

**In the
Supreme Court of the State of Nevada**

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

THE DEMOCRATIC
SENATORIAL CAMPAIGN
COMMITTEE; THE
DEMOCRATIC
CONGRESSIONAL CAMPAIGN
COMMITTEE,

Intervenors-Real
Parties in Interest.

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Case No.: 85604

Eighth Judicial District Court
Case No.: A858609

Intervenors' Appendix

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ALPHABETICAL INDEX TO JOINT APPENDIX

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DATED this 8th day of November, 2022.

**WOLF, RIFKIN, SHAPIRO,
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Bv: /s/ Bradley S. Schrager

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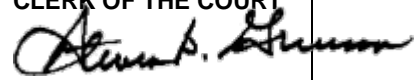
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2022, a true and correct copy of the **Intervenors' Appendix** 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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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 REPUBLICAN NATIONAL
COMMITTEE,

9 Plaintiff,

10 vs.

11 CLARK COUNTY, ET AL.,

12 Defendants.

) CASE#: A-22-858609-W

) DEPT. XVI

13
14 BEFORE THE HONORABLE TIMOTHY C. WILLIAMS
DISTRICT COURT JUDGE
15 WEDNESDAY, NOVEMBER 2, 2022

16 **RECORDER'S TRANSCRIPT OF WRIT OF MANDAMUS HEARING**

17 APPEARANCES:

18 For the Plaintiff: JORDAN T. SMITH, ESQ.

19 For the Defendant: LISA LOGSDON., ESQ.

20 For the Intervenors: BRADLEY S. SCHRAGER, ESQ.
CHRISTOPHER D. DODGE, ESQ.

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25 RECORDED BY: MARIA GARIBAY, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, November 2, 2022

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3 [Case called at 9:24 a.m.]

4 THE COURT: -- of the calendar and that's the Republican
5 National Committee v. Clark County.

6 MR. SMITH: Good morning, Your Honor. Jordan Smith on
7 behalf of the Republican National Committee.

8 THE COURT: Good morning, sir.

9 MS. LOGSDON: Good morning, Lisa Logsdon on behalf of
10 Clark County and Joe Gloria, Clark County Registrar of Voters.

11 THE COURT: Good morning, ma'am.

12 MR. SCHRAGER: Your Honor, good morning. Bradley
13 Schrager on behalf of proposed Intervenor. I'm here with Mr.
14 Christopher Guy of my office and Mr. Chris Dodge of the Elias Law
15 Group.

16 THE COURT: And good morning.

17 MR. SCHRAGER: And to you.

18 THE COURT: Does that count all appearances?

19 MR. SMITH: It does, Your Honor.

20 THE COURT: Okay. All right. Anyway, I've read everything,
21 and my first question is, is this -- how can I hear this matter
22 procedurally?

23 MR. SMITH: Certainly, Your Honor, if I may.

24 THE COURT: Yeah. I mean, because -- I mean, I -- this is --
25 there's two things that have happened. Number 1, we've had a filing of

1 a petition, right, which is rogue document for all practical purposes. But
2 under the rule, you have to -- for supplementation, you have to move.

3 MR. SMITH: No. So, Your Honor, there's been no formal
4 answer filed under Rule 15. There was an opposition to the com -- the
5 application to compel, but if you look at the underlying filing, it's set out
6 just like a petition or a complaint with multiple allegations. There was an
7 opposition on the merits of the motion aspect, but there's been no
8 formal answer to the petition filed, Your Honor.

9 THE COURT: Okay.

10 MR. SMITH: So under rule under Rule 15(b), there's leave to
11 amend as a matter of course. 15(a)(1).

12 THE COURT: Because they brought that up as an issue. Is
13 that correct, ma'am [sic]?

14 MR. SMITH: Sure. They did, Your Honor, but we also
15 addressed it in a footnote of our motion here and I can expand on that.
16 There's nothing that precludes adding substantive claims to a public
17 Records Acts petition. I would point Your Honor to NRS 239, which
18 that's the NPRA, Nevada Public Records Act, 239.011 Subsection 4,
19 which says, "The rights and remedies recognized by this section are in
20 addition to any other rights and remedies that may exist at law."

21 So you can add substantive claims --

22 THE COURT: But you have to file a motion to do that.

23 MR. SMITH: But there's been there's been no formal answer.

24 THE COURT: No. No. That's a different issue.

25 MR. SMITH: Sure. Sure.

1 THE COURT: My point is this. I get that, but that doesn't
2 trump the rules of civil procedure.

3 MR. SMITH: And -- so, Your Honor, you can file -- it's just like
4 a --

5 THE COURT: No, no, no, no. I understand that you can --

6 MR. SMITH: Sure.

7 THE COURT: -- after you file a petition or potentially a
8 complaint, you can freely amend. I get that. I understand the Rules of
9 Civil Procedure.

10 MR. SMITH: Certainly.

11 THE COURT: But a statutory scheme doesn't trump the Rules
12 of Civil Procedure and that's kind of my point.

13 MR. SMITH: No. So let me see if I can address it.

14 THE COURT: And I think your position is, Judge, we can
15 freely amend, based upon the current procedural posture of the case.
16 That --

17 MR. SMITH: Under Rule 15, that's correct.

18 THE COURT: -- that's a different issue.

19 MR. SMITH: So, certainly, Your Honor, I was misspeaking.
20 Under Rule 15, there's been no answer filed --

21 THE COURT: Yeah.

22 MR. SMITH: -- to the original petition, so we can amend
23 under Rule 15(a)(1) as a matter of course without leave.

24 THE COURT: I understand your position. I do. But continue.

25 MR. SMITH: Okay.

1 THE COURT: And if you want to address that?

2 MR. SCHRAGER: Oh. Actually, one or two housekeeping
3 matters before we start, maybe --

4 THE COURT: The motion to intervene?

5 MR. SCHRAGER: The motion to intervene and the pro hac
6 vice, which I need to advance --

7 THE COURT: Okay. All right.

8 MR. SCHRAGER: -- forward.

9 THE COURT: Was there any opposition to the motion to
10 intervene?

11 MR. SMITH: No. We take no -- we take no position on that,
12 so we have no opposition.

13 THE COURT: Okay. Any --

14 MS. LOGSDON: The County has no opposition as well.

15 THE COURT: Okay. That will be granted.

16 MR. SCHRAGER: Thank you, Your Honor. We also filed --
17 and I'm sorry. We filed rather than submitted it yesterday, a pro hac vice
18 motion on behalf of Mr. Dodge. I would make an oral motion to advance
19 that to now so Your Honor may rule on that so that Mr. Dodge may carry
20 out the argument.

21 THE COURT: Okay. But --

22 MR. SMITH: No objection, Your Honor.

23 MS. LOGSDON: No objection.

24 MR. SCHRAGER: I have an order, if you want it.

25 THE COURT: Okay. That's fine. You can hand it to -- all

1 right. Let's hear from the adverse party on that issue. All right.

2 MS. LOGSDON: Well, Your Honor, I mean, I think in our
3 opposition, we don't believe that this is the right mechanism to bring this
4 additional writ. This case was filed as a petition for -- or, I'm sorry, for a
5 petition for public records under NRS 239. The County did answer. We
6 entered into stipulations. We entered into a stay. There doesn't appear
7 to be grounds to lift that stay in order to bring additional claims that are
8 unrelated to the compelling of public records.

9 THE COURT: All right.

10 MR. SMITH: And if Your Honor -- if I may, two additional
11 points to additional points on that. We did enter into a stipulation and
12 stay in this case and that stipulation specifically contemplated staying
13 the action, not dismissing it, so if there's any disputes arising from --
14 related to petition or arising from the documents produced under that
15 petition, we could come into court. So we expressly -- the parties
16 expressly contemplated that if there was a controversy arising from that
17 production, we could come to Your Honor.

