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**Motion for Admission Pro Hac Vice Pending; Attorney has complied with LR IA 11-2*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:24-cv-00198

MOTION TO INTERVENE

MOTION TO INTERVENE AS DEFENDANT

Pursuant to Federal Rule of Civil Procedure 24(a), the Democratic National Committee ("DNC" or "Proposed Intervenor") respectfully moves to intervene as a defendant in this case as a matter of right. Alternatively, the DNC moves for permissive intervention under Rule 24(b). This Motion is made and based on the papers and pleadings on file in this case and the Points and Authorities set forth below. A proposed Answer is attached as Exhibit A to this Motion and a proposed Motion to Dismiss is attached as Exhibit B consistent with Rule 24(c).[1]

INTRODUCTION

Proposed Intervenor has abundant good cause to seek intervention both as a matter of right and permissively. The Republican National Committee ("RNC"), Nevada Republican Party, Donald J. Trump for President, Inc. 2024 ("Trump Campaign"), and Donald J. Szymanski seek to undermine a commonsense and convenient voting option relied on by thousands of

[1] The text of Federal Rule of Civil Procedure 24(c) requires a proposed defendant-intervenor attach a proposed "pleading" to a motion to intervene. *See* Fed. R. Civ. P. 24(c). Rule 7(a) identifies seven kinds of "pleading," and does not include Rule 12(b) motions to dismiss. *See* Fed. R. Civ. P. 7(a). As a result, even though a named defendant may file a motion to dismiss under Rule 12(b) before serving one of the pleadings identified in Rule 7(a), it is not clear whether the same opportunity is available to intervenor-defendants. This matters because under Rule 12(b), motions asserting certain defenses, including failure to state a claim upon which relief can be granted, "*must* be made before pleading if a responsive pleading is allowed." Fed. R. Civ. P. 12(b) (emphasis added). Thus, if "pleading" as used in Rule 24 is limited to the pleadings identified in Rule 7, it is impossible for intervenor-defendants to file a timely 12(b)(6) motion to dismiss. Despite this, courts have held a proposed motion to dismiss satisfies Rule 24(c)'s requirement. *See, e.g.*, *Ctr. for Biological Diversity v. Jewell*, NO. 15-cv-00019, 2015 WL 13037049, at *2 (D. Ariz. May 12, 2015) ("The Court finds that the stricken Motion to Dismiss would have complied with the substantive requirements of Rule 24(c); it puts the existing parties on sufficient notice of the State's claim or defense, such that the procedural requirements of Rule 24(c) would be met."). Proposed Intervenor-Defendant respectfully requests the Court accept the attached Proposed Motion to Dismiss or, in the alternative, if the Court determines a proposed answer is required to comply with Rule 24(c), accept the attached Proposed Answer and construe and docket the attached Motion to Dismiss as a Motion for Judgment on the Pleadings under Rule 12(c).

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Nevada voters in every election *one month* before Nevada voters cast ballots in the Nevada primary election and *less than six months* before a presidential election.

Plaintiffs take issue with Nevada Revised Statute 293.269921, which allows election officials to accept and count ballots mailed by election day but received up to four days later.

The issue, according to Plaintiffs, is that federal law requires there be "only one federal Election Day" and by accepting ballots cast before election day but not received until after it, Nevada is impermissibly "holding voting open" beyond that designated federal election day. ECF No. 1 at 6, ¶ 46. If Plaintiffs were correct in their narrow interpretation of the United States Constitution and federal law, then the consequences for Nevada elections, and elections across the country, would be nothing short of profound.

The parties will dispute the merits at a later point, but there can be no reasonable dispute that the DNC satisfies the criteria for intervention as of right or permissively. Given the stakes of this litigation, the DNC undoubtedly has significant interests in this action which, if successful, would force the DNC to expend significant resources and would burden its constituents and members. Further, the existing parties do not adequately represent the DNC's interests. Proposed Intervenor also satisfies the criteria for permissive intervention. The DNC—and its counterpart the RNC—is regularly permitted to intervene in suits challenging state election procedures. DNC Counsel have conferred with counsel for the existing parties and no defendants object to the DNC's intervention in this matter. Plaintiffs indicated they would alert the Court to their position after reviewing the intervention papers.

For these reasons, the DNC respectfully submits that it should be permitted to intervene as of right, or, in the alternative, should be granted permissive intervention.

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POINTS AND AUTHORITIES

I. Background

A. The Democratic National Committee

The DNC is the oldest continuing party committee in the United States, dedicated to electing Democratic candidates to all levels of public office nationwide. Its organizational purposes and functions are to communicate the Democratic Party's position and messages on issues; protect voters' rights; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats, but also to cast their ballots for Democratic candidates. To accomplish its mission, the DNC assists state parties and candidates by providing active support through the development of programs benefiting Democratic candidates. The DNC works with individual members and constituents across Nevada, educating Democratic voters in the state, and working to ensure they have access to the franchise.

The DNC is composed of its chair, vice chairs, and more than 200 members elected by Democrats in every U.S. state and territory and the District of Columbia. The DNC also represents millions of voters scattered around the country, including many within Nevada.

B. Nevada's mail ballot statute

Nevada adopted universal mail voting effective January 1, 2022. 2021 N.V. AB 321 (June 14, 2021). State law requires county clerks and registrars to mail every active registered voter a ballot, with some limited exceptions. NRS 293.269911(1), (2). Voters who receive a ballot may return it either by mail or by dropping the ballot in a designated drop box. NRS 293.269921(1). To be counted, mail ballots must be postmarked on or before election day and received no later than 5:00 p.m. on the fourth day after election day. NRS 293.269921(1)(b).

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When the date of a ballot's postmark cannot be determined, Nevada law presumes the ballot was timely submitted as long as it is received before 5:00 p.m. on the third day after election day. NRS 293.269921(2).

C. Plaintiffs' lawsuit

Plaintiffs seek to declare invalid and enjoin the portions of Nevada law that allow election officials to count ballots received up to four days after election day. *See generally* ECF No. 1. Plaintiffs specifically allege that Nevada law runs afoul of 3 U.S.C. § 1 and 2 U.S.C. §§ 1, 7 because it permits state officials to count ballots received after election day. The problem, Plaintiffs insist, is that "[t]here is only one federal election day," and Nevada violates federal law "[b]y holding voting open beyond the federal Election Day." *Id.* at 6, ¶ 46. Plaintiffs also bring two claims under 42 U.S.C. § 1983, erroneously contending that Nevada's statutory scheme counts illegitimate votes and, thus, dilutes "honest votes." *Id.* at ¶¶ 79–80.

Among other relief, Plaintiffs seek to enjoin the ballot receipt deadline in the "November 2024 general election" that is *less than six months away*. *Id.* at 16, ¶ B.

II. Argument

A. Legal standard

"Rule 24 traditionally receives liberal construction in favor of applicants for intervention." *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003), *as amended* (May 13, 2003); *see also W. Expl. LLC v. U.S. Dep't of the Interior*, No. 3:15-cv-00491-MMD-VPC, 2016 WL 355122, at *2 (D. Nev. Jan. 28, 2016) (noting Rule 24's liberal construction and "focus[] on practical considerations rather than technical distinctions").

The Ninth Circuit "require[s] applicants for intervention as of right pursuant to Rule 24(a)(2) to meet a four-part test":

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> (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

United States v. Aerojet Gen. Corp., 606 F.3d 1142, 1148 (9th Cir. 2010) (quoting *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006)).

"Rule 24(b) permits the Court to allow anyone to intervene who submits a timely motion and 'has a claim or defense that shares with the main action a common question of law or fact.'" *Nevada v. United States*, No. 3:18-cv-569-MMD-CBC, 2019 WL 718825, at *2 (D. Nev. Jan. 14, 2019) (quoting Fed. R. Civ. P. 24(b)(1)(B)). In addition to a common question of law or fact, permissive intervention under Rule 24(b) also requires (1) a timely motion and (2) an independent basis for the court's jurisdiction. See *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998).

Finally, Rule 24(c) requires that a motion to intervene "be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c).

B. The DNC is entitled to intervene as a matter of right.

The DNC satisfies all four requirements for intervention as of right. *See* Fed. R. Civ. P. 24(a). Specifically, (1) this application for intervention is indisputably timely, (2) the DNC has an interest in the subject of these actions, (3) the disposition of these cases will impair the DNC's ability to protect its interests, and (4) there is inadequate representation of the DNC's interests by existing parties to this litigation. *See Aerojet Gen. Corp.*, 606 F.3d at 1148 (reciting four-element test). The DNC (and other party committees) is regularly permitted to intervene as of right in suits regarding states' election procedures. *See, e.g.*, *Paher v. Cegavske*, No. 3:20-cv-00243,

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2020 WL 2042365, at *3 (D. Nev. Apr. 28, 2020); *Issa v. Newsom*, No. 2:20-cv-01044, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020). There is no reason this case should be treated any differently.

1. This motion is timely.

First, the motion is timely. "In determining whether a motion for intervention is timely, [courts in this Circuit] consider three factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997) (citation omitted). Each of these considerations supports a finding of timeliness here. The timeliness of this motion cannot be seriously questioned.

First, this case is at its earliest stage. The Complaint was filed on May 3, 2024, just ten days ago. *See Paher*, 2020 WL 2042365, at *2 (finding "no question" intervention within a week of filing was timely). And the DNC filed this motion before any defendant appeared in the case or any substantive activity occurred. This case has neither a trial date nor an entered case schedule. *See, e.g.*, *Nevada*, 2019 WL 718825, at *2 (granting motion to intervene filed several weeks after action commenced); *W. Expl.*, 2016 WL 355122, at *2 (granting motion to intervene filed nearly two months after action commenced).

All other factors also support the timeliness of the DNC's motion. Given the early stage of proceedings, the existing parties will suffer no prejudice if the DNC intervenes. The DNC is also prepared to adhere to any case schedule set by the Court without delay. *See, e.g.*, *W. States Trucking Ass'n v. Schoorl*, No. 2:18-CV-1989-MCE-KJN, 2018 WL 5920148, at *1 (E.D. Cal. Nov. 13, 2018) (finding "no delay" where party "sought to intervene [at] the very outset of litigation").

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2. The DNC has a significant, protectable interest in the outcome of this litigation.

The Ninth Circuit "follow[s] the guidance … that 'if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.'" *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (citing Fed. R. Civ. P. 24 advisory committee's notes). "[N]o specific legal or equitable interest need be established" to satisfy the interest requirement in Rule 24(a)(2). *See Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (internal quotation marks omitted). Applicants need only establish that their interest is "protectable under some law and that there is a relationship between the legally protected interest and the claims at issue." *Id.* Courts have held qualifying interests include an organizational interest in needing "to expend additional resources . . . should [a challenged] election law change" and "an associational interest on behalf of its members . . . should the law change" and threaten those members' votes. *Bost v. Illinois State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023); *see also La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) (holding sufficient interests include a political committee's need to "expend significant resources" based on a new election law that "regulate[d] the conduct of the Committees' volunteers and poll watchers"). Courts have also found qualifying interests where a lawsuit threatens to interfere with a political party's electoral prospects. *See Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981) (holding "the potential loss of an election" is sufficient interest for intervention).

This standard is easily met here: Plaintiffs outright admit the relief they seek in this litigation will directly affect Democratic voters and, by extension, Democratic candidates and the DNC. *See* ECF No. 1 at ¶¶ 56–59 (explaining "Democrats disproportionately vote[] by mail compared to Republicans" and "Democrats tend to vote later").

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Furthermore, the DNC has significant organizational and associational interests in this case.

Organizational interests: The core mission of Proposed Intervenor is maximizing voter turnout for Democratic candidates in federal, state, and local elections. To do that in Nevada, as it does in any other state, the DNC hires employees and recruits volunteers to educate voters on whether, how, when, and where they can vote under the rules prescribed by the state. Given the close proximity of the primary and general elections, the DNC has already begun preparing for the upcoming elections under current law. These expenditures "to educate their members on the election procedures . . . are routinely found to constitute significant protectable interests." *Issa*, 2020 WL 3074351, at *3; *see Bost*, 75 F.4th at 687 (finding an interest sufficient where a political party "would have to expend additional resources . . . should the law change").

Courts in the Ninth Circuit, including this one, have found "significant protectable interests" where, as here, "Plaintiffs' success on their claims would disrupt the organizational intervenors' efforts to promote the franchise and ensure the election of Democratic Party candidates." *Paher*, 2020 WL 2042365, at *2; *see also Issa*, 2020 WL 3074351, at *3 (concluding significant protectable interests exist because if "Plaintiffs were to succeed on their claims, then the Proposed Intervenor would have to devote its limited resources to educating their members on California's current voting-by-mail system and assisting those members with the preparation of applications to vote by mail"). If Plaintiffs succeed in enjoining portions of Nevada's mail ballot statute, the DNC will have to divert and expend resources to encourage Nevada voters to complete and mail their ballots well before election day to avoid disenfranchisement—a particularly heavy lift given the sheer volume of voters who submit their ballots by mail in Nevada. *See Presidential Preference Primary*, Silver State Election Results

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2024, https://silverstateelection.nv.gov/vote-turnout/ (last visited May 6, 2024) (reporting 78.26% of ballots cast by mail in most recent Nevada election). Avoiding that expenditure is a "direct" and "substantial" interest of the DNC itself, separate from the interests of its constituent members. *See La Union*, 29 F.4th at 306.

A recent case from the Fifth Circuit is squarely on point. In *La Union del Pueblo Entero v. Abbott*, the Fifth Circuit affirmed the RNC's right to intervene in a suit challenging a Texas law "pertaining to voter registration, voting by mail, poll watchers, and more" because the RNC "expend[s] significant resources in the recruiting and training of volunteers and poll watchers who participate in the election process" and the law at issue "unquestionably regulates the conduct of the Committees' volunteers and poll watchers." *Id.* at 304, 306. That reasoning applies equally here. The challenged statute implicates the right of all Nevadans to have their ballot counted; the DNC expends significant resources educating voters about voting requirements in their state and facilitating the timely completion and submission of ballots. The law at issue "unquestionably" implicates the conduct of the DNC's volunteers and staff engaged in voter education initiatives.

Plaintiffs frame their interest in this case not just in terms of how they plan to expend their resources, but also in terms of "competitive electoral harms." ECF No. 1 at ¶ 6. Any "competitive electoral harm" will, by the same token, impact the DNC as well. *Cf. Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022) (holding election regulations that "make[] the competitive landscape worse for a candidate or that candidate's party" confer standing).

Associational interests: Political entities like the DNC have an "associational interest on behalf of [their] members" to challenge or defend a law that might affect those members' right to vote. *Bost*, 75 F.4th at 687; *see also Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 &

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n.7 (2008) (holding, in the more demanding context of standing, that a political party had "standing to challenge the validity of" a law that imposed voting requirements on the party's members). Proposed Intervenor's members are both voters and candidates for elected office, and Plaintiffs' lawsuit threatens the rights of both.

This suit implicates the rights of all DNC voters "to cast their ballots and have them counted"—a right secured by the Constitution. *See United States v. Classic*, 313 U.S. 299, 315 (1941). Indeed, "[t]here is no right more basic in our democracy than the right to participate in electing our political leaders." *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014). If Plaintiffs' challenge is successful, numerous Democratic Party voters (indeed, numerous voters period) could lose the ability to have their votes counted. The DNC has an overriding interest in preventing that outcome.

This suit also threatens to prevent the election of Democratic candidates. ECF No. 1 at ¶¶ 56–59 (explaining "Democrats disproportionately vote[] by mail compared to Republicans"). Interference with a political party's electoral prospects constitutes a particularized interest. *E.g.*, *Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981) (holding "the potential loss of an election" is sufficient interest for intervention); *cf. Mecinas*, 30 F.4th at 898 (holding DNC "has standing to sue based on the ongoing, unfair advantage conferred to their rival candidates by the Ballot Order Statute"). This Court and others in the Ninth Circuit have permitted political parties to intervene on these grounds. *See, e.g.*, *Paher*, 2020 WL 2042365, at *2 (granting intervention to DNC and related groups where they "maintain significant protectable interests" in their "efforts to promote the franchise and ensure the election of Democratic Party candidates"); *Issa*, 2020 WL 3074351, at *3 (granting intervention of state party where "Plaintiffs' success on their claims would disrupt the organizational intervenors' efforts to promote the franchise and ensure

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the election of Democratic Party candidates") (citation omitted). No other defendant has an interest in the election of candidates, let alone Democratic candidates specifically.

If Plaintiffs succeed in enjoining NRS 293.269921, then it will undoubtedly (negatively) affect both the DNC's voter-members' ability to vote and candidate members' ability to win. *See Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 573–74 (6th Cir. 2004) (per curiam) ("Appellees have standing to assert, at least, the rights of their members who will vote in the November 2004 election.").

Finally, if Plaintiffs have standing to file this suit, the DNC has the "mirror image" interest in opposing it. *See Democratic Nat'l Comm. v. Bostelmann*, No. 20-cv-249, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (allowing the RNC and Republican Party of Wisconsin to intervene "as they are uniquely qualified to represent the mirror-image interests of the plaintiffs, as direct counterparts to the DNC/[Democratic Party of Wisconsin]") (internal quotations omitted), *modified on reconsideration*, 451 F. Supp. 3d 952 (W.D. Wis. 2020). Indeed, courts regularly grant intervention to Democratic Party organizations in suits brought by their Republican counterparts, and vice versa. *See, e.g.*, *Ariz. Democratic Party v. Hobbs*, No. CV-20-01143, 2020 WL 6559160, at *2 (D. Ariz. June 26, 2020) (granting intervention to the RNC and Arizona Republican Party).

The DNC is "uniquely qualified" to defend against suits like this one. *E.g.*, *Bostelmann,* 2020 WL 1505640, at *5. Plaintiffs' lawsuit cuts at the very core of the DNC's purpose to protect the legal rights of voters and encourage the election of Democratic candidates at the national, state, and local levels. As such, the DNC's interests are particularized and legally protectable, satisfying Rule 24(a)(2).

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3. Denial of the Motion will impair the DNC's ability to protect its interests.

A proposed intervenor bears the "minimal" burden of showing the relevant suit "may" impair or impede their ability to protect their interests. *Brumfield v. Dodd*, 749 F.3d 339, 344 & n.2 (5th Cir. 2014) (quoting *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999)). Courts have "little difficulty" finding that burden satisfied when the proposed intervenor has a "significant protectable interest." *Citizens for Balanced Use*, 647 F.3d at 898 (citation omitted).

There is little question that disposition of these matters will impair the DNC's ability to protect its interests. Any decision invalidating NRS 293.269921 will place additional burdens on Nevada voters—including members of the Democratic Party and voters who would support Democratic candidates. In the Presidential Preference Primary conducted earlier this year, nearly seventy-nine percent of votes were cast by mail. *See Presidential Preference Primary*, Silver State Election Results 2024, https://silverstateelection.nv.gov/vote-turnout/ (last visited May 6, 2024). Those voters submitted mail ballots with the understanding that, to be counted, their ballot need only be postmarked—not received—by election day. Plaintiffs' lawsuit threatens to upend that established practice, creating confusion that would require significant voter outreach to correct.

