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20 **Pro hac vice application forthcoming*

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

REPUBLICAN NATIONAL COMMITTEE;
NEVADA REPUBLICAN PARTY; DONALD J.
TRUMP FOR PRESIDENT 2024, INC.; and
DONALD J. SZYMANSKI,
Plaintiffs,

v.

CARI-ANN BURGESS, *in her official capacity as the
Washoe County Registrar of Voters*; JAN
GALASSINI, *in her official capacity as the Washoe
County Clerk*; LORENA PORTILLO, *in her official
capacity as the Clark County Registrar of Voters*; LYNN
MARIE GOYA, *in her official capacity as the Clark
County Clerk*; FRANCISCO AGUILAR, *in his offi-
cial capacity as Nevada Secretary of State*,
Defendants.

No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiffs the Republican National Committee, the Nevada Republican Party, Donald J. Trump for President 2024, Inc., and Donald J. Szymanski bring this action to challenge Section 293.269921 of the Nevada Revised Statutes. Plaintiffs allege as follows:

INTRODUCTION

1. Under the U.S. Constitution, states have broad discretion to decide how to conduct federal elections. But their election laws must comply with the higher law of the U.S. Constitution and with federal laws enacted under it.

2. Exercising its constitutional power under the Elections Clause and the Electors Clause, Congress has established a uniform, national day to elect members of Congress and to appoint presidential electors. 2 U.S.C. §§1, 7; 3 U.S.C. §1. Congress enacted these laws “to provide a uniform time of electing Representatives,” Senators, and presidential electors. Cong. Globe, 42d Cong., 2d Sess. 112 (1871).

1 3. Nevada contravenes those federal laws by counting mail ballots that are
2 received up to four business days after Election Day, Nev. Rev. Stat. §293.269921(1)(b),
3 and by presuming that ballots received up to three days after Election Day “have been
4 postmarked on or before the day of the election,” *id.* §293.269921(2). Nevada effectively
5 extends Nevada’s federal election past the Election Day established by Congress.

6 4. The result of Nevada’s violation of federal law is that timely, valid ballots
7 are diluted by untimely, invalid ballots, which violates the rights of candidates, cam-
8 paigns, and voters under federal law.

9 5. For these reasons, Section 293.269921 is unlawful and must be enjoined.

10 6. In 2020, this Court dismissed a case for lack of standing that challenged an
11 earlier law governing mail ballot deadlines. *See Donald J. Trump for President, Inc. v. Cegavske*,
12 488 F. Supp. 3d 993 (D. Nev. 2020) (challenging Act of August 3, 2020, A.B. No. 4,
13 2020 Nev. Stat. 18, §20). That earlier law applied only to “elections impacted by emer-
14 gencies or disasters.” *Id.* In 2021, the Nevada Legislature codified post-election receipt
15 of mail ballots for all elections, irrespective of emergencies or disasters. *See* Act of June
16 2, 2021, A.B. No. 321, 2021 Nev. Laws Ch. 248, §56. The organizational injuries alleged
17 in that case were the need to divert resources to educate voters and combat voter fraud.
18 This case is different. Among other bases for standing, the challenged law injures Plain-
19 tiffs here by causing competitive electoral harms and by requiring Plaintiffs to divert
20 resources to conduct election activities beyond election day.

21 **JURISDICTION AND VENUE**

22 7. The Court has subject-matter jurisdiction because this case arises under the
23 Constitution and laws of the United States. 28 U.S.C. §§1331, 1343.

1 8. Venue is proper because at least one Defendant resides in this district and
2 all Defendants are residents of Nevada, and because a substantial part of the events
3 giving rise to the claims occurred in this district. *Id.* §1391(b).

4 **PARTIES**

5 9. Plaintiff, the Republican National Committee (RNC), is the national com-
6 mittee of the Republican Party, as defined by 52 U.S.C. §30101(14), with its principal
7 place of business at 310 First Street S.E., Washington, DC 20003.

