

IN THE SUPREME COURT OF THE STATE OF NEVADA

AMERICAN CIVIL LIBERTIES
UNION OF NEVADA, a domestic
nonprofit corporation; and
STEVEN BACUS, an individual,

Petitioners,

vs.

THE COUNTY OF NYE, a
governmental entity; and MARK
KAMPF, in his official capacity as
interim County Clerk,

Respondents.

Case No.:

Electronically Filed
Oct 17 2022 09:14 AM
Elizabeth A. Brown
Clerk of Supreme Court

**EMERGENCY PETITION FOR WRIT OF MANDAMUS
PURSUANT TO NRAP 21(a)(6)**

IMMEDIATE ACTION REQUESTED BY OCTOBER 21, 2022

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NRAP 26.1 DISCLOSURE

In accordance with NRAP 26.1, the undersigned counsel of record for Plaintiff ACLU of Nevada certifies that there are no known interested parties other than the named Plaintiffs, and that there are no remaining undisclosed parties or individuals that must be disclosed pursuant the NRAP 26.1.

AMERICAN CIVIL LIBERTIES UNION OF NEVADA

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ROUTING STATEMENT

This case is presumptively retained by the Supreme Court as it presents issues involving ballot or election questions. *See* NRAP 17(a)(2). Additionally, it raises questions of statewide public importance—(1) whether the verbal announcement of a selected candidate for each race from each ballot prior to the close of polls on election day, in the presence of the public, will result in the release of election results impacting local, state, and national elections in violation of state law; (2) whether the limiting access to touch screens complying with the Americans with Disabilities Act to individuals with “special needs” violates the Help America Vote Act (HAVA) and Article 2, Section 1A of the Nevada Constitution by impermissibly authorizing election workers to enquire about a voter’s disability or turn away otherwise eligible voters based on arbitrary decision-making thereby preventing them from voting in local, state, and national elections; and (3) whether Nye County’s proposed use of “stringent signature verifications” impermissibly prevents voters from proving their identity using methods described in NRS 293.285, NRS 293.8874, and NRS 293.277 and would ultimately invalidate their ballot or prevent them

from voting in local, state, and national elections. See NRAP 17(a)(12).

A writ of mandamus may be issued by the court “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person,” when there is no plain, speedy, and adequate remedy in the ordinary course.¹ The court will generally exercise its discretion to consider an extraordinary writ where an important legal issue that needs clarification is raised or to promote judicial economy and administration.² This Court has the authority to grant the writ relief requested herein pursuant to Article 6, Section 4 of the Constitution of the State of Nevada and NRS 34.330.

¹ “The writ may be issued by the Supreme Court ...to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person. When issued by a district court or a judge of the district court it shall be made returnable before the district court.” NRS 34.160; NRS 34.170.

² *State Office of the Attorney General v. Justice Court of Las Vegas Township*, 133 Nev. 78, 80, 392 P.3d 170, 172 (2017).

This case involves unprecedented departures from safe, accurate, and transparent democratic voting processes used by communities across Nevada in order to implement unlawful hand counting procedures as well as other unlawful administrations of the election. If these violations are permitted to proceed, and if not remedied before the start of early voting on October 22, 2022, the citizens of Nye County face the imminent risk of having their fundamental rights as voters infringed upon and not having their vote counted. These consequences extend beyond impacting Nye County and its voters, given that this election cycle involves local, state, and national elections. The time constraint, the inability to seek a remedy after the election, and the national impact of these issues warrant the Supreme Court's immediate attention.

STATEMENT OF THE ISSUES

1. Under NRS 293.3606 and NRS 293.269935, does Nye County's plan to announce from each ballot the candidate selected from each race, in the presence of the public, result in the release of election results in violation of Nevada law?

