

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

**Supreme Court Case No. 89149**

Electronically Filed  
Sep 03 2024 03:25 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

REPUBLICAN NATIONAL COMMITTEE; NEVADA REPUBLICAN PARTY;  
DONALD J. TRUMP FOR PRESIDENT 2024, INC.; and SCOTT JOHNSTON,  
Appellants,

v.

FRANCISCO AGUILAR, in his official capacity as Nevada Secretary of State;  
State of NEVADA; STATE OF NEVADA; CARI-ANN BURGESS, in her official  
capacity as the Washoe County Registrar of Voters; JAN GALASSINI, in her  
official capacity as the Washoe County Clerk; LORENA PORTILLO, in her  
official capacity as the Clark County Registrar of Voters; LYNN MARIE GOYA, in  
her official capacity as the Clark County Clerk; VET VOICE FOUNDATION; and  
the NEVADA ALLIANCE FOR RETIRED AMERICANS,  
Respondents.

Appeal from Order Denying Motion for Preliminary Injunction  
First Judicial District Court, Case No. 24 OC 00101 1B  
The Honorable James Russell

---

**JOINT APPENDIX VOLUME 1 OF 2**

---

Jeffrey F. Barr (Bar No. 7269)  
Ashcraft & Barr LLP  
9205 West Russell Road, STE 240  
Las Vegas, NV 89148  
702-631-4755  
*Attorneys for Appellants*

Sigal Chattah (Bar No. 8264)  
5875 S. Rainbow Blvd #204  
Las Vegas, NV 89118  
*Attorney for Appellant Nevada Republican Party*

Michael Francisco (Pro Hac Vice)  
Christopher O. Murray (Pro Hac Vice)  
First & Fourteenth PLLC  
800 Connecticut Avenue NW, STE 300  
Washington, D.C. 20006  
202-998-1978  
*Attorneys for Appellant Republican  
National Committee*

## **ALPHABETICAL INDEX**

<b>Date</b>	<b>Description</b>	<b>Volume</b>	<b>Page</b>
July 3, 2024	Amended Complaint	1	JA00018-0041
May 31, 2024	Complaint	1	JA00003-00017
July 17, 2024	Declaration of Service	1	JA00059-00061
July 17, 2024	Declaration of Service	1	JA00062-0064
July 17, 2024	Declaration of Service	1	JA00065-00067
July 17, 2024	Declaration of Service	1	JA00068-00070
July 17, 2024	Declaration of Service	1	JA00071-00073
July 22, 2024	Defendants Lorena Portillo and Lynn-Marie Goya's Joinder in State Defendants' Opposition to Motion for Preliminary Injunction and Defendants Lorena Portillo and Lynn-Marie Goya's Joinder in Washoe County Defendants' Opposition to Motion for Preliminary Injunction	1	JA00104-00107
July 17, 2024	Errata to Plaintiffs' Motion for Preliminary Injunction	1	JA00087-00103
July 17, 2024	Intervenors' Opposition to Motion for Preliminary Injunction	1	JA00074-00086

<b>Date</b>	<b>Description</b>	<b>Volume</b>	<b>Page</b>
August 8, 2024	Notice of Appeal	2	JA00318-00320
August 7, 2024	Notice of Entry of Order on Order Denying Motion for Preliminary Injunction	2	JA00295-JA00317
August 6, 2024	Order Denying Motion for Preliminary Injunction	2	JA00277-00294
July 3, 2024	Plaintiffs' Motion for Preliminary Injunction	1	JA00042-00058
July 31, 2024	Reply to County Defendants in Support of Motion for Preliminary Injunction	1	JA00180-00188
July 23, 2024	Reply to Intervenor Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction	1	JA00108-00116
July 31, 2024	Reply to State Defendants in Support of Motion for Preliminary Injunction	1	JA00141-00179
July 23, 2024	State Defendants' Opposition to Motion for Preliminary Injunction	1	JA00117-00129
August 2, 2024	Transcript of August 2, 2024 Hearing on Plaintiffs' Motion for Preliminary Injunction	2	JA00189-00276
July 23, 2024	Washoe County Defendants' Opposition to Motion for Preliminary Injunction	1	JA00130-00140

### **CHRONOLOGICAL INDEX**

<b>Date</b>	<b>Description</b>	<b>Volume</b>	<b>Page</b>
May 31, 2024	Complaint	1	JA00003-00017
July 3, 2024	Amended Complaint	1	JA00018-0041
July 3, 2024	Plaintiffs' Motion for Preliminary Injunction	1	JA00042-00058
July 17, 2024	Declaration of Service	1	JA00059-00061
July 17, 2024	Declaration of Service	1	JA00062-0064
July 17, 2024	Declaration of Service	1	JA00065-00067
July 17, 2024	Declaration of Service	1	JA00068-00070
July 17, 2024	Declaration of Service	1	JA00071-00073
July 17, 2024	Intervenors' Opposition to Motion for Preliminary Injunction	1	JA00074-00086
July 17, 2024	Errata to Plaintiffs' Motion for Preliminary Injunction	1	JA00087-00103
July 22, 2024	Defendants Lorena Portillo and Lynn-Marie Goya's Joinder in State Defendants' Opposition to Motion for Preliminary Injunction and Defendants Lorena Portillo and Lynn-Marie Goya's Joinder in Washoe	1	JA00104-00107



### **CHRONOLOGICAL INDEX**

<b>Date</b>	<b>Description</b>	<b>Volume</b>	<b>Page</b>
	County Defendants' Opposition to Motion for Preliminary Injunction		
July 23, 2024	Reply to Intervenor Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction	1	JA00108-00116
July 23, 2024	State Defendants' Opposition to Motion for Preliminary Injunction	1	JA00117-00129
July 23, 2024	Washoe County Defendants' Opposition to Motion for Preliminary Injunction	1	JA00130-00140
July 31, 2024	Reply to State Defendants in Support of Motion for Preliminary Injunction	1	JA00141-00179
July 31, 2024	Reply to County Defendants in Support of Motion for Preliminary Injunction	1	JA00180-00188
August 2, 2024	Transcript of August 2, 2024 Hearing on Plaintiffs' Motion for Preliminary Injunction	2	JA00189-00276
August 6, 2024	Order Denying Motion for Preliminary Injunction	2	JA00277-00294
August 7, 2024	Notice of Entry of Order on Order Denying Motion for Preliminary Injunction	2	JA00295- JA00317
August 8, 2024	Notice of Appeal	2	JA00318-00320

## CERTIFICATE OF SERVICE

I certify that on the 3rd day of September 2024, I served a copy of this **JOINT APPENDIX VOLUME 1 OF 2** upon all parties to this appeal:

☒ by electronic means to registered users of the court's electronic filing system  
If served other than through the court's electronic filing system, enter the names and email address of the parties served by this means and attach a copy of each party's written consent authorizing service by this means. *See* NRAP 25(c)(2)

☐ by personally serving it upon him/her;

☐ by mailing it by first class mail with sufficient postage prepaid to the following address(es):

ASHCRAFT & BARR LLP

By: /s/ Jeffrey F. Barr  
JEFFREY F. BARR, ESQ.  
Nevada Bar No. 7269  
barrj@ashcraftbarr.com  
9205 W. Russell Road, Suite 240  
Las Vegas, NV 89148  
(702) 631-4755

**PAGE LEFT BLANK INTENTIONALLY**

**PAGE LEFT BLANK INTENTIONALLY**

**PAGE LEFT BLANK INTENTIONALLY**

**PAGE LEFT BLANK INTENTIONALLY**

**PAGE LEFT BLANK INTENTIONALLY**

**PAGE LEFT BLANK INTENTIONALLY**

REC'D &amp; FILED —

IN THE FIRST JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA IN AND FOR CARSON CITY:

CLERK

REPUBLICAN NATIONAL  
COMMITTEE; NEVADA  
REPUBLICAN PARTY; DONALD J.  
TRUMP FOR PRESIDENT 2024, INC.;  
SCOTT JOHNSTON

v.

FRANCISCO AGUILAR, in his official  
capacity as Nevada Secretary of State;  
State of NEVADA; CARI-ANN  
BURGESS, in her official capacity as  
the Washoe County Registrar of  
Voters; JAN GALASSINI, in her  
official capacity as the Washoe County  
Clerk; LORENA PORTILLO, in her  
official capacity as the Clark County  
Registrar of Voters; LYNN MARIE  
GOYA, in her official capacity as the  
Clark County Clerk.

Case No.:

Dept. No.:

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Arbitration Exemption: Declaratory  
and Injunctive Relief

Plaintiffs Republican National Committee and the Nevada Republican Party,  
Donald J. Trump for President 2024, Inc., and Scott Johnston, by and through  
undersigned counsel, file this Complaint against Francisco Aguilar, in his official  
capacity as Nevada Secretary of State; the State of Nevada; Cari-Ann Burgess, in her  
official capacity as the Washoe County Registrar of Voters; Jan Galassini, in her  
official capacity as the Washoe County Clerk; Lorena Portillo, in her official capacity  
as the Clerk County Registrar of Voters; and Lynn Marie Goya, in her official capacity  
as the Clark County Clerk; and allege as follows:

**NATURE OF THE CASE**

1. Nevada law permits the counting of some ballots received by mail after

1 election day, within time limits established by the Nevada legislature. This lawsuit  
2 seeks to enforce one critical component of Nevada’s post-election day counting of  
3 ballots: the requirement that mail ballots received after election day but lacking a  
4 postmark are not counted, as set forth in NRS 293.269921(1)-(2).

5         2. This lawsuit is necessary because the Nevada Deputy Secretary of State  
6 for Elections recently testified that this key safeguard of Nevada law will be ignored  
7 in upcoming elections and that mail ballots *without a postmark* will be counted if  
8 received up to 3 days after election day. See Deputy Secretary of State for Elections  
9 Mark Wlaschin, testimony before Nevada Advisory Committee on Participatory  
10 Democracy, April 23, 2024, available at [4/23/2024 - Secretary of State - Advisory Committee](#)  
11 [on Participatory Democracy - YouTube \(starting at 1:30:09\)](#).

12         3. Counting non-postmarked mail ballots is not permitted by Nevada law,  
13 which allows late-arriving mail ballots to be counted in only two circumstances: (1)  
14 the ballot is accompanied by a valid postmark indicating it was mailed on or before  
15 election day, or (2) the ballot has a postmark but “the date of the postmark cannot be  
16 determined.” Legibly postmarked ballots are counted if received four days after  
17 election day. NRS 293.269921(1). Ballots bearing postmarks with dates that are  
18 illegible or otherwise cannot be determined are appropriately given a shorter  
19 timeframe of three days. NRS 293.269921(2).

20         4. In enacting (and recently amending) section 293.269921, the Nevada  
21 legislature has made policy judgments about which mail ballots received after  
22 election day may be counted. In closely contested elections (and all elections), care  
23 must be taken to ensure that ballots cast after election day cannot be counted. Indeed,  
24 it is axiomatic to fair elections that once the time for voting has ended, no interested  
25 party can add new votes to the mix. The unfairness and opportunity for changing the  
26 valid results of an election are self-evident.

27         5. Plaintiffs seek a declaration and injunction to ensure that Nevada voters  
28 will have confidence that only those late-arriving mail ballots with evidence of having

1 been mailed on or before election day will be counted, as the Nevada legislature  
2 intended when it required the presence of a postmark before such late-arriving mail  
3 ballots may be counted.

#### 4 **JURISDICTION AND VENUE**

5 6. This Court has jurisdiction to hear Plaintiffs' claims and to grant  
6 declaratory and injunctive relief pursuant to NRS 295.061, 30.030, 30.040, and  
7 33.010.

8 7. Venue is proper under NRS 13.020 and 13.040 because this action is  
9 against a public officer, certain Defendants are located within the instant judicial  
10 district, the acts complained of herein occurred within the instant judicial district,  
11 and the relief Plaintiff seeks would be granted from within the instant judicial  
12 district.

#### 13 **PARTIES**

14 8. Plaintiff, the Republican National Committee (RNC), is the national  
15 committee of the Republican Party, as defined by 52 U.S.C. § 30101(14), with its  
16 principal place of business at 310 First Street S.E., Washington, DC 20003.

17 9. The RNC organizes and operates the Republican National Convention,  
18 which nominates a candidate for President and Vice President of the United States.

19 10. The RNC represents over 30 million registered Republicans in all 50  
20 states, the District of Columbia, and the U.S. territories. It is comprised of 168 voting  
21 members representing state Republican Party organizations, including three  
22 members who are registered voters in Nevada.

23 11. The RNC works to elect Republican candidates to state and federal office  
24 in Nevada. In the November 2024 general election, Republican candidates will appear  
25 on the ballot in Nevada for election to the Presidency, U.S. Senate, U.S. House of  
26 Representatives, and state offices.

27 12. The RNC has vital interests in protecting the ability of Republican  
28 voters to cast, and Republican candidates to receive, effective votes in Nevada

1 elections and elsewhere.

2 13. The RNC seeks to vindicate its own rights and represent the rights of  
3 its members, affiliated voters, and candidates.

4 14. The RNC has a strong interest in ensuring that elections in which it and  
5 its candidates compete for votes are conducted in a legally structured competitive  
6 environment.

7 15. The RNC devotes significant resources to mail-ballot-chasing operations  
8 and election integrity activities, including post-election day activities, such as  
9 monitoring the processing and counting of mail ballots. If non-postmarked ballots  
10 received after election day are counted, the RNC will have to devote resources to  
11 ascertaining and ensuring that only ballots mailed by election day are counted.

12 16. Plaintiff Nevada Republican Party (NVGOP) is a political party in  
13 Nevada with its principal place of business at 2810 West Charleston Blvd. #69, Las  
14 Vegas, NV 89102.

15 17. The NVGOP exercises its federal and state constitutional rights of  
16 speech, assembly, petition, and association to “provide the statutory leadership of the  
17 Nevada Republican Party as directed in the Nevada Revised statutes,” to “recruit,  
18 develop, and elect representative government at the national, state, and local levels,”  
19 and to “promote sound, honest, and representative government at the national, state  
20 and local levels.” NRCC Bylaws, art. II, §§1.A-1.C.

21 18. The NVGOP represents over 550,000 registered Republican voters in  
22 Nevada.

23 19. The NVGOP has the same interests as the RNC in vindicating its own  
24 rights, preserving resources, and representing the rights of its members, affiliated  
25 voters, and candidates.

26 20. Plaintiff Donald J. Trump for President 2024, Inc. (Trump Campaign) is  
27 the principal committee for President Donald J. Trump’s campaign for President with  
28 its headquarters in West Palm Beach, FL.



1           21. Donald J. Trump will be a candidate for President on the ballot for the  
2 2024 Nevada general election (by and through presidential and vice presidential  
3 electors) and is a Republican affiliated with the RNC and NVGOP.

4           22. The Trump Campaign has the same interests in this case as the RNC  
5 and NVGOP with respect to the candidacy of President Trump and seeks to vindicate  
6 those interests in the same ways. The Trump Campaign intends to invest resources  
7 seeking voter support for the Nevada general election.

8           23. Plaintiff Scott Johnston is a 60-year resident of Nevada and a registered  
9 Nevada voter residing in Washoe County. He regularly votes in Nevada elections, and  
10 he plans to vote in the November 2024 general election, including for U.S. President,  
11 Senate, and the House of Representatives. Mr. Johnston is registered as a  
12 Republican, supports Republican candidates, and has volunteered on behalf of the  
13 Republican Party. He is a member of the Washoe County Republican Party Central  
14 Committee, which is the governing body of the Washoe County Republican Party. Mr.  
15 Johnston has also served as a precinct captain for the Galena Forest Estates area  
16 since 2020, and a Nevada State Central Committee person since 2021.

17           24. Defendant Francisco V. Aguilar is the Nevada Secretary of State and is  
18 sued in his official capacity. He serves “as the Chief Officer of Elections” for Nevada  
19 and “is responsible for the execution and enforcement of the provisions of title 24 of  
20 NRS and all other provisions of state and federal law relating to elections in” Nevada.  
21 NRS §293.124.

22           25. Defendant State of Nevada is a political jurisdiction and State of the  
23 United States.

24           26. Defendant Cari-Ann Burgess is the Registrar of Voters for Washoe  
25 County. She is the county’s chief election officer and is responsible for “establish[ing]  
26 procedures for the processing and counting of mail ballots” in Washoe County. NRS  
27 293.269925(1); *see id.* 293.269911-.269937, 244.164. Defendant Burgess is sued in her  
28 official capacity.

1           27. Defendant Jan Galassini is the Washoe County Clerk. She is responsible  
2 for certifying the election results in Washoe County. NRS 293.393. Defendant  
3 Galassini is sued in her official capacity.

4           28. Defendant Lorena Portillo is the Registrar of Voters for Clark County.  
5 She is the county's chief election officer and is responsible for "establish[ing]  
6 procedures for the processing and counting of mail ballots" in Clark County. NRS  
7 293.269925(1); *see id.* 293.269911-.269937, 244.164. Defendant Portillo is sued in her  
8 official capacity.

9           29. Defendant Lynn Marie Goya is the Clark County Clerk. She is  
10 responsible for certifying the election results in Clark County. NRS 293.393.  
11 Defendant Goya is sued in her official capacity.

## 12                           **GENERAL ALLEGATIONS**

13           30. Nevada citizens rely on consistent application of election rules to ensure  
14 free and fair elections. How mail ballots received after election day are counted is an  
15 issue of critical importance for the upcoming Nevada general election. The public will  
16 only have confidence in the fairness and finality of the election if Nevada law  
17 requiring ballots to be voted and deposited in the mail on or before election day is  
18 fully enforced.

### 19           **A. Nevada Statutory Scheme for Late-Arriving Mail Ballots.**

20           31. There are numerous opportunities to vote in Nevada, including by mail.  
21 A mail ballot may be returned in person, deposited in a ballot drop box, or returned  
22 by mail.

23           32. Nevada provides for mail ballots to be sent to all active registered voters  
24 who do not opt out of receiving a ballot by mail, and Nevada includes postage pre-  
25 paid return envelopes for returning mail ballots.

26           33. Since 2020, Nevada law has provided that ballots returned by mail may  
27 be counted provided there is evidence they were voted on or before election day but  
28 were not received by the clerk and recorder until after election day. (Prior to 2020,

1 Nevada law did not permit the counting of any absent ballots received in the mail  
2 after election day. See NRS 293.317 (2019)). These late-arriving ballots are subject  
3 to strict limits, as would be expected for the counting of additional ballots received  
4 after the election has been completed and the polls have closed.

5 34. Under Nevada law, “[I]n order for a mail ballot to be counted for any  
6 election, the ballot must be ... [m]ailed to the county clerk,” “postmarked on or before  
7 the day of the election,” and “[r]eceived by the clerk not later than 5 p.m. on the fourth  
8 day following the election.” NRS 293.269921(1).

9 35. Nevada law further provides that “[i]f a mail ballot is received by mail  
10 not later than 5 p.m. on the third day following the election and the date of *the*  
11 *postmark* cannot be determined, the mail ballot shall be deemed to have been  
12 postmarked on or before the day of the election.” NRS 293.269921(2) (emphasis  
13 added).

14 **B. The 2024 Nevada General Election is Expected to have Substantial**  
15 **Mail Ballot Returns**

16 36. Nevada will hold a general federal election on November 5, 2024. In  
17 addition to many local and state election matters, the general election will select  
18 presidential and vice presidential electors and elect Representatives and a U.S.  
19 Senator from the State.

20 37. Under Nevada law, mail ballots “postmarked on or before” November 5,  
21 2024, and “[r]eceived by the clerk not later than 5 p.m.” on November 9, 2024, will be  
22 counted. NRS 293.269921(1).

23 38. Under Nevada law, postmarked mail ballots whose postmark date  
24 “cannot be determined” will be counted if received on or before 5 p.m. on November  
25 8, 2024. NRS 293.269921(2).

26 39. On April 23, 2024, the Deputy Secretary of State for Elections, Mark  
27 Wlaschin, testified before the Nevada Legislature’s Advisory Committee on  
28 Participatory Democracy that Nevada’s policy and practice is to count mail ballots

1 “without a postmark” if they are received within three days of election day. *See*  
2 Deputy Secretary of State for Elections Mark Wlaschin, testimony before Nevada  
3 Advisory Committee on Participatory Democracy, April 23, 2024, available at  
4 [4/23/2024 - Secretary of State - Advisory Committee on Participatory Democracy - YouTube](#)  
5 (starting at 1:30:09).

6 40. The Secretary of State participates or sends a designee to participate in  
7 the Advisory Committee on Participatory Democracy, which was created pursuant to  
8 NRS Chapter 225.

9 41. Upon information and belief, consistent with Deputy Secretary  
10 Wlaschin’s testimony, election officials in Nevada have counted and will continue to  
11 count mail ballots that lack a postmark and are received on or before 5 p.m. on the  
12 third day following the election. Election officials will count mail ballots that lack a  
13 postmark and are received on or before 5 p.m. on November 8, 2024.

14 42. Nevada law permits the counting of a mail ballot received after election  
15 day only if it bears a postmark indicating it was mailed on or before election day. The  
16 law further provides that a mail ballot received after election day where “the date of  
17 the postmark cannot be determined” will be counted if received within three days  
18 after election day. This minor caveat to the law requiring mail ballots to be  
19 postmarked on or before election day applies where the mail ballot envelope has a  
20 postmark but the date of the postmark cannot be determined. It does not apply when  
21 the mail ballot envelope lacks any postmark whatsoever.

22 43. USPS routinely delivers mail inside of three days within Nevada. For  
23 example, the online Service Standard Map for first class mail originating in any Las  
24 Vegas zip code shows the letter will be delivered to the Clark County Elections  
25 Department within two days:  
26

Service:

☒ Originating  
☐ Destinating  
☐ Destination Entry

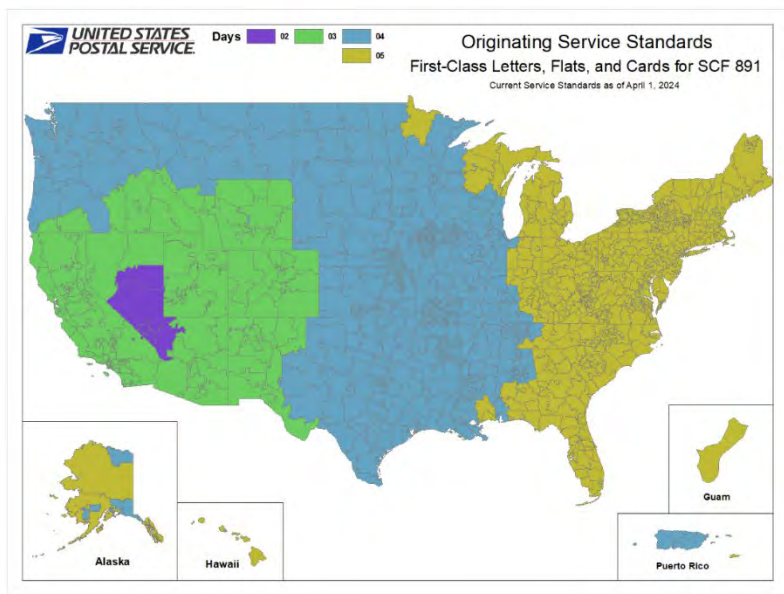
Mail Class:

☒ First-Class Letters & Flats  
☐ Marketing Mail  
☐ Package Services  
☐ Parcel Select and Parcel Select Lightweight  
☐ Periodicals  
☐ USPS Ground Advantage - below one pound  
☐ USPS Ground Advantage - between one and 70 pounds

ZIP and City Name:

891 LAS VEGAS NV

☐ List cities in alphabetical order



44. It is therefore possible, if not probable, that mail ballots deposited in the mail after election day could arrive at mail-ballot processing facilities within the three-day deadline, and under Deputy Secretary Wlaschin's erroneous legal interpretation, those untimely ballots would be counted if they do not bear a postmark.

45. A postmark is printed on mail received by the U.S. Postal Service (USPS) and indicates which USPS office accepted the mail, including the state, zip code, and date of mailing, often with markings indicating the postage has been canceled and cannot be reused.

46. Upon information and belief, some mail ballots will be received by Clark and Washoe County election officials after election day which lack any postmark.

### C. Plaintiffs necessarily rely on Nevada's statutory ballot-counting regime.

47. The RNC, NVGOP, and Trump Campaign rely on provisions of Nevada law in conducting their campaigns, which include resources allocated to the post-election counting and certification processes.

1           48. For example, Nevada law guarantees Plaintiffs the right to be  
2 represented on county mail ballot central counting boards. See NRS 293.269929(2)  
3 (“The voters appointed as election board officers for the mail ballot central counting  
4 board must not all be of the same political party.”). Nevada law also guarantees the  
5 right to observe the handling and counting of mail ballots. See NRS 293.269931(1);  
6 Nev. Admin. Code 293.322(3), (4); 356(1). Counting all ballots received within three  
7 days after Election Day, including non-postmarked ballots, requires Plaintiffs and  
8 their members to divert more time and money to post-election mail ballot activities.  
9 See NRS 293.269931 (counting may continue up to “the seventh day following an  
10 election”).

11           49. In addition, late-arriving ballots without a postmark are not valid, so  
12 counting them dilutes the weight of timely, valid ballots. For instance, if 1,000 ballots  
13 are mailed after election day and then counted by Nevada because they lack a  
14 postmark, the valid votes on or before election day would be diluted by the counting  
15 of those 1,000 unlawfully counted ballots.

16           50. Any votes deposited in the mail after the polls close on election day  
17 would not be legally cast votes and should not be counted.

18           51. It is possible that the results of a close election could be changed by the  
19 counting of ballots cast after election day.

20           52. Dilution of honest votes, to any degree, by the counting of late-cast votes  
21 violates the right to vote and prevents the holding of a free and fair election.

22           53. Voting by mail is highly polarized by party, meaning the dilution of votes  
23 on account of late-arriving mail ballots directly and specifically harms Plaintiffs. For  
24 example, according to the MIT Election Lab, 46% of Democratic voters in the 2022  
25 General Election mailed in their ballots, compared to only 27% of Republicans.  
26 Charles Stewart III, How We Voted in 2022, at 10 <https://perma.cc/444Z-58ZY>.  
27 Accordingly, late-arriving mail ballots that are counted will tend to  
28 disproportionately favor Democrat candidates.

1           54. In Nevada, voting by mail is even more polarized by party. For example,  
2 in Nevada’s 2020 general election, 60.3% of Democratic voters voted by mail,  
3 compared to just 36.9% of Republican voters. *See* Nev. Sec’y of State, 2020 General  
4 Election Turnout, <https://perma.cc/Z6F3-SM4N>. Likewise in the 2022 general  
5 election, 61.3% of Democrats and just 40% of Republicans voted by mail. *See* Nev.  
6 Sec’y of State, 2022 General Election Turnout, <https://perma.cc/N7G7-RUQ9>.

7           55. Moreover, mail ballots from Democrat affiliated voters frequently arrive  
8 late, in part because “Democratic get-out-the-vote drives—which habitually occur  
9 shortly before election day—may delay maximum Democratic voting across-the-  
10 board, and produce a ‘blue shift’ in late mail ballots.” Ed Kilgore, Why Do the Last  
11 Votes Counted Skew Democratic?, *Intelligencer* (Aug. 10, 2020),  
12 <https://perma.cc/R78D-3Q58>. Indeed, “even if Republicans and Democrats voted in  
13 person and by mail at identical levels, Democrats tend to vote later, which in turn  
14 (particularly in elections with heavy voting by mail) means early Republican leads in  
15 close races could be fragile.” *Id.*

16           56. Indeed, data from the Nevada Secretary of State’s office and county  
17 election offices indicates that there were approximately 50% more late-arriving  
18 ballots from registered Democratic voters than registered Republican voters in the  
19 2020 and 2022 general elections.

20           57. In the 2022 Nevada election for U.S. Senate, media reported that late-  
21 arriving mail ballots favored the Democrat and helped swing the final election  
22 results. *See* Jacob Solis, *Cortez Masto defeats Laxalt in Senate race, securing majority*  
23 *for Democrats*, Nov. 12, 2022 *The Nevada Independent*, available at [Cortez Masto defeats](#)  
24 [Laxalt in Senate race, securing majority for Democrats - The Nevada Independent](#) (“Cortez Masto’s  
25 delayed victory became clear late Saturday after the extended process of counting  
26 mail ballots submitted through the postal service and drop boxes through Election  
27 Day. ... Though Laxalt had led Cortez Masto by as much as 23,000 votes on the  
28 morning following Election Day, remaining mail ballots counted in urban counties

1 through this week have favored Cortez Masto by upwards of a 2-to-1 margin, erasing  
2 Laxalt's lead by thousands of votes with every update of the count.")

3 58. In the Nevada 2024 primary elections, Democrat affiliated voters  
4 disproportionately voted by mail as compared to Republican affiliated voters. Office  
5 of Nev. Sec'y of State, 2024 Presidential Preference Primary Turnout: Cumulative  
6 Presidential Preference Primary Election Turnout – Final (Feb. 20, 2024),  
7 perma.cc/7USY-5NMY. There were also more Democrat affiliated mail ballots  
8 rejected for not being returned correctly. See Office of Nev. Sec'y of State, 2024  
9 Presidential Preference Primary Turnout: Mail Ballot Information – Cumulative  
10 Totals (Feb. 20, 2024), perma.cc/7NTN-JV6L.

11 59. Accordingly, counting mail ballots received after election day which lack  
12 any postmark specifically and disproportionately harms Republican candidates and  
13 Republican voters.

14 60. Harm from counting mail ballots lacking a postmark that are received  
15 after election day is irreparable.

16 61. Separate and distinct from this lawsuit, Plaintiffs have challenged  
17 Nevada's counting of late-arriving mail ballots as violating federal law in the U.S.  
18 District Court for the District of Nevada in a case captioned, *Republican National*  
19 *Committee et al. v. Cari-Ann Burgess, et al*, No. 24-cv-00198 (D. Nev.). That case  
20 remains pending and will not impact the state law issues raised in this complaint.  
21 Should the federal court issue relief that impacts the administration of NRS  
22 293.269921(2), Plaintiffs will promptly notify the Court.

## 23 FIRST CAUSE OF ACTION

### 24 (Declaratory Judgment)

25 62. The preceding paragraphs are incorporated by reference.

26 63. The Plaintiffs seek declaratory relief that mail ballots received after  
27 election day which lack a postmark shall not be counted.

28 64. The Court has the authority to declare rights, status and other legal



rights of the parties, regardless of whether further relief could be had.

65. The facts and issues presented constitute a justiciable controversy, in which the Plaintiffs assert a legally protected interest.

66. The controversy is ripe for determination.

67. Plaintiffs are entitled to relief under NRS 30.010 in the form of a declaration that says:

a. Nevada law prohibits the counting of all mail ballots received after election day which lack a postmark; and

b. Nevada law prohibits the counting of all mail ballots received after election day which do not bear evidence indicating they were mailed on or before election day.

68. For the foregoing reasons, the counting of any mail ballots received after election day that lack a postmark violates NRS 293.269921(1)-(2).

69. Consistent with the requirements of NRS 233B.110(3), Plaintiffs will serve a copy of the Complaint on the Attorney General.

70. The Court should therefore declare the policy and practice of counting mail ballots received after election day that lacks a postmark to be invalid.

## **SECOND CAUSE OF ACTION**

### **(Injunctive Relief)**

71. The preceding paragraphs are incorporated by reference.

72. The counting of mail ballots received after election day which lack a postmark threatens to immediately deprive Petitioners and Petitioners' members of the rights with respect to a fair election conducted in compliance with Nevada law.

73. Plaintiffs and Plaintiffs' members have no adequate remedy at law.

74. Without injunctive relief, Plaintiffs and Plaintiffs' members will suffer irreparable harm for which compensatory damages are inadequate.

75. The RNC and NVGOP, the Trump Campaign, their members, supporters, and voters, and Mr. Johnston have a significant interest in preventing

1 harm that will be created in the upcoming elections by counting mail ballots received  
2 after election day which lack a postmark.

3 76. Courts have authority “whenever necessary and proper” to grant further  
4 “relief based on a declaratory judgment or decree,” including injunctive relief. NRS  
5 30.100. Thus, an injunction can pair with a declaratory judgment under NRS  
6 233B.110.” *Smith v. Bd. of Wildlife Comm’rs*, 461 P.3d 164, (Nev 2020) (unpublished);  
7 *Aronoff v. Katleman*, 75 Nev. 424, 432 (Nev. 1959) (“[U]nder appropriate  
8 circumstances, a declaratory judgment may be coupled with injunctive relief.”).

9 77. Permanent injunctive relief is appropriate to protect voters rights to a  
10 “uniform, statewide standard for counting and recounting all votes accurately.” Nev.  
11 Const. art. 2 S 1A(10); See also NRS S 293.2546 (5).

12 78. The Court should enjoin Defendants from counting mail ballots received  
13 after election day which lack a postmark.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff prays for the following relief:

16 A. A declaratory judgment that the policy and practice of counting of mail  
17 ballots received after election day that lack a postmark violates NRS  
18 293.269921(1)-(2);

19 B. A permanent injunction prohibiting Defendants from counting mail ballots  
20 received after election day that lack a postmark, including for the November  
21 5, 2024, general election;

22 C. Plaintiffs’ reasonable costs and expenses of this action, including attorneys’  
23 fees; and

24 D. All other further relief that Plaintiffs may be entitled to.  
25  
26  
27  
28

1  
2  
3  
4 **AFFIRMATION**

5 The undersigned hereby affirm that the foregoing document does not contain  
6 the social security number of any person.

7 DATED this 31st day of May, 2024.

8  
9 ~~ASHCRAFT & BARR LLP~~

10 By: 

11 Jeffrey F. Barr (Bar # 7269)  
12 9405 West Russell Road, Suite 240  
13 Las Vegas, NV 89148

14 FIRST & FOURTEENTH PLLC

15 Michael Francisco (pro hac vice forthcoming)  
16 Christopher O. Murray (pro hac vice forthcoming)

17 *Counsel for Plaintiffs*

18 SIGAL CHATTAH LAW OFFICES  
19 Sigal Chattah (Bar # 8264)

20 *Counsel for Plaintiff Nevada Republican Party*

21 DHILLON LAW GROUP

22  
23 David A. Warrington\* (pro hac vice forthcoming)  
24 Gary M. Lawkowski\* (pro hac vice forthcoming)

25 *Attorneys for Plaintiff Donald J. Trump for*  
26 *President 2024, Inc.*  
27  
28

REC'D & FILED

JUL - 3 2024

Date

WILLIAM SCOTT HOEN  
CLERK

By K. PETERSON Deputy

Alicia R. Ashcraft (Bar # 6980)  
Jeffrey F. Barr (Bar # 7269)  
Ashcraft & Barr LLP  
8275 South Eastern Avenue, Suite 200  
Las Vegas, NV 89123  
702-631-4755  
barrj@ashcraftbarr.com

Michael Francisco\* (CO Atty. No. 39111)  
Christopher O. Murray\* (CO. Atty No. 39340)  
First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
Washington, D.C. 20006  
202-998-1978  
michael@first-fourteenth.com  
chris@first-fourteenth.com

Sigal Chattah (Bar # 8264)  
5875 S. Rainbow Blvd #204  
Las Vegas, NV 89118  
702-360-6200  
sigal@thegoodlawyerlv.com

David A. Warrington\* (VA Bar No. 72293)  
Gary M. Lawkowski\* (VA Bar No. 82329)  
2121 Eisenhower Ave, Suite 608  
Alexandria, VA 22314  
703-574-1206  
DWarrington@dhillonlaw.com  
GLawkowski@dhillonlaw.com

\* *Pro hac vice application forthcoming*

1  
2 **IN THE FIRST JUDICIAL DISTRICT COURT**  
3 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**  
4

5 REPUBLICAN NATIONAL  
6 COMMITTEE; NEVADA  
7 REPUBLICAN PARTY; DONALD J.  
8 TRUMP FOR PRESIDENT 2024, INC.;  
9 SCOTT JOHNSTON

10 Plaintiffs,

11 v.

12 FRANCISCO AGUILAR, in his official  
13 capacity as Nevada Secretary of State;  
14 State of NEVADA; CARI-ANN  
15 BURGESS, in her official capacity as  
16 the Washoe County Registrar of  
17 Voters; JAN GALASSINI, in her  
18 official capacity as the Washoe County  
19 Clerk; LORENA PORTILLO, in her  
20 official capacity as the Clark County  
21 Registrar of Voters; LYNN MARIE  
22 GOYA, in her official capacity as the  
23 Clark County Clerk.

24 Defendants,

25 and

26 VET VOICE FOUNDATION; and the  
27 NEVADA ALLIANCE FOR RETIRED  
28 AMERICANS,

Intervenor-Defendants.

Case No.: 24 OC 00101 1B

Dept. No.: I

**AMENDED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Arbitration Exemption: Declaratory  
and Injunctive Relief

Plaintiffs Republican National Committee and the Nevada Republican Party,

1 Donald J. Trump for President 2024, Inc., and Scott Johnston, by and through  
2 undersigned counsel, file this Amended Complaint against Francisco Aguilar, in his  
3 official capacity as Nevada Secretary of State; the State of Nevada; Cari-Ann Burgess,  
4 in her official capacity as the Washoe County Registrar of Voters; Jan Galassini, in  
5 her official capacity as the Washoe County Clerk; Lorena Portillo, in her official  
6 capacity as the Clark County Registrar of Voters; and Lynn Marie Goya, in her official  
7 capacity as the Clark County Clerk; and allege as follows:

#### 8 NATURE OF THE CASE

9 1. Nevada law permits the counting of some ballots received by mail after  
10 election day, within time limits established by the Nevada legislature. This lawsuit  
11 seeks to enforce one critical component of Nevada's post-election day counting of  
12 ballots: the requirement that mail ballots received after election day but lacking a  
13 postmark are not counted, as set forth in NRS 293.269921(1)-(2).

14 2. This lawsuit is necessary because the Nevada Secretary of State has  
15 adopted a policy and practice of disregarding the statute's postmark requirement,  
16 and County Clerks and Registrars have disregarded, and will continue to disregard,  
17 the postmark requirement in the administration of elections in Nevada.

18 3. Counting non-postmarked mail ballots is not permitted by Nevada law,  
19 which allows late-arriving mail ballots to be counted in only two circumstances: (1)  
20 the ballot is accompanied by a valid postmark indicating it was mailed on or before  
21 election day, or (2) the ballot has a postmark but "the date of the postmark cannot be  
22 determined." Ballots legibly postmarked on or before election day are counted if  
23 received four days after election day. NRS 293.269921(1). Ballots bearing postmarks  
24 with dates that are illegible or otherwise cannot be determined are appropriately  
25 given a shorter timeframe of three days. NRS 293.269921(2).

26 4. Just days before the June 11, 2024 primary election, the Secretary of  
27 State's office issued a "Memorandum" (dated May 29, 2024) to all County Clerks and  
28 Registrars to disregard the postmark requirement. The Memorandum stated: "[A]



1 mail ballot that has no visible postmark should be interpreted to have an  
2 indeterminate postmark, and therefore should be accepted if it has been received by  
3 the clerk by mail not later than 5 p.m. on the third day following the election.” Office  
4 of the Secretary of State Memorandum 2024-015, dated May 29, 2024, attached as  
5 Exhibit 1.

6 5. This Memorandum followed testimony by the Deputy Secretary of State  
7 for Elections that mail ballots without a postmark will be counted if received up to  
8 three days after election day. See Deputy Secretary of State for Elections Mark  
9 Wlaschin, testimony before Nevada Advisory Committee on Participatory  
10 Democracy, April 23, 2024, available at 4/23/2024 - Secretary of State - Advisory Committee  
11 on Participatory Democracy - YouTube (starting at 1:30:09)  
12 <https://www.youtube.com/watch?v=OmQ8SSH1XFI>

13 6. During the June 11, 2024 primary election, officials in Clark and  
14 Washoe Counties did not check for postmarks when processing mail ballots received  
15 during the three days following election day. Observers representing the Republican  
16 Party at the ballot processing centers in both counties also reported that officials did  
17 not appear to be enforcing the requirement that ballots received after 5 pm on the  
18 third day following the election be postmarked on or before election day. On that day,  
19 even under the Secretary’s (unlawful) policy, counties should be enforcing the  
20 statutory postmark requirement.

21 7. In enacting (and recently amending) section 293.269921, the Nevada  
22 legislature has made policy judgments about which mail ballots received after  
23 election day may be counted. In closely contested elections (and all elections), care  
24 must be taken to ensure that ballots cast after election day cannot be counted. Indeed,  
25 it is axiomatic to fair elections that once the time for voting has ended, no interested  
26 party can add new votes to the mix. The unfairness and opportunity for changing the  
27 valid results of an election are self-evident. That is why numerous states that accept  
28 ballots after election day impose a postmark requirement.

