

IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN NATIONAL
COMMITTEE,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE TIMOTHY C.
WILLIAMS, DISTRICT JUDGE,

Respondents, and

CLARK COUNTY; CLARK
COUNTY ELECTION
DEPARTMENT; JOE P. GLORIA, IN
HIS OFFICIAL CAPACITY AS THE
CLARK COUNTY REGISTRAR OF
VOTERS; DSCC; and DCCC,

Real Parties in Interest.

Case No.: 85604

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**REPUBLICAN NATIONAL
COMMITTEE'S MOTION TO
REISSUE ORDER AS
PUBLISHED OPINION**

I. INTRODUCTION

This Court's Order Denying Petition for Writ of Mandamus (the "Order") addressed, for the first time, whether NRS 293B.360 requires Nevada's county clerks or registrars to "represent all political parties as equally as possible" when they choose to assemble a group of individuals to verify mail ballot signatures. This question – which the Court answered in the negative – presented an issue of first impression, clarified the legal obligations of county clerks and registrars, and

involved an issue of statewide public importance about Nevada's electoral system. The Court's ruling affects *all* counties, *all* voters, and *all* future mail ballot elections.

Reissuing the Order as a published opinion will provide greater certainty about the rules under which the State's elections are conducted. The Legislature, county clerks, registrars, and voters should know whether they are entitled to rely on this Court's ruling about the mail ballot signature verification process when operating and using mail ballot elections going forward. Therefore, the Court should reissue the Order as a published opinion pursuant to NRAP 36(f).

II. ARGUMENT

A. The Order Satisfies the Criteria to be Reissued as a Published Decision.

A party or nonparty may move the Court to reissue an unpublished disposition as a published opinion within 14 days of the order. NRAP 36(f). NRAP 36(f) provides that a motion to reissue an order as an opinion must be based upon at least one of the "criteria for publication set forth in Rule 36(c)(1)(A)-(C)." NRAP 36(f)(3). The motion must specifically state the criteria on which the motion is based and set forth the argument in support of each contention. *See id.* Rule 36(c)(1) specifies the Court will decide a case by published opinion if it:

(A) Presents an issue of first impression;

(B) Alters, modifies, or significantly clarifies a rule of law previously announced by either the Supreme Court or the Court of Appeals; or

(C) Involves an issue of public importance that has application beyond the parties.

NRAP 36(c)(1).

Here, the Order "[p]resents an issue of first impression," and "[i]nvolves an issue of public importance that has application beyond the parties." *Id.* As a result, the Order should be reissued as a published opinion.

B. This Order Presented an Issue of First Impression about New Election Laws.

The Rules of Appellate Procedure allow the Court to decide a case by published opinion when the matter "[p]resents an issue of first impression." NRAP 36(c)(1)(A). When the Court confronts a new and novel question, "disposition by published opinion is appropriate." *AJS Const., Inc. v. Pankopf*, 129 Nev. 1094 (2013) (unpublished) (Hardesty, J., concurring) (citing NRAP 36(c)(1)).

For the first time, this Court interpreted certain obligations of county clerks and registrars stemming from newly-enacted election laws. AB 321 – passed in 2021 – overhauled the procedures and requirements for mail ballot voting (formerly "absentee ballots"). As discussed in the Order, the arguments offered in support of, and against, the writ stem directly from these recently-enacted statutes. Before this proceeding, the Court had not yet addressed the interplay between

NRS 293B.360 and NRS 293.269927. Nor had the Court considered whether county clerks and registrars have a statutory obligation to ensure that the group verifying mail ballot signatures "represent[s] all political parties as equally as possible." The Court's ruling provides fresh guidance about this new and important – but previously open – question.¹

Accordingly, this case presented, and resolved, an issue of first impression. The Order meets the first criteria for reissuance as a published order set forth under NRAP 36(c)(1)(A).²

C. The Order Involves an Issue of Statewide Public Importance about Nevada's Election Laws.

Unpublished orders involving "issue[s] of public importance" with "application beyond the parties" are eligible to be reissued as a published opinion. NRAP 36(c)(1)(C); *see also* NRAP 36(f)(3). Few issues are more significant or important to the public than the election of government officials and the requisite procedures in conducting an election. *See, e.g., Green Party of Tennessee v. Hargett*, 767 F.3d 533, 554 (6th Cir. 2014) (challenge to election law "involve[d] matters of great public importance"); *Republican Party of State v. Dep't of*

¹ Even though the Court entertained these issues on an urgent basis, the Court's ruling rested on a purely legal question of statutory interpretation.

² This Court's Order addressed the propriety of writ relief as well as the merits of the sole issue presented. Thus, any revisions necessary for reissuing this Order as an opinion will not "result in the discussion of additional issues not included in the original decision." NRAP 36(f)(4).

Elections of New Castle Cnty., 792 A.2d 224, 227 (Del. Super. Ct. 2001) ("Election laws have a 'transcending public importance, touching upon – indeed giving vitality to – the most fundamental of our rights'").

The Court's Order reviewed a central component of Nevada's electoral system. It considered the relationship between NRS 293B.360, NRS 293.269927, and the signature verification process for the State's universal mail voting. The Court ultimately held "that anyone assisting the Registrar in election efforts is [not] necessarily an election board to which NRS 293B.360(2) applies." (Order at 4.) Thus, the Court concluded that NRS 293.269927 governs and "[t]he statute contains no requirement that a board verify the signatures, nor is there any requirement therein that signature verification on mail ballot returns is done by persons of different political parties." (*Id.*)

The Court's decision has significant consequences that are not limited to the Republican National Committee and Clark County in just this one election. As state statutes, NRS 293B.360 and NRS 293.269927 apply to all counties, all voters, and all elections across the State. Nevada's Legislature, county clerks, and registrars now have clarity about who can be tasked with verifying mail ballot signatures and whether the composition of the group must "represent all political parties as equally as possible." The Court's reasoning will likely affect the counties' planning and hiring for mail ballot elections in future cycles. After the

Order, voters also have a better understanding about the legal obligations of counties when verifying their mail ballot signatures.

Because the Court's Order impacts the rules under which Nevada's mail ballot elections are conducted, it involves issues of statewide public importance and should be reissued as a published decision. *See ACLU v. The County of Nye*, No. 85507, 2022 WL 14285458, at *2 (Nev. Oct. 21, 2022) (Unpublished Disposition) (stating "[v]oters have a compelling interest in the way elections are run" and election procedures "impact[] the citizens of this state in general.").

III. CONCLUSION

For these reasons, the Republican National Committee respectfully requests that this Court grant this Motion and reissue the Order as a published opinion pursuant to NRAP 36(f).

DATED this 22nd day of November, 2022.

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith
Jordan T. Smith, Esq., #12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

*Attorneys for Petitioner
Republican National Committee*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 22nd day of November, 2022, I caused to be e-filed/e-served through the Court's website true and correct copies of the above and foregoing **REPUBLICAN NATIONAL COMMITTEE'S MOTION TO REISSUE ORDER AS PUBLISHED OPINION** to the following:

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC