

1 AARON D. FORD  
 Attorney General  
 2 GREGORY L. ZUNINO, Bar No. 4805  
 Deputy Solicitor General  
 3 CRAIG A. NEWBY, Bar No. 8591  
 State of Nevada  
 4 100 N. Carson Street  
 Carson City, Nevada 89701-4717  
 5 Tel: (775) 684-1100  
 E-mail: [glzunino@ag.nv.gov](mailto:glzunino@ag.nv.gov)  
 6 E-mail: [cnewby@ag.nv.gov](mailto:cnewby@ag.nv.gov)

7 *Attorneys for Barbara Cegavske*

8  
 9 **UNITED STATES DISTRICT COURT**  
 10 **DISTRICT OF NEVADA**

11 STANLEY WILLIAM PAHER, TERRESA  
 MONROE-HAMILTON, and GARY  
 12 HAMILTON,

13 Plaintiffs,

14 vs.

15 BARBARA CEGAVSKE, in her official  
 capacity as Nevada Secretary of State,  
 16 DEANNA SPIKULA, in her official  
 capacity as Registrar of Voters for Washoe  
 17 County,

18 Defendants.

Case No. 3:20-cv-00243

**DEFENDANT SECRETARY OF STATE  
 BARBARA CEGAVSKE'S OPPOSITION  
 TO MOTION FOR PRELIMINARY  
 INJUNCTION**

19 Defendant Barbara Cegavske, by and through counsel, Aaron D. Ford, Attorney  
 20 General and Gregory L. Zunino, Deputy Solicitor General, hereby submits this opposition  
 21 to Plaintiff's Motion for Preliminary Injunction (ECF No. 2).

22 DATED this 27th day of April, 2020.

23 AARON D. FORD  
 24 Attorney General

25 By: Gregory L. Zunino  
 GREGORY L. ZUNINO  
 Deputy Solicitor General  
 CRAIG A. NEWBY  
 26 [gzunino@ag.nv.gov](mailto:gzunino@ag.nv.gov)  
 27 [cnewby@ag.nv.gov](mailto:cnewby@ag.nv.gov)

28 *Attorneys for Defendants*

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

To diminish the spread of the COVID-19 illness, Secretary of State Barbara Cegavske (“Secretary Cegavske”) and her staff worked in partnership with Nevada’s seventeen local election officials to implement an all-mail primary election for June 9, 2020 (ECF No. 22 at p. 3). Subsection 4 of NRS 293.213 sets forth the legislative grant of authority for her to do so under the current circumstances. Without qualification, this statutory provision authorizes Nevada’s state and local election officials to cooperatively establish “mailing precincts” in which registered voters cast their votes by mail. Despite Plaintiffs’ arguments to the contrary, Secretary Cegavske was well within her authority, as lawfully delegated to her by the Nevada Legislature, to approve a statewide all-mail primary election. The motion should be denied.

**II. STATEMENT OF THE CASE**

Plaintiffs have filed suit to halt Nevada’s all-mail primary election in favor of an in-person election. Plaintiffs allege that they are Nevada registered voters who usually “vote[] early or on election day in-person” (ECF No. 1 at p. 3, ¶¶7-9). Citing *Bush v. Gore* as controlling precedent (ECF No. 2 at pp. 9-11, 14, and 18), Plaintiffs speculate that their votes will be diluted by the votes of persons who cast two or more votes or who fail to meet voter eligibility standards (ECF No. 2 at pp. 5-6). According to Plaintiffs, this will likely occur because the all-mail primary circumvents various legal safeguards designed to protect the integrity of elections. They suggest that the absence of safeguards is akin to “ballot-box stuffing” or altering ballots (ECF No. 2 at p. 7). Plaintiffs allege causes of action for:

Count I—Vote Dilution (ECF No. 1 at p. 8);

Count II—Violation of the Right to Vote for Legislative Representatives (ECF No. 1 at p. 9); Count III—Violation of the Right to Vote under the Purcell Principle (ECF

