In the
Supreme Court of the State of Nevada

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Clerk of Supreme Court

THE REPUBLICAN NATIONAL COMMITTEE

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT; THE HON. TIMOTHY C. WILLIAMS,

Respondents,

CLARK COUNTY; CLARK COUNTY ELECTIONS DEPARTMENT; JOSEPH P. GLORIA, CLARK COUNTY REGISTRAR OF VOTERS, IN HIS OFFICIAL CAPACITY,

Real Parties in Interest, and

DSCC AND DCCC,

Intervenors-Real Parties in Interest.

Case No.: 85604

Eighth Judicial District Court
Case No.: A858609

Intervenors' Response to Petition for Writ of Mandamus

BRADLEY SCHRAGER, ESQ.
DANIEL BRAVO, ESQ.
WOLF RIFKIN SHAPIRO SCHULMAN & RABKIN, LLP
3773 Howard Hughes Parkway,
Suite 590 South
Las Vegas, Nevada 89169

CHRISTOPHER DODGE, ESQ.
(*Pro Hac Vice*)
ELIAS LAW GROUP LLP
10 G St. NE, Suite 600
Washington, DC 20002

Attorneys for Intervenors-Real Parties in Interest

N.R.A.P. 26.1 DISCLOSURE

Pursuant to Nevada Rule of Appellate Procedure ("N.R.A.P.") 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in N.R.A.P. 26.1(a) that must be disclosed.

DATED this 8th day of November, 2022.

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN. LLP

By: */s/ Bradley S. Schrager*
BRADLEY S. SCHRAGER, ESQ.
DANIEL BRAVO, ESQ.
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169

CHRISTOPHER DODGE, ESQ.
(*pro hac vice*)
ELIAS LAW GROUP LLP
10 G St. NE Suite 600
Washington, DC 20002

Attorneys for Intervenors-Real Parties in Interest

TABLE OF CONTENTS

N.R.A.P. 26.1 DISCLOSURE i

MEMORANDUM OF POINTS AND AUTHORITIES 1

BACKGROUND 4

I. Nevada's statutory process for verifying a voter's signature on a mail ballot 4

II. Clark County's process for verifying mail ballot signatures 6

III. This litigation and the district court's denial of the RNC's application for a writ of mandamus or injunctive relief 10

LEGAL STANDARD 13

ARGUMENT 14

I. The district court properly concluded that temporary employees in the Registrar's office who perform signature verification do not serve on a "board." 14

A. Manual signature verification in Nevada is performed by "employee[s] in the office of the clerk," not a board. 14

B. The Clark County Registrar did not create a "board" under NRS 293B.360. 16

C. Clark County is permitted to hire temporary employees to serve in the Registrar's office. 22

II. The RNC has failed to meet the heavy burden of showing entitlement to mandamus relief on the eve of an election. 24

CONCLUSION 30

CERTIFICATE OF COMPLIANCE 31

TABLE OF AUTHORITIES

Page(s)

Cases

ACLU of Nev. v. Nye County,
No. 85507, 2022 WL 14285458 (Nev. Oct. 21, 2022) 1, 14

Bisch v. Las Vegas Metro Police Dep't,
302 P.3d 1108 (Nev. 2013) 24

Chattah v. Cegavske,
517 P.3d 241, 2022 WL 4597416 (Nev. Sept. 29, 2022).....28

Clark Cnty. v. State, Nev. Indus. Comm'n,
669 P.2d 730 (1983) (per curiam) 22

Floyd v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark,
504 P.3d 1133 (Nev. 2022) 15

Foster v. Washoe County,
964 P.2d 788 (Nev. 1998) 19, 20

Gardner on Behalf of L.G. v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark,
405 P.3d 651 (Nev. 2017) 14, 24

Helfstein v. Eighth Jud. Dist. Ct.,
362 P.3d 91 (Nev. 2015) 14

Howell v. Ricci,
197 P.3d 1044 (Nev. 2008) 13

Lance v. Coffman,
549 U.S. 437 (2007) 25

Law v. Whitmer,
477 P.3d 1124 (Nev. 2020) 7, 28

Law v. Whitmer,
No. 20 OC 00163 1B (Nev. Dist. Ct. Dec. 4, 2020).....7

Merrill v. Milligan,
142 S. Ct. 879 (2022) (Kavanaugh, J., concurring) 27

Mosley v. Nev. Comm'n on Jud. Discipline,
22 P.3d 655 (Nev. 2001) 13

Pan v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark,
88 P.3d 840 (Nev. 2004) 14

Walker v. Second Jud. Dist. Ct. in & for Cnty. of Washoe,
476 P.3d 1194 (2020).....25

Statutes

NRS § 293.269927.....*passim*

NRS § 293.269927(4) 19

NRS § 293B.027 18

NRS § 293B.360 .....*passim*

NRS § 293B.360(2).....13

NRS § 34.160.....13

NRS § 239.011(2) 10

NRS § 288.270(1)(f).....23

NRS § 293.171.....23

NRS § 293.217–.243.....11, 18

NRS § 293.367(2)(c) 16

NRS § 293.383(2) 16

NRS § 293.391(1) 16

NRS § 293.1715.....23

NRS § 293.2175(e*)* 16

NRS § 293.3604(1)(a)(2) 16
NRS § 293.3608(2)(b) 16
NRS § 293.3625 16
NRS § 293.269911 4
NRS § 293.269911(1) 4
NRS § 293.269917(c) 5, 6, 7, 8
NRS § 293.269927 ..... 1, 4, 5, 14
NRS § 293.269927(1) 1, 5, 14
NRS § 293.269927(2) 4
NRS § 293.269927(2)(a) 4
NRS § 293.269927(2)(b) 4
NRS § 293.269927(3) 4
NRS § 293.269927(3)(a) 1, 5, 14
NRS § 293.269927(3)(b) ..... *passim*
NRS § 293.269927(4) 15
NRS § 293.269927(5) 5, 15
NRS § 293.269927(7)(c) 15
NRS § 293B.027 18
NRS § 293B.360 2
NRS § 293B.360(1) 12, 18
NRS § 293B.360(1)(b) 17
NRS § 293B.360(1)(e) 17

