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10 *Attorneys for Petitioners*

11 **IN THE FIRST JUDICIAL DISTRICT COURT**
12 **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,

Case No.
Dept No.

16 **Petitioners,**

17 vs.

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

21 **Respondents.**

22 **APPLICATION FOR TEMPORARY RESTRAINING ORDER PENDING A**
23 **DETERMINATION ON APPLICANTS PETITION FOR WRIT OF MANDAMUS,**
24 **OR IN THE ALTERNATIVE, WRIT OF PROHIBITION**

25 Petitioners, Fred Kraus, Donald J. Trump for President, Inc. and the Nevada Republican
26 Party (herein "Petitioners"), by and through their attorneys, respectfully move this court under
27 Nevada Rule of Civil Procedure 65(b) for a temporary restraining order barring Respondents from
28 separating or counting ballots in Clark County until the proper procedures are in place that

1 facilitate transparency and allow for meaningful observation of the process by the public.
2 Respondents conduct has and will continue to inflict irreparable injury upon Petitioners and the
3 voters in the State of Nevada. This Court should issue immediate relief to protect the integrity of
4 the 2020 Election. This Application is based on the following Memorandum of Points and
5 Authorities and any oral argument this Court may allow.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 The Supreme Court of the United States long ago recognized that “sunlight,” as has so
9 often been observed, “is the most powerful of all disinfectants.” *N.Y. Times Co. v. Sullivan*, 376
10 U.S. 254, 305 (1964). Indeed, as courts have recognized “openness of the voting process helps
11 prevent election fraud, voter intimidation, and various other kinds of electoral evils.” *PG*
12 *Publishing Co. v. Aichele*, 705 F.3d 91 (3d Cir. 2013).

13 These lofty principles are reflected in the details of Nevada’s election laws. As Clark
14 County Registrar, Joseph Gloria was statutorily required to submit a “written plan for the
15 accommodation of members of the general public who observe the delivery, counting, handling
16 and processing of ballots at a polling place, receiving center or central counting place” by April
17 15, 2020. NRS 293B.354(1). Unlike every other election official in this state, however, Gloria
18 failed to comply with his statutory obligation to submit a plan by April 15, 2020. He compounded
19 his complete disregard for his statutory obligations when he refused to submit a compliant plan for
20 approval after the passing of Assembly Bill No. 4 (“AB4”). Rather, Gloria proceeded with the
21 election process, without submitting a plan as required by NRS 293B.354.

22 The result of the Registrar’s disregard for his statutory obligations is a total lack of
23 meaningful observation. Meaningful observation is a right expressly granted to the public under
24 NRS 293B.353(1), which mandates that the “county or city clerk *shall* allow members of the
25 general public to observe the counting of the ballots at the central counting place if those members
26 do not interfere with the counting of the ballots.” (Emphasis added). This right is also protected
27 by AB4, which makes clear “mail ballot central counting board may begin counting the received
28 mail ballots 15 days before the day of the election” and “[t]he counting procedure must be public.”

1 AB 4, § 25. Petitioners have evidence that Gloria is obstructing the observation process. Gloria
2 must accommodate meaningful observation to assure transparency and integrity in the election
3 process. Because he has refused to timely provide a plan to the Secretary for her approval, the
4 Petitioners have sought for this honorable Court to order the Secretary to issue an approved plan
5 for Clark County that assures immediate, meaningful observation and prohibit Clark County from
6 processing and counting ballots until proper procedures are in place to ensure transparency and
7 integrity in all parts of the process.

8 However, until the Petitioners can be heard on this matter, it is incumbent upon this Court
9 that the integrity of the ballot counting process in Clark County be preserved. Unfortunately,
10 despite the best efforts of the Petitioners, both the Secretary and Registrar have refused to act
11 absent a court order. Consequently, Petitioners are not only before this Court because of the issues
12 raised but also because of the unwillingness of these officials to act or compromise to assure
13 complete transparency in the election processes they are duty bound to protect.

