MARC E. ELIAS, ESQ. (D.C. Bar No. 442007) (pro hac vice submitted)
JOHN M. DEVANEY, ESQ. (D.C. Bar No. 375465) (pro hac vice submitted)
HENRY J. BREWSTER, ESQ. (D.C. Bar No. 1033410) (pro hac vice submitted)
COURTNEY A. ELGART, ESQ. (D.C. Bar No. 1645065) (pro hac vice submitted)
JYOTI JASRASARIA, ESQ. (D.C. Bar No. 1671527) (pro hac vice submitted)
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 800
Washington, D.C. 20005-3960
Tel: (202) 654-6200
melias@perkinscoie.com
jdevaney@perkinscoie.com
hbrewster@perkinscoie.com
celgart@perkinscoie.com
jjasrasaria@perkinscoie.com

KEVIN J. HAMILTON, ESQ. (Wash. Bar No. 15648) (pro hac vice submitted)
ABHA KHANNA, ESQ. (Wash. Bar No. 42612) (pro hac vice submitted)
JONATHAN P. HAWLEY, ESQ. (Wash. Bar No. 56297) (pro hac vice submitted)
REINA A. ALMON-GRIFFIN, ESQ. (Wash. Bar No. 54651) (pro hac vice submitted)
NITIKA ARORA, ESQ. (Wash. Bar No. 54084) (pro hac vice submitted)
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Tel: (206) 359-8000
khamilton@perkinscoie.com
akhanna@perkinscoie.com
jhawley@perkinscoie.com
ralmon-griffin@perkinscoie.com
narora@perkinscoie.com

BRADLEY SCHRAGER, ESQ. (SBN 10217)
DANIEL BRAVO, ESQ. (SBN 13078)
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3556 East Russell Road, Second Floor
Las Vegas, Nevada 89120
Tel: (702) 341-5200
bschrager@wrslawyers.com
dbravo@wrslawyers.com

Attorneys for Defendants

IN THE FIRST JUDICIAL DISTRICT COURT
CARSON CITY, NEVADA

JESSE LAW, an individual; MICHAEL MCDONALD, an individual; JAMES DEGRAFFENREID III, an individual; DURWARD JAMES HINDLE III, an individual; EILEEN RICE, an individual; SHAWN MEEHAN, an individual, as candidates for presidential electors on behalf of Donald J. Trump,

Case No.: 20 OC 00163 1B

Dept.: 1

DEFENDANTS' MOTION TO DISMISS STATEMENT OF CONTEST OF THE NOVEMBER 3, 2020 PRESIDENTIAL ELECTION

MARC E. ELIAS, ESQ. (D.C. Bar No. 442007) (pro hac vice submitted)
JOHN M. DEVANEY, ESQ. (D.C. Bar No. 375465) (pro hac vice submitted
HENRY J. BREWSTER, ESQ. (D.C. Bar No. 1033410) (pro hac vice submitted)
COURTNEY A. ELGART, ESQ. (D.C. Bar No. 1645065) (pro hac vice submitted)
JYOTI JASRASARIA, ESQ. (D.C. Bar No. 1671527) (pro hac vice submitted)
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 800
Washington, D.C. 20005-3960
Tel: (202) 654-6200
melias@perkinscoie.com
jdevaney@perkinscoie.com
hbrewster@perkinscoie.com
celgart@perkinscoie.com
jjasrasaria@perkinscoie.com

KEVIN J. HAMILTON, ESQ. (Wash. Bar No. 15648) (pro hac vice submitted)
ABHA KHANNA, ESQ. (Wash. Bar No. 42612) (pro hac vice submitted)
JONATHAN P. HAWLEY, ESQ. (Wash. Bar No. 56297) (pro hac vice submitted)
REINA A. ALMON-GRIFFIN, ESQ. (Wash. Bar No. 54651) (pro hac vice submitted)
NITIKA ARORA, ESQ. (Wash. Bar No. 54084) (pro hac vice submitted)
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Tel: (206) 359-8000
khamilton@perkinscoie.com
akhanna@perkinscoie.com
jhawley@perkinscoie.com
ralmon-griffin@perkinscoie.com
narora@perkinscoie.com

BRADLEY SCHRAGER, ESQ. (SBN 10217)
DANIEL BRAVO, ESQ. (SBN 13078)
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3556 East Russell Road, Second Floor
Las Vegas, Nevada 89120
Tel: (702) 341-5200
bschrager@wrslawyers.com
dbravo@wrslawyers.com

Attorneys for Defendants

IN THE FIRST JUDICIAL DISTRICT COURT
CARSON CITY, NEVADA

JESSE LAW, an individual; MICHAEL MCDONALD, an individual; JAMES DEGRAFFENREID III, an individual; DURWARD JAMES HINDLE III, an individual; EILEEN RICE, an individual; SHAWN MEEHAN, an individual, as candidates for presidential electors on behalf of Donald J. Trump,

Case No.: 20 OC 00163 1B

Dept.: 1

DEFENDANTS' MOTION TO DISMISS STATEMENT OF CONTEST OF THE NOVEMBER 3, 2020 PRESIDENTIAL ELECTION

Contestants,

vs.

JUDITH WHITMER, an individual; SARAH MAHLER, an individual; JOSEPH THRONEBERRY, an individual; ARTEMISA BLANCO, an individual; GABRIELLE D'AYR, an individual; and YVANNA CANCELA, an individual, as candidates for presidential electors on behalf of Joseph R. Biden, Jr.,

Defendants.

The people of Nevada have spoken. On November 3, 2020, more than 1.3 million Nevadans cast their votes in races up and down the ballot. And once the ballots were counted, President-elect Joe Biden prevailed by a decisive margin of 2.4 percent. Dissatisfied with this result and unwilling to accept it, Contestants—elector candidates pledged to support President Donald Trump—now attempt to sow doubts about the results of the election. Contestants seek extraordinary and unprecedented relief: they ask this Court to either shift Nevada's six electoral votes to President Donald Trump, who lost the State by more than 33,000 votes, or void the election results altogether, thereby disenfranchising all 1.3 million Nevadans who sought to make their voices heard in this election.

Contestants' vehicle for this improper and inequitable relief, Nevada's statute for election contests, contains carefully delineated categories of challenges into which Contestants have clumsily attempted to shoehorn their tall tales of fraud and misconduct. The gambit fails completely. None of the purported irregularities identified in their statement is cognizable under the statute, and they have not outlined their claims with even the minimum specificity needed to allow Defendants to respond to their claims and defend President-elect Biden's victory. Moreover, Contestants' inexcusable delay in challenging long-standing policies and procedures for processing mail ballots has prejudiced not only Defendants, but voters and election officials as well, all of whom relied on these procedures in preparing for, conducting, and participating in

this election. And both the allegations Contestants assert and the legal theories on which they rely have already been addressed by Nevada courts—and roundly rejected. Clark County's use of the Agilis vote-processing machine is lawful; observers were granted sufficient access to the tabulation process; and there is no evidence of widespread fraud or malfeasance. Both before and after election day, courts throughout Nevada reached these conclusions after carefully considering the law and the facts. While Contestants might not like the results, they must accept them.

Ultimately, this lawsuit is just one more attempt to disrupt the timely and orderly completion of the democratic process, the latest salvo in an increasingly desperate campaign to overturn the will of the people. Contestants' claims rest on mere intrigue and fantasy, divorced from reality and the successful administration of this election by Nevada officials operating under intense scrutiny in the midst of a public health crisis. The State's efforts were aided by the reforms made in July by Assembly Bill 4 ("AB 4"), which afforded state and local officials greater flexibility to serve Nevada voters during an unprecedented pandemic.

Contestants' kitchen-sink approach to election contestation fails as a matter of law. This Court should therefore dismiss their statement, and the certification of Nevada's returns should not be disturbed.

BACKGROUND

I. Assembly Bill 4

This past summer, in response to the ongoing pandemic, the Nevada Legislature passed AB 4 during a special session. *See* Statement of Contest of the November 3, 2020 Presidential Election ("Statement") ¶¶ 13–14. The Legislature's goal was to ensure that "[e]lection officials have certainty concerning the procedures to prepare for and conduct" elections held during states of emergency—so-called "affected elections"—and that "voters have faith and confidence that they can participate in [an] affected election and exercise their right to vote without fear for their

health, safety and welfare under such circumstances." AB 4 § 2.[1] The rules for affected elections applied during the November 3 election.

Contestants' challenge to the election implicates various provisions of AB 4 and Nevada's election laws, particularly the processing and counting of mail ballots.

Because this election took place during the COVID-19 pandemic, every active registered voter was mailed a ballot by October 14, 2020. *See* Nevada Revised Statutes ("NRS") 293.8844. When a mail ballot is received by the county clerk, the counting board is required to check the signature on the ballot return envelope against the signature in the registration records. *See* NRS 293.8874(1)(a) ("The clerk or employee shall check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk."). The statute does not require that either a manual or an electronic process be used except to say that a ballot cannot be flagged for rejection unless "at least two employees in the office of the clerk believe there is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter." NRS 293.8874(1)(b). AB 4 specifically allows the clerk to "establish procedures for the processing and counting of mail ballots." NRS 293.8871(1). Those procedures "[m]ay authorize mail ballots to be *processed and counted by electronic means*." NRS 293.8871(2)(a) (emphasis added).

II. Previous Lawsuits

Even before election day, the lawfulness of AB 4 and Clark County's actions under it were challenged—and upheld—in both state and federal courts.

Immediately after the Governor signed AB 4 into law, Donald J. Trump for President, Inc. (the "Trump Campaign"), the Republican National Committee, and the Nevada Republican Party sued to challenge the new law. *See* Compl. for Declaratory & Injunctive Relief, *Donald J.*

[1] The full text of AB 4 can be found on the Legislature's website. *See* AB 4, Nev. Elec. Legis. Info. Sys., https://www.leg.state.nv.us/App/NELIS/REL/32nd2020Special/Bill/7150/Text (last visited Nov. 23, 2020).

Trump for President, Inc. v. Cegavske, No. 2:20-CV-1445 JCM (VCF) (D. Nev. Aug. 4, 2020), ECF No. 1 (attached as Ex. 1). One of their claims specifically targeted Section 22 of AB 4, which authorizes Clark County to use the Agilis machine to process ballots. *See id.* ¶¶ 122–35. The court dismissed their lawsuit, including their challenge to Section 22, after concluding that these plaintiffs lacked standing. *See Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5626974, at *7 (D. Nev. Sept. 18, 2020).

On September 1, two plaintiffs—the Election Integrity Project, a nonprofit "dedicated to assuring that every legally cast vote is properly counted and reported," and political activist Sharron Angle—lodged a host of challenges to AB 4 in the Eighth Judicial District Court. *See* Compl. for Prelim. Inj., Permanent Inj., & Declaratory Relief ¶¶ 5–6, *Election Integrity Project of Nev. v. State ex rel. Cegavske*, No. A-20-820510-C (Nev. 8th Jud. Dist. Ct. Sept. 1, 2020) (attached as Ex. 2). They alleged not only that AB 4 constitutes an impermissible unfunded mandate, *see id.* ¶¶ 50–56, but also that the new law—including Section 22—violates equal protection, *see id.* ¶¶ 57–89. The *Election Integrity* plaintiffs sought both a temporary restraining order and a preliminary injunction, which District Judge Rob Bare denied, concluding that "[t]he full text of AB 4 reveals that Nevada's legislators acted reasonably and in good faith to strike an appropriate balance between election integrity concerns, public health concerns, and voter access concerns." *Election Integrity Project of Nev. v. State ex rel. Cegavske*, No. A-20-820510-C, slip op. at 12 (Nev. 8th Jud. Dist. Ct. Sept. 28, 2020) (attached as Ex. 3). The *Election Integrity* plaintiffs then sought a writ of mandamus or prohibition, which the Nevada Supreme Court promptly denied after concluding that Judge Bare "properly concluded that [the plaintiffs] failed to make a prima facie showing through substantial evidence that they were entitled to a preliminary injunction preventing the Secretary of State from implementing AB 4." *Election Integrity Project of Nev. v. Eighth Jud. Dist. Ct.*, No. 81847, slip op. at 6 (Nev. Oct. 7, 2020) (attached as Ex. 4).

The issue of whether use of the Agilis machine is permissible under Nevada law was raised by another set of petitioners—including the Trump Campaign—and resolved by this Court

before election day in *Kraus v. Cegavske*, No. 20 OC 00142 1B, slip op. at 12 (Nev. 1st Jud. Dist. Ct. Oct. 29, 2020) (attached as Ex. 5). After a ten-hour evidentiary hearing, District Judge James E. Wilson, Jr. found that "major metropolitan areas including Cook County, Illinois, Salt Lake City, Utah, and Houston Texas use Agilis," and that the same system was "used for the June primary election," during which "[n]o evidence was presented that the setting used by Clark County causes or has resulted in any fraudulent ballot being validated or any valid ballot invalidated." *Id.* at 4. In denying this and other claims on standing grounds, Judge Wilson concluded that "[t]here is no evidence that any vote that should lawfully not be counted has been or will be counted," and that "[t]here is no evidence that any election worker did anything outside of the law, policy, or procedures." *Id.* at 9. On the merits, Judge Wilson explained that

> AB 4 passed by the legislature in August 2020 specifically authorized county officials to process and count ballots by electronic means. Petitioners' argument that AB 4, Sec. 23(a) requires a clerk or employee check the signature on a returned ballot means the check can only be done manually is meritless. The ballot must certainly be checked but the statute does not prohibit the use of electronic means to check the signature.

Id. at 12 (citation omitted). Judge Wilson also rejected the petitioners' equal protection claim, concluding that "[n]othing the State or Clark County has done values one voter's vote over another's." *Id.* at 13. He further determined that the "[p]etitioners [] failed to prove" that Clark County Registrar of Voters Joseph P. Gloria ("Registrar Gloria") "has interfered with any right they or anyone else has as an observer" and that Registrar "Gloria has not failed to meet his statutory duties . . . to allow members of the general public to observe the counting of ballots." *Id.* at 11. In response to Judge Wilson's order, the *Kraus* petitioners filed an emergency motion for immediate relief with the Nevada Supreme Court, which denied the request after concluding that they "ha[d] not demonstrated a sufficient likelihood of success to merit a stay or injunction." *Kraus v. Cegavske*, No. 82018, slip op. at 2–3 (Nev. Nov. 3, 2020) (attached as Ex. 6). A week later, the petitioners dismissed their appeal.

These groundless challenges continued *after* election day as well. On November 5, another group of plaintiffs—again backed by the Trump Campaign—filed suit in federal court

and alleged that "us[e of] the Agilis software system" was unlawful under Nevada's election statutes and thus violated the Elections Clause of the U.S. Constitution. Compl. ¶ 21, *Stokke v. Cegavske*, No. 2:20-cv-02046-APG-DJA (D. Nev. Nov. 5, 2020), ECF No. 1 (attached as Ex. 7). The *Stokke* plaintiffs claimed that Registrar "Gloria is using the Agilis signature-verification software in a manner which is contrary to the manufacturer's prescriptions" by using "signature files from the DMV which are all scanned at less than 200 D.P.I., resulting in the Agilis machine being unable to perform its required function." *Id.* ¶ 14. The plaintiffs further claimed that

> [i]rregularities have plagued the election in Clark County, including lax procedures for authenticating mail ballots and over 3,000 instances of ineligible individuals casting ballots. Ballots have even been cast on behalf of deceased voters. Moreover, the public has often been prohibited from observing the processing of mail ballots, resulting in much of their work being done in the shadows without public accountability.

Id. ¶ 11. After an evidentiary hearing, the court denied the *Stokke* plaintiffs' motion for temporary restraining order and preliminary injunction. *See* Minutes of Proceedings, *Stokke v. Cegavske*, No. 2:20-cv-02046-APG-DJA (D. Nev. Nov. 6, 2020), ECF No. 27. The Court's ruling was based on findings that Clark County's use of the Agilis machine does not "conflict with the other provisions of the Nevada election laws" and that there was "little to no evidence that the machine is not doing what it's supposed to do, or incorrectly verifying other signatures." Reporter's Tr. of Proceedings at 79:5–7, 79:24–80:1, *Stokke v. Cegavske*, No. 2:20-cv-02046-APG-DJA (D. Nev. Nov. 6, 2020) (attached as Ex. 8).

III. Contestants' Statement

On November 3, 2020, Nevadans cast ballots in the general election and voted for President-elect Biden by a reported margin of 33,596 votes. *See* Statement ¶ 29.

Two weeks later, on November 17—the last day for such an action as permitted by statute, *see* NRS 293.413(1)—Contestants filed their statement. They allege generally that various irregularities and illegalities occurred in vote casting and tabulation throughout Nevada and in Clark County in particular, and that, if all lawful ballots were counted and all unlawful ballots removed from the tally, President Trump would emerge victorious and receive Nevada's

six electoral votes. *See generally* Statement. They cite various alleged grounds for their contest:

- Clark County's use of the Agilis machine to perform the initial signature verification for mail ballots, which they claim, among other things, was not permitted by Nevada law, violated equal protection principles, was technologically improper, and resulted in malfunctioning, *id.* ¶¶ 32–50;
- the use of electronic voting machines, which were allegedly both unreliable and unsecured, *id.* ¶¶ 51–61;
- the purported counting of unlawful ballots in Clark County, including those allegedly cast by voters who voted in multiple states, voters who did not meet Nevada's residency requirement, voters who were deceased, and individuals impersonating voters, *id.* ¶¶ 62–71;
- the alleged counting of provisional ballots "without the issues which rendered them provisional in the first place ever being resolved," *id.* ¶¶ 72–79;
- Clark County's purportedly insufficient observation procedures, *id.* ¶¶ 80–93; and
- claims of a voting drive campaign coordinated by the Nevada Native Vote Project ("NNVP"), in which the group "offered gift cards, gas cards, raffle entries, and t-shirts in exchange for voters coming to the polling place and casting their votes," *id.* ¶¶ 94–102.

Contestants assert that these "statutory violations and voting irregularities . . . , when considered in total, invalidate significant numbers of ballots and thereby reduce the vote totals of both candidate in large numbers," but that "the reduction in votes for [President-elect Biden] . . . is 40,000 or more than the reduction in votes for [President Trump]," or at least "an amount sufficient to raise reasonable doubt as to the outcome of the Election." *Id.* ¶ 104. Contestants seek an order from this Court either declaring President Trump the winner in Nevada and certifying Contestants as the State's duly elected electors, or holding that President-elect Biden's victory "be declared null and void" and that the November 3 election "be annulled and that no candidate for elector for the office of President of the United States of America be certified from the State of Nevada." *Id.* at 20.

ARGUMENT

I. Contestants cannot use an election contest to litigate claims that have already been rejected or should have been raised before the election.

Even before reaching the substantive failings of Contestants' statement, their grounds for contest are barred by both issue preclusion and the equitable doctrine of laches.

A. Issue preclusion bars Contestants from relitigating issues this Court rejected in *Kraus*.

Two of Contestants' grounds for contest—Clark County's use of the Agilis machine and its alleged failure to allow meaningful observation—are barred by the doctrine of issue preclusion. *See In re Coday*, 130 P.3d 809, 816–17 (Wash. 2006) (dismissing election contest on res judicata grounds). Under Nevada law, issue preclusion applies when (1) the issue decided in the prior litigation is identical to the issue in the current action; (2) the initial ruling was on the merits and has become final; (3) the party against whom the judgment is asserted was a party or in privity with a party to the prior litigation; and (4) the issue was necessarily and actually litigated. *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008). Each of these four factors is satisfied for these two grounds for contest. In *Kraus*, the Trump Campaign, the Nevada Republican Party, and an individual voter challenged Clark County's use of the Agilis machine and the County's purported failure to allow meaningful observation of its tabulation process. Judge Wilson rejected these claims on the merits, which binds Contestants and precludes them from raising these same issues as grounds to contest the general election results.

First, Contestants' challenges to Clark County's use of the Agilis machine and its observation policies are identical to issues raised by the *Kraus* petitioners. In this matter, Contestants raise four challenges to the Agilis machine: (1) its use is prohibited by Nevada election law; (2) its use violated the equal protection rights of Nevadans; (3) the Clark County election board is guilty of malfeasance under NRS 293.410(2)(a) due to its use; and (4) the Agilis machine malfunctioned, raising reasonable doubt as to the outcome of the election. *See* Statement ¶¶ 32–50. The first two challenges are identical to claims raised in *Kraus* and rejected by this Court. *See* slip op. at 12–13 (concluding that AB 4 does not prohibit use of Agilis machine and that *Kraus* petitioners failed to establish equal protection clause claims) (attached as Ex. 5). And although Contestants' third and fourth challenges to the Agilis were not raised in this precise form in *Kraus*, identical facts underlie these challenges and the *Kraus* claims. "Issue

preclusion may apply 'even though the causes of action are substantially different, if the same fact issue is presented.'" *LaForge v. State, Univ. & Cmty. Coll. Sys.*, 116 Nev. 415, 420, 997 P.2d 130, 134 (2000) (quoting *Clark v. Clark*, 80 Nev. 52, 56, 389 P.2d 69, 71 (1964)). Contestants' assertions that the election board committed malfeasance and that the Agilis machine malfunctioned are moored in two factual allegations that were litigated in *Kraus*: that Clark County did not operate the Agilis machine according to manufacturer suggestions because it lowered the "tolerance level" to 40 percent, Statement ¶¶ 35–41, 48(b), 50; and that Clark County fed the Agilis machine low-quality signatures from the DMV to match against voter signatures, *id.* ¶ 37. Because the "common issue" in both suits are factually identical, Contestants' challenges regarding the Agilis machine are identical to the issues raised by the *Kraus* petitioners. *LaForge*, 116 Nev. at 420, 997 P.2d at 133.

Contestants' challenge to an alleged lack of meaningful observation was also raised and addressed in *Kraus*. Although Contestants assert that "the County Registrars failed and refused to grant meaningful observation and opportunities to the general public with respect to mail in ballots," Statement ¶ 83, their statement articulates specific allegations related to Clark County only. Accordingly, all of Contestants' arguments regarding any purported lack of "meaningful observation" were already raised and rejected in *Kraus*, where Judge Wilson concluded that Clark County met its statutory obligations. *See* slip op. at 13 (concluding that Registrar Gloria and Secretary of State Barbara Cegavske had met their statutory duties to "allow members of the general public to observe the counting of ballots") (attached as Ex. 5). Notably, Judge Wilson held that although the *Kraus* petitioners claimed a right to "meaningful observation," the word "meaningful" does not appear in the relevant statutes, and the "[p]etitioners failed to cite any constitutional provision, [statute], rule, or case that supports such a request." *Id.* at 10–11.

Second, this Court issued an opinion in *Kraus* denying the petitioners mandamus relief, which constituted a final decision on the merits. Nevada law takes a functional approach to finality, inquiring as to whether a prior "judgment" is "sufficiently firm"—which is to say, neither tentative nor subject to further determination by the court. *Kirsch v. Traber*, 134 Nev.

163, 166–67, 414 P.3d 818, 821–22 (2018) (quoting Restatement (Second) of Judgments § 13 (Am. L. Inst. 1982)). "Factors indicating finality include (a) 'that the parties were fully heard,' (b) 'that the court supported its decision with a reasoned opinion,' and (c) 'that the decision was subject to appeal.'" *Id.* at 167, 414 P.3d at 822 (quoting Restatement (Second) of Judgments § 13). "Recent decisions have relaxed traditional views of the finality requirement by applying issue preclusion to matters resolved by preliminary rulings or to determinations of liability that have not yet been completed by an award of damages or other relief." *Hoffman v. Second Jud. Dist. Ct.*, No. 60119, 2013 WL 7158424, at *4 (Nev. Dec. 16, 2013) (quoting 18A Charles Alan Wright et al., *Federal Practice and Procedure* § 4434 (2d ed. 2002)). Given that Judge Wilson's denial of the emergency petition for writ of mandamus was non-tentative, not open to further consideration or proceedings, supported by a reasoned opinion following over 250 pages of briefing and a day-long evidentiary hearing, and subject to appeal (and, indeed, was appealed), it constituted a final decision for purposes of issue preclusion.

Third, as Trump electors, Contestants are in privity with the *Kraus* petitioners—specifically, the Trump Campaign and Nevada Republican Party. The Nevada Supreme Court has recognized that "determining privity for preclusion purposes requires a close examination of the facts and circumstances of each case." *Mendenhall v. Tassinari*, 133 Nev. 614, 618–19, 403 P.3d 364, 369 (2017) ("[C]ontemporary courts . . . have broadly construed the concept of privity, far beyond its literal and historic meaning, to include any situation in which the relationship between the parties is sufficiently close to supply preclusion." (quoting *Vets N., Inc. v. Libutti*, No. CV-01-7773-DRHETB, 2003 WL 21542554, at *11 (E.D.N.Y. Jan. 24, 2003))). Here, the "facts and circumstances" show that Contestants are in privity with the Nevada Republican Party and the Trump Campaign—both petitioners in *Kraus*. Contestants are electors who were specifically "nomin[ated]" and "select[ed]" to serve as electors by the Nevada Republican Party. NRS 298.035(1). In this capacity, Contestants are mere functionaries of the Trump Campaign; as electors, casting a ballot for the Republican nominee is their raison d'être. Indeed, had President Trump prevailed in Nevada, Contestants would have become presidential electors and, had they

not cast their ballots for him, been replaced *as a matter of law*. *See* NRS 298.065; NRS 298.075; *see also Chiafalo v. Washington*, 140 S. Ct. 2316, 2322 (2020). In other words, Contestants were selected to perform a ministerial duty on behalf of the Trump Campaign and Nevada Republican Party and cannot credibly dispute their extraordinarily close connection to both. Indeed, Contestants' counsel, Jesse Binnall, argued on behalf of the *Kraus* petitioners during that case's day-long mandamus hearing. And given that this is a contest of the election of the President of the United States—which Nevada law specifically contemplates will be brought by "elector[s]," *see* NRS 293.407(2)—it simply beggars belief that Contestants are not sufficiently linked to President Trump, his party, and his campaign. Therefore, although Contestants were not themselves parties in *Kraus*, they are nonetheless "sufficiently close" to, such that their interests were "adequate[ly] represent[ed]" by, the *Kraus* petitioners. *Mendenhall*, 133 Nev. at 618, 403 P.3d at 369 (first quoting *Vets N.*, 2003 WL 21542554, at *11; and then quoting *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 261, 321 P.3d 912, 917 (2014)); *cf. Coday*, 130 P.3d at 817 (finding preclusion applied where contestant was not party to prior litigation but had "identical interests" with prior litigants (quoting *In re Pearsall-Stipek*, 961 P.2d 343, 346 (Wash. 1998))).

Fourth, the issues relating to the Agilis machine and meaningful observation of tabulation were necessarily and actually litigated in *Kraus*. "When an issue is properly raised . . . and is submitted for determination, . . . the issue is actually litigated." *Alcantara*, 130 Nev. at 262, 321 P.3d at 918 (quoting *Frei ex rel. Frei v. Goodsell*, 129 Nev. 403, 407, 305 P.3d 70, 72 (2013)). In *Kraus*, Judge Wilson reviewed four substantive briefs, conducted a full-day evidentiary hearing, and prepared a reasoned, considered order rejecting the petitioners' claims. These issues were therefore properly raised and submitted and were thus actually litigated.

In short, each of the four requirements for issue preclusion is satisfied as to Contestants' grounds for contest related to the lawfulness of the Agilis machines and meaningful observation of ballot tabulation. Their attempt to circumvent their party's and standard-bearer's loss in *Kraus* should be rejected, and these grounds for contest should be dismissed.

B. Contestants are barred by laches from challenging use of the Agilis machine.

Contestants' challenge to Clark County's use of the Agilis machine—the principal ground for contest alleged in their statement—is also barred by the equitable 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." *Miller v. Burk*, 124 Nev. 579, 598, 188 P.3d 1112, 1125 (2008) (quoting *Carson City v. Price*, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997)). "To determine whether a challenge is barred by the doctrine of laches," the Court must consider three factors: "(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." *Id.*, 188 P.3d at 1125. "Applicability of the laches doctrine depends upon the particular facts of each case." *Price*, 113 Nev. at 412, 934 P.2d at 1043. Here, all factors favor barring use of the Agilis machine as a basis for an election contest.

First, Contestants inexcusably delayed in challenging this policy. They contend that Clark County's use of the Agilis machine was unlawful, *see* Statement ¶¶ 32–50, but Clark County began using the Agilis machine to conduct signature matching during the State's June primary. Contestants could have and should have brought this challenge at an earlier juncture, particularly considering that their privies challenged the Agilis machine *before* the election, *see supra* Part I.A, with one privy, the Trump Campaign, also challenging AB 4—the statute authorizing Clark County to use the Agilis machine—four months ago. *See* Ex. 1. Indeed, Contestants themselves note that lawsuits challenging the machine "were filed *prior to the Nevada election*." Statement ¶ 20 (emphasis added). And yet Contestants waited until November 17—*two weeks after election day*—to question the lawfulness of Clark County's use of the machine, months after it began and after Clark County's 453,248 mail ballots were processed with the Agilis machine. *See id.* ¶ 15.

Second, Contestants' months-long delay constitutes acquiescence to these policies and

procedures. More than 900,000 Clark County voters cast ballots in this election, and the Clark County Commission certified the results of the presidential election the day *before* Contestants filed this contest. Contestants' inexcusably delayed challenge to the policies and procedures under which these ballots were counted now threatens a mass, ex post disenfranchisement that could have been avoided if Contestants had brought their challenges before the election. Contestants' claims against the Agilis machines are particularly galling in this regard. Despite having notice of the machine's use in June, if not earlier, they waited for Clark County to process its mail ballots (including some of Contestants' own), count those ballots, and certify the results of the presidential election—all with the aid of the Agilis machine—before raising this challenge. *See Bldg. & Constr. Trades Council of N. Nev. v. State ex rel. Pub. Works Bd.*, 108 Nev. 605, 611–12, 836 P.2d 633, 637 (Nev. 1992) (finding laches barred petition for writ of mandamus where (1) petitioner inexcusably delayed in seeking petition, (2) implied waiver and acquiescence to conditions arose when petitioner knew of its legal rights but waited almost one month to file challenge, and (3) petitioner knowingly allowed "significant work" on project at issue to take place before filing petition).

Third, Contestants' inexplicable delay has indisputably prejudiced voters and election officials: the former who cast lawful ballots that now might be rejected through no fault of their own, and the latter who successfully administered an election—in unprecedented conditions during a global pandemic—under the (in some cases, judicially sanctioned) belief that their actions were consistent with state and federal law. The election process is complete; the bell cannot be unrung. *See Price*, 113 Nev. at 412, 934 P.2d at 1043 ("The condition of the party asserting laches must become so changed that the party cannot be restored to its former state." (quoting *Home Sav. Ass'n v. Bigelow*, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989))). Contestants' delay therefore risks the nullification of the votes of tens or even hundreds of thousands of Nevadans who followed all applicable rules and guidelines and cast their ballots accordingly—a result not only prejudicial, but potentially unconstitutional as well. *See United States v. Saylor*, 322 U.S. 385, 387–88 (1944) ("[T]o refuse to count and return the vote as cast [is] as much an

infringement of that personal right as to exclude the voter from the polling place."); *Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 595, 597–98 (6th Cir. 2012) (concluding that rejection of ballots invalidly cast due to poll worker error likely violates due process); *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-CV-02078, 2020 WL 6821992, at *1 (M.D. Pa. Nov. 21, 2020) ("Plaintiffs ask this Court to disenfranchise almost seven million voters. This Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated.").

Contestants' delay also prejudices Defendants and the candidate they are pledged to support. Defendants' and President-elect Biden's victory came after no small effort. Campaigns are long, arduous, and expensive affairs, but they have an end point—election day. Allowing Contestants to now use the election contest statute to effect an electoral do-over—with challenges to purportedly questionable election administration practices that could have been brought well in advance of election day—would undermine the finality of elections to the detriment of not only voters and officials, but candidates as well.

In short, the three relevant factors counsel in favor of barring Contestants' challenge to the Agilis machine under the doctrine of laches.

Notably, that laches precludes Contestants' challenge to the Agilis machine is consistent with the contest statute itself. As discussed in Part III *infra*, election contests can only be premised on narrowly defined grounds—basically, irregularities and anomalies in the conduct and administration of elections. *See* NRS 293.410(2). Significantly, the statute only allows challenges based on *departures* from election policies, *not the policies themselves*. This limitation is consistent with the equitable considerations that courts have recognized in denying late-hour and post-election challenges to election laws. For one, if pre-election policies could be readily challenged after election day, candidates for office would be able to lie in wait to gauge election results and file challenges to election laws only *after* they lose. *See Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973) (en banc) ("[T]he failure to require prompt pre-election action . . . as a prerequisite to post-election relief may permit, if not encourage, parties who could raise a

claim 'to lay by and gamble upon receiving a favorable decision of the electorate' and then, upon losing, seek to undo the ballot results in a court action." (quoting *Toney v. White*, 476 F.2d 203, 209 (5th Cir. 1973))). Moreover, election laws engender significant reliance interests on the parts of both voters and officials. *See, e.g.*, *Miller*, 124 Nev. at 598–99, 188 P.3d at 1125 (concluding that post-election challenge to ballot question is "[the] sort of procedural challenge [that] is ripe for judicial review preelection"); *Bognet v. Sec'y of Commonwealth*, No. 20-3214, 2020 WL 6686120, at *17 (3d Cir. Nov. 13, 2020) (concluding that "[u]nique and important equitable considerations, including voters' reliance on the rules in place when they made their plans to vote and chose how to cast their ballots," counseled against late-hour change to election law); *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980) ("As time passes, the state's interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made."). Indeed, post-election challenges threaten disenfranchisement of voters who cast their ballots in reliance on previously settled election rules—precisely the risk that Contestants have created with this contest. *See Child v. Lomax*, 124 Nev. 600, 606, 188 P.3d 1103, 1107 (2008) (recognizing that "a postelection challenge does not provide an adequate means to avoid impairing voter input").

Accordingly, "[e]xtreme diligence and promptness are required in election-related matters." *In re Contested Election of Nov. 2, 1993*, 650 N.E.2d 859, 862 (Ohio 1995) (per curiam). "Courts will consider granting post-election relief only where the plaintiffs were not aware of a major problem prior to the election or where by the nature of the case they had no opportunity to seek pre-election relief," *Hart v. King*, 470 F. Supp. 1195, 1198 (D. Haw. 1979), even where parties allege far more egregious misconduct than Contestants claim here. *See, e.g.*, *Tucker v. Burford*, 603 F. Supp. 276, 279 (N.D. Miss. 1985) (refusing to void election even where defendants conceded that districts were malapportioned because "to grant the extraordinary relief of setting aside an election, when no circumstances barred timely suit by the plaintiffs, would be to embrace the hedging posture" that courts have discouraged (citations omitted)).

Here, Clark County's use of the Agilis machine has been its stated policy—a rule facilitated by AB 4—for more than five months. It is a feature of Clark County's election regime, not a bug. In challenging use of the Agilis machine at this late hour, Contestants seek to discard ballots cast and counted pursuant to long-announced and long-implemented policies. This Court should reject their inexcusably delayed efforts that would yield such an inequitable—and, indeed, unconscionable and unconstitutional—result.

II. Contestants' statement of contest is fatally insufficient as a matter of law.

Setting aside these jurisdictional and equitable doctrines, Contestants have failed to file a substantively sufficient statement, warranting dismissal of *all* their claims on that basis as well. Nevada law provides that "[a] statement of contest shall not be dismissed by any court for want of form," but it requires that "the grounds of contest [be] alleged *with sufficient certainty* to inform the defendant of the charges the defendant is required to meet." NRS 293.410(1) (emphasis added). Contestants' statement—replete with speculation and generalizations and utterly lacking in the required specifics or any credible evidence—falls well short of this standard.

Caselaw and statutes from other states confirm what the text of NRS 293.410(a) requires: that a legally sufficient statement of contest must contain sufficient specificity so as to (1) demonstrate that the grounds for contest fall within the statute's ambit, (2) put the defendant on fair notice to address the asserted claims, and (3) ensure that the election contest is expeditiously resolved. As the Minnesota Supreme Court explained in considering a similar contest statute,

> there is a strong public policy in favor of finality in elections. The will of the voters in any election could easily be subverted by the filing of a groundless notice of contest. . . . To this end, the legislature has required that one who plans to challenge an election *clearly state the points upon which he will do so. . . .*

Greenly v. Indep. Sch. Dist. No. 316, 395 N.W.2d 86, 91 (Minn. 1986) (emphasis added). To further achieve these ends, compliance with the requirements of an election contest statute is generally considered jurisdictional, and the basis for invoking the statute must be obvious from

the face of the contest statement.[2] A statement of contest that fails to adequately allege facts to invoke an election contest statute is "ineffectual to start up the legal machinery for the contest," *Petition of Clee*, 196 A. 476, 486 (N.J. 1938), and must be dismissed. *See, e.g.*, *Maxfield v. Herbert*, 284 P.3d 647, 657 (Utah 2012) (affirming dismissal of election contest where stated grounds for contest did not fall within statute).

Here, Contestants acknowledge that "[a]s of November 16, 2020, the published vote margin in the State of Nevada between President-elect Biden and President Trump was 33,596." Statement ¶ 29. Accordingly, to prevail on several of their grounds for contest, their statement must demonstrate—*with sufficient certainty*—the existence of enough ballots to overcome this 33,596-vote deficit. *See infra* Part III. Contestants ultimately contend that, once the various irregularities they identify are remedied, "[t]he evidence will show that the reduction in votes for Defendant . . . is 40,000 or more than the reduction in votes for the Contestant or, at the very least, in an amount sufficient to raise reasonable doubt as to the outcome of the Election." Statement ¶ 104. But Contestants allege no specific facts to support this assertion; it is a number pulled from thin air, based on nothing more than speculation, conjecture, and wishful thinking. This fundamental defect is fatal to their case. *See, e.g.*, *Tataii v. Cronin*, 198 P.3d 124, 127

---

[2] *See, e.g.*, *De Koning v. Mellema*, 534 N.W.2d 391, 394 (Iowa 1995) (collecting cases and concluding that "[t]he rule is quite generally recognized that to initiate special proceedings, such as election contest proceedings, the statutory provisions necessary to confer jurisdiction must be strictly complied with by the contestants"); *In re Contested Election*, 650 N.E.2d at 862 ("The procedures prescribed for election contests are specific and exclusive, and must be strictly construed."); *Stafford v. Bailey*, 138 S.W.2d 999, 1002 (Ky. 1940) ("[A]s a general rule, a strict observance of the [election contest] statute is required, so far as regards the steps necessary to give jurisdiction, and the jurisdictional facts must appear on the face of the proceedings." (quoting 18 Am. Jur. 1st § 275 (1936))); *Petition of Clee*, 196 A. 476, 486 (N.J. 1938) (noting that, in election contests, "it is an indispensable requirement that the petition make out a prima facie case"); *Soper v. Bd. of Cnty. Comm'rs*, 48 N.W. 1112, 1112 (Minn. 1891) (notices of contest must be "definite and specific"); *Wright-Jones v. Johnson*, 256 S.W.3d 177, 180–81 (Mo. Ct. App. 2008) ("A party seeking relief pursuant to one of the election contest statutes must bring herself strictly within its terms. Strict compliance with the election contest statutes is necessary to confer subject matter jurisdiction upon the trial court." (citation omitted) (citing *Hockemeier v. Berra*, 641 S.W.2d 67, 69 (Mo. 1982))).

(Haw. 2008) (per curiam) ("An election contest cannot be based upon mere belief or indefinite information." (quoting *Akaka v. Yoshina*, 935 P.2d 98, 103 (Haw. 1997))).

First, the figures Contestants cite throughout their statement are necessarily couched in the language of conjecture—for example, "no less than 1,000 illegal or improper votes [were] cast and counted," *id.* ¶ 59—since each example of alleged irregularities is premised on vague allegations and estimations without *any* demonstrable basis in fact. Again and again Contestants assert that "[t]he evidence will show" the accuracy of their approximations. *See, e.g.*, *id.* ¶¶ 45, 59–60, 64, 67–68, 70, 77, 100. But the burden is on *Contestants*, not anyone else, to establish with sufficient certainty the grounds for their contest. They have failed to do so, only alleging potential irregularities and then simply guessing how many votes might be implicated (or, in some cases, without even providing an estimate, such as their claims regarding ballots that were allegedly duplicated improperly, *see id.* ¶¶ 84–87). Contestants might hope that the sheer force of repetition is enough to raise their vague claims from the purely speculative to the somewhat credible, but even setting aside the arithmetic shortcomings of their statement, *see infra* Part III.D, this Court should not accept Contestants' baseless estimates when the statute on which they rely requires a higher standard of specificity for the extraordinary remedy they hope to pursue.

Indeed, repetition-without-evidence is apparently the unifying strategy of the Trump Campaign's nationwide challenges to President-elect Biden's victory. Rather than provide sufficient specificity about Nevada's election, this statement of contest features many of the same vague, baseless allegations of misconduct that have also been alleged—and rejected—in numerous other states. For example, this past Saturday, a federal judge in Pennsylvania threw out the Trump Campaign's lawsuit to overturn the Commonwealth's election results based on the same accusations of fraud caused by mail voting. *See Boockvar*, 2020 WL 6821992, at *14–15. In dismissing the lawsuit on the pleadings—with prejudice—the court explained the fundamental problem that sank that lawsuit and similarly dooms this one:

> One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of

> rampant corruption, such that this Court would have no option but to regrettably grant the proposed injunctive relief despite the impact it would have on such a large group of citizens.
>
> That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populated state. Our people, laws, and institutions demand more.

Id. at *1. In Georgia, a Republican voter sued to challenge President-elect Biden's win. *See Wood v. Raffensperger*, No. 1:20-cv-04651-SDG, 2020 WL 6817513, at *1–2 (N.D. Ga. Nov. 20, 2020). In denying a request for preliminary injunction and dismissing the case, that court also took issue with the conjectural nature of the plaintiff's claims, which "speculate[d] as to wide-spread impropriety," but identified only "garden variety" election issues far short of what is required to overturn an election. *See id.* at *12. *Boockvar* and *Wood* are not anomalies—they are paradigms, as one court after the other has rejected the efforts of President Trump and his allies to overturn the democratic will of the people based on nothing more than rank speculation.[3]

---

[3] *See also, e.g.*, *Costantino v. City of Detroit*, No. 20-014780-AW, slip op. at 11–13 (Mich. Cir. Ct. Nov. 13, 2020) (denying preliminary injunction to halt certification of election results in Wayne County, Michigan based on claims of purported fraud) (attached as Ex. 9), *appeal denied*, No. 355443 (Mich. Ct. App. Nov. 16, 2020) (attached as Ex. 10); *Donald J. Trump for President, Inc. v. Benson*, No. 20-000225-MZ, slip op. at 3–5 (Mich. Ct. Cl. Nov. 6, 2020) (denying Trump Campaign's emergency motion to cease counting and processing of absentee ballots and noting that plaintiffs provided no admissible evidence supporting their claims) (attached as Ex. 11); *Stoddard v. City Election Comm'n*, No. 20-014604-CZ, slip op. at 4 (Mich. Cir. Ct. Nov. 6, 2020) (denying Election Integrity Fund's motion for preliminary injunction to prohibit Detroit from certifying its results and concluding that "plaintiffs have made only a claim but have offered no evidence to support their assertions" and "[a] delay in counting and finalizing the votes from the City of Detroit without any evidentiary basis for doing so, engenders a lack of confidence in the City of Detroit to conduct full and fair elections") (attached as Ex. 12); *Donald J. Trump for President, Inc. v. Phila. Cnty. Bd. of Elections*, Civ. No. 20-5533, slip op. at 1 (E.D. Pa. Nov. 5, 2020), ECF No. 5 (denying Trump Campaign's emergency motion to stop Philadelphia County Board of Elections from counting ballots) (attached as Ex. 13); *In re Enf't of Election Laws & Securing Ballots Cast or Received After 7:00 P.M. on Nov. 3, 2020*, No. SPCV2000982-J3, slip op. at 1 (Ga. Super. Ct. Nov. 5, 2020) (denying Trump Campaign's petition to segregate certain ballots and noting that "there is no evidence the ballots referenced in the petition [were invalid]" and "there is no evidence that the Chatham County Board of Elections or the Chatham County Board of Registrars has failed to comply with the law")

Second, even setting aside the inherent problem of "estimated" vote totals and Contestants' other speculative claims, Statement ¶ 41, Contestants do not *attempt* to demonstrate that these alleged votes, if allocated in the manner they advocate, would even narrow the 33,596-vote gap between President-elect Biden and President Trump, let alone reverse it. Indeed, under Contestants' paltry allegations, it is just as likely that all the ballots they challenge were cast for President Trump and all the ballots they claim were improperly excluded were for President-elect Biden, since they offer no specific facts to support an estimate of how many ballots in each category were for which candidate with the requisite "sufficient certainty." *See Tataii*, 198 P.3d at 126–27 ("In the absence of facts showing that irregularities exceed the reported margin between the candidates, the complaint is legally insufficient because, even if its truth were assumed, the result of the election would not be affected." (quoting *Akaka*, 935 P.2d at 103)).

Third, Contestants' statement is wholly lacking in the factual details needed to give Defendants the opportunity to defend against these claims. Contestants' catalogue of alleged misconduct is conspicuously and tellingly bereft of specific dates, specific locations, and specific names. *Cf. Evans v. Johnson*, No. 2:12-CV-01053-MMD, 2013 WL 3030216, at *1 (D. Nev. June 14, 2013) (noting that heightened pleading standard for fraud under Federal Rule of Civil Procedure 9(b) requires party to "plead with particularity 'the who, what, when, where, and how of the misconduct charged'" so as to "give defendants notice of the particular misconduct so that they can defend against the charge and not just deny that they have done anything wrong" (quoting *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003))). For example, they claim that "Clark County election personnel were under immense pressure to 'push the

---

(attached as Ex. 14). These cases represent only *post*-election losses; the Trump Campaign's attempts to challenge the rules of the game on the eve of the election were also foiled by the need to provide evidence of fraud and not just speculation. *See, e.g.*, *Donald J. Trump for President, Inc. v. Way*, Civil Action No. 20-10753 (MAS) (ZNQ), 2020 WL 6204477, at *4–6 (D.N.J. Oct. 22, 2020); *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-cv-966, 2020 WL 5997680, at *2 (W.D. Pa. Oct. 10, 2020); *Donald J. Trump for President, Inc. v. Bullock*, No. CV 20-66-H-DLC, 2020 WL 5810556, at *1 (D. Mont. Sept. 30, 2020).

votes through,'" Statement ¶ 44, but do not identify who felt pressured and who applied the pressure, much less identify the specific ballots that were "push[ed] through" or (most fundamentally) for whom those ballots were cast. They claim that "voting machines regularly 'froze,' forcing voters to interrupt their voting process," *id.* ¶ 54, but do not explain where this happened, when, how often, how many voters were affected, whether they ultimately were able to vote, or for whom they intended to cast their ballots. They claim that "no less than 15,000" votes were "from voters who are also known to have voted in other states," *id.* ¶ 64, but do not specify who these voters were, for whom they cast their ballots, or even how Contestants came to know this information. And they claim that "no less than 500 provisional ballots were counted in the official vote totals without the issues which rendered them provisional in the first place ever being resolved," *id.* ¶ 77, but do not explain what those issues were, which specific ballots were involved, or for whom those ballots were cast. For these and their other allegations, Contestants have failed to even *plead* these essential details, let alone suggest how they might *prove* them.

