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17 **Admitted Pro Hac Vice*

18 *** Application for Admission Pro Hac Vice Pending*

19 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
20 **IN AND FOR THE COUNTY OF WASHOE**

21 FREDERICK KRAUS, PUBLIC
22 INTEREST LEGAL FOUNDATION,

23 *Petitioners,*

24 v.

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

28 *Respondent,*

and

FRANCISCO V. AGUILAR, in his
Official Capacity as NEVADA
SECRETARY OF STATE,

Intervenor-Respondent

Case No.: CV24-01051

Dept. No.: 4

**REPLY TO OPPOSITION TO PETITION
FOR WRIT OF MANDAMUS**

1 Mr. Kraus and the Public Interest Legal Foundation (“Petitioners”) reply to the Washoe
2 County Registrar of Voters and Secretary of State’s Opposition to Petition for Writ of Mandamus
3 (“Opposition”).

4 INTRODUCTION

5 Petitioners identified for the Washoe County Registrar forty-eight locations that
6 Petitioners believed to be commercial addresses on Nevada’s voter rolls in Washoe County. See
7 Petition, Exhibit A. The Petitioners did not seek to have any registrant removed but, rather,
8 requested the Washoe County Registrar examine the validity of the addresses as Nevada law
9 requires *actual* residences be used. See NRS 293.486(1). After conducting an examination of
10 commercial addresses listed on the State of Nevada voter rolls, the Foundation personally visited
11 and photographed each of the forty-eight addresses identified in the Petition. The provided data is
12 reasonable, reliable and based on personal knowledge. The Washoe County Registrar’s failure to
13 examine the forty-eight problematic commercial addresses is the genesis of this mandamus
14 action.

15 Instead of addressing the problem in the nearly seven months since the Foundation alerted
16 the Washoe County Registrar to the problem, both the Washoe County Registrar and the
17 Secretary of State pour their limited resources into fighting against the Petitioners’ requested
18 relief—an investigation. Rather than focus on the duty to maintain accurate voter rolls, the
19 Washoe County Registrar and the Secretary of State cast aspersions about Petitioners and claim
20 no investigation is warranted. In contrast, when faced with a mandamus action, the Clark County
21 Registrar quickly conducted an investigation and informed the petitioners of the results (after
22 which the petitioners voluntarily dismissed their suit.). Because the Washoe County Registrar has
23 not done an investigation and reported its results, the relief sought is warranted. The Petition
24 should be granted.

ARGUMENT

I. The Washoe County Registrar and the Secretary of State Have a Duty to Maintain the Voter Roll.

As the Washoe County Registrar and the Secretary of State acknowledge, federal law requires list maintenance. (*See* Opposition at 4). For example, states shall “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—(A) the death of the registrant; or (b) a change in the residence of the registrant...” 52 U.S.C. § 20507(a)(4). Further, the Washoe County Registrar and the Secretary of State concede that “[c]ounty clerks...are the election professionals who perform most list maintenance in Nevada.” (Opposition at 5.) It is precisely those duties that are at issue in this Petition.

II. Petitioners Seek Review of Addresses, not Challenges of Registrants.

Petitioners identified forty-eight commercial addresses in Washoe County from the state’s own voter roll. *See* Petition, Exhibit A. The resulting list sent to the Washoe County Registrar included dozens of addresses where it would be physically impossible for someone to reside, contrary to what is required by NRS 293.486(1). Under Nevada law, “for the purposes of preregistering or registering to vote, the address at which the person actually resides is the street address assigned to the location at which the person actually resides.” NRS 293.486(1). This case has never involved challenges to voters. The relief Petitioners have requested is for the Washoe County Registrar to *examine* the forty-eight facially problematic commercial addresses identified in the Petition at which no one resides. *See* Petition, Exhibit A. The Petitioners do not seek to challenge, much less remove, any voters. Indeed, the addresses identified may relate to more than one registrant, but the Petitioners have not catalogued registrants. They catalogued addresses because that is what they sought the Washoe County Registrar to review.

1 Despite the Petitioners urging an investigation, both in their correspondence and in filings
2 before this Court, the Washoe County Registrar and the Secretary of State continue to choose to
3 operate under their faulty premise that the Petition seeks to “bypass the written challenge
4 process.” (Opposition at 3.) Not so. No matter how often the Petitioners explain their relief, and
5 despite the plain language of the Petition itself, the Washoe County Registrar and Secretary of
6 State *continue* to refer to the Petitioners’ requested relief as “euphemisms” and “semantic sleight-
7 of-hand.” (Opposition at 12.) Curiously, the Washoe County Registrar and Secretary of State do
8 not address what transpired in Clark County involving a similar mandamus action which
9 demonstrates the Petitioners’ intentions and directly belie the Defendants’ aspersions.

