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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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Case No.: A-22-858609-W
Dept. No.: XVI

**FIRST AMENDED PETITION FOR WRIT
OF MANDAMUS AND APPLICATION
COMPELLING DISCLOSURE OF PUBLIC
RECORDS PURSUANT TO NRS 239.011**

Exempt from Arbitration

- Action Presenting a Significant Issue of Public Policy
- Action Seeking Equitable or Extraordinary Relief
- Action Presents Unusual Circumstances that Constitute Good Cause for Removal from Arbitration Program
- Action for Declaratory Relief

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

Petitioner the Republican National Committee hereby submits this Application and Petition for a Writ of Mandamus to compel disclosure of public records pursuant to NRS 239.011 against Respondents Clark County, Clark County Election Department, and Joe P. Gloria in his official capacity as Clark County Registrar of Voters (together "Respondents") as follows:

NATURE OF THE CASE

1. Nevada election law requires that "registered voters appointed as election board officers for any polling place" – commonly referred to as poll workers – "must not all be of the same political party." NRS 293.217(1). To verify Respondents' compliance with this provision, Petitioner served an NRS Chapter 239 Nevada Public Records Act ("NPRA") request seeking information about the partisan breakdown and political affiliation of Clark County's poll workers.

1 Like other government employees, poll workers are paid with taxpayer funds. Poll workers are also
2 public facing at election sites around Clark County during early voting and on Election Day. Thus,
3 information about poll workers is not confidential, and the requested information is presumptively
4 open to public inspection under the NPRA.

5 2. Even though it had no obligation to do so, Petitioner offered to treat this information
6 as "attorneys' eyes only" to alleviate any privacy concerns that may legitimately exist. Although
7 Petitioner repeatedly offered to reach a mutually acceptable accommodation for this information,
8 Respondents completely refused to produce *any* documents to allow Petitioner – and the public
9 generally – to confirm that Clark County is hiring poll workers that are representative of Nevada's
10 political parties as NRS 293.217 mandates.

11 3. The purpose of the NPRA is "to foster democratic principles by providing members
12 of the public with prompt access to inspect, copy or receive a copy of public books and records to
13 the extent permitted by law." NRS 239.001. The need to promote transparency and democratic
14 principles is especially acute in the election context.

15 4. Respondents' denial of Petitioner's public records request frustrates the public's
16 interests in open government and in ensuring a fair, transparent, and controversy-free election.

17 5. Accordingly, the Court should grant Petitioner's Application and issue a writ of
18 mandamus ordering Respondents to immediately produce public records containing verifiable
19 information about poll workers' party identification/affiliation.

20 THE PARTIES

21 6. Petitioner the Republican National Committee ("RNC") is the official national
22 political committee for the Republican Party. The RNC manages the party's business at the national
23 level, including development and promotion of the Party's national platform and fundraising and
24 election strategies; supports Republican candidates for public office at all levels across the country
25 including those on the ballot in Nevada; and assists state parties throughout the country, including
26 the Nevada Republican Party, to educate, mobilize, assist, and turn out voters. The RNC made
27 significant contributions and expenditures in support of Republican candidates up and down the
28 ballot and in mobilizing and educating voters in Nevada in past election cycles and is doing so again

1 in 2022. It brings this Application and Petition on behalf of itself, its voters, its candidates, and the
2 elected officials with whom it associates.

3 7. Respondent Clark County is a political subdivision of the State of Nevada and
4 subject to the NPRA. *See* NRS 239.005(2); NRS 239.005(5)(b).

5 8. Respondent Clark County Election Department is an agency, division, or department
6 of Clark County and subject to the NPRA. *See* NRS 239.005(2); NRS 239.005(5)(b).

7 9. Respondent Joe P. Gloria ("Gloria") is a resident of Clark County, Nevada and is the
8 Clark County Registrar of Voters. Gloria is the head of the Clark County Election Department and
9 is subject to the NPRA. *See* NRS 239.005(2); NRS 239.005(5)(a).

10 JURISDICTION AND VENUE

11 10. A writ of mandamus is the appropriate means for pursuing the disclosure of public
12 records pursuant to NRS 239.011. *City of Sparks v. Reno Newspapers, Inc.*, 133 Nev. 398, 399,
13 399 P.3d 352, 355 (2017) (collecting cases).

14 11. This Court has jurisdiction to issue writs of mandamus under Article 6, Section 6 of
15 the Nevada Constitution and NRS 34.160.