NRS § 293B.360(2).....12
NRS § 293B.365.....18
NRS § 293B.370.....18
NRS § 293B.370(2).....17
NRS § 293B.375.....18
NRS § 293B.380.....18

MEMORANDUM OF POINTS AND AUTHORITIES

Mere days before the November 8 midterm elections, the Republican National Committee ("RNC") asks this Court for extraordinary and unprecedented relief—to commandeer the Clark County Registrar's supervision of his own employees and force the Registrar to hire, train, and schedule Republican employees to perform mail ballot signature review. *See* Pet. at 33. The RNC's demand badly misconstrues the relevant statutory law, and the district court properly denied its request below. Without even waiting for that court to enter a formal order, the RNC presents the same flawed arguments to this Court, seeking to inject partisan chaos into Clark County's signature review process that has been underway now for over two weeks. The Court should decline the RNC's eleventh hour attempt to disrupt a statutory regime it has known about for years.

Nevada law is clear about who performs mail ballot signature review. NRS 293.269927 prescribes the "[d]uties of [the] county clerk upon return of mail ballot[s]" including "[p]rocedure[s] for checking signatures" on mail ballot return envelopes. As this Court just recognized, this provision "govern[s] signature verification" for mail ballots. *ACLU of Nev. v. Nye County*, No. 85507, 2022 WL 14285458, at *4 (Nev. Oct. 21, 2022). And it makes abundantly clear that "*the clerk or an employee in the office of the clerk* shall check the signature used for the mail ballot." NRS § 293.269927(1) (emphasis added); *see also id.* §

293.269927(3)(a) (explaining "[t]he clerk or employee shall check the signature used for the mail ballot"); *id.* § 293.269927(3)(b) (assigning task to "employees in the office of the clerk"). Nothing in the provision suggests that the clerk or his employees serve on a "board" or are subject to a partisan balancing requirement. That is unremarkable—these employees do not perform a partisan task; they simply compare signature exemplars on computer screens under rules set forth by the Assembly, without any clue as to the contents of the ballots themselves.

The RNC nonetheless asserts that these employees serve on what it has variously referred to as a "signature verification board," a "mail ballot inspection board," and now a "signature verification entity." Nothing in the record supports that claim. The statute the RNC points to—NRS 293B.360—provides only that a county clerk "*may*" create a "mail ballot inspection board" or "[s]uch additional boards" as he deems necessary, and that such boards must achieve a rough partisan balance of members. But the Clark County Registrar has been clear that he has *not* exercised his discretion to create such a board. (APP0177). The RNC's insistence otherwise is, as the district court found, "a big stretch," particularly since the boards listed in NRS 293B.360 are not mandatory in the first place. (APP0470). Nothing in the record or Nevada law suggests the clerk's employees—who are mostly temporary staff hired from third-party agencies—are board-members subject to a partisan balancing requirement.

Even if the RNC were not badly wrong on the law, their request for extraordinary relief should still be denied. The RNC has put forth *zero* evidence of harm to their candidates or voters based on the partisan affiliation of temporary workers performing signature verification—nothing in the record suggests Democratic, Republican, or non-partisan reviewers are more or less likely to find a match. Further still, the RNC's requested relief—having this Court micromanage the hiring and scheduling of dozens of employees in a county office on the eve of election day—is likely to prove disruptive. Clark County's employees have already been reviewing mail ballot signatures for over *two weeks*; having this Court commandeer that process midstream is likely to upset orderly election administration. The RNC has no excuse for its delay in seeking relief—the Registrar is handling mail ballot signature review the same way he did in the 2020 general election and 2022 primary election—temporarily hiring staff (without regard to partisanship) to help review the deluge of mail ballots Clark County will receive during the election. Despite knowing for years that this is how Clark County handles mail ballot signature review, the RNC waited until the last possible minute to seek relief. Any of these considerations supplies an independent reason to reject the RNC's last-minute effort to install its own hand-picked appointees in the Clark County Registrar's office.

BACKGROUND

I. Nevada's statutory process for verifying a voter's signature on a mail ballot

Nevada permits all registered voters to cast their ballots by mail. *See generally* NRS 293.269911. For each election, "the county clerk shall prepare and distribute to each active registered voter in the county and each person who registers to vote or updates his or her voter registration information not later than the 14 days before the election a mail ballot for every election." *Id.* § 293.269911(1).

When a voter returns a mail ballot to their county clerk's office, "the clerk or an employee in the office of the clerk" is required to check the signature on the envelope. *See generally id.* § 293.269927. This may be done "by electronic means" or "manually." *Id.* § 293.269927(2) (electronic means); *id.* § 293.269927(3) (manually). When performed by electronic means, the county clerk's office must employ an "electronic device" that can "take a digital image of the signature used for the mail ballot and compare the digital image with the signatures of the voter from his or her application to register to vote or application to preregister to vote available in the records of the county clerk." *Id.* § 293.269927(2)(a). "If the electronic device does not match the signature of the voter, the signature shall be reviewed manually[.]" *Id.* § 293.269927(2)(b).

