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28 * *Pro hac vice application forthcoming*

1
2 **IN THE FIRST JUDICIAL DISTRICT COURT**
3 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**
4

5 REPUBLICAN NATIONAL
6 COMMITTEE; NEVADA
7 REPUBLICAN PARTY; DONALD J.
8 TRUMP FOR PRESIDENT 2024, INC.;
9 SCOTT JOHNSTON

10 Plaintiffs,

11 v.

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

24 Defendants,

25 and

26 VET VOICE FOUNDATION; and the
27 NEVADA ALLIANCE FOR RETIRED
28 AMERICANS,

Intervenor-Defendants.

Case No.: 24 OC 00101 1B

Dept. No.: I

**AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Arbitration Exemption: Declaratory
and Injunctive Relief

Plaintiffs Republican National Committee and the Nevada Republican Party,

1 Donald J. Trump for President 2024, Inc., and Scott Johnston, by and through
2 undersigned counsel, file this Amended Complaint against Francisco Aguilar, in his
3 official capacity as Nevada Secretary of State; the State of Nevada; Cari-Ann Burgess,
4 in her official capacity as the Washoe County Registrar of Voters; Jan Galassini, in
5 her official capacity as the Washoe County Clerk; Lorena Portillo, in her official
6 capacity as the Clark County Registrar of Voters; and Lynn Marie Goya, in her official
7 capacity as the Clark County Clerk; and allege as follows:

8 **NATURE OF THE CASE**

9 1. Nevada law permits the counting of some ballots received by mail after
10 election day, within time limits established by the Nevada legislature. This lawsuit
11 seeks to enforce one critical component of Nevada's post-election day counting of
12 ballots: the requirement that mail ballots received after election day but lacking a
13 postmark are not counted, as set forth in NRS 293.269921(1)-(2).

14 2. This lawsuit is necessary because the Nevada Secretary of State has
15 adopted a policy and practice of disregarding the statute's postmark requirement,
16 and County Clerks and Registrars have disregarded, and will continue to disregard,
17 the postmark requirement in the administration of elections in Nevada.

18 3. Counting non-postmarked mail ballots is not permitted by Nevada law,
19 which allows late-arriving mail ballots to be counted in only two circumstances: (1)
20 the ballot is accompanied by a valid postmark indicating it was mailed on or before
21 election day, or (2) the ballot has a postmark but "the date of the postmark cannot be
22 determined." Ballots legibly postmarked on or before election day are counted if
23 received four days after election day. NRS 293.269921(1). Ballots bearing postmarks
24 with dates that are illegible or otherwise cannot be determined are appropriately
25 given a shorter timeframe of three days. NRS 293.269921(2).

26 4. Just days before the June 11, 2024 primary election, the Secretary of
27 State's office issued a "Memorandum" (dated May 29, 2024) to all County Clerks and
28 Registrars to disregard the postmark requirement. The Memorandum stated: "[A]

1 mail ballot that has no visible postmark should be interpreted to have an
2 indeterminate postmark, and therefore should be accepted if it has been received by
3 the clerk by mail not later than 5 p.m. on the third day following the election.” Office
4 of the Secretary of State Memorandum 2024-015, dated May 29, 2024, attached as
5 Exhibit 1.

6 5. This Memorandum followed testimony by the Deputy Secretary of State
7 for Elections that mail ballots without a postmark will be counted if received up to
8 three days after election day. See Deputy Secretary of State for Elections Mark
9 Wlaschin, testimony before Nevada Advisory Committee on Participatory
10 Democracy, April 23, 2024, available at [4/23/2024 - Secretary of State - Advisory Committee](https://www.youtube.com/watch?v=OmQ8SSH1XFI)
11 [on Participatory Democracy - YouTube \(starting at 1:30:09\)](https://www.youtube.com/watch?v=OmQ8SSH1XFI)
12 <https://www.youtube.com/watch?v=OmQ8SSH1XFI>

13 6. During the June 11, 2024 primary election, officials in Clark and
14 Washoe Counties did not check for postmarks when processing mail ballots received
15 during the three days following election day. Observers representing the Republican
16 Party at the ballot processing centers in both counties also reported that officials did
17 not appear to be enforcing the requirement that ballots received after 5 pm on the
18 third day following the election be postmarked on or before election day. On that day,
19 even under the Secretary’s (unlawful) policy, counties should be enforcing the
20 statutory postmark requirement.

21 7. In enacting (and recently amending) section 293.269921, the Nevada
22 legislature has made policy judgments about which mail ballots received after
23 election day may be counted. In closely contested elections (and all elections), care
24 must be taken to ensure that ballots cast after election day cannot be counted. Indeed,
25 it is axiomatic to fair elections that once the time for voting has ended, no interested
26 party can add new votes to the mix. The unfairness and opportunity for changing the
27 valid results of an election are self-evident. That is why numerous states that accept
28 ballots after election day impose a postmark requirement.

1 8. Plaintiffs seek a declaration and injunction to ensure that Nevada voters
2 will have confidence that only those late-arriving mail ballots with evidence of having
3 been mailed on or before election day will be counted, as the Nevada legislature
4 intended when it required the presence of a postmark before such late-arriving mail
5 ballots may be counted.

6 JURISDICTION AND VENUE

7 9. This Court has jurisdiction to hear Plaintiffs' claims and to grant
8 declaratory and injunctive relief pursuant to NRS 295.061, 30.030, 30.040, and
9 33.010.

10 10. Venue is proper under NRS 13.020 and 13.040 because this action is
11 against a public officer, certain Defendants are located within the instant judicial
12 district, the acts complained of herein occurred within the instant judicial district,
13 and the relief Plaintiff seeks would be granted from within the instant judicial
14 district.

15 PARTIES

16 11. Plaintiff, the Republican National Committee (RNC), is the national
17 committee of the Republican Party, as defined by 52 U.S.C. § 30101(14), with its
18 principal place of business at 310 First Street S.E., Washington, DC 20003.

19 12. The RNC organizes and operates the Republican National Convention,
20 which nominates a candidate for President and Vice President of the United States.

21 13. The RNC represents over 30 million registered Republicans in all 50
22 states, the District of Columbia, and the U.S. territories. It is composed of 168 voting
23 members representing state Republican Party organizations, including three
24 members who are registered voters in Nevada.

25 14. The RNC works to elect Republican candidates to state and federal office
26 in Nevada. In the November 2024 general election, Republican candidates will appear
27 on the ballot in Nevada for election to the Presidency, U.S. Senate, U.S. House of
28 Representatives, and state offices.

1 15. The RNC has vital interests in protecting the ability of Republican
2 voters to cast, and Republican candidates to receive, effective votes in Nevada
3 elections and elsewhere.

4 16. The RNC seeks to vindicate its own rights and represent the rights of
5 its members, affiliated voters, and candidates.

6 17. The RNC has a strong interest in ensuring that elections in which it and
7 its candidates compete for votes are conducted in a legally structured competitive
8 environment.

9 18. The RNC devotes significant resources to mail-ballot-chasing operations
10 and election integrity activities, including post-election day activities, such as
11 monitoring the processing and counting of mail ballots. If non-postmarked ballots
12 received after election day are counted, the RNC will have to devote resources to
13 ascertaining and ensuring that only ballots mailed by election day are counted in
14 order to protect its interests and the interests of its voters, members, and candidates.

15 19. Plaintiff Nevada Republican Party (NVGOP) is a political party in
16 Nevada with its principal place of business at 2810 West Charleston Blvd. #69, Las
17 Vegas, NV 89102.

18 20. The NVGOP exercises its federal and state constitutional rights of
19 speech, assembly, petition, and association to “provide the statutory leadership of the
20 Nevada Republican Party as directed in the Nevada Revised statutes,” to “recruit,
21 develop, and elect representative government at the national, state, and local levels,”
22 and to “promote sound, honest, and representative government at the national, state
23 and local levels.” NRCC Bylaws, art. II, §§1.A-1.C.

24 21. The NVGOP represents over 550,000 registered Republican voters in
25 Nevada.

26 22. The NVGOP has the same interests as the RNC in vindicating its own
27 rights, preserving resources, and representing the rights of its members, affiliated
28 voters, and candidates.

1 23. Plaintiff Donald J. Trump for President 2024, Inc. (Trump Campaign) is
2 the principal committee for President Donald J. Trump's campaign for President with
3 its headquarters in West Palm Beach, FL.

4 24. Donald J. Trump will be a candidate for President on the ballot for the
5 2024 Nevada general election (by and through presidential and vice presidential
6 electors) and is a Republican affiliated with the RNC and NVGOP.

7 25. The Trump Campaign has overlapping interests in this case with the
8 RNC and NVGOP with respect to the candidacy of President Trump and it seeks to
9 vindicate those interests in the same ways. However, the Trump Campaign's acute
10 interests are limited by its exclusive focus on the 2024 election, whereas the RNC is
11 an ongoing entity whose interests will endure beyond the 2024 election. The Trump
12 Campaign intends to invest resources seeking voter support for the Nevada general
13 election.

14 26. Plaintiff Scott Johnston is a 60-year resident of Nevada and a registered
15 Nevada voter residing in Washoe County. He regularly votes in Nevada elections, and
16 he plans to vote in the November 2024 general election, including for U.S. President,
17 Senate, and the House of Representatives. Mr. Johnston is registered as a
18 Republican, supports Republican candidates, and has volunteered on behalf of the
19 Republican Party. He is a member of the Washoe County Republican Party Central
20 Committee, which is the governing body of the Washoe County Republican Party. Mr.
21 Johnston has also served as a precinct captain for the Galena Forest Estates area
22 since 2020, and a Nevada State Central Committee person since 2021.

23 27. Defendant Francisco V. Aguilar is the Nevada Secretary of State and is
24 sued in his official capacity. He serves "as the Chief Officer of Elections" for Nevada
25 and "is responsible for the execution and enforcement of the provisions of title 24 of
26 NRS and all other provisions of state and federal law relating to elections in" Nevada.
27 NRS §293.124.

28 28. Defendant State of Nevada is a political jurisdiction and State of the

1 United States.

2 29. Defendant Cari-Ann Burgess is the Registrar of Voters for Washoe
3 County. She is the county's chief election officer and is responsible for "establish[ing]
4 procedures for the processing and counting of mail ballots" in Washoe County. NRS
5 293.269925(1); *see id.* 293.269911-.269937, 244.164. Defendant Burgess is sued in her
6 official capacity.

7 30. Defendant Jan Galassini is the Washoe County Clerk. She is responsible
8 for certifying the election results in Washoe County. NRS 293.393. Defendant
9 Galassini is sued in her official capacity.

10 31. Defendant Lorena Portillo is the Registrar of Voters for Clark County.
11 She is the county's chief election officer and is responsible for "establish[ing]
12 procedures for the processing and counting of mail ballots" in Clark County. NRS
13 293.269925(1); *see id.* 293.269911-.269937, 244.164. Defendant Portillo is sued in her
14 official capacity.

15 32. Defendant Lynn Marie Goya is the Clark County Clerk. She is
16 responsible for certifying the election results in Clark County. NRS 293.393.
17 Defendant Goya is sued in her official capacity.

18 GENERAL ALLEGATIONS

19 33. Nevada citizens rely on consistent application of election rules to ensure
20 free and fair elections. How mail ballots received after election day are counted is an
21 issue of critical importance for the upcoming Nevada general election. The public will
22 only have confidence in the fairness and finality of the election if Nevada law
23 requiring ballots to be voted and deposited in the mail on or before election day is
24 fully enforced.

25 A. Nevada Statutory Scheme for Late-Arriving Mail Ballots.

26 34. There are numerous opportunities to vote in Nevada, including by mail.
27 A mail ballot may be returned in person, deposited in a ballot drop box, or returned
28 by mail.

1 35. Nevada provides for mail ballots to be sent to all active registered voters
2 who do not opt out of receiving a ballot by mail, and Nevada includes postage pre-
3 paid return envelopes for returning mail ballots.

4 36. Since 2020, Nevada law has provided that ballots returned by mail may
5 be counted if there is evidence they were voted on or before election day and not
6 received by the clerk or registrar after election day. (Prior to 2020, Nevada law did
7 not permit the counting of any absent ballots received in the mail after election day.
8 See NRS 293.317 (2019)). These late-arriving ballots are subject to strict limits, as
9 would be expected for the counting of additional ballots received after the election has
10 been completed and the polls have closed.

11 37. Under Nevada law, “[I]n order for a mail ballot to be counted for any
12 election, the ballot must be ... [m]ailed to the county clerk,” “postmarked on or before
13 the day of the election,” and “[r]eceived by the clerk not later than 5 p.m. on the fourth
14 day following the election.” NRS 293.269921(1).

15 38. Nevada law further provides that “[i]f a mail ballot is received by mail
16 not later than 5 p.m. on the third day following the election and the date of *the*
17 *postmark* cannot be determined, the mail ballot shall be deemed to have been
18 postmarked on or before the day of the election.” NRS 293.269921(2) (emphasis
19 added).

20 39. Consistent with this statutory requirement, the Clark County Election
21 Department’s website states that voted mail ballots “must” be “Postmarked on or
22 before Election Day.”



Mail Ballots

MAIL BALLOT VOTING

Last Updated: 08/28/2023

All Mail Ballot Elections

Starting in 2022, Nevada began having all-mail ballot elections. All