

IN THE SUPREME COURT OF THE STATE OF NEVADA

STAVROS ANTHONY, an individual,

Appellant,

v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government
entity; ROSS MILLER, an individual,

Respondents.

Supreme Court No. 82269

District Case No. 20-82187-1
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Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX TO APPELLANT'S OPENING BRIEF
VOLUME I of II**

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CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on the 7th day of January, 2021 the foregoing **APPENDIX TO APPELLANT’S OPENING BRIEF VOLUME I of II** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list below.

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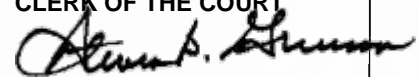
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CASE NO: A-20-824971-W
Department 31

Attorneys for Plaintiff/Petitioner Ross Miller

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

ROSS MILLER, and individual,

Plaintiff/Petitioner,

vs.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government
entity; and DOES I-X, inclusive,

Defendant.

Case No.:

Dept.:

ELECTION-RELATED ACTION

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT
OF MANDAMUS AND PROHIBITION**

(Exempt from Arbitration- Declaratory/
Injunctive Relief Requested)

For his Complaint and Petition, Plaintiff ROSS MILLER ("Plaintiff/Petitioner") alleges as follow:

INTRODUCTION

1. This is an action by a candidate for Clark County Commission, District C, who undisputedly received the most votes from ballots cast for the seat in District C during the 2020 General Election yet is being deprived of the office due to the unlawful actions of the Clark County Board of Commissioners (hereinafter "Board"). That Board's actions are beyond its constitutional limitations and in direct transgression of the textually clear and precise legislatively enacted statutory scheme governing elections in Nevada.

2. Upon the final counting of all the ballots for the District C election, Plaintiff/Petitioner received seventy-six thousand five hundred eighty-six (76,586) as compared to

1 2. Upon the final counting of all the ballots for the District C election,
2 Plaintiff/Petitioner received seventy-six thousand five hundred eighty-six (76,586) as compared to
3 seventy-six thousand five hundred seventy-six (76,576) votes for his opponent. In his presentation
4 to the Board on November 16, 2020, Joseph Gloria ("Registrar"), the Clark County Registrar of
5 Voters stated that there were "discrepancies" found with regard to one hundred thirty-nine (139)
6 votes cast in the District C race, representing "discrepancies" in 0.0009% of the total of one hundred
7 fifty-threes thousand one hundred sixty-two (153,162) votes cast.

8 3. These "discrepancies" were neither unique to the District C race in this election nor
9 to elections in general, according to the Registrar. Six (6) of the one hundred thirty-nine (139)
10 purported "discrepancies" emanate from voters who are believed to have voted twice; the remaining
11 one hundred thirty-three (133) "discrepancies" involve an numerically undifferentiated amalgam of
12 issues with regard to mail-in ballot "cure processes", "counting board process" and tracking of
13 signatures, or from cancelled voter check-ins or check-in errors. Neither are they identified as to the
14 precincts in which they occurred. The Registrar contends that he has "found discrepancies that we
15 cannot explain that would cast a doubt [in his mind] on whether or not" Plaintiff/Petitioner's ten
16 vote "margin of victory is solid".

17 4. In response to the Registrar's presentation on November 16, 2020, rather than
18 comport its conduct to what the law requires of it, certify the results and allow the legislatively
19 mandated process to go forward, which permits the unsuccessful election opponent to seek a recount
20 and/or judicially challenge the outcome, the Board took the unprecedented and unlawful step of
21 wiping clean all votes from the record in their entirety. Further, it ordered a new election to take
22 place for the District C seat, thus totally ignoring the Constitution of the State of Nevada, Article 4,
23 §26, and usurping to itself and from the judicial branch of Nevada government the procedure that is
24 prescribed by law in NRS 293.387, NRS 293.393, NRS 293.397, NRS 293.403, NRS 293.407, NRS
25 293.410 and NRS 293.417.

26 5. It is for these reasons that Plaintiff/Petitioner brings forth this action.

27 **PARTIES**

28 6. Plaintiff/Petitioner ROSS MILLER is and was at all times relevant hereto a candidate

1 for District C of the Clark County Commission.

2 7. Defendant CLARK COUNTY BOARD OF COMMISSIONERS is and was at all
3 times relevant hereto a constitutionally created Nevada local government entity, that refused to
4 certify the votes in the 2020 General Election for the Clark County Commission, District C race,
5 and unlawfully voted for a new election for Clark County Commission, District C.

6 **BACKGROUND**

7 **A. Plaintiff/Petitioner Files And Wins The Democratic District C Primary Election**

8 8. Clark County, Nevada, is divided into separate districts with each having its own
9 elected representative on the Board.

10 9. The term of the Commissioner for District C expired at the end of 2020 and became
11 open for the November 2020 General Election.

12 10. Plaintiff/Petitioner filed as the Democratic Party candidate, prevailed in the primary
13 election and then proceeded to the General Election against a Republican opponent.

14 11. Stavros Anthony, not a party herein, was the Republican opponent in the General
15 Election.

16 **B. Plaintiff/Petitioner Wins Most Votes In The General Election**

17 12. The 2020 General Election for Nevada had a variety of federal and state offices that
18 involved contested races, including President of the United States, three Congressional seats,
19 multiple state legislative seats, countywide judicial seats and other state and local offices.

20 13. All voters were permitted to cast a ballot for President, while the remaining offices
21 were restricted to voters from designated geographical districts. A total of nine hundred seventy-
22 two thousand five hundred ten (972,510) votes were cast in Clark County for the office of President.

23 14. The voting procedure did not vary according to the race. Votes could be cast by in
24 person early voting at various locations throughout the county, by the use of drop off boxes, through
25 use of the mail and in person on election day at their designated precinct,

26 15. The Clark County Commission had four contested races on the ballot for the General
27 Election, including District C. One hundred fifty-threes thousand one hundred sixty-two (153,162)
28 votes were cast for that district. Plaintiff/Petitioner had ten (10) more votes cast for him than his

1 opponent did.

2 **C. “Discrepancies” Give Registrar “Doubt” as to “Margin Of Victory”**

3 16. The Registrar is responsible for overseeing and managing the integrity of the election
4 voting process, including, but not limited to, insuring that only those who are eligible to vote will
5 have their vote counted and that the “one vote” limitation pertains.

6 17. On information and belief, the Registrar and his staff collected and published all the
7 data from the General Election.

8 18. On information and belief, as part of the process, the Registrar and his staff record
9 and publish each voter’s participation in the general election using rosters in each precinct.

10 19. On information and belief, the Registrar and his staff have in place systems and
11 procedures for insuring and auditing the accuracy and validity of mail-in ballots, counting of ballots,
12 tracking of signatures, cancelled voter check-ins or check-in errors.

13 20. On November 16, 2020, the Registrar announced to the Board that he found
14 “discrepancies” with regard to some or all of the processes set for in the paragraph above, contending
15 that he had no explanation as to why he could not resolve them.

16 21. Further, during that same hearing, the Registrar conceded that there were hundreds
17 of similar discrepancies that were discovered with regard to other races as well, separately and
18 independently of those related to District C.

19 22. The Registrar could not and did not attempt to address whether or not these
20 “discrepancies” impacted the outcome of the District C election results. Rather, he said that he had
21 a personal “doubt” as to whether Plaintiff/Petitioner’s ten vote “margin of victory is solid”.

22 23. Neither the Registrar, the District Attorney nor any Board Member spoke to or even
23 addressed the alternative probabilities that the “discrepancies” (1) may have had no impact on the
24 margin (2) may have resulted in Plaintiff/Petitioner’s margin of victory being even greater, or (3)
25 may have reduced the Plaintiff/Petitioner’s margin of victory but he still would have won.

26 24. Importantly, the Registrar opined that a recount would not turn out any differently
27 than the numerical results he reported for the District C election.

1 **D. Assistant District Attorney Predicts What A Court Would Do**

2 25. The Assistant District Attorney in charge of the Civil Division of that office was
3 present and acting as legal advisor to the Board. Recognizing that the statutory procedure of NRS
4 293.400 *et seq.* would commence if the Board were to certify the election allowing the losing
5 opponent to resort to a judicial determination, if he wished to do so. Perhaps feeling clairvoyant or
6 projecting her personal opinion as to the appropriate judicial decision, she told the Board that a
7 judge would rule that a new election take place. She did so without further articulation as to how
8 these “discrepancies” would be characterized in NRS 293.400 *et seq.*

9 26. Other than the possible double voting, nothing said by the Registrar or the District
10 Attorney bespoke deliberate misconduct or fraud on anyone’s part.

11 27. The Assistant District Attorney did not mention that, in the absence of fraud or
12 deliberate misconduct, before a court could do so, NRS 293.410 (2)(c) would require that the
13 challenger bear the burden of proving that illegal or improper votes were cast and counted; or, legal
14 and proper votes were not counted; or a combination of the circumstances occurred in an amount
15 that is equal to or greater than the margin between the contestant and the defendant, or otherwise in
16 an amount sufficient to raise reasonable doubt as to the outcome of the election.

17 28. The Assistant District Attorney did not mention that in the absence of fraud or
18 deliberate misconduct, as an alternative, before a court could do so, NRS 293.410 (2)(d) would
19 require that the challenger bear the burden of proving that the election board, in conducting the
20 election or in canvassing the returns, made errors sufficient to change the result of the election as to
21 any person who has been declared elected.

22 29. The Assistant District Attorney did not mention that in the absence of fraud or
23 deliberate misconduct, as an alternative, before a court could do so, NRS 293.410 (2)(e) would
24 require that the challenger bear the burden of proving that the Plaintiff/Petitioner or any person
25 acting, either directly or indirectly, on behalf of the Plaintiff/Petitioner has given, or offered to give,
26 to any person anything of value for the purpose of manipulating or altering the outcome of the
27 election.

28 30. The Assistant District Attorney did not mention that in the absence of fraud or

1 deliberate misconduct, as an alternative, before a court could do so, NRS 293.410 (2)(f) would
2 require that the challenger bear the burden of proving that there was a malfunction of any voting
3 device or electronic tabulator, counting device or computer in a manner sufficient to raise reasonable
4 doubt as to the outcome of the election.

5 31. The Assistant District Attorney did not even mention the possibility that a court
6 would rule differently than she opined, nor did she advise the Board as to the quality and/or quantum
7 of evidence that would be needed for the challenger to prevail. Rather, she advised the Board that it
8 had the power and authority to refuse to certify and to order the new election without needing to
9 wait for a court to do so.

10 32. The Board then voted not to certify the District C election and called for a new
11 election to occur, directing the Registrar to report to it at its first meeting in December 2020.

12 **FIRST CLAIM FOR RELIEF**

13 (Declaratory Relief)

14 33. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs
15 above as though fully set forth herein.

16 34. A justiciable controversy arises as to the Clark County Board of Commissioners' has
17 a statutorily mandates duty and obligation to canvass the votes in the 2020 General Election for the
18 Clark County Commission, District C race, and instruct the Clark County Registrar to certify the
19 results.

20 35. A justiciable controversy has arisen as to the Clark County Board of Commissioners'
21 right to *sua sponte* conduct a new election. That is, Plaintiff asserts that the Clark County Board of
22 Commissioners violated well established governing statutory law and, by deliberately refusing to
23 certify the election results in accordance with that governing statutory scheme, the Clark County
24 Board of Commissioners exceeded its authority by voting to hold a special election for Clark County
25 Commission, District C

26 36. This dispute is between parties whose interests are adverse and is ripe for
27 adjudication.

28 37. A judicial declaration of the parties' rights is necessary to avoid any further dispute

1 between the parties in connection with the election.

2 38. Plaintiff has been forced to hire an attorney to prosecute this action and therefore
3 seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

4 **SECOND CLAIM FOR RELIEF**

5 (Injunctive Relief)

6 39. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
7 above as though fully set forth herein.

8 40. Injunctive relief is appropriate to restrain a local governing authority from exceeding
9 its authority under the law.

10 41. Plaintiff is entitled to an injunction preventing the disenfranchisement of voters and
11 requiring the Clark County Board of Commissioners to immediately canvass the votes and certify
12 the results in the 2020 General Election for the Clark County Commission, District C race.

13 42. Unless the Clark County Board of Commissioners' actions are restrained by
14 temporary and permanent injunctive relief, Plaintiff will be irreparably harmed.

15 43. Plaintiff has been forced to hire an attorney to prosecute this action and therefore
16 seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

17 **THIRD CLAIM FOR RELIEF**

18 (Writ of Mandamus)

19 44. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
20 above as though fully set forth herein.

21 45. Pursuant to NRS 293.387, it is the Board's non-discretionary, ministerial duty to
22 canvass the returns and cause the Registrar to certify the results.

23 46. The Clark County Board of Commissioners exceeded its authority when it refused to
24 canvass the votes and certify the results in the 2020 General Election for the Clark County
25 Commission, District C race.

26 47. The Clark County Board of Commissioners also exceeded its authority when it voted
27 to hold a special election for Clark County Commission, District C.

28 48. Accordingly, the Clark County Board of Commissioners should be compelled by the

1 Court to canvass the votes and order the Clark County Board of Commissioners to certify the results
2 in the 2020 General Election for the Clark County Commission, District C race.

3 49. Plaintiff has been forced to hire an attorney to prosecute this action and therefore
4 seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

5 **FOURTH CLAIM FOR RELIEF**

6 (Writ of Prohibition)

7 50. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
8 above as though fully set forth herein.

9 51. The Clark County Board of Commissioners exceeded its authority when it refused to
10 canvass the votes and certify the results in the 2020 General Election for the Clark County
11 Commission, District C race.

12 52. The Clark County Board of Commissioners also exceeded its authority when it voted
13 to hold a special election for Clark County Commission, District C.

14 53. Accordingly, the Court should restrain the Clark County Board of Commissioners
15 from going forward with the planned special election for Clark County Commission, District C.

16 54. Plaintiff has been forced to hire an attorney to prosecute this action and therefore
17 seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

18 **WHEREFORE**, Plaintiff prays for judgment as follows:

19 1. For an order declaring that:

20 a. The Clark County Board of Commissioners exceeded its authority when it
21 refused to canvass the votes and certify the results in the 2020 General
22 Election for the Clark County Commission, District C race;

23 b. The Clark County Board of Commissioners also exceeded its authority when
24 it voted to hold a special election for Clark County Commission, District C;

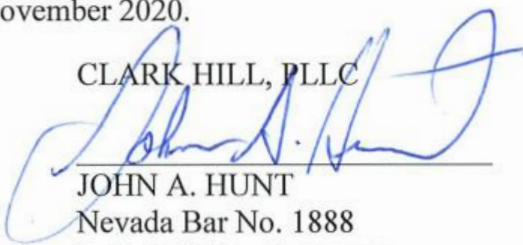
25 2. For an injunction preventing the special election for Clark County Commission,
26 District C, from going forward and compelling the Clark County Board of Commissioners to
27 canvass the votes and certify the results in the 2020 General Election for the Clark County
28 Commission, District C race;

6 5. For an award of reasonable costs and attorneys' fees as permitted by Nevada and
7 law; and

8 6. Any additional relief this Court deems just and proper on the evidence presented at
9 trial.

10 Dated this 17th day of November 2020.

11 CLARK HILL, PLLC

12 
13 _____
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15 Nevada Bar No. 1888

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17 Nevada Bar No. 1923

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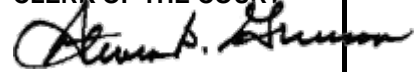
VERIFICATION

I, ROSS MILLER, hereby declare that I am the Plaintiff/Petitioner in the above-captioned action and that I have read the foregoing VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDAMUS AND PROHIBITION and am competent to testify that the same is true of my own knowledge or I have gained such knowledge from a review of the relevant document and records. As for those matters stated on information and belief, I believe them to be true under the penalty or perjury.

DATE

11/17/20

ROSS MILLER



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

ROSS MILLER,

Plaintiff,

vs.

CLARK COUNTY BOARD OF
COMMISSIONERS,

Defendant.

CASE NO. A-20-824971-W
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
FRIDAY, NOVEMBER 20, 2020

TELEPHONIC CONFERENCE AT REQUEST OF COURT

APPEARANCES (ALL TELEPHONIC) :

FOR THE PLAINTIFF: DOMINIC P. GENTILE, ESQ.
BRADLEY S. SCHRAGER, ESQ.

FOR CLARK COUNTY: MARY-ANNE MEYERS MILLER, ESQ.

ALSO PRESENT MARK A. HUTCHISON, ESQ.
FOR STAVROS ANTHONY:

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, NOVEMBER 20, 2020, 2:47 P.M.**

2 * * * * *

3 THE COURT: We're so glad to hear you.

4 Mr. Schrager, are you still on the phone?

5 (No audible response.)

6 THE COURT: Can you take me off mute if you are.

7 MR. GENTILE: Well, it was my understanding that this
8 was set for 3:00 o'clock. Am I wrong?

9 THE COURT: No. But we did a 2:30, and he was on the
10 2:30.

11 So, Ms. Miller, are you on the phone still?

12 MR. GENTILE: I understand that he was on a 2:30. So
13 did he, I think.

14 MS. MILLER: It was a different matter.

15 THE COURT: It was a different case, yeah.

16 MR. GENTILE: Okay. Well, I'm here.

17 THE COURT: All right. Do we need Mr. Schrager? He
18 said he was going to be involved in the Miller case.

19 MR. GENTILE: He is definitely going to be involved,
20 and I really don't want to proceed without him, Judge, because,
21 frankly --

22 THE COURT: That's okay. I'm waiting. Listen, you
23 can't see my patient face over the phone, Mr. Gentile. I have
24 my patient face on.

25 So, Mr. Gentile, I am going to tell you a case number

1 for you and Ms. Miller because neither of you were involved,
2 but Mr. Schrager was. It was a consolidated case, A-11-643835.

3 MR. GENTILE: That's *Wagner*; right?

4 THE COURT: *Wagner* and *Montandon*. Okay. So you
5 do --

6 MR. GENTILE: I don't think there's anything in that
7 case that I haven't read in the last four days.

8 THE COURT: Okay. I'm sorry.

9 But, Ms. Miller, I don't think you were there. I
10 know Mr. Lomax came and testified, but I don't remember if you
11 were here with him or someone else came.

12 MS. MILLER: I wasn't a party there, no, Your Honor.

13 THE COURT: Okay. That was like --

14 MS. MILLER: He came and -- it got a lot more
15 complicated. We were only there for a brief period I think.

16 THE COURT: It was a lot more complicated than what
17 Larry Lomax was involved in because you weren't involved in the
18 open meeting stuff that was involved. So.

19 But I did reread some of that stuff this morning.
20 So.

21 Mr. Schrager, are you on?

22 (No audible response.)

23 THE COURT: So I told him 3:00 o'clock. So he
24 probably will get back on. He's probably actually working.

25 MR. GENTILE: Your Honor, if you give me a minute,

1 I'm going to call him. Maybe we can expedite this.

2 THE COURT: It's all right, Mr. Gentile.

3 MR. GENTILE: I'll get him. I have another phone.

4 I'll call him on that phone, and I'll tell him to get on this
5 one.

6 THE COURT: All right, Mr. Gentile. Thank you.

7 MR. GENTILE: Okay. Sure.

8 (Pause in the proceedings.)

9 MR. GENTILE: Your Honor, I'm back.

10 THE COURT: Thank you.

11 MR. GENTILE: I was totally unsuccessful in getting
12 through to him. His telephone has been lit up for days now.
13 So I'm sure he'll be here at any minute.

14 THE COURT: I'm certain of that too. So we'll just
15 sit here and be quiet while we wait. We've got seven minutes.

16 (Pause in the proceedings.)

17 MR. SCHRAGER: Hi, it's Bradley.

18 THE COURT: Thank you for joining us, Mr. Schrager.
19 Sorry that we are trying to bounce you around.

20 MR. SCHRAGER: You're (telephonic interference), Your
21 Honor. I was here, and now I'm back.

22 THE COURT: I know. I appreciate that. I've got
23 Mr. Gentile and Ms. Miller on the phone as well.

24 MR. SCHRAGER: Very good.

25 THE COURT: So, Mr. Schrager, you are the plaintiff

1 on behalf of Mr. Miller, you and Mr. Gentile. What is your
2 plan? What would you like to do?

3 MR. SCHRAGER: Yes, Your Honor. I think here is the
4 basic case plan, and I think it will be really familiar to you.

5 We intend to file a temporary -- an application for a
6 temporary restraining order to enjoin the planning or holding
7 of the special election. Now, I believe that the consideration
8 of that is upcoming on December 2nd. So we would need relief
9 on that by that time, and we're planning to file that Monday,
10 midday by the latest. And I will immediately serve Ms. Miller,
11 wherein, you know, we are colleagues. I will -- we're in good
12 contact. So we'll take care of that.

13 We can set a briefing schedule in this call for that
14 if you'd like and even set a hearing (telephonic interference)
15 might as well wait until the actual TRO application.

16 Thereafter, during the pendency of what we hope will
17 be the restraining order, we think that within the 14 days if
18 we're actually recorded given that most of this is matter of
19 law based, we can have a preliminary injunction hearing that we
20 can accelerate to a trial on the merits that will tie up all
21 the (indiscernible) in this case in a very rapid, I think,
22 period of time. So that's the basic plan.

23 THE COURT: So do you need to do any discovery or
24 obtain any records?

25 MR. GENTILE: Your Honor, I'd like to address that.

1 I know you probably don't want to hear from two of us, but I've
2 been working this case while Mr. Schrager has been juggling
3 three golf balls and a shotput with the various matters that
4 he's involved in.

5 And, yes, we're going to need at least one
6 deposition, and we're going to need access to the documents
7 that Mr. Gloria described as being discrepancies. I believe
8 Mr. Gloria described them; and Ms. Miller, I don't think she
9 refuted that. So at least that because I don't think that
10 there's any way to proceed with regard to the mandamus action
11 without that.

12 THE COURT: So which deposition are you requesting to
13 take?

14 MR. GENTILE: Well, I'm saying that there would be at
15 least one. And that first one that we would want to take would
16 be Joseph Gloria, the registrar.

17 THE COURT: Okay. And then you have some documents
18 or information requests that you would like to make related to
19 the comments that were made during the county commission
20 meeting?

21 MR. GENTILE: Correct.

22 THE COURT: Okay.

23 Ms. Miller.

24 MS. MILLER: Well, I'm going to take a different
25 approach to it. I think I would agree with Mr. Schrager's

1 assessment that this could probably be resolved on briefing
2 issues because I think only legal issues presented because if
3 you start getting into the facts of whether something was a
4 discrepancy or not, I think now you're talking about
5 discretionary stuff, and mandamus would not (video
6 interference).

7 But it is the solely the question whether or not
8 certification is a purely ministerial act. That's a legal
9 question, and I think you could do it on briefing.

10 THE COURT: Well, but there's the factual question
11 that I have to address related to fraudulent ballots as part of
12 it, and, you know, I wasn't at the county commission meeting.
13 I've only read some news reports. So I don't know exactly the
14 degree to which people have had that discussion. But that is
15 an important distinction that has to be drawn in doing the
16 evaluation, at least from my perspective.

17 MS. MILLER: From my understanding, I think there
18 were two people who voted twice in this particular precinct.
19 We don't know if it's fraud or honest mistake. Those have been
20 turned over to the Attorney General's office.

21 But the rest of them were through my understanding,
22 they're not fraud. They're clerical errors. Either clerical
23 errors or errors on behalf of the voter, which renders us
24 unable to balance out precincts in that race. I don't believe
25 that there's any significant allegations of fraud.

1 THE COURT: Okay.

2 MR. SCHRAGER: And that's my understanding as well.
3 I also -- let me sort of amplify, and see if Ms. Miller will
4 agree with this. There's no way for us to know, even if there
5 were two voters who voted twice in this race, there is no way
6 to know whether they cast any ballots in this race. This was
7 not, you know, the presidential race. This was not the top of
8 the ticket. This was a little further down. It was very low
9 on the ballot this year. So there's no way to even know that.

10 Is that correct, Ms. Miller?

11 MS. MILLER: I would agree with that.

12 THE COURT: All right.

13 MR. SCHRAGER: Yeah. I would also agree with my
14 colleague Mr. Gentile that it may be useful to hear certain
15 explanation regarding the situation from Mr. Gloria himself
16 through a deposition. So I don't know that I would foreclose
17 it.

18 THE COURT: So I will let you take the deposition of
19 Mr. Gloria, but I think this is primarily going to be a legal
20 challenge issue because you are all agreeing that there doesn't
21 appear to be fraud that relates to it which has a different set
22 of rules that get applied.

23 MR. GENTILE: Right.

24 THE COURT: So I will have Mr. Gloria make himself
25 available. I'll let you guys work on that offline. I'm

1 certain that you can come up with a day.

2 I am going to limit the deposition to three hours.

3 MR. SCHRAGER: Okay.

4 THE COURT: Okay. So you can do that while your
5 motion is pending. As soon as you get it over here, I will get
6 it set.

7 Ms. Miller, how long do you think you need to
8 respond?

9 MS. MILLER: To which motion, Your Honor?

10 THE COURT: The application for temporary restraining
11 order and preliminary injunction.

12 MS. MILLER: So I don't have any problem with
13 stipulating that the board does not go forward until the Court
14 has made a determination in this matter. So I think we should
15 just brief on the merits. Is that correct?

16 THE COURT: Yep. So then let's just brief on the
17 merits, take Mr. Gloria's depo and I can --

18 MR. SCHRAGER: Wait. Well --

19 THE COURT: -- how long do we need?

20 MR. SCHRAGER: Hold on. Something significant just
21 happened. I want to --

22 THE COURT: Yes. That was called a stipulation.
23 That is a significant thing.

24 So how long do you need to respond to the motion,
25 Ms. Miller?

1 MS. MILLER: I haven't seen it. So.

2 THE COURT: I know. None of us have.

3 MS. MILLER: (Indiscernible.)

4 THE COURT: It's going to be ready Monday. So how
5 long?

6 MR. SCHRAGER: Well, we have Thanksgiving coming up,
7 but we are -- we were in the process for appearing and filing a
8 temporary restraining order to stop the special election. If
9 Ms. Miller is saying I don't need to do that and we can deal
10 with that by stipulation, why don't her and I work out a
11 briefing schedule.

12 I know she's -- she's not feeling well at the moment,
13 and she's under the weather, and there's -- you know, let's do
14 this properly.

15 But we're probably talking about us filing early this
16 week, her filing just after Thanksgiving; it gives her time to
17 reply to mine. We can also take Joe Gloria's deposition, and
18 we'll have a hearing a week after that.

19 So, but (video interference), Your Honor, a plan for
20 that.

21 THE COURT: All right. So I'm going to put a status
22 check on my chambers calendar for December 4th to see what
23 day the following week you picked for the hearing.

24 MR. SCHRAGER: Okay.

25 MR. HUTCHISON: Your Honor.

1 THE COURT: Yes.

2 MR. HUTCHISON: This is Mark Hutchison. I am coming
3 in at 3:00 o'clock because that's when I thought the hearing
4 was. I apologize. I'm appearing on behalf of Stavros
5 Anthony's campaign.

6 THE COURT: All right. You may want to be involved.

7 MR. HUTCHISON: Your Honor --

8 THE COURT: Does anyone object to Mr. Hutchison
9 intervening?

10 MS. MILLER: Yes.

11 Anyone object to Mr. Hutchison intervening for
12 Mr. Anthony?

13 MR. GENTILE: Your Honor, I may -- I may have -- this
14 comes as a surprise, and I may have an objection to that. This
15 is Dominic Gentile.

16 THE COURT: Uh-huh.

17 MR. GENTILE: I may have one because I really don't
18 believe that Mr. Anthony has any kind of standing to intervene
19 that would be required for intervention at this level.

20 THE COURT: Well, remember in the *Wagner* case I let
21 Mr. Schrager intervene on behalf of Mr.--

22 MR. GENTILE: -- make an objection formally on the
23 record.

24 THE COURT: All right. I appreciate that. I'm going
25 to overrule the objection.

1 Mr. Hutchison, you may intervene. You may file
2 whatever you think is appropriate, and you may participate to
3 the extent we are able to have a live hearing.

4 MR. HUTCHISON: Thanks, Your Honor. That's great.
5 Appreciate it.

6 So the -- I'll just make it an oral motion to
7 intervene. That's been granted.

8 THE COURT: Yes.

9 MR. HUTCHISON: And we can proceed.

10 THE COURT: Yes. And so Mr. Schrager is going to
11 file an application or motion for injunctive relief.

12 Ms. Miller and you may respond. We're looking for a
13 response from you middle of the week after Thanksgiving which
14 is the week of the 30th.

15 And I'm going to check to see what you have agreed to
16 on December 4th to hope you have agreed to a hearing date or
17 a date to be submitted to me for decision on the briefing.

18 And if you want to participate in the deposition of
19 Mr. Gloria, you may, but I've set a time limit on it.

20 MR. HUTCHISON: I (video interference). Thank you,
21 Your Honor.

22 THE COURT: Okay.

23 MR. SCHRAGER: I guess --

24 THE COURT: Okay.

25 MR. SCHRAGER: I have one point, Your Honor. This is

1 Bradley Schrager.

2 Obviously, well, (indiscernible), obviously Mark is
3 now a party.

4 THE COURT: Yes, he is.

5 MR. SCHRAGER: Can I ask whether he is amenable to
6 the stipulation Mary and I have just agreed to which is that
7 the board will hold off in going forward on the special
8 election until this matter is resolved?

9 MR. HUTCHISON: Yes, Your Honor, I'm willing to
10 stipulate to that so we can proceed in an orderly fashion. I
11 think that makes sense.

12 THE COURT: Thank you.

13 MR. SCHRAGER: I appreciate that very much.

14 THE COURT: All right.

15 MR. SCHRAGER: All right. We'll take care of
16 everything, Your Honor. We'll get it on your desk.

17 THE COURT: All right. So I set a status check on
18 December 4th for me to look at the date and briefing schedule
19 that you've come up with and see if all the briefs are in.

20 And then I will reach out to you to talk about
21 whether we need to actually have an argument or any additional
22 evidence or we can go on the briefing. Okay?

23 MR. SCHRAGER: Thank you so much, Your Honor.

24 THE COURT: Be well, everyone.

25 MR. HUTCHISON: Thanks for accommodating, Your Honor.

1 Thank you.

2 THE COURT: Ms. Miller, feel better.

3 MR. SCHRAGER: Indeed. Feel better.

4 THE COURT: We'll be in recess.

5 (Proceedings concluded at 3:05 p.m.)

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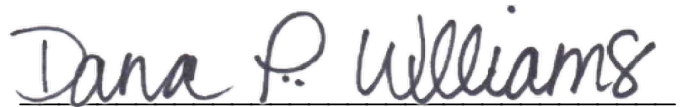
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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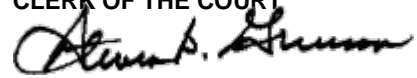
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MILLER: [11] 2/14 3/12 3/14 6/24 7/17 8/11 9/9 9/12 10/1 10/3 11/10 THE COURT: [52]</p> <hr/> <p>1</p> <p>12/15/2020 [1] 15/18 14 [1] 5/17</p> <hr/> <p>2</p> <p>20 [2] 1/11 2/1 2020 [3] 1/11 2/1 15/18 2:30 [3] 2/9 2/10 2/12 2:47 [1] 2/1 2nd [1] 5/8</p> <hr/> <p>3</p> <p>30th [1] 12/14 3:00 o'clock [3] 2/8 3/23 11/3 3:05 p.m [1] 14/5</p> <hr/> <p>4</p> <p>4th [3] 10/22 12/16 13/18</p> <hr/> <p>6</p> <p>643835 [1] 3/2</p> <hr/> <p>8</p> <p>89183 [1] 15/12</p> <hr/> <p>A</p> <p>able [1] 12/3 about [3] 7/4 10/15 13/20 ABOVE [1] 15/4 ABOVE-ENTITLED [1] 15/4 accelerate [1] 5/20 access [1] 6/6 accommodating [1] 13/25 act [1] 7/8 action [1] 6/10 actual [1] 5/15 actually [3] 3/24 5/18 13/21 additional [1] 13/21 address [2] 5/25 7/11 AFFIRM [1] 15/9 AFFIRMATION [1] 15/7 after [3] 10/16 10/18 12/13 agree [4] 6/25 8/4 8/11 8/13 agreed [3] 12/15 12/16 13/6 agreeing [1] 8/20 all [14] 1/14 2/17 4/2 4/6 5/20 8/12 8/20 10/21 11/6 11/24 13/14</p> | <p>13/15 13/17 13/19 allegations [1] 7/25 also [4] 1/18 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FRIDAY [1] 1/11 further [1] 8/8</p> <hr/> <p>G</p> <p>General's [1] 7/20 GENTILE [9] 1/15 2/23 2/25 4/2 4/6 4/23 5/1 8/14 11/15 get [7] 3/24 4/3 4/4 8/22 9/5 9/5 13/16 getting [2] 4/11 7/3 give [1] 3/25 given [1] 5/18 gives [1] 10/16 glad [1] 2/3 Gloria [7] 6/7 6/8 6/16 8/15 8/19 8/24 12/19 Gloria's [2] 9/17 10/17 go [2] 9/13 13/22 going [15] 2/18 2/19 2/25 4/1 6/5 6/6 6/24 8/19 9/2 10/4 10/21 11/24 12/10 12/15 13/7 golf [1] 6/3 GONZALEZ [1] 1/10 good [2] 4/24 5/11 got [3] 3/14 4/15 4/22 granted [1] 12/7 great [1] 12/4 guess [1] 12/23 guys [1] 8/25</p> <hr/> <p>H</p> <p>had [1] 7/14 happened [1] 9/21 has [6] 4/12 6/2 7/15 8/21 9/14 11/18</p> |
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<p>Mr. Miller [1] 5/1</p> <p>Mr. Schrager [9] 2/4 2/17 3/2 3/21 4/18 4/25 6/2 11/21 12/10</p> <p>Mr. Schrager's [1] 6/25</p> <p>Ms [1] 2/11</p> <p>Ms. [13] 3/1 3/9 4/23 5/10 6/8 6/23 8/3 8/10 9/7 9/25 10/9 12/12 14/2</p> <p>Ms. Miller [13] 3/1 3/9 4/23 5/10 6/8 6/23 8/3 8/10 9/7 9/25 10/9 12/12 14/2</p> <p>much [2] 13/13 13/23</p> <p>mute [1] 2/6</p> <p>my [9] 2/7 2/23 2/24 7/16 7/17 7/21 8/2 8/13 10/22</p> <p>N</p> <p>need [10] 2/17 5/8 5/23 6/5 6/6 9/7 9/19 9/24 10/9 13/21</p> <p>neither [1] 3/1</p> <p>NEVADA [3] 1/2 2/1</p> | <p>15/12</p> <p>news [1] 7/13</p> <p>no [9] 1/5 1/6 2/5 2/9 3/12 3/22 8/4 8/5 8/9</p> <p>None [1] 10/2</p> <p>not [9] 7/4 7/5 7/7 7/22 8/7 8/7 9/13 10/12 15/9</p> <p>NOVEMBER [2] 1/11 2/1</p> <p>now [5] 4/12 4/21 5/7 7/4 13/3</p> <p>number [2] 2/25 15/10</p> <p>O</p> <p>o'clock [3] 2/8 3/23 11/3</p> <p>object [2] 11/8 11/11</p> <p>objection [3] 11/14 11/22 11/25</p> <p>obtain [1] 5/24</p> <p>obviously [2] 13/2 13/2</p> <p>off [2] 2/6 13/7</p> <p>office [1] 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Attorneys for Intervening Plaintiff
Stavros Anthony

DISTRICT COURT

CLARK COUNTY, NEVADA

ROSS MILLER, an individual,

Plaintiff/Petitioner,

v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government entity;
and DOES I – X, inclusive,

Defendant.

Case No. A-20-824971-W

Dept. No. 31

ELECTION RELATED ACTION

**ARBITRATION EXEMPTION:
INJUNCTIVE RELIEF
REQUESTED**

COMPLAINT IN INTERVENTION

STAVROS ANTHONY, an individual,

Intervening Plaintiff,

v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government entity;
ROSS MILLER, an individual; and DOES I – X,
inclusive,

Defendants.

Intervening Plaintiff, Stavros Anthony, (“Anthony” or “Intervening Plaintiff”) alleges as follows:

INTRODUCTION

1. Intervening Plaintiff has been forced to intervene in this action as a result of Ross Miller’s (“Miller”) underlying Complaint to this Court regarding the uncertified 2020 General Election for Clark County Commission, District C.

2. The Clark County Board of Commissioners voted not to certify the election for District C and instead to have a new election in District C.

3. The canvass of the final count of ballots in the General Election yielded a count of 76,576 votes for Anthony and 76,586 for Miller, a total difference of 10 votes.¹

4. On November 16, 2020, the Clark County Registrar of Voters, Joe P. Gloria (the “Registrar”), reported to the Clark County Board of Commissioners (the “Board”) that there were 139 discrepancies found in ballots for the District C election.²

5. At the Board meeting, the Registrar reported that the canvass yielded a result indicating the District C election should not be certified because neither he nor the Clark County Election Department could explain these discrepancies or ensure that the ballot count reflected the will of the voters in District C. Therefore, the Registrar recommended a new election because the number and nature of the discrepancies, which were substantially more than the difference in vote total between Miller and Anthony.

6. As a result the Registrar’s report regarding the voting discrepancies and the margin of votes between the District C candidates, the Board determined it was unable to certify the vote and instead voted on November 16, 2020, to hold a new election.

PARTIES

7. Intervening Plaintiff, Stavros Anthony, is and was at all times relevant hereto a candidate for Clark County Commission, District C.

¹ See Complaint ¶2.

² *Id.* at ¶3.

1 8. Defendant Clark County Board of Commissioners is and was at all times
2 relevant hereto a Nevada local government entity properly identified in statute and endowed
3 with authority under NRS 293.465 to call for a new election in Clark County Commission,
4 District C.

5 9. Plaintiff/Petitioner Ross Miller is and was at all times relevant hereto a candidate
6 for Clark County Commission, District C.

7 **FACTUAL BACKGROUND AND ALLEGATIONS**

8 10. Anthony agrees with much of Miller’s Complaint’s background allegations
9 regarding the Clark County Commission, District C election, and reiterates those allegations as
10 follows:

11 a. “Clark County, Nevada, is divided into separate districts with each
12 having its own elected representative on the Board.”³

13 b. “The term of the Commissioner for District C expired at the end of 2020
14 and became open for the November 2020 General Election.”⁴

15 c. “[Miller] filed as the Democratic Party candidate, prevailed in the
16 primary election and then proceeded to the General Election against a Republican
17 opponent.”⁵

18 11. Anthony was the Republican Party candidate for District C.

19 12. During the General Election, 153,162 votes were cast in the Clark County
20 Commission, District C race resulting in a 10 vote difference.⁶

21 13. Furthermore, Anthony largely agrees with the Miller Complaint’s background
22 allegations regarding the responsibility of the Registrar and his staff, and reiterates those
23 allegations as follows:

24 a. “The Registrar is responsible for overseeing and managing the integrity
25 of the election voting process, including, but not limited to, insuring that only those who
26

27 ³ *Id.* at ¶8.

28 ⁴ *Id.* at ¶9.

⁵ *Id.* at ¶10.

⁶ *Id.* at ¶2.

1 are eligible to vote will have their vote counted and that the ‘one vote’ limitation
2 pertains.”⁷

3 b. “On information and belief, the Registrar and his staff collected and
4 published all the data from the General Election.”⁸

5 c. “On information and belief, as part of the process, the Registrar and his
6 staff record and publish each voter's participation in the general election using rosters in
7 each precinct.”⁹

8 d. “On information and belief, the Registrar and his staff have in place
9 systems and procedures for insuring and auditing the accuracy and validity of mail-in
10 ballots, counting of ballots, tracking of signatures, cancelled voter check-ins or check-in
11 errors.”¹⁰

12 14. Further, the Registrar is the “appropriate election officer” identified in NRS
13 293.465 to report and recommend new elections to the Board.

14 15. On November 16, 2020, the Registrar made his presentation to the Board stating
15 that he and his staff had concluded that there were unexplained discrepancies or irregularities
16 with the vote for the District C election.

17 16. The Registrar explained to the Board that it is a routine procedure for the
18 election boards, after election voting concludes and before the canvass of that election, to
19 examine the voter sign-ins with the vote tallies of each precinct to ensure that they balance. In
20 the event that they do not balance and/or match, members of the election board examine the
21 records available in order to ascertain why the numbers do not match.

22 17. The Registrar further explained that there may be a number of reasons that a
23 voter number would not match the vote tally and it is not unusual for these discrepancies to
24 occur and for the election boards to be unable to discern the reason for the discrepancy. The
25 Registrar specifically stated that one reason for these discrepancies could be that voters fail to
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27 ⁷ *Id.* at ¶16.

28 ⁸ *Id.* at ¶17.

⁹ *Id.* at ¶18.

¹⁰ *Id.* at ¶19.

1 sign in when voting so there is an additional vote counted in the race as compared to the number
2 of people signed in to vote. Meaning someone could have voted twice without the Registrar
3 being able to verify that is what occurred. The Registrar also reported that six people were
4 caught voting twice in the election.

5 18. In the District C election, the members of the counting and auditing boards found
6 that the number of voter discrepancies compared to the margin of purported victory for Miller
7 called into doubt the true and actual outcome of the election such that the Registrar could not
8 certify the election results in that election.

9 19. The Registrar stated that there were 139 discrepancies he was unable to
10 reconcile. As a result, he could not certify that the vote was an accurate representation of the
11 will of the voters in District C, and it was his opinion as an election official that this raised
12 reasonable doubt as to the outcome of the election.

13 20. Likewise alleged and confirmed by Miller's Complaint, the Registrar stated that
14 he had a personal "doubt" as to whether Miller's ten vote "margin of victory is solid."

15 21. In addition to his statements to the Board on November 16, 2020, the Registrar
16 also provided the Board with an affidavit regarding these subjects pursuant to NRS 293.465.¹¹

17 22. As a direct result of the Registrar's findings and recommendations, the Board
18 voted to certify the remaining elections in Clark County but withheld certification in the District
19 C election and called for a new election to occur in that District, directing the Registrar to report
20 to the Board at its December 1, 2020 meeting with his recommendations for conducting this
21 new election.

22 23. On November 23, 2020, Anthony immediately responded to the Registrar's NRS
23 293.465 affidavit by submitting his application for a new election in District C.¹²

28 ¹¹ Attached as Exhibit A.

¹² Stavros Anthony Application Letter Exhibit B.