8. Plaintiffs seek a declaration and injunction to ensure that Nevada voters will have confidence that only those late-arriving mail ballots with evidence of having been mailed on or before election day will be counted, as the Nevada legislature intended when it required the presence of a postmark before such late-arriving mail ballots may be counted.

## JURISDICTION AND VENUE

9. This Court has jurisdiction to hear Plaintiffs' claims and to grant declaratory and injunctive relief pursuant to NRS 295.061, 30.030, 30.040, and 33.010.

10. Venue is proper under NRS 13.020 and 13.040 because this action is against a public officer, certain Defendants are located within the instant judicial district, the acts complained of herein occurred within the instant judicial district, and the relief Plaintiff seeks would be granted from within the instant judicial district.

## PARTIES

11. Plaintiff, the Republican National Committee (RNC), is the national committee of the Republican Party, as defined by 52 U.S.C. § 30101(14), with its principal place of business at 310 First Street S.E., Washington, DC 20003.

12. The RNC organizes and operates the Republican National Convention, which nominates a candidate for President and Vice President of the United States.

13. The RNC represents over 30 million registered Republicans in all 50 states, the District of Columbia, and the U.S. territories. It is composed of 168 voting members representing state Republican Party organizations, including three members who are registered voters in Nevada.

14. The RNC works to elect Republican candidates to state and federal office in Nevada. In the November 2024 general election, Republican candidates will appear on the ballot in Nevada for election to the Presidency, U.S. Senate, U.S. House of Representatives, and state offices.



1        15. The RNC has vital interests in protecting the ability of Republican  
2 voters to cast, and Republican candidates to receive, effective votes in Nevada  
3 elections and elsewhere.

4        16. The RNC seeks to vindicate its own rights and represent the rights of  
5 its members, affiliated voters, and candidates.

6        17. The RNC has a strong interest in ensuring that elections in which it and  
7 its candidates compete for votes are conducted in a legally structured competitive  
8 environment.

9        18. The RNC devotes significant resources to mail-ballot-chasing operations  
10 and election integrity activities, including post-election day activities, such as  
11 monitoring the processing and counting of mail ballots. If non-postmarked ballots  
12 received after election day are counted, the RNC will have to devote resources to  
13 ascertaining and ensuring that only ballots mailed by election day are counted in  
14 order to protect its interests and the interests of its voters, members, and candidates.

15        19. Plaintiff Nevada Republican Party (NVGOP) is a political party in  
16 Nevada with its principal place of business at 2810 West Charleston Blvd. #69, Las  
17 Vegas, NV 89102.

18        20. The NVGOP exercises its federal and state constitutional rights of  
19 speech, assembly, petition, and association to "provide the statutory leadership of the  
20 Nevada Republican Party as directed in the Nevada Revised statutes," to "recruit,  
21 develop, and elect representative government at the national, state, and local levels,"  
22 and to "promote sound, honest, and representative government at the national, state  
23 and local levels." NRCC Bylaws, art. II, §§1.A-1.C.

24        21. The NVGOP represents over 550,000 registered Republican voters in  
25 Nevada.

26        22. The NVGOP has the same interests as the RNC in vindicating its own  
27 rights, preserving resources, and representing the rights of its members, affiliated  
28 voters, and candidates.

1           23. Plaintiff Donald J. Trump for President 2024, Inc. (Trump Campaign) is  
2 the principal committee for President Donald J. Trump's campaign for President with  
3 its headquarters in West Palm Beach, FL.

4           24. Donald J. Trump will be a candidate for President on the ballot for the  
5 2024 Nevada general election (by and through presidential and vice presidential  
6 electors) and is a Republican affiliated with the RNC and NVGOP.

7           25. The Trump Campaign has overlapping interests in this case with the  
8 RNC and NVGOP with respect to the candidacy of President Trump and it seeks to  
9 vindicate those interests in the same ways. However, the Trump Campaign's acute  
10 interests are limited by its exclusive focus on the 2024 election, whereas the RNC is  
11 an ongoing entity whose interests will endure beyond the 2024 election. The Trump  
12 Campaign intends to invest resources seeking voter support for the Nevada general  
13 election.

14           26. Plaintiff Scott Johnston is a 60-year resident of Nevada and a registered  
15 Nevada voter residing in Washoe County. He regularly votes in Nevada elections, and  
16 he plans to vote in the November 2024 general election, including for U.S. President,  
17 Senate, and the House of Representatives. Mr. Johnston is registered as a  
18 Republican, supports Republican candidates, and has volunteered on behalf of the  
19 Republican Party. He is a member of the Washoe County Republican Party Central  
20 Committee, which is the governing body of the Washoe County Republican Party. Mr.  
21 Johnston has also served as a precinct captain for the Galena Forest Estates area  
22 since 2020, and a Nevada State Central Committee person since 2021.

23           27. Defendant Francisco V. Aguilar is the Nevada Secretary of State and is  
24 sued in his official capacity. He serves "as the Chief Officer of Elections" for Nevada  
25 and "is responsible for the execution and enforcement of the provisions of title 24 of  
26 NRS and all other provisions of state and federal law relating to elections in" Nevada.  
27 NRS §293.124.

28           28. Defendant State of Nevada is a political jurisdiction and State of the



1 United States.

2 29. Defendant Cari-Ann Burgess is the Registrar of Voters for Washoe  
3 County. She is the county's chief election officer and is responsible for "establish[ing]  
4 procedures for the processing and counting of mail ballots" in Washoe County. NRS  
5 293.269925(1); *see id.* 293.269911-.269937, 244.164. Defendant Burgess is sued in her  
6 official capacity.

7 30. Defendant Jan Galassini is the Washoe County Clerk. She is responsible  
8 for certifying the election results in Washoe County. NRS 293.393. Defendant  
9 Galassini is sued in her official capacity.

10 31. Defendant Lorena Portillo is the Registrar of Voters for Clark County.  
11 She is the county's chief election officer and is responsible for "establish[ing]  
12 procedures for the processing and counting of mail ballots" in Clark County. NRS  
13 293.269925(1); *see id.* 293.269911-.269937, 244.164. Defendant Portillo is sued in her  
14 official capacity.

15 32. Defendant Lynn Marie Goya is the Clark County Clerk. She is  
16 responsible for certifying the election results in Clark County. NRS 293.393.  
17 Defendant Goya is sued in her official capacity.

#### 18 GENERAL ALLEGATIONS

19 33. Nevada citizens rely on consistent application of election rules to ensure  
20 free and fair elections. How mail ballots received after election day are counted is an  
21 issue of critical importance for the upcoming Nevada general election. The public will  
22 only have confidence in the fairness and finality of the election if Nevada law  
23 requiring ballots to be voted and deposited in the mail on or before election day is  
24 fully enforced.

##### 25 A. Nevada Statutory Scheme for Late-Arriving Mail Ballots.

26 34. There are numerous opportunities to vote in Nevada, including by mail.  
27 A mail ballot may be returned in person, deposited in a ballot drop box, or returned  
28 by mail.

1        35. Nevada provides for mail ballots to be sent to all active registered voters  
2 who do not opt out of receiving a ballot by mail, and Nevada includes postage pre-  
3 paid return envelopes for returning mail ballots.

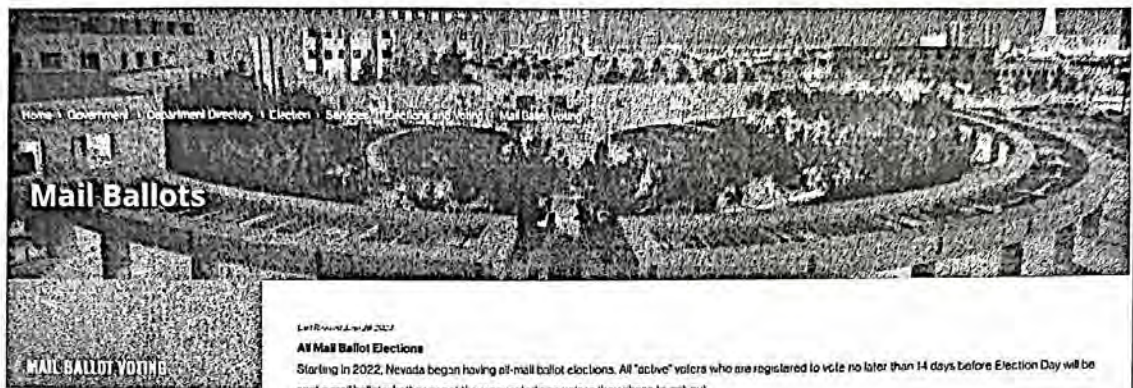
4        36. Since 2020, Nevada law has provided that ballots returned by mail may  
5 be counted if there is evidence they were voted on or before election day and not  
6 received by the clerk or registrar after election day. (Prior to 2020, Nevada law did  
7 not permit the counting of any absent ballots received in the mail after election day.  
8 See NRS 293.317 (2019)). These late-arriving ballots are subject to strict limits, as  
9 would be expected for the counting of additional ballots received after the election has  
10 been completed and the polls have closed.

11       37. Under Nevada law, “[I]n order for a mail ballot to be counted for any  
12 election, the ballot must be ... [m]ailed to the county clerk,” “postmarked on or before  
13 the day of the election,” and “[r]eceived by the clerk not later than 5 p.m. on the fourth  
14 day following the election.” NRS 293.269921(1).

15       38. Nevada law further provides that “[i]f a mail ballot is received by mail  
16 not later than 5 p.m. on the third day following the election and the date of the  
17 *postmark* cannot be determined, the mail ballot shall be deemed to have been  
18 postmarked on or before the day of the election.” NRS 293.269921(2) (emphasis  
19 added).

20       39. Consistent with this statutory requirement, the Clark County Election  
21 Department’s website states that voted mail ballots “must” be “Postmarked on or  
22 before Election Day.”





#### Voted Mail Ballot Postmark and Receiving Deadlines

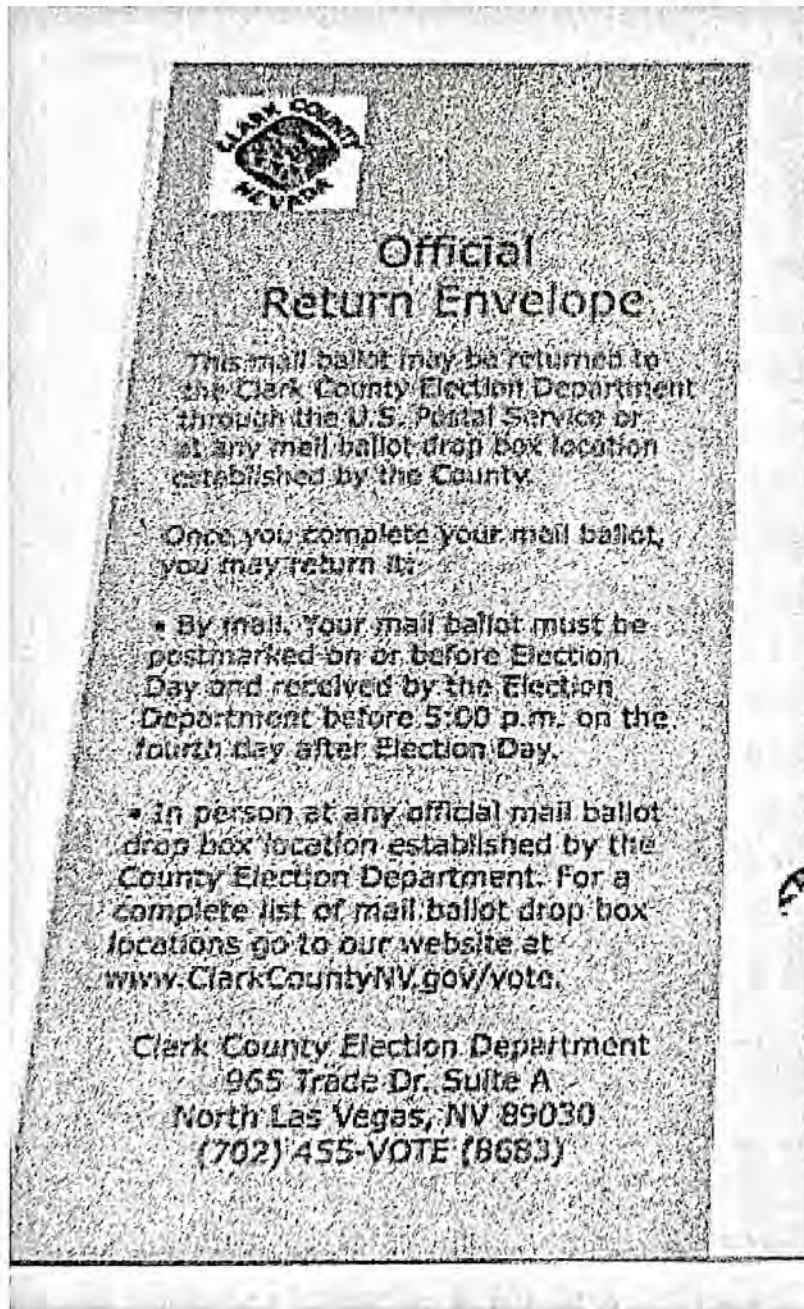
Voted mail ballots sent through the Post Office must be: (1) Mailed in the postage-paid return envelope provided specifically for you, showing your name and address, and you must also sign the outside of that envelope before mailing it; (2) Postmarked on or before Election Day; and (3) Received by the Election Department on or before by 5:00 p.m. on the fourth day after Election Day.

<https://www.clarkcountynv.gov/government/departments/elections/services/mb.php>

40. The official election mail ballot envelopes used in Clark County during the 2024 primary election likewise stated they "MUST BE POSTMARKED ON OR BEFORE ELECTION DAY":



1        41. Likewise, the inner official return envelope for the 2024 primary election  
2        stated that mail ballots "must be postmarked on or before Election Day":



3  
4        42. The sample ballot provided by Clark County for the 2024 primary  
5        election also stated that voted mail ballots "must be ... [p]ostmarked on or before



1 Tuesday, June 11, 2024" (the date of the election).

convenient return --  
**Mail Ballot Postmark and Receiving Deadlines for the June 11, 2024, Primary Election:**  
• Voted mail ballots must be mailed in your postage-paid mail ballot return envelope provided by the Election Department, which you must also sign, and  
• Postmarked on or before Tuesday, June 11, 2024; and  
• Received by the Election Department no later than 5:00 p.m. on the fourth day following Election Day (Saturday, June 15, 2024).

2  
3 **B. Nevada Officials Ignore the Postmark Requirement.**

4 43. On April 23, 2024, the Deputy Secretary of State for Elections, Mark  
5 Wlaschin, testified before the Nevada Legislature's Advisory Committee on  
6 Participatory Democracy that Nevada's policy and practice is to count mail ballots  
7 "without a postmark" if they are received within three days of election day. See  
8 Deputy Secretary of State for Elections Mark Wlaschin, Testimony Before Nevada  
9 Advisory Committee on Participatory Democracy, April 23, 2024, available at  
10 4/23/2024 - Secretary of State - Advisory Committee on Participatory Democracy - YouTube  
11 (starting at 1:30:09). <https://www.youtube.com/watch?v=OmQ8SSH1XFI>

12 44. The Secretary of State participates or sends a designee to participate in  
13 the Advisory Committee on Participatory Democracy, which was created pursuant to  
14 NRS Chapter 225.

15 45. On May 29, 2024, the Nevada Secretary of State's office issued a  
16 Memorandum to all County Clerks and Registrars to disregard the statutory  
17 postmark requirement. The Memorandum states: "[A] mail ballot that has no visible  
18 postmark should be interpreted to have an indeterminate postmark, and therefore  
19 should be accepted if it has been received by the clerk by mail not later than 5 p.m.  
20 on the third day following the election." **Exhibit 1** at 1. According to the  
21 Memorandum, "it is the intent of the Office of the Secretary of State that this  
22 guidance be submitted as a regulation following the conclusion of the 2024 election  
23 cycle." *Id.* at 2.

1        46.     During the mail ballot counting process for the June 11, 2024 primary  
2 election, observers representing the Republican National Committee and the Nevada  
3 Republican Party personally observed officials in Clark County and Washoe County  
4 count numerous mail ballots *without a postmark* received by the counties after  
5 election day.

6        47.     Clark County issued a document entitled "Mail Ballot Process Quick  
7 Guide" to all observers of the ballot processing and counting process. Exhibit 2. The  
8 document describes the process of ballot intake, signature verification, sorting and  
9 separating, tray inspection, counting board, and tabulation, but nowhere does it  
10 reference checking mail ballot postmarks at any point in the process. *Id.*

11       48.     The Republican Party observers personally observed officials in Clark  
12 County and Washoe County systematically fail to check for postmarks on mail ballots  
13 received after June 11, 2024 through 5:00 p.m. on the third day after the primary  
14 (June 14, 2024).

15       49.     In Clark County, these observers personally observed Clark County  
16 officials perform only a cursory check of postmarks on ballots received on Saturday,  
17 June 15, 2024, the fourth day after June 11, 2024. These observers further personally  
18 observed that not a single ballot was rejected for lack of postmark or a postmark post-  
19 dating June 11, 2024. The observers were not close enough to the officials conducting  
20 this check to verify that each of the ballots checked by Clark County officials on June  
21 15, 2024, had a legible postmark showing a date on or before June 11, 2024.

22       50.     In Washoe County, these observers personally observed Washoe County  
23 officials fail to check for postmarks on mail ballots received on June 15, 2024.

24       **C. Election Officials Intend to Ignore the Postmark Requirement For**  
25       **the 2024 Nevada General Election**

26       51.     Nevada will hold a general federal election on November 5, 2024. In  
27 addition to many local and state election matters, the general election will select  
28 presidential and vice presidential electors and elect Representatives and a U.S.



1 Senator from the State.

2 52. Under Nevada law, mail ballots “postmarked on or before” November 5,  
3 2024, and “[r]eceived by the clerk not later than 5 p.m.” on November 9, 2024, will be  
4 counted. NRS 293.269921(1).

5 53. Under Nevada law, postmarked mail ballots whose postmark date  
6 “cannot be determined” may be counted if received on or before 5 p.m. on November  
7 8, 2024. NRS 293.269921(2).

8 54. Consistent with Deputy Secretary Wlaschin’s testimony and the  
9 Secretary of State office’s May 29, 2024 Memorandum, election officials in Nevada  
10 have counted and will continue to count mail ballots that lack a postmark and are  
11 received by 5 p.m. on the third day following the election. Election officials will count  
12 mail ballots that lack a postmark and are received by 5 p.m. on November 8, 2024.

13 55. Nevada law permits the counting of a mail ballot received after election  
14 day only if it bears a postmark indicating it was mailed on or before election day. The  
15 law further provides that a mail ballot received after election day where “the date of  
16 the postmark cannot be determined” will be counted if received within three days  
17 after election day. This minor caveat to the law requiring mail ballots to be  
18 postmarked on or before election day applies where the mail ballot envelope has a  
19 postmark but the date of the postmark cannot be determined. It does not apply when  
20 the mail ballot envelope lacks any postmark whatsoever. It would be absurd as well  
21 as inconsistent for Nevada law to, on the one hand, specifically require a postmark  
22 on mailed ballots while, on the other hand, permit the counting of ballots without any  
23 postmark whatsoever.

24 56. USPS routinely delivers mail inside of three days within Nevada. For  
25 example, the online Service Standard Map for first class mail originating in any Las  
26 Vegas zip code shows the letter will be delivered to the Clark County Elections  
27 Department within two days:  
28

Service:  
☒ Originating  
☐ Destinating  
☐ Destination Entry

Mail Class:  
☒ First-Class Letters & Flats  
☐ Marketing Mail  
☐ Package Services  
☐ Parcel Select and Parcel Select Lightweight  
☐ Periodicals  
☐ USPS Ground Advantage - below one pound  
☐ USPS Ground Advantage - between one and 70 pounds

ZIP and City Name:

891 LAS VEGAS NV

☐ List cities in alphabetical order



57. It is therefore likely that mail ballots deposited in the mail after election day would arrive at mail-ballot processing facilities within the three-day deadline, and under the Secretary of State's erroneous legal interpretation, those untimely ballots would be counted if they do not bear a postmark.

58. A postmark is printed on mail received by the U.S. Postal Service (USPS) and indicates which USPS office accepted the mail, including the state, zip code, and date of mailing, often with markings indicating the postage has been canceled and cannot be reused.

59. Upon information and belief, some mail ballots will be received by Clark and Washoe County election officials after election day which lack any postmark.

60. As observed by observers representing the Republican National Committee and the Nevada Republican Party during the June 2024 primary election, the Defendants counted a substantial number of mail ballots received after election day through 5:00 p.m. on the third day after election day that lacked any postmark.

61. Based on these observers' observations, it appears that Defendants do not instruct or train any election workers to check for postmarks, legible or

1 indeterminate, for mail ballots received after election day through 5:00 p.m. on the  
2 third day after the election.

3 62. Further, while Clark County appears to check for postmarks on ballots  
4 received on the fourth day after the election, its apparent failure to reject a single  
5 ballot checked indicates that Clark County does not actually enforce the requirement  
6 that ballots received on the fourth day after election day bear a legible postmark from  
7 election day or before.

8 63. And Washoe County does not check for postmarks on ballots received on  
9 the fourth day after the election, showing that Washoe County does not enforce the  
10 requirement that ballots received on the fourth day after election day bear a legible  
11 postmark from election day or before.

12 64. If Defendants are not ordered by this Court to count only those late-  
13 arriving mail ballots that conform to the postmark requirement, then substantial  
14 numbers of mail ballots will be counted after the 2024 general election even when  
15 those ballots lack any postmark whatsoever, contrary to Nevada law.

16 **D. Plaintiffs necessarily rely on Nevada's statutory ballot-counting**  
17 **regime.**

18 65. The RNC, NVGOP, and Trump Campaign rely on provisions of Nevada  
19 law in conducting their campaigns, which include resources allocated to the post-  
20 election counting and certification processes.

21 66. For example, Nevada law guarantees Plaintiffs the right to be  
22 represented on county mail ballot central counting boards. See NRS 293.269929(2)  
23 ("The voters appointed as election board officers for the mail ballot central counting  
24 board must not all be of the same political party."). Nevada law also guarantees the  
25 right to observe the handling and counting of mail ballots. See NRS 293.269931(1);  
26 Nev. Admin. Code 293.322(3), (4); 356(1). Counting all ballots received within three  
27 days after Election Day, including non-postmarked ballots, requires Plaintiffs and  
28 their members to divert more time and money to post-election mail ballot activities.



1 See NRS 293.269931 (counting may continue up to “the seventh day following an  
2 election”).

3 67. In addition, late-arriving ballots without a postmark are not valid under  
4 state law, so counting them dilutes the weight of timely, valid ballots. For instance,  
5 if 1,000 ballots without postmarks are counted, the weight of those valid ballots would  
6 be diluted by the counting of those 1,000 unlawfully counted ballots.

7 68. Moreover, any votes deposited in the mail after the polls close on election  
8 day would not be legally cast votes and should not be counted.

9 69. It is highly likely that the results of a close election could be changed by  
10 the counting of non-postmarked ballots received after election day, including those  
11 mailed after election day. For example, a Clark County Commission election was  
12 decided by just 30 votes out of more than 150,000 cast in 2020. *See* Jordan Gartner,  
13 *Clark County releases recount totals for District C race between Miller, Anthony*,  
14 *KTNV* (Dec. 11, 2020). The defeated Republican candidate had a 2,700 vote lead on  
15 election day that was reduced following post-election day counting. *Id.*

16 70. Dilution of honest votes, to any degree, by the counting of invalid votes  
17 violates the right to vote and prevents the holding of a free and fair election.

18 71. Voting by mail is highly polarized by party, meaning the dilution of votes  
19 on account of late-arriving mail ballots directly and specifically harms Plaintiffs. For  
20 example, according to the MIT Election Lab, 46% of Democratic voters in the 2022  
21 General Election mailed in their ballots, compared to only 27% of Republicans.  
22 Charles Stewart III, *How We Voted in 2022*, at 10 <https://perma.cc/444Z-58ZY>.  
23 Accordingly, late-arriving mail ballots that are counted will tend to  
24 disproportionately favor Democrat candidates.

25 72. This trend continued for the 2024 primary election, where 74% of  
26 Democrats cast ballots by mail as compared to 52% for Republican affiliated voters.  
27 *See*, Eric Neugeboren, *Analysis: Nevada primary turnout down, but mail voting again*  
28 *reigns supreme*, *Nevada Daily Independent*, 6/17/2024 available at

1 [https://thenevadaindependent.com/article/analysis-nevada-primary-turnout-down-](https://thenevadaindependent.com/article/analysis-nevada-primary-turnout-down-but-mail-voting-again-reigns-supreme)  
2 [but-mail-voting-again-reigns-supreme](https://thenevadaindependent.com/article/analysis-nevada-primary-turnout-down-but-mail-voting-again-reigns-supreme)

3 73. In Nevada, voting by mail is even more polarized by party. For example,  
4 in Nevada's 2020 general election, 60.3% of Democratic voters voted by mail,  
5 compared to just 36.9% of Republican voters. See Nev. Sec'y of State, 2020 General  
6 Election Turnout,

7 <https://www.nvsos.gov/sos/home/showpublisheddocument/9054/63742671953890000>

8 Q. Likewise in the 2022 general election, 61.3% of Democrats and just 40% of  
9 Republicans voted by mail. See Nev. Sec'y of State, 2022 General Election Turnout,  
10 <https://www.nvsos.gov/sos/home/showpublisheddocument/11297/6381491715051700>  
11 00.

12 74. Moreover, mail ballots from Democrat affiliated voters frequently arrive  
13 late, in part because "Democratic get-out-the-vote drives—which habitually occur  
14 shortly before election day—may delay maximum Democratic voting across-the-  
15 board, and produce a 'blue shift' in late mail ballots." Ed Kilgore, Why Do the Last  
16 Votes Counted Skew Democratic?, *Intelligencer* (Aug. 10, 2020),  
17 [https://nymag.com/intelligencer/2020/08/why-do-the-last-votes-counted-skew-](https://nymag.com/intelligencer/2020/08/why-do-the-last-votes-counted-skew-democratic.html)  
18 [democratic.html](https://nymag.com/intelligencer/2020/08/why-do-the-last-votes-counted-skew-democratic.html). Indeed, "even if Republicans and Democrats voted in person and by  
19 mail at identical levels, Democrats tend to vote later, which in turn (particularly in  
20 elections with heavy voting by mail) means early Republican leads in close races could  
21 be fragile." *Id.*

22 75. Indeed, data from the Nevada Secretary of State's office and county  
23 election offices indicates that there were approximately 50% more late-arriving  
24 ballots from registered Democratic voters than registered Republican voters in both  
25 the 2020 and 2022 general elections.

26 76. In the 2022 Nevada election for U.S. Senate, media reported that late-  
27 arriving mail ballots favored the Democrat and helped swing the final election  
28 results. See Jacob Solis, *Cortez Masto defeats Laxalt in Senate race, securing majority*



1 for Democrats, Nov. 12, 2022 The Nevada Independent, available at  
2 [https://thenevadaindependent.com/article/cortez-masto-defeats-laxalt-in-senate-](https://thenevadaindependent.com/article/cortez-masto-defeats-laxalt-in-senate-race-securing-majority-for-democrats)  
3 [race-securing-majority-for-democrats](https://thenevadaindependent.com/article/cortez-masto-defeats-laxalt-in-senate-race-securing-majority-for-democrats) ("Cortez Masto's delayed victory became clear  
4 late Saturday after the extended process of counting mail ballots submitted through  
5 the postal service and drop boxes through Election Day. ... Though Laxalt had led  
6 Cortez Masto by as much as 23,000 votes on the morning following Election Day,  
7 remaining mail ballots counted in urban counties through this week have favored  
8 Cortez Masto by upwards of a 2-to-1 margin, erasing Laxalt's lead by thousands of  
9 votes with every update of the count.")

10 77. In the Nevada 2024 primary elections, Democratic voters  
11 disproportionately voted by mail as compared to Republican voters. Office of Nev.  
12 Sec'y of State, 2024 Presidential Preference Primary Turnout: Cumulative  
13 Presidential Preference Primary Election Turnout – Final (Feb. 20, 2024),  
14 <https://www.nvsos.gov/sos/home/showpublisheddocument/13069/6384404454739700>  
15 00 . There were also more Democratic mail ballots rejected for not being returned  
16 correctly. See Office of Nev. Sec'y of State, 2024 Presidential Preference Primary  
17 Turnout: Mail Ballot Information – Cumulative Totals (Feb. 20, 2024),  
18 <https://www.nvsos.gov/sos/home/showpublisheddocument/13048/6384403264877000>  
19 00

20 78. Accordingly, counting mail ballots received after election day which lack  
21 any postmark specifically and disproportionately harms Republican candidates and  
22 Republican voters.

23 79. Harm from counting mail ballots lacking a postmark that are received  
24 after election day is irreparable.

25 80. Separate and distinct from this lawsuit, Plaintiffs have challenged  
26 Nevada's counting of late-arriving mail ballots as violating federal law in the U.S.  
27 District Court for the District of Nevada in a case captioned, *Republican National*  
28 *Committee et al. v. Cari-Ann Burgess, et al*, No. 24-cv-00198 (D. Nev.). That case

1 remains pending and will not impact the state law issues raised in this complaint.  
2 Should the federal court issue relief that impacts the administration of NRS  
3 293.269921(2), Plaintiffs will promptly notify the Court.

#### 4 **FIRST CAUSE OF ACTION**

##### 5 **(Declaratory Judgment)**

6 81. The preceding paragraphs are incorporated by reference.

7 82. The Court has the authority to declare rights, status and other legal  
8 rights of the parties, regardless of whether further relief could be had.

9 83. The facts and issues presented constitute a justiciable controversy, in  
10 which the Plaintiffs assert a legally protected interest.

11 84. The controversy is ripe for determination.

12 85. Plaintiffs are entitled to relief under NRS 30.010 in the form of a  
13 declaration that the policy and practice of counting of mail ballots received after  
14 election day that lack a postmark violates NRS 293.269921(1)-(2).

#### 15 **SECOND CAUSE OF ACTION**

##### 16 **(Injunctive Relief)**

17 86. The preceding paragraphs are incorporated by reference.

18 87. The counting of mail ballots received after election day that lack a  
19 postmark threatens to immediately deprive Plaintiffs and Plaintiffs' members of their  
20 rights with respect to a fair election conducted in compliance with Nevada law.

21 88. Plaintiffs and Plaintiffs' members have no adequate remedy at law.

22 89. Without injunctive relief, Plaintiffs and Plaintiffs' members will suffer  
23 irreparable harm for which compensatory damages are inadequate.

24 90. The RNC and NVGOP, the Trump Campaign, their members,  
25 supporters, and voters, and Mr. Johnston have a significant interest in preventing  
26 irreparable harm in upcoming elections that would result from counting mail ballots  
27 received after election day that lack a postmark.

28 91. Courts have authority "whenever necessary and proper" to grant further



1 “relief based on a declaratory judgment or decree,” including injunctive relief. NRS  
2 30.100. Thus, an injunction can pair with a declaratory judgment under NRS  
3 233B.110.” *Smith v. Bd. of Wildlife Comm’rs*, 461 P.3d 164, (Nev 2020) (unpublished);  
4 *Aronoff v. Katleman*, 75 Nev. 424, 432 (Nev. 1959) (“[U]nder appropriate  
5 circumstances, a declaratory judgment may be coupled with injunctive relief.”).

6 92. Permanent injunctive relief is appropriate to protect voters’ rights to a  
7 “uniform, statewide standard for counting and recounting all votes accurately.” Nev.  
8 Const. art. 2 S 1A(10); *see also* NRS S 293.254 (5).

9 93. The Court should enjoin Defendants from counting mail ballots received  
10 after election day that lack a postmark.

11 94. The Court should further enjoin Defendants from counting mail ballots  
12 received after election day that bear a legible postmark from after election day.

### 13 THIRD CAUSE OF ACTION

#### 14 (Nevada Administrative Procedure Act)

15 95. The preceding paragraphs are incorporated by reference.

16 96. The May 29, 2024 Memorandum is unlawful because it is contrary to the  
17 plain text of Nevada statute, namely NRS 293.269921, which does not permit mail  
18 ballots received after election day to be counted when they lack any postmark,  
19 requires ballots to be postmarked on or before election day, and contains a limited  
20 exception for mail ballots envelopes with a postmark where the date of the postmark  
21 cannot be determined.

22 97. In the alternative, the Memorandum is unlawful because the Secretary  
23 of State has engaged in ad hoc rulemaking contrary to the Nevada Administrative  
24 Procedure Act (“APA”) under the guise of regulatory “guidance.”

25 98. The Memorandum constitutes a regulation. NRS 233B.038.

26 99. The Secretary did not follow any of the procedural requirements of the  
27 APA to properly promulgate the Memorandum as a regulation. NRS 233B.040 – NRS  
28 233B.120.



100. The Secretary did not follow the procedure to designate the Memorandum as an emergency regulation. NRS 233B.0613.

101. The Secretary was aware of the requirements of the APA because the Memorandum itself states: “It is the intent of the Office of the Secretary of State that this guidance be submitted as a regulation following the conclusion of the 2024 election cycle. To that end, if any Clerk identifies any means to improve this guidance, please notify the Deputy for Elections prior to December 15, 2024.”

102. A regulation cannot be promulgated as “guidance” in contravention of the requirements of the APA.

103. Plaintiffs are entitled to relief under NRS 223B.110 in the form of a declaration that the Memorandum is invalid because it was not promulgated in accordance with the procedural requirements of the APA.

104. Plaintiffs are entitled to an injunction that prohibits Defendants and anyone with notice from enforcing the Memorandum. *State Farm Mut. Auto. Ins. Co. v. Comm'r of Ins.*, 114 Nev. 535, 539, 958 P.2d 733, 735 (1998).

105. Consistent with the requirements of NRS 233B.110(3), Plaintiffs will serve a copy of the Complaint on the Attorney General.

### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays for the following relief:

A. A declaratory judgment that the policy and practice of counting of mail ballots received after election day that lack a postmark violates NRS 293.269921(1)-(2);

B. A preliminary and permanent injunction prohibiting Defendants from counting mail ballots received after election day that lack a postmark, including for the November 5, 2024, general election;

C. A preliminary and permanent injunction prohibiting Defendants from counting mail ballots received after election day that bear a legible postmark

- 1 from after election day, including for the November 5, 2024, general election;
- 2 D. A declaratory judgment that the Memorandum dated May 29, 2024 with the
- 3 subject "Memo 2024-015 – Indeterminate Postmark" is an invalid regulation
- 4 as it was issued contrary to the requirements of the Nevada Administrative
- 5 Procedure Act;
- 6 E. An order requiring the Secretary of State to withdraw the Memorandum;
- 7 F. An order requiring the Secretary of State to instruct County Clerks and
- 8 Registrars not to count mail ballots received after election day that lack a
- 9 postmark;
- 10 G. An injunction prohibiting Defendants and anyone with Notice from enforcing
- 11 the Memorandum dated May 29, 2024 with the subject "Memo 2024-015 –
- 12 Indeterminate Postmark."
- 13 H. Plaintiffs' reasonable costs and expenses of this action, including attorneys'
- 14 fees; and
- 15 I. All other further relief that Plaintiffs may be entitled to.
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

AFFIRMATION

The undersigned hereby affirm that the foregoing document does not contain the social security number of any person.

DATED this 3rd day of July, 2024.

ASHCRAFT & BARR LLP

By: 

Jeffrey F. Barr (Bar # 7269)

FIRST & FOURTEENTH PLLC

By: \_\_\_\_\_

Michael Francisco (pro hac vice forthcoming)

Christopher O. Murray (pro hac vice forthcoming)

*Counsel for Plaintiffs*

SIGAL CHATTAH LAW OFFICES

By: \_\_\_\_\_

Sigal Chattah (Bar # 8264)

*Counsel for Plaintiff Nevada Republican Party*

DHILLON LAW GROUP

By: \_\_\_\_\_

David A. Warrington\* (pro hac vice forthcoming)

Gary M. Lawkowski\* (pro hac vice forthcoming)

*Attorneys for Plaintiff Donald J. Trump for President 2024, Inc.*



1 Alicia R. Ashcraft (Bar # 6980)  
2 Jeffrey F. Barr (Bar # 7269)  
Ashcraft & Barr LLP  
3 8275 South Eastern Avenue, Suite 200  
4 Las Vegas, NV 89123  
702-631-4755  
5 barrj@ashcraftbarr.com

6 Michael Francisco\* (CO Atty. No. 39111)  
7 Christopher O. Murray\* (CO. Atty No. 39340)  
8 First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
9 Washington, D.C. 20006  
202-998-1978  
10 michael@first-fourteenth.com  
11 chris@first-fourteenth.com

12 Sigal Chattah (Bar # 8264)  
13 5875 S. Rainbow Blvd #204  
14 Las Vegas, NV 89118  
702-360-6200  
15 sigal@thegoodlawyerlv.com

16 David A. Warrington\* (VA Bar No. 72293)  
17 Gary M. Lawkowski\* (VA Bar No. 82329)  
18 2121 Eisenhower Ave, Suite 608  
Alexandria, VA 22314  
19 703-574-1206  
20 DWarrington@dhillonlaw.com  
21 GLawkowski@dhillonlaw.com

22 \* *Pro hac vice application forthcoming*  
23  
24  
25  
26  
27  
28

REC'D & FILED

JUL - 3 2024

Date

WILLIAM SCOTT HOEN  
CLERK

By K. PETERSON Deputy

1  
2                   **IN THE FIRST JUDICIAL DISTRICT COURT**  
3                   **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**  
4

5       REPUBLICAN NATIONAL  
6       COMMITTEE; NEVADA  
7       REPUBLICAN PARTY; DONALD J.  
8       TRUMP FOR PRESIDENT 2024, INC.;  
9       SCOTT JOHNSTON

10       Plaintiffs,

11       v.

12       FRANCISCO AGUILAR, in his official  
13       capacity as Nevada Secretary of State;  
14       State of NEVADA; CARI-ANN  
15       BURGESS, in her official capacity as  
16       the Washoe County Registrar of  
17       Voters; JAN GALASSINI, in her  
18       official capacity as the Washoe County  
19       Clerk; LORENA PORTILLO, in her  
20       official capacity as the Clark County  
21       Registrar of Voters; LYNN MARIE  
22       GOYA, in her official capacity as the  
23       Clark County Clerk.

24       Defendants,

25       and

26       VET VOICE FOUNDATION; and the  
27       NEVADA ALLIANCE FOR RETIRED  
28       AMERICANS,

Intervenor-Defendants.

Case No.: 24 OC 00101 1B

Dept. No.: I

**MOTION FOR PRELIMINARY  
INJUNCTION**

Plaintiffs Republican National Committee and the Nevada Republican Party,

1 Donald J. Trump for President 2024, Inc., and Scott Johnston, by and through  
2 undersigned counsel, file this motion for preliminary injunction against Defendants  
3 Francisco Aguilar, in his official capacity as Nevada Secretary of State; the State of  
4 Nevada; Cari-Ann Burgess, in her official capacity as the Washoe County Registrar  
5 of Voters; Jan Galassini, in her official capacity as the Washoe County Clerk; Lorena  
6 Portillo, in her official capacity as the Clark County Registrar of Voters; and Lynn  
7 Marie Goya, in her official capacity as the Clark County Clerk. This motion is made  
8 based on the points and authorities below, the Amended Complaint on file, and any  
9 oral argument or evidence the Court may entertain at any hearing.

#### 10 NATURE OF THE CASE

11 Plaintiffs seek to enforce one critical component of Nevada's post-election day  
12 counting of ballots: the requirement that mail ballots received after election day bear  
13 a postmark. Nevada law requires that mail ballots received by 5:00 pm on the fourth  
14 day after the election be postmarked "on or before" election day in order to count. NRS  
15 293.269921(1). The law contains a limited caveat allowing mail ballots to count if "the  
16 date of the postmark cannot be determined" as long as those ballots are received by  
17 5:00 pm on the third day after the election. NRS 293.269921(2). The postmark  
18 requirement is a critical safeguard that enables Nevada to offer a post-election day  
19 ballot receipt deadline, because the requirement ensures that ballots received after  
20 election day were not mailed after election day. That is why Nevada is one of many  
21 states requiring mail ballots received after election day to be postmarked on or before  
22 election day.

23 But the Nevada Secretary of State and some County Clerks and Registrars in  
24 Nevada have adopted a policy and practice of disregarding the statute's postmark  
25 requirement. On May 29, 2024, the Secretary of State's office issued a Memorandum  
26 stating: "[A] mail ballot that has no visible postmark should be interpreted to have  
27 an indeterminate postmark, and therefore should be accepted if it has been received  
28 by the clerk by mail not later than 5 p.m. on the third day following the election."



1 During the June 11, 2024 primary election, officials in Clark and Washoe Counties  
2 did in fact disregard the postmark requirement, failing to check mail ballots received  
3 in the three days following election day for postmarks. Indeed, the counties  
4 apparently did not enforce the requirement that ballots received on the fourth day  
5 following the election be postmarked on or before election day.