2. Under the 42 U.S.C § 15481 and Article 2, Section 1A of the Nevada, does Nye County's plan to limit access to touch screen voting machines to individuals with "special needs" violate federal and Nevada law by impermissibly authorizing election workers to enquire about a voter's disability or turn away otherwise eligible voters based on arbitrary decision making?
3. Under NRS 293.285, NRS 293.8874, and NRS 293.277, does Nye County's "stringent signature verification" process, requiring that voters provide identification if Nye County officials determine that their signature does not match their voter registration, impermissibly prevent voters from proving their identity using options permitted by Nevada law?

STATEMENT OF FACTS

On September 6, 2022, the Nye County Clerk's office officially announced its intention to use paper ballots and hand counting procedures for all ballots during the 2022 General Election.³ The announcement indicated that Nye County will "conduct a parallel

³ Pet'rs App., Vol. 1, APP0001.

electronic tabulation of the voted paper ballots along with a hand count of those ballots.”⁴ The announcement also stated that the hand count process will be performed by “citizen volunteers who are registered voters,” and that the hand count will be conducted Monday through Friday from October 25, 2022 and continuing through November 10, 2022.⁵

In addition to this official announcement, interim Nye County Clerk Mark Kampf presented to the Nye County Board of Commissioners on September 20, 2022, “Presentation regarding the paper ballot and hand-count process to be implemented for the Nye County General Election in November 2022.”⁶ The presentation, in sum

⁴ *Id.*

⁵ *Id.*

⁶ Nye County has not posted a transcript or minutes from the Board of County Commissioners meeting on September 20, 2020. The only public record to which Petitioners may cite, therefore, is a video recording that is available on the Nye County website. However, Petitioners have provided notations of the times in the video at which statements are made that are supportive of Petitioners’ allegations, so that the Court or staff may skip ahead to these moments in the video. Nye County Streaming Media Archive. *Board of County Commissioners Regular Meeting*. (Sept. 20, 2022), http://nyecounty.granicus.com/ViewPublisher.php?view_id=4

and substance, stated:

1. One ADA touch screen will be available at each polling location which will be “limited to those with special needs”;⁷
2. Tabulators (vote counters) will be used for all ballots;⁸
3. A parallel hand count process will be used;⁹
4. The hand count process will be live streamed by video camera;¹⁰
5. The hand count team will consist of a reader, a verifier, and three talliers to tally the results;¹¹
6. “Stringent signature verifications” will be used including requiring the voter to show an ID if their signature does not match and “no prompting of voter verification system;”¹² and
7. The hand count process, as well as “ADA compliance” listed under number one, are “stop gap measure[s] while researching alternative

(Presentation begins 1:48:10 and ends at 2:08:50); *see also* Petr’s App., Vol. 1, APP0003–0013.

⁷ Petr’s App, Vol. 1,. APP0006.

⁸ Petr’s App, Vol. 1, APP0007.

⁹ *Id.*

¹⁰ Petr’s App, Vol. 1, APP0011.

¹¹ Petr’s App, Vol. 1, APP0009.

¹² Petr’s App, Vol. 1, APP0012

solutions.”¹³

During this presentation, Kampf provided additional details on the hand count process Nye County plans to use during the 2022 General Election, and explicitly stated that the process is “very locked in” with no changes to be made.¹⁴ According to Kampf, the counting of ballots will begin on October 25, 2022, and all paper ballots will first be run through a mechanical tabulator.¹⁵ Once the ballots are processed through the mechanical tabulator, all paper ballots will be hand counted. The hand counting team will conduct the count by having the “reader” read out loud the selected candidate for the race from a ballot, the “verifier” verifying that the ballot is being read aloud correctly, and three “talliers” will tally the votes simultaneously.¹⁶ After this process is done for one batch consisting of fifty ballots, the verifier, the reader, and the talliers will check the tallies to determine if they match.¹⁷ If there

¹³ Petr’s App., Vol. 1, APP0006.

¹⁴ *Board of County Commissioners Regular Meeting* (Sept. 20, 2022), *infra* 6, n. 6, at 2:07:12-2:07:20.

¹⁵ *Id* at 1:58:45-1:59:16.