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25. A justiciable controversy has arisen as to the Board's performance of its duties and obligations to canvass the votes in the 2020 General Election for the Clark County Commission, District C as well as its decision not to certify the District C election.

27. This dispute is between parties whose interests are adverse and is ripe for adjudication.

29. Specifically, Anthony seeks a declaration from the Court that the Registrar and the Board were acting within their statutory and/or legal authority to identify irregularities or discrepancies in the District C election that called into question the accuracy of the vote count and the will of the voters who cast ballots in the District C election and thus deciding not to certify the District C election.

31. Anthony has been forced to hire an attorney to prosecute this action and therefore seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

32. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs above as though fully set forth herein.

6 of 10

1 34. As the Registrar does not have confidence in the election results – due to
2 documented and unexplainable voting discrepancies or irregularities whose number far exceed
3 the margin of victory – and the Board did not certify the election results, Anthony is entitled to
4 an injunction compelling the Board to conduct a new election, as ordered by the Board on
5 November 16, 2020.

6 35. On December 1, 2020 at 9:05am the Board has scheduled a meeting wherein the
7 first agenda item, “for possible action,” is the reconsideration of its decision to not certify the
8 District C election results and instead hold a new election.

9 36. If, in fact, the Board chooses to reconsider its non-certification – thereby
10 disregarding the requirements of NRS 293.465 – and certifies the election for Miller, Anthony
11 will suffer irreparable harm.

12 37. After an election is canvassed and certified, Anthony’s only recourse is to object
13 to and combat the election result by pursuing a recount and/or an election contest pursuant to
14 NRS 293.403, 407-417.

15 38. However, neither a recount nor an election contest results in a new election.
16 Under the Nevada recount statute, Anthony would be entitled to “receive a recount of the vote
17 for the office for which he or she is a candidate to determine the number of votes received for
18 the candidate and the number of votes received for the person who won the election” NRS
19 293.403(1). Moreover, pursuant to the Nevada election contest statute, even if Anthony
20 prevails in the election contest, his remedies do not include a new election. The Court has one
21 of two statutory remedies in an election contest in evaluating the Registrar’s already-identified
22 voting discrepancies or irregularities: (1) find from the evidence that Anthony actually
23 “received the greater number of legal votes” than Miller received or (2) determine that the
24 election should be “annulled or set aside” and thereby “the office is vacant.” NRS 293.417(1),
25 (4).

26 39. At this point, the vacant seat would not be awarded to Anthony, but would be
27 filled by a person selected by the Governor – who is under no obligation or inclination to
28 appoint Anthony as Anthony is a member of the opposing political party.

1 40. The election remedy of a new election for District C must be directed by the
2 Board. The Registrar has transmitted to the Board “an affidavit setting forth” the fact of the
3 causes that prevents the election in District C from being certified. Anthony has submitted to
4 the Board “an application” for a new election in District C. Thus, the Board “shall order a new
5 election in that . . . district.” NRS 293.465.

6 41. Thus, Anthony has a reasonable probability of succeeding on the merits of his
7 underlying claim and unless the Board is compelled by temporary and permanent injunctive
8 relief, Anthony will be irreparably harmed.

9 42. Anthony has been forced to hire an attorney to prosecute this action and
10 therefore seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

11 43. Alternatively, and in abundance of caution, Anthony reserves his right to request
12 a recount and/or file an election contest as proscribed by statute should this Court reject the
13 arguments contained herein and the Board certifies the District C election.

14 WHEREFORE, Plaintiff prays for judgment as follows:

15 1. For an order declaring that:

- 16 a. the Clark County Board of Commissioners acted within its authority
17 when it identified discrepancies or irregularities in the District C election
18 and voted not to certify the results in the 2020 General Election for the
19 Clark County Commission, District C election;
20 b. the Clark County Board of Commissioners acted within its authority
21 when it directed the Clark County Registrar of Voters to prepare and hold
22 a special election for Clark County Commission, District C; and
23 c. the Clark County Board of Commissioners is required under Nevada law
24 to call a new election in District C.

25 2. For a temporary and permanent injunction:

- 26 a. preventing the Clark County Commission from reconsidering its vote to
27 not certify the election in District C;
28

b. preventing the Clark County Commission from certifying the District C election; and

c. requiring the Clark County Commission to direct that a new election be held in District C.

3. For an award of reasonable costs and attorneys' fees as permitted by Nevada and law; and,

4. Any additional relief this Court deems just and proper on the evidence presented at trial.

DATED this 24th day of November, 2020.

HUTCHISON & STEFFEN, PLLC

/s/ *Mark A. Hutchison*

Mark A. Hutchison (4639)

Jacob A. Reynolds (10199)

Piers R. Tueller (14633)

Peccole Professional Park

10080 W. Alta Drive, Suite 200

Las Vegas, Nevada 89145

*Attorneys for Intervening Plaintiff
Stavros Anthony*

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TO ALL THE PARTIES ON THE E-SERVICE LIST

/s/ Madelyn B. Carnate-Peralta
An Employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY



EXHIBIT A

AFFIDAVIT OF JOSEPH GLORIA

State of Nevada)
) ss:
County of Clark)

1. I am the Registrar of Voters for Clark County, and this declaration formalizes the statements I made to the Commissioners on November 16, 2020 during the canvass of the 2020 General Election.

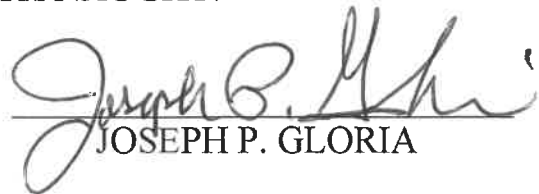
2. It is a routine procedure for the election boards after each election and before the canvass of that election to examine the voter sign ins with the vote tallies of each precinct to ensure that they balance. In the event that they do not balance (match), members of the board examine the records available in order to ascertain why the numbers do not match. There are a number of reasons that a voter number will not match with the vote tally and it is not unusual for these discrepancies to occur and for the election boards to be unable to discern the reason for the discrepancy.

3. In the case of the Commission, District C race, the members of counting and auditing boards found discrepancies such that the margin of victory in that race is called into doubt. There are 218 precincts in District C. There were 139 discrepancies which the election boards were unable to reconcile. As a result, I cannot certify that the vote is an accurate representation of the will of the voters in

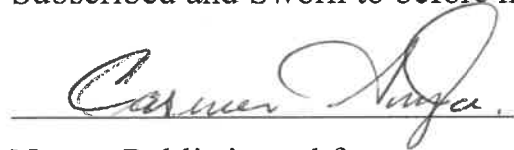
that district, and in my professional opinion as an election official, it raises a reasonable doubt as to the outcome of the election.

4. The discrepancies found in other races in the General Election were not of sufficient magnitude to call into question the results of that race.

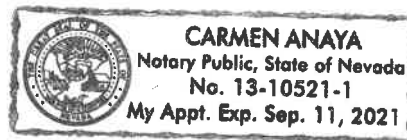
FURTHER YOUR AFFIANT SAYETH NAUGHT.


JOSEPH P. GLORIA

Subscribed and Sworn to before me



Notary Public in and for
said County and State



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EXHIBIT PAGE ONLY



EXHIBIT B

November 23, 2020

Via Email

Clark County Commission
c/o Lynn Marie Goya
Clark County Clerk
Lynn.Goya@clarkcountynv.gov

Registrar of Voters
jpg@clarkcountynv.gov

Clark County Commission
c/o Mary-Anne Miller
District Attorney, Clark County Commission
Mary-Anne.Miller@clarkcountyda.com

Re: Stavros Anthony's application for a new election in the Clark County Commission District C race pursuant to NRS 293.465.

To the Clark County Commission,

By this letter I formalize my request for a new election in the Clark County Commission District C race pursuant to NRS 293.465 based on *at a minimum* the irregularities identified by the Registrar of Voters. I have additional evidence supported by affidavits if the Commission is willing to receive it. I submit this application now because my understanding is that the Registrar of Voters submitted a written affidavit this morning pursuant to NRS 293.465, to formalize his affirmative statements before the Commission on November 16, 2020. I did not previously submit this letter as my understanding was that the Commission did in fact agree with the Registrar's recommendation and did in fact vote at its meeting on November 16, 2020, to have a new election in Clark County Commission District C race.

However, following the lead of the Registrar of Voters, by this document, I also want to confirm my desire and make my formal application for a new election in the Clark County Commission District C race pursuant to NRS 293.465. My understanding is that the new election is not discretionary but based on NRS 293.465 is mandatory.

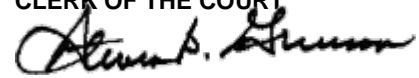
Sincerely,



Stavros Anthony
Candidate, Clark County Commission District C

Cc: Hutchison & Steffen Attorneys

AA000043



MPRI

Mark A. Hutchison (4639)
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jreynolds@hutchlegal.com
ptueller@hutchlegal.com

Attorneys for Intervening Plaintiff
Stavros Anthony

DISTRICT COURT

CLARK COUNTY, NEVADA

ROSS MILLER, an individual,

Plaintiff/Petitioner,
v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government entity;
and DOES I – X, inclusive,

Defendant

Case No. A-20-824971-W

Dept. No. ● XI

HEARING REQUESTED

**MOTION FOR PRELIMINARY
INJUNCTION ON AN ORDER
SHORTENING TIME BEFORE TUESDAY,
DECEMBER 1, 2020**

STAVROS ANTHONY, an individual,

Intervening Plaintiff,
v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government entity;
and DOES I – X, inclusive,

Defendant

Date of Hearing: 11/30/2020

Time of Hearing: 1:00p.m.

1 Intervening Party Stavros Anthony (“Anthony”, “Intervening Plaintiff”) hereby moves this
2 Court for a Preliminary Injunction on an order shortening time before December 1, 2020, which is
3 when the Clark County Commission has scheduled a meeting and agendized items that will impact the
4 election between Anthony and Plaintiff Ross Miller, including certifying the election (contrary to the
5 Commission’s vote on November 16, 2020) and destroying the *status quo* before this Court can rule
6 on the merits of the case. If this occurs Anthony will be deprived on the remedy that the Commission
7 has already directed and solely controls — a new election in Clark County Commission, District C —
8 and thus irreparably damage Anthony.
9

10 This Motion is based on the Points and Authorities below, the attached declaration, exhibits,
11 and pleadings and documents on file with the Court, and any oral argument entertained at the hearing
12 on this Motion.
13

14 DATED this 24th day of November, 2020.

15 HUTCHISON & STEFFEN, PLLC
16

17 /s/ Mark A. Hutchison

18 Mark A. Hutchison (4639)
19 Jacob A. Reynolds (10199)
20 Piers R. Tueller (14633)
21 Peccole Professional Park
22 10080 W. Alta Drive, Suite 200
23 Las Vegas, Nevada 89145

24 *Attorneys for Intervening Plaintiff*
25 *Stavros Anthony*
26
27
28

DECLARATION OF JACOB A. REYNOLDS IN
SUPPORT OF APPLICATION FOR ORDER SHORTENING TIME

I, Jacob A. Reynolds, declare:

1. I am an attorney with Hutchison & Steffen, PLLC and along with others represent Stavros Anthony ("Anthon") in this case. I make this declaration under the penalty of perjury.

2. I submit this request for an Order Shortening Time in an effort to expedite the requested judicial relief.

3. The relief requested needs to be addressed before the Clark County Commission meeting scheduled for **Tuesday, December 1, 2020 at 9:05 a.m.** See Agenda attached as Exhibit A.

4. On Monday, November 23, I informed counsel for the Clark County Commission, Mary-Anne Miller that Anthony intended to file this Motion and addressed the substance of the Motion with her as it is an injunction against her client.

5. On Tuesday, November 24 I communicated with counsel for Ross Miller my intent to file a motion and attempted to work out a stipulation to avoid the motion but those efforts were rejected.

6. This Motion is being served on counsel simultaneous to its filing with the Court to provide as much notice as possible.

7. The Injunction is necessary because the Clark County Commission has agendized items for possible action as #1 and #33 on its current Agenda for the Commission's meeting on December 1, 2020, to reconsider whether the Clark County Commission, District C election should be certified despite the 139 discrepancies in District C identified by the Registrar of Voters at the Commission's November 16, 200 meeting when the Commission considered the canvass and certification of the elections in Clark County. This can severely disrupt the *status quo* that counsel for Anthony

1 understood was stipulated to in this case at the hearing on Friday, November 20, 2020 at
2 approximately 3:00 p.m.

3 8. Injunctive relief is necessary because the Clark County Commission no longer has
4 discretion on whether a new election should be held. Pursuant to NRS 293.465 the Clark County
5 Commission is required to proceed with a new election as the statute states: "Upon receipt of the
6 affidavit and upon the application of any candidate for any office to be voted for by the registered
7 voters of that precinct or district, the board of county commissioners **shall order a new election** in
8 that precinct or district." (Emphasis Added.)
9

10 9. The Registrar has submitted the required affidavit under NRS 293.465. *See* Affidavit
11 attached as Exhibit B.
12

13 10. The same day that the affidavit was submitted by the Registrar, Anthony submitted his
14 Application for a new election under NRS 293.465. *See* Application Letter attached as Exhibit C.
15

16 11. Accordingly, the Commission is now required to proceed with a new election in District
17 C and its Agenda item #1 to reconsider whether the District C election should be certified despite the
18 139 discrepancies would be contrary to Nevada law.

19 12. Lastly, Agenda item #1 must be enjoined as it is scheduled to occur before public
20 comment, which is a direct violation of the open meeting law. *See* NRS 241.020(3)(d)(3)(I).
21

22 13. The Exhibits A-C attached hereto are true and correct copies of the Affidavit of Joe
23 Gloria presented to me by his attorney, the Letter of Application from Stavros Anthony, and the
24 Commission's Agenda for December 1, 2020, at 9:05 a.m. that was made available on Monday
25 November 23, 2020, one business day after this Court's hearing on Friday, November 20, 2020.

26 ///


27 ///

14. I certify that the foregoing constitutes good cause under EDCR 2.26 to consider this matter on shortened time.

/s/ *Jacob A. Reynolds*

Jacob A. Reynolds

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Elizabeth Gonzalez, District Court Judge

POINTS AND AUTHORITIES

1. Introduction.

Intervening Plaintiff, Stavros Anthony, (“Anthony” or “Intervening Plaintiff”) moves the Court for a preliminary injunction against the Defendant Clark County Board of Commissioners (the “Commission”) from certifying the election of the Clark County Commission, District C, or reconsidering its vote to hold a new election for District C, at its meeting scheduled on **December 1, 2020**¹ or thereafter until this Court has ruled on the merits of this case. There are three bases for this injunction. First, the parties agreed to a stipulated injunction to maintain the *status quo* in this case on Friday November 20, 2020. The parties agreed that the *status quo* at the time of the stipulation was that the Commission had voted to proceed with a new election in District C. Miller contends that the Commission erred and it was obligated to certify the election results in District C. Anthony contends that the Commission was correct and in fact was well within its discretion and under the facts of this election *mandated* to hold a new election pursuant to NRS 293.465. As the purpose of any injunction is to maintain the *status quo*, the stipulated injunction is defeated if the Commission is permitted to certify the election in favor of Miller and reconsider its vote to hold a new election for District C.

Second, NRS 293.465 empowers the Commission with the authority to hold a new election. Further, under the statute, a new election is not simply authorized for the District C election, it is *mandatory*. The statute specifically requires that when facts present in this case occur *i.e.*, the Registrar provides an affidavit to the Commission and Anthony submits an application for a new election, both pursuant to NRS 293.465, then “the board of county commissioners **shall** order a new election in that precinct or district.” NRS 293.465 (emphasis added). Accordingly, the Court must enjoin the Commission from reconsidering its vote to proceed to a new election in District C because Nevada law *mandates* that a new election be held.

Third, as is readily apparent in the Agenda, Item #1 is an action item and is deliberately placed before public comment, which is a direct violation of the Open Meeting Law. *See* NRS 241.020(3)(d)(3)(I).

¹ December 1, 2020 Clark County Board of Commissioners Meeting Agenda (“Agenda”), attached hereto as Exhibit A.

1 **2. Factual Background.**

2 On Monday, November 16, 2020, the Commission voted to certify all elections in Clark County
3 save for the election in Clark County Commission District C. In Clark County Commission District C
4 the Commission voted to withhold its certification, proceed to a new election, and to have the
5 Registrar present options for running the new election at the Commission’s December 1, 2020,
6 Commission meeting.

7 On Tuesday, November 17, 2020, Plaintiff Ross Miller (“Miller”) filed this action claiming that
8 the Commission erred in voting for a new election in District C, that the Commission was required to
9 vote to certify the election in District C, and that the Commission should be forced to vote for
10 certification.

11 On Friday, November 20, 2020, the Court held a status hearing in this case. At the hearing, the
12 Court granted Anthony’s motion to intervene in the case. The parties stipulated to an injunction to
13 preserve the *status quo* and prevent the Commission from proceeding to its vote on how the special
14 election would proceed, which was to occur at its December 1, 2020 meeting. Following that hearing,
15 on Monday, November 23, 2020, one business day after hearing, the Agenda for the December 1,
16 2020, Commission meeting was released to the public. The first agenda item is for the Commission to
17 reconsider the Commission’s vote not to certify the election of District C and to proceed to a new
18 election.² Moreover, Item #33 on the same agenda under “Business Items” states for possible action
19 canvassing of the District C election and directing the Registrar to submit documents of the election to
20 the Secretary of State.³ The Commission should be enjoined from proceeding on these Agenda item to
21 reconsider its vote to hold a new election in District C or to otherwise certify the election for District
22 C.

23 **3. Legal Standard.**

24 Preliminary injunctions are issued to maintain the *status quo*. *See Dixon v. Thatcher*, 103 Nev.
25 414, 415, 742 P.2d 1029, 1029 (1987). A preliminary injunction is available upon a showing that the
26 party seeking it enjoys a reasonable probability of success on the merits and that a defendant’s

27
28 ² See Agenda, attached hereto as Exhibit A.

³ See *id.*

1 conduct, if allowed to continue, would result in irreparable harm for which compensatory damage is
2 an inadequate remedy. *Id.* (citing *Number One Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 780, 587
3 P.2d 1329, 1330 (1978)). In exercising its discretion, this Court should also weigh the potential
4 hardships to the relative parties and others, and to the public interest. *See University & Community*
5 *College System of Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004)
6 (In affirming the relevant portion of a preliminary injunction, the Court held that a government
7 entity's actions/imposed restrictions unreasonably denied a private political group exercise of election
8 rights codified in NRS 293.). Anthony satisfies the requirements of obtaining a preliminary
9 injunction.

10 **A. Irreparable Harm.**

11 If, in fact, the Commission chooses to reconsider its non-certification and holding a new
12 election in District C – thereby disregarding the requirements of NRS 293.465 – and certifies the
13 election for Miller, Anthony will suffer irreparable harm. After an election is canvassed and certified,
14 Anthony's only recourse is to object to and combat the election result by pursuing a recount and/or an
15 election contest pursuant to NRS 293.403, 407-417.

16 However, neither a recount nor an election contest results in a new election. Under the Nevada
17 recount statute, Anthony would be entitled to “receive a recount of the vote for the office for which he
18 or she is a candidate to determine the number of votes received for the candidate and the number of
19 votes received for the person who won the election” NRS 293.403(1). Moreover, pursuant to the
20 Nevada election contest statute, even if Anthony prevails in the election contest, his remedies do not
21 include a new election. The Court has one of two statutory remedies in an election contest in
22 evaluating the Registrar's already-identified voting discrepancies or irregularities: (1) find from the
23 evidence that Anthony actually “received the greater number of legal votes” than Miller received or
24 (2) determine that the election should be “annulled or set aside” and thereby “the office is vacant.”
25 NRS 293.417(1), (4).

26 At this point, the vacant seat would not be awarded to Anthony, but would be filled by a person
27 selected by the Governor – who is under no obligation or inclination to appoint Anthony as Anthony is
28 a member of the opposing political party.

1 **B. Success on the Merits.**

2 Anthony enjoys a reasonable probability of on the merits of his underlying claim. Anthony has
3 one declaratory relief claim (in addition to injunctive relief) set forth in his complaint. In that claim
4 Anthony seeks a declaration from this Court that

5 (a) the Registrar and the Commission were acting within their
6 statutory and/or legal authority to identify irregularities or discrepancies in the
7 District C election that called into question the accuracy of the vote count and the
8 will of the voters who cast ballots in the District C election and thus deciding not
9 to certify the District C election; and

10 (b) the Commission was and is required under Nevada law, including
11 chapter 293 of NRS and in particular NRS 293.465 to call for a new election in
12 District C.

13 *See* Complaint ¶¶29-30.

14 The election remedy of a new election for District C must be directed by the Commission. As
15 discussed herein, the Registrar has transmitted to the Board “an affidavit setting forth” the fact of the
16 causes that prevents the election in District C from being certified. Anthony has submitted to the
17 Commission “an application” for a new election in District C. Thus, the Commission “shall order a
18 new election in that . . . district.” NRS 293.465.

19 **C. Balance of the Hardship and the Public’s Interest.**

20 In the absence of the issuance of a preliminary injunction, Anthony will be deprived of the most
21 just and fair remedy available to him—a new election. As demonstrated herein, neither a recount nor
22 an election contest will provide the remedy of a new election. With only 10 votes separating Miller
23 and Anthony and 139 discrepancies or irregularities identified by the Registrar of Voters in the ballots
24 cast in District C, a new election is not only the appropriate remedy, it is the mandated remedy. It is
25 available only by the Commission directing that a new election be held. Under the facts presented by
26 the Registrar and his opinion that the number and nature of the discrepancies call into doubt the
27 outcome of the election and whether it reflects the will of the voters, the public interest is served by
28 this Court issuing the preliminary injunction. *See* NRS 293.127(1)(c) (Chapter 293 of NRS “must be

1 liberally construed to the end that . . . [t]he real will of the electors is not defeated by any informality
2 or by failure substantially to comply with the provision of this title with respect to . . . certifying the
3 results” of an election.).

4 Thus, Anthony has a reasonable probability of succeeding on the merits of his underlying claim
5 and unless the Board is compelled by temporary and permanent injunctive relief, Anthony will be
6 irreparably harmed. Moreover, the balance of hardships and the public interest favor a preliminary
7 injunction.

8 **D. The Bond Amount Should be Minimal.**

9 For these same reasons, the preliminary injunction should be issued with the bond set at a
10 nominal amount.

11 **4. The Court should enjoin the Commission from reconsidering its vote not to**
12 **certify the election or to hold a new election in District C.**

13 **A. The Injunction should issue based upon the stipulation of the parties.**

14 On Friday November 20, 2020, the parties stipulated on the record to preserve the *status quo*
15 and prevent the Commission from proceeding on its vote to move forward with the new election in
16 Clark County Commission District C. Following the hearing on the next business day, Monday,
17 November 23, 2020, the Clark County Commission issued an Agenda and the first item is to
18 reconsider the Commission’s vote to not certify the election and to proceed to hold a new election in
19 District C. Moreover, Agenda Item #33 calls for the canvassing of the election for District C and
20 directing the Registrar to submit election paperwork to the Secretary of State.⁴ The Commission’s
21 reconsideration of its vote not to certify and to hold a new election would seriously change the *status*
22 *quo* and therefore violate the stipulated injunction. The primary purpose of injunctions is to preserve
23 the status quo. *See Dixon v. Thatcher*, 103 Nev. at 415, 742 P.2d at 1029.

24 If the stipulated injunction does not prevent a change in the *status quo* for all parties, it is
25 meaningless. Further, if the stipulated injunction works only to the benefit of Miller (who wants the
26 vote reconsidered) and to the detriment of Anthony (who wants the vote on the new election to
27

28

⁴ See Agenda attached as Exhibit A.

1 proceed) then Anthony seeks by this Motion maintenance of the *status quo* for all parties. The parties'
2 stipulation should not be a one-way street.

3 **B. The Injunction should issue because the Commission is required to hold a new election.**

4 Miller wants the Commission to certify the election because that will foreclose Anthony's legal
5 remedy of securing a new election. Once an election is certified Anthony's legal remedies are limited
6 to a recount, and/or an election contest. However, neither a recount nor an election contest results in a
7 new election. Under the Nevada recount statute, Anthony would be merely be entitled to "receive a
8 recount of the vote for the office for which he or she is a candidate to determine the number of votes
9 received for the candidate and the number of votes received for the person who won the election"
10 NRS 293.403(1). Moreover, pursuant to the Nevada election contest statute, even if Anthony
11 prevailed in the election contest, his remedies do not include a new election. The Court has one of two
12 statutory remedies in an election contest in evaluating the Registrar's already-identified voting
13 discrepancies or irregularities: (1) find from the evidence that Anthony actually "received the greater
14 number of legal votes" than Mr. Miller received or (2) determine that the election should be "annulled
15 or set aside" and thereby "the office is vacant." NRS 293.417(1), (4). Thus, even if Anthony prevails
16 at this point, the vacant seat would not be awarded to Anthony, but would be filled by a person
17 selected by the Governor – who is under no obligation or inclination to appoint Anthony as Anthony is
18 a member of the opposing political party.

19 Obviously seeking to have the Commission certify the election for District C is clearly a shrewd
20 political maneuver because it guarantees either Miller or another Democrat appointed by Governor
21 Sisolak will occupy the District C Commission seat, but not Republican Anthony.

22 However, the law actually mandates a different result in this case. Under the facts of this
23 election not only is the Commission authorized to hold a new election, but Nevada law mandates that
24 a new election be held:

25
26 **NRS 293.465 Loss or destruction of ballots, or other cause,
preventing election in precinct or district; new election.**

27 If an election is prevented in any precinct or district by reason of the loss
28 or destruction of the ballots intended for that precinct, or *any other cause*,

1 the appropriate election officers in that precinct or district shall make an
2 affidavit setting forth that fact and transmit it to the appropriate board of
3 county commissioners. Upon receipt of the affidavit and upon the
4 application of any candidate for any office to be voted for by the
registered voters of that precinct or district, the board of county
commissioners shall order a new election in that precinct or district.

5 NRS 293.465 (emphasis added).

6 Notably, this statute has been directly addressed and analyzed by the Nevada Supreme Court in
7 a related context. Specifically, in a previous Clark County election an issue surfaced concerning the
8 election voting apparatus, which resulted in an unknown number of voters casting their ballots for the
9 wrong candidates. *See LaPorta v. Broadbent*, 91 Nev. 27, 29, 530 P.2d 1404, 1406 (1975). In
10 *LaPorta*, the candidates on the ballot for Nevada State Assembly District 22 were R. Hal Smith
11 (“Smith”) and John E. Jeffrey (“Jeffrey”). *Id.* at 28. On Election Day, voters assigned to vote in a
12 certain precinct were unknowingly unable to cast a ballot for either Smith or Jeffery. *Id.* This is
13 because a ballot had previously become stuck in the voting apparatus and the mechanism had to be
14 replaced. *Id.* The substituted mechanism did not contain the name of Smith or Jeffery, but was
15 instead listed candidates who belonged to another precinct. *Id.* This problem was unnoticed for
16 approximately three hours. *Id.* Although the error was ultimately discovered and the correct list was
17 inserted, an unknown number of persons had already cast their ballots – intending to vote for either
18 Smith or Jeffrey – but had in fact not voted for either of them. *Id.* Ultimately Jeffery won the election
19 by a mere six votes. *Id.* Consequently, the result of that election was cast into doubt, and Smith
20 requested that the Commission order a re-vote. *Id.* at 28. Although the Commission’s vote for a new
21 election resulted in a tie – and therefore failed to pass – Smith filed a writ of mandamus with the
22 Nevada Supreme Court to compel a re-vote. *Id.* at 29. The Court granted the writ and ordered a re-
23 vote – pursuant to NRS 293.465 – and further provided specific procedures for the re-vote or new
24 election. *Id.* In analyzing NRS 293.465, the Nevada Supreme Court opined that the statute is
25 “unequivocal on the subject of a faulty election when the ballots are unavailable. If an election is
26 prevented as it was here by absence of ballots the statute specifically states that the county
27 commissioners shall order a new election in the precinct where the ballots were absent.” *Id.* This is
28 because, the “fundamentals of suffrage require that electors shall have the opportunity to participate in

1 elections *and that the real will of the electors should not be defeated by errors in the conduct of an*
2 *election.” Id. at 30 (citing NRS 293.127)(emphasis added).*

3 Here, as in *LaPorta*, the Registrar of Voters, Joe Gloria, has identified 139 voting discrepancies
4 or irregularities that constituted errors in the conduct of the election and calls it into doubt. This
5 election was prevented by the catchall phrase used in the statute: “or any other cause” as determined
6 and reported by the Registrar Gloria to the Commission on November 16, 2020 and in his affidavit
7 submitted to the Commission. Specifically Registrar Gloria determined that the election in the Clark
8 County Commission District C race was prevented by 139 voting discrepancies, ballots that have been
9 counted that cannot be reconciled, nor can they be traced to any voter as they are essentially “lost”
10 amongst the pool of anonymous votes in the system. So there is no way to simply cast out the
11 erroneous ballots and do an effective recount. In other elections this may not have mattered, but in
12 this election only 10 votes separated Miller and Anthony.

13 Registrar Gloria is “the appropriate election officer[] in that precinct or district [District C]
14 under NRS 293.465.” Registrar Gloria at first did not make a formal affidavit but rather reported at
15 the “special meeting” on November 16, 2020, before the Commission about the canvass of District C.
16 There is no transcript of the meeting but the video recording is available at the Commission’s
17 website.⁵ At the meeting Registrar Gloria and Counsel to the Commission, Mary-Anne Miller, stated
18 and affirmed their recommendation to hold a new election in Commission District C based on the 139
19 discrepancies or irregularities found in the canvassing or auditing of the ballots cast in District C.
20 Neither could be confident that the will of the voters had been expressed given the 10 vote
21 differentiation between Miller and Anthony. The County Commission then voted not to certify the
22 election and to move forward with a new election in District C.⁶

23 Further, after the Commission’s special meeting Registrar Gloria submitted an affidavit
24 pursuant to NRS 293.465 which “formalizes the statements I made to the Commissioners on
25 November 16, 2020 during the canvass of the 2020 General election.”⁷ This affidavit was submitted
26

27

⁵ https://www.clarkcountynv.gov/government/board_of_county_commissioners/commission_meeting_agendas.php

28 ⁶ See generally, Ross Miller’s Complaint ¶¶2-4, 16-21.

⁷ Affidavit of Joseph P. Gloria, attached hereto as Exhibit B at ¶1.

1 to the Clark County Commission, which is “the appropriate board of county commissioners” under
2 NRS 293.465.

3 In the Affidavit Registrar Gloria attests:

4 In the case of the Commission, District C race, the members of
5 counting and auditing boards found discrepancies such that the margin of
6 victory in that race is called into doubt. There are 218 precincts in District
7 C. There were 139 discrepancies which the election boards were unable to
8 reconcile. As a result, I cannot certify that the vote is an accurate
9 representation of the will of the voters in that district, and in my
10 professional opinion as an election official, it raises a reasonable doubt as
11 to the outcome of the election.⁸

12 On the same day the affidavit was submitted, Anthony submitted his formal application for a
13 new election to the Commission as well.⁹ Accordingly, pursuant to NRS 293.465 the Commission is
14 now obligated to hold a new election: “Upon receipt of the affidavit [Ex. B] and upon the application
15 of any candidate for any office to be voted for by the registered voters of that precinct or district [Ex.
16 C], the board of county commissioners **shall order a new election** in that precinct or district.” NRS
17 293.465 (emphasis added).

18 This is mandatory language in the statute. *See Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. 618,
19 627, 310 P.3d 560, 566 (2013) (“It is a well-settled principle of statutory construction that statutes
20 using the word ‘may’ are generally directory and permissive in nature, while those that employ the
21 term ‘shall’ are presumptively mandatory.”); *see also, Nevada Comm’n on Ethics v.*
22 *JMA/Lucchesi*, 110 Nev. 1, 9–10, 866 P.2d 297, 302 (1994). Moreover, the purpose of this language
23 is clear and interpretation is unnecessary. *See Rural Tel. Co. v. Pub. Utilities Comm’n*, 133 Nev. 387,
24 389, 398 P.3d 909, 911 (2017) (“[W]hen the language of a statute is plain and unambiguous,” the
25 courts are not permitted to look beyond the statute itself when determining its meaning.”); *Banegas v.*
26 *State Indus. Ins. Sys.*, 117 Nev. 222, 225, 19 P.3d 245, 247 (2001) (“[W]ords within a statute must not
27 be read in isolation, and statutes must be construed to give meaning to all of their parts
28 and language within the context of the purpose of the legislation.”); *Orion Portfolio Servs. 2, LLC v.*

⁸ Gloria Aff’d ¶3.

⁹ Application of Stavros Anthony, attached hereto as Exhibit C.

1 *Cty. of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010) (The
2 Court must “not render any part of the statute meaningless,” or read it in a way that “produce[s] absurd
3 or unreasonable results.”). The Commission no longer has a choice on whether it will hold a new
4 election for Clark County Commission, District C, the statute plainly states that it “shall order a new
5 election” in District C. This Court should therefore enjoin the Commission from reconsidering its vote
6 not to certify the election or to hold a new election in District C. Proceeding with the new election is
7 no longer discretionary. It is mandatory.

8 **C. The Commission’s Proceedings Underscore the Need for Preliminary Injunction.**

9 The relevant agenda item is #1 and #33 on the Agenda.¹⁰ Notably, it is placed on the Agenda
10 even ahead of public comment, which emphasizes its questionable nature.¹¹ Having an action item
11 before public comment is an independent legal justification to enjoin the commission from taking up
12 the item. *See* NRS 241.020(3)(d)(3)(I).

13 The agenda item states: “Reconsider the decision of the Board of County Commissioners to
14 omit from its certification of the canvass conducted on November 16, 2020, the office of County
15 Commission, District C. (For possible action).”¹² The Court must understand this: the question of
16 certification versus a new election are two sides of the same coin. It is either one or the other result.
17 There cannot be both. This was expressly discussed by Commissioner Jones at the special meeting on
18 November 16, 2020.

19 Commissioner Jones: Thank you Madam Chair. NRS 293.387 requires us to canvass,
20 complete our canvass today. So, I guess in terms of reviewing discrepancies before the
21 December meeting do we even have discretion Ms. Miller to do anything other than hold a
special election if we don’t certify today?

22 Attorney Mary-Anne Miller: I’m not aware of any other options.

23 Commissioner Jones: So we either certify today or we don’t and it has to go to a special
24 election.

25 Attorney Mary-Anne Miller: That’s my understanding.

26
27 _____
28 ¹⁰ *See* Agenda, Attached hereto as Exhibit A.

¹¹ *Id.*

¹² *Id.*

1 See MP4 recording, Clark County Commission Special Meeting, November 16, 2020, 41:10-41:39.¹³

2
3 Accordingly, the understanding was clearly stated to the Commissioners that there are two
4 options: certify the election or hold a special election. Commissioner Jones was also clear at the
5 meeting that certifying the election gave the challenging candidate certain rights as well (*i.e.*, a
6 recount, an election contest), but the law is clear that a new election is taken off the table at that point.
7 Commissioner Gibson offered a follow-up to Commissioner Jones' point on the reason why certifying
8 the results and allowing Anthony to file for a recount is not a justifiable resolution in this case:

9 **Commissioner Gibson:** Of course when the phones started ringing last week,
10 and people from both sides were reaching out, the first thing that occurred to me
11 was "This is easy, we will just do a recount and that will be the end of it." The.. ,
12 this additional complication in my estimation elevates it to a place where the
13 transcendent importance of the Commission, and its, this institution, the County,
14 Mr. Gloria's reputation and the entire Election Department's reputation in my
15 estimation is affected by the action we take. And, I believe that, um, the way
16 that we address it as imperfect as it may be, may apparently only is to do a
17 special election. So, I guess for that reason, since there really are no other viable
18 options we can either wait and some *court* tells us to do a special election, or we
19 can get out of the way and get something going so that the people of District C
20 can find a new Commissioner. . .

21 [Omitted discussion with Registrar Joe Gloria on certain discrepancies]

22

23 I see this [District C election] as so dramatically different than any of the rest of
24 them [*i.e.*, the other election disputes] because of the number. And you've
25 isolated it down to 139 I think you said, uh ballots, and I just don't think we have
26 any option. I think the credibility of everything that we do is something that can
27 be affirmed by simply doing that, rather than waiting for some Court to tell us
28 how to conduct our business. So I think that's where I come down, but thank
you very much Madame Chair.

MP4 recording, Clark County Commission Special Meeting, November 16, 2020, 42:35-46:43.¹⁴

¹³ This transcript was created using the .mp4 file of the Special Meeting of County Commissioners on November 16, 2020,
available at

https://www.clarkcountynv.gov/government/board_of_county_commissioners/commission_meeting_agendas.php

¹⁴ This transcript was created using the .mp4 file of the Special Meeting of County Commissioners on November 16, 2020,
available at

https://www.clarkcountynv.gov/government/board_of_county_commissioners/commission_meeting_agendas.php

1 Miller's complaint demonstrates that his case hinges on this Court deciding that the Commission *must*
2 certify the election.¹⁵ However, if this Court accepts this argument, that the Commission must certify
3 the election in Commission District C, then Anthony will lose his remedy to a new election and he will
4 undoubtedly be irreparably harmed. *See University & Cmty. Coll. Sys. of Nevada v. Nevadans for*
5 *Sound Gov't*, 120 Nev. at 721, 100 P.3d at 187 (2004) (An injunction is necessary when the conduct of
6 the parties will cause irreparable harm for which compensatory damage is an inadequate remedy).
7 Indeed, the Commission is the governmental body that is authorized and mandated to provide Anthony
8 a new election based on the number and nature of discrepancies or irregularities in the vote tally of
9 District C as reported and attested to by the Registrar Gloria.

10 Finally, reading the statutes in NRS 293 *et seq.* as Miller does to require the Commission to
11 certify the election as a "ministerial act" completely ignores NRS 293.465. More than ignoring the
12 statute, it actually reads the statute out of existence and renders it completely meaningless. That is
13 wrong because the Court must "construe statutes to give meaning to all of their parts and language,
14 and this court will read each sentence, phrase, and word to render it meaningful within the context of
15 the purpose of the legislation. Further, no part of a statute should be rendered meaningless and its
16 language should not be read to produce absurd or unreasonable results." *Harris Assocs. v. Clark Cty.*
17 *Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (internal citations and quotations omitted).
18 Moreover, when possible, the interpretation of a statute or constitutional provision will be harmonized
19 with other statutory or provisions to avoid unreasonable or absurd results. *See Nevada Power Co. v.*
20 *Haggerty*, 115 Nev. 353, 364, 989 P.2d 870 (1999).

21 **5. Conclusion.**

22 For all of these reasons, the Court should grant Anthony's motion for preliminary injunction.

23 Preliminary injunctive relief is required to compel the Commission to exercise its's statutorily-
24 mandated duty to direct that a new election be conducted in District C. The election result is in doubt.
25 The will of the voters may not be reflected in the vote count. As the Registrar of Voters does not have
26
27

28 ¹⁵ See Complaint ¶¶44-49

1 confidence in the election results – due to the documented the 139 voting discrepancies or
2 irregularities, which number far exceed the voting difference between Miller and Anthony – and the
3 Commission did not certify the election results but called for a new election, Anthony is entitled to a
4 preliminary injunction to maintain the *status quo* and preventing the Clark County Commission from
5 certifying the election of Clark County Commission, District C, or otherwise reconsidering its vote to
6 hold a new election for District C at its December 1, 2020 meeting or thereafter until this Court has
7 ruled on the merits of this case.
8

9 DATED this 24th day of November, 2020.

10 HUTCHISON & STEFFEN, PLLC
11

12 /s/ Mark A. Hutchison

13 Mark A. Hutchison (4639)
14 Jacob A. Reynolds (10199)
15 Piers R. Tueller (14633)
16 Peccole Professional Park
10080 W. Alta Drive, Suite 200
Las Vegas, Nevada 89145

17 *Attorneys for Intervening Plaintiff*
18 *Stavros Anthony*
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TO ALL THE PARTIES ON THE E-SERVICE LIST

/s/ Madelyn B. Carnate-Peralta
An Employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY



EXHIBIT A

AGENDA

**JOINT MEETING OF THE
CLARK COUNTY BOARD OF COMMISSIONERS
CLARK COUNTY WATER RECLAMATION DISTRICT BOARD OF TRUSTEES AND
UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA BOARD OF TRUSTEES
9:05 AM TUESDAY, DECEMBER 1, 2020
CLARK COUNTY COMMISSION CHAMBERS, GOVERNMENT CENTER
500 SOUTH GRAND CENTRAL PARKWAY, LAS VEGAS, NEVADA**

This meeting has been properly noticed and posted online at ClarkCountyNV.gov and Nevada Public Notice at <https://notice.nv.gov/> and in the following locations:

| | |
|---|--|
| CC Government Center 500 S. Grand Central Pkwy. Las Vegas, NV (Principal Office) | Regional Justice Center 200 Lewis Ave, 1 st Fl. Las Vegas, NV |
| Third Street Building 309 S. Third St. Las Vegas, NV | Paradise Park Pool & Center 4775 McLeod Dr. Las Vegas, NV |
| Winchester Park & Center 3130 S. McLeod Dr Las Vegas, NV | Desert Breeze Park & Community Ctr 8275 Spring Mtn. Rd Las Vegas, NV |

Agenda Also Available At:

| | |
|--|--|
| Clark County Reg. Govt. Center 101 Civic Way Laughlin, NV | City of North Las Vegas 2250 N. Las Vegas Blvd North Las Vegas, NV |
| City of Henderson 240 Water St. Henderson, NV | City of Boulder City 400 California Ave. Boulder City, NV |
| City of Mesquite 10 E. Mesquite Blvd. Mesquite, NV | City of Las Vegas 495 S. Main St. Las Vegas, NV |

Pursuant to the Governor's Directive, this meeting will not be open to the public.

This meeting will be broadcast live in the Las Vegas area. Clark County Television is available in the Las Vegas area on Channel 4/1004 on Cox cable and on CenturyLink on Channels 4 and 1004 as well as in Laughlin on Channel 14 via Suddenlink. Live streaming of CCTV programming is available at www.ClarkCountyNV.gov and www.YouTube.com/ClarkCountyNV. CCTV is also available in Boulder City on Channel 4 and in Moapa Valley on Digital Channel 50.3. For more information about the program schedule, please refer to <https://www.clarkcountynv.gov/public-communications/Pages/CCTV4.aspx> or contact CCTV Channel 4 at (702) 455-6890.

