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

14
 15 REPUBLICAN NATIONAL COMMITTEE;
 NEVADA REPUBLICAN PARTY;
 16 DONALD J. TRUMP FOR PRESIDENT
 2024, INC.; and DONALD J. SZYMANSKI,

17 Plaintiffs,

18 v.

19 CARI-ANN BURGESS, in her official
 capacity as the Washoe County Registrar of
 20 Voters; JAN GALASSINI, in her official
 capacity as the Washoe County Clerk;
 21 LORENA PORTILLO, in her official capacity
 as the Clark County Registrar of Voters;
 LYNN MARIE GOYA, in her official
 22 capacity as the Clark County Clerk;
 FRANCISCO AGUILAR, in his official
 23 capacity as Nevada Secretary of State,

24 Defendants.

Case No. 3:24-cv-00198-MMD-CLB

**INTERVENOR-DEFENDANT THE
 DNC’S REPLY IN SUPPORT OF
 MOTION TO DISMISS PLAINTIFFS’
 COMPLAINT**

25 INTERVENOR-DEFENDANT
 THE DNC’S REPLY ISO
 26 MOTION TO DISMISS

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1 **I. INTRODUCTION**

2 Plaintiffs’ Oppositions to the Motions to Dismiss make clear that their claims should be
3 dismissed. The statutory text, legislative history, and long-standing practice of many states prove
4 that all federal law requires for an “election” to take place on “election day” is for voters to make
5 their final choice and then properly submit their ballot by that day, whether by U.S. mail, drop
6 box, or leaving it directly with election officials. That is the only sensible reading of the Federal
7 Election Day Statutes, as numerous states, and *every court* to have confronted the issue, have easily
8 concluded.

9 Against this backdrop, Plaintiffs offer precious little to support their claims. Finding no
10 support in the text of the statute, its legislative history, or the public policy it is designed to
11 advance, Plaintiffs instead largely rely on a single quote from an obviously distinguishable
12 Supreme Court case and a self-serving redefinition of “casting” a ballot. On this thin reed,
13 Plaintiffs seek to overturn state law, which would almost certainly have the effect of invalidating
14 thousands—or potentially tens of thousands—of ballots cast by fully qualified voters, all in service
15 of an avowedly partisan goal. *See Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 777 (5th
16 Cir. 2000) (“[W]e cannot conceive that Congress intended the federal election day statutes to have
17 the effect of impeding citizens in exercising their right to vote. The legislative history of the
18 statutes reflects Congress’s concern that citizens be able to exercise their right to vote.”). This falls
19 woefully short of the mark. Plaintiffs’ claims fail as a matter of law.

20 **II. ARGUMENT**

21 Every federal court that has considered Plaintiffs’ claim that a ballot must be received by
22 election officials on or before election day has emphatically rejected it. *See Bost v. Ill. State Bd. of*
23 *Elections*, 684 F. Supp. 3d 720, 736 (N.D. Ill. 2023) (ballot receipt statute allowing ballots to be
24

1 received and counted for fourteen days after election day “operates harmoniously with the federal
 2 statutes that set the timing for federal elections”); *Donald J. Trump for President, Inc. v. Way*, 492
 3 F. Supp. 3d 354, 368, 372 (D.N.J. 2020) (“the Federal Election Day Statutes are silent on methods
 4 of determining the timeliness of ballots”); *cf. Pa. Democratic Party v. Boockvar*, 238 A.3d 345,
 5 368 n.23 (Pa. 2020) (“[A]llowing the tabulation of ballots received after Election Day does not
 6 undermine the existence of a federal Election Day.”).¹

7 That’s hardly a surprise. Plaintiffs’ interpretation of the Federal Election Day Statutes is
 8 inconsistent with the statutes’ text, their legislative history, federal case law, public policy, and the
 9 practical reality of election administration, all of which confirm that the essence of an “election”
 10 is the voter’s *choice* of candidates. *See* the DNC’s Mot. to Dismiss at 6–9 (May 30, 2024), ECF
 11 No. 59 (“ECF No. 59”). And in the context of absentee ballots, that choice occurs when a voter
 12 properly submits their ballot—whether by mailing the ballot, placing it in a ballot drop box, or
 13 leaving it directly with election officials. *Id.*

