

IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN NATIONAL  
COMMITTEE,

Petitioner,

vs.

CLARK COUNTY; CLARK  
COUNTY ELECTION  
DEPARTMENT; and JOE P.  
GLORIA, in his official capacity as  
the Clark County Registrar of Voters,

Respondents.

No. 85604

District Court No. A-22-858609-W

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**RESPONSE TO PETITIONER'S EMERGENCY PETITION FOR WRIT OF  
MANDAMUS UNDER NRAP 21(a)(6) – ELECTION RELATED  
IMMEDIATE RELIEF REQUESTED**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
<b><u>I. STATEMENT OF ISSUES</u></b> .....	3
<b><u>II. STATEMENT OF THE CASE</u></b> .....	3
<b><u>III. STATEMENT OF FACTS</u></b> .....	5
<b><u>IV. SUMMARY OF THE ARGUMENTS</u></b> .....	7
<b><u>V. LEGAL ARGUMENT</u></b> .....	8
<b><u>1. The District Court Correctly Found that Mandamus Relief Was Not Warranted as there is No Legal Duty to Create a Board Pursuant to NRS 293B.360</u></b> .....	8
<b>A. The District Court Correctly determined that the Clark County Registrar of Voters had not Created a Mail Ballot Inspection Board or Other Board Pursuant to NRS 293B.360</b> .....	8
<b>B. Clark County Has Not Referred to Manual Signature Verification Temporary Employees as a Board</b> .....	9
<b>C. The District Court Correctly Found that the Clark County Registrar of Voters Hired Temporary Employees Pursuant to NRS 293B.360</b> .....	11
<b>D. There is No Evidence of Systematic Exclusion of Republicans</b> .....	12
<b>E. Clark County's Manual Signature Verification Staff Changes Daily and Petitioner Misconstrues Clark County Registrar of Voters Actions to Increase Workers as an Admission that NRS 293B.360 Applies to Worker Verifying Manual Signatures</b> .....	13
<b>F. Even if NRS 293.B.360 Applied, Which it Does Not, It Still Does Not Require an Equal Number of Republicans</b> .....	15
<b>G. Petitioner's Requested Relief Cannot be Granted as No Such Duty of Equal Representation of Election Workers Exists in Nevada Law</b> .....	16

<b><u>VI. CONCLUSION</u></b> .....	17
<b>CERTIFICATE OF COMPLIANCE</b> .....	17-19
<b>CERTIFICATE OF SERVICE</b> .....	20

## TABLE OF AUTHORITIES

### Cases

<i>Levin v. Second Judicial Dist. Court</i> , 450 P.3d 911, 2019 WL 5448653 (Nev. October 23, 2019) .....	8
<i>Round Hill Gen. Improvement Dist. v. Newman</i> , 97 Nev. 602, 603-604, 637 P.2d 534, 536 (1981).....	8
<i>Pan v. Eighth Judicial Dist. Court</i> , 120 Nev. 22, XX, 88 P.2d 840, 844 (2004)....	8

### Statutes

NRS 293.011 .....	5-6
NRS 293.044 .....	3
NRS 293.217 .....	15
NRS 293.269927 .....	3, 4, 7, 9, 10, 11, 12
NRS 293.269929 .....	10
NRS 293B.360 .....	3, 4, 6, 7, 8, 9, 11, 12, 13, 15, 16

### Rules

NRAP 21(a)(6).....	18
NRAP 28(e).....	18
NRAP 32(a)(4).....	17
NRAP 32(a)(5).....	17
NRAP 32(a)(6).....	17
NRAP 32(a)(7)(C).....	18

## **I. STATEMENT OF ISSUES**

1. Did the Clark County Registrar of Voters appoint a discretionary “special election board” pursuant to NRS 293B.360 to manually verify signatures on mail ballots pursuant to NRS 293.269927?

No. The Clark County Registrar of Voters did not appoint any members to a “board” of any type pursuant to NRS 293B.360 to manually verify mail ballot signatures.

2. Is the Clark County Registrar of Voters statutorily required to appoint members to a “special election board” pursuant to NRS 293B.360 for manual signature verification of mail ballots?

