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**SECOND JUDICIAL DISTRICT COURT  
IN AND FOR WASHOE COUNTY, STATE OF NEVADA**

FREDERICK H. KRAUS; PUBLIC INTEREST  
LEGAL FOUNDATION,

Petitioners,

v.

CARRIE-ANN BURGESS, in her official  
capacity as Washoe County Interim  
Registrar of Voters,

Respondent,

and

RISE ACTION FUND; INSTITUTE FOR A  
PROGRESSIVE NEVADA; and NEVADA

Case No. CV24-01051  
Dept. No.: 4

**[PROPOSED<sup>1</sup>] MOTION TO DISMISS  
THE PETITION FOR WRIT OF  
MANDAMUS**

<sup>1</sup> Proposed Intervenor file this Proposed Motion to Dismiss the Petition for Writ of Mandamus on what appears to them to be the named Respondent's deadline to respond to the Petition, pending the adjudication of their Motion to Intervene as Respondents.

1 ALLIANCE FOR RETIRED AMERICANS,

2 Proposed  
3 Intervenor-  
4 Respondents.

5 Pursuant to Nevada Rules of Civil Procedure 12(b)(1) and 12(b)(5), Proposed Intervenor-  
6 Respondents Rise Action Fund, the Institute for a Progressive Nevada, and the Nevada Alliance  
7 for Retired Americans move to dismiss the Petition for Writ of Mandamus in this action.

8 This Motion is based on the Memorandum of Points and Authorities below, all papers and  
9 pleadings on file, and any oral argument this Court sees fit to allow at the hearing on this matter.  
10

11 DATED this 15th day of July, 2024.

12 By: /s/ Bradley Schrager

13 Bradley Schrager

14 Daniel Bravo

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... iv

MEMORANDUM OF POINTS AND AUTHORITIES ..... 1

BACKGROUND ..... 2

    I. Statutory Background ..... 2

    II. Other Recent and Ongoing Attempts to Remove Nevada Voters from the Rolls ..... 4

    III. The Present Lawsuit..... 5

    IV. Petitioners’ Virtually Identical Lawsuit in Clark County ..... 6

ARGUMENT ..... 6

    I. Petitioners are not entitled to the extraordinary remedy of mandamus. .... 7

        A. Petitioners have not shown a clear right to their requested relief. .... 8

        B. Petitioners have a plain, speedy, and adequate alternative remedy. .... 12

        C. The Petition is deficient because it is not supported by affidavit. .... 12

    II. Petitioners lack standing to bring their claim. .... 13

    III. Petitioners’ requested relief is barred by the National Voter Registration Act. .... 15

    IV. Petitioners’ claim is barred by the doctrine of laches. .... 17

CONCLUSION..... 18

AFFIRMATION ..... 19

CERTIFICATE OF SERVICE ..... 20

## TABLE OF AUTHORITIES

### Page(s)

#### Cases

<i>Brewery Arts Ctr. v. State Bd. of Examiners</i> , 108 Nev. 1050, 843 P.2d 369 (1992) (per curiam) .....	1, 7, 9
<i>Carson City v. Price</i> , 113 Nev. 409, 934 P.2d 1042 (1997) .....	17, 18
<i>Craig v. Donnelly</i> , 135 Nev. 37, 439 P.3d 413 (Nev. App. 2019) .....	7
<i>Drake v. Obama</i> , 664 F.3d 774 (9th Cir. 2011) .....	14
<i>Gaines v. State</i> , 116 Nev. 359, 998 P.2d 166 (2000) .....	10
<i>Garmong v. Lyon Cnty. Bd. of Comm'rs</i> , No. 74644, 135 Nev. 646, 2019 WL 1989191 (Nev. May 3, 2019) (unpublished disposition) .....	14
<i>Halverson v. Sec'y of State</i> , 124 Nev. 484, 186 P.3d 893 (2008) .....	7, 12
<i>Heller v. Legislature of State of Nev.</i> , 120 Nev. 456, 93 P.3d 746 (2004) (per curiam) .....	13, 14, 15
<i>Howell v. Ricci</i> , 124 Nev. 1222, 197 P.3d 1044 (2008) .....	9, 12
<i>Husted v. A. Philip Randolph Inst.</i> , 584 U.S. 756 (2018) .....	16
<i>La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest</i> , 624 F.3d 1083 (9th Cir. 2010) .....	15
<i>Lance v. Coffman</i> , 549 U.S. 437 (2007) (per curiam) .....	14
<i>Miller v. Burk</i> , 124 Nev. 579, 188 P.3d 1112 (2008) .....	17
<i>N.A.A.C.P. v. N.A.A.C.P. Legal Def. &amp; Educ. Fund, Inc.</i> , 753 F.2d 131 (D.C. Cir. 1985) .....	18

