintiffs lacked standing. *See Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-
6 CV-1445 JCM (VCF), 2020 WL 5626974, at *7 (D. Nev. Sept. 18, 2020).

7 On September 1, two plaintiffs—the Election Integrity Project, a nonprofit “dedicated to
8 assuring that every legally cast vote is properly counted and reported,” and political activist
9 Sharron Angle—lodged a host of challenges to AB 4 in the Eighth Judicial District Court. *See*
10 *Compl. for Prelim. Inj., Permanent Inj., & Declaratory Relief* ¶¶ 5–6, *Election Integrity Project*
11 *of Nev. v. State ex rel. Cegavske*, No. A-20-820510-C (Nev. 8th Jud. Dist. Ct. Sept. 1, 2020)
12 (attached as Ex. 2). They alleged not only that AB 4 constitutes an impermissible unfunded
13 mandate, *see id.* ¶¶ 50–56, but also that the new law—including Section 22—violates equal
14 protection, *see id.* ¶¶ 57–89. The *Election Integrity* plaintiffs sought both a temporary restraining
15 order and a preliminary injunction, which District Judge Rob Bare denied, concluding that “[t]he
16 full text of AB 4 reveals that Nevada’s legislators acted reasonably and in good faith to strike an
17 appropriate balance between election integrity concerns, public health concerns, and voter access
18 concerns.” *Election Integrity Project of Nev. v. State ex rel. Cegavske*, No. A-20-820510-C, slip
19 op. at 12 (Nev. 8th Jud. Dist. Ct. Sept. 28, 2020) (attached as Ex. 3). The *Election Integrity*
20 plaintiffs then sought a writ of mandamus or prohibition, which the Nevada Supreme Court
21 promptly denied after concluding that Judge Bare “properly concluded that [the plaintiffs] failed
22 to make a prima facie showing through substantial evidence that they were entitled to a
23 preliminary injunction preventing the Secretary of State from implementing AB 4.” *Election*
24 *Integrity Project of Nev. v. Eighth Jud. Dist. Ct.*, No. 81847, slip op. at 6 (Nev. Oct. 7, 2020)
25 (attached as Ex. 4).

26 The issue of whether use of the Agilis machine is permissible under Nevada law was
27 raised by another set of petitioners—including the Trump Campaign—and resolved by this Court
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1 before election day in *Kraus v. Cegavske*, No. 20 OC 00142 1B, slip op. at 12 (Nev. 1st Jud.
2 Dist. Ct. Oct. 29, 2020) (attached as Ex. 5). After a ten-hour evidentiary hearing, District Judge
3 James E. Wilson, Jr. found that “major metropolitan areas including Cook County, Illinois, Salt
4 Lake City, Utah, and Houston Texas use Agilis,” and that the same system was “used for the
5 June primary election,” during which “[n]o evidence was presented that the setting used by Clark
6 County causes or has resulted in any fraudulent ballot being validated or any valid ballot
7 invalidated.” *Id.* at 4. In denying this and other claims on standing grounds, Judge Wilson
8 concluded that “[t]here is no evidence that any vote that should lawfully not be counted has been
9 or will be counted,” and that “[t]here is no evidence that any election worker did anything
10 outside of the law, policy, or procedures.” *Id.* at 9. On the merits, Judge Wilson explained that

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

15 *Id.* at 12 (citation omitted). Judge Wilson also rejected the petitioners’ equal protection claim,
16 concluding that “[n]othing the State or Clark County has done values one voter’s vote over
17 another’s.” *Id.* at 13. He further determined that the “[p]etitioners [] failed to prove” that Clark
18 County Registrar of Voters Joseph P. Gloria (“Registrar Gloria”) “has interfered with any right
19 they or anyone else has as an observer” and that Registrar “Gloria has not failed to meet his
20 statutory duties . . . to allow members of the general public to observe the counting of ballots.”
21 *Id.* at 11. In response to Judge Wilson’s order, the *Kraus* petitioners filed an emergency motion
22 for immediate relief with the Nevada Supreme Court, which denied the request after concluding
23 that they “ha[d] not demonstrated a sufficient likelihood of success to merit a stay or injunction.”
24 *Kraus v. Cegavske*, No. 82018, slip op. at 2–3 (Nev. Nov. 3, 2020) (attached as Ex. 6). A week
25 later, the petitioners dismissed their appeal.

26 These groundless challenges continued *after* election day as well. On November 5,
27 another group of plaintiffs—again backed by the Trump Campaign—filed suit in federal court
28

1 and alleged that “us[e of] the Agilis software system” was unlawful under Nevada’s election
2 statutes and thus violated the Elections Clause of the U.S. Constitution. Compl. ¶ 21, *Stokke v.*
3 *Cegavske*, No. 2:20-cv-02046-APG-DJA (D. Nev. Nov. 5, 2020), ECF No. 1 (attached as Ex. 7).
4 The *Stokke* plaintiffs claimed that Registrar “Gloria is using the Agilis signature-verification
5 software in a manner which is contrary to the manufacturer’s prescriptions” by using “signature
6 files from the DMV which are all scanned at less than 200 D.P.I., resulting in the Agilis machine
7 being unable to perform its required function.” *Id.* ¶ 14. The plaintiffs further claimed that

8 [i]rregularities have plagued the election in Clark County, including lax
9 procedures for authenticating mail ballots and over 3,000 instances of ineligible
10 individuals casting ballots. Ballots have even been cast on behalf of deceased
11 voters. Moreover, the public has often been prohibited from observing the
12 processing of mail ballots, resulting in much of their work being done in the
13 shadows without public accountability.

14 *Id.* ¶ 11. After an evidentiary hearing, the court denied the *Stokke* plaintiffs’ motion for
15 temporary restraining order and preliminary injunction. *See* Minutes of Proceedings, *Stokke v.*
16 *Cegavske*, No. 2:20-cv-02046-APG-DJA (D. Nev. Nov. 6, 2020), ECF No. 27. The Court’s
17 ruling was based on findings that Clark County’s use of the Agilis machine does not “conflict
18 with the other provisions of the Nevada election laws” and that there was “little to no evidence
19 that the machine is not doing what it’s supposed to do, or incorrectly verifying other signatures.”
20 Reporter’s Tr. of Proceedings at 79:5–7, 79:24–80:1, *Stokke v. Cegavske*, No. 2:20-cv-02046-
21 APG-DJA (D. Nev. Nov. 6, 2020) (attached as Ex. 8).

22 **III. Contestants’ Statement**

23 On November 3, 2020, Nevadans cast ballots in the general election and voted for
24 President-elect Biden by a reported margin of 33,596 votes. *See* Statement ¶ 29.

25 Two weeks later, on November 17—the last day for such an action as permitted by
26 statute, *see* NRS 293.413(1)—Contestants filed their statement. They allege generally that
27 various irregularities and illegalities occurred in vote casting and tabulation throughout Nevada
28 and in Clark County in particular, and that, if all lawful ballots were counted and all unlawful
ballots removed from the tally, President Trump would emerge victorious and receive Nevada’s

six electoral votes. *See generally* Statement. They cite various alleged grounds for their contest:

- Clark County’s use of the Agilis machine to perform the initial signature verification for mail ballots, which they claim, among other things, was not permitted by Nevada law, violated equal protection principles, was technologically improper, and resulted in malfunctioning, *id.* ¶¶ 32–50;
- the use of electronic voting machines, which were allegedly both unreliable and unsecured, *id.* ¶¶ 51–61;
- the purported counting of unlawful ballots in Clark County, including those allegedly cast by voters who voted in multiple states, voters who did not meet Nevada’s residency requirement, voters who were deceased, and individuals impersonating voters, *id.* ¶¶ 62–71;
- the alleged counting of provisional ballots “without the issues which rendered them provisional in the first place ever being resolved,” *id.* ¶¶ 72–79;
- Clark County’s purportedly insufficient observation procedures, *id.* ¶¶ 80–93; and
- claims of a voting drive campaign coordinated by the Nevada Native Vote Project (“NNVP”), in which the group “offered gift cards, gas cards, raffle entries, and t-shirts in exchange for voters coming to the polling place and casting their votes,” *id.* ¶¶ 94–102.

Contestants assert that these “statutory violations and voting irregularities . . . , when considered in total, invalidate significant numbers of ballots and thereby reduce the vote totals of both candidate in large numbers,” but that “the reduction in votes for [President-elect Biden] . . . is 40,000 or more than the reduction in votes for [President Trump],” or at least “an amount sufficient to raise reasonable doubt as to the outcome of the Election.” *Id.* ¶ 104. Contestants seek an order from this Court either declaring President Trump the winner in Nevada and certifying Contestants as the State’s duly elected electors, or holding that President-elect Biden’s victory “be declared null and void” and that the November 3 election “be annulled and that no candidate for elector for the office of President of the United States of America be certified from the State of Nevada.” *Id.* at 20.

ARGUMENT

I. Contestants cannot use an election contest to litigate claims that have already been rejected or should have been raised before the election.

Even before reaching the substantive failings of Contestants’ statement, their grounds for contest are barred by both issue preclusion and the equitable doctrine of laches.

1 **A. Issue preclusion bars Contestants from relitigating issues this Court rejected**
2 **in *Kraus*.**

3 Two of Contestants' grounds for contest—Clark County's use of the Agilis machine and
4 its alleged failure to allow meaningful observation—are barred by the doctrine of issue
5 preclusion. *See In re Coday*, 130 P.3d 809, 816–17 (Wash. 2006) (dismissing election contest on
6 res judicata grounds). Under Nevada law, issue preclusion applies when (1) the issue decided in
7 the prior litigation is identical to the issue in the current action; (2) the initial ruling was on the
8 merits and has become final; (3) the party against whom the judgment is asserted was a party or
9 in privity with a party to the prior litigation; and (4) the issue was necessarily and actually
10 litigated. *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008). Each of
11 these four factors is satisfied for these two grounds for contest. In *Kraus*, the Trump Campaign,
12 the Nevada Republican Party, and an individual voter challenged Clark County's use of the
13 Agilis machine and the County's purported failure to allow meaningful observation of its
14 tabulation process. Judge Wilson rejected these claims on the merits, which binds Contestants
15 and precludes them from raising these same issues as grounds to contest the general election
16 results.

17 *First*, Contestants' challenges to Clark County's use of the Agilis machine and its
18 observation policies are identical to issues raised by the *Kraus* petitioners. In this matter,
19 Contestants raise four challenges to the Agilis machine: (1) its use is prohibited by Nevada
20 election law; (2) its use violated the equal protection rights of Nevadans; (3) the Clark County
21 election board is guilty of malfeasance under NRS 293.410(2)(a) due to its use; and (4) the
22 Agilis machine malfunctioned, raising reasonable doubt as to the outcome of the election. *See*
23 Statement ¶¶ 32–50. The first two challenges are identical to claims raised in *Kraus* and rejected
24 by this Court. *See slip op.* at 12–13 (concluding that AB 4 does not prohibit use of Agilis
25 machine and that *Kraus* petitioners failed to establish equal protection clause claims) (attached as
26 Ex. 5). And although Contestants' third and fourth challenges to the Agilis were not raised in this
27 precise form in *Kraus*, identical facts underlie these challenges and the *Kraus* claims. "Issue
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preclusion may apply ‘even though the causes of action are substantially different, if the same fact issue is presented.’” *LaForge v. State, Univ. & Cmty. Coll. Sys.*, 116 Nev. 415, 420, 997 P.2d 130, 134 (2000) (quoting *Clark v. Clark*, 80 Nev. 52, 56, 389 P.2d 69, 71 (1964)). Contestants’ assertions that the election board committed malfeasance and that the Agilis machine malfunctioned are moored in two factual allegations that were litigated in *Kraus*: that Clark County did not operate the Agilis machine according to manufacturer suggestions because it lowered the “tolerance level” to 40 percent, Statement ¶¶ 35–41, 48(b), 50; and that Clark County fed the Agilis machine low-quality signatures from the DMV to match against voter signatures, *id.* ¶ 37. Because the “common issue” in both suits are factually identical, Contestants’ challenges regarding the Agilis machine are identical to the issues raised by the *Kraus* petitioners. *LaForge*, 116 Nev. at 420, 997 P.2d at 133.

Contestants’ challenge to an alleged lack of meaningful observation was also raised and addressed in *Kraus*. Although Contestants assert that “the County Registrars failed and refused to grant meaningful observation and opportunities to the general public with respect to mail in ballots,” Statement ¶ 83, their statement articulates specific allegations related to Clark County only. Accordingly, all of Contestants’ arguments regarding any purported lack of “meaningful observation” were already raised and rejected in *Kraus*, where Judge Wilson concluded that Clark County met its statutory obligations. *See slip op.* at 13 (concluding that Registrar Gloria and Secretary of State Barbara Cegavske had met their statutory duties to “allow members of the general public to observe the counting of ballots”) (attached as Ex. 5). Notably, Judge Wilson held that although the *Kraus* petitioners claimed a right to “meaningful observation,” the word “meaningful” does not appear in the relevant statutes, and the “[p]etitioners failed to cite any constitutional provision, [statute], rule, or case that supports such a request.” *Id.* at 10–11.

Second, this Court issued an opinion in *Kraus* denying the petitioners mandamus relief, which constituted a final decision on the merits. Nevada law takes a functional approach to finality, inquiring as to whether a prior “judgment” is “sufficiently firm”—which is to say, neither tentative nor subject to further determination by the court. *Kirsch v. Traber*, 134 Nev.

1 163, 166–67, 414 P.3d 818, 821–22 (2018) (quoting Restatement (Second) of Judgments § 13
2 (Am. L. Inst. 1982)). “Factors indicating finality include (a) ‘that the parties were fully heard,’
3 (b) ‘that the court supported its decision with a reasoned opinion,’ and (c) ‘that the decision was
4 subject to appeal.’” *Id.* at 167, 414 P.3d at 822 (quoting Restatement (Second) of Judgments
5 § 13). “Recent decisions have relaxed traditional views of the finality requirement by applying
6 issue preclusion to matters resolved by preliminary rulings or to determinations of liability that
7 have not yet been completed by an award of damages or other relief.” *Hoffman v. Second Jud.*
8 *Dist. Ct.*, No. 60119, 2013 WL 7158424, at *4 (Nev. Dec. 16, 2013) (quoting 18A Charles Alan
9 Wright et al., *Federal Practice and Procedure* § 4434 (2d ed. 2002)). Given that Judge Wilson’s
10 denial of the emergency petition for writ of mandamus was non-tentative, not open to further
11 consideration or proceedings, supported by a reasoned opinion following over 250 pages of
12 briefing and a day-long evidentiary hearing, and subject to appeal (and, indeed, was appealed), it
13 constituted a final decision for purposes of issue preclusion.

14 *Third*, as Trump electors, Contestants are in privity with the *Kraus* petitioners—
15 specifically, the Trump Campaign and Nevada Republican Party. The Nevada Supreme Court
16 has recognized that “determining privity for preclusion purposes requires a close examination of
17 the facts and circumstances of each case.” *Mendenhall v. Tassinari*, 133 Nev. 614, 618–19, 403
18 P.3d 364, 369 (2017) (“[C]ontemporary courts . . . have broadly construed the concept of privity,
19 far beyond its literal and historic meaning, to include any situation in which the relationship
20 between the parties is sufficiently close to supply preclusion.” (quoting *Vets N., Inc. v. Libutti*,
21 No. CV-01-7773-DRHETB, 2003 WL 21542554, at *11 (E.D.N.Y. Jan. 24, 2003))). Here, the
22 “facts and circumstances” show that Contestants are in privity with the Nevada Republican Party
23 and the Trump Campaign—both petitioners in *Kraus*. Contestants are electors who were
24 specifically “nomin[ated]” and “select[ed]” to serve as electors by the Nevada Republican Party.
25 NRS 298.035(1). In this capacity, Contestants are mere functionaries of the Trump Campaign; as
26 electors, casting a ballot for the Republican nominee is their *raison d’être*. Indeed, had President
27 Trump prevailed in Nevada, Contestants would have become presidential electors and, had they
28

1 not cast their ballots for him, been replaced *as a matter of law*. See NRS 298.065; NRS 298.075;
2 see also *Chiafalo v. Washington*, 140 S. Ct. 2316, 2322 (2020). In other words, Contestants were
3 selected to perform a ministerial duty on behalf of the Trump Campaign and Nevada Republican
4 Party and cannot credibly dispute their extraordinarily close connection to both. Indeed,
5 Contestants’ counsel, Jesse Binnall, argued on behalf of the *Kraus* petitioners during that case’s
6 day-long mandamus hearing. And given that this is a contest of the election of the President of
7 the United States—which Nevada law specifically contemplates will be brought by “elector[s],”
8 see NRS 293.407(2)—it simply beggars belief that Contestants are not sufficiently linked to
9 President Trump, his party, and his campaign. Therefore, although Contestants were not
10 themselves parties in *Kraus*, they are nonetheless “sufficiently close” to, such that their interests
11 were “adequate[ly] represent[ed]” by, the *Kraus* petitioners. *Mendenhall*, 133 Nev. at 618, 403
12 P.3d at 369 (first quoting *Vets N.*, 2003 WL 21542554, at *11; and then quoting *Alcantara ex rel.*
13 *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 261, 321 P.3d 912, 917 (2014)); cf. *Coday*,
14 130 P.3d at 817 (finding preclusion applied where contestant was not party to prior litigation but
15 had “identical interests” with prior litigants (quoting *In re Pearsall-Stipek*, 961 P.2d 343, 346
16 (Wash. 1998))).

17 *Fourth*, the issues relating to the Agilis machine and meaningful observation of
18 tabulation were necessarily and actually litigated in *Kraus*. “When an issue is properly raised . . .
19 and is submitted for determination, . . . the issue is actually litigated.” *Alcantara*, 130 Nev. at
20 262, 321 P.3d at 918 (quoting *Frei ex rel. Frei v. Goodsell*, 129 Nev. 403, 407, 305 P.3d 70, 72
21 (2013)). In *Kraus*, Judge Wilson reviewed four substantive briefs, conducted a full-day
22 evidentiary hearing, and prepared a reasoned, considered order rejecting the petitioners’ claims.
23 These issues were therefore properly raised and submitted and were thus actually litigated.

24 In short, each of the four requirements for issue preclusion is satisfied as to Contestants’
25 grounds for contest related to the lawfulness of the Agilis machines and meaningful observation
26 of ballot tabulation. Their attempt to circumvent their party’s and standard-bearer’s loss in *Kraus*
27 should be rejected, and these grounds for contest should be dismissed.

1 **B. Contestants are barred by laches from challenging use of the Agilis machine.**

2 Contestants’ challenge to Clark County’s use of the Agilis machine—the principal
3 ground for contest alleged in their statement—is also barred by the equitable doctrine of laches.

4 “Laches is an equitable doctrine which may be invoked when delay by one party works to
5 the disadvantage of the other, causing a change of circumstances which would make the grant of
6 relief to the delaying party inequitable.” *Miller v. Burk*, 124 Nev. 579, 598, 188 P.3d 1112, 1125
7 (2008) (quoting *Carson City v. Price*, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997)). “To
8 determine whether a challenge is barred by the doctrine of laches,” the Court must consider three
9 factors: “(1) whether the party inexcusably delayed bringing the challenge, (2) whether the
10 party’s inexcusable delay constitutes acquiescence to the condition the party is challenging, and
11 (3) whether the inexcusable delay was prejudicial to others.” *Id.*, 188 P.3d at 1125.
12 “Applicability of the laches doctrine depends upon the particular facts of each case.” *Price*, 113
13 Nev. at 412, 934 P.2d at 1043. Here, all factors favor barring use of the Agilis machine as a basis
14 for an election contest.

15 *First*, Contestants inexcusably delayed in challenging this policy. They contend that
16 Clark County’s use of the Agilis machine was unlawful, *see* Statement ¶¶ 32–50, but Clark
17 County began using the Agilis machine to conduct signature matching during the State’s June
18 primary. Contestants could have and should have brought this challenge at an earlier juncture,
19 particularly considering that their privies challenged the Agilis machine *before* the election, *see*
20 *supra* Part I.A, with one privy, the Trump Campaign, also challenging AB 4—the statute
21 authorizing Clark County to use the Agilis machine—four months ago. *See* Ex. 1. Indeed,
22 Contestants themselves note that lawsuits challenging the machine “were filed *prior to the*
23 *Nevada election*.” Statement ¶ 20 (emphasis added). And yet Contestants waited until November
24 17—*two weeks after election day*—to question the lawfulness of Clark County’s use of the
25 machine, months after it began and after Clark County’s 453,248 mail ballots were processed
26 with the Agilis machine. *See id.* ¶ 15.

27 *Second*, Contestants’ months-long delay constitutes acquiescence to these policies and
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1 procedures. More than 900,000 Clark County voters cast ballots in this election, and the Clark
2 County Commission certified the results of the presidential election the day *before* Contestants
3 filed this contest. Contestants' inexcusably delayed challenge to the policies and procedures
4 under which these ballots were counted now threatens a mass, ex post disenfranchisement that
5 could have been avoided if Contestants had brought their challenges before the election.
6 Contestants' claims against the Agilis machines are particularly galling in this regard. Despite
7 having notice of the machine's use in June, if not earlier, they waited for Clark County to process
8 its mail ballots (including some of Contestants' own), count those ballots, and certify the results
9 of the presidential election—all with the aid of the Agilis machine—before raising this
10 challenge. *See Bldg. & Constr. Trades Council of N. Nev. v. State ex rel. Pub. Works Bd.*, 108
11 Nev. 605, 611–12, 836 P.2d 633, 637 (Nev. 1992) (finding laches barred petition for writ of
12 mandamus where (1) petitioner inexcusably delayed in seeking petition, (2) implied waiver and
13 acquiescence to conditions arose when petitioner knew of its legal rights but waited almost one
14 month to file challenge, and (3) petitioner knowingly allowed “significant work” on project at
15 issue to take place before filing petition).

16 *Third*, Contestants' inexplicable delay has indisputably prejudiced voters and election
17 officials: the former who cast lawful ballots that now might be rejected through no fault of their
18 own, and the latter who successfully administered an election—in unprecedented conditions
19 during a global pandemic—under the (in some cases, judicially sanctioned) belief that their
20 actions were consistent with state and federal law. The election process is complete; the bell
21 cannot be unrung. *See Price*, 113 Nev. at 412, 934 P.2d at 1043 (“The condition of the party
22 asserting laches must become so changed that the party cannot be restored to its former state.”
23 (quoting *Home Sav. Ass’n v. Bigelow*, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989))). Contestants'
24 delay therefore risks the nullification of the votes of tens or even hundreds of thousands of
25 Nevadans who followed all applicable rules and guidelines and cast their ballots accordingly—a
26 result not only prejudicial, but potentially unconstitutional as well. *See United States v. Saylor*,
27 322 U.S. 385, 387–88 (1944) (“[T]o refuse to count and return the vote as cast [is] as much an
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1 infringement of that personal right as to exclude the voter from the polling place.”); *Ne. Ohio*
2 *Coal. for Homeless v. Husted*, 696 F.3d 580, 595, 597–98 (6th Cir. 2012) (concluding that
3 rejection of ballots invalidly cast due to poll worker error likely violates due process); *Donald J.*
4 *Trump for President, Inc. v. Boockvar*, No. 4:20-CV-02078, 2020 WL 6821992, at *1 (M.D. Pa.
5 Nov. 21, 2020) (“Plaintiffs ask this Court to disenfranchise almost seven million voters. This
6 Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in
7 the contest of an election, in terms of the sheer volume of votes asked to be invalidated.”).

8 Contestants’ delay also prejudices Defendants and the candidate they are pledged to
9 support. Defendants’ and President-elect Biden’s victory came after no small effort. Campaigns
10 are long, arduous, and expensive affairs, but they have an end point—election day. Allowing
11 Contestants to now use the election contest statute to effect an electoral do-over—with
12 challenges to purportedly questionable election administration practices that could have been
13 brought well in advance of election day—would undermine the finality of elections to the
14 detriment of not only voters and officials, but candidates as well.

15 In short, the three relevant factors counsel in favor of barring Contestants’ challenge to
16 the Agilis machine under the doctrine of laches.

17 Notably, that laches precludes Contestants’ challenge to the Agilis machine is consistent
18 with the contest statute itself. As discussed in Part III *infra*, election contests can only be
19 premised on narrowly defined grounds—basically, irregularities and anomalies in the conduct
20 and administration of elections. *See* NRS 293.410(2). Significantly, the statute only allows
21 challenges based on *departures* from election policies, *not the policies themselves*. This
22 limitation is consistent with the equitable considerations that courts have recognized in denying
23 late-hour and post-election challenges to election laws. For one, if pre-election policies could be
24 readily challenged after election day, candidates for office would be able to lie in wait to gauge
25 election results and file challenges to election laws only *after* they lose. *See Toney v. White*, 488
26 F.2d 310, 314 (5th Cir. 1973) (en banc) (“[T]he failure to require prompt pre-election action . . .
27 as a prerequisite to post-election relief may permit, if not encourage, parties who could raise a
28

1 claim ‘to lay by and gamble upon receiving a favorable decision of the electorate’ and then, upon
2 losing, seek to undo the ballot results in a court action.” (quoting *Toney v. White*, 476 F.2d 203,
3 209 (5th Cir. 1973))). Moreover, election laws engender significant reliance interests on the parts
4 of both voters and officials. *See, e.g., Miller*, 124 Nev. at 598–99, 188 P.3d at 1125 (concluding
5 that post-election challenge to ballot question is “[the] sort of procedural challenge [that] is ripe
6 for judicial review preelection”); *Bognet v. Sec’y of Commonwealth*, No. 20-3214, 2020 WL
7 6686120, at *17 (3d Cir. Nov. 13, 2020) (concluding that “[u]nique and important equitable
8 considerations, including voters’ reliance on the rules in place when they made their plans to
9 vote and chose how to cast their ballots,” counseled against late-hour change to election law);
10 *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980) (“As time passes, the state’s interest in
11 proceeding with the election increases in importance as resources are committed and irrevocable
12 decisions are made.”). Indeed, post-election challenges threaten disenfranchisement of voters
13 who cast their ballots in reliance on previously settled election rules—precisely the risk that
14 Contestants have created with this contest. *See Child v. Lomax*, 124 Nev. 600, 606, 188 P.3d
15 1103, 1107 (2008) (recognizing that “a postelection challenge does not provide an adequate
16 means to avoid impairing voter input”).

17 Accordingly, “[e]xtreme diligence and promptness are required in election-related
18 matters.” *In re Contested Election of Nov. 2, 1993*, 650 N.E.2d 859, 862 (Ohio 1995) (per
19 curiam). “Courts will consider granting post-election relief only where the plaintiffs were not
20 aware of a major problem prior to the election or where by the nature of the case they had no
21 opportunity to seek pre-election relief,” *Hart v. King*, 470 F. Supp. 1195, 1198 (D. Haw. 1979),
22 even where parties allege far more egregious misconduct than Contestants claim here. *See, e.g.,*
23 *Tucker v. Burford*, 603 F. Supp. 276, 279 (N.D. Miss. 1985) (refusing to void election even
24 where defendants conceded that districts were malapportioned because “to grant the
25 extraordinary relief of setting aside an election, when no circumstances barred timely suit by the
26 plaintiffs, would be to embrace the hedging posture” that courts have discouraged (citations
27 omitted)).

1 Here, Clark County’s use of the Agilis machine has been its stated policy—a rule
2 facilitated by AB 4—for more than five months. It is a feature of Clark County’s election regime,
3 not a bug. In challenging use of the Agilis machine at this late hour, Contestants seek to discard
4 ballots cast and counted pursuant to long-announced and long-implemented policies. This Court
5 should reject their inexcusably delayed efforts that would yield such an inequitable—and,
6 indeed, unconscionable and unconstitutional—result.

7 **II. Contestants’ statement of contest is fatally insufficient as a matter of law.**

8 Setting aside these jurisdictional and equitable doctrines, Contestants have failed to file a
9 substantively sufficient statement, warranting dismissal of *all* their claims on that basis as well.
10 Nevada law provides that “[a] statement of contest shall not be dismissed by any court for want
11 of form,” but it requires that “the grounds of contest [be] alleged *with sufficient certainty* to
12 inform the defendant of the charges the defendant is required to meet.” NRS 293.410(1)
13 (emphasis added). Contestants’ statement—replete with speculation and generalizations and
14 utterly lacking in the required specifics or any credible evidence—falls well short of this
15 standard.

16 Caselaw and statutes from other states confirm what the text of NRS 293.410(a) requires:
17 that a legally sufficient statement of contest must contain sufficient specificity so as to
18 (1) demonstrate that the grounds for contest fall within the statute’s ambit, (2) put the defendant
19 on fair notice to address the asserted claims, and (3) ensure that the election contest is
20 expeditiously resolved. As the Minnesota Supreme Court explained in considering a similar
21 contest statute,

22 there is a strong public policy in favor of finality in elections. The will of the
23 voters in any election could easily be subverted by the filing of a groundless
24 notice of contest. . . . To this end, the legislature has required that one who plans
25 to challenge an election *clearly state the points upon which he will do so*. . . .

26 *Greenly v. Indep. Sch. Dist. No. 316*, 395 N.W.2d 86, 91 (Minn. 1986) (emphasis added). To
27 further achieve these ends, compliance with the requirements of an election contest statute is
28 generally considered jurisdictional, and the basis for invoking the statute must be obvious from

1 the face of the contest statement.² A statement of contest that fails to adequately allege facts to
2 invoke an election contest statute is “ineffectual to start up the legal machinery for the contest,”
3 *Petition of Clee*, 196 A. 476, 486 (N.J. 1938), and must be dismissed. *See, e.g., Maxfield v.*
4 *Herbert*, 284 P.3d 647, 657 (Utah 2012) (affirming dismissal of election contest where stated
5 grounds for contest did not fall within statute).

6 Here, Contestants acknowledge that “[a]s of November 16, 2020, the published vote
7 margin in the State of Nevada between President-elect Biden and President Trump was 33,596.”
8 Statement ¶ 29. Accordingly, to prevail on several of their grounds for contest, their statement
9 must demonstrate—with sufficient certainty—the existence of enough ballots to overcome this
10 33,596-vote deficit. *See infra* Part III. Contestants ultimately contend that, once the various
11 irregularities they identify are remedied, “[t]he evidence will show that the reduction in votes for
12 Defendant . . . is 40,000 or more than the reduction in votes for the Contestant or, at the very
13 least, in an amount sufficient to raise reasonable doubt as to the outcome of the Election.”
14 Statement ¶ 104. But Contestants allege no specific facts to support this assertion; it is a number
15 pulled from thin air, based on nothing more than speculation, conjecture, and wishful thinking.
16 This fundamental defect is fatal to their case. *See, e.g., Tataii v. Cronin*, 198 P.3d 124, 127

17
18 ² *See, e.g., De Koning v. Mellema*, 534 N.W.2d 391, 394 (Iowa 1995) (collecting cases and
19 concluding that “[t]he rule is quite generally recognized that to initiate special proceedings, such
20 as election contest proceedings, the statutory provisions necessary to confer jurisdiction must be
21 strictly complied with by the contestants”); *In re Contested Election*, 650 N.E.2d at 862 (“The
22 procedures prescribed for election contests are specific and exclusive, and must be strictly
23 construed.”); *Stafford v. Bailey*, 138 S.W.2d 999, 1002 (Ky. 1940) (“[A]s a general rule, a strict
24 observance of the [election contest] statute is required, so far as regards the steps necessary to
25 give jurisdiction, and the jurisdictional facts must appear on the face of the proceedings.”
26 (quoting 18 Am. Jur. 1st § 275 (1936))); *Petition of Clee*, 196 A. 476, 486 (N.J. 1938) (noting
27 that, in election contests, “it is an indispensable requirement that the petition make out a prima
28 facie case”); *Soper v. Bd. of Cnty. Comm’rs*, 48 N.W. 1112, 1112 (Minn. 1891) (notices of
contest must be “definite and specific”); *Wright-Jones v. Johnson*, 256 S.W.3d 177, 180–81 (Mo.
Ct. App. 2008) (“A party seeking relief pursuant to one of the election contest statutes must bring
herself strictly within its terms. Strict compliance with the election contest statutes is necessary
to confer subject matter jurisdiction upon the trial court.” (citation omitted) (citing *Hockemeier v.*
Berra, 641 S.W.2d 67, 69 (Mo. 1982))).

1 (Haw. 2008) (per curiam) (“An election contest cannot be based upon mere belief or indefinite
2 information.” (quoting *Akaka v. Yoshina*, 935 P.2d 98, 103 (Haw. 1997))).

3 *First*, the figures Contestants cite throughout their statement are necessarily couched in
4 the language of conjecture—for example, “no less than 1,000 illegal or improper votes [were]
5 cast and counted,” *id.* ¶ 59—since each example of alleged irregularities is premised on vague
6 allegations and estimations without *any* demonstrable basis in fact. Again and again Contestants
7 assert that “[t]he evidence will show” the accuracy of their approximations. *See, e.g., id.* ¶¶ 45,
8 59–60, 64, 67–68, 70, 77, 100. But the burden is on *Contestants*, not anyone else, to establish
9 with sufficient certainty the grounds for their contest. They have failed to do so, only alleging
10 potential irregularities and then simply guessing how many votes might be implicated (or, in
11 some cases, without even providing an estimate, such as their claims regarding ballots that were
12 allegedly duplicated improperly, *see id.* ¶¶ 84–87). Contestants might hope that the sheer force of
13 repetition is enough to raise their vague claims from the purely speculative to the somewhat
14 credible, but even setting aside the arithmetic shortcomings of their statement, *see infra* Part
15 III.D, this Court should not accept Contestants’ baseless estimates when the statute on which
16 they rely requires a higher standard of specificity for the extraordinary remedy they hope to
17 pursue.

18 Indeed, repetition-without-evidence is apparently the unifying strategy of the Trump
19 Campaign’s nationwide challenges to President-elect Biden’s victory. Rather than provide
20 sufficient specificity about Nevada’s election, this statement of contest features many of the
21 same vague, baseless allegations of misconduct that have also been alleged—and rejected—in
22 numerous other states. For example, this past Saturday, a federal judge in Pennsylvania threw out
23 the Trump Campaign’s lawsuit to overturn the Commonwealth’s election results based on the
24 same accusations of fraud caused by mail voting. *See Boockvar*, 2020 WL 6821992, at *14–15.
25 In dismissing the lawsuit on the pleadings—with prejudice—the court explained the fundamental
26 problem that sank that lawsuit and similarly dooms this one:

27 One might expect that when seeking such a startling outcome, a plaintiff would
28 come formidably armed with compelling legal arguments and factual proof of

1 rampant corruption, such that this Court would have no option but to regrettably
2 grant the proposed injunctive relief despite the impact it would have on such a
large group of citizens.

3 That has not happened. Instead, this Court has been presented with strained legal
4 arguments without merit and speculative accusations, unpled in the operative
5 complaint and unsupported by evidence. In the United States of America, this
cannot justify the disenfranchisement of a single voter, let alone all the voters of
its sixth most populated state. Our people, laws, and institutions demand more.

6 *Id.* at *1. In Georgia, a Republican voter sued to challenge President-elect Biden’s win. *See*
7 *Wood v. Raffensperger*, No. 1:20-cv-04651-SDG, 2020 WL 6817513, at *1–2 (N.D. Ga. Nov.
8 20, 2020). In denying a request for preliminary injunction and dismissing the case, that court also
9 took issue with the conjectural nature of the plaintiff’s claims, which “speculate[d] as to wide-
10 spread impropriety,” but identified only “garden variety” election issues far short of what is
11 required to overturn an election. *See id.* at *12. *Boockvar* and *Wood* are not anomalies—they are
12 paradigms, as one court after the other has rejected the efforts of President Trump and his allies
13 to overturn the democratic will of the people based on nothing more than rank speculation.³

15 ³ *See also, e.g., Costantino v. City of Detroit*, No. 20-014780-AW, slip op. at 11–13 (Mich. Cir.
16 Ct. Nov. 13, 2020) (denying preliminary injunction to halt certification of election results in
17 Wayne County, Michigan based on claims of purported fraud) (attached as Ex. 9), *appeal denied*,
18 No. 355443 (Mich. Ct. App. Nov. 16, 2020) (attached as Ex. 10); *Donald J. Trump for President,*
19 *Inc. v. Benson*, No. 20-000225-MZ, slip op. at 3–5 (Mich. Ct. Cl. Nov. 6, 2020) (denying Trump
20 Campaign’s emergency motion to cease counting and processing of absentee ballots and noting
21 that plaintiffs provided no admissible evidence supporting their claims) (attached as Ex. 11);
22 *Stoddard v. City Election Comm’n*, No. 20-014604-CZ, slip op. at 4 (Mich. Cir. Ct. Nov. 6,
23 2020) (denying Election Integrity Fund’s motion for preliminary injunction to prohibit Detroit
24 from certifying its results and concluding that “plaintiffs have made only a claim but have
25 offered no evidence to support their assertions” and “[a] delay in counting and finalizing the
26 votes from the City of Detroit without any evidentiary basis for doing so, engenders a lack of
27 confidence in the City of Detroit to conduct full and fair elections”) (attached as Ex. 12); *Donald*
J. Trump for President, Inc. v. Phila. Cnty. Bd. of Elections, Civ. No. 20-5533, slip op. at 1 (E.D.
Pa. Nov. 5, 2020), ECF No. 5 (denying Trump Campaign’s emergency motion to stop
Philadelphia County Board of Elections from counting ballots) (attached as Ex. 13); *In re Enf’t*
of Election Laws & Securing Ballots Cast or Received After 7:00 P.M. on Nov. 3, 2020, No.
SPCV2000982-J3, slip op. at 1 (Ga. Super. Ct. Nov. 5, 2020) (denying Trump Campaign’s
petition to segregate certain ballots and noting that “there is no evidence the ballots referenced in
the petition [were invalid]” and “there is no evidence that the Chatham County Board of
Elections or the Chatham County Board of Registrars has failed to comply with the law”)

1 *Second*, even setting aside the inherent problem of “estimated” vote totals and
2 Contestants’ other speculative claims, Statement ¶ 41, Contestants do not *attempt* to demonstrate
3 that these alleged votes, if allocated in the manner they advocate, would even narrow the 33,596-
4 vote gap between President-elect Biden and President Trump, let alone reverse it. Indeed, under
5 Contestants’ paltry allegations, it is just as likely that all the ballots they challenge were cast for
6 President Trump and all the ballots they claim were improperly excluded were for President-
7 elect Biden, since they offer no specific facts to support an estimate of how many ballots in each
8 category were for which candidate with the requisite “sufficient certainty.” *See Tataii*, 198 P.3d
9 at 126–27 (“In the absence of facts showing that irregularities exceed the reported margin
10 between the candidates, the complaint is legally insufficient because, even if its truth were
11 assumed, the result of the election would not be affected.” (quoting *Akaka*, 935 P.2d at 103)).

12 *Third*, Contestants’ statement is wholly lacking in the factual details needed to give
13 Defendants the opportunity to defend against these claims. Contestants’ catalogue of alleged
14 misconduct is conspicuously and tellingly bereft of specific dates, specific locations, and specific
15 names. *Cf. Evans v. Johnson*, No. 2:12-CV-01053-MMD, 2013 WL 3030216, at *1 (D. Nev.
16 June 14, 2013) (noting that heightened pleading standard for fraud under Federal Rule of Civil
17 Procedure 9(b) requires party to “plead with particularity ‘the who, what, when, where, and how
18 of the misconduct charged’” so as to “give defendants notice of the particular misconduct so that
19 they can defend against the charge and not just deny that they have done anything wrong”
20 (quoting *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003))). For example,
21 they claim that “Clark County election personnel were under immense pressure to ‘push the
22 _____

23 (attached as Ex. 14). These cases represent only *post*-election losses; the Trump Campaign’s
24 attempts to challenge the rules of the game on the eve of the election were also foiled by the need
25 to provide evidence of fraud and not just speculation. *See, e.g., Donald J. Trump for President,*
26 *Inc. v. Way*, Civil Action No. 20-10753 (MAS) (ZNQ), 2020 WL 6204477, at *4–6 (D.N.J. Oct.
27 22, 2020); *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-cv-966, 2020 WL
5997680, at *2 (W.D. Pa. Oct. 10, 2020); *Donald J. Trump for President, Inc. v. Bullock*, No.
CV 20-66-H-DLC, 2020 WL 5810556, at *1 (D. Mont. Sept. 30, 2020).

1 votes through,” Statement ¶ 44, but do not identify who felt pressured and who applied the
2 pressure, much less identify the specific ballots that were “push[ed] through” or (most
3 fundamentally) for whom those ballots were cast. They claim that “voting machines regularly
4 ‘froze,’ forcing voters to interrupt their voting process,” *id.* ¶ 54, but do not explain where this
5 happened, when, how often, how many voters were affected, whether they ultimately were able
6 to vote, or for whom they intended to cast their ballots. They claim that “no less than 15,000”
7 votes were “from voters who are also known to have voted in other states,” *id.* ¶ 64, but do not
8 specify who these voters were, for whom they cast their ballots, or even how Contestants came to
9 know this information. And they claim that “no less than 500 provisional ballots were counted in
10 the official vote totals without the issues which rendered them provisional in the first place ever
11 being resolved,” *id.* ¶ 77, but do not explain what those issues were, which specific ballots were
12 involved, or for whom those ballots were cast. For these and their other allegations, Contestants
13 have failed to even *plead* these essential details, let alone suggest how they might *prove* them.

14 Contestants’ claims are little more than a frustrating exercise in generalization and
15 evasion. They simply list categories of potentially unlawful votes, add arbitrary and unsupported
16 numbers to accompany them, and ask this Court to accept it as a sufficiently certain statement of
17 contest. The entire effort falls woefully short of the mark. It is not possible for Defendants to
18 prepare any sort of defense, let alone on an accelerated timeframe, when the statement is lacking
19 in anything resembling specific allegations.

20 Ultimately, the purpose of Nevada’s contest process is to allow ostensibly defeated
21 candidates to ensure their rightful elections. *Cf. Beko v. Kelly*, 78 Nev. 489, 492, 376 P.2d 429,
22 431 (1962) (noting that “authorization to file an election contest is given to a defeated candidate
23 to contest the right to office of a person who has been declared elected,” not “to a successful
24 candidate who simply feels that there may be some cloud upon his title by reason of an
25 irregularity in one or more of the election proceedings”). It is a method of vindicating earned
26 electoral success, not a mechanism for airing baseless grievances or a license to conduct a “mere
27 fishing expedition undertaken in the hope that in an examination of all the ballots enough might
28

1 be discovered to change the result.” *Waters v. Nago*, No. SCEC-14-0001317, 2014 WL 7334915,
2 at *7 (Haw. Dec. 24, 2014) (quoting *Brown v. Iaukea*, 18 Haw. 131, 133 (1906)). Contestants
3 should not be permitted to secure the resources of the judiciary and burden Nevada election
4 administrators precisely when they are finalizing the results of this election—and require
5 Defendants to undertake the expense of litigation—when all they can produce is idle speculation
6 and guesswork.⁴ The statutory requirement of “sufficient certainty” is not a mere formality; it is a
7 necessary stopgap to ensure that election contests cannot proceed where, as here, the case is
8 premised on speculation rather than specific allegations supported by clarifying details. NRS
9 293.410(1) explicitly requires that Contestants provide sufficient detail to inform Defendants “of
10 the charges [they are] required to meet.” Contestants’ statement—lacking any detailed
11 explanation or even an allusion to evidentiary support, let alone articulable justifications for this
12 action—does not come close to satisfying this standard; it fails to give Defendants even the
13 barest hint of the factual predicates for Contestants’ allegations. The statement should therefore
14 be dismissed.