6 Plaintiffs seek preliminary injunctive relief prohibiting Nevada officials from  
7 counting mail ballots received after election day that lack a postmark, in accordance  
8 with the plain language of NRS 293.269921(1)-(2). Such relief is warranted because  
9 Plaintiffs will suffer irreparable harm if such ballots are allowed to count in the  
10 upcoming November 2024 general election. The counting of ballots that are invalid  
11 under state law will harm the electoral prospects and competitive standing of  
12 Plaintiffs' candidates and dilute the voting power of Plaintiffs' members. Once the  
13 election occurs, this harm is irreparable. An injunction serves the public interest  
14 because compliance with the postmark requirement ensures that only those late-  
15 arriving mail ballots with evidence of having been mailed on or before election day  
16 will count and promotes confidence in the integrity of the election.

## 17 BACKGROUND

### 18 A. Nevada Statutory Scheme for Late-Arriving Mail Ballots.

19 There are numerous opportunities to vote in Nevada, including by mail. A mail  
20 ballot may be returned in person, deposited in a ballot drop box, or returned by mail.  
21 Nevada provides for mail ballots to be sent to all active registered voters who do not  
22 opt out of receiving a ballot by mail, and Nevada includes postage pre-paid return  
23 envelopes for returning mail ballots. Am. Compl. ¶¶ 34-35.

24 Since 2020, Nevada law has provided that mail ballots may be counted if there  
25 is evidence they were mailed on or before election day but were not received by the  
26 clerk or registrar until after election day. (Prior to 2020, Nevada law did not permit  
27 the counting of any absent ballots received in the mail after election day. See NRS  
28 293.317 (2019)). These late-arriving ballots are subject to strict limits, as would be

1 expected for the counting of additional ballots received after the election has been  
2 completed and the polls have closed.

3 The law states:

4 [I]n order for a mail ballot to be counted for any election,  
5 the mail ballot must be ... Mailed to the county clerk, and:  
6 (1) Postmarked on or before the day of the election; and (2)  
7 Received by the clerk not later than 5 p.m. on the fourth  
8 day following the election.

9 NRS 293.269921(1). Nevada law further provides that “[i]f a mail ballot is received  
10 by mail not later than 5 p.m. on the third day following the election and the date of  
11 *the postmark* cannot be determined, the mail ballot shall be deemed to have been  
12 postmarked on or before the day of the election.” NRS 293.269921(2) (emphasis  
13 added). Consistent with this statutory requirement, Nevada election materials  
14 repeatedly inform voters that their ballots must be postmarked on or before election  
15 day. Am. Compl. ¶¶ 39-42.

16 **B. Nevada Officials Ignore the Postmark Requirement.**

17 On April 23, 2024, the Deputy Secretary of State for Elections, Mark Wlaschin,  
18 testified before the Nevada Legislature’s Advisory Committee on Participatory  
19 Democracy that Nevada’s policy and practice is to count mail ballots “without a  
20 postmark” if they are received within three days of election day. See Deputy Secretary  
21 of State for Elections Mark Wlaschin, Testimony Before Nevada Advisory Committee  
22 on Participatory Democracy, April 23, 2024, available at 4/23/2024 - Secretary of  
23 State - Advisory Committee on Participatory Democracy - YouTube (starting at  
24 1:30:09). <https://www.youtube.com/watch?v=OmQ8SSH1XFI>

25 On May 29, 2024, the Nevada Secretary of State’s office issued a Memorandum  
26 to all County Clerks and Registrars to disregard the statutory postmark requirement.  
27 The Memorandum states: “[A] mail ballot that has no visible postmark should be  
28 interpreted to have an indeterminate postmark, and therefore should be accepted if  
29 it has been received by the clerk by mail not later than 5 p.m. on the third day  
30 following the election.” Am. Compl. ¶ 45. According to the Memorandum, “it is the



1 intent of the Office of the Secretary of State that this guidance be submitted as a  
2 regulation following the conclusion of the 2024 election cycle.” *Id.*

3 During the mail ballot counting process for the June 11, 2024 primary election,  
4 observers representing the Republican National Committee and the Nevada  
5 Republican Party personally observed officials in Clark County and Washoe County  
6 count numerous mail ballots without a postmark received by the counties after  
7 election day. Am. Compl. ¶ 46. See Decl. of Clark County Observer Alida Ceballos,  
8 attached as **Exhibit 2**, and Decl. of Washoe County Observer Lori Croom, attached  
9 as **Exhibit 3**. This practice was consistent with Clark County’s “Mail Ballot Process  
10 Quick Guide,” it issued to all observers of the ballot processing and counting process.  
11 Am. Compl. ¶ 47, attached as **Exhibit 4**. The document describes the process of ballot  
12 intake, processing, and tabulation, but nowhere does it reference checking mail ballot  
13 postmarks at any point in the process. Thus, the Republican Party observers  
14 personally observed officials in Clark County and Washoe County systematically fail  
15 to check for postmarks on mail ballots received after June 11, 2024 through 5:00 p.m.  
16 on the third day after the primary (June 14, 2024). Am. Compl. ¶ 48.

17 Officials also did not even enforce the requirement that mail ballots received  
18 on the *fourth* day following primary election day be postmarked on or before election  
19 day. See Exs. 2, 3. The statutory exception for indeterminate postmarks expires at  
20 5:00 pm on the third day after the election, so it should be standard practice for  
21 officials to check postmark dates on ballots received on the fourth day. In Washoe  
22 County, the Republican Party’s observers personally observed officials fail to check  
23 for postmarks on mail ballots received on June 15, 2024, four days after the election.  
24 In Clark County, the observers personally observed officials perform only a cursory  
25 check of postmarks on ballots received on June 15. These observers further personally  
26 observed that not a single ballot was rejected for lack of postmark or a postmark dated  
27 after election day. Am. Compl. ¶¶ 47-48. The observers were not close enough to the  
28 officials to verify that each of the ballots checked by Clark County officials on June

1 15 had a legible postmark showing a date on or before June 11. Consistent with the  
2 lack of a step for checking postmarks in Clark County's "Mail Ballot Process Quick  
3 Guide," it appears county officials did not enforce the postmark requirement at all,  
4 even for ballots received after the deadline for counting mail ballots with  
5 indeterminate postmarks.

6 **C. Election Officials Intend to Ignore the Postmark Requirement**  
7 **For the 2024 Nevada General Election.**

8 Nevada will hold a general federal election on November 5, 2024. In addition  
9 to many local and state election matters, the general election will select presidential  
10 and vice presidential electors and elect Representatives and a U.S. Senator from the  
11 State. Under Nevada law, mail ballots "postmarked on or before" November 5, 2024,  
12 and "[r]eceived by the clerk not later than 5 p.m." on November 9, 2024, will be  
13 counted. NRS 293.269921(1). Postmarked mail ballots whose postmark date "cannot  
14 be determined" may be counted if received on or before 5 p.m. on November 8, 2024.  
15 NRS 293.269921(2).

16 Consistent with Deputy Secretary Wlaschin's testimony and the Secretary of  
17 State office's May 29, 2024 Memorandum, election officials in Nevada have counted  
18 and will continue to count mail ballots that lack a postmark and are received by 5:00  
19 p.m. on the third day following the election. Am. Compl. ¶¶ 48-50. Pursuant to this  
20 policy, Nevada election officials intend to count mail ballots that lack a postmark and  
21 are received on or before 5:00 p.m. on November 8, 2024. Election officials will also  
22 likely continue to disregard the postmark requirement for mail ballots received on  
23 the fourth day after election day.

24 USPS routinely delivers mail inside of three days within Nevada. For example,  
25 the online Service Standard Map for first class mail originating in any Las Vegas zip  
26 code shows the letter will be delivered to the Clark County Elections Department  
27 within two days. Am. Compl. ¶¶ 56-57. It is therefore likely that mail ballots  
28 deposited in the mail after election day could arrive at mail-ballot processing facilities



1 within the three-day deadline, and under the Defendants' policy, those untimely  
2 ballots would be counted if they do not bear a postmark.<sup>1</sup>

### 3 LEGAL STANDARD

4 Consistent with NRCP 65 and NRS 33.010, Plaintiffs seek a preliminary  
5 injunction before the general election on November 5, 2024. "NRS 33.010(1)  
6 authorizes a [preliminary] injunction when it appears from the complaint that the  
7 plaintiff is entitled to the relief requested and at least part of the relief consists of  
8 restraining the challenged act." *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans/or*  
9 *Sound Gov't*, 120 Nev. 712, 12 721, 100 P.3d 179, 187 (2004). "Before a preliminary  
10 injunction will issue, the applicant must show (1) a likelihood of success on the merits;  
11 and (2) a reasonable probability that the non-moving party's conduct, if allowed to  
12 continue, will cause irreparable harm for which compensatory damage is an  
13 inadequate remedy. In considering preliminary injunctions, courts also weigh the  
14 potential hardships to the relative parties and others, and the public interest." *Id.*  
15 (quotation marks and citations omitted)."

### 16 REASONS TO GRANT PRELIMINARY INJUNCTION

#### 17 1. Plaintiffs are Likely to Succeed on the Merits.

18 Plaintiffs are likely to succeed on the merits of their claims that (a) Defendants'  
19 policy and practice of disregarding the postmark requirement violates NRS  
20 293.269921(1)-(2), and that (b) the Secretary of State did not comply with  
21 Administrative Procedure Act requirements in issuing the May 29, 2024  
22 Memorandum.

---

<sup>1</sup> Separate and distinct from this lawsuit, Plaintiffs have challenged Nevada's counting of late-arriving mail ballots as violating federal law in the U.S. District Court for the District of Nevada in a case captioned, *Republican National Committee et al. v. Cari-Ann Burgess, et al*, No. 24-cv-00198 (D. Nev.). That case remains pending and will not impact the state law issues raised in this complaint. Should the federal court issue relief that impacts the administration of NRS 293.269921(2), Plaintiffs will promptly notify the Court.

1       a.     **Nevada law requires ballots received after election day to be**  
2       **postmarked evincing mailing on or before election day.**

3       “[W]hen the language of a statute is plain and unambiguous, a court should  
4     give that language its ordinary meaning and not go beyond it.” *Employers Ins. Co. of*  
5     *Nev. v. Chandler*, 117 Nev. 421, 425, 23 P.3d 255, 258 (2001). Here, the statute could  
6     not be clearer. In order for a mail ballot received after election day to count, it must  
7     be “postmarked on or before the day of the election” and received by 5:00 pm on the  
8     fourth day after the election. NRS 293.269921(1). However, if “the date of the  
9     postmark cannot be determined,” the ballot is presumed postmarked by election day  
10    and will count if received by 5:00 pm on the third day following the election. NRS  
11    293.269921(2).

12       In all instances, a mail ballot received after election day requires a postmark  
13    in order for it to count. The statute requires ballots to be postmarked on or before  
14    election day, but it provides a limited exception for ballots where “the date of the  
15    postmark cannot be determined.” *Id.* This exception still requires the existence of a  
16    postmark on the ballot envelope, because the statute speaks in terms of “*the*  
17    postmark.” *Id.* Moreover, the statute specifies the exact piece of information in “the  
18    postmark” that must be indeterminate in order for the exception to apply: the  
19    postmark’s “date.” There is simply no way to read subsection (2) of the statute to  
20    excuse the postmark requirement altogether.

21       The Defendants’ policy and practice of counting mail ballots received after  
22    election day that lack a postmark renders this entire framework meaningless and  
23    cannot be squared with the plain language of the statute. When “conducting a plain  
24    language reading” of a statute, courts must “avoid an interpretation that renders  
25    language meaningless or superfluous.” *Nev. Dep’t of Corrs. v. York Claims Servs.*, 131  
26    Nev. 199, 203, 348 P.3d 1010, 1013 (2015) (cleaned up). The Secretary’s interpretation  
27    does just that. In treating a ballot with “no visible postmark” as having “an  
28    indeterminate postmark” for purposes of NRS 293.269921(2), the Secretary’s  
29    interpretation reads the postmark requirement out of the statute altogether. Am.



1 Compl. ¶ 45. A “plain language reading” of the statute cannot sustain the Secretary’s  
2 interpretation. *Nev. Dep’t of Corrs.*, 131 Nev. at 203.

3 The statute is not ambiguous. *See id.* at 203-04 (a statute is ambiguous if it “is  
4 subject to more than one reasonable interpretation”). But even if it were, it must be  
5 interpreted “consistently with what reason and public policy would indicate the  
6 Legislature intended.” *Id.* at 204 (citation omitted). Here, the Nevada Legislature  
7 made a policy choice to extend the ballot-receipt deadline past election day for ballots  
8 received through the mail. To ensure that such ballots were mailed by election day,  
9 the Legislature imposed a requirement that they be postmarked on or before election  
10 day. This basic safeguard is amply supported by reason and public policy. It protects  
11 the security and integrity of the election by preventing ballots that are mailed after  
12 election day from being counted. That is why numerous states with post-election day  
13 ballot-receipt deadlines have postmark requirements. *See, e.g.,* Alaska Stat.  
14 § 15.20.081(e), (h) (Alaska); D.C. Code Ann § 1-1001.05(a)(10A) (District of Columbia);  
15 Kan. Stat. Ann. § 25-1132 (Kansas); Mass. Gen. Laws Ann. 54 § 93 (Massachusetts);  
16 Miss. Code Ann. § 23-15-637(1)(a) (Mississippi); N.Y. Election Law § 8-412(1) (New  
17 York); Ohio Rev. Code Ann. § 3509.05(D)(2) (Ohio); Tex. Election Code Ann. § 86.007  
18 (Texas); Utah Code Ann. § 20A-3a-204(2)(a) (Utah); Va. Code 24.2-709(B) (Virginia);  
19 W. Va. Code § 3-3-5(g)(2) (West Virginia). The Legislature made a minor exception to  
20 count postmarked ballots in rare instances where the date of the postmark cannot be  
21 determined—e.g., because the date is illegible. NRS 293.269921(2). But to read this  
22 narrow exception to obliterate the postmark requirement entirely would not be  
23 consistent with the Legislature’s intent.

24 Because Defendants’ policy and practice of counting non-postmarked ballots  
25 received after election day violates NRS 293.269921(1)-(2), Plaintiffs are likely to  
26 succeed on the merits of their claims.<sup>2</sup>

---

<sup>2</sup> Although the Secretary’s stated interpretation seems to require mail ballots received after 5:00 pm on the third day following the election to be postmarked on or



1           b.     **The Memorandum Dated May 29, 2024 Violates the Nevada**  
2                 **APA.**

3           In the alternative, the Secretary has engaged in ad hoc rule-making without  
4 following the requirements of the Nevada Administrative Procedures Act ("APA").  
5 The interpretation is a regulation within the meaning of NRS 233B.038(1)(a).

6           A "regulation" subject to the Nevada APA includes any agency "rule, standard,  
7 directive or statement of general applicability which effectuates or interprets law or  
8 policy, or describes the organization, procedure or practice requirements of any  
9 agency." NRS 233B.038. The Nevada Secretary of State is an agency. An agency  
10 "makes a rule when it does nothing more than state its official position on how it  
11 interprets a requirement already provided for and how it proposes to administer its  
12 statutory function." *Coury v. Whittlesea-Bell Luxury Limousine*, 102 Nev. 302, 305,  
13 721 P.2d 375, 377 (1986); *Las Vegas Transit Sys., Inc. v. Las Vegas Strip Trolley*, 105  
14 Nev. 575, 578, 780 P.2d 1145, 1146 (1989); *Dunning v. Nevada State Bd. of Physical*  
15 *Therapy Examiners*, 132 Nev. 963 (2016) (policy of "general applicability" constitutes  
16 regulation). The May 29 memorandum was sent to all county clerks and registrars  
17 and was "provided for consistent and clear guidance regarding the interpretation of  
18 NRS 293.269921(2)." The May 29 memorandum is described as "guidance" that is "to  
19 be submitted as a regulation following the conclusion of the 2024 election cycle". *Id.*

20           The memorandum was "a statement of general applicability that effectuated  
21 agency policy" and therefore regulation and not mere interpretive ruling. *State Farm*  
22 *Mut. Auto. Ins. Co. v. Comm'r of Ins.*, 114 Nev. 535, 544 (1998). It is blackletter law  
23 that when "an agency engages in conduct that constitutes the making of a regulation,  
24 it must adhere to the notice and hearing requirements set forth under NRS 233B.060  
25 and 233B.061." *Id.* at 724.

---

before election day, as the statute plainly requires, Clark County and Washoe  
County appear to be disregarding that requirement as well. See Am. Compl. ¶¶ 49-  
50. Plaintiffs are likely to succeed on the merits of their claim that this policy and  
practice is inconsistent with NRS 293.269921(1).

1 It is undisputed that the Secretary implemented the regulation without notice  
2 or hearing. See *S. Nevada Operating Engineers Contract Compliance Tr. v. Johnson*,  
3 121 Nev. 523, 530 (2005) (“*Johnson*”). If NRS 293.269921(2) requires interpretation,  
4 the Secretary must comply with the notice and hearing requirements of NRS  
5 233B.040 or NRS 233B.060. The Nevada APA requires regulations to provide notice  
6 and an opportunity for a hearing before the regulation becomes effective.

7 The APA “sets forth minimum procedural requirements, such as notice and a  
8 hearing, when agencies engage in rulemaking activity” and “[t]he notice and hearing  
9 requirements are not mere technicalities; they are essential to the adoption of valid  
10 rules and regulations.” *Id.* at 531 (citation omitted). Consistent with the APA, when  
11 “an agency engages in conduct that constitutes the making of a regulation, it must  
12 adhere to the notice and hearing requirements set forth under NRS 233B.060 and  
13 233B.061.” *Johnson*, 121 Nev. at 528. An agency “cannot act without notice and a  
14 reasonable opportunity to be heard and must act within constitutional limits.”  
15 *Checker, Inc. v. Pub. Serv. Comm’n*, 84 Nev. 623, 634 (1968). As a regulation, the May  
16 29 memorandum is void for failure to comply with the notice and hearing  
17 requirements of the APA. Indeed, the May 29 memorandum acknowledges the  
18 regulatory nature of the Secretary’s interpretation when it states, “it is the intent of  
19 the Office of the Secretary of State that this guidance be submitted as a regulation  
20 following the conclusion of the 2024 election cycle.” Am. Compl. at ¶ 45.

21 Moreover, the May 29 memorandum—regardless of notice and hearing—  
22 would be an invalid regulation contrary to and inconsistent with the statute at issue,  
23 NRS 293.269921. Administrative agencies may not adopt regulations contrary to  
24 statute and it “acts without authority when it promulgates a rule or regulation in  
25 contravention of the will of the legislature as expressed in the statute, or a rule or  
26 regulation that exceeds the scope of the statutory grant of authority.” *Scott v.*  
27 *Angelone*, 771 F. Supp. 1064, 1066–67 (D. Nev. 1991), *aff’d*, 980 F.2d 738 (9th Cir.  
28 1992); *see also Ruley v. Nevada Bd. of Prison Comm’rs*, 628 F. Supp. 108, 111 (D. Nev.

1 1986) (“agency may not make a rule or regulation that is out of harmony with or goes  
2 beyond the scope of its statutory grant of authority”). For the reasons explained  
3 above, NRS 293.269921 is unambiguous and does not permit the Agency to adopt a  
4 regulation that requires mail ballots received after election day that lack a postmark  
5 to be counted, or allow ballots to be counted that exhibit a postmark evincing a date  
6 of mailing after election day.

7 The court has the authority to declare the regulation invalid for violation of  
8 the procedural and substantive requirements of the Nevada Administrative  
9 Procedure Act. See NRS 233B.110; and *State Bd. of Equalization v. Sierra Pac. Power*  
10 *Co.*, 97 Nev. 461, 466, 634 P.2d 461, 464 (1981) (declaring regulation invalid for  
11 failure to follow APA notice and hearing requirements).

12 **2. Plaintiffs Will Suffer Irreparable Harm in the Absence of a**  
13 **Preliminary Injunction.**

14 Absent a grant of Plaintiffs’ motion, election officials will count non-postmarked  
15 ballots received after election day in the upcoming November election. Plaintiffs will  
16 suffer irreparable harm if Defendants are not enjoined from counting non-  
17 postmarked ballots received after election day. In the election context, harms  
18 sustained by violations of election law are irreparable if not enjoined prior to the  
19 election occurring. “[O]nce the election occurs, there can be no do-over and no  
20 redress,” making the injury “real and completely irreparable if nothing is done to  
21 enjoin [the challenged] law.” *League of Women Voters of N. C. v. North Carolina*, 169  
22 F.3d 224, 247 (4th Cir. 2014).

23 Here, “[t]he counting of votes that are of questionable legality threatens  
24 irreparable harm.” *Carson v. Simon*, 978 F.3d 1051, 1061 (8th Cir. 2020). Plaintiffs  
25 and their candidates have an interest “in ensuring that the final vote tally accurately  
26 reflects the legally valid votes cast.” *Id.* at 1058. If allowed to stand, Defendants’  
27 disregard of the postmark requirement will “foreclose[ ]” electoral opportunities for  
28 Plaintiffs and their candidates that cannot be restored after the fact. *Brown v. Chote*,



1 411 U.S. 452, 457 (1973) (candidate opportunities “irreparably lost”); *see also Mecinas*  
2 *v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022) (political party is harmed if “an allegedly  
3 unlawful election regulation makes the competitive landscape worse for a candidate  
4 or that candidate’s party than it would otherwise be if the regulation were declared  
5 unlawful”); *id.* (recognizing injury “that results from being forced to participate in an  
6 ‘illegally structure[d] competitive environment’”).

7 Tens of thousands of ballots are received after election day in Nevada. The  
8 counting of non-postmarked ballots in violation of state law will affect the results of  
9 Nevada elections, to the detriment of Republican candidates, because late-arriving  
10 ballots are disproportionately cast by Democratic voters. Am. Compl. ¶¶ 70-78.  
11 Indeed, ballots received after election day have swung elections in Democratic  
12 candidates’ favor in recent election cycles. Am. Compl. ¶¶ 69, 76. Counting non-  
13 postmarked ballots will continue to cause Plaintiffs and their candidates to lose  
14 elections and force them to compete in a worse and unlawful “competitive landscape.”  
15 *Mecinas*, 30 F.4th at 898. These harms are irreparable. *Carson*, 978 F.3d at 1061.

16 Additionally, Plaintiffs’ members and voters, including Mr. Scott Johnston,  
17 will suffer dilution of their valid votes by counting invalid non-postmarked ballots  
18 received after election day. Am. Compl. ¶¶ 67-71. Dilution of lawful votes by unlawful  
19 votes is a cognizable injury to individual voting rights. *Baker v. Carr*, 369 U.S. 186,  
20 207-09 (1962) (recognizing injury caused “from dilution by a false tally”); *Reynolds v.*  
21 *Sims*, 377 U.S. 533, 555 (1964) (“[T]he right of suffrage can be denied by a debasement  
22 or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting  
23 the free exercise of the franchise.”); *Anderson v. United States*, 417 U.S. 211, 226  
24 (1974) (“The right to an honest (count) is a right possessed by each voting elector, and  
25 to the extent that the importance of his vote is nullified, wholly or in part, he has  
26 been injured in the free exercise of a right or privilege secured to him by the laws and  
27 Constitution of the United States.”). The harm to Plaintiffs’ voting rights is especially  
28 acute because failure to enforce the postmark requirement will likely result in



1 counting ballots mailed after election day. Counting such ballots causes vote dilution  
2 “no matter how small or great their number.” *Anderson*, 417 U.S. at 226. And this  
3 harm to Plaintiffs’ voting rights is irreparable. *League of Women Voters*, 769 F.3d at  
4 247; *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1310 (N.D. Ga. 2018).

5       **3. The Balance of Hardships and Public Interest Favor an**  
6       **Injunction.**

7       The balance of hardships weighs strongly in Plaintiffs’ favor. On the one hand,  
8 Plaintiffs face irreparable harm to their electoral prospects and competitiveness and  
9 voting rights if the postmark requirement is not enforced. Indeed, because Plaintiffs  
10 will suffer injury to their constitutional rights, “the balance of hardships tips  
11 decidedly in the plaintiff’s favor.” *Greater Chautauqua Fed. Credit Union v. Marks*,  
12 600 F. Supp. 3d 405, 433 (S.D.N.Y. 2022). Allowing the Secretary to continue to  
13 implement his interpretation of NRS 293.269921 while this lawsuit proceeds it is also  
14 likely to lead to voter confusion and administration of the November general election.  
15 In contrast, the Secretary will suffer no harm if prohibited from implementing his  
16 interpretation authorizing the illegal counting of non-postmarked ballots received  
17 after election day. Defendants “cannot suffer harm from an injunction that merely  
18 ends an unlawful practice.” *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015).  
19 Enforcing the postmark requirement—in accordance with Nevada law and  
20 Defendants’ own instructions to voters—will not require substantial alteration of  
21 post-election day ballot processing, as it would simply add one additional checkpoint  
22 for officials inspecting ballot envelopes. Granting Plaintiffs’ motion would simply  
23 maintain the statutory status quo which requires that a ballot either be received by  
24 election day or bear *some* postmark in order to be entitled to a three-day grace period.

25       Finally, there is “no public interest in the perpetuation of unlawful  
26 [government] action.” *Washington v. DeVos*, 481 F. Supp. 3d 1184, 1197 (W.D. Wash.  
27 2020) (quoting *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12  
28 (D.C. Cir. 2016)). “To the contrary, there is a substantial public interest in having

1 governmental agencies abide by the ... laws that govern their existence and  
2 operations." *Id.* There is a particularly strong public interest in enforcing election  
3 laws meant to safeguard the integrity of the electoral process. *See Purcell v. Gonzalez*,  
4 549 U.S. 1, 4, 127 S. Ct. 5, 7 (2006) ("Confidence in the integrity of our electoral  
5 processes is essential to the functioning of our participatory democracy.").  
6 Accordingly, there is a substantial public interest in requiring Defendants to comply  
7 with the statutory postmark requirement.

8       **4. Plaintiffs Do Not Seek to Disrupt the June 11, 2024 Nevada**  
9       **Primary Election.**

10       Plaintiffs note that they seek relief only as to the November 2024 general  
11 election. Given that the June 11 primary election is in the process of canvassing,  
12 Plaintiffs do not seek relief that would confuse or otherwise disrupt that election.

13                       **Bond should be nominal**

14       Given the likelihood of success and the nominal (non-existent) harm to the  
15 Defendants of an injunction requiring them to comply with statutory law, a nominal  
16 bond of \$100 is appropriate.

17                       **CONCLUSION**

18       For the reasons stated above, the Court should grant the Plaintiffs' motion and  
19 require a nominal bond, if any.




1  
2  
3  
4 **AFFIRMATION**

5 The undersigned hereby affirm that the foregoing document does not contain  
6 the social security number of any person.

7 DATED this 3rd day of July, 2024.  
8

9 ASHCRAFT & BARR LLP

10 By:  \_\_\_\_\_

11 Jeffrey F. Barr (Bar # 7269)

12 FIRST & FOURTEENTH PLLC

13 By: \_\_\_\_\_

14 Michael Francisco (pro hac vice forthcoming)

15 Christopher O. Murray (pro hac vice forthcoming)

16 *Counsel for Plaintiffs*

17  
18 SIGAL CHATTAH LAW OFFICES

19 By: \_\_\_\_\_

20 Sigal Chattah (Bar # 8264)

21 *Counsel for Plaintiff Nevada Republican Party*

22  
23 DHILLON LAW GROUP

24 By: \_\_\_\_\_

25 David A. Warrington\* (pro hac vice forthcoming)

26 Gary M. Lawkowski\* (pro hac vice forthcoming)

*Attorneys for Plaintiff Donald J. Trump for  
President 2024, Inc.*

IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CARSON CITY

Republic National Committee, et al.,  
Plaintiff(s),

VS.

CASE NO: 24 OC 00101 1B

Francisco Aguilar, In his official capacity as Nevada  
Secretary of State, et al.,  
Defendant(s),

DECLARATION OF SERVICE

ss.:

**Samantha Curl**, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **Summons; Motion for Preliminary Injunction; Amended Complaint for Declaratory Injunctive Relief**; On 7/9/2024 and served the same on 7/9/2024 at 3:19 PM by delivery and leaving a copy with:

**Juan Hauck - Administration Assistant**, of the office of the Nevada Secretary of State who stated he/she is authorized to accept service on behalf of Francisco Aguilar, in his official capacity as Nevada Secretary of State

**101 N Carson St, Carson City, NV 89701-3713**

A description of Juan Hauck is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Male	Latino	Brown	18 - 25	5'7 - 6'0	141-160 Lbs

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

STATE OF NEVADA  
COUNTY OF WASHOE

Executed on: 7/10/2024  
by Samantha Curl  
Registration: R-2022-02620

No notary is required per NRS 53.045

X

  
Samantha Curl  
Registration: R-2022-02620  
Reno Carson Messenger Service, Inc #211  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



Order#: R179085 NVPRF411

JA00059



1 Alicia R. Ashcraft (Bar # 6980)  
Jeffrey F. Barr (Bar # 7269)  
2 Ashcraft & Barr LLP  
8275 South Eastern Avenue, Suite 200  
3 Las Vegas, NV 89123  
702-631-4755  
4 barrj@ashcraftbarr.com  
  
5 Michael Francisco\* (CO Atty. No. 39111)  
Christopher O. Murray\* (CO. Atty No. 39340)  
6 First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
7 Washington, D.C. 20006  
202-998-1978  
8 michael@first-fourteenth.com  
chris@first-fourteenth.com  
9 \* *Pro hac vice application forthcoming*

10 **IN THE FIRST JUDICIAL DISTRICT COURT**  
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 **REPUBLICAN NATIONAL**  
13 **COMMITTEE; et al.**

14 **Plaintiffs,**

15 **v.**

16 **FRANCISCO AGUILAR, in his official**  
17 **capacity as Nevada Secretary of State;**  
18 **State of NEVADA; et al.**

19 **Defendants,**

20 **and**

21 **VET VOICE FOUNDATION; and the**  
22 **NEVADA ALLIANCE FOR RETIRED**  
23 **AMERICANS,**

24 **Intervenor-Defendants.**

**Case No.: 24 OC 00101 1B**

**Dept. No.: 1**

**CERTIFICATE OF SERVICE**

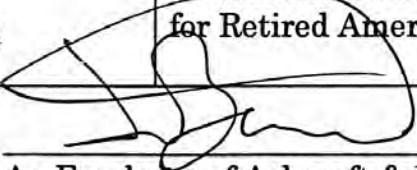
25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on the 17th day of July 2024, I served a true and correct  
27 copy of the foregoing DECLARATION OF SERVICE by electronic mail to the e-  
mail addresses listed below:

• LStJules@ag.nv.gov

Attorneys for Defendant  
Francisco Aguilar

1		
2	<ul style="list-style-type: none"> <li>• <a href="mailto:lisa.logsdon@clarkcountydانv.gov">lisa.logsdon@clarkcountydانv.gov</a></li> <li>• <a href="mailto:Afeni.Banks@ClarkCountyDANV.gov">Afeni.Banks@ClarkCountyDANV.gov</a></li> </ul>	Attorneys for Defendants Lorena Portillo and Lynn Marie Goya
3	<ul style="list-style-type: none"> <li>• <a href="mailto:ehickman@da.washoecounty.gov">ehickman@da.washoecounty.gov</a></li> </ul>	Attorneys for Cari-Ann Burgess and Jan Galassini
4		
5	<ul style="list-style-type: none"> <li>• <a href="mailto:daniel@bravoschrager.com">daniel@bravoschrager.com</a></li> <li>• <a href="mailto:rmedina@elias.law">rmedina@elias.law</a></li> <li>• <a href="mailto:mmcqueen@elias.law">mmcqueen@elias.law</a></li> <li>• <a href="mailto:bradley@bravoschrager.com">bradley@bravoschrager.com</a></li> </ul>	Attorneys for Intervenor Defendants Vet Voice Foundation and Nevada Alliance for Retired Americans
6		
7		
8		

  
 An Employee of Ashcraft & Barr | LLP

IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CARSON CITY

Republic National Committee, et al.,  
Plaintiff(s),

VS.

Francisco Aguilar, in his official capacity as Nevada  
Secretary of State, et al.,  
Defendant(s),

REC'D & FILED  
2024 JUL 19 PM 3:23  
CASE NO: 24 OC 00101 1B

WILLIAM SCOTT HCE  
CLERK

BY

DEPUTY

DECLARATION OF SERVICE

SS.:

**Annabel Navarro**, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **Summons; Motion for Preliminary Injunction; Amended Complaint for Declaratory Injunctive Relief**; On 7/9/2024 and served the same on 7/9/2024 at 1:59 PM by delivery and leaving a copy with:

By then and there personally delivering a true and correct copy of the documents into the hands of and leaving with **Lori Petersen** whose title is **Office Specialist**.

Served on behalf of **Cari-Ann Burgess**, in her official capacity as the **Washoe County Registrar of Voters**

Service Address: **Washoe County Clerk's Office - 1001 E 9th St , Reno, NV 89512-2845**

**A description of Lori Petersen is as follows**

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	Caucasian	Blond	46 - 50	5'1 - 5'6	100-120 Lbs

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

STATE OF NEVADA  
COUNTY OF Washoe

Executed on: 7/10/2024  
by Annabel Navarro  
Registration: R-2023-01649

No notary is required per NRS 53.045

*Annabel Navarro*

Annabel Navarro  
Registration: R-2023-01649  
Reno Carson Messenger Service, Inc #211  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



Order#: R179087 NVPRF411



1 Alicia R. Ashcraft (Bar # 6980)  
Jeffrey F. Barr (Bar # 7269)  
2 Ashcraft & Barr LLP  
8275 South Eastern Avenue, Suite 200  
3 Las Vegas, NV 89123  
702-631-4755  
4 barrj@ashcraftbarr.com  
  
5 Michael Francisco\* (CO Atty. No. 39111)  
Christopher O. Murray\* (CO. Atty No. 39340)  
6 First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
7 Washington, D.C. 20006  
202-998-1978  
8 michael@first-fourteenth.com  
chris@first-fourteenth.com  
9 \* *Pro hac vice application forthcoming*

10 **IN THE FIRST JUDICIAL DISTRICT COURT**  
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 **REPUBLICAN NATIONAL**  
13 **COMMITTEE; et al.**

14 **Plaintiffs,**

15 **v.**

16 **FRANCISCO AGUILAR, in his official**  
17 **capacity as Nevada Secretary of State;**  
18 **State of NEVADA; et al.**

19 **Defendants,**

20 **and**

21 **VET VOICE FOUNDATION; and the**  
22 **NEVADA ALLIANCE FOR RETIRED**  
23 **AMERICANS,**

24 **Intervenor-Defendants.**

**Case No.: 24 OC 00101 1B**

**Dept. No.: 1**

**CERTIFICATE OF SERVICE**

23 **CERTIFICATE OF SERVICE**


24 I hereby certify that on the 17th day of July 2024, I served a true and correct  
25 copy of the foregoing DECLARATION OF SERVICE by electronic mail to the e-  
26 mail addresses listed below:

27 • LStJules@ag.nv.gov

Attorneys for Defendant  
Francisco Aguilar



1		
2	<ul style="list-style-type: none"> <li>• <a href="mailto:lisa.logsdon@clarkcountydانv.gov">lisa.logsdon@clarkcountydانv.gov</a></li> <li>• <a href="mailto:Afeni.Banks@ClarkCountyDANV.gov">Afeni.Banks@ClarkCountyDANV.gov</a></li> </ul>	Attorneys for Defendants Lorena Portillo and Lynn Marie Goya
3	<ul style="list-style-type: none"> <li>• <a href="mailto:ehickman@da.washoecounty.gov">ehickman@da.washoecounty.gov</a></li> </ul>	Attorneys for Cari-Ann Burgess and Jan Galassini
4		
5	<ul style="list-style-type: none"> <li>• <a href="mailto:daniel@bravoschrager.com">daniel@bravoschrager.com</a></li> <li>• <a href="mailto:rmedina@elias.law">rmedina@elias.law</a></li> <li>• <a href="mailto:mmcqueen@elias.law">mmcqueen@elias.law</a></li> <li>• <a href="mailto:bradley@bravoschrager.com">bradley@bravoschrager.com</a></li> </ul>	Attorneys for Intervenor Defendants Vet Voice Foundation and Nevada Alliance for Retired Americans
6		
7		
8		

  
 An Employee of Ashcraft & Barr | LLP

IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CARSON CITY

Republic National Committee, et al.,  
Plaintiff(s),

VS.

Francisco Aguilar, in his official capacity as Nevada  
Secretary of State, et al.,  
Defendant(s),

CASE NO: 24 OC 001011B

REC'D & FILED

2024 JUL 19 PM 3:29

WILLIAMSON CLERK

DEPUTY

DECLARATION OF SERVICE

SS.:

Annabel Navarro, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **Summons; Motion for Preliminary Injunction; Amended Complaint for Declaratory Injunctive Relief**; On 7/9/2024 and served the same on 7/9/2024 at 1:59 PM by delivery and leaving a copy with:

By then and there personally delivering a true and correct copy of the documents into the hands of and leaving with **Lori Petersen** whose title is **Office Specialist**.

Served on behalf of **Jan Galassini**, in her official capacity as the **Washoe County Clerk**

Service Address: **Washoe County Clerk's Office - 1001 E 9th St , Reno, NV 89512-2845**

A description of **Lori Petersen** is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	Caucasian	Blond	46 - 50	5'1 - 5'6	100-120 Lbs

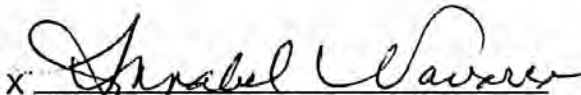
Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

STATE OF NEVADA  
COUNTY OF Washoe

Executed on: 7/10/2024  
by Annabel Navarro  
Registration: R-2023-01649

No notary is required per NRS 53.045

X 

Annabel Navarro  
Registration: R-2023-01649  
Reno Carson Messenger Service, Inc #211  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



Order#: R179089 NVPRF411

JA00065

1 Alicia R. Ashcraft (Bar # 6980)  
Jeffrey F. Barr (Bar # 7269)  
2 Ashcraft & Barr LLP  
8275 South Eastern Avenue, Suite 200  
3 Las Vegas, NV 89123  
702-631-4755  
4 barrj@ashcraftbarr.com  
  
5 Michael Francisco\* (CO Atty. No. 39111)  
Christopher O. Murray\* (CO. Atty No. 39340)  
6 First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
7 Washington, D.C. 20006  
202-998-1978  
8 michael@first-fourteenth.com  
chris@first-fourteenth.com  
9 \* *Pro hac vice application forthcoming*

10 **IN THE FIRST JUDICIAL DISTRICT COURT**  
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 **REPUBLICAN NATIONAL**  
13 **COMMITTEE; et al.**

14 **Plaintiffs,**

15 **v.**

16 **FRANCISCO AGUILAR, in his official**  
17 **capacity as Nevada Secretary of State;**  
18 **State of NEVADA; et al.**

19 **Defendants,**

20 **and**

21 **VET VOICE FOUNDATION; and the**  
22 **NEVADA ALLIANCE FOR RETIRED**  
23 **AMERICANS,**

24 **Intervenor-Defendants.**

**Case No.: 24 OC 00101 1B**

**Dept. No.: 1**

**CERTIFICATE OF SERVICE**

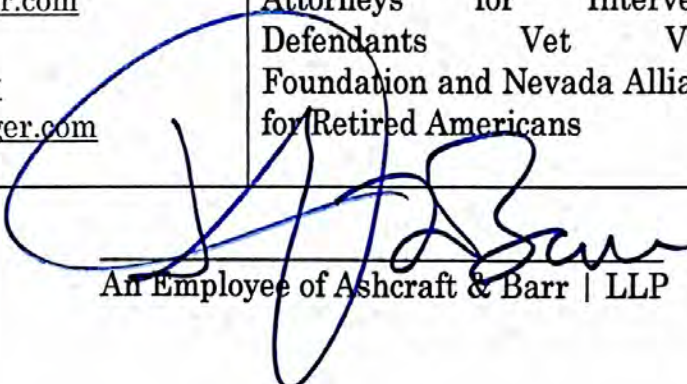
25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on the 17th day of July 2024, I served a true and correct  
27 copy of the foregoing DECLARATION OF SERVICE by electronic mail to the e-  
mail addresses listed below:

• LStJules@ag.nv.gov

Attorneys for Defendant  
Francisco Aguilar

1		
2	<ul style="list-style-type: none"> <li>• <a href="mailto:lisa.logsdon@clarkcountydav.gov">lisa.logsdon@clarkcountydav.gov</a></li> <li>• <a href="mailto:Afeni.Banks@ClarkCountyDANV.gov">Afeni.Banks@ClarkCountyDANV.gov</a></li> </ul>	Attorneys for Defendants Lorena Portillo and Lynn Marie Goya
3		
4	<ul style="list-style-type: none"> <li>• <a href="mailto:ehickman@da.washoecounty.gov">ehickman@da.washoecounty.gov</a></li> </ul>	Attorneys for Cari-Ann Burgess and Jan Galassini
5	<ul style="list-style-type: none"> <li>• <a href="mailto:daniel@bravoschrager.com">daniel@bravoschrager.com</a></li> <li>• <a href="mailto:rmedina@elias.law">rmedina@elias.law</a></li> <li>• <a href="mailto:mmcqueen@elias.law">mmcqueen@elias.law</a></li> <li>• <a href="mailto:bradley@bravoschrager.com">bradley@bravoschrager.com</a></li> </ul>	Attorneys for Intervenor Defendants Vet Voice Foundation and Nevada Alliance for Retired Americans
6		
7		
8		

  
An Employee of Ashcraft & Barr | LLP



IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CARSON CITY

Republic National Committee, et al.,  
Plaintiff(s),

VS.

