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10 **IN THE UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 JILL STOKKE, an individual, CHRIS
13 PRUDHOME, an individual, MARCH
14 FOR CONGRESS, RODIMER FOR
15 CONGRESS,

16 Plaintiffs,

17 vs.

18 SECRETARY OF STATE BARBARA
19 CEGAVSKE, in her official capacity,
20 CLARK COUNTY REGISTRAR OF
21 VOTERS JOSEPH P. GLORIA, in his
22 official capacity,

23 Defendants.

Case No. 2:20-cv-02046- APG-DJA

**BRIEF OF AMICUS CURIAE
OPPOSING THE GRANT OF A
PRELIMINARY INJUNCTION**

24 **BRIEF OF AMICUS CURIAE**

25 **OPPOSING THE MOTION FOR PRELIMINARY INJUNCTION**

26 **BY CLARK COUNTY DEMOCRATIC PARTY**

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II. Table of Authorities

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III. Statement of Amicus Curiae

The Clark County Democratic Party is the officially sanctioned entity representing the Democratic Party in Clark County, Nevada. The present suit seeks to effectively halt vote counting in Clark County in order to prevent any clear determination of victory in Nevada by the Democratic candidate, Joe Biden. As Clark County is the County performing the voting, and the county whose votes are impacted, and the leading candidate is the candidate from the Democratic party, it is uniquely within the authority of the CCDP to speak on this issue, and to defend the votes of the democratic voters of Clark County, as well as the election integrity of Clark County. This brief argues for DENIAL of the motion for preliminary injunction.

IV. FRAP 29(a)(4)(E) Statement

- i. Counsel for CCDP authored this brief in its entirety.
- ii. No party or its counsel contributed money or anything else of value to fund preparing this brief.
- iii. No person or entity outside of CCDP contributed money intended to fund the preparing of this brief.

V. ARGUMENT

The number of fatal deficiencies in the present suit and motion is vast. The balance of hardships weighs heavily against the grant of any motion, there is clearly no Federal subject matter jurisdiction, there is no Article III case or controversy sufficient to establish standing of any of the Plaintiffs, and even if the Court were to review the substantive claims, none of them present even an imaginable viable legal claim.

a. The Motion Does Not Satisfy the Requirements for a Preliminary Injunction

1 Plaintiffs’ motion properly listed the factors to be considered in issuing
2 a preliminary injunction. For the sake of brevity, CCDP will focus on the
3 essentially contested elements of the balance of hardships, and likelihood of
4 success.

5
6 **1. Balance of Hardships Favors Denial**

7 First, to be granted a preliminary injunction, the balance of hardships
8 must favor the grant. Here we have a request that would likely result in the
9 effective halt of vote counting, and likely prevent all votes from being counted
10 prior to the statutory deadline. Clark County’s vote counting plan is likely to
11 be based upon the systems they currently have in place. Requiring them to halt
12 using their current system, and come up with a new system, immediately
13 without preparation, and to carry on by hand, would almost certainly result in
14 enough delay to push the counting past the statutory deadline of November 12,
15 thus having the effect of preventing significant numbers of Clark County
16 residents from having their votes counted. Beyond that, this would have the
17 effect of halting the determination of the next president of the United States,
18 and likely cause a national crisis. Weighed against this, is Plaintiffs’ abstract
19 claim of a loss of voting rights, without any explanation as to exactly how a
20 denial of the injunction would infringe upon those rights, or how a grant would
21 protect them in anything but the most abstract way. It is the movant’s burden
22 to show that the balance of hardships favors them, and neither their Complaint,
23 nor their motion, nor their declaration gives the slightest explanation of how
24 the alleged voting rights would be infringed in the absence of an injunction. It
25 is thus clear that the balance of hardships must oppose the grant of an
injunction.

26 **2. There is No Likelihood of Success on the Merits**

27 **A. There is No Subject Matter Jurisdiction**
28

1 Federal courts are courts of limited jurisdiction. They possess only that
2 power authorized by Constitution and statute. *Kokkonen v. Guardian Life Ins.*
3 *Co. of America*, 511 US 375 (US Sup.Ct 1994); see *Willy v. Coastal*
4 *Corp.*, 503 U. S. 131, 136-137 (1992); *Bender v. Williamsport Area School*
5 *Dist* , 475 U. S. 534, 541 (1986). “It is to be presumed that a cause lies outside
6 this limited jurisdiction, and the burden of establishing the contrary rests upon
7 the party asserting jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of*
8 *America*, 511 US 375 (US Sup.Ct 1994); *Turner v. Bank of North-America*, 4
9 Dall. 8, 11 (1799); *McNutt v. General Motors Acceptance Corp.*, 298 U. S.
10 178, 182-183 (1936).

11 Review of the Complaint makes clear that the Plaintiffs have failed their
12 burden to establish the subject matter jurisdiction of this Court. All the claims
13 presented are state law claims, loosely clothed with a few words tying them to
14 Constitutional claims. The two alleged federal question claims are violation of
15 the elections clause of the Constitution, and violation of equal protection, and
16 neither is a true claim under federal law.