14 **II. LEGAL STANDARD**

15 NRCP 65(b) provides that this “court may issue a temporary restraining order without
16 written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit
17 or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will
18 result to the movant before the adverse party can be heard in opposition; and (B) the movant’s
19 attorney certifies in writing any efforts made to give notice and the reasons why it should not be
20 required.” *Id.*; see also *Hamm v. Arrowcreek Homeowners’ Ass’n*, 124 Nev. 290, 297 n.15 (2008);
21 *Turner v. Saka*, 90 Nev. 54, 63 (1974).

22 Injunctive relief is normally available when the moving party can demonstrate that it has a
23 reasonable probability of success on the merits and that the nonmoving party’s conduct, if allowed
24 to continue, will cause irreparable harm for which compensatory relief is inadequate. *Univ. &*
25 *Cnty. Coll. Sys. of Nevada v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187
26 (2004); *Dangberg Holdings v. Douglas County*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999).
27 The question of whether to grant or deny a preliminary injunction is addressed to the sound
28 discretion of the district court. See *U. Sys.*, 120 Nev. at 721, 100 P.3d at 187. In this case, the

1 facts to support each element are present, justifying the requested exercise of this Court's
2 discretion.

3 Petitioners seek temporary injunctive relief until they can be heard on the ultimate issues
4 in this matter which seek to assure the integrity of the ballot counting process in Clark County.
5 Absent an injunction, Petitioners have no adequate remedy at law. As aptly stated by other courts
6 hearing such elections issues "none of the harm that [Respondents] will allegedly suffer from an
7 injunction rises to the same level as the harm that disenfranchised [voters] will suffer without an
8 order from this Court. ... it is axiomatic that there is no post hoc remedy for a violation of the right
9 to vote." *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1310 (N.D. Ga. 2018); *see also Fla.*
10 *Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1258 (N.D. Fla. 2016)(stating with respect to
11 elections "[t]his isn't golf: there are no mulligans."); *League of Women Voters of N. Carolina v.*
12 *North Carolina*, 769 F.3d 224, 247-48 (4th Cir. 2014)(affirming "once the election occurs, there
13 can be no do-over and no redress. The injury to these voters is real and completely irreparable if
14 nothing is done." Courts routinely deem restrictions on fundamental voting rights irreparable
15 injury. *See, e.g., Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir.2012); *Williams v. Salerno*,
16 792 F.2d 323, 326 (2d Cir.1986); *Alternative Political Parties v. Hooks*, 121 F.3d 876 (3d
17 Cir.1997); *United States v. City of Cambridge*, 799 F.2d 137, 140 (4th Cir.1986).

18 Based upon the forgoing, Petitioners submit that immediate injunctive relief is appropriate
19 until this Court has an opportunity to issue a determination on the pending writ petition.

20 **III. ARGUMENT**

21 In Nevada, before issuing injunctive relief, this Court must show: (i) a likelihood of success
22 on the merits; (ii) a reasonable probability of irreparable harm; (iii) the potential hardships to the
23 relative parties; (iv) and the public interest. *See U. Sys.*, 120 Nev. at 721, 100 P.3d at 187. Here,
24 Petitioners have a strong likelihood of success on the merits and the irreparable harm associated
25 with elections is well established in law. Moreover, there potential hardships associated with a
26 recount, the loss of public confidence in the election process and voter disenfranchisement strongly
27 favor Petitioners who seek to preserve the public interest.

28

1 **A. PETITIONERS ENJOY A STRONG LIKELIHOOD OF SUCCESS ON**
2 **THE MERITS**

3 There is a strong likelihood that Petitioners will prevail on the merits of their writ petition
4 given that the Registrar wholly failed to comply with his statutory obligations and refusal to allow
5 the public their statutory right to engage in the meaningful observation of the ballot counting
6 process.

