

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

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Elizabeth A. Brown
Clerk of Supreme Court

REPUBLICAN NATIONAL COMMITTEE,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE
HONORABLE TIMOTHY C. WILLIAMS, DISTRICT JUDGE, DEPT. XVI,

Respondents,

and

CLARK COUNTY; CLARK COUNTY ELECTION DEPARTMENT; AND
JOE P. GLORIA, IN HIS OFFICIAL CAPACITY AS THE CLARK COUNTY
REGISTRAR OF VOTERS,

Real Parties in Interest,

and

DSCC AND DCCC,

Intervenor-Real Parties in Interest

**EMERGENCY PETITION FOR WRIT OF MANDAMUS
UNDER NRAP 21(a)(6) - ELECTION RELATED
IMMEDIATE RELIEF REQUESTED**

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the foregoing are persons or entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Jordan T. Smith, Esq., of Pisanelli Bice PLLC, is the only attorney that has or will appear for Petitioner. There are no other persons or entities described in NRAP 26.1(a) that need to be disclosed.

DATED this 4th day of November, 2022.

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith
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ROUTING STATEMENT

The Nevada Supreme Court should retain this matter because it presents an election question and raises as a principal issue a question of statewide public importance. NRAP 17(a)(1), (12).

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ISSUES PRESENTED

NRS 293B.360 requires that any "mail ballot inspection board" or "such other additional boards or . . . officers as the county clerk deems necessary for the expeditious processing of ballots" "must represent *all political parties as equally as possible*." The Clark County Registrar hired outside workers through a third-party temporary staffing agency to staff a signature verification entity, which it initially called a "board," whose members inspect the signatures on mail ballots to determine if the signatures match the signature of the voter on file. Originally, the Registrar hired sixty-four members, out of which only eight were Republicans. There were *four times* as many Democrats on that entity. After Petitioner filed the underlying motion, the Registrar stopped referring to the entity as a "board," and immediately added six more Republicans to the group. The District Court ruled that the Registrar has no obligation to try to hire an equal number of all political parties because Clark County's signature verification board is not a "board" under NRS 293B.360 and its temporary workers qualify as the County's or Registrar's "employees" under NRS 293.269927.

Does NRS 293B.360 apply to the Registrar's signature verification entity and, if so, does its composition "represent all political parties as equally as possible" under NRS 293B.360(2)?

I. INTRODUCTION AND RELIEF SOUGHT

Clark County's Registrar of Voters¹ hand-selected a group of individuals to verify mail ballot signatures that disproportionately excludes Republicans. The Registrar advances the astonishing claim that he has no duty to provide equal representation for all political parties on Clark County's important signature verification board. However, NRS 293B.360(2) mandates that when the Registrar "create[s]" "a mail ballot inspection board" or any "such additional boards . . . deem[ed] necessary for the expeditious processing of ballots," "*the members of each board must represent all political parties as equally as possible.*"

In August 2022, through Nevada Public Records Act requests, Petitioner Republican National Committee ("RNC") began requesting information to confirm whether the Registrar was complying with its statutory obligation to hire representatives from all political parties. The Registrar stonewalled and repeatedly refused various compromise offers for the RNC to, at least, obtain the requested information in a limited format. Eventually, the RNC was forced to sue. The *very next day* after RNC's filed suit, the Registrar released pieces of the information the RNC sought weeks before. As a result, the parties entered a stipulation and order to stay the case on the condition that the Registrar would provide to the RNC rosters of

¹ The Clark County Real Parties in Interest are referred to as "the Registrar" or "Clark County."

the political party affiliation for all election polling locations "including the manual signature verification and counting *board teams*" – the first time the Registrar referred to the entity as a "board" in Court.

Following the stipulation, the Registrar disclosed the party affiliation roster for all poll workers and counting board members in Clark County, but the Registrar dragged its feet disclosing the make-up of the signature verification board. On October 18, 2022, the Registrar finally revealed that Clark County's signature verification board had *four times* as many Democrats as Republicans. Out of sixty-four total members, the Registrar hired a mere eight Republicans.

The RNC immediately proposed solutions to bring the Registrar into compliance with the law, avoid litigation, and prevent a controversy from hanging over the election. The RNC suggested transferring already-hired Republicans to the signature verification board to even out the proportions. The Registrar refused. The RNC provided a list of 250 individuals who had applied to be poll workers and were willing to verify signatures. The Registrar refused. The RNC recommended using other statutorily-required reserve election board officers to fill in the ranks. The Registrar refused. Time and again, the Registrar claimed there was insufficient time to find and train new Republican members.

Without any other options, the RNC filed a motion to lift the previously entered stay and made an application for writ of mandamus or injunction directing

the Registrar to comply with NRS 293B.360(2). Again, *the very next day after the RNC threatened litigation*, the Registrar suddenly added six new Republicans to the signature verification board. Contrary to its prior representations, the Registrar was able to train new recruits that morning and they started working the very next day.