8 10. The RNC organizes and operates the Republican National Convention,
9 which nominates a candidate for President and Vice President of the United States.

10 11. The RNC represents over 30 million registered Republicans in all 50 states,
11 the District of Columbia, and the U.S. territories. It is comprised of 168 voting members
12 representing state Republican Party organizations, including three members who are
13 registered voters in Nevada.

14 12. The RNC works to elect Republican candidates to state and federal office.
15 In November 2024, its candidates will appear on the ballot in Nevada for election to the
16 Presidency, U.S. Senate, and U.S. House of Representatives.

17 13. The RNC has vital interests in protecting the ability of Republican voters
18 to cast, and Republican candidates to receive, effective votes in Nevada elections and
19 elsewhere. The RNC brings this suit to vindicate its own rights in this regard, and in a
20 representational capacity to vindicate the rights of its members, affiliated voters, and
21 candidates.

22 14. The RNC also has an interest in opposing Nevada’s constitutionally prob-
23 lematic mail ballot deadlines. Nevada’s mail ballot deadline forces the RNC to divert
24 resources from in-person voting activities and election-integrity measures, and instead
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1 spend money on mail ballot chase programs and post-election activities. The mail ballot
2 deadline also specifically and disproportionately harms Republican candidates.

3 15. Plaintiff Nevada Republican Party (NVGOP) is a political party in Nevada
4 with its principal place of business at 2810 West Charleston Blvd. #69, Las Vegas, NV
5 89102. The Nevada Republican Central Committee (NRCC) is the NVGOP's governing
6 body. The NVGOP and NRCC exercise their federal and state constitutional rights of
7 speech, assembly, petition, and association to "provide the statutory leadership of the
8 Nevada Republican Party as directed in the Nevada Revised statutes," to "recruit, de-
9 velop, and elect representative government at the national, state, and local levels," and
10 to "promote sound, honest, and representative government at the national, state and
11 local levels." NRCC Bylaws, art. II, §§1.A-1.C.

12 16. The NVGOP represents over 550,000 registered Republican voters in Ne-
13 vada.

14 17. The NVGOP has the same interests in this case as the RNC and seeks to
15 vindicate those interests in the same ways.

16 18. Plaintiff Donald J. Trump for President 2024, Inc. (Trump Campaign) is
17 the principal committee for President Donald J. Trump's campaign with its headquarters
18 in West Palm Beach, FL.

19 19. The Trump Campaign has the same interests in this case as the RNC with
20 respect to the candidacy of President Trump and seeks to vindicate those interests in
21 the same ways.

22 20. Donald J. Szymanski is a registered Nevada voter and resident of Clark
23 County. He regularly votes in Nevada's primary and general elections, and he plans to
24 vote in the November 2024 general election, including for U.S. President, Senate, and

1 House of Representatives. Mr. Szymanski is registered as a Republican, supports Repub-
2 lican candidates, and has volunteered on behalf of the Republican Party.

3 21. Defendant Cari-Ann Burgess is the Registrar of Voters for Washoe
4 County. She is the county’s chief election officer and is responsible for “establish[ing]
5 procedures for the processing and counting of mail ballots” in Washoe County. Nev.
6 Rev. Stat. §293.269925(1); *see id.* §§293.269911-.269937, 244.164. Defendant Burgess is
7 sued in her official capacity.

8 22. Defendant Jan Galassini is the Washoe County Clerk. She is responsible
9 for certifying the election results in Washoe County. Nev. Rev. Stat. §293.393. Defend-
10 ant Galassini is sued in her official capacity.

11 23. Defendant Lorena Portillo is the Registrar of Voters for Clark County. She
12 is the county’s chief election officer and is responsible for “establish[ing] procedures for
13 the processing and counting of mail ballots” in Clark County. Nev. Rev. Stat.
14 §293.269925(1); *see id.* §§293.269911-.269937, 244.164. Defendant Portillo is sued in her
15 official capacity.