Contestants' claims are little more than a frustrating exercise in generalization and evasion. They simply list categories of potentially unlawful votes, add arbitrary and unsupported numbers to accompany them, and ask this Court to accept it as a sufficiently certain statement of contest. The entire effort falls woefully short of the mark. It is not possible for Defendants to prepare any sort of defense, let alone on an accelerated timeframe, when the statement is lacking in anything resembling specific allegations.

Ultimately, the purpose of Nevada's contest process is to allow ostensibly defeated candidates to ensure their rightful elections. *Cf. Beko v. Kelly*, 78 Nev. 489, 492, 376 P.2d 429, 431 (1962) (noting that "authorization to file an election contest is given to a defeated candidate to contest the right to office of a person who has been declared elected," not "to a successful candidate who simply feels that there may be some cloud upon his title by reason of an irregularity in one or more of the election proceedings"). It is a method of vindicating earned electoral success, not a mechanism for airing baseless grievances or a license to conduct a "mere fishing expedition undertaken in the hope that in an examination of all the ballots enough might

be discovered to change the result." *Waters v. Nago*, No. SCEC-14-0001317, 2014 WL 7334915, at *7 (Haw. Dec. 24, 2014) (quoting *Brown v. Iaukea*, 18 Haw. 131, 133 (1906)). Contestants should not be permitted to secure the resources of the judiciary and burden Nevada election administrators precisely when they are finalizing the results of this election—*and* require Defendants to undertake the expense of litigation—when all they can produce is idle speculation and guesswork.[4] The statutory requirement of "sufficient certainty" is not a mere formality; it is a necessary stopgap to ensure that election contests cannot proceed where, as here, the case is premised on speculation rather than specific allegations supported by clarifying details. NRS 293.410(1) explicitly requires that Contestants provide sufficient detail to inform Defendants "of the charges [they are] required to meet." Contestants' statement—lacking any detailed explanation or even an allusion to evidentiary support, let alone articulable justifications for this action—does not come close to satisfying this standard; it fails to give Defendants even the barest hint of the factual predicates for Contestants' allegations. The statement should therefore be dismissed.

III. Contestants' allegations are not cognizable under the contest statute.

Even if Contestants' statement were stitched together by something more than general allegations and rank speculation, their grounds for contest are not cognizable under the statute.

Nevada's election contest law is not a catch-all provision to remedy any purported

---

[4] As the Chief Justice of the New Jersey Supreme Court reflected eight decades ago,

> [t]ested by the standard of common sense or principles of justice, can it be said that the Legislature intended that every elected official might be put to a contest, together with the expense and vexation which necessarily accompanies it, merely because a petition is filed asking for a contest and stating, generally, the broad grounds of the statute, without detail sufficient to frame an issue against which the incumbent might prepare his defense? I do not think so. It is the duty of the court to uphold an election unless it clearly appears that it was illegal; public policy so ordains.

Clee, 196 A. at 486 (citation omitted).

irregularity in balloting or tabulation. Nor is it an electoral Mulligan for unsuccessful candidates to employ whenever they are aggrieved by the will of the people. Indeed, sore losers—some apparently sorer than others—are a constant in our democratic system. Far rarer are successful contests brought under this statute, given that it is a highly specific, carefully crafted mechanism for addressing *only* an enumerated list of issues.

Specifically, elections may be contested only on the "following grounds":

- (a) "That the election board or any member thereof was guilty of malfeasance";
- (b) That a prevailing candidate was ineligible for office;
- (c) That "[i]llegal or improper votes were cast and counted," and/or "[l]egal and proper votes were not counted . . . in an amount that is equal to or greater than the margin between the contestant and the defendant, or otherwise in an amount sufficient to raise reasonable doubt as to the outcome of the election";
- (d) "That the election board, in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election";
- (e) "That the defendant or any person acting, either directly or indirectly, on behalf of the defendant has given, or offered to give, to any person anything of value for the purpose of manipulating or altering the outcome of the election"; and
- (f) "That there was a malfunction of any voting device or electronic tabulator, counting device or computer in a manner sufficient to raise reasonable doubt as to the outcome of the election."

NRS 293.410(2). *That's it*. The statute is intended to remedy only a select collection of potential electoral issues: official or candidate misconduct, candidate eligibility, and tabulation errors, technical malfunctions, or counting of unlawful ballots (or non-counting of lawful ballots) sufficient to overturn or cast reasonable doubt on the outcome of the election. Conspicuously absent from this narrow list are the types of allegations that form the basis of Contestants' statement, such as Clark County's use (and alleged misuse) of the Agilis machine, the County's purportedly insufficient observation policies, and the challenged voter drives organized by third parties. Indeed, none of the allegations raised in the statement constitute viable grounds under the statute, and the statement should therefore be dismissed for this reason as well pursuant to NRS 293.410.

A. Contestants do not allege that election boards committed malfeasance.

Contestants suggest that three of their grounds for contest implicate alleged "malfeasance under NRS 293.410(2)(a)": issues with Clark County's use of the Agilis machine, Statement ¶ 48; issues with electronic voting machines, *see id.* ¶ 58; and "Clark County's failure to provide the general public with meaningful opportunities to observe the processing and tabulation of mail-in ballots," *id.* ¶ 92. None of these grounds constitutes cognizable malfeasance.

1. Clark County's operation of the voting machines was not malfeasance.

Nevada law is clear that "malfeasance . . . constitute[s] an act of commission as distinguished from an act of omission." *Jones v. Eighth Jud. Dist. Ct.*, 67 Nev. 404, 408, 219 P.2d 1055, 1057 (1950). Contestants, by contrast, allege that "the election board or members thereof were guilty of malfeasance" due to "issues with the use of [electronic] voting machine[s]" through a series of "failing[s]" and "failure[s]." Statement ¶ 58. But "[o]missions to act are not acts of malfeasance in office, but constitute nonfeasance. A distinct difference is recognized between the two. Conduct invoking one charge will not be sufficient to justify the other." *Buckingham v. Fifth Jud. Dist. Ct.*, 60 Nev. 129, 136, 102 P.2d 632, 635 (1940). Accordingly, whatever omissions for which election officials might be responsible—that they allegedly *failed* to "adequately update and/or maintain the voting machines prior to the election," "ensure continuous and proper operation of the voting machines," "protect the integrity of voting information through adequate password and data encryption measures," "ensure the integrity of voting information such that vote hand-tallies matched voting machine logs throughout the voting process," or "count legal and proper votes," Statement ¶ 58—constitute mere acts of *non*feasance, not *mal*feasance as required by the contest statute.

Moreover, malfeasance requires, at the very least, an allegation of *knowledge* that the act was wrongful, if not a greater level of nefarious intent. *See Jones*, 67 Nev. at 415–18, 219 P.2d at 1060–62 (finding that complaint sufficiently alleged malfeasance by alleging knowledge and agreeing that officer "must have done [the illegal act] knowing that he was doing wrong or at

least under such circumstances that any reasonable person who had done the same thing would have known that he was doing something wrong" (quoting *Atwood v. Cox*, 55 P.2d 377, 393 (Utah 1936))).[5] At no point do Contestants allege that, in supposedly failing to adequately operate the electronic voting machines, election officials had knowledge of the wrongfulness of these actions. Accordingly, under the Nevada Supreme Court's interpretation of "malfeasance," none of the allegations relating to voting machines qualifies as a ground for contest.

2. Clark County's observation policies were not malfeasance.

The same is true for the allegations relating to Clark County's observation policies. Contestants assert that "Clark County's failure to provide the general public with meaningful opportunities to observe the processing and tabulation of mail-in ballots was a violation of Nevada law and, therefore, a malfeasance." Statement ¶ 92. But, as discussed above, malfeasance requires more than a mere failure to comply with the law—it requires a knowingly wrong affirmative act. Nowhere do Contestants allege that Clark County election board members intentionally or knowingly committed any wrongful acts relating to public observation. Nor *could* they have made such allegations, let alone prevail on them; as this Court already concluded, Clark County's observation policies during the election were in fact lawful. *See Kraus*, slip op. at 11 (concluding that "[p]etitioners [] failed to prove Registrar Gloria has interfered with any right they or anyone else has as an observer" and that Registrar "Gloria has not failed to meet his statutory duties . . . to allow members of the general public to observe the

---

[5] *See also, e.g.*, *State v. McRoberts*, 192 N.E. 428, 430 (Ind. 1934) ("'Malfeasance' is the doing of an act wholly wrongful and unlawful."); *State ex rel. Hardie v. Coleman*, 155 So. 129, 132 (Fla. 1934) ("Malfeasance has reference to evil conduct or an illegal deed, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity that is wholly illegal and wrongful, which he has no right to perform or which he has contracted not to do."); *Holliday v. Fields*, 275 S.W. 642, 647 (Ky. 1925) ("Malfeasance in office is the wrongdoing of an official act with an evil intent, or accompanied by such gross negligence as to be equivalent to fraud." (quoting *Commonwealth v. Wood*, 76 S.W. 842, 843 (Ky. 1903))). In *Buckingham*, the Nevada Supreme Court cited *McRoberts*, *Coleman*, and *Holliday* as "cases pointing out [the] distinction" between nonfeasance and malfeasance. *Buckingham*, 60 Nev. at 136; 102 P.2d at 635.

counting of ballots") (attached as Ex. 5); *see also supra* Part I.A. Contestants have neither alleged nor demonstrated that Clark County's observation practices were unlawful, let alone knowingly so, and so this ground cannot constitute malfeasance.

3. Clark County's operation of the Agilis machine was not malfeasance.

Contestants' claim that use of the Agilis machine constitutes malfeasance is premised on two theories: that its use was unlawful under both Nevada statutes and the Equal Protection Clauses of the U.S. and Nevada Constitutions, *and* that Clark County "[u]tiliz[ed] the Agilis machine in a manner inconsistent with its factory specification." *Id.* ¶ 48. But, as with the allegations discussed above, at no point do Contestants suggest that Clark County's failure to use factory specifications was an intentional commission motivated by, or even with knowledge of, its wrongfulness. And Contestants do not suggest that Clark County operated the Agilis machine in a manner its officials knew violated Nevada statutes or equal protection principles. Nor *could* they; Clark County's use of the Agilis machine is permitted under Nevada's election law and consistent with basic principles of equal protection, as Judge Wilson already concluded. *See Kraus*, slip op. at 12–13 (attached as Ex. 5).

In passing AB 4, the Nevada Legislature specifically authorized counties to adopt procedures that include the processing and counting of mail ballots "*by electronic means*." NRS 293.8871(2)(a) (emphasis added). Pursuant to this authority, Clark County employed the Agilis machine to sort ballots and conduct a first pass in matching the signatures on ballot return envelopes with the signatures on file in Clark County's records. In response to this straightforward exercise of statutorily granted administrative discretion, Contestants suggest that NRS 293.8874 does not permit "relying on artificial intelligence software to verify matching signatures." Statement ¶ 38. But that section does not need to permit it because NRS 293.8871(2)(a) *does*. Nothing in NRS 293.8874 requires the clerk or the clerk's employees to conduct its initial signature matching manually, or to abstain from using a machine to process ballots. Instead, human intervention is required only when a ballot is rejected. At that point, "at least two employees in the office of the clerk" must agree that "there is a reasonable question of

fact as to whether the signature used for the mail ballot matches the signature of the voter." NRS 293.8874(1)(b). Contestants do not and cannot allege that ballots were rejected in Clark County due to signature mismatches *without* following this procedure. Accordingly, Clark County's use of the Agilis machine is permitted (and, indeed, contemplated) by Nevada's election laws, as Judge Wilson already concluded, *see Kraus*, slip op. at 12 ("[T]he statute does not prohibit the use of electronic means to check the signature.") (attached as Ex. 5)—a conclusion with which the Nevada Supreme Court already stated it was likely to agree. Contestants' apparent dissatisfaction with Clark County's decision and the results of the election does not permit them to rewrite these laws. This ground for contest cannot be maintained.

Contestants also suggest—briefly—that Clark County's use of the Agilis machine "[v]iolat[ed] the equal protection right afforded to the citizens of Nevada by the Nevada and United States Constitutions." Statement ¶ 48(c).[6] But Contestants do not allege that Clark County intentionally or even knowingly violated the Equal Protection Clause, and an alleged equal protection violation on its own is not otherwise a cognizable ground on which to base an election contest. *See* NRS 293.410(2). And at any rate, Contestants do not allege that Clark County failed to follow the same procedures every other county is required to use before a ballot is rejected under the signature-matching regime (specifically, examination of the ballot by two employees, *see* NRS 293.8874(1)(b)) or identify any other purportedly disparate treatment—a fatal shortcoming that forecloses an equal protection claim. *See Moore v. Bryant*, 853 F.3d 245, 250 (5th Cir. 2017) ("The gravamen of an equal protection claim is differential governmental treatment."). And even if use of the Agilis machine *could* be somehow construed as disparate treatment, it clearly furthers a legitimate government purpose and therefore passes constitutional muster. Clark County, the most populous county in Nevada, has an interest in ensuring it is able

[6] For purposes of equal protection analysis, "the standard of the Equal Protection Clause of the Nevada Constitution [is] the same as the federal standard." *Armijo v. State*, 111 Nev. 1303, 1304, 904 P.2d 1028, 1029 (1995) (per curiam).

to process the vastly larger number of mail ballots it receives. *See Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2748301, at *9 (D. Nev. May 27, 2020) ("[I]t cannot be contested that Clark County, which contains most of Nevada's population—and likewise voters (69% of all registered voters)—is differently situated than other counties."). It therefore satisfies rational basis review, and there is no cognizable equal protection violation.[7]

Because Clark County's utilization of the Agilis machine—far from intentionally wrongful—was wholly lawful, it cannot possibly constitute malfeasance.

B. Contestants do not allege that Defendants committed misconduct.

Contestants suggest that third-party voter drives, which were allegedly "promoted by NNVP organizing personnel displaying 'Biden-Harris' promotional material and logos," violated NRS 293.410(2)(e) because "value was being offered to voters under these circumstances in an effort to manipulate or alter the outcome of the Election." Statement ¶ 102. But that provision requires intentional wrongdoing by a person who (1) has an agency relationship with the candidate—"the defendant or any person acting, either directly or indirectly, on behalf of the defendant"—and (2) offers a thing of value "for the purpose of manipulating or altering the outcome of the election." NRS 293.410(2)(e). Contestants' allegations fall short on both counts.

First, at no point do Contestants allege (nor could they) that either NNVP or its personnel were acting on behalf of Defendants or President-elect Biden's campaign. As with their other allegations, *see supra* Part II, Contestants rely on wholly conclusory statements without providing necessary specifics: when these drives were held, where they were held, and, most

---

[7] *Bush v. Gore*, 531 U.S. 98 (2000) (per curiam)—an oft-cited case for post-election equal protection issues—does not save Contestants' claim. There, the U.S. Supreme Court considered "whether the use of standardless manual recounts" by some Florida counties in the aftermath of the 2000 presidential election violated the Equal Protection Clause of the U.S. Constitution. *Id.* at 103. The Court specifically clarified that it was *not* deciding "whether local entities, in the exercise of their expertise, may develop different systems for implementing elections." *Id.* at 109. Instead, it was addressing a situation where the counting of ballots lacked even "minimal procedural safeguards." *Id*. Here, the requirement that all ballots be subject to manual review before they are rejected provides that very safeguard.

importantly, what constituted the requisite connection between NNVP and Defendants. *Cf.* NRCP 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."); *Thomas v. Eugene*, 973 N.Y.S.2d 529, 533 (N.Y. Sup. Ct. 2013) (dismissing fraud action against city council candidate where petition "fail[ed] to allege candidate involvement with any specificity"). The only link Contestants cite is that some NNVP personnel allegedly wore Biden-Harris apparel, promoted that presidential ticket, and "st[ood] in front of a van bearing a 'Biden-Harris' logo." Statement ¶ 99. But neither these individuals' sartorial selections nor the presence of a Biden-Harris logo constitutes a sufficient connection between Defendants and NNVP's voting drives such that Defendants and the Biden campaign are implicated by these activities. Otherwise, a candidate for office would become responsible for the actions of every supporter who sported a t-shirt with the candidate's name or a red hat with the candidate's slogan.

Second, encouraging people to vote by offering prizes—which is all NNVP even *allegedly* did—does not constitute "manipulating or altering the outcome of the election." NRS 293.410(2)(e). Given the grave consequences of the conduct proscribed, this provision should be read to mean only what it is obviously intended to reach: intentional tampering or other wrongdoing to subvert the outcome of the election. Offering a t-shirt to encourage someone to vote, or even a raffle ticket or gift card, cannot, under any reasonable interpretation of the contest statute, be considered a cognizable manipulation of the outcome of an election.

C. Contestants do not sufficiently allege that there were technical malfunctions that cast doubt on the election.

Contestants' allegations of malfunction fare no better. Although they allege malfunctions of both the Agilis machine, *see* Statement ¶ 35, and electronic voting machines, *see id.* ¶ 61, their allegations concerning both are insufficient as a matter of law.

1. Clark County's operation of the Agilis machine was not a malfunction.

Although the election contest statute does not itself define "malfunction," dictionaries

define the term as "[a] fault in the way something works," *Malfunction, Black's Law Dictionary* (11th ed. 2019), and "a failure to operate or function in the normal or correct manner," *Malfunction, Merriam-Webster's Collegiate Dictionary* (11th ed. 2003); *see also Allison v. Merck & Co.*, 110 Nev. 762, 768, 878 P.2d 948, 952 (1994) ("[W]hen '"machinery 'malfunctions,' it obviously lacks fitness regardless of the cause of the malfunction."'" (quoting *Stackiewicz v. Nissan Motor Corp.*, 100 Nev. 443, 448–49, 686 P.2d 925, 928 (1984))); *Otis Elevator Co. v. Reid*, 101 Nev. 515, 520, 706 P.2d 1378, 1381 (1985) (describing incidents where elevator operated differently than "normal" as "malfunctions"). Contestants, however, do not allege that the Agilis machine was faulty, but rather that Clark County "utiliz[ed] the Agilis machine in a manner inconsistent with its factory specifications—i.e. altering the error tolerance level and utilizing signature exemplars at lower than the minimum resolution required." Statement ¶ 48(b). Clark County's mode of operating the Agilis machine, though not to Contestants' liking, was not a malfunction even under Contestants' own characterization. The Agilis machine functioned as the County planned, and its use did not constitute a malfunction.

2. Contestants do not raise a reasonable doubt as to the outcome of the election with respect to alleged malfunctioning of voting machines.

Even if they had alleged a "malfunction," Contestants never explain how the purported failures of the electronic voting machines raise any doubt as to the outcome of the election. They state, with nothing more, that "[t]he evidence will show that there were no less than 1,000 illegal or improper votes cast and counted through the use of the voting machine" and "no less than 1,000 legal and proper votes that were not cast and counted through the use of the voting machine." *Id.* ¶¶ 59, 60. These allegations are wholly inadequate to provide sufficient notice as to how votes were lost or added, and the 2,000 alleged votes identified by the Contestants here certainly fall well short of the threshold required to call into question the outcome of an election that resulted in a 30,000-plus vote margin between the candidates. *See Clee*, 196 A. at 484 ("Even if the conjecture that many [ballots] cast for the contestant were wrongfully rejected be taken as true, the petition should state in what districts such rejections occurred, and how many

in each district, so that the incumbent might prepare for his defense, and the court might see what influence the counting of these rejected ballots would have towards changing the result." (alteration in original) (quoting *Lehlbach v. Haynes*, 23 A. 422, 422 (N.J. 1891))).

D. Contestants do not allege illegal votes sufficient to change or cast doubt on the outcome of the election.

Finally, Contestants' statement fails to allege, let alone with the requisite "sufficient certainty," that the number of supposedly "illegal or improper" votes cast was great enough to change the outcome of the election or call it into reasonable doubt. Although the Nevada Supreme Court has never addressed this provision, the meaning of these terms is apparent: "illegal or improper votes" are those that could not have been lawfully cast and should therefore not be counted.[8]

In their statement, Contestants identify the following votes that were allegedly cast illegally and included in the tally:

- "far more than 3,188" votes that "should have been rejected and not counted in the vote totals" based on "expected rejection rate during the course of signature comparisons," *id.* ¶ 45;
- "no less than 1,000 illegal or improper votes cast and counted"—and "no less than 1,000 legal and proper votes . . . not cast and counted"—due to purported maintenance and security issues with voting machines, *id.* ¶¶ 59–60;
- "no less than 15,000 . . . illegal and improper votes" cast by "voters who are also known to have voted in other states," *id.* ¶ 64;

---

[8] *See, e.g.*, *Mahaffey v. Barnhill*, 855 P.2d 847, 850 (Colo. 1993) (defining votes cast by those ineligible to vote as "illegal votes"); *Turner v. Cooper*, 347 So. 2d 1339, 1341 (Ala. 1977) (describing "illegal votes" as those cast by unqualified voters); *Groves v. Bd. of Cnty. Comm'rs*, 429 P.2d 994, 995–96 (Okla. 1967) (using "illegal votes" to describe those cast by "illegal voters," "not qualified, taxpaying voters"); *Olson v. Fleming*, 254 P.2d 335, 336 (Kan. 1953) (using "votes of illegal voters" and "illegal votes" interchangeably); *Grounds v. Lawe*, 193 P.2d 447, 449 (Ariz. 1948) (explaining that trial court found "fifteen illegal votes" because "fifteen [votes] had been cast by persons not qualified to vote"); *Harris v. Stewart*, 193 So. 339, 341 (Miss. 1940) (describing "illegal votes" as those cast by someone "not a qualified voter"); *Jaycox v. Varnum*, 226 P. 285, 288 (Idaho 1924) (similar); *Montoya v. Ortiz*, 175 P. 335, 337 (N.M. 1918) ("There was no question raised as to illegal votes. All voters who voted at the election were concededly qualified voters."); *Horton v. Sullivan*, 86 A. 314, 314 (R.I. 1913) (using "illegal votes" to describe those cast by "illegal voters").

- "no less than 1,000 . . . illegal and improper votes" "cast by voters who did not meet the resident requirement to vote in Nevada," *id.* ¶ 67;
- "no less than 500 . . . illegal and improper votes" that were "received from deceased persons," *id.* ¶ 68;
- "no less than 500 . . . illegal and improper votes" that "were completed and submitted at polling places by those other than voters," *id.* ¶ 70; and
- "no less than 500 provisional ballots [that] were counted in the official vote total without the issues which rendered them provisional in the first place ever being resolved," *id.* ¶ 77.[9]

But as discussed in Part II *supra*, all of Contestants' vote-figure allegations are impermissibly vague, conjectural, and imprecise, falling well short of the specificity and certainty needed for a statement of contest. *See Waters*, 2014 WL 7334915, at *6 ("A plaintiff challenging a special general election must show that he or she has actual information of mistakes or errors sufficient to change the election result."). Contestants provide absolutely no detail to bolster these conclusory allegations; they simply list off various conceivable forms of illegal voting and conjure an accompanying vote total, without a shred of specific information. *See In re Contest of Nov. 8, 2005 Gen. Election for Office of Mayor of Twp. of Parsippany-Troy Hills*, 934 A.2d 607, 630 (N.J. 2007) (Rivera-Soto, J., concurring in part and dissenting in part) ("[Contest] petition should have contained factual representations—not bare conclusions—as to the wherefores and the whys regarding those [petitioner] identified as legal voters whose votes had been rejected or those [petitioner] identified as illegal voters.").

---

[9] Contestants allege other contested vote figures in their statement, but none of these implicates "illegal or improper" votes. For example, Contestants cite an "estimated 130,000 votes" that were verified using the Agilis machine in alleged "violation of NRS 293.8874(1)" and "should be invalidated as illegal votes," Statement ¶ 41, but illegal votes are those that are unlawfully *cast*, not unlawfully *processed*, and at any rate, use of the Agilis machine is legal. *See supra* Part III.A.3. Contestants also point to "no less than 500 . . . illegal and improper votes" "cast in exchange for" various incentives." Statement ¶ 100. But although use of incentives by a candidate might be grounds for a contest, *see* NRS 293.410(2)(e); *see also supra* Part III.B, Contestants cite no authority for the proposition that a vote cast by a person who received an incentive is itself illegal or unlawful. *See Clee*, 196 A. at 483 ("Fraud is a conclusion of law which is based upon fact. . . . The addition of the word 'fraudulent' to an allegation, otherwise insufficient on its face, will not make out a case under the statute.").

Even if these allegations were not hopelessly speculative, the sum total of the allegedly "illegal and improper" votes catalogued in Contestants' statement is only *22,688*—more than *ten thousand votes* shy of the 33,596-vote margin that separates President-elect Biden and President Trump. *See* Statement ¶ 29. In other words, even accepting Contestants' vague conjectures regarding illegal votes as true—and accepting that removal of these votes would help only President Trump and not President-elect Biden, which is never clearly alleged and wholly implausible—the total number of votes alleged in Contestants' statement would still fall well short of "an amount that is equal to or greater than the margin between the contestant and the defendant," as required by the contest statute. NRS 293.410(2)(c). Nor is this "an amount sufficient to raise reasonable doubt as to the outcome of the election," *id.*—although the figure reduces the margin, it would still leave President-elect Biden with an insurmountable winning margin of nearly 11,000 votes, or 0.7 percent. *See Waters*, 2014 WL 7334915, at *6–7 ("In the absence of facts showing that irregularities exceed the reported margin between the candidates, the complaint is legally insufficient because, even if its truth were assumed, the result of the election would not be affected.").

CONCLUSION

President-elect Biden won the presidential contest and, with it, Nevada's electoral votes. Contestants' last-ditch effort to deny his victory—what will hopefully be the final chapter in a prolonged, shameful attempt to undermine the democratic process and subvert the will of voters in Nevada and nationwide—necessarily fails, as it is premised on phantom tales of fraud and debunked legal theories. This Court and other courts have already considered and rejected many of Contestants' claims, and their statement itself is an impermissibly vague and speculative effort that falls woefully short of the minimum standard required to justify the time and expense of discovery and adjudication. It further fails to articulate grounds for contest cognizable under the statute that authorizes the relief they seek. Contestants' action is, ultimately, a prejudicially delayed, thoroughly inequitable attempt at disenfranchisement that runs contrary to both the text and spirit of the law.

For these reasons, Defendants respectfully request that this Court dismiss Contestants' statement.

AFFIRMATION

The undersigned does hereby affirm that the foregoing document does **not** contain the social security number of any person.

DATED this 23rd day of November, 2020.

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: */s/ Bradley S. Schrager*

Bradley S. Schrager, Esq., SBN 10217
Daniel Bravo, Esq., SBN 13078
3556 East Russell Road, Second Floor
Las Vegas, Nevada 89120

Marc E. Elias, Esq.*
John M. Devaney, Esq.*
Henry J. Brewster, Esq.*
Courtney A. Elgart, Esq.*
Jyoti Jasrasaria, Esq.*
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 800
Washington, D.C. 20005-3960

Kevin J. Hamilton, Esq.*
Abha Khanna, Esq.*
Jonathan P. Hawley, Esq.*
Reina A. Almon-Griffin, Esq.*
Nitika Arora, Esq.*
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099

Attorneys for Defendants

**Pro hac vice submitted*

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd of November, 2020 a true and correct copy of **DEFENDANTS' MOTION TO DISMISS STATEMENT OF CONTEST OF THE NOVEMBER 3, 2020 PRESIDENTIAL ELECTION** was served upon all parties via electronic mailing to the following:

Shanna D. Weir, Esq. (SBN 9468)
WEIR LAW GROUP, LLC
sweir@weirlawgroup.com

Jesse R. Binnall (Pro Hac Forthcoming)
HARVEY & BINNALL, PLLC
jbinnall@harveybinnall.com

Attorneys for the Contestants

By: */s/ Dannielle Fresquez*
Dannielle Fresquez, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

EXHIBIT 1

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ, (1216)
djc@cwlawlv.com
J. COLBY WILLIAMS, ESQ. (5549)
jcw@cwlawlv.com
700 South 7th Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

CONSOVOY MCCARTHY PLLC
WILLIAM S. CONSOVOY, ESQ.*
Virginia Bar No. 47704
will@consovoymccarthy.com
THOMAS R. MCCARTHY, ESQ.*
Virginia Bar No. 47145
tom@consovoymccarthy.com
TYLER R. GREEN, ESQ.*
Utah Bar No. 10660
tyler@consovoymccarthy.com
CAMERON T. NORRIS, ESQ.*
Virginia Bar No. 91624
cam@consovoymccarthy.com
1600 Wilson Boulevard, Suite 700
Arlington, Virginia 22209
Telephone: (703) 243-9423

**Application for admission*
pro hac vice forthcoming

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

Plaintiffs,

v.

BARBARA CEGAVSKE, in her official capacity as Nevada Secretary of State,

Defendant.

No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Donald J. Trump for President, Inc., the Republican National Committee, and the Nevada Republican Party bring this action to challenge Assembly Bill 4—a bill passed on Sunday, August 2, 2020, during the 32nd Special Session of the Nevada Legislature. Plaintiffs allege as follows:

INTRODUCTION

1. Every American who is eligible to vote should be able to freely do so. Robust participation in our biennial elections strengthens the Nation's civic fibers, allowing the United States of America to retain its place as the world's preeminent constitutional republic. Thus, Republicans have always supported efforts to make it easier for voters to cast their ballot. At the same time, however, the electoral process cannot function properly if it lacks integrity and results in chaos. Put simply, the American people must be able to trust that the result is the product of a free and fair election.

2. Nevada's recently enacted election laws—collectively, AB4—fall far short of this standard. On a straight-party-line vote taken on a Sunday afternoon, the Nevada Legislature passed a 60-page, single-spaced bill first introduced shortly after noon the previous Friday. AB4 adds more than 25 new election-related sections to the Nevada Revised Statutes and amends more than 60 others. Many of those provisions will undermine the November election's integrity. Some go beyond that, crossing the line that separates bad policy judgments from enactments that violate federal law or the United States Constitution.

3. Hence this lawsuit. Our elections must occur under valid laws. Under the U.S. Constitution, states have broad discretion to decide how to conduct their elections. But their election laws must comply with the higher law of the U.S. Constitution and with federal laws enacted under it.

4. Exercising its constitutional power under the Elections Clause and the Electors Clause, Congress has established a uniform, national day to elect members of Congress and to appoint presidential electors. *See* 2 U.S.C. §§ 1, 7; 3 U.S.C. §1. AB4 contravenes those valid federal laws by requiring elections officials to accept and count ballots received after Election Day *even when* those ballots lack objective evidence that voters cast them on or before Election Day. In short,

AB4 effectively postpones and prolongs Nevada's 2020 general election past the Election Day established by Congress.

5. Other provisions in AB4 lack clear standards to guide the actions of county and city officials administering certain parts of Nevada's elections. AB4 thus will result in the State treating Nevada voters differently based on nothing more than their county of residence. That disparate treatment violates their Fourteenth Amendment right to the equal protection of the laws.

6. The combined effect of those problems, and others described below, will be to dilute the votes of some Nevada voters, thereby infringing their right to vote under the Fourteenth Amendment.

7. New York's June 2020 primary election confirms that these are not hypothetical concerns. "Elections officials in New York City widely distributed mail-in ballots for the primary on June 23." Jesse McKinley, *Why the Botched N.Y.C. Primary Has Become the November Nightmare*, N.Y. Times (Aug. 3, 2020), https://nyti.ms/3fvDrhx. "Now, nearly six weeks later, two closely watched congressional races remain undecided, and major delays in counting a deluge of 400,000 mail-in ballots and other problems are being cited as examples of the challenges facing the nation as it looks toward conducting the November general election during the pandemic." *Id.* Yet as those very problems unfolded, Nevada's Democratic leadership still introduced and passed AB4 on a weekend, straight-party-line vote. No one should be surprised that such a process produced legislation bearing constitutional flaws.

8. For all these reasons and those alleged below, AB4 is illegal and must be enjoined.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction because this action arises under the Constitution and laws of the United States. 28 U.S.C. §§1331 & 1343.

10. Venue is proper because a substantial part of the events giving rise to the claims occurred in this District, and the Defendants reside in this District. *Id.* §1391.

PARTIES

11. Plaintiff Donald J. Trump for President, Inc. is the principal committee for President Donald J. Trump's reelection campaign.

12. Plaintiff Republican National Committee (RNC) is a national political party with its principal place of business at 310 First Street S.E., Washington D.C., 20003.

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

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

15. The RNC works to elect Republican candidates to state and federal office. In November 2020, its candidates will appear on the ballot in Nevada for most federal and state offices. In elections for the U.S. House of Representatives, for example, the Cook Political Report lists two of Nevada's four house races as "competitive," with one of those as "likely Democratic" and the other as "lean Democratic."

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

17. The RNC also has an interest in preventing AB4's constitutionally problematic changes to Nevada election law. Major or hasty changes confuse voters, undermine confidence in the electoral process, and create incentive to remain away from the polls. Thus, AB4 forces the RNC to divert resources and spend significant amounts of money educating Nevada voters on those changes and encouraging them to still vote.

18. Plaintiff Nevada Republican Party (NVGOP) is a political party in Nevada with its principal place of business at 2810 West Charleston Blvd. #69, Las Vegas, NV 89102. The Nevada Republican Central Committee (NRCC) is the NVGOP's governing body. The NVGOP and NRCC exercise their federal and state constitutional rights of speech, assembly, petition, and association to "provide the statutory leadership of the Nevada Republican Party as directed in the Nevada Revised statutes," to "recruit, develop, and elect representative government at the national, state, and local levels," and to "promote sound, honest, and representative government at the national,

state and local levels." NRCC Bylaws, art. II, §§1.A-1.C.

19. The NVGOP represents over 600,000 registered Republican voters in Nevada as of August 2020.

20. The NVGOP has the same interests in this case, and seeks to vindicate those interests in the same ways, as the RNC.

21. Defendant Barbara Cegavske is the Secretary of State of Nevada. She serves "as the Chief Officer of Elections" for Nevada and "is responsible for the execution and enforcement of the provisions of title 24 of NRS and all other provisions of state and federal law relating to elections in" Nevada. NRS 293.124. She is sued in her official capacity.

BACKGROUND

I. State laws that set the time, place, and manner of elections for federal offices cannot conflict with contrary federal law or with federal constitutional commands.

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

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

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

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

26. The U.S. Constitution also vests in "Congress" the power to "determine the Time of

chusing the Electors" for the offices of President and Vice President. U.S. Const. art. II, §1, cl. 4.

27. Exercising that power, Congress has established that "[t]he electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President." 3 U.S.C. §1.

28. Combined, 2 U.S.C. §§1, 7, and 3 U.S.C. §1 establish the Tuesday after the first Monday in November as the uniform, national Election Day for members of Congress and as the uniform, national day for appointing electors for President and Vice President.

29. Those "uniform rules for federal elections" are both "binding on the States" and superior to conflicting state law: "'[T]he regulations made by Congress are paramount to those made by the State legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be operative.'" *Foster*, 522 U.S. at 69 (quoting *Ex parte Siebold*, 100 U.S. 371, 384 (1879)). In other words, if a state law governing elections for federal offices "conflicts with federal law," that state law is "void." *Id.* at 74.

30. State election laws must also comport with federal constitutional requirements. For example, state election laws may not "deny to any person within" the state's "jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, §1.

31. According to the Supreme Court, the Fourteenth Amendment of the U.S. Constitution protects the "the right of all qualified citizens to vote, in state as well as in federal elections." *Reynolds v. Sims*, 77 U.S. 533, 554 (1964). "Obviously included within the right to [vote], secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted." *United States v. Classic*, 313 U.S. 299, 315 (1941). "[T]he right to have the vote counted" means counted "at full value without dilution or discount." *Reynolds*, 377 U.S. at 555 n.29 (quoting *South v. Peters,* 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)).

32. Both direct denials and practices that otherwise promote fraud and dilute the effectiveness of individual votes, thus, can violate the Fourteenth Amendment. *See id.* at 555 ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

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

34. Fraudulent votes "debase[]" and "dilute" the weight of *each* validly cast vote. *See Anderson*, 417 U.S. at 227. When it comes to "'dilut[ing] the influence of honest votes in an election,'" whether the dilution is "'in greater or less degree is immaterial'"; it is a violation of the Fourteenth Amendment. *Id.* at 226.

35. The Equal Protection Clause of the U.S. Constitution requires States to "'avoid arbitrary and disparate treatment of the members of its electorate.'" *Charfauros v. Bd. of Elections*, 249 F.3d 941, 951 (9th Cir. 2001) (quoting *Bush v. Gore*, 531 U.S. 98, 105 (2000)); *see also Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) ("[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction."); *Gray v. Sanders*, 372 U.S. 368, 380 (1963) ("The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of [the Supreme Court's] decisions.").

36. "[T]reating voters differently" thus "violate[s] the Equal Protection Clause" when the disparate treatment is the result of arbitrary, ad hoc processes. *Charfauros*, 249 F.3d at 954. Indeed, a "minimum requirement for nonarbitrary treatment of voters [is] necessary to secure the fundamental right" to vote. *Bush*, 531 U.S. at 105.

37. The use of "standardless" procedures can violate the Equal Protection Clause. *Bush*, 531 U.S. at 103. "The problem inheres in the absence of specific standards to ensure … equal application" of even otherwise unobjectionable principles. *Id.* at 106. Any voting system that involves discretion by decisionmakers about how or where voters will vote must be "confined by specific rules designed to ensure uniform treatment." *Id.* at 106.

II. Nevada law regulates the time, place, and manner of elections for federal offices.

38. The Nevada Legislature has exercised its power under the Elections Clause to pass laws regulating the time, place, and manner of elections for federal officers from Nevada. *See, e.g.*,

NRS Chapters 293, 298, 304.

39. For example, Nevada law regulates the administration of primary elections, including setting rules for becoming a candidate for federal and state office and for how those candidates qualify for the primary-election ballot. *See, e.g.*, NRS 293.175-293.190.

40. Nevada law also regulates the administration of general elections. Among other things, Nevada law establishes at least five different ways that Nevadans may vote in a general election: by in-person voting at the polls, NRS 293.270-293.307; by provisional ballot, NRS 293.3078-293.3086; by absent ballot voting, NRS 293.3088-293.340; by voting in mailing precincts, NRS 293.343-293.355; and by early in-person voting, NRS 293.356-293.361. Nevada law also establishes how ballots are to be counted and the returns are to be canvassed. NRS 293.3625-293.397.

41. Among those voting options, Nevadans historically have chosen overwhelmingly to vote in person. Consider just the past two election cycles, where the Secretary's own data show that 9 of every 10 ballots cast have been in-person votes.

42. In Nevada's 2016 primary election, 89.49% of the total ballots cast were in-person votes cast during early voting (50.53% of total ballots) or on Election Day (38.96% of total ballots). Absent ballots constituted just 9.30% of total ballots cast, and the remaining 1.21% of total ballots cast were mailing ballots. Office of Nev. Sec'y of State Barbara K. Cegavske, 2016 Primary Election Turnout (June 23, 2016), https://bit.ly/31dPyux.

43. In Nevada's 2016 general election, 93.02% of the total ballots cast were in-person votes cast during early voting (62.41% of total ballots) or on Election day (30.61% of total ballots). Absent ballots constituted just 6.41% of total ballots cast, and the remaining 0.57% of total ballots cast were mailing ballots. Office of Nev. Sec'y of State Barbara K. Cegavske, 2016 General Election Turnout (Feb. 10, 2017), https://bit.ly/3a0U9nS.

44. Nevadans' overwhelming preference for voting in person remained unchanged two years later. In Nevada's 2018 primary election, 92.1% of the total ballots cast were in-person votes cast during early voting (47.75% of total ballots) or on Election Day (44.35% of total ballots). Absent ballots constituted just 7.21% of total ballots cast, and the remaining 0.69% of total ballots

cast were mailing ballots. Office of Nev. Sec'y of State Barbara K. Cegavske, 2018 Primary Election Turnout (July 10, 2018), https://bit.ly/3fyX6NH.

45. So too for Nevada's 2018 general election. There, 91.04% of the total ballots cast were in-person votes cast during early voting (56.80% of total ballots) or on Election day (34.24% of total ballots). Absent ballots constituted just 8.57% of total ballots cast, and the remaining 0.39% of total ballots cast were mailing ballots. Office of Nev. Sec'y of State Barbara K. Cegavske, 2018 General Election Turnout (Nov. 20, 2018), https://bit.ly/31kS81E.

46. For Nevada's 2020 primary election, however, all that changed. On March 24, 2020, Secretary Cegavske announced that Nevada's June 9, 2020, primary election would be an all-mail election due to "the many uncertainties surrounding the COVID-19 pandemic." *Secretary Cegavske Announces Plan to Conduct the June 9, 2020 Primary Election by All Mail* (Mar. 24, 2020), https://bit.ly/33mZt3p. The Secretary directed county and city elections officials to mail absent ballots to all active registered voters, who could return those ballots by mail in a postage-prepaid envelope or by dropping the ballot in person at a designated county location. *See id.* But the Secretary assured Nevadans that despite the move to an all-mail election, "at least one in-person polling location will be available in each county for the June 9, 2020 primary election" to "accommodate same-day voter registration" and to help "voters who have issues with the ballot that was mailed to them." *Id.*

47. Nearly a month later, the Democratic National Committee, the Nevada State Democratic Party, related entities, and four individual Nevadans sued Secretary Cegavske, the Clark County Registrar of Voters, the county clerks of Washoe and Elko Counties, and Nevada Attorney General Aaron Ford in Nevada state court. *See* Compl., *Corona et al. v. Cegavske et al.*, No. 20-OC-00064-I-B (1st Judicial Dist. Apr. 16, 2020). Those plaintiffs contended, among other things, that the Secretary's plan unconstitutionally burdened Nevadans' right to vote. They sought an order requiring elections officials (1) to open *more* in-person voting places, and (2) to mail absent ballots not just to active registered voters but also to *inactive* voters—persons the State had learned, principally from return-mail notices from the U.S. Postal Service, no longer lived at the address where they had registered to vote. The Republican National Committee and the Nevada

Republican Party successfully intervened as defendants in the *Corona* case.

48. The plaintiffs in *Corona* moved for a preliminary injunction. Secretary Cegavske and Attorney General Ford, the Washoe and Elko County Clerks, and the RNC and NVGOP opposed the motion.

49. But on the day his opposition brief was due, the Clark County Registrar told the plaintiffs and other parties that the Clark County Commission had instructed him both to open additional in-person voting places in Clark County and to mail ballots to all Clark County active *and inactive* registered voters.

50. After receiving notice of Clark County's concessions, the *Corona* plaintiffs withdrew their motion for a preliminary injunction. And Clark County conducted the primary election as it said it would.

51. The consequences of this hurried switch—from Nevada elections occurring 90% by in-person voting to an all-mail election—should surprise no one. The *Las Vegas Review-Journal* reported that, within the first week of voting in Nevada's first-ever all-mail primary, photographic evidence surfaced of numerous ballots "tossed in trash cans and littering apartment mailbox areas" in Clark County.

52. On May 8, 2020, one Clark County voter found "about a dozen ballots pinned to the complex's bulletin board or otherwise thrown around." Over the next few days, he found many more in nearby trash cans.

53. In a different apartment complex, another voter saw ballots "sticking out of residents' mailboxes and 'at least a dozen' were sitting in nearby garbage cans."

54. Another resident received a ballot at her home addressed to her deceased mother.

55. A U.S. Postal Service worker serving the area witnessed the breadth of the problem. She recounted that, over the course of multiple days, she saw an "influx of absentee ballots"—as many as 100 in a single day—that were "'no good,'" often because they had been sent to recipients who had moved or died. "In all, she said there were thousands [of ballots] sitting in crates with no additional safeguards and marked to be sent back to the county."

56. Nevada is not the only jurisdiction that experienced those types of problems after a

hurried switch to mail-in voting for its Spring 2020 elections.

57. The New Jersey media has reported that similar problems took root in Paterson, New Jersey in the May 12 election for Second Ward City Council—the "first election in state history that was contested only by mail-in voting."

58. More than 800 mail-in ballots were set aside in Paterson due to suspicion that they were gathered illegally.

59. Hundreds of mail-in ballots were collected from *single* mailboxes. In one case, 366 ballots were picked up from the same mailbox.

60. In some cases, "large quantities of mail-in ballots were fastened together with a rubber-band and dropped at the same location."

61. There have been reports of Paterson voters not receiving their ballots as well as reports of "letter carriers leaving massive numbers of ballots in a bin at a particular apartment building."

62. In addition, one candidate reported that many people's "votes were paid for and still others who had no idea that they voted or who they voted for because someone filled out a mail-in ballot for them." Things are so bad that a court has temporarily blocked the winning candidate from taking office. *See* Joe Malinconico, *Paterson councilman-elect charged with election fraud can't take office, judge rules*, Patterson Press (June 30, 2020), https://njersy.co/3gsZarF.

63. Those facts confirm the common-sense conclusion of the Commission on Federal Election Reform—a bipartisan commission chaired by former President Jimmy Carter and James Baker, and cited extensively by the U.S. Supreme Court—that absentee voting is "the largest source of potential voter fraud." *Building Confidence in U.S. Elections* 46, https://bit.ly/3dXH7rU (*Carter-Baker Report*). Many well-regarded commissions and groups of diverse political affiliation agree that "when election fraud occurs, it usually arises from absentee ballots." Michael T. Morley, *Election Emergency Redlines* 2, https://bit.ly/3e59PY1 (Morley, *Redlines*). Such fraud is easier to do and harder to detect. As one federal court put it, "absentee voting is to voting in person as a take-home exam is to a proctored one." *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004).