¹⁶ *Id* at 1:56:25-1:56:53.

¹⁷ *Id* at 1:56:54-1:57:00.

is a match, all five team members will sign off to that effect.¹⁸ If there is a difference, a recount will be conducted on a special recount tally sheet.¹⁹ The process will be open to the public to view in person, and will also be live streamed so “people at home can become poll watchers.”²⁰

In light of the presentation and Kampf’s statements on September 20, 2022, several aspects of Kampf’s presented process remain unexplained. No information has been provided regarding: (1) how Kampf intends to define “special needs” to determine who may use the voting machine; (2) who will determine if an individual voter qualifies as having “special needs” under that definition; (3) what are the “stringent signature verifications” the election workers will use when matching signatures and deciding whether a voter’s ballot will be counted; (4) who will decide when the “stringent signature verifications” are required; and (5) how will the election workers be trained on these

¹⁸ *Id* at 1:57:01-1:57:21.

¹⁹ *Id* at 1:57:22-1:57:49.

²⁰ *Id* at 2:01:20-2:01:46.

“stringent signature verifications”.

On October 4, 2022, Petitioners first attempted to address these issues by filing an Emergency Petition for Writ of Mandamus Enjoining Nye County Interim Clerk from Implementing Proposed Unlawful Hand Counting Measures During the November 2022 General Election and Complaint for Declaratory and Injunctive Relief in the Fifth Judicial District Court.²¹ Mark Kampf was served with a copy of the Petition, and the District Court Cover Sheet, at 1520 E. Basin Ave., Pahrump, NV 89060 on October 4, 2022.²² Service was attempted on Nye County on October 4, 2022, on two separate occasions.²³ During the first attempt at service on Nye County, the process server was told that all service of process for Nye County goes to the Administrative Office located at a different address.²⁴ The process server attempted service on Nye County for the second time at the address given for the

²¹ Petr’s App, Vol. 1, APP0014-0041.

²² Petr’s App., Vol. 1, APP0042.

²³ Petr’s App., Vol. 1, APP0043-0044.

²⁴ Petr’s App., Vol. 1, APP0043.

Administrative Office.²⁵ The process server was told that Frank Carbone and Tim Sutton are the only individuals who can accept service of process for Nye County, and they would be unavailable all day because they were in a meeting.²⁶

Due to the two attempts at service and the urgency of the writ of mandamus, counsel for Petitioners reached out to Mr. Carbone and Mr. Sutton via email on October 5, 2022 to inquire about their availability to accept service of process.²⁷ Counsel for Petitioners received a reply on October 7, 2022, at 9:11 a.m. from Mr. Carbone stating that he will be available from 10:00 a.m. to 11:00 a.m. that morning.²⁸ The one-hour notice and the limited availability provided by Mr. Carbone, and the need to drive approximately an hour and fifteen minutes to Nye County from Clark County, made it nearly impossible to coordinate service of process with the process server for that time. Therefore, counsel for Petitioners requested that Mr. Carbone provide his availability for

²⁵ Petr's App, Vol. 1,. APP0044.

²⁶ *Id.*

²⁷ Petr's App, Vol. 1, APP0049-0050.

²⁸ Petr's App., Vol. 1, APP0049.

October 10, 2022 through October 12, 2022.²⁹ Mr. Carbone was served with a copy of the Petition and Complaint, and the District Court Cover Sheet, at 2100 E Walt Williams Dr., Pahrump, NV 89048 on October 10, 2022 based on the availability he provided.³⁰

A final order denying the Petitioners'/Plaintiffs' Emergency Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief was issued on October 12, 2022.³¹ At the time the court issued its order, no response was filed by the opposing parties, nor was a hearing date set for the case. In support of its order, the district court offered two bases for its denial: (1) that no certificate of service was filed indicating that Respondents were served with the Emergency Petition; and (2) that while the Petitioners had cited to Nye County Commission webpage where Mark Kampf's presentation was available, the Petitioners had not attached a copy of the presentation or a transcript from the Commission meeting to the petition.³² The district court

²⁹ *Id.*

³⁰ Petr's App., Vol. 1, APP0047.