11 On June 25, 2024, Mr. Kraus, the Foundation, and an additional petitioner filed a petition
12 for writ of mandamus pursuant to NRS 34.160 for Clark County Registrar of Voters to Determine
13 whether commercial addresses on the voter roll are accurate as required by NRS 293.530. *Kraus,*
14 *et. al v. Portillo*, A-24-896151-W (Eighth Judicial District Court, Clark County). The petition
15 sought similar relief to the Petition before the Court except that it involved nearly *double* the
16 number of addresses. On August 15, 2024, the Clark County Registrar of Voters filed a motion to
17 dismiss the petition. In the motion to dismiss, she stated the following:
18

19 [T]he ROV and her staff have now completed an investigation into the addresses
20 provided by PILF and has made the following determinations: (a) 29 addresses were
21 confirmed as the voter’s actual residence; (b) 19 addresses will require additional
22 research by the Election Department; (c) 16 addresses were previously identified by
23 the Department and the voters at those addresses were inactivated; (d) 12 addresses
24 had no active or inactive voters; (e) 9 addresses were connected to voided
25 registrations; (f) 4 addresses the voters had updated their voter registration; and (g) 1
26 address was [a] typo.

27 Motion to Dismiss at 7, *Kraus, et. al v. Portillo*, A-24-896151-W (attached hereto as Exhibit A.)

28 As a result, the parties stipulated to dismiss the Petition. The Clark County Registrar of Voters
conducted an investigation just as the petitioners sought. The claim by the Washoe County
Registrar and the Secretary of State that the Petitioners here “never explain” what they are

1 seeking is contradicted by the face of the Petition and the demonstrable results of the Clark
2 County case. In fact, the Petitioners set forth this information in their Request for Briefing
3 Schedule that was filed on September 26, 2024. Specifically, Petitioners stated “if Respondent
4 has conducted a full investigation of the commercial addresses after reviewing the Clark County
5 ROV’s motion, then Respondent only needs to provide that information to Petitioners and the
6 Court and the matter will be rendered moot, just as it was in Clark County.” (Request for Briefing
7 Schedule at 2.) Neither the Washoe County Registrar nor the Secretary of State provided that
8 information. Nor do they argue that the Petition is moot.

10 Importantly, the Clark County Registrar of Voters investigated ninety (90) addresses in
11 the just **51 days** between when the petition was filed on June 25, 2024, and the motion to dismiss
12 was filed on August 15, 2024. Here, it has now been **181 days** since the Petition was filed and
13 Washoe County Registrar has not informed the Court whether they have investigated all forty-
14 eight (48) addresses identified by the Petitioners.

16 **III. The Washoe County Registrar’s Failure to Act Was Arbitrary and Capricious.**

17 Petitioners identified and highlighted those addresses for the Washoe County Registrar, in
18 hopes that such errors could be corrected. Correction of errors is in the Washoe County
19 Registrar’s, the Secretary of State’s, and the voters of Nevada’s best interest as well. *See* Face the
20 State: Cari-Ann Burgess, Part One, 2 NEWS KVTN (Apr. 20, 2024) at 1:19
21 [https://www.2news.com/video/face-the-state-cari-ann-burgess-part-one/video_27eclal3-3595-
22 5e9e-89ee-024dc960d923.html](https://www.2news.com/video/face-the-state-cari-ann-burgess-part-one/video_27eclal3-3595-5e9e-89ee-024dc960d923.html). (Ms. Burgess stating “I have a great passion for elections and
23 making sure that they’re done and done right”); Face the State: Cari-Ann Burgess, Part Two, 2
24 NEWS KVTN (Apr. 20, 2024) at 8:24 [https://www.2news.com/video/face-the-state-cari-ann-
25 burgess-part-two/video_62818e05-4677-5520-a02f-889a72557012.html](https://www.2news.com/video/face-the-state-cari-ann-burgess-part-two/video_62818e05-4677-5520-a02f-889a72557012.html). (Ms. Burgess stating,
26 “Making sure that our voter rolls are clean is something that is very important to me.”)
27
28

1 Petitioners sent a letter to the Washoe County Registrar on April 11, 2024, including all
2 addresses in question alongside photographic evidence of the addresses found on the Washoe
3 County Registrar’s own voter roll. Petition, Exhibit A. Under Nevada law, part of Washoe
4 County Registrar’s authority as county clerk is to “determine whether a registered voter’s current
5 residence is other than that indicated on the voter’s application to register to vote.” NRS
6 293.530(1)(a). The Washoe County Registrar’s office, after initially indicating that it was going
7 to review the addresses provided, arbitrarily chose not to do so, citing provisions of law that are
8 not relevant to the Petitioners’ request. *See* Petition, Exhibit B.

10 The Washoe County Registrar was put on notice of forty-eight addresses in her county
11 that appeared to be commercial buildings or completely empty lots and she arbitrarily ignored
12 such evidence and chose not to use the authority as the registrar of voters to determine whether
13 the residences are accurate. The process for challenging the residence of a voter is not what is at
14 issue here. The Washoe County Registrar abused her discretionary power when she was put on
15 notice of commercial addresses on her voter registration roll and chose to ignore such evidence.

17 The Nevada Supreme Court has stated that a “writ of mandamus is available to... control
18 an arbitrary or capricious exercise of discretion.” *Int’l Game Tech., Inc. v. Second Jud.*, 124 Nev.
19 193, 197, 179 P.3d 556, 558 (Nev. 2008). “An arbitrary or capricious exercise of discretion is one
20 ‘founded on prejudice or preference rather than on reason’...or ‘contrary to the evidence or
21 established rules of law.’” *State v. Eight Jud. Dist. Ct.*, 127 Nev. 927, 931-932 (Nev. 2011)
22 (quoting Black’s Law Dictionary).

