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IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY

FRED KRAUS, an individual registered to vote in Clark County, Nevada, DONALD J. TRUMP FOR PRESIDENT, INC.; the NEVADA REPUBLICAN PARTY,

Petitioners,

vs.

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

Respondents.

Case No. 20 OC 00142 1B
Dept No. 2

REPLY IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

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REPLY IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

I. INTRODUCTION

Respondents Barbara Cegavske, as Secretary of State ("Secretary"), and Joseph P. Gloria, as Registrar for Clark County ("Registrar"), and intervenor respondents Democratic National Committee and Nevada State Democratic Party (collectively "Respondents"), understandably concede that the mail ballot tabulation now rapidly proceeding in Clark County is unprecedented. Under these extraordinary circumstances, it is essential that every public body—including this Court—take proper precautions to ensure this election is administered in a manner that protects Nevadans' fundamental right to vote. It is not petitioners Fred Kraus, Donald J. Trump for President, Inc., and the Nevada Republican Party ("Petitioners"), but rather the Registrar and Secretary's current failings that are jeopardizing that right and undermining public confidence in the election, Unless this Court acts expeditiously to ensure ballots are not separated and counted improperly, Petitioners will have no opportunity to redress the serious legal wrongs currently occurring in Clark County's mail vote tabulation process. The public must be able to trust this election is conducted honestly and transparently. Modest judicial action now to ensure this trust is an appropriate and necessary use of this Court's equitable power.

II. STANDARD

"A writ of mandamus is available to compel the performance of an act that the law requires." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Courts "may consider writ petitions when an important issue of law needs clarification and considerations of sound judicial economy are served." *Helfstein v. Eighth Jud. Dist. Ct.*, 131 Nev. 909, 912, 362 P.3d 91, 94 (2015).

III. ARGUMENT

A. PETITIONERS HAVE STANDING TO ADVANCE EACH CLAIM.

Although the Nevada Constitution does not contain a "case or controversy" clause, "Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial

relief." *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). "A party must show a personal injury and not merely a general interest that is common to all members of the public." *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

Petitioners satisfy each of these criteria. With this petition, Kraus, the campaign, and the party seek to restore integrity to the Nevada election process. Petitioners cite three specific forms of injury which more than suffice to establish standing: (1) compromise of process through violation of public observation laws; (2) compromise of process through violation of ballot secrecy laws; and (3) devaluation of the right to vote through a lack of uniform standards for signature match and denial of a challenge procedure for mail-in ballots.

1. Ensuring Meaningful Public Observation Is A Public Duty Enforceable Through Mandamus.

Under Nevada law, courts have authority to issue writs of mandamus and prohibition in response to applications of parties or persons who are "beneficially interested." NRS 34.170, 34.330. Such beneficial interest vests individuals with standing to seek writ relief in Nevada's courts. *See Heller v. Legislature of Nev.*, 120 Nev. 456, 460-61, 93 P.3d 746, 749 (2004). Individual petitioners may even pursue writs on behalf of the public in certain circumstances. *Laborers' Int'l Union of N. Am., Local Union No. 169 v. Truckee Carson Irr. Dist.*, 130 Nev. 1207 (2014) (*unpub'd*). This principle allowed citizens to challenge the governor's failure to comply with a law requiring him to declare two judicial vacancies, *see State Bar of Nev. v. List*, 97 Nev. 367, 368, 632 P.2d 341, 342 (1981), and the Court's 2008 decision allowing a political party to seek a writ of mandamus or prohibition challenging the constitutionality of a statutory amendment creating new judicial positions, *see Indep. Am. Party of Clark Cty. ex rel. Hansen v. Miller ex rel. State*, 124 Nev. 1476 (2008) (*unpub'd*). Where a petitioner shows government actions or failures to act directly damage the rights of the citizenry, courts allow the petition to proceed.

Petitioners have done that. They allege that the Secretary and Registrar have failed to comply with their public duty to create a written plan to allow observation of the election process.