1	<i>Nat'l Ass'n of Mut. Ins. Cos. v. Dep't of Bus. &amp; Indus., Div. of Ins.,</i>	
2	524 P.3d 470 (2023).....	13
3	<i>Nev. Pub. Emps. Retirement Bd. v. Smith,</i>	
4	129 Nev. 618, 310 P.3d 560 (2013).....	9
5	<i>Round Hill Gen. Improvement Dist. v. Newman,</i>	
6	97 Nev. 601 637 P.2d 534 (1981).....	7
7	<i>Sgro &amp; Roger v. Eighth Jud. Dist. Ct.,</i>	
8	No. 76418, 134 Nev. 1010, 2018 WL 3624635 (Nev. July 20, 2018)	
9	(unpublished disposition).....	13
10	<i>Sierra Life Ins. Co. v. Rottman,</i>	
11	95 Nev. 654, 601 P.2d 56 (1979) (per curiam).....	10
12	<i>Slade v. Caesars Ent. Corp.,</i>	
13	132 Nev. 374, 373 P.3d 74 (2016).....	7
14	<i>State v. Eighth Jud. Dist. Ct. (Armstrong),</i>	
15	127 Nev. 927, 267 P.3d 777 (2011).....	7
16	<i>Superpumper, Inc. v. Leonard, Tr. for Bankr. Estate of Morabito,</i>	
17	137 Nev. 429, 495 P.3d 101 (2021).....	13
18	<i>United Road Towing, Inc. v. Eighth Jud. Dist. Ct.,</i>	
19	No. 69538, 132 Nev. 1039, 2016 WL 606001 (Nev. Feb. 12, 2016)	
20	(unpublished disposition).....	13
21	<i>Valdez-Jimenez v. Eighth Jud. Dist. Ct.,</i>	
22	136 Nev. 155, 460 P.3d 976 (2020).....	7
23	<i>Walker v. Second Jud. Dist. Ct.,</i>	
24	136 Nev. 678, 476 P.3d 1194 (2020).....	12
25	<b>Statutes</b>	
26	52 U.S.C. § 20507.....	2, 4, 16, 17
27	NRS 34.160.....	9, 12
28	NRS 34.170.....	8, 12, 13
	NRS 293.530.....	<i>passim</i>
	NRS 293.535.....	1, 3, 10
	NRS 293.547.....	1, 3, 8, 10
	NRS 293.675.....	<i>passim</i>

**Other Authorities**

<i>About</i> , Pigpen Project, <a href="https://pigpenproject.com/about/">https://pigpenproject.com/about/</a> (last accessed July 15, 2024) .....	4
Alexandra Berzon & Nick Corasaniti, <i>Trump’s Allies Ramp Up Campaign Targeting Voter Rolls</i> , N.Y. Times (Mar. 3, 2024).....	4
NRCP 12(b) .....	6, 7, 13

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Petitioners base their request for this extraordinary (and extraordinarily disruptive) relief on two statutes that simply do not require Respondent to do what Petitioners say they do. *See* NRS 293.530; NRS 293.675. This is fatal to their claim. “Mandamus may not be used to compel a discretionary act.” *Brewery Arts Ctr. v. State Bd. of Examiners*, 108 Nev. 1050, 1054, 843 P.2d 369, 372 (1992) (per curiam). Yet the relevant parts of the statutory provisions on which Petitioners rely do not impose mandatory duties on Respondent Burgess: she “*may* use any reliable and reasonable means available to correct” the registration list and “*may*, with the consent of the board of county commissioners, make investigations of registration.” NRS 293.530(1)(a)–(b) (emphasis added). It is Petitioners—and not Respondent—who have failed to comply with Nevada law in bringing this challenge: they brought this mandamus action rather than following the well-established third-party challenge procedures laid out in Nevada statutes. *See* NRS 293.535; NRS 293.547. For these and other reasons, Petitioners are not entitled to mandamus relief.

Petitioners also fail to establish that they have standing to bring their claim. Mr. Kraus has nothing more than a generalized interest as a citizen in this matter, which courts have time and again found insufficient for standing. Nor does PILF have standing merely because it allegedly has abstract concerns about Nevada's voter roll, or because it purportedly elected to spend its own resources investigating those concerns in the absence of any actual injury to itself. Further, to the extent Petitioners seek immediate removal of any voter from Nevada's registration list, that relief

1 would be contrary to both Nevada law and the National Voter Registration Act (“NVRA”), which  
2 outlines specific requirements that states must meet before removing a voter from the rolls on the  
3 grounds that the voter’s residence has changed. *See* 52 U.S.C. § 20507(b), (c), (d). Finally,  
4 Petitioners’ claim—which they unjustifiably brought mere months before a presidential election—  
5 is barred by the equitable doctrine of laches.

6 The Petition should be dismissed.

## 7 BACKGROUND

### 8 I. Statutory Background

9 Petitioners’ claim is based on two Nevada statutes. The first, NRS 293.530(1), provides  
10 that county clerks “*may* use any reliable and reasonable means available to correct the portions of  
11 the statewide voter registration list which are relevant to the county clerks and to determine  
12 whether a registered voter’s current residence is other than that indicated on the voter’s application  
13 to register to vote.” NRS 293.530(1)(a) (emphasis added). The statute adds that county clerks  
14 “*may*, with the consent of the board of county commissioners, make investigations of registration  
15 in the county by census, by house-to-house canvass or by any other method.” NRS 293.530(1)(b)  
16 (emphasis added). The remainder of NRS 293.530 prescribes detailed procedures that must be  
17 followed before a registration may be canceled, allowing for cancellation only after: (1) the clerk  
18 mails a written notice to the voter, along with a return postcard that has a place for the voter to  
19 write any new address; (2) the voter does not respond; (3) the voter’s registration information is  
20 not otherwise updated by an automatic voter registration agency; and (4) the voter does not appear  
21 to vote in two successive general elections following the date of the notice. NRS 293.530(1)(c).

22 The second statute Petitioners rely on, NRS 293.675, provides that “[t]he Secretary of State  
23 shall establish and maintain a centralized, top-down database that collects and stores information  
24 related to the preregistration of persons and the registration of electors.” NRS 293.675(1). It further  
25 states that the Secretary “shall use the voter registration information collected in the database . . .  
26 to create the official statewide voter registration list, which may be maintained on the Internet, in  
27



1 consultation with each county and city clerk,” and that this list must be “regularly maintained to  
2 ensure the integrity of the registration process and the election process.” NRS 293.675(2), (3)(i).  
3 NRS 293.675 explains that the list is to be maintained via agreements with the Department of  
4 Motor Vehicles, the Social Security Administration, and the State Registrar of Vital Statistics to  
5 allow verification of information on voter registration applications. NRS 293.675(5)–(6), (8). The  
6 only duties NRS 293.675 imposes on county and city clerks are to enter voter registration  
7 information into the database when received, to provide the Secretary of State with any voter  
8 registration information he reasonably requests, and, for county clerks, to “use the database . . . to  
9 collect and maintain all records of preregistration and registration to vote.” NRS 293.675(1), (4).