17 The elections clause simply requires that the states determine how
18 elections will happen in each state. There is no allegation that this did not
19 occur. The entire body of this ‘claim’ argues that Defendants wrongfully
20 violated state election statutes. This claim being considered a federal question
21 is pure sophistry.

22 The equal protection claim, simply argues that the verification system
23 used was not a good one, without giving any explanation of how this would
24 cause the laws to apply unequally to any classes of persons. Without any
25 legitimate federal questions, and without any claim of diversity jurisdiction,
26 Plaintiffs can not establish federal jurisdiction.

27 **B. The Claim Does Not Satisfy Article III Justiciability**
28

1 Determination of standing is an essential precursor to the jurisdiction of a
2 Federal Courts pursuant to the case or controversy requirement of Article III of
3 the Constitution. The Constitutional minimum showing of standing requires
4 three elements; 1) the Plaintiff must have suffered an “injury in fact”, which is
5 concrete, particularized, and actual or imminent, 2) there must be a causal
6 connection between the injury and the conduct complained of, and 3) it must
7 be likely (rather than speculative) that the injury will be redressed by a
8 favorable decision. *Lujan v. Defenders of Wildlife*, 504 US 555 (US Sup.Ct.
9 1992); *Allen v. Wright*, 468 U. S. 737, 751 (1984); *Warth v. Seldin*, 422 U. S.
10 490, 508 (1975); *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U. S.
11 26, 41-42 (1976). Further, the party invoking Federal jurisdiction bears the
12 burden of proof of these elements, and “[s]ince they are not mere pleading
13 requirements but rather an indispensable part of the plaintiff’s case, each
14 element must be supported in the same way as any other matter on which the
15 plaintiff bears the burden of proof.” *Lujan v. Defenders of Wildlife*, Id. at 561.
16 Review of the facts of this case make clear that none of the Plaintiffs meet
17 those requirements.

18 i. Plaintiff Jill Stokke

19 Plaintiffs allege that Plaintiff Stokke was prevented from legally voting,
20 a seemingly serious allegation. Plaintiffs allege, upon information and belief,
21 that this was caused by using an automatic signature verification system.
22 While deprivation of the right to vote may be an injury, there is no concrete
23 causality shown between such injury and the use of Clark County’s
24 verification system, and no indication as to what was done after the initial
25 refusal¹. Most significantly, none of the relief prayed for in the Complaint, nor
26 sought in the preliminary injunction, would redress this issue. Thus Stokke is

27 ¹ If Clark County responded to the issue by doing an in-person review of the signature in
28 question, then there can be no causality attributed to the electronic verification system,
since it did not make the final decision.

1 clearly unable to establish the second and third elements of standing, and thus
2 can not invoke the jurisdiction of this Court.

3 ii. Plaintiff Chris Prudhome

4 Plaintiffs allege that Plaintiff Prudhome attempted to enter a
5 voting facility after midnight, and was told he could not enter because they had
6 closed for the night. There are no allegations that Prudhome attempted entry at
7 any other time, nor that he was rejected entry at any other time, nor that the
8 reason for his rejection was anything other than the location being closed for
9 the night. There is no clear injury to Prudhome whatsoever, as he has not
10 claimed any cognizable personal right that was infringed by not being allowed
11 into a voting center while it was closed. As discussed below, his argument that
12 the rule against “adjournment” prevents any recess for workers to rest is
13 apparently based upon a misconception of the definition of ‘adjournment’, as
14 opposed to ‘recess’. Because he has not attempted entry since, any suggestion
15 that he would not be allowed entry is purely speculative. Without an injury in
16 fact, the first element, Prudhome can not establish the second element, being a
17 causation of such an injury. Prudhome is also unable to establish the third
18 element, because there is no allegation that he can not currently enter the
19 counting location thus the only injury is the inability to enter in the past –
20 something the Court is unable to remedy with injunctive relief. Prudhome is
21 clearly unable to establish any of the elements of standing, and thus can not
22 invoke the jurisdiction of this Court.

23 iii. Campaign Plaintiffs Marchant and Rodimer

24 Neither of the campaign Plaintiffs have alleged any specific injury, nor
25 any causality of such an injury, nor any redress they would gain from a
26 positive result of the present case. For this reason there can be no claim that
27 either of the campaign Plaintiffs have standing, and no claim that they have the
28 ability to invoke the jurisdiction of this Court.

1 As none of the Plaintiffs have shown a claim that can establish the
2 requirements of Article III justiciability, and they bear that legal burden as a
3 prerequisite to invoking the power of the Federal Courts, the matter is almost
4 certain to be dismissed, and thus does not have a remote likelihood of success
5 on the merits.

6 **C. There Are No Claims Upon Which Relief Could Be Granted**

7 Even if the Court were to move past the jurisdictional hurdles and
8 evaluate the claims substantively, each clearly fails to even meet the loose
9 standard of FRCP 12(b)(6), and thus the claims are likely to be dismissed, and
10 not likely to achieve success on the merits.