³¹ Petr's App., Vol. 1, APP0051-0053.

³² Petr's App., Vol. 1, APP0051-0052.

offered no legal authority to support its position that any of these were sufficient grounds to warrant denial of the petition. Additionally, the order violated Nevada law and the Nevada Rules of Civil Procedure (NRCP).³³ Finally, the district court was required to provide a hearing, “whether the adverse party appear[ed] or not,” prior to ruling on the petition.³⁴ Even if Petitioners had a duty to attach a copy of the presentation and/or a transcript to the petition in addition to its citation, and to serve the opposing parties within eight days of filing its petition and complaint, such a duty would not warrant a denial of the petition and complaint as they would qualify as technical defects.³⁵

³³ See NRS 34.200 (authorizing the application for a writ of mandamus without any notice provided to adverse party); NRS 34.280 (requiring that service of writs be performed in the same manner as a summons in a civil action); NRCP 4(d) (Unless a defendant voluntarily appears or waives or admits service, a plaintiff must file proof of service with the court stating the date, place, and manner of service *no later than the time permitted for the defendant to respond to the summons*) (emphasis added); NRCP 4(e) (the summons and complaint must be served upon a defendant *no later than 120 days* after the complaint is filed, unless the court grants an extension of time under this rule) (emphasis added).

³⁴ NRS 34.200.

³⁵ This Court previously reversed the Fifth Judicial District Court’s judgment in which Judge Kimberly A. Wanker denied a petition for habeas corpus due to defects that are technical. The Court determined that the Petitioner should have been afforded the opportunity to cure

Considering the order dispositive, the district court closed the matter before the Fifth Judicial District without considering the substantive issues raised in the petition. Petitioners now seek relief from this Court, who has original jurisdiction, on the substantive issues of Petitioner's petition.

REASONS WHY A WRIT SHOULD ISSUE

I. Mandamus Standard

Writ relief is an extraordinary remedy, and therefore, it is within the court's sound discretion whether to grant such relief. ³⁶

"Extraordinary writ relief may be available where there is no 'plain, speedy and adequate remedy in the ordinary course of law.'" ³⁷

However, even when a legal remedy is available, this court may exercise its discretion to consider a writ petition when the petition presents a legal issue of statewide importance that needs clarification, and principles of judicial economy and public policy weigh in favor of

them. *See Briggs v. State*, No. 82443, 2021 Nev. Unpub. LEXIS 825 (Nev. Nov. 10, 2021) (unpublished).

³⁶ *Segovia v. Eighth Judicial Dist. Court*, 133 Nev. 910, 911, 407 P.3d 783, 785 (2017).

³⁷ *Id.* (quoting NRS 34.170 and NRS 34.330).

considering the petition.³⁸

A writ of mandamus may be issued by the court “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person,” when there is no plain, speedy, and adequate remedy in the ordinary course.³⁹ The court must examine each request for writ relief individually.⁴⁰

³⁸ *Lorton v. Jones*, 130 Nev. 51, 54, 322 P.3d 1051 (2014), quoting *Salaiscooper v. Eighth Judicial Dist. Court*, 117 Nev. 892, 34 P.3d 509 (2001).

³⁹ “The writ may be issued by ... a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person. When issued by a district court or a judge of the district court it shall be made returnable before the district court.” NRS 34.160; NRS 34.170.

⁴⁰ *Jeep Corp. v. Second Judicial Dist. Court*, 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982).

II. Nye County's proposed hand counting process violates NRS 293.3606 and NRS 293.269935 as it would reveal election results prior to the time permitted.

The Nevada Legislature has conferred a duty upon county clerks to follow certain procedures when administering elections. It has set clear mandates regarding the release of election results as well as procedures pertaining to the counting of ballots.

