

In the Supreme Court of the State of Nevada

FRED KRAUS, and individual
registered to vote in Clark County,
Nevada; DONALD J. TRUMP FOR
PRESIDENT, INC.; and NEVADA
REPUBLICAN PARTY,

Appellants,

vs.

BARBARA CEGAVSKE, in her
official capacity as Nevada
Secretary of State; JOSEPH
GLORIA, in his official capacity as
Registrar of Voters for Clark
County, Nevada; DEMOCRATIC
NATIONAL COMMITTEE; and
NEVADA STATE DEMOCRATIC
PARTY

Respondents,

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Case No.: 82018

First Judicial District Court Case
No.: 20 OC 00142 1B

Respondent's Appendix Vol. 1

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DATED this 3rd day of November, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2020, a true and correct copy of the **Respondent's Appendix** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

By /s/ Dannielle Fresquez

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

FRED KRAUS, an individual registered to vote
in Clark County, Nevada, DONALD J. TRUMP
FOR PRESIDENT, INC.; the NEVADA
REPUBLICAN PARTY,

Case No.
Dept No.

Petitioners,

vs.

BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State, JOSEPH
P. GLORIA, in his official capacity as Registrar
of Voters for Clark County, Nevada,

Respondents.

**EMERGENCY PETITION FOR WRIT OF MANDAMUS,
OR IN THE ALTERNATIVE, WRIT OF PROHIBITION**

Petitioners, Fred Kraus, Donald J. Trump for President, Inc. and the Nevada Republican
Party (herein "Petitioners"), by and through their attorneys, respectfully submits this Petition for
Writ of Mandamus, or in the Alternative, Writ of Prohibition (the "Petition") against Respondents
Barbara Cegavske (the "Secretary"), in her official capacity as Nevada Secretary of State; Joseph

1 P. Gloria ("Gloria" or "Registrar"), in his official capacity as Registrar of Voters for Clark County,.
2 This Petition is brought pursuant to NRS Chapter 34, NRS 293B and is based on the following
3 Memorandum of Points and Authorities and any oral argument this Court may allow.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 I. INTRODUCTION

6 The United States Supreme Court long ago recognized a bright line principle of good
7 government that runs throughout federal and state law: "[S]unlight," as has so often been observed,
8 "is the most powerful of all disinfectants." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 305 (1964).
9 Indeed, as courts recognize "openness of the voting process helps prevent election fraud, voter
10 intimidation, and various other kinds of electoral evils." *PG Publishing Co. v. Aichele*, 705 F.3d
11 91 (3d Cir. 2013).

12 These lofty principles are reflected in the details of Nevada's election laws. As Clark
13 County Registrar, Gloria was statutorily required to submit a "written plan for the accommodation
14 of members of the general public who observe the delivery, counting, handling and processing of
15 ballots at a polling place, receiving center or central counting place" by April 15, 2020. NRS
16 293B.354(1). However, unlike every other election official in this state, Gloria failed to comply
17 with his statutory obligation to submit a plan by April 15, 2020. Gloria compounded his complete
18 disregard for his statutory obligations when he failed and refused to submit a compliant plan for
19 approval after the passing of Assembly Bill No. 4 ("AB4"). Rather, Gloria proceeded forward with
20 the election process, while blatantly ignoring both requests by the State and his statutory obligation
21 to submit a plan pursuant to NRS 293B.354. It appears Gloria believes he and Clark County are
22 above the law.

23 The result of the Registrar's disregard for his statutory obligations is a total lack of
24 meaningful observation. Meaningful observation is a right expressly granted to the public under
25 NRS 293B.353(1), which mandates that the "county or city clerk *shall* allow members of the
26 general public to observe the counting of the ballots at the central counting place if those members
27 do not interfere with the counting of the ballots." (Emphasis added). This right is also protected
28 by AB4, which makes clear "mail ballot central counting board may begin counting the received

1 mail ballots 15 days before the day of the election” and “[t]he counting procedure must be public.”
2 AB 4, § 25. Plaintiffs have evidence that Gloria is obstructing the observation process. Gloria must
3 accommodate meaningful observation to ensure transparency and integrity in the election process
4 and, since he refused to timely provide a plan to the Secretary for her approval, this Court should
5 order the Secretary to issue an approved plan for Clark County that assures immediate, meaningful
6 observation. In the alternative, Petitioners request that the Court prohibit Clark County from
7 processing and counting ballots until proper procedures are in place to ensure transparency and
8 integrity in all parts of the process.

9 Finally, in Nevada there is a mechanism for challenging voters who physically show up to
10 vote. *See* NRS 293.303. However, there is no such mechanism for challenging voters who vote by
11 mail. Dissimilar treatment in the challenging mechanisms violates the Equal Protection Clause of
12 the Fourteenth Amendment.

13 **II. LEGAL STANDARD**

14 A writ shall issue “in all cases where there is not a plain, speedy and adequate remedy in
15 the ordinary course of law.” NRS 34.170; NRS 34.330. “A writ of prohibition is appropriate when
16 a district court acts without or in excess of its jurisdiction.” *Cote v. District Ct.*, 124 Nev. 36, 39,
17 175 P.3d 906, 907 (2008) (citing NRS 34.320; *State v. District Ct. (Anzalone)*, 118 Nev. 140, 146-
18 47, 42 P.3d 233, 237 (2002)). “A writ of mandamus is available to ‘compel the performance of an
19 act which the law . . . [requires] as a duty resulting from an office, trust or station,’ ” *id.*, 124 Nev.
20 at 39, 175 P.3d at 907-08 (quoting NRS 34.160), or “to control a manifest abuse or an arbitrary or
21 capricious exercise of discretion.” *Id.* (citing *Round Hill Gen. Imp. Dist. V. Newman*, 97 Nev. 601,
22 603-04, 637 P.2d 534, 536 (1981)). “Because both writs of prohibition and writs of mandamus are
23 extraordinary remedies, [the court has] complete discretion to determine whether to consider
24 them.” *Id.*, 124 Nev. at 39, 175 P.3d at 908 (citing *Smith v. District Ct.*, 107 Nev. 674, 818 P.2d
25 849 (1991)).

26 Even when an “arguable adequate remedy exists, this court may exercise its discretion to
27 entertain a petition for mandamus under circumstances of urgency or strong necessity, or when an
28 important issue of law needs clarification and sound judicial economy and administration favor

1 the granting of the petition." *State v. District Ct.*, 118 Nev. 609, 614, 55 P.3d 420, 423 (2002)
2 (citations omitted).

3 **III. ARGUMENT**

4 **A. GLORIA REFUSES TO COMPLY WITH NEVADA LAW.**

5 No later than April 15, 2020, the Clark County Registrar was required to "submit to the
6 Secretary of State for approval a written plan for the accommodation of members of the general
7 public who observe the delivery, counting, handling and processing of ballots at a polling place,
8 receiving center or central counting place." NRS 293B.354(1). In Nevada, each plan must include:

9 ... (a) The location of the central counting place and of each polling place and
10 receiving center; (b) A procedure for the establishment of areas within each polling
11 place and receiving center and the central counting place from which members of
12 the general public may observe the activities set forth in subsections 1 and 2; (c)
13 The requirements concerning the conduct of the members of the general public who
14 observe the activities set forth in subsections 1 and 2; and (d) Any other provisions
relating to the accommodation of members of the general public who observe the
activities set forth in subsections 1 and 2 which the county or city clerk considers
appropriate.

15 NRS 293B.354(3).

16 No such plan was received by the Secretary prior to election operations beginning in Clark
17 County. Without an *approved* plan in place, observers have noted multiple issues that have
18 precluded them from engaging in meaningful observation, but not limited to:

19 **1. *Observers being prohibited from observing the totality of the process.***

20 There are certain areas where ballots are handled, reviewed, or the information therefrom is utilized
21 to affirm whether a ballot will be counted, but Gloria has deemed these areas restricted and/or off
22 limits to observers.¹ One such area is the call center, which has been specifically deemed by Gloria
23 as off limits and other rooms are dedicated to resolving ballot issues.² Given that these ballot
24 review processes are necessary in the counting of ballots, observers must be allowed to observe.
25

26
27 ¹ See Declaration of Fred Kraus ("Kraus Dec."), attached hereto as Exhibit I at ¶¶ 10, 20- 21.

28 ² *Id.*

1 Simply put, the only way to assure transparency in the process is to assure *all* parts of the process
2 are subject to observation and scrutiny.

3
4 2. *Observers engaging in meaningful observation.*³ Unfortunately, Gloria
5 has positioned observers in such a manner that they cannot meaningfully observe. Notably,
6 observers are often located more than 25 feet away from certain processes, and cannot see the
7 computer screens or monitors of individual workers or observe calls made relative to the cure
8 processes.⁴ Observers have also noted that there are certain observation locations where only
9 portions of the processing of ballots can be observed.⁵ Moreover, observers are required to be
10 with “ambassadors” at all times. Unfortunately, there are not enough “ambassadors” to allow
11 consistent and meaningful observation of the entire process.⁶ Without meaningful observation,
12 there cannot be any assurances of transparency.
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17 ³ According to the Election Observation Handbook (6th Ed.) published by the OSCE Office for Democratic
18 Institutions and Human Rights, minimum standards for credible election observation must be met including
19 assuring “that an appropriately secure environment exists, allowing for a meaningful election process to be
20 conducted and for free, unimpeded movement for election observers. The value of election observation is
21 essentially negated if security requirements prevent participants in an election observation activity from
22 obtaining information, moving freely . . . or meeting with all election stakeholders. Under these conditions,
the credibility of any findings can be questioned.” (<https://www.osce.org/files/f/documents/5/e/68439.pdf>).
While this Election Handbook is generally targeted toward burgeoning nations looking to establish fair
elections, it is similarly appropriate here in Nevada where there are serious concerns about assuring fair,
accountable and transparent elections.

23 ⁴ See Declaration of Robert Thomas III (“Thomas Dec.”), attached hereto as Exhibit 2 at ¶¶7-10, 12-15;
24 see also Kraus Dec at. ¶¶8-10, 12-22.

25 ⁵ See Kraus Dec at. ¶17 (stating at ¶8 “8. I was confined to a rectangular space situated at the intersection
26 of the long part of an L shaped room. From this vantage point, I was only able to observe a few tables on
27 the base of the L shape of the room.” In ¶16 “[t]here were 32 tables for ballot examiners. Of which, I was
only able to see 24 of the tables from a distance with all but a few located at a distance such that I could not
engage in meaningful observation.” And, in ¶17 “[t]here were also 7 duplicator tables which were not
visible from my designated area.”)

28 ⁶ See Thomas Dec. at ¶16; see also Kraus Dec at. ¶23.

1 3. *Ensuring ballot secrecy.* Concerns have arisen amongst observers about
2 ensuring voters' ballots remain secret.⁷ AB4, Sec. 16.(1)(c) requires that each active registered
3 voter receive an "envelope or sleeve into which the mail ballot is inserted to ensure its secrecy."
4 Unfortunately, it has been observed to be the policy and procedure of the Clark County Counting
5 Board that, immediately after a ballot has been opened, the board member who opened the
6 envelope reviews the ballot to see if it complies with law.⁸ Should the ballot be rejected, the ballot
7 is then placed back into the same envelope in which it was received. The result is that the board
8 member reviewing the ballot knows the identity of the voter who cast the ballot and can now
9 observe or even record how the individual voted.⁹ Moreover, if the ballot has a deficiency that
10 requires it to be duplicated by a board member, the envelope is often sent with the ballot to be
11 duplicated, resulting in yet another board member who can observe how the voter cast his or her
12 ballot.¹⁰ This procedure no longer assures the secrecy contemplated by AB4 and undermines the
13 American norm of ballot secrecy.¹¹ Moreover, if the staff member does not agree with how the
14 individual voted, this knowledge may become an incentive for the staff member to invalidate the
15 ballot, risking voter disenfranchisement.¹² Given these issues, a process must be implemented such
16 that, once received, a ballot cannot be placed back in its original envelope but should merely be
17 placed in "an envelope" as contemplated by AB4, Sec. 25-26.
18
19
20

21
22 ⁷ See Thomas Dec. at ¶18; see also Kraus Dec at. ¶28.

23 ⁸ See Thomas Dec. at ¶17; see also Kraus Dec at. ¶24.

24 ⁹ *Id.*

25 ¹⁰ See Thomas Dec. at ¶17.

26 ¹¹ "Between 1888 and 1896, nearly every State adopted the secret ballot." *Minnesota Voters All. v. Mansky*,
27 138 S. Ct. 1876, 1883 (2018). Thus, the secret ballot is a "venerable a part of the American tradition."
Burson v. Freeman, 504 U.S. 191, 214 (1992) (Scalia, J., concurring).

28 ¹² See Thomas Dec. at ¶18; see also Kraus Dec at. ¶28.

1 4. **COVID-19 Concerns.** The Nevada Legislature called a special session to
2 enact AB4, citing COVID-19 as one of its primary concerns. Similarly, Gloria has limited the
3 access and number of observers permitted in Clark County facilities, citing similar COVID-19
4 concerns. In response to this concerns, the Petitioners reached out to Gloria and requested that he
5 allow the placement of cameras throughout the facility to afford the public the ability to observe
6 from the safety and security of alternate locations.¹³ In an effort to ensure this was not a financial
7 burden on Clark County, the Petitioners offered to pay for the cameras, tripods, and other
8 equipment necessary to allow this alternative method for observation. Further, the Petitioners
9 offered to host the video feed on its servers and provide feed access to Clark County so they could
10 similarly monitor the process. This offer was wholly rejected despite the Governor, the Attorney
11 General, Clark County Commissioners, and numerous Clark County officials calling for everyone
12 to do their part to stop the spread of the COVID-19 virus. The Petitioners remain willing to do
13 their part and, at the same time, assure there is safe and meaningful observation of the ballot
14 counting process at no additional expense to Nevada voters.
15

16 As noted above, Petitioners have attempted to resolve these issues with Gloria directly to
17 no avail. Additionally, Petitioners demanded the Secretary implement an approved plan in Clark
18 County pursuant to NRS 293B.354(3) which: (1) allows observation of the entire ballot counting
19 process; (2) ensures meaningful observation; (3) affirms ballot secrecy; and (4) accommodates the
20
21

22
23 ¹³ See Email correspondence between counsel for Petitioners and counsel for Clark County,
24 attached hereto as Exhibit 3; see also Demand Letter to the Secretary dated October 20, 2020 , attached
hereto as Exhibit 4. Further, NRS 293B.353(2)-(3) provides:

25 2. The county or city clerk may photograph or record or cause to be photographed or
26 recorded on audiotape or any other means of sound or video reproduction the counting of
the ballots at the central counting place.

27 3. A registered voter may submit a written request to the county or city clerk for any
28 photograph or recording of the counting of the ballots prepared pursuant to subsection 2.
The county or city clerk shall, upon receipt of the request, provide the photograph or
recording to the registered voter at no charge.

1 Petitioners request to place cameras so observation can be done in a safe and secure manner.
2 However, the Secretary of State has failed to implement any such plan. Consequently, Gloria
3 continues to operate without the approval of the statutorily required plan. *See* NRS 293B.354.

4 The only way to ensure that members of the public are able to meaningfully observe the
5 counting of ballots is for this Court to mandate the Secretary of State approve a plan in Clark
6 County which: (1) allows observation of the entire ballot counting process; (2) ensures meaningful
7 observation; (3) affirms ballot secrecy; and (4) accommodates the Petitioners request to place
8 cameras so observation can be done in a safe and secure manner. Further, this Court must mandate
9 that the Registrar immediately implement the approved plan in Clark County.

11 **B. NEVADA'S CHALLENGING STATUTE VIOLATES THE EQUAL**
12 **PROTECTION CLAUSE.**

13 In Nevada, there is a mechanism for challenging voters who physically show up to vote.
14 *See* NRS 293.303. However, there is no such mechanism for challenging voters who vote by mail.
15 Dissimilar treatment in the challenging mechanisms violates the Equal Protection Clause of the
16 Fourteenth Amendment.

17 A state shall not value one person's vote over that of another by arbitrary and disparate
18 treatment. *Bush v. Gore*, 531 U.S. 98, 104 (2000). Doing so violates the Equal Protection Clause
19 of the Fourteenth Amendment. "[T]he right of suffrage can be denied by a debasement or dilution
20 of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the
21 franchise." *Id.* at 105 (citing *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)); Voting procedures must
22 be "calculated to sustain the confidence that all citizens must have in the outcome of elections."
23 *Bush v. Gore*, 531 U.S. 98, 106 (2000); *see Charfauros v. Bd. of Elections*, 249 F.3d 941, 952, 954
24 (9th Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (July 6, 2001) ("voter election
25 challenge procedures" that "create[d] two classes of voters" "were flawed and . . . in danger of
26 violating the fundamental rights" of voters).

27 Even if this dissimilar treatment does not wholly prohibit any citizen's free exercise of the
28 franchise, the dissimilar treatment does debase or dilute the right to vote of those voters who

1 choose to vote in person. By only subjecting in-person voters to this mechanism for challenge,
2 Nevada is giving those who vote absentee an arbitrary and backwards advantage over those who
3 vote in-person. The dissimilar treatment of these voters violates the Equal Protection Clause of the
4 Fourteenth Amendment. Therefore, this Court should mandate that the two classes of voters—in
5 person and mail-in—must be treated equally and equally subject to the same challenge procedure.

6 **C. CLARK COUNTY'S IMPROPER USE OF A MACHINE TO**
7 **AUTHENTICATE VOTERS VIOLATES THE EQUAL PROTECTION**
8 **CLAUSE.**

9 All Nevada counties, except for Clark County, are visually matching the signatures on the
10 ballot envelope to the signature on file with the various registrars of voters. Clark County is using
11 a machine called the Agilis Ballot Packing Sorting System ("Agilis") as an initial effort to match
12 signatures. If a signature is matched by that machine, then it is not further scrutinized. The Agilis'
13 manufacturer has recommended settings for tolerance in order to guard against forgeries or other
14 improper signatures. If a signature is rejected by the machine, then it is reviewed visually by a
15 county official.

16 Gloria has intentionally lowered the tolerance number in order to decrease the number of
17 ballots rejected by the machine for improper signatures. Consequently, fewer ballots are being
18 reviewed visually by county officials and it is more likely that fraudulent and improper ballots are
19 being tabulated by Clark County. For the election, Gloria ordered that the tolerance level be
20 lowered from the manufacturer's recommendation to all the way to 40 percent. As a result, Clark
21 County is catching fewer improperly signed ballots compared to other Nevada counties. For
22 example, as of October 22, 2020, only 1.45% of mailed ballots in Clark County have been returned
23 for cure, yet, 3.78% of ballots in Churchill County have been returned for cure.

24 Because of Gloria's unilateral and arbitrary decision to lower the tolerance on the Agilis,
25 he is making it harder for Clark County officials to catch improper or fraudulent mail in ballots as
26 opposed to the rest of Nevada. The result is two classes of voters: those whose signatures are
27 verified by Agilis and those whose signatures are being checked visually by election officials. This
28 two-tier system violates the fundamental rights of voters in Nevada. *See Bush, 531 U.S. at 104;*
see also Charfauros, 249 F.3d at 952–54. Moreover, the failure of Gloria to take reasonable

1 measures to ensure the authenticity of voters in the most populated county in Nevada may cast
2 doubt on the accuracy of the election. *Id.*

3 **IV. CONCLUSION**

4 Gloria's complete failure to timely submit an election plan as required by Nevada law and
5 further refusal to work with Petitioners to assure meaningful and safe observation of the process
6 is unprecedented. There is a strong public interest in this case and as the election is upon us and
7 ballot processing has already begun, no adequate remedy exists for Petitioners to seek relief other
8 than to request the Court's assistance by way of a Petition for Writ of Mandamus or Writ of
9 Prohibition.

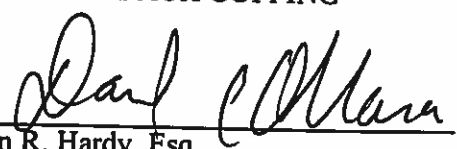
10 For the foregoing reasons, Petitioners respectfully request that the Court mandate the
11 Secretary issue a plan to Clark County that complies with the statutory requirements of NRS 293B
12 and which: (1) allows observation of the entire ballot counting process; (2) ensures meaningful
13 observation; (3) affirms ballot secrecy; and (4) accommodates the Petitioners request to place
14 cameras so observation can be done in a safe and secure manner. Further, this Court must mandate
15 that the Registrar immediately implement the approved plan in Clark County. In the alternative,
16 Petitioners request that the Court prohibit Gloria and Clark County from counting ballots until the
17 proper procedures are in place.

18 Petitioners also request that this Court mandate the same ballot challenge procedures apply
19 to all classes of voters, whether in-person or vote by mail. Finally, Petitioners request that Gloria
20 be prohibited from creating two-classes of voters by using a method of authenticating ballot
21 signatures, not used in the rest of Nevada, that would decrease the ability of election officials from
22 catching fraudulent or improper ballots.

23 Dated this ___ day of October, 2020.

24 MARQUIS AURBACH COFFING

25
26 By


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

AFFIRMATION


The undersigned does hereby affirm that the preceding document, PETITIONERS' PETITION
FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION,

does not contain the Social Security number of any person.

Dated this 23rd day of October, 2020.

MARQUIS AURBACH COFFING

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EXHIBIT 1

EXHIBIT 1

DECLARATION OF FRED KRAUS

Fred Kraus. declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I make this declaration in support of Petitioner's Petition for Writ of Mandamus, or in the alternative, Writ of Prohibition.

3. I am a Clark County registered voter in the State of Nevada.

4. As a registered voter in the State of Nevada, there is a mechanism for my status as a voter to be challenged because I voted in person, however there is no such mechanism to challenge voters who cast their vote by mail. I am concerned that people like me that are voting in person are having our votes diluted or cancelled because our votes can be challenged, unlike the votes of those that vote by mail.

5. Moreover, as a member of public, I am expressly granted the right to observe the counting of the ballots at the central counting place.

6. On Thursday, October 15, 2020 I went to a Clark County facility located at 2060 E. Flamingo Road, Las Vegas, NV 89119 to observe mail ballot processing.

7. As part of my observation, I observed the preparation of duplicate ballots in lieu of damaged ballots.

8. I was confined to a rectangular space situated at the intersection of the long part of an L shaped room. From this vantage point, I was only able to observe a few tables on the base of the L shape of the room.

9. There were rooms or offices where staff would walk in and out with ballots, but we were not allowed to view the process or conduct of staff in these rooms. For example, at the East Flamingo location there was a room labelled "MB Vault." Inside were large bins with many shelves with blank ballots. I observed staff walking in and out of that room and retrieving blank ballots with green envelopes in their hands that contained ballots and then going to a part of the

1 room that I could not observe. At the Trade Drive location in the room with the Agilis Machine
2 there was a side door with a small window and a set of steps leading to a floor above. I was not
3 permitted in that room. I was told later by a county employee escorting me out of the Agilis room
4 that there were blank ballots stored upstairs. Before I left that room, I saw an employee returning
5 with papers in a tray.

6 10. For example, once the operations at the tables at Greystone were completed a box
7 of ballots would be taken to a supervisor's office located across from where we were seated that I
8 could not see into. On other occasions, the box of ballots was carried or wheeled in a cart past me
9 to a location that I could not see. However, on being escorted to my small location when I arrived
10 or being escorted out of the room during break times for employees' breaks, I could see that there
11 was an audit area but other than just noticing that area I was unable to observe the operations in
12 this audit area. I was told the boxes would be inspected for compliance with procedures.
13 Ultimately, I would see portable black vaults coming out of the supervisor's office and leaving the
14 room. I was told the portable black vaults contained the finished boxes. The portable black vaults
15 were to be taken to another vault room at Greystone and later were to be returned to the Trade
16 Drive campus. However, we were not permitted any meaningful opportunity to see what the
17 supervisor was looking to do during her inspection or what the process was in the audit area or, in
18 either case, to observe the sealing of the boxes for transport back to the Trade Drive location.

19 11. On Friday, October 16, 2020, I returned to the Clark County facility located at 2060
20 E. Flamingo Road, Las Vegas, NV 89119 to observe mail ballot processing.

21 12. I was escorted to the same area as the day before for observation. Although I was
22 able to walk past the duplicator desks, I was not given any time to make observations.

23 13. I viewed ballot examiners place defective ballots in a green folder. Roving
24 employees would then take these green folders to the ballot duplicators which were not visible
25 from the viewing area, but would often, but not in all cases, enter the Master Ballot Room where
26 sometimes I could see from a distance their removing a blank ballot and leaving the room and
27 heading in the direction of the duplicating tables.
28

14. On Saturday, October, 17, 2020, I returned to the Clark County facility located at 2060 E. Flamingo Road, Las Vegas, NV 89119 to observe mail ballot processing.

15. I was allowed to observe in the same confined area as the previous days.

16. There were 32 tables for ballot examiners. Of which, I was only able to see 24 of the tables from a distance with all but a few located at a distance such that I could not engage in meaningful observation.

17. Notably, I could only hear what was being discussed at the few tables closest to me. There were also 7 duplicator tables which were not visible from my designated area.

18. On Tuesday October 20, 2020, I went to a Clark County facility located at 965 Trade Dr., North Las Vegas, NV 89030.

19. I observed the scanning/tabulation of ballots in the scanning room. The scanning room is an enclosed area with two sections. The section closest to the observation area has a glass window and the scanning operation takes place in that room. That room is connected to a back room which has a glass wall facing the observers.

20. It was impossible for me to determine what processes were happening in the back room because the designated area for observers was too far away.

21. I was shown two offices which were dedicated to resolving rejected ballot issues. These offices were referred to as the Freedom Room and the Liberty Room. The Freedom Room was staffed, but I was not allowed to enter or observe.

22. The Liberty Room was not staffed and I was not allowed to enter.

23. During my observation, I was required to be with ambassadors or minders at all times. Unfortunately, there are not enough ambassadors to allow for more than a few observers and the function of the ambassadors or minders is to make sure we were only able to observe operations from specified locations, which would not permit a consistent and meaningful observation of the entire process.

24. I was told by one of my ambassadors or minders at the East Flamingo location that the only function performed there was an examination of ballots to see if the ballots were damaged, soiled or obscured in some way such that they would not be suitable for tabulating when returned

1 to the Trade Drive location. However, I observed small envelopes at the tables I could see that
2 were labelled for rejected ballots. When I inquired about the rejection envelopes, I was told that
3 the only rejection that takes place at Greystone is when a voter signs the ballot. However, there
4 were white sheets of paper attached to the glass or plexiglass at each table that were labelled
5 "Rejected Ballot Codes" and which then listed seven (7) rejection codes. Rejection for a voter
6 signing the ballot was not among the rejection codes listed. The instructions in one rejection
7 category included a requirement that the employee "Find the ballot envelope with the voter's name
8 on it" and "place the ballot back in the ballot return envelope."

9 25. I also noticed a sign on the wall that stated "Rejecting Identified Ballots" which
10 was not consistent with an operation limited to examining ballots for those not machine worthy.

11 26. I was able to observe on a number of occasions that workers at tables placed
12 documents in Rejected Ballot envelopes. In addition, on the morning of October 17, 2020, I
13 overheard a worker at the table located just outside the offices across from me mention to a
14 supervisor that one of her envelopes had 2 ballots inside. That would be a rejection code of RT
15 from the Rejected Ballot Code papers affixed to each table working area. So, the statement made
16 to me on October 15, 2020 that the only rejected ballots processed at the East Flamingo location
17 were those where the voter signed or initialed the ballot was incorrect

18 27. I did see a Rejected Ballot envelope sitting on top of the completed trans file at a
19 table where I overheard the employee mention to her supervisor that she had an envelope with 2
20 ballots. While I could not see the worker insert the ballots and the return ballot envelope, which
21 contains the voter's signature, into the Rejected Ballot envelope, I believe that she did so and thus
22 would have been able to observe the name of the voter who signed the return ballot envelope. I
23 believe this because one of the signs on the walls was entitled "Rejecting Identified Ballots." The
24 instructions in that separate rejection category included a requirement that the employee "Find the
25 ballot envelope with the voter's name on it" and "place the ballot back in the ballot return
26 envelope." In addition, when a ballot is rejected the only way to identify whose ballot was rejected
27 would be to place both the ballot and the return ballot envelope, which identified the voter whose
28 ballot was rejected, in the rejected ballot envelope.

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
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28. This process is concerning because it does not ensure ballot secrecy and if the staff member does not agree with how the individual voted, this knowledge may become an incentive for the staff member to invalidate the ballot, risking voter disenfranchisement

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 23rd day of October, 2020.

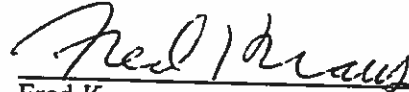

Fred Kraus

EXHIBIT 2

EXHIBIT 2

DECLARATION OF ROBERT E THOMAS III

Robert E. Thomas, III, declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I make this declaration in support of Petitioner's Petition for Writ of Mandamus, or in the alternative, Writ of Prohibition.

3. I am a Nye County registered voter in the State of Nevada.

4. As a registered voter in the State of Nevada, there is a mechanism for my status as a voter to be challenged if I physically show up to vote, however there is no such mechanism for voters who vote by mail to be challenged. I'm worried that the votes of people who vote in person will be diluted because it is possible to challenge them as opposed to people who vote by mail.

5. Moreover, as a member of public, I am expressly granted to the right to observe the counting of the ballots at the central counting place.

6. On Monday, October 19, 2020 I went to a Clark County facility located at 965 Trade Dr., North Las Vegas, NV 89030 to observe mail ballot processing.

7. As part of my observation, I observed the AEGILIS machine. The observation area for the AEGILIS machine was at the end of the room.

8. The observation area was approximately 25ft away from the monitor that controlled the operation of the AEGILIS machine, and I was not able to see the monitor screen.

9. I noticed the machine would sporadically have mechanical issues. The worker would then go talk to support staff who would come to the monitor to correct something.

10. I was not close enough to see what was corrected or what the error was.

11. While there was a break, I asked my ambassador [an Extra-Help employee hired to escort observers] to see the screen My ambassador said she talked to Joe Gloria and I was not allowed to see the screen. However, I was told there was an ongoing issue with the AEGILIS machine matching signatures from the DMV.

12. The observation I was allowed to do was meaningless because I could not see the process in its entirety and my ambassador could not answer some of my questions.

13. On Monday, October 19, 2020, I was also observing the verification stations at the same Clark County location. The observation area for the verification station is partitioned away from the station with plexiglass. The computer screens in the verification station are too far away from observers to have meaningful observation and the observers cannot hear the telephone calls being made.

14. On Wednesday, October 21, 2020 I returned to the Clark County facility located at 965 Trade Dr., North Las Vegas, NV 89030 to observe mail ballot processing.

15. As part of my observation, I observed ballot counting in a room with a wall of windows, like a fishbowl. I was stationed outside of the room looking in through the windows. Each station in the room has a computer monitor and terminal. As an observer, while I could identify an error message appear on the monitors, I was unable to read what the error was because the observation area was too far away.

16. During my observation, I was required to be with ambassadors at all times. Unfortunately, there are not enough ambassadors to allow consistent and meaningful observation of the entire process.

17. It was my observation that after a ballot has been opened, the staff member who opened the envelope reviews the ballot. I am informed and observed that if a ballot is rejected, the ballot is then placed back into the same envelope in which it was received. The result is that the board member reviewing the ballot knows the identity of the voter who cast the ballot and can now observe or even record how the individual voted. Moreover, I am informed that if the ballot has a deficiency that requires it to be duplicated by another staff member, the envelope is sent with the ballot to be duplicated, resulting in yet another staff member observe how the voter cast their ballot.

18. This process is concerning because it does not ensure ballot secrecy and if the staff member does not agree with how the individual voted, this knowledge may become an incentive for the staff member to invalidate the ballot, risking voter disenfranchisement.

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
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1 Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of
2 Nevada that the foregoing is true and correct.

3 Dated this 22nd day of October, 2020.


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7 Robert E. Thomas III
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EXHIBIT 3

EXHIBIT 3

Brian R. Hardy

From: Mary-Anne Miller <Mary-Anne.Miller@clarkcountyda.com>
Sent: Tuesday, October 20, 2020 7:36 AM
To: Brian R. Hardy
Subject: RE: [External] Video Observation [IWOV-iManage.FID1124849]

Thanks for the update. One of the many concerns is that a NVGOP person would control the feed. Knowing what we know, other people would complain about that and want to control it. Given what we have gone through to date, we do not think it would markedly improve the disruptiveness of observers.

From: Brian R. Hardy <bhardy@maclaw.com>
Sent: Monday, October 19, 2020 3:23 PM
To: Mary-Anne Miller <Mary-Anne.Miller@clarkcountyda.com>
Subject: RE: [External] Video Observation [IWOV-iManage.FID1124849]

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Mary-Anne

I want to make sure you understand the request in case I was not clear, the request that I made was for the County to allow the NVGOP to set up tripods with cameras mounted on them that would broadcast and record a feed that can be accessed by observers (and County officials) offsite. As I am sure you can imagine, if they are observing offsite, they will no longer be your problem or disruptive to your operations. Please let me know if this clarification changes your opinion as we still stand by ready to place the cameras and tripods as soon as possible.

Thanks

Brian



**MARQUIS AURBACH
COFFING**

Brian R. Hardy, Esq.
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DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (collect) immediately at (702) 382-0711 and ask to speak to the sender of the communication. Also please e-mail the sender and notify the sender immediately that you have received the communication in error. Thank you. Marquis Aurbach Coffing - Attorneys

From: Mary-Anne Miller <Mary-Anne.Miller@clarkcountyda.com>
Sent: Monday, October 19, 2020 10:28 AM
To: Brian R. Hardy <bhardy@maclaw.com>
Subject: RE: [External] Video Observation [IWOV-iManage.FID1124849]

Hello Brian,

At this time, the Election Department is not comfortable with non County individuals filming operations. The Election Department has been very accommodating allowing observers in most aspects of the Election Department operations, even though the department is not required to. The observers have very disruptive to our operations and we will continue to accommodate their presence as long as possible. We do not believe, however, that cameras operated by observers with no rules will eliminate any of those problems, but rather add to them.

Thanks,

MARY-ANNE MILLER
COUNTY COUNSEL
OFFICE OF THE DISTRICT ATTORNEY | CIVIL DIVISION
702 455 4761 | MARY-ANNE.MILLER@CLARKCOUNTYDA.COM

From: Brian R. Hardy <bhardy@maclaw.com>
Sent: Monday, October 19, 2020 8:33 AM
To: Mary-Anne Miller <Mary-Anne.Miller@clarkcountyda.com>
Subject: Video Observation [IWOV-iManage.FID1124849]

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Mary-Anne

Thank you for speaking with me last week about resolving the concerns raised by observers and officials related to observers. As we discussed, the NVGOP is willing to coordinate with County officials and will pay for placement of cameras in certain observation areas to allow full and complete access to observers while allowing them to meet all social distancing and other COVID related guidelines. Additionally, this option will help to minimize the impact on County officials and staff who are tasked with assisting the observers and escorting them in and out of certain areas. My clients have procured the cameras, tripods and other equipment and would like to coordinate with the County as soon as possible to get these into place. I am told they are available as early as this afternoon to get the cameras in place and open up the online viewing portal. Please let us know if we will be able to get these cameras in place and, if not, what reasons the County has for not facilitating this request.

Thanks

Brian



**MARQUIS AURBACH
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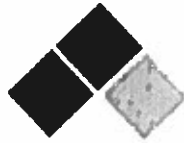
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EXHIBIT 4

EXHIBIT 4



MARQUIS AURBACH COFFING

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PHILLIP S. AURBACH
AVECE M. HIGBEE
TERRY A. COFFING
SCOTT A. MARQUIS
JACK CHEN MIN JUAN
CRAIG R. ANDERSON
TERRY A. MOORE
GERALDINE TOMICH
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JACKIE V. NICHOLS
RACHEL S. TYGRET
JORDAN B. PEEL
JAMES A. BECKSTROM
COLLIN M. JAYNE
ALEXANDER K.
CALAWAY
SCOTT W. CARDENAS
SUSAN E. GILLESPIE

JOHN M. SACCO [RET.]
LANCE C. EARL
WILLIAM P. WRIGHT
BRIAN R. HARDY
JENNIFER L. MICHELI
OF COUNSEL

October 20, 2020

Via Email sosmail@sos.nv.gov and Regular Mail

Secretary of State
Attn: Barbara K. Cegavske
Nevada State Capitol Building
101 North Carson Street, Suite 3
Carson City, NV 89701

Re: Transparency in Nevada Elections

Ms. Cegavske:

Please be advised that this firm represents Donald J. Trump for President, Inc. (the "Trump Campaign") and the Nevada Republican Party ("NVGOP"). As such, please direct all future correspondence to this office. We have learned that, despite multiple requests from your office, Clark County failed to timely submit its plan for accommodation of members of the general public who observe delivery, counting, handling and processing of ballots under NRS 293B.354(1). In fact, Clark County's dereliction is not merely a failure to timely submit its plan. Rather, Clark County has chosen to ignore its statutory obligations and simply did not submit any "written plan for the accommodation of members of the general public who observe the delivery, counting, handling and processing of ballots at a polling place, receiving center or central counting place." One would hope that this is not a calculated attempt to allow Clark County to obstruct the observation process.¹ However, given recent complaints, observations and rejected accommodations, the reality in Clark County is obstruction. As such, demand is hereby made that your office immediately step in and inform Clark County that a number of its current observation protocols (which were never submitted to your office for approval) are unacceptable and that

¹ One would also have hoped that this statutorily required written plan would have been timely submitted by April 15, 2020. Even if Clark, County somehow anticipated legislative changes would be

Clark County must accommodate meaningful observation² to assure transparency in the election process.

Clark County observers have noted multiple issues that have precluded them from engaging in meaningful observation including, but not limited to:

1. ***Observers are being prohibited from observing the totality of the process.*** There are certain areas where ballots are handled, reviewed, or the information therefrom is utilized to affirm whether a ballot will be counted, but Clark County has deemed these areas restricted and/or off limits to observers. One such area is the call center, which has been deemed by Clark County as “off limits.” Given that these ballot review processes are deemed necessary by Clark County in the counting of ballots, observers must be allowed to observe. Simply put, the only way to assure transparency in the process is to assure all parts of the process are subject to observation and scrutiny.
2. ***Engaging in Meaningful Observation.***³ Unfortunately, Clark County has positioned observers in such a manner that they cannot meaningfully observe. Notably, observers are often located more than 30 feet away from certain processes, cannot see the computer screens or monitors of individual workers, or observe calls made relative to the cure processes being engaged in by Clark County in the counting of ballots. Moreover, observers are required to be with “ambassadors” at all times, and there are not enough observers to allow consistent observation of the process. Without meaningful observation, there cannot be any assurance of transparency.

forthcoming, however, it should have submitted a compliant plan under the new statutes shortly after the passing of Assembly Bill No. 4 (“AB4”).

² NRS 293B.353(1) clearly provides that the “county or city clerk *shall* allow members of the general public to observe the counting of the ballots at the central counting place if those members do not interfere with the counting of the ballots.” (Emphasis added).

³ According to the Election Observation Handbook (6th Ed.) published by the OSCE Office for Democratic Institutions and Human Rights, minimum standards for credible election observation must be met including assuring “that an appropriately secure environment exists, allowing for a meaningful election process to be conducted and for free, unimpeded movement for election observers. The value of election observation is essentially negated if security requirements prevent participants in an election observation activity from obtaining information, moving freely ... or meeting with all election stakeholders. Under these conditions, the credibility of any findings can be questioned.” (<https://www.osce.org/files/f/documents/5/e/68439.pdf>). While this Election Handbook is generally targeted toward burgeoning nations looking to establish fair elections, it is similarly appropriate here in Nevada where there are serious concerns about assuring fair, accountable and transparent elections.

3. **COVID Concerns.** The Nevada Legislature called a special session to enact AB4, citing COVID-19 as one of its primary concerns. Similarly, Clark County has limited the access and number of observers permitted in its facilities, citing similar COVID-19 concerns. As such, the NVGOP reached out to Clark County and requested that Clark County allow the placement of cameras throughout the facility to afford the public the ability to observe from the safety and security of alternate locations.⁴ In an effort to assure this was not a financial burden on Clark County, the NVGOP offered to pay for the cameras, tripods, and other equipment necessary to allow this alternative method for observation. Further, the NVGOP offered to host the video feed on its servers and provide feed access to Clark County so they could similarly monitor the process. This offer was wholly rejected despite the Governor, Clark County Commissioners, and Clark County officials calling for everyone to do their part to stop the spread of the virus. The NVGOP and the Trump Campaign remain willing to do their part and, at the same time, assure there is safe and meaningful observation of the ballot counting process at no additional expense to Nevada voters.

In addition to the foregoing, concerns have arisen amongst observers about ensuring voters' ballots remain secret. As you are aware, AB4, Sec 16.(1)(c) requires that each active registered voter received an "envelope or sleeve into which the mail ballot is inserted to ensure its secrecy." Unfortunately, it has been observed to be the policy and procedure of the Clark County Counting Board that, immediately after a ballot has been opened, the board member who opened the envelope reviews the ballot to see if it complies with law. Should the ballot be rejected, the ballot is then placed back into the same envelope in which it was received. The result is that the board member reviewing the ballot knows the identity of the voter who casts the ballot and can now observe or even record how the individual voted. Moreover, if the ballot has a deficiency that requires it to be duplicated by a board member, the envelope is often sent with the ballot to be duplicated, resulting in yet another board member who can observe how the voter cast his or her ballot. The concern here is two-fold: First, this procedure no longer assures the secrecy contemplated by AB4 and undermines the American norm of ballot secrecy.⁵ Second, if the Clark

⁴ NRS 293B.353(2)-(3) provides:

2. The county or city clerk may photograph or record or cause to be photographed or recorded on audiotape or any other means of sound or video reproduction the counting of the ballots at the central counting place.
3. A registered voter may submit a written request to the county or city clerk for any photograph or recording of the counting of the ballots prepared pursuant to subsection 2. The county or city clerk shall, upon receipt of the request, provide the photograph or recording to the registered voter at no charge.

⁵ "Between 1888 and 1896, nearly every State adopted the secret ballot." *Minnesota Voters All. v. Mansky*, 138 S. Ct. 1876, 1883 (2018). Thus, the secret ballot is a "venerable a part of the American tradition." *Burson v. Freeman*, 504 U.S. 191, 214 (1992) (Scalia, J., concurring).

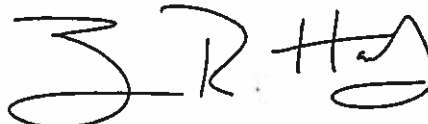
County staff member does not agree with how the individual voted, this knowledge may become an incentive for the staff member to invalidate the ballot, risking voter disenfranchisement. Given these issues, we would ask that your office issue a clarification notice to Clark County (and all counties) that, once received, a ballot cannot be placed back in its original envelope but should merely be placed in "an envelope" as contemplated by AB4, Sec. 25-26.

Please understand that the NVGOP and the Trump Campaign take seriously the integrity of the election process and will not stand idly by while certain officials tread on the rights of the people to participate in the election and have their votes counted. As such, unless the your office directs Clark County to: (1) allow observation of the entire ballot counting process; (2) assure all such observation is meaningful observation; and (3) accommodate the request of the NVGOP and the Trump Campaign to place cameras so observation can be done in a safe and secure manner, then the NVGOP and the Trump Campaign will have no alternative other than to seek legal relief. Further, we would ask that you review the process utilized by Clark County which undermines the secrecy of ballots and provide a directive to all counties clarifying their obligations relative to such processes.

As always, we appreciate your prompt attention to this matter and, if you have any questions, comments, concerns, or wish to discuss the foregoing further, please feel free to contact the undersigned directly.

Sincerely,

MARQUIS AURBACH COFFING

A handwritten signature in black ink, appearing to read "BR Hardy", written over the printed name of Brian R. Hardy.

Brian R. Hardy, Esq.

BRH:mm

Cc: Mary-Anne Miller (Mary-Anne.Miller@clarkcountyda.com); Joe P. Gloria (jpg@ClarkCountyNV.gov) Mark Wlaschin (mwlaschin@sos.nv.gov) and Greg Zunino (GZunino@ag.nv.gov)

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15 dbravo@wrslawyers.com

16 *Attorneys for Intervenor-Respondents, Nevada*
17 *Democratic Party and Democratic National*
18 *Committee*

19 **Pro hac vice forthcoming*

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

22 FRED KRAUS, an individual registered voter in
23 Clark County, Nevada; DONALD J. TRUMP
24 FOR PRESIDENT, INC.; the NEVADA
25 REPUBLICAN PARTY,

26 Petitioners,

27 v.

28 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State; JOSEPH
P. GLORIA, in his official capacity as Registrar
of Voters for Clark County, Nevada,

Respondents,

and

DEMOCRATIC NATIONAL COMMITTEE
and NEVADA STATE DEMOCRATIC
PARTY,

Intervenor-Respondents.

Case No. 20 OC 00142 1B

Dept. No.: 2

INTERVENOR-RESPONDENTS'
ANSWER TO EMERGENCY PETITION
FOR WRIT OF MANDAMUS, OR IN
THE ALTERNATIVE, WRIT OF
PROHIBITION

1 The COVID-19 pandemic has required election officials throughout the country,
2 including in Nevada, to take extraordinary measures and to engage in unprecedented planning to
3 ensure that citizens are able to vote in the November election and to have their votes counted. In
4 Nevada, these measures have included mailing ballots to all registered voters and permitting
5 county election officials to begin counting mail ballots 15 days before Election Day. As of today,
6 nearly 365,000 mail ballots have been cast by Nevadans, and election officials have been
7 verifying and counting those ballots for nearly a week. In Clark County, Nevada's most populous
8 county, election officials have already received tens of thousands of mail ballots, and clerks have
9 been working diligently and effectively for days to process those ballots. Now, nearly half-way
10 through this herculean effort, Petitioners are requesting this Court to insert itself into this process
11 and to substitute its judgment on election procedures for that of Clark County's election officials.
12 The Court should reject this improper request, which falls far short of satisfying the stringent
13 standards Petitioners must meet to obtain extraordinary relief in the form of a writ of mandamus
14 or a writ of prohibition.

15 To meet their heavy burden, Petitioners must demonstrate that the relief they are seeking
16 is required by law and that defendants are violating their duties as election officials by not
17 following the election procedures Petitioners seek to impose. In other words, Petitioners must
18 show that Nevada law *requires* videotaping and audio recording of the activities of Clark County
19 election workers, providing the general public with access to the computer screens of election
20 workers, making confidential information voter information available to the public, and allowing
21 anyone who so desires to enter specific rooms, unescorted, where election personnel are
22 performing their work. Of course, none of these intrusive demands, each of which would
23 interfere with the ability of election workers to do their jobs in this final critical week of the
24 election, is required by Nevada election laws. On the contrary, Petitioners' requests are
25 prohibited by Nevada privacy laws, state laws protecting the confidentiality of voter information,
26 and the Equal Protection Clause of the U.S. Constitution, which prohibits singling out Clark
27 County and its voters for this disparate treatment. The lack of any *requirement* in Nevada law for
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Clark County election officials to implement Petitioners’ demands is fatal to their request for a writ of mandamus or prohibition, for these rarely granted, extraordinary forms of relief require a showing that the election officials are disregarding the law in dereliction of their duties, a showing that has not and cannot be made here.

The reality is that over the past week, Clark County officials and election workers have been processing and counting mail ballots without any problems and in full view of members of the public—including representatives of Petitioners—in compliance with Nevada election laws demanding public observation. In fact, the County has structured its operations and observation rules so that the public can see not only the counting of mail ballots, which is all that the law requires, but also the mail processing procedures that election workers undertake prior to ballot tabulation. There is no legal or factual basis for requiring the County to do more or for the Court to interfere with the exercise of the discretion that Nevada election laws give to the county’s registrar. Nor is there any legitimate reason to single out Clark County, and no other county in the State, for purposes of imposing new intrusive requirements that interfere with the ongoing work of the County’s highly professional elections staff.

Finally, Petitioners’ request that the Court issue an extraordinary writ relating to the constitutionality of Nevada’s statutory scheme for challenging the eligibility of voters, set forth in NRS 293.303, is procedurally improper and wrong on the merits. In addition to being far too late in the election process to bring a facial challenge to the constitutionality of this long-standing election law, such a challenge must be brought as an action at law, not through a petition for mandamus. For the same reason, Petitioners cannot rely on their mandamus petition to support their untimely claim that the technology Clark County is using to verify voter signatures violates the Equal Protection Clause.

For these reasons and those that follow, the Court should deny Petitioners’ request for relief.

PROCEDURAL POSTURE

The expertise of election officials has never been more important than now. The COVID-

1 19 pandemic has fundamentally altered how people are voting in Nevada and across the country.
2 Absentee voting is surging, and those who choose to vote in-person must comply with safety
3 protocols that are essential to protect against spread of the virus. Nevada officials have
4 responded to this uncharted territory through a series of changes to its election procedures. On
5 March 24, Secretary of State Barbara Cegavske (“Secretary Cegavske” or “the Secretary”)
6 announced that, in coordination with the State’s 17 counties, she would mail ballots to all active
7 registered Nevada voters for the June 9, 2020 primary and operate limited in-person polling
8 places in each county. And in a special session this past summer, the Nevada legislature enacted
9 Assembly Bill 4 (“AB 4”), creating a category of “affected elections” during emergency periods
10 for which the State would similarly mail ballots to voters. To allow for timely processing of the
11 new influx of mail ballots, AB 4 allowed each county’s central counting board to “begin
12 counting the received mail ballots 15 days before the day of the election.” AB 4, § 25(1). “The
13 counting procedure must be public.” *Id.*

14 As proscribed by the new law, Clark County could begin processing mail ballots on
15 Monday, October 19. Clark County Registrar of Voters, Joe Gloria, permitted poll watchers of
16 any party to be present in the County’s ballot processing centers and to stand in a designated
17 public viewing area to observe election workers in their review of ballots. This early access to
18 ballot processing as opposed to ballot counting, goes beyond what is required by Nevada law.
19 Observers are permitted to be as close as 25 feet to the election workers—a distance that
20 balances the interest in public observation with Clark County’s legal obligation to preserve the
21 confidentiality of voter information and also its obligation to protect its workers from COVID-
22 19. Representatives of Petitioners have been regularly observing the process since county
23 personnel began their work last week.

24 The Nevada Republican Party (the “Nevada GOP”) wrote to Clark County on October 19
25 and to Secretary Cegavske on October 20 to complain that they should be permitted closer access
26 to election workers and should be allowed to view all aspects of the process, including
27 apparently looking over the shoulders of election officials while they view voter confidential
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1 information and perform signature matching. Unsatisfied with the already expanded access Clark
2 County has granted them, the Nevada GOP demanded that the Registrar permit it to install GOP-
3 financed and controlled video cameras and audio equipment to monitor the work of election
4 workers and, apparently, to view the voter information displayed on their computer screens. The
5 Nevada GOP has made this audacious request only of Clark County and not of the dozens of
6 other counties in the State that are engaged in substantially the same process of verifying and
7 counting mail ballots.

8 Two days after making these requests, the Nevada GOP, joined by Donald J. Trump for
9 President, Inc. and Fred Kraus (“Petitioners”), an individual Nevada voter, petitioned this Court
10 for the writs of mandamus or prohibition that are the subject of this opposition while also asking
11 the Court to issue a temporary restraining order that would have stopped the ballot-counting
12 process in this critical pre-election period. The Court held a hearing that same day at which the
13 Nevada State Democratic Party and the Democratic National Committee (“Respondent
14 Intervenors”) appeared and were granted intervention into the case. The Court denied
15 Petitioners’ request for emergency injunctive relief, while ordering the parties to submit briefing
16 on Petitioners’ request for a writ of mandamus or prohibition on an expedited basis ahead of an
17 evidentiary hearing on October 28.

18 **LEGAL STANDARD**

19 Petitioners’ burden to establish that the Court must issue a writ of mandamus is “a heavy
20 one.” *Poulos v. Eighth Judicial Dist. Court of State of Nev. In & For Clark Cty.*, 98 Nev. 453,
21 455, 652 P.2d 1177, 1178 (1982). “Mandamus is an extraordinary remedy, and the decision as to
22 whether a petition will be entertained lies within the discretion of” the deciding court. *State ex*
23 *rel. Dep’t of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983); *Kussman v.*
24 *Eighth Judicial Dist. Court In & For Clark Cty.*, 96 Nev. 544, 545, 612 P.2d 679 (1980).

25 The remedy of mandamus is only appropriate when the officer’s “duty to perform such
26 act is clear” under the law. *Gill v. State ex rel. Booher*, 75 Nev. 448, 451, 345 P.2d 421, 422
27 (1959). “Mandamus will not issue unless *a clear legal right to the relief sought is shown.*” *State*
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1 *ex rel. Conklin v. Buckingham*, 58 Nev. 450, 83 P.2d 462, 463 (1938) (emphasis added); *In re*
2 *Manhattan W. Mech.'s Lien Litig.*, 131 Nev. 702, 708, 359 P.3d 125, 129 (2015) (“A writ of
3 mandamus is available to compel the performance of an act *that the law requires* as a duty
4 resulting from an office, trust, or station.”) (emphasis added) (quoting *Int’l Game Tech., Inc. v.*
5 *Second Judicial Dist. Court ex rel. Cty. of Washoe*, 124 Nev. 193, 197, 179 P.3d 556, 558
6 (2008)).

7 “The writ of prohibition is the counterpart of the writ of mandate. It arrests the
8 proceedings of any tribunal, corporation, board or person exercising judicial functions, when
9 such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board
10 or person.” NRS 34.320. “A writ of prohibition is available to halt proceedings occurring in
11 excess of a court’s jurisdiction.” *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129 Nev. 492, 497,
12 306 P.3d 369, 373 (2013). A writ of prohibition is purely discretionary and will not issue where
13 the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. *See Sweat*
14 *v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 133 Nev. 602, 603–04, 403 P.3d 353, 356
15 (2017). Here, because Clark County election officials are not engaged in actions that in any way
16 resemble a judicial proceeding, Petitioners’ request for a writ of prohibition is plainly improper,
17 both procedurally and on the merits.

18 **ARGUMENT**

19 **I. THE CLARK COUNTY REGISTRAR HAS COMPLIED WITH NEVADA’S** 20 **ELECTION CODE.**

21 Petitioners are requesting that the Court take control of the procedures Clark County’s
22 election officials have carefully developed and implemented to ensure lawful, accurate validation
23 and processing of mail ballots. At a time when the expertise of election officials has never been
24 more important, county officials developed procedures that carefully balance the novel factors
25 that are in play while conducting an election during a pandemic. These include ensuring the
26 safety of election workers, protecting the confidentiality of voter information, giving the public
27 the opportunity to observe the ballot-counting process, and ensuring that all lawfully cast ballots
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1 are accepted and counted. Petitioners have not cited any legal authority to support the remarkable
2 proposition that the Court should substitute its judgment on how to balance these factors for that
3 of the County’s election officials. Indeed, there is no legal authority to countenance this absurd
4 result, which would inject chaos and confusion into the election only days before Election Day.

5 Petitioners specifically request that the Court impose four specific demands: (1) that
6 Respondent Gloria submit an observation plan that he already recently sent to the Secretary;
7 (2) that Gloria provide the public with carte blanche access to every corner of the County’s
8 election facilities; (3) that Gloria allow the Nevada GOP to install GOP-financed video and audio
9 monitoring devices to allow monitoring of the work of county election officials; and (4) that
10 Gloria modify the procedures by which ballots are removed from their envelopes. Because none
11 of these demands are required by Nevada’s election code, the Court must reject them and deny
12 the petition.

13 **A. Clark County has complied with Nevada’s election code requiring public**
14 **access to the counting of ballots.**

15 There is a wide chasm between what Nevada election law requires of Respondent Gloria
16 and the demands Petitioners ask this Court to impose. The Nevada election code requires only
17 that “[t]he counting procedure” implemented by the mail ballot central counting board “be made
18 public.” AB 4, § 25(1).¹ The exact contours of that observation are left to the discretion of the
19 county clerks or registrars. Thus, there is no requirement in the election code for a county to
20 allow videotaping and audio recording of election workers; no requirement to allow members of
21 the public to be in close enough proximity to election workers to view their computer screens;

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23 ¹ Petitioners’ citations to NRS 293B.353 and 293B.354 are misguided. Chapter 293B primarily
24 deals with the handling and counting of ballots that are delivered from a polling place to a
25 “central counting place.” See NRS 293B.330 (“Secure all mechanical recording devices against
26 further voting.”); 293B.335 (“At least two members of the election board shall deliver the sealed
27 container to a receiving center or to the central counting place, as directed by the county clerk”).
28 The legislature’s comprehensive statement of mail voting rules for the 2020 general election,
which specifies (1) the distinct process for receiving, processing and delivering ballots to the
mail ballot counting board and (2) the public’s rights in those processes, is the correct source of
authority here.

1 and no requirement to allow representatives of a political party to roam election offices
2 unescorted. Indeed, there is no requirement that Petitioners be allowed to monitor ballot
3 processing, as opposed to the counting, at all.

4 Petitioners do not contend that the ballot counting process is being conducted in secret.
5 By their own admission, Respondent Gloria has granted extended public access to, and
6 observation of, the processing and counting of ballots in the lead up to the 2020 general election.
7 In several places in his declaration, Petitioner Kraus relates his experience being granted access
8 to observe processing at Clark County’s voting centers on multiple occasions in the last several
9 weeks. Kraus Decl. ¶ 6 (access granted to Flamingo Road facility on October 15, 2020); *id.* ¶ 11
10 (access granted on October 16, 2020); *id.* ¶ 14 (same on October 17, 2020); *id.* ¶ 18 (access
11 granted to North Las Vegas facility on October 20, 2020). The same is true for declarant Robert
12 Thomas. Thomas Decl. ¶ 6 (access granted to North Las Vegas facility on October 19, 2020); *id.*
13 ¶ 14 (access granted to same facility on October 21, 2020). In other words, there is no need for
14 this Court to mandate anything; Respondent Gloria and his office are already in compliance by
15 facilitating public access to the process.

16 Petitioners attempt to fill the statutory void underlying their intrusive demands by
17 asserting that counties have an obligation to provide “meaningful observation” and then force-
18 fitting their various demands into that undefined standard. That standard, however, appears
19 nowhere in the Nevada election code. Instead, it is apparently derived from an Election
20 Observation Handbook published by the Organization for Security and Co-operation in Europe
21 that, by Petitioners’ own admission, “is generally targeted toward burgeoning nations.” Pet. at 5
22 n.3. The standard has no applicability here and, in any event, the public observation Clark
23 County allows for the counting of ballots and election workers’ processing of mail ballots is
24 meaningful observation under any reasonable definition of the term.

25 Finally, Gloria has complied with the requirement to submit an observation plan to the
26 Secretary. NRS 293B.354(1) requires the County to “submit to the Secretary of State for
27 approval a written plan for the accommodation of members of the general public who observe
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1 the delivery, counting, handling and processing of ballots at a polling place, receiving center or
2 central counting place.” NRS 293B.354; *see* Pet. at 4-8. As discussed at the October 23 hearing
3 in this case, Gloria submitted his plan to Secretary Cegavske on October 20, which the Secretary
4 approved on October 22. In addition to granting access to the counting of mail ballots as required
5 by Nevada’s election code, Gloria has also granted public observation of the mail ballot
6 processing procedures, which is not required by law. For purposes of Petitioners’ request for
7 issuance of a writ of mandamus or prohibition, it is of no moment that the plan was submitted
8 after the deadline for counties to submit such plans. The relevant inquiry is only whether Clark
9 County is complying with the requirement to allow public observation while the counting of
10 ballots is taking place. Because the County is, that ends the inquiry.

