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8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 REPUBLICAN NATIONAL COMMITTEE,)
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Petitioners,

vs.

CLARK COUNTY; CLARK COUNTY
ELECTION DEPARTMENT; and JOE P.
GLORIA, in his official capacity as the Clark
County Registrar of Voters,

Respondents.

Case No: A-22-858609-W
Dept No: 16

Date of Hearing: November 2, 2022
Time of Hearing: 9:05 a.m.

**CLARK COUNTY'S OPPOSITION TO PETITIONER'S MOTION TO LIFT STAY
AND APPLICATION FOR WRIT OF MANDAMUS OR INJUNCTION DIRECTING
THE CLARK COUNTY REGISTRAR TO COMPLY WITH NRS 293B.360(2) ON
ORDER SHORTENING TIME**

Respondents, CLARK COUNTY and JOE P. GLORIA, Clark County Registrar of
Voters by STEVEN B. WOLFSON, Clark County District Attorney, and through its attorney
LISA V. LOGSDON, County Counsel, hereby submit their Opposition to Petitioner's
Motion to Lift Stay and Application for Writ of Mandamus or Injunction Directing the Clark
County Registrar to Comply with NRS 293B.360(2) on Order Shortening Time.

This Opposition is made and based upon all papers, pleadings, and records on file

...
...

1 herein, the attached Memorandum of Points and Authorities, and any oral arguments allowed
2 at a hearing on this matter.

3 Dated this 31st day of October, 2022.

4 STEVEN B. WOLFSON
5 DISTRICT ATTORNEY

6 By: /s/ Lisa V. Logsdon
7 LISA V. LOGSDON
8 County Counsel
9 State Bar No. 011409
500 South Grand Central Pkwy. 5th Flr.
Las Vegas, Nevada 89155-2215
Attorney for Defendants

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. SUMMARY OF ARGUMENTS**

12 The Petitioner's Motion to Lift the Stay should be denied as the public records agreed
13 upon in the Stipulation and Order have been provided, as the Petitioner acknowledges on
14 page 2 line 3. Petitioner improperly seeks to lift the stay of a case regarding public records
15 so it can bring an entirely separate and unrelated complaint against Clark County. If the
16 Petitioner seeks to challenge an election law, Petitioner must file a new complaint. Clark
17 County respectfully request the Court to deny the Petitioner's motion to stay as improper as
18 Clark County has complied with the Stipulation and Order and provided the records
19 requested by the Petitioner.

20 Furthermore, if the Court wishes to entertain the Petitioner's improper writ of
21 mandamus or request for an injunction it shall be denied as NRS 293B.360 is discretionary
22 and not required by law. Pursuant to NRS 293.269937, Clark County uses employees to
23 verify the signatures on mail ballots not a special election board created pursuant to NRS
24 293B.360, therefore, Petitioner's request for the Court to order Clark County to comply with
25 a discretionary statute must fail.

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1 **II. PETITIONER’S MOTION TO LIFT STAY SHALL BE DENIED AS**
2 **CLARK COUNTY PROVIDED THE REQUESTED PUBLIC RECORDS**
3 **PURSUANT TO THE STIPULATION AND ORDER AND PETITIONER’S**
 MOTION AND WRIT OF MANDAMUS IS PROCEDURALLY
 IMPROPER.

4 On September 20, 2022, Petitioner filed a Petition for Writ of Mandamus and
5 Application Compelling Disclosure of Public Records Pursuant to NRS 293.011. On
6 October 5, 2022, the parties entered into a Stipulation and Order regarding the requested
7 records. Clark County provided the requested records pursuant to the Stipulation and Order.
8 Now, Petitioner seeks to bring a new cause of action against Clark County by seeking relief
9 of this Court to lift the stay and to have this Court consider essentially an entire new Writ of
10 Mandamus or grant an injunction against Clark County. Petitioner brought its original
11 petition pursuant to NRS 239.011, which provides for extraordinary relief regarding public
12 records disclosures. NRS 239.011 gives priority to public records disputes over other civil
13 matters. NRS 239.011 does not allow a Petitioner to add or amend its Petition to bring
14 claims unrelated to the disclosure of public records.

15 The Petitioner’s assertion that substantive claims can be joined with a NPRA (Nevada
16 Public Records Act) or FOIA (Freedom of Information Act) action is a misrepresentation of
17 the applicable law. The assertion stems from the provisions of Nevada Rules of Civil
18 Procedure or the Federal Rules of Civil Procedure 15(d) which state: on a motion and
19 reasonable notice, the court may, on just terms, permit a party to serve supplemental
20 pleading setting out any transaction, occurrence or event that happened after the date of the
21 pleading to be supplemented. The court may permit supplementation even though the
22 original pleading is defective in stating a claim or defense. The court may order that the
23 opposing party plead to the supplemental pleading within a specified period. Here, the
24 Petitioner has provided no motion pursuant to NRCP 15(d) and the Petitioner’s footnote on
25 page 11 is essentially an admission that this Motion is improper, and acknowledgment that a
26 separate lawsuit is required.