NRS 293.269925(1) vests the county clerk with the power to establish procedures for the processing and counting of mail ballots. NRS 293.269925(2) explicitly states that such procedures must not conflict with NRS 293.269935, among other state laws.

NRS 293.269935 states that no voting results of mail ballots may be released until all polling places are closed and all votes have been cast on the day of the election. Any person who disseminates to the public in any way information pertaining to the count of mail ballots before all polling places are closed and all votes have been cast on the day of the election is guilty of a misdemeanor. Similarly, NRS 293.3606 states that the returns for early voting must not be reported until after the polls have closed on election day. Any person who disseminates to the public information relating to the count of returns for early voting

before the polls close is guilty of a gross misdemeanor. Both statutes criminalize the dissemination of information pertaining to the results of the returns before all polling places close on election day and an individual engaging in such acts is guilty of, at minimum, a misdemeanor.⁴¹

When counting ballots, the process must be conducted in public, open to observation.⁴² Nevada permits the processing of ballots, in public, prior to election day in *only* the following circumstances:

1. Mail-ballots can be processed 15 days before the day of the election; and⁴³
2. The returns for early voting can be counted by the counting board starting at 8 a.m. on election day.⁴⁴

However, Nevada law is clear that the returns of these counts, for both mail-in ballots and early voting returns, ***must not*** be reported

⁴¹ See NRS 293.269931(3); NRS 293.3606(5).

⁴² See NRS 293.363(1): “When the polls are closed, the counting board shall prepare to count the ballots voted. The counting procedure must be public and continue without adjournment until completed.”

⁴³ NRS 293.269931.

⁴⁴ NRS 293.3606.

until the polls have closed on election day.⁴⁵

The current process, followed throughout the state and the country, uses mechanical voting systems, and its processing of ballots prior to the closing of polls on election day complies with both the public counting aspect of the law and not releasing *any* information pertaining to the count prior to the close of polls on election day. Compliance with both of these laws can be achieved simultaneously because mechanical tabulators are programmed not to produce sums until election night, and the results of the election are not printed until the closing of polls on election day.⁴⁶ As further assurance of compliance with these laws, federal law requires that all voting systems certified to the latest federal Voluntary Voting System Guidelines have the capability to process ballots *without* printing the tallies before polls close.⁴⁷

⁴⁵ NRS 293.269931(3): “No voting results of mail ballots may be released until all polling places are closed and all votes have been cast on the day of the election”; NRS 293.3606(2): “The returns for early voting must not be reported until after the polls have closed on election day.”

⁴⁶ Grace Gordon, et al., *Ballot Pre-processing Policies Explained*, Bipartisan Policy Center (September 7, 2022), <https://bipartisanpolicy.org/explainer/ballot-pre-processing-explained/>.

⁴⁷ Election Assistance Commission, *Voluntary Voting System Guidelines 2.0*, at 57 (February 10, 2021), available at

Mr. Kampf's current process for hand counting will be public, as required by Nevada state law.⁴⁸ It involves a reader reading aloud the selected candidate for office, a verifier to assure that it is being read correctly and that the tallies are marked correctly, and three talliers to mark a tally for the vote.⁴⁹ However, Kampf's proposed plan does not and cannot comply with all provisions of state and federal law.

The "reader" verbally stating aloud the elected candidate of a particular office on the ballot will reveal election results prior to the time permitted in violation of NRS 293.269935 and NRS 293.3606. This is because observers of the hand counting will hear the selected candidate, as will viewers at home watching the live stream of the count. On the other hand, if Mr. Kampf decided to have the reader simply read the elected candidate to themselves, then such a process would not be considered "in public" as required by NRS 293.363. As

https://www.eac.gov/sites/default/files/TestingCertification/Voluntary_Voting_System_Guidelines_Version_2_0.pdf.

⁴⁸ Nye County Streaming Media Archive, *Board of County Commissioners Regular Meeting* (Sept. 20, 2022), <https://www.nyecountynv.gov/DocumentCenter/View/41992/Item35>, at 2:01:20-2:01:46.