7 **1. THE CLARK COUNTY REGISTRARS FAILURE TO COMPLY**
8 **WITH NEVADA LAW.**

9 No later than April 15, 2020, the Clark County Registrar was required to “submit to the
10 Secretary of State for approval a written plan for the accommodation of members of the general
11 public who observe the delivery, counting, handling and processing of ballots at a polling place,
12 receiving center or central counting place.” NRS 293B.354(1). Each plan must include:

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

22 NRS 293B.354(3).

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

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

27 Defendant Gloria has deemed certain areas where ballots are handled, reviewed, and evaluated for
28 validity restricted or off limits to observers.¹ One such area is the call center, which has been
 specifically deemed by Gloria as off limits. Another such area are the rooms dedicated to resolving

¹ See Declaration of Fred Kraus (“Kraus Dec.”), attached hereto as Exhibit 1 at ¶¶ 10, 20- 21.

1 ballot issues.² It is during these processes that ballots are most vulnerable to manipulation,
2 degradation, or improper rejection. Given that these ballot review processes are necessary in the
3 counting of ballots, observers must be allowed to observe. Simply put, the only way to assure
4 transparency in the process is to assure *all* parts of the process are subject to observation and
5 scrutiny.

6
7 2. *Observers engaging in meaningful observation.*³ Unfortunately, Gloria
8 has severely restricted election observers' freedom of movement, and has positioned observers in
9 such a manner that they cannot meaningfully observe. Observers are often restricted to locations
10 more than 25 feet away from certain processes, from which they cannot see the computer screens
11 or monitors of individual workers or observe calls made relative to the cure processes.⁴ Observers
12 have also noted that there are certain observation locations where only portions of the processing
13 of ballots can be observed.⁵ Moreover, observers are required to be with "ambassadors" at all
14 times. Unfortunately, there are not enough "ambassadors" to allow consistent and meaningful
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16
17 ² *Id.*

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

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

⁵ See Kraus Dec at. ¶17 (stating at ¶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." 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.")

1 observation of the entire process.⁶ Without meaningful observation, there cannot be any assurances
2 of transparency.

3
4 3. *Ensuring ballot secrecy.* Concerns have arisen amongst observers about
5 ensuring voters' ballots remain secret.⁷ AB4, Sec 16.(1)(c) requires that each active registered
6 voter receive an "envelope or sleeve into which the mail ballot is inserted to ensure its secrecy."
7 Unfortunately, it has been observed to be the policy and procedure of the Clark County Counting
8 Board that, immediately after a ballot has been opened, the board member who opened the
9 envelope reviews the ballot to see if it complies with law.⁸ Should the ballot be rejected, the ballot
10 is then placed back into the same envelope in which it was received. The result is that the board
11 member reviewing the ballot knows the identity of the voter who cast the ballot and can now
12 observe or even record how the individual voted.⁹ Moreover, if the ballot has a deficiency that
13 requires it to be duplicated by a board member, the envelope is often sent with the ballot to be
14 duplicated, resulting in yet another board member who can observe how the voter cast his or her
15 ballot.¹⁰ This procedure no longer assures the secrecy contemplated by AB4 and undermines the
16 American norm of ballot secrecy.¹¹ Moreover, if the staff member does not agree with how the
17 individual voted, this knowledge may become an incentive for the staff member to invalidate the
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21 _____
22 ⁶ See Thomas Dec. at ¶16; see also Kraus Dec at. ¶23.

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

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

25 ⁹ *Id.*

26 ¹⁰ See Thomas Dec. at ¶17

27 ¹¹ "Between 1888 and 1896, nearly every State adopted the secret ballot." *Minnesota Voters All. v. Mansky*,
28 138 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).

1 ballot, risking voter disenfranchisement.¹² Given these issues, a process must be implemented such
2 that, once received, a ballot cannot be placed back in its original envelope but should merely be
3 placed in “an envelope” as contemplated by AB4, Sec. 25-26.

