

IN THE SUPREME COURT OF THE STATE OF NEVADA

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AMERICAN CIVIL LIBERTIES  
UNION OF NEVADA, a domestic  
nonprofit corporation;

Petitioners,

vs.

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

Respondents.

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

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**IMMEDIATE ACTION REQUESTED BY NOVEMBER 14, 2022**

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Sadmira Ramic, Esq.  
Nevada Bar No.: 15984  
Christopher M. Peterson, Esq.  
Nevada Bar No.: 13932  
Sophia A. Romero, Esq.  
Nevada Bar No.: 12446  
**AMERICAN CIVIL  
LIBERTIES  
UNION OF NEVADA**

601 S. Rancho Dr., Suite B-11  
Las Vegas, Nevada 89106  
Telephone: (702) 366-1536  
Facsimile: (702) 366-1331  
Email: [ramic@aclunv.org](mailto:ramic@aclunv.org)  
Email: [peterston@aclunv.org](mailto:peterston@aclunv.org)  
Email: [romero@aclunv.org](mailto:romero@aclunv.org)

*Counsel for Petitioners*

## 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

/s/ Sadmira Ramic

Sadmira Ramic, Esq.

Nevada Bar No.: 15984

Christopher M. Peterson, Esq.

Nevada Bar No.: 13932

### AMERICAN CIVIL LIBERTIES UNION OF NEVADA

601 South Rancho Drive, Suite B-11

Las Vegas, Nevada 89106

Telephone: (702) 366-1536

Facsimile: (702) 366-1331

Email: [ramic@aclunv.org](mailto:ramic@aclunv.org)

Email: [peterston@aclunv.org](mailto:peterston@aclunv.org)

*Counsel for Petitioners*

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## INTRODUCTION

Petitioners seek a writ of mandamus enjoining Respondents Nye County and interim County Clerk Mark Kampf from pursuing an unlawful hand count of ballots cast in the November 8, 2022 General Election.

Nye County has counted all ballots via machine and has now begun to count all the ballots again in an unprecedented, last-minute “parallel” hand count process. Nevada law permits no such process. Moreover, because Nye County has begun tabulating votes via machine, either its hand count is an impermissible revision of its existing plan or it is effectively a “recount” or “audit.” Neither would comply with Nevada law.

To the extent Nye County attempts to frame its “parallel” counting effort as part of a pre-approved process, such a drastic, belated change flouts the law’s requirements and threatens voters’ express rights under the state Constitution to security and accuracy. *First*, the hand count plan was not submitted by the deadline imposed by Nevada statute and approved by the Secretary of State as required by law to ensure the integrity and security of the State’s elections. *Second*,

Respondents have moved all ballots and have begun counting them at a location not approved as a central counting place pursuant to a plan submitted to the Secretary of State prior to the April 15, 2022, as required by Nevada law. This last-minute move with no identified transport security plan will further undermine security and integrity.

Nye County's "parallel" counting plan, moreover, cannot be, and would not meet the statutory requirements for, a "recount," "audit," or "contest"--the only instances in which Nevada law provides for a second count of ballots after the close of polls on Election Day. Unless enjoined by this Court, this hand count will set a dangerous precedent for future elections by encouraging local officials to make up and implement their own vote counting processes that violate voters' constitutional right to an accurate election "as provided by law."

In sum, these legal violations create an unprecedented departure from safe, accurate, and transparent democratic voting processes used by communities across Nevada and put the integrity of the General Election in peril, causing irreparable harm to Nye County voters and Nevada voters more broadly. Judicial relief is warranted to preserve Petitioners' constitutional rights to a "uniform, statewide standard for counting and

*recounting* all votes accurately as provided by law.”<sup>1</sup> and “[t]o have complaints about elections and election contests resolved fairly, accurately and efficiently as provided by law.”<sup>2</sup>

The urgency of this situation, the lack of any other emergency remedy available, and the statewide importance of these issues warrant this Court’s immediate attention. This Court should put an end to Nye County’s repeated attempts to experiment with voters’ ballots during this election outside the bounds of Nevada law and grant this petition.

### **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 regarding the administration of this year’s General Election.

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

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<sup>1</sup> Nev. Const. art. 2 § 1A(11) (emphasis added).

<sup>2</sup> Nev. Const. art. 2 § 1A(11).



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.<sup>3</sup> 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.<sup>4</sup> 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.