10         Neither statute that Petitioners invoke requires county clerks to take any particular action  
11 to maintain voter rolls. Nor do those statutes make any mention of the involvement of any  
12 nongovernmental third parties in the process of correcting and updating voter information. That is  
13 because two other Nevada statutes that Petitioners do not cite—NRS 293.535 and NRS 293.547—  
14 expressly govern third party challenges to voter registrations. Under NRS 293.535, “any elector or  
15 other reliable person” may file an affidavit with the county clerk, which must be based on personal  
16 knowledge, stating that a voter is not a citizen or has moved outside the county where he or she is  
17 registered to vote and established residence elsewhere. NRS 293.535(1). If the challenge is based  
18 on residence, the clerk must notify the registrant “in the manner set forth in NRS 293.530,” and  
19 the same timeline and procedures apply for canceling the registration based on lack of response.  
20 NRS 293.535(2). Similarly, NRS 293.547 allows a registered voter to file a written challenge to  
21 another voter’s registration between 25 and 30 days before an election. NRS 293.547(1). The  
22 challenger must be registered to vote in the same precinct as the person challenged; the challenge  
23 must be based on personal knowledge; it must be signed and verified; and it must target a single  
24 individual. NRS 293.547(2)–(4).

25         A state’s ability to make changes to its voter rolls is further limited by the federal National  
26 Voter Registration Act of 1993 (“NVRA”). The NVRA imposes strict restrictions on whether,  
27

1 when, and how a state may remove a voter from its registration rolls. *See* 52 U.S.C. § 20507(a)(3)–  
2 (4), (b)–(d). In most situations, a registrant may be removed from the rolls by reason of change of  
3 residence only after failing to respond to a notice and failing to appear to vote for two general  
4 elections following that notice. *Id.* § 20507(d)(1). In addition, a state must complete “any program  
5 the purpose of which is to systematically remove the names of ineligible voters from the official  
6 lists of eligible voters” no “later than 90 days prior to the date of a primary or general election for  
7 Federal office.” *Id.* § 20507(c)(2)(A).

## 8 **II. Other Recent and Ongoing Attempts to Remove Nevada Voters from the Rolls**

9 Petitioners’ lawsuits are part of a broader effort to attack the accuracy of Nevada’s voter  
10 rolls and force a rushed purge of voters before the 2024 general election. In January 2023,  
11 conservative activists in Nevada launched the so-called “Pigpen Project,” a project of Citizen  
12 Outreach Foundation. *See About, Pigpen Project*, <https://pigpenproject.com/about/> (last accessed  
13 July 15, 2024). The project’s self-described mission is to “clean[] up the voter rolls in Nevada by  
14 removing ineligible voters from the ‘Active’ voting list.” *Id.* According to the group, it searches  
15 voter files for purported “red flags” of potentially invalid registrations and conducts “boots on the  
16 ground” inspections to provide evidence of allegedly “bad registrations” to election officials. *Id.*  
17 Since its creation, the Pigpen Project has “organized door-to-door canvassing and enlisted  
18 landlords to compare voter rolls with their leasing records,” including by “escort[ing] landlords to  
19 the Clark County registrar’s office so that they can flag registrations of former tenants.” Alexandra  
20 Berzon & Nick Corasaniti, *Trump’s Allies Ramp Up Campaign Targeting Voter Rolls*, N.Y. Times  
21 (Mar. 3, 2024), <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html>.

22 Similarly, the Republican National Committee and the Nevada Republican Party have sued  
23 state and county officials in federal court, seeking to force a voter purge, purportedly under the  
24 NVRA. *See generally* Compl., *RNC v. Aguilar*, No. 2:24-cv-00518 (D. Nev. Mar. 18, 2024), ECF  
25 No. 1. That suit is ongoing, although the original complaint in that action was dismissed without  
26 prejudice for lack of standing. Minutes of Proceedings, *RNC v. Aguilar*, No. 2:24-cv-00518 (D.

1 Nev. June 24, 2024), ECF No. 97. Just last week, the court granted all three Proposed Intervenor  
2 here intervention in that case, finding that “Proposed Intervenor’s participation . . . will contribute  
3 to the just and equitable resolution of the issues before [it]” because of their “expressed mission .  
4 . . to ensure that voters are retained on or restored to the rolls.” *See* Order Granting Mot. to  
5 Intervene at 6, *RNC v. Aguilar*, No. 2:24-cv-00518 (D. Nev. July 12, 2024), ECF No. 99.

### 6 **III. The Present Lawsuit**

7 According to the Petition, on April 11, 2024, Logan Churchwell, an employee of PILF,  
8 sent an email to the official address of the Washoe County Elections Department. Pet. for Writ of  
9 Mandamus (“Pet.”), Ex. B at 4. That email attached a letter addressed to Petitioner Cari-Ann  
10 Burgess, the Interim Registrar of Voters of Washoe County. *See* Pet., Ex. A at 1. The letter stated  
11 that PILF had conducted an “analysis of Nevada’s statewide voter list dated April 9, 2024” and  
12 “identified numerous addresses listed as residential that appeared to be commercial buildings  
13 where no one resides,” and included a list of addresses and photographs. *Id.*; *see generally* Pet. Ex.  
14 A. The letter further requested that Burgess “conduct [her] investigation and make any appropriate  
15 corrections to the voter roll by May 1, 2024,” stating that “[a]ction is needed prior to mailing out  
16 ballots for the June primary election.” Pet. Ex. A at 1 (emphasis omitted).