16 24. Defendant Lynn Marie Goya is the Clark County Clerk. She is responsible
17 for certifying the election results in Clark County. Nev. Rev. Stat. §293.393. Defendant
18 Goya is sued in her official capacity.

19 25. Defendant Francisco Aguilar is the Secretary of State of Nevada. He serves
20 “as the Chief Officer of Elections” for Nevada and “is responsible for the execution
21 and enforcement of the provisions of title 24 of NRS and all other provisions of state
22 and federal law relating to elections in” Nevada. Nev. Rev. Stat. §293.124. He is sued in
23 his official capacity.

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ALLEGATIONS

I. There is only one federal Election Day.

26. The U.S. Constitution’s Elections Clause vests state legislatures with power to set the time, place, and manner of congressional elections. U.S. Const. art. I, §4, cl. 1.

27. But the Elections Clause also reserves to “Congress” the power to “at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” *Id.*

28. A law governs “‘the election’ of a Senator or Representative” when it “plainly refer[s] to the combined actions of voters and officials meant to make a final selection of an officeholder.” *Foster v. Love*, 522 U.S. 67, 71 (1997).

29. Exercising its constitutional power to pass laws governing elections for federal offices, Congress has established one specific day as the uniform, national Election Day for members of the United States House of Representatives and of the United States Senate. For both offices, the “Tuesday next after the 1st Monday in November” is “the day for the election.” 2 U.S.C. §7 (elections for members of the House of Representatives held on that day “in every even numbered year”); *see also id.* §1 (Senators to be elected “[a]t the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which a Representative to Congress is regularly by law to be chosen”).

30. The U.S. Constitution also vests in “Congress” the power to “determine the Time of chusing the Electors” for the offices of President and Vice President. U.S. Const. art. II, §1, cl. 4.

1 31. Exercising that power, Congress has established that “[t]he electors of
2 President and Vice President shall be appointed, in each State, on election day, in ac-
3 cordance with the laws of the State enacted prior to election day.” 3 U.S.C. §1.

4 32. Together, 2 U.S.C. §§1, 7, and 3 U.S.C. §1 establish the Tuesday after the
5 first Monday in November as the uniform, national Election Day for members of Con-
6 gress and as the uniform, national day for appointing electors for President and Vice
7 President.

8 33. Those “uniform rules for federal elections” are “binding on the States” and
9 superior to conflicting state law. *Foster*, 522 U.S. at 69. “[T]he regulations made by Con-
10 gress are paramount to those made by the State legislature; and if they conflict therewith,
11 the latter, so far as the conflict extends, ceases to be operative.” *Id.* (quoting *Ex parte*
12 *Siebold*, 100 U.S. 371, 384 (1879)). In other words, if a state law governing elections for
13 federal offices “conflicts with federal law,” that state law is “void.” *Id.* at 74.

14 **II. Nevada’s mail ballot deadline extends the election beyond the federal elec-** 15 **tion day.**

16 34. Under Nevada law, “[I]n order for a mail ballot to be counted for any elec-
17 tion, the ballot must be ... [m]ailed to the county clerk,” “postmarked on or before the
18 day of the election,” and “[r]eceived by the clerk not later than 5 p.m. on the fourth day
19 following the election.” Nev. Rev. Stat. §293.269921(1).

20 35. Nevada law further provides that “[i]f a mail ballot is received by mail not
21 later than 5 p.m. on the third day following the election and the date of the postmark
22 cannot be determined, the mail ballot shall be deemed to have been postmarked on or
23 before the day of the election.” *Id.* §293.269921(2).

1 **III. Nevada’s mail ballot deadline violates federal law.**

2 41. The next federal election will be held on Tuesday, November 5, 2024. In
3 that election, Nevada will elect its next slate of presidential and vice-presidential electors,
4 as well as a new Congressional delegation.

5 42. Under Nevada’s current law, mail ballots for the November 5 election
6 postmarked by election day will be counted if received on or before 5 p.m. on November
7 9, 2024.