14 Intervenor-Defendant the DNC submits that Plaintiffs’ Complaint should be dismissed.

15 **A. The Ballot Receipt Deadline is consistent with the text and the purpose of the**
 16 **Federal Election Day Statutes.**

17 Plaintiffs claim that “[b]y effectively extending Nevada’s federal election past election day,
 18 Nevada violates federal law mandating that elections take place on the uniform, national ‘day for
 19 the election.’” Resp. to Secretary’s Mot. to Dismiss at 1 (June 13, 2024), ECF No. 74 (“ECF No.
 20 74”). But Plaintiffs find no support for their theory in either the plain text of the Federal Election
 21 Day Statutes or the legislature’s intent in passing them.

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 23
 24 ¹ Motions for Summary Judgment in *RNC v. Wetzel*, No. 1:24cv25 LG-RPM (S.D.
 Miss.), are still pending as of the filing of this reply.

1 The Federal Election Day Statutes simply set the date for when an “election” must occur.
2 The statutes do not say anything about the details of the election (in-person, early voting, or all
3 mail) or when election officials must *receive* ballots to be counted. *See* ECF No. 59 at 10. Those
4 issues are left to the various states, subject only to congressional authority to “make or alter such
5 regulations.” U.S. Const. art. I, § 4. Nevada’s Ballot Receipt Deadline creates a mailbox rule that
6 allows a voter to cast a ballot by mailing it on or before election day and requires receipt of the
7 ballot within four days of the election. NRS 293.269921. Other states have adopted different rules:
8 some require receipt by election day, Minn. Stat. § 203B.08(3), while others allow receipt for
9 longer periods, Cal. Elec. Code § 3020(b). This is precisely what the Framers intended.

10 Nevada’s Ballot Receipt Deadline ensures that voters choose their candidates and submit
11 their ballots no later than election day. Once the voter mails the ballot (or puts it in a drop box or
12 delivers it to election officials), that voter’s choice is *final*. ECF No. 59 at 11. So, federal law and
13 Nevada’s Ballot Receipt Deadline “operate harmoniously.” *Gonzalez v. Arizona*, 677 F.3d 383,
14 394 (9th Cir. 2012), *aff’d sub nom. Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013).

15 Without really saying why, Plaintiffs contend that the Ballot Receipt Deadline undermines
16 Congress’s intent. *See* Resp. to the DNC’s Mot. to Dismiss at 9 (June 13, 2024), ECF No. 73
17 (“ECF No. 73”). But it plainly doesn’t. Congress enacted the Federal Election Day Statutes to
18 prevent (1) “distortion of the voting process threatened when the results of an early federal election
19 in one State can influence later voting in other States” and (2) the “burden on citizens forced to
20 turn out on two different election days to make final selections of federal officers in Presidential
21 election years.” *Foster v. Love*, 522 U.S. 67, 73–74 (1997) (citing the remarks of Representative
22 Butler, the sponsor of the original bill that ultimately became 2 U.S.C. § 7 found in Cong. Globe,

1 42d Cong., 2d Sess. 141 (1871)). Nothing about Nevada’s Ballot Receipt Deadline even remotely
2 undermines those purposes.

3 Once a Nevada voter submits their ballot—whether by mail, to a drop box, or in person—
4 the ballot has been cast. Voters do not get to change their vote while it is in the mail or is sitting in
5 a ballot drop box, and they certainly cannot be influenced by results from elsewhere.²

6 Plaintiffs claim that their theory helps “avoid the chaos and suspicions of impropriety that
7 can ensue if thousands of absentee ballots flow in after election day and potentially flip the results
8 of an election.” *Id.* (quoting *DNC v. Wis. State Legislature*, 141 S. Ct. 28, 33 (2020) (Kavanaugh,
9 J., concurring)). This hardly helps their argument. For starters, voters’ *misunderstanding* of
10 Nevada law or election administration is hardly a justification for overturning the Ballot Receipt
11 Deadline. After all, those “thousands of absentee ballots [flowing] in after election day” still had
12 to be *cast on or before election day*. But more importantly, the details of the time, place, and
13 manner of the election are constitutionally assigned to Nevada. U.S. Const. art. I, § 4. Plaintiffs’
14 preference for a different set of rules is irrelevant.