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Nevada law requires that the Registrar "***shall***, not later than April 15 of each year in which a general election is held, submit to the Secretary of State for approval a 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." NRS 293B.354 (emphasis added). "The word 'shall' is generally regarded as mandatory." *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 665, 310 P.3d 569, 572 (2013). Thus, petitioners have alleged a public duty, not a discretionary function. "[W]hen a petition seeks to enforce a public duty and involves a public right, the petitioner 'is not required to show that he has any legal or special interest in the result, it being sufficient if he shows that he is interested, as a citizen, in having the laws executed and the right enforced.' *Miller*, 124 Nev. 1476, 238 P.3d 821 (quoting *State of Nevada v. Gracey*, 11 Nev. 223, 229–30 (1876)).

Moreover, Petitioners' mandamus action is not mooted by the exhibits attached to the Secretary's brief. ***First***, the heart of Petitioner's claim is that the October 20, 2020 letter (sent only after a demand was made by the Petitioners) that purports to include a "plan for observation of ballots" does not actually comply with the Registrar's public duty to ensure meaningful observation. ***Second***, the Secretary's October 22, 2020 letter—suspiciously conveyed to the Registrar after petitioners had sent a demand letter—expressly recognizes that there is a continuing dereliction of the public duty to "ensure meaningful observation." This is a live controversy.[1]

2. <u>Respondents Have A Public Duty To Ensure Ballot Secrecy.</u>

AB4, Sec. 16.(1)(c) requires that each active registered voter receive an "envelope or sleeve

[1] Even if this claim is otherwise moot, Petitioners can overcome mootness by proving "that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important." *Bisch v. Las Vegas Metro. Police Dep't*, 129 Nev. 328, 334–35, 302 P.3d 1108, 1113 (2013). There is no question that the period in which voters can observe the processing of ballots is short in duration, that similar issues will arise in future elections, and that the integrity and sanctity of the fundamental right to vote is important.

into which the mail ballot is inserted to ensure its secrecy." Although this claim was addressed only by a mere paragraph of the combined hundreds of pages of briefing and exhibits in opposition to Petitioners' claim, Petitioners have a similar interest in ensuring both their ballots remain secret and the public duty of ballot secrecy is fulfilled. *See Gracey*, 11 Nev. at 229–30.

3. Petitioners Have Standing To Advance Their Equal Protection Claims.

The Constitution of the United States protects the right of all qualified citizens to vote. *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). This right "is protected in more than the initial allocation of the franchise." *Bush v. Gore*, 531 U.S. 98, 104 (2000). Once the state has "granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Id.* Here, Petitioners allege a personal, concrete equal protection injury in the devaluation of their fundamental right to vote through an admitted lack of uniform standards.

These are cognizable harms. *See Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 332 (1999) (recognizing vote dilution as an injury-in-fact for Article III standing). Kraus, as an individual voter, will suffer a direct harm if his vote is diluted and if he is denied his statutory right to meaningfully review the ballot counting process.[2] *See Clark Cty. v. City of Las Vegas*, 92 Nev. 323, 342, 550 P.2d 779, 792 (1976) ("[A] voter has the constitutional right to have his vote given as much weight as any other vote and not to have his vote denied, debased, or diluted in any manner."). Likewise, the campaign and party will suffer harms where government action burdens the availability of political opportunity. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 199 (1986). Petitioners' application for writ relief thus falls squarely within the category for which courts recognize standing to pursue relief. Indeed, the ends of this petition are the very ends for

[2] *See* Declaration of Fred Kraus ("Kraus Dec.") at ¶¶ 5–25.

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which writ relief exists: to compel government actors to perform their statutory duties and to prohibit them from taking unlawful or ultra vires action subjecting petitioners to injury. NRS 34.170, 34.330.