15 **III. Contestants’ allegations are not cognizable under the contest statute.**

16 Even if Contestants’ statement were stitched together by something more than general
17 allegations and rank speculation, their grounds for contest are not cognizable under the statute.

18 Nevada’s election contest law is not a catch-all provision to remedy any purported
19

20 ⁴ As the Chief Justice of the New Jersey Supreme Court reflected eight decades ago,
21

22 [t]ested by the standard of common sense or principles of justice, can it be said
23 that the Legislature intended that every elected official might be put to a contest,
24 together with the expense and vexation which necessarily accompanies it, merely
25 because a petition is filed asking for a contest and stating, generally, the broad
26 grounds of the statute, without detail sufficient to frame an issue against which the
27 incumbent might prepare his defense? I do not think so. It is the duty of the court
28 to uphold an election unless it clearly appears that it was illegal; public policy so
ordains.

Clee, 196 A. at 486 (citation omitted).

1 irregularity in balloting or tabulation. Nor is it an electoral Mulligan for unsuccessful candidates
2 to employ whenever they are aggrieved by the will of the people. Indeed, sore losers—some
3 apparently sorer than others—are a constant in our democratic system. Far rarer are successful
4 contests brought under this statute, given that it is a highly specific, carefully crafted mechanism
5 for addressing *only* an enumerated list of issues.

6 Specifically, elections may be contested only on the “following grounds”:

- 7 • (a) “That the election board or any member thereof was guilty of malfeasance”;
- 8 • (b) That a prevailing candidate was ineligible for office;
- 9 • (c) That “[i]llegal or improper votes were cast and counted,” and/or “[l]egal and proper
10 votes were not counted . . . in an amount that is equal to or greater than the margin
11 between the contestant and the defendant, or otherwise in an amount sufficient to raise
12 reasonable doubt as to the outcome of the election”;
- 13 • (d) “That the election board, in conducting the election or in canvassing the returns, made
14 errors sufficient to change the result of the election”;
- 15 • (e) “That the defendant or any person acting, either directly or indirectly, on behalf of the
16 defendant has given, or offered to give, to any person anything of value for the purpose of
manipulating or altering the outcome of the election”; and
- (f) “That there was a malfunction of any voting device or electronic tabulator, counting
device or computer in a manner sufficient to raise reasonable doubt as to the outcome of
the election.”

17 NRS 293.410(2). *That’s it.* The statute is intended to remedy only a select collection of potential
18 electoral issues: official or candidate misconduct, candidate eligibility, and tabulation errors,
19 technical malfunctions, or counting of unlawful ballots (or non-counting of lawful ballots)
20 sufficient to overturn or cast reasonable doubt on the outcome of the election. Conspicuously
21 absent from this narrow list are the types of allegations that form the basis of Contestants’
22 statement, such as Clark County’s use (and alleged misuse) of the Agilis machine, the County’s
23 purportedly insufficient observation policies, and the challenged voter drives organized by third
24 parties. Indeed, none of the allegations raised in the statement constitute viable grounds under the
25 statute, and the statement should therefore be dismissed for this reason as well pursuant to NRS
26 293.410.

1 **A. Contestants do not allege that election boards committed malfeasance.**

2 Contestants suggest that three of their grounds for contest implicate alleged “malfeasance
3 under NRS 293.410(2)(a)”: issues with Clark County’s use of the Agilis machine, Statement
4 ¶ 48; issues with electronic voting machines, *see id.* ¶ 58; and “Clark County’s failure to provide
5 the general public with meaningful opportunities to observe the processing and tabulation of
6 mail-in ballots,” *id.* ¶ 92. None of these grounds constitutes cognizable malfeasance.

7 **1. Clark County’s operation of the voting machines was not**
8 **malfeasance.**

9 Nevada law is clear that “malfeasance . . . constitute[s] an act of commission as
10 distinguished from an act of omission.” *Jones v. Eighth Jud. Dist. Ct.*, 67 Nev. 404, 408, 219
11 P.2d 1055, 1057 (1950). Contestants, by contrast, allege that “the election board or members
12 thereof were guilty of malfeasance” due to “issues with the use of [electronic] voting
13 machine[s]” through a series of “failing[s]” and “failure[s].” Statement ¶ 58. But “[o]missions to
14 act are not acts of malfeasance in office, but constitute nonfeasance. A distinct difference is
15 recognized between the two. Conduct invoking one charge will not be sufficient to justify the
16 other.” *Buckingham v. Fifth Jud. Dist. Ct.*, 60 Nev. 129, 136, 102 P.2d 632, 635 (1940).
17 Accordingly, whatever omissions for which election officials might be responsible—that they
18 allegedly *failed* to “adequately update and/or maintain the voting machines prior to the election,”
19 “ensure continuous and proper operation of the voting machines,” “protect the integrity of voting
20 information through adequate password and data encryption measures,” “ensure the integrity of
21 voting information such that vote hand-tallies matched voting machine logs throughout the
22 voting process,” or “count legal and proper votes,” Statement ¶ 58—constitute mere acts of
23 nonfeasance, not *malfeasance* as required by the contest statute.

24 Moreover, malfeasance requires, at the very least, an allegation of *knowledge* that the act
25 was wrongful, if not a greater level of nefarious intent. *See Jones*, 67 Nev. at 415–18, 219 P.2d at
26 1060–62 (finding that complaint sufficiently alleged malfeasance by alleging knowledge and
27 agreeing that officer “must have done [the illegal act] knowing that he was doing wrong or at
28

1 least under such circumstances that any reasonable person who had done the same thing would
2 have known that he was doing something wrong” (quoting *Atwood v. Cox*, 55 P.2d 377, 393
3 (Utah 1936))).⁵ At no point do Contestants allege that, in supposedly failing to adequately
4 operate the electronic voting machines, election officials had knowledge of the wrongfulness of
5 these actions. Accordingly, under the Nevada Supreme Court’s interpretation of “malfeasance,”
6 none of the allegations relating to voting machines qualifies as a ground for contest.

7 **2. Clark County’s observation policies were not malfeasance.**

8 The same is true for the allegations relating to Clark County’s observation policies.
9 Contestants assert that “Clark County’s failure to provide the general public with meaningful
10 opportunities to observe the processing and tabulation of mail-in ballots was a violation of
11 Nevada law and, therefore, a malfeasance.” Statement ¶ 92. But, as discussed above,
12 malfeasance requires more than a mere failure to comply with the law—it requires a knowingly
13 wrong affirmative act. Nowhere do Contestants allege that Clark County election board members
14 intentionally or knowingly committed any wrongful acts relating to public observation. Nor
15 *could* they have made such allegations, let alone prevail on them; as this Court already
16 concluded, Clark County’s observation policies during the election were in fact lawful. *See*
17 *Kraus*, slip op. at 11 (concluding that “[p]etitioners [] failed to prove Registrar Gloria has
18 interfered with any right they or anyone else has as an observer” and that Registrar “Gloria has
19 not failed to meet his statutory duties . . . to allow members of the general public to observe the

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21 ⁵ *See also, e.g., State v. McRoberts*, 192 N.E. 428, 430 (Ind. 1934) (“‘Malfeasance’ is the doing
22 of an act wholly wrongful and unlawful.”); *State ex rel. Hardie v. Coleman*, 155 So. 129, 132
23 (Fla. 1934) (“Malfeasance has reference to evil conduct or an illegal deed, the doing of that
24 which one ought not to do, the performance of an act by an officer in his official capacity that is
25 wholly illegal and wrongful, which he has no right to perform or which he has contracted not to
26 do.”); *Holliday v. Fields*, 275 S.W. 642, 647 (Ky. 1925) (“Malfeasance in office is the
27 wrongdoing of an official act with an evil intent, or accompanied by such gross negligence as to
28 be equivalent to fraud.” (quoting *Commonwealth v. Wood*, 76 S.W. 842, 843 (Ky. 1903))). In
Buckingham, the Nevada Supreme Court cited *McRoberts*, *Coleman*, and *Holliday* as “cases
pointing out [the] distinction” between nonfeasance and malfeasance. *Buckingham*, 60 Nev. at
136; 102 P.2d at 635.

counting of ballots”) (attached as Ex. 5); *see also supra* Part I.A. Contestants have neither alleged nor demonstrated that Clark County’s observation practices were unlawful, let alone knowingly so, and so this ground cannot constitute malfeasance.

3. Clark County’s operation of the Agilis machine was not malfeasance.

Contestants’ claim that use of the Agilis machine constitutes malfeasance is premised on two theories: that its use was unlawful under both Nevada statutes and the Equal Protection Clauses of the U.S. and Nevada Constitutions, *and* that Clark County “[u]tiliz[ed] the Agilis machine in a manner inconsistent with its factory specification.” *Id.* ¶ 48. But, as with the allegations discussed above, at no point do Contestants suggest that Clark County’s failure to use factory specifications was an intentional commission motivated by, or even with knowledge of, its wrongfulness. And Contestants do not suggest that Clark County operated the Agilis machine in a manner its officials knew violated Nevada statutes or equal protection principles. Nor *could* they; Clark County’s use of the Agilis machine is permitted under Nevada’s election law and consistent with basic principles of equal protection, as Judge Wilson already concluded. *See Kraus*, slip op. at 12–13 (attached as Ex. 5).

In passing AB 4, the Nevada Legislature specifically authorized counties to adopt procedures that include the processing and counting of mail ballots “*by electronic means.*” NRS 293.8871(2)(a) (emphasis added). Pursuant to this authority, Clark County employed the Agilis machine to sort ballots and conduct a first pass in matching the signatures on ballot return envelopes with the signatures on file in Clark County’s records. In response to this straightforward exercise of statutorily granted administrative discretion, Contestants suggest that NRS 293.8874 does not permit “relying on artificial intelligence software to verify matching signatures.” Statement ¶ 38. But that section does not need to permit it because NRS 293.8871(2)(a) *does*. Nothing in NRS 293.8874 requires the clerk or the clerk’s employees to conduct its initial signature matching manually, or to abstain from using a machine to process ballots. Instead, human intervention is required only when a ballot is rejected. At that point, “at least two employees in the office of the clerk” must agree that “there is a reasonable question of

fact as to whether the signature used for the mail ballot matches the signature of the voter.” NRS 293.8874(1)(b). Contestants do not and cannot allege that ballots were rejected in Clark County due to signature mismatches *without* following this procedure. Accordingly, Clark County’s use of the Agilis machine is permitted (and, indeed, contemplated) by Nevada’s election laws, as Judge Wilson already concluded, *see Kraus*, slip op. at 12 (“[T]he statute does not prohibit the use of electronic means to check the signature.”) (attached as Ex. 5)—a conclusion with which the Nevada Supreme Court already stated it was likely to agree. Contestants’ apparent dissatisfaction with Clark County’s decision and the results of the election does not permit them to rewrite these laws. This ground for contest cannot be maintained.

Contestants also suggest—briefly—that Clark County’s use of the Agilis machine “[v]iolat[ed] the equal protection right afforded to the citizens of Nevada by the Nevada and United States Constitutions.” Statement ¶ 48(c).⁶ But Contestants do not allege that Clark County intentionally or even knowingly violated the Equal Protection Clause, and an alleged equal protection violation on its own is not otherwise a cognizable ground on which to base an election contest. *See* NRS 293.410(2). And at any rate, Contestants do not allege that Clark County failed to follow the same procedures every other county is required to use before a ballot is rejected under the signature-matching regime (specifically, examination of the ballot by two employees, *see* NRS 293.8874(1)(b)) or identify any other purportedly disparate treatment—a fatal shortcoming that forecloses an equal protection claim. *See Moore v. Bryant*, 853 F.3d 245, 250 (5th Cir. 2017) (“The gravamen of an equal protection claim is differential governmental treatment.”). And even if use of the Agilis machine *could* be somehow construed as disparate treatment, it clearly furthers a legitimate government purpose and therefore passes constitutional muster. Clark County, the most populous county in Nevada, has an interest in ensuring it is able

⁶ For purposes of equal protection analysis, “the standard of the Equal Protection Clause of the Nevada Constitution [is] the same as the federal standard.” *Armijo v. State*, 111 Nev. 1303, 1304, 904 P.2d 1028, 1029 (1995) (*per curiam*).

1 to process the vastly larger number of mail ballots it receives. *See Paher v. Cegavske*, No. 3:20-
2 cv-00243-MMD-WGC, 2020 WL 2748301, at *9 (D. Nev. May 27, 2020) (“[I]t cannot be
3 contested that Clark County, which contains most of Nevada’s population—and likewise voters
4 (69% of all registered voters)—is differently situated than other counties.”). It therefore satisfies
5 rational basis review, and there is no cognizable equal protection violation.⁷

6 Because Clark County’s utilization of the Agilis machine—far from intentionally
7 wrongful—was wholly lawful, it cannot possibly constitute malfeasance.

8 **B. Contestants do not allege that Defendants committed misconduct.**

9 Contestants suggest that third-party voter drives, which were allegedly “promoted by
10 NNVP organizing personnel displaying ‘Biden-Harris’ promotional material and logos,” violated
11 NRS 293.410(2)(e) because “value was being offered to voters under these circumstances in an
12 effort to manipulate or alter the outcome of the Election.” Statement ¶ 102. But that provision
13 requires intentional wrongdoing by a person who (1) has an agency relationship with the
14 candidate—“the defendant or any person acting, either directly or indirectly, on behalf of the
15 defendant”—and (2) offers a thing of value “for the purpose of manipulating or altering the
16 outcome of the election.” NRS 293.410(2)(e). Contestants’ allegations fall short on both counts.

17 *First*, at no point do Contestants allege (nor could they) that either NNVP or its personnel
18 were acting on behalf of Defendants or President-elect Biden’s campaign. As with their other
19 allegations, *see supra* Part II, Contestants rely on wholly conclusory statements without
20 providing necessary specifics: when these drives were held, where they were held, and, most

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22 ⁷ *Bush v. Gore*, 531 U.S. 98 (2000) (per curiam)—an oft-cited case for post-election equal
23 protection issues—does not save Contestants’ claim. There, the U.S. Supreme Court considered
24 “whether the use of standardless manual recounts” by some Florida counties in the aftermath of
25 the 2000 presidential election violated the Equal Protection Clause of the U.S. Constitution. *Id.* at
26 103. The Court specifically clarified that it was *not* deciding “whether local entities, in the
27 exercise of their expertise, may develop different systems for implementing elections.” *Id.* at
28 109. Instead, it was addressing a situation where the counting of ballots lacked even “minimal
procedural safeguards.” *Id.* Here, the requirement that all ballots be subject to manual review
before they are rejected provides that very safeguard.

1 importantly, what constituted the requisite connection between NNVP and Defendants. *Cf.*
2 NRC 9(b) (“In alleging fraud or mistake, a party must state with particularity the circumstances
3 constituting fraud or mistake.”); *Thomas v. Eugene*, 973 N.Y.S.2d 529, 533 (N.Y. Sup. Ct. 2013)
4 (dismissing fraud action against city council candidate where petition “fail[ed] to allege
5 candidate involvement with any specificity”). The only link Contestants cite is that some NNVP
6 personnel allegedly wore Biden-Harris apparel, promoted that presidential ticket, and “st[ood] in
7 front of a van bearing a ‘Biden-Harris’ logo.” Statement ¶ 99. But neither these individuals’
8 sartorial selections nor the presence of a Biden-Harris logo constitutes a sufficient connection
9 between Defendants and NNVP’s voting drives such that Defendants and the Biden campaign
10 are implicated by these activities. Otherwise, a candidate for office would become responsible
11 for the actions of every supporter who sported a t-shirt with the candidate’s name or a red hat
12 with the candidate’s slogan.

13 *Second*, encouraging people to vote by offering prizes—which is all NNVP even
14 *allegedly* did—does not constitute “manipulating or altering the outcome of the election.” NRS
15 293.410(2)(e). Given the grave consequences of the conduct proscribed, this provision should be
16 read to mean only what it is obviously intended to reach: intentional tampering or other
17 wrongdoing to subvert the outcome of the election. Offering a t-shirt to encourage someone to
18 vote, or even a raffle ticket or gift card, cannot, under any reasonable interpretation of the contest
19 statute, be considered a cognizable manipulation of the outcome of an election.

20 **C. Contestants do not sufficiently allege that there were technical malfunctions**
21 **that cast doubt on the election.**

22 Contestants’ allegations of malfunction fare no better. Although they allege malfunctions
23 of both the Agilis machine, *see* Statement ¶ 35, and electronic voting machines, *see id.* ¶ 61, their
24 allegations concerning both are insufficient as a matter of law.

25 **1. Clark County’s operation of the Agilis machine was not a**
26 **malfunction.**

27 Although the election contest statute does not itself define “malfunction,” dictionaries
28

define the term as “[a] fault in the way something works,” *Malfunction*, *Black’s Law Dictionary* (11th ed. 2019), and “a failure to operate or function in the normal or correct manner,” *Malfunction*, *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2003); *see also Allison v. Merck & Co.*, 110 Nev. 762, 768, 878 P.2d 948, 952 (1994) (“[W]hen “machinery ‘malfunctions,’ it obviously lacks fitness regardless of the cause of the malfunction.”” (quoting *Stackiewicz v. Nissan Motor Corp.*, 100 Nev. 443, 448–49, 686 P.2d 925, 928 (1984))); *Otis Elevator Co. v. Reid*, 101 Nev. 515, 520, 706 P.2d 1378, 1381 (1985) (describing incidents where elevator operated differently than “normal” as “malfunctions”). Contestants, however, do not allege that the Agilis machine was faulty, but rather that Clark County “utiliz[ed] the Agilis machine in a manner inconsistent with its factory specifications—i.e. altering the error tolerance level and utilizing signature exemplars at lower than the minimum resolution required.” Statement ¶ 48(b). Clark County’s mode of operating the Agilis machine, though not to Contestants’ liking, was not a malfunction even under Contestants’ own characterization. The Agilis machine functioned as the County planned, and its use did not constitute a malfunction.

2. Contestants do not raise a reasonable doubt as to the outcome of the election with respect to alleged malfunctioning of voting machines.

Even if they had alleged a “malfunction,” Contestants never explain how the purported failures of the electronic voting machines raise any doubt as to the outcome of the election. They state, with nothing more, that “[t]he evidence will show that there were no less than 1,000 illegal or improper votes cast and counted through the use of the voting machine” and “no less than 1,000 legal and proper votes that were not cast and counted through the use of the voting machine.” *Id.* ¶¶ 59, 60. These allegations are wholly inadequate to provide sufficient notice as to how votes were lost or added, and the 2,000 alleged votes identified by the Contestants here certainly fall well short of the threshold required to call into question the outcome of an election that resulted in a 30,000-plus vote margin between the candidates. *See Clee*, 196 A. at 484 (“Even if the conjecture that many [ballots] cast for the contestant were wrongfully rejected be taken as true, the petition should state in what districts such rejections occurred, and how many

1 in each district, so that the incumbent might prepare for his defense, and the court might see what
2 influence the counting of these rejected ballots would have towards changing the result.”
3 (alteration in original) (quoting *Lehlbach v. Haynes*, 23 A. 422, 422 (N.J. 1891))).

4 **D. Contestants do not allege illegal votes sufficient to change or cast doubt on**
5 **the outcome of the election.**

6 Finally, Contestants’ statement fails to allege, let alone with the requisite “sufficient
7 certainty,” that the number of supposedly “illegal or improper” votes cast was great enough to
8 change the outcome of the election or call it into reasonable doubt. Although the Nevada
9 Supreme Court has never addressed this provision, the meaning of these terms is apparent:
10 “illegal or improper votes” are those that could not have been lawfully cast and should therefore
11 not be counted.⁸

12 In their statement, Contestants identify the following votes that were allegedly cast
13 illegally and included in the tally:

- 14 • “far more than 3,188” votes that “should have been rejected and not counted in the vote
15 totals” based on “expected rejection rate during the course of signature comparisons,” *id.*
16 ¶ 45;
- 17 • “no less than 1,000 illegal or improper votes cast and counted”—and “no less than 1,000
18 legal and proper votes . . . not cast and counted”—due to purported maintenance and
security issues with voting machines, *id.* ¶¶ 59–60;
- “no less than 15,000 . . . illegal and improper votes” cast by “voters who are also known
to have voted in other states,” *id.* ¶ 64;

19
20 ⁸ See, e.g., *Mahaffey v. Barnhill*, 855 P.2d 847, 850 (Colo. 1993) (defining votes cast by those
ineligible to vote as “illegal votes”); *Turner v. Cooper*, 347 So. 2d 1339, 1341 (Ala. 1977)
21 (describing “illegal votes” as those cast by unqualified voters); *Groves v. Bd. of Cnty. Comm’rs*,
429 P.2d 994, 995–96 (Okla. 1967) (using “illegal votes” to describe those cast by “illegal
22 voters,” “not qualified, taxpaying voters”); *Olson v. Fleming*, 254 P.2d 335, 336 (Kan. 1953)
(using “votes of illegal voters” and “illegal votes” interchangeably); *Grounds v. Lawe*, 193 P.2d
23 447, 449 (Ariz. 1948) (explaining that trial court found “fifteen illegal votes” because “fifteen
[votes] had been cast by persons not qualified to vote”); *Harris v. Stewart*, 193 So. 339, 341
24 (Miss. 1940) (describing “illegal votes” as those cast by someone “not a qualified voter”);
Jaycox v. Varnum, 226 P. 285, 288 (Idaho 1924) (similar); *Montoya v. Ortiz*, 175 P. 335, 337
25 (N.M. 1918) (“There was no question raised as to illegal votes. All voters who voted at the
election were concededly qualified voters.”); *Horton v. Sullivan*, 86 A. 314, 314 (R.I. 1913)
26 (using “illegal votes” to describe those cast by “illegal voters”).
27
28

- 1 • “no less than 1,000 . . . illegal and improper votes” “cast by voters who did not meet the
2 resident requirement to vote in Nevada,” *id.* ¶ 67;
- 3 • “no less than 500 . . . illegal and improper votes” that were “received from deceased
4 persons,” *id.* ¶ 68;
- 5 • “no less than 500 . . . illegal and improper votes” that “were completed and submitted at
6 polling places by those other than voters,” *id.* ¶ 70; and
- 7 • “no less than 500 provisional ballots [that] were counted in the official vote total without
8 the issues which rendered them provisional in the first place ever being resolved,” *id.*
9 ¶ 77.⁹

10 But as discussed in Part II *supra*, all of Contestants’ vote-figure allegations are impermissibly
11 vague, conjectural, and imprecise, falling well short of the specificity and certainty needed for a
12 statement of contest. *See Waters*, 2014 WL 7334915, at *6 (“A plaintiff challenging a special
13 general election must show that he or she has actual information of mistakes or errors sufficient
14 to change the election result.”). Contestants provide absolutely no detail to bolster these
15 conclusory allegations; they simply list off various conceivable forms of illegal voting and
16 conjure an accompanying vote total, without a shred of specific information. *See In re Contest of*
17 *Nov. 8, 2005 Gen. Election for Office of Mayor of Twp. of Parsippany-Troy Hills*, 934 A.2d 607,
18 630 (N.J. 2007) (Rivera-Soto, J., concurring in part and dissenting in part) (“[Contest] petition
19 should have contained factual representations—not bare conclusions—as to the wherefores and
20 the whys regarding those [petitioner] identified as legal voters whose votes had been rejected or
21 those [petitioner] identified as illegal voters.”).

22 ⁹ Contestants allege other contested vote figures in their statement, but none of these implicates
23 “illegal or improper” votes. For example, Contestants cite an “estimated 130,000 votes” that
24 were verified using the Agilis machine in alleged “violation of NRS 293.8874(1)” and “should
25 be invalidated as illegal votes,” Statement ¶ 41, but illegal votes are those that are unlawfully
26 cast, not unlawfully *processed*, and at any rate, use of the Agilis machine is legal. *See supra* Part
27 III.A.3. Contestants also point to “no less than 500 . . . illegal and improper votes” “cast in
28 exchange for” various incentives.” Statement ¶ 100. But although use of incentives by a
candidate might be grounds for a contest, *see* NRS 293.410(2)(e); *see also supra* Part III.B,
Contestants cite no authority for the proposition that a vote cast by a person who received an
incentive is itself illegal or unlawful. *See Clee*, 196 A. at 483 (“Fraud is a conclusion of law
which is based upon fact. . . . The addition of the word ‘fraudulent’ to an allegation, otherwise
insufficient on its face, will not make out a case under the statute.”).

Even if these allegations were not hopelessly speculative, the sum total of the allegedly “illegal and improper” votes catalogued in Contestants’ statement is only 22,688—more than *ten thousand votes* shy of the 33,596-vote margin that separates President-elect Biden and President Trump. *See* Statement ¶ 29. In other words, even accepting Contestants’ vague conjectures regarding illegal votes as true—and accepting that removal of these votes would help only President Trump and not President-elect Biden, which is never clearly alleged and wholly implausible—the total number of votes alleged in Contestants’ statement would still fall well short of “an amount that is equal to or greater than the margin between the contestant and the defendant,” as required by the contest statute. NRS 293.410(2)(c). Nor is this “an amount sufficient to raise reasonable doubt as to the outcome of the election,” *id.*—although the figure reduces the margin, it would still leave President-elect Biden with an insurmountable winning margin of nearly 11,000 votes, or 0.7 percent. *See Waters*, 2014 WL 7334915, at *6–7 (“In the absence of facts showing that irregularities exceed the reported margin between the candidates, the complaint is legally insufficient because, even if its truth were assumed, the result of the election would not be affected.”).

CONCLUSION

President-elect Biden won the presidential contest and, with it, Nevada’s electoral votes. Contestants’ last-ditch effort to deny his victory—what will hopefully be the final chapter in a prolonged, shameful attempt to undermine the democratic process and subvert the will of voters in Nevada and nationwide—necessarily fails, as it is premised on phantom tales of fraud and debunked legal theories. This Court and other courts have already considered and rejected many of Contestants’ claims, and their statement itself is an impermissibly vague and speculative effort that falls woefully short of the minimum standard required to justify the time and expense of discovery and adjudication. It further fails to articulate grounds for contest cognizable under the statute that authorizes the relief they seek. Contestants’ action is, ultimately, a prejudicially delayed, thoroughly inequitable attempt at disenfranchisement that runs contrary to both the text and spirit of the law.

1 For these reasons, Defendants respectfully request that this Court dismiss Contestants'
2 statement.

3 **AFFIRMATION**

4 The undersigned does hereby affirm that the foregoing document does **not** contain the
5 social security number of any person.

6 DATED this 23rd day of November, 2020.

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**Pro hac vice submitted*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 23rd of November, 2020 a true and correct copy of
3 **DEFENDANTS' MOTION TO DISMISS STATEMENT OF CONTEST OF THE**
4 **NOVEMBER 3, 2020 PRESIDENTIAL ELECTION** was served upon all parties via electronic
5 mailing to the following:

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EXHIBIT 1

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**Application for admission
pro hac vice forthcoming*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DONALD J. TRUMP FOR PRESIDENT,
INC.; REPUBLICAN NATIONAL
COMMITTEE; and NEVADA
REPUBLICAN PARTY,

Plaintiffs,

v.

BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,

Defendant.

No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Plaintiffs Donald J. Trump for President, Inc., the Republican National Committee, and the
2 Nevada Republican Party bring this action to challenge Assembly Bill 4—a bill passed on Sunday,
3 August 2, 2020, during the 32nd Special Session of the Nevada Legislature. Plaintiffs allege as
4 follows:

5 **INTRODUCTION**

6 1. Every American who is eligible to vote should be able to freely do so. Robust
7 participation in our biennial elections strengthens the Nation’s civic fibers, allowing the United
8 States of America to retain its place as the world’s preeminent constitutional republic. Thus,
9 Republicans have always supported efforts to make it easier for voters to cast their ballot. At the
10 same time, however, the electoral process cannot function properly if it lacks integrity and results
11 in chaos. Put simply, the American people must be able to trust that the result is the product of a
12 free and fair election.

13 2. Nevada’s recently enacted election laws—collectively, AB4—fall far short of this
14 standard. On a straight-party-line vote taken on a Sunday afternoon, the Nevada Legislature passed
15 a 60-page, single-spaced bill first introduced shortly after noon the previous Friday. AB4 adds more
16 than 25 new election-related sections to the Nevada Revised Statutes and amends more than 60
17 others. Many of those provisions will undermine the November election’s integrity. Some go
18 beyond that, crossing the line that separates bad policy judgments from enactments that violate
19 federal law or the United States Constitution.

20 3. Hence this lawsuit. Our elections must occur under valid laws. Under the U.S.
21 Constitution, states have broad discretion to decide how to conduct their elections. But their election
22 laws must comply with the higher law of the U.S. Constitution and with federal laws enacted under
23 it.

24 4. Exercising its constitutional power under the Elections Clause and the Electors
25 Clause, Congress has established a uniform, national day to elect members of Congress and to
26 appoint presidential electors. *See* 2 U.S.C. §§ 1, 7; 3 U.S.C. §1. AB4 contravenes those valid federal
27 laws by requiring elections officials to accept and count ballots received after Election Day *even*
28 *when* those ballots lack objective evidence that voters cast them on or before Election Day. In short,

1 AB4 effectively postpones and prolongs Nevada's 2020 general election past the Election Day
2 established by Congress.

3 5. Other provisions in AB4 lack clear standards to guide the actions of county and city
4 officials administering certain parts of Nevada's elections. AB4 thus will result in the State treating
5 Nevada voters differently based on nothing more than their county of residence. That disparate
6 treatment violates their Fourteenth Amendment right to the equal protection of the laws.

7 6. The combined effect of those problems, and others described below, will be to dilute
8 the votes of some Nevada voters, thereby infringing their right to vote under the Fourteenth
9 Amendment.

10 7. New York's June 2020 primary election confirms that these are not hypothetical
11 concerns. "Elections officials in New York City widely distributed mail-in ballots for the primary
12 on June 23." Jesse McKinley, *Why the Botched N.Y.C. Primary Has Become the November*
13 *Nightmare*, N.Y. Times (Aug. 3, 2020), <https://nyti.ms/3fvDrhx>. "Now, nearly six weeks later, two
14 closely watched congressional races remain undecided, and major delays in counting a deluge of
15 400,000 mail-in ballots and other problems are being cited as examples of the challenges facing the
16 nation as it looks toward conducting the November general election during the pandemic." *Id.* Yet
17 as those very problems unfolded, Nevada's Democratic leadership still introduced and passed AB4
18 on a weekend, straight-party-line vote. No one should be surprised that such a process produced
19 legislation bearing constitutional flaws.

20 8. For all these reasons and those alleged below, AB4 is illegal and must be enjoined.

21 **JURISDICTION AND VENUE**

22 9. This Court has subject matter jurisdiction because this action arises under the
23 Constitution and laws of the United States. 28 U.S.C. §§1331 & 1343.

24 10. Venue is proper because a substantial part of the events giving rise to the claims
25 occurred in this District, and the Defendants reside in this District. *Id.* §1391.

26 **PARTIES**

27 11. Plaintiff Donald J. Trump for President, Inc. is the principal committee for President
28 Donald J. Trump's reelection campaign.

1 12. Plaintiff Republican National Committee (RNC) is a national political party with its
2 principal place of business at 310 First Street S.E., Washington D.C., 20003.

3 13. The RNC organizes and operates the Republican National Convention, which
4 nominates a candidate for President and Vice President of the United States.

5 14. The RNC represents over 30 million registered Republicans in all 50 states, the
6 District of Columbia, and the U.S. territories. It is comprised of 168 voting members representing
7 state Republican Party organizations, including three members who are registered voters in Nevada.

8 15. The RNC works to elect Republican candidates to state and federal office. In
9 November 2020, its candidates will appear on the ballot in Nevada for most federal and state
10 offices. In elections for the U.S. House of Representatives, for example, the Cook Political Report
11 lists two of Nevada's four house races as "competitive," with one of those as "likely Democratic"
12 and the other as "lean Democratic."

13 16. The RNC has a vital interest in protecting the ability of Republican voters to cast,
14 and Republican candidates to receive, effective votes in Nevada elections and elsewhere. The RNC
15 brings this suit to vindicate its own rights in this regard, and in a representational capacity to
16 vindicate the rights of its members, affiliated voters, and candidates.

17 17. The RNC also has an interest in preventing AB4's constitutionally problematic
18 changes to Nevada election law. Major or hasty changes confuse voters, undermine confidence in
19 the electoral process, and create incentive to remain away from the polls. Thus, AB4 forces the
20 RNC to divert resources and spend significant amounts of money educating Nevada voters on those
21 changes and encouraging them to still vote.

22 18. Plaintiff Nevada Republican Party (NVGOP) is a political party in Nevada with its
23 principal place of business at 2810 West Charleston Blvd. #69, Las Vegas, NV 89102. The Nevada
24 Republican Central Committee (NRCC) is the NVGOP's governing body. The NVGOP and NRCC
25 exercise their federal and state constitutional rights of speech, assembly, petition, and association
26 to "provide the statutory leadership of the Nevada Republican Party as directed in the Nevada
27 Revised statutes," to "recruit, develop, and elect representative government at the national, state,
28 and local levels," and to "promote sound, honest, and representative government at the national,

1 state and local levels.” NRCC Bylaws, art. II, §§1.A-1.C.

2 19. The NVGOP represents over 600,000 registered Republican voters in Nevada as of
3 August 2020.

4 20. The NVGOP has the same interests in this case, and seeks to vindicate those interests
5 in the same ways, as the RNC.

6 21. Defendant Barbara Cegavske is the Secretary of State of Nevada. She serves “as the
7 Chief Officer of Elections” for Nevada and “is responsible for the execution and enforcement of
8 the provisions of title 24 of NRS and all other provisions of state and federal law relating to
9 elections in” Nevada. NRS 293.124. She is sued in her official capacity.

10 **BACKGROUND**

11 **I. State laws that set the time, place, and manner of elections for federal offices cannot 12 conflict with contrary federal law or with federal constitutional commands.**

13 22. The U.S. Constitution’s Elections Clause vests state legislatures with power to set
14 the time, place, and manner of congressional elections. U.S. Const., art. I, §4, cl. 1.

15 23. But the Elections Clause also reserves to “Congress” the power to “at any time by
16 Law make or alter such Regulations, except as to the Places of chusing Senators.” *Id.*

17 24. A law governs “‘the election’ of a Senator or Representative” when it “plainly
18 refer[s] to the combined actions of voters and officials meant to make a final selection of an
19 officeholder.” *Foster v. Love*, 522 U.S. 67, 71 (1997).

20 25. Exercising its constitutional power to pass laws governing elections for federal
21 offices, Congress has established one specific day as the uniform, national Election Day for
22 members of the United States House of Representatives and of the United States Senate. For both
23 offices, the “Tuesday next after the 1st Monday in November” is “the day for the election.” 2 U.S.C.
24 §7 (elections for members of the House of Representatives held on that day “in every even
25 numbered year”); *see also id.* §1 (Senators to be elected “[a]t the regular election held in any State
26 next preceding the expiration of the term for which any Senator was elected to represent such State
27 in Congress, at which a Representative to Congress is regularly by law to be chosen”).

28 26. The U.S. Constitution also vests in “Congress” the power to “determine the Time of

1 choosing the Electors” for the offices of President and Vice President. U.S. Const. art. II, §1, cl. 4.

2 27. Exercising that power, Congress has established that “[t]he electors of President and
3 Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in
4 November, in every fourth year succeeding every election of a President and Vice President.” 3
5 U.S.C. §1.

6 28. Combined, 2 U.S.C. §§1, 7, and 3 U.S.C. §1 establish the Tuesday after the first
7 Monday in November as the uniform, national Election Day for members of Congress and as the
8 uniform, national day for appointing electors for President and Vice President.

9 29. Those “uniform rules for federal elections” are both “binding on the States” and
10 superior to conflicting state law: “[T]he regulations made by Congress are paramount to those
11 made by the State legislature; and if they conflict therewith, the latter, so far as the conflict extends,
12 ceases to be operative.” *Foster*, 522 U.S. at 69 (quoting *Ex parte Siebold*, 100 U.S. 371, 384
13 (1879)). In other words, if a state law governing elections for federal offices “conflicts with federal
14 law,” that state law is “void.” *Id.* at 74.

15 30. State election laws must also comport with federal constitutional requirements. For
16 example, state election laws may not “deny to any person within” the state’s “jurisdiction the equal
17 protection of the laws.” U.S. Const. amend. XIV, §1.

18 31. According to the Supreme Court, the Fourteenth Amendment of the U.S.
19 Constitution protects the “the right of all qualified citizens to vote, in state as well as in federal
20 elections.” *Reynolds v. Sims*, 77 U.S. 533, 554 (1964). “Obviously included within the right to
21 [vote], secured by the Constitution, is the right of qualified voters within a state to cast their ballots
22 and have them counted.” *United States v. Classic*, 313 U.S. 299, 315 (1941). “[T]he right to have
23 the vote counted” means counted “at full value without dilution or discount.” *Reynolds*, 377 U.S.
24 at 555 n.29 (quoting *South v. Peters*, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)).

25 32. Both direct denials and practices that otherwise promote fraud and dilute the
26 effectiveness of individual votes, thus, can violate the Fourteenth Amendment. *See id.* at 555
27 (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote
28 just as effectively as by wholly prohibiting the free exercise of the franchise.”).

33. “Every voter in a federal ... election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes.” *Anderson v. United States*, 417 U.S. 211, 227 (1974); *see also Baker v. Carr*, 369 U.S. 186, 208 (1962).

34. Fraudulent votes “debase[]” and “dilute” the weight of *each* validly cast vote. *See Anderson*, 417 U.S. at 227. When it comes to “dilut[ing] the influence of honest votes in an election,” whether the dilution is “in greater or less degree is immaterial”; it is a violation of the Fourteenth Amendment. *Id.* at 226.

35. The Equal Protection Clause of the U.S. Constitution requires States to “avoid arbitrary and disparate treatment of the members of its electorate.” *Charfauros v. Bd. of Elections*, 249 F.3d 941, 951 (9th Cir. 2001) (quoting *Bush v. Gore*, 531 U.S. 98, 105 (2000)); *see also Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (“[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.”); *Gray v. Sanders*, 372 U.S. 368, 380 (1963) (“The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of [the Supreme Court’s] decisions.”).

36. “[T]reating voters differently” thus “violate[s] the Equal Protection Clause” when the disparate treatment is the result of arbitrary, ad hoc processes. *Charfauros*, 249 F.3d at 954. Indeed, a “minimum requirement for nonarbitrary treatment of voters [is] necessary to secure the fundamental right” to vote. *Bush*, 531 U.S. at 105.

37. The use of “standardless” procedures can violate the Equal Protection Clause. *Bush*, 531 U.S. at 103. “The problem inheres in the absence of specific standards to ensure ... equal application” of even otherwise unobjectionable principles. *Id.* at 106. Any voting system that involves discretion by decisionmakers about how or where voters will vote must be “confined by specific rules designed to ensure uniform treatment.” *Id.* at 106.

II. Nevada law regulates the time, place, and manner of elections for federal offices.

38. The Nevada Legislature has exercised its power under the Elections Clause to pass laws regulating the time, place, and manner of elections for federal officers from Nevada. *See, e.g.,*

1 NRS Chapters 293, 298, 304.

2 39. For example, Nevada law regulates the administration of primary elections,
3 including setting rules for becoming a candidate for federal and state office and for how those
4 candidates qualify for the primary-election ballot. *See, e.g.*, NRS 293.175-293.190.

5 40. Nevada law also regulates the administration of general elections. Among other
6 things, Nevada law establishes at least five different ways that Nevadans may vote in a general
7 election: by in-person voting at the polls, NRS 293.270-293.307; by provisional ballot, NRS
8 293.3078-293.3086; by absent ballot voting, NRS 293.3088-293.340; by voting in mailing
9 precincts, NRS 293.343-293.355; and by early in-person voting, NRS 293.356-293.361. Nevada
10 law also establishes how ballots are to be counted and the returns are to be canvassed. NRS
11 293.3625-293.397.

12 41. Among those voting options, Nevadans historically have chosen overwhelmingly to
13 vote in person. Consider just the past two election cycles, where the Secretary's own data show that
14 9 of every 10 ballots cast have been in-person votes.

15 42. In Nevada's 2016 primary election, 89.49% of the total ballots cast were in-person
16 votes cast during early voting (50.53% of total ballots) or on Election Day (38.96% of total ballots).
17 Absent ballots constituted just 9.30% of total ballots cast, and the remaining 1.21% of total ballots
18 cast were mailing ballots. Office of Nev. Sec'y of State Barbara K. Cegavske, 2016 Primary
19 Election Turnout (June 23, 2016), <https://bit.ly/31dPyux>.

20 43. In Nevada's 2016 general election, 93.02% of the total ballots cast were in-person
21 votes cast during early voting (62.41% of total ballots) or on Election day (30.61% of total ballots).
22 Absent ballots constituted just 6.41% of total ballots cast, and the remaining 0.57% of total ballots
23 cast were mailing ballots. Office of Nev. Sec'y of State Barbara K. Cegavske, 2016 General
24 Election Turnout (Feb. 10, 2017), <https://bit.ly/3a0U9nS>.

25 44. Nevadans' overwhelming preference for voting in person remained unchanged two
26 years later. In Nevada's 2018 primary election, 92.1% of the total ballots cast were in-person votes
27 cast during early voting (47.75% of total ballots) or on Election Day (44.35% of total ballots).
28 Absent ballots constituted just 7.21% of total ballots cast, and the remaining 0.69% of total ballots

1 cast were mailing ballots. Office of Nev. Sec’y of State Barbara K. Cegavske, 2018 Primary
2 Election Turnout (July 10, 2018), <https://bit.ly/3fyX6NH>.

3 45. So too for Nevada’s 2018 general election. There, 91.04% of the total ballots cast
4 were in-person votes cast during early voting (56.80% of total ballots) or on Election day (34.24%
5 of total ballots). Absent ballots constituted just 8.57% of total ballots cast, and the remaining 0.39%
6 of total ballots cast were mailing ballots. Office of Nev. Sec’y of State Barbara K. Cegavske, 2018
7 General Election Turnout (Nov. 20, 2018), <https://bit.ly/31kS81E>.