18 And again, the point of doing that was -- the election at the
19 time was on the horizon and fastly -- fast approaching. Now it's
20 currently in process. So we think --

21 THE COURT: So what portion of the stipulation should I look
22 at for that? I have that up on here.

23 MR. SMITH: Sure. That would be paragraph 8, Your Honor.
24 I've got a copy if you need it handy. Paragraph 8 says,

25 "Any disputes or disagreements between the parties related

1 to the issues raised in the petition, this stipulation and/or the
2 disclosure of information and documents pursuant to the
3 stipulation order may be resolved by the court on motion
4 practice following good faith meet and confer efforts by the
5 parties."

6 MS. LOGSDON: And Your Honor --

7 THE COURT: Wait. Wait. I've got to -- I don't know if he's
8 done yet.

9 MS. LOGSDON: Okay.

10 MR. SMITH: And so, Your Honor, I think under Rule 15, our
11 pleading is appropriate. If necessary, I'll make an oral motion to amend.
12 The important thing is the election is happening right now. Nobody is
13 served by further delay. The Defendants, both the County and
14 Intervenors have briefed all the issues on the merits. Everyone, I believe,
15 is here ready to discuss it. So I think the amended petition we filed
16 yesterday is appropriate under rule 15(a)(1), but to the extent it's not, I'll
17 make an oral motion.

18 This is a significant issue of public importance that I don't
19 think anybody on the other side would disagree with and it needs a
20 resolution one way or the other sooner rather than later. A delay, kicking
21 this out with the election happening, the signature verification
22 happening right now serves nobody's purposes. So I think our pleading
23 is appropriate. This --

24 THE COURT: I get that, but here's my point. Why didn't we
25 do this earlier? I mean, the elections --

1 MR. SMITH: Sure.

2 THE COURT: -- have been planned for four years, right? And
3 so why should -- why -- I mean, why didn't this happen during the
4 summer or sometime like that? Because you're saying, look, Judge, this
5 has to be done now. Well, it should have been done a little earlier.

6 MR. SMITH: Well --

7 THE COURT: But go ahead.

8 MR. SMITH: Sure.

9 THE COURT: But I'm just telling you that.

10 MR. SMITH: No. No. And I'll address it, Your Honor. I'll go
11 through the timing, and I'll explain to Your Honor why this couldn't have
12 happened any earlier. And it's not from any fault of the RNC or any
13 delay on the RNC's fault. So let me let me take a step back and then and
14 then I'll set the stage. I mean, the --

15 THE COURT: When was the first public record request
16 made?

17 MR. SMITH: August --

18 THE COURT: Okay.

19 MR. SMITH: -- 5th, Your Honor, is when it was made. This
20 information about the signature verification board was not produced by
21 the County until October 19th. So October 19th is when this information
22 was produced by the County. And the RNC, which has been a theme of
23 this, didn't run in, didn't storm into court, didn't go to the press to create
24 a controversy. We spent weeks looking for solutions.

25 THE COURT: But I don't look at it in that regard, because the

1 only reason I bring that up, I would think, and I can't remember ever
2 denying a public information request. And I've always granted those, I
3 think. I can't remember it really any time. There might be a published
4 decision or two about that. And my point is if you would have come to
5 me and said Judge, look, this is public information and we have a right
6 to it, I probably would have granted the motion and that's kind of my
7 point.

8 MR. SMITH: We'll certainly, Your Honor. Let me explain
9 how we got to where we are. So let me set the stage here, okay. The
10 overarching goal here is to enforce Nevada's election laws and to
11 prevent a controversy from hanging over this election. So even though
12 we're going to be here talking about the political party affiliation of
13 certain workers, this shouldn't be a partisan issue or political issue. This
14 involves the straightforward clinical application of the law.

15 And the law imposes an undisputed unequivocal statutory duty
16 on the Registrar to represent all political parties as equally as possible
17 when he uses a mail ballot inspection board or a mail ballot processing
18 board. He prefers to call it something else. He prefers to call it the
19 signature verification board, but that's what this board is, a mail ballot
20 inspection board under 239(b)361(b). That's what this is. And so he's
21 refused to follow that statutory command.

22 But let me set the stage. Your Honor has a concern about
23 timing. Let me explain how we got here and explain all the efforts the
24 RNC took to avoid a controversy. So this saga began back in August
25 with a simple request for government transparency. The RNC served a

1 public records request, asking for information and documents that would
2 confirm whether or not the Registrar was complying with his statutory
3 obligation to hire a representative sample of all poll workers and election
4 board members. After weeks, that request was ultimately denied.
5 RNC --

6 THE COURT: Wait, wait, wait. It wasn't denied by me.

7 MR. SMITH: No. Not by you. Denied by the by the Registrar
8 in Clark County. Not by you, Your Honor. Not yet. We haven't got to
9 you, yet, Your Honor. That request was denied after a period of weeks
10 by the Registrar. Instead of storming into court unnecessarily, we tried
11 to work out a solution, spent multiple days, weeks trying to work out a
12 solution. We said, okay, you don't want to provide that detail of
13 information. Will you provide information about the party registration of
14 poll workers on an aggregate basis? Just tell us how many Democrats,
15 Republicans, nonparty or otherwise you have hired for poll workers.

16 The answer was no. Then they cited security and privacy
17 concerns. And I said, okay, I disagree with those concerns. But if you
18 want, I'll enter into a confidentiality agreement, just like those Your
19 Honor deals with every day in business court. I'll enter into a
20 confidentiality agreement and you can treat that information attorney's
21 eyes only. My clients won't even see it. I'll see it. So it's not about, you
22 know, harassing anybody or scaring anybody. We just want to verify
23 that when you say you've hired X number of Democrats, X number of
24 Republicans, X number of nonpartisans, we can confirm it.

25 I offered to enter into a confidentiality agreement. They

1 refused. So without -- so left with no other option, that's when we filed
2 the underlying petition. And guess what happened the very next day,
3 Your Honor? The very next day, literally in the morning, the very next
4 day, Clark County provided the aggregate number of Democrats,
5 Republicans and nonpartisans they'd hired for poll workers, the same
6 information we were asking --

7 THE COURT: And what day --

8 MR. SMITH: -- for weeks earlier.

9 THE COURT: -- were we talking about again, sir?

10 MR. SMITH: So --

11 THE COURT: The said date they produced it.

12 MR. SMITH: The date they produced that information to us,
13 Your Honor, finally, is -- and this is the initial request. The initial request
14 was ultimately provided. We filed the petition on September 20th, I
15 believe, Your Honor. September 20th. It was provided the next day,
16 September 21st. And this is when they provided the aggregate
17 information of poll workers, Republicans, Democrats and nonpartisan
18 poll workers. September 20th.

19 And because Clark County, after making that production,
20 appeared to be providing the information that we'd been asking for
21 weeks, that's when we entered into the stipulation with Your Honor.
22 That stipulation was October 5th of 2020 [sic]. And you look at
23 paragraph 6 of that stipulation. Clark County agreed in paragraph 6 of
24 that stipulation, to provide us with the political party affiliation of all poll
25 workers, the signature verification board and the counting board. That's

1 what paragraph 6 of the stipulation says.

2 So after they provided the total aggregate poll workers, they
3 agreed they would also provide us with the party registration and
4 political party breakdown of the signature verification board. After
5 entering that stipulation, they did immediately product provide the poll
6 worker information and started providing the counting board
7 information, but they didn't provide the signature verification board
8 information. I had to follow up a number of times to get that. And that
9 signature verification board information wasn't provided to us on an
10 aggregate basis until October 18th, Your Honor.

11 So that's when we got the aggregate number of Republicans,
12 Democrats and nonpartisans on the signature verification board. And
13 that's when we learned that that information was troubling. It was
14 completely lopsided and excluded Republicans. Of the 64 total people
15 on the signature verification board, Your Honor, there were a mere eight
16 Republicans. There were 33 nonpartisans, 23 Democrats. So in other
17 words, four times as many Democrats as Republicans on the signature
18 verification board.