64. "Absentee balloting is vulnerable to abuse in several ways." For one, ballots are

sometimes "mailed to the wrong address or to large residential buildings" and "might get intercepted." *Carter-Baker Report* 46. For another, absentee voters "who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation." *Id.* And "[v]ote buying schemes are far more difficult to detect when citizens vote by mail." *Id.* For example, "[i]ndividuals can sign and sell their absentee ballot," or "[o]ne spouse can coerce the other to sign the ballot and hand it over to them to vote fraudulently."

65. This risk of abuse is magnified by the fact that "many states' voter registration databases are outdated or inaccurate." Morley, *Redlines* 2.

66. A 2012 study from the Pew Center on the States—which the U.S. Supreme Court cited in a recent case—found that "[a]pproximately 24 million—one of every eight—voter registrations in the United States are no longer valid or are significantly inaccurate"; "[m]ore than 1.8 million deceased individuals are listed as voters"; and "[a]pproximately 2.75 million people have registrations in more than one state."

67. Similarly, a 2010 study by the Caltech/MIT Voting Technology Project found that roughly 9% of listed registration records in the United States are invalid." On top of those invalid records, "in the typical state 1 in 65 records is duplicative, meaning that the same registrant is listed multiple times." The same study found that "[i]n the typical state, 1 in 40 counted votes in the 2008 general election cannot be matched to a registrant listed as having voted" and that "1 in 100 listed registrants is likely to be deceased."

68. Federal law recognizes those risks of voting by mail and thus requires certain first-time voters to present identification. *See* 52 U.S.C. § 21083(b).

III. In a special session on a weekend vote, the Nevada Legislature passes AB4.

69. After Nevada's June 2020 primary election, the *Corona* plaintiffs amended their complaint. The plaintiffs' new claims raised constitutional challenges to Nevada laws that banned ballot harvesting—the process of third parties unrelated to a voter collecting and returning that voter's absent ballot. They also challenged the Nevada laws requiring election officials to verify a voter's signature on an absent ballot against the signature on the voter's registration. The parties conducted expedited discovery on those claims throughout July 2020 to prepare for a one-week

trial on them scheduled to begin on Monday, August 17, 2020.

70. On Friday, July 31, 2020, the Nevada Legislature convened its 32nd Special Session in response to a call from Governor Sisolak.

71. One of the bills the Nevada Legislature considered during that special session was Assembly Bill 4.

72. The Democratic majority in the Nevada Assembly introduced AB4 on the afternoon of July 31, 2020. AB4 runs more than 60 single-spaced pages. Even so, the Assembly passed AB4 on a straight party-line vote mere hours after it was introduced.

73. AB4 then went to the Nevada Senate, which considered it near midnight on Friday, July 31, 2020, and again on Saturday, August 1, 2020, before passing it on Sunday, August 2, 2020, on a straight party-line vote.

74. Governor Sisolak signed AB4 into law on Monday, August 3, 2020.

75. AB4 contains 88 sections. Sections 2 through 29 enact entirely new provisions in the Nevada Revised Statutes. Within those, Sections 2 through 27 create a new framework for primary or general elections held during a declared emergency or state of disaster, defined under AB4 as an "affected election." AB4, §§5, 8. Sections 30 through 83, in turn, amend scattered existing provisions of NRS Chapters 293 and 293C. Sections 84 through 88 appropriate money to implement the bill and establish effective dates for its provisions.

76. Many of AB4's provisions are head-scratching—particularly given the stark irregularities in Nevada's June 2020 primary election, and because AB4 changes so many election laws so close to the 2020 general election. Indeed, Defendant herself recently acknowledged that Nevada could (and should) successfully hold its 2020 general election without changing its election laws. Barbara K. Cegavske, *Nevada's voting laws do not need to be changed*, The Nevada Independent (July 29, 2020), https://bit.ly/30qA4UO. But this lawsuit does not challenge AB4's wisdom (or lack thereof). *Cf. New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 209 (2008) (Stevens, J., concurring) ("'The Constitution does not prohibit legislatures from enacting stupid laws.'"). Rather, this lawsuit challenges the parts of AB4 that violate the Constitution or contradict federal law enacted under it, and that are thus invalid and must be enjoined.

77. First among AB4's unconstitutional provisions is Section 20. It effectively delays the day for electing members of Congress and for appointing presidential electors that Congress has established in 2 U.S.C. §§1, 7 and 3 U.S.C. §1.

78. The "election" established in those federal statutes is "the combined actions of voters and officials meant to make a final selection of an officeholder." *Foster v. Love*, 522 U.S. 67, 71 (1997).

79. Section 20.2 "deem[s]" ballots "received by mail not later than 5 p.m. on the third day following the election" "to have been postmarked on or before the day of the election" when "the date of the postmark cannot be determined."

80. But AB4 makes it likely that most mail ballots will lack a legible postmark showing when voters mailed them. AB4 instructs county and city clerks to send mail ballots to voters along with "a return envelope" that "must include postage prepaid by first-class mail." AB4, §16.3. The U.S. Postal Service generally does not apply postmarks to postage prepaid envelopes. *See* United States Postal Serv., §1-1.3 Postmarks ("Postmarks are not required for mailings bearing a permit, meter, or precanceled stamp for postage, nor to pieces with an indicia applied by various postage evidencing systems."), https://bit.ly/3kftt7l. So for the vast majority of mail ballots, election officials will not be able to rely on a postmark date to determine when voters cast them because most mail ballots will not have a postmark at all. Instead, the only objective indicator of whether voters have timely cast their mail ballots before Election Day will be whether election officials received them on or before Election Day.

81. In addition, the U.S. Postal Service delivers the overwhelming majority of first-class mail sent from a Clark County address to another Clark County address, or from a Washoe County address to another Washoe County address, within one or two business days. That means mail sent within Clark County or Washoe County on a Wednesday or Thursday will usually be received within Clark County or Washoe County by the next Friday.

82. As a result, a ballot mailed in Clark or Washoe Counties in a state-provided, postage prepaid first-class envelope on the Wednesday or Thursday after Election Day will likely be received at the Clark County Registrar's Office or Washoe County Clerk's Office before 5:00 pm

on the Friday after the election without bearing a postmark. Under Section 20.2, those ballots must be counted. Section 20.2 thus effectively extends the congressionally established Election Day.

83. Sections 11 and 12 of AB4 are also unconstitutional. Those sections set forth the number of in-person polling places for early voting (Section 11) and vote centers for day-of-election voting (Section 12). Under those sections, the number of in-person voting places a county must establish is tied to the county's population, resulting in more in-person voting places per capita for voters in urban counties than in rural counties. This disparate treatment of Nevada voters based on county population violates rural voters' rights under the Equal Protection Clause.

84. Section 22 of AB4 is also unconstitutional. It provides that "the county or city clerk, as applicable, shall establish procedures for the processing and counting of ballots." Beyond that general instruction, it provides only that counties "[m]ay authorize mail ballots to be processed and counted by electronic means." This lack of uniform standards to be applied across counties means that Nevada counties will necessarily adopt different procedures for processing and counting ballots, which could produce differences in rejection rates. This unequal, standardless treatment of Nevada voters across counties constitutes an equal protection violation.

85. Finally, Section 25 of AB4 requires county or city clerks to count potentially fraudulent or invalid ballots, thereby diluting the votes of honest citizens and depriving them of their right to vote in violation of the Fourteenth Amendment. Section 25 provides that "[i]f two or more ballots are found folded together to present the appearance of a single ballot, they must be laid aside. If a majority of the inspectors are of the opinion that the mail ballots folded together were voted by one person, the mail ballots must be rejected and placed in an envelope, upon which must be written the reason for their rejection." But Section 25 establishes no standard by which the inspectors should assess whether the ballots were voted by one person. Neither does Section 25 require inspectors to reject either of two or more ballots folded together when a majority of the inspectors are of the opinion that the mail ballots were voted by *more than* one person. In that case, Section 25 appears to contemplate that inspectors will count *all* of the ballots, even though at least one of the voters has not complied with the bill's signature-verification process. This loophole invites fraud, coercion, theft, or otherwise illegitimate voting that dilutes the votes of honest citizens

and deprives them of their right to vote in violation of the Fourteenth Amendment.

86. On March 12, 2020, Governor Sisolak declared a state of emergency in Nevada due to COVID-19. That makes Nevada's 2020 general election an "affected election" to which Sections 2 through 27 of AB4 apply. *See* AB4, §§5, 8.

CAUSES OF ACTION

COUNT I

Violation of 3 U.S.C. §1, 2 U.S.C. §7, 2 U.S.C. §1; Elections Clause (U.S. Const. art. I, §4, cl. 1); Electors Clause (U.S. Const. art. II, §1, cl. 4); Supremacy Clause (U.S. Const. art. VI, §2)

87. Plaintiffs incorporate all their prior allegations.

88. 3 U.S.C. §1 provides that "[t]he electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President."

89. 2 U.S.C. §7 provides that "[t]he Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter."

90. 2 U.S.C. §1 provides that, "[a]t the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter."

91. This trio of statutes "mandates holding all elections for Congress and the Presidency on a single day throughout the Union." *Foster v. Love*, 522 U.S. 67, 70 (1997).

92. The word "election" in 3 U.S.C. §1 means the "combined actions of voters and officials meant to make a final selection of an officeholder." *Foster*, 522 U.S. at 71.

93. It is the consummation of the process of electing an official.

94. By its terms then, 3 U.S.C. §1 requires that the 2020 general election be consummated on Election Day (November 3, 2020).

95. A mail ballot is not a legal vote unless it is marked and cast on or before Election

Day. Whatever latitude state legislatures retain under federal law to define the process of casting mail ballots through the U.S. Postal Service, they cannot create a process where ballots mailed *after* Election Day can be considered timely.

96. Consistent with 3 U.S.C. §1, "the Voting Rights Act Amendments of 1970 require that citizens be allowed to vote by absentee ballot in Presidential elections on or before the day of the election." *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 778 (5th Cir. 2000). *See* 52 U.S.C. §10502(d).

97. "The regulations made by Congress are paramount to those made by the State legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be operative." *Foster v. Love*, 522 U.S. 67, 69 (1997). *See* U.S. Const. art VI, cl. 2 (Supremacy Clause).

98. Section 20.2 of AB4 conflicts with 3 U.S.C. §1 by permitting absent ballots that have not been postmarked to be counted if they are received by 5:00 pm three days after Election Day (based on a presumption that those ballots were mailed on or before Election Day).

99. Absent ballots are mailed to the county clerk for the county in which the voter resides.

100. Absent ballots are delivered by the U.S. Postal Service via First Class mail.

101. The estimated delivery time for First Class mail from one place in any Nevada county to another place within the same county is typically less than three days.

102. Section 20.2 of AB4 thus allows absent ballots to be cast after Election Day but still counted as lawfully cast votes in the 2020 general election.

103. Section 20.2 of AB4 is a particularly egregious violation of 3 U.S.C. §1 because it allows for absentee ballots to be *cast* after Election Day.

104. Federal law thus preempts Section 20.2 of AB4.

105. Defendant has acted and will continue to act under color of state law to violate the 3 U.S.C. §1.

106. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing Section 20.2 of AB4.

COUNT II
Violation of the Equal Protection Clause (42 U.S.C. §1983)

107. Plaintiffs incorporate all their prior allegations.

108. "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

109. Sections 11 and 12 of AB4 violate the right to vote of rural voters by inhibiting their ability to vote in person. More specifically, Sections 11 and 12 of AB4 authorize disparate treatment of voters in rural counties with respect to the placement of polling places and vote centers for in-person voting.

110. Section 11 of AB4 outlines three categories of counties based upon total county population and directs the county clerk in each county to provide for a particular number of polling places for early voting by personal appearance.

a. In a county whose population is 700,000 or more, at least 35 polling places for early voting by personal appearance, which may be any combination of temporary or permanent polling places for early voting.

b. In a county whose population is 100,000 or more but less than 700,000, at least 15 polling places for early voting by personal appearance, which may be any combination of temporary or permanent polling places for early voting.

c. In a county whose population is less than 100,000, at least 1 permanent polling place for early voting by personal appearance.

111. Section 12 of AB4 outlines three categories of counties based upon total county population and directs the county clerk in each county to establish a particular number of polling places as vote centers for the day of the election.

a. In a county whose population is 700,000 or more, [the county clerk] must establish

at least 100 vote centers for the day of the election.

b. In a county whose population is 100,000 or more but less than 700,000, [the county clerk] must establish at least 25 vote centers for the day of the election.

c. In a county whose population is less than 100,000, [the county clerk] may establish one or more vote centers for the day of the election.

112. Sections 11 and 12 discriminate against voters in rural counties by authorizing more polling places and vote centers per capita in urban areas.

113. For example, data from the Secretary of State shows that there are 319,212 registered voters in Washoe County. AB4 authorizes a minimum of 15 polling places in Washoe County, or at least 1 polling place for every 21,281 registered voters in Washoe County.

114. Several rural counties—where AB4 authorizes only 1 polling place each—have substantially higher numbers of registered voters per polling place. For example, Lyon County (1 polling place per 40,816 registered voters) and Douglas County (1 polling place per 41,649 registered voters) have approximately twice as many registered voters per polling place as Washoe County. Several other rural counties have substantially higher numbers of registered voters per polling place than Washoe County: Carson City: 1 polling place per 37,624 registered voters; Elko County: 1 polling place per 29,131 registered voters; Nye County: 1 polling place per 34,431 registered voters.

115. Similarly, AB4 authorizes a minimum of 25 vote centers in Washoe County, or at least 1 vote center for every 12,768 registered voters.

116. Several rural counties—where AB4 authorizes only 1 vote center each—have substantially higher numbers of people per vote center. For example, Lyon County: (1 vote center per 40,816 registered voters), Douglas County (1 vote center per 41,649 registered voters), and Carson City (1 vote center per 37,624 registered voters) all have approximately three times as many registered voters per vote center as Washoe County. Several other rural counties have substantially higher numbers of registered voters per vote center than Washoe County: Elko County: 1 vote center per 29,131 registered voters; Nye County: 1 vote center per 34,431 registered voters; Churchill County: 1 vote center per 15,987 registered voters.

117. By limiting their ability to cast ballots via in-person voting through reduced numbers of polling places and vote centers, Sections 11 and 12 of AB4 engage in disparate treatment with respect to rural voters.

118. "A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause." *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). AB4 infringes "the basic principle of equality among voters within a State … that voters cannot be classified, constitutionally, on the basis of where they live." *Id.* at 560.

119. Sections 11 and 12 of AB4 thus violate the Equal Protection Clause.

120. Defendant has acted and will continue to act under color of state law to violate the Equal Protection Clause of the Fourteenth Amendment.

121. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing Sections 11 and 12 of AB4.

COUNT III
Violation of the Equal Protection Clause (42 U.S.C. §1983)

122. Plaintiffs incorporate all their prior allegations.

123. "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

124. In particular, the Equal Protection Clause imposes a "minimum requirement for nonarbitrary treatment of voters" and forbids voting systems and practices that distribute election resources in "standardless" fashion, without "specific rules designed to ensure uniform treatment." *Bush v. Gore*, 531 U.S. 98, 105-06 (2000); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477-78 (6th Cir. 2008).

125. The Supreme Court has instructed that the "formulation of uniform rules" is "necessary" because the "want of" such rules may lead to "unequal evaluation of ballots." *Bush v. Gore*, 531 U.S. 98, 106 (2000).

126. Section 22 of AB4 requires each "county or city clerk" (as applicable) to "establish procedures for the processing and counting of mail ballots."

127. Section 22 of AB4 provides no guidance or guardrails of any kind for the establishment of "procedures for the processing and counting of mail ballots."

128. Section 22 thus violates the "minimum requirement for nonarbitrary treatment of voters" by authorizing "standardless" procedures for the processing and counting of mail ballots, without "specific rules designed to ensure uniform treatment." *Bush v. Gore*, 531 U.S. 98, 105-06 (2000).

129. Further, Section 22 provides no "minimal procedural safeguards" to protect against the "unequal evaluation" of mail ballots. *Bush v. Gore*, 531 U.S. 98, 109 (2000).

130. Section 22 of AB4 instructs each county or city clerk that they "may authorize mail ballots to be processed and counted by electronic means."

131. Nevada's counties thus have the option of processing and counting mail ballots by either electronic means (of any kind, apparently) or manually.

132. Section 22 thus expressly authorizes Nevada's counties to "use[] varying standards to determine what [i]s a legal vote," contrary to the Equal Protection Clause. *Bush v. Gore*, 531 U.S. 98, 107 (2000).

133. Section 22 of AB4 thus violates the Equal Protection Clause.

134. Defendant has acted and will continue to act under color of state law to violate the Equal Protection Clause of the Fourteenth Amendment.

135. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing Section 22 of AB4.

COUNT IV
Violation of the Equal Protection Clause (42 U.S.C. §1983)

136. Plaintiffs incorporate all their prior allegations.

137. "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

138. In particular, the Equal Protection Clause imposes a "minimum requirement for nonarbitrary treatment of voters" and forbids voting systems and practices that distribute election resources in "standardless" fashion, without "specific rules designed to ensure uniform treatment." *Bush v. Gore*, 531 U.S. 98, 105-06 (2000); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477-78 (6th Cir. 2008).

139. The Supreme Court has instructed that the "formulation of uniform rules" is "necessary" because the "want of" such rules may lead to "unequal evaluation of ballots." *Bush v. Gore*, 531 U.S. 98, 106 (2000).

140. Section 25 of AB4 provides that "[i]f two or more mail ballots are found folded together to present the appearance of a single envelope," and "a majority of the inspectors are of the opinion that the mail ballots folded together were voted by one person, the mail ballots must be rejected." §25.2.

141. Section 25 provides no guidance or guardrails of any kind for the establishment of standards "a majority of inspectors" should apply to determine whether "the mail ballots folded together were voted by one person."

142. Section 25 thus violates the "minimum requirement for nonarbitrary treatment of voters" by authorizing "standardless" procedures for determining the validity of multiple ballots within a single envelope, without "specific rules designed to ensure uniform treatment." *Bush v. Gore*, 531 U.S. 98, 105-06 (2000).

143. Further, Section 25 provides no "minimal procedural safeguards" to protect against the "unequal evaluation" of multiple ballots within a single envelope. *Bush v. Gore*, 531 U.S. 98, 109 (2000).

144. Section 25 thus will result in Nevada's counties "us[ing] varying standards to determine what [i]s a legal vote," contrary to the Equal Protection Clause. *Bush v. Gore*, 531 U.S. 98, 107 (2000).

145. Section 25 of AB4 thus violates the Equal Protection Clause.

146. Defendant has acted and will continue to act under color of state law to violate the Equal Protection Clause of the Fourteenth Amendment.

147. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing Section 25 of AB4.

COUNT V
Violation of the Right to Vote (42 U.S.C. §1983)

148. Plaintiffs incorporate all their prior allegations.

149. AB4, which upends Nevada's election laws and requires massive changes in election procedures and processes, makes voter fraud and other ineligible voting inevitable.

150. AB4 requires counties to accept and count ballots received after Election Day—including ballots that may have been mailed after Election Day. §§20.1(b)(2), 20.2. It establishes a disparate number of in-person places for early voting and Election Day voting throughout Nevada based on a county's population, resulting in fewer in-person voting places for rural voters. §§11, 12. It fails to establish uniform statewide standards for processing and counting ballots, §22, or for determining whether multiple ballots received in one envelope must be rejected, §25. It also authorizes ballot harvesting. §21.

151. The combined effect of those problematic provisions is to dilute Nevadans' honest votes. Dilution of honest votes, to any degree, by the casting of fraudulent or illegitimate votes violates the right to vote. *Reynolds*, 377 U.S. at 555; *Anderson*, 417 U.S. at 226-27; *Baker*, 369 U.S. at 208.

152. The aspects of AB4 identified above facilitate fraud and other illegitimate voting practices for the reasons described above. Those provisions thus dilute the value of honest, lawful votes and therefore violate the Fourteenth Amendment to the U.S. Constitution.

153. Defendant has acted and will continue to act under color of state law to violate the Fourteenth Amendment.

154. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing AB4.

WHEREFORE, Plaintiffs ask this Court to enter judgment in their favor and provide the following relief:

a. A declaratory judgment that AB4 violates 2 U.S.C. §§1, 7 and 3 U.S.C. §1, the Elections Clause, the Electors Clause, the Supremacy Clause, and the Fourteenth Amendment.

b. A permanent injunction prohibiting Defendant from implementing and enforcing AB4;

c. A temporary restraining order and preliminary injunction granting the relief specified above during the pendency of this action;

d. Plaintiffs' reasonable costs and expenses, including attorneys' fees; and

e. All other preliminary and permanent relief that Plaintiffs are entitled to, and that the Court deems just and proper.

Dated: August 4, 2020

Respectfully submitted,

/s/ Donald J. Campbell

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
J. COLBY WILLIAMS, ESQ. (5549)
700 South 7th Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540
djc@cwlawlv.com
jcw@cwlawlv.com

CONSOVOY MCCARTHY PLLC
WILLIAM S. CONSOVOY, ESQ.*
Virginia Bar No. 47704
THOMAS R. MCCARTHY, ESQ.*
Virginia Bar No. 47145
TYLER R. GREEN, ESQ.*
Utah Bar No. 10660
CAMERON T. NORRIS, ESQ.*
Virginia Bar No. 91624
1600 Wilson Boulevard, Suite 700
Arlington, VA 22209
Telephone: (703) 243-9423
will@consovoymccarthy.com
tom@consovoymccarthy.com
tyler@consovoymccarthy.com
cam@consovoymccarthy.com

**Application for admission*
pro hac vice forthcoming

EXHIBIT 2

JOEL F. HANSEN, ESQ.
Nevada Bar No. 1876
HANSEN & HANSEN, LLC
9030 W. Cheyenne Ave. #210
Las Vegas, NV 89129
(702) 906-1300: office
(702) 620-5732: facsimile
jfhansen@hansenlawyers.com
Attorney for Plaintiffs

CASE NO: A-20-820510-C
Department 32

DISTRICT COURT

CLARK COUNTY, NEVADA

THE ELECTION INTEGRITY PROJECT OF NEVADA, A Nevada LLC; SHARRON ANGLE, an individual Plaintiff, v. THE STATE OF NEVADA, on relation of BARBARA CEGAVSKE, in her official capacity as Nevada Secretary of State, Defendants	CASE NO. DEPT. NO.

COMPLAINT FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, AND DECLARATORY RELIEF

COME NOW, THE ELECTION INTEGRITY PROJECT OF NEVADA, a Nevada LLC, and SHARRON ANGLE, an individual, by and through their Attorney, Joel F. Hansen, Esq., of Hansen & Hansen Attorneys, and file their Complaint for a Preliminary Injunction, a Permanent Injunction, and Declaratory Relief.

I.

JURISDICTION, STANDING, AND PARTIES

1. This Court has jurisdiction under Article 6 §6 of the Nevada Constitution. A significant part of this case arises in the County of Clark as it deals with the election process throughout the State of Nevada.

2. These Plaintiffs have standing to bring this suit under the public-importance exception announced by the Nevada Supreme Court in the case *of Schwartz v. Lopez*, 132 Nev. 732, 737, 382 P.3d 886, 891, 2016 Nev. LEXIS 668, wherein the high court held that a court may grant standing to a Nevada citizen to raise constitutional challenges to legislative expenditures or appropriations without a showing of a special or personal injury. The public-importance exception is narrow and available only if the following criteria are met: First, the case must involve an issue of significant public importance. The present case involves an issue of significant public importance, because it challenges AB4 which was recently passed in special session of the Nevada Legislature, a bill which worked profound changes in the voting system of Nevada and opened the coming general election to significant and rampant fraud, as explained further in the allegations of the Complaint set forth below.

3. Second, the case must involve a challenge to a legislative expenditure or appropriation on the basis that it violates a specific provision of the Nevada Constitution. As explained in detail below, this case challenges the manner in which the legislature allocated, or did not allocate, funds, in that the funding of the election violates the Nevada Constitution's Equal Protection clause, Section 21 Article 4, which is coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment. It also violates NRS 354.599, prohibiting unfunded mandates from the State of Nevada to local governments.

4. Third, the plaintiff must be an "appropriate" party, meaning that there is no one else in a better position who will likely bring an action and that the plaintiff is capable of fully advocating his or her position in court.

5. Plaintiff THE ELECTION INTEGRITY PROJECT OF NEVADA, is a tax exempt, public benefit, non-profit 501(c)(3), non-partisan Nevada LLC dedicated to assuring that every legally cast vote is properly counted and reported. EIPNv is available to assist citizen groups as well as political

and business organizations on a non-partisan basis in their efforts to assure integrity in the voting process. EIPNv is an all-volunteer organization.

6. Plaintiff SHARRON ANGLE is a resident of Nevada, a long-time active participant in the political process and elections in Nevada, has run for office several times, served in the Nevada State Legislature, and in general has taken a close interest in the integrity of Nevada elections for many years. She is highly qualified to bring this suit because of her years of experience in the political and governmental processes in Nevada, and because she has taken a special interest in protecting the integrity of the Nevada elections system and also in the right of suffrage of all Nevadans. Her vote, as well as the vote of all other Nevada voters, will be diluted and compromised if AB4, the all mail-in voting law passed at the special session of the Nevada Legislature recently concluded, is allowed to be carried out for the general election in November.

7. The Defendant is the Secretary of State of Nevada, Barbara Cegavske. She serves as the Chief Officer of Elections for Nevada and is responsible for the execution and enforcement of the provisions of title 24 of NRS and all other provisions of state and federal law relating to elections in Nevada under NRS 293.124. She is sued in her official capacity.

II.

GENERAL ALLEGATIONS AND FACTS

8. Every Nevadan who is eligible to vote should be able to freely do so. Robust participation in our biennial elections strengthen Nevada's political and governmental processes, allowing Nevadan's to choose their elected representatives in the traditional, constitutionally and legally guaranteed fashion as established by the Founding Fathers of America and followed and established in the Constitution and laws of the State of Nevada.

9. The Plaintiffs support legitimate efforts to make it convenient for voters to cast their ballots.[1] At the same time, however, the electoral process cannot function properly if it lacks integrity and results in chaos. Put simply, the people of Nevada must be able to trust that the election results are the product of free and fair elections which are not determined by corruption and/or fraud accomplished by nefarious practices of unscrupulous persons to gain victory by any means necessary.

10. Nevada's recently enacted election laws—collectively, AB4—fall far short of ensuring that this standard is met.

11. On a straight-party-line vote taken on a Sunday afternoon, the Nevada Legislature passed a 60-page, single-spaced bill first introduced shortly after noon the previous Friday. AB4 adds more than 25 new election-related sections to the Nevada Revised Statutes and amends more than 60 others.

12. Many of those provisions will undermine the November election's integrity and some go beyond that, crossing the line that separates bad policy judgments from enactments that violate Nevada's Constitution and its election laws.

13. This lawsuit is brought for the purpose of ensuring that our elections occur under valid laws. Under the U.S. Constitution, States have broad discretion to decide how to conduct their elections. But the State of Nevada, through its Constitution and laws enacted under that Constitution, has established laws which must be followed in order to ensure free and fair elections where the electors may be assured that the results are not the product of fraud or other illegal practices.

14. AB4 enacts many unconstitutional and illegal provisions. Some of these are as follows:

/ / /

[1] It should be made clear that EIPNv does not oppose absentee balloting. Absentee ballots are not mail-in ballots, because absentee ballots must be requested, while mail in ballots are sent to all voters.

15. AB4 is illegal because it CONTAINS UNFUNDED MANDATES: AB4 violates Nevada Law, NRS 354.599, prohibiting unfunded mandates from the State of Nevada to local governments.

16. This law is UNCONSTITUTIONAL – AB4 violates the Nevada Constitution Article 4 Section 21 which is coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment. This law violates Article 4, Section 21, Nevada's guarantee of equal protection,[2] in numerous ways outlined below.

III.

FACTUAL FINDINGS OF THE PLAINTIFF ELECTIONS INTEGRITY PROJECT

A. Declaration of Plaintiff Sharron Angle (Exh. 1) establishes the following findings of the Election Integrity Project

17. Plaintiffs repeat and reallege all of the above paragraphs 1-16 and incorporate them herein by reference.

18. ELECTION INTEGRITY PROJECT NEVADA FINDINGS:

19. **Multiple Or Duplicate Voting At Vote Centers**: Sections 11-14 of AB4 establish various requirements relating to polling places and voter registration for affected elections subject to sections 2-27, including requirements relating to: (1) polling places established for early voting by personal appearance; (2) polling places established as vote centers;

20. Vote centers remove the voter from his precinct where he is known and allows for impersonation, especially when no ID is required, and also allows for multiple voting by using sample ballots or "found ballots" where nefarious voters travel from one vote center to another rather than appearing at the precinct where the voter is registered. This multiple voting is part of the

/ / /

[2] And it violates the provisions set forth in the newly proposed and soon to be ratified Nevada Constitution Article 2. - Right of Suffrage, Section 1, Voter's Rights.

"findings" sent to the Secretary of State, Barbara Cegavske by Election Integrity Project Nevada (EIPNv.com) on July 24, 2020.

21. **Finding # 8: Duplicated Voter Registrations:**

22. Notwithstanding the legal obligations to eliminate duplicate names from the list, EIPNv has identified **1,289** persons who appear to be registered twice in the state. Each occurrence has the same/similar name and same/similar birthdate at the same address or differing addresses in the state. This includes persons who appear to be registered under both maiden and married last names. Matching phone numbers provide additional evidence for suspected duplicates at differing addresses. Duplicated registrants can easily vote by mail more than once undetected.

23. **Finding #9: Suspected Double Voting**

There are **9** suspected duplicated registrants whose voting histories, if they are confirmed as duplicates, show they voted twice in an election. Five appear to have voted twice in the June 2020 primary because they each had two Active registrations and were mailed two ballots.[3]

24. **Finding # 10: Registrants to be Mailed Two Ballots for November 2020**

Should Nevada not correct the registrations it confirms as duplicated, as many as **1,226 registrants will be mailed two ballots for the November 2020 election**. This includes 849 who each appear to have two Active registrations and 377 additional registrants in Clark County who have one or both registrations as Inactive status, should Clark County include Inactives in its mailed ballot plans. Persons sent more than one ballot can easily vote more than once undetected.

25. Voter impersonation is also more likely when one voter can travel from vote center to vote center impersonating someone with an active-but not voting in several years- status.

/ / /

[3] EIPNv's analysis of potential double voting excluded 12 counties which currently have incorrect voting histories for the June 2020 election.

26. **Finding #1: Delayed Inactivations**

EIPNv has identified **41,040** Nevada registrant whose records show no indications of registration updates or federal voting activity since November 2, 2010 or prior. Since these registrants have likely relocated or died, they may be eligible for inactivation or cancellation, yet they remain in "Active" status. Voting histories indicate **3,331** have not voted in 16 or more years and **22,151** have records indicating, they have NEVER voted since registering to vote a decade or more ago. Clark County has 38,103 of the potential delayed inactivations, more than 3% of its Active registrations.

27. **Finding #2: "Delayed Inactivations" to be Mailed Ballots for November 2020**

Should Nevada mail ballots to all Active-status registrants for the November 2020 election, as many as **41,050**-- who may instead be eligible for inactivation or cancellation—will be mailed ballots, including 38,103 in Clark County. These ballots, if they fall into the wrong hands, could be voted by persons other than the voter named on the ballot.

28. **Finding #3: Delayed Cancellations:**

There are 18,290 registrants who were previously inactivated by a county or the state yet remain on the voter list despite no indications of registration updates or voting activity since November 2, 2010 or prior. These registrations may be eligible for cancellation under federal law and Nevada state law [NRS 293.530]. 9,049 have records indicating they have NEVER voted since registering to vote a decade or more ago. Clark County has 14,327 of the suspected delayed cancellations and Washoe County has 1,673. For this finding EIPNv assumes that—quoting from the Defendant's May 29, 2020 press release-- "…in order for a registered voter to be designated as inactive, a piece of election mail sent to the voter must have been returned as undeliverable and the voter must have failed to respond to a mailer asking the voter to confirm their voter registration information…", and that "…If an inactive registered voter fails to vote in two federal election cycles (i.e., four years) and the

/ / /

inactive registered voter has no other voter activity during this time, their voter registration in Nevada is cancelled." Again, these ballots could be voted improperly.

29. **Finding #4: "Delayed Cancellations" to be Mailed Ballots for November 2020** Should Clark County mail ballots to all Inactive-status registrants for the November 2020 election, as it did for the June 2020 primary, as many as **14,327** registrants-- who may instead be eligible for cancellation—will be mailed ballots, opening the way for voting by the wrong individuals.

30. **Same Day Voter Registration: AB4 Sections 11-14 (3) voter registration at polling places on election day**

Same day registration is problematic because there is no time to authenticate the voter against residence, citizenship, or deceased rolls. If people who reside somewhere else, are not citizens, or are dead are voting, Plaintiff Angle's and every other voter's vote is diluted, which violates the law and injures Plaintiff's and all other voters' Constitutional rights. The only remedy is for this Court to issue its order invalidating AB4.

31. **Finding #5: Registrants Aged 105 or Older and Likely Deceased**

Notwithstanding the legal requirement to maintain voter registration lists that are free of dead registrants, there are **74** registrants whose birthdates indicate they are 105+ years old and likely deceased. Once again, these ballots might be sent in by persons other than the registered voter.

32. **Finding #6: Registrants Aged 105+ to be Mailed Ballots for November 2020** Should Nevada mail ballots to all Active registrants for the November 2020 election, **63** registrants aged 105+ and likely deceased will be mailed ballots. This includes 40 of Active status and 23 additional Inactive status registrants aged 105+ should Clark County mail ballots to Inactive registrants as it did for the June 2020 primary.

///

///

33. **Signature Verification Not Required**.

AB4 Sections 23, 39 and 69 revise these existing procedures and set forth standards for determining when there is a reasonable question of fact as to whether the signature used for an absent ballot, mailing ballot or mail ballot matches the signature of the voter.

34. This is a new requirement that will add extra work to the registrar and may get them to accept signatures they would otherwise reject because of this added workload.

35. AB4 makes it much to easy for a substitute signature to be affixed to the mail in ballot and still pass muster and be counted. The operative language states:

> *2. For purposes of 1:(a)There is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if the signature used for the mail ballot differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk.(b)There is not a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if:(1)The signature used for the mail ballot is a variation of the signature of the voter caused by the substitution of initials for the first or middle name or the use of a common nickname and it does not otherwise differ in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk;*
>
> Thus, if variations of the legal name or signature are acceptable, then this creates an opportunity for multiple ballots to be cast under the legal name, another under the initials, another under the nickname, etc.

36. **Finding #7: Missing Information:**

There are **1,657** registrants who are missing a birthdate, appear to be missing a legal name, or have a non-alpha character in their names. The Nevada voter registration affidavit requires registrants to list their names as they appear on their Nevada driver license, state ID card or Social Security card, but a majority of the 1,657 have what appear to be "nickname" initials in place of their legal first names. Such missing information hinders the state's ability to confirm these registrants' eligibility and to match with death, NCOA and other records required for list maintenance.

37. If a person's signature does not have to be official or legal then there is more possibility of voter impersonation and multiple voting under different signatures. This opens the door for

fraudulent voting which dilutes an honest voter's vote and which violates the law and injures Plaintiff's and all voters Constitutional rights.

38. **Opening Mail-In Ballots And Counting Them 15 Days Before The Election:**

Sections 22-27, 39, 48, 49, 69, 79 and 80 of this bill revise these existing procedures and provide that such counting boards can begin their process of counting the returned absent ballots, mailing ballots and mail ballots 15 days before the election.

39. The separation of the ballot from the signature envelope keeps the ballot from being removed from the count if the signature or the person who cast the ballot is challenged. These challenges must take place at the time the ballot is received, requiring overseers of the counting process to be in attendance for 11 more days than the existing law. It is unreasonable to expect that volunteers will be in attendance for 11 additional days. If a court finds that ineligible votes have been cast, if the ballot is not intact there is no way to remove those ineligible votes from the system. The court's determination may be, "Yes there was fraud and the election is corrupted but we don't know who the corrupted ballots voted for." The lengthening of time for counting impairs oversight, inviting possible corruption. This would allow the vote to be counted and the information released prior to election day, causing people to react the results by not casting a vote if their candidate appeared to be losing.

40. When illegal votes are counted Plaintiff's vote is diluted. Dilution of Plaintiff's vote is a violation of the law and the Constitution.

41. **Ballot Harvesting:**

AB4 sections 15-27 establish certain election procedures for the mail ballots distributed to active registered voters for affected elections subject to sections 2-27. Because these particular election procedures relating to absent ballots, mailing ballots and mail ballots serve similar purposes, sections 15-83 make conforming changes in order to align all the provisions and make them uniform

in their operation for Nevada's elections. Under existing law, at the request of a voter who has a physical disability or is at least 65 years of age or under certain other circumstances, a person may mark and sign an absent ballot on behalf of the voter or assist voter to mark and sign the absent ballot if the person complies with certain requirements. (NRS 293.316, 293.3165, 293C.317, 293C.318) Sections 19, 28, 29, 35, 56, 57 and 65 of this bill provide that at the request of a voter who has a physical disability, is at least 65 years of age or is unable to read or write. Sections 21, 40, 44, 70 and 75 of this bill: (1) allow a voter to authorize *any person* to return an absent ballot, mailing ballot or mail ballot to the county or city clerk on behalf of the voter;

42. Allowing "any person" to assist in this process encourages fraud. Instead, a request for assistance should be made in writing to the registrar who should send a deputy to assist since this is a form of ballot harvesting which if done by campaign workers would often mean that improper pressure or even coercion is placed upon the elderly or disabled vulnerable voter. Since age is noted on the registration rolls, those older voters may be targeted by ballot harvesters who at least be casting the vote for that person or impersonating their vote. Assistance must be done by a trusted and impartial deputy of the election board. Since this is a form of ballot harvesting, a practice proven to be fraught with fraudulent opportunity for hired "boletera" for example. This would create an atmosphere for a trunk full of ballots to come in after the election. "About 6,700 ballots were not counted in this year's Nevada the primary election after officials could not match signatures on the ballots, according to the Nevada Secretary of State's Office."[4] Since Plaintiff is over 65 this means that she may be targeted by ballot harvesters which is a form of harassment and discrimination. My right to privacy and equal protection are violated. To remedy this injury, the Secretary of State should be enjoined from implementing and enforcing AB4.

[4] https://apnews.com/a9c95d374f922747b1e6d03b5cc39f41

43. **Unable To Determine If Ballot Is Cast On Time:** AB4 Sections 20, 37 and 67 of this bill provide that to be timely returned by mail, an absent ballot, mailing ballot or mail ballot must be postmarked on or before the day of the election and received by the county or city clerk not later than 5 p.m. on the seventh day following the election. Sections 20, 37 and 67 also provide that if the county or city clerk is unable to determine the date of the postmark on such a ballot, but the ballot is received by the clerk not later than 5 p.m. on the third day following the election, the ballot is deemed to have been postmarked on or before the day of the election.

44. This extends the length of the election and allows nefarious opportunities to "find" more ballots. Once again this makes the Election Day arbitrary and underlines the failings of the postal service, making the mail-in ballot less secure. It will be impossible to know with the extension to seven days past the election for allowing ballots to be accepted, if those ballots were marked before the election or after the results were announced. It gives opportunity to "find" more ballots if someone wants to change the election results.

45. According to a FOIA request made by the Public Interest Legal Foundation, "Of the 1,325,934 ballots mailed out in Clark, 223,469 were returned as undeliverable. About 305,000 were returned by voters, verified and counted by the county. About 58 percent of the undeliverable ballots belonged to inactive voters — those who have failed to confirm their address with the county but remain registered. Inactive voters are removed from the rolls entirely if they miss two consecutive federal elections. However, 93,585 undeliverable ballots belonged to voters classified as active in Clark County's voter rolls. Public Interest also audited the Clark County and Nevada state voter rolls and found that 2,358 people on the state's active rolls were deceased. More than 2,200 of these came from Clark County."[5] "The foundation reported that based on its study, Clark County mailed

/ / /

[5] https://www.reviewjournal.com/news/politics-and-government/clark-county/more-than-223k-mailed-ballots-returned-undelivered-in-primary-2095001/

1,325,934 ballots to voters. Of that number, 223,469 were returned as undeliverable. In Washoe County, 291,434 ballots were mailed, and 27,640 were returned."[6]

46. "Thousands of ballots have been sent out by the Clark County Election Department to inactive voters – those who have not voted in recent elections, a roster that can include people who either have moved or are deceased – and the envelopes are piling up in post office trays, outside apartment complexes and on community bulletin boards in and around Las Vegas." [7] (As pictured below—discarded ballots available for anyone to pick up, fill out, and send in.)

[6] https://justthenews.com/politics-policy/elections/nevada-mailed-more-quarter-million-ballots-returned-undeliverable

[7] https://www.890kdxu.com/nevadas-vote-by-mail-primary-stirs-fraud-concerns-as-unclaimed-ballots-pile-up-something-stinks-here/

47. **Finding # 10: Registrants to be Mailed Two Ballots for November 2020**

Should Nevada not correct the registrations it confirms as duplicated, as many as **1,226 registrants will be mailed two ballots for the November 2020 election**. This includes 849 who each appear to have two Active registrations and 377 additional registrants in Clark County who have one or both registrations as Inactive status, should Clark County include Inactives in its mailed ballot plans. Persons sent more than one ballot can easily vote more than once undetected.

48. Just by doing the math, 1,325,934 ballots mailed out in Clark, 223,469 were returned as undeliverable, 305,000 were returned by voters, verified and counted by the county , there are still over 500,000 ballots that are unaccounted for in the primary election. It is reported that those ballots were "piling up in post office trays, outside apartment complexes and on community bulletin boards in and around Las Vegas" ripe for using to sway an election if the same processes are followed and the safeguards of the "old" law are abandoned for implementation of AB4. This shows the chaos inherent in all mail voting.

49. Additionally, the EIPNv findings show that 5 voters who have voted twice in the past also voted twice in the 2020 primary making them part of the 305,000 "verified and counted" ballots. If 5 slipped through and voted, thus diluting the vote of legal voters, in the preliminary findings of EIPNv for registrations from 2010 or before, how many more duplicate voters actually voted if we looked at the registrations from 2010 to 2018? The presence of the documented fraudulent vote of 5 voters is evidence that the vote in Nevada is not secure, fair or honest. It also proves that the provisions of AB4 will only exacerbate the problem. Since Plaintiff's vote was diluted in the June 2020 primary election by this fraud, the only remedy for this injury is that Defendant Secretary of State should be enjoined from implementing and enforcing AB4.

///

///

III.

UNFUNDED MANDATES

50. Plaintiffs repeat and reallege all of the above paragraphs 1-49 and incorporate them herein by reference.

51. AB4 CONTAINS UNFUNDED MANDATES: AB4 violates Nevada Law prohibiting unfunded mandates from State of Nevada to local governments.

> **NRS 354.599 states that a "**Specified **source of additional revenue [is] required under certain circumstances when Legislature directs local governmental action requiring additional funding.** If the Legislature directs one or more local governments to:
>
> 1. Establish a program or provide a service; or
>
> 2. Increase a program or service already established which requires additional funding, -- and the expense required to be paid by each local government to establish, provide or increase the program or service is $5,000 or more, a specified source for the additional revenue to pay the expense must be authorized by a specific statute. The additional revenue may only be used to pay expenses directly related to the program or service. If a local government has money from any other source available to pay such expenses, that money must be applied to the expenses before any money from the revenue source specified by statute

52. AB4 does not fully nor adequately fund the mandate to local governments:

Sec. 84. 1. States:

> "The Chief of the Budget Division shall transfer the sum of $2,000,000 from Budget Account 101-1327 to the Secretary of State for the costs related to the preparation and distribution of mail ballots pursuant to the provisions of sections 2 25 to 27, inclusive, of this act for the 2020 General Election.

But Defendant Cegavske has admitted that the equipment, education, printing and postage would cost the Secretary of State's office an additional $3 million, not including costs to counties, which distribute and tabulate ballots.

/ / /

/ / /

/ / /

/ / /

53. Nevada spent more than $4 million in federal relief dollars ***in the June primary***, most of which it funneled to counties. More than $1 million went toward leasing, counting and sorting machines to accommodate a greater number of absentee ballots.[8]

54. According to the fiscal note from the county of Plaintiff Angle's residence, Washoe County, AB4 will cost an additional $1.9 million. This cost alone will take all of the $2 million funded in AB4. There are also state costs as well as the unfunded cost of 16 other counties including Clark County with the largest number of registered voters of 1.5 million. Washoe County has 281,000 active registered voters or one-sixth the number of voters in Clark County. If the Washoe County election based on AB4 requirements will cost $1.9 million it could reasonably be expected that Clark County's costs alone would be six times that amount, or 11.4 million dollars, far beyond the $2 million allocated by the State Legislature. See **Exh. 2.**

55. According to these sources, AB4 is unfunded or grossly underfunded and therefore is an illegal law under Nevada's law against unfunded mandates, NRS 354.599, from the state to the local governments. Because this mandate will become a local burden, the taxpayers, including Plaintiff Angle, will become responsible for the payment of this shortfall either through increased tax burden or loss of services because of funds being reallocated to cover the cost of the election.

56. The remedy for this injury to Plaintiff Angle and to all taxpayers of Nevada is strike this law as illegal and prohibit it from being implemented.

IV.

AB 4 IS UNCONSTITUTIONAL AS IT VIOLATES EQUAL PROTECTION

57. Plaintiffs repeat and reallege all of the above paragraphs 1-56 and incorporate them herein by reference.

---

[8] https://www.rgj.com/story/news/2020/08/04/trump-campaign-sues-state-nevada-over-mail-ballot-initiative/3297017001/

58. AB4 violates the Nevada Constitution Article 4 Section 2, which mandates that "all laws shall be general and of uniform operation throughout the State." The Courts have held that this section of the Nevada Constitution is coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. "The U.S. Const. amendment XIV forbids an enactment that denies any person equal protection of the laws. The Nevada Constitution. Art. 4, § 21 requires that all laws be general and of uniform operation throughout the state. The standard for testing the validity of legislation under the equal protection clause of the state constitution is the same as the federal standard. *Barrett v. Baird*, 111 Nev. 1496, 1499, 908 P.2d 689, 692, 1995 Nev. LEXIS 182, *Rico v. Rodriguez*, 121 Nev. 695, 702-03, 120 P.3d 812, 817 (2005). Thus, Equal Protection requires equal access for all voters to elections.