8 43. Under Nevada’s current law, mail ballots whose postmark date cannot be
9 determined will be counted if received on or before 5 p.m. on November 8, 2024.

10 44. Upon information and belief, election officials in Nevada have counted
11 and will continue to count mail ballots that lack a postmark and are received on or before
12 5 p.m. on November 8, 2024. For example, the United States Postal Service does not
13 postmark bulk rate mail, which means that a significant number of mail ballots will lack
14 a postmark. Nevada election officials will count such ballots even if they are *sent* after
15 Election Day.

16 45. “When the federal statutes speak of ‘the election’ of a Senator or Repre-
17 sentative, they plainly refer to the combined actions of voters and officials meant to
18 make a final selection of an officeholder....” *Foster*, 522 U.S. at 71. “By establishing a
19 particular day as ‘the day’ on which these actions must take place, the statutes simply
20 regulate the time of the election, a matter on which the Constitution explicitly gives
21 Congress the final say.” *Id.* at 71-72.

22 46. By holding voting open beyond the federal Election Day, Nevada violates
23 federal law and harms plaintiffs.

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1 47. The RNC, NVGOP, and Trump Campaign intend to conduct their cam-
2 paigns in accordance with federal law.

3 48. The RNC, NVGOP, and Trump Campaign rely on provisions of federal
4 and state law in conducting their campaigns, which include resources allocated to the
5 post-election counting and certification processes. For example, Nevada law guarantees
6 Plaintiffs the right to be represented on county mail ballot central counting boards. *See*
7 Nev. Rev. Stat. §293.269929(2) (“The voters appointed as election board officers for the
8 mail ballot central counting board must not all be of the same political party.”). Nevada
9 law also guarantees the right to observe the handling and counting of mail ballots. *See*
10 Nev. Rev. Stat. §293.269931(1); Nev. Admin. Code §§293.322(3), (4); 356(1). Counting
11 ballots received after Election Day thus requires Plaintiffs and their members to divert
12 more time and money to post-election mail ballot activities. *See* Nev. Rev. Stat.
13 §293.269931 (counting may continue up to “the seventh day following an election”).

14 49. Nevada’s law also requires the RNC, NVGOP, and Trump Campaign to
15 maintain mail-ballot-specific get-out-the-vote operations to encourage mail ballot voters
16 to return their mail ballots through Election Day. Funding and staffing these operations
17 diverts resources from in-person Election Day get-out-the-vote activities.

18 50. In addition, late-arriving ballots are not valid, so counting them dilutes the
19 weight of timely, valid ballots.

20 51. Dilution of honest votes, to any degree, by the casting of fraudulent or
21 illegitimate votes violates the right to vote.

22 52. The Fourteenth Amendment of the U.S. Constitution protects the “the
23 right of all qualified citizens to vote, in state as well as in federal elections.” *Reynolds v.*
24 *Sims*, 77 U.S. 533, 554 (1964). “Obviously included within the right to [vote], secured by

1 the Constitution, is the right of qualified voters within a state to cast their ballots and
2 have them counted.” *United States v. Classic*, 313 U.S. 299, 315 (1941). “[T]he right to
3 have the vote counted” means counted “at full value without dilution or discount.” *Reyn-*
4 *olds*, 377 U.S. at 555 n.29 (quoting *South v. Peters*, 339 U.S. 276, 279 (1950) (Douglas, J.,
5 dissenting)).

6 53. Thus, both direct denials and practices that count invalid ballots dilute the
7 effectiveness of individual votes and violate the Fourteenth Amendment. *See id.* at 555
8 (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a
9 citizen’s vote just as effectively as by wholly prohibiting the free exercise of the fran-
10 chise.”).