⁴⁹ *Id* at 1:56:25-1:56:53.

such, Mr. Kampf's hand counting process violates Nevada state laws. These proposals also subject the "tally team volunteers" to criminal prosecution.

Mr. Kampf has acknowledged these violations, as it pertains to streaming the hand count live on camera, on the record at the Nye County Board of Commissioners meeting, but nonetheless determined that it is not an issue because it would be a "monumental task for anyone to be able to figure that out."⁵⁰

III. Nye County's plan to limit access to ADA touch screens to individuals with "special needs" violates the Help America Vote Act (HAVA) and Article 2, Section 1A of the Nevada Constitution.

Mr. Kampf's procedures for accessibility by elderly and disabled voters include one "ADA touch screen" at each polling location, satisfying HAVA's requirements in that manner. However, Mr. Kampf has either failed to take a deeper dive into the requirements of HAVA or has chosen to ignore them, as the plan to limit access to ADA touch screen to "those with special needs" violates HAVA's mandate that all voting systems be accessible to individuals with disabilities "in a

⁵⁰ *Id.* 2:07:39- 2:07:50.

manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.”⁵¹ Nevada’s Constitution provides similar requirements: “Each voter who is a qualified elector under this Constitution and is registered to vote [...] has the right: 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.”⁵²

In order to limit the touch screens to those with “special needs,” poll workers will inevitably be required to assess whether a voter has such needs by either requesting proof or enquiring the voter about their disability. It is unclear what Mr. Kampf means when he says “special needs” as the framing of this language is not legally operative and is insufficiently vague. To the extent Mr. Kampf is referring to individuals with disabilities, such inquires violate the privacy of the voter. Separating voters with a disability from those voting on paper ballots,

⁵¹ 42 U.S.C § 15481.

⁵² Nev. Const. art. 2 § 1A(9). The language of Article 2 § 1A(9) of the Nevada Constitution was codified as part of the “Voter’s Bill of Rights” in NRS 293.2546(9).

and requiring them to take unnecessary steps to prove they have “special needs” does not create equal access to the elections system as poll workers determining whether someone has a disability, especially given that many disabilities are hidden, will result in qualified voters being turned away at the polls.

IV. Nye County’s proposed “stringent signature verification” procedure violates NRS 293.285, NRS 293.8874, and NRS 293.277.

The use of more “stringent signature verifications,” including “no prompting of voter verification information” and “requir[ing] identification if signature or verification fails,” conflict with the procedure for checking signatures mandated by the legislature under NRS 293.285, NRS 293.8874, and NRS 293.277.

Pursuant to NRS 293.8874, clerks are required to check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk.⁵³ If at least two employees in the office of the clerk believe there is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter, the clerk must contact the voter and ask the voter to confirm

⁵³ NRS 293.8874.

whether the signature used for the mail ballot belongs to the voter.⁵⁴ Nothing in this section authorizes the clerk to require an identification card if the signature fails.

In addition to outlining how verification of a signature is conducted, NRS 293.8874 also defines “reasonable question of fact,” and when a “reasonable question of fact” does not exist:

For purposes of subsection 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

(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

⁵⁴ NRS 293.8874(1).

clerk.

Pursuant to NRS 293.285(2), when it is determined that a voter's signature does not match at a polling location, the voter can prove their identity by any of the three options: 1) answering questions from the election board officer covering the personal data which is reported on the application to register to vote; *or* 2) providing the election board officer, orally or in writing, with other personal data which verifies the identity of the voter; *or* 3) providing the election board officer with proof of identification as described in NRS 293.277 other than the registration card issued to the voter.

If a voter elects to prove their identity by showing identification, any of the following are acceptable: 1) a driver's license; 2) an identification card issued by the Department of Motor Vehicles; 3) a military identification card; *or* 4) any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture.⁵⁵

Mr. Kampf's verification process is vague and does not provide explanations as to what "stringent signature verifications" entails. To

⁵⁵ NRS 293.277.

the extent that Mr. Kampf requires the registered voter to provide an identification card only, such a requirement would violate NRS 293.285.