No. 1 at p. 10);

1 Count IV—Violation of the Right to Vote in the Manner Chosen by the Nevada  
2 Legislature (ECF No. 1 at p. 11); and

3 Count V—Violation of the Right to a Republican Form of Government (ECF No. 1  
4 at p. 12).

5 Certain of the above causes of action are not cognizable under federal law (Counts  
6 II, III and V), while others are based upon the false premise that Nevada’s all-mail  
7 primary election strips Nevada law of election integrity safeguards provided by state law  
8 (Counts I, IV, and V). Additionally, because the alleged injury of vote dilution is based  
9 upon conjecture and speculation (Counts I-V), Plaintiffs have not demonstrated that they  
10 have standing to challenge Nevada’s all-mail election. Finally, insofar as they have  
11 manufactured abstract disputes concerning the manner of conducting elections (Count  
12 IV), and the required structure of elections (Count V), Plaintiffs do not have standing to  
13 seek declaratory or equitable relief under Articles I and IV of the U.S. Constitution.<sup>1</sup>

### 14 **III. STANDARD OF REVIEW**

15 To obtain a preliminary injunction, Plaintiffs must demonstrate that (1) they are  
16 likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the  
17 absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an  
18 injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,  
19 20, 129 S. Ct. 365, 172 L.Ed.2d 249 (2008). This traditional test applies absent Plaintiffs’  
20 ability to demonstrate that the balance of equities tips sharply in their favor. *Fox Broad.*  
21 *Co. v. Dish Network L.L.C.*, 747 F.3d 1060, 1066 n.2 (9th Cir. 2014). Plaintiffs cannot  
22 meet this burden because they are unlikely to succeed on the merits, having generally  
23 non-cognizable claims. Further, Plaintiffs will not suffer any harm, much less irreparable  
24 harm, unless one of their preferred candidates loses his or her primary race as a result of

---

25 <sup>1</sup> Plaintiffs have framed their arguments in a way to suggest that they have no  
26 intention of demonstrating their standing to bring claims for alleged violations of Articles  
27 I and IV of the U.S. Constitution. Federal law is clear that they do indeed have an  
28 obligation to prove standing in the form of a concrete injury (even when they allege  
violations of bedrock principles of constitutional governance). *See Arizona State  
Legislature v. Arizona Independent Redistricting Commission*, \_\_U.S.\_\_, 135 S.Ct. 2652,  
2663-65 (2015).

1 election fraud. At this point, any harm to Plaintiffs is entirely speculative. Finally, the  
2 balance of equities and the public interest during these unprecedented times weigh  
3 heavily against injunctive relief.

4 The motion must be denied.

#### 5 **IV. ARGUMENT**

##### 6 **A. Plaintiffs are Unlikely to Succeed on the Merits for Multiple Reasons**

##### 7 **1. Secretary Cegavske is Entitled to Judgment on the Merits** 8 **Because Plaintiffs Misrepresent Applicable Nevada Law**

9 The Secretary of State is the Chief Officer of Elections for the state of Nevada.  
10 NRS 293.124. As such, Secretary Cegavske may approve “mailing precincts” at the  
11 request of Nevada’s county election officials. NRS 293.213(4). When state and local  
12 elections officials work together in this manner in pursuit of shared objectives, such as a  
13 common desire to mitigate the impact of the COVID-19 pandemic, the population ceilings  
14 and other criteria set forth at subsections 1, 2 and 3 of NRS 293.213 are inapplicable. In  
15 other words, according to the plain language of subsection 4, a local election official “may  
16 establish a mailing precinct ... that does not [exceed the stated population ceilings] if the  
17 county clerk obtains prior approval from the Secretary of State.”

