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CASE NO: A-22-860996-W
Department 8

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**EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR CLARK COUNTY, STATE OF NEVADA**

CORTEZ MASTO FOR SENATE and DSCC,

Case No.:

Plaintiff-Petitioners,

Dept. No.:

v.

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

**MOTION FOR TEMPORARY
RESTRAINING ORDER OR WRIT
OF MANDAMUS**

Defendants-Respondents.

INTRODUCTION

Plaintiffs Cortez Masto for Senate and DSCC file this action and bring this motion to ensure that the voters of Clark County are given an adequate opportunity to exercise their constitutional right to vote. This afternoon, voting centers across Clark County reported delays due to running out of printer paper for their Voter Verified Paper Audit Trail (VVPAT). This is not just a matter of running out of paper—upon information and belief, entire VVPAT printers had to be switched out, a process which on average took approximately two hours at most voting centers. While some of the polling sites suffering a loss of paper are back up and running, many others continue to wait for

1 replacement deliveries of VVPAT machines. In the meantime, lines continue to grow at these
2 polling locations and many voters, discouraged at the inability to cast ballots, have left voting
3 centers without voting, effectively disenfranchising them.

4 Nevada law requires that polling places be open for 12 hours on election day, NRS 293.305,
5 and contemplates processes for the casting of ballots after the traditional hours when a court orders
6 an extension of hours. *See* NRS 293.464. The Nevada Constitution also guarantees that all eligible
7 citizens “shall be entitled to vote for all officers that now or hereafter may be elected by the people,
8 and upon all questions submitted to the electors at such election.” Nev. Const., Art. II, Sections 1,
9 2.

10 Petitioners therefore request an order from this Court requiring Respondents to continue
11 operating the voting centers above until 9:00 p.m. and to permit voters who have joined the line for
12 those voting centers up until that time to vote.

13 **1. Petitioners are Entitled to a Temporary Injunction/Preliminary Injunction and Writ**
14 **of Mandamus.**

15 A writ of mandamus may be issued to “to compel the performance of an act which the law
16 especially enjoins as a duty resulting from an office, trust or station.” NRS § 34.160.

17 Accordingly, “mandamus will not issue unless the petitioner can show that the respondent
18 ‘has a clear, present legal duty to act.’” *Howell v. Ricci*, 197 P.3d 1044, 1049 (Nev. 2008) (quoting
19 *Round Hill Gen. Imp. Dist. v. Newman*, 637 P.2d 534, 536 (Nev. 1981)). “The writ will not issue,
20 however, if the petitioner has a plain, speedy and adequate remedy in the ordinary course of law.”
21 *Mosley v. Nev. Comm’n on Jud. Discipline*, 22 P.3d 655, 658 (Nev. 2001). “Whether to consider a
22 writ petition is solely within this court’s discretion.” *Gardner on Behalf of L.G. v. Eighth Jud. Dist.*
23 *Ct. in & for Cnty. of Clark*, 405 P.3d 651, 653 (Nev. 2017).

24 “A preliminary injunction is available when the moving party can demonstrate that the
25 nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which
26 compensatory relief is inadequate and that the moving party has a reasonable likelihood of success
27 on the merits.” *Boulder Oaks Cmty. Ass’n v. B & J Andrews Enterprises, LLC*, 125 Nev. 397, 403,
28 215 P.3d 27, 31 (2009). *See also* Nev. R. Civ. P. 65(a); NRS 33.010.

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2. Petitioners are likely to succeed on the merits and have demonstrated that Respondents are violated a statutory duty.

Defendants’ failure to keep the polls open risks disenfranchising Clark County voters, including Petitioners’ supporters, and accordingly harming Petitioners’ competitive prospects in today’s election. The Nevada Constitution affirmatively guarantees the right to vote, *see* Nev. Const., Art. II, Sections 1 & 2, and Nevada statute similarly provides that voting centers *must* be “open at 7 a.m. and close at 7 p.m.” NRS 293.273. Respondents have violated this right and their statutory duty by failing to keep numerous voting centers open for the 12 hour period mandated by Nevada law. As a result, many eligible voters are being forced to wait in unreasonable lines that discourage them from voting. Many voters are likely to leave voting centers in such circumstances, effectively disenfranchising them and denying them their constitutional right to vote. Petitioners are therefore likely to succeed on the merits of their constitutional and statutory claims.

Moreover, Nevada law expressly contemplates the relief Petitioners seek here. NRS 293.464 provides:

If a court of competent jurisdiction orders a county to extend the deadline for voting beyond the statutory deadline in a particular election, the county clerk shall, as soon as practicable after receiving notice of the court’s decision:

(a) Cause notice of the extended deadline to be published in a newspaper of general circulation in the county; and

(b) Transmit a notice of the extended deadline to each registered voter who received a mail ballot for the election and has not returned the mail ballot before the date on which the notice will be transmitted.