11 i. Violation of the Elections Clause of the Constitution

12 First and foremost, this claim fails because it does not even allege that
13 the Elections clause of the Constitution was violated, nor how any Plaintiff
14 would have standing to oppose such a violation if it were alleged. Plaintiffs
15 instead twist their reasoning to attempt to argue that the use of an electronic
16 signature verification system constitutes a violation of NRS 293.2546, and that
17 somehow this violation constitutes preventing the government of the states
18 from establishing its own guidelines for holding elections.

19 Plaintiffs point to the language of NRS 293.2546(1) requiring a
20 “uniform, statewide standard for counting and recounting all votes accurately”,
21 and suggest that the fact that Clark county uses a different method of signature
22 verification than the smaller counties in the state, constitutes a violation. The
23 two most obvious problems with this reasoning are, that a standard for
24 “counting and recounting” votes, is not the same as a standard for verifying
25 signatures on votes. The only allegation is a deficiency in the method used to
26 verify signatures, and no allegation regarding any method or system of vote
27 counting, so this provision would clearly not apply. The second issue is that
28

1 the new statute cited by Plaintiff, AB4 (2020), clearly authorizes the use of
2 electronic systems to process votes. Section 22 of that bill states:

3 1. For any affected election, the county or city clerk, as
4 applicable, shall establish procedures for the processing and
5 counting of mail ballots.

6 2. The procedures established pursuant to subsection 1:

7 **May authorize mail ballots to be processed and counted by
8 electronic means** (emphasis added).

9 Section 23 makes clear that the signatures to be used for comparison are to be
10 taken from “all signatures of the voter available” to the clerk. Thus the use of
11 DMV signatures is appropriate if those are the signatures available. As the
12 practices complained of are specifically authorized, no claim that they are
13 illegal can hold merit.

14 ii. Equal Protection Claim

15 Plaintiffs’ equal protection claim is based upon the fact that Clark
16 County used the electronic signature verification system to verify signatures,
17 rather than live persons. The first issue is that neither Defendant can be held
18 liable for such an action. Defendant Barbara Cegavske is the Secretary of
19 State, and not alleged to be responsible for establishing Clark County’s vote
20 verification systems, thus she can not be considered to be a party violating
21 equal protection. The second Defendant, Joseph Gloria, is the Registrar of
22 Voters in Clark County; he is responsible for managing the verification system
23 in Clark County, however he controls ONLY Clark County, thus, if the claim
24 is that Clark County voters are treated differently from other Nevada voters, it
25 is impossible for him to have policies that treat those classes of voters
26 differently, because his policies only affect Clark County voters.

27 Even if the Defendants would be appropriate defendants for such a
28 claim, there is simply no basis given to reach a conclusion that any statute,
rule, or policy has any discriminatory intent or effect, nor any allegation that

1 any suspect class is affected. Thus the only scrutiny level would be rational
2 basis, which is satisfied simply by observing the state interest in efficient
3 processing of ballots.

4 iii. Violation of NRS 293.363 and AB4

5
6 Plaintiffs' claim that requirements for public access to vote counting are
7 without merit. The statutes require that the process of ballot-counting be
8 "public" and that it "not adjourn" until complete. First, the fact that a single
9 person was unable to gain entrance to the counting facility after midnight,
10 when it was closed, does not constitute a violation of the "public" requirement.
11 Public does not mean anyone can wander in unsupervised at any time, it means
12 that there are systems in place for designated observers, and that the process is
13 transparent. Plaintiffs have made no showing that Prudhome attempted
14 entrance at any other time, nor that he was refused entrance at any other time.
15 Thus his inability to enter while the site was closed can not constitute a
16 violation of the "public" requirement for vote counting.

17 Plaintiffs also seem to suggest that the fact that the site closed at all was
18 a violation of the requirement "not to adjourn". This indicates that Plaintiffs
19 are not familiar with the difference between 'adjournment' and 'recess'. The
20 Law.com legal dictionary defines adjourn as follows:

21 **adjourn**

22 v. the ***final*** closing of a meeting, such as a convention, a meeting
23 of the board of directors, or any official gathering. ***It should not
be confused with a recess, meaning the meeting will break and
then continue at a later time.*** (Emphasis added).

24 It seems clear that not allowing poll workers to rest or sleep anytime in the
25 four days thus far of vote counting would be an unreasonable interpretation,
26 and the fact that counting has not concluded makes clear that the break
27 referenced was a recess, and not an adjournment, and thus not a violation of
28 that statutory language.

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CONCLUSION

As the balance of hardships weighs overwhelmingly against an injunction, and there is neither subject matter jurisdiction, nor standing, to bring this claim, and no merit to the claims regardless, CCDP argues that the motion for preliminary injunction should be denied, so that the voters of Clark County may have their votes counted in the election of the next President of the United States.

DATED this 6th day of November, 2020.

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By: /s/ Robert Kern

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VI. ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 97 in Times New Roman 14pt type.
2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) and NRAP 29(a)(5) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains less than 3,289 words, which is less than half the length available for a principal brief.

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DATED this 6th day of November, 2020.

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