18 As a practical matter, this means that state and local election officials may agree to  
19 establish mailing precincts without regard to the number of voters in each of those  
20 precincts. The manifest intent of subsection 4 is to address unforeseen circumstances  
21 compromising voters’ ability to access physical polling locations within any given region of  
22 the state. The COVID-19 pandemic has made such access deeply problematic throughout  
23 the entire state. Consequently, Secretary Cegavske’s decision to approve a statewide all-  
24 mail primary not only satisfies the plain language of subsection 4, but is wholly consistent  
25 with its intent. “When the Legislature's intent is clear from the plain language, this court  
26 will give effect to such intention and construe the statute's language to effectuate rather  
27 than nullify its manifest purpose.” *We the People Nevada ex rel. Angle v. Miller*, 124 Nev.  
28 874, 192 P.3d 1166, 1171 (2008). Since all of Plaintiffs’ claims are premised, in one way or

1 another, upon alleged violations of state law, Secretary Cegavske is entitled to judgment  
2 in her favor on the merits.

3 To avoid an unfavorable judgment against them, Plaintiffs conflate “mailing  
4 precincts” and “absent ballots” in an effort to cast doubt upon the legal validity of the  
5 scheduled all-mail primary (ECF No. 2 at 5-6, 12-13). By definition, an “absent ballot” is  
6 “a ballot voted by a person who expects to be or is absent from the polling place for his or  
7 her precinct or district on election day.” NRS 293.013. Although a voter need not offer an  
8 excuse for voting absentee, the voter must affirmatively request an absent ballot in order  
9 to cast the ballot by mail. NRS 293.313. A mailing precinct, by contrast, is a precinct in  
10 which the registered voters are automatically mailed their ballots at their addresses of  
11 record. NRS 293.345.

12 As Plaintiffs observe, the submission of an absent ballot is governed by rules  
13 designed to ensure that a person who casts an absent ballot meets the voter eligibility  
14 criteria stated at Article 2, § 1 of the Nevada Constitution, including age and residency  
15 qualifications (ECF No. 2 at pp. 5-6, 12-13). Accordingly, a person who requests an  
16 absent ballot is subject to the verification process that Plaintiffs describe in their motion  
17 for injunctive relief (ECF No. 2 at pp. 5-6.). Plaintiffs agree that these verification  
18 processes are designed to reconcile discrepancies between the voter’s address of record  
19 and a new address associated with the voter’s affirmative request for an absent ballot  
20 (ECF No. 2 at 6). Predictably, Plaintiffs fail to acknowledge that there is no need to  
21 reconcile such discrepancies with respect to mailing precincts. This is because there can  
22 be no discrepancies unless the voter affirmatively request an absent ballot in lieu of the  
23 standard ballot that will be mailed, unsolicited, to the voter’s address of record within the  
24 mailing precinct.

25 In other words, if a voter plans to move to a new address before the standard ballot  
26 issues in the mail, the voter may request that an absent ballot be mailed to the voter’s  
27 new address. Under these circumstances, if there is a discrepancy between the voter’s  
28 address of record and the new address associated with the voter’s affirmative request for

1 an absent ballot, the voter will be subject to the address reconciliation concerns that  
2 Plaintiffs have expressed in their motion for injunctive relief (ECF No. 2 at pp. 5-6.)  
3 There is no factual or legal basis for Plaintiffs to claim that voters will have the option to  
4 circumvent applicable election integrity measures.

5 Likewise, there is no basis for Plaintiffs to claim that first-time voters will be able  
6 to circumvent the identity and residency verification processes that are periodically  
7 conducted at physical polling locations (ECF No. 2 at p. 12). Plaintiffs incorrectly assert  
8 that first-time voters will be able to circumvent the requirements of NRS 293.2725(1) if  
9 they receive their ballots in the mail. As explained in the Declaration of Wayne Thorley  
10 (ECF No. 22 at p. 2), this is untrue because NRS 293.2725(2) sets forth an exception for  
11 first-time voters who submit to automated identity and residency verification as part of  
12 the initial registration process, or who mail proof of identity and residency along with  
13 their ballots. In summary, first-time voters must submit to the very same verification  
14 processes that apply to all elections, regardless of whether voting is conducted by mail or  
15 in person.