19 And we didn't storm into court. We didn't go to the press.
20 We didn't cause a controversy. We spent days trying to work out a
21 solution to this problem. Having a disproportionate number of parties
22 doesn't comply with the statute. So we offered a number of solutions.
23 We said, Okay, you've hired, you've told us about 400 Republicans as
24 poll workers. They've hired about 600 plus of Democrats, but they've
25 hired 400 plus Republicans.

1 I suggested, why don't you transfer some of those
2 Republicans to the signature verification board to even out the numbers?
3 The answer was no. Then I said, Okay, why don't you hire more
4 Republicans? And in fact, we gave them a list of 250 Republicans we had
5 confirmed we're willing to serve in this position, had applied to be poll
6 workers and hadn't received a response yet. They said no, we're not
7 going to hire anymore. Then I said, well, by statute, other statutes, you
8 have an obligation to have reserve election board officers already hired.
9 Why can't you call up these Republican reserve officers and add them to
10 even out the numbers?

11 And the response again was no. We don't have time to train
12 them, they said. They don't have -- we don't have time. The election is
13 too close. We won't do it. Okay. So we tried these solutions. It ran its
14 course. Then we filed this motion. And again, what happened the very
15 next day, literally the next day after we filed this motion, magically, they
16 found six more Republicans to add to the board.

17 So it's just like our public records request. We filed the
18 petition. The next day, they provide the information. We filed this
19 motion. Now they add six more Republicans the next day. And if you
20 look at Exhibit 10 to our reply brief we filed yesterday, Your Honor, it
21 shows you training was never really an obstacle. They were able to train
22 these people in the morning and they could have started that afternoon
23 or the next day. So training was never actually a legitimate excuse.
24 They just didn't want to follow with what the law said. And now they
25 now they point to the addition of these Republicans, these six people,

1 and they say, well now we satisfied our statutory obligation.

2 And they're trying to get to what they call the rough
3 percentage of political party registration in Clark County. But that's not
4 what NRS 239 -- or 293(b).360 says. 293(b).360 says as equally as
5 possible. So it's not just party registration. And you're not going to hear
6 anybody today claim that the current makeup of the signature
7 verification board comes anywhere close to satisfying to 293(b).360.
8 That requires as equally as possible. And the numbers are woefully
9 lopsided, even with the addition of six. There's -- they're nowhere close
10 to as equally as possible.

11 Instead what they're saying, Your Honor, is 293(b) doesn't
12 even apply. This isn't really a board. 293(b) doesn't apply. It falls under
13 293. But 293(b) and those requirements of equality on a signature
14 verification board, that's the provision that does apply. That's the
15 chapter of the code that applies, Your Honor. And it applies because
16 293(b) governs when you use a mechanical system or device for an
17 election. And Clark County uses a mechanical system and devices for an
18 election.

19 So they want to call this signature verification board
20 something else. They say it's not a board, but it functions like a board,
21 acts like a board and looks like a board under NRS 293(b).360(1)(b). That
22 says a mail ballot inspection board. And you'll note in their brief, the
23 DSCC doesn't talk about that subsection. They completely skip over and
24 ignore the subsection that says a mail ballot inspection board because
25 that's exactly what this is. It's a mail ballot in --

1 THE COURT: And what subsection is that again?

2 MR. SMITH: NRS 293(b).360(1)(b). 1(b), Your Honor. The
3 statute's set out in a block quote --

4 THE COURT: No. I have it right here in front of me. I just
5 wanted to make sure it was --

6 MR. SMITH: Yeah. And it's also on page 15 of our --

7 THE COURT: Yeah.

8 MR. SMITH: -- brief, Your Honor. So let me explain to you
9 why this board by any other name is still a mail ballot inspection board.
10 This is the board of individuals who inspect the signature on a mail
11 ballot and compare it to the signature on file of the voter to determine if
12 they match. And this process, this manual process, happens after the
13 electronic voting machine has already said the signature doesn't match.
14 So the signatures go through the voting machine. If they can't find a
15 match electronically --

16 THE COURT: No, no. I understand how it works.

17 MR. SMITH: Yeah.

18 THE COURT: I do. In fact, they said look, you don't know
19 when you're -- verifying signatures, you don't know what party the
20 person who allegedly submitted a ballot was even a part of or a member
21 of.

22 MR. SMITH: That's right. That the argument that's made,
23 but the reason that this board -- the reason why this legislature -- the
24 legislature required this board to have equal party representation --

25 THE COURT: But what's a board? And the reason why I say

1 that is this -- because it looks here -- I'm looking at the statute and this
2 293(b).360 you're relying upon.

3 And it says, "To facilitate processing and computation of
4 votes cast in any election conducted under the mechanical voting
5 system." And this is the mandatory language. It says, "The County shall
6 create a computer program and processing accuracy board and may
7 create, be, an absent valid mailing precinct inspection board."

8 And so my question is this. Number 1, it appears to me --
9 and you can tell me if I'm wrong. You know you've been in front of me
10 many times. I never -- that never bothers me. But it seems to me,
11 number one, the creation of a absent ballot mailing precinct inspection
12 board is discretionary.

13 MR. SMITH: So Your Honor, I want to make sure --

14 THE COURT: Let --

15 MR. SMITH: -- we're looking at the same version. The
16 absent ballot version was overruled, Your Honor. Or not overruled. It
17 was replaced AB.321. So the current version of the statute says, "A mail
18 ballot inspection board." Now that mail ballots are universal, there's
19 really no such thing as an absent ballot board anymore.

20 THE COURT: Okay.

21 MR. SMITH: So you may be looking at an older version of
22 the statute, Your Honor. The updated version is on -- in block quotes on
23 page 15 of my brief.

24 THE COURT: Is it discretionary or mandatory?

25 MR. SMITH: It says, "And may create," so it is discretionary.

1 THE COURT: Well, that's my whole point.

2 MR. SMITH: Yeah.

3 THE COURT: I mean, that's not the -- that's my question.

4 MR. SMITH: So no one's arguing that he had to make this
5 board. But Clark County Registrar has created this board and they've
6 called it a board. They called it a board in the stipulation in this
7 courtroom, Your Honor. Again, go back to the stipulation from October
8 5th, paragraph six. They called it a signature verification board. In
9 correspondence to me before this issue cropped up, they were calling it
10 a board. They now want to characterize it and call it something else
11 other than a board, anything else other than a board because they realize
12 if it is, in fact, a board, they have a statutory obligation to make the
13 composition of that board as equally -- as equal as possible.

14 So a board -- I mean, a board is a collection of people and
15 that's what this is. It's a collection of 64 plus people who are inspecting
16 the signatures on a mail ballot and comparing it to the signatures on file.
17 And the reasons for having this be a bipartisan board made up of all
18 political parties equally, is a check and balance, Your Honor. It's a check
19 and a balance. Why? Because it ensures by having all political parties
20 represented on this, it ensures that the same standard for verifying
21 signatures applies to everybody.

22 Some individuals, some groups might be predisposed to be
23 too lenient, some may be predisposed to be too stringent. Having a
24 bipartisan board verifying the signatures ensures that the same
25 signature verification standard is applied evenly and fairly to everybody.

1 And the importance of this board is pretty apparent, Your Honor. And I
2 think the best evidence or some of the best evidence of how important
3 this board is, is the fact that my Democratic colleagues have intervened
4 in this case to maintain their disproportionate advantage on this board.
5 They have an unfair advantage by numbers on this board and they've
6 intervened in this case to maintain it.

