No. 85302

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIGAL CHATTAH,

Appellant,

vs.

BARBARA CEGAVSKE, in her official capacity as Nevada SECRETARY OF STATE; JOHN T. KENNEDY, an individual

Respondents.

On Appeal from the First Judicial District Court of the State of Nevada Case No. 22-OC-00099-1B

RESPONDENT BARBARA CEGAVSKE'S ANSWERING BRIEF

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JURISDICTIONAL STATEMENT

Pursuant to NRAP 3A(b)(3), this court has jurisdiction to adjudicate the district court's September 7, 2022 order denying Appellant's Application for Temporary Restraining Order and Motion for Preliminary Injunction and Related Relief, following the filing of Appellant's notice of appeal on September 7, 2022.

ROUTING STATEMENT

Pursuant to NRAP 17(a)(2), the Supreme Court should retain this case because it involves "ballot or election questions."

STATEMENT OF ISSUE

Did the district court abuse its discretion by denying Appellant mandatory injunctive relief of reprinting all ballots or adding a printed insert to all mail ballots based on the available evidence, including Appellant's failure to make a timely challenge and the significant logistics and expense associated with Appellant's demanded relief?

STATEMENT OF THE CASE

Appellant, the Republican candidate for Attorney General, missed multiple statutory deadlines for challenging the candidacy of John T. Kennedy ("Kennedy"), including the July 22 deadline for the Secretary to finalize the 2022 General Election ballot for Nevada counties. Had Appellant exercised basic due diligence under Nevada's challenge-based system for disqualification, there would be no case.

Under NRS 293.2045, based on missing the deadline for finalizing the 2022 General Election ballot, Appellant is entitled to an order disqualifying Kennedy from holding office and the issuance of signs at polling places informing voters that Kennedy is disqualified. The Secretary did not and does not oppose the imposition of such relief by the district court or this court, even at this late hour.

However, Appellant seeks a mandatory injunction to have each Nevada county reprint all ballots or to add an additional printed notice within all mail ballots nearly nine weeks after the July 22 deadline to finalize the 2022 General Election ballot. The district court correctly denied such injunctive relief to Appellant, based on the limited evidence she presented to justify such an extraordinary remedy.

Nevada statute, as interpreted by this court, places the burden on challengers to make timely challenges, not the Secretary to investigate declarations of candidacy made under penalty of perjury. Any harm suffered by Appellant came by her own

inaction, which she could have prevented. Appellant did not bear her burden of proving her remedy was feasible, instead contending that the Office of the Secretary of State had the evidentiary burden to disprove her speculation. There is no evidence within this record that any county can effectuate the mandatory injunction Appellant demands here.

Under such circumstances, the district court's order does not constitute a manifest abuse of discretion. To the contrary, ordering the reprinting of all Nevada ballots nearly nine weeks after Nevada statute required the ballot to be final at great expense to Nevada taxpayers without evidence would have been an abuse of discretion.

The district court's order denying a mandatory temporary restraining order was not a manifest abuse of discretion. The district court's order should be affirmed.

STATEMENT OF FACTS

I. Background on the 2022 Election and Required Declaration of Candidacy

This election cycle, 1,227 candidates filed for Nevada elected office.[1] Each candidate submitted a declaration of candidacy swearing that they "will qualify for the office if elected thereto, including, but not limited to, complying with any limitation prescribed by the Constitution and laws of this State concerning the

[1] SC0054 at ¶ 2.

number of years or terms for which a person may hold the office."[2] Each candidate does so with the understanding that "knowingly and willfully filing a declaration of candidacy which contains a false statement is a crime punishable as a gross misdemeanor and also subjects [them] to a civil action disqualifying [them] from entering upon the duties of the office."[3]

The Secretary, as Nevada's Chief Elections Officer, reasonably relies on the candidates' truthfulness within their respective declarations of candidacy, checked by the competitive incentives of opposing candidates to seek disqualification of those who are not qualified. This election cycle, the Secretary received two timely challenges, resulting in the removal of two candidates from the 2022 election.[4] One was an unqualified candidate for the public office at issue in this case.[5] Appellant's allegation that the Secretary has affirmative "obligations to verify" candidacies does not cite to Nevada statute and is contrary to the existing structure of candidate declarations and challenges.[6]

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[2] NRS 293.177(2).