4 4. **COVID-19 Concerns.** The Nevada Legislature called a special session to
5 enact AB4, citing COVID-19 as one of its primary concerns. Similarly, Gloria has limited the
6 access and number of observers permitted in Clark County facilities, citing similar COVID-19
7 concerns. In response to this concerns, the Petitioners reached out to Gloria and requested that he
8 allow the placement of cameras throughout the facility to afford the public the ability to observe
9 from the safety and security of alternate locations.¹³ In an effort to assure this was not a financial
10 burden on Clark County, the Petitioners offered to furnish or pay for the cameras, tripods, and
11 other equipment necessary to allow this alternative method for observation. Further, the Petitioners
12 offered to host the video feed on its servers and provide feed access to Clark County so they could
13 similarly monitor the process. This offer was wholly rejected despite the Governor, the Attorney
14 General, Clark County Commissioners, and numerous Clark County officials calling for everyone
15 to do their part to stop the spread of the COVID-19 virus. The Petitioners remain willing to do
16 their part and, at the same time, assure there is safe and meaningful observation of the ballot
17 counting process at no additional expense to Nevada voters.
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22 ¹² See Thomas Dec. at ¶18; see also Kraus Dec at. ¶28.

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 As noted above, Petitioners have attempted to resolve these issues with Gloria amicably
2 and directly to no avail. Additionally, Petitioners requested the Secretary implement an approved
3 plan in Clark County pursuant to NRS 293B.354(3) which: (1) allows observation of the entire
4 ballot counting process; (2) ensures meaningful observation; (3) affirms ballot secrecy; and (4)
5 accommodates the Petitioners request to place cameras so observation can be done in a safe and
6 secure manner. However, the Secretary of State has failed to implement any such plan.
7 Consequently, Gloria continues to operate without the approval of the statutorily required plan and
8 Petitioners enjoy a likelihood of success in obtaining relief from this Court mandating the
9 Secretary of State approve a plan in Clark County which: (1) allows observation of the entire ballot
10 counting process; (2) ensures meaningful observation; (3) affirms ballot secrecy; and (4)
11 accommodates the Petitioners request to place cameras so observation can be done in a safe and
12 secure manner.

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14
15 2. **NEVADA'S CHALLENGING STATUTE VIOLATES THE EQUAL**
16 **PROTECTION CLAUSE.**

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

21 A state shall not value one person's vote over that of another by arbitrary and disparate
22 treatment. *Bush v. Gore*, 531 U.S. 98, 104 (2000). Doing so violates the Equal Protection Clause
23 of the Fourteenth Amendment. "[T]he right of suffrage can be denied by a debasement or dilution
24 of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the
25 franchise." *Id.* at 105 (citing *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)); Voting procedures must
26 be "calculated to sustain the confidence that all citizens must have in the outcome of elections."
27 *Bush v. Gore*, 531 U.S. 98, 106 (2000); see *Charfauros v. Bd. of Elections*, 249 F.3d 941, 952, 954
28 (9th Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (July 6, 2001) ("voter election

1 challenge procedures” that “create[d] two classes of voters” “were flawed and . . . in danger of
2 violating the fundamental rights” of voters).

3 Even if this dissimilar treatment does not wholly prohibit any citizen’s free exercise of the
4 franchise, the dissimilar treatment does debase or dilute the right to vote of those voters who
5 choose to vote in person. By only subjecting in-person voters to this mechanism for challenge,
6 Nevada is giving those who vote absentee an arbitrary and backwards advantage over those who
7 vote in-person. The dissimilar treatment of these voters violates the Equal Protection Clause of the
8 Fourteenth Amendment. Therefore, Petitioners enjoy a likelihood of success in obtaining relief
9 from this Court mandating the two classes of voters—in person and mail-in— be treated equally
10 and equally subject to the same challenge procedure.

11 3. **CLARK COUNTY’S IMPROPER USE OF A MACHINE TO**
12 **AUTHENTICATE VOTERS VIOLATES THE EQUAL**
13 **PROTECTION CLAUSE.**

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

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

1 Because of Gloria’s unilateral and arbitrary decision to lower the tolerance on the Agilis,
2 he is making it harder for Clark County officials to catch improper or fraudulent mail in ballots as
3 opposed to the rest of Nevada. The result is two classes of voters: those whose signatures are
4 verified by Agilis and those whose signatures are being checked visually by election officials. This
5 two-tier system violates the fundamental rights of voters in Nevada. *See Bush, 531 U.S. at 104;*
6 *see also Charfauros v. Bd. of Elections, 249 F.3d at 952, 954.* Moreover, the failure of Gloria to
7 take reasonable measures to ensure the authenticity of voters in the most populous county in
8 Nevada may cast doubt on the accuracy of the election. *Id.* Petitioners enjoy a likelihood of success
9 in obtaining relief from this Court mandating the Registrar increase the tolerances of the Agilis to
10 those recommended by the manufacturer to assure all questionable signatures are verified visually
11 by election officials.