When manually verifying signature the "*clerk or employee* shall check the signature used for the mail ballot against all signatures of the

voter available in the records of the clerk." *Id.* § 293.269927(3)(a) (emphasis added). "*If at least two employees in the office of the clerk* believe there is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter, the clerk shall contact the voter and ask the voter to confirm whether the signature used for the mail ballot belongs to the voter." *Id.* § 293.269927(3)(b) (emphasis added). Once the clerk is satisfied "that the voter is entitled to cast the mail ballot, the clerk shall deposit the mail ballot in the proper ballot box or place the mail ballot, unopened, in a container that must be securely locked or under the control of the clerk at all times." *Id.* § 293.269927(5). Those ballots are then delivered by the clerk "to the mail ballot central counting board to be processed and prepared for counting." *Id.*

Critically for purposes of the RNC's petition, NRS 293.269927(1) is clear that manual signature verification is performed by "the clerk or an employee in the office of the clerk"—***not*** by any "election board" or partisan appointees. Nothing in § 293.269927 imposes any partisan balancing requirement on who the Registrar hires as employees. And contrary to the RNC's repeated suggestion, employees hired to perform signature view do ***not*** "inspect the signature on mail ballots." *See* Pet. at 2; *see also id.* at 24, 26. That claim is doubly wrong—reviewers inspect signatures from the mail ballot *return envelopes*—not the ballots themselves (*see* NRS § 293.269917(c))—and, at least in Clark County, never have direct access to the mail ballots or return envelopes. Instead,

"[t]hey're looking at two computer screens," (I-RPI0023),[1] one of which has an exemplar and the other of which has a digitized version of the signature on a voter's mail ballot envelope. (*See also* APP0220 (explaining employees "reviewed the signature against a reference signature on a computer screen")). At no time do employees know how a voter cast their ballot.

II. Clark County's process for verifying mail ballot signatures

As described above, while county clerks may employ either electronic or manual means to review mail ballot signatures, those ballots that are not found to match by electronic means must then be reviewed manually by the clerk or his employees.

Clark County first performs an electronic review. (APP0069). To do this, the Clark County Registrar uses what is known as an "Agilis Ballot Sorting System." (APP0217–18). In addition to sorting ballots, the Agilis machine has automatic signature verification software that takes a picture of the signature included on a mail ballot return envelope. (*Id.*) It then compares the signature from the envelope to an exemplar found in a voter's registration file and uses an algorithm to "score" the signature.

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[1] Intervenors-Real Parties in Interest DSCC and DCCC attach a supplemental appendix to this response that includes a rough transcript of the November 2 hearing before the district court ("I-RPI"). All other record citations are to the appendix submitted by Petitioner.

(*Id.*) Each user may select a "score" threshold for a signature on a scale of 1–100. (APP0218-19).

During the 2020 elections, Clark County set its Agilis machine "score" threshold at 40. (APP0219, 0274).[2] Scores below that threshold were flagged for manual review. To perform this manual review, permanent employees of the Clark County Registrar were "trained by a forensic signature expert and former FBI agent" and they "developed a training program for *temporary staff* based on this instruction." (APP0220 (emphasis added); *see also* APP0269–270, 0322). If they could not confirm a match, "the signature was passed along for additional review and compared against the voter's entire history of signatures." (APP0220). If still uncertain, the signature was reviewed by the Clark County Registrar of Voters "as a final check." (*Id.*) Voters whose signatures could still not be confirmed were contacted under Nevada's statutory cure process. (*Id.*) Nothing in the record suggests these temporary employees in 2020 served on any sort of "board."

Under this system, "no ballot was rejected for signature mismatch by Clark County without first being reviewed by Clark County *employees*." (APP0220 (emphasis added)). A ballot could only be rejected,

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[2] Much of this record comes from the factual findings of the district court in *Law v. Whitmer*, No. 20 OC 00163 1B (Nev. Dist. Ct. Dec. 4, 2020). The district court's order in that case was affirmed by this Court. *See Law v. Whitmer*, 477 P.3d 1124 (Nev. 2020).

and thus require curing, if "at least two *employees*" agreed the signature on the ballot differed in "multiple, significant and obvious respects" from those available in the voter's registration file. (*Id*. (citing NRS § 293.8874)); *see also* NRS § 293.269927(3)(b) (describing same process).

Because Clark County relied on relatively low-quality comparator signatures from the county's Department of Motor Vehicles, its Agilis machines only verified roughly 30 percent of signatures during the 2020 general election. (APP0220). Accordingly, nearly 70 percent of mail ballot return envelopes submitted in Clark County during the 2020 general election—tens of thousands of ballots—required manual verification by the clerk or clerk's office employees. (*Id.*). The Clark County Registrar made clear during the *Law* litigation that the individuals performing this manual signature verification review were temporary *employees*.

> Q. So 30 percent of these were accepted by the Agilis, and the other 70 percent I think you said were reviewed by hand; right?
>
> A. It's still an automated process as far as the signatures coming across on a computer screen, but there are human beings that are making the matches at that point.
>
> Q. And those human beings *are election personnel that are employed by your department*; correct?
>
> A. *That's correct*.
>
> Q. They received training in how to do that signature verification?

A. Yes, they do.

Q. Who does that training?

A. My permanent staff. We actually have a forensic signature expert that comes into the election department once a year to provide training. Based on that training we're provided by that vendor, *we turn around and develop our own training for the staff that are going to be responsible for making those signature matches*. There's always a *permanent staffer who oversees the work of any of these staffers that are doing the manual signature check*.

(APP0269–70) (emphases added)). While the Clark County Registrar's office had 38 "[p]ermanent employees" at that time, "[d]uring the election cycle [it] ha[s] hundreds of temporary employees that are working in different divisions[.]" (APP0258).