### **STATEMENT OF THE ISSUES**

1. Does Nye County have authority to violate the Nevada Constitution by performing a “parallel” hand count process that counts all Nye County votes a second time, after the machine tabulation is complete, without establishing that such a process is either a valid

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<sup>3</sup> NRS 34.160; NRS 34.170.

<sup>4</sup> *State Office of the Attorney General v. Justice Court of Las Vegas Township*, 133 Nev. 78, 80, 392 P.3d 170, 172 (2017).

“recount” pursuant to NRS 293.403 or an “audit” pursuant to NRS 293.394 or NRS 293.247?

2. Pursuant to NRS 293B.354, does Nye County’s relocation of all ballots to a location that has not been designated as a central counting place violate Nevada law?
3. Pursuant to NRS 293.247 and NAC 293B.040, does Nye County’s parallel hand count process violate voters rights to security and accuracy?

### **STATEMENT OF FACTS**

In February 2022, the Office of the Nye County Clerk issued its ballot county plan for 2022 elections.<sup>5</sup> Nye County planned to use ImageCast brand voting machines and scanners, and “software and firmware certified by the Secretary of State for use in Nevada,” to tabulate votes at the Tonopah Clerk’s Office and Pahrump satellite office as it had in prior elections.<sup>6</sup>

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<sup>5</sup> Office of the Nye County Clerk, Plan for Security of Ballots, Result USBs and VVPATS for the 2022 General Election, Petr’s App., Vol. 1 at 1–3.

<sup>6</sup> *Id.*.

The Nye County Commission took a different view, however. That spring, the Commission voted to recommend hand-counting ballots, relying on witnesses who alleged that the certified voting machines could be subject to hacking and outside influence and disregarding County Clerk Sam Merlino’s detailed account of the security measures already in place to prevent and detect such tampering.<sup>7</sup> Facing pressure to conduct an unprecedented, unnecessary and ill-conceived hand count, Ms. Merlino resigned.<sup>8</sup>

On September 6, 2022, the Nye County Clerk’s office—now helmed by interim Nye County Clerk Mark Kampf—officially announced its intention to hand count all ballots during the 2022 General Election.<sup>9</sup> The announcement indicated that Nye County will “conduct a parallel electronic tabulation of the voted paper ballots along with a hand count of those ballots.”<sup>10</sup> The

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<sup>7</sup> See Sam Metz, *Election conspiracies grip Nevada community, sowing distrust*, Associated Press (Jul. 29, 2022), Petr’s App., Vol. 1 at 6–12.

<sup>8</sup> *Id.*

<sup>9</sup> “Clerk’s Office Announces Paper Ballot and Hand-Count Procedures for General Election”, Nye County Press Release, Petr’s App., Vol. 1 at 27.

<sup>10</sup> *Id.*

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.<sup>11</sup>

On September 20, 2022, Mr. Kampf delivered to the Nye County Board of Commissioners a “[p]resentation regarding the paper ballot and hand-count process to be implemented for the Nye County General Election in November 2022.”<sup>12</sup>

The ACLU of Nevada and an individual voter sought, and this Court issued, a writ of mandamus barring, among other things, Mr. Kampf from conducting a hand count involving oral announcements

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<sup>11</sup> *Id.*

<sup>12</sup> 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](http://nyecounty.granicus.com/ViewPublisher.php?view_id=4) (Presentation begins 1:48:10 and ends at 2:08:50); *see also* Petr’s App., Vol. 1 at 28–39.

of each vote before the close of the polls on November 8.”<sup>13</sup> Mr. Kampf proceeded to begin counting early votes on October 26 and 27.<sup>14</sup> After further motion practice, this Court clarified its order that “observers may not be positioned so as to become privy to the ballot selections and room tallies,”<sup>15</sup> and the Secretary of State ordered Mr. Kampf to stop the count.<sup>16</sup>

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<sup>13</sup> *ACLU of Nev v. County of Nye*, No. 85507, 2022 WL 14285458, at \*4 (Nev. Oct. 21, 2022).

<sup>14</sup> See Gabe Stern, *Nevada officials begin unprecedented hand count of ballots*, Associated Press (Oct. 28, 2022), <https://apnews.com/article/2022-midterm-elections-nevada-voting-las-vegas-617fc7a37e9cd8d1a512e4fb7be77574>; see also Petr’s App., Vol. 1 at 40–45.

<sup>15</sup> *ACLU of Nev v. County of Nye.*, No. 85507, 2022 WL 14285458, at \*2 (Nev. Oct. 21, 2022).