12 **B. PEITITIONERS WILL SUFFER IRREPARABLE HARM**

13 Here, Petitioners can show a high probability of injury absent judicial intervention. As
14 noted above, Petitioners seek temporary injunctive relief until they can be heard on the ultimate
15 issues in this matter which seek to assure the integrity of the ballot counting process in Clark
16 County. Absent an injunction, Petitioners have no adequate remedy at law. In addressing
17 elections issues courts are clear that “none of the harm that [Respondents] will allegedly suffer
18 from an injunction rises to the same level as the harm that disenfranchised [voters] will suffer
19 without an order from this Court. ... it is axiomatic that there is no post hoc remedy for a violation
20 of the right to vote.” *Martin, 347 F. Supp. 3d 1310; see also Fla. Democratic Party, 215 F. Supp.*
21 *3d 1258* (stating with respect to elections “[t]his isn’t golf: there are no mulligans.”); *League of*
22 *Women Voters of N. Carolina, 769 F.3d at 247–48*(affirming “once the election occurs, there can
23 be no do-over and no redress. The injury to these voters is real and completely irreparable if
24 nothing is done.” In fact, courts routinely deem restrictions on fundamental voting rights as
25 irreparable injury. *See, e.g., Obama for Am. v. Husted, 697 F.3d 423, 436* (6th Cir.2012); *Williams*
26 *v. Salerno, 792 F.2d 323, 326* (2d Cir.1986); *Alternative Political Parties v. Hooks, 121 F.3d 876*
27 *(3d Cir.1997); United States v. City of Cambridge, 799 F.2d 137, 140* (4th Cir.1986).

1 Moreover, “[i]t is well established that the deprivation of constitutional rights
2 ‘unquestionably constitutes irreparable injury.’ *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
3 2012)(citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976). Courts
4 have long recognized that restrictions on the right to vote fall into that category. *League of Women*
5 *Voters of N. Carolina*, 769 F.3d at 247; *Obama for Am.*, 697 F.3d at 436; *Hooks*, 121 F.3d 876;
6 *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986). These cases all recognize the indisputable
7 fact that, “once the election occurs, there can be no do-over and no redress.” *League of Women*
8 *Voters of N. Carolina*, 769 F.3d at 247. The instant case is no different. As discussed, the Registrar
9 and Secretary’s conduct are likely to cause Petitioners, their members and thousands of other
10 Nevada and Clark County citizens irreparable harm. *See Crawford v. Marion Cty. Election Bd.*,
11 472 F.3d 949, 951 (7th Cir. 2007), *affd*, 553 U.S. 181, 128 S. Ct. 1610, 170 L. Ed. 2d 574
12 (2008)(citing *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 573–74 (6th
13 Cir.2004); *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 343, 97 S.Ct. 2434,
14 53 L.Ed.2d 383 (1977) concluding [t]he Democratic Party also has standing to assert the rights of
15 those of its members).