16 As a final matter, Plaintiffs falsely claim that state and local election officials  
17 violated NRS 293.205 and .206 for failure to meet the deadline for changing precinct  
18 boundaries (ECF No. 2 at p. 6). Since there were no changes to precinct boundaries, this  
19 argument is nonsensical. The only change was to the method of voting within existing  
20 precinct boundaries. In light of the COVID-19 pandemic, voters residing within existing  
21 precinct boundaries will have the option to mail their ballots to the clerk or registrar of  
22 the county where they reside, thus obviating the need for those same voters to appear in  
23 person at physical polling locations within those precinct boundaries.<sup>2</sup> With respect to  
24 voters such as Plaintiffs who prefer to vote in person on election day, they may cast their

---

25 <sup>2</sup> Early voting procedures have rendered precinct boundaries largely  
26 irrelevant in Nevada. During the 2-week period for early voting, voters may cast their  
27 votes at any location where a vote center has been established. *See* NRS 293.356-.361.  
28 Effective January 1, 2020, the same is true on election day. *See* NRS 293.3072-.3075.  
Accordingly, there is little incentive for incumbent politicians to advocate for last-minute  
changes to precinct boundaries in the hope that certain voters will be unable to locate  
their precincts on election day.

1 votes at a countywide vote center regardless of any precinct to which they may be  
2 assigned (ECF No. 22 at p. 4). *See* NRS 293.3072-.3075.

3 **2. Plaintiffs' Argument for Discarding the *Anderson-Burdick* Test**  
4 **is Unpersuasive**

5 In their motion for injunctive relief, Plaintiffs discuss the *Anderson-Burdick*  
6 balancing test at length, but ultimately urge the Court to discard it (ECF No. 2 at pp 8-9),  
7 replacing it with principles discussed in *Bush v. Gore*, 531 U.S. 98 (2000) (per curiam),  
8 and *Reynolds v. Sims*, 377 U.S. 533 (1964).<sup>3</sup> Those cases involved illegible ballots and a  
9 convoluted legislative apportionment scheme, respectively. *Id.* Plaintiffs claim that the  
10 *Anderson-Burdick* balancing test is inapplicable because it is not useful for evaluating  
11 vote dilution claims (ECF No. 2 at 9). As discussed below, however, Plaintiffs' cause of  
12 action for vote dilution is premised entirely upon speculation and conjecture. While it is a  
13 colorful analogy, this case does not allege facts that are tantamount to "ballot-box  
14 stuffing", nor does it implicate altered or destroyed ballots (ECF No. 2 at 7).

15 Notwithstanding the hyperbole, Plaintiffs' motion for injunctive relief ultimately  
16 expresses a disagreement with the policy of replacing in-person voting with mail-in voting  
17 for the 2020 primary election. Since that policy is based upon Secretary Cegavske's  
18 reasonable interpretation of NRS 293.213(4), the only question for this Court is whether  
19 the policy unduly burdens Plaintiffs' voting rights relative to the State's interest in  
20 protecting the health and safety of its voters. The *Anderson-Burdick* balancing test  
21 provides the appropriate standard for evaluating Plaintiffs' claims.

22 According to the *Anderson-Burdick* line of cases, "[w]hen a state election law  
23 provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and  
24 Fourteenth Amendment rights of voters, 'the State's important regulatory interests are  
25 generally sufficient to justify' the restrictions." *Burdick v. Takushi*, 504 U.S. 428, 434  
26 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)); *see also Arizona Green*

---

27  
28 <sup>3</sup> Plaintiffs' reliance on *Bush v. Gore* is misplaced, given that the *per curiam*  
decision was limited to the circumstances in that case, involving the 2000 presidential  
election. *Id.* at 109.

1 *Party v. Reagan*, 838 F.3d 983, 988 (9<sup>th</sup> Cir. 2016). Here, Plaintiffs cannot demonstrate a  
2 burden upon their voting rights, only an imposition upon their preference for in-person  
3 voting. By contrast, the State’s interest in protecting the health and safety of its voters is  
4 compelling. Particularly during a global pandemic. When applied to the allegations in  
5 this case, the *Anderson-Burdick* balancing test weighs heavily in favor Secretary  
6 Cegavske.