Despite the Secretary's misguided citation of the late Justice Scalia's private feelings, *Bush v. Gore* remains good law that has consistently been applied by courts across the country for two decades to establish the standing of plaintiffs and remedy equal protection injuries nearly identical to those here. *See, e.g.*, *Stewart v. Blackwell*, 444 F.3d 843, 855 (6th Cir. 2006) ("The increased probability that their votes will be improperly counted based on punch-card and central-count optical scan technology is neither speculative nor remote."), *vacated* (July 21, 2006), *superseded*, 473 F.3d 692 (6th Cir. 2007) (vacated and superseded on the grounds that the case was rendered moot by the county's subsequent abandonment of the DRE machines at issue); *Banfield v. Cortes*, 922 A.2d 36, 44 (Pa. Commw. Ct. 2007) (finding that the plaintiffs had sufficiently alleged standing under similar Pennsylvania law, based on "the fact that Electors have no way of knowing whether the votes they cast on a DRE have been recorded and will be counted," which "gives Electors a direct and immediate interest in the outcome of this litigation"). Indeed, Justice Kavanaugh cited *Bush v. Gore* just yesterday. *See Democratic National Committee, et al. v. Wisconsin State Legislature, et al.*, No. 20A66, 592 U.S. ___, slip op. 9 n.1 (Oct. 26, 2020) (Kavanaugh, J., concurring in denial of application to vacate stay) (citing *Bush v. Gore*, 531 U.S. at 120 (Rehnquist, C. J., concurring)). The Secretary might disagree with the Supreme Court, but this Court should faithfully apply binding precedent.

Consistent with this body of equal protection case law, Petitioners allege an actual injury: Mail-in voters must undergo human signature match safeguards everywhere in Nevada except in Clark County, where many thousands of mail-in voters' signatures go unreviewed by any human being. This "continued reliance on the use of [the Agilis] machines in public elections likely results

in 'a debasement or dilution of the weight of [Petitioners'] vote[s],' even if such conduct does not completely deny [Petitioners] the right to vote." *Curling v. Kemp*, 334 F. Supp. 3d 1303, 1322 (N.D. Ga. 2018), *aff'd in part, appeal dismissed in part sub nom. Curling v. Sec'y of Georgia*, 761 F. App'x 927 (11th Cir. 2019) (quoting *Bush v. Gore*, 531 U.S. at 105). Petitioners allege that because of this machine, "voters in some counties are statistically less likely to have their votes counted than voters in other counties in the same state in the same election for the same office" because of this lack of uniform standards, such that "[s]imilarly situated persons are treated differently in an arbitrary manner." *Black v. McGuffage*, 209 F. Supp. 2d 889, 899 (N.D. Ill. 2002). "By employing different standards within [ ] different counties," the Secretary and Registrar have "ratified a system of 'uneven treatment' that result[s] in the debasement of votes statewide." *Pierce v. Allegheny Cty. Bd. of Elections*, 324 F. Supp. 2d 684, 697 (W.D. Pa. 2003) (citing *Bush*, 531 U.S. at 107). The deprivation of Petitioner's right to have their ballots treated under uniform standards by election officials in the state is an injury that is redressable by a court order mandating uniformity. *See Elley v. Stephens*, 104 Nev. 413, 416-17, 760 P.2d 768, 770 (1988).

Petitioners likewise have standing to bring their claim that the disparate vote challenge process violates equal protection principles. *See* NRS 293.303. This admitted dis-uniformity is a particularized equal protection injury against Petitioner Kraus, who has voted in-person but faced a different standard from every vote-by-mail voter and continues have his vote diluted or cancelled by unchallengeable votes.[3] "[I]f this court does not act, there will be no mechanism by which absentee ballots could be challenged for alleged violations of the election code and the United

[3] Kraus Dec., at ¶ 4. Intervenors mistake Petitioners' the alleged injury for a desire to someday challenge a mail-in ballotin the future. Intervenors' Br. at 11. That is incorrect. Rather, Kraus is injured because he has already voted in person under a system that allows for challenges, but hundreds of thousands of unchallengeable mail-in ballots have been cast or are certainly impending, debasing the weight of his in-person vote. *See Bush v. Gore*, 531 U.S. at 105.

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States Constitution" on the same terms as in-person ballots. 324 F. Supp. 2d at 692.[4]

B. MANDAMUS IS REQUIRED TO PROTECT MEANINGFUL OBSERVATION

The primary issue in this Emergency Petition is whether the observation scheme created by the Registrar complies with the law. The answer is a resounding no. The Registrar has developed a program wherein officials can hide in plain sight, not allowing observers any meaningful right to serve as sunlight for Nevada election integrity.

