

**EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR CLARK COUNTY, STATE OF NEVADA**

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2
3 APRIL BECKER, as an individual, as a
4 Candidate for Senate District 6, and as a Voter
in Clark County, Nevada

Case No. A-20-824878-W
Dept. No.: 15

5 Plaintiff,

6 v.

7 JOSEPH P. GLORIA, in his official capacity
8 as Registrar of Voters for Clark County,
9 Nevada; CLARK COUNTY, a political
subdivision of the State of Nevada; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

10 Defendants,

11 and

12 DNC SERVICES
13 CORPORATION/DEMOCRATIC
14 NATIONAL COMMITTEE and NEVADA
STATE DEMOCRATIC PARTY,

15 Intervenor-
16 Defendants.

17 **ORDER**

18 Before the Court is Plaintiff April Becker's Petition for Writ of Mandamus and Complaint
19 for Declaratory and Injunctive Relief (the "Petition"). Plaintiff Becker seeks to void the election of
20 State Senator Nicole Cannizzaro and requests a new election (or "revote") for all elections in
21 Clark County, or alternatively, a revote in Nevada Senate District 6. The Court held a hearing to
22 address Plaintiff's Petition on November 24, 2020. Counsel for all parties were present. The Court
23 considered all of the papers filed by the parties and proposed Intervenor-Defendants and the files
24 and records in this matter and, after considering the parties' oral arguments, ruled from the bench.
25 This order codifies the Court's bench ruling.

26 The Court **GRANTS** the application of Kevin J. Hamilton to appear pro hac vice in this
27 matter. Mr. Hamilton is a lawyer admitted to practice before the Bar of the State of Washington,
28 has produced evidence of his good standing before that Bar, and has otherwise complied with

1 Nevada Supreme Court Rule 42.

2 The Court **GRANTS** the Motion to Intervene on behalf of the Nevada State Democratic
3 Party and the DNC Services Corporation/Democratic National Committee (“Intervenor-
4 Defendants”). The Court heard oral arguments on Intervenor-Defendants’ Motion to Intervene
5 from Intervenor-Defendants and Plaintiff. Defendants did not oppose intervention. The Court finds
6 that intervention as of right is warranted under Nevada Rule of Civil Procedure 24(a). Intervenor-
7 Defendants, which represent the Democratic Party at the state and national level, have a significant
8 and protectable interest in this litigation’s subject matter. Plaintiff’s request to hold a replacement
9 general election in Clark County threatens to disrupt the final certification of votes, which was
10 completed on November 24. Their interest is not adequately represented by the existing parties,
11 given that Defendants represent the interests of Clark County rather than any individual candidates
12 and affiliates of the Democratic party. Their motion to intervene was timely, having been filed just
13 two days after the Petition and before any substantive hearings were held in this case. Additionally
14 and alternatively, the Court finds that permissive intervention is warranted under Nevada Rule of
15 Civil Procedure 24(b). Intervenor-Defendants have defenses that share with the main action
16 common questions of law or fact, and their participation will cause no delay in proceedings or
17 otherwise be prejudicial. Intervention is therefore appropriate.

18 The Court **DENIES** the Petition and **DISMISSES** this case. In this action, Plaintiff seeks
19 a writ of mandamus or injunctive relief requiring a new election for Clark County in its entirety, or
20 in Senate District 6. The Court will not order such relief for the following reasons.

21 First, the Court lacks jurisdiction to hear this matter. Plaintiff’s complaint, although
22 characterized as a Petition for mandamus and complaint for declaratory and injunctive relief,
23 plainly is an attempt to state a claim for an election contest under NRS 293.407. The extraordinary
24 relief Plaintiff seeks here—the ordering of a revote for Clark County Senate District 6—is
25 available only through an election contest under NRS 293.410, which, if successful, empowers a
26 court to “annul[] or set aside” an election, NRS 293.417. Petitioner has cited no law that grants
27 this Court the broad power to invalidate an entire county’s election. A disappointed candidate
28 cannot plead around Nevada’s election contest procedures by characterizing his or her petition as

1 one merely seeking a writ of mandamus. As a result, this Court lacks jurisdiction to proceed, the
2 Petition must be denied, and the action dismissed.¹

3 Because this action was characterized as a mandamus and not properly characterized as an
4 election contest, a required party under Nevada Rule of Civil Procedure 19(a)(1) is missing: the
5 prevailing candidate, Senator Cannizzaro. In an election contest, Senator Cannizzaro would have
6 been listed as a defendant. In her absence, the Court cannot accord complete relief among existing
7 parties. NRCP 19(a)(1). To proceed properly, Senator Cannizzaro would also need to be before the
8 Court.

9 Second, and in the alternative, even if the Court had jurisdiction to entertain the Petition,
10 Plaintiff's claims fail on the merits. A writ of mandamus is available "to compel the performance
11 of an act which the law especially enjoins as a duty resulting from an office, trust or station." NRS
12 34.160. Plaintiff seeks a writ of mandamus compelling the Board of County Commissioners to
13 "order a new election as mandated under NRS 293.465." But the statute invoked by Plaintiff is not
14 applicable in this context. The statute states:

15 If an election is prevented in any precinct or district by reason of the *loss or*
16 *destruction of the ballots* intended for that precinct, or any other cause, the
17 appropriate election officers in that precinct or district shall make an affidavit
18 setting forth that fact and transmit it to the appropriate board of county
19 commissioners. Upon receipt of the affidavit and upon the application of any
candidate for any office to be voted for by the registered voters of that precinct or
district, the board of county commissioners shall order a new election in that
precinct or district.

20 NRS 293.465 (emphasis added). Here, no ballots have been "lost and destroyed" within the
21 meaning of NRS 293.465. Only one Nevada Supreme Court case, *LaPorta v. Broadbent*, 91 Nev.
22 27, 530 P.2d 1404 (1975), has applied NRS 293.465. In *LaPorta*, "ballots were absent" for the
23 precinct in question on election day "[f]or a period of approximately three hours" for two of the
24 candidates for office. *Id.* 91 Nev. at 28, 530 P.2d at 1405. *LaPorta* is entirely factually
25

26 ¹ The Court find that the Nevada Supreme Court's certification of the general election on
27 November 24 does not divest this Court of jurisdiction to hear the case. Rather, it's the statutory
28 scheme for election contests that deprives the Court of jurisdiction.

1 distinguishable from this case. *LaPorta* demonstrates that NRS 293.465 concerns instances where
2 ballots were “lost” due to their unavailability, or “destroyed.” Clearly, NRS 293.465 does not
3 apply where a losing candidate disagrees with the process (electronic or otherwise) through which
4 ballots were processed. *LaPorta* is therefore not binding precedent for the facts before the Court
5 here. NRS 293.465 is therefore inapplicable and unavailable as a means to seek relief here.

6 Plaintiff’s claims also fail because, even assuming the veracity of Plaintiff’s allegations for
7 the purposes of the motion to dismiss, AB 4 does not prohibit matching signatures by mechanical
8 or other electronic means. The Court in *Kraus v. Cegavske*, No. 20 OC 00142 1B, (Nev. 1st Jud.
9 Dist. Ct. Oct. 29, 2020), recently came to the same conclusion. Clark County’s use of the Agilis
10 machine is permitted (and, indeed, contemplated) by Nevada’s election laws. In passing AB 4, the
11 Nevada Legislature specifically authorized counties to adopt procedures that include the
12 processing and counting of mail ballots “by electronic means.” NRS 293.8871(2)(a) (emphasis
13 added). The Court finds that neither Register of Voters Joseph Gloria nor Clark County erred in
14 using the Agilis machine. Based on the record placed before the Court in the Petition, Plaintiff can
15 “prove no set of facts, which, if true, would entitle [her] to the relief” she seeks. *Buzz Stew, LLC v.*
16 *City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

17 Even if Plaintiff’s allegations properly invoked the jurisdiction of the court (they do not),
18 the proffered factual showing fails in all events to justify relief. Plaintiff’s burden to establish that
19 the Court must issue a writ of mandamus is “a heavy one.” *Poulos v. Eighth Judicial Dist. Court*
20 *of State of Nev. In & For Clark Cty.*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). “Mandamus
21 is an extraordinary remedy, and the decision as to whether a petition will be entertained lies within
22 the discretion of” the deciding court. *State ex rel. Dep’t of Transp. v. Thompson*, 99 Nev. 358, 360,
23 662 P.2d 1338, 1339 (1983); *Kussman v. Eighth Judicial Dist. Court In & For Clark Cty.*, 96 Nev.
24 544, 545, 612 P.2d 679 (1980). The evidence supporting Plaintiff’s claims do not come close to
25 meeting that heavy burden. Plaintiff’s allegations are largely based on declarations and newspaper
26 articles. The Court would necessarily need to disregard those declarations as inadmissible hearsay.
27 The Court finds that Plaintiff has offered no evidence sufficient to find any error on the part of
28 either Clark County or Registrar Gloria that would warrant granting the relief sought here. Finally,

1 Plaintiffs have put forth no evidence that any discrepancies in Senate District 6 would affect the
2 outcome of the election given that the margin was 631 votes.

3 **NOW THEREFORE**, the Court **GRANTS** the Motion to Appear Pro Hac Vice filed by
4 Kevin J. Hamilton, Esq.; **GRANTS** Intervenor-Defendants' Motion to Intervene; **GRANTS**
5 Intervenor-Defendants' Motion to Dismiss; **DENIES** Plaintiff's Petition; and **DISMISSES** this
6 case without prejudice to Plaintiff to seek relief under the appropriate statutory scheme.

7 DATED this ___ day of December, 2020.

Dated this 2nd day of December, 2020



8
9 HON. JOSEPH HARDY JR., DISTRICT COURT JUDGE

10 Submitted by:

11 Intervenor-Defendants, Nevada State Democratic Party and the DNC Services Corporation/Democratic National Committee
12 **698 DED C4B0 9A9E**
Joe Hardy
District Court Judge

13 By: /s/ Bradley S. Schrager

14 Bradley S. Schrager, Esq., SBN 10217
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24 **Appearing pro hac vice*

25 Plaintiff, April Becker

26 By: Did Not Respond

27 Craig A. Mueller, Esq., SBN 4703
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Defendant, Joseph P. Gloria

By: Did Not Respond

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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 April Becker, Plaintiff(s)

CASE NO: A-20-824878-W

7 vs.

DEPT. NO. Department 15

8 Joseph Gloria, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/2/2020

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