### 7 **3. Plaintiffs Lack Standing for Their Speculative, Novel Claims**

8 Article III, § 2 of the U.S. Constitution states that the federal courts may only  
9 adjudicate “Cases” and “Controversies”. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555,  
10 559 (1992). The case-or-controversy requirement of Article III requires that Plaintiffs  
11 establish their “standing” as a jurisdictional prerequisite to the prosecution of this law  
12 suit. *Clapper v. Amnesty International USA*, 586 U.S. 398, 408 (2013). To establish  
13 standing, Plaintiffs must show that their alleged injury is “actual or imminent, not  
14 conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 (internal quotations and citations  
15 omitted). Additionally, they must show a “causal connection” between the alleged injury  
16 and the conduct about which they complain. *Id.* As a final matter, Plaintiffs may not  
17 offer mere speculation that a decision in their favor, namely a decision to require in-  
18 person voting at physical polling locations throughout Washoe County, will redress their  
19 alleged injury. *Id.* at 561.

20 Moreover, Plaintiffs must demonstrate standing separately for each form of relief  
21 sought. *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 185  
22 (2000). Plaintiffs seek injunctive and declaratory relief with respect to each of their five  
23 causes of action. However, their claim for vote dilution (Count I) is the only claim that  
24 even hints at the nature of their alleged injury. To establish standing, Plaintiffs must  
25 show that they have suffered an injury in fact that is fairly traceable to the challenged  
26 conduct of the defendants and is likely to be redressed by a favorable judicial decision.  
27 *Lujan*, 504 U.S. at 560–61 (1992). Injury in fact is “the ‘[f]irst and foremost’ of standing’s  
28 three elements.” *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (alteration in



1 original) (*quoting Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103, 118 S.Ct. 1003,  
2 140 L.Ed.2d 210 (1998)). Among other things, “an injury in fact must be both concrete and  
3 particularized.” *Id.* at 1548.

4 Here, Plaintiffs allege a possible future injury in the form of vote dilution, but no  
5 injuries beyond that. The specter of vote dilution “may suffice if the threatened injury is  
6 certainly impending, or there is a substantial risk that the harm will occur.” *Susan B.*  
7 *Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S. Ct. 2334, 189 L.Ed.2d 246 (2014)  
8 (internal quotation marks omitted). However, Plaintiffs must still prove a causal  
9 connection between the alleged injury and the alleged unlawful conduct on the part of  
10 Secretary Cegavske. *Lujan*, 504 U.S. at 560.

11 As discussed above, Secretary Cegavske adhered to the letter of the law when she  
12 worked in partnership with county election officials to implement an all-mail primary  
13 election for 2020. Accordingly, there can be no causal connection between Plaintiffs’  
14 alleged injury of vote dilution and the alleged violations of state law. Plaintiffs’ claim to  
15 standing fails on this ground alone because there were no violations of state law. For this  
16 reason, Secretary Cegavske is entitled to judgment in her favor on the merits, in addition  
17 to dismissal on jurisdictional grounds.

18 Insofar as Plaintiffs imply that all-mail elections are inherently more vulnerable to  
19 election fraud than are in-person elections (ECF No. 2 at p. 12), their position is based  
20 entirely upon conjecture and speculation. Five states, including Utah, have adopted all-  
21 mail election processes on a permanent basis (ECF No. 22 at p. 3). Their decision to adopt  
22 vote-by-mail elections indicates that they have great confidence in the integrity of mail-in  
23 processes. Furthermore, Nevada’s limited experience with mailing precincts has yielded  
24 no evidence of election fraud (ECF No. 22 at p. 3). Not surprisingly, Plaintiffs have  
25 framed their case as a legal dispute rather than a factual dispute (ECF No. 4, pp. 1-4)  
26 because they have no evidence that their votes will be diluted by election fraud.