Providing petitioners with an opportunity to meaningfully observe is not discretionary under the statute—it is mandatory. "When interpreting a statute, this court begins with the statute's text." *Andrews v. State*, 134 Nev. 95, 97, 412 P.3d 37, 38 (2018). The Court will use "legitimate tools of statutory interpretation, including related statutes." *Castaneda v. State*, 132 Nev. 434, 439, 373 P.3d 108, 111 (2016). When the plain and ordinary text of a statute is unambiguous, Nevada Courts need not look beyond the text. *City of North Las Vegas v. Warburton*, 127 Nev. 682 (Oct. 6, 2011).

The text of the statute clearly requires Nevada Counties to accommodate members of the public who desire to "observe" the delivery, counting, handling and processing of ballots at a polling place, receiving center or central counting place. And counties must allow the public to actually "observe the activities." NRS 293B.354(2). The plain meaning of the terms confirms this. Merriam Webster's Dictionary defines the term "observe" in relevant part as "*to watch carefully* especially with attention to details or behavior for the purpose of arriving at a

[4] Nevada courts recognize a "public-importance" exception to the injury requirement of standing. *See Schwartz*, 132 Nev. at 743. Although the courts traditionally apply this exception only in taxpayer suits challenging legislative expenditures or allocations, the principles underlying the exception undoubtedly apply in suits like the present one in which matters of general public consequence are involved. If this Court is unpersuaded by the specific injuries alleged by petitioners, petitioners alternatively argue that they have standing under this exception to the general injury requirement.

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judgment."[5] This definition is consistent with the commonly understood meaning and usage of the term. *See, e.g.*, OBSERVE, Black's Law Dictionary (11th ed. 2019) ("To watch carefully."). By definition, "observation" thus necessarily requires public on-lookers to be afforded *meaningful* review. They must be permitted to "watch carefully" and "with attention to details."

Contrary to Respondents' argument, the content of this right to public observation in NRS 293B.353 is not limited to "the counting of the ballots" because the next provision of the statute provides specifics that inform the broader public right: "[t]he county clerk *shall*" create a 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*." NRS 293B.354 (emphasis added). "Specific provisions take precedence over general provisions." *Davidson v. Davidson*, 132 Nev. 709, 714, 382 P.3d 880, 883 (2016). The right to public observation must include, at a minimum, each of the emphasized elements of the election process in NRS 293B.354: ballot delivery, ballot counting, ballot handling, and ballot processing shall be accommodated by the clerk's written plan; each of these actions must be observable at the polling place, ballot receiving center, and central counting place by the general public.

The purpose of the public observation requirement confirms this reading: to ensure that ballots are delivered, counted, handled, and processed properly. *See* NRS 293B.354(2); *see also Opinion of the Justices*, 371 A.2d 616, 622–23 (Me. 1977) ("The stated purpose of [the statute] is clear: –the counting [of ballots] must be done in such a way as to facilitate public observation. We infer from this stated purpose the ultimate but unarticulated

[5] *Merriam Webster's Online Dictionary*, https://www.merriam-webster.com/dictionary/observe (emphasis added). This definition is also consistent with the Election Observation Handbook (6th Ed.), published by the OSCE Office for Democratic Institutions and Human Rights. *See* Pet. at 5.

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goal:–the public observation must be such as to ensure to those present that the ballots are being counted correctly."); *Davidson*, 132 Nev. at 713, 382 P.3d at 883 ("This court's goal in construing statutes is to uphold the intent of the Legislature"). Indeed, the statute establishes a presumption of public access with a narrow exception to avoid public interference: "if [the] members do not interfere with the counting of the ballots," then the "city clerk shall allow [those] members of the general public to observe the counting of the ballots at the central counting place." NRS 293B.353(1).[6]

Despite this clear statutory right, the Secretary continues to refuse to comply with her duties. As Exhibit B to the Secretary's Response brief shows, the Secretary noticed a problem with public observation and requested an improvement, but to no avail. The Registrar has still not afforded such meaningful public observation of the election activities and the Secretary has not ensured it. As the Petition describes, observers are often located more than 25 feet from certain processes and cannot observe computer screens or monitors of election workers or observe calls made regarding cure processes. *See* Pet. at 5. Further, public observers are restricted from certain areas where ballots are handled or reviewed, as well as rooms dedicated to resolving ballot issues. All these processes are necessary to the "counting, handling and processing of ballots" and thus must be open to meaningful observation. Therefore, as a matter of law, the Registrar and Secretary are violating the election laws designed to ensure public integrity and transparency in Nevada's election process.

