

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

AMERICAN CIVIL LIBERTIES UNION OF  
NEVADA, a domestic nonprofit corporation; and  
STEVEN BACUS, an individual,

Petitioners,

vs.

THE COUNTY OF NYE, a governmental entity; and  
MARK KAMPF, in his official capacity as interim  
County Clerk,

Respondents.

Case No.: 85507

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**COUNTY OF NYE AND MARK KAMPF'S OPPOSITION TO  
EMERGENCY MOTION FOR CLARIFICATION**

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## **I. INTRODUCTION**

There is an old adage that what isn't said is as important as what is said. Petitioners American Civil Liberties Union of Nevada and Steven Bacus ("ACLU" or "Petitioners") have submitted an emergency motion ("Motion") for this Court to clarify its October 21, 2022 order ("Order"), specifically with respect to whether observers being able to audibly hear the content of individual ballots is in violation of the Order (even though observers sign a certification and inherently do not have access to the totality of vote count results since the hand count is spread across multiple rooms). *See* Order at pg. 1. The ACLU substantiates the need for clarification from this Court via declarations from Mr. Athar Haseebullah ("Mr. Haseebullah") and Mr. César Carvajal ("Mr. Carvajal") ("ACLU Declarations"), who attest that, as observers of Nye County's hand count conducted on October 26, 2022, they were able to audibly hear individual ballots' selections of candidates.<sup>1</sup> Yet what Mr. Haseebullah and Mr. Carvajal don't tell us in their declarations is equally as telling and critical as what they do say.

Critically, at no point in their declarations, nor in Mr. Haseebullah's Twitter post about his observer experience,<sup>2</sup> is there any mention of any election results,

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<sup>1</sup> *See* Petitioner's Appendix, Vol. 2 ("APP") at 0074-0077.

<sup>2</sup> *See* Declaration of Mark Kampf in Support of Opposition to Motion ("Kampf Decl.") at ¶ 6; *see also* Exhibit 3 attached hereto for redacted Twitter post of Mr. Haseebullah; APP 0074-0077. The substantive allegations set forth in the Twitter

such as the frequency of any candidate announced during the hand count. This fact alone indicates that Respondents Nye County and Mr. Kampf's ("Respondents") plan for compliance is working in furtherance of this Court's Order.<sup>3</sup>

Respondents share Petitioners' devotion to ensuring compliance with this Court's Order. Yet what is good for the goose is good for the gander, and what also remains untold in the ACLU Declarations is that on October 26, 2022, an ACLU observer took notes on a piece of paper about the vote count process, potentially in violation of this Court's Order.<sup>4</sup> Worse than that, Mr. Haseebullah – a licensed

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post are irrelevant to this Motion, yet Respondents would observe that disseminating such observations about the vote count process only serve to discourage Nye County residents from voting – ironically one of the chief rationales for making illegal the premature public dissemination of election results.

<sup>3</sup> See Kampf Decl. at ¶ 3; *see also* Exhibit 2 for observer sign in sheet and observer declarations of Mr. Haseebullah and Mr. Carvajal.

<sup>4</sup> See Exhibit 3, in which Mr. Haseebullah tweets that an ACLU associate of his was asked to leave due to taking notes while observing, and actually shows the image of said notes in the tweet (which has been redacted out of potential concerns for violating this Court's Order). This Court's Order mandated that observers certify "they will not prematurely release *any information regarding the vote count process*" prior to the close of the polls (emphasis added). Order at pgs. 6-7.

The fact that the ACLU has potentially violated this Court's Order should in no way be construed as a deficiency with respect to Respondents' proffered plan for compliance with the Order. Ultimately, those want to violate the law will always find a way to do so. For instance, there is nothing prohibiting an individual from completing and dropping a mail ballot in the mail, and then proceeding to vote in person that same day. All a county can do in that situation is require the individual to affirm he/she has not also voted by mail. That is exactly equivalent to what Respondents are doing with respect to the hand count – taking all reasonable

attorney who despite not officially representing the ACLU in the instant legal action, has almost assuredly advised on the legal strategy for the same<sup>5</sup> – brazenly told Mr. Kampf upon his departure that while he was not giving legal advice, it was improper for him to allow notetaking in light of this Court’s Order.<sup>6</sup> This exchange, though not dispositive as to the issue at hand, raises the question of why the ACLU was doing as such (i.e. notetaking) when they believed it was violative of this Court’s Order<sup>7</sup> – calling into question the motives of the ACLU with respect to actually ensuring compliance with this Court’s Order.