Meanwhile, the DSCC and DCCC (Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee) intervened in the lawsuit to defend the disproportionate number of Democrats and their unfair advantage on the signature verification board. The district court held a hearing on November 2, 2022, and denied the RNC's motion and application. The district court erroneously held that the Registrar's group of temporary workers verifying mail ballot signatures does not qualify as a "board" under NRS 293B.360 or were otherwise "employees in the clerk's office" under NRS Chapter 293 to which no equality requirement purportedly applies. The district court decided that these temporary workers "simply perform ministerial functions." But the signature verifiers do not simply push paper. They have the final word on whether the mail ballot signatures match or whether the signatures must go through the "cure" process. There is no one that supervises or vetoes their decisions. In many ways, this group of temporary workers unilaterally decides if the vote is counted or not.

The district court's ruling has significant consequences for Nevada's election. Under the district court's reasoning, all Nevada counties could play word games,

re-label their signature verification entity, and stack it with members of a single political party. Any Nevada county could appoint only Republicans or only Democrats to decide if mail ballot signatures match. Such a system contravenes NRS 293B.360(2) and renders toothless a vital procedural safeguard implemented by the Legislature to ensure that an election board – like Clark County's signature verification board – applies its standards and rules evenly to all mail ballots and voters. The presence of an equal number of all political parties acts as a checks and balances system against partisan actors and, equally important, dispels any *appearance* of partiality in this crucial aspect of the process.

Unless this Court intervenes and issues emergency relief, the RNC and all Nevada voters will suffer irreparable harm. There is no practical way to undo the signature verification process that is occurring *right now* using the Registrar's unlawful composition. This Court can prevent any controversy or cloud from hanging over the election by directing the Registrar to comply with NRS 293B.360(2).

To be clear, the RNC did not request the district court, and does not seek from this Court, any halt to voting or mail ballot processing. Nor does the RNC seek to undo any completed processing. The RNC only seeks immediate corrective action and compliance with NRS 293B.360(2) going forward because the Registrar has given no assurances that he will continue to hire and schedule an equal number of

Republicans for the board verifying mail ballot signatures in Clark County. *The hiring and scheduling of an equal number of all political parties is within the Registrar's control.*

Clark County's signature verification process is ongoing. Yet, there is still time for this Court to afford relief. The deadline to receive mail ballots is November 12, 2022, at 5:00 p.m. and the deadline to cure mail ballots with signature defects is November 14, 2022, at 5:00 p.m. Therefore, the Court's ruling will impact the remaining signature verification process. This Court should issue a writ of mandamus directing the district court to lift the stay and order the Clark County Registrar to comply with NRS 293B.360(2).

II. STATEMENT OF FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED BY THE PETITION

A. The RNC Sends a Public Records Request to the Registrar.

This saga began in August 2022 with a simple request for government transparency. The RNC sent a public records request to the Registrar for, among other things, the political party affiliation and registration for all Clark County poll workers hired for the 2022 election. (APP0018.) The RNC offered to treat this information as "attorneys' eyes only" under a confidentiality agreement. (*Id.*) The Registrar, through counsel, responded to the RNC's public records requests via email on August 11, 2022, stating that "it [was] anticipated [that] some of the records will be available by September 1, 2022, but based on the numerous request[s] it is

anticipated that some requests may take longer." (APP0021-22.) The Registrar did not assert any objection or concerns about confidentiality or privacy in this response.

(Id.)

On August 17, 2022, the Registrar started producing documents on a rolling basis for other categories of the RNC's requests but not for the request about poll worker party affiliation. The Registrar indicated that "the County will be releasing documents as they become available." (APP0024-25.) Two weeks later, on August 31, 2022, the Registrar emailed stating, "As previously indicated, the election department will not be providing a list of the people that worked or will work the primary and general 2022 elections due to election security." (APP0027.) This communication was the Registrar's first formal denial of the RNC's NPRA request about poll worker information.

That same day, the RNC asked the Registrar to provide the legal authority for Respondents' blanket denial of the requested information. (APP0029-31.) The RNC also reiterated its earlier offer to keep the information "attorneys' eyes only" even though there is no legal obligation to do so. (APP00029-31.)

The Registrar responded without citing any explicit statutory authority for its claim of confidentiality. Instead, he pointed to a balancing test and asserted privacy concerns related to the supposed risk of harassment. (APP0029.)

To avert litigation and a public controversy, the RNC sent a compromise letter to the Registrar on September 2, 2022 detailing the many reasons the requested information about poll workers is not confidential and must be disclosed. The RNC asked the Registrar to reconsider his position and to provide a response by September 8, 2022. (APP0033-36.) The Registrar would not relent.

B. The RNC files Suit and the Registrar Released Information the Next Day.

On September 20, 2022, the RNC filed a Petition for Writ of Mandamus and Application Compelling Disclosure of Public Records Pursuant to NRS 239.011. The Petition sought, among other things, an order compelling, and a writ of mandamus directing, the Registrar to disclose the party affiliation of Clark County's poll workers and other election board members. (APP0001-36.)

The very next morning, on September 21, 2022, the Registrar at last provided the aggregate party affiliation of poll workers. (APP0083.) Because the Registrar was finally releasing the requested information, the parties reached an agreement to resolve their dispute over production of information, and this Court entered a Stipulation and Order reflecting that compromise on October 5, 2022. (APP0057-61.)