16 12. This Court has jurisdiction and venue pursuant to NRS 239.011(1) because
17 Clark County, Nevada is the county where all requested records are located.

18 STANDING

19 13. Petitioner has standing to pursue this expedited application and writ of mandamus
20 because the public records it requested from Respondents, through counsel, have been denied and
21 willfully withheld. *See* NRS 239.011; NRS 239.340.

22 GENERAL ALLEGATIONS AND STATEMENT OF FACTS

23 **A. Political Parties are Entitled to Fair Representation Among Poll Workers.**

24 14. The county clerk or registrar of each county is responsible for appointing election
25 board officers for the various polling places in the county. NRS 293.217(1).

26 15. Poll workers are a type of election board officer. They are hired, trained, and paid
27 for by Clark County with public funds. Poll workers perform various important functions at polling
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1 locations during early voting and on Election Day. Poll workers are also staffed at ballot processing
2 facilities.

3 16. Because of the central role that they play in elections, NRS 293.217(1) requires that
4 "[t]he registered voters appointed as [poll workers] for any polling place must not all be of the same
5 political party."

6 17. NRS 293.217 mandates that political parties receive proportional representation
7 among poll workers. The statute is a mechanism to ensure election processes are followed fairly. A
8 balanced poll-worker work force decreases the chances of real or perceived improprieties and
9 increases confidence in the electoral system.

10 **B. The RNC Sends an NPRA Request for Information About Poll Workers But is**
11 **Unlawfully Denied.**

12 18. As part of its obligation to its voters, candidates, and officeholders, the RNC has
13 made many efforts to obtain information about – and make improvements in – Clark County's
14 election processes.

15 19. In July 2022, the RNC's counsel met in person with Gloria and his counsel to debrief
16 about the June primary election and to discuss issues related to the upcoming 2022 general election.
17 Among the issues discussed was the partisan percentage of poll workers in light of NRS 293.217's
18 requirements. Despite the statutory requirements, Gloria declined to provide this information,
19 expressing privacy concerns about releasing anything that would allow the RNC or the public to
20 verify that Clark County's poll workers will be representative of the political parties.

21 20. Notwithstanding his initial concerns, Gloria and his counsel invited the RNC to send
22 a formal public records request for their consideration.

23 21. On August 5, 2022, the RNC, through its counsel, sent an NPRA request to
24 Respondents asking for a number of public records. Request 21 asked Respondents to "[p]roduce
25 the full name, title/position, and political party affiliation/registration of all poll workers employed
26 in the 2022 primary election and those hired for the 2022 election." ("NPRA Request"). Even
27 though there is no legal requirement to do so, the RNC offered to treat information responsive to
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1 the NPRA Request as "attorneys' eyes only" to address the privacy concerns Gloria raised at the
2 July meeting.

3 22. In full, the NPRA Request states:

4 Produce the full name, title/position, and political party affiliation/registration
5 of all poll workers employed in the 2022 primary election and those hired for the
6 2022 general election. As we previously agreed at our July 26, 2022 meeting, the
7 identity of all government workers is public information. However, given the
8 privacy concerns you expressed, we will agree to keep the information produced in
9 response to this Request No. 21 as "attorneys' eyes only" and will agree not to
10 disseminate it beyond counsel in an effort to expedite obtaining this information.

11 23. The requested documents constitute public records within the meaning of
12 NRS Chapter 239.

13 24. The RNC did not request – and does not seek – any other personal identifying
14 information other than the poll workers' names and party affiliation. Any other information may be
15 redacted.

16 25. Respondents generically responded to all of the RNC's requests via email on
17 August 11, 2022, stating that "it [was] anticipated [that] some of the records will be available by
18 September 1, 2022, but based on the numerous request[s] it is anticipated that some requests may
19 take longer." Respondents did not assert any objection or concerns about confidentiality or privacy
20 in this response.

21 26. If Respondents contended that the NPRA Request implicated confidential
22 information, NRS 239.0107(1)(d) required them to respond in writing by the fifth day after the
23 request providing notice of that fact *and* "[a] citation to the specific statute or other legal authority
24 that makes the public book or record, or a part thereof, confidential." However, Respondents made
25 no such objection in their August 11, 2022, response.

26 27. On August 17, 2022, Respondents began producing documents on a rolling basis for
27 other categories of the RNC's requests but not for the subject NPRA Request. Respondents
28 indicated that "the County will be releasing documents as they become available."