11 Indeed, Gloria’s submission of a plan and Clark County’s compliance with the
12 observation protocols in the plan preclude the extraordinary judicial act of issuing a writ of
13 mandamus, which, as discussed, is only appropriate when a public official refuses to comply
14 with explicit tenets of the law. *Buckingham*, 58 Nev. 450, 83 P.2d at 463 (“[M]andamus against
15 an officer is an appropriate remedy only *where he refuses to perform a definite present duty*
16 *imposed upon him by law.*”) (emphasis added).

17 **B. Clark County is not required to allow Petitioners to install cameras.**

18 The overreaching nature of Petitioners’ demands and mandamus petition are best
19 demonstrated by Petitioners’ request that Clark County install GOP-owned and financed
20 surveillance cameras and audio equipment that would allow them to monitor election workers
21 and observe confidential voter information on the workers’ computer screens. Pet. at 7. As
22 discussed, there is no Nevada statute that entitles Petitioners’ to surveil county election workers
23 or requires Clark County to provide telegraphic or video access to the counting of ballots. The
24 only statute Petitioners cite in support of this demand is NRS 293B.353(2)-(3), which allows (but
25 does not mandate) the clerk (and not the public) to photograph or otherwise record the counting
26 of ballots. Pet. at 7 n.13. And while Nevada’s election code invites the public to observe voting
27 and ballot processing, it prohibits, in several instances, recording of voting activities by the
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1 public. *E.g.*, NRS 293.274(2) (“A member of the general public, shall not photograph the
2 conduct of voting at a polling place or record the conduct of voting on audiotape or any other
3 means of sound or video reproduction.”); NRS 293C.269(2) (same). Petitioners’ request to
4 furnish and operate its own cameras inside the Clark County facilities falls far outside the kind of
5 public observation afforded by Nevada’s election code.

6 Additionally, requiring Clark County to allow Petitioners to monitor the activities and
7 communications in the election through constant audio and video recording would violate
8 Nevada’s privacy laws. NRS 200.620(1) prohibits interception of any wire communication
9 unless (a) one party to the communication provided prior consent and (b) “[a]n emergency
10 situation exists and it is impractical to obtain a court order as required by” Nevada law before the
11 interception.² An emergency situation exists when law enforcement is investigating a crime—
12 not when state employees are performing ordinary duties such as tabulating and verifying ballots.
13 *See, e.g., Evans v. State*, No. 69275, 2016 WL 3586687, at *2 (Nev. App. June 20, 2016).

14 **C. Clark County’s handling of ballots does not violate ballot secrecy rules.**

15 Petitioners’ final claim regarding ballot secrecy invites this Court to dictate the intricacies
16 of ballot processing to Clark County instead of affording it the discretion to ensure ballot secrecy
17 that the law contemplates. *See* AB 4, § 27 (“The clerk shall develop a procedure to ensure that
18 each mail ballot is kept secret.”). The suggestion that Clark County’s procedures are troublesome
19 is based on an unsupported premise that county officials will only process ballots that comport
20 with their own political views. This mere speculation, bereft of current or historical evidence,
21 does not support the issuance of an extraordinary writ. Moreover, there are reasons to question
22 the accuracy of the Petitioners’ description of the process by which ballots are removed from
23 their envelopes, which further cautions against the Court’s intervention into this area.

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26 ² NRS 200.620(1)(a)-(b); NRS 200.610(2) (defining “Wire communication” to mean
27 “transmission of writing, signs, signals, pictures and sounds of all kinds by wire, cable, or other
28 similar connection between the points of origin and reception of such transmission”).

1 **II. PETITIONERS' CLAIM THAT NEVADA'S CHALLENGE STATUTE**
2 **VIOLATES THE EQUAL PROTECTION CLAUSE DOES NOT SUPPORT**
3 **MANDAMUS.**

4 Nevada's challenge statute, NRS 293.303, provides a mechanism for challenging voters
5 who vote in person at polling locations but not for voters who vote by mail. Petitioners argue that
6 this differential treatment of in-person and mail voters violates the Equal Protection Clause of the
7 Fourteenth Amendment and request that this Court "mandate the same ballot challenge
8 procedures apply to all classes of voters, whether in-person or vote by mail." Pet. at 8-10. This
9 claim fails for multiple reasons: Petitioners lack standing to bring it; the claim fails as a matter of
10 law because it is improperly before the Court as a mandamus petition; and the claim fails on the
11 merits because Petitioners have not provided evidence of the supposed "voter dilution" that they
12 assert results from the challenge statute.

13 **A. Petitioners lack standing to bring this claim.**

14 At the outset, Petitioners lack standing to assert an Equal Protection Clause violation
15 because they have not shown that NRS 293.303 has or will injure them. "Nevada has a long
16 history of requiring an actual justiciable controversy as a predicate to judicial relief." *Doe v.*
17 *Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). For such a controversy to exist, parties
18 "must show a personal injury and not merely a general interest that is common to all members of
19 the public." *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). The burden of
20 demonstrating a particularized injury to establish standing falls on the parties bringing the suit.
21 *Id.* Petitioners have not alleged that they currently seek to challenge any particular voter who
22 has voted by mail, and that they are unable to do so because Nevada's election code does not
23 provide them such an avenue. Instead, Petitioners allege that they might someday wish to
24 challenge a mail voter. This "injury" is all the more speculative because Nevada uniquely
25 requires that those challenging voters must do so based on the challengers' personal knowledge
26 of the voter they are challenging. *See* NRS 293.303.³ Petitioners have provided no evidence of

27 ³ Four states and the District of Columbia have raised the evidentiary burdens that polling
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1 personal knowledge relating to any particular voter.

2 Petitioners’ alleged vote dilution injury is similarly speculative. Petitioners argue that
3 legitimate votes will be “diluted” by the casting of fraudulent or illegitimate votes in the absence
4 of a challenge process. Pet. at 8-9. Courts have consistently held that the purported injury of vote
5 dilution from the threat of potential voter fraud is far too speculative to confer standing. *See, e.g.,*
6 *Donald J. Trump for President, Inc. v. Way*, Case No. 20-10753 (MAS) (ZNQ), 2020 WL
7 6204477, at *6 (D. N.J. Oct. 22, 2020) (concluding that Petitioners “highly speculative fear” of
8 vote dilution did not provide a basis for standing because “Petitioners ha[d] alleged nothing more
9 than the possibility of a future injury to their members.”); *Donald J. Trump for President, Inc. v.*
10 *Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at *59 (W.D. Pa. Oct. 10, 2020) (in
11 determining that Petitioners lacked standing, holding “Petitioners have not presented a concrete
12 injury to warrant federal-court review. All of Petitioners’ remaining claims have the same theory
13 of injury—one of ‘vote dilution.’ . . . While Petitioners may not need to prove actual voter fraud,
14 they must at least prove that such fraud is ‘certainly impending.’”); *Donald J. Trump for*
15 *President, Inc. v. Cegavske*, Case No. 2:20-CV-1445 JCM (VCF), 2020 WL 5626974 at *4 (D.
16 Nev., Sept. 18, 2020) (in concluding that Petitioners lacked standing, stating “[e]ven if accepted
17 as true, Plaintiffs’ pleadings allude to vote dilution that is impermissibly generalized. The alleged
18 injuries are speculative as well, but their key defect is generality.”) (citation omitted); *Am. Civil*
19 *Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) (“[T]he risk of
20 vote dilution [is] speculative and, as such, [is] more akin to a generalized grievance about the
21 government than an injury in fact.”). Indeed, in April, the U.S. District Court for the District of
22 Nevada found no standing when confronted with a similar challenge to the Secretary’s plans for
23 the June Primary. *See Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2089813,
24 at * 5 (D. Nev. Apr. 30, 2020) (rejecting standing premised on theory that primary plan “will
25 place challengers must satisfy. Nevada imposed the “personal knowledge” requirement in 2007.
26 *See Nicholas Riley, Voter Challenges*, Brennan Center for Justice, available at
27 https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf (last
28 visited October 24, 2020).

1 lead to an increase in illegal votes thereby harming them as rightful voters by diluting the vote”);
2 *Paher v. Cegavske*, 457 F. Supp. 3d 919 (D. Nev. May 27, 2020) (no standing where “Petitioners
3 fail to show a nexus between the alleged violations and their claimed injury” because they “fail
4 to more than speculatively connect the specific conduct they challenge . . . and the claimed injury
5 [of] vote dilution”). Indeed, these specific litigants have argued vote dilution by fraud as a basis
6 for standing in several states including Nevada and have been rejected. *Way*, 2020 WL 6204477
7 at *11; *Boockvar*, 2020 WL 5997680 at *59; *Cegavske*, 2020 WL 5626974 at *7. Without an
8 injury to redress or the imminent threat of an injury, Petitioners lack standing. *See Fondo v.*
9 *State*, No. 65277, 2016 WL 207611, at *4 (Nev. Jan. 15, 2016) (finding appellant lacked
10 standing where he “failed to demonstrate that . . . a favorable ruling would redress any injury”
11 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992))).

12 Petitioners also lack standing to represent the interest of in-person voters, who they claim
13 are being treated disparately from mail voters. “The proposition that Petitioners must seek relief
14 that actually improves their position is a well-established principle.” *Townley v. Miller*, 722 F.3d
15 1128, 1134 (9th Cir. 2013) (holding plaintiff voters failed to establish standing where the
16 requested relief “would worsen the position of voters”). Further, Petitioners do not appear to ask
17 this Court to strike down challenge procedures for voters who vote in-person; they ask the Court
18 to *impose* them on mail voters. Making it harder for mail voters to vote, however, does not
19 redress any purported injury to in-person voters. Petitioners cite nothing to support their
20 proposition that, if there is an equal protection violation at hand, the remedy is to rewrite
21 Nevada’s election code to impose challenge procedures on voters who vote by mail, rather than
22 forbid the challenging of in-person voters. If, in fact, the challenge procedure imposes
23 unconstitutional burdens on in-person voters, then that is the proper remedy; it is not to impose
24 burdens on more voters.

25 Petitioners also ignore that, as an elections administration matter, it is not unusual for
26 states to subject voting in person and voting by mail to different procedures. Equal protection
27 does not demand the imposition of “mechanical compartments of law all exactly alike.” *Jackman*
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1 *v. Rosenbaum Co.*, 260 U.S. 22, 31, 43 S.Ct. 9, 67 L.Ed. 107 (1922). “[T]he Constitution is
2 sufficiently flexible to permit its requirements to be considered in relation to the ... contexts in
3 which they are invoked.” *Merchants Nat’l Bank of Mobile v. Dredge Gen. G. L. Gillespie*, 663
4 F.2d 1338, 1343 (5th Cir. 1981). If Petitioners’ theory were correct that the mere application of
5 different procedures to mail-in voting versus in-person voting established an equal protection
6 violation, than any number of differential requirements would offend the constitution. But this is
7 not the law. *See, e.g., Boockvar*, 2020 WL 5997680 at *52 (rejecting Trump Campaign’s and
8 Republican Committees’ equal protection claims that rested on differential treatment of in-
9 person ballots versus mail-in ballots and granting summary judgment for the Commonwealth of
10 Pennsylvania on those claims).

11 **B. Petitioners’ claim fails on the merits.**

12 Petitioners assert two different, half-formed theories of an equal protection violation: (1)
13 that the challenge statute treats in person voters and mail voters disparately, and (2) that the lack
14 of challenges will lead to vote dilution by fraud. Neither has merit.

15 **1. Petitioners have not established a disparate treatment claim.**

16 Even if mandamus were the proper avenue to remedy Petitioners’ claims, the claim fails
17 on the merits. As discussed *supra* at II.A, there is simply no precedent to support Petitioners’
18 assertion that a state is required to treat in person and mail voters exactly the same. In the equal-
19 protection context, the plaintiff “must present evidence that s/he has been treated differently from
20 persons who are similarly situated.” *Renchenski v. Williams*, 622 F.3d 315, 337 (3d Cir. 2010)
21 (cleaned up). In person voters and mail voters are not similarly situated. *See Nordlinger v. Hahn*,
22 505 U.S. 1, 10, 112 S.Ct. 2326, 2331, 120 L. Ed. 2d 1 (1992) (“The Equal Protection Clause does
23 not forbid classifications. It simply keeps governmental decisionmakers from treating differently
24 persons who are in all relevant respects alike.”); *Plyler v. Doe*, 457 U.S. 202, 216, 102 S.Ct.
25 2382, 2394, 72 L. Ed. 2d 786 (1982) (“[t]he Constitution does not require things which are
26 different in fact or opinion to be treated in law as though they were the same.”). Absentee ballots
27 have distinct procedural safeguards in place. For example, an absentee ballot will only be mailed
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1 to the registration address on file for the voter and each ballot is bar coded.⁴

2 And not just any differential treatment amounts to an equal protection violation.
3 Differences in treatment raise equal-protection concerns, and may necessitate heightened
4 scrutiny of governmental interests, only if they burden a fundamental right (such as the right to
5 vote) or involve a suspect classification based on a protected class. *See Obama for Am. v.*
6 *Husted*, 697 F.3d 423, 429 (6th Cir. 2012) (“If a plaintiff alleges only that a state treated him or
7 her differently than similarly situated voters, without a corresponding burden on the fundamental
8 right to vote, a straightforward rational basis standard of review should be used.”). Petitioners
9 have not alleged or offered proof that the challenge process burdens the right of voters to vote.
10 *See Boockvar*, 2020 WL 5997680, at *48 (concluding that Petitioners “scant evidence” of vote
11 dilution “demonstrate[d], at most, an increased risk of some election irregularities—which, as
12 many courts have held, does not impose a meaningful burden” on voters). Therefore, Nevada’s
13 challenge statute is subject to rational basis review. *Id.*; *Short v. Brown*, 893 F.3d 671, 679 (9th
14 Cir. 2018) (applying rational basis review “given that the burden [wa]s so slight” on voters); *see*
15 *also Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 205, 128 S. Ct. 1610, 1624-25, 1070
16 L. Ed. 2d 574, 574 (2008) (Scalia, J. concurring) (Petitioners “have to identify a burden before
17 we can weigh it.”). Under rational basis review, “[t]he distinctions drawn by a challenged
18 statute must bear some rational relationship to a legitimate state end and will be set aside as
19 violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit
20 of that goal.” *McDonald v. Bd. of Election Comm’rs of Chicago*, 394 U.S. 802, 809, 89 S.Ct.
21 1404, 1408 (1969). Nevada’s election code does not contemplate citizens acting as supervisors of
22 election officials, with good reason. Even as mere observers of the election process during this
23 Election, Petitioners have already been obstructive of the election process. Pet., Ex. 3 (Email
24 from Respondent Gloria’s counsel to the NV GOP’s counsel stating, “The observers have [been]

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26 ⁴ Nevada Secretary of State, *Facts v. Myths: 2020 Nevada General Election*, at 4, available at:
27 <https://www.nvsos.gov/sos/home/showdocument?id=8842>.

1 very disruptive to our operations, and we will continue to accommodate their presence as long as
2 possible.”). Therefore, Nevada’s challenge statute survives rational basis review.

3 **2. Petitioners have not established a vote dilution claim.**

4 To the extent that Petitioners rely on a theory of vote dilution by fraud to support this
5 claim, Pet. at 8-9 (“Even if this dissimilar treatment does not wholly prohibit any citizen’s free
6 exercise of the franchise, the dissimilar treatment does debase or dilute the right to vote of those
7 voters who choose to vote in person.”), it has been universally rejected. Vote dilution is a viable
8 basis for equal protection claims in certain contexts, such as when laws are crafted that
9 structurally devalue one community’s votes over another’s. *See, e.g., Republican Party of Pa. v.*
10 *Cortés*, 218 F. Supp. 3d 396, 406–07 (E.D. Pa. 2016); *see also Reynolds v. Sims*, 377 U.S. 533,
11 568, 84 S.Ct. 1362, 1385, 12 L. Ed. 2d 506 (1964) (“Simply stated, an individual’s right to vote
12 for state legislators is unconstitutionally impaired when its weight is in a substantial fashion
13 diluted when compared with votes of citizens living in other parts of the State.”). In these unique
14 cases, plaintiffs alleged that their votes are devalued as compared to similarly situated voters in
15 other parts of the state. *See Reynolds*, 377 U.S. at 567–68. Petitioners here, by contrast, have not
16 alleged an equal protection claim suggesting that the challenge statute more heavily weighs some
17 other group of votes over their own, and so they have failed at the most basic step of pleading an
18 equal protection claim.

19 Ultimately, “[t]he Constitution is not an election fraud statute.” *Minn. Voters All. v.*
20 *Ritchie*, 720 F.3d 1029, 1031 (8th Cir. 2013) (quoting *Bodine v. Elkhart Cty. Election Bd.*, 788
21 F.2d 1270, 1271 (7th Cir. 1986)). There is simply no authority for converting the vote dilution
22 line of cases into a weapon that voters may use to rewrite election codes based entirely on
23 unfounded and speculative fears of voter fraud. In fact, courts have routinely rejected such
24 efforts. *See Minn. Voters All.*, 720 F.3d at 1031–32 (affirming Rule 12(b)(6) dismissal of vote
25 dilution claim); *see also Cortés*, 218 F. Supp. 3d at 406–07 (rejecting claim of vote dilution
26 “based on speculation that fraudulent voters may be casting ballots elsewhere in the” state on
27 motion for preliminary injunction); *Boockvar*, 2020 WL 5997680 at *76 (entering judgment
28

1 against Petitioners’ claims based on vote dilution); *Donald J. Trump for President, Inc. v.*
2 *Bullock*, No. CV 20-66-H-DLC, 2020 WL 5810556, at *12 (D. Mont. Sept. 30, 2020) (“The
3 parties have focused their argument on whether a claim for vote dilution rooted in the United
4 States Constitution is cognizable. The Court finds such an analysis to be unnecessary because,
5 even assuming such a claim exists, Petitioners have not even attempted to introduce the requisite
6 evidence necessary to prevail.”). Because Petitioners have failed to allege facts that give rise to a
7 plausible claim for relief, or even alleged a cognizable legal theory, Petitioners vote dilution
8 claims should be dismissed.

9 If the Court could reach the merits of Petitioners’ vote dilution claim, Petitioners have not
10 put forth even a modicum of persuasive explanation—let alone evidence—to support their
11 conclusory allegation that absent their ability to challenge vote by mail ballots, Clark County’s
12 election will be replete with fraud. Petitioners have therefore failed to meet the “heavy” burden
13 to establish that this Court should take the extraordinary action they request. *Poulos*, 98 Nev. at
14 455; *see also Boockvar*, 2020 WL 5997680, at *48, *59 (in rejecting Petitioners’ equal
15 protection claims, finding that Petitioners’ evidence of vote dilution was “scant” and that
16 “plaintiffs relied on hypotheticals, rather than actual events.”). Absentee voters in no way have
17 any “advantage” over those who vote in person. In fact, voters who vote absentee are much more
18 likely to have their legitimately cast ballots rejected, in large part due to measures like signature
19 match laws. *See* Ex. A, (Secretary of State data showing that as of October 24, 2020, more than
20 4,500 ballots were already in need of signature cure).

21 **C. The balance of equities weighs strongly against granting mandamus relief.**

22 The Equal Protection Clause “commands that no State shall ‘deny to any person within
23 its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons
24 similarly situated should be treated alike.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473
25 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L. Ed. 2d 313 (1985) (quoting *Plyler v. Doe*, 457 U.S.
26 202, 216, 102 S.Ct. 2382, 2394, 72 L.Ed.2d 786 (1982)). In an election context, it prohibits a
27 state from imposing voting standards and procedures that vary from one county to another and
28

1 that burden some voters but not others. *Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir.
2 2012) (“The Equal Protection Clause applies when a state either classifies voters in disparate
3 way, or places restrictions on the right to vote.”). That is precisely what would occur if the Court
4 were to impose Petitioners’ requested relief on Clark County but impose no similar requirements
5 on, for example, other counties that Petitioners do not currently view as problematic with respect
6 to these issues. Petitioners have not brought this claim against any of Nevada’s other 16 counties.
7 Thus, if Petitioners’ requested relief were granted, only mail voters in Clark County would be
8 subject to a challenge process, *creating*, not alleviating an equal protection violation. This makes
9 the distinction between Petitioners’ Equal Protection Clause claim and the one that would occur
10 if this Court granted Petitioners’ relief an important one: Petitioners’ Equal Protection Clause
11 challenge does not implicate similarly situated voters, but their requested relief would burden
12 similarly situated voters. As explained, the Equal Protection Clause does not require that
13 differently situated people be treated the same, *Plyler*, 457 U.S. at 216, and in-person voters and
14 absentee voters are not similarly situated. *See supra* at II.B.1; *see also Nordlinger*, 505 U.S. at
15 10. However, if the Court imposed Petitioners’ requested relief, only mail voters in Clark County
16 would be subject to a challenge process, while a similarly situated mail voter from Washoe
17 County would not be subject to a challenge process. This is the clearest form of an equal
18 protection violation.

19 Moreover, as stated, Nevada’s election code does not contemplate citizens acting as
20 supervisors of election officials. Even as mere observers of the election process during this
21 Election, Clark County has stated that Petitioners have already been obstructive of the election
22 process. Petitioners assert this attack on Nevada’s challenge statute eight days before Election
23 Day, despite that it has existed for 60 years and despite not presenting or identifying an actual
24 voter they wish to challenge. “Mandamus is an extraordinary remedy,” *State ex rel. Dep’t of*
25 *Transp.*, 99 Nev. at 360, but this is not an extraordinary case. The Court should decline to
26 exercise its discretion to grant mandamus relief to Petitioners’ equal protection clause claim
27 against Nevada’s challenge statute.
28

1 **III. PETITIONERS' CLAIM THAT CLARK COUNTY'S USE OF ITS BALLOT**
2 **SORTING SYSTEM VIOLATES THE EQUAL PROTECTION CLAUSE DOES**
3 **NOT SUPPORT MANDAMUS.**

4 Petitioners lodge an equal protection challenge to Clark County's use of an Agilis
5 machine to sort ballots and to conduct a first pass in matching the signature on a ballot return
6 envelope with the signature on file in Clark County's records. Petitioners assert that all Nevada
7 counties, except for Clark County, visually match signatures on the ballot envelope to the
8 signature on file and that Clark County's use of a ballot sorting system (the "Agilis") violates the
9 Equal Protection Clause. Pet. at 8-9. Petitioners allege that "Gloria has intentionally lowered the
10 tolerance number [of the Agilis] in order to decrease the number of ballots rejected by the
11 machine for improper signatures." Pet. at 9. This claim fails at every conceivable level:
12 Petitioners claims are barred by laches; Petitioners lack standing to bring this claim; Petitioners
13 claim fails as a matter of law because it is improperly before the Court as a mandamus action and
14 lacks legal support; and Petitioners claim fails on the merits because they have failed to set forth
any evidence to support their baseless vote dilution concerns.

15 **A. Petitioners' claims are barred by laches and equitable estoppel.**

16 Petitioners' relief is barred by the equitable doctrine of laches and equitable estoppel. *See*
17 *Carson City v. Price*, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997) (recognizing that the
18 laches doctrine is an equitable doctrine that is invoked to deny relief to a party who worked to
19 the disadvantage of the other and caused a change in circumstances); *Nevada State Bank v.*
20 *Jamison Partnership*, 106 Nev. 792, 799, 801 P.2d 1377, 1382 (1990) ("Equitable estoppel
21 [prevents] a party from asserting legal rights that, in equity and good conscience, they should not
22 be allowed to assert because of their conduct."). Clark County began using the Agilis sorting
23 machine to conduct signature matching in the June 2020 Primary. Petitioners' counsel, the
24 Republican National Committee, and the Nevada GOP were all privy to detailed discovery
25 describing the Agilis machine in a prior litigation over Nevada's signature match laws, and even
26 sat in a deposition of Respondent Gloria as he described in detail how Clark County used the
27 Agilis machine and chose its calibration settings. Ex. B, Dep. Tr. J. Gloria in *Corona et al. v.*
28

1 *Cegavske et al.*, No. 20-OC-00064 1B, (Dist. Ct. Carson City 2020), at 43:14-44:13, 45:16-47:7,
2 68:7-69:19 (describing use and operation of Agilis machine in June primary); Ex. C, *Corona*
3 Interrog. Responses from J. Gloria, at 2 (“The process begins with the Agilis ballot sorting
4 machine”). Yet, Petitioners waited until 10 days before Election Day to bring an emergency
5 action that would fundamentally alter the way Clark County sorts ballots, threatening to delay
6 election results in Nevada’s largest county for weeks. Petitioners could have brought this claim
7 at an earlier juncture, particularly considering that they very recently brought similar challenges
8 to Nevada’s election laws in federal court. *Donald J. Trump for President et al., v. Ceagvske et*
9 *al.*, Case No: 2:20-cv-01445 (D. Nev. 2020). Clark County has been processing general election
10 ballots using the Agilis for more than a week. Changing its ballot sorting procedure only 8 days
11 before Election Day would severely burden the County.

12 **B. Petitioners lack standing to bring this claim.**

13 Petitioners lack standing to bring their Equal Protection Clause challenge against Clark
14 County’s use of its ballot sorting system. The only “injury” asserted by Petitioners is an
15 unsupported allegation that legitimate votes will be diluted by fraudulent votes because Clark
16 County’s use of the Agilis “mak[es] it harder for Clark County officials to catch improper or
17 fraudulent mail in ballots as opposed to the rest of Nevada.” Pet. at 9. However, courts have
18 routinely rejected unsupported vote dilution by fraud as a basis for standing. *See supra* at II.A.
19 To the extent Petitioners are bringing this claim on behalf of voters in other counties, they still do
20 not have standing because they have not sought relief that would redress those voters’ injuries.
21 *See supra* at II.A.

22 **C. A mandamus petition is improper for the relief sought.**

23 Mandamus relief is not an appropriate vehicle for this Court to micromanage election
24 officials down to the specific settings used on ballot sorting machinery. Mandamus relief is
25 generally unavailable to challenge discretionary actions. *Round Hill*, 97 Nev. 601, 604, 637 P.2d
26 534, 536 (1981) (general rule that mandamus may not be used to control a discretionary action).
27 Nevada’s election code grants a great deal of election administration power to county election
28

officials.⁵ In a court filing from earlier this year, the Secretary of State’s Office noted that “enforce[ment] of statutory election-integrity safeguards is entrusted to the discretion of state and local elections officials and law enforcement agencies.” Ex. D, Defs.’ Opp. to Mot. Prelim. Injunction in *Corona*, at 3. Therefore, the settings used on ballot sorting equipment is undoubtedly the kind of discretionary action that is inappropriate for mandamus review.

D. Petitioners’ claim fails on the merits.

Petitioners’ claim fails on the merits. Petitioners argue that Clark County’s use of an Agilis machine where other counties do not use one, and their calibration of the machine, violates the principles annunciated in *Bush v. Gore*, 531 U.S. 98, 104 (2000). Petitioners’ reliance on *Bush* is misplaced. In *Bush*, the U.S. Supreme Court considered “whether the use of standardless manual recounts” by some, but not all, Florida counties in the aftermath of the 2000 presidential election violated the Equal Protection Clause of the U.S. Constitution. 531 U.S. at 103. The Court specifically clarified that it was not deciding “whether local entities, in the exercise of their expertise, may develop different systems for implementing elections.” *Id.* at 109. Instead, it was addressing a situation where the counting of ballots lacked even “minimal procedural safeguards.” *Id.* Equal protection does not demand the imposition of “mechanical compartments of law all exactly alike.” *Jackman v. Rosenbaum Co.*, 260 U.S. 22, 31, 43 S.Ct. 9, 67 L.Ed. 107 (1922). “[F]ew (if any) electoral systems could survive constitutional scrutiny if the use of different voting mechanisms by counties offended the Equal Protection Clause.” *Boockvar*, 2020 WL 5997680, at *45 (citing *Bullock*, 2020 WL 5810556, at *14)). Clark County, the most populous county in Nevada, has an interest in processing ballots in a different manner

⁵ E.g., NRS 293.213 (power to establish mailing precincts); NRS 293.218 (power to recommend chairs of county election boards); NRS 293.323 (power to send and process absent ballots); NRS 293.325 (power to conduct signature matching and begin ballot cure process); NRS 293.343 (power to establish in-person polling locations); NRS 293.345 (power to mail regular and sample ballots to registered voters); NRS 293.2733 (power to, upon request, establish a polling place within the boundaries of a Native American reservation); NRS 293.3564 (power to establish permanent polling locations for early voting); NRS 244.164 (describing the election “powers and duties vested in and imposed upon the county clerk with respect to elections” that a county with a population of more than 100,000 can delegate to registrars of voters).

1 than other counties to ensure it is able to process the larger amount of ballots it will receive.
2 *Paher v. Cegavske*, No. 20-243, 2020 WL 2748301, at *9 (D. Nev. May 27, 2020) (“[I]t cannot
3 be contested that Clark County, which contains most of Nevada's population—and likewise
4 voters (69% of all registered voters)—is differently situated than other counties.”).

5 Petitioners do not put forth any evidence that the Agilis machine is inaccurate, or likely to
6 “mak[e] it harder for Clark County officials to catch improper or fraudulent mail ballots as
7 opposed to the rest of Nevada.” Pet. at 9. Instead, Clark County has calibrated the Agilis machine
8 to what it believes will cause Agilis to accept all obvious signature matches.⁶ So far, the Agilis
9 system has accepted roughly 30 percent of mail ballot return envelopes. That means the other 70
10 percent have gone through a manual verification process. And, ultimately, Clark County goes
11 through the very same process as any other county before rejecting a ballot for counting: “[i]f at
12 least two employees in the office of the county clerk believe there is a reasonable question of fact
13 as to whether the signature on the absent ballot matches the signature of the voter, the county
14 clerk shall contact the voter and ask the voter to confirm whether the signature on the absent
15 ballot belongs to the voter.” NRS 293.325. Petitioners have therefore failed to meet the “heavy”
16 burden to establish that this Court should take the extraordinary action they request. *Poulos*, 98
17 Nev. at 455. Petitioners may disagree with Clark County’s standards, but the Equal Protection
18 Clause does not provide an avenue for them to micromanage the County where they have not
19 provided any evidence that voters are being arbitrarily disenfranchised.

20 **IV. PETITIONERS ARE NOT ENTITLED TO A WRIT OF PROHIBITION.**

21 Petitioners’ alternative request for a writ of prohibition is equally flawed. The writ of
22 prohibition “arrests the proceedings of any tribunal, corporation, board, or person exercising

23
24 ⁶ Petitioners also take issue with how Clark County has calibrated the machine, arguing that
25 the County is not using the manufacturer’s recommended setting for Agilis. But there is no
26 recommended setting. Riley Snyder & Jackie Valley, *Judge denies temporary restraining order*
27 *request by Trump campaign, Nevada Republicans to stop Clark County mail vote counting*, The
28 Nevada Independent, Oct. 23, 2020, available at:
<https://thenevadaindependent.com/article/trump-campaign-nevada-republicans-sue-to-stop-clark-county-mail-vote-counting-until-proper-procedures-in-place>.

1 judicial functions, when such proceedings are without or in excess of the jurisdiction of the
2 tribunal, corporation, board, or person.” NRS 34.320. Unlike the writ of mandamus statute, the
3 plain text of the writ of prohibition statute limits its application to courts, as well as corporations,
4 boards, and persons “exercising judicial functions.” *See* NRS 34.150 (a writ of mandate may be
5 issued “to compel the performance of an act which the law especially enjoins as a duty resulting
6 from an office, trust or station”); *see also Goicoechea v. Fourth Judicial Dist. Court*, 96 Nev.
7 287, 289, 607 P.2d 1140, 1141 (1980) (holding that a writ of prohibition “will not issue if the
8 court sought to be restrained had jurisdiction to hear and determine the matter under
9 consideration.”). Intervenor-Respondents are unaware of any case where a Nevada court has
10 utilized writ of prohibition against a person not exercising judicial functions, like a county clerk
11 or the Secretary of State.⁷ It is therefore unavailable as relief in this action.

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23 ⁷ A quick review of the writ of prohibition cases makes it clear that the vast majority of these
24 cases are brought against lower courts. *See e.g., Sweat v. Eighth Judicial Dist. Court in & for*
25 *Cty. of Clark*, 133 Nev. 602, 603, 403 P.3d 353, 355 (2017) *Daane v. Eighth Judicial Dist. Court*
26 *of State ex rel. Cty. of Clark*, 127 Nev. 654, 654, 261 P.3d 1086, 1087 (2011); *Cote H. v. Eighth*
27 *Judicial Dist. Court ex rel. Cty. of Clark*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008); *State v.*
28 *Justice Court of Las Vegas Twp., Clark Cty.*, 112 Nev. 803, 805, 919 P.2d 401, 402 (1996);
Greene v. Eighth Judicial Dist. Court of Nevada ex rel. Cty. of Clark, 115 Nev. 391, 393, 990
P.2d 184, 185 (1999).

1 **CONCLUSION**

2 For these reasons, Intervenor-Respondents respectfully request that this Court deny
3 Petitioners' request for a writ of mandamus or prohibition.

4 **AFFIRMATION**

5 The undersigned does hereby affirm that the preceding document does not contain the
6 Social Security number of any person.

7 DATED this 26th day of October, 2020.

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9 **SCHULMAN & RABKIN, LLP**

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21 *Democratic Party*

22 * *Pro Hac Vice Pending*

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2020, a true and correct copy of the
**INTERVENOR-RESPONDENTS' ANSWER TO EMERGENCY PETITION FOR WRIT
OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION** was served upon
all parties via electronic mailing and via U.S. Mail, First Class postage prepaid, at Las Vegas,
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Index of Exhibits

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EXHIBIT A

EXHIBIT A



Office of Nevada Secretary of State Barbara K. Cegavske
2020 General Election Turnout

Updated 10/24/2020 8:10 PM

Signature Cure Information

Current Mail Ballots Needing Signature Cures (this is the <u>current</u> number of mail ballots needing a signature cure <u>today</u> - this number can go up or down each day)						Total Signatures Successfully Cured (this is a running total for the <u>entire</u> 2020 General Election and will increase through November 10th)					Total Returned Mail Ballots that Needed a Signature Cure (this is a running total for the <u>entire</u> 2020 General Election, NOT just the number of current signature cures needed)					
County	Total Ballots Needing Signature Cures	Percent of Ballots Returned	Dem Total	Rep Total	Other Total	Total Successful Cures	Percent of Ballots Needing Cures	Dem Total	Rep Total	Other Total	Total Ballots Needing Signature Cures	Percent of Ballots Returned	Dem Total	Rep Total	Other Total	County
Carson City	87	0.99%	36	26	25	62	41.61%	27	14	21	149	1.70%	63	40	46	Carson City
Churchill	59	2.03%	14	24	21	38	39.18%	11	12	15	97	3.34%	25	36	36	Churchill
Clark	1,361	0.58%	636	303	422	1,840	57.45%	1,041	309	490	3,203	1.37%	1,678	612	913	Clark
Douglas	126	1.12%	28	45	53	82	39.42%	26	26	30	208	1.85%	54	71	83	Douglas
Elko	24	0.68%	8	8	8	18	42.86%	5	7	6	42	1.20%	13	15	14	Elko
Esmeralda	-	0.00%	-	-	-	-	0.00%	-	-	-	-	0.00%	-	-	-	Esmeralda
Eureka	1	0.49%	-	-	1	-	0.00%	-	-	-	1	0.49%	-	-	1	Eureka
Humboldt	16	1.51%	6	7	3	-	0.00%	-	-	-	16	1.51%	6	7	3	Humboldt
Lander	1	0.20%	1	-	-	-	0.00%	-	-	-	1	0.20%	1	-	-	Lander
Lincoln	1	0.19%	-	-	1	-	0.00%	-	-	-	1	0.19%	-	-	1	Lincoln
Lyon	85	1.05%	23	22	40	20	19.05%	11	5	4	105	1.29%	34	27	44	Lyon
Mineral	1	0.18%	1	-	-	1	33.33%	-	1	-	3	0.53%	1	2	-	Mineral
Nye	41	0.51%	11	21	9	24	36.92%	8	14	2	65	0.81%	19	35	11	Nye
Pershing	2	0.34%	2	-	-	1	33.33%	-	1	-	3	0.51%	2	1	-	Pershing
Storey	3	0.41%	1	-	2	6	66.67%	2	2	2	9	1.22%	3	2	4	Storey
Washoe	1,135	1.37%	502	308	325	11	1.55%	2	1	8	711	0.86%	341	170	200	Washoe
White Pine	12	1.01%	4	7	1	3	20.00%	1	2	-	15	1.27%	5	9	1	White Pine
Statewide	2,955	0.81%	1,273	771	911	2,106	71.27%	1,134	394	578	4,629	1.27%	2,245	1,027	1,357	Statewide
Percent of Total Needing Signature Cure						Percent of Total Successful Cures					Percent of Total Needing Signature Cure					
43.08%						53.85%					48.50%					
26.09%						18.71%					22.19%					
30.83%						27.45%					29.32%					

EXHIBIT B

EXHIBIT B

Corona, et al. vs Cegavske, et al.

Recorded Video Conference Deposition of

JOSEPH P. GLORIA

July 24, 2020



888.832.0050

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FIRST JUDICIAL DISTRICT COURT

CARSON CITY, NEVADA

DANIEL CORONA, DARIN MAINS, BRIAN
MELENDEZ, TERESA MELENDEZ, OMAR
ABDUL-RAHIM, DALE AULT, LYNN
JOHN, GENE ROBERSON, LORENZITA
SANTOS, NEVADA STATE DEMOCRATIC
PARTY, DNC SERVICES
CORPORATION/DEMOCRATIC
NATIONAL COMMITTEE, DCCC,
PRIORITIES USA, and THE NATIVE
AMERICAN CAUCUS OF THE NEVADA
STATE DEMOCRATIC PARTY,

Plaintiffs,

vs.

CASE NO.
20 OC 00064 1B

BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of
State, JOSEPH GLORIA, in his
official capacity as Registrar
of Voters for Clark County, Nevada,
///

RECORDED VIDEO CONFERENCE DEPOSITION

OF JOSEPH P. GLORIA

on Friday, July 24, 2020

at 8:06 a.m.

Reported by: Denise R. Kelly, CCR #252, RPR

<p>1 DEANNA SPIKULA, in her official 2 capacity as Registrar of Voters 3 for Washoe County, Nevada, 4 KRISTINE JAKEMAN, in her official 5 capacity as the Elko County Clerk, 6 and AARON FORD, in his official 7 capacity as the Attorney General 8 of the State of Nevada, 9 10 Defendants, 11 12 and 13 14 REPUBLICAN NATIONAL COMMITTEE 15 and NEVADA REPUBLICAN PARTY, 16 17 Intervenor-Defendants. 18 19 _____/ 20 21 22 23 24 25</p>	<p>page 2</p> <p>1 APPEARANCES (CONTINUED) 2 (All appearances via video conference): 3 4 For Defendant Deanna Spikula: 5 HERBERT B. KAPLAN, ESQ. 6 WASHOE COUNTY DISTRICT ATTORNEY 7 DEPUTY DISTRICT 8 1 South Sierra Street 9 Reno, NV 89520 10 775.337.5700 11 hkaplan@da.washoecounty.us 12 For Defendant Kristine Jakeman: 13 RAND GREENBURG, ESQ. 14 ELKO COUNTY DISTRICT ATTORNEYS OFFICE 15 540 Court Street 16 2nd Floor 17 Elko, Nevada 89801 18 775.738-3101 19 rgreenburg@elkocountynv.net 20 For Intervenor-Defendants Republican National 21 Committee and Nevada Republican Party: 22 23 BRIAN R. HARDY, ESQ. 24 MARQUIS AURBACH COFFING 25 10001 Park Run Drive Las Vegas, Nevada 89145 702.382.0711 bhardy@maclaw.com Also present: ANDY MORTENSEN, VIDEOGRAPHER/TECHNICIAN</p> <p>page 4</p>
<p>1 APPEARANCES 2 (All appearances via video conference): 3 4 For the Plaintiffs: 5 JONATHAN P. HAWLEY, ESQ. 6 ABHA KHANNA, ESQ. 7 STEVEN BEALE, ESQ. 8 PAIGE L. WHIDBEE, ESQ. 9 PERKINS COIE LLP 10 1201 Third Avenue 11 Suite 4900 12 Seattle, Washington 98101 13 206.359.8000 14 jhawley@perkinscoie.com 15 akhanna@perkinscoie.com 16 sbeale@perkinscoie.com 17 pwhidbee@perkinscoie.com 18 COURTNEY A. ELGART, ESQ. 19 PERKINS COIE LLP 20 700 Thirteenth Street NW 21 Suite 800 22 Washington, D.C. 20005 23 202.654.6200 24 celgart@perkinscoie.com 25 For Defendants Barbara Cegavske and Aaron Ford: GREGORY ZUNINO, ESQ. OFFICE OF THE ATTORNEY GENERAL 100 North Carson Street Carson City, Nevada 89701 775.684.1108 gzunino@ag.nv.gov For Defendant Joseph Gloria: MARY-ANNE MILLER, ESQ. OFFICE OF THE DISTRICT ATTORNEY, CIVIL DIVISION 500 South Grand Central Parkway Suite 5075 Las Vegas, Nevada 89106 702.455.4761 mary-anne.miller@clarkcountynv.com ///</p> <p>page 3</p>	<p>1 INDEX 2 3 WITNESS PAGE 4 JOSEPH P. GLORIA 5 Examination by Mr. Hawley 9 6 Examination by Ms. Miller 186 7 Examination Mr. Hardy 187 8 Further Examination by Ms. Miller 188 9 Further Examination Mr. Hardy 189 10 Examination by Mr. Zunino 190 11 Further Examination by Mr. Hawley 194 12 13 INFORMATION TO BE SUPPLIED 14 None 15 16 EXHIBITS 17 DESCRIPTION PAGE 18 Exhibit 1 - Notice of Taking Deposition 19 of Joseph Gloria, in his 20 Individual Capacity 13 21 Exhibit 2 - Notice of Taking Deposition 22 of Joseph Gloria in his 23 Official Capacity 14 24 25 ///</p> <p>page 5</p>

<div>page 6</div> <div>EXHIBITS (CONTINUED)</div> <div>DESCRIPTION</div> <div>PAGE</div>	<div>page 8</div> <div>FRIDAY, JULY 24, 2020,</div> <div>8:06 A.M.</div> <div>* * * * *</div>
<div>Exhibit 3 - Absentee an Mail Ballot</div> <div>Signature Verification</div> <div>Policy</div> <div>CORONA0000029-39</div> <div>Exhibit 4 - Assembly Bill No. 345</div> <div>Exhibit 5 - NRS 293.333</div> <div>Exhibit 6 - NRS 293.325</div> <div>Exhibit 7 - Scanning Procedures</div> <div>CORONA0000467-471</div> <div>Exhibit 8 - Clark County Responses</div> <div>CORONA0000472-474</div> <div>Exhibit 9 - Letter from Justin LoPresto,</div> <div>Runbeck, 7/13/20</div> <div>CORONA0000459-460</div> <div>Exhibit 10 - Counting Board Instructions</div> <div>CORONA0000303-346</div> <div>Exhibit 11 - Letter from Joseph Garcia,</div> <div>Signature Cure</div> <div>CORONA0000465-466</div> <div>Exhibit 12 - Roberson Mail Ballot Return</div> <div>Envelop Missing or Discrepant</div> <div>Signature</div> <div>CORONA0001336-1337</div>	<div>THE VIDEOGRAPHER: This begins the media</div> <div>of the videotaped deposition of Joseph Gloria in his</div> <div>individual capacity and in his official capacity as</div> <div>Registrar of Voters for Clark County, Nevada, taken by</div> <div>counsel for the plaintiffs in the matter of Daniel</div> <div>Corona, et al., versus Barbara Cegavske, in her</div> <div>official capacity as Nevada Secretary of State,</div> <div>et al., in the First Judicial District Court in and</div> <div>for Carson City, State of Nevada, Case No.</div> <div>20 OC 00064 1B.</div> <div>This deposition is being conducted by Zoom</div> <div>and recorded in Irving, Texas on July 24th, 2020. The</div> <div>time on the video screen is 8:06 a.m.</div> <div>My name is Andy Mortensen. I am the legal</div> <div>videographer from Digital Evidence Group.</div> <div>The court reporter is Denise Kelly in</div> <div>association with Digital Evidence Group.</div> <div>Due to the nature of remote reporting,</div> <div>please pause briefly before speaking to ensure all</div> <div>parties are heard completely.</div> <div>Counsel will be noted on the stenographic</div> <div>record.</div>
<div>page 7</div> <div>EXHIBITS (CONTINUED)</div> <div>DESCRIPTION</div> <div>PAGE</div>	<div>page 9</div> <div>Will the court reporter please swear in</div> <div>the witness.</div>
<div>Exhibit 13 - Excel Document - 20P Mail</div> <div>Ballot Signature Cured</div> <div>Exhibit 14 - NRS 293.353</div> <div>Exhibit 15 - NRS 293.330</div> <div>Exhibit 16 - NRS 293.316</div> <div>Exhibit 17 - NRS 293.3165</div> <div>Exhibit 18 - Email, 6/10/20</div> <div>CORONA0001636</div> <div>Letter, 6/10/20 with</div> <div>Attachments</div> <div>CORONA000167-1644</div> <div>Emails, 7/17/20</div> <div>CORONA0000457-458</div>	<div>JOSEPH P. GLORIA,</div> <div>having been first duly sworn, was</div> <div>examined and testified as follows:</div> <div>COURT REPORTER: Thank you.</div> <div>Counsel may proceed.</div> <div>EXAMINATION</div> <div>BY MR. HAWLEY:</div> <div>Q. Good morning, Mr. Gloria. I'm Jonathan</div> <div>Hawley, and I represent the plaintiffs in this case.</div> <div>A. Good morning.</div> <div>Q. Good morning.</div> <div>To get started, can I ask you to please</div> <div>state your full name for the record.</div> <div>A. Joseph Paul Gloria.</div> <div>Q. Thank you.</div> <div>And your address, please?</div> <div>A. Home or work?</div> <div>Q. It looks like you are at work, so work</div> <div>address is fine.</div> <div>A. 965 Trade Drive, North Las Vegas, 89030.</div>

<p style="text-align: right;">page 10</p> <p>1 Q. Terrific.</p> <p>2 Have you ever been deposed before,</p> <p>3 Mr. Gloria?</p> <p>4 A. Yes, I have.</p> <p>5 Q. How many times?</p> <p>6 A. Maybe three. Three, I would say.</p> <p>7 Q. Okay. And in what cases?</p> <p>8 A. Tough questions. I did one related to --</p> <p>9 my God, going back. Golly, what was that? Me and</p> <p>10 Kathy and Renna (phonetic) had to do it.</p> <p>11 MS. MILLER: It was voter fraud.</p> <p>12 THE WITNESS: Voter fraud. Yes, it was a</p> <p>13 voter fraud case a couple years back, I believe.</p> <p>14 And I was also deposed for a personnel</p> <p>15 issue within the county.</p> <p>16 BY MR. HAWLEY:</p> <p>17 Q. Okay. And do you know approximately when</p> <p>18 those other depositions took place?</p> <p>19 A. I believe the personnel issues were in</p> <p>20 2017. And the voter fraud I believe was in 2018.</p> <p>21 Q. Can you tell me a little more about the</p> <p>22 voter fraud case you were deposed in?</p> <p>23 A. We were involved in a case where I believe</p> <p>24 somebody was being prosecuted for voting twice, I</p> <p>25 think the case was, I believe it was.</p>	<p style="text-align: right;">page 12</p> <p>1 that is that I'll ask you that if I've asked a</p> <p>2 question that you answer it before we take a break so</p> <p>3 there is no break in the record.</p> <p>4 Does that sound good?</p> <p>5 A. Yes, it does.</p> <p>6 Q. All right. And as Mr. Mortensen said,</p> <p>7 this deposition is being recorded. The court reporter</p> <p>8 will be recording my questions and your answers and</p> <p>9 she can only record verbal answers. So to the extent</p> <p>10 you can, please do your best to answer with an audible</p> <p>11 "yes" or "no" or whatever the answer might be.</p> <p>12 Sound good?</p> <p>13 A. Yes.</p> <p>14 Q. All right. And would you please wait</p> <p>15 until I finish asking my questions before you start</p> <p>16 answering. And then I'll do my best to make sure you</p> <p>17 are finished answering before I move on to my next</p> <p>18 question.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Excellent.</p> <p>21 What did you do to prepare for today's</p> <p>22 deposition?</p> <p>23 A. I met with my DA representative Mary-Anne</p> <p>24 Miller, and read through documents that I was</p> <p>25 provided.</p>
<p style="text-align: right;">page 11</p> <p>1 Q. Do you remember how that case resolved?</p> <p>2 A. I do not, I'm sorry.</p> <p>3 Q. No problem.</p> <p>4 Is this your first time being deposed over</p> <p>5 a web platform like Zoom?</p> <p>6 A. Yes, it is.</p> <p>7 Q. Okay. So even though you have been</p> <p>8 deposed before, we're going to start just by going</p> <p>9 over a few ground rules just to make sure we are all</p> <p>10 on the same page and we all understand the technology.</p> <p>11 Does that sound fair?</p> <p>12 A. Yes, it does.</p> <p>13 Q. All right. First thing, if at any point</p> <p>14 you do not understand the question that I ask you,</p> <p>15 will you please let me know.</p> <p>16 A. Certainly.</p> <p>17 Q. Okay. I will do my best to rephrase and</p> <p>18 otherwise clarify anything you need. And if you do</p> <p>19 answer a question, I will assume that you did</p> <p>20 understand it; is that fair?</p> <p>21 A. That's fair.</p> <p>22 Q. Okay. If at any time you would like to</p> <p>23 take a break today, please just let me know, and we</p> <p>24 will find a good place to take a pause and take a few</p> <p>25 minutes to go off the record. The one exception to</p>	<p style="text-align: right;">page 13</p> <p>1 Q. What documents did you look over?</p> <p>2 A. I went through the case document and some</p> <p>3 questions that were provided.</p> <p>4 Q. Other than your counsel, did you meet with</p> <p>5 anyone else to prepare for today's deposition?</p> <p>6 A. No, I did not.</p> <p>7 Q. Okay. Have you discussed your deposition</p> <p>8 with anyone else in your office?</p> <p>9 A. No, I did not.</p> <p>10 Q. Okay. Have you discussed your deposition</p> <p>11 with representatives of any of the other clerk or</p> <p>12 registrars' offices in Nevada?</p> <p>13 A. No, I did not.</p> <p>14 Q. Okay. And is there anyone else in the</p> <p>15 room with you today?</p> <p>16 A. Mary-Anne Miller, my DA representative.</p> <p>17 Q. Okay.</p> <p>18 MR. HAWLEY: Mr. Mortensen, could I ask</p> <p>19 you to please pull up Tab B, as in Bravo, and mark it</p> <p>20 as Exhibit 1.</p> <p>21 (Gloria Exhibit 1, marked for identification.)</p> <p>22 BY MR. HAWLEY:</p> <p>23 Q. Mr. Gloria, this is your individual</p> <p>24 deposition notice. Do you recognize this document?</p> <p>25 A. Yes, I do.</p>

<p style="text-align: right;">page 14</p> <p>1 Q. Okay. Excellent.</p> <p>2 MR. HAWLEY: Can we please scroll down to</p> <p>3 page 2, line 24.</p> <p>4 BY MR. HAWLEY:</p> <p>5 Q. All right. Mr. Gloria, do you see where</p> <p>6 it says that we will:</p> <p>7 "...take the deposition of Joseph</p> <p>8 Gloria"?</p> <p>9 A. Yes. Line 25.</p> <p>10 Q. Excellent.</p> <p>11 A. I gotcha.</p> <p>12 Q. Very good. Thank you.</p> <p>13 Are you prepared to testify in your</p> <p>14 individual capacity today?</p> <p>15 A. As a Registrar of Voters, yes, I am.</p> <p>16 Q. Okay. Thank you.</p> <p>17 MR. HAWLEY: Mr. Mortensen, can you please</p> <p>18 pull up Tab A, as in Alpha, and mark it as Exhibit 2.</p> <p>19 (Gloria Exhibit 2, marked for identification.)</p> <p>20 BY MR. HAWLEY:</p> <p>21 Q. This is the deposition notice of your</p> <p>22 official capacity.</p> <p>23 MR. HAWLEY: Mr. Mortensen, could you</p> <p>24 please scroll down to page 2.</p> <p>25 Excellent.</p>	<p style="text-align: right;">page 16</p> <p>1 A. Yes, I am.</p> <p>2 Q. All right. And if you are unable to</p> <p>3 answer any questions in your official capacity as</p> <p>4 Clark County Registrar, would you please let me know?</p> <p>5 A. Yes, I will.</p> <p>6 Q. All right. Very good.</p> <p>7 MR. HAWLEY: We can take down Exhibit 2.</p> <p>8 BY MR. HAWLEY:</p> <p>9 Q. Okay, Mr. Gloria, we are going to start</p> <p>10 with some background about yourself and your office.</p> <p>11 Just for the record, what is your current</p> <p>12 job title?</p> <p>13 A. Registrar of Voters for Clark County,</p> <p>14 Nevada.</p> <p>15 Q. And how long have you been Registrar of</p> <p>16 Voters?</p> <p>17 A. Since June of 2013.</p> <p>18 Q. Can you tell me about your educational</p> <p>19 background since high school?</p> <p>20 A. I have an undergraduate degree in business</p> <p>21 administration and a Master's degree in public</p> <p>22 administration.</p> <p>23 Q. Where did you receive your BA in business</p> <p>24 administration?</p> <p>25 A. University of Phoenix.</p>
<p style="text-align: right;">page 15</p> <p>1 BY MR. HAWLEY:</p> <p>2 Q. Mr. Gloria, do you recognize this notice?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Did you review this document in</p> <p>5 preparation for today's deposition?</p> <p>6 A. I briefly reviewed it.</p> <p>7 Q. Are you prepared to testify today in your</p> <p>8 official capacity as Registrar of Voters for Clark</p> <p>9 County?</p> <p>10 A. Yes, I am.</p> <p>11 Q. Great.</p> <p>12 MR. HAWLEY: Mr. Mortensen, can you please</p> <p>13 pull up pages 6 and 7.</p> <p>14 BY MR. HAWLEY:</p> <p>15 Q. Mr. Gloria, these are the topics that we</p> <p>16 asked you to prepare to discuss during today's</p> <p>17 deposition. Have you reviewed these topics?</p> <p>18 A. Yes, I have.</p> <p>19 Q. Would you like an opportunity to review</p> <p>20 them again now?</p> <p>21 A. No, I believe I'm prepared.</p> <p>22 Q. Okay. Excellent.</p> <p>23 You are prepared to testify today</p> <p>24 regarding these topics in your official capacity as</p> <p>25 Registrar?</p>	<p style="text-align: right;">page 17</p> <p>1 Q. And your MPA?</p> <p>2 A. UNLV. Go Rebs.</p> <p>3 Q. Excellent.</p> <p>4 Do you hold any other advanced degrees?</p> <p>5 A. No, I do not.</p> <p>6 Q. Do you hold any professional licenses or</p> <p>7 certifications?</p> <p>8 A. With the Election Center, I'm a Certified</p> <p>9 Election Registration Administrator.</p> <p>10 Q. Okay. And what did you do before becoming</p> <p>11 Clark County Registrar?</p> <p>12 A. I've worked in elections my entire</p> <p>13 professional life. Before that, I managed the</p> <p>14 Warehouse Division.</p> <p>15 Q. The Warehouse Division For the Clark</p> <p>16 County Registrar?</p> <p>17 A. That is correct.</p> <p>18 Q. And you did that immediately before</p> <p>19 becoming Registrar?</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. What did you do before managing the</p> <p>22 warehouse?</p> <p>23 A. I was a Voting Machine Technician. There</p> <p>24 was a progression. But I started as a temporary</p> <p>25 employee in elections, went to voting machine</p>

<p style="text-align: right;">page 18</p> <p>1 technician, became the senior tech, became a warehouse 2 manager, and then they upgraded my title to Election 3 Operations Supervisor before I became the Registrar. 4 Q. Okay. So temporary employee of the 5 Registrar, that was your first position with the 6 Registrar's office? 7 A. My apologies. I started my election 8 career in New Mexico. 9 Q. Oh, I see. Thank you. 10 A. And in New Mexico I saw the posting for a 11 voting machine technician in Clark County, applied, 12 and got the job. So I was never a temporary in Clark 13 County. 14 Q. I understand. When did you apply for and 15 receive the voting technician job? 16 A. That was in 1995. 17 Q. Okay. So you have been with the Clark 18 County Registrar's office since 1995? 19 A. That is correct. 20 Q. Okay, thank you. 21 Let's talk about Clark County, Mr. Gloria. 22 How many registered voters live in Clark County? 23 A. Approximately 1.1 million. 24 Q. Okay. And how many people do you 25 supervise as Registrar?</p>	<p style="text-align: right;">page 20</p> <p>1 responsibilities as Clark County Registrar? 2 A. To manage the election process for Clark 3 County from the federal to the local level. 4 Q. Other than managing the elections, do you 5 have any other responsibilities as Registrar? 6 A. As a Registrar, that's my primary 7 responsibility. It's completely focused on elections. 8 Q. Okay. Is it fair to say that, that 9 100 percent, or close to 100 percent of your time is 10 spent on elections then? 11 A. That is correct. 12 Q. Okay. So you have 1.1 million voters and 13 38 full-time staff. So I have to ask, what is the 14 pace in your office during election season? 15 A. Frantic. 16 Q. Frantic, okay. Tell me more about that. 17 A. Well, with any election process there are 18 many things that we have to manage from the warehouse, 19 to logistical support, to mail, to in-person voting, 20 for early voting, Election Day, also dealing with the 21 general public. So we are spread pretty thin. We do 22 the best with what we have. 23 Q. Certainly. I imagine it's oftentimes 24 stressful? 25 A. Yes, I'm certain I've taken many years off</p>
<p style="text-align: right;">page 19</p> <p>1 A. 38 at this time, full-time employees. 2 Q. Is there anyone else other than those 3 38 individuals on your staff at the Registrar's 4 office? 5 A. We have a large number of temporary 6 employees that come in to help support elections, so 7 yes. 8 Q. I assume that these temporary employees 9 are seasonal in the sense that they are not always 10 volunteering with your office, but maybe you see more 11 in election years than nonelection years? 12 A. That is correct. 13 Q. So this is an election year right now. 14 How many temporary employees do you have on your staff 15 right now? 16 A. The temporary staff ranges from 80 to 150. 17 Q. So say 80 in a nonelection year and 150 in 18 an election year? 19 A. No. It's a little more complicated than 20 that. In the odd years we used to support municipal 21 elections, which is a much smaller scale. We will no 22 longer be supporting those because they've moved to 23 even years. 24 Q. I understand. Thank you. 25 Generally speaking, what are your</p>	<p style="text-align: right;">page 21</p> <p>1 my life in this profession. 2 Q. Well, thank you. And thanks to your staff 3 as well for their excellent and important work. 4 Are you consistently busy in your office 5 including in nonelection years or does your level of 6 busyness change with what is going on? 7 A. It definitely changes. In election year 8 we are nonstop from the start of the day to the end. 9 And we start working longer hours, weekends, holidays. 10 In an off-election year, we focus on the 11 legislative session and trying to make improvements in 12 testing equipment, looking at our processes to see 13 where we can improve, and look at the possibility of 14 increasing efficiency through IT processes. 15 Q. Thank you. 16 When you said, I think you said assisting 17 with the legislative session, what does that mean 18 exactly? 19 A. Nevada meets every other year in the odd 20 years in Carson City. And so anything related to 21 election law, I'm usually involved with the review of 22 those bill drafts and participating by testifying and 23 providing my feedback. 24 Q. I see. 25 So during the legislative session, you</p>