If you wish to comment on an item marked "For Possible Action" appearing on this agenda, you may go to <https://clarkcountynv.gov/bccmeeting> (Meeting ID: 998 7654 2540, Passcode: 398117) or by calling 1-408-638-0968. Please identify on which agenda item you are commenting.

- Items on the agenda may be taken out of order.
- The Board of County Commissioners, Board of Trustees, and Licensing Board may combine two or more agenda items for consideration.
- The Board of County Commissioners, Board of Trustees, and Licensing Board may remove an item from the agenda or delay discussion relating to an item at any time.

Contracts, zoning matters, or ordinances that do not comply with the County's disclosure requirement as outlined in Section 10(2) of the County Ethics Policy are subject to being voided.

The main agenda is available on Clark County's website, ClarkCountyNV.gov. For copies of agenda items and supporting backup materials, please contact Cyndi Baroni, Agenda Coordinator, at (702) 455-3530.

This meeting will be broadcast live in the Las Vegas area. Clark County Television is available in the Las Vegas area on Channel 4/1004 on Cox cable and on CenturyLink on Channels 4 and 1004 as well as in Laughlin on Channel 14 via Suddenlink. Live streaming of CCTV programming is available at www.ClarkCountyNV.gov and <https://www.youtube.com/ClarkCountyNV>. CCTV is also available in Boulder City on Channel 4 and in Moapa Valley on Digital Channel 50.3. For more information about the program schedule, please refer to <https://www.clarkcountynv.gov/cctv4> or contact CCTV Channel 4 at (702) 455-6890.

SEC. 1. OPENING CEREMONIES

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

1. Reconsider the decision of the Board of County Commissioners to omit from its certification of the canvass conducted on November 16, 2020, the office of County Commission, District C. (For possible action)
2. Public Comment
3. Approval of Minutes of the Regular Meeting on November 3, 2020. (For possible action) (*Available in the County Clerk's Office, Commission Division*)
4. Approval of Agenda with the Inclusion of Any Emergency Items and Deletion of Any Items. (For possible action)

SEC. 2. CONSENT AGENDA: Items No. 5 through No. 26

NOTE:

- The Board of County Commissioners, Board of Trustees, and Licensing Board may remove an item from the agenda or delay discussion relating to an item at any time.
- Consent Agenda - All matters in this sub-category are considered by the Board of County Commissioners, Board of Trustees, and Licensing Board to be routine and may be acted upon in one motion. Most agenda items are phrased for a positive action. However, the Board/Trustees may take other actions such as hold, table, amend, etc.
- Consent Agenda items are routine and can be taken in one motion unless a Commissioner/Trustee/Licensing member requests that an item be taken separately. The Chair will call for public comment on these items before a vote. For all items left on the Consent Agenda, the action taken will be staff's recommendation as indicated on the item.
- Items taken separately from the Consent Agenda by Commission/Trustees/Licensing members at the meeting will be heard following the Commissioners'/County Manager's Recognition Section.

Purchasing & Contracts

5. Ratify and approve the Contract with Gallagher Benefit Services, Inc., for CBE No. 605732-20, for Employee Benefit Consulting Services, contingent upon submission of the required insurance; and authorize the Chief Financial Officer or her designee to sign the Contract; or take other action as appropriate. (For possible action)
6. Approve the Contract with Design Vision Inc. dba Southwick Landscape Architects, for CBE No. 605751-20, for Professional Services for Desert Breeze Park Baseball Fields, contingent upon submission of the required insurance; and authorize the Chief Financial Officer or her designee to sign the Contract; or take other action as appropriate. (For possible action)
7. Approve the award of Bid No. 605658-20, for Swenson Street & Joe W. Brown Drive Fiber Optic Interconnect System to the low responsive and responsible bidder, contingent upon submission of the required bonds and insurance. Staff recommends award to L.L.O. Inc. dba Acme Electric; and rejection of the Bid received from Vinco, Inc.; or take other action as appropriate. (For possible action)

Town Services

8. Note for the record the following Town Advisory Board (TAB) and/or Citizens Advisory Council (CAC) Minutes: Enterprise TAB - October 28, 2020; Laughlin TAB - September 8, 2020; Paradise TAB - October 27, 2020; Searchlight TAB - October 14, 2020; Sunrise Manor TAB - October 29, 2020; and Winchester TAB - October 27, 2020.

Parks & Recreation

9. Approve the proposed revisions to the Department of Parks and Recreation's Fees and Charges Schedule and authorize the Department Director to Implement the changes effective January 1, 2021. (For possible action)

Aviation

10. Approve and authorize the Director of Aviation to sign the Lease Agreement between Clark County and Rocky Mountain Aviation, LLC (David A. Austin, General Manager) for the development and operation of a corporate hangar at Henderson Executive Airport; or take other action as appropriate. (For possible action)

Public Works

11. Approve and authorize the acquisition by negotiation of portions of Assessor's Parcel Numbers 140-23-801-003, 140-26-103-007, 140-26-601-003, 140-26-103-005, and 140-26-203-001 needed for the construction of the Jim McGaughey Detention Basin, Collection Basin and Outfall project; and authorize the County Manager or her designee to sign future escrow instructions and any pertinent documents necessary to complete the acquisition process. (For possible action)
12. Approve and authorize the County Manger or her designee to sign Supplemental No. 2 to the professional engineering services contract between Clark County and Atkins North America, Inc. (Matthew Baird, P.E., Vice President) for a time extension to the contract for the Pedestrian Grade Separations at Las Vegas Boulevard and Bellagio Drive and Las Vegas Boulevard and Park Avenue and Rehabilitation of Existing Pedestrian Grade Separations project. (For possible action)

13. Approve and authorize the County Manager or her designee to sign Supplemental No. 2 to the professional engineering services contract between Clark County and WSP USA Inc. (Roger Patton, P.E., Vice President) to extend design engineering services for the design of the Jones Boulevard between Cactus Avenue and Blue Diamond Road project. (For possible action)
14. Approve and authorize the Chair to sign a revocable license and maintenance agreement between Clark County and TBC - The Boring Company (Steven Davis, President) to use a portion of the right-of-way in Desert Inn Road and Paradise Road to construct, maintain and operate a point-to-point underground tunnel transit system between the Las Vegas Convention Center and the Encore Resort. (For possible action)
15. Approve and authorize the extension of the current rankings of pre-qualified professional service providers (January 7, 2019 through December 31, 2020) used to perform professional services on Clark County projects administered by the Department of Public Works through December 31, 2021. (For possible action)

Budget & Finance

16. In accordance with NRS 244.210 and 354.220 through 354.250, approve, adopt, and authorize the Chair to sign a resolution to authorize refunds as shown on Exhibit "A. " (For possible action)

Clark County Water Reclamation District (*Board of County Commissioners sitting as the CCWRD Board of Trustees*)

17. Approve an extension to December 31, 2022 of the current list of prequalified professional service providers approved by the Board on December 18, 2018, and the authority granted to the General Manager to contract with the prequalified firms; and approve staff's evaluation and pre-qualification of professional service providers for two (2) additional professional service categories; or take other action as appropriate. (For possible action)

University Medical Center of Southern Nevada (*Board of County Commissioners sitting as the UMC Hospital Board of Trustees*)

18. Approve Amendment No. 4 to the Group Enrollment Agreement with Health Plan of Nevada, Inc. to provide health care coverage to UMC employees, dependents, and retirees through a Health Maintenance Organization; and take action as deemed appropriate. (For possible action)

General Administration

19. Approve and authorize the Chair to sign the correction of the 2017-2018 thru 2020-2021 Secured and the 2019-2020 thru 2020-2021 Unsecured Assessment Roll AR-1201-20-23 and order the corrections to be made. (For possible action)
20. Approve and authorize the Chair to grant the petition to designate as uncollectible the taxes on personal property on the attached list. (For possible action)
21. Approve and authorize the Chair to sign a resolution setting compensation at \$125 per day, for members of the Board of Equalization who are not elected public officials, for their work in responding to public concerns regarding property assessment disputes. (For possible action)

22. Reappoint one permanent member: Tio DiFederico; appoint one new alternate member: Suzette Wheeler to the Clark County Board of Equalization for 4-year terms ending December 31, 2024. (For possible action)
23. Ratify the submission of a scope of work for the grant award from the State of Nevada Department of Health and Human Services, Division of Child and Family Services for a Community Network for Keeping Babies Safe in the amount of \$560,000, effective from date of award through June 30, 2022; authorize the Administrator or his designee to sign any additional grant documents; approve and authorize the creation of one (1) part time Family Services Specialist grant funded position for the period which the grant funds are available; and accept any funds awarded. (For possible action)
24. Approve and authorize the Chair to sign an interlocal contract between Clark County and the State of Nevada Department of Health and Human Services for continuance of a reimbursement program for ground ambulance transportation services in accordance with the State of Nevada Medicaid State Plan; or take other action as appropriate. (For possible action)
25. Approve and authorize the filing of an appeal in the matter of the Las Vegas Review Journal (“RJ”) vs. Clark County Office of the Coroner/Medical Examiner (“Coroner”), A-17-758501, and an appeal in the matter of the RJ and The Associated Press vs. the Coroner, A-17-764842, and authorize legal counsel to file the appropriate documents necessary for the appeal. (For possible action)
26. Approve, adopt and authorize the Chair to sign a resolution joining in the request of the District Attorney's Office for assistance from the Attorney General's Office in the prosecution of Case Nos. 20CRH000934, 20CR026536, 20CR026260 and 20CR026286. (For possible action)

END CONSENT AGENDA

SEC. 3. ITEMS TAKEN SEPARATELY FROM CONSENT AGENDA

SEC. 4. PUBLIC HEARINGS - 10 AM

27. Conduct a public hearing to approve and authorize the Administrator of Human Services, or his designee, to submit a Substantial Amendment to the FY2020 Action Plan to the U.S. Department of Housing and Urban Development (HUD), accept funding as appropriate, create limited perm grant-funded staffing positions specific to CDBG-CV funding: one (1) grants coordinator (C29) and two (2) part-time management assistants, and allow the County Manager or her designee to sign any agreements. (For possible action)
28. Conduct a public hearing to approve and authorize the Administrator of Human Services, or his designee, to submit a Substantial Amendment to the FY2020 Action Plan to the U.S. Department of Housing and Urban Development (HUD), accept funding as appropriate, create limited perm grant-funded staffing positions specific to the CARES Act Emergency Solutions Grant (ESG-CV) funding: one (1) grants coordinator (C29), two (2) senior eligibility workers (C25), and six (6) part-time management assistants, and allow the County Manager or her designee to sign any agreements. (For possible action)
29. Conduct a public hearing and approve, adopt, and authorize the Chair to sign an ordinance to amend Clark County Title 4, Chapter 4.08 - Combined Transient Lodging Tax to redefine "gross receipts" and the deductions and exemptions applicable to combined transient lodging tax; and providing for other matters properly related thereto. Commission District: All (For possible action)

END PUBLIC HEARINGS

SEC. 5. INTRODUCTION OF ORDINANCES

This item is for introduction only. A date and time will be set for a public hearing. No public comments will be heard at this time.

- 30.** Introduce an ordinance amending Clark County Code Chapter 2.40 to update provisions regarding the establishment and administration of a county merit personnel system; and providing for other matters relating thereto; and set a public hearing. (For possible action)
- 31.** Introduce an ordinance to amend Title 5, Chapter 5.02 and Title 6, Chapter 6.12 of the Clark County Code regarding rights-of-management for wireless communications facilities; adding and revising definitions; clarifying separation restrictions for wireless communications facilities; revising commencement of installation of a wireless communications facility; revising design standards; revising wireless site license fees; clarifying compliance inspection of wireless communications facilities; adding a new section to provide for business license fees for wireless communications licensees that have a master wireless use license agreement with the County; and providing for other matters properly related thereto; and set a public hearing. Commission District: All (For possible action)

SEC. 6. BUSINESS ITEMS

- 32.** Identify emerging issues to be addressed by staff or by the Board at future meetings; receive updates on the activities of the various regional boards and commissions; and direct staff accordingly.
- 33.** Canvass the returns of the General Election in the race of County Commission, District C; direct the Registrar of Voters to submit a copy of the abstract of votes cast in that race to the Secretary of State; or take other action as appropriate. (For possible action)
- 34.** Receive and accept the Phase 2 report for the Southwest Clark County Public Facilities Needs Assessment (PFNA) and County-wide Gap Analysis; and direct staff accordingly. (For possible action)
- 35.** Consider whether an adjustment to the Public Facilities Needs Assessment (PFNA) fees should be instituted; and direct staff accordingly. (For possible action)
- 36.** Consider and approve the Business Impact Statement, pursuant to NRS Chapter 237, for the proposed amendments to Title 5, Chapter 5.02 (Rights-of-Way Management – Wireless Communications Facilities) and Title 6, Chapter 6.12 (Fees and Related Matters); adding and revising definitions; requiring relocation of certain wireless installations; shortening the distance separation between wireless communications facilities; reducing fees to align with County costs; increasing the maximum amount of electrical power that licensees may use; adding Section 6.12.996 to relocate the licensee fees provided for in Chapter 5.02; and providing for other matters properly related thereto. Commission District: All (For possible action)
- 37.** Receive a report and presentation from Bird Rides relating to Assembly Bill 485 to create Nevada's first electric scooter share pilot program, including potential approval of a pilot program operating agreement with Bird Rides, Inc., and take any other action deemed appropriate. (For possible action)

- 38.** Go into closed session, pursuant to NRS 241.015(3)(b)(2), to receive information from the District Attorney regarding potential or existing litigation involving a matter over which the Board has supervision, control, jurisdiction or advisory power, and to deliberate toward a decision on the matter, and pursuant to NRS Chapter 288.220, to receive a report on the status of ongoing labor negotiations; and direct staff accordingly. (For possible action)

PUBLIC COMMENTS WITHIN THE GENERAL JURISDICTION OF THE BOARD/TRUSTEES

ZONING AND SUBDIVISIONS

Wednesday, December 2, 2020, 9:00 a.m.

Separate Agenda

THE REGULAR JOINT MEETINGS OF THE CLARK COUNTY BOARD OF COMMISSIONERS, THE CLARK COUNTY WATER RECLAMATION BOARD OF TRUSTEES, THE UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA BOARD OF TRUSTEES, AND THE CLARK COUNTY LIQUOR AND GAMING LICENSING BOARD HELD ON THE FIRST AND THIRD TUESDAYS OF EACH MONTH, ARE VIDEO-TAPED BY CLARK COUNTY TELEVISION (CCTV). THIS MEETING WILL BE BROADCAST LIVE IN THE LAS VEGAS AREA. CLARK COUNTY TELEVISION IS AVAILABLE IN THE LAS VEGAS AREA ON CHANNEL 4/1004 ON COX CABLE AND ON CENTURYLINK ON CHANNELS 4 AND 1004 AS WELL AS IN LAUGHLIN ON CHANNEL 14 VIA SUDDENLINK. LIVE STREAMING OF CCTV PROGRAMMING IS AVAILABLE AT WWW.CLARKCOUNTYNV.GOV AND WWW.YOUTUBE.COM/CLARKCOUNTYNV. CCTV IS ALSO AVAILABLE IN BOULDER CITY ON CHANNEL 4 AND IN MOAPA VALLEY ON DIGITAL CHANNEL 50.3. FOR MORE INFORMATION ABOUT THE PROGRAM SCHEDULE, PLEASE REFER TO [HTTPS://WWW.CLARKCOUNTYNV.GOV/CCTV4](https://WWW.CLARKCOUNTYNV.GOV/CCTV4) OR CONTACT CCTV CHANNEL 4 AT (702) 455-6890.

THE COUNTY CLERK KEEPS THE OFFICIAL RECORD OF ALL PROCEEDINGS OF THE COUNTY COMMISSION, THE CCWRD BOARD OF TRUSTEES, THE UMC HOSPITAL BOARD OF TRUSTEES, AND THE CLARK COUNTY LIQUOR AND GAMING LICENSING BOARD. IN ORDER TO MAINTAIN A COMPLETE AND ACCURATE RECORD OF ALL PROCEEDINGS, ANY PHOTOGRAPH, MAP, CHART, OR ANY OTHER DOCUMENT USED IN ANY PRESENTATION TO THE BOARD/TRUSTEES SHOULD BE SUBMITTED TO THE COUNTY CLERK. IF MATERIALS ARE TO BE DISTRIBUTED TO COMMISSIONERS/TRUSTEES, PLEASE PROVIDE SUFFICIENT COPIES FOR DISTRIBUTION TO THE COUNTY MANAGER, COUNTY COUNSEL, AND COUNTY CLERK.

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EXHIBIT PAGE ONLY



EXHIBIT B

AFFIDAVIT OF JOSEPH GLORIA

State of Nevada)
) ss:
County of Clark)

1. I am the Registrar of Voters for Clark County, and this declaration formalizes the statements I made to the Commissioners on November 16, 2020 during the canvass of the 2020 General Election.

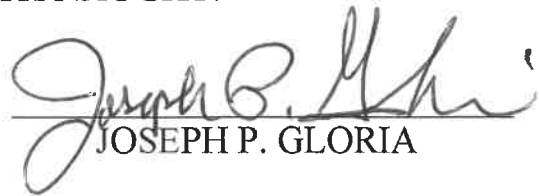
2. It is a routine procedure for the election boards after each election and before the canvass of that election to examine the voter sign ins with the vote tallies of each precinct to ensure that they balance. In the event that they do not balance (match), members of the board examine the records available in order to ascertain why the numbers do not match. There are a number of reasons that a voter number will not match with the vote tally and it is not unusual for these discrepancies to occur and for the election boards to be unable to discern the reason for the discrepancy.

3. In the case of the Commission, District C race, the members of counting and auditing boards found discrepancies such that the margin of victory in that race is called into doubt. There are 218 precincts in District C. There were 139 discrepancies which the election boards were unable to reconcile. As a result, I cannot certify that the vote is an accurate representation of the will of the voters in

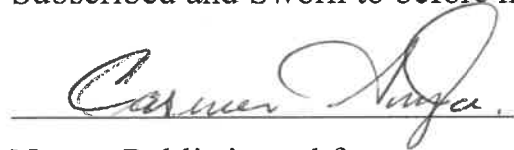
that district, and in my professional opinion as an election official, it raises a reasonable doubt as to the outcome of the election.

4. The discrepancies found in other races in the General Election were not of sufficient magnitude to call into question the results of that race.

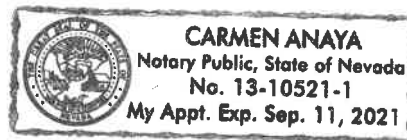
FURTHER YOUR AFFIANT SAYETH NAUGHT.


JOSEPH P. GLORIA

Subscribed and Sworn to before me



Notary Public in and for
said County and State



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EXHIBIT PAGE ONLY



EXHIBIT C

November 23, 2020

Via Email

Clark County Commission
c/o Lynn Marie Goya
Clark County Clerk
Lynn.Goya@clarkcountynv.gov

Registrar of Voters
jpg@clarkcountynv.gov

Clark County Commission
c/o Mary-Anne Miller
District Attorney, Clark County Commission
Mary-Anne.Miller@clarkcountyda.com

Re: Stavros Anthony's application for a new election in the Clark County Commission District C race pursuant to NRS 293.465.

To the Clark County Commission,

By this letter I formalize my request for a new election in the Clark County Commission District C race pursuant to NRS 293.465 based on *at a minimum* the irregularities identified by the Registrar of Voters. I have additional evidence supported by affidavits if the Commission is willing to receive it. I submit this application now because my understanding is that the Registrar of Voters submitted a written affidavit this morning pursuant to NRS 293.465, to formalize his affirmative statements before the Commission on November 16, 2020. I did not previously submit this letter as my understanding was that the Commission did in fact agree with the Registrar's recommendation and did in fact vote at its meeting on November 16, 2020, to have a new election in Clark County Commission District C race.

However, following the lead of the Registrar of Voters, by this document, I also want to confirm my desire and make my formal application for a new election in the Clark County Commission District C race pursuant to NRS 293.465. My understanding is that the new election is not discretionary but based on NRS 293.465 is mandatory.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stavros Anthony', written in a cursive style.

Stavros Anthony
Candidate, Clark County Commission District C

Cc: Hutchison & Steffen Attorneys

AA000076

* * * * *

ROSS MILLER,

Plaintiff,

VS.

CLARK COUNTY BOARD OF
COMMISSIONERS,

Defendant.

CASE NO. A-20-824971-W

DEPT. NO. XI

Transcript of Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**MOTION FOR PRELIMINARY INJUNCTION ON AN ORDER SHORTENING
TIME BEFORE TUESDAY, DECEMBER 1, 2020**

MONDAY, NOVEMBER 30, 2020

APPEARANCES (ALL VIA TELECONFERENCE):

For the Plaintiff: BRADLEY S. SCHRAGER, ESQ.

For the Defendant: MARY-ANNE MEYERS MILLER, ESQ.

For the Intervenor,

Stavros Anthony: MARK A. HUTCHISON, ESQ.
JACOB A. REYNOLDS, ESQ.
PIERS R. TUELLER, ESQ.

RECORDED BY: ANGELICA MICHAUX, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

1 MONDAY, NOVEMBER 30, 2020 AT 12:57 P.M.

2
3 THE COURT: Is everybody present? Do we think we
4 have anybody else joining us?

5 Mr. Hutchison, it's your Motion.

6 MR. HUTCHISON: Yes, Your Honor. Thank you. Good
7 afternoon. Thank you for accommodating us on this
8 shortened time.

9 I'm sure the Court has been through the papers, as
10 you always go through them, Your Honor, but let me just
11 start off by reminding all of us what is happening here
12 today. There's been a lot of argument and a lot of sort of
13 chest pounding about the idea that this case has, you know,
14 been decided already by other previous cases addressed by
15 the Court, not only in this district but others, and that
16 the statutory interpretation then of those courts leads to
17 the conclusion that this case doesn't have any merit under
18 the relevant statute, NRS 293.465.

19 Judge, every single one of those other cases that
20 counsel cited, including the case that you handled, Your
21 Honor, --

22 THE COURT: With you.

23 MR. HUTCHISON: -- the parties -- excuse me?

24 THE COURT: With you.

25 MR. HUTCHISON: Yes, Your Honor.

1 THE COURT: Yeah.

2 MR. HUTCHISON: Your Honor, I'm talking about in
3 2020, any of those 2020 election lawsuits, in every single
4 one of those, every single one of those, the -- our
5 opposing party and the County itself argues that you should
6 defer and courts should defer to Joe Gloria; except,
7 apparently, in this case, that you should accept his
8 election expertise and defer to him, except in this case.
9 That --

10 THE COURT: So, Mr. Hutchison, can I ask you a
11 question?

12 MR. HUTCHISON: Sure.

13 THE COURT: And thank you for attaching the
14 Affidavit as Exhibit B to your Motion. Can you tell me how
15 the Affidavit qualifies as an affidavit under NRS 293.465,
16 since it does not appear to indicate that an election was
17 prevented?

18 MR. HUTCHISON: Yeah. A couple of points. If the
19 Court -- and I'm sure you've got the statute in front of
20 you and --

21 THE COURT: I do.

22 MR. HUTCHISON: -- the -- in the briefing. If an
23 election is -- this is NRS 293.465, for the record. Quote:

24 If an election is prevented in any precinct or
25 district by reason of the loss or destruction of the

1 ballots intended for that precinct, or any other cause,
2 the appropriate election officers in that precinct or
3 district shall make an affidavit setting forth that
4 fact and transmit it to the appropriate board of county
5 commissioners.

6 Judge, the reason that this Affidavit satisfies
7 NRS 293.465 is because the affidavit itself says that he --
8 Mr. Gloria is simply formalizing the statements that he
9 made to the Commission on November 16th, 2020. I don't know
10 if the Court's had an opportunity to listen to that County
11 Commission meeting, but, in that County Commission meeting,
12 he sets forth very clearly the reasons why he has no
13 confidence that the election tally in District C reflects
14 the will of the voters. And, so, he sets forth the fact
15 that we've had an audit of this election, as he has other
16 audit -- other elections. He sets forth that there were
17 218 precincts in District C and that there were 139
18 discrepancies, which the Election Board was unable to
19 reconcile. He also said that the results, he can't certify
20 it as being representative, that is the vote tally, of the
21 will of the voters in that District, and that he opines
22 that, in his professional opinion, it raises reasonable
23 doubt as to the outcome of the election.

24 Your Honor, there isn't anything in here other
25 than the fact -- in NRS 293.465 that has to be stated by

1 Mr. Gloria, other than the fact that the election has been
2 prevented. The election has been prevented, Your Honor, by
3 way of these discrepancies and by way of the doubtful
4 nature of this election.

5 Now, if the Court is saying, Mr. Hutchison, in
6 order for you to satisfy NRS 293.465, Mr. Gloria has to use
7 the words, the election was prevented, then --

8 THE COURT: Yep.

9 MR. HUTCHISON: -- I would say to the Court that's
10 not in the statute. It doesn't require his affidavit to
11 say the election was prevented. He was -- it says that
12 he's got to set forth fact that would -- reports the
13 election has been prevented, Your Honor. That's setting
14 forth the fact that the -- his view of the election was not
15 reliable and, essentially, I'm adding that to the statutory
16 language.

17 But to answer you, specifically, Judge, keep in
18 mind as well that, you know, NRS 293.127(1)(c) provides
19 that statutes under NRS 293:

20 Must be liberally construed to the end that: The
21 real will of the electors is not defeated by any
22 informality or by failure to substantially comply with
23 the provisions of the title with respect to certifying
24 the results of an election.

25 So, Your Honor, I would suggest to the Court that

1 if you say -- and, again, this is not an affidavit that we
2 control. This is an affidavit, of course, that the County
3 controls. If you say that the County can choose not to put
4 language that says that the election was prevented and,
5 therefore, NRS 293.465 is not satisfied, well, then, in
6 every case that the County does not want NRS 293.465 to
7 apply, they can simply not include that language. I think
8 that's inconsistent, Judge, with the statutory parameters,
9 and intended legislature, as well as the language of the
10 statute. So, --

11 THE COURT: Thank you, Mr. Hutchison. Since I
12 interrupted you, was there anything else you wanted to tell
13 me?

14 MR. HUTCHISON: Yes, Your Honor. Your Honor, we
15 would ask that the Court also consider the fact that if the
16 -- literally, if the election recount does not lie with the
17 County Commission here, and that's the plaintiff's
18 argument, that it's just -- that this is simply a
19 ministerial act, that the Court -- you know, that the
20 Commission has no discretion at all, then that essentially
21 reads out of Nevada election law any new election or any
22 special election, except, I guess, as the plaintiffs argued
23 in the case of a repeat of 9/11 or some disaster. That's
24 just certainly not consistent with the *LaPorta* decision by
25 the Nevada Supreme Court, Your Honor, which we cited to the

1 Court and otherwise demonstrated that the Court has
2 ordered, in cases other than a disaster, that the County
3 Commission order a new election.

4 THE COURT: But the *LaPorta* case --

5 MR. HUTCHISON: So, that --

6 THE COURT: Mr. Hutchison, that is a --

7 MR. HUTCHISON: Yes.

8 THE COURT: -- a machine malfunction. Correct?

9 MR. HUTCHISON: Sure.

10 THE COURT: Yeah.

11 MR. HUTCHISON: It absolutely is not an actual
12 disaster. It was a machine malfunction. Yes.

13 THE COURT: Okay.

14 MR. HUTCHISON: The plaintiffs argue that there's
15 got to be a natural disaster and *LaPorta* makes clear, Your
16 Honor, that it can be for a machine malfunction, it could
17 be when bells or locks are destroyed, and the statute says
18 or for any other reasons. And, so, this idea that the
19 election was held and, so, therefore, counteracts 293.465,
20 just simply doesn't apply because the election wasn't,
21 quote/unquote, prevented, reads an election far too
22 narrowly, Your Honor.

23 For all of us who do a run for office, and there
24 are some on the phone, they know that you run an election
25 not simply so you go through the motion of the voters

1 casting a ballot. The election also includes the tallying
2 of the ballot, as well as an accurate representation of the
3 ballot, so that the will of the voters have been reflected
4 in those votes. That's an election. Election isn't just
5 simply the act of passing ballots. It's more than that.
6 You don't get a Certificate of Election because your name
7 was on a ballot and voters cast a ballot to you. There's
8 more to it than that. In fact, the plaintiffs recognize
9 that there's an election life cycle, they called it. An
10 election life cycle. It's more than just simply casting
11 ballots, Your Honor. It's also being able to tally those
12 ballots accurately and have a winner declared.

13 The election was prevented because the Clark
14 County Commission's own election official, Mr. Gloria, for
15 the first time in any of the election challenges, said:
16 This election cannot be certified, in his opinion, because
17 of discrepancies or errors in the election process. The
18 election was prevented. Those -- that's my use of the
19 term, Your Honor.

20 THE COURT: I understand.

21 MR. HUTCHISON: Let me also, Your Honor, if I can,
22 just point to a case that you pointed us to at the very
23 beginning of our process. You cited the *Cherchio* case and,
24 Your Honor, I guess, officially, the *Mike Montandon versus*
25 *City of Las Vegas* case.

1 THE COURT: Yes.

2 MR. HUTCHISON: And Your Honor said -- as the
3 Court well knows, Your Honor set forth the Findings of Fact
4 and Conclusions of Law that -- and I would like to point
5 the Court to two Conclusions of Law that wholly distinguish
6 the *Cherchio* election from the Stavros Anthony and Ross
7 Miller election. If the Court takes a look at its own
8 Findings -- excuse me, the Conclusion of Law 5, and I'll
9 also direct you, Judge, to Conclusion of Law 16. So, your
10 Conclusion of Law 5 in the *Cherchio* matter read, quote:

11 No clerical error occurred in the recording,
12 reporting, or calculating of the total votes cast. And
13 no evidence was presented of any clerical error.

14 Close quote. That's Conclusion 5.

15 Conclusion 16, Your Honor, says, quote: No
16 election was prevented here. Lomax confirmed that the
17 election occurred, and that all voting machines
18 operated appropriately, and that all ballots were
19 correctly counted and tabulated. No evidence was
20 presented of any election being prevented.

21 Close quote.

22 That is not what happened here, Your Honor. We
23 have evidence before the Court, you've got Mr. Gloria's --
24 not only that, but you also have his statement before the
25 County Commission that he could not accurately and credibly

1 count or tabulate the ballots. And, particularly, when
2 you're trying to correct -- count them in terms of: Did it
3 reflect the will of the voters? He came in, and you can
4 imagine the pressure that was put on him in this crazy
5 election environment. For the election official of the
6 Clark County Commission to come in and say: You know,
7 there's been claims of all kinds of problems with these
8 elections. I've had no problem with any of them. And my
9 audit is showing no problem with not one of them, except
10 for Commission C. And then he laid it out. There's 139
11 discrepancies we can't account for. People who have signed
12 in who didn't vote or people who voted that didn't sign in.

13 Now, we know what he said at the hearing, or at
14 the meeting, that there were at least six voters who voted
15 twice. And, so, what was his recommendation -- and, by the
16 way, Your Honor, the recommendation of Clark County's
17 counsel? That was to hold a new election. They knew,
18 Judge, and we cite in our papers even on -- just
19 referencing page 16 and 17 of our brief, the Commissioner
20 Jones asked if there was any other possible thing that
21 could happen other than, at that time, certifying the
22 election or go to a special election. And the counsel's
23 commission -- the Commission's counsel, the County's
24 counsel, says: No. That's what you do.

25 Because, Judge, -- and this is the point of our

1 preliminary injunction hearing, and it's the point of our
2 preliminary injunction motion, that is: If, in fact, the
3 votes are certified, that takes away from Mr. Anthony's
4 right of a new election. And there's -- okay. To my
5 opposing counsel and friends on the other side, they
6 forthright state: Yep, if this is certified, if this
7 election is certified, Anthony cannot seek a new election.
8 In effect, what you're going to be ruling, if you rule in
9 their favor, is at the County Commission level and the City
10 Council level, if there is -- unless there's some sort of a
11 9/11 disaster, those bodies have no discretion or authority
12 to order a new election.

13 Think of the number of new elections that have
14 been ordered or directed by municipal bodies, county
15 bodies, and what the opposing counsel is saying is those
16 were all unauthorized. All of them. You will write out of
17 election law in Nevada any special elections or new
18 election, because it would -- when you go on to the new
19 canvass, that's their point. Just send them away, Judge,
20 and have them go to a recount, or have them go through
21 election contest. Well, they know very well that neither
22 one of those statutory methods provides the remedy in an
23 election, Your Honor. That's why Mr. Anthony would be
24 irreparably harmed now if the County Commission does not
25 follow the mandates of NRS 293.465. That remedy is gone

1 after the election is certified.

2 Everybody, I believe, within the briefing agreed
3 with that, and yet we've got a history, and we've got
4 Nevada Supreme Court precedent, that has not only called
5 for a new election but has required of them. At the county
6 level and it was short of some natural disaster, Your
7 Honor.

8 So, the Court should enter a preliminary
9 injunction preventing the County Commission from certifying
10 the commission to the election or, otherwise, reconsidering
11 its vote to hold a new election. Why? Because NRS 293.465
12 requires it, because Mr. Gloria has indicated, Your Honor,
13 that, in fact, he does not have confidence in the outcome,
14 the fact, Your Honor, that the Nevada Supreme Court has
15 required that these elections -- new elections be held in
16 situations like this where you've got an affidavit under
17 NRS 293.465, which says that the election, in effect, was
18 prevented because there was no way to reconcile the 139
19 discrepancies in an election, Your Honor, that was decided
20 by 10 votes.

21 So, Your Honor, I'll reserve my main time to reply
22 to my friends on the other side.

23 THE COURT: Thank you. Mr. Schrager?

24 MR. SCHRAGER: Yes, Your Honor. Thank you.
25 Bradley Schrager for petitioner, Ross Miller.

1 I first want to note that this Motion comes to you
2 on a rather odd procedural footing because, in essence,
3 what Mr. Anthony is doing is flipping the burden of Mr.
4 Miller's underlying actions. He is taking on the burden
5 because, in essence, Mr. Anthony cannot win his Motion if
6 Mr. Miller is right on the underlying ultimate questions in
7 the litigation and whether the Board had a duty to canvass
8 and whether 293.465 forces a new election. The opposite is
9 true as well. Mr. Miller cannot prevail if, in fact, Mr.
10 Anthony is correct that the Board had perfect discretion
11 not to canvass. And, now, there's no way out of that
12 crack. In order to reconsider, they'd have to go and hold
13 a new election.

14 So, in essence, we have a lot at head in this
15 litigation. And, normally, I would find that rather
16 curious. In this instance, I guess the hints are helpful.
17 A preliminary indication of Your Honor's thoughts on the
18 merits of those underlying issues, I think, is useful to
19 the parties so that they may chart their future conduct.
20 Now, I feel that way because I think we have the better of
21 the arguments on Mr. Miller's side, but I also think that
22 if I'm wrong, if I'm on the wrong side, I just want to know
23 that as quickly as possible. So, I would urge the parties
24 to take great heed to what the Court says here today.

25 Now, as for the Motion itself, Mr. Anthony seems

1 to be proceeding on the basis that he has a right to a
2 special election and that failure to have that could
3 somehow do irreparable harm to him. Now, I absolutely
4 agree with my colleague that in the absence of -- if this
5 vote is certified, canvass was certified, there will be no
6 special election. You know, I'm sorry if that's
7 frustrating for Mr. Anthony. It also happens to be the
8 law. It's the law that every candidate signs up for when
9 they enter into an election with a possible prospect of a
10 recount and election contest thereafter. That's simply how
11 we resolve post-elections in Nevada.

12 There's two single questions here that need to be
13 resolved for Mr. Anthony to have any likelihood of success
14 on the merits. First thing, he doesn't really state at all
15 in his Motion, and only obliquely in the response or in the
16 Reply, which is whether that is a ministerial duty of the
17 Board to canvass and certify the results. Clearly, it is.
18 Not only does 293.387 say that, 244.090 sub 5, mandatory
19 duty. Writs of mandamus have issued on multiple occasions
20 from the Supreme Court and from District Courts ordering
21 canvassing authorities to perform their duties.

22 The reason why we don't give discretion in that
23 area is there could be canvass and authorities interfering
24 with the finality of elections. Only that finality gets
25 you to the next stage of the statutory process, which is

1 the recount and the contest available to any candidate.
2 That's where you go when you want to present evidence of --
3 that the election -- that there were votes that were cast
4 that shouldn't have been, that there were votes -- that
5 there were votes that weren't counted that should have
6 been, that there was malfunction that would have overcome
7 the margins between candidates. That's where you do that.
8 And there are particular statutory reasons why the Nevada
9 Legislature puts those people through that process. It has
10 clear standards for evidence, and for judgments, and for
11 relief, all the time frames, all of those things. That's
12 why those are the exclusive remedies to situations like
13 this.

14 So, the duty is mandatory to canvass and that the
15 only way out of that, and this clearly is recommended by
16 Mr. Anthony, is the potential for 293.465, preventing an
17 election. But, first, it comes down to whether the
18 election is prevented. Now, counsel reads that statute
19 really broadly, but, in fact, it's not so broad. It is not
20 necessarily an earthquake, or a fire, or where I'm talking
21 about loss or destruction of ballots, or some other cause
22 that prevents the election. The key to that statute isn't
23 the earthquake, Your Honor. It's the prevention.

24 Now, I would submit to you with the argument
25 presented within our briefs that -- you know, certainly the

1 truth that Mr. Gloria's Affidavit restates what he said to
2 the County Commission. But, important is what he doesn't
3 say is by the power invested in me by 293.465, he doesn't
4 use the word: Prevented. There's no claim any ballots are
5 decreasing or there was a prevention. There are none of
6 the things that .465 would require, if someone is seeking
7 the drastic and incredibly rare, you know, relief of the --
8 essentially the canceling of an election.

9 And, in fact, what Mr. Gloria doesn't say is that,
10 yes, there would be discrepancies. And as counsel pointed
11 out, sometimes people sign in and don't vote. Sometimes
12 people vote that didn't sign in. Those things happen in
13 every election and Mr. Gloria realizes these are the usual
14 anomalies in every statistical audit or [indiscernible] of
15 what happens in an election. It does not mean there are
16 139 people who voted who shouldn't have. It doesn't mean
17 that there's a stack of ballots somewhere that Mr. Gloria
18 needs to count but didn't. In fact, he would have said
19 that. Mr. Gloria counted every ballot he was supposed to,
20 didn't count any that he wasn't supposed to, and he gave
21 his report. And that's the end to the story.

22 You cannot ever prevent an election with 150,000
23 people, voting into the race, 139 unidentifiable,
24 unresolvable, but normal statistical anomalies with a sign-
25 in sheet and say that the election was prevented. No other

1 race of the other districts, assembly, or state senate,
2 with any information the Commission has received were
3 prevented. So, you cannot say an election was prevented.
4 What was prevented by the results themselves was Mr.
5 Anthony's goal of leading the election until the final
6 results came in. That's not the same thing.

7 So, I mean, it just -- it strikes us very clearly
8 that that there are no grounds either to enjoin the Board
9 from doing this whatever -- discretionary duties, well, he
10 has no idea what they're going to do. We have no idea if
11 they're going to keep it on, if they're going to
12 reconsider, if they're going to fail to reconsider it.
13 They're going to -- we don't know. But they get to do
14 whatever they're going to do, all right, and the
15 legislative body with an agenda item placed, the Board.

16 So, I mean, it is -- it's very clear to us that
17 the duty of canvassing is mandatory and enforcing the
18 [indiscernible] does not apply because no election was
19 prevented.

20 And, so, I'd be happy to answer any questions that
21 you have, Your Honor, but we'll submit it on that.

22 THE COURT: Thank you, Mr. Schrager. Ms. Miller,
23 do you have anything you'd like to add?

24 MS. MILLER: Just that I agree with Mr. Schrager
25 that the County Commission should take heed of whatever the

1 Court does today. If the Court -- because I don't think
2 the arguments are going to change in a week or so. So, if
3 the Court has already determined that it is a ministerial
4 duty or, in the alternative, that the Board has a mandatory
5 duty for a special election, the sooner we know the better.

6 THE COURT: Okay. Mr. Hutchison.

7 MR. HUTCHISON: Your Honor, a couple of different
8 points. I just -- I want to just bring up aside, this is
9 not *Cherchio*. There is evidence that has been presented of
10 an election having been prevented. Let me just respond to
11 my opposing counsel's argument about statutes, that you --
12 coming up, and the Court's ordered to, and Mr. Schrager
13 cited at the end, as he had in his briefing, NRS 293.3872
14 subsection (a), and he emphasized that's where the
15 Commission is commanded to note separately any clerical
16 errors discovered. And, then, essentially, you know, the
17 argument is: Well, that just is merely a ministerial act
18 then. You then simply note those errors that were found by
19 Mr. Gloria and that becomes a part of your canvass, and
20 that's -- they need canvass, but that's not before reading
21 the statute.

22 Subsection (b) continues: And take into the
23 account of the changes resulting of discovery so that
24 the result declared represents the true vote cast.

25 That is what Mr. Gloria did on November 16th. He

1 went before the County Commission at great pressure, great
2 stress, I'm sure, to himself, and said: I cannot declare
3 to you that Commission C represents the true vote cast. I
4 can't do it.

5 And, when you pair that, Your Honor, with the
6 legislative directive of NRS 293.127(1)(c), that the
7 statutes are to be:

8 Liberally construed to the end that: The real
9 will of the electors is not defeated.

10 Now, I think, Your Honor, the argument that this
11 is a ministerial task when you're presented with 139
12 discrepancies that make your election official, the
13 official who the Clark County Commission themselves
14 appointed for purposes of running a fair election, and you
15 call that into question, that the statutory provisions that
16 are relied upon by the plaintiff simply are not satisfied,
17 Your Honor.

18 They also continue to cite in the brief, you know,
19 that the Board meets after each general election, canvass
20 the election, and return to the matter provided by law.
21 And, as counsel said, that's statutory law, including NRS
22 293.465. They also point to NRS 234.146, which mandates
23 that:

24 Express -- except as expressly authorized by
25 statute, the Board of County Commissioners shall not

1 order or conduct an election.

2 Well, NRS 293.465 is that statute, Your Honor.

3 So, Your Honor, the Court needs to take into
4 consideration, and the Court has done this many, many
5 times, as we all know, the entire lay of the land when it
6 comes to the statutory obligations and duties. If, in
7 fact, you rule in favor of the plaintiff, you are writing
8 out of existence NRS 293.465. You are saying that, in
9 fact, the County Commission and the City Council does not
10 have the discretion, or the authority, or is not mandated,
11 when their own election official comes before them and
12 calls into question whether or not the -- an election
13 result reflects the vote of the people.