Francisco Aguilar, in his official capacity as Nevada  
Secretary of State, et al.,  
Defendant(s),

CASE NO: 24 OC 00104 1B 19 PM 3:29

REC'D & FILED  
2024 JUL 19 PM 3:29  
WILLIAM J. GUY  
CLERK  
DEPUTY

DECLARATION OF SERVICE

ss.:

**DONALD TAYLOR**, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **Summons; Motion for Preliminary Injunction; Amended Complaint for Declaratory Injunctive Relief**; On 7/9/2024 and served the same on 7/9/2024 at 2:25 PM by delivery and leaving a copy with:

By then and there personally delivering a true and correct copy of the documents into the hands of and leaving with **Jewel Gooden** whose title is **Assistant Clerk** authorized to accept.

Served on behalf of **Lynn Marie Goya**, in her official capacity as the **Clark County Clerk**

Service Address: **Clark County Clerk's Office - 500 S Grand Central Pkwy , Las Vegas, NV 89155-4502**

**A description of Jewel Gooden is as follows**

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	Asian	Black	36 - 40	5'1 - 5'6	121-140 Lbs

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

STATE OF NEVADA  
COUNTY OF Clark

Executed on: 7/10/2024  
by **DONALD TAYLOR**  
Registration: R-2022-13398

No notary is required per NRS 53.045

X \_\_\_\_\_  
**DONALD TAYLOR**  
Registration: R-2022-13398  
Reno Carson Messenger Service, Inc #211  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



Order#: R179090 NVPRF411

JA00068

1 Alicia R. Ashcraft (Bar # 6980)  
Jeffrey F. Barr (Bar # 7269)  
2 Ashcraft & Barr LLP  
8275 South Eastern Avenue, Suite 200  
3 Las Vegas, NV 89123  
702-631-4755  
4 barrj@ashcraftbarr.com  
  
5 Michael Francisco\* (CO Atty. No. 39111)  
Christopher O. Murray\* (CO. Atty No. 39340)  
6 First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
7 Washington, D.C. 20006  
202-998-1978  
8 michael@first-fourteenth.com  
chris@first-fourteenth.com  
9 \* *Pro hac vice application forthcoming*

10 **IN THE FIRST JUDICIAL DISTRICT COURT**  
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 **REPUBLICAN NATIONAL**  
13 **COMMITTEE; et al.**

14 Plaintiffs,

15 v.

16 **FRANCISCO AGUILAR, in his official**  
17 **capacity as Nevada Secretary of State;**  
18 **State of NEVADA; et al.**

19 Defendants,

20 and

21 **VET VOICE FOUNDATION; and the**  
22 **NEVADA ALLIANCE FOR RETIRED**  
23 **AMERICANS,**

24 Intervenor-Defendants.

Case No.: 24 OC 00101 1B

Dept. No.: 1

**CERTIFICATE OF SERVICE**

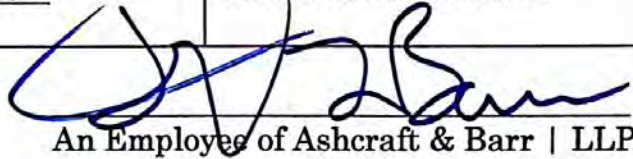
25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on the 17th day of July 2024, I served a true and correct  
27 copy of the foregoing DECLARATION OF SERVICE by electronic mail to the e-  
mail addresses listed below:

• LStJules@ag.nv.gov

Attorneys for Defendant  
Francisco Aguilar

<ul style="list-style-type: none"> <li>• <a href="mailto:lisa.logsdon@clarkcountydانv.gov">lisa.logsdon@clarkcountydانv.gov</a></li> <li>• <a href="mailto:Afeni.Banks@ClarkCountyDANV.gov">Afeni.Banks@ClarkCountyDANV.gov</a></li> </ul>	Attorneys for Defendants Lorena Portillo and Lynn Marie Goya
<ul style="list-style-type: none"> <li>• <a href="mailto:ehickman@da.washoecounty.gov">ehickman@da.washoecounty.gov</a></li> </ul>	Attorneys for Cari-Ann Burgess and Jan Galassini
<ul style="list-style-type: none"> <li>• <a href="mailto:daniel@bravoschrager.com">daniel@bravoschrager.com</a></li> <li>• <a href="mailto:rmedina@elias.law">rmedina@elias.law</a></li> <li>• <a href="mailto:mmcqueen@elias.law">mmcqueen@elias.law</a></li> <li>• <a href="mailto:bradley@bravoschrager.com">bradley@bravoschrager.com</a></li> </ul>	Attorneys for Intervenor Defendants Vet Voice Foundation and Nevada Alliance for Retired Americans

  
 An Employee of Ashcraft & Barr | LLP



IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CARSON CITY


Republic National Committee, et al.,  
Plaintiff(s),

VS.

Francisco Aguilar, in his official capacity as Nevada  
Secretary of State, et al.,  
Defendant(s),

REC'D & FILED  
CASE NO. J24 CC 00101 18:29

WILLIAM SCOTT BROWN  
CLERK

BY  DEPUTY

DECLARATION OF SERVICE

SS.:

**DONALD TAYLOR**, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **Summons; Motion for Preliminary Injunction; Amended Complaint for Declaratory Injunctive Relief**; On 7/9/2024 and served the same on 7/9/2024 at 3:04 PM by delivery and leaving a copy with:

By then and there personally delivering a true and correct copy of the documents into the hands of and leaving with **Richard Wade** whose title is **Election Programs Manager**.

Served on behalf of **Lorena Portillo**, in her official capacity as the **Clark County Registrar of Voters**

Service Address: **965 Trade Dr SUITE # A , North Las Vegas, NV 89030**

**A description of Richard Wade is as follows**

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Male	Caucasian	Bald	Over 60	5'7 - 6'0	261-280 Lbs
Other Features: Glasses					

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

STATE OF NEVADA  
COUNTY OF Clark

Executed on: 7/10/2024  
by DONALD TAYLOR  
Registration: R-2022-13398

No notary is required per NRS 53.045

X

  
DONALD TAYLOR  
Registration: R-2022-13398  
Reno Carson Messenger Service, Inc #211  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



Order#: R179092 NVPRF411

JA00071

Alicia R. Ashcraft (Bar # 6980)  
Jeffrey F. Barr (Bar # 7269)  
Ashcraft & Barr LLP  
8275 South Eastern Avenue, Suite 200  
Las Vegas, NV 89123  
702-631-4755  
barrj@ashcraftbarr.com

Michael Francisco\* (CO Atty. No. 39111)  
Christopher O. Murray\* (CO. Atty No. 39340)  
First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
Washington, D.C. 20006  
202-998-1978  
michael@first-fourteenth.com  
chris@first-fourteenth.com  
\* *Pro hac vice application forthcoming*

**IN THE FIRST JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

REPUBLICAN NATIONAL  
COMMITTEE; et al.

Plaintiffs,

v.

FRANCISCO AGUILAR, in his official  
capacity as Nevada Secretary of State;  
State of NEVADA; et al.

Defendants,

and

VET VOICE FOUNDATION; and the  
NEVADA ALLIANCE FOR RETIRED  
AMERICANS,

Intervenor-Defendants.

Case No.: 24 OC 00101 1B

Dept. No.: 1

**CERTIFICATE OF SERVICE**

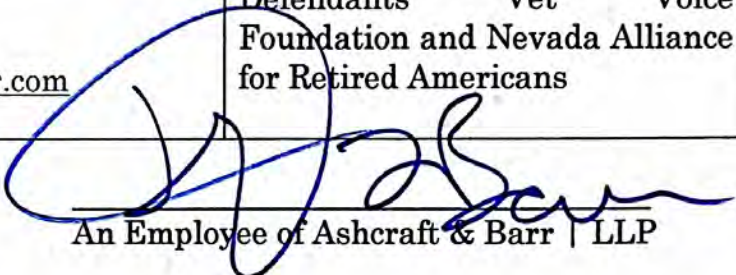
**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of July 2024, I served a true and correct copy of the foregoing DECLARATION OF SERVICE by electronic mail to the e-mail addresses listed below:

• [LStJules@ag.nv.gov](mailto:LStJules@ag.nv.gov)

Attorneys for Defendant  
Francisco Aguilar

1		
2	<ul style="list-style-type: none"> <li>• <a href="mailto:lisa.logsdon@clarkcountydav.gov">lisa.logsdon@clarkcountydav.gov</a></li> <li>• <a href="mailto:Afeni.Banks@ClarkCountyDANV.gov">Afeni.Banks@ClarkCountyDANV.gov</a></li> </ul>	Attorneys for Defendants Lorena Portillo and Lynn Marie Goya
3		
4	<ul style="list-style-type: none"> <li>• <a href="mailto:ehickman@da.washoecounty.gov">ehickman@da.washoecounty.gov</a></li> </ul>	Attorneys for Cari-Ann Burgess and Jan Galassini
5		
6	<ul style="list-style-type: none"> <li>• <a href="mailto:daniel@bravoschrager.com">daniel@bravoschrager.com</a></li> <li>• <a href="mailto:rmedina@elias.law">rmedina@elias.law</a></li> <li>• <a href="mailto:mmcqueen@elias.law">mmcqueen@elias.law</a></li> <li>• <a href="mailto:bradley@bravoschrager.com">bradley@bravoschrager.com</a></li> </ul>	Attorneys for Intervenor Defendants Vet Voice Foundation and Nevada Alliance for Retired Americans
7		
8		

  
 An Employee of Ashcraft & Barr | LLP



ORIGINAL

REC'D

2024 JUL 17 AM 10:52

WILLIAM SCOTT  
CLERK  
BY [Signature] DEPUTY

DAVID R. FOX (NV Bar No. 16536)  
RICHARD A. MEDINA (admitted *pro hac vice*)  
MARCOS MOCINE-MCQUEEN (admitted *pro hac vice*)  
**ELIAS LAW GROUP LLP**  
250 Massachusetts Ave NW, Suite 400  
Washington, DC 20001  
Tel: (202) 968-4490  
dfox@elias.law  
rmedina@elias.law  
mmcqueen@elias.law

BRADLEY S. SCHRAGER (NV Bar No. 10217)  
DANIEL BRAVO (NV Bar No. 13078)  
**BRAVO SCHRAGER LLP**  
6675 South Tenaya Way, Suite 200  
Las Vegas, NV 89113  
(702) 996-1724  
bradley@bravoschrager.com  
daniel@bravoschrager.com

*Attorneys for Intervenor-Defendants Vet Voice Foundation  
and the Nevada Alliance for Retired Americans*

**FIRST JUDICIAL DISTRICT COURT  
IN AND FOR CARSON CITY, STATE OF NEVADA**

REPUBLICAN NATIONAL COMMITTEE;  
NEVADA REPUBLICAN PARTY; DONALD  
J. TRUMP FOR PRESIDENT 2024, INC.;  
SCOTT JOHNSTON,

Plaintiffs,

v.

FRANCISCO AGUILAR, in his official capacity  
as Nevada Secretary of State; State of  
NEVADA; CARI-ANN BURGESS, in her  
official capacity as the Washoe County Registrar  
of Voters; JAN GALASSINI, in her official  
capacity as the Washoe County Clerk; LORENA  
PORTILLO, in her official capacity as the Clark  
County Registrar of Voters; LYNN MARIE  
GOYA, in her official capacity as the Clark  
County Clerk,

Defendants,

and

VET VOICE FOUNDATION; NEVADA  
ALLIANCE FOR RETIRED AMERICANS,

Intervenor-  
Defendants

Case No.: 24 OC 00101 1B  
Dept. No.: 1

**INTERVENOR-DEFENDANTS'  
OPPOSITION TO PRELIMINARY  
INJUNCTION MOTION**

1 Plaintiffs ask the Court to enter a preliminary injunction requiring election officials to reject  
2 timely cast mail ballots from qualified voters if the postal service, through no fault of the voter,  
3 fails to apply a visible postmark to the ballot return envelope. Plaintiffs' motion fails at the  
4 threshold because Plaintiffs offer no evidence, only unsworn allegations, with respect to their  
5 assertion of irreparable harm and standing to sue. Plaintiffs' motion fails on the merits because  
6 Plaintiffs lack standing and their core statutory construction argument is wrong: Nevada law  
7 anticipates that some ballots will lack a visible postmark date and expressly provides that such  
8 ballots must be counted if they are received by the statutory deadline. And Plaintiffs' motion fails  
9 as an equitable matter, because Plaintiffs do not face irreparable injury from the counting of valid  
10 votes from qualified voters and the relief they seek would disenfranchise qualified Nevada voters  
11 due to post office errors beyond their control. The Court should deny the motion.

## 12 BACKGROUND

13 When Nevada voters return ballots by mail, they must generally be "(1) [p]ostmarked on  
14 or before the day of the election; and (2) [r]eceived by the clerk not later than 5 p.m. on the fourth  
15 day following the election." NRS 293.269921(1)(b). But there is a fallback if "the date of the  
16 postmark cannot be determined": if such ballots are "received by mail not later than 5 p.m. on the  
17 third day following the election, . . . the mail ballot shall be deemed to have been postmarked on  
18 or before the day of the election." NRS 293.269921(2). The Secretary of State recently issued  
19 guidance clarifying that ballots received by mail without any visible postmark qualify for that  
20 fallback provision and must be counted if they are received by 5 p.m. on the third day after election  
21 day. *See* Mot. for Prelim. Inj. ("Mot.") Ex. 1. Plaintiffs filed suit to challenge that clarification and  
22 prevent the counting of ballots without a visible postmark that are delivered by mail after election  
23 day.

## 24 STANDARD OF LAW

25 "A party seeking a preliminary injunction must show a likelihood of success on the merits  
26 of their case and that they will suffer irreparable harm without preliminary relief." *Shores v. Global*  
27

1 *Experience Specialists, Inc.*, 134 Nev. 503, 505, 422 P.3d 1238, 1241 (2018). The moving party  
2 “must make a prima facie showing through substantial evidence that it is entitled to the preliminary  
3 relief requested.” *Id.* at 507, 422 P.3d at 1242. “[C]ourts also weigh the potential hardships to the  
4 relative parties and others, and the public interest.” *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans*  
5 *for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

## 6 ARGUMENT

### 7 I. Plaintiffs fail to adequately support the Motion with evidence.

8 The Motion fails at the threshold because Plaintiffs’ argument for injury and irreparable  
9 harm relies entirely on the Amended Complaint’s unsworn allegations, not evidence. “[I]n the  
10 absence of testimony or exhibits establishing the material allegations of the complaint, . . . the  
11 application for a preliminary injunction [should] be denied.” *Coronet Homes, Inc. v. Mylan*, 84  
12 Nev. 435, 437, 442 P.2d 901, 902 (1968); *see also Chattah v. Cegavske*, No. 85302, 2022 WL  
13 4597416, at \*1 (Nev. Sept. 29, 2022) (unpublished disposition) (similar). Plaintiffs  
14 overwhelmingly fail to provide such evidence. They cite a total of four exhibits: the challenged  
15 memorandum, two barebones declarations from election observers describing the counting of  
16 ballots without visible postmarks, and a one-page Clark County “Quick Guide” that does not  
17 mention postmarks. These exhibits show, at most, that Clark and Washoe Counties are following  
18 the Secretary’s challenged guidance. None does anything to support Plaintiffs’ allegations of injury  
19 and irreparable harm, which turn on alleged but unproven diversions of resources and alleged but  
20 unproven disparities in the partisanship of late-arriving mail ballots. Mot. at 14. Plaintiffs’ failure  
21 to provide any evidence supporting their claimed injuries requires denial of their Motion. *Coronet*,  
22 84 Nev. at 437, 442 P.2d at 902.

### 23 II. Plaintiffs are unlikely to succeed on the merits.

#### 24 A. Plaintiffs lack standing.

25 Plaintiffs are unlikely to succeed on the merits, first, because they lack standing. At the  
26 preliminary injunction stage, Plaintiffs have the burden of showing that they will be injured by the  
27



1 counting of ballots without visible postmarks. They have failed to do so. Indeed, they have even  
2 failed to make colorable allegations that—if believed—would make this showing. And, at this  
3 stage, the Court is no longer permitted to simply accept Plaintiffs’ allegations as true.

4 As explained in more detail in Intervenor-Defendant’s Motion to Dismiss the Amended  
5 Complaint, regardless of what happens in this case, mail ballots will be a central component of  
6 Nevada elections, and many of them will be counted after election day. Plaintiffs are unable to  
7 explain how or why the counting of ballots without visible postmarks in particular would cause  
8 them to “expend[] additional resources that they would not have otherwise expended.” *Friends of*  
9 *the Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 942 (9th Cir. 2021) (citation omitted). Nor do  
10 Plaintiffs adequately allege injury to their electoral prospects, which requires showing “an unfair  
11 advantage in the election process.” *Donald J. Trump for President, Inc. v. Cegavske*, 488 F. Supp.  
12 3d 993, 1003 (D. Nev. 2020) (quoting *Drake v. Obama*, 664 F.3d 774, 783 (9th Cir. 2011)). The  
13 challenged guidance applies equally to *all* candidates and to *all* voters, so no one “is specifically  
14 disadvantaged” by it. *Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 737–38 (N.D. Ill.  
15 2023) (quoting *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020)). And a “veritable  
16 tsunami” of decisions have rejected Plaintiffs’ “vote dilution” theory that all voters are injured by  
17 the counting of supposedly unlawful votes. *O’Rourke v. Dominion Voting Sys. Inc.*, No. 20-CV-  
18 03747-NRN, 2021 WL 1662742, at \*9 (D. Colo. Apr. 28, 2021) (collecting cases); *see also Paher*  
19 *v. Cegavske*, 457 F. Supp. 3d 919, 926 (D. Nev. 2020). At bottom, Plaintiffs’ claim that “the law  
20 . . . has not been followed” is a “generalized grievance about the conduct of government” that is  
21 insufficient to show standing. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (per curiam).

22 **B. The Secretary’s interpretation of the no-postmark provision is correct.**

23 Plaintiffs are also unlikely to succeed on the merits of their challenge to the Secretary’s  
24 interpretation of NRS 293.269921. Their claim depends on reading the no-postmark-date provision  
25 to create an arbitrary distinction between ballots that have a visible postmark but no legible date  
26 and ballots that have no visible postmark at all, even though the provision applies to *all* ballots for  
27

1 which “the date of the postmark cannot be determined.” NRS 293.269921(2). “In interpreting a  
2 statute, this court looks to the plain language of the statute and, if that language is clear, this court  
3 does not go beyond it. But when a statute is susceptible to more than one reasonable interpretation,  
4 it is ambiguous, and this court must resolve that ambiguity by looking to the statute’s legislative  
5 history and construing the statute in a manner that conforms to reason and public policy.” *Valenti*  
6 *v. State, Dep’t of Motor Vehicles*, 131 Nev. 875, 879, 362 P.3d 83, 85 (2015) (citations omitted).  
7 Plaintiffs’ strained interpretation of NRS 293.269921 cannot be squared with the statute’s plain  
8 text, evident purpose, or legislative history. The Court should reject it.

9 **1. The statute’s plain text does not make the distinction Plaintiffs assert.**

10 Nothing in the text of the no-postmark-date provision supports Plaintiffs’ effort to  
11 distinguish between ballots with a visible postmark but no legible date and ballots with no visible  
12 postmark at all. The provision applies *whenever* “a mail ballot is received by mail not later than 5  
13 p.m. on the third day following the election and the date of the postmark cannot be determined.”  
14 NRS 293.269921(2). The provision is not limited to particular *reasons* why the “date of the  
15 postmark cannot be determined,” and it nowhere requires that there be a visible postmark on the  
16 ballot envelope. When a statute imposes a particular set of requirements, courts may not add  
17 additional requirements that the Legislature declined to impose. *See Dep’t of Tax’n v.*  
18 *DaimlerChrysler Servs, N. Am., LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005) (“Nevada law  
19 also provides that omissions of subject matters from statutory provisions are presumed to have  
20 been intentional.”); *City of Reno v. Yturbide*, 135 Nev. 113, 115–16, 440 P.3d 32, 35 (2019)  
21 (“Where the language of the statute is plain and unambiguous, a court should not add to or alter  
22 the language to accomplish a purpose not on the face of the statute or apparent from permissible  
23 extrinsic aids such as legislative history or committee reports.” (cleaned up)). Yet that is what  
24 Plaintiffs ask the Court to do in demanding that only ballots with a visible postmark be counted.

25 The structure of NRS 293.269921 reinforces the conclusion that no visible postmark is  
26 required for the no-postmark-date provision to apply. NRS 293.269921 carefully articulates two  
27

1 sets of rules for counting ballots delivered by mail to election officials. The first, in subsection (1),  
2 applies to ballots whose postmark dates *can* be determined. Such ballots may be counted only if  
3 they are postmarked on or before election day and received by 5 p.m. on the fourth day after  
4 election day. The second, in subsection (2), applies where the date of the postmark *cannot* be  
5 determined. Such ballots may be counted only if they are received by 5 p.m. on the third day after  
6 election day. These two subsections are plainly intended to cover all ballots delivered to election  
7 officials by mail: those with determinable postmark dates, and those without. There is no third set  
8 of rules. The Secretary's interpretation therefore does not, as Plaintiffs assert, render any portion  
9 of the statute superfluous. Mot. at 9. It gives effect to *both* sets of rules in NRS 293.269921.

10 Plaintiffs' argument that the statute implicitly demands election officials reject ballots with  
11 no visible postmark at all inserts words into the statute that are not there. No provision in the statute  
12 addresses that specific category of ballots, as distinct from the broader set of all ballots for which  
13 a postmark date cannot be determined. The Court must "look to the statute's plain language" to  
14 "ascertain the Legislature's intent." *Williams v. State Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d  
15 1260, 1262 (2017). If the Legislature intended that ballots without visible postmarks be rejected,  
16 it could easily have said so. Because "the statute's language is clear and unambiguous," the Court  
17 must "enforce the statute as written." *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011).

18 Moreover, while Plaintiffs' complaint specifically targets ballots arriving after election  
19 day, their argument would lead to absurd results, putting *any* ballot that arrives in the mail at the  
20 county clerk's office without a visible postmark at risk of rejection, even if it arrives before or on  
21 election day. Subsection 1 allows for the counting of "[p]ostmarked" ballots. NRS  
22 293.269921(1)(b)(1). It is NRS 293.269921(2) that explicitly provides for ballots without a visible  
23 postmark or legible postmark to be counted, with the only temporal limitation being the three-day  
24 post-election deadline. Even Plaintiffs implicitly acknowledge that rejecting such ballots that  
25 arrive by election day would be untenable: their requested relief reflects as much—they ask the  
26 Court to order that election officials throw out only ballots that arrive after election day without a  
27



1 visible postmark. But this distinction between ballots that arrive before and after election day  
2 appears nowhere in the text and would require the Court to read in language that is not there.

3 **2. Legislative history confirms the error in Plaintiffs' interpretation.**

4 The legislative history of NRS 293.269921 confirms the Secretary's plain text  
5 interpretation. The Nevada Supreme Court "determines the Legislature's intent by evaluating the  
6 legislative history and construing the statute in a manner that conforms to reason and public  
7 policy." *A.J. v. Eighth Jud. Dist. Ct. in and for Cnty. of Clark*, 133 Nev. 202, 207, 394 P.3d 1209,  
8 1213 (2017) (internal quotation marks omitted). Here, the Legislature explicitly considered the  
9 very interpretive question at issue when it adopted NRS 293.269921, and the bill's sponsor directly  
10 confirmed what is apparent from the face of the statute: NRS 293.269921(2) applies equally to  
11 mail ballots lacking a postmark as to those with illegible postmarks. He explained that under the  
12 bill, "to the extent that there were envelopes that *were not postmarked* or the postmark was  
13 illegible, smudged, or otherwise damaged to where it could not be read—I think similar to the  
14 postmark requirement of three days—any of those that came in within that same period of time  
15 *would be counted* and anything that came in after that would not be counted." Minutes of the  
16 Meeting of the Assemb. Comm. on Legislative Operations & Elections, 2021 Leg., 81st Session  
17 21 (Nev. Apr. 1, 2021) (statement of Jason Frierson, Speaker of the Nev. Assemb.)  
18 <https://www.leg.state.nv.us/Session/81st2021/Minutes/Assembly/LOE/Final/663.pdf> (emphasis  
19 added). Speaker Frierson's statement could not be more clear or explicit: it was the intent of the  
20 Legislature in enacting NRS 293.269921(2) that ballots lacking a visible postmark would be  
21 counted if they arrived within three days of election day.

22 **3. Public policy does not support Plaintiffs' interpretation.**

23 The Secretary's interpretation also "conforms to reason and public policy," *Great Basin*  
24 *Water Network v. Taylor*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010), while Plaintiffs'  
25 interpretation defies common sense. The no-postmark-date provision is designed to ensure that  
26 timely-cast ballots are not discarded due to circumstances—such as the smudging or omission of  
27

1 a postmark—that are entirely outside the voter’s control. This rationale applies equally to ballots  
2 with no visible postmark as to ballots with illegible postmarks dates. An illegible postmark  
3 provides election officials with no information that a ballot delivered by mail without a visible  
4 postmark lacks. The Secretary’s interpretation gives effect to the intent of the Legislature by  
5 ensuring that ballots are not discarded due to postal service error. Plaintiffs’ interpretation, on the  
6 other hand, would lead to absurd—and potentially unconstitutional—results. A state may not  
7 “disenfranchise[] voters who *do* meet the deadlines imposed by state law by invalidating their  
8 ballots that, through no fault of their own, are not postmarked and are delivered two or more days  
9 after Election Day.” *DCCC v. Kosinski*, 614 F. Supp. 3d 20, 56–57 (S.D.N.Y. 2022); *see also*  
10 *Gallagher v. N.Y. State Bd. of Elections*, 477 F. Supp. 3d 19, 44 (S.D.N.Y. 2020) (similar). But,  
11 again, whether or not a ballot ends up with a visible postmark is entirely outside the voter’s control.  
12 The Legislature could not have intended such arbitrary disenfranchisement. *See Tate v. State, Bd.*  
13 *of Medical Examiners*, 131 Nev. 675, 678, 356 P.3d 506, 508 (2015) (“Statutes should be construed  
14 so as to avoid absurd results.”). “[W]hen statutory language is susceptible of multiple  
15 interpretations, a court may shun an interpretation that raises serious constitutional doubts and  
16 instead may adopt an alternative that avoids those problems.” *Degraw v. Eighth Jud. Dist. Ct.*, 134  
17 Nev. 330, 333, 419 P.3d 136, 139 (2018) (citation omitted).

18 **C. The Secretary’s interpretation is not subject to the procedural rulemaking**  
19 **requirements of the APA.**

20 Plaintiffs’ procedural claim under the APA also fails because the Secretary’s Memorandum  
21 is not a regulation. It is instead an interpretation that the Secretary has statutory authority to issue,  
22 and therefore is not subject to the APA’s procedural requirements. An agency engages in  
23 “rulemaking” only when it “promulgates, amends, or repeals an agency rule, standard, directive or  
24 statement of general applicability which effectuates or interprets law or policy, or describes the  
25 organization, procedure, or practice requirements of any agency.” *Labor Comm’r of State of Nev.*  
26 *v. Littlefield*, 123 Nev. 35, 39–40, 153 P.3d 26, 29 (2007) (cleaned up). The APA’s statutory  
27

1 definition of “regulation” explicitly excludes “an interpretation of an agency that has statutory  
2 authority to issue interpretations,” NRS 233B.038(2)(h). The Secretary has statutory authority to  
3 “provide interpretations and take other actions necessary for the effective administration of the  
4 statutes and regulations governing the conduct of primary, presidential preference primary,  
5 general, special and district elections in this State.” NRS 293.247(4). Such “interpretations”  
6 therefore are not “regulations,” which the Secretary is separately authorized to promulgate under  
7 a different subsection, NRS 293.247(1). *See Nev. State Democratic Party v. Nev. Republican*  
8 *Party*, 256 P.3d 1, 6–7 (Nev. 2011) (distinguishing between a regulation and an interpretation).

9 **III. Plaintiffs will not suffer irreparable harm absent an injunction.**

10 As explained above, Plaintiffs have not submitted *any evidence* of injury, much less of  
11 irreparable harm, in support of their motion. And even their allegations fail to show that they face  
12 any concrete harm sufficient for standing, let alone “immediate threatened injury.” *Caribbean*  
13 *Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). The only authority on which  
14 Plaintiffs rely for their supposed interest in “ensuring that the final vote tally accurately reflects  
15 the legally valid votes cast,” *Carson v. Simon*, 978 F.3d 1051, 1058 (8th Cir. 2020), rested on  
16 flawed reasoning and has been repeatedly rejected by other federal courts. *See id.* at 1063 (Kelly,  
17 J., dissenting) (explaining the plaintiffs’ “claimed injury—a potentially ‘inaccurate vote tally’ . . .  
18 —appears to be ‘precisely the kind of undifferentiated, generalized grievance about the conduct of  
19 government’ that the Supreme Court has long considered inadequate for standing.” (quoting  
20 *Lance*, 549 U.S. at 442)); *see also Bognet v. Sec’y Commonwealth of Pa.*, 980 F.3d 336, 351 n.6  
21 (3d Cir. 2020) (explaining *Carson*’s error and declining to follow it), *vacated as moot sub nom.*  
22 *Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021); *King v. Whitmer*, 505 F. Supp. 3d 720, 736 (E.D.  
23 Mich. 2020) (same); *Feehan v. Wis. Elections Comm’n*, 506 F. Supp. 3d 596, 612 (E.D. Wis. 2020)  
24 (same); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 710–11 (D. Ariz. 2020) (same); *Bost*, 684 F. Supp.  
25 3d at 734 (same). Even the rare courts that have accepted *Carson*’s premise have still required  
26 plaintiffs to “allege[] facts to show that it is plausible that the field is ‘tilted’.” *Lake v. Hobbs*, 623  
27



1 F. Supp. 3d 1015, 1029 (D. Ariz. 2022). Plaintiffs have not done so here.

2 Second, Plaintiffs speculate that the challenged guidance will harm their electoral prospects  
3 because it will help Democratic voters more than it helps Republican voters. But to establish a  
4 cognizable “competitive” injury requires a structural “ongoing, unfair advantage.” *Mecinas v.*  
5 *Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022); *Cegavske*, 488 F. Supp. 3d at 1003. Here, the Secretary’s  
6 interpretation equally benefits *all* voters, including Plaintiffs’ supporters. Far from showing  
7 irreparable harm, Plaintiffs have alleged nothing more than a generalized interest in compliance  
8 with the law, coupled with rank speculation that Democratic ballots are more likely to be affected  
9 by their requested relief than Republican ballots.

10 Finally, Plaintiffs’ claim that their votes will be “diluted” cannot establish the necessary  
11 irreparable harm. As discussed above and in Intervenor’s Motion to Dismiss, courts have routinely  
12 and uniformly rejected the theory of “vote dilution” that Plaintiffs advance here. Because the  
13 Secretary’s interpretation treats all voters the same, no one “is specifically disadvantaged” by this  
14 level playing field. *Wood*, 981 F.3d at 1314. This distinguishes Plaintiffs’ theory from the distinct  
15 circumstances in which courts have found vote dilution to be a cognizable injury. *See id.* at 1314–  
16 15 (comparing “vote dilution in this context,” which “is a ‘paradigmatic generalized grievance that  
17 cannot support standing,’” with its use in the racial gerrymandering and malapportionment  
18 contexts, where “vote dilution occurs when voters are harmed compared to ‘irrationally favored’  
19 voters from other districts” (quoting *Baker v. Carr*, 369 U.S. 186, 207–08 (1962))).<sup>1</sup>

20 **IV. The balance of hardships and the public interest weigh against a preliminary**  
21 **injunction.**

22 While Plaintiffs will suffer no harm in the absence of a preliminary injunction, granting an  
23 injunction would work grave harm to Nevada voters—including Intervenor’s members and  
24

---

25 <sup>1</sup> Plaintiffs’ APA claim also does not support their assertions of irreparable harm. “[P]rocedural  
26 harm, standing alone, cannot support the necessary finding of a likelihood of irreparable harm.”  
27 *Nevada v. United States*, 364 F. Supp. 3d 1146, 1154 (D. Nev. 2019).

1 constituents—and the public interest. Of course, voters have no control over whether the postal  
2 service prints a visible postmark on their mail ballot. If Plaintiffs succeed in imposing their atextual  
3 interpretation of Nevada law, an untold number of qualified Nevada voters will be disenfranchised  
4 due to postal errors or omissions that are entirely out of their control. Plaintiffs do not dispute  
5 this—it is the *stated purpose* of their lawsuit. They argue that “[t]he counting of non-postmarked  
6 ballots in violation of state law will affect the results of Nevada elections, to the detriment of  
7 Republican candidates, because late-arriving ballots are disproportionately cast by Democratic  
8 voters.” Mot. at 14. And they do not allege that ballots lacking a visible postmark are likely to be  
9 cast by anyone other than qualified Nevada voters.

10 Plaintiffs bizarrely claim that the balance of hardships tips in their favor because they “will  
11 suffer injury to their constitutional rights.” Mot. at 15. But there is no constitutional right to prevent  
12 the counting of another person’s ballot. *Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018). The  
13 only constitutional interests involved in this case cut exactly the other way. Courts have long  
14 recognized that the public interest “is best served by favoring enfranchisement and ensuring that  
15 qualified voters’ exercise of their right to vote is successful” and “favors permitting as many  
16 qualified voters to vote as possible.” *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012)  
17 (citations omitted). The public has a “strong interest in exercising the fundamental political right  
18 to vote.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (cleaned up *see also League of Women Voters*  
19 *of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“By definition, [t]he public interest  
20 . . . favors permitting as many qualified voters to vote as possible.”); *Election Integrity Proj. of*  
21 *Nev., LLC v. Eighth Jud. Dist. Court*, No. 81847, 2020 WL 5951543, at \*1 (Nev. Oct. 7, 2020)  
22 (unpublished disposition) (same). It is not in the public interest for a court of equity to help  
23 Plaintiffs win elections by throwing out the ballots of qualified voters they do not like.

## 24 CONCLUSION

25 The Court should deny Plaintiffs’ request for a preliminary injunction.  
26  
27

1 **AFFIRMATION**

2 Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that this  
3 document does not contain the personal information of any person.

4 DATED this 16th day of July 2024.

5  
6 By: 

7 Bradley S. Schrager (NV Bar No. 10217)  
8 Daniel Bravo (NV Bar No. 13078)  
9 **BRAVO SCHRAGER LLP**  
6675 South Tenaya Way, Suite 200  
Las Vegas, NV 89113

10 David R. Fox (NV Bar No. 16536)  
11 Richard A. Medina\* (D.C. Bar No.  
12 90003752)  
13 Marcos Mocine-McQueen\* (D.C. Bar No.  
14 1779598)  
**ELIAS LAW GROUP LLP**  
250 Massachusetts Ave NW, Suite 400  
Washington, DC 20001

15 *Attorneys for Intervenor-Defendants Vet*  
16 *Voice Foundation and the Nevada Alliance*  
17 *for Retired Americans*

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
\*Admitted *pro hac vice*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of July 2024, a true and correct copy of  
**INTERVENORS' OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY  
INJUNCTION** was served by depositing a true copy of the same via U.S.P.S. Mail postage pre-  
paid Las Vegas, Nevada and via electronic mail as follows:

Jeffrey F. Barr  
Alicia R. Ashcraft  
**Aschraft & Barr LLP**  
9205 West Russell Road, Suite 240  
Las Vegas, NV 89148  
[barrj@ashcraftbarr.com](mailto:barrj@ashcraftbarr.com)

Francisco V. Aguilar  
101 North Carson Street, Suite 3  
Carson City, NV 89701

Cari-Ann Burgess  
1001 E. Ninth Street, Bldg A, Rm 135  
Reno, NV 89512

Michael Francisco  
Christopher O. Murray  
First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
Washington, D.C. 20006  
[michael@first-fourteenth.com](mailto:michael@first-fourteenth.com)  
[chris@first-fourteenth.com](mailto:chris@first-fourteenth.com)

Jan Galassini  
1001 E. Ninth Street, Bldg A, Rm 135  
Reno, NV 89512

Lorena Portillo  
500 South Grand Central Pkwy  
Las Vegas, NV 89106


Sigal Chattah  
5875 S. Rainbow Blvd #204  
Las Vegas, NV 89118  
[sigal@thegoodlawyerlv.com](mailto:sigal@thegoodlawyerlv.com)

Lynn Marie Goya  
500 South Grand Central Pkwy  
Las Vegas, NV 89106

David A. Warrington  
Gary M. Lawkowski  
2121 Eisenhower Ave, Suite 608  
Alexandria, VA 22314  
[DWarrington@dhillonlaw.com](mailto:DWarrington@dhillonlaw.com)  
[GLawkowski@dhillonlaw.com](mailto:GLawkowski@dhillonlaw.com)  
*Attorneys for Plaintiffs*

Julie Harkleroad  
Judicial Assistant to  
Hon. James T. Russell  
First Judicial District Court, Dept. I  
[jharkleroad@dcsmv.org](mailto:jharkleroad@dcsmv.org)

By:

  
Dannielle Fresquez, an Employee of  
BRAVO SCHRAGER LLP

1 Alicia R. Ashcraft (Bar # 6980)  
Jeffrey F. Barr (Bar # 7269)  
2 Ashcraft & Barr LLP  
8275 South Eastern Avenue, Suite 200  
3 Las Vegas, NV 89123  
702-631-4755  
4 barrj@ashcraftbarr.com  
5 Michael Francisco\* (CO Atty. No. 39111)  
Christopher O. Murray\* (CO. Atty No. 39340)  
6 First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
7 Washington, D.C. 20006  
202-998-1978  
8 michael@first-fourteenth.com  
chris@first-fourteenth.com  
9 \* *Pro hac vice application forthcoming*

10 **IN THE FIRST JUDICIAL DISTRICT COURT**  
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 **REPUBLICAN NATIONAL**  
13 **COMMITTEE; et al.**

14 **Plaintiffs,**

15 **v.**

16 **FRANCISCO AGUILAR, in his official**  
17 **capacity as Nevada Secretary of State;**  
18 **State of NEVADA; et al.**

19 **Defendants,**

20 **and**

21 **VET VOICE FOUNDATION; and the**  
22 **NEVADA ALLIANCE FOR RETIRED**  
23 **AMERICANS,**

24 **Intervenor-Defendants.**

**Case No.: 24 OC 00101 1B**

**Dept. No.: 1**

**ERRATA TO MOTION FOR**  
**PRELIMINARY INJUNCTION**

25 **Plaintiffs file this Errata to Motion for Preliminary Injunction. The following**  
26 **exhibits may have been inadvertently excluded from the Plaintiffs' Motion for**  
27 **Preliminary Injunction and are attached hereto in an abundance of caution:**

**Exhibit 1-May 29 Memo**

**Exhibit 2-Ceballos Declaration**



Exhibit 3-Croom Declaration

Exhibit 4-Mail Ballot Processing Guide

DATED this 17th day of July 2024.

Ashcraft & Barr | LLP

JEFFREY F. BARR, ESQ.