15 **B. Plaintiffs’ attempt to manufacture a conflict with federal law fails.**

16 The only purported “conflict” that Plaintiffs raise between the Federal Election Day
17 Statutes and Nevada law—and the heart of their argument—is their belief that “[t]he day for the
18 election’ means the final day ballots are received by election officials.” ECF No. 74 at 18; *see also*
19 ECF No. 73 at 8–9. But Plaintiffs do not cite a single authority, of any kind, to support that
20 pronouncement. *See id.*

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23 ² Nor do Plaintiffs plausibly allege the Ballot Receipt Deadline enables fraudulent voting,
24 double voting, “the transmission of voters from one State to another,” or any of the other claims
Plaintiffs make. ECF No. 73 at 9. Plaintiffs themselves entirely fail to explain exactly how the
Ballot Receipt Deadline allows for any of that. *Id.* It plainly doesn’t.

1 Instead, the primary support for Plaintiffs’ theory is a single sentence, plucked from *Foster*,
2 an inapposite Supreme Court opinion. That sentence reads: “When the federal [election] statutes
3 speak of ‘the election’ of a Senator or Representative, they plainly refer to the combined actions
4 of voters and officials meant to make a final selection of an officeholder” 522 U.S. at 71; ECF
5 No. 74 at 18–19. Plaintiffs use this quote to argue that the term “election” must mean more than
6 merely casting a ballot because that activity does not involve an election official. ECF No. 74 at
7 18–19. But Plaintiffs’ selection of *ballot receipt* as the relevant “act of consummation” is entirely
8 arbitrary. *See id.* They offer no principled explanation why *receipt* by election officials concludes
9 the “combined actions of voters and officials” constituting an “election,” as opposed to processing
10 and accepting the ballot (e.g., verifying a voter’s signature and confirming the voter is eligible and
11 has not already voted), counting the ballot, or certifying the election. *See id.* Plaintiffs offer nothing
12 significant about *receipt* of a ballot.³ They just make it up.

13 *Foster*’s narrow holding offers Plaintiffs no help. *Foster* addressed a Louisiana law
14 providing that any congressional candidate who received a majority of the votes cast in the state’s
15 open primary would be “elected,” and no general election for that office would be held on the
16 federal election day. 522 U.S. at 70. The Court found that eighty percent of the contested
17 congressional elections held under this system concluded after the open primary. *Id.* The Court
18 struck down Louisiana’s system, holding that an election that “is concluded as a matter of law
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21 ³ Indeed, both Nevada and federal law expressly provide a variety of official actions that
22 will occur after election day. *See, e.g.*, NRS § 293.387(1) (requiring the canvass of votes “be
23 completed on or before the 10th day following the election”); 3 U.S.C. § 7 (requiring electors
24 meet “on the first Tuesday after the second Wednesday in December next following their
appointment”). Plaintiffs also fail to meaningfully explain why *Foster* is not referring to certain
affirmative actions of officials and instead refers only to the passive “action” of receiving a
voter’s ballot.

1 before the federal election day, with no act in law or in fact to take place on the date chosen by
2 Congress, clearly violates [the Federal Election Day Statutes].” *Id.* at 72.

3 The Court repeatedly emphasized that its holding was exceedingly narrow. Indeed, the
4 Court wrote that “[t]his case thus does not present the question whether a State must always employ
5 the conventional mechanics of an election. We hold today *only* that if an election does take place,
6 it may not be consummated prior to federal election day.” *Id.* at 72 n.4 (emphasis added). Of
7 course, that holding has no bearing on the Ballot Receipt Deadline at issue here.