In anticipation of the large volume of mail ballots it is already in the process of reviewing for the 2022 midterm elections, the Clark County Registrar's office has again made temporary hires to assist with signature review. (APP0462). Because these hires are temporary staff in the clerk's office—rather than partisan appointees—the clerk's office did not solicit them from political parties, but instead hired them from third-party staffing agencies without regard to their political affiliation. (*Id.*) The majority of those originally hired—33 out of 64—have no partisan affiliation at all, and the remainder included a mix of both Democrats and Republicans. (APP0157). These temporary hires, if anything, overrepresent *non-partisan voters*, as Clark County has a greater number

of actively registered Democratic voters than non-partisan or Republican voters. (APP0464).

III. This litigation and the district court's denial of the RNC's application for a writ of mandamus or injunctive relief

The RNC filed this lawsuit on September 20, 2022. Its complaint originally raised only a single claim—to compel disclosure of certain documents from Clark County, the Clark County Election Department, and Joseph P. Gloria—the Clark County Registrar for Voters—under Nevada's public records law. (APP0011–12); *see also* NRS § 239.011(2). Nothing in the original complaint mentions signature verification.

Because Clark County complied with the RNC's request and provided it documents on a rolling basis, the parties entered into a stay agreement on October 5, 2022. On October 18, 2022, Clark County provided the RNC with "a tentative breakdown of party affiliation for the manual signature verification room." (APP0157). This breakdown showed that of the 64 temporary employees hired for manual signature verification, 33 happened to be non-partisan observers, along with 23 Democrats and 8 Republicans. *Id*. While the RNC now alleges without proof that the Registrar "hand-selected a group of individuals" and chose to exclude Republicans, Pet. at 3, it previously (and more accurately) acknowledged that the Registrar did not seek out certain employees but instead "simply took what the staffing agency gave him and did nothing more." (APP0071).

The RNC then demanded that the Registrar hire additional Republicans, either by transferring poll workers—who are appointed, rather than hired, under a separate statutory regime (*see* NRS § 293.217–.243)—into the signature verification room, or by simply hiring new Republican appointees off a list of names supplied by the RNC. (APP0166–68). Although the Registrar did not accept either of these demands, it hired an additional six Republican-affiliated signature reviewers. (APP0464). The Registrar also explained that, because not all employees report for work on any given day, the mix of employees present on any given day is inconsistent. For example, on October 31 the signature verification room had 18 non-partisan, 12 Republican, and 10 Democratic workers present. (APP0180).

Nonetheless, apparently dissatisfied with the partisan preferences of these temporary hires, the RNC filed an application for a writ of mandamus or an injunction on October 27, 2022. The application effectively asked the district court to compel the Clark County Registrar to hire more Republican temporary staff. (APP0080).

Because the RNC's requested relief threatened to disrupt orderly election administration in Clark County and prejudice a host of other interests, DSCC and DCCC promptly moved to intervene as Respondents on October 31. (APP0182). Neither the RNC nor the Clark County Registrar opposed the motion, which was granted by the district court. (I-RPI0015).

The district court scheduled a hearing on the RNC's application for November 2. On the eve of the hearing, the RNC purported to serve an amended petition adding a claim for relief under NRS 293B.360(2)). The district court expressed doubt that the RNC had properly amended its petition, (I-RPI0002-4), and inquired why the RNC did not seek relief sooner. (I-RPI0007-8). On the merits, the court highlighted that, under NRS 293B.360(1), the creation of any board other than a "computer program and processing accuracy board" is left to the discretion of the county clerk. (I-RPI0016). Counsel for the RNC acknowledged the creation of any other board was discretionary, which the court found to be the "whole point." (*Id.* at 16:24–17:3).

The next day the district court issued a minute order denying the RNC's application. It found that the Clark County Registrar, "in [his] discretion, never created a board nor appointed the temporary employees as board members." (APP0469). The mere act of "hiring temporary employees" supplied "insufficient evidence" to show the Registrar created a board under NRS 293B.360. (*Id.*). The court instead found that, as temporary employees hired to perform a ministerial function, the workers constituted "employees" as defined in NRS 293.269927. (APP0469–70). It further explained that "the temporary workers' nominal exercise of discretion in performing a job-related task does not rise to the level of decision making typically expected from a board." (APP0470). Accordingly, the court concluded it would be a "big stretch to

classify temporary employees as board members on a board that the County Registrar never created." (*Id.*)

The court's order instructed Clark County to prepare a "detailed Order, Findings of Facts, and Conclusions of Law" based on both the court's minute order and the record. (*Id.*). Before that order could be submitted to the district court, the RNC petitioned for a writ of mandamus from this Court. It asks that this Court "issue a writ of mandamus directing the district court to lift the stay and order the Clark County Registrar to comply with NRS 293B.360(2) by hiring and scheduling an equal number of political parties to serve on the signature verification board, including Republicans." Pet. at 33.

LEGAL STANDARD

A writ of mandamus may be issued to "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station." NRS § 34.160. Accordingly, "mandamus will not issue unless the petitioner can show that the respondent 'has a clear, present legal duty to act.'" *Howell v. Ricci*, 197 P.3d 1044, 1049 (Nev. 2008) (quoting *Round Hill Gen. Imp. Dist. v. Newman*, 637 P.2d 534, 536 (Nev. 1981)). Nor will the writ issue "if the petitioner has a plain, speedy and adequate remedy in the ordinary course of law." *Mosley v. Nev. Comm'n on Jud. Discipline*, 22 P.3d 655, 658 (Nev. 2001). "Whether to consider a writ petition is solely within this court's discretion, and the petitioner bears the burden of demonstrating why extraordinary relief is

warranted." *Gardner on Behalf of L.G. v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 405 P.3d 651, 653 (Nev. 2017).