17 George Guthrie, an employee of the Registrar’s office, responded to Mr. Churchwell’s  
18 email, and the two men exchanged several emails. *See* Pet. Ex. B at 3–4. Mr. Churchwell stated  
19 that PILF had “reviewed the Nevada voter roll directly to identify commercial addresses” and  
20 “noted active, inactive, or a combination of those at the addresses shown in the presentation list.”  
21 *Id.* at 2–3. Mr. Guthrie replied that he would “be sending [a] bulk response” to all the addresses  
22 “in the coming weeks.” *Id.* at 2. On May 2, 2024, Mr. Churchwell sent another email asking,  
23 “Which addresses have you reviewed and what actions have been taken?” *Id.* at 1. Four days later,  
24 Mr. Guthrie responded that “[a]fter further evaluation of the information you’ve provided to our  
25 office, I would suggest bringing your information to the Secretary of State’s office.” *Id.* Mr.  
26 Guthrie further noted that “we are within the 90 day list maintenance window as described by the  
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1 NVRA” and so “any action would have to be taken after the June Primary. In the meantime, you  
2 may wish to pursue other options laid out in NRS 293.535 and NRS 293.547”—the statutes  
3 governing the voter challenge process by which third parties can challenge voter eligibility. *Id.*

4 Instead of following that statutory process, Petitioners filed the present Petition on May 10,  
5 2024. Petitioners bring a single count for relief based on Burgess’s alleged failure “to investigate  
6 and make corrections regarding known commercial addresses in violation of her duties to maintain  
7 the voter registration list.” Pet. ¶ 32. Petitioners seek both “a declaratory judgment that Respondent  
8 is not in compliance with NRS 293.530 and 293.675” and “a writ of mandamus requiring  
9 Respondent to investigate known commercial addresses.” *Id.* ¶¶ 35–36.

10 Proposed Intervenors moved to intervene in this matter on May 28, 2024. The Nevada  
11 Secretary of State likewise moved to intervene on June 17, 2024.

#### 12 **IV. Petitioners’ Virtually Identical Lawsuit in Clark County**

13 On June 25, 2024, the two Petitioners in this suit, along with one other individual, filed a  
14 virtually identical lawsuit in the Eighth Judicial District Court for Clark County, also styled as a  
15 mandamus petition. *See* Pet. for Writ of Mandamus, *Kraus v. Portillo*, No. A-24-896151-W (8th  
16 Jud. Dist. Ct. Clark Cnty. June 25, 2024). There, the petitioners allege that they sent a letter to the  
17 Clark County Registrar, Lorena S. Portillo, similarly identifying a series of supposed commercial  
18 addresses listed as residences on the Nevada voter roll. After Portillo did not respond, the  
19 petitioners sued her as well. Aside from the differences in addresses listed, the *Portillo* lawsuit is  
20 essentially identical to this one. As in this action, the Clark County petitioners bring a single count  
21 for relief, seeking “a declaratory judgment that [Portillo] is not in compliance with NRS 293.530  
22 and 293.675” and “a writ of mandamus requiring [Portillo] to investigate known commercial  
23 addresses.” *Id.* ¶¶ 30–31.

### 24 **ARGUMENT**

25 NRCP 12(b)(5) provides for dismissal of an action for failure to state a claim upon which  
26 relief can be granted. Under this rule, a complaint (or, as here, a petition) should be dismissed for  
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1 failure to state a claim if it “appears beyond a doubt that [the petitioner] could prove no set of facts,  
2 which, if true, would entitle [the petitioner] to relief.” *Slade v. Caesars Ent. Corp.*, 132 Nev. 374,  
3 379–80, 373 P.3d 74, 78 (2016). Even assuming the truth of all the allegations in the Petition, there  
4 are no facts that could entitle Petitioners to relief because Nevada law simply does not require  
5 Respondent Burgess to do what Petitioners would have the Court compel her to do. The Court  
6 should therefore dismiss the Petition under NRCP 12(b)(5).

7 In addition, NRCP 12(b)(1) provides for dismissal of an action based on lack of subject-  
8 matter jurisdiction. A complaint (or again, as here, a petition) should be dismissed on this basis  
9 “when a lack of subject matter jurisdiction is apparent on the face of the complaint.” *Craig v.*  
10 *Donnelly*, 135 Nev. 37, 39, 439 P.3d 413, 415 (Nev. App. 2019). Petitioner also lacks standing to  
11 bring this action. Whether standing is an issue of subject-matter jurisdiction in Nevada is an open  
12 question, but regardless of the answer, the Petition must be dismissed for this additional reason,  
13 either under NRCP 12(b)(1) or NRCP 12(b)(5).

14 **I. Petitioners are not entitled to the extraordinary remedy of mandamus.**

15 Petitioners have brought this action as a petition for a writ of mandamus. *See generally* Pet.  
16 A “writ of mandamus is an extraordinary remedy,” and it is within the court’s “complete discretion  
17 whether to consider it.” *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 158, 460 P.3d 976,  
18 981 (2020). A petitioner “has the burden to establish that [mandamus] relief is appropriate,” and a  
19 mandamus petition “will *only* be granted when the petitioner has a clear right to the relief requested  
20 *and* there is no plain, speedy, and adequate remedy in the ordinary course of law.” *Halverson v.*  
21 *Sec’y of State*, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008) (emphasis added). “Mandamus may  
22 not be used to compel a discretionary act,” *Brewery Arts Ctr.*, 108 Nev. at 1054, 843 P.2d at 372,  
23 “unless discretion is manifestly abused or is exercised arbitrarily or capriciously,” *Round Hill Gen.*  
24 *Improvement Dist. v. Newman*, 97 Nev. 601, 604 637 P.2d 534, 536 (1981); *see State v. Eighth*  
25 *Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931–32, 267 P.3d 777, 780 (2011) (holding that action  
26 is arbitrary and capricious if “founded on prejudice or preference rather than on reason,” or  
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1 “contrary to the evidence or established rules of law” (quoting *Black’s Law Dictionary* (9th ed.  
2 2009)). Further, a writ of mandamus may only be issued “upon affidavit, on the application of the  
3 party beneficially interested.” NRS 34.170.