7 What they're asking this court to do is put its stamp of
8 approval and approve the fact that there are disproportionate fewer
9 Republicans than Democrats. That's why they're intervening here, to
10 maintain their advantage. But that also shows you why the statutory
11 requirement of equality is all the more important and why the legislature
12 imposed it. So this -- they can slap whatever label they want to call on
13 this collection of people. This collection of people functions as a mail
14 ballot inspection board or under 1(e), a board necessary for the
15 expeditious processing of ballots.

16 That's what this board does. A board by any other name is
17 still a board, Your Honor, and playing word games like this, calling a
18 group of people something else to avoid statutory equality requirements
19 doesn't serve anybody and it just allows the Government to skirt
20 statutory requirements. This is a board.

21 And their second point is that, well, these aren't actually --
22 these are employees in the Clerk's office. If you look at 293 -- not 293(b),
23 but 293, it says the people conducting the signature verification process
24 is the Clerk or employees in the Clerk's office, but these aren't
25 employees in the Clerk's office at all, Your Honor. These are third parties

1 hired with a -- by a temp staffing agency. There's no evidence that the
2 staffing agency knew that it should have been hiring representatives of
3 all political parties. The RFP hasn't been provided. There's no evidence
4 that the Registrar did anything after finding out that the pool of people
5 didn't represent all political parties.

6 The Registrar has effectively delegated to an outside,
7 nongovernmental actor, his affirmative duty to find representatives of all
8 political parties. He punted that to an outside entity and then didn't do
9 anything when he was told that it violated the law. There is no evidence
10 that these are employees. The hiring paperwork hasn't been provided.
11 There's no evidence they get any benefits of being a County employee. I
12 doubt they're in PERS [phonetic] or any sort of retirement benefit. And
13 we cite to Your Honor a Clark County code, that's Clark County Code
14 2.40.030, Subsections C(4) and D.

15 And what that Clark County code says is, "Temporary or part
16 time hourly employees shall not be entitled to any of the benefits of
17 employment to which other employees are entitled." So these are
18 outside temp vendors, essentially. They're not employees in the Clerk's
19 Office. And even if we were to consider them employees in the Clerk's
20 Office, you can't create a board under 293(b), staff it with employees,
21 quote, unquote, and avoid the statutory obligation for equal as possible
22 amongst all workers.

23 You can't create a board, call it employees and say, well, we
24 can just chalk this board with all members of one party. The fact that the
25 Clark County Registrar suggesting and my Democratic colleagues are

1 suggesting that you could staff the entire signature verification board
2 with all members of one party is simply shocking and disingenuous.
3 Imagine if the shoe was on the other foot. They'd be in here, making the
4 exact same arguments and saying the statute says there should be
5 equality and that's what we're here asking for. Unlike the Democrats,
6 who've come in to maintain their unfair advantage, the RNC is saying all
7 political parties should have the same seat at the table. They should all
8 have the same opportunity. Their members should have the same
9 opportunity to attend and participate in this board and verify signatures.

10 I also want to highlight, in addition to the fact that in the
11 stipulation, they called it a board, Your Honor. In -- further evidence that
12 these are not actually quote, unquote, employees are their own internal
13 records. We attach it as Exhibit 9 to our reply brief. And this comes
14 from the partisan roster of the signature verification board from the June
15 primary. If you look at Exhibit 9, Exhibit 9 quite clearly distinguishes the
16 temp employees from the Clark County employees. All of them are temp
17 employees. There's one person labeled Clark County employee.

18 So even internally, the Registrar doesn't consider these
19 outside workers to be employees in the Clerk's office. And to be clear,
20 I'm not trying to dictate or micromanage how Mr. Gloria runs an
21 election, but the legislature has dictated to him the composition of these
22 boards. The legislature has told him if you create a body that functions
23 like a mail ballot inspection board or a processing board under 1(e), then
24 under Subsection 2, the members of each board -- or sorry. The
25 members of each board must represent all political parties as equally as

1 possible.

2 That's what the legislature told Mr. Gloria to do. So,
3 however he accomplishes that, that's completely up to him. I'm not
4 telling him how to do that, but there are a number of simple solutions.
5 And we spent days and weeks trying to get him there, short of litigation
6 and short of causing a controversy. We've tried to have them fix it and
7 their response, just like the PRA response was, if you want me to do it,
8 you're going to have to sue me to get more people. Despite the fact that
9 overnight, they managed to magically find six more Republicans to add
10 to this board.

11 And I also get that there are things outside of the Registrar's
12 control. He can schedule people and they can quit. They can no call, no
13 show. They can get sick. That can happen. But what is 100 percent
14 within the Registrar's control is he can hire an equal number of all
15 partisans. He can schedule an equal number of all partisans and he's
16 simply not done that. The County points out, well, that on Monday, the
17 same day, coincidentally, they filed their opposition, now finally, on this
18 board there was one more Republican than a Democrat.

19 But I don't know the breakdown yesterday. I don't know the
20 breakdown today and they're disclaiming any obligation to continue
21 doing it forward, so we don't know what the breakdown is going to be
22 tomorrow. So that's why a writ of mandamus is necessary. This --
23 again, this functions like a board. Whatever label you want to slap on it,
24 it's a group of people who are inspecting ballots under a mechanical
25 voting system. That's what this is and that's why to 293(b).360 directly

1 applies. There's no getting around that and frankly, without an order of
2 this Court there's going to be irreparable harm not only to the RNC, but
3 all voters.

4 Once ballots and signatures are checked under this unlawful
5 board, for practical purposes, that can't be undone. And if this isn't fixed
6 and there's a controversy over this at the end of this election, that also
7 can be undone. So that's what we're asking Your Honor to do. Issue a
8 writ of mandamus or an injunction to fix an easily correctable problem.
9 They claim they've already started to correct it. Just continue it and
10 reach parity as equally as possible as the statute requires. And that's
11 what we're asking Your Honor to do.

12 THE COURT: Okay, thank you. I just had one last question.
13 Does Chapter 293(b) define what a board is?

14 MR. SMITH: I don't believe so, Your Honor. I don't believe
15 so.

16 THE COURT: All right. Thank you, sir. And we'll hear from
17 the County.

18 MS. LOGSDON: Good morning, Your Honor. I think the
19 County's position is a lot more simple. This is one, a discretionary
20 board. Registrar of Voter Gloria has not appointed such discretionary
21 board. And in addition, NRS 293.269927, which was adopted for the new
22 mail ballot processing requiring manual signatures to be verified by the
23 Clerk or the employees of the Clerk. So here that is what Clark County
24 has done. Clark County has hired temporary employees, because we
25 usually have about the staff of about 40 employees that work in the

1 election department.

2 During election time, we hire almost close to 2,000
3 employees to help with the County work its election. And in this matter,
4 the County has used those employees to staff our signature verification
5 room. The RNC's argument that the County has called this a board, you
6 know, I mean, I think that's just playing games with words. I think it's
7 important what does this -- employees do, and they do their duties in
8 accordance with NRS 293.26 -- it's a long one -- 269927, which was
9 enacted by 8321 as part of the mail ballot processing being eligible to all
10 voters in Nevada.

11 In addition to, I think we spelled out in our opposition, there's
12 no harm. These employees are looking at a signature on the screen and
13 the signature in the system. So they look at the signature that's on the
14 mail ballot that's been digitized and they and they check that against all
15 signatures that are in the Clerk's record. It's not a ballot processing of
16 any variety because the ballots are not there. They're looking at two
17 computer screens.

18 And so the County just asked this Court let the Registrar do
19 his duties that he's been doing. In addition, the County has worked
20 continuously with the RNC. And we worked in good faith with them, and
21 we've tried to work on resolutions. I believe their representation of the
22 County's, you know, timing is a little off. And we were working on this
23 issue since the 18th, when they raised the issue that they believe that the
24 representation was not equally as possible, but the County doesn't
25 believe equally as possible is the legal standard.