59. An amendment entitled "Rights of Voters" has been proposed and passed twice by the Legislature. It will undoubtedly become law after the general election of 2020. It guarantees equal access to voting opportunities, thus defining with more certainly voting rights of voters in Nevada. See **Exh. 3.**

60. Nevertheless, all of these protections are already built into Article 4 Section 2 because of the "coextensive" rulings by the Nevada Supreme Court. Thus, the pronouncements of the U.S. Supreme Court interpreting the Equal Protection Clause of the 14th Amendment are all incorporated into Nevada law.

A. The Unequal Allocation of In-Person Polling Places Does Not Provide Equal Treatment of Voters and is thus Unconstitutional

61. Sections 11 and 12 of AB4 are unconstitutional. Those sections set forth the number of in-person polling places for early voting (Section 11) and vote centers for day-of-election voting (Section 12). Under those sections, the number of in-person voting places a county must establish is tied to the county's population, resulting in more in-person voting places per capita for voters in urban counties than in rural counties due to the fact that the number of voters allocated for the in-

person voting centers in the large counties per capita is greater than the number of in person voting centers allotted to the voters, per capita, in the smaller counties.

62. This arrangement violates rural voters' rights under the Equal Protection Clause, since there are not as many voting centers per capita for them as there are in the large counties, making it more difficult for the rural county voters to cast their votes. This is an unlawful AND unconstitutional expenditure of funds to establish these unequally distributed and established voting centers.

63. By limiting their ability to cast ballots via in-person voting through reduced numbers of polling places and vote centers, Sections 11 and 12 of AB4 engage in disparate treatment with respect to rural voters. The United States Supreme Court has given guidance regarding this unequal treatment: "A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm." *Reynolds v. Sims,* 377 U.S. 533, 568 (1964). AB4 infringes "the basic principle of equality among voters within a State . . . that voters cannot be classified, constitutionally, on the basis of where they live." *Id.* at 560.

B. Standardless Counting Procedures

64. EQUAL PROTECTION for voters also means that a uniform standard for counting and recounting all votes must be established statewide. If ballots are counted under different rules and standards, then the accuracy and reliability of the tabulations will necessarily vary among the counties.

65. Section 22 of AB4 requires each "county or city clerk" (as applicable) to "establish procedures for the processing and counting of mail ballots." Section 22 of AB4 provides no guidance or guardrails of any kind for the establishment of "procedures for the processing and counting of mail ballots." It envisions the creation of procedures and rules by each county clerk/registrar without any central control over those procedures, which will inevitably result in a different set of rules in each or the 17 counties.

66. Section 22 of AB4 requires each "county or city clerk" (as applicable) to "establish procedures for the processing and counting of mail ballots." Section 22 of AB4 provides no guidance or guardrails of any kind for the establishment of "procedures for the processing and counting of mail ballots." Section 22 provides no uniform statewide standard for processing and counting mail-in ballots by authorizing "standardless" procedures for the processing and counting of mail ballots, without specific state-wide rules designed to ensure uniform treatment.

67. Therefore, Sections 11 and 12 of AB4 violate Nevada's Constitutional equal protection clause which requires uniform standards and procedures for processing and counting ballots throughout the State.

68. There is no adequate remedy at law for voters in the rural counties. They will suffer serious and irreparable harm to their constitutional rights unless the state is enjoined from implementing and enforcing Sections 11 and 12 of AB4.

C. Section 22 provides no "minimal procedural safeguards" to protect against the "unequal evaluation" of mail ballots.

69. The Supreme Court has instructed that the "formulation of uniform rules" is "necessary" because the "want of" such rules may lead to "unequal evaluation of ballots." *Bush v. Gore*, 531 U.S. 98, 106 (2000). This rule applies in Nevada under Nevada's Equal Protection Constitutional guarantee, Art. 4, § 21.

70. Nevertheless, Section 22 provides no "minimal procedural safeguards" to protect against the "unequal evaluation" of mail ballots. Id. at 109, 130. Section 22 of AB4 instructs each county or city clerk that they "*may* authorize mail ballots to be processed and counted by electronic means." Nevada's counties thus have the option of processing and counting mail ballots by either electronic means (of any kind, apparently) or manually.

71. Section 22 thus expressly authorizes Nevada's counties to "use[] varying standards to determine what [i]s a legal vote," contrary to the U.S. Supreme Court's uniform rules requirement.

Id. at 107, 133. Section 22 of AB4 thus violates the Equal Protection Clause, referencing again the Supreme Court of Nevada's interpretation of the requirement of Section 21 of Article 4 of the Nevada Constitution that "all laws shall be general and of uniform operation throughout the State" to be coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution:

> The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the *State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution* of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

Bush v. Gore, 531 U.S. 98, 104-05 (2000), (Emphasis added.)

73. In particular, the Equal Protection Clause imposes a "minimum requirement for nonarbitrary treatment of voters" and forbids voting systems and practices that distribute election resources in a "*standardless*" fashion, without "specific rules designed to ensure uniform treatment." *Bush v. Gore*, 531 U.S. 98, 105-06 (2000); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477-78 (6th Cir. 2008). The United States Supreme Court has instructed that the "formulation of uniform rules" is "necessary" because the "want of" such rules may lead to "unequal evaluation of ballots." **Id.**

74. Section 25 of AB4 provides that "[i]f two or more mail ballots are found folded together to present the appearance of a single envelope," and "a majority of the inspectors are of the opinion that the mail ballots folded together were voted by one person, the mail ballots must be rejected." §25.2.

75. ***Section 25 provides no guidance or guardrails of any kind for the establishment of standards "a majority of inspectors" should apply to determine whether "the mail ballots folded together were voted by one person."*** Section 25 thus violates the "minimum requirement for nonarbitrary treatment of voters" by authorizing "standardless" procedures for determining the

/ / /

validity of multiple ballots within a single envelope, without "specific rules designed to ensure uniform treatment." *Bush v. Gore*, 531 U.S. 98, 105-06 (2000).

76. Further, Section 25 provides no "minimal procedural safeguards" to protect against the "unequal evaluation" of multiple ballots within a single envelope. *Id.* at 109.

77. Section 25 of AB4 thus violates the Equal Protection Clause, Section 21 Article 4 of the Nevada Constitution.

78. Sharron Angle will suffer serious and irreparable harm to her constitutional rights unless the state is enjoined from implementing and enforcing Section 25 of AB4.

D. AB4 will allow ballots cast after election day to be counted unlawfully

79. AB4, which upends Nevada's election laws and requires massive changes in election procedures and processes, makes voter fraud and other ineligible voting inevitable. AB4 requires counties to accept and count ballots received after Election Day— including ballots that may have been mailed after Election Day. §§20.1(b)(2), 20.2.

80. But the Nevada Constitution ORDINANCE § 5 requires the ballots cast to be counted immediately after the election. That section provides:

> 5. Election returns.
>
> The Judges and Inspectors of said **elections** shall carefully count each ballot ***immediately*** after said **elections**, and ***forthwith*** make duplicate returns thereof to the clerks of the said County Commissioners of their respective Counties. . . .
>
> (Emphasis added.)

81. AB4 contravenes Section 5 by requiring elections officials to accept and count ballots received after Election Day *even when* those ballots lack objective evidence that voters cast them on or before Election Day. In short, AB4 effectively postpones and prolongs Nevada's 2020 general election past the Election Day.

/ / /

82. The Nevada Constitution Art. 4, § 4 entitled "Senators: Election and term of office; eligibility for office, provides:

> **1.** Senators shall be chosen at the same time and places as members of the Assembly by the qualified electors of their respective districts, and their term of Office shall be four Years from the **day** next after their **election**.

83. The Nevada Constitution, Art. 17, § 10 also provides:

> At the general **election** in A.D. Eighteen hundred and Sixty Six; and thereafter, the term of Senators shall be for Four Years from the **day** succeeding such general **election**, and members of Assembly for Two Years from the **day** succeeding such general **election**. . . . See also Nev. Const. Art. 17, § 11 and Nev. Const. Art. 4, § 3.

84. AB4 calls into question the term of the elected Assemblymen and Senators because it extends the voting date beyond the one established by law.

85. Section 20.2 of AB4 conflicts with the above quoted sections of the Nevada Constitution by permitting absent ballots that have not been postmarked to be counted if they are received by 5:00 pm three days after Election Day (based on a presumption that those ballots were mailed on or before Election Day).

86. Absent ballots are mailed to the county clerk for the county in which the voter resides. Then the absent ballots are delivered by the U.S. Postal Service via First Class mail. But the estimated delivery time for First Class mail from one place in any Nevada county to another place within the same county is typically less than three days.

87. Section 20.2 of AB4 thus allows absent ballots to be cast after Election Day to still be counted as lawfully cast votes in the 2020 general election.

88. Thus, Section 20.2 of AB4 is a particularly egregious violation of Nevada's voting laws because it allows for absentee ballots to be *cast* after Election Day.

89. What this means is that if a candidate or a party believes that the voting in that candidate's election is close, they can corruptly gather up unvoted ballots (via ballot harvesting) in that district,

/ / /

get them completed fraudulently, and then mail them in on the day after the election in order to weight the vote in their favor.

CONCLUSION OF GENERAL ALLEGATIONS

90. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing AB4 § 20.2. It establishes a disparate number of in-person places for early voting and Election Day voting throughout Nevada based on a county's population, resulting in fewer in-person voting places for rural voters. §§11, 12. It fails to establish uniform statewide standards for processing and counting ballots, §22, or for determining whether multiple ballots received in one envelope must be rejected, §25. It also authorizes ballot harvesting. §21. The combined effect of those problematic provisions is to dilute honest votes. Dilution of honest votes, to any degree, by the casting of fraudulent or illegitimate votes violates the right to vote. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964); *Anderson V. United States*, 417 U.S . 211, 226-2794 (1974); *Baker* v. *Carr*, 369 U.S. 186, 208 (1962), *Schlesinger v. Reservists Comm. to Stop the War,* 418 U.S. 208, 223 (1974).

91. The aspects of AB4 identified above facilitate fraud and other illegitimate voting practices for the reasons described above. Those provisions thus dilute the value of honest, lawful votes and therefore, violate the Fourteenth Amendment to the U.S. Constitution, Article 4 Section 21 of the Nevada Constitution and the equal access clause of the voter's rights in Article 2 1A section 9 of the Nevada Constitution.

92. Because of the aforementioned arguments, AB4 is unconstitutional and Plaintiff Angle will suffer serious and irreparable harm to her constitutional rights unless the state is enjoined from implementing and enforcing AB4.

/ / /

/ / /

CAUSES OF ACTION

COUNT I

Violation of NRS 354.599

1. AB4 CONTAINS UNFUNDED MANDATES: AB4 violates Nevada Law prohibiting unfunded mandates from State of Nevada to local governments.

NRS states that a "Specified source of additional revenue [is] required under certain circumstances when Legislature directs local governmental action requiring additional funding. If the Legislature directs one or more local governments to:

> 1. Establish a program or provide a service; or
>
> 2. Increase a program or service already established which requires additional funding, -- and the expense required to be paid by each local government to establish, provide or increase the program or service is $5,000 or more, a specified source for the additional revenue to pay the expense must be authorized by a specific statute. The additional revenue may only be used to pay expenses directly related to the program or service. If a local government has money from any other source available to pay such expenses, that money must be applied to the expenses before any money from the revenue source specified by statute

2. AB4 does not fully or adequately fund the mandate to local governments to carry out an all-mail-in ballots election, as set forth in paragraphs 54 through 60 of the above complaint.

3. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm by transferring almost the entire burden of funding the all mail-in ballot election costs, which will result in either an increased tax burden or a decrease in county services to the Plaintiff Sharron Angle unless Defendant is enjoined from implementing and enforcing AB4.

COUNT II
Violation of the Equal Protection Clause

"The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote

over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). See paragraphs 61-93, set forth above.

1. AB 4 violates the Nevada Constitution Article 4, § 21 which requires that all laws be general and of uniform operation throughout the state in the following particulars, outlined more fully in the complaint:

a. The Unequal Allocation of In-Person Polling Places Does Not Provide Equal Treatment of Voters and thus Unconstitutional

b. Standardless Counting Procedures:

EQUAL PROTECTION for voters means that a uniform standard for counting and recounting all votes must be established statewide. If ballots are counted under different rules and standards, then the accuracy and reliability of the tabulations will necessarily vary among the counties.

c. Section 22 provides no minimal procedural safeguards to protect against the unequal evaluation of mail ballots: The formulation of uniform rules is necessary because the want of such rules may lead to "unequal evaluation of ballots." *Bush v. Gore*, 531 U.S. 98, 106 (2000):

> AB4 Section 22 provides no "minimal procedural safeguards" to protect against the "unequal evaluation" of mail ballots.

d. AB4 will allow ballots cast after election day to be counted unlawfully:
AB4 makes voter fraud and other ineligible voting inevitable. AB4 requires counties to accept and count ballots received after Election Day— including ballots that may have been mailed after Election Day. §§20.1(b)(2), 20.2, thus diluting Plaintiffs' votes.

e. AB4 allows for and permits the following fraudulent abuses of election procedures, resulting in dishonest and incorrect voting totals:

1. Multiple or Duplicate Voting at Vote Centers;

2. Delayed Inactivations and Delayed Cancellations will result in ballots being mailed to persons dead or no longer living at that address;

3. Same Day Voter Registration: AB4 Sections 11-14 (3) provides insufficient time to authenticate a voters' identity, thus resulting in fraudulent or unauthorized votes being cast;

4. Registrants Aged 105 or Older and Likely Deceased will be mailed ballots, resulting in living people voting those ballots unlawfully;

5. Proper Voter Signature Verification Not Required by AB4 Sections 23, 39 and 69, resulting in fraudulent voting;

6. Missing Information on a voter's registration hinders the state's ability to confirm these registrants' eligibility and to match with death, NCOA and other records required for list maintenance. If a person's signature does not have to be official or legal then there is more possibility of voter impersonation and multiple voting under different signatures, thus diluting the votes of properly identified registered voters.

7. Opening mail-in ballots and counting them 15 days before the election: Sections 22-27, 39, 48, 49, 69, 79 and 80 resulting in being able to identify who actually cast the ballot.

8. Ballot Harvesting from the elderly: Sections 19, 28, 29, 35, 56, 57 and 65 of this bill provide that at the request of a voter who has a physical disability, is at least 65 years of age or is unable to read or write . Sections 21, 40, 44, 70 and 75 of this bill: (1) allow a voter to authorize any person to return an absent ballot, mailing ballot or mail ballot to the county or city clerk on behalf of the voter; Since age is noted on the registration rolls, those older voters may be targeted by ballot harvesters who may be casting the vote for that person or impersonating their vote. This is a form of ballot harvesting a practice proven to be fraught with fraudulent opportunity to take advantage of older or disadvantaged people.

9. Other violations of equal protection as set forth in the main body of the complaint.

3. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing AB4.

WHEREFORE, Plaintiffs ask this Court to enter judgment in their favor and provide the following relief:

a. A declaratory judgment that AB4 violates NRS 354.599 (unfunded mandates) and Nevada Constitution Article 4, § 21, the Equal Protection clause, coextensive with the U.S.

Constitution's 14th Amendment;

b. A preliminary injunction granting the relief prohibiting Defendant from implementing and enforcing AB4 during the pendency of this action;

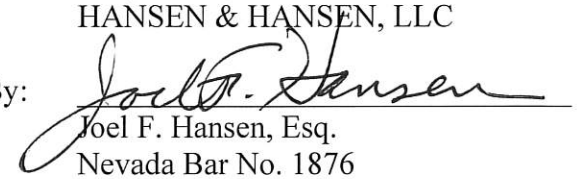
c. A permanent injunction prohibiting Defendant from implementing and enforcing AB4;

d. Plaintiffs' reasonable costs and expenses, including attorneys' fees; and

e. All other preliminary and permanent relief that Plaintiffs are entitled to, and that the Court deems just and proper.

DATED this 1st day of September, 2020.

Respectfully submitted,
HANSEN & HANSEN, LLC

By: 

Joel F. Hansen, Esq.
Nevada Bar No. 1876
9030 W. Cheyenne Ave. #210
Las Vegas, NV 89129
Attorney for Plaintiffs

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

DECLARATION OF SHARRON ANGLE REGARDING ILLEGALITY AND UNCONSTITUTIONALITY OF ASSEMBLY BILL 4 OF THE 2020 NEVADA 32nd SPECIAL SESSION

I, Sharron Angle, make this declaration before God and under penalties of perjury.

AB4 is Illegal and Unconstitutional for the following reasons:

1. CONTAINS UNFUNDED MANDATE: AB4 violates Nevada Law prohibiting unfunded mandates from State of Nevada to local governments.

> **NRS 354.599** Specified **source of additional revenue required under certain circumstances when Legislature directs local governmental action requiring additional funding.** If the Legislature directs one or more local governments to:
>
> 1. Establish a program or provide a service; or
> 2. Increase a program or service already established which requires additional funding,
>
> Ê and the expense required to be paid by each local government to establish, provide or increase the program or service is $5,000 or more, a specified source for the additional revenue to pay the expense must be authorized by a specific statute. The additional revenue may only be used to pay expenses directly related to the program or service. If a local government has money from any other source available to pay such expenses, that money must be applied to the expenses before any money from the revenue source specified by statute.
>
> (Added to NRS by 1969, 800; A 1971, 236; 1975, 1686; 1979, 1241; 1981, 312; 1987, 1669; 1993, 1349; 1999, 1181; 2001, 1804)

AB4 does not fully nor adequately fund the mandate to local governments:

> Sec. 84. 1. The Chief of the Budget Division shall transfer the sum of $2,000,000 from Budget Account 101-1327 to the Secretary of State for the costs related to the preparation and distribution of mail ballots pursuant to the provisions of sections 2 25 to 27, inclusive, of this act for the 2020 General Election.

But Secretary Cegavske said that the equipment, education, printing and postage would cost the Secretary of State's office an additional $3 million, not including costs to counties, which distribute and tabulate ballots.

Nevada spent more than $4 million in federal relief dollars in the June primary, most of which it funneled to counties. More than $1 million went toward leasing counting and sorting machines to accommodate a greater number of absentee ballots.
https://www.rgj.com/story/news/2020/08/04/trump-campaign-sues-state-nevada-over-mail-ballot-initiative/3297017001/

According to the fiscal note from the county of my residence, Washoe County, AB4 will cost an additional $1.9 million. This cost alone will take all of the $2million funded in AB4. There are also state costs as well as the unfunded cost of 16 other counties including the Clark County with the largest number of registered voters1.5 million. Washoe County has 281,000 active registered voters or one-sixth the number of voters in Clark County. If the Washoe County election based on AB4 requirements will cost $1.9 million it could reasonably be expected that Clark Counties costs alone would be six times that amount.
Washoe County - Assembly Bill 4 Description of service or product Total Cost
https://www.leg.state.nv.us/Session/32nd2020Special/FiscalNotes/2055.pdf

- Postage Permit 539 (non profit)- Sample Ballot $60,000.00
- Postage Permit 215 (First Class)- Election Ballolt $220,000.00
- Mail Ballot envelopes(outgoing & returning) domestic/overseas & instructions & secrecy sleves 1,373,850 pieces $110,340.61 K&H
- Mail in Ballots/Counter Ballots/packet assembly/delivery/subsequent extracts/freight 314,563-printed 294,161-mailed $168,411.83 K&H
- Sample Ballot 304,200 0.196 $60,378.20 Metro - Shipping $755.00
- Moving Company $25,000.00 delivery to all EV and ED and AB drop off sites

- additional ICC's 2 $17,500 Dominion ICC ballot scanners
- Secure Mail Ballot Drop Boxes $25,000.00
- Mail scanner/sorter of return ballots 1 $250,000.00 have quotes from a few vendors
- Personal Protective Equipment for office staff and election workers $110,000.00
- Absent Ballot Elections workers - Early Voting $69,300.00 $11 per hour
- 4 additional EV workers per site $66,528.00 $11 per hour
- 4 additional ED workers per site $11,000.00 $110 for all day 7 am 7 pm

- Total unfunded costs of AB4 $1,193,458.64

According to these sources, AB4 is unfunded and therefore and illegal law under Nevada's law against unfunded mandates from the state to the local governments. Because this mandate will become a local burden, as a taxpayer, I will become responsible for the payment of this shortfall either through increased tax burden or loss of services because funds were reallocated to cover the cost of the election. The remedy for this injury to me as a taxpayer is strike this law as illegal and prohibit it from being implemented.

2. UNCONSTITUTIONAL – AB4 violates the Nevada Constitution Section 21 Article 4 which is coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and requiring equal access for all voters to elections.
    - By limiting their ability to cast ballots via in-person voting through reduced numbers of polling places and vote centers, Sections 11 and 12 of AB4 engage in disparate treatment with respect to rural voters.

    "A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm." Reynolds v. Sims, 377 U.S. 533, 568 (1964). AB4 infringes "the basic principle of equality among voters within a State … that voters cannot be classified, constitutionally, on the basis of where they live." Id. at 560.

    - Section 22 of AB4 requires each "county or city clerk" (as applicable) to "establish procedures for the processing and counting of mail ballots." Section 22 of AB4 provides no guidance or

guardrails of any kind for the establishment of "procedures for the processing and counting of mail ballots." Section 22 thus violates the "specific rules designed to ensure uniform treatment." Bush v. Gore, 531 U.S. 98, 105-06 (2000).

- Further, Section 22 provides no "minimal procedural safeguards" to protect against the "unequal evaluation" of mail ballots. Bush v. Gore, 531 U.S. 98, 109 (2000). 130. Section 22 of AB4 instructs each county or city clerk that they "may authorize mail ballots to be processed and counted by electronic means." Nevada's counties thus have the option of processing and counting mail ballots by either electronic means (of any kind, apparently) or manually.
- Section 22 thus expressly authorizes Nevada's counties to "use[] varying standards to determine what [i]s a legal vote," contrary to the uniform standard clause. Bush v. Gore, 531 U.S. 98, 107 (2000). 133. Section 22 of AB4 thus violates the Equal Protection Clause. Nevada's equal access clause section 10
- Referring to the Supreme Court of Nevada "interpreted the requirement of Section 21 of Article 4 of the Nevada Constitution that "all laws shall be general and of uniform operation throughout the State" to be coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;" "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Bush v. Gore, 531 U.S. 98, 104-05 (2000). In particular, the Equal Protection Clause imposes a "minimum requirement for nonarbitrary treatment of voters" and forbids voting systems and practices that distribute election resources in "standardless" fashion, without "specific rules designed to ensure uniform treatment." Bush v. Gore, 531 U.S. 98, 105-06 (2000); League of Women Voters of Ohio v. Brunner, 548 F.3d 463, 477-78 (6th Cir. 2008). The United States

Supreme Court has instructed that the "formulation of uniform rules" is "necessary" because the "want of" such rules may lead to "unequal evaluation of ballots." Bush v. Gore, 531 U.S. 98, 106 (2000).

- Section 25 of AB4 provides that "[i]f two or more mail ballots are found folded together to present the appearance of a single envelope," and "a majority of the inspectors are of the opinion that the mail ballots folded together were voted by one person, the mail ballots must be rejected." §25.2. 141. Section 25 provides no guidance or guardrails of any kind for the establishment of standards "a majority of inspectors" should apply to determine whether "the mail ballots folded together were voted by one person." Section 25 thus violates the "minimum requirement for non-arbitrary treatment of voters" by authorizing "standardless" procedures for determining the validity of multiple ballots within a single envelope, without "specific rules designed to ensure uniform treatment." Bush v. Gore, 531 U.S. 98, 105-06 (2000). Case 2:20-cv-01445-JCM-VCF Document 1 Filed 08/04/20 Page 22 of 25 Further, Section 25 provides no "minimal procedural safeguards" to protect against the "unequal evaluation" of multiple ballots within a single envelope. Bush v. Gore, 531 U.S. 98, 109 (2000). Section 25 of AB4 thus violates the Equal Protection Clause, Section 21 Article 4 of the Nevada Constitution, and the Equal access clause Nevada Constitution section 9.
- AB4, which upends Nevada's election laws and requires massive changes in election procedures and processes, makes voter fraud and other ineligible voting inevitable. AB4 requires counties to accept and count ballots received after Election Day— including ballots that may have been mailed after Election Day. §§20.1(b)(2), 20.2. It establishes a disparate number of in-person places for early voting and Election Day voting throughout Nevada based on a county's population, resulting in fewer in-person voting places for rural voters. §§11, 12. It fails to establish uniform statewide standards for processing and counting ballots, §22, or for determining whether multiple ballots received in one envelope must be rejected, §25. It also authorizes ballot harvesting. §21. The combined effect of those problematic provisions is to

dilute honest votes. Dilution of honest votes, to any degree, by the casting of fraudulent or illegitimate votes violates the right to vote. Reynolds, 377 U.S Filed. at 555; Anderson, 417 U.S. at 226-27; Baker, 369 U.S. at 208. Case 2:20-cv-01445-JCM-VCF Document 1 08/04/20 Page 23 of 25. The aspects of AB4 identified above facilitate fraud and other illegitimate voting practices for the reasons described above. Those provisions thus dilute the value of honest, lawful votes and therefore violate the Fourteenth Amendment to the U.S. Constitution, Article 4 Section 21 of the Nevada Constitution .

- NV SJR8 Proposes to amend the Nevada Constitution to guarantee equal rights. (BDR C-1278) Has been passed by the Legislature and is scheduled for passage by voters in the 2020 general election to be ratified into the Nevada State Constitution. If this amendment is ratified by the people, AB 4 will be in violation of the equal access clause and the Voter's Bill Of Rights in SJR8.
- I will suffer serious and irreparable harm to my constitutional rights unless the state is enjoined from implementing and enforcing AB4.

3. ELECTION INTEGRITY PROJECT NEVADA FINDINGS:

MULTIPLE OR DUPLICATE VOTING AT VOTE CENTERS: Sections 11-14 of AB4 establish various requirements relating to polling places and voter registration for affected elections subject to sections 2-27, including requirements relating to: (1) polling places established for early voting by personal appearance; (2) polling places established as vote centers;

- Vote centers remove the voter from his precinct where he is known and allows for impersonation especially when no ID is required and also allows for multiple voting by using sample ballots or "found ballots" where nefarious voters travel from one vote center to another rather than appearing at the precinct where the voter is registered. This multiple voting is part of the "findings" sent to the Secretary of State, Barbara Cegavske by Election Integrity Project Nevada (EIPNv.com) on July 24, 2020.

Finding # 8: Duplicated Voter Registrations Notwithstanding the legal obligations to eliminate duplicate names from the list, EIPNv has identified **1,289** persons who appear to be registered twice in the state. Each occurrence has the same/similar name and same/similar birthdate at the same address or differing addresses in the state. This includes persons who appear to be registered under both maiden and married last names. Matching phone numbers provide additional evidence for suspected duplicates at differing addresses. Duplicated registrants can easily vote more than once undetected.

Finding #9: Suspected Double Voting There are **9** suspected duplicated registrants whose voting histories, if they are confirmed as duplicates, show they voted twice in an election. Five appear to have voted twice in the June 2020 primary because they each had two Active registrations and were mailed two ballots. *EIPNv's analysis of potential double voting excluded 12 counties which currently have incorrect voting histories for the June 2020 election.*

Finding # 10: Registrants to be Mailed Two Ballots for November 2020 Should Nevada not correct the registrations it confirms as duplicated, as many as **1,226 registrants will be mailed two ballots for the November 2020 election**. This includes 849 who each appear to have two Active registrations and 377 additional registrants in Clark County who have one or both registrations as Inactive status, should Clark County include Inactives in its mailed ballot plans. Persons sent more than one ballot can easily vote more than once undetected.

Voter impersonation is also more likely when one voter can travel from vote center to vote center impersonating someone with an active but not voting in several years status.

Finding #1: Delayed Inactivations EIPNv has identified **41,040** Nevada registrant whose records show no indications of registration updates or federal voting activity since November 2, 2010 or prior. Since these registrants have likely relocated or died, they may be eligible for inactivation or cancellation yet they remain in "Active" status. Voting histories indicate **3,331** have not voted in 16 or more years and **22,151** have records indicating they have NEVER voted since registering to vote a decade or more ago. Clark County has 38,103 of the potential delayed inactivations, more than 3% of its Active registrations.

Finding #2: "Delayed Inactivations" to be Mailed Ballots for November 2020 Should Nevada mail ballots to all Active-status registrants for the November 2020 election, as many as **41,050**-- who may instead be eligible for inactivation or cancellation—will be mailed ballots, including 38,103 in Clark County.

Finding #3: Delayed Cancellations

There are 18,290 registrants who were previously inactivated by a county or the state yet remain on the voter list despite no indications of registration updates or voting activity since November 2, 2010 or prior. These registrations may be eligible for cancellation under federal law and Nevada state law [NRS 293.530]. 9,049 have records indicating they have NEVER voted since registering to vote a decade or more ago. Clark County has 14,327 of the suspected delayed cancellations and Washoe County has 1,673.

For this finding EIPNv assumes that (quoting from your May 29, 2020 press release) "…in order for a registered voter to be designated as inactive, a piece of election mail sent to the voter must have been returned as undeliverable and the voter must have failed to respond to a mailer asking the voter to confirm their voter registration information…", and that "…If an inactive registered voter fails to vote in two federal election cycles (i.e., four years) and the inactive registered voter has no other voter activity during this time, their voter registration in Nevada is cancelled."

Finding #4: "Delayed Cancellations" to be Mailed Ballots for November 2020 Should Clark County mail ballots to all Inactive-status registrants for the November 2020 election, as it did for the June 2020 primary, as many as **14,327** registrants-- who may instead be eligible for cancellation—will be mailed ballots.

4. SAME DAY VOTER REGISTRATION: AB4 Sections 11-14 (3) voter registration at polling places on election day

Same day registration is problematic because there is no time to authenticate the voter against residence, citizenship, or deceased rolls. If people who reside somewhere else, are not citizens or are dead are voting, my vote is diluted which violates the law and injures my Constitutional rights. The only remedy is not to implement this law.

Finding #5: Registrants Aged 105 or Older and Likely Deceased Notwithstanding the legal requirement to maintain voter registration lists that are free of dead registrants, there are **74** registrants whose birthdates indicate they are 105+ years old and likely deceased.

Finding #6: Registrants Aged 105+ to be Mailed Ballots for November 2020 Should Nevada mail ballots to all Active registrants for the November 2020 election, **63** registrants aged 105+ and likely deceased will be mailed ballots. This includes 40 of Active status and 23 additional Inactive status registrants aged 105+ should Clark County mail ballots to Inactive registrants as it did for the June 2020 primary.

5. SIGNATURE VERIFICATION NOT REQUIRED. AB4 Sections 23, 39 and 69 revise these existing procedures and set forth standards for determining when there is a reasonable question of fact as to whether the signature used for an absent ballot, mailing ballot or mail ballot matches the signature of the voter.
    - This is a new requirement that will add extra work to the registrar and may get them to accept signatures they would otherwise reject because of this added work load. Here are the things that can't be used to disqualify the signature in the new bill:

2.For purposes of 1:(a)There is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if the signature used for the mail ballot differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk.(b)There is not a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if:(1)The signature used for the mail ballot is a variation of the signature of the voter caused by the substitution of initials for the first or middle name or the use of a

common nickname and it does not otherwise differ in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk; or

- I have to prove at the DMV the married name is the same as my birth certificate which only contains my maiden name. How can any variation on the legal name or signature be acceptable? This is an opportunity for multiple ballots to a voter under the legal name, another under the initials, another under the nickname etc.

(2)There are only slight dissimilarities between the signature used for the mail ballot and the signatures of the voter available in the records of the clerk.)

- This is relative. How are slight or dissimilarities defined? With these provisions in place all signatures WOULD be acceptable thus nullifying the need for a signature.

Finding #7: Missing Information There are **1,657** registrants who are missing a birthdate, appear to be missing a legal name, or have a non-alpha character in their names. The Nevada voter registration affidavit requires registrants to list their names as they appear on their Nevada driver license, state ID card or Social Security card, but a majority of the 1,657 have what appear to be "nickname" initials in place of their legal first names. Such missing information hinders the state's ability to confirm these registrants' eligibility and to match with death, NCOA and other records required for list maintenance.

If a person's signature does not have to be official or legal then there is more possibility of voter impersonation and multiple voting under different signatures. My vote is diluted which violates the law and injures my Constitutional rights. The only remedy is not to implement this law.

6. OPENING MAIL-IN BALLOTS AND COUNTING THEM 15 DAYS BEFORE THE ELECTION:

Sections 22-27, 39, 48, 49, 69, 79 and 80 of this bill revise these existing procedures and provide that such counting boards can begin their process of counting the returned absent ballots, mailing ballots and mail ballots 15 days before the election.

- The separation of the ballot from the signature envelope keeps the ballot from being removed from the count if the signature or the person who cast the ballot is challenged. These challenges must take place at the time the ballot is received requiring overseers of the counting process to be in attendance for 11 more days than the existing law. When a court finds that ineligible votes have been cast if the ballot is not in tact there is no way to remove those ineligible votes from the system. The court determination is, "yes there was fraud and the election is corrupted but we don't know who the corrupted ballots voted for." The lengthening of time for counting impairs oversight inviting possible corruption. This would allow the vote to be counted and the information released prior to election day causing people to react results by not casting a vote if their candidate appeared to be losing.

When illegal votes are counted my vote is diluted. Dilution of my vote is a violation of the law and the Constitution.

7. AGE DISCRIMINATION:

AB4 sections 15-27 establish certain election procedures for the mail ballots distributed to active registered voters for affected elections subject to sections 2-27. Because these particular election procedures relating to absent ballots, mailing ballots and mail ballots serve similar purposes, sections 15-83 make conforming changes in order to align all the provisions and make them uniform in their operation for Nevada's elections. Under existing law, at the request of a voter who has a physical disability or is at least 65 years of age or under certain other circumstances, a person may mark and sign an absent ballot on behalf of the voter or assist voter to mark and sign the absent ballot if the person complies with certain requirements. (NRS 293.316, 293.3165, 293C.317, 293C.318) Sections 19, 28, 29, 35, 56, 57 and 65 of this bill provide that at the request of a voter who has a physical disability, is at least 65 years of age or is unable to read or write . Sections 21, 40, 44, 70 and 75 of this bill: (1) allow a voter to authorize any person to return an absent ballot, mailing ballot or mail ballot to the county or city clerk on behalf of the voter;

- This request should be made in writing to the registrar who should send a deputy to assist since this is a form of ballot harvesting which if done by campaign workers can be interpreted as electioneering. Coercion of vulnerable voters is also a possibility. Since age is noted on the registration rolls, those older voters may be targeted by ballot harvesters who at least may be electioneering and at worst be casting the vote for that person or impersonating their vote. One of the tests for citizenship is literacy. Assistance must be done by a trusted and impartial deputy of the election board. Since this is a form of ballot harvesting a practice proven to be fraught with fraudulent opportunity for hired "boletera" for example. This would create an atmosphere for a trunk full of ballots to come in after the election. "About 6,700 ballots were not counted in this month's Nevada the primary election after officials could not match signatures on the ballots, according to the Nevada Secretary of State's Office."
  https://apnews.com/a9c95d374f922747b1e6d03b5cc39f41

Since I am over 65 this means that I may be targeted by ballot harvesters which is a form of harassment and discrimination. My right to privacy and equal protection are violated. To remedy this injury, this law should be enjoined from implementing and enforcing AB4.

8. UNABLE TO DETERMINE IF BALLOT IS CAST ON TIME:

AB4 Sections 20, 37 and 67 of this bill provide that to be timely returned by mail, an absent ballot, mailing ballot or mail ballot must be postmarked on or before the day of the election and received by the county or city clerk not later than 5 p.m. on the seventh day following the election Sections 20, 37 and 67 also provide that if the county or city clerk is unable to determine the date of the postmark on such a ballot, but the ballot is received by the clerk not later than 5 p.m. on the third day following the election, the ballot is deemed to have been postmarked on or before the day of the election

- This extends the length of the election and allows nefarious opportunity to "find" more ballots. Once again this makes the Election Day arbitrary and underlines the failings of the postal service

making the mail-in ballot less secure. It will be impossible to know with the extension to seven days past the election for allowing ballots to be accepted, if those ballots were marked before the election or after the results were announced. It gives opportunity to "find" more ballots if someone wants to change the election results.

- According to a FOIA request made by the Public Interest Legal Foundation, "Of the 1,325,934 ballots mailed out in Clark, 223,469 were returned as undeliverable. About 305,000 were returned by voters, verified and counted by the county. About 58 percent of the undeliverable

ballots belonged to inactive voters — those who have failed to confirm their address with the county but remain registered. Inactive voters are removed from the rolls entirely if they miss two consecutive federal elections… However, 93,585 undeliverable ballots belonged to voters classified as active in Clark County's voter rolls. Public Interest also audited the Clark County and Nevada state voter rolls and found that 2,358 people on the state's active rolls were deceased. More than 2,200 of these came from Clark County." https://www.reviewjournal.com/news/politics-and-government/clark-county/more-than-223k-mailed-ballots-returned-undelivered-in-primary-2095001/ "The foundation reported that based on its study, Clark County mailed 1,325,934 ballots to voters. Of that number, 223,469 were returned as undeliverable. In Washoe County, 291,434 ballots were mailed, and 27,640 were returned." https://justthenews.com/politics-policy/elections/nevada-mailed-more-quarter-million-ballots-returned-undeliverable

- "Thousands of ballots have been sent out by the Clark County Election Department to inactive voters – those who have not voted in recent elections, a roster that can include people who either have moved or are deceased – and the envelopes are piling up in post office trays, outside apartment complexes and on community bulletin boards in and around Las Vegas."

https://www.890kdxu.com/nevadas-vote-by-mail-primary-stirs-fraud-concerns-as-unclaimed-ballots-pile-up-something-stinks-here/

- **Finding #9: Suspected Double Voting** There are **9** suspected duplicated registrants whose voting histories, if they are confirmed as duplicates, show they voted twice in an election. Five appear to have voted twice in the June 2020 primary because they each had two Active registrations and were mailed two ballots. *EIPNv's analysis of potential double voting excluded 12 counties which currently have incorrect voting histories for the June 2020 election.*
- **Finding # 10: Registrants to be Mailed Two Ballots for November 2020** Should Nevada not correct the registrations it confirms as duplicated, as many as **1,226 registrants will be mailed two ballots for the November 2020 election**. This includes 849 who each appear to have two Active registrations and 377 additional registrants in Clark County who have one or both registrations as Inactive status, should Clark County include Inactives in its mailed ballot plans. Persons sent more than one ballot can easily vote more than once undetected.

Just by doing the math, 1,325,934 ballots mailed out in Clark, 223,469 were returned as undeliverable, 305,000 were returned by voters, verified and counted by the county , there are still over 500,000 ballots that are unaccounted for in the primary election. It is reported that those ballots were "piling up in post office trays, outside apartment complexes and on community bulletin boards in and around Las Vegas" ripe for using to sway an election if the same processes are followed and the safeguards of the "old" law are abandoned for implementation of AB4. Additionally, the EIPNv findings show that 5 voters who have voted twice in the past also voted twice in the 2020 primary making them part of the 305,000 "verified and counted" ballots. If 5 slipped through an voted diluting the vote of legal voters, in the preliminary findings of EIPNv for registrations from 2010 or before, how many more duplicate voters actually voted if we looked at the registrations from 2010 to 2018? The presence of the documented fraudulent vote of 5 voters is evidence that the vote in Nevada is not secure, fair or honest. It also proves that the provisions of AB4 will only exacerbate the problem. Since my vote was diluted in the June 2020 primary election by this fraud, the only

remedy for this injury is AB4 should be enjoined from implementing and enforcing AB4.

I understand from information gained from a call to the Secretary of State's office that the mail in ballots have already gone to the printer, and thus an immediate preliminary injunction must be issued in order to halt the carrying out of the mandates of AB4. If AB4 is implemented the plaintiffs will incur irreparable injury due to the numerous violations of the law and of their rights of equal protection as guaranteed under the Nevada Constitution.

I swear before God and under penalty of perjury, that the statements I have made in this affidavit are true.

Sharron Angle, Nevada Voter and Citizen

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

Washoe County's costs alone to carry out-Assembly Bill 4 Are set forth below:

Postage Permit 539 (non profit)- Sample Ballot $60,000.00

- Postage Permit 215 (First Class)- Election Ballolt $220,000.00
- Mail Ballot envelopes(outgoing & returning) domestic/overseas & instructions & sec recy sleves 1,373,850 pieces $110,340.61 K&H
- Mail in Ballots/Counter Ballots/packet assembly/delivery/subsequent extracts/freight 314,563-printed 294,161-mailed $168,411.83 K&H
- Sample Ballot 304,200 0.196 $60,378.20 Metro - Shipping $755.00
- Moving Company $25,000.00 delivery to all EV and ED and AB drop off sites
- additional ICC's 2 $17,500 Dominion ICC ballot scanners
- Secure Mail Ballot Drop Boxes $25,000.00
- Mail scanner/sorter of return ballots 1 $250,000.00 have quotes from a few vendors
- Personal Protective Equipment for office staff and election workers $110,000.00
- Absent Ballot Elections workers - Early Voting $69,300.00 $11 per hour
- 4 additional EV workers per site $66,528.00 $11 per hour
- 4 additional ED workers per site $11,000.00 $110 for all day 7 am 7 pm
- Total unfunded costs of AB4 $1,193,458.64

See https://www.leg.state.nv.us/Session/32nd2020Special/FiscalNotes/2055.pdf

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

1A. **Rights** of voters. [Proposed new section]

Each voter who is a qualified elector under this Constitution and is registered to vote in accordance with Section 6 of this Article and the laws enacted by the Legislature pursuant thereto has the **right**:

1. To receive and cast a ballot that:

(a) Is written in a format that allows the clear identification of candidates; and

(b) Accurately records the **voter's** preference in the selection of candidates.

2. To have questions concerning voting procedures answered and to have an explanation of the procedures for voting posted in a conspicuous place at the polling place.

3. To vote without being intimidated, threatened or coerced.

4. To vote during any period for early voting or on election day if the voter is waiting in line at a polling place at which, by law, the voter is entitled to vote at the time that the polls close and the voter has not already cast a vote in that election.

5. To return a spoiled ballot and receive another ballot in its place.

6. To request assistance in voting, if necessary.

7. To a sample ballot which is accurate, informative and delivered in a timely manner as provided by law.

8. To receive instruction in the use of the equipment for voting during any period for early voting or on election day.

9. To equal access to the elections system without discrimination, including, without limitation, discrimination on the basis of race, age, disability, military service, employment or overseas residence.

10. To a uniform, statewide standard for counting and recounting all votes accurately as provided by law.

11. To have complaints about elections and election contests resolved fairly, accurately and efficiently as provided by law.

Editor's Notes

This new section was proposed and passed in Statutes of Nevada 2017 and agreed to and passed by the 2019 Legislature, to take effect November 24, 2020, if the proposed amendment is ratified at the 2020 General Election.

EXHIBIT 3

ORDR
AARON D. FORD
Attorney General
Gregory L. Zunino (Bar No. 4805)
Deputy Solicitor General
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701
(775) 684-1237 (phone)
(775) 684-8000 (fax)
gzunino@ag.nv.gov

Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE ELECTION INTEGRITY PROJECT OF NEVADA, a Nevada LLC; SHARRON ANGLE, an individual,

Plaintiffs,

v.

THE STATE OF NEVADA, on relation of BARBARA CEGAVSKE, in her official capacity as Nevada Secretary of State,

Defendants,

and

INSTITUTE FOR A PROGRESSIVE NEVADA; and PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA,

Proposed Intervenor-Defendants.

CASE NO. A-20-820510-C
DEPT. NO. XXXII

HEARING DATE: September 17, 2020
HEARING TIME: 11:00 a.m.

ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

On September 3, 2020, Plaintiffs the Election Integrity Project of Nevada, a Nevada limited-liability company, and Sharron Angle, an individual (Plaintiffs), by and through their counsel, Joel F. Hansen, Esq., filed an application for an emergency preliminary injunction, followed on September 4, 2020, by an application for an emergency temporary

restraining order. Plaintiffs requested an order enjoining the implementation of Assembly Bill No. 4 of the 32nd Special Session (2020) of the Nevada Legislature. *See* Act of August 3, 2020, ch. 3, 2020 Nev. Stat. 18, §§ 1–88 (AB 4). AB 4 adopts vote-by-mail election processes for the 2020 general election.

The Court held a hearing on September 17, 2020. The hearing was conducted by videoconference. Joel F. Hansen, Esq., appeared for Plaintiffs. Gregory L. Zunino, Deputy Solicitor General, appeared for Defendants State of Nevada, on relation of Barbara Cegavske, in her official capacity as Nevada Secretary of State (Defendants). Abha Khanna, Esq., with the law firm of Perkins Coie, LLP, and Bradley Schrager, Esq., and Daniel Bravo, Esq., both with the law firm of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, appeared for Proposed Intervenor-Defendants Institute for a Progressive Nevada and Progressive Leadership Alliance of Nevada. The purpose of the hearing was to address the merits of Plaintiffs' request for an emergency preliminary injunction in advance of the 2020 general election. The Court treated Plaintiffs' separate applications for injunctive relief as a single motion for a preliminary injunction. The Court heard arguments from Mr. Hansen, Mr. Zunino, and Ms. Khanna. The Court also addressed Proposed Intervenor-Defendants' motion to intervene. The Court heard arguments from Mr. Hansen and Ms. Khanna. Defendants did not object to Proposed Intervenor-Defendants' motion to intervene. Lastly, the Court addressed Ms. Khanna's motion to appear *pro hac vice*. No party objected to Ms. Khanna's motion.

Upon review of the papers and pleadings on file herein, the arguments of counsel, and good cause appearing, Ms. Khanna's motion to appear *pro hac vice* is GRANTED; Proposed Defendant-Intervenor's motion to intervene is GRANTED; and Plaintiffs' motion for a preliminary injunction is DENIED.

FINDINGS OF FACT

1. Plaintiffs filed their complaint on September 1, 2020, less than one month before the first ballots are scheduled to be mailed to voters in Douglas, Elko, Esmeralda, Lander, and Lincoln Counties. Ballots are scheduled to be mailed to the voters in Nevada's

other counties during the first two weeks in October. Plaintiffs requested an order enjoining the mailing of the ballots in advance of the November 3, 2020 general election. Plaintiffs argue that AB 4 is unconstitutional for a variety of reasons, principally because it makes Nevada's election system vulnerable to voter fraud.

2. Plaintiff Sharron Angle is a longtime Nevada resident, a Nevada registered voter, a former Nevada legislator, a former Republican Party nominee and candidate for the U.S. Senate, and the head of Plaintiff the Election Integrity Project of Nevada, a nonprofit organization which advocates for measures to protect the integrity of Nevada's elections.

3. Together, Plaintiffs challenge various provisions of AB 4 on the ground that they make Nevada's election system vulnerable to voter fraud, thus diluting the value of the "honest" votes lawfully cast by Nevada's qualified electors. Plaintiffs cite *Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525 (2000) (*per curiam*), and *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362 (1964), as support for the proposition that the alleged injury of "vote dilution" suffices to establish a person's standing to bring an equal protection challenge to a state's election laws. Plaintiffs bring their challenge under Article 4, Section 21 of the Nevada Constitution. Plaintiffs acknowledge that the equal protection guarantees of the Nevada Constitution are coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment. Accordingly, Plaintiffs cite federal case law in support of their position that AB 4 violates the Nevada Constitution.

4. Plaintiffs represent that they are especially concerned about AB 4 because it directs local election officials to mail ballots, unsolicited, to all of Nevada's active registered voters. AB 4's directive to mail ballots to all active, registered voters is in addition to its directive to establish a specified minimum number of physical polling places in each county. Plaintiffs allege that this significantly increases the risk of voter fraud by distributing a large number of ballots to persons whose identities cannot be properly verified. According to Plaintiffs, vote-by-mail processes increase the probability that ballots will be intercepted by fraudsters.

5. Plaintiffs further allege that Defendants' alleged failure to properly conduct list maintenance exacerbates the problem. "List maintenance" refers to the process of removing the names of ineligible voters from the voter rolls. This includes removing the names of deceased persons, persons who have moved out of state, persons who have duplicated their voter registration status by filing two or more registration forms, and others who, for a variety of reasons, may be legally ineligible to vote or legally ineligible to receive an unsolicited ballot in the mail.

6. Additionally, Plaintiffs allege that certain provisions of AB 4 contribute to the disparate treatment of voters. These include provisions of AB 4 that direct local election officials to establish a minimum number of physical polling locations within each of their respective counties. *See* §§ 11 and 12. Plaintiffs argue that the minimum number of polling locations in each county is not proportional, on a per-capita basis, to the minimum number of polling locations in each of the other counties. According to Plaintiffs, this results in the disparate treatment of voters from one county to the next. Moreover, Plaintiffs argue that vote counting procedures and postmark presumptions improperly extend traditional time frames for processing and counting votes, thus increasing the probability that unlawful votes will be counted during these extended time frames. *See* §§ 20, 22–27, 39, 48–49, 69 and 79.

7. Finally, Plaintiffs allege that AB 4: (1) repealed a criminal prohibition against "ballot harvesting" and replaced it with new provisions that fail to adequately deter voter intimidation, *see* § 21; (2) is not otherwise complemented by sufficiently robust anti-fraud statutes, including signature verification requirements, *see* §§ 29, 39 and 69; and (3) operates in tandem with in-person voting provisions that are similarly vulnerable to voter fraud. These latter provisions of the statute authorize same-day voter registration, *see* NRS 293.5772–5792, and provide for "vote centers" where voters can appear in person outside of traditional precinct boundaries to cast their ballots, *see* NRS 293.3072–3075.

8. In support of their arguments, Plaintiffs rely upon anecdotes from other states and public reports purporting to identify a correlation between increased instances of voter

fraud and mail-in voting. They also rely upon public data concerning the 2020 primary election in Nevada. This data indicates that a significant percentage of mail-in ballots were returned to Nevada's local election officials as undeliverable. The largest percentage of returned ballots, roughly 17%, was attributable to Clark County, where election officials mailed ballots to both active and inactive registered voters. As AB 4 pertains to the 2020 general election, the bill directs election officials to mail ballots to active registered voters only. *See* § 15.

9. Finally, in terms of providing support for their allegations, Plaintiffs rely on a self-conducted analysis of public records indicating that voter rolls contain names that should not appear on the rolls because the named persons are deceased, "inactive" or otherwise ineligible to vote or receive an unsolicited ballot in the mail. The Secretary of State's office responds that when conducting list maintenance, it uses different records than those evaluated by Plaintiffs, and makes a diligent effort to maintain accurate voter registration lists.

10. In addition to their election-related allegations, Plaintiffs allege that AB 4 contains an "unfunded mandate" to Nevada's local governments. More specifically, Plaintiffs allege that the Nevada Legislature did not appropriate sufficient funds to cover the local costs of mailing ballots to voters. Plaintiffs allege that this violates NRS 354.599.

11. The Nevada Legislature adopted AB 4 on the basis of its finding that "[t]he State of Nevada faces a substantial and continuing danger that the occurrence or existence of an emergency or disaster in this State will adversely affect the public's health, safety and welfare and the ability of elections officials to prepare for and conduct an affected election safely and securely under such circumstances." § 2. Sections 2 to 27 of AB 4 apply to any election occurring during a declared state of emergency or disaster, including the 2020 general election. *See* §§ 5 and 8. Section 10(1) of AB 4 states that the legislation "must be liberally construed and broadly interpreted" to achieve its goal of enfranchising voters during the COVID-19 pandemic. § 10(1).

12. Proposed Intervenor-Defendants filed their motion to intervene on September 10, 2020. Proposed-Intervenor Defendants argue that they are entitled to intervene as of right pursuant to NRCP 24(a), and alternatively, request that the Court grant permissive intervention pursuant to NRCP 24(b).

13. To the extent any finding of fact is more appropriately characterized as a conclusion of law, it is incorporated as such below.

CONCLUSIONS OF LAW

A. Intervention Standard of Review

1. To intervene as of right under NRCP 24(a)(2), an applicant must meet four requirements:

> (1) that it has a sufficient interest in the litigation's subject matter, (2) that it could suffer an impairment of its ability to protect that interest if it does not intervene, (3) that its interest is not adequately represented by existing parties, and (4) that its application is timely.

Am. Home Assurance Co. v. Eighth Jud. Dist. Ct. ex rel. County of Clark, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006). "In evaluating whether Rule 24(a)(2)'s requirements are met," courts "construe the Rule 'broadly in favor of proposed intervenors' . . . . because '[a] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.'" *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (second alteration in original) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397–98 (9th Cir. 2002)).

2. Under NRCP 24(b), the Court may grant permissive intervention if the applicant "has a claim or defense that shares with the main action a common question of law or fact." NRCP 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." NRCP 24(b)(3); *accord Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180, 186–88, 368 P.3d 1198, 1202–03 (2016).

3. Because NRCP 24 and Federal Rule of Civil Procedure 24 are "equivalent," *Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 668 (1978), "[f]ederal cases interpreting [Rule 24] 'are strong persuasive authority.'" *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

B. Intervention as of Right

4. Proposed Intervenor-Defendants (Intervenor-Defendants) satisfy NRCP 24(a)'s requirements for intervention as a matter of right. First and second, Intervenor-Defendants have significantly protectable interests in this lawsuit that might be impaired by Plaintiffs' causes of action. "A 'significantly protectable interest' . . . is protected under the law and bears a relationship to the plaintiff's claims." *Am. Home Assurance Co.*, 122 Nev. at 1239, 147 P.3d at 1127 (quoting *Donaldson v. United States*, 400 U.S. 517, 531, 91 S. Ct. 534, 542 (1971)). In assessing whether such an interest is sufficiently "impair[ed] or impede[d]," NRCP 24(a)(2), courts "look[] to the 'practical consequences' of denying intervention." *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (quoting *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967)). "Once an applicant has established a significantly protectable interest in an action, courts regularly find that disposition of the case may, as a practical matter, impair an applicant's ability to protect that interest." *Venetian Casino Resort, LLC v. Enwave Las Vegas, LLC*, No. 2:19-CV-1197 JCM (DJA), 2020 WL 1539691, at *3 (D. Nev. Jan. 7, 2020) (citing *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006)).

5. Plaintiffs' challenge to AB 4 would impair Intervenor-Defendants' legally protected interests. If Plaintiffs succeed in their suit, then the various provisions of AB 4 designed to help Nevadans vote—such as the use of third-party ballot collection, reforms to the election code's signature matching rules, and proactive distribution of mail ballots during the November Election—will be struck down. The result would be potential disenfranchisement for those Nevada voters who are unable, due to the ongoing pandemic

and other issues, to safely cast ballots. This would implicate and impair Intervenor-Defendants' interests in improving voter turnout in Nevada.

6. Intervenor-Defendants possess organizational interests that are threatened by Plaintiffs' lawsuit. They are nonpartisan organizations dedicated to promoting civic engagement and expanding the franchise. If AB 4 were enjoined, then Intervenor-Defendants would divert resources from their other activities to remedy restricted voting opportunities.

7. Third, Intervenor-Defendants have demonstrated that they cannot rely on the parties in this case to adequately represent their interests. While the Secretary of State has an undeniable interest in defending the actions of state government, Intervenor-Defendants have a different focus: upholding the specific measures in place in AB 4, which they advocated for by testifying in support of AB 4. AB 4 furthers Intervenor-Defendants mission to ensure that every voter in Nevada has a meaningful opportunity to cast a ballot and have that ballot counted, both in November and in future elections. In other words, while the Secretary of State has an interest in defending Nevada's election laws generally, Intervenor-Defendants have a specific interest in upholding *this* newly enacted law.

8. Fourth, the motion is timely. Plaintiffs filed their complaint on September 1, 2020. Intervenor-Defendants filed their motion to intervene less than two weeks later, before any substantive activity in the case. There has therefore been no delay, and no possible risk of prejudice to the other parties.

C. Preliminary Injunction Standard of Review

9. Plaintiffs request a preliminary junction against the implementation of AB 4. Plaintiffs specifically request an injunction against AB 4's directive to local election officials that they mail ballots to all active, registered voters in the state of Nevada. *See* § 15. To obtain a preliminary injunction, Plaintiffs must show (1) a likelihood of success on the merits and (2) a reasonable probability that the alleged conduct on the part of state and county election officials, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy. *Univ. & Cmty. Coll. Sys. v. Nevadans for*

Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). "In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest." *Id.*, 100 P.3d at 187.

D. Standing

10. Defendants and Intervenor-Defendants argue that Plaintiffs do not have standing to bring their claims. To establish jurisdiction, generally, a party must show a personal injury and not merely a general interest that is common to all members of the public to have standing to file suit. *See Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (Nev. 2016). In the context of challenging the constitutionality of a statute, the Nevada Supreme Court has held that a party must suffer harm fairly traced to the statute that invalidating it would redress. *Elley v. Stephens*, 104 Nev. 413, 416–17, 760 P.2d 768, 770 (1988).

11. In *Schwartz*, however, the Nevada Supreme Court recognized a "public-importance" exception to the injury requirement of Nevada's standing doctrine. 132 Nev. at 743, 382 P.3d at 894. "Under this public-importance exception, [the Court] may grant standing to a Nevada citizen to raise constitutional challenges to legislative expenditures or appropriations without a showing of a special or personal injury." *Id.*, 382 P.3d at 894. To qualify for the exception, a case must involve an issue of significant public importance, it must involve a challenge to a legislative expenditure or appropriation as violating a specific provision of the Nevada Constitution, and it must be commenced by a plaintiff who is in an ideal position to bring the action and who is capable of fully advocating that position in court. *Id.*, 382 P.3d at 894–95.

12. The Court finds that Plaintiffs satisfy the first and the third parts of the three-part inquiry stated above. The topics of election integrity and voting rights are vitally important to the public, and Plaintiffs are qualified to represent the interests of voters who are concerned about the integrity of Nevada's election system. The second part of the inquiry is also satisfied. AB 4 requires an expenditure of public funds in excess of that which would ordinarily be required to conduct an election. Plaintiffs have challenged

AB 4 for that reason, among others. Therefore, the Court finds that Plaintiffs have standing to bring their challenge pursuant to the public-importance exception.

E. Speculative Injuries

13. Defendants argue that Plaintiffs' claims are not ripe for review. Nevada requires litigated matters to present an existing controversy, not merely the prospect of a future problem, for them to be ripe for judicial determination. *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65–66, 752 P.2d 229, 232 (1988). To demonstrate ripeness, Plaintiffs must demonstrate that "harm is likely to occur in the future because of a deprivation of a constitutional right." *Id.* at 66, 752 P.2d at 233.

14. In a pre-election challenge to election laws, the "harm alleged by the party seeking review [must be] sufficiently concrete, rather than remote or hypothetical, to yield a justiciable controversy." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006). "Alleged harm that is speculative or hypothetical is insufficient: an existing controversy must be present." *Id.*, 131 P.3d at 1231. Though well taken, the concerns raised by Plaintiffs here are insufficiently concrete to yield a justiciable controversy as required by Nevada's ripeness doctrine. The Court agrees with Defendants that Plaintiffs election-related claims are not ripe for review.

15. Defendants and Intervenor-Defendants argue that Plaintiffs have failed to demonstrate that AB 4 will result in irreparable harm. For the same reasons that this case is not ripe for review, Plaintiffs fail to demonstrate irreparable harm as a necessary predicate for obtaining a preliminary injunction. Plaintiffs' unfounded speculations regarding voter fraud fall short of the "substantial evidence" required to obtain injunctive relief. *Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018). Although Plaintiffs argue that certain provisions of AB 4 will make Nevada's voting system susceptible to illegitimate votes, Plaintiffs present no concrete evidence that such events will occur. For example, Plaintiffs allege that Defendants' failure to properly conduct list maintenance exacerbates the problem, but cite no authority or evidence to

support their ultimate conclusion that these alleged failures will lead to voter fraud.[1] It is not enough for Plaintiffs to simply identify problems with Defendants' list maintenance; Plaintiffs bear the burden of demonstrating that these alleged problems will indeed likely lead to voter fraud.

16. The Court also finds that existing criminal prohibitions against voter fraud, voter intimidation and related offenses, *see* NRS 293.700–800, provide an adequate deterrent to election-related crime. For these reasons, Defendants have not put forth sufficient evidence to demonstrate that AB 4 will result in irreparable harm.

F. Probability of Success on the Merits

17. Just as they must show irreparable harm as a condition of obtaining a preliminary injunction, Plaintiffs must show a reasonable probability of success on the merits. As a general proposition, Plaintiffs allege that AB 4 violates the equal protection guarantees of Article 4, Section 21 of the Nevada Constitution. Plaintiffs allege that AB 4 violates equal protection because it increases the risk of voter fraud, thus diluting honest votes. The Court finds that Plaintiffs' challenge is governed by a rational basis standard of review.

18. "Under the rational basis standard, legislation will be upheld so long as it is rationally related to a legitimate governmental interest." *Williams v. State*, 118 Nev. 536, 542, 50 P.3d 1116, 1120 (2002). Applying the rational basis standard here is consistent with the federal standard governing elections: "[W]hen a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S. Ct. 2059, 2063 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S. Ct. 1564, 1570 (1983)).

[1] In addition, the Secretary of State's office uses different records than those evaluated by Plaintiffs, calling into question the accuracy of Plaintiffs' findings.

19. Given the COVID-19 pandemic, the Nevada Legislature was faced with the daunting challenge of fully enfranchising voters while maintaining the integrity of the election process. Under current circumstances, AB 4 reflects a reasonable decision to adopt vote-by-mail processes as a means of enfranchising voters who might have justifiable health concerns if they vote at in-person polling locations. The full text of AB 4 reveals that Nevada's legislators acted reasonably and in good faith to strike an appropriate balance between election integrity concerns, public health concerns, and voter access concerns. This decision is particularly reasonable considering the record voter participation in the June 2020 primary election in Nevada, with 491,654 Nevadans participating—and 98.4 percent of those voters returning their ballots by mail.[2] At the same time, the Nevada Legislature kept in place the numerous fail-safes embedded in Nevada law to prevent and detect voter fraud and ensure the integrity of Nevada's elections. AB 4 largely incorporates and supplements the State's existing election code to safeguard the franchise in November and during future crises.

20. With respect to Plaintiffs' claims about specific provisions of AB 4, Sections 11 and 12 reasonably allocate polling locations based on each county's population. The Nevada Legislature had numerous plausible policy reasons to allocate polling places in AB 4 according to each county's total population—including long lines experienced in the State's most populous counties during the June Primary, and the fact that Nevada's same-day registration law means that polling locations serve all potential voters, not just those who are registered. *See* NRS 293.5842. Additionally, Sections 11 and 12 require only that a *minimum* number of physical polling locations be placed in each of Nevada's counties. Sections 11 and 12 do not preclude local election officials in rural or urban counties from

---

[2] *2020 Primary Election Turnout*, Nev. Sec'y of State, https://www.nvsos.gov/sos/home/showdocument?id=8686 (June 19, 2020). By comparison, the 2016 primary election—the last to be held in a presidential election year—saw 240,213 Nevadans participate, with just 10.5 percent of voters returning their ballots by mail. *2016 Primary Election Turnout: In Person Early Voting, Absent, and Mailing Precincts*, Nev. Sec'y of State, https://www.nvsos.gov/sos/home/showdocument?id=4310 (June 23, 2016).

establishing a greater number of physical polling places than the required minimums. Far from discriminating against the voters in any particular county, Sections 11 and 12 give local election officials the flexibility to adapt to local needs and conditions based upon historical trends and projected in-person turnout for the 2020 general election.[3] Sections 11 and 12 do not, as Plaintiffs contend, constitute "arbitrary and capricious action" on the part of the Legislature, *Reynolds*, 377 U.S. at 557, 84 S. Ct. at 1379 (quoting *Baker v. Carr*, 369 U.S. 186, 226, 82 S. Ct. 691, 715 (1962)), or fail to meet the "rudimentary requirements of equal treatment and fundamental fairness." *Bush*, 531 U.S. at 109, 121 S. Ct. at 532. Therefore, there is a rational basis for the provisions of Sections 11 and 12.

21. Likewise, there is a rational basis for Section 20(2) of AB 4. Section 20(2) establishes a presumption that a mailed ballot received within three days after the election was cast on or before the date of the election if the ballot envelope bears no postmark or an illegible postmark. Plaintiffs argue that Section 20(2) effectively pushes back the date of the election, as mandated by federal law, thus diluting timely cast votes with late-cast votes. The Court accepts Defendants' representation that the U.S. Postal Service has adopted a policy of affixing postmarks to all election-related mail, including ballots, even though it generally does not affix postmarks to prepaid mail. This makes it highly unlikely that a late-cast ballot will be counted. For a late-cast ballot to be counted, the ballot would have to be mailed on November 4 or later, and arrive by November 6 without a legible postmark, or with no postmark at all. This is highly improbable. On the other hand, it is reasonably likely that a timely mailed ballot will arrive without a legible postmark during the window of time between November 4 and November 6. Section 20(2) ensures that such votes will be counted.

---

[3] In fact, several smaller rural counties have already announced their plans to open additional polling places for election day. Elko County, for example, intends to provide seven polling locations on election day, while Nye County will have at least five locations open. *See 2020 General Election & Polling Locations*, Nev. Sec'y of State, https://www.nvsos.gov/sos/elections/election-day-information (last visited Sept. 21, 2020).

22. Plaintiffs are also unlikely to succeed on their challenges to the other sections of AB 4, specifically, Sections 22 through 27, 39, 48 through 49, 69, and 79 through 80. As explained, Plaintiffs have failed to provide evidence of any injury resulting from these provisions of AB 4. NRS 33.010 (injunctive relief only available when the challenged action "would produce great or irreparable injury to the plaintiff").

23. For these reasons, Plaintiffs are unlikely to prevail upon their merits of their challenge to AB 4.

G. Public Interest

24. Plaintiffs must also demonstrate that the public interest would be served if AB 4 were enjoined. "By definition, '[t]he public interest . . . favors permitting as many qualified voters to vote as possible.'" *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (alteration in original) (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012)). Nevada's Legislature enacted AB 4 to ensure that all eligible Nevadans can "safely and securely" access the franchise during the COVID-19 pandemic. § 2(1). The Court accepts Defendants' representation that the Secretary of State has already begun notifying Nevadans about how to vote in the November Election pursuant to the provisions of AB 4. Granting Plaintiffs' request to upend AB 4 at this late date would negatively impact and disrupt the election process that is already under way and would disenfranchise voters who have relied on the notices of an all-mail election.

F. Unfunded Mandate

25. Policy choices and value determinations that are constitutionally committed to other branches are political questions outside the purview of judicial review. *N. Lake Tahoe Fire Prot. Dist. v. Washoe Cnty. Bd. of Cnty. Comm'rs*, 129 Nev. 682, 687, 310 P.3d 583, 587 (2013). Plaintiffs challenge AB 4 on the ground that it contains an unfunded mandate to local governments. The challenge seeks to alter the allocation of public funds, and ultimately the cost burdens, between state and local units of governments. The manner of allocating funds and cost burdens between state and local units of government is a legislative function, not a judicial function. Therefore, the Court finds that Plaintiffs'

claim concerning the alleged unfunded mandate of AB 4 is not justiciable. For the same reason, the Court finds that NRS 354.599 does not confer a private right of action upon Plaintiffs.

26. To the extent any conclusion of law is more appropriately characterized as a finding of fact, it is incorporated as such above.

NOW THEREFORE, the Court **GRANTS** the motion to appear *pro hac vice* filed by Abha Khanna, Esq.; **GRANTS** Intervenor-Defendants' motion to intervene; and **DENIES** Plaintiffs' motion for a preliminary injunction preventing the implementation of AB 4.

DATED this 28th day of September, 2020.

DISTRICT COURT JUDGE
ROB BARE

Submitted by:

AARON D. FORD
Attorney General
By: */s/ Gregory L. Zunino*
GREGORY L. ZUNINO (Bar No. 4805)
Deputy Solicitor General
State of Nevada
Office of the Attorney General
100 N. Carson St.
Carson City, Nevada 89701
Email: gzunino@ag.nv.gov

Attorneys for Defendant

Reviewed as to form and content by:

Joel F. Hansen, Esq. (Bar No. 1876)
HANSEN & HANSEN, LLC
9030 W. Cheyenne Ave., #210
Las Vegas, Nevada 89129
jfhansen@hansenlawyers.com

Refused to sign
JOEL F. HANSEN
Attorneys for Plaintiffs

Bradley S. Schrager, Esq., (Bar No. 10217)
Daniel Bravo, Esq., (Bar No. 13078)
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120
bschrager@wrslawyers.com
/s/ Bradley S. Schrager
BRADLEY S. SCHRAGER

Abha Khanna - *Pro hac vice granted*
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
Attorneys for Proposed Intervenor-Defendants Institute for a Progressive Nevada and Progressive Leadership Alliance of Nevada

EXHIBIT 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELECTION INTEGRITY PROJECT OF NEVADA, LLC; AND SHARRON ANGLE, AN INDIVIDUAL,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ROB BARE, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA ON RELATION OF BARBARA K. CEGAVSKE, IN HER OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE; INSTITUTE FOR A PROGRESSIVE NEVADA AND THE PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA,
Real Parties in Interest.

No. 81847

FILED

OCT 07 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

This emergency petition for a writ of mandamus or prohibition challenges a district court order denying a motion for a preliminary injunction in an action challenging the constitutionality of recently enacted Assembly Bill 4, which allows statewide voting by mail when an emergency or disaster has been declared and provides for the mailing of ballots to all active registered voters.

20-36922

Petitioners seek extraordinary relief, arguing that the law required the district court to grant a preliminary injunction to halt the implementation of Assembly Bill (AB) 4, which they assert violates the Nevada Constitution's equal protection provision, Article 4, § 21, because it allows for "standardless counting procedures," lacks minimal safeguards to evaluate ballots equally, allows ballots cast after election day to be counted, and permits various "fraudulent abuses of election procedures, resulting in dishonest and incorrect voting totals." Although writ relief ordinarily will not lie when a party has another remedy such as an appeal and orders denying preliminary injunctions are appealable under NRAP 3A(b)(3), we will entertain this petition because it was filed before entry of a written order and involves a matter of urgency given the deadlines for mailing ballots. *See Las Vegas Review-Journal v. Eighth Judicial Dist. Court*, 134 Nev. 40, 43, 412 P.3d 23, 26 (2018) (accepting a petition for writ relief, directing entry of a written order, ordering expedited briefing, and addressing the petition on its merits under similar urgent circumstances where "a later appeal would not adequately remediate the harm complained of").

Based on the nature of the relief requested and the district court's jurisdiction to consider the request for a preliminary injunction, we conclude that a petition for a writ of mandamus, rather than prohibition, is the appropriate means to challenge the district court's decision under these circumstances. *Compare* NRS 34.160 (providing that a writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station), *with* NRS 34.320 (providing that a writ of prohibition is available to restrain a tribunal's proceedings

that "are without or in excess of [its] jurisdiction"), *and Goicoechea v. Fourth Judicial Dist. Court*, 96 Nev. 287, 289, 607 P.2d 1140, 1141 (1980) (holding that a writ of prohibition "will not issue if the court sought to be restrained had jurisdiction to hear and determine the matter under consideration"). But, we are not persuaded that petitioners have met their burden of demonstrating that mandamus relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that petitioners bear the burden to demonstrate that writ relief is warranted).

This petition was not filed with this court until September 25, 2020.[1] AB 4 was approved by the Governor on August 3, 2020. The next day, several entities filed suit in federal court to challenge various provisions of AB 4 raising many claims identical to those raised by petitioners. *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5626974 (D. Nev. Sept. 18, 2020). Petitioners in this matter then waited until September 1, 2020, to file their complaint in state court, which challenges both changes to the law in AB 4 but also provisions that were already in Nevada law and could have been challenged even earlier. According to documents provided in petitioners' appendix,

---

[1]The appendix filed with the petition is 20 volumes and the size of each volume varies between 14 and roughly 130 pages. It lacks a comprehensive index, and some of the volumes are not individually indexed. Petitioners do not always cite to the record to support statements in their petition and when they do, they cite to exhibits attached to documents within the record without providing page numbers for the language on which they rely (e.g., Declaration of Sharron Angle attached to the complaint, Appdx. 1).

several counties planned to send mail-in ballots to active registered voters on September 24, the day before petitioners filed their petition with this court. And while we have endeavored to expedite both briefing and consideration of this matter to the extent possible, to grant the petition at this late date would inject a significant measure of confusion into an election process that is already underway. We are reluctant to do so absent a clear and compelling demonstration that the district court had a legal duty to enjoin AB 4. *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("By definition, [t]he public interest . . . favors permitting as many qualified voters to vote as possible."). That showing has not been made here.

To obtain a preliminary injunction, petitioners had to show (1) a likelihood of success on the merits and (2) a reasonable probability that the conduct of mailing, verifying, and counting ballots, if allowed to continue, will cause petitioners irreparable harm. *Univ. and Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). While petitioners need not "establish certain victory on the merits, [they] must make a prima facie showing through substantial evidence that [they are] entitled to the preliminary relief requested." *Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018). Relatedly, an action must be ripe for judicial review, meaning that it "present[s] an existing controversy, not merely the prospect of a future problem." *Resnick v. Nevada Gaming Commission*, 104 Nev. 60, 65-66, 752 P.2d 229, 232 (1988).

The district court determined that petitioners did not present a ripe controversy because the harm they alleged was largely hypothetical,

and regardless, AB 4 did not violate equal protection principles and the relative hardships and public interest weighed against a preliminary injunction. *See Univ. Sys.*, 120 Nev. at 721, 100 P.3d at 187 (observing that, in considering preliminary injunctions, courts also "weigh the potential hardships to the relative parties and others, and the public interest"). On this record, we agree.[2] *Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015) (recognizing that the decision to grant a preliminary injunction is within the district court's discretion, and this court will overturn such a decision only "when the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact" (internal quotations omitted)); *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009) (observing that questions of law, including whether a statute is constitutional, are reviewed de novo and "[s]tatutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional").

We have considered each of petitioners' challenges to the various provisions of AB 4, along with the evidence petitioners presented

---

[2]With the reply in support of their petition, petitioners offer evidence that was not presented to the district court, suggesting that we should consider that evidence because they could have sought extraordinary relief with this court in the first instance. Even if petitioners had proceeded directly in this court in the first instance, this court generally declines to exercise its discretion to entertain mandamus petitions unless "legal, rather than factual, issues are presented" because "an appellate court is not an appropriate forum in which to resolve disputed questions of fact." *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981). We therefore have not considered the new evidence offered by petitioners.

below to support their complaint and motion. Assuming without deciding that the district court correctly determined that petitioners had standing to challenge AB 4 under the public importance exception to the standing doctrine set forth in *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016), we conclude that the court properly concluded that petitioners failed to make a prima facie showing through substantial evidence that they were entitled to a preliminary injunction preventing the Secretary of State from implementing AB 4. Petitioners did not allege any burden that the challenged provisions of AB 4 impose on an identifiable group's right to vote. We therefore are not convinced that the district court was obligated to apply strict scrutiny. *See Short v. Brown*, 893 F.3d 671, 676 (9th Cir. 2018) (discussing review applied to constitutional challenges to a state election law); *see also Burdick v. Takushi*, 504 U.S. 428, 434 (1992) ("[T]he rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights."). We also are not convinced that the district court erred in concluding that petitioners did not demonstrate with substantial evidence that the challenged provisions are not rationally related to the State's interest in ensuring that all active registered voters have an opportunity to exercise their right to vote in a safe and secure manner during a pandemic. *See Burdick*, 504 U.S. at 433-34 ("When a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions" (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983))). Similarly, although petitioners argued that certain provisions of AB 4 will

make the voting system susceptible to illegitimate votes that would result in irreparable harm by diluting legitimate votes, they presented no concrete evidence that such events will occur or that the Secretary of State's maintenance of the voter rolls exacerbated any such problem. And there are provisions in AB 4, along with existing provisions of NRS Chapter 293, that provide numerous safeguards to prevent and detect voter fraud, including criminal prohibitions against voter fraud, voter intimidation, and related offenses. AB 4 §§ 21, 40, 44, 70, 75; NRS 293.700; NRS 293.710; NRS 293.775; and NRS 293.770. Consistent with the foregoing, we

ORDER the petition for extraordinary writ relief DENIED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. Rob Bare, District Judge
Hansen & Hansen, LLC
Attorney General/Carson City
Perkins Coie, LLP/Seattle
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas
Eighth District Court Clerk

EXHIBIT 5

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

-oOo-

FRED KRAUS, an individual registered to vote in Clark County, Nevada, DONALD J. TRUMP FOR PRESIDENT, INC., and the NEVADA REPUBLICAN PARTY,

Petitioners,

vs.

BARBARA CEGAVSKE, in her official capacity as Nevada Secretary of State, JOSEPH P. GLORIA, in his official capacity as Registrar of Voters for Clark County, Nevada,

Respondents.

CASE NO. 20 OC 00142 1B

DEPT. 2

ORDER DENING EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

PROCEDURAL BACKGROUND

Before the Court is the Emergency Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition. The Court held an evidentiary hearing on October 28, 2020.

ISSUES

Do Petitioners have standing to bring these claims?

Has Registrar Joseph P. Gloria failed to meet his statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots?

Has Registrar Gloria unlawfully precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled?

Has Registrar Gloria exercised discretion arbitrarily or through mere caprice?

Has Registrar Gloria acted without or in excess of authorized powers?

Has Secretary of State Barbara Cegavske failed to meet any statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots?

Has Secretary of State Barbara Cegavske unlawfully precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled?

Has Secretary Cegavske exercised discretion arbitrarily or through mere caprice?

Has Secretary Cegavske acted without or in excess of authorized powers?

Has Secretary of State Cegavske unlawfully precluded Petitioners the use and/or enjoyment of a right to which Petitioners are entitled?

Have Petitioners proved they are entitled to a writ of mandamus on their equal protection claims?

FACTS

It is important to note the factual context in which this case arose. All of the states in the United States are attempting to hold elections under the health, political, social, and economic consequences of the COVID-19 pandemic. Nevada's state and county election officials had relatively little time to assess, plan, modify, and implement procedures that are quite different from the established election procedures in an effort

to provide safe, open elections that would not result in long waiting lines. The modification of procedures includes fewer polling places, a very large increase in mail-in voting, and long lines as a result of social distancing.

A second important context is that this lawsuit was filed October 23, 2020–11 days before the general election.

Every Nevada county is required to submit to the Secretary of State, by April 15, 2020, the county's plan for accommodation of members of the general public who observe the processing of ballots. NRS 293B.354(1). Registrar Gloria did not submit a plan by April 15, 2020.

Registrar Gloria submitted a plan to the Secretary of State on October 20, 2020. A copy of the plan is attached as Exhibit 1.

Historically, the Secretary of State has not sent letters or other notification to the counties approving the counties' plans.

The Secretary of State's office reviewed Registrar Gloria's plan, concluded it complied with the law, and Secretary Cegavske issued a letter to Registrar Gloria on October 22, 2020. The letter is attached as Exhibit 2. The Secretary did not write that Registrar Gloria's plan was "approved," but it is clear from the letter that the plan was approved with a suggestion to that the Registrar consider providing additional seating in public viewing areas for observers to view the signature verification process to the extent feasible while ensuring that no personally identifiable information is observable by the public.

A copy of all 17 county plans were admitted as exhibits. Clark County's plan is not substantially different from the plan of any of the other 16 counties, and none of the plans is substantially different from the plans of previous years.

Clark County uses an electronic ballot sorting system, Agilis. No other Nevada county uses Agilis. Some major metropolitan areas including Cook County, Illinois, Salt

Lake City, Utah, and Houston, Texas use Agilis. Some Nevada counties use other brands of ballot sorting systems.

Registrar Gloria decided to purchase Agilis because of the pandemic and the need to more efficiently process ballot signatures.

One of Petitioners' attorneys questioned Registrar Gloria about Agilis in earlier case, Corona v. Cegavske, but never asked Registrar Gloria to stop using Agilis.

Clark County election staff tested Agilis by manually matching signatures. Clark County election staff receives yearly training on signature matching from the Federal Bureau of Investigation. The last training was in August of this year.

For this general election Clark County is using the same they used for the June primary election. No evidence was presented that the setting used by Clark County causes or has resulted in any fraudulent ballot being validated or any valid ballot invalidated.

No evidence was presented of any Agilis errors or inaccuracies. No evidence was presented that there is any indication of any error in Clark County's Agilis signature match rate.

Registrar Gloria opined that if Clark County could not continue using Agilis the county could not meet the canvass deadline which is November 15, 2020. The Court finds that if Clark County is not allowed to continue using Agilis the county will not meet the canvass deadline.

When the envelope containing mail-in ballots are opened the ballot and envelope are separated and not kept in sequential order. Because they are not kept in sequential order it would be difficult to identify a voter by matching a ballot with its envelope.

This is the first election in Registrar Gloria's 28 years of election experience in Clark County that there are large numbers of persons wanting to observe the ballot process.

Persons that observe the ballot process sign an acknowledgment and a memo containing instructions to the observer. A copy of an acknowledgment and memo are attached as Exhibit 3.

People hired by the Registrar to manage the people wanting to observe the ballot process are called ambassadors. The observer acknowledgment states observers are prohibited from talking to staff. The memo explains the role of ambassadors and invites observers to inform their ambassador they have a question for election officials or the observer may pose a question directly to an election official.

Registrar Gloria is not aware of any observer complaints.

Several witnesses supporting Petitioners and called by Petitioners testified: they saw ballots that had been removed from the envelope left alone; runners handle ballots in different ways, including taking the ballots into an office, taking ballots into "the vault" and/or otherwise failing to follow procedure, but no procedure was identified; inability to see some tables from the observation area; inability to see into some rooms; inability to see all election staff monitors; inability to see names on monitors; saw a signatures she thought did not match but admitted she had no signature comparison training; and/or trouble getting to where they were supposed to go to observe and trouble being admitted to act as observer at the scheduled time.

No evidence was presented that any party or witness wanted to challenge a vote or voter, or had his or her vote challenged.

No evidence was presented that there was an error in matching a ballot signature, that any election staff did anything that adversely affected a valid ballot or failed to take appropriate action on an invalid ballot.

No evidence was presented that any election staff were biased or prejudiced for or against any party or candidate.

One Petitioner witness did not raise issues regarding things she observed with an ambassador but instead went to the Trump Campaign. No issue was ever raised as a result of her observations or report to the Trump Campaign.

Washoe County is using cameras to photograph or videotape the ballot process.

No Nevada county hand-counts ballots.

LEGAL PRINCIPLES

Standing

Nevada law requires an actual justiciable controversy as a predicate to judicial relief. *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). For a controversy to exist the petitioner must have suffered a personal injury and not merely a general interest that is common to all members of the public. *Schwarz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

Mandamus and Prohibition

A court may issue a writ of mandamus "to compel the performance of an act which the law especially enjoins as a duty resulting from an office . . . ; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such . . . person." NRS 34.160. A court may issue a writ of mandamus "when the respondent has a clear, present legal duty to act." *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603, 637 P.2d 534 (1981). The flip side of that proposition is that a court cannot mandate a person take action if the person has no clear, present legal duty to act. Generally, mandamus will lie to enforce ministerial acts or duties and to require the exercise of discretion, but it will not serve to control the discretion." *Gragson v. Toco*, 90 Nev. 131,

133 (1974). There is an exception to the general rule: when discretion "is exercised arbitrarily or through mere caprice." *Id.*

"Petitioners carry the burden of demonstrating that extraordinary relief is warranted." *Pan v. Dist. Ct.*, 120 Nev. 222, 228 (2004).

The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal . . . or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal . . . or person. NRS 34.320.

A writ of prohibition "may be issued . . . to a person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.330.

Voting Statutes

NRS 293B.353 provides in relevant part:

> 1. The county . . . shall allow members of the general public to observe the counting of the ballots at the central counting place if those members do not interfere with the counting of the ballots.
>
> 2. The county . . . may photograph or record or cause to be photographed or recorded on audiotape or any other means of sound or video reproduction the counting of the ballots at the central counting place.
>
> 3. A registered voter may submit a written request to the county . . . clerk for any photograph or recording of the counting of the ballots prepared pursuant to subsection 2. The county . . . clerk shall, upon receipt of the request, provide the photograph or recording to the registered voter at no charge.

NRS 293B.354 provides in relevant part:

> 1. The county clerk shall, not later than April 15 of each year in which a general election is held, submit to the Secretary of State for approval a written plan for the accommodation of members of the general public who observe the delivery, counting, handling and processing of ballots at a polling place, receiving center or central counting place.
>
> . . .

3. Each plan must include:

(a) The location of the central counting place and of each polling place and receiving center;

(b) A procedure for the establishment of areas within each polling place and receiving center and the central counting place from which members of the general public may observe the activities set forth in subsections 1 and 2;

(c) The requirements concerning the conduct of the members of the general public who observe the activities set forth in subsections 1 and 2; and

(d) Any other provisions relating to the accommodation of members of the general public who observe the activities set forth in subsections 1 and 2 which the county . . . considers appropriate.

AB 4 section 22 provides in relevant part:

1. For any affected election, the county . . . clerk, shall establish procedures for the processing and counting of mail ballots.

2. The procedures established pursuant to subsection 1:

(a) May authorize mail ballots to be processed and counted by el electronic means; and

(b) Must not conflict with the provisions of sections 2 to 27, I innclusive, of this act.

AB 4 section 23 provides in relevant part:

1. . . . for any affected election, when a mail ballot is returned by or on behalf of a voter to the county . . .clerk . . . and a record of its return is made in the mail ballot record for the election, the clerk or an employee in the office of the clerk shall check the signature used for the mail ballot in accordance with the following procedure:

a. The clerk or employee shall check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk.

AB 4 section 25 provides in relevant part:

1. The counting procedures must be public.

ANALYSIS

Petitioners failed to prove they have standing to bring their Agilis, observation, ballot handling or secrecy claims.

As set forth above for a justiciable controversy to exist the petitioner must have suffered a personal injury and not merely a general interest that is common to all members of the public. Petitioners provided no evidence of any injury, direct or indirect, to themselves or any other person or organization. The evidence produced by Petitioners shows concern over certain things these observers observed. There is no evidence that any vote that should lawfully be counted has or will not be counted. There is no evidence that any vote that should lawfully not be counted has been or will be counted. There is no evidence that any election worker did anything outside of the law, policy, or procedures. Petitioners do not have standing to maintain their mandamus claims.

Likewise, Petitioners provided no evidence of a personal injury and not merely a general interest that is common to all members of the public regarding the differences between the in-person and mail-in procedures. Petitioners provided no evidence of any injury, direct or indirect, to themselves or any other person or organization as a result of the different procedures. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting in person and voting by mailing in the ballot are different and so the procedures differ. There is no evidence that anything the State or Clark County have done or not done creates two different classes of voters. There is no evidence that anything the State or Clark County has done values one voter's vote over another's.

There is no evidence of any debasement or dilution of any citizen's vote. Petitioners do not have standing to bring their equal protection claims.

Petitioners failed to prove Registrar Gloria failed to meet his statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots?

Petitioners argued they have a right to observers having meaningful observation under NRS 293B.353(1) and AB 4 sec. 25. NRS 293B.353(1) provides in relevant part, "[t]he county . . . shall allow members of the general public to observe the counting of the ballots . . . ." AB 4 sec. 25 provides in relevant part "[t]he counting procedure must be public." The statutes do not use the modifier "meaningful."

The Nevada Legislature codified the right of the public to observe the ballot counting procedure in NRS 293B.353 and 293B.354, and AB 4 section 25(1). NRS 293B.354(1) requires each county to annually submit a plan to the Secretary of State. NRS 293B. 354(3) states the requirements of the plan. The statutory requirements of the plan are very general. The legislature left to the election professionals, the Secretary of State and the county elections officials, wide discretion in establishing the specifics of the plan. Petitioners failed to prove either Secretary Cegavske or Registrar Gloria exercised their discretion arbitrarily or through mere caprice.

The fact that Registrar failed to timely submit a plan was remedied by submitting the plan late and the Secretary of State approving the plan.

Petitioners seem to request unlimited access to all areas of the ballot counting area and observation of all information involved in the ballot counting process so they

can verify the validity of the ballot, creating in effect a second tier of ballot counters and/or concurrent auditors of the ballot counting election workers. Petitioners failed to cite any constitutional provision, statue, rule, or case that supports such a request. The above-cited statutes created observers not counters, validators, or auditors. Allowing such access creates a host of problems. Ballots and verification tools contain confidential voter information that observers have not right to know. Creating a second tier of counters, validators, or auditors would slow a process the Petitioners failed to prove is flawed. The request if granted would result in an increase in the number of persons in the ballot processing areas at a time when social distancing is so important because of the COVID-19 pandemic.

Petitioners have failed to prove Registrar Gloria has interfered with any right they or anyone else has as an observer.

Petitioners claim a right to have mail-in ballots and the envelopes the ballots are mailed in to be kept in sequential order. Petitioners failed to cite Constitutional provision, statute, rule, or case that creates a duty for Nevada registrars to keep ballots and envelopes in sequential order. Because they failed to show a duty they cannot prevail on a mandamus claim that requires proof a duty resulting from office. Because there is no duty or right to sequential stacking the Court cannot mandate Registrar Gloria to stack ballots and envelopes sequentially.

Because there is not right to sequential stacking the Court cannot mandate the use and enjoyment of that "right."

Plaintiffs want the Court to mandate Registrar Gloria allow Petitioners to photograph of videotape the ballot counting process. The legislature provided in NRS

293B.353(2) the procedure for photographing or videotaping the counting of ballots. The county may photograph or videotape the counting and upon request provide a copy of the photographs or videotapes.

Petitioners failed to cite any constitutional provision, statute, rule, or case that gives the public the right to photograph or videotape ballot counting.

Petitioners failed to prove Secretary Cegavske or Registrar Gloria exercised her or his discretion arbitrarily or through mere caprice in any manner. Therefore, the Court cannot mandate Registrar Gloria to require sequential stacking of ballots and envelopes.

Petitioners requested the Court mandate Registrar Gloria provide additional precautions to ensure the secrecy of ballots. Petitioners failed to prove that the secrecy of any ballot was violated by anyone at any time. Petitioners failed to prove that the procedures in place are inadequate to protect the secrecy of every ballot.

Petitioners also request the Court mandate Registrar Gloria stop using the Agilis system. Petitioners failed to show any error or flaw in the Agilis results or any other reason for such a mandate. Petitioners failed to show the use of Agilis caused or resulted in any harm to any party, any voter, or any other person or organization. Petitioners failed Registrar Gloria has a duty to stop using Agilis.

AB 4 passed by the legislature in August 2020 specifically authorized county officials to process and count ballots by electronic means. AB 4, Sec. 22(2)(a). Petitioners' argument that AB 4, Sec. 23(a) requires a clerk or employee check the signature on a returned ballot means the check can only be done manually is meritless. The ballot must certainly be checked but the statute does not prohibit the use of electronic means to check the signature.

Equal Protection

There is no evidence that in-person voters are treated differently than mail-in voters. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting in person and voting by mailing in the ballot are different and so the procedures differ. Nothing the State or Clark County have done creates two different classes of voters. Nothing the State or Clark County has done values one voter's vote over another's. There is no evidence of debasement or dilution of a citizen's vote.

CONCLUSIONS OF LAW

Petitioners do not have standing to bring these claims.

Registrar Joseph P. Gloria has not failed to meet his statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots.

Registrar Gloria has not precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled.

Registrar Gloria has not exercised discretion arbitrarily or through mere caprice.

Registrar Gloria has not acted without or in excess of authorized powers.

Secretary of State Barbara Cegavske has not failed to meet any statutory duty under NRS 293B.353(1) to allow members of the general public to observe the counting of ballots.

Secretary of State Barbara Cegavske has not unlawfully precluded Petitioners from the use and enjoyment of a right to which Petitioners are entitled.

Secretary Cegavske has not exercised discretion arbitrarily or through mere caprice.

Secretary Cegavske has not acted without or in excess of authorized powers.

Secretary of State Cegavske has not precluded Petitioners the use and/or enjoyment of a right to which Petitioners are entitled.

Petitioners failed to prove they are entitled to a writ of mandamus on any of their claims.

ORDER

The Petition for Writ of Mandamus or in the Alternative for Writ of Prohibition is denied.

October 29, 2020.