8 46. For Nevada’s 2020 primary election, however, all that changed. On March 24, 2020,
9 Secretary Cegavske announced that Nevada’s June 9, 2020, primary election would be an all-mail
10 election due to “the many uncertainties surrounding the COVID-19 pandemic.” *Secretary*
11 *Cegavske Announces Plan to Conduct the June 9, 2020 Primary Election by All Mail* (Mar. 24,
12 2020), <https://bit.ly/33mZt3p>. The Secretary directed county and city elections officials to mail
13 absent ballots to all active registered voters, who could return those ballots by mail in a postage-
14 prepaid envelope or by dropping the ballot in person at a designated county location. *See id.* But
15 the Secretary assured Nevadans that despite the move to an all-mail election, “at least one in-person
16 polling location will be available in each county for the June 9, 2020 primary election” to
17 “accommodate same-day voter registration” and to help “voters who have issues with the ballot
18 that was mailed to them.” *Id.*

19 47. Nearly a month later, the Democratic National Committee, the Nevada State
20 Democratic Party, related entities, and four individual Nevadans sued Secretary Cegavske, the
21 Clark County Registrar of Voters, the county clerks of Washoe and Elko Counties, and Nevada
22 Attorney General Aaron Ford in Nevada state court. *See Compl., Corona et al. v. Cegavske et al.*,
23 No. 20-OC-00064-I-B (1st Judicial Dist. Apr. 16, 2020). Those plaintiffs contended, among other
24 things, that the Secretary’s plan unconstitutionally burdened Nevadans’ right to vote. They sought
25 an order requiring elections officials (1) to open *more* in-person voting places, and (2) to mail
26 absent ballots not just to active registered voters but also to *inactive* voters—persons the State had
27 learned, principally from return-mail notices from the U.S. Postal Service, no longer lived at the
28 address where they had registered to vote. The Republican National Committee and the Nevada

1 Republican Party successfully intervened as defendants in the *Corona* case.

2 48. The plaintiffs in *Corona* moved for a preliminary injunction. Secretary Cegavske
3 and Attorney General Ford, the Washoe and Elko County Clerks, and the RNC and NVGOP
4 opposed the motion.

5 49. But on the day his opposition brief was due, the Clark County Registrar told the
6 plaintiffs and other parties that the Clark County Commission had instructed him both to open
7 additional in-person voting places in Clark County and to mail ballots to all Clark County active
8 *and inactive* registered voters.

9 50. After receiving notice of Clark County's concessions, the *Corona* plaintiffs
10 withdrew their motion for a preliminary injunction. And Clark County conducted the primary
11 election as it said it would.

12 51. The consequences of this hurried switch—from Nevada elections occurring 90% by
13 in-person voting to an all-mail election—should surprise no one. The *Las Vegas Review-Journal*
14 reported that, within the first week of voting in Nevada's first-ever all-mail primary, photographic
15 evidence surfaced of numerous ballots "tossed in trash cans and littering apartment mailbox areas"
16 in Clark County.

17 52. On May 8, 2020, one Clark County voter found "about a dozen ballots pinned to the
18 complex's bulletin board or otherwise thrown around." Over the next few days, he found many
19 more in nearby trash cans.

20 53. In a different apartment complex, another voter saw ballots "sticking out of
21 residents' mailboxes and 'at least a dozen' were sitting in nearby garbage cans."

22 54. Another resident received a ballot at her home addressed to her deceased mother.

23 55. A U.S. Postal Service worker serving the area witnessed the breadth of the problem.
24 She recounted that, over the course of multiple days, she saw an "influx of absentee ballots"—as
25 many as 100 in a single day—that were "no good," often because they had been sent to recipients
26 who had moved or died. "In all, she said there were thousands [of ballots] sitting in crates with no
27 additional safeguards and marked to be sent back to the county."

28 56. Nevada is not the only jurisdiction that experienced those types of problems after a

hurried switch to mail-in voting for its Spring 2020 elections.

57. The New Jersey media has reported that similar problems took root in Paterson, New Jersey in the May 12 election for Second Ward City Council—the “first election in state history that was contested only by mail-in voting.”

58. More than 800 mail-in ballots were set aside in Paterson due to suspicion that they were gathered illegally.

59. Hundreds of mail-in ballots were collected from *single* mailboxes. In one case, 366 ballots were picked up from the same mailbox.

60. In some cases, “large quantities of mail-in ballots were fastened together with a rubber-band and dropped at the same location.”

61. There have been reports of Paterson voters not receiving their ballots as well as reports of “letter carriers leaving massive numbers of ballots in a bin at a particular apartment building.”

62. In addition, one candidate reported that many people’s “votes were paid for and still others who had no idea that they voted or who they voted for because someone filled out a mail-in ballot for them.” Things are so bad that a court has temporarily blocked the winning candidate from taking office. *See Joe Malinconico, Paterson councilman-elect charged with election fraud can’t take office, judge rules*, Patterson Press (June 30, 2020), <https://njersy.co/3gsZarF>.

63. Those facts confirm the common-sense conclusion of the Commission on Federal Election Reform—a bipartisan commission chaired by former President Jimmy Carter and James Baker, and cited extensively by the U.S. Supreme Court—that absentee voting is “the largest source of potential voter fraud.” *Building Confidence in U.S. Elections* 46, <https://bit.ly/3dXH7rU> (*Carter-Baker Report*). Many well-regarded commissions and groups of diverse political affiliation agree that “when election fraud occurs, it usually arises from absentee ballots.” Michael T. Morley, *Election Emergency Redlines* 2, <https://bit.ly/3e59PY1> (Morley, *Redlines*). Such fraud is easier to do and harder to detect. As one federal court put it, “absentee voting is to voting in person as a take-home exam is to a proctored one.” *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004).

64. “Absentee balloting is vulnerable to abuse in several ways.” For one, ballots are

1 sometimes “mailed to the wrong address or to large residential buildings” and “might get
 2 intercepted.” *Carter-Baker Report* 46. For another, absentee voters “who vote at home, at nursing
 3 homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to
 4 intimidation.” *Id.* And “[v]ote buying schemes are far more difficult to detect when citizens vote
 5 by mail.” *Id.* For example, “[i]ndividuals can sign and sell their absentee ballot,” or “[o]ne spouse
 6 can coerce the other to sign the ballot and hand it over to them to vote fraudulently.”

7 65. This risk of abuse is magnified by the fact that “many states’ voter registration
 8 databases are outdated or inaccurate.” Morley, *Redlines* 2.

9 66. A 2012 study from the Pew Center on the States—which the U.S. Supreme Court
 10 cited in a recent case—found that “[a]pproximately 24 million—one of every eight—voter
 11 registrations in the United States are no longer valid or are significantly inaccurate”; “[m]ore than
 12 1.8 million deceased individuals are listed as voters”; and “[a]pproximately 2.75 million people
 13 have registrations in more than one state.”

14 67. Similarly, a 2010 study by the Caltech/MIT Voting Technology Project found that
 15 roughly 9% of listed registration records in the United States are invalid.” On top of those invalid
 16 records, “in the typical state 1 in 65 records is duplicative, meaning that the same registrant is listed
 17 multiple times.” The same study found that “[i]n the typical state, 1 in 40 counted votes in the 2008
 18 general election cannot be matched to a registrant listed as having voted” and that “1 in 100 listed
 19 registrants is likely to be deceased.”

20 68. Federal law recognizes those risks of voting by mail and thus requires certain first-
 21 time voters to present identification. *See* 52 U.S.C. § 21083(b).

22 **III. In a special session on a weekend vote, the Nevada Legislature passes AB4.**

23 69. After Nevada’s June 2020 primary election, the *Corona* plaintiffs amended their
 24 complaint. The plaintiffs’ new claims raised constitutional challenges to Nevada laws that banned
 25 ballot harvesting—the process of third parties unrelated to a voter collecting and returning that
 26 voter’s absent ballot. They also challenged the Nevada laws requiring election officials to verify a
 27 voter’s signature on an absent ballot against the signature on the voter’s registration. The parties
 28 conducted expedited discovery on those claims throughout July 2020 to prepare for a one-week

1 trial on them scheduled to begin on Monday, August 17, 2020.

2 70. On Friday, July 31, 2020, the Nevada Legislature convened its 32nd Special Session
3 in response to a call from Governor Sisolak.

4 71. One of the bills the Nevada Legislature considered during that special session was
5 Assembly Bill 4.

6 72. The Democratic majority in the Nevada Assembly introduced AB4 on the afternoon
7 of July 31, 2020. AB4 runs more than 60 single-spaced pages. Even so, the Assembly passed AB4
8 on a straight party-line vote mere hours after it was introduced.

9 73. AB4 then went to the Nevada Senate, which considered it near midnight on Friday,
10 July 31, 2020, and again on Saturday, August 1, 2020, before passing it on Sunday, August 2, 2020,
11 on a straight party-line vote.

12 74. Governor Sisolak signed AB4 into law on Monday, August 3, 2020.

13 75. AB4 contains 88 sections. Sections 2 through 29 enact entirely new provisions in
14 the Nevada Revised Statutes. Within those, Sections 2 through 27 create a new framework for
15 primary or general elections held during a declared emergency or state of disaster, defined under
16 AB4 as an “affected election.” AB4, §§5, 8. Sections 30 through 83, in turn, amend scattered
17 existing provisions of NRS Chapters 293 and 293C. Sections 84 through 88 appropriate money to
18 implement the bill and establish effective dates for its provisions.

19 76. Many of AB4’s provisions are head-scratching—particularly given the stark
20 irregularities in Nevada’s June 2020 primary election, and because AB4 changes so many election
21 laws so close to the 2020 general election. Indeed, Defendant herself recently acknowledged that
22 Nevada could (and should) successfully hold its 2020 general election without changing its election
23 laws. Barbara K. Cegavske, *Nevada’s voting laws do not need to be changed*, The Nevada
24 Independent (July 29, 2020), <https://bit.ly/30qA4UO>. But this lawsuit does not challenge AB4’s
25 wisdom (or lack thereof). *Cf. New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 209
26 (2008) (Stevens, J., concurring) (“The Constitution does not prohibit legislatures from enacting
27 stupid laws.”). Rather, this lawsuit challenges the parts of AB4 that violate the Constitution or
28 contradict federal law enacted under it, and that are thus invalid and must be enjoined.

1 77. First among AB4's unconstitutional provisions is Section 20. It effectively delays
2 the day for electing members of Congress and for appointing presidential electors that Congress
3 has established in 2 U.S.C. §§1, 7 and 3 U.S.C. §1.

4 78. The "election" established in those federal statutes is "the combined actions of
5 voters and officials meant to make a final selection of an officeholder." *Foster v. Love*, 522 U.S.
6 67, 71 (1997).

7 79. Section 20.2 "deem[s]" ballots "received by mail not later than 5 p.m. on the third
8 day following the election" "to have been postmarked on or before the day of the election" when
9 "the date of the postmark cannot be determined."

10 80. But AB4 makes it likely that most mail ballots will lack a legible postmark showing
11 when voters mailed them. AB4 instructs county and city clerks to send mail ballots to voters along
12 with "a return envelope" that "must include postage prepaid by first-class mail." AB4, §16.3. The
13 U.S. Postal Service generally does not apply postmarks to postage prepaid envelopes. *See* United
14 States Postal Serv., §1-1.3 Postmarks ("Postmarks are not required for mailings bearing a permit,
15 meter, or precanceled stamp for postage, nor to pieces with an indicia applied by various postage
16 evidencing systems."), <https://bit.ly/3kftt7l>. So for the vast majority of mail ballots, election
17 officials will not be able to rely on a postmark date to determine when voters cast them because
18 most mail ballots will not have a postmark at all. Instead, the only objective indicator of whether
19 voters have timely cast their mail ballots before Election Day will be whether election officials
20 received them on or before Election Day.

21 81. In addition, the U.S. Postal Service delivers the overwhelming majority of first-class
22 mail sent from a Clark County address to another Clark County address, or from a Washoe County
23 address to another Washoe County address, within one or two business days. That means mail sent
24 within Clark County or Washoe County on a Wednesday or Thursday will usually be received
25 within Clark County or Washoe County by the next Friday.

26 82. As a result, a ballot mailed in Clark or Washoe Counties in a state-provided, postage
27 prepaid first-class envelope on the Wednesday or Thursday after Election Day will likely be
28 received at the Clark County Registrar's Office or Washoe County Clerk's Office before 5:00 pm

1 on the Friday after the election without bearing a postmark. Under Section 20.2, those ballots must
2 be counted. Section 20.2 thus effectively extends the congressionally established Election Day.

3 83. Sections 11 and 12 of AB4 are also unconstitutional. Those sections set forth the
4 number of in-person polling places for early voting (Section 11) and vote centers for day-of-election
5 voting (Section 12). Under those sections, the number of in-person voting places a county must
6 establish is tied to the county's population, resulting in more in-person voting places per capita for
7 voters in urban counties than in rural counties. This disparate treatment of Nevada voters based on
8 county population violates rural voters' rights under the Equal Protection Clause.

9 84. Section 22 of AB4 is also unconstitutional. It provides that "the county or city clerk,
10 as applicable, shall establish procedures for the processing and counting of ballots." Beyond that
11 general instruction, it provides only that counties "[m]ay authorize mail ballots to be processed and
12 counted by electronic means." This lack of uniform standards to be applied across counties means
13 that Nevada counties will necessarily adopt different procedures for processing and counting
14 ballots, which could produce differences in rejection rates. This unequal, standardless treatment of
15 Nevada voters across counties constitutes an equal protection violation.

16 85. Finally, Section 25 of AB4 requires county or city clerks to count potentially
17 fraudulent or invalid ballots, thereby diluting the votes of honest citizens and depriving them of
18 their right to vote in violation of the Fourteenth Amendment. Section 25 provides that "[i]f two or
19 more ballots are found folded together to present the appearance of a single ballot, they must be
20 laid aside. If a majority of the inspectors are of the opinion that the mail ballots folded together
21 were voted by one person, the mail ballots must be rejected and placed in an envelope, upon which
22 must be written the reason for their rejection." But Section 25 establishes no standard by which the
23 inspectors should assess whether the ballots were voted by one person. Neither does Section 25
24 require inspectors to reject either of two or more ballots folded together when a majority of the
25 inspectors are of the opinion that the mail ballots were voted by *more than* one person. In that case,
26 Section 25 appears to contemplate that inspectors will count *all* of the ballots, even though at least
27 one of the voters has not complied with the bill's signature-verification process. This loophole
28 invites fraud, coercion, theft, or otherwise illegitimate voting that dilutes the votes of honest citizens

1 and deprives them of their right to vote in violation of the Fourteenth Amendment.

2 86. On March 12, 2020, Governor Sisolak declared a state of emergency in Nevada due
3 to COVID-19. That makes Nevada's 2020 general election an "affected election" to which Sections
4 2 through 27 of AB4 apply. *See* AB4, §§5, 8.

5 **CAUSES OF ACTION**

6 **COUNT I**

7 **Violation of 3 U.S.C. §1, 2 U.S.C. §7, 2 U.S.C. §1; Elections Clause (U.S. Const. art. I, §4, cl. 1); Electors Clause (U.S. Const. art. II, §1, cl. 4); Supremacy Clause (U.S. Const. art. VI, §2)**

8 87. Plaintiffs incorporate all their prior allegations.

9 88. 3 U.S.C. §1 provides that "[t]he electors of President and Vice President shall be
10 appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth
11 year succeeding every election of a President and Vice President."

12 89. 2 U.S.C. §7 provides that "[t]he Tuesday next after the 1st Monday in November, in
13 every even numbered year, is established as the day for the election, in each of the States and
14 Territories of the United States, of Representatives and Delegates to the Congress commencing on
15 the 3d day of January next thereafter."

16 90. 2 U.S.C. §1 provides that, "[a]t the regular election held in any State next preceding
17 the expiration of the term for which any Senator was elected to represent such State in Congress,
18 at which election a Representative to Congress is regularly by law to be chosen, a United States
19 Senator from said State shall be elected by the people thereof for the term commencing on the 3d
20 day of January next thereafter."

21 91. This trio of statutes "mandates holding all elections for Congress and the Presidency
22 on a single day throughout the Union." *Foster v. Love*, 522 U.S. 67, 70 (1997).

23 92. The word "election" in 3 U.S.C. §1 means the "combined actions of voters and
24 officials meant to make a final selection of an officeholder." *Foster*, 522 U.S. at 71.

25 93. It is the consummation of the process of electing an official.

26 94. By its terms then, 3 U.S.C. §1 requires that the 2020 general election be
27 consummated on Election Day (November 3, 2020).

28 95. A mail ballot is not a legal vote unless it is marked and cast on or before Election

1 Day. Whatever latitude state legislatures retain under federal law to define the process of casting
2 mail ballots through the U.S. Postal Service, they cannot create a process where ballots mailed *after*
3 Election Day can be considered timely.

4 96. Consistent with 3 U.S.C. §1, “the Voting Rights Act Amendments of 1970 require
5 that citizens be allowed to vote by absentee ballot in Presidential elections on or before the day of
6 the election.” *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 778 (5th Cir. 2000). *See* 52
7 U.S.C. §10502(d).

8 97. “The regulations made by Congress are paramount to those made by the State
9 legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be
10 operative.” *Foster v. Love*, 522 U.S. 67, 69 (1997). *See* U.S. Const. art VI, cl. 2 (Supremacy Clause).

11 98. Section 20.2 of AB4 conflicts with 3 U.S.C. §1 by permitting absent ballots that
12 have not been postmarked to be counted if they are received by 5:00 pm three days after Election
13 Day (based on a presumption that those ballots were mailed on or before Election Day).

14 99. Absent ballots are mailed to the county clerk for the county in which the voter
15 resides.

16 100. Absent ballots are delivered by the U.S. Postal Service via First Class mail.

17 101. The estimated delivery time for First Class mail from one place in any Nevada
18 county to another place within the same county is typically less than three days.

19 102. Section 20.2 of AB4 thus allows absent ballots to be cast after Election Day but still
20 counted as lawfully cast votes in the 2020 general election.

21 103. Section 20.2 of AB4 is a particularly egregious violation of 3 U.S.C. §1 because it
22 allows for absentee ballots to be *cast* after Election Day.

23 104. Federal law thus preempts Section 20.2 of AB4.

24 105. Defendant has acted and will continue to act under color of state law to violate the
25 3 U.S.C. §1.

26 106. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
27 harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing
28 Section 20.2 of AB4.

COUNT II**Violation of the Equal Protection Clause (42 U.S.C. §1983)**

107. Plaintiffs incorporate all their prior allegations.

108. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

109. Sections 11 and 12 of AB4 violate the right to vote of rural voters by inhibiting their ability to vote in person. More specifically, Sections 11 and 12 of AB4 authorize disparate treatment of voters in rural counties with respect to the placement of polling places and vote centers for in-person voting.

110. Section 11 of AB4 outlines three categories of counties based upon total county population and directs the county clerk in each county to provide for a particular number of polling places for early voting by personal appearance.

- a. In a county whose population is 700,000 or more, at least 35 polling places for early voting by personal appearance, which may be any combination of temporary or permanent polling places for early voting.
- b. In a county whose population is 100,000 or more but less than 700,000, at least 15 polling places for early voting by personal appearance, which may be any combination of temporary or permanent polling places for early voting.
- c. In a county whose population is less than 100,000, at least 1 permanent polling place for early voting by personal appearance.

111. Section 12 of AB4 outlines three categories of counties based upon total county population and directs the county clerk in each county to establish a particular number of polling places as vote centers for the day of the election.

- a. In a county whose population is 700,000 or more, [the county clerk] must establish

1 at least 100 vote centers for the day of the election.

2 b. In a county whose population is 100,000 or more but less than 700,000, [the county
3 clerk] must establish at least 25 vote centers for the day of the election.

4 c. In a county whose population is less than 100,000, [the county clerk] may establish
5 one or more vote centers for the day of the election.

6 112. Sections 11 and 12 discriminate against voters in rural counties by authorizing more
7 polling places and vote centers per capita in urban areas.

8 113. For example, data from the Secretary of State shows that there are 319,212
9 registered voters in Washoe County. AB4 authorizes a minimum of 15 polling places in Washoe
10 County, or at least 1 polling place for every 21,281 registered voters in Washoe County.

11 114. Several rural counties—where AB4 authorizes only 1 polling place each—have
12 substantially higher numbers of registered voters per polling place. For example, Lyon County (1
13 polling place per 40,816 registered voters) and Douglas County (1 polling place per 41,649
14 registered voters) have approximately twice as many registered voters per polling place as Washoe
15 County. Several other rural counties have substantially higher numbers of registered voters per
16 polling place than Washoe County: Carson City: 1 polling place per 37,624 registered voters; Elko
17 County: 1 polling place per 29,131 registered voters; Nye County: 1 polling place per 34,431
18 registered voters.

19 115. Similarly, AB4 authorizes a minimum of 25 vote centers in Washoe County, or at
20 least 1 vote center for every 12,768 registered voters.

21 116. Several rural counties—where AB4 authorizes only 1 vote center each—have
22 substantially higher numbers of people per vote center. For example, Lyon County: (1 vote center
23 per 40,816 registered voters), Douglas County (1 vote center per 41,649 registered voters), and
24 Carson City (1 vote center per 37,624 registered voters) all have approximately three times as many
25 registered voters per vote center as Washoe County. Several other rural counties have substantially
26 higher numbers of registered voters per vote center than Washoe County: Elko County: 1 vote
27 center per 29,131 registered voters; Nye County: 1 vote center per 34,431 registered voters;
28 Churchill County: 1 vote center per 15,987 registered voters.

117. By limiting their ability to cast ballots via in-person voting through reduced numbers of polling places and vote centers, Sections 11 and 12 of AB4 engage in disparate treatment with respect to rural voters.

118. “A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution’s Equal Protection Clause.” *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). AB4 infringes “the basic principle of equality among voters within a State ... that voters cannot be classified, constitutionally, on the basis of where they live.” *Id.* at 560.

119. Sections 11 and 12 of AB4 thus violate the Equal Protection Clause.

120. Defendant has acted and will continue to act under color of state law to violate the Equal Protection Clause of the Fourteenth Amendment.

121. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing Sections 11 and 12 of AB4.

COUNT III

Violation of the Equal Protection Clause (42 U.S.C. §1983)

122. Plaintiffs incorporate all their prior allegations.

123. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

124. In particular, the Equal Protection Clause imposes a “minimum requirement for nonarbitrary treatment of voters” and forbids voting systems and practices that distribute election resources in “standardless” fashion, without “specific rules designed to ensure uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06 (2000); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477-78 (6th Cir. 2008).

1 125. The Supreme Court has instructed that the “formulation of uniform rules” is
2 “necessary” because the “want of” such rules may lead to “unequal evaluation of ballots.” *Bush v.*
3 *Gore*, 531 U.S. 98, 106 (2000).

4 126. Section 22 of AB4 requires each “county or city clerk” (as applicable) to “establish
5 procedures for the processing and counting of mail ballots.”

6 127. Section 22 of AB4 provides no guidance or guardrails of any kind for the
7 establishment of “procedures for the processing and counting of mail ballots.”

8 128. Section 22 thus violates the “minimum requirement for nonarbitrary treatment of
9 voters” by authorizing “standardless” procedures for the processing and counting of mail ballots,
10 without “specific rules designed to ensure uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06
11 (2000).

12 129. Further, Section 22 provides no “minimal procedural safeguards” to protect against
13 the “unequal evaluation” of mail ballots. *Bush v. Gore*, 531 U.S. 98, 109 (2000).

14 130. Section 22 of AB4 instructs each county or city clerk that they “may authorize mail
15 ballots to be processed and counted by electronic means.”

16 131. Nevada’s counties thus have the option of processing and counting mail ballots by
17 either electronic means (of any kind, apparently) or manually.

18 132. Section 22 thus expressly authorizes Nevada’s counties to “use[] varying standards
19 to determine what [i]s a legal vote,” contrary to the Equal Protection Clause. *Bush v. Gore*, 531
20 U.S. 98, 107 (2000).

21 133. Section 22 of AB4 thus violates the Equal Protection Clause.

22 134. Defendant has acted and will continue to act under color of state law to violate the
23 Equal Protection Clause of the Fourteenth Amendment.

24 135. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
25 harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing
26 Section 22 of AB4.

COUNT IV

Violation of the Equal Protection Clause (42 U.S.C. §1983)

136. Plaintiffs incorporate all their prior allegations.

137. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

138. In particular, the Equal Protection Clause imposes a “minimum requirement for nonarbitrary treatment of voters” and forbids voting systems and practices that distribute election resources in “standardless” fashion, without “specific rules designed to ensure uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06 (2000); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477-78 (6th Cir. 2008).

139. The Supreme Court has instructed that the “formulation of uniform rules” is “necessary” because the “want of” such rules may lead to “unequal evaluation of ballots.” *Bush v. Gore*, 531 U.S. 98, 106 (2000).

140. Section 25 of AB4 provides that “[i]f two or more mail ballots are found folded together to present the appearance of a single envelope,” and “a majority of the inspectors are of the opinion that the mail ballots folded together were voted by one person, the mail ballots must be rejected.” §25.2.

141. Section 25 provides no guidance or guardrails of any kind for the establishment of standards “a majority of inspectors” should apply to determine whether “the mail ballots folded together were voted by one person.”

142. Section 25 thus violates the “minimum requirement for nonarbitrary treatment of voters” by authorizing “standardless” procedures for determining the validity of multiple ballots within a single envelope, without “specific rules designed to ensure uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06 (2000).

143. Further, Section 25 provides no “minimal procedural safeguards” to protect against the “unequal evaluation” of multiple ballots within a single envelope. *Bush v. Gore*, 531 U.S. 98, 109 (2000).

144. Section 25 thus will result in Nevada’s counties “us[ing] varying standards to determine what [i]s a legal vote,” contrary to the Equal Protection Clause. *Bush v. Gore*, 531 U.S. 98, 107 (2000).

145. Section 25 of AB4 thus violates the Equal Protection Clause.

146. Defendant has acted and will continue to act under color of state law to violate the Equal Protection Clause of the Fourteenth Amendment.

147. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing Section 25 of AB4.

COUNT V

Violation of the Right to Vote (42 U.S.C. §1983)

148. Plaintiffs incorporate all their prior allegations.

149. AB4, which upends Nevada’s election laws and requires massive changes in election procedures and processes, makes voter fraud and other ineligible voting inevitable.

150. AB4 requires counties to accept and count ballots received after Election Day—including ballots that may have been mailed after Election Day. §§20.1(b)(2), 20.2. It establishes a disparate number of in-person places for early voting and Election Day voting throughout Nevada based on a county’s population, resulting in fewer in-person voting places for rural voters. §§11, 12. It fails to establish uniform statewide standards for processing and counting ballots, §22, or for determining whether multiple ballots received in one envelope must be rejected, §25. It also authorizes ballot harvesting. §21.

151. The combined effect of those problematic provisions is to dilute Nevadans’ honest votes. Dilution of honest votes, to any degree, by the casting of fraudulent or illegitimate votes violates the right to vote. *Reynolds*, 377 U.S. at 555; *Anderson*, 417 U.S. at 226-27; *Baker*, 369 U.S. at 208.

152. The aspects of AB4 identified above facilitate fraud and other illegitimate voting practices for the reasons described above. Those provisions thus dilute the value of honest, lawful votes and therefore violate the Fourteenth Amendment to the U.S. Constitution.

153. Defendant has acted and will continue to act under color of state law to violate the Fourteenth Amendment.

154. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing AB4.

WHEREFORE, Plaintiffs ask this Court to enter judgment in their favor and provide the following relief:

- a. A declaratory judgment that AB4 violates 2 U.S.C. §§1, 7 and 3 U.S.C. §1, the Elections Clause, the Electors Clause, the Supremacy Clause, and the Fourteenth Amendment.
- b. A permanent injunction prohibiting Defendant from implementing and enforcing AB4;
- c. A temporary restraining order and preliminary injunction granting the relief specified above during the pendency of this action;
- d. Plaintiffs' reasonable costs and expenses, including attorneys' fees; and
- e. All other preliminary and permanent relief that Plaintiffs are entitled to, and that the Court deems just and proper.

Dated: August 4, 2020

Respectfully submitted,

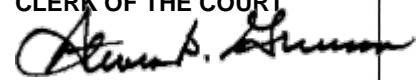
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**Application for admission
pro hac vice forthcoming*

EXHIBIT 2

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CASE NO: A-20-820510-C
Department 32

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6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8
9 THE ELECTION INTEGRITY PROJECT
10 OF NEVADA, A Nevada LLC; SHARRON
ANGLE, an individual

11 Plaintiff,

12 v.

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

16 Defendants

CASE NO.
DEPT. NO.

17 **COMPLAINT FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, AND**
18 **DECLARATORY RELIEF**

19 COME NOW, THE ELECTION INTEGRITY PROJECT OF NEVADA, a Nevada LLC, and
20 SHARRON ANGLE, an individual, by and through their Attorney, Joel F. Hansen, Esq., of Hansen
21 & Hansen Attorneys, and file their Complaint for a Preliminary Injunction, a Permanent Injunction,
22 and Declaratory Relief.

23 **I.**

24 **JURISDICTION, STANDING, AND PARTIES**

25 1. This Court has jurisdiction under Article 6 §6 of the Nevada Constitution. A significant
26 part of this case arises in the County of Clark as it deals with the election process throughout the
27 State of Nevada.
28

1 2. These Plaintiffs have standing to bring this suit under the public-importance exception
2 announced by the Nevada Supreme Court in the case of *Schwartz v. Lopez*, 132 Nev. 732, 737, 382
3 P.3d 886, 891, 2016 Nev. LEXIS 668, wherein the high court held that a court may grant standing to
4 a Nevada citizen to raise constitutional challenges to legislative expenditures or appropriations
5 without a showing of a special or personal injury. The public-importance exception is narrow and
6 available only if the following criteria are met: First, the case must involve an issue of
7 significant public importance. The present case involves an issue of significant public importance,
8 because it challenges AB4 which was recently passed in special session of the Nevada Legislature, a
9 bill which worked profound changes in the voting system of Nevada and opened the coming general
10 election to significant and rampant fraud, as explained further in the allegations of the Complaint set
11 forth below.
12

13
14 3. Second, the case must involve a challenge to a legislative expenditure or appropriation on the
15 basis that it violates a specific provision of the Nevada Constitution. As explained in detail below,
16 this case challenges the manner in which the legislature allocated, or did not allocate, funds, in that
17 the funding of the election violates the Nevada Constitution's Equal Protection clause, Section 21
18 Article 4, which is coextensive with the guarantees of the Equal Protection Clause of the Fourteenth
19 Amendment. It also violates NRS 354.599, prohibiting unfunded mandates from the State of Nevada
20 to local governments.
21

22 4. Third, the plaintiff must be an "appropriate" party, meaning that there is no one else in a
23 better position who will likely bring an action and that the plaintiff is capable of fully advocating his
24 or her position in court.

25 5. Plaintiff THE ELECTION INTEGRITY PROJECT OF NEVADA, is a tax exempt, public
26 benefit, non-profit 501(c)(3), non-partisan Nevada LLC dedicated to assuring that every legally cast
27 vote is properly counted and reported. EIPNV is available to assist citizen groups as well as political
28

1 and business organizations on a non-partisan basis in their efforts to assure integrity in the voting
2 process. EIPNV is an all-volunteer organization.

3 6. Plaintiff SHARRON ANGLE is a resident of Nevada, a long-time active participant in the
4 political process and elections in Nevada, has run for office several times, served in the Nevada State
5 Legislature, and in general has taken a close interest in the integrity of Nevada elections for many
6 years. She is highly qualified to bring this suit because of her years of experience in the political and
7 governmental processes in Nevada, and because she has taken a special interest in protecting the
8 integrity of the Nevada elections system and also in the right of suffrage of all Nevadans. Her vote,
9 as well as the vote of all other Nevada voters, will be diluted and compromised if AB4, the all mail-
10 in voting law passed at the special session of the Nevada Legislature recently concluded, is allowed
11 to be carried out for the general election in November.
12

13 7. The Defendant is the Secretary of State of Nevada, Barbara Cegavske. She serves as the
14 Chief Officer of Elections for Nevada and is responsible for the execution and enforcement of the
15 provisions of title 24 of NRS and all other provisions of state and federal law relating to elections in
16 Nevada under NRS 293.124. She is sued in her official capacity.
17

18 II.

19 GENERAL ALLEGATIONS AND FACTS

20 8. Every Nevadan who is eligible to vote should be able to freely do so. Robust participation in
21 our biennial elections strengthen Nevada's political and governmental processes, allowing
22 Nevadan's to choose their elected representatives in the traditional, constitutionally and legally
23 guaranteed fashion as established by the Founding Fathers of America and followed and established
24 in the Constitution and laws of the State of Nevada.
25
26
27
28

1 9. The Plaintiffs support legitimate efforts to make it convenient for voters to cast their ballots.¹
2 At the same time, however, the electoral process cannot function properly if it lacks integrity and
3 results in chaos. Put simply, the people of Nevada must be able to trust that the election results are
4 the product of free and fair elections which are not determined by corruption and/or fraud
5 accomplished by nefarious practices of unscrupulous persons to gain victory by any means
6 necessary.
7

8 10. Nevada's recently enacted election laws—collectively, AB4—fall far short of ensuring that
9 this standard is met.

10 11. On a straight-party-line vote taken on a Sunday afternoon, the Nevada Legislature passed a
11 60-page, single-spaced bill first introduced shortly after noon the previous Friday. AB4 adds more
12 than 25 new election-related sections to the Nevada Revised Statutes and amends more than 60
13 others.
14

15 12. Many of those provisions will undermine the November election's integrity and some go
16 beyond that, crossing the line that separates bad policy judgments from enactments that violate
17 Nevada's Constitution and its election laws.

18 13. This lawsuit is brought for the purpose of ensuring that our elections occur under valid laws.
19 Under the U.S. Constitution, States have broad discretion to decide how to conduct their elections.
20 But the State of Nevada, through its Constitution and laws enacted under that Constitution, has
21 established laws which must be followed in order to ensure free and fair elections where the electors
22 may be assured that the results are not the product of fraud or other illegal practices.
23

24 14. AB4 enacts many unconstitutional and illegal provisions. Some of these are as follows:
25 ///
26

27 ¹ It should be made clear that EIPNV does not oppose absentee balloting. Absentee ballots are not
28 mail-in ballots, because absentee ballots must be requested, while mail in ballots are sent to all
 voters.

1 15. AB4 is illegal because it CONTAINS UNFUNDED MANDATES: AB4 violates Nevada
2 Law, NRS 354.599, prohibiting unfunded mandates from the State of Nevada to local governments.

3 16. This law is UNCONSTITUTIONAL – AB4 violates the Nevada Constitution Article 4
4 Section 21 which is coextensive with the guarantees of the Equal Protection Clause of the Fourteenth
5 Amendment. This law violates Article 4, Section 21, Nevada’s guarantee of equal protection,² in
6 numerous ways outlined below.
7

8 III.

9 FACTUAL FINDINGS OF THE PLAINTIFF ELECTIONS INTEGRITY PROJECT

10 A. Declaration of Plaintiff Sharron Angle (Exh. 1) establishes the following findings of the 11 Election Integrity Project

12 17. Plaintiffs repeat and reallege all of the above paragraphs 1-16 and incorporate them herein by
13 reference.

14 18. ELECTION INTEGRITY PROJECT NEVADA FINDINGS:

15 19. **Multiple Or Duplicate Voting At Vote Centers:** Sections 11-14 of AB4 establish various
16 requirements relating to polling places and voter registration for affected elections subject to sections
17 2-27, including requirements relating to: (1) polling places established for early voting by personal
18 appearance; (2) polling places established as vote centers;
19

20 20. Vote centers remove the voter from his precinct where he is known and allows for
21 impersonation, especially when no ID is required, and also allows for multiple voting by using
22 sample ballots or “found ballots” where nefarious voters travel from one vote center to another
23 rather than appearing at the precinct where the voter is registered. This multiple voting is part of the
24

25 ///

26
27
28 ² And it violates the provisions set forth in the newly proposed and soon to be ratified Nevada
Constitution Article 2. - Right of Suffrage, Section 1, Voter’s Rights.

1 “findings” sent to the Secretary of State, Barbara Cegavske by Election Integrity Project Nevada
2 (EIPNv.com) on July 24, 2020.

3 **21. Finding # 8: Duplicated Voter Registrations:**

4
5 22. Notwithstanding the legal obligations to eliminate duplicate names from the list, EIPNv has
6 identified **1,289** persons who appear to be registered twice in the state. Each occurrence has the
7 same/similar name and same/similar birthdate at the same address or differing addresses in the state.
8 This includes persons who appear to be registered under both maiden and married last names.
9 Matching phone numbers provide additional evidence for suspected duplicates at differing addresses.
10 Duplicated registrants can easily vote by mail more than once undetected.

11 **23. Finding #9: Suspected Double Voting**

12
13 There are **9** suspected duplicated registrants whose voting histories, if they are confirmed as
14 duplicates, show they voted twice in an election. Five appear to have voted twice in the June 2020
15 primary because they each had two Active registrations and were mailed two ballots.³

16 **24. Finding # 10: Registrants to be Mailed Two Ballots for November 2020**

17 Should Nevada not correct the registrations it confirms as duplicated, as many as **1,226**
18 **registrants will be mailed two ballots for the November 2020 election.** This includes 849 who
19 each appear to have two Active registrations and 377 additional registrants in Clark County who
20 have one or both registrations as Inactive status, should Clark County include Inactives in its mailed
21 ballot plans. Persons sent more than one ballot can easily vote more than once undetected.

22
23 25. Voter impersonation is also more likely when one voter can travel from vote center to vote
24 center impersonating someone with an active-but not voting in several years- status.

25 ///

26
27
28 ³ EIPNv’s analysis of potential double voting excluded 12 counties which currently have incorrect
voting histories for the June 2020 election.

1 **26. Finding #1: Delayed Inactivations**

2 EIPNV has identified **41,040** Nevada registrant whose records show no indications of registration
3 updates or federal voting activity since November 2, 2010 or prior. Since these registrants have
4 likely relocated or died, they may be eligible for inactivation or cancellation, yet they remain in
5 “Active” status. Voting histories indicate **3,331** have not voted in 16 or more years and **22,151** have
6 records indicating, they have NEVER voted since registering to vote a decade or more ago. Clark
7 County has 38,103 of the potential delayed inactivations, more than 3% of its Active registrations.
8

9 **27. Finding #2: “Delayed Inactivations” to be Mailed Ballots for November 2020**

10 Should Nevada mail ballots to all Active-status registrants for the November 2020 election, as many
11 as **41,050--** who may instead be eligible for inactivation or cancellation—will be mailed ballots,
12 including 38,103 in Clark County. These ballots, if they fall into the wrong hands, could be voted by
13 persons other than the voter named on the ballot.
14

15 **28. Finding #3: Delayed Cancellations:**

16 There are 18,290 registrants who were previously inactivated by a county or the state yet remain on
17 the voter list despite no indications of registration updates or voting activity since November 2, 2010
18 or prior. These registrations may be eligible for cancellation under federal law and Nevada state law
19 [NRS 293.530]. 9,049 have records indicating they have NEVER voted since registering to vote a
20 decade or more ago. Clark County has 14,327 of the suspected delayed cancellations and Washoe
21 County has 1,673. For this finding EIPNV assumes that—quoting from the Defendant’s May 29,
22 2020 press release-- “...in order for a registered voter to be designated as inactive, a piece of election
23 mail sent to the voter must have been returned as undeliverable and the voter must have failed to
24 respond to a mailer asking the voter to confirm their voter registration information...”, and that “...If
25 an inactive registered voter fails to vote in two federal election cycles (i.e., four years) and the
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1 inactive registered voter has no other voter activity during this time, their voter registration in
2 Nevada is cancelled.” Again, these ballots could be voted improperly.

3 **29. Finding #4: “Delayed Cancellations” to be Mailed Ballots for November 2020** Should
4 Clark County mail ballots to all Inactive-status registrants for the November 2020 election, as it did
5 for the June 2020 primary, as many as **14,327** registrants-- who may instead be eligible for
6 cancellation—will be mailed ballots, opening the way for voting by the wrong individuals.

7
8 **30. Same Day Voter Registration: AB4 Sections 11-14 (3) voter registration at polling**
9 **places on election day**

10 Same day registration is problematic because there is no time to authenticate the voter against
11 residence, citizenship, or deceased rolls. If people who reside somewhere else, are not citizens, or are
12 dead are voting, Plaintiff Angle’s and every other voter’s vote is diluted, which violates the law and
13 injures Plaintiff’s and all other voters’ Constitutional rights. The only remedy is for this Court to
14 issue its order invalidating AB4.

15
16 **31. Finding #5: Registrants Aged 105 or Older and Likely Deceased**

17 Notwithstanding the legal requirement to maintain voter registration lists that are free of dead
18 registrants, there are **74** registrants whose birthdates indicate they are 105+ years old and likely
19 deceased. Once again, these ballots might be sent in by persons other than the registered voter.

20
21 **32. Finding #6: Registrants Aged 105+ to be Mailed Ballots for November 2020** Should
22 Nevada mail ballots to all Active registrants for the November 2020 election, **63** registrants aged
23 105+ and likely deceased will be mailed ballots. This includes 40 of Active status and 23 additional
24 Inactive status registrants aged 105+ should Clark County mail ballots to Inactive registrants as it did
25 for the June 2020 primary.

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1 **33. Signature Verification Not Required.**

2 AB4 Sections 23, 39 and 69 revise these existing procedures and set forth standards for
3 determining when there is a reasonable question of fact as to whether the signature used for an
4 absent ballot, mailing ballot or mail ballot matches the signature of the voter.

5
6 34. This is a new requirement that will add extra work to the registrar and may get them to accept
7 signatures they would otherwise reject because of this added workload.

8 35. AB4 makes it much to easy for a substitute signature to be affixed to the mail in ballot and
9 still pass muster and be counted. The operative language states:

10 *2. For purposes of 1:(a)There is a reasonable question of fact as to whether the signature*
11 *used for the mail ballot matches the signature of the voter if the signature used for the mail*
12 *ballot differs in multiple, significant and obvious respects from the signatures of the voter*
13 *available in the records of the clerk. (b)There is not a reasonable question of fact as to*
14 *whether the signature used for the mail ballot matches the signature of the voter if: (1)The*
15 *signature used for the mail ballot is a variation of the signature of the voter caused by the*
16 *substitution of initials for the first or middle name or the use of a common nickname and it*
17 *does not otherwise differ in multiple, significant and obvious respects from the signatures of*
18 *the voter available in the records of the clerk;*

16 Thus, if variations of the legal name or signature are acceptable, then this creates an
17 opportunity for multiple ballots to be cast under the legal name, another under the initials,
18 another under the nickname, etc.

18 **36. Finding #7: Missing Information:**

19 There are **1,657** registrants who are missing a birthdate, appear to be missing a legal name, or
20 have a non-alpha character in their names. The Nevada voter registration affidavit requires
21 registrants to list their names as they appear on their Nevada driver license, state ID card or Social
22 Security card, but a majority of the 1,657 have what appear to be “nickname” initials in place of their
23 legal first names. Such missing information hinders the state’s ability to confirm these registrants’
24 eligibility and to match with death, NCOA and other records required for list maintenance.
25

26 37. If a person’s signature does not have to be official or legal then there is more possibility of
27 voter impersonation and multiple voting under different signatures. This opens the door for
28

1 fraudulent voting which dilutes an honest voter's vote and which violates the law and injures
2 Plaintiff's and all voters Constitutional rights.

3 **38. Opening Mail-In Ballots And Counting Them 15 Days Before The Election:**

4 Sections 22-27, 39, 48, 49, 69, 79 and 80 of this bill revise these existing procedures and provide
5 that such counting boards can begin their process of counting the returned absent ballots, mailing
6 ballots and mail ballots 15 days before the election.