29 28. Two weeks later, on August 31, 2022, Respondents emailed RNC's counsel stating,
30 "As previously indicated, the election department will not be providing a list of the people that
31 worked or will work the primary and general 2022 elections due to election security."

1 "must be construed liberally to carry out this important purpose." NRS 239.001(2). Courts
2 "presume that the requested public records must be disclosed unless the governmental entity
3 demonstrates that either (1) the records are confidential by law or (2) the balance of interests
4 weighs against disclosure." *Dep't of Emp., Training & Rehab., Emp. Sec. Div.*, 136 Nev. at 100,
5 460 P.3d at 21.

6 36. However, "[a]ny exemption, exception or balancing of interests which limits or
7 restricts access to public books and records by members of the public must be construed narrowly."
8 NRS 239.001(3). The government entity resisting disclosure "has the burden of proving by a
9 preponderance of the evidence that the public book or record, or a part thereof, is confidential."
10 NRS 239.0113.

11 37. Here, the RNC served an NPRA request asking for "the full name, title/position, and
12 political party affiliation/registration of all poll workers employed in the 2022 primary election and
13 those hired for the 2022 election." The requested public records are presumptively public and
14 available for production and inspection. The RNC's request is in the spirit of cultivating democratic
15 principles and government accountability. *See* NRS 239.001(1); *Nevada Independent*,
16 138 Nev. Adv. Op. 15, 506 P.3d at 1039.

17 38. Nonetheless, Respondents have willfully refused to provide any documents
18 responsive to the RNC's NPRA Request without identifying any express statutory provision
19 deeming information about election poll workers confidential and exempt from disclosure. Rather,
20 Respondents rely on the balancing test set forth in *Las Vegas Metropolitan Police Department v.*
21 *Las Vegas Review-Journal*, 136 Nev. 733, 478 P.3d 383 (2020).

22 39. *LVMPD* is plainly distinguishable, and Respondents' position conflicts with other
23 express statutes in NRS Chapter 239 as well as other Nevada Supreme Court authority.

24 40. In *LVMPD*, the Las Vegas Review-Journal submitted an NPRA request for certain
25 information related to Las Vegas Metropolitan Police Department's ("Metro") sex-trafficking cases,
26 including the officers' names, badge numbers, and unit assignments. 136 Nev. at 734, 478 P.3d
27 at 385. Metro partially responded with the officers' names and badge numbers but refused to
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1 disclose the officers' unit assignments due to concerns that it might reveal the identities of
2 undercover officers and jeopardize officer safety. *Id.* at 734, 478 P.3d at 385-86.

3 41. The Review-Journal filed a petition for writ of mandamus and the district court
4 partially granted it. *Id.* at 734-35, 478 P.3d 383, 385-86 (2020). The district court applied a
5 balancing test and explained that Metro's evidence was too speculative to rebut the presumption of
6 access and the records did not implicate any cognizable privacy concerns "***because Metro's officers***
7 ***are public employees who necessarily interact with the public and the community.***" *Id.* at 735,
8 478 P.3d at 386 (emphasis added).

9 42. Metro appealed, and the Nevada Supreme Court applied the two-part *CCSD*
10 balancing test for personal privacy claims. Under this test, "the government must establish that
11 disclosure would intrude on a personal privacy interest that is nontrivial or that rises above the
12 de minimis level." *Id.* at 737, 478 P.3d at 387. If the government's burden is met, "the burden shifts
13 to the requesting party to show that disclosure is likely to advance a significant public interest." *Id.*

14 43. While concluding that government employees, like police officers, have nontrivial
15 privacy interests in avoiding harassment, the Nevada Supreme Court observed that "***Metro ha[d]***
16 ***already released not only its officers' names, but also their badge numbers.*** Metro is only
17 objecting to disclosure of its officers' unit assignments." *Id.* at 740, 478 P.3d at 389
18 (emphasis added). The Court treated unit assignments differently from merely releasing names
19 because "[t]hat information is not released on a regular basis and could lead to invasions of privacy
20 ***even if the disclosure of names alone would not.***" *Id.* at 100, 460 P.3d at 21 (emphasis added). The
21 Court remanded for consideration of the second "public interest prong." *Id.*

22 44. Unlike *LVMPD*, Respondents are even refusing to release the names and party
23 affiliations of the publicly-hired and publicly-paid poll workers to confirm compliance with
24 NRS 293.217. Merely disclosing the poll workers' names and party affiliations – without (for
25 example) the individuals' addresses, phone numbers, or other contact information – does not
26 implicate anything more than nontrivial privacy interests and does not create any realistic risk of
27 harassment or other stigmatization. After all, the names (and sometimes salaries) of government
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1 workers are public information and often listed online. And, the poll workers and their names will
2 be visible to the public throughout the voting process at polling locations.