24 Shortly before the Petition was filed, the Washoe County Registrar stated in an interview
25 that “we [Washoe County Registrar] are doing our due diligence in making sure the voter rolls are
26 clean.” Face the State: Cari-Ann Burgess, Part Two, 2 NEWS KVTN (Apr. 20, 2024) at 6:28,
27 https://www.2news.com/video/face-the-state-cari-ann-burgess-part-two/video_62818e05-4677-
28

1 [5520-a02f-889a72557012.html](https://www.2news.com/video/face-the-state-cari-ann-burgess-part-two/video_62818e05-4677-5520-a02f-889a72557012.html). When asked about making sure the voter rolls were clean,
2 concerning issues such as deceased voters or people who have moved out of state on the voter
3 rolls, Ms. Burgess stated, “Oh absolutely, we work on those all the time.” Face the State: Cari-
4 Ann Burgess, Part Two, 2 NEWS KVTN (Apr. 20, 2024) at 7:30,
5 [https://www.2news.com/video/face-the-state-cari-ann-burgess-part-two/video_62818e05-4677-](https://www.2news.com/video/face-the-state-cari-ann-burgess-part-two/video_62818e05-4677-5520-a02f-889a72557012.html)
6 [5520-a02f-889a72557012.html](https://www.2news.com/video/face-the-state-cari-ann-burgess-part-two/video_62818e05-4677-5520-a02f-889a72557012.html).
7

8 The Washoe County Registrar’s exercise of discretion here is arbitrary because it is
9 founded on preference rather than reason. *See State v. Eighth Jud. Dist. Ct.*, 127 Nev. at 931-932.
10 The Washoe County Registrar chose to recast the Petitioners’ request as one relating to
11 challenging or removing voters, rather than the actual request to examine known commercial
12 addresses. The Washoe County Registrar arbitrarily relied upon a prohibition on removing
13 registrants within 90 days of an election as a reason to not examine the addresses Petitioners
14 presented. *See* Petition, Exhibit B.. No removal was sought and, therefore, no prohibition on
15 removal could serve as a reasonable basis for inaction. Further, even if she could not act within 90
16 days of an election, she did not act in the adequate time between the June primary election and the
17 opening of the November general election’s 90-day window. She continues not to act even now,
18 after the November general election has concluded.
19

20 The Washoe County Registrar abused her discretion to refuse to, at the least, investigate
21 or even examine, forty-eight addresses presumed to be of commercial use, some of which
22 included completely vacant lots¹, government offices², and a U.S. Post Office Approved Postal
23 Provider.³ *See* Petition, Exhibit A. Ignoring even one flagrant and glaring example of a
24 commercial address on the voter roll is discretion founded on preference rather than duty, as the
25
26

27 ¹ Petition at 11.

28 ² Petition at 37-38.

³ Petition at 12.

1 Washoe County Registrar has specifically stated one of her duties is to conduct list maintenance.
2 See Face the State: Cari-Ann Burgess, Part Two, 2 NEWS KVTN (Apr. 20, 2024) at 6:40; 7:30
3 [https://www.2news.com/video/face-the-state-cari-ann-burgess-part-two/video_62818e05-4677-](https://www.2news.com/video/face-the-state-cari-ann-burgess-part-two/video_62818e05-4677-5520-a02f-889a72557012.html)
4 [5520-a02f-889a72557012.html](https://www.2news.com/video/face-the-state-cari-ann-burgess-part-two/video_62818e05-4677-5520-a02f-889a72557012.html).

5
6 This Court is equipped to issue a mandamus in the face of arbitrary or capricious
7 discretion. “[W]rits of mandamus serve ‘to control an arbitrary or capricious exercise of
8 discretion’” *Clark Cnty. Dep’t of Fam. Servs. v. Eighth Jud. Dist. Ct. (In re J.B.)*, 550 P.3d 333,
9 337 (Nev. 2024) (quoting *Div. of Child & Fam. Servs. v. Eighth Jud. Dist. Ct.*, 92 P.3d 1239,
10 1942 (Nev. 2004).) The Washoe County Registrar’s inaction amounts to arbitrary exercise of
11 discretion as her discretion is based on preference over reason. See *State v. Eighth Jud. Dist. Ct.*,
12 127 Nev. at 931-932. The Washoe County Registrar’s discretion would be reasonable had she
13 taken notice of the forty-eight addresses presented to her as potentially problematic and
14 investigated them as she claims her staff already does for other concerns on the voter roll. There
15 is no reasonable justification to ignore conspicuous errors in the Washoe County Registrar’s own
16 voter roll.
17

18 The Washoe County Registrar and Secretary of State posit whether the Washoe County
19 Registrar could even do what the Petitioners sought. (Opposition at 10.) Again, their question
20 rests upon a faulty understanding of the relief sought. Even still, the fact that the Clark County
21 Registrar was able to complete the investigation and report the results undercuts the alleged
22 concerns found in the Opposition. Further, even if the Washoe County Registrar would need to
23 seek the consent of the Washoe County Board of County Commissioners to act, which the
24 Petitioners do not believe is necessary, the Washoe County Registrar could have requested such
25 consent at the time of receipt of the Foundation’s letter until now. To the Petitioners’ knowledge,
26 she has not done so.
27
28