7
8 39. The separation of the ballot from the signature envelope keeps the ballot from being removed
9 from the count if the signature or the person who cast the ballot is challenged. These challenges must
10 take place at the time the ballot is received, requiring overseers of the counting process to be in
11 attendance for 11 more days than the existing law. It is unreasonable to expect that volunteers will be
12 in attendance for 11 additional days. If a court finds that ineligible votes have been cast, if the ballot
13 is not intact there is no way to remove those ineligible votes from the system. The court's
14 determination may be, "Yes there was fraud and the election is corrupted but we don't know
15 who the corrupted ballots voted for." The lengthening of time for counting impairs oversight,
16 inviting possible corruption. This would allow the vote to be counted and the information released
17 prior to election day, causing people to react the results by not casting a vote if their candidate
18 appeared to be losing.
19

20
21 40. When illegal votes are counted Plaintiff's vote is diluted. Dilution of Plaintiff's vote is a
22 violation of the law and the Constitution.

23 **41. Ballot Harvesting:**

24 AB4 sections 15-27 establish certain election procedures for the mail ballots distributed to
25 active registered voters for affected elections subject to sections 2-27. Because these particular
26 election procedures relating to absent ballots, mailing ballots and mail ballots serve similar purposes,
27 sections 15-83 make conforming changes in order to align all the provisions and make them uniform
28

1 in their operation for Nevada's elections. Under existing law, at the request of a voter who has a
2 physical disability or is at least 65 years of age or under certain other circumstances, a person may
3 mark and sign an absent ballot on behalf of the voter or assist voter to mark and sign the absent
4 ballot if the person complies with certain requirements. (NRS 293.316, 293.3165, 293C.317,
5 293C.318) Sections 19, 28, 29, 35, 56, 57 and 65 of this bill provide that at the request of a voter
6 who has a physical disability, is at least 65 years of age or is unable to read or write. Sections 21, 40,
7 44, 70 and 75 of this bill: (1) allow a voter to authorize *any person* to return an absent ballot, mailing
8 ballot or mail ballot to the county or city clerk on behalf of the voter;

10 42. Allowing “any person” to assist in this process encourages fraud. Instead, a request for
11 assistance should be made in writing to the registrar who should send a deputy to assist since this is a
12 form of ballot harvesting which if done by campaign workers would often mean that improper
13 pressure or even coercion is placed upon the elderly or disabled vulnerable voter. Since age is noted
14 on the registration rolls, those older voters may be targeted by ballot harvesters who at least be
15 casting the vote for that person or impersonating their vote. Assistance must be done by a trusted and
16 impartial deputy of the election board. Since this is a form of ballot harvesting, a practice proven to
17 be fraught with fraudulent opportunity for hired “boletera” for example. This would create an
18 atmosphere for a trunk full of ballots to come in after the election. “About 6,700 ballots were not
19 counted in this year’s Nevada the primary election after officials could not match signatures on the
20 ballots, according to the Nevada Secretary of State’s Office.”⁴ Since Plaintiff is over 65 this means
21 that she may be targeted by ballot harvesters which is a form of harassment and discrimination. My
22 right to privacy and equal protection are violated. To remedy this injury, the Secretary of State
23 should be enjoined from implementing and enforcing AB4.
24
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27 ⁴ <https://apnews.com/a9c95d374f922747b1e6d03b5cc39f41>
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1 **43. Unable To Determine If Ballot Is Cast On Time:** AB4 Sections 20, 37 and 67 of this bill
2 provide that to be timely returned by mail, an absent ballot, mailing ballot or mail ballot must be
3 postmarked on or before the day of the election and received by the county or city clerk not later
4 than 5 p.m. on the seventh day following the election. Sections 20, 37 and 67 also provide that if the
5 county or city clerk is unable to determine the date of the postmark on such a ballot, but the ballot is
6 received by the clerk not later than 5 p.m. on the third day following the election, the ballot is
7 deemed to have been postmarked on or before the day of the election.
8

9 44. This extends the length of the election and allows nefarious opportunities to “find” more
10 ballots. Once again this makes the Election Day arbitrary and underlines the failings of the postal
11 service, making the mail-in ballot less secure. It will be impossible to know with the extension to
12 seven days past the election for allowing ballots to be accepted, if those ballots were marked before
13 the election or after the results were announced. It gives opportunity to “find” more ballots if
14 someone wants to change the election results.
15

16 45. According to a FOIA request made by the Public Interest Legal Foundation, “Of the
17 1,325,934 ballots mailed out in Clark, 223,469 were returned as undeliverable. About 305,000 were
18 returned by voters, verified and counted by the county. About 58 percent of the undeliverable ballots
19 belonged to inactive voters — those who have failed to confirm their address with the county but
20 remain registered. Inactive voters are removed from the rolls entirely if they miss two consecutive
21 federal elections. However, 93,585 undeliverable ballots belonged to voters classified as active in
22 Clark County’s voter rolls. Public Interest also audited the Clark County and Nevada state voter rolls
23 and found that 2,358 people on the state’s active rolls were deceased. More than 2,200 of these came
24 from Clark County.”⁵ “The foundation reported that based on its study, Clark County mailed
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28 ⁵ <https://www.reviewjournal.com/news/politics-and-government/clark-county/more-than-223k-mailed-ballots-returned-undelivered-in-primary-2095001/>

1 1,325,934 ballots to voters. Of that number, 223,469 were returned as undeliverable. In Washoe
2 County, 291,434 ballots were mailed, and 27,640 were returned.”⁶

3 46. “Thousands of ballots have been sent out by the Clark County Election Department to
4 inactive voters – those who have not voted in recent elections, a roster that can include people who
5 either have moved or are deceased – and the envelopes are piling up in post office trays, outside
6 apartment complexes and on community bulletin boards in and around Las Vegas.”⁷ (As pictured
7 below—discarded ballots available for anyone to pick up, fill out, and send in.)
8



26 ⁶ [https://justthenews.com/politics-policy/elections/nevada-mailed-more-quarter-million-ballots-](https://justthenews.com/politics-policy/elections/nevada-mailed-more-quarter-million-ballots-returned-undeliverable)
27 [returned-undeliverable](https://justthenews.com/politics-policy/elections/nevada-mailed-more-quarter-million-ballots-returned-undeliverable)

28 ⁷ [https://www.890kdxu.com/nevadas-vote-by-mail-primary-stirs-fraud-concerns-as-unclaimed-](https://www.890kdxu.com/nevadas-vote-by-mail-primary-stirs-fraud-concerns-as-unclaimed-ballots-pile-up-something-stinks-here/)
[ballots-pile-up-something-stinks-here/](https://www.890kdxu.com/nevadas-vote-by-mail-primary-stirs-fraud-concerns-as-unclaimed-ballots-pile-up-something-stinks-here/)

1 **47. Finding # 10: Registrants to be Mailed Two Ballots for November 2020**

2 Should Nevada not correct the registrations it confirms as duplicated, as many as **1,226 registrants**
3 **will be mailed two ballots for the November 2020 election.** This includes 849 who each appear to
4 have two Active registrations and 377 additional registrants in Clark County who have one or both
5 registrations as Inactive status, should Clark County include Inactives in its mailed ballot plans.
6 Persons sent more than one ballot can easily vote more than once undetected.
7

8 48. Just by doing the math, 1,325,934 ballots mailed out in Clark, 223,469 were returned as
9 undeliverable, 305,000 were returned by voters, verified and counted by the county , there are still
10 over 500,000 ballots that are unaccounted for in the primary election. It is reported that those ballots
11 were “piling up in post office trays, outside apartment complexes and on community bulletin boards
12 in and around Las Vegas” ripe for using to sway an election if the same processes are followed and
13 the safeguards of the “old” law are abandoned for implementation of AB4. This shows the chaos
14 inherent in all mail voting.
15

16 49. Additionally, the EIPNV findings show that 5 voters who have voted twice in the past also
17 voted twice in the 2020 primary making them part of the 305,000 “verified and counted” ballots. If 5
18 slipped through and voted thus diluting the vote of legal voters, in the preliminary findings of
19 EIPNV for registrations from 2010 or before, how many more duplicate voters actually voted if we
20 looked at the registrations from 2010 to 2018? The presence of the documented fraudulent vote of 5
21 voters is evidence that the vote in Nevada is not secure, fair or honest. It also proves that the
22 provisions of AB4 will only exacerbate the problem. Since Plaintiff’s vote was diluted in the June
23 2020 primary election by this fraud, the only remedy for this injury is that Defendant Secretary of
24 State should be enjoined from implementing and enforcing AB4.
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III.

UNFUNDED MANDATES

50. Plaintiffs repeat and reallege all of the above paragraphs 1-49 and incorporate them herein by reference.

51. AB4 CONTAINS UNFUNDED MANDATES: AB4 violates Nevada Law prohibiting unfunded mandates from State of Nevada to local governments.

NRS 354.599 states that a “Specified source of additional revenue [is] required under certain circumstances when Legislature directs local governmental action requiring additional funding. If the Legislature directs one or more local governments to:

1. Establish a program or provide a service; or
2. Increase a program or service already established which requires additional funding, - and the expense required to be paid by each local government to establish, provide or increase the program or service is \$5,000 or more, a specified source for the additional revenue to pay the expense must be authorized by a specific statute. The additional revenue may only be used to pay expenses directly related to the program or service. If a local government has money from any other source available to pay such expenses, that money must be applied to the expenses before any money from the revenue source specified by statute

52. AB4 does not fully nor adequately fund the mandate to local governments:

Sec. 84. 1. States:

“The Chief of the Budget Division shall transfer the sum of \$2,000,000 from Budget Account 101-1327 to the Secretary of State for the costs related to the preparation and distribution of mail ballots pursuant to the provisions of sections 2 25 to 27, inclusive, of this act for the 2020 General Election.

But Defendant Cegavske has admitted that the equipment, education, printing and postage would cost the Secretary of State’s office an additional \$3 million, not including costs to counties, which distribute and tabulate ballots.

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1 53. Nevada spent more than \$4 million in federal relief dollars *in the June primary*, most of
2 which it funneled to counties. More than \$1 million went toward leasing, counting and sorting
3 machines to accommodate a greater number of absentee ballots.⁸

4 54. According to the fiscal note from the county of Plaintiff Angle's residence, Washoe County,
5 AB4 will cost an additional \$1.9 million. This cost alone will take all of the \$2 million funded in
6 AB4. There are also state costs as well as the unfunded cost of 16 other counties including Clark
7 County with the largest number of registered voters of 1.5 million. Washoe County has 281,000
8 active registered voters or one-sixth the number of voters in Clark County. If the Washoe County
9 election based on AB4 requirements will cost \$1.9 million it could reasonably be expected that Clark
10 County's costs alone would be six times that amount, or 11.4 million dollars, far beyond the \$2
11 million allocated by the State Legislature. See **Exh. 2.**

12 55. According to these sources, AB4 is unfunded or grossly underfunded and therefore is an
13 illegal law under Nevada's law against unfunded mandates, NRS 354.599, from the state to the
14 local governments. Because this mandate will become a local burden, the taxpayers, including
15 Plaintiff Angle, will become responsible for the payment of this shortfall either through increased
16 tax burden or loss of services because of funds being reallocated to cover the cost of the election.
17

18 56. The remedy for this injury to Plaintiff Angle and to all taxpayers of Nevada is strike this law
19 as illegal and prohibit it from being implemented.
20

21 IV.

22 **AB 4 IS UNCONSTITUTIONAL AS IT VIOLATES EQUAL PROTECTION**

23 57. Plaintiffs repeat and reallege all of the above paragraphs 1-56 and incorporate them herein by
24 reference.
25

26
27 ⁸ [https://www.rgj.com/story/news/2020/08/04/trump-campaign-sues-state-nevada-over-mail-ballot-](https://www.rgj.com/story/news/2020/08/04/trump-campaign-sues-state-nevada-over-mail-ballot-initiative/3297017001/)
28 [initiative/3297017001/](https://www.rgj.com/story/news/2020/08/04/trump-campaign-sues-state-nevada-over-mail-ballot-initiative/3297017001/)

1 58. AB4 violates the Nevada Constitution Article 4 Section 2, which mandates that “all laws
2 shall be general and of uniform operation throughout the State.” The Courts have held that this
3 section of the Nevada Constitution is coextensive with the guarantees of the Equal Protection Clause
4 of the Fourteenth Amendment of the United States Constitution. “The U.S. Const. amendment
5 XIV forbids an enactment that denies any person equal protection of the laws. The Nevada
6 Constitution. Art. 4, § 21 requires that all laws be general and of uniform operation throughout the
7 state. The standard for testing the validity of legislation under the equal protection clause of the
8 state constitution is the same as the federal standard. *Barrett v. Baird*, 111 Nev. 1496, 1499, 908
9 P.2d 689, 692, 1995 Nev. LEXIS 182, *Rico v. Rodriguez*, 121 Nev. 695, 702-03, 120 P.3d 812, 817
10 (2005). Thus, Equal Protection requires equal access for all voters to elections.
11

12 59. An amendment entitled “Rights of Voters” has been proposed and passed twice by the
13 Legislature. It will undoubtedly become law after the general election of 2020. It guarantees equal
14 access to voting opportunities, thus defining with more certainty voting rights of voters in Nevada.
15 See **Exh. 3**.
16

17 60. Nevertheless, all of these protections are already built into Article 4 Section 2 because of the
18 “coextensive” rulings by the Nevada Supreme Court. Thus, the pronouncements of the U.S.
19 Supreme Court interpreting the Equal Protection Clause of the 14th Amendment are all incorporated
20 into Nevada law.
21

22 **A. The Unequal Allocation of In-Person Polling Places Does Not Provide Equal Treatment of**
23 **Voters and is thus Unconstitutional**

24 61. Sections 11 and 12 of AB4 are unconstitutional. Those sections set forth the number of in-
25 person polling places for early voting (Section 11) and vote centers for day-of-election voting
26 (Section 12). Under those sections, the number of in-person voting places a county must establish is
27 tied to the county’s population, resulting in more in-person voting places per capita for voters in
28 urban counties than in rural counties due to the fact that the number of voters allocated for the in-

1 person voting centers in the large counties per capita is greater than the number of in person voting
2 centers allotted to the voters, per capita, in the smaller counties.

3
4 62. This arrangement violates rural voters' rights under the Equal Protection Clause, since there
5 are not as many voting centers per capita for them as there are in the large counties, making it more
6 difficult for the rural county voters to cast their votes. This is an unlawful AND unconstitutional
7 expenditure of funds to establish these unequally distributed and established voting centers.

8
9 63. By limiting their ability to cast ballots via in-person voting through reduced numbers of
10 polling places and vote centers, Sections 11 and 12 of AB4 engage in disparate treatment with
11 respect to rural voters. The United States Supreme Court has given guidance regarding this unequal
12 treatment: "A citizen, a qualified voter, is no more nor no less so because he lives in the city or on
13 the farm." *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). AB4 infringes "the basic principle of
14 equality among voters within a State . . . that voters cannot be classified, constitutionally, on the
15 basis of where they live." *Id.* at 560.

16 **B. Standardless Counting Procedures**

17
18 64. EQUAL PROTECTION for voters also means that a uniform standard for counting and
19 recounting all votes must be established statewide. If ballots are counted under different rules and
20 standards, then the accuracy and reliability of the tabulations will necessarily vary among the
21 counties.

22 65. Section 22 of AB4 requires each "county or city clerk" (as applicable) to "establish
23 procedures for the processing and counting of mail ballots." Section 22 of AB4 provides no
24 guidance or guardrails of any kind for the establishment of "procedures for the processing and
25 counting of mail ballots." It envisions the creation of procedures and rules by each county
26 clerk/registrar without any central control over those procedures, which will inevitably result in a
27 different set of rules in each or the 17 counties.
28

1 66. Section 22 of AB4 requires each “county or city clerk” (as applicable) to “establish
2 procedures for the processing and counting of mail ballots.” Section 22 of AB4 provides no
3 guidance or guardrails of any kind for the establishment of “procedures for the processing and
4 counting of mail ballots.” Section 22 provides no uniform statewide standard for processing and
5 counting mail-in ballots by authorizing “standardless” procedures for the processing and counting of
6 mail ballots, without specific state-wide rules designed to ensure uniform treatment.
7

8 67. Therefore, Sections 11 and 12 of AB4 violate Nevada’s Constitutional equal protection
9 clause which requires uniform standards and procedures for processing and counting ballots
10 throughout the State.

11 68. There is no adequate remedy at law for voters in the rural counties. They will suffer serious
12 and irreparable harm to their constitutional rights unless the state is enjoined from implementing and
13 enforcing Sections 11 and 12 of AB4.
14

15 **C. Section 22 provides no “minimal procedural safeguards” to protect against the “unequal
16 evaluation” of mail ballots.**

17 69. The Supreme Court has instructed that the “formulation of uniform rules” is “necessary”
18 because the “want of” such rules may lead to “unequal evaluation of ballots.” *Bush v. Gore*, 531 U.S.
19 98, 106 (2000). This rule applies in Nevada under Nevada’s Equal Protection Constitutional
20 guarantee, Art. 4, § 21.

21 70. Nevertheless, Section 22 provides no “minimal procedural safeguards” to protect against the
22 “unequal evaluation” of mail ballots. *Id.* at 109, 130. Section 22 of AB4 instructs each county or city
23 clerk that they “*may* authorize mail ballots to be processed and counted by electronic means.”
24 Nevada’s counties thus have the option of processing and counting mail ballots by either electronic
25 means (of any kind, apparently) or manually.
26

27 71. Section 22 thus expressly authorizes Nevada’s counties to “use[] varying standards to
28 determine what [i]s a legal vote,” contrary to the U.S. Supreme Court’s uniform rules requirement.

1 *Id.* at 107, 133. Section 22 of AB4 thus violates the Equal Protection Clause, referencing again the
2 Supreme Court of Nevada’s interpretation of the requirement of Section 21 of Article 4 of the
3 Nevada Constitution that “all laws shall be general and of uniform operation throughout the State”
4 to be coextensive with the guarantees of the Equal Protection Clause of the Fourteenth
5 Amendment to the United States Constitution:
6

7 The right to vote is protected in more than the initial allocation of the franchise. Equal
8 protection applies as well to the manner of its exercise. Having once granted the right to vote
9 on equal terms, the *State may not, by later arbitrary and disparate treatment, value one*
10 *person's vote over that of another. It must be remembered that the right of suffrage can be*
11 *denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by*
12 *wholly prohibiting the free exercise of the franchise.*

13 *Bush v. Gore*, 531 U.S. 98, 104-05 (2000), (Emphasis added.)

14 73. In particular, the Equal Protection Clause imposes a “minimum requirement for nonarbitrary
15 treatment of voters” and forbids voting systems and practices that distribute election resources in a
16 “*standardless*” fashion, without “specific rules designed to ensure uniform treatment.” *Bush v. Gore*,
17 531 U.S. 98, 105-06 (2000); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477-78 (6th
18 Cir. 2008). The United States Supreme Court has instructed that the “formulation of uniform rules”
19 is “necessary” because the “want of” such rules may lead to “unequal evaluation of ballots.” *Id.*

20 74. Section 25 of AB4 provides that “[i]f two or more mail ballots are found folded together to
21 present the appearance of a single envelope,” and “a majority of the inspectors are of the opinion that
22 the mail ballots folded together were voted by one person, the mail ballots must be
23 rejected.” §25.2.

24 ***75. Section 25 provides no guidance or guardrails of any kind for the establishment of***
25 ***standards “a majority of inspectors” should apply to determine whether “the mail ballots folded***
26 ***together were voted by one person.”*** Section 25 thus violates the “minimum requirement for
27 nonarbitrary treatment of voters” by authorizing “standardless” procedures for determining the

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1 validity of multiple ballots within a single envelope, without “specific rules designed to ensure
2 uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06 (2000).

3 76. Further, Section 25 provides no “minimal procedural safeguards” to protect against the
4 “unequal evaluation” of multiple ballots within a single envelope. *Id.* at 109.

5 77. Section 25 of AB4 thus violates the Equal Protection Clause, Section 21 Article 4 of the
6 Nevada Constitution.

7 78. Sharron Angle will suffer serious and irreparable harm to her constitutional rights unless the
8 state is enjoined from implementing and enforcing Section 25 of AB4.

9
10 **D. AB4 will allow ballots cast after election day to be counted unlawfully**

11 79. AB4, which upends Nevada’s election laws and requires massive changes in election
12 procedures and processes, makes voter fraud and other ineligible voting inevitable. AB4 requires
13 counties to accept and count ballots received after Election Day— including ballots that may have
14 been mailed after Election Day. §§20.1(b)(2), 20.2.

15
16 80. But the Nevada Constitution ORDINANCE § 5 requires the ballots cast to be counted
17 immediately after the election. That section provides:

18 5. Election returns.

19 The Judges and Inspectors of said **elections** shall carefully count each ballot *immediately*
20 after said **elections**, and *forthwith* make duplicate returns thereof to the clerks of the said
21 County Commissioners of their respective Counties. . . .

22 (Emphasis added.)

23 81. AB4 contravenes Section 5 by requiring elections officials to accept and count ballots
24 received after Election Day *even when* those ballots lack objective evidence that voters cast them on
25 or before Election Day. In short, AB4 effectively postpones and prolongs Nevada’s 2020 general
26 election past the Election Day.

27 ///
28

1 82. The Nevada Constitution Art. 4, § 4 entitled “Senators: Election and term of office; eligibility
2 for office, provides:

- 3 1. Senators shall be chosen at the same time and places as members of the Assembly by
4 the qualified electors of their respective districts, and their term of Office shall be
5 four Years from the **day** next after their **election**.

6 83. The Nevada Constitution, Art. 17, § 10 also provides:

7 At the general **election** in A.D. Eighteen hundred and Sixty Six; and thereafter, the term of
8 Senators shall be for Four Years from the **day** succeeding such general **election**, and
9 members of Assembly for Two Years from the **day** succeeding such general **election**. . . .
See also Nev. Const. Art. 17, § 11 and Nev. Const. Art. 4, § 3.

10 84. AB4 calls into question the term of the elected Assemblymen and Senators because it extends
11 the voting date beyond the one established by law.

12 85. Section 20.2 of AB4 conflicts with the above quoted sections of the Nevada Constitution by
13 permitting absent ballots that have not been postmarked to be counted if they are received by 5:00
14 pm three days after Election Day (based on a presumption that those ballots were mailed on or
15 before Election Day).

16 86. Absent ballots are mailed to the county clerk for the county in which the voter resides. Then
17 the absent ballots are delivered by the U.S. Postal Service via First Class mail. But the estimated
18 delivery time for First Class mail from one place in any Nevada county to another place within the
19 same county is typically less than three days.
20

21 87. Section 20.2 of AB4 thus allows absent ballots to be cast after Election Day to still be
22 counted as lawfully cast votes in the 2020 general election.

23 88. Thus, Section 20.2 of AB4 is a particularly egregious violation of Nevada’s voting laws
24 because it allows for absentee ballots to be *cast* after Election Day.
25

26 89. What this means is that if a candidate or a party believes that the voting in that candidate’s
27 election is close, they can corruptly gather up unvoted ballots (via ballot harvesting) in that district,
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1 get them completed fraudulently, and then mail them in on the day after the election in order to
2 weight the vote in their favor.

3 CONCLUSION OF GENERAL ALLEGATIONS

4 90. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
5 harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing
6 AB4 § 20.2. It establishes a disparate number of in-person places for early voting and Election Day
7 voting throughout Nevada based on a county's population, resulting in fewer in-person voting places
8 for rural voters. §§11, 12. It fails to establish uniform statewide standards for processing and
9 counting ballots, §22, or for determining whether multiple ballots received in one envelope must be
10 rejected, §25. It also authorizes ballot harvesting. §21. The combined effect of those problematic
11 provisions is to dilute honest votes. Dilution of honest votes, to any degree, by the casting of
12 fraudulent or illegitimate votes violates the right to vote. *Reynolds v. Sims*, 377 U.S. 533, 555
13 (1964); *Anderson V. United States*, 417 U.S. 211, 226-2794 (1974); *Baker v. Carr*, 369 U.S. 186,
14 208 (1962), *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 223 (1974).

15 91. The aspects of AB4 identified above facilitate fraud and other illegitimate voting practices
16 for the reasons described above. Those provisions thus dilute the value of honest, lawful votes and
17 therefore, violate the Fourteenth Amendment to the U.S. Constitution, Article 4 Section 21 of the
18 Nevada Constitution and the equal access clause of the voter's rights in Article 2 1A section 9 of the
19 Nevada Constitution.
20

21 92. Because of the aforementioned arguments, AB4 is unconstitutional and Plaintiff Angle will
22 suffer serious and irreparable harm to her constitutional rights unless the state is enjoined from
23 implementing and enforcing AB4.
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CAUSES OF ACTION

COUNT I

Violation of NRS 354.599

1. AB4 CONTAINS UNFUNDED MANDATES: AB4 violates Nevada Law prohibiting unfunded mandates from State of Nevada to local governments.

NRS states that a “Specified source of additional revenue [is] required under certain circumstances when Legislature directs local governmental action requiring additional funding. If the Legislature directs one or more local governments to:

1. Establish a program or provide a service; or
2. Increase a program or service already established which requires additional funding, -- and the expense required to be paid by each local government to establish, provide or increase the program or service is \$5,000 or more, a specified source for the additional revenue to pay the expense must be authorized by a specific statute. The additional revenue may only be used to pay expenses directly related to the program or service. If a local government has money from any other source available to pay such expenses, that money must be applied to the expenses before any money from the revenue source specified by statute
2. AB4 does not fully or adequately fund the mandate to local governments to carry out an all-mail-in ballots election, as set forth in paragraphs 54 through 60 of the above complaint.
3. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm by transferring almost the entire burden of funding the all mail-in ballot election costs, which will result in either an increased tax burden or a decrease in county services to the Plaintiff Sharron Angle unless Defendant is enjoined from implementing and enforcing AB4.

COUNT II

Violation of the Equal Protection Clause

“The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote

1 over that of another. It must be remembered that the right of suffrage can be denied by a debasement
2 or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free
3 exercise of the franchise.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). See paragraphs 61-93, set forth
4 above.

5
6 1. AB 4 violates the Nevada Constitution Article 4, § 21 which requires that all laws be
7 general and of uniform operation throughout the state in the following particulars, outlined more
8 fully in the complaint:

9 a. The Unequal Allocation of In-Person Polling Places Does Not Provide Equal
10 Treatment of Voters and thus Unconstitutional

11 b. Standardless Counting Procedures:

12 EQUAL PROTECTION for voters means that a uniform standard for counting and
13 recounting all votes must be established statewide. If ballots are counted under
14 different rules and standards, then the accuracy and reliability of the tabulations will
necessarily vary among the counties.

15 c. Section 22 provides no minimal procedural safeguards to protect against the unequal
16 evaluation of mail ballots. The formulation of uniform rules is necessary because the
17 want of such rules may lead to “unequal evaluation of ballots.” *Bush v. Gore*, 531
U.S. 98, 106 (2000);

18 AB4 Section 22 provides no “minimal procedural safeguards” to protect
19 against the “unequal evaluation” of mail ballots.

20 d. AB4 will allow ballots cast after election day to be counted unlawfully:
21 AB4 makes voter fraud and other ineligible voting inevitable. AB4 requires counties
22 to accept and count ballots received after Election Day— including ballots that may
have been mailed after Election Day. §§20.1(b)(2), 20.2, thus diluting Plaintiffs’
votes.

23 e. AB4 allows for and permits the following fraudulent abuses of election procedures,
24 resulting in dishonest and incorrect voting totals:

25 1. Multiple or Duplicate Voting at Vote Centers;

26 2. Delayed Inactivations and Delayed Cancellations will result in ballots being
27 mailed to persons dead or no longer living at that address;
28

3. Same Day Voter Registration: AB4 Sections 11-14 (3) provides insufficient time to authenticate a voters' identity, thus resulting in fraudulent or unauthorized votes being cast;
4. Registrants Aged 105 or Older and Likely Deceased will be mailed ballots, resulting in living people voting those ballots unlawfully;
5. Proper Voter Signature Verification Not Required by AB4 Sections 23, 39 and 69, resulting in fraudulent voting;
6. Missing Information on a voter's registration_hinders the state's ability to confirm these registrants' eligibility and to match with death, NCOA and other records required for list maintenance. If a person's signature does not have to be official or legal then there is more possibility of voter impersonation and multiple voting under different signatures, thus diluting the votes of properly identified registered voters.
7. Opening mail-in ballots and counting them 15 days before the election: Sections 22-27, 39, 48, 49, 69, 79 and 80 resulting in being able to identify who actually cast the ballot.
8. Ballot Harvesting from the elderly: Sections 19, 28, 29, 35, 56, 57 and 65 of this bill provide that at the request of a voter who has a physical disability, is at least 65 years of age or is unable to read or write . Sections 21, 40, 44, 70 and 75 of this bill: (1) allow a voter to authorize any person to return an absent ballot, mailing ballot or mail ballot to the county or city clerk on behalf of the voter; Since age is noted on the registration rolls, those older voters may be targeted by ballot harvesters who may be casting the vote for that person or impersonating their vote. This is a form of ballot harvesting a practice proven to be fraught with fraudulent opportunity to take advantage of older or disadvantaged people.
9. Other violations of equal protection as set forth in the main body of the complaint.

3. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing AB4.

WHEREFORE, Plaintiffs ask this Court to enter judgment in their favor and provide the following relief:

- a. A declaratory judgment that AB4 violates NRS 354.599 (unfunded mandates) and Nevada Constitution Article 4, § 21, the Equal Protection clause, coextensive with the U.S.

1 Constitution's 14th Amendment;
2

3 b. A preliminary injunction granting the relief prohibiting Defendant from implementing
4 and enforcing AB4 during the pendency of this action;

5 c. A permanent injunction prohibiting Defendant from implementing and enforcing AB4;

6 d. Plaintiffs' reasonable costs and expenses, including attorneys' fees; and

7 e. All other preliminary and permanent relief that Plaintiffs are entitled to, and that the
8 Court deems just and proper.
9

10 DATED this 1st day of September, 2020.

11 Respectfully submitted,
12 HANSEN & HANSEN, LLC

13 By: 

14 Joel F. Hansen, Esq.
15 Nevada Bar No. 1876
16 9030 W. Cheyenne Ave. #210
17 Las Vegas, NV 89129
18 *Attorney for Plaintiffs*
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EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

DECLARATION OF SHARRON ANGLE REGARDING ILLEGALITY AND
UNCONSTITUTIONALITY OF ASSEMBLY BILL 4 OF THE 2020 NEVADA 32nd
SPECIAL SESSION

I, Sharron Angle, make this declaration before God and under penalties of perjury.

AB4 is Illegal and Unconstitutional for the following reasons:

1. CONTAINS UNFUNDED MANDATE: AB4 violates Nevada Law prohibiting unfunded mandates from State of Nevada to local governments.

NRS 354.599 Specified source of additional revenue required under certain circumstances when Legislature directs local governmental action requiring additional funding. If the Legislature directs one or more local governments to:

1. Establish a program or provide a service; or
2. Increase a program or service already established which requires additional funding,

and the expense required to be paid by each local government to establish, provide or increase the program or service is \$5,000 or more, a specified source for the additional revenue to pay the expense must be authorized by a specific statute. The additional revenue may only be used to pay expenses directly related to the program or service. If a local government has money from any other source available to pay such expenses, that money must be applied to the expenses before any money from the revenue source specified by statute.

(Added to NRS by 1969, 800; A 1971, 236; 1975, 1686; 1979, 1241; 1981, 312; 1987, 1669; 1993, 1349; 1999, 1181; 2001, 1804)

AB4 does not fully nor adequately fund the mandate to local governments:

Sec. 84. 1. The Chief of the Budget Division shall transfer the sum of \$2,000,000 from Budget Account 101-1327 to the Secretary of State for the costs related to the preparation and distribution of mail ballots pursuant to the provisions of sections 2 25 to 27, inclusive, of this act for the 2020 General Election.

But Secretary Cegavske said that the equipment, education, printing and postage would cost the Secretary of State's office an additional \$3 million, not including costs to counties, which distribute and tabulate ballots.

Nevada spent more than \$4 million in federal relief dollars in the June primary, most of which it funneled to counties. More than \$1 million went toward leasing counting and sorting machines to accommodate a greater number of absentee ballots.

<https://www.rgj.com/story/news/2020/08/04/trump-campaign-sues-state-nevada-over-mail-ballot-initiative/3297017001/>

According to the fiscal note from the county of my residence, Washoe County, AB4 will cost an additional \$1.9 million. This cost alone will take all of the \$2million funded in AB4. There are also state costs as well as the unfunded cost of 16 other counties including the Clark County with the largest number of registered voters 1.5 million. Washoe County has 281,000 active registered voters or one-sixth the number of voters in Clark County. If the Washoe County election based on AB4 requirements will cost \$1.9 million it could reasonably be expected that Clark Counties costs alone would be six times that amount.

Washoe County - Assembly Bill 4 Description of service or product Total Cost

<https://www.leg.state.nv.us/Session/32nd2020Special/FiscalNotes/2055.pdf>

- Postage Permit 539 (non profit)- Sample Ballot \$60,000.00
- Postage Permit 215 (First Class)- Election Ballot \$220,000.00
- Mail Ballot envelopes(outgoing & returning) domestic/overseas & instructions & secrecy sleeves 1,373,850 pieces \$110,340.61 K&H
- Mail in Ballots/Counter Ballots/packet assembly/delivery/subsequent extracts/freight 314,563-printed 294,161-mailed \$168,411.83 K&H
- Sample Ballot 304,200 0.196 \$60,378.20 Metro - Shipping \$755.00
- Moving Company \$25,000.00 delivery to all EV and ED and AB drop off sites

- additional ICC's 2 \$17,500 Dominion ICC ballot scanners
- Secure Mail Ballot Drop Boxes \$25,000.00
- Mail scanner/sorter of return ballots 1 \$250,000.00 have quotes from a few vendors
- Personal Protective Equipment for office staff and election workers \$110,000.00
- Absent Ballot Elections workers - Early Voting \$69,300.00 \$11 per hour
- 4 additional EV workers per site \$66,528.00 \$11 per hour
- 4 additional ED workers per site \$11,000.00 \$110 for all day 7 am 7 pm
- Total unfunded costs of AB4 \$1,193,458.64

According to these sources, AB4 is unfunded and therefore and illegal law under Nevada's law against unfunded mandates from the state to the local governments. Because this mandate will become a local burden, as a taxpayer, I will become responsible for the payment of this shortfall either through increased tax burden or loss of services because funds were reallocated to cover the cost of the election. The remedy for this injury to me as a taxpayer is strike this law as illegal and prohibit it from being implemented.

2. UNCONSTITUTIONAL – AB4 violates the Nevada Constitution Section 21 Article 4 which is coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and requiring equal access for all voters to elections.

- By limiting their ability to cast ballots via in-person voting through reduced numbers of polling places and vote centers, Sections 11 and 12 of AB4 engage in disparate treatment with respect to rural voters.

“A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm.” Reynolds v. Sims, 377 U.S. 533, 568 (1964). AB4 infringes “the basic principle of equality among voters within a State ... that voters cannot be classified, constitutionally, on the basis of where they live.” Id. at 560.

- Section 22 of AB4 requires each “county or city clerk” (as applicable) to “establish procedures for the processing and counting of mail ballots.” Section 22 of AB4 provides no guidance or

guardrails of any kind for the establishment of “procedures for the processing and counting of mail ballots.” Section 22 thus violates the “specific rules designed to ensure uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06 (2000).

- Further, Section 22 provides no “minimal procedural safeguards” to protect against the “unequal evaluation” of mail ballots. *Bush v. Gore*, 531 U.S. 98, 109 (2000). 130. Section 22 of AB4 instructs each county or city clerk that they “may authorize mail ballots to be processed and counted by electronic means.” Nevada’s counties thus have the option of processing and counting mail ballots by either electronic means (of any kind, apparently) or manually.
- Section 22 thus expressly authorizes Nevada’s counties to “use[] varying standards to determine what [i]s a legal vote,” contrary to the uniform standard clause. *Bush v. Gore*, 531 U.S. 98, 107 (2000). 133. Section 22 of AB4 thus violates the Equal Protection Clause. Nevada’s equal access clause section 10
- Referring to the Supreme Court of Nevada “interpreted the requirement of Section 21 of Article 4 of the Nevada Constitution that “all laws shall be general and of uniform operation throughout the State” to be coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;” “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). In particular, the Equal Protection Clause imposes a “minimum requirement for nonarbitrary treatment of voters” and forbids voting systems and practices that distribute election resources in “standardless” fashion, without “specific rules designed to ensure uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06 (2000); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477-78 (6th Cir. 2008). The United States

Supreme Court has instructed that the “formulation of uniform rules” is “necessary” because the “want of” such rules may lead to “unequal evaluation of ballots.” *Bush v. Gore*, 531 U.S. 98, 106 (2000).

- Section 25 of AB4 provides that “[i]f two or more mail ballots are found folded together to present the appearance of a single envelope,” and “a majority of the inspectors are of the opinion that the mail ballots folded together were voted by one person, the mail ballots must be rejected.” §25.2. 141. Section 25 provides no guidance or guardrails of any kind for the establishment of standards “a majority of inspectors” should apply to determine whether “the mail ballots folded together were voted by one person.” Section 25 thus violates the “minimum requirement for non-arbitrary treatment of voters” by authorizing “standardless” procedures for determining the validity of multiple ballots within a single envelope, without “specific rules designed to ensure uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06 (2000). Case 2:20-cv-01445-JCM-VCF Document 1 Filed 08/04/20 Page 22 of 25 Further, Section 25 provides no “minimal procedural safeguards” to protect against the “unequal evaluation” of multiple ballots within a single envelope. *Bush v. Gore*, 531 U.S. 98, 109 (2000). Section 25 of AB4 thus violates the Equal Protection Clause, Section 21 Article 4 of the Nevada Constitution, and the Equal access clause Nevada Constitution section 9.
- AB4, which upends Nevada’s election laws and requires massive changes in election procedures and processes, makes voter fraud and other ineligible voting inevitable. AB4 requires counties to accept and count ballots received after Election Day—including ballots that may have been mailed after Election Day. §§20.1(b)(2), 20.2. It establishes a disparate number of in-person places for early voting and Election Day voting throughout Nevada based on a county’s population, resulting in fewer in-person voting places for rural voters. §§11, 12. It fails to establish uniform statewide standards for processing and counting ballots, §22, or for determining whether multiple ballots received in one envelope must be rejected, §25. It also authorizes ballot harvesting. §21. The combined effect of those problematic provisions is to

dilute honest votes. Dilution of honest votes, to any degree, by the casting of fraudulent or illegitimate votes violates the right to vote. Reynolds, 377 U.S. Filed. at 555; Anderson, 417 U.S. at 226-27; Baker, 369 U.S. at 208. Case 2:20-cv-01445-JCM-VCF Document 1 08/04/20 Page 23 of 25. The aspects of AB4 identified above facilitate fraud and other illegitimate voting practices for the reasons described above. Those provisions thus dilute the value of honest, lawful votes and therefore violate the Fourteenth Amendment to the U.S. Constitution, Article 4 Section 21 of the Nevada Constitution .

- NV SJR8 Proposes to amend the Nevada Constitution to guarantee equal rights. (BDR C-1278) Has been passed by the Legislature and is scheduled for passage by voters in the 2020 general election to be ratified into the Nevada State Constitution. If this amendment is ratified by the people, AB 4 will be in violation of the equal access clause and the Voter's Bill Of Rights in SJR8.
- I will suffer serious and irreparable harm to my constitutional rights unless the state is enjoined from implementing and enforcing AB4.

3. ELECTION INTEGRITY PROJECT NEVADA FINDINGS:

MULTIPLE OR DUPLICATE VOTING AT VOTE CENTERS: Sections 11-14 of AB4 establish various requirements relating to polling places and voter registration for affected elections subject to sections 2-27, including requirements relating to: (1) polling places established for early voting by personal appearance; (2) polling places established as vote centers;

- Vote centers remove the voter from his precinct where he is known and allows for impersonation especially when no ID is required and also allows for multiple voting by using sample ballots or "found ballots" where nefarious voters travel from one vote center to another rather than appearing at the precinct where the voter is registered. This multiple voting is part of the "findings" sent to the Secretary of State, Barbara Cegavske by Election Integrity Project Nevada (EIPNv.com) on July 24, 2020.

Finding # 8: Duplicated Voter Registrations Notwithstanding the legal obligations to eliminate duplicate names from the list, EIPNV has identified **1,289** persons who appear to be registered twice in the state. Each occurrence has the same/similar name and same/similar birthdate at the same address or differing addresses in the state. This includes persons who appear to be registered under both maiden and married last names. Matching phone numbers provide additional evidence for suspected duplicates at differing addresses. Duplicated registrants can easily vote more than once undetected.

Finding #9: Suspected Double Voting There are **9** suspected duplicated registrants whose voting histories, if they are confirmed as duplicates, show they voted twice in an election. Five appear to have voted twice in the June 2020 primary because they each had two Active registrations and were mailed two ballots. *EIPNV's analysis of potential double voting excluded 12 counties which currently have incorrect voting histories for the June 2020 election.*

Finding # 10: Registrants to be Mailed Two Ballots for November 2020 Should Nevada not correct the registrations it confirms as duplicated, as many as **1,226 registrants will be mailed two ballots for the November 2020 election.** This includes 849 who each appear to have two Active registrations and 377 additional registrants in Clark County who have one or both registrations as Inactive status, should Clark County include Inactives in its mailed ballot plans. Persons sent more than one ballot can easily vote more than once undetected.

Voter impersonation is also more likely when one voter can travel from vote center to vote center impersonating someone with an active but not voting in several years status.

Finding #1: Delayed Inactivations EIPNV has identified **41,040** Nevada registrant whose records show no indications of registration updates or federal voting activity since November 2, 2010 or prior. Since these registrants have likely relocated or died, they may be eligible for inactivation or cancellation yet they remain in "Active" status. Voting histories indicate **3,331** have not voted in 16 or more years and **22,151** have records indicating they have NEVER voted since registering to vote a decade or more ago. Clark County has 38,103 of the potential delayed inactivations, more than 3% of its Active registrations.

Finding #2: “Delayed Inactivations” to be Mailed Ballots for November 2020 Should Nevada mail ballots to all Active-status registrants for the November 2020 election, as many as **41,050--** who may instead be eligible for inactivation or cancellation—will be mailed ballots, including 38,103 in Clark County.

Finding #3: Delayed Cancellations

There are 18,290 registrants who were previously inactivated by a county or the state yet remain on the voter list despite no indications of registration updates or voting activity since November 2, 2010 or prior. These registrations may be eligible for cancellation under federal law and Nevada state law [NRS 293.530]. 9,049 have records indicating they have NEVER voted since registering to vote a decade or more ago. Clark County has 14,327 of the suspected delayed cancellations and Washoe County has 1,673.

For this finding EIPNV assumes that (quoting from your May 29, 2020 press release) “...in order for a registered voter to be designated as inactive, a piece of election mail sent to the voter must have been returned as undeliverable and the voter must have failed to respond to a mailer asking the voter to confirm their voter registration information...”, and that “...If an inactive registered voter fails to vote in two federal election cycles (i.e., four years) and the inactive registered voter has no other voter activity during this time, their voter registration in Nevada is cancelled.”