<p>page 22</p> <p>1 serve something of an advisory capacity to help the 2 legislature with their election reforms and bills? 3 A. That's correct in respect to Clark County 4 and how it affects us. 5 Q. Okay. Thank you. 6 Can you tell me a little bit more about 7 the different roles your office plays in administering 8 elections? 9 A. Well, there are several divisions. Our IT 10 staff that supports information technology for the 11 entire department, our Mail Ballot Division, our 12 Registration Division, our Recruiting and Training 13 Division, Administration, and the Warehouse which 14 supports the voting equipment. And we have staff that 15 year-round manages the maintenance and upkeep of all 16 of the voting equipment that we use for in-person 17 voting. 18 Q. Of those six divisions that you just 19 mentioned, which is the largest? 20 A. Staffwise? 21 Q. Yes. 22 A. Registration. 23 Q. Tell me about the Mail Ballot Division. 24 How many full-time employees work in that division? 25 A. We currently have a vacancy in that</p>	<p>page 24</p> <p>1 Secretary of State and her office in administering 2 elections? 3 A. The Secretary in the State of Nevada is 4 the Chief Election Officer. So they work with us to 5 be sure that we are following the letter of the law as 6 far as NRS. They provide training. They lay out 7 mandates according to the direction of the Secretary 8 and her policies and where they want to move the state 9 as far as -- well, for instance, with registration, 10 top down or bottom up model. They make those types of 11 decisions at the state level where we have to follow 12 the directive from the State on how exactly we carry 13 out policy in the counties. 14 Q. So when you say you have to follow the 15 mandates from the Secretary of State's office, does 16 the Secretary of State offer binding guidance on your 17 office? 18 A. As long as it's spelled out in the law, we 19 have to follow NRS. So they have to develop that 20 administrative code. So when the law isn't specific 21 enough to tell us how to handle certain details, then 22 they draft the administrative code, we review it, and 23 then we carry out the election using the 24 administrative code. 25 But as long as it follows what the law</p>
<p>page 23</p> <p>1 division. But when it's fully staffed, we have five 2 permanent staff members in the mail now. 3 Q. Okay. Can you tell me about some of the 4 other public officials in Nevada who also have 5 significant responsibility administering elections? 6 A. Can you give me a little more -- exactly 7 what do you want to know about? 8 Q. Certainly. 9 So you're the Registrar of Clark County. 10 I assume that the Registrars and clerks in other 11 counties play a similar role in administering 12 elections? 13 A. Yes, without a doubt. Washoe and Clark 14 County are unique in that we have a Registrar; 15 whereas, the other 15 have elected officials that have 16 other duties other than elections that they support. 17 Clark County is unique in that we are the 18 largest county by far. We support 75 to 80 percent of 19 the total number of voters in the State of Nevada. 20 Q. Excellent. 21 At the statewide level, which public 22 officials have the most direct role in administering 23 elections? 24 A. That would be the Secretary of State. 25 Q. Okay. And how do you work with the</p>	<p>page 25</p> <p>1 dictates that we need to do to support elections, yes, 2 we have to follow what the Secretary instructs. 3 Q. Okay. And the administrative code is 4 binding on you and your office? 5 A. That is correct. 6 Q. Okay. Does the Secretary of State ever 7 offer discretionary guidance to you and the other 8 counties? 9 A. Can you be more specific? Are you asking 10 if they make a suggestion as to how they think things 11 should be handled that aren't spelled out -- 12 Q. Exactly. 13 A. -- or -- 14 Q. Yes. Okay. Would you say more often that 15 the guidance provided by the Secretary of State's 16 office is binding or discretionary or optional? 17 A. Most of what they pass on to the counties 18 is prescribed by the law. 19 Q. Okay. 20 A. A large percentage of it, yes. 21 Q. Okay. 22 MR. HAWLEY: Mr. Mortensen, can we please 23 pull up Tab C as in Charlie and mark it as Exhibit 3. 24 (Gloria Exhibit 3, marked for identification.) 25 ///</p>

<p>page 26</p> <p>1 BY MR. HAWLEY:</p> <p>2 Q. So this is the Absentee and Mail Ballot</p> <p>3 Signature Verification Policy issued by the Nevada</p> <p>4 Secretary of State.</p> <p>5 Mr. Gloria, have you seen this document?</p> <p>6 A. Yes, I have seen the draft policy that</p> <p>7 they put out.</p> <p>8 Q. Okay. So this -- is this a copy of the</p> <p>9 draft policy?</p> <p>10 A. Based on the cover, I would say yes.</p> <p>11 Q. Has the Secretary of State's office issued</p> <p>12 a finalized version of this document?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. Do you have any indication when that --</p> <p>15 when you will receive the finalized version?</p> <p>16 A. I do not.</p> <p>17 Q. Have you implemented any of the</p> <p>18 recommendations contained in this draft version?</p> <p>19 A. Many of the policies that they describe</p> <p>20 there were already in place, and so we did not change</p> <p>21 our policy based on the document. We did review it.</p> <p>22 Q. Okay. So just to clarify. So after</p> <p>23 reviewing the document, there are no, there are no</p> <p>24 changes that your office would need to make to be in</p> <p>25 compliance with the, the recommendations and</p>	<p>page 28</p> <p>1 BY MR. HAWLEY:</p> <p>2 Q. This is Assembly Bill 345, Mr. Gloria.</p> <p>3 Are you familiar with this document?</p> <p>4 A. Yes, I am.</p> <p>5 Q. Did you play a role in advising the state</p> <p>6 legislature as they enacted Assembly Bill 345?</p> <p>7 A. I provided feedback based on its impact on</p> <p>8 Clark County, yes.</p> <p>9 Q. Did you provide feedback on specific areas</p> <p>10 of the law?</p> <p>11 A. As you reviewed all of the, the language,</p> <p>12 in several sections we provided feedback, yes.</p> <p>13 Q. Did you provide any feedback on any</p> <p>14 provisions of the law relating to signature matching?</p> <p>15 A. You know, I would have to review it in</p> <p>16 more detail than just to say off the cuff. There were</p> <p>17 many sections, I believe the bill was 116 pages long</p> <p>18 and it was in 2019.</p> <p>19 Q. It --</p> <p>20 A. But I know that I reviewed the entire</p> <p>21 document and spent quite a bit of time providing</p> <p>22 review on what we could and could not support</p> <p>23 logistically in Clark County.</p> <p>24 Q. Would you say there were several things in</p> <p>25 the bill as it was originally written that you would</p>
<p>page 27</p> <p>1 regulations in this document; is that correct?</p> <p>2 A. That would be correct.</p> <p>3 Q. Okay. Thank you.</p> <p>4 MR. HAWLEY: Could we please scroll down</p> <p>5 to page 5, Mr. Mortensen, and zoom in on Policy</p> <p>6 Directive No. 1.</p> <p>7 Excellent.</p> <p>8 BY MR. HAWLEY:</p> <p>9 Q. So this Procedure 9.1. Do you see where</p> <p>10 it says that, Mr. Gloria?</p> <p>11 A. I do.</p> <p>12 Q. Do you have Procedure 9.1?</p> <p>13 A. Not in front of me.</p> <p>14 Q. But you are familiar with Procedure 9.1?</p> <p>15 A. I have reviewed the document, yes.</p> <p>16 Q. Okay. Thank you.</p> <p>17 So that document has been issued by the</p> <p>18 Secretary of State?</p> <p>19 A. The draft document was shared with all</p> <p>20 counties.</p> <p>21 Q. I understand. Thank you.</p> <p>22 MR. HAWLEY: Okay. Mr. Mortensen, could</p> <p>23 we please pull up Tab D, as in Delta, and mark it as</p> <p>24 Exhibit 4.</p> <p>25 (Gloria Exhibit 4, marked for identification.)</p>	<p>page 29</p> <p>1 have had trouble implementing in Clark County?</p> <p>2 A. There were many drafts. As it was</p> <p>3 originally written, we definitely had issues.</p> <p>4 Q. How about in the final text? Did you have</p> <p>5 any issues implementing the final provisions of the,</p> <p>6 of the bill?</p> <p>7 A. In the final text I believe that we were</p> <p>8 able to comply with all of the requirements.</p> <p>9 Q. Okay. So what if a bill or a law like</p> <p>10 AB345 is passed by the legislature, what are the steps</p> <p>11 that you take to implement those changes in Clark</p> <p>12 County?</p> <p>13 A. Well, after any legislative session,</p> <p>14 obviously we go through and do a review as soon as the</p> <p>15 law is signed and we know it's going to be final.</p> <p>16 Just to clarify, AB345 was a huge bill in</p> <p>17 the State of Nevada. It made substantial changes to a</p> <p>18 lot of processes in elections. And in my opinion</p> <p>19 provided more access for voters, and gave us more</p> <p>20 authority to have flexibility with vote centers and</p> <p>21 other things.</p> <p>22 But my staff immediately goes into in June</p> <p>23 and July the review of all the bills that may change,</p> <p>24 changes to what we will need to support in the even</p> <p>25 year. And we immediately began to work with our</p>

<p style="text-align: right;">page 30</p> <p>1 vendors to, to implement what we needed in order to 2 support the new law. 3 Q. So AB345 was issued in 2019, which, as you 4 indicated, is an odd-numbered year when the 5 legislature meets. And all of your elections are in 6 even number years. So you take the time in between 7 when the bill is issued in the odd-numbered year and 8 the election in the even-numbered year to implement 9 the changes; is that correct? 10 A. That's correct. And just to be accurate, 11 again the change from municipal elections was only 12 recently made. So we were supporting elections in 13 2019 as the session was taking place. 14 Q. I see. Thank you. 15 When a bill like AB345 is, is ratified and 16 signed, do you work with the Secretary of State's 17 office in implementing its provisions? 18 A. Certainly. There is administrative code 19 that needs be drafted in order to carry out the 20 provisions of the law. So we work directly with the 21 Secretary and other counties as well. 22 There is a big disparity in Nevada in that 23 again, I've already mentioned that we provide support 24 to the largest number of voters. So obviously, the 25 impact of something like this on Esmeralda County, who</p>	<p style="text-align: right;">page 32</p> <p>1 But before we do that, I just want to walk 2 through some terminology to make sure we are using a 3 common language and that you understand my questions 4 and I understand your answers. Does that sound okay? 5 A. Sure. 6 Q. Great. 7 MR. HAWLEY: And, Mr. Mortensen, we can 8 take down Exhibit 4. 9 BY MR. HAWLEY: 10 Q. So my understanding is that in Nevada 11 there are two types of ballots that a voter might use 12 outside of a polling place. There are mail-in ballots 13 which are automatically sent to voters in mailing 14 precincts. And there are absent ballots which a voter 15 can request that they receive and then use in the 16 mail. Is that accurate, Mr. Gloria? 17 A. It is correct. However, since we've 18 implemented the use of vote centers in Clark County, 19 we no longer use mail precincts in Clark County. The 20 reason mail precincts were utilized previously was 21 because we didn't define a polling place for those 22 voters to gain access to the ballot on Election Day 23 due to the size of the precinct or the number of 24 active registered voters. 25 And so we had to provide a mail ballot to</p>
<p style="text-align: right;">page 31</p> <p>1 has less than 1,000 registered voters, and Clark 2 County with 1.1 million, there is a big difference 3 there. 4 And so we have to -- the Secretary has to 5 work out to make sure that all counties can support 6 that. 7 Q. I see. And tell me a little bit about the 8 process with the Secretary of State's office, if you 9 could. Is it a back and forth? Is it kind of a 10 dialogue? Or do they provide guidance that you then 11 follow? Can you tell me a little bit about how that 12 process works. 13 A. There is definitely a lot of back and 14 forth. They, they do a pretty good job of trying to 15 make sure that all of our needs are met; and that 16 obviously if Clark County can support it, more work 17 needs to be done as far as what they are asking us to 18 do in the code. But it's a back and forth, and we 19 have a good relationship with the Secretary. I don't 20 believe that anything was mandated that we couldn't 21 support and it wasn't directly related to the law. 22 Q. Okay. Thank you, Mr. Gloria. 23 Okay. I would like to now switch gears 24 and move into some of the specific issues in this, in 25 this lawsuit.</p>	<p style="text-align: right;">page 33</p> <p>1 them since there wasn't going to be a polling place 2 with their specific precinct available to them on 3 Election Day. 4 But since we've implemented vote centers, 5 it's very similar to early voting in that all ballot 6 styles are available to all voters on Election Day. 7 So we were able to eliminate the use of mail precincts 8 in Clark County. That was put into effect in 2018 for 9 the first time. 10 Q. Thank you. 11 So just to clarify then, Clark County no 12 longer utilizes mailing ballots; is that correct? 13 A. We no longer utilize mail-only precincts. 14 Q. Okay. But Clark County continues to use 15 absent ballots? 16 A. Absolutely. They are absolutely necessary 17 for any election. 18 Q. Okay. If I use the term "mail ballot" 19 during our deposition today, can we agree that it 20 refers to both absent ballots and any other sort of 21 ballot that is distributed to voters through the mail? 22 A. If you want to include UOCAVA, sure. 23 Q. Yes. Yes. Thank you. 24 Just to ask. The statute uses the term 25 "absent ballot." But I think most people use the term</p>

<p>page 34</p> <p>1 "absentee ballot." Which term do you prefer?</p> <p>2 A. It's, it's really, it's not accurate</p> <p>3 anymore. You don't have to be absent, you just have</p> <p>4 to request a mail ballot. So whatever term you use</p> <p>5 I'll be comfortable with.</p> <p>6 Q. Okay. I might flip into absentee ballot,</p> <p>7 but you'll know that that means I'm referring to</p> <p>8 absent ballots as defined in the statute. Is that</p> <p>9 okay?</p> <p>10 A. That's fine, yes. The State of Nevada has</p> <p>11 been a no-excuse absentee ballot state for many years</p> <p>12 now.</p> <p>13 Q. Okay. All right. So on that note, let's</p> <p>14 talk about absentee ballots if you could. I would</p> <p>15 like to just talk about the process generally.</p> <p>16 So let's assume a normal pre-pandemic</p> <p>17 election, where the vote-by-mail in Clark County is</p> <p>18 predominantly carried out through the absentee voting</p> <p>19 process.</p> <p>20 Could you just walk me through the</p> <p>21 absentee process from when a voter makes the request</p> <p>22 to when the voter receives the absentee ballot?</p> <p>23 A. Sure. And also it's important to mention</p> <p>24 that voters are now able to request a permanent</p> <p>25 absentee ballot, which means that they don't need to</p>	<p>page 36</p> <p>1 we get entered into the system in order to get our</p> <p>2 absentee ballots out, it's all hands on deck. So we</p> <p>3 could have people who have been trained in the</p> <p>4 Warehouse Division, Admin Division, any division</p> <p>5 that's working extra hours to get those into the</p> <p>6 system.</p> <p>7 Q. Okay. And the second step you mentioned</p> <p>8 is to determine whether it's a permanent absentee</p> <p>9 ballot or just for that election year. Approximately</p> <p>10 how many voters in Clark County are on the permanent</p> <p>11 absentee voter roll?</p> <p>12 A. I don't have that number, but I can</p> <p>13 certainly get it to you and provide it.</p> <p>14 Q. Certainly.</p> <p>15 Do you have any sense of sort of the</p> <p>16 proportion of the absentee request forms that you</p> <p>17 receive are permanent versus a one-off?</p> <p>18 A. I think it's fair to say that since the</p> <p>19 permanent ballot has been made available to voters</p> <p>20 that the numbers are going up.</p> <p>21 Q. Excellent.</p> <p>22 And so how does a voter apply for the</p> <p>23 absentee ballot?</p> <p>24 A. Well, we are very fortunate in Clark</p> <p>25 County that we have a very active group of community</p>
<p>page 35</p> <p>1 submit a request any longer. Previously it was only</p> <p>2 for the 65 or older or disabled voters.</p> <p>3 But once we receive, as you say in a</p> <p>4 normal election year, outside of a pandemic year, once</p> <p>5 you send in your mail ballot request, it's logged in</p> <p>6 our voter registration database. We tag whether it's</p> <p>7 a permanent request or just a request for one specific</p> <p>8 election or for the election year.</p> <p>9 And once that's tagged to the voter for</p> <p>10 that year, we will be sending an absentee ballot to</p> <p>11 that voter at the mailing address or residential</p> <p>12 address that they provided.</p> <p>13 Q. Okay. So let's talk about that first step</p> <p>14 first.</p> <p>15 You receive the application from the voter</p> <p>16 and you log it into your database. Who's responsible</p> <p>17 for logging in those, those applications?</p> <p>18 A. It could be any of my staff, frontline</p> <p>19 mail or registration. We take the mail in and those</p> <p>20 are sorted and put into groups to be processed. It</p> <p>21 could go to any member of my staff in the mail or</p> <p>22 registration division.</p> <p>23 Outside, or actually once we are in the</p> <p>24 election cycle, then we could be a temporary employee.</p> <p>25 Or if we have a large number that we need to make sure</p>	<p>page 37</p> <p>1 partners that we work with, the League of Women</p> <p>2 Voters, de Comunivota (phonetic), the Democratic, the</p> <p>3 Republican Party.</p> <p>4 They have mail ballot request forms and</p> <p>5 they sometimes have a process where they go out and</p> <p>6 they reach out to voters encouraging them to fill out</p> <p>7 a mail -- or an absentee request so that they don't</p> <p>8 have to go out to the polls, mainly focusing on the</p> <p>9 elderly or disabled.</p> <p>10 We also in the law as described where any</p> <p>11 group can -- they have to notify us if it's over 500,</p> <p>12 but they can circulate mail ballot requests through</p> <p>13 the mail in an automated process, such as the voter</p> <p>14 participation center. Democrats do it. The</p> <p>15 Republicans do it. They send out large numbers</p> <p>16 actually to the general public which sometimes creates</p> <p>17 problems for us.</p> <p>18 But from our office you can go into our</p> <p>19 website or the Secretary of State's website, you can</p> <p>20 print out the form, you fill it out, and you send it</p> <p>21 in to us or deliver it personally and we get that</p> <p>22 entered into the system.</p> <p>23 Q. So in the process you just described, you</p> <p>24 mentioned that there are physical applications that</p> <p>25 voters can receive either from your office or from a</p>

<p style="text-align: right;">page 38</p> <p>1 third-party organization who distributes them, 2 correct? 3 A. Correct. 4 Q. Are applications available in other ways 5 other than a physical application? 6 A. Well, I mentioned it's available on the 7 website. 8 Q. Yeah. 9 A. Our website and the Secretary's. 10 Q. And when a voter fills out the online 11 absentee form, do they still mail the application in 12 or is it submitted online? 13 A. They can fax it in as well or scan it and 14 send it to us in an email. As long and it's signed 15 and filled out correctly, we will process it. 16 Q. Okay. Thank you. 17 A. Believe it or not we still have people who 18 use the fax machine. 19 Q. Really? 20 A. I can't believe it, they sure do. 21 Q. Okay. And you mentioned that again, once 22 the application comes in, you log it in your database. 23 How long does that process take between when the 24 application is received by your office and when it is 25 processed and in the database?</p>	<p style="text-align: right;">page 40</p> <p>1 I'm sorry, that's changed, I believe 2 that's 14 days now. 3 Q. 14 days, okay. 4 So is it fair to say that the last bulk 5 mailing of absentee ballots will go out at least 20 6 days before the election, that was the third mailing 7 that you just mentioned? 8 A. That's accurate. 9 Q. Okay. And but voters have until 14 days 10 prior to the election to submit their absentee ballot 11 applications? 12 A. Yes. 13 Q. So in that six-day gap there between when 14 you do the first mailing and when the voters can still 15 submit absentee ballot applications, how do those 16 voters receive absentee ballots? 17 A. How do they receive them? 18 Q. Yes, I'm sorry. How does your office mail 19 out those absentee ballots for the applications that 20 come in after the 20 days? 21 A. If, if the number of ballots is large 22 enough, we can send it to our print vendor and they 23 can load that file and send them out for us. 24 Otherwise, we have to do it internally. 25 Q. Okay. When you send an absentee ballot to</p>
<p style="text-align: right;">page 39</p> <p>1 A. There is, there is no straight answer to 2 that. It all depends on the time of the year. And, 3 for instance, the Voter Participation Center sent out 4 hundreds of thousands of applications in the 2018 5 election. So if they just put out a mailer, then we 6 will receive a large influx of those absentee 7 applications, and it could take hopefully no longer 8 than a week to a week and a half to get them processed 9 and into the system. 10 That's why I say sometimes the third-party 11 mailers do create issues for us, which was something 12 that was addressed in AB345, giving us a little more 13 time. Because they have to notify us earlier than 14 they used to when they send out both mailers for 15 absentees. 16 Q. Okay. So once -- at what point during the 17 election cycle does your office mail out absentee 18 ballots? 19 A. We are federally required to send out the 20 overseas ballots 45 days prior. Anything out of state 21 goes out 40 days before the election. And our 22 in-state and local go out 20 days before the election 23 as long as we have it in the system. People can still 24 submit an application for an absentee ballot seven 25 days prior to the election.</p>	<p style="text-align: right;">page 41</p> <p>1 a voter, can you talk about some of the security 2 measures are in place to ensure that only that voter 3 can vote that ballot? 4 A. Well, the security measures begin when we 5 get the ballot back. We have to verify their identity 6 by verifying their signature. And that ballot is 7 tagged for that voter. We have a sequence number and 8 a voter registration number. This is all done 9 electronically. And we are able to make sure that it 10 goes out to that voter according to the information 11 that we have in the system. 12 And once we get it back, we will begin the 13 process of starting to verify the signatures that are 14 on the envelopes. 15 Q. Okay. Do the ballot return envelopes have 16 barcodes that identify them with the appropriate 17 voter? 18 A. That is correct, on the return envelope. 19 Q. Yes, thank you. 20 You said that the absentee ballot is 21 mailed to the address provided by the voter in the 22 application. My question is, can an absentee ballot 23 be mailed to any address provided by the voter? 24 A. If we don't have a mailing address that's 25 provided by the voter, then it will go to their</p>

<p style="text-align: right;">page 42</p> <p>1 residential address where they are registered in the 2 system. They have to provide a mailing address in 3 order for us to send it to anything other than the 4 residential address. It could be any address. 5 Q. Okay. So that could include somebody 6 else's residential address, for example? 7 A. They can place whatever mailing address 8 they, they want into the request and we will send it 9 to that address. 10 Q. Thank you. 11 Are absentee ballots forwarded through the 12 U.S. Postal Service's forwarding mail service? 13 A. No, they are not. 14 Q. Are those ballots returned to your office? 15 A. Yes. They were this election. 16 Q. And that -- I'm sorry, Mr. Gloria, could 17 you repeat that? 18 A. Yes. They were this election. They were 19 returned to our office undeliverable. 20 Q. Did your office process those again and 21 attempt to remail them? 22 A. No, we did not. 23 Q. Okay. And does the postal service provide 24 you with tracking numbers for ballots? 25 A. Individuals can log into the postal system</p>	<p style="text-align: right;">page 44</p> <p>1 and seven. And also the system identifies those 2 ballots that aren't signed and put those into its own 3 batch. And the system also has the ability to do the 4 first check for signature match. And any of those 5 ballots that run through the Agilis machine that don't 6 match, are kicked out so that we can start the next 7 process of review. 8 Q. And if the Agilis machine does not kick 9 the ballot back for further review, what happens to 10 the ballot then? 11 A. At that point it's considered good to vote 12 and we begin the processing for the counting board to 13 review that and prepare it for counting. 14 Q. And at what point -- 15 A. And any of the security measures. 16 Obviously, all of these are stored according to 17 statute in a vault in lock boxes and tracked and 18 marked in the system as they come in electronically. 19 All of our process is electronic. We 20 can't -- our process is too large in order for us to 21 do anything manually as far as tracking those ballots. 22 Q. Sure. 23 At what point during the election process 24 are the ballots processed for the counting board? 25 A. Well, we -- as soon as we begin to receive</p>
<p style="text-align: right;">page 43</p> <p>1 and have that tracking ability individually. But we 2 don't track anything other than with the barcode and 3 the sequence number that we attach to that ballot when 4 we send it out. 5 Q. Okay. And just to confirm. Other than 6 the signature you mentioned, the serial number that 7 tags the ballot with the voter, and the barcode, are 8 there any other security measures that you can think 9 of that are in place for absentee ballots? 10 A. No, not that I can think of. We use the 11 most trusted service available to us, the 12 United States Postal Service. 13 Q. Very good. Thank you. 14 Now let's talk about the voter side of the 15 absentee ballot. A voter receives their ballot. They 16 will it fill it out and seal it and return it. What 17 happens when that absentee ballot arrives back at your 18 office? 19 A. We begin the processing of that ballot. 20 It begins by now running through the Agilis machine 21 which is programmed to sort those. 22 We have precinct numbers that represent 23 commission districts for us that run from 1,000 to 24 7,000. And so we are grouping those according to 25 those denominations one, two, three, four, five, six,</p>	<p style="text-align: right;">page 45</p> <p>1 ballots, we start running through them in preparation 2 to get them to the counting board. So we will start 3 getting ballots in late September. 4 Q. And then at what point are the ballots 5 actually counted? 6 A. According to statute, we can't count more 7 than four days before the election. So -- 8 Q. But you can begin -- I'm sorry, sir. 9 A. No, I apologize. 10 So we begin the process of batching those 11 into batches of 200, so that they can begin going to 12 the counting board in order for them to do the final 13 review and get them ready to be separated for 14 counting. 15 Q. Okay. Thank you. 16 All right. If we could, I'd like to start 17 talking about the signature match process that you 18 just mentioned. 19 Let's start just kind of 30,000 feet just 20 to get an overview of the process. Could you walk 21 me -- and you started doing that already, but could 22 you walk me through step by step what happens with the 23 signature match process. 24 A. As we receive the ballots, we are going to 25 begin to batch them in order to run them through our</p>

<p style="text-align: right;">page 46</p> <p>1 Agilis machine, which is an automated mail ballot 2 processing machine that we use from, and have 3 purchased from Runbeck, a company out of Phoenix, 4 Arizona, that we were fortunate enough to be able to 5 contract with, with the large increase in absentee 6 ballots that we process for the primary and plan to do 7 so for the general. 8 So they run through the Agilis, as I 9 mentioned before. They are sorted according to 10 precinct. And then those batches that come out where 11 the signature is not matched according to the 12 algorithm that's used in the software provided to the 13 Agilis system, that begins our second line of review 14 by election staff members, and they actually go 15 through and begin to do a manual check of the 16 signature. 17 And that second wave of checking the 18 signature, if it's still judged by the employee 19 staffer that the signature does not match, now it's 20 going to go to a review board and the counting board 21 for another check on the signature. And that's a 22 bipartisan board on the counting board and they also 23 have access to all of the signatures that we have on 24 file in the database. 25 But no signature is rejected in Clark</p>	<p style="text-align: right;">page 48</p> <p>1 A. That would be correct. 2 Q. Okay. So has it ever happened that a 3 voter is asked to cure their ballot but ultimately 4 either yourself or the bipartisan board determines 5 that the signature does match? 6 A. I would have to review the records. I'm 7 sure it does with the number of ballots that we get. 8 Q. Okay. Thank you. 9 I would like to talk about that second 10 wave, as you call it, the election workers who do the 11 first pass after the machine. Who -- is that your 12 permanent staff that does that? Volunteers? Who 13 performs that step? 14 A. Well, just, just to be sure we understand. 15 We call them volunteers -- or you're calling them 16 volunteers, but these are paid staff members that we 17 hire in order to do the mail ballot processing. 18 So with the number of ballots that we have 19 coming through the system, it's not always a permanent 20 staffer, but there's always a permanent staffer 21 supervising the process. 22 So it could be the part-time hourly or 23 limited permanent employee who does that second check 24 before it gets to the counting board. 25 Q. Okay. So I'm correct in saying then, you</p>
<p style="text-align: right;">page 47</p> <p>1 County without passing through my desk. So I 2 physically run through and check all of the rejected 3 signatures leading into an election. 4 Q. Excellent. But you are the, you are the 5 final arbiter of any ballot that is rejected for a 6 signature mismatch? 7 A. In Clark County that is correct. 8 Q. Thank you. 9 A. Now, what I hadn't defined there is once 10 the Agilis machine doesn't match it and the first set 11 of election department employees also agree manually 12 it doesn't match, we begin the signature cure process 13 which was also defined in AB345 where we contact the 14 voter via mail. 15 If we have an email address or a phone 16 number, we can attempt to contact through email or by 17 the phone to get them to fill out the affidavit and 18 provide a Nevada driver's license in order to identify 19 them and confirm their identity so that we can cure 20 that signature and get that ballot processed to be 21 counted. 22 Q. And did you say that that cure process 23 begins after the second wave review by the election 24 workers but before the, if we call it the third wave 25 where the bipartisan board reviews the ballot?</p>	<p style="text-align: right;">page 49</p> <p>1 don't utilize volunteers during this process, they are 2 either paid full-time staff or paid temporary staff; 3 is that correct? 4 A. I would love to find that pool of free 5 workers. Anybody that comes in, we are paying. 6 Q. Okay. Understood. Thank you. Thank you 7 for clearing that up for me. 8 At that second review when, when the 9 staffer looks at the ballot, is it only a single 10 staffer that does the review or is it more than one 11 staffer? 12 A. It's a single staffer supervised by a 13 permanent employee. 14 Q. Does the supervisor inspect every ballot 15 that the staffer determines is a mismatch? 16 A. No. 17 Q. Okay. 18 A. No, the quantity is too great there. We 19 don't have the staff in order to do that. 20 Q. Okay. 21 A. But ultimately, it would get to the 22 counting board, which is a bipartisan board, it's 23 either a Democrat and a Republican, or a Democrat and 24 an independent, or a Republican and an independent who 25 would do that review.</p>

<p style="text-align: right;">page 50</p> <p>1 Q. I see. Thank you.</p> <p>2 A. If I --</p> <p>3 Q. I'm sorry, please.</p> <p>4 A. I don't know if you're going to ask this</p> <p>5 question. But we also do have a professional who</p> <p>6 comes in to train our staff, a forensic signature</p> <p>7 professional who trains our staff on signature</p> <p>8 matching. And they will be returning to train the</p> <p>9 staff again in August. They usually come --</p> <p>10 Q. You read my mind, and I will ask you about</p> <p>11 the training in a little bit. But thank you for</p> <p>12 flagging that. We will return to that shortly.</p> <p>13 I was going to ask, you mentioned that the</p> <p>14 cure process was altered by AB345. I just wanted to</p> <p>15 confirm whether any of the other steps in the</p> <p>16 signature matching process that you just described</p> <p>17 were changed or altered by AB345?</p> <p>18 A. No. I don't believe it was.</p> <p>19 Q. Okay, thank you.</p> <p>20 MR. HAWLEY: Mr. Mortensen, could you</p> <p>21 please pull up E, as in Echo, and mark it as</p> <p>22 Exhibit 5.</p> <p>23 (Gloria Exhibit 5, marked for identification.)</p> <p>24 BY MR. HAWLEY:</p> <p>25 Q. This is Nevada Revised Statute Section</p>	<p style="text-align: right;">page 52</p> <p>1 A. I'm sorry, can you repeat that? I was</p> <p>2 reading and I didn't hear everything you said.</p> <p>3 Q. I'm sorry. Here, I'll give you a moment</p> <p>4 just to read through it and then I'll ask my question.</p> <p>5 A. Okay, I'm ready. Go ahead.</p> <p>6 Q. Okay. So do you agree that this statute</p> <p>7 requires that an election board ensures that the</p> <p>8 signature on the back of the return envelope is</p> <p>9 compared with the application signature?</p> <p>10 A. Yes, I agree.</p> <p>11 Q. Okay. I just wanted to nail that. Who</p> <p>12 constitutes that election board in Clark County?</p> <p>13 A. The registration staff actually has a</p> <p>14 process when the part-time hourlies come on and they</p> <p>15 become members of the election board. The counting</p> <p>16 board that reviews it, the bipartisan group is also a</p> <p>17 group that's identified and sworn in.</p> <p>18 Q. Okay. So, essentially, you have two</p> <p>19 boards who are involved with the signature matching.</p> <p>20 You have the election board, which is the paid staff</p> <p>21 in that second wave of review after the machine. And</p> <p>22 then also the counting board, who might do a third</p> <p>23 wave review after that. Is that, is that fair?</p> <p>24 A. That's accurate.</p> <p>25 Q. Okay. Thank you.</p>
<p style="text-align: right;">page 51</p> <p>1 293.333.</p> <p>2 Mr. Gloria, are you familiar with this</p> <p>3 statute?</p> <p>4 A. Yes, we are.</p> <p>5 Q. Okay. Have you read it in the course of</p> <p>6 your official duties?</p> <p>7 A. Yes, I have.</p> <p>8 Q. Based on your review of this statute, have</p> <p>9 you formed an understanding of what it means?</p> <p>10 A. I believe that we have.</p> <p>11 Q. And does that understanding inform how you</p> <p>12 implement the statute in your official capacity as</p> <p>13 Clark County Registrar?</p> <p>14 A. It definitely serves as the foundation for</p> <p>15 developing our process, that is correct.</p> <p>16 Q. Thank you.</p> <p>17 MR. HAWLEY: Mr. Mortensen, can you zoom</p> <p>18 in on subsection 1.</p> <p>19 BY MR. HAWLEY:</p> <p>20 Q. And, Mr. Gloria, you will see that we have</p> <p>21 two, in particular two things highlighted there.</p> <p>22 Am I correct in saying that this statute</p> <p>23 requires that the election, an election board ensures</p> <p>24 that the signature on the back of the return envelope</p> <p>25 is compared with the registration signature?</p>	<p style="text-align: right;">page 53</p> <p>1 Okay. I would like to, I would like to</p> <p>2 spend just a few minutes now talking about the</p> <p>3 standard that your office applies when undertaking</p> <p>4 signature matching.</p> <p>5 MR. HAWLEY: So, Mr. Mortensen, could you</p> <p>6 please pull up Tab F, as in Foxtrot, and mark it as</p> <p>7 Exhibit 6.</p> <p>8 (Gloria Exhibit 6, marked for identification.)</p> <p>9 BY MR. HAWLEY:</p> <p>10 Q. Okay. This is Nevada Revised Statute</p> <p>11 Section 293.325.</p> <p>12 Mr. Gloria, are you familiar with this</p> <p>13 statute?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. Have you reviewed this statute in</p> <p>16 your official capacity as Clark County Registrar?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Based on that review, have you formed an</p> <p>19 understanding of what it means?</p> <p>20 A. I believe that we have.</p> <p>21 Q. And does that understanding inform your</p> <p>22 implementation of the statute in your official</p> <p>23 capacity as Registrar?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Thank you.</p>

<p style="text-align: right;">page 54</p> <p>1 MR. HAWLEY: Let's look at subsection B, 2 if we could, please, Mr. Mortensen. 3 BY MR. HAWLEY: 4 Q. In the highlighted section there, 5 Mr. Gloria, do you see where it says: 6 "If at least two employees in the 7 office of the county clerk believe there is a 8 reasonable question of fact as to whether the 9 signature on the absent ballot matches the 10 signature of the voter." 11 A. Yes, I see that. 12 Q. So just -- I would like to kind of run 13 through this subsection with you. 14 My first question, it specifies at least 15 two employees. So you mentioned that sometimes that 16 second wave, when the staffers look at the ballots 17 after the machine processes them, that sometimes only 18 one person will look at the ballot but then it goes on 19 to the counting board. 20 So is it fair to say that between the -- 21 that the two employees might constitute both a member 22 of the election board and a member of the counting 23 board? Does that make sense, is that correct? 24 A. Yes. 25 Q. Okay. Thank you.</p>	<p style="text-align: right;">page 56</p> <p>1 term "reasonable question of fact"? 2 A. Other than what's in the draft of that 3 document, I would say no. 4 Q. Okay, thank you. 5 And, as you said, you personally make the 6 final determination on any ballot that is ultimately 7 rejected for signature mismatch, correct? 8 A. That is correct. No signature is rejected 9 due to the signature without passing by my desk. 10 Q. Can you estimate how many signatures that 11 you verify in, say, a normal primary election? 12 A. Well, this last primary was not normal. 13 But I would say a minimum of 1,000 in what you're 14 calling a normal election. But this past primary, due 15 to the number of absentee ballots that we sent to 16 every voter, I know that I looked through thousands, 17 possibly 4,000 that passed across my desk. 18 Q. And how about during what we call a normal 19 general election? 20 A. Again, I'm saying a normal election would 21 probably be in the area of 1,000. 22 Q. Okay. So over the course of the seven or 23 eight years that you have been Clark County Registrar, 24 is it fair to say that you have examined tens of 25 thousands of signatures?</p>
<p style="text-align: right;">page 55</p> <p>1 And so is that, is that how your office 2 satisfies the two-employee requirement as described 3 there? 4 A. Yes, sir. 5 Q. Okay. I see. Thank you. 6 All right. I would like to ask you about 7 the phrase "reasonable question of fact." What do you 8 understand that term to mean? 9 A. Based on the training that we've received, 10 we have a set of criteria that we follow. And based 11 on that criteria of -- I mean, we can certainly go 12 into more detail. We have also provided documents 13 related to the training that is provided to staff. 14 But if it doesn't match, the slant, the 15 direction of the signature, there are several things 16 that we look at to try to match that to identify and 17 ensure that the voter is truly the one that should 18 have voted that ballot and sent it back to us. 19 Q. Have you received any training materials 20 on signature matching from the Secretary of State's 21 office? 22 A. Other than that draft document that you 23 showed me earlier, we have not. 24 Q. To your recollection, has the Secretary of 25 State's office provided any guidance explaining the</p>	<p style="text-align: right;">page 57</p> <p>1 A. Yes. 2 Q. Okay. So please walk me through the 3 process that you use when you go about making a 4 signature match determination. What criteria do you 5 look at? 6 A. I have the advantage of having all of the 7 signatures that are on file for every voter in the 8 packet that's provided to me when a signature is 9 rejected during one of our review levels. So I'm 10 looking at all of the signatures that we have on file 11 for whatever document has been returned by the voter. 12 And then again, I follow the criteria that 13 was provided to us by the professional that has 14 trained us. I'm looking at the slant in the 15 signature. I'm looking for certain -- the curve in 16 the signature as far as how they sweep through, the 17 size of the signature, how compact the signature is 18 from left to right. 19 And for those voters who are putting -- 20 because on the back of every return envelope every 21 voter is supposed to print their name at the top 22 before they sign on the bottom. And so for those 23 voters who have submitted a document to us where they 24 have handwriting, I'm able to look at that as well and 25 see if I see a match.</p>

<p style="text-align: right;">page 58</p> <p>1 Because unfortunately, in the process that 2 we use, a lot of voters are very uncomfortable signing 3 the back of that envelope because they are 4 unfortunately convinced that there is somebody at the 5 post office who's looking to steal their identity, 6 they will be able to see the information on the back 7 of that envelope and their signature. 8 So the signature they give us sometimes 9 isn't the one that they would sign on a check or even 10 the registration form that they provided us because 11 they were under the impression nobody would see it but 12 us. 13 And so I try to take the handwriting into 14 effect as well, because they don't have a problem 15 printing the way they normally print up top. So if I 16 have a document that I can review as far as voter 17 registration form, I will also take a look at the 18 handwriting and try to match that in combination with 19 looking at the signature. 20 Q. I see. Thank you. 21 Do you consider any criteria related to 22 the voters themselves when you, when you look at 23 signatures? For example, the age of the voter or the 24 age of the signature or any criteria like that? 25 A. Certainly.</p>	<p style="text-align: right;">page 60</p> <p>1 any signature that requires a closer look represents a 2 reasonable question of fact as to whether it's, it is 3 the signature of the voter? 4 A. Can you repeat that. 5 Q. Certainly. 6 So the statute requires if there is a 7 reasonable question of fact as to whether the 8 signature on the ballot matches the signature of the 9 voter, then you would move forward with the cure 10 process. 11 So I'm just trying to determine when your 12 office -- what criteria your office uses to decide if 13 there is a reasonable question of fact? What 14 threshold that has to cross. 15 So I'll ask again. If the signature is 16 not -- if it requires a second look, if it requires a 17 closer look, does that itself, in your understanding, 18 constitute a reasonable question of fact? 19 A. Yes. 20 Q. Okay. Based on your standing, in order 21 for there to be a reasonable question of fact as to 22 whether a signature matches, does it have to appear 23 more likely than not that the signature is a mismatch? 24 A. Let me just state that -- and I don't know 25 if this is going to answer your question.</p>
<p style="text-align: right;">page 59</p> <p>1 Q. Okay. Can you, can you kind of walk me 2 through what some of those criteria might be? 3 A. Well, an elderly voter or somebody who may 4 be suffering from something that causes their 5 signature to be not what we would have in the system. 6 We are looking for start of the signature, the end of 7 the signature, again how compact that signature is. 8 So we definitely take that into account. 9 And again, I take in my final review any 10 handwriting that is put onto the envelope that I can 11 take into consideration as well. And since I have the 12 full history of their signatures, a lot of those folks 13 are voting every year absentee as they become elderly 14 voters, so I can see the progression and, and identify 15 usually using those tools that I have at my -- 16 available to me. 17 Q. Thank you. That's very helpful. 18 Just to kind of step back at sort of the 19 10,000-foot level. Is it fair to say that it's not 20 always clear whether a signature is it a match or not? 21 A. Absolutely. 22 Q. Okay. And I would just like to, I'd like 23 to return to this phrase that we have underlined on 24 the screen right now, "reasonable question of fact." 25 Is it your understanding or practice that</p>	<p style="text-align: right;">page 61</p> <p>1 Q. Please. 2 A. But it's always been our goal to try to 3 enfranchise voters in every process that we support 4 for bringing ballots and making sure identity is 5 verified and that we enfranchise people. 6 So I think -- we are always looking to 7 make sure that we are taking everything into 8 consideration and doing everything we can to qualify 9 the ballot. 10 I wouldn't say that we lean towards being 11 hard line or making sure that that signature is 12 exactly on, we do not do that. We're looking, again, 13 as I mentioned, I take into consideration the 14 handwriting that is there. I'm doing everything that 15 I can do in my power with my final review, knowing 16 that I'm the last person that stops this individual 17 from having their vote counted for an election, to 18 make sure that I'm giving them the benefit of the 19 doubt in identifying who they are and sending that 20 ballot forward to be counted. And that's why I take 21 the responsibility of making that call on every 22 ballot. 23 So even after that second wave, if the 24 cure letter is sent out, that ballot is still going to 25 be coming to me. And so if I verify that I see what I</p>

<p style="text-align: right;">page 62</p> <p>1 need to see that that's a signature match, then the 2 cure process is, is done and that ballot gets sent 3 forward, it's marked in the system to be voted. 4 So I think that we do have an extreme 5 effort here in Clark County, actually I would be 6 comfortable saying trying to enfranchise the voter 7 with every step of the mail ballot processing. 8 Q. Thank you, Mr. Gloria. 9 So is it fair to say then that, that you 10 and your office apply the presumption in favor of 11 finding that a signature is a match; is that fair to 12 say? 13 A. That's fair to say. 14 Q. And what is that presumption based on in 15 the law? 16 A. Well, it's pretty much up to the 17 discretion of the election employee on the signature 18 match. You've reviewed the same documents that I'm 19 reviewing. It's, it's not specific, and it's hard to 20 be specific without making it very difficult for an 21 election department to process these signatures. So 22 otherwise, it would be difficult and we would have 23 three times the number of rejected signatures that, 24 that we sent back. 25 So the law, I would have to say, is maybe</p>	<p style="text-align: right;">page 64</p> <p>1 the final review. 2 Q. I see. 3 Is it fair to say that the different, the 4 different people in your office, yourself included 5 then, apply a different standard to what is a 6 reasonable question of fact as to whether a signature 7 on the ballot, on the envelope matches the voter's 8 signature? 9 A. I'm sorry, I'm not clear on your question. 10 I don't know what you mean by a different standard. 11 Q. Sorry. So -- 12 A. Obviously what we're doing, we still have 13 to comply with the law. 14 Q. Of course, of course. 15 A. Again, our goal is always to uphold the 16 integrity of the process. 17 Q. You indicated that so you have this 18 presumption in favor of a ballot. But given that fact 19 that the people before you in the ballot review 20 process might apply less of a presumption in favor of 21 a match, would that be fair to say? 22 A. You're asking me to speak in generalities 23 about a very large group of people, sir. I don't know 24 that -- 25 Q. Sure.</p>
<p style="text-align: right;">page 63</p> <p>1 purposely vague in allowing the election officials the 2 freedom to make decisions. In respect to Clark 3 County, we work to enfranchise the voter. I can't say 4 that's the case for all election officials, but in 5 Clark County that's our goal. 6 Q. Thank you, Mr. Gloria. 7 Has the Secretary of State's office ever 8 articulated guidance regarding that sort of 9 presumption that you apply in Clark County? 10 A. No. 11 Q. And you said that you personally, if I can 12 say, apply that presumption. Do you instruct your 13 staff and the counting board to also apply that 14 presumption? 15 A. The counting board, and I think the 16 counting board as far as my supervisors and what they 17 communicate, they all know that I'm doing the final 18 review. So if nothing else, I think that takes them 19 off the hook somewhat in that they feel like, hey, if 20 I'm at all uncertain here and I don't want to be 21 irresponsible with the integrity of this process, if I 22 reject it, I know the registrar is the final review. 23 So I think that makes it easier for them 24 to do their work and they are not in doubt as to being 25 comfortable making those decisions knowing that I make</p>	<p style="text-align: right;">page 65</p> <p>1 A. -- I'm comfortable saying so. 2 I think that we have a very conscientious 3 group of people and we're very fortunate in Clark 4 County that a lot of those people that come back and 5 do that counting board work, they've been doing it for 6 years, so they are very familiar with the process. 7 But I don't think I'm comfortable making a 8 presumption as to what -- in this past election, it 9 was 160 people that were running that process. We 10 give a very stern talk to them leading into the 11 election and leading into their work, letting them 12 know that the general public is counting on us to 13 uphold the integrity of the process. I think they 14 take that very seriously. 15 Now, I've already mentioned we also make 16 sure that we are working to enfranchise voters. And 17 with the work of AB345 and the cure process, I think 18 that we've put in a very good step to make sure that 19 voters have the opportunity to cure that signature. 20 So I don't know that I'm comfortable 21 making a general statement for that large a number of 22 people. I can tell you that we are very serious when 23 we train them and we give them several talks. And I 24 drop through that counting board work area on a 25 regular basis and they see my face. They're very</p>

<p style="text-align: right;">page 66</p> <p>1 familiar with me. Sometimes they stop me and ask me a 2 question, I'm always happy to sit down and talk with 3 them. 4 Q. Thank you. 5 I understand that you have a very large 6 staff and that you certainly don't want to speak for 7 every individual. 8 So instead, maybe let me ask about the 9 guidance that you provide to them. You mentioned -- 10 do you ever articulate that there is a presumption in 11 favor of enfranchising a voter and finding that a 12 signature matches? Is that communicated to the staff 13 who undertakes signature matching? 14 A. I, I think that at some point it's made 15 pretty clear that we are trying to enfranchise the 16 voters, yes. My supervisors have the same attitude 17 that I have as far as what we are doing to try to 18 qualify that voter. 19 Q. Okay. And you mentioned that that -- is 20 it fair to say that you mentioned that that might not 21 be the same presumption that is applied in other 22 counties; is that correct? 23 A. I can't make any type of statement related 24 to the other counties. I can only tell you what I'm 25 familiar with here in Clark County and the county that</p>	<p style="text-align: right;">page 68</p> <p>1 We are going off the record. 2 (Recessed from 9:16 a.m. to 9:27 a.m.) 3 THE VIDEOGRAPHER: The time is 9:27 a.m. 4 We are going back on the record. 5 BY MR. HAWLEY: 6 Q. All right. Thank you, Mr. Gloria. 7 I would like to now talk a bit about the 8 screening process. So you mentioned that your office 9 uses both the signature matching machine as well as 10 individuals who conduct the screening. So we are 11 going to go through both of those categories, but 12 we'll start with your staff first. 13 So when a staff member scans a mail ballot 14 into the voter registration system, what exactly do 15 they see? What happens? 16 A. Okay. The staff member doesn't actually 17 scan that in. 18 Q. Okay. 19 A. The Agilis system handles that. So the 20 Agilis takes that first pass and it's all electronic 21 and using the barcodes that we have that identify the 22 voter. It brings those up and sequences them for 23 review electronically. 24 So what happens is when it's put in for 25 review is they are cued and our staffers go through</p>
<p style="text-align: right;">page 67</p> <p>1 I represent. 2 Q. Thank you. That's what I was going to 3 ask. 4 So you are not certain if in other 5 counties the clerks or registrars instruct their 6 employees as you do in Clark County? 7 A. No, I cannot say that I am. 8 Q. Okay. Thank you. 9 Can I just ask, is this presumption that 10 you apply, do you know if that was the same 11 presumption that your predecessor also applied during 12 the signature match process? 13 A. I, I can't say. 14 Q. Okay. 15 A. We never had a conversation along those 16 lines. 17 Q. Okay. 18 MR. HAWLEY: Okay. I think now might be 19 good time to take a little break and take a quick 20 refresher. So how about we go off the record now and 21 we all reconvene at, say, 9:26, if that works. 22 THE WITNESS: Sounds good to us. 23 MR. HAWLEY: All right, great. We'll see 24 you in about 10 minutes. Thank you, everyone. 25 THE VIDEOGRAPHER: The time is 9:16 a.m.</p>	<p style="text-align: right;">page 69</p> <p>1 individually and click on the next record. When that 2 record comes up, the signature is there along with an 3 image of the ballot that was scanned with the 4 signature on the bottom and they use that to review. 5 Q. I see. So they don't physically have the, 6 the ballot envelope in front of them? 7 A. Not anymore now that it's an automated 8 Agilis process. 9 Q. Okay. 10 A. They can certainly get to it. If for some 11 reason they are looking at it and they make the 12 determination that, you know, I think I would like 13 rather see it, then we've got them cataloged and they 14 can immediately find it and bring up the physical 15 ballot. 16 But as long the image, which has been 17 pretty good -- of course the system is brand-new so it 18 better be -- as long as they are comfortable looking 19 at that image, then they use that electronic image. 20 Q. Okay. 21 MR. HAWLEY: Mr. Mortensen, could you 22 please pull up Tab R, as in Romeo, and mark it as 23 Exhibit 7. 24 (Gloria Exhibit 7, marked for identification.) 25 ///</p>

<p style="text-align: right;">page 70</p> <p>1 BY MR. HAWLEY:</p> <p>2 Q. Mr. Gloria, do you recognize this</p> <p>3 document?</p> <p>4 A. Yeah, it looks like VEMACS to me.</p> <p>5 Q. Okay. And can you tell me what, what this</p> <p>6 document is?</p> <p>7 A. Can you blow it up a little bit?</p> <p>8 Q. Certainly. Mr. Mortensen is a, is a real</p> <p>9 wizard with this program. So basically anything you</p> <p>10 ever need, he can do it.</p> <p>11 A. Okay. I can't quite see the bottom of</p> <p>12 that screen. But they are in the module. Looks like</p> <p>13 they are in the mail module in VEMACS, and they have</p> <p>14 got highlighted the code for voted. So they don't</p> <p>15 mark these individually unless after review they are</p> <p>16 changing the status.</p> <p>17 Now that they are scanned with the Agilis,</p> <p>18 the Agilis will automatically link to this subset of</p> <p>19 categories for the ballot and it will link it to that</p> <p>20 record.</p> <p>21 Now, if they review, for instance, if it</p> <p>22 was -- let's see, where is RM? RM, which you can see</p> <p>23 is, let me see, signature does not match. So in their</p> <p>24 review if they make the determination that, hey, this</p> <p>25 is wrong, it does match, then they can go through and</p>	<p style="text-align: right;">page 72</p> <p>1 the process for review and what the staffer would need</p> <p>2 to change as far as the status of that ballot to RM</p> <p>3 for signature does not match.</p> <p>4 Q. And is this still the process that your</p> <p>5 staff uses even with the Agilis machine?</p> <p>6 A. Yes. Except it's just turned around now.</p> <p>7 They probably wouldn't be doing much of this exercise</p> <p>8 to mark it as RM because the system would do that.</p> <p>9 Once a ballot is marked as voted and the</p> <p>10 signature matches, nobody is making another</p> <p>11 determination as to whether or not that signature</p> <p>12 matches. The first time it passes, it passes.</p> <p>13 So the system does it in an automated</p> <p>14 fashion. What they would be doing that's different</p> <p>15 from the screen is changing the RM to a V.</p> <p>16 Q. Right. Okay. I think I understand.</p> <p>17 What I would like to know is, on the</p> <p>18 screen we have a signature. Is that still an accurate</p> <p>19 representation of what one of your staff members who's</p> <p>20 conducting the signature match would see while they</p> <p>21 are matching the signatures?</p> <p>22 A. It is except that it would be much bigger</p> <p>23 on the screen.</p> <p>24 Q. Okay.</p> <p>25 A. Blown up larger than that.</p>
<p style="text-align: right;">page 71</p> <p>1 they can change the status of that ballot to voted and</p> <p>2 put it on a different track to go into a batch to see</p> <p>3 the counting board.</p> <p>4 Does that, does that sufficiently answer</p> <p>5 your question?</p> <p>6 Q. It is.</p> <p>7 So you described this as being the VEMACS</p> <p>8 system; is that correct?</p> <p>9 A. VEMACS is the voter registration database</p> <p>10 system that we use from our vendor VOTEC.</p> <p>11 Q. Is this still the process that you use</p> <p>12 even though you have the Agilis machine?</p> <p>13 A. Well, keep in mind, this is just the data.</p> <p>14 Q. Okay.</p> <p>15 A. So the Agilis machine sorts the ballots</p> <p>16 and then matriculates that data into VEMACS.</p> <p>17 Q. I see.</p> <p>18 MR. HAWLEY: Okay. Mr. Mortensen, could</p> <p>19 you please put up page 3 and focus on step No. -- can</p> <p>20 you zoom in on step No. 7 and 8.</p> <p>21 Perfect.</p> <p>22 BY MR. HAWLEY:</p> <p>23 Q. So Mr. Gloria, can you explain to me</p> <p>24 what's happening in step 7 and 8 here?</p> <p>25 A. Yes. It looks like they are describing</p>	<p style="text-align: right;">page 73</p> <p>1 Q. Okay. So I next want to ask. As you can</p> <p>2 see, there is only one signature on the screen right</p> <p>3 now. The second wave of review, after the machine,</p> <p>4 those staff members, how many signatures do they have</p> <p>5 access to for matching purposes?</p> <p>6 A. That second check is still the latest</p> <p>7 signature in the system. It would only be one.</p> <p>8 Q. Okay.</p> <p>9 A. Once it's passed that step, then our</p> <p>10 research team has access to all history of signatures</p> <p>11 if there are other signatures from past mail ballots</p> <p>12 or past documents that have been scanned into the</p> <p>13 system.</p> <p>14 Q. You mentioned the research team. Do they</p> <p>15 undertake an additional signature match review?</p> <p>16 A. Certainly.</p> <p>17 Q. Okay.</p> <p>18 A. They are looking at all the signatures.</p> <p>19 And then in that process they'll physically print out</p> <p>20 those images and make that available to the counting</p> <p>21 board so that they can also see them.</p> <p>22 Q. So is it fair to say that the research</p> <p>23 team conducts an additional, an additional wave of</p> <p>24 signature review in between the first staffer and the</p> <p>25 counting board?</p>

<p style="text-align: right;">page 74</p> <p>1 A. That's the third wave. The research team 2 is part of the third wave and then the counting board. 3 We are calling about -- you're calling them waves. 4 It's four different processes. 5 Q. Okay. I apologize. 6 But just so it's clear in my head. So the 7 first, the first process is the Agilis machine itself. 8 The second process would be that first 9 staff member and potentially the staff supervisor 10 taking a second look at the ballot. 11 The third process, the research team has 12 access to the additional signatures and then they 13 provide those to the counting board for the next stage 14 of the review. 15 And then the fourth process is you 16 yourself doing the final review. Does that sound 17 right? 18 A. Yes. 19 Q. Okay. Thank you. 20 Okay. I would like to talk about, so when 21 the research team, you said they have access to, to 22 the other signatures on the file. How many signatures 23 are in a voter file? 24 A. That just depends on the record. If they 25 have been registered for many years and they voted</p>	<p style="text-align: right;">page 76</p> <p>1 the file look different from each other? 2 A. Yes. 3 Q. Okay. How so? Or what, what is your 4 understanding of some of the causes that might lead to 5 that? 6 A. Well, again I mentioned that there is some 7 third-party people who are out in the field working. 8 Sometimes they catch you off guard. Maybe you didn't 9 really want to stop and take the time to do that, so 10 your signature is going to be rushed. 11 My name is Joseph Paul Gloria. Sometimes 12 I sign Joe Gloria. Sometimes I sign JP Gloria. A lot 13 of people make those different variations in the way 14 that they sign. 15 Q. Okay. So when the, when the research team 16 and counting board and then yourself have access to 17 multiple signatures, do you use a particular signature 18 in the group to match the signature on the mail ballot 19 or do you use any signature in the file? 20 A. Any signature. We're just looking for 21 anything that helps us to match what we are seeing on 22 the return envelope. 23 Q. Okay. So would it be fair to say that if, 24 say, there were a dozen signatures in the voter's 25 file, each of them having differences among each</p>
<p style="text-align: right;">page 75</p> <p>1 absentee, changed their registration as far as change 2 of address, change of party, something that would 3 require another signature from them; or not 4 necessarily require, but, say, they were shopping and 5 a third-party group was out there giving them the 6 opportunity to change their address or change a party, 7 they would have filled out another form which would 8 have another signature. So that's how we build a 9 history of signatures. 10 So the length of time that you are 11 registered, however many times you have a transaction 12 with the election department, such as a returned 13 absentee ballot or a voter registration form or an 14 NVRA card that's sent out and sent back with your 15 signature. That's how we amass a bank of signatures 16 from the voter. 17 Q. Okay. The word transaction there I think 18 is helpful. So is it fair to say that anytime a voter 19 has a transaction with your office that involves a 20 signature, that signature is captured and added to 21 their file? 22 A. That is right on. 23 Q. Okay, great. Thank you. 24 In files that have multiple signatures, is 25 it your experience that sometimes the signatures in</p>	<p style="text-align: right;">page 77</p> <p>1 other, as long as one of those signature is a 2 reasonable match with the ballot envelope, would that 3 be a sufficient match for your purposes? 4 A. Yes, that is fair to say. 5 Q. Okay. 6 THE VIDEOGRAPHER: Excuse me. May I 7 interject real quick. 8 Mr. Gloria, can you pull your camera down 9 just a little bit. 10 THE WITNESS: Okay. 11 THE VIDEOGRAPHER: There you go. Thank 12 you very much. 13 BY MR. HAWLEY: 14 Q. How old -- let me rephrase that. 15 If someone registered to vote in the 16 1970s, for example, is it possible that their, their 17 signature would still been in the, in the voter file? 18 A. There was a point in time when we went 19 from manual files to electronic. That was in the late 20 '90s. 21 So obviously, recordkeeping requirements 22 changed over the years. At the point where we 23 switched to an electronic registration system that we 24 currently use, anything that we had on file was 25 scanned into the system. So it's possible we could</p>

