

1 **DAO**

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3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**
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7 Daniel Rodimer, as an individual, as a
8 Candidate for the State of Nevada
9 Congressional District 3, and as a Voter in
Clark County

10 Plaintiff/Petitioner,

11 v.

12 Joseph P. Gloria, in his official capacity as
13 Registrar of Voters for Clark County, Nevada;
14 Clark County Board of Commissioners, a
15 local government entity and political
subdivision of the State of Nevada.

16 Defendant/Petitioner.

CASE NO. A-20-825130-W

DEPT NO. 8

17 **DECISION AND ORDER**

18 **I. Factual Background and Procedural History**

19
20 The subject matter arises from the November 3, 2020 general election for Nevada's
21 Third Congressional District wherein United States Congressional Representative Susie
22 Lee defeated Petitioner, Dan Rodimer, (hereinafter, the "Petitioner").

23 Due to alleged voting discrepancies, the Clark County Board of Commissioners on
24 November 16, 2020 ordered a new election in Clark County Commission C, which partly
25 lies in Congressional District 3. The Clark County Commissioners however refused to
26 order a new election in Congressional District 3. Petitioner filed the instant Petition for
27 Writ of Mandamus and Complaint for Declaratory and Injunctive Relief Pursuant to NRS
28 293.465 and NRS 30.030 seeking among other remedies, an order to "compel the Board
of County Commissioners to order a revote in Clark County." Petitioner asserts
Defendant Joe Gloria, ("hereinafter, "Gloria"), violated NRS 293D.200 due to the use of a
signature verification machine identified as Agilis Ballot Sorting system, to verify mail in
ballot signatures in lieu of election personnel. Additionally, Petitioner asserted the

1 integrity of the Nevada 2020 General Election was compromised due to irregularities,
2 double voting, lack of verification of mail ballots, and the destruction of the secrecy of
3 voter ballots.¹

4 The Nevada State Democratic Party filed a motion seeking to intervene, which was
5 subsequently granted. Additionally, the Nevada State Democratic Party filed a Motion to
6 Dismiss Petitioner's Petition arguing this Court lacks subject matter jurisdiction to
7 entertain the Petition pursuant to NRS 293.407(1) which excludes "the office of United
8 States Senator or Representative in Congress" from its ambit. Additionally, the Nevada
9 State Democratic Party contends that even if this Court has jurisdiction to entertain the
10 Petition, the matter fails on the merits as NRS 293.465 is inapplicable.²

11 The hearing for the Petition was originally set for November 24, 2020 at 1:30 p.m.;
12 however, counsel for Petitioner at this hearing requested a one day continuance to that
13 his office could have the opportunity to file an opposition to the motion to dismiss. This
14 one day continuance was granted by the court with the acquiescence of counsel for the
15 other parties. Thereafter, The Clark County Board of Commissioners and Gloria filed a
16 Joinder to the Nevada State Democratic Party's Motion to Dismiss, whereas Petitioner
17 filed an opposition to the motion to dismiss.

18 This Court entertained oral argument on behalf of the parties on November 25, 2020
19 after having the opportunity to review all pleadings and papers filed in connection with
20 the matter

21 **II. Issues Before the Court**

- 22 1. Does this Court have jurisdiction to consider Petitioner's Petition for Writ of
23 Mandamus?
- 24 2. Is NRS 293.465 applicable to the instant matter?

25 **III. Findings of Fact and Conclusions of Law**

26 **A. Jurisdiction**

27 The Nevada Supreme Court held "The constitutional provision precludes a state court
28 from judging an election contest involving a congressional office."³ Further, NRS
293.407(1) provides that "A candidate at any election, or any registered voter of the
appropriate political subdivision, may contest the election of any candidate, *except* for
the office of United States Senator or Representative in Congress."

Here, Petitioner is contesting the results of the U.S. Representative in Congress, District
3. Petitioner's argument that he is challenging the improper method used to verify the
signatures on absentee ballots and not a direct challenge to the election pursuant to

¹ These facts are drawn from the information set forth in the Petitioner's Petition for Writ of Mandamus.

² These facts are drawn from the information set forth in Intervenor Nevada State Democratic Party's Motion to Dismiss.

³ *Laxalt v. Cannon*, 80 Nev. 588, 591, 397 P.2d 466, 467 (1964).

1 NRS 293.407(1) is a distinction without a difference.⁴ The extraordinary relief plaintiff
2 seeks is available only through an election contest under NRS 293.407(1). However,
3 NRS 293.407(1) excludes federal legislative elections from its scope. Given this
4 candidate race involves that of a U.S. Representative in Congress, the appropriate
5 jurisdiction is not a Nevada state court. Accordingly, this Court lacks the requisite
6 jurisdiction to entertain Petitioner’s Petition, and as such the Petition must be denied,
7 and the action dismissed.

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B. Applicability of NRS 293.465

NRS 293.465 provides

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

The Nevada Supreme Court discussed applicability of NRS 293.465 in *LaPorta v. Broadbent*, 91 Nev. 27 (1975). In *LaPorta*, ballots were unavailable to voters for three hours because a ballot became stuck in the voting apparatus and the mechanism had to be replaced. The mechanism failed to include the names of the State Assembly District 22 candidates; instead a list of candidates that belonged to another precinct was included. The Nevada Supreme Court held “NRS 293.465 is unequivocal on the subject of a faulty election when the ballots are unavailable. If an election is prevented as it was here by absence of ballots the statute specifically states that the county commissioners shall order a new election in the precinct where the ballots were absent.”

Even if the Court had subject matter jurisdiction, Petitioner’s Petition fails as a matter of law. Here, NRS 293.465, relied upon by Petitioner, is inapplicable in the given that it deals with prevention of elections. However, no ballots were “lost or destroyed” within the meaning of NRS 293.465 in the general election. The instant matter is distinguishable from *LaPorta* because the general election was not prevented as the ballots were available and counted. Further, the general election was not prevented by the absence of ballots. Therefore, NRS 293.465 is inapplicable to the instant matter and unavailable as a means to seek the sought after relief.

⁴ This Court also considered Petitioner’s argument in his opposition to the Nevada State Democratic Party’s Motion to Dismiss that “the ballots in question did not simply contain the names of candidates for United States Senator or Representative in Congress; rather, the ballots contained the names of all the candidates in all other race.” However the Court found this assertion unpersuasive given Petitioner, a candidate for U.S. Congress is seeking the relief sought and such relief is expressly impermissible under NRS 293.407(1).

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ORDER

The Court having reviewed all pleadings and papers on file herein and entertained oral argument on behalf of the parties, hereby GRANTS Intervenor's Motion to Dismiss; DENIES Petitioner Rodimer's Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief; and DISMISSES this case.

Dated this 25th day of November, 2020

Dated: November 25, 2020.



Trevor L. Atkin
District Court Judge, Dept.8
24A 30E 878D 08EB
Trevor Atkin
District Court Judge

Certificate of Service

I hereby certify that on the date filed, a copy of this Order was electronically served on all parties registered through the Eighth Judicial District Court EFP system or mailed to any party or attorney not registered with the EFT system.

/s/ Lynne Lerner
Lynne Lerner
Judicial Executive Assistant

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Daniel Rodimer, Plaintiff(s) | CASE NO: A-20-825130-W
7 vs. | DEPT. NO. Department 8
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: 11/25/2020

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25 If indicated below, a copy of the above mentioned filings were also served by mail
26 via United States Postal Service, postage prepaid, to the parties listed below at their last
27 known addresses on 11/30/2020
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