14 And the only thing you can do is just go to a
15 recount or go to election contest, neither of which result
16 in a new election, neither of which result in a new
17 election. It wipes the remedy out of the law, Your Honor.
18 And *LaPorta* is contrary to that. *LaPorta* does not require
19 any particular showing by the election official as to how
20 it's prevented. The Court, itself, determined that the
21 facts of the case resulted in a prevented election. And
22 that's what we are asking the Court to do here as well,
23 Your Honor, that, in fact, because of what Mr. Gloria has
24 done, he went before the County Commission. He said
25 there's 139 discrepancies in an election that was decided

1 by 10 votes and I really have serious doubts whether or not
2 the election tally reflects the will of the people, the
3 will of the elector. I'm asking, I'm recommending for a
4 new election. And the County Commission did the right
5 thing at that point. They didn't certify and they called
6 for a new election. We're not asking that this Court issue
7 a mandatory injunction. We're simply saying that the Court
8 prevent the County Commission from doing what it already
9 did, legally, and was mandated -- and what it was mandated
10 to do.

11 My final point, Your Honor, is this. If, in fact,
12 the Court is not going to grant us relief, the idea that
13 this accelerates everything, and there's no need for a
14 hearing is something that we don't agree with and certainly
15 don't agree that discovery is otherwise eliminated. The
16 Court's already ordered or at least the parties to
17 stipulate to it at this point.

18 THE COURT: Thank you. The Motion for a
19 Preliminary Injunction or Temporary Restraining Order is
20 denied. NRS 293.465 is clear that the election must be
21 prevented. There are a number of ways it could be
22 prevented that don't include natural disasters. There
23 could be an accident that is transmitting the vehicle that
24 has the thumb drives in it. There's a lot of different
25 ways the election could have been prevented. That is not

1 what is included in Mr. Gloria's affidavit. There are
2 discrepancies of 139. That does not mean that there was
3 any election that was prevented in any precinct or
4 district.

5 While I read the statute more broadly than Mr.
6 Schrager does, it does not fall -- the Affidavit does not
7 fall within the scope of NRS 293.465. For that reason, I
8 am not going to enjoin the County Commission from
9 addressing whatever it thinks appropriate to do tomorrow at
10 their meeting. I do have, on December 4th, which is this
11 Friday, your hearing on my chamber's calendar on the writ
12 of prohibition. I will await the remaining briefs before
13 I tell you my opinion on the writ that Mr. Schrager is
14 seeking.

15 So, Mr. Schrager, if you would please prepare an
16 Order, submit to Mr. Hutchison and Ms. Miller. Please have
17 fun tomorrow morning at the County Commission meeting.

18 MR. SCHRAGER: Your Honor, I will indeed, Your
19 Honor. I also pointed out, if it helps at all, that the --
20 the stipulations regarding dec relief of the remainder of
21 the case, --

22 THE COURT: Yeah. It --

23 MR. SCHRAGER: -- Wednesday and the brief 30 days
24 from today. And, so, --

25 THE COURT: It --

1 MR. SCHRAGER: -- the December 4th status check, we
2 had had a little trouble getting scheduling for Mr.
3 Gloria's deposition and nobody wanted to file briefs prior
4 to that, so there's a schedule in the stipulation that may
5 cross Your Honor forsaking status hearing or hearing on the
6 4th and reset along the lines that are suggested.

7 THE COURT: I know, but I'm going to look on
8 December 4th to see if I have all the briefs yet. And, if I
9 have all the briefs, I'll issue a minute order. If I
10 don't, I'll continue it until I get all the briefs.

11 MR. SCHRAGER: Thank you.

12 THE COURT: I saw your stipulation and Dan filed
13 it, but we kept the December 4th date just so that we can
14 make sure we decide as quickly as we are able, given the
15 pending deadline. I think the meeting that you want me to
16 have a decision for is prior to December 18th.

17 MR. SCHRAGER: Very good.

18 MR. HUTCHISON: That's right, Your Honor.

19 THE COURT: All right. Anything else?

20 MR. SCHRAGER: Thank you very much, Your Honor.

21 THE COURT: Everyone stay well. Ms. Miller, I
22 hope you're feeling better.

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MS. MILLER: Thank you, Your Honor.

THE COURT: All right. Be well. We will be in
recess.

PROCEEDING CONCLUDED AT 1:27 P.M.

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CERTIFICATION

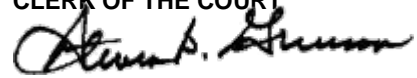
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



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Stavros Anthony

DISTRICT COURT

CLARK COUNTY, NEVADA

ROSS MILLER, an individual,

Plaintiff/Petitioner,
v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government entity;
and DOES I – X, inclusive,

Defendant

Case No. A-20-824971-W

Dept. No. 11

**REPLY IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION ON AN
ORDER SHORTENING TIME BEFORE
TUESDAY, DECEMBER 1, 2020**

STAVROS ANTHONY, an individual,

Intervening Plaintiff,
v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government entity;
and DOES I – X, inclusive,

Defendant

HEARING: November 30, 2020

TIME: 1:00 p.m.

(TELEPHONIC)

1 Intervening Party Stavros Anthony (“Anthony”, “Intervening Plaintiff”) hereby files his Reply
2 in support of the Motion for a Preliminary Injunction on an order shortening time before December 1,
3 2020. This Reply is based on the Points and Authorities below, the attached declaration, exhibits, and
4 pleadings and documents on file with the Court, and any oral argument entertained at the hearing on
5 this Motion.
6

7 DATED this 30th day of November, 2020.

8 HUTCHISON & STEFFEN, PLLC

9
10 /s/ Mark A. Hutchison

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POINTS AND AUTHORITIES

1. Reply.

A. The hypocrisy of Plaintiff's objection.

Plaintiff Ross Miller ("Miller") begins his Opposition by criticizing the Motion's "remarkable" request to "enjoin the lawful and proper conduct of the duly-constituted legislative body of a political subdivision" calling it "a request in and of itself any court would approach with great circumspection." (Opp'n at 2:7-10.) This attack is incredibly hypocritical given that Miller's entire case is based on the exact same premise of stopping the exact same legislative body from proceeding towards the constitutionally and statutorily authorized election it voted to hold.

Miller admits this hypocrisy in the section of his brief in trying to downgrade the parties' stipulated injunction, to an "agreement."¹ Stating specifically: "Mr. Miller had made clear he would seek a temporary restraining order preventing the planning or holding of a new election and the Board, through its counsel, made that unnecessary by agreeing to not go forward." (Opp'n at 3:8-11.) How could it be anymore clear that: (1) Miller wanted to "enjoin the lawful and proper conduct of the duly-constituted legislative body of a political subdivision"; or (2) that the basis of the agreement was to agree to the *injunction* that Plaintiff Miller was going to seek.

Nevertheless, Miller's opening salvo is to criticize Intervenor Plaintiff for seeking an order to honor the stipulated injunction. The remainder of Plaintiff's Opposition suffers from comparable symptoms.

B. Plaintiff's Purposeful Ignorance of NRS 241.020(3)(d)(3)(I).

Plaintiff states: "the open-meeting issue Mr. Anthony raises regarding the order of items on the agenda is for the County to resolve or act upon." (Opp'n 3:26-27.) This type of casual dismissiveness is common throughout the Opposition. However, it cannot be denied that placing this action item before public comment is a clear violation of the Open Meeting Law. *See* NRS 241.020(3)(d)(3)(I). Anthony has directly asked for relief on this ground and Miller has recognized it, but chosen not to

¹ As argued in the Motion, the stipulation on November 20 was an *injunction* to maintain the status quo pending a ruling from the court. Plaintiff's efforts to downgrade the stipulated injunction to an Agreement are legally baseless. The legal effect of the agreement was an injunction.

1 address it substantively. The Motion for Injunction included the agenda, it's a publicly available
2 document, and official action is scheduled to be taken in direct violation of the law anyway. This
3 Court is well within its authority to issue an injunction on this basis alone.

4 **C. Miller attempts to lump Anthony in with “the others.”**

5 Plaintiff makes a lot of hay out of the fact that there are many other courts that have not granted
6 relief to other parties under NRS 293.465 in this election cycle. Specifically Plaintiff points to *Becker*
7 *v. Gloria*; *Marchant v. Gloria*; *Rodimer v. Gloria*, and *Arrington v. Gloria*. (Opp'n at 7:3-11.)
8 Throughout the Opposition Plaintiff seeks to tie Anthony to “the others.” (Opp'n at 4:26-28)
9 (discussion other lawsuits over the last few weeks). But the difference between Plaintiff's “others”
10 and Anthony is that Joe Gloria, the duly appointed (by the Clark County Commission itself) and
11 “appropriate election officer” identified in NRS 293.465, *has recommended* a new election in Clark
12 County Commission District C.

13 Inasmuch as the Plaintiff wants to address “the others” then the irony is that in all “the other”
14 cases counsel has argued strenuously, and successfully, for the proper judicial deference and respect to
15 the legislative body and the duly appointed Registrar to address these election matters. However, here
16 the Plaintiff argues for *not* deferring to the Registrar and ignoring his reasons for and recommendation
17 to hold a new election.

18 **(1) The LaPorta case.**

19 NRS 293.465 applies to the present issue. NRS 293.465 provides the statutorily mandated
20 procedure for the election of the Clark County Commission District C. Miller's claim that this statute
21 is in case of disaster only is not supported by any legal authority. There is no supporting case law that
22 a party can only avail herself of NRS 293.465 during an earthquake or fire. Nor does Miller provide
23 any legislative history showing that this statute cannot be used except in the case of a terrorist attack.
24 Such arguments are legally insufficient and seek to use emotion to avoid the clear language of the
25 law. It is also clear that the language of NRS 293.465 – again, the only statute that is relevant in this
26 type of election – authorizes the Clark County Commission to vote to hold a new election. In
27 attempting to distinguish the facts of only Nevada Supreme Court case analyzing this issue, Miller has
28 failed to consider the Court's entire decision. Specifically, in *LaPorta*, on Election Day, voters

1 assigned to vote in a certain precinct were unknowingly unable to cast a ballot for either relevant
2 candidate for their Nevada State Assembly district due to both a mechanical issue and a subsequent
3 error with a replacement part. *LaPorta v. Broadbent*, 91 Nev. 27, 28, 530 P.2d 1404, 1406 (1975).
4 This resulted in people casting their ballots – intending to vote for either of the applicable State
5 Assembly candidates – but had in fact not voted for either of them. *Id.* It was unknown who these
6 people were or even the number of people whose votes were affected. *Id.* The only thing that was
7 known was the precinct where the issue occurred. *See Id.* at 28. As a result, the Supreme Court held
8 that, when the election was prevented by errors or discrepancies in the ballots, NRS 293.465
9 specifically stated that the county commissioners *shall* order a new election in the precinct where the
10 ballots were absent.” *Id.* This is because, the “fundamentals of suffrage require that electors shall
11 have the opportunity to participate in elections and that the real will of the electors should not be
12 defeated by errors in the conduct of an election.” *Id.* at 30.

13 Here, the Clark County Registrar of Voters, Joseph Gloria, has identified 139 voting
14 discrepancies from the whole district that constituted errors in the conduct of the election, calling the
15 District C result into doubt. Just as the effect of the *LaPorta* voter’s was unknown in that election, so
16 to is the effect of these 139 discrepancies unknown here. Given the margin in the District C, it is
17 important to consider and count every vote. As a result, the Commission was unable to certify the
18 election for District C, and in according to the language of the statute, order a new election in the
19 “district.” *See* NRS 293.465. Anthony is not seeking a mandatory injunction; Anthony is not trying to
20 force the Commission into pursuing a new course of action; Anthony’s request for injunction is simply
21 requesting that the Commission continue to act consistent with NRS 293.465 by not certifying the
22 District C results, and by adhering to its vote to hold a new election.

23 **(2) *The Registrar’s affidavit.***

24 In the series of cases cited to by Miller regarding other cases involving NRS 293.465, it is key
25 to note that there Joseph Gloria’s actions in reporting no issues with those elections and
26 recommending certification was not condemned. Moreover, in effect the Court accepted Mr. Gloria’s
27 report and recommendation, in resolving those cases against the candidate challengers. Here, Miller
28 has proffered no evidence for this Court to dispute the validity and veracity of Mr. Gloria’s report and

1 recommendation solely for District C. Such an argument is nonsensical and is merely a by-product of
2 the hyper-competitive nature of partisan politics.

3 Additionally, Miller’s arguments contesting Mr. Gloria’s affidavit are not based on any
4 statutory or legal basis. It is unclear what Miller means when stating a “NRS 293.465 affidavit” as the
5 operative statute does not contain any specific requirements or conditions on what should be included
6 in that affidavit except for the following, “the appropriate election officers in that precinct or district
7 shall make an affidavit setting forth *that fact*.” NRS 293.465. (emphasis added). “[T]hat fact” refers
8 to the preceding clause and the enumerated three conditions: (1) loss of the ballots preventing the
9 election, (2) destruction of ballots preventing the election, or (3) any other cause preventing the
10 election. *See Id.* Relying on this language, Mr. Gloria’s affidavit states (among other things), “As a
11 result, I cannot certify that the vote is an accurate representation of the will of the voters in that
12 district, and in my professional opinion as an election official, it raises a reasonable doubt as to the
13 outcome of the election. The discrepancies found in other races in the General Election were not of
14 sufficient magnitude to call into question the results of that race.”

15 Miller’s argument that this affidavit does not specifically state certain things and thus renders it
16 inoperative, is wrong and contrary to reasonable election law. A margin of 10 votes with 139
17 discrepancies is a substantial issue that should indeed call into the question whether the election tally
18 reflects the win of the voters. This is not like the other cases previously addressed by this Court where
19 the margin of victory was hundreds/thousands of votes with any discrepancies not having any effect
20 on the outcome – as also reported by Mr. Gloria. Both Mr. Gloria and the Commission were correct
21 not to certify the election for District C. There are no real legal challenges to Mr. Gloria’s affidavit.
22 The only reason Miller asserts that Mr. Gloria is meaningless is because Miller does not like the
23 content or the result. Again, every vote matters and Miller should not attempt to sideline the report
24 and recommendation of the election official who reported the results.

25 **D. Miller’s ironically false claim that the new election is “Unauthorized by any statute.”**

26 Miller’s brief is also infused throughout with a constant theme that the re-election is
27 “unauthorized by any statute.” (*See e.g.* Opp’n 4:17.) This really comes to the heart of the matter
28 because Plaintiff also admits readily that Anthony loses his right to a new election if the Commission

1 certifies the election. Plaintiff once again casually dismisses this with “Anthony complains that his
2 remedies at law—a recount and an election contest—are, in fact, his remedies at law.” (*See* Opp’n
3 10:18-19; *see also* 10:20-11:10.)

4 The statute, NRS 293.465, and the Nevada Supreme Court’s analysis in *La Porta* case shows
5 that the new election is *mandatory*. To go from there to “unauthorized by any statute” requires
6 substantial mental gymnastics. But frankly, that is Plaintiff’s case. As explained clearly in the
7 Opposition, Plaintiff says it is solely a ministerial act to certify the election. As also explained clearly
8 in Plaintiff’s own papers, if the act is ministerial under NRS 293.387 this eliminates Anthony’s avenue
9 to have a new election. As stated in the Motion, Plaintiff requires this Court to read NRS 293.387 to
10 the effective *elimination* of NRS 293.465. But this is improper statutory construction. *Banegas v.*
11 *State Indus. Ins. Sys.*, 117 Nev. 222, 225, 19 P.3d 245, 247 (2001)(“[W]ords within a statute must not
12 be read in isolation, and statutes must be construed to give meaning to all of their parts
13 and language within the context of the purpose of the legislation.”); *Orion Portfolio Servs. 2, LLC v.*
14 *Cty. of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010) (The
15 Court must “not render any part of the statute meaningless,” or read it in a way that “produce[s] absurd
16 or unreasonable results.”).

17 Plaintiff’s argument is clear: (1) the Commission erred when it failed to certify the election
18 because certification is merely a ministerial act; (2) once the election is certified Stavros Anthony
19 cannot call for a new election. The Court cannot justify this overt attempt to read NRS 293.465 out of
20 existence. Rather, the proper way to address the current factual scenario is for the Commission order a
21 new election, as it was authorized to do, and is in fact now mandated to do in cases such as this one.

22
23 **(1) *The irony of Plaintiff’s position.***

24 The irony of Plaintiff’s position is that it is clearly *not* the obligation of the Commission to
25 certify this election under NRS 293.387. Plaintiff keeps pointing the Court to 293.387(2)(a) where the
26 Commission is commanded that it “shall: (a) Note separately any clerical errors discovered.” Plaintiff
27 argues that it is essentially the Commission’s duty to simply note the errors found by Gloria as part of
28 its canvass, and then to canvass. But that is *not* the full reading of the statute. The statute continues:

1 “**and** (b) Take account of *the changes resulting* from the discovery, so that the result declared
2 *represents the true vote cast.*” See NRS 293.387(2)(b) (emphasis added).

3 It is irresponsible to read canvassing as a ministerial act when the statute at the basis of that
4 determination clearly points to requiring that the clerical errors not just be *noted* but that *corrections*
5 be made *so that* a result is declared that “represents the true vote cast.” That was at the heart of the
6 Registrar’s affidavit and his testimony to the Commission in recommending a new election. NRS
7 293.387’s mandate to canvass the election returns does not apply *because* the registrar is not able to
8 declare the “true vote cast.” NRS 293.387(2)(a) *must* be read in conjunction with NRS
9 293.387(2)(b)’s language which couches the purpose of the canvas. Neither of these statutes can be
10 read to eliminate NRS 293.465’s statutory authority for the Commission to hold new elections.
11 Further, reading the statutes as Plaintiff suggests would ignore 293.127(1)(c) : which states that
12 Chapter 293 of NRS “must be liberally construed to the end that . . . [t]he real will of the electors is
13 not defeated by any informality or by failure substantially to comply with the provision of this title
14 with respect to . . . certifying the results” of an election.

15 Where there is such a narrow margin in this election (distinguishing it from “the others”); where
16 the duly appointed Registrar has recommended a new election based on his inability to determine the
17 true vote cast or to declare the real will of the electors; where the statute actually mandates that a new
18 election be held, the Court should reject Plaintiff’s argument that certification is “ministerial” and
19 must occur in all cases thus reading special elections out of the statute and out of Nevada election law.

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1 **2. Conclusion.**

2 The Court should enjoin the Commission from certifying the election in Clark County District
3 C, or reconsidering its vote to proceed to a new election in Clark County Commission District C.
4

5 DATED this 30th day of November, 2020.

6 HUTCHISON & STEFFEN, PLLC

7
8 /s/ Mark A. Hutchison

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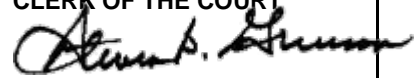
16 *Stavros Anthony*
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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 30th day of November, 2020, I caused the above and foregoing document entitled **REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME BEFORE TUESDAY, DECEMBER 1, 2020** to be served through the Court's mandatory electronic service system, per EDCR 8.02, upon the following:

TO ALL THE PARTIES ON THE E-SERVICE LIST

/s/ Madelyn B. Carnate-Peralta
An Employee of Hutchison & Steffen, PLLC



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EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR CLARK CITY, STATE OF NEVADA

ROSS MILLER, and individual,

Plaintiff/Petitioner,

vs.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government
entity; and DOES I-X, inclusive,

Defendant.

and

STAVROS ANTHONY, an individual,

Intervenor-Defendant.

Case No. A-20-824971-W
Dept. 11

**RESPONSE TO INTERVENOR'S
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: November 30, 2020
Hearing Time: 1:00 p.m.

Plaintiff/Petitioner, Ross Miller ("Plaintiff" or "Mr. Miller"), by and through counsel of

1 record, submits his response to Intervenor Stavros Anthony’s motion for preliminary injunction.
2 This brief is based on the memorandum of points and authorities below, any affidavits and
3 exhibits attached hereto, all papers and pleadings on file, and any oral argument this Court sees fit
4 to allow at the hearing on this matter.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 Mr. Anthony’s motion for preliminary injunction is a remarkable document. He is asking
8 this Court to enjoin the lawful and proper conduct of the duly-constituted legislative body of a
9 political subdivision, a request in and of itself any court would approach with great
10 circumspection. His basis for doing so is a patchwork of legal theories that amount to claiming
11 that the Clark County Board of County Commissioners (the “Board”) did have discretion to refuse
12 to canvass or certify the 2020 General Election race in Commission District C, and now does not
13 have discretion to reconsider its previous decision which resulted in this action, pursuant to Mr.
14 Anthony’s reading of NRS 293.465.

15 Mr. Anthony begins from the faulty premise that he is entitled to a “new” or “special”
16 election and then works backward, arguing essentially that any barrier to that relief is unlawful,
17 flawed, or simply unfair. But what Mr. Anthony has achieved by his motion is an acceleration of
18 the present litigation. Because his theory of the case relies, for its argument regarding his
19 likelihood of success on the merits, upon the two central matters of law in this case—whether
20 canvassing and certifying election results is a ministerial, nondiscretionary duty of the Board with
21 which it should have complied, and the meaning and application of Nevada’s prevented-election
22 statute, NRS 293.465—Mr. Anthony has placed this Court in the position of deciding these
23 questions now, and he has managed to shift the burden to himself in doing so. He cannot prevail
24 on his claims in intervention if he cannot convince this Court that canvassing the results was not
25 ministerial, and that NRS 293.465 mandates the conduct of a new election, and these arguments
26 are the mirror opposites of Mr. Miller’s claims. A ruling against the present motion is, in all
27 important respects, a preliminary ruling for Mr. Miller on the merits. Perhaps that would lead to an
28 early resolution of the litigation, so that all concerned may move to the appropriate post-election

1 matters that will resolve which candidate attains the Commission District C seat.

2 **II. PERTINENT BACKGROUND**

3 The Court is well aware of the basic facts of this matter, the general election results, the
4 actions or the Board at the November 16, 2020 special meeting to canvass and certify the results of
5 voting, and the justifications provided by the actors in that episode that have resulted in the present
6 litigation. There is little need to restate those here.

7 One aspect worthy of discussion, however, is Mr. Anthony's contentions regarding the
8 agreement by the Board not to proceed with its plan to conduct a new election. As the Court will
9 recall, Mr. Miller had made clear he would seek a temporary restraining order preventing the
10 planning or holding of a new election and the Board, through its counsel, made that unnecessary
11 by agreeing not go forward. A stipulation to that effect, among other items, has now been
12 presented to the Court, signed by all parties including Mr. Anthony. There was no injunction
13 required.

14 Now Mr. Anthony argues that the agreement should have been read to include barring the
15 Board from reconsidering its decision not to canvass or certify. This was never raised in the
16 telephonic hearing, represents no part of the agreement of the parties, and, as described below,
17 would be an improper intrusion into the legislative—and litigation—prerogatives of the Board.

18 **III. ARGUMENT**

19 **A. The Court Should Not Enjoin The Legislative Body Of A Political Subdivision**
20 **From Acting According To Law**

21 As an initial matter, Mr. Miller has no idea if the Board will reconsider its November 16,
22 2020 decision, or if it does whether it will rescind and proceed to canvass and certify the results, or
23 if it will redouble its intention to seek a new election. Mr. Anthony, however, brings this motion in
24 order to prevent what appears to be the lawful conduct of the Board in placing an item upon its
25 December 1, 2020 meeting agenda. There is no allegation that the Board has not provided
26 appropriate notice of the item(s), and the open-meeting issue Mr. Anthony raises regarding the
27 order of items on the agenda is for the County to resolve or act upon. The demand for an
28 injunction by Mr. Anthony to foreclose the Board's consideration of the agenda item, however, is

1 improper on a number of grounds.

2 On pure separation of powers concerns, the Court should not take up Mr. Anthony's
3 invitation to interfere with the processes of the Board. "The judiciary may not interfere with the
4 Legislature's execution of its constitutional duties [and] will not, under separation of powers
5 concepts and affording the comity and respect due a co-equal branch of state government, interfere
6 with the conduct of legislative affairs." *League of Women Voters of Wisconsin v. Evers*, 387
7 Wis.2d 511, 537, 929 N.W.2d 209 (2019) (internal quotation omitted). As the legislative body of
8 Clark County, separation of powers concerns apply equally to it as to any other duly-constituted
9 representative body. "Because under our system of constitutional government, no one of the co-
10 ordinate departments can interfere with the discharge of the constitutional duties of one of the
11 other departments, no court has jurisdiction to enjoin the legislative process at any point." *Id.*
12 Absent extraordinary circumstances, courts should permit legislative bodies to proceed with their
13 work.

14 This is quite unlike a situation where—had it been required—Mr. Miller would have
15 sought an injunction barring a new election. The argument there, and it would have been a
16 compelling one, would have been that the Board was already proceeding unlawfully, both in
17 failing to discharge its canvassing duty and in ordering a new election unauthorized by any statute,
18 and was threatening the interests Mr. Miller has in the official declaration of the election results as
19 the victorious candidate. In other words, the Board had already acted unlawfully and was about to
20 compound its error, to Mr. Miller's increasing detriment. Here, Mr. Anthony does not make any
21 argument that the Board's contemplated activity in reconsidering its conduct is unlawful, and what
22 mandate he argues exists for going through with the special election (NRS 293.465) is not viable
23 as a legal theory under these facts in any event.

24 Furthermore, the Board is a litigant. It is not required to see matters through to the bitter
25 end, just to benefit Mr. Anthony, if it determines that a different, wiser course would resolve the
26 central dispute of this case. It is certainly possible, given the decisions regarding NRS 293.465
27 issued by district courts over the last few weeks, that calmer reflection since the filing of Mr.
28 Miller's lawsuit will lead to the appropriate outcome; perhaps not. But the Board has the

1 prerogative to make that decision, if it chooses to limit or resolve its liability through
2 reconsideration of its previous action. This would seem to be a commonplace, not subject to
3 serious contravention and, as demonstrated below, Mr. Anthony's strained 293.465 argument does
4 nothing to alter that conclusion.

5 **B. Mr. Anthony Has No Likelihood Of Success On The Merits**

6 There is no plausible legal scenario, under current facts, that provides Mr. Anthony any
7 likelihood of success on the merits of his claims. He cannot establish that the Board should not
8 have canvassed the race; cannot establish that NRS 293.465 mandates a new election; and cannot
9 rest on this Court's willingness to enjoin a board of county commissioners from performing its
10 lawful duties as it sees fit.

11 **1. Mr. Anthony makes no argument regarding the mandatory nature of**
12 **the Board's duty to canvass and certify the results of the election**

13 Nowhere does Mr. Anthony wrestle with the question of the mandatory duty of the Board
14 to canvass and certify the results of the election. NRS 293.387 provides, in pertinent part:

15 1. As soon as the returns from all the precincts and districts in any county
16 have been received by the board of county commissioners, **the board shall**
17 **meet and canvass the returns.** The canvass must be completed on or before
the 10th day following the election or, if applicable, the 13th day following an
affected election that is subject to the provisions of NRS 293.8801 to 293.8887,
inclusive.

18 2. In making its canvass, the board shall:

19 (a) **Note separately any clerical errors discovered; and**

20 (b) **Take account of the changes resulting from the discovery,**
so that the result declared represents the true vote cast.

21 3. The county clerk shall, as soon as the result is declared, enter upon the
22 records of the board an abstract of the result, which must contain the number of
votes cast for each candidate. The board, after making the abstract, shall cause
the county clerk to certify the abstract and, by an order made and entered in the
minutes of its proceedings, to make:

23 (a) A copy of the certified abstract; and

24 (b) A mechanized report of the abstract in compliance with
25 regulations adopted by the Secretary of State, and transmit them to the
Secretary of State on or before the 10th day following the election or, if
applicable, the 13th day following an affected election that is subject to the
provisions of NRS 293.8801 to 293.8887, inclusive

26 (Emphasis added). Furthermore, NRS 244.090(5) states "The board shall also meet after each
27 general election to canvass election returns in the manner provided by law," while NRS
28 244.146(3)(e) mandates that "Except as expressly authorized by statute, a board of county

1 commissioners shall not [o]rder or conduct an election.”

2 The role of the Board is to canvass the returns. State law does not provide the Board with
3 authority or jurisdiction to resolve questions or concerns it has about the result of a lawful
4 election. It may, and should, note any “clerical errors” reported to it by the Registrar, and note also
5 any changes resulting from such clerical errors. That is the extent of the Board’s duty in
6 canvassing the results.

7 Here, no “clerical error” is present in the reporting, recording, or calculation of the votes in
8 Commission District C, and the Board heard no evidence of any such errors. The vote as counted
9 and reported was precisely and exactly as the Registrar performed it, with Mr. Miller receiving the
10 highest vote total according to its figures. Mr. Gloria’s affidavit, attached as an exhibit to the
11 motion, reiterates what he told the Board at its November 16, 2020 meeting: that the “voter sign-
12 ins” in this race do not match the vote total, that it is not unusual for that to happen, and he cannot
13 discern the reasons for these “discrepancies.” Mr. Gloria did not, and does not now, identify any
14 clerical error or necessary changes made on its basis.

15 The Board’s responsibilities here are ministerial, without discretion to annul or otherwise
16 alter the results it receives, and it has no authority to decline or refuse to perform its duty. The
17 canvass is a stage in the life-cycle of an election, and the Board has no legal authority to fail in its
18 statutory task. Whether the Board likes, dislikes, or is confused by the results is immaterial; it
19 must proceed. *See Reed v. Wheeler*, 77 Nev. 6, 358 P.2d 112 (1961) (mandamus issued to board of
20 county commissioners to canvass election returns).

21 There is no statute in Nevada that permits a Board of County Commissioner to annul a
22 properly-held election and hold a special election for the seat instead. In fact, there are few
23 instances in which a court would order a special election, either. In a properly brought election
24 contest, either a winner is determined on the basis of the evidence, or a vacancy is declared. *See*
25 NRS 293.417. The ordering of special elections in the wake of close races simply is not a feature
26 of Nevada election law. Mr. Anthony’s only argument against the Board’s duty to canvass is that
27 operation of NRS 293.465 relieves the Board of its responsibilities and forces a new election. It
28 does not.

1 **2. NRS 293.465 does not apply at all here, much less does it operate to**
2 **mandate a new election for Commission District C**

3 NRS 293.465 has seen more interpretation in the past three weeks by Clark County district
4 courts than in the last half-century combined. The statute features as the primary statutory basis for
5 demands for new elections in *Becker v. Gloria*, Eighth Judicial District Court, Case No. A824878
6 (decided November 24, 2020); *Marchant v. Gloria*, Eighth Judicial District Court, Case No.
7 A824884 (decided November 20, 2020); *Rodimer v. Gloria*, Eighth Judicial District Court, Case
8 No. A825130 (decided November 25, 2020); and *Arrington v. Gloria*, Eighth Judicial District
9 Court, Case No. A825149 (currently pending). In every instance thus far, NRS 293.465 has been
10 interpreted, properly, as inapplicable and not supporting a new election under the circumstances of
11 the 2020 General Election, because no election was prevented. Mr. Miller does not need to attach
12 all the orders flowing from the cases listed above, not just because they do not bind this Court but
13 because this Court wrote the template for all these decisions, nearly a decade ago, in the Cherchio
14 Cases, consolidated as *Montandon v. City of North Las Vegas*, Eighth Judicial District Court, Case
15 No. A643835 (decided July 12, 2011).¹ In the Cherchio cases, it is important to remember, the
16 margin was a single vote, an actual identifiable voter had cast an unlawful ballot, and the City
17 Council had both an election official's affidavit pursuant to NRS 293C.710 and an application by
18 the candidate; none of this was sufficient to mandate a new election, and the parties were directed
19 to canvass the votes with the candidates having the option of proceeding to a recount and an
20 election contest. Here, we have a much less concrete situation, with no particularized evidence of a
21 prevented election at all, just the mere fact that the usual statistical discrepancies have occurred,
22 and their number exceeds the margin between Mr. Miller and Mr. Anthony. This is the classic
23 scenario in which recounts and contests occur. It is why recounts and election contests exist.

24 Since *Montandon* in 2011, nothing has changed in the law itself, and no amendments or
25 clarifications have occurred that would either upend this Court's original interpretation or call into
26 _____

27 ¹ Strictly speaking, *Montandon* involved NRS 293C.710, which is a word-for-word cognate of
28 NRS 293.465, applied to municipal elections. There is no meaningful distinction between their
respective texts, interpretations, or applications.

1 doubt the very recent decisions of district courts. NRS 293.465 permits the calling of a new
2 election, in particular precincts or in a district as a whole, where an election has been prevented,
3 not where a defeated candidate, a canvassing authority, or even a registrar of voters is made
4 uncomfortable or is startled by the closeness of official results of the balloting. Here, no
5 circumstances exist or are plausibly alleged that would bring the Commission District C race
6 under the provisions of 293.465 and mandate a new election.

7 **(a) No election was prevented on November 3, 2020, for reasons**
8 **described by NRS 293.465, and therefore no new election is**
 authorized

9 The 2020 General Election took place. Votes were cast and counted. No one has claimed
10 otherwise, or established—as if they could—that an election was prevented. This alone removes
11 293.465 from utility in this action, either to defend the Board’s decision or to support Mr.
12 Anthony’s motion for injunction.

13 NRS 293.465 reads, in full:

14 If an election is prevented in any precinct or district by reason of the loss or
15 destruction of the ballots intended for that precinct, or any other cause, the
16 appropriate election officers in that precinct or district shall make an affidavit
17 setting forth that fact and transmit it to the appropriate board of county
18 commissioners. Upon receipt of the affidavit and upon the application of any
 candidate for any office to be voted for by the registered voters of that precinct or
 district, the board of county commissioners shall order a new election in that
 precinct or district.

19 NRS 293.465 applies in instances in which an election—as in, an entire election, or a
20 portion of one, at the precinct level—is prevented from occurring, and makes provision for a new
21 election in those circumstances. It is not a statute permitting a new election if one’s own preferred
22 candidate is not elected, or when results declared by the Registrar are close. It is not a substitute
23 for the statutory recount-and-contest process. NRS 293.465 exists in case of disaster, for instance
24 if an earthquake or a fire or loss of ballots through unexpected circumstances causes the inability
25 of an election to be conducted in a particular precinct. Recall, for example, that not only was
26 September 11, 2001 a day of enormous tragedy for the country, it was primary election day in
27 New York City. An election was prevented that day. Only one other time has the Nevada Supreme
28 Court had occasion to interpret 293.465, in a case distinguishable from the present one in the most

1 important respects. *See LaPorta v. Broadbent*, 91 Nev. 27, 530 P.2d 1404 (1975). In *LaPorta*,
2 ballots were unavailable to voters for three hours because a ballot became stuck in the voting
3 apparatus and the mechanism had to be replaced. The mechanism failed to include the names of
4 the State Assembly District 22 candidates, and instead a list of candidates that belonged to another
5 precinct was included. The Nevada Supreme Court held “NRS 293.465 is unequivocal on the
6 subject of a faulty election when the ballots are unavailable. If an election is prevented as it was
7 here by absence of ballots the statute specifically states that the county commissioners shall order
8 a new election in the precinct where the ballots were absent.” *Id.* at 29.

9 Here, Clark County had an election on November 3, 2020. The results of every other race
10 have been canvassed and certified. No precinct failed to complete its election, and races in districts
11 whose precincts lie either entirely or partially within Commission District C were canvassed and
12 certified on November 16, 2020. It does not withstand the slightest scrutiny to say that, for
13 example, those precincts in the same zone held an election for State Senate District 6, but not for
14 Commission District C—on the very same ballot for tens of thousands of voters. NRS 293.465
15 cannot apply here, by its express terms. In fact, that implies that a ballot with a vote in State
16 Senate District 6 (which lies almost completely within Commission District C) is countable,
17 canvassable, and certifiable in that race but somehow not in Commission District C which appears
18 on the voters same ballot. This makes no sense. A particular vote recorded on a ballot may, in the
19 midst of a recount or election contest—may be reviewable, but canvassing votes in one race on a
20 ballot but not another on the very same ballot demonstrates that the *election* in which that
21 particular elector voted was not “prevented” under the clear meaning of NRS 293.465.

22 **(b) The Gloria Affidavit and the Anthony Letter are legally**
23 **meaningless**

24 In support of his claims and motion, Mr. Anthony attaches a late-arriving affidavit from
25 the Registrar, Mr. Gloria. The affidavit is undated, though the supporting materials seem to
26 indicate that it was executed—probably for this lawsuit—a week after the canvass was to have
27 taken place, and three weeks after the election itself, at the same time as Mr. Anthony’s
28 “application.” *See* Declaration of Jacob Reynolds in Support of Application for Order Shortening

1 Time, at ¶¶ 9, 10. This, Anthony claims, removes jurisdiction from the Board to reconsider its
2 decision, and forces a new election in Commission District C.

3 But the Gloria affidavit is not an NRS 293.465 affidavit, in any manner. It merely, as Mr.
4 Anthony concedes, “formalizes the statements [Gloria] made to the Commissioners on November
5 16, 2020 during the canvass of the 2020 General Election.” Motion, at 14. The affidavit does not
6 mention NRS 293.465. It does not declare that an election was prevented, either in whole or at the
7 level of any particular precinct. It does not describe or identify any “loss or destruction of the
8 ballots.” NRS 293.465. One would think that if a registrar was declaring an election “prevented,”
9 the details would be clear and the matter would not take a week of litigation preparation to
10 produce, or that the affidavit in support of such a drastic and rarely-precedented event would state,
11 for example, that the Registrar is exercising his authority, expressly, under 293.465 and informing
12 the Board of the exact facts supporting a finding of a prevented election. It does none of those
13 things, and its failure as a 293.465 affidavit means that Mr. Anthony’s application letter is a legal
14 nullity as well.

15 Mr. Gloria’s affidavit does not describe a prevented election; it describes a close election.
16 And under Nevada law, close elections provide express and exclusive procedures and remedies for
17 defeated candidates.

18 **3. Mr. Anthony complains that his remedies at law—a recount and an**
19 **election contest—are, in fact, his remedies at law**

20 Mr. Anthony proceeds as if resort to the normal post-election mechanisms for resolving
21 election disputes is somehow an unfair burden upon him. But there is an established, exclusive,
22 mandatory, statutory process including a recount and an election contest available to address any
23 issues that a defeated candidate may wish to adjudicate.

24 Nevada law has very clear procedures to demand a recount and to contest the results of an
25 election by a defeated candidate. *See* NRS 293.410, *et seq.* This process is adversarial and
26 judicially enforced. It mandates the submission of admissible evidence, permits the calling of
27 witnesses and taking of discovery, and is subject to rigorous and express standards of how a
28 district court judge is to approach her evaluative task and issue a judgment regarding the election,

1 all within an expedited framework that privileges efficiency and finality of result. Nowhere in
2 state law is there authority for a board of county commissioners to toss out election results that
3 have been counted and submitted by the Registrar. There is nothing special about this race, or
4 about Mr. Anthony's candidacy; laws that procedures that have been available to every narrowly-
5 defeated candidate in Nevada are available to him as well.

6 Mr. Anthony makes the further, and audacious, claim that the usual legal process is unfair
7 to him because among the election-contest remedies is the declaration of a vacancy in Commission
8 District C, to be filled by gubernatorial appointment. Mr. Anthony says he is unlikely to be
9 awarded any such appointment because his political party does not currently hold the
10 governorship. This, of course, is none of the Court's concern.

11 **C. Mr. Anthony Will Suffer No Irreparable Harm, Or Even Hardship, In The**
12 **Absence Of Injunction**

13 Mr. Anthony's entire argument regarding irreparable harm is to say that he will lack the
14 remedy of a new election absent judicial intervention. He lacks this remedy in any event, so the
15 notion that its loss constitutes irreparable harm is not persuasive. Again, there is quite clearly no
16 authority for a special election under these circumstances in any provision of applicable statute.
17 Mr. Anthony's greatest harm would be that he is forced to proceed in the very manner envisioned
18 by the Nevada Legislature for resolving close elections. And the harm he does identify is no
19 strictly irreparable, either; Mr. Anthony may win the Commission seat after a recount, or in an
20 election contest.

21 **D. The Public Interest Does Not Favor Mr. Anthony**

22 The Constitution of the State of Nevada, Article 4, §26 mandates that "County
23 Commissioners shall jointly and individually perform such duties as may be *prescribed by law*["]
24 That italicized phrase, which is contained in many state constitutions in addition to Nevada's, has
25 uniformly been interpreted to mean statutory law. *See Coyne v. Walker*, 368 Wisc. 2d 444, 471,
26 879 N.W. 2d 520, 533 (Wisc. 2016); *State ex. rel. Strandberg v. Board of Land Commissioners*,
27 131 Mont. 65, 68, 307 P. 2d 234, 236 (Mont. 1957); *State ex rel. McKittrick v. Missouri Public*
28 *Service Comm.*, 352 Mo. 29, 35, 175 S.W.2d 857, 861 (Mo. 1943) (en banc); *State v. Frohmiller*,

1 53 Ariz. 483, 487-490, 90 P. 2d 998, 1000-1002 (Ariz. 1939). NRS 293.387, NRS 244.090(5),
2 NRS 244.146(3)(e), even NRS 293.465—all of these pertinent statutes are inherently in the public
3 interest to interpret and enforce properly. All Nevada citizens—collectively “the public interest”—
4 have the justifiable expectation that their constitution and laws will be obeyed by their
5 government. It is always in the public interest to prevent the violation of a party’s constitutional
6 and statutory rights, especially in the context of election.

7 **IV. CONCLUSION**

8 For all the reasons described above, Mr. Anthony’s motion should be denied by this Court.

9 DATED this 30th day of November, 2020.

10 By: /s/ Bradley S. Schrager

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 30th day of November, 2020, a true and correct copy of the
3 **RESPONSE TO INTERVENOR'S MOTION FOR PRELIMINARY INJUNCTION** was
4 served by electronically filing with the Clerk of the Court using the Odyssey eFileNV system and
5 serving all parties with an email address on record, pursuant to Administrative Order 1402 and
6 Rule 9 of the N.E.F.C.R.

7
8
9 By: /s/ Dannielle Fresquez

10 Dannielle Fresquez, an Employee of
11 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
12 RABKIN, LLP
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1 MONDAY, NOVEMBER 30, 2020 AT 12:57 P.M.

2
3 THE COURT: Is everybody present? Do we think we
4 have anybody else joining us?