1 **IV. The Data Submitted Is Reasonable and Reliable.**

2 The Washoe County Registrar and Secretary of State claim that the data Petitioners
3 submitted is not reasonable or reliable. (Opposition at 14-19.) But the data Petitioners provided is
4 the Washoe County Registrar’s *own data*. The Petitioners submitted a list of addresses taken
5 directly from the state’s voter roll. To assist the Washoe County Registrar, the Petitioners also
6 provided pictures they had taken along with their notes about each location. But, at the heart,
7 Petitioners simply asked the Washoe County Registrar to review her own voter roll. To now say
8 that the data provided was not reasonable or reliable calls into question whether reliance on
9 Washoe County Registrar’s own voter roll is reasonable or reliable.
10

11 Further, in opposition to the Petition, the Washoe County Registrar claims to have
12 reviewed *some* of the addresses provided by Petitioners. Yet, even as to the addresses the Washoe
13 County Registrar chose to review, that review only amplifies the need for a complete
14 investigation of the provided list.
15

16 Each address the Washoe County Registrar claims to have reviewed is home to at least
17 one—and sometimes more—registered voter. In other words, the Washoe County Registrar
18 confirmed that the addresses provided are present on the current voter roll, some with active
19 registrations. The Washoe County Registrar focuses on the fact that some addresses relate to
20 registrants who are listed as inactive. The Petitioners never claimed to be limiting their research
21 to active registrants. As is stated above, the Petitioners are focused on proper addresses, not
22 specific registrants. But even more fundamentally, ensuring the accuracy of voter rolls is not
23 limited to those voters who are presently in active status. Nevertheless, that the Petitioners’ data is
24 reliable is confirmed by Washoe County Registrar’s own mini investigation. (*See* Opposition at
25 17 (“Nevertheless, Petitioners’ findings are consistent with Washoe County voter records as the
26 status of the voter that most recently used this address as his residence is already inactive.”))
27
28

1 **V. Petitioners Have Standing.**

2 To have standing, Nevada courts have examined “whether the party seeking relief has a
3 sufficient interest in the litigation,’ so as ‘to ensure the litigant will vigorously and effectively
4 present his or her case” *Nevada Policy Research Inst. v. Cannizzaro*, 507 P.3d 1203, 1207
5 (Nev. 2022) (citing *Schwartz v. Lopez*, 382 P.3d 886, 894 (Nev. 2016)) (“*NPRP*”).⁴

7 **A. The Foundation Has Organizational Standing.**

8 The Washoe Registrar and Secretary of State incorrectly rely upon a recent U.S. Supreme
9 Court case, *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024) (“*Alliance*”), for their
10 assertion that the Foundation does not have organizational standing. In *Alliance*, the Supreme
11 Court found that the organizational plaintiffs did not have standing because they had only “legal,
12 moral, ideological, and policy objections to mifepristone being prescribed and used by *others*.”
13 *Alliance*, 602 U.S. at 386.

14 Importantly, and correctly, the Supreme Court explained that an organizational plaintiff
15 would have standing where the defendant “directly affected and interfered with [the plaintiff’s]
16 core business activities.” *Id.* at 395 (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379
17 (1982)). That is precisely what occurred here.

18 The Foundation does not rely on the type of remote injuries pleaded in *Alliance*. The
19 Foundation alleges an injury based upon the Washoe County Registrar’s failure to maintain the
20 voter roll in contravention of her duties and failure to investigate the information Petitioners
21 brought to her attention. Specifically,
22 brought to her attention. Specifically,

23 ⁴ Towards the end of the Opposition, the Washoe County Registrar and Secretary of State argue that the Petition is
24 deficient because an affidavit was not attached. (Opposition at 19.) The cases upon which the Registrar and Secretary
25 of State rely are distinguishable. See *Kimberlywhite v. Eighth Judicial Dist. Court Ok Nev.*, 517 P.3d 242 (Nev. 2022)
26 (“The petition does not comply with several statutory and court rule requirements, such that it appears not all of the
27 parties were provided proper notice and this court is unable to fully understand the matters set forth in the petition.”)
28 In contrast, the Petitioners included a signed letter as an attachment to the Petition, the facts upon which the Petition
 was based. See Petition, Exhibit A. Further, the Petitioners are attaching a Declaration of Logan Churchwell to this
 Reply. See Exhibit B, attached.

1 Petitioners brought to Respondent's attention evidence concerning whether
2 residential addresses listed on the statewide voter registration list are accurate
3 as there is no indication that individuals reside at the specific locations
4 identified. Petitioners sought Respondent's compliance with state law regarding
5 the accuracy of the statewide voter list through investigations of specific
6 addresses for accuracy. Respondent has not acted.

7 Petition at 2:14-18. The Foundation alleged that it

8 [R]egularly analyzes the programs and activities of state and local election
9 officials to determine whether lawful efforts are being made to keep voter rolls
10 current and accurate. The Foundation also uses records and data to produce and
11 disseminate reports, articles, blog and social media posts, and newsletters to
12 advance the public education aspect of its organizational mission.

13 Petition at 2:28-3:5. The Foundation alleges the type of direct interference with business activities
14 that *Alliance* and *Havens Realty* deem sufficient for standing purposes. *See Alliance*, 602 U.S. at
15 395. The Foundation's injury affects its "pre-existing core activities." *Ariz. All. for Retired Ams.*
16 *v. Mayes*, 117 F.4th 1165 (9th Cir. 2024).