<sup>16</sup> Ken Ritter, *Hand vote count stops, but Nevada county vows to try again*, Associated Press (Oct. 28, 2022), <https://apnews.com/article/2022-midterm-elections-nevada-voting-las-vegas-11d01766ce66e17474f001dcf19ed6d7>; see also Petr’s App., Vol. 1 at 46–51. Because Mr. Kampf began counting ballots using his previously announced procedure before all votes were cast, this Court is afforded a window into what that dangerously flawed process will look like. Each of the two groups of ballot counters was able to work through approximately fifty ballots in the course of three hours. The counters repeatedly found that their tallies did not match one another, and spent substantial time conducting recounts. See Gabe Stern, *Nevada officials begin unprecedented hand count of ballots*, Associated Press (Oct. 28, 2022), <https://apnews.com/article/2022-midterm-elections-nevada->

On November 4, the Secretary of State wrote to Nye County rejecting its proposal to begin the hand count citing concerns relating to the integrity of the election. In response, Mr. Kampf’s office promulgated a further-updated proposed set of “Precinct Hand Count Procedures.”<sup>17</sup> These updated procedures do not substantially differ from prior sets of procedures the Secretary of State found insufficient to protect the security of the election.<sup>18</sup>

Ballots from the general election in Nye County have largely been tabulated via the standard machine process.<sup>19</sup> However, on November 9, 2022, Nye County announced it would again re-engage in a hand count starting on November 10, 2022, this time at the Valley Electric

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voting-las-vegas-617fc7a37e9cd8d1a512e4fb7be77574; *see also* Petr’s App., Vol. 1 at 40–45.

<sup>17</sup> Precinct Hand Count Procedures, Updated 11/4/2022, Petr’s App., Vol. 1 at 71–85.

<sup>18</sup> Precinct Hand Count Procedures, Updated 11/2/2022, Petr’s App. Vol. 1 at 52–65.

<sup>19</sup> “Hand-count to restart Thursday; Election Day and Early Voting results released,” Nye County Press Release, Petr’s App., Vol. 1 at 92.

Conference Center rather than at the approved counting locations.<sup>20</sup> Kampf indicated that he intended to have election workers hand counting ballots through the weekend, and according to the process they intend to follow, they will count all ballots a second time.<sup>21</sup>

## REASONS WHY THE WRIT SHOULD ISSUE

### I. Mandamus Standard

A writ of mandamus may issue to compel an official to perform a legally required act.<sup>22</sup> The writ may issue “in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.”<sup>23</sup> However, even when a legal remedy is available, this Court may exercise its discretion to consider a petition for a writ of mandamus when the petition presents a legal issue of statewide importance that needs

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<sup>20</sup> *Id.* (“Other than dropbox and mail ballots received on Election Day, all Early Vote and Election Day ballots were tabulated by 11:59 PM on November 8<sup>th</sup>”).

<sup>21</sup> *Id.*

<sup>22</sup> NRS 34.160; *see also* *ACLU of Nevada v. County of Nye*, No. 85507, 2022 WL 14285458, at \*2 (Nev. Oct. 21, 2022); *Sw. Gas Corp. v. Pub. Serv. Comm’n of Nev.*, 92 Nev. 48, 52, 546 P.2d 219, 222 (1976).

<sup>23</sup> NRS 34.170; *ACLU of Nev.*, 2022 WL 14285458, at \*2.

clarification, and when principles of judicial economy and public policy weigh in favor of considering the petition.

A writ of mandamus is an extraordinary remedy that falls within this Court's sound discretion.<sup>24</sup> The Court has previously exercised its discretion and granted a petition for a writ of mandamus to prevent unlawful hand counting procedures, given (1) voters' "compelling interest in the way elections are run"<sup>25</sup>; (2) their constitutional right to "have complaints about elections and election contests resolved fairly, accurately and efficiently as provided by law"<sup>26</sup>; and (3) the effects that unlawful election procedures at the county-level have on statewide election contests and ballot matters, which can "threaten the validity of that election process, thus impacting the citizens of this state in general."<sup>27</sup>

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<sup>24</sup> *ACLU of Nev.*, 2022 WL 14285458, at \*2; *Segovia v. Eighth Judicial Dist. Court*, 133 Nev. 910, 911, 407 P.3d 783, 785 (2017).

<sup>25</sup> *ACLU of Nev.*, 2022 WL 14285458, at \*2.

<sup>26</sup> Nev. Const. art. 2 § 1A(11).

<sup>27</sup> *ACLU of Nev.*, 2022 WL 14285458, at \*2.