4 The Petition fails all of these requirements. Neither of the two statutes that Petitioners  
5 invoke imposes any mandatory duty on Respondent to do what Petitioners seek, nor even *allows*  
6 Respondent to act as Petitioners would compel her to act. To the extent Petitioners are entitled to  
7 any action from Respondent, they have an adequate, alternative remedy in the form of the  
8 challenge procedures under NRS 293.535 and NRS 293.547, which they inexplicably refuse to  
9 use. Finally, Petitioners have simply ignored the requirement to support their claims by affidavit.  
10 For all of these independent reasons, the Petition must be dismissed.

11 **A. Petitioners have not shown a clear right to their requested relief.**

12 At the outset, the Petition must be dismissed because Petitioners have not pleaded facts  
13 showing that they have any right to relief. Petitioners invoke two statutes that they say Respondent  
14 has violated—NRS 293.530 and NRS 293.675—but both arguments are unavailing.

15 *I. NRS 293.530*

16 NRS 293.530 provides, in relevant part, that “[c]ounty clerks may use any reliable and  
17 reasonable means available to correct the portions of the statewide voter registration list which are  
18 relevant to the county clerks and to determine whether a registered voter’s current residence is  
19 other than that indicated on the voter’s application to register to vote.” NRS 293.530(1)(a). That  
20 is the only portion of the statute that Petitioners quote and on which they base their claim that  
21 Respondent is violating NRS 293.530. For numerous reasons, the statute cannot support  
22 Petitioners’ claim.

23 *First*, this subsection imposes no mandatory duty on county clerks. It clearly states, to the  
24 contrary, that county clerks “*may* use any reliable and reasonable means” to correct portions of the  
25 statewide voter registration list and make determinations regarding a voter’s residence. *Id.*  
26 (emphasis added). “It is a well-settled principle of statutory construction that statutes using the  
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word ‘may’ are generally directory and permissive in nature, while those that employ the term ‘shall’ are presumptively mandatory.” *Nev. Pub. Emps. Retirement Bd. v. Smith*, 129 Nev. 618, 627, 310 P.3d 560, 566 (2013) (quotation omitted). The statute thus provides county clerks with discretion to use any reliable and reasonable means to correct the list and make residence determinations. But it does not *require* them to do anything at all—let alone to investigate alleged commercial addresses at the whim of any third party that demands it. *Contra* Pet. ¶ 36. Clerks’ exercise of their authority under this provision is therefore exactly the sort of “discretionary act” that cannot be compelled by mandamus. *Brewery Arts Ctr.*, 108 Nev. at 1054, 843 P.2d at 372. Mandamus relief “will not issue unless the petitioner can show that the respondent ‘has a clear, present legal duty to act.’” *Howell v. Ricci*, 124 Nev. 1222, 1228, 197 P.3d 1044, 1049 (2008) (quoting *Round Hill Gen. Imp. Dist.*, 97 Nev. at 603, 146 P.3d at 536); *see also* NRS 34.160 (permitting mandamus relief “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station”). Because NRS 293.530(1)(a) does not *require* Respondent to do anything of the sort that Petitioners allege, their claim should be rejected.

*Second*, Petitioners ignore NRS 293.530’s other explicit requirements. In particular, the statute dictates that a “county clerk *may*, with the *consent of the board of county commissioners*, make investigations of registration in the county by census, by house-to-house canvass or by any other method.” NRS 293.530(1)(b) (emphasis added). The word “may” reinforces that county clerks have discretion as to *whether* to make investigations of registration. Even then, this discretion can only be exercised under an express condition: before a clerk can conduct any such investigation, the clerk must obtain the approval of the board of county commissioners. The Petition never mentions this prerequisite to Respondent Burgess’s investigatory authority, much less demonstrates that it has been satisfied. *See generally* Pet. Absent such a demonstration, Respondent does not even have the *authority* to do what Petitioners would have the Court compel her to do, much less a mandatory duty that could justify mandamus. It cannot possibly have been

1 arbitrary or capricious for Respondent to refuse to do something she lacks statutory authority to  
2 do.

3       *Third*, other Nevada statutes expressly govern clerks’ consideration of information  
4 provided by nongovernmental third parties in making residence determinations, and Petitioners  
5 have not satisfied the requirements of those directly applicable provisions: the challenge  
6 procedures set out in NRS 293.535 and NRS 293.547. Those statutes provide specific procedures  
7 by which third parties may file a written challenge to a voter’s eligibility. It is well established  
8 under Nevada law that “specific statutes take precedence over general statutes.” *Gaines v. State*,  
9 116 Nev. 359, 365, 998 P.2d 166, 170 (2000) (holding that one statute “is controlling in this matter  
10 because it is more specific than” another statute); *see also, e.g., Sierra Life Ins. Co. v. Rottman*, 95  
11 Nev. 654, 656, 601 P.2d 56, 57 (1979) (per curiam) (holding that “a provision which specifically  
12 applies to a given situation will take precedence over one that applies only generally”). Where  
13 Nevada law has already presented a specific mechanism by which third parties may present  
14 information to clerks in order to challenge a voter’s eligibility—and specific requirements for and  
15 limitations on that mechanism—it follows that neither Petitioners nor clerks may evade those  
16 directly governing requirements by relying instead on a more general statute, NRS 293.530, that  
17 says nothing about nongovernmental third parties at all. For that reason, too, Respondent Burgess’s  
18 alleged failure to act cannot be arbitrary or capricious.