16 **C. THE BALANCE OF THE EQUITIES FAVORS PETITIONERS’ FAVOR**

17 The balance of the equities also tips strongly in favor of issuing the requested injunction.
18 *See Ariz. Dream Act Coal. v. Brewer*, 818 F.3d 901, 920 (9th Cir. 2016) (“The public interest and
19 the balance of the equities favor ‘prevent[ing] the violation of a party’s constitutional rights.’”)
20 (quoting *Melendres I*, 695 F.3d. at 1002). While Respondents may incur some administrative or
21 financial costs as a result, any such costs are far outweighed by the constitutional injury that
22 Petitioners, their members and constituents, and thousands of other Nevada and Clark County
23 voters are likely to suffer absent an injunction. *See, e.g., Taylor v. La.*, 419 U.S. 522, 535 (1975)
24 (holding “administrative convenience” cannot justify practices that impinge upon fundamental
25 rights); *Johnson v. Halifax Cty.*, 594 F. Supp 161, 171 (E.D.N.C. 1984) (“administrative and
26 financial burdens on the defendant ... are not ... undue in view of the otherwise irreparable harm to
27 be incurred by plaintiffs”). Here, simply holding off on the counting of ballots until a
28 determination can be reached on the merits of the pending petitions is no real burden. Ballots need

1 not be counted until election day and, given the provisions of AB4, are even counted for days after
2 election day. However, if ballots are counted without meaningful observation, then they are likely
3 subject to challenge and a recount will ultimately be the result anyway.

4 **D. THE PUBLIC INTEREST FAVORS THE ISSUANCE OF INJUNCTIVE**
5 **RELEIF.**

6 “[I]t is always in the public interest to prevent the violation of a party's constitutional
7 rights.” *Melendres I*, 695 F.3d at 1002. It is equally well established that “[t]he public has a ‘strong
8 interest in exercising the fundamental political right to vote.’” *League of Women Voters of N.*
9 *Carolina*, 769 F.3d at 248 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006)). If not enjoined,
10 the County's practices are highly likely to directly interfere with the fundamental right to vote of
11 thousands of Clark County, Nevada citizens, including Petitioners and their core constituencies
12 and in the process decreasing the public’s trust in the voting process. Simply put, the public has a
13 statutory right to meaningful observation and by obscuring this right the results of the coming
14 election will be highly suspect. Accordingly, the public interest strongly weighs in favor of issuing
15 injunctive relief.

16 **IV. CONCLUSION**

17 Gloria’s complete failure to timely submit an election plan as required by Nevada law and
18 further refusal to work with Petitioners to assure meaningful and safe observation of the process
19 is unprecedented. There is a strong public interest in this case and as the election is upon us and
20 ballot processing has already begun, no adequate remedy exists for Petitioners to seek relief other
21 than to request the Court’s assistance by way of a Petition for Writ of Mandamus or Writ of
22 Prohibition. Unfortunately, the Petitioners and Nevada voters will suffer irreparable harm until the
23 writ petition can be heard unless immediate injunctive relief is granted.

24 As such, Petitioners request that the Court prohibit Gloria and Clark County from
25 processing and counting ballots until the proper procedures are in place.


26 Dated this 23 day of October, 2020.

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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, APPLICATION FOR TEMPORARY RESTRAINING ORDER PENDING A DETERMINATION ON APPLICANTS 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

By 

Brian R. Hardy, Esq.
Nevada Bar No. 10068
Susan E. Gillespie, Esq.
Nevada Bar No. 15227
10001 Park Run Drive
Las Vegas, Nevada 89145

The O'Mara Law Firm, P.C.
David O'Mara, Esq.
Nevada Bar No. 8599
311 E. Liberty Street
Reno, Nevada 89501

Attorneys for Petitioners

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

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 to 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

- 1 14. On Saturday, October, 17, 2020, I returned to the Clark County facility located at
2 2060 E. Flamingo Road, Las Vegas, NV 89119 to observe mail ballot processing.
- 3 15. I was allowed to observe in the same confined area as the previous days.
- 4 16. There were 32 tables for ballot examiners. Of which, I was only able to see 24 of
5 the tables from a distance with all but a few located at a distance such that I could not engage in
6 meaningful observation.
- 7 17. Notably, I could only hear what was being discussed at the few tables closest to me.
8 There were also 7 duplicator tables which were not visible from my designated area.
- 9 18. On Tuesday October 20, 2020, I went to a Clark County facility located at 965
10 Trade Dr., North Las Vegas, NV 89030.
- 11 19. I observed the scanning/tabulation of ballots in the scanning room. The scanning
12 room is an enclosed area with two sections. The section closest to the observation area has a glass
13 window and the scanning operation takes place in that room. That room is connected to a back
14 room which has a glass wall facing the observers.
- 15 20. It was impossible for me to determine what processes were happening in the back
16 room because the designated area for observers was too far away.
- 17 21. I was shown two offices which were dedicated to resolving rejected ballot issues.
18 These offices were referred to as the Freedom Room and the Liberty Room. The Freedom Room
19 was staffed, but I was not allowed to enter or observe.
- 20 22. The Liberty Room was not staffed and I was not allowed to enter.
- 21 23. During my observation, I was required to be with ambassadors or minders at all
22 times. Unfortunately, there are not enough ambassadors to allow for more than a few observers
23 and the function of the ambassadors or minders is to make sure we were only able to observe
24 operations from specified locations, which would not permit a consistent and meaningful
25 observation of the entire process.
- 26 24. I was told by one of my ambassadors or minders at the East Flamingo location that
27 the only function performed there was an examination of ballots to see if the ballots were damaged,
28 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.