"Because an appeal is ordinarily an adequate remedy, this court generally declines to consider writ petitions challenging interlocutory district court orders." *Helfstein v. Eighth Jud. Dist. Ct.*, 362 P.3d 91, 94 (Nev. 2015). Indeed, "even if an appeal is not immediately available because the challenged order is interlocutory in nature, the fact that the order may ultimately be challenged on appeal from the final judgment generally precludes writ relief." *Pan v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 88 P.3d 840, 841 (Nev. 2004).

ARGUMENT

I. The district court properly concluded that temporary employees in the Registrar's office who perform signature verification do not serve on a "board."

A. Manual signature verification in Nevada is performed by "employee[s] in the office of the clerk," not a board.

NRS 293.269927 describes the "[d]uties of [the] county clerk upon return of mail ballot[s]" and the "[p]rocedure for checking signatures" on mail ballot return envelopes. *See* NRS § 293.269927 (title). As this Court recently explained, the provision "govern[s] signature verification" for mail ballots. *ACLU of Nev.*, 2022 WL 14285458, at *4.

In three separate instances, NRS 293.269927 makes clear that signature verification is performed by "the clerk or an employee in the office of the clerk." NRS § 293.269927(1); *see also id.* § 293.269927(3)(a),

(b) (similar). The provision makes no mention of a "signature verification board," a "mail ballot inspection board," or a "signature verification entity." Nothing in the provision even suggests employees in the office of the clerk who perform signature verification serve on a board are subject to a partisan balancing requirement.

That conclusion is reinforced by the fact that NRS 293.269927 separately refers to a "mail ballot central counting board" responsible for tallying ballots. *See id.* § 293.269927(5), (7)(c). That reference makes clear that, when drafting NRS 293.269927, the Assembly knew how to refer to a board if it so desired but elected not to do so as to any so-called "signature verification board" or the like. *Cf. Floyd v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 504 P.3d 1133 (Nev. 2022) ("[W]hen [the Legislature] includes particular language in one section of a statute but omits it in another—let alone in the very next provision—this Court presumes that [the Legislature] intended a difference in meaning.") (quoting *Loughrin v. United States,* 573 U.S. 351, 358 (2014)).

There is also no reason workers in the clerk's office *should* be subject to a partisan balancing requirement. Their work, while important, is non-partisan and ministerial. NRS 293.269927(4) sets forth legislatively-prescribed rules for verifying signatures that limit the discretion of reviewers. Reviewers have no idea how any given voter is registered or cast their ballot—their task is limited to briefly "looking at two computer screens," (I-RPI0023), to compare a signature exemplar

and a digitized scan of the voter's signature on the mail ballot return envelope. The Registrar has followed this same approach—hiring temporary staff without regard to partisan affiliation to assist with the flood of mail ballots around election time—in both the 2020 general election and 2022 primary elections, all without complaint from the RNC.

B. The Clark County Registrar did not create a "board" under NRS 293B.360.

The RNC's belated effort to have these temporary workers deemed a "board" tries to hammer a square peg into a round hole. The RNC insists the Registrar created a "signature verification board" under NRS 293B.360, but that subsection—indeed chapter 293B as a whole—does not once use the term "signature," never mind "signature verification board" or "signature verification entity." Nor does NRS 293.269927 ever cross-reference NRS 293B.360 or anything else in chapter 293B. If the Assembly had intended the "employees" described to in NRS 293.269927 to constitute a "board" under a separate statutory chapter, it would have said so expressly. Indeed, a myriad of other subsections of NRS 293 *do* expressly cross-reference chapter 293B.[3] NRS 293.269927 does not.

Moreover, the discretionary nature of the Registrar's authority to create a "board" under NRS 293B.360 is incompatible the Registrar's mandatory duty to verify signatures in accordance with NRS 293.269927.

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[3] *See e.g.*, NRS § 293.2175(e*); see also id.* §§ 293.3604(1)(a)(2), 293.3608(2)(b), 293.3625, 293.367(2)(c), 293.383(2), 293.391(1).

NRS 293B.360 provides that the Registrar "*may*" create certain boards, including a "mail ballot inspection board" or "[s]uch additional boards" as the Registrar "deems necessary for the expeditious processing of ballots." *Id.* § 293B.360(1)(b), (e) (emphasis added). The RNC's counsel conceded below that the creation of these boards is left to the discretion of the Registrar. (I-RPI0016-17). And the Registrar has unambiguously stated that he did not create any such board here. (APP0177). As the district court found, "it is a big stretch to classify temporary employees as board members on a board that the Country Registrar never created." (APP0470). Indeed, it makes little sense to believe that the employees described in NRS 293.269927—who perform a statutorily-mandated signature verification process in *every* election—are necessarily members of a board that need not even exist in the first place. That is confirmed by the fact that the Registrar is doing the same thing he has done in prior elections—hire temporary staff, without regard to partisanship, to help process a surge of mail ballots. (APP0258, 269–270).[4]

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[4] Even if the Registrar *had* created a "mail ballot inspection board," there is no reason to conclude the board's duties would include the signature verification process assigned to the clerk and his employees under NRS 293.269927. Counsel for the RNC conceded below that the "mail ballot inspection board" replaced what was previously known as an "absent ballot mailing precinct inspection board." (I-RPI0016). That board's duties included "bundl[ing] the empty absent and mailing ballot return envelopes according to ballot type or precinct and deliver[ing] the bundles to the county clerk." NRS § 293B.370(2). Neither its duties—nor

The RNC is therefore left with the baseless argument that the Registrar has created a *de facto* "election board" without calling it such. *See* Pet. at 25–28. But the RNC's support for this claim is thin. For example, the RNC contends that because the temporary employees "assist" the Registrar, they are an "election board" under NRS 293B.027. But the Registrar's permanent employees also "assist" him in his election-related duties without serving on any board, (APP0258, 269–270), and there is no reason temporary employees should be any different. Moreover, the election board members governed by NRS 293B.027 are "appointed"—a process governed by specific statutory provisions. *See* NRS 293.217–.243. In contrast, as the RNC's counsel repeatedly acknowledged at the hearing, the temporary employees here are merely "hired," as they have been in elections past. (*E.g.*, I-RPI0013, 18-19, 21, 38, 44).

