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9 *Counsel for Plaintiffs Jill Stokke, Chris Prudhome,*  
10 *Marchant for Congress, Rodimer for Congress*

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 JILL STOKKE, an individual, CHRIS )  
14 PRUDHOME, an individual, )  
15 MARCHANT FOR CONGRESS, )  
16 RODIMER FOR CONGRESS, )  
17 Plaintiffs, )

Case No. 2:20-cv-02046

18 v. )

19 **PLAINTIFFS’ EMERGENCY MOTION**  
20 **FOR TEMPORARY RESTRAINING**  
21 **ORDER AND PRELIMINARY**  
22 **INJUNCTION**

23 SECRETARY OF STATE BARBARA )  
24 CEGAVSKE, in her official capacity, and )  
25 CLARK COUNTY REGISTRAR OF )  
26 VOTERS JOSEPH P. GLORIA, in his )  
27 official capacity, CLARK COUNTY )  
28 ELECTION BOARD, )  
Defendants. )

19 Plaintiffs Jill Stokke, Chris Prudhome, Marchant for Congress, Rodimer for Congress,  
20 through their undersigned counsel, respectfully move this Court, on an emergency basis, under  
21 Federal Rule of Civil Procedure 65 for a temporary restraining order and preliminary injunction  
22 barring Defendants from violating Nevada Law and the Elections Clauses and the Equal Protection  
23 Clause of the U.S. Constitution. Defendants’ conduct has inflicted, and continues to inflict,  
24 irreparable injury upon Plaintiffs. This Court should issue immediate relief to protect both Plaintiffs  
25 and the integrity of the 2020 general election. Plaintiffs respectfully request that this Court issue a  
26 temporary restraining order and preliminary injunction to enjoin Defendants from continuing to

1 violate Nev. Rev. Statutes 293.8874, 293.363(1), 293.8881(1), the U.S. Const., art. I, § 4, cl. 1 and  
2 amend. XIV, § 1.

3 **DECLARATION OF DAVID O'MARA, ESQ. IN SUPPORT OF**  
4 **EMERGENCY MOTION AND REQUESTS OF EXPEDITED HEARING**

5 I, David O'Mara, Esq., make the following Declaration in support of the instant Emergency  
6 Motion of Plaintiffs Jill Stokke and Chris Prudhome for a Temporary Restraining Order and  
7 Preliminary Injunction pursuant to LR 7-4 and Request for Expedited Hearing pursuant to Fed. R.  
8 Civ. P. 65 and LR 6-1:

9 1. I am competent to testify to the matter asserted herein, of which I have personal  
10 knowledge, except as to those matters stated upon information and belief. As to those matters stated  
11 upon information and belief, I believe them to be true.

12 2. I am counsel of record for Plaintiff Jill Stokke and Chris Prudhome in the instant  
13 action.

14 **Nature of the Emergency**

15 3. The 2020 general election is currently in progress.

16 4. As set forth in the Complaint and the Declaration of Jill Stokke, on November 3,  
17 2020, Plaintiff Stokke attempted to vote in person in Clark County, Nevada. She was not allowed to  
18 vote because, according to election officials, she had already cast a mail ballot. Plaintiff Stokke had  
19 not, in fact, cast any such mail ballot.

20 5. On information and belief, it was Clark County's use of Agilis signature-verification  
21 software that allowed Plaintiff Stokke's mail ballot, which she had not signed, to be accepted and  
22 counted in the Election.

23 6. On information and belief, Clark County is the only county in Nevada that uses the  
24 Agilis system and the only county in Nevada that does not verify signatures on mail ballots in  
25 person.

1           7.       Nev. Rev. Stat. § 293.8874(1), as enacted in Assembly Bill 4, Sec. 23, 32nd Special  
2 Session (Nev. 2020), requires “the clerk or an employee in the office of the clerk shall check the  
3 signature used for the mail ballot in accordance with” detailed procedures.