In the Stipulation, the Registrar, among other things, "agree[d] to provide the RNC with the scheduled roster for all early voting and general election polling locations in Clark County, including manual signature verification and counting

board teams. The roster will include the political party affiliation and job title/task assignment for all poll workers at each polling location." (APP0058) (emphasis added). The Stipulation plainly refers to a signature verification entity as a *board*. (*Id.*)

The parties also expressly stipulated that "[a]ny disputes or disagreements between the parties related to the issues raised in the Petition, this Stipulation, and/or disclosure of the information and documents pursuant to this Stipulation and Order may be resolved by the Court on motion practice following good faith meet and confer efforts by the parties." (APP0058.) The parties stayed proceedings until December 23, 2022 and agreed to dismiss the action if there was no pending disputes. (APP0059.)

C. The Registrar Releases Information Showing Systematic Exclusion of Republicans.

On October 9, 2022, Clark County provided the partisan breakdown of poll workers for early voting and Election Day. (APP0088-117.) The Registrar "anticipate[d] having the manual signature verification and counting board rosters by mid-week." (*Id.*) Again, the Registrar called the entity verifying signatures a "manual signature verification . . . board." (*Id.*)

The disparity of partisan poll workers at certain locations in Clark County is significant. The early voting roster is a stark illustration:

- Boulevard Mall
 - Democrats 29
 - Republicans 3
 - Nonpartisans 8
 - Students 2
- Deer Springs Town Center
 - Democrats 28
 - Republicans 3
 - Nonpartisans 3
- East Las Vegas Library
 - Democrats 19
 - Republicans 3
 - Nonpartisans 6
 - Students 5
- Las Vegas Athletic Club – North Decatur
 - Democrats 24
 - Republicans 11
 - Nonpartisans 6
- Las Vegas City Clerk
 - Democrats 7
 - Republicans 2
 - Nonpartisans 3
- Nellis Crossing Shopping Center
 - Democrats 24
 - Republicans 8
 - Nonpartisans 8
 - Students 1
- Lowes Craig Road
 - Democrats 21
 - Republicans 8
 - Nonpartisans 8

- Town Square Las Vegas
 - Democrats 20
 - Republicans 7
 - Nonpartisans 7
- Mobile Team 5
 - Democrats 23
 - Republicans 10
 - Nonpartisans 5
 - Students 1
- Mobile Team 6
 - Democrats 18
 - Republicans 8
 - Nonpartisans 9
- Mobile Team 12
 - Democrats 26
 - Republicans 3
 - Nonpartisans 3
- Mobile Team 14
 - Democrats 15
 - Republicans 6
 - Nonpartisan 6
 - Students 1
- Mobile Team 15
 - Democrats 17
 - Republicans 7
 - Nonpartisans 7
 - Students 1
- Poll Worker Extras Blue
 - Democrats 8
 - Republicans 1
 - Nonpartisans 1
- Poll Worker Extras Green
 - Democrats 19
 - Republicans 7
 - Nonpartisans 8

- Poll Worker Extras Pink
 - Democrats 17
 - Republicans 6
 - Nonpartisans 1

(APP0119-47.)

Given the troubling disparity between Republicans and Democrats at these polling locations, the RNC wrote the Registrar requesting an immediate meet and confer to discuss solutions without litigation or controversy. (APP0149-52.) The RNC's letter highlighted that the Registrar had not yet provided the partisan roster for the signature verification board pursuant to the Stipulation in this case. (*Id.*)

On October 10, 2022, the Registrar provided the partisan proportions of the counting board, but not the signature verification board. (APP0154-55.) The Registrar stated he "anticipate[d] having the manual signature verification room roster by the end of the week." (*Id.*) The day after the RNC's letter, on October 18, 2022, the Registrar finally provided "a tentative breakdown of party affiliation for the manual signature verification room." (APP0157-58.) The partisan percentages were stunning.

The Registrar hired *four times as many Democrats as Republicans*. Out of sixty-four total members, the Registrar hired only eight Republicans from this State's most populous county. The partisan composition of its signature verification board disproportionately excludes Republicans as follows:

- Democrats 23
- Republicans 8
- Nonpartisans 33

(*Id.*)

D. The Role of the Signature Verification Board.

The signature verification board plays an integral role in universal mail-in voting elections. In Nevada, "each active registered voter in the county" receives a mail-in ballot. *See* NRS 293.269911. Generally, mail-in ballots are collected from a few sources: United States mail, drop boxes, and overseas mail (typically from military personnel). (*See* APP0160.)