The RNC also claims that the employees' task—manually comparing signature exemplars on computer screens—is sufficiently discretionary and non-ministerial to warrant deeming them members of

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the duties of any other board described in NRS 293B.360—involve signature verification. *See id.* § 293B.365 (duties of central ballot inspection board); *id.* § 293B.370 (duties of absent ballot mailing precinct inspection board); *id.* § 293B.375 (duties of ballot duplicating board); *id.* § 293B.380 (duties of ballot processing and packaging board). Instead, all those boards have duties related to the actual "processing and computing of votes," *id.* § 293B.360(1), rather than predicate acts like signature verification.

a "board." *See* Pet. at 26–27. That argument is irrelevant—the Assembly drafted NRS 293.269927 to refer to these workers as "employee[s] in the office of the clerk," even though it demonstrated in the same provision that it knew how to reference a board if it so desired. Nothing about the scope of these employees' responsibilities can transmogrify them into a "board" under an entirely separate statute that makes no mention of signature verification or NRS 293.269927.

The RNC's argument is wrong anyway. While signature verification is important, those who perform it in Nevada are not "[a] group of persons having managerial, supervisory, or advisory powers." Black's Law Dictionary (11th ed. 2019) (defining "Board"); *see also* APP0470. The Assembly has set forth clear rules and standards for signature verification, and the temporary staff's task is simply to execute them faithfully. *See* NRS 293.269927(4). As the district court analogized, a worker at the DMV has the nominal discretion "whether or not to accept your application" for a license but must adhere to clearly prescribed rules in doing so. (I-RPI0036). Such employees do not automatically rise to the level of a "board.". *Id.*[5]

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[5] The RNC's cited case—*Foster v. Washoe County*—proves the point. That case concerned a lawsuit against a social services agency that allegedly failed to conduct a diligent investigation into child abuse. *See* 964 P.2d 788, 792 (Nev. 1998). This Court found that the suit could not proceed because the agency had immunity for discretionary, non-ministerial acts, and "the conduct of an investigation itself involves

The RNC's last desperate gambit is to play word games. Contrary to its claim (at 27), the record shows no party except the RNC has ever referred to the signature reviewers hired by Clark County as a "board." For its part, Clark County in its correspondence has referred to "the manual ballot signature verification process" (APP0022); the "signature verification team" (APP0152); and the "manual signature verification room" (APP0154, APP0157). That is similar to how the Clark County Registrar referred to these temporary hires in 2020 as well. (APP0258, APP0269–70). The RNC points to a single instance where Clark County used the phrase "manual signature verification and counting board teams." Pet. at 27 (citing APP0058). The use of the plural "teams" makes clear this language refers to a "manual signature verification *team*" and a separate "counting board *team*." That is consistent not only with how Clark County referred to the signature verification team in every other instance, but also with the fact that the "counting board" is referenced *dozens* of times in NRS 293, whereas the so-called "signature verification board" is referenced nowhere in Nevada law at all.

In fact, it is the RNC that has changed its tune over the course of this litigation. Prior to late October, the RNC did not *once* use the term

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numerous decisions on possible approaches" that render it "inherently discretionary." *Id.* But investigating child abuse, which "clearly implicates a discretionary function," *id.*, is a far cry from the rote act of briefly comparing two signatures on computer screens under legislatively drafted rules and standards.

"signature verification board" in its public records request or extensive correspondence with Clark County. The first use of the term "signature verification board" in the record is in an October 25 letter from the RNC to Clark County sent mere days before the RNC's request for mandamus relief. (APP0166). Prior to that, the RNC consistently referred to these individual as "employees" and recognized that signature verification is governed by NRS 293.269927. (APP0016–19; APP0160–163). Indeed, its public record request sought "[t]he names and political party identification of *each employee* . . . involved in the electronic and/or manual signature review of mail ballots including, but not limited to, those referenced in NRS 293.269927." (APP0018 (emphasis added)). These same requests—which focused extensively on the signature verification process in NRS 293.269927 (APP0016–17)—make no mention of a "signature verification board." Only when the RNC decided to seek mandamus relief in late October did it coin the phrase "signature review board." Tellingly, after making a dozen public records requests specifically about the signature verification process in NRS 293.269927, the RNC's argument for mandamus relief to the district court suddenly omitted *any* reference to the provision. (APP0075–80). The RNC's flimsy wordsmithing reinforces that the district court properly concluded the Registrar did not exercise its discretion to create a "board" under NRS 293B.360.

C. Clark County is permitted to hire temporary employees to serve in the Registrar's office.

The RNC's final merits argument is that temporary workers do not qualify as a "employee[s] in the clerk's office" under NRS 293.269927. *See* Pet. at 28–31. It is not clear why this matters—even if the RNC is correct (and it is not), it would not impose any duty on Clark County to hire more Republican-affiliated employees. It would instead just impose a burdensome requirement on Clark County to hire dozens of permanent employees—without regard to partisanship—for the seasonal task of reviewing mail ballots. Nothing about the RNC's argument about the term "employee" as used in NRS 293.269927 changes the fact that the provision does not contain any partisan balancing requirement.