[3] *Id.*

[4] SC0054-0055 at ¶ 3.

[5] *Id.*

[6] SC0006 at ¶ 13.

II. The Libertarian Party's Right to Make Candidate Filings, Including for Kennedy

Similarly, for minor political parties, the Secretary reasonably relies upon filings by said political parties pursuant to Nevada statute. Kennedy was the Libertarian Party's candidate for Attorney General. NRS 293.1715(2) governs procedures for "minor political parties" such as the Libertarian Party to place candidates' names onto the ballot for the general election. Specifically, the "names of the candidates for partisan office of a minor political party must be placed on the ballot for the general election if the minor political party is qualified."[7] Among other requirements, the minor political party "must have filed a list of its candidates for partisan office … with the Secretary of State."[8]

III. Kennedy's Declaration of Candidacy was Inaccurate

Here, the Libertarian Party did such a filing for its candidates, including for Kennedy.[9] Further, Kennedy filed his declaration of candidacy.[10] Kennedy has now admitted that his declaration of candidacy is inaccurate because he is not a Nevada attorney in good standing.[11]

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[7] NRS 293.1715(2) (emphasis added).

[8] *Id.*

[9] SC0058-0059.

[10] SC0061.

[11] SC0063.

IV. Procedural History before the First Judicial District Court

On July 26, 2022, 105 days after the preelection candidate qualification challenge deadline and 4 days after the statutory deadline to finalize the general election ballot, Appellant submitted an Election Integrity Violation Report to the Secretary.[12] Consistent with her procedures, the Office of the Secretary of State reviewed and responded to the Report on August 17, 2022.[13] Appellant filed this case on August 25, 2022.[14]

The Secretary responded to Appellant's Renewed Application for Temporary Restraining Order on August 31, 2022.[15] There, the Secretary provided information pertaining to the reprinting of mail ballots and the mailing of a separate postcard notifying active registered voters of Kennedy's ineligibility.[16]

The next day, the First Judicial District Court conducted a status conference with the parties, at which he attempted to derive undisputed facts and considered relief outside that provided by NRS 293.2045. The Secretary was granted leave to file a supplemental response on Friday, September 2nd, in which the legislative

[12] SC0027-0037.

[13] SC0039-0040.

[14] SC0002-0010.

[15] SC0043-0052.

[16] SC0055-SC0056.

history of NRS 293.2045 was analyzed and the ability to have mail ballot printing vendors for various Nevada counties to add a notice of Kennedy's disqualification.[17] There, Deputy Secretary Wlaschin provided specific information that Clark County's mail ballot vendor could not add such a supplement unless it was told to do so by no later than Wednesday, September 7.[18] Appellant filed a reply brief on September 6, 2022, immediately before a second status hearing before the district court.[19]

The district court issued its order denying Appellant's request for injunctive relief "under any standard of proof."[20] The court did so after the parties had consented to the district court proceeding "without an evidentiary hearing."[21] There, the district court held that Nevada statute does "not expressly or implicitly require the Secretary of State to investigate every qualification of every candidate, or any

[17] To avoid delay, the Secretary submitted its Supplemental Response with exhibits to all counsel and the district court. Opposing counsel confirmed receipt of the Supplemental Response with exhibits. The subsequent wet signature filing with the district court erroneously attached exhibits from the original response, instead of those transmitted to the district court and opposing counsel. The emails pertaining to the email service along with the Supplemental Response and the exhibits referencing legislative history (also available as public records from the Legislature's website) are set forth as the Secretary's Appendix. The legislative history will also be cited to by hyperlink from the Legislature's website. The Secretary will not include Deputy Secretary Wlaschin's declaration from that same day, which was already included by Appellant as part of its appendix.