5 Mr. Hutchison, it's your Motion.

6 MR. HUTCHISON: Yes, Your Honor. Thank you. Good
7 afternoon. Thank you for accommodating us on this
8 shortened time.

9 I'm sure the Court has been through the papers, as
10 you always go through them, Your Honor, but let me just
11 start off by reminding all of us what is happening here
12 today. There's been a lot of argument and a lot of sort of
13 chest pounding about the idea that this case has, you know,
14 been decided already by other previous cases addressed by
15 the Court, not only in this district but others, and that
16 the statutory interpretation then of those courts leads to
17 the conclusion that this case doesn't have any merit under
18 the relevant statute, NRS 293.465.

19 Judge, every single one of those other cases that
20 counsel cited, including the case that you handled, Your
21 Honor, --

22 THE COURT: With you.

23 MR. HUTCHISON: -- the parties -- excuse me?

24 THE COURT: With you.

25 MR. HUTCHISON: Yes, Your Honor.

1 THE COURT: Yeah.

2 MR. HUTCHISON: Your Honor, I'm talking about in
3 2020, any of those 2020 election lawsuits, in every single
4 one of those, every single one of those, the -- our
5 opposing party and the County itself argues that you should
6 defer and courts should defer to Joe Gloria; except,
7 apparently, in this case, that you should accept his
8 election expertise and defer to him, except in this case.
9 That --

10 THE COURT: So, Mr. Hutchison, can I ask you a
11 question?

12 MR. HUTCHISON: Sure.

13 THE COURT: And thank you for attaching the
14 Affidavit as Exhibit B to your Motion. Can you tell me how
15 the Affidavit qualifies as an affidavit under NRS 293.465,
16 since it does not appear to indicate that an election was
17 prevented?

18 MR. HUTCHISON: Yeah. A couple of points. If the
19 Court -- and I'm sure you've got the statute in front of
20 you and --

21 THE COURT: I do.

22 MR. HUTCHISON: -- the -- in the briefing. If an
23 election is -- this is NRS 293.465, for the record. Quote:

24 If an election is prevented in any precinct or
25 district by reason of the loss or destruction of the

1 ballots intended for that precinct, or any other cause,
2 the appropriate election officers in that precinct or
3 district shall make an affidavit setting forth that
4 fact and transmit it to the appropriate board of county
5 commissioners.

6 Judge, the reason that this Affidavit satisfies
7 NRS 293.465 is because the affidavit itself says that he --
8 Mr. Gloria is simply formalizing the statements that he
9 made to the Commission on November 16th, 2020. I don't know
10 if the Court's had an opportunity to listen to that County
11 Commission meeting, but, in that County Commission meeting,
12 he sets forth very clearly the reasons why he has no
13 confidence that the election tally in District C reflects
14 the will of the voters. And, so, he sets forth the fact
15 that we've had an audit of this election, as he has other
16 audit -- other elections. He sets forth that there were
17 218 precincts in District C and that there were 139
18 discrepancies, which the Election Board was unable to
19 reconcile. He also said that the results, he can't certify
20 it as being representative, that is the vote tally, of the
21 will of the voters in that District, and that he opines
22 that, in his professional opinion, it raises reasonable
23 doubt as to the outcome of the election.

24 Your Honor, there isn't anything in here other
25 than the fact -- in NRS 293.465 that has to be stated by

1 Mr. Gloria, other than the fact that the election has been
2 prevented. The election has been prevented, Your Honor, by
3 way of these discrepancies and by way of the doubtful
4 nature of this election.

5 Now, if the Court is saying, Mr. Hutchison, in
6 order for you to satisfy NRS 293.465, Mr. Gloria has to use
7 the words, the election was prevented, then --

8 THE COURT: Yep.

9 MR. HUTCHISON: -- I would say to the Court that's
10 not in the statute. It doesn't require his affidavit to
11 say the election was prevented. He was -- it says that
12 he's got to set forth fact that would -- reports the
13 election has been prevented, Your Honor. That's setting
14 forth the fact that the -- his view of the election was not
15 reliable and, essentially, I'm adding that to the statutory
16 language.

17 But to answer you, specifically, Judge, keep in
18 mind as well that, you know, NRS 293.127(1)(c) provides
19 that statutes under NRS 293:

20 Must be liberally construed to the end that: The
21 real will of the electors is not defeated by any
22 informality or by failure to substantially comply with
23 the provisions of the title with respect to certifying
24 the results of an election.

25 So, Your Honor, I would suggest to the Court that

1 if you say -- and, again, this is not an affidavit that we
2 control. This is an affidavit, of course, that the County
3 controls. If you say that the County can choose not to put
4 language that says that the election was prevented and,
5 therefore, NRS 293.465 is not satisfied, well, then, in
6 every case that the County does not want NRS 293.465 to
7 apply, they can simply not include that language. I think
8 that's inconsistent, Judge, with the statutory parameters,
9 and intended legislature, as well as the language of the
10 statute. So, --

11 THE COURT: Thank you, Mr. Hutchison. Since I
12 interrupted you, was there anything else you wanted to tell
13 me?

14 MR. HUTCHISON: Yes, Your Honor. Your Honor, we
15 would ask that the Court also consider the fact that if the
16 -- literally, if the election recount does not lie with the
17 County Commission here, and that's the plaintiff's
18 argument, that it's just -- that this is simply a
19 ministerial act, that the Court -- you know, that the
20 Commission has no discretion at all, then that essentially
21 reads out of Nevada election law any new election or any
22 special election, except, I guess, as the plaintiffs argued
23 in the case of a repeat of 9/11 or some disaster. That's
24 just certainly not consistent with the *LaPorta* decision by
25 the Nevada Supreme Court, Your Honor, which we cited to the

1 Court and otherwise demonstrated that the Court has
2 ordered, in cases other than a disaster, that the County
3 Commission order a new election.

4 THE COURT: But the *LaPorta* case --

5 MR. HUTCHISON: So, that --

6 THE COURT: Mr. Hutchison, that is a --

7 MR. HUTCHISON: Yes.

8 THE COURT: -- a machine malfunction. Correct?

9 MR. HUTCHISON: Sure.

10 THE COURT: Yeah.

11 MR. HUTCHISON: It absolutely is not an actual
12 disaster. It was a machine malfunction. Yes.

13 THE COURT: Okay.

14 MR. HUTCHISON: The plaintiffs argue that there's
15 got to be a natural disaster and *LaPorta* makes clear, Your
16 Honor, that it can be for a machine malfunction, it could
17 be when bells or locks are destroyed, and the statute says
18 or for any other reasons. And, so, this idea that the
19 election was held and, so, therefore, counteracts 293.465,
20 just simply doesn't apply because the election wasn't,
21 quote/unquote, prevented, reads an election far too
22 narrowly, Your Honor.

23 For all of us who do a run for office, and there
24 are some on the phone, they know that you run an election
25 not simply so you go through the motion of the voters

1 casting a ballot. The election also includes the tallying
2 of the ballot, as well as an accurate representation of the
3 ballot, so that the will of the voters have been reflected
4 in those votes. That's an election. Election isn't just
5 simply the act of passing ballots. It's more than that.
6 You don't get a Certificate of Election because your name
7 was on a ballot and voters cast a ballot to you. There's
8 more to it than that. In fact, the plaintiffs recognize
9 that there's an election life cycle, they called it. An
10 election life cycle. It's more than just simply casting
11 ballots, Your Honor. It's also being able to tally those
12 ballots accurately and have a winner declared.

13 The election was prevented because the Clark
14 County Commission's own election official, Mr. Gloria, for
15 the first time in any of the election challenges, said:
16 This election cannot be certified, in his opinion, because
17 of discrepancies or errors in the election process. The
18 election was prevented. Those -- that's my use of the
19 term, Your Honor.

20 THE COURT: I understand.

21 MR. HUTCHISON: Let me also, Your Honor, if I can,
22 just point to a case that you pointed us to at the very
23 beginning of our process. You cited the *Cherchio* case and,
24 Your Honor, I guess, officially, the *Mike Montandon versus*
25 *City of Las Vegas* case.

1 THE COURT: Yes.

2 MR. HUTCHISON: And Your Honor said -- as the
3 Court well knows, Your Honor set forth the Findings of Fact
4 and Conclusions of Law that -- and I would like to point
5 the Court to two Conclusions of Law that wholly distinguish
6 the *Cherchio* election from the Stavros Anthony and Ross
7 Miller election. If the Court takes a look at its own
8 Findings -- excuse me, the Conclusion of Law 5, and I'll
9 also direct you, Judge, to Conclusion of Law 16. So, your
10 Conclusion of Law 5 in the *Cherchio* matter read, quote:

11 No clerical error occurred in the recording,
12 reporting, or calculating of the total votes cast. And
13 no evidence was presented of any clerical error.

14 Close quote. That's Conclusion 5.

15 Conclusion 16, Your Honor, says, quote: No
16 election was prevented here. Lomax confirmed that the
17 election occurred, and that all voting machines
18 operated appropriately, and that all ballots were
19 correctly counted and tabulated. No evidence was
20 presented of any election being prevented.

21 Close quote.

22 That is not what happened here, Your Honor. We
23 have evidence before the Court, you've got Mr. Gloria's --
24 not only that, but you also have his statement before the
25 County Commission that he could not accurately and credibly

1 count or tabulate the ballots. And, particularly, when
2 you're trying to correct -- count them in terms of: Did it
3 reflect the will of the voters? He came in, and you can
4 imagine the pressure that was put on him in this crazy
5 election environment. For the election official of the
6 Clark County Commission to come in and say: You know,
7 there's been claims of all kinds of problems with these
8 elections. I've had no problem with any of them. And my
9 audit is showing no problem with not one of them, except
10 for Commission C. And then he laid it out. There's 139
11 discrepancies we can't account for. People who have signed
12 in who didn't vote or people who voted that didn't sign in.

13 Now, we know what he said at the hearing, or at
14 the meeting, that there were at least six voters who voted
15 twice. And, so, what was his recommendation -- and, by the
16 way, Your Honor, the recommendation of Clark County's
17 counsel? That was to hold a new election. They knew,
18 Judge, and we cite in our papers even on -- just
19 referencing page 16 and 17 of our brief, the Commissioner
20 Jones asked if there was any other possible thing that
21 could happen other than, at that time, certifying the
22 election or go to a special election. And the counsel's
23 commission -- the Commission's counsel, the County's
24 counsel, says: No. That's what you do.

25 Because, Judge, -- and this is the point of our

1 preliminary injunction hearing, and it's the point of our
2 preliminary injunction motion, that is: If, in fact, the
3 votes are certified, that takes away from Mr. Anthony's
4 right of a new election. And there's -- okay. To my
5 opposing counsel and friends on the other side, they
6 forthright state: Yep, if this is certified, if this
7 election is certified, Anthony cannot seek a new election.
8 In effect, what you're going to be ruling, if you rule in
9 their favor, is at the County Commission level and the City
10 Council level, if there is -- unless there's some sort of a
11 9/11 disaster, those bodies have no discretion or authority
12 to order a new election.

13 Think of the number of new elections that have
14 been ordered or directed by municipal bodies, county
15 bodies, and what the opposing counsel is saying is those
16 were all unauthorized. All of them. You will write out of
17 election law in Nevada any special elections or new
18 election, because it would -- when you go on to the new
19 canvass, that's their point. Just send them away, Judge,
20 and have them go to a recount, or have them go through
21 election contest. Well, they know very well that neither
22 one of those statutory methods provides the remedy in an
23 election, Your Honor. That's why Mr. Anthony would be
24 irreparably harmed now if the County Commission does not
25 follow the mandates of NRS 293.465. That remedy is gone

1 after the election is certified.

2 Everybody, I believe, within the briefing agreed
3 with that, and yet we've got a history, and we've got
4 Nevada Supreme Court precedent, that has not only called
5 for a new election but has required of them. At the county
6 level and it was short of some natural disaster, Your
7 Honor.

8 So, the Court should enter a preliminary
9 injunction preventing the County Commission from certifying
10 the commission to the election or, otherwise, reconsidering
11 its vote to hold a new election. Why? Because NRS 293.465
12 requires it, because Mr. Gloria has indicated, Your Honor,
13 that, in fact, he does not have confidence in the outcome,
14 the fact, Your Honor, that the Nevada Supreme Court has
15 required that these elections -- new elections be held in
16 situations like this where you've got an affidavit under
17 NRS 293.465, which says that the election, in effect, was
18 prevented because there was no way to reconcile the 139
19 discrepancies in an election, Your Honor, that was decided
20 by 10 votes.

21 So, Your Honor, I'll reserve my main time to reply
22 to my friends on the other side.

23 THE COURT: Thank you. Mr. Schrager?

24 MR. SCHRAGER: Yes, Your Honor. Thank you.
25 Bradley Schrager for petitioner, Ross Miller.

1 I first want to note that this Motion comes to you
2 on a rather odd procedural footing because, in essence,
3 what Mr. Anthony is doing is flipping the burden of Mr.
4 Miller's underlying actions. He is taking on the burden
5 because, in essence, Mr. Anthony cannot win his Motion if
6 Mr. Miller is right on the underlying ultimate questions in
7 the litigation and whether the Board had a duty to canvass
8 and whether 293.465 forces a new election. The opposite is
9 true as well. Mr. Miller cannot prevail if, in fact, Mr.
10 Anthony is correct that the Board had perfect discretion
11 not to canvass. And, now, there's no way out of that
12 crack. In order to reconsider, they'd have to go and hold
13 a new election.

14 So, in essence, we have a lot at head in this
15 litigation. And, normally, I would find that rather
16 curious. In this instance, I guess the hints are helpful.
17 A preliminary indication of Your Honor's thoughts on the
18 merits of those underlying issues, I think, is useful to
19 the parties so that they may chart their future conduct.
20 Now, I feel that way because I think we have the better of
21 the arguments on Mr. Miller's side, but I also think that
22 if I'm wrong, if I'm on the wrong side, I just want to know
23 that as quickly as possible. So, I would urge the parties
24 to take great heed to what the Court says here today.

25 Now, as for the Motion itself, Mr. Anthony seems

1 to be proceeding on the basis that he has a right to a
2 special election and that failure to have that could
3 somehow do irreparable harm to him. Now, I absolutely
4 agree with my colleague that in the absence of -- if this
5 vote is certified, canvass was certified, there will be no
6 special election. You know, I'm sorry if that's
7 frustrating for Mr. Anthony. It also happens to be the
8 law. It's the law that every candidate signs up for when
9 they enter into an election with a possible prospect of a
10 recount and election contest thereafter. That's simply how
11 we resolve post-elections in Nevada.

12 There's two single questions here that need to be
13 resolved for Mr. Anthony to have any likelihood of success
14 on the merits. First thing, he doesn't really state at all
15 in his Motion, and only obliquely in the response or in the
16 Reply, which is whether that is a ministerial duty of the
17 Board to canvass and certify the results. Clearly, it is.
18 Not only does 293.387 say that, 244.090 sub 5, mandatory
19 duty. Writs of mandamus have issued on multiple occasions
20 from the Supreme Court and from District Courts ordering
21 canvassing authorities to perform their duties.

22 The reason why we don't give discretion in that
23 area is there could be canvass and authorities interfering
24 with the finality of elections. Only that finality gets
25 you to the next stage of the statutory process, which is

1 the recount and the contest available to any candidate.
2 That's where you go when you want to present evidence of --
3 that the election -- that there were votes that were cast
4 that shouldn't have been, that there were votes -- that
5 there were votes that weren't counted that should have
6 been, that there was malfunction that would have overcome
7 the margins between candidates. That's where you do that.
8 And there are particular statutory reasons why the Nevada
9 Legislature puts those people through that process. It has
10 clear standards for evidence, and for judgments, and for
11 relief, all the time frames, all of those things. That's
12 why those are the exclusive remedies to situations like
13 this.

14 So, the duty is mandatory to canvass and that the
15 only way out of that, and this clearly is recommended by
16 Mr. Anthony, is the potential for 293.465, preventing an
17 election. But, first, it comes down to whether the
18 election is prevented. Now, counsel reads that statute
19 really broadly, but, in fact, it's not so broad. It is not
20 necessarily an earthquake, or a fire, or where I'm talking
21 about loss or destruction of ballots, or some other cause
22 that prevents the election. The key to that statute isn't
23 the earthquake, Your Honor. It's the prevention.

24 Now, I would submit to you with the argument
25 presented within our briefs that -- you know, certainly the

1 truth that Mr. Gloria's Affidavit restates what he said to
2 the County Commission. But, important is what he doesn't
3 say is by the power invested in me by 293.465, he doesn't
4 use the word: Prevented. There's no claim any ballots are
5 decreasing or there was a prevention. There are none of
6 the things that .465 would require, if someone is seeking
7 the drastic and incredibly rare, you know, relief of the --
8 essentially the canceling of an election.

9 And, in fact, what Mr. Gloria doesn't say is that,
10 yes, there would be discrepancies. And as counsel pointed
11 out, sometimes people sign in and don't vote. Sometimes
12 people vote that didn't sign in. Those things happen in
13 every election and Mr. Gloria realizes these are the usual
14 anomalies in every statistical audit or [indiscernible] of
15 what happens in an election. It does not mean there are
16 139 people who voted who shouldn't have. It doesn't mean
17 that there's a stack of ballots somewhere that Mr. Gloria
18 needs to count but didn't. In fact, he would have said
19 that. Mr. Gloria counted every ballot he was supposed to,
20 didn't count any that he wasn't supposed to, and he gave
21 his report. And that's the end to the story.

22 You cannot ever prevent an election with 150,000
23 people, voting into the race, 139 unidentifiable,
24 unresolvable, but normal statistical anomalies with a sign-
25 in sheet and say that the election was prevented. No other

1 race of the other districts, assembly, or state senate,
2 with any information the Commission has received were
3 prevented. So, you cannot say an election was prevented.
4 What was prevented by the results themselves was Mr.
5 Anthony's goal of leading the election until the final
6 results came in. That's not the same thing.

7 So, I mean, it just -- it strikes us very clearly
8 that that there are no grounds either to enjoin the Board
9 from doing this whatever -- discretionary duties, well, he
10 has no idea what they're going to do. We have no idea if
11 they're going to keep it on, if they're going to
12 reconsider, if they're going to fail to reconsider it.
13 They're going to -- we don't know. But they get to do
14 whatever they're going to do, all right, and the
15 legislative body with an agenda item placed, the Board.

16 So, I mean, it is -- it's very clear to us that
17 the duty of canvassing is mandatory and enforcing the
18 [indiscernible] does not apply because no election was
19 prevented.

20 And, so, I'd be happy to answer any questions that
21 you have, Your Honor, but we'll submit it on that.

22 THE COURT: Thank you, Mr. Schrager. Ms. Miller,
23 do you have anything you'd like to add?

24 MS. MILLER: Just that I agree with Mr. Schrager
25 that the County Commission should take heed of whatever the

1 Court does today. If the Court -- because I don't think
2 the arguments are going to change in a week or so. So, if
3 the Court has already determined that it is a ministerial
4 duty or, in the alternative, that the Board has a mandatory
5 duty for a special election, the sooner we know the better.

6 THE COURT: Okay. Mr. Hutchison.

7 MR. HUTCHISON: Your Honor, a couple of different
8 points. I just -- I want to just bring up aside, this is
9 not *Cherchio*. There is evidence that has been presented of
10 an election having been prevented. Let me just respond to
11 my opposing counsel's argument about statutes, that you --
12 coming up, and the Court's ordered to, and Mr. Schrager
13 cited at the end, as he had in his briefing, NRS 293.3872
14 subsection (a), and he emphasized that's where the
15 Commission is commanded to note separately any clerical
16 errors discovered. And, then, essentially, you know, the
17 argument is: Well, that just is merely a ministerial act
18 then. You then simply note those errors that were found by
19 Mr. Gloria and that becomes a part of your canvass, and
20 that's -- they need canvass, but that's not before reading
21 the statute.

22 Subsection (b) continues: And take into the
23 account of the changes resulting of discovery so that
24 the result declared represents the true vote cast.

25 That is what Mr. Gloria did on November 16th. He

1 went before the County Commission at great pressure, great
2 stress, I'm sure, to himself, and said: I cannot declare
3 to you that Commission C represents the true vote cast. I
4 can't do it.

5 And, when you pair that, Your Honor, with the
6 legislative directive of NRS 293.127(1)(c), that the
7 statutes are to be:

8 Liberally construed to the end that: The real
9 will of the electors is not defeated.

10 Now, I think, Your Honor, the argument that this
11 is a ministerial task when you're presented with 139
12 discrepancies that make your election official, the
13 official who the Clark County Commission themselves
14 appointed for purposes of running a fair election, and you
15 call that into question, that the statutory provisions that
16 are relied upon by the plaintiff simply are not satisfied,
17 Your Honor.

18 They also continue to cite in the brief, you know,
19 that the Board meets after each general election, canvass
20 the election, and return to the matter provided by law.
21 And, as counsel said, that's statutory law, including NRS
22 293.465. They also point to NRS 234.146, which mandates
23 that:

24 Express -- except as expressly authorized by
25 statute, the Board of County Commissioners shall not

1 order or conduct an election.

2 Well, NRS 293.465 is that statute, Your Honor.

3 So, Your Honor, the Court needs to take into
4 consideration, and the Court has done this many, many
5 times, as we all know, the entire lay of the land when it
6 comes to the statutory obligations and duties. If, in
7 fact, you rule in favor of the plaintiff, you are writing
8 out of existence NRS 293.465. You are saying that, in
9 fact, the County Commission and the City Council does not
10 have the discretion, or the authority, or is not mandated,
11 when their own election official comes before them and
12 calls into question whether or not the -- an election
13 result reflects the vote of the people.

14 And the only thing you can do is just go to a
15 recount or go to election contest, neither of which result
16 in a new election, neither of which result in a new
17 election. It wipes the remedy out of the law, Your Honor.
18 And *LaPorta* is contrary to that. *LaPorta* does not require
19 any particular showing by the election official as to how
20 it's prevented. The Court, itself, determined that the
21 facts of the case resulted in a prevented election. And
22 that's what we are asking the Court to do here as well,
23 Your Honor, that, in fact, because of what Mr. Gloria has
24 done, he went before the County Commission. He said
25 there's 139 discrepancies in an election that was decided

1 by 10 votes and I really have serious doubts whether or not
2 the election tally reflects the will of the people, the
3 will of the elector. I'm asking, I'm recommending for a
4 new election. And the County Commission did the right
5 thing at that point. They didn't certify and they called
6 for a new election. We're not asking that this Court issue
7 a mandatory injunction. We're simply saying that the Court
8 prevent the County Commission from doing what it already
9 did, legally, and was mandated -- and what it was mandated
10 to do.

11 My final point, Your Honor, is this. If, in fact,
12 the Court is not going to grant us relief, the idea that
13 this accelerates everything, and there's no need for a
14 hearing is something that we don't agree with and certainly
15 don't agree that discovery is otherwise eliminated. The
16 Court's already ordered or at least the parties to
17 stipulate to it at this point.

18 THE COURT: Thank you. The Motion for a
19 Preliminary Injunction or Temporary Restraining Order is
20 denied. NRS 293.465 is clear that the election must be
21 prevented. There are a number of ways it could be
22 prevented that don't include natural disasters. There
23 could be an accident that is transmitting the vehicle that
24 has the thumb drives in it. There's a lot of different
25 ways the election could have been prevented. That is not

1 what is included in Mr. Gloria's affidavit. There are
2 discrepancies of 139. That does not mean that there was
3 any election that was prevented in any precinct or
4 district.

5 While I read the statute more broadly than Mr.
6 Schrager does, it does not fall -- the Affidavit does not
7 fall within the scope of NRS 293.465. For that reason, I
8 am not going to enjoin the County Commission from
9 addressing whatever it thinks appropriate to do tomorrow at
10 their meeting. I do have, on December 4th, which is this
11 Friday, your hearing on my chamber's calendar on the writ
12 of prohibition. I will await the remaining briefs before
13 I tell you my opinion on the writ that Mr. Schrager is
14 seeking.

15 So, Mr. Schrager, if you would please prepare an
16 Order, submit to Mr. Hutchison and Ms. Miller. Please have
17 fun tomorrow morning at the County Commission meeting.

18 MR. SCHRAGER: Your Honor, I will indeed, Your
19 Honor. I also pointed out, if it helps at all, that the --
20 the stipulations regarding dec relief of the remainder of
21 the case, --

22 THE COURT: Yeah. It --

23 MR. SCHRAGER: -- Wednesday and the brief 30 days
24 from today. And, so, --

25 THE COURT: It --

1 MR. SCHRAGER: -- the December 4th status check, we
2 had had a little trouble getting scheduling for Mr.
3 Gloria's deposition and nobody wanted to file briefs prior
4 to that, so there's a schedule in the stipulation that may
5 cross Your Honor forsaking status hearing or hearing on the
6 4th and reset along the lines that are suggested.

7 THE COURT: I know, but I'm going to look on
8 December 4th to see if I have all the briefs yet. And, if I
9 have all the briefs, I'll issue a minute order. If I
10 don't, I'll continue it until I get all the briefs.

11 MR. SCHRAGER: Thank you.

12 THE COURT: I saw your stipulation and Dan filed
13 it, but we kept the December 4th date just so that we can
14 make sure we decide as quickly as we are able, given the
15 pending deadline. I think the meeting that you want me to
16 have a decision for is prior to December 18th.

17 MR. SCHRAGER: Very good.

18 MR. HUTCHISON: That's right, Your Honor.

19 THE COURT: All right. Anything else?

20 MR. SCHRAGER: Thank you very much, Your Honor.

21 THE COURT: Everyone stay well. Ms. Miller, I
22 hope you're feeling better.

23 ...

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MS. MILLER: Thank you, Your Honor.

THE COURT: All right. Be well. We will be in
recess.

PROCEEDING CONCLUDED AT 1:27 P.M.

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CERTIFICATION

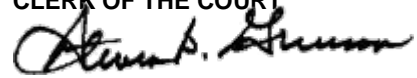
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
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DISTRICT COURT

CLARK COUNTY, NEVADA

ROSS MILLER, an individual,

Plaintiff/Petitioner,

v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government entity;
and DOES I – X, inclusive,

Defendant.

Case No. A-20-824971-W

Dept. No. 31

ELECTION RELATED ACTION

**ARBITRATION EXEMPTION:
INJUNCTIVE RELIEF
REQUESTED**

**FIRST AMENDED COMPLAINT
IN INTERVENTION**

STAVROS ANTHONY, an individual,

Intervening Plaintiff,

v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government entity;
ROSS MILLER, an individual; and DOES I – X,
inclusive,

Defendants.

1
2 Intervening Plaintiff, Stavros Anthony, (“Anthony” or “Intervening Plaintiff”) alleges as
3 follows:

4 **INTRODUCTION**

5 1. Intervening Plaintiff has been forced to intervene in this action as a result of
6 Ross Miller’s (“Miller”) underlying Complaint to this Court regarding the uncertified 2020
7 General Election for Clark County Commission, District C.

8 2. The Clark County Board of Commissioners voted not to certify the election for
9 District C and instead to have a new election in District C.

10 3. The canvass of the final count of ballots in the General Election yielded a count
11 of 76,576 votes for Anthony and 76,586 for Miller, a total difference of 10 votes.¹

12 4. On November 16, 2020, the Clark County Registrar of Voters, Joe P. Gloria (the
13 “Registrar”), reported to the Clark County Board of Commissioners (the “Board”) that there
14 were 139 discrepancies found in ballots for the District C election.²

15 5. At the Board meeting, the Registrar reported that the canvass yielded a result
16 indicating the District C election should not be certified because neither he nor the Clark
17 County Election Department could explain these discrepancies or ensure that the ballot count
18 reflected the will of the voters in District C. Therefore, the Registrar recommended a new
19 election because the number and nature of the discrepancies, which were substantially more
20 than the difference in vote total between Miller and Anthony.

21 6. As a result the Registrar’s report regarding the voting discrepancies and the
22 margin of votes between the District C candidates, the Board determined it was unable to certify
23 the vote and instead voted on November 16, 2020, to hold a new election.

24 7. However, on December 1, 2020, the Board – under considerable political
25 pressure and public scrutiny – voted to reconsider its previous decision, and voted to certify the
26 District C election results.

27
28 ¹ See Complaint ¶2.

² *Id.* at ¶3.

8. The Board's certification of the District C election results, also reversed the Board's previous vote to hold a new election.

PARTIES

9. Intervening Plaintiff, Stavros Anthony, is and was at all times relevant hereto a candidate for Clark County Commission, District C.

10. Defendant Clark County Board of Commissioners is and was at all times relevant hereto a Nevada local government entity properly identified in statute and endowed with authority under NRS 293.465 to call for a new election in Clark County Commission, District C.

11. Plaintiff/Petitioner Ross Miller is and was at all times relevant hereto a candidate for Clark County Commission, District C.

FACTUAL BACKGROUND AND ALLEGATIONS

12. Anthony agrees with much of Miller's Complaint's background allegations regarding the Clark County Commission, District C election, and reiterates those allegations as follows:

a. “Clark County, Nevada, is divided into separate districts with each having its own elected representative on the Board.”³

b. “The term of the Commissioner for District C expired at the end of 2020 and became open for the November 2020 General Election.”⁴

c. “[Miller] filed as the Democratic Party candidate, prevailed in the primary election and then proceeded to the General Election against a Republican opponent.”⁵

13. Anthony was the Republican Party candidate for District C.

14. During the General Election, 153,162 votes were cast in the Clark County Commission, District C race resulting in a 10 vote difference.⁶

³ *Id.* at ¶8.

⁴ *Id.* at ¶9.

⁵ *Id.* at ¶10.

⁶ *Id.* at ¶2.

1 15. Furthermore, Anthony largely agrees with the Miller Complaint’s background
2 allegations regarding the responsibility of the Registrar and his staff, and reiterates those
3 allegations as follows:

4 a. “The Registrar is responsible for overseeing and managing the integrity
5 of the election voting process, including, but not limited to, insuring that only those who
6 are eligible to vote will have their vote counted and that the ‘one vote’ limitation
7 pertains.”⁷

8 b. “On information and belief, the Registrar and his staff collected and
9 published all the data from the General Election.”⁸

10 c. “On information and belief, as part of the process, the Registrar and his
11 staff record and publish each voter's participation in the general election using rosters in
12 each precinct.”⁹

13 d. “On information and belief, the Registrar and his staff have in place
14 systems and procedures for insuring and auditing the accuracy and validity of mail-in
15 ballots, counting of ballots, tracking of signatures, cancelled voter check-ins or check-in
16 errors.”¹⁰

17 16. Further, the Registrar is the “appropriate election officer” identified in NRS
18 293.465 to report and recommend new elections to the Board.

19 17. On November 16, 2020, the Registrar made his presentation to the Board stating
20 that he and his staff had concluded that there were unexplained discrepancies or irregularities
21 with the vote for the District C election.

22 18. The Registrar explained to the Board that it is a routine procedure for the
23 election boards, after election voting concludes and before the canvass of that election, to
24 examine the voter sign-ins with the vote tallies of each precinct to ensure that they balance. In
25
26

27 ⁷ *Id.* at ¶16.

28 ⁸ *Id.* at ¶17.

⁹ *Id.* at ¶18.

¹⁰ *Id.* at ¶19.

1 the event that they do not balance and/or match, members of the election board examine the
2 records available in order to ascertain why the numbers do not match.

3 19. The Registrar further explained that there may be a number of reasons that a
4 voter number would not match the vote tally and it is not unusual for these discrepancies to
5 occur and for the election boards to be unable to discern the reason for the discrepancy. The
6 Registrar specifically stated that one reason for these discrepancies could be that voters fail to
7 sign in when voting so there is an additional vote counted in the race as compared to the number
8 of people signed in to vote. Meaning someone could have voted twice without the Registrar
9 being able to verify that is what occurred. The Registrar also reported that six people were
10 caught voting twice in the election.

11 20. In the District C election, the members of the counting and auditing boards found
12 that the number of voter discrepancies compared to the margin of purported victory for Miller
13 called into doubt the true and actual outcome of the election such that the Registrar could not
14 certify the election results in that election.

15 21. The Registrar stated that there were 139 discrepancies he was unable to
16 reconcile. As a result, he could not certify that the vote was an accurate representation of the
17 will of the voters in District C, and it was his opinion as an election official that this raised
18 reasonable doubt as to the outcome of the election.

19 22. Likewise alleged and confirmed by Miller's Complaint, the Registrar stated that
20 he had a personal "doubt" as to whether Miller's ten vote "margin of victory is solid."

21 23. In addition to his statements to the Board on November 16, 2020, the Registrar
22 also provided the Board with an affidavit regarding these subjects pursuant to NRS 293.465.¹¹

23 24. As a direct result of the Registrar's findings and recommendations, the Board
24 voted to certify the remaining elections in Clark County but withheld certification in the District
25 C election and called for a new election to occur in that District, directing the Registrar to report
26
27

28 ¹¹ Attached to the underlying Intervenor Complaint and here as Exhibit A.

1 to the Board at its December 1, 2020 meeting with his recommendations for conducting this
2 new election.

3 25. On November 23, 2020, Anthony immediately responded to the Registrar's NRS
4 293.465 affidavit by submitting his application for a new election in District C.¹²

5 26. On December 1, 2020, the Board held a meeting wherein it voted to reconsider
6 its previous decision not to certify the District C election.

7 27. At that same meeting, the Board further voted to certify the District C election,
8 ignoring the requirements of NRS 293.465 for a new election.

9 28. Despite hearing testimony from the Registrar, no additional information was
10 proffered to justify the Board's reconsideration of its previous decision.

11 29. Moreover, despite hearing testimony from the Registrar, the 139 discrepancies in
12 District C remain unexplained, and still raise a reasonable doubt as to the outcome of the
13 District C election and whether the will of the voters is reflected in the outcome of the election.

14 30. As a result of the Board's vote, the only statutory remedies available to Anthony
15 are either a recount and/or an election contest.

16 **FIRST CLAIM FOR RELIEF**
17 **(Declaratory Relief)**

18 31. Anthony repeats and re-alleges the allegations set forth in the preceding
19 paragraphs above as though fully set forth herein.

20 32. A justiciable controversy has arisen as to the Board's performance of its duties
21 and obligations to canvass the votes in the 2020 General Election for the Clark County
22 Commission, District C as well as its decision not to certify the District C election.

23 33. A justiciable controversy has arisen as a result of the Board's proper exercise of
24 its authority to order a new election, pursuant to NRS 293 *et seq.* including NRS 293.465.

25 34. This dispute is between parties whose interests are adverse and is ripe for
26 adjudication.

27
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¹² Stavros Anthony Application Letter attached to the underlying Intervenor Complaint and here as Exhibit B.

35. A judicial declaration of the parties' rights is necessary to avoid any further dispute between the parties in connection with the election.

36. Specifically, Anthony seeks a declaration from the Court that the Registrar and the Board were acting within their statutory and/or legal authority to identify irregularities or discrepancies in the District C election that called into question the accuracy of the vote count and the will of the voters who cast ballots in the District C election and thus deciding not to certify the District C election.

37. Moreover, Anthony seeks a declaration from this Court that the Board was and is required under Nevada law, including NRS 293 *et. seq.*, and NRS 293.465 in particular, to call for a new election in District C.

38. Anthony has been forced to hire an attorney to prosecute this action and therefore seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

SECOND CLAIM FOR RELIEF

(Injunctive Relief)

39. Anthony repeats and realleges the allegations set forth in the preceding paragraphs above as though fully set forth herein.

40. Injunctive relief is appropriate to compel the Board to exercise its's statutorily-mandated duty to direct that a new election be conducted in District C.

41. As the Registrar does not have confidence in the election results and has submitted to the Board an affidavit under NRS 293.465 – due to documented and unexplainable 139 voting discrepancies or irregularities which number far exceeds the margin of victory – and Anthony has submitted to the Board an application for a new election pursuant to NRS 293.465 and the Board has changed its vote and certified the election results, Anthony is entitled to an injunction compelling the Board to conduct a new election as mandated by NRS 293.465, as the Board initially directed on November 16, 2020, and to rescind its certification of the election.

42. The Board reconsidered its non-certification of the election and its vote to hold a new election – thereby disregarding the requirements of NRS 293.465 – and certified the election for Miller, thereby causing Anthony to suffer irreparable harm.

1 43. After an election is canvassed and certified, Anthony’s only recourse is to object
2 to and combat the election result by pursuing a recount and/or an election contest pursuant to
3 NRS 293.403, 407-417.

4 44. However, neither a recount nor an election contest results in a new election.
5 Under the Nevada recount statute, Anthony would be entitled to “receive a recount of the vote
6 for the office for which he or she is a candidate to determine the number of votes received for
7 the candidate and the number of votes received for the person who won the election” NRS
8 293.403(1). Moreover, pursuant to the Nevada election contest statute, even if Anthony
9 prevails in the election contest, his remedies do not include a new election. The Court has one
10 of two statutory remedies in an election contest in evaluating the Registrar’s already-identified
11 voting discrepancies or irregularities: (1) find from the evidence that Anthony actually
12 “received the greater number of legal votes” than Miller received or (2) determine that the
13 election should be “annulled or set aside” and thereby “the office is vacant.” NRS 293.417(1),
14 (4).

15 45. At this point, the vacant seat would not be awarded to Anthony, but would be
16 filled by a person selected by the Governor – who is under no obligation or inclination to
17 appoint Anthony as Anthony is a member of the opposing political party.

18 46. The election remedy of a new election for District C must be directed by the
19 Board. The Registrar has transmitted to the Board “an affidavit setting forth” the fact of the
20 causes that prevents the election in District C from being certified. Anthony has submitted to
21 the Board “an application” for a new election in District C. Thus, the Board “shall order a new
22 election in that . . . district.” NRS 293.465.

23 47. Consequently, Anthony has a reasonable probability of succeeding on the merits
24 of his underlying claim and unless the Board is compelled by temporary and/or permanent
25 injunctive relief, Anthony will be irreparably harmed.

26 48. Anthony has been forced to hire an attorney to prosecute this action and
27 therefore seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.
28

49. Alternatively, and in abundance of caution, Anthony reserves his right to request a recount and/or file an election contest as proscribed by statute should this Court reject the arguments contained herein and the Board certifies the District C election.

THIRD CLAIM FOR RELIEF **(Writ of Mandamus)**

50. Anthony repeats and realleges the allegations set forth in the preceding paragraphs above as though fully set forth herein.

51. Pursuant to NRS 293.465, it is the Board's mandatory duty to order a new election when an election is prevented by reason of loss or destruction of ballots, or any other cause—as occurred in Clark County Commission, District C election—and the appropriate election officer submits an affidavit to the Board setting forth that fact and a candidate in that election applies for a new election.

52. The Clark County Board of Commissioners exceeded its authority when it reconsidered its legally proper decision to not certify the results in the 2020 General Election for the Clark County Commission, District C race and did in fact certify the election results, thereby rejecting a new election.

53. The Clark County Board of Commissioners has now exceeded its authority by failing to order a new election for Clark County Commission, District C.

54. Accordingly, the Clark County Board of Commissioners should be compelled by the Court to order a new election for District C only.

55. Anthony has been forced to hire an attorney to prosecute this action and therefore seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For an order declaring that:
 - a. the Clark County Board of Commissioners acted within its authority when it identified discrepancies or irregularities in the District C election and voted not to certify the results in the 2020 General Election for the Clark County Commission, District C election;

b. the Clark County Board of Commissioners acted within its authority when it directed the Clark County Registrar of Voters to prepare and hold a special election for Clark County Commission, District C; and

c. the Clark County Board of Commissioners is required under Nevada law to call a new election in District C.

2. For a temporary and/or permanent injunction:

a. preventing the Clark County Commission from certifying the Clark County Commission, District C election; and

b. requiring the Clark County Commission to direct that a new election be held in Clark County Commission, District C.

3. For a writ of mandamus compelling the Board to order and hold a new election for Clark County Commission, District C, pursuant to NRS 293 et seq. and NRS 293.465 in particular.

4. For an award of reasonable costs and attorneys' fees as permitted by Nevada and law; and

5. Any additional relief this Court deems just and proper on the evidence presented at trial.

DATED this 1st day of December, 2020.

HUTCHISON & STEFFEN, PLLC

/s/ Mark A. Hutchison

Mark A. Hutchison (4639)

Jacob A. Reynolds (10199)

Piers R. Tueller (14633)

Peccole Professional Park

10080 W. Alta Drive, Suite 200

Las Vegas, Nevada 89145

Attorneys for Intervening Plaintiff

Stavros Anthony

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TO ALL THE PARTIES ON THE E-SERVICE LIST

/s/ Suzanne Morehead

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EXHIBIT PAGE ONLY

EXHIBIT A

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

AFFIDAVIT OF JOSEPH GLORIA

State of Nevada)
) ss:
County of Clark)

1. I am the Registrar of Voters for Clark County, and this declaration formalizes the statements I made to the Commissioners on November 16, 2020 during the canvass of the 2020 General Election.

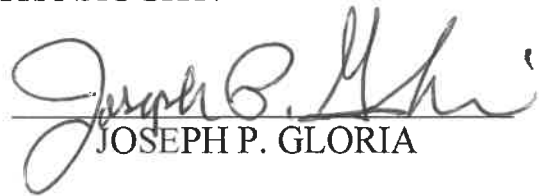
2. It is a routine procedure for the election boards after each election and before the canvass of that election to examine the voter sign ins with the vote tallies of each precinct to ensure that they balance. In the event that they do not balance (match), members of the board examine the records available in order to ascertain why the numbers do not match. There are a number of reasons that a voter number will not match with the vote tally and it is not unusual for these discrepancies to occur and for the election boards to be unable to discern the reason for the discrepancy.

3. In the case of the Commission, District C race, the members of counting and auditing boards found discrepancies such that the margin of victory in that race is called into doubt. There are 218 precincts in District C. There were 139 discrepancies which the election boards were unable to reconcile. As a result, I cannot certify that the vote is an accurate representation of the will of the voters in

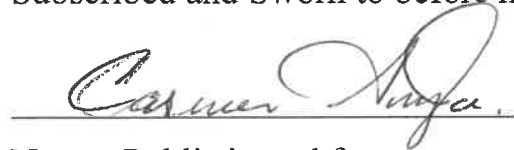
that district, and in my professional opinion as an election official, it raises a reasonable doubt as to the outcome of the election.

4. The discrepancies found in other races in the General Election were not of sufficient magnitude to call into question the results of that race.

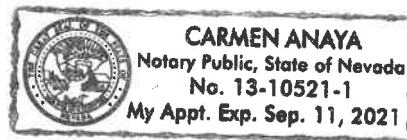
FURTHER YOUR AFFIANT SAYETH NAUGHT.