4           8.       On information and belief, by utilizing the Agilis software system for verifying  
5 Defendants have violated the Elections Clause by usurping the Nevada Legislature’s constitutional  
6 authority to set the manner of elections. In particular, by using the Agilis software system instead of  
7 matching signatures in person, Defendants have ignored the requirement in Nev. Rev. Stat. §  
8 293.8873(1), as enacted under Assembly Bill 4, Sec. 23, 32nd Special Session (Nev. 2020), that “the  
9 clerk or an employee in the office of the clerk shall check the signature used for the mail ballot” as  
10 well as the procedures by which the clerk or employee must do so.

11           9.       As set forth in the Complaint and the Declaration of Chris Prudhome, he is a  
12 credentialed member of the media who, as a member of the media, attempted to observe the counting  
13 of ballots in the Election in Clark County. On November 4, 2020, at approximately 12:45 a.m.,  
14 Plaintiff Prudhome tried to observe ballot counting at the Clark County Election office located at 965  
15 Trade Drive, Las Vegas, Nevada 89030. Election officials tried to deny him entry to the office. A  
16 few minutes later, Defendant Gloria told Plaintiff Prudhome counting was complete for the evening  
17 and instructed him to leave. Moreover, while Plaintiff Prudhome was allowed to observe, the screens  
18 through which he would have watched were all turned off and faced away from him. When Plaintiff  
19 Prudhome inquired into these conditions, election officials asked law enforcement to remove him  
20 from the building.

21           10.      Nev. Rev. Stat. § 293.8881, as enacted in Assembly Bill 4, Sec. 4, 32nd Special  
22 Session (Nev. 2020) provides, “For any affected election, the mail ballot central counting board may  
23 begin counting the received mail ballots 15 days before the day of the election. The board must  
24 complete the count of all mail ballots on or before the ninth day following the election. The counting  
25 procedure must be public.”

26  
27  
28

1 11. Nev. Rev. Stat. § 293.363 provides that for in-person ballots, “[w]hen the polls are  
2 closed, the counting board shall prepare to count the ballots voted. The counting procedure must be  
3 public and continue without adjournment until completed.”

4 12. Through the above-described conduct, Defendants deprived Plaintiff Prudhome any  
5 meaningful access to ballot-counting.

6 13. Absent immediate court intervention, Defendants will continue to utilize the Agilis  
7 software system to count ballots and prevent public access to observe the counting of ballots in  
8 violation of Nevada and Federal law.

9 14. The office address and telephone numbers of movant and all parties is as follows:

10 **Movant/Plaintiffs’ Counsel:**

11 THE O’MARA LAW FIRM, P.C.  
12 DAVID C. O’MARA  
13 311 East Liberty St.  
14 Reno, Nevada 89501  
15 775-323-1321

14 **All other Parties/Defendants:**

15 SECRETARY OF STATE BARBARA K. CEGAVSKE, in her official capacity  
16 2250 Las Vegas Blvd., Suite 400  
17 North Las Vegas, NV 89030  
18 (702) 486-2880

18 CLARK COUNTY REGISTRAR OF VOTERS JOE P. GLORIA, in his official capacity,  
19 965 Trade Drive, Suite A  
20 Las Vegas, Nevada 89030  
21 (702) 455-8683

21 15. Based on the nature of the violations and harm to Plaintiffs as set forth in the  
22 Complaint and the supporting Declarations, Plaintiffs believe that a meet and confer would be futile  
23 and that Defendants harmful conduct will not cease absent court intervention and issuance of a  
24 temporary restraining order and injunction.

25 16. The Emergency Motion is being filed concurrent with the Complaint instituting this  
26 action. As such, pursuant to LR 7-4(a)(3), undersigned states that he will endeavor to notify  
27 Defendants’ of this Emergency Motion for Temporary Restraining Order and Preliminary Injunction  
28

1 and Request for Expedited Hearing by either emailing or faxing a copy of the Complaint and  
2 Emergency Motion to Defendants.

3 I declare under penalty of perjury that the forgoing is true and correct.

4 DATED: November 5, 2020

THE O'MARA LAW FIRM, P.C.