Put another way, if Plaintiffs succeed, numerous voters, including many Democratic voters, risk disenfranchisement—an outcome that directly threatens the DNC's interests. As detailed above, an adverse ruling would, among other things, cause significant upheaval in how Nevada administers its elections. The DNC educates voters about when, where, and how to return mail ballots, based on Nevada election law. As Plaintiffs themselves acknowledge, "[m]ail ballots from Democratic voters … tend to arrive late, *in part because 'Democratic get-out-the-vote drives—which habitually occur shortly before election day—may delay maximum*

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Democratic voting across-the-board, and produce a 'blue shift' in late mail ballots.'" ECF No. 1 at ¶ 58 (emphasis added). Those "get-out-the-vote drives" are, in significant part, the work of the DNC. If Plaintiffs succeed in obtaining the relief they seek, the DNC will be forced to dedicate and re-allocate resources—including money and staff time—to effectively reach voters. *See La Union*, 29 F.4th at 307 ("If the district court either partially or fully grants the relief sought by the plaintiffs here, the Committees will have to expend resources to educate their members on the shifting situation in the lead-up to the 2022 election.").

And a decision invalidating NRS 293.269921 would harm Democratic candidates' election prospects. Plaintiffs implicitly acknowledge this lawsuit is simply a gambit to skew the upcoming election in their favor: "Counting mail ballots received after Election Day … specifically and disproportionately harms Republican candidates and voters." ECF No. 1 at ¶ 60. That is why the RNC seeks to void those votes. But any decision of this Court that invalidates ballots cast on or before election day simply because they are received after election day would equally "specifically and disproportionately harm[]" Democratic candidates and voters. A decision in Plaintiffs' favor will impair the DNC's interests in protecting the legal rights of voters and encouraging the election of Democratic candidates.

Again, this case resembles numerous decisions in which a variety of federal courts, including this one, found a political party committee may intervene to prevent restrictions on voting access. *E.g.*, *Paher*, 2020 WL 2042365, at *4 (granting DNC intervention in election law case brought by conservative interest group); *Issa*, 2020 WL 3074351, at *3 (granting Democratic Congressional Campaign Committee and California Democratic Party intervention in lawsuit by Republican congressional candidate); *Donald J. Trump for President, Inc. v. Murphy*, No. 20-cv-10753, 2020 WL 5229209, at *1 (D.N.J. Sept. 1, 2020) (granting Democratic

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Congressional Campaign Committee intervention in lawsuit by Republican candidate and party entities).

Because the outcome of this litigation may impair the rights of the DNC, as well as those of its members, the DNC satisfies the third prong of the Rule 24(a) test.

4. The DNC's interests are not adequately represented by the existing parties.

"The burden of showing inadequacy of representation is minimal and satisfied if the applicant can demonstrate that representation of its interests may be inadequate." *Citizens for Balanced Use*, 647 F.3d at 898 (internal citations omitted); *see also Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); *La Union*, 29 F.4th at 307; *W. Expl.*, 2016 WL 355122, at *3 (intervenor conservation groups' more narrow interests in environmental protections may not be adequately represented by a federal agency defendant's "broader land management interests"). The DNC certainly meets that standard here.

Further, "the government's representation of the public interest may not be 'identical to the individual parochial interest' of a particular group just because 'both entities occupy the same posture in the litigation.'" *Citizens for Balanced Use*, 647 F.3d at 899 (citation omitted) (allowing environmental group to intervene where it had different objectives than the U.S. Forest Service); *see Berger v. N. Carolina State Conf. of the NAACP*, 597 U.S. 179 (2022) (even when state agents pursue interests "related" to those of political actors, those interests are not properly considered "identical"); *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir. 2001) ("[T]he government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [political candidate] merely because both entities occupy the same posture in the litigation.").

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Indeed, courts have "often concluded that governmental entities *do not* adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003) (emphasis added); *accord La Union*, 29 F.4th at 309 (The "private interests" of the political committees "are different in kind from the public interests of the State or its officials"); *Citizens for Balanced Use*, 647 F.3d at 899.

While the Secretary of State and various county official defendants may oppose the relief that Plaintiffs seek, they do not share the DNC's particular interest in the votes of *Democratic Party members* and the *election of Democratic candidates*. The Defendants' interests in this litigation are defined by their statutory duties to conduct elections and to administer Nevada's election laws. *See, e.g.*, NRS 293.124(1) ("The Secretary of State shall serve as the Chief Officer of Elections for this State [and] is responsible for the execution and enforcement of the provisions of title 24 of NRS and all other provisions of state and federal law relating to elections in this State."); NRS 293.269925(1) (county clerk responsible for "establish[ing] procedures for the processing and counting of mail ballots"). Indeed, Defendants' stake is defined by their statutory duties, requiring them to "represent the broad public interest." *Great Basin Res. Watch v. U.S. Dep't of the Interior*, Case No. 3:19-cv-00661-LRH-WGC, 2020 WL 1308330, at *3 (D. Nev. Mar. 19, 2020) (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994)).

By contrast, the DNC's interests are much more particular. The DNC's mission is to ensure that as many of its voters who have cast ballots have their votes counted and to have its candidates elected. Plaintiffs' lawsuit threatens significant harm to the DNC's core missions of mobilizing and educating Democratic voters and electing Democratic candidates if NRS 293.269921 is invalidated. *See Issa*, 2020 WL 3074351, at *3 ("While Defendants' arguments turn on their inherent authority as state executives and their responsibility to properly administer

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election laws, the Proposed Intervenor is concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures."). Plaintiffs' actions would disenfranchise voters and will harm Democratic candidates. Nothing could be more "germane" to the DNC's purposes. *See La Union*, 29 F.4th at 308 (citation omitted).

For these reasons, courts have repeatedly permitted political parties to intervene in cases involving election administration, even where government officials are named as defendants—including in Nevada. *See, e.g.*, *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5229116, at *1 (D. Nev. Aug. 21, 2020) (granting intervention as of right because Secretary of State did not adequately represent partisan organization's interests, despite both wishing to defend against suit); *Paher*, 2020 WL 2042365, at *3 (similar, even where intervenors and named defendant "presumably share[d] the goal of protecting the all-mail election provisions . . . being challenged"); *Fair Maps Nevada v. Cegavske*, No. 3:20-CV-00271-MMD-WGC, 2020 WL 8188427, at *3 (D. Nev. May 20, 2020) (similar); *see also, e.g.*, *Hobbs*, 2020 WL 6559160, at *1 (allowing parties, including the RNC, to intervene in case brought by the DNC and Arizona Democratic Party); *Issa*, 2020 WL 3074351, at *3.

The DNC satisfies this prong too; at the very least, the Defendants may not adequately represent the DNC's interests, and this potential inadequacy is all that is necessary to support intervention.

C. Alternatively, the DNC should be permitted to intervene under Rule 24(b).

If the Court does not grant intervention as a matter of right, the DNC respectfully requests that the Court exercise its discretion to allow the DNC to intervene under Rule 24(b).

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The DNC easily satisfies the requirements for permissive intervention under Rule 24(b), which grants this Court broad discretion "to allow anyone to intervene who submits a timely motion and 'has a claim or defense that shares with the main action a common question of law or fact.'" *Nevada*, 2019 WL 718825, at *2 (quoting Fed. R. Civ. P. 24(b)(1)(B)). "Because a court has discretion in deciding whether to permit intervention, it should consider whether intervention will cause undue delay or prejudice to the original parties, whether the applicant's interests are adequately represented by the existing parties, and whether judicial economy favors intervention." *Id.* (citing *Venegas v. Skaggs*, 867 F.2d 527, 530–31 (9th Cir. 1989), *aff'd sub nom. Venegas v. Mitchell*, 495 U.S. 82 (1990)); *Paher*, 2020 WL 2042365, at *3 (granting permissive intervention to the DNC and others).

For the reasons discussed above, the DNC's motion is timely. Intervention will result in neither prejudice nor undue delay. The DNC has an undeniable interest in a swift resolution to this action to ensure that Defendants have sufficient time to allow every Nevada voter to cast a ballot in the upcoming presidential election and beyond. Moreover, the DNC has significant interests at stake in this litigation, as outlined above, which would be undermined by the relief Plaintiffs seek and the DNC cannot rely on Defendants to adequately protect its interests. Finally, the DNC also has defenses to Plaintiffs' claims that share common questions of law and fact. Indeed, there is one core "question of law" undergirding the named Defendants' and DNC's positions: the validity of NRS 293.269921. Although each party will undoubtedly approach that question in different ways, informed by their unique interests, this is more than enough to satisfy Rule 24(b).

For the reasons set forth above, permitting the DNC's intervention is consistent with Rule 24 and will permit it to protect its rights and the rights of its members.

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III. Conclusion

For the reasons stated above, the DNC respectfully requests the Court grant its motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit it to intervene under Rule 24(b).

Dated: May 13, 2024

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By: *s/ Kevin J. Hamilton*

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**Motion for Admission Pro Hac Vice Pending; Attorney has complied with LR IA 11-2*

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2024, I filed the foregoing **MOTION TO INTERVENE** with the Clerk of the Court for the United States Federal District Court for the District of Nevada by using the CM/ECF system and that the proper parties were served by way of electronic service.

/s/ Dominique Hoskins
An Employee of Brownstein Hyatt Farber Schreck

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EXHIBIT A

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**Motion for Admission Pro Hac Vice Pending; attorney has complied with LR IA 11-2*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:24-cv-00198

PROPOSED INTERVENOR-DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT

ORAL ARGUMENT REQESTED

MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Proposed Intervenor-Defendant the Democratic National Committee ("DNC") files this proposed motion to dismiss the complaint filed by the Republican National Committee ("RNC"), Nevada Republican Party, Donald J. Trump for President 2024, Inc. ("Trump Campaign"), and Donald J. Syzmanski ("Plaintiffs").

POINTS AND AUTHORITIES

I. INTRODUCTION

This suit advances the same theory floated—and rejected—in a string of lawsuits over the last four years. Plaintiffs contend that states cannot count ballots that are mailed on or before election day, and arrive shortly after election day, because this would purportedly violate federal laws establishing a single national election day. Every court that has considered this claim has rejected it. This Court should do the same.