[6] The Secretary of State's position that the Election Code chapter heading somehow limits the public's right to observation of vote-by-mail ballots is incorrect because "Mechanical voting systems" is a defined term. Indeed, the statute defines "Mechanical voting system" in the broadest possible sense: "a system of voting whereby a voter may cast a vote." NRS 293B.033. Because vote-by-mail processes are "a system of voting whereby a voter may cast a vote," the public's right to meaningful observation applies with equal force to mail-in ballots processing.

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This lack of observation is an irreparable harm. Every day, thousands of ballots are being separated from their only form of identification—at which point there is no way to challenge those votes and ensure they are lawfully cast. The evidence is thus spoliated and the dilution of the voters' rights that might have been prevent through transparency cannot be repaired. *See Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1258 (N.D. Fla. 2016) (stating with respect to elections: "This isn't golf: there are no mulligans.").

C. PROHIBITION IS NECESSARY TO ENSURE BALLOT SECRECY.

This issue was ignored completely by Respondents and mentioned only in passing by the intervenors as "mere speculation." Intervenors Br. at 10. Ballot secrecy is critical. *See Minnesota Voters All. v. Mansky*, 138 S. Ct. 1876, 1883 (2018). Petitioners explained that what little observation has been afforded them shows that the Registrar is not protecting ballot secrecy, Pet. at 6, violating a clear duty in AB 4, § 27 ("The clerk shall develop a procedure to ensure that each mail ballot is kept secret").

D. MANDAMUS AND PROHIBITION IS NECESSARY TO RESTORE EQUAL PROTECTION.

Contrary to Respondents' bald assertion, Petitioners do not argue that vote-by-mail and in-person voters must be treated identically. Indeed, Petitioners agree with the Registrar's analogy: "the signature verification process for a mail ballot voter is the equivalent of a prospective voter checking in at a polling place." Registrar's Br. at 4. But as a result of Respondents' twin Equal Protection Clause violations, mail-in voters have an advantage over Petitioner Kraus and similarly situated voters who have voted in person but continue to have their votes devalued by lack of uniform statewide standards for ballot security. Two election processes violate the Equal Protection Clause of the Fourteenth Amendment.

First, Nevada deprives voters of equal protection by providing a mechanism for challenging voters who vote in person at polling locations but not for voters who vote by mail. *See*

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NRS 293.303.[7] In *Charfauros v. Board of Elections*, the court considered "whether the Equal Protection Clause permits a State to discriminate among its citizens based on who challenged their voter eligibility," or "whether the voter challenge procedures adopted by the Board 'are consistent with its obligation to avoid arbitrary and disparate treatment of the members of its electorate.'" 249 F.3d 941, 951 (9th Cir. 2001*), as amended on denial of reh'g and reh'g en banc* (July 6, 2001) (quoting *Bush v. Gore*, 531 U.S. 98) (cleaned up). In that case, "the Board created two classes of challenged voters—Republican voters, whose eligibility was challenged by the Democratic Party and considered before the election, and Democratic voters, whose eligibility was challenged by the Republican Party and considered after the election." *Id.* at 945. The Court concluded this classification was unconstitutional under the Equal Protection Clause—and so clearly unlawful that the election officials were not entitled to qualified immunity. ("A reasonable Board would have known its actions violated the fundamental rights to vote and to equal treatment under the law … the Board is not entitled to qualified immunity"). *Id.* at 955–56.

Second, the Registrar is using a defective signature matching computer system. Vote-by-mail voters in Clark County thus have an advantage over voters anywhere else in the state, whether compared to using either mail or in-person balloting. This is because many thousands of vote-by-mail ballots are never reviewed by a human being, as the Registrar stunningly admits. *See* Registrar's Br. at 7 ("the machine's match rate to the County's election database has hovered around 30%); *see also* Decl. of Joseph P. Gloria ("*If* the Agilis machine does not match the signature, it is *then* reviewed by Election Department staff") (emphasis added). *See Pierce*, 324 F. Supp. 2d at 699 ("Voters … who take advantage of defendant's policy … may be afforded greater voting strength than similarly-situated voters"). This process not only subjects voters to unequal treatment, it also violates the express requirements of AB 4. Section 23 of AB 4 specifically states that, with respect to each mail ballot received, "the clerk or an employee in the office of the clerk shall check the signature used for the mail ballot." Although Section 22 generally permits "mail

[7] NRS 293.547 is not a procedure for challenging mail in ballots, contrary to Respondent's representation to the court. *See* Hearing Tr. 15:2-9 (Miller).