The RNC's argument is nonsensical regardless. The Clark County Code permits the county to hire a "temporary employee" to "fill a position in the noncompetitive service not to exceed six months." CCC 2.40.010(p); *see also* (APP0469). This Court has made clear in other contexts that such "temporary employees" are "employees" for purposes of Nevada's election and labor laws. *See Clark Cnty. v. State, Nev. Indus. Comm'n*, 669 P.2d 730, 731 (1983) (per curiam) (affirming that "temporary election workers hired by [Clark] [C]ounty are 'employees' of the county" and thus subject to various employment laws). While the RNC stresses that temporary employees are not entitled to certain benefits under the Clark County Code, *see* Pet. at 30, it is not clear at all why that matters—nothing in

NRS 293.269927 says "employee[s] in the office of the clerk" only qualify as "employees" if they receive certain full-time benefits. Clark County's characterization of these temporary employees as "Temp Agency" hires is consistent with the text of NRS 293.269927. (APP0462).

Grasping at straws, the RNC scaremongers about the prospect of a wayward county clerk "stuff[ing] a signature verification 'group' with members of a single party selected from his or her own staff." Pet. at 29. But that far-fetched scenario is not what happened. The RNC conceded below that the Registrar simply "took what the staffing agenc[ies]" gave him, (APP0071), and did not "stuff" the signature verification room. Most of the temporary employees provided by those agencies are *non-partisan,* with both major political parties represented among the remainder.[6] Nothing in the record justifies the extraordinary relief the RNC demands, baseless hypotheticals aside.

Finally, the RNC's half-baked suggestion that the Registrar create a "board" staffed with *employees* balanced along partisan lines is not helpful to its cause. *See* Pet. at 29. For the reasons above, that argument misreads both NRS 293.269927 and NRS 293B.360. And it forces the county into a buzzsaw the RNC simply ignores. "NRS 288.270(1)(f)

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[6] The RNC's argument and requested relief simply ignore that two other recognized political parties—the Independent American Party and Libertarian Party of Nevada—exist in Nevada and are entitled to ballot access. *See* NRS §§ 293.171, 293.1715.

provides that discrimination against an employee by a local government employer or the employer's designated representative for 'political or personal reasons or affiliations' constitutes a prohibited practice." *Bisch v. Las Vegas Metro Police Dep't*, 302 P.3d 1108, 1116 (Nev. 2013). The RNC nowhere explains how Clark County may hire dozens of temporary employees every election cycle, screening for their partisan affiliation, without risk of violating Nevada's public employment laws. At a minimum, such a course would invite unnecessary and costly litigation against Clark County. This Court should not set the precedent of requiring public agencies to screen employees for political affiliation, particularly where the Assembly has nowhere mandated such balancing.

II. The RNC has failed to meet the heavy burden of showing entitlement to mandamus relief on the eve of an election.

Mandamus relief is discretionary and the RNC "bears the burden of demonstrating why extraordinary relief is warranted." *Gardner*, 405 P.3d at 653. Because the district court itself possessed discretion to grant relief extraordinary relief, the RNC's "burden to demonstrate a clear legal right to a particular course of action by that court is substantial; [this Court] can issue traditional mandamus only where the lower court has manifestly abused that discretion or acted arbitrarily or

capriciously." *Walker v. Second Jud. Dist. Ct. in & for Cnty. of Washoe*, 476 P.3d 1194, 1196 (2020).

Even setting aside the RNC's misreading of the relevant statutory provisions, mandamus relief is inappropriate for a host of other reasons. To start, the RNC has put forth no credible explanation—never mind record evidence—of irreparable harm. As explained, signature verification is simply not a partisan task—it is an administrative act performed under clear statutory guidelines from the Assembly by workers without any knowledge of the contents of the return envelopes that contain a voter's ballot. Even if the RNC believes its own hand-picked appointees might more vigorously enforce signature verification requirements—and thus, speculatively, improve the electoral prospects of Republicans by forcing additional voters to cure their ballots—it has not plainly said as much, nor substantiated that claim with evidence. The only rationale it puts forward is that elections must "be held in compliance with the law." Pet. at 31. But a bare desire to see the law properly applied is ordinarily not even enough to supply *standing*, never mind *irreparable harm* warranting extraordinary relief. *Cf. Lance v. Coffman*, 549 U.S. 437, 442, (2007) (explaining the mere allegation that the law "has not been followed" is "precisely the kind of undifferentiated, generalized grievance about the conduct of government" that fails to supply standing under Article III).

The RNC's meager assertion of harm also ignores the record. After it complained to the Registrar about the temporary employees hired to perform signature verification, the Registrar (unnecessarily) hired six additional Republican-affiliated workers. (APP0464). On some days there are now more Republican-affiliated reviewers than Democratic ones in the signature verification room, and the largest share remain non-partisan in any event. (APP0180). The RNC offers no cogent explanation of how it is suffering irreparable harm under these circumstances.

The extreme relief sought by the RNC, and its belated effort in requesting it, also renders its mandamus request inappropriate. Signature verification has been happening in Clark County since at least October 23. (I-RPI0033). Yet now—on the eve of election day—it asks this Court to commandeer the Registrar's office to ensure it "hir[es] and schedule[s]" particular individuals to serve on a fictitious "signature verification board." Pet. at 33. That relief is unreasonable for several reasons.