27 In short, Plaintiffs engage in unsupported speculation that their votes in the  
28 primary election will be diluted by election fraud resulting from a mish-mash of alleged

1 statutory and constitutional violations. Since there has been no violation of state or  
2 federal law, much less a showing that an alleged violation would cause vote dilution even  
3 if it had occurred, Plaintiffs allegations do not satisfy Article III requirements for  
4 standing.

5 **4. There is Not an Unqualified Right under Federal Law to**  
6 **Compel Adherence to State Voting Laws**

7 As to Count II of their complaint, Plaintiffs argue that alleged *ultra vires* conduct  
8 by Secretary Cegavske, a member of the executive branch of Nevada state government,  
9 violates their right to vote for members of the legislative branch of Nevada state  
10 government (ECF No. 2 at pp. 15-16.) Yet, Plaintiffs offer no explanation of how the  
11 administrative action of an executive branch official can, in and of itself, burden the  
12 Plaintiffs' right to freely cast a vote for their preferred choice of legislative candidates. To  
13 allege that an administrative action usurps a legislative power does not alone suffice to  
14 state a claim for a voting rights violation. Here, the only connection to voting rights is the  
15 subject matter of the statutes that were allegedly violated. As discussed above, those  
16 statutes were not actually violated, but even if they had been violated, there would be no  
17 causal nexus between the violations and the alleged burden upon the right to vote for  
18 state legislators.

19 Plaintiffs suggest, in summary, that the right to vote for a legislative candidate  
20 encompasses a right to protect that candidate, if elected, from future incursions upon his  
21 or her exercise of legislative powers. This is an absurd proposition, and in substance, it  
22 merely raises a garden-variety separation of powers issue governed by state law, not a  
23 violation of voting rights guaranteed by the First and the Fourteenth Amendments to the  
24 U.S. Constitution. Because they cannot explain how the all-mail election burdens their  
25 right to vote for state legislators, only that it infringes upon state legislative powers, the  
26 Plaintiffs' remedy for such an alleged violation is to file a writ petition in state court. *See*  
27 *NRS Chapter 34*. Indeed, if every clash between separate branches of state government  
28 could give rise to a cause of action for a voting rights violation, the federal courts would

1 become mired in endless litigation concerning the interpretation of state statutes and  
2 regulations.

3           **5. The “Purcell Principle” and Article IV, § 4 of the U.S.**  
4           **Constitution Confer no Private Causes of Action**

5           Plaintiffs acknowledge that federal case law does not, at present, support their  
6 claim for an alleged violation of Article IV, § 4 of the U.S. Constitution, given that the  
7 claim presents a non-justiciable political question (ECF No. 2 at p. 19). *See Luther v.*  
8 *Borden*, 48 U.S. 1 (1849). They argue, however, that the U.S. Supreme Court “has  
9 severely cut back on [the] political-question doctrine” (ECF No. 2 at p. 19), thus  
10 suggesting that the Supreme Court may abandon the abstention doctrine altogether once  
11 it reviews the facts in this case. Since that is highly improbable, this Court should reject  
12 the claim.

13           With regard to *Purcell v. Gonzalez*, 541 U.S. 1 (2006), the U.S. Supreme Court  
14 vacated a pre-election injunction because the Ninth Circuit had issued the injunction on  
15 the eve of the election. *Id.* at 5-6. In this context, the holding of *Purcell* can only be  
16 construed as an admonition to the federal courts, not as the foundation for a private cause  
17 of action. It is generally understood that that federal statutes and constitutional  
18 provisions are the source of rights enforceable in the federal district courts. *See Gonzaga*  
19 *University v. Doe*, 536 U.S. 273, 283 (2002) (“We now reject the notion that our cases  
20 permit anything short of an unambiguously conferred right to support a cause of action  
21 brought under § 1983”). The *Purcell* case neither states nor implies that its holding was  
22 intending to confer enforceable rights upon private plaintiffs. Moreover, it undermines  
23 Plaintiffs’ request for injunctive relief here because it is **Plaintiffs** who seek court  
24 alterations to election processes at the proverbial 11<sup>th</sup> hour. If anything *Purcell* advises  
25 against the issuance of an injunction by this Court.