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ballots to be processed and counted by electronic means," any such electronic processing may not "conflict with the provisions of sections 2 to 27, inclusive, of this act." Nothing in AB 4 permits use of a machine to check mail ballot signatures in lieu of the statutory requirement that this critically important task be conducted by "the clerk or an employee in the office of the clerk." Indeed, the Legislature's specific use of the words "or an employee in the office of the clerk" reinforces its statutory mandate that all signature verification must be conducted by a human being.[8]

Under the Equal Protection Clause, "[d]ilution of the right to vote may not be accomplished by stuffing the ballot-boxes," "[n]or may the right to vote be diluted by" state officials' "improper counting of ballots." *United States v. Classic*, 313 U.S. 299, 315 (1941). Thus, Petitioners are suffering irreparable equal protection harm due to the unlawful use of the Agilis machine. *See Feldman v. Arizona Sec'y of State's Office*, 843 F.3d 366, 394 (9th Cir. 2016) ("[T]here are no 'do over' elections; 'the State cannot run the election over again[.]' " (citation omitted)); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("A restriction on the fundamental right to vote . . . constitutes irreparable injury."); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1310 (N.D. Ga. 2018) ("[N]one of the harm that [Respondents] will allegedly suffer from an injunction rises to the same level as the harm that disenfranchised [voters] (and, undoubtedly, other absentee voters) will suffer without an order from this Court. . . . [I]t is axiomatic that there is no post hoc remedy for a violation of the right to vote.").

Finally, laches does not bar relief in this case. "In determining whether the doctrine of laches should preclude consideration of a petition for mandamus, it must be demonstrated that (1) there was inexcusable delay in seeking the petition, (2) an implied waiver arose from petitioner's knowing acquiescence in existing conditions, and (3) prejudice resulted to the respondent." *We*

[8] Election officials lack authority to undertake any action contrary to governing statute or regulation. *Kelly v. Murphy*, 79 Nev. 1 (1963). Any such unauthorized conduct is a "futile act," a term of art that means it is thus void as a matter of law. *Id.* at 4. Thus, as AB 4 expressly requires that mail ballot signatures be checked by "the clerk or an employee of the clerk," Registrar's use of the Agilis Ballot Packing Sorting System ("Agilis System") to check mail ballot signatures has been futile.

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The People Nevada ex rel. Angle v. Miller ex rel. State, 124 Nev. 1518, 238 P.3d 865 n.20 (2008) (*unpub'd*). Respondents have made no such showing, nor could they. Petitioners acted promptly upon learning of the disparity between Clark County's signature matching process and the signature matching process elsewhere in the state. Moreover, the only prejudice in this case is not to Respondents, but to voters who are not subject to the faulty Agilis machine who have their votes diluted or cancelled by improperly counted ballots.

IV. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court issue a writ of mandate or, alternatively, prohibition requiring the Secretary and Registrar to immediately:

1. Cease and desist from further use of the Agilis System to check the signature for any mail ballot, and for the Registrar to conduct all further mail ballot signature verification individually or through his employees as required by AB 4;

2. Permit meaningful public observation of the mail ballot signature verification process without violating the privacy right of any Nevada voter;

3. Permit election observers to challenge the signature on any mail ballot before it is tabulated;

4. Maintain ballot secrecy as required by AB 4; and

5. Maintain physical connection between each challenged signature and its associated ballot until such time as this challenge has been finally resolved or adjudicated.

Dated this 27th 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 herby affirm that the preceding document, **REPLY IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION,** does not contain the Social Security number of any person.

Dated this 27th day of October, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION** was submitted for filing and/or service with the First Judicial District Court on the 27th day of October, 2020. Service of the foregoing document was made by mailing a true and correct copy thereof, postage prepaid, addressed to:

Michelle Monkarsh
an employee of Marquis Aurbach Coffing

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