17 Further, the Foundation has never claimed to base standing upon claims of voter dilution.
18 Any such suggestion by the Washoe Registrar and Secretary of State (*see* Opposition at 9-10) is
19 baseless.

20 **B. Mr. Kraus Has Standing.**

21 Mr. Kraus is a Nevada voter seeking a writ of mandamus compelling the Washoe County
22 Registrar to investigate a specific subset of addresses. He has been injured by the Washoe County
23 Registrar's refusal to investigate these specific addresses. This injury will be redressed by the
24 granting of the Petition.

25 The Petitioners have vigorously and effectively presented their case, briefed the court and
26 limited relief to a specific, identified and admitted duty. Consequently, the injury Petitioners have
27 suffered in fact exists and is easily resolved once the Washoe County Registrar does her duty.
28

1 **CONCLUSION**

2 For the foregoing reasons and based upon the Petitioners' prior briefing before this Court,
3 the Petition should be granted.
4

5 **AFFIRMATION**
6 (Pursuant to NRS 239B.030)

7 The undersigned does hereby affirm that the preceding document filed in the above
8 referenced matter does not contain the social security number of any person.
9

10 Dated: November 7, 2024.
11 Respectfully submitted,

THE O'MARA LAW FIRM, P.C.

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23 **Admitted Pro Hac Vice*
*** Application for Admission Pro Hac Vice*
24 *Forthcoming*
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify on this 7th day of November, 2024, a true and correct copy of **REPLY**
3 **TO OPPOSITION TO PETITION FOR WRIT OF MANDAMUS** was served by
4 electronically filing with the Clerk of the Court using the Court's electronic filing system and
5 serving all parties with an email-address on record.
6

7 Dated: November 7, 2024

8 By: /s/ Valerie Weis
9 VALERIE WEIS

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EXHIBIT INDEX

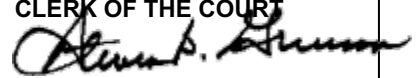
Exhibit No.	Description	Pages
A	Motion to Dismiss Petition for Writ of Mandamus	10
B	Declaration of Logan Churchwell	3

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EXHIBIT A

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EXHIBIT A



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DISTRICT COURT

CLARK COUNTY, NEVADA

FREDERICK H. KRAUS, JOEY PAULOS,)
PUBLIC INTEREST LEGAL)
FOUNDATION,)

Petitioners,

vs.

LORENA S. PORTILLO, in her official)
capacity as Clark County Registrar of Voters,)

Respondents.)

Case No: A-24-896151-W
Dept No: 16

MOTION TO DISMISS THE PETITION FOR WRIT OF MANADMUS

COMES NOW Defendant, Lorena Portillo, in her capacity as the Clark County Registrar of Voters, by and through STEVEN B. WOLFSON, District Attorney, by Lisa Logsdon, County Counsel, and moves this Honorable Court for its order dismissing Petitioner's Petition for Writ of Mandamus ("Petition").

///

///

1 This Motion is based upon the pleadings and papers on file herein, the following
2 Points and Authorities, the attached declaration and the oral arguments of counsel at the time
3 of hearing in this matter, if any.

4 DATED this 15th day of August, 2024.

5 STEVEN B. WOLFSON
6 DISTRICT ATTORNEY

7 By: /s/Lisa V. Logsdon
8 LISA V. LOGSDON
9 County Counsel
10 State Bar No. 011409
11 500 South Grand Central Pkwy. 5th Flr.
12 Las Vegas, Nevada 89155-2215
13 Attorney for Respondent
14 LORENA S. PORTILLO

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. INTRODUCTION

17 On June 3, 2024, seven (7) days before the June primary election, which was held on
18 June 11, 2024, the Clark County Registrar of Voters, Lorena Portillo ("ROV") received a
19 letter from the Public Interest Legal Foundation ("PILF") demanding that the ROV
20 determine whether various commercial addresses provided by PILF are accurate and, if not,
21 make appropriate corrections. The letter stated, "[w]e request that you conduct your
22 investigation and make any **appropriate corrections** to the voter roll by **June 17, 2024.**"

23 **Emphasis added.** When the ROV received the letter the ROV was in the middle of
24 conducting the primary election. Early voting began in Clark County on May 25, 2024 and
25 ran through June 7, 2024. Additionally, the ROV presented the elections results to Clark
26 County Board of County Commissioners for certification on June 21, 2024. Rather than
27 allowing the ROV sufficient time to respond to the Petitioners' lengthy demand, the
28 Petitioners improperly filed this Petition on June 25, 2024, demanding that the ROV
investigate certain addresses on the voter registration roll based on NRS 293.530, which
provides that a county clerk *may* use any reliable and reasonable means available to correct
portions of the statewide voter registration list which are relevant to the county clerk and to

1 determine whether a registered voter's current residence is other than that indicated on the
2 voter's application to register to vote.

3 The Petition must be denied because the Petitioner has failed to state a claim upon
4 which relief can be granted as the Petition seeks to enforce a statute (NRS 293.530), which is
5 discretionary, and the Petitioner has an adequate alternative remedy in the challenge
6 procedures in NRS 293.353 and NRS 293.547. The Court should also dismiss the Petitioner
7 because the ROV did complete an investigation into the 90 addresses provided.