Nevada Bar No 7269

[barrj@AshcraftBarr.com](mailto:barrj@AshcraftBarr.com)

Ashcraft & Barr | LLP

9205 W. Russell Road, STE 240

Las Vegas, Nevada 89148

Telephone: (702) 631.4755

Facsimile: (702) 631.4755

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of July 2024, I served a true and correct copy of the foregoing ERRATA TO MOTION FOR PRELIMINARY INJUNCTION by electronic mail to the e-mail addresses listed below:

<ul style="list-style-type: none"><li>• <a href="mailto:LStJules@ag.nv.gov">LStJules@ag.nv.gov</a></li></ul>	Attorneys for Defendant Francisco Aguilar
<ul style="list-style-type: none"><li>• <a href="mailto:lisa.logsdon@clarkcountydانv.gov">lisa.logsdon@clarkcountydانv.gov</a></li><li>• <a href="mailto:Afeni.Banks@ClarkCountyDANV.gov">Afeni.Banks@ClarkCountyDANV.gov</a></li></ul>	Attorneys for Defendants Lorena Portillo and Lynn Marie Goya
<ul style="list-style-type: none"><li>• <a href="mailto:ehickman@da.washoecounty.gov">ehickman@da.washoecounty.gov</a></li></ul>	Attorneys for Cari-Ann Burgess and Jan Galassini
<ul style="list-style-type: none"><li>• <a href="mailto:daniel@bravoschrager.com">daniel@bravoschrager.com</a></li><li>• <a href="mailto:rmedina@elias.law">rmedina@elias.law</a></li><li>• <a href="mailto:mmcqueen@elias.law">mmcqueen@elias.law</a></li><li>• <a href="mailto:bradley@bravoschrager.com">bradley@bravoschrager.com</a></li></ul>	Attorneys for Intervenor Defendants Vet Voice Foundation and Nevada Alliance for Retired Americans

An Employee of Ashcraft & Barr | LLP



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

# **EXHIBIT 1**

# **EXHIBIT 1**

**FRANCISCO V. AGUILAR**  
*Secretary of State*

**SHAUNA BAKKEDahl**  
*Deputy Secretary for Commercial Recordings*

**DEBBIE I. BOWMAN**  
*Deputy Secretary for Operations*

STATE OF NEVADA



OFFICE OF THE  
SECRETARY OF STATE

# MEMORANDUM

**GABRIEL DI CHIARA**  
*Chief Deputy Secretary of State*

**ERIN HOUSTON**  
*Deputy Secretary for Securities*

**MARK A. WLASCHIN**  
*Deputy Secretary for Elections*

To: Nevada County Clerks & Registrars  
From: Mark Wlaschin, Deputy Secretary of State for Elections  
Date: May 29, 2024  
Subject: Memo 2024-015 – Indeterminate Postmark

The following is provided for consistent and clear guidance regarding the interpretation of NRS 293.269921(2).

For the purposes of accepting a mail ballot pursuant to NRS 293.269921(2), a mail ballot that has no visible postmark should be interpreted to have an indeterminate postmark, and therefore should be accepted if it has been received by the clerk by mail not later than 5 p.m. on the third day following the election.

**NRS 293.269921 Procedure for timely returning mail ballot; treatment of mail ballot when postmark cannot be determined; requirements for ballot drop boxes.**

1. Except as otherwise provided in subsection 2 and chapter 293D of NRS, in order for a mail ballot to be counted for any election, the mail ballot must be:

(a) Before the time set for closing of the polls, delivered by hand to the county clerk, or any ballot drop box established in the county pursuant to this section; or

(b) Mailed to the county clerk, and:

(1) Postmarked on or before the day of the election; and

(2) Received by the clerk not later than 5 p.m. on the fourth day following the election.

2. If a mail ballot is received by mail not later than 5 p.m. on the third day following the election and the date of the postmark cannot be determined, the mail ballot shall be deemed to have been postmarked on or before the day of the election.

3. Each county clerk must establish a ballot drop box at every polling place in the county, including, without limitation, a polling place for early voting. A county clerk may establish a ballot drop box at any other location in the county where mail ballots can be delivered by hand and collected during the period for early voting and on election day. No person other than a clerk may establish a drop box for mail ballots.

4. A ballot drop box must be:

(a) Constructed of metal or any other rigid material of sufficient strength and resistance to protect the security of the mail ballots; and

(b) Capable of securely receiving and holding the mail ballots and being locked.

5. A ballot drop box must be:

(a) Placed in an accessible and convenient location at the office of the county clerk or a polling place in the county; and

(b) Made available for use during the hours when the office of the county clerk, or the polling place, is open for business or voting, as applicable.

(Added to NRS by 2021, 1219)

NEVADA STATE CAPITOL  
101 N. Carson Street, Suite 3  
Carson City, Nevada 89701-3714

PAUL LAXALT BUILDING  
COMMERCIAL RECORDINGS  
401 N. Carson Street  
Carson City, Nevada 89701

LAS VEGAS OFFICE  
2250 Las Vegas Blvd North, Suite 400  
North Las Vegas, Nevada 89030-5873

[nvsos.gov](http://nvsos.gov)

JA00091



It is the intent of the Office of the Secretary of State that this guidance be submitted as a regulation following the conclusion of the 2024 election cycle. To that end, if any Clerk identifies a means to improve this guidance, please notify the Deputy for Elections prior to December 16, 2024.

If you have any questions regarding this guidance, please contact the Office of the Secretary of State at [NVElect@sos.nv.gov](mailto:NVElect@sos.nv.gov) or (775) 684-5705.

Respectfully,

Francisco V. Aguilar  
Secretary of State

By: \_\_\_\_\_  
Mark Wlaschin, Deputy Secretary for Elections

# EXHIBIT 2

John R. Anderson\* (CO Bar No. 3437)  
Anderson & Son, LLC  
8275 South Rainbow Avenue, Suite 200  
Las Vegas, NV 89118  
702-471-4700  
janderson@anderson.com

Michael P. Gorman\* (CO Adj. No. 3437)  
Christopher D. Gorman\* (CO Adj. No. 3437)  
Farr & Gorman, PLLC  
901 Connecticut Avenue NW, Suite 300  
Washington, D.C. 20006  
202-596-1478

www.farrandgorman.com  
chris@farrandgorman.com

Supriya Chatterjee (Bar # 8504)  
5475 S. Rainbow Blvd #204  
Las Vegas, NV 89118  
702-393-0200  
sigah@sigahodley.com

David A. Warrington\* (VA Bar No. 7474)  
Gary M. Lawkowski\* (VA Bar No. 8427)  
2121 Eisenhower Ave, Suite 100  
Alexandria, VA 22304  
703-574-1200  
DWarrington@challinorlaw.com  
GLawkowski@challinorlaw.com

\* Pro hac vice application forthcoming

# EXHIBIT 2

1 Alicia R. Ashcraft (Bar # 6980)  
2 Jeffrey F. Barr (Bar # 7269)  
Ashcraft & Barr LLP  
3 8275 South Eastern Avenue, Suite 200  
4 Las Vegas, NV 89123  
702-631-4755  
5 barrj@ashcraftbarr.com  
6  
Michael Francisco\* (CO Atty. No. 39111)  
7 Christopher O. Murray\* (CO. Atty No. 39340)  
8 First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
9 Washington, D.C. 20006  
202-998-1978  
10 michael@first-fourteenth.com  
11 chris@first-fourteenth.com  
12  
Sigal Chattah (Bar # 8264)  
13 5875 S. Rainbow Blvd #204  
14 Las Vegas, NV 89118  
702-360-6200  
15 sigal@thegoodlawyerlv.com  
16  
David A. Warrington\* (VA Bar No. 72293)  
17 Gary M. Lawkowski\* (VA Bar No. 82329)  
18 2121 Eisenhower Ave, Suite 608  
Alexandria, VA 22314  
19 703-574-1206  
20 DWarrington@dhillonlaw.com  
21 GLawkowski@dhillonlaw.com

22 \* *Pro hac vice application forthcoming*  
23  
24  
25  
26  
27  
28



1  
2                   **IN THE FIRST JUDICIAL DISTRICT COURT**  
3                   **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

4  
5   REPUBLICAN NATIONAL  
6   COMMITTEE; NEVADA  
7   REPUBLICAN PARTY; DONALD J.  
8   TRUMP FOR PRESIDENT 2024, INC.;  
9   SCOTT JOHNSTON

10       Plaintiffs,

11       v.

12   FRANCISCO AGUILAR, in his official  
13   capacity as Nevada Secretary of State;  
14   State of NEVADA; CARI-ANN  
15   BURGESS, in her official capacity as  
16   the Washoe County Registrar of Voters;  
17   JAN GALASSINI, in her official  
18   capacity as the Washoe County Clerk;  
19   LORENA PORTILLO, in her official  
20   capacity as the Clark County Registrar  
21   of Voters; LYNN MARIE GOYA, in her  
22   official capacity as the Clark County  
23   Clerk.

24       Defendants,

25       and

26   VET VOICE FOUNDATION; and the  
27   NEVADA ALLIANCE FOR RETIRED  
28   AMERICANS,

Intervenor-Defendants

Case No.: 24 OC 00101 B

Dept. No.: 1

**DECLARATION OF ALIDA  
CEBALLOS IN SUPPORT OF  
PLAINTIFFS MOTION FOR  
PRELIMINARY INJUNCTION**

I, Alida Ceballos, makes the following Declaration in support of Plaintiffs

1 Motion for Preliminary Injunction and states as follows:

2 1. I am over 18 years of age, of sound mind and make this Declaration of  
3 my own free will.

4 2. I am a resident of the State of Nevada and reside in Clark County.

5 3. I am registered to vote and a member of the Nevada Republican Party.

6 4. I served as an observer for the Republican Party during the 2024  
7 Primary Election held on June 11, 2024. In this capacity I observed all stages of  
8 ballot processing at the Clark County Department of Elections facility located at  
9 965 Trade Dr North Las Vegas 89030. I served as an observer following the  
10 primary election held on June 11, 2024.

11 5. On June 12, 2024 and June 13, 2024 I observed Clark County  
12 Department of Elections staff open and tabulate ballots received in envelopes  
13 bearing no postmark. Indeed, I never observed Clark County Department of  
14 Elections staff visibly check any envelopes received on these days for a postmark.

15 6. On June 15, 2024, I observed Clark County Department of Elections  
16 staff conduct what they informed me was a facial check of ballot return envelopes  
17 received that day for the presence of a postmark, and I observed a single individual  
18 (not the customary bipartisan team) flip through the front of ballot envelopes. After  
19 conducting this check, I did not observe a single ballot received that day was  
20 rejected for either lacking a postmark, or for bearing a postmark the post-dated  
21 election day.

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

23 Executed this 1 day of July, 2024 at Las Vegas Nevada.  
24

25 By:

26 

27 [INSERT DECLARANT NAME]  
28

**JA00097**

1 Alicia R. Ashcraft (Bar # 6980)  
2 Jeffrey F. Barr (Bar # 7269)  
3 Ashcraft & Barr LLP  
4 8275 South Eastern Avenue, Suite 200  
5 Las Vegas, NV 89123  
6 702-631-4755  
7 barrj@ashcraftbarr.com  
8  
9 Michael Francisco\* (CO Atty. No. 39111)  
10 Christopher O. Murray\* (CO. Atty No. 39340)  
11 First & Fourteenth PLLC  
12 800 Connecticut Avenue NW, Suite 300  
13 Washington, D.C. 20006  
14 202-998-1978  
15 michael@first-fourteenth.com  
16 chris@first-fourteenth.com  
17  
18 Sigal Chattah (Bar # 8264)  
19 5875 S. Rainbow Blvd #204  
20 Las Vegas, NV 89118  
21 702-360-6200  
22 sigal@thegoodlawyerlv.com  
23  
24 David A. Warrington\* (VA Bar No. 72293)  
25 Gary M. Lawkowski\* (VA Bar No. 82329)  
26 2121 Eisenhower Ave, Suite 608  
27 Alexandria, VA 22314  
28 703-574-1206  
DWarrington@dhillonlaw.com  
GLawkowski@dhillonlaw.com

\* *Pro hac vice application forthcoming*



1  
2 **IN THE FIRST JUDICIAL DISTRICT COURT**  
3 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**  
4

5 **REPUBLICAN NATIONAL**  
6 **COMMITTEE; NEVADA**  
7 **REPUBLICAN PARTY; DONALD J.**  
8 **TRUMP FOR PRESIDENT 2024, INC.;**  
9 **SCOTT JOHNSTON**

10 **Plaintiffs,**

11 **v.**

12 **FRANCISCO AGUILAR, in his official**  
13 **capacity as Nevada Secretary of State;**  
14 **State of NEVADA; CARI-ANN**  
15 **BURGESS, in her official capacity as**  
16 **the Washoe County Registrar of Voters;**  
17 **JAN GALASSINI, in her official**  
18 **capacity as the Washoe County Clerk;**  
19 **LORENA PORTILLO, in her official**  
20 **capacity as the Clark County Registrar**  
21 **of Voters; LYNN MARIE GOYA, in her**  
22 **official capacity as the Clark County**  
23 **Clerk.**

24 **Defendants,**

25 **and**

26 **VET VOICE FOUNDATION; and the**  
27 **NEVADA ALLIANCE FOR RETIRED**  
28 **AMERICANS,**

**Intervenor-Defendants**

**Case No.: 24 OC 00101 B**

**Dept. No.: 1**

**DECLARATION OF LORI CROOM**  
**IN SUPPORT OF PLAINTIFFS'**  
**MOTION FOR PRELIMINARY**  
**INJUNCTION**

**I, Lori Ann Croom, make the following Declaration in support of Plaintiffs'**

1 Motion for Preliminary injunction and states as follows:

2 1. I am over 18 years of age, of sound mind and make this Declaration of  
3 my own free will.

4 2. I am a resident of the State of Nevada. My home address is: 17285  
5 Aqua Marine Dr., Reno, NV 89508.

6 3. I am registered to vote and a member of the Nevada Republican Party.

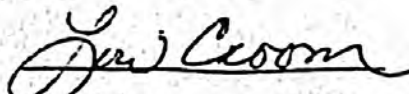
7 4. I served as an appointed observer for the Republican Party during the  
8 2024 Primary Election held on June 11, 2024. In this capacity I observed all stages  
9 of ballot processing at the Washoe County Registrar of Voters facility located at  
10 1001 E. Ninth Street, Reno, NV 89512. I served as an observer from Tuesday, June  
11 11 through Saturday, June 15, 2024.

12 5. On each day, June 12 through June 15, 2024 I observed Washoe  
13 County Department of Elections staff open and tabulate ballots received. Washoe  
14 County Department of Elections staff never checked any envelopes received on  
15 these days for a postmark.

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

17  
18 Executed this 1st day of July, 2024 at Reno, Nevada.

19  
20  
21 By:

22   
23  
24 Lori Croom  
25  
26  
27

# EXHIBIT 4

# EXHIBIT 4



### Did You Know?

Ballots are stored in sealed boxes for post-election Risk Limiting Audit (RLA).

Mail Ballot processing starts 15-days prior to Election Day, but votes are not tabulated until Election Day.

Once someone has voted that information is registered in our database. This prevents them from voting a second time in person or by mail in the same election.

Ballot Extraction, Signature Verification, and Ballot Adjudication are all conducted by bipartisan teams.



togetherfor**better**

## CLARK COUNTY ELECTION DEPARTMENT

965 Trade Drive  
Suite A  
North Las Vegas, NV 89030

(702)-455-VOTE (8683)  
(702)-455-3666 (Español)  
(702)-455-7871 (Filipino)  
711 (TTY/ TDD)

ELINFO@ClarkCountyNV.gov

**For More Information Visit**  
[www.ClarkCountyNV.gov/vote](http://www.ClarkCountyNV.gov/vote)



★ ★ ★ ★ ★  
CLARK COUNTY

# Mail Ballot Process Quick Guide



## 1 INTAKE

- Voter completes their mail ballot following the instructions provided and puts their ballot inside the return envelope provided.
- Voter signs the back of the return envelope in the signature area, seals the envelope, and returns it to the Election Department by mail or by bringing it to any ballot drop-off location.
- Mail ballot envelopes are received by the Election Department and prepared for processing.
- The mail ballot envelopes are scanned and the signature on each envelope is captured.

## 2 SIGNATURE VERIFICATION

- The scanned signatures are reviewed by the Automatic Signature Recognition (ASR) program.
- Ballot envelopes with signatures that were not verified automatically go to Manual Signature Verification where bipartisan teams compare the signatures on the return envelopes with the signatures on file - most of which come from either the Department of Motor Vehicles or election registration forms.



**CLARK  
COUNTY**

**Mail Ballot Process**

## 3 SORTING AND SEPARATING

- The mail ballot envelopes are sorted to separate the envelopes with verified signatures from those without a verified signature.
- Envelopes with signatures that were verified and accepted through Automatic Signature Verification or Manual Signature Verification move on to Tray Inspection and then the Central Counting Board.
- Envelopes missing a signature or with a signature that cannot be matched to our records go to the Signature Cure process.
- Signature Cure notices are sent to notify voters of their ballot's status and advise them how to correct it. If a voter cures their signature, then their mail ballot envelope will be sent to Tray Inspection and then the Central Counting Board for processing.

## 4 TRAY INSPECTION

- Tray Inspectors verify and audit trays of mail ballot envelopes with verified signatures.
- Audited ballot envelopes are logged and then brought to the Central Counting Board Area.

## 5 COUNTING BOARD

- Ballot Extraction and Inspection**
- The mail ballot envelopes are opened, and the mail ballot and secrecy sleeve are removed and separated. This is the step where your identity is separated from your ballot!
  - Ballots are flattened and visually inspected to ensure the mail ballot voting instructions were followed and the ballot can be read by our tabulation scanners.

## 5 COUNTING BOARD continued

- Ballot Duplication**
- Bipartisan teams create a new physical ballot when a ballot is damaged or marked in a way that may prevent a vote from being read by a scanner.
- Imprinting**
- Ballots are imprinted with a unique number used to conduct a post-election tabulation audit called risk-limiting audit (RLA).

## 6 TABULATION

- Scanning**
- Ballots are run through high-speed scanners that capture the selections made by the voters.
  - Any ballots that cannot be read by the scanner are logged and sent back to the Central Counting Board for duplication.
  - Ballots that require adjudication due to an apparent overvote or an ambiguous mark on a ballot go to bipartisan teams of adjudicators to be resolved.

## 7 STORAGE

- After being scanned, the ballots are put into boxes that are sealed and brought to secure storage area.
- The sealed ballot boxes are retained for 22 months as required by law





STEVEN B. WOLFSON

District Attorney

**CIVIL DIVISION**

State Bar No. 001565

By: **LISA V. LOGSDON**

COUNTY COUNSEL

State Bar No. 011409

500 South Grand Central Pkwy. 5<sup>th</sup> Flr.

Las Vegas, Nevada 89155-2215

(702) 455-4761

Fax (702) 382-5178

E-Mail: [Lisa.Logsdon@ClarkCountyDA.com](mailto:Lisa.Logsdon@ClarkCountyDA.com)


Attorneys for Defendants

*Lorena Portillo and Lynn Marie Goya*

RECEIVED & FILED

2024 JUL 26 PM 3:34

WILLIAM SCOTT HOEN  
CLERK

BY  DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT**

**OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

REPUBLICAN NATIONAL COMMITTEE;  
NEVADA REPUBLICAN PARTY; DONALD J.  
TRUMP FOR PRESIDENT 2024, INC.; SCOTT  
JOHNSTON

Plaintiffs,

vs.

FRANCISCO AGUILAR, in his official capacity a  
Nevada Secretary of State; State of NEVADA; CARI-  
ANN BURGESS, in her official capacity as the Washoe  
County Registrar of Voters; JAN GALASSINI, in her  
official capacity as the Washoe County Clerk;  
LORENA PORTILLO, in her official capacity as the  
Clark County Registrar of Voters; LYNN MARIE  
GOYA, in her official capacity as the Clark County  
Clerk,

Defendants,

and

VET VOICE FOUNDATION; and the NEVADA  
ALLIANCE FOR RETIRED AMERICANS,

Intervenor-Defendants.

Case No: 24 OC 00101 1B  
Dept No: I

**DEFENDANTS' LORENA  
PORTILLO AND LYNN  
MARIE GOYA'S JOINDER  
IN STATE DEFENDANTS'  
OPPOSITION TO MOTION  
FOR PRELIMINARY  
INJUNCTION AND  
DEFENDANTS' LORENA  
PORTILLO AND LYNN  
MARIE GOYA'S JOINDER  
IN WASHOE COUNTY  
DEFENDANTS'  
OPPOSITION TO MOTION  
FOR PRELIMINARY  
INJUNCTION**

COMES NOW DEFENDANTS, LORENA PORTILLO, in her official capacity as  
Clark County Registrar of Voters and LYNN MARIE GOYA, in her official capacity as the  
Clark County Clerk, by and through its attorney, STEVEN B. WOLFSON, District Attorney,

**JA00104**

1 by LISA V. LOGSDON, County Counsel, and hereby joins in State Defendants' Opposition  
2 to Motion for Preliminary Injunction and Washoe County Defendants' Opposition to Motion  
3 for Preliminary Injunction.

4 DEFENDANTS, LORENA PORTILLO, in her official capacity as Clark County  
5 Registrar of Voters and LYNN MARIE GOYA, in her official capacity as the Clark County  
6 Clerk joins State Defendants' Opposition to Motion for Preliminary Injunction and Washoe  
7 County Defendants' Opposition to Motion for Preliminary Injunction in its entirety, thereby  
8 adopting the supporting points and authorities filed therein, and respectfully requests an  
9 Order from this Court dismissing Plaintiffs' Motion for Preliminary Injunction.

10 DATED this 22<sup>nd</sup> day of July, 2024.

11 STEVEN B. WOLFSON  
12 DISTRICT ATTORNEY

13 By: \_\_\_\_\_  
14 LISA V. LOGSDON  
15 COUNTY COUNSEL  
16 State Bar No. 011409  
17 500 South Grand Central Pkwy. 5<sup>th</sup> Flr.  
18 Las Vegas, Nevada 89155-2215  
19 Attorney for Defendants  
20 *Lorena Portillo and Lynn Marie Goya*  
21  
22  
23  
24  
25  
26

27 ///

28 ///

**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 22<sup>nd</sup> day of July, 2024, I deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of the above and foregoing **DEFENDANTS' LORENA PORTILLO AND LYNN MARIE GOYA'S JOINDER IN STATE DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND DEFENDANTS' LORENA PORTILLO AND LYNN MARIE GOYA'S JOINDER IN WASHOE COUNTY DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** addressed as follows:

Alicia R. Ashcraft, Esq.  
Jeffery F. Barr, Esq.  
Nevada Bar No. 7269  
ASHCRAFT & BARR LLP  
9205 West Russell Road, #240  
Las Vegas, NV 89148  
Attorneys for Plaintiff  
barrj@ashcraftbarr.com

Sigal Chattah, Esq.  
5875 S. Rainbow Blvd #204  
Las Vegas, NV 89118  
Attorney for Plaintiff  
sigal@thegoodlaweyerlv.com

David A. Warrington, Esq.  
(VA Bar No. 72293)  
Gary M. Lawkowski, Esq.  
(VA Bar No. 82329)  
2121 Eisenhower Avenue, Suite 608  
Alexandria, VA 22314  
Attorneys for Plaintiff  
DWarrington@dhillonlaw.com  
GLawkowski@dhillonlaw.com

Michael Francisco, Esq.  
(CO Atty. No. 39111)  
Christopher O. Murray, Esq.  
(CO Atty. No. 39340)  
FIRST & FOURTEENTH PLLC  
800 Connecticut Avenue NW, Suite 300  
Washington, D.C. 20006  
Attorneys for Plaintiff  
michael@first-fourteenth.com  
chris@first-fourteenth.com

Bradley S. Schrager, Esq.  
Nevada Bar No. 10217  
Daniel Bravo, Esq.  
Nevada Bar No. 13078  
Bravo Schrager LLP  
6675 South Tenaya Way, Suite 200  
Las Vegas, NV 89113  
[bradley@bravoschrager.com](mailto:bradley@bravoschrager.com)  
[daniel@bravoschrager.com](mailto:daniel@bravoschrager.com)

///

///



1 David R. Fox, Esq.  
Nevada Bar No. 16536  
2 Richard A. Medina, Esq.  
Marcos Mocine-McQueen, Esq.  
3 ELIAS LAW GROUP LLP  
250 Massachusetts Ave, NW, #400  
4 Washington, DC 20001  
[dfox@elias.law](mailto:dfox@elias.law) [cdodge@elias.law](mailto:cdodge@elias.law)  
5 [mogara@elias.law](mailto:mogara@elias.law)

6  
7  
8 

---

An Employee of the Clark County District  
Attorney's Office – Civil Division  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

REC'D & FILED

2024 JUL 23 PM 3:18

WILLIAM SCOTT HOEN  
CLERK

BY K. PETERSON  
DEPUTY

1 Alicia R. Ashcraft (Bar # 6980)  
Jeffrey F. Barr (Bar # 7269)  
2 Ashcraft & Barr LLP  
9205 West Russell Road, Suite 240  
3 Las Vegas, NV 89148  
702-631-4755  
4 barrj@ashcraftbarr.com

5 Michael Francisco\* (CO Atty. No. 39111)  
Christopher O. Murray\* (CO. Atty No. 39340)  
6 First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
7 Washington, D.C. 20006  
202-998-1978  
8 michael@first-fourteenth.com  
chris@first-fourteenth.com

9 Sigal Chattah (Bar # 8264)  
10 5875 S. Rainbow Blvd #204  
11 Las Vegas, NV 89118  
702-360-6200  
12 sigal@thegoodlawyerlv.com

13 David A. Warrington\* (VA Bar No. 72293)  
14 Gary M. Lawkowski\* (VA Bar No. 82329)  
2121 Eisenhower Ave, Suite 608  
15 Alexandria, VA 22314  
703-574-1206

16 DWarrington@dhillonlaw.com  
GLawkowski@dhillonlaw.com

17 \* *Pro hac vice application pending or forthcoming*

1  
2 **IN THE FIRST JUDICIAL DISTRICT COURT**  
3 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

4 REPUBLICAN NATIONAL  
5 COMMITTEE; et al.

6 Plaintiffs,

7 v.

8 FRANCISCO AGUILAR, in his official  
9 capacity as Nevada Secretary of State;  
10 State of NEVADA; et al.

11 Defendants,

12 and

13 VET VOICE FOUNDATION; and the  
14 NEVADA ALLIANCE FOR RETIRED  
AMERICANS,

Intervenor-Defendants.

**Case No.:** 24 OC 00101 1B

**Dept. No.:** 1

**REPLY TO INTEVENOR  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

15 Plaintiffs seek an injunction to prevent the irreparable harm that will follow if  
16 the Defendant Secretary of State and Counties disregard Nevada's clear law  
17 regarding the counting of mail ballots received after election day that lack a  
18 postmark. The Court set argument for August 2. Intervenor Defendants have  
19 opposed the motion while the three governmental defendants have yet to appear.

20 Nevada recently joined the minority of States that allow for the counting of  
21 mail ballots received after election day, within express limits. It did not join the  
22 super-minority of States that allow ballots to be counted without a postmark.  
23 Compare Mot. 10 (collecting states with postmark requirements); with Cal. Elec.  
24 Code § 3020 (allowing counting of mail ballot "has no postmark" if other conditions  
25 are satisfied); Wash. Admin. Code 434-250-120(1)(c)(i) (procedures for ballots with  
26 envelope "missing" postmark); see generally <https://www.ncsl.org/elections-and->



[campaigns/table-11-receipt-and-postmark-deadlines-for-absentee-mail-ballots](#)

(collecting statutes). If the Nevada legislature intended to allow the counting of some mail ballots received after election with “no postmark,” as does California, or if the postmark is “missing,” as Washington does, it could have said so in NRS 293.269921. Instead, the Nevada legislature joined the States that allow late-arriving mail ballots to be counted *if postmarked* on or before the election. The Secretary of States’ improperly issued rulemaking dated May 29, 2024 (“Memorandum”) contradicts the plain statutory requirements and, if not corrected, would irreparably harm Plaintiffs.

**1. Plaintiffs have standing to Challenge the Ad-Hoc Rulemaking**

Intervenor-Defendants argue that Plaintiffs lack standing. Nevada courts generally require the same showing of injury-in-fact, redressability, and causation as federal courts. *See Nat’l Ass’n of Mut. Ins. Co.’ v. Dep’t of Bus. & Indus.*, 524 P.3d 470, 476 (Nev. 2023).

**a. Plaintiffs RNC, Nevada Republican GOP and Trump Campaign are injured by the Secretary’s May 29 Memorandum it will force them to Divert Resources from Campaign Activities**

Plaintiffs will be forced to spend money they would not otherwise spend as a result of the Memorandum. Compl. ¶¶ 18, 22, 25, 66. Such forced diversion of resources is axiomatically recognized to support standing in cases challenging election laws, regulations, or as here, pronouncements. *See, e.g., Brnovich v. DNC*, 141 S. Ct. 2321 (2021) (Democratic Party had standing to challenge ballot-counting and ballot-collection laws); *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1266 (N.D. Ga. 2019) (the “need to divert resources from general voting initiatives or other missions of the organization” establishes standing “[i]n election law cases”); *Nat’l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040 (9th Cir. 2015) (collecting cases). As Plaintiffs allege that counting of late ballots forces the organizational plaintiffs to spend money on a variety of election

1 activities that they would otherwise spend on other mission-critical activities,  
2 “[t]here can be no question” that diversions of resources are an “injury in fact” in  
3 this case. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).

4 Intervenor-Defendants mischaracterize the injury to Plaintiffs. Opp’n p. 4. The  
5 Memorandum purports to allow even ballots with no visible postmark to be  
6 counted up to three days after the election. Because this is clearly contrary to NRS  
7 293.269921, Plaintiffs will, if they are denied relief here, be forced to expend  
8 additional time and money to recruit and train observers to document all  
9 instances of non-postmarked ballots that are counted after Election Day in order  
10 to preserve their ability to bring an election contest. The devotion of additional  
11 resources and energy will “divert[] resources from in-person Election Day get-out-  
12 the-vote activities” of the Plaintiffs. Compl. ¶ 66. The resource-diversion doctrine  
13 does not permit the Court “to second-guess a candidate’s reasonable assessment  
14 of his own campaign.” *Becker v. FEC*, 230 F.3d 381, 387 (1st Cir. 2000) (citing  
15 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167 (2000)).

16  
17 **b. The Memorandum Injures Plaintiffs RNC, Nevada GOP and  
Trump Campaign by Disproportionally Benefiting Democratic Votes**

18 The RNC, Nevada GOP, and the Trump Campaign are Republican  
19 organizations that represent Republican candidates in upcoming Nevada  
20 elections. Compl. ¶¶ 11, 14, 19, 22, 23, 25. Plaintiffs allege that the Memorandum  
21 favors Democrats in Nevada, whose voters disproportionately vote by mail. Compl.  
22 ¶¶ 71-78. These allegations of an unfair advantage distinguish this lawsuit from  
23 those challenges to emergency laws enacted due to concerns about COVID, as cited  
24 by Intervenor-Defendants. *See, e.g. Donald J. Trump for President, Inc. v.*  
25 *Cegavske*, 488 F. Supp. 3d 993 (D. Nev. 2020). The “principle” of competitive  
26 electoral harms “is neither novel nor unique to the realm of the electoral.” *Mecinas*  
27

1 *v. Hobbs*, 30 F. 4th 890, 898 (9th Cir. 2022). “[C]andidates. . . have a cognizable  
2 interest in ensuring that the final vote tally accurately reflects the legally valid  
3 votes cast. An inaccurate vote tally is a concrete and particularized injury to  
4 candidates such as the Electors.” *Carson v. Simon*, 978 F.3d 1051, 1058 (8th Cir.  
5 2020). “Voluminous” authority shows that candidates and parties suffer injury  
6 when their “chances of victory would be reduced.” *Tex. Democratic Party*, 459 F.3d  
7 at 587 & n.4 (collecting cases).

8 Also, political parties have competitive standing *regardless* of whether the  
9 Memorandum actually favors one party over another. Republican candidates “‘are  
10 at the very least harmed by having to anticipate other actors taking advantage of  
11 the regulations to engage in activities that otherwise would be barred.” *Shays v.*  
12 *FEC*, 414 F.3d 76, 87 (D.C. Cir. 2005). That is because pronouncements like the  
13 Memorandum “necessarily affect the way these politicians will run their  
14 campaigns.” *Id.* (cleaned up). It is thus sufficient that the Memorandum forces  
15 both parties to work “to prevent their opponent from gaining an unfair advantage  
16 in the election process.” *Owen v. Mulligan*, 640 F.2d 1130, 1133 (9th Cir. 1981).  
17 The Ninth Circuit recently upheld standing for the DNC to challenge election laws  
18 by rejecting the argument that standing required showing imminent change in  
19 outcome of election. *Mecinas v. Hobbs*, 30 F.4th 890, 899 (9th Cir. 2022).

20 **c. By threatening to dilute lawfully-cast ballots with unlawfully-**  
21 **cast ballots, the Memorandum also threatens to disenfranchise Mr.**  
22 **Johnston and the members of the RNC and Nevada GOP.**

23 Vote dilution is the most obvious form of injury suffered by voters when  
24 unlawful votes are counted. Courts recognize that “vote dilution can be a basis for  
25 standing.” *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020). Plaintiffs  
26 here “are asserting ‘a plain, direct and adequate interest in maintaining the  
27 effectiveness of their votes,’ not merely a claim of ‘the right possessed by every

1 citizen to require that the government be administered according to law.” *Baker*  
2 *v. Carr*, 369 U.S. 186, 208 (1962) (citation omitted); *cf. Reynolds v. Sims*, 377 U.S.  
3 533, 555 (1964) (“The right to vote can neither be denied outright, nor destroyed  
4 by alteration of ballots, nor diluted by ballot-box stuffing.” (citations omitted)).  
5 NRS 293.269921 plainly requires ballots to be postmarked in order to be counted  
6 after Election Day. Contrary to Intervenor-Defendants’ argument that this  
7 constitutes a “generalized grievance”, Opp’n p. 4, this dilution harms Plaintiffs  
8 Johnston and the members of the RNC and Nevada GOP specifically because it  
9 threatens to dilute validly-cast Republican votes with invalidly-cast Democratic  
10 votes. Compl. ¶¶ 71-78.

11 Independently, Plaintiffs have independent standing for the APA challenge as  
12 they are irreparably harmed. *See Nat’ls Ass’n of Mutual Ins. Cos.*, at 470.

## 13 **2. Plaintiffs will Succeed on the Merits.**

14 Defendants have adopted a policy and practice of disregarding the statute’s  
15 postmark requirement, as set forth in the motion for preliminary injunction. In  
16 response, Intervenor-Defendants argue the statute “nowhere requires there to be  
17 a visible postmark on the ballot envelop.” Opp. at 5. On the contrary, NRS  
18 293.269921(2) speaks of the “date of *the postmark*,” thus requiring a visible  
19 postmark, consistent with Defendants instructions to voters. Comp.¶ ¶ 39-42.  
20 Likewise, because the statute is unambiguous, the court must disregard the appeal  
21 to legislative history. *Zohar v. Zbiegien*, 334 P.3d 402, 405 (Nev. 2014). The lone  
22 legislative remark offered by Intervenor-Defendants, Opp. 7, is itself ambiguous  
23 and the main thrust addresses illegible postmarks, consistent with the statute’s  
24 plain meaning of the statute.

25 As to the APA claim Intervenor-Defendants attempt to pass off the  
26 Memorandum as “interpretation” that is somehow exempt from rulemaking,  
27



1 citing *Nevada State Democratic Party v. Nevada Republican Party*, 256 P.3d 1, 7  
2 (Nev. 2011). In fact, that case strongly supports Plaintiffs claim and rejected an  
3 attempt to justify the Secretary of State’s election related “interpretation.” *Id.* at  
4 7. Courts do not defer to the Secretary of State when “the plain language of the  
5 election statute” contradicts the interpretation, as it does in this case. *Independent*  
6 *American Party v. Lau*, 880 P.2d 1391, 1393 (Nev. 1994).

7 **3. Plaintiffs Prove Irreparable Harm; Public Interest Favors Relief**

8 The injuries supporting standing likewise support irreparable harm  
9 requirement for injunctive relief. In addition, the balance of equities and public  
10 interest favor resolution *before* the election, not delaying legal challenges until  
11 ballots are counted contrary to Nevada law. *See generally Carson*, 978 F.3d at 1061  
12 (interest in pre-election resolution). Plaintiffs are entitled to a preliminary  
13 injunction.

14 ///

15 ///

16 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

DATED this 23rd day of July, 2024.

By: 

FIRST & FOURTEENTH PLLC

By: \_\_\_\_\_

*Counsel for Plaintiffs*

By: \_\_\_\_\_

*Counsel for Plaintiff Nevada Republican Party*

By: \_\_\_\_\_

Gary M. Lawkowski\* (pro hac vice forthcoming)

*Attorneys for Plaintiff Donald J. Trump for  
President 2024, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of July 2024, I served a true and correct copy of the foregoing REPLY TO INTEVENOR DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION by electronic mail to the e-mail addresses listed below:

<ul style="list-style-type: none"><li>• <a href="mailto:LStJules@ag.nv.gov">LStJules@ag.nv.gov</a></li></ul>	Attorneys for Defendant Francisco Aguilar
<ul style="list-style-type: none"><li>• <a href="mailto:lisa.logsdon@clarkcountydav.gov">lisa.logsdon@clarkcountydav.gov</a></li><li>• <a href="mailto:Afeni.Banks@ClarkCountyDANV.gov">Afeni.Banks@ClarkCountyDANV.gov</a></li></ul>	Attorneys for Defendants Lorena Portillo and Lynn Marie Goya
<ul style="list-style-type: none"><li>• <a href="mailto:ehickman@da.washoecounty.gov">ehickman@da.washoecounty.gov</a></li></ul>	Attorneys for Cari-Ann Burgess and Jan Galassini
<ul style="list-style-type: none"><li>• <a href="mailto:daniel@bravoschrager.com">daniel@bravoschrager.com</a></li><li>• <a href="mailto:dfox@elias.law">dfox@elias.law</a></li><li>• <a href="mailto:rmedina@elias.law">rmedina@elias.law</a></li><li>• <a href="mailto:mmcqueen@elias.law">mmcqueen@elias.law</a></li><li>• <a href="mailto:bradley@bravoschrager.com">bradley@bravoschrager.com</a></li></ul>	Attorneys for Intervenor Defendants Vet Voice Foundation and Nevada Alliance for Retired Americans

  
An Employee of Ashcraft & Barr | LLP

1 AARON D. FORD  
 Attorney General  
 2 LAENA ST-JULES (Bar No. 15156)  
 Senior Deputy Attorney General  
 3 DEVIN A. OLIVER (Bar No. 16773C)  
 Deputy Attorney General  
 4 Office of the Attorney General  
 100 North Carson Street  
 5 Carson City, NV 89701-4717  
 T: (775) 684-1265  
 6 F: (775) 684-1108  
 E: [lstjules@ag.nv.gov](mailto:lstjules@ag.nv.gov)  
 7 [doliver@ag.nv.gov](mailto:doliver@ag.nv.gov)

8 *Attorneys for State Defendants*

REC'D & FILED

2024 JUL 23 PM 1:30

WILLIAM S. LUTHER  
 CLERK

DEPUTY

10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
 11 **IN AND FOR CARSON CITY**

12 REPUBLICAN NATIONAL  
 COMMITTEE, *et al.*,

13 Plaintiffs,

14 vs.

15 FRANCISCO AGUILAR, in his official  
 16 capacity as Nevada Secretary of State, *et*  
*al.*,

17 Defendants.

Case No.: 24 OC 00101 1B

Dept. No. I

19 **STATE DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY**  
 20 **INJUNCTION**

21 Defendants the State of Nevada and Francisco Aguilar, in his official capacity as  
 22 Nevada Secretary of State ("Secretary" or "Secretary of State," and together with the State  
 23 of Nevada, "State Defendants"), by and through counsel, hereby file State Defendants'  
 24 Opposition ("Opposition") to Plaintiffs the Republican National Committee ("RNC"),  
 25 Nevada Republican Party ("NV GOP"), Donald J. Trump for President 2024, Inc. (together  
 26 with the RNC and NVGOP, "Organizational Plaintiffs"), and Scott Johnston's Motion for  
 27 Preliminary Injunction ("Motion").

28 ///



1 This Opposition is made and based upon the following Memorandum of Points and  
2 Authorities, the attachments hereto, and the papers and pleadings on file herein.

### 3 MEMORANDUM OF POINTS AND AUTHORITIES

#### 4 I. INTRODUCTION

5 Plaintiffs seek to prevent the counting of mail ballots based on the arbitrary failure  
6 of the U.S. Postal Service (“USPS”) not to postmark some mail ballots because Plaintiffs  
7 think Republican candidates and voters will be harmed if such mail ballots are counted.  
8 Nevada law does not support their request to enjoin Nevada officials from counting mail  
9 ballots that arrive up to three days after an election for no reason other than because the  
10 USPS failed to postmark them. The statute at issue, NRS 293.269921(2), allows these mail  
11 ballots to be counted, and Plaintiffs have no likelihood of success on the merits. The  
12 Secretary has interpreted NRS 293.269921(2) consistent with the Legislature’s intent and  
13 the public’s interest, and has acted at all times in accordance with Nevada law. The Motion  
14 should be denied based on this Opposition and the Washoe County Defendants’ Opposition  
15 to Motion for Preliminary Injunction in which the State Defendants join.<sup>1</sup>

#### 16 II. BACKGROUND

##### 17 A. Nevada Law

18 Effective August 3, 2020, for elections held during a declared state of emergency,  
19 Nevada law provided: “If a mail ballot is received by mail not later than 5 p.m. on the third  
20 day following the election and the date of the postmark cannot be determined, the mail  
21 ballot shall be deemed to have been postmarked on or before the day of the election.” See  
22 Assembly Bill 4 of the 32nd Special Sess. (Nev. 2020) (“AB 4”)<sup>2</sup> §§ 8(1), 20(2), 88(1). This  
23 exact same language in AB 4 § 20(2) was adopted for all elections effective January 1, 2022.  
24 See Assembly Bill 321 of the 81st Sess. (Nev. 2021) (“AB 321”)<sup>3</sup> 8(2), §§ 92(3). It is now  
25 codified as NRS 293.269921(2) (“Postmark Provision”).