8 More importantly, the *Foster* Court expressly declined to define the term “election” in the
9 Federal Election Day Statutes. *Id.* at 72 (“Without paring the term ‘election’ in § 7 down to the
10 definitional bone, it is enough to resolve this case . . .”). The Court stressed that “our decision does
11 not turn on any nicety in isolating precisely what acts a State must cause to be done on federal
12 election day (and not before it) in order to satisfy the statute.” *Id.* The Court also acknowledged
13 that, at the time, there was “room for argument about just what may constitute the final act of
14 selection within the meaning of the law.” *Id.*

15 Nevertheless, Plaintiffs (incorrectly) present *Foster* as conclusively resolving the issue of
16 what an “election” on election day means. ECF No. 74 at 18–19. It didn’t, as even a cursory reading
17 of the case demonstrates. Plaintiffs ask this Court to expand *Foster*’s application to control a
18 question it expressly *declined* to decide. *See Foster*, 522 U.S. at 72; ECF No. 73 at 1; *Millsaps v.*
19 *Thompson*, 259 F.3d 535, 545 (6th Cir. 2001) (noting “the Supreme Court’s silence in *Foster* as to
20 which acts a State must take on federal election day”).

21 Plaintiffs’ attempt to expand *Foster* to cover this case only exposes the logical flaw of their
22 position. Plaintiffs assert “[a] ‘final selection’ does not occur when the voter merely marks the
23 ballot or delivers the ballot to the post office because those events do not involve an election
24

1 official.” ECF No. 74 at 19. But that’s just not true. Nevada voters do not vote on random scraps
2 of paper. Election officials are heavily involved in a voter’s “final selection” long before a voter
3 delivers the ballot to the post office. They build the entire election infrastructure before a voter
4 makes their candidate selection: election officials continuously update the voter rolls; design and
5 print the ballots, envelopes, and return envelopes; mail those materials; train their workers; set up
6 drop boxes; and perform countless other administrative tasks. “[T]he combined actions of voters
7 and officials meant to make a final selection of an officeholder,” *Foster*, 522 U.S. at 71, obviously
8 includes all of this too. So why, then, do the “combined actions of voters and officials” not
9 conclude upon the voter’s *final action* of selecting their candidate and submitting their ballot?
10 Plaintiffs cannot say—and don’t even attempt the task.

11 Plaintiffs’ literal interpretation runs into yet another problem in *Foster*. Their theory hinges
12 on the argument that “the election must be ‘consummated’ on election day.” ECF No. 74 at 19
13 (citing *Foster*, 522 U.S. at 72 n.4). But *Foster* uses “consummated” interchangeably with
14 “concluded as a matter of law.”⁴ It is hard to imagine that even Plaintiffs would consider an
15 “election concluded as a matter of law” when ballots are received on election day. After all, ballots
16 are almost always still being processed, challenged, cured, and counted well after 11:59 p.m. on
17 election night. In short, Plaintiffs’ attempt to expand *Foster* is implausible.

18 Next, Plaintiffs rely on *Maddox v. Board of State Canvassers*, which involved a 1943
19 *Montana state law* that “provide[d] for voting by ballots deposited with the election officials.” 149
20 P.2d 112, 115 (Mont. 1944); ECF No. 73 at 8. The Court held that under Montana law “voting is

22 ⁴ Compare *Foster*, 522 U.S. at 72 n.4 (“We hold today only that if an election does take
23 place, it may not be consummated prior to federal election day.”) with *id.* at 72 (“[I]t is enough to
24 resolve this case to say that a contested selection of candidates for a congressional office that is
concluded as a matter of law before the federal election day ... clearly violates § 7.”).