V. There is no plain, speedy and adequate remedy in the ordinary course of law for Petitioners in this matter.

Whether an appeal is sufficiently adequate and speedy necessarily turns on the underlying proceedings' status, the types of issues raised in the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented.⁵⁶

This court has observed that, in entertaining an original proceeding in mandamus, it has the “power to protect the rights, interests, and franchises of the state, and the rights and interests of the whole people, to enforce the performance of high officials affecting the public at large[.]”⁵⁷ Accordingly, in *Miller v. Burk*, this court considered the timing of an upcoming election in exercising its discretion to proceed with a writ of mandamus.⁵⁸ In *Miller*, the court issued a writ of

⁵⁶ *Halcrow, Inc. v. Eighth Judicial Dist. Court of the State*, 129 Nev. 394, 302 P.3d 1148 (2013) quoting *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736 (2007).

⁵⁷ *SW Gas Corp. v. Pub. Serv. Comm’n*, 92 Nev. 48, 57 546 P.2d 219, 225 (1976) (internal quotation omitted).

⁵⁸ 124 Nev. 579, 588, 188 P.3d 1112, 1118 (2008).

mandamus to three county officials, directing them to exclude certain candidates' names from the 2008 general election ballot based on the term-limit amendment set forth in the state's constitution.⁵⁹ Importantly, the court issued its decision—denoting the timing of the upcoming election—over four months before the state's general election.

This case was originally filed in the Fifth Judicial District Court as an emergency petition due to important questions of law concerning the administration of the November 2022 election by Nye County and the close proximity to not only the election, but the October 25, 2022 time frame, which Mark Kampf has pinpointed as the day Nye County will start hand counting ballots.

Voting begins on October 22, 2022, and Mr. Kampf will begin counting ballots using unlawful hand counting measures on October 25, 2022. No remedy for the issues underlined herein could be provided after election day on November 8, 2022. The election at issue in *Miller* was months away, and here it is days. Consequently, an appeal is not a

⁵⁹ *Id.* at 599.

speedy remedy.⁶⁰

Additionally, the denial of the Petition and Complaint by the Fifth Judicial District Court was not rooted in the merits of the case, therefore an appeal would be an inadequate remedy as it will not permit this court to meaningfully review the issues presented.

VI. Even if there was an adequate remedy under law, a writ would still be warranted as the underlying issues are matters of state-wide importance.

Even if an appeal constituted a plain, speedy, and adequate remedy at law in this matter, a petition for extraordinary relief would be justified because this petition raises “an important issue of law [that] needs clarification and public policy is served by this court's invocation of its original jurisdiction.”⁶¹ Furthermore, under “circumstances evoking urgency or evincing matters of statewide importance, this [C]ourt, in recognizing situations creating a need for immediate intervention, has considered petitions for extraordinary relief, even

⁶⁰ See *Garvin v. Ninth Judicial Dist. Court*, 118 Nev. 749, 766 n. 76, 59 P.3d 1180 (2002) (“[S]everal time constraints render an appeal inadequate.”).

⁶¹ *Diaz v. Eighth Judicial Dist. Court*, 116 Nev. 88, 993 P.2d 50 (2000), quoting *Business Computer Rentals v. State Treas.*, 114 Nev. 63, 67, 953 P.2d 13, 15 (1998).

though a remedy at law was otherwise available to petitioner.” Election-related issues fall within this exception.⁶²

The underlying issues in this case are pure questions of law that involve Nye County voters’ fundamental right to vote and their right to have the results of the election not be released prior to the close of polls on election day. The unlawful hand counting process and administration of the November 2022 election as prescribed by Mark Kampf encompasses local, state, and national races which is of statewide importance and public policy will be served by its resolution.