Finding #4: “Delayed Cancellations” to be Mailed Ballots for November 2020 Should Clark County mail ballots to all Inactive-status registrants for the November 2020 election, as it did for the June 2020 primary, as many as **14,327** registrants-- who may instead be eligible for cancellation—will be mailed ballots.

4. SAME DAY VOTER REGISTRATION: AB4 Sections 11-14 (3) voter registration at polling places on election day

Same day registration is problematic because there is no time to authenticate the voter against residence, citizenship, or deceased rolls. If people who reside somewhere else, are not citizens or are dead are voting, my vote is diluted which violates the law and injures my Constitutional rights. The only remedy is not to implement this law.

Finding #5: Registrants Aged 105 or Older and Likely Deceased Notwithstanding the legal

requirement to maintain voter registration lists that are free of dead registrants, there are **74** registrants whose birthdates indicate they are 105+ years old and likely deceased.

Finding #6: Registrants Aged 105+ to be Mailed Ballots for November 2020 Should Nevada mail ballots to all Active registrants for the November 2020 election, **63** registrants aged 105+ and likely deceased will be mailed ballots. This includes 40 of Active status and 23 additional Inactive status registrants aged 105+ should Clark County mail ballots to Inactive registrants as it did for the June 2020 primary.

5. SIGNATURE VERIFICATION NOT REQUIRED. AB4 Sections 23, 39 and 69 revise these existing procedures and set forth standards for determining when there is a reasonable question of fact as to whether the signature used for an absent ballot, mailing ballot or mail ballot matches the signature of the voter.
- This is a new requirement that will add extra work to the registrar and may get them to accept signatures they would otherwise reject because of this added work load. Here are the things that can't be used to disqualify the signature in the new bill:

2. For purposes of 1: (a) There is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if the signature used for the mail ballot differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk. (b) There is not a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if: (1) The signature used for the mail ballot is a variation of the signature of the voter caused by the substitution of initials for the first or middle name or the use of a

common nickname and it does not otherwise differ in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk; or

- I have to prove at the DMV the married name is the same as my birth certificate which only contains my maiden name. How can any variation on the legal name or signature be acceptable? This is an opportunity for multiple ballots to a voter under the legal name, another under the initials, another under the nickname etc.

(2)There are only slight dissimilarities between the signature used for the mail ballot and the signatures of the voter available in the records of the clerk.)

- This is relative. How are slight or dissimilarities defined? With these provisions in place all signatures WOULD be acceptable thus nullifying the need for a signature.

Finding #7: Missing Information There are **1,657** registrants who are missing a birthdate, appear to be missing a legal name, or have a non-alpha character in their names. The Nevada voter registration affidavit requires registrants to list their names as they appear on their Nevada driver license, state ID card or Social Security card, but a majority of the 1,657 have what appear to be “nickname” initials in place of their legal first names. Such missing information hinders the state’s ability to confirm these registrants’ eligibility and to match with death, NCOA and other records required for list maintenance.

If a person’s signature does not have to be official or legal then there is more possibility of voter impersonation and multiple voting under different signatures. My vote is diluted which violates the law and injures my Constitutional rights. The only remedy is not to implement this law.

6. OPENING MAIL-IN BALLOTS AND COUNTING THEM 15 DAYS BEFORE THE ELECTION:

Sections 22-27, 39, 48, 49, 69, 79 and 80 of this bill revise these existing procedures and provide that such counting boards can begin their process of counting the returned absent ballots, mailing ballots and mail ballots 15 days before the election.

- The separation of the ballot from the signature envelope keeps the ballot from being removed from the count if the signature or the person who cast the ballot is challenged. These challenges must take place at the time the ballot is received requiring overseers of the counting process to be in attendance for 11 more days than the existing law. When a court finds that ineligible votes have been cast if the ballot is not in tact there is no way to remove those ineligible votes from the system. The court determination is, “yes there was fraud and the election is corrupted but we don’t know who the corrupted ballots voted for.” The lengthening of time for counting impairs oversight inviting possible corruption. This would allow the vote to be counted and the information released prior to election day causing people to react results by not casting a vote if their candidate appeared to be losing.

When illegal votes are counted my vote is diluted. Dilution of my vote is a violation of the law and the Constitution.

7. AGE DISCRIMINATION:

AB4 sections 15-27 establish certain election procedures for the mail ballots distributed to active registered voters for affected elections subject to sections 2-27. Because these particular election procedures relating to absent ballots, mailing ballots and mail ballots serve similar purposes, sections 15-83 make conforming changes in order to align all the provisions and make them uniform in their operation for Nevada's elections. Under existing law, at the request of a voter who has a physical disability or is at least 65 years of age or under certain other circumstances, a person may mark and sign an absent ballot on behalf of the voter or assist voter to mark and sign the absent ballot if the person complies with certain requirements. (NRS 293.316, 293.3165, 293C.317, 293C.318) Sections 19, 28, 29, 35, 56, 57 and 65 of this bill provide that at the request of a voter who has a physical disability, is at least 65 years of age or is unable to read or write . Sections 21, 40, 44, 70 and 75 of this bill: (1) allow a voter to authorize any person to return an absent ballot, mailing ballot or mail ballot to the county or city clerk on behalf of the voter;

- This request should be made in writing to the registrar who should send a deputy to assist since this is a form of ballot harvesting which if done by campaign workers can be interpreted as electioneering. Coercion of vulnerable voters is also a possibility. Since age is noted on the registration rolls, those older voters may be targeted by ballot harvesters who at least may be electioneering and at worst be casting the vote for that person or impersonating their vote. One of the tests for citizenship is literacy. Assistance must be done by a trusted and impartial deputy of the election board. Since this is a form of ballot harvesting a practice proven to be fraught with fraudulent opportunity for hired “boletera” for example. This would create an atmosphere for a trunk full of ballots to come in after the election. “About 6,700 ballots were not counted in this month’s Nevada the primary election after officials could not match signatures on the ballots, according to the Nevada Secretary of State’s Office.”

<https://apnews.com/a9c95d374f922747b1e6d03b5cc39f41>

Since I am over 65 this means that I may be targeted by ballot harvesters which is a form of harassment and discrimination. My right to privacy and equal protection are violated. To remedy this injury, this law should be enjoined from implementing and enforcing AB4.

8. UNABLE TO DETERMINE IF BALLOT IS CAST ON TIME:

AB4 Sections 20, 37 and 67 of this bill provide that to be timely returned by mail, an absent ballot, mailing ballot or mail ballot must be postmarked on or before the day of the election and received by the county or city clerk not later than 5 p.m. on the seventh day following the election Sections 20, 37 and 67 also provide that if the county or city clerk is unable to determine the date of the postmark on such a ballot, but the ballot is received by the clerk not later than 5 p.m. on the third day following the election, the ballot is deemed to have been postmarked on or before the day of the election

- This extends the length of the election and allows nefarious opportunity to “find” more ballots. Once again this makes the Election Day arbitrary and underlines the failings of the postal service

making the mail-in ballot less secure. It will be impossible to know with the extension to seven days past the election for allowing ballots to be accepted, if those ballots were marked before the election or after the results were announced. It gives opportunity to “find” more ballots if someone wants to change the election results.

- According to a FOIA request made by the Public Interest Legal Foundation, “Of the 1,325,934 ballots mailed out in Clark, 223,469 were returned as undeliverable. About 305,000 were returned by voters, verified and counted by the county. About 58 percent of the undeliverable



ballots belonged to inactive voters — those who have failed to confirm their address with the county but remain registered. Inactive voters are removed from the rolls entirely if they miss two consecutive federal elections... However, 93,585 undeliverable ballots belonged to voters classified

as active in Clark County’s voter rolls. Public Interest also audited the Clark County and Nevada state voter rolls and found that 2,358 people on the state’s active rolls were deceased. More than 2,200 of these came from Clark County.” <https://www.reviewjournal.com/news/politics-and-government/clark-county/more-than-223k-mailed-ballots-returned-undelivered-in-primary-2095001/> “The foundation reported that based on its study, Clark County mailed 1,325,934 ballots to voters. Of that number, 223,469 were returned as undeliverable. In Washoe County, 291,434 ballots were mailed, and 27,640 were returned.” <https://justthenews.com/politics-policy/elections/nevada-mailed-more-quarter-million-ballots-returned-undeliverable>

- “Thousands of ballots have been sent out by the Clark County Election Department to inactive voters – those who have not voted in recent elections, a roster that can include people who either have moved or are deceased – and the envelopes are piling up in post office trays, outside apartment complexes and on community bulletin boards in and around Las Vegas.”

<https://www.890kdxu.com/nevadas-vote-by-mail-primary-stirs-fraud-concerns-as-unclaimed-ballots-pile-up-something-stinks-here/>

- **Finding #9: Suspected Double Voting** There are 9 suspected duplicated registrants whose voting histories, if they are confirmed as duplicates, show they voted twice in an election. Five appear to have voted twice in the June 2020 primary because they each had two Active registrations and were mailed two ballots. *EIPNV's analysis of potential double voting excluded 12 counties which currently have incorrect voting histories for the June 2020 election.*
- **Finding # 10: Registrants to be Mailed Two Ballots for November 2020** Should Nevada not correct the registrations it confirms as duplicated, as many as **1,226 registrants will be mailed two ballots for the November 2020 election.** This includes 849 who each appear to have two Active registrations and 377 additional registrants in Clark County who have one or both registrations as Inactive status, should Clark County include Inactives in its mailed ballot plans. Persons sent more than one ballot can easily vote more than once undetected.

Just by doing the math, 1,325,934 ballots mailed out in Clark, 223,469 were returned as undeliverable, 305,000 were returned by voters, verified and counted by the county, there are still over 500,000 ballots that are unaccounted for in the primary election. It is reported that those ballots were “piling up in post office trays, outside apartment complexes and on community bulletin boards in and around Las Vegas” ripe for using to sway an election if the same processes are followed and the safeguards of the “old” law are abandoned for implementation of AB4. Additionally, the EIPNV findings show that 5 voters who have voted twice in the past also voted twice in the 2020 primary making them part of the 305,000 “verified and counted” ballots. If 5 slipped through and voted diluting the vote of legal voters, in the preliminary findings of EIPNV for registrations from 2010 or before, how many more duplicate voters actually voted if we looked at the registrations from 2010 to 2018? The presence of the documented fraudulent vote of 5 voters is evidence that the vote in Nevada is not secure, fair or honest. It also proves that the provisions of AB4 will only exacerbate the problem. Since my vote was diluted in the June 2020 primary election by this fraud, the only

remedy for this injury is AB4 should be enjoined from implementing and enforcing AB4.

I understand from information gained from a call to the Secretary of State's office that the mail in ballots have already gone to the printer, and thus an immediate preliminary injunction must be issued in order to halt the carrying out of the mandates of AB4. If AB4 is implemented the plaintiffs will incur irreparable injury due to the numerous violations of the law and of their rights of equal protection as guaranteed under the Nevada Constitution.

I swear before God and under penalty of perjury, that the statements I have made in this affidavit are true.

A handwritten signature in cursive script that reads "Sharron Angle". The signature is written in dark ink and is positioned above the printed name.

Sharron Angle, Nevada Voter and Citizen

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EXHIBIT 2

EXHIBIT 2

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EXHIBIT 2

Washoe County's costs alone to carry out-Assembly Bill 4 Are set forth below:

Postage Permit 539 (non profit)- Sample Ballot \$60,000.00

- Postage Permit 215 (First Class)- Election Ballot \$220,000.00
- Mail Ballot envelopes(outgoing & returning) domestic/overseas & instructions & security sleeves 1,373,850 pieces \$110,340.61 K&H
- Mail in Ballots/Counter Ballots/packet assembly/delivery/subsequent extracts/freight 314,563-printed 294,161-mailed \$168,411.83 K&H
- Sample Ballot 304,200 0.196 \$60,378.20 Metro - Shipping \$755.00
- Moving Company \$25,000.00 delivery to all EV and ED and AB drop off sites
- additional ICC's 2 \$17,500 Dominion ICC ballot scanners
- Secure Mail Ballot Drop Boxes \$25,000.00
- Mail scanner/sorter of return ballots 1 \$250,000.00 have quotes from a few vendors
- Personal Protective Equipment for office staff and election workers \$110,000.00
- Absent Ballot Elections workers - Early Voting \$69,300.00 \$11 per hour
- 4 additional EV workers per site \$66,528.00 \$11 per hour
- 4 additional ED workers per site \$11,000.00 \$110 for all day 7 am 7 pm
- Total unfunded costs of AB4 \$1,193,458.64

See <https://www.leg.state.nv.us/Session/32nd2020Special/FiscalNotes/2055.pdf>

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

1A. Rights of voters. [Proposed new section]

Each voter who is a qualified elector under this Constitution and is registered to vote in accordance with Section 6 of this Article and the laws enacted by the Legislature pursuant thereto has the **right**:

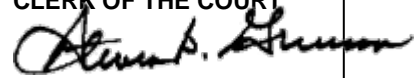
1. To receive and cast a ballot that:
 - (a) Is written in a format that allows the clear identification of candidates; and
 - (b) Accurately records the voter's preference in the selection of candidates.
2. To have questions concerning voting procedures answered and to have an explanation of the procedures for voting posted in a conspicuous place at the polling place.
3. To vote without being intimidated, threatened or coerced.
4. To vote during any period for early voting or on election day if the voter is waiting in line at a polling place at which, by law, the voter is entitled to vote at the time that the polls close and the voter has not already cast a vote in that election.
5. To return a spoiled ballot and receive another ballot in its place.
6. To request assistance in voting, if necessary.
7. To a sample ballot which is accurate, informative and delivered in a timely manner as provided by law.
8. To receive instruction in the use of the equipment for voting during any period for early voting or on election day.
9. To equal access to the elections system without discrimination, including, without limitation, discrimination on the basis of race, age, disability, military service, employment or overseas residence.
10. To a uniform, statewide standard for counting and recounting all votes accurately as provided by law.
11. To have complaints about elections and election contests resolved fairly, accurately and efficiently as provided by law.

Editor's Notes

This new section was proposed and passed in Statutes of Nevada 2017 and agreed to and passed by the 2019 Legislature, to take effect November 24, 2020, if the proposed amendment is ratified at the 2020 General Election.

EXHIBIT 3

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ORDER

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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. XXXII

HEARING 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

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

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

9 **F. Probability of Success on the Merits**

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

17 18. "Under the rational basis standard, legislation will be upheld so long as it is
18 rationally related to a legitimate governmental interest." *Williams v. State*, 118 Nev. 536,
19 542, 50 P.3d 1116, 1120 (2002). Applying the rational basis standard here is consistent
20 with the federal standard governing elections: "[W]hen a state election law provision
21 imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth
22 Amendment rights of voters, 'the State's important regulatory interests are generally
23 sufficient to justify' the restrictions." *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S. Ct.
24 2059, 2063 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S. Ct. 1564, 1570
25 (1983)).

26
27
28 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.

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

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

24 ² 2020 Primary Election Turnout, Nev. Sec’y of State,
25 <https://www.nvsos.gov/sos/home/showdocument?id=8686> (June 19, 2020). By comparison,
26 the 2016 primary election—the last to be held in a presidential election year—saw 240,213
27 Nevadans participate, with just 10.5 percent of voters returning their ballots by mail. 2016
28 *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.

Submitted by:

AARON D. FORD

Attorney General

By: /s/ Gregory L. Zunino

GREGORY L. ZUNINO (Bar No. 4805)

Deputy Solicitor General

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DISTRICT COURT JUDGE

ROB BARE

HL

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/s/ Bradley S. Schrager

BRADLEY S. SCHRAGER

Abha Khanna - *Pro hac vice granted*

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Attorneys for Proposed Intervenor-Defendants

Institute for a Progressive Nevada and

Progressive Leadership Alliance of Nevada

EXHIBIT 4

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IN THE SUPREME COURT OF THE STATE OF NEVADA

ELECTION INTEGRITY PROJECT OF
NEVADA, LLC; AND SHARRON
ANGLE, AN INDIVIDUAL,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE ROB
BARE, DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA ON
RELATION OF BARBARA K.
CEGAVSKE, IN HER OFFICIAL
CAPACITY AS NEVADA SECRETARY
OF STATE; INSTITUTE FOR A
PROGRESSIVE NEVADA AND THE
PROGRESSIVE LEADERSHIP
ALLIANCE OF NEVADA,
Real Parties in Interest.

No. 81847

FILED

OCT 07 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

*ORDER DENYING PETITION FOR WRIT
OF MANDAMUS OR PROHIBITION*

This emergency petition for a writ of mandamus or prohibition challenges a district court order denying a motion for a preliminary injunction in an action challenging the constitutionality of recently enacted Assembly Bill 4, which allows statewide voting by mail when an emergency or disaster has been declared and provides for the mailing of ballots to all active registered voters.

Petitioners seek extraordinary relief, arguing that the law required the district court to grant a preliminary injunction to halt the implementation of Assembly Bill (AB) 4, which they assert violates the Nevada Constitution's equal protection provision, Article 4, § 21, because it allows for "standardless counting procedures," lacks minimal safeguards to evaluate ballots equally, allows ballots cast after election day to be counted, and permits various "fraudulent abuses of election procedures, resulting in dishonest and incorrect voting totals." Although writ relief ordinarily will not lie when a party has another remedy such as an appeal and orders denying preliminary injunctions are appealable under NRAP 3A(b)(3), we will entertain this petition because it was filed before entry of a written order and involves a matter of urgency given the deadlines for mailing ballots. *See Las Vegas Review-Journal v. Eighth Judicial Dist. Court*, 134 Nev. 40, 43, 412 P.3d 23, 26 (2018) (accepting a petition for writ relief, directing entry of a written order, ordering expedited briefing, and addressing the petition on its merits under similar urgent circumstances where "a later appeal would not adequately remediate the harm complained of").

Based on the nature of the relief requested and the district court's jurisdiction to consider the request for a preliminary injunction, we conclude that a petition for a writ of mandamus, rather than prohibition, is the appropriate means to challenge the district court's decision under these circumstances. *Compare* NRS 34.160 (providing that a writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station), *with* NRS 34.320 (providing that a writ of prohibition is available to restrain a tribunal's proceedings

that “are without or in excess of [its] jurisdiction”), and *Goicoechea v. Fourth Judicial Dist. Court*, 96 Nev. 287, 289, 607 P.2d 1140, 1141 (1980) (holding that a writ of prohibition “will not issue if the court sought to be restrained had jurisdiction to hear and determine the matter under consideration”). But, we are not persuaded that petitioners have met their burden of demonstrating that mandamus relief is warranted. See *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that petitioners bear the burden to demonstrate that writ relief is warranted).

This petition was not filed with this court until September 25, 2020.¹ AB 4 was approved by the Governor on August 3, 2020. The next day, several entities filed suit in federal court to challenge various provisions of AB 4 raising many claims identical to those raised by petitioners. *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5626974 (D. Nev. Sept. 18, 2020). Petitioners in this matter then waited until September 1, 2020, to file their complaint in state court, which challenges both changes to the law in AB 4 but also provisions that were already in Nevada law and could have been challenged even earlier. According to documents provided in petitioners’ appendix,

¹The appendix filed with the petition is 20 volumes and the size of each volume varies between 14 and roughly 130 pages. It lacks a comprehensive index, and some of the volumes are not individually indexed. Petitioners do not always cite to the record to support statements in their petition and when they do, they cite to exhibits attached to documents within the record without providing page numbers for the language on which they rely (e.g., Declaration of Sharron Angle attached to the complaint, Appdx. 1).

several counties planned to send mail-in ballots to active registered voters on September 24, the day before petitioners filed their petition with this court. And while we have endeavored to expedite both briefing and consideration of this matter to the extent possible, to grant the petition at this late date would inject a significant measure of confusion into an election process that is already underway. We are reluctant to do so absent a clear and compelling demonstration that the district court had a legal duty to enjoin AB 4. See *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“By definition, [t]he public interest . . . favors permitting as many qualified voters to vote as possible.”). That showing has not been made here.

To obtain a preliminary injunction, petitioners had to show (1) a likelihood of success on the merits and (2) a reasonable probability that the conduct of mailing, verifying, and counting ballots, if allowed to continue, will cause petitioners irreparable harm. *Univ. and Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). While petitioners need not “establish certain victory on the merits, [they] must make a prima facie showing through substantial evidence that [they are] entitled to the preliminary relief requested.” *Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018). Relatedly, an action must be ripe for judicial review, meaning that it “present[s] an existing controversy, not merely the prospect of a future problem.” *Resnick v. Nevada Gaming Commission*, 104 Nev. 60, 65-66, 752 P.2d 229, 232 (1988).

The district court determined that petitioners did not present a ripe controversy because the harm they alleged was largely hypothetical,

and regardless, AB 4 did not violate equal protection principles and the relative hardships and public interest weighed against a preliminary injunction. See *Univ. Sys.*, 120 Nev. at 721, 100 P.3d at 187 (observing that, in considering preliminary injunctions, courts also “weigh the potential hardships to the relative parties and others, and the public interest”). On this record, we agree.² *Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015) (recognizing that the decision to grant a preliminary injunction is within the district court’s discretion, and this court will overturn such a decision only “when the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact” (internal quotations omitted)); *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009) (observing that questions of law, including whether a statute is constitutional, are reviewed de novo and “[s]tatutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional”).

We have considered each of petitioners’ challenges to the various provisions of AB 4, along with the evidence petitioners presented

²With the reply in support of their petition, petitioners offer evidence that was not presented to the district court, suggesting that we should consider that evidence because they could have sought extraordinary relief with this court in the first instance. Even if petitioners had proceeded directly in this court in the first instance, this court generally declines to exercise its discretion to entertain mandamus petitions unless “legal, rather than factual, issues are presented” because “an appellate court is not an appropriate forum in which to resolve disputed questions of fact.” *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981). We therefore have not considered the new evidence offered by petitioners.

below to support their complaint and motion. Assuming without deciding that the district court correctly determined that petitioners had standing to challenge AB 4 under the public importance exception to the standing doctrine set forth in *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016), we conclude that the court properly concluded that petitioners failed to make a prima facie showing through substantial evidence that they were entitled to a preliminary injunction preventing the Secretary of State from implementing AB 4. Petitioners did not allege any burden that the challenged provisions of AB 4 impose on an identifiable group's right to vote. We therefore are not convinced that the district court was obligated to apply strict scrutiny. See *Short v. Brown*, 893 F.3d 671, 676 (9th Cir. 2018) (discussing review applied to constitutional challenges to a state election law); see also *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (“[T]he rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.”). We also are not convinced that the district court erred in concluding that petitioners did not demonstrate with substantial evidence that the challenged provisions are not rationally related to the State's interest in ensuring that all active registered voters have an opportunity to exercise their right to vote in a safe and secure manner during a pandemic. See *Burdick*, 504 U.S. at 433-34 (“When 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” (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983))). Similarly, although petitioners argued that certain provisions of AB 4 will

make the voting system susceptible to illegitimate votes that would result in irreparable harm by diluting legitimate votes, they presented no concrete evidence that such events will occur or that the Secretary of State's maintenance of the voter rolls exacerbated any such problem. And there are provisions in AB 4, along with existing provisions of NRS Chapter 293, that provide numerous safeguards to prevent and detect voter fraud, including criminal prohibitions against voter fraud, voter intimidation, and related offenses. AB 4 §§ 21, 40, 44, 70, 75; NRS 293.700; NRS 293.710; NRS 293.775; and NRS 293.770. Consistent with the foregoing, we

ORDER the petition for extraordinary writ relief DENIED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. Rob Bare, District Judge
Hansen & Hansen, LLC
Attorney General/Carson City
Perkins Coie, LLP/Seattle
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas
Eighth District Court Clerk

EXHIBIT 5

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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 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

1 133 (1974). There is an exception to the general rule: when discretion “is exercised
2 arbitrarily or through mere caprice.” *Id.*

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

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

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

11 **Voting Statutes**

12 NRS 293B.353 provides in relevant part:

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

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

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

23 NRS 293B.354 provides in relevant part:

24 1. The county clerk shall, not later than April 15 of each year in which a
25 general election is held, submit to the Secretary of State for approval a written
26 plan for the accommodation of members of the general public who observe the
27 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

1
2 **Equal Protection**

3 There is no evidence that in-person voters are treated differently than mail-in
4 voters. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting
5 in person and voting by mailing in the ballot are different and so the procedures differ.
6 Nothing the State or Clark County have done creates two different classes of voters.
7 Nothing the State or Clark County has done values one voter's vote over another's. There
8 is no evidence of debasement or dilution of a citizen's vote.
9

10
11
12 **CONCLUSIONS OF LAW**

13 Petitioners do not have standing to bring these claims.

14 Registrar Joseph P. Gloria has not failed to meet his statutory duty under NRS
15 293B.353(1) to allow members of the general public to observe the counting of ballots.

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

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

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

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

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

25 Secretary Cegavske has not exercised discretion arbitrarily or through mere
26 caprice.
27

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.
311 E. Liberty Street
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

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 large initial "J" and a stylized "G".

Joseph P. Gloria
Registrar of Voters

Enclosures

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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:

[Signature]

Print Name:

VIRGINIA STEWART

Date:

10/27/20

Polling Place or Election Department Location:

TRAOB

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 6

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRED KRAUS, AN INDIVIDUAL
REGISTERED TO VOTE IN CLARK
COUNTY, NEVADA; DONALD J.
TRUMP FOR PRESIDENT, INC.; AND
NEVADA REPUBLICAN PARTY,
Appellants,

vs.

BARBARA K. 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;
DEMOCRATIC NATIONAL
COMMITTEE; AND NEVADA STATE
DEMOCRATIC PARTY,
Respondents.

No. 82018

FILED

NOV 03 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR STAY AND TO EXPEDITE APPEAL*

This appeal challenges a district court order denying a petition for a writ of mandamus or prohibition in an election matter.

Appellants have filed an emergency motion seeking immediate relief under NRAP 8, pending appeal, prohibiting the Clark County Registrar from continuing to duplicate mail ballots unless observers are granted an opportunity to meaningfully observe the process and from using artificial intelligence to authenticate ballot signatures. Appellants also seek to expedite this appeal.

As this matter involves the election process currently underway, we conclude that it should be expedited. Therefore, we grant the motion as to the request to expedite. Appellants shall have until tomorrow

at 4 p.m. to file and serve their transcript request form or certificate that no transcript will be requested. NRAP 9(a). Appellants shall have until 4 p.m. on Thursday, November 5, 2020, to file and serve the docketing statement, opening brief, and appendices. Respondents' answering brief shall be due on or before 4 p.m. on Monday, November 9, 2020. No extensions of time will be granted.¹

We have also considered appellants' request that we enjoin the registrar from duplicating ballots and using artificial intelligence to authenticate ballots. Under NRAP 8(c), in determining whether to grant a stay or injunction pending appeal, we look to whether the object of the appeal will be defeated absent a stay or injunction, whether the granting or denying of a stay or injunction will result in irreparable or serious injury to appellants and respondents, and whether appellants have demonstrated a likelihood of success on the merits.

Although some portions of the appeal may be defeated absent immediate relief, appellants have not demonstrated that the entire appeal will be defeated, and due to the urgent nature of the matter, we have granted their request to expedite. Moreover, appellants have not demonstrated a sufficient likelihood of success to merit a stay or injunction. The district court concluded that appellants' allegations lacked evidentiary support, and their request for relief to this court is not supported by

¹For purposes of this order, we suspend the provisions of NRAP 25(a)(2)(B)(ii), (iii), and (iv), which provide that a document is timely filed if, on or before its due date, it is mailed to this court, dispatched for delivery by a third party commercial carrier, or deposited in the Supreme Court drop box. See NRAP 2. Accordingly, all documents shall be filed personally or by facsimile or electronic transmission with the clerk of this court in Carson City.

affidavit or record materials supporting many of the factual statements made therein. See NRAP 8(2)(B)(ii), (iii). It is unclear from the motion how appellants are being prevented from observing the process or that the use of the Agilis machine is prohibited under AB 4. As the district court's order points out, mandamus relief is warranted only to compel performance of a mandatory statutory duty or to remedy a manifest abuse of discretion. *Round Hill General Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Appellants' motion, on its face, does not identify any mandatory statutory duty that respondents appear to have ignored. Further, appellants fail to address the district court's conclusion that they lack standing to pursue this relief. Thus, appellants have not shown that the NRAP 8(c) factors militate in favor of a stay or injunction, and the request for immediate relief is denied.

It is so ORDERED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. James E. Wilson, District Judge
Hon. James E. Wilson, District Judge
Marquis Aurbach Coffing
O'Mara Law Firm, P.C.
Harvey & Binnall, PLLC
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas
Attorney General/Carson City
Perkins Coie, LLP/Washington DC
Clark County District Attorney/Civil Division
Carson City Clerk

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EXHIBIT 7

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THE O'MARA LAW FIRM, P.C.
 DAVID C. O'MARA
 NEVADA BAR NO. 8599
 311 East Liberty St.
 Reno, Nevada 89501
 775-323-1321
 775-323-4082 (fax)
david@omaralaw.net

Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

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

Case No.

COMPLAINT

Plaintiffs,

v.

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

Defendants.

Plaintiffs Jill Stokke, Chris Prudhome, Marchant for Congress, and Rodimer for Congress through their undersigned counsel, bring this action against: Defendant Secretary of State Barbara K. Cegavske and the Clark County Registrar of Voters Joe P. Gloria. All persons named as defendants are sued exclusively in their official capacities. Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331, because this case arises under the Constitution and laws of the United States of America and 28 U.S.C. § 1367 because the claims based on state law are so related to the federal questions as to form part of the same case or controversy. This Court also has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

2. Venue is proper in this Court under 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to this action arose in this district.

PARTIES

3. Plaintiff Jill Stokke is a duly qualified and properly registered voter who has attempted to vote in the November 3, 2020 general election (the “Election”).

4. Chris Prudhome is a credentialed member of the media who, as a member of the media, attempted to observe the counting of ballots in the Election in Clark County.

5. Marchant for Congress is the official candidate committee for James Marchant, a candidate for U.S. Congress for Nevada’s Fourth Congressional District.

6. Rodimer for Congress is the official candidate committee for Daniel Rodimer, a candidate for U.S. Congress for Nevada’s Third Congressional District.

7. Defendant Barbara K. Cegavske is the Secretary of State of Nevada. Pursuant to Nev. Rev. Stat. § 293.124(1), she serves as the “Chief Officer of Elections for this state,” and “is responsible for the execution and enforcement of the provisions of Title 24 of NRS and all other provisions of state and federal law relating to elections in this state.”

8. Defendant Joe P. Gloria is the Clark County Registrar of Voters and is responsible for appointment and oversight of local election boards for the various precincts and districts in Clark County, Nevada. Nev. Rev. Stat. § 293.217(1).

DEFENDANTS’ ILLEGAL CONDUCT

9. The Election is currently in progress.

10. NRS 293.8874(1), as enacted in Assembly Bill 4, Sec. 4, 32nd Special Session (Nev. 2020), requires “the clerk or an employee in the office of the county clerk shall check the signature used for the mail ballot in accordance with” detailed procedures.¹

¹ The use of the word “shall” in a statute imposes a mandatory duty. *Kingdomware Technologies, Inc.*, 136 S.Ct. 1969, 195 L.Ed 2d 334 (2016) *See United States ex rel. Siegel v. Thoman*, 156 U.S. 353, 359–360, 15 S.Ct. 378, 39 L.Ed. 450 (1895) “When a statute distinguishes between ‘may’ and ‘shall,’ it is generally clear that ‘shall’ imposes a mandatory duty.”)

1 11. Irregularities have plagued the election in Clark County, including lax procedures for
2 authenticating mail ballots and over 3,000 instances of ineligible individuals casting ballots. Ballots
3 have even been cast on behalf of deceased voters. Moreover, the public has often been prohibited
4 from observing the processing of mail ballots, resulting in much of their work being done in the
5 shadows without public accountability.

6 12. On November 3, 2020, Plaintiff Stokke attempted to vote in person in Clark County.
7 She was not allowed to vote because, according to election officials, she had already cast a mail
8 ballot. Plaintiff Stokke had not, in fact, cast any such mail ballot.

9 13. On information and belief, it was Clark County's use of Agilis signature-verification
10 software that allowed Plaintiff Stokke's ballot, which she had not signed, to be accepted and counted
11 in the Election.

12 14. Further, Defendant Gloria is using the Agilis signature-verification software in a
13 manner which is contrary to the manufacturer's prescriptions. Specifically, the manufacture requires
14 that signatures be scanned with a resolution of at least 200 D.P.I. Nevertheless, Mr. Gloria has
15 consistently used signature files from the DMV which are all scanned at less than 200 D.P.I.,
16 resulting in the Agilis machine being unable to perform its required function (i.e. verifying
17 signatures).

18 15. Clark County is the only county in Nevada that uses the Agilis system and the only
19 county in Nevada that does not verify signatures on absentee and mail in ballots in person.

20 16. Nev. Rev. Stat. § 293.8881, as enacted in Assembly Bill 4, Sec. 4, 32nd Special
21 Session (Nev. 2020) provides, "For any affected election, the mail ballot central counting board may
22 begin counting the received mail ballots 15 days before the day of the election. The board must
23 complete the count of all mail ballots on or before the ninth day following the election. The counting
24 procedure must be public."

25 17. Nev. Rev. Stat. § 293.363 provides that for in-person ballots, "[w]hen the polls are
26 closed, the counting board shall prepare to count the ballots voted. The counting procedure must be
27 public and continue without adjournment until completed."

18. On November 4, 2020, at approximately 12:45 a.m., Plaintiff Prudhome tried to observe ballot counting at the Clark County Election office located at 965 Trade Drive, Las Vegas, Nevada 89030. Election officials tried to deny him entry to the office. A few minutes later, Defendant Gloria told Plaintiff Prudhome counting was complete for the evening and instructed him to leave. Moreover, while Plaintiff Prudhome was allowed to observe, the screens through which he would have watched were all turned off and faced away from him. When Plaintiff Prudhome inquired into these conditions, election officials asked law enforcement to remove him from the building.

Count I: VIOLATIONS OF THE ELECTIONS CLAUSE

19. Plaintiffs fully incorporate the allegations in paragraphs 1 through 15 above as if fully set forth herein.

20. Section 4 of Article I of the U.S. Constitution provides, “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof”

21. Defendants have violated the Elections Clause by usurping the Nevada Legislature’s constitutional authority to set the manner of elections. In particular, by using the Agilis software system. No other county in Nevada uses this system, and accordingly, voters in Clark County, including Plaintiff Stokke, are at an unequal risk of having their legal votes diluted by votes with mismatched signatures.

22. There is no legitimate state interest that justifies this disparity in any way.

23. As part of the Voter’s Bill of Rights, codified at Nev. Rev. Stat. § 293.2546, the Nevada Legislature declared that each voter has the right to a “uniform, statewide standard for counting and recounting all votes accurately. NRS 293.2546(1).

Count II: Equal Protection

24. Plaintiffs fully incorporate the allegations in paragraphs 1 through 18 above as if fully set forth herein.

1 25. The Equal Protection Clause of the U.S. Constitution prohibits states from denying
2 “to any person . . . the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Plaintiffs’ equal
3 protection rights are enforceable pursuant to 18 U.S.C. § 1983.

4 26. Defendants have violated the Equal Protection Clause by attempting to match
5 signatures in Clark County using the Agilis system and thereafter, not having the clerk or employee
6 of the clerk’s office verify the signature.

7 27. No other county in Nevada uses this system, and accordingly, voters in Clark County,
8 including Plaintiff Stokke, are at an unequal risk of having their legal votes diluted by votes with
9 mismatched signatures.

10 28. There is no legitimate state interest that justifies this disparity in any way and such
11 disparity violates Nevada voters’ right to have uniform, statewide standard of counting and
12 recounting all votes accurately.

13 **Count III: Violation of Nev. Rev. Stat. §§ 293.8881 and 293.363**

14 29. Plaintiffs fully incorporate the allegations in paragraphs 1 through 21 above as if fully
15 set forth herein.

16 30. Nev. Rev. Stat. §§ 293.8881 and 293.363 require Defendants to allow public access to
17 ballot-counting. Through the above-described conduct, Defendants deprived Plaintiff Prudhome any
18 meaningful access to ballot-counting.

19 **PRAYER FOR RELIEF**

20 WHEREFORE Plaintiffs respectfully pray for the following relief:

21 1. An Injunction directing Defendants and their officers, agents, employees, attorneys, and any
22 other person acting under their direction or control to cease the use of the Agilis system to count
23 ballots in Clark County;

24 2. Injunctive relief directing Defendants that the Agilis system is improper and that each mail
25 ballot shall and must be checked by the clerk or an employee of the office of the clerk before it can
26 be verified as a valid ballot for counting.

1 3. For injunctive relief directing Defendants and their officers, agents, employees and any other
2 person acting under their direction or control to allow meaningful access to the ballot counting
3 process.

4 4. For declaratory judgment that Defendants have violated NRS 293.8874 passed by the Nevada
5 Legislature in 2020.

6 5. A declaratory judgment that Defendants have violated the Elections and Equal Protection
7 Clauses and Nev. Rev. Stat. §§ 293.8881 and 293.363;

8 6. Attorney's fees and costs pursuant to 18 U.S.C. § 1988; and

9 7. All other relief that this honorable Court deems just and proper.

10 DATED: November 5, 2020

THE O'MARA LAW FIRM, P.C.

11
12 /s/ David C. O'Mara

13 DAVID C. O'MARA, ESQ

14 311 East Liberty St.
15 Reno, Nevada 89501
16 775-323-1321
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18 *Counsel for Plaintiff*
19
20
21
22
23
24
25
26
27
28

EXHIBIT 8

RETRIEVED FROM DEMOCRACYDOCKET.COM

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3
4 JILL STOKKE; CHRIS)
PRUDHOME; MERCHANT for) Case No. 2:20-cv-2046-APG-DJA
5 CONGRESS; and RODIMER for)
CONGRESS,) Las Vegas, Nevada
6) Friday, November 6, 2020
Plaintiffs,) 2:08 p.m.
7)
vs.) EMERGENCY MOTION FOR
8) PRELIMINARY INJUNCTION VIA
BARBARA K. CEGAVSKE,) VIDEOCONFERENCE
9 Secretary of State, in her)
official capacity;)
10 JOSEPH P. GLORIA, Clark)
County Registrar of)
11 Voters, in his official)
capacity, et al.,)
12)
Defendants.)
13) O R I G I N A L

14
15
16 REPORTER'S TRANSCRIPT OF PROCEEDINGS17 BEFORE THE HONORABLE ANDREW P. GORDON,
18 UNITED STATES DISTRICT JUDGE19 APPEARANCES:

20 (Appearances on Page 2)

21 COURT REPORTER:

22 Heather K. Newman, RPR, CRR, CCR #774
United States District Court
23 333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
24 (702) 471-0002 or HN@nvd.uscourts.gov

25 Proceedings reported by machine shorthand; transcript produced
by computer-aided transcription.

1 APPEARANCES:

2 For the Plaintiffs:

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8 For the Defendant Barbara K. Cegavske:

9 OFFICE OF THE ATTORNEY GENERAL
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14 (775) 684-1206

15 For the Defendant Joseph P. Gloria:

16 CLARK COUNTY DISTRICT ATTORNEY'S OFFICE, CIVIL DIVISION
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21 (702) 455-4761

22 For the Intervenor Defendants Democratic National Committee and
23 Nevada State Democratic Party:

24 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
25 BY: DANIEL BRAVO, ESQ.
BRADLEY SCOTT SCHRAGER, ESQ.
3556 East Russell Road
Las Vegas, NV 89120
(702) 341-5200

PERKINS COIE LLP
BY: JOHN M. DEVANEY, ESQ.
700 Thirteenth Street NW, Suite 600
Washington, DC 20005

Also present:

Barbara Cegavske, Secretary of State
Aaron Ford, Attorney General
Wayne Thorley, Deputy Secretary of State for Elections

1 LAS, NEVADA; FRIDAY, NOVEMBER 6, 2020; 2:08 P.M.

2 --oOo--

3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: Jill Stokke, et al. vs.
5 Barbara K. Cegavske, et al., 2:20-cv-2046-APG-DJA.

6 Counsel, will you please make your appearances,
7 starting with the plaintiff?

8 MR. O'MARA: Yes, good afternoon, Your Honor,
9 David O'Mara on behalf of plaintiff.

10 THE COURT: Good afternoon.

11 Anyone else for the plaintiff?

12 MR. O'MARA: Just me --

13 THE COURT: I'm sorry, just Mr. O'Mara?

14 MR. O'MARA: That's correct.

15 THE COURT: Thank you.

16 Anyone for the -- who's on for the defendants?

17 MR. NEWBY: Good afternoon, Your Honor, Craig Newby,
18 Deputy Solicitor General for the State of Nevada, representing
19 Secretary of State Barbara Cegavske. Also, present virtually,
20 per me looking at the Zoom, is Attorney General Ford and
21 Mr. Craig Zunino from my office. Also present for the client
22 is Deputy Secretary of State for Elections, Wayne Thorley.

23 MS. CEGAVSKE: And this is Barbara Cegavske, Secretary
24 of State, I'm also on the line.

25 THE COURT: Thank you, Secretary of State Cegavske.

1 All right. I'm going to have all the cameras turned
2 off.

3 MR. BRAVO: Your Honor, good afternoon, this is
4 Daniel Bravo, from the law firm of Wolf Rifkin on behalf of
5 proposed intervenor the Democratic National Committee and the
6 Nevada State Democratic Party. Along with me virtually is my
7 colleague, Brad Schrager, from the law firm of Wolf Rifkin as
8 well as Mr. John Devaney from the law firm of Perkins Coie, who
9 we submitted a verified petition for pro hac vice.

10 THE COURT: Thank you -- thank you, Mr. Bravo. I
11 forgot to mention that as well, that we've allowed you to
12 participate.

13 All right. So I'm going to --

14 MS. MILLER: Your Honor, this is Mary-Anne Miller from
15 the Clark County District Attorney's Office on behalf of
16 defendant Joseph Gloria.

17 THE COURT: Thank you, Ms. Miller. I appreciate you
18 making your appearance. I apologize for leaving you out of
19 that. I guess -- is there anybody else that I've missed, any
20 of the lawyers or parties on the line that I need to be aware
21 of?

22 Going once. . . going twice. . . All right. Thank
23 you all.

24 Like I said, I'm going to have the video shut down.
25 We're just going to do this by audio.

1 Let me note first for the record that Federal Rule of
2 Civil Procedure Number 1 counsels courts to secure the just,
3 speedy and inexpensive determination of every action and
4 proceeding. Due to the COVID-19 pandemic and consistent with
5 Rule 1 and with this Court's General Orders, this emergency
6 hearing is being conducted telephonically by audio only.
7 Information on how to access this public hearing has been
8 prominently posted on the court's website to allow full access
9 to this hearing by the public, the media, and the participants,
10 and we also issued a Minute Order with the dial-in information
11 so folks could join on the phone if they wanted to hear.