1 The County did, you know, use its resources and they looked
2 at other Republicans that they already had signed up to work and they
3 re-shifted and brought additional people in to additional training. I think
4 that's evident from the numbers in which I provided in the opposition
5 that we have. It varies day to day, depending on who comes to work and
6 who shows up and the County does the best it can in trying to provide
7 the employees to do the job. And this job is to check the manual
8 signatures and that is what they've been doing.

9 And it's not a partisan job. It's not a job on which the law
10 requires such partisan makeup, which is why to 293(b).380 -- or I'm
11 sorry, 360, does not apply. It is discretionary. And if the Registrar or
12 Voter would have adopted and appointed -- not hired, appointed such
13 members, he would have done so with that statute and meeting the
14 statutory obligation. Thank you.

15 THE COURT: Thank you.

16 MR. DODGE: Good morning, Judge. Christopher D. Dodge
17 on behalf of the Democratic Senate Campaign Committee and the
18 Democratic Congressional Campaign Committee. Thank you for
19 granting my pro hac vice application. I want to start by stepping back on
20 a couple issues, because the RNC used some very strong language to
21 ask for some very extraordinary relief on a very quick basis. You know,
22 you heard that our intervention was motivated by a desire to maintain
23 some quote, unquote, partisan an advantage on some quote, unquote
24 board. I think it's important to step back and recall that Clark County
25 found these employees through a temp agency. The folks who went to

1 that temp agency are normal people.

2 THE COURT: You know what, and here's the thing. And I
3 keep coming back to this. Understand, this is business court, right?
4 That's where you're at. I deal with boards and boards of directors all the
5 time and specifically what they deal with. And you know, terms have
6 meaning, right? And I had my law clerk go and pull the definition of a
7 board. And this is out of Blacks Law dictionary. And it says, quote, "A
8 board," and it says, "A group of persons having managerial, supervisory
9 or advisory powers." Right?

10 And that's important to point out, because, you know, we
11 deal with boards of directors all the time in this courtroom. We do. you
12 know. And many of their duties and responsibilities are dictated by the
13 bylaws and so on. And they're there typically to manage the
14 corporation. And here's my point. And that's why I kept coming back to
15 this. I look at it and it seems to me that a board would be someone that
16 would be over the processes, right, with specific duties and
17 responsibilities.

18 And so I'm try -- it would be like calling the employees of a
19 corporation that are performing certain functions, a board. How can I --
20 is that a board? I mean, I'm looking at it from a very straightforward
21 process, because at the end of the day, you look at the language of the
22 statute and the statute has to have meaning. And it talks about the
23 creation of the special election boards, right? Appointment of members
24 of the board. And I come back to the statutory construction, and I look at
25 it and it's -- and like I said before, I think I got it right here. It says the

1 Clerk may. And then we have a mail ballot inspection board. Right?
2 And so I'm trying to figure out how boards translate into individuals
3 performing a function.

4 MR. DODGE: I think Your Honor got it exactly right and I'd
5 like to make two points on that. One, it's just important to -- well, one,
6 let's go to the statute that actually governs the signature verification
7 process, which we've heard very little about from the Petitioner here
8 today, which is, as my colleague said, a very long statute, 293.269927.
9 That statute, which is titled duties of County Clerk upon return of mail
10 ballot procedure for checking signatures. This is the statute that
11 repeatedly says that the people responsible for doing these signatures
12 are employees.

13 This statute does not refer to a signature verification board,
14 which is a term nowhere in Nevada statute. It doesn't refer to --

15 THE COURT: Well, that's why I asked for is there a definition.
16 I'm just trying to go through the process, right? Like a judge should. Is
17 there a definition in the statute that would guide me? No, there's not.
18 So then I look at, okay, what's a generally accepted definition? That's
19 why I went to Black's Law Dictionary, right. And that gives a definition of
20 what a board is. And so -- and I don't mind saying it again. Remember,
21 you're in business court and we deal with corporate issues all the time
22 and words have meaning. They have -- you know, they're terms of art,
23 right? They do.

24 MR. DODGE: And I think this is the point my colleague from
25 Clark County was making, which is that, you know, the folks who are

1 hired to be put in the signature verification room are not managerial.
2 They're doing something important, but functional. They're comparing
3 signatures on an envelope. They have no idea who the voter is, They
4 have no idea what their registration is. You know, the folks fulfilling this
5 role were not people who went to the Democratic Party or the
6 Republican Party and put their hands up and said, I really want to
7 volunteer in the election.

8 They're people who went to a temp agency looking for
9 administerial work. They had no idea that they were going to the
10 Registrar's Office, presumably. They could just as easily have been in a
11 law firm or an accountant's office, but instead they just -- you know, by
12 luck of the draw or unluck of the draw, were sent into this position to
13 work in the signature verification room. So the idea that there's some
14 sort of like partisan advantage that these people sought out this role to
15 try and give some advantage to one side or the other, they're just normal
16 people who by happenstance ended up and in the signature -- in the
17 Registrar's Office.

18 THE COURT: And here's my question. What's the statute
19 again you cited?

20 MR. DODGE: 293.269927.

21 THE COURT: Okay. I got that right.

22 MR. DODGE: And you know, I think it's worth discussing that
23 statute, because it is, in fact, what the law is here, even though my friend
24 from the RNC tries to run from that statute at every point. The Nevada
25 Supreme Court said just a week ago in the *ACLU v. Nye County* case that

1 293.269927, quote, "Governs signature verification." You know, the RNC
2 doesn't have a response to that. That's what the Supreme Court said like
3 nine days ago. The title of the statute, procedure for checking
4 signatures, and then that statute sets out the procedures for checking
5 signatures. It says who checks the signature. Who checks the signature?
6 The Clerk or employees in the Office of the Clerk, not a board. There's
7 no mention of a board.

8 Until two weeks ago, the RNC agreed that this statute
9 actually governed signature verification. You can look at, you know,
10 paragraphs 20 to 22 of Mr. Smith's declaration, where he points to this
11 statute. You can look at their August 5 letter, which is Exhibit 7 on their
12 application, where they say probably a half dozen times that this statute,
13 26.9927 is the one that actually governs here. The first sentence of that
14 is, "The Clerk or an employee in the Office of the Clerk shall check the
15 signature." So we're dealing with the Clerk or employees of the Clerk,
16 not a board.

17 I think it's also worth noting that that other statute, the
18 26.9927 one does refer to a board. It refers to the counting board. That's
19 where the ballots go after they've been verified by the signature
20 checkers. So the legislature plainly knew how to refer to a board when it
21 wanted to in this statute that governs signature verification. It referred to
22 the counting board, but there's no signature verification board reference,
23 there's no mail ballot inspection board reference or any other board that
24 these employees might be on.

25 You know, I -- I'll really emphasize the point you made, Your

1 Honor, which is entirely correct, which is that the mail ballot inspection
2 board that the RNC is hanging its hat on here is entirely discretionary.
3 So you have two statutes in front of you, Your Honor. One says there's a
4 mandatory verification process done by employees of the Clerk. That
5 has to happen. That's the way the legislature has set out the process for
6 verifying signatures manually.

7 On the other hand, you have a discretionary board that need
8 not even exist. There's no evidence that the Registrar has created it here
9 and so it cannot be the case that this mandatory process set out by
10 293.269927 with these employees, that these people are somehow on a
11 board that need not even exist in the first place. That's simply not
12 possible. If those people were automatically a member of some mail
13 inspection board, the mail inspection board would have to exist as a
14 matter of law. It wouldn't be left to the Registrar's discretion.

15 You know, the RNC tries to play these games by saying that
16 the temp employees are not actually employees, they're officers or, you
17 know, they can't have temporary employees. The Clark County Code,
18 which they rely on a lot in their reply brief, defines temporary employee.
19 It's a 2.40.010P. So the idea that the Registrar can't hire a temporary
20 employee is simply not correct. There's even a Nevada Supreme Court
21 case on this, *Clark County v. State*, where the Supreme Court said that,
22 quote, "Temporary election workers hired by Clark County are
23 employees of the County."

