

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.

No. 85507

FILED

OCT 27 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER GRANTING MOTION FOR CLARIFICATION

On October 21, 2022, we entered an order granting in part this emergency, original petition for a writ of mandamus challenging certain Nye County voting procedures to be implemented during the November 2022 election. Among other things, we particularly “note[d] our concern that, if the read-aloud requirement [of the hand-count process] remains and observers are positioned to hear it, the observers, themselves members of the public, NRS 293B.353, are likely to learn election result information before the release of such information is statutorily authorized, even if they certify that they will not disclose this information to others.” While we pointed out that the record did not sufficiently describe the planned process as to the read-aloud requirement, we further “note[d] that if such observers hear results, this would violate the applicable statutes.” We thus mandated “that respondents require all observers to certify that they will not prematurely release any information regarding the vote count process

before then and ensure public observers do not prematurely learn any election results.”

Petitioners have now filed an emergency motion for clarification, asserting that respondents have interpreted this language in our order as differentiating between the “vote count process” and “election results,” such that respondents believe only the “totality of vote count results” is precluded from premature release. Petitioners disagree with that interpretation and argue that respondents’ simultaneous, multi-team/multi-room hand-count process, which allows observers in each room to hear the reader’s oral pronouncement of the selections on the ballots counted by that team, even though those observers are not able to aggregate the total results from all rooms, causes the premature release of election results, as prohibited by law.

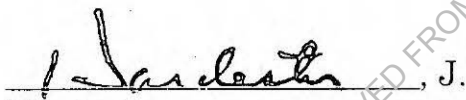
Respondents oppose the motion, asserting that, by mandating that they require observers to sign a form certifying that the observers will not release vote count information, we implicitly acknowledged that allowing observers to learn information about the vote count was permissible. And because observers can learn information about the vote count, respondents deduce, they inherently may legally witness the oral count and tallying of votes in a single room, so long as the total aggregate number of votes counted remains undisclosed.

Because it appears that respondents over-read our order and clarification is warranted, we grant petitioners’ motion and hereby clarify that “any election results,” as set forth in the mandate directing respondents to “ensure public observers do not prematurely learn any election results,” includes orally pronounced ballot selections and per-room tallies. As our October 21 order explained, the ability of observers to hear

the read-aloud selections on ballots violates NRS 293.269935(3) (prohibiting the early release of "voting results" and criminalizing the dissemination "to the public in any way information pertaining to the count of mail ballots") and NRS 293.3606(5) (barring the premature reporting of "returns for early voting" and criminalizing the public dissemination of "information relating to the count of returns for early voting"). Therefore, observers may not be positioned so as to become privy to the ballot selections and room tallies. The specifics of the hand-count process and observer positioning so as not to violate this mandate is for respondents and the Nevada Secretary of State to determine.

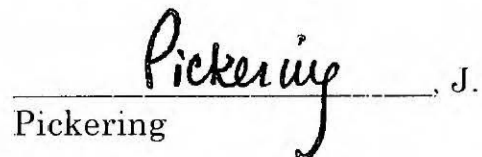
It is so ORDERED.

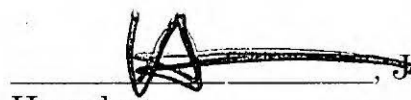

Parraguire


Hardesty


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Pickering


Herndon

cc: American Civil Liberties Union of Nevada/Las Vegas
Marquis Aurbach Chtd.