19       Clerks are also forbidden from taking account of information provided by third parties  
20 under NRS 293.530 for the additional reason that such information is not a “reliable and reasonable  
21 means” of correcting the record and making residence determinations. NRS 293.530(1)(a). NRS  
22 293.535 and NRS 293.547 require third parties challenging other voters’ eligibility to base their  
23 challenges on “personal knowledge,” and either “verif[y]” them or support them by affidavit. NRS  
24 293.535(1); NRS 293.547(2)(b), (3). Petitioners did not comply with any of those safeguards,  
25 which the Legislature specifically imposed to ensure that third-party information is reliable, and  
26 Respondent therefore had no obligation or authority to consider their submitted information.



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The only portions of the statute that Petitioners rely on do not in fact support them. Those are its provisions that “[e]ach county clerk shall use the database created by the Secretary of State pursuant to this subsection to collect and maintain all records of preregistration and registration to vote” and that the statewide voter registration list must be “regularly maintained to ensure the integrity of the registration process and the election process.” NRS 293.675(1), (3)(i) (cited in Pet. ¶ 1). But neither provision requires Respondent to do what Petitioners seek. The former requires only that county clerks *use* the database to collect and maintain records. It does not require clerks to take any specific steps toward that end—let alone to conduct investigations when prompted by any third party that insists on it.

involved in “consultation” toward this end. And even to the extent this subsection might impose any duties on clerks, it again requires no specific steps of them, and certainly not a duty to investigate the allegations of any third party regarding a voter’s address.

In short, Petitioners’ invocation of NRS 293.675 fails for the same reason that their invocation of NRS 293.530 fails. Petitioners simply cannot show that Respondent has any duty to act in response to their request or that they have any legal right to their requested relief. *See, e.g., Halverson*, 124 Nev. at 487, 186 P.3d at 896; *Howell*, 124 Nev. at 1228, 197 P.3d at 1049; *see also* NRS 34.160. Their Petition should accordingly be denied.

**B. Petitioners have a plain, speedy, and adequate alternative remedy.**

In addition, the Petition must also be denied because, to the extent Petitioners have any entitlement to Respondent’s consideration of their evidence, they have a “plain, speedy, and adequate remedy in the ordinary course of law” by which they may get it. *Halverson*, 124 Nev. at 487, 186 P.3d at 896; *see also* NRS 34.170. Specifically, they may simply employ the challenge procedures available to them in NRS 293.535 and NRS 293.547. *See* Pet. Ex. B at 1 (Mr. Guthrie suggesting that Petitioner PILF “may wish to pursue other options laid out in [these statutes]”). The existence of this alternative remedy flatly precludes Petitioners from seeking mandamus relief. Whether mandamus relief might provide “an easier or more expeditious remedy” is irrelevant; the only concern relevant to the question before this Court “is with the existence of a remedy and not whether it will be unproductive in [any] particular case.” *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 683, 476 P.3d 1194, 1198 (2020) (quoting *Washoe County v. City of Reno*, 77 Nev. 152, 156, 360 P.2d 602, 603–04 (1961)) (denying mandamus relief after concluding alternate remedy was available). Here, because Petitioners have such an alternative remedy, their Petition cannot succeed.

**C. The Petition is deficient because it is not supported by affidavit.**

Finally, the Petition is deficient because it is not supported by an affidavit. A writ of mandamus may only be issued “upon affidavit, on the application of the party beneficially

interested.” NRS 34.170. Nevada courts routinely deny petitions for mandamus relief that fail to meet this requirement because they are unsupported by affidavits. *See, e.g., Sgro & Roger v. Eighth Jud. Dist. Ct.*, No. 76418, 134 Nev. 1010, 2018 WL 3624635, at \*1 & n.1 (Nev. July 20, 2018) (unpublished disposition) (denying mandamus relief and describing “Petitioner’s failure to provide an affidavit of the party beneficially interested” as a “bas[i]s on which to deny this writ petition”); *United Road Towing, Inc. v. Eighth Jud. Dist. Ct.*, No. 69538, 132 Nev. 1039, 2016 WL 606001, at \*1 & n.1 (Nev. Feb. 12, 2016) (unpublished disposition) (similar). As in these cases, Petitioners have filed no such affidavit to support their Petition, nor have they otherwise verified the allegations in their Petition. *See generally* Pet. Their Petition is thus facially deficient and should be denied for this additional, independent reason.

## **II. Petitioners lack standing to bring their claim.**

The Petition must further be dismissed because Petitioners lack standing.<sup>2</sup> Nevada courts “generally require[] the same showing of injury-in-fact, redressability, and causation that federal cases require for Article III standing.” *Nat’l Ass’n of Mut. Ins. Cos. v. Dep’t of Bus. & Indus., Div. of Ins.*, 524 P.3d 470, 476 (2023). “To establish standing in” the context of “a mandamus proceeding, the petitioner must demonstrate a ‘beneficial interest’ in obtaining writ relief.” *Heller v. Legislature of State of Nev.*, 120 Nev. 456, 460–61, 93 P.3d 746, 749 (2004) (per curiam) (quoting NRS 34.170). In order to possess such a beneficial interest, “a party must show a direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted”; in other words, “the writ must be denied if the petitioner will gain no direct benefit from

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<sup>2</sup> The Nevada courts have not definitively resolved the issue of whether standing is a matter of subject-matter jurisdiction in Nevada. *See Superpumper, Inc. v. Leonard, Tr. for Bankr. Estate of Morabito*, 137 Nev. 429, 433 n.2, 495 P.3d 101, 106 n.2 (2021) (expressly reserving that question). Either way, for the Court’s present purposes, the distinction is immaterial: Petitioners lack standing, and their Petition must therefore either be dismissed under NRCP 12(b)(1) for lack of subject-matter jurisdiction or under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted.

1 its issuance and suffer no direct detriment if it is denied.” *Id.* at 461, 93 P.3d at 749 (quotations  
2 omitted).