Once received, the ballots are processed twice through an electronic device which compares and verifies the voters' signatures. In Clark County, this is known as an "Agilis machine." On the first pass, the Agilis machine checks ballots for irregularities (*e.g.* weight/thickness) and then takes a picture of the voter's signature on the envelope. (*Id.*) The Agilis machine next sorts those ballots with potential irregularities from the ballots ready for a second pass. (*Id.*)

On the second pass, the Agilis machine compares the first-pass picture of the voter's signature to other signatures on file to see if they match. (*Id.*) The comparison signature usually comes from Department of Motor Vehicles (DMV) records. (*Id.*) If the Agilis machine finds that the signatures sufficiently match based on its

settings, there is no manual review of the signatures and the ballots are transferred to the counting board. (*Id.*)

Frequently, due to the poor quality of the DMV images, the Agilis machine rejects a high percentage of signatures. When the Agilis machine does not find a sufficient match, two members from the signature verification board conduct a manual review of the mail ballot signatures to check if they match or if "there is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter." (APP0161); NRS 293.269927(3). There is a "reasonable question of fact" about whether the signatures match "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" except for discrepancies about middle initials or middle names, certain punctuation, use of common nicknames, or use of one last name instead of two. NRS 293.269927(4).

If the signature verification board members determine that there is a "reasonable question of fact" about the mail ballot signature, but the voter otherwise appears entitled to cast a mail ballot, the clerk "shall contact the voter and advise the voter of the procedures to provide a signature or a confirmation that the signature used for the mail ballot belongs to the voter as applicable." NRS 293.269927(6)

This procedure is referred to as the "cure" process. Before the mail ballot may be counted, "the voter must provide a signature or confirmation, as applicable, not

later than 5 p.m. on the sixth day following the election." (*Id.*) Nevada law requires the Registrar to contact the voter and proceed through the cure and confirmation process whenever *two* members determine there is a reasonable question of fact about whether the signature on the mail ballot matches the signature of the voter. There is no secondary review.

E. The RNC Tries to Fix the Registrar's Statutory Violation before Litigation.

Because the Registrar's allocation of "all political parties" on the signature verification board is nowhere close to "as equally as possible," the RNC conducted an immediate conference with the Registrar's counsel on October 18, 2022. (APP0166-72.) The RNC explained how the Registrar's partisan allocation violated NRS 293B.360(2). (*Id.*) The Registrar disagreed and described how he utilized three staffing agencies and only hired individuals provided by those entities without taking any other independent steps to find and hire an equal number of Republicans (or any other party). (APP0166-72.) The Registrar did not actively recruit individuals. The Registrar simply took what the staffing agency gave him and did nothing more. There is no indication that the third-party staffing agencies did anything – or even knew about – the Registrar's obligation under NRS 239B.360(2). (*Id.*)

The RNC suggested many solutions to comply with the statute. For instance, because Clark County hired approximately 426 Republicans (to 689 Democrats) as poll workers, the RNC inquired if some Republicans could be transferred to the

signature verification board. (APP0166-72.) The RNC also provided a list of about 250 Republicans who applied to work as poll workers and were willing to fill these positions. (*Id.*; APP0464-68.) The RNC extended this list to make the Registrar's job easier, not to "place hyper-partisan volunteers." Lastly, the RNC asked whether the reserve election board members could be added to the signature verification board. (APP0166-72.) Clark County is required to hire reserve election board members pursuant to NRS 293.225 and these reserve individuals are available to serve on the signature verification board.

The Registrar refused each of these options, and stated that there was insufficient time to train more Republicans for the signature verification board. (APP0166-72.) The Registrar's final rejection arrived on October 25, 2022. (APP0072.)

F. The RNC Files for a Writ of Mandamus or Injunction and the Registrar Suddenly Adds More Republicans to the Board.

On October 27, 2022, the RNC filed a Motion to Lift Stay and Application for Writ of Mandamus or Injunction Directing the Clark County Registrar to Comply with NRS 293B.360(2) on Order Shortening Time. (APP0062).² Hours later, the

² Because Clark County had not filed a formal answer to the RNC's Petition, the RNC filed a First Amended Petition adding a substantive claim related to the unlawful signature verification board. (APP0440-54.); *See* NRAP 15(a)(1). Although unnecessary, the RNC also made an oral motion to amend its pleadings at the hearing.

Registrar informed the RNC that it "add[ed] 6 additional employees with Republican party affiliation to the manual signature verification process." (APP0464.) The new Republicans were trained the next day and started the day after. (*Id.*) Thus, insufficient time for training was a pretextual excuse to avoid the Registrar's compliance with (or his violation of) NRS 293B.360(2).

In the meantime, Clark County filed an opposition to the RNC's motion. (APP0174-81.) Clark County provided no evidence about the nature of the relationship between the Registrar's office and the temporary employees verifying signatures. Clark County did not introduce the request for proposal(s) under which the temporary workers were hired nor did it provide any hiring paperwork for the temporary workers. There was no evidence or testimony about how Clark County classified the employment of the temporary workers. Clark County's internal records from the June primary indicate that it classifies temporary workers differently than county employees. (APP0462.) It distinguished between "Temp Agency" and "County Employee[s]." (*Id.*) There was no evidence that the Registrar attempted to hire an equal number of signature verifiers from all political parties or that he tried to correct the disparity once he learned about it.

The Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee also intervened to defend the disproportionate

number of Democrats on Clark County's signature verification board and to maintain their unfair advantage. (APP0182.)