1 done not merely by marking the ballot but by having it delivered to the election officials and
 2 deposited in the ballot box before the closing of the polls on election day.” *Id.* But here, the Nevada
 3 law specifically provides for voting by ballots deposited with election officials, in a ballot drop
 4 box, or mailed on or before election day and received up to four days later. NRS 293.269921.
 5 While the Montana Supreme Court said that “[n]othing short of the delivery of the ballot to the
 6 election officials for deposit in the ballot box constitutes casting the ballot,” *Maddox*, 149 P.2d at
 7 115, the Court based its decision on *Montana* law, which defined an entirely different set of rules
 8 governing *Montana* elections. The case has little precedential value outside of Montana and none
 9 in Nevada where different voting rules apply. No court has *ever* cited or adopted *Maddox*’s
 10 reasoning in any other state. This Court should not either.⁵

11 **C. Congress has deferred to multiple states’ long-standing practice of accepting**
 12 **ballots delivered after election day.**

13 Plaintiffs grossly misrepresent the prevalence and history of state laws that allow mail-in
 14 ballots to be received after election day. A majority of states allow mail ballots to arrive after
 15 election day for at least some voters (e.g., military voters stationed overseas). *See* ECF No. 59 at
 16 16–17, n.14. In addition to Nevada, fourteen states and the District of Columbia currently accept
 17 timely cast mail ballots received after election day from all absentee voters.⁶ Many have done so

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 19 ⁵ Plaintiffs also cherry-pick phrases from a 100-year-old Supreme Court opinion,
 20 *Newberry v. United States*, 256 U.S. 232, 250 (1921). *See* ECF No. 73 at 1 (“That is, the
 21 ‘election’ means the ‘final choice’ of a federal officer ‘by the duly qualified electors.’”). That
 case has no relevance here and does not even mention the Federal Election Day Statutes. In any
 event, Plaintiffs’ statement agrees with the DNC’s position—the voter’s “final selection” is the
 core of an election. ECF No. 59 at 7–9.

22 ⁶ *See* Alaska Stat. § 15.20.081(e) (requiring voters mail their ballot on or before election
 23 day); Cal. Elec. Code § 3020(b)(1) (ballots are “timely cast” if received within seven days of
 24 election day and mailed on or before election day); D.C. Code § 1-1001.05(10A) (same); 10 Ill.
 Comp. Stat. 5/19-8(c) (ballots postmarked on or before election day received after polls close
 “shall be counted”); Kan. Stat. Ann. § 25-1132(b) (counting ballots received after polls close if

1 for years. The list of states with laws like the one Plaintiffs seek to invalidate here includes four of
2 the nation’s five most populous states—California, Texas, New York, and Pennsylvania.
3 Universally, and consistent with federal law, states that accept ballots received after election day
4 require that voters cast their vote on or before election day. These states simply confirm that such
5 ballots arriving within a specified period after election day should be counted. They do not, as
6 Plaintiffs claim, “hold open voting” beyond election day. *See* ECF No. 73 at 7.

7 Moreover, Plaintiffs’ historical telling suggests that states receiving mail ballots after
8 election day is a new phenomenon, emerging only in response to the COVID-19 pandemic. Hardly.
9 Washington state has allowed for receipt of mail ballots after election day in the absentee voting
10 context *for over a century* (since at least 1917). *Id.* at 4 (citing P. Orman Ray, *Absent-Voting Laws,*
11 *1917*, 12 Am. Pol. Sci. Rev. 251, 253–54 (1918)).⁷ As far back as the 1920s, other states, including
12 California, Missouri, Nebraska, and Rhode Island, allowed voters to mail ballots on election day
13 (necessarily meaning the ballot would be received by an election official after election day). *See*

14 _____
15 mailed on or before election day); Md. Code Ann., Elec. Law § 9-505 (counting ballots received
16 after election day if mailed on or before election day); Mass. Gen. Laws § 25(13) (same); Miss.
17 Code Ann. § 23-15-637(1)(a) (same); N.J. Stat. Ann. § 19:63022(a) (same); N.Y. Elec. Law § 8-
18 412(1) (same); Or. Rev. Stat. § 254.470(6)(e)(B)(i) (same); Tex. Elec. Code Ann. § 86.007(a)(2)
19 (accepting ballots arriving after election day if postmarked no later than 7:00 p.m. on election
20 day); Va. Code Ann. § 24.2-709(B) (counting ballots postmarked on or before election day);
21 Wash. Rev. Code § 29A.40.091(4) (same); W. Va. Code § 3-3-5(g)(2) (receiving ballots up until
22 board of canvassers convenes to begin the canvass if postmarked no later than election day); *see*
23 *also* Alaska Admin. Code tit. 6, § 25.590(a) (defining “election day” for mail elections as “the
24 deadline by which a voter’s ballot must be voted, witnessed, mailed, and if postmarked, date-
stamped by the post office”).