[18] SC0066.

[19] SC0068-0072.

[20] SC0083-0084 (Order at 7:20-8:6).

[21] *Id.* at SC0077 (Order at 1:27).

qualification of any candidate."[22] Further, the district court recognized that Appellant's delay in making her challenge impacts any allegation of irreparable harm and balancing the interests of the parties in this case. If injunctive relief had been awarded in this case, the district court noted that "there will be no incentive for a candidate or any elector to comply with the statutes by timely filing a preelection candidate qualification challenge."[23]

Rather than request an evidentiary hearing to develop the factual record, as offered by the district court, Appellant filed its notice of appeal and, eventually, filed its opening brief.

SUMMARY OF THE ARGUMENT

Nothing set forth by Appellant warrants reversal of the district court's order denying mandatory injunctive relief.

It is unlikely that Appellant could obtain a mandatory injunction caused by her own inaction. It is undisputed that Appellant missed the April 2022 challenge deadline and the July 22 deadline for the ballot to be final. As set forth clearly under Nevada statute and the understanding of said statutes by the Legislature and this court, the duty to challenge was on Appellant, not the Secretary. The Legislature had

[22] *Id.* at SC0080 (Order at 4:21-23).

[23] *Id.* at SC0082 (Order at 6:19-23).

the authority to set forth the deadline to finalize the ballot, understanding that mail ballots require time to be printed and mailed to active Nevada voters, such that the statutory remedy of putting up a sign at an in-person polling place was the only available remedy to finalize the ballot.

Appellant also cannot demonstrate she will suffer irreparable harm where her own inaction led to this dilemma or that her speculative harm outweighs the costs and logistical difficulties identified on an expedited basis by the Secretary.

Ultimately, Appellant did not meet her evidentiary burden to demonstrate a clear showing she was entitled to the extraordinary remedy of a mandatory injunction. To the contrary, Appellant's lack of evidence and lack of record citations further warrant affirmance of the district court's order and denial of this appeal.

ARGUMENT

I. Standard of Review

On appeal, the district court's determination whether to grant a preliminary injunction "will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact."[24]

[24] *Attorney General v. NOS Commc'ns*, 120 Nev. 65, 67, 84 P.3d 1052, 1053 (2004).

Injunctive relief is extraordinary relief.[25] A "preliminary injunction is an "extraordinary remedy that may only be awarded upon clear showing that the Appellant is entitled to such relief."[26] A "preliminary injunction is available if an applicant can show a likelihood of success on the merits and a reasonable probability the non-moving party's conduct, if allowed to continue, will cause irreparable harm."[27] Even where a party makes those showings, a court may decline to order injunctive relief due to the potential hardship on each party and considerations of the public interest.[28] In cases like this one, where the party opposing injunctive relief is a government entity, the potential hardship and the public interest considerations are merged.[29] Mandatory "injunctions are used to restore the status quo, to undo wrongful conditions."[30] Nevada courts are cautioned to "exercise restraint and caution in providing this type of equitable relief."[31]

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[25] *Dep't of Conservation & Nat. Res., Div. of Water Res. v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005).

[26] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (emphasis added); *see also* NRS 33.010(1).

[27] *Clark Cty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996).

[28] *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721 (2004).

[29] *Nken v. Holder*, 556 U.S. 418, 435 (2009).

[30] *Leonard v. Stoebling*, 102 Nev. 543, 550–51, 728 P.2d 1358, 1363 (1986).

[31] *Id.*

Here, Appellant cannot demonstrate that the district court abused its discretion, based its decision on an erroneous legal standard, or made clearly erroneous findings of fact. This appeal must be denied.

II. The District Court Correctly Determined that Appellant was Unlikely to Succeed on the Merits of Her Case

A. Appellant Missed the Deadline for Making an NRS 293.182 Challenge Addressable Directly by the Secretary

NRS 293.182 provided an April 11 deadline for anyone (including Appellant) to challenge Kennedy's candidacy to the Secretary, with potential referral and investigation by law enforcement.[32] It is undisputed that Appellant made no such timely challenge.