Like many states that accept mail-in ballots, Nevada has adopted a commonsense rule that allows time for ballots to arrive in the mail. Nevada law recognizes that votes are cast upon mailing, which must happen on or before election day, and provides that these ballots will be counted as long as election officials receive them within four days after the election. This approach is consistent with longstanding election administration practice. For more than a century, states have used frameworks like Nevada's, which require ballots to be mailed by election day but permit them to be received and counted afterwards. Those statutes remain prevalent today—a majority of states and the District of Columbia allow election officials to count mail-in ballots that arrive after election day—with a principal beneficiary being members of the military serving our country abroad. Embracing Plaintiffs' unconventional theory would

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create a seismic shift in American elections, changing the way tens of millions of Americans vote in nearly every state. There is no reason to disrupt this settled practice.

Contrary to Plaintiffs' argument, federal law establishing a single election day does not set a deadline for states to receive ballots cast on or before election day. Federal law requires only that the voters' choice occur (i.e., the votes be cast) on or before election day. That leaves states free to adopt a mailbox rule like Nevada's, which accepts votes cast before election day but received afterwards. Plaintiffs' argument finds no support from any court, from a plain reading of the relevant statutes, or from historical practices of states and the federal government alike. Plaintiffs' constitutional claims fail for the additional reason that Nevada's mail voting law places no burden on Plaintiffs' constitutional rights. Indeed, the law secures, not impairs, those rights. That is fatal. If Plaintiffs' relief were granted, thousands of Nevadans would be stripped of their right to vote. If that were not enough, adopting Plaintiffs' far-fetched theories would also reverberate throughout the American political system and undermine the fundamental right to vote.

Plaintiffs' claims find utterly no support in the law. The DNC respectfully requests that this Court dismiss Plaintiffs' complaint.

II. BACKGROUND

A. The Federal Election Day Statutes

For almost a hundred years, "each State" was free to fix its federal elections "upon a different day." *See Foster v. Love*, 522 U.S. 67, 74 (1997) (citation omitted). But this practice caused two significant problems. *See id.* at 73–74. First, when states could set different election days, states that held elections earlier could "influence later voting in other States" and, thus, held an "undue advantage" in influencing federal elections. *Id*. This practice threatened to (and

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did) "distort[]" the voting process. *Id.* at 73. Second, when a state held congressional elections on a different day than presidential elections, residents were burdened with turning out for two different federal election days in a single year. *Id.* at 73–74.

In 1872, Congress set a specific date for federal elections to curb these adverse effects. Today, federal law establishes the Tuesday after the first Monday in November "as the day for the election" of members of Congress in every even numbered year (2 U.S.C. §§ 1, 7) and the day for the "appoint[ment]" of presidential electors in every fourth year (3 U.S.C. §§ 1, 21).[1]

B. Nevada law

Nevada law likewise requires that general elections "be held throughout the State on the first Tuesday after the first Monday of November in each even-numbered year." NRS 293.12755.

In 2021, the Nevada Legislature adopted universal mail voting. 2021 N.V. AB 321 (June 14, 2021). The new law took effect January 1, 2022. *Id*. State law requires county clerks and registrars to mail every active registered voter a ballot with some limited exceptions. NRS 293.269911(1), (2). Voters who receive a ballot may return it either by mail or by dropping it in a designated drop box. NRS 293.269921(1). To be counted, mail ballots must be postmarked on or before election day and received no later than 5:00 p.m. on the fourth day after election day. NRS 293.269921(1)(b). When the date of a ballot's postmark cannot be determined, Nevada law presumes the ballot was timely submitted as long as it is received before 5:00 p.m. on the third day after election day. NRS 293.269921(2).[2]

[1] 2 U.S.C. §§ 1, 7, and 3 U.S.C. §§ 1, 21 are referred to collectively as the "Federal Election Day Statutes."

[2] NRS 293.269921 is hereinafter referred to as the "Ballot Receipt Deadline."

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C. Plaintiffs' lawsuit

Plaintiffs seek to enjoin the portions of Nevada law that allow election officials to count ballots received up to four days after election day. *See generally* ECF No. 1. Plaintiffs specifically allege that the Ballot Receipt Deadline runs afoul of the Federal Election Day Statutes because it permits state officials to count ballots received after election day. The problem, Plaintiffs insist, is that "[t]here is only one federal election day," and Nevada violates federal law "[b]y holding voting open beyond the federal election day." *Id.* at 6, ¶ 46.

Plaintiffs also bring two claims under 42 U.S.C. § 1983. The first contends that Nevada has deprived Plaintiffs of their constitutional rights by "forcing Plaintiffs to spend money, devote time, and otherwise injuriously rely on unlawful provisions of state law in organizing, funding, and running their campaigns." *Id.* at ¶ 74. The second claims that Nevada's statutory scheme counts illegitimate votes and, thus, dilutes "honest votes." *Id.* at ¶¶ 79–80.

Among other relief, Plaintiffs seek to enjoin the Ballot Receipt Deadline in the "November 2024 general election" that is less than six months away. *Id.* at 16, ¶ B.

D. Prior failed challenges to mail ballot receipt deadlines

The RNC, Trump Campaign and a state Republican Party first advanced this theory in *Donald J. Trump for President, Inc. v. Way*, 492 F. Supp. 3d 354 (D.N.J. 2020), which challenged a New Jersey law authorizing the counting of ballots received shortly after election day. That case was dismissed for lack of standing, but not before the court determined Plaintiffs failed to establish a reasonable probability of success on the merits "because the Federal Election Day Statutes are silent on methods of determining the timeliness of ballots." *Id.* at 368, 372.

Two years later, Republican plaintiffs raised claims nearly identical to those here in *Bost v. Illinois State Board of Elections*, No. 22-cv-2754, ECF No. 1 at 7–10 (N.D. Ill. May 25, 2022).

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That case, too, was dismissed.[3] In addition to determining the plaintiffs lacked standing, the *Bost* court found the ballot receipt statute at issue in that case, which allowed ballots to be received and counted for up to fourteen days after election day, "operates harmoniously with the federal statutes that set the timing for federal elections." *Bost*, 2023 WL 4817073, at *11 (July 26, 2023). Plaintiffs also "fail[ed] to allege a plausible claim that the Statute affects their rights to vote and stand for office." *Id.* at *12.

Most recently, the RNC, state Republican Party and two individuals filed a suit essentially identical to this one in Mississippi, seeking to permanently enjoin implementation of a state law that allows ballots mailed on or before election day to be received up to five business days after election day. *RNC v. Wetzel*, No. 1:24cv25 LG-RPM, ECF No. 1, ¶¶ 3, 5. Motions for Summary Judgment are pending in that litigation.[4]

III. LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6), a complaint must "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This standard requires Plaintiffs do more than provide "labels and conclusions, and a formulaic recitation of the elements of a cause of action." *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Even though the Court must accept all factual allegations as true, those allegations must "raise a right to relief above the speculative level." *Id.* Dismissal is appropriate where there is "either (1) the lack of a cognizable legal theory or (2) the absence of sufficient facts alleged under a cognizable legal theory." *Newlands Asset Holding Trust v. SFT Invs. Pool 1, LLC*, Case

[3] The case is currently on appeal before the Seventh Circuit. *See* No. 23-2644 (7th Cir. Aug. 21, 2023).

[4] The Libertarian Party of Mississippi filed another suit that was later consolidated with this case. *See* Order Consolidating Cases, *Libertarian Party of Mississippi v. Wetzel*, Case No. 1:24-cv-37-LG-RPM, ECF No. 17 (Mar. 14, 2024).

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No. 3:17-cv-00370-LRH-WGC, 2017 WL 5559956, at *2 (D. Nev. Nov. 17, 2017) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)).

IV. ARGUMENT

A. Plaintiffs' claims rely on a fundamental misinterpretation of Nevada law and the Federal Election Day Statutes.

Plaintiffs' claims rest on the assertion that Nevada's Ballot Receipt Deadline conflicts with the Federal Election Day Statutes. Their lawsuit boils down to two flawed assertions: (1) a ballot is not lawfully cast until it is *received* by election officials, ECF No. 1 at ¶ 67, and (2) by accepting mail-in ballots up to four days after election day, Nevada law allows a ballot to be "cast" after election day, *id.* at ¶ 69. Therefore, Plaintiffs argue, the Ballot Receipt Deadline violates the Federal Election Day Statutes.

This premise is fundamentally and irretrievably flawed: There is no conflict between the state and federal provisions at issue. Moreover, Plaintiffs' theory that ballots may only be counted if they are *received* by election day finds no support in federal law—that requirement does not appear in the text of any federal statute and has never been endorsed by any federal court. Such a theory would be inconsistent with a plain reading of federal statutes, longstanding state election procedures nationwide, and the purpose of the Federal Election Day Statutes. In all events, indulging Plaintiffs' theory would lead to absurd results. The claims should be dismissed.

1. Plaintiffs' position conflicts with the plain language of the Federal Election Day Statutes and other federal law.

Reading a statute "must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). In claiming that federal law requires all votes be *received* by election day, Plaintiffs ignore the plain text of

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the Federal Election Day Statutes. By the statutes' terms, the "election" of members of Congress (2 U.S.C. §§ 1, 7) and "appointment" of presidential electors (3 U.S.C. § 1) occur once all citizens *choose* their preferred candidates, even if state law permits those votes (i.e., those choices) to be *received* after election day.

(a) "Election" of a member of Congress occurs when a voter chooses that candidate.

The term "election" in the Federal Election Day Statutes refers to the "combined actions of voters and officials" that make a "final selection of an officeholder." *Foster*, 522 U.S. at 71 (citation omitted). In other words, the "election" is the voters' act of choosing a candidate through a process managed by election officials. In providing that "the election" of a Senator or Representative must take place on election day, federal law requires that the "act of choosing a person to fill an office" occur by the close of election day. *Id.* That it might take some time to determine which officeholder has been elected (e.g., time to receive ballots, count votes, and certify results) is of no import. *E.g.*, *Millsaps v. Thompson,* 259 F.3d 535, 546 (6th Cir. 2001) (explaining "official action to confirm or verify the results of the election extends well beyond federal election day"). The *choice* of officeholder is made once all voters *submit* their votes. At that point, the "election" has been completed.