8 II. ARGUMENTS

9 A. Writ of Mandamus Cannot Compel a Discretionary Act.

10 A petition should be dismissed under NRCP 12(b)(5) for failure to state a claim if there
11 are no set of facts, which, if true would entitle the petitioner to relief. *Buzz Stew, LLC v. City*
12 *of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). "A writ of mandamus is
13 available to compel the performance of an act which the law requires as a duty resulting from
14 an office, trust or station, ... or to control an arbitrary or capricious exercise of discretion."
15 *Barnes v. Eighth Jud. Dist. Ct.*, 103 Nev. 679, 682 (1987). A petition for mandamus will only
16 be granted when the petitioner has a clear right to the relief requested and there is no plain,
17 speedy and adequate remedy in the ordinary course of law. While there is an exception to the
18 foregoing rule that mandamus can be appropriate if the discretion is manifestly abuse or that
19 discretion is exercised arbitrary or capriciously. *Round Hill Gen. Improvement Dist. v. Newan*,
20 97 Nev. 601, 637 P.2d 534 (1981).

21 The Petitioner seeks to enforce NRS 293.530, which states¹:

22 1. Except as otherwise provided in NRS 293.541:

23 (a) County clerks² *may* use any reliable and reasonable means available to
24 correct portions of the statewide voter registration list which are relevant to
25 the county clerk and to determine whether a registered voter's current
26 residence is other than that indicated on the voter's application to register to
27 vote.

26 ¹ The Petition also cites NRS 293.675 but fails to make any substantive arguments as to how the ROV as violated this
27 statute or how the Court can require the Clark County ROV to perform a statutory duty of the Nevada Secretary of State.
The Petition makes no allegation against the ROV as it related to NRS 293.675.

28 ² Clark County has appointed a Registrar of Voters in accordance with NRS 244.164(1). The Registrar of Voters
"assumes all the powers and duties vested in and imposed upon the county clerk of the county with respect to
elections..." NRS 244.162(2). As such, references to county clerk in NRS Chapter 293 have been assumed by the
Registrar of Voters.

1 (b) A county clerk *may*, with the consent of the board of county commissioners,
2 make investigations of registrations in the county by census, by house-to-
house canvass or by any other method. ***Emphasis added.***

3 Clearly, the duties articulated in NRS 293.530 are discretionary for the ROV. Even if
4 the information provided by the Petitioner in its letter and Petition were reliable and reasonable
5 to determine whether a registered voter's current residence is other than what is indicated on
6 the voter's application, there is no duty for the ROV to investigate these assertions. This is
7 especially true, when the Petitioner demanded this investigation during a current election
8 period. While there is a recognized exception to the foregoing rule that mandamus can be
9 appropriate if the discretion is "manifestly abused" or that discretion is exercised arbitrarily or
10 capriciously. *Round Hill Gen. Improvement Dist. v. Newan*, 97 Nev. 601, 637 P.2d 534
11 (1981). Here, there is clearly no obvious abuse of discretion nor has the ROV acted arbitrary
12 or capriciously. The Petitioner gave the ROV fourteen (14) days to conduct an investigation
13 during a period of time that the Petitioner knew was one of the busiest times for the ROV,
14 during an election. In addition to the election day responsibilities of managing over a hundred
15 polling sites, the ROV is responsible to collecting and counting mail ballots returned by
16 Nevada voters. All mail ballots must be counted no later than 7 days after election day. NRS
17 293.269931. The Petitioner has provided no evidence that the ROV has acted arbitrary or
18 capricious in the exercise of her discretionary duties under NRS 293.530.

19 In addition to the Petitioner failing to meet any legal standard for the relief requested,
20 the Petitioner failed to provide an affidavit to support their claim as required by NRS 34.170.
21 For the above reasons, the Petition should be dismissed for a failure to state a claim upon such
22 relief can be granted.

23 **B. Petitioners Lacks Standing to Request Mandamus Relief.**

24 To have standing in a mandamus matter, the petitioner must demonstrate a beneficial
25 interest in obtaining the relief requested. *Heller v Legis. Of State of Nev.*, 120 Nev. 456.
26 460-61, 93 P.3d 746, 749 (2004). The court has found that beneficial interest to mean a
27 direct and substantial interest that falls within the zone of interests to be protected by the
28 legal duty asserted. As discussed above, the Petition lacked the affidavit required in NRS

1 34.170, which could have provided the Court with the required information regarding the
2 Petitioners beneficial interest protected by the legal duty that the Petitioners are asking the
3 Court to order the ROV to perform. But, even if the affidavit was included, the individual
4 Petitioners, Mr. Kraus and Mr. Paulos have failed to demonstrate any injury by the ROV's
5 failure to investigate these addresses. Outside of being registered voters in Nevada, the
6 Petition is absent of any direct impact to Mr. Kraus and Mr. Paulos of the ROV's alleged
7 failure to investigate commercial addresses. Just as Mr. Kraus and Mr. Paulos have no direct
8 and substantial interest in the discretionary actions of the ROV, PILF also lacks standings as
9 PILF's speculative concerns regarding voter registration rolls and the diversion of resources
10 fails to provide any legal basis for standing. The Petitioner's lack of standing warrants
11 dismissal of the Petition under either NRCP 12(b)(1) or NRCP 12(b)(5).