3 45. Poll workers are not hidden, and Respondents have not traditionally shielded the
4 poll workers from public view. Indeed, NRS 293.269931(1) requires that "[t]he counting procedure
5 must be public" and NAC 293.245(6) provides the public with a right of "meaningful observation"
6 at polling places. Respondents' proffered anxieties about the prospect of harassment do not rise
7 above the speculative level. *See Clark Cnty. Sch. Dist. v. Las Vegas Rev.-J.*, 134 Nev. 700, 706,
8 429 P.3d 313, 319 (2018) ("A government entity cannot meet its burden for preventing disclosure
9 by voicing non-particularized hypothetical concerns.") (quotations omitted). The NPRA Request is
10 aimed solely at ensuring that Respondents are complying with their statutory obligations under
11 election law to have a partisan balance among poll workers.

12 46. Moreover, Respondents' legitimate concerns, if any, are mitigated by the RNC's
13 continued offers to treat this information as "attorneys' eyes only."

14 47. The NPRA itself designates names and identifying information confidential and
15 protected from disclosure in only two limited circumstances. NRS 239.0105 states that "records
16 contain[ing] the *name*, address, telephone number or *other identifying information of a natural*
17 *person*" "are confidential and not public books or records within the meaning of NRS 239.010 *if*"
18 the information is contained within the records "for the purposes of: (1) [r]egistering with or
19 applying to the local governmental entity for the use of any recreational facility or portion thereof
20 that the local governmental entity offers for use through the acceptance of reservations; or (2) [o]n
21 his or her own behalf or on behalf of a minor child, registering or enrolling with or applying to the
22 local governmental entity for participation in an instructional or recreational activity or event
23 conducted, operated or sponsored by the local governmental entity." (Emphases added.)

24 48. Neither of these limitations on the disclosure of "names" and "other identifying
25 information" apply here, and their express statutory inclusion in NRS Chapter 239 prohibits the
26 judicial creation of new confidentiality exemptions for the names of natural persons that do not fall
27 within NRS 239.0105. *See Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) ("The
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1 maxim 'expressio Unius Est Exclusio Alterius', the expression of one thing is the exclusion of
2 another, has been repeatedly confirmed in this State.").

3 49. When the Legislature wants to shield the identities of certain individuals from
4 disclosure under the NPRA, it does so explicitly. For instance, in *City of Sparks v.*
5 *Reno Newspapers, Inc.*, 133 Nev. 398, 399, 399 P.3d 352, 354 (2017), the Reno Gazette-Journal
6 filed a petition for mandamus demanding the unredacted disclosure of the identities of individuals
7 holding business licenses for medical marijuana establishments. The Nevada Supreme Court found
8 that the information was exempt from disclosure because a specific statute provided the "power to
9 withhold identifying information of certain persons" and the information requested had "been
10 expressly and unequivocally deemed confidential [and] thus, exempt from disclosure." *Id.* at 398,
11 405, 399 P.3d at 358.

12 50. The Legislature has not specifically designated poll worker names and party
13 affiliation as confidential and beyond public inspection. *Cf.* NRS 293.906-NRS 293.914.

14 51. Respondents failed to identify any nontrivial interest in nondisclosure, particularly
15 in an area of paramount public interest like election operations. Therefore, Respondents have not
16 rebutted the presumption that the RNC's requested documents are open to public inspection or
17 shown that interests in non-disclosure clearly outweigh the public's right of access. *LVMPD*,
18 136 Nev. at 735, 478 P.3d at 386.

19 52. Even if Respondents could show a nontrivial interest to withhold the requested
20 information – and they cannot – disclosing the RNC's requested information will significantly
21 advance public interests. *See id.* at 737, 478 P.3d at 387. NRS 293.217(1) provides that "[t]he
22 registered voters appointed as election board officers for any polling place must not all be of the
23 same political party." This provision ensures that poll workers are representative of the political
24 parties to decrease real or perceived favoritism by the government and to minimize the chances of
25 any improprieties.