G. The District Court Holds a Hearing and Denies the RNC's Motion.

The district court entertained oral arguments on November 2, 2022, and issued a minute order the following day. (APP0469-70.) The district court denied RNC's motion. It held that the collection of temporary workers verifying signatures for Clark County did "not constitute a 'board' for purposes of NRS 293B.360." (APP0470.) It found "insufficient evidence to establish that, by hiring temporary employees, the County created a 'mail ballot inspection board' requiring 'representation from all political parties as equally as possible.'" (APP0469) (citing NRS 293B.360(2)). The district court concluded that "the County did not delegate its own discretion (nor its decision-making power) to a purported mail ballot inspection board . . . [it] simply hired temporary employees." (*Id.*) However, the district court did not directly address NRS 293B.360(1)(e)'s catch-all provision for "[s]uch additional boards or appoint such officers as the county clerk deems necessary for the expeditious processing of ballots."

The district court also determined that the temporary workers "are County employees, for purposes of NRS 293.269927," the statute that outlines the process by which mail ballot signatures are manually verified after an electronic voting machine rejects them. (APP0470.) According to the district court, these temporary

employees "perform ministerial functions for the County" (*id.*), and verifying signatures is just "a job-related task [that] does not rise to the level of decision making typically expected from a board." (APP0469-70.) Even though the Registrar presented no evidence about the nature or classification of the temporary workers' employment, the district court surmised that it is "a big stretch to classify temporary workers as board members on a board that the County Registrar never created." (*Id.*)

The district court directed Clark County to prepare "a detailed Order, Findings of Fact, and Conclusions of Law, based not only on the foregoing Minute Order but also on the record on file here." (*Id.*) A final, written order has not yet been entered at the time of this Emergency Petition for Writ of Mandamus.

III. REASONS WHY THE REQUESTED WRIT SHOULD ISSUE

A. The Court Should Entertain this Writ Petition.

1. The RNC's Petition is proper.

The RNC's Emergency Petition for Writ of Mandamus is the correct vehicle for relief from this Court. Even though the RNC moved the district court for a writ and injunction, which are ordinarily appealable, the necessary formal written order has not been entered in this fast moving and urgent situation. Thus, there is no written order from which to appeal and this is an emergency situation warranting immediate appellate review from this Court. The Court has held that writ petitions are proper in these circumstances. *See Las Vegas Rev.-J. v. Eighth Jud. Dist. Ct.*, 134 Nev. 40,

43, 412 P.3d 23, 26 (2018) ("Although preliminary injunction orders are directly appealable, and ordinarily, writ relief will not lie when a party can take a direct appeal, here the Review-Journal sought writ relief from the district court's oral preliminary injunction, which could not be appealed until a written order was entered. Because the Review-Journal had no right of direct appeal when it filed its writ petition, and because a later appeal would not adequately remediate the harm complained of in this case, we accepted the emergency petition for writ relief . . . and now proceed to address the petition on its merits.") (internal citations omitted); *see also Las Vegas Metro. Police Dep't v. Eighth Jud. Dist. Ct.*, 134 Nev. 971, 431 P.3d 37, 2018 WL 6264749, at *2 (2018) (unpublished disposition) ("[B]ut prior to entry of the district court's written order, Metro filed the instant emergency petition for a writ of prohibition challenging the district court's pending order. This court directed the entry of a written order from the district court, stayed the case below, and ordered briefing.").

Once a formal written order is entered, the RNC will be able to file a notice of appeal and consolidate it with this matter, if necessary. The Court can treat the RNC's Petition as its opening brief on appeal. *See Ramsey v. Eighth Jud. Dist. Ct.*, 131 Nev. 1336, 2015 WL 4550488, at *1 (2015) (stating

"We will treat Ramsey's petition as the opening brief in the appeal" in election context where petitioner filed a petition before a notice of appeal).

Therefore, this Petition is rightly before the Court.

2. *The standard for writs of mandamus.*

Nevada law vests this Court with authority to issue writs of mandamus. Nev. Const. art. VI, §4; NRS 34.160. The Court may issue a writ of mandamus "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station." NRS 34.160. The writ should issue "in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. The Court may also consider and grant a writ of mandamus when the petition presents an issue of first impression, or an opportunity to clarify a legal issue, and doing so will serve judicial economy. *Canarelli v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 138 Nev. Adv. Op. 12, 506 P.3d 334, 337 (2022).

As detailed below, the Registrar has a statutory duty arising from his office to "represent all political parties as equally as possible" when he utilizes a "mail ballot inspection board" or "[s]uch additional boards or . . . such officers as the county clerk deems necessary for the expeditious processing of ballots." As a result, the district court also had a duty to grant the RNC's requested relief. Absent this Court's intervention, the RNC – and all Nevadans – will suffer irreparable harm and have no plain, speedy, or adequate legal remedy after the election.

The Court should entertain the Petition to address this important issue of Nevada law about whether *all* of Nevada's counties can staff a signature verification entity with the representatives of a single political party or whether those groups must have equal and proportional representation. This Court has recently entertained similar writ petitions in the election context because "[v]oters have a compelling interest in the way elections are run" and election procedures "impact[] the citizens of this state in general." *ACLU v. The County of Nye*, No. 85507, 2022 WL 14285458, at *2 (Nev. Oct. 21, 2022) (Unpublished Disposition).

