

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

JIM MARCHANT, as an individual, as a
Nevada Fourth Congressional District
Representative, and as a Voter in Clark
County, Nevada,

Case No. A-20-824878-W
Dept. No.: 26

Plaintiff,

v.

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

Defendants,

and

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

Intervenor-
Defendants.

ORDER

Before the Court is Plaintiff Jim Marchant's Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief (the "Petition"). The Court held a hearing to address Plaintiff's Petition on November 20, 2020. Counsel for all parties were present. The Court has considered all of the papers filed by the parties and proposed Intervenor-Defendants and the files and records in this matter and, after considering the parties' oral arguments, rules as follows.

The Court **GRANTS** the application of Kevin J. Hamilton to appear pro hac vice in this matter. Mr. Hamilton is a lawyer admitted to practice before the Bar of the State of Washington, has produced evidence of his good standing before that Bar, and has otherwise complied with Nevada Supreme Court Rule 42.

1 The Court **GRANTS** the Motion to Intervene on behalf of the Nevada State Democratic
2 Party and the DNC Services Corporation/Democratic National Committee (“Intervenor-
3 Defendants”). The Court heard oral arguments on Intervenor-Defendants’ Motion to Intervene
4 from Intervenor-Defendants and Plaintiff. Defendants did not oppose intervention. The Court finds
5 that permissive intervention under Nevada Rule of Civil Procedure 24(b) is warranted. Intervenor-
6 Defendants’ motion was timely, having been filed just two days after the Petition and before any
7 substantive hearings were held in this case. Intervenor-Defendants, which represent the
8 Democratic Party at the state and national level, are appropriate parties to represent the interests of
9 Representative Horsford and have defenses that share with the main action common questions of
10 law or fact. Their intervention is therefore appropriate.

11 The Court **DENIES** the Petition and **DISMISSES** this case. In this action, Plaintiff seeks
12 a writ of mandamus or injunctive relief requiring a new election for Nevada’s Fourth
13 Congressional District in Clark County. The Court will not order such relief for the following
14 reasons.

15 First, the Court lacks jurisdiction to hear the case. Plaintiff’s complaint, although
16 characterized as a petition for mandamus and complaint for declaratory and injunctive relief,
17 plainly is an attempt to state a claim for an election contest under NRS 293.407. The extraordinary
18 relief Plaintiff seeks here—the ordering of a “new election” (or “revote”) for Nevada’s Fourth
19 Congressional District in Clark County—is available only through an election contest under NRS
20 293.407, which, if successful, empowers a court to “annul[] or set aside” an election, NRS
21 293.417. Nevada’s election contest statute, however, explicitly excludes federal legislative
22 elections from its scope. NRS 293.407 (“A candidate at any election . . . may contest the election
23 of any candidate, *except for the office of United States Senator or Representative of Congress.*”) (emphasis added). The statute reflects the Nevada Legislature’s considered decision to carve out
24 election contests over federal legislative elections, and thus this Court cannot entertain this action
25 regardless of how it is characterized. Given the clarity of the statutory language, a disappointed
26 federal candidate cannot plead around the explicit statutory exclusion contained in NRS 293.407
27 by characterizing his or her petition as one merely seeking a writ of mandamus. As a result, this
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1 Court lacks jurisdiction to proceed, the Petition must be denied, and the action dismissed.

2 Second, even if the Court had jurisdiction to entertain the Petition, the matter fails on the
3 merits. A writ of mandamus is available “to compel the performance of an act which the law
4 especially enjoins as a duty resulting from an office, trust or station.” NRS 34.160. Plaintiff seeks
5 a writ of mandamus compelling the Board of County Commissioners to “order a new election as
6 mandated under NRS 293.495.” But the statute invoked by Plaintiff is not applicable in this
7 context. The statute states:

8 If an election is prevented in any precinct or district by reason of the *loss or*
9 *destruction of the ballots* intended for that precinct, or any other cause, the
10 appropriate election officers in that precinct or district shall make an affidavit
11 setting forth that fact and transmit it to the appropriate board of county
12 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.

13 NRS 293.465 (emphasis added). Here, no ballots have been “lost and destroyed” within the
14 meaning of NRS 293.465. *See LaPorta v. Broadbent*, 91 Nev. 27 (1975) (applying NRS 293.465
15 where “ballots were absent” for the precinct in question on election day “[f]or a period of
16 approximately three hours” for two of the candidates for office). NRS 293.465 is therefore
17 inapplicable to the facts pled in the Petition and unavailable as a means to seek relief here.

18 Third, this Court finds that even if it had jurisdiction to hear this case, which it does not,
19 the Court would be unable to fashion the remedy sought in the Petition. Plaintiff seeks a new
20 election in Clark County alone, just one of seven counties that comprise the congressional district
21 for which he sought office. Plaintiff’s margin of defeat in Clark County is more than 33,000 votes,
22 which the Court finds to be an insurmountable deficit to overcome on the facts before it. Based on
23 the record placed before the Court in the Petition, Plaintiff can “prove no set of facts, which, if
24 true, would entitle [him] to the relief” he seeks. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev.
25 224, 228, 181 P.3d 670, 672 (2008).

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NOW THEREFORE, the Court **GRANTS** the Motion to Appear Pro Hac Vice filed by Kevin J. Hamilton, Esq.; **GRANTS** Intervenor Defendants’ Motion to Intervene; **DENIES** Plaintiff’s Petition; and **DISMISSES** this case.

DATED this ____ day of November, 2020.

Dated this 23rd day of November, 2020



DISTRICT COURT JUDGE

03A D84 4140 C30C
Gloria Sturman
District Court Judge

Submitted by:
Intervenor-Defendants
Nevada State Democratic Party and the DNC Services Corporation/Democratic National Committee

By: /s/ Bradley Schrager
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**Appearing pro hac vice*

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Jim Marchant, Plaintiff(s)

CASE NO: A-20-824884-W

7 vs.

DEPT. NO. Department 26

8 Joseph Gloria, Defendant(s)

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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: 11/23/2020

15 Bradley Schrager	bschrager@wrslawyers.com
16 Dannielle Fresquez	dfresquez@wrslawyers.com
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22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 11/24/2020

26 Bradley Schrager	Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
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Steven Wolfson

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