12 To ensure that the parties have a full and fair day
13 here in court, all attendees to this telephonic hearing will be
14 muted and only I and counsel who are arguing will have their
15 microphones activated. That should cut down on the background
16 noise and interference and hopefully allow the parties to focus
17 in on the arguments.

18 Let me put everyone on notice that recording -- and
19 this includes the folks on the phone as well -- recording,
20 taping, streaming, or otherwise broadcasting district court
21 hearings is expressly prohibited by this court's General Order
22 2017-02 and the policies of the judicial conference. So,
23 recording, taping, streaming or otherwise broadcasting the
24 audio, or any photograph or video of this hearing, is
25 prohibited. If you're doing so, stop.

1 Let me next offer a personal word of thanks to the
2 many judicial clerks in my chambers and some of my fellow
3 judge's chambers who have helped me get up to speed really
4 quickly on this case given that it was filed late yesterday
5 afternoon and the motion was filed last night. We had
6 contributions from many of our court staff, chambers staff, and
7 a special thanks to our court administrative staff and
8 courtroom deputy for helping me put together the technology to
9 allow us to do this hearing this afternoon. We're all keeping
10 our fingers crossed that the technology works and we're able to
11 continue with this hearing.

12 I'm first going to address the Motion to Intervene
13 that was filed by I'm just going to call it the DNC and the
14 Nevada Democratic National Party. Let me ask Mr. O'Mara, does
15 your client -- clients, plural -- oppose the Motion to
16 Intervene?

17 MR. O'MARA: No, Your Honor, neither do we oppose the
18 pro hac vice application.

19 THE COURT: All right. Mr. Newby, if you're going to
20 argue, or is Mr. Zunino for the defense, do you have any
21 objection to the DNC intervention?

22 MR. BRAVO: Your Honor, Craig Newby will be doing the
23 argument today. We have no objection to either --

24 (Court reporter clarification).

25 THE COURT: Thank you.

1 That was my court reporter Heather Newman who's --
2 like she said, we don't have the audio -- the video, so please
3 identify yourselves before speaking.

4 I think that was Mr. Newby speaking.

5 MR. NEWBY: It was, Your Honor, Craig Newby, again,
6 for defendant Cegavske. I will be doing the argument this
7 afternoon on the merits. Secretary has no objection to the
8 Motion to Intervene or the Motion for pro hac vice admission.

9 THE COURT: Ms. Miller, on behalf of Mr. Gloria, do
10 you have any objection to the Motion to Intervene?

11 MS. MILLER: No, Your Honor.

12 THE COURT: All right. I will grant the Motion to
13 Intervene. I'll do a separate order on the pro hac vice
14 application. I haven't reviewed it yet, so I just want to make
15 sure it's all satisfied -- complies with our local rules.
16 Presuming it does, I will conditionally allow it for at least
17 purposes of the argument today.

18 So, we now turn to the motion for Temporary
19 Restraining Order and Motion for Preliminary Injunction.
20 Before we dig into it, let me again remind everyone that my
21 court reporter is listening in on audio like everyone else.
22 Please state your name before speaking so that we get it
23 accurate in the record. Please don't speak over each other.
24 Pause to make sure the speaker is finished before jumping in
25 because sometimes the audio cuts out if everyone's speaking at

1 once.

2 I have read the papers that were filed, the complaint,
3 the motion for TRO, obviously, the motion for expedited hearing
4 which I granted, received the numerous -- I shouldn't say
5 numerous, but the responses that were filed by the
6 defendants -- I should say at least defendant Cegavske. I have
7 reviewed the proposed intervention by the DNC. So, I think I'm
8 pretty up to speed, factually, and on the arguments. I have
9 some specific questions to ask each of you as we go forward,
10 but I will allow you to start with an argument if you want to
11 make it. Just please don't repeat everything in your papers
12 because we don't want to be here all night, and I have read
13 those.

14 So, Mr. O'Mara, it's your motion, you get to go first.

15 MR. O'MARA: Thank you, Your Honor. And I echo your
16 comments in regards to the court staff and, also, I also want
17 to acknowledge counsel for all this -- all the parties who
18 continue to work very well together to make sure that when
19 something is filed, they get it to the opposing party as soon
20 as possible, so if I were here as an adversarial --
21 (unintelligible) counsel these cases have been very active with
22 each other and that is --

23 THE COURT: Okay. And let me interrupt, I apologize,
24 Mr. O'Mara, I meant to ask you a question at the very
25 beginning. I understand from the latest filings that came down

1 this afternoon that the state court case that was pending up in
2 Carson City and up in the Nevada Supreme Court, that that has
3 been settled, and is it now dismissed? Is that case over?

4 MR. O'MARA: I do not know the answer to that
5 question, Your Honor. There was a stipulation in -- the last I
6 had heard and maybe I'm just not up to date, is that there had
7 not been a completed stipulation in that case. However, I
8 don't believe that that case is relevant to my state claims
9 here today because they are separate people, separate claims
10 and they have separate harms, remedies by the court.

11 THE COURT: Okay. All right. Thank you. I didn't
12 mean to interrupt. Go -- I did mean to interrupt, but thank
13 you for addressing that. Now go ahead with your argument.

14 MR. O'MARA: Great. Thank you.

15 Your Honor, I understand you have read the briefs and
16 I just want to go into the two issues: One issue is whether or
17 not the Registrar of Voters of Clark County should be able to
18 preclude the public from actually having the -- an opportunity
19 to view and monitor and observe county procedures which are to
20 be made public. And, so, you know, there's -- there's
21 basically two statutes that we cited. We cited both statutes,
22 N.R.S. 293.8881 specifically says the county procedure must be
23 public. The second statute is N.R.S. 293.363. That also says
24 when the polls have closed, county procedure must be public.

25 Now, Mr. Prudhome went there and attempted to view the

1 county process and he, as my declaration says, and his said as
2 well, claims that he's not getting adequate public viewing of
3 the procedure.

4 Now, what we have to look at is we're here today at a
5 public hearing. And the way the registrar of voters has it set
6 up is that the public viewing is allowed to watch through a
7 glass partition to see where they are. They're not within a
8 reasonable viewing distance. They're about 10 feet away. They
9 have a partition. They can't see what's going on, and most
10 importantly they can't hear what's going on. And, so, that's
11 not a public procedure that is open to the public. You may be
12 able to look and say, oh, I wonder what they're doing today,
13 but you don't understand what they're doing, you can't see what
14 they're doing, and most importantly you can't hear what they're
15 doing. And that's important because here we are today and if
16 we were in your courtroom, all of these people on the phone
17 would have been able to walk into your courtroom, they would
18 have sat in the gallery, they would have been able to listen,
19 they would have been able to see what their lawyers were doing,
20 but what -- what the registrar is doing is -- if we were in a
21 court, would put a glass partition between the bar and the
22 gallery and the people would not be able to see or not be able
23 to hear what was going on, they would just be able to see some
24 actions about the lawyers. And we have it here today on Zoom
25 and the new technology. It would be akin to you -- the Court

1 having a public hearing as you are now but putting everybody on
2 the telephone on mute, or if they were on Zoom, on mute to
3 where all they would be able to do is see what the lawyers were
4 doing. That's not open to the public. That's not sufficient.

5 And there isn't a --

6 (Court reporter admonishment).

7 MR. O'MARA: So, Your Honor, what we're here about is
8 there has to be a meaningful observation of the public to view
9 the counting of the ballots.

10 Now, there is an opportunity to be able to be 6 feet
11 away if that's the requirement in regards to Nevada. You could
12 probably be closer, but 6 feet away, they can watch, they can
13 hear, they can actually publicly observe the counting of the
14 ballots. So, what we're asking for is for them -- for the
15 registrar to comply with the statutory provisions for counting
16 to the public. It has to be a public that -- where the public,
17 just like any hearing or any public open meeting where you get
18 the opportunity to see what's going on and what is -- what you
19 can hear. And if you're not within 10 -- 6 feet and able to
20 see or actually see the devices in which the machines are being
21 used, then that is not open to the public, it's just basically
22 nothing. You get nothing out of it, and it basically makes
23 that statute a nullity. It nullifies the legislative intent
24 that we are entitled, or this -- my client is entitled, as well
25 as any other public official or public citizen, to go in and

1 have the counting open to the public.

2 THE COURT: All right. Let me -- let me interrupt,
3 Mr. O'Mara, and ask you this, because your motion simply asks
4 that the defendants should be required to allow meaningful
5 access to the ballot-counting process.

6 MR. O'MARA: That's right.

7 THE COURT: What are you asking for?

8 MR. O'MARA: Yeah. So, Your Honor, I'm asking for
9 them to be within a -- at least a 6-foot area where they can
10 see and hear the actual counting and what has been said in
11 regards to the ballot counting.

12 THE COURT: What if we have -- well --

13 MR. O'MARA: Well, let me -- let me just say something
14 to Your Honor. There -- there was an issue up in Washoe County
15 and what happened was is the balloting procedure -- or the
16 watching of the polls was being really kind of difficult
17 because Washoe County was only allowing three -- or two people
18 to view in a location for 1 hour, and that was causing a lot of
19 problems because some were getting to the polling location and
20 they would get kicked out in an hour. We would have people
21 that would come in with their friends and then they would be
22 maybe, probably, from the same political party, or they
23 wouldn't and, so, they worked with them. And what they did was
24 is they had a system, three chairs: You had a Republican
25 chair, a Democrat chair and an Independent chair. Those chairs

1 are specifically for those three options and if someone was to
2 leave and there was no -- say, no Democrat viewer, then anybody
3 would be able to come in and watch, if there was no Republican,
4 then a Democrat would be able to come in and watch until one of
5 them was able to be able to do this.

6 Now, I -- I don't think that, you know, in a normal
7 situation, that that is adequate because the public should be
8 able to do it, but everybody keeps on saying this is COVID
9 times and we have to make COVID -- we have to make COVID
10 provisions. And, so, in order to do that you have three major
11 entities, you have a -- two major political parties and
12 everybody else and, so, I think that in order to draft an
13 injunction, to allow for a remedy that will benefit everyone,
14 is to have such observation and have a system where if no one's
15 there, then another person can come in, or you have it to where
16 the interested party -- especially in this case, you have two
17 interested parties, you have the campaigns and you have -- you
18 have the Democratic party and the state party. So, you can
19 draft the injunctive relief to say we're going to have three
20 people -- up to three people for 6 -- no farther than 6 feet
21 that allows them to monitor and hear the counting and the
22 actual counting of the ballots.

23 THE COURT: Mr. O'Mara, isn't that the legislature's
24 job, not mine?

25 MR. O'MARA: Well, Your Honor, your job is to make

1 sure that the statutes are implemented in a way that allows for
2 them to be viewed. And, so, the Court is being asked to step
3 in and tell our voters, you are not -- this is not open. It
4 happens all the time where the courts look at, is this a public
5 hearing, was it open, was it -- and that court allowed us to
6 look at it and say, no, you have to make it open to the public.
7 And case law shows that open to the public means you have to
8 have meaningful observation where you can hear and partici- --
9 mostly in campaigns, the case law says you can participate, and
10 we don't have that here, so you have the other three, which is
11 to hear and to understand and to see what is going on so that
12 later on you can participate and find out what -- what
13 happened. I mean, if you don't have an avenue for a public
14 meeting or a public observation and the person is just standing
15 out watching nothing, then they have no opportunity to actually
16 be a part of the public viewing because they can't --
17 whatsoever afterwards to say, I saw something, it wasn't right,
18 this is what happened. And, so, that basically means that that
19 statute's a nullity if the registered voters aren't allowed to
20 continue on with this process.

21 THE COURT: Let me ask you to respond to
22 Justice Kavanaugh's concurrence in the case of *Democratic*
23 *National Committee vs. Wisconsin State Legislature* that was
24 decided about a week or so ago, on October 26th, where Justice
25 Kavanaugh, in his concurrence, said that "even seemingly

1 innocuous, late-in-the-day judicial alterations to state
2 election laws can interfere with administration of an election
3 and cause unanticipated consequences." He went on to say that
4 "it's one thing for the state legislature to alter their own
5 election rules in the late innings, but it's quite another for
6 a federal district court to swoop in and alter carefully
7 considered and democratically enacted state election rules when
8 an election is imminent." I'll add to that, when it's already
9 undergone and the counting's going on.

10 Why should I -- you're asking me, it seems, to ignore
11 Justice Kavanaugh's direction -- yes, it was only a
12 concurrence -- but isn't that a good counsel to a judge like me
13 to not step in and interfere with these administrative
14 proceedings that you're telling me to do?

15 MR. O'MARA: Well, I don't -- there is no -- you're
16 not stepping in and involving yourself in the administrative
17 proceedings. You're not causing the administrative proceedings
18 to be changed. What you're doing is allowing for the
19 administrations to be conducted in the method in which the
20 state law requires, which is to be open to the public. We're
21 not asking you to change anything, Your Honor; we're asking you
22 to be able to say you need -- as the registrar, need to follow
23 the state law so that the administration of the election is
24 actually moving forward under the law, instead of an arbitrary
25 decision by the Registrar of Voters to keep people away from

1 the public -- the public away from viewing a publicly open
2 ballot counting, which is what is happening. So we're not
3 asking you to change the law, Your Honor; we're asking you to
4 tell the Registrar of Voters, you need to make a meaningful
5 policy -- a meaningful enforcement of the actual election laws
6 in which you are going to do.

7 I mean --

8 THE COURT: Okay. Let me follow up -- let me follow
9 up --

10 (Simultaneous cross-talk).

11 MR. O'MARA: -- the Court to be aware of. Sorry.
12 I'll hold that back. I'm sorry.

13 THE COURT: Thank you. Let me -- let me -- I need to
14 do two things: One, let me -- I need to ask everyone on the
15 phone to please mute your phones and your microphones. We're
16 getting interference and noise in the background, so anyone,
17 public, media, parties, whoever else is not speaking, that is
18 the lawyer, please mute your phones and microphones so that we
19 can -- I can hear the lawyers.

20 Mr. O'Mara, I want to get to a practical standpoint
21 because you're asking me to impose some new standards or
22 strictures or guidelines that -- that the defendants would have
23 to follow. And you want to be able to see and to hear what
24 they're talking about. So, hypothetically, if I have, or if
25 the defendants have someone who is counting the ballot who is

1 very soft-voiced, or is whispering, or is hoarse, do we have to
2 provide them microphones? Do we have to say, hey, you need to
3 speak up so everybody can hear them? I mean, at what point
4 does this get to the ridiculous?

5 MR. O'MARA: Your Honor, I -- I -- I mean, you can
6 come up with a lot of things in regards to that, but if the --
7 if the person is talking softly and the other election
8 officials can hear them, then they would be able to be heard.
9 I mean, the problem is, is that if you don't allow for a
10 viewing, then it makes the statute a nullity and it makes it to
11 where why even have the statute? I mean, the --

12 THE COURT: Okay. But -- okay. But, your client --
13 your client did view -- I'm reading his affidavit. He was
14 allowed to view. He didn't like where he was put, but he was
15 put, at least in Paragraph 5 of his declaration, said that
16 "they directed me to another area of the location where I would
17 not be able to fully observe. My understanding was that was
18 for people who were only media." So he was placed, apparently,
19 by his own statement, in the media area. Then he says, in
20 Paragraph 6, that "regardless, they did not accept my media
21 credentials. I remained in the observer area as an observer."
22 So he's been in the media area; he's been in the observer area.
23 I -- he's viewing.

24 MR. O'MARA: But he's -- Your Honor, it's -- it says
25 that. . . it says that "directed me to the area where I would

1 not be able to fully observe." So, if I keep on moving him
2 back and forth to one specific area where he apparently can
3 observe maybe (unintelligible) that way and then he cannot
4 fully observe, there -- it is not open to the public. There is
5 different people that get to see things and different people
6 that don't get to see. And that --

7 THE COURT: So I -- so we need to open it to anybody
8 in the world that wants to come?

9 MR. O'MARA: No, Your Honor, and that's why -- I mean,
10 I -- I mean, the statute is put into place that counting must
11 be open to the public. And, you know, and what I was telling
12 you about is that the argument is always going to be that COVID
13 does not allow for the general public to be able to come in in
14 mass numbers or in relatively larger numbers and therefore it's
15 got to be a smaller amount of area for them to view and it's
16 got to be farther away from the location of where the ballots
17 are being counted. And, so, you have to -- it's -- you can't
18 let COVID run everything and allow the -- the statute to be
19 nullified when you can -- you can move the parties that are
20 interested in watching the count to be able to see and hear and
21 be a part of the public viewing of the counting.

22 THE COURT: And what in your client's affidavit or
23 declaration says that he could not observe?

24 MR. O'MARA: Well, it says, "They directed me to
25 another area where I would not be able to fully observe."

1 THE COURT: And then he apparently was moved to a
2 different area, the observer area. Doesn't say he couldn't
3 fully observe there.

4 MR. O'MARA: But he --

5 THE COURT: What specifically did your client not get
6 to see? What specifically does your client want me to let him
7 see that he hasn't been already? I -- you're asking for
8 extraordinary injunctive relief.

9 MR. O'MARA: Right.

10 THE COURT: It needs to be narrowly tailored and what
11 I'm not hearing is any narrow tailoring of what you want me to
12 do. I can speak in great platitudes, yes, it should be open to
13 the public. That doesn't help us with an injunction.

14 MR. O'MARA: Right, and as I was talking about
15 earlier, and you talked about how -- the administration effects
16 and things of that nature. What -- we would like an injunctive
17 relief to require the Registrar of Voters to place my client,
18 and anyone in a similar situation, to be able to monitor the
19 election, counting, within a 6-foot, no longer -- no farther
20 than 6 feet where he can see and hear the actual counting of
21 the ballots. It's a very specific, less than 6 feet -- I mean,
22 if they can put him 4 feet and that is available, then we would
23 like 4 feet. If it's 6 feet, that would be the location where
24 we believe that he would be able to hear and see the actual
25 counting of the ballots.

1 THE COURT: And if I don't put specific measurements
2 in there, I just say it's got to be where he can see and hear,
3 isn't that exactly the problem we're in right now with the
4 statute that says meaningful review or whatever it is,
5 meaningful view?

6 MR. O'MARA: The statute says -- (unintelligible). If
7 you -- you want it to be narrowly tailored so that the remedy
8 actually, you know, provides for a remedy that will be
9 sufficient to satisfy the statute, which is, you know, what we
10 believe is 6 feet.

11 THE COURT: All right. And who is similarly situated
12 to your client? Since you want that in the order, who is
13 similarly situated?

14 MR. O'MARA: Well, it's open to the public,
15 Your Honor, so that's why I was talking to you earlier about,
16 you know, in regards to what the registrar or what I believe
17 maybe the registrar may argue, the Secretary of State may argue
18 is that, look, we're in a COVID situation, we don't want to
19 have, you know, 10 or 15 people watching the counting of the
20 ballots and that's therefore I was talking about how
21 Washoe County utilizes a system where they would allow for the
22 monitoring of the polls and then they would. . . I'm sorry,
23 Your Honor. They would monitor the polls and they would allow
24 for a specific party to have a chair and then an Independent
25 party to have a chair and things of that nature. We have two

1 parties that are -- well, we have two campaigns and a party
2 that are involved in these cases and therefore you can -- you
3 can generally look at there's two sides of the aisle and then
4 you put in a third. It would work in order to narrowly tailor
5 something to where the viewing location would be.

6 THE COURT: Why is that your client? Why does he get
7 one of those chairs?

8 MR. O'MARA: Well, he would get one of those chairs
9 because he's bringing this action. He's the one that wants to
10 view it. He's the one that wants to have this open for the
11 public. But if you -- they -- if the Registrar of Voters
12 wanted to have it to where I was just talking about where the
13 viewer has to designate an interested party, which is a
14 Democrat party, a Republican party, and a non-party, he would
15 have to designate himself to what that would be, and maybe
16 that's, you know, a media access where one media person -- and
17 you'd have four chairs that would allow for it to be close
18 enough in that regard.

19 THE COURT: And then -- and then someone comes up and
20 says, I want to be the Democrat, or I want to be the Republican
21 or I want to be the Independent, your client gets to kick them
22 out?

23 MR. O'MARA: You would -- well, no, you would not kick
24 that person out, but you could move them and rotate them in on
25 a basis that would allow for a public viewing.

1 Look, I mean, we're -- I would -- I would love to tell
2 you and I would -- I would make the argument today that it has
3 to be open to the public and that the Registrar of Voters has
4 to make accommodations so that it is open to the public so that
5 anyone that comes in can do that, but I acknowledge that
6 there's going to be an argument probably that says we cannot do
7 that because of the COVID restrictions put in place and then
8 based on --

9 THE COURT: I don't mean to be facetious, but you're
10 asking me for extraordinary injunctive relief that has to be
11 narrowly tailored and as we're walking through this, it occurs
12 to me that you're forcing me to get way down deep in the weeds
13 and then we're going to be right back here if I put something
14 in place when two other people claim they're the public and
15 they want to watch and all of a sudden we've got them on a --
16 you know, I've got to alter it again and again and again. I --
17 anyhow, we're getting far afield on that.

18 Turn to the issue of Ms. Stokke -- I don't know if I
19 mispronounced her name, how do you pronounce it, Stokke or
20 Stokke?

21 MR. O'MARA: Yes.

22 You want me to start, Your Honor.

23 THE COURT: Well, yeah, I guess the question is, I
24 want to make sure we're clear, you're not asking me to stop the
25 defendants from counting ballots --

1 MR. O'MARA: That's correct.

2 THE COURT: -- right?

3 MR. O'MARA: We're not asking you to stop the
4 Registrar of Voters to count ballots. What we're asking you to
5 do today is to stop them from using the Agilis machine to
6 verify the signatures during that process. So, as -- as the
7 Secretary of State put in her declaration, they're saying that
8 70 percent of them are already going to have to go through the
9 process anyway, so there's only 30 percent. So, we're only
10 asking you to set aside -- well, to make sure that -- that the
11 Agilis machine is not used any further as we move forward, to
12 just keep the status quo of making sure the statute is
13 enforced. And, so --

14 THE COURT: Okay. So let me ask -- you're fine, and
15 again, I apologize for interrupting, and my court reporter is
16 going to hate me, but I have to -- I want to keep this going
17 forward.

18 I want to make sure factually we're all on the same
19 page. Your complaint says that Ms. Stokke tried to vote on
20 November 3rd. Her affidavit says she tried to vote on
21 October 28th. Which is the correct date? Which am I to
22 believe.

23 MR. O'MARA: I would believe the declaration,
24 Your Honor.

25 THE COURT: Okay. So if she tried to vote on

1 October 28th, why did she wait 8 days, until November 5th, to
2 do something about it? Why isn't that claim barred by laches
3 or something else?

4 MR. O'MARA: Yeah. So, well -- okay. So, as the
5 declaration says, Your Honor, on October 28th is when she found
6 out. She was told by the county clerk's office, or the county
7 registrar's office that they would get back to her in regards
8 to her ballot. They did not, so she drove back down there and
9 that's when Gloria went back in -- Mr. Gloria was there
10 involved in the (unintelligible).

11 To say that she is going to be barred by laches, an
12 elderly woman who has had her vote taken from her because of a
13 5-day period or even more, for laches, is a little bit
14 unreasonable.

15 THE COURT: Okay. But why -- why did she wait 7 days?

16 MR. O'MARA: I don't know the answer to that question,
17 but she -- obviously, she didn't wait to try to get her vote.
18 What happened was is on the 28th she wanted to vote. She tried
19 to go in and vote. They told her no. On the 29th she went
20 back in then because the Registrar of Voters did not go forward
21 with that. You have her on the 29th, which is a Thursday, you
22 have a holiday Friday, Saturday, Sunday, and then you have
23 what's going on. It takes a little while to get things going
24 and figuring out that what has happened to her was wrong. She
25 can't -- you can't say to an 80-year- -- or I don't know, I

1 can't say what her name -- age is, but an elderly woman that,
2 you know, you tried everything you could, you went to the
3 registrar's office, you demanded that they give you the vote,
4 you didn't get the relief you want, you try to find out what's
5 happening, you finally get someone that's going to help you and
6 you come in 7 days later and the Court says, sorry, you know,
7 your vote doesn't mean anything to where we're going to allow
8 you to make the argument and laches applies. No --

9 THE COURT: Okay. Listen, and -- laches may be
10 overstating. I don't dispute that, but -- but the delay --
11 often in a TRO situation, when someone delays seeking relief,
12 that sort of factors into my consideration of immediate and
13 irreparable harm, if not the balance of hardships and equities.
14 So should I just ignore that 7-day delay?

15 MR. O'MARA: Well, I mean, I -- obviously, you can't
16 ignore any facts, I'm not asking the Court to do that, but you
17 have to take that into context of what we have here. We have a
18 citizen of Nevada who has put her trust in a system that has
19 been enforced, or that she believes is being run properly by
20 the Secretary of State's Office and the Registrar of Voters
21 Office and she -- she believes that they are following the law,
22 that they're requiring the proper (unintelligible). And then
23 she goes in and she finds out that her vote is not counted.
24 And then she finds out that there is something wrong with the
25 system. I mean, they're going to make an argument that she

1 doesn't even know about the fact that there's an argument about
2 the Agilis machine, she probably doesn't even know that the
3 Agilis machine is being used instead of what we believe to be
4 the right method. She has her faith in the elections officials
5 and the -- what those elections officials do, they don't do
6 anything for her except for tell her that's -- you're not going
7 to be able to vote because someone else did it for you. And,
8 so --

9 THE COURT: Well, that's -- that's not what the
10 affidavit that the -- the defendants filed an affidavit -- or
11 the report says that they offered her, if she would fill out an
12 affidavit basically saying, you know, this isn't my original --
13 that vote wasn't mine and they would let her do a provisional
14 ballot and she said no.

15 MR. O'MARA: The provisional ballot does not include
16 every single election. The provisional ballot is basically --
17 that still takes away her First Amendment right, or her right
18 to vote. The provisional ballot is only used when -- when you
19 don't have the proper mechanisms in place for your
20 registration. She registered, she went to go vote, and she was
21 denied the right to vote for every candidate that she is
22 entitled to under the ballot. So to --

23 THE COURT: But if -- if it was determined that her
24 signature on the original ballot was improper, then they would
25 have counted the provisional ballot; correct?

1 MR. O'MARA: I'm sorry, Your Honor, I did not hear
2 your question.

3 THE COURT: I'm sorry. I'm concerned about the
4 provisional ballot here. What I understood the situation to be
5 was she raised the issue with Mr. Gloria saying, hey, somebody
6 used my name or signature. Mr. Gloria said fill out,
7 basically, this affidavit saying that that original ballot was
8 not your signature, we'll let you cast a provisional ballot and
9 in the event it turns out you're right, somebody forged your
10 name, we will then count your provisional ballot. Why is that
11 not an adequate remedy?

12 MR. O'MARA: Because the provisional -- first of all,
13 if you look at her declaration, it says that they said that she
14 had to attest that her roommate possibly stole the ballot,
15 which she has no -- she can't do and, so, she felt very
16 pressured by Mr. Gloria to sign that. Second, a provisional
17 ballot is not a ballot. The ballot has been taken from her.
18 She doesn't get to vote her ballot. The provisional ballot
19 would only allow her for some, but not all, and many --
20 basically not the majority of the elections that she wanted to
21 vote for. It's not an adequate remedy. The adequate remedy
22 would have been -- instead of having the Agilis machine move
23 forward, it would have been to have the actual clerk or the
24 employee of the clerk check the signature in the first place
25 and then go through the proper procedures, but that didn't

1 happen.

2 THE COURT: All right. So, what in her affidavit says
3 that her problem was caused by the Agilis machine? And I know
4 the answer is nothing because it's not there.

5 MR. O'MARA: Right.

6 THE COURT: And I get it, maybe she doesn't know.
7 What evidence do you have that the Agilis machine caused this
8 problem that's in front of me?

9 MR. O'MARA: Well, I don't believe we have any
10 evidence to show that her machine went through the proper
11 procedures.

12 THE COURT: Then -- then why do I grant extraordinary
13 relief if you don't have evidence to support a likelihood of
14 success on the merits?

15 MR. O'MARA: Because the likelihood of success on the
16 merits is to show that the Agilis machine was not to be used at
17 all, and they weren't, and it was used and, so, therefore our
18 allegation was is that it did go through the Agilis machine.
19 And I think it's based upon. . . I -- I -- you know, I can't
20 say that, Your Honor, because my understanding was is that she
21 was told that they looked at the machine, the signature, and
22 the printout, which I believe there is a printout of the Agilis
23 machine signature that they would be able to compare and show
24 that that's why it went through, but I --

25 THE COURT: So -- so somebody -- so somebody, after

1 she points out the error, somebody compared that signature to
2 hers, and it was identical. That's the human interaction
3 you're requested. So that happened, so regardless of --

4 MR. O'MARA: After. After.

5 THE COURT: Okay. But cured it on the back end.
6 What's there to fix now? It was cured on the back end and she
7 was given the chance to do a provisional ballot. Isn't the
8 system working the way you want it to when --

9 MR. O'MARA: No.

10 THE COURT: -- when you want human inter- -- you
11 wanted human interaction, you got it. They compared it, it was
12 identical. You may disagree with that, but if the Agilis
13 machine didn't exist, you'd still have somebody comparing the
14 signature and coming to the same conclusion.

15 MR. O'MARA: No, because her ballot has already been
16 stolen because it was allowed to be counted improperly because
17 (unintelligible).

18 THE COURT: Excuse me. Is there a remedy for that.

19 MR. O'MARA: If I could step back for just a second,
20 Your Honor, and try to frame it for you so that we're not going
21 down a rabbit hole.

22 The method in which the Agilis machine is used, okay,
23 is that the machine pumps everything through and if it doesn't
24 match, it pumps it out, but 30 percent of those get forwarded.
25 And our allegation is that her ballot went through, okay, and

1 it -- through the Agilis machine and it was not flagged. Okay?
2 It was then counted, and then her ballot was taken from her.
3 Because of the improper use of the Agilis machine, we have a
4 vote and a disenfranchisement of my client. That's -- point
5 blank right there that is a problem with the Agilis machine and
6 the ability of having people's votes taken in her case. To
7 connect --

8 THE COURT: Okay. Now you --

9 MR. O'MARA: Then to come back and, say, oh, we came
10 back and we looked at it but we're going to cure you by giving
11 you a provisional but we still have to show that, you know,
12 your ballot wasn't counted, doesn't get to the remedy of what
13 happened by using an improper machine and therefore --

14 THE COURT: Okay. All right. So if there was no
15 Agilis machine, a human being would have taken the signature on
16 the ballot, compared it to the signature on the paper and come
17 up with the same conclusion that they have right now.

18 MR. O'MARA: Well, we don't know that.

19 THE COURT: How would -- you had a human being look at
20 it and they said it looks to be the same thing, at least that's
21 the report from the defendants. It says we went back and
22 looked and it -- compared and it was identical.

23 MR. O'MARA: Okay. And did they -- did they
24 produce -- I don't believe that that was produced, the
25 signatures were produced. Were they not?

1 THE COURT: I don't recall seeing them right now,
2 but. . . I just got to deal with the information and evidence I
3 have in front of me and that's their response.

4 MR. O'MARA: I -- I understand. And I -- is this the
5 Secretary of State's response, Your Honor?

6 THE COURT: I believe so. We'll get to them in a few
7 minutes and see.

8 (Brief pause in proceedings).

9 THE COURT: Yeah, in the -- actually, I'm looking at
10 the Memorandum of Interview, this is ECF Number 19 at Page 52.

11 MR. O'MARA: I'm not sure if I have that yet, so let
12 me just please go -- give me a second and I can bring that up.

13 THE COURT: Sure. She -- she apparently told the
14 Secretary of State's investigator that she went to the
15 elections headquarters to address the matter, spoke directly to
16 Joe Gloria. Gloria told her the signature on the ballot
17 received on October 14th, 2020, matched the signature she had
18 on file with the registrar's office. My recollection is, and
19 maybe this was -- well, I don't know.

20 MR. O'MARA: That is made by the declaration of the
21 Secretary of State's Office, Your Honor, and, so, I don't
22 understand where that would -- if the clerk and the -- or the
23 employee needs to be able to be the one to look at it. So.
24 There's nothing in there to say it wasn't matched up with the
25 signature based on the Agilis machine.

1 THE COURT: Okay. I cut you off. Anything else?

2 MR. O'MARA: Well, you know, Your Honor, I think that
3 I want to address the one thing in regards to the Democratic
4 party claim that the machine is allowed under the statute.

5 Interestingly, the Democratic party only puts in
6 partial statutory language in regards to the use of the
7 machine. As the Court will see from N.R.- -- in the N.R.S.
8 statute allows for procedures and policies to be put into
9 place. It also restricts and precludes the Registrar of Voters
10 from putting in any policy or procedure that conflicts with
11 other statutory alignment. And it's interesting that the
12 Democratic party doesn't put that in there where it says
13 it's -- precludes any conflict -- they can't be in conflict
14 with any other provision. And when you look at the statute, it
15 specifically says "shall." It specifically says that the
16 registrar, in this case what he considers the clerk, or his
17 employee, must check the ballot and the signature -- I'm sorry,
18 must check the signature. When the Agilis machine gets put
19 through and there's not a -- when there's not a determination
20 by the clerk or the Registrar of Voters or some employee, then
21 it's not following the standards and therefore not only is my
22 client, Ms. Stokke, harmed, but so is my client Merchant for
23 Congress and Rodimer for Congress who they have an interest in
24 this to make sure that the election is properly set forth.
25 There's no policies and procedures that are written that I am

1 aware of in regards to how the machine is going to be used,
2 whether or not it -- how it is checking it, whether it's being
3 used based upon the manufacture's suggested usage or if it's
4 been monitored or if it's been changed or if it's been changed
5 throughout the election. We don't run elections in Nevada, and
6 we have historically had it to where Nevada law has
7 specifically said, in regulations, that have to be promulgated
8 by the Nevada Secretary of State. In this case, we don't have
9 any written policies or procedures for the public to know or
10 anybody to understand, and if you don't allow everybody to
11 understand what the rules of the election are and then you just
12 implement something that is not entitled under the law, such as
13 the Agilis machine, then the act of using the machine is a
14 futile act that is not authorized by law. It cannot occur to
15 happen. And, so, therefore, that's why we're here today to ask
16 you to push pause, let us -- enter a Temporary Restraining
17 Order to say you don't have to stop counting, but you need to
18 stop using the Agilis machine, start verifying through the
19 proper procedure under the statute, which is N.R.S. 293.8874,
20 and the procedure is that the clerk or employee shall check the
21 signature and if the clerk and signature, then they go to
22 whether two employees [sic]. That's a human interaction that
23 has to go before the vote is actually counted. That's the
24 processing of the votes. So --

25 THE COURT: Let me -- let me interrupt and ask you

1 this: My understanding is that state district Judge James
2 Wilson, in Carson City, had an Evidentiary Hearing on this
3 issue, not necessarily your client's, but looked at the Agilis
4 system and made a determination that if it was not used and
5 they had to look at each one of these by hand or by eyeball,
6 that it could not be completed by -- a canvass could not be
7 completed in the statute time frame. So what you're asking me
8 to do is to do something that Judge Wilson has already found
9 can't be done under the statutory time frame.

10 MR. O'MARA: Well, in order --

11 THE COURT: Tell me, why isn't that a hardship that
12 favors the state more than your client?

13 MR. O'MARA: Okay. So, Your Honor, to answer that
14 question, it is my understanding that while Mr. Gloria
15 testified that he could not get it done, he then published and
16 provided information of when he was going to actually do the
17 verification and provided a mere approximately 8 hours over the
18 next period of time to actually do the signature verifications.
19 So, it wasn't that they couldn't get it done, they just weren't
20 going to spend time on it throughout the process. It would
21 only allow for 8 hours over the next approximate 2-week period
22 to do verifications, or -- or at least a minimum of 8 hours
23 from the time of the hearing to the Election Day. So -- so to
24 say that there is going to be a harm, they can get it done.
25 We're asking them to segregate the ballots in regards to the

1 ones that have already ran through the Agilis machine and have
2 not been viewed by a member of his staff or him in the first
3 place, and then the ones that he's processing, which I believe
4 would only be an additional 30 percent of what they have left,
5 will then -- if they choose to, they can run it, you know,
6 through the -- well, they will -- they will then be able to use
7 the human aspect as required by the statute to verify
8 signatures and keep the vote going.

9 THE COURT: So, just so I'm clear, does -- I wasn't
10 quite sure I followed. You're suggesting that Mr. Gloria said
11 they could get this all done in 8 hours?

12 MR. O'MARA: No. No. He said that they couldn't get
13 it done but then told -- then provided information to the
14 public that said he was only going to allow for an 8-hour
15 period over in the next -- I -- I -- I said 2 weeks,
16 Your Honor, and I can't make -- then I corrected myself because
17 I cannot make that assertion, but I believe it was either that,
18 or it was over a period of the next period of days before the
19 election that they were going to --

20 THE COURT: So let me ask it a different way. What do
21 you believe -- how long do you think it will take for them to
22 finish the task if I tell them you have to review all these by
23 eyeball?

24 MR. O'MARA: Well, it's my understanding that they
25 would be able to be done by tomorrow -- or Saturday. And, so,

1 if they have an additional 30 percent out of the hundred that
2 they have to do, then they're only looking at maybe Sunday or
3 early Monday at the latest.

4 THE COURT: So you're saying I should order them to
5 review -- whatever remaining ballots there are, review those by
6 eyeball and not use the Agilis machine?

7 MR. O'MARA: Right. What I'm asking you to do is to
8 have them follow the statutory provisions that require the
9 clerk to first verify -- to require the clerk, or his employee,
10 to check the signature used on the ballot against the signature
11 of the voter and go through the proper process set forth in
12 293.8874, and then I would like you to have that -- in regards
13 to the other ones that have not been -- that have gone through
14 the Agilis machine already, because they -- we believe that
15 those are also invalid in regards to not going through the
16 system properly. Those should just be segregated, and then we
17 can come back Monday or Tuesday and have an Evidentiary Hearing
18 to determine what to do with those ballots because they have
19 been processed without the clerk or the employee checking the
20 signature.

21 THE COURT: How long is it going to take, in your
22 estimation, for the defendants to eyeball all of the remaining
23 ballots?

24 MR. O'MARA: So, I -- it's my understanding that
25 they -- that the Registrar of Voters believes that he will be

1 done counting by tomorrow afternoon. So if you take 30 percent
2 additional, then -- from today, then there's less than
3 36 hours, so it would be, like, Sunday or Monday morning.

4 THE COURT: Okay. If we require them to go back and
5 eyeball all of them that you're requesting, next week, how long
6 is that going to take?

7 MR. O'MARA: Well, that would take significantly a lot
8 more time, Your Honor. And there's 30 percent, so you would
9 have to take into consideration how much time they spent in
10 regards to counting those ballots, and I don't know the answer
11 to that.

12 THE COURT: And -- and do you have any reason to think
13 that would not take it beyond the statutory canvass period?

14 MR. O'MARA: I don't have any -- I believe that if
15 they were to sit down and do the 30 percent of the ones that
16 have not been through the Agilis machine, and we don't -- we're
17 only talking about mail ballots, we're not talking about
18 ballots that were --

19 THE COURT: That's not what I'm asking because you
20 asked -- you said you want them to go back and do the eyeball
21 of all of them that went through -- the 30 percent of all of
22 them that went through the Agilis machine next week after the
23 Evidentiary Hearing --

24 MR. O'MARA: Right.

25 THE COURT: -- that process would take beyond the

1 statutory mandatory canvass period; right?

2 MR. O'MARA: I don't know that to be true, Your Honor,
3 but I would imagine that that's what the Registrar of Voters is
4 going to argue but if they are -- if they finish counting and
5 they have the staff, they should immediately go to close that.
6 But you can't state to the American people, well, really, the
7 Nevada citizens that we are not going to go back because of the
8 time frame and try to make sure that this election was actually
9 conducted under the statutes implemented by AB 4 and then
10 codified in the statutes that specifically say that a clerk or
11 employee shall check the signatures. It is imperative that
12 Nevadans know that it was not a deal between the Secretary of
13 State's Office and Clark County that has a different system for
14 Clark County to verify signatures than any other county, that
15 it's not within the statutory provision and then, say, well,
16 sorry, because we did this wrong and we ran out of time, we're
17 not going to try to redo it properly. Nevadans deserve to have
18 their elections conducted under the law. The law
19 specifically states --

20 THE COURT: I understand.

21 MR. O'MARA: -- clerk or employee.

22 THE COURT: I understand. All right. I -- anything
23 further before I turn to the plaintiff -- or to the defendants?

24 MR. O'MARA: No -- I mean, Your Honor, I would make
25 other arguments but if you have other questions, then I can

1 respond to their arguments after that.

2 THE COURT: Yeah, that's got most of them. Let me
3 give them a chance to speak and then we'll come back to you.

4 MR. O'MARA: Thank you, Your Honor.

5 THE COURT: All right. You're welcome.

6 Mr. Newby or Ms. Miller, I don't know who's going to
7 go first. Mr. Newby I'll turn to you to see if you want to go
8 first.

9 MR. NEWBY: I'm happy to go first, Your Honor. Again,
10 for the record, Craig Newby, Deputy Solicitor General for the
11 State of Nevada representing Secretary Cegavske.

12 We're here before this court on an emergency basis
13 this afternoon as ballots are being counted in Clark County
14 without evidence justifying any, any supportable argument that
15 this lawsuit could succeed on the merits.

16 And I'm going to try to go in the order that
17 plaintiffs addressed their argument. And what we have first
18 with regards to the -- the public access to vote counting is an
19 issue where one of the plaintiffs, interpreting his declaration
20 in the guise most favorable to him, was denied potentially --
21 it's uncertain whether he was denied less than 90 minutes of
22 observation of ballot counting between the early
23 morning/evening hours of November 4th. According to his
24 declaration, everyone was told to leave. And on that basis,
25 plaintiffs seek to impose a nebulous, undefined,

1 no-further-than-6-feet-away distance, ignoring commonly known
2 CDC requirements on social distancing that we've all been
3 forced to live with, including today in terms of arguing this
4 hearing virtually rather than in person before this Court,
5 without any sort of identification of what the limits are or
6 aren't such that this Court would not be placed in the
7 situation should, hypothetically speaking, Mr. -- plaintiffs'
8 relief and an Evidentiary Hearing is granted and Nevada becomes
9 the epicenter of the universe and we do a re-examination of
10 personal signatures of ballots on mail ballots, over the next
11 week, 2 weeks, 3 weeks, I can't speak to how long, I would have
12 to defer to Clark County and a registrar for precise
13 information on how long that would take, we have daily or
14 perhaps hourly appearances before this Court to resolve can
15 this person stand here, can this person stand there, can
16 that -- does that person (unintelligible) that does this person
17 not require --

18 THE COURT: I'm not anxious to go back to the days of
19 the hanging chad, if that's what you're getting to.

20 MR. NEWBY: No, I'm not. I wasn't going to bring up
21 the hanging chad, but I think what Justice Kavanaugh's
22 concurrence that was referred to during the beginning of this
23 argument, and more generally to the Supreme Court's principle
24 in *Purcell*, expressed in *Purcell* in terms of whether federal
25 district courts should step in and create 11th hour changes to

1 procedures warrants consideration, and that can be more true, I
2 think, in this -- in the context of both the public access
3 issue and this case overall given that right now, following a
4 day-long Evidentiary Hearing that included this plaintiff's
5 counsel, included parties who are equally positioned in terms
6 of their views in terms of how they feel about access for
7 counting, how they feel regarding Clark County's Agilis
8 machine, and all the other issues that are raised in this case
9 before this Court, was adjudicated in a day-long Evidentiary
10 Hearing up in Carson City before Judge Wilson and is currently
11 pending on an expedited basis before the Nevada Supreme Court.