A writ of mandamus is equally appropriate here. Respondents have implemented their own unprecedented, “parallel” hand count of general election ballots, despite lacking any authority to do so under Nevada law, and in direct contravention of several express statutory and regulatory requirements designed to protect the election’s security and accuracy. Respondents are conducting their hand count at an off-site location, with no assurances of ballot security, with no protections against ballot alteration, and without using the transparent, bipartisan process required by state law. If allowed to proceed, Respondents’ hand count procedure will engender public confusion and present a serious threat to the security of voters’ paper ballots and the integrity of Nevada’s general election. Petitioners seek to vindicate voters’ right to a “uniform, statewide standard for counting and *recounting* all votes accurately as provided by law” and “[t]o have complaints about elections and election contests resolved fairly, accurately and efficiently as provided by law.”<sup>28</sup>

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<sup>28</sup> Nev. Const. art. 2 § 1A(10)-(11)

**II.A “parallel process” for counting all ballots does not exist under Nevada law, which provides the specific parameters for when a ballot may be counted more than once.**

Under Nevada law, there are three circumstances under which a ballot that has already been counted may be counted again. The first is when a county conducts an audit of the election. The second is when a candidate defeated in any election demands a recount of the vote for the office for which he or she is a candidate. The third is a contest brought under NRS 293.407-.435.

Nye County maintained that the hand count of all ballots a second time was a “parallel process,” and never framed it as an audit, recount, or contest. However, to the extent that Respondents now suggest that their “parallel” hand count is an audit, recount, or contest, Respondents are mistaken. Nevada law sets express requirements for when such processes can be invoked and the procedures that must be followed when conducting audits or recounts. None of these processes authorizes a county clerk to conduct a hand count of *all* ballots on their own initiative. As such, any plan by a county clerk to conduct a hand count of *all* ballots after the polls close exceeds the authority of the county clerk and is not permitted by Nevada law.

**A. A hand count of all ballots that have already been counted by an electronic tabulator falls outside the definition of an audit, and violates the procedures prescribed for conducting audits under Nevada law and the Nevada Administrative Code.**

Under Nevada law, two types of audits exist: a risk limiting audit of election results and a post-election certification audit. Neither audit permits a full hand count of all ballots that have already been counted by a mechanical tabulator. Nye County, by conducting a count of all ballots already counted, is circumventing the auditing processes in place and attempts to invent new audit procedures not prescribed by Nevada law or the Nevada Administrative Code.

NRS 293.247(3)(g) requires the Secretary of State to adopt regulations prescribing procedures to be used for “the testing, use and auditing of a mechanical voting system which directly records the votes electronically and which creates a paper record when a voter casts a ballot on the system.” Additionally, NRS 293.394 requires the Secretary of State to adopt regulations for conducting a risk-limiting audit of an election, and these regulations must describe the procedures and the audit’s scope as well as the criteria for elections that must be audited.

The statutory provision does not authorize a county clerk to develop their own auditing standards.

In accordance with NRS 293.394, the Nevada Secretary of State adopted Regulation R110-21.<sup>29</sup> This regulation requires each county clerk to conduct an audit of the 2022 General Election and outlines the process that each clerk must follow, as well as limitations placed on county clerks when conducting a risk limiting audit. Specifically, the regulation limits the audit to the results of one race for statewide office and one race for countywide office.<sup>30</sup> Only the Secretary of State is authorized to randomly select a statewide race for performance of a risk-limiting audit. NRS 293.394 and NAC R110-21 also require “use of statistical principles and methods,” “require the use of risk-limiting

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<sup>29</sup> Adopted Regulation of the Secretary of State, LCB File No. R081-21, at 1, available on p. 136 at <https://www.nvsos.gov/sos/home/showpublisheddocument/10232/637823518790600000>.

<sup>30</sup> Adopted Regulation of the Secretary of State, LCB File No. R081-21, at 2, available on p. 137 at <https://www.nvsos.gov/sos/home/showpublisheddocument/10232/637823518790600000>.

software with the risk limit set at 5 percent,” and mandate use of a method where “individual paper ballots are randomly selected . . .”

Nye County’s hand count process involves counting *all* ballots that have already been counted by a mechanical recording device or electronic tabulator for *every* race on the ballot.<sup>31</sup> Such a process is not permitted when conducting a risk limiting audit and thus would not fall within its scope.