James E. Wilson, Jr.
District Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 2 day of November 2020, I served a copy of this document by placing a true copy in an envelope addressed to:

Brian R. Hardy, Esq. 10001 Park Run Drive Las Vegas, NV 89145 bhardy@maclaw.com MaryAnn Miller Office of the District Attorney Civil Division 500 S. Grand Central Parkway Las Vegas, NV 89106 Mary-Anne.Miller@clarkcountyda.com Daniel Bravo, Esq. 3556 E. Russell Road Second Floor Las Vegas, NV 89120 dbravo@wrslawyers.com	David O'Mara, Esq. 311 E. Liberty Street Reno, NV 89501 david@omaralaw.net Bradley Schrager, Esq. 3556 E. Russell Road Second Floor Las Vegas, NV 89120 Bschrager@wrs.awyers.com Gregory L. Zunino, Esq. Office of the Attorney General 100 North Carson Street Carson City, NV 89701 Gzunino@ag.nv.gov

the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.

Billie Shadron
Judicial Assistant

Election Department

965 Trade Dr • Ste A • North Las Vegas NV 89030
Voter Registration (702) 455-8683 • Fax (702) 455-2793

Joseph Paul Gloria, Registrar of Voters
Lorena Portillo, Assistant Registrar of Voters

October 20, 2020

The Honorable Barbara K. Cegavske
Secretary of State
State of Nevada
101 N. Carson St., Suite 3
Carson City, Nevada 89701-4786

Attention: Wayne Thorley
Deputy Secretary of State for Elections

RE: Accommodation of Members of the General Public at Polling Places, Mail Ballot Processing, and at the Central Counting Place

Dear Secretary Cegavske:

In accordance with NRS 293B.354, I am forwarding to you the following guidelines which are provided to our polling place team leaders and our election staff to ensure we accommodate members of the general public who wish to observe activities within a polling place and/or at the central counting facilities.

Polling Places (Early Voting and Election Day)

Designated public viewing areas are established in each polling place, both early voting and Election Day vote centers, where individuals may quietly sit or stand and observe the activities within the polling place.

Observation guidelines:

- Observers may not wear or display political campaign items
- Observers may not photograph, or record by any other means, any activity at any early voting or Election Day polling place
- Use of cell phones is prohibited in the polling place
- Observers may not disrupt the voting process
- If observers have questions, they must direct them to the polling place team leader

Mail Ballot Processing (Warehouse & Flamingo-Greystone Facility)

The general public is allowed, according to the NRS, to observe the counting of mail ballots. In addition, as a courtesy, members of the general public are also being allowed to observe our mail ballot processing procedures, which occur prior to tabulation.

Due to space limitations we are processing our mail ballots in two different facilities:

- 965 Trade Dr., North Las Vegas, NV 89030
  - AGILIS mail ballot processing
  - Signature audit team
  - Tabulation
    - Ballot duplication
- 2030 E. Flamingo Road, Las Vegas, NV 89119
  - Counting Board
    - Ballot duplication

Observation guidelines:

- Observers may not wear or display political campaign items
- Observers may not photograph, or record by any other means, any activity at any early voting or Election Day polling place
- Use of cell phones is prohibited in the polling place
- Observers may not disrupt the voting process
- If observers have questions, they must direct them to the polling place team leader

Election Night (Warehouse Tabulating)

In front of our tabulation area an area is provided for any observer who wishes to observe our counting activity. Reports are provided after each update to the general public and are also available on our website for review. The general public may access the website through our free county wi-fi access on their personal devices should they choose to do so.

The public viewing area allows the general public to view the tabulation room, where the processing of election night results may be observed through windows that provide full view of all counting activity. Observers are not allowed inside the room because of congestion and COVID restrictions.

The Registrar is available to answer questions, although it should be noted that very few

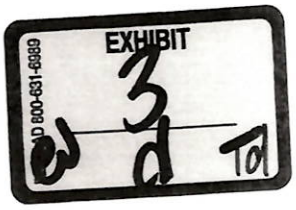
individuals from the public have been at the Election Center Warehouse on election night since 2000. This will probably be different this year due to increased interest in observing our activities.

In accordance with NRS 293B.354, at link provided here is a link to the vote center polling places that will be used in the General Election on November 3, 2020 in Clark County. https://cms8.revize.com/revize/clarknv/Election%20Department/VC-Web-20G.pdf?t=1602940110601&t=1602940110601. An electronic copy is also attached to the e-mail.

Sincerely,

Joseph P. Gloria
Registrar of Voters

Enclosures



OBSERVATION OF POLLING PLACE OR CLARK COUNTY ELECTION DEPARTMENT LOCATIONS ACKNOWLEDGEMENT

In accordance with NAC 293.245 (full text included in page 2):

I, VIRGINIA STEWART, by signing this form, hereby acknowledge that during the time I observe the conduct of voting or of any election related process, I am prohibited from the following activities:

1. Talking to voters or staff within the polling place or Election Department location;
2. Using any technical devices within the polling place or Election Department location;
3. Advocating for or against a candidate, political party or ballot question;
4. Arguing for or against or challenging any decisions of the county or city election personnel and;
5. Interfering with the conduct of voting or any election related process.

I further acknowledge that I may be removed from the polling place by the county or city clerk for violating any provisions of Title 24 of the Nevada Revised Statutes or any of the restrictions described herein.

Representing Group/Organization: Republican Party

Contact Information: 6196568405

Signature: [signature]

Print Name: VIRGINIA STEWART

Date: 10/27/20

Polling Place or Election Department Location: TRADE

October 21, 2020

Memo to Election Observers in the Greystone or County Election Department buildings:

Thank you for choosing to observe our voting process.

The department brought in additional staff to provide adequate supervision and security for observation areas. These staff, whom we call ambassadors, will accompany you while you are in our facilities.

Our ambassadors are not permanent Election Department employees and receive no training in our election processes, and so they are not able to accurately answer your questions about elections.

If you have any questions about the processes you are observing or other election-related questions, please inform the ambassador that you have a question for County Election Department officials. (The ambassador will create a list of questions from observers to relay to Election officials.) Or, you may choose to wait and pose their question to the Election official directly.

At this time, we plan to make Election Department officials available to observers around 9 a.m. and 3 p.m. daily to respond to any questions or concerns. These meetings will occur at both the Greystone and Election Department buildings

Thank you for our understanding.

Sincerely,

Joe Gloria

Clark County Registrar of Voters

BARBARA K. CEGAVSKE
Secretary of State

MARK A. WLASCHIN
Deputy Secretary for Elections

STATE OF NEVADA

OFFICE OF THE
SECRETARY OF STATE

SCOTT W. ANDERSON
Chief Deputy Secretary of State

October 22, 2020

Mr. Joe Gloria, Registrar of Voters
965 Trade Drive, Suite A
North Las Vegas, NV 89030-7802
jpg@ClarkCountyNV.gov
via Email

Re: Revision of Observation Plan

Mr. Gloria,

Over the last few days, a potential opportunity for improvement to your elections process observation plan have come to light that the Secretary of State believes to be worth considering. We have received Clark County's plan for accommodating election observers. In addition to the items detailed in your plan, we would request that you consider implementing the following:

> Provide additional seating in the public viewing area for observing the signature verification process to the extent feasible while ensuring that no Personally Identifiable Information (PII) is observable to the public. This increase in seating should ensure meaningful observation.

If you have any questions regarding this letter and my determination in this matter, please contact me at (775) 684-5709.

Respectfully,

Barbara K. Cegavske

Barbara K. Cegavske
Secretary of State

EXHIBIT 6

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRED KRAUS, AN INDIVIDUAL REGISTERED TO VOTE IN CLARK COUNTY, NEVADA; DONALD J. TRUMP FOR PRESIDENT, INC.; AND NEVADA REPUBLICAN PARTY,
Appellants,
vs.
BARBARA K. CEGAVSKE, IN HER OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE; JOSEPH P. GLORIA, IN HIS OFFICIAL CAPACITY AS REGISTRAR OF VOTERS FOR CLARK COUNTY, NEVADA; DEMOCRATIC NATIONAL COMMITTEE; AND NEVADA STATE DEMOCRATIC PARTY,
Respondents.

No. 82018

FILED

NOV 03 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY AND TO EXPEDITE APPEAL

This appeal challenges a district court order denying a petition for a writ of mandamus or prohibition in an election matter.

Appellants have filed an emergency motion seeking immediate relief under NRAP 8, pending appeal, prohibiting the Clark County Registrar from continuing to duplicate mail ballots unless observers are granted an opportunity to meaningfully observe the process and from using artificial intelligence to authenticate ballot signatures. Appellants also seek to expedite this appeal.

As this matter involves the election process currently underway, we conclude that it should be expedited. Therefore, we grant the motion as to the request to expedite. Appellants shall have until tomorrow

at 4 p.m. to file and serve their transcript request form or certificate that no transcript will be requested. NRAP 9(a). Appellants shall have until 4 p.m. on Thursday, November 5, 2020, to file and serve the docketing statement, opening brief, and appendices. Respondents' answering brief shall be due on or before 4 p.m. on Monday, November 9, 2020. No extensions of time will be granted.[1]

We have also considered appellants' request that we enjoin the registrar from duplicating ballots and using artificial intelligence to authenticate ballots. Under NRAP 8(c), in determining whether to grant a stay or injunction pending appeal, we look to whether the object of the appeal will be defeated absent a stay or injunction, whether the granting or denying of a stay or injunction will result in irreparable or serious injury to appellants and respondents, and whether appellants have demonstrated a likelihood of success on the merits.

Although some portions of the appeal may be defeated absent immediate relief, appellants have not demonstrated that the entire appeal will be defeated, and due to the urgent nature of the matter, we have granted their request to expedite. Moreover, appellants have not demonstrated a sufficient likelihood of success to merit a stay or injunction. The district court concluded that appellants' allegations lacked evidentiary support, and their request for relief to this court is not supported by

---

[1]For purposes of this order, we suspend the provisions of NRAP 25(a)(2)(B)(ii), (iii), and (iv), which provide that a document is timely filed if, on or before its due date, it is mailed to this court, dispatched for delivery by a third party commercial carrier, or deposited in the Supreme Court drop box. *See* NRAP 2. Accordingly, all documents shall be filed personally or by facsimile or electronic transmission with the clerk of this court in Carson City.

affidavit or record materials supporting many of the factual statements made therein. *See* NRAP 8(2)(B)(ii), (iii). It is unclear from the motion how appellants are being prevented from observing the process or that the use of the Agilis machine is prohibited under AB 4. As the district court's order points out, mandamus relief is warranted only to compel performance of a mandatory statutory duty or to remedy a manifest abuse of discretion. *Round Hill General Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Appellants' motion, on its face, does not identify any mandatory statutory duty that respondents appear to have ignored. Further, appellants fail to address the district court's conclusion that they lack standing to pursue this relief. Thus, appellants have not shown that the NRAP 8(c) factors militate in favor of a stay or injunction, and the request for immediate relief is denied.

It is so ORDERED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. James E. Wilson, District Judge
Hon. James E. Wilson, District Judge
Marquis Aurbach Coffing
O'Mara Law Firm, P.C.
Harvey & Binnall, PLLC
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas
Attorney General/Carson City
Perkins Coie, LLP/Washington DC
Clark County District Attorney/Civil Division
Carson City Clerk

EXHIBIT 7

THE O'MARA LAW FIRM, P.C.
DAVID C. O'MARA
NEVADA BAR NO. 8599
311 East Liberty St.
Reno, Nevada 89501
775-323-1321
775-323-4082 (fax)
david@omaralaw.net

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JILL STOKKE, an individual, CHRIS PRUDHOME, MARCHANT FOR CONGRESS, RODIMER FOR CONGRESS, an individual, Plaintiffs, v. SECRETARY OF STATE BARBARA CEGAVSKE, in her official capacity, and CLARK COUNTY REGISTRAR OF VOTERS JOSEPH P. GLORIA, in his official capacity, Defendants.	Case No. **COMPLAINT**

Plaintiffs Jill Stokke, Chris Prudhome, Marchant for Congress, and Rodimer for Congress through their undersigned counsel, bring this action against: Defendant Secretary of State Barbara K. Cegavske and the Clark County Registrar of Voters Joe P. Gloria. All persons named as defendants are sued exclusively in their official capacities. Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331, because this case arises under the Constitution and laws of the United States of America and 28 U.S.C. § 1367 because the claims based on state law are so related to the federal questions as to form part of the same case or controversy. This Court also has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

2. Venue is proper in this Court under 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to this action arose in this district.

PARTIES

3. Plaintiff Jill Stokke is a duly qualified and properly registered voter who has attempted to vote in the November 3, 2020 general election (the "Election").

4. Chris Prudhome is a credentialed member of the media who, as a member of the media, attempted to observe the counting of ballots in the Election in Clark County.

5. Marchant for Congress is the official candidate committee for James Marchant, a candidate for U.S. Congress for Nevada's Fourth Congressional District.

6. Rodimer for Congress is the official candidate committee for Daniel Rodimer, a candidate for U.S. Congress for Nevada's Third Congressional District.

7. Defendant Barbara K. Cegavske is the Secretary of State of Nevada. Pursuant to Nev. Rev. Stat. § 293.124(1), she serves as the "Chief Officer of Elections for this state," and "is responsible for the execution and enforcement of the provisions of Title 24 of NRS and all other provisions of state and federal law relating to elections in this state."

8. Defendant Joe P. Gloria is the Clark County Registrar of Voters and is responsible for appointment and oversight of local election boards for the various precincts and districts in Clark County, Nevada. Nev. Rev. Stat. § 293.217(1).

DEFENDANTS' ILLEGAL CONDUCT

9. The Election is currently in progress.

10. NRS 293.8874(1), as enacted in Assembly Bill 4, Sec. 4, 32md Special Session (Nev. 2020), requires "the clerk or an employee in the office of the county clerk shall check the signature used for the mail ballot in accordance with" detailed procedures.[1]

---

[1] The use of the word "shall" in a statute imposes a mandatory duty. *Kingdomware Technologies*, Inc., 136 S.Ct. 1969, 195 L.Ed 2d 334 (2016) *See United States ex rel. Siegel v. Thoman*, 156 U.S. 353, 359–360, 15 S.Ct. 378, 39 L.Ed. 450 (1895)""When a statute distinguishes between 'may' and 'shall,' it is generally clear that 'shall' imposes a mandatory duty.")

11. Irregularities have plagued the election in Clark County, including lax procedures for authenticating mail ballots and over 3,000 instances of ineligible individuals casting ballots. Ballots have even been cast on behalf of deceased voters. Moreover, the public has often been prohibited from observing the processing of mail ballots, resulting in much of their work being done in the shadows without public accountability.

12. On November 3, 2020, Plaintiff Stokke attempted to vote in person in Clark County. She was not allowed to vote because, according to election officials, she had already cast a mail ballot. Plaintiff Stokke had not, in fact, cast any such mail ballot.

13. On information and belief, it was Clark County's use of Agilis signature-verification software that allowed Plaintiff Stokke's ballot, which she had not signed, to be accepted and counted in the Election.

14. Further, Defendant Gloria is using the Agilis signature-verification software in a manner which is contrary to the manufacturer's prescriptions. Specifically, the manufacture requires that signatures be scanned with a resolution of at least 200 D.P.I. Nevertheless, Mr. Gloria has consistently used signature files from the DMV which are all scanned at less than 200 D.P.I., resulting in the Agilis machine being unable to perform its required function (i.e. verifying signatures).

15. Clark County is the only county in Nevada that uses the Agilis system and the only county in Nevada that does not verify signatures on absentee and mail in ballots in person.

16. Nev. Rev. Stat. § 293.8881, as enacted in Assembly Bill 4, Sec. 4, 32md Special Session (Nev. 2020) provides, "For any affected election, the mail ballot central counting board may begin counting the received mail ballots 15 days before the day of the election. The board must complete the count of all mail ballots on or before the ninth day following the election. The counting procedure must be public."

17. Nev. Rev. Stat. § 293.363 provides that for in-person ballots, "[w]hen the polls are closed, the counting board shall prepare to count the ballots voted. The counting procedure must be public and continue without adjournment until completed."

18. On November 4, 2020, at approximately 12:45 a.m., Plaintiff Prudhome tried to observe ballot counting at the Clark County Election office located at 965 Trade Drive, Las Vegas, Nevada 89030. Election officials tried to deny him entry to the office. A few minutes later, Defendant Gloria told Plaintiff Prudhome counting was complete for the evening and instructed him to leave. Moreover, while Plaintiff Prudhome was allowed to observe, the screens through which he would have watched were all turned off and faced away from him. When Plaintiff Prudhome inquired into these conditions, election officials asked law enforcement to remove him from the building.

Count I: VIOLATIONS OF THE ELECTIONS CLAUSE

19. Plaintiffs fully incorporate the allegations in paragraphs 1 through 15 above as if fully set forth herein.

20. Section 4 of Article I of the U.S. Constitution provides, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . . ."

21. Defendants have violated the Elections Clause by usurping the Nevada Legislature's constitutional authority to set the manner of elections. In particular, by using the Agilis software system. No other county in Nevada uses this system, and accordingly, voters in Clark County, in including Plaintiff Stokke, are at an unequal risk of having their legal votes diluted by votes with mismatched signatures.

22. There is no legitimate state interest that justifies this disparity in any way.

23. As part of the Voter's Bill of Rights, codified at Nev. Rev. Stat. § 293.2546, the Nevada Legislature declared that each voter has the right to a "uniform, statewide standard for counting and recounting all votes accurately. NRS 293.2546(1).

Count II: Equal Protection

24. Plaintiffs fully incorporate the allegations in paragraphs 1 through 18 above as if fully set forth herein.

25. The Equal Protection Clause of the U.S. Constitution prohibits states from denying "to any person . . . the equal protection of the laws." U.S. Const. amend. XIV, § 1. Plaintiffs' equal protection rights are enforceable pursuant to 18 U.S.C. § 1983.

26. Defendants have violated the Equal Protection Clause by attempting to match signatures in Clark County using the Agilis system and thereafter, not having the clerk or employee of the clerk's office verify the signature.

27. No other county in Nevada uses this system, and accordingly, voters in Clark County, including Plaintiff Stokke, are at an unequal risk of having their legal votes diluted by votes with mismatched signatures.

28. There is no legitimate state interest that justifies this disparity in any way and such disparity violates Nevada voters' right to have uniform, statewide standard of counting and recounting all votes accurately.

Count III: Violation of Nev. Rev. Stat. §§ 293.8881 and 293.363

29. Plaintiffs fully incorporate the allegations in paragraphs 1 through 21 above as if fully set forth herein.

30. Nev. Rev. Stat. §§ 293.8881 and 293.363 require Defendants to allow public access to ballot-counting. Through the above-described conduct, Defendants deprived Plaintiff Prudhome any meaningful access to ballot-counting.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully pray for the following relief:

1. An Injunction directing Defendants and their officers, agents, employees, attorneys, and any other person acting under their direction or control to cease the use of the Agilis system to count ballots in Clark County;

2. Injunctive relief directing Defendants that the Agilis system is improper and that each mail ballot shall and must be checked by the clerk or an employee of the office of the clerk before it can be verified as a valid ballot for counting.

3. For injunctive relief directing Defendants and their officers, agents, employees and any other person acting under their direction or control to allow meaningful access to the ballot counting process.

4. For declaratory judgment that Defendants have violated NRS 293.8874 passed by the Nevada Legislature in 2020.

5. A declaratory judgment that Defendants have violated the Elections and Equal Protection Clauses and Nev. Rev. Stat. §§ 293.8881 and 293.363;

6. Attorney's fees and costs pursuant to 18 U.S.C. § 1988; and

7. All other relief that this honorable Court deems just and proper.

DATED: November 5, 2020

THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara
DAVID C. O'MARA, ESQ

311 East Liberty St.
Reno, Nevada 89501
775-323-1321
775-323-4082 (fax)
Counsel for Plaintiff

EXHIBIT 8

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JILL STOKKE; CHRIS PRUDHOME; MERCHANT for CONGRESS; and RODIMER for CONGRESS, Plaintiffs, vs. BARBARA K. CEGAVSKE, Secretary of State, in her official capacity; JOSEPH P. GLORIA, Clark County Registrar of Voters, in his official capacity, et al., Defendants.	Case No. 2:20-cv-2046-APG-DJA Las Vegas, Nevada Friday, November 6, 2020 2:08 p.m. EMERGENCY MOTION FOR PRELIMINARY INJUNCTION VIA VIDEOCONFERENCE O R I G I N A L

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ANDREW P. GORDON,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

(Appearances on Page 2)

COURT REPORTER:

Heather K. Newman, RPR, CRR, CCR #774
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
(702) 471-0002 or HN@nvd.uscourts.gov

Proceedings reported by machine shorthand; transcript produced by computer-aided transcription.

APPEARANCES:

For the Plaintiffs:

THE O'MARA LAW FIRM, P.C.
BY: DAVID C. O'MARA, ESQ.
311 East Liberty Street
Reno, NV 89501
(775) 323-1321

For the Defendant Barbara K. Cegavske:

OFFICE OF THE ATTORNEY GENERAL
BY: CRAIG A. NEWBY, ESQ.
GREGORY LOUIS ZUNINO, ESQ.
100 North Carson Street
Carson City, NV 89701
(775) 684-1206

For the Defendant Joseph P. Gloria:

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE, CIVIL DIVISION
BY: MARY-ANNE M. MILLER, ADA
500 South Grand Central Parkway, 5th Floor
P.O. Box 552215
Las Vegas, NV 89155
(702) 455-4761

For the Intervenor Defendants Democratic National Committee and Nevada State Democratic Party:

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
BY: DANIEL BRAVO, ESQ.
BRADLEY SCOTT SCHRAGER, ESQ.
3556 East Russell Road
Las Vegas, NV 89120
(702) 341-5200

PERKINS COIE LLP
BY: JOHN M. DEVANEY, ESQ.
700 Thirteenth Street NW, Suite 600
Washington, DC 20005

Also present:

Barbara Cegavske, Secretary of State
Aaron Ford, Attorney General
Wayne Thorley, Deputy Secretary of State for Elections

LAS, NEVADA; FRIDAY, NOVEMBER 6, 2020; 2:08 P.M.

--oOo--

P R O C E E D I N G S

COURTROOM ADMINISTRATOR: Jill Stokke, et al. vs. Barbara K. Cegavske, et al., 2:20-cv-2046-APG-DJA.

Counsel, will you please make your appearances, starting with the plaintiff?

MR. O'MARA: Yes, good afternoon, Your Honor, David O'Mara on behalf of plaintiff.

THE COURT: Good afternoon.

Anyone else for the plaintiff?

MR. O'MARA: Just me --

THE COURT: I'm sorry, just Mr. O'Mara?

MR. O'MARA: That's correct.

THE COURT: Thank you.

Anyone for the -- who's on for the defendants?

MR. NEWBY: Good afternoon, Your Honor, Craig Newby, Deputy Solicitor General for the State of Nevada, representing Secretary of State Barbara Cegavske. Also, present virtually, per me looking at the Zoom, is Attorney General Ford and Mr. Craig Zunino from my office. Also present for the client is Deputy Secretary of State for Elections, Wayne Thorley.

MS. CEGAVSKE: And this is Barbara Cegavske, Secretary of State, I'm also on the line.

THE COURT: Thank you, Secretary of State Cegavske.

All right. I'm going to have all the cameras turned off.

MR. BRAVO: Your Honor, good afternoon, this is Daniel Bravo, from the law firm of Wolf Rifkin on behalf of proposed intervenor the Democratic National Committee and the Nevada State Democratic Party. Along with me virtually is my colleague, Brad Schrager, from the law firm of Wolf Rifkin as well as Mr. John Devaney from the law firm of Perkins Coie, who we submitted a verified petition for pro hac vice.

THE COURT: Thank you -- thank you, Mr. Bravo. I forgot to mention that as well, that we've allowed you to participate.

All right. So I'm going to --

MS. MILLER: Your Honor, this is Mary-Anne Miller from the Clark County District Attorney's Office on behalf of defendant Joseph Gloria.

THE COURT: Thank you, Ms. Miller. I appreciate you making your appearance. I apologize for leaving you out of that. I guess -- is there anybody else that I've missed, any of the lawyers or parties on the line that I need to be aware of?

Going once. . . going twice. . . All right. Thank you all.

Like I said, I'm going to have the video shut down. We're just going to do this by audio.

Let me note first for the record that Federal Rule of Civil Procedure Number 1 counsels courts to secure the just, speedy and inexpensive determination of every action and proceeding. Due to the COVID-19 pandemic and consistent with Rule 1 and with this Court's General Orders, this emergency hearing is being conducted telephonically by audio only. Information on how to access this public hearing has been prominently posted on the court's website to allow full access to this hearing by the public, the media, and the participants, and we also issued a Minute Order with the dial-in information so folks could join on the phone if they wanted to hear.

To ensure that the parties have a full and fair day here in court, all attendees to this telephonic hearing will be muted and only I and counsel who are arguing will have their microphones activated. That should cut down on the background noise and interference and hopefully allow the parties to focus in on the arguments.

Let me put everyone on notice that recording -- and this includes the folks on the phone as well -- recording, taping, streaming, or otherwise broadcasting district court hearings is expressly prohibited by this court's General Order 2017-02 and the policies of the judicial conference. So, recording, taping, streaming or otherwise broadcasting the audio, or any photograph or video of this hearing, is prohibited. If you're doing so, stop.

Let me next offer a personal word of thanks to the many judicial clerks in my chambers and some of my fellow judge's chambers who have helped me get up to speed really quickly on this case given that it was filed late yesterday afternoon and the motion was filed last night. We had contributions from many of our court staff, chambers staff, and a special thanks to our court administrative staff and courtroom deputy for helping me put together the technology to allow us to do this hearing this afternoon. We're all keeping our fingers crossed that the technology works and we're able to continue with this hearing.

I'm first going to address the Motion to Intervene that was filed by I'm just going to call it the DNC and the Nevada Democratic National Party. Let me ask Mr. O'Mara, does your client -- clients, plural -- oppose the Motion to Intervene?

MR. O'MARA: No, Your Honor, neither do we oppose the pro hac vice application.

THE COURT: All right. Mr. Newby, if you're going to argue, or is Mr. Zunino for the defense, do you have any objection to the DNC intervention?

MR. BRAVO: Your Honor, Craig Newby will be doing the argument today. We have no objection to either --

(Court reporter clarification).

THE COURT: Thank you.

That was my court reporter Heather Newman who's -- like she said, we don't have the audio -- the video, so please identify yourselves before speaking.

I think that was Mr. Newby speaking.

MR. NEWBY: It was, Your Honor, Craig Newby, again, for defendant Cegavske. I will be doing the argument this afternoon on the merits. Secretary has no objection to the Motion to Intervene or the Motion for pro hac vice admission.

THE COURT: Ms. Miller, on behalf of Mr. Gloria, do you have any objection to the Motion to Intervene?

MS. MILLER: No, Your Honor.

THE COURT: All right. I will grant the Motion to Intervene. I'll do a separate order on the pro hac vice application. I haven't reviewed it yet, so I just want to make sure it's all satisfied -- complies with our local rules. Presuming it does, I will conditionally allow it for at least purposes of the argument today.

So, we now turn to the motion for Temporary Restraining Order and Motion for Preliminary Injunction. Before we dig into it, let me again remind everyone that my court reporter is listening in on audio like everyone else. Please state your name before speaking so that we get it accurate in the record. Please don't speak over each other. Pause to make sure the speaker is finished before jumping in because sometimes the audio cuts out if everyone's speaking at

once.

I have read the papers that were filed, the complaint, the motion for TRO, obviously, the motion for expedited hearing which I granted, received the numerous -- I shouldn't say numerous, but the responses that were filed by the defendants -- I should say at least defendant Cegavske. I have reviewed the proposed intervention by the DNC. So, I think I'm pretty up to speed, factually, and on the arguments. I have some specific questions to ask each of you as we go forward, but I will allow you to start with an argument if you want to make it. Just please don't repeat everything in your papers because we don't want to be here all night, and I have read those.

So, Mr. O'Mara, it's your motion, you get to go first.

MR. O'MARA: Thank you, Your Honor. And I echo your comments in regards to the court staff and, also, I also want to acknowledge counsel for all this -- all the parties who continue to work very well together to make sure that when something is filed, they get it to the opposing party as soon as possible, so if I were here as an adversarial -- (unintelligible) counsel these cases have been very active with each other and that is --

THE COURT: Okay. And let me interrupt, I apologize, Mr. O'Mara, I meant to ask you a question at the very beginning. I understand from the latest filings that came down

this afternoon that the state court case that was pending up in Carson City and up in the Nevada Supreme Court, that that has been settled, and is it now dismissed? Is that case over?

MR. O'MARA: I do not know the answer to that question, Your Honor. There was a stipulation in -- the last I had heard and maybe I'm just not up to date, is that there had not been a completed stipulation in that case. However, I don't believe that that case is relevant to my state claims here today because they are separate people, separate claims and they have separate harms, remedies by the court.

THE COURT: Okay. All right. Thank you. I didn't mean to interrupt. Go -- I did mean to interrupt, but thank you for addressing that. Now go ahead with your argument.

MR. O'MARA: Great. Thank you.

Your Honor, I understand you have read the briefs and I just want to go into the two issues: One issue is whether or not the Registrar of Voters of Clark County should be able to preclude the public from actually having the -- an opportunity to view and monitor and observe county procedures which are to be made public. And, so, you know, there's -- there's basically two statutes that we cited. We cited both statutes, N.R.S. 293.8881 specifically says the county procedure must be public. The second statute is N.R.S. 293.363. That also says when the polls have closed, county procedure must be public.

Now, Mr. Prudhome went there and attempted to view the

county process and he, as my declaration says, and his said as well, claims that he's not getting adequate public viewing of the procedure.

Now, what we have to look at is we're here today at a public hearing. And the way the registrar of voters has it set up is that the public viewing is allowed to watch through a glass partition to see where they are. They're not within a reasonable viewing distance. They're about 10 feet away. They have a partition. They can't see what's going on, and most importantly they can't hear what's going on. And, so, that's not a public procedure that is open to the public. You may be able to look and say, oh, I wonder what they're doing today, but you don't understand what they're doing, you can't see what they're doing, and most importantly you can't hear what they're doing. And that's important because here we are today and if we were in your courtroom, all of these people on the phone would have been able to walk into your courtroom, they would have sat in the gallery, they would have been able to listen, they would have been able to see what their lawyers were doing, but what -- what the registrar is doing is -- if we were in a court, would put a glass partition between the bar and the gallery and the people would not be able to see or not be able to hear what was going on, they would just be able to see some actions about the lawyers. And we have it here today on Zoom and the new technology. It would be akin to you -- the Court

having a public hearing as you are now but putting everybody on the telephone on mute, or if they were on Zoom, on mute to where all they would be able to do is see what the lawyers were doing. That's not open to the public. That's not sufficient.

And there isn't a --

(Court reporter admonishment).

MR. O'MARA: So, Your Honor, what we're here about is there has to be a meaningful observation of the public to view the counting of the ballots.

Now, there is an opportunity to be able to be 6 feet away if that's the requirement in regards to Nevada. You could probably be closer, but 6 feet away, they can watch, they can hear, they can actually publicly observe the counting of the ballots. So, what we're asking for is for them -- for the registrar to comply with the statutory provisions for counting to the public. It has to be a public that -- where the public, just like any hearing or any public open meeting where you get the opportunity to see what's going on and what is -- what you can hear. And if you're not within 10 -- 6 feet and able to see or actually see the devices in which the machines are being used, then that is not open to the public, it's just basically nothing. You get nothing out of it, and it basically makes that statute a nullity. It nullifies the legislative intent that we are entitled, or this -- my client is entitled, as well as any other public official or public citizen, to go in and

have the counting open to the public.

THE COURT: All right. Let me -- let me interrupt, Mr. O'Mara, and ask you this, because your motion simply asks that the defendants should be required to allow meaningful access to the ballot-counting process.

MR. O'MARA: That's right.

THE COURT: What are you asking for?

MR. O'MARA: Yeah. So, Your Honor, I'm asking for them to be within a -- at least a 6-foot area where they can see and hear the actual counting and what has been said in regards to the ballot counting.

THE COURT: What if we have -- well --

MR. O'MARA: Well, let me -- let me just say something to Your Honor. There -- there was an issue up in Washoe County and what happened was is the balloting procedure -- or the watching of the polls was being really kind of difficult because Washoe County was only allowing three -- or two people to view in a location for 1 hour, and that was causing a lot of problems because some were getting to the polling location and they would get kicked out in an hour. We would have people that would come in with their friends and then they would be maybe, probably, from the same political party, or they wouldn't and, so, they worked with them. And what they did was is they had a system, three chairs: You had a Republican chair, a Democrat chair and an Independent chair. Those chairs

are specifically for those three options and if someone was to leave and there was no -- say, no Democrat viewer, then anybody would be able to come in and watch, if there was no Republican, then a Democrat would be able to come in and watch until one of them was able to be able to do this.

Now, I -- I don't think that, you know, in a normal situation, that that is adequate because the public should be able to do it, but everybody keeps on saying this is COVID times and we have to make COVID -- we have to make COVID provisions. And, so, in order to do that you have three major entities, you have a -- two major political parties and everybody else and, so, I think that in order to draft an injunction, to allow for a remedy that will benefit everyone, is to have such observation and have a system where if no one's there, then another person can come in, or you have it to where the interested party -- especially in this case, you have two interested parties, you have the campaigns and you have -- you have the Democratic party and the state party. So, you can draft the injunctive relief to say we're going to have three people -- up to three people for 6 -- no farther than 6 feet that allows them to monitor and hear the counting and the actual counting of the ballots.

THE COURT: Mr. O'Mara, isn't that the legislature's job, not mine?

MR. O'MARA: Well, Your Honor, your job is to make

sure that the statutes are implemented in a way that allows for them to be viewed. And, so, the Court is being asked to step in and tell our voters, you are not -- this is not open. It happens all the time where the courts look at, is this a public hearing, was it open, was it -- and that court allowed us to look at it and say, no, you have to make it open to the public. And case law shows that open to the public means you have to have meaningful observation where you can hear and partici- -- mostly in campaigns, the case law says you can participate, and we don't have that here, so you have the other three, which is to hear and to understand and to see what is going on so that later on you can participate and find out what -- what happened. I mean, if you don't have an avenue for a public meeting or a public observation and the person is just standing out watching nothing, then they have no opportunity to actually be a part of the public viewing because they can't -- whatsoever afterwards to say, I saw something, it wasn't right, this is what happened. And, so, that basically means that that statute's a nullity if the registered voters aren't allowed to continue on with this process.

THE COURT: Let me ask you to respond to Justice Kavanaugh's concurrence in the case of *Democratic National Committee vs. Wisconsin State Legislature* that was decided about a week or so ago, on October 26th, where Justice Kavanaugh, in his concurrence, said that "even seemingly

innocuous, late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences." He went on to say that "it's one thing for the state legislature to alter their own election rules in the late innings, but it's quite another for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent." I'll add to that, when it's already undergone and the counting's going on.

Why should I -- you're asking me, it seems, to ignore Justice Kavanaugh's direction -- yes, it was only a concurrence -- but isn't that a good counsel to a judge like me to not step in and interfere with these administrative proceedings that you're telling me to do?

MR. O'MARA: Well, I don't -- there is no -- you're not stepping in and involving yourself in the administrative proceedings. You're not causing the administrative proceedings to be changed. What you're doing is allowing for the administrations to be conducted in the method in which the state law requires, which is to be open to the public. We're not asking you to change anything, Your Honor; we're asking you to be able to say you need -- as the registrar, need to follow the state law so that the administration of the election is actually moving forward under the law, instead of an arbitrary decision by the Registrar of Voters to keep people away from

the public -- the public away from viewing a publicly open ballot counting, which is what is happening. So we're not asking you to change the law, Your Honor; we're asking you to tell the Registrar of Voters, you need to make a meaningful policy -- a meaningful enforcement of the actual election laws in which you are going to do.

I mean --

THE COURT: Okay. Let me follow up -- let me follow up --

(Simultaneous cross-talk).

MR. O'MARA: -- the Court to be aware of. Sorry. I'll hold that back. I'm sorry.

THE COURT: Thank you. Let me -- let me -- I need to do two things: One, let me -- I need to ask everyone on the phone to please mute your phones and your microphones. We're getting interference and noise in the background, so anyone, public, media, parties, whoever else is not speaking, that is the lawyer, please mute your phones and microphones so that we can -- I can hear the lawyers.

Mr. O'Mara, I want to get to a practical standpoint because you're asking me to impose some new standards or strictures or guidelines that -- that the defendants would have to follow. And you want to be able to see and to hear what they're talking about. So, hypothetically, if I have, or if the defendants have someone who is counting the ballot who is

very soft-voiced, or is whispering, or is hoarse, do we have to provide them microphones? Do we have to say, hey, you need to speak up so everybody can hear them? I mean, at what point does this get to the ridiculous?

MR. O'MARA: Your Honor, I -- I -- I mean, you can come up with a lot of things in regards to that, but if the -- if the person is talking softly and the other election officials can hear them, then they would be able to be heard. I mean, the problem is, is that if you don't allow for a viewing, then it makes the statute a nullity and it makes it to where why even have the statute? I mean, the --

THE COURT: Okay. But -- okay. But, your client -- your client did view -- I'm reading his affidavit. He was allowed to view. He didn't like where he was put, but he was put, at least in Paragraph 5 of his declaration, said that "they directed me to another area of the location where I would not be able to fully observe. My understanding was that was for people who were only media." So he was placed, apparently, by his own statement, in the media area. Then he says, in Paragraph 6, that "regardless, they did not accept my media credentials. I remained in the observer area as an observer." So he's been in the media area; he's been in the observer area. I -- he's viewing.

MR. O'MARA: But he's -- Your Honor, it's -- it says that. . . it says that "directed me to the area where I would

not be able to fully observe." So, if I keep on moving him back and forth to one specific area where he apparently can observe maybe (unintelligible) that way and then he cannot fully observe, there -- it is not open to the public. There is different people that get to see things and different people that don't get to see. And that --

THE COURT: So I -- so we need to open it to anybody in the world that wants to come?

MR. O'MARA: No, Your Honor, and that's why -- I mean, I -- I mean, the statute is put into place that counting must be open to the public. And, you know, and what I was telling you about is that the argument is always going to be that COVID does not allow for the general public to be able to come in in mass numbers or in relatively larger numbers and therefore it's got to be a smaller amount of area for them to view and it's got to be farther away from the location of where the ballots are being counted. And, so, you have to -- it's -- you can't let COVID run everything and allow the -- the statute to be nullified when you can -- you can move the parties that are interested in watching the count to be able to see and hear and be a part of the public viewing of the counting.

THE COURT: And what in your client's affidavit or declaration says that he could not observe?

MR. O'MARA: Well, it says, "They directed me to another area where I would not be able to fully observe."

THE COURT: And then he apparently was moved to a different area, the observer area. Doesn't say he couldn't fully observe there.

MR. O'MARA: But he --

THE COURT: What specifically did your client not get to see? What specifically does your client want me to let him see that he hasn't been already? I -- you're asking for extraordinary injunctive relief.

MR. O'MARA: Right.

THE COURT: It needs to be narrowly tailored and what I'm not hearing is any narrow tailoring of what you want me to do. I can speak in great platitudes, yes, it should be open to the public. That doesn't help us with an injunction.

MR. O'MARA: Right, and as I was talking about earlier, and you talked about how -- the administration effects and things of that nature. What -- we would like an injunctive relief to require the Registrar of Voters to place my client, and anyone in a similar situation, to be able to monitor the election, counting, within a 6-foot, no longer -- no farther than 6 feet where he can see and hear the actual counting of the ballots. It's a very specific, less than 6 feet -- I mean, if they can put him 4 feet and that is available, then we would like 4 feet. If it's 6 feet, that would be the location where we believe that he would be able to hear and see the actual counting of the ballots.

THE COURT: And if I don't put specific measurements in there, I just say it's got to be where he can see and hear, isn't that exactly the problem we're in right now with the statute that says meaningful review or whatever it is, meaningful view?

MR. O'MARA: The statute says -- (unintelligible). If you -- you want it to be narrowly tailored so that the remedy actually, you know, provides for a remedy that will be sufficient to satisfy the statute, which is, you know, what we believe is 6 feet.

THE COURT: All right. And who is similarly situated to your client? Since you want that in the order, who is similarly situated?

MR. O'MARA: Well, it's open to the public, Your Honor, so that's why I was talking to you earlier about, you know, in regards to what the registrar or what I believe maybe the registrar may argue, the Secretary of State may argue is that, look, we're in a COVID situation, we don't want to have, you know, 10 or 15 people watching the counting of the ballots and that's therefore I was talking about how Washoe County utilizes a system where they would allow for the monitoring of the polls and then they would. . . I'm sorry, Your Honor. They would monitor the polls and they would allow for a specific party to have a chair and then an Independent party to have a chair and things of that nature. We have two

parties that are -- well, we have two campaigns and a party that are involved in these cases and therefore you can -- you can generally look at there's two sides of the aisle and then you put in a third. It would work in order to narrowly tailor something to where the viewing location would be.

THE COURT: Why is that your client? Why does he get one of those chairs?

MR. O'MARA: Well, he would get one of those chairs because he's bringing this action. He's the one that wants to view it. He's the one that wants to have this open for the public. But if you -- they -- if the Registrar of Voters wanted to have it to where I was just talking about where the viewer has to designate an interested party, which is a Democrat party, a Republican party, and a non-party, he would have to designate himself to what that would be, and maybe that's, you know, a media access where one media person -- and you'd have four chairs that would allow for it to be close enough in that regard.

THE COURT: And then -- and then someone comes up and says, I want to be the Democrat, or I want to be the Republican or I want to be the Independent, your client gets to kick them out?

MR. O'MARA: You would -- well, no, you would not kick that person out, but you could move them and rotate them in on a basis that would allow for a public viewing.

Look, I mean, we're -- I would -- I would love to tell you and I would -- I would make the argument today that it has to be open to the public and that the Registrar of Voters has to make accommodations so that it is open to the public so that anyone that comes in can do that, but I acknowledge that there's going to be an argument probably that says we cannot do that because of the COVID restrictions put in place and then based on --

THE COURT: I don't mean to be facetious, but you're asking me for extraordinary injunctive relief that has to be narrowly tailored and as we're walking through this, it occurs to me that you're forcing me to get way down deep in the weeds and then we're going to be right back here if I put something in place when two other people claim they're the public and they want to watch and all of a sudden we've got them on a -- you know, I've got to alter it again and again and again. I -- anyhow, we're getting far afield on that.

Turn to the issue of Ms. Stokke -- I don't know if I mispronounced her name, how do you pronounce it, Stokke or Stokke?

MR. O'MARA: Yes.

You want me to start, Your Honor.

THE COURT: Well, yeah, I guess the question is, I want to make sure we're clear, you're not asking me to stop the defendants from counting ballots --

MR. O'MARA: That's correct.

THE COURT: -- right?

MR. O'MARA: We're not asking you to stop the Registrar of Voters to count ballots. What we're asking you to do today is to stop them from using the Agilis machine to verify the signatures during that process. So, as -- as the Secretary of State put in her declaration, they're saying that 70 percent of them are already going to have to go through the process anyway, so there's only 30 percent. So, we're only asking you to set aside -- well, to make sure that -- that the Agilis machine is not used any further as we move forward, to just keep the status quo of making sure the statute is enforced. And, so --

THE COURT: Okay. So let me ask -- you're fine, and again, I apologize for interrupting, and my court reporter is going to hate me, but I have to -- I want to keep this going forward.

I want to make sure factually we're all on the same page. Your complaint says that Ms. Stokke tried to vote on November 3rd. Her affidavit says she tried to vote on October 28th. Which is the correct date? Which am I to believe.

MR. O'MARA: I would believe the declaration, Your Honor.

THE COURT: Okay. So if she tried to vote on

October 28th, why did she wait 8 days, until November 5th, to do something about it? Why isn't that claim barred by laches or something else?

MR. O'MARA: Yeah. So, well -- okay. So, as the declaration says, Your Honor, on October 28th is when she found out. She was told by the county clerk's office, or the county registrar's office that they would get back to her in regards to her ballot. They did not, so she drove back down there and that's when Gloria went back in -- Mr. Gloria was there involved in the (unintelligible).

To say that she is going to be barred by laches, an elderly woman who has had her vote taken from her because of a 5-day period or even more, for laches, is a little bit unreasonable.

THE COURT: Okay. But why -- why did she wait 7 days?

MR. O'MARA: I don't know the answer to that question, but she -- obviously, she didn't wait to try to get her vote. What happened was is on the 28th she wanted to vote. She tried to go in and vote. They told her no. On the 29th she went back in then because the Registrar of Voters did not go forward with that. You have her on the 29th, which is a Thursday, you have a holiday Friday, Saturday, Sunday, and then you have what's going on. It takes a little while to get things going and figuring out that what has happened to her was wrong. She can't -- you can't say to an 80-year- -- or I don't know, I

can't say what her name -- age is, but an elderly woman that, you know, you tried everything you could, you went to the registrar's office, you demanded that they give you the vote, you didn't get the relief you want, you try to find out what's happening, you finally get someone that's going to help you and you come in 7 days later and the Court says, sorry, you know, your vote doesn't mean anything to where we're going to allow you to make the argument and laches applies. No --

THE COURT: Okay. Listen, and -- laches may be overstating. I don't dispute that, but -- but the delay -- often in a TRO situation, when someone delays seeking relief, that sort of factors into my consideration of immediate and irreparable harm, if not the balance of hardships and equities. So should I just ignore that 7-day delay?

MR. O'MARA: Well, I mean, I -- obviously, you can't ignore any facts, I'm not asking the Court to do that, but you have to take that into context of what we have here. We have a citizen of Nevada who has put her trust in a system that has been enforced, or that she believes is being run properly by the Secretary of State's Office and the Registrar of Voters Office and she -- she believes that they are following the law, that they're requiring the proper (unintelligible). And then she goes in and she finds out that her vote is not counted. And then she finds out that there is something wrong with the system. I mean, they're going to make an argument that she

doesn't even know about the fact that there's an argument about the Agilis machine, she probably doesn't even know that the Agilis machine is being used instead of what we believe to be the right method. She has her faith in the elections officials and the -- what those elections officials do, they don't do anything for her except for tell her that's -- you're not going to be able to vote because someone else did it for you. And, so --

THE COURT: Well, that's -- that's not what the affidavit that the -- the defendants filed an affidavit -- or the report says that they offered her, if she would fill out an affidavit basically saying, you know, this isn't my original -- that vote wasn't mine and they would let her do a provisional ballot and she said no.

MR. O'MARA: The provisional ballot does not include every single election. The provisional ballot is basically -- that still takes away her First Amendment right, or her right to vote. The provisional ballot is only used when -- when you don't have the proper mechanisms in place for your registration. She registered, she went to go vote, and she was denied the right to vote for every candidate that she is entitled to under the ballot. So to --

THE COURT: But if -- if it was determined that her signature on the original ballot was improper, then they would have counted the provisional ballot; correct?