Other provisions in Title 2 also equate the "election" of an officeholder with that officeholder having been chosen. 2 U.S.C. § 1a (requiring "the executive of the State from which any Senator has been chosen to certify his election"); § 381 (defining "election" to mean "an official general or special election to choose" a Representative). Section 1 itself employs this phrasing by tying the date on which a Senator "shall be elected" to the date of "the regular election" at which a "Representative" is to be "chosen." *Id.* § 1. Each of these provisions suggest the core of an "election" is choice. And the only choice involved in mail voting is the voter's

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completion and submission of their ballot. Voters' collective choice is made once all voters submit their votes.

Other federal election statutes also recognize that states may impose ballot receipt deadlines that postdate election day. *Bost*, 2023 WL 4817073, at *11 ("[E]ven federal laws governing elections allow ballots received after election day to be counted."). This, in fact, is the established position of the United States. *Bost v. Illinois*, Civil Action No. 1:22-cv-02754, ECF No. 47 at 1 (N.D. Ill. Aug. 31, 2022) ("Permitting the counting of otherwise valid ballots cast by election day even though they are received thereafter does not violate federal statutes setting the day for federal elections. This practice not only complies with federal law but can be vital in ensuring that military and overseas voters are able to exercise their right to vote."). Thus, federal law does not conflict with state laws governing when officials must complete the ministerial acts of receiving and counting the votes that were submitted by election day.

(b) "Appointment" of a presidential elector refers to when they are chosen.

Federal statutes providing that the "appointment" of presidential electors must occur on election day similarly refer to when those electors are finally chosen, irrespective of ministerial efforts before or after that choice. *See* 3 U.S.C. §§ 1, 21. The term "appoint[ment]" was first introduced into the statutory provisions in 1845, at which time "appointment" meant "designation to office." N. Webster, An American Dictionary of the English Language at 46 (1844). "Appointment" is the designation of a person to hold an office—a definition that parallels *Foster's* definition of "election" as the "final selection" of an officeholder. *See Foster*, 522 U.S. at 71. "Designation," "selection," and "choice" all describe the same portion of the electoral process: the submission of votes. This means that, when votes are submitted for the electors, those electors have received the "appointment" required under Section 1 of Title 3.

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Surrounding portions of Title 3 confirm the proper interpretation of "appointed" as used in that provision. In particular, 3 U.S.C. § 5 distinguishes the "appointment" of electors from the "ascertainment of appointment of electors," with the latter occurring some period of time after election day pursuant to state canvassing laws. Section 5 requires that each State's executive must "issue a certificate of ascertainment of appointment of electors" not later than "6 days before" the "meeting of the electors." 3 U.S.C. § 5(a)(1). The certificate must set forth "the names of the electors appointed and the canvass or other determination under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast." *Id.* § 5(a)(2)(A). Reading Section 1 and Section 5 together, it is clear the "appointment" of electors refers to the choice of a candidate through the casting of ballots, and that choice occurs when a vote is "given." By contrast, "ascertainment" of the winning candidate occurs through the separate process of counting ballots.

2. Federal Election Day Statutes and Nevada law complement, rather than conflict with, one another.

To prevail on any of their claims, Plaintiffs must establish that the Ballot Receipt Deadline conflicts with federal law. *See Foster*, 522 U.S. at 69. They cannot.

Under the Constitution, states are responsible for "the mechanics" of federal elections. *Foster*, 522 U.S. at 69. Pursuant to that authority, forty-six states and the District of Columbia

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have established periods for early voting.[5] Some states allow mail balloting for specific reasons,[6] while others allow for no-excuse mail voting, or, like Nevada, have adopted an all-mail elections system.[7] Some states require that mail ballots be received by election day, while others require only that mail ballots be postmarked by election day.[8]

Nevada's Ballot Receipt Deadline easily fits within this broader structure and certainly does not "conflict" with the Federal Election Day Statutes. Indeed, they "operate harmoniously." *Gonzalez v. Arizona*, 677 F.3d 383, 394 (9th Cir. 2012). The Federal Election Day Statutes set the date by which voters must *cast* their ballots in federal elections. But they do not say anything about when election officials must receive those ballots to be counted.[9] *See Bognet v. Sec'y*

[5] *See, e.g.*, Alaska Stat. § 15.20.064 (allowing voting for fifteen days before an election); Ark. Code § 7-5-418 (same); Ariz. Rev. Stat. § 16-541 (requiring elections "provide for early voting"); Fla. Stat. § 101.657 (requiring early voting ten days before an election); 10 Ill. Comp. stat. 5/19A-15 (providing for early voting forty days before an election); Kan. Stat. Ann. § 25-1119 (providing for advance voting); Md. Code Ann., Elec. Law § 10-301.1 (allowing early voting); Neb. Rev. Stat. § 32-938 ("A registered voter shall be permitted to vote early…"); N.J. Stat. Ann. § 19:15A-1 (same); N.M. Stat. Ann. § 1-6-5.7 (allowing early voting twenty-eight days before an election); N.Y. Elec. Law § 8-600 (allowing early voting ten days before an election); N.C. Gen. Stat. § 163-166.40 (allowing early voting "the Third Thursday before an election"); S.C. Code Ann. § 7-13-25 (providing for early voting); Tenn. Code Ann. § 2-6-102 (allowing early voting twenty days before an election); Tex. Elec. Code § 85.0001 (allowing early voting seventeen days before an election); Utah Code Ann. § 20A-3a-601 (allowing early voting fourteen days before an election); W. Va. Code § 3-3-3 (allowing early voting thirteen days before an election).

[6] *See, e.g.*, Conn. Gen. Stat § 9-135; Del. Code Ann. Tit. 15 § 5502; Ind. Code § 3-11-10-24; LSA-R.S. 18:1303; Mo. Rev. Stat. § 115.277 (all specifying reasons someone may vote by absentee ballot).

[7] *See, e.g.*, NRS 293.269911; Colo. Rev. Stat § 1-5-401; Hawaii Rev. Stat. § 11-101; Or. Rev. Stat. § 254.465; Vt. Stat. Ann. Tit. 17 § 2537a; Wash. Rev. Stat. § 29A.40.010 (all of which create universal mail voting systems).

[8] *Compare, e.g.*, Ala Code § 17-11-18 (requiring mail ballots be received by noon on election day) *with, e.g.*, Cal. Elec. Code § 3020 (requiring mail ballots be received no later than seven days after election day if postmarked on or before election day).

[9] To be sure, other state laws (e.g., canvassing deadlines) and federal law (e.g., the Electoral Count Reform and Presidential Transition Improvement Act of 2022's certification deadline) provide limits on setting the receipt deadline far beyond election day. But those issues are not implicated here.

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Commonwealth of Pa., 980 F.3d 336, 353 (3d Cir. 2020) ("Federal law does not provide for when or how ballot counting occurs."); *Way*, 492 F. Supp. 3d at 372 (finding New Jersey law permitting canvassing of ballots lacking a postmark but "received within forty-eight hours of the closing of the polls is not preempted by the Federal Election Day Statutes because the Federal Election Day Statutes are silent on methods of determining the timeliness of ballots").

Nevada's Ballot Receipt Deadline does not change the date on which ballots must be "cast." In fact, it is designed to ensure compliance with the federal requirement that votes be "cast" by election day. Nevada law counts mail ballots received after election day under just two circumstances: (1) when the mail ballot is postmarked on or before election day and received before 5:00 p.m. on the fourth day after election day and (2) when the mail ballot's postmark cannot be determined (because it is missing or illegible) but the ballot is received by 5:00 p.m. on the third day following election day. NRS 293.269921(1)(b), (2). These provisions guarantee that only ballots filled out and submitted on or before election day are counted. They ensure that all ballots cast on or before election day are counted by allowing for the possibility a timely-cast ballot may be mailed on election day or its delivery may be delayed by the postal service.[10]

Both prongs of the Ballot Receipt Deadline reflect precisely the type of discretion that federal law allows. *See Bost*, 2023 WL 4817073, at *11 (holding similar Illinois law "operates harmoniously with the federal statutes that set the timing for federal elections"); *Way*, 492 F.

[10] This is precisely why Nevada provides a shorter acceptance period (of three days instead of four) for ballots that lack a discernible postmark. Because voters have no control over whether the post office will put a postmark on their ballot, there is no opportunity for gamesmanship. *See Way*, 492 F. Supp. 3d at 371 ("The Court finds, with a high degree of confidence, that ballots lacking a postmark and received within forty-eight hours of the closing of the polls are timely cast.").

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Supp. 3d at 372 (upholding New Jersey law permitting canvassing of ballots lacking a postmark but "received within forty-eight hours of the closing of the polls").

All courts that have considered this question reached the same conclusion with respect to comparable provisions enacted in other states. *See, e.g.*, *Bost*, 2023 WL 4817073, at *11; *Way*, 492 F. Supp. 3d at 372; *cf. Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 368 n.23 (Pa. 2020). In each case, state law required all ballots be cast by election day, but permitted those ballots to be received and/or counted later. Every court to analyze the question held that the state statutes complied with federal law. *Bost* concluded that Illinois law "operates harmoniously" with the Federal Election Day Statutes, despite allowing for ballots received after election day to be counted, because in all events votes must be cast by election day. *Bost*, 2023 WL 4817073, at *11. *Bookvar*, 238 A.3d at 368 n.23, reached the same conclusion ("[A]llowing the tabulation of ballots received after election day does not undermine the existence of a federal election day"), as did *Way*, 492 F. Supp. 3d at 372. No court has held otherwise.

The court in *Way* reached the same conclusion specifically with respect to ballots lacking a postmark. 492 F. Supp. 3d at 372 ("Plaintiffs direct the Court to no federal law regulating methods of determining the timeliness of mail-in ballots or requiring that mail-in ballots be postmarked."). There, the court specifically found that a New Jersey "law permitting the canvassing of ballots lacking a postmark if they are received within forty-eight hours of the closing of the polls is not preempted by the Federal Election Day Statutes because the Federal Election Day Statutes are silent on methods of determining the timeliness of ballots." *Id.* at 371-72.[11]

[11] This rule makes good sense as it provides an outcome neutral rule for election officials to consistently apply when they have to make routine decisions on a ballot's validity. That is, in part, why other states have adopted rules like Nevada's. *See, e.g.*, Cal. Elec. Code § 3020(a)(2);

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In their complaint, Plaintiffs repeatedly cite *Foster v. Love*, 522 U.S. 67 (1997), but that case undercuts, rather than supports, their claims. As explained in Section IV.A.1.a, above, *Foster* stands for the proposition that the "election" consists of voters' act of choosing a candidate, and that such choice is made once all voters submit their votes—a proposition consistent with Nevada's Ballot Receipt Deadline. Nor do the particular facts of *Foster* help Plaintiffs. In *Foster*, the Supreme Court addressed a Louisiana "open primary" system under which the election of candidates for Congress could be concluded as a matter of law before the federally mandated "election day." 522 U.S. at 70. Under that system, if any candidate received a majority of the votes cast in the open primary, they would be "elected," and no general election would be held on the federal election day. *Id.* The court concluded this system was inconsistent with the Federal Election Day Statutes, but emphasized its ruling was narrow, holding "only that if an election does take place, it may not be consummated prior to federal election day." *Id.* at 72 n.4. The case did not purport to "isolate[e] precisely what acts a State must cause to be done on federal election day . . . in order to satisfy the [Federal Election Day Statutes]." *Id*. at 72. Nevada's Ballot Receipt Deadline is entirely consistent with the holding in *Foster*. Unlike the Louisiana primary system, Nevada's Ballot Receipt Deadline does not "consummate[]" an election before election day or set a competing date on which "a contested selection of candidates for a [federal] office []is concluded as a matter of law." *Id.* at 72. Just the opposite. The Ballot Receipt Deadline *ensures* that the election is not "consummated prior to federal election day." *Id.* at 72 n.4.

10 Ill. Comp. Stat. § 5/19-8, 5/18A-15; Md. Code Ann. Elec. Law § 9-309; N.J. Rev. Stat. § 19:63-22; N.Y. Elec. Law § 9-209(3)(b); Wash. Rev. Code § 29A.40.110(4).

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3. Plaintiffs' interpretation of the law contradicts historical practices.

"[T]he long history of congressional tolerance, despite the federal election day statute[s], of absentee balloting and express congressional approval of absentee balloting," including when those ballots are received after the election, further requires rejecting Plaintiffs' theory. *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1175 (9th Cir. 2001). Courts may not "read the federal election day statutes in a manner that would prohibit … a universal, longstanding practice." *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776 (5th Cir. 2000). Yet accepting Plaintiffs' unsupported theory of the Election Day Statutes would do just that.

States have permitted absentee balloting for "[m]ore than a century." *Bomer*, 199 F.3d at 776 (citing Edward B. Moreton, Jr., *Voting by Mail*, 58 S. Cal. L. Rev. 1261, 1261-62 (1985)). "Absentee voting began during the Civil War as a means of providing soldiers the ability to vote. Vermont became the first state to accord absentee voting privileges to civilians in 1896. States have continued to provide for and expand absentee voting since." *Keisling*, 159 F.3d at 1175. Indeed, all but four states had some form of absentee voting provisions by 1924. P. Orman Ray, *Absent-voting Laws*, 18 AM. POL. SCI. REV. 321, 321 (1924). Many states permitted votes submitted by election day to be received and counted at a later date. And some states even imposed explicit ballot receipt deadlines. *Id.* at 253–54.

Several States allowed Civil War soldiers to "vote in the field" and extended the "time for canvassing the votes" thereafter received in the relevant state. J.H. Benton, *Voting in the Field* 317-318 (1915).[12] Even fifty years after the Civil War, many states allowed soldiers to vote

[12] Many northern states did not extend the time for counting ballots because there was already a sufficient period between "the day of the election, which was the day on which the soldiers were to vote in the field, and the counting of the votes." *Id.* at 318.

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in the field on election day and have their vote counted in their home state at a later time. *See* Ray, *supra*, at 468-69.

While federal law in subsequent years sought to help uniformed servicemembers and citizens living abroad, Congress ultimately enacted the Uniformed and Overseas Citizens Absentee Voting Act of 1986 ("UOCAVA"). *See* Cong. Research Serv., RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Overview & Issues* (2016), https://crsreports.congress.gov/product/pdf/RS/ RS20764; *see also Bomer*, 199 F.3d at 777 (discussing purposes behind UOCAVA, including how it requires states to provide absentee ballots to certain voters). Congress's enactment of UOCAVA is especially relevant here for two reasons: 1) the plain language of UOCAVA emphasizes the distinction between the date a ballot is cast and the date it is counted and 2) Congress has not invalidated laws in many states that allow counting of UOCAVA ballots cast on election day, but received at a later date.

First, Congress established procedures for the collection and delivery of absentee ballots to state election officials. *See* 52 U.S.C. § 20304. The law requires states to "process[] and accept[] . . . marked absentee ballots of absent overseas uniformed services voters" and to "facilitate the delivery" of such ballots "to the appropriate State election official" by "the date by which an absentee ballot must be received in order to be counted in the election" under state law. 52 U.S.C. §§ 20302(a)(10); 20304(b)(1). These provisions recognize that the "election" itself occurs on a particular date, and further recognize that the date by which a ballot must be received to be counted may be a different date. *Id*. In other words, the act of receiving the votes is not a part of the election itself. The "election" is the voters' choice of a candidate, and the process of receiving and counting ballots is a ministerial act aimed at identifying the results of the election.

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Second, in passing—and amending—UOCAVA, Congress has repeatedly recognized and approved of states setting their own receipt deadlines for absentee ballots, a substantial portion of which postdate election day. *See, e.g.*, *Bognet*, 980 F.3d at 354 ("[M]any States also accept absentee ballots mailed by overseas uniformed servicemembers that are received after election day, in accordance with UOCAVA."); *Boockvar*, 238 A.3d at 368 n.23 (pointing to "the procedure under federal and state law allowing for the tabulation of military and overseas ballots received after election day" to explain why "allowing the tabulation of ballots received after election day does not undermine the existence of a federal election day"). This reflects the entirely reasonable assumption that mailed ballots will take some time to arrive from overseas, and it serves as an important protection for the franchise of military voters stationed abroad.

Moreover, the Attorney General is authorized to enforce UOCAVA. 52 U.S.C. § 20307(a) (providing enforcement authority). Exercising that authority, the government has sued states on several occasions and secured orders that require states to extend their deadlines for receipt of absentee ballots—sometimes several days after election day—to prevent disenfranchisement of military members serving overseas. *See Cases Raising Claims Under the Uniformed and Overseas Citizen Absentee Voting Act*, U.S. DEP'T OF JUST., https://www.justice.gov/crt/cases-raising-claims-under-uniformed-and-overseas-citizen-absentee-voting-act (last visited May 9, 2024) (collecting cases). Jurisdictions in the Ninth Circuit sued on this basis include Arizona, New Mexico, and Guam.[13] These facts cannot be

[13] *See United States v. Arizona*, Case No. 2:18-cv-00505-DLR, ECF No. 8 (D. Ariz. Feb. 15, 2018) (consent decree providing additional time for receipt of UOCAVA ballots to ensure eligible military and overseas voters have sufficient time to vote); *United States v. Guam*, Civil Case No. 1–cv-00025, ECF No. 27 (D. Guam July 13, 2012) (consent decree requiring Guam extend deadline for receipt of absentee ballots from military and overseas voters until November 15, 2010); *United States v. New Mexico*, Case 1:10-cv-00968-MV-ACT, ECF No. 12 (D.N.M.

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reconciled with Plaintiffs' claim that the Federal Election Day Statutes require all ballots be received as of election day.

Today, a majority of the states and the District of Columbia permit mailed ballots to arrive after election day for at least some voters.[14] *See Bost*, 2023 WL 4817073, at *11 (noting "[d]espite these ballot receipt deadline statutes being in place for many years in many states, Congress has never stepped in and altered the rules."). Even when states do not permit all late-arriving ballots to be counted, they will often count late-arriving votes from UOCAVA voters.[15]

Congress's enactment of the "election day" statutes in 1872 must be construed against this unbroken historical practice. The uniform understanding of elections was that the receiving of votes was something that could occur after the election itself. Accepting Plaintiffs' argument would invalidate those statutes and disenfranchise mail-in voters, including members of the military and citizens living abroad who vote in Nevada. Plaintiffs' unsupported construction of federal law cannot be reconciled with longstanding historical practice and must be rejected.

Aug. 1, 2011) (consent decree requiring state to extend deadline for accepting and counting UOCAVA ballots by four days).

[14] See Ala. Code § 17-11-18(b); Alaska Stat. § 15.20.081; Ark. Code. Ann. § 7-5-411(a)(1)(A)(ii); Cal. Elec. Code § 3020(b); D.C. Code § 1-1001.05(a)(10B); Fla. Stat. § 101.6952(5); Ga. Code Ann. § 21-2-386(a)(1)(G); 10 Ill. Comp. Stat. 5/19-8, 10 Ill. Comp. Stat. 5/18A-15; Ind. Code § 3-12-1-17(b); Kan. Stat. Ann. 25-1132(b); Md. Code Ann., Elec. Law § 9-302(c)(1); Mass. Gen. Laws ch. 54 § 93; Miss. Code Ann. § 23-15-637; Mo. Rev. Stat. § 115.920(1); NRS 293.269921(1)(b), (2); N.J. Stat. Ann. § 19:63-22(a); N.Y. Elec. Law § 8-412(1); N.C. Gen. Stat. § 163A-1310; N.D. Cent. Code Ann. § 16.1-07-09; Ohio Rev. Code Ann. § 3509.05(D)(2)(a); Or. Rev. Stat. § 254.470(6)(e)(B); 25 Pa. Cons. Stat. § 3511(a); R.I. Gen. Laws § 17-20-16; S.C. Code Ann. § 7-15-700(A); Tex. Elec. Code Ann. § 86.007(a)(2); Utah Code Ann. § 20A-3a-204(2)(a); Va. Code Ann. § 24.2-709(B); Wash. Rev. Code Ann. § 29A.40.091; W. Va. Code § 3-3-5(g)(2) (tied to day of canvassing, which is five days after election).

[15] *See, e.g.*, Ala. Code § 17-11-18(b); Ark. Code. Ann. § 7-5-411(a)(1)(A)(ii); Fla. Stat. § 101.6952(5); Ga. Code Ann. § 21-2-386(a)(1)(G); Ind. Code § 3-12-1-17(b).

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4. Plaintiffs' theory would lead to absurd results.

Plaintiffs' interpretation of federal law would lead to absurd results and have a profound effect on voting in the United States. Statutes should be interpreted to reach "a sensible construction that avoids attributing to [Congress] either an unjust or an absurd conclusion." *United States v. Granderson,* 511 U.S. 39, 56 (1994) (quotation marks omitted). Requiring all votes be submitted *and* received as of election day would work enormous chaos, regardless of whether that requirement was based on the meaning of "casting" a vote or on some requirement that votes be cast and received as of election day.

To start, Plaintiffs offer no meaningful basis for distinguishing between votes received *after* election day and votes received *before* election day. If counting a ballot received after election day "holds voting open after election day," *see* ECF No. 1 at ¶ 69, it would seem to follow that counting a ballot received *before* election day would likewise extend the "election" to a period before the congressionally prescribed day. That would, however, mean that only mail ballots submitted and received on election day itself would be valid, leading to an absurdly difficult (if not impossible) system for voting by mail. Worse still, Plaintiffs' theory that "the combined actions of voters and officials" must take place on *a single election day* would also invalidate early voting across the United States. That would mean the forty-six states that currently offer some form of early voting are doing so in direct violation of federal law. Such a conclusion would require nothing short of a seismic change in the administration of elections, all premised on the thin reed of a theory that no court has ever credited. This Court should not be the first to embrace such a radical reimagining of American election law.

In response to this problem, Plaintiffs might contend (atextually) that the "election" must be complete and *final* as of election day, but can begin taking place before election day. But

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elections are *never* final as of election day. *See Millsaps,* 259 F.3d at 546 (recognizing and explaining in detail how "official action to confirm or verify the results of the election extends well beyond federal election day"). Extensive counting, canvassing, and certification efforts occur after election day, and Plaintiffs make no claim that those efforts improperly hold open the day for elections. Nor could they. Requiring election officials to tally millions of votes by midnight, mere hours after the polls close on election day or be in violation of federal election law would be absurd.[16] It would also require Plaintiffs to draw a meaningful distinction between receipt and counting of votes, which they have not done. Instead, the only reasonable understanding of the "final selection" language in *Foster* is the plain meaning of the statutory language as articulated above: the relevant *choice* must conclude by election day. Surrounding ministerial efforts, whether before or after the election, are irrelevant.

There is no credible argument that Congress intended such absurd results.

5. Rejecting ballots cast before, but received after, election day would frustrate the purposes of federal law.

Plaintiffs' interpretation cannot be squared with the purpose of the Federal Election Day Statutes. In passing the Federal Election Day Statutes, "Congress was concerned . . . with the distortion of the voting process threatened when the results of an early federal election in one State can influence later voting in other states." *Foster*, 522 U.S. at 73; *Way*, 49 F. Supp. 3d at 368 ("the primary concern when enacting the [Federal Election Day Statutes] appears to be the

[16] This interpretation would also result in serious constitutional and statutory problems. For example, the inevitable inability to count all votes submitted on election day by midnight would create Equal Protection problems—treating similarly situated voters differently by the pure happenstance of whether officials were able to count their votes in time. It would also be in tension with 52 U.S.C. § 10502(d), which requires States to provide absentee voting for presidential elections and to hold open the deadline for receipt of those votes at least until election day. If states were unable to count all votes received on election day, Plaintiffs' theory would bar them from doing so after election day, in violation of federal law.

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reporting of final election results in some states before other states had yet to open the polls.") (citation omitted); *see also Millsaps*, 259 F.3d at 541–42.

The Ballot Receipt Deadline does not "foster either of the primary evils identified by Congress as reasons for passing the federal statutes[.]" *Bomer*, 199 F.3d at 777. Nothing about that statute establishes two (or more) election days; every vote must be submitted as of election day. *See id*. Plaintiffs' allegation that Nevada law "holds open" election day ignores the clear operation of the statute, which guarantees that, to be counted, every vote must be cast by election day. NRS 293.269921(1)(b)–(2). Moreover, ballots arriving later cannot create results that might distort other elections.

Finally, declining to count ballots cast on or before, but received after, election day would disenfranchise large numbers of Nevada voters. In fact, Plaintiffs admit that is why they brought this suit. They believe the Ballot Receipt Deadline will "disproportionately" break for Democrats, cutting into "fragile" "early Republican leads in close races." ECF No. 1 at ¶¶ 58–59. They accordingly seek to enjoin Defendants from counting ballots cast on or before election day by qualified voters because those voters are (allegedly) likely to vote for Plaintiffs' political opponents. But that cannot be what Congress intended with the Federal Election Day Statutes. As the Fifth Circuit said in *Bomer*, "we cannot conceive that Congress intended the Federal Election Day Statutes to have the effect of impeding citizens in exercising their right to vote. The legislative history of the statutes reflects Congress's concern that citizens be able to exercise their right to vote." 199 F.3d at 777 (citing Cong. Globe, 42d Cong., 2d Sess. 3407-08 (1872)). Plaintiffs' argument runs directly contrary to this recognized purpose and denigrates the very constitutional rights that Plaintiffs claim they seek to safeguard.

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In short, Plaintiffs' interpretation would stretch the Federal Election Day Statutes far beyond, and even contradict, their purpose.

B. Plaintiffs' constitutional claims fail.

Plaintiffs also assert constitutional claims based on the right to vote and the right to stand for election. These claims also fail as a matter of law. At the outset, each of these claims expressly depends on Plaintiffs' misreading of the Federal Election Day Statutes; they therefore fail for the same reasons as Plaintiffs' preemption claim.

The constitutional claims also fail for an independent reason: nothing about Nevada law burdens Plaintiffs' or their members' and supporters' right to vote or stand for office, and there are no allegations in the complaint that plausibly claim otherwise. The Ballot Receipt Deadline in no way burdens the right to vote. Indeed, it is *Plaintiffs* who seek to burden Nevadans' right to vote through this lawsuit.

Burdens on the right to vote and to stand for office are reviewed under the *Anderson-Burdick* test. *See Arizona Democratic Party v. Hobbs*, 976 F.3d 1081, 1085 (9th Cir. 2020). The first step is to determine whether the right to vote has been impacted at all. *Short v. Brown*, 893 F.3d 671, 676 (9th Cir. 2018) ("[A] court faced with a constitutional challenge to a state election law must first consider the character magnitude of the asserted injury … .") (internal quotation marks omitted). Laws that do not make it harder to vote do not implicate the right to vote. *See id.* at 677. The same is true of laws that do not impede a candidate's ability to stand for office. *See Bates v. Jones,* 131 F.3d 843, 846–47 (9th Cir. 1997).

Nothing about the Ballot Receipt Deadline makes it harder for voters to exercise their right to vote. It simply ensures that qualified voters do not have their timely-cast ballots rejected. The law thus protects the right to vote; the right to vote will only be impeded if Plaintiffs

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succeed. Plaintiffs' theory, on its face, fails to plead a claim under *Anderson-Burdick*. *See Short*, 893 F.3d at 677 (affirming dismissal of challenge to law that "does not burden anyone's right to vote" and instead "makes it easier for some voters to cast their ballots by mail").

Nor are Nevadans' votes "diluted" when state officials count legally cast votes received after election day. *See* ECF No. 1 at ¶¶ 4, 50–52. Dilution occurs only when certain votes are given less value than others. *See Bost*, 2023 WL 4817073, at *7. Even if votes received after election day were invalid—which they are not—"an increase in the pool of voters generally does not constitute vote dilution." *Id.*

Similarly, Plaintiffs fail to allege any basis for finding that the Ballot Receipt Deadline makes it harder to run for office. *See Bost*, 2023 WL 4817073, at *14 (finding congressman failed to plausibly allege "right to stand for office" claim where law did not prevent him "from standing for office at all"). Indeed, Plaintiffs do not provide even threadbare allegations as to how the Ballot Receipt Deadline is alleged to violate these rights. Because these arguments hinge entirely on whether ballots received after election day are in fact "unlawful," they too fail.

By contrast, Nevada has strong interests in both ensuring that qualified voters who have already cast their votes have those votes counted and in avoiding the voter confusion that would follow if the law was suddenly changed. Indeed, the Ballot Receipt Deadline and the Federal Election Day Statutes share common purposes in expanding the franchise and protecting the right to vote. "These state interests constitute the very backbone of our constitutional scheme—the right of the people to cast a meaningful ballot." *Utah Republican Party v. Cox*, 892 F.3d 1066, 1084 (10th Cir. 2018); *Riddell v. Nat'l Democratic Party*, 508 F.2d 770, 778 (5th Cir. 1975) (noting "avoidance of voter confusion is a worthwhile objective").

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The Ballot Receipt Deadline sets a clear, predictable rule for voters to know when they must mail their ballots to ensure that they are counted, allowing them to vote with as much information as possible and without having to project whether they may encounter significant mail delays, which have plagued previous elections. Because Plaintiffs fail to state a cognizable constitutional claim, those claims must also be dismissed, as a matter of law.

C. Plaintiffs' request for relief in the 2024 General Election is barred by laches.

Finally, and regardless of the merits, Plaintiffs claims are in all events barred by laches. "Laches is an equitable defense that prevents a plaintiff, who with full knowledge of the facts, acquiesces in a transaction and sleeps upon his rights." *See Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 950–51 (9th Cir. 2001) (internal quotation marks and citation omitted). "To demonstrate laches, the 'defendant must prove both an unreasonable delay by the plaintiff and prejudice to itself.'" *Id.* at 951 (quoting *Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1083 (9th Cir. 2000)). Those criteria are easily satisfied here.

1. Plaintiffs delayed filing suit over a known election process until six months before a presidential election.

The Ballot Receipt Deadline was enacted in June 2021 and took effect January 1, 2022. 2021 N.V. AB 321 (June 24, 2021). It has been on the books for almost two and a half years, during which time there have been multiple statewide elections in Nevada, including an election for the U.S. Senate and this year's Presidential Preference Primary. Yet Plaintiffs waited until now, just six months before a presidential election, to raise concerns about a purported conflict between the statute and federal law.

2. Defendants are prejudiced by Plaintiffs' delay.

Plaintiffs' unreasonable delay prejudiced Intervenor-Defendants because parties "took actions [they] would not have, had the plaintiff brought suit promptly." *Danjaq*, 263 F.3d at 955.

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Specifically, the Ballot Receipt Deadline was part of a statutory amendment that transitioned Nevada to universal mail voting. To educate Nevada voters about these new procedures, the DNC necessarily changed the messages it shared with Nevada voters. Had Plaintiffs timely challenged the Ballot Receipt Deadline, the DNC would not have invested significant time and resources in planning voter education and assistance programs focused on getting voters to submit their ballots *by* election day; the programs would instead focus on getting voters to submit their ballots *well before* election day.

The state has an even larger interest in conducting orderly elections. *See Crookston v. Johnson*, 841 F.3d 396, 399 (6th Cir. 2016). The state and the DNC have trained untold numbers of staff and volunteers on Nevada's election statutes, including the one Plaintiffs now contend is unconstitutional. Revising and reprinting all voter resources and retraining everyone who interacts with voters on behalf of the state or various party organizations would require significant investment that could have been avoided if Plaintiffs had flagged this statute as potentially conflicting with federal law earlier. Requiring the parties to make such an investment now significantly prejudices them.

Because Plaintiffs unreasonably delayed in filing suit, and that delay prejudices Defendants, Plaintiffs' requested relief for the 2024 general election is barred by the laches doctrine and should be denied.

V. CONCLUSION

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

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Dated: May 13, 2024

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**Motion for admission pro hac vice pending; Attorney has complied with LR IA 11-2*

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EXHIBIT B

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**Motion for Admission Pro Hac Vice Pending; Attorney has complied with LR IA 11-2*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:24-cv-00198

PROPOSED INTERVENOR-DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT

Proposed Intervenor-Defendant the Democratic National Committee (the "DNC" or "Proposed Intervenor"), by and through its attorneys, submits the following proposed Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief ("Complaint"). Proposed Intervenor responds to the allegations in the Complaint as follows:

INTRODUCTION

1. Paragraph 1 contains legal argument and conclusions to which no answer is required.

2. Paragraph 2 contains legal argument and conclusions to which no answer is required.

3. Denied.

4. Denied.

5. Denied.

6. Paragraph 6 contains legal argument and conclusions to which no answer is required.

JURISDICTION AND VENUE

7. Paragraph 7 contains legal argument and conclusions to which no answer is required.

8. Paragraph 8 contains legal argument and conclusions to which no answer is required.

PARTIES

9. Admitted.

10. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and therefore denies them.

11. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and therefore denies them.

12. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and therefore denies them.

13. Proposed Intervenor lacks knowledge and information sufficient to form a belief as

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to the truth of the allegations in Paragraph 13 and therefore denies them.

14. Paragraph 14 contains legal argument and conclusions to which no answer is required. To the extent Paragraph 14 contains factual allegations, Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and therefore denies them.

15. Proposed Intervenor admits the Nevada Republican Party is a political party in Nevada. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the other allegations in Paragraph 15 and therefore denies them. To the extent Paragraph 15 quotes the Nevada Republican Central Committee Bylaws, that document speaks for itself.

16. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and therefore denies them.

17. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies them.

18. Admitted.

19. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and therefore denies them.

20. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and therefore denies them.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

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25. Admitted.

ALLEGATIONS

26. Paragraph 26 contains legal argument and conclusions to which no answer is required.

27. Paragraph 27 contains legal argument and conclusions to which no answer is required.

28. Paragraph 28 contains legal argument and conclusions to which no answer is required.

29. Paragraph 29 contains legal argument and conclusions to which no answer is required.

30. Paragraph 30 contains legal argument and conclusions to which no answer is required.

31. Paragraph 31 contains legal argument and conclusions to which no answer is required.

32. Paragraph 32 contains legal argument and conclusions to which no answer is required.

33. Paragraph 33 contains legal argument and conclusions to which no answer is required.

II. Nevada's mail ballot deadline extends the election beyond the federal election day.

34. Paragraph 34 quotes select excerpts from NRS 293.269921(1). That statute, which should be read in its entirety and in context, speaks for itself.

35. Admitted.

36. Paragraph 36 quotes select excerpts from NRS 293.269929. That statute, which

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should be read in its entirety and in context, speaks for itself.

37. Paragraph 37 quotes select excerpts from NRS 293.269931. That statute, which should be read in its entirety and in context, speaks for itself.

38. Paragraph 38 quotes and summarizes select excerpts from NRS 293.269933. That statute, which should be read in its entirety and in context, speaks for itself.

39. Paragraph 39 quotes select excerpts from NRS 293.269931. That statute, which should be read in its entirety and in context, speaks for itself.

40. Paragraph 40 contains legal argument and conclusions to which no answer is required.

III. Nevada's mail ballot deadline violates federal law.

41. Admitted.

42. Paragraph 42 contains legal argument and conclusions to which no answer is required.

43. Paragraph 43 contains legal argument and conclusions to which no answer is required.

44. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 44 and therefore denies them.

45. Paragraph 45 contains legal argument and conclusions to which no answer is required.

46. Denied.

47. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and therefore denies them.

48. Paragraph 48 contains legal argument and conclusions to which no answer is

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required. To the extent Paragraph 48 includes quotations from or summaries of Nevada statutes and regulations, those laws speak for themselves.

49. The first sentence of Paragraph 49 is denied. Proposed Intervenor lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 49 and therefore denies them.

50. Paragraph 50 contains legal argument and conclusions to which no answer is required.

51. Paragraph 51 contains legal argument and conclusions to which no answer is required.

52. Paragraph 52 contains legal argument and conclusions to which no answer is required.

53. Paragraph 53 contains legal argument and conclusions to which no answer is required.

54. Paragraph 54 contains legal argument and conclusions to which no answer is required.

55. Paragraph 55 contains legal argument and conclusions to which no answer is required.

56. The first sentence of Paragraph 56 is denied. To the extent Paragraph 56 refers to information found in Charles Stewart III's "How We Voted in 2022," that publication speaks for itself.

57. Paragraph 57 refers to information available on the Nevada Secretary of State's website. Information available on that website speaks for itself.

58. Denied.

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59. Paragraph 59 refers to information available on the Nevada Secretary of State's website. Information available on that website speaks for itself.

60. Paragraph 60 contains legal argument and conclusions to which no answer is required.

61. Paragraph 61 contains legal argument and conclusions to which no answer is required.

COUNT I
Equitable Relief under *Ex Parte Young*
Violation of 3 U.S.C. § 1, 2 U.S.C. §§ 1, 7

62. Proposed Intervenor incorporates all its prior responses as if set forth fully herein.

63. Admitted.

64. 3 U.S.C. § 1 provides "The electors of President and Vice President shall be appointed, in each State, on election day, in accordance with the laws of the State enacted prior to election day."

65. Paragraph 65 quotes select portions of 2 U.S.C. §§ 1, 7. Those statutes, which should be read in their entirety and in context, speak for themselves.

66. Paragraph 66 contains legal argument and conclusions to which no answer is required.

67. Denied.

68. Paragraph 68 summarizes NRS 293.269921. That statute, which should be read in its entirety and in context, speaks for itself.

69. Denied.

70. Paragraph 70 contains legal argument and conclusions to which no answer is required.

71. Denied.

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COUNT II
Violation of the Right to Stand for Office (42 U.S.C. § 1983)

72. Proposed Intervenor incorporates all its prior responses as if set forth fully herein.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

COUNT III
Violation of the Right to Vote (42 U.S.C. § 1983)

77. Proposed Intervenor incorporates all its prior responses as if set forth fully herein.

78. Denied.

79. Paragraph 79 contains legal argument and conclusions to which no answer is required.

80. Denied.

81. Denied.

82. Denied.

GENERAL DENIAL

Proposed Intervenor denies every allegation in the Complaint that is not expressly admitted herein.

AFFIRMATIVE DEFENSES

Proposed Intervenor further responds to Plaintiffs' Complaint by asserting the following affirmative defenses:

1. Plaintiffs fail to state a claim on which relief can be granted.

2. Plaintiffs lack a private right of action.

3. Plaintiffs' claims are equitably barred, including by laches.

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PRAYER FOR RELIEF

Proposed Intervenor asks this Court to enter judgment in its favor and provide the following relief:

A. Deny that Plaintiffs are entitled to any relief whatsoever;

B. Dismiss Plaintiffs' Complaint with prejudice; and

C. Grant such other relief as the Court deems just and proper.

Dated: May 13, 2024

PERKINS COIE LLP

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Attorneys for the Democratic National Committee
**Motion for Admission Pro Hac Vice Pending; Attorney has complied with LR IA 11-2*