<p style="text-align: right;">page 78</p> <p>1 have, and I've seen them, voter registration forms</p> <p>2 from the '60s or '70s.</p> <p>3 Q. Okay. Thank you.</p> <p>4 Does a signature in a voter's file ever</p> <p>5 expire? Do you ever remove it from the file for age</p> <p>6 or any other reason?</p> <p>7 A. No reason to do so. In the future, I</p> <p>8 would assume they would only be -- if we ever ran into</p> <p>9 an issue with memory capacity, but I don't think we</p> <p>10 will. That will never be an issue for us.</p> <p>11 Q. Okay. Do voters use different source of</p> <p>12 writing implements when they provide the signatures</p> <p>13 that you use in their files?</p> <p>14 A. I'm sorry, did you say "implements"?</p> <p>15 Q. Yes, I'm sorry. Say a pen versus a pencil</p> <p>16 versus some other tool to actually make the signature?</p> <p>17 A. Sure.</p> <p>18 Q. Okay. Are any of the signatures</p> <p>19 electronic signatures that the voter would have made</p> <p>20 on, on an electronic pad or a phone or something like</p> <p>21 that?</p> <p>22 A. Our online voter registration is linked to</p> <p>23 the Nevada DMV and they do provide an electronic</p> <p>24 signature to us.</p> <p>25 Q. Okay. Thank you.</p>	<p style="text-align: right;">page 80</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Are any of those voters absentee</p> <p>3 voters?</p> <p>4 A. I couldn't tell you with absolute</p> <p>5 certainly. But based on the number of voters that we</p> <p>6 have and based on the fact that we sent everybody an</p> <p>7 absentee ballot in the primary, yes.</p> <p>8 Q. Okay. Let me phrase the question this</p> <p>9 way.</p> <p>10 Has it ever occurred that you have been</p> <p>11 conducting a signature match for an absentee or other</p> <p>12 mail ballot and there has not been a signature on file</p> <p>13 to match it with?</p> <p>14 A. Very, very rare for that to happen. But</p> <p>15 we are dealing in an electronic age, so yes, of</p> <p>16 course, we've had to deal with that.</p> <p>17 Q. Okay.</p> <p>18 A. Before this cure, we would have, we would</p> <p>19 have contacted the voter to try to correct that. You</p> <p>20 usually would catch that before the absentee ballot</p> <p>21 goes out, because that would be reviewed when we are</p> <p>22 running through the process of entering in the</p> <p>23 information for the absentee request, but yes.</p> <p>24 Q. Okay. Thank you.</p> <p>25 All right. Now I would like to spend some</p>
<p style="text-align: right;">page 79</p> <p>1 Is it your experience that signatures can</p> <p>2 vary based on the sort of implements that was used to</p> <p>3 make the signature?</p> <p>4 A. Yes.</p> <p>5 Q. Is that something that's taken into</p> <p>6 account by you or others on your staff when you</p> <p>7 conduct signature matching?</p> <p>8 A. Yes.</p> <p>9 Q. Can you describe how that, how that might</p> <p>10 be taken into consideration?</p> <p>11 A. Well, in the case where a voter only has</p> <p>12 that one signature, especially if it appears to be a</p> <p>13 poor signature, we may even follow up with a mailer</p> <p>14 asking them to give us a new signature that we can</p> <p>15 scan into the system and get it to a 200 DPI level,</p> <p>16 dots per inch, making it easier for us to reproduce</p> <p>17 the signature and also have it reviewed now by the</p> <p>18 Agilis.</p> <p>19 But in the case where there are multiple</p> <p>20 signatures, then we would rely on the other ones that</p> <p>21 were of a higher quality. So, yeah, we take that into</p> <p>22 consideration.</p> <p>23 Q. Okay. To your knowledge, are there any</p> <p>24 voters in your system that do not have a signature on</p> <p>25 file?</p>	<p style="text-align: right;">page 81</p> <p>1 time talking about the Agilis machine that you</p> <p>2 mentioned a few times. I understand that your office</p> <p>3 worked with the Secretary of State to use CARE Act</p> <p>4 funds to help purchase that machine; is that correct?</p> <p>5 A. That is correct.</p> <p>6 Q. Okay. And when was that?</p> <p>7 A. That would have been in April for</p> <p>8 implementation in May. It happened very quickly.</p> <p>9 Q. Okay. Why did you decide to purchase the</p> <p>10 signature match machine?</p> <p>11 A. Automation is always the smoothest way to</p> <p>12 process things in large quantities. We wanted to make</p> <p>13 sure what we would have the capacity having made the</p> <p>14 decision in late March to go with an all-mail.</p> <p>15 We were looking for any tool that we could</p> <p>16 utilize to ensure that we'd be able to support the</p> <p>17 election. And that Agilis machine was definitely a</p> <p>18 positive thing for us.</p> <p>19 Q. I see.</p> <p>20 The decision to, to hold a primarily</p> <p>21 by-mail primary, that was a, that was a factor into</p> <p>22 your decision to acquire the signature match machine?</p> <p>23 A. A huge factor. It would not have occurred</p> <p>24 had that not happened.</p> <p>25 Q. Okay, thank you.</p>

<p style="text-align: right;">page 82</p> <p>1 And you said that it was implemented in 2 May. Do you happen to remember the specific date that 3 the machine was up and running and used for, for 4 signature matching? 5 A. No, I do not. But I can get you that 6 information if you would like it. 7 Q. Okay. 8 A. Would you like me to get that to you? 9 Q. Oh, yes, thank you. 10 So I would like to know a little bit more 11 about how the machine works. So you said it's the 12 Agilis machine; is that correct? 13 A. That is correct. It's spelled 14 A-g-i-l-i-s. 15 Q. And it's produced by Runmark, you said? 16 A. It's sold by Runbeck. I don't believe 17 that they manufacture the machine. 18 Q. I understand. So Agilis manufactures the 19 machine and you purchased it from a, from a vendor? 20 A. Correct. 21 Q. Okay. Do you know what software your 22 Agilis machine runs? 23 A. I'm sorry, I do not have that information 24 in my head. But we did send documentation over to 25 you --</p>	<p style="text-align: right;">page 84</p> <p>1 A. Yes, sir. 2 Q. Did you review this document before it was 3 sent to the plaintiffs in this case? 4 A. Yes. 5 Q. Did you review this document in 6 preparation for today's deposition? 7 A. Yes. 8 Q. Okay. Excellent. 9 I'm hoping that we can just kind of go 10 through some of the points in here just to make sure 11 we understand how the signature machine works. 12 MR. HAWLEY: So, Mr. Mortensen, could you 13 please zoom in on the answer to question No. 4. And I 14 think it might go over two pages. 15 Excellent. Thank you, Mr. Mortensen. 16 BY MR. HAWLEY: 17 Q. Mr. Gloria, would you please read through 18 your response to question No. 4, and when you're ready 19 to talk about it, just let me know. 20 A. Not a loud, just to myself, correct? 21 Q. Sure. That would be fine. 22 A. (Deponent complies.) 23 Okay, I believe I'm ready. 24 Q. Okay. So if you will indulge me, we will 25 just kind of go line by line and just to make sure</p>
<p style="text-align: right;">page 83</p> <p>1 Q. Okay. 2 A. -- on the software in the machine. 3 Q. Okay. Is it fair to say that it -- did 4 the machine come with software preprogrammed into it? 5 A. Certainly. That's the only way that it 6 functions. 7 Q. Okay. And just in case we were unclear 8 before, I'm sorry, I dove right into these questions. 9 But if you could send us the information about when 10 you, what day you started implementing the machine, 11 that would be very helpful. I'm not sure, I might 12 have missed that. 13 A. Let me make sure that we're clear. You 14 want to know when we received the machine or when it 15 was actually put into use? 16 Q. When it was put into use. 17 A. Okay. 18 Q. Okay. Thank you. 19 MR. HAWLEY: Okay. Mr. Mortensen, could 20 you please pull up Tab S, as in Sierra, and mark it as 21 Exhibit 8. 22 (Gloria Exhibit 8, marked for identification.) 23 BY MR. HAWLEY: 24 Q. Okay. Mr. Gloria, do you recognize this 25 document?</p>	<p style="text-align: right;">page 85</p> <p>1 that we have a common understanding of what the 2 different provisions mean. 3 So let's start with the first line. It 4 says: 5 "Signature verification functionality 6 as it relates to the sorter is based on 7 capturing the signature on the outer envelope 8 with a high-speed camera as the in-bound vote 9 by mail envelopes are fed through the 10 sorter." 11 So in your words, what does that mean 12 exactly? 13 A. We batch these envelopes and they're -- I 14 don't know if you've been to a post office, but it's 15 very similar to one of those machines. 16 Q. Okay. 17 A. It's kind of fun to watch. I believe we 18 can put more than 300 envelopes in the slot at one 19 time and it sweeps those through with a spring and 20 reads them through and scans them. 21 Q. When you say scan it, it uses a high-speed 22 camera? 23 A. That is correct. 24 Q. Okay. Great. 25 All right. The next step, it says:</p>

<p>page 86</p> <p>1 "Automatic signature verification 2 software provides the county with the 3 opportunity to set a threshold for comparing 4 the captured signature automatically against 5 the most recent signature captured in the 6 voter registration base." 7 So can you explain what that means? 8 A. Well, I have to tell you that I'm not a 9 complete expert on this, but I will tell you what I 10 know. The ASR -- 11 Q. That would be just fine. 12 A. Okay. ASR software is based on an 13 algorithm that's used commonly in the banking 14 institution, I'm told, that measures the variance of 15 the signature left to right, top to bottom, swing, 16 direction, things of that nature. It goes into a 17 great deal of computer detail on that. 18 We can set a threshold then as it's 19 explained to me. As we continue to use the system, 20 that threshold will be able to set -- it runs from 21 zero to 100. 22 The manufacturer generally recommends that 23 you start that threshold at 50, which means that the 24 software has to qualify that signature at 50 percent 25 of the algorithms that are used in the software to</p>	<p>page 88</p> <p>1 Q. Threshold. Okay. 2 And you say you started at 50 percent. Is 3 that when you actually started processing ballots or 4 did you start by, say, testing the machine? 5 A. No, it's when he started testing, we start 6 at 100 percent. That, that gives you a baseline for 7 your system and the quality of what you currently have 8 in your database. Obviously we swung it down and we 9 ended up starting off at the manufacturer's suggested 10 50 percent, but then later we dropped that to 40. 11 Q. So when you say dropped that to 40, so as 12 a result, the machine -- let me just, let me just try 13 to, try to rephrase this. 14 So the machine will accept, will accept a 15 signature as long as it meets a 40 percent, 40 percent 16 match based on its algorithms? 17 A. You hit it right on the head. 18 Q. Okay. Excellent. 19 And does that 40 percent correspond to a 20 certain rate of rejected ballots? 21 A. No, not necessarily. 40 percent will -- 22 as we were getting ready to implement use of the 23 system, we made a gauge based on manual checks of the 24 signatures that the system was approving. And based 25 on my permanent staff and my review, we felt</p>
<p>page 87</p> <p>1 qualify that signature. 2 As I was trying to mention earlier, the 3 longer we have the system, the more good signatures we 4 will get in the system, because it has to be a 200 DPI 5 quality signature, dots per inch. If not, then it 6 doesn't even make an attempt to match that signature. 7 So in actuality, we started at the 8 50 percent threshold and actually moved it down, 9 because we were getting too many rejects on our 10 system. 11 As the system continues to be used and our 12 quality of the signature improves, and we can get the 13 DMV onboard with possibly getting equipment in their 14 offices to get a 200 DPI signature, then we can 15 increase that threshold. But for right now, we are 16 running it at about 40 percent, I believe. 17 Q. Okay. A few, a few follow-ups based on 18 what you just said, Mr. Gloria. 19 The first is, so essentially, you can -- 20 to put it in another way, you set the sensitive of the 21 machine. And it will, it will alter its rate of 22 rejection based on what that level is set at. Is that 23 more or less correct? 24 A. I would agree with that. They call it the 25 threshold.</p>	<p>page 89</p> <p>1 comfortable at the 40 percent level that what the 2 system was approving, we would live with. That we 3 were comfortable saying, yes, this is a signature 4 match. 5 Q. So the lower the number, as you go from 6 50 to 40, and if you went lower, that leads to a lower 7 rate of rejected ballots? 8 A. That leads to a lower requirement for 9 match on the algorithm. 10 Q. Okay. And as a result, more ballots will 11 be accepted by the machine? 12 A. I don't know if that's an accurate 13 statement. 14 Q. Okay. Okay. But it's a lower threshold 15 the signature has to satisfy? 16 A. There are other variables that you have to 17 take into consideration and it's very complicated when 18 you start talking about the algorithm. I'm not 19 qualified to have that conversation. 20 Q. Nor am I. 21 A. I'll just tell you that we were -- we ran 22 tests on the system prior to putting it into use and 23 the signatures that were kicked out at the 40 percent 24 level, we were all in agreement that we were 25 comfortable saying these are matches.</p>

<p style="text-align: right;">page 90</p> <p>1 Now, I can't tell you that means it was a 2 lesser amount or more of an amount, I can't make that 3 generality. 4 Q. Okay. So just, just to confirm, so when 5 you were running the machine at 50 percent, it was -- 6 you and your staff concluded that it was rejecting too 7 many ballots that you and your staff felt were, were 8 clear matches? 9 A. Yes. 10 Q. And so then you lowered the sensitivity to 11 40 percent so that it wouldn't be as sensitive and it 12 wouldn't reject quite as many ballots that you felt 13 were, were good matches? 14 A. I think I can sleep with that answer, yes. 15 Q. Okay. If it works for you, it works for 16 me. Thank you. 17 Did you consider going lower than 18 40 percent at any time? 19 A. No. No, sir. Once we, once we all 20 agreed, we stopped. 21 Q. Okay. All right. And there was one more, 22 one more point. So you said that you were going to 23 try to ensure that you have a sufficiently high 24 quality signature for each voter for the machine to 25 use. But that would -- it would still be the case</p>	<p style="text-align: right;">page 92</p> <p>1 won't match, because we can't -- it's not clear enough 2 for the system to identify the actual signature from 3 the shading that's behind it. But, yes. 4 Q. Okay. When you say the signature won't 5 match, do you mean that the machine won't use that 6 example signature or that it will reject a signature 7 because of that background? 8 A. It won't use that. The only advantage 9 that we have there is those are very old 10 registrations. So we usually have a more current 11 registration or signature in the system. That did -- 12 that only caused an issue for us on a very, very small 13 percentage, because we didn't have high enough quality 14 signature. 15 Q. Okay. Thank you. 16 Moving on. 17 "When signatures have a clean 18 background and are over 200 DPI, counties 19 have seen machine consistent -- have seen 20 matching consistently between 30 percent and 21 70 percent using Runbeck's automatic 22 signature recognition software." 23 Can you explain what that means to me? 24 A. Yeah, that -- I think I would have to be a 25 salesman to really stand behind that. That's really</p>
<p style="text-align: right;">page 91</p> <p>1 that the, that the machine would only look at the 2 latest signature, correct? 3 A. It's only going to look at the latest one. 4 We would have to get an upgrade to the system in order 5 for it to look at more. Work with our registration 6 database vendor. And as the system ages, we will have 7 more qualified signatures because the ballots coming 8 back are being recorded at 200 DPI. So we will have a 9 200 DPI quality image saved in the system that we can 10 compare against. 11 Q. Okay. Thank you. 12 So the next line, and we were just 13 touching on this, so: 14 "Successful matches for signatures 15 when using this software is based on the dots 16 per inch of the signature image and how clean 17 the background is for the signature." 18 So, essentially, that referred to the 19 quality of the signature that it uses to match, 20 correct? 21 A. That is correct. And there are a lot of 22 factors that it takes into account. Also the -- in 23 the background, I have no idea why they did this, but 24 the old registration form had like a grayed area 25 behind the signature. Those are horrible. Those</p>	<p style="text-align: right;">page 93</p> <p>1 the pitch from the vendor, I think. We don't have any 2 data to say that's accurate or not. 3 After this election we can look back and 4 see how many ballots were run through the system and 5 how many were passed on the first, first pass. But 6 that -- that's what the vendor claims is 30 to 7 70 percent. I'm sure we are somewhere in there, 8 between the 30 to 70. But I don't, I don't have 9 confidence enough to say that that's true or not. 10 Q. Okay, thank you. 11 Skipping to the next, the bullet point at 12 the bottom. It says: 13 "There is no calibration for the 14 system since the signature match is based on 15 a software algorithm." 16 What exactly does that mean? 17 A. It's a, it's a camera, digital camera. So 18 you don't calibrate that camera. They run it, and if 19 it's capturing signatures, then it's good to go. 20 We have a spare part in-house. So if that 21 camera goes down, we would be able to replace it and 22 get the system back up and running. 23 But there is no calibrating software. The 24 software is what it is. And it's basing all of its 25 determinations on the algorithms that are in the</p>

<p style="text-align: right;">page 94</p> <p>1 software. So as long as that digital camera is</p> <p>2 properly shooting and they didn't have a calibration</p> <p>3 for it, it's either working or it's not, and we are</p> <p>4 prepared to replace it very quickly if it goes down.</p> <p>5 Q. I understand.</p> <p>6 But you can, you can calibrate the machine</p> <p>7 to the extent that you can change that threshold that</p> <p>8 we talked about earlier?</p> <p>9 A. That's not a calibration to the system.</p> <p>10 Q. Okay. Okay.</p> <p>11 A. I'm an old technician, so I wouldn't call</p> <p>12 that a calibration. That's, that's a subjective</p> <p>13 decision that's made on the part of every jurisdiction</p> <p>14 to change that threshold. That's not calibrating the</p> <p>15 system and making any determination on whether it's</p> <p>16 working accurately or not working.</p> <p>17 Q. Understood. Thank you. Thank you very</p> <p>18 much, Mr. Gloria.</p> <p>19 One moment, please.</p> <p>20 So just -- you'd mentioned that, that you</p> <p>21 might take some issue with, with that 30 to, 30 to</p> <p>22 70 percent range that was kind of presented. I just</p> <p>23 want to understand what you understand that term to</p> <p>24 mean.</p> <p>25 So when a county has seen matching</p>	<p style="text-align: right;">page 96</p> <p>1 would have concluded? If that makes sense.</p> <p>2 A. I'm going to have to get back to you,</p> <p>3 because I don't think I'm -- I'm not qualified to make</p> <p>4 that statement. I'll get with the vendor and I'll get</p> <p>5 that information to you and see what they were, they</p> <p>6 were getting at with that statement.</p> <p>7 Q. That would be terrific. Thank you,</p> <p>8 Mr. Gloria.</p> <p>9 Okay. Thank you for your indulgence going</p> <p>10 through that document. We are going to look at</p> <p>11 something else now, I just have a few more questions</p> <p>12 on.</p> <p>13 MR. HAWLEY: So, Mr. Mortensen, can we</p> <p>14 pull up Tab G, as in Gulf, and mark that as Exhibit</p> <p>15 No. 9.</p> <p>16 (Gloria Exhibit 9, marked for identification.)</p> <p>17 BY MR. HAWLEY:</p> <p>18 Q. Okay, Mr. Gloria, do you recognize this</p> <p>19 document?</p> <p>20 A. Yes, I do. This was a description that</p> <p>21 was provided to us by the vendor.</p> <p>22 Q. Okay. And did you produce this document</p> <p>23 to plaintiffs in response to an open records request?</p> <p>24 A. We did.</p> <p>25 Q. Okay. We have more or less been over</p>
<p style="text-align: right;">page 95</p> <p>1 consistently between 30 and 70 percent, do you</p> <p>2 understand that as meaning, as meaning that between</p> <p>3 30 and 70 percent of, of ballots would be matched</p> <p>4 correctly by the machine? Is that how you interpret</p> <p>5 that figure? Or does it refer to the rate of approval</p> <p>6 or rejection of the ballots?</p> <p>7 A. I think in your question, those are one in</p> <p>8 the same.</p> <p>9 But it's my -- it would, it would be my</p> <p>10 opinion that 30 to 70 percent is a number that they</p> <p>11 are trying to sell. That that's how many are usually</p> <p>12 successful passed through the system according to the</p> <p>13 number of ballots that are run through. Which again</p> <p>14 is a number that it depends on how, how good those</p> <p>15 signatures come back from the voters. So it's</p> <p>16 relative.</p> <p>17 Q. Okay. Okay.</p> <p>18 A. I'm not standing behind that number.</p> <p>19 Q. Okay, that's fine. That's fine.</p> <p>20 A. That's, that's from the vendor. Maybe I</p> <p>21 should not have put that in there.</p> <p>22 Q. And when you say, "successfully passed</p> <p>23 through the machine," just to confirm, does that mean</p> <p>24 a signature is determined to be a match or that the</p> <p>25 machine accomplishes what a person doing the match</p>	<p style="text-align: right;">page 97</p> <p>1 this, but I want to confirm.</p> <p>2 In the, at the end --</p> <p>3 MR. HAWLEY: Can you, please, actually,</p> <p>4 Mr. Mortensen, zoom in on the first paragraph. And</p> <p>5 highlight the text beginning with "Default values can</p> <p>6 be adjusted."</p> <p>7 BY MR. HAWLEY:</p> <p>8 Q. Okay. The text says:</p> <p>9 "The software uses a threshold setting</p> <p>10 to specify the recognition threshold for</p> <p>11 acceptance."</p> <p>12 Does that refer to the threshold process</p> <p>13 that we just discussed?</p> <p>14 A. I believe so.</p> <p>15 Q. Okay. One moment, please, Mr. Gloria.</p> <p>16 It indicates that:</p> <p>17 "If the threshold is set to 80, the</p> <p>18 recognition confidence value for an answer</p> <p>19 must be 81 or greater for the answer to be</p> <p>20 accepted."</p> <p>21 That's consistent with sort of the</p> <p>22 conversation that we were just having about setting</p> <p>23 the algorithm rate; is that correct?</p> <p>24 A. I believe so.</p> <p>25 Q. Okay. Okay.</p>

<p style="text-align: right;">page 98</p> <p>1 MR. HAWLEY: Okay. All right. We can 2 take, take Exhibit 9 down, Mr. Mortensen. 3 BY MR. HAWLEY: 4 Q. Just a few more questions, Mr. Gloria. 5 You mentioned that you had set, you 6 originally set the value at -- that threshold at 50 as 7 you started processing ballots during the June primary 8 and ultimately changed it to 40, correct? 9 A. That's what we set it when we began 10 testing. I believe that we had it set at 40 when we 11 began processing. 12 Q. Thank you. Okay. 13 And once you started processing the 14 ballots, did you change that threshold rate at any 15 time? 16 A. Not that I'm aware of. 17 Q. Okay. So based on this, this election 18 that you've, you've used the machine, are you 19 satisfied with its results? 20 A. Yes. 21 Q. Do you feel that the, that the signature 22 matching machine is accurate? 23 A. Yes. 24 Q. And is that, is that, is that based on 25 just your experience with the machine or is that based</p>	<p style="text-align: right;">page 100</p> <p>1 senior voters or voters with disabilities? 2 A. We haven't run any data along those lines 3 yet. 4 Q. Okay. At the end of the day, do you 5 believe that the signature verification machine is 6 more or less accurate than a staff member who would be 7 performing the same match? 8 A. I would say it's more efficient. That 9 does not answer your question. 10 Q. Fair enough. 11 Do you have any sense of whether or not it 12 is more, more accurate than a, than a staff member? 13 A. I do not. 14 Q. Okay. Do you have any indication of 15 whether the ballot rejection rate increased or 16 decreased after your office started using the machine? 17 A. No, I do not. We haven't run any data on 18 the machine. Those are all things that we definitely 19 would be interested in after the cycle when we can 20 catch our breath. 21 Q. Okay. Fair enough. 22 Just to confirm, had you started 23 processing signatures on absentee and mail ballot 24 before the machine started scanning the ballots? 25 A. Yes.</p>
<p style="text-align: right;">page 99</p> <p>1 on anything else? 2 A. I've only got one election under my belt, 3 sir, so I don't know if I can bank on that. 4 Q. Fair enough. 5 A. The fact that we tested it beforehand and 6 we were all very confident that at the 40 percent 7 threshold it was passing through ballots that we were 8 comfortable standing behind as far as the decision it 9 was making on the match. 10 Q. Okay. Do you feel that the machine was 11 accurate in evaluating signatures from voters for whom 12 English might not be their first language? 13 A. I cannot answer that. I wouldn't have 14 any -- I wouldn't have any information to justify a 15 response. 16 Q. Okay. What about for, for younger voters? 17 Do you feel the machine was, was accurate in matching 18 signatures from younger voters? 19 A. You know, these are interesting questions. 20 We might want to look at that kind of thing after the 21 election. We are still underwater in election 22 support, so we haven't really had a chance to be smart 23 with anything on data. We haven't looked at anything 24 along those lines. 25 Q. Okay. So the same would be true for, say,</p>	<p style="text-align: right;">page 101</p> <p>1 Q. Okay. So it's fair to say that during the 2 June primary, some ballots, some absentee and mail-in 3 ballots were processed using the machine and others 4 were not? 5 A. Yes. 6 Q. Okay. Thank you. 7 Just a couple more questions about the 8 machine and then we will take a little break. 9 So anytime, anytime that -- anytime that a 10 staff -- now that you are using the machine, anytime a 11 staffer conducts a second round of review, it would 12 only be because the machine has first rejected the 13 signature; is that correct? 14 A. Yes, sir. Once, as I mentioned earlier, 15 once a signature is, is approved as a match, it 16 doesn't get looked at again. 17 Q. Okay. And then anytime the counting 18 board, for example, looks at a signature, it will be 19 because both the machine and the first wave of 20 reviewers determined it was not a match, correct? 21 A. That is correct. The only continued 22 review would occur on a rejected signature. Anything 23 that is good, at that point it's put into a batch to 24 be sent to the counting board for counting. 25 Q. Thank you.</p>

<p style="text-align: right;">page 102</p> <p>1 So my question is, are you concerned that 2 either the counting board or that first individual 3 might be biased by the conclusions of the machine or 4 the reviewers before it? 5 A. I am not. 6 Q. Okay. Do you have any indication that 7 your staff is more likely to find a mismatch of a 8 signature because of the machine first rejected it? 9 A. One more time, please. Repeat that. 10 Q. Certainly. 11 Do you feel that your staff is more likely 12 to find a signature mismatch if the ballot signature 13 has first been rejected by the machine? 14 A. No. 15 Q. Okay. Do you plan to utilize the 16 signature verification machine in the November 17 election? 18 A. Absolutely. 19 Q. Okay. Do you plan to use the same 20 threshold level of 40 as you did during the November 21 (sic) election? 22 A. At this point in time, I would say yes. 23 Q. Can you imagine why you might change that 24 number? 25 A. Well, perhaps if we can sweep some more</p>	<p style="text-align: right;">page 104</p> <p>1 match process. So would you please let me know for 2 each one whether your office employs these safeguards. 3 Okay? 4 A. Okay. 5 Q. Okay. Do you screen staff who conduct 6 signature matching for visual impairments? 7 A. No. 8 Q. Okay. Do you screen signature matchers 9 for their ability to accurately match signatures? 10 A. We do not screen them. We provide them 11 with a briefing. 12 Q. Okay. And we will talk more about that in 13 just a minute. But first, are signature matchers 14 assessed on their performance once signature matching 15 has started? 16 A. We can track data on the rate of rejection 17 by a particular group as long as they are signed into 18 the system. 19 Are they reviewed? I know that when we 20 start the work that we do keep an eye on the workers. 21 And once they've proven that they seem to be working 22 at an acceptable rate and within what we consider 23 normal, then I don't believe we do it after that. 24 Q. Okay. Do you or any of your supervisors 25 ever remove staffers from signature matching?</p>
<p style="text-align: right;">page 103</p> <p>1 signatures that were just scanned in the primary into 2 the system, we might be able to change it. But I, I 3 don't anticipate that happening. My programmers are 4 busy just dealing with getting the election set up. 5 Q. Sure. 6 To your knowledge, do any other counties 7 in Nevada use signature matching machines? 8 A. To my knowledge, no. 9 MR. HAWLEY: Okay. All right. Thank you 10 very much, Mr. Gloria. 11 Let's just take a quick five-minute break, 12 if that would be all right, just to catch our breath. 13 Could we, could we all return at 10:15 if that works. 14 THE WITNESS: We will be back. 15 MR. HAWLEY: Thank you, Mr. Gloria. 16 THE VIDEOGRAPHER: The time is 10:10 a.m. 17 We are going off the record. 18 (Recessed from 10:10 a.m. to 10:16 a.m.) 19 THE VIDEOGRAPHER: The time is 10:16 a.m. 20 We are going back on the record. 21 BY MR. HAWLEY: 22 Q. Okay, Mr. Gloria, continuing on with the 23 signature matching. 24 I'm going to run through some potential 25 safeguards that can be used as part of the signature</p>	<p style="text-align: right;">page 105</p> <p>1 A. Oh, sure. A staffer can be removed for 2 all kinds of things in the Election Department. 3 Q. Sure. I guess more specifically, are they 4 ever removed from that position because of their 5 performance signature matching? 6 A. I'm sure that they have. 7 Q. Okay. 8 A. And, again, just to emphasize, we have 9 hundreds of people that do this. Sometimes they don't 10 work out in one way or another. 11 Q. Okay, thank you. 12 Does your office have lighting equipment 13 available to signature matchers while they are 14 conducting this process? 15 A. Did you say light? 16 Q. I'm sorry, lighting equipment, yes. 17 A. Yes. Everything is properly lit in all of 18 our work areas. 19 Q. Okay. And does your office provide 20 magnification equipment for signature matchers? 21 A. For those who request it. I actually use 22 a magnifying glass right on my desk with a light. 23 Q. Do, do you find that other staffers use 24 the magnification equipment that you offer? 25 A. We have some people. Some actually bring</p>

<p style="text-align: right;">page 106</p> <p>1 in their own.</p> <p>2 Q. Excellent. Thank you.</p> <p>3 Now, you had mentioned the training, I</p> <p>4 would like to talk about that a little more. Can you</p> <p>5 describe the guidance or training that you provide to</p> <p>6 staffers who conduct signature matching?</p> <p>7 A. As I mentioned, we have a professional</p> <p>8 forensic signature examiner who comes in to train our</p> <p>9 permanent staff. That serves as a foundation for what</p> <p>10 our staff trains those folks who are going to be</p> <p>11 reviewing signatures.</p> <p>12 With the temporary staff, we go through</p> <p>13 the basics, spacing, swing, line placement, just the</p> <p>14 basics with, with our temporary folks.</p> <p>15 But bottom line, if it doesn't look like</p> <p>16 it matches to you, reject it, because there are other</p> <p>17 levels of review.</p> <p>18 Q. Okay. Is it fair to say that every</p> <p>19 staffer who conducts signature matching experiences</p> <p>20 this training?</p> <p>21 A. Yes, it is, absolutely.</p> <p>22 Q. Do they go through it once every election</p> <p>23 cycle?</p> <p>24 A. Every election cycle before we start the</p> <p>25 process, yes, we provide that training.</p>	<p style="text-align: right;">page 108</p> <p>1 (Gloria Exhibit 10, marked for identification.)</p> <p>2 BY MR. HAWLEY:</p> <p>3 Q. Mr. Gloria, do you recognize this</p> <p>4 document?</p> <p>5 A. That's an award winner right there, that</p> <p>6 "Don't Lose Your Voice."</p> <p>7 Q. Excellent.</p> <p>8 Did you produce this guide to the</p> <p>9 plaintiffs during this litigation?</p> <p>10 A. Yes, we did.</p> <p>11 Q. Okay.</p> <p>12 MR. HAWLEY: Excellent. Thank you,</p> <p>13 Mr. Mortensen.</p> <p>14 BY MR. HAWLEY:</p> <p>15 Q. Are these the written instructions that</p> <p>16 you had just mentioned that are provided to signature</p> <p>17 matchers?</p> <p>18 A. We have several documents. I would</p> <p>19 appreciate it if you could scroll through it.</p> <p>20 Q. Sure.</p> <p>21 MR. HAWLEY: Yes. Could we, could we just</p> <p>22 scroll through the first couple of slides.</p> <p>23 THE WITNESS: Oh, this is actually the</p> <p>24 PowerPoint.</p> <p>25 ///</p>
<p style="text-align: right;">page 107</p> <p>1 Q. Okay.</p> <p>2 A. I'm sorry. Just to clarify, are you</p> <p>3 talking about the, the forensic expert that comes to</p> <p>4 train my permanent staff or the one that we give to</p> <p>5 each employee as they come in that's more of a brief?</p> <p>6 Q. I was referring to the latter. But let's</p> <p>7 talk about the former. How often does your, your</p> <p>8 supervisory staff have these trainings with the</p> <p>9 forensic expert?</p> <p>10 A. It's not just the supervisors, all</p> <p>11 permanent staffers are put through that training once</p> <p>12 a year.</p> <p>13 Q. Okay.</p> <p>14 A. We will be taking part in that next month,</p> <p>15 in August.</p> <p>16 Q. Okay. Excellent. Thank you very much.</p> <p>17 When, when your permanent staff conducts</p> <p>18 the briefing, we will call it, for the signature</p> <p>19 matchers, so what occurs every election cycle, do they</p> <p>20 provide any written materials or guidance to the</p> <p>21 signature matcher?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 MR. HAWLEY: Mr. Mortensen, can you please</p> <p>25 pull Tab H, as in Hotel, and mark it as Exhibit 10.</p>	<p style="text-align: right;">page 109</p> <p>1 BY MR. HAWLEY:</p> <p>2 Q. Yes, I think it is a PowerPoint.</p> <p>3 A. Yes. Yes. This is what we use.</p> <p>4 Q. Okay. Are signature matchers given any</p> <p>5 other materials in addition to this PowerPoint?</p> <p>6 A. They do receive hard copies, yes, that</p> <p>7 they can review.</p> <p>8 Q. Okay. But are they -- do they receive any</p> <p>9 other PowerPoints or any other materials other than</p> <p>10 like a hard copy of this PowerPoint?</p> <p>11 A. They also receive a packet of the</p> <p>12 documents that we use to attach to any of the ballots</p> <p>13 that are reviewed and rejected.</p> <p>14 Q. Okay. If those documents have not been</p> <p>15 produced to plaintiffs yet during this litigation,</p> <p>16 would your office be willing to produce those?</p> <p>17 A. Absolutely. I think we have. I saw it in</p> <p>18 the documents I reviewed.</p> <p>19 Q. Okay. So to your knowledge, signature</p> <p>20 matchers don't receive any documents that haven't been</p> <p>21 produced over the course of this litigation; is that</p> <p>22 fair?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. Thank you.</p> <p>25 When, when your staff conducts signature</p>

<p style="text-align: right;">page 110</p> <p>1 matching, you said that they have -- they are given a 2 hard copy. Do they have that hard copy available to 3 them while they are going through the process? 4 A. We certainly don't deter them from doing 5 so. 6 Q. Okay. Fair enough. 7 How long has your office been using these 8 instructions? 9 A. For at least the past two election cycles. 10 Q. Okay. 11 A. We review after every election. We try to 12 make things better. I believe it's the same stuff we 13 used in 2018. 14 Q. Okay. So these are the instructions that 15 were used this past June for the primary election? 16 A. Correct. 17 Q. And are these the instructions that you 18 plan to use during the November election? 19 A. As I said, we review after every election. 20 I have not asked Kathy if she's made any updates. But 21 as far as I know, we will be using this same thing. 22 Q. Okay, very good. Thank you. 23 Do you verify that each signature matcher 24 has reviewed these instructions? 25 A. Yes.</p>	<p style="text-align: right;">page 112</p> <p>1 wife sign each other's ballots that their ballots are 2 automatically accepted even though the signature does 3 not match? 4 A. Well, the signature doesn't match for the, 5 for the return envelope. However, we have to find a 6 match of somehow or find somebody at that residence 7 that, that we can match a signature against. We are 8 still going to match that signature. We just fully 9 realized that they made an honest mistake and signed 10 the return envelope for somebody else who received a 11 ballot in their household. 12 Q. So the basis for that judgment is the fact 13 that they share the same address? 14 A. Yes. 15 Q. Is that how a signature matcher would know 16 that this exception might apply? 17 A. Yes. 18 Q. Okay. 19 A. They may not see both of the envelopes at 20 the same time. This is, this is caught at the review 21 level once we get to the research team. 22 Q. I see. 23 A. This is not uncommon. 24 Q. Okay. What happens if, say, the husband 25 and the wife just completed and mailed their ballots</p>
<p style="text-align: right;">page 111</p> <p>1 Q. How do you do that? 2 A. In the meeting when they sign in. 3 Q. Great. 4 And do signature matchers have an 5 opportunity to ask you or your staff questions about 6 these instructions? 7 A. Not just during the training but while 8 they are doing the work. 9 Q. Okay. Is it fair to say that there is 10 always someone on your staff in a supervisory role 11 that signature matchers can ask questions to during 12 the process? 13 A. Always. 14 Q. Okay, thank you. 15 MR. HAWLEY: Okay. Mr. Mortensen, can you 16 please scroll down to page 26. 17 BY MR. HAWLEY: 18 Q. Mr. Gloria, do signature matchers apply 19 this exception when they are conducting signature 20 matching? 21 A. Oh, yes. I should have looked at the top. 22 Yes. 23 Q. Okay, great. 24 And just to clarify what this slide 25 represents. Does this mean that when a husband and</p>	<p style="text-align: right;">page 113</p> <p>1 at different times, is it possible that your office 2 would not receive them in the same batch? 3 A. Yes. 4 Q. But are you -- is the research team still 5 able to, say, associate the two ballots based on the 6 common address even if they are not processed at the 7 same time? 8 A. What stands out with this ballot is that 9 the name on the return does not match the signature 10 pretty clearly. 11 Q. Right. 12 A. So the research team is looking for that 13 type of issue. 14 Q. Okay. Okay. Does this same exception 15 apply to other individuals who share the same 16 household? 17 A. It can. 18 Q. Okay. So even though the exception only 19 specifically mentions spouses, could the exception 20 apply to unmarried domestic partners, for example? 21 A. It can. 22 Q. Or siblings? 23 A. As long as they are at the same address, 24 then it can. 25 Q. Okay. What about roommates who share the</p>

<p style="text-align: right;">page 114</p> <p>1 same address unrelated?</p> <p>2 A. I would have to check. I don't know if</p> <p>3 that's a scenario we've run into.</p> <p>4 Q. Okay. Is it your understanding that this</p> <p>5 exception is supported by the ballot -- by the</p> <p>6 signature matching statutes?</p> <p>7 A. No.</p> <p>8 Q. Okay. Why not?</p> <p>9 A. I guess, I guess I would have to go do a</p> <p>10 rereview to make sure. We are still trying to match</p> <p>11 that signature against the voter. So I retract that</p> <p>12 statement. Yes. In fact, we are still verifying if</p> <p>13 that signature matches for the correct person. We are</p> <p>14 just not making subjective decisions. We still match</p> <p>15 that signature against that person. There has to be a</p> <p>16 pair in that residential household that matches that</p> <p>17 information. So I retract that, my first statement.</p> <p>18 Yes, it does.</p> <p>19 Q. Okay. Thank you, Mr. Gloria.</p> <p>20 MR. HAWLEY: Mr. Mortensen, we can take</p> <p>21 down Exhibit 10.</p> <p>22 BY MR. HAWLEY:</p> <p>23 Q. But just quickly, Mr. Gloria, I believe</p> <p>24 when you said when you reviewed these instructions,</p> <p>25 someone named Kathy will help with the instruction</p>	<p style="text-align: right;">page 116</p> <p>1 In addition to you, what oversight is</p> <p>2 provided to staffers and other people who are</p> <p>3 conducting signature matching?</p> <p>4 A. Other than the briefing and the monitoring</p> <p>5 by supervisors in all of the work areas?</p> <p>6 Q. Yes. Is there anything else that we</p> <p>7 haven't covered?</p> <p>8 A. No.</p> <p>9 Q. Okay. Does your office have guidelines on</p> <p>10 how long each signature match should take?</p> <p>11 A. No.</p> <p>12 Q. Do you have any sense of on average how --</p> <p>13 knowing that you have a lot of people doing it, do you</p> <p>14 have any sense of how long the average, the average</p> <p>15 signature match takes place?</p> <p>16 A. Well, I know that a batch, it's not</p> <p>17 unusual or we hope that they will be able to process a</p> <p>18 batch of 200 between each break session. So 200</p> <p>19 should usually be completed from an 8:00 to 10:00,</p> <p>20 break, from 10:15 to 12:00, we expect that another</p> <p>21 batch should be processed. So I guess 200 every two</p> <p>22 hours.</p> <p>23 Q. Okay.</p> <p>24 A. If it's not reaching that, then we would</p> <p>25 be monitoring them closely.</p>
<p style="text-align: right;">page 115</p> <p>1 review process; is that correct?</p> <p>2 A. She, she's my registration supervisor.</p> <p>3 She creates the PowerPoint.</p> <p>4 Q. I'm sorry, I was wondering if I could get</p> <p>5 her name. You said she is the registration</p> <p>6 supervisor?</p> <p>7 A. Kathy Smith.</p> <p>8 Q. Okay, thank you.</p> <p>9 Okay. So your office has sent -- when</p> <p>10 we -- we understand that your office has sent a group</p> <p>11 of permanent employees to do training with a signature</p> <p>12 expert in Arizona. Is that the forensic training that</p> <p>13 you mentioned earlier?</p> <p>14 A. Yes. And we do not send them to Arizona.</p> <p>15 She comes here. And in this case this year, it will</p> <p>16 be a visual training due to the COVID.</p> <p>17 Q. Okay. And that is conducted once every</p> <p>18 year you said.</p> <p>19 A. Yes, we began that last year.</p> <p>20 Q. Okay. And do, do your staff receive any</p> <p>21 other specialized training in signature matching?</p> <p>22 A. No.</p> <p>23 Q. Okay. Okay. I would like to briefly talk</p> <p>24 again about your role in the signature matching</p> <p>25 process.</p>	<p style="text-align: right;">page 117</p> <p>1 Q. Okay. So as we discussed a few times, you</p> <p>2 personally review each signature before it is</p> <p>3 ultimately rejected, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Do you have a sense of what percentage of</p> <p>6 those signatures that you receive for the final</p> <p>7 determination are ultimately rejected?</p> <p>8 A. 70 to 75 percent.</p> <p>9 Q. Okay. And just this is a little bit of</p> <p>10 review, but you mentioned that you consider various</p> <p>11 criteria as you review a signature, including the age</p> <p>12 of the voter, the age of the voter's signature, and</p> <p>13 other criteria, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Are these criteria communicated to your</p> <p>16 staff and to the counting board during the training</p> <p>17 processes?</p> <p>18 A. They don't have the same tools that I have</p> <p>19 in that final review.</p> <p>20 Q. Okay.</p> <p>21 A. So, no.</p> <p>22 Q. What training of signature matching have</p> <p>23 you personally undertaken?</p> <p>24 A. Other than the forensic professional that</p> <p>25 comes in and trains, just volumes over years that I --</p>

<p>page 118</p> <p>1 Q. Experience?</p> <p>2 A. -- tens of thousands of signatures in</p> <p>3 my --</p> <p>4 Q. Okay.</p> <p>5 A. -- career.</p> <p>6 Q. Thank you.</p> <p>7 All right. Now I would like to spend a</p> <p>8 little time talking about the cure process.</p> <p>9 In your words, what does it mean to cure a</p> <p>10 ballot?</p> <p>11 A. Curing a ballot would -- what's the word</p> <p>12 I'm looking for? It ensures that the identity of the</p> <p>13 voter is accurate. That the voter who was sent the</p> <p>14 ballot is the voter who has signed the ballot and it</p> <p>15 should be counted.</p> <p>16 Q. Okay. So we've sort of been over this,</p> <p>17 but just to review again.</p> <p>18 So the cure process begins after the</p> <p>19 second wave of review results in a ballot rejection,</p> <p>20 correct?</p> <p>21 Once, once the first staffer who looks at</p> <p>22 the ballot determines there is a mismatch, then the</p> <p>23 cure process begins, correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And walk me through, how does that cure</p>	<p>page 120</p> <p>1 A. Everybody gets a letter, I'm sorry. It's</p> <p>2 an automated process. But we would add the email and</p> <p>3 the phone if we have that information available to us.</p> <p>4 Q. How many, for how many voters do you have</p> <p>5 email addresses would you say?</p> <p>6 A. I would have to look that up for you.</p> <p>7 I'm, I'm not prepared to give you a guess.</p> <p>8 Q. Would the same be true for phone numbers?</p> <p>9 A. No. I think we probably have more phone</p> <p>10 numbers than email addresses, believe it or not. But</p> <p>11 those numbers are going up. I can get those to you.</p> <p>12 Q. Thank you.</p> <p>13 So how do you make the determination</p> <p>14 whether to do that additional step of contacting a</p> <p>15 voter by phone or email if you have that contact</p> <p>16 information?</p> <p>17 A. A lot of it has to do with resources that</p> <p>18 are available. Certainly if we have time, we have got</p> <p>19 an automated process that tells us and we can draw a</p> <p>20 report that tells us those that were sent the cure</p> <p>21 letter via the mail and whether they have an email or</p> <p>22 a phone number.</p> <p>23 If we have staff available, we will sit</p> <p>24 them down and have them try to use one of those other</p> <p>25 methods to send that information to them as well. But</p>
<p>page 119</p> <p>1 process proceed?</p> <p>2 A. It's an automated process the system kicks</p> <p>3 out, and we will send a letter in the mail with the</p> <p>4 documents notifying the voter that their signature did</p> <p>5 not match. That we need them to fill out the</p> <p>6 affidavit and provide a driver's license, a copy of</p> <p>7 their driver's license, Nevada driver's license or ID</p> <p>8 card. We give them the means to send that back</p> <p>9 electronically.</p> <p>10 We also had a tool available provided</p> <p>11 through the Secretary of State's office that people</p> <p>12 were very happy with that gave them a mobile</p> <p>13 application that they could use to handle that entire</p> <p>14 process where they took a picture of the ID, sent it,</p> <p>15 and it was put in a secure queue for us or gain those,</p> <p>16 get those records electronically and process them.</p> <p>17 If we -- we have the system that will</p> <p>18 identify to us, because this is an automated process</p> <p>19 where we have an additional means to contact the</p> <p>20 voter, such as by email or through cell phone number,</p> <p>21 so we will make an attempt to, to reach out to them</p> <p>22 there as well.</p> <p>23 Q. Okay. That's very helpful. So just the</p> <p>24 first process you said is that a letter is sent. And</p> <p>25 that is automated, correct?</p>	<p>page 121</p> <p>1 it's more important that we count ballots. So it's</p> <p>2 all a matter of what's going on at the time,</p> <p>3 unfortunately.</p> <p>4 Q. I understand. So would it be fair to say</p> <p>5 that it might be more likely to receive that secondary</p> <p>6 notification early in the process before the count has</p> <p>7 begun than on Election Day, for example?</p> <p>8 A. That's, that's fair to say.</p> <p>9 Q. Okay. During that -- of that first</p> <p>10 letter, what is the time gap between when that, when</p> <p>11 the, when the second wave of review determines that</p> <p>12 the ballot does not match and when that first letter</p> <p>13 is mailed out to the voter?</p> <p>14 A. We try to get it done as quickly as</p> <p>15 possible, but it depends on the number of ballots that</p> <p>16 come in.</p> <p>17 We've never had an election like we just</p> <p>18 supported in the primary.</p> <p>19 Q. Sure.</p> <p>20 A. In a busy election for the 2018 general,</p> <p>21 we processed and counted 45,000 ballots. Just in this</p> <p>22 primary we did over 300,000. So that was a completely</p> <p>23 new experience for us. So we had to shift staff as,</p> <p>24 as ballots were received. Obviously we can't predict</p> <p>25 when we are going to get a batch of 20- to 30,000 in a</p>

<p style="text-align: right;">page 122</p> <p>1 day or in a day when we get 5- to 10,000. But we try 2 to get those processed just as quickly as possible. 3 Q. Okay. During that -- with 300,000 ballots 4 to process, were you able to send out the, the 5 notification letters to every person who was in need 6 of a, of a cure for the mismatch? 7 A. Oh, it's an automated process. 8 Q. Okay. 9 A. So the computer handles pumping those out 10 and they go into the mail through our sorter, our mail 11 provider. So everybody got a letter. How quickly we 12 were able to determine that they needed that letter, 13 that varied. 14 Q. I understand. Okay, thank you. 15 MR. HAWLEY: Mr. Mortensen, can you please 16 pull up Tab I, as in -- I knew I'd eventually start 17 forgetting what the, what the words are that go with 18 the different letters, and I guess it's happened now. 19 Oh, but Tab I, there we go. Okay, mark 20 this as Exhibit 11. 21 (Gloria Exhibit 11, marked for identification.) 22 BY MR. HAWLEY: 23 Q. Mr. Gloria, do you recognize this 24 document? 25 A. Yes.</p>	<p style="text-align: right;">page 124</p> <p>1 document? 2 A. Yes, sir. 3 Q. Is this the notification letter that 4 plaintiff Genea Roberson received during the June 5 primary election? 6 A. I couldn't tell you if she received it, 7 but it looks like it was sent her. Her name is -- 8 Q. Let me rephrase that. 9 Is this the letter that was sent to 10 Miss Roberson during the June primary? 11 A. It appears to be. 12 Q. Okay. To your understanding, is this 13 similar to the other letters, the notification letters 14 that other Clark County voters received during this 15 past election? 16 A. I would agree with that. 17 Q. Okay. Does this notification letter 18 specify the specific problem with the voter's ballot 19 signature? Oh, and we can make it bigger. 20 MR. HAWLEY: Actually, Mr. Mortensen, can 21 you please zoom in on the first paragraph under "Dear 22 Voter." 23 THE WITNESS: It tells her that either she 24 didn't sign it or it didn't match. 25 ///</p>
<p style="text-align: right;">page 123</p> <p>1 Q. Has your office used this form to notify 2 voters of signature problems previously? 3 A. Yes. 4 Q. Did your office use this form during the 5 June primary? 6 A. I believe we, we used something similar to 7 this. But I don't think -- because it would have been 8 included with the affidavit as well. 9 Q. Okay. Do you see on this form that there 10 are little check boxes next to, up near the top if the 11 signature does not match. And then a separate check 12 box if the return envelope was not signed. 13 Do you see that? 14 A. I see it. 15 Q. Is it fair to assume that when this form 16 is used, the appropriate box would be checked 17 depending on the specific issue for the voter? 18 A. That's the purpose of the boxes, yes. 19 Q. Okay, thank you. 20 MR. HAWLEY: Mr. Mortensen, can we please 21 take down Exhibit 11 and replace it with Tab J, as in 22 Juliette, and we will mark that as Exhibit 12. 23 (Gloria Exhibit 12, marked, for identification.) 24 BY MR. HAWLEY: 25 Q. Mr. Gloria, do you recognize this</p>	<p style="text-align: right;">page 125</p> <p>1 BY MR. HAWLEY: 2 Q. But unlike the previous form, it doesn't 3 specify the precise problem; is that a correct 4 characterization? 5 A. Not in that paragraph, no. 6 Q. Okay. Do you see anywhere else -- 7 MR. HAWLEY: If we could zoom back out, 8 Mr. Mortensen. 9 BY MR. HAWLEY: 10 Q. Mr. Gloria, do you see anywhere else on 11 the letter where it specifies the precise nature of 12 the voter's signature issue? 13 A. No, I do not. But the cure process was -- 14 required the same response, the affidavit and the 15 Nevada driver's license regardless of which case it 16 was. 17 Q. Okay. Is there, is there any particular 18 reason why this notification letter doesn't specify 19 the particular issue for the voter? 20 A. I'm going to assume that that other box 21 that you saw in the previous letter, would have been a 22 manual process to mark that. And this took care of 23 both scenarios since they both needed to send the same 24 documentation back. 25 And we knew that we were going to be</p>

<p style="text-align: right;">page 126</p> <p>1 swamped with an unknown number of, of these cure 2 letters and we wanted to make sure we would be able to 3 support it. 4 A lot of what we do is based on us trying 5 to proactively make sure we can actually pull off the 6 support of the election. In this case it appears 7 that's what we did as well. 8 Q. Okay. I understand. 9 As a general matter, do you think it would 10 be helpful to the voter if the, if the letter 11 specified the nature of their cure issue? 12 A. I don't know how it would be helpful for 13 them to know which one. I'm sure they would 14 appreciate it if it did. A lot of people appreciate 15 if we put an NVR card in an envelope it's twice the 16 cost. 17 So, again, we get into resources that are 18 available. We did the best we could with what we had. 19 Q. I understand. Thank you. 20 MR. HAWLEY: Could we please zoom in on 21 the third paragraph of the letter, Mr. Mortensen. 22 Just above the table in the middle. 23 BY MR. HAWLEY: 24 Q. Mr. Gloria, do you see where it says: 25 "If your ballot contained a signature</p>	<p style="text-align: right;">page 128</p> <p>1 these specific cases to law enforcement? 2 A. Not at this point. 3 Q. Okay. Do you have any sense of which, 4 which form of the notification letter you will use 5 during the November election? 6 A. As far as I know, we are planning to use 7 the same one. 8 Q. Okay, thank you. 9 MR. HAWLEY: Mr. Mortensen, we can take 10 down Exhibit 12. 11 BY MR. HAWLEY: 12 Q. You mentioned earlier, Mr. Gloria, that, 13 that resources and time permitting, you might also 14 contact a voter about the cure process over the phone 15 or by email, correct? 16 A. If we have the information, that's 17 correct. 18 Q. Okay. If someone is contacted by phone, 19 does the caller have a particular script that they use 20 to inform the voter of the, of the signature issue? 21 A. Not a script, no. 22 Q. Is it sort of kind of an improvised, 23 improvised call? 24 A. These are permanent staff members that are 25 dealing with this. So we don't have a script. They</p>
<p style="text-align: right;">page 127</p> <p>1 that was not verifiable, and you do not 2 affirm on the enclosed form that you voted a 3 ballot, we may turn over this discrepancy to 4 law enforcement for investigation"? 5 A. Yes. 6 Q. Was this law enforcement warning included 7 in earlier notification letters? 8 A. I do not believe so. 9 Q. Okay. Why was it added? 10 A. Again, we are trying to uphold the 11 integrity of the process. You shouldn't have sent 12 something back if it wasn't your ballot. 13 Q. Is it possible that some voters might not 14 be able to complete the cure process even if they had 15 signed their own ballot? 16 A. Well, we required the Nevada ID. That's 17 what's required by law. So I suppose there were 18 instances where some could not. 19 Q. Okay. How many verification -- do you 20 have any sense of how many of these affirmation forms 21 were mailed out but not returned during the June 22 primary election? 23 A. I can certainly get that number to you. 24 Q. Okay, that would be very helpful. 25 Do you recall if you turned over any of</p>	<p style="text-align: right;">page 129</p> <p>1 are just communicating. Most of my staff is reaching 2 out to the general public on a regular basis. 3 Q. Okay. So they would be familiar with the 4 cure process and be able to communicate that to the 5 voter? 6 A. That's correct. 7 Q. Okay, thank you. 8 And is the same true of emails, do you 9 have a script or is it just kind of written by your 10 permanent staff on an individual basis? 11 A. There is no script. 12 Q. Okay. Thank you. 13 You mentioned you used the text cure 14 option during the June primary, and I think you said 15 that it was quite popular; is that correct? 16 A. We had a lot of positive feedback on it. 17 Q. Okay. 18 Do you feel that it improved the rate of 19 cured ballots using the text option? 20 A. I'm sure that it gave another opportunity 21 for people to, who are technologically savvy to do it. 22 This is the only election we've used it in. So to 23 make, to make any kind of judgment on it is a little 24 bit difficult. 25 Q. Sure.</p>

<p style="text-align: right;">page 130</p> <p>1 Do you plan to utilize this process during 2 the November election? 3 A. Certainly hoping so. The Secretary of 4 State has not committed to paying for that service, 5 which they did in the primary election. So we are 6 currently working on making sure that we still have it 7 in place. 8 Q. If the Secretary of State's office isn't 9 able to provide the funds for it, I assume that your 10 office would need to expend its own funds to do it? 11 A. That would -- yes, that would be the case. 12 Q. Sure. And is it fair to say that money is 13 tight right now given the, given the circumstances? 14 A. Money is always tight, but especially now. 15 Q. Sure. Sure. 16 Do you think you will be -- if the 17 Secretary of State's office is not able to provide the 18 funds, do you, do you imagine that your office will 19 still be able to provide the text option? 20 A. I can't commit to that. 21 Q. Fair enough. 22 A. We are in a pandemic situation here. 23 There are 34 other departments that are begging for 24 resources along with me. We are, we are making an 25 active effort to make sure that it's available because</p>	<p style="text-align: right;">page 132</p> <p>1 BY MR. HAWLEY: 2 Q. Mr. Gloria, is this a correct 3 representation of the different options that a voter 4 has to cure their ballot? 5 A. Yes. 6 Q. Okay. Are there any circumstance in which 7 a voter would be required to go in person to your 8 office to cure a ballot issue? 9 A. If they chose to do so, they could. But 10 we wouldn't require it. 11 Q. Okay. If a voter calls your office and 12 wants to know if their signature and their ballot was 13 counted, would you provide that information over the 14 phone? 15 A. If it's available. 16 Q. Okay. 17 A. We provide information on the website 18 based on the status. However, we need to get more 19 detailed with that information. Now that we have the 20 Agilis, that creates a whole new challenge for us. 21 There is a ton of data that's available for us, but 22 you have to have a programmer to sit down and 23 implement and write the queries so that we can release 24 that information in a timely fashion. 25 Certainly after the election when</p>
<p style="text-align: right;">page 131</p> <p>1 we got positive feedback, and we think it's a good 2 thing for the voter. But I can't commit to saying. 3 Q. Understandable. Thank you, Mr. Gloria. 4 A couple of other questions about other 5 potential avenues of curing ballot mismatches. 6 Do you or your staff ever go to voters' 7 homes to cure ballot issues? 8 A. No. 9 Q. Okay. Do you have any concerns about the 10 mail, the mail service in Clark County? 11 A. No. 12 Q. Okay. Do you keep records of the number 13 of times each voter is contacted to cure a ballot 14 issue? 15 A. No. 16 Q. Okay. 17 A. If it's not the automated process, then, 18 no. We are not tracking the emails or the -- 19 obviously electronically there is always a signature, 20 so I guess we could research it, but it would be 21 difficult. 22 Q. Okay. Thank you. 23 MR. HAWLEY: Mr. Mortensen, could we 24 please bring up Exhibit 12, again. And zoom in on the 25 box option 1 and option 2.</p>	<p style="text-align: right;">page 133</p> <p>1 everything is updated, voter history and all that kind 2 of thing, we have that information available for them. 3 But it depends on the step, on the process of where 4 their ballot is so that we could actually go into 5 VEMACS and find accurate information. 6 Q. Okay. Does your office keep a record of 7 calls from voters regarding their cure options or any 8 other inquiries that they make? 9 A. Not specifically on the cure. But we -- 10 all of the calls that come in with inquiries or 11 complaints or compliments, they are tracked, we have a 12 form that we fill out. 13 Q. Okay. 14 Is it -- in your experience and your 15 practice is it ever the case that phone calls or 16 inquiries from voters regarding the cure process go 17 unanswered? 18 A. I don't think that we had any reports 19 along those lines. We do the best we can with the 20 resources that we have. We certainly don't purposely 21 turn away phone calls. But I don't recall any 22 specific complaints along those lines in large 23 numbers. 24 Certainly if you are calling on Election 25 Day, we may reach call volume where not all the calls</p>

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1 get through and get answered. But, no, I'm not aware
2 of any significant number.
3 Q. Okay. Thank you.
4 Let's say a voter receives the cure
5 letter, not unlike this one, and completes the voter
6 affirmation form. What happens once your office
7 receives that form?
8 A. And provides a Nevada ID as well?
9 Q. Correct.
10 A. Yeah, if they provide the documentation
11 that's required, then we can ship that status to voted
12 and the ballot is actually pulled from the batch and
13 sent over to the counting board for processing to be
14 counted.
15 Q. Okay. Does your office match the
16 signature on the ballot envelope with the signature
17 that the voter provides on the affirmation form?
18 A. Once we receive the documentation that
19 they've sent us, that's all that's required.
20 Q. Okay. Is there any reason a ballot would
21 be rejected after a voter successfully completes the
22 affirmation form and provides the documentation you
23 need?
24 A. No.
25 Q. Okay. On the topic of that

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1 identification, I believe earlier you mentioned a
2 Nevada driver's license was required; is that correct?
3 A. Driver's license or ID card.
4 Q. Okay. Does the voter need to provide
5 proof of identification regardless of the method that
6 they use to cure their ballot?
7 A. Can you repeat that.
8 Q. Sure. I'll clean that up.
9 Is a voter always required to provide
10 identification when they are curing a signature issue
11 on their ballot?
12 A. Yes, sir. It's required by the law.
13 Q. Okay. Based on your understanding of the
14 law, where, where is that required?
15 A. Where? Where is it in statute?
16 Q. Correct. Or where is your understanding
17 that it's required by the law? Where does that come
18 from?
19 A. I would have to look it up for you. But
20 it's in statute. It was defined in the process that
21 was put into AB345, I believe.
22 Q. Okay. Thank you.
23 Would a tribal identification card be
24 permissible ID, permissible ID to correct a ballot
25 issue?