26  
27 <sup>1</sup> The Motion also violates FJDCR 3.23(b) as it exceeds 10 pages, and Plaintiffs did not seek leave to  
exceed the page limit.

28 <sup>2</sup> Available at [https://www.leg.state.nv.us/Session/32nd2020Special/Bills/AB/AB4\\_EN.pdf](https://www.leg.state.nv.us/Session/32nd2020Special/Bills/AB/AB4_EN.pdf).

<sup>3</sup> Available at [https://www.leg.state.nv.us/Session/81st2021/Bills/AB/AB321\\_EN.pdf](https://www.leg.state.nv.us/Session/81st2021/Bills/AB/AB321_EN.pdf).

1           **B.     The Organizational Plaintiffs' Prior Lawsuits**

2                   **1.     2020 Federal Lawsuit**

3           In 2020, Donald J. Trump for President, Inc., the RNC, and the NVGOP sued former  
4 Secretary of State Barbara Cegavske in the U.S. District Court for the District of Nevada  
5 in connection with the implementation of AB 4. *See* State Defs.' App. of Exs. to State Defs.'  
6 Opp. ("SD App.") 001–31, Am. Compl. for Declaratory and Inj. Relief, ECF No. 29, *Donald*  
7 *J. Trump for President, Inc. v. Cegavske*, Case No. 2:20-cv-01445-JCM-VCF (D. Nev. Aug.  
8 20, 2020), ("Cegavske Am. Compl."). The plaintiffs challenged, among other things, the  
9 legality of AB 4 § 20(2) because it "allow[ed] absent ballots to be cast after Election Day but  
10 still be counted as lawfully cast in the 2020 general election." *Id.* ¶ 119.

11           In the 2020 litigation, both the Secretary and the plaintiffs recognized that the  
12 language in AB 4, which is identical to the language in NRS 293.269921(2) challenged here,  
13 meant that mailed ballots with no postmark would be counted if received not later than 5  
14 p.m. on the third day following the election. *Id.* ¶ 115 ("Section 20.2 of AB4 . . . permit[s]  
15 absent ballots that have not been postmarked to be counted if they are received by 5:00 pm  
16 three days after Election Day . . ."); *see also id.* ¶ 97; SD App. 037, Def. Sec'y of State  
17 Barbara Cegavske's Mot. to Dismiss, ECF No. 37, *Donald J. Trump for President, Inc. v.*  
18 *Cegavske*, Case No. 2:20-cv-01445-JCM-VCF (D. Nev. August 24, 2020) ("Section 20(2)  
19 establishes a presumption that a mailed ballot received within 3 days after the election was  
20 cast on or before the date of the election if the ballot envelope bears no postmark."); *see also*  
21 *id.* at SD App. 040. Since 2020, the Organizational Plaintiffs have therefore been on notice  
22 of (and agreed with) the Secretary's position that mail ballots with no postmark should be  
23 counted if received by 5 p.m. on the third day following an election. The court granted  
24 dismissal because the plaintiffs did not have standing. *See Donald J. Trump for President,*  
25 *Inc. v. Cegavske*, 488 F. Supp. 3d 993 (D. Nev. 2020) ("Cegavske").

26                   **2.     2024 Federal Lawsuit**

27           As Plaintiffs note, they "have challenged Nevada's counting of late-arriving mail  
28 ballots as violating federal law in the U.S. District Court for the District of Nevada." Am.

1 Compl. for Declaratory and Inj. Relief (“Am. Compl.”) ¶ 80. On July 17, 2024, Chief Judge  
2 Miranda Du granted dismissal because the plaintiffs lacked standing. *RNC v. Burgess*,  
3 Case No. 3:24-cv-00198-MMD-CLB, 2024 WL 3445254 (D. Nev. July 17, 2024) (“*Burgess*”).

### 4 **III. LEGAL STANDARDS**

5 A preliminary injunction is “an extraordinary remedy that may only be awarded  
6 upon clear showing that the plaintiff is entitled to such relief.” *See Winter v. Nat. Res. Def.*  
7 *Council, Inc.*, 555 U.S. 7, 22 (2008). It should be denied “in the absence of testimony or  
8 exhibits establishing the material allegations of the complaint.” *Coronet Homes, Inc. v.*  
9 *Mylan*, 84 Nev. 435, 437, 442 P.2d 901, 902 (1968) (citations omitted). And the evidence  
10 supporting injunctive relief must be admissible. *See State v. NOS Commc’ns, Inc.*, 120 Nev.  
11 65, 69, 84 P.3d 1052, 1054 (2004). An applicant for a preliminary injunction order bears  
12 the burden of showing “(1) a likelihood of success on the merits; and (2) a reasonable  
13 probability that the non-moving party’s conduct, if allowed to continue, will cause  
14 irreparable harm for which compensatory damage is an inadequate remedy.” *Univ. &*  
15 *Cnty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187  
16 (2004). Additionally, courts “weigh the potential hardships to the relative parties and  
17 others, and the public interest.” *Id.*

### 18 **IV. ARGUMENT**

#### 19 **A. Plaintiffs Are Not Likely to Succeed on the Merits**

##### 20 **1. Plaintiffs Do Not Have Standing**

21 Nevada “caselaw generally requires the same showing of injury-in-fact,  
22 redressability, and causation that federal cases require for Article III standing.” *Nat’l*  
23 *Assoc. of Mut. Ins. Cos. v. Dep’t of Bus. & Indus., Div. of Ins.*, 524 P.3d 470, 476 (Nev. 2023)  
24 (citations omitted).

##### 25 **a. The Organizational Plaintiffs Are Precluded from Re-** 26 **Litigating Standing**

27 The Organizational Plaintiffs already litigated the issue of standing to challenge  
28 Nevada’s laws on counting mail ballots received after election day in the 2020 *Cegavske*

1 case. *See Cegavske*, 488 F. Supp. 3d 993. They are thus precluded from re-litigating the  
2 issue again here. “Federal law governs the [issue preclusion] effect of a case decided by a  
3 federal court.” *Clark v. Columbia/HCA Info. Servs., Inc.*, 117 Nev. 468, 481, 25 P.3d 215,  
4 224 (2001). Under federal law, issue preclusion applies where “(1) the issue at stake was  
5 identical in both proceedings; (2) the issue was actually litigated and decided in the prior  
6 proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the issue  
7 was necessary to decide the merits.” *Janjua v. Neufeld*, 933 F.3d 1061, 1065 (9th Cir. 2019)  
8 (citations omitted). All four factors are met here.

9 In *Cegavske*, the Organizational Plaintiffs challenged AB 4 § 20(2)’s mail ballot  
10 deadline, and AB 4 § 20(2) is identical to NRS 293.269921(2). *See* 488 F. Supp. 3d at 996–  
11 97. The issue of standing is identical; the Organizational Plaintiffs claimed in *Cegavske*,  
12 as here, associational and competitive standing, and standing based on a diversion of  
13 resources and vote dilution. *Id.* 1000–03. “Because the factual and legal context in which  
14 the issues of this case arise has not materially altered since [*Cegavske*], normal rules of  
15 preclusion should operate to relieve the [Secretary] of ‘redundant litigation [over] the  
16 identical question of’” standing. *Montana v. United States*, 440 U.S. 147, 162 (1979)  
17 (citations omitted).

18 Standing was also actually litigated and decided in the prior litigation after a full  
19 and fair opportunity to litigate the issue, and the *Cegavske* court’s decision on standing was  
20 the basis for dismissal of the prior action. *See Cegavske*, 488 F. Supp. 3d at 1004. There  
21 can be no question that issue preclusion applies where a case is dismissed for lack of  
22 standing, even if the decision finding a lack of standing was erroneous. *Love v. Villacana*,  
23 73 F.4th 751, 755 (9th Cir. 2023). It also applies if the Organizational Plaintiffs claim they  
24 are raising new arguments to support standing. *See Paulo v. Holder*, 669 F.3d 911, 918  
25 (9th Cir. 2011).

26 Finally, issue preclusion applies to Plaintiff Donald J. Trump for President 2024,  
27 Inc., even though the plaintiff in *Cegavske* was Donald J. Trump for President, Inc. Both  
28 organizations have been “the principal committee for President Donald J. Trump’s”



1 campaign. Am. Compl. ¶ 23; SD App. 006, *Cegavske* Am. Compl. ¶ 11. They therefore have  
2 the same interests and are consequently in privity. *Va. Sur. Co. v. Northrop Grumman*  
3 *Corp.*, 144 F.3d 1243, 1247 (9th Cir. 1998) (“Privity exists between parties who adequately  
4 represent the same legal interests. It is the identity of interest that controls in determining  
5 privity, not the nominal identity of the parties.”).

6 **b. Alleged Vote Dilution Does Not Establish Standing**

7 Plaintiffs rely on the widely rejected theory of vote dilution to assert standing. *See*  
8 Am. Compl. ¶¶ 67, 70. In the highly similar *Burgess* action brought by the Organizational  
9 Plaintiffs, the *Burgess* court explained that vote dilution is “an insufficient injury in fact to  
10 support standing when the alleged harm is predicated up on the counting of illegitimate or  
11 otherwise invalid ballots and equally affects all voters in a state.” 2024 WL 3445254, at \*6  
12 (collecting cases). “Counting ballots [without postmarks] received after Election Day does  
13 not specifically disadvantage any one voter, ‘even if the error might have a “mathematical  
14 impact on the final tally and thus on the proportional effect of every vote.”’” *Id.* at \*7  
15 (citation omitted). Nor is the outcome different if Plaintiffs “fram[e] vote dilution in terms  
16 of Republican voting power in Nevada.” *Id.* That is because “a *statewide* detriment to  
17 [Republican voters’] collective interests in Republican representation is not sufficiently  
18 particularized to confer standing.” *Id.* (citing *Gill v. Whitford*, 585 U.S. 48, 68 (2018)).

19 **2. Nevada Law Permits the Counting of Mail Ballots Without**  
20 **Postmarks**

21 **a. Nothing in the Statute’s Plain Text, Structure, or Purpose**  
22 **Imposes the Restrictions Plaintiffs Assert**

23 Courts “look to [a] statute’s plain language” to “ascertain” and “give effect to the  
24 Legislature’s intent,” which is “[t]he goal of statutory interpretation.” *Williams v. State*  
25 *Dep’t of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017) (citation omitted). The  
26 Secretary’s plain-text interpretation of the Postmark Provision honors traditional modes of  
27 interpretation. The Postmark Provision applies to *any* cast mail ballot that (1) “is received  
28 by mail not later than 5 p.m. on the third day following the election” and (2) “the date of

1 the postmark cannot be determined.” NRS 293.269921(2). The Provision applies *whenever*  
2 a mail ballot is timely mailed and received by the county clerk and a postmark date “cannot  
3 be determined,” regardless of the *reason why* “the date of the postmark cannot be  
4 determined.” The Provision does not, by its own terms, require a visible postmark on the  
5 mail ballot. Nor is its application limited to specific reasons why “the date of the postmark  
6 cannot be determined.” It does not matter whether a postmark is illegible or absent  
7 altogether; the date of a postmark is still indeterminate in both scenarios. The Secretary’s  
8 interpretation thus withstands Plaintiffs’ semantic gymnastics.

9 Plaintiffs’ interpretation of the Provision hinges on two cherry-picked words—“the  
10 postmark”—to concoct extra requirements that appear nowhere in the plain text. The  
11 Provision, Plaintiffs contend, “requires the existence of a postmark on the ballot envelope”  
12 for it to be indeterminate based on the use of the definite article “the” in relation to a  
13 “postmark” and its “date.” Mot. at 9. Yet nothing in the Provision’s text bakes in the extra  
14 requirement to distinguish, much less reject, a mail ballot when it has no visible postmark.  
15 Whether smudged, torn, or absent altogether, the postmark still “cannot be determined” in  
16 all scenarios. When a statutory provision lays out specific requirements, but makes no  
17 mention of others, Nevada courts presume that such “omissions” by the Legislature were  
18 intentional. *See In re Lowry*, 549 P.3d 483, 485 (Nev. 2024) (citation omitted).

19 Structurally, Plaintiffs’ interpretation also falters. “When interpreting a statute, a  
20 court should consider multiple legislative provisions as a whole.” *Int’l Game Tech., Inc. v.*  
21 *Second Jud. Dist. Ct.*, 122 Nev. 132, 152, 127 P.3d 1088, 1102 (2006). In doing so, courts  
22 “give those words their plain and ordinary meanings unless . . . a different meaning is  
23 apparent from the context.” *Lofthouse v. State*, 136 Nev. 378, 380, 467 P.3d 609, 611 (2020)  
24 (citation omitted). The words “the date of the postmark”—namely, the use of “the”—should  
25 not be cherry-picked, as Plaintiffs do in their Motion. Plaintiffs’ hyper-fixation misses the  
26 textual forest for the trees. Taken together, NRS 293.269921(1) and (2) create two rules  
27 that comprehensively apply to all ballots received by mail. First, subsection (1) applies to  
28 mail ballots with postmark dates that the clerk can, in fact, determine.

1 See NRS 293.269921(1)(b). Second, subsection (2) applies to those mail ballots with  
2 postmarks that *cannot* be determined, regardless of the reason why they are indeterminate  
3 (e.g., smudged, torn, missing). The structural context of NRS 293.269921 makes it  
4 apparent that, in relation to “the date of the postmark,” the Legislature did not intend to  
5 distinguish, let alone disenfranchise, timely cast mail ballots without postmarks. See  
6 *Lofthouse*, 136 Nev. at, 381–82, 467 P.3d at 612–13 (considering both plain text and  
7 statutory context to ascertain Legislative intent and avoid “absurd results”).

8 The Secretary’s interpretation also harmonizes with the purpose and “spirit” of  
9 Nevada’s election laws. The broader, overarching thrust of NRS chapter 293, which favors  
10 the counting, not rejecting, of votes, further undercuts Plaintiffs’ interpretation.  
11 “[W]henever possible, [courts] will interpret a rule or statute in harmony with other rules  
12 or statutes.” *Williams*, 133 Nev. at 596, 402 P.3d at 1262 (cleaned up). “The language of a  
13 statute should be given its plain meaning unless, in so doing, the spirit of the act is  
14 violated.” *Int’l Game Tech., Inc.*, 122 Nev. at 152, 127 P.3d at 1102. The Legislature  
15 codified the “spirit” of NRS chapter 293 at NRS 293.127(1)(c). This provision demands that  
16 all Nevada election laws, under Title 24, be “liberally construed” to effectuate the “real will  
17 of the electors,” such that it “is not defeated by any informality or by failure substantially  
18 to comply with the provisions of this title with respect to . . . the conducting of an election  
19 or certifying the results thereof.” NRS 293.127(1)(c); see *Univ. & Cmty. Coll. Sys. of Nev.*,  
20 120 Nev. at 734, 100 P.3d at 195. Liberally construing the Postmark Provision to effectuate  
21 the will of the people, Plaintiffs’ interpretation would also likely lead to an absurd result:  
22 the undue rejection of otherwise valid mail ballots and consequent denial of voters’ right to  
23 have their votes counted based on the arbitrary decision of the USPS to not postmark mail  
24 ballots. Plaintiffs’ wishful efforts to rewrite NRS 293.266921 to impose more onerous  
25 postmark requirements are better directed toward the Legislature, which has yet to enact  
26 a law addressing the issue of this case. See *City of Reno v. Yturbide*, 135 Nev. 113, 118, 440  
27 P.3d 32, 36 (2019).

28 ///

1                   b.     NRS 293.269921's Legislative History Further Belies  
2                             Plaintiffs' Reading of the Postmark Provision

3             Even if the plain text of the Postmark Provision were ambiguous, traditional canons  
4 of construction further support the Secretary's reading. "Where a statute lacks plain  
5 meaning," Nevada courts "will consult legislative history, related statutes, and context as  
6 interpretive aids." *Nev. State Democratic Party v. Nev. Republican Party*, 256 P.3d 1, 7  
7 (Nev. 2011) (citations omitted). Courts also may interpret an ambiguous statute by  
8 "examining the context and the spirit of the law or the causes which induced the  
9 Legislature to enact it. The entire subject matter and policy may be involved as an  
10 interpretive aid." *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).

11             The canon of constitutional avoidance, long recognized in both Nevada and federal  
12 courts, points to only one reasonable interpretive option: the Secretary's. *See, e.g., Degraw*  
13 *v. Eighth Jud. Dist. Ct.*, 134 Nev. 330, 333, 419 P.3d 136, 139 (2018). As the Secretary  
14 interprets it, the Postmark Provision ensures that any voter who mails in their ballot by  
15 election day, in compliance with NRS 293.266921, will have their vote rightfully counted,  
16 regardless of whether the USPS applies a postmark—an act fully out of the voter's control.  
17 *See Bush v. Hillsborough Cnty. Canvassing Bd.*, 123 F. Supp. 2d 1305, 1317 (N.D. Fla.  
18 2000) (noting that local election officials' "job is to accept votes, not reject them," and that  
19 they "must diligently count every vote that substantially complies with a state's election  
20 law absent any indication of fraud.").

21             Plaintiffs' interpretation, on the other hand, runs afoul of the constitutional  
22 avoidance doctrine because it explicitly requires a visible postmark on all mail ballots and,  
23 in turn, implicitly compels county clerks to reject valid mail ballots. Plaintiffs' rewrite of  
24 the Provision would lead to rejection of timely mail ballots—an absurd and  
25 unconstitutional outcome that prevents accurate counting of votes and stymies Nevada  
26 voters' right to "a uniform, statewide standard for counting . . . all votes *accurately*." Nev.  
27 Const. art. II, § 1A(10) (emphasis added); NRS 293.2546(10); *cf. DCCC v. Kosinski*, 614 F.  
28 Supp. 3d 20, 56–57 (S.D.N.Y. 2022) (finding that application of state law rejecting post-



1 election day ballots without postmarks “constitute[d] a severe burden on the right to vote”  
2 because it “disenfranchise[d] voters who *do* meet the deadlines imposed by state law by  
3 invalidating their ballots that, through no fault of their own, are not postmarked and are  
4 delivered two or more days after Election Day”). To safeguard voters’ rights, constitutional  
5 avoidance requires this Court to “shun” Plaintiffs’ interpretation of the Postmark Provision  
6 and instead adopt the Secretary’s. *Degraw*, 134 Nev. at 333, 419 P.3d at 139.

7 The legislative history of NRS 293.269921, consistent with sound reason and public  
8 policy, further bolsters the Secretary’s plain-text interpretation of the Postmark Provision.  
9 As NRS 293.269921 (then AB 321) made its way through the Nevada Legislature, the  
10 Legislature considered this very interpretive issue. Assemblyman Jason Frierson,  
11 AB 321’s primary sponsor, explained that timely mail ballots without postmarks would also  
12 be counted under the bill:

13 To the extent that there were [ballot] envelopes that were not  
14 postmarked or the postmark was illegible, smudged, or otherwise  
15 damaged to where it could not be read—I think similar to the  
16 postmark requirement of three days—any of those that came in  
within that same period of time would be counted and anything  
that came in after that would not be counted. Again, with respect  
to the postmark issue, I would defer to our election officials.

17 Minutes of the Meeting of the Assemb. Comm. on Legis. Operations & Elections, 2021 Leg.,  
18 81st Sess. at 21 (Nev. 2021).<sup>4</sup> More broadly, Frierson emphasized the need to *expand* voting  
19 rights in Nevada through A.B. 321—an expansion in which the counting of mail ballots  
20 plays a central role:

21 I believe as the late U.S. Representative John Lewis did—that the  
22 vote is the most powerful nonviolent tool that we have in a  
23 democracy, and we must use it. . . . I am proud that Nevada has  
24 led the way over the years to expand the ways in which people  
25 vote, and I am proud to continue expanding our freedoms with  
A.B. 321. This reflects an expansion in Nevada but not a new  
concept; several states have had seamless and very successful  
election processes via mail ballots, including some states that do  
only mail ballot elections.

26 *Id.* at 8. Assemblyman Frierson’s statement is reasoned, crystalline evidence of a  
27 legislative intent (and public policy) to count mail ballots lacking a visible postmark if they

28 <sup>4</sup> Available at <https://www.leg.state.nv.us/session/81st2021/minutes/assembly/loe/final/663.pdf>.

1 arrived within three days after election day. *See* NRS 293.127(1)(c); *Univ. & Cmty. Coll.*  
2 *Sys. of Nev*, 120 Nev. at 734, 100 P.3d at 195. And as the Nevada Supreme Courts has  
3 recognized, “even the most basic general principles of statutory construction must yield to  
4 clear contrary evidence of legislative intent.” *A.J. v. Eighth Jud. Dist. Ct.*, 133 Nev. 202,  
5 206, 394 P.3d 1209, 1213 (2017) (citation omitted).

6 Lastly, Plaintiffs’ nod to ten other states’ mail-ballot laws represents, if anything,  
7 wishful thinking of what they want Nevada law to one day be, which, again, amounts to a  
8 statutory change and request better directed toward the Legislature. Mot. at 10. Because  
9 legislative intent, public policy, and commonsense all show that timely cast votes should  
10 not be thrown out due to an action completely out a voter’s control—the application of a  
11 postmark—Plaintiffs’ construction of the Provision cannot stand. *See DCCC*, 614 F. Supp.  
12 3d at 56–57.

### 13 3. The Secretary Did Not Violate the APA

14 A “regulation” subject to the notice and hearing requirements of the Administrative  
15 Procedure Act (“APA,” NRS chapter 233B) “does not include . . . [a]n interpretation of an  
16 agency that has statutory authority to issue interpretations.” NRS 233B.038(2)(h). The  
17 Legislature specifically authorized the Secretary, as the Chief Officer of Elections, to  
18 “provide interpretations and take other actions necessary for the effective administration  
19 of the statutes and regulations governing the conduct of primary, presidential preference  
20 primary, general, special and district elections in this State.” NRS 293.124(1), 293.247(4).  
21 While the Secretary is authorized to promulgate regulations on any “matter[] as  
22 determined necessary by the Secretary of State,” NRS 293.247(3)(j), he was well within his  
23 statutory authority to issue the interpretation of NRS 293.269921(2) in Memorandum  
24 2024-015 (Mot. Ex. 1). The Memorandum was therefore not a “regulation” as defined in  
25 NRS 233B.038(2)(h) and there is no violation of the APA.

### 26 V. CONCLUSION

27 For the foregoing reasons, the Court should deny Plaintiffs’ Motion.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED this 23rd day of July, 2024.

Bý:

*Attorneys for State Defendants*

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 23rd day of July, 2024, I served a true and correct copy of the foregoing STATE DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION by electronic mail, pursuant to agreement, on:

Alicia R. Ashcraft  
Jeffrey F. Barr  
Ashcraft & Barr LLP  
[barrj@ashcraftbarr.com](mailto:barrj@ashcraftbarr.com)

Michael Francisco  
Christopher O. Murray  
First & Fourteenth PLLC  
[michael@first-fourteenth.com](mailto:michael@first-fourteenth.com)  
[chris@first-fourteenth.com](mailto:chris@first-fourteenth.com)

Sigal Chattah  
[sigal@thegoodlawyerlv.com](mailto:sigal@thegoodlawyerlv.com)

David A. Warrington  
Gary M. Lawkowski  
[DWarrington@dhillonlaw.com](mailto:DWarrington@dhillonlaw.com)  
[GLawkowski@dhillonlaw.com](mailto:GLawkowski@dhillonlaw.com)

*Attorneys for Plaintiffs*

Elizabeth Hickman  
Washoe County District Attorney's Office  
[ehickman@da.washoecounty.gov](mailto:ehickman@da.washoecounty.gov)

*Attorneys for Cari-Ann Burgess and Jan Galassini*

Lisa V. Logsdon  
Clark County District Attorney's Office  
[Lisa.Logsdon@clarkcountydav.gov](mailto:Lisa.Logsdon@clarkcountydav.gov)

*Attorneys for Lorena Portillo and Lynn Marie Goya*

  
Aaron D. Van Sickle




1 CHRISTOPHER J. HICKS  
2 Washoe County District Attorney  
3 ELIZABETH HICKMAN (Bar No. 11598)  
4 Deputy District Attorney  
5 One South Sierra Street  
6 Reno, Nevada 89501  
7 ehickman@da.washoecounty.gov

8 *Attorneys for Washoe County Defendants*

REC'D & FILED

2024 JUL 23 PM 3:17

WILLIAM SCOTT HOEN  
CLERK

BY  DEPUTY

9  
10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR CARSON CITY**

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
REPUBLICAN NATIONAL  
COMMITTEE, *et al.*,

Plaintiffs,

vs.

FRANCISCO AGUILAR, in his official  
capacity as Nevada Secretary of State, *et*  
*al.*,

Defendants.

Case No.: 24 OC 00101 1B

Dept. No. I

**WASHOE COUNTY DEFENDANTS' OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION**

Defendants Cari-Ann Burgess, in her official capacity as the Washoe County Registrar of Voters, and Jan Galassini, in her official capacity as the Washoe County Clerk ("Washoe County Defendants"), by and through counsel, hereby file the Washoe County Defendants' Opposition to Plaintiffs the Republican National Committee ("RNC"), Nevada Republican Party ("NVGOP"), Donald J. Trump for President 2024, Inc. (together with the RNC and NVGOP, "Organizational Plaintiffs"), and Scott Johnston's Motion for Preliminary Injunction ("Motion").

///

///

///

JA00130

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

The Washoe County Defendants join in the State Defendants' Opposition to Motion for Preliminary Injunction ("State Defendants' Opposition") and incorporate the same background and argument here.<sup>1</sup> The Washoe County Defendants raise in this Opposition further bases supporting denial of Plaintiffs' Motion, including Plaintiff's failure to join a necessary party and the Organizational Plaintiff's lack of standing. Additionally, Plaintiff's cannot show irreparable harm or that the public interest necessitates denying the motion. Last, this lawsuit is barred by the doctrine of laches. For these reasons, in addition to those asserted in the State Defendants' Opposition, the Motion must be denied.

### II. ARGUMENT

#### A. Plaintiffs Are Not Likely to Succeed on the Merits

##### 1. Plaintiffs Have Failed to Join a Necessary Party

NRCP 19(a)(1)(B)(i) requires joinder of a party where that party "claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may . . . as a practical matter impair or impede the person's ability to protect the interest." Pursuant to NRCP 12(b)(6), dismissal is appropriate for failure to join a party under NRCP 19. This is because the Court cannot enter a final judgment absent necessary parties. *Univ. of Nev. v. Tarkanian*, 95 Nev. 389, 396, 594 P.2d 1159, 1163 (1979) ("If the interest of the absent parties "may be affected or bound by the decree, they must be brought before the court, or it will not proceed to a decree.""); *see also Schwob v. Hemsath*, 98 Nev. 293, 294, 646 P.2d 1212, 1212 (1982) ("Failure to join an indispensable party is fatal to a judgment and may be raised by an appellate court sua sponte.").

Plaintiffs allege that "late-arriving mail ballots that are counted will tend to disproportionately favor Democrat candidates." Am. Compl. for Declaratory & Inj. Relief ("Amended Complaint") ¶ 71. Plaintiffs, then, are trying to harm Democrats by preventing

---

<sup>1</sup> The Washoe County Defendants also join in the proposed order dismissing the Motion submitted by the State Defendants.

1 the counting of some Democratic mail ballots. Just as Plaintiffs claim an interest in the  
2 interpretation and application of NRS 293.269921(2), *see id.* ¶¶ 15, 17, 18, 22, 25, 83, 90,  
3 the Democratic party would have the same interests, as well as the interest in ensuring the  
4 maximum number of Democratic mail ballots are counted. Under Plaintiffs' own  
5 allegations, therefore, they should have joined at least *some* Democratic party, such as the  
6 Democratic National Committee or the Nevada State Democratic Party, in this action to  
7 protect those interests. Because Plaintiffs did not, this action should be dismissed, and  
8 Plaintiffs have no likelihood of success on the merits.

## 9                   **2.       The Organizational Plaintiffs Do Not Have Standing**

10           Nevada “caselaw generally requires the same showing of injury-in-fact,  
11 redressability, and causation that federal cases require for Article III standing.” *Nat’l*  
12 *Assoc. of Mut. Ins. Cos. v. Dep’t of Bus. & Indus., Div. of Ins.*, 524 P.3d 470, 476 (Nev. 2023)  
13 (citations omitted). Just last week, the U.S. District of Nevada dismissed a similar lawsuit  
14 brought by the same Organizational Plaintiffs and an individual plaintiff for lack of  
15 standing. *See generally RNC v. Burgess*, Case No. 3:24-cv-00198-MMD-CLB, 2024 WL  
16 3445254 (D. Nev. July 17, 2024) (“*Burgess*”). The *Burgess* plaintiffs challenged Nevada’s  
17 laws allowing some mail ballots that are received within four days after an election to be  
18 counted, including NRS 293.269921(2). *See id.* at \*1. Because Plaintiffs rely on the same  
19 rejected standing theories here, they have no likelihood of success on the merits.

### 20                   **a.       The Organizational Plaintiffs’ Competitive Harm Theory** 21                   **of Standing Fails**

22           The Organizational Plaintiffs claim injury based on the assertion that “late-arriving  
23 mail ballots that are counted will tend to disproportionately favor Democrat candidates.”  
24 *Am. Compl.* ¶ 71; *see also id.* ¶¶ 72-77. To establish competitive standing, the  
25 Organizational Plaintiffs would need to either show the “potential loss of an election,”  
26 *Drake v. Obama*, 664 F.3d 774, 783 (9th Cir. 2011) (citation omitted), or that they are  
27 “forced to compete under the weight of a state-imposed disadvantage, *Mecinas v. Hobbs*, 30

28   ///

1 F.4th 890, 899 (9th Cir. 2022). The Organizational Plaintiffs have submitted no evidence  
2 establishing either.

3 i. The Organizational Plaintiffs Have Failed to  
4 Establish the Potential Loss of an Election

5 As the *Burgess* court explained, “[a]ny harm to Organizational Plaintiffs’ electoral  
6 success from the Nevada mail ballot receipt deadline ‘arises from the government’s  
7 allegedly unlawful regulation’ of a third party: Nevada voters.” *Burgess*, 2024 WL 3445254,  
8 at \*2 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992)). Because the  
9 Organizational Plaintiffs could not “rely on speculation about the unfettered choices made  
10 by independent actors’ to establish standing,” the *Burgess* court found the Organizational  
11 Plaintiffs failed to establish causation and redressability with respect to a theory of injury  
12 based on potential loss of an election. *Id.* (quoting *Food & Drug Admin. v. All. for*  
13 *Hippocratic Med.*, 602 U.S. 367, 383 (2024)). The same is true here.

14 As in *Burgess*, Plaintiffs include no allegations or evidence relating to unaffiliated  
15 voters, who cast around 27.6% of mail ballots in the past two general election; “[t]he  
16 partisan lean of unaffiliated mail ballots is unknown.” *Id.* at 2, n.4. Thus, the  
17 Organizational Plaintiffs have failed to establish that late-arriving mail ballots without  
18 postmarks skew Democratic. Regardless, “it is far from guaranteed that Nevada voters  
19 will” continue their same mail ballot voting trends. *Id.* (citing *O’Shea v. Littleton*, 414 U.S.  
20 488, 496-97 (1974)). Thus, it is “‘inherently speculative’ that mail ballots [without  
21 postmarks] received in Nevada after Election Day will favor Democratic candidates and  
22 that, if they do, such votes will be ‘sufficient in number to change the outcome of the election  
23 to [Republicans] detriment.’” *Id.* (quoting *Bognet v. Sec’y Commonwealth Pa.*, 980 F.3d  
24 336, 351-52 (3d Cir. 2020)). And for the same reason, the “Organizational Plaintiffs have  
25 not shown that any harm to their electoral prospects will ‘likely’ be redressed by enjoining  
26 Nevada from counting ballots [without postmarks] received after election Day.” *Id.* at \*3  
27 (citing *All. for Hippocratic Med.*, 602 U.S. at 380).

28 ///



1                                   ii.    **The Organizational Plaintiffs Have Failed to**  
2   **Establish any State-Imposed Disadvantage**

3           It is not enough for the Organizational Plaintiffs to allege that the government is  
4 acting illegally. See Am. Compl. ¶ 17; *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (“[A  
5 plaintiff raising only a generally available grievance about government—claiming only  
6 harm to his and every citizen’s interest in proper application of the Constitution and laws,  
7 and seeking relief that no more directly and tangibly benefits him than it does the public  
8 at large—does not state an Article III case or controversy.”). They must allege an “unfair  
9 advantage in the election process,” *Owen v. Mulligan*, 640 F.2d 1130, 1133 (9th Cir. 1981)  
10 (citation omitted), or that they are forced to compete on an uneven playing field, *City of Los*  
11 *Angeles v. Barr*, 929 F.3d 1163, 1173 (9th Cir. 2019) (citations omitted). But mail ballots  
12 without postmarks that arrive within three days after the election will be counted for all  
13 Nevada voters. See *Burgess*, 2024 WL 3445254, at \*3 (“Republican candidates ‘face no  
14 harms that are unique from their electoral opponents’ when all Nevada voters are  
15 uniformly given greater access to the ballot box.”); *Donald J. Trump for President, Inc. v.*  
16 *Cegavske*, 488 F. Supp. 3d 993, 1003 (D. Nev. 2020) (“*Cegavske*”) (“Plaintiffs seek to muster  
17 ‘competitive standing,’ yet their candidates face no harms that are unique from their  
18 electoral opponents.”). Consequently, the Organizational Plaintiffs do not have competitive  
19 standing.

20                                   b.    **The Organizational Plaintiffs Do Not Advance a**  
21   **Cognizable Diversion of Resources Theory of Injury**

22           The Organizational Plaintiffs attempt to allege a diversion of resources theory of  
23 injury. See Am. Compl. ¶¶ 18, 66. They argue that as a result of the interpretation of NRS  
24 293.269921(2) at issue here, they and their members must “divert more time and money to  
25 post-election mail ballot activities.” *Id.* ¶ 66. A diversion of resources theory of injury  
26 cannot be premised on “continuing ongoing activities” or expenditures that are part of  
27 “business as usual.” *Friends of the Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 943 (9th  
28 Cir. 2021) (citations omitted). The Organizational Plaintiffs must instead “show that [they]

1 would have suffered some other injury if [they] had not diverted resources to counteracting  
2 the problem.” *See La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624  
3 F.3d 1083, 1088 (9th Cir. 2010).

4 The Organizational Plaintiffs allege that they already “devote[] significant resources  
5 to mail-ballot-chasing operations and election integrity activities.” Am. Compl. ¶ 18. They  
6 do not explain *why* the interpretation of NRS 293.269921(2) would have any impact on  
7 their activities. They fail to specify a harm they must counteract by diverting resources  
8 based on the interpretation of NRS 293.269921(2). For instance, they claim that “[i]f non-  
9 postmarked ballots received after election day are counted, the RNC will have to devote  
10 resources to ascertaining and ensuring that only ballots mailed by election day are  
11 counted.” *Id.* But they already indicate that they participate in mail-ballot counting  
12 activities, *see id.* ¶¶ 65-66, and whether NRS 293.269921(2) is interpreted to include mail  
13 ballots without postmarks, the same amount of resources would be expended. *See Burgess*,  
14 2024 WL 3445254, at \*5 (“Organizational Plaintiffs therefore are not engaging in additional  
15 poll watching and mail ballot counting activities to identify and counteract any harms from  
16 the Nevad mail ballot receipt deadline.”).

17 **c. The Organizational Plaintiffs Do Not Have Associational**  
18 **Standing**

19 The Organizational Plaintiffs do not have standing here to bring suit on behalf of  
20 their members. *See* Am. Compl. ¶¶ 16, 22. They would have to have members who “would  
21 otherwise have standing to sue in their own right.” *Hunt v. Wash. State Apple Advert.*  
22 *Comm’n*, 432 U.S. 333, 343 (1977). For the same reasons Plaintiffs do not have standing  
23 based on vote dilution, as described in the State Defendants’ Opposition, the  
24 Organizational Plaintiffs do not have associational standing.

25 **B. Plaintiffs Have Failed to Show Irreparable Harm**

26 Plaintiffs claim irreparable harm based on (1) the potential loss of an election; and  
27 (2) vote dilution. Mot. at 13-15. Plaintiffs have failed to show any reasonable probability  
28 that they will suffer these harms in the absence of an injunction. *See Univ. & Cmty. Coll.*

1 *Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

2 Both harms depend on the Court finding that counting mail ballots without  
3 postmarks violates NRS 293.269221(2). As set out in the State Defendants' Opposition,  
4 Plaintiffs' interpretation of NRS 293.269921(2) is meritless. Plaintiffs have also failed to  
5 present evidence showing any reasonable probability that the counting of late-arriving mail  
6 ballots without postmarks will result in the loss of any election.

7 As discussed above, Plaintiffs have failed to include any allegation relating to the  
8 partisan lean of unaffiliated voters, and they therefore do no more than speculate about  
9 whether late-arriving mail ballots without postmarks favor Democrats. Further, Plaintiffs  
10 point to two elections where the results changed after the initial tally on election day. Mot.  
11 at 14 (citing Am. Compl. ¶¶ 69, 76). Nevada law allows for ballots to be counted up to seven  
12 days after an election, NRS 293.269931(1), so election day results are subject to change.  
13 Mail ballots can arrive by mail up to four days after an election, NRS 293.269921, mail  
14 ballots can be cured up to six days after an election if they, for example, lack a signature,  
15 NRS 293.269927(6), and provisional ballots can be counted if validated within three days  
16 of an election, NRS 293.3085(3)(b). Plaintiffs' two cited elections do not establish any  
17 reasonable probability that election results have changed or will change due to the counting  
18 of mail ballots without postmarks under NRS 293.269921(2).

19 Plaintiffs also allege an interest of candidates and voters in accurate vote tallies. *See*  
20 Mot. at 13-15. This is not a cognizable harm. While vote dilution is cognizable as a harm  
21 where there are "irrationally favored" voters, such as where voters from one county are  
22 disfavored based on malapportionment, *see, e.g., Baker v. Carr*, 369 U.S. 186, 207-08 (1962),  
23 a "veritable tsunami of decisions" confirm that vote dilution as alleged here is not  
24 cognizable. *O'Rourke v. Dominion Voting Sys. Inc.*, Civil Action No. 20-cv-03747-NRN,  
25 2021 WL 1662742, at \*9 (D. Colo. Apr. 28, 2021), *aff'd* No. 21-1161, 2022 WL 1699425 (10th  
26 Cir. May 27, 2022); *see also Wood v. Raffensberger*, 981 F.3d 1307, 1314-15 (11th Cir. 2020)  
27 (vote dilution where "no single voter is specifically disadvantaged" if a vote is counted  
28 improperly" is "a paradigmatic generalized grievance that cannot support standing");

1 *Bognet*, 980 F.3d at 359 (“[I]t [does] not follow that every such ‘false’ or incorrect tally is an  
2 injury in fact for purposes of an Equal Protection Clause claim.”), *cert. granted* 131 S. Ct.  
3 2508 (2021) (dismissed as moot); *Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 732  
4 (N.D. Ill. 2023) (“Plaintiffs suggest the dilution posed by the Ballot Receipt Deadline  
5 Statute violates the Elections Clause, but . . . Plaintiffs do not allege an injury beyond the  
6 general grievance that all Illinois voters would share if that were the case.”).

7 **C. The Public Interest Warrants Denial of the Motion**

8 There is no dispute that the public interest favors “free and fair elections.” Am.  
9 Compl. ¶ 33. The public interest is also served by ensuring that the maximum number of  
10 legitimate votes are counted. *See, e.g.*, 52 U.S.C. § 20501(a)(1)-(2) (“The Congress finds  
11 that . . . the right of citizens of the United State to vote is a fundamental right [and] it is  
12 the duty of the Federal, State, and local governments to promote the exercise of that right  
13 . . . .”). Plaintiffs have provided no competent evidence that late-arriving mail ballots  
14 without postmarks were not lawfully cast by election day. There is no public interest in  
15 disenfranchising voters.