Because no timely challenge was made, the Secretary lacked statutory authority to use the NRS 293.182 process to consider removing Kennedy from the 2022 election. In that context, the Secretary lacked authority to take any of the "subsequent remedial measures" Appellant desired because Appellant's challenge was untimely.[33]

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[32] SC0079.

[33] SC0007 at ¶ 18.

B. Appellant Missed the July 22 Deadline to Effect Changes to the General Election Ballot

Appellant missed the statutory deadline for revising the ballot for the general election.[34] That deadline was July 22, 2022, days before Appellant submitted her initial complaint to the Secretary[35] and more than one month before filing this lawsuit.[36] This precludes Appellant's belated demand to remove Kennedy from the general election ballot.

C. Nevada's Election Law Relies on Timely Challenges to Remove Unqualified Candidates

Appellant contends that she had borne an "undue burden" by being forced to challenge Kennedy's candidacy.[37] Appellant argues that the Secretary "was grossly negligent in the administration of the process of Declaration of Candidacy."[38] However, review of the legislative history for Nevada's challenge statutes confirms that the Legislature intended for candidate challenges, not investigations by the Secretary.

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[34] *See* SC0018 (App. at 7:7-8) (immediately following bolded text).

[35] SC0005 at ¶ 10.

[36] NRS 293.165(4).

[37] OB at 13-15.

[38] OB at 19. Appellant contends that failure to do as she wants would result in a "contested election." *Id.* at 20. Review of NRS 293.410(2) confirms that no contest would result from the Secretary's compliance with Nevada statute. The Secretary engaged in no wrongdoing, such that there would be criminal malfeasance. NRS 293.410(2)(b). As noted by the District Court, there is no evidence that complying with Nevada statute would constitute any error, much less an error "sufficient to change the result of the election as to any person who has been declared elected." NRS 293.410(2)(d).

1. NRS 293.182 Relies on Timely Challenges

When analyzing NRS 293.182, this court recognized the importance of expediency to ensure effective elections. Specifically, this court held that:

> The expedited procedure under NRS 293.182 is meant to ensure that a qualifications challenge potentially affecting the names to be printed on an election ballot will be resolved within an adequate period before the election so that the ballots can be timely prepared and distributed.[39]

Here, Appellant missed the applicable deadline by 105 days. Under such circumstances, the Secretary lacked authority to challenge Kennedy's candidacy absent legal action.

2. NRS 293.2045 Relies on Timely Challenges

NRS 293.2045 was enacted by the 2017 Legislature as part of AB 21.[40] The primary focus of the 2017 Legislature was addressing candidate residency requirements.[41]

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[39] *DeStefano v. Berkus*, 121 Nev. 627, 631, 119 P.3d 1238, 1241 (2005) (citing Hearing on A.B. 487 Before the Senate Comm. on Government Affairs, 71st Leg. (Nev., May 2, 2001)).

[40] SOS007-030 (https://www.leg.state.nv.us/Session/79th2017/Bills/AB/AB21_EN.pdf) (last accessed 9/20/2022).

[41] SOS042 (https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/LOE/Final/270.pdf) (last accessed 9/20/2022).

When presenting AB 21, then-Deputy Secretary of State Wayne Thorley testified at committee as follows:

> Our Office believes that the preelection challenge period goes from the end of the candidate filing period to any time before the actual election occurs. There are a number of preelection challenges specifically identified in law. One of them is a written challenge that any elector can bring within five days after the close of the candidate filing period. That requires that the Secretary of State or the county clerk, depending on who the filing officer is, review the information and forward that on to the appropriate prosecutor, whether it be the Office of the Attorney General or the local district attorney's office, to follow up. Of course, there are declaratory and injunctive relief and other actions that can be brought forth by private citizens related to a person's qualification to hold office.[42]

In short, the legislative history recognizes the written challenge process deadline that Appellant missed by more than 100 days in this case, separate and apart from the NRS 293.2045 procedure at issue here.