24 So the idea that these temp employees are somehow
25 something greater than a temp employee because -- you know, is not

1 correct, that the Registrar has the authority to hire temp employees
2 under the Clark County Code and those employees, you know, qualify as
3 the employees in the Office of the Clerk as set out in 293.26992.

4 THE COURT: And what's that code provision again? I want
5 to --

6 MR. DODGE: 2.40.010P. And all that says is that there are
7 such a thing as temporary employees in Clark County.

8 THE COURT: And for the record, that's 2.40.010P?

9 MR. DODGE: Correct, Your Honor. So, you know, turning to
10 the statute that the RNC is hanging its hats on, the one in 293(b). The
11 entire chapter of 293(b) does not once refer to signature. It does not use
12 the word, signature, never mind the term, signature verification board,
13 which exists nowhere in Nevada statute. My friend on the other side
14 can't make up what this board -- can't make up his mind about what this
15 board is called. It's either a mail ballot inspection board or signature
16 verification board or board by any other name. It's not a board.

17 These are temporary employees. There's no question that
18 Clark County has the authority to hire temporary employees to do this,
19 you know, important, but functional task of reviewing signatures. It's
20 just not plausible that the legislature intended for these people to be on a
21 board, but in one statute calls them employees and then in the other
22 statute that sets out the rules for boards, never refers back to that
23 original statute governing signature verification, never mentions those
24 employees, never characterizes them as being on a board.

25 I mean that is a -- that would be a very confusing way for the

1 legislature to create a board, by having two parallel statutory chapters
2 that cross-reference each other implicitly, but in no express manner and
3 it's even more implausible, because the 269927 statute in Chapter 293
4 does refer to a board. The legislature knew how to do that, if it wanted
5 to. You know, I think the RNC then sort of has to fall back on these word
6 games, like Clark County did call it a board. That's not true. I mean, you
7 can read the stipulation for yourself.

8 Clark County said -- they referred to a signature verification
9 and counting board teams, so those were referring to teams, a signature
10 verification team and accounting board team. They never called it a
11 board. No one has called it a board except for the RNC.

12 I guess I'll turn to irreparable harm. You know, my colleague
13 from Clark County made this point and I think it's an important one here.
14 It's just not clear to me how the RNC is harmed by the mixture of people
15 who are temporarily hired to do this very functional task of looking at
16 signatures. They haven't set it out. They haven't identified any
17 prejudice to their voters. They haven't identified any prejudice to their
18 candidates.

19 And going back to timing, which was the issue Your Honor
20 led with. I think it's worth noting that the process they're now
21 challenging and the statutory scheme they're now trying to misinterpret
22 is one the Clark County Registrar has applied for several election cycles
23 now. We cited this in our brief and in our exhibits the findings of the
24 District Court in *Law v. Whitmer* in December of 2020 and Mr. Gloria's
25 deposition in that same litigation. He sets out a procedure of Clark

1 County hiring temporary employees to help with the -- you know, the
2 flood of mail ballots they get around election time to help with this
3 manual verification process because it is assigned to the Clerk and his
4 employees.

5 And, you know, nonetheless, here we are, a week before
6 Election Day and they're asking you to essentially let them place people
7 in the Clark County Register's Office, when they know that this is how
8 Clark County conducts its elections for two years. If they had a problem
9 with this process, if they believe this other 293(b) statute actually
10 governed, they didn't complain about it in 2020. They didn't complain
11 about it in the primary. So there's simply no explanation at all as to why
12 we're hearing about this two weeks before Election Day.

13 You know, this isn't like a partisan board that counts ballots
14 where you have readily identifiable partisans on both sides. These are
15 people whose political affiliations we wouldn't even know, but for the
16 RNC, you know, sort of badgering to find out the political affiliation of
17 these people who went to a temp agency to get work doing administerial
18 labor.

19 And I guess, you know, again, my colleague from Clark
20 County said this. All the relief here they're requesting for is entirely
21 discretionary. And the relief they're seeking is really not appropriate. I
22 mean, they're essentially asking you to let them place their own hyper
23 partisans on the -- you know, in the signature verification room. That's
24 likely to prove very disruptive. The County has been reviewing
25 signatures now for weeks. There's only a few days left before the

1 election. They're asking --

2 THE COURT: When did the signature verification process
3 start?

4 MR. DODGE: Well --

5 MS. LOGSDON: It started Sunday, October 23rd.

6 MR. DODGE: Which would have been a few days after
7 ballots first went out to voters, Your Honor.

8 THE COURT: And that was October 23rd?

9 MS. LOGSDON: Yes. On a Sunday.

10 MR. DODGE: The other thing, too, is I think the relief they're
11 asking for here sets a very dangerous precedent, because there's really
12 no way around the fact that these people are employees under the
13 statute. And what they're asking for you to do is to require Clark County
14 to investigate the political affiliation of people it hires as employees, so
15 that it can assess some balance. I mean, do we really want to say the
16 precedent here where Clark County in future elections has to ask a temp
17 employee, well, are you a Democrat or a Republican? Well, sorry, we
18 can't hire you. We already have too many Republicans.

19 That itself is sort of a legal problem. And it's certainly not
20 something that's appropriate for a public agency to be doing when it's
21 making employment decisions. And I'll come back finally to the point
22 that, you know, while my friend from the RNC, complains about the
23 political affiliation of these people in the signature verification room, it's
24 not like the democrats were placed there by the Democratic Party.
25 Again, these are people who went to a temp agency looking for a

1 temporary job at a law office, an accountant's office or as it turns out, the
2 Registrar's Office.

3 And if Your Honor permits them to sort of put forward this
4 list of their earnest volunteers to go into the signature verification room,
5 you know, the Democratic Party, would have to respond in kind to, you
6 know, make sure that its own volunteers are there, because the folks
7 who were there, you know, these are people who checked a box at some
8 time in the past when they registered to vote. It's not clear that they're
9 engaged voters. It's not clear they intend to vote. It's not clear they
10 intend to vote for Democrats, Republicans, third party candidates. It's
11 not clear at all.

12 So unless Your Honor has further questions, I think, you
13 know, your point about discretion hit the nail on the head. That's really
14 where the merits are resolved here. Unless Your Honor has anything
15 else.

16 THE COURT: I don't have any questions.

17 Sir?

18 MR. SMITH: Thank you, Your Honor. So let me address your
19 point on the definition of a board. And I tried to write as quickly as I
20 could about what you said Black's Law Dictionary says. And this group
21 quite -- from what you read to me, fits quite comfortably within that
22 definition, particularly what you said about advisory power. There is no
23 veto or check over these individuals who check the signatures. This
24 group has the final say on whether these signatures go through the cure
25 process or go through.

1 There is no supervisor over them. They have the last and
2 final say. That's what boards typically have, that if the machine rejects
3 them, these individuals look at them and the Registrar himself. There's
4 no veto power over their decision. They look at it and they say there's a
5 reasonable question of fact about the signature or there's not and theirs
6 is the last word. For all practical purposes, they're the body, the group of
7 people who determine is that voter who they say they are. So that fits
8 quite comfortably --

9 THE COURT: How often does that happen?

10 MR. SMITH: About 70 percent of the time, I believe, is the
11 testimony Your Honor. Contrary to what some earlier litigation back in
12 2020 said, the Agilis machine that actually checks the signatures rejects
13 more than it lets through, partially because it's checking usually against
14 DMV signatures and the quality of the DMV signatures isn't really that
15 great as compared to what the machine wants. So actually, the vast
16 majority get kicked out, I would say, by the machine. And so most
17 signatures do go to this verification board.