16 Plaintiffs also offer no explanation for why similarly situated voters who cast their  
17 ballots by mail should be treated differently depending on the arbitrary failure of the U.S.  
18 Postal Service to postmark their ballots. Instead, such a holding would likely implicate the  
19 federal and state equal protection clauses because it would treat “similarly situated people  
20 differently.” *In re Candelaria*, 126 Nev. 408, 416, 245 P.3d 518, 523 (2010) (citation  
21 omitted). Plaintiffs do not argue that there is a legitimate basis to discriminate between  
22 voters whose ballots have a smudged postmark versus voters whose ballots lack postmarks.

23 At bottom, Plaintiffs’ public interest argument presumes that NRS 293.269921(2)  
24 does not allow the counting of late-arriving mail ballots without postmarks. Mot. at 15-16.  
25 That contention is meritless, as described in the State Defendants’ Opposition, and it does  
26 not overcome the public’s interest in having timely cast mail ballots counted.

27 ///

28 ///



1           **D.     Plaintiffs' Request Is Barred by the Doctrine of Laches**

2           "Laches is an equitable doctrine which may be invoked when delay by one party  
3 works to the disadvantage of the other, causing a change of circumstances which would  
4 make the grant of relief to the delaying party inequitable." *Miller v. Burk*, 124 Nev. 579,  
5 598, 188 P.3d 1112, 1124 (2008). It can apply to preclude issuance of a preliminary  
6 injunction. *Carson City v. Price*, 113 Nev. 409, 411-12, 934 P.2d 1042, 1043-44 (1997). And  
7 it can apply in the election context, including where there is a request for prospective  
8 injunctive relief. *See Miller*, 124 Nev. at 597-999, 188 P.3d at 1124-25 (applying laches to  
9 Legislature's challenge to language adopted through initiative petition); *Paher v. Cegavske*,  
10 Case No. 3:20-cv-00243-MMD-WGC, 2020 WL 2748301, at \*5-6 (D. Nev. May 27, 2020)  
11 (applying laches to request for prospective injunctive relief to stop the implementation of  
12 an all-mail election). Courts consider three factors in determining whether to apply laches:  
13 "(1) whether the party inexcusably delayed bringing the challenge, (2) whether the party's  
14 inexcusable delay constitutes acquiescence to the condition the party is challenging, and  
15 (3) whether the inexcusable delay was prejudicial to others." *Miller*, 124 Nev. at 598, 188  
16 P.3d at 1125. In the election context, prejudice to voters warrants application of laches.  
17 *See id.*, 124 Nev. at 599, 188 P.3d at 1125 (applying laches where there would be prejudice  
18 to voters who had been relying on an approved ballot initiative).

19           As described in the State Defendants' Opposition, the Organizational Plaintiffs have  
20 known about (and even agreed with) the Secretary of State's interpretation of the language  
21 in NRS 293.269921(2) as requiring the counting of mail ballots without postmarks since  
22 2020 when they litigated the *Cegavske* action. Now, four years later, Plaintiffs seek  
23 preliminary injunctive relief to prevent the counting of mail ballots without postmarks only  
24 four months before the November 5, 2024, general election.

25           Nevada had a presidential preference primary election on February 6, 2024, NRS  
26 298.650(1), and a primary election on June 11, 2024, NRS 293.175(1). The interpretation  
27 that NRS 293.269921(2) includes mail ballots without postmarks has already been in effect  
28 for two elections in 2024. Yet Plaintiffs waited until June 3, 2024, to file this action, and

1 another month still, until July 3, 2024, to file this Motion. They are asking that the  
2 defendants be enjoined from effectuating the statutory interpretation that the  
3 Organizational Plaintiffs have known about since 2020. If Plaintiffs' requested relief is  
4 granted, voters may not learn that their mail ballots will be processed differently than in  
5 the last two recent 2024 elections. They may rely on mail ballot acceptance rules that have  
6 been recently applied and choose to vote by mail, not knowing that their mail ballot would  
7 be rejected if the U.S. Postal Service failed to postmark it. In essence, Plaintiffs' requested  
8 relief runs the substantial risk of prejudicing voters who vote by mail. Had Plaintiffs  
9 successfully brought this Motion before the passage of two elections this year, the Secretary  
10 of State and county clerks and registrars of voters could have devoted resources to  
11 informing the public that their mail ballot might not be counted, even if timely submitted.  
12 The Court should therefore deny Plaintiffs' Motion based on laches.

### 13 **III. CONCLUSION**

14 For the foregoing reasons, the Court should deny Plaintiffs' Motion.

### 15 **AFFIRMATION**

16 The undersigned does hereby affirm that the document entitled Washoe County  
17 Defendants' Opposition to Motion for Preliminary Injunction does not contain personal  
18 information as defined in NRS 239B.030(4), and further acknowledges that an affirmation  
19 will only be provided on any additional documents if the document does contain personal  
20 information.

21 DATED: *July 23, 2024*

22 CHRISTOPHER J. HICKS  
23 Washoe County District Attorney

24 By: *Elizabeth Hickman*  
25 Elizabeth Hickman (Bar No. 11598)  
26 Deputy District Attorney  
27 One South Sierra Street  
28 Reno, NV 89501  
(775) 337-5700  
ehickman@da.washoecounty.gov

*Attorneys for Washoe County Defendants*



1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Washoe County District Attorney's Office, and  
3 that on this 23rd day of July, 2024, I served a true and correct copy of the foregoing  
4 **WASHOE COUNTY DEFENDANTS' OPPOSITION TO MOTION FOR**  
5 **PRELIMINARY INJUNCTION** by email, pursuant to agreement, to:

6 Alicia R. Ashcraft  
7 Jeffrey F. Barr  
8 Ashcraft & Barr LLP  
9 barrj@ashcraftbarr.com

10 Michael Francisco  
11 Christopher O. Murray  
12 First & Fourteenth PLLC  
13 michael@first-fourteenth.com  
14 chris@first-fourteenth.com

15 Sigal Chattah  
16 sigal@thegoodlawyerlv.com

17 David A. Warrington  
18 Gary M. Lawkowski  
19 DWarrington@dhillonlaw.com  
20 GLawkowski@dhillonlaw.com

21 *Attorneys for Plaintiffs*

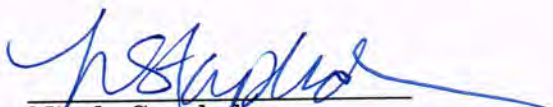
22 Laena St-Jules  
23 Nevada Attorney General's Office  
24 lstjules@ag.nv.gov

25 *Attorneys for State of Nevada and Francisco Aguilar*

26 Lisa V. Logsdon  
27 Clark County District Attorney's Office  
28 Lisa.Logsdon@clarkcountydav.gov

*Attorneys for Lorena Portillo and Lynn Marie Goya*

Dated this 23rd day of July, 2024.

25   
26 Nicole Stapledon

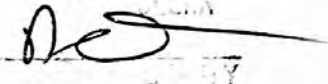
ORIGINAL

240000101

REC'D & FILED

2024 JUL 31 PM 3:38

WILLIAM SCOTT HEN



1 Alicia R. Ashcraft (Bar # 6980)

2 Jeffrey F. Barr (Bar # 7269)

3 Ashcraft & Barr LLP

4 8275 South Eastern Avenue, Suite 200

5 Las Vegas, NV 89123

6 702-631-4755

7 barrj@ashcraftbarr.com

8 Michael Francisco\* (CO Atty. No. 39111)

9 Christopher O. Murray\* (CO. Atty No. 39340)

10 First & Fourteenth PLLC

11 800 Connecticut Avenue NW, Suite 300

12 Washington, D.C. 20006

13 202-998-1978

14 michael@first-fourteenth.com

15 chris@first-fourteenth.com

16 Sigal Chattah (Bar # 8264)

17 5875 S. Rainbow Blvd #204

18 Las Vegas, NV 89118

19 702-360-6200

20 sigal@thegoodlawyerlv.com

21 David A. Warrington\* (VA Bar No. 72293)

22 Gary M. Lawkowski\* (VA Bar No. 82329)

23 2121 Eisenhower Ave, Suite 608

24 Alexandria, VA 22314

25 703-574-1206

26 DWarrington@dhillonlaw.com

27 GLawkowski@dhillonlaw.com

28 \* *Pro hac vice application pending or forthcoming*



1  
2 **IN THE FIRST JUDICIAL DISTRICT COURT**  
3 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

4 REPUBLICAN NATIONAL  
5 COMMITTEE; et al.

6 Plaintiffs,

7 v.

8 FRANCISCO AGUILAR, in his official  
9 capacity as Nevada Secretary of State;  
10 State of NEVADA; et al.

11 Defendants,

12 and

13 VET VOICE FOUNDATION; and the  
14 NEVADA ALLIANCE FOR RETIRED  
AMERICANS,

Intervenor-Defendants.

**Case No.:** 24 OC 00101 1B

**Dept. No.:** 1

**REPLY TO STATE DEFENDANTS  
IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

15 Plaintiffs seek an injunction to prevent the irreparable harm that will  
16 follow if the Defendant Secretary of State and Counties disregard Nevada's clear  
17 law regarding the counting of mail ballots received after election day that lack a  
postmark under the secretary's May 29 Memorandum ("Memorandum").

18 **Plaintiffs are Likely to Succeed on the Merits of Their Claims.**

19 State Defendants' Opposition Focuses exclusively on Plaintiffs' likelihood  
20 of success on the merits. Plaintiffs incorporate by reference their previously and  
21 contemporaneously filed briefs addressing their likelihood of success on the  
22 merits and address only arguments unique to (or expanded upon) by the State  
23 Defendants' opposition here.

24 **a. Plaintiffs are not Estopped from Claiming Standing**

25 The State Defendants argue that Plaintiffs' standing is precluded because of  
26 the 2020 *Cegavske* case. As an initial matter, *Cegavske* was wrongly decided.  
27 Even if *Cegavske* were not incorrectly decided, "[i]n order for collateral estoppel

1 to apply: (1) the parties to the prior action must be identical to, or in privity  
2 with, the parties in the current action; (2) the initial ruling must have been on  
3 the merits and final; and (3) the issues in the two actions must be identical.”  
4 *Clark v. Columbia/HCA Info. Servs., Inc.*, 117 Nev. 468, 481 (2001). Prongs one  
5 and three fail.

6 First, the parties in this action are not identical to nor in privity with the  
7 parties in the current action. Defendants do not dispute that Scott Johnston was  
8 not a party to the 2020 *Cegavske* case. “A person who was not a party to a suit  
9 generally has not had a ‘full and fair opportunity to litigate’ the claims and  
10 issues settled in that suit.” *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). As an  
11 individual voter, Mr. Johnston has standing to challenge the Memorandum.

12 Neither Donald J. Trump for President 2024, Inc. nor Mr. Johnston were  
13 parties to the 2020 *Cegavske* case. According to the Federal Election  
14 Commission, the Donald J. Trump for President 2024, Inc. and Donald J. Trump  
15 for President, Inc. (now registered with the FEC as Make America Great Again  
16 PAC) both currently exist as separate entities. Separate Statements of  
17 Organization, separate filings, separate ID numbers, separate registration dates,  
18 and supporting different candidates. It is not the case that the same entity has  
19 changed its “nominal identity.” The Trump Campaign in this case is a separate  
20 entity.

21 Second, the issues here are not identical to those in *Cegavske*, there  
22 Plaintiffs asserted broad federal constitutional claims. Here, Plaintiffs assert a  
23 narrow state law claim challenging the validity of the Memorandum as contrary  
24 to the express language of NRS 293.269921 or in the alternative as having been  
25 adopted in violation of the Nevada APA. Unlike *Cegavske*, Plaintiffs here have  
26 made specific allegations regarding how this single departure from controlling  
27

1 state law causes them specific harm. *Cegavske* was dismissed, in part, because of  
2 the federal court’s finding that Plaintiffs did not make such allegations there.<sup>1</sup>

3 The RNC and NVGOP are not precluded from asserting their standing in  
4 this court by the federal district court’s decision in *Cegavske*. Even if they were,  
5 the Trump Campaign and Mr. Johnston cannot be precluded because they were  
6 not parties to *Cegavske*. Standing will not save Defendants here.

7 **b. RNC and NVGOP’s Complaint in *Cegavske* Does Not Change The Text**  
8 **of NRS 293.269921.**

9 The State Defendants note that the complaint which was dismissed in  
10 *Cegavske* included an allegation that AB4, the predecessor statute to AB 321  
11 now codified at NRS 293.269921 requires ballots “without a postmark” to be  
12 “counted.” This allegation—made in the context of an explosion of laws and  
13 court decisions allowing ballots to be counted after election day in connection  
14 with the hasty switch to mail-ballot voting in response to COVID-19—does not  
15 change what NRS 293.269921 says. If the Legislature wanted to permit ballots  
16 to be counted with no postmark, it could easily have adopted the equivalent of  
17 Cal. Elec. Code § 3020. It did not, and the fact that some of the Plaintiffs in this  
18 case were mistaken as to a predecessor statute in 2020 does nothing to change  
19 that fact. To the extent State Defendants suggest that the *Cegavske* complaint  
20 somehow binds Plaintiffs, they are incorrect. Two of the parties to this case, the  
21 2024 Trump Campaign and Mr. Johnston were not parties to *Cegavske* in 2020,  
22 and, most critically, none of the *Cegavske* Plaintiffs succeeded in having the  
23 *Cegavske* court adopt their mistaken view of AB4. See *Mainor v. Nault*, 120 Nev.

---

26 <sup>1</sup> Moreover, and more basically, *Cegavske* decided standing under the U.S.  
27 Constitution and the Federal Rules of Civil Procedure, not the Nevada  
Constitution and the Nevada Rules of Civil Procedure like the case here.

1 750, 765, 101 P.3d 308, 318 (2004) (success in having a tribunal adopt a position  
2 is an element of judicial estoppel).<sup>2</sup>

3 **c. Missing Postmarks cannot be Conflated with “Indeterminate” Dates**  
4 **on Postmarks**

5 State Defendants contend that NRS 293.269921 treats mail ballots that  
6 lack a “visible” postmark the same as ballots with a postmark when the “date of  
7 the postmark,” NRS, cannot be “determined.” The plain meaning of the statute,  
8 as explained in detail in Plaintiffs’ prior briefing, is that mail ballots must be  
9 “postmarked” and can *only* be counted if they are “postmarked on or before the  
10 date of the election” or “the date of the postmark cannot be determined,” in  
11 which case the ballot “shall be deemed to have been postmarked on or before the  
12 date of the election.” NRS 293.269921(1)(b)(2), (2). Contrary to State Defendants’  
13 assertion that Plaintiffs have “cherry picked” words from the statute, and as  
14 detailed in Plaintiffs’ Opposition to Intervenor-Defendants’ motion to dismiss, it  
15 is clear from the language of NRS 293.269921 that the Legislature made a  
16 determination to count mail ballots received after election day, but only if there  
17 is some indicia these late ballots were actually mailed by election day. Plaintiffs’  
18 plain language read of the statute comports with the Legislature’s purpose of  
19 making it easier to have a ballot count while maintaining some safeguards  
20 against late-cast ballots.

---

21  
22  
23 <sup>2</sup> Plaintiffs note that Defendant Washoe County appears to have agreed with  
24 Plaintiffs’ reading of NRS 293.269921 in its own recent complaint against the  
25 Postmaster General: “Under Nevada law, when [sic] a mail ballot must be (1)  
26 postmarked on or before election day and (2) received by the clerk not later than  
27 5 p.m on the fourth day following the election. Nev. Rev. Stat. S  
293.269921(1)(b). As such Washoe County relies on the Postal Service to timely  
deliver mail ballots so that Washoe County Registrar of Voters can ensure all  
ballots are included in the election results.” *See* Ex. A (Complaint dated  
5/28/2024 in *Washoe County v. Dejoy, et al.*, No. 3:24-cv-00224, D. Nev.) at ¶ 44.



1 It is Defendants' conflation of ballots that lack a postmark with ballots  
2 where the "date of the postmark" cannot be determined that cannot be squared  
3 with the Legislature's chosen language. First, the deeming clause of subsection 2  
4 only makes sense if the ballots subject to the exception to the rule are ballots  
5 with a physical postmark present. The structure is "if" a condition is met, then  
6 "the mail ballot shall be deemed" to have a property. That property illuminates  
7 the unmistakable meaning and fits with the structure of NRS 293.269921. If the  
8 ballot meets the exception, *then* the ballot "shall be deemed to have been  
9 **postmarked on or before the date of the election.**" NRS  
10 293.269921(2)(emphasis added). That fits with the statutory requirement that  
11 mail ballots "must be" "**postmarked on or before the date of the election,**"  
12 as required in subsection 1. The language is identical and it must mean the law  
13 requires a postmark to be present. That reading, consistent with Plaintiffs'  
14 interpretation of the law, is fully consistent and places the import on the legally  
15 significant date of the postmark.

16 Second, Defendants conflate indeterminate postmark dates with  
17 envelopes lacking any postmark. This is contrary to commonsense  
18 understanding of language and the statute. Here is an example provided by  
19 Washoe County in this litigation of a mail ballot in the past primary election

20 Mr. Francisco,  
21 This is an example of what Washoe County considers an indeterminate postmark – there is evidence of a postmark, but  
22 the date is not legible:



26 with an indeterminate postmark date:  
27

1 See Ex. B (Email from E. Hickman to M. Francisco, 7/18/24). Clearly, this is a  
2 smudged postmark where it was “postmarked” (as required by the statute), but  
3 the date cannot be “determined.” Consistent with this, *both* Clark and Washoe  
4 County defendants, in this litigation, provided data from the recent Primary  
5 Election which naturally and easily distinguished between (1) mail ballots with  
6 no postmark, and (2) mail ballots with an indeterminate postmark, and (3) mail  
7 ballots with legible postmark. See Ex. C (Email from E.Hickman to M.Francisco  
8 7/18/24, Email from L. Logsdon to M.Francisco 7/18/24). Defendants’ own use of  
9 language and tracking of ballot information thus belies their litigation position.

10 Perhaps most tellingly, the Memorandum describes “a mail ballot that has no  
11 visible postmark” as something needing to “be interpreted to have an  
12 indeterminate postmark” because everyone understands that normal usage of  
13 language does not allow “no visible postmark” to be understood as “the date of  
14 the postmark cannot be determined,” as NRS 293.269921 describes. The “should  
15 be interpreted” aspect of the Memorandum strongly supports Plaintiffs legal  
16 position regarding what the Nevada statute requires.

1  
2 **AFFIRMATION**

3 The undersigned hereby affirm that the foregoing document does not  
4 contain the social security number of any person.

5 DATED this 31st day of July, 2024.

6 ASHCRAFT & BARR LLP

7 By:  \_\_\_\_\_

8 Jeffrey F. Barr (Bar # 7269)

9 FIRST & FOURTEENTH PLLC

10 By: \_\_\_\_\_

11 Michael Francisco (pro hac vice forthcoming)  
12 Christopher O. Murray (pro hac vice  
13 forthcoming)

14 *Counsel for Plaintiffs*

15 CHATTAH LAW GROUP

16 By: \_\_\_\_\_

17 Sigal Chattah (Bar # 8264)

18 *Counsel for Plaintiff Nevada Republican*  
19 *Party*

20 DHILLON LAW GROUP

21 By: \_\_\_\_\_

22 David A. Warrington\* (pro hac vice  
23 forthcoming)  
24 Gary M. Lawkowski\* (pro hac vice  
25 forthcoming)

26 *Attorneys for Plaintiff Donald J. Trump for*  
27 *President 2024, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of July 2024, I served a true and correct copy of the foregoing REPLY TO STATE DEFENDANTS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION by electronic mail to the e-mail addresses listed below:

<ul style="list-style-type: none"><li>• <a href="mailto:LStJules@ag.nv.gov">LStJules@ag.nv.gov</a></li></ul>	Attorneys for Defendant Francisco Aguilar
<ul style="list-style-type: none"><li>• <a href="mailto:lisa.logsdon@clarkcountydانv.gov">lisa.logsdon@clarkcountydانv.gov</a></li><li>• <a href="mailto:Afeni.Banks@ClarkCountyDANV.gov">Afeni.Banks@ClarkCountyDANV.gov</a></li></ul>	Attorneys for Defendants Lorena Portillo and Lynn Marie Goya
<ul style="list-style-type: none"><li>• <a href="mailto:ehickman@da.washoecounty.gov">ehickman@da.washoecounty.gov</a></li></ul>	Attorneys for Cari-Ann Burgess and Jan Galassini
<ul style="list-style-type: none"><li>• <a href="mailto:daniel@bravoschrager.com">daniel@bravoschrager.com</a></li><li>• <a href="mailto:dfox@elias.law">dfox@elias.law</a></li><li>• <a href="mailto:rmedina@elias.law">rmedina@elias.law</a></li><li>• <a href="mailto:mmcqueen@elias.law">mmcqueen@elias.law</a></li><li>• <a href="mailto:bradley@bravoschrager.com">bradley@bravoschrager.com</a></li></ul>	Attorneys for Intervenor Defendants Vet Voice Foundation and Nevada Alliance for Retired Americans



An Employee of Ashcraft & Barr | LLP



# EXHIBIT A

# EXHIBIT A

__ Filed __	Received __	Entered __	Served On
Counsel/Parties of Record			
<b>MAY 28 2024</b>			
Clerk US District Court District of Nevada			
By: _____		Deputy _____	

1 CHRISTOPHER J. HICKS  
Washoe County District Attorney

2 LINDSAY L. LIDDELL  
3 Deputy District Attorney  
4 Nevada State Bar Number 14079  
5 One South Sierra Street  
6 Reno, NV 89501  
7 lliddell@da.washoecounty.gov  
8 (775) 337-5700

9 ATTORNEYS FOR WASHOE COUNTY

Paid Amt \$ 405.00 Date 5/28/2024

Receipt # 565 Initials DL8

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 \* \* \*

13 WASHOE COUNTY, a political  
14 subdivision of the State of Nevada,

15 Plaintiff,

16 vs.

17 LOUIS DEJOY, in his official capacity as  
18 Postmaster General of the United States, and the  
19 UNITED STATES POSTAL SERVICE, /

20 Defendants.

Case No. 3:24-cv-00224

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

21 Plaintiff Washoe County, a political subdivision of the State of Nevada, by and  
22 through its attorney, Lindsay L. Liddell, Deputy District Attorney, hereby complains and  
23 alleges as follows:

24 I. Introduction

25 1. The United States Postal Service ("USPS" or the "Postal Service") is vital to  
26 a functional democracy, and one of the few public goods set forth in the United States  
Constitution. See U.S. Const. Art. 1, § 8. As James Madison explained in *The Federalist No.*  
42, "The power of establishing post roads must, in every view, be a harmless power and  
may, perhaps, by judicious management, become productive of great public conveniency.

1 Nothing which tends to facilitate the intercourse between the States can be deemed  
2 unworthy of the public care." *The Federalist No. 42*, at 271 (James Madison) (Clinton  
3 Rossiter ed., 1961).

4 2. For the past several decades, mail originating from Northwestern Nevada has  
5 been processed and sorted in the Reno Processing and Distribution Center. When Washoe  
6 County sent election mail to its register voters, it would be sorted at the Reno Facility and  
7 then transferred to other local mail handlers for further sorting and prompt delivery.

8 3. In May 2020, Louis DeJoy ("DeJoy") was appointed Postmaster General of  
9 the USPS. In 2021, DeJoy implemented the Postal Service's "Delivering for America" 10-  
10 year strategic plan ("DFA").<sup>1</sup> The DFA includes changes to delivery standards, postage  
11 pricing, and a transformation of the Postal Service's "processing and logistics network."

12 4. In 2023, the Postal Service began implementing the DFA phase of  
13 "deploying a best-in-class processing and delivery operations network."<sup>2</sup> The DFA network  
14 phase includes reviewing existing processing facilities for possible downsizing into local  
15 processing facilities and expansion of regional processing and distribution centers.<sup>3</sup> On  
16 information and belief, the Postal Service intends to review approximately 190 facilities for  
17 changes in their processing operations throughout the United States. **Exhibit 1 at p. 1.**  
18 Thus far, the Postal Service has reviewed or started review of 59 existing processing  
19 facilities, including the Reno Processing and Distribution Center. **Exhibit 1 at pp. 7–9.**

20 5. In April 2024, USPS announced its unilateral decision to close the Reno  
21 Processing and Distribution Center and transfer Northwestern Nevada mail processing  
22

23 <sup>1</sup> *Delivering for America*, available at [https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS\\_Delivering-For-America.pdf](https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf) (last visited May 20, 2024).

24 <sup>2</sup> *Delivering for America Second-Year Progress Report*, available at <https://about.usps.com/what/strategic-plans/delivering-for-america/assets/usps-dfa-two-year-report.pdf> (last visited May 20, 2024).

25 <sup>3</sup> *Modernizing USPS Mail Processing Operations Frequently Asked Questions*, available at  
26 <https://about.usps.com/what/strategic-plans/mpfr/documents/fact-sheet-408s.pdf> (last visited May 20, 2024).

1 operations to Sacramento. On information and belief, once USPS implements its plan for  
2 Reno, a letter placed in the mail in Reno and destined for another Reno location will first  
3 be placed on a truck, driven on Interstate-80 over Donner Pass, delivered to the Sacramento  
4 Regional Processing Facility, sorted in Sacramento, California, then placed on a truck,  
5 driven back over Donner Pass, and then transferred to the Reno local processing center for  
6 ultimate processing and delivery. **Exhibit 2.** The 250-mile roundtrip journey involves a  
7 route notorious for its severe weather conditions, traffic holds, and road closures.

8 6. DeJoy and the Postal Service circumvented procedural law requiring them to  
9 first request an advisory opinion from the Postal Regulatory Commission before  
10 implementing any plans that have a substantially nation-wide effect. 39 U.S.C. § 3661.

11 7. By filing this case, Plaintiff Washoe County seeks: (i) to halt Defendants  
12 from implementing the network optimization phase of the DFA plan, including the plan to  
13 downsize the Reno Processing and Distribution Center, (ii) declaratory relief deeming  
14 Defendants' actions unlawful, and (iii) declaratory relief deeming that any further  
15 implementation of the DFA network optimization phase is unlawful in the absence of  
16 compliance with the requisite administrative process before the Postal Regulatory  
17 Commission.

## 18 **II. Jurisdiction and Venue**

19 8. This Court has subject matter jurisdiction based on the federal questions  
20 presented pursuant to 28 U.S.C. Section 1331 and 39 U.S.C. Section 409. The Court has  
21 jurisdiction to award declaratory and other relief pursuant to 28 U.S.C. Section 2201.

22 9. Venue is proper in the District of Nevada, because a substantial part of the  
23 acts or omissions giving rise to the claims occurred or will imminently occur in this judicial  
24 district. 28 U.S.C. §§ 1391(b)(2), (e)(1). Particularly, a substantial volume of mail is  
25 currently sent, processed, and delivered in Northern Nevada. Washoe County relies on  
26 USPS to timely deliver voter registration documents, sample ballots, mail-in ballots, other



1 election mail, utility bill correspondence, and various administrative notices including  
2 licensing notices, code violation notices, and other legal mail. Implementing the network  
3 optimization phase of the DFA plan will delay the receipt and postmarking of Washoe  
4 County mail, which harms its departments that rely on mail correspondence and may  
5 disenfranchise its residence. The Postal Service's unilateral network optimization phase  
6 implementation also deprived Washoe County of its procedural right to be heard and  
7 participate in an action before the Postal Regulatory Commission.

### 8 **III. Parties**

9 10. Plaintiff Washoe County is a political subdivision of the State of Nevada.  
10 Washoe County relies on the Postal Service to carry out its business correspondence and its  
11 duties regarding elections, code enforcement, licensing, and utility services, among others.

12 11. Defendant Louis DeJoy is the Postmaster General, the chief executive office  
13 of USPS. He is sued in his official capacity.

14 12. Defendant USPS is an independent agency of the executive branch of the  
15 United States. Congress has waived USPS's immunity from suit. 39 U.S.C. § 401.

16 13. Any and all reference to "Defendants" means the acts of Defendants acting  
17 individually, jointly, and/or severally.

### 18 **IV. Factual Allegations**

#### 19 **A. The Postal Service and Postal Regulatory Commission**

20 14. The United States Constitution, in Article 1, Section 8, vests Congress with  
21 the power to "establish Post Offices and Post Roads." In 1792, Congress exercised that  
22 power, and President George Washington signed into law the Postal Service Act  
23 establishing the U.S. Post Office Department.

24 15. The Postal Service is "a basic and fundamental service provided to the  
25 people by the Government of the United States." 39 U.S.C. § 101(a). By law, its "basic  
26 function" is "to provide postal services to bind the National together through the personal,

1 education, literary, and business correspondence of the people.” *Id.* “[**The Postal Service**]  
2 **shall provide prompt, reliable, and efficient services to patrons in all areas and shall**  
3 **render postal services to all communities.**” *Id.* (emph. added).

4 16. Federal law mandates that the Postal Service “serve nearly as practicable the  
5 entire population of the United States.” 39 U.S.C. § 403.

6 17. The Postal Service delivers critical mail, including voter registration  
7 applications and notifications, sample ballots, mail-in ballots, utility bills, administrative  
8 penalty notices, legal mail, prescriptions, county tax assessment notices, and licensing  
9 correspondence.

10 18. When creating its policies, the Postal Service is required to “give the highest  
11 consideration to the requirement for the most expeditious collection, transportation, and  
12 delivery of important letter mail.” 39 U.S.C. § 101(e).

13 19. In 1970, Congress created the Postal Rate Commission, an independent body  
14 to oversee postage rates and other Postal Service actions. In 2006, Congress expanded that  
15 body into the Postal Regulatory Commission with increased authority over the Postal  
16 Service including authority regarding the Postal Service’s mail operations.

17 20. Before making major changes, the Postal Service is required to first  
18 participate in a proceeding before the Postal Regulatory Commission. Specifically, “[w]hen  
19 the Postal Service determines that there should be a change in the nature of postal services  
20 which will generally affect service on a nationwide or substantially nationwide basis, it  
21 shall submit a proposal, within a reasonable time prior to the effective date of such  
22 proposal, to the Postal Regulatory Commission requesting an advisory opinion on the  
23 change.” 39 U.S.C. § 3661(b).

24 21. In the advisory opinion proceedings, there must be “an opportunity for a  
25 hearing on the record under [the Administrative Procedure Act] ... accorded to the Postal  
26 Service, users of the mail, and an officer of the Commission who shall be required to

1 represent the interests of the general public,” before the Postal Regulatory Commission  
2 may issue the advisory opinion. 39 U.S.C. § 3661(c).

3 22. In a proceeding before the Postal Regulatory Commission, any person is  
4 entitled to submit comments. 39 C.F.R. § 3010.140.

5 23. More importantly, a person may become a party to the Postal Regulatory  
6 Commission proceeding by filing a notice of intervention. 39 C.F.R. § 3010.142(b). As a  
7 party to that proceeding, the intervenor may participate in discovery and motion practice,  
8 file testimony, cross examine witnesses, file briefs, and present oral argument to the Postal  
9 Regulatory Commission. 39 C.F.R. § 3010.142(a), (e).

10 24. Congress created the advisory opinion proceedings as a check and balance to  
11 the Postal Service’s transparency and public accountability.

12 **B. The Delivering For America Plan**

13 25. On March 23, 2021, the Postal Service published a 10-year strategic  
14 Delivering for America (“DFA”) plan. The DFA plan contains several strategies to achieve  
15 financial stability and involves consolidating and downsizing mail service in the name of  
16 efficiency.

17 26. In 2023, Defendants published its DFA Second Year Progress Report  
18 regarding an “overhaul” of the USPS processing and delivery networks.

19 27. The DFA network optimization phase involves creating Regional Processing  
20 and Distribution Centers (RPDCs or “Regional Centers”) by consolidating and centralizing  
21 processing operations.

22 28. The network optimization phase also involves creating Local Processing  
23 Centers (“Local Centers” or “LPCs”) from existing facilities including former processing  
24 and distribution centers.

25 //

26 //

29. Defendants also intend to create Sorting and Delivery Centers (“S&DCs”), some of which will be co-located with Local Centers.

30. On May 20, 2024, DeJoy sent a letter describing these mail processing network changes as a “national strategy.” Ex. 1 at 2.

**C. Nationwide Implementation of the DFA — Network Optimization Phase**

31. On April 16, 2024, DeJoy stated that Defendants plan to redesign their network from 430 facilities to 220 facilities. *United States Postal Service*, Statement of Postmaster General and Chief Executive Officer Louis DeJoy before the Senate Committee on Homeland Security and Government Affairs, April 16, 2024, at p. 6.

32. In DeJoy’s May 20, 2024 letter, he explained, “We are now in the process of scheduling work for this initiative, which we expect to accomplish over the next 18-24 months.” Ex. 1 at p. 2.

33. In July 2023, Defendants launched the first Regional Center in Richmond, Virginia.

34. Between 2023 and 2024, Defendants implemented its plans and downsized existing processing and distribution centers in (1) Medford, Oregon, (2) Eugene, Oregon, (3) Macon, Georgia, (4) Augusta, Georgia, (5) Greenville, South Carolina, (6) Tallahassee, Florida, and (7) Fort Wayne, Indiana. The mail originating from the aforementioned facilities now travels to a Regional Center for processing prior to delivery.

35. Thus far, Defendants have implemented or begun renovations to create Regional Centers for the DFA network optimization phase in Richmond, Atlanta, Portland, Boise, Charlotte, Chicago, Houston, Jacksonville, Jersey City, Greensboro, Phoenix, Santa Clarita, and Indianapolis. *See* Ex. 1 at p. 3. Specifically, as of May 2024, the following is an excerpt of DeJoy’s May 20, 2024 letter describing the implementation status at those locations:

//



1. **Richmond RPDC: Richmond, Virginia** - an existing 680,000 square foot facility substantially complete and operating, awaiting further conveying equipment to be installed in first quarter of next year.
2. **Atlanta RPDC: Palmetto, Georgia** - a new 1,200,000 square foot facility substantially complete and substantially operating awaiting some additional equipment and facility adjustments.
3. **Charlotte RPDC: Gastonia, North Carolina** - a new 700,000 square foot facility substantially completed and partially operating.
4. **Chicago RPDC: Chicago, Illinois** - an existing 720,000 square foot facility currently being substantially renovated and equipped and partially operating. Expected completion prior to year-end.
5. **Portland RPDC: Portland, Oregon** - an existing 780,000 square foot facility substantially complete and operating, awaiting further material handling equipment to be installed prior to the end of the year.
6. **Boise RPDC: Boise, Idaho** - an existing 300,000 square foot facility substantially complete and operating, awaiting further material handling equipment to be installed prior to the end of the year.
7. **Houston RPDC: Houston, Texas** - an existing 850,000 square foot facility currently being substantially renovated and equipped and partially operating.
8. **Indianapolis RPDC: Indianapolis, Indiana** - a new 1,200,000 square foot facility in various levels of completion by function awaiting additional equipment installation. Partially operating for package sortation with increasing functionality and volume through the end of 2024.
9. **Jacksonville RPDC: Jacksonville, Florida** - an existing 780,000 square foot facility currently being substantially renovated and equipped. Partial operations to begin this fall. Expected completion prior to year-end.
10. **Jersey City RPDC: Jersey City, New Jersey** - an existing 1,400,000 square foot facility currently being substantially renovated and equipped and partially operating for package sortation. Expected completion in September of 2025.
11. **Greensboro RPDC: Greensboro, North Carolina** - an existing 460,000 square foot facility currently being substantially renovated and equipped and partially operating. Expected completion in September of 2025.
12. **Phoenix RPDC: Phoenix, Arizona** - a new 500,000 square foot facility in various levels of completion by function awaiting additional equipment installation. Initial operations begin for package sortation in September 2024.
13. **Santa Clarita RPDC: Santa Clarita, California** - An existing 650,000 square foot facility receiving a 200,000 square foot addition scheduled for completion in 2026.

Ex. 1 at p. 3.

//

//

//

//

//

//

//

//

//

1           36. Implementing the DFA's network optimization phase, on information and  
2 belief, the Postal Service will create a mail delay throughout the United States. The Postal  
3 Service is currently reviewing 59 processing and distribution centers for potential changes  
4 to processing operations, including downsizing those operations. **Exhibit 1** at pp. 7–8. In  
5 addition to the change in Northern Nevada set forth below, Defendants' processing changes  
6 include:

- 7           a. Removing *all* processing operations within the State of Wyoming,  
8 including removing processing operations from Casper, Wyoming and  
9 rerouting their processing through a 560-mile round trip to and from  
10 Billings, Montana;
- 11          b. Removing processing operations from Medford, Oregon, and processing  
12 their mail approximately 4.5 hours away in Portland, Oregon;
- 13          c. Removing processing operations from McAllen, Texas, and processing  
14 their mail through a 500-mile round trip to and from San Antonio, Texas;
- 15          d. Removing processing operations from Manchester, New Hampshire, and  
16 processing their mail through a notoriously heinous commute in Boston,  
17 Massachusetts;
- 18          e. Removing processing operations from Missoula, Montana, and  
19 processing their mail through a 408-mile round trip to and from Spokane,  
20 Washington; and
- 21          f. Removing processing operations from Grand Junction, Colorado, and  
22 processing their mail through a 506-mile round trip to and from Denver,  
23 Colorado.

24           37. There have been mail delays in regions where Defendants already  
25 implemented the network optimization phase with Regional Centers such as Atlanta and  
26 Richmond.

1       38. Based on such delays and on information and belief, the network  
2 optimization phase will create nationwide mail delays with longer distances for processing  
3 to Regional Centers.

4       **D. Implementing the DFA in Reno, Nevada.**

5       39. The Reno Processing and Distribution Center currently processes mail for  
6 zip codes beginning in 895-, 894-, 897-, and 961. **Exhibit 3.** This area includes Washoe  
7 County, Carson City, Douglas County, Storey County, Lyon County, Churchill County,  
8 Pershing County, Esmeralda County, Humboldt County, Mineral County, part of Elko  
9 County, and part of Nye County. *See id.*

10       40. Washoe County relies on the Postal Service and the Reno Processing and  
11 Distribution Center for timely delivery of business correspondence and to carry out its  
12 duties including for elections, code enforcement, licensing, and utility services.

13       41. On information and belief, nearby Nevada counties also rely on the Postal  
14 Service and its Reno Processing and Distribution Center to timely carry out  
15 correspondence in the course of their official government business, including for election  
16 mail.

17       42. Nevada has a decades-long history of safely and securely administering mail-  
18 in ballots. In 1991, Nevada adopted a no-excuse absentee system whereby any voter could  
19 request a paper ballot to cast by mail. In 2022, Nevada law shifted a statewide mail-in  
20 ballot structure whereby state and local elections officials are required to mail paper ballots  
21 to all active registered voters.

22       43. Voting by mail is especially important for Washoe County's rural  
23 communities, including the Pyramid Lake Paiute Tribe Reservation, Gerlach, and the  
24 northern areas along the California and Oregon borders.

25       44. Under Nevada law, when a mail ballot must be (1) postmarked on or before  
26 election day and (2) received by the clerk not later than 5 p.m. on the fourth day following

1 the election. Nev. Rev. Stat. § 293.269921(1)(b). As such, Washoe County relies on the  
2 Postal Service to timely deliver mail ballots so the Washoe County Registrar of Voters can  
3 ensure all ballots are included in the election results.

4 45. On January 10, 2024, the Postal Service announced its Notice of Intent to  
5 evaluate “[w]hether efficiency could be increased by transferring some mail processing  
6 operations currently performed at the Reno PD&C to the Sacramento PD&C in West  
7 Sacramento, California.”

8 46. On February 6, 2024, the Postal Service published its “Initial Findings,” to  
9 transition the Reno processing and distribution center into a Local Center LPC, and that  
10 “the business case supports transferring mail processing outgoing operations to the  
11 Sacramento PD&C.”

12 47. On February 28, 2024, Washoe County submitted public comment to the  
13 Postal Service through their online portal. Washoe County highlighted its concerns for  
14 delayed mail service based on Donner Pass road conditions and the lack of data to support  
15 Defendants’ decision to move processing from Reno to Sacramento.

16 48. On or about April 23, 2024, the Postal Service published its “Final MPFR”  
17 [Mail Processing Facility Review], announcing its decision to proceed with transferring  
18 processing functions from Reno to the Sacramento.

19 49. On information and belief, Defendants’ plan includes removing biohazard  
20 detection equipment from the Reno USPS location, rendering Defendants’ staff unable to  
21 make an exception and process mail ballots in Reno.

22 50. On information and belief, Defendants intend to fully implement the plan  
23 phase for the Reno Processing and Distribution Center in January 2025.