Next, at the same committee hearing, Assemblyman Daly stated the following:

> The time to file an objection goes all the way up to election day. As you know, there is a deadline when you cannot get your name taken off the ballot, so you will appear on the ballot anyway. We had issues with signs being put up that said the person does not live here. We have had cases where that person actually won.[43]

This acknowledges the importance of the ballot deadline, another deadline Appellant missed in this case. Nothing within the legislative history of AB 21 changes the deadline for finalizing ballots.

At the same hearing, Kevin Powers for the Legislative Counsel Bureau offered the following:

> As the statutes are set up now, if a court in a preelection challenge finds that a nonlegislative candidate does not meet the qualifications for the

[42] SOS044 (emphasis added).

[43] SOS045 (emphasis added).

> office and the time for changing the ballots has passed, that candidate's name remains on the ballot. If they receive the most number of votes at the election, that creates a vacancy in the office, and then the laws governing vacancies are used to fill that nonlegislative office.[44]

With regards to legislative candidates, Kevin Powers further testified:

> The dilemma that you bring up has been addressed by the courts. They said it is incumbent on the challenger to bring the challenge as soon as possible. They can then take advantage of the provisions of the law that require the name of the candidate to be removed from the ballot. You will not have the problem of the candidate being elected if his name is not on the ballot. If the challenger acts dilatorily and does not move quickly with the court action, then you are right. The jurisdiction will transfer itself to this house, and the house will make the determination. The resolution is on the challenger.[45]

AB 21's legislative history is consistent with the district court's determinations. The resolution of this dispute is on Appellant, based on her dilatory challenge relative to the statutory deadline for finalizing the ballot, not the Secretary. It was incumbent on Appellant to bring the challenge as soon as possible.

D. The Nevada Legislature had Reason to Treat Finalizing Mail Ballots Different than Polling Places for Purposes of Disqualification

The Legislature has set forth the available relief for the situation Appellant alleges here and specifically precludes removing disqualified names from the ballot after this deadline.[46] There is no reason to believe, notwithstanding Appellant's speculation, that removing disqualified names from mail ballots should be treated

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[44] *Id.*

[45] SOS047 (emphasis added).

[46] NRS 293.2045(1)(a).

differently.[47] Particularly where the Legislature makes "[a]ny untimely legal action which would prevent the mail ballot from being distributed to any voter pursuant to this section" "moot and of no effect."[48]

Counties need sufficient time with their mail ballot vendors to print and mail such mail ballots to all Nevada active registered voters. The existing statutory deadline for finalizing ballots may be more important for mail ballots than in-person voting, based on the need to finalize and send mail ballots. Under such circumstances, where having a final ballot is most important, the Legislature was silent on taking a sign requirement from NRS 293.2045 (which can be applied at the last minute to in-person polling places) and making it apply to mail ballots (which must be final much earlier than printing a sign). That is understandable. Making a challenge after the statutory deadline to finalize the ballot is done at a challenger's peril.[49] Particularly here where Appellant could have made this challenge many months ago.

Under these undisputed circumstances, the district court did not err when concluding that it was "not reasonably likely that [Appellant] will prevail on her request to take Kennedy's name off the ballot, or in the alternative, to include a

[47] OB at 11.

[48] NRS 293.269911(7).

[49] *Id.*

notice of Kennedy's disqualification with the mail ballots because of her extremely late filing of her preelection candidate qualification challenge."[50]

III. The District Court Correctly Determined that Appellant had not Demonstrated Irreparable Harm, Particularly Given Her Delay

The district court held that the "irreparable harm factor is also affected by the fact that [Appellant] filed her preelection candidate qualification challenge 105 days after the statutory deadline, and 4 days after the deadline to change the general election ballot."[51] This finding was not erroneous, as delay seeking injunctive relief implies that any purported harm is not irreparable.[52]

"A timely challenge by [Appellant] could have avoided the present scenario."[53] "Laches is an equitable doctrine which may be invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable.'"[54] Here, Appellant inexcusably delayed bringing her challenge, prejudicing others.[55]

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[50] SC0082-0083 (Order at 6:24-7:2).