Putting aside political stunts and “gotcha” games, Respondents believe that by spreading the hand count among various rooms, a critical fact not before this

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measures available to ensure voters are aware of and committed to compliance with the law.

<sup>5</sup> See, e.g., Exhibit 3, in which Mr. Haseebullah, who affixes the “Esq.” designation to his Twitter name, says that “[o]ur team is assessing for compliance with the Nevada Supreme Court’s order.”

<sup>6</sup> See Kampf. Decl. at ¶ 5. Respondents view Mr. Haseebullah’s comment to Mr. Kampf as a potentially objectionable ex-parte communication outside the presence of Mr. Kampf’s legal counsel.

<sup>7</sup> Whether or not notetaking about the process (and not the vote count/election results) is impermissible in light of this Court’s Order is ultimately not at issue. Respondents do not necessarily concede that notetaking is violative of this Court’s Order, but appreciate the ACLU’s concern, and in light of the ACLU’s interpretation of the Order, is taking measures to prevent observers from taking hand-written notes moving forward.

Court in the prior briefing leading up to the Order,<sup>8</sup> Respondents are ensuring compliance with this Court's Order by not allowing observers to hear election *results*, and instead only allowing them to hear a partial *vote count*. Respondents therefore oppose the ACLU's Motion as moot and unnecessary.

## **II. LEGAL ARGUMENT**

Undoubtedly, this Court's Order expressed concern about the read-aloud element of Respondents' hand count procedures, noting that reading the votes out loud meant observers were "likely to learn election result information" prior to the close of all polls. *See, e.g.* Order at pg. 6. Yet importantly, this Court's Order tacitly conceded that observers would learn information about the "vote count" which would be permissible so long as said observers signed the requisite certification. *See* Order at pgs. 9-10. The Court did draw the line though and unequivocally barred observers from learning "election results." Order at pg. 10. Thus, the question arises as to what differentiates the "vote count" from "election results."

Merriam-Webster's Dictionary defines "count"<sup>9</sup> as "the action or process of counting," with "counting"<sup>10</sup> defined as "to call aloud" or "include in a tallying,"

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<sup>8</sup> *See* APP 0063 (setting forth Respondents' plans for using 4-6 hand count rooms).

<sup>9</sup> <https://www.merriam-webster.com/dictionary/count> (*see* Entry 2 of 3).

<sup>10</sup> *See id.* (Entry 1 of 3).

among other definitions. Merriam Webster's further defines "result"<sup>11</sup> as "something obtained by calculation or investigation." In this case, that "something" being obtained via calculation is the total, aggregate number of votes counted – i.e. "election results," which importantly are calculated by adding the vote counts from 4 – 6 different hand count rooms operating simultaneously. As such, no single observer could learn election results unless they could simultaneously affix themselves in all of the 4 – 6 different rooms (clearly a physical impossibility). With this framework in mind and structure in place, this Court allowing observers to learn limited information about the vote count (only after executing a certification), inherently allows for observers being able to witness the calling aloud of or tallying of votes in a single room. As such, Respondents are actively complying with this Court's Order and ensuring that observers do not learn election results prematurely.

### **III. CONCLUSION**

Nevada's election laws, enshrined in NRS 293, clearly contemplate there will always be certain individuals, usually poll workers, who will have access to and thus the ability to disseminate election result information prematurely. Hence why the Nevada Legislature criminalized such public dissemination. Respondents respectfully submit that observers, who (1) sign a declaration under the penalty of

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<sup>11</sup> <https://www.merriam-webster.com/dictionary/result> (*see* Entry 2 of 2).

perjury (and in doing so commit themselves to a standard of secrecy equal to or greater than even the poll workers), and (2) can inherently observe the tallying of votes in one of multiple rooms, are not subverting this Court's Order, nor offending Nevada's statutory scheme regarding public dissemination. As such, Respondents respectfully request this Court deny Petitioners' Motion, and allow the voters of Nye County to continue with the lawful hand count authorized by the Secretary of State and supported by its Board of Commissioners.