MR. O'MARA: I'm sorry, Your Honor, I did not hear your question.

THE COURT: I'm sorry. I'm concerned about the provisional ballot here. What I understood the situation to be was she raised the issue with Mr. Gloria saying, hey, somebody used my name or signature. Mr. Gloria said fill out, basically, this affidavit saying that that original ballot was not your signature, we'll let you cast a provisional ballot and in the event it turns out you're right, somebody forged your name, we will then count your provisional ballot. Why is that not an adequate remedy?

MR. O'MARA: Because the provisional -- first of all, if you look at her declaration, it says that they said that she had to attest that her roommate possibly stole the ballot, which she has no -- she can't do and, so, she felt very pressured by Mr. Gloria to sign that. Second, a provisional ballot is not a ballot. The ballot has been taken from her. She doesn't get to vote her ballot. The provisional ballot would only allow her for some, but not all, and many -- basically not the majority of the elections that she wanted to vote for. It's not an adequate remedy. The adequate remedy would have been -- instead of having the Agilis machine move forward, it would have been to have the actual clerk or the employee of the clerk check the signature in the first place and then go through the proper procedures, but that didn't

happen.

THE COURT: All right. So, what in her affidavit says that her problem was caused by the Agilis machine? And I know the answer is nothing because it's not there.

MR. O'MARA: Right.

THE COURT: And I get it, maybe she doesn't know. What evidence do you have that the Agilis machine caused this problem that's in front of me?

MR. O'MARA: Well, I don't believe we have any evidence to show that her machine went through the proper procedures.

THE COURT: Then -- then why do I grant extraordinary relief if you don't have evidence to support a likelihood of success on the merits?

MR. O'MARA: Because the likelihood of success on the merits is to show that the Agilis machine was not to be used at all, and they weren't, and it was used and, so, therefore our allegation was is that it did go through the Agilis machine. And I think it's based upon. . . I -- I -- you know, I can't say that, Your Honor, because my understanding was is that she was told that they looked at the machine, the signature, and the printout, which I believe there is a printout of the Agilis machine signature that they would be able to compare and show that that's why it went through, but I --

THE COURT: So -- so somebody -- so somebody, after

she points out the error, somebody compared that signature to hers, and it was identical. That's the human interaction you're requested. So that happened, so regardless of --

MR. O'MARA: After. After.

THE COURT: Okay. But cured it on the back end. What's there to fix now? It was cured on the back end and she was given the chance to do a provisional ballot. Isn't the system working the way you want it to when --

MR. O'MARA: No.

THE COURT: -- when you want human inter- -- you wanted human interaction, you got it. They compared it, it was identical. You may disagree with that, but if the Agilis machine didn't exist, you'd still have somebody comparing the signature and coming to the same conclusion.

MR. O'MARA: No, because her ballot has already been stolen because it was allowed to be counted improperly because (unintelligible).

THE COURT: Excuse me. Is there a remedy for that.

MR. O'MARA: If I could step back for just a second, Your Honor, and try to frame it for you so that we're not going down a rabbit hole.

The method in which the Agilis machine is used, okay, is that the machine pumps everything through and if it doesn't match, it pumps it out, but 30 percent of those get forwarded. And our allegation is that her ballot went through, okay, and

it -- through the Agilis machine and it was not flagged. Okay? It was then counted, and then her ballot was taken from her. Because of the improper use of the Agilis machine, we have a vote and a disenfranchisement of my client. That's -- point blank right there that is a problem with the Agilis machine and the ability of having people's votes taken in her case. To connect --

THE COURT: Okay. Now you --

MR. O'MARA: Then to come back and, say, oh, we came back and we looked at it but we're going to cure you by giving you a provisional but we still have to show that, you know, your ballot wasn't counted, doesn't get to the remedy of what happened by using an improper machine and therefore --

THE COURT: Okay. All right. So if there was no Agilis machine, a human being would have taken the signature on the ballot, compared it to the signature on the paper and come up with the same conclusion that they have right now.

MR. O'MARA: Well, we don't know that.

THE COURT: How would -- you had a human being look at it and they said it looks to be the same thing, at least that's the report from the defendants. It says we went back and looked and it -- compared and it was identical.

MR. O'MARA: Okay. And did they -- did they produce -- I don't believe that that was produced, the signatures were produced. Were they not?

THE COURT: I don't recall seeing them right now, but. . . I just got to deal with the information and evidence I have in front of me and that's their response.

MR. O'MARA: I -- I understand. And I -- is this the Secretary of State's response, Your Honor?

THE COURT: I believe so. We'll get to them in a few minutes and see.

(Brief pause in proceedings).

THE COURT: Yeah, in the -- actually, I'm looking at the Memorandum of Interview, this is ECF Number 19 at Page 52.

MR. O'MARA: I'm not sure if I have that yet, so let me just please go -- give me a second and I can bring that up.

THE COURT: Sure. She -- she apparently told the Secretary of State's investigator that she went to the elections headquarters to address the matter, spoke directly to Joe Gloria. Gloria told her the signature on the ballot received on October 14th, 2020, matched the signature she had on file with the registrar's office. My recollection is, and maybe this was -- well, I don't know.

MR. O'MARA: That is made by the declaration of the Secretary of State's Office, Your Honor, and, so, I don't understand where that would -- if the clerk and the -- or the employee needs to be able to be the one to look at it. So. There's nothing in there to say it wasn't matched up with the signature based on the Agilis machine.

THE COURT: Okay. I cut you off. Anything else?

MR. O'MARA: Well, you know, Your Honor, I think that I want to address the one thing in regards to the Democratic party claim that the machine is allowed under the statute.

Interestingly, the Democratic party only puts in partial statutory language in regards to the use of the machine. As the Court will see from N.R.- -- in the N.R.S. statute allows for procedures and policies to be put into place. It also restricts and precludes the Registrar of Voters from putting in any policy or procedure that conflicts with other statutory alignment. And it's interesting that the Democratic party doesn't put that in there where it says it's -- precludes any conflict -- they can't be in conflict with any other provision. And when you look at the statute, it specifically says "shall." It specifically says that the registrar, in this case what he considers the clerk, or his employee, must check the ballot and the signature -- I'm sorry, must check the signature. When the Agilis machine gets put through and there's not a -- when there's not a determination by the clerk or the Registrar of Voters or some employee, then it's not following the standards and therefore not only is my client, Ms. Stokke, harmed, but so is my client Merchant for Congress and Rodimer for Congress who they have an interest in this to make sure that the election is properly set forth. There's no policies and procedures that are written that I am

aware of in regards to how the machine is going to be used, whether or not it -- how it is checking it, whether it's being used based upon the manufacture's suggested usage or if it's been monitored or if it's been changed or if it's been changed throughout the election. We don't run elections in Nevada, and we have historically had it to where Nevada law has specifically said, in regulations, that have to be promulgated by the Nevada Secretary of State. In this case, we don't have any written policies or procedures for the public to know or anybody to understand, and if you don't allow everybody to understand what the rules of the election are and then you just implement something that is not entitled under the law, such as the Agilis machine, then the act of using the machine is a futile act that is not authorized by law. It cannot occur to happen. And, so, therefore, that's why we're here today to ask you to push pause, let us -- enter a Temporary Restraining Order to say you don't have to stop counting, but you need to stop using the Agilis machine, start verifying through the proper procedure under the statute, which is N.R.S. 293.8874, and the procedure is that the clerk or employee shall check the signature and if the clerk and signature, then they go to whether two employees [sic]. That's a human interaction that has to go before the vote is actually counted. That's the processing of the votes. So --

THE COURT: Let me -- let me interrupt and ask you

this: My understanding is that state district Judge James Wilson, in Carson City, had an Evidentiary Hearing on this issue, not necessarily your client's, but looked at the Agilis system and made a determination that if it was not used and they had to look at each one of these by hand or by eyeball, that it could not be completed by -- a canvass could not be completed in the statute time frame. So what you're asking me to do is to do something that Judge Wilson has already found can't be done under the statutory time frame.

MR. O'MARA: Well, in order --

THE COURT: Tell me, why isn't that a hardship that favors the state more than your client?

MR. O'MARA: Okay. So, Your Honor, to answer that question, it is my understanding that while Mr. Gloria testified that he could not get it done, he then published and provided information of when he was going to actually do the verification and provided a mere approximately 8 hours over the next period of time to actually do the signature verifications. So, it wasn't that they couldn't get it done, they just weren't going to spend time on it throughout the process. It would only allow for 8 hours over the next approximate 2-week period to do verifications, or -- or at least a minimum of 8 hours from the time of the hearing to the Election Day. So -- so to say that there is going to be a harm, they can get it done. We're asking them to segregate the ballots in regards to the

ones that have already ran through the Agilis machine and have not been viewed by a member of his staff or him in the first place, and then the ones that he's processing, which I believe would only be an additional 30 percent of what they have left, will then -- if they choose to, they can run it, you know, through the -- well, they will -- they will then be able to use the human aspect as required by the statute to verify signatures and keep the vote going.

THE COURT: So, just so I'm clear, does -- I wasn't quite sure I followed. You're suggesting that Mr. Gloria said they could get this all done in 8 hours?

MR. O'MARA: No. No. He said that they couldn't get it done but then told -- then provided information to the public that said he was only going to allow for an 8-hour period over in the next -- I -- I -- I said 2 weeks, Your Honor, and I can't make -- then I corrected myself because I cannot make that assertion, but I believe it was either that, or it was over a period of the next period of days before the election that they were going to --

THE COURT: So let me ask it a different way. What do you believe -- how long do you think it will take for them to finish the task if I tell them you have to review all these by eyeball?

MR. O'MARA: Well, it's my understanding that they would be able to be done by tomorrow -- or Saturday. And, so,

if they have an additional 30 percent out of the hundred that they have to do, then they're only looking at maybe Sunday or early Monday at the latest.

THE COURT: So you're saying I should order them to review -- whatever remaining ballots there are, review those by eyeball and not use the Agilis machine?

MR. O'MARA: Right. What I'm asking you to do is to have them follow the statutory provisions that require the clerk to first verify -- to require the clerk, or his employee, to check the signature used on the ballot against the signature of the voter and go through the proper process set forth in 293.8874, and then I would like you to have that -- in regards to the other ones that have not been -- that have gone through the Agilis machine already, because they -- we believe that those are also invalid in regards to not going through the system properly. Those should just be segregated, and then we can come back Monday or Tuesday and have an Evidentiary Hearing to determine what to do with those ballots because they have been processed without the clerk or the employee checking the signature.

THE COURT: How long is it going to take, in your estimation, for the defendants to eyeball all of the remaining ballots?

MR. O'MARA: So, I -- it's my understanding that they -- that the Registrar of Voters believes that he will be

done counting by tomorrow afternoon. So if you take 30 percent additional, then -- from today, then there's less than 36 hours, so it would be, like, Sunday or Monday morning.

THE COURT: Okay. If we require them to go back and eyeball all of them that you're requesting, next week, how long is that going to take?

MR. O'MARA: Well, that would take significantly a lot more time, Your Honor. And there's 30 percent, so you would have to take into consideration how much time they spent in regards to counting those ballots, and I don't know the answer to that.

THE COURT: And -- and do you have any reason to think that would not take it beyond the statutory canvass period?

MR. O'MARA: I don't have any -- I believe that if they were to sit down and do the 30 percent of the ones that have not been through the Agilis machine, and we don't -- we're only talking about mail ballots, we're not talking about ballots that were --

THE COURT: That's not what I'm asking because you asked -- you said you want them to go back and do the eyeball of all of them that went through -- the 30 percent of all of them that went through the Agilis machine next week after the Evidentiary Hearing --

MR. O'MARA: Right.

THE COURT: -- that process would take beyond the

statutory mandatory canvass period; right?

MR. O'MARA: I don't know that to be true, Your Honor, but I would imagine that that's what the Registrar of Voters is going to argue but if they are -- if they finish counting and they have the staff, they should immediately go to close that. But you can't state to the American people, well, really, the Nevada citizens that we are not going to go back because of the time frame and try to make sure that this election was actually conducted under the statutes implemented by AB 4 and then codified in the statutes that specifically say that a clerk or employee shall check the signatures. It is imperative that Nevadans know that it was not a deal between the Secretary of State's Office and Clark County that has a different system for Clark County to verify signatures than any other county, that it's not within the statutory provision and then, say, well, sorry, because we did this wrong and we ran out of time, we're not going to try to redo it properly. Nevadans deserve to have their elections conducted under the law. The law specifically states --

THE COURT: I understand.

MR. O'MARA: -- clerk or employee.

THE COURT: I understand. All right. I -- anything further before I turn to the plaintiff -- or to the defendants?

MR. O'MARA: No -- I mean, Your Honor, I would make other arguments but if you have other questions, then I can

respond to their arguments after that.

THE COURT: Yeah, that's got most of them. Let me give them a chance to speak and then we'll come back to you.

MR. O'MARA: Thank you, Your Honor.

THE COURT: All right. You're welcome.

Mr. Newby or Ms. Miller, I don't know who's going to go first. Mr. Newby I'll turn to you to see if you want to go first.

MR. NEWBY: I'm happy to go first, Your Honor. Again, for the record, Craig Newby, Deputy Solicitor General for the State of Nevada representing Secretary Cegavske.

We're here before this court on an emergency basis this afternoon as ballots are being counted in Clark County without evidence justifying any, any supportable argument that this lawsuit could succeed on the merits.

And I'm going to try to go in the order that plaintiffs addressed their argument. And what we have first with regards to the -- the public access to vote counting is an issue where one of the plaintiffs, interpreting his declaration in the guise most favorable to him, was denied potentially -- it's uncertain whether he was denied less than 90 minutes of observation of ballot counting between the early morning/evening hours of November 4th. According to his declaration, everyone was told to leave. And on that basis, plaintiffs seek to impose a nebulous, undefined,

no-further-than-6-feet-away distance, ignoring commonly known CDC requirements on social distancing that we've all been forced to live with, including today in terms of arguing this hearing virtually rather than in person before this Court, without any sort of identification of what the limits are or aren't such that this Court would not be placed in the situation should, hypothetically speaking, Mr. -- plaintiffs' relief and an Evidentiary Hearing is granted and Nevada becomes the epicenter of the universe and we do a re-examination of personal signatures of ballots on mail ballots, over the next week, 2 weeks, 3 weeks, I can't speak to how long, I would have to defer to Clark County and a registrar for precise information on how long that would take, we have daily or perhaps hourly appearances before this Court to resolve can this person stand here, can this person stand there, can that -- does that person (unintelligible) that does this person not require --

THE COURT: I'm not anxious to go back to the days of the hanging chad, if that's what you're getting to.

MR. NEWBY: No, I'm not. I wasn't going to bring up the hanging chad, but I think what Justice Kavanaugh's concurrence that was referred to during the beginning of this argument, and more generally to the Supreme Court's principle in *Purcell*, expressed in *Purcell* in terms of whether federal district courts should step in and create 11th hour changes to

procedures warrants consideration, and that can be more true, I think, in this -- in the context of both the public access issue and this case overall given that right now, following a day-long Evidentiary Hearing that included this plaintiff's counsel, included parties who are equally positioned in terms of their views in terms of how they feel about access for counting, how they feel regarding Clark County's Agilis machine, and all the other issues that are raised in this case before this Court, was adjudicated in a day-long Evidentiary Hearing up in Carson City before Judge Wilson and is currently pending on an expedited basis before the Nevada Supreme Court.

THE COURT: And was that case resolved? Because you submitted a stipulation, has that been resolved and dismissed or is that still going on?

MR. NEWBY: I'm going to defer to the DNC on that one. I know DNC is a party to that case as an intervenor, and it is my understanding that their position is that they will not sign that stipulation.

So I can't speak for them directly. From what I've heard, they haven't signed it yet and in light of the same case being brought in federal court, I don't know why the Nevada Supreme Court would enforce such a stipulation. I would think they would want to -- to the extent these Nevada statutory questions need to be adjudicated with regards to the 2020 election, I would argue, and I think the Nevada Supreme Court

would agree, that they are in the best position and the final authority on what Nevada state law is rather than this court, respectfully. So that's -- I mean, that's a general issue in terms of where we are in terms of this public access. Nothing defined about it. And it's not -- it's not the secretary's burden, and it's certainly not Clark County's burden at this hearing to prove -- to disprove the appropriateness of injunctive relief here. That's plaintiffs' burden. They have been aware of these issues. (Unintelligible) regarding these issues. Yet, here we are with the evidence before this Court, and I submit it's not that much.

And, so, I don't have anything further I want to address with regards to the public observation questions other than to note that opposing counsel keeps using the word meaningful. And it -- I haven't seen a citation to statute that quotes meaningful. I haven't seen it. It's not there. And it's asking this Court to write what the statute should mean, to write whether it should be 4 feet away, 6 feet away. Three people in musical chairs, or five people in chairs, or this world during COVID, or not during COVID, and that's -- that's the legislature's job and they undertook it when they passed Assembly Bill 4 in the context of COVID this summer. So if there's no questions on the public observation, I would move on to the -- I guess the Agilis machine arguments pertaining to Ms. Stokke and overall.

THE COURT: Okay.

MR. NEWBY: Okay. And I don't want to overdo this, but with regards to the Agilis machine, the issue has been out there for several months. It has not been a secret. It is my understanding from the legislative record that's available on videotape that it's no surprise that Clark County, as a large, urban county within Nevada, would use a different system to attempt to verify signatures on mail ballots than one of our more rural counties. That is part of federalism and being logical and there's a rational basis for that, obviously, because there's a lot more people in Clark County. And I think this Court -- plaintiffs attempt to address this in part by responding to the DNC argument, but they don't respond to what is set forth in our briefing here today, which, on Page 4, starting at Line 14, which I'm sure the Court has read, there -- there are two adjacent sections of Assembly Bill 4, Section 22(2)(a), which specifically allows a county registrar, such as Clark County, to authorize "mail ballots to be processed and counted by electronic means" followed by Section 23, which does not specify that the clerk must do this by hand, that the clerk must do this by his own eyeball, or that the clerk must do this by standing adjacent to a machine, or that the clerk is prohibited from using a machine. It says nothing of that sort. It says a fair reading of the adjacent sections of the statute, a plain reading of that, a reasonable reading

of that under these circumstances is, of course a county, if they make that decision, is entitled to do so. And I'm not going to attempt to revisit on this emergency basis what was addressed by a full-day Evidentiary Hearing in state court in terms of assessing the merits that -- the alleged merits of the Agilis system, Clark County's best positioned to that, but it is a valid system, there is nothing under statute that prohibits it, and there's been nothing proffered here by plaintiffs seeking extraordinary relief demonstrate -- providing facts to this Court that the Agilis machine is unreliable. Instead, what we have is the declaration of Ms. Stokke, who -- who had a mail ballot voted. It was determined by Mr. Gloria that it was his [sic] signature. That was the representation of that conversation made by Ms. Stokke. As the Court noted, that was on Page 52 of the declaration that was filed before this. It was made to an investigator. It was made -- it was made by a party opponent in this case. It's an admission by Ms. Stokke that that's -- that's what she was told by Mr. Gloria, that she -- that the signature on file matched. I will leave it to Clark County to determine whether Mr. Gloria actually looked at the signature before telling her it was her signature, but I strongly suspect that is the case.

And then her declaration ignores what the Secretary of State's investigator did independently, which is asking for information, asking for something to be declared, and offering

to follow -- follow up with questions and then it was left behind and we get a week later here. And while I appreciate plaintiffs' effort to disentangle Ms. Stokke's role in justification of timing from their justification for the motion, but if she decided she wasn't going to do something about this and this Agilis machine issue was known and available, then there's no reason in the world why they couldn't have proceeded sooner. And there's no evidence that there's a missing signature or that the Agilis system failed, and on that basis -- on that non-existent, factual basis they want to shut down the Clark County continued counting the election timely. It's untimely. There's no basis for that and there's certainly no basis in fact or evidence or whatever it is that's being discussed about reviewing the other signatures sometime next week. There's just no basis for it. There's no one that has asserted standing in this case. And the standing argument's addressed in more detail by the DNC in their briefing and I'll defer to them on that argument, but the state would certainly submit there's no standing from anyone in this case regarding that -- regarding the Agilis machine and. . . In short, this is their burden. This is -- this is a serious -- this is a serious matter. We're talking about the integrity of Nevada's elections and -- and a lawsuit is required in obtaining extraordinary relief, like what's being asked of this Court requires evidence, not just talking points,

or allegations. It requires facts, and we don't have any here. And that alone means I should stop, address any questions that the Court has, and if there are none, the Court should deny the motion.

Thank you.

THE COURT: I'm just checking my notes to see if you've covered all the questions I had. Bear with me for just a minute.

(Brief pause in proceedings).

THE COURT: Is -- and I don't know if I should address the question to you or Ms. Miller on behalf of Mr. Gloria, this is more of a technical question on the Agilis system, whether -- what's the procedure for verifying a signature with the system and if the system -- if Agilis says it doesn't match, is there a human confirmation of that, how does that all work. Is that something you can address or is that something for Ms. Miller?

MR. NEWBY: That is something that would be best addressed by Ms. Miller on behalf of Clark County.

THE COURT: All right. She can thank you for throwing her under the bus on that one.

MR. NEWBY: Not that I'm. . .

THE COURT: All right. Thank you, Mr. Newby.

Ms. Miller.

MS. MILLER: Thank you, Your Honor.

I first have to apologize. The county isn't open on Fridays for COVID reasons and I was having technical difficulties this morning and it was all I could do to get my Notice of Appearance entered and I consider that a moral victory, but I'm sorry I don't have a formal document on file. If I had more time and this goes to a Preliminary Hearing, I would proffer that this is what are the facts:

The statute, N.R.S. 293.- -- 293B.353 says that the Clark County clerk shall -- or the Clark County clerk shall allow members of the public to observe the counting of the ballots as long as they don't interfere with the counting -- the counting process. And in Clark County, we've had that setup for years. The tabulation room is a big glass enclosed room with plenty of room outside for observers. They're not 6 feet next to them because they'd have to be inside that glass enclosure and cheek by jowl with the tabulation machine operators and that just won't work, even in a non-COVID era, but there's plenty of room outside the windows, and as of 2:30 p.m. today, we have not had to turn away any observers for lack of room. There's easily room for 30, 35 observers. And they've been there every day that we've been tabulating and no one has complained.

What happened with Mr. Prudhome is a little bit different. He showed up in the middle of the night. No problem there. We were tabulating. Went into the observer's

area. Wanted to record, and he was told he couldn't record, that was against the statute, only the media were. He didn't provide his media credentials, but he was shown to the media area, which is not as close as the observers area. So he went back to the observers area with his recording device and quite frankly the observers weren't having it. They were getting on his case for trying to game the system and it got contentious and Mr. Prudhome was asked to leave, really, for his own safety. He is more than welcome back as an observer at any time if he doesn't disrupt the system.

With respect to Ms. Stokke, regardless of whether her -- the initial mailed-in ballot in question was read by the Agilis machine, it was her signature, and the signature on the ballot envelope was manually reviewed by Mr. Gloria and two trained supervisors, and in their trained opinion, they believe it to be a match with her signatures on file. Regardless, if she had been willing to sign an affidavit that she did not vote that ballot and that was not her signature, she would have been given a full provisional ballot, and she chose not to do that. So, the Agilis machine did not have any -- any involvement in what happened to Ms.- -- Ms. Stokke at all because she -- she did get her ballot envelope signature reviewed by three trained supervisors, and it more that meets with the statutory requirements for met -- for reviewing signatures.

I would point out that AB 4 does not require a manual

review of the signatures. It does say that the Registrar of Voters shall review the signatures, but it doesn't say it can't be done electronically, and, in fact, AB 4 says it -- ballots can be processed and counted electronically. What the Agilis machine does, in Clark County, are three different actions:

First, the ballot envelopes are run through there. The signatures are captured electronically and put into the Clark County system, and there's a tracking device so that we can acknowledge and track that we've got this ballot in our -- in our office as in it's been read by the Agilis machine.

It goes through a second time to see if the quality of the signature in our database provides a match to the signature on the envelope, and that happens about 30 percent of the time. And if it doesn't match by the Agilis machine, those are all reviewed by non- -- bipartisan panel's signature verifiers manually looking at the ballot envelopes to the ballot signatures that we have on file. So that's a more time-consuming process just because you have to pull up all the files.

And then the third -- and then the ballot envelopes are run through the Agilis machine a third time to make sure that they've been accurately numbered and tracked and those signatures -- those ballot envelopes are tracked through our system until the envelopes are separated from the ballots.

So I just --

THE COURT: Hang on. Let me ask you to pause there for a second.

MS. MILLER: Sure.

THE COURT: I want to make sure my notes are accurate on what you've just described. Give me a second here.

(Brief pause in proceedings).

THE COURT: So, on this sort of second phase, you're running through a second time to see if the quality of the signature in your database matches the signature on the envelope and you said that happens about 30 percent of the time. What happens 30 percent of the time, 30 percent of them are run through that test or it says 30 percent of them don't work --

MS. MILLER: No.

THE COURT: -- don't match?

MS. MILLER: 30 percent of them are a match, the quality of the signature on the envelope and the quality of the signature in our database match up so that this -- this machine, which is similar to machines that are used in banks to verify signatures, say that the signature on the envelope and the signature in our ballot -- in our database matches.

THE COURT: Okay. So, if the 70 percent then don't match, those 70 percent then are hand reviewed?

MS. MILLER: That's correct.

THE COURT: Okay. I'm with you. I apologize for

interrupting you. Go ahead now. Thank you.

MS. MILLER: I just don't see, given those facts -- and those facts were all put into evidence at the earlier hearing about the Agilis machine -- that these plaintiffs have shown that they have had any harm related to the Registrar of Voters viewing policy at the tabulation center or the use of the Agilis machine. They just haven't established a harm to them, and certainly not the candidates who are plaintiffs.

THE COURT: All right. Anything further?

MS. MILLER: I just would join into the responses of both the Secretary of State and the intervenors for the record.

THE COURT: Okay. Let me ask you a factual question, if I can. Bear with me here.

(Brief pause in proceedings).

THE COURT: I apologize. Just bear with me here. I'm looking at my notes and some papers.

(Brief pause in proceedings).

THE COURT: Okay. Yeah. I'm looking at state district George -- I'm sorry, state district Judge Wilson's findings and conclusions in the *Kraus vs. Cegavske* case dated October 29th, on Page 4, he said that Registrar Gloria opined in that case that if Clark County could not continue using Agilis, the county could not meet the canvass deadline which is November 15th, and Judge Wilson found that if Clark County's not allowed to continue using it, the county will not meet the

canvass deadline.

Do you agree with that finding by Judge Wilson?

MS. MILLER: That was an accurate finding based on the information he was given then in testimony last week. Obviously, a lot of those ballot envelopes have been read between last Wednesday and today, but we still do have 63,000 that we're processing. 241 more ballots came in the mail today. They have a few more days to get ballots -- ballots to come in the mail, so the effect -- to be frank with the Court as I have a duty to, the effect wouldn't be as catastrophic if you entered it today, but it would still delay our processing.

THE COURT: So you said you still have, you believe, approximately 67- -- 63,000 ballots that still have to be counted in Clark County?

MS. MILLER: That still have to be processed before they can be counted, yes.

THE COURT: Oh, okay.

MS. MILLER: Those are mail ballots. There's some other electronic ballots, but I think we're only talking about mail ballots for this purpose.

THE COURT: Okay.

All right. Thank you, Ms. Miller. I interrupted you. Anything further?

MS. MILLER: No -- no, Your Honor.

THE COURT: Thank you.

Let me turn to Mr. Bravo or one of your co-counsel on behalf of the DNC.

MR. DEVANEY: Your Honor, this is John Devaney, I'll be speaking for the DNC with the Court's permission.

THE COURT: Absolutely.

MR. DEVANEY: Thank you, Your Honor. I think I'll begin by answering the question that you posed and I've been reluctant to jump in and interfere, but the state court action is continuing, so just to be very clear about that. It's still pending in the Supreme Court of Nevada. The plaintiffs/appellants in that case just yesterday requested for a briefing schedule, a postponement for the briefing schedule that has briefs due approximately a week from now, and the case is not resolved. We expect that that case will proceed and those state law issues remain before the Supreme Court of Nevada.

THE COURT: So I've got this stip- -- I've got the stipulation and order for dismissal that's signed at least by Ms. Miller and the attorney for the petitioners in that case, obviously your client hasn't signed off on it and I don't see Secretary of State's Cegavske's signature on it. Are you saying that stipulation didn't go forward?

MS. MILLER: It did not include a signature from our client, the DNC, or the Nevada Democratic state party and, so, as of this juncture it remains pending and our expectation is

that we'll go ahead and brief that appeal and present those issues of state law to the Supreme Court.

THE COURT: Okay. Go ahead. I interrupted you.

MR. DEVANEY: And, Your Honor, of course that has a direct bearing on the issues before you. I'm sure the Court is well aware of the Truman Doctrine and Pullman abstention and that doctrine, of course, establishes that when resolution of a question of state law by a state court will resolve a matter pending before a federal court, the federal court should abstain. And the issues teed up in the Supreme Court proceeding bear directly on the issues before Your Honor. They involve, one's the lawfulness of using Agilis and the discretion of the registrar to use that machine, and two, the extent to which a county, in this case Clark County, is required to provide public observation of the counting of ballots. And those statutes -- state statutory questions are before the court, the Supreme Court that is, and therefore Pullman applies with full force in this instance. So I just thought I'd begin with that, Your Honor, since you had asked about where that state court proceeding stands.

THE COURT: Thank you. I appreciate that.

MR. DEVANEY: And, Your Honor, I don't want to belabor the points that have been made already, but there are a few points that I really do want to emphasize. One is just the extraordinary context of this case.

The Agilis system was used in the June primary. It's public knowledge that this system has been used. As Judge Wilson found, this system is used by multiple jurisdictions around the country, including very large cities around the country. It's been proven to be reliable. And people in Nevada have known, including plaintiffs' counsel, that this machine has been in use for many months in Nevada, and that it would be used in this election. And, you know, here we are now, it is literally 2 days after election that they filed their complaint -- 2 days after Election Day, knowing for months that this system was being used and coming in and asking the Court to stop use of the system. You know, one -- one can just hear that story and understand the equities that -- the equitable problems that raises. It cries out for laches. It cries out for equitable estoppel. And the disruption that would be created by stopping the use of this machine, when, as Ms. Miller just mentioned, there's still 62,000, approximately, ballots that need to be processed. And literally the whole country is looking at Nevada, and Clark County in particular, and waiting for the election results. And I don't know exactly how much delay would be (unintelligible) from Agilis, but I know from the evidentiary proceeding we had last week that it would be meaningful, it would probably be days and days. I don't know if it would compromise the canvassing deadline now, but there certainly

would be delay, and it would create chaos and confusion. And given the timing of this, where plaintiffs' counsel at least, have known about the use of Agilis for months, it's just extraordinary that they'd come in and even ask for this relief knowing the chaos that would result from it. So I just wanted to emphasize that very important context as we consider the legal arguments that -- the claims that are before you.

And also then relatedly, it's just the fundamental lack of evidence, the -- let's just pause for a moment and think about what evidence is before you that would cause the Court to stop the use of Agilis. It is a single declaration from a single voter who doesn't even know if Agilis affected her ability to vote. That's not established anywhere. And we've heard the facts relating to her attempt to vote, which are quite different from what were represented initially, where she was given a chance to vote, she was given a chance to submit a provisional ballot and she refused that opportunity and it's just extraordinary that you would be asked to take the leap from that flawed affidavit, the declaration, to shutting down Agilis altogether and stopping, essentially, the counting or processing of ballots in Clark County while the whole country looks on. It's really just a remarkable leap that you're being asked to make.

In addition to those problems, Your Honor, there is a fundamental standing problem here. And you've read our briefs

and I'm mindful of your comment earlier that we shouldn't repeat what's in our briefs, but I do just want to briefly emphasize that their theory here is vote dilution, that the Agilis machine somehow causes more wrongful rejection of ballots in Clark County than elsewhere in the state. First of all, there's no proof of that. That's number one. But even if there were vote dilution, it's well-established by the case law cited in our brief, it's not a basis for standing. It's a form of alleged harm that affects everybody in the state equally. If there's dilution, then everybody's vote is diluted equally across the state. And, so, that's why courts have consistently found that a vote dilution based on fraud theory is insufficient to confer standing and multiple cases have resulted in courts finding a complete lack of standing based on a vote dilution theory.

And then, Your Honor, the second standing problem that plaintiffs have relates to their claim under the elections clause. As I understand it, they're claiming that the use of Agilis and perhaps even the registrar's decision on observation somehow violates the legislative demands in Nevada and that the registrar is usurping the authority of the legislature by administering the election in this way. And, again, Your Honor, there's significant case law establishing that -- that there is no standing, that they cannot stand in the shoes of the legislature. It's only the legislature that would have

standing to come in and claim that their power is being usurped. Certainly these plaintiffs do not have that authority, and I cite the Court to *Corman v. Torres* which makes that proposition clear, as does *Lance v. Coffman,* a Supreme Court case, and the standing deficiencies aren't remedied by tacking on the two committee candidates as parties. The pleadings don't even allege any harm to those committees, so, in addition to the -- the equitable problems they have that I started off with, there is a fundamental standing problem that exists in this case.

And then, Your Honor, that takes me to the merits, which other counsel have addressed and I don't -- I will not spend a lot of time on the merits, but I will respond to the suggestion from plaintiffs' counsel that the DNC somehow misrepresented to the Court the statutory scheme relating to use of electronic technology in processing ballots. The language is very clear. It says that electronic technology can be used, and that's not inconsistent with elsewhere in the statute where it says the clerks shall -- shall review ballots. It doesn't mean that clerks can't rely on electronic technology, as Judge Wilson found, and then as we've talked about, Judge Wilson found that technology is completely reliable and used in a standard way by multiple jurisdictions around the country.

Your Honor, just a couple more points, and that is

that on the observation claim, Your Honor alluded to it, but it's absolutely right that the time, place, and manner of conducting elections is within the jurisdiction of election officials and the legislature and the court -- a court should not get into micromanaging how -- where people stand, what machines are used to process ballots, and that's what you're being asked to do. And it really does get into a separation of powers issue, and time, place, and manner is exclusively within the jurisdiction of the legislature and registrars, you know, unless there is a constitutional violation, and there's nothing here that's close to a constitutional violation. So, I just wanted to reiterate that point.

And then, finally, Your Honor, I'll just conclude with the equitable considerations that bar relief because I just think they're so compelling and important. One is they sat on their claims; two, it's against the public interest to just disrupt the processing now; three, the plaintiffs are able to observe, so you (unintelligible) to the parties, they are able to observe. The delay in reporting results is significant. It's a -- it's not just a Nevada interest, it's a national interest. And last, this claim, just like the claim that Judge Wilson considered, is singling out Clark County, it's treating Clark County disparately from other counties in the state. There's no -- we don't see the Trump campaign or other parties going into counties other than Clark to ask about

observation, to redress observation, and that's just another equitable fact is the disparate treatment that's being imposed on Clark that I would ask the Court to consider.

Your Honor, there's more I'd say, but I think it's covered in our briefs and it's been covered by the other parties, so I'll stop now and, of course, entertain any questions you might have.

THE COURT: Given that brevity is the soul of wit, Mr. Devaney, I appreciate your comment.

MR. DEVANEY: Thank you.

THE COURT: Let me turn back to Mr. O'Mara, since it's your motion, you get the rebuttal. Address for me, if you would, first off, this argument of Pullman abstention. If the Supreme Court of Nevada currently has this case pending in front of it addressing these various issues, why should I wade into their pool?

Mr. O'Mara?

Uh-oh. Let's go off the record for a second and see if we can. . . is he on there?

Off the record for a technical standpoint. Let's see if we can get Mr. O'Mara.

MR. O'MARA: Okay. Is that me?

THE COURT: Okay. All right. Back on the record. We got you. Thank you.

MR. O'MARA: Sorry.

THE COURT: Back on the record.

That's okay. No worries.

MR. O'MARA: So, Your Honor, the argument about the fact that the Supreme Court is getting -- addressed this issue is not likely to happen because the parties to the issue have moved and are trying to dismiss (unintelligible) DNC's ability or their not wanting to sign an agreement takes that into effect, but also this is a TPO. We're asking for the Court for the relief to review the statute and, so, to me, the issue, if you look at the Nevada Supreme Court, the briefing is not going to be until next week, the likelihood is that the votes will already be counted, the Agilis machine will have already been used and therefore extraordinary relief is necessary for this Court because it's not going to be able to defer to the Nevada Supreme Court. So, with that in mind, the Court needs to protect the integrity of this election to provide for Nevadans and with all due respect to the rest of the country, this is a Nevada election and it needs to be followed by Nevada law.

And secondly --

THE COURT: So shouldn't -- no, but shouldn't that be decided by Nevada justices elected by Nevada residents? Why should I, a federal judge, wade into the Nevada elected justices dealing with state election law?

MR. O'MARA: Because the -- the issue is in front of you today and it will not be addressed by Nevada state law, and

it needs to be addressed in an expedited manner so the vote is protected moving forward.

THE COURT: So shouldn't you address that to the Supreme Court of Nevada and ask them to expedite their hearing?

MR. O'MARA: Well, Your Honor, that is a separate case. We have separate harm in this case with the client. So, my clients do not have the right to expedite this issue to the Nevada Supreme Court. My client has been harmed. And contrary to what the DNC says, this is not a voter dilution case.

I'm sorry, is someone not muted? I'm hearing a lot of background.

THE COURT: Yeah. No, I agree. Let me ask again, everyone on the line, please mute your phone and microphone and we are getting a little interruption here. Again, whether you're on the telephone or some other access, please mute your phone and microphone.

Thank you, Mr. O'Mara, I apologize for that.

MR. O'MARA: I'm sorry.

So, this is -- my clients have been -- just my client in regards to Ms. Stokke, has been disenfranchised by the use of a machine that is improperly done and we don't have the ability to move forward in the Supreme Court. She needs relief now, relief to show that that machine should not be working so that no other disenfranchisement is handled.

Now, in regards to the standing, we have -- she

actually has actual injury. She wasn't -- what Ms. -- what Ms. Miller said today was that Mr. Gloria and two of his employees looked over the machine. Okay. And that -- the only -- know that that happened was after my client went to the board -- to Mr. Gloria and said this vote is stolen; it's not mine because you're -- again, I hear some muting.

THE COURT: Again, please mute your phones. We're having a little bit of interruption.

Go ahead, Mr. O'Mara.

(Court reporter interruption).

THE COURT: So, Mr. O'Mara, again, if you'll get closer to the phone and I'm going to ask everyone to mute their phones.

Go ahead.

MR. O'MARA: So, we look at the situation and we don't -- we don't have, as a normal Nevada law, you know, would have it. We have a situation here where there is a -- we don't have the opportunity to do that. Our client --

(Court reporter interruption).

THE COURT: Mr. O'Mara, are you on a speaker phone?

MR. O'MARA: I'm on a Zoom, Your Honor, so it's --

THE COURT: Okay. Go ahead. Yeah.

Go ahead.

MR. O'MARA: So, my client has been harmed. She has equal protection grounds. This hasn't been a dilution -- well,

there is standing on equal protection grounds if there is a -- been a dilution or debasement of voting. What we have, a situation where Ms. Miller talks about Mr. Gloria only reviewing the -- or I'm going to infer that since she didn't say that Mr. Gloria had (unintelligible) already reviewed the ballot signature that they went over it again with my client, we believe it was the first time that Mr. Gloria, after the vote had already been taken, after Mr. Gloria says, oh, you know, your vote -- if you claim that your vote has been taken, you can have a secondary -- we will treat you secondary and give you a provisional ballot and you don't get the opportunity to do your vote. She's been -- she's been harmed. She deserves recourse.

THE COURT: Why -- wait. Okay. Let me address -- let me address that directly because that -- I'm still, I guess, having a hard time understanding your argument. If -- if -- assume that everything your client is saying is correct, that her -- somebody else turned in her ballot for her --

MR. O'MARA: Um-hmm.

THE COURT: -- and Mr. Gloria said we'll let you vote again and we will count your new vote, it's a provisional. If we can prove that your original vote is fraud or false or not your signature, we'll invalidate that one and we will let your vote count. Why doesn't that cure the problem?

MR. O'MARA: Well, it doesn't let her vote, first of

all, because there is a ballot out there that has fraudulently been filed and --

THE COURT: But if they invalidate that ballot and let your client vote, doesn't that cure the problem? Because otherwise, there's never a remedy to fix it, you're saying.

MR. O'MARA: Well, Your Honor, there is -- there is no evidence to show that the Registrar of Voters can go back in and find the vote and say this one has been canceled out.

THE COURT: Okay. So let's say -- so let's say they can't. Then we allow your client to vote. If this vote comes down to one vote, then we may have an issue, but if there's a fraudulent vote hanging out there and your client -- okay. I understand what your argument, sort of, but I guess I'm not sure, factually, whether what you're saying is correct or not.

MR. O'MARA: My client, Your Honor, is entitled to the same rights as every other American and every other Nevadan and then that is the right to vote their ballot and have their ballot counted. And when we have a system that is put into place where it is contrary to Nevada law, it is contrary to the provisions throughout the state and she loses her ballot, she is harmed and that is really terrible, unfortunate, and not the American way, nor is it Nevada.

Now, the Democratic party says, oh, we're only going after Clark County. Well, the reason why you're only going after Clark County is because every other county eyeballed and

did it appropriately through the statute. Okay. They didn't have the right to do this. And if you look at what the legislature's declaration of voter rights is, under N.R.S. 293.2546, it specifically says that the legislature hereby declares that each voter has the right to have a uniform statewide standard for counting and recounting all votes accurately, and that's exactly what happened when you look at the statutes. I mean, we look at mail ballots and people are always saying mail ballots, absentee ballots, they're all the same in regards to how you -- well, how you go about doing the verification. You have to have the clerk look at it and say this is valid. To say that you can read into the statute of N.R.S. -- of the statute and say that the clerk or employee shall check the signature -- but they don't actually have to check it, they can use a machine -- against all other signatures, that's an absurd result, especially when you look at N.R.S. (unintelligible) Subsection 1. It says except as provided in provision -- in N.R.S. 293D.200. That's not the section before it. If the legislature truly wanted to, they would have said, you know, except as otherwise provided in N.R.S. 293.8871(2)(a) that the clerk and employee has it [sic]. It specifically says, under the statute of 293.8871, while there is a mechanism for the process and counting by electronic means, it also says, "and must not conflict with provisions of N.R.S. 293.8801 to 293.8887." So you look at the next --

THE COURT: Except -- I get the -- I get the argument. I get the argument. Isn't the reverse argument to that, though, that the legislature wanted to, they could have said it has to be checked by eyeball or by finger or by Braille or by some mechanical method and the fact is, they wrote it the way they wrote it and they added the statute that said they can do that by electronic mail -- by electronic means in the other statute. I mean, at some point --

MR. O'MARA: No -- no, Your Honor, because they quantify it and qualify it by saying that the next -- in the next section, it says must not conflict with provisions of N.R.S. 293.8801. It's a conflict.

When you look at the statutory language, it says duties of clerk upon return of mail ballots. Procedure for checking signature. Now, it sets forth (a) and (b). So if you don't do (a), you can't get to (b). So, that's -- you can't come up and have a reasonable argument that says that. You know, they -- and, so, you move forward and -- and the statute is very clear.

Now, the second thing is that they talk about, like, Judge -- Judge Wilson's argument. Well, we didn't know that there was a harm. That was one of the things that the judge looked at. We now know that there is a harm, and that's -- and we have a harm. We have -- we have a person that was not entitled to vote. And, so, there's a different analysis in

this case than there is on the other one.

Additionally, what we're asking for is a TPO. Ms. Miller has contested -- or has stated that if you do just set these aside for these last ones until we can come back in here and show other information and other evidence and go through the Agilis machine, and send a 5-year Agilis machine [sic], it may be delayed, but they will still be able to get to it. And it is more important for Nevada to do it right than it is for Nevada to do it fast. That is exactly what Mr. Gloria has been saying throughout the whole entire process, why he's been -- why there has been delays. It is to do it properly and not to do it fast. So, if we're going to do it properly and we're going to take the situation where we're going to look at the situation, they -- there is no harm to them -- to the Registrar of Voters except for a little bit of time to set aside the Agilis machine and eyeball -- eyeball and look at it and have a clerk or an employee look at it first and then move forward.

And when you look at whether or not there's -- the legislature says this, look at all the other counties in Nevada. Only Clark County said we're going to go ahead and do this. Now, if Clark County would have wanted to make sure that they had this Agilis machine, they -- the legislature could have put in there, specifically, that we no longer care that there's uniform standards and Clark County can do whatever they

want and have a machine or whatever they want and then everybody else has to do it the right way and under the statute, but -- excuse me, not the right way, but under the statute in that regard. So --

THE COURT: Well, isn't -- isn't -- isn't that implied in 293.871(1) that says, "The county or city clerk, as applicable, shall establish procedures to the processing and counting of mail ballots"? Doesn't that give to each county the right to do what they think is best and then get it blessed by the Secretary of State? So the legislature presumed there might be different systems used; right?

MR. O'MARA: Well, here -- here's the thing, Your Honor. You make -- you bring up a good point. You talk about how the Secretary of State has to approve and put it as a blessing, but the Nevada legislature -- or the Nevada Supreme Court has consistently held that oral -- oral consent of the Secretary of State is not proper. If you look at *Kelly vs. Murphy*, 79- --

THE COURT: Wait. Wait. Wait. Whoa. Whoa. That's not your brief. That's way far afield of what we're here on today and -- and that's really getting into a Pullman issue. You know, we're here on the allegations in your motion and that is Ms. Stokke and Mr. Prudhome.

MR. O'MARA: Right.

THE COURT: And. . .

MR. O'MARA: Exactly, but it goes towards the provisions, Your Honor, and you were talking about -- and you were saying that it has to have the blessing of the Nevada -- of the Secretary of State and I'm telling you, what I'm saying is that Nevada law was that the Secretary of State cannot just give oral communications, they have to promulgate regulations. And if they don't do that, then the oral communication and actions are a futile act undertaken within -- without lawful authorization.

So we have --

THE COURT: Well, let me -- let me ask you to follow up on that then because looking at the statute, the plain language of the statute makes no reference to the Secretary of State. It just says, "For any elected -- any affected election, the county or city clerk, as applicable, shall establish procedures for the processing and counting of mail ballots."

MR. O'MARA: Right.