11 54. “Every voter in a federal ... election, whether he votes for a candidate with
12 little chance of winning or for one with little chance of losing, has a right under the
13 Constitution to have his vote fairly counted, without its being distorted by fraudulently
14 cast votes.” *Anderson v. United States*, 417 U.S. 211, 227 (1974); *see also Baker v. Carr*, 369
15 U.S. 186, 208 (1962).

16 55. Fraudulent votes “debase[]” and “dilute” the weight of each validly cast
17 vote. *Anderson*, 417 U.S. at 227. When it comes to “dilut[ing] the influence of honest
18 votes in an election,” whether the dilution is “in greater or less degree is immaterial”—
19 it is a violation of the Fourteenth Amendment. *Id.* at 226.

20 56. Because voting by mail is starkly polarized by party, that dilution directly
21 and specifically harms Plaintiffs. For example, according to the MIT Election Lab, 46%
22 of Democratic voters in the 2022 General Election mailed in their ballots, compared to
23 only 27% of Republicans. Charles Stewart III, *How We Voted in 2022*, at 10,
24

1 <https://perma.cc/444Z-58ZY>. That means the late-arriving mail ballots that are
2 counted disproportionately break for Democrats.

3 57. Voting by mail is even more polarized by party in Nevada specifically. For
4 example, in Nevada’s 2020 general election, 60.3% of Democratic voters voted by mail,
5 compared to just 36.9% of Republican voters. *See Nev. Sec’y of State, 2020 General Elec-*
6 *tion Turnout*, <https://perma.cc/Z6F3-SM4N>. Likewise in its 2022 general election,
7 61.3% of Democrats and just 40% of Republicans voted by mail. *See Nev. Sec’y of*
8 *State, 2022 General Election Turnout*, <https://perma.cc/N7G7-RUQ9>.

9 58. Mail ballots from Democratic voters also tend to arrive late, in part because
10 “Democratic get-out-the-vote drives—which habitually occur shortly before election
11 day—may delay maximum Democratic voting across-the-board, and produce a ‘blue
12 shift’ in late mail ballots.” Ed Kilgore, *Why Do the Last Votes Counted Skew Democratic?*,
13 *Intelligencer* (Aug. 10, 2020), <https://perma.cc/R78D-3Q58>. Indeed, “even if Republi-
14 cans and Democrats voted in person and by mail at identical levels, Democrats tend to
15 vote later, which in turn (particularly in elections with heavy voting by mail) means early
16 Republican leads in close races could be fragile.” *Id.*

17 59. According to data reported by the Nevada Secretary of State’s office, in
18 the Nevada 2024 primary elections, Democrats disproportionately voted by mail com-
19 pared to Republicans. Office of Nev. Sec’y of State, *2024 Presidential Preference Primary*
20 *Turnout: Cumulative Presidential Preference Primary Election Turnout – Final* (Feb. 20, 2024),
21 perma.cc/7USY-5NMY. Democrats also had significantly more mail ballots rejected for
22 not being returned correctly. Office of Nev. Sec’y of State, *2024 Presidential Preference*
23 *Primary Turnout: Mail Ballot Information – Cumulative Totals* (Feb. 20, 2024),
24 perma.cc/7NTN-JV6L.

1 relief:

- 2 A. A declaratory judgment that the relevant parts of Nev. Rev. Stat.
3 §293.269921 violate the Fourteenth Amendment, 2 U.S.C. §§1, 7, and 3
4 U.S.C. §1;
- 5 B. Preliminary and permanent injunctions prohibiting Defendants from im-
6 plementing and enforcing the relevant parts of Nev. Rev. Stat.
7 §293.269921, including prohibiting Defendants from counting mail ballots
8 for federal office for the November 2024 general election that are received
9 by election officials after the day of the election; or, alternatively, prohibit-
10 ing Defendants from counting ballots for federal office for the November
11 2024 general election that are not postmarked by the day of the election;
- 12 C. Plaintiffs' reasonable costs and expenses of this action, including attorneys'
13 fees; and
- 14 D. All other further relief that Plaintiffs may be entitled to.
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Dated: May 3, 2024

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