[51] SC0082 (Order at 6:6-8).

[52] *See Oakland Tribune, Inc v. Chronicle Pub'g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) ("Plaintiff's long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm."); *Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015); *Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (finding a 44-day delay in seeking injunctive relief to be "inexcusable").That reason alone justifies denying the TRO application.

[53] SC0082 (Order at 6:8-9).

[54] *Miller v. Burk*, 124 Nev. 579, 598, 188 P.3d 1112, 1125 (2008).

[55] *Id.*

Under such circumstances, the district court did not err when concluding that Appellant "has not shown, under any standard of proof, that the commission of some act, during the litigation, would produce great or irreparable injury to her."[56] Particularly where Appellant "has not shown, under any standard of proof, that having Kennedy's name on the ballot will negatively affect the outcome of her attorney general race, the allegation is speculation."[57]

IV. The District Court Correctly Determined that the Balance of Equities and the Public Interest Favored the Secretary, Given Appellant's Undue Delay

Nevada courts may decline to order injunctive relief due to the potential hardship on each party and considerations of the public interest.[58]

When weighing the public interest, this court must consider Appellant's own inaction when determining whether extraordinary relief at great logistical expense and cost is warranted. Here, basic due diligence by Appellant to bring a timely complaint would have prevented her asserted harm. Instead, without statutory support, Appellant claims it is the Secretary's job to investigate every candidate that already averred their candidacies are truthful and valid, even under threat of a potential gross misdemeanor.

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[56] SC0083 (Order at 7:22-24).

[57] SC0082 (Order at 6:3-5).

[58] *Univ. & Cmty. Coll. Sys*, 120 Nev. at 721 (2004).

Weighed against Appellant's harm is the definite and certain harm to Nevadans resulting from reformulating and reprinting ballots approved as to form more than one month ago.[59] The Secretary estimated that reformulating and reprinting ballots would cost approximately $2.7 million.[60] The Secretary estimated that sending a postcard to active registered voters would cost $330,000.[61] Upon request from the district court, the Secretary determined that it would cost more than $200,000 for certain counties to add a print insert on Kennedy's disqualification to mail ballots, while not receiving information from other counties that it would be possible to do so at any cost at that time.[62]

The Legislature weighed this exact balance of harms between a candidate running against someone unqualified versus the Secretary's logistical time and costs when delineating relief available 1) before the ballot deadline and 2) after the ballot deadline. No good cause exists for undoing this weighing of the public interest here.

V. Appellant's Remaining Evidentiary Arguments are Unavailing

Appellant makes arguments pertaining to purported reliance on hearsay.[63] This ignores Appellant's burden to demonstrate that she was entitled to the

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[59] SC0055-0056.

[60] *Id.*

[61] *Id.*

[62] SC0066 at ¶¶ 7-11.

[63] OB at 18.

extraordinary remedy of a mandatory injunction.[64] Had the Secretary not provided evidence of the costs and logistics associated with Appellant's proposals, there would have been no evidence whatsoever upon which a court could determine whether or how to issue injunctive relief. No proof was provided by Appellant to contradict the evidence proffered by the Secretary, only speculative argument.[65]

Further, the information provided by the Secretary was not hearsay. The Secretary regularly communicates with county election officials and their vendors to administer the State's elections. For instance, the Secretary does not print mail ballots for delivery to active Nevada registered voters; counties do so through vendors of their choice.[66] Similarly, Deputy Secretary Wlaschin issued two declarations to the district court based on these communications. The first identified the costs of reprinting mail ballots and for mailing a separate postcard to all Nevada registered voters.[67] Following questioning from the district court, Deputy Secretary Wlaschin provided additional information on the timing and costs for inserting an

[64] *Winter*, 555 U.S. at 22 (2008).