3 Both Mr. Kraus and PILF lack standing to seek mandamus in this case. As for Mr. Kraus,  
4 the Petition scarcely mentions him. It states only that he “is an individual registered to vote in  
5 Nevada,” Pet. ¶ 4, and otherwise does not mention his name or attempt to explain his interest in  
6 the case. In any event, Mr. Kraus plainly lacks standing, as the fact that he is allegedly a Nevada  
7 voter is far from sufficient to provide him with standing. To the contrary, it demonstrates that all  
8 he has is “a generalized interest as a citizen” in this matter—precisely the opposite of the “direct  
9 and substantial interest” required for standing. *Garmong v. Lyon Cnty. Bd. of Comm’rs*, No. 74644,  
10 135 Nev. 646, 2019 WL 1989191, at \*1 (Nev. May 3, 2019) (unpublished disposition) (affirming  
11 dismissal of petition for mandamus, rejecting petitioner’s contention that he had a generalized  
12 interest “in having the laws executed and the public duties and rights enforced”).

13 Although the Petition contains few details regarding PILF’s theory of standing, it  
14 demonstrates that PILF, too, lacks standing. Neither of the two main categories of allegations that  
15 PILF pleads on this subject provides an adequate basis for standing. *First*, PILF’s abstract and  
16 alleged “concern[] with the accuracy of Respondent’s voter roll” cannot provide for standing (nor  
17 could it provide for standing for Mr. Kraus even to the extent he may share such concerns). Pet.  
18 ¶ 7. That, too, is merely a “generalized interest” that is insufficient to provide standing. *Garmong*,  
19 2019 WL 1989191, at \*1. Even if the Court were to award the relief Petitioners seek, it would not  
20 provide them with any “direct benefit” on this score that they would not share with the populace  
21 at large. *Heller*, 120 Nev. at 461, 93 P.3d at 749. In analogous contexts, numerous other courts  
22 have held that such subjective and unsubstantiated concerns do not allow for standing. *See, e.g.*,  
23 *Lance v. Coffman*, 549 U.S. 437, 441–42 (2007) (per curiam) (holding plaintiffs lacked standing  
24 to bring claim under U.S. Constitution’s Elections Clause where “[t]he only injury plaintiffs allege  
25 is that the law . . . has not been followed” because this was an “undifferentiated, generalized  
26 grievance about the conduct of government”); *Drake v. Obama*, 664 F.3d 774, 782 (9th Cir. 2011)

1 (holding plaintiff lacked standing in suit alleging Barack Obama was ineligible to serve as  
2 President of the United States where plaintiff has “no greater stake in this lawsuit than any other  
3 United States citizen,” as this harm was “too generalized to confer standing”).

4       *Second*, the Petition’s allegations that PILF “has been required to divert resources to  
5 Nevada to investigate erroneous addresses on the voter roll” and thus “Respondent Burgess’s  
6 violations of Nevada law have impaired and will impair [PILF] from carrying out its mission” are  
7 also insufficient to provide standing. Pet. ¶ 30. A party “cannot manufacture [an] injury by  
8 incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would  
9 not affect the organization at all,” and must instead “show that it would have suffered some other  
10 injury if it had not diverted resources to counteracting the problem.” *La Asociacion de*  
11 *Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). PILF  
12 has entirely failed to do so. Other than its own costs in investigating and pursuing this litigation,  
13 PILF has not identified any injury it suffered or would have suffered as a result of Respondent’s  
14 actions. Far from being “required to divert resources to Nevada,” PILF *chose* to spend its own  
15 money and resources investigating Nevada’s voter rolls, corresponding with Respondent’s  
16 employees, and ultimately bringing this Petition. Pet. ¶¶ 6–7, 19–27, 30. The Petition contains not  
17 a single allegation as to how Respondent’s actions with respect to the oversight of voting rolls in  
18 Washoe County had the slightest effect on a self-described “non-partisan, public interest  
19 organization incorporated and based in Alexandria, Virginia.” *Id.* ¶ 5.

20       In short, having not suffered any injury as a result of Respondent’s actions, even if the  
21 Court were to grant the relief Petitioners seek, PILF would “gain no direct benefit” from its  
22 decision. *Heller*, 120 Nev. at 461, 93 P.3d at 749. This Court should thus conclude that Petitioners  
23 lack standing and dismiss this case.

24 **III. Petitioners’ requested relief is barred by the National Voter Registration Act.**

25       Although Petitioners seek a “writ of mandamus compelling Respondent to investigate  
26 known commercial addresses listed as residences on the voter roll,” Pet. at 45, they allege that  
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1 “Respondent Burgess has failed to investigate *and make corrections regarding known commercial*  
2 *addresses* in violation of her duties to maintain the voter registration list.” Pet. ¶ 32 (emphasis  
3 added); *see also id.* at 1–2 (stating that Petitioners “submit this Petition for Writ of Mandamus to  
4 compel the Washoe County Registrar of Voters . . . to determine whether commercial addresses  
5 on the voter roll are accurate and, if not, make corrections”). It is not clear what sort of an  
6 “investigation” Petitioners wish Respondent Burgess to undertake, or what “corrections” they wish  
7 her to make. But to the extent that they seek the removal of any individual from Nevada’s voter  
8 rolls, that relief is precluded by the National Voter Registration Act (NVRA).