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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.

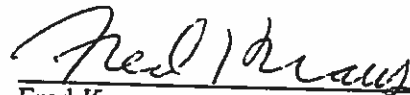

Fred Kraus

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.

- 1 12. The observation I was allowed to do was meaningless because I could not see the
2 process in its entirety and my ambassador could not answer some of my questions.
- 3 13. On Monday, October 19, 2020, I was also observing the verification stations at the
4 same Clark County location. The observation area for the verification station is partitioned away
5 from the station with plexiglass. The computer screens in the verification station are too far away
6 from observers to have meaningful observation and the observers cannot hear the telephone calls
7 being made.
- 8 14. On Wednesday, October 21, 2020 I returned to the Clark County facility located at
9 965 Trade Dr., North Las Vegas, NV 89030 to observe mail ballot processing.
- 10 15. As part of my observation, I observed ballot counting in a room with a wall of
11 windows, like a fishbowl. I was stationed outside of the room looking in through the windows.
12 Each station in the room has a computer monitor and terminal. As an observer, while I could
13 identify an error message appear on the monitors, I was unable to read what the error was because
14 the observation area was too far away.
- 15 16. During my observation, I was required to be with ambassadors at all times.
16 Unfortunately, there are not enough ambassadors to allow consistent and meaningful observation
17 of the entire process.
- 18 17. It was my observation that after a ballot has been opened, the staff member who
19 opened the envelope reviews the ballot. I am informed and observed that if a ballot is rejected, the
20 ballot is then placed back into the same envelope in which it was received. The result is that the
21 board member reviewing the ballot knows the identity of the voter who cast the ballot and can now
22 observe or even record how the individual voted. Moreover, I am informed that if the ballot has a
23 deficiency that requires it to be duplicated by another staff member, the envelope is sent with the
24 ballot to be duplicated, resulting in yet another staff member observe how the voter cast their
25 ballot.
- 26 18. This process is concerning because it does not ensure ballot secrecy and if the staff
27 member does not agree with how the individual voted, this knowledge may become an incentive
28 for the staff member to invalidate the ballot, risking voter disenfranchisement.

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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 22nd day of October, 2020.



Robert E. Thomas III

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]

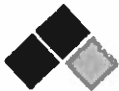
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Mary-Anne

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
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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



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Martindale-Hubbell



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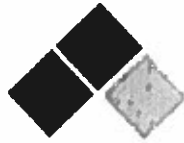
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EXHIBIT 4

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
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 part of the American tradition." *Burson v. Freeman*, 504 U.S. 191, 214 (1992) (Scalia, J., concurring).

Secretary of State
October 20, 2020
Page 4

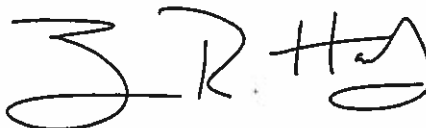
County staff member does not agree with how the individual voted, this knowledge may become an incentive for the staff member to invalidate the ballot, risking voter disenfranchisement. Given these issues, we would ask that your office issue a clarification notice to Clark County (and all counties) that, 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 initial "B" and "R" and a cursive "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)