Nye County’s “parallel” hand count process is also not a post-election certification audit as it includes mail ballots and exceeds the limited sample size permitted by NAC 293.255. NAC 293.255 mandates that county clerks, including Mark Kampf as the interim county clerk of Nye County, conduct a postelection certification audit of *randomly* selected voter verifiable paper audit trail printers (VVPATs) to ensure that the paper record produced by a VVPAT accurately records all votes cast by voters on a mechanical recording device.

The regulation describes the sample based on population size of the county. A county clerk of a county “whose population is less than 100,000

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<sup>31</sup> See Precinct Hand Count Procedures, Updated 11/4/22, Petr’s App., Vol. 1 at 72.

must randomly select a number of mechanical recording devices *equal to 3 percent* of the number of mechanical recording devices with attached VVPATs used in the election, or not less than four mechanical recording devices, whichever is greater, for the postelection certification audit.”<sup>32</sup> NRS 293B.032 defines a mechanical recording device as a device which mechanically or electronically compiles a total of the number of votes cast for each candidate and for or against each measure voted on. NRS 293B.033 on the other hand, defines the process of “marking a paper ballot which is subsequently counted on an electronic tabulator” as a “mechanical voting system.” By counting *all* ballots a second time, Nye County is inventing a process unauthorized by law in two separate ways. First, for the ballots that were cast on a mechanical recording device, Nye County is exceeding the limited sample size by counting all the ballots a second time. Second, the counting of all ballots for the second time, **including hand-marked paper ballots scanned through an electronic tabulator**, cannot be considered a post-election certification audit as the audit is only limited to VVPATs on “mechanical recording devices.”

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<sup>32</sup> NAC 293.255(4) (emphasis added).

**B. A hand count of all ballots that have already been counted by a mechanical tabulator cannot constitute a recount or a contest as no candidate defeated in the election demanded a recount per NRS 293.403, and no candidate or registered voter contested the election per NRS 293.407.**

The only other instances where a county clerk can count ballots more than once is through a recount pursuant to NRS 293.403 and a recount after an election is contested under NRS 293.407. However, a recount pursuant to NRS 293.403 can only be conducted if a defeated candidate in the election demands a recount, and the count is limited to a recount of the votes of the candidate's race. Additionally, a recount pursuant to NRS 293.407 can only be conducted if a candidate at any election or a registered voter of the appropriate political subdivision contest the election of any candidate. Again, because Nye County is recounting *all* ballots, without the triggering demand of a candidate or registered voter, the hand count plan runs afoul of this process, and it cannot proceed.

Because Nye County's unprecedented plan ignores Nevada's well-established procedures for audits, recounts, or contests, any effort to belatedly label its plan as an audit, recount, or contest plainly fails.

### **III. Respondents’ Process, Submitted Days Before Its Implementation, Violates Legal Requirements to Ensure Ballot Security and Voting Accuracy.**

Respondents’ hand count cannot proceed because it fails to comply with the Secretary of State’s regulations implementing NRS 293.3677 that promote the right to accurate elections.

NAC 293B.040 requires the county clerk to submit “a plan to ensure the accuracy and security of voting in the county,” which must include “procedures to be used to ensure the security of the ballots.”<sup>33</sup> The county clerk must submit the plan to the Secretary of State at least 90 days before the general election, and the Secretary of State will approve or disapprove of the plan within 15 days.<sup>34</sup> Respondents’ hand count does not comply with these requirements.

The Secretary of State rejected Respondents’ previous plan to proceed with their proposed hand count procedure. On November 4, Respondents promulgated a new plan for conducting a hand count—just five days before the election. Respondents did not submit a timely plan for the hand count of ballots 90 days in advance, nor was such a plan

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<sup>33</sup> NAC 293B.040(2)(a); *see also* NRS 293.247(3)(e).

<sup>34</sup> NAC 293B.040.



approved by the Secretary of State within 15 days of the prescribed deadline, as required by NAC 293B.040. Nye County's February 22 Plan included procedures for counting ballots electronically, not by hand. To change its tabulation process to a hand count, the Nye County Clerk would have had to submit a plan detailing procedures for ensuring the security of hand-counted ballots by August 10, 2022.

To the extent that Respondents purport to have received approval from the Secretary of the State after promulgating their November 4 plan, such approval from the Secretary of State would not comply with the Secretary's own regulations. Nor would it comply with NRS 293.3677, which provides that the Secretary of State "[s]hall adopt regulations establishing uniform, statewide standards for counting a vote cast by each method of voting used in this State" other than a mechanical voting system that is used to mark paper ballots.<sup>35</sup>

This Court has emphasized "framers' intent to maintain consistency for general elections,"<sup>36</sup> and Nevada law requires the

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<sup>35</sup> NRS 293.3677(3)(b).