⁷ Plaintiffs offer no principled reason why casting a ballot in one county to be transferred
21 by election officials to another county (almost certainly via the U.S. mail), as allowed under
22 Washington law in the early twentieth century, or a soldier “in the field” giving his ballot to
23 another soldier deputized as an election official to be returned later is any different from a voter
24 today putting their voted ballot in the U.S. mail. *See* ECF No. 73 at 3–4. What matters is that, in
all these states, the voter cast their ballot on or by election day and election officials counted it
even though it was received after election day. Who carried it from one place to another is
irrelevant.

1 Cal. Political Code §§ 1359(b)-(c), 1360 (James H. Derring ed. 1924), <https://bit.ly/3VN7GJg>
2 (allowing voter to mail ballot on election day); Mo. Rev. Stat. § 11474 (1939),
3 <https://bit.ly/3VQsq2P> (same); Neb. Rev. Stat. § 32-838 (1943), <https://bit.ly/45zCHmX> (same);
4 R.I. Sess. Law, ch. 1863, § 6 (1932), <https://bit.ly/3RrDS1V> (requiring voter mail ballot on
5 election day and allowing for receipt “before midnight of the Monday following” election day).
6 And of the fifteen states that currently accept mail ballots after election day, eleven did so well
7 before 2020. For example, West Virginia’s law allowing receipt of ballots after election day has
8 been in effect since 2007. *See* W. Va. Code § 3-3-5(g)(2). Virginia has allowed post-election-day
9 receipt since 2010, Va. Code Ann. § 24.2-709(B); New York since 2011, N.Y. Elec. Law § 8-
10 412(1) (McKinney); Maryland since 2013, Md. Code Ann., Elec. Law § 9-505; California since
11 2015, Cal. Elec. Code § 3020(b)(1); and Texas since 2017, Tex. Elec. Code Ann. § 86.007(a)(2).
12 This is neither a new nor isolated approach.

13 That Congress has not superseded these states’ practices is instructive. *See Bost*, 684 F.
14 Supp. 3d at 736. (“Despite these ballot receipt deadline statutes being in place for many years in
15 many states, Congress has never stepped in and altered the rules.”). Congress knows states allow
16 for the receipt of mail ballots after election day, and at least one has done so for over 100 years.
17 But in all those years, Congress has chosen not to preempt those electoral regulations. Despite
18 amending the Federal Election Day Statutes multiple times, Congress “has taken no action to curb
19 th[e] established practice” of accepting ballots that arrive by mail after election day. *See Bomer*,
20 199 F.3d at 776. Most recently, Congress passed the Electoral Count Reform and Presidential
21 Transition Improvement Act (“ECRA”). *See* Pub. L. No. 117-328, 136 Stat. 4459, 5233 (2022).
22 When the ECRA passed in 2022, Congress was well aware that an increasing number of states
23 accepted ballots mailed on or before election day but arriving thereafter. But Congress did *not*

1 correct the states' practice of accepting ballots after election day; it said simply that electors "shall
2 be appointed ... on election day." 3 U.S.C. § 1; *cf. Bob Jones Univ. v. United States*, 461 U.S. 574,
3 599 (1983) ("Congress can and often does correct ... misconceptions" about the meaning of
4 statutes and finding "an unusually strong case of legislative acquiescence in and ratification by
5 implication" where Congress is "constantly reminded" and aware of a certain practice).