Dated this 27th day of October, 2022.

MARQUIS AURBACH

By /s/ Brian R. Hardy

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*Attorneys for Respondents County of*

*Nye and Mark Kampf*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **COUNTY OF NYE AND MARK KAMPF'S OPPOSITION TO EMERGENCY MOTION FOR CLARIFICATION** was filed electronically with the Nevada Supreme Court on the 27th day of October, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Sadmira Ramic, Esq.  
Sophia Romero, Esq.  
Christopher Peterson, Esq.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Honorable Kimberly A. Wanker  
District Court Judge, Dept. 1  
Fifth Judicial District Court  
1520 E. Basin Ave., #105  
Pahrump, Nevada 89060

/s/ Leah Dell  
\_\_\_\_\_  
An employee of Marquis Aurbach Coffing



# Exhibit 1

**DECLARATION OF MARK KAMPF IN SUPPORT OF OPPOSITION TO  
PETITIONERS' EMERGENCY MOTION FOR CLARIFICATION PURSUANT TO  
NRAP 27**

Mark Kampf declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am currently the Clerk of Nye County, Nevada.

3. I am informed and thereon believe that Exhibit 2 represents (a) a true and accurate copy of the observer sign-in sheet reflecting the signatures and initials of Mr. Athar Haseebullah and Mr. César Carvajal, and (b) the signed and initialed observer declarations for Mr. Athar Haseebullah and Mr. César Carvajal.

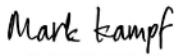
4. I am informed and thereon believe that on October 26, 2022, Mr. Haseebullah and Mr. Carvajal observed Nye County's hand counting processes at one of our facilities.

5. Upon leaving the facility, Mr. Haseebullah informed me that pursuant to the Supreme Court's order I should not be allowing people to take notes about the hand count, but also indicated he was not giving me legal advice.

6. I am further informed of, and have reviewed a tweet from Mr. Haseebullah about his experience observing the hand count on October 26, 2022, a true and accurate copy of which is attached as Exhibit 3 (with only the notepad notes redacted).

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on 10/27/2022

DocuSigned by:  
  
48DFA5FCAD74B1...

Mark Kampf

# Exhibit 2

### OBSERVER DECLARATION

I hereby declare as follows:

1. I am over the age 18 and, pursuant to NRS §53.045, affirm under penalty of perjury under the laws of the State of Nevada that the following is true and correct.

2. I am being afforded the opportunity to observe the processing and counting of ballots and, in doing so, understand acknowledge that under both state and federal law I must adhere to certain standards of conduct and that I do not interfere with, obstruct or otherwise impede the election or its processes including, but not limited to, affirming the following:

CC : I will not release, or cause to be released, any information about the vote count prior to the close of all polls as determined by the Nevada Secretary of State, including but not limited to, any of the names (or frequency thereof) that are read aloud during the hand count process;

CC : I will not collaborate, conspire or coordinate with other observer(s) to develop a cumulative understanding of the vote count and overall election results;

CC : I will not record or tally (whether manually, electronically or through any other means) or actively seek to remember the frequency of any names that are read aloud during the hand count process;

CC : I will not seek to subvert the Nevada Supreme Court's order in Case No. 85507, which bars the public dissemination of election results prior to the close of all polls as determined by the Nevada Secretary of State, including but not limited to, any of the names (or frequency thereof) that are read aloud during the hand count process;

CC : I understand during my observation of the hand count process my image and likeness may be captured by camera (video and audio recording), and hereby irrevocably grant Nye County the right to use any recording containing my image and likeness, and hereby release Nye County from all liability stemming from such recordings or the use thereof.

3. I understand that if I violate or attempt to violate any of the above affirmations or undertake any efforts to interfere with, obstruct or otherwise impede the election or its processes that I may be subject to legal penalties and/or excluded from further observation of the process.

Dated this 26 day of October, 2022

  
\_\_\_\_\_  
Signature

César Carvajal  
\_\_\_\_\_  
Printed Name

### OBSERVER DECLARATION

I hereby declare as follows:

1. I am over the age 18 and, pursuant to NRS §53.045, affirm under penalty of perjury under the laws of the State of Nevada that the following is true and correct.