[65] Similarly, Appellant misdirects her evidentiary burden to the Secretary when arguing that the Secretary had to disprove that mail ballots had already been printed. OB at 7, 18. Appellant had the opportunity to develop a fact record through an evidentiary hearing with the district court, but instead chose this appeal. SC0084 (Order at 8:7-10).

[66] SC0066 at ¶ 4.

[67] Appellant did not challenge the evidentiary basis of this declaration in its Opening Brief.

additional printed notice of disqualification within all mail ballots. This information would be admissible evidence and not hearsay. [68]

Ironically, it is Appellant who makes numerous unsupported assertions in her opening brief. NRAP 28(e)(1) requires "every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found." "This court need not consider the contentions of an appellant where the appellant's opening brief fails to cite to the record on appeal."[69] "Parties that do not comply with the rules concerning briefs and appendices risk sanctions, including having their appeal dismissed for non-compliance rather than considered on the merits."[70] Two unsupported statements reiterated repeatedly without record support by Appellant warrant brief review.

First, Appellant argues that Kennedy informed the Secretary's office that he was not an attorney when he completed his declaration of candidacy.[71] No admissible evidence from the record supports this argument. Specifically, only one citation for this assertion was provided on pages 14-15 of the brief, based on an email

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[68] NRS 51.135.

[69] *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993).

[70] *Huckabay Props., Inc. v. NC Auto Parts, LLC,* 130 Nev. Adv. Op. 23, 322 P.3d 429, 434–35 (2014).

[71] OB at 3-4, 9-10, 14-16, 19.

from Kennedy to the Secretary's office after Appellant had sued him.[72] Appellant, among other things, demanded a criminal "referral to the Carson City District Attorney office [against Kennedy] for knowingly and willfully filing a Declaration of Candidacy containing a false statement" before Kennedy sent his email.[73] Kennedy did not testify before the district court and he did not complete an affidavit or declaration under penalty of perjury for this case. The Kennedy email's statements regarding his communications with the Secretary's office are inadmissible hearsay.[74]

Second, Appellant argues that Kennedy said there were outdated notices regarding the eligibility requirements for the office of Attorney General.[75] No admissible evidence from the record supports this argument. The sole citation provided for this assertion is a link to a newspaper article after Appellant had sued him and after the district court's order.[76] The newspaper article is hearsay within hearsay, as even an email from Kennedy to that basis would be hearsay.[77]

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[72] The Secretary conducted an initial investigation of this allegation and noted its disagreement with Kennedy's assertions to the district court. SC0046; SC0055. However, no party requested an evidentiary hearing to present admissible evidence on this issue and the Secretary submits that none was necessary for the district court to reach the conclusions within its order.

[73] SC0009 (Complaint at 8:20-21).

[74] To the extent Kennedy admits within the email that he is not qualified for the office of Attorney General, that is a party admission and not hearsay. NRS 51.035(3)(a).

[75] OB at 3-5, 9-11, 14, 16.

[76] OB at 3 n.3.

[77] NRS 51.067.

The lack of record citations further warrants denial of this appeal.

CONCLUSION

The district court did not err when denying Appellant injunctive relief. This court should affirm the district court's order.

Dated this 26th day of September, 2022.

AARON D. FORD
Attorney General

By: /s/ *Craig Newby*
Craig A. Newby (Bar No. 8591)
Deputy Solicitor General

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 pt. font and Times New Roman; or

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2. I further certify that this brief complies with the page- or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not

frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 26th day of September, 2022.

AARON D. FORD
Attorney General

By: */s/ Craig Newby*
Craig A. Newby (Bar No. 8591)
Deputy Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing RESPONDENT BARBARA CEGAVSKE'S ANSWERING BRIEF in accordance with this Court's electronic filing system and consistent with NEFCR 9 on this 26th day of September, 2022.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

I further certify that any of the participants in the case that are not registered as electronic users will be mailed the foregoing document by First-Class Mail, postage prepaid.

/s/ Lucas Combs
An employee of the
Office of the Attorney General