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

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

Petitioners,

vs.

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

Respondents.

Case No.
Dept No.

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

24 Petitioners, Fred Kraus, Donald J. Trump for President, Inc. and the Nevada Republican
25 Party (herein "Petitioners"), by and through their attorneys, respectfully submits this Petition for
26 Writ of Mandamus, or in the Alternative, Writ of Prohibition (the "Petition") against Respondents
27 Barbara Cegavske (the "Secretary"), in her official capacity as Nevada Secretary of State; Joseph
28

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

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25
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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.

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