12 **C. Petitioner Fails to State a Claim as the National Voter Registration**
13 **Act Precludes Petitioner's Requested Relief to Make Corrections.**

14 To the extent, that the Petitioner's requested relief from the Court is to have the voter
15 registrations related to the identified commercial addresses removed from the voter
16 registration roll, such action is prohibited by the National Voter Registration Act ("NVRA").
17 The NVRA provides specific requirements that must met before a voter's registration can be
18 removed from the voter registration roll on the grounds that the voter's residence has
19 changed. *See* 52 U.S.C. § 20507(b). Furthermore, voter list maintenance programs to
20 remove ineligible voters from the official voter registration list must occur no later than 90
21 days prior to the date of any primary or general election for federal office. This 90-day
22 deadline applies to state list maintenance verification activities, such as general mailings and
23 door to door canvasses, which are like the discretionary actions permitted pursuant to NRS
24 293.530(1)(b). The NVRA requires any correction to the voter registration roll be made by
25 August 7, 2024.³ Therefore, the Petitioner's requested relief is barred by the NVRA, and the
26 Petition fails to state a claim upon which relief can be granted.

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³ August 7, 2024 is 90 days prior to November 5, 2024, the date for the general election.

1 **D. Petitioner Has Adequate Relief under NRS 293.535 or NRS 293.547.**

2 The Petitioner appears to argue that Nevada law does not allow voters to register to
3 vote using a business address. Pet. pg. 6. This is not accurate. NRS 293.486 states for the
4 purpose of pre-registering or registering to vote, the address at which the person actually
5 resides is the street address assigned to the location at which the person **actually resides**.
6 Emphasis added. There is no requirement in NRS 293.486 that the address provided be a
7 residential address or an address zoned or approve for residential living, just that the person
8 actually resides at the address. If the Petitioner seeks to challenge the actual residence of a
9 registered voter, the Petitioners have two avenues.

10 NRS 293.535 permits any elector or other reliable person to submit an affidavit based
11 on personal knowledge of the facts set forth in the affidavit to the county clerk stating that
12 the registrant is not a citizen of the United States or the registrant has moved outside the
13 boundaries of the county where he or she is registered to another county, state, territory or
14 foreign country with the intention of remaining there for an indefinite time and with the
15 intention of abandoning his or her residence in the county where registered and established
16 residence in some other state, territory or foreign country or in some other county of this
17 state, naming that place. Upon receipt of such affidavit the ROV shall notify the registrant in
18 the manner set forth in NRS 293.530 and enclose a copy of the affidavit. If the registrant
19 fails to respond or appear to vote within the required time, the county clerk shall cancel the
20 registration. NRS 293.535(2).

21 Additionally, a registered voter can challenge a voter is pursuant to NRS 293.547.
22 After the 30th day but not later than the 25th day before any election, a registered voter may
23 file a written challenge with the county clerk. A registered voter may file a written challenge
24 if he or she is registered to vote in the same precinct as the person whose right to vote is
25 challenged and the challenge is based on the personal knowledge of the registered voter.

26 While the Petition is unclear what the Petitioner wants the ROV to do with the results
27 of such a requested investigation, the Petitioners are not entitled to relief under the Petition
28 as the Petitioners have an adequate remedy under NRS 293.535 or NRS 293.547, to

1 challenge the residency of a voter, therefore, the Petition should be dismissed as there is an
2 adequate remedy in the ordinary course of law.

3 **E. ROV Has Investigated the Addresses Provided, Therefore, the**
4 **Petition Should be Dismissed as Moot.**

5 The Petitioner requested that the Court order the ROV to investigate the commercial
6 addresses provided in the Petition. The ROV has already done so, therefore, the Petition is
7 moot. As explained above, the ROV was not able to investigate these addresses before the
8 Petitioner's arbitrary deadline of June 17, 2024 as the ROV was still conducting the primary
9 election, but the ROV and her staff have now completed an investigation into the addresses
10 provided by PILF and has made the following determinations: (a) 29 addresses were
11 confirmed as the voter's actual residence; (b) 19 addresses will require additional research
12 by the Election Department; (c) 16 addresses were previously identified by the Department
13 and the voters at those addresses were inactivated; (d) 12 addresses had no active or inactive
14 voters; (e) 9 addresses were connected to voided registrations; (f) 4 addresses the voters had
15 updated their voter registration; and (g) 1 address was typo. *See* Exhibit A, Declaration of
16 Lorena Portillo. While the ROV asserts it was not required to conduct this investigation
17 pursuant to NRS 293.530, the ROV did exercise its discretion in reviewing the addresses and
18 will take the appropriate action as required by federal and state law.

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1 **III. CONCLUSION**

2 The Petitioner has failed to state a claim upon which relief can be granted as a writ of
3 mandamus cannot compel a discretionary act and even if such relief could be grant, the
4 Petitioner's request is moot, therefore, the ROV respectfully request the Court dismiss the
5 Petition.

6 DATED this 15th day of August, 2024.

7 STEVEN B. WOLFSON
8 DISTRICT ATTORNEY

9 By: /s/Lisa V. Logsdon
10 LISA V. LOGSDON
11 County Counsel
12 State Bar No. 011409
13 500 South Grand Central Pkwy. 5th Flr.
14 Las Vegas, Nevada 89155-2215
15 Attorney for Respondent
16 LORENA S. PORTILLO

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 15th day of August, 2024, I served a true and correct copy of the foregoing **MOTION TO DISMISS THE PETITION FOR WRIT OF MANADMUS** (United States District Court Pacer System or the Eighth Judicial District Wiznet), by e-mailing the same to the following recipients. Service of the foregoing document by e-mail is in place of service via the United States Postal Service.