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1 A. Yes. I believe that the Secretary of
2 State did send out notification after the election had
3 started that we needed to accept those as well.
4 Q. Okay.
5 A. Which was an exception at that point.
6 Q. Okay. Moving forward, will your office
7 accept tribal identification cards?
8 A. We will now that we have been notified by
9 the Secretary, that is correct.
10 Q. I see. It was guidance moving forward,
11 not just for that particular election?
12 A. Unless we receive word from the Secretary
13 to discontinue doing that, then we would continue to
14 doing -- to carry forward any mandate that they put in
15 place as long as it's not contrary to the law.
16 Q. Very good.
17 What about a student identification card?
18 A. No, sir, that's not allowed.
19 Q. Okay. If a voter shows up in person to
20 cure a ballot issue, would they, again, still be
21 required to show ID?
22 A. Yes, sir.
23 Q. Okay. Thank you.
24 Okay. I believe you mentioned that voters
25 have the option to track their ballot status online;

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1 is that correct?
2 A. That is correct, but that's dependent on
3 what the time period when they are looking for that
4 information and where their ballot is physically in
5 the process as to whether it's accurate.
6 Q. Okay. If a voter is current -- if a voter
7 needs to cure their ballot because of a signature
8 mismatch, would that information be reflected on the
9 online portal?
10 A. Not at this point. We haven't been able
11 to adopt that. It's a good idea, though.
12 Q. Okay. How are voters informed of the
13 online portal for checking their ballots?
14 A. Well, it's on the website. We interact
15 regularly with our community partners, we have
16 meetings, we have presentations. That's something
17 that I consistently share with anybody that I talk to
18 as far as a group to let them know that there is a ton
19 of information available on our website that voters
20 can access related to their registration. It's
21 prominently displayed on our website on the front
22 page, it's registered voter services. That's how we
23 do it.
24 Q. Sure. Thank you.
25 One more question, one more specific

<p style="text-align: right;">page 138</p> <p>1 question, actually, about the cure process.</p> <p>2 MR. HAWLEY: Mr. Mortensen, can you please</p> <p>3 pull up Tab Q, as in Quebec, and mark it as</p> <p>4 Exhibit 13, please.</p> <p>5 (Gloria Exhibit 13, marked for identification.)</p> <p>6 BY MR. HAWLEY:</p> <p>7 Q. Okay. Mr. Gloria, do you recognize this</p> <p>8 Excel sheet? And we can zoom in on, on anything that</p> <p>9 you need to, to help with that.</p> <p>10 A. You know, we provide public information in</p> <p>11 many different formats. So I don't know exactly what</p> <p>12 this information in this, that's being displayed. But</p> <p>13 I see that it looks like some type of voter list, and</p> <p>14 a mail ballot is listed as reason to the left. What</p> <p>15 is this, the rejection list or?</p> <p>16 Q. Well, that's what I was hoping that we</p> <p>17 could, we could find out.</p> <p>18 MR. HAWLEY: Mr. Mortensen, can you zoom</p> <p>19 in on the name of the file up in the top bar of the</p> <p>20 Excel sheet where it says "20P Mail Ballot Signature</p> <p>21 Cured (RM_RS)."</p> <p>22 THE VIDEOGRAPHER: Unfortunately, I can't</p> <p>23 zoom in on that.</p> <p>24 MR. HAWLEY: Okay, that's all right.</p> <p>25 ///</p>	<p style="text-align: right;">page 140</p> <p>1 THE VIDEOGRAPHER: 2,895.</p> <p>2 THE WITNESS: So those are the cured ones.</p> <p>3 Those are the ones that were successful in curing.</p> <p>4 BY MR. HAWLEY:</p> <p>5 Q. Thank you.</p> <p>6 In that case, just to confirm.</p> <p>7 MR. HAWLEY: Mr. Mortensen, could I please</p> <p>8 ask you to scroll back up to line 658. And I'm not</p> <p>9 sure if there is a way that you can, you can</p> <p>10 highlight. Oh, okay.</p> <p>11 BY MR. HAWLEY:</p> <p>12 Q. It's okay if not, Mr. Gloria, I can</p> <p>13 represent to you what it says.</p> <p>14 But are you able to read the name listed</p> <p>15 on that line that's currently highlighted?</p> <p>16 A. Looks like Miss Roberson, Genea. Yes.</p> <p>17 Q. Are you aware that Miss Roberson is a</p> <p>18 plaintiff in this lawsuit?</p> <p>19 A. Oh, I am now.</p> <p>20 Q. Okay.</p> <p>21 MR. HAWLEY: Mr. Mortensen, could you</p> <p>22 please also go to sheet 1 of this Excel sheet.</p> <p>23 BY MR. HAWLEY:</p> <p>24 Q. This is an additional sheet that was</p> <p>25 provided in the same Excel sheet.</p>
<p style="text-align: right;">page 139</p> <p>1 BY MR. HAWLEY:</p> <p>2 Q. So I will represent to you, Mr. Gloria,</p> <p>3 that this is an Excel sheet that we received from your</p> <p>4 office and it is titled "20P underscore Mail Ballot</p> <p>5 Signature Cured (RM_RS)." And this is a redacted form</p> <p>6 that we produced.</p> <p>7 A. Okay.</p> <p>8 Q. Are you familiar with this particular</p> <p>9 Excel sheet?</p> <p>10 A. I am now that you told me what it was.</p> <p>11 Q. Okay. So what does this Excel sheet, what</p> <p>12 information does it provide?</p> <p>13 A. Well, according to the title on the file,</p> <p>14 I'm assuming that it's providing you with a list of</p> <p>15 people that were rejected for not signing or not</p> <p>16 having a signature that matched.</p> <p>17 Q. The fact that it says "Cured" in the name</p> <p>18 of the document, does that mean that the voters listed</p> <p>19 in this document were able to cure their ballot</p> <p>20 issues?</p> <p>21 A. Can you scroll to the bottom and see the</p> <p>22 count. If you give me the count on the bottom, that</p> <p>23 will give me a better idea of what it is.</p> <p>24 Q. Thank you.</p> <p>25 A. What is that? 2,000 or 4,000?</p>	<p style="text-align: right;">page 141</p> <p>1 MR. HAWLEY: Actually, Mr. Mortensen, can</p> <p>2 we see the final count on this sheet?</p> <p>3 Okay. So it appears to be roughly the</p> <p>4 same.</p> <p>5 Mr. Mortensen, can you scroll up to line</p> <p>6 1,413.</p> <p>7 BY MR. HAWLEY:</p> <p>8 Q. Mr. Gloria, are you able to read the name</p> <p>9 that is currently highlighted on that line?</p> <p>10 A. It looks like the same name.</p> <p>11 Q. Okay. Do you agree that it's the name of</p> <p>12 Genea Roberson?</p> <p>13 A. Yes.</p> <p>14 Q. My question is, does Ms. Roberson's</p> <p>15 inclusion in this Excel sheet indicate that her</p> <p>16 signature issue was cured?</p> <p>17 A. I'm going to say yes.</p> <p>18 Q. Okay. As far as you're aware, that is why</p> <p>19 her name is listed?</p> <p>20 A. As far as I know.</p> <p>21 Q. Okay. Does this mean that her vote was</p> <p>22 counted?</p> <p>23 A. If it was cured, it should have been</p> <p>24 counted.</p> <p>25 Q. Okay.</p>

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1 MS. MILLER: Mr. Hawley, I'm going to
2 insert an objection here, because we don't have on
3 file what the public record request was. So he has to
4 speculate to what this is responding to.
5 Are you going to put that public record
6 request into evidence on this deposition?
7 MR. HAWLEY: Yes. Yes, we can. We can do
8 that. And if it would be helpful, we could just move
9 on from this for now.
10 One moment, please.
11 Yes, we will try to get that. Before we
12 close out the deposition, we will try to get that into
13 evidence.
14 BY MR. HAWLEY:
15 Q. But before we move on, Mr. Gloria, I just
16 have a general question related to this.
17 Is it possible that a voter's ballot was
18 cured if they did not fill out and complete the
19 affirmation form included with the notification
20 letter?
21 **A. Are you asking could we have made a**
22 **mistake?**
23 Q. No. I'm honestly -- I -- not necessarily.
24 I'm just purely asking for information.
25 Are there any other methods of, if a voter

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1 received the affirmation form in the mail and didn't
2 complete it, are there other ways that their ballot
3 might have been cured?
4 **A. No.**
5 MR. HAWLEY: Okay. Okay. That's, that's
6 all the questions on this. We can take down Exhibit,
7 Exhibit 13.
8 Okay. And we can also take down, I think
9 that's Exhibit 12.
10 BY MR. HAWLEY:
11 Q. Okay. So we are now ready to move on from
12 signature issues and talk about the voter assistance
13 ban. And we'll start again with just some sort of
14 common language, Mr. Gloria.
15 Have you reviewed Plaintiffs' Amended
16 Complaint in this lawsuit?
17 **A. I'm sorry. Repeat that. I'm sorry.**
18 Q. No problem.
19 Have you reviewed the Amended Complaint in
20 this lawsuit?
21 **A. Yes.**
22 Q. Are you familiar with the term "voter
23 assistance ban" as plaintiffs use it in the Amended
24 Complaint?
25 **A. I was not familiar with the term until I**

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1 **saw it in the document.**
2 MR. HAWLEY: Okay. Mr. Mortensen, could
3 you please pull up Tab L, as in Lima, and mark it as
4 Exhibit 14.
5 (Gloria Exhibit 14, marked for identification.)
6 BY MR. HAWLEY:
7 Q. This is Nevada Revised Statute
8 Section 293.353.
9 Mr. Gloria, are you familiar with this
10 statute?
11 **A. Yes.**
12 Q. Have you reviewed this statute in the
13 course of your duties as Clark County Registrar?
14 **A. Yes.**
15 Q. And based on your review of the statute,
16 have you come to an understanding of what it means?
17 **A. Yes.**
18 Q. And does that understanding inform how you
19 implement this statute in your official capacity as
20 Clark County Registrar?
21 **A. Yes.**
22 Q. Okay. Thank you.
23 MR. HAWLEY: Mr. Mortensen, can you zoom
24 in on Subsection 4, which stretches across pages 1 and
25 2, obviously the highlighted portion there.

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1 BY MR. HAWLEY:
2 Q. Mr. Gloria, could you read through
3 Subsection 4, please.
4 **A. (Deponent complies.)**
5 **Okay.**
6 Q. Okay, great.
7 MR. HAWLEY: Now, Mr. Mortensen, can we
8 please pull up Tab K, as in Kilo, and mark that as
9 Exhibit 15.
10 (Gloria Exhibit 15, marked for identification.)
11 BY MR. HAWLEY:
12 Q. This is Nevada Revised Statute Section
13 293.330. Mr. Gloria, have you reviewed this statute
14 in the course of your duties as Registrar?
15 **A. Yes, sir.**
16 Q. Based on your review of the statute, have
17 you come to an understanding of what it means?
18 **A. Yes.**
19 Q. And does that understanding inform your
20 implementation of this statute in your official
21 capacity as Registrar?
22 **A. Yes, sir.**
23 Q. Okay.
24 MR. HAWLEY: Mr. Mortensen, can we please
25 again zoom in on Subsection 4.

<p style="text-align: right;">page 146</p> <p>1 BY MR. HAWLEY: 2 Q. Mr. Gloria, could you please review 3 Subsection 4. 4 A. (Deponent complies.) 5 Okay. 6 Q. Okay. Mr. Gloria, is it fair to say that 7 these laws generally make it a felony for someone 8 other than a voter's family member to return a mail 9 ballot? Is that an accurate statement? 10 A. Yes, sir. 11 Q. Okay. If I use the term "voter assistance 12 ban" to refer to both of these statutes, will you 13 understand what I mean? 14 A. Yes. 15 Q. Do you agree that the two subsections are 16 quite similar? 17 A. Yes. 18 Q. Okay. I might pull up just one of the 19 statutes to ask you questions. And can we agree that 20 your answers will cover both statutes unless you let 21 me know otherwise? 22 A. Yes. 23 Q. Okay. Thank you. 24 So let's look again at Subsection 4 here. 25 It says that:</p>	<p style="text-align: right;">page 148</p> <p>1 A. Yes. 2 Q. Okay. Is it your understanding that this, 3 that the voter assistance ban would make it unlawful 4 for a nonfamily member to seal a mail ballot on behalf 5 of someone else? 6 A. I don't know how on earth I would know 7 that, young man. But I don't think, I don't think the 8 law says anything about who is sealing your ballot. 9 Q. Okay. Thank you. 10 You mentioned that, as you said, it would 11 cover someone returning someone -- a nonfamily member 12 returning someone else's ballot to your office. 13 What happens if a nonfamily member simply 14 drives a voter to your office. Would the, would that 15 statute prohibit that? 16 A. Driving a voter to my office, would it, 17 would it not allow them to drive them somewhere? 18 Q. Correct. 19 A. No. I don't think the statute hits on 20 that. 21 Q. Thank you. 22 So the -- so at the risk of sounding 23 repetitious. So to the extent that the statute 24 prohibits someone from returning someone else's mail 25 ballot to your office, what is your understanding --</p>
<p style="text-align: right;">page 147</p> <p>1 "It is unlawful for any person to 2 return a mailing ballot..." 3 What is your understanding of what the 4 word "return" means? 5 A. Well, there's several methods for a ballot 6 to be returned. There is a drop-off box. You can put 7 it in the post office. You can bring it in in person. 8 So there is different forms for them to return a 9 ballot. 10 Q. Is it your understanding the voter 11 assistance ban would prevent nonfamily members from 12 undertaking any of those three activities, whether 13 it's dropping it off at a drop-off location, placing 14 it in the post office, or returning it in person? 15 A. The way we use or provide direction on 16 that is for drop-off locations where we can actually 17 man it. I have no idea how somebody turns it in at 18 the post office box. 19 Q. So is it fair to say that it's not your 20 understanding that this statute would cover someone 21 who places another person's ballot in a mailbox? 22 A. That is not my understanding. 23 Q. Okay. But it would cover a nonfamily 24 member who returns someone else's ballot to your 25 office?</p>	<p style="text-align: right;">page 149</p> <p>1 where does your understanding of that come from? 2 A. In-person drop-offs. At a drop-off site 3 or in my office. 4 Q. Okay. Thank you, Mr. Gloria. 5 I would like to shift our attention to 6 another section of Subsection 4, which creates an 7 exception for a member of the voter's family. Do you 8 see where it says that in the, in the statute? 9 A. Yes. 10 Q. What do you understand the term "member of 11 the voter's family" to mean? 12 A. Member of the family. When they come into 13 our office, we simply ask them if they are a family 14 member. So we don't make any qualification as to what 15 the family member is. They drop off the ballot 16 signed, stating that they are a family member, and we 17 accept the ballot. 18 Q. Do you provide them a form to sign? 19 A. Actually, we do have a form, but in most 20 cases we have a stamp where we stamp on the outside of 21 that return envelope that they are a family member and 22 they're dropping off the ballot for the voter. 23 Q. Okay. So if you do not use the form and 24 you use the stamp, would it be that the person 25 returning the ballot would simply say to the member of</p>

<p style="text-align: right;">page 150</p> <p>1 your staff that they are a member of the voter's 2 family? 3 A. That is correct. 4 Q. Okay. Would your staff ask for any kind 5 of identification or proof of that? 6 A. No. 7 Q. Okay. To your knowledge, do you or your 8 staff ever inform someone whether or not they would 9 qualify as a member of a voter's family? 10 A. No. 11 Q. Okay. I'm just going to run through this, 12 based on your understanding of the law. Would you 13 please tell me if the following people would be 14 considered a member of a voter's family. 15 Would a voter's siblings, to your 16 understanding, be a member of a voter's family? 17 A. Yes. 18 Q. How about a voter's grandchildren? 19 A. Yes. 20 Q. How about a voter's in-laws? 21 A. Yes. 22 Q. A voter's cousin? 23 A. Yes. 24 Q. A voter's fiancé? 25 A. If they made that, made us aware of that,</p>	<p style="text-align: right;">page 152</p> <p>1 to or any direction in the law to tell me that I know 2 of. 3 Q. Okay. And so just to close the loop -- 4 A. What I would call a family member, I 5 guess. 6 Q. Okay. And to close the loop, your office 7 does not have a formal policy on who and who does not 8 constitute a family member? 9 A. No. 10 Q. Okay. Is it your understanding that as 11 Clark County Registrar, it's your office's 12 responsibility to ensure that nonfamily members do not 13 return voters' ballots? 14 A. With every dropped-off ballot, if it is 15 not the person whose ballot they are turning in, we 16 ask them if they are a family member and require them 17 to sign. 18 Q. Okay. Thank you, Mr. Gloria. 19 Do you have any sense of how often either 20 the form or the stamp is used during an average 21 election? Which is to say how many times a family 22 member helps a voter return a ballot to your office? 23 A. I don't have any information along those 24 lines. 25 Q. Okay. Does your office keep any records</p>
<p style="text-align: right;">page 151</p> <p>1 I don't think we would consider that a family member. 2 Q. Okay. What about a domestic partner? 3 A. Yes. 4 Q. Okay. What about a nanny employed by the 5 family who lives in the household? 6 A. No. 7 Q. Okay. What about a close family friend 8 who is considered by the family to be a family member? 9 A. No. 10 Q. What about a voter's roommate? 11 A. No. 12 Q. Okay. But just to reiterate, it is -- I'm 13 sorry, how about a tribal elder? 14 A. No. 15 Q. Okay. Just to reiterate, it is your 16 office's practice not to ask the voter what their 17 relationship is with the voter in this -- under these 18 circumstances? 19 A. That is correct. 20 Q. Okay. The list that we just went through, 21 what is your understanding as who constitutes a family 22 member and who does not, what is that understanding 23 based on? 24 A. Just my concept of what a family member 25 is, I guess. I don't have any document that I refer</p>	<p style="text-align: right;">page 153</p> <p>1 when a, when a family member returns someone else's 2 ballot? 3 A. Other than having to go through and see 4 the ballot, no. 5 Q. Okay. But you said that the ballot would 6 be stamped, correct? 7 A. Yes. 8 Q. Is there -- do you keep those ballots on 9 record so that the stamps would be part of the record? 10 A. The envelopes are kept for 22 months. 11 Q. Okay. And that 22 months is established 12 by law, correct? 13 A. Yes, that's correct. 14 Q. Okay. Thank you. 15 Does your office proactively educate 16 voters in any way about the option to have family 17 members return their ballots? 18 A. We indicate it in the briefings that I 19 discussed earlier on information that I share with the 20 general public. I don't hide that information. I 21 indicate that you can have a family member drop off 22 your ballot but never define exactly who a family 23 member is. 24 Q. Okay, thank you. Very good, Mr. Gloria. 25 Thank you.</p>

<p style="text-align: right;">page 154</p> <p>1 Let's look back at Subsection 4 here. Do 2 you see at the beginning when it says: 3 "Except as otherwise provided in NRS 4 293.316 and 293.3165"? 5 A. I see that. 6 Q. Okay. Very good. Thank you. 7 Are you familiar with these two statutes? 8 A. Yes. 9 Q. Okay. 10 MR. HAWLEY: Mr. Mortensen, could you pull 11 up Tab N, as in November, and mark it as Exhibit 16. 12 And this will be Nevada Revised Statute 13 Section 293.316. 14 (Gloria Exhibit 16, marked for identification.) 15 BY MR. HAWLEY: 16 Q. Mr. Gloria, have you reviewed this statute 17 in the course of your duties as Clark County 18 Registrar? 19 A. Yes. 20 Q. And based on your review of the statute, 21 have you formed an understanding of what it means? 22 A. Yes. 23 Q. And does that understanding inform how you 24 implement this statute in your official capacity as 25 Registrar?</p>	<p style="text-align: right;">page 156</p> <p>1 statute, does it allow eligible voters to receive 2 assistance in returning their ballots by the person 3 designated? 4 A. Yes. 5 Q. And where, where in the law do -- does 6 that understanding come from? 7 A. Looks like Section 5. 8 Q. Okay. Thank you. 9 Okay. Let's turn to the second exception, 10 which is Nevada Revised Statute 293.3165. 11 MR. HAWLEY: Mr. Mortensen, could you 12 please bring up Tab O, as in October, and mark it as 13 Exhibit 17. 14 (Gloria Exhibit 17, marked for identification.) 15 BY MR. HAWLEY: 16 Q. Okay, Mr. Gloria, have you reviewed this 17 statute in the course of your duties as Clark County 18 Registrar? 19 A. Yes. 20 Q. And based on your review of the statute, 21 have you come to an understanding of what it means? 22 A. Yes, sir. 23 Q. And does that understanding inform how you 24 implement this statute in your official capacity as 25 Registrar?</p>
<p style="text-align: right;">page 155</p> <p>1 A. Yes. 2 Q. Thank you. 3 MR. HAWLEY: Mr. Mortensen, can you please 4 zoom in on Subsection 1, Subsection 1, 4, and 5, if 5 possible. I believe they are on different pages, I'm 6 not sure. He can do anything. 7 BY MR. HAWLEY: 8 Q. Mr. Gloria, would you like to take a 9 moment just to, to review these subsections? 10 A. Yes, I would. 11 Q. Thank you. 12 A. (Deponent complies.) 13 Okay. 14 Q. Okay, thank you, sir. 15 In your words, what is your understanding 16 of the exception to the voter assistance ban that is 17 created by this section? 18 A. For someone who is hospitalized or 19 confined and cannot get out to bring their ballot to 20 us, they can assign somebody to do that for them. 21 Q. Is it your understanding that this section 22 would apply to a senior or a disabled voter who lives 23 at home but receives in-home assistance? 24 A. Yes. 25 Q. Okay. Based on your understanding of the</p>	<p style="text-align: right;">page 157</p> <p>1 A. Yes, sir. 2 Q. Thank you, sir. 3 MR. HAWLEY: Could we please zoom in on 4 Subsection 3. 5 BY MR. HAWLEY: 6 Q. Could you take a moment to review 7 Subsection 3, Mr. Gloria. 8 A. (Deponent complies.) 9 Okay. 10 Q. Okay. Again, in your understanding, what 11 is the exception to the voter assistance ban that this 12 section creates? 13 A. That they can be assisted with their 14 ballot from a voter. 15 Q. Okay. Does it allow a person who assists 16 the voter in signing and marking their ballot? 17 A. Yes. 18 Q. And is it your understanding that it 19 allows that person to also assist the voter in 20 returning their ballot? 21 A. Yes, sir. 22 Q. Okay. Thank you, Mr. Gloria. 23 MR. HAWLEY: Mr. Mortensen, we can take 24 down Exhibit 17. 25 ///</p>

<p>page 158</p> <p>1 BY MR. HAWLEY: 2 Q. Mr. Gloria, you mentioned earlier that 3 your office tracks complaints, requests, and 4 compliments, and other, other inputs from voters; is 5 that correct? 6 A. Yes, sir. 7 Q. Does your office have a set policy on how 8 to respond to concerns that voters might articulate? 9 A. Yes, we do. 10 Q. Okay. Within the past five years, has 11 your office received any complaints about the voter 12 assistance ban? 13 A. Like I mentioned to you, I had never heard 14 the term "voter assistance ban" until I read the 15 documents. So I guess my answer would -- nobody ever 16 referred to it as anything. 17 Q. I'll rephrase my question, Mr. Gloria. 18 Within the past five years, has your 19 office received any complaints about the prohibition 20 on nonfamily members helping voters return their 21 ballots? 22 A. I would say yes. 23 Q. Okay. From whom did you receive those 24 complaints? 25 A. Well, we received complaints from folks</p>	<p>page 159</p> <p>1 who thought that we were damaging the integrity of the 2 election by opening it up along those lines because 3 anybody could make the claim. 4 And on, on the other side, I think we've 5 heard from advocates that voters weren't aware of 6 that. And that they -- we needed to try to make a 7 better effort to inform the voters that they had the 8 ability to get assistance along those lines. So both 9 sides. 10 Q. Both sides, okay, I see. 11 The first categories of complaints about 12 election integrity. Do you know approximately how 13 many of those complaints you received in the past five 14 years? 15 A. No. 16 Q. Okay. And what about the other set of 17 complaints about people wanting more access and more 18 publicity for this, for the, for -- 19 A. I don't -- I'm not aware of the counts, 20 unaware of them. 21 Q. Do you have any sense of how you receive 22 these sorts of complaints whether it's by email, 23 phone, text, or some combination? 24 A. I would say it's a combination. They 25 reach my level when folks insist on talking to the</p>	<p>page 160</p> <p>1 Registrar, which is completely acceptable. They are 2 entitled to have a conversation if they don't feel 3 satisfied with the response that my staff gives. 4 Q. Okay. In that case, let me ask. Have you 5 personally responded to any complaints about, about 6 these statutes relating to election integrity 7 concerns? 8 A. Oh, yes. 9 Q. And, and what do you tell those, those 10 callers or those people who reach out? 11 A. I tell them that it's clearly stated in 12 the law that those people have the ability to do so. 13 Q. Okay. And when the -- and have you taken 14 calls and comments from that second group of people, 15 have you personally responded to them when they asked 16 for more publicity or more exposure to these laws? 17 A. Certainly, yes. We make it a point with 18 every presentation that I give to try to share that 19 type of information. 20 Q. Thank you. 21 And what is your response to those sorts 22 of concerns? 23 A. That, that we will do better. We try to 24 get this information out. There is a wealth of 25 information on our website. We encourage them to do</p>	<p>page 161</p> <p>1 their own research as well on our website. Secretary 2 of State also has information along those lines, I 3 believe. I couldn't tell you where it is, but I'm 4 sure that they do, and we are always trying to do it 5 better. 6 Q. Mr. Gloria, do you have any concerns about 7 election integrity stemming from this -- these laws? 8 A. Well, I have concerns in that I hear it 9 from both ends and I'm in the middle. There is no 10 making both sides happy. Certainly you can appreciate 11 the argument on both sides. 12 I don't disagree that those people will 13 need assistance in order for them to get their vote 14 counted, and we want that to happen. 15 I can also appreciate that there are 16 nefarious people out there in the world who might work 17 to take advantage of that situation and manipulate a 18 voter. 19 So I wish we had better tools to try to 20 identify that. 21 Q. To your knowledge, within the past five 22 years, have you encountered, as you said, any 23 nefarious people who tried to take advantage and, and 24 unlawfully cast a ballot by pretending to be a voter's 25 family member?</p>
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<p style="text-align: right;">page 162</p> <p>1 A. No.</p> <p>2 Q. Okay. What happens if a voter attempts to</p> <p>3 vote twice in the same election?</p> <p>4 A. If we can identify it. I don't have an</p> <p>5 investigative team and my DA stays very busy with</p> <p>6 other items in the county. So we normally forward</p> <p>7 that to the Secretary of State to see if they have</p> <p>8 appetite or resources to pursue it.</p> <p>9 Q. Okay. What happens if a voter attempts</p> <p>10 to -- sorry, strike that.</p> <p>11 What happens if a voter attempts to return</p> <p>12 more than one mail ballot at the same time?</p> <p>13 A. That's not uncommon. The issue that we</p> <p>14 regularly run into is a voter who calls to say: I</p> <p>15 have not received my ballot, please resend me a</p> <p>16 ballot.</p> <p>17 So while we are sending them the ballot,</p> <p>18 they get the ballot. And so sometimes they will send</p> <p>19 both of them in. We can identify it and not count</p> <p>20 the, the ballot that, that was spoiled. Because as</p> <p>21 soon as somebody makes that call, we have to spoil the</p> <p>22 first ballot that was sent out and it's no longer</p> <p>23 eligible.</p> <p>24 Q. I see, okay.</p> <p>25 And what happens if a voter attempts to</p>	<p style="text-align: right;">page 164</p> <p>1 government, the United States Postal Service. So if</p> <p>2 they are not comfortable with the postal service, then</p> <p>3 they need to find another means to get it in.</p> <p>4 Allowing anybody to turn those in does it</p> <p>5 make it easier for the voter. But then on the flip</p> <p>6 side, I deal with both groups, people who are for that</p> <p>7 type of thing and people who are against it. So you</p> <p>8 know, I'm caught in the middle trying to uphold the</p> <p>9 integrity for both sides. Sometimes it's a very</p> <p>10 difficult place to be.</p> <p>11 Q. Okay. Within the past five years, have</p> <p>12 any voters in Clark County reached out to your office</p> <p>13 requesting assistance with returning their ballot?</p> <p>14 A. Well, you use five years like it was</p> <p>15 yesterday.</p> <p>16 Q. Let's, let's simplify matters. Within</p> <p>17 the -- during the June primary election, this most</p> <p>18 recent election --</p> <p>19 A. Okay, all right.</p> <p>20 Q. -- are you aware of any voters in Clark</p> <p>21 County who reached out to your office for assistance</p> <p>22 with returning their ballots?</p> <p>23 A. We were required to put in a process that</p> <p>24 allowed voters to call in and have one of our staff</p> <p>25 members or a field registrar go out. We had three</p>
<p style="text-align: right;">page 163</p> <p>1 return more than one mail ballot belonging to two</p> <p>2 different voters? I think we already covered this,</p> <p>3 but to clarify. In that situation, you would then</p> <p>4 employ a form or the stamp to verify that the person</p> <p>5 is a family member of the other voter, correct?</p> <p>6 A. Well, if I know about it. I don't know</p> <p>7 what they do out at the mailbox. But if they come to</p> <p>8 my office to turn them in, we train our folks who are</p> <p>9 manning the drop-off boxes to make sure that they've</p> <p>10 indicated to the voter that if this is not their</p> <p>11 ballot, they have to be a family member.</p> <p>12 As long as they say they are a family</p> <p>13 member and they sign, we accept the ballot.</p> <p>14 Q. Okay. Thank you.</p> <p>15 Do you think allowing ballot collection</p> <p>16 from nonfamily members would increase the number of</p> <p>17 people who vote?</p> <p>18 A. Well, we are not really a mail ballot</p> <p>19 jurisdiction. So I don't know that that's -- these</p> <p>20 are very special situations that we are dealing with</p> <p>21 in the pandemic. With everybody getting a mail</p> <p>22 ballot, I believe it does make it a bit simpler for</p> <p>23 people to get their ballot in.</p> <p>24 Again, we use the most trusted source that</p> <p>25 we have available to us, along with the federal</p>	<p style="text-align: right;">page 165</p> <p>1 people call in. And one of people that called in, my</p> <p>2 staffer showed up and they refused to give them the</p> <p>3 ballot. So that wasn't a service that was taken</p> <p>4 advantage of.</p> <p>5 And to be honest with you, quite frankly,</p> <p>6 I'm glad it wasn't, because that would have been a</p> <p>7 very big strain on our resources having to send people</p> <p>8 out to pick those up.</p> <p>9 Q. Given the -- given that, would you say</p> <p>10 it's uncommon in general for voters to contact your</p> <p>11 office asking for assistance returning their ballots?</p> <p>12 A. Well, based on what I just mentioned, yes,</p> <p>13 I would say so.</p> <p>14 Q. Okay, thank you.</p> <p>15 A. It was available to them. And many of our</p> <p>16 community partners were aware of it, so they were</p> <p>17 sharing the information, and three people called in.</p> <p>18 Q. Okay, thank you.</p> <p>19 Other than -- previous to the June</p> <p>20 primary, has your office ever sent people to voters'</p> <p>21 homes to help return -- help collect ballots?</p> <p>22 A. We've got a very, very small number of</p> <p>23 situations where people call in that are</p> <p>24 incapacitated, in the hospital, sick, or recently had</p> <p>25 an injury that disabled them. We do, we do send that</p>

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1 out. But it's very small numbers.
2 Q. Okay. Thank you.
3 MR. HAWLEY: Okay. We have been going at
4 it for a little while. If it's all right, I think we
5 will take one more 10-minute break right now just to
6 grab water and refresh ourselves, and then we'll meet
7 back here at 11:40, if that works.
8 **THE WITNESS: I just -- before we go, I**
9 **just want to make sure. I do have other meetings**
10 **scheduled for after 1:00, so we are going to be done**
11 **by 1:00 today, correct?**
12 MR. HAWLEY: I have every intention that
13 we will have you out of here by 1:00, Mr. Gloria. In
14 the event that we are unable to do that today, we
15 might hold open your deposition and attempt to
16 reschedule it. But judging by what I have left, I
17 don't think that will be a problem.
18 **THE WITNESS: Oh, good. Okay, thank you.**
19 MR. HAWLEY: Sure. Thank you.
20 THE VIDEOGRAPHER: The time is 11:30 a.m.
21 We are going off the record.
22 (Recessed from 11:30 a.m. to 11:41 a.m.)
23 THE VIDEOGRAPHER: The time is 11:41 a.m.
24 We are going back on the record.
25 ///

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1 BY MR. HAWLEY:
2 Q. Thank you, Mr. Gloria.
3 I would like to talk briefly about some of
4 the policy rationales behind the law that we are
5 dealing with in this lawsuit.
6 My first question for you is, for what
7 reason or reasons does your office support what we
8 have called the voter assistance ban?
9 **A. I don't know that we supported it one way**
10 **or the other. We follow the law as best we can. Our**
11 **goal here is two major things. We have always worked**
12 **to provide more access to voters to the process. The**
13 **second piece of that is we do everything we can to try**
14 **to uphold the integrity of the process so that when**
15 **the election is over, people are confident that the**
16 **vote represents what the people voted for.**
17 **So I believe that that's really what the**
18 **intent of the legislature is when they draft most of**
19 **these laws, that people are given the ability to**
20 **provide feedback, testify, do all that kind of stuff.**
21 **I have been doing it for a little while**
22 **now, and I'm confident that they usually have the**
23 **rights of the voter in mind in everything that I've**
24 **seen.**
25 **So I don't know that I -- I wouldn't say**

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1 **that I'm supportive or against it. I know arguments**
2 **on both sides and we follow the law.**
3 Q. So in addition to following the law, do
4 you believe that the voter assistance ban serves those
5 two interests that you just mentioned, increasing
6 access for voters and upholding election integrity?
7 **A. I know that we follow the law.**
8 Q. Okay. Thank you, Mr. Gloria.
9 Does Clark County or your office have any
10 interests in the voter assistance ban being upheld in
11 this lawsuit?
12 **A. I can --**
13 MS. MILLER: Objection.
14 **THE WITNESS: I can -- okay.**
15 MS. MILLER: He's only testifying as the
16 Clark County Registrar of Voters, not as a
17 representative of Clark County.
18 MR. HAWLEY: I'm sorry. Can I strike that
19 and rephrase it, please.
20 BY MR. HAWLEY:
21 Q. Does your office have any interest in the
22 voter assistance ban being upheld within this lawsuit?
23 **A. Our interest is to make sure that we have**
24 **clarification as to what we need to do to uphold the**
25 **law. So when this is all over with, we will want to**

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1 **make sure we get clear direction on what's expected of**
2 **us and those are the processes that we will develop**
3 **and put into place before the election.**
4 Q. Okay. In addition to clarification on the
5 proper application of the law, can you identify any
6 other interests?
7 **A. No.**
8 Q. Okay. Has the State of Nevada
9 communicated its interest in enforcing the voter
10 assistance ban to you?
11 **A. No.**
12 Q. Are you aware of any of the State's
13 interests in enforcing the voter assistance ban?
14 **A. No.**
15 Q. Okay, thank you.
16 Now I would like to talk about the
17 signature matching regime that is being challenged in
18 this lawsuit.
19 For what reason or reasons does your
20 office support the ballot rejection rules or the
21 signature matching regime?
22 **A. Again, I don't think I have a position**
23 **where I support or I'm against either one. We take**
24 **the law as it's written, and, and we do our best to**
25 **make sure we are complying with the law in supporting**

<p style="text-align: right;">page 170</p> <p>1 voters without disenfranchising them according to the 2 letter of the law. 3 I'm, I'm not going to say I'm for or 4 against either. We follow the law and I try to 5 develop our processes to meet those requirements. 6 Q. Okay. Thank you. 7 Does your office have any interest in the 8 signature matching rules being upheld in this lawsuit? 9 A. Again, we are just looking for clear 10 direction once this is over so that we know exactly 11 what will be expected of us to avoid lawsuits so that 12 we can support an election and not have to do 13 depositions for four hours when we should be 14 developing ballots. 15 Q. Okay. Has the State of Nevada 16 communicated to you its interest in enforcing the 17 signature match rules? 18 A. No, I haven't had any conversations with 19 them along those lines. 20 Q. Okay. Thank you, Mr. Gloria. 21 I would like to ask you a few questions 22 now about the current pandemic situation. And just 23 generally, how has the COVID 19 pandemic impacted your 24 office? 25 A. Severely. Severely. I, I couldn't have</p>	<p style="text-align: right;">page 172</p> <p>1 plan to for early voting and Election Day. Will I be 2 able to get the workers? Will they be very concerned? 3 We've been trying for years to shift from 4 the poll worker that's elderly to try to get a 5 newer -- not newer, but younger support base. Not 6 because the seniors aren't capable of doing the work, 7 but just to diversify and get people who are more 8 comfortable dealing with technology. We don't know if 9 we are going to be able to do that, but we're going to 10 make our best effort. 11 So it's been a serious impact, very 12 challenging, very costly. And we are just doing 13 everything we can to make sure that we can provide the 14 voting process in what will be the biggest election 15 we've ever supported, which is what we say about 16 pretty much every presidential election. 17 Q. You've just indicated, but is it fair to 18 say that your office is anticipating that the pandemic 19 will continue to present challenges in the November 20 election? 21 A. We have to. If, if you are in the 22 election industry and you're not preparing for the 23 worst and hoping for the best, you are not going to be 24 successful. So we always try to look at what the 25 worst case could be and that's what we are preparing</p>
<p style="text-align: right;">page 171</p> <p>1 done it without the staff that provided the support in 2 such -- not many staffs in -- definitely in the State 3 of Nevada, or the country for that matter, could have 4 adjusted to what we did in March when they told us we 5 needed to go all mail, which I was in agreement with. 6 We wanted to make sure that we weren't 7 exposing the general public to any danger of catching 8 this COVID 19 and still have an opportunity to cast 9 their ballot. 10 So unfortunately, in the position that we 11 were in, we didn't keep everybody happy, but I was 12 completely confident that we had done everything in 13 our power to support the election and provide access 14 and try to prevent the spread of the virus. 15 It's not going away. It continues to pose 16 tremendous challenges. The number one challenge being 17 we can't predict the future. I mean, if we base what 18 we were going to try to do in October and November on 19 what we know today, we've broken three records this 20 week in Nevada or Clark County, actually. We had over 21 1,000 cases, new cases reported for three days in the 22 past week. That's an extremely serious situation to 23 be in. 24 Are we going to be able to get workers? 25 We would love to provide more in-person access or we</p>	<p style="text-align: right;">page 173</p> <p>1 for, so... 2 We don't always get along with other 3 departments because they think we are overdoing things 4 and asking for too much. But if we don't do that and 5 then things turn out to be for the worst, then we look 6 unprepared and like we didn't do our job. 7 Q. Have you received comments or concerns 8 from voters regarding either the June election in the 9 past or the upcoming November election regarding 10 concerns with voting in light of the COVID 19 11 pandemic? 12 A. Yes. It's been a very stressful time. 13 I've heard from people on both sides of the argument. 14 I've heard from people who are very upset that we even 15 considered going all mail. I've heard from other 16 people who didn't understand why we couldn't do the 17 mail and provide in-person voting. 18 So, yes, I mean, we have had a tremendous 19 amount of feedback from the general public. More 20 along the lines of: Well, now what are you going to 21 do for the general? And we are still waiting for some 22 direction in that area. 23 But we are planning definitely to plan for 24 35 sites to vote for early voting for 14 days and a 25 large number of vote centers on Election Day. And if</p>

<p style="text-align: right;">page 174</p> <p>1 we can get some help, we are also planning to send a 2 mail ballot to every voter so that we will have all 3 the bases covered no matter what happens with the 4 pandemic. 5 Q. I think you just said that if you get some 6 help that you would like to mail ballots to every 7 voter, do I have that correct? 8 A. Yes, you do. I don't have the authority 9 to do it on my own. 10 Q. Okay. So in addition to legal authority, 11 is there any other help that your office would require 12 to mail out ballots? 13 A. No, I just need the authority to do so. 14 And so my -- I have communicated this to my Board of 15 County Commissioners and they have given me 16 instruction to move forward and do what I can to try 17 to make that happen, but I'm just a registrar. So I 18 have communicated that to people at the State level 19 what we would like to see happen and what we feel is 20 absolutely crucial to us being successful in 21 supporting the election this coming fall. 22 So I have done what I can and we're 23 waiting, we're waiting for that assistance. 24 Q. Okay. The plans that you just articulated 25 that you currently have for November, are these</p>	<p style="text-align: right;">page 176</p> <p>1 A. We are definitely taking a look at our 2 sample ballot on what information we will be 3 providing. We, we are doing everything we can just to 4 do the basics. 5 So I don't know how much outreach we are 6 going to do, but we are going to put a ton of 7 information on our website and make sure helping -- 8 working with our PIO, and of course my management. 9 We'll be developing documents to make sure that we are 10 getting out information on a lot of things we talked 11 about today, the cure process, when to expect your 12 ballot, how to go about getting your ballot to a 13 drop-off box, requirements for doing so, all of those 14 kinds of things. 15 So, yes, we have been pretty successful in 16 the past with sharing information with the general 17 public, so we are hoping we will be able to continue 18 to do that. 19 Q. Very good. Thank you. 20 Are voters able to check their 21 registration status online at this time? 22 A. Yes, sir. 23 Q. Okay. Thank you. 24 Okay, thank you. Now I would like to 25 shift gears and talk a little bit about the relief</p>
<p style="text-align: right;">page 175</p> <p>1 official plans of your office? 2 A. Yes. 3 Q. Have they been announced? 4 A. Yes. 5 Q. Do you anticipate that you will continue 6 to update and announce new policies and plans as the 7 situation develops? 8 A. Certainly. Time stands still for no one. 9 Q. Indeed. 10 What is the latest date that mail ballots 11 would need to be printed for the November election? 12 A. Well, we have to meet the federal 13 guideline of getting our ballots out 45 days prior to 14 the election. So we are now currently in the process 15 of ballot development and proofing. So our printer is 16 going to probably need to be able to go to work on the 17 actual ballots by the end of August in order to make 18 sure that we can have everything printed and ready to 19 go, starting with the federal deadline. 20 Q. Okay. Thank you, Mr. Gloria. 21 Will postage be paid on mail ballots that 22 are used in the November general election? 23 A. Yes, sir. 24 Q. And will you be undertaking voter 25 education efforts in advance of the November election?</p>	<p style="text-align: right;">page 177</p> <p>1 that the plaintiffs have requested in this lawsuit. 2 So with regards to the voter assistance 3 ban, the plaintiffs have asked this Court to enjoin 4 enforcement of that ban, which means that we've asked 5 the Court to order you and other local election 6 officials charged with enforcing the law to stop 7 enforcing it. 8 So my question for you is if plaintiffs 9 are successful and the voter assistance ban is 10 enjoined, what would your office need to do to 11 implement that change in the law? 12 A. We just need the information. We are 13 prepared to support whatever occurs after this case is 14 over. But having the information is most of the 15 battle. 16 Q. Okay, thank you. Great. 17 And moving on to the signature matching 18 law. Plaintiffs have asked the Court to enjoin 19 enforcement of those signature matching laws, which 20 again means that we've asked the Court to prevent your 21 office and the other local election officials from 22 rejecting ballots based on whether the ballot return 23 envelope is signed or whether the signature is 24 believed to be a match with the voter's signature on 25 file.</p>

<p style="text-align: right;">page 178</p> <p>1 If plaintiffs are successful and the 2 ballot rejection rules are enjoined, what would your 3 office need to do to implement that change in the law? 4 A. Well, that's just a change of policy and 5 educating our staff on what's now required. That is 6 not new to us. Change is consistent in elections from 7 one cycle to the next. So again having the 8 information is all we need. Tell us what we need to 9 do and we will make it happen. We've got a bad habit 10 of doing that. 11 Q. Very good. Thank you. 12 If either the Court or the Nevada 13 legislature required that county clerks reject a 14 ballot only if a signature was deemed to be a mismatch 15 beyond a reasonable doubt, what would your office need 16 to do to implement that change in the law? 17 A. Well, can -- you need to define that. 18 What is beyond a reasonable doubt? You've asked me 19 several questions today related to what I base my 20 decisions on. Give us something to base that decision 21 on. What is a reasonable doubt? That's the direction 22 we need. 23 Q. When you say "that's the direction we 24 need," is that something that you would expect 25 normally from the Secretary of State's office or from,</p>	<p style="text-align: right;">page 180</p> <p>1 machine will have nothing to do with, with whatever is 2 determined in this case. The thresholds on that 3 machine will be changed according to the quality of 4 our signatures that we have in the database and what 5 we see as an acceptable output for the machine in our 6 process. 7 Q. Let me ask you one more question along 8 these lines, Mr. Gloria. 9 If the Court or the legislature required 10 that county clerks continue the cure process for an 11 additional three days, in addition to the seven days 12 currently provided, what would your office need to do 13 to implement that change? 14 A. So you're pushing that to the canvass 15 date. 16 Q. Please, please say more on that. 17 A. You better change the canvass date. 18 Because once the cure process is done, now we have to 19 send our ballot information to the Secretary who has 20 to develop a report that matches voters in all 17 21 counties to make sure that we don't have duplicate 22 voters or anybody doing anything nefarious in the 23 State of Nevada. 24 Our voter registration system in Nevada is 25 bottom up, not top down. So each of the 17 counties</p>
<p style="text-align: right;">page 179</p> <p>1 from someone else? 2 A. Could come from the Secretary of State. 3 But the change you're talking about that might occur 4 as a result of this lawsuit, if you don't tell us what 5 beyond a reasonable doubt means and then you ask us to 6 define that, you're going to be in court again. And 7 Esmeralda might not do it the way I do it. Washoe 8 might not do it the way I do it. So the Secretary is 9 the Chief Election Officer, they should definitely 10 take the lead. 11 If you have that solution in hand, if this 12 case -- if you are successful with this case, the more 13 direction you can give us, the better off we will all 14 be. 15 Q. And in light of that direction, would you 16 imagine that you might need to, for example, change 17 the threshold level on the machine that we discussed 18 earlier, is that one of the things that -- 19 A. That threshold level has nothing to do 20 with what you're talking about. 21 Q. Okay. 22 A. Because we still have a manual review. 23 Keep in mind, if the signature is rejected, we've 24 still got three levels of review, including mine, that 25 occur with that signature. What we do with the</p>	<p style="text-align: right;">page 181</p> <p>1 has their own database that they use for voter 2 registration for processing voters. So in order to 3 make sure that the same day registration and 4 everything else that goes on, if we have to wait for 5 an additional three days, which would take it to a 6 Friday, which is canvass day, that means we won't get 7 a report from the Secretary. And they don't like 8 working weekends. But we won't get a report from the 9 Secretary at the earliest Saturday, probably Sunday, 10 because they have to run that data and match it and 11 give us a report to tell us these people appear to 12 have voted twice. 13 We had at least one person that fell into 14 that category in the primary. So that's a check that 15 we have to do. And we can't read those, we can't 16 finish reading those ballots until we receive that 17 report. 18 So you're pushing the canvass date which 19 now affects the State canvass and the Supreme Court 20 and what they do to canvass the election. So if you 21 delay that, the whole thing needs to shift and there 22 will be lot of a grumpy people. 23 For us, it doesn't matter as long as the 24 canvass date gets extended as well. 25 Q. Thank you, Mr. Gloria.</p>

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1 **A. I do know this that I could, we did --**
2 **that the -- well, no, that doesn't, never mind.**
3 **Disregard.**
4 Q. Okay. No worries. Thank you.
5 Would your answer to my previous question
6 about extending the cure process by three days, you
7 pointed to some issues that would arise with that. If
8 it were extended by two days, would that help matters
9 or in your view would that still present those same
10 logistical difficulties?
11 **A. Same thing. Doesn't matter how many days.**
12 **If it's one day, two days, three days, you have to**
13 **extend the canvass period. We have to do that work.**
14 **We still have to reconcile. We still have to get**
15 **those ballots counted into the system.**
16 **So whatever number of days you extend**
17 **that, you have to increase the canvass period.**
18 Q. Okay, thank you. I have good news for
19 you, Mr. Gloria, I'm very close to being finished with
20 all of my questions.
21 **A. Good news. I told you, I have enchiladas**
22 **waiting.**
23 Q. And I don't want to keep you from them, so
24 we're going to wrap this up as quickly as we can.
25 Before I, I turn things over to the other

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1 lawyers, I just want to quickly review.
2 Earlier, if you recall, I showed you an
3 Excel sheet and asked you some questions about it. Do
4 you recall that?
5 **A. Yes, I do.**
6 Q. I just want to establish for your benefit,
7 where would that Excel sheet came from.
8 MR. HAWLEY: So could I ask,
9 Mr. Mortensen, could you please pull up Tab AA and
10 mark it as Exhibit 18.
11 (Gloria Exhibit 18, marked for identification.)
12 MR. HAWLEY: Okay. And could, could you
13 zoom in on that a bit.
14 BY MR. HAWLEY:
15 Q. Okay, Mr. Gloria, do you recognize this
16 email?
17 **A. This is the information that Daniel**
18 **requested.**
19 Q. Okay.
20 MR. HAWLEY: And could you please scroll
21 down, Mr. Mortensen. One moment, please. Could you
22 please scroll down to pages 2 and 3.
23 BY MR. HAWLEY:
24 Q. Mr. Gloria, are these the open records
25 requests that you received?

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1 **A. It looks like, yes.**
2 Q. Okay.
3 MR. HAWLEY: And could I ask you to scroll
4 down to pages 10 and 11, Mr. Mortensen.
5 Okay. And actually, could you zoom in on
6 the, on the top half of, of page 10, please. Thank
7 you.
8 BY MR. HAWLEY:
9 Q. Do you recognize this email, Mr. Gloria?
10 **A. Yes, I do. That information is different**
11 **than that spreadsheet as far as the inactive voters.**
12 Q. Okay, I'm sorry. So do you see where it
13 says: "Attachments"? Do you see where it says:
14 "20P_Mail Ballot Signature Cured
15 (RM)" --
16 A. I see that.
17 Q. -- "RS)"?
18 Okay. Is that, is that the Excel sheet
19 that you looked at earlier? Sorry, not the one that's
20 highlighted.
21 MR. HAWLEY: Actually, Mr. Mortensen, the
22 preceding Excel sheet.
23 There we go. Thank you, Mr. Mortensen.
24 BY MR. HAWLEY:
25 Q. Mr. Gloria, is that the Excel sheet that

page 185

1 you reviewed earlier?
2 **A. Well, it's got the same title, I'll agree**
3 **with that.**
4 Q. Okay. If I represent to you that the
5 Excel sheet we showed you is the Excel sheet that you
6 had attached to this email, would you change any of
7 the answers that you gave earlier in the deposition?
8 **A. No. I believe I said that I, I agreed**
9 **that it was -- those were the cured, those ones that**
10 **successfully cured their ballot.**
11 Q. Okay. Very good. Thank you very much,
12 Mr. Gloria.
13 Do you intend to be -- do you intend to
14 testify at trial in this case?
15 **A. Only if I'm forced to do so.**
16 Q. Okay. And if you were called to testify,
17 would you address any topics that I haven't asked you
18 about already?
19 **A. I don't know that I have the ability to**
20 **just bring things up I want to talk about. I don't**
21 **believe so.**
22 Q. Okay. And do you have any other additions
23 or changes you would like to make to the answers that
24 you have given me today?
25 **A. No.**

<p style="text-align: right;">page 186</p> <p>1 MR. HAWLEY: Okay. That's all I have for 2 now, Mr. Gloria. Thank you very much. 3 I will turn things over to your lawyer and 4 the rest of the group. 5 MR. HARDY: I just have a couple of 6 questions, if that's all right. 7 MS. MILLER: Could I take it first there, 8 Mr. Hardy? 9 MR. HARDY: Go ahead. 10 MS. MILLER: Thank you. 11 12 EXAMINATION 13 BY MS. MILLER: 14 Q. Earlier you testified that the only way 15 for a voter to cure his or her signature was to return 16 one of those cure affidavits? 17 A. That's correct. 18 Q. That's correct. 19 But and those cure notices go out early in 20 the signature rejection process; is that right? 21 A. That's correct. 22 Q. What if later in the signature review 23 process you or your staff determine that signature 24 wasn't matched? 25 A. Then the cure process would be eliminated</p>	<p style="text-align: right;">page 188</p> <p>1 A. Wolf. I'm not sure exactly. He works for 2 a local attorney's office that provided that 3 information request to me. 4 Q. What interactions have you had with 5 Mr. Bravo? 6 A. Solely in relation to the public 7 information request and what they requested and what 8 we were able to provide. 9 Q. Have you had any direct conversations with 10 his office? 11 A. No. 12 MR. HARDY: That's all I have. Thank you. 13 Nothing further. 14 MR. HAWLEY: Does anyone else have any 15 questions for Mr. Gloria? 16 MS. MILLER: I do have a follow-up. 17 18 FURTHER EXAMINATION 19 BY MS. MILLER: 20 Q. Do you know Bradley Schrager? 21 A. I do know Bradley Schrager. 22 Q. Are you aware what firm he works with? 23 A. My memory is terrible. I don't know 24 exactly, but I know that he's a local attorney. 25 Q. Would it surprise you to learn he worked</p>
<p style="text-align: right;">page 187</p> <p>1 because we verify and confirm that the signature did 2 match according to our review. So they would no 3 longer need to provide the cure. 4 Q. Would their name still show up on a list 5 of people who were sent a notice? 6 A. Yes. 7 Q. Would they show up as cured? 8 A. Not necessarily. 9 THE VIDEOGRAPHER: Excuse me. Ms. Miller, 10 I know you're in the same room, but do you mind 11 speaking up just a little bit since you're using his 12 microphone? It's coming in a little faint. 13 MS. MILLER: Okay. I'm done, and I'll 14 pass the witness. 15 16 EXAMINATION 17 BY MR. HARDY: 18 Q. Mr. Gloria, you referenced -- this is 19 Brian Hardy. I'm the attorney for the intervenor 20 defendants. 21 Previously, and right at the close, you 22 were asked some questions about giving info to Daniel. 23 Who is the Daniel that you're referring to? 24 A. Daniel Bravo. He works for -- 25 Q. Go ahead.</p>	<p style="text-align: right;">page 189</p> <p>1 with Wolf Rifkin? 2 A. No, it would not. 3 Q. Have you had conversations with 4 Mr. Schrager on the telephone? 5 A. In relation to this case? 6 Q. Just since the primary? 7 A. Questions, yes. He generally works with a 8 group that will call in with issues at polling places 9 related to electioneering, just general issues going 10 on. Sometimes he will send a question related to that 11 and his representative. 12 MS. MILLER: Thank you. No further 13 questions. 14 MR. HARDY: I just want to follow up on 15 that, Mary-Anne, if I can. 16 17 FURTHER EXAMINATION 18 BY MR. HARDY: 19 Q. Your interactions with Mr. Schrager, you 20 said that you may have talked to him about this case 21 or just issues related to voting in general? 22 A. Voting in general. 23 Q. Okay. So you haven't had any 24 conversations with any other attorneys about this 25 specific case other than your own counsel?</p>

<p style="text-align: right;">page 190</p> <p>1 A. No, I have not.</p> <p>2 MR. HARDY: I have nothing further then.</p> <p>3 MR. HAWLEY: Okay, Mr. Gloria -- sorry,</p> <p>4 did someone else have a question?</p> <p>5 MR. ZUNINO: I did. Thank you, Jonathan.</p> <p>6 Mr. Mortensen, will you pull up Exhibit 6,</p> <p>7 please.</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 BY MR. ZUNINO:</p> <p>11 Q. This is the provision that Mr. Hawley</p> <p>12 asked you about. Specifically the one that's been</p> <p>13 highlighted in yellow regarding reasonable question of</p> <p>14 fact.</p> <p>15 Do you know when that provision was</p> <p>16 adopted or made part of Nevada law?</p> <p>17 A. No, I would have to do some homework to</p> <p>18 give you that answer, sir.</p> <p>19 Q. You have been the Registrar for quite a</p> <p>20 few years, haven't you?</p> <p>21 A. Seven.</p> <p>22 Q. So when, when did you -- as you recall,</p> <p>23 when did you start using this reasonable question of</p> <p>24 fact standard?</p> <p>25 A. Our policies have been developed here for</p>	<p style="text-align: right;">page 192</p> <p>1 has received and on past practices, we've developed a</p> <p>2 policy that has us look at signatures in more than one</p> <p>3 pass.</p> <p>4 Now we have the computer system that has</p> <p>5 an algorithm that also checks the quality of the</p> <p>6 signature. We are looking to match that signature</p> <p>7 based on what we have been trained from the</p> <p>8 professional agent that comes in and works with us and</p> <p>9 on policy that has been developed for many years</p> <p>10 within the department.</p> <p>11 Q. Do you think that like guidance or a</p> <p>12 definition of reasonable question of fact would help</p> <p>13 you to do your job?</p> <p>14 A. Anytime you clarify anything, as long as</p> <p>15 it's based in the law, it always helps. We have 17</p> <p>16 counties. You know, we get together for a</p> <p>17 conversation and not everybody is thinking along the</p> <p>18 same lines. So as the Chief Election Officer, you</p> <p>19 hope that the Secretary develops policies that gives</p> <p>20 clear direction.</p> <p>21 Q. Okay.</p> <p>22 MR. ZUNINO: Mr. Mortensen, would you</p> <p>23 bring up -- pull this down and bring up Exhibit 15,</p> <p>24 please.</p> <p>25 ///</p>
<p style="text-align: right;">page 191</p> <p>1 many years. We carried forward on what we've used in</p> <p>2 the past. So, in my switchover, when I moved into the</p> <p>3 Registrar's position, we of course did a review of</p> <p>4 policy and talked to division managers. We adopted</p> <p>5 what we had in place because it was working.</p> <p>6 So specifically to the reasonable</p> <p>7 question, I couldn't tell you when that was</p> <p>8 specifically taken into consideration when developing</p> <p>9 policy.</p> <p>10 Q. Okay. Do you understand this provision as</p> <p>11 creating a presumption that there is a match between</p> <p>12 signatures unless there is reasonable evidence to the</p> <p>13 contrary? Does it create a presumption in your mind</p> <p>14 or no?</p> <p>15 A. A presumption that there needs to be a</p> <p>16 signature match in order to process the ballot to be</p> <p>17 counted?</p> <p>18 Q. So does it create a presumption of a match</p> <p>19 in the absence of evidence to the contrary?</p> <p>20 A. No, not in my opinion. To presume that</p> <p>21 the signature is good unless we have --</p> <p>22 Q. I don't -- yeah. So in your mind, what</p> <p>23 is -- what does this reasonable question of fact</p> <p>24 standard require of your staff?</p> <p>25 A. Well, based on the training that my staff</p>	<p style="text-align: right;">page 193</p> <p>1 BY MR. ZUNINO:</p> <p>2 Q. Okay. And this is what Mr. Hawley has</p> <p>3 referred to as the voter assistance ban. And he's</p> <p>4 highlighted there for you Subsection 4, which deals</p> <p>5 with family members, right.</p> <p>6 So do you understand this provision has</p> <p>7 created an exception to the voter assistance ban for</p> <p>8 people who return ballots on behalf of their family</p> <p>9 members?</p> <p>10 A. An exception? Yes. It's allowing for a</p> <p>11 member of the family to deliver a ballot for them.</p> <p>12 Q. So it would be an exception to the crime,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you -- I think you've already</p> <p>16 answered this. Does your office have like a criminal</p> <p>17 investigative function?</p> <p>18 A. No.</p> <p>19 Q. Do you have a prosecutorial function?</p> <p>20 A. No.</p> <p>21 MR. ZUNINO: Okay. That's all that I had.</p> <p>22 Thanks.</p> <p>23 MR. HAWLEY: Mr. Kaplan, Mr. Greenburg,</p> <p>24 Ms. Miller, any additional questions?</p> <p>25 MS. MILLER: None for me.</p>

<p>page 194</p> <p>1 MR. GREENBURG: This is Rand Greenburg. I</p> <p>2 have no questions.</p> <p>3 MR. HAWLEY: Okay. Mr. Gloria, I actually</p> <p>4 just have one more question for you, please.</p> <p>5</p> <p>6 FURTHER EXAMINATION</p> <p>7 BY MR. HAWLEY:</p> <p>8 Q. The training that you and your staff have</p> <p>9 started undertaking with the, with the forensic</p> <p>10 expert, about how long does that training last?</p> <p>11 A. Oh, it's about a four-hour training.</p> <p>12 Q. Okay. Do you use the same, the same</p> <p>13 trainer each time?</p> <p>14 A. We were happy with what she did for us in</p> <p>15 the first year, which was last year, so we've</p> <p>16 continued to use her.</p> <p>17 Q. Okay. Do you happen to have her name?</p> <p>18 A. Not with me. I can get it for you.</p> <p>19 Q. Okay. And actually on that note, you have</p> <p>20 been kind enough to agree to give us various pieces of</p> <p>21 information over the course of this deposition. We</p> <p>22 will communicate a letter to, to your counsel listing</p> <p>23 some of those things that you agreed to send to us.</p> <p>24 Does that sound okay?</p> <p>25 A. That sounds great.</p>	<p>page 196</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 STATE OF NEVADA)</p> <p>4) ss</p> <p>5 COUNTY OF CLARK)</p> <p>6</p> <p>7 I Denise R. Kelly, a Certified court</p> <p>8 Reporter, duly licensed by the State of Nevada do</p> <p>9 hereby certify:</p> <p>10 That I reported the deposition of</p> <p>11 JOSEPH P. GLORIA, commencing on Friday, July 24, 2020,</p> <p>12 at the hour of 8:06 a.m.</p> <p>13 That prior to being deposed, the deponent</p> <p>14 was duly sworn by me to testify to the truth;</p> <p>15 That I thereafter transcribed my said</p> <p>16 stenographic notes into written form;</p> <p>17 That the typewritten transcript is a</p> <p>18 complete, true, and accurate transcription of my said</p> <p>19 stenographic notes;</p> <p>20 I further certify that pursuant to NRCP</p> <p>21 Rule 30(e)(1) that the signature of the deponent:</p> <p>22 ___ was requested by the deponent or a</p> <p>23 party before the completion of the deposition;</p> <p>24 ___X_ was not requested by the deponent or a</p> <p>25 party before the completion of the deposition;</p> <p>26 I further certify that I am not a relative</p>
<p>page 195</p> <p>1 MR. HAWLEY: Okay. All right. The very</p> <p>2 last thing I have to say on the record is to thank you</p> <p>3 for your time, and thank you and your staff for the</p> <p>4 work that you do.</p> <p>5 And to, on behalf of all of us, wish your</p> <p>6 mother a very happy birthday, and I hope you have a</p> <p>7 wonderful time. And thank you so much for your time</p> <p>8 today.</p> <p>9 THE WITNESS: Sure thing. Thank you.</p> <p>10 MS. MILLER: You guys have a good weekend.</p> <p>11 THE VIDEOGRAPHER: The time is 12:15 p.m.,</p> <p>12 and this concludes the video deposition of Joseph</p> <p>13 Gloria.</p> <p>14 (Whereupon, the deposition concluded at 12:15 p.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>page 197</p> <p>1 or employee of counsel or of any of the parties</p> <p>2 involved in the proceeding, nor a person financially</p> <p>3 interested in the proceeding.</p> <p>4 IN WITNESS WHEREOF, I have set my hand in my</p> <p>5 office in the County of Clark, State of Nevada, this</p> <p>6 31st day of July, 2020.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Denise R. Kelly</p> <p>CCR #252, RPR</p>

EXHIBIT C

EXHIBIT C

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Clark County District Attorney
MARY-ANNE MILLER
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702.455.2164
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*Attorneys for Defendant Joseph P. Gloria,
Clark County Registrar of Voters*

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

DANIEL CORONA, DARIN MAINS,
BRIAN MELENDEZ, TERESA
MELENDEZ, OMAR ABDUL-RAHIM,
DALE AULT, LYNN JOHN, GENE
ROBERSON, LORENZITA SANTOS,
NEVADA STATE DEMOCRATIC
PARTY, DNC SERVICES
CORPORATION/DEMOCRATIC
NATIONAL COMMITTEE, DCCC,
PRIORITIES USA, and THE NATIVE
AMERICAN CAUCUS OF THE
NEVADA STATE DEMOCRATIC
PARTY,

Plaintiffs,

vs.

BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State;
JOSEPH P. GLORIA, in his official
capacity as Registrar of Voters for Clark
County, Nevada; DEANNA SPIKULA, in
her official capacity as Registrar of Voters
for Washoe County, Nevada; KRISTINE
JAKEMAN, in her official capacity as the
Elko County Clerk; and AARON FORD, in
his official capacity as the Attorney General
of the State of Nevada,

Defendants.

Case No.: 20 OC 00064 1B

Dept. No.: II

**ANSWERS TO PLAINTIFFS FIRST
SET OF INTERROGATORIES TO
DEFENDANT JOSEPH P. GLORIA**

Comes now Defendant Joseph P. Gloria, Registrar of Voters for Clark County, by and
through his counsel, Steven B. Wolfman, District Attorney, by Mary-Anne Miller, County
Counsel and answers Plaintiffs' First Set of Interrogatories to Defendant Joseph Gloria
pursuant to Rule 33 of the Nevada Rules of Civil Procedure as follows:

1 **INTERROGATORY NO. 1:**

2 Describe the make and model of any signature match machines used by Your Office
3 in implementing the Signature Matching Regime.

4 **ANSWER TO INTERROGATORY NO. 1:**

5 Please see attached equipment specification, identified as "Clark 023-".

6 **INTERROGATORY NO. 2:**

7 Describe how many signature matching machines used by your Office operate and
8 make determinations, including but not limited to how the machines are calibrated, what data
9 the machines rely on to make determinations, and how many signatures for each voter the
10 machines have access to.

11 **ANSWER TO INTERROGATORY NO. 2:**

12 Please see answer to Interrogatory No. 1. Signature verification functionality as it
13 relates to the sorter is based on capturing the signature on the outer envelope with a high-
14 speed camera as the in-bound vote by mail envelopes are fed through the sorter. Automatic
15 signature verification software (ASR) provides the county with the opportunity to set a
16 threshold for comparing the captured signature automatically against the most recent
17 signature captured in the voter registration base. Successful matches for signatures when
18 using this software is based on the dots per inch (DPI) of the signature image and how clean
19 the background is for the signature. Those signatures that are not matched by the software
20 are then viewed by county staff for another review of the signature match.

21 There is no calibration for the system since the signature match is based on a software
22 algorithm, similar to what is used in banking institutions, to match signatures.

23 **INTERROGATORY NO. 3:**

24 Describe how Your Office verifies signatures on absent and mailing ballot return
25 envelopes under N.R.S. 293.325.

26 **ANSWER TO INTERROGATORY NO. 3:**

27 The process begins with the Agilis ballot sorting machine. Those ballots are
28 ...

1 individually scanned from the return envelope matching the voters' information to our voter
2 registration database. The software displays the voter's signature which is verified for a
3 match. If the signature does not match it is sent to our researching team who has access to
4 all signatures on file for the voter. If the signature is still not verified for a match it is sent to
5 a bi-partisan counting board team for review to make one more review of the signature
6 before being sent directly to the Registrar of Voters for final review. Any voter whose
7 signature does not match or whose signature is missing must be contacted by mail, e-mail, or
8 phone number to inform them that they must provide a signed oath verifying that they have
9 returned their ballot and a NV driver license to confirm their identity. The NVSOS has
10 provided a mobile application that allows voters to accomplish this task electronically.
11 Otherwise they must provide the information to use via e-mail or by personally dropping off
12 the information. The voter has up to the seventh day by 5pm following the election to cure
13 their signature.

14 **INTERROGATORY NO. 4:**

15 Describe how Your Office verifies signatures on absent and mailing ballot return
16 envelopes under N.R.S. 293.333.

17 **ANSWER TO INTERROGATORY NO. 4:**

18 These ballots are verified in the same manner as envelopes under NRS 293.325.

19 **INTERROGATORY NO. 5:**

20 Describe any efforts by your Office to enforce the Voter Assistance Ban, including
21 but not limited to any forms, procedures, practices, requirements, or guidelines Your Office
22 uses when an individual returns multiple absent or mailing ballots to your Office.

23 **ANSWER TO INTERROGATORY NO. 5:**

24 This defendant and the Clark County Election Department are not familiar with the
25 term "Voter Assistance Ban." If the inquiry is about the enforcement of NRS 293.330(4) or
26 293.353(4), the procedure is as follows: When a person delivers more than one to an
27 election official, the delivering person is offered an opportunity to make a declaration that he
28 or she is a member of the family of the voter. If the delivering person indicates that he or

1 she is willing to make that declaration, the outside of the ballot envelope is stamped with a
2 declaration form to that effect, and the person signs it. If the person indicates that he or she
3 is not a family member, he or she is told to return ballots other than his or his own to those
4 voters or to drop the ballots in a U.S.P.S. mailbox or mail office.

5 DATED this 17th day of July, 2020.

6 STEVEN B. WOLFSON
7 DISTRICT ATTORNEY

8 By: /s/ Mary-Anne Miller
9 MARY-ANNE MILLER
10 County Counsel
11 State Bar No. 001419
12 500 South Grand Central Pkwy. 5th Flr.
13 Las Vegas, Nevada 89155-2215
14 *Attorneys for Defendant Joseph P. Gloria,*
15 *Clark County Registrar of Voters*

16 **CERTIFICATE OF MAILING**

17 I hereby certify that on the 17th day of July, 2020, I served a copy of the document by
18 emailing a copy of the above and foregoing **Answers to Plaintiffs First Set of**
19 **Interrogatories to Defendant Joseph P. Gloria** addressed as follows:

20 Brian Hardy, Esq.
21 bhardv@maclaw.com

22 Bradley Schrager, Esq.
23 bschrager@wrslawyers.com

24 Gregory Zunino, Esq.
25 gzunino@ag.nv.gov

26 Tyler R. Green, Esq.
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28 /s/ Afeni Banks
An Employee of the Clark County District
Attorney's Office – Civil Division



DUAL AGILIS EQUIPMENT SPECIFICATIONS

The *Dual Agilis* is an innovative mail ballot sorting solution that makes inbound ballot processing, quick, easy and affordable and empowers elections officials to manage election mail processing right in your facility. The Agilis was designed to fit where space is very limited, with a small base footprint and can simply be rolled on its heavy-duty wheels through any standard size doorway and plugged into a standard 110v outlet. Its slim design has the capabilities to process up to 36,000 mail ballots per hour (real use volume will vary between 20,000-36,000 mail ballots per hour) and is highly configurable with full reporting and audit capabilities.

The *Dual Agilis* can scan ballot envelopes capturing the voter's signature, presenting the image to the user on-screen for signature comparison against the signature held in the voter registration database. Questioned ballots such as envelopes with no signature, are identified, and separated for manual review. Additionally, if the County would require the ability for automated signature recognition, the *Dual Agilis* has that as an option.

Runbeck understands the significance of installing a ballot acceptance system for counties that conduct their elections by mail. Runbeck has the experience required to fulfill the County's ballot envelope sorting and scanning needs and the capability to answer any imperative concerns derived from implementing and streamlining established processes with new ones.

Common criteria for County signature capture, compare, sorting and opening:

- ✓ Automatically endorse the envelope with time, date and sequence number.
- ✓ Scans voter barcode and capture image of the envelope.
- ✓ Shows ballot as received in the Voter Registration Database (VRDB) providing the voter credit for voting in that election.
- ✓ Extract voter signature from the envelope to compare side-by-side with signature on file in the VRDB.
- ✓ Compatible with current VRDB system
- ✓ Compatible with County network and overall technology infrastructure.
- ✓ Coordinate with Clerk's Office and County Information Technology on system setup and deployment on County data network.
- ✓ Implement system using security best practices.



- ✓ Maintain and secure a full audit trail of ballot processing.
- ✓ Sort envelopes by exceptions, such as missing signatures, ballots from other elections, from another jurisdiction, etc.
- ✓ Ability for one machine to process total returned ballot volume.
- ✓ Ability to stack at least 100 ballots for throughput at one time.
- ✓ Ability to generate reports at the group level to identify ballots that were out- stacked with exceptions.
- ✓ Ability to handle batches of up to 250 envelopes.
- ✓ Double feed detection.
- ✓ Envelope thickness detection with the ability to set a threshold and out stacking the envelopes that don't meet that threshold.
- ✓ Automatically produce group log sheet to put in with the group of envelopes when scanning group is complete.
- ✓ Ability to identify ballot return method at the beginning of the group (such as mail, drop box, etc.) and have that information available to the VRDB.
- ✓ Optional Automated Signature Recognition is available if desired, with the ability to set a confidence threshold and with the ability to change to manual review.
- ✓ Label generation at the end of the group (for archive purposes) with user configurable information such as election, the group number, and the destruction date.
- ✓ Provide training plan for elections staff, both initial and on-going. Initial training will be on-site with on-going phone technical support.
- ✓ Ability to open the envelopes as they are processed through machine.

Additionally, the *Dual Agilis* can:

- ✦ Process up to 36,000 mail pieces per hour (600 mail pieces per minute).
- ✦ Sort by any supplied routing information.
- ✦ Reject wrong election mail ballots.
- ✦ Scan multiple barcode locations in one pass.
- ✦ Detect barcode duplicates and identify barcodes that cannot be read.
- ✦ Verify signature capture and comparison.
- ✦ Provide thin and thick envelope detection.

EXHIBIT D

EXHIBIT D

1 AARON D. FORD
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8

9 *Attorneys for Defendants Barbara Cegavske*
and Aaron Ford

10
11 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF**
12 **NEVADA IN AND FOR CARSON CITY**
13

14 DANIEL CORONA, DARIN MAINS,
15 BRIAN MELENDEZ, TERESA
MELENDEZ, NEVADA STATE
16 DEMOCRATIC PARTY, DNC SERVICES
CORPORATION/DEMOCRATIC
17 NATIONAL COMMITTEE, DCCC, and
PRIORITIES USA,

18 Plaintiffs,

19 vs.

20 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,
21 JOSEPH P. GLORIA, in his official
capacity as Registrar of Voters for Clark
22 County, Nevada, DEANNA SPIKULA, in
her official capacity as Registrar of Voters
23 for Washoe County, Nevada, KRISTINE
JAKEMAN, in her official capacity as the
24 Elko County Clerk, and AARON FORD, in
his official capacity as the Attorney
25 General of the State of Nevada,

26 Defendants.

Case No. 20-OC-00064 1B

27 **DEFENDANTS' OPPOSITION TO PLAINTIFFS'**
28 **MOTION FOR PRELIMINARY INJUNCTION**

1 Defendants BARBARA CEGAVSKE, in her official capacity as Secretary of State for
2 the State of Nevada (Secretary of State), and AARON D. FORD, in his official capacity as
3 Nevada Attorney General, acting by and through counsel, Gregory L. Zunino, Deputy
4 Solicitor General and Craig A. Newby, Deputy Solicitor General, hereby submit their
5 Opposition to Plaintiffs' Motion for Preliminary Injunction.

6 MEMORANDUM OF POINTS AND AUTHORITIES

7 I. INTRODUCTION

8 To diminish the spread of the COVID-19 illness, Secretary of State Barbara
9 Cegavske ("Secretary" or "Secretary Cegavske") and her staff worked in partnership with
10 Nevada's seventeen local election officials to implement an all-mail primary election for
11 June 9, 2020. Ex. A at 2:6–9; Ex. B at 2:20–25, 3:1–14; Ex. C at 2:3–10. Subsection 4 of NRS
12 293.213 sets forth the legislative grant of authority for her do so under the current
13 circumstances. Without qualification, this statutory provision authorizes Nevada's state
14 and local election officials to cooperatively establish "mailing precincts" in which registered
15 voters cast their votes by mail.

16 Plaintiffs agree that Secretary Cegavske lawfully exercised her authority to approve
17 mailing precincts within each of Nevada's seventeen counties. Mot. at 5:16–17; Compl. at
18 2:26–28. They disagree, however, with the Secretary's decision to defer to the discretion of
19 the county clerks regarding: (1) the number of physical polling places in excess of one to be
20 established within each county; and (2) the composition of the roster of persons (active
21 versus inactive voters) to whom the county clerks will mail ballots for the 2020 primary
22 election. Compl. at 12:1–28. These are policy decisions for local election officials to make
23 in light of the geographic considerations, fiscal concerns and logistical challenges unique to
24 each county. Ex. B at 4:1–24, 5:1–26; Ex C. at 2:1–28, 3:1–26. Overall, the policy decisions
25 concerning the administration of Nevada's 2020 primary election were carefully evaluated,
26 reasonable, and consistent with all applicable statutory and constitutional protections for
27 voting rights, free speech and freedom of assembly.

1 In addition to challenging the reasonable policy decisions of state and local election
2 officials, Plaintiffs object to the anticipated enforcement of statutory election-integrity
3 provisions governing: (1) the process for verifying the signatures on paper ballots, Compl.
4 at 18:18–28, 19:1–28; and (2) the time within which signature discrepancies on ballot
5 envelopes must be cured, Compl. at 21:1–18. See NRS 293.325–335. Finally, they take
6 issue with what they characterize as a statutory “ban” on “voter assistance.” Compl. at
7 17:20–28, 18:1–17. See also NRS 293.317, .330 and .353. With certain exceptions, Nevada’s
8 so-called “voter assistance ban” prohibits campaign volunteers and partisan advocates from
9 collecting and returning paper ballots on behalf of voters. Numerous states have similar
10 statutes as a means to deter voter fraud. See Research by the National Conference of State
11 Legislatures, last accessed on 5/2/20 at [www.ncsl.org/research/elections-and-](http://www.ncsl.org/research/elections-and-campaigns/returning-absentee-ballots.aspx)
12 [campaigns/returning-absentee-ballots.aspx](http://www.ncsl.org/research/elections-and-campaigns/returning-absentee-ballots.aspx).

13 As with the decisions concerning physical polling locations and the mailing of ballots,
14 the manner of enforcing statutory election-integrity safeguards is entrusted to the
15 discretion of state and local election officials and law enforcement agencies. There is no
16 reason to believe, based upon Plaintiffs’ complaint and motion for injunctive relief, that the
17 enforcement of existing election-integrity statutes will burden Plaintiffs’ voting rights, free
18 speech, or freedom to assemble.

19 II. STANDARD OF REVIEW

20 To obtain a preliminary injunction in this case, Plaintiffs must show (1) a likelihood
21 of success on the merits and (2) a reasonable probability that the alleged conduct on the
22 part of state and county election officials, if allowed to continue, will cause irreparable harm
23 for which compensatory damage is an inadequate remedy. *University and Community*
24 *College System of Nevada v. Nevadans for Sound Government*, 120 Nev. 712, 721, 100 P.3d
25 179, 187 (2004). “In considering preliminary injunctions, courts also weigh the potential
26 hardships to the relative parties and others, and the public interest.” *Id.*

27 Plaintiffs cannot meet these burdens; they are unlikely to succeed on the merits
28 because they advance speculative claims about potential burdens upon voting rights. For

1 the same reason, Plaintiffs will not suffer any harm, much less irreparable harm, at this
2 preliminary stage of the election administration process. Finally, the balance of equities
3 and the public interest during these unprecedented times weigh heavily against injunctive
4 relief.

5 The motion must be denied.

6 **III. SUMMARY OF THE ARGUMENT**

7 Plaintiffs are individual registered voters, voting rights advocates, and partisan
8 political organizations who express concern that state and local election officials have not
9 taken adequate precautions to ensure that *all potential voters* are afforded ample
10 opportunity to cast a vote in the 2020 primary election. Their advocacy on behalf of all
11 potential voters is not consistent with principles of standing and ripeness. Nor does it
12 afford proper deference to the election officials who are charged with making the critical
13 policy decisions that underlie the preparations for the all-mail primary election.

14 As noted above, Secretary Cegavske and local election officials worked in
15 partnership to implement an all-mail primary election. Their objective was to “maintain a
16 high level of access to the ballot, while protecting the safety of voters and poll workers”
17 Mot., Ex. 12 at 1. Volunteer poll workers, in particular, tend to be in a high risk category
18 for developing life-threatening complications from COVID-19. Ex. A at 2:15–20; Ex. B at
19 6:1–6; Ex. C at 2:11–13. Through public education and voter outreach programs, state and
20 local election officials will significantly increase voter awareness of vote-by-mail processes,
21 thus creating an incentive for them to cast paper ballots. Ex. A at 4:15–20; Ex. B at 3:17–
22 20; Ex. C at 2:3–10. Conversely, by limiting the number of physical polling locations within
23 each county, election officials will create a disincentive for voters to needlessly expose one
24 another and poll workers to the risk of infection. Ex. A at 5:1–4; Ex. B at 6:7–19; Ex. C at
25 2:24–28, 3:1–8.

26 Election officials have agreed to establish at least one polling location within each
27 county to accommodate statutory same-day registration requirements, *see* NRS 293.5842,
28 and to increase access for voters who may, due to unforeseeable circumstances, be unable

1 to cast their votes by mail. Ex. B at 5:5–9; Ex. C at 3:9–13. Election officials have also
2 agreed to mail ballots only to active voters to reduce the expense of mailing ballots that
3 will almost certainly be returned by the U.S. Postal Service as undeliverable. Ex. A at 4:1–
4 4; Ex. B at 3:21–26, 4:1–7, 4:19–24; Ex. C at 3:9–13. By reducing the considerable expense
5 of mailing ballots to inactive voters, limited government resources can be reallocated to
6 public education and voter outreach programs Ex. A at 4: 8–20; Ex. B at 3:17-20; Ex. C at
7 3:9-13.

8 In summary, the decisions that Plaintiffs challenge in this case implement
9 reasonable policy considerations and do not burden voting rights or other constitutional
10 liberties. Under applicable federal and state case law, the preparations for the all-mail
11 primary should be allowed to proceed unimpeded by Plaintiffs' unforeseeable demands.
12 Furthermore, to the extent that Plaintiffs take issue with the possible manner of enforcing
13 statutory election-integrity provisions, their claims are too speculative to warrant this
14 Court's intervention.

15 IV. ARGUMENT

16 A. Plaintiffs are Unlikely to Succeed on the Merits for Multiple Reasons

17 i. *Plaintiffs Do Not Have to Standing, Nor Are Their Claims Ripe for Review*

18 To establish jurisdiction, generally, a party must show a personal injury and not
19 merely a general interest that is common to all members of the public to have standing to
20 file suit. *See Schwartz v. Lopez*, 382 P.3d 886, 894 (Nev. 2016). In the context of challenging
21 the constitutionality of a statute, the Nevada Supreme Court has held that a party must
22 suffer harm fairly traced to the statute that invalidating it would redress. *Elley v.*
23 *Stephens*, 104 Nev. 413, 416-17, 760 P.2d 768, 770 (1988).

24
25 Nevada requires litigated matters to present an existing controversy, not merely the
26 prospect of a future problem, for them to be ripe for judicial determination. *Resnick v.*
27 *Nevada Gaming Commission*, 104 Nev. 60, 65-66, 752 P.2d 229, 232 (1988). To
28

1 demonstrate ripeness, Plaintiffs must demonstrate that “harm is likely to occur in the
2 future because of a deprivation of a constitutional right.” *Id.* 104 Nev. at 66. In short, both
3 standing and ripeness doctrines require Plaintiffs to demonstrate harm tied to the
4 purportedly improper actions by the Secretary. Because none yet exists, the Court should
5 reject Plaintiffs’ claims.

6 Here, Plaintiffs have not yet suffered an injury fairly traceable to the Secretary’s
7 plan for the primary election. First, Plaintiffs claim an interest in having Nevada’s election
8 laws enforced based on their presumed status as “active” registered voters, yet the primary
9 dispute about the mailing of ballots centers on “inactive” voters. It is not clear whether
10 any such voter is or could be made a party to this case. For purposes of voting in the June
11 9 primary election, any registered voter (including any inactive registered voter) has the
12 ability to update the voter’s address using a variety of different methods, including the
13 Secretary of State’s on-line system, if the update is made on or before the day of the election.
14 *See* NRS 293.5832; NRS 293.525. Moreover, there are no legal impediments to a voter’s
15 request that a paper ballot be mailed to the voter’s newly-updated address in advance of
16 the election; the only impediments are practical impediments related to the timing of the
17 voter’s request. Given the ease with which a person can update his or her address prior to
18 the election, any harm associated with not receiving a mail ballot is traceable to the voter,
19 not the Secretary or the county clerks. As a last resort, a voter who changes his or her
20 address immediately before the election may vote in person on the day of the election. *See*
21 NRS 293.525.

22 Second, Plaintiffs have not yet suffered an injury fairly traceable to the Secretary’s
23 enforcement of Nevada statutes governing identity verification through signature match.
24 Plaintiffs’ policy preferences ignore the actual additional steps the Secretary is taking to
25 balance enforcement of the signature requirement with encouraging robust participation
26 in the election. Specifically, as noted in the Declaration of Wayne Thorley, the responsible
27 county clerk will promptly contact any voter flagged as a result of the signature
28 requirement to provide that voter with the opportunity to cure a signature discrepancy,

1 including by electronic means. Ex. A at 4:8–14. Consequently, any harm associated with
2 the signature requirement results from the voter’s failure to affix a legible signature to the
3 ballot envelope in the first instance, or to take advantage of the signature cure process
4 during the 7-day, post-election cure period.

5 Third, Plaintiffs have not asserted a harm fairly traceable to the Secretary’s
6 continued enforcement of ballot return statutes. Plaintiffs have the ability to mail ballots
7 using postage-prepaid envelopes immediately upon receiving them. Furthermore, NRS
8 293.330(4) allows a voter to deliver a ballot using a family member as a courier, and NRS
9 293.316 and .3165 establish voter assistance exceptions for the elderly and persons
10 confined to hospitals or nursing homes. As it pertains to the completion and return of paper
11 ballots, Nevada law strikes an appropriate balance between anti-fraud concerns and voter
12 access concerns.

13 Fourth, Plaintiffs have not asserted a harm fairly traceable to the number of polling
14 places that a county may choose to establish as a last alternative to vote-by-mail processes
15 during the COVID-19 pandemic. To the extent that vote-by-mail processes may conflict
16 with Plaintiffs’ preference for in-person voting, the alleged imposition upon voting
17 preference is outweighed by the Defendants’ interest in public health and safety during the
18 emergency.

19 ii. *The Anderson-Burdick Balancing Test Demonstrates that Success on*
20 *the Merits is Improbable*

21 In the context of a vote-by-mail program that was found to pass constitutional
22 muster, the Ninth Circuit applied the *Anderson-Burdick* balancing test in *Short v. Brown*,
23 893 F.3d 671, 676-77 (9th Cir. 2018). When considering the standard of review for state
24 election processes the Ninth Circuit recognized that “not all election laws impose
25 constitutionally suspect burdens on [the right to vote].” *Id.* at 676. Indeed, the court stated
26 that, as “a practical matter, there must be a substantial regulation of elections if they are
27 to be fair and honest and if some sort of order, rather than chaos, is to accompany the
28 democratic processes.” *Id.* While recognizing that any “election regulation inevitably

1 affects—at least to some degree—the individual’s right to vote and his right to associate
2 with others for political ends,” the Ninth Circuit reaffirmed that “the state’s important
3 regulatory interests are generally sufficient to justify reasonable, nondiscriminatory
4 restrictions.” *Id.*

5 In light of these principles, the Ninth Circuit set forth the following balancing test:

6 • First, a court faced with a constitutional challenge to a state election law must
7 “consider the character and magnitude of the asserted injury to the rights . . . that the
8 plaintiff seeks to vindicate.” *Short*, 893 F.3d at 676. This is a factual question on which
9 Plaintiffs bear the burden of proof. *Democratic Party of Haw. v. Nago*, 833 F.3d 1119, 1122–
10 24 (9th Cir. 2016).

11 • Second, it “must identify and evaluate the precise interests put forward by the
12 State as justifications for the burden imposed by its rule. Those interests must be
13 “sufficiently weighty to justify the limitation, and there must be a means-ends fit between
14 the state’s proffered justification and the rule employed.” *Short*, 893 F.3d at 676-77.

15 • Third, “under this framework, strict scrutiny applies only where the burden
16 on the fundamental right to vote is severe.” *Id.* at 677. Stated differently, “when a state
17 election law provision imposes only ‘reasonable, nondiscriminatory restrictions’ upon the
18 First and Fourteenth Amendment rights of voters, ‘the State’s important regulatory
19 interests are generally sufficient to justify’ the restrictions.” *Burdick v. Takushi*, 504 U.S.
20 428, 433–34, 112 S. Ct. 2059, 119 L.Ed.2d 245 (1992).

21 When considering the Secretary’s plan for the primary under this framework, it is
22 clear that Plaintiffs cannot meet their burden of demonstrating a likelihood of success on
23 any of its challenges.

24 *iii. The Transmission of Ballots to All Active Voters and to Anyone Else*
25 *Who Contacts Election Officials*

26 In the unique circumstances presented by the COVID-19 pandemic, the Secretary’s
27 primary plan greatly expands access to voting by providing mail ballots to all active voters.
28 This case is akin to what the Ninth Circuit faced in *Short*, which considered challenges to

1 California's phased expansion of all-mail voting to certain counties at first. There, it
2 recognized that California had expanded voting, not restricted voting. Further, the court
3 noted that individual voters who did not reside where all-mail voting had been
4 implemented could still request a mail ballot. Under such circumstances, the Ninth Circuit
5 rejected the challenge to election procedures.

6 For similar reasons, the challenge to the Secretary's plan should be rejected on this
7 issue. First, the Secretary's plan greatly expands access to voting. Plaintiffs do not dispute
8 this. Second, as noted above, the Secretary's plan includes the ability of any voter (whether
9 or not active) to request a mail ballot. Nothing prevents a voter from being able to receive
10 a mail ballot for this primary. Third, nothing within the Secretary's plan prevents a voter
11 from requesting a paper ballot after updating the voter's address through existing methods
12 of registration, including on-line registration as provided by NRS 293.5832.

13 In short, the alleged injury asserted by Plaintiffs is minimal or non-existent. This is
14 balanced against the Secretary's lawful exercise of constitutional and statutory authority
15 during a declared public health emergency (at the global, federal, and state level) to
16 minimize exposure to and spread of COVID-19. Emphasizing vote by mail and taking
17 additional steps to ensure it is available to all makes the balancing test weigh even more
18 heavily in favor of the Secretary than it did for California election officials in *Short*.

19 *iv. Nevada's Signature Requirement*

20 Plaintiffs speculate on the purported harm associated with untrained experts
21 enforcing a signature match requirement for mail ballots. Compl. at pp 18-21; Mot. at pp.
22 21-31. Notably, this provision was not changed by the Secretary as part of the primary
23 plan. However, this speculation ignores the Secretary's actual plan, which involves
24 contacting each and every voter for whom there is a signature match question to confirm
25 that the signed voter actually voted the mail ballot. Ex. A at 2:21-28, 3:1-11, 4:8-14.
26 Under such circumstances, there is little to no risk of harm to Plaintiffs.

27 Balanced against this minimal burden is Nevada's interest in counting only the votes
28 of eligible voters. "Confidence in the integrity of our electoral processes is essential to the

1 functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S. Ct.
2 5, 166 L.Ed.2d 1 (2006). The statutory signature requirement, as implemented with
3 multiple failsafe provisions (specifically including voter contact), constitutes a well-
4 considered “means-end” fit for ensuring all votes are counted and eliminating any
5 inaccurate ballots.

6 Further, a state “need not show specific local evidence of fraud in order to justify
7 preventive measures,” *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 394 (5th Cir. 2013), nor
8 is such evidence required to uphold a law that imposes minimal burdens under the
9 *Anderson-Burdick* framework, see *Munro v. Socialist Workers Party*, 479 U.S. 189, 195, 107
10 S. Ct. 533, 93 L.Ed.2d 499 (1986) (explaining that legislatures are “permitted to respond to
11 potential deficiencies in the electoral process with foresight rather than reactively”).
12 Accordingly, continued enforcement of the signature requirement serves Nevada’s
13 important interest in preventing voter fraud even without direct evidence of voter fraud.

14 v. *Nevada’s Voter Assistance Requirements*

15 Plaintiffs speculate on the harm associated with the voter assistance requirements
16 of Nevada law, which have not been changed by the Secretary’s plan. Plaintiffs have the
17 ability to mail ballots, as they have received them. Furthermore, as discussed above,
18 Nevada authorizes voter assistance when provided by a family member who acts as a
19 courier for a voter’s paper ballot, see NRS 293.330(4), or when provided to voters who are
20 elderly or confined to hospitals and nursing homes, see NRS 293.316 and .3165. Here,
21 Nevada has a continuing interest in ensuring that only eligible votes are counted and does
22 not need to show specific local evidence of fraud to justify this preventive measure, as
23 previously discussed above.

24 vi. *The Number of Polling Places*

25 Plaintiffs’ speculative harm centers on sensational allegations that Nevada’s
26 primary will become like Wisconsin’s April primary, including pictures detailing the harm
27 associated with waiting in long lines to vote in person. However, Plaintiffs omit the full
28 procedural history of Wisconsin’s primary election, which includes the Wisconsin Supreme

1 Court's refusal to cancel the primary election during the height of COVID-19, and the
2 Supreme Court's reversal of a federal district court's decision to extend absentee voting
3 deadlines and other requirements. *See Republican National Committee v. Democratic*
4 *National Committee*, 589 U.S. ___, 140 S. Ct. 1205, 1208 (2020) (*per curiam*). Nevada's plan
5 for the all-mail primary election, utilizing executive and local authority to expand voting
6 access on a non-partisan basis, is not comparable in any way to Wisconsin's conflicted,
7 adversarial process.

8 This difference in form matters for purposes of considering this court's authority to
9 change election procedures at the proverbial 11th hour. With regards to the Wisconsin
10 primary, the United States Supreme Court ultimately rejected the lower court's ruling after
11 having "repeatedly emphasized that lower federal courts should ordinarily not alter the
12 election rules on the eve of an election." *Republican Nat'l. Committee*, 140 S. Ct. at 1207
13 (*citing Purcell v. Gonzalez*, 549 U. S. 1 (2006)). Ironically here, it is Plaintiffs who seek to
14 change Nevada election procedure on policy grounds at the 11th hour, creating the
15 confusion that the Supreme Court sought to avoid in *Purcell*.

16 Further, Plaintiffs speculate that voters will have little inclination to vote by mail,
17 thus putting pressure on physical polling locations. As demonstrated by historical trends,
18 however, voters will likely have little inclination to vote by either method. Ex. B at 4:19-
19 24; Ex. C at 3:14-19. And since almost all voters (no matter how registered) will be able to
20 vote by mail, there is a very low probability that polling places will be overcrowded. Nevada
21 has greatly expanded the ease of remote mail voting during the ongoing global pandemic.
22 In compliance with statute, but recognizing that almost all voters will choose to vote in this
23 primary by mail, local election officials have reduced the number of polling places. This
24 both preserves resources redirected to expanded mail-in voting while supporting the public
25 health and safety interests Nevada faces during COVID-19.

26 ...

27 ...

28 ...

1 In short, the Secretary's plan survives the *Anderson-Burdick* balancing test.

2 B. Plaintiffs Have Not Alleged a Cognizable Claim Under NRS 293.345(1)

3 The office of the Secretary of State is a constitutional office existing within the
4 executive department of Nevada state government. Nev. Const. Art 5, §19. As the Chief
5 Officer of Elections for the state of Nevada, *see* NRS 293.124, the Secretary of State has the
6 authority to adopt regulations governing elections, issue forms for use by candidates, voters
7 and election workers, and "provide interpretations and take other actions necessary for the
8 effective administration of the statutes and regulations governing the conduct of primary,
9 general, special and district elections in this State." NRS 293.247(1)-(4). The Secretary's
10 role and duties are distinct from those of the Nevada judiciary. *See* Nev. Const. Art. 6, § 1.

11 Generally, the judiciary "has no inherent appellate jurisdiction over official acts of
12 administrative agencies [or executive branch departments] except where the legislature
13 has made some statutory provision for judicial review." *Washoe County v. Otto*, 128 Nev.
14 424, 431, 289 P.3d 719, 724 (2012) (*citing Crane v. Continental Telephone*, 105 Nev. 399,
15 401, 775 P.2d 705, 706 (1989)). And when the Legislature has made no express provision
16 for challenging the acts of an executive branch department, such as in the Nevada
17 Administrative Procedure Act (APA), *see id.*, the judicial remedy for an alleged violation of
18 statute is to petition the courts for a writ of mandamus, prohibition, or certiorari, as
19 applicable, *see* NRS Chapter 34. Here, Plaintiffs seek injunctive and declaratory relief, not
20 writ relief, for an alleged violation of NRS 293.345(1). Plaintiffs alleged that Secretary
21 Cegavske has violated this provision for failure to require that the county clerks mail
22 ballots to all registered voters, as opposed to active registered voters only. Compl. at 27:16-
23 28. NRS 293.345(1) states: "Before 5 p.m. on the last business day preceding the first day
24 of the period for early voting for any primary election or general election, the county clerk
25 shall cause to be mailed to each registered voter in each mailing precinct and in each absent
26 ballot mailing precinct an official mailing ballot, and accompanying supplies, as specified
27 in NRS 293.350."

1 According to its plain language, the purpose of NRS 293.345(1) is to establish a
2 *deadline* by which the county clerks must mail ballots to the registered voters within
3 mailing precincts. It does not expressly, or by implication, confer upon inactive voters a
4 judicially enforceable right to be mailed an unsolicited ballot. Nor does it confer upon active
5 registered voters a right to demand, through judicial processes, that inactive voters be
6 mailed an unsolicited ballot. “[T]he absence of an express provision providing for a private
7 cause of action to enforce a statutory right strongly suggests that the Legislature did not
8 intend to create a privately enforceable judicial remedy.” *Baldonado v. Wynn Las Vegas,*
9 LLC, 124 Nev. 951, 959, 194 P.3d 96, 101 (2008).

10 As the Court in *Baldonado* observed, legislative intent is the “determinative factor
11 [for evaluating] whether the Legislature intended to create a private judicial remedy.” *Id.*
12 Notwithstanding the “strong suggestion” of legislative intent here—namely the absence of
13 an express right to bring a private cause of action—a full evaluation of legislative intent to
14 create an *implied* right must include inquiry as to (1) whether Plaintiffs are of the class for
15 whose special benefit the statute was enacted, (2) whether the legislative history indicates
16 any intention to create or to deny a private remedy, and (3) whether implying such a
17 remedy is consistent with the underlying purposes of the legislative scheme. *Id.*

18 As to an implied right to bring a private cause of action under NRS 293.345,
19 Plaintiffs cite no legislative history in support of their assertion that the statute is
20 enforceable by way of an action for injunctive relief. Moreover, there is no indication in
21 NRS Chapter 293 that inactive voters are afforded special rights under Nevada election
22 law. To the contrary, inactive voters must take affirmative steps to verify their eligibility
23 to vote or risk cancellation of their voter registration. *See* NRS 293.525–530. And absentee
24 voters have historically been required to request a paper ballot if they wish to vote by mail.
25 NRS 293.313.

26 Furthermore, as noted above, the manifest purpose of NRS 293.345(1) is to establish
27 a deadline by which county clerks must mail ballots to the residents of ballot precincts.
28 “When the Legislature’s intent is clear from the plain language, this court will give effect

1 to such intention and construe the statute's language to effectuate rather than nullify its
2 manifest purpose." *We the People Nevada ex rel. Angle v. Miller*, 124 Nev. 874, 192 P.3d
3 1166, 1171 (2008). Therefore, NRS 293.345(1) is properly construed to foreclose a private
4 right of action against elections officials who fail to mail ballots to inactive voters. Since
5 Plaintiffs' action for declaratory relief is coupled with a claim for injunctive relief, in lieu of
6 a claim in the alternative for writ relief, the absence of any private right of action under
7 NRS 293.345(1) warrants dismissal of the claim. *See Baldonado*, 124 Nev. at 965 (holding
8 that where there was an alternative remedy, plaintiffs could not void or reverse a policy,
9 nor seek damages, in the absence of a private right of action under statute).

10 C. Decisions Regarding the Mailing of Ballots and the Placement of Polling
11 Locations Are Entitled to Judicial Deference

12 As discussed above, the discretionary decisions of an executive branch official must
13 typically be challenged through a petition for judicial review, as provided by NRS 233B.130,
14 or by way of writ proceedings when judicial review under the APA is unavailable. *See NRS*
15 *Chapter 34; Kay v. Nunez*, 122 Nev. 1100, 146 P.3d 801 (2006) ("Here, Kay understandably
16 challenged the district court's order through both a petition for judicial review and a
17 petition for a writ of mandamus. As the petition for judicial review was the proper
18 mechanism . . . Kay's writ petition was inappropriate."). There are limited methods for
19 challenging agency decisions, such as those at issue here, because "[t]he courts must be
20 wary not to tread upon the prerogatives of other departments of government or to assume
21 or utilize any undue powers. *Galloway v. Truesdell*, 83 Nev. 13, 31, 422 P.2d 237, 249
22 (1967). "If this is not done, the balance of powers will be disturbed and that cannot be
23 tolerated for the strength of our system of government and the judiciary itself is based upon
24 that theory." *Id.*

25 Proceedings to obtain a writ of mandamus would typically be the proper method for
26 compelling the Secretary of State to issue an order to county clerks requiring that they mail
27 ballots to inactive voters. NRS 34.160 states that mandamus may be used "to compel the
28 performance of an act which the law especially enjoins as a duty resulting from an office,

1 trust or station.” But “[m]andamus will not lie to control discretionary action, unless
2 discretion is manifestly abused or is exercised arbitrarily or capriciously.” *Round Hill*
3 *General Improvement District v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).
4 Moreover, “[a]n agency’s interpretation of a statute that it is authorized to execute is
5 entitled to deference ‘unless it conflicts with the constitution or other statutes, exceeds the
6 agency’s powers, or is otherwise arbitrary and capricious.’” *Nuleaf CLV Dispensary, LLC v.*
7 *State, Department of Health and Human Servs.*, 134 Nev. 129, 133, 414 P.3d 305, 308
8 (2017). (quoting *Cable v. State ex rel. Emp’rs Ins. Co. of Nev.*, 122 Nev. 120, 126, 127 P.3d
9 528, 532 (2006)).

10 Here, NRS 293.345(1) is silent as to whether ballots must be mailed to inactive
11 voters when it is highly probable that most of those ballots will be returned as
12 undeliverable. Given the cost of mailing ballots to inactive voters, especially during a time
13 when state and local coffers will be severely impacted by the COVID-19 pandemic and the
14 resulting lockdown of businesses, state and local election officials have reasonably
15 interpreted NRS 293.345(1) as imposing a deadline for mailing ballots to the residents of
16 mailing precincts, not as mandating that ballots be mailed to all inactive voters. This
17 interpretation is entitled to deference because it was not arbitrary and capricious, nor did
18 it exceed the powers granted to the Secretary of State pursuant to NRS 293.247(4).

19 The same is true of the Secretary’s decision to give county clerks the discretion to
20 establish the appropriate number of polling locations within their individual counties,
21 based upon fiscal concerns, staffing and training challenges, and related logistical
22 complications. Plaintiffs request that the Court second guess the manner in which local
23 elections officials have chosen to allocate limited resources between competing election
24 objectives. This is not, however, the role of Nevada’s judiciary. *See N. Lake Tahoe Fire v.*
25 *Washoe Cnty. Comm’rs*, 129 Nev. 682, 690, 310 P.3d 583, 589 (2013) (“The executive power
26 also includes the general power to, among other things, administer appropriated funds, so
27 long as doing so does not conflict with legislative purpose”). Because Plaintiffs have not
28 even identified a statute or regulation that requires the county clerks to establish a

1 minimum number of polling locations in excess of one, they cannot prevail on the polling
2 location claim under state law. Likewise, insofar as the NRS 293.345 claim is based upon
3 an alleged violation of state law, they cannot prevail on their claim for an injunction
4 requiring that ballots be mailed to all inactive voters.

5 With respect to alleged violations of federal law, the decisions in question are
6 entitled to similar judicial deference under the *Anderson-Burdick* balancing test, as
7 discussed above.¹

8 D. Plaintiffs Cannot Demonstrate Irreparable Harm, as Adequate
9 Remedies Exist to Address Their Speculative Claims after the
10 Primary Election

11 Like other equitable remedies, injunctions require a showing that irreparable harm
12 is probable and not speculative. *Nevada v. United States*, 364 F. Supp.3d 1146, 1154 (D.
13 Nev. 2019). At this preliminary stage of the electoral process, Plaintiffs' alleged injuries
14 under federal law are speculative, rendering them incapable of being remedied by way of
15 injunctive relief. *See Siegel v. LePore*, 120 F. Supp.2d 1041, 1052-53 (S.D. Fla. 2000) ("[W]e
16 find Plaintiffs' alleged injuries on an as-applied basis to be speculative, and far from
17 irreparable, at this stage in the electoral recount process."). Their claims under state law
18 fare no better because they are based upon the speculative premise that voters will be
19 disenfranchised if this Court defers to the reasonable preparations that state and local
20 elections officials have made for the primary election. Here, even assuming Plaintiffs
21 correctly predict some harm (they do not), they make no effort to articulate why the
22 appropriate remedy for that harm should not be fashioned in immediate temporal
23 proximity to the primary election, when the source and the nature of the harm might

24 ¹ Plaintiffs allege that the all-mail primary violates various provisions of the Nevada
25 Constitution in addition to the First and Fourteenth Amendments to the U.S. Constitution.
26 Since the identified protections in the Nevada Constitution are roughly equivalent to the
27 protections afforded by the First and Fourteenth Amendments, the *Anderson-Burdick*
28 balancing test is the appropriate standard for evaluating Plaintiffs' claims under the
Nevada Constitution. In fact, the Nevada Supreme Court has applied the *Anderson-
Burdick* balancing test in the context of a challenge to an election-integrity statute similar
to the statutory provisions at issue here. *See Busefink v. State*, 128 Nev. 525, 529-31, 286
P.3d 599, 602-04 (2012).

1 conceivably be ascertained. *See Curry v. Baker*, 802 F.2d 1302, 1314 (11th Cir.1986)
2 (“Although federal courts closely scrutinize state laws whose very design infringes on the
3 rights of voters, federal courts will not intervene to supervise the administrative details of
4 a local election. Only in extraordinary circumstances will a challenge to a state election rise
5 to the level of a constitutional deprivation.”) (internal citation omitted).

6 E. The Balancing of Equities and the Public Interest Favors Secretary Cegavske

7 There is no genuine doubt that Nevada has the power to protect the health of its
8 citizens, particularly in an emergency such as this. Prior to ratification of the Constitution,
9 various colonies had quarantine laws, thereby establishing the legal tradition of local and
10 state jurisdiction over matters of public health reflected in the Constitution’s reservation
11 of power to the states to regulate public health, safety, and morals. *Gibbons v. Ogden*, 22
12 U.S. 1 (1824).

13 It is in this context that Plaintiffs seek to substitute their judgment of the public
14 interest for the judgment of the state and local election officials who are responsible for
15 balancing voter access considerations and public health concerns. Recognizing the
16 unprecedented global pandemic, state and local officials came together to work within
17 existing statutory authority to ensure a fair Nevada primary election while minimizing
18 health risks to its voters. As set forth above, Plaintiffs only have speculation to support
19 their claim that voters will be disenfranchised under these circumstances. Granting the
20 preliminary injunction would simply create further chaos during an emergency. This prong
21 strongly warrants denial of the motion.

22 CONCLUSION

23 At most, this case presents a policy dispute about the best way to allocate limited
24 public resources in order to address competing election objectives and public health
25 concerns. Secretary Cegavske acted within her authority, pursuant to NRS 293.213(4), to
26 approve an all-mail election for the 2020 primary election, and the county clerks have made
27 reasonable administrative decisions concerning the management and implementation of
28 the election. The Secretary’s actions, and those of local election officials, have not imposed

1 a discernable burden upon Plaintiffs' constitutional or statutory rights, nor have they
2 created an increased risk that voters will be unable to exercise their franchise. For these
3 reasons, the Court should deny Plaintiffs' motion for declaratory and injunctive relief.

4 **AFFIRMATION**
5 **(Pursuant to NRS 239B.030)**

6 The undersigned does hereby affirm that the preceding document, Defendants'
7 Opposition to Plaintiffs' Motion, does not contain the social security number of any person.

8 DATED this 4th day of May, 2020.

9 AARON D. FORD
10 Attorney General

11 By: 
12 GREGORY L. ZUNINO, Bar # 4805
13 Deputy Solicitor General
14 CRAIG A. NEWBY, Bar # 8591
15 Deputy Solicitor General
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CERTIFICATE OF SERVICE

I, Sandra Geyer, certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on May 4, 2020, I filed and served the foregoing document (document) and by electronic service to the following parties:

Marc E. Elias, Esq. (*Pro Hac Vice forthcoming*)
Henry J. Brewster, Esq. (*Pro Hac Vice forthcoming*)
Courtney A. Elgart, Esq. (*Pro Hac Vice forthcoming*)
Abha Khanna, Esq. (*Pro Hac Vice forthcoming*)
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An employee of the Office of the
Attorney General

INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
A.	Declaration of Wayne Thorley	5
B.	Declaration of Deanna Spikula	8
C.	Affidavit of Lorena Portillo	4

EXHIBIT A

EXHIBIT A

1 AARON D. FORD
Attorney General
2 GREGORY L. ZUNINO (Bar No. 4805)
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9 *Attorneys for Defendants Barbara Cegavske
and Aaron Ford*

10
11 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF**
12 **NEVADA IN AND FOR CARSON CITY**
13

14 DANIEL CORONA, DARIN MAINS,
15 BRIAN MELENDEZ, TERESA
MELENDEZ, NEVADA STATE
16 DEMOCRATIC PARTY, DNC SERVICES
CORPORATION/DEMOCRATIC
17 NATIONAL COMMITTEE, DCCC, and
PRIORITIES USA,

18 Plaintiffs,

19 vs.

20 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,
21 JOSEPH P. GLORIA, in his official
capacity as Registrar of Voters for Clark
22 County, Nevada, DEANNA SPIKULA, in
her official capacity as Registrar of Voters
23 for Washoe County, Nevada, KRISTINE
JAKEMAN, in her official capacity as the
24 Elko County Clerk, and AARON FORD, in
his official capacity as the Attorney
25 General of the State of Nevada,

26 Defendants.
27
28

Case No. 20-OC-00064 1B

DECLARATION OF WAYNE THORLEY

1 I, WAYNE THORLEY, declare as follows:

2 I am the Deputy of Elections for the Nevada Secretary of State. I was appointed to
3 the position of Deputy of Elections pursuant to NRS 225.060(1), and I have held the position
4 since October 21, 2015. I have personal knowledge of the matters set forth below, and if
5 called upon to testify in the above-captioned matter, I would testify as follows:

6 1. For the 2020 primary election in Nevada, the Secretary of State, in
7 partnership with Nevada's 17 county election officials, developed a plan to implement an
8 all-mail primary election in order to diminish the spread of COVID-19. The decision to
9 hold the all-mail primary was announced to the public on March 24, 2020.

10 2. Given the need to be proactive with preparations for the 2020 primary
11 election, the decision to hold an all-mail primary election was announced as soon as possible
12 after state and county election officials had evaluated and discussed the many logistical,
13 fiscal, and public health challenges associated with holding an election during the COVID-
14 19 pandemic.

15 3. Historically more than 90 percent of Nevada's voters have cast their votes in
16 person at physical polling locations staffed and managed by volunteers and county election
17 officials. Because Nevada's system for managing elections is largely decentralized and
18 heavily dependent upon the ability of local election officials to recruit and train volunteer
19 poll workers, the COVID-19 pandemic severely impacted normal operating procedures and
20 administrative practices.

21 4. In addition to acquiring the technology discussed below regarding signature
22 cure, the Secretary of State's office has issued guidance to the county clerks on the subject
23 of signature cure. All of the counties should be following the same procedure. Once the
24 county becomes aware that a signature cure is needed, the county will mail the voter a
25 letter within 48 hours.

26 5. If a signature discrepancy is discovered at any time before the Saturday after
27 the election, the voter will be contacted by mail, but not by telephone, text, or email at that
28 time. In the interest of efficiency, the decision was made to contact voters by mail during

1 this time frame because telephone numbers and email addresses are not always in the voter
2 file. The letter will inform the voter that a signature cure is needed and then instruct the
3 voter on how to proceed with curing the signature discrepancy.

4 6. Starting the Saturday after the election, if the county becomes aware that a
5 signature cure is needed, the county will not send a signature cure letter of the voter.
6 Instead, the county will attempt to contact the voter using any additional contact
7 information the county has on file for the voter (phone, text, and email). If no such contact
8 information is on file for the voter, no signature cure opportunity will be provided. Any
9 voter requested to cure a signature discrepancy must completed the signature cure process
10 by 5:00 p.m. on the Tuesday after the election.

11 7. Making the transition to a vote-by-mail election is not only logistically
12 challenging, but expensive. Therefore, on April 30, 2020, I testified before the Interim
13 Finance Committee (IFC) of the Nevada Legislature in regards to the availability of federal
14 grant funds to assist with the administration of the 2020 primary election.

15 8. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
16 appropriates \$400 million in emergency funds for use by the states to prevent, prepare for,
17 and respond to the election threats posed by the COVID-19 pandemic. Nevada's portion of
18 this grant funding is \$4,496,720.

19 9. Of the roughly \$4.5 million that is available to Nevada under the CARES Act,
20 the Office of the Secretary of State has received IFC approval to allocate expenditures as
21 follows:

22 a. \$565,000 will be used to procure the additional voting equipment
23 needed to process the significant increase in mail ballots. Necessary equipment includes
24 ballot scanners, ballot printers, and adjudication equipment.

25 b. Another \$500,000 will be used to procure non-voting equipment, such
26 as mail sorters and commercial letter openers.

27 c. The largest portion will be spent on ballot printing and outbound
28 postage. This amount is estimated at \$2.4 million. There will be nearly a nine-fold increase

1 in the number of ballots printed for this election compared to previous elections. Each
2 ballot costs approximately \$1.10 to print and mail.

3 d. In order to make sure no voter is precluded from returning their ballot
4 by mail due to lack of return postage, all ballots will come with a postage prepaid ballot
5 return envelope. The cost for the ballot return postage is estimated at \$235,000.

6 e. Next, \$34,000 will be spent to procure an electronic signature cure
7 service. If a voter returns a mail ballot but forgets to sign their ballot return envelope, or
8 if the signature on their ballot return envelope doesn't match any of the signatures we have
9 on file for the voter, the voter will be given an opportunity to engage in a process known as
10 "signature cure," which gives voters an opportunity to confirm that they did actually cast
11 their mail ballot. The electronic signature cure service will allow voters to cure signatures
12 directly on their phone or tablet.

13 f. Lastly, because of the change to a vote-by-mail election for the 2020
14 primary election, the Secretary of State believes a large-scale voter education campaign is
15 needed. The office has contracted with a Reno-based marketing firm and will be spending
16 \$753,000 to get information to voters about the vote-by-mail primary election. This effort
17 includes TV and radio ads, digital ads for social media, direct mail marketing, and a website
18 dedicated specifically for providing information about the primary election.

19 10. The CARES Act currently requires that states provide a 20 percent match as
20 a condition of receiving the federal grant funds. Nevada's state match requirement is
21 approximately \$900,000.

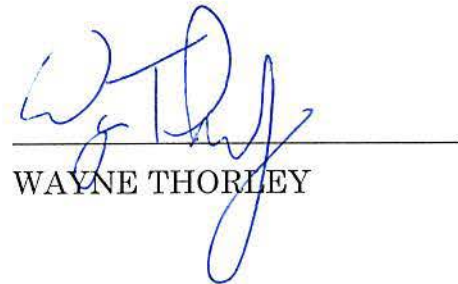
22 11. I am aware that there is bipartisan support among state election officials for
23 a proposal to eliminate the state match requirement under the CARES Act. Because state
24 and local budgets throughout the county have been severely impacted by the COVID-19
25 pandemic and the resulting lockdown of businesses, we are hopeful that Congress may
26 eliminate the state match requirement.

27 12. In the meantime, the Secretary of State's office is working with county election
28 officials to allocate limited resources in a way that will encourage full voter participation

1 while simultaneously protecting the health of poll workers, election volunteers, and the
2 public.

3 I declare under penalty of perjury of the laws of the state of Nevada that the
4 foregoing is true and correct to the best of my knowledge and belief, and I have affixed my
5 signature hereto this 4th day of May, 2020.

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WAYNE THORLEY

EXHIBIT B

EXHIBIT B

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

9 DANIEL CORONA, DARIN MAINS,
BRIAN MELENDEZ, TERESA MELENDEZ,
10 NEVADA STATE DEMOCRATIC PARTY,
DNC SERVICES
11 CORPORATION/DEMOCRATIC
NATIONAL COMMITTEE, DCCC, and
12 PRIORITIES USA,

Case No. 20-OC-00064-1B

Dept. No. I

**DECLARATION OF DEANNA
SPIKULA, WASHOE COUNTY
REGISTRAR OF VOTERS**

13 Plaintiffs,

14 vs.