2. I am being afforded the opportunity to observe the processing and counting of ballots and, in doing so, understand acknowledge that under both state and federal law I must adhere to certain standards of conduct and that I do not interfere with, obstruct or otherwise impede the election or its processes including, but not limited to, affirming the following:

AL : I will not release, or cause to be released, any information about the vote count prior to the close of all polls as determined by the Nevada Secretary of State, including but not limited to, any of the names (or frequency thereof) that are read aloud during the hand count process;

AL : I will not collaborate, conspire or coordinate with other observer(s) to develop a cumulative understanding of the vote count and overall election results;


AL : I will not record or tally (whether manually, electronically or through any other means) or actively seek to remember the frequency of any names that are read aloud during the hand count process;

AL : I will not seek to subvert the Nevada Supreme Court's order in Case No. 85507, which bars the public dissemination of election results prior to the close of all polls as determined by the Nevada Secretary of State, including but not limited to, any of the names (or frequency thereof) that are read aloud during the hand count process;

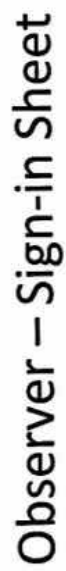
AL : I understand during my observation of the hand count process my image and likeness may be captured by camera (video and audio recording), and hereby irrevocably grant Nye County the right to use any recording containing my image and likeness, and hereby release Nye County from all liability stemming from such recordings or the use thereof.

3. I understand that if I violate or attempt to violate any of the above affirmations or undertake any efforts to interfere with, obstruct or otherwise impede the election or its processes that I may be subject to legal penalties and/or excluded from further observation of the process.

Dated this 15 day of Oct, 2022

  
\_\_\_\_\_  
Signature

Mun Hester  
\_\_\_\_\_  
Printed Name

[illegible]

# Exhibit 3



## Thread



Athar Haseebullah, Esq.

@atharesq



Today, @ACLUNV went to Nye County alongside our partners at @SSV\_NV to observe whether Nye County was in compliance with the Nevada Supreme Court order. What a disaster of a process. Never seen anything like it.

1/7



4:54 PM · Oct 26, 2022 · Twitter for iPhone

27 Retweets   16 Quote Tweets   61 Likes





**Athar Haseebullah, Esq.** @atharesq · 5h

...

Replying to @atharesq

I should have known it would be a weird day when someone walked by me two times with a newspaper article in today's Pahrump Valley Times in her arms turned specifically to the page where my picture was. I'm not intimidated by myself or rogue conspiracy theorists so whatever.

2/7



1

2

15



**Athar Haseebullah, Esq.** @atharesq · 5h

...

We then saw the volunteer hand counters stand to take an oath administered by the election denying interim clerk. The oath ended with "to prevent fraud in any manner in conducting this election." Freaky. Scary. Weird.

3/7

1

4

12





**Athar Haseebullah, Esq.** @atharesq · 5h



After we signed a document saying observers wouldn't record or intentionally try to remember the election results we heard (whatever that means), we entered into separate small rooms where the hand counts began. Notably, the rooms had varying amount of people tallying. 🙄

4/7



1



4



12



**Athar Haseebullah, Esq.** @atharesq · 5h



After hearing ballots read aloud followed by "wait can you repeat that" I saw my @ACLUNV comms associate escorted out of a room by a gun carrying, oath affirming volunteer who accused her of "tallying" and demanding she show her notepad. Just nuts. No ma'am. Not today.

5/7



1



4



15





**Athar Haseebullah, Esq.** @atharesq · 5h

...

I exited my room, advised that volunteer that we don't share notes with the govt, she wasn't in a position to demand anything, etc. After a back and forth, we left. Here's the notes. Notable concern: talliers getting lost and starting over and inconsistencies in results.

6/7



2

5

12



**Athar Haseebullah, Esq.** @atharesq · 5h

...

"Oh shoot" is right. The whole process and execution was sloppy and all over the place, especially with disparate results between talliers and the snail's pace when counting. Our team is assessing for compliance with the Nevada Supreme Court's order.

7/7

1

5

26