24 51. Interstate 80 experiences severe weather conditions during winter months  
25 that cause road closures, weather-related vehicle accidents, chain controls, and semi-truck  
26 holds. For example:





- a. The above photograph from the California Highway Patrol's Truckee Division depicts a "jackknifed" FedEx semi-truck blocking Interstate-80 traffic in winter weather conditions;
- b. During the 2016-2017 winter season, trucks were held on Interstate-80 westbound for over 215 hours and eastbound for over 247 hours;
- c. During the 2021-2022 winter season, trucks were held westbound for over 81 hours, and eastbound over 89 hours; and
- d. During the 2022-2023 winter season, trucks were held westbound for over 125 hours, and eastbound almost 127 hours.

52. On information and belief, the volatile road conditions of Donner Pass will create additional and substantial mail delays if and when Defendants implement their plan to move Reno's mail processing to Sacramento, California.

53. Defendants' implementation of the DFA network optimization phase for the Reno Processing and Distribution Center alone will generally affect service on a nationwide or substantially nationwide basis insofar as the service, once implemented, will include the power to impact the outcome of federal elections by failing to timely deliver mail in ballots that would otherwise be processed in Reno, Nevada and counted in an election.

1           54. Northern Nevada voters, many of whom rely on the Postal Service to deliver  
 2 their ballots, have the power to determine outcomes of statewide elections. For example, in  
 3 the 2022 general election, United States Senator Catherine Cortez Masto won her race  
 4 against candidate Adam Laxalt by approximately 8,000 votes in Nevada. A different  
 5 outcome in Nevada's Senate Race would have impacted the function of the entire U.S.  
 6 Senate. On information and belief, if Northern Nevada's mail ballots had been processed in  
 7 Sacramento instead of Reno, there is a substantial likelihood that mail ballots would have  
 8 been delayed and thus not counted. Specifically:

- 9           a. In the 2022 general election, the counted mail ballots included ballots  
 10 from Washoe County (103,085), Lyon County (13,261), Carson City  
 11 (14,158), Douglas County (18,895), and Humboldt County (2,843).
- 12           b. The 2022 general election occurred on November 8, 2022, meaning that  
 13 mail ballots must have a postmark on or before November 8, 2022, and  
 14 received at the appropriate clerk's office on or before 5p.m. on November  
 15 12, 2022, to be counted in that election.
- 16           c. In the days leading up to and following the 2022 general election, Donner  
 17 Pass on Interstate-80 experienced significant winter weather conditions.  
 18 **Exhibit 4.** On November 2, 2022, there was a snowstorm that caused icy  
 19 and slippery road conditions, and chains were required on all vehicles. *Id.*  
 20 at 1–2. Later that day, traffic was held eastbound on Donner Pass due to a  
 21 traffic collision. *Id.* at 3. On November 3, 2022, chain control remained in  
 22 effect over Donner Pass. *Id.* at 4. On November 6, 2022, traffic was held  
 23 westbound near Donner Lake due to a rockslide. *Id.* at 5. On November  
 24 7, 2022, the roads remained full of snow and trucks were “at maximum  
 25 restrictions.” *Id.* at 6–7. On November 8, 2022, election day, snow  
 26 continued to fall, chains were required, and eventually eastbound

1 Interstate-80 traffic was closed and traffic diverted due to a collision  
2 involving three “big rigs.” *Id.* at 8–10. On November 9, 2022, chain  
3 controls remained in effect, the snow fall near the road was several feet,  
4 and trucks were “at maximum restrictions.” *Id.* at 11–12. On November  
5 12, 2022, the date which ballots must be received to be counted,  
6 Interstate-80 continued to experience significant snow with chain control  
7 in both directions and trucks again at “maximum restrictions.” *Id.* at 13.

8 d. On information and belief, based on the above conditions, the Postal  
9 Service would have delayed delivery of mail ballots if ballots were  
10 required to travel on a semi-truck through Donner Pass twice before final  
11 sorting and delivery in Northern Nevada.

12 55. Alternatively, Defendants’ implementation of the DFA network optimization  
13 phase for the Reno Processing and Distribution Center alone will generally affect service on  
14 a nationwide or substantially nationwide basis in that, once implemented, a broad  
15 geographic region will experience delayed mail service. The population whose mail is  
16 currently processed in Reno includes Washoe County (486,492 people), Carson City  
17 (58,639 people), Douglas County (49,488 people), Storey County (4,104 people), Lyon  
18 County (59,235 people), Churchill County (25,516 people), Pershing County (6,650  
19 people), Esmeralda County (729 people), Humboldt County (17,285 people), and Mineral  
20 County (4,554 people) — over 700,000 residents.<sup>4</sup> The delayed delivery of mail generated  
21 by residents currently serviced by the Reno Processing and Distribution Center will, on  
22 information and belief, have a substantially nationwide effect on service.

23 //

24  
25 \_\_\_\_\_  
26 <sup>4</sup> Population totals are based on the 2020 U.S. Census.

1           **E.     Absence of Advisory Opinion Proceedings for the Network Optimization**  
2                   **Phase**

3           56.     In 2021, the Postal Regulatory Commission held that the DFA plan itself, as  
4 a generalized 10-year strategic plan, did not require an advisory opinion. *Postal Regulatory*  
5 *Commission*, Docket No. C2022-1, Order No. 6067 at pp. 17–18 (Dec. 17, 2021).  
6 Nevertheless, in so holding, the Postal Regulatory Commission including that “this is not  
7 to say that specific initiatives described in a strategic plan would not require a request for an  
8 advisory opinion pursuant to 39 U.S.C. § 3661(b) **in advance of implementation of those**  
9 **initiatives...**” *Id.* at p. 18 (emph. added).

10          57.     Defendants failed to request an advisory opinion prior to implementing any  
11 of its DFA network optimization phase.

12          58.     Defendants did not initiate advisory opinion proceedings regarding the  
13 processing consolidation changes that already occurred in Richmond, Atlanta, Portland,  
14 Boise, Charlotte, Houston, Jacksonville, and Indianapolis. On information and belief, those  
15 regions have experienced delayed mail processing since Defendants implemented those  
16 changes.

17          59.     Defendants continued to review existing processing and distribution facilities  
18 for potential downsizing beginning in Fall 2023, again without initiating an advisory  
19 proceeding for its implementation of the DFA network optimization phase. Defendants still  
20 did not and have not initiated an advisory proceeding before moving forward with the  
21 implementation activities set forth on pages 2 and 3 of Exhibit 1.

22          60.     In conducting facility reviews, the Postal Service announced its “Decision to  
23 Proceed” on altering the function of 56 existing processing and distribution facilities  
24 throughout the United States. Each review includes a published notice of intent and  
25 internal review of Postal Service operations. Defendants chose which facilities to review  
26 and conducted its review without initiating an advisory opinion proceeding.



1           61. Defendants did not seek an advisory opinion prior to removing the following  
2 Processing and Distribution Centers throughout the nation: Medford, Oregon; Eugene,  
3 Oregon; Macon, Georgia; Augusta, Georgia; Greenville, South Carolina; Tallahassee,  
4 Florida; or Fort Wayne, Indiana.

5           62. On April 26, 2024, the Postal Regulatory Commission issued an Order  
6 Directing Postal Service to Show Cause or File a Nature of Service Proceeding Regarding  
7 Certain Delivering for America Initiatives (“Order to Show Cause”). *Postal Regulatory*  
8 *Commission*, Docket No. PI2023-4, Order No. 7061 (Apr. 26, 2024). It noted that “[t]he  
9 Commission has a duty to provide transparency, oversight, and ongoing monitoring of the  
10 Postal Service’s network transformation plans.” *Id.* at p. 7. Regarding implementation of  
11 the DFA network optimization phase, the Order to Show Cause noted, “it has become  
12 increasingly apparent that the operational changes to be implemented by the Postal Service  
13 nationwide may result in significant service changes over a broad area of the country.” *Id.*  
14 at p. 12. It directed the Postal Service to show cause or to file a request for an advisory  
15 opinion. *Id.* at pp. 12–13.

16           63. On May 16, 2024, instead of initiating advisory opinion proceedings, the  
17 Postal Service filed a Response to the Order to Show Cause. *Postal Regulatory Commission*,  
18 Docket No. PI2023-4, *United States Postal Service Response to the Order to Show Cause Regarding*  
19 *Certain Delivering for America Initiatives* (May 16, 2024). The Postal Service’s Response  
20 argues that the Order to Show Cause exceeded the Postal Regulatory Commission’s  
21 authority, and that the Postal Service has sole discretion on whether to seek an advisory  
22 opinion. Essentially, the Postal Service seeks to circumvent the “nationwide effect”  
23 language that triggers the advisory opinion proceedings by claiming that its implementation  
24 is only regional in nature. However, the Postal Service’s Mail Processing Facility Review  
25 records belie any claim that its approach is less than nationwide. In fact, the records plainly  
26 reveal the rollout of a coast-to-coast campaign. On one single day, January 10, 2024, the

1 Postal Service issued Notices of Intent to review approximately 31 existing processing  
2 centers in 22 states, spanning from Massachusetts to California.<sup>5</sup> See **Exhibit 1** at pp. 7–8.  
3 Nonetheless, the Postal Service claimed that it was “actively considering” a request for  
4 advisory opinion.

5 64. As of the date and time of this filing, the Postal Service still has not sought  
6 an advisory opinion from the Postal Regulatory Commission regarding the implementation  
7 of the DFA network optimization phase.

8 65. Washoe County was deprived of an opportunity to be heard and participate  
9 in an advisory opinion proceeding before the Postal Regulatory Commission. As such,  
10 Washoe County experienced a procedural harm as a result of Defendants’ conduct.

## 11 **V. CAUSES OF ACTION**

### 12 **First Cause of Action**

#### 13 **(*Ultra Vires* Agency Action)**

14 66. Plaintiff Washoe County hereby incorporates paragraphs 1-65 of this  
15 Complaint as fully set forth herein.

16 67. Under 39 U.S.C. Section 3661, the Postal Service may adopt service changes  
17 with the advice of the Postal Regulatory Commission, and subject to the public’s  
18 opportunity to comment on the proposed changes.

19 68. As set forth above, Defendants’ implementation of the network optimization  
20 phase of the DFA thus far is a change that will generally affect service on a substantially  
21 nationwide basis.

22 69. Alternatively, Defendants’ implementation of the network optimization  
23 phase of the DFA plan as it relates to the Reno Processing and Distribution Center is a  
24

---

25 <sup>5</sup> Mail Processing Facility Review documents are available at [https://about.usps.com/what/strategic-](https://about.usps.com/what/strategic-plans/mpfr/welcome.htm)  
26 [plans/mpfr/welcome.htm](https://about.usps.com/what/strategic-plans/mpfr/welcome.htm) (last visited May 20, 2024).

1 change that will generally affect service on a substantially nationwide basis as set forth  
2 above.

3 70. Pursuant to 39 U.S.C. Section 3661, the Postal Service was required to seek  
4 an advisory opinion prior to effecting *any* implementation of the network optimization  
5 phase of the DFA plan.

6 71. By circumventing 39 U.S.C. Section 3661 and unilaterally implementing he  
7 network optimization phase of the DFA plan without following federal law procedures,  
8 Defendants are acting *ultra vires*.

9 72. Defendants' implementation of the network optimization phase of the DFA  
10 plan should be declared unlawful and Defendants should be enjoined because its  
11 implementation actions are *ultra vires*.

12 73. Defendants' *ultra vires* actions harmed Washoe County because they deprived  
13 Washoe County of an opportunity to be heard before the Postal Regulatory Commission in  
14 an advisory opinion proceeding.

15 74. Plaintiff Washoe County is entitled to a declaration that implementing the  
16 network optimization phase of the DFA plan without first following the advisory opinion  
17 process is unlawful, and an injunction is necessary to prevent Defendants from further  
18 implementing the same until they carry out the advisory opinion process.

#### 19 VI. Prayer for Relief

20 Wherefore, Plaintiff Washoe County prays for judgment on its Complaint and  
21 respectfully requests that the Court:

22 1. Declare unlawful Defendants' changes set forth above for being outside  
23 procedures required by law as they constitute changes that will affect service substantially  
24 nationwide, and thus may not be implemented prior to their submission to the Postal  
25 Regulatory Commission for proceedings, including a public hearing, pursuant to 39 U.S.C.  
26 Section 3661;

2. Declare the actions described herein to be *ultra vires* because they exceed DeJoy's statutory and regulatory authority as Postmaster General;

3. Preliminarily and permanently enjoin DeJoy, the Postal Service, and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them under their direction or control, from implementing and/or continuing to implement any actions to further the network optimization phase of the DFA plan, including removal of Reno's mail sorting machines, removal of Reno's biohazard detection equipment, making any changes to Reno's mail processing operations, and carrying out any other processing facility reviews and moves;

4. Direct DeJoy and the Postal Service to immediately act to reverse any of the actions described herein and declared unlawful, including those which have been previously implemented in whole or in part by DeJoy or USPS in the absence of an appropriate advisory opinion so as to restore the status quo before their illegal actions;

5. Award Washoe County its reasonable costs and attorneys' fees; and

6. Grant other and further relief as the Court may deem proper or as the interests of justice may require.

Dated this 28th day of May 2024.

Respectfully submitted,

CHRISTOPHER J. HICKS  
District Attorney

By /s/ Lindsay L. Liddell  
LINDSAY L. LIDDELL  
Deputy District Attorney  
One South Sierra Street  
Reno, NV 89501  
lliddell@da.washoecounty.gov  
(775) 337-5700

ATTORNEY FOR WASHOE COUNTY



**INDEX OF EXHIBITS**

Exhibit 1	May 20, 2024 Letter from Postmaster Dejoy to U.S. Senate.....	9 pages
	Homeland Security and Government Affairs Committee	
Exhibit 2	Estimated Minimum Reno Local Mail Delivery .....	1 page
Exhibit 3	Map of Postal Service Areas .....	1 page
Exhibit 4	California Highway Patrol Truckee "X," fka Twitter, Posts.....	13 pages

**INDEX OF EXHIBITS**

# **EXHIBIT B**

# **EXHIBIT B**

**From:** [Hickman, Elizabeth](#)  
**To:** [Michael Francisco](#); [Lisa Logsdon](#); [Laena St Jules](#); [Richard Medina](#); [David Fox](#); [Bradley Schrager](#); [Daniel Bravo](#); [Marcos Mocine-McQueen](#)  
**Cc:** [Chris Murray](#); [Jeffrey F. Barr](#)  
**Subject:** RE: Clark County Mail Ballot Data  
**Date:** Thursday, July 18, 2024 5:53:19 PM  
**Attachments:** [image006.png](#)  
[image008.png](#)  
[image009.png](#)  
[image010.png](#)  
[image011.png](#)

---

Mr. Francisco,

This is an example of what Washoe County considers an indeterminate postmark – there is evidence of a postmark, but the date is not legible:



Thank you,

Beth

---

**From:** Michael Francisco <Michael@first-fourteenth.com>

**Sent:** Thursday, July 18, 2024 12:26 PM

**To:** Hickman, Elizabeth <ehickman@da.washoecounty.gov>; Lisa Logsdon <Lisa.Logsdon@clarkcountydav.gov>; Laena St Jules <LStJules@ag.nv.gov>; Richard Medina <rmedina@elias.law>; David Fox <dfox@elias.law>; Bradley Schrager <bradley@bravoschrager.com>; Daniel Bravo <daniel@bravoschrager.com>; Marcos Mocine-McQueen <mmcqueen@elias.law>

**Cc:** Chris Murray <Chris@first-fourteenth.com>; Jeffrey F. Barr <barrj@ashcraftbarr.com>

**Subject:** RE: Clark County Mail Ballot Data

Thank you Ms. Hickman,

You indicate there were five ballots with “indeterminate” postmarks. Would it be possible for us to see those ballot envelopes to understand what Washoe County treats as falling in that category? This may help us streamline the case arguments and case going forward.

Thank you for your consideration,

Michael Francisco

**Michael Francisco**  
Partner, First & Fourteenth, PLLC

**JA00172**

Cell: 202.754.0522

---

**From:** Hickman, Elizabeth <[ehickman@da.washoecounty.gov](mailto:ehickman@da.washoecounty.gov)>

**Sent:** Thursday, July 18, 2024 12:24 PM

**To:** Lisa Logsdon <[Lisa.Logsdon@clarkcountydav.gov](mailto:Lisa.Logsdon@clarkcountydav.gov)>; Michael Francisco <[Michael@first-fourteenth.com](mailto:Michael@first-fourteenth.com)>; Laena St Jules <[LStJules@ag.nv.gov](mailto:LStJules@ag.nv.gov)>; Richard Medina <[rmedina@elias.law](mailto:rmedina@elias.law)>; David Fox <[dfox@elias.law](mailto:dfox@elias.law)>; Bradley Schrager <[bradley@bravoschrager.com](mailto:bradley@bravoschrager.com)>; Daniel Bravo <[daniel@bravoschrager.com](mailto:daniel@bravoschrager.com)>; Marcos Mocine-McQueen <[mmcqueen@elias.law](mailto:mmcqueen@elias.law)>

**Cc:** Chris Murray <[Chris@first-fourteenth.com](mailto:Chris@first-fourteenth.com)>; Jeffrey F. Barr <[barrj@ashcraftbarr.com](mailto:barrj@ashcraftbarr.com)>

**Subject:** RE: Clark County Mail Ballot Data

Mr. Francisco,

In the 4 days following the June 11, 2024, primary election, the Washoe County Registrar of Voters received the following mail ballots:

**June 12, 2024**

3,111 ballots postmarked on or before June 11, 2024 (accepted)  
2 ballots postmarked after June 11, 2024 (rejected)  
3 ballots with indeterminate postmark (accepted)  
0 ballots with no postmark

**June 13, 2024**

103 ballots postmarked on or before June 11, 2024 (accepted)  
406 ballots postmarked after June 11, 2024 (rejected)  
1 ballot with indeterminate postmark (accepted)  
0 ballots with no postmark

**June 14, 2024**

51 ballots postmarked on or before June 11, 2024 (accepted)  
72 ballots postmarked after June 11, 2024 (rejected)  
1 ballot with indeterminate postmark (accepted)  
0 ballots with no postmark

**June 15, 2025**

0 ballots postmarked on or before June 11, 2024 (accepted)  
40 ballots postmarked after June 11, 2024 (rejected)  
0 ballots with indeterminate postmark  
0 ballots with no postmark

Thanks,  
Beth

| **Beth Hickman**

**JA00173**





Deputy District Attorney  
Washoe County District Attorney  
[ehickman@da.washoecounty.gov](mailto:ehickman@da.washoecounty.gov)  
Office: 775.337.5700  
One S. Sierra St. 4<sup>th</sup> Floor, Reno, NV 89501  
Justice First, People Always



This e-mail, including any attachments, is intended only for the person or entity to which it is addressed. This e-mail may contain confidential information, proprietary information, and/or information which is protected by the attorney-client privilege or work product doctrine. The unauthorized review, use, forwarding, printing, copying, disclosure, or distribution of this e-mail is strictly prohibited. If you are not the intended recipient or have reason to believe you are not authorized to receive this e-mail, please promptly delete this message and notify the sender.

---

**From:** Lisa Logsdon <[Lisa.Logsdon@clarkcountydav.gov](mailto:Lisa.Logsdon@clarkcountydav.gov)>

**Sent:** Thursday, July 18, 2024 9:07 AM

**To:** Michael Francisco <[Michael@first-fourteenth.com](mailto:Michael@first-fourteenth.com)>; Laena St Jules <[LStJules@ag.nv.gov](mailto:LStJules@ag.nv.gov)>;  
Hickman, Elizabeth <[ehickman@da.washoecounty.gov](mailto:ehickman@da.washoecounty.gov)>; Richard Medina <[rmedina@elias.law](mailto:rmedina@elias.law)>;  
David Fox <[dfox@elias.law](mailto:dfox@elias.law)>; Bradley Schrager <[bradley@bravoschrager.com](mailto:bradley@bravoschrager.com)>; Daniel Bravo  
<[daniel@bravoschrager.com](mailto:daniel@bravoschrager.com)>; Marcos Mocine-McQueen <[mmcqueen@elias.law](mailto:mmcqueen@elias.law)>

**Cc:** Chris Murray <[Chris@first-fourteenth.com](mailto:Chris@first-fourteenth.com)>; Jeffrey F. Barr <[barrj@ashcraftbarr.com](mailto:barrj@ashcraftbarr.com)>

**Subject:** Clark County Mail Ballot Data

Mr. Francisco,

Pursuant to our conference call yesterday, Clark County can provide the following information regarding mail ballots received after June 11, 2024 for the 2024 Primary Election:

**June 12, 2024**

6,779 ballots postmarked on or before June 11, 2024 (accepted)  
3 ballots received with no postmark (accepted)

**June 13, 2024**

272 ballots postmarked on or before June 11, 2024 (accepted),  
9 ballots with no postmark (accepted)  
1,397 ballots postmarked after June 11, 2024 (late - rejected)

**June 14, 2024**

118 ballots postmarked on or before June 11, 2024 (accepted),  
12 ballots with no postmark (accepted)  
264 ballots postmarked after June 11, 2024 (late - rejected)

**June 15, 2024**

36 ballots postmarked on or before June 11, 2024 (accepted)  
1 ballot without postmark (late - rejected)  
150 ballots postmarked after June 11, 2024 (late - rejected)

**June 16, 2024** – Sunday

**JA00174**

**June 17, 2024**

140 ballots received (late - rejected)

**June 18, 2024**

3 ballots received (late - rejected)

**June 19, 2024** – Holiday

**June 20, 2024**

76 ballots received (late - rejected)

Lisa Logsdon

County Counsel

Clark County District Attorney – Civil Division

Telephone: (702) 455-4761

Email: [Lisa.Logsdon@clarkcountydav.gov](mailto:Lisa.Logsdon@clarkcountydav.gov)

CONFIDENTIALITY NOTICE: This electronic message is intended to be viewed only by the individual or entity to whom it is addressed. It may contain information that is protected by the attorney client privilege, confidential, and exempt from disclosure under applicable law. Any dissemination, distribution, or copying of this communication is strictly prohibited without our prior permission. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, or if you have received this communication in error, please notify me immediately by return e-mail and delete the original message and any copies of it from your computer. Thank you.

**JA00175**

EXHIBIT C

EXHIBIT C

**From:** [Hickman, Elizabeth](#)  
**To:** [Lisa Logsdon](#); [Michael Francisco](#); [Laena St Jules](#); [Richard Medina](#); [David Fox](#); [Bradley Schrager](#); [Daniel Bravo](#); [Marcos Mocine-McQueen](#)  
**Cc:** [Chris Murray](#); [Jeffrey F. Barr](#)  
**Subject:** RE: Clark County Mail Ballot Data  
**Date:** Thursday, July 18, 2024 12:24:18 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

Mr. Francisco,

In the 4 days following the June 11, 2024, primary election, the Washoe County Registrar of Voters received the following mail ballots:

-

**June 12, 2024**

3,111 ballots postmarked on or before June 11, 2024 (accepted)  
2 ballots postmarked after June 11, 2024 (rejected)  
3 ballots with indeterminate postmark (accepted)  
0 ballots with no postmark

**June 13, 2024**

103 ballots postmarked on or before June 11, 2024 (accepted)  
406 ballots postmarked after June 11, 2024 (rejected)  
1 ballot with indeterminate postmark (accepted)  
0 ballots with no postmark

**June 14, 2024**

51 ballots postmarked on or before June 11, 2024 (accepted)  
72 ballots postmarked after June 11, 2024 (rejected)  
1 ballot with indeterminate postmark (accepted)  
0 ballots with no postmark

**June 15, 2025**

0 ballots postmarked on or before June 11, 2024 (accepted)  
40 ballots postmarked after June 11, 2024 (rejected)  
0 ballots with indeterminate postmark  
0 ballots with no postmark

Thanks,  
Beth

Beth Hickman  
Deputy District Attorney  
Washoe County District Attorney  
[ehickman@da.washoecounty.gov](mailto:ehickman@da.washoecounty.gov)  
Office: 775.337.5700

**JA00177**





One S. Sierra St. 4<sup>th</sup> Floor, Reno, NV 89501

Justice First, People Always



This e-mail, including any attachments, is intended only for the person or entity to which it is addressed. This e-mail may contain confidential information, proprietary information, and/or information which is protected by the attorney-client privilege or work product doctrine. The unauthorized review, use, forwarding, printing, copying, disclosure, or distribution of this e-mail is strictly prohibited. If you are not the intended recipient or have reason to believe you are not authorized to receive this e-mail, please promptly delete this message and notify the sender.

---

**From:** Lisa Logsdon <Lisa.Logsdon@clarkcountydav.gov>

**Sent:** Thursday, July 18, 2024 9:07 AM

**To:** Michael Francisco <Michael@first-fourteenth.com>; Laena St Jules <LStJules@ag.nv.gov>; Hickman, Elizabeth <ehickman@da.washoecounty.gov>; Richard Medina <rmedina@elias.law>; David Fox <dfox@elias.law>; Bradley Schrager <bradley@bravoschrager.com>; Daniel Bravo <daniel@bravoschrager.com>; Marcos Mocine-McQueen <mmcqueen@elias.law>

**Cc:** Chris Murray <Chris@first-fourteenth.com>; Jeffrey F. Barr <barrj@ashcraftbarr.com>

**Subject:** Clark County Mail Ballot Data

Mr. Francisco,

Pursuant to our conference call yesterday, Clark County can provide the following information regarding mail ballots received after June 11, 2024 for the 2024 Primary Election:

**June 12, 2024**

6,779 ballots postmarked on or before June 11, 2024 (accepted)

3 ballots received with no postmark (accepted)

**June 13, 2024**

272 ballots postmarked on or before June 11, 2024 (accepted),

9 ballots with no postmark (accepted)

1,397 ballots postmarked after June 11, 2024 (late - rejected)

**June 14, 2024**

118 ballots postmarked on or before June 11, 2024 (accepted),

12 ballots with no postmark (accepted)

264 ballots postmarked after June 11, 2024 (late - rejected)

**June 15, 2024**

36 ballots postmarked on or before June 11, 2024 (accepted)

1 ballot without postmark (late - rejected)

150 ballots postmarked after June 11, 2024 (late - rejected)

**June 16, 2024** – Sunday

**JA00178**

**June 17, 2024**

140 ballots received (late - rejected)

**June 18, 2024**

3 ballots received (late - rejected)

**June 19, 2024** – Holiday

**June 20, 2024**

76 ballots received (late - rejected)

Lisa Logsdon

County Counsel

Clark County District Attorney – Civil Division

Telephone: (702) 455-4761

Email: [Lisa.Logsdon@clarkcountydav.gov](mailto:Lisa.Logsdon@clarkcountydav.gov)

CONFIDENTIALITY NOTICE: This electronic message is intended to be viewed only by the individual or entity to whom it is addressed. It may contain information that is protected by the attorney client privilege, confidential, and exempt from disclosure under applicable law. Any dissemination, distribution, or copying of this communication is strictly prohibited without our prior permission. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, or if you have received this communication in error, please notify me immediately by return e-mail and delete the original message and any copies of it from your computer. Thank you.

ORIGINAL

REC'D & FILED

2024 JUL 31 PM 3:38

WILLIAM POTTER

BY

- 1 Alicia R. Ashcraft (Bar # 6980)  
Jeffrey F. Barr (Bar # 7269)  
2 Ashcraft & Barr LLP  
9205 West Russell Road, Suite 240  
3 Las Vegas, NV 89148  
702-631-4755  
4 barrj@ashcraftbarr.com
- 5 Michael Francisco\* (CO Atty. No. 39111)  
Christopher O. Murray\* (CO. Atty No. 39340)  
6 First & Fourteenth PLLC  
800 Connecticut Avenue NW, Suite 300  
7 Washington, D.C. 20006  
202-998-1978  
8 michael@first-fourteenth.com  
chris@first-fourteenth.com
- 9 Sigal Chattah (Bar # 8264)  
10 5875 S. Rainbow Blvd #204  
11 Las Vegas, NV 89118  
702-360-6200  
12 sigal@thegoodlawyerlv.com
- 13 David A. Warrington\* (VA Bar No. 72293)  
Gary M. Lawkowski\* (VA Bar No. 82329)  
14 2121 Eisenhower Ave, Suite 608  
15 Alexandria, VA 22314  
703-574-1206  
16 DWarrington@dhillonlaw.com  
GLawkowski@dhillonlaw.com  
17 \* Pro hac vice application pending or forthcoming

1  
2 **IN THE FIRST JUDICIAL DISTRICT COURT**  
3 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

4 REPUBLICAN NATIONAL  
5 COMMITTEE; et al.

6 Plaintiffs,

7 v.

8 FRANCISCO AGUILAR, in his official  
9 capacity as Nevada Secretary of State;  
10 State of NEVADA; et al.

11 Defendants,

12 and

13 VET VOICE FOUNDATION; and the  
14 NEVADA ALLIANCE FOR RETIRED  
AMERICANS,

Intervenor-Defendants.

**Case No.:** 24 OC 00101 1B

**Dept. No.:** 1

**REPLY TO COUNTY  
DEFENDANTS IN SUPPORT OF  
MOTION FOR PRELIMINARY  
INJUNCTION**

15 Plaintiffs seek an injunction to prevent the irreparable harm that will follow if  
16 the Defendant Secretary of State and Counties disregard Nevada's clear law  
17 regarding the counting of mail ballots received after election day that lack a  
18 postmark. The improperly issued rulemaking from the Secretary of State dated  
19 May 29, 2024 ("Memorandum") contradicts the plain statutory requirements and,  
20 if not corrected, would irreparably harm Plaintiffs. This is why Plaintiffs brought  
21 this suit within *days* of the Memorandum's issuance. This Court should correct  
22 this action and order the government defendants to comply with Nevada law.

23 **1. Plaintiffs are Likely to Succeed on the Merits of Their Claims.**

24 The County Defendants, while eschewing any argument on the legal merit of  
25 Plaintiffs' claims largely incorporate and repeat arguments attacking Plaintiffs'  
26 standing previously made in the Intervenor-Defendants' motion to dismiss and  
27 opposition to Plaintiffs' motion for preliminary injunction. Plaintiffs incorporate



1 by reference their previously filed briefs addressing these points and address only  
2 arguments unique to (or expanded upon in) the County Defendants' opposition  
3 here.

4 **a. Rule 19 does not Require the Joinder of “Some” Democratic**  
5 **Party.**

6 The County Defendants argue Plaintiffs cannot succeed on the merits of this  
7 case because they have failed to join an indispensable party (“*some* Democratic  
8 Party,” Washoe Resp. at 3 (emphasis in original)) under N.R.C.P. 19. They  
9 maintain that suit must therefore be dismissed. *Id.* County Defendants’  
10 contention appears to be that because Plaintiffs allege that the Memorandum will  
11 disproportionately disadvantage Republican candidates by permitting the  
12 tabulation of ballots received without a postmark after Election Day, Plaintiffs are  
13 “trying to harm Democrats” by “preventing the counting of some Democratic mail  
14 ballots.” *Id.* Leaving aside the fact that no voter or political party has a legally  
15 cognizable interest in the counting of ballots contrary to law, County Defendants’  
16 are just plain wrong: the fact that a third party may be affected—even  
17 negatively—by the outcome of a case does not make it a “necessary” party under  
18 Rule 19(a). See *Las Vegas Police Protective Ass’n, Inc. v. Eighth Jud. Dist. Ct. in*  
19 *& for Cnty. of Clark*, 138 Nev. Adv. Op. 59, 515 P.3d 842, 848 (2022) (holding that  
20 public employees’ union not necessary party to lawsuit over police officer’s right  
21 to choose his representative in internal investigation despite fact ruling would  
22 arguably negatively affect union).

23 Only the threatened impairment of a particular and clear legal right—such as  
24 the impairment of a contract or right to property—qualifies a third party for  
25 mandatory joinder under Rule 19. *Id.* Federal courts applying Fed. R. Civ. P. 19  
26 have held that political parties are not necessary parties in a fight over the  
27 requirements of an election law. See e.g., *Fulani v. McKay*, 2007 WL 959308 at

1 \*3 (S.D.N.Y. March 29, 2007) (“That the other political parties might be affected-  
2 even negatively affected-by a holding invalidating [an election law], does not  
3 make them necessary parties”). Indeed, recent history demonstrates Democrats  
4 see no need to name Republicans when they sue under Nevada’s election laws.  
5 See, e.g. *Cortez Masto for Senate and Democratic Senatorial Campaign*  
6 *Committee v. Clark County, et al.*, No. A-22-860996-W (Clark. Co. Dist. Ct.). And  
7 where a third party is not “necessary,” it cannot be indispensable such that that  
8 party’s non-joinder requires dismissal. *Makah Indian Tribe v. Verity*, 910 F.2d  
9 555, 559 (9th Cir. 1990) (“Only if the absent parties are “necessary” and cannot  
10 be joined must the court determine whether in “equity and good conscience” the  
11 case should be dismissed under Fed.R.Civ.P. 19(b).”). Because “some Democratic  
12 Party” is not a necessary party to this litigation, “some Democratic Party” cannot  
13 be an indispensable party to this litigation.

14 **b. The RNC, NVGOP and Trump Campaign need not establish the**  
15 **“potential loss of an election” to have standing.**

16 Plaintiffs need not prove a “potential loss of an election” to establish standing  
17 as an organization, just as the DNC did not show any election loss in *Mecinas v.*  
18 *Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022), instead showing an ongoing and unfair  
19 advantage to rival candidates. The *Burgess* decision relies on the same precedent  
20 and adds nothing to the requirements for organizational standing. *Republican*  
21 *Nat’l Comm. v. Burgess*, No. 3:24-CV-00198-MMD-CLB, 2024 WL 3445254, at \*2  
22 (D. Nev. July 17, 2024); see also *Owen v. Mulligan*, 640 F.2d 1130, 1132–34 (9th  
23 Cir. 1981) (finding competitive harm standing for candidate and political party  
24 without election outcome analysis). Plaintiffs amply allege how the counting of  
25 late-arriving mail ballots that lack a postmark uniquely harms Plaintiffs and their  
26 members and constitutes an unfair advantage to rival candidates. See Am. Compl.  
27 ¶¶ 66-79. Moreover, Plaintiffs *do* allege that Republican candidates have lost

1 close elections decided by ballots received after Election Day, which more than  
2 plausibly suggests that non-enforcement of the postmark requirement will cause  
3 potential loss of a future election. Id. ¶¶ 69, 76.

4 In any event, County Defendants do not question Plaintiff Johnston's standing.

5 Only one plaintiff needs to have standing when only injunctive relief is sought.

6 *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7<sup>th</sup> Cir.2007), *aff'd*, 553  
7 U.S. 181, 189 n. 7, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008).

8 **2. Plaintiffs have shown Irreparable Harm and the Public Interest**  
9 **Supports an Injunction.**

10 County Defendants argue that there can be no irreparable harm to Plaintiffs  
11 unless the Court finds "that counting mail ballots without postmarks violates NRS  
12 293.269221(2)." This is a tautology: of course there can be no irreparable harm to  
13 Plaintiffs if the law permits the conduct of which they complain. Plaintiffs have  
14 addressed why NRS 293.269221(2) does not permit the counting of ballots received  
15 after election day without a postmark in their other filings in this case and  
16 incorporate those arguments here by reference. If the Court agrees with Plaintiffs  
17 that NRS 293.269221(2) does not permit the counting of ballots received after  
18 election day without a postmark, they have amply demonstrated irreparable  
19 harm.

20 County Defendants similarly advance a tautology that the public interest  
21 cannot favor an injunction because "[t]he public interest is also served by ensuring  
22 the maximum number of legitimate votes are counted." Washoe Resp. at 8. But  
23 this also turns on the idea that Plaintiffs are wrong about NRS 293.269221(2),  
24 because there is "no public interest in the perpetuation of unlawful [government]  
25 action." *Washington v. DeVos*, 481 F. Supp. 3d 1184, 1197 (W.D. Wash. 2020)  
26 (quoting *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C.  
27 Cir. 2016)). "To the contrary, there is a substantial public interest in having

1 governmental agencies abide by the ... laws that govern their existence and  
2 operations.” *Id.* There is a particularly strong public interest in enforcing election  
3 laws meant to safeguard the integrity of the electoral process. See *Purcell v.*  
4 *Gonzalez*, 549 U.S. 1, 4, 127 S. Ct. 5, 7 (2006) (“Confidence in the integrity of our  
5 electoral processes is essential to the functioning of our participatory  
6 democracy.”).

### 7 **3. Laches Does Not Bar Plaintiffs’ Requested Relief**

8 The County Defendants argue that laches bars Plaintiffs’ requested relief  
9 because Plaintiffs somehow knew of the Secretary’s interpretation of NRS  
10 293.269221(2) to permit the counting of non-postmarked ballots received after  
11 election day either four years ago under then-effective AB4, or earlier this year  
12 when the policy was, according to the County Defendants, already in effect for the  
13 presidential preference and primary elections. Washoe Response at 9. While  
14 Plaintiffs address the argument regarding their 2020 litigation against AB4 in  
15 their concurrently filed reply in support of their motion for preliminary injunction  
16 against the State Defendants, any suggestion that Plaintiffs’ unreasonably  
17 delayed in bringing this lawsuit is risible. The Memorandum was issued on  
18 Wednesday, May 29, 2024. This lawsuit was filed the immediately following  
19 Monday, June 3, 2024, only five days later. Despite the late issuance of the  
20 Memorandum, Plaintiffs went out of their way to be sure to request relief only for  
21 the general election so as to avoid any potential prejudice to elections officials and  
22 voters.

23 County Defendants’ suggestion that voters could somehow be misled if this  
24 Court enters Plaintiffs’ requested preliminary injunction makes no sense. As  
25 shown in Plaintiffs’ Amended Complaint and Motion for Preliminary Injunction,  
26 County Defendants *already conspicuously advise voters that their ballots must be*  
27 *postmarked on or before election day* in at least three places: on the outer envelope



1 in which voters receive their ballots, on the return envelope which voters use to  
2 return their ballots, and on the instructions voters receive with their ballots.  
3 Plaintiffs seek targeted relief such that all an injunction here will do is ensure  
4 County Defendants comply with NRS 293.269221(2) and the instructions they are  
5 already issuing to Nevada voters. See *Georgia Coal. for People's Agenda, Inc. v.*  
6 *Kemp*, 347 F. Supp. 3d 1251, 1259 (N.D. Ga. 2018) (declining to apply laches where  
7 early voting had begun).

1  
2 **AFFIRMATION**

3 The undersigned hereby affirm that the foregoing document does not  
4 contain the social security number of any person.

5 DATED this 31st day of July, 2024.

6 ASHCRAFT & BARR LLP

7 By:  \_\_\_\_\_

8 Jeffrey F. Barr (Bar # 7269)

9 FIRST & FOURTEENTH PLLC

10 By: \_\_\_\_\_

11 Michael Francisco (pro hac vice forthcoming)

12 Christopher O. Murray (pro hac vice  
13 forthcoming)

14 *Counsel for Plaintiffs*

15 CHATTAH LAW GROUP

16 By: \_\_\_\_\_

17 Sigal Chattah (Bar # 8264)

18 *Counsel for Plaintiff Nevada Republican*  
19 *Party*

20 DHILLON LAW GROUP

21 By: \_\_\_\_\_

22 David A. Warrington\* (pro hac vice  
23 forthcoming)

24 Gary M. Lawkowski\* (pro hac vice  
25 forthcoming)

26 *Attorneys for Plaintiff Donald J. Trump for*  
27 *President 2024, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of July 2024, I served a true and correct copy of the foregoing REPLY TO COUNTY DEFENDANTS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION by electronic mail to the e-mail addresses listed below:

<ul style="list-style-type: none"><li>• <a href="mailto:LStJules@ag.nv.gov">LStJules@ag.nv.gov</a></li></ul>	Attorneys for Defendant Francisco Aguilar
<ul style="list-style-type: none"><li>• <a href="mailto:lisa.logsdon@clarkcountydانv.gov">lisa.logsdon@clarkcountydانv.gov</a></li><li>• <a href="mailto:Afeni.Banks@ClarkCountyDANV.gov">Afeni.Banks@ClarkCountyDANV.gov</a></li></ul>	Attorneys for Defendants Lorena Portillo and Lynn Marie Goya
<ul style="list-style-type: none"><li>• <a href="mailto:ehickman@da.washoecounty.gov">ehickman@da.washoecounty.gov</a></li></ul>	Attorneys for Cari-Ann Burgess and Jan Galassini
<ul style="list-style-type: none"><li>• <a href="mailto:daniel@bravoschrager.com">daniel@bravoschrager.com</a></li><li>• <a href="mailto:dfox@elias.law">dfox@elias.law</a></li><li>• <a href="mailto:rmedina@elias.law">rmedina@elias.law</a></li><li>• <a href="mailto:mmcqueen@elias.law">mmcqueen@elias.law</a></li><li>• <a href="mailto:bradley@bravoschrager.com">bradley@bravoschrager.com</a></li></ul>	Attorneys for Intervenor Defendants Vet Voice Foundation and Nevada Alliance for Retired Americans



An Employee of Ashcraft & Barr | LLP