JOSEPH P. GLORIA

Subscribed and Sworn to before me



Notary Public in and for
said County and State



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EXHIBIT PAGE ONLY

EXHIBIT B

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

November 23, 2020

Via Email

Clark County Commission
c/o Lynn Marie Goya
Clark County Clerk
Lynn.Goya@clarkcountynv.gov

Registrar of Voters
jpg@clarkcountynv.gov

Clark County Commission
c/o Mary-Anne Miller
District Attorney, Clark County Commission
Mary-Anne.Miller@clarkcountyda.com

Re: Stavros Anthony's application for a new election in the Clark County Commission District C race pursuant to NRS 293.465.

To the Clark County Commission,

By this letter I formalize my request for a new election in the Clark County Commission District C race pursuant to NRS 293.465 based on *at a minimum* the irregularities identified by the Registrar of Voters. I have additional evidence supported by affidavits if the Commission is willing to receive it. I submit this application now because my understanding is that the Registrar of Voters submitted a written affidavit this morning pursuant to NRS 293.465, to formalize his affirmative statements before the Commission on November 16, 2020. I did not previously submit this letter as my understanding was that the Commission did in fact agree with the Registrar's recommendation and did in fact vote at its meeting on November 16, 2020, to have a new election in Clark County Commission District C race.

However, following the lead of the Registrar of Voters, by this document, I also want to confirm my desire and make my formal application for a new election in the Clark County Commission District C race pursuant to NRS 293.465. My understanding is that the new election is not discretionary but based on NRS 293.465 is mandatory.

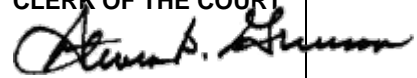
Sincerely,

A handwritten signature in black ink, appearing to read 'Stavros Anthony', written in a cursive style.

Stavros Anthony
Candidate, Clark County Commission District C

Cc: Hutchison & Steffen Attorneys

AA000165



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JOHN A. HUNT
3 Nevada Bar No. 1888
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8 BRADLEY S. SCHRAGER, ESQ.
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14 *Attorneys for Plaintiff/Petitioner*

15
16 **EIGHTH JUDICIAL DISTRICT COURT**
17 **IN AND FOR CLARK CITY, STATE OF NEVADA**

18 ROSS MILLER, and individual,
19 Plaintiff/Petitioner,
20 vs.

21 CLARK COUNTY BOARD OF
COMMISSIONERS, a local government
22 entity; and DOES I-X, inclusive,
23 Defendant.

24 and
25 STAVROS ANTHONY, an individual,
26 Intervenor-Defendant.
27
28

Case No. A-20-824971-W
Dept. ●XI

STIPULATION AND ORDER

Date of Hearing: 12/11/2020, In Chambers

1 The parties to the above-entitled action stipulate and agree, and ask the Court to order, as
2 follows:

3 1. The motion to intervene by Intervenor-Defendant Stavros Anthony is
4 **GRANTED.**

5 2. Defendant the Clark County Board of Commissioners (the "Board") agrees not to
6 call, set, order, prepare for or make any fiscal expenditures relating to any special election in
7 Commission District C prior to the completion of this litigation matter.¹

8 3. The Board shall make available for deposition, not to exceed 3 hours, Clark
9 County Registrar of Voters Joseph P. Gloria, on Wednesday, December 2, at 12:00 p.m., or such
10 other time by agreement of the parties.

11 4. Counsel for the Board will make every effort to comply with reasonable requests
12 for records and documents related to this action within two (2) business days of the request and
13 shall inform all parties of compliance and shall meet and confer should questions arise regarding
14 such requests.

15 5. Petitioner and the Board shall have until 10:00 a.m. on Monday, November 30,
16 2020, to file an Opposition or other response to Intervenor-Defendant's motion for preliminary
17 injunction, filed Tuesday, November 24, 2020, with a view towards hearing by the Court later
18 that day.

19 6. Petitioner shall file his brief in support of his Petition for Writs of Mandamus and
20 Prohibition on or before the close of business on Friday, December 4, 2020.

21 Defendant and Intervenor-Defendant shall file their Opposition to Petitioner's
22 brief on or before the close of business on Tuesday, December 8, 2020.

23 _____
24 ¹ The parties agree that this stipulation in no way prejudices or adversely affects Stavros
25 Anthony's recently-filed motion for preliminary injunction to prevent the Clark County
26 Commission from certifying the election for Clark County Commission, District C or
27 reconsidering the Commission's decision to proceed with a new election in District C.
28

Petitioner shall file his reply brief, if any, by the close of business on Thursday, December 10, 2020.

7. The Parties agree to hold hearing on this matter, subject to availability of the Court, on Friday, December 11, 2020 or Monday, December 14, 2020, and require decision of the Court by the time of the next regularly-scheduled Board of County Commissioners meeting on Tuesday, December 15, 2020, expected to begin at 9:00 a.m. that morning.

IT IS SO STIPULATED.

DATED this 25th day of November, 2020

CLARK HILL PLLC

/s/ Bradley S. Schrager

DOMINIC P. GENTILE

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WOLF, RIFKIN, SHAPIRO,

SCHULMAN & RABKIN, LLP

3556 E. Russell Road, Second Floor

Las Vegas, Nevada 89120

Attorneys for Plaintiff/Petitioner Ross

Miller

DATED this 25th day of November, 2020

**OFFICE OF THE DISTRICT ATTORNEY,
CIVIL DIVISION**

/s/ Mary-Anne Miller

MARY-ANNE MILLER, ESQ.

Nevada Bar No. 1565

500 South Grand Central Pkwy.

Las Vegas, Nevada 89155-2215

Attorneys for Defendant

Clark County Board of Commissioners

1 DATED this 25th day of November, 2020

2 **HUTCHISON & STEFFEN**

3 */s/ Jacob Reynolds*

4 **MARK A. HUTCHISON, ESQ.**

Nevada Bar No. 4639

5 **JACOB REYNOLDS, ESQ.**

Nevada Bar No. 10199

6 **PIERS TUELLER, ESQ.**

Nevada Bar No. 14633

10080 w. Alta Dr., #200

8 Las Vegas, Nevada 89145

Attorneys for Intervenor-Defendants,

9 *Stavros Anthony*

10 **ORDER**

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED.**

13 **IT IS SO ORDERED.**

14  11-30-2020
15 **DISTRICT COURT JUDGE**

16 Submitted by:

18 */s/ Bradley S. Schrager*

19 **DOMINIC P. GENTILE**

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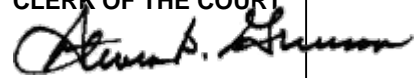
24 **WOLF, RIFKIN, SHAPIRO,**

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27 *Attorneys for Plaintiff/Petitioner Ross Miller*



ORDR

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*Attorneys for Intervenor-Plaintiff,
Stavros Anthony*

EIGHTH JUDICIAL DISTRICT COURT

IN AND FOR CLARK CITY, STATE OF NEVADA

ROSS MILLER, and individual,

Plaintiff/Petitioner,

vs.

Case No. A-20-824971-W

Dept. ● XI

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government
entity; and DOES I-X, inclusive,

Defendant.

**ORDER DENYING INTERVENOR'S
MOTION FOR PRELIMINARY
INJUNCTION**

STAVROS ANTHONY, an individual,

Intervenor-Plaintiff.

vs.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government
entity; ROSS MILLER, an individual, and
DOES I-X, inclusive,

Defendant.

On November 25, 2020, Intervenor-Plaintiff Stavros Anthony ("Intervenor"), by and through counsel of record, filed a Motion for Preliminary Injunction ("Motion for Preliminary Injunction"). Intervenor requested an order enjoining the Clark County

Commission from certifying the election of Clark County Commission, District C, or otherwise reconsidering its vote to hold a new election for District C at its December 1, 2020 meeting or thereafter until this Court has ruled on the merits of this case.

On November 30, 2020, an opposition to Intervenor's Motion for Preliminary Injunction was filed by Plaintiff Ross Miller ("Plaintiff"), and Intervenor filed a reply.

The Court held a hearing on November 30, 2020. The hearing was conducted by teleconference. Mark A. Hutchison, Esq., appeared and argued on behalf of Intervenor. Bradley S. Schrager, Esq. appeared Plaintiff. Mary-Anne Miller, Esq., appeared argued on behalf of Defendant Clark County Board of Commissioners ("Defendant" or the "Board").

Upon review of the papers and pleadings on file herein, the arguments of counsel, and good cause appearing,

Intervenor's Motion for Preliminary Injunction is DENIED.

December 3, 2020

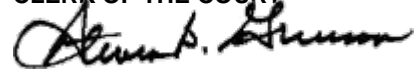
IT IS SO ORDERED.


DISTRICT COURT JUDGE

Submitted by

HUTCHISON & STEFFEN

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Attorneys for Intervening Plaintiff
Stavros Anthony

DISTRICT COURT

CLARK COUNTY, NEVADA

ROSS MILLER, an individual,

Plaintiff/Petitioner,
v.

CLARK COUNTY BOARD OF
COMMISSIONERS, a local government entity;
and DOES I – X, inclusive,

Defendant

Case No. A-20-824971-W

Dept. No. XI

HEARING REQUESTED:

**Hearing: Currently set for Friday December
18, 2020, In Chambers.**

**MOTION FOR WRIT OF MANDAMUS
REQUIRING THE CLARK COUNTY
BOARD OF COMMISSIONERS TO ORDER
A NEW ELECTION FOR CLARK COUNTY
COMMISSION DISTRICT C.**

1 STAVROS ANTHONY, an individual,
2
3 Intervening Plaintiff,
4 v.
5 CLARK COUNTY BOARD OF
6 COMMISSIONERS, a local government entity;
7 ROSS MILLER, an individual,
8
9 Defendants.

10 Intervening Party Stavros Anthony (“Anthony,” “Intervening Plaintiff”) hereby moves this
11 Court for a Writ of Mandamus that requires the Clark County Board of Commissioners to hold a new
12 election in Clark County Commission District C pursuant to Nevada law, including NRS 293.465.

13 This Motion is based on the Points and Authorities below, the attached declarations, exhibits,
14 and pleadings and documents on file with the Court, and any oral argument entertained at the hearing
15 on this Motion.

16 DATED this 10th day of December, 2020.

17 HUTCHISON & STEFFEN, PLLC

18 /s/ Mark A. Hutchison

19 Mark A. Hutchison (4639)
20 Jacob A. Reynolds (10199)
21 Piers R. Tueller (14633)
22 Peccole Professional Park
23 10080 W. Alta Drive, Suite 200
24 Las Vegas, Nevada 89145

25 *Attorneys for Intervening Plaintiff*
26 *Stavros Anthony*
27
28

POINTS AND AUTHORITIES

1. Introduction.

This Case turns on the interpretation of the term “prevented” in NRS 293.465.

NRS 293.465 Loss or destruction of ballots, or other cause, preventing election in precinct or district; new election.

If an election is *prevented* in any precinct or district by reason of the loss or destruction of the ballots intended for that precinct, or *any other cause*, the appropriate election officers in that precinct or district shall make an affidavit setting forth that fact and transmit it to the appropriate board of county commissioners. Upon receipt of the affidavit and upon the application of any candidate for any office to be voted for by the registered voters of that precinct or district, the board of county commissioners *shall* order a new election in that precinct or district.

(Emphasis added.)

Anthony moves the Court for a writ of mandamus requiring the Defendant Clark County Board of Commissioners (the “Commission”) to order a new election for Clark County Commission District C pursuant to Nevada law, including NRS 293.465, because the Registrar of Voter (“Registrar”) identified 139 irreconcilable errors or discrepancies in the election, which “called into doubt” the margin of victory in that race, a mere 10 votes, and therefore *prevented* him from “certify[ing] that the vote is an accurate representation of the will of the voters in [District C].”¹

To accept Plaintiff Ross Miller’s argument to the contrary—*i.e.* that certification of such a dubious result was required by the Commission—not only vitiates NRS 293.465 from the statutory scheme in violation of the Nevada Supreme Court’s principles of statutory construction, but it also calls on the Court to render meaningless what it means “to certify” an election.

2. Factual Background.

On Monday, November 16, 2020, the Commission held a Special meeting to consider the canvass of the November 2020 General Election. At that meeting the Registrar stated that all of the elections should be certified save for the election in Clark County Commission District C. In regards to that election the Registrar reported as follows:

¹ See Exhibit 3, Gloria Aff. ¶ 3.

1 MR. GLORIA: I've identified 139 discrepancies in the Commission C race that
2 follow pretty closely to what I described in the canvas document. Basically, there are
3 records that were transferred back and forth from different responsibilities within the
4 mail process that canceled check-ins and things of that nature *that we can't reconcile*
and so they very much or very well could represent a discrepancy that would affect
*the outcome of the election.*²

5 When asked about the possibility of a recount instead of a new election the Registrar responded:

6 MR. GLORIA: The vote count will not change. So what we've tallied represent[s]
7 the results in all of the contests within the election. However, we have found
8 discrepancies that we can't explain that would cast a doubt on whether or not that
margin of victory is solid and that I could certify it to say that is definitely accurate.

9 *Id.* at 7:22-26.

10 Mr. Gloria thus plainly and forthrightly determined that the 139 irreconcilable discrepancies
11 prevented him from certifying the election results as accurate. In a subsequent affidavit submitted to
12 the Commission, which was intended to "formaliz[e] the statements I made to the Commissioners on
13 November 16, 2020," the Registrar was even more clear that the irreconcilable discrepancies
14 *prevented* him from certifying the election: "There were 139 discrepancies which the election boards
15 were unable to reconcile. As a result, *I cannot certify* that the vote is an accurate representation of the
16 will of the voters in that district. . ."³

17 Accordingly, on November 16, 2020, the Commission voted 6-1 to certify all elections in Clark
18 County save for the election in Clark County Commission District C where a new election would be
19 held. The Registrar was asked to present options for running the new election at the Commission's
20 December 1, 2020, Commission meeting.

21 On Tuesday, November 17, 2020, Miller instituted this action claiming that the Commission
22 erred in voting for a new election in District C, because the Commission was required to vote to
23

24 ² See Exhibit 1, Tr. Special Meeting, Nov. 16, 2020 at 6:47-53 (emphasis added). The Registrar specifically reviewed the
25 attached transcript of the hearing and confirmed at his deposition that he had an opportunity to review the transcript and
26 found no errors in it. See Exhibit 8, Gloria Depo. 9:7-12; 10:16-24. This transcript was created using the .mp4 file of the
Special Meeting of County Commissioners on November 16, 2020, *available at*
https://www.clarkcountynv.gov/government/board_of_county_commissioners/commission_meeting_agendas.php. The
27 transcript has been authenticated by an attorney at Hutchison & Steffen, PLLC. See Exhibit 2. The transcript was created
for the convenience of the Court and parties to reference the testimony at the November 16, 2020, Special Meeting.
28 Anthony recognizes that the official record is the publicly available video of the meeting.

³ Exhibit 3, Gloria Aff. ¶ 3 (emphasis added).

1 certify the election in District C, and that the Commission should be forced to vote to certify the
2 election. On Friday, November 20, 2020, the Court held a status hearing in this case. At the hearing,
3 the Court granted Anthony's motion to intervene. The parties stipulated to an injunction to preserve
4 the *status quo* and prevent the Commission from proceeding to its vote on how the special election
5 would proceed at the December 1, 2020 meeting.

6 On Monday, November 23, 2020, the first business day after the first Court hearing in this case,
7 the Registrar submitted his affidavit to the Commission to formalize his statements to the Commission
8 on November 16, 2020.⁴ This affidavit was immediately followed by Anthony submitting an
9 application for new election pursuant to NRS 293.465.⁵

10 Also, on Monday, November 23, 2020, the Agenda for the December 1, 2020, Commission
11 meeting was released to the public. The first agenda item was for the Commission to "reconsider" the
12 Commission's vote not to certify the election of District C and to proceed to a new election.⁶
13 Moreover, item #33 on the same agenda under "Business Items" marked for possible action was the
14 canvassing of the District C election and directing the Registrar to submit documents of the election to
15 the Secretary of State.⁷

16 Anthony thereafter filed for a preliminary injunction to prevent the reconsideration based on the
17 mandatory nature of NRS 293.465 as well as the parties' stipulation to preserve the *status quo* pending
18 the Court's resolution of the case.

19 On November 30, the Court denied Anthony's Motion and specifically stated on the record that
20 it was not ruling *on the merits* of Miller's claims.⁸ Regardless, on December 1, 2020, the Commission
21 specifically relied on this Court's statements to vote unanimously *for* reconsidering the new election
22 and then proceeded to vote unanimously *for* canvassing and certifying the election in District C.

23 On December 1, 2020, Anthony filed his Amended Complaint seeking a writ of mandamus to
24 require the Commission to order a new election pursuant to Nevada law, including NRS 293.465. On
25

26 ⁴ See Exhibit 3, Gloria Aff. ¶ 1.

27 ⁵ See Exhibit 4, Anthony's application for a new election.

28 ⁶ See Exhibit 6, Agenda of the Clark County Commission, December 1, 2020.

⁷ See *Id.*

⁸ See Exhibit 7, Tr. Hr'g Nov. 30, 2020, 22:5-14.

December 7, 2020, Registrar, Joe Gloria, was deposed by the parties.⁹ This case is now ready for final adjudication.

The Court should issue a writ of mandamus requiring the Commission to order a new election for Clark County Commission District C pursuant to Nevada law, including NRS 293.465.

3. Legal Standard.

This authority to grant a writ of mandamus is embedded in the Nevada Constitution, Article 6, Section 4, “[t]he court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise of its appellate jurisdiction.” 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 or to control an abuse of discretion. *See* NRS 34.160; *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981); *see also*, *Beazer Homes, Nev., Inc. v. Dist. Ct.*, 120 Nev. 575, 97 P.3d 1132, 1135 (2004). An equitable writ of mandamus will not issue where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of the law. *See* NRS 34.170.

Based on the District Court’s ruling, and the Clark County Board of Commissioner’s reversal of its position and subsequent vote to certify the Clark County Commission District C election results, Anthony has no other legal remedy, save writ relief, to secure or enforce the legal and statutory obligations imposed on the Commission. Without this Court’s intervention via the issuance of a writ of mandamus and an order overturning the underlying Clark County Board of Commissioner’s actions, Anthony will be wholly precluded from obtaining a new election required because of the identified 139 voting errors or discrepancies and the razor-thin margin of victory. To be clear, Anthony is not in this Motion petitioning this Court to certify him the victor in the election. Anthony is merely seeking a writ to ensure that the requirements of the Nevada law, including NRS 293.465, are followed, and a new election is ordered.

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⁹ *See* Exhibit 8.

1 **4. The Court should issue a writ of mandamus.**

2 The Commission and Miller now seem dedicated to a world where if an election count or
3 result is known to be questionable, where even the Registrar “cannot certify that the vote is an accurate
4 representation of the will of the voters”¹⁰ and where there is “reasonable doubt as to the outcome of
5 the election”¹¹ because of 139 known and irreconcilable errors, “errors caused by the conduct of
6 election,”¹² that those problems should be *ignored* and the 10-vote-margin election should be certified
7 anyway. There can be no reasonable doubt that this approach will serve to undermine every rational
8 observers’ confidence in the integrity of Clark County elections.

9 Tellingly, the Registrar is *by far* the person most trained and experienced in election
10 management, election machine software, and election errors of any nature involved in this case. He
11 has more experience than the Court, than any member of the Commission, and more than any attorney
12 representing any party in this case. *That* person, the Registrar, frankly acknowledges that he has
13 “found discrepancies that we can’t explain that would cast a doubt on whether or not that margin of
14 victory is solid and that I could certify it to say that is definitely accurate.”¹³ Yet that person’s
15 experienced professional opinions and conclusions have received absolutely *zero* deference from the
16 Commission.

17 Further, this questionable determination by the Commission to certify admittedly dubious
18 election results represents a severe misunderstanding of Nevada case law and statutes governing
19 elections and fails to read the statutory scheme as a cohesive whole in violation of the Nevada
20 Supreme Court’s canons for construing statutes. This predetermined approach to decision making
21 vitiates the meaning of NRS 293.465 (in contravention of NRS 293 *et seq.*) but also vitiates what it
22 means to *certify* an election. The County Commission’s “certification” of this admittedly questionable
23 election result renders the idea of “certification” *meaningless*.

24
25

 ¹⁰ Exhibit 3, Gloria Aff. ¶ 3.

26 ¹¹ *Id.*

27 ¹² *LaPorta v. Broadbent*, 91 Nev. 27, 30, 530 P.2d 1404, 1406 (1975) (“The fundamentals of suffrage require that electors
28 shall have the opportunity to participate in elections and that the real will of the electors should not be defeated by errors in
the conduct of an election. NRS 293.127.”); *see also* Exhibit 8, Gloria Depo. 34:17-24; 63:12-17 (these errors are known
and *expected* in the conduct of an election).

¹³ *See* Exhibit 1, Tr. Special Meeting 7:22-26.

1 **A. The type of election errors involved in the election.**

2 The canvass of the election resulted in the Registrar discovering 139 discrepancies in the race
3 for Clark County Commission District C. These discrepancies represent essentially the Registrar's
4 efforts to reconcile the records of the election. The Registrar explained these discrepancies to the
5 Commission at the Special Meeting on November 16, 2020, and specifically identified two examples
6 of what will be called herein the "Missing Ballot" discrepancy and the "Extra Ballot" discrepancy:

7 MR. GLORIA: I've identified 139 discrepancies in the Commission C race that
8 follow pretty closely to what I described in the canvas document. Basically, there are
9 records that were transferred back and forth from different responsibilities within the
10 mail process that canceled check-ins and things of that nature *that we can't reconcile*
11 *and so they very much or very well could represent a discrepancy that would affect*
12 *the outcome of the election.*

13

14 MR. GLORIA: If I could follow up as well commissioner to maybe clarify. In the
15 course of a day at a particular site, you may have 50 voters who vote at a precinct
16 1105. There are two areas where we track that activity. One is in the voter
17 registration database where we have our pole book that signs voters in. That varies
18 from time to time. What we tally into the system as a vote does not change. So if I
19 end up with 50 votes in my voter registration, but then only 49 in my Democracy
20 Suite or tabulation for voting systems, I have a discrepancy and because there were
21 50 votes in that I can't determine exactly which individual it was affected by, but I
22 know that I'm off. And so, we go through with every single precinct by tally type:
23 mail, early voting and election day and wherever there's a discrepancy, it should be
24 a balance. It should be 50/50 but where we have areas in a Precinct where is 51 and
25 50 or 49 and 50 there's a discrepancy there. And so, we search through our
26 documentation to identify if the team leader has identified with paperwork to
27 document that so that we can explain it. If we don't have documentation, then we
28 can't make a determination as to exactly why that discrepancy occurred but we know
we have one. In the Commission C race, I've identified 139. That's the only race in
the entire election where we have any concern related to the outcome and it's
because of the close margin. It's a district with 218 precincts. A margin to 10 is very
difficult to audit.¹⁴

25 Accordingly, it is very easy to see why the Registrar himself has no confidence that he can
26 certify the election result as accurate, because the race is only decided by 10 votes and there are 139

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28 ¹⁴ See Exhibit 1, Tr. Special Meeting at 6:47-54; 7:49-8:16.

1 irreconcilable errors that could literally represent (1) extra ballots cast on accident because staff at the
2 voting location handled a technical situation incorrectly; or (2) missing ballots of people who tried to
3 vote but whose vote was not recorded.

4 The Registrar admitted during his deposition that these are errors that are *known* to occur in
5 elections of this size, and they occur through the conduct of an election:

6 Q. And so these errors that we found are errors that you would expect in a -- in any
7 election, correct?

8 A. An election this size, yes.

9 Q. And those errors just simply result from the conduct of the election, correct?
10

11 A. *I would agree with that.*

12 Q. And some of those errors, because you don't know what they are, some of those
13 could be that somebody tried to vote, but their vote was not counted, correct?

14 A. Yes, that's a possible scenario. Yes.

15 Q. And going the other way, a possible scenario is that somebody voted and their
16 ballot is actually counted twice simply because of the way the person in charge of
the site handled the situation, correct?

17 A. Yes.

18 Q. And once again, those are hypotheticals because you don't know exactly what
19 happened in those scenarios, correct?

20 A. Exactly.¹⁵

21 The person with the most experience in conducting elections involved in this case determined
22 that based on the type and number of discrepancies he discovered that they “*very much or very well*
23 *could represent a discrepancy that would affect the outcome of the election.*”¹⁶ Accordingly, the
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26 ¹⁵ See Exhibit 8, Gloria Depo. 35:16-36:12 (emphasis added). The precise count of different types of errors is broken
27 down by precinct in the Exhibits submitted by the Registrar’s attorney prior to the Deposition. The Deposition is attached
28 as Exhibit 8 to this Motion. The Registrar’s breakdown of the discrepancies by precinct is shown in Exhibits 5-7 of the
Registrar’s Deposition.

¹⁶ See Exhibit 1, Tr. Special Meeting at 6:47-54 (emphasis added).

Registrar was *prevented* from certifying the election results, or in his words, he “*cannot certify* that the vote is an accurate representation of the will of the voters in that district.”¹⁷

Given the nature and number of these errors and the likelihood that they would “affect the outcome of the election,” the Registrar has also been clear that the standard for dealing with these types of irreconcilable discrepancies is that they *should* be measured and counted against the margin of victory.¹⁸ Neither the Commission nor Miller has offered any reasonable reason why the standard of counting these types of discrepancies against the margin of victory should be simply *waived* in the election for Clark County Commission District C.

Lastly, these errors and discrepancies are *expected* in an election, and they result simply from the conduct of well-meaning though imperfect staff in conducting of an election. As these errors do result from the conduct of the election, and prevent the Registrar or the Commission itself from “certify[ing] that the vote is an accurate representation of the will of the voters in [District C],”¹⁹ then the Nevada Supreme Court and Nevada statutes both mandate that there should be a new election. *See LaPorta v. Broadbent*, 91 Nev. 27, 29, 530 P.2d 1404, 1406 (1975) (“The fundamentals of suffrage require that electors shall have the opportunity to participate in elections and that the real will of the electors should not be defeated by errors in the conduct of an election. NRS 293.127.”); *see also* NRS 293.465, 293.127, and 293.387(2)(b).

B. The legal principles by which the Commission and this Court should construe statutes.

The Court and the Commission must “construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation. Further, no part of a statute should be rendered meaningless and its language should not be read to produce absurd or unreasonable results.” *Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (internal citations and quotations omitted). Moreover, when possible, the interpretation of a statute or constitutional provision should be harmonized with other statutory or provisions to avoid unreasonable or absurd results. *See Nevada*

¹⁷ See Exhibit 3, Gloria Aff. ¶ 3.

¹⁸ See Exhibit 8, Gloria Depo. 24:17-25:18; 27:11-28:17; 30:24-31:11; 36:19-37:12; 55:14-24.

¹⁹ Exhibit 3, Gloria Aff. ¶ 3.

1 *Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870 (1999); *see also Banegas v. State Indus. Ins.*
2 *Sys.*, 117 Nev. 222, 225, 19 P.3d 245, 247 (2001)(“[W]ords within a statute must not be read in
3 isolation, and statutes must be construed to give meaning to all of their parts and language within the
4 context of the purpose of the legislation.”); *Orion Portfolio Servs. 2, LLC v. Cty. of Clark ex rel. Univ.*
5 *Med. Ctr. of So. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010) (The Court must “not render any
6 part of the statute meaningless,” or read it in a way that “produce[s] absurd or unreasonable results.”).

7 NRS 293.127 actually specifies the legal standard by which the provisions of the NRS 293 *et*
8 *seq.* are to be interpreted: “1. This title *must* be liberally construed to the end that: . . . (c) The real
9 will of the electors is *not* defeated by any informality or by failure substantially to comply with the
10 provisions of this title with respect to the giving of any notice or the conducting of an election or
11 *certifying* the results thereof.” (Emphasis added.)

12 Accordingly, protecting the “real will of the electors” is paramount and should be at the core of
13 interpreting all other statutes in NRS 293. The Registrar’s finding of 139 voting discrepancies and his
14 forthright conclusion that he cannot determine whether the real will of the electors was manifest in the
15 election count or results of the District C election underscore that a new election should be held. NRS
16 293.127 commands an interpreting body or court to “*liberally construe*” the statutes in NRS 293 “to
17 the end that . . . the real will of the electors is *not defeated* by failure substantially to comply with the
18 provisions of this title with respect to . . . the conducting of an election or certifying the results
19 thereof.” (Emphasis added.) The Commission’s certification of the admittedly dubious election
20 results defeats the will of the electors and openly prevents the will of the electors from being rightfully
21 determined. A new election resolves this problem.

22 **C. The Commission should certify accurate election results.**

23 Certify is defined as: “to attest authoritatively: such as . . . to attest as being true or as
24 represented or as meeting a standard” or “to inform with certainty.”²⁰ However, the election results of
25 Clark County Commission District C, as confirmed by the Registrar himself, cannot be “attested to
26 authoritatively” nor have the election “results” met any “standard.” Instead these results and the 139
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²⁰ See Merriam Webster’s Dictionary, *available at* <https://www.merriam-webster.com/dictionary/certify>.

1 voting discrepancies in a race with 10 votes separating the candidates plainly *prevent* the Commission
2 from declaring a victor “with certainty.”

3 In short, the Commission is not supposed to certify simply that an election *happened*. That
4 would be a truly meaningless, and frankly useless, certification. Rather, the statutes mandate that the
5 Commission is *supposed* to certify that the canvass has yielded the true will of the voters (NRS
6 293.127), or as stated in NRS 293.387(2)(b) – ensure that the declared result of the canvass
7 “represents the true vote cast.” Further, NRS 293 directly asserts that steps should be taken to *avoid*
8 “certifying an incorrect election outcome.” *See* NRS 293.394(2)(b). The certification should therefore
9 mean something about the *integrity* of the election results.

10 Nevertheless, somehow this clear purpose of the statutory scheme as been overlooked by the
11 Commission’s unwarranted eagerness to comply with only the first part of the NRS 293.387, which
12 mandates the Board to canvass elections and “shall: (a) Note separately any clerical errors
13 discovered;...” This is the legal foundation of Miller’s Complaint asserting that the duty of the
14 Commission to certify the election is mandatory.²¹ This was also the basis of Clark County
15 Commissioner Jones’ push to certify the election immediately on November 16, 2020.²² Notably,
16 Commissioner Jones was the only person at the November 16 Special Meeting who voted against the
17 motion for a new election in District C.²³

18 However, reading NRS 293.387(2)(a)’s admonition to note the clerical errors identified in the
19 canvass before certification, without the immediate context of NRS 293.387(2)(b), leads to an absurd
20 result and is contrary to principles of statutory interpretation recognized by the Nevada Supreme
21 Court. Moreover, NRS 293.387(2)(b) is a direct command that the Commission correct the canvass
22 results based on the errors discovered. However, the Commission here deliberately ignored its duty
23 under NRS 293.387(2)(b) and focused solely on its duty under NRS 293.387(2)(a).

26 ²¹ Plaintiff Ross Miller Complaint, filed with the Court on November 17, 2020.

27 ²² *See* Exhibit 1, Tr. Special Meeting at 12:31-35.

28 ²³ Action Summary, *available at*

https://clark.granicus.com/MinutesViewer.php?view_id=17&clip_id=6901&doc_id=7d3dfc44-285a-11eb-a4b6-0050569183fa

1 This approach thus yielded an absurd result, and violated the legal principle of construing
2 statutes in harmony with one another. In short, the Commission and Miller want this Court to accept
3 that it does not matter that there are known and irreconcilable errors in an election result that could be
4 outcome determinative, errors that call into doubt the “true vote cast,” irreconcilable errors that caused
5 the Registrar himself to declare openly that he “*cannot certify* the vote is an accurate representation of
6 the will of the voters” and that in his “professional opinion as an election official . . . raises a
7 reasonable doubt as to the outcome of the election.” The Commission and Miller want the Court to
8 accept that none of this matters and that the election result must still be “certified.”

9 It is imperative that neither the Commission, nor this Court, ignore the fact that the very
10 purpose of the election result and its certification is to confirm the “will of the electors.” This is
11 accomplished by identifying and certifying the “true vote cast” pursuant to NRS 293.387(2)(a) **and**
12 (b). There is no reasonable interpretation of NRS 293 *et seq.* as a whole that mandates the election be
13 certified with known errors that are potentially outcome determinative as the Commission and Miller
14 now suggest. Rather, the great weight of the statutory scheme leads to a more cohesive understanding
15 that the Commission’s responsibility is to determine whether the will of the electors can be ascertained
16 so that the Commission can certify the “true vote cast.”

17 **D. A new election is the necessary remedy when potentially outcome determinative errors in**
18 **the conduct of an election prevent knowing that the true will of the voters is reflected in**
19 **the election results.**

20 In fact statutory interpretation of NRS 293 *et seq.* as a cohesive whole yields the opposite
21 conclusion sought by Miller and reached by the Commission. Indeed, the Commission is required to
22 order a new election for Clark County Commission District C pursuant to NRS 293.465.

23 **NRS 293.465 Loss or destruction of ballots, or other cause,**
24 **preventing election in precinct or district; new election.**

25 If an election is prevented in any precinct or district by reason of the loss
26 or destruction of the ballots intended for that precinct, or **any other cause**,
27 the appropriate election officers in that precinct or district shall make an
28 affidavit setting forth that fact and transmit it to the appropriate board of
county commissioners. Upon receipt of the affidavit and upon the
application of any candidate for any office to be voted for by the

1 registered voters of that precinct or district, the board of county
2 commissioners *shall* order a new election in that precinct or district.

3 The elements are easy to identify for a mandatory election, and in this case, they are met: (1)
4 The election must be “prevented;” (2) the appropriate election officer must make an affidavit setting
5 forth that fact; (3) the affidavit must be submitted to the Commission; and (4) a candidate must apply
6 for a new election. The last three elements are met in this case without much controversy, the true
7 question revolves around element (1): whether or not the election was “prevented.”

8 Further, the language in NRS 293.465 is mandatory language. *See Nev. Pub. Emps. Ret. Bd. v.*
9 *Smith*, 129 Nev. 618, 627, 310 P.3d 560, 566 (2013) (“It is a well-settled principle
10 of statutory construction that statutes using the word ‘may’ are generally directory and permissive in
11 nature, while those that employ the term ‘shall’ are presumptively mandatory.”); *see also, Nevada*
12 *Comm’n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 9–10, 866 P.2d 297, 302 (1994). Accordingly, if the
13 elements are met, the Commission has no discretion and a writ of mandamus is appropriate to require
14 the Commission to order a new election for Clark County Commission District C.

15 • **Element 4: The candidate must apply for a new election.**

16 This element is unquestionably satisfied. Attached is the application letter²⁴ along with
17 affidavit of delivery to representatives of the Commission.²⁵

18 • **Element 3: The affidavit must be submitted to the Commission.**

19 This element is likewise unquestionably met. Attached is an email from Joe Gloria to members
20 of the Commission with the affidavit attached. The email is dated November 23, 2020.²⁶

21 • **Element 2: The appropriate election officer must make an affidavit setting forth that fact.**

22 Regardless of whether the Court believes the facts set forth in the affidavit constitute sufficient
23 facts that the election was “prevented,” the Court should accept that the affidavit, in conjunction with
24 the Registrar’s incorporated statements to the Commission at the Special Meeting, satisfies the
25 affidavit requirement of NRS 293.465. The Registrar’s affidavit is attached as Exhibit 3. The
26

27 _____
28 ²⁴ See Exhibit 4, attached.

²⁵ See Exhibit 5.

²⁶ See Exhibit 9.

1 affidavit should be construed liberally pursuant to NRS 293.127 to prevent the will of the electors
2 from being defeated. On that standard the affidavit meets the statutory requirement.

3 The affidavit qualifies because it is clearly directed to the election results in Clark County
4 Commission District C. The affidavit itself attests that in the District C election there were 139
5 discrepancies.²⁷ The affidavit expressly incorporates the statements the Registrar provided to the
6 Commission on November 16, 2020.²⁸ The affidavit and incorporated statements to the Commission
7 lay out the Registrar's facts as to why in his professional opinion he was prevented from certifying the
8 result of the election in District C.

9 The errors or discrepancies were such that the Registrar stated "the margin of victory in that
10 race is called into doubt" and that he "cannot certify that the vote is an accurate representation of the
11 will of the voters in that district, and in my professional opinion as an election official, it raises a
12 reasonable doubt as to the outcome of the election."²⁹ In other words, the errors in the election could
13 be outcome determinative.

14 At the Special Meeting the Registrar specified the types of errors that could have led to the
15 unknown and irreconcilable errors in the conduct of the election. Specifically, the Registrar stated that
16 he had "found discrepancies that we can't explain that would cast a doubt on whether or not that
17 margin of Victory is solid and that I could certify it to say that is definitely accurate."³⁰ In describing
18 the 139 errors specifically he noted: "I've identified 139 discrepancies in the Commission C race that
19 follow pretty closely to what I described in the canvass document. Basically, there are records that
20 were transferred back and forth from different responsibilities within the mail process that canceled
21 check-ins and things of that nature that we can't reconcile and so they very much or *very well could*
22 *represent a discrepancy that would affect the outcome of the election.*"³¹ Again, the errors or
23 discrepancies the Registrar identified could be outcome determinative.

26 ²⁷ Exhibit 3, Gloria Aff. ¶ 3.

27 ²⁸ Exhibit 3, Gloria Aff. ¶ 1; *see also* Exhibit 8, Gloria Depo 13:11-15.

28 ²⁹ Exhibit 3, Gloria Aff. ¶ 3.

³⁰ Exhibit 1, Tr. Special Meeting 7:22-26.

³¹ Exhibit 1, Tr. Special Meeting 6:47-53.

1 The discrepancies that were identified by Gloria in his Affidavit were more thoroughly
2 described at the Special Meeting incorporated by reference in his Affidavit: “Six voters have been
3 identified who voted twice in this election. The mail ballot discrepancies represent issues related to
4 tracking the process of ballots, moving from signature verification to manual signature verification,
5 the ballot cure process and counting board process. The early voting and election day discrepancies
6 are related to inadvertent canceled voter check-ins, reactivated voter cards, duplicate activations or
7 check-in *errors*.”³²

8 The affidavit, in conjunction with the testimony at the special meeting, satisfies the affidavit
9 requirement under NRS 293.465 under the requisite standard articulated in NRS 293.127. Moreover,
10 pursuant to NRS 293.127 it should be acceptable that the affidavit incorporates the Registrar’s
11 statements at the Special Meeting of the Clark County Commission. The legal question is whether the
12 “facts set forth” in the affidavit constitute a situation where the election was “prevented.”

13 • **Element 1: The election must be prevented.**

14 The Nevada Supreme Court has interpreted NRS 293.465 on one other occasion. The *LaPorta*
15 case dealt with an Assembly Race in Clark County. The concern in that election revolved around how
16 staff had set up a voting apparatus, which resulted in an *unknown* number of voters casting their
17 ballots for the wrong candidates. *See LaPorta v. Broadbent*, 91 Nev. 27, 29, 530 P.2d 1404, 1406
18 (1975). In *LaPorta*, the candidates on the ballot for Nevada State Assembly District 22 were R. Hal
19 Smith (“Smith”) and John E. Jeffrey (“Jeffrey”). *Id.* at 28. On Election Day, voters assigned to vote
20 in a certain precinct were *unknowingly unable* to cast a ballot for either Smith or Jeffery. *Id.* This is
21 because a ballot had previously become stuck in the voting apparatus and the mechanism had to be
22 replaced. *Id.* The substituted mechanism did not contain the name of Smith or Jeffery, but because a
23 staff erroring failing to update the machine properly, it instead listed candidates running in another
24 precinct. *Id.* This problem was unnoticed for approximately three hours. *Id.*

25 Although the staff error was ultimately discovered and the correct candidates list was inserted,
26 an unknown number of voters had already cast their ballots. *Id.* Ultimately Jeffery won the election
27

28

³² Exhibit 1, Tr. Special Meeting 5:14-16. (Emphasis added.)

1 by a mere six votes. *Id.* Consequently, the result of that election was cast into doubt, and Smith
2 requested that the Commission order a re-vote. *Id.* at 28. Although the Commission’s vote for a new
3 election resulted in a tie – and therefore failed to pass – Smith filed a writ of mandamus with the
4 Nevada Supreme Court to compel a re-vote. *Id.* at 29. The Court granted the writ and ordered a re-
5 vote – pursuant to NRS 293.465 – and further provided specific procedures for the re-vote or new
6 election. *Id.* In analyzing NRS 293.465, the Nevada Supreme Court opined that the statute is
7 “unequivocal on the subject of a faulty election when the ballots are unavailable. If an election is
8 prevented as it was here by absence of ballots the statute specifically states that the county
9 commissioners shall order a new election in the precinct where the ballots were absent.” *Id.* This is
10 because, the “fundamentals of suffrage require that electors shall have the opportunity to participate in
11 elections *and that the real will of the electors should not be defeated by errors in the conduct of an*
12 *election.*” *Id.* at 30 (citing NRS 293.127) (emphasis added).

13 The concluding reasoning in *LaPorta* is the most salient: “the real will of the electors should not
14 be defeated by *errors in the conduct of an election.*” *Id.* For the same reasons as stated in *LaPorta* the
15 Court should order a new election for Clark County Commission District C.

16 **(1) *Unknown errors call into doubt the election result in this case.***

17 The *LaPorta* case dealt with an election decided by six votes. The issue was a machine that was
18 not properly updated by staff at a polling location. *LaPorta v. Broadbent*, 91 Nev. at 28, 530 P.2d at
19 1405 (identifying that the staff had failed to insert the correct list for a voting machine). As a result of
20 staff’s actions in conducting the election, the integrity of the election result was called into doubt. The
21 Court in *LaPorta* recognized that an *unknown* number of people had used the voting machine that by
22 staff error had failed to be updated. Accordingly, the final vote count of the election was questionable
23 because of the margin of victory and an *unknown* number of errors, caused by staff failing to update
24 equipment correctly, that *could* have changed the outcome of the election.³³ In other words, the nature
25 and number of errors was potentially outcome determinative. Given the reasonable doubt that the real
26
27
28

³³ See generally *LaPorta v. Broadbent*, 91 Nev. 27, 530 P.2d 1404 (1975).

1 will of the electors was represented in the election result, the Nevada Supreme Court issued a writ of
2 mandamus for the Commission to order a new election.

3 The *LaPorta* case is directly comparable to the instant case between Anthony and the
4 Commission. At the Special Meeting of the Clark County Commission, the Registrar specifically
5 offered two examples of causes for a discrepancy or error: (1) 50 people sign-in to vote in a precinct
6 but there are 51 ballots [i.e. an “Extra Ballot” problem]; or (2) 50 people signed in to vote but only 49
7 ballots were counted for the precinct [i.e. a “Missing Ballot” problem].³⁴ The Registrar acknowledged
8 at his deposition that these are errors that are *known* to occur in elections of this size, and they occur
9 through the conduct of an election:

10 Q. And so these errors that we found are errors that you would expect in a -- in any
11 election, correct?

12 A. An election this size, yes.

13 Q. And those errors just simply result from the conduct of the election, correct?

14 A. *I would agree with that.*

15 Q. And some of those errors, because you don't know what they are, some of those
16 could be that somebody tried to vote, but their vote was not counted, correct?

17 A. Yes, that's a possible scenario. Yes.

18 Q. And going the other way, a possible scenario is that somebody voted and their
19 ballot is actually counted twice simply because of the way the person in charge of
20 the site handled the situation, correct?

21 A. Yes.

22 Q. And once again, those are hypotheticals because you don't know exactly what
23 happened in those scenarios, correct?

24 A. Exactly.³⁵

25
26

³⁴ See Exhibit 1, Tr. Special Meeting at 7:49-8:16.

27 ³⁵ See Exhibit 8, Gloria Depo. 35:16-36:12 (emphasis added). The precise count of different types of errors is broken
28 down by precinct in the Exhibits submitted by the Registrar's attorney prior to the Deposition. The Deposition is attached
as Exhibit 8 to this Motion. The Registrar's breakdown of the discrepancies by precinct is shown in Exhibits 5-7 of the
Registrar's Deposition.

1 These types of discrepancies identified by the Registrar are directly comparable to the situation
2 in *LaPorta* where it was *unknown* how many people were affected by an error caused by staff, but
3 known that it was *possibly* a problem for some voters casting their votes. *Id.* In *LaPorta* it was also
4 known that the margin of victory in the tabulated votes was only six votes. *Id.* And it was known that
5 staff had set up a machine incorrectly. *Id.* What was *unknown* was whether the staff's failure to
6 properly conduct the election prevented *anyone* from voting, or even prevented *enough* people from
7 voting that it changed the election result. *Id.* 28-29, at 1405. Yet, the situation in *LaPorta* was
8 sufficiently concerning that the Nevada Supreme Court issued a writ of mandamus directing the
9 Commission to order a re-vote or new election. *Id.* at 30.

10 Notably, if those conducting the election could have affirmatively stated: "only three ballots
11 were cast on the machine in its impaired state" that would easily change the outcome of the *LaPorta*
12 decision. Obviously, there would be no concern, and no need for the Nevada Supreme Court to
13 require a new election, if it was *known* that the error in conducting the election *could not* have changed
14 the election result — because what is being certified is that the true vote cast represents the will of the
15 electors.

16 Anthony is not arguing that a perfect election is required to certify election results. Errors will
17 occur in conducting elections. Rather, Anthony asserts that when known and irreconcilable errors in
18 conducting an election exist that *prevent* the Registrar from certifying the election result because the
19 irreconcilable errors outnumber the margin of victory, then the "any other cause" language of NRS
20 293.465 applies and the errors "prevent" an election. Errors or discrepancies that could be outcome
21 determinative of an election circumvent the true will of the elections.

22 **(2) Further understanding of "prevented" by "any other cause."**

23 NRS 293.465 provides that "If an election is prevented in any precinct or district by reason of
24 the loss or destruction of the ballots intended for that precinct, or any other cause..." NRS 293.465.

25 Notably, NRS 293 *et seq.* does not define the term "prevented." Miller and the Commission
26 both take the position that the only way to prevent an election is to have an earthquake or a fire that
27 destroys some of the ballots, or a voting machine somehow malfunctions. Some event that actually
28 and literally "prevents" the election itself from *happening* is the easy case. However, this is also an

1 overly simplistic view of the statute when NRS 293.127 instructs the interpreter to *liberally construe*
2 the meaning of the statute, which construction is broadened in light of the fact that this particular
3 statute has a catchall phrase “or any other cause.”

4 The statutes’ more natural and cohesive reading is that “any cause” that “prevents” the true will
5 of the electors from being determined should qualify under the catchall phrase. For example, why
6 does it only “prevent” an election to lose ballots, or burn ballots, or stop ballots from being cast when
7 the other side of that same coin poses an equally destructive problem and threat to the legitimacy of an
8 election, *e.g.*, extra ballots being *added* to the pool of tabulated ballots. Certainly if the 139
9 discrepancies represent only 10 instances where voters had their ballots counted twice, an error that
10 the Registrar *admits* is a possibility with these discrepancies, and is a *known* error to occur in
11 elections, then the Extra Ballot problem should be considered an election “*prevented*” under NRS
12 293.465. Even though no vote in this scenario was literally “prevented” from being cast, the clerical
13 error of staff in conducting the election by creating the potential of double votes for single voters
14 *would* prevent the “real will of the electors” identified in NRS 293.127 from being determined. The
15 nature of this “Extra Ballot” discrepancy “prevents” the Commission from determining the “true vote
16 cast” pursuant 293.387(2)(b) as the Commission is required to do when it certifies the election.

17 The Registrar has been very clear that *both* the Missing Ballot discrepancy, *and* the Extra Ballot
18 discrepancy are discrepancies that *should* be measured and counted against the margin of victory in
19 the election results for District C.³⁶

20 The Registrar was also very clear that the *reason* these particular errors or discrepancies *should*
21 be counted against the margin of victory is because, as in *LaPorta*, the extent of the discrepancies is
22 *unknown* and they could have an effect on the outcome of the election.³⁷ Or as stated in the
23 Registrar’s NRS 293.465 affidavit to the Commission:

24 In the case of the Commission, District C race, the members of counting and
25 auditing boards found discrepancies such that the margin of victory in that race is
26 called into doubt. There are 218 precincts in District C. There were 139
27 discrepancies which the election boards were unable to reconcile. As a result, I

28 ³⁶ Exhibit 8, Gloria Depo. 24:17-25:18; 27:11-28:17; 30:24-31:11; 36:19-37:12; 55:14-24.

³⁷ See *Id.* 31:12-32:1.

1 cannot certify that the vote is an accurate representation of the will of the voters in
2 that district, and in my professional opinion as an election official, it raises a
reasonable doubt as to the outcome of the election.³⁸

3 Here, as in *LaPorta*, the Registrar has identified 139 voting discrepancies or irregularities that
4 constituted errors in the conduct of the election and calls the result into doubt. The Registrar in
5 essence has stated in his affidavit that these 139 voting errors or discrepancies *prevented* him from
6 certifying the election result in Clark County Commission District C.

7 **(3) *The Court may determine that the relevant ballots were essentially “lost” and therefore the***
8 ***election was prevented.***

9 Another interpretation of NRS 293.465 that would require this Court to issue of a writ of
10 mandamus is for the Court to determine the relevant ballots are lost. The Registrar was clear in his
11 deposition testimony that the ballots associated with the 139 discrepancies cannot be found.³⁹ Another
12 way of saying something cannot be found is that it is “lost.” The Registrar testified that there is *no*
13 way to find the ballots associated with the 139 discrepancies.⁴⁰

14 If the margin of victory were 200 votes, and there were only 139 discrepancies, then the fact
15 that the ballots associated with the 139 discrepancies cannot be found would not justify a new election
16 for the obvious reason that the discrepancies could not be deemed outcome determinative. But the
17 problem is that NRS 293.387 requires the Commission to not only identify errors in the election, but
18 also pursuant to NRS 293.387(2)(b) the Commission must “[t]ake account of the changes resulting
19 from the discovery [of the errors], so that the result declared represents the true vote cast.”

20 These 139 discrepancies were caused by errors in staff mismanaging sign-ins, staff failing to
21 handle troublesome machines correctly and causing double entries, staff failing to properly document
22 what actually occurred to definitively determine the cause of discrepancies. Accordingly, these
23 discrepancies are squarely within the “clerical errors” universe.

24 The ballots associated with these 139 discrepancies *cannot* be identified. They cannot be found.
25 They cannot be cured to show the “true vote cast” pursuant to NRS 293.387(2)(b). They are as strands
26 of hay in a haystack. They are for all practical purposes *lost*. Because the errors cannot be reconciled

27 ³⁸ Exhibit 3, Gloria Aff. ¶ 3.

28 ³⁹ Exhibit 8, Gloria Depo 37:13-16.

⁴⁰ *Id.*

1 pursuant to NRS 293.387(2)(b), and they cannot be resolved because the ballots associated with these
2 discrepancies are essentially lost, the election is *prevented* because the will of the electors and the true
3 vote cast cannot be determined.

4 **5. Conclusion.**

5 Stavros Anthony respectfully moves the Court to issue a writ of mandamus requiring the
6 Commission to order a new election for Clark County Commission District C pursuant to Nevada law,
7 including NRS 293.465.

8 DATED this 10th day of December, 2020.

9
10 HUTCHISON & STEFFEN, PLLC

11 /s/ Mark A. Hutchison

12 Mark A. Hutchison (4639)
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18 *Attorneys for Intervening Plaintiff*
19 *Stavros Anthony*
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TO ALL THE PARTIES ON THE E-SERVICE LIST

/s/ Suzanne Morehead
An Employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

1 00:00-5:45 - meeting set up

2

3 5:46

4

5 MS. KIRKPATRICK: okay, were going to go ahead and call to order the
6 special meeting for Monday, November 16th.

7

8 MS. KING: Good afternoon, Madam Chair and Commissioners. The first item
9 on your agenda is public comment.

10

11 MS. KIRKPATRICK: This is the first time set aside for public comment.
12 Anybody wishing to speak on public comment regarding this item. Please
13 come forward. Please state your name for the record.

14

15 MS. DERISO: I haven't been here for public comment. Can I talk without
16 this?

17

18 INDISTINCT TALKING

19

20 MS. KIRKPATRICK: Okay, Lisa. If you can wipe off the mike when you're
21 done and absolutely everything it would be great.

22

23 Ms. DERISO: My name is Lisa Mayo Deriso and I'm here. I want to put in
24 public record this letter. I'm here on behalf of the Stavros Anthony
25 campaign for Clark County Commission and I'd like to read this letter
26 into the record. I believe you should have received it this morning by
27 email. Thank you, but I just wanted to make sure that we write it into
28 the record. Its addressed to Joe Gloria, Registrar of Voters, Clark
29 County Election Department:

30

31 6:56 - BEGINNING OF LETTER

32

33 Dear Mr. Gloria,

34

35 The law firm of Hutchison & Steffen serves as legal counsel for the
36 Stavros Anthony for County Commission campaign (the Anthony Campaign).
37 As you prepare to report to the Clark County Board of Commissioners on
38 the canvassing of the 2020 general election returns on Monday, November
39 16th, we ask respectfully on behalf of the Anthony Campaign that you
40 seriously consider delaying the presentation for approval of the vote for
41 Clark County Commission District C.

42

43 As the Anthony Campaign reviewed Election Department voter data, some
44 possible voter irregularities may have occurred in District C including:
45 over two dozen District C residents have provided written statements that
46 they had a ballot return from their address by people who do not live
47 there. This information has been researched and gathered by the Anthony
48 Campaign's field and phone teams. This research and outreach is
49 continuing and very well may result in securing additional affidavits.
50 There were approximately 160 voters were mailed ballots in the primary
51 election that were returned to the post office as undeliverable. Those
52 same voters were again mailed ballots in the general election to the same
53 addresses that were previously shown as undeliverable, yet votes were
54 case in the general election for those 160 votes.

1 There are 19 voters who cast two ballots. There are approximately 150
2 addresses to which mail was delivered and from which votes were cast, but
3 the addresses were inaccurate. This should have resulted in the ballot
4 being returned to the Clark County - to Clark County.

5
6 The Anthony Campaign respectfully requests that you investigate and give
7 due consideration to these potential voting irregularities before
8 presenting the election results to the County Commission for approval.
9 With a 10 vote margin, which is .000653 difference in the separating Mr.
10 Anthony and Mr. Miller, the utmost consideration and careful review
11 should be given to the voters of District C and the counting of their
12 votes so that an accurate final tally can be confidently given. Anthony,
13 additionally as the Anthony campaign proceeds in the days ahead and
14 weighs its options, including a recount, the Anthony Campaign
15 respectfully requests that you seriously consider and make all necessary
16 arrangements to include not just a recount of ballots but a thorough
17 review of all Mail envelopes that contained the ballots and signatures to
18 ensure they comply with the Nevada law. With the - can I continue? Thank
19 you - with the extraordinary circumstances of the 2020 general election
20 when the normal mail ballot load received by Election Department
21 increased from 5% of the total vote to roughly 50% of the total vote, the
22 envelopes take on critical importance. In addition, the corresponding
23 workload placed on County staff was significantly higher than a normal
24 general election and must be considered ensuring that the final vote
25 count is accurate.

26
27 10:00
28

29 Because the legitimacy of all mail-in ballots are tied directly to the
30 envelopes that they were mailed in, a complete review and careful
31 evaluation of all envelopes should be undertaken. It is imperative that
32 any envelope from which a ballot was received, extracted, accepted, and
33 then counted meets all requirements for legal submission. Ballots
34 arriving in envelopes that fail to comply with the County guidelines or
35 Nevada law should be considered for rejection.

36
37 On behalf of the Anthony Campaign, and Stavros Anthony personally, thank
38 you for taking the time to ensure that the final vote tally is correct
39 and the voters of Clark County Commission District D can be confident the
40 canvassing of the election is accurate because it was completed a careful
41 and deliberate matter in light of the concerns expressed above.

42
43 10:48 - END OF LETTER
44

45 MS. DERISO: I just wanted to do that. Thank you very much for allowing
46 me to do that.

47
48 MS. KIRKPATRICK: Thank you. Anybody else wishing to speak during public
49 comment?

50
51 MR. MUELLER: Good afternoon Commissioners. May I speak? My name is Craig
52 Mueller. I'm an attorney. I was on the phone yesterday with Stavros
53 Anthony and also second his motion for a continuation. I'm actually also

here on behalf of April Becker, Dan Gilliam, William Kephart, Jim Merchant and Melinda Schumacher.

We had a little more time to go through the data and we believe that pursuant to statute that a partial or total revote is necessary. I draw the Commission's attention to Nevada Revised Statute 293.465, upon receipt of affidavits or application of any candidate or any office to be revoted, the Registrar of Voters for that Precinct, the Board of County Commissioners shall order a new election and precincts or District.

What our investigation has revealed is Mr. Gloria, for whatever reason, flooded the county with 93,000 additional ballots. The 93,000 ballots should not have gone out. Normally, that wouldn't necessarily have been a problem had there been a meaningful signature verification of these ballots as they came in. Unfortunately, there was not. Mr. Gloria, apparently on his own initiative, decided to use an artificial intelligence program called AGILUS so that he didn't have to manually check them.

MS. KIRKPATRICK: Mr. Mueller, here's what I'm going to tell you. Please be respectful. Mr. Gloria has done yeoman's work.

MR. MUELLER: Yes he has.

MS. KIRKPATRICK: So you do not have to call him out by name as you speak and he's THE registrar if you'd like to refer to him, but it is not solely His decision. We all direct him to do things. So please be respectful of Mr. Gloria.

MR. MUELLER: Thank you Commissioner. The answer is there are so many fundamental flaws here with this election that nobody could reasonably believe that these outcomes, whatever side of the party, whichever side your issues are going to believe that these election reflects the will of the people. I have assembled what I was able to attend to and get it put together on short notice. I've got a copy for each other Commissioners. There are statutory provisions for such a circumstance. Those of you who have been in Las Vegas for a long time may remember we actually revoted an Assembly District back in 94-96. That was actually my home District and I actually participated as a voter.

There is authority to revoke. There is reason to revoke and if the Anthony Campaign wants to ask for a few additional days, we would join them but I believe statutorily and factually there is actually no other option here, but the revoke the entire election and I will submit this to the clerk so that you will have a copy of the exhibits and information we put together. I have a copy for everybody.

MS. KIRKPATRICK: Thank you Mr. Mueller. We appreciate that. Is there anybody else wishing to speak during public comment? OK I'm going to go ahead and close the public comment, and I just want to start by saying Mr. Gloria I know that you and your staff have worked tirelessly, and we can't say thank you enough, and we appreciate all the work that they have done and everything that they've done to ensure that our process is fair. So, thank you. Miss King.

MS. KING: The next item on the agenda is item number 2, approval of the agenda.

MS. KIRKPATRICK: Entertain a motion to approve the heaven motion by commissioner Gibson to approve the agenda. Any discussion? Seeing none, please cast your vote. And that motion passes.

15:00

MS. KING: Next, we have a number 3, which is to receive the report from the Registrar of Voters, canvas the returns of the general election held on November 3rd of 2020 and direct the Registrar to submit a copy of the abstract of votes cast to the Nevada Secretary of State within 13 days after the election pursuant to Assembly Bill 4.

MS. KIRKPATRICK: Mr. Gloria.

MR. GLORIA: Good afternoon. For the record, Joe Gloria, Registrar of Voters Clark County, Nevada. I'd like to start by thanking a long list of people who provided critical support to us this election season. We couldn't have done what we did without assistance from so many different areas. And first, I'd like to thank the Commissioners for your support and the resources as we communicated and what are concerns where you consistently came through with what are office needed in order to carry out this election. So it really means a lot to our department that you are here for us. Also, the County Manager and Senior Management team and a long list of agencies and departments that I hope you'll bear with me because they all deserve praise: Human Resources, Risk Management, Parks and Recreation, with all the facilities that we used in order to provide voting, IT, Cyber Security Protection and all of the work that they did to support. We can't provide the process that we do efficiently without constant IT support so thanks to them. Automotive, Park Police for providing security, Metro Police for additional security provided at our facility and also throughout the early voting and election day. The city of North Las Vegas and their Police Department, city of Henderson, the city of Boulder City and their Police Department, the City of Mesquite and their fire department, the city of Las Vegas and the city Marshals, all of the owners of the shopping centers that let us have polling places on their property. There are many challenges that come with allowing us to come in and provide this service. They provided support for additional parking, additional security all throughout the period, so thank you to all of those Property Owners. The more than 3,400 County residents who stepped up to work at the poles during such a difficult process with a pandemic going on in the large number of Voters who showed up to vote. My staff at the Election Department do I simply cannot say enough about sticking it through long hours day after day without any days off. I simply can't say enough for the effort that they put forth in supporting this election. And then, most importantly, the voters in Clark County.

With that, I'll go ahead and read the results of the canvassing into the record and then answer any questions that you may have.

1 Results of the canvas for the 2020 general election November 3rd, 2020.
2 The results of the November 3rd, 2020 general election were canvassed
3 comparing the computer printout of ballots counted in the results thereof
4 with the official ballot statement for each of the 1150 precincts
5 utilized in this election. Of the 974,185 ballots cast in the 1150
6 precincts, we identified 936 discrepancies: 710 were in the mail
7 precincts, 121 in the early voting precincts, and 105 in the election day
8 precincts. Six voters have been identified who voted twice in this
9 election. The mail ballot discrepancies represent issues related to
10 tracking the process of ballots, moving from signature verification to
11 manual signature verification, the ballot cure process and Counting board
12 process.

13
14 The early voting and election day discrepancies are related to
15 inadvertent canceled voter check-ins, reactivated voter cards, duplicate
16 activations or check-in errors. Of the 60,109 provisional ballots cast
17 in the election, 57,866 were accepted and 2,243 were rejected. Of those
18 that were rejected, 115 had already voted in the election, 142 voted in
19 the wrong District or Precinct, 8 were not eligible to vote, 1,925 were
20 not registered to vote and 53 did not provide adequate proof of residence
21 or identification. There were no tabulation errors in the 1150 precincts
22 and that ends my report.

23
24 MS. KIRKPATRICK: Thank you Mr. Gloria. Did anybody have any questions?

25
26 MR. BROWN: Madame Chair, thank you. I'd like to make a motion
27 understanding that I would welcome comments and questions from my
28 colleagues. Based upon the report of the Registrar of Voters, I would
29 like to make the following motion: that we accept the canvas of the vote
30 and certify the election results with the exception of County Commission
31 District C.

32
33 20:00

34
35 The commission has received individual briefings in the last 24 hours and
36 to the best of my knowledge some of the discrepancies outlined by the
37 Registrar indicate that those discrepancies surpassed the narrow margin
38 of victory in the District C race calling into question the validity of
39 the election results in just District C. I would like to ask the
40 Registrar as part of my motion to come back at the next regular scheduled
41 BCC meeting with options for a District C resolution.

42
43 MS. KIRKPATRICK: OK. Commissioner Jones.

44
45 MR. JONES: Thank you Madame Chair, and I appreciate my colleague from
46 District C's motion. I would suggest that under NRS 293.032, our job in
47 conducting a canvas in the review of the election results by the board of
48 County Commissioners by which any errors within the election results are
49 officially noted and the official election results are declared. So our
50 job in canvassing the vote is not to ensure that every single ballot has
51 been double checked and triple checked in and quadruple checked. It's
52 simply to note any election roll any errors within the election results
53 to note them and the official election results are declared. And we are

1 to complete that under NRS 293.387 today, the tenth day following the
2 election.

3
4 In terms of how to resolve any concerns that are brought up that is,
5 under NRS 293, designated for a recount in which the candidate can ask
6 for a recount and under NRS 293.405, the costs of the recount are born by
7 the challenging party. So, I can't support the motion. I think that our
8 job here is to note any discrepancies. I think that Mr. Gloria has in his
9 canvas noted any discrepancies and our job is simply to accept them and
10 any candidate can challenge them through the recount process.

11
12 MS. KIRKPATRICK: Okay. Thank you. Commissioner Gibson.

13
14 MR. GIBSON: Thank you Madame Chair. A couple of questions. First, to
15 our Counsel - What is your counsel to us respecting the things that are
16 just been commented upon by my colleague?

17
18 COUNSEL: Which colleague?

19
20 MR. GIBSON: Mr. Jones.

21
22 COUNSEL: There is some authority for the proposition that your job here
23 is just ministerial, that is not been that the custom of the Commission
24 in the past when there's been discrepancies that make it impossible for
25 the Registrar to say that the results aren't totally valid and the will
26 of the people.

27
28 MR. GIBSON: So, is the motion that Commissioner Brown offered up
29 something that goes without or beyond the authority of this board to do?

30
31 COUNSEL: I think it's within the authority and responsibility for the
32 board.

33
34 MR. GIBSON: I have a question about the discrepancies. We've talked
35 about a number of discrepancies, 936 discrepancies countywide, I take it.
36 What is the circumstance respecting discrepancies in District C in the
37 District C vote? Are there ballots that are District C ballots where you
38 found discrepancies? And what are the nature of the discrepancies?

39
40 MR. GLORIA: Commissioner Gibson, in my review I have found discrepancies
41 that surpass the amount of the margin of victory, in Commission C
42 specifically.

43
44 MR. GIBSON: Can you give us a number and then tell us, give us a sense
45 of what these discrepancies are?

46
47 MR. GLORIA: I've identified 139 discrepancies in the Commission C race
48 that follow pretty closely to what I described in the canvas document.
49 Basically, there are records that were transferred back and forth from
50 different responsibilities within the mail process that canceled check-
51 ins and things of that nature that we can't reconcile and so they very
52 much or very well could represent a discrepancy that would affect the
53 outcome of the election.

MR. GIBSON: So, the nature of these discrepancies is such that you can't just look at them again, or in the context of a recount apply them to one candidate or another. You cannot do that.

25:00

MR. GLORIA: That is correct sir. The privacy of the ballot prevents us from doing anything with identifying specific ballots according to a particular voter where we would have the ability to pull those out. It's not possible.

MR. GIBSON: For now, I have a couple other questions, but I'd like to wait just for a minute.

MS. KIRKPATRICK: Does anybody else have any questions that they'd like answered? Commissioner Segerblom.

MR. SEGERBLOM: I'm still not clear. So you're saying that that 900 people in this district, there are a hundred people show they have voted but you don't have actual vote counts for that or...

MR. GLORIA: The vote count will not change. So what we've tallied represent the results in all of the contests within the election. However, we have found discrepancies that we can't explain that would cast a doubt on whether or not that margin of Victory is solid and that I could certify it to say that is definitely accurate.

MR. SEGERBLOM: But it's a discrepancy that that you don't know if the person's vote was counted or not counted? What is the discrepancy?

MS. MILLER: An example of a discrepancy is when you sign in, when you go to vote in person, you sign in at the check in table and then they check - you're given a card and led to a machine. If somebody fails to actually sign in but is then led to a voter machine and votes than that printing is going to be off by one vote. Or, conversely, if that person checks in to vote and for some reason he decides he doesn't want to hit the cast button, cast ballot button, but he leaves and doesn't tell a clerk what has happened? There's going to be a discrepancy there in the number of voters in each precinct and the number of votes recorded for that precinct.

MR. SEGERBLOM: So you would know the person who...

MS. MILLER: Not necessarily. Like for example if they haven't signed in, we don't know who that extra person is necessarily. Sometimes we're able to do enough investigation that we can figure it out but not in these cases, not in these particular ones Mr. Gloria is reporting today.

MR. GLORIA: If I could follow up as well commissioner to maybe clarify. In the course of a day at a particular site, you may have 50 voters who vote at a precinct 1105. There are two areas where we track that activity. One is in the voter registration database where we have our pole book that signs voters in. That varies from time to time. What we tally into the system as a vote does not change. So if I end up with 50

1 votes in my voter registration, but then only 49 in my Democracy Suite or
2 tabulation for voting systems, I have a discrepancy and because there
3 were 50 votes in that I can't determine exactly which individual it was
4 affected by, but I know that I'm off. And so, we go through with every
5 single precinct by tally type: mail, early voting and election day and
6 wherever there's a discrepancy, it should be a balance. It should be
7 50/50 but where we have areas in a Precinct where is 51 and 50 or 49 and
8 50 there's a discrepancy there. And so, we search through our
9 documentation to identify if the team leader has identified with
10 paperwork to document that so that we can explain it. If we don't have
11 documentation, then we can't make a determination as to exactly why that
12 discrepancy occurred but we know we have one. In the Commission C race,
13 I've identified 139. That's the only race in the entire election where
14 we have any concern related to the outcome and it's because of the close
15 margin. It's a district with 218 precincts A margin to 10 is very
16 difficult to audit.

17
18 MR. SEGERBLOM: So to follow up on that. If there's a recount, the
19 recount would still be the same based on this discrepancy.

20
21 MR. GLORIA: Not necessarily. I couldn't guarantee it would come out 100%
22 the same. In 2016, we recounted over 800,000 ballots I believe it was,
23 and at the end of the day, we had a discrepancy of 4 so it was very tight
24 and all those votes that were cast, it was only changed by 4. That's
25 pretty tight as far as the process and the fact that we counted fairly
26 accurately in that election. I can't tell you whether or not it would be
27 that close or if there would be a wider margin with a recount.

28
29 MR. SEGERBLOM: But I'm saying this discrepancy would not be identified
30 by the recount because the recount just counts the 50 or the 49.

31
32 30:00

33
34 MR. GLORIA: Precisely. According to statute, we would count those
35 ballots in the exact same way we counted them in for this result.

36
37 MR. SEGERBLOM: So I'm going to ask the attorney then what happens if we
38 if we have a recount and the same thing happens? Is there ... the winner
39 have a recourse to go to court or something?

40
41 MS. MILLER: Contestant's always have the ability to file a contest
42 rather than a recount and the contest grounds are more Broad. In this
43 case, there would be grounds for a contest because there were enough
44 discrepancies to raise a question about the final vote. So, rather than a
45 recount, it be more likely that somebody would file a contest. As Mr.
46 Gloria said, a recount's not going to solve those discrepancies for you.

47
48 MR. SEGERBLOM: And just one more question. So, if we do certify today
49 that this does not prevent a request for a recount or for the other
50 processes you talked about.

51
52 MS. MILLER: Well, for the other races, they can file their contest. You
53 can't file a contest of a race that hasn't been certified because
54 technically there's not a winner. Somebody hasn't been declared a winner

1 in there. There might be the other legal avenues that they could follow but
2 not technically a contest.

3
4 MR. SEGERBLOM: So, If we don't certify then, are we then saying
5 potentially we're going to ask for a revote ourselves?

6
7 MS. MILLER: That's what the Board has done in the past, is set up a
8 special election just with those two candidates to re-run the election.

9
10 MS. KIRKPATRICK: Can I ask who bears that cost? Do we as the County? Is
11 that what we did? I feel like there is a public administrator that we
12 did this for.

13
14 MS. MILLER: It's not the only time. It's not an unusual practice. So
15 that most recently did we did it with the Republican primary for the
16 public administrator in 2018. It happens more likely in assembly races
17 because they're smaller and then they're more likely to be close than a
18 bigger race, but

19
20 MS. KIRKPATRICK: Commissioner Jones.

21
22 MR. JONES: Ms. Miller, what's the statutory basis for holding a special
23 election? I'm trying to understand that.

24
25 MS. MILLER: In this case, you could use the same statute that you cited
26 saying that because there's a catch-all clause there. You could determine
27 that the will of the voters had not been determined then hold a special
28 election.

29
30 MR. JONES: Which statute specifically?

31
32 MS. MILLER: I think you cited 293.045

33
34 MS. KIRKPATRICK: All these attorneys up here feel nervous. Commissioner
35 Naft.

36
37 MR. NAFT: Thank you Madame Chair. While he's reviewing that...Ms. Miller,
38 could you speak a little bit more to where the proper forum for this to
39 proceed would be? I understand, from your interpretation, it is in this
40 body's ability not to certify but if we don't, it would go to the court
41 process leaving candidates some options still to protest the outcome.

42
43 MS. MILLER: If you certified the results, the candidates - the losing
44 candidate could file a contest tomorrow. I believe that's the deadline is
45 why I mentioned tomorrow.

46
47 MS. KIRKPATRICK: So explain to me again. What does that mean?

48
49 MS. MILLER: So a contest is going to court and essentially doing the
50 same sort of analysis that a judge would do the same sort of analysis you
51 are doing today and determine whether or not the person declared the
52 winner was legally declared the winner.

1 MS. KIRKPATRICK: OK. Commissioner Weekly.

2
3 MR. WEEKLY: And with that being said, Ms. Miller, the judge could
4 declare another race?

5
6 MS. MILLER: Yes.

7
8 MR. WEEKLY: Or the judge could defer it back to us for us to make a
9 decision. Could it go back that way as well? I'm just trying to
10 understand as well.

11
12 MS. MILLER: They would - the judge would probably say yes there has to
13 be another race, but the County Commissioners have to call that and the
14 circumstances under which is called that he wouldn't set the date for
15 probably.

16
17 MS. KIRKPATRICK: Commissioner Gibson.

18
19 MR. GIBSON: In the motion, it seems as though the objective there would
20 be a special election.

21
22 MS. MILLER: Yes.

23
24 35:00

25
26 MR. GIBSON: Because you can't, I mean, unless the candidate who is
27 behind gives up in a negotiation and says I'm not going to contest this.
28 Otherwise, the only way you get something that you can certify is by
29 taking into... once you given you have to take into account these
30 discrepancies would be if you held the election again. So the question
31 is what if... Do we have authority to withhold a certification and direct
32 that there be a second vote? Do we have that authority?

33
34 MS. MILLER: Yes.

35
36 MR. GIBSON: Does it require that all the parties or the two parties come
37 together and agree to that end?

38
39 MS. MILLER: No.

40
41 MR. GIBSON: Or do we have authority, Plenary Authority, under the
42 statutes today or in 2 weeks?

43
44 MS. MILLER: I don't know that its plenary authority, but you do have
45 authority to declare that there's enough concerns about an election in a
46 particular race that you won't certify the result and direct staff to -
47 you guys have to call this special election.

48
49 MR. GIBSON: So we have that Authority today. We don't need to wait for a
50 judge to decide that.

51
52 MS. MILLER: Yes, that's correct.

53
54 MS. KIRKPATRICK: Commissioner Brown.

1
2 MR. BROWN: Thank you. Couple questions. Joe, the discrepancies that you
3 have referenced, are they common in all elections?
4

5 MR. GLORIA: Commissioner Brown, yes. There's no election that goes
6 without discrepancies that are identified in particular this time with
7 such a large mail ballot number that the number that I've identified is
8 actually in the thousands of percent. So it was fairly accurate where it
9 gets as a result of such a close margin of victory with 218 precincts in
10 the margin of victory of ten, it's very difficult to get through that
11 without having the discrepancy being larger than the margin of victory.
12

13 MR. BROWN: So the past practice of disregarding discrepancies in those
14 races that the total number would have no impact on the outcome. That
15 has been standard practice at the county and probably challenged on a
16 rare occasion.
17

18 MR. GLORIA: That is correct, Commissioner Brown. We have, for as long as
19 I can remember since I've been here, it is always been the practice to go
20 through and identify what the discrepancies are and ensure that the
21 margin of victory surpasses that so that you can certify.
22

23 MR. BROWN: In the, Joe or Mary on this one, questions that were brought
24 up in the earlier speakers reference to the letter received. Do we have
25 the ability to, or do we have an obligation, to look into those
26 accusations?
27

28 MS. MILLER: In the letter that you were sent it is certainly within the
29 board's discretion. There's not a lot of backup on there. You'd have to
30 create your own back up to support those allegations or perhaps that
31 candidate would provide it to you.
32

33 MR. BROWN: And to Commissioner Segerblom's point, so a recount is going
34 to serve no purpose to change what we know today? Is that correct? Other
35 than perhaps 4 out of 800,000 that you reference. It doesn't address the
36 discrepancies.
37

38 MR. GLORIA: No, it does not. We have the ability to recount and we
39 would recount in the same manner according to statute as we read them
40 originally into the system, but that wouldn't change the discrepancies
41 that I've identified.
42

43 MR. BROWN: Madam Chairwoman and, MaryAnn correct me if I overstep here,
44 but I'd like to amend the last portion of my Amendment where I indicated
45 at the next regular meeting with options for the District C race only. I
46 would say the Registrar to come back at the next regular scheduled
47 meeting with options for a special election in that race only. Would that
48 be allowable?
49

50 MS. KIRKPATRICK: Can I ask for some clarification Commissioner Brown,
51 tomorrow is our next regular scheduled meeting, so you don't mean
52 tomorrow, right?
53

1 MR. BROWN: How about the first meeting in December? Is that appropriate?
2 And during that time again, I for one, with less than 20 hours of
3 briefing, have so many additional questions if we could during that two-
4 week time frame meet with Joe and Counsel to find out all the other
5 pieces that have come into this and I'm guessing would it be appropriate
6 as was mentioned really at the register reach out to both candidates to
7 get some sense of what a special election looks like from a programmable
8 standpoint, from a practical standpoint, from a timing standpoint. Would
9 that be appropriate?

10
11 40:00
12

13 MS. MILLER: That would certainly be my recommendation.
14

15 MS. KIRKPATRICK: Commissioner Naft, and then Commissioner Jones.
16

17 MR. NAFT: Commissioner Brown, I was going to suggest if there is more
18 briefings that's required which I think would be helpful. Do we then want
19 to broaden the direction to Mr. Gloria rather than make it more specific?
20

21 MR. BROWN: That was by earlier motion, but I got the sense that we are
22 focusing in on the only thing that could happen.
23

24 MR. NAFT: That might be the will of the Board. I just raised the
25 question if there if there is more briefings required or perhaps you
26 you're meaning more briefing specifically on what a future subsequent
27 election would look like.
28

29 MS. KIRKPATRICK: Commissioner Jones.
30

31 MR. JONES: Thank you Madame Chair. NRS 293.387 requires us to canvas -
32 complete our canvas today. So, I guess in terms of reviewing
33 discrepancies before the December meeting. Do we even have discretion Ms.
34 Miller to do anything other than hold a special election if we don't
35 certify today?
36

37 MS. MILLER: I'm not aware of any other options.
38

39 MR. JONES: So we either certify today or we don't and it has to go to a
40 special election.
41

42 MS. MILLER: That's my understanding.
43

44 MR. JONES: Okay, so we're not gonna look at discrepancies because
45 looking at discrepancies isn't going to matter, right?
46

47 MS. MILLER: [not audible]
48

49 MS. KIRKPATRICK: Commissioner Segerblom and then Commissioner Gibson.
50

51 MR. SEGERBLOM: Just to clarify, Commissioner Jones, when you initially
52 stated this, you said, I thought you said, you interpreted state law to
53 say our only obligation was to certify. That's your legal interpretation
54 of what's at stake, right?

1
2 MR. JONES: Yes. I'm not counsel for the board, though.

3
4 MR. SEGERBLOM: I know, but I'm saying there's certainly an argument to
5 be made that we don't have the discretion to say we're going to call and
6 election. We're just saying certified.

7
8 MR. KIRKPATRICK: Anything else, Commissioner? Any other
9 Commissioners? Commissioner Gibson.

10
11 MR. GIBSON: Of course, when the phone started ringing last week and
12 people from both sides were reaching out, the first thing that occurred
13 to me was this is easy. We'll just do a recount and that'll be the end of
14 it. This additional complication in my estimation elevates it to a place
15 where the transcendent importance of the commission and this institution,
16 the County, Mr. Gloria's reputation, and the entire Election Department's
17 reputation in my estimation is affected by the action that we take. And I
18 believe that the way that we address it, as imperfect as it may be, may
19 apparently only is to do a special election. So I guess for that reason,
20 since there really are no other viable options, we can either wait and
21 some Court tells us to do a special election or we can get out of the way
22 and get something going, so the people at District C can find a new
23 Commissioner and it's disappointing that there have been things like the
24 ones that are described. I imagine there are other things that have
25 happened. Were any of the ballots returned and not readable? Marked in
26 a way that is confusing? Did that happen? I don't know how you do that.
27 But are there any other things? Is there any voter negligence in the way
28 that these discrepancies get characterized?

29
30 MR. GLORIA: In the hundreds of thousands of ballots, Commissioner, that
31 were reviewed, there are issues with ballots. That's why we have a
32 duplication board that can take a look at the ballot and as long as we
33 follow the prescribed determinations that we've reviewed with our County
34 DA they have the ability to duplicate a ballot and then we can get it
35 into the system.

36
37 45:00

38
39 The system performed relatively flawlessly because we are able to review
40 the document and make sure that it's not in a condition that would damage
41 the machine. So, there weren't many instances where the ICC scanner was
42 unable to read ballots, but we did see ballots that were identified. We
43 did see ballots that were damaged that had to be duplicated to run into
44 the system. But nothing that would reach to the level of we call it a
45 discrepancy. That's just the normal course of an election.

46
47 Mr. GIBSON: So the work that would be done for any race was on this
48 ballot has been done. Everything has been reviewed and what we're
49 suggesting here today has no implication, or bears not at all on outcomes
50 in any other race. It is only in this race. We had a couple up here I
51 went back and looked at the report and looks like there's several
52 thousand votes different in the case of some of the people whose names
53 were mentioned as candidates who are seeking relief and then maybe there
54 is something they can do but I see this so dramatically differently from

1 any of the rest of them because of the number and you've isolated it down
2 to 139, I think you said, of ballots and I just don't think we have any
3 option. I think that the credibility of everything that we do is
4 something that can be affirmed by simply doing that rather than waiting
5 for some Court to tell us how to conduct our business. So I think that's
6 where I come down. But thank you very much Madame Chair.

7
8 MS. KIRKPATRICK: OK, Commissioner Jones.

9
10 MR. JONES: What is the estimated cost of a special election
11 commissioner?

12
13 MR. GLORIA: That would depend how we hold the election, commissioner.
14 So, I will have those costs with me when I present to you and what the
15 options are in if there are any discussions between now and the next
16 Commission meeting. I would be prepared to have those numbers.

17
18 MR. JONES: If a, Ms. Miller, a contest where if we certified today and a
19 contest were filed and a judge were to not agree with our certification
20 canvas of the result. Would the cost then be borne by Mr. Anthony?

21
22 MS. MILLER: Not the cost of the election. I think they can recover court
23 costs against the other parties to the contest but if a judge orders a
24 new election, that the jurisdiction bears the cost of that election.

25
26 MS. KIRKPATRICK: OK, Commissioner Naft.

27
28 MR. NAFT: Ms. Miller, could you speak a little bit more to the
29 eventuality that the court would rule or your estimation that a court
30 would rule that a revote needs to occur.

31
32 MS. MILLER: I don't think because of the nature of the discrepancies
33 then any Court presented with these discrepancies would be comfortable
34 saying that with the results really reflect the will of the voters and
35 Commission C. It's just such a close race. We're unable to go back and
36 find out which way those votes went one way or the other a Court would
37 not be able to do that in any event, so the court would really be in very
38 similar situation to you, where the Commissioners are today.

39
40 MS. KIRKPATRICK: OK. Commissioner Brown you want to receipt your
41 amended motion?

42
43 MR. BROWN: Thank you Madame Chair. I would like to make the following
44 motion that we accept the canvas of the vote and certify the election
45 results, with the exception of County Commission District C. The
46 Commissioners received into individual briefings and over the last 24
47 hours and some of the discrepancies Outline by the Registrar indicate
48 that the discrepancies surpassed the narrow margin of victory in that
49 race, calling into question the validity of the election results in just
50 the District C race. I would like to ask the Registrar to come back at
51 the next regular meeting. No, I take that back. I would like the
52 Registrar to come back at the first meeting in December with options for
53 a special election in the District C race only, and submit a copy of the
54 abstract of votes cast for the Nevada Secretary of State 4AB4.

1
2 MS. KIRKPATRICK: OK. You've heard the motion. Any other discussion?
3 Please cast your vote. That motion passes. Can I ask a question?

4
5 50:00

6
7 Mr. Gloria, outside of that long discussion we just had. So, what
8 happens to the people that voted twice? I hope that we're going to go
9 after them. Correct? If we can prove that it was egregious and on
10 purpose?

11
12 MR. GLORIA: There would need to be an investigation done where they
13 interview the individuals. We definitely have the evidence
14 to provide that they did in fact vote twice, so I can't tell you exactly
15 in each scenario what might or might not happen, but we'll definitely be
16 submitting them to the Secretary of State.

17
18 MS. KIRKPATRICK: And then how long does that process? I mean, I just
19 would like you to put us back in the loop because I just want to make
20 sure that we keep up with the integrity of elections and we remind folks
21 of the importance of doing it the right way.

22
23 MR. GLORIA: Sure, at your request Madame Chair. I'll be sure to stay
24 abreast of what's going on in the investigation once we submit.

25
26 MS. KIRKPATRICK: OK. Ms. King, does that conclude us?

27
28 MS. KING: Yes it does, Madame Chair.