27 Even, if the Petitioner’s request was procedurally proper it must still be denied. The
28 Petitioner cites to *Powell v. Internal Revenue Service*, 263 F.Supp. 3d, 5, 7 (D.D.C. 2017),

1 in support of its argument. Aside from being non-controlling, non-mandatory authority,
2 Petitioner fails to establish how its new claim regarding failure to comply with NRS
3 293B.360 relates to its original claim for the disclosure of public records. The initial petition
4 was to acquire records under the Nevada Public Records Act (NRS 239.011). Here,
5 Petitioner seeks to add claims under inapplicable Nevada’s election laws (NRS 293B). The
6 only relationship between the two is the fact that the records requested related to election
7 workers. The Petitioner’s Motion to Lift Stay is improper and procedurally deficient and
8 should be denied.

9 III. LEGAL ARGUMENTS

10 A. NRS 293B.360 Is Discretionary and not Required by Law.

11 Even the Court chooses to entertain the Petitioner’s Motion and improper Writ of
12 Mandamus regarding Clark County’s alleged violation of NRS 293B.360, the Petitioners
13 request for “equal representation” fails as such a special election board is not required by law
14 nor has the Clark County Registrar appointed members to such a board. Petitioner
15 incorrectly asserts (1) that Clark County has created a special election board under NRS
16 293B.360 and (2) that if Clark County has not created such a special election board then
17 Clark County has no authority to process mail ballots and verify the signatures on mail
18 ballots. Both assertions are false.

19 NRS 293.269927, which specifically addresses the requirements for the verification
20 of signatures on mail ballots, states that when a mail ballot is returned by or on behalf of a
21 voter to the county clerk and a record of its return is made in the mail ballot record for the
22 election, the *clerk or an employee of the office of the clerk* shall check the signature used
23 for the mail ballot by electronic means pursuant to subsection 2 or manually pursuant to
24 subsection 3.¹ Clark County has elected to use electronic means to check the signature on
25 returned mail ballots. In accordance with subsection 2 of NRS 293.269927, the electronic
26 device takes a digital image of the signature used on the mail ballot and compares the digital
27 image with the signatures of the voter from his or her application to register to vote or

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¹ County clerk is synonymous with registrar of voters in Clark County. NRS 293.044

1 application to preregister to vote. If the electronic device does not match the signature of the
2 voter, the signature shall be reviewed manually pursuant to subsection 3.

3 Subsection 3 of NRS 293.269927 states, the *clerk or employee* shall check the signature used
4 for the mail ballot against all signatures of the voter available in the records of the clerk.

5 This section does not require the county clerk to establish a “special election board” pursuant
6 to NRS 293B.360, but instead requires the *county clerk or an employee* of the county clerk

7 to manually verify the voter’s signature. In accordance with NRS 293.269927, Clark County
8 Registrar of Voters uses his employees to manually verify mail ballots and did not elect to

9 appoint a special election board pursuant to NRS 293B.360. The Registrar of Voters has

10 hired temporary workers from multiple employment agencies to assist in conducting the

11 2022 general election. The Petitioner claims that the registrar’s has “punted” his statutory

12 duty by using temporary employment agencies to hire temporary employees for the election.

13 Nothing can be further from the truth. The Registrar has three different temporary

14 employment agencies on contract to ensure that he can hire the appropriate number of

15 employees for the election. While hiring has been difficult for all employers across the

16 country, the Registrar has hired enough employees to conduct the election. Even though

17 Clark County informed the Petitioner that Clark County was using three different temporary

18 employment agencies, the Petitioner provided a list of 250 Republicans who supposedly

19 “applied” to the County, even though the County did not have an application process for this

20 position. Clark County cannot verify if these individuals are even registered voters from the

21 information that was provided. The Petitioner’s Motion and request for Writ of Mandamus

22 must be denied as NRS 293B.360 is discretionary and not required by law.

23 **B. Petitioner Fails to Show any Harm as Workers Manually Verifying a Voter’s**
24 **Signature Have no Ability to Know the Voter’s Political Affiliation.**

25 For the Court to grant an injunction, the Petitioner must demonstrate that a

26 “reasonable probability that real injury will occur in the injunction is not issued. *See NRS*

27 *33.010; Boulder Oaks Community Assoc. v. B & J Andrews Enterprises, LLC, 125 Nev. 397,*

28 *403, 215 P.3d 27, 31 (Nev. 2009).* While the Petitioner would have this Court believe that

1 having fewer Republicans work in the manual signature verification room than Democrats
2 somehow leads to the improper approval of mail ballot signatures, erroneous rejection of
3 mail ballot signatures, or both is ridiculous and does not support any reasonable probability
4 that a real injury will occur. The Petitioner is choosing to ignore that when a worker reviews
5 the digital image of the voter's mail ballot signature on the returned mail ballot against all
6 signatures of voter available in the records of the clerk, the worker does not know the
7 political party affiliation of the voter's signature being reviewed. Additionally, as stated
8 above, equal party representation is not required of employees that manually verify
9 signatures pursuant to NRS 293.269927. If the Legislature required equal representation as
10 alleged by the Petitioner, it would have enacted such a statutory requirement. Lastly, even
11 if, NRS 293B.360 applied to employees employed to manually verify mail ballot signatures,
12 the Petitioner has failed to show any irreparable harm from Clark County's employing fewer
13 Republicans than other political parties or that the representation is not as equally as
14 possible.