5  
6 /s/ David C. O'Mara  
7 DAVID C. O'MARA, ESQ

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 The standard for granting a temporary restraining order and a preliminary injunction under  
10 Federal Rule 65 is well established. A plaintiff seeking a preliminary injunction must establish: (1)  
11 that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence  
12 of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in  
13 the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008); *Park Vill. Apt.*  
14 *Tenants Ass'n v. Mortimer Howard Trust*, 636 F.3d 1150, 1160 (9th Cir. 2011). In addition, a court  
15 may issue a temporary restraining order without notice to an adverse party "if immediate and  
16 irreparable injury, loss, or damage will result . . . before the adverse party can be heard in  
17 opposition." Fed. R. Civ. P. 65(b). As set forth below, Plaintiffs satisfy each of these requirements.

18 **A. Plaintiffs Satisfy the Requirements for Receiving a Temporary Restraining**  
19 **Order**

20 This Court should issue a temporary restraining order to prevent Defendants' ongoing  
21 violations of federal election law. The Complaint establishes that, unless this Court grants  
22 immediate relief, Plaintiffs will suffer "immediate and irreparable injury." Fed. R. Civ. P. 65(b).

23 The U.S. Supreme Court has held that the right to vote is a "fundamental political right,"  
24 "preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *United States v. Olinger*,  
25 759 F.2d 1293, 1302 (7th Cir. 1985). This right extends not only to "the initial allocation of the  
26 franchise," but also to "the manner of its exercise." *Bush v. Gore*, 531 U.S. 98, 104–05 (2000).  
27 Infringement of fundamental constitutional freedoms such as the right to vote, "for even minimal

1 periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373  
2 (1976); *Christian Legal Society v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006). Defendants’ ongoing  
3 violations of NRS 293.8874(1), as enacted in Assembly Bill 4, Sec. 4, 32nd Special Session (Nev.  
4 2020), threaten to burden or infringe upon the rights of Plaintiff Jill Stokke by violating the Elections  
5 Clauses and Equal Protection Clauses of the U.S. Constitution. The use of the Agilis Ballot Packing  
6 Sorting System to check signatures of ballots clearly violates Nevada law, enacted by the legislature,  
7 which states “*the clerk or an employee in the office of the clerk* shall check the signature used for  
8 the mail ballot.” NRS 293.8874(1), as enacted in Assembly Bill 4, Sec. 4, 32nd Special Session  
9 (Nev. 2020) (emphasis added).

10 Likewise, Defendants’ ongoing violations of NRS §§ 293.8881(1) and 293.363(1) threaten to  
11 burden or infringe upon the rights of Plaintiff Chris Prudhome by violating the Elections Clauses and  
12 Equal Protection Clauses of the U.S. Constitution. Nevada law clearly provides that ballot counting  
13 “must be public,” yet he was denied access to the Clark County Election central counting facility.  
14 NRS §§ 293.8881(1); 293.363(1).

15 Thus, only this Court can prevent immediate and irreparable injury to Plaintiffs.

16 **B. Plaintiffs Satisfy the Requirements for Receiving a Preliminary Injunction**

17 Plaintiffs also satisfy the requirements for obtaining a preliminary injunction.

18 *First*, there is no adequate remedy at law. Because vote tallying is ongoing, the harm to  
19 Plaintiffs is immediate and cannot be remedied by monetary relief. Defendants’ ongoing violations  
20 of state and federal law threaten to undermine the integrity and fairness of the election in ways that  
21 cannot be easily traced or remedied after the fact. Because both the election and Defendants’  
22 misconduct are ongoing, the harm to Plaintiffs is immediate, and cannot be remedied by monetary  
23 relief.

24 *Second*, as discussed above, Plaintiffs will suffer irreparable injury in the absence of  
25 immediate relief. Indeed, the infringement of fundamental constitutional freedoms such as the right  
26 to vote, “for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v.*  
27 *Burns*, 427 U.S. 347, 373 (1976).



1 Defendants, and their officers, agents, employees, and any other person acting under their  
2 direction or control should be required to allow meaningful access to the ballot counting process.

3 DATED: November 5, 2020

THE O'MARA LAW FIRM, P.C.

4

5

/s/ David C. O'Mara

DAVID C. O'MARA, ESQ

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