First, requiring the Registrar to hire and schedule new workers well into the signature verification process is likely to prove disruptive. Counsel for the RNC insisted at the hearing below that he was "not trying to dictate or micromanage how" the Registrar "runs an election." (I-RPI0020; *see also* I-RPI0043). But that is precisely the relief the RNC asks this Court to order. Not only does it want this Court to usurp the Registrar's discretion to create a so-called "signature verification board"

alien to Nevada law, but it also now asks the Court to supervise the *scheduling* of various temporary employees in the clerk's office. That is not appropriate relief at this stage: "When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring). The RNC may not swoop in days before an election and demand that Clark County rejigger its election process by judicial fiat to include a "signature verification board" that exists nowhere in law. Such last minute "judicial tinkering" invites unanticipated confusion and disruption that harms the public's interest in fair and well-administered elections. *Id.*

The RNC's requested relief is even more likely to prove disruptive because it seeks to place its own hand-picked, partisan appointees into a signature verification room staffed primarily by people who were not hired on a partisan basis. (APP0071). Introducing an even more partisan contingent into a process the Assembly designed to be non-partisan creates a serious risk of disruption, particularly in view of widespread

attempts at election interference by right-wing partisans this election cycle.[7]

Second, the RNC has no excuse for its belated effort to obtain relief. The process the Registrar is using to verify mail ballot signatures is, for purposes of this petition, the *same* process it followed in November 2020 and June 2022. (APP0258, APP0269–70). The Registrar's processing of mail ballots in 2020 was *extensively* scrutinized in post-election litigation, including a statewide presidential election contest that made its way to this Court. *See Law*, 477 P.3d at 1124. Yet at no time did any Republican candidate or entity, including the RNC, contend that the "temporary staff" hired by the Registrar constituted a "board" under NRS 293B.360. The supposed irreparable harm the RNC faces—and the disruption granting its requested relief would cause—"could have been avoided by a timely challenge." *Chattah v. Cegavske*, 517 P.3d 241, 2022 WL 4597416 (Nev. Sept. 29, 2022) (citing *Oakland Tribute, Inc. v. Chronicle Pub'g Co.*,

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[7] *See, e.g.*, Jennifer Solis, *Clark, Washoe election departments pelted with records requests by election deniers*, Nevada Current (Oct. 26, 2022), https://www.nevadacurrent.com/2022/10/26/clark-washoe-election-departments-peltedwith-records-requests-by-election-deniers/; Jessica Hill, '*Prepare for the worst': Election officials increase security to protect workers from threats*, Las Vegas Review-Journal (Oct. 24, 2022), https://www.reviewjournal.com/news/politics-and-government/nevada/prepare-for-the-worst-election-officials-increase-security-to-protect-workers-from-threats-2663781/; Ned Parker et al., '*Stop the steal' supporters train thousands of U.S. poll observers,*" Reuters (Oct. 13, 2022), https://www.reuters.com/world/us/stop-stealsupporters-train-thousands-us-poll-observers-2022-10-13/.

762 F.2d 1374, 1377 (9th Cir. 1985) (delay in seeking relief "implies a lack of urgency and irreparable harm")). As the district court charitably put it, all of this "should have been done a little earlier." (I-RPI0008).

Finally, the relief sought by the RNC prejudices the DSCC and DCCC, who intervened in this matter to protect their uncontested interest in Nevada's election laws. Changing the rules of the election at the eleventh hour will require DSCC and DCCC to shift resources and staff attention to account for the consequences of new election rules. (APP0192–93). Although the RNC suggests the Democratic committees enjoy some partisan advantage based on the current composition of the signature verification room, that ignores that the temporary employees staffed there *are not partisan volunteers*. They are ordinary people who sought administerial work from temp agencies and happened to be placed in the Registrar's office. If the RNC is permitted to put its own hand-picked appointees into the signature verification room, the DSCC and DCCC will naturally need to divert resources and staff attention at the last possible minute to do the same. That last-minute introduction of partisanship into what the Assembly designed to be a non-partisan exercise serves no one's interest.

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CONCLUSION

For the reasons above, the RNC's petition for a writ of mandamus should be denied.

DATED this 8th day of November, 2022.

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

By: */s/ Bradley S. Schrager*
BRADLEY S. SCHRAGER, ESQ.
DANIEL BRAVO, ESQ.
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169

CHRISTOPHER DODGE, ESQ.
(*pro hac vice*)
ELIAS LAW GROUP LLP
10 G St. NE Suite 600
Washington, DC 20002

Attorneys for Intervenors-Real Parties in Interest

CERTIFICATE OF COMPLIANCE

1. I certify that this Brief complies with the formatting requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P. 32(a)(5) and the type style requirements of N.R.A.P. 32(a)(6) because it has been prepared in a proportionally-spaced typeface, size 14, Century Schoolbook.

2. I further certify that this Brief complies with the type-volume limitations of N.R.A.P. 32(a)(7) because, excluding the parts of the Brief exempted by N.R.A.P. 32(a)(7)(C), it contains 6,883 words.

3. Finally, I hereby certify that I have read this 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 N.R.A.P. 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

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sanctions in the event that the accompanying Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8th day of November, 2022.

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN. LLP

By: */s/ Bradley S. Schrager*
BRADLEY S. SCHRAGER, ESQ.
DANIEL BRAVO, ESQ.
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169

CHRISTOPHER DODGE, ESQ.
(*pro hac vice*)
ELIAS LAW GROUP LLP
10 G St. NE Suite 600
Washington, DC 20002

Attorneys for Intervenors-Real Parties in Interest

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2022, a true and correct copy of the **Intervenors' Response to Petition for Writ of Mandamus** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

By */s/ Dannielle Fresquez*
Dannielle Fresquez, an Employee of
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