No. NRS 293.269927 states that the clerk or an employee in the office of the clerk shall check the signature used for the mail ballot by electronic means pursuant to subsection 2 or manually pursuant to subsection 3. NRS 293.269927 does not require the employees checking mail ballot signatures manually to be appointed to a special election board pursuant to NRS 293B.360.<sup>1</sup>

## **II. STATEMENT OF CASE**

Petitioner Republican National Committee (“Petitioner or “RNC”) has taken abundant liberties with the facts of this case in a clearly improper attempt to concoct a non-existent “emergency” arguing that this Court must overturn the

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<sup>1</sup> Clerk is synonymous with Registrar of Voters in Clark County. NRS 293.044

district court and order the Clark County Registrar of Voters to hire more republicans to process mail ballots “to prevent any controversy or cloud from hanging over the election”. Petitioner’s Emergency Writ, page 6. Petitioner’s argument is flawed in several fundamental ways. Initially, Petitioner’s entire argument is premised on its incorrect belief that the temporary employees engaged by the Clark County Registrar of Voters to assist with manual verification of mail ballot signatures somehow constitutes a “board” under the election laws and is therefore governed by NRS 293B.360. Petitioner’s position is wrong. Clark County, through the Clark County Registrar of Voters, has no statutory duty to appoint a discretionary “special election board” to manually verify mail ballot signatures in accordance with NRS 293.269927. To handle the requirements of manual mail ballot signature verification, Clark County hired temporary employees pursuant to NRS 293.269927. Clark County has not “appointed” a “special election board” pursuant to NRS 293B.360 and no such special election board is required under Nevada law for the manual verification of signatures pursuant to NRS 293.269927. Further, there is no basis for Petitioner’s requested relief as Petitioner has failed to make any showing that its requested relief is available under Nevada law.

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### **III. STATEMENT OF FACTS**

The facts in this case are uncomplicated, despite Petitioner requiring thirteen pages to recite mostly irrelevant and misleading occurrences. On August 5, 2022, Petitioner made an overly broad and burdensome request for various election information seeking, among other things, personal information of certain election workers. APP 0016-0019. The Clark County Election Department worked diligently to produce the volumes of information requested, but from the beginning of the records request process, Clark County made it clear that Clark County would not provide the names of the poll workers, or certain other personal information, to prevent harassment of the election works and to prevent any invasion of the election workers' privacy rights. APP 0029. In a separate public records request from the law firm of Marquis Aurbach, Clark County provided an aggregate political party breakdown of poll workers for the 2022 primary election without the specific names of poll workers. APP 0083. With respect to Petitioner's request for poll workers names, titles/positions, and political party affiliation, for the 2022 general election, at the time of Petitioner's request, that information was not available to the Registrar of Voters as the Registrar was still finalizing employee schedules for the 2022 general election.

On September 20, 2022, Petitioner filed a Petition for Writ of Mandamus and Application Compelling Disclosure of Public Records Pursuant to NRS

239.011 on an order shortening time. APP 0001-0036. On September 27, 2022, Clark County and Clark County Registrar of Voters filed an opposition to that Writ. APP 0043-0054. On October 5, 2022, the parties entered into a Stipulation and Order regarding the disclosure of poll worker's political party affiliation without inclusion of the poll worker's names. APP 0054-0061. Clark County complied with the Stipulation and Order and provided the requested poll worker information to Petitioner. After receiving the agreed upon information, Petitioner then demanded the imposition of a nonexistent statutory duty of equal political party representation on the Clark County Registrar of Voters manual signature verification purportedly pursuant to NRS 293B.360. APP 0149 – 0152; 0166 – 0168.

On October 27, 2022, Petitioner improperly filed a Motion to Lift Stay and Application for Writ of Mandamus or Injunction Directing the Clark County Registrar to Comply with NRS 293B.360 on an order shortening time. On October 31, 2022, Clark County filed an opposition to challenge the Motion and Writ on procedural grounds and substantively on the basis that the Clark County Registrar of Voters had not appointed a discretionary board under NRS 293B.360 for the manual verification of mail ballot signatures. APP 0174 -0181. On November 3, 2022, the District Court issued a minute order properly denying both Petitioner's Motion to Lift the Stay and Petitioner's Application for Writ of Mandamus or



Injunction. APP 0469-0470. Now, Petitioner has improperly petitioned this Court for extraordinary relief based on Petitioner's continued erroneous interpretation and application of Nevada election law.