B. The Court Should Issue a Writ of Mandamus

1. *The Registrar's signature verification entity is a "board" under NRS 293B.360(2)*

NRS Chapter 293B.360 governs the requirements when a county – like Clark County – uses "mechanical voting systems or devices" and creates discretionary groups or bodies to assist with conducting mail voting elections. NRS 293B.360(2) states in full:

NRS 293B.360 Creation of special election boards; appointment of members to boards. [Effective January 1, 2022.]

1. To facilitate the processing and computation of votes cast at any election conducted under a mechanical voting system, the county clerk shall create a computer program and processing accuracy board, *and may create*:

- (a) A central ballot inspection board;
- (b) *A mail ballot inspection board*;
- (c) A ballot duplicating board;
- (d) A ballot processing and packaging board; and
- (e) *Such additional boards or appoint such officers as the county clerk deems necessary for the expeditious processing of ballots.*

2. Except as otherwise provided in subsection 3, the county clerk may determine the number of members to constitute any board. The county clerk shall make any appointments from among competent persons who are registered voters in this State. ***The members of each board must represent all political parties as equally as possible.*** The same person may be appointed to more than one board but must meet the particular qualifications for each board to which he or she is appointed.

3. If the county clerk creates a ballot duplicating board, the county clerk shall appoint to the board at least two members. The members of the ballot duplicating board must not all be of the same political party.

4. All persons appointed pursuant to this section serve at the pleasure of the county clerk.

NRS 293B.360 (emphasis added).

This provision confers authority on the Registrar to convene groups that perform various functions to help the Registrar conduct an election, including inspecting mail ballots and any other function the Registrar finds "necessary for the expeditious processing of ballots." Any group of people that "assists" the Registrar with these duties is considered an "election board." NRS 293B.027 states that an "election board" "means the persons appointed by each county or city clerk *to assist in the conduct of an election.*" (emphasis added).

However, the Legislature imposed a condition on the Registrar if he creates groups to assist him. The Legislature decreed that the Registrar may only create these boards if "the members of each board . . . represent all political parties as equally as possible." There is only one exception to the equality requirement. NRS 293B.360(3) states that the "members of a ballot duplicating board must not all be of the same political party." In other words, a ballot duplicating board may have

minimal diversity among political parties. *All* other boards must represent all parties equally.

Neither Clark County nor the DSCC/DCCC asserted that the current composition of Clark County's signature verification group remotely satisfies NRS 293B.360(2)'s equality requirement. Significantly, the Registrar also did not argue – or present evidence – that it made any efforts whatsoever to compile the group with an equal number of members from all political parties. There is no proof that the Registrar took any independent action at all. It seemingly delegated its statutory obligation to third-party staffing agencies to find workers for the signature verification board without any regard for their political affiliations. There is no evidence the Registrar tried to make the entity "as equal[] as possible."

Instead of showing statutory compliance, the Registrar and the DSCC/DCCC successfully convinced the district court that NRS Chapter 293B does not apply at all. The district court held that the Registrar need not comply with NRS 293B.360(2)'s equality requirement because Clark County's compilation of temporary workers verifying mail ballot signatures is not a "board" under NRS 293B.360.

But a "board" by any other name (or no name) is still a "board." This group of outside temporary workers unquestionably "assists" the Registrar to conduct an election by matching signatures. The collection of signature verifiers would not exist

if it did not "assist" the Registrar. Thus, this group qualifies as an "election board" under NRS 293B.027.

The entity's operations confirm NRS 293B.360's application. The collection of temporary workers "inspects" the signatures on mail ballots to ascertain whether the signatures match the voters' signatures when electronic devices do not find a match. *See* NRS 293.269927. The Registrar admits that members of this entity "check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk" and "manually verify the voter's signature." (APP0178.) Accordingly, the group operates like a "mail ballot inspection board" under NRS 293B.360(1)(b). There is also little doubt that the Registrar deemed the conglomeration of temporary workers "necessary for the expeditious processing of ballots" pursuant to NRS 293B.360(1)(e). Again, the Registrar would not use these workers if they were not necessary to process ballots.³

The district court erroneously concluded the "temporary employees do not have power to make decisions on ballot counting procedures [and] simply perform ministerial functions for the County." (APP0469.) A "ministerial act" is one that is "absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed designated facts or the execution of a set task imposed by a law

³ The district court gave insufficient weight to the language of the statutes and relied on *Black's Law Dictionary*, which no party briefed or cited. (APP0470.)

prescribing and defining the time, mode, and occasion of its performance with such certainty *that nothing remains for judgment or discretion.*" *Foster v. Washoe Cnty.*, 114 Nev. 936, 942, 964 P.2d 788, 792 (1998) (quotations omitted; emphasis added). A ministerial act requires a compulsory result. *Id.*

Yet determining whether signatures match inherently involves the exercise of discretion and judgment. And the temporary workers are the final say on whether the signatures match. There is no secondary review or appeal of the manual review process. (APP0160-64.) The temporary workers have complete and final authority. Contrary to the district court, the temporary workers wield "the level of decision making typically expected from a board." (Cf. APP0470.)