26 ...

1           **B. Plaintiffs Cannot Demonstrate Irreparable Harm, as Adequate**  
2           **Remedies Exist to Address Their Speculative Claims after**  
3           **the Primary Election**

4           Like other equitable remedies, injunctions require a showing that irreparable harm  
5 is probable and not speculative. *Nevada v. United States*, 364 F.Supp.3d 1146, 1154 (D.  
6 Nev. 2019). At this preliminary stage of the electoral process, Plaintiffs’ alleged injuries  
7 are speculative, rendering them incapable of being remedied by way of injunctive relief.  
8 *See Siegel v. LePore*, 120 F.Supp.2d 1041, 1052-53 (S.D. Fla. 2000) (“[W]e find Plaintiffs’  
9 alleged injuries on an as-applied basis to be speculative, and far from irreparable, at this  
10 stage in the electoral recount process.”) Here, even assuming Plaintiffs correctly predict  
11 some harm (they do not), they make no effort to articulate why the appropriate remedy  
12 for that harm should not be fashioned after the primary election, when the source and the  
13 nature of the harm might conceivably be ascertained. *See Curry v. Baker*, 802 F.2d 1302,  
14 1314 (11th Cir.1986) (“Although federal courts closely scrutinize state laws whose very  
15 design infringes on the rights of voters, federal courts will not intervene to supervise the  
16 administrative details of a local election. Only in extraordinary circumstances will a  
17 challenge to a state election rise to the level of a constitutional deprivation.”) (internal  
18 citation omitted).

19           **C. The Balancing of Equities Favors Defendant Cegavske**

20           Plaintiffs’ analysis does not state the full standard for balancing equities. “A  
21 preliminary injunction is an extraordinary remedy never awarded as of right. In each  
22 case, courts “must balance the competing claims of injury and must consider the effect on  
23 each party of the granting or withholding of the requested relief.” *Winter*, 555 U.S. at 24  
24 (internal citations omitted).

25           Instead, Plaintiffs presume, based on their (refuted) statutory analysis that  
26 Defendants have no cognizable interest in the plan for an all-mail primary election. This  
27 is simply not true, ignoring the global pandemic, as recognized by the World Health  
28 Organization, the United States, and Nevada. Defendant Cegavske, as Nevada’s chief  
election officer, has an obligation to conduct the primary election in a manner that

1 protects Nevada’s citizens by allowing them to exercise their right to vote securely while  
2 not being denied this right by being forced to make a Hobson’s choice between their  
3 franchise and their health. Granting injunctive relief now will force Nevada’s citizens to  
4 do so.

5 Further, in an ironic twist, granting injunctive relief at the late hour violates the  
6 “*Purcell* principle” Plaintiffs mistakenly contend is a cognizable claim here. Having the  
7 judiciary alter election procedures within the statutory discretion of state and local  
8 officials at the proverbial “11<sup>th</sup> hour” would create confusion during this public health  
9 emergency.

10 Accordingly, the equities balance in favor of Defendants in this case, further  
11 warranting denial of the motion.

12 **D. The Public Interest Strongly Favors Defendant Cegavske**

13 Plaintiffs’ analysis does not state the full standard for considering the public  
14 interest. “In exercising their sound discretion, courts of equity should pay particular  
15 regard for the public consequences in employing the extraordinary remedy of injunction.”  
16 *Winter*, 555 U.S. at 24. Similar to *Winter*’s consideration of military interests,  
17 Nevada is currently in battle with the most significant public health emergency in over a  
18 century. To be clear, after the World Health Organization declared a pandemic, President  
19 Trump declared a nationwide emergency on March 13, 2020. See  
20 [https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)  
21 [emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/). Governor Sisolak  
22 declared a Nevada emergency on March 12, 2020 (ECF No. 2 at p. 21). Both the state and  
23 federal emergencies remain in effect.