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Retired Americans*

/s/ Afeni Banks

An Employee of the Clark County District
Attorney's Office – Civil Division

EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT B

1 **DECLARATION OF LOGAN CHURCHWELL**
2 **IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS**

3 I, Logan Churchwell, hereby declare and state as follows:

4 1. I am over the age of 18 and competent to testify as to the matters set forth in this
5 Declaration based upon my own personal knowledge. I believe them to be true and would so testify
6 if called upon to do so.

7 2. I am the Research Director for the Public Interest Legal Foundation. The Foundation
8 is a non-partisan, public interest organization incorporated and based in Alexandria, Virginia. The
9 Foundation seeks to promote the integrity of elections in Nevada and other jurisdictions nationwide
10 through research, education, remedial programs, and litigation. The Foundation regularly analyzes
11 the programs and activities of state and local election officials to determine whether lawful efforts
12 are being made to keep voter rolls current and accurate. The Foundation also uses records and data
13 to produce and disseminate reports, articles, blog and social media posts, and newsletters to advance
14 the public education aspect of its organizational mission.

15 3. The Foundation has devoted significant resources to analyzing Nevada's statewide
16 voter list. In conducting its analysis, it identified numerous addresses listed as residential that
17 appeared to be commercial buildings. The Foundation conducted a similar analysis in the past and
18 documented its findings in a video. *See* "Voting from Nevada Businesses," Public Interest Legal
19 Foundation, <https://vimeo.com/465165902>.

20 4. The Foundation is especially concerned with the accuracy of Respondent's voter
21 roll given that Nevada has recently expanded voting by mail. The Foundation has studied the effects
22 of errors on Nevada's statewide voter list in terms of mail ballots being sent to incorrect addresses.
23 *See* "223 Clark County NV Mail Ballots Went to Wrong Addresses in 2020 Primary,"
24 [https://publicinterestlegal.org/reports/223k-clark-county-nv-mail-ballots-went-to-wrong-](https://publicinterestlegal.org/reports/223k-clark-county-nv-mail-ballots-went-to-wrong-addresses-in-2020-primary/)
25 [addresses-in-2020-primary/](https://publicinterestlegal.org/reports/223k-clark-county-nv-mail-ballots-went-to-wrong-addresses-in-2020-primary/) and "92K Clark County NV Mail Ballots Went to Wrong Addresses in

2020 Presidential Election,” <https://publicinterestlegal.org/reports/92k-clark-county-nv-mail-ballots-went-to-wrong-addresses-in-2020-presidential-election/>.

5. On April 11, 2024, Petitioners wrote to Respondent Burgess requesting that she investigate the commercial addresses listed on the voter roll in Washoe County. That letter is attached to the Petition as Exhibit A and lists forty-eight (48) apparent commercial addresses.

6. On April 12, 2024, George Guthrie, Registrar of Voters Media Production Specialist, responded to the Foundation’s letter stating that the office was “reviewing your letter now along with the provided information you’ve found. Would you be able to send us the documents you’re using as reference to find these addresses?” Petition Exhibit B at 4.

7. I respond that the information was found by reviewing “the Nevada voter roll directly to identify commercial addresses. We visited each location and took the included pictures.” Petition Exhibit B at 3.

8. Mr. Guthrie responded, asking several questions:

When we’re talking about the Nevada voter roll, are you talking about a list provided by our office? NV SOS? Federal voter list including Nevada?

When we took a look at a few of the examples provided, some were not showing any active registrations under the address. Or the address was just appropriately marked as commercial so it would be impossible to register at the location. I just want to make sure I am able to reference the same information that you used to conduct your investigations, so we can discuss the full picture.

If not, I can give you responses based on the information we have on hand.

Petition Exhibit B at 2-3.

9. That same day, I responded “Yes, the voter roll is from the NVSOS data portal, focusing on the residential address fields—not the mailing ones. Our research noted active, inactive, or a combination of those at the addresses shown in the presentation list. Please let me know if you have any other questions. Thank you for your attention on this matter.” Petition Exhibit B at 2.

1 10. On April 22, 2024, Mr. Guthrie responded that they are “taking a look at all the
2 addresses provided in your letter” and would be “sending a bulk response to each in the coming
3 weeks.” Petition Exhibit B at 2.

4 11. Hearing nothing further, I reached out on May 2, 2024, for an update. Petition
5 Exhibit B at 1.

6 12. On May 6, 2024, Mr. Guthrie responded, stating:

7
8 After further evaluation of the information you’ve provided to our office, I
9 would suggest bringing the information to the Secretary of State’s office.

10 Furthermore, I would also note that we are within the 90 day list maintenance
11 window as described by the NVRA...

12 Petition Exhibit B at 1.

13 13. Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the
14 State of Nevada that the foregoing is true and correct.

15 14. This declaration is executed on the 1st day of November, 2024, in Oklahoma
16 County, Oklahoma.

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20 _____
21 Logan Churchwell
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