CONCLUSION

Nye County and Mark Kampf have proposed significant changes to the administration of the November 2022 election. The changes violate Nevada state law, federal law, and the Nevada Constitution. Accordingly, the Court should issue a writ of mandamus finding that: 1)

⁶² *Child v. Lomax*, 124 Nev. 600, 604-06, 188 P.3d 1103, 1106-07 (2008) (stating in connection to a challenge to a single candidate’s eligibility, “[d]ue to the statewide significance of the question presented, a postelection challenge does not provide an adequate means to avoid impairing voter input”).

the verbal announcement of a selected candidate for each race of each ballot prior to the close of polls on election day, in the presence of the public, will result in the release of election results in violation of NRS 293.3606 and NRS 293.269935; 2) the limitation of ADA touch screens to individuals with “special needs” does not comply with the Help America Vote Act (HAVA) or Article 2, Section 1A of the Nevada Constitution because it impermissibly permits election workers to enquire about a voter’s disability or turn away otherwise eligible voters based on arbitrary decision-making; and 3) the use of “stringent signature verifications” violates NRS 293.285, NRS 293.8874, and NRS 293.277.

DATED this 14th day of October 2022.

Respectfully submitted:

**AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**

/s/ Sadmira Ramic

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VERIFICATION

I, Sadmira Ramic, declare as follows:

1. I am counsel for Petitioners ACLU of Nevada and Steven Bacus.
2. I verify that I have read the foregoing Emergency Petition and that the same is true of my own knowledge, except for matters state on information and belief, and as to those matters, I believe them true.
3. I declare under penalty of perjury under the law of the Nevada that foregoing is true and correct.

Executed this 14th day of October 2022, in Las Vegas, Nevada.

/s/ Sadmira Ramic

Sadmira Ramic, Esq.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e), which requires that every assertion in the brief regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14 point Century Schoolbook.

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Finally, I hereby certify that this brief complies with the type-volume limitations of NRAP 21(d) and 32(c)(2) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 5,436 words.

DATED this 14th day of October 2022.

Respectfully submitted:

**AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**

/s/ Sadmira Ramic

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NRAP 27(e) CERTIFICATE

I, Christopher Peterson, declare as follows:

4. I am counsel for Petitioners ACLU of Nevada and Steven Bacus.
5. The telephone numbers and address of the attorneys for the parties are as follows:

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6. Emergency relief is proper because voting will begin in Nye County on October 22, 2022, and Mr. Kampf will begin implementing his proposed voting procedures on October 22, 2022 and the hand counting process on October 25, 2022. The proposed procedures violate the Nevada Constitution, Nevada election law, and federal election law. If Nye County and Kampf are not prevented from implementing their proposed procedures, it will result in immediate and irreparable harm to the voters of Nye County and the uniform implementation of statewide election processes.

7. Prior to filing this brief, I spoke by telephone with attorneys Harry L. Arnold and Brian R. Hardy on October 14, 2022. I explained

that this petition is substantively similar to that filed before the Fifth Judicial district both in the legal arguments and the relief sought. I sent Mr. Arnold and Mr. Hardy, via email, a digital copy of the foregoing petition and Petitioner's Appendix, Volume 1, on October 14, 2022, before they were filed.

8. I also contacted the Office of the Clerk of the Supreme Court of Nevada to notify it that the ACLU of Nevada would be filing this motion, in accordance with Nevada Rule of Appellate Procedure 27(e)(1), on behalf of petitioners.

Executed this 14th day of October 2022, in Las Vegas, Nevada.

vs/ Christopher Peterson

Christopher M. Peterson, Esq.

Nevada Bar No.: 13932

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2022, I electronically filed the foregoing **EMERGENCY PETITION FOR WRIT OF MANDAMUS PURSUANT TO NRAP 21(a)(6)** with the Nevada Supreme Court by using the appellate electronic filing system.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Harry L. Arnold
Marquis Aurbach
10001 Park Run Drive
Las Vegas, NV 89145

I further certify that a true and correct copy of this document was served by email to:

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/s/ Christopher Peterson

Christopher Peterson

An employee of the ACLU of Nevada