9         The NVRA outlines specific requirements that states must meet before removing a voter  
10 from the rolls on the grounds that the voter’s residence has changed. *See* 52 U.S.C. § 20507(b),  
11 (c), (d). Most importantly, a state “may not remove a registrant’s name on change-of-residence  
12 grounds unless either (A) the registrant confirms in writing that he or she has moved or (B) the  
13 registrant fails to return a preaddressed, postage prepaid ‘return card’ containing statutorily  
14 prescribed content. This card must explain what a registrant who has not moved needs to do in  
15 order to stay on the rolls, *i.e.*, either return the card or vote during the period covering the next two  
16 general federal elections.” *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 762 (2018) (citing 52  
17 U.S.C. § 20507(d)(2)(A)). And even if a voter fails to return the “return card,” then the voter may  
18 not be immediately removed from the rolls. “Instead, the voter’s name is kept on the list for a  
19 period covering two general elections for federal office (usually about four years). Only if the  
20 registrant fails to vote during that period and does not otherwise confirm that he or she still lives  
21 in the district (*e.g.*, by updating address information online) may the registrant’s name be  
22 removed.” *Id.* at 763 (citing 52 U.S.C. § 20507(d)(1)(B), (d)(2)(A), (d)(3)).

23         Nevada law provides a statutory procedure for removing voters that complies with the  
24 notice provisions of the NVRA. *See* NRS 293.530. Under this procedure, voters who do not return  
25 a postcard mailed to their registered address within 30 days may be designated as “inactive” but  
26 may not be deregistered. NRS 293.530(1)(c)(4), (1)(g).

Thus, to the extent Petitioners seek immediate removal of any voter from Nevada’s registration list without compliance with this procedure, that relief would be contrary to both Nevada law and the NVRA. Even if, after an individualized inquiry into the residence of each challenged voter, the Registrar believes that the voter no longer resides at the listed address, the Registrar must then mail the required postcard to the voter and wait 30 days before taking any action. NRS 293.530(1)(c), (1)(g). And even if the voter fails to return the postcard within 30 days, then the Registrar may only move the voter to “inactive” status, and cannot remove the voter from the voting rolls until two general elections have passed. NRS 293.530(1)(c)(4), (1)(g); 52 U.S.C. § 20507(d)(1)(B)(ii).

**IV. Petitioners’ claim is barred by the doctrine of laches.**

Finally, Petitioners’ challenge comes too late and is barred by the doctrine of laches. “Laches is an equitable doctrine which may be invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable.” *Carson City v. Price*, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997) (quoting *Building & Constr. Trades v. Public Works*, 108 Nev. 605, 610–11, 836 P.2d 633, 636–37 (1992)). To determine whether laches bars a particular challenge, courts consider “(1) whether the party inexcusably delayed bringing the challenge, (2) whether the party’s inexcusable delay constitutes acquiescence to the condition the party is challenging, and (3) whether the inexcusable delay was prejudicial to others.” *Miller v. Burk*, 124 Nev. 579, 598, 188 P.3d 1112, 1125 (2008). All three factors weigh against Petitioners here.

*First*, Petitioners did not initiate their analysis of Nevada’s statewide voter list until April 2024, mere weeks before the June primary election. Pet. Ex. A. at 1. And they filed this lawsuit on May 10, less than six months before the upcoming November presidential election. Yet Petitioners make no allegation that the voter registrations with which they take issue are new; nor do they provide any reason that they could not have analyzed an earlier statewide voter list. *See id.* *Second*, and relatedly, Petitioners’ late interest in Washoe County’s voter rolls and failure to “pursue other

options laid out in NRS 293.535 and NRS 293.547”—even at the Registrar’s office’s express invitation, Pet. Ex. B at 1—demonstrates their acceptance of the status quo. If Petitioners had sincere concerns about the validity of the registrations they now seek to investigate and potentially remove, they could have followed the detailed third-party challenge procedures available to them under established law rather than pursuing this far-fetched court-ordered end run.

*Third*, Petitioners’ delay is undoubtedly prejudicial to Proposed Intervenors, their members and constituents, and all voters who rely on the county’s well-established voter registration procedures and may end up in the crosshairs of Petitioners’ requested relief. *See N.A.A.C.P. v. N.A.A.C.P. Legal Def. & Educ. Fund, Inc.*, 753 F.2d 131, 137 (D.C. Cir. 1985) (“Laches may bar injunctive relief when the defendant has established a substantial reliance interest.” (citing *French Republic v. Saratoga Vichy Spring Co.*, 191 U.S. 427 (1903), and *Saratoga Vichy Spring Co., Inc. v. Lehman*, 625 F.2d 1037, 1041 (2d Cir. 1980))). As Proposed Intervenors set forth in their motion to intervene, Petitioners’ requested relief would threaten their members’ and constituents’ voting rights and require Proposed Intervenors to expend substantial resources to educate voters and protect them from baseless attacks on their eligibility. In other words, Petitioners’ decision to bring this lawsuit in the months leading up to a presidential election runs the risk of altering Proposed Intervenors’ and Washoe County voters’ conditions so much so that they cannot be restored to their former state. *Carson City*, 113 Nev. at 412, 934 P.2d 1043. This Court should therefore dismiss Petitioners’ belated claim.

### CONCLUSION

For the reasons stated above, Proposed Intervenors respectfully request that the Court grant their motion to dismiss and dismiss the Petition in its entirety and with prejudice.

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1 **AFFIRMATION**

2 Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that this  
3 document does not contain the personal information of any person.  
4

5 DATED this 15th day of July, 2024.  
6

7 By: /s/ Bradley Schrager

8 Bradley Schrager

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21 *for a Progressive Nevada, and the Nevada*  
22 *Alliance for Retired Americans*  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 15th day of July, 2024, a true and correct copy of  
3 **[PROPOSED] MOTION TO DISMISS THE PETITION FOR WRIT OF MANDAMUS** was  
4 served by electronically filing with the Clerk of the Court using the Odyssey eFileNV system and  
5 serving all parties with an email-address on record, pursuant to Administrative Order 14-2 and  
6 Rule 9 of the N.E.F.C.R.

7  
8 By: /s/ Dannielle Fresquez  
9 Dannielle Fresquez, an employee of  
10 BRAVO SCHRAGER LLP  
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