24 Further, there is no genuine doubt that Nevada has the power to protect the health  
25 of its citizens, particularly in an emergency such as this. Prior to ratification of the  
26 Constitution, various colonies had quarantine laws, thereby establishing the legal  
27 tradition of local and state jurisdiction over matters of public health reflected in the  
28

1 Constitution's reservation of power to the states to regulate public health, safety, and  
2 morals. *Gibbons v. Ogden*, 22 U.S. 1 (1824).

3 It is in this context that Plaintiffs seek to substitute their judgment of the public  
4 interest for those representing us in the local, state, and federal government (ECF No. 2  
5 at pp. 21-22). Plaintiffs' contention that the preliminary injunction favors the public  
6 interest in contrast to the global pandemic respectfully does not pass the laugh test.

7 Recognizing the unprecedented global pandemic, state and local officials came  
8 together to work within existing statutory authority to ensure a fair Nevada primary  
9 election while minimizing health risks to its voters. As set forth above, Plaintiffs only  
10 have speculation to support their claim that voting rights are being violated under these  
11 circumstances. Granting the preliminary injunction would simply create further chaos  
12 during an emergency. This prong strongly warrants denial of the motion.

13 **V. CONCLUSION**

14 At most, this case presents a policy dispute about the relative merits of in-  
15 person voting processes and vote-by-mail processes during a pandemic. Secretary  
16 Cegavske acted within her authority, pursuant to NRS 293.213(4), to approve an all-mail  
17 election for the 2020 primary election. Her actions, and those of local election officials,  
18 have not imposed a discernable burden upon Plaintiffs' voting rights, nor have they  
19 created an increased risk of election fraud. For these reasons, the Court should deny  
20 Plaintiffs' motion for declaratory and injunctive relief.

21 DATED this 27th day of April 2020.

22 AARON D. FORD  
Attorney General

23 By: Gregory L. Zunino  
24 GREGORY L. ZUNINO, Bar No. 4805  
Deputy Solicitor General  
25 CRAIG A. NEWBY, Bar No. 8591  
State of Nevada  
26 100 N. Carson Street  
Carson City, Nevada 89701-4717  
27 Tel: (775) 684-1100  
E-mail: [glzunino@ag.nv.gov](mailto:glzunino@ag.nv.gov)  
28 E-mail: [cnewby@ag.nv.gov](mailto:cnewby@ag.nv.gov)

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 27th day of April, 2020, I filed with this Court's CM/ECF electronic filing system, **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**, and served by U.S. Mail to the address listed below:

David O'Mara, Esq.  
The O'Mara Law Firm, P.C.  
311 E. Liberty Street  
Reno, Nevada 89501  
[David@omaralaw.net](mailto:David@omaralaw.net)  
*Attorneys for Plaintiffs*

James Bopp, Jr., Esq.  
Richard E. Coleson, Esq.  
Corrine L. Youngs, Esq.  
Amanda L. Narog, Esq.  
The Bopp Law Firm, PC  
1 South Sixth Street  
Terre Haute, IN 47807  
[jboppjr@aol.com](mailto:jboppjr@aol.com)  
[rcoleson@bopplaw.com](mailto:rcoleson@bopplaw.com)  
[cyoungs@bopplaw.com](mailto:cyoungs@bopplaw.com)  
[anarog@bopplaw.com](mailto:anarog@bopplaw.com)  
*Pro Hac Vice Pending*  
*Attorneys for Plaintiffs*

Herbert Kaplan, Esq.  
Washoe County Registrar of Voters  
1001 E. 9<sup>th</sup> Street, Bldg. A  
Reno, Nevada 89512  
[hkaplan@da.washoecounty.us](mailto:hkaplan@da.washoecounty.us)  
*Attorneys for Defendant Registrar of Voters*



An employee of the Office  
of the Attorney General