THE COURT: Doesn't even have to be approved by the Secretary of State, apparently.

MR. O'MARA: Well, and that is -- and then you can read that, but you have to also look at Subsection 2, which says that they are only to establish those procedures if they do not conflict with the other provisions. And --

THE COURT: Okay.

MR. O'MARA: -- the other provisions are clerk or employee. If they wanted -- they could have just said clerk or employee or any mechanical device or -- but it doesn't. It specifically says "clerk or employee shall." It doesn't say may. It doesn't say may, the clerk or employee may check. It says they have -- they shall check.

THE COURT: Okay. Let me ask you this then: Under 293.881(1) it talks about having to count, the mail ballot central counting board, they have to count. It doesn't say how they count it. Does that mean they have to count them all by hand? Are they allowed to use a calculator? Are they allowed to use a machine to count? It doesn't say --

MR. O'MARA: There's no procedure or policy that conflicts with what the -- what the Agilis machine is. Okay. So, there's nothing in there that says this is how they have to count the ballots. It says that they have to count them. And, so, they may authorize ballots to be processed and counted by (unintelligible) election means.

Now, for example, when Ms. Miller talks about Subsection 1, or Section 1 of the Agilis machine first, she runs it through and they do something with it, that's a processing. But when they do the second one, that one is outside of the realm of what the Agilis machine can be used for. It cannot be used for the verification because the verifications without a clerk or an employee. So therefore you

can -- you can run it through to make sure that that person is no longer going to vote, which is exactly what happened, we believe, with my client, it ran through the system, it clicked her off so she couldn't go in and vote. Then it comes back, then they run it through improperly because the next statute requires that a clerk or employee shall check the signature. There's nothing -- there's no evidence to show that there's no clerk checking that signature at that time, and the Agilis machine spits out 30 percent of them saying I've checked it, not a clerk or an employee. The Agilis machine. Not the clerk or the employee. And then the third one, if you go to the counting of the ballots in that regard. So --

THE COURT: Yeah, I -- I get the argument. We're all repeating ourselves now. I understand the argument.

MR. O'MARA: Okay. As to proven reliable, we already know that -- we're obviously saying something different, which was not available at the time of Judge Wilson's decision. Ms. Stokke didn't have -- didn't know about her ballot really until at least October 29th when she went back in to Mr. Gloria. So there was obviously no time to bring that up to Judge Wilson's ability to make his decision on that date.

Sorry, Your Honor, let me just scan my notes a minute.

THE COURT: Yep.

(Brief pause in proceedings).

MR. O'MARA: Also, Your Honor, where are -- there are

no policies and procedures as to the Agilis machine. There hasn't been anything established. What it has been is a definite unilateral decision by the Registrar of Voters to implement a system. There's no policies and procedures. There's nothing that saying he's going to do this, these are the steps that we're going to take. He just basically says I'm going to do this. No policies and procedures of the Agilis machine. So, he himself has not set policies and procedures to allow the Agilis machine and therefore, again, it's a futile act under the (unintelligible) system that's unlawful and therefore you can't -- you got to have everything in writing. You got to have the policies and procedures in place.

The lach- -- I think the laches, do you need me to go into more of the laches, Your Honor?

THE COURT: No. No. No. No. I was just throwing that out there as an example. I'm not relying upon laches.

MR. O'MARA: Like I said, Your Honor, today, you know, we're asking the Court, and Ms. Miller has said that the stopping the Agilis machine will have very little harm to the -- to Registrar of Voters, we're asking for you to set that aside for the weekend or until Monday or Tuesday to allow people to further brief and present in an Evidentiary Hearing on Tuesday and all ballots should go through the legally required process for digital verification and once they go through that verified visual verification, we're not asking for

the ballots to be stopped and uncounted, but we are asking for the Agilis machine to be not used over the next few days until the Court can have an Evidentiary Hearing.

We are asking that you segregate all ballots that have been counted by the Agilis machine previously so that if the Court does issue a ruling on a TPO, or on the injunctive relief after an Evidentiary Hearing, those ballots can already be ready to go so that they can be visually verified without delay. Like I said, we're not asking them to count -- stop counting. And we need to have uniform standards where every county, it's the same.

And, so, we ask you to enter, as I presented in the opening, a plan for observation as well as what I just talked about, about the Agilis machine.

Thank you, Your Honor.

THE COURT: Thank you, Mr. O'Mara.

Let me -- let me just backtrack for just a second to Ms. Miller, and if you don't know the answer to this, I appreciate that, but let me ask you, because I asked this or suggested this to Mr. O'Mara, and that is that, if, in fact, it's determined that Ms. Stokke's original ballot that she claims was fraudulently submitted was, in fact, a fraud, is there a way to cancel that ballot out?

MS. MILLER: Probably not at this time. Maybe when she first complained about it, it -- it could have been

segregated, but once the ballot envelope is separated from the ballots, you can't go back and take it out of the pool for that reason. But she could have gone ahead, acknowledged by affidavit that it was not hers and that she did not vote the ballot and she would have given -- been given a provisional ballot, a full provisional ballot. So, it's really not any different than if somebody went up to in-person voting and forged her signature on the sign-in in such a fashion that the poll worker said, yeah, that's good enough, go vote. Once that vote gets into the system, we can't pull it back out, but she could have, either when talking with Mr. Gloria or at in-person voting, said, I'll sign the affidavit, let me vote. And she chose not to do that. And she hasn't established that it was the Agilis machine rather than somebody committing fraud upon her that caused her harm.

THE COURT: So -- so just to follow up and be clear. If I walk up to the polling headquarters and say I want to vote and they show me the book and say sign here and it's got somebody else's signature on my spot and I show them that's not my signature and somebody apparently voted in my place, the poll worker there could verify that signature isn't correct and I would be given a new ballot and I could vote that ballot?

MS. MILLER: If you signed an affidavit saying it wasn't your signature --

THE COURT: Correct, yes.

MS. MILLER: -- and that you had not voted yet, yes.

THE COURT: And Ms. Stokke, in your opinion, since you raised the issue, if she would have signed an affidavit that says this is -- the original ballot was not mine, they would have given her a ballot and she could have signed that, or she could have voted on that ballot?

MS. MILLER: Yes.

THE COURT: Okay. Thank you.

(Brief pause in proceedings).

THE COURT: All right. Here's my decision.

As I mentioned earlier, I take into account Justice Kavanaugh and his concurrence in the *Democratic National Committee vs. Wisconsin State Legislature* case. His concurrence on October 22nd of 2020 strongly suggests that district court judges like me should not interfere with state election proceedings unless there are. . . significant, I'll call it, reasons to. I won't repeat the quotes I put on the record earlier, but I incorporate them here. The notion being that it's for the state legislature to write state election laws and I should not usurp that proper role of state legislatures and rewrite state election laws.

In determining whether to enter a Temporary Restraining Order, or Preliminary Injunction, I'm guided by the four-factor test that's set forth in the Supreme Court's decision of *Winter vs. Natural Resources Defense Council, Inc.*,

which is at 555 U.S. 7, at Page 20, it's a 2008 case. There are four factors:

One, a likelihood of success on the merits; two, a likelihood of irreparable harm; three, the balance of hardships favors the plaintiff; and four, an injunction is in the public interest. And it's the plaintiff seeking a motion for -- or seeking a Temporary Restraining Order that has the burden of demonstrating those.

In addition, when the plaintiff seeks a mandatory injunction, that is, an injunction that requires affirmative conduct, that means forcing the defendant to do something different as opposed to just stopping them from doing something, that standard is even higher because those requests are subject to heightened scrutiny, and the Ninth Circuit has said they should not be used unless the facts and law clearly favor the moving party. That comes from the case of *Dahl* -- D-a-h-l -- *vs. HEM Pharmaceutical Corporation*, 7 F.3d 1399 at 1403, Ninth Circuit case from 1993.

Turning to the first prong of the *Winter* test, the likelihood of success on the merits, I don't find that the plaintiff has demonstrated -- plaintiffs, plural -- have demonstrated a likelihood of success. I am concerned that the Pullman document -- doctrine would suggest I stay away from this case given that these issues are being litigated right now in front of the Supreme Court of Nevada. This is an issue of

significant state concern involving state laws and should be interpreted by state courts, particularly Supreme Court justices elected by state of Nevada citizens.

The Pullman abstention doctrine is narrow, and I don't use that to completely step away from cases unless there are significantly good reasons to do so. There's a three-factor test set forth in the case of *Porter vs. Jones*, 319 F.3d 483, a Ninth Circuit case from 2003. Those factors here suggest that I should step away and allow the Supreme Court of Nevada to make that decision. I'm not going to do that. I'm not going to say I'm abstaining, but I do think I -- I do take that into consideration in looking at the likelihood of success on the merits in this case.

The defendants and DNC raise issues of standing on behalf of the plaintiffs, or that the plaintiffs don't have standing. I'm not going to get into that issue today. I'll presume for purpose of today that they do have standing.

Turning to the statutes of Nevada, Nevada Revised Statute § 293.874(1)(a) says, "The clerk or employee shall check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk." Nevada Revised Statute § 293.887(1) says that "for an affected election, the county or city clerk shall establish procedures for the processing and counting of mail ballots," and it goes on to say that those procedures may authorize mail ballots to

be processed and counted by electronic means. Mr. O'Mara correctly points out that the second part of that subsection says that those procedures must not conflict with the provisions of the other parts of the Nevada election statute. That's true. I don't find the Agilis system as used here, so far, to conflict with the other provisions of the Nevada election laws.

I don't see a likelihood of success on the merits of the plaintiffs' claims. Nor do I see a likelihood of success in showing that Mr. Prudhome was denied public access to observe the procedures as required under the statute, and the injunction that's being requested, at least on the papers, didn't quite address the harm alleged and I am loath to get into the weeds of entering an injunction about distances and volumes and overhearing what the reporter -- or the election counters are doing and all those kind of things. The cases are legion that judges like me should try to avoid that when possible. I would do that if I thought there was a stronger reason to do that here, but I don't see that.

Turning to the prong of irreparable harm, Ms. Stokke, it appears to me, could have repaired her harm by filing a provisional ballot with the affidavit. There is also little to no evidence that the Agilis machine incorrectly verified Ms. Stokke's signatures in particular. There's little to no evidence that the machine is not doing what it's supposed to

do, or incorrectly verifying other signatures. There's no evidence that the Agilis machine even touched her ballot, or if it did, that it kicked out a different problem, nor is there evidence that a human review would have done it better. At best, we have one piece of evidence, Ms. Stokke's affidavit. We've got the statements, apparently, that Mr. Gloria and two other supervisors actually did look at it by hand, so that's the relief that the plaintiffs' counsel wants, and that was given to them.

Turning to the balance of hardships, the plaintiffs have shown that there is at best one ballot that was invalidly placed. On the other hand, we have tens, if not hundreds of thousands of votes that potentially might not be counted because the signatures might not be able to be verified by human beings before the canvass window closes under the statute. Ms. Miller thinks that that may be doable, depending upon how many are counted, but I don't have the evidence in front of me to show that that could be done. In fact, I've got Mr. -- or Judge Wilson's finding that at the time back then, it could not be done. I acknowledge that Ms. Miller suggests that it would not be as catastrophic this time, I factor that in to the analysis of this -- of this factor. I don't know that it's determinative one way or another on that point.

The public interest is not in favor of disrupting the completion of the processing and counting of the ballots.

There is an interest in having the Nevada legislature's rules and laws carried out. There is an interest in not disenfranchising tens, if not hundreds of thousands of votes, potentially, balanced against potentially one improper ballot. So the balance of hardships and equities and the public interest don't favor entering injunctive relief at this time.

Now let me be clear, I threw around terms like "laches" earlier. Let me be clear that I'm not deciding this case on a technicality or some esoteric legal principle like laches or Pullman abstention, rather I'm deciding that the plaintiffs have not come to the Court at this point with a sufficient legal showing and a sufficient evidentiary basis to get what is required to obtain the extraordinary relief of an injunction, especially a mandatory affirmative injunction that would require me to dictate to the Clark County Elections Board and folks over there how to do their jobs. So, I am going to deny the motion for Temporary Restraining Order.

With regard to the Motion for Preliminary Injunction that's attached to it, at this stage, I'm going to deny that as well. If I give full credence to the two affidavits that are attached to the motions, that is, the declarations I should say of Mr. Prudhome and Ms. Stokke, even giving those the full merit of truth, it still does not rise to the level of justifying a Preliminary Injunction. So I'm going to deny the Motion for Preliminary Injunction without prejudice. If the

plaintiffs can come up with more evidence or different arguments that are more compelling, but particularly more evidence that would justify an Evidentiary Hearing, then I would consider that on a Motion for Preliminary Injunction. But at this stage, I don't see the need for an Evidentiary Hearing because what's in front of me, even if I give credence to those declarations, it would not cause me to issue the injunction so an Evidentiary Hearing at this stage would not be needed.

So that's my ruling. The motions are denied. The case will go forward, as all civil cases do.

Anything else I can address for the parties?

Mr. O'Mara?

MR. O'MARA: No, Your Honor. Thank you very much, again, on behalf of everybody, to your staff and everyone else for setting this hearing so quickly.

THE COURT: You're welcome, and I do want to thank all of the parties and all of the lawyers. This was very well-briefed and it was on a compressed time frame. I do appreciate everyone's professional- -- professionalism, ability, and well-briefing.

Mr. Newby, anything further from you or your party?

MR. NEWBY: Nothing further at this time. Have a good weekend, Your Honor.

THE COURT: You too.

Ms. Miller, anything from you or your client?

MS. MILLER: No, thank you, Your Honor.

THE COURT: Mr. Devaney, anything further from you or your client?

MS. MILLER: No thanks, Your Honor.

THE COURT: With that then, the hearing is concluded. I hope you all stay safe, and wear your masks.

We're in recess on this matter.

(Proceedings adjourned at 4:12 p.m.)

--oOo--

COURT REPORTER'S CERTIFICATE

I, Heather K. Newman, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

DATED: 11-16-2020

/s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

EXHIBIT 9

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Cheryl A. Costantino and
Edward P. McCall, Jr.
Plaintiffs,

Hon. Timothy M. Kenny
Case No. 20-014780-AW

City of Detroit; Detroit Election Commission; Janice M. Winfrey, in her official capacity as the Clerk of the City of Detroit and the Chairperson and the Detroit Election Commission; Cathy Garrett, In her official capacity as the Clerk of Wayne County; and the Wayne County Board of Canvassers,
Defendants.

_____/

OPINION & ORDER

At a session of this Court
Held on: November 13, 2020
In the Coleman A. Young Municipal Center
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

This matter comes before the Court on Plaintiffs' motion for preliminary injunction, protective order, and a results audit of the November 3, 2020 election. The Court having read the parties' filing and heard oral arguments, finds:

With the exception of a portion of Jessy Jacob affidavit, all alleged fraudulent claims brought by the Plaintiffs related to activity at the TCF Center. Nothing was alleged to

have occurred at the Detroit Election Headquarters on West Grand Blvd. or at any polling place on November 3, 2020.

The Defendants all contend Plaintiffs cannot meet the requirements for injunctive relief and request the Court deny the motion.

When considering a petition for injunction relief, the Court must apply the following four-pronged test:

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2nd 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief "represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity." *Id.* at 612 fn 135 quoting *Senior Accountants, Analysts and Appraisers Association v Detroit*, 218 Mich. App. 263, 269; 553 NW2nd 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) states that the Plaintiffs bear the burden of proving the preliminary injunction should be granted. In cases of alleged fraud, the Plaintiff must state with particularity the circumstances constituting the fraud. MCR 2.112 (B) (1)

Plaintiffs must establish they will likely prevail on the merits. Plaintiffs submitted seven affidavits in support of their petition for injunctive relief claiming widespread voter

fraud took place at the TCF Center. One of the affidavits also contended that there was blatant voter fraud at one of the satellite offices of the Detroit City Clerk. An additional affidavit supplied by current Republican State Senator and former Secretary of State Ruth Johnson, expressed concern about allegations of voter fraud and urged "Court intervention", as well as an audit of the votes.

In opposition to Plaintiffs' assertion that they will prevail, Defendants offered six affidavits from individuals who spent an extensive period of time at the TCF Center. In addition to disputing claims of voter fraud, six affidavits indicated there were numerous instances of disruptive and intimidating behavior by Republican challengers. Some behavior necessitated removing Republican challengers from the TCF Center by police.

After analyzing the affidavits and briefs submitted by the parties, this Court concludes the Defendants offered a more accurate and persuasive explanation of activity within the Absent Voter Counting Board (AVCB) at the TCF Center.

Affiant Jessy Jacob asserts Michigan election laws were violated prior to November 3, 2020, when City of Detroit election workers and employees allegedly coached voters to vote for Biden and the Democratic Party. Ms. Jacob, a furloughed City worker temporarily assigned to the Clerk's Office, indicated she witnessed workers and employees encouraging voters to vote a straight Democratic ticket and also witnessed election workers and employees going over to the voting booths with voters in order to encourage as well as watch them vote. Ms. Jacob additionally indicated while she was working at the satellite location, she was specifically instructed by superiors not to ask for driver's license or any photo ID when a person was trying to vote.

The allegations made by Ms. Jacob are serious. In the affidavit, however, Ms. Jacob does not name the location of the satellite office, the September or October date these

acts of fraud took place, nor does she state the number of occasions she witnessed the alleged misconduct. Ms. Jacob in her affidavit fails to name the city employees responsible for the voter fraud and never told a supervisor about the misconduct.

Ms. Jacob's information is generalized. It asserts behavior with no date, location, frequency, or names of employees. In addition, Ms. Jacob's offers no indication of whether she took steps to address the alleged misconduct or to alter any supervisor about the alleged voter fraud. Ms. Jacob only came forward after the unofficial results of the voting indicated former Vice President Biden was the winner in the state of Michigan.

Ms. Jacob also alleges misconduct and fraud when she worked at the TCF Center. She claims supervisors directed her not to compare signatures on the ballot envelopes she was processing to determine whether or not they were eligible voters. She also states that supervisors directed her to "pre-date" absentee ballots received at the TCF Center on November 4, 2020. Ms. Jacob ascribes a sinister motive for these directives. Evidence offered by long-time State Elections Director Christopher Thomas, however, reveals there was no need for comparison of signatures at the TCF Center because eligibility had been reviewed and determined at the Detroit Election Headquarters on West Grand Blvd. Ms. Jacob was directed not to search for or compare signatures because the task had already been performed by other Detroit city clerks at a previous location in compliance with MCL 168.765a. As to the allegation of "pre-dating" ballots, Mr. Thomas explains that this action completed a data field inadvertently left blank during the initial absentee ballot verification process. Thomas Affidavit, #12. The entries reflected the date the City received the absentee ballot. *Id.*

The affidavit of current State Senator and former Secretary of State Ruth Johnson essentially focuses on the affidavits of Ms. Jacob and Zachery Larsen. Senator Johnson believed the information was concerning to the point that judicial intervention was needed and an audit of the ballots was required. Senator Johnson bases her assessment entirely on the contents of the Plaintiffs' affidavits and Mr. Thomas' affidavit. Nothing in Senator Johnson's affidavit indicates she was at the TCF Center and witnessed the established protocols and how the AVCB activity was carried out. Similarly, she offers no explanation as to her apparent dismissal of Mr. Thomas' affidavit. Senator Johnson's conclusion stands in significant contrast to the affidavit of Christopher Thomas, who was present for many hours at TCF Center on November 2, 3 and 4. In this Court's view, Mr. Thomas provided compelling evidence regarding the activity at the TCF Center's AVCB workplace. This Court found Mr. Thomas' background, expertise, role at the TCF Center during the election, and history of bipartisan work persuasive.

Affiant Andrew Sitto was a Republican challenger who did not attend the October 29th walk- through meeting provided to all challengers and organizations that would be appearing at the TCF Center on November 3 and 4, 2020. Mr. Sitto offers an affidavit indicating that he heard other challengers state that several vehicles with out-of-state license plates pulled up to the TCF Center at approximately 4:30 AM on November 4th. Mr. Sitto states that "tens of thousands of ballots" were brought in and placed on eight long tables and, unlike other ballots, they were brought in from the rear of the room. Sitto also indicated that every ballot that he saw after 4:30 AM was cast for former Vice President Biden.

Mr. Sitto's affidavit, while stating a few general facts, is rife with speculation and guess-work about sinister motives. Mr. Sitto knew little about the process of the absentee voter counting board activity. His sinister motives attributed to the City of Detroit were negated by Christopher Thomas' explanation that all ballots were delivered to the back of Hall E at the TCF Center. Thomas also indicated that the City utilized a rental truck to deliver ballots. There is no evidentiary basis to attribute any evil activity by virtue of the city using a rental truck with out-of-state license plates.

Mr. Sitto contends that tens of thousands of ballots were brought in to the TCF Center at approximately 4:30 AM on November 4, 2020. A number of ballots speculative on Mr. Sitto's part, as is his speculation that all of the ballots delivered were cast for Mr. Biden. It is not surprising that many of the votes being observed by Mr. Sitto were votes cast for Mr. Biden in light of the fact that former Vice President Biden received approximately 220,000 more votes than President Trump.

Daniel Gustafson, another affiant, offers little other than to indicate that he witnessed "large quantities of ballots" delivered to the TCF Center in containers that did not have lids were not sealed, or did not have marking indicating their source of origin. Mr. Gustafson's affidavit is another example of generalized speculation fueled by the belief that there was a Michigan legal requirement that all ballots had to be delivered in a sealed box. Plaintiffs have not supplied any statutory requirement supporting Mr. Gustafson's speculative suspicion of fraud.

Patrick Colbeck's affidavit centered around concern about whether any of the computers at the absent voter counting board were connected to the internet. The answer given by a David Nathan indicated the computers were not connected to the

internet. Mr. Colbeck implies that there was internet connectivity because of an icon that appeared on one of the computers. Christopher Thomas indicated computers were not connected for workers, only the essential tables had computer connectivity. Mr. Colbeck, in his affidavit, speculates that there was in fact Wi-Fi connection for workers use at the TCF Center. No evidence supports Mr. Colbeck's position.

This Court also reads Mr. Colbeck's affidavit in light of his pre-election day Facebook posts. In a post before the November 3, 2020 election, Mr. Colbeck stated on Facebook that the Democrats were using COVID as a cover for Election Day fraud. His predilection to believe fraud was occurring undermines his credibility as a witness.

Affiant Melissa Carone was contracted by Dominion Voting Services to do IT work at the TCF Center for the November 3, 2020 election. Ms. Carone, a Republican, indicated that she "witnessed nothing but fraudulent actions take place" during her time at the TCF Center. Offering generalized statements, Ms. Carone described illegal activity that included, untrained counter tabulating machines that would get jammed four to five times per hour, as well as alleged cover up of loss of vast amounts of data. Ms. Carone indicated she reported her observations to the FBI.

Ms. Carone's description of the events at the TCF Center does not square with any of the other affidavits. There are no other reports of lost data, or tabulating machines that jammed repeatedly every hour during the count. Neither Republican nor Democratic challengers nor city officials substantiate her version of events. The allegations simply are not credible.

Lastly, Plaintiffs rely heavily on the affidavit submitted by attorney Zachery Larsen. Mr. Larsen is a former Assistant Attorney General for the State of Michigan who alleged mistreatment by city workers at the TCF Center, as well as fraudulent activity by election workers. Mr. Larsen expressed concern that ballots were being processed without confirmation that the voter was eligible. Mr. Larsen also expressed concern that he was unable to observe the activities of election official because he was required to stand six feet away from the election workers. Additionally, he claimed as a Republican challenger, he was excluded from the TCF Center after leaving briefly to have something to eat on November 4th. He expressed his belief that he had been excluded because he was a Republican challenger.

Mr. Larsen's claim about the reason for being excluded from reentry into the absent voter counting board area is contradicted by two other individuals. Democratic challengers were also prohibited from reentering the room because the maximum occupancy of the room had taken place. Given the COVID-19 concerns, no additional individuals could be allowed into the counting area. Democratic party challenger David Jaffe and special consultant Christopher Thomas in their affidavits both attest to the fact that neither Republican nor Democratic challengers were allowed back in during the early afternoon of November 4th as efforts were made to avoid overcrowding.

Mr. Larsen's concern about verifying the eligibility of voters at the AVCB was incorrect. As stated earlier, voter eligibility was determined at the Detroit Election Headquarters by other Detroit city clerk personnel.

The claim that Mr. Larsen was prevented from viewing the work being processed at the tables is simply not correct. As seen in a City of Detroit exhibit, a large monitor was

at the table where individuals could maintain a safe distance from poll workers to see what exactly was being performed. Mr. Jaffe confirmed his experience and observation that efforts were made to ensure that all challengers could observe the process.

Despite Mr. Larsen's claimed expertise, his knowledge of the procedures at the AVCB paled in comparison to Christopher Thomas'. Mr. Thomas' detailed explanation of the procedures and processes at the TCF Center were more comprehensive than Mr. Larsen's. It is noteworthy, as well, that Mr. Larsen did not file any formal complaint as the challenger while at the AVCB. Given the concerns raised in Mr. Larsen's affidavit, one would expect an attorney would have done so. Mr. Larsen, however, only came forward to complain after the unofficial vote results indicated his candidate had lost.

In contrast to Plaintiffs' witnesses, Christopher Thomas served in the Secretary of State's Bureau of Elections for 40 years, from 1977 through 2017. In 1981, he was appointed Director of Elections and in that capacity implemented Secretary of State Election Administration Campaign Finance and Lobbyist disclosure programs. On September 3, 2020 he was appointed as Senior Advisor to Detroit City Clerk Janice Winfrey and provided advice to her and her management staff on election law procedures, implementation of recently enacted legislation, revamped absent voter counting boards, satellite offices and drop boxes. Mr. Thomas helped prepare the City of Detroit for the November 3, 2020 General Election.

As part of the City's preparation for the November 3rd election Mr. Thomas invited challenger organizations and political parties to the TCF Center on October 29, 2020 to have a walk-through of the entire absent voter counting facility and process. None of Plaintiff challenger affiants attended the session.

On November 2, 3, and 4, 2020, Mr. Thomas worked at the TCF Center absent voter counting boards primarily as a liaison with Challenger Organizations and Parties. Mr. Thomas indicated that he "provided answers to questions about processes at the counting board's resolved dispute about process and directed leadership of each organization or party to adhere to Michigan Election Law and Secretary of State procedures concerning the rights and responsibilities of challengers."

Additionally, Mr. Thomas resolved disputes about the processes and satisfactorily reduced the number of challenges raised at the TCF Center.

In determining whether injunctive relief is required, the Court must also determine whether the Plaintiffs sustained their burden of establishing they would suffer irreparable harm if an injunction were not granted. Irreparable harm does not exist if there is a legal remedy provided to Plaintiffs.

Plaintiffs contend they need injunctive relief to obtain a results audit under Michigan Constitution Article 2, § IV, Paragraph 1 (h) which states in part "the right to have the results of statewide elections audited, in such as manner as prescribed by law, to ensure the accuracy and integrity of the law of elections." Article 2, § IV, was passed by the voters of the state of Michigan in November, 2018.

A question for the Court is whether the phrase "in such as manner as prescribed by law" requires the Court to fashion a remedy by independently appointing an auditor to examine the votes from the November 3, 2020 election before any County certification of votes or whether there is another manner "as prescribed by law".

Following the adoption of the amended Article 2, § IV, the Michigan Legislature amended MCL 168.31a effective December 28, 2018. MCL 168.31a provides for the Secretary of State and appropriate county clerks to conduct a results audit of at least

one race in each audited precinct. Although Plaintiffs may not care for the wording of the current MCL 168.31a, a results audit has been approved by the Legislature. Any amendment to MCL 168.31a is a question for the voice of the people through the legislature rather than action by the Court.

It would be an unprecedented exercise of judicial activism for this Court to stop the certification process of the Wayne County Board of Canvassers. The Court cannot defy a legislatively crafted process, substitute its judgment for that of the Legislature, and appoint an independent auditor because of an unwieldy process. In addition to being an unwarranted intrusion on the authority of the Legislature, such an audit would require the rest of the County and State to wait on the results. Remedies are provided to the Plaintiffs. Any unhappiness with MCL 168.31a calls for legislative action rather than judicial intervention.

As stated above, Plaintiffs have multiple remedies at law. Plaintiffs are free to petition the Wayne County Board of Canvassers who are responsible for certifying the votes. (MCL 168.801 and 168.821 et seq.) Fraud claims can be brought to the Board of Canvassers, a panel that consists of two Republicans and two Democrats. If dissatisfied with the results, Plaintiffs also can avail themselves of the legal remedy of a recount and a Secretary of State audit pursuant to MCL 168.31a.

Plaintiff's petition for injunctive relief and for a protective order is not required at this time in light of the legal remedy found at 52 USC § 20701 and Michigan's General Schedule #23 – Election Records, Item Number 306, which imposes a statutory obligation to preserve all federal ballots for 22 months after the election.

In assessing the petition for injunctive relief, the Court must determine whether there will be harm to the Plaintiff if the injunction is not granted, as Plaintiffs' existing legal

remedies would remain in place unaltered. There would be harm, however, to the Defendants if the Court were to grant the requested injunction. This Court finds that there are legal remedies for Plaintiffs to pursue and there is no harm to Plaintiffs if the injunction is not granted. There would be harm, however, to the Defendants if the injunction is granted. Waiting for the Court to locate and appoint an independent, nonpartisan auditor to examine the votes, reach a conclusion and then finally report to the Court would involve untold delay. It would cause delay in establishing the Presidential vote tabulation, as well as all other County and State races. It would also undermine faith in the Electoral System.

Finally, the Court has to determine would there be harm to the public interest. This Court finds the answer is a resounding yes. Granting Plaintiffs' requested relief would interfere with the Michigan's selection of Presidential electors needed to vote on December 14, 2020. Delay past December 14, 2020 could disenfranchise Michigan voters from having their state electors participate in the Electoral College vote.

Conclusion

Plaintiffs rely on numerous affidavits from election challengers who paint a picture of sinister fraudulent activities occurring both openly in the TCF Center and under the cloak of darkness. The challengers' conclusions are decidedly contradicted by the highly-respected former State Elections Director Christopher Thomas who spent hours and hours at the TCF Center November 3rd and 4th explaining processes to challengers and resolving disputes. Mr. Thomas' account of the November 3rd and 4th events at the TCF Center is consistent with the affidavits of challengers David Jaffe, Donna MacKenzie and Jeffrey Zimmerman, as well as former Detroit City Election Official, now contractor, Daniel Baxter and City of Detroit Corporation Counsel Lawrence Garcia.

Perhaps if Plaintiffs' election challenger affiants had attended the October 29, 2020 walk-through of the TCF Center ballot counting location, questions and concerns could have been answered in advance of Election Day. Regrettably, they did not and, therefore, Plaintiffs' affiants did not have a full understanding of the TCF absent ballot tabulation process. No formal challenges were filed. However, sinister, fraudulent motives were ascribed to the process and the City of Detroit. Plaintiffs' interpretation of events is incorrect and not credible.

Plaintiffs are unable to meet their burden for the relief sought and for the above mentioned reasons, the Plaintiffs' petition for injunctive relief is DENIED. The Court further finds that no basis exists for the protective order for the reasons identified above. Therefore, that motion is DENIED. Finally, the Court finds that MCL 168.31a governs the audit process. The motion for an independent audit is DENIED.

It is so ordered.

This is not a final order and does not close the case.

November 13, 2020

Hon. Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

EXHIBIT 10

Court of Appeals, State of Michigan

ORDER

Cheryl A Costantino v City of Detroit

Docket No. 355443

LC No. 20-014780-AW

Michael J. Riordan
Presiding Judge

Cynthia Diane Stephens

Anica Letica
Judges

The motion for immediate consideration is GRANTED.

The motion for peremptory reversal pursuant to MCR 7.211(C)(4) is DENIED for failure to persuade the Court of the existence of manifest error requiring reversal and warranting peremptory relief without argument or formal submission.

The application for leave to appeal is DENIED.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

November 16, 2020
Date

Chief Clerk

EXHIBIT 11

STATE OF MICHIGAN

COURT OF CLAIMS

DONALD J. TRUMP FOR PRESIDENT, INC. and ERIC OSTEGREN,

Plaintiffs,

v

JOCELYN BENSON, in her official capacity as Secretary of State,

Defendants.
_____/

OPINION AND ORDER

Case No. 20-000225-MZ

Hon. Cynthia Diane Stephens

Pending before the Court are two motions. The first is plaintiffs' November 4, 2020 emergency motion for declaratory relief under MCR 2.605(D). For the reasons stated on the record and incorporated herein, the motion is DENIED. Also pending before the Court is the motion to intervene as a plaintiff filed by the Democratic National Committee. Because the relief requested by plaintiffs in this case will not issue, the Court DENIES as moot the motion to intervene.

According to the allegations in plaintiffs' complaint, plaintiff Eric Ostegren is a credentialed election challenger under MCL 168.730. Paragraph 2 of the complaint alleges that plaintiff Ostegren was "excluded from the counting board during the absent voter ballot review process." The complaint does not specify when, where, or by whom plaintiff was excluded. Nor does the complaint provide any details about why the alleged exclusion occurred.

The complaint contains allegations concerning absent voter ballot drop-boxes. Plaintiffs allege that state law requires that ballot containers must be monitored by video surveillance. Plaintiff contends that election challengers must be given an opportunity to observe video of ballot drop-boxes with referencing the provision(s) of the statute that purportedly grant such access, . See MCL 168.761d(4)(c).

Plaintiffs' emergency motion asks the Court to order all counting and processing of absentee ballots to cease until an "election inspector" from each political party is allowed to be present at every absent voter counting board, and asks that this court require the Secretary of State to order the immediate segregation of all ballots that are not being inspected and monitored as required by law. Plaintiffs argue that the Secretary of State's failure to act has undermined the rights of all Michigan voters. While the advocate at oral argument posited the prayer for relief as one to order "meaningful access" to the ballot tabulation process, plaintiffs have asked the Court to enter a preliminary injunction to enjoin the counting of ballots. A party requesting this "extraordinary and drastic use of judicial power" must convince the Court of the necessity of the relief based on the following factors:

> (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012).]

As stated on the record at the November 5, 2020 hearing, plaintiffs are not entitled to the extraordinary form of emergency relief they have requested.

I. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

A. OSTEGREN CLAIM

Plaintiff Ostegren avers that he was removed from an absent voter counting board. It is true that the Secretary of State has general supervisory control over the conduct of elections. See MCL 168.21; MCL 168.31. However, the day-to-day operation of an absent voter counting board is controlled by the pertinent city or township clerk. See MCL 168.764d. The complaint does not allege that the Secretary of State was a party to or had knowledge of, the alleged exclusion of plaintiff Ostegren from the unnamed absent voter counting board. Moreover, the Court notes that recent guidance from the Secretary of State, as was detailed in matter before this Court in *Carra et al v Benson et al*, Docket No. 20-000211-MZ, expressly advised local election officials to admit credentialed election challengers, provided that the challengers adhered to face-covering and social-distancing requirements. Thus, allegations regarding the purported conduct of an unknown local election official do not lend themselves to the issuance of a remedy against the Secretary of State.

B. CONNARN AFFIDAVIT

Plaintiffs have submitted what they refer to as "supplemental evidence" in support of their request for relief. The evidence consists of: (1) an affidavit from Jessica Connarn, a designated poll watcher; and (2) a photograph of a handwritten yellow sticky note. In her affidavit, Connarn avers that, when she was working as a poll watcher, she was contacted by an unnamed poll worker who was allegedly "being told by other hired poll workers at her table to change the date the ballot was received when entering ballots into the computer." She avers that this unnamed poll worker later handed her a sticky note that says "entered receive date as 11/2/20 on 11/4/20." Plaintiffs contend that this documentary evidence confirms that some unnamed persons engaged in

fraudulent activity in order to count invalid absent voter ballots that were received after election day.

This "supplemental evidence" is inadmissible as hearsay. The assertion that Connarn was informed by an unknown individual what "other hired poll workers at her table" had been told is inadmissible hearsay within hearsay, and plaintiffs have provided no hearsay exception for either level of hearsay that would warrant consideration of the evidence. See MRE 801(c). The note—which is vague and equivocal—is likewise hearsay. And again, plaintiffs have not presented an argument as to why the Court could consider the same, given the general prohibitions against hearsay evidence. See *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 105; 776 NW2d 114 (2009). Moreover, even overlooking the evidentiary issues, the Court notes that there are still no allegations implicating the Secretary of State's general supervisory control over the conduct of elections. Rather, any alleged action would have been taken by some unknown individual at a polling location.

C. BALLOT BOX VIDEOS

It should be noted at the outset that the statute providing for video surveillance of drop boxes only applies to those boxes that were installed after October 1, 2020. See MCL 168.761d(2). There is no evidence in the record whether there are any boxes subject to this requirement, how many there are, or where they are. The plaintiffs have not cited any statutory authority that requires any video to be subject to review by election challengers. They have not presented this Court with any statute making the Secretary of State responsible for maintaining a database of such boxes. The clear language of the statute directs that "[t]he city or township clerk must use video monitoring of that drop box to ensure effective monitoring of that drop box." MCL 168.761d(4)(c) Additionally, plaintiffs have not directed the Court's attention to any authority directing the

Secretary of State to segregate the ballots that come from such drop-boxes, thereby undermining plaintiffs' request to have such ballots segregated from other ballots, and rendering it impossible for the Court to grant the requested relief against this defendant. Not only can the relief requested not issue against the Secretary of State, who is the only named defendant in this action, but the factual record does not support the relief requested. As a result, plaintiffs are unable to show a likelihood of success on the merits.

II. MOOTNESS

Moreover, even if the requested relief could issue against the Secretary of State, the Court notes that the complaint and emergency motion were not filed until approximately 4:00 p.m. on November 4, 2020—despite being announced to various media outlets much earlier in the day. By the time this action was filed, the votes had largely been counted, and the counting is now complete. Accordingly, and even assuming the requested relief were available against the Secretary of State—and overlooking the problems with the factual and evidentiary record noted above—the matter is now moot, as it is impossible to issue the requested relief. See *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018)

IT IS HEREBY ORDERED that plaintiff's November 4, 2020 emergency motion for declaratory judgment is DENIED.

IT IS HEREBY FURTHER ORDERED that proposed intervenor's motion to intervene is DENIED as MOOT.

This is not a final order and it does not resolve the last pending claim or close the case.

November 6, 2020

Cynthia Diane Stephens
Judge, Court of Claims

EXHIBIT 12

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

Sarah Stoddard and
Election Integrity Fund,

v

Hon. Timothy M. Kenny
Case No. 20-014604-CZ

City Election Commission of
The City of Detroit and
Janice Winfrey, in her official
Capacity as Detroit City Clerk and
Chairperson of the City Election
Commission, and
Wayne County Board of
Canvassers,
_____/

OPINION & ORDER

At a session of this Court
Held on: November 6, 2020
In the Coleman A. Young Municipal Center
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

Plaintiffs Sarah Stoddard and the Election Integrity Fund petition this Court for preliminary injunctive relief seeking:

1. Defendants be required to retain all original and duplicate ballots and poll books.
2. The Wayne County Board of Canvassers not certify the election results until both Republican and Democratic party inspectors compare the duplicate ballots with original ballots.
3. The Wayne County Board of Canvassers unseal all ballot containers and remove all duplicate and original ballots for comparison purposes.
4. The Court provide expedited discovery to plaintiffs, such as limited interrogatories and depositions.

When considering a petition for injunctive relief the Court must apply the following four-prong test:

1. The likelihood the party seeking the injunction will prevail on the merits.
2. The danger the party seeking the injunction will suffer irreparable harm if the injunction is not granted.
3. The risk the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the injunction.
4. The harm to the public interest if the injunction is issued. *Davis v City of Detroit Financial Review Team*, 296 Mich. App. 568, 613; 821 NW2d 896 (2012).

In the *Davis* opinion, the Court also stated that injunctive relief "represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity" Id at 612 fn 135, quoting *Senior Accountants, Analysts & Appraisers Ass'n v. Detroit*, 218 Mich. App. 263, 269; 553 NW2d 679 (1996).

When deciding whether injunctive relief is appropriate MCR 3.310 (A)(4) indicates that the plaintiff bears the burden of proving the preliminary injunction should be granted.

Plaintiffs' pleadings do not persuade this Court that they are likely to prevail on the merits for several reasons. First, this Court believes plaintiffs misinterpret the required placement of major party inspectors at the absent voter counting board location. MCL 168.765a (10) states in part "At least one election inspector from each major political party must be present at the absent voter counting place..." While plaintiffs contends the statutory section mandates there be a Republican and Democratic inspector at each table inside the room, the statute does not identify this requirement. This Court believes the plain language of the statute requires there be election inspectors at the TCF Center facility, the site of the absentee counting effort.

Pursuant to MCL 168.73a the County chairs for Republican and Democratic parties were permitted and did submit names of absent voter counting board inspectors to the City of Detroit Clerk. Consistent with MCL 168.674, the Detroit City Clerk did make appointments of inspectors. Both Republican and Democratic inspectors were present throughout the absent voter counting board location.

An affidavit supplied by Lawrence Garcia, Corporation Counsel for the City of Detroit, indicated he was present throughout the time of the counting of absentee

ballots at the TCF Center. Mr. Garcia indicated there were always Republican and Democratic inspectors there at the location. He also indicated he was unaware of any unresolved counting activity problems.

By contrast, plaintiffs do not offer any affidavits or specific eyewitness evidence to substantiate their assertions. Plaintiffs merely assert in their verified complaint "Hundreds or thousands of ballots were duplicated solely by Democratic party inspectors and then counted." Plaintiffs' allegation is mere speculation.

Plaintiffs' pleadings do not set forth a cause of action. They seek discovery in hopes of finding facts to establish a cause of action. Since there is no cause of action, the injunctive relief remedy is unavailable. *Terlecki v Stewart*, 278 Mich. App. 644; 754 NW2d 899 (2008).

The Court must also consider whether plaintiffs will suffer irreparable harm. Irreparable harm requires "A particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction." *Michigan Coalition of State Employee Unions v Michigan Civil Service Commission*, 465 Mich. 212, 225; 634 NW2d 692, (2001).

In *Dunlap v City of Southfield*, 54 Mich. App. 398, 403; 221 NW2d 237 (1974), the Michigan Court of Appeals stated "An injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural."

In the present case, Plaintiffs allege that the preparation and submission of "duplicate ballots" for "false reads" without the presence of inspectors of both parties violates both state law, MCL 168.765a (10), and the Secretary of State election manual. However, Plaintiffs fail to identify the occurrence and scope of any alleged violation The only "substantive" allegation appears in paragraph 15 of the First Amended Complaint, where Plaintiffs' allege "on information and belief" that hundreds or thousands of ballots have been impacted by this improper practice. Plaintiffs' Supplemental Motion fails to present any further specifics. In short, the motion is based upon speculation and conjecture. Absent any evidence of an improper practice, the Court cannot identify if this alleged violation occurred, and, if it did, the frequency of such violations. Consequently, Plaintiffs fail to move past mere apprehension of a future injury or to establish that a threatened injury is more than speculative or conjectural.

This Court finds that it is mere speculation by plaintiffs that hundreds or thousands of ballots have, in fact, been changed and presumably falsified. Even with this assertion, plaintiffs do have several other remedies available. Plaintiffs are entitled to bring their challenge to the Wayne County Board of Canvassers pursuant to MCL 168.801 *et seq.* and MCL 168.821 *et seq.* Additionally, plaintiffs can file for a recount of the vote if they believe the canvass of the votes suffers from fraud or mistake. MCL168.865-168.868. Thus, this Court cannot conclude that plaintiffs would experience irreparable harm if a preliminary injunction were not issued.

Additionally, this Court must consider whether plaintiffs would be harmed more by the absence of injunctive relief than the defendants would be harmed with one.

If this Court denied plaintiffs' request for injunctive relief, the statutory ability to seek relief from the Wayne County Board of Canvassers (MCL 168.801 et seq. and MCL 168.821 et seq.) and also through a recount (MCL 168.865-868) would be available. By contrast, injunctive relief granted in this case could potentially delay the counting of ballots in this County and therefore in the state. Such delays could jeopardize Detroit's, Wayne County's, and Michigan's ability to certify the election. This in turn could impede the ability of Michigan's elector's to participate in the Electoral College.

Finally, the Court must consider the harm to the public interest. A delay in counting and finalizing the votes from the City of Detroit without any evidentiary basis for doing so, engenders a lack of confidence in the City of Detroit to conduct full and fair elections. The City of Detroit should not be harmed when there is no evidence to support accusations of voter fraud.

Clearly, every legitimate vote should be counted. Plaintiffs contend this has not been done in the 2020 Presidential election. However, plaintiffs have made only a claim but have offered no evidence to support their assertions. Plaintiffs are unable to meet their burden for the relief sought and for the above-mentioned reasons, the plaintiffs' petition for injunctive relief is denied.

It is so ordered.

November 6, 2020
Date

Hon. Timothy M. Kenny
Chief Judge
Third Judicial Circuit Court of Michigan

EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONALD J. TRUMP FOR PRESIDENT, INC.	:	
Plaintiffs,	:	
	:	
v.	:	**Civ. No. 20-5533**
	:	
PHILADELPHIA COUNTY BOARD OF ELECTIONS,	:	
Defendant.	:	

O R D E R

As stated during today's Emergency Injunction Hearing, in light of the Parties' agreement, Plaintiff's Motion (Doc. No. 1) is **DENIED without prejudice.**

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

EXHIBIT 14

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

IN RE: ENFORCEMENT OF ELECTION LAWS AND SECURING BALLOTS CAST OR RECEIVED AFTER 7:00 P.M. ON NOVEMBER 3, 2020,	:	SPCV2000982-J3

ORDER ON PETITION TO COMMAND ENFORCEMENT

OF ELECTION LAWS

Before the Court is a Petition to Command Enforcement of Election Laws which was filed by the Georgia Republican Party and Donald J. Trump for President, Inc. The matter was heard via Webex on November 5, 2020. Having read and considered said petition, all argument and evidence of record, including the evidence presented at the hearing, and the applicable law, the Court finds that there is no evidence that the ballots referenced in the petition were received after 7:00 p.m. on election day, thereby making those ballots invalid. Additionally, there is no evidence that the Chatham County Board of Elections or the Chatham County Board of Registrars has failed to comply with the law.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above petition is **DISMISSED.**

SO ORDERED, THIS THE 5TH DAY OF NOVEMBER, 2020.

James F. Bass, Jr., Judge
Superior Court, E.J.C. of Georgia

cc: All parties