15 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,
16 JOSEPH P. GLORIA, in his official capacity
as Registrar, of Voters for Clark County,
17 Nevada, DEANNA SPIKULA, in her official
capacity as Registrar of Voters for Washoe
18 County, Nevada, KRISTINE JAKEMAN, in
her official capacity as the Elko County Clerk,
19 and AARON FORD, in his official capacity as
the Attorney General of the State of Nevada

20 Defendants.
21
22 _____/

23
24 I, Deanna Spikula, do hereby declare, under penalty of perjury, the following:

25 1. I am the Washoe County Registrar of Voters ("hereinafter Registrar or Washoe
26 County Registrar"). I was appointed as Registrar by the Washoe County Board of County

1 Commissioners in 2018. Prior to that, I had worked for the Washoe County Registrar of Voters'
2 office since 2011.

3 2. As the Washoe County Registrar, I have the powers and duties vested in and
4 imposed upon the county clerk of the county with respect to elections, except the duties imposed
5 by virtue of NRS 293.393 to make out and deliver certificates of election.

6 3. That in or about early March 2020, the impact of COVID-19 began to be
7 apparent, as cases in the State of Nevada and in Washoe County began to appear.

8 4. Coupled with numerous deaths related to COVID-19, on March 12, 2020,
9 Governor Steve Sisolak reacted with a declaration of emergency. The following day, President
10 Trump declared a nationwide state of emergency based on the rapidly spreading, deadly COVID-
11 19 virus. The World Health Organization and the United States Centers for Disease Control and
12 Prevention advised that there is a correlation between density of persons gathered and the risk of
13 transmission of COVID-19.

14 Governor Sisolak soon after declaring an emergency, imposed a number of increasing
15 restrictions.¹

16 5. It is my understanding and belief that all of the actions taken by Governor Sisolak
17 were done in an effort to minimize contact that would potentially result in the spread of COVID-
18 19 and to stress the importance of social distancing in an effort to slow the spread of the deadly
19 virus.

20 6. With the State of Nevada being on stay-at-home social distancing orders, with no
21 end of that restriction in sight, the 17 county election officials in Nevada conferred with the
22 Secretary of State's Office in an effort to determine how to address the fast-approaching,
23 upcoming 2020 primary election in a manner that would comply with the social distancing
24 restrictions in place, to ensure the safeguarding of voters' health and safety while participating in
25 voting, while also maintaining the integrity of the election.

26 ¹ All of Governor Sisolak's COVID-19 Directives are available at
http://gov.nv.gov/News/Emergency_Orders/Emergency_Orders/.

1 Thereafter, each of the 17 county election officials made a request of the Secretary of
2 State's Office to approve that all precincts be designated as all-mail in precincts for the primary
3 election.

4 7. As a result, on March 24, 2020, the Secretary of State's Office issued a press
5 release advising that the primary election will be conducted as an all-mail election. The press
6 release went on to advise that this action was necessary to ensure the voters' "health and safety
7 while participating in voting is paramount to state and local election officials." Id. The release
8 further advised that "training of thousands of poll workers who support Nevada's large in-person
9 voter effort was scheduled to begin next week (the first week of April)" and that the majority of
10 those poll workers "belong to groups at high risk of severe illness from COVID-19." Id.

11 8. All 17 county election officials, as well as the Secretary of State's Office,
12 immediately began to take action to affect the all-mail ballot primary election. Announcements
13 were made to the public advising that the election would be conducted as an all-mail election.
14 The process was explained.

15 9. The primary election is scheduled to take place on June 9, 2020, while early
16 voting is scheduled to begin May 23, 2020 and continue through June 5, 2020.

17 10. Sample ballots for all active Washoe County registered voters have been prepared
18 at great expense, and have been mailed to those voters. Actual ballots have been mailed to that
19 same group as well, having been mailed on April 30, 2020. See Exhibit "A," a true and correct
20 copy of the Ballot Mailing Receipt, attached hereto.

21 11. In Washoe County, there are 24,076 inactive registered voters. Those inactive
22 registered voters were not included in the mailing for several reasons.

23 First, most of those voters have not responded to mailings because they have moved and
24 failed to advise my office. It is estimated that approximately 90% of the inactive registered
25 voters on the roll have moved. This belief is based on a historical review of the records of my
26

1 office. Most of those ballots would be returned to my office, as ballots may not be forwarded to
2 an address other than that which they are mailed.

3 Mailing those ballots would cause a great amount of additional unbudgeted expense
4 unnecessarily. It would also result in an extreme increase in the tracking of ballots, which would
5 place additional stress on my office staff, which is limited and already working extremely hard
6 on executing this primary election under pressures imposed by the COVID-19 restrictions and
7 health and safety concerns.

8 In addition, NRS 293.3165 also provides a distinction between active and inactive
9 registered voters, and specifically precludes the election official from mailing an absent ballot
10 requested by a registered voter pursuant to subsection 1 if, after the request is submitted the
11 registered voter is designated inactive pursuant to NRS 293.530.

12 Those inactive registered voters who actually remain in Washoe County, either at the
13 address provided to my office in connection with their registration, or elsewhere in Washoe
14 County, have every ability to easily update their voter registration record, either online, in
15 person, or through the mail. If they do so in a timely fashion, as all voters are being urged to do,
16 they can still receive their ballot and vote by mail if they have provided the appropriate proof of
17 residence, and if voting by mail is their preference. They would also have the opportunity to
18 vote in person, either during early voting, or on election day, June 9, 2020.

19 Past election turnout for primary elections in Washoe County is as follows: in 2018 the
20 turnout was 26.90%; in 2016 the turnout was 21.59%; in 2014 the turnout was 23.43%; and in
21 2012 the turnout was 19.98%. It is estimated that mailing ballots to all inactive registered voters
22 would cost approximately \$36,850.00. Based on the historical low turnout at primary elections
23 like the upcoming one, as well as the other issues noted, I did not, and still do not, believe that
24 the excessive cost warranted mailing to inactive registered voters.

1 12. With respect to the polling locations issue, at the present time, only the Office of
2 the Registrar of Voters is designated as an in-person polling location for the early voting period,
3 as well as the June 9, 2020 primary election.

4 //

5 The purpose of limiting the location was to encourage voters to vote by mail to avoid the
6 health and safety risks to voters and poll workers associated with voting in person. While the in-
7 person polling location has been identified for the primary purpose of facilitating same day voter
8 registration, and my office is encouraging voters to vote by mail, voters who appear in person to
9 vote will not be denied the ability to vote in person.

10 The primary election situation in Wisconsin has been referenced, but the situation here is
11 quite different, especially with respect to timing and preparation. My understanding with that
12 situation is that the timing of the Wisconsin primary election and the simultaneous explosion of
13 the COVID-19 virus resulted in a short time frame for voters to request absent ballots, receive
14 them, and vote them. The primary was originally scheduled for March 17, and then changed to
15 April 7. Some voters did not receive ballots due to the short turnaround time involved. Long
16 lines at the polling locations resulted. The goal in Nevada, in not requiring requests for ballots,
17 and in mailing all active registered voters ballots as early as possible, was to allow ample time
18 and opportunity to vote by mail ballot, to avoid the situation that resulted in the Wisconsin cities
19 at the April 7, 2020 primary election. Ballots were mailed to all active registered voters on April
20 30. Having additional polling locations for in-person voting will encourage people to vote in
21 person, increasing the health and safety risks associated with the COVID-19 virus and the
22 mandated social distancing.

23 Having more polling locations will also require locating facilities willing and able to
24 house additional polling locations. At this time, with the social distancing restrictions in place, it
25 will be difficult to find locations. Those polling locations, assuming they can be arranged at this
26 late date in the process, also require volunteer poll workers willing and able to staff the locations.

1 That becomes problematic, as the majority of the regular volunteer poll workers belong to groups
2 at high risk of severe illness from COVID-19, and have indicated an inability or unwillingness to
3 act in the capacity of poll workers as a result. An adequate number of poll workers would be
4 //
5 required, which would, under the circumstances, result in many new volunteers being poll
6 workers.

7 The next level of concern is that those poll workers, most of whom will have no
8 experience in assisting in an election, or with the process, will have to be trained. That training
9 normally has occurred in early April during the process. It has not occurred at this time due to
10 the social distancing restrictions in place through at least April 30, 2020, and further due to the
11 announcement of the all-mail election. While some of the training necessary can be
12 accomplished remotely, there is also a hands-on training that is necessary to ensure the poll
13 workers understand the voting system and can properly function as a poll worker. While some
14 form of distance training might be possible at this point, I would not feel comfortable with only
15 that remote training to go forward with the election increasing the number of in-person polling
16 locations with early voting set to begin on May 23, 2020.

17 The health and welfare of each voter, each poll worker, and potentially all those they
18 come in contact with, would be placed in jeopardy if an increase in in-person polling locations is
19 required. The efficient running and integrity of the primary election would be placed into issue.

20 Furthermore, NRS 293.203 requires that I publish a notice of the primary election "in a
21 newspaper of general circulation in the county once a week for 2 successive weeks" and that the
22 notice must contain: 1) the date of the election; 2) the location of the polling places, and 3) the
23 hours during which the polling places will be open for voting. That notice has been published as
24 required, designating the dates of early voting, as well as my office being the only in-person
25 polling location. See Notice of Primary Election attached hereto as **Exhibit B**. It is too late to
26

1 properly notify the public of other polling locations should additional locations be required.

2 Confusion will be likely with such a change.

3 13. As for the voter assistance, or ballot harvesting, issue, I am mandated to follow
4 the law. The law as it exists disallows voter assistance, except in limited situations, and requires
5 documentation to evidence the voter's request for such assistance. It is my intention to follow
6 the law in connection with the upcoming primary election. Except as specifically provided, voter
7 assistance or ballot harvesting will not be allowed.

8 14. With regard to signature verification, this is required in the process. It has
9 occurred for years without significant issue. My office does have guidelines in place for staff to
10 follow during the signature verification process. In the past 4 elections, there have been a total
11 of 19 ballots that were challenged for signature mismatches that were not able to be resolved.

12 The all-mail primary election provides all of the voter fraud safeguards that exist in
13 statute. The normal safeguards for absent ballots and mail-in ballots remain in place.
14 Specifically, only the actual voter may complete their ballot. The ballot must be returned in the
15 envelope, postage prepaid, provided, as each ballot issued is associated with the return envelope
16 provided. The voter is required to sign the return envelope and seal the envelope. The voter is
17 required to return the ballot, in the sealed, signed envelope, by placing the same in the United
18 States mail, having it postmarked no later than June 9, 2020, or by returning the envelope in
19 person at my office. Voters may authorize a family member to place the ballot in the mail or
20 deliver it to my office. However, no other individual may be authorized to do so. As a result,
21 the ballot should not be in the hands of anyone other than the voter, a family member if
22 authorized by the voter, the U.S. Postal Service, and my office personnel. Once received by my
23 office, my office must check the signature on the return envelope against all signatures of the
24 voter available in our records. If at least two employees in the office believe there is a
25 reasonable question of fact as to whether the signature on the absent ballot matches the signature
26 of the voter, my office must then contact the voter and ask the voter to confirm whether the

1 signature on the absent ballot belongs to the voter. My office will contact the individual by
2 phone or e-mail if possible, or if not possible, by mail, to attempt to verify that the ballot is
3 submitted by the identified voter and can be counted.

4 Signature verification is necessary to ensure that the registered voter is actually the
5 person submitting the completed ballot.

6 15. The documents attached hereto as exhibits are true and correct copies of the
7 original documents either created by me or received by me electronically.

8 DATED THIS 1st DAY OF MAY, 2020.

9
10 
Deanna Spikula

EXHIBIT C

EXHIBIT C

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5 702.455.2164
Mary-anne.miller@clarkcountynvda.com
6 *Attorneys for Defendant Joseph P. Gloria,*
Clark County Registrar of Voters
7
8
9

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

12 DANIEL CORONA, DARIN MAINS, BRIAN
MELENDEZ, TERESA MELENDEZ,
13 NEVADA STATE DEMOCRATIC PARTY,
DNC SERVICES
14 CORPORATION/DEMOCRATIC
NATIONAL COMMITTEE, DCCC, and
15 PRIORITIES USA,
Plaintiffs,

Case No.: 20 OC 00064 1B

Dept. No.: II

16 vs.

17 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State; JOSEPH
18 P. GLORIA, in his official capacity as
Registrar of Voters for Clark County, Nevada;
19 DEANNA SPIKULA, in her official capacity
as Registrar of Voters for Washoe County,
20 Nevada; KRISTINE JAKEMAN, in her official
capacity as the Elko County Clerk; and
21 AARON FORD, in his official capacity as the
Attorney General of the State of Nevada,
22 Defendants.
23

24 **AFFIDAVIT OF LORENA PORTILLO**

25 STATE OF NEVADA)
26) ss:
27 COUNTY OF CLARK)

28 COMES NOW, Lorena Portillo, being duly sworn, states:

1 1. I am the Assistant Registrar of Voters of Clark County, and have worked for the Clark
2 County Election Department since August 3, 1998.

3 2. That the Clark County Registrar of Voters supported the adoption of an all-mail ballot
4 election for the June 9, 2020 Primary Election and the temporary provisions that the Nevada
5 Secretary of State enacted to implement that. The plan is a necessary and an appropriate way to
6 address voter and staff safety while safeguarding the right to vote in a fair and secure election
7 setting. The Clark County Election Department immediately undertook the complicated process and
8 expense necessary to conduct an election in this manner, including the acquisition of mail ballot and
9 signature verification hardware and software at an expense of \$331,750. Mail ballots will go out to
10 active registered votes on May 6, 2020.

11 3. I have read the affidavit of Deanna Spikula, Washoe County Registrar of Voters,
12 submitted in this action and agree with the representation of the problems that a revision to or
13 expansion of same day registration/in person voting would present in the upcoming primary election.

14 4. To expand the provision of same-day registration and in-person voting on election day,
15 Clark County will have to acquire the use of additional printers that are capable of printing the
16 individualized ballot for each prospective voter with the accuracy required to have it counted with
17 the County's automated ballot counting machines. There are only 60 printers available from the
18 County's vendor that can be delivered and programmed by Primary Election Day. The cost of
19 leasing the available printers for one year will be \$138,997.50.

20 5. Clark County will have to locate available sites which have both sufficient wiring and
21 electrical facilities for the computers and printers, as well as the necessary space to adequately
22 separate staff and voters from each other. Many sites traditionally used are not available because
23 they do not wish to undertake the risk of exposures at this time.

24 6. If County sites are used, and the additional available printers are divided into two sites,
25 the County could staff two additional vote centers with 25-30 additional personnel assigned to each
26 site, who could assist the prospective voter, research voter issues, and ensure that proper distancing
27 is maintained between 15 prospective voter registration/vote stations and waiting voters. An order
28 that would impose more than two additional sites in Clark County would require that these existing

1 printers be spread out among the additional sites, resulting in the potential for longer lines and wait
2 times at those sites. In turn, that expands the potential for infection spread and danger to the public.
3 Further, each new site will require additional ADA desktops, as well as hardware and software for
4 onsite audio voting, and additional PPE for each site, all at the unbudgeted expense of the County.

5 7. In addition, each new vote center will require additional staff to monitor voter and staff
6 safety measures, including site disinfectant and distance spacing. Clark County will experience the
7 same troubles outlined in Ms. Spikula's affidavit in recruiting and training staff willing to work with
8 a constant flow of strangers during the pandemic.

9 8. It will cost Clark County \$184,738.01 (\$30,385.00 in postage; \$154,353.01 in mail ballot
10 packet-bulk pricing) to mail ballots to inactive voters in Clark County. It will take seven days to
11 print and assemble the ballot packets, and they will be mailed out over a period of a few days to
12 comply with postal service bulk mail rules. Based on past experience, at least 90% of those will
13 come back undeliverable.

14 9. The past voter turnout for primary election in even numbered years has been low. In
15 2018, with a highly contested gubernatorial primary and two U.S. Senate nominations on the
16 primary ballot, the turnout was only 20.41% of registered voters. In 2016, the primary election
17 turnout was 16.16%. In 2014, it was 15.80% in the County. In 2012, the turnout was 16.23%. This
18 year, with no hotly contested state-wide races at the top of the ballot, there is nothing special to draw
19 voters in greater numbers than before for in-person voting.

20 10. Signature verification has not been a significant issue on absent ballots in the recent past.
21 For example, in the 2018 Primary Election, there were only 9 mismatched signatures out of 14,708
22 ballots returned, and in the 2018 General Election, only 59 signatures were determined to be
23 mismatched out of a ballot return of 49,072.

24 11. Given the low voter turnout expected, the increased risk of harm to voter and staff safety
25 alike, and in light of the new expenses already incurred, there is little justification for such increased
26 risk and expense that any change to the plan would cause.

27 Dated this 7th day of April, 2020.

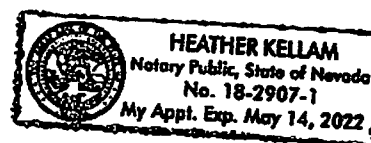
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Lorena Portillo
LORENA PORTILLO

SUBSCRIBED and SWORN to before me
this 30th day of April, 2020.

Heather Kellam
NOTARY PUBLIC in and for
said County and State.



STEVEN B. WOLFSON
Clark County District Attorney
MARY-ANNE MILLER
County Counsel
NSB #001419
500 S. Grand Central Parkway
Las Vegas, NV 89106
702.455.2164
Mary-Anne.Miller@ClarkCountyDA.com
*Attorneys for Respondent Joseph P. Gloria,
Clark County Registrar of Voters*

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

FRED KRAUS, an individual registered to
voter in Clark County, Nevada, DONALD
J. TRUMP FOR RESIDENT, INC.; the
NEVADA REPUBLICAN PARTY,

Petitioners,

vs.

BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State;
JOSEPH P. GLORIA, in his official
capacity as Registrar of Voters for Clark
County,

Respondents.

Case No.: 20 OC 00142 1B

Dept. No.: II

**RESPONSE OF
RESPONDENT
JOSEPH P. GLORIA
TO PETITION FOR
EXTRAORDINARY AND
INJUNCTIVE
RELIEF**

Comes now Defendant Joseph P. Gloria, Registrar of Voters for Clark County, by and through his counsel, Steven B. Wolfman, District Attorney, by Mary-Anne Miller, County Counsel and, as and for his response and opposition to the Petitioners' request for mandamus and injunctive relief, submits the following.

1. Petitioners are not entitled to injunctive relief.

Petitioners have set forth the standard for issuing an injunction but they cannot meet their burdens thereunder. As established below, they cannot prevail on the merits. Further, they lose in a balancing of the hardships. Very real damage which will occur to the voters' confidence in the process and the actual counting of the ballots in a timely manner if Petitioners' request to delay the process until they can operate cameras within secure areas of the county facility is granted.

1 Although voter confusion and distrust seems to be part of the intent behind their widely
2 publicized request for relief, such is exactly the reason that the United States Supreme Court
3 has warned courts to tread carefully where preliminary relief would disrupt a state voting
4 system. When the preliminary relief sought would interfere with state voting procedures on
5 the eve of an election, a court considering such relief must weigh, “in addition to the harms
6 attendant upon issuance or nonissuance of an injunction, considerations specific to election
7 cases and its own institutional procedures.” *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S.Ct. 5,
8 166 L.Ed.2d 1 (2006) (per curiam); *Short v. Brown*, 893 F.3d 671 (Ninth Cir. 2018); see also
9 *Paher v. Cegavske*, 2020 WL 2748301 (D. Nev. May 27, 2020). Disrupting workers and
10 delaying the procedures put in place to secure the privacy of the ballots and the health of the
11 workers during this pandemic would work unjustifiable damage to the election system.

12 **2. *Petitioners are not entitled to a writ of mandamus***

13 Petitioners, who include a candidate and one of his pollwatchers, demand that the
14 Secretary of State impose an entirely different observers plan than that submitted by the Clark
15 County Registrar of Voters. When a petitioner seeks to compel a discretionary act, the court
16 may not issue a writ of mandamus unless the target of the writ manifestly abused or arbitrarily
17 or capriciously exercised its discretion. *Levin v. Second Judicial District Court*, 450 P.3d 911,
18 2019 WL 5448653 (Nev. October 23, 2019); *Round Hill Gen. Improvement Dist. v. Newman*,
19 97 Nev. 602, 603-04, 637 P.2d 534, 536 (1981); A manifest abuse of discretion is a clearly
20 erroneous interpretation of the law or a clearly erroneous application of a law or rule. *State v.*
21 *Eighth Judicial Dist. Court*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011).

22 Here, the Petitioner has the burden of demonstrating that extraordinary relief is
23 warranted. *Pan v. Eighth Judicial District Court*, 120 Nev. 22, 228, 88 P.3d 840, 844 (2004).
24 During the hearing for a temporary restraining order in this case, Counsel for Respondent
25 Cegavske read into the record the Secretary of State’s implicit approval of Clark County’s
26 observation plan, and no further action remains to be directed or reviewed.

27 ...

28 ...

1 3. *Both the Secretary and the Registrar acted within their discretion*

2 The statute directing a county to submit to the state a plan for review is very broad,
3 contains no specifics, and provides the Secretary wide discretion in what she deems sufficient.
4 NRS 293B.354. The Petitioners blatantly insert words into this provision that do not appear
5 there, claiming lofty aspirations not adopted by the Nevada Legislature.

6 In their quest for a determination that they have the right to unfettered unrecording of
7 all aspects of what they, but not the Nevada Legislature, have determined to be part of the
8 counting process, Petitioners claim that they are entitled to "meaningfully" observe "the
9 totality of the process", whatever they decide that may be.

10 The statutes at issue however do not provide those terms or an absolute right to such a
11 lofty goal; instead, they read as follows:

12 1. The county clerk shall allow members of the general public to observe
13 the conduct of voting at a polling place.

14 2. A member of the general public shall not photograph the conduct of
15 voting at a polling place or record the conduct of voting on audiotape or any
16 other means of sound or video reproduction. (NRS 293.274).

17 1. The county or city clerk shall allow members of the general public to
18 observe the counting of the ballots at the central counting place if those
19 members do not interfere with the counting of the ballots.

20 2. The county or city clerk may photograph or record or cause to be
21 photographed or recorded on audiotape or any other means of sound or video
22 reproduction the counting of the ballots at the central counting place. (NRS
23 293B.353)

24 In other words, poll watchers can observe as long as they are not disruptive to the
25 process. Observation is not the same as concurrent auditing, though. These statutes provide
26 for observation of the *counting* of ballots, not the recording and broadcasting of every
27 phrase of the election process. Although the Petitioners are not the individuals elected by the
28 voters or appointed by government officials to conduct elections, the Petitioners want to
loom, either in person or by means of a camera lens, over the shoulder of each election
worker who is conducting signature verification by use of the County's database. That
database contains information deemed confidential by law. See, e.g., NRS 293.5002 and
NRS 293.558.

...

1 The signature verification process for a mail ballot voter is the equivalent of a
2 prospective voter checking in at a polling place. Clearly, the observer have no right to film
3 that and in fact, they are specifically precluded from doing so. See NRS 293.274(2)(“A
4 member of the general public **shall not** photograph the conduct of voting at a polling place
5 or record the conduct of voting on audiotape or any other means of sound or video
6 reproduction.” (emphasis added)).

7 Petitioners also want to monitor calls to the Election Department’s call center, where
8 voters can cure signature problems by providing that protected confidential personal
9 information. Voters may also discuss medical issues that are proving an impediment to their
10 voting or the voting of household members.

11 Essentially, Petitioners want to treat areas of the election department as if it were a
12 public sidewalk, but the election department’s ballot processing center is not a public forum.
13 See *Poniktera v. Seiler*, 104 Cal. Rptr. 3d 291 (CA. 4th District 2010). In discussing polling
14 places which are even more accessible to the public than the election warehouse, the courts
15 have concluded that their review of poll watchers policies is limited to whether the policy is
16 a reasonable, content-neutral regulation. They have upheld an anti-recording policy as a
17 “reasonable means of ensuring an orderly and peaceful voting environment, free from the
18 threat of contention or intimidation.” *Marlin v. District of Columbia Bd. Of Elections and*
19 *Ethics*, 236 F.3d 716 (D.C. Cir. 2001). In *Poniktera*, in addition to wanting to film, the
20 plaintiff wanted the court to adopt his suggested method of ballot box security rather than the
21 one implemented by the registrar of voters. The court denied his request noting that the
22 registrar of voters was not violating any state law or rule.¹

23 In *Donald J. Trump for President, Inc. v. Boockvar*, ___ F. Supp. 3d ___, 2020 WL
24 5997680 (W.D. Penn. October 10, 2020), the plaintiff challenged the planned use of mail
25 ballot drop boxes and restrictions on poll watchers. Plaintiffs wanted implementation of
26

27
28 ¹ Petitioners cite ballot security as somehow supporting their petition by providing affidavits of observers who clearly
are mixing up statutory processes for duplicating ballots and those for spoiling ballots with identifying information on
them. See Affidavit of Joseph Gloria, attached, explaining the process.

1 those security measures that they deemed appropriate (guards, signature comparison and poll
2 watchers), claiming a risk of voter fraud. The court noted that the theory of harm was
3 speculative and that the plaintiffs were essentially asking the court to second-guess the
4 judgment of election officials. Put differently, the Court wrote: “[J]udges can have a lot of
5 power—especially when issuing injunctions. And sometimes we may even have a good
6 ideas or two. But the Constitution sets out our sphere of decision-making, and that sphere
7 does not extend to second-guessing and interfering with a State’s reasonable,
8 nondiscriminatory election rules.” *Id.*, citing *New Georgia Project v. Raffensperger*,
9 ____F.3d____, 2020 WL 5877588 (11th Cir. October 2, 2020).

10 In denying Plaintiffs’ claim, the *Boockvar* court noted that “First, there is not an
11 individual constitutional right to serve as a poll watcher, rather, the right to do so is
12 conferred by statute.”(citations omitted). Second, poll watching is not incidental to the right
13 of free association and thus, has no district First Amendment protection....Third, poll
14 watching does not implicate core political speech (citations omitted)” *Id.* The court denied
15 the claim even amid assertions of possible heightened election fraud. See also *Turner v.*
16 *Cooper*, 583 F. Supp. 1160 (N.D. Ill. 1983)

17 Because Petitioners have established NO statutory or constitutional right for the relief
18 that they have requested, their petition should be denied.

19 **4. The challenge procedures are not unconstitutional**

20 As an obvious Hail Mary, the petition also sets forth an anemic attempt at an Equal
21 Protection challenge, claiming, erroneously that there is no method to challenge a mail ballot
22 voter. NRS 293.547 contains just such a procedure, but perhaps that is not to the Petitioners’
23 liking at this late date. Petitioner Kraus, the only petitioner in this action with the standing to
24 challenge any voters, and only those residing in his election precinct, has not identified how
25 his right to challenge those voters has been significantly impeded. The written method
26 actually provides a much simpler process than making him run around to the 129 vote
27 centers in Clark County, hoping to catch a voter in his precinct. Given the timeframe in
28

1 which mail ballots can be sent in, the deadline for written challenges serves a legitimate
2 election purpose.

3 Assuming, arguendo, that the right to challenge voters is afforded the same
4 protections as the right to vote, the fact that Mr. Kraus would have to challenge mail ballot
5 voters in a different manner than he would in-person voters is not sufficient to support his
6 claim for extraordinary relief. The U.S. Constitution explicitly provides state legislatures
7 with authority to regulate the “Time, Places and Manner of holding Elections.” U.S. Const.
8 art. I Section 4, clause 1. When a claimant has alleged that a state has burdened voting rights
9 through the disparate treatment of votes, the Supreme Court has directed the application of
10 the *Anderson-Burdick* framework.

11 The *Anderson-Burdick* balancing test is applied where it is alleged that an election
12 law or policy violates the right to vote. See: *Anderson v. Celebrezze*, 460 U.S. 780, 788–89,
13 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct.
14 2059, 119 L.Ed.2d 245 (1992). [w]hen a state election law provision imposes only
15 ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights
16 of voters, ‘the State’s important regulatory interests are generally sufficient to justify’ the
17 restrictions.” *Burdick*, 504 U.S. at 434, 112 S.Ct. 2059 (quoting *Anderson*, 460 U.S. at 788,
18 103 S.Ct. 1564; see *Crawford v. Marion Co. Ed. Bd*, 553 U.S. 187, 128 S.Ct. 1610 (2008)
19 (internal quotation and citations omitted) (“[E]venhanded restrictions that protect the
20 integrity and reliability of the electoral process itself are not invidious.”).

21 That one method of voter challenge is different than another, when the differences are
22 easily attributable to the nature of the vote and neither advantages or disadvantages any
23 group of voters, is a natural result of the complicated election process and does not constitute
24 an Equal Protection violation. See, e.g., *Short v. Brown*, 893 F.3d 671 (9th 2018).

25 **5. *The County’s use of a signature verification does not violate any statute or***
26 ***rights of the Petitioners***

27 AB 4 of the 32nd Special Session of the Nevada Legislature (2020) expressly allows
28 the use of a machine to process mail ballot signatures. Section 22 provides:

- 1 1. For any affected election, the county or city clerk, as applicable, shall
2 establish procedures for the processing and counting of mail ballots. 2.
3 The procedures established pursuant to subsection 1: (a) May authorize
4 mail ballots to be processed and counted by electronic means; and (b)
5 Must not conflict with the provisions of sections 2 to 27, inclusive, of
6 this act.

7 Petitioners persist, however, in disseminating inaccurate information about the
8 machine. See Letter of Brian Hardy, attached.² The manufacturer does NOT recommend
9 any particular tolerance. The machine is set to a default setting of 50 and the users are
10 advised to check the machine's efficacy against each user's database. After testing, the
11 County is utilizing a calibration of 40, but that is in no way equivalent to 40% of anything.
12 In fact, the machine's match rate to the County's election database has hovered around 30%,
13 far lower than the 98.45% suggested by Petitioners on page 9 of their Petition. The Registrar
14 could lower the calibration, ensuring a higher match rate, but he has chosen to be more
15 conservative in this contentious election. See Affidavit of Joseph Gloria, attached as Exhibit
16 1.

17 Petitioners' claim that use of the machine gives mail ballot voters an enhanced ability to
18 defraud the system is submitted totally without supporting evidence. The use of the
19 signature verification machine is justified by the increased participation of vote by mail due
20 to the COVID-19 pandemic and, as such, is a reasonable government action that survives
21 constitutional scrutiny. See *Wexler v. Anderson*, 452 F.3d 1226 (11th Cir. 2006)(use of
22 different voting machines with different potentials for voter error not an EP violation).

23 **Conclusion**

24 Petitioners' arguments about the role of poll watchers to deter voter fraud disregards
25 other aspects of the regulatory framework mandated by the Legislature and the Secretary of
26 State to ensure ballot integrity. *Republican Party of Pennsylvania v. Cortez*, 218 F. Supp. 3d

27 ² The letter also claims that Section 23 of AB 4 completely vitiates the authorization to use a machine provided in
28 Section 22 because it provides: "The clerk or employee shall check the signature used for the mail ballot against all
signatures in the records of the clerk." Petitioners would have this mean that a machine can't be used and the clerk has
to look at all signatures, even if a match in made on the first inspection. Given that the entire scheme of those legislative
sections are to ensure signatures are not rejected arbitrarily, this strict construction, which renders Section 22 nugatory,
is absurd. The Nevada Supreme Court interprets statutes within a statutory scheme harmoniously with one another to
avoid an unreasonable or absurd result. *Horizons at Seven Hills v. Ikon Holding*, 132 Nev 363, 373 P.3d 66 (2016).

1 396 (E.D. Penn. 2016)([W]hile poll watchers may help guard the integrity of the vote, they
2 are not the Election Code's only, or even best, method of doing so"). If these Petitioners
3 cannot dissuade enough voters to discard their plans to vote by mail, secondarily they want
4 to audit every step of the process in a way that will scare away workers and prove so
5 disruptive to the process that they can succeed where they failed in their litigation earlier this
6 summer—shutting down the ability of a voter to vote by mail with confidence. That
7 determination of how mail ballots are processed should be left to the Legislature and not to
8 an individual candidate. The relief requested should be wholly denied.

9 DATED this 26th day of October, 2020.

10 STEVEN B. WOLFSON
11 DISTRICT ATTORNEY

12 By: /s/ Mary-Anne Miller
13 MARY-ANNE MILLER
14 County Counsel
15 State Bar No. 001419
16 500 South Grand Central Pkwy. 5th Flr.
17 Las Vegas, Nevada 89155-2215
18 *Attorneys for Respondent Joseph P. Gloria,*
19 *Clark County Registrar of Voters*

20 CERTIFICATE OF MAILING

21 I hereby certify that on the 26th day of October, 2020, I served a copy of the document
22 by emailing a copy of the above and foregoing **Response of Respondent Joseph Gloria to**
23 **Petition for Mandamus** addressed as follows:

24 Billie Shadron, Clerk
25 bshadron@carson.org

26 David Omara, Esq.
27 david@omaralaw.net

28 Brian R. Hardy, Esq.
bhardy@maclaw.com

Districtcourtclerk@carson.org

Gregory Zunino, Esq.
gzunino@ag.nv.gov

Craig Newby, Esq.
cnewby@ag.nv.gov

Daniel Bravo, Esq.
dbravo@wrslawyers.com

Bradley Schrager, Esq.
bschrager@wrslawvers.com

Afeni Banks
An Employee of the Clark County District
Attorney's Office – Civil Division

Exhibit 1

AFFIDAVIT OF JOSEPH P. GLORIA

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

COMES NOW, Joseph P. Gloria, being duly sworn, states:

1. I am the Registrar of Voters of Clark County and a respondent in this lawsuit.
2. Clark County is utilizing a signature verification machine for its initial review of signatures on mail ballots. The manufacturer sets a default “confidence threshold” at 50 and recommends that its users individually calibrate the machine to the quality of the user’s database. In the case of Clark County, that database is signatures sent from NVDMV, electronically scanned voter registration applications, voter signatures captured at polling places, miscellaneous correspondence sent to the Election Department, and similar documents. Clark County has set the confidence threshold to 40, after test runs of signatures. We are confident that this setting only approves signatures that match signatures in our database and which would be approved by Election Department officials.
3. The setting of 40 on an Agilis machine is not equivalent to 40% of anything. As used by Clark County in the 2020 General Election to date, approximately 30 percent of signatures on ballot envelopes run through the Agilis to this point are deemed by the machine to contain a match to the signature in our database for that registered voter. Traditionally, the signature match rate for mail ballots is fairly high, but I have chosen a higher tolerance rate for the machine, to be conservative in this contentious election.

4. If the Agilis machine does not match the signature, it is then reviewed by Election Department staff who have access to the Election Department database of signatures. A signature is not rejected until a board has rejected it, a team of supervisors has also rejected it, and that decision is finally affirmed by me, the Registrar of Voters.

5. Once a signature on the outside envelope is approved, it is moved in tracked batches to a ballot inspection board. Before any inspection of a voted ballot is made, however, the outside envelope is removed (voter identifying information face down), and the ballot is separated from that envelope with the privacy sleeve intact. This process is accomplished in teams of two. The ballot envelopes are then stored separately for archiving in accordance with state law and Secretary of State regulations. The voted ballots are then inspected for tears, stray marks or other irregularities that may cause the ballot counting machine to reject the ballot. Ballots that are in good shape are bundled for the counting machine, and ballots that need duplication are placed in a green manila folder for duplication by the boards and final preparation for the counting machine.

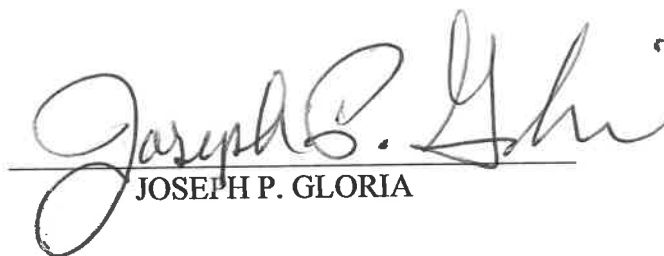
6. If a voter signs an actual ballot (as opposed to the ballot return envelope), that identification violates NRS 293.367(1), and the ballot must be spoiled. In that event, the ballot is returned to its original ballot return envelope if it can be traced, and the ballot is spoiled. It is not duplicated, but this violation is noted by the duplication board.

7. In each step of the above process, the ballots are kept in groups of not more than 150 and tagged and tracked along the way, and noted in the Election Department's computer systems so that the status of any individual ballot envelope can be traced until the time that it is separated from its ballot. Thereafter, the batches of voted ballots, separated from their identifying envelopes, are tracked through the system, including counting.

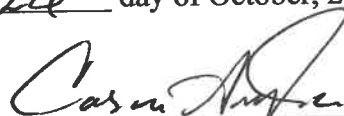
8. At each of these processes, the public is allowed access to observe the process. Our counting, verification, and duplication boards always work in groups of at least two. The current breakdown of those election officials is 40 registered Democrats, 35 registered Republicans, and 15 registered Independents.

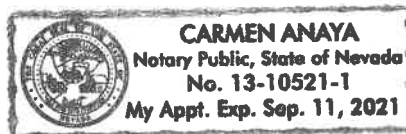
9. I have attached to this affidavit photographs of the above processes in the Clark County Election Department, depicting the areas for election observers.

Dated this 26 day of October, 2020.


JOSEPH P. GLORIA

SUBSCRIBED and SWORN to before me
this 26 day of October, 2020.

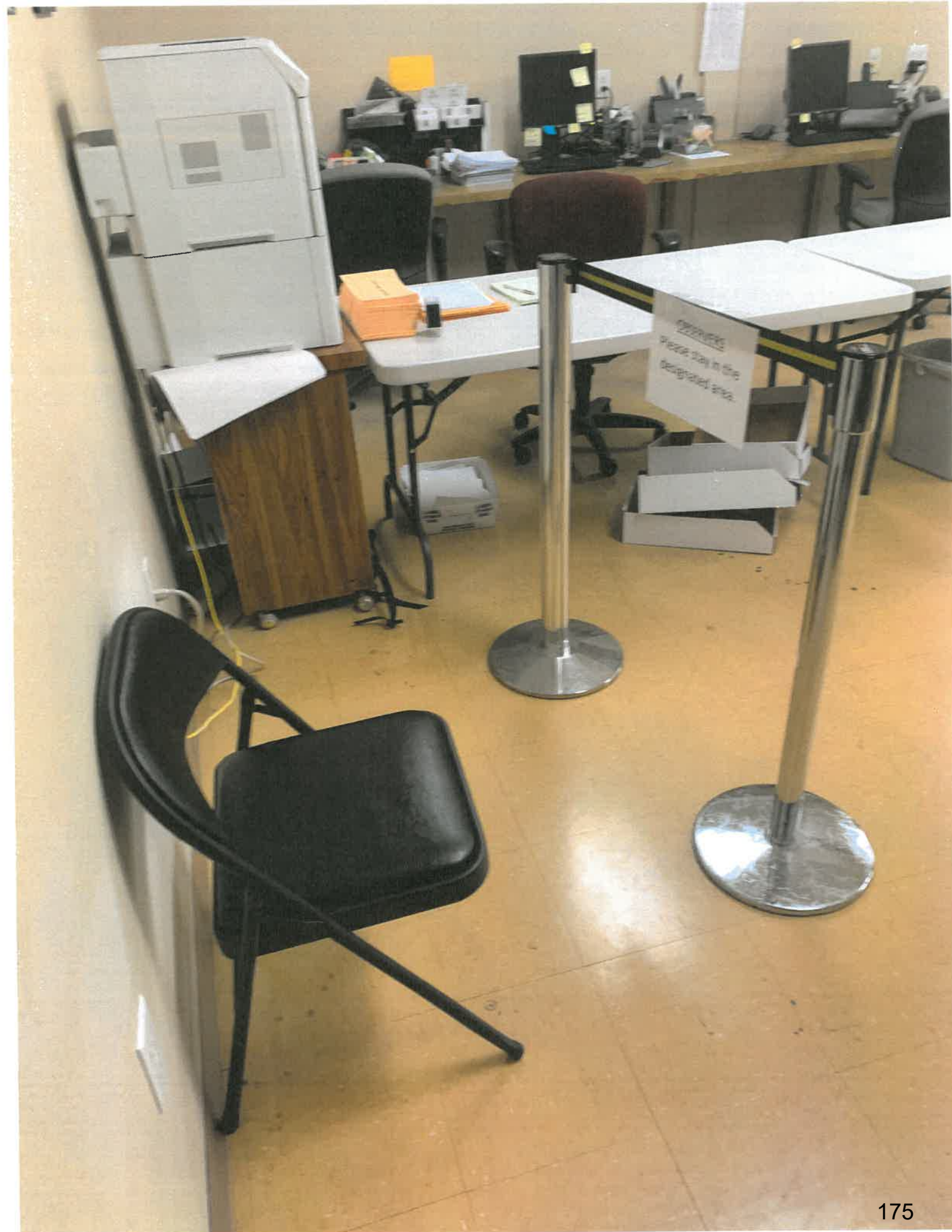

NOTARY PUBLIC in and for
said County and State.



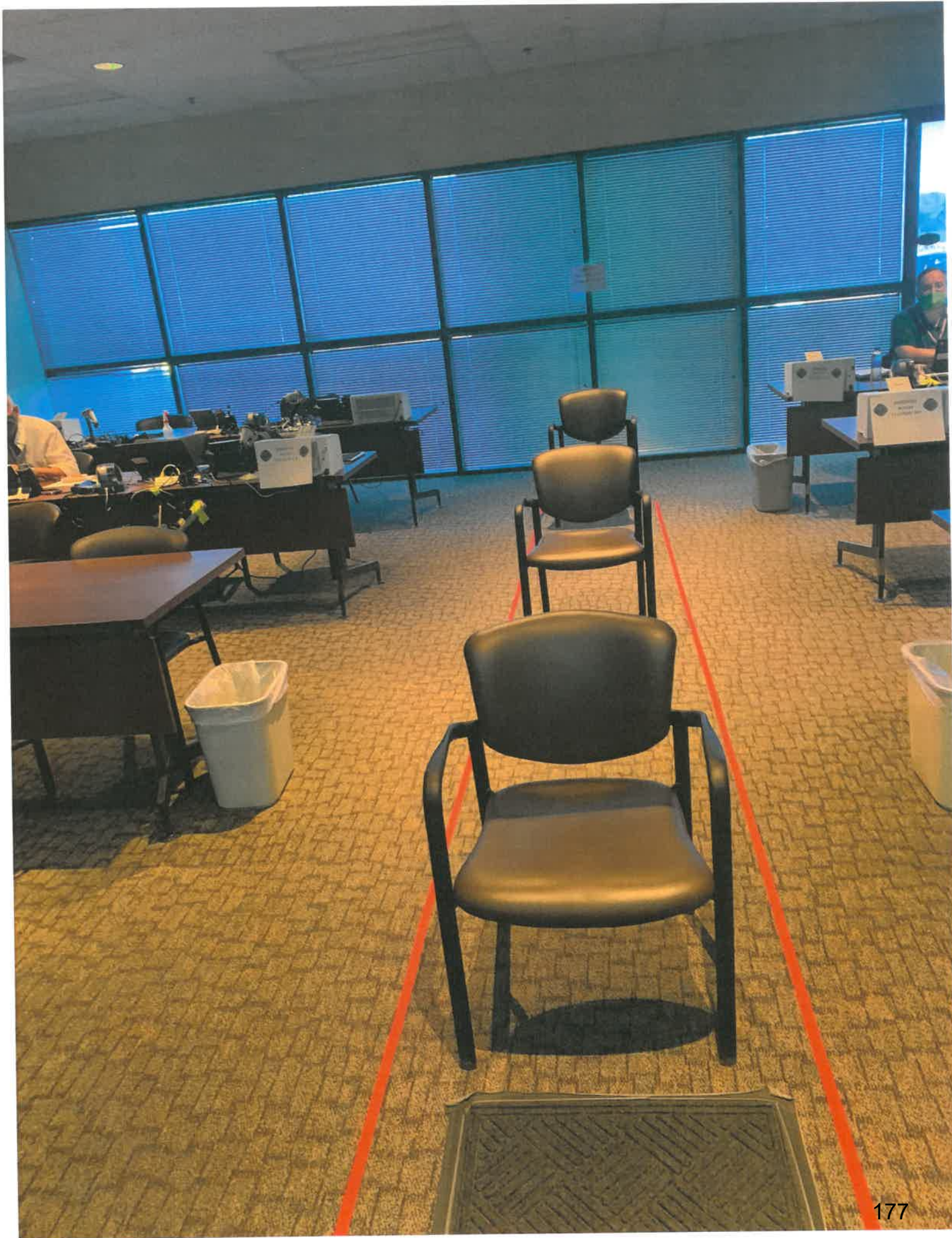
AGILIS ROOM OBSERVATION AREA

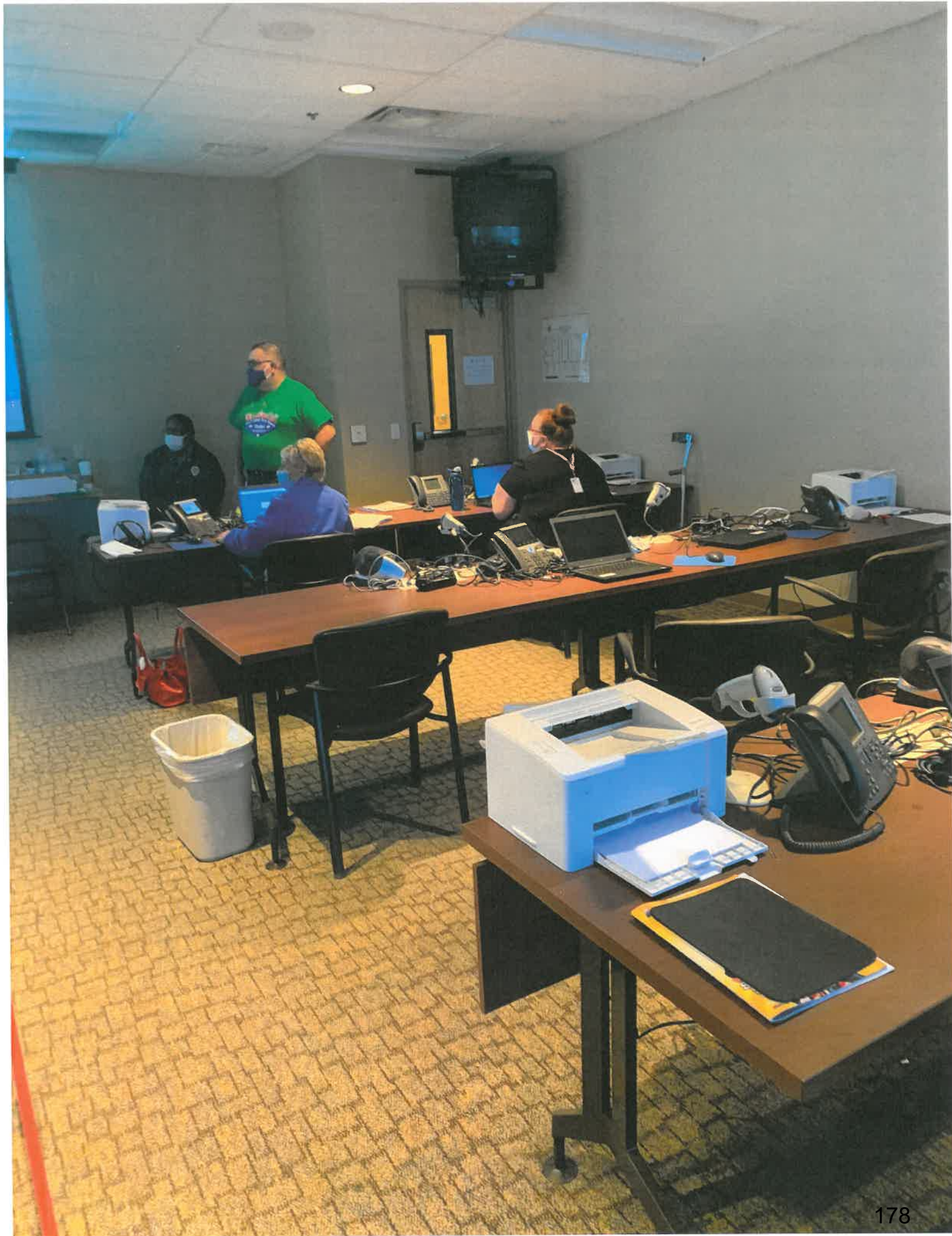




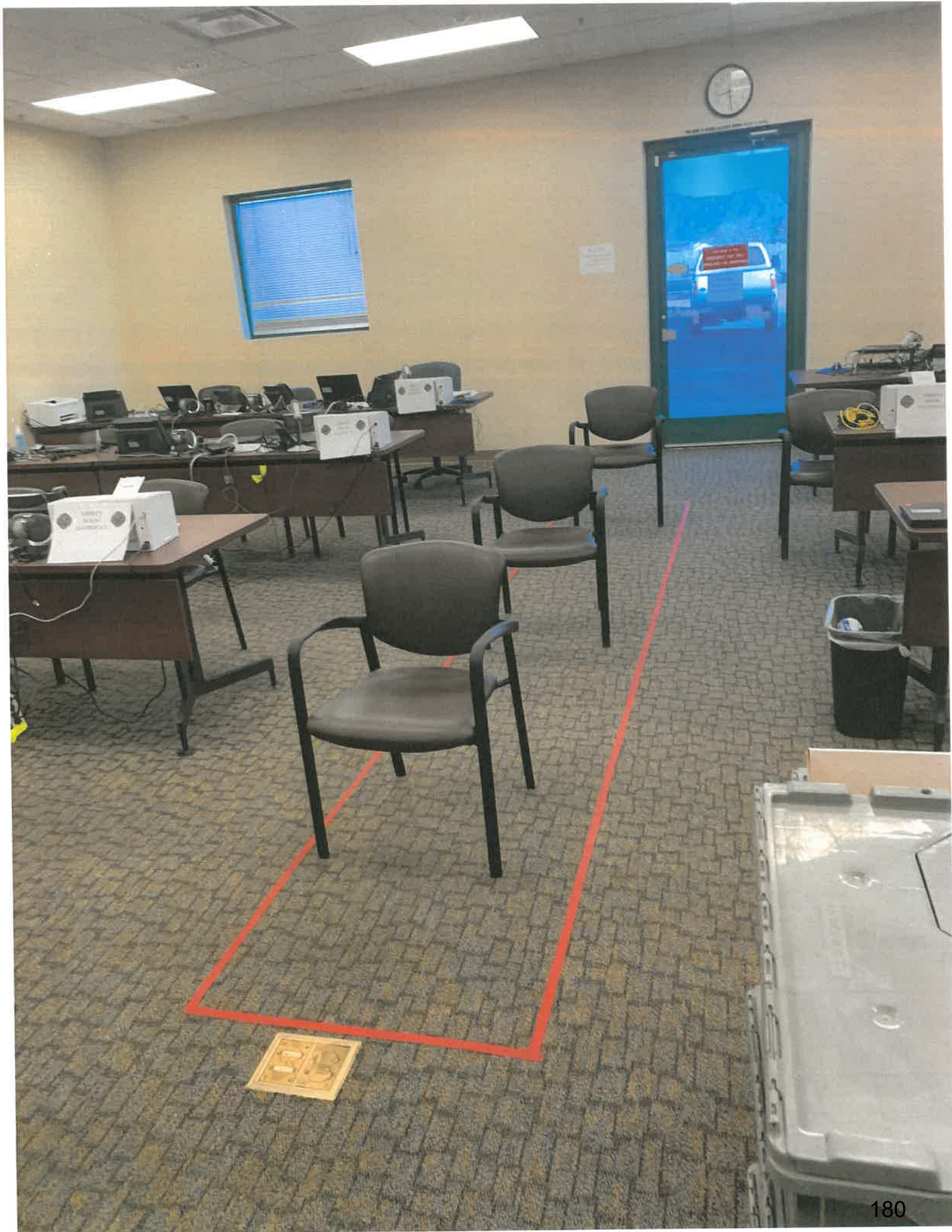


**MANUAL SIGNATURE
VERIFICATION ROOMS**

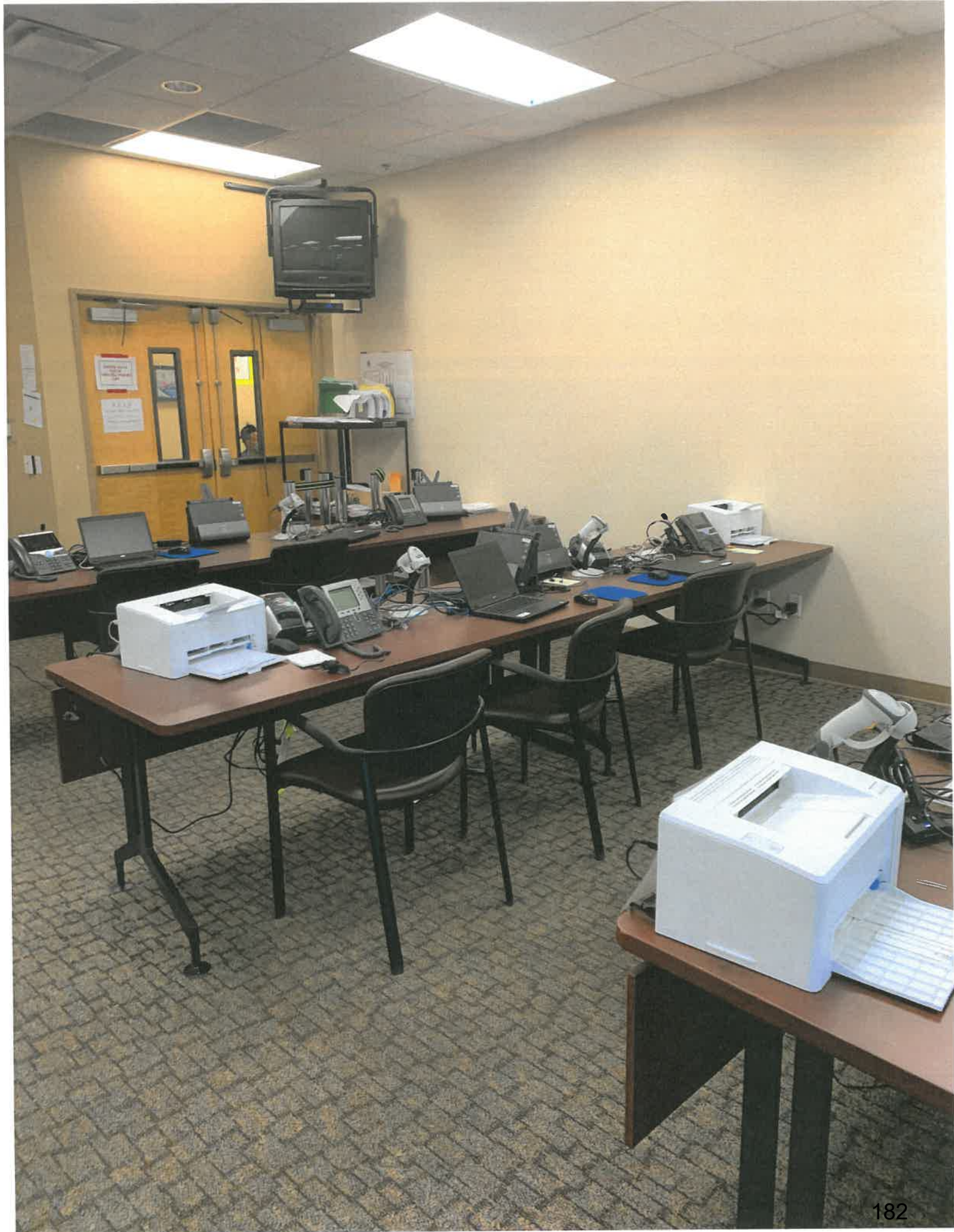












BALLOT INSPECTION AND DUPLICATION AREAS



Sent from my iPhone





TABULATION AREA

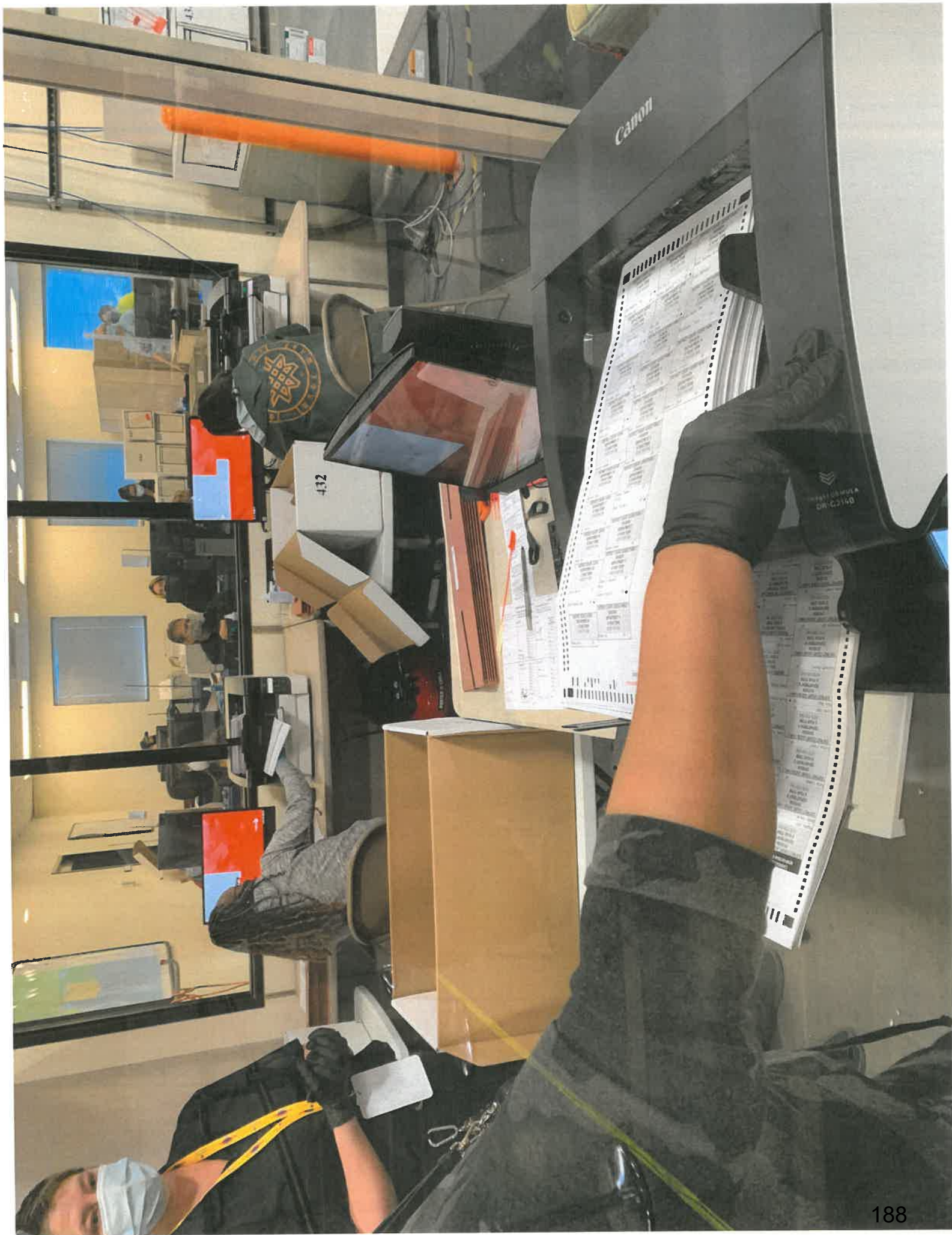








Exhibit 2



MARQUIS AURBACH COFFING

DIRECT LINE: (702)207-6097
DIRECT FAX: (702) 382-5816
EMAIL: BHARDY@MACLAW.COM

ALBERT G. MARQUIS
PHILLIP S. AURBACH
AVECE M. HIGBEE
TERRY A. COFFING
SCOTT A. MARQUIS
JACK CHEN MIN JUAN
CRAIG R. ANDERSON
TERRY A. MOORE
GERALDINE TOMICH
NICHOLAS D. CROSBY
TYE S. HANSEEN
DAVID G. ALLEMAN
CODY S. MOUNTEER
CHAD F. CLEMENT
CHRISTIAN T. BALDUCCI

JARED M. MOSER
MICHAEL D. MAUPIN
KATHLEEN A. WILDE
JACKIE V. NICHOLS
RACHEL S. TYGRET
JORDAN B. PEEL
JAMES A. BECKSTROM
COLLIN M. JAYNE
ALEXANDER K.
CALAWAY
SCOTT W. CARDENAS
SUSAN E. GILLESPIE

JOHN M. SACCO [RET.]
LANCE C. EARL
WILLIAM P. WRIGHT
BRIAN R. HARDY
JENNIFER L. MICHELI
OF COUNSEL

October 25, 2020

Via email to counsel at GZunino@ag.nv.gov

Secretary of State
Attn: Barbara K. Cegavske
Nevada State Capitol Building
101 North Carson Street, Suite 3
Carson City, NV 89701

RE: Protecting the Legitimacy of Nevada's 2020 General Election

Dear Secretary Cegavske,

As you know, we represent Donald J. Trump for President, Inc. and the Nevada Republican Party. We seek your immediate intervention to protect the legitimacy of Nevada's 2020 general election. Every Nevadan has a sacred and Constitutional right to vote – and to ensure that his or her vote is not negated by a fraudulent or otherwise improper ballot. But that right is in danger because a Clark County official refuses to process and tabulate mail ballots in an open and transparent manner.