18 So I think the numbers like 60 or 70 percent and Ms. Logsdon
19 can correct me if I'm wrong about that. But the majority go through the
20 signature verification process and this group of people are the final say
21 for all practical purposes of that. That's what a board does. They have
22 the full sole last word power on whether these signatures match and if
23 they don't match, they go to the cure process. That's what a board does.
24 Nobody's over them. Nobody's telling them what to do. Once they
25 determine they do or don't match, that's the end of the story. And that's

1 what a board does.

2 So under the definition from Black's Law Dictionary, you read
3 to me that ma -- it fits quite comfortably there and there's no different
4 [sic] here between this and --

5 THE COURT: And who are the advising? I mean, that's my
6 question, because normally, you know, a board of directors might give
7 advice to the CEO or the CFO or somebody regarding --

8 MR. SMITH: So --

9 THE COURT: -- policy, et cetera, et cetera. It appears to me
10 they're performing administerial function.

11 MR. SMITH: I disagree, Your Honor. They're advising the
12 Registrar whether the next step has to happen, so their decision is do
13 they match or not? If they don't match, they're then telling the Registrar
14 these must go through the cure process. That's how it works. So their
15 decision happens and it's ultimately the Registrar --

16 THE COURT: But wouldn't any employee almost making
17 some sort of decision be functioning in that manner? I mean --

18 MR. SMITH: No. I --

19 THE COURT: -- they make a lot of decisions. I mean,
20 whether or not to accept your application at DMV. Would that be a
21 board?

22 MR. SMITH: No. So let -- this dovetails into another point
23 my colleagues make. And I -- I think the analogy to a corporation is
24 good. Corporations have various different boards who have various
25 different silos and functions on what they're supposed to do. And so I

1 agree creating this board is discretionary to start with. Says you may.
2 The Registrar himself, Joe Gloria, could sit down and he could
3 individually check everyone himself if he wanted to. Obviously he can't
4 do that, given the volume, so what has he done? He's created a group or
5 a board to do that for him.

6 So this is discretionary. But if you create a board 293(b) says
7 if you create a board, then they must represent all political parties as
8 equally as possible. So if you choose to do it, you must you must follow
9 that equality component. And these aren't employees in the Clerk's
10 Office. Again, Joe Gloria could. He could use his regular full time staff
11 to do this. He's not.

12 THE COURT: But don't typic -- I mean, are you saying this is
13 a temporary board --

14 MR. SMITH: It is.

15 THE COURT: -- for the purpose of the election or don't they
16 have boards that are in place like through the year and they look at
17 policies and processes and those types of things to make them better --

18 MR. SMITH: All of these --

19 THE COURT: -- and more efficient.

20 MR. SMITH: All of these boards exist, whether it's this
21 particular one we're talking about, counting board, duplicating board, all
22 these various boards that are referenced in statue, they're basically good
23 for one ride only. They're good for this election cycle and they're not like
24 a standing committee is my understanding. And again, I'm happy to
25 have Ms. Logsdon correct me, but they're basically -- they're around for

1 one election cycle and then they're all gone. And so when the Registrar
2 makes the choice, he can use, contrary what my friend says, he can use
3 temporary employees.

4 He can use vendors like he's done. I'm not saying he can't. if
5 you do that, if you go outside the Clerk's Office and you hire outside
6 individuals to do this, that is a board, an appointed board, that falls
7 under 293(b) and the equality requirement applies. That's entirely
8 consistent. He can choose to do this however he wants to, but once you
9 make the choice to hire outside people that are not in the Clerk's Office --
10 and there's no evidence these are employees of the Clerk's Office. And I
11 do want to correct this, and I hope Your Honor writes this down as well.
12 I know you made the note of the Clark County Code provision my
13 colleagues cited.

14 THE COURT: Oh, yeah. Tell me --

15 MR. SMITH: Yeah.

16 THE COURT: You know, you've been in front of me many
17 times. You'll know I'll read it.

18 MR. SMITH: Oh, that -- I know you will, Your Honor. That's
19 why I want to repeat myself a little bit here. It's Clark County Code
20 2.40.030 Subsection 4C.

21 THE COURT: Wait, wait, wait.

22 MR. SMITH: Sorry.

23 THE COURT: 2.4.030.

24 MR. SMITH: 030 C4 --

25 THE COURT: C4.

1 MR. SMITH: And then Subsection D. Those -- when you
2 read those two provisions together, what that says is temporary or part
3 time hourly employees, and then you get to Subsection D, shall not be
4 entitled to any of the benefits of employment to which other employees
5 are entitled under this chapter. So these aren't full time employees
6 under the Clark County code. These are temporary employees staffing a
7 board to help the Registrar complete one discrete job and then they're
8 done when the election cycle is over. And there -- again, there is no
9 check over them. They are the final say checking signatures before they
10 tell the Registrar this is a set of ballots that needs to go into the cure
11 process.

12 THE COURT: Here's the question I have for you. Then I want
13 to hear from the adverse party on this issue. Like I'm looking at
14 processing of ballots under 293(b).325. It deals with, I guess -- and this is
15 the first section. I should say 330 it talks about duties of election board.
16 And what should I -- should I look to anything in that provision as it
17 pertains to guidance as far as what a board is?

18 MR. SMITH: Your Honor, I -- again, we've argued that these
19 statutes and others before with you. I think you need to read all statutes
20 and context, so --

21 THE COURT: Well, that's why I'm -- you know, that's --

22 MR. SMITH: Yes.

23 THE COURT: -- why I'm asking the question.

24 MR. SMITH: Yeah. I think -- I'm not asking you to ignore
25 anything, Your Honor. I'm not asking you -- even though my colleague

1 says that I'm asking to ignore 293, I'm not asking you to ignore that,
2 either. But we also know the canon is well-accepted. You've got to read
3 all statutory provisions in harmony.

4 THE COURT: Right.

5 MR. SMITH: And 293 describes how the signature
6 verification process happens. 293 says nothing about who does it,
7 outside regular employees of the Clerk. So if you're not using regular
8 employees of the Clerk, you can only look at 293(b). So you read 293
9 and its reference to Clerk and employees in the Clerk's Office in harmony
10 with 293(b). I'm not asking you to ignore anything but 290 --

11 THE COURT: No, no, no, no, no.

12 MR. SMITH: Yeah.

13 THE COURT: What I was asking it for was for guidance. I
14 don't know --

15 MR. SMITH: Yeah.

16 THE COURT: -- if you're -- I'm not asking -- I'm not -- I didn't
17 think you were asking -- if you want to be to ignore -- you never have.

18 MR. SMITH: No.

19 THE COURT: I don't mind saying that.

20 MR. SMITH: No. No. And that's fine, Your Honor, but I
21 guess the allegation was made that I'm ignoring 293 or running away
22 from 269927 and I'm not at all. I know what it says, and it does outline
23 how the process works. And so does the case that he cites, the recent
24 Nevada Supreme Court case. That case didn't involve anything having
25 to do with the composition of who's doing the signatures. It had to do

1 with other litigation in another County that had nothing to do with who's
2 doing the signature review. And I understand 269927 says here's how
3 that review happens, but if it's not at the Clerk or employee in the Clerk's
4 Office. It's a board under 293(b) and that requires all political parties to
5 be represented as equally as possible. That's what it says. And they say
6 we have no injury, or we have no harm. The reason the legislature --

7 THE COURT: No. No. I'm not even there. I'm just focusing
8 on the board issue again --

9 MR. SMITH: Okay.

10 THE COURT: -- and the reason why I come back to that,
11 specific pursuant to NRCP 293(b).330, for example, it sets forth the duties
12 and obligations of the election board and what functions they have to
13 perform. And I know there's a process in place for that, but I'm -- I don't
14 see something similar as it pertains to what you're really focusing on as
15 far as whether these people come under the definition of performing a
16 board function.