29
30 MS. KIRKPATRICK: This is the second time set aside for public comment.
31 Anybody wishing to speak on public comment? Seeing none, we're going to
32 go ahead and close the public comment and we are adjourned.
33

34

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EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

DECLARATION OF PIERS R. TUELLER IN SUPPORT OF
MOTION FOR WRIT OF MANDAMUS

I, Piers R. Tueller, declare:

1. I am a resident of Nevada, and am an associate at the law firm of Hutchison & Steffen, PLLC, acting as counsel for Stavros Anthony in this matter.
2. As part of Mr. Anthony's Motion for writ of mandamus, I submit this declaration verifying the accuracy of the transcript of the November 16, 2020, Special Meeting of Clark County Board of Commissioners, attached as Exhibit 1.
3. I have personally reviewed the transcript, which was also used as exhibit 4 in the deposition of Clark County Registrar of Voters Joseph P. Gloria, and I attest that it is an accurate transcription and attribution of the testimony and statements from the November 16th meeting.
4. This transcript was created using the .mp4 file of the Special Meeting of County Commissioners on November 16, 2020, which is the true record and publicly *available* at https://www.clarkcountynv.gov/government/board_of_county_commissioners/commission_meeting_agendas.php.
5. I personally did not notice any differences between the written transcript and publicly available video.
6. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct based upon my knowledge, information, and belief.

/s/ Piers R. Tueller

Piers R. Tueller

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EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

AFFIDAVIT OF JOSEPH GLORIA

State of Nevada)
) ss:
County of Clark)

1. I am the Registrar of Voters for Clark County, and this declaration formalizes the statements I made to the Commissioners on November 16, 2020 during the canvass of the 2020 General Election.

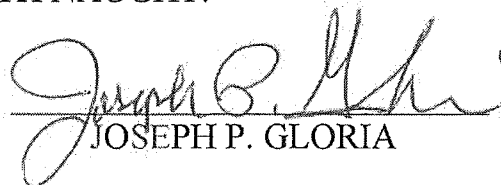
2. It is a routine procedure for the election boards after each election and before the canvass of that election to examine the voter sign ins with the vote tallies of each precinct to ensure that they balance. In the event that they do not balance (match), members of the board examine the records available in order to ascertain why the numbers do not match. There are a number of reasons that a voter number will not match with the vote tally and it is not unusual for these discrepancies to occur and for the election boards to be unable to discern the reason for the discrepancy.

3. In the case of the Commission, District C race, the members of counting and auditing boards found discrepancies such that the margin of victory in that race is called into doubt. There are 218 precincts in District C. There were 139 discrepancies which the election boards were unable to reconcile. As a result, I cannot certify that the vote is an accurate representation of the will of the voters in

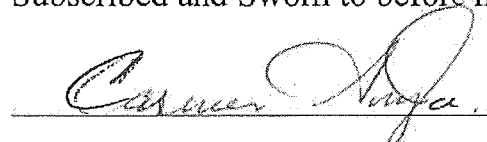
that district, and in my professional opinion as an election official, it raises a reasonable doubt as to the outcome of the election.

4. The discrepancies found in other races in the General Election were not of sufficient magnitude to call into question the results of that race.

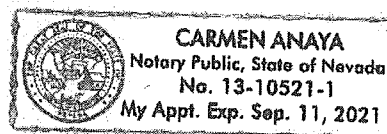
FURTHER YOUR AFFIANT SAYETH NAUGHT.


JOSEPH P. GLORIA

Subscribed and Sworn to before me



Notary Public in and for
said County and State



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EXHIBIT 4

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

November 23, 2020

Via Email

Clark County Commission
c/o Lynn Marie Goya
Clark County Clerk
Lynn.Goya@clarkcountynv.gov

Registrar of Voters
jpg@clarkcountynv.gov

Clark County Commission
c/o Mary-Anne Miller
District Attorney, Clark County Commission
Mary-Anne.Miller@clarkcountyda.com

Re: Stavros Anthony's application for a new election in the Clark County Commission District C race pursuant to NRS 293.465.

To the Clark County Commission,

By this letter I formalize my request for a new election in the Clark County Commission District C race pursuant to NRS 293.465 based on *at a minimum* the irregularities identified by the Registrar of Voters. I have additional evidence supported by affidavits if the Commission is willing to receive it. I submit this application now because my understanding is that the Registrar of Voters submitted a written affidavit this morning pursuant to NRS 293.465, to formalize his affirmative statements before the Commission on November 16, 2020. I did not previously submit this letter as my understanding was that the Commission did in fact agree with the Registrar's recommendation and did in fact vote at its meeting on November 16, 2020, to have a new election in Clark County Commission District C race.

However, following the lead of the Registrar of Voters, by this document, I also want to confirm my desire and make my formal application for a new election in the Clark County Commission District C race pursuant to NRS 293.465. My understanding is that the new election is not discretionary but based on NRS 293.465 is mandatory.

Sincerely,



Stavros Anthony
Candidate, Clark County Commission District C

Cc: Hutchison & Steffen Attorneys

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EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

DECLARATION OF JACOB A. REYNOLDS IN SUPPORT OF
MOTION FOR WRIT OF MANDAMUS

I, JACOB A. REYNOLDS, declare:

1. I am a resident of Nevada, and am an attorney at the law firm of Hutchison & Steffen, PLLC, acting as counsel for Stavros Anthony in this matter.
2. As part of Mr. Anthony's Motion for writ of mandamus, I submit this declaration to state that I can personally confirm Mr. Anthony's application, attached to this Motion as Exhibit 4, was sent to the Commission by his campaign at 4:24 p.m. on November 23, 2020, as I was copied on the email sent to Mary-Anne Miller, the Clerk Lynn Goya, and to the Registrar Joe P. Gloria.
3. A copy of that email (sans attached .jpg file) is attached to this declaration.
4. I also personally confirm that I forwarded the same application to counsel for the Commission, Ms. Mary-Anne Miller at 5:11 p.m. on November 23, 2020.
5. The application was prepared to comply with NRS 293.465 in light of conversations with counsel on November 20, 2020, indicating that Joe Gloria would be submitting an affidavit pursuant to NRS 293.465 on November 23, 2020.
6. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct based upon my knowledge, information, and belief.

/s/ Jacob A. Reynolds

Jacob A. Reynolds

Jacob A. Reynolds

From: steve forsythe <sforsythe@ffeadventas.com>
Sent: Monday, November 23, 2020 4:25 PM
To: Lynn.Goya@clarkcountynv.gov; Mary-Anne.Miller@clarkcountyda.com;
jpg@clarkcountynv.gov
Cc: Mark A. Hutchison; Jacob A. Reynolds
Subject: Stavros Anthony Application for a new elecction
Attachments: Stavros Anthony Letter.jpeg

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EXHIBIT 6

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

AGENDA

**JOINT MEETING OF THE
CLARK COUNTY BOARD OF COMMISSIONERS
CLARK COUNTY WATER RECLAMATION DISTRICT BOARD OF TRUSTEES AND
UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA BOARD OF TRUSTEES
9:05 AM TUESDAY, DECEMBER 1, 2020
CLARK COUNTY COMMISSION CHAMBERS, GOVERNMENT CENTER
500 SOUTH GRAND CENTRAL PARKWAY, LAS VEGAS, NEVADA**

This meeting has been properly noticed and posted online at ClarkCountyNV.gov and Nevada Public Notice at <https://notice.nv.gov/> and in the following locations:

Agenda Also Available At:

CC Government Center
500 S. Grand Central Pkwy.
Las Vegas, NV
(Principal Office)

Regional Justice Center
200 Lewis Ave, 1st Fl.
Las Vegas, NV

Clark County
Reg. Govt. Center
101 Civic Way
Laughlin, NV

City of North Las Vegas
2250 N. Las Vegas Blvd
North Las Vegas, NV

Third Street Building
309 S. Third St.
Las Vegas, NV

Paradise Park
Pool & Center
4775 McLeod Dr.
Las Vegas, NV

City of Henderson
240 Water St.
Henderson, NV

City of Boulder City
400 California Ave.
Boulder City, NV

Winchester Park & Center
3130 S. McLeod Dr
Las Vegas, NV

Desert Breeze
Park & Community Ctr
8275 Spring Mtn. Rd
Las Vegas, NV

City of Mesquite
10 E. Mesquite Blvd.
Mesquite, NV

City of Las Vegas
495 S. Main St.
Las Vegas, NV

Pursuant to the Governor's Directive, this meeting will not be open to the public.

This meeting will be broadcast live in the Las Vegas area. Clark County Television is available in the Las Vegas area on Channel 4/1004 on Cox cable and on CenturyLink on Channels 4 and 1004 as well as in Laughlin on Channel 14 via Suddenlink. Live streaming of CCTV programming is available at www.ClarkCountyNV.gov and www.YouTube.com/ClarkCountyNV. CCTV is also available in Boulder City on Channel 4 and in Moapa Valley on Digital Channel 50.3. For more information about the program schedule, please refer to <https://www.clarkcountynv.gov/public-communications/Pages/CCTV4.aspx> or contact CCTV Channel 4 at (702) 455-6890.

If you wish to comment on an item marked "For Possible Action" appearing on this agenda, you may go to <https://clarkcountynv.gov/bccmeeting> (Meeting ID: 998 7654 2540, Passcode: 398117) or by calling 1-408-638-0968. Please identify on which agenda item you are commenting.

- Items on the agenda may be taken out of order.
- The Board of County Commissioners, Board of Trustees, and Licensing Board may combine two or more agenda items for consideration.
- The Board of County Commissioners, Board of Trustees, and Licensing Board may remove an item from the agenda or delay discussion relating to an item at any time.

Contracts, zoning matters, or ordinances that do not comply with the County's disclosure requirement as outlined in Section 10(2) of the County Ethics Policy are subject to being voided.

The main agenda is available on Clark County's website, ClarkCountyNV.gov. For copies of agenda items and supporting backup materials, please contact Cyndi Baroni, Agenda Coordinator, at (702) 455-3530.

This meeting will be broadcast live in the Las Vegas area. Clark County Television is available in the Las Vegas area on Channel 4/1004 on Cox cable and on CenturyLink on Channels 4 and 1004 as well as in Laughlin on Channel 14 via Suddenlink. Live streaming of CCTV programming is available at www.ClarkCountyNV.gov and <https://www.youtube.com/ClarkCountyNV>. CCTV is also available in Boulder City on Channel 4 and in Moapa Valley on Digital Channel 50.3. For more information about the program schedule, please refer to <https://www.clarkcountynv.gov/cctv4> or contact CCTV Channel 4 at (702) 455-6890.

SEC. 1. OPENING CEREMONIES

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

1. Reconsider the decision of the Board of County Commissioners to omit from its certification of the canvass conducted on November 16, 2020, the office of County Commission, District C. (For possible action)
2. Public Comment
3. Approval of Minutes of the Regular Meeting on November 3, 2020. (For possible action) (*Available in the County Clerk's Office, Commission Division*)
4. Approval of Agenda with the Inclusion of Any Emergency Items and Deletion of Any Items. (For possible action)

SEC. 2. CONSENT AGENDA: Items No. 5 through No. 26

NOTE:

- The Board of County Commissioners, Board of Trustees, and Licensing Board may remove an item from the agenda or delay discussion relating to an item at any time.
- Consent Agenda - All matters in this sub-category are considered by the Board of County Commissioners, Board of Trustees, and Licensing Board to be routine and may be acted upon in one motion. Most agenda items are phrased for a positive action. However, the Board/Trustees may take other actions such as hold, table, amend, etc.
- Consent Agenda items are routine and can be taken in one motion unless a Commissioner/Trustee/Licensing member requests that an item be taken separately. The Chair will call for public comment on these items before a vote. For all items left on the Consent Agenda, the action taken will be staff's recommendation as indicated on the item.
- Items taken separately from the Consent Agenda by Commission/Trustees/Licensing members at the meeting will be heard following the Commissioners'/County Manager's Recognition Section.

Purchasing & Contracts

5. Ratify and approve the Contract with Gallagher Benefit Services, Inc., for CBE No. 605732-20, for Employee Benefit Consulting Services, contingent upon submission of the required insurance; and authorize the Chief Financial Officer or her designee to sign the Contract; or take other action as appropriate. (For possible action)
6. Approve the Contract with Design Vision Inc. dba Southwick Landscape Architects, for CBE No. 605751-20, for Professional Services for Desert Breeze Park Baseball Fields, contingent upon submission of the required insurance; and authorize the Chief Financial Officer or her designee to sign the Contract; or take other action as appropriate. (For possible action)
7. Approve the award of Bid No. 605658-20, for Swenson Street & Joe W. Brown Drive Fiber Optic Interconnect System to the low responsive and responsible bidder, contingent upon submission of the required bonds and insurance. Staff recommends award to L.L.O. Inc. dba Acme Electric; and rejection of the Bid received from Vinco, Inc.; or take other action as appropriate. (For possible action)

Town Services

8. Note for the record the following Town Advisory Board (TAB) and/or Citizens Advisory Council (CAC) Minutes: Enterprise TAB - October 28, 2020; Laughlin TAB - September 8, 2020; Paradise TAB - October 27, 2020; Searchlight TAB - October 14, 2020; Sunrise Manor TAB - October 29, 2020; and Winchester TAB - October 27, 2020.

Parks & Recreation

9. Approve the proposed revisions to the Department of Parks and Recreation's Fees and Charges Schedule and authorize the Department Director to Implement the changes effective January 1, 2021. (For possible action)

Aviation

10. Approve and authorize the Director of Aviation to sign the Lease Agreement between Clark County and Rocky Mountain Aviation, LLC (David A. Austin, General Manager) for the development and operation of a corporate hangar at Henderson Executive Airport; or take other action as appropriate. (For possible action)

Public Works

11. Approve and authorize the acquisition by negotiation of portions of Assessor's Parcel Numbers 140-23-801-003, 140-26-103-007, 140-26-601-003, 140-26-103-005, and 140-26-203-001 needed for the construction of the Jim McGaughey Detention Basin, Collection Basin and Outfall project; and authorize the County Manager or her designee to sign future escrow instructions and any pertinent documents necessary to complete the acquisition process. (For possible action)
12. Approve and authorize the County Manger or her designee to sign Supplemental No. 2 to the professional engineering services contract between Clark County and Atkins North America, Inc. (Matthew Baird, P.E., Vice President) for a time extension to the contract for the Pedestrian Grade Separations at Las Vegas Boulevard and Bellagio Drive and Las Vegas Boulevard and Park Avenue and Rehabilitation of Existing Pedestrian Grade Separations project. (For possible action)

13. Approve and authorize the County Manager or her designee to sign Supplemental No. 2 to the professional engineering services contract between Clark County and WSP USA Inc. (Roger Patton, P.E., Vice President) to extend design engineering services for the design of the Jones Boulevard between Cactus Avenue and Blue Diamond Road project. (For possible action)
14. Approve and authorize the Chair to sign a revocable license and maintenance agreement between Clark County and TBC - The Boring Company (Steven Davis, President) to use a portion of the right-of-way in Desert Inn Road and Paradise Road to construct, maintain and operate a point-to-point underground tunnel transit system between the Las Vegas Convention Center and the Encore Resort. (For possible action)
15. Approve and authorize the extension of the current rankings of pre-qualified professional service providers (January 7, 2019 through December 31, 2020) used to perform professional services on Clark County projects administered by the Department of Public Works through December 31, 2021. (For possible action)

Budget & Finance

16. In accordance with NRS 244.210 and 354.220 through 354.250, approve, adopt, and authorize the Chair to sign a resolution to authorize refunds as shown on Exhibit "A. " (For possible action)

Clark County Water Reclamation District (*Board of County Commissioners sitting as the CCWRD Board of Trustees*)

17. Approve an extension to December 31, 2022 of the current list of prequalified professional service providers approved by the Board on December 18, 2018, and the authority granted to the General Manager to contract with the prequalified firms; and approve staff's evaluation and pre-qualification of professional service providers for two (2) additional professional service categories; or take other action as appropriate. (For possible action)

University Medical Center of Southern Nevada (*Board of County Commissioners sitting as the UMC Hospital Board of Trustees*)

18. Approve Amendment No. 4 to the Group Enrollment Agreement with Health Plan of Nevada, Inc. to provide health care coverage to UMC employees, dependents, and retirees through a Health Maintenance Organization; and take action as deemed appropriate. (For possible action)

General Administration

19. Approve and authorize the Chair to sign the correction of the 2017-2018 thru 2020-2021 Secured and the 2019-2020 thru 2020-2021 Unsecured Assessment Roll AR-1201-20-23 and order the corrections to be made. (For possible action)
20. Approve and authorize the Chair to grant the petition to designate as uncollectible the taxes on personal property on the attached list. (For possible action)
21. Approve and authorize the Chair to sign a resolution setting compensation at \$125 per day, for members of the Board of Equalization who are not elected public officials, for their work in responding to public concerns regarding property assessment disputes. (For possible action)

22. Reappoint one permanent member: Tio DiFederico; appoint one new alternate member: Suzette Wheeler to the Clark County Board of Equalization for 4-year terms ending December 31, 2024. (For possible action)
23. Ratify the submission of a scope of work for the grant award from the State of Nevada Department of Health and Human Services, Division of Child and Family Services for a Community Network for Keeping Babies Safe in the amount of \$560,000, effective from date of award through June 30, 2022; authorize the Administrator or his designee to sign any additional grant documents; approve and authorize the creation of one (1) part time Family Services Specialist grant funded position for the period which the grant funds are available; and accept any funds awarded. (For possible action)
24. Approve and authorize the Chair to sign an interlocal contract between Clark County and the State of Nevada Department of Health and Human Services for continuance of a reimbursement program for ground ambulance transportation services in accordance with the State of Nevada Medicaid State Plan; or take other action as appropriate. (For possible action)
25. Approve and authorize the filing of an appeal in the matter of the Las Vegas Review Journal ("RJ") vs. Clark County Office of the Coroner/Medical Examiner ("Coroner"), A-17-758501, and an appeal in the matter of the RJ and The Associated Press vs. the Coroner, A-17-764842, and authorize legal counsel to file the appropriate documents necessary for the appeal. (For possible action)
26. Approve, adopt and authorize the Chair to sign a resolution joining in the request of the District Attorney's Office for assistance from the Attorney General's Office in the prosecution of Case Nos. 20CRH000934, 20CR026536, 20CR026260 and 20CR026286. (For possible action)

END CONSENT AGENDA

SEC. 3. ITEMS TAKEN SEPARATELY FROM CONSENT AGENDA

SEC. 4. PUBLIC HEARINGS - 10 AM

27. Conduct a public hearing to approve and authorize the Administrator of Human Services, or his designee, to submit a Substantial Amendment to the FY2020 Action Plan to the U.S. Department of Housing and Urban Development (HUD), accept funding as appropriate, create limited perm grant-funded staffing positions specific to CDBG-CV funding: one (1) grants coordinator (C29) and two (2) part-time management assistants, and allow the County Manager or her designee to sign any agreements. (For possible action)
28. Conduct a public hearing to approve and authorize the Administrator of Human Services, or his designee, to submit a Substantial Amendment to the FY2020 Action Plan to the U.S. Department of Housing and Urban Development (HUD), accept funding as appropriate, create limited perm grant-funded staffing positions specific to the CARES Act Emergency Solutions Grant (ESG-CV) funding: one (1) grants coordinator (C29), two (2) senior eligibility workers (C25), and six (6) part-time management assistants, and allow the County Manager or her designee to sign any agreements. (For possible action)
29. Conduct a public hearing and approve, adopt, and authorize the Chair to sign an ordinance to amend Clark County Title 4, Chapter 4.08 - Combined Transient Lodging Tax to redefine "gross receipts" and the deductions and exemptions applicable to combined transient lodging tax; and providing for other matters properly related thereto. Commission District: All (For possible action)

END PUBLIC HEARINGS

SEC. 5. INTRODUCTION OF ORDINANCES

This item is for introduction only. A date and time will be set for a public hearing. No public comments will be heard at this time.

- 30.** Introduce an ordinance amending Clark County Code Chapter 2.40 to update provisions regarding the establishment and administration of a county merit personnel system; and providing for other matters relating thereto; and set a public hearing. (For possible action)
- 31.** Introduce an ordinance to amend Title 5, Chapter 5.02 and Title 6, Chapter 6.12 of the Clark County Code regarding rights-of-management for wireless communications facilities; adding and revising definitions; clarifying separation restrictions for wireless communications facilities; revising commencement of installation of a wireless communications facility; revising design standards; revising wireless site license fees; clarifying compliance inspection of wireless communications facilities; adding a new section to provide for business license fees for wireless communications licensees that have a master wireless use license agreement with the County; and providing for other matters properly related thereto; and set a public hearing. Commission District: All (For possible action)

SEC. 6. BUSINESS ITEMS

- 32.** Identify emerging issues to be addressed by staff or by the Board at future meetings; receive updates on the activities of the various regional boards and commissions; and direct staff accordingly.
- 33.** Canvass the returns of the General Election in the race of County Commission, District C; direct the Registrar of Voters to submit a copy of the abstract of votes cast in that race to the Secretary of State; or take other action as appropriate. (For possible action)
- 34.** Receive and accept the Phase 2 report for the Southwest Clark County Public Facilities Needs Assessment (PFNA) and County-wide Gap Analysis; and direct staff accordingly. (For possible action)
- 35.** Consider whether an adjustment to the Public Facilities Needs Assessment (PFNA) fees should be instituted; and direct staff accordingly. (For possible action)
- 36.** Consider and approve the Business Impact Statement, pursuant to NRS Chapter 237, for the proposed amendments to Title 5, Chapter 5.02 (Rights-of-Way Management – Wireless Communications Facilities) and Title 6, Chapter 6.12 (Fees and Related Matters); adding and revising definitions; requiring relocation of certain wireless installations; shortening the distance separation between wireless communications facilities; reducing fees to align with County costs; increasing the maximum amount of electrical power that licensees may use; adding Section 6.12.996 to relocate the licensee fees provided for in Chapter 5.02; and providing for other matters properly related thereto. Commission District: All (For possible action)
- 37.** Receive a report and presentation from Bird Rides relating to Assembly Bill 485 to create Nevada's first electric scooter share pilot program, including potential approval of a pilot program operating agreement with Bird Rides, Inc., and take any other action deemed appropriate. (For possible action)

38. Go into closed session, pursuant to NRS 241.015(3)(b)(2), to receive information from the District Attorney regarding potential or existing litigation involving a matter over which the Board has supervision, control, jurisdiction or advisory power, and to deliberate toward a decision on the matter, and pursuant to NRS Chapter 288.220, to receive a report on the status of ongoing labor negotiations; and direct staff accordingly. (For possible action)

PUBLIC COMMENTS WITHIN THE GENERAL JURISDICTION OF THE BOARD/TRUSTEES

ZONING AND SUBDIVISIONS

Wednesday, December 2, 2020, 9:00 a.m.

Separate Agenda

THE REGULAR JOINT MEETINGS OF THE CLARK COUNTY BOARD OF COMMISSIONERS, THE CLARK COUNTY WATER RECLAMATION BOARD OF TRUSTEES, THE UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA BOARD OF TRUSTEES, AND THE CLARK COUNTY LIQUOR AND GAMING LICENSING BOARD HELD ON THE FIRST AND THIRD TUESDAYS OF EACH MONTH, ARE VIDEO-TAPED BY CLARK COUNTY TELEVISION (CCTV). THIS MEETING WILL BE BROADCAST LIVE IN THE LAS VEGAS AREA. CLARK COUNTY TELEVISION IS AVAILABLE IN THE LAS VEGAS AREA ON CHANNEL 4/1004 ON COX CABLE AND ON CENTURYLINK ON CHANNELS 4 AND 1004 AS WELL AS IN LAUGHLIN ON CHANNEL 14 VIA SUDDENLINK. LIVE STREAMING OF CCTV PROGRAMMING IS AVAILABLE AT WWW.CLARKCOUNTYNV.GOV AND WWW.YOUTUBE.COM/CLARKCOUNTYNV. CCTV IS ALSO AVAILABLE IN BOULDER CITY ON CHANNEL 4 AND IN MOAPA VALLEY ON DIGITAL CHANNEL 50.3. FOR MORE INFORMATION ABOUT THE PROGRAM SCHEDULE, PLEASE REFER TO [HTTPS://WWW.CLARKCOUNTYNV.GOV/CCTV4](https://WWW.CLARKCOUNTYNV.GOV/CCTV4) OR CONTACT CCTV CHANNEL 4 AT (702) 455-6890.

THE COUNTY CLERK KEEPS THE OFFICIAL RECORD OF ALL PROCEEDINGS OF THE COUNTY COMMISSION, THE CCWRD BOARD OF TRUSTEES, THE UMC HOSPITAL BOARD OF TRUSTEES, AND THE CLARK COUNTY LIQUOR AND GAMING LICENSING BOARD. IN ORDER TO MAINTAIN A COMPLETE AND ACCURATE RECORD OF ALL PROCEEDINGS, ANY PHOTOGRAPH, MAP, CHART, OR ANY OTHER DOCUMENT USED IN ANY PRESENTATION TO THE BOARD/TRUSTEES SHOULD BE SUBMITTED TO THE COUNTY CLERK. IF MATERIALS ARE TO BE DISTRIBUTED TO COMMISSIONERS/TRUSTEES, PLEASE PROVIDE SUFFICIENT COPIES FOR DISTRIBUTION TO THE COUNTY MANAGER, COUNTY COUNSEL, AND COUNTY CLERK.

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EXHIBIT PAGE ONLY

EXHIBIT 7

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

1 TRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 * * * * *

5
6 ROSS MILLER,)

7 Plaintiff,)

8 vs.)

9 CLARK COUNTY BOARD OF)
10 COMMISSIONERS,)

11 Defendant.)

CASE NO. A-20-824971-W

DEPT. NO. XI

Transcript of Proceedings

12 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

13 **MOTION FOR PRELIMINARY INJUNCTION ON AN ORDER SHORTENING**
14 **TIME BEFORE TUESDAY, DECEMBER 1, 2020**

15 MONDAY, NOVEMBER 30, 2020

16 APPEARANCES (ALL VIA TELECONFERENCE):

17 For the Plaintiff: BRADLEY S. SCHRAGER, ESQ.

18 For the Defendant: MARY-ANNE MEYERS MILLER, ESQ.

19 For the Intervenor,

20 Stavros Anthony: MARK A. HUTCHISON, ESQ.

JACOB A. REYNOLDS, ESQ.

21 PIERS R. TUELLER, ESQ.

22 RECORDED BY: ANGELICA MICHAUX, DISTRICT COURT

23 TRANSCRIBED BY: KRISTEN LUNKWITZ

24 Proceedings recorded by audio-visual recording; transcript
25 produced by transcription service.

1 MONDAY, NOVEMBER 30, 2020 AT 12:57 P.M.

2

3 THE COURT: Is everybody present? Do we think we
4 have anybody else joining us?

5 MR. HUTCHISON, it's your Motion.

6 MR. HUTCHISON: Yes, Your Honor. Thank you. Good
7 afternoon. Thank you for accommodating us on this
8 shortened time.

9 I'm sure the Court has been through the papers, as
10 you always go through them, Your Honor, but let me just
11 start off by reminding all of us what is happening here
12 today. There's been a lot of argument and a lot of sort of
13 chest pounding about the idea that this case has, you know,
14 been decided already by other previous cases addressed by
15 the Court, not only in this district but others, and that
16 the statutory interpretation then of those courts leads to
17 the conclusion that this case doesn't have any merit under
18 the relevant statute, NRS 293.465.

19 Judge, every single one of those other cases that
20 counsel cited, including the case that you handled, Your
21 Honor, --

22 THE COURT: With you.

23 MR. HUTCHISON: -- the parties -- excuse me?

24 THE COURT: With you.

25 MR. HUTCHISON: Yes, Your Honor.

1 THE COURT: Yeah.

2 MR. HUTCHISON: Your Honor, I'm talking about in
3 2020, any of those 2020 election lawsuits, in every single
4 one of those, every single one of those, the -- our
5 opposing party and the County itself argues that you should
6 defer and courts should defer to Joe Gloria; except,
7 apparently, in this case, that you should accept his
8 election expertise and defer to him, except in this case.
9 That --

10 THE COURT: So, Mr. Hutchison, can I ask you a
11 question?

12 MR. HUTCHISON: Sure.

13 THE COURT: And thank you for attaching the
14 Affidavit as Exhibit B to your Motion. Can you tell me how
15 the Affidavit qualifies as an affidavit under NRS 293.465,
16 since it does not appear to indicate that an election was
17 prevented?

18 MR. HUTCHISON: Yeah. A couple of points. If the
19 Court -- and I'm sure you've got the statute in front of
20 you and --

21 THE COURT: I do.

22 MR. HUTCHISON: -- the -- in the briefing. If an
23 election is -- this is NRS 293.465, for the record. Quote:

24 If an election is prevented in any precinct or
25 district by reason of the loss or destruction of the

1 ballots intended for that precinct, or any other cause,
2 the appropriate election officers in that precinct or
3 district shall make an affidavit setting forth that
4 fact and transmit it to the appropriate board of county
5 commissioners.

6 Judge, the reason that this Affidavit satisfies
7 NRS 293.465 is because the affidavit itself says that he --
8 Mr. Gloria is simply formalizing the statements that he
9 made to the Commission on November 16th, 2020. I don't know
10 if the Court's had an opportunity to listen to that County
11 Commission meeting, but, in that County Commission meeting,
12 he sets forth very clearly the reasons why he has no
13 confidence that the election tally in District C reflects
14 the will of the voters. And, so, he sets forth the fact
15 that we've had an audit of this election, as he has other
16 audit -- other elections. He sets forth that there were
17 218 precincts in District C and that there were 139
18 discrepancies, which the Election Board was unable to
19 reconcile. He also said that the results, he can't certify
20 it as being representative, that is the vote tally, of the
21 will of the voters in that District, and that he opines
22 that, in his professional opinion, it raises reasonable
23 doubt as to the outcome of the election.

24 Your Honor, there isn't anything in here other
25 than the fact -- in NRS 293.465 that has to be stated by

1 Mr. Gloria, other than the fact that the election has been
2 prevented. The election has been prevented, Your Honor, by
3 way of these discrepancies and by way of the doubtful
4 nature of this election.

5 Now, if the Court is saying, Mr. Hutchison, in
6 order for you to satisfy NRS 293.465, Mr. Gloria has to use
7 the words, the election was prevented, then --

8 THE COURT: Yep.

9 MR. HUTCHISON: -- I would say to the Court that's
10 not in the statute. It doesn't require his affidavit to
11 say the election was prevented. He was -- it says that
12 he's got to set forth fact that would -- reports the
13 election has been prevented, Your Honor. That's setting
14 forth the fact that the -- his view of the election was not
15 reliable and, essentially, I'm adding that to the statutory
16 language.

17 But to answer you, specifically, Judge, keep in
18 mind as well that, you know, NRS 293.127(1)(c) provides
19 that statutes under NRS 293:

20 Must be liberally construed to the end that: The
21 real will of the electors is not defeated by any
22 informality or by failure to substantially comply with
23 the provisions of the title with respect to certifying
24 the results of an election.

25 So, Your Honor, I would suggest to the Court that

1 if you say -- and, again, this is not an affidavit that we
2 control. This is an affidavit, of course, that the County
3 controls. If you say that the County can choose not to put
4 language that says that the election was prevented and,
5 therefore, NRS 293.465 is not satisfied, well, then, in
6 every case that the County does not want NRS 293.465 to
7 apply, they can simply not include that language. I think
8 that's inconsistent, Judge, with the statutory parameters,
9 and intended legislature, as well as the language of the
10 statute. So, --

11 THE COURT: Thank you, Mr. Hutchison. Since I
12 interrupted you, was there anything else you wanted to tell
13 me?

14 MR. HUTCHISON: Yes, Your Honor. Your Honor, we
15 would ask that the Court also consider the fact that if the
16 -- literally, if the election recount does not lie with the
17 County Commission here, and that's the plaintiff's
18 argument, that it's just -- that this is simply a
19 ministerial act, that the Court -- you know, that the
20 Commission has no discretion at all, then that essentially
21 reads out of Nevada election law any new election or any
22 special election, except, I guess, as the plaintiffs argued
23 in the case of a repeat of 9/11 or some disaster. That's
24 just certainly not consistent with the *LaPorta* decision by
25 the Nevada Supreme Court, Your Honor, which we cited to the

1 Court and otherwise demonstrated that the Court has
2 ordered, in cases other than a disaster, that the County
3 Commission order a new election.

4 THE COURT: But the *LaPorta* case --

5 MR. HUTCHISON: So, that --

6 THE COURT: Mr. Hutchison, that is a --

7 MR. HUTCHISON: Yes.

8 THE COURT: -- a machine malfunction. Correct?

9 MR. HUTCHISON: Sure.

10 THE COURT: Yeah.

11 MR. HUTCHISON: It absolutely is not an actual
12 disaster. It was a machine malfunction. Yes.

13 THE COURT: Okay.

14 MR. HUTCHISON: The plaintiffs argue that there's
15 got to be a natural disaster and *LaPorta* makes clear, Your
16 Honor, that it can be for a machine malfunction, it could
17 be when bells or locks are destroyed, and the statute says
18 or for any other reasons. And, so, this idea that the
19 election was held and, so, therefore, counteracts 293.465,
20 just simply doesn't apply because the election wasn't,
21 quote/unquote, prevented, reads an election far too
22 narrowly, Your Honor.

23 For all of us who do a run for office, and there
24 are some on the phone, they know that you run an election
25 not simply so you go through the motion of the voters

1 casting a ballot. The election also includes the tallying
2 of the ballot, as well as an accurate representation of the
3 ballot, so that the will of the voters have been reflected
4 in those votes. That's an election. Election isn't just
5 simply the act of passing ballots. It's more than that.
6 You don't get a Certificate of Election because your name
7 was on a ballot and voters cast a ballot to you. There's
8 more to it than that. In fact, the plaintiffs recognize
9 that there's an election life cycle, they called it. An
10 election life cycle. It's more than just simply casting
11 ballots, Your Honor. It's also being able to tally those
12 ballots accurately and have a winner declared.

13 The election was prevented because the Clark
14 County Commission's own election official, Mr. Gloria, for
15 the first time in any of the election challenges, said:
16 This election cannot be certified, in his opinion, because
17 of discrepancies or errors in the election process. The
18 election was prevented. Those -- that's my use of the
19 term, Your Honor.

20 THE COURT: I understand.

21 MR. HUTCHISON: Let me also, Your Honor, if I can,
22 just point to a case that you pointed us to at the very
23 beginning of our process. You cited the *Cherchio* case and,
24 Your Honor, I guess, officially, the *Mike Montandon versus*
25 *City of Las Vegas* case.

1 THE COURT: Yes.

2 MR. HUTCHISON: And Your Honor said -- as the
3 Court well knows, Your Honor set forth the Findings of Fact
4 and Conclusions of Law that -- and I would like to point
5 the Court to two Conclusions of Law that wholly distinguish
6 the *Cherchio* election from the Stavros Anthony and Ross
7 Miller election. If the Court takes a look at its own
8 Findings -- excuse me, the Conclusion of Law 5, and I'll
9 also direct you, Judge, to Conclusion of Law 16. So, your
10 Conclusion of Law 5 in the *Cherchio* matter read, quote:

11 No clerical error occurred in the recording,
12 reporting, or calculating of the total votes cast. And
13 no evidence was presented of any clerical error.

14 Close quote. That's Conclusion 5.

15 Conclusion 16, Your Honor, says, quote: No
16 election was prevented here. Lomax confirmed that the
17 election occurred, and that all voting machines
18 operated appropriately, and that all ballots were
19 correctly counted and tabulated. No evidence was
20 presented of any election being prevented.

21 Close quote.

22 That is not what happened here, Your Honor. We
23 have evidence before the Court, you've got Mr. Gloria's --
24 not only that, but you also have his statement before the
25 County Commission that he could not accurately and credibly

1 count or tabulate the ballots. And, particularly, when
2 you're trying to correct -- count them in terms of: Did it
3 reflect the will of the voters? He came in, and you can
4 imagine the pressure that was put on him in this crazy
5 election environment. For the election official of the
6 Clark County Commission to come in and say: You know,
7 there's been claims of all kinds of problems with these
8 elections. I've had no problem with any of them. And my
9 audit is showing no problem with not one of them, except
10 for Commission C. And then he laid it out. There's 139
11 discrepancies we can't account for. People who have signed
12 in who didn't vote or people who voted that didn't sign in.

13 Now, we know what he said at the hearing, or at
14 the meeting, that there were at least six voters who voted
15 twice. And, so, what was his recommendation -- and, by the
16 way, Your Honor, the recommendation of Clark County's
17 counsel? That was to hold a new election. They knew,
18 Judge, and we cite in our papers even on -- just
19 referencing page 16 and 17 of our brief, the Commissioner
20 Jones asked if there was any other possible thing that
21 could happen other than, at that time, certifying the
22 election or go to a special election. And the counsel's
23 commission -- the Commission's counsel, the County's
24 counsel, says: No. That's what you do.

25 Because, Judge, -- and this is the point of our

1 preliminary injunction hearing, and it's the point of our
2 preliminary injunction motion, that is: If, in fact, the
3 votes are certified, that takes away from Mr. Anthony's
4 right of a new election. And there's -- okay. To my
5 opposing counsel and friends on the other side, they
6 forthright state: Yep, if this is certified, if this
7 election is certified, Anthony cannot seek a new election.
8 In effect, what you're going to be ruling, if you rule in
9 their favor, is at the County Commission level and the City
10 Council level, if there is -- unless there's some sort of a
11 9/11 disaster, those bodies have no discretion or authority
12 to order a new election.

13 Think of the number of new elections that have
14 been ordered or directed by municipal bodies, county
15 bodies, and what the opposing counsel is saying is those
16 were all unauthorized. All of them. You will write out of
17 election law in Nevada any special elections or new
18 election, because it would -- when you go on to the new
19 canvass, that's their point. Just send them away, Judge,
20 and have them go to a recount, or have them go through
21 election contest. Well, they know very well that neither
22 one of those statutory methods provides the remedy in an
23 election, Your Honor. That's why Mr. Anthony would be
24 irreparably harmed now if the County Commission does not
25 follow the mandates of NRS 293.465. That remedy is gone

1 after the election is certified.

2 Everybody, I believe, within the briefing agreed
3 with that, and yet we've got a history, and we've got
4 Nevada Supreme Court precedent, that has not only called
5 for a new election but has required of them. At the county
6 level and it was short of some natural disaster, Your
7 Honor.

8 So, the Court should enter a preliminary
9 injunction preventing the County Commission from certifying
10 the commission to the election or, otherwise, reconsidering
11 its vote to hold a new election. Why? Because NRS 293.465
12 requires it, because Mr. Gloria has indicated, Your Honor,
13 that, in fact, he does not have confidence in the outcome,
14 the fact, Your Honor, that the Nevada Supreme Court has
15 required that these elections -- new elections be held in
16 situations like this where you've got an affidavit under
17 NRS 293.465, which says that the election, in effect, was
18 prevented because there was no way to reconcile the 139
19 discrepancies in an election, Your Honor, that was decided
20 by 10 votes.

21 So, Your Honor, I'll reserve my main time to reply
22 to my friends on the other side.

23 THE COURT: Thank you. Mr. Schrager?

24 MR. SCHRAGER: Yes, Your Honor. Thank you.

25 Bradley Schrager for petitioner, Ross Miller.

1 I first want to note that this Motion comes to you
2 on a rather odd procedural footing because, in essence,
3 what Mr. Anthony is doing is flipping the burden of Mr.
4 Miller's underlying actions. He is taking on the burden
5 because, in essence, Mr. Anthony cannot win his Motion if
6 Mr. Miller is right on the underlying ultimate questions in
7 the litigation and whether the Board had a duty to canvass
8 and whether 293.465 forces a new election. The opposite is
9 true as well. Mr. Miller cannot prevail if, in fact, Mr.
10 Anthony is correct that the Board had perfect discretion
11 not to canvass. And, now, there's no way out of that
12 crack. In order to reconsider, they'd have to go and hold
13 a new election.

14 So, in essence, we have a lot at head in this
15 litigation. And, normally, I would find that rather
16 curious. In this instance, I guess the hints are helpful.
17 A preliminary indication of Your Honor's thoughts on the
18 merits of those underlying issues, I think, is useful to
19 the parties so that they may chart their future conduct.
20 Now, I feel that way because I think we have the better of
21 the arguments on Mr. Miller's side, but I also think that
22 if I'm wrong, if I'm on the wrong side, I just want to know
23 that as quickly as possible. So, I would urge the parties
24 to take great heed to what the Court says here today.

25 Now, as for the Motion itself, Mr. Anthony seems

1 to be proceeding on the basis that he has a right to a
2 special election and that failure to have that could
3 somehow do irreparable harm to him. Now, I absolutely
4 agree with my colleague that in the absence of -- if this
5 vote is certified, canvass was certified, there will be no
6 special election. You know, I'm sorry if that's
7 frustrating for Mr. Anthony. It also happens to be the
8 law. It's the law that every candidate signs up for when
9 they enter into an election with a possible prospect of a
10 recount and election contest thereafter. That's simply how
11 we resolve post-elections in Nevada.

12 There's two single questions here that need to be
13 resolved for Mr. Anthony to have any likelihood of success
14 on the merits. First thing, he doesn't really state at all
15 in his Motion, and only obliquely in the response or in the
16 Reply, which is whether that is a ministerial duty of the
17 Board to canvass and certify the results. Clearly, it is.
18 Not only does 293.387 say that, 244.090 sub 5, mandatory
19 duty. Writs of mandamus have issued on multiple occasions
20 from the Supreme Court and from District Courts ordering
21 canvassing authorities to perform their duties.

22 The reason why we don't give discretion in that
23 area is there could be canvass and authorities interfering
24 with the finality of elections. Only that finality gets
25 you to the next stage of the statutory process, which is

1 the recount and the contest available to any candidate.
2 That's where you go when you want to present evidence of --
3 that the election -- that there were votes that were cast
4 that shouldn't have been, that there were votes -- that
5 there were votes that weren't counted that should have
6 been, that there was malfunction that would have overcome
7 the margins between candidates. That's where you do that.
8 And there are particular statutory reasons why the Nevada
9 Legislature puts those people through that process. It has
10 clear standards for evidence, and for judgments, and for
11 relief, all the time frames, all of those things. That's
12 why those are the exclusive remedies to situations like
13 this.

14 So, the duty is mandatory to canvass and that the
15 only way out of that, and this clearly is recommended by
16 Mr. Anthony, is the potential for 293.465, preventing an
17 election. But, first, it comes down to whether the
18 election is prevented. Now, counsel reads that statute
19 really broadly, but, in fact, it's not so broad. It is not
20 necessarily an earthquake, or a fire, or where I'm talking
21 about loss or destruction of ballots, or some other cause
22 that prevents the election. The key to that statute isn't
23 the earthquake, Your Honor. It's the prevention.

24 Now, I would submit to you with the argument
25 presented within our briefs that -- you know, certainly the