And if all this were not enough (it is), the Registrar itself referred to the combination of temporary workers as a "board" until he realized the legal significance of it. The Registrar's stipulation in the district court agreed to provide the party affiliation rosters for "manual signature verification . . . board teams." (APP0058.) Similarly, the Registrar referred to the body as a board in correspondence to the RNC when it was delaying disclosure. (APP0088) ("I anticipate having the manual signature verification . . . board rosters by mid-week.").

The Registrar cannot dodge his statutory duty to represent all political parties as equally as possible by playing word games or slapping different labels on an entity

performing the important election task of verifying mail ballot signatures. If it looks like a "board," acts like a "board," and was called a "board" – it is a "board."

Because the Registrar's group of signature verifiers constitutes a "board" under NRS 293B.360, he was statutorily obligated to "represent all political parties as equally as possible." The Registrar has refused to comply with this duty. The District Court has allowed the Registrar's violation of law to continue and, as a result, a writ of mandamus is necessary.

2. *The temporary workers are not "Employees in the Clerk's Office."*

The district court also permitted the Registrar to skirt his statutory duty to represent all political parties as equally as possible by classifying the temporary workers as "county employees" under NRS 293.269927. (APP0470.) The mechanics of the signature verification procedure are set out in NRS 293.269927(1). It states, "when a mail ballot is returned by or on behalf of a voter to the county clerk . . . the clerk or an employee in the office of the clerk shall check the signature used for the mail ballot by electronic means pursuant to subsection 2 or manually pursuant to subsection 3." In turn, subsection 3 provides that "[t]o check the signature used for a mail ballot manually, the county clerk shall use the following procedure: (a) The clerk or employee shall check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk." NRS 293.269927(3)(a).

The district court theorized that if the temporary workers are "employees" of

Clark County or the Registrar, then the equality mandate of NRS 293B.360(2) does not apply. But the Court must read all statutory sections in harmony. *Beazer Homes Nevada, Inc. v. Eighth Jud. Dist. Ct.*, 120 Nev. 575, 587, 97 P.3d 1132, 1140 (2004).

NRS 293.269927 and NRS 293B.360 are easily harmonized and do not conflict. Read together, if the Registrar creates a "board" with county employees, the Registrar must still represent all political parties as equally as possible among those employees. Any other reading would lead to the absurd (and dangerous) result that a registrar or county clerk could stuff a signature verification "group" with members of a single party selected from his or her own staff. Condoning this practice would undermine the procedural safeguard that the Legislature enacted in NRS 293B.360 to afford all political parties a seat at the table. *See Gallagher v. City of Las Vegas*, 114 Nev. 595, 599-600, 959 P.2d 519, 521 (1998). Equal representation ensures that all election rules and standards are being applied consistently and fairly.

There is no evidence that the temporary workers are "employees" of the Registrar in any event. The Registrar concedes that these individuals were hired through three outside temporary staffing agencies. (APP0178.) Consequently, the temporary workers are third-party contractors or vendors – not county "employees." The Registrar presented no evidence that the individuals are classified as Clark County employees. He did not produce any hiring paperwork or contracts. He also did not disclose the request for proposal sent to the temporary staffing agencies

describing what the agencies *should* have done to find an equal number of all political party representatives for this group. The Registrar submitted no affidavit.

In fact, the Registrar's own internal records produced through other public records requests show the signature verification board members are not considered employees. They are classified differently. (APP0462.) The partisan roster from the June primary demonstrates that the Registrar distinguishes between "Temp Agency" individuals and "County Employees" (*Id.*) The document does not describe outside-hires as "County Employees." (*Id.*) They are consistently referred to as "Temp Agency" workers. The district court misread this document and reached the opposite conclusion. (APP0469.)

Without noting the Registrar's lack of evidence, the district court relied on a simple definition of "temporary employee" in Clark County's ordinances. (APP0469) (citing CCC 2.40.010(p).) Clark County Code 2.40.010(p) defines "temporary employee" as "a person hired to fill a position in the noncompetitive service not to exceed six months." The district court, however, discounted other substantive code provisions governing the classification of temporary workers. Clark County Code 2.40.030(c)(4) and (d) covers "Classification of Personnel" and provides that "temporary or part-time hourly employees" like these "shall not be entitled to any of the benefits of employment to which other employees are entitled under this chapter." CCC 2.40.030(c)(4), (d).

Under Clark County's code, the temporary workers verifying signatures in Clark County are not "employees in the clerk's office" under NRS 293.269927. And, once more, even if the third-party workers are "employees," the Registrar's aggregation of them into a "board" requires that they "represent all political parties as equally as possible." NRS 293B.360(2).

3. *The RNC has no other adequate legal remedy and it and the public will suffer irreparable harm.*

"Voters have a compelling interest in the way elections are run, as well as a constitutional right [t]o have complaints about elections and election contests resolved fairly, accurately and efficiently as provided by law." *ACLU*, 2022 WL 14285458, at *2 (internal citations and quotations omitted). "[S]tate electoral law violations . . . implicate the public interest." *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003).