17 MR. SMITH: So I -- the way the way I read it all together,
18 Your Honor, is that to 293(b).360 is a catchall grant of authority to the
19 Registrar. The Registrar runs elections and the legislature, I believe,
20 wasn't trying to predict in advance every type of board or body the
21 Registrar might need, right? Various things can come up and the
22 Registrar might say I need a board to help me with this. I need a board
23 to help me with that. And that's what 1(e) covers. Such additional
24 boards or appoint such officers as the County Clerk deems necessary for
25 the expeditious processing of ballots.

1 So it's a catchall grant of authority. If the Registrar, while
2 running an election, determines I need an additional board -- and this is
3 necessary for the expeditious processing of ballots, he has authority to
4 do that. So there are certain boards that are referenced specifically, like
5 this ballot duplicating board and others, but the Registrar has authority
6 that if you create additional boards to help you run an election, then
7 those boards under 360 Subsection 2, the members of each board must
8 represent all political parties as equally as possible.

9 If you decide to create a board -- you don't have to. But if
10 you do, that's the caveat. All members must represent all political
11 parties as equally as possible. So when -- again, the Registrar went
12 outside of his own employees. He's not doing it himself. He's not using
13 his full time employees that he used normally. He's gone outside his
14 agency, done an RFP, got outside vendors, created a body to do this.
15 And under that scenario, 293(b) applies. And it has a caveat.

16 THE COURT: No. No. Go ahead.

17 MR. SMITH: Okay.

18 THE COURT: I'm listening to you.

19 MR. SMITH: I'm waiting for Your Honor. So I do want to
20 address this point of lack of harm. There's unquestionably harm here.
21 The reason the legislature imposed this qualification, I think is obvious.
22 If you're going to create these additional boards, it's a procedural
23 safeguard to ensure that the rules are being applied evenly and fairly to
24 everybody. It's a prophylactic safeguard to prevent wrongdoing and
25 importantly, to prevent the appearance of wrongdoing. If all political

1 parties have an equal seat at the table, there's less likely for somebody
2 to cry foul afterwards. There's less likely to be a controversy here.

3 And I understand. I'm not saying that the democrats, you
4 know, planted these people on the board or that the parties did this. I'm
5 not saying that, but what they are doing, they've come in here and said,
6 well, now that it is lopsided, keep it that way, Your Honor. That's what
7 they're arguing here and there's no two ways about that. They're telling
8 you we have more -- almost by four to one, we have more Democrats
9 than Republicans and it's just got to be that way. Don't make it fair, Your
10 Honor. That's the point that they can't avoid making.

11 And that's what they're saying here. And I'm not asking you
12 to plant specific people. Again, I want to emphasize the point. I'm not
13 telling the Registrar how to run an election. I'm not trying to
14 micromanage it, but the legislature already did. It's got to be as equally
15 as possible. So, however Mr. Gloria wants to reach that parity and reach
16 as equally as possible, that's what he's got to do. He can -- we gave him
17 a list to make it easy. You don't have to hire off that list.

18 THE COURT: How feasible is your requested remedy?

19 MR. SMITH: I think it's very feasible -- is, in fact, the County's
20 claimed they've already started doing it. The day after we filed this
21 motion, they magically found six more people. They trained him that
22 morning and I think they started that afternoon or the next day, so this
23 idea that it's not feasible or there's too much time for training, that's just
24 not the case. It's very feasible. And in fact, Clark County told us on
25 Monday, October 31st, there was actually one more Republican than a

1 Democrat. So they apparently have the ability to schedule. And that's
2 what we're asking for.

3 At bottom, Your Honor, the relief we're requesting is really
4 twofold. One, that the Registrar hire an equal number all parties,
5 Republicans, Democrats otherwise. And it's also within his power to
6 schedule on each of these shifts. He can schedule an equal number of
7 Republicans. That's within his control. So no matter what the universe
8 of people are --

9 THE COURT: Now, the only question I have on that, you
10 said, well, what's your relief? And you said that the Registrar hire. I
11 don't think they hire board members.

12 MR. SMITH: Well -- well --

13 THE COURT: I was thinking a point.

14 MR. SMITH: Oh, yes. That's right. So --

15 THE COURT: I mean --

16 MR. SMITH: -- loose language, Your Honor. Appoint board
17 members. And that source can come from anybody. It can come from
18 anybody. They've already hired poll workers. You can appoint those.
19 By statute -- and I can give you that statute, Your Honor. By statute --

20 THE COURT: But then --

21 MR. SMITH: -- they're --

22 THE COURT: -- but then it becomes a discretionary issue,
23 then on the flip side. I mean, I don't know. I'm listening to you. You're
24 here all the time. I'm listening, sir.

25 MR. SMITH: No. That's right, Your Honor. If they didn't

1 think they had to, they wouldn't have overnight added six more
2 Republicans to it. They had that ability that quick. And at that point,
3 Your Honor, they were already processing ballots. On this timing issue,
4 Ms. Logsdon says correctly they started doing this verification on
5 October 23rd. They didn't tell us about this issue until October 18th is
6 when we finally learned these lopsided numbers and then we spent days
7 frantically. I asked for an immediate meet and confer. I spent days
8 offering solutions. Transfer people, call up your reserve officers, hire
9 more people.

10 We tried to avoid litigation, and now we're being penalized
11 for trying to avoid litigation and controversy. I guess we should have
12 come in here without trying to fix it first is what they're telling Your
13 Honor. But we tried to avoid controversy and we left -- we were left with
14 no other options. And then when we sued or filed this motion, then they
15 added six more people. So it's -- I under -- again, I want to emphasize. I
16 understand things are out of their control. People no call, no show.
17 They quit. They get sick. All sorts of things. But what is within their
18 power and has been from the very beginning of this, is hiring an equal
19 number of everybody.

20 And there's -- I mean, there literally is no harm to the County
21 or the public by making sure all political parties have the same seat at
22 the table, same seat at the table. If you take their argument to its logical
23 conclusion, there's no avoiding the fact they're saying they can all be of
24 the same party, Your Honor. We have no duty whatsoever to make this
25 equal. We have no specific percentage we're supposed to hit. It could

1 all be any party. And I would have a problem with that, whether it's all
2 ours, all nonpartisans, all Ds what have you. That's inappropriate with a
3 board that performs this important function.

4 It is the last word on whether signatures match and every
5 party should be equally represented to make sure everything is being
6 applied fairly and equally to everybody. The same standards being
7 applied. It's a check and a balance and that's why the legislature, in its
8 wisdom imposed this condition in the first place.

9 THE COURT: All right. Anything else? Is that it?

10 MR. SMITH: I don't, Your Honor, unless you have any
11 questions.

12 THE COURT: No, no. I don't. I don't. And if any -- if no one
13 else has anymore comments, this is what I'm going to do. This
14 afternoon, I'll take a closer look at all these issues. I'll read the County
15 Code as far as provisions are concerned. And it's my goal to get a
16 decision out, either by the close of business today or tomorrow morning
17 real quick, all right? Real quick. All right?

18 MR. SMITH: Thank you, Your Honor.

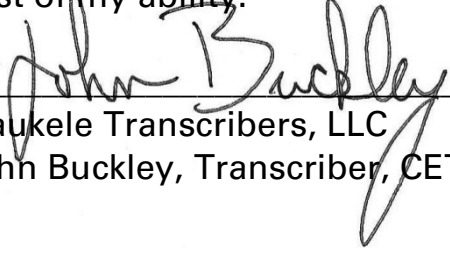
19 MR. SCHRAGER: Thank you, Your Honor.

20 MR. DODGE: Thank you, Judge.

21 THE COURT: Enjoy your day.

22 [Proceedings adjourned at 10:16 a.m.]

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio-visual recording of the proceeding in the above entitled case to the
3 best of my ability.

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