12 THE COURT: And was that case resolved? Because you
13 submitted a stipulation, has that been resolved and dismissed
14 or is that still going on?

15 MR. NEWBY: I'm going to defer to the DNC on that one.
16 I know DNC is a party to that case as an intervenor, and it is
17 my understanding that their position is that they will not sign
18 that stipulation.

19 So I can't speak for them directly. From what I've
20 heard, they haven't signed it yet and in light of the same case
21 being brought in federal court, I don't know why the Nevada
22 Supreme Court would enforce such a stipulation. I would think
23 they would want to -- to the extent these Nevada statutory
24 questions need to be adjudicated with regards to the 2020
25 election, I would argue, and I think the Nevada Supreme Court

1 would agree, that they are in the best position and the final
2 authority on what Nevada state law is rather than this court,
3 respectfully. So that's -- I mean, that's a general issue in
4 terms of where we are in terms of this public access. Nothing
5 defined about it. And it's not -- it's not the secretary's
6 burden, and it's certainly not Clark County's burden at this
7 hearing to prove -- to disprove the appropriateness of
8 injunctive relief here. That's plaintiffs' burden. They have
9 been aware of these issues. (Unintelligible) regarding these
10 issues. Yet, here we are with the evidence before this Court,
11 and I submit it's not that much.

12 And, so, I don't have anything further I want to
13 address with regards to the public observation questions other
14 than to note that opposing counsel keeps using the word
15 meaningful. And it -- I haven't seen a citation to statute
16 that quotes meaningful. I haven't seen it. It's not there.
17 And it's asking this Court to write what the statute should
18 mean, to write whether it should be 4 feet away, 6 feet away.
19 Three people in musical chairs, or five people in chairs, or
20 this world during COVID, or not during COVID, and that's --
21 that's the legislature's job and they undertook it when they
22 passed Assembly Bill 4 in the context of COVID this summer. So
23 if there's no questions on the public observation, I would move
24 on to the -- I guess the Agilis machine arguments pertaining to
25 Ms. Stokke and overall.

1 THE COURT: Okay.

2 MR. NEWBY: Okay. And I don't want to overdo this,
3 but with regards to the Agilis machine, the issue has been out
4 there for several months. It has not been a secret. It is my
5 understanding from the legislative record that's available on
6 videotape that it's no surprise that Clark County, as a large,
7 urban county within Nevada, would use a different system to
8 attempt to verify signatures on mail ballots than one of our
9 more rural counties. That is part of federalism and being
10 logical and there's a rational basis for that, obviously,
11 because there's a lot more people in Clark County. And I think
12 this Court -- plaintiffs attempt to address this in part by
13 responding to the DNC argument, but they don't respond to what
14 is set forth in our briefing here today, which, on Page 4,
15 starting at Line 14, which I'm sure the Court has read,
16 there -- there are two adjacent sections of Assembly Bill 4,
17 Section 22(2)(a), which specifically allows a county registrar,
18 such as Clark County, to authorize "mail ballots to be
19 processed and counted by electronic means" followed by Section
20 23, which does not specify that the clerk must do this by hand,
21 that the clerk must do this by his own eyeball, or that the
22 clerk must do this by standing adjacent to a machine, or that
23 the clerk is prohibited from using a machine. It says nothing
24 of that sort. It says a fair reading of the adjacent sections
25 of the statute, a plain reading of that, a reasonable reading

1 of that under these circumstances is, of course a county, if
2 they make that decision, is entitled to do so. And I'm not
3 going to attempt to revisit on this emergency basis what was
4 addressed by a full-day Evidentiary Hearing in state court in
5 terms of assessing the merits that -- the alleged merits of the
6 Agilis system, Clark County's best positioned to that, but it
7 is a valid system, there is nothing under statute that
8 prohibits it, and there's been nothing proffered here by
9 plaintiffs seeking extraordinary relief demonstrate --
10 providing facts to this Court that the Agilis machine is
11 unreliable. Instead, what we have is the declaration of
12 Ms. Stokke, who -- who had a mail ballot voted. It was
13 determined by Mr. Gloria that it was his [sic] signature. That
14 was the representation of that conversation made by Ms. Stokke.
15 As the Court noted, that was on Page 52 of the declaration that
16 was filed before this. It was made to an investigator. It was
17 made -- it was made by a party opponent in this case. It's an
18 admission by Ms. Stokke that that's -- that's what she was told
19 by Mr. Gloria, that she -- that the signature on file matched.
20 I will leave it to Clark County to determine whether Mr. Gloria
21 actually looked at the signature before telling her it was her
22 signature, but I strongly suspect that is the case.

23 And then her declaration ignores what the Secretary of
24 State's investigator did independently, which is asking for
25 information, asking for something to be declared, and offering

1 to follow -- follow up with questions and then it was left
2 behind and we get a week later here. And while I appreciate
3 plaintiffs' effort to disentangle Ms. Stokke's role in
4 justification of timing from their justification for the
5 motion, but if she decided she wasn't going to do something
6 about this and this Agilis machine issue was known and
7 available, then there's no reason in the world why they
8 couldn't have proceeded sooner. And there's no evidence that
9 there's a missing signature or that the Agilis system failed,
10 and on that basis -- on that non-existent, factual basis they
11 want to shut down the Clark County continued counting the
12 election timely. It's untimely. There's no basis for that and
13 there's certainly no basis in fact or evidence or whatever it
14 is that's being discussed about reviewing the other signatures
15 sometime next week. There's just no basis for it. There's no
16 one that has asserted standing in this case. And the standing
17 argument's addressed in more detail by the DNC in their
18 briefing and I'll defer to them on that argument, but the state
19 would certainly submit there's no standing from anyone in this
20 case regarding that -- regarding the Agilis machine and. . .
21 In short, this is their burden. This is -- this is a
22 serious -- this is a serious matter. We're talking about the
23 integrity of Nevada's elections and -- and a lawsuit is
24 required in obtaining extraordinary relief, like what's being
25 asked of this Court requires evidence, not just talking points,

1 or allegations. It requires facts, and we don't have any here.
2 And that alone means I should stop, address any questions that
3 the Court has, and if there are none, the Court should deny the
4 motion.

5 Thank you.

6 THE COURT: I'm just checking my notes to see if
7 you've covered all the questions I had. Bear with me for just
8 a minute.

9 (Brief pause in proceedings).

10 THE COURT: Is -- and I don't know if I should address
11 the question to you or Ms. Miller on behalf of Mr. Gloria, this
12 is more of a technical question on the Agilis system, whether
13 -- what's the procedure for verifying a signature with the
14 system and if the system -- if Agilis says it doesn't match, is
15 there a human confirmation of that, how does that all work. Is
16 that something you can address or is that something for
17 Ms. Miller?

18 MR. NEWBY: That is something that would be best
19 addressed by Ms. Miller on behalf of Clark County.

20 THE COURT: All right. She can thank you for throwing
21 her under the bus on that one.

22 MR. NEWBY: Not that I'm. . .

23 THE COURT: All right. Thank you, Mr. Newby.
24 Ms. Miller.

25 MS. MILLER: Thank you, Your Honor.

1 I first have to apologize. The county isn't open on
2 Fridays for COVID reasons and I was having technical
3 difficulties this morning and it was all I could do to get my
4 Notice of Appearance entered and I consider that a moral
5 victory, but I'm sorry I don't have a formal document on file.
6 If I had more time and this goes to a Preliminary Hearing, I
7 would proffer that this is what are the facts:

8 The statute, N.R.S. 293.- -- 293B.353 says that the
9 Clark County clerk shall -- or the Clark County clerk shall
10 allow members of the public to observe the counting of the
11 ballots as long as they don't interfere with the counting --
12 the counting process. And in Clark County, we've had that
13 setup for years. The tabulation room is a big glass enclosed
14 room with plenty of room outside for observers. They're not
15 6 feet next to them because they'd have to be inside that glass
16 enclosure and cheek by jowl with the tabulation machine
17 operators and that just won't work, even in a non-COVID era,
18 but there's plenty of room outside the windows, and as of
19 2:30 p.m. today, we have not had to turn away any observers for
20 lack of room. There's easily room for 30, 35 observers. And
21 they've been there every day that we've been tabulating and no
22 one has complained.

23 What happened with Mr. Prudhome is a little bit
24 different. He showed up in the middle of the night. No
25 problem there. We were tabulating. Went into the observer's

1 area. Wanted to record, and he was told he couldn't record,
2 that was against the statute, only the media were. He didn't
3 provide his media credentials, but he was shown to the media
4 area, which is not as close as the observers area. So he went
5 back to the observers area with his recording device and quite
6 frankly the observers weren't having it. They were getting on
7 his case for trying to game the system and it got contentious
8 and Mr. Prudhome was asked to leave, really, for his own
9 safety. He is more than welcome back as an observer at any
10 time if he doesn't disrupt the system.

11 With respect to Ms. Stokke, regardless of whether
12 her -- the initial mailed-in ballot in question was read by the
13 Agilis machine, it was her signature, and the signature on the
14 ballot envelope was manually reviewed by Mr. Gloria and two
15 trained supervisors, and in their trained opinion, they believe
16 it to be a match with her signatures on file. Regardless, if
17 she had been willing to sign an affidavit that she did not vote
18 that ballot and that was not her signature, she would have been
19 given a full provisional ballot, and she chose not to do that.
20 So, the Agilis machine did not have any -- any involvement in
21 what happened to Ms. -- Ms. Stokke at all because she -- she
22 did get her ballot envelope signature reviewed by three trained
23 supervisors, and it more that meets with the statutory
24 requirements for met -- for reviewing signatures.

25 I would point out that AB 4 does not require a manual

1 review of the signatures. It does say that the Registrar of
2 Voters shall review the signatures, but it doesn't say it can't
3 be done electronically, and, in fact, AB 4 says it -- ballots
4 can be processed and counted electronically. What the Agilis
5 machine does, in Clark County, are three different actions:

6 First, the ballot envelopes are run through there.
7 The signatures are captured electronically and put into the
8 Clark County system, and there's a tracking device so that we
9 can acknowledge and track that we've got this ballot in our --
10 in our office as in it's been read by the Agilis machine.

11 It goes through a second time to see if the quality of
12 the signature in our database provides a match to the signature
13 on the envelope, and that happens about 30 percent of the time.
14 And if it doesn't match by the Agilis machine, those are all
15 reviewed by non- -- bipartisan panel's signature verifiers
16 manually looking at the ballot envelopes to the ballot
17 signatures that we have on file. So that's a more
18 time-consuming process just because you have to pull up all the
19 files.

20 And then the third -- and then the ballot envelopes
21 are run through the Agilis machine a third time to make sure
22 that they've been accurately numbered and tracked and those
23 signatures -- those ballot envelopes are tracked through our
24 system until the envelopes are separated from the ballots.

25 So I just --

1 THE COURT: Hang on. Let me ask you to pause there
2 for a second.

3 MS. MILLER: Sure.

4 THE COURT: I want to make sure my notes are accurate
5 on what you've just described. Give me a second here.

6 (Brief pause in proceedings).

7 THE COURT: So, on this sort of second phase, you're
8 running through a second time to see if the quality of the
9 signature in your database matches the signature on the
10 envelope and you said that happens about 30 percent of the
11 time. What happens 30 percent of the time, 30 percent of them
12 are run through that test or it says 30 percent of them don't
13 work --

14 MS. MILLER: No.

15 THE COURT: -- don't match?

16 MS. MILLER: 30 percent of them are a match, the
17 quality of the signature on the envelope and the quality of the
18 signature in our database match up so that this -- this
19 machine, which is similar to machines that are used in banks to
20 verify signatures, say that the signature on the envelope and
21 the signature in our ballot -- in our database matches.

22 THE COURT: Okay. So, if the 70 percent then don't
23 match, those 70 percent then are hand reviewed?

24 MS. MILLER: That's correct.

25 THE COURT: Okay. I'm with you. I apologize for

1 interrupting you. Go ahead now. Thank you.

2 MS. MILLER: I just don't see, given those facts --
3 and those facts were all put into evidence at the earlier
4 hearing about the Agilis machine -- that these plaintiffs have
5 shown that they have had any harm related to the Registrar of
6 Voters viewing policy at the tabulation center or the use of
7 the Agilis machine. They just haven't established a harm to
8 them, and certainly not the candidates who are plaintiffs.

9 THE COURT: All right. Anything further?

10 MS. MILLER: I just would join into the responses of
11 both the Secretary of State and the intervenors for the record.

12 THE COURT: Okay. Let me ask you a factual question,
13 if I can. Bear with me here.

14 (Brief pause in proceedings).

15 THE COURT: I apologize. Just bear with me here. I'm
16 looking at my notes and some papers.

17 (Brief pause in proceedings).

18 THE COURT: Okay. Yeah. I'm looking at state
19 district George -- I'm sorry, state district Judge Wilson's
20 findings and conclusions in the *Kraus vs. Cegavske* case dated
21 October 29th, on Page 4, he said that Registrar Gloria opined
22 in that case that if Clark County could not continue using
23 Agilis, the county could not meet the canvass deadline which is
24 November 15th, and Judge Wilson found that if Clark County's
25 not allowed to continue using it, the county will not meet the

1 canvass deadline.

2 Do you agree with that finding by Judge Wilson?

3 MS. MILLER: That was an accurate finding based on the
4 information he was given then in testimony last week.

5 Obviously, a lot of those ballot envelopes have been read
6 between last Wednesday and today, but we still do have 63,000
7 that we're processing. 241 more ballots came in the mail
8 today. They have a few more days to get ballots -- ballots to
9 come in the mail, so the effect -- to be frank with the Court
10 as I have a duty to, the effect wouldn't be as catastrophic if
11 you entered it today, but it would still delay our processing.

12 THE COURT: So you said you still have, you believe,
13 approximately 67- -- 63,000 ballots that still have to be
14 counted in Clark County?

15 MS. MILLER: That still have to be processed before
16 they can be counted, yes.

17 THE COURT: Oh, okay.

18 MS. MILLER: Those are mail ballots. There's some
19 other electronic ballots, but I think we're only talking about
20 mail ballots for this purpose.

21 THE COURT: Okay.

22 All right. Thank you, Ms. Miller. I interrupted you.
23 Anything further?

24 MS. MILLER: No -- no, Your Honor.

25 THE COURT: Thank you.

1 Let me turn to Mr. Bravo or one of your co-counsel on
2 behalf of the DNC.

3 MR. DEVANEY: Your Honor, this is John Devaney, I'll
4 be speaking for the DNC with the Court's permission.

5 THE COURT: Absolutely.

6 MR. DEVANEY: Thank you, Your Honor. I think I'll
7 begin by answering the question that you posed and I've been
8 reluctant to jump in and interfere, but the state court action
9 is continuing, so just to be very clear about that. It's still
10 pending in the Supreme Court of Nevada. The
11 plaintiffs/appellants in that case just yesterday requested for
12 a briefing schedule, a postponement for the briefing schedule
13 that has briefs due approximately a week from now, and the case
14 is not resolved. We expect that that case will proceed and
15 those state law issues remain before the Supreme Court of
16 Nevada.

17 THE COURT: So I've got this stip- -- I've got the
18 stipulation and order for dismissal that's signed at least by
19 Ms. Miller and the attorney for the petitioners in that case,
20 obviously your client hasn't signed off on it and I don't see
21 Secretary of State's Cegavske's signature on it. Are you
22 saying that stipulation didn't go forward?

23 MS. MILLER: It did not include a signature from our
24 client, the DNC, or the Nevada Democratic state party and, so,
25 as of this juncture it remains pending and our expectation is

1 that we'll go ahead and brief that appeal and present those
2 issues of state law to the Supreme Court.

3 THE COURT: Okay. Go ahead. I interrupted you.

4 MR. DEVANEY: And, Your Honor, of course that has a
5 direct bearing on the issues before you. I'm sure the Court is
6 well aware of the Truman Doctrine and Pullman abstention and
7 that doctrine, of course, establishes that when resolution of a
8 question of state law by a state court will resolve a matter
9 pending before a federal court, the federal court should
10 abstain. And the issues teed up in the Supreme Court
11 proceeding bear directly on the issues before Your Honor. They
12 involve, one's the lawfulness of using Agilis and the
13 discretion of the registrar to use that machine, and two, the
14 extent to which a county, in this case Clark County, is
15 required to provide public observation of the counting of
16 ballots. And those statutes -- state statutory questions are
17 before the court, the Supreme Court that is, and therefore
18 Pullman applies with full force in this instance. So I just
19 thought I'd begin with that, Your Honor, since you had asked
20 about where that state court proceeding stands.

21 THE COURT: Thank you. I appreciate that.

22 MR. DEVANEY: And, Your Honor, I don't want to belabor
23 the points that have been made already, but there are a few
24 points that I really do want to emphasize. One is just the
25 extraordinary context of this case.

1 The Agilis system was used in the June primary. It's
2 public knowledge that this system has been used. As
3 Judge Wilson found, this system is used by multiple
4 jurisdictions around the country, including very large cities
5 around the country. It's been proven to be reliable. And
6 people in Nevada have known, including plaintiffs' counsel,
7 that this machine has been in use for many months in Nevada,
8 and that it would be used in this election. And, you know,
9 here we are now, it is literally 2 days after election that
10 they filed their complaint -- 2 days after Election Day,
11 knowing for months that this system was being used and coming
12 in and asking the Court to stop use of the system. You know,
13 one -- one can just hear that story and understand the equities
14 that -- the equitable problems that raises. It cries out for
15 laches. It cries out for equitable estoppel. And the
16 disruption that would be created by stopping the use of this
17 machine, when, as Ms. Miller just mentioned, there's still
18 62,000, approximately, ballots that need to be processed. And
19 literally the whole country is looking at Nevada, and
20 Clark County in particular, and waiting for the election
21 results. And I don't know exactly how much delay would be
22 (unintelligible) from Agilis, but I know from the evidentiary
23 proceeding we had last week that it would be meaningful, it
24 would probably be days and days. I don't know if it would
25 compromise the canvassing deadline now, but there certainly

1 would be delay, and it would create chaos and confusion. And
2 given the timing of this, where plaintiffs' counsel at least,
3 have known about the use of Agilis for months, it's just
4 extraordinary that they'd come in and even ask for this relief
5 knowing the chaos that would result from it. So I just wanted
6 to emphasize that very important context as we consider the
7 legal arguments that -- the claims that are before you.

8 And also then relatedly, it's just the fundamental
9 lack of evidence, the -- let's just pause for a moment and
10 think about what evidence is before you that would cause the
11 Court to stop the use of Agilis. It is a single declaration
12 from a single voter who doesn't even know if Agilis affected
13 her ability to vote. That's not established anywhere. And
14 we've heard the facts relating to her attempt to vote, which
15 are quite different from what were represented initially, where
16 she was given a chance to vote, she was given a chance to
17 submit a provisional ballot and she refused that opportunity
18 and it's just extraordinary that you would be asked to take the
19 leap from that flawed affidavit, the declaration, to shutting
20 down Agilis altogether and stopping, essentially, the counting
21 or processing of ballots in Clark County while the whole
22 country looks on. It's really just a remarkable leap that
23 you're being asked to make.

24 In addition to those problems, Your Honor, there is a
25 fundamental standing problem here. And you've read our briefs

1 and I'm mindful of your comment earlier that we shouldn't
2 repeat what's in our briefs, but I do just want to briefly
3 emphasize that their theory here is vote dilution, that the
4 Agilis machine somehow causes more wrongful rejection of
5 ballots in Clark County than elsewhere in the state. First of
6 all, there's no proof of that. That's number one. But even if
7 there were vote dilution, it's well-established by the case law
8 cited in our brief, it's not a basis for standing. It's a form
9 of alleged harm that affects everybody in the state equally.
10 If there's dilution, then everybody's vote is diluted equally
11 across the state. And, so, that's why courts have consistently
12 found that a vote dilution based on fraud theory is
13 insufficient to confer standing and multiple cases have
14 resulted in courts finding a complete lack of standing based on
15 a vote dilution theory.

16 And then, Your Honor, the second standing problem that
17 plaintiffs have relates to their claim under the elections
18 clause. As I understand it, they're claiming that the use of
19 Agilis and perhaps even the registrar's decision on observation
20 somehow violates the legislative demands in Nevada and that the
21 registrar is usurping the authority of the legislature by
22 administering the election in this way. And, again,
23 Your Honor, there's significant case law establishing that --
24 that there is no standing, that they cannot stand in the shoes
25 of the legislature. It's only the legislature that would have

1 standing to come in and claim that their power is being
2 usurped. Certainly these plaintiffs do not have that
3 authority, and I cite the Court to *Corman v. Torres* which makes
4 that proposition clear, as does *Lance v. Coffman*, a Supreme
5 Court case, and the standing deficiencies aren't remedied by
6 tacking on the two committee candidates as parties. The
7 pleadings don't even allege any harm to those committees, so,
8 in addition to the -- the equitable problems they have that I
9 started off with, there is a fundamental standing problem that
10 exists in this case.

11 And then, Your Honor, that takes me to the merits,
12 which other counsel have addressed and I don't -- I will not
13 spend a lot of time on the merits, but I will respond to the
14 suggestion from plaintiffs' counsel that the DNC somehow
15 misrepresented to the Court the statutory scheme relating to
16 use of electronic technology in processing ballots. The
17 language is very clear. It says that electronic technology can
18 be used, and that's not inconsistent with elsewhere in the
19 statute where it says the clerks shall -- shall review ballots.
20 It doesn't mean that clerks can't rely on electronic
21 technology, as Judge Wilson found, and then as we've talked
22 about, Judge Wilson found that technology is completely
23 reliable and used in a standard way by multiple jurisdictions
24 around the country.

25 Your Honor, just a couple more points, and that is

1 that on the observation claim, Your Honor alluded to it, but
2 it's absolutely right that the time, place, and manner of
3 conducting elections is within the jurisdiction of election
4 officials and the legislature and the court -- a court should
5 not get into micromanaging how -- where people stand, what
6 machines are used to process ballots, and that's what you're
7 being asked to do. And it really does get into a separation of
8 powers issue, and time, place, and manner is exclusively within
9 the jurisdiction of the legislature and registrars, you know,
10 unless there is a constitutional violation, and there's nothing
11 here that's close to a constitutional violation. So, I just
12 wanted to reiterate that point.

13 And then, finally, Your Honor, I'll just conclude with
14 the equitable considerations that bar relief because I just
15 think they're so compelling and important. One is they sat on
16 their claims; two, it's against the public interest to just
17 disrupt the processing now; three, the plaintiffs are able to
18 observe, so you (unintelligible) to the parties, they are able
19 to observe. The delay in reporting results is significant.
20 It's a -- it's not just a Nevada interest, it's a national
21 interest. And last, this claim, just like the claim that
22 Judge Wilson considered, is singling out Clark County, it's
23 treating Clark County disparately from other counties in the
24 state. There's no -- we don't see the Trump campaign or other
25 parties going into counties other than Clark to ask about

1 observation, to redress observation, and that's just another
2 equitable fact is the disparate treatment that's being imposed
3 on Clark that I would ask the Court to consider.

4 Your Honor, there's more I'd say, but I think it's
5 covered in our briefs and it's been covered by the other
6 parties, so I'll stop now and, of course, entertain any
7 questions you might have.

8 THE COURT: Given that brevity is the soul of wit,
9 Mr. Devaney, I appreciate your comment.

10 MR. DEVANEY: Thank you.

11 THE COURT: Let me turn back to Mr. O'Mara, since it's
12 your motion, you get the rebuttal. Address for me, if you
13 would, first off, this argument of Pullman abstention. If the
14 Supreme Court of Nevada currently has this case pending in
15 front of it addressing these various issues, why should I wade
16 into their pool?

17 Mr. O'Mara?

18 Uh-oh. Let's go off the record for a second and see
19 if we can. . . is he on there?

20 Off the record for a technical standpoint. Let's see
21 if we can get Mr. O'Mara.

22 MR. O'MARA: Okay. Is that me?

23 THE COURT: Okay. All right. Back on the record. We
24 got you. Thank you.

25 MR. O'MARA: Sorry.

1 THE COURT: Back on the record.

2 That's okay. No worries.

3 MR. O'MARA: So, Your Honor, the argument about the
4 fact that the Supreme Court is getting -- addressed this issue
5 is not likely to happen because the parties to the issue have
6 moved and are trying to dismiss (unintelligible) DNC's ability
7 or their not wanting to sign an agreement takes that into
8 effect, but also this is a TPO. We're asking for the Court for
9 the relief to review the statute and, so, to me, the issue, if
10 you look at the Nevada Supreme Court, the briefing is not going
11 to be until next week, the likelihood is that the votes will
12 already be counted, the Agilis machine will have already been
13 used and therefore extraordinary relief is necessary for this
14 Court because it's not going to be able to defer to the Nevada
15 Supreme Court. So, with that in mind, the Court needs to
16 protect the integrity of this election to provide for Nevadans
17 and with all due respect to the rest of the country, this is a
18 Nevada election and it needs to be followed by Nevada law.

19 And secondly --

20 THE COURT: So shouldn't -- no, but shouldn't that be
21 decided by Nevada justices elected by Nevada residents? Why
22 should I, a federal judge, wade into the Nevada elected
23 justices dealing with state election law?

24 MR. O'MARA: Because the -- the issue is in front of
25 you today and it will not be addressed by Nevada state law, and

1 it needs to be addressed in an expedited manner so the vote is
2 protected moving forward.

3 THE COURT: So shouldn't you address that to the
4 Supreme Court of Nevada and ask them to expedite their hearing?

5 MR. O'MARA: Well, Your Honor, that is a separate
6 case. We have separate harm in this case with the client. So,
7 my clients do not have the right to expedite this issue to the
8 Nevada Supreme Court. My client has been harmed. And contrary
9 to what the DNC says, this is not a voter dilution case.

10 I'm sorry, is someone not muted? I'm hearing a lot of
11 background.

12 THE COURT: Yeah. No, I agree. Let me ask again,
13 everyone on the line, please mute your phone and microphone and
14 we are getting a little interruption here. Again, whether
15 you're on the telephone or some other access, please mute your
16 phone and microphone.

17 Thank you, Mr. O'Mara, I apologize for that.

18 MR. O'MARA: I'm sorry.

19 So, this is -- my clients have been -- just my client
20 in regards to Ms. Stokke, has been disenfranchised by the use
21 of a machine that is improperly done and we don't have the
22 ability to move forward in the Supreme Court. She needs relief
23 now, relief to show that that machine should not be working so
24 that no other disenfranchisement is handled.

25 Now, in regards to the standing, we have -- she

1 actually has actual injury. She wasn't -- what Ms. -- what
2 Ms. Miller said today was that Mr. Gloria and two of his
3 employees looked over the machine. Okay. And that -- the
4 only -- know that that happened was after my client went to the
5 board -- to Mr. Gloria and said this vote is stolen; it's not
6 mine because you're -- again, I hear some muting.

7 THE COURT: Again, please mute your phones. We're
8 having a little bit of interruption.

9 Go ahead, Mr. O'Mara.

10 (Court reporter interruption).

11 THE COURT: So, Mr. O'Mara, again, if you'll get
12 closer to the phone and I'm going to ask everyone to mute their
13 phones.

14 Go ahead.

15 MR. O'MARA: So, we look at the situation and we
16 don't -- we don't have, as a normal Nevada law, you know, would
17 have it. We have a situation here where there is a -- we don't
18 have the opportunity to do that. Our client --

19 (Court reporter interruption).

20 THE COURT: Mr. O'Mara, are you on a speaker phone?

21 MR. O'MARA: I'm on a Zoom, Your Honor, so it's --

22 THE COURT: Okay. Go ahead. Yeah.

23 Go ahead.

24 MR. O'MARA: So, my client has been harmed. She has
25 equal protection grounds. This hasn't been a dilution -- well,

1 there is standing on equal protection grounds if there is a --
2 been a dilution or debasement of voting. What we have, a
3 situation where Ms. Miller talks about Mr. Gloria only
4 reviewing the -- or I'm going to infer that since she didn't
5 say that Mr. Gloria had (unintelligible) already reviewed the
6 ballot signature that they went over it again with my client,
7 we believe it was the first time that Mr. Gloria, after the
8 vote had already been taken, after Mr. Gloria says, oh, you
9 know, your vote -- if you claim that your vote has been taken,
10 you can have a secondary -- we will treat you secondary and
11 give you a provisional ballot and you don't get the opportunity
12 to do your vote. She's been -- she's been harmed. She
13 deserves recourse.

14 THE COURT: Why -- wait. Okay. Let me address -- let
15 me address that directly because that -- I'm still, I guess,
16 having a hard time understanding your argument. If -- if --
17 assume that everything your client is saying is correct, that
18 her -- somebody else turned in her ballot for her --

19 MR. O'MARA: Um-hmm.

20 THE COURT: -- and Mr. Gloria said we'll let you vote
21 again and we will count your new vote, it's a provisional. If
22 we can prove that your original vote is fraud or false or not
23 your signature, we'll invalidate that one and we will let your
24 vote count. Why doesn't that cure the problem?

25 MR. O'MARA: Well, it doesn't let her vote, first of

1 all, because there is a ballot out there that has fraudulently
2 been filed and --

3 THE COURT: But if they invalidate that ballot and let
4 your client vote, doesn't that cure the problem? Because
5 otherwise, there's never a remedy to fix it, you're saying.

6 MR. O'MARA: Well, Your Honor, there is -- there is no
7 evidence to show that the Registrar of Voters can go back in
8 and find the vote and say this one has been canceled out.

9 THE COURT: Okay. So let's say -- so let's say they
10 can't. Then we allow your client to vote. If this vote comes
11 down to one vote, then we may have an issue, but if there's a
12 fraudulent vote hanging out there and your client -- okay. I
13 understand what your argument, sort of, but I guess I'm not
14 sure, factually, whether what you're saying is correct or not.

15 MR. O'MARA: My client, Your Honor, is entitled to the
16 same rights as every other American and every other Nevadan and
17 then that is the right to vote their ballot and have their
18 ballot counted. And when we have a system that is put into
19 place where it is contrary to Nevada law, it is contrary to the
20 provisions throughout the state and she loses her ballot, she
21 is harmed and that is really terrible, unfortunate, and not the
22 American way, nor is it Nevada.

23 Now, the Democratic party says, oh, we're only going
24 after Clark County. Well, the reason why you're only going
25 after Clark County is because every other county eyeballed and

1 did it appropriately through the statute. Okay. They didn't
2 have the right to do this. And if you look at what the
3 legislature's declaration of voter rights is, under N.R.S.
4 293.2546, it specifically says that the legislature hereby
5 declares that each voter has the right to have a uniform
6 statewide standard for counting and recounting all votes
7 accurately, and that's exactly what happened when you look at
8 the statutes. I mean, we look at mail ballots and people are
9 always saying mail ballots, absentee ballots, they're all the
10 same in regards to how you -- well, how you go about doing the
11 verification. You have to have the clerk look at it and say
12 this is valid. To say that you can read into the statute of
13 N.R.S. -- of the statute and say that the clerk or employee
14 shall check the signature -- but they don't actually have to
15 check it, they can use a machine -- against all other
16 signatures, that's an absurd result, especially when you look
17 at N.R.S. (unintelligible) Subsection 1. It says except as
18 provided in provision -- in N.R.S. 293D.200. That's not the
19 section before it. If the legislature truly wanted to, they
20 would have said, you know, except as otherwise provided in
21 N.R.S. 293.8871(2)(a) that the clerk and employee has it [sic].
22 It specifically says, under the statute of 293.8871, while
23 there is a mechanism for the process and counting by electronic
24 means, it also says, "and must not conflict with provisions of
25 N.R.S. 293.8801 to 293.8887." So you look at the next --

1 THE COURT: Except -- I get the -- I get the argument.
2 I get the argument. Isn't the reverse argument to that,
3 though, that the legislature wanted to, they could have said it
4 has to be checked by eyeball or by finger or by Braille or by
5 some mechanical method and the fact is, they wrote it the way
6 they wrote it and they added the statute that said they can do
7 that by electronic mail -- by electronic means in the other
8 statute. I mean, at some point --

9 MR. O'MARA: No -- no, Your Honor, because they
10 quantify it and qualify it by saying that the next -- in the
11 next section, it says must not conflict with provisions of
12 N.R.S. 293.8801. It's a conflict.

13 When you look at the statutory language, it says
14 duties of clerk upon return of mail ballots. Procedure for
15 checking signature. Now, it sets forth (a) and (b). So if you
16 don't do (a), you can't get to (b). So, that's -- you can't
17 come up and have a reasonable argument that says that. You
18 know, they -- and, so, you move forward and -- and the statute
19 is very clear.

20 Now, the second thing is that they talk about, like,
21 Judge -- Judge Wilson's argument. Well, we didn't know that
22 there was a harm. That was one of the things that the judge
23 looked at. We now know that there is a harm, and that's -- and
24 we have a harm. We have -- we have a person that was not
25 entitled to vote. And, so, there's a different analysis in

1 this case than there is on the other one.

2 Additionally, what we're asking for is a TPO.

3 Ms. Miller has contested -- or has stated that if you do just
4 set these aside for these last ones until we can come back in
5 here and show other information and other evidence and go
6 through the Agilis machine, and send a 5-year Agilis machine
7 [sic], it may be delayed, but they will still be able to get to
8 it. And it is more important for Nevada to do it right than it
9 is for Nevada to do it fast. That is exactly what Mr. Gloria
10 has been saying throughout the whole entire process, why he's
11 been -- why there has been delays. It is to do it properly and
12 not to do it fast. So, if we're going to do it properly and
13 we're going to take the situation where we're going to look at
14 the situation, they -- there is no harm to them -- to the
15 Registrar of Voters except for a little bit of time to set
16 aside the Agilis machine and eyeball -- eyeball and look at it
17 and have a clerk or an employee look at it first and then move
18 forward.

19 And when you look at whether or not there's -- the
20 legislature says this, look at all the other counties in
21 Nevada. Only Clark County said we're going to go ahead and do
22 this. Now, if Clark County would have wanted to make sure that
23 they had this Agilis machine, they -- the legislature could
24 have put in there, specifically, that we no longer care that
25 there's uniform standards and Clark County can do whatever they

1 want and have a machine or whatever they want and then
2 everybody else has to do it the right way and under the
3 statute, but -- excuse me, not the right way, but under the
4 statute in that regard. So --

5 THE COURT: Well, isn't -- isn't -- isn't that implied
6 in 293.871(1) that says, "The county or city clerk, as
7 applicable, shall establish procedures to the processing and
8 counting of mail ballots"? Doesn't that give to each county
9 the right to do what they think is best and then get it blessed
10 by the Secretary of State? So the legislature presumed there
11 might be different systems used, right?

12 MR. O'MARA: Well, here -- here's the thing,
13 Your Honor. You make -- you bring up a good point. You talk
14 about how the Secretary of State has to approve and put it as a
15 blessing, but the Nevada legislature -- or the Nevada Supreme
16 Court has consistently held that oral -- oral consent of the
17 Secretary of State is not proper. If you look at *Kelly vs.*
18 *Murphy*, 79- --

19 THE COURT: Wait. Wait. Wait. Whoa. Whoa. That's
20 not your brief. That's way far afield of what we're here on
21 today and -- and that's really getting into a Pullman issue.
22 You know, we're here on the allegations in your motion and that
23 is Ms. Stokke and Mr. Prudhome.

24 MR. O'MARA: Right.

25 THE COURT: And. . .

1 MR. O'MARA: Exactly, but it goes towards the
2 provisions, Your Honor, and you were talking about -- and you
3 were saying that it has to have the blessing of the Nevada --
4 of the Secretary of State and I'm telling you, what I'm saying
5 is that Nevada law was that the Secretary of State cannot just
6 give oral communications, they have to promulgate regulations.
7 And if they don't do that, then the oral communication and
8 actions are a futile act undertaken within -- without lawful
9 authorization.

10 So we have --

11 THE COURT: Well, let me -- let me ask you to follow
12 up on that then because looking at the statute, the plain
13 language of the statute makes no reference to the Secretary of
14 State. It just says, "For any elected -- any affected
15 election, the county or city clerk, as applicable, shall
16 establish procedures for the processing and counting of mail
17 ballots."

18 MR. O'MARA: Right.

19 THE COURT: Doesn't even have to be approved by the
20 Secretary of State, apparently.

21 MR. O'MARA: Well, and that is -- and then you can
22 read that, but you have to also look at Subsection 2, which
23 says that they are only to establish those procedures if they
24 do not conflict with the other provisions. And --

25 THE COURT: Okay.

1 MR. O'MARA: -- the other provisions are clerk or
2 employee. If they wanted -- they could have just said clerk or
3 employee or any mechanical device or -- but it doesn't. It
4 specifically says "clerk or employee shall." It doesn't say
5 may. It doesn't say may, the clerk or employee may check. It
6 says they have -- they shall check.

7 THE COURT: Okay. Let me ask you this then: Under
8 293.881(1) it talks about having to count, the mail ballot
9 central counting board, they have to count. It doesn't say how
10 they count it. Does that mean they have to count them all by
11 hand? Are they allowed to use a calculator? Are they allowed
12 to use a machine to count? It doesn't say --

13 MR. O'MARA: There's no procedure or policy that
14 conflicts with what the -- what the Agilis machine is. Okay.
15 So, there's nothing in there that says this is how they have to
16 count the ballots. It says that they have to count them. And,
17 so, they may authorize ballots to be processed and counted by
18 (unintelligible) election means.

19 Now, for example, when Ms. Miller talks about
20 Subsection 1, or Section 1 of the Agilis machine first, she
21 runs it through and they do something with it, that's a
22 processing. But when they do the second one, that one is
23 outside of the realm of what the Agilis machine can be used
24 for. It cannot be used for the verification because the
25 verifications without a clerk or an employee. So therefore you

1 can -- you can run it through to make sure that that person is
2 no longer going to vote, which is exactly what happened, we
3 believe, with my client, it ran through the system, it clicked
4 her off so she couldn't go in and vote. Then it comes back,
5 then they run it through improperly because the next statute
6 requires that a clerk or employee shall check the signature.
7 There's nothing -- there's no evidence to show that there's no
8 clerk checking that signature at that time, and the Agilis
9 machine spits out 30 percent of them saying I've checked it,
10 not a clerk or an employee. The Agilis machine. Not the clerk
11 or the employee. And then the third one, if you go to the
12 counting of the ballots in that regard. So --

13 THE COURT: Yeah, I -- I get the argument. We're all
14 repeating ourselves now. I understand the argument.

15 MR. O'MARA: Okay. As to proven reliable, we already
16 know that -- we're obviously saying something different, which
17 was not available at the time of Judge Wilson's decision.
18 Ms. Stokke didn't have -- didn't know about her ballot really
19 until at least October 29th when she went back in to
20 Mr. Gloria. So there was obviously no time to bring that up to
21 Judge Wilson's ability to make his decision on that date.

22 Sorry, Your Honor, let me just scan my notes a minute.

23 THE COURT: Yep.

24 (Brief pause in proceedings).

25 MR. O'MARA: Also, Your Honor, where are -- there are

1 no policies and procedures as to the Agilis machine. There
2 hasn't been anything established. What it has been is a
3 definite unilateral decision by the Registrar of Voters to
4 implement a system. There's no policies and procedures.
5 There's nothing that saying he's going to do this, these are
6 the steps that we're going to take. He just basically says I'm
7 going to do this. No policies and procedures of the Agilis
8 machine. So, he himself has not set policies and procedures to
9 allow the Agilis machine and therefore, again, it's a futile
10 act under the (unintelligible) system that's unlawful and
11 therefore you can't -- you got to have everything in writing.
12 You got to have the policies and procedures in place.

13 The lach- -- I think the laches, do you need me to go
14 into more of the laches, Your Honor?

15 THE COURT: No. No. No. No. I was just throwing
16 that out there as an example. I'm not relying upon laches.

17 MR. O'MARA: Like I said, Your Honor, today, you know,
18 we're asking the Court, and Ms. Miller has said that the
19 stopping the Agilis machine will have very little harm to
20 the -- to Registrar of Voters, we're asking for you to set that
21 aside for the weekend or until Monday or Tuesday to allow
22 people to further brief and present in an Evidentiary Hearing
23 on Tuesday and all ballots should go through the legally
24 required process for digital verification and once they go
25 through that verified visual verification, we're not asking for

1 the ballots to be stopped and uncounted, but we are asking for
2 the Agilis machine to be not used over the next few days until
3 the Court can have an Evidentiary Hearing.

4 We are asking that you segregate all ballots that have
5 been counted by the Agilis machine previously so that if the
6 Court does issue a ruling on a TPO, or on the injunctive relief
7 after an Evidentiary Hearing, those ballots can already be
8 ready to go so that they can be visually verified without
9 delay. Like I said, we're not asking them to count -- stop
10 counting. And we need to have uniform standards where every
11 county, it's the same.

12 And, so, we ask you to enter, as I presented in the
13 opening, a plan for observation as well as what I just talked
14 about, about the Agilis machine.

15 Thank you, Your Honor.

16 THE COURT: Thank you, Mr. O'Mara.

17 Let me -- let me just backtrack for just a second to
18 Ms. Miller, and if you don't know the answer to this, I
19 appreciate that, but let me ask you, because I asked this or
20 suggested this to Mr. O'Mara, and that is that, if, in fact,
21 it's determined that Ms. Stokke's original ballot that she
22 claims was fraudulently submitted was, in fact, a fraud, is
23 there a way to cancel that ballot out?

24 MS. MILLER: Probably not at this time. Maybe when
25 she first complained about it, it -- it could have been

1 segregated, but once the ballot envelope is separated from the
2 ballots, you can't go back and take it out of the pool for that
3 reason. But she could have gone ahead, acknowledged by
4 affidavit that it was not hers and that she did not vote the
5 ballot and she would have given -- been given a provisional
6 ballot, a full provisional ballot. So, it's really not any
7 different than if somebody went up to in-person voting and
8 forged her signature on the sign-in in such a fashion that the
9 poll worker said, yeah, that's good enough, go vote. Once that
10 vote gets into the system, we can't pull it back out, but she
11 could have, either when talking with Mr. Gloria or at in-person
12 voting, said, I'll sign the affidavit, let me vote. And she
13 chose not to do that. And she hasn't established that it was
14 the Agilis machine rather than somebody committing fraud upon
15 her that caused her harm.

16 THE COURT: So -- so just to follow up and be clear.
17 If I walk up to the polling headquarters and say I want to vote
18 and they show me the book and say sign here and it's got
19 somebody else's signature on my spot and I show them that's not
20 my signature and somebody apparently voted in my place, the
21 poll worker there could verify that signature isn't correct and
22 I would be given a new ballot and I could vote that ballot?