15 **C. Clark County Took Actions to Increase Republican Employees for**
16 **Manual Signature Verification.**

17 As stated above, Clark County contracted with three separate temporary employment
18 agencies to provide employees during the election. Clark County uses the employees hired
19 by the employment agencies to fill positions at the election warehouse, which includes the
20 processing of mail ballots. In addition to the employees required to process mail ballots,
21 Clark County also does its own separate recruitment for workers to work the over 100
22 election day vote centers and early voting locations. While the Petitioner believes that hiring,
23 training and scheduling thousands of employees is a simple task, Clark County works
24 especially hard and diligently to provide equal assignment of election tasks among the
25 available employees. In Clark County the political party breakdown is appropriately 35.47%
26 Democrats, 25.84% Republican, 31.07% nonpartisan and 7.62% other.

27 On October 18, 2022, before the processing of mail ballot started, Clark County had
28 employees with the following political party affiliation assigned to work the manual

1 signature verification room: 23 Democrats (35%), 8 Republicans (12%) and 33 (51%)
2 Nonpartisan workers for a total of 64 employees. In light of Petitioner’s letter received on
3 Tuesday, October 25, 2022 at 6:14 p.m., Clark County, in good faith, by Thursday, October
4 26, 2022, before the Petitioner’s filing of this Motion, was able to recruit additional
5 employees and had 6 additional Republicans trained on Friday, October 28, 2022 and
6 scheduled to work on Saturday, October 29, 2022.

7 As with any employer and employee relationship there are circumstances that arise
8 that require changes to work schedules. Election employees are no different. There are
9 circumstances beyond the control of Clark County regarding the availability to employees.
10 On Saturday, October 29, 2022, the breakdown of employees assigned to the manual
11 signature verification room was: 20 Democrats (36%); 12 Republicans (21%) and 23
12 Nonpartisan (41%). At the time of this filing (Monday, October 31, 2022) the current
13 breakdown of employees assigned to the manual verification room are: 10 Democrats (25%),
14 12 Republicans (30%) and 18 Nonpartisan (45%) workers.² While “equal representation”
15 may be the Petitioner’s desire, Nevada law does not require the Registrar of Voters to have
16 “equal party representation.” Clark County and the Registrar of Voter has complied with
17 Nevada law and taken additional steps in good faith to address Petitioner’s concerns
18 regarding the employment of employees to manually verify mail ballot signatures.
19 Petitioner’s motion and improper writ shall be denied as Petitioner’s fail any legal basis for
20 its requested relief.

21 **IV. CONCLUSION**

22 Based on the foregoing, Respondents Clark County and Clark County Registrar Joe P.
23 Gloria request the Court deny Petitioner’s Motion to Lift Stay and also deny the Petitioner’s
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² It is important to note this breakdown is subject to change for various employee related reasons.

1 improper Application for Writ of Mandamus or Injunction Directing the Clark County
2 Registrar to Comply with NRS 293B.360(2) on Order Shortening Time.

3 Dated this 31st day of October, 2022.

4 STEVEN B. WOLFSON
5 DISTRICT ATTORNEY

6 By: /s/ Lisa V. Logsdon
7 LISA V. LOGSDON
8 County Counsel
9 State Bar No. 011409
500 South Grand Central Pkwy. 5th Flr.
Las Vegas, Nevada 89155-2215
Attorney for Defendants

10 **CERTIFICATE OF ELECTRONIC SERVICE**

11 I hereby certify that I am an employee of the Office of the Clark County District
12 Attorney and that on this 31st day of October, 2022, I served a true and correct copy of the
13 foregoing **Clark County's Opposition to Petitioner's Motion to Lift Stay and**
14 **Application for Writ Of Mandamus or Injunction Directing the Clark County**
15 **Registrar to Comply With NRS 293B.360(2) on Order Shortening Time** (United States
16 District Court Pacer System or the Eighth Judicial District Wiznet), by e-mailing the same to
17 the following recipients. Service of the foregoing document by e-mail is in place of service
18 via the United States Postal Service.

19 Jordan T. Smith
20 PISANELLI BICE PLLC
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21 *Attorney for Plaintiff*
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22
23 /s/ Afeni Banks
24 An Employee of the Clark County District
Attorney's Office – Civil Division