<sup>36</sup> *Halverson v. Sec'y of State*, 124 Nev. 484, 490 (2008).

Secretary of State to obtain and maintain consistency in the application, operation and interpretation of election laws.”<sup>37</sup> Permitting Nye County to continue an unprecedented “parallel” count effort not permitted by Nevada law would generate confusion about the 2022 election results and invite future officials to invent their own risky processes outside the procedures established by Nevada law.

**IV. Respondents are counting all ballots a second time via hand at a location that was not approved as a central counting place in violation of Nevada election law.**

Respondents’ unprecedented hand counting process involves unlawfully transporting voters’ ballots from previously approved polling places, receiving centers, and a central counting place in Nye County to a different location unapproved by the Secretary of State prior to April 15, 2022. As such, it violates additional provisions critical to Nevadans’ constitutional right to accurate election results.

NRS 293B.354 requires county clerks to submit a written plan to the Secretary of State for approval no later than April 15 of each year a

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<sup>37</sup> *Heller v. Legislature of State of Nev.*, 120 Nev. 456, 461 (2004).

general election is held detailing (among other things) the location of each central counting place, polling place, and receiving center to be used for the counting and processing of ballots.<sup>38</sup> An approved plan is required to identify precisely where counting will occur after voting ends. At the end of a voting day, county election officials must deliver ballots and other election materials to an approved receiving center or central counting place for counting and processing—not to some other location chosen ad hoc by the county clerk.<sup>39</sup> This is in part to ensure transparency in the administration of elections at the county level by allowing members of the public to “observe the delivery, counting, handling and processing of the ballots at a polling place, receiving center or central counting place.”<sup>40</sup> These processes ensure a proper chain of custody and protect against practices where ballots are shuttled different places, thus opening the door to potential tampering.

As required, the then Nye County Clerk, Sandra Merlino, submitted a plan pursuant to NRS 293B. 354 to the Secretary of State on

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<sup>38</sup> NRS 293B.354.

<sup>39</sup> NRS 293B.330(1)(b); NRS 293B.335.

<sup>40</sup> NRS 293B.354(1),(2).

April 12, 2022 naming two locations as central counting places: 1) the Clerk's Office at the Nye County Courthouse located at 101 Radar Road, Tonopah, and 2) the Clerk's Office at the Ian Deutch Justice Complex located at 1520 East Basin Avenue, Pahrump.<sup>41</sup>

While Mr. Kampf began the hand counting process at the approved central counting place listed in Ms. Merlino's letter, he has since made a last minute decision to move all ballots to the Valley Electric Conference Center—a location never identified as a place where the counting of ballots will occur—to conduct the hand count. Respondents' relocation of ballots and the hand count process to an unauthorized location thus violates NRS 293B.354, and this is a serious breach of the lawful procedures that are designed to preserve the security of ballots, transparency in ballot counting and processing, and the public's confidence in the integrity of Nevada's elections.

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<sup>41</sup> Office of Nye County Clerk, Plan to Accommodate Public to Observe Certain Election Procedures, Petr's App., Vol. 1, 4–5.

## **V. There Is No Plain, Speedy, and Adequate Remedy in the Ordinary Course of Law for Petitioner in This Matter.**

The Court should exercise its discretion to consider a petition for a writ of mandamus because the petition presents a legal issue of statewide importance that requires immediate clarification, and because the principles of judicial economy and public policy weigh in favor of deciding the petition.

The Court has previously exercised its discretion and granted a petition for a writ of mandamus to prevent unlawful hand counting procedures, given (1) voters' "compelling interest in the way elections are run;"<sup>42</sup> (2) their constitutional right to "have complaints about elections and election contests resolved fairly, accurately and efficiently as provided by law;"<sup>43</sup> and (3) the effects of unlawful election procedures at the county-level have on statewide election contests and ballot matters, which can "threaten the validity of that election process, thus impacting the citizens of this state in general."<sup>44</sup>

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<sup>42</sup> *ACLU of Nev.*, 2022 WL 14285458, at \*2.

<sup>43</sup> Nev. Const. art. 2 § 1A(11).

<sup>44</sup> *ACLU of Nev.*, 2022 WL 14285458, at \*2.

A writ of mandamus is similarly appropriate here. Respondents have begun the “parallel” hand count on Thursday, November 10, 2022<sup>45</sup> in direct contravention of several express statutory and regulatory requirements that are critical to a fair and accurate count. If allowed to proceed, Respondents’ conduct will result in irreparable harm.