We filed an Emergency Petition for Writ of Mandamus ("Petition") challenging certain of the election procedures utilized by Joseph P. Gloria, the Registrar of Voters for Clark County ("Registrar Gloria"). The Petition is now pending in the First Judicial District Court for Carson City and is set for hearing this coming Wednesday, October 28. But this matter cannot wait until then. By the time our Petition is adjudicated, many of the violations we are addressing will have occurred—and it will be too late to correct them. The People of Nevada need your help now.

This letter focuses on an issue of immediate urgency: Signature verification of mail ballots to ensure that every ballot counted in this election was properly cast. What is occurring in Clark County constitutes a grave violation not only of Assembly Bill 4, the emergency election legislation enacted in August ("AB4"), but also of the Nevada and United States Constitutions.

Specifically, Registrar Gloria has implemented an improper and, we believe, unlawful process that:

1. Fails to implement the signature verification procedure for mail ballots that expressly is required by AB4;
2. Fails to afford meaningful public observation of the mail ballot signature verification process;
3. Fails to afford an opportunity to challenge the decision of Registrar Gloria to count a mail ballot; and
4. Constitutes willful spoliation of evidence by permanently separating each mail ballot from the signature used for that mail ballot—thereby forever preventing review or adjudication of the statutory signature verification process.

This matter is of utmost urgency because Registrar Gloria's improper and unlawful signature verification process is proceeding apace. Indeed, we understand that at least 200,000 mail ballots already have been processed in Clark County, and this is continuing on an hourly and daily basis. If you do not immediately put a temporary stop to this fundamental violation of the rights of Nevada citizens, the veracity of our election will be grievously and permanently undermined.

Section 23 of AB4 expressly requires that, with respect to each mail ballot received, "the clerk or an employee in the office of the clerk shall check the signature used for the mail ballot." Although Section 22 generally permits "mail ballots to be processed and counted by electronic means," any such electronic processing may not "conflict with the provisions of sections 2 to 27, inclusive, of this act." Thus AB4 does not permit the use of a machine to check mail ballot signatures in circumvention of the express requirement in Section 23 that this critically important function be conducted manually by "the clerk or an employee in the office of the clerk."

Registrar Gloria is violating this express statutory mandate by utilizing an Agilis Ballot Packing Sorting System ("Agilis System") to check signatures used for mail ballots. This is improper. Worse, and as alleged in our Petition, Registrar Gloria has set the Agilis System to a far lower tolerance setting—just 40 percent—than that recommended by its manufacturer to guard against forgeries and other improper signatures. As a result, Clark County has identified mismatched signatures at a far lower rate than the mismatch rate in other counties. For example, Clark County's mismatch rate is only about one-third the mismatch rate in Churchill County. This is highly suspicious on its face.

More than five decades ago, our Supreme Court held that election officials lack authority to undertake any action contrary to governing statute or regulation. *Kelly v. Murphy*, 79 Nev. 1 (1963). Any such unauthorized conduct is a "futile act" and thus void as a matter of law. *Id.* at 4. Accordingly, as AB4 expressly requires that mail ballot signatures be checked by "the clerk or an employee of the clerk," Registrar Gloria's use of the Agilis System purportedly to check mail

October 25, 2020

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ballot signatures has been futile. Simply put, there has been no valid and lawful verification of these signatures to date.

Moreover, even as to the unnaturally low number of signature mismatches identified by the Agilis System which then are manually checked ostensibly in the manner required by Section 23, Registrar Gloria has failed to afford any meaningful public observation of that process. This constitutes a serious violation of the Constitutional and statutory rights of Nevada citizens to ensure a proper and lawful election.

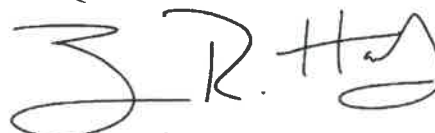
Further, Registrar Gloria has failed to afford the public an opportunity to challenge the decision of Registrar Gloria or his employees that the signature used for a mail ballot matches “all signatures of the voter available in the records of the clerk” as required by AB4 Section 23.1(a) – and, on that basis, count the mail ballot. Without a procedure to challenge these inherently subjective decisions the public is excluded from effective participation in this critically important process.

Finally, and perhaps most egregiously, Registrar Gloria has mandated that, once the signature for a mail ballot has been “checked”—whether by the Agilis System or the manual system required by Section 23—the signature used to verify the signed and authenticatable envelope is permanently and irretrievably separated from the ballot itself, thereby rendering retrospective review and possible adjudication effectively impossible. Registrar Gloria is well aware of our position and thus appears to be proceeding with the specific intention of harming our ability to review his oversight of this election. As a matter of law, therefore, Registrar Gloria’s deliberate spoliation of evidence creates a presumption that the evidence he willfully and improperly is destroying would have been harmful to him. *See, e.g., Bass-Davis v. Davis*, 122 Nev. 422 (2006).

Secretary Cegavske, the time to act is now. There will be no future opportunity to correct these serious legal violations and thereby preserve the sanctity of our election. Please exercise your authority as Secretary of State to safeguard our election by requiring Registrar Gloria to immediately cease and desist from any further signature verification of mail ballots unless and until the foregoing deficiencies are adequately and permanently rectified.

Sincerely,

MARQUIS AURBACH COFFING

A handwritten signature in black ink, appearing to read "B.R. Hardy", written over the printed name.

Brian R. Hardy, Esq.

Cc: Joe Gloria via email to counsel at Mary-Anne.Miller@clarkcountynvda.com

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

FRED KRAUS, an individual registered to vote
in Clark County, Nevada, DONALD J. TRUMP
FOR PRESIDENT, INC.; the NEVADA
REPUBLICAN PARTY,

Petitioners,

vs.

BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State, JOSEPH
P. GLORIA, in his official capacity as Registrar
of Voters for Clark County, Nevada,

Respondents.

Case No. 20 OC 00142 1B
Dept No. 2

**REPLY IN SUPPORT OF EMERGENCY
PETITION FOR WRIT OF MANDAMUS,
OR IN THE ALTERNATIVE, WRIT OF
PROHIBITION**

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I. INTRODUCTION

Respondents Barbara Cegavske, as Secretary of State (“Secretary”), and Joseph P. Gloria, as Registrar for Clark County (“Registrar”), and intervenor respondents Democratic National Committee and Nevada State Democratic Party (collectively “Respondents”), understandably concede that the mail ballot tabulation now rapidly proceeding in Clark County is unprecedented. Under these extraordinary circumstances, it is essential that every public body—including this Court—take proper precautions to ensure this election is administered in a manner that protects Nevadans’ fundamental right to vote. It is not petitioners Fred Kraus, Donald J. Trump for President, Inc., and the Nevada Republican Party (“Petitioners”), but rather the Registrar and Secretary’s current failings that are jeopardizing that right and undermining public confidence in the election. Unless this Court acts expeditiously to ensure ballots are not separated and counted improperly, Petitioners will have no opportunity to redress the serious legal wrongs currently occurring in Clark County’s mail vote tabulation process. The public must be able to trust this election is conducted honestly and transparently. Modest judicial action now to ensure this trust is an appropriate and necessary use of this Court’s equitable power.

II. STANDARD

“A writ of mandamus is available to compel the performance of an act that the law requires.” *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Courts “may consider writ petitions when an important issue of law needs clarification and considerations of sound judicial economy are served.” *Helfstein v. Eighth Jud. Dist. Ct.*, 131 Nev. 909, 912, 362 P.3d 91, 94 (2015).

III. ARGUMENT

A. PETITIONERS HAVE STANDING TO ADVANCE EACH CLAIM.

Although the Nevada Constitution does not contain a “case or controversy” clause, “Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial

1 relief.” *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). “A party must show a personal
2 injury and not merely a general interest that is common to all members of the public.” *Schwartz v.*
3 *Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

4 Petitioners satisfy each of these criteria. With this petition, Kraus, the campaign, and the
5 party seek to restore integrity to the Nevada election process. Petitioners cite three specific forms
6 of injury which more than suffice to establish standing: (1) compromise of process through
7 violation of public observation laws; (2) compromise of process through violation of ballot secrecy
8 laws; and (3) devaluation of the right to vote through a lack of uniform standards for signature
9 match and denial of a challenge procedure for mail-in ballots.

10 1. **Ensuring Meaningful Public Observation Is A Public Duty**
11 **Enforceable Through Mandamus.**

12 Under Nevada law, courts have authority to issue writs of mandamus and prohibition in
13 response to applications of parties or persons who are “beneficially interested.” NRS 34.170,
14 34.330. Such beneficial interest vests individuals with standing to seek writ relief in Nevada’s
15 courts. *See Heller v. Legislature of Nev.*, 120 Nev. 456, 460-61, 93 P.3d 746, 749 (2004).
16 Individual petitioners may even pursue writs on behalf of the public in certain circumstances.
17 *Laborers’ Int’l Union of N. Am., Local Union No. 169 v. Truckee Carson Irr. Dist.*, 130 Nev. 1207
18 (2014) (*unpub’d*). This principle allowed citizens to challenge the governor’s failure to comply
19 with a law requiring him to declare two judicial vacancies, *see State Bar of Nev. v. List*, 97 Nev.
20 367, 368, 632 P.2d 341, 342 (1981), and the Court’s 2008 decision allowing a political party to
21 seek a writ of mandamus or prohibition challenging the constitutionality of a statutory amendment
22 creating new judicial positions, *see Indep. Am. Party of Clark Cty. ex rel. Hansen v. Miller ex rel.*
23 *State*, 124 Nev. 1476 (2008) (*unpub’d*). Where a petitioner shows government actions or failures
24 to act directly damage the rights of the citizenry, courts allow the petition to proceed.
25

26 Petitioners have done that. They allege that the Secretary and Registrar have failed to
27 comply with their public duty to create a written plan to allow observation of the election process.
28

1 Nevada law requires that the Registrar “*shall*, not later than April 15 of each year in which a
2 general election is held, submit to the Secretary of State for approval a written plan for the
3 accommodation of members of the general public who observe the delivery, counting, handling
4 and processing of ballots at a polling place, receiving center or central counting place.” NRS
5 293B.354 (emphasis added). “The word ‘shall’ is generally regarded as mandatory.” *Markowitz v.*
6 *Saxon Special Servicing*, 129 Nev. 660, 665, 310 P.3d 569, 572 (2013). Thus, petitioners have
7 alleged a public duty, not a discretionary function. “[W]hen a petition seeks to enforce a public
8 duty and involves a public right, the petitioner ‘is not required to show that he has any legal or
9 special interest in the result, it being sufficient if he shows that he is interested, as a citizen, in
10 having the laws executed and the right enforced.’ *Miller*, 124 Nev. 1476, 238 P.3d 821 (quoting
11 *State of Nevada v. Gracey*, 11 Nev. 223, 229–30 (1876)).

12
13 Moreover, Petitioners’ mandamus action is not mooted by the exhibits attached to the
14 Secretary’s brief. **First**, the heart of Petitioner’s claim is that the October 20, 2020 letter (sent only
15 after a demand was made by the Petitioners) that purports to include a “plan for observation of
16 ballots” does not actually comply with the Registrar’s public duty to ensure meaningful
17 observation. **Second**, the Secretary’s October 22, 2020 letter—suspiciously conveyed to the
18 Registrar after petitioners had sent a demand letter—expressly recognizes that there is a continuing
19 dereliction of the public duty to “ensure meaningful observation.” This is a live controversy.¹
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22 **2. Respondents Have A Public Duty To Ensure Ballot Secrecy.**

23 AB4, Sec. 16.(1)(c) requires that each active registered voter receive an “envelope or sleeve
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25 ¹ Even if this claim is otherwise moot, Petitioners can overcome mootness by proving “that (1) the duration
26 of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the
27 future, and (3) the matter is important.” *Bisch v. Las Vegas Metro. Police Dep’t*, 129 Nev. 328, 334–35,
28 302 P.3d 1108, 1113 (2013). There is no question that the period in which voters can observe the processing
of ballots is short in duration, that similar issues will arise in future elections, and that the integrity and
sanctity of the fundamental right to vote is important.

1 into which the mail ballot is inserted to ensure its secrecy.” Although this claim was addressed
2 only by a mere paragraph of the combined hundreds of pages of briefing and exhibits in opposition
3 to Petitioners’ claim, Petitioners have a similar interest in ensuring both their ballots remain secret
4 and the public duty of ballot secrecy is fulfilled. *See Gracey*, 11 Nev. at 229–30.

5
6 **3. Petitioners Have Standing To Advance Their Equal Protection**
Claims.

7 The Constitution of the United States protects the right of all qualified citizens to vote.
8 *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). This right “is protected in more than the initial
9 allocation of the franchise.” *Bush v. Gore*, 531 U.S. 98, 104 (2000). Once the state has “granted
10 the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value
11 one person’s vote over that of another.” *Id.* Here, Petitioners allege a personal, concrete equal
12 protection injury in the devaluation of their fundamental right to vote through an admitted lack of
13 uniform standards.

14
15 These are cognizable harms. *See Dep’t of Commerce v. U.S. House of Representatives*, 525
16 U.S. 316, 332 (1999) (recognizing vote dilution as an injury-in-fact for Article III standing). Kraus,
17 as an individual voter, will suffer a direct harm if his vote is diluted and if he is denied his statutory
18 right to meaningfully review the ballot counting process.² *See Clark Cty. v. City of Las Vegas*, 92
19 Nev. 323, 342, 550 P.2d 779, 792 (1976) (“[A] voter has the constitutional right to have his vote
20 given as much weight as any other vote and not to have his vote denied, debased, or diluted in any
21 manner.”). Likewise, the campaign and party will suffer harms where government action burdens
22 the availability of political opportunity. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 199
23 (1986). Petitioners’ application for writ relief thus falls squarely within the category for which
24 courts recognize standing to pursue relief. Indeed, the ends of this petition are the very ends for
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28 ² *See* Declaration of Fred Kraus (“Kraus Dec.”) at ¶¶ 5–25.

1 which writ relief exists: to compel government actors to perform their statutory duties and to
2 prohibit them from taking unlawful or ultra vires action subjecting petitioners to injury. NRS
3 34.170, 34.330.

4 Despite the Secretary's misguided citation of the late Justice Scalia's private feelings, *Bush*
5 *v. Gore* remains good law that has consistently been applied by courts across the country for two
6 decades to establish the standing of plaintiffs and remedy equal protection injuries nearly identical
7 to those here. *See, e.g., Stewart v. Blackwell*, 444 F.3d 843, 855 (6th Cir. 2006) ("The increased
8 probability that their votes will be improperly counted based on punch-card and central-count
9 optical scan technology is neither speculative nor remote."), *vacated* (July 21, 2006), *superseded*,
10 473 F.3d 692 (6th Cir. 2007) (vacated and superseded on the grounds that the case was rendered
11 moot by the county's subsequent abandonment of the DRE machines at issue); *Banfield v. Cortes*,
12 922 A.2d 36, 44 (Pa. Commw. Ct. 2007) (finding that the plaintiffs had sufficiently alleged
13 standing under similar Pennsylvania law, based on "the fact that Electors have no way of knowing
14 whether the votes they cast on a DRE have been recorded and will be counted," which "gives
15 Electors a direct and immediate interest in the outcome of this litigation"). Indeed, Justice
16 Kavanaugh cited *Bush v. Gore* just yesterday. *See Democratic National Committee, et al. v.*
17 *Wisconsin State Legislature, et al.*, No. 20A66, 592 U.S. ___, slip op. 9 n.1 (Oct. 26, 2020)
18 (Kavanaugh, J., concurring in denial of application to vacate stay) (citing *Bush v. Gore*, 531 U.S.
19 at 120 (Rehnquist, C. J., concurring)). The Secretary might disagree with the Supreme Court, but
20 this Court should faithfully apply binding precedent.

21 Consistent with this body of equal protection case law, Petitioners allege an actual injury:
22 Mail-in voters must undergo human signature match safeguards everywhere in Nevada except in
23 Clark County, where many thousands of mail-in voters' signatures go unreviewed by any human
24 being. This "continued reliance on the use of [the Agilis] machines in public elections likely results
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1 in ‘a debasement or dilution of the weight of [Petitioners’] vote[s],’ even if such conduct does not
2 completely deny [Petitioners] the right to vote.” *Curling v. Kemp*, 334 F. Supp. 3d 1303, 1322
3 (N.D. Ga. 2018), *aff’d in part, appeal dismissed in part sub nom. Curling v. Sec’y of Georgia*, 761
4 F. App’x 927 (11th Cir. 2019) (quoting *Bush v. Gore*, 531 U.S. at 105). Petitioners allege that
5 because of this machine, “voters in some counties are statistically less likely to have their votes
6 counted than voters in other counties in the same state in the same election for the same office”
7 because of this lack of uniform standards, such that “[s]imilarly situated persons are treated
8 differently in an arbitrary manner.” *Black v. McGuffage*, 209 F. Supp. 2d 889, 899 (N.D. Ill. 2002).
9 “By employing different standards within [] different counties,” the Secretary and Registrar have
10 “ratified a system of ‘uneven treatment’ that result[s] in the debasement of votes statewide.” *Pierce*
11 *v. Allegheny Cty. Bd. of Elections*, 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003) (citing *Bush*, 531
12 U.S. at 107). The deprivation of Petitioner’s right to have their ballots treated under uniform
13 standards by election officials in the state is an injury that is redressable by a court order mandating
14 uniformity. *See Elley v. Stephens*, 104 Nev. 413, 416-17, 760 P.2d 768, 770 (1988).

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17 Petitioners likewise have standing to bring their claim that the disparate vote challenge
18 process violates equal protection principles. *See* NRS 293.303. This admitted dis-uniformity is a
19 particularized equal protection injury against Petitioner Kraus, who has voted in-person but faced
20 a different standard from every vote-by-mail voter and continues have his vote diluted or cancelled
21 by unchallengeable votes.³ “[I]f this court does not act, there will be no mechanism by which
22 absentee ballots could be challenged for alleged violations of the election code and the United
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26 ³ Kraus Dec., at ¶ 4. Intervenor’s mistake Petitioners’ the alleged injury for a desire to someday challenge a
27 mail-in ballot in the future. Intervenor’s Br. at 11. That is incorrect. Rather, Kraus is injured because he has
28 already voted in person under a system that allows for challenges, but hundreds of thousands of
unchallengeable mail-in ballots have been cast or are certainly impending, debasing the weight of his in-
person vote. *See Bush v. Gore*, 531 U.S. at 105.

1 States Constitution” on the same terms as in-person ballots. 324 F. Supp. 2d at 692.⁴

2 **B. MANDAMUS IS REQUIRED TO PROTECT MEANINGFUL**
3 **OBSERVATION**

4 The primary issue in this Emergency Petition is whether the observation scheme created
5 by the Registrar complies with the law. The answer is a resounding no. The Registrar has
6 developed a program wherein officials can hide in plain sight, not allowing observers any
7 meaningful right to serve as sunlight for Nevada election integrity.

8 Providing petitioners with an opportunity to meaningfully observe is not discretionary
9 under the statute—it is mandatory. “When interpreting a statute, this court begins with the statute’s
10 text.” *Andrews v. State*, 134 Nev. 95, 97, 412 P.3d 37, 38 (2018). The Court will use “legitimate
11 tools of statutory interpretation, including related statutes.” *Castaneda v. State*, 132 Nev. 434, 439,
12 373 P.3d 108, 111 (2016). When the plain and ordinary text of a statute is unambiguous, Nevada
13 Courts need not look beyond the text. *City of North Las Vegas v. Warburton*, 127 Nev. 682 (Oct.
14 6, 2011).

15
16 The text of the statute clearly requires Nevada Counties to accommodate members of the
17 public who desire to “observe” the delivery, counting, handling and processing of ballots at a
18 polling place, receiving center or central counting place. And counties must allow the public to
19 actually “observe the activities.” NRS 293B.354(2). The plain meaning of the terms confirms this.
20 Merriam Webster’s Dictionary defines the term “observe” in relevant part as “to watch
21 carefully especially with attention to details or behavior for the purpose of arriving at a
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24 ⁴ Nevada courts recognize a “public-importance” exception to the injury requirement of standing. See
25 *Schwartz*, 132 Nev. at 743. Although the courts traditionally apply this exception only in taxpayer suits
26 challenging legislative expenditures or allocations, the principles underlying the exception undoubtedly
27 apply in suits like the present one in which matters of general public consequence are involved. If this Court
28 is unpersuaded by the specific injuries alleged by petitioners, petitioners alternatively argue that they have
standing under this exception to the general injury requirement.

1 judgment.”⁵ This definition is consistent with the commonly understood meaning and usage of
2 the term. *See, e.g.*, OBSERVE, Black’s Law Dictionary (11th ed. 2019) (“To watch carefully.”).
3 By definition, “observation” thus necessarily requires public on-lookers to be
4 afforded *meaningful* review. They must be permitted to “watch carefully” and “with attention to
5 details.”

6
7 Contrary to Respondents’ argument, the content of this right to public observation in NRS
8 293B.353 is not limited to “the counting of the ballots” because the next provision of the statute
9 provides specifics that inform the broader public right: “[t]he county clerk *shall*” create a plan for
10 “the accommodation of members of the general public who observe the *delivery, counting,*
11 *handling and processing* of ballots at a *polling place, receiving center or central counting place.*”
12 NRS 293B.354 (emphasis added). “Specific provisions take precedence over general provisions.”
13 *Davidson v. Davidson*, 132 Nev. 709, 714, 382 P.3d 880, 883 (2016). The right to public
14 observation must include, at a minimum, each of the emphasized elements of the election process
15 in NRS 293B.354: ballot delivery, ballot counting, ballot handling, and ballot processing shall be
16 accommodated by the clerk’s written plan; each of these actions must be observable at the polling
17 place, ballot receiving center, and central counting place by the general public.

18
19 The purpose of the public observation requirement confirms this reading: to ensure that
20 ballots are delivered, counted, handled, and processed properly. *See* NRS 293B.354(2); *see*
21 *also Opinion of the Justices*, 371 A.2d 616, 622–23 (Me. 1977) (“The stated purpose of [the
22 statute] is clear: –the counting [of ballots] must be done in such a way as to
23 facilitate public observation. We infer from this stated purpose the ultimate but unarticulated
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27 ⁵*Merriam Webster’s Online Dictionary*, <https://www.merriam-webster.com/dictionary/observe> (emphasis added). This definition is also consistent with the Election Observation Handbook (6th
28 Ed.), published by the OSCE Office for Democratic Institutions and Human Rights. *See* Pet. at 5.

1 goal:—the public observation must be such as to ensure to those present that the ballots are being
2 counted correctly.”); *Davidson*, 132 Nev. at 713, 382 P.3d at 883 (“This court’s goal in construing
3 statutes is to uphold the intent of the Legislature”). Indeed, the statute establishes a presumption
4 of public access with a narrow exception to avoid public interference: “if [the] members do not
5 interfere with the counting of the ballots,” then the “city clerk shall allow [those] members of the
6 general public to observe the counting of the ballots at the central counting place.” NRS
7 293B.353(1).⁶

8
9 Despite this clear statutory right, the Secretary continues to refuse to comply with her
10 duties. As Exhibit B to the Secretary’s Response brief shows, the Secretary noticed a problem with
11 public observation and requested an improvement, but to no avail. The Registrar has still not
12 afforded such meaningful public observation of the election activities and the Secretary has not
13 ensured it. As the Petition describes, observers are often located more than 25 feet from certain
14 processes and cannot observe computer screens or monitors of election workers or observe calls
15 made regarding cure processes. *See* Pet. at 5. Further, public observers are restricted from certain
16 areas where ballots are handled or reviewed, as well as rooms dedicated to resolving ballot issues.
17 All these processes are necessary to the “counting, handling and processing of ballots” and thus
18 must be open to meaningful observation. Therefore, as a matter of law, the Registrar and Secretary
19 are violating the election laws designed to ensure public integrity and transparency in Nevada’s
20 election process.
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24 ⁶ The Secretary of State’s position that the Election Code chapter heading somehow limits the public’s right
25 to observation of vote-by-mail ballots is incorrect because “Mechanical voting systems” is a defined term.
26 Indeed, the statute defines “Mechanical voting system” in the broadest possible sense: “a system of voting
27 whereby a voter may cast a vote.” NRS 293B.033. Because vote-by-mail processes are “a system of voting
28 whereby a voter may cast a vote,” the public’s right to meaningful observation applies with equal force to
mail-in ballots processing.

1 This lack of observation is an irreparable harm. Every day, thousands of ballots are being
2 separated from their only form of identification—at which point there is no way to challenge those
3 votes and ensure they are lawfully cast. The evidence is thus spoliated and the dilution of the
4 voters' rights that might have been prevent through transparency cannot be repaired. *See Fla.*
5 *Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1258 (N.D. Fla. 2016) (stating with respect to
6 elections: "This isn't golf; there are no mulligans.").

7
8 **C. PROHIBITION IS NECESSARY TO ENSURE BALLOT SECRECY.**

9 This issue was ignored completely by Respondents and mentioned only in passing by the
10 intervenors as "mere speculation." Intervenors Br. at 10. Ballot secrecy is critical. *See Minnesota*
11 *Voters All. v. Mansky*, 138 S. Ct. 1876, 1883 (2018). Petitioners explained that what little
12 observation has been afforded them shows that the Registrar is not protecting ballot secrecy, Pet.
13 at 6, violating a clear duty in AB 4, § 27 ("The clerk shall develop a procedure to ensure that each
14 mail ballot is kept secret").

15
16 **D. MANDAMUS AND PROHIBITION IS NECESSARY TO RESTORE
17 EQUAL PROTECTION.**

18 Contrary to Respondents' bald assertion, Petitioners do not argue that vote-by-mail and in-
19 person voters must be treated identically. Indeed, Petitioners agree with the Registrar's analogy:
20 "the signature verification process for a mail ballot voter is the equivalent of a prospective voter
21 checking in at a polling place." Registrar's Br. at 4. But as a result of Respondents' twin Equal
22 Protection Clause violations, mail-in voters have an advantage over Petitioner Kraus and similarly
23 situated voters who have voted in person but continue to have their votes devalued by lack of
24 uniform statewide standards for ballot security. Two election processes violate the Equal
25 Protection Clause of the Fourteenth Amendment.

26 *First*, Nevada deprives voters of equal protection by providing a mechanism for
27 challenging voters who vote in person at polling locations but not for voters who vote by mail. *See*
28

1 NRS 293.303.⁷ In *Charfauros v. Board of Elections*, the court considered “whether the Equal
2 Protection Clause permits a State to discriminate among its citizens based on who challenged their
3 voter eligibility,” or “whether the voter challenge procedures adopted by the Board ‘are consistent
4 with its obligation to avoid arbitrary and disparate treatment of the members of its electorate.’”
5 249 F.3d 941, 951 (9th Cir. 2001), *as amended on denial of reh’g and reh’g en banc* (July 6, 2001)
6 (quoting *Bush v. Gore*, 531 U.S. 98) (cleaned up). In that case, “the Board created two classes of
7 challenged voters—Republican voters, whose eligibility was challenged by the Democratic Party
8 and considered before the election, and Democratic voters, whose eligibility was challenged by
9 the Republican Party and considered after the election.” *Id.* at 945. The Court concluded this
10 classification was unconstitutional under the Equal Protection Clause—and so clearly unlawful
11 that the election officials were not entitled to qualified immunity. (“A reasonable Board would
12 have known its actions violated the fundamental rights to vote and to equal treatment under the
13 law ... the Board is not entitled to qualified immunity”). *Id.* at 955–56.

14 **Second**, the Registrar is using a defective signature matching computer system. Vote-by-
15 mail voters in Clark County thus have an advantage over voters anywhere else in the state, whether
16 compared to using either mail or in-person balloting. This is because many thousands of vote-by-
17 mail ballots are never reviewed by a human being, as the Registrar stunningly admits. *See*
18 Registrar’s Br. at 7 (“the machine’s match rate to the County’s election database has hovered
19 around 30%); *see also* Decl. of Joseph P. Gloria (“If the Agilis machine does not match the
20 signature, it is *then* reviewed by Election Department staff”) (emphasis added). *See Pierce*, 324 F.
21 Supp. 2d at 699 (“Voters ... who take advantage of defendant’s policy ... may be afforded greater
22 voting strength than similarly-situated voters”). This process not only subjects voters to unequal
23 treatment, it also violates the express requirements of AB 4. Section 23 of AB 4 specifically states
24 that, with respect to each mail ballot received, “the clerk or an employee in the office of the clerk
25 shall check the signature used for the mail ballot.” Although Section 22 generally permits “mail

26
27 ⁷ NRS 293.547 is not a procedure for challenging mail in ballots, contrary to Respondent’s
28 representation to the court. *See* Hearing Tr. 15:2-9 (Miller).

1 ballots to be processed and counted by electronic means,” any such electronic processing may not
2 “conflict with the provisions of sections 2 to 27, inclusive, of this act.” Nothing in AB 4 permits
3 use of a machine to check mail ballot signatures in lieu of the statutory requirement that this
4 critically important task be conducted by “the clerk or an employee in the office of the clerk.”
5 Indeed, the Legislature’s specific use of the words “or an employee in the office of the clerk”
6 reinforces its statutory mandate that all signature verification must be conducted by a human
7 being.⁸

8 Under the Equal Protection Clause, “[d]ilution of the right to vote may not be accomplished
9 by stuffing the ballot-boxes,” “[n]or may the right to vote be diluted by” state officials’ “improper
10 counting of ballots.” *United States v. Classic*, 313 U.S. 299, 315 (1941). Thus, Petitioners are
11 suffering irreparable equal protection harm due to the unlawful use of the Agilis machine. *See*
12 *Feldman v. Arizona Sec’y of State’s Office*, 843 F.3d 366, 394 (9th Cir. 2016) (“[T]here are no
13 ‘do over’ elections; ‘the State cannot run the election over again[.]’ ” (citation omitted)); *Obama*
14 *for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“A restriction on the fundamental right to
15 vote . . . constitutes irreparable injury.”); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1310 (N.D.
16 Ga. 2018) (“[N]one of the harm that [Respondents] will allegedly suffer from an injunction rises
17 to the same level as the harm that disenfranchised [voters] (and, undoubtedly, other absentee
18 voters) will suffer without an order from this Court. . . . [I]t is axiomatic that there is no post hoc
19 remedy for a violation of the right to vote.”).

20 Finally, laches does not bar relief in this case. “In determining whether the doctrine of
21 laches should preclude consideration of a petition for mandamus, it must be demonstrated that (1)
22 there was inexcusable delay in seeking the petition, (2) an implied waiver arose from petitioner’s
23 knowing acquiescence in existing conditions, and (3) prejudice resulted to the respondent.” *We*

24
25 ⁸ Election officials lack authority to undertake any action contrary to governing statute or regulation. *Kelly*
26 *v. Murphy*, 79 Nev. 1 (1963). Any such unauthorized conduct is a “futile act,” a term of art that means it is
27 thus void as a matter of law. *Id.* at 4. Thus, as AB 4 expressly requires that mail ballot signatures be
28 checked by “the clerk or an employee of the clerk,” Registrar’s use of the Agilis Ballot Packing Sorting
System (“Agilis System”) to check mail ballot signatures has been futile.

1 *The People Nevada ex rel. Angle v. Miller ex rel. State*, 124 Nev. 1518, 238 P.3d 865 n.20 (2008)
2 (*unpub'd*). Respondents have made no such showing, nor could they. Petitioners acted promptly
3 upon learning of the disparity between Clark County's signature matching process and the
4 signature matching process elsewhere in the state. Moreover, the only prejudice in this case is not
5 to Respondents, but to voters who are not subject to the faulty Agilis machine who have their votes
6 diluted or cancelled by improperly counted ballots.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Petitioners respectfully request that this Court issue a writ of
9 mandate or, alternatively, prohibition requiring the Secretary and Registrar to immediately:

10 1. Cease and desist from further use of the Agilis System to check the signature for any
11 mail ballot, and for the Registrar to conduct all further mail ballot signature verification
12 individually or through his employees as required by AB 4;

13 2. Permit meaningful public observation of the mail ballot signature verification process
14 without violating the privacy right of any Nevada voter;

15 3. Permit election observers to challenge the signature on any mail ballot before it is
16 tabulated;

17 4. Maintain ballot secrecy as required by AB 4; and

18 5. Maintain physical connection between each challenged signature and its associated
19 ballot until such time as this challenge has been finally resolved or adjudicated.

20 Dated this 27th day of October, 2020.

21 MARQUIS AURBACH COFFING

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

3 **AFFIRMATION**

4 The undersigned does hereby affirm that the preceding document, **REPLY IN SUPPORT OF**
5 **EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE,**
6 **WRIT OF PROHIBITION**, does not contain the Social Security number of any person.

7 Dated this 27th day of October, 2020.

8
9 MARQUIS AURBACH COFFING

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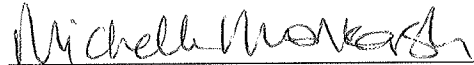
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION** was submitted for filing and/or service with the First Judicial District Court on the 27th day of October, 2020. Service of the foregoing document was made by mailing a true and correct copy thereof, postage prepaid, addressed to:


an employee of Marquis Aurbach Coffing

REC'D & FILED

2020 OCT 29 PH 5:44

AUDREY HOWLAND

BY  DEPUTY

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

-oOo-

FRED KRAUS, an individual registered
to vote in Clark County, Nevada,
DONALD J. TRUMP FOR PRESIDENT,
INC., and the NEVADA REPUBLICAN
PARTY,

Petitioners,

vs.

BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,
JOSEPH P. GLORIA, in his official
capacity as Registrar of Voters for Clark
County, Nevada,

Respondents.

CASE NO. 20 OC ⁰⁰¹⁴² ~~00004~~ 1B

DEPT. 2

ORDER DENING EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR
IN THE ALTERNATIVE, WRIT OF PROHIBITION

PROCEDURAL BACKGROUND

Before the Court is the Emergency Petition for Writ of Mandamus, or in the
Alternative, Writ of Prohibition. The Court held an evidentiary hearing on October 28,
2020.

1 **ISSUES**

2 Do Petitioners have standing to bring these claims?

3 Has Registrar Joseph P. Gloria failed to meet his statutory duty under NRS
4 293B.353(1) to allow members of the general public to observe the counting of ballots?

5 Has Registrar Gloria unlawfully precluded Petitioners from the use and
6 enjoyment of a right to which Petitioners are entitled?

7 Has Registrar Gloria exercised discretion arbitrarily or through mere caprice?

8 Has Registrar Gloria acted without or in excess of authorized powers?

9 Has Secretary of State Barbara Cegavske failed to meet any statutory duty under
10 NRS 293B.353(1) to allow members of the general public to observe the counting of
11 ballots?

12 Has Secretary of State Barbara Cegavske unlawfully precluded Petitioners from
13 the use and enjoyment of a right to which Petitioners are entitled?

14 Has Secretary Cegavske exercised discretion arbitrarily or through mere caprice?

15 Has Secretary Cegavske acted without or in excess of authorized powers?

16 Has Secretary of State Cegavske unlawfully precluded Petitioners the use and/or
17 enjoyment of a right to which Petitioners are entitled?

18 Have Petitioners proved they are entitled to a writ of mandamus on their equal
19 protection claims?

20
21 **FACTS**

22 It is important to note the factual context in which this case arose. All of the
23 states in the United States are attempting to hold elections under the health, political,
24 social, and economic consequences of the COVID-19 pandemic. Nevada's state and
25 county election officials had relatively little time to assess, plan, modify, and implement
26 procedures that are quite different from the established election procedures in an effort

1 to provide safe, open elections that would not result in long waiting lines. The
2 modification of procedures includes fewer polling places, a very large increase in mail-in
3 voting, and long lines as a result of social distancing.

4 A second important context is that this lawsuit was filed October 23, 2020—11
5 days before the general election.

6 Every Nevada county is required to submit to the Secretary of State, by April 15,
7 2020, the county's plan for accommodation of members of the general public who
8 observe the processing of ballots. NRS 293B.354(1). Registrar Gloria did not submit a
9 plan by April 15, 2020.

10 Registrar Gloria submitted a plan to the Secretary of State on October 20, 2020.
11 A copy of the plan is attached as Exhibit 1.

12 Historically, the Secretary of State has not sent letters or other notification to the
13 counties approving the counties' plans.

14 The Secretary of State's office reviewed Registrar Gloria's plan, concluded it
15 complied with the law, and Secretary Cegavske issued a letter to Registrar Gloria on
16 October 22, 2020. The letter is attached as Exhibit 2. The Secretary did not write that
17 Registrar Gloria's plan was "approved," but it is clear from the letter that the plan was
18 approved with a suggestion to that the Registrar consider providing additional seating in
19 public viewing areas for observers to view the signature verification process to the extent
20 feasible while ensuring that no personally identifiable information is observable by the
21 public.

22 A copy of all 17 county plans were admitted as exhibits. Clark County's plan is not
23 substantially different from the plan of any of the other 16 counties, and none of the
24 plans is substantially different from the plans of previous years.

25 Clark County uses an electronic ballot sorting system, Agilis. No other Nevada
26 county uses Agilis. Some major metropolitan areas including Cook County, Illinois, Salt
27

1 Lake City, Utah, and Houston, Texas use Agilis. Some Nevada counties use other brands
2 of ballot sorting systems.

3 Registrar Gloria decided to purchase Agilis because of the pandemic and the need
4 to more efficiently process ballot signatures.

5 One of Petitioners' attorneys questioned Registrar Gloria about Agilis in earlier
6 case, Corona v. Cegavske, but never asked Registrar Gloria to stop using Agilis.

7 Clark County election staff tested Agilis by manually matching signatures. Clark
8 County election staff receives yearly training on signature matching from the Federal
9 Bureau of Investigation. The last training was in August of this year.

10 For this general election Clark County is using the same they used for the June
11 primary election. No evidence was presented that the setting used by Clark County
12 causes or has resulted in any fraudulent ballot being validated or any valid ballot
13 invalidated.

14 No evidence was presented of any Agilis errors or inaccuracies. No evidence was
15 presented that there is any indication of any error in Clark County's Agilis signature
16 match rate.

17 Registrar Gloria opined that if Clark County could not continue using Agilis the
18 county could not meet the canvass deadline which is November 15, 2020. The Court
19 finds that if Clark County is not allowed to continue using Agilis the county will not meet
20 the canvass deadline.

21 When the envelope containing mail-in ballots are opened the ballot and envelope
22 are separated and not kept in sequential order. Because they are not kept in sequential
23 order it would be difficult to identify a voter by matching a ballot with its envelope.

24 This is the first election in Registrar Gloria's 28 years of election experience in
25 Clark County that there are large numbers of persons wanting to observe the ballot
26 process.

Persons that observe the ballot process sign an acknowledgment and a memo containing instructions to the observer. A copy of an acknowledgment and memo are attached as Exhibit 3.

People hired by the Registrar to manage the people wanting to observe the ballot process are called ambassadors. The observer acknowledgment states observers are prohibited from talking to staff. The memo explains the role of ambassadors and invites observers to inform their ambassador they have a question for election officials or the observer may pose a question directly to an election official.

Registrar Gloria is not aware of any observer complaints.

Several witnesses supporting Petitioners and called by Petitioners testified: they saw ballots that had been removed from the envelope left alone; runners handle ballots in different ways, including taking the ballots into an office, taking ballots into “the vault” and/or otherwise failing to follow procedure, but no procedure was identified; inability to see some tables from the observation area; inability to see into some rooms; inability to see all election staff monitors; inability to see names on monitors; saw a signatures she thought did not match but admitted she had no signature comparison training; and/or trouble getting to where they were supposed to go to observe and trouble being admitted to act as observer at the scheduled time.

No evidence was presented that any party or witness wanted to challenge a vote or voter, or had his or her vote challenged.

No evidence was presented that there was an error in matching a ballot signature, that any election staff did anything that adversely affected a valid ballot or failed to take appropriate action on an invalid ballot.

No evidence was presented that any election staff were biased or prejudiced for or against any party or candidate.

1 One Petitioner witness did not raise issues regarding things she observed with an
2 ambassador but instead went to the Trump Campaign. No issue was ever raised as a
3 result of her observations or report to the Trump Campaign.

4 Washoe County is using cameras to photograph or videotape the ballot process.

5 No Nevada county hand-counts ballots.
6

7 LEGAL PRINCIPLES 8

9 Standing

10 Nevada law requires an actual justiciable controversy as a predicate to judicial
11 relief. *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). For a controversy to
12 exist the petitioner must have suffered a personal injury and not merely a general
13 interest that is common to all members of the public. *Schwarz v. Lopez*, 132 Nev. 732,
14 743, 382 P.3d 886, 894 (2016).
15

16 Mandamus and Prohibition

17 A court may issue a writ of mandamus “to compel the performance of an act
18 which the law especially enjoins as a duty resulting from an office . . . ; or to compel the
19 admission of a party to the use and enjoyment of a right or office to which the party is
20 entitled and from which the party is unlawfully precluded by such . . . person.” NRS
21 34.160. A court may issue a writ of mandamus “when the respondent has a clear,
22 present legal duty to act.” *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603, 637
23 P.2d 534 (1981). The flip side of that proposition is that a court cannot mandate a
24 person take action if the person has no clear, present legal duty to act. Generally,
25 mandamus will lie to enforce ministerial acts or duties and to require the exercise of
26 discretion, but it will not serve to control the discretion.” *Gragson v. Toco*, 90 Nev. 131,
27

1 133 (1974). There is an exception to the general rule: when discretion “is exercised
2 arbitrarily or through mere caprice.” *Id.*

3 “Petitioners carry the burden of demonstrating that extraordinary relief is
4 warranted.” *Pan v. Dist. Ct.*, 120 Nev. 222, 228 (2004).

5 The writ of prohibition is the counterpart of the writ of mandate. It arrests the
6 proceedings of any tribunal . . . or person exercising judicial functions, when such
7 proceedings are without or in excess of the jurisdiction of such tribunal . . . or person.
8 NRS 34.320.

9 A writ of prohibition “may be issued . . . to a person, in all cases where there is
10 not a plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.330.

11 **Voting Statutes**

12 NRS 293B.353 provides in relevant part:

13 1. The county . . . shall allow members of the general public to observe the
14 counting of the ballots at the central counting place if those members do not
15 interfere with the counting of the ballots.

16 2. The county . . . may photograph or record or cause to be photographed
17 or recorded on audiotape or any other means of sound or video reproduction the
18 counting of the ballots at the central counting place.

19 3. A registered voter may submit a written request to the county . . . clerk
20 for any photograph or recording of the counting of the ballots prepared pursuant
21 to subsection 2. The county . . . clerk shall, upon receipt of the request, provide
22 the photograph or recording to the registered voter at no charge.

23 NRS 293B.354 provides in relevant part:

24 1. The county clerk shall, not later than April 15 of each year in which a
25 general election is held, submit to the Secretary of State for approval a written
26 plan for the accommodation of members of the general public who observe the
27 delivery, counting, handling and processing of ballots at a polling place, receiving
center or central counting place.

...

3. Each plan must include:

- (a) The location of the central counting place and of each polling place and receiving center;
- (b) A procedure for the establishment of areas within each polling place and receiving center and the central counting place from which members of the general public may observe the activities set forth in subsections 1 and 2;
- (c) The requirements concerning the conduct of the members of the general public who observe the activities set forth in subsections 1 and 2; and
- (d) Any other provisions relating to the accommodation of members of the general public who observe the activities set forth in subsections 1 and 2 which the county . . . considers appropriate.

AB 4 section 22 provides in relevant part:

1. For any affected election, the county . . . clerk, shall establish procedures for the processing and counting of mail ballots.

2. The procedures established pursuant to subsection 1:

- (a) May authorize mail ballots to be processed and counted by electronic means; and
- (b) Must not conflict with the provisions of sections 2 to 27, inclusive, of this act.

AB 4 section 23 provides in relevant part:

1. . . . for any affected election, when a mail ballot is returned by or on behalf of a voter to the county . . . clerk . . . and a record of its return is made in the mail ballot record for the election, the clerk or an employee in the office of the clerk shall check the signature used for the mail ballot in accordance with the following procedure:

- a. The clerk or employee shall check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk.

AB 4 section 25 provides in relevant part:

1. The counting procedures must be public.

ANALYSIS

Petitioners failed to prove they have standing to bring their Agilis, observation, ballot handling or secrecy claims.

As set forth above for a justiciable controversy to exist the petitioner must have suffered a personal injury and not merely a general interest that is common to all members of the public. Petitioners provided no evidence of any injury, direct or indirect, to themselves or any other person or organization. The evidence produced by Petitioners shows concern over certain things these observers observed. There is no evidence that any vote that should lawfully be counted has or will not be counted. There is no evidence that any vote that should lawfully not be counted has been or will be counted. There is no evidence that any election worker did anything outside of the law, policy, or procedures. Petitioners do not have standing to maintain their mandamus claims.

Likewise, Petitioners provided no evidence of a personal injury and not merely a general interest that is common to all members of the public regarding the differences between the in-person and mail-in procedures. Petitioners provided no evidence of any injury, direct or indirect, to themselves or any other person or organization as a result of the different procedures. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting in person and voting by mailing in the ballot are different and so the procedures differ. There is no evidence that anything the State or Clark County have done or not done creates two different classes of voters. There is no evidence that anything the State or Clark County has done values one voter's vote over another's.

1 There is no evidence of any debasement or dilution of any citizen's vote. Petitioners do
2 not have standing to bring their equal protection claims.

3
4 **Petitioners failed to prove Registrar Gloria failed to meet his**
5 **statutory duty under NRS 293B.353(1) to allow members of the general**
6 **public to observe the counting of ballots?**

7
8 Petitioners argued they have a right to observers having meaningful observation
9 under NRS 293B.353(1) and AB 4 sec. 25. NRS 293B.353(1) provides in relevant part,
10 "[t]he county . . . shall allow members of the general public to observe the counting of
11 the ballots" AB 4 sec. 25 provides in relevant part "[t]he counting procedure must
12 be public." The statutes do not use the modifier "meaningful."

13 The Nevada Legislature codified the right of the public to observe the ballot
14 counting procedure in NRS 293B.353 and 293B.354, and AB 4 section 25(1). NRS
15 293B.354(1) requires each county to annually submit a plan to the Secretary of State.
16 NRS 293B. 354(3) states the requirements of the plan. The statutory requirements of
17 the plan are very general. The legislature left to the election professionals, the Secretary
18 of State and the county elections officials, wide discretion in establishing the specifics of
19 the plan. Petitioners failed to prove either Secretary Cegavske or Registrar Gloria
20 exercised their discretion arbitrarily or through mere caprice.

21
22 The fact that Registrar failed to timely submit a plan was remedied by submitting
23 the plan late and the Secretary of State approving the plan.

24 Petitioners seem to request unlimited access to all areas of the ballot counting
25 area and observation of all information involved in the ballot counting process so they
26

1 can verify the validity of the ballot, creating in effect a second tier of ballot counters
2 and/or concurrent auditors of the ballot counting election workers. Petitioners failed to
3 cite any constitutional provision, statute, rule, or case that supports such a request. The
4 above-cited statutes created observers not counters, validators, or auditors. Allowing
5 such access creates a host of problems. Ballots and verification tools contain confidential
6 voter information that observers have not right to know. Creating a second tier of
7 counters, validators, or auditors would slow a process the Petitioners failed to prove is
8 flawed. The request if granted would result in an increase in the number of persons in
9 the ballot processing areas at a time when social distancing is so important because of
10 the COVID-19 pandemic.

11
12 Petitioners have failed to prove Registrar Gloria has interfered with any right they
13 or anyone else has as an observer.

14 Petitioners claim a right to have mail-in ballots and the envelopes the ballots are
15 mailed in to be kept in sequential order. Petitioners failed to cite Constitutional
16 provision, statute, rule, or case that creates a duty for Nevada registrars to keep ballots
17 and envelopes in sequential order. Because they failed to show a duty they cannot
18 prevail on a mandamus claim that requires proof a duty resulting from office. Because
19 there is no duty or right to sequential stacking the Court cannot mandate Registrar
20 Gloria to stack ballots and envelopes sequentially.

21
22 Because there is not right to sequential stacking the Court cannot mandate the use and
23 enjoyment of that "right."

24 Plaintiffs want the Court to mandate Registrar Gloria allow Petitioners to
25 photograph of videotape the ballot counting process. The legislature provided in NRS
26

1 293B.353(2) the procedure for photographing or videotaping the counting of ballots.

2 The county may photograph or videotape the counting and upon request provide a copy
3 of the photographs or videotapes.

4 Petitioners failed to cite any constitutional provision, statute, rule, or case that
5 gives the public the right to photograph or videotape ballot counting.

6 Petitioners failed to prove Secretary Cegavske or Registrar Gloria exercised her or
7 his discretion arbitrarily or through mere caprice in any manner. Therefore, the Court
8 cannot mandate Registrar Gloria to require sequential stacking of ballots and envelopes.
9

10 Petitioners requested the Court mandate Registrar Gloria provide additional
11 precautions to ensure the secrecy of ballots. Petitioners failed to prove that the secrecy
12 of any ballot was violated by anyone at any time. Petitioners failed to prove that the
13 procedures in place are inadequate to protect the secrecy of every ballot.

14 Petitioners also request the Court mandate Registrar Gloria stop using the Agilis
15 system. Petitioners failed to show any error or flaw in the Agilis results or any other
16 reason for such a mandate. Petitioners failed to show the use of Agilis caused or resulted
17 in any harm to any party, any voter, or any other person or organization. Petitioners
18 failed Registrar Gloria has a duty to stop using Agilis.
19

20 AB 4 passed by the legislature in August 2020 specifically authorized county
21 officials to process and count ballots by electronic means. AB 4, Sec. 22(2)(a).

22 Petitioners' argument that AB 4, Sec. 23(a) requires a clerk or employee check the
23 signature on a returned ballot means the check can only be done manually is meritless.
24 The ballot must certainly be checked but the statute does not prohibit the use of
25 electronic means to check the signature.
26

1
2 **Equal Protection**

3 There is no evidence that in-person voters are treated differently than mail-in
4 voters. All Nevada voters have the right to choose to vote in-person or by mail-in. Voting
5 in person and voting by mailing in the ballot are different and so the procedures differ.
6 Nothing the State or Clark County have done creates two different classes of voters.
7 Nothing the State or Clark County has done values one voter's vote over another's. There
8 is no evidence of debasement or dilution of a citizen's vote.
9
10

11
12 **CONCLUSIONS OF LAW**

13 Petitioners do not have standing to bring these claims.

14 Registrar Joseph P. Gloria has not failed to meet his statutory duty under NRS
15 293B.353(1) to allow members of the general public to observe the counting of ballots.

16 Registrar Gloria has not precluded Petitioners from the use and enjoyment of a
17 right to which Petitioners are entitled.

18 Registrar Gloria has not exercised discretion arbitrarily or through mere caprice.

19 Registrar Gloria has not acted without or in excess of authorized powers.

20 Secretary of State Barbara Cegavske has not failed to meet any statutory duty
21 under NRS 293B.353(1) to allow members of the general public to observe the counting
22 of ballots.

23 Secretary of State Barbara Cegavske has not unlawfully precluded Petitioners
24 from the use and enjoyment of a right to which Petitioners are entitled.

25 Secretary Cegavske has not exercised discretion arbitrarily or through mere
26 caprice.
27

1 Secretary Cegavske has not acted without or in excess of authorized powers.

2 Secretary of State Cegavske has not precluded Petitioners the use and/or
3 enjoyment of a right to which Petitioners are entitled.

4 Petitioners failed to prove they are entitled to a writ of mandamus on any of their
5 claims.

6
7 **ORDER**

8 The Petition for Writ of Mandamus or in the Alternative for Writ of Prohibition is
9 denied.
10

11 October 29, 2020.

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13 
14 _____
James E. Wilson, Jr.
District Judge
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CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 2 day of November 2020, I served a copy of this document by placing a true copy in an envelope addressed to:

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the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.


Billie Shadron
Judicial Assistant



Election Department

965 Trade Dr • Ste A • North Las Vegas NV 89030
Voter Registration (702) 455-8683 • Fax (702) 455-2793

Joseph Paul Gloria, Registrar of Voters
Lorena Portillo, Assistant Registrar of Voters

October 20, 2020

The Honorable Barbara K. Cegavske
Secretary of State
State of Nevada
101 N. Carson St., Suite 3
Carson City, Nevada 89701-4786

Attention: Wayne Thorley
Deputy Secretary of State for Elections

RE: Accommodation of Members of the General Public at Polling Places, Mail Ballot Processing, and at the Central Counting Place

Dear Secretary Cegavske:

In accordance with NRS 293B.354, I am forwarding to you the following guidelines which are provided to our polling place team leaders and our election staff to ensure we accommodate members of the general public who wish to observe activities within a polling place and/or at the central counting facilities.

Polling Places (Early Voting and Election Day)

Designated public viewing areas are established in each polling place, both early voting and Election Day vote centers, where individuals may quietly sit or stand and observe the activities within the polling place.

Observation guidelines:

- Observers may not wear or display political campaign items
- Observers may not photograph, or record by any other means, any activity at any early voting or Election Day polling place
- Use of cell phones is prohibited in the polling place
- Observers may not disrupt the voting process
- If observers have questions, they must direct them to the polling place team leader

Mail Ballot Processing (Warehouse & Flamingo-Greystone Facility)

The general public is allowed, according to the NRS, to observe the counting of mail ballots. In addition, as a courtesy, members of the general public are also being allowed to observe our mail ballot processing procedures, which occur prior to tabulation.

Due to space limitations we are processing our mail ballots in two different facilities:

- 965 Trade Dr., North Las Vegas, NV 89030
 - AGILIS mail ballot processing
 - Signature audit team
 - Tabulation
 - Ballot duplication
- 2030 E. Flamingo Road, Las Vegas, NV 89119
 - Counting Board
 - Ballot duplication

Observation guidelines:

- Observers may not wear or display political campaign items
- Observers may not photograph, or record by any other means, any activity at any early voting or Election Day polling place
- Use of cell phones is prohibited in the polling place
- Observers may not disrupt the voting process
- If observers have questions, they must direct them to the polling place team leader

Election Night (Warehouse Tabulating)

In front of our tabulation area an area is provided for any observer who wishes to observe our counting activity. Reports are provided after each update to the general public and are also available on our website for review. The general public may access the website through our free county wi-fi access on their personal devices should they choose to do so.

The public viewing area allows the general public to view the tabulation room, where the processing of election night results may be observed through windows that provide full view of all counting activity. Observers are not allowed inside the room because of congestion and COVID restrictions.

The Registrar is available to answer questions, although it should be noted that very few

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Secretary of State Barbara K. Cegavske

March 14, 2018

individuals from the public have been at the Election Center Warehouse on election night since 2000. This will probably be different this year due to increased interest in observing our activities.

In accordance with NRS 293B.354, at link provided here is a link to the vote center polling places that will be used in the General Election on November 3, 2020 in Clark County. <https://cms8.revize.com/revize/clarknv/Election%20Department/VC-Web-20G.pdf?t=1602940110601&t=1602940110601>. An electronic copy is also attached to the e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph P. Gloria". The signature is fluid and cursive, with a large initial "J" and a stylized "G".

Joseph P. Gloria
Registrar of Voters

Enclosures



OBSERVATION OF POLLING PLACE OR CLARK COUNTY ELECTION DEPARTMENT LOCATIONS ACKNOWLEDGEMENT

In accordance with NAC 293.245 (full text included in page 2):

I, VIRGINIA STEWART, by signing this form, hereby acknowledge that during the time I observe the conduct of voting or of any election related process, I am prohibited from the following activities:

1. Talking to voters or staff within the polling place or Election Department location;
2. Using any technical devices within the polling place or Election Department location;
3. Advocating for or against a candidate, political party or ballot question;
4. Arguing for or against or challenging any decisions of the county or city election personnel and;
5. Interfering with the conduct of voting or any election related process.

I further acknowledge that I may be removed from the polling place by the county or city clerk for violating any provisions of Title 24 of the Nevada Revised Statutes or any of the restrictions described herein.

Representing Group/Organization:

Republican Party

Contact Information:

6196568405

Signature:

[Signature]

Print Name:

VIRGINIA STEWART

Date:

10/27/20

Polling Place or Election Department Location:

TRAOB

October 21, 2020

Memo to Election Observers in the Greystone or County Election Department buildings:

Thank you for choosing to observe our voting process.

The department brought in additional staff to provide adequate supervision and security for observation areas. These staff, whom we call ambassadors, will accompany you while you are in our facilities.

Our ambassadors are not permanent Election Department employees and receive no training in our election processes, and so they are not able to accurately answer your questions about elections.

If you have any questions about the processes you are observing or other election-related questions, please inform the ambassador that you have a question for County Election Department officials. (The ambassador will create a list of questions from observers to relay to Election officials.) Or, you may choose to wait and pose their question to the Election official directly.

At this time, we plan to make Election Department officials available to observers around 9 a.m. and 3 p.m. daily to respond to any questions or concerns. These meetings will occur at both the Greystone and Election Department buildings

Thank you for our understanding.

Sincerely,

Joe Gloria

Clark County Registrar of Voters

BARBARA K. CEGAVSKE
Secretary of State

STATE OF NEVADA

SCOTT W. ANDERSON
Chief Deputy Secretary of State

MARK A. WLASCHIN
Deputy Secretary for Elections



**OFFICE OF THE
SECRETARY OF STATE**

October 22, 2020

Mr. Joe Gloria, Registrar of Voters
965 Trade Drive, Suite A
North Las Vegas, NV 89030-7802
jpg@ClarkCountyNV.gov
via Email

Re: Revision of Observation Plan

Mr. Gloria,

Over the last few days, a potential opportunity for improvement to your elections process observation plan have come to light that the Secretary of State believes to be worth considering. We have received Clark County's plan for accommodating election observers. In addition to the items detailed in your plan, we would request that you consider implementing the following:

Provide additional seating in the public viewing area for observing the signature verification process to the extent feasible while ensuring that no Personally Identifiable Information (PII) is observable to the public. This increase in seating should ensure meaningful observation.

If you have any questions regarding this letter and my determination in this matter, please contact me at (775) 684-5709.

Respectfully,

A handwritten signature in black ink that reads "Barbara K. Cegavske".

Barbara K. Cegavske
Secretary of State