2. The notice required pursuant to paragraph (a) of subsection 1 must be published:

(a) In a county whose population is 47,500 or more, on at least 3 successive days.

(b) In a county whose population is less than 47,500, at least twice in successive issues of the newspaper.

1 Nevada law therefore expressly contemplates the relief Petitioners seek, reinforcing their likelihood
2 of success on the merits.

3 **3. Petitioners will suffer irreparable harm absent relief**

4 Clark County voters and supporters of Cortez Masto for Senate and DSCC will suffer
5 disenfranchisement absent immediate action from this Court. That this injury is, by definition,
6 irreparable, should be uncontroversial, as “once the election occurs, there can be no do-over and no
7 redress.” *League of Women Voters of N.C. v. North Carolina*, 769 F. 3d 224, 247 (4th Cir. 2014).
8 Indeed, courts regularly find the irreparable harm element met when voting rights are at stake. *See*,
9 *e.g.*, *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“A restriction on the fundamental
10 right to vote . . . constitutes irreparable injury.”); *N.C. State Conference of the NAACP v. N.C. State*
11 *Bd. of Elections*, No. 1:16CV1274, 2016 WL 6581284, at *8 (M.D.N.C. Nov. 4, 2016) (“Denying
12 an eligible voter her constitutional right to vote and to have that vote counted will always constitute
13 irreparable harm.”); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (finding “irreparable
14 harm if [plaintiffs’] right to vote were impinged upon”). There can be little question Petitioners and
15 Clark County voters will suffer irreparable harm absent relief.

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18 **4. The balance of the equities and the public interest tip in Plaintiffs’ favor**

19 As both the U.S. Supreme Court and the Nevada Constitution recognize, “[n]o right is more
20 precious in a free country than that of having a voice in the election of those who make the laws
21 under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *see also*
22 *Nev. Const., Art. II, Section 1*; *Clark Cnty. v. City of Las Vegas*, 92 Nev. 323, 342, 550 P.2d 779,
23 792 (1976) (“It is, of course, well established that the right to vote is fundamental in a free
24 democratic society. Every citizen has an unalienable right to full, effective participation in the
25 political process.”).

26
27 Here, an injunction would provide Petitioners’ supporters with an opportunity to exercise
28

1 the franchise and would have little to no impact on Respondents, who would merely have to keep
2 the polls open for several extra hours—a process expressly contemplated by Nevada law. *See* NRS
3 293.464. The public will be served by an injunction or writ of mandamus as even non-supporters
4 of Petitioners will be able to vote who could not otherwise, and the balance of equities tips
5 decisively in Petitioners’ favor.
6

7 **5. Petitioners have No Adequate Remedy at Law.**

8 Given the extraordinary time constrains at issue and the irreparable harm they face,
9 Petitioners have no alternative remedy at law. *See We the People Nev. v. Miller*, 124 Nev. 874, 880,
10 192 P.3d 1166, 1170 (2008) (allowing for public policy, urgency, and necessity factors in deciding
11 to consider a writ petition that “raises issues of significant magnitude” and “potentially has an
12 impact on this year’s election as well as future general elections”); *LaPorta v. Broadbent*, 91 Nev.
13 27, 29, 530 P.2d 1404, 1405-06 (1975) (exercising discretion to consider a writ petition concerning
14 an election matter in the first instance “because the public interest requires an early determination
15 of the issue”).
16

17 **6. Relief Sought**

18 Upon information and belief, the following voting centers have been most severely
19 impacted by the lack of printing paper and the substitution of VVPAT machines:
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- 21 ● Boulevard Mall
- 22 ● Deer Springs Town Center
- 23 ● Nellis
- 24 ● Aliente
- 25 ● Keller
- 26 ● Silverado Ranch Plaza
- 27 ● Walnut Community Center
- 28 ● Whitney Recreation Center
- Hollywood Recreation Center

27 Upon information and belief, it has usually taken approximately two additional hours for
28 VVPAT machines to be restored and for voting to resume with the required number of machines.

1 During this time voters have been forced to wait in line or been forced to leave voting centers
2 altogether in the hopes of returning at a later time.

3 Petitioners therefore request an order from this Court requiring Respondents to continue
4 operating the voting centers above until 9:00 p.m. and to permit voters to join the line for those
5 voting centers up until that time so that voters who previously left the line due to an inability to
6 vote may return and lawfully cast their ballots.
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8 Dated: November 8, 2022

Respectfully submitted,

9
10 /s/ Bradley Schrager

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