Nye County’s process lacks basic procedures for ensuring security, including no publicly available (1) security protocols that would protect the ballots against corruption given the significant numbers of additional people and the supplementary space needed to perform the hand count; (2) procedures to ensure the accuracy of the vote given the well-documented added risk of error from hand counts;<sup>45</sup> (3) identification of those responsible for transporting ballots; and (4) description of how security of the ballots will be ensured in transit to protect the chain of custody. Without the proper security assurances required by Nevada law,

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<sup>45</sup> McFarland, K., [@KelseyMarie\_TV]. (2022, November 10) *Hand-counting of ballots is well underway in Pahrump. Volunteers are wearing gloves to avoid tampering (like using graphite under fingernails) and purple pens so they can’t make an additional mark on ballots.* Twitter. [https://twitter.com/KelseyMarie\\_TV/status/1590762951996493824](https://twitter.com/KelseyMarie_TV/status/1590762951996493824)

Respondents' plan will present a serious threat to the security of voters' paper ballots.

The Secretary of State already raised "concerns relating to the integrity of the election" in connection with the hand count.<sup>46</sup> Those concerns persist. Respondents' efforts to enact two separate and parallel ballot counting processes will generate significant public confusion, particularly if the public perceives any inconsistencies between the parallel counts. Finally, sanctioning this plan in the midst of political pressure and unfounded allegations casting doubt on Nevada's election will further undermine confidence in the election process and the integrity of Nevada's general election.

## **CONCLUSION**

Respondents' "parallel hand count procedure" for all ballots is unlawful under Nevada state law. The proposed procedure threatens voters' rights to accurate elections by compromising the security of their ballots in Nye County and undermining the integrity of a closely watched general election. Given Respondents' have begun using this unlawful procedure, Petitioner lacks any plain, speedy, and adequate remedy in

the ordinary course, and there is compelling reason to grant a writ of mandamus in this case.

Accordingly, the Court should issue a writ of mandamus finding that: 1) Respondents' plan to count all ballots a second time via hand after machine tabulation exceeds specific legal parameters by which a ballot may be dually reviewed and counted under Nevada law in order to protect accurate elections; 2) Respondents' plan to count all ballots a second time via hand after machine tabulation violates procedures outlined for audits under NRS 293.247(3)(g), NRS 293.394, NAC 293.295, and Regulation R110-21; 3) Respondents' plan to count all ballots a second time via hand after machine tabulation violates procedures outlined for a recount under NRS 293.403; 4) Respondents' plan to count all ballots a second time via hand after machine tabulation outside of a location approved as a central counting place violates NRS 293B.354; and 5) Nye County must cease the parallel hand count of all ballots immediately.

///

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DATED this 10th day of November, 2022.

Respectfully submitted:

**AMERICAN CIVIL  
LIBERTIES UNION OF  
NEVADA**

/s/ Sadmira Ramic

Sadmira Ramic, Esq.

Nevada Bar No.: 15984

601 South Rancho Drive, Suite B-11

Las Vegas, Nevada 89106

Telephone: (702) 366-1536

Facsimile: (702) 366-1331

Email: [ramic@aclunv.org](mailto:ramic@aclunv.org)

*Counsel for Petitioner*

/s/ Alice Clapman

Alice Clapman, Esq.\*

*Pro hac vice* pending

Bar ID #: 1012525 (D.C.)

**BRENNAN CENTER FOR  
JUSTICE**

1140 Connecticut Ave NW #1150

Washington, DC 20036

Telephone: (202) 662-8600

Facsimile: (202) 793-0857

Email:

[clapmana@brennan.law.nyu.edu](mailto:clapmana@brennan.law.nyu.edu)

*Co-Counsel for Petitioner*

/s/ Jeremy M. Creelan

Jeremy M. Creelan, Esq.\*

*Pro hac vice* pending

Bar Reg #: 2831535 (N.Y.)

**JENNER & BLOCK LLP**  
1155 Avenue of the Americas  
New York, NY 10036-2711  
Telephone: (212) 891-1678  
Facsimile: (212) 891-1699  
Email: jcreelan@jenner.com  
*Co-Counsel for Petitioner*

\*Not yet admitted in Nevada

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## VERIFICATION

I, Sadmira Ramic, declare as follows:

1. I am counsel for Petitioner ACLU of Nevada.
2. I verify that I have read the foregoing Emergency Petition

and that the same is true of my own knowledge, except for matters stated on information and belief, and as to those matters. I believe them true.