6 Plaintiffs argue that other courts "erroneously" relied on the Uniformed and Overseas
7 Citizens Absentee Voting Act (UOCAVA) to conclude that Congress "allow[s] ballots received
8 after Election Day to be counted" because Congress did not set a deadline for UOCAVA ballot
9 receipt and instead deferred to the state's specific law. ECF No. 74 at 22 (quoting *Bost*, 684 F.
10 Supp. 3d at 737). But deference to state deadlines is the whole point. When Congress enacted
11 UOCAVA, as Plaintiffs acknowledge, *id.*, some states counted ballots cast before election day but
12 received after election day, and others did not. *See* ECF No. 73 at 6.⁸ By not clarifying that
13 UOCAVA ballots must be *received* by election day, Congress deferred to the states.

14 Indeed, the Act of September 16, 1942, *see* ECF No. 73 at 5, demonstrates that when
15 Congress wants to set election day as a categorical deadline for receipt of ballots, it can and does.
16 In that statute (subsequently superseded), Congress set the closing of polls on election day as the
17 unambiguous deadline for *receipt* of ballots cast by servicemembers. Act of Sept. 16, 1942, ch.
18 561, 56 Stat. 753, § 9. Of course, if the Federal Election Day Statutes already mandated such a
19 deadline, this law would have been superfluous.

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22 ⁸ The MOVE Act, passed in 2009, also defers to state law ballot receipt deadlines. The
23 MOVE Act requires that ballots from overseas servicemembers "for regularly scheduled general
24 elections for Federal office" must be delivered "to the appropriate election officials" "not later
than the date by which an absentee ballot must be received [under state law] in order to be
counted in the election." 52 U.S.C. § 20304(b)(1).

1 **D. Plaintiffs’ theory nonsensically differentiates between things that can and**
2 **cannot happen after election day.**

3 As a practical matter, it is impossible for officials to conduct all the actions needed to
4 “conclude[] [the election] as a matter of law” on election day. Even putting aside the signature
5 comparison process, the opportunity for voters to cure their signature issues, and the counting
6 board activities, just counting itself is time-intensive; nearly 1.5 million votes were cast in Nevada
7 in the 2020 General Election. Nevada Sec’y of State, *2020 General Election Turnout*,
8 <https://www.nvsos.gov/sos/home/showpublisheddocument/9054/637426719538900000> (last
9 visited June 16, 2024). Plaintiffs do not and cannot explain why their position does not require all
10 of this to happen before 11:59 p.m. on election day.

11 **E. Plaintiffs’ hypotheticals are irrelevant.**

12 Finally, Plaintiffs propose a string of hypotheticals, none of which advances the ball. *See*
13 ECF No. 73 at 8. Submitting a ballot by election day (whether by mail, or drop box, or hand
14 delivery to election officials) is not the only requirement for casting a mail ballot in Nevada. Before
15 mailing a ballot, voters must also mark or sign the ballot and address their ballot to local election
16 officials—not the Department of Public Safety. NRS 293.269917(1)(c); 293.269921(1)(b); ECF
17 No. 73 at 8. The ballot also, obviously, has to actually be *put in the mail* to count. NRS
18 293.269921(1)(b). And if a voter chooses to deliver their ballot on election day, they have to
19 actually deliver it—not put it in a trash can. NRS 293.269921(1)(a); ECF No. 73 at 8. These
20 hypotheticals are simply irrelevant. This case is about timing, not whether ballots should be
21 counted if they were not delivered to the right place, or not delivered at all.

22 ///

23 ///

1 **III. CONCLUSION**

2 For the foregoing reasons, the DNC respectfully requests that the Court dismiss Plaintiffs'
3 Complaint.

4 Dated: June 20, 2024

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20 * Admitted to practice in this case under LR IA
21 11-2

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June 2024, a true and correct copy of the foregoing, **INTERVENOR-DEFENDANT THE DNC’S REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS’ COMPLAINT**, was transmitted to all parties by operation of the Court’s electronic filing system:

/s/Rachael L. Chavez

An employee of Reese Ring Velto, PLLC

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