



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 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 "B.R. Hardy". The signature is stylized with a large, looping initial "B" and "R", and a distinct "H" and "a" for "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)