26 53. Party representation among poll workers is a vital component of a fair and
27 transparent election. The public cannot know whether Respondents are complying with their
28 statutory obligation without disclosure of the requested information and, as a result, cannot be

1 certain that no irregularities will occur. Thus, a significant public interest is implicated, and the
2 information must be produced.

3 **FIRST CLAIM FOR RELIEF**

4 **(Writ of Mandamus/Application for Order Compelling Disclosure under NRS 293.011)**

5 54. Petitioner repeats and realleges the allegations set forth above as though fully set
6 forth herein.

7 55. On August 5, 2022, Petitioner submitted to Respondents an NPRA public records
8 request asking them to "[p]roduce the full name, title/position, and political party
9 affiliation/registration of all poll workers employed in the 2022 primary election and those hired
10 for the 2022 election."

11 56. The documents requested are public records and available to Respondents to
12 disclose to Petitioner, if Respondents desired. Under NRS Chapter 239, Respondents have a duty
13 resulting from their office, trust or station to produce them for inspection and copying.
14 *See* NRS 34.160.

15 57. On August 31, 2022, Respondents denied Petitioner's NPRA Request without citing
16 any statute or other legal authority that makes the requested records confidential or exempt.

17 58. Respondents have rejected Petitioner's many attempts at compromise to obtain the
18 information.

19 59. There is no statutory or common law exemption prohibiting disclosure of the names
20 and party affiliation of poll workers who play an important role in our voting process. Respondents
21 failed to establish that disclosure would intrude on a personal privacy interest that is nontrivial or
22 rises above the de minimis level.

23 60. Petitioner's request advances significant public interests to make certain that
24 Respondents are conducting elections openly and fairly in accordance with the law. *See*
25 Nev. Const. art. II, § 1A(2) (a voter has a right "[t]o have questions concerning voting procedures
26 answered and to have an explanation of the procedures for voting posted in a conspicuous place at
27 the polling place.").

28

1 *The members of each board must represent all political parties as equally as*
2 *possible.*" (Emphasis added.)

3 69. The signature verification board plays a pivotal role in universal mail-in voting
4 elections.

5 70. The signature verification board qualifies as a "mail ballot inspection board" under
6 NRS 293B.360(1)(b) or an "additional board . . . the county clerk deem[ed] necessary for the
7 expeditious processing of ballots" under NRS 293B.360(1)(e). Thus, the members of this board
8 "must represent all political parties as equally as possible."

9 71. Respondents took no affirmative steps to comply with NRS 293B.360(2). Instead,
10 Respondents outsourced their statutory obligation to third-party temporary hire agencies.

11 72. Petitioner made many good faith efforts to remedy the Registrar's violation of
12 NRS 293B.360(2), but the Registrar refused.

13 73. On account of the foregoing, an actual and justiciable controversy exists between
14 and among the parties regarding their respective rights, status or other legal relations under
15 NRS 293B.360(2).

16 74. Petitioner therefore seeks a declaratory judgment that Respondents are not in
17 compliance with their legal obligations under the above-cited statute. *See* NRS 30.040.

18 75. In addition to declaratory relief, Petitioner is entitled to a writ of mandamus and/or
19 mandatory injunction compelling Respondents to comply with NRS 293B.360(2).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner prays for relief as follows:

22 1. For the Court to give this matter priority over other civil matters to which priority is
23 not given by other statutes and decide this matter expeditiously as required by NRS 239.011(2);

24 2. For a writ of mandamus compelling Respondents to produce the public records for
25 inspection and copying as set forth herein;

26 3. For an order granting this Application and directing Respondents to allow Petitioner
27 to inspect and copy the public records as set forth herein;

28 4. For a writ of mandamus compelling Respondents to comply with NRS 293B.360(2);

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- 5. For any necessary injunctive or declaratory remedies related to Petitioner's relief;
- 6. For the civil penalties authorized by NRS 239.340;
- 7. For an award of reasonable costs and attorneys' fees as provided by law; and
- 8. Any additional relief this Court deems just, proper, and equitable.

DATED this 1st day of November, 2022.

PISANELLI BICE PLLC

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Attorneys for Petitioner

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 1st day of November, 2022, I caused to be served via the Court's CM/ECF website true and correct copies of the above and foregoing **FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND APPLICATION COMPELLING DISCLOSURE OF PUBLIC RECORDS PURSUANT TO NRS 239.011** to all parties registered for service.

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