Elections *must* be held in compliance with the law. There is no valid justification for stacking the signature verification board – or whatever the Registrar now wants to call it – with a disproportionate number of certain political parties. All political parties should be evenly represented. Partisan balance protects the fairness – and appearance of impartiality – of the signature verification process. That is why the Legislature imposed this statutory duty in the first place. Lack of equal partisan representation may lead to either improper approval of mail ballot signatures, erroneous rejection of mail ballot signatures, or both. Equally as bad, an uneven

signature verification board allows the appearance of partiality to creep into the electoral process and cast doubt on the public's perception of an evenhanded election. On the other hand, a signature verification board equally representing all political parties has appropriate checks and balances to ensure that all rules are being followed and all standards are being applied the same to all political parties.

There is no prejudice to the Registrar or the public if this Court issues a writ of mandamus directing the district court to order the Registrar to comply with NRS 293B.360(2). The Registrar claims that "Clark County took actions to increase Republican employees for manual signature verification" after the RNC's motion. (APP0179.)⁴ These eleventh hour improvements in the middle of early voting show that the Registrar could have complied from the start and that it still can comply.

Even so, the Registrar disclaims any continuing obligation to add Republicans or obtain parity. Neither Respondents nor the DSCC/DCCC will suffer any harm from continuing to march toward, and reach, equality. The DSCC/DCCC's loss of an unfair advantage does not outweigh the public's interest in compliance with election laws. That the Registrar and another national political party organization would take the opposing position is shocking to say the least.

⁴ NRS 293B.360(2) requires all parties to be represented as equally as possible. It does not state that representation is proportional to party registration.

IV. CONCLUSION

For these reasons, this Court should issue a writ of mandamus directing the district court to lift the stay and order the Clark County's Registrar to comply with NRS 293B.360(2) by hiring and scheduling an equal number of political parties to serve on the signature verification board, including Republicans.

DATED this 4th day of November, 2022.

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith
Jordan T. Smith, Esq., Bar No. 12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorney for Petitioner

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VERIFICATION/DECLARATION

I, Jordan T. Smith, Esq., declare as follows:

1. I am counsel for Petitioner Republican National Committee.
2. I verify that I have read the foregoing Emergency Petition for Writ of Mandamus Under NRAP 21(a)(6), and that the same is true to my own knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.
3. I have also reviewed the contents of the Appendix filed with this Petition and verify that the documents included are true and correct copies. NRAP 21(a)(4).
4. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

This declaration is executed on 4th day of November 2022, in Las Vegas, Nevada.

/s/ Jordan T. Smith
JORDAN T. SMITH, ESQ.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition 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 Office Word 2013 in size 14 font in double-spaced Times New Roman.

I certify that I have read this Petition and that it complies with the page or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted, it is proportionately spaced, has a typeface of 14 points or more, and 6,980 words.

I further certify that, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this Petition regarding matters in the record to be supported by appropriate references to Appendix filed with this Petition. I understand that I may be subject to sanctions in the event that the accompanying Petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Finally, I certify that the Appendix accompanying this Petition complies with NRAP 21(a)(4) and NRAP 30 in that the Appendix includes a copy of the district court's Order Denying Petitioner Republican National Committee's Motion to Lift Stay and Application for Writ of Mandamus or Injunction Directing the Clark County Registrar to Comply with NRS 293B.360(2) and other original documents essential to understand the matter set forth in herein.

DATED this 4th day of November 2022.

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith

Jordan T. Smith, Esq., #12097

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Attorney for Petitioner

NRAP 21(a)(6) and NRAP 27(e) CERTIFICATE

I, Jordan T. Smith, declare as follows:

1. I am counsel for Petitioners named herein.
2. I verify that I have read the foregoing Emergency Petition for Writ of Mandamus under NRAP 21(a)(6) 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 to be true.
3. The facts showing the existence and nature of the emergency are set forth in the Petition. As described above, relief is needed immediately because the unlawful signature verification and general election are ongoing. The deadline to receive mail ballots is November 12, 2022, at 5:00 p.m. and the deadline to cure mail ballots with signature defects is November 14, 2022, at 5:00 p.m.
4. The relief sought in this Petition was presented to the district court and was denied by minute order yesterday, Thursday, November 3, 2022. No formal written order has been entered yet. The RNC is filing this Petition at the earliest possible time.
5. I have made every practicable effort to notify the Supreme Court and opposing counsel of the filing of this Petition. I called the Clerk of Court's Office and opposing counsel before filing. I also emailed all counsel. A courtesy copy was emailed to all parties.

6. Below are the telephone numbers and office addresses of the known participating attorneys:

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Executed on this 4th day of November 2022, in Las Vegas, Nevada.

/s/ Jordan T. Smith
Jordan T. Smith, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 4th day of November 2022, I caused to be served via email a true and correct copy of the above and foregoing **EMERGENCY PETITION FOR WRIT OF MANDAMUS UNDER NRAP 21(a)(6)** properly addressed to the following:

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