3. I declare under penalty of perjury under the law of Nevada that the foregoing is true and correct.

Executed this 10th day of November, 2022, in Las Vegas, Nevada.

/s/ Sadmira Ramic  
Sadmira Ramic, Esq.  
Nevada Bar No.: 15984

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## CERTIFICATION 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 NRAP 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 the brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14 point Cambria.

The remainder of this page is intentionally left blank.

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 proportionally spaced, has a typeface of 14 points or more, and contains 5124 words.

DATED this 10th day of November, 2022.

/s/ Sadmira Ramic  
Sadmira Ramic, Esq.  
Nevada Bar No.: 15984

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## NRAP 27(e) CERTIFICATE

I, [Christopher Peterson], declare as follows:

1. I am counsel for Petitioner ACLU of Nevada.
2. The telephone numbers and addresses of the attorneys for the

parties are as follows:

### **For the ACLU of Nevada**

Sadmira Ramic

NV Bar #15984

702.751.1483

[ramic@aclunv.org](mailto:ramic@aclunv.org)

American Civil Liberties Union of Nevada

601 S. Rancho Dr., #B-11

Las Vegas, NV 89106

Christopher Peterson

NV Bar #13932

702.366.1902

[peter@aclunv.org](mailto:peter@aclunv.org)

American Civil Liberties Union of Nevada

601 S. Rancho Dr., #B-11

Las Vegas, NV 89106

Sophia Romero

NV Bar #12446

775.446.5546

[romero@aclunv.org](mailto:romero@aclunv.org)

American Civil Liberties Union of Nevada

601 S. Rancho Dr., #B-11

Las Vegas, NV 89106

Alice Clapman\*

*Pro hac vice* pending

Bar ID #: 1012525 (D.C.)  
202.662.8600  
[clapmana@brennan.law.nyu.edu](mailto:clapmana@brennan.law.nyu.edu)  
Brennan Center for Justice  
1140 Connecticut Ave NW #1150  
Washington, DC 20036

Jeremy M. Creelan\*  
*Pro hac vice* pending  
Bar Reg #: 2831535 (N.Y.)  
212.891.1678  
[jcreelan@jenner.com](mailto:jcreelan@jenner.com)  
Jenner & Block LLP  
1155 Avenue of the Americas  
New York, NY 10036

\*Not yet admitted in Nevada

### **For Nye County and Mark Kampf**

Harry L. Arnold  
702.207.6090  
[harnold@maclaw.com](mailto:harnold@maclaw.com)  
Marquis Aurbach  
10001 Park Run Dr.  
Las Vegas, NV 89145

Brian R. Hardy  
702.382.0711  
[bhardy@maclaw.com](mailto:bhardy@maclaw.com)  
Marquis Aurbach 10001  
Park Run Dr.  
Las Vegas, NV 89145

3. Emergency relief is proper because voting was completed in

Nye County on November 8, 2022, and Mr. Kampf will begin conducting an unlawful hand count of ballots for the November 8 general election on November 10, 2022. The hand count violates the Nevada Constitution and Nevada election law. If allowed to proceed, the hand count will result in immediate and irreparable harm to the voters of Nye County and the uniform implementation of statewide election processes.

4. Prior to filing this brief, I attempted to contact attorneys Harry L. Arnold and Brian R. Hardy on November 9, 2022 via phone and email. Mr. Arnold confirmed receipt of email on November 9, 2022. I sent Mr. Arnold and Mr. Hardy, via email, a digital copy of the foregoing Emergency Petition and Petitioner's Appendix, Volume 1, on November 10, 2022, before they were filed.

5. I also contacted the Office of the Clerk of the Supreme Court of Nevada to notify it that Petitioner would be filing this Emergency Petition, in accordance with NRAP 27(e)(1).

Executed this 10th day of November, 2022, in Las Vegas, Nevada.

/s/ Christopher Peterson  
Christopher M. Peterson, Esq.  
Nevada Bar No.: 13932



## CERTIFICATE OF SERVICE

I hereby certify that on November 10, 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, post-prepaid 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:

Harry L. Arnold  
[harnold@maclaw.com](mailto:harnold@maclaw.com)

Brian R. Hardy  
[bhardy@maclaw.com](mailto:bhardy@maclaw.com)

/s/ Christopher Peterson  
Christopher M. Peterson, Esq.  
Nevada Bar No.: 13932