23 MS. MILLER: If you signed an affidavit saying it
24 wasn't your signature --

25 THE COURT: Correct, yes.

1 MS. MILLER: -- and that you had not voted yet, yes.

2 THE COURT: And Ms. Stokke, in your opinion, since you
3 raised the issue, if she would have signed an affidavit that
4 says this is -- the original ballot was not mine, they would
5 have given her a ballot and she could have signed that, or she
6 could have voted on that ballot?

7 MS. MILLER: Yes.

8 THE COURT: Okay. Thank you.

9 (Brief pause in proceedings).

10 THE COURT: All right. Here's my decision.

11 As I mentioned earlier, I take into account
12 Justice Kavanaugh and his concurrence in the *Democratic*
13 *National Committee vs. Wisconsin State Legislature* case. His
14 concurrence on October 22nd of 2020 strongly suggests that
15 district court judges like me should not interfere with state
16 election proceedings unless there are. . . significant, I'll
17 call it, reasons to. I won't repeat the quotes I put on the
18 record earlier, but I incorporate them here. The notion being
19 that it's for the state legislature to write state election
20 laws and I should not usurp that proper role of state
21 legislatures and rewrite state election laws.

22 In determining whether to enter a Temporary
23 Restraining Order, or Preliminary Injunction, I'm guided by the
24 four-factor test that's set forth in the Supreme Court's
25 decision of *Winter vs. Natural Resources Defense Council, Inc.*,

1 which is at 555 U.S. 7, at Page 20, it's a 2008 case. There
2 are four factors:

3 One, a likelihood of success on the merits; two, a
4 likelihood of irreparable harm; three, the balance of hardships
5 favors the plaintiff; and four, an injunction is in the public
6 interest. And it's the plaintiff seeking a motion for -- or
7 seeking a Temporary Restraining Order that has the burden of
8 demonstrating those.

9 In addition, when the plaintiff seeks a mandatory
10 injunction, that is, an injunction that requires affirmative
11 conduct, that means forcing the defendant to do something
12 different as opposed to just stopping them from doing
13 something, that standard is even higher because those requests
14 are subject to heightened scrutiny, and the Ninth Circuit has
15 said they should not be used unless the facts and law clearly
16 favor the moving party. That comes from the case of *Dahl* --
17 D-a-h-l -- *vs. HEM Pharmaceutical Corporation*, 7 F.3d 1399 at
18 1403, Ninth Circuit case from 1993.

19 Turning to the first prong of the *Winter* test, the
20 likelihood of success on the merits, I don't find that the
21 plaintiff has demonstrated -- plaintiffs, plural -- have
22 demonstrated a likelihood of success. I am concerned that the
23 Pullman document -- doctrine would suggest I stay away from
24 this case given that these issues are being litigated right now
25 in front of the Supreme Court of Nevada. This is an issue of

1 significant state concern involving state laws and should be
2 interpreted by state courts, particularly Supreme Court
3 justices elected by state of Nevada citizens.

4 The Pullman abstention doctrine is narrow, and I don't
5 use that to completely step away from cases unless there are
6 significantly good reasons to do so. There's a three-factor
7 test set forth in the case of *Porter vs. Jones*, 319 F.3d 483, a
8 Ninth Circuit case from 2003. Those factors here suggest that
9 I should step away and allow the Supreme Court of Nevada to
10 make that decision. I'm not going to do that. I'm not going
11 to say I'm abstaining, but I do think I -- I do take that into
12 consideration in looking at the likelihood of success on the
13 merits in this case.

14 The defendants and DNC raise issues of standing on
15 behalf of the plaintiffs, or that the plaintiffs don't have
16 standing. I'm not going to get into that issue today. I'll
17 presume for purpose of today that they do have standing.

18 Turning to the statutes of Nevada, Nevada Revised
19 Statute § 293.874(1)(a) says, "The clerk or employee shall
20 check the signature used for the mail ballot against all
21 signatures of the voter available in the records of the clerk."
22 Nevada Revised Statute § 293.887(1) says that "for an affected
23 election, the county or city clerk shall establish procedures
24 for the processing and counting of mail ballots," and it goes
25 on to say that those procedures may authorize mail ballots to

1 be processed and counted by electronic means. Mr. O'Mara
2 correctly points out that the second part of that subsection
3 says that those procedures must not conflict with the
4 provisions of the other parts of the Nevada election statute.
5 That's true. I don't find the Agilis system as used here, so
6 far, to conflict with the other provisions of the Nevada
7 election laws.

8 I don't see a likelihood of success on the merits of
9 the plaintiffs' claims. Nor do I see a likelihood of success
10 in showing that Mr. Prudhome was denied public access to
11 observe the procedures as required under the statute, and the
12 injunction that's being requested, at least on the papers,
13 didn't quite address the harm alleged and I am loath to get
14 into the weeds of entering an injunction about distances and
15 volumes and overhearing what the reporter -- or the election
16 counters are doing and all those kind of things. The cases are
17 legion that judges like me should try to avoid that when
18 possible. I would do that if I thought there was a stronger
19 reason to do that here, but I don't see that.

20 Turning to the prong of irreparable harm, Ms. Stokke,
21 it appears to me, could have repaired her harm by filing a
22 provisional ballot with the affidavit. There is also little to
23 no evidence that the Agilis machine incorrectly verified
24 Ms. Stokke's signatures in particular. There's little to no
25 evidence that the machine is not doing what it's supposed to

1 do, or incorrectly verifying other signatures. There's no
2 evidence that the Agilis machine even touched her ballot, or if
3 it did, that it kicked out a different problem, nor is there
4 evidence that a human review would have done it better. At
5 best, we have one piece of evidence, Ms. Stokke's affidavit.
6 We've got the statements, apparently, that Mr. Gloria and two
7 other supervisors actually did look at it by hand, so that's
8 the relief that the plaintiffs' counsel wants, and that was
9 given to them.

10 Turning to the balance of hardships, the plaintiffs
11 have shown that there is at best one ballot that was invalidly
12 placed. On the other hand, we have tens, if not hundreds of
13 thousands of votes that potentially might not be counted
14 because the signatures might not be able to be verified by
15 human beings before the canvass window closes under the
16 statute. Ms. Miller thinks that that may be doable, depending
17 upon how many are counted, but I don't have the evidence in
18 front of me to show that that could be done. In fact, I've got
19 Mr. -- or Judge Wilson's finding that at the time back then, it
20 could not be done. I acknowledge that Ms. Miller suggests that
21 it would not be as catastrophic this time, I factor that in to
22 the analysis of this -- of this factor. I don't know that it's
23 determinative one way or another on that point.

24 The public interest is not in favor of disrupting the
25 completion of the processing and counting of the ballots.

1 There is an interest in having the Nevada legislature's rules
2 and laws carried out. There is an interest in not
3 disenfranchising tens, if not hundreds of thousands of votes,
4 potentially, balanced against potentially one improper ballot.
5 So the balance of hardships and equities and the public
6 interest don't favor entering injunctive relief at this time.

7 Now let me be clear, I threw around terms like
8 "laches" earlier. Let me be clear that I'm not deciding this
9 case on a technicality or some esoteric legal principle like
10 laches or Pullman abstention, rather I'm deciding that the
11 plaintiffs have not come to the Court at this point with a
12 sufficient legal showing and a sufficient evidentiary basis to
13 get what is required to obtain the extraordinary relief of an
14 injunction, especially a mandatory affirmative injunction that
15 would require me to dictate to the Clark County Elections Board
16 and folks over there how to do their jobs. So, I am going to
17 deny the motion for Temporary Restraining Order.

18 With regard to the Motion for Preliminary Injunction
19 that's attached to it, at this stage, I'm going to deny that as
20 well. If I give full credence to the two affidavits that are
21 attached to the motions, that is, the declarations I should say
22 of Mr. Prudhome and Ms. Stokke, even giving those the full
23 merit of truth, it still does not rise to the level of
24 justifying a Preliminary Injunction. So I'm going to deny the
25 Motion for Preliminary Injunction without prejudice. If the

1 plaintiffs can come up with more evidence or different
2 arguments that are more compelling, but particularly more
3 evidence that would justify an Evidentiary Hearing, then I
4 would consider that on a Motion for Preliminary Injunction.
5 But at this stage, I don't see the need for an Evidentiary
6 Hearing because what's in front of me, even if I give credence
7 to those declarations, it would not cause me to issue the
8 injunction so an Evidentiary Hearing at this stage would not be
9 needed.

10 So that's my ruling. The motions are denied. The
11 case will go forward, as all civil cases do.

12 Anything else I can address for the parties?

13 Mr. O'Mara?

14 MR. O'MARA: No, Your Honor. Thank you very much,
15 again, on behalf of everybody, to your staff and everyone else
16 for setting this hearing so quickly.

17 THE COURT: You're welcome, and I do want to thank all
18 of the parties and all of the lawyers. This was very
19 well-briefed and it was on a compressed time frame. I do
20 appreciate everyone's professional- -- professionalism,
21 ability, and well-briefing.

22 Mr. Newby, anything further from you or your party?

23 MR. NEWBY: Nothing further at this time. Have a good
24 weekend, Your Honor.

25 THE COURT: You too.

1 Ms. Miller, anything from you or your client?

2 MS. MILLER: No, thank you, Your Honor.

3 THE COURT: Mr. Devaney, anything further from you or
4 your client?

5 MS. MILLER: No thanks, Your Honor.

6 THE COURT: With that then, the hearing is concluded.
7 I hope you all stay safe, and wear your masks.

8 We're in recess on this matter.

9 (Proceedings adjourned at 4:12 p.m.)

10

11

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12

COURT REPORTER'S CERTIFICATE

13

14 I, Heather K. Newman, Official Court Reporter, United
15 States District Court, District of Nevada, Las Vegas, Nevada,
16 do hereby certify that pursuant to Section 753, Title 28,
17 United States Code, the foregoing is a true, complete, and
18 correct transcript of the proceedings had in connection with
19 the above-entitled matter.

20

21 DATED: 11-16-2020

22

/s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

23

24

25

EXHIBIT 9

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STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Cheryl A. Costantino and
Edward P. McCall, Jr.
Plaintiffs,

Hon. Timothy M. Kenny
Case No. 20-014780-AW

City of Detroit; Detroit Election
Commission; Janice M. Winfrey,
in her official capacity as the
Clerk of the City of Detroit and
the Chairperson and the Detroit
Election Commission; Cathy Garrett,
In her official capacity as the Clerk of
Wayne County; and the Wayne County
Board of Canvassers,
Defendants.

OPINION & ORDER

At a session of this Court
Held on: November 13, 2020
In the Coleman A. Young Municipal Center
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

This matter comes before the Court on Plaintiffs' motion for preliminary injunction, protective order, and a results audit of the November 3, 2020 election. The Court having read the parties' filing and heard oral arguments, finds:

With the exception of a portion of Jessy Jacob affidavit, all alleged fraudulent claims brought by the Plaintiffs related to activity at the TCF Center. Nothing was alleged to

have occurred at the Detroit Election Headquarters on West Grand Blvd. or at any polling place on November 3, 2020.

The Defendants all contend Plaintiffs cannot meet the requirements for injunctive relief and request the Court deny the motion.

When considering a petition for injunction relief, the Court must apply the following four-pronged test:

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2nd 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief "represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity." *Id.* at 612 fn 135 quoting *Senior Accountants, Analysts and Appraisers Association v Detroit*, 218 Mich. App. 263, 269; 553 NW2nd 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) states that the Plaintiffs bear the burden of proving the preliminary injunction should be granted. In cases of alleged fraud, the Plaintiff must state with particularity the circumstances constituting the fraud. MCR 2.112 (B) (1)

Plaintiffs must establish they will likely prevail on the merits. Plaintiffs submitted seven affidavits in support of their petition for injunctive relief claiming widespread voter

fraud took place at the TCF Center. One of the affidavits also contended that there was blatant voter fraud at one of the satellite offices of the Detroit City Clerk. An additional affidavit supplied by current Republican State Senator and former Secretary of State Ruth Johnson, expressed concern about allegations of voter fraud and urged "Court intervention", as well as an audit of the votes.

In opposition to Plaintiffs' assertion that they will prevail, Defendants offered six affidavits from individuals who spent an extensive period of time at the TCF Center. In addition to disputing claims of voter fraud, six affidavits indicated there were numerous instances of disruptive and intimidating behavior by Republican challengers. Some behavior necessitated removing Republican challengers from the TCF Center by police.

After analyzing the affidavits and briefs submitted by the parties, this Court concludes the Defendants offered a more accurate and persuasive explanation of activity within the Absent Voter Counting Board (AVCB) at the TCF Center.

Affiant Jessy Jacob asserts Michigan election laws were violated prior to November 3, 2020, when City of Detroit election workers and employees allegedly coached voters to vote for Biden and the Democratic Party. Ms. Jacob, a furloughed City worker temporarily assigned to the Clerk's Office, indicated she witnessed workers and employees encouraging voters to vote a straight Democratic ticket and also witnessed election workers and employees going over to the voting booths with voters in order to encourage as well as watch them vote. Ms. Jacob additionally indicated while she was working at the satellite location, she was specifically instructed by superiors not to ask for driver's license or any photo ID when a person was trying to vote.

The allegations made by Ms. Jacob are serious. In the affidavit, however, Ms. Jacob does not name the location of the satellite office, the September or October date these

acts of fraud took place, nor does she state the number of occasions she witnessed the alleged misconduct. Ms. Jacob in her affidavit fails to name the city employees responsible for the voter fraud and never told a supervisor about the misconduct.

Ms. Jacob's information is generalized. It asserts behavior with no date, location, frequency, or names of employees. In addition, Ms. Jacob's offers no indication of whether she took steps to address the alleged misconduct or to alter any supervisor about the alleged voter fraud. Ms. Jacob only came forward after the unofficial results of the voting indicated former Vice President Biden was the winner in the state of Michigan.

Ms. Jacob also alleges misconduct and fraud when she worked at the TCF Center. She claims supervisors directed her not to compare signatures on the ballot envelopes she was processing to determine whether or not they were eligible voters. She also states that supervisors directed her to "pre-date" absentee ballots received at the TCF Center on November 4, 2020. Ms. Jacob ascribes a sinister motive for these directives. Evidence offered by long-time State Elections Director Christopher Thomas, however, reveals there was no need for comparison of signatures at the TCF Center because eligibility had been reviewed and determined at the Detroit Election Headquarters on West Grand Blvd. Ms. Jacob was directed not to search for or compare signatures because the task had already been performed by other Detroit city clerks at a previous location in compliance with MCL 168.765a. As to the allegation of "pre-dating" ballots, Mr. Thomas explains that this action completed a data field inadvertently left blank during the initial absentee ballot verification process. Thomas Affidavit, #12. The entries reflected the date the City received the absentee ballot. *Id.*

The affidavit of current State Senator and former Secretary of State Ruth Johnson essentially focuses on the affidavits of Ms. Jacob and Zachery Larsen. Senator Johnson believed the information was concerning to the point that judicial intervention was needed and an audit of the ballots was required. Senator Johnson bases her assessment entirely on the contents of the Plaintiffs' affidavits and Mr. Thomas' affidavit. Nothing in Senator Johnson's affidavit indicates she was at the TCF Center and witnessed the established protocols and how the AVCB activity was carried out. Similarly, she offers no explanation as to her apparent dismissal of Mr. Thomas' affidavit. Senator Johnson's conclusion stands in significant contrast to the affidavit of Christopher Thomas, who was present for many hours at TCF Center on November 2, 3 and 4. In this Court's view, Mr. Thomas provided compelling evidence regarding the activity at the TCF Center's AVCB workplace. This Court found Mr. Thomas' background, expertise, role at the TCF Center during the election, and history of bipartisan work persuasive.

Affiant Andrew Sitto was a Republican challenger who did not attend the October 29th walk-through meeting provided to all challengers and organizations that would be appearing at the TCF Center on November 3 and 4, 2020. Mr. Sitto offers an affidavit indicating that he heard other challengers state that several vehicles with out-of-state license plates pulled up to the TCF Center at approximately 4:30 AM on November 4th. Mr. Sitto states that "tens of thousands of ballots" were brought in and placed on eight long tables and, unlike other ballots, they were brought in from the rear of the room. Sitto also indicated that every ballot that he saw after 4:30 AM was cast for former Vice President Biden.

Mr. Sitto's affidavit, while stating a few general facts, is rife with speculation and guess-work about sinister motives. Mr. Sitto knew little about the process of the absentee voter counting board activity. His sinister motives attributed to the City of Detroit were negated by Christopher Thomas' explanation that all ballots were delivered to the back of Hall E at the TCF Center. Thomas also indicated that the City utilized a rental truck to deliver ballots. There is no evidentiary basis to attribute any evil activity by virtue of the city using a rental truck with out-of-state license plates.

Mr. Sitto contends that tens of thousands of ballots were brought in to the TCF Center at approximately 4:30 AM on November 4, 2020. A number of ballots speculative on Mr. Sitto's part, as is his speculation that all of the ballots delivered were cast for Mr. Biden. It is not surprising that many of the votes being observed by Mr. Sitto were votes cast for Mr. Biden in light of the fact that former Vice President Biden received approximately 220,000 more votes than President Trump.

Daniel Gustafson, another affiant, offers little other than to indicate that he witnessed "large quantities of ballots" delivered to the TCF Center in containers that did not have lids were not sealed, or did not have marking indicating their source of origin. Mr. Gustafson's affidavit is another example of generalized speculation fueled by the belief that there was a Michigan legal requirement that all ballots had to be delivered in a sealed box. Plaintiffs have not supplied any statutory requirement supporting Mr. Gustafson's speculative suspicion of fraud.

Patrick Colbeck's affidavit centered around concern about whether any of the computers at the absent voter counting board were connected to the internet. The answer given by a David Nathan indicated the computers were not connected to the

internet. Mr. Colbeck implies that there was internet connectivity because of an icon that appeared on one of the computers. Christopher Thomas indicated computers were not connected for workers, only the essential tables had computer connectivity. Mr. Colbeck, in his affidavit, speculates that there was in fact Wi-Fi connection for workers use at the TCF Center. No evidence supports Mr. Colbeck's position.

This Court also reads Mr. Colbeck's affidavit in light of his pre-election day Facebook posts. In a post before the November 3, 2020 election, Mr. Colbeck stated on Facebook that the Democrats were using COVID as a cover for Election Day fraud. His predilection to believe fraud was occurring undermines his credibility as a witness.

Affiant Melissa Carone was contracted by Dominion Voting Services to do IT work at the TCF Center for the November 3, 2020 election. Ms. Carone, a Republican, indicated that she "witnessed nothing but fraudulent actions take place" during her time at the TCF Center. Offering generalized statements, Ms. Carone described illegal activity that included, untrained counter tabulating machines that would get jammed four to five times per hour, as well as alleged cover up of loss of vast amounts of data. Ms. Carone indicated she reported her observations to the FBI.

Ms. Carone's description of the events at the TCF Center does not square with any of the other affidavits. There are no other reports of lost data, or tabulating machines that jammed repeatedly every hour during the count. Neither Republican nor Democratic challengers nor city officials substantiate her version of events. The allegations simply are not credible.

Lastly, Plaintiffs rely heavily on the affidavit submitted by attorney Zachery Larsen. Mr. Larsen is a former Assistant Attorney General for the State of Michigan who alleged mistreatment by city workers at the TCF Center, as well as fraudulent activity by election workers. Mr. Larsen expressed concern that ballots were being processed without confirmation that the voter was eligible. Mr. Larsen also expressed concern that he was unable to observe the activities of election official because he was required to stand six feet away from the election workers. Additionally, he claimed as a Republican challenger, he was excluded from the TCF Center after leaving briefly to have something to eat on November 4th. He expressed his belief that he had been excluded because he was a Republican challenger.

Mr. Larsen's claim about the reason for being excluded from reentry into the absent voter counting board area is contradicted by two other individuals. Democratic challengers were also prohibited from reentering the room because the maximum occupancy of the room had taken place. Given the COVID-19 concerns, no additional individuals could be allowed into the counting area. Democratic party challenger David Jaffe and special consultant Christopher Thomas in their affidavits both attest to the fact that neither Republican nor Democratic challengers were allowed back in during the early afternoon of November 4th as efforts were made to avoid overcrowding.

Mr. Larsen's concern about verifying the eligibility of voters at the AVCB was incorrect. As stated earlier, voter eligibility was determined at the Detroit Election Headquarters by other Detroit city clerk personnel.

The claim that Mr. Larsen was prevented from viewing the work being processed at the tables is simply not correct. As seen in a City of Detroit exhibit, a large monitor was

at the table where individuals could maintain a safe distance from poll workers to see what exactly was being performed. Mr. Jaffe confirmed his experience and observation that efforts were made to ensure that all challengers could observe the process.

Despite Mr. Larsen's claimed expertise, his knowledge of the procedures at the AVCB paled in comparison to Christopher Thomas'. Mr. Thomas' detailed explanation of the procedures and processes at the TCF Center were more comprehensive than Mr. Larsen's. It is noteworthy, as well, that Mr. Larsen did not file any formal complaint as the challenger while at the AVCB. Given the concerns raised in Mr. Larsen's affidavit, one would expect an attorney would have done so. Mr. Larsen, however, only came forward to complain after the unofficial vote results indicated his candidate had lost.

In contrast to Plaintiffs' witnesses, Christopher Thomas served in the Secretary of State's Bureau of Elections for 40 years, from 1977 through 2017. In 1981, he was appointed Director of Elections and in that capacity implemented Secretary of State Election Administration Campaign Finance and Lobbyist disclosure programs. On September 3, 2020 he was appointed as Senior Advisor to Detroit City Clerk Janice Winfrey and provided advice to her and her management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting boards, satellite offices and drop boxes. Mr. Thomas helped prepare the City of Detroit for the November 3, 2020 General Election.

As part of the City's preparation for the November 3rd election Mr. Thomas invited challenger organizations and political parties to the TCF Center on October 29, 2020 to have a walk-through of the entire absent voter counting facility and process. None of Plaintiff challenger affiants attended the session.

On November 2, 3, and 4, 2020, Mr. Thomas worked at the TCF Center absent voter counting boards primarily as a liaison with Challenger Organizations and Parties. Mr. Thomas indicated that he “provided answers to questions about processes at the counting board’s resolved dispute about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers.”

Additionally, Mr. Thomas resolved disputes about the processes and satisfactorily reduced the number of challenges raised at the TCF Center.

In determining whether injunctive relief is required, the Court must also determine whether the Plaintiffs sustained their burden of establishing they would suffer irreparable harm if an injunction were not granted. Irreparable harm does not exist if there is a legal remedy provided to Plaintiffs.

Plaintiffs contend they need injunctive relief to obtain a results audit under Michigan Constitution Article 2, § IV, Paragraph 1 (h) which states in part “the right to have the results of statewide elections audited, in such as manner as prescribed by law, to ensure the accuracy and integrity of the law of elections.” Article 2, § IV, was passed by the voters of the state of Michigan in November, 2018.

A question for the Court is whether the phrase “in such as manner as prescribed by law” requires the Court to fashion a remedy by independently appointing an auditor to examine the votes from the November 3, 2020 election before any County certification of votes or whether there is another manner “as prescribed by law”.

Following the adoption of the amended Article 2, § IV, the Michigan Legislature amended MCL 168.31a effective December 28, 2018. MCL 168.31a provides for the Secretary of State and appropriate county clerks to conduct a results audit of at least

one race in each audited precinct. Although Plaintiffs may not care for the wording of the current MCL 168.31a, a results audit has been approved by the Legislature. Any amendment to MCL 168.31a is a question for the voice of the people through the legislature rather than action by the Court.

It would be an unprecedented exercise of judicial activism for this Court to stop the certification process of the Wayne County Board of Canvassers. The Court cannot defy a legislatively crafted process, substitute its judgment for that of the Legislature, and appoint an independent auditor because of an unwieldy process. In addition to being an unwarranted intrusion on the authority of the Legislature, such an audit would require the rest of the County and State to wait on the results. Remedies are provided to the Plaintiffs. Any unhappiness with MCL 168.31a calls for legislative action rather than judicial intervention.

As stated above, Plaintiffs have multiple remedies at law. Plaintiffs are free to petition the Wayne County Board of Canvassers who are responsible for certifying the votes. (MCL 168.801 and 168.821 et seq.) Fraud claims can be brought to the Board of Canvassers, a panel that consists of two Republicans and two Democrats. If dissatisfied with the results, Plaintiffs also can avail themselves of the legal remedy of a recount and a Secretary of State audit pursuant to MCL 168.31a.

Plaintiff's petition for injunctive relief and for a protective order is not required at this time in light of the legal remedy found at 52 USC § 20701 and Michigan's General Schedule #23 – Election Records, Item Number 306, which imposes a statutory obligation to preserve all federal ballots for 22 months after the election.

In assessing the petition for injunctive relief, the Court must determine whether there will be harm to the Plaintiff if the injunction is not granted, as Plaintiffs' existing legal

remedies would remain in place unaltered. There would be harm, however, to the Defendants if the Court were to grant the requested injunction. This Court finds that there are legal remedies for Plaintiffs to pursue and there is no harm to Plaintiffs if the injunction is not granted. There would be harm, however, to the Defendants if the injunction is granted. Waiting for the Court to locate and appoint an independent, nonpartisan auditor to examine the votes, reach a conclusion and then finally report to the Court would involve untold delay. It would cause delay in establishing the Presidential vote tabulation, as well as all other County and State races. It would also undermine faith in the Electoral System.

Finally, the Court has to determine would there be harm to the public interest. This Court finds the answer is a resounding yes. Granting Plaintiffs' requested relief would interfere with the Michigan's selection of Presidential electors needed to vote on December 14, 2020. Delay past December 14, 2020 could disenfranchise Michigan voters from having their state electors participate in the Electoral College vote.

Conclusion

Plaintiffs rely on numerous affidavits from election challengers who paint a picture of sinister fraudulent activities occurring both openly in the TCF Center and under the cloak of darkness. The challengers' conclusions are decidedly contradicted by the highly-respected former State Elections Director Christopher Thomas who spent hours and hours at the TCF Center November 3rd and 4th explaining processes to challengers and resolving disputes. Mr. Thomas' account of the November 3rd and 4th events at the TCF Center is consistent with the affidavits of challengers David Jaffe, Donna MacKenzie and Jeffrey Zimmerman, as well as former Detroit City Election Official, now contractor, Daniel Baxter and City of Detroit Corporation Counsel Lawrence Garcia.

Perhaps if Plaintiffs' election challenger affiants had attended the October 29, 2020 walk-through of the TCF Center ballot counting location, questions and concerns could have been answered in advance of Election Day. Regrettably, they did not and, therefore, Plaintiffs' affiants did not have a full understanding of the TCF absent ballot tabulation process. No formal challenges were filed. However, sinister, fraudulent motives were ascribed to the process and the City of Detroit. Plaintiffs' interpretation of events is incorrect and not credible.

Plaintiffs are unable to meet their burden for the relief sought and for the above mentioned reasons, the Plaintiffs' petition for injunctive relief is DENIED. The Court further finds that no basis exists for the protective order for the reasons identified above. Therefore, that motion is DENIED. Finally, the Court finds that MCL 168.31a governs the audit process. The motion for an independent audit is DENIED.

It is so ordered.

This is not a final order and does not close the case.

November 13, 2020


Hon. Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

EXHIBIT 10

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Court of Appeals, State of Michigan

ORDER

Cheryl A Costantino v City of Detroit

Docket No. 355443

LC No. 20-014780-AW

Michael J. Riordan
Presiding Judge

Cynthia Diane Stephens

Anica Letica
Judges

The motion for immediate consideration is GRANTED.

The motion for peremptory reversal pursuant to MCR 7.211(C)(4) is DENIED for failure to persuade the Court of the existence of manifest error requiring reversal and warranting peremptory relief without argument or formal submission.

The application for leave to appeal is DENIED.


Presiding Judge

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A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

November 16, 2020
Date


Chief Clerk

EXHIBIT 11

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE OF MICHIGAN
COURT OF CLAIMS

DONALD J. TRUMP FOR PRESIDENT, INC.
and ERIC OSTEGREN,

OPINION AND ORDER

Plaintiffs,

v

Case No. 20-000225-MZ

JOCELYN BENSON, in her official capacity as
Secretary of State,

Hon. Cynthia Diane Stephens

Defendants.

_____ /

Pending before the Court are two motions. The first is plaintiffs' November 4, 2020 emergency motion for declaratory relief under MCR 2.605(D). For the reasons stated on the record and incorporated herein, the motion is DENIED. Also pending before the Court is the motion to intervene as a plaintiff filed by the Democratic National Committee. Because the relief requested by plaintiffs in this case will not issue, the Court DENIES as moot the motion to intervene.

According to the allegations in plaintiffs' complaint, plaintiff Eric Ostegren is a credentialed election challenger under MCL 168.730. Paragraph 2 of the complaint alleges that plaintiff Ostegren was "excluded from the counting board during the absent voter ballot review process." The complaint does not specify when, where, or by whom plaintiff was excluded. Nor does the complaint provide any details about why the alleged exclusion occurred.

The complaint contains allegations concerning absent voter ballot drop-boxes. Plaintiffs allege that state law requires that ballot containers must be monitored by video surveillance. Plaintiff contends that election challengers must be given an opportunity to observe video of ballot drop-boxes with referencing the provision(s) of the statute that purportedly grant such access, . See MCL 168.761d(4)(c).

Plaintiffs' emergency motion asks the Court to order all counting and processing of absentee ballots to cease until an "election inspector" from each political party is allowed to be present at every absent voter counting board, and asks that this court require the Secretary of State to order the immediate segregation of all ballots that are not being inspected and monitored as required by law. Plaintiffs argue that the Secretary of State's failure to act has undermined the rights of all Michigan voters. While the advocate at oral argument posited the prayer for relief as one to order "meaningful access" to the ballot tabulation process, plaintiffs have asked the Court to enter a preliminary injunction to enjoin the counting of ballots. A party requesting this "extraordinary and drastic use of judicial power" must convince the Court of the necessity of the relief based on the following factors:

(1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012).]

As stated on the record at the November 5, 2020 hearing, plaintiffs are not entitled to the extraordinary form of emergency relief they have requested.

I. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

A. OSTEGRÉN CLAIM

Plaintiff Ostegren avers that he was removed from an absent voter counting board. It is true that the Secretary of State has general supervisory control over the conduct of elections. See MCL 168.21; MCL 168.31. However, the day-to-day operation of an absent voter counting board is controlled by the pertinent city or township clerk. See MCL 168.764d. The complaint does not allege that the Secretary of State was a party to or had knowledge of, the alleged exclusion of plaintiff Ostegren from the unnamed absent voter counting board. Moreover, the Court notes that recent guidance from the Secretary of State, as was detailed in matter before this Court in *Carra et al v Benson et al*, Docket No. 20-000211-MZ, expressly advised local election officials to admit credentialed election challengers, provided that the challengers adhered to face-covering and social-distancing requirements. Thus, allegations regarding the purported conduct of an unknown local election official do not lend themselves to the issuance of a remedy against the Secretary of State.

B. CONNARN AFFIDAVIT

Plaintiffs have submitted what they refer to as “supplemental evidence” in support of their request for relief. The evidence consists of: (1) an affidavit from Jessica Connarn, a designated poll watcher; and (2) a photograph of a handwritten yellow sticky note. In her affidavit, Connarn avers that, when she was working as a poll watcher, she was contacted by an unnamed poll worker who was allegedly “being told by other hired poll workers at her table to change the date the ballot was received when entering ballots into the computer.” She avers that this unnamed poll worker later handed her a sticky note that says “entered receive date as 11/2/20 on 11/4/20.” Plaintiffs contend that this documentary evidence confirms that some unnamed persons engaged in

fraudulent activity in order to count invalid absent voter ballots that were received after election day.

This “supplemental evidence” is inadmissible as hearsay. The assertion that Connarn was informed by an unknown individual what “other hired poll workers at her table” had been told is inadmissible hearsay within hearsay, and plaintiffs have provided no hearsay exception for either level of hearsay that would warrant consideration of the evidence. See MRE 801(c). The note—which is vague and equivocal—is likewise hearsay. And again, plaintiffs have not presented an argument as to why the Court could consider the same, given the general prohibitions against hearsay evidence. See *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 105; 776 NW2d 114 (2009). Moreover, even overlooking the evidentiary issues, the Court notes that there are still no allegations implicating the Secretary of State’s general supervisory control over the conduct of elections. Rather, any alleged action would have been taken by some unknown individual at a polling location.

C. BALLOT BOX VIDEOS

It should be noted at the outset that the statute providing for video surveillance of drop boxes only applies to those boxes that were installed after October 1, 2020. See MCL 168.761d(2). There is no evidence in the record whether there are any boxes subject to this requirement, how many there are, or where they are. The plaintiffs have not cited any statutory authority that requires any video to be subject to review by election challengers. They have not presented this Court with any statute making the Secretary of State responsible for maintaining a database of such boxes. The clear language of the statute directs that “[t]he city or township clerk must use video monitoring of that drop box to ensure effective monitoring of that drop box.” MCL 168.761d(4)(c). Additionally, plaintiffs have not directed the Court’s attention to any authority directing the

Secretary of State to segregate the ballots that come from such drop-boxes, thereby undermining plaintiffs' request to have such ballots segregated from other ballots, and rendering it impossible for the Court to grant the requested relief against this defendant. Not only can the relief requested not issue against the Secretary of State, who is the only named defendant in this action, but the factual record does not support the relief requested. As a result, plaintiffs are unable to show a likelihood of success on the merits.

II. MOOTNESS

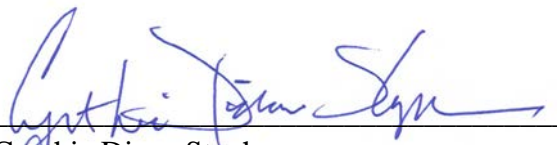
Moreover, even if the requested relief could issue against the Secretary of State, the Court notes that the complaint and emergency motion were not filed until approximately 4:00 p.m. on November 4, 2020—despite being announced to various media outlets much earlier in the day. By the time this action was filed, the votes had largely been counted, and the counting is now complete. Accordingly, and even assuming the requested relief were available against the Secretary of State—and overlooking the problems with the factual and evidentiary record noted above—the matter is now moot, as it is impossible to issue the requested relief. See *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018).

IT IS HEREBY ORDERED that plaintiff's November 4, 2020 emergency motion for declaratory judgment is DENIED.

IT IS HEREBY FURTHER ORDERED that proposed intervenor's motion to intervene is DENIED as MOOT.

This is not a final order and it does not resolve the last pending claim or close the case.

November 6, 2020



Cynthia Diane Stephens
Judge, Court of Claims

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EXHIBIT 12

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STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Sarah Stoddard and
Election Integrity Fund,

v

Hon. Timothy M. Kenny
Case No. 20-014604-CZ

City Election Commission of
The City of Detroit and
Janice Winfrey, in her official
Capacity as Detroit City Clerk and
Chairperson of the City Election
Commission, and
Wayne County Board of
Canvassers,

OPINION & ORDER

At a session of this Court
Held on: November 6, 2020
In the Coleman A. Young Municipal Center
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

Plaintiffs Sarah Stoddard and the Election Integrity Fund petition this Court for preliminary injunctive relief seeking:

1. Defendants be required to retain all original and duplicate ballots and poll books.
2. The Wayne County Board of Canvassers not certify the election results until both Republican and Democratic party inspectors compare the duplicate ballots with original ballots.
3. The Wayne County Board of Canvassers unseal all ballot containers and remove all duplicate and original ballots for comparison purposes.
4. The Court provide expedited discovery to plaintiffs, such as limited interrogatories and depositions.

When considering a petition for injunctive relief the Court must apply the following four-prong test:

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2d 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief "represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity" Id at 612 fn 135, quoting *Senior Accountants, Analysts & Appraisers Ass'n v. Detroit*, 218 Mich. App. 263, 269; 553 NW2d 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) indicates that the plaintiff bears the burden of proving the preliminary injunction should be granted.

Plaintiffs' pleadings do not persuade this Court that they are likely to prevail on the merits for several reasons. First, this Court believes plaintiffs misinterpret the required placement of major party inspectors at the absent voter counting board location. MCL 168.765a (10) states in part "At least one election inspector from each major political party must be present at the absent voter counting place..." While plaintiffs contends the statutory section mandates there be a Republican and Democratic inspector at each table inside the room, the statute does not identify this requirement. This Court believes the plain language of the statute requires there be election inspectors at the TCF Center facility, the site of the absentee counting effort.

Pursuant to MCL 168.73a the County chairs for Republican and Democratic parties were permitted and did submit names of absent voter counting board inspectors to the City of Detroit Clerk. Consistent with MCL 168.674, the Detroit City Clerk did make appointments of inspectors. Both Republican and Democratic inspectors were present throughout the absent voter counting board location.

An affidavit supplied by Lawrence Garcia, Corporation Counsel for the City of Detroit, indicated he was present throughout the time of the counting of absentee

ballots at the TCF Center. Mr. Garcia indicated there were always Republican and Democratic inspectors there at the location. He also indicated he was unaware of any unresolved counting activity problems.

By contrast, plaintiffs do not offer any affidavits or specific eyewitness evidence to substantiate their assertions. Plaintiffs merely assert in their verified complaint "Hundreds or thousands of ballots were duplicated solely by Democratic party inspectors and then counted." Plaintiffs' allegation is mere speculation.

Plaintiffs' pleadings do not set forth a cause of action. They seek discovery in hopes of finding facts to establish a cause of action. Since there is no cause of action, the injunctive relief remedy is unavailable. *Terlecki v Stewart*, 278 Mich. App. 644; 754 NW2d 899 (2008).

The Court must also consider whether plaintiffs will suffer irreparable harm. Irreparable harm requires "A particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction." *Michigan Coalition of State Employee Unions v Michigan Civil Service Commission*, 465 Mich. 212, 225; 634 NW2d 692, (2001).

In *Dunlap v City of Southfield*, 54 Mich. App. 398, 403; 221 NW2d 237 (1974), the Michigan Court of Appeals stated "An injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural."

In the present case, Plaintiffs allege that the preparation and submission of "duplicate ballots" for "false reads" without the presence of inspectors of both parties violates both state law, MCL 168.765a (10), and the Secretary of State election manual. However, Plaintiffs fail to identify the occurrence and scope of any alleged violation. The only "substantive" allegation appears in paragraph 15 of the First Amended Complaint, where Plaintiffs' allege "on information and belief" that hundreds or thousands of ballots have been impacted by this improper practice. Plaintiffs' Supplemental Motion fails to present any further specifics. In short, the motion is based upon speculation and conjecture. Absent any evidence of an improper practice, the Court cannot identify if this alleged violation occurred, and, if it did, the frequency of such violations. Consequently, Plaintiffs fail to move past mere apprehension of a future injury or to establish that a threatened injury is more than speculative or conjectural.

This Court finds that it is mere speculation by plaintiffs that hundreds or thousands of ballots have, in fact, been changed and presumably falsified. Even with this assertion, plaintiffs do have several other remedies available. Plaintiffs are entitled to bring their challenge to the Wayne County Board of Canvassers pursuant to MCL 168.801 *et seq.* and MCL 168.821 *et seq.* Additionally, plaintiffs can file for a recount of the vote if they believe the canvass of the votes suffers from fraud or mistake. MCL 168.865-168.868. Thus, this Court cannot conclude that plaintiffs would experience irreparable harm if a preliminary injunction were not issued.

Additionally, this Court must consider whether plaintiffs would be harmed more by the absence of injunctive relief than the defendants would be harmed with one.

If this Court denied plaintiffs' request for injunctive relief, the statutory ability to seek relief from the Wayne County Board of Canvassers (MCL 168.801 *et seq.* and MCL 168.821 *et seq.*) and also through a recount (MCL 168.865-868) would be available. By contrast, injunctive relief granted in this case could potentially delay the counting of ballots in this County and therefore in the state. Such delays could jeopardize Detroit's, Wayne County's, and Michigan's ability to certify the election. This in turn could impede the ability of Michigan's elector's to participate in the Electoral College.

Finally, the Court must consider the harm to the public interest. A delay in counting and finalizing the votes from the City of Detroit without any evidentiary basis for doing so, engenders a lack of confidence in the City of Detroit to conduct full and fair elections. The City of Detroit should not be harmed when there is no evidence to support accusations of voter fraud.

Clearly, every legitimate vote should be counted. Plaintiffs contend this has not been done in the 2020 Presidential election. However, plaintiffs have made only a claim but have offered no evidence to support their assertions. Plaintiffs are unable to meet their burden for the relief sought and for the above-mentioned reasons, the plaintiffs' petition for injunctive relief is denied.

It is so ordered.

November 6, 2020
Date


Hon. Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

EXHIBIT 13

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONALD J. TRUMP FOR
PRESIDENT, INC.

Plaintiffs,

v.

PHILADELPHIA COUNTY BOARD
OF ELECTIONS,

Defendant.

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Civ. No. 20-5533

ORDER

As stated during today's Emergency Injunction Hearing, in light of the Parties' agreement, Plaintiff's Motion (Doc. No. 1) is **DENIED without prejudice.**

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

EXHIBIT 14

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

e-Filed in Office
Tammie Mosley
Clerk of Superior Court
Chatham County
Date: 11/5/2020 12:17 PM
Reviewer: CM

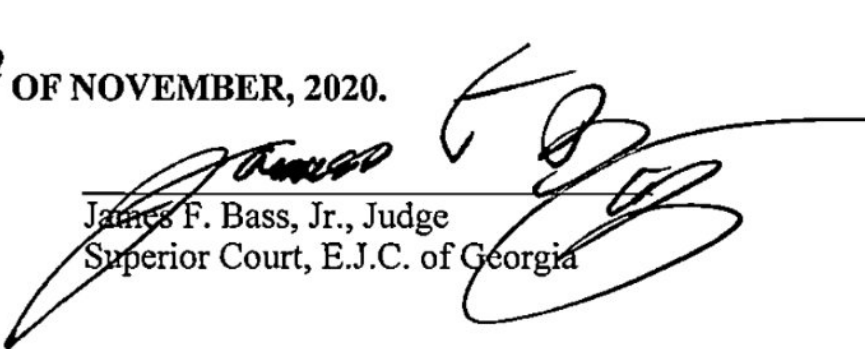
IN RE: ENFORCEMENT OF ELECTION :
LAWS AND SECURING BALLOTS :
CAST OR RECEIVED AFTER 7:00 P.M. : SPCV2000982-J3
ON NOVEMBER 3, 2020, :
:

ORDER ON PETITION TO COMMAND ENFORCEMENT
OF ELECTION LAWS

Before the Court is a Petition to Command Enforcement of Election Laws which was filed by the Georgia Republican Party and Donald J. Trump for President, Inc. The matter was heard via Webex on November 5, 2020. Having read and considered said petition, all argument and evidence of record, including the evidence presented at the hearing, and the applicable law, the Court finds that there is no evidence that the ballots referenced in the petition were received after 7:00 p.m. on election day, thereby making those ballots invalid. Additionally, there is no evidence that the Chatham County Board of Elections or the Chatham County Board of Registrars has failed to comply with the law.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above petition is **DISMISSED**.

SO ORDERED, THIS THE 5th DAY OF NOVEMBER, 2020.


James F. Bass, Jr., Judge
Superior Court, E.J.C. of Georgia

cc: All parties