#### **IV. SUMMARY OF THE ARGUMENTS**

A writ of mandamus is an extraordinary remedy which does not control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously. Here, the Petitioner has failed to provide the Court with the any evidence or legal justification for Petitioner's position that the Clark County Registrar of Voters had a clear and legal duty to create a special election board for the manual verification of mail ballot signatures. Petitioner's request for mandamus must fail as (i) NRS 293B.360 is discretionary; (ii) Clark County Registrar of Voters did not created or appoint members to a discretionary board pursuant NRS 293B.360 to manually review mail ballot signatures; and (iii) Clark County Registrar of Voters hired temporary employees to perform the task of signature verification required by NRS 293.269927, which statute does not mandate the Clark County Registrar of Voters to hire employees that represent all political parties as equally as possible. The District Court correctly found that, (i) Clark County did not have a duty to create a special board under NRS 293B.360, (ii) and that the employees hired to perform the task of manual signature verification did not constitute a board under NRS 293B.360.

## **V. LEGAL ARGUMENT**

### **1. The District Court Correctly Found that Mandamus Relief Was Not Warranted as there was No Legal Duty to Create a Board Pursuant to NRS 293B.360.**

When a petitioner seeks to compel a discretionary act, the court may not issue a writ of mandamus unless the target of the writ manifestly abused or arbitrarily or capriciously exercised its discretion. *Levin v. Second Judicial Dist. Court*, 450 P.3d 911, 2019 WL 5448653 (Nev. October 23, 2019); *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 602, 603-604, 637 P.2d 534, 536 (1981); Here, the Petitioner RNC has the burden of demonstrating that extraordinary relief is warranted, which the Petitioner had failed to carry. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 22, XX, 88 P.3d 840, 844 (2004). Petitioner has failed to establish that the Clark County Registrar of Voter had a clear and present legal duty to create a special election board for the verification of mail ballot signatures under NRS 293B.360. Petitioner rehashes the same arguments here that the District Court already found unpersuasive.

#### **A. The District Court Correctly determined that the Clark County Registrar of Voters had not Created a Mail Ballot Inspection Board or Other Board Pursuant to NRS 293B.360.**

Petitioner incorrectly asserts (1) that Clark County has created a special election board under NRS 293B.360 and (2) that if Clark County has not created such a special election board, then Clark County has no authority to process mail ballots and verify the signatures on mail ballots. Both assertions are wrong. The

District Court correctly found that the Clark County Registrar of Voter had not created a mail ballot inspection board or other special board requiring representation from all political parties as equally as possible. APP 0469. The District Court found that the more specific provision, NRS 293.269927, applied to the verification of mail ballot signatures. Specifically, the District Court found that the employees performing tasks pursuant to NRS 293.269927 did not constitute a “board” for the purposes of NRS 293B.360. The District Court found that the Clark County Registrar of Voters had not created a board pursuant to NRS 293B.360 because the duties of verifying a mail ballot signature did not arise to the level of decision making typically expected from a board. The District Court’s decision is supported by the plain language of board found in Black’s Law Dictionary and NRS 293.269927, that employees of the clerk’s office shall check the signature used for the mail ballot pursuant to NRS 293.269227, not a discretionary special election board appointed by NRS 293B360.

**B. Clark County Has Not Referred to Manual Signature Verification Temporary Employees as a Board.**

Petitioner alleges that the County is playing games with the term “board,” but it is Petitioner is attempting to play fast and loose with this term. Petitioner has repeatedly and disingenuously misquoted the County to create the false conclusion that if the County called manual signature verification employees a “board”, then they must be a “board”. Petitioner’s proposition argument is fabricated and is not

supported by the district court record or by Nevada law. Specifically, Petitioner has represented to this Court that, in the Stipulation and Order, the County referred to employees engaged in manual signature verification as “boards.” (Petitioner’s Writ, page 4.) Instead, the correct reading and interpretation of the Stipulation and Order, which is consistent with Nevada law, is that the County would provide Petitioner with the political party affiliations of the manual signature verification and *counting board* teams. This phrase in the Stipulation and Order refers to two separate groups engaged by the Clark County Registrar of Voters. Group one is the manual signature verification team and group two is the counting board team. The reference to the word “board” in the Stipulation was with respect to the *counting board* required by NRS 293.269929, and was not to the employees assigned to manual signature verification pursuant to NRS 293.269927. This is made clear by Clark County’s County Counsel’s email to Petitioner’s counsel on Monday, October 10, 2022, which stated, attached are the following records, “Tentative Counting Board by party representation – per the stipulation. I anticipate having the manual signature verification room **roster** by the end of the week.” APP 0154. Clark County referred to the manual signature verification employees as the manual verification *team or roster*, and not as a board, as Petitioner deceptively argues.

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**C. The District Court Correctly Found that the Clark County Registrar of Voters Hired Temporary Employees Pursuant to NRS 293.269927.**

NRS 293.269927 specifically governs the process for verify signatures on mail ballots. NRS 293.269927, states that when a mail ballot is returned by or on behalf of a voter to the county clerk and a record of its return is made in the mail ballot record for the election, the *clerk or an employee of the office of the clerk* shall check the signature used for the mail ballot by electronic means pursuant to subsection 2 or manually pursuant to subsection 3. Clark County has elected to use electronic means to check the signature on returned mail ballots. In accordance with subsection 2 of NRS 293.269927, the electronic device takes a digital image of the signature used on the mail ballot and compares the digital image with the signatures of the voter from his or her application to register to vote or application to preregister to vote. If the electronic device does not match the signature of the voter, the signature shall be reviewed manually pursuant to subsection 3. Subsection 3 of NRS 293.269927 states, 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. This section does not require the county clerk to establish a “special election board” pursuant to NRS 293B.360, but instead requires the *county clerk or an employee* of the county clerk to manually verify the voter’s signature. In accordance with NRS 293.269927, Clark County Registrar of Voters

uses its employees to manually verify mail ballots and is not required to appoint a special election board pursuant to NRS 293B.360. To meet the significant staffing needs to conduct an election, each election year the Clark County Registrar of Voters hires temporary employees. Petitioner alleges that the Clark County Registrar of Voters has hand selected employees to exclude Republicans. Nothing can be further from the truth. The Registrar uses three different temporary employment agencies on contract with Clark County to ensure that the Registrar can hire the appropriate number of employees for the election. While hiring has been difficult for all employers across the country, the Registrar hired enough employees to conduct the election in accordance with Nevada law. Petitioner alleges that NRS 293.269927 and Clark County Code somehow prevent the Clark County Registrar from hiring temporary election workers to perform the task of signature verification. Petitioner provides no legal basis for this hollow assertion. Under Petitioner's rationale every person temporarily hired to work an election in the State of Nevada is an "election board" member and every task would need to be completed by people from equal representation of political parties in Nevada. This assertion is nonsensical and is not supported by Nevada law.

**D. There is No Evidence of Systematic Exclusion of Republicans.**

Petitioner provides no evidence of systematic exclusion of Republicans by the Clark County Registrar of Voters in the selection and hiring of election

workers. While Clark County does not at this time have the total number of the 2022 General Election workers, there was a significant cross section of employees' political party representation for employees that worked the 2022 Primary Election. For the 2022 Primary Election, the breakdown of poll workers was 880 Democrats (49%); 603 Republicans (34%); and 295 Nonpartisans (17%). APP 0048. In Clark County, the political party affiliation of its registered voters is approximately 35.47% Democrats, 25.84% Republican, 31.07% nonpartisan and 7.62% other. As evidenced, Republicans are not systematically excluded from working elections in Clark County.

**E. Clark County's Manual Signature Verification Staff Changes Daily and Petitioner Misconstrues Clark County Registrar of Voters Actions to Increase Workers as an Admission that NRS 293B.360 Applies to Worker Verifying Manual Signatures.**

As stated above, Clark County contracted with three separate temporary employment agencies to provide temporary employees during the election. Clark County uses the employees hired by the employment agencies to fill positions at the election warehouse, which includes the processing of mail ballots. In addition to the employees required to process mail ballots, Clark County also does its own separate recruitment for workers to work the over 100 election day vote centers and early voting locations. While the Petitioner believes that hiring, training and scheduling thousands of employees is a simple task, Clark County works especially hard and diligently to provide employees with various political party

affiliations when determining the schedules of thousands of temporary employees, including the employees assigned to perform manual signature verifications.

On October 18, 2022, before the processing of mail ballots started, Clark County had employees with the following political party affiliation assigned to work the manual signature verification room: 23 Democrats (35%), 8 Republicans (12%), and 33 (51%) Nonpartisan workers, for a total of 64 employees. In light of Petitioner's letter received on Tuesday, October 25, 2022 at 6:14 p.m., Clark County, in good faith, by Thursday, October 26, 2022, before the Petitioner's filing of its Motion and Writ in District Court, was able to recruit additional employees and had six (6) additional Republicans that would be available to work in the manual signature verification room. But, as with any employer and employee relationship, there are circumstances that arise that require changes to work schedules. Election employees are no different. There are circumstances beyond the control of Clark County Registrar of Voters regarding the availability to employees. This is evident by the breakdown of the manual signature verification employees each day. On Saturday, October 29, 2022, the breakdown of employees assigned to the manual signature verification room was: 20 Democrats (36%), 12 Republicans (21%), and 23 Nonpartisan (41%). On Monday, October 31, 2022, the current breakdown of employees assigned to the manual verification room was:



10 Democrats (25%), 12 Republicans (30%), and 18 Nonpartisan (45%) workers.<sup>2</sup> While “equal representation” may be the Petitioner’s desire, Nevada law does not require the Registrar of Voters to have “equal party representation.” Clark County and the Registrar of Voters has complied with Nevada law and Petitioners aspirations for equal representation for employees conducting manual signature verification is unfounded in Nevada law.

**F. Even if NRS 293B.360 Applied, Which it Does Not, It Still Does Not Require an Equal Number of Republicans.**

Throughout this case, Petitioner has consistently misapplied and misinterpreted Nevada election law. Petitioner’s original writ of mandamus sought the names and political party affiliation of poll workers to ensure compliance with NRS 293.217, which Petitioner argued required proportional political party representation of all poll workers. APP 0004 ll. 8-11. NRS 293.217 requires that election board officer for any polling place *must not all be of the same political party*. NRS 293.217 does not require “proportional political party representation” of poll workers just as NRS 293B.360 does not require an “equal number” of political parties for special election boards. Just as in its original writ where Petitioner previously mischaracterized NRS 293.217 as requiring “proportional representation of political parties”, here Petitioner has misinterpreted NRS

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<sup>2</sup> It is important to note this breakdown is subject to change for various employee related reasons.

293B.360 as requiring an “equal number of employees from each political party.” NRS 293B.360 subsection 2 specifically states, “[e]xcept as otherwise provided in subsection 3, the county clerk may determine the number of members to constitute any board. The county clerk shall make any appointments from among competent persons who are registered voters in this State. The members of each board must represent all political parties *as equally as possible*. The same person may be appointed to more than one board but must meet the particular qualifications for each board to which he or she is appointed.” NRS 293B.360 does not require “equal representation” instead it requires “as equally as possible.” So even if the Registrar of Voters had appointed such a board, which it did not, the political party breakdown of the temporary employees tasked with verifying mail ballot signatures, meets the statutory requirement under NRS 293B.360 of “as equally as possible.”

**G. Petitioner’s Requested Relief Cannot be Granted as No Such Duty of Equal Representation of Election Workers Exists in Nevada Law.**

Petitioner’s requested relief does is not provided for under Nevada law. Petitioner has requested this Court to impose a duty on the entire State of Nevada regarding the staffing of employees to perform election tasks that is not required by Nevada law. Even if, such a legal requirement for “equal political party representation” among election workers existed in Nevada law, which it does not,

Petitioner has failed to show any identifiable harm that the political party breakdown of employees has had on Clark County elections.

## **VI. CONCLUSION**

For these reasons, Respondents Clark County and Clark County Registrar of Voters, respectfully request, that Petitioner's Writ of Mandamus be denied.

DATED this 8<sup>th</sup> day of November, 2022.

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DISTRICT ATTORNEY

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## **CERTIFICATE OF COMPLIANCE**

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

[X] The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman 14 font style; or

☐ This brief has been prepared in a monospaced typeface using Microsoft Word 2002 with Times New Roman 14 characters per inch type style.

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

☒ Proportionately spaced, has a typeface of 14 points or more and contains 4263 words; or

☐ Monospaced, has 10.5 or fewer characters per inch and contains 3684 words or \_\_\_\_\_ lines of text; or

☒ Does not exceed 30 pages.

3) Finally, I certify that I have read this **RESPONSE TO PETITIONER'S EMERGENCY PETITION FOR WRIT OF MANDAMUS UNDER NRAP 21(a)(6) – ELECTION RELATED IMMEDIATE RELIEF REQUESTED**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure in particular NRAP 28(e), which requires every assertion of the brief regarding matters in the record to be supported by a reference to the page 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 8<sup>th</sup> day of November, 2022.

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## **CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Clark County District Attorney and that on this 8<sup>th</sup> day of November, 2022, I served a true and correct copy of the foregoing **RESPONSE TO PETITIONER’S EMERGENCY PETITION FOR WRIT OF MANDAMUS UNDER NRAP 21(a)(6) – ELECTION RELATED IMMEDIATE RELIEF REQUESTED** through the Electronic Filing System of the Nevada Supreme Court (or, if necessary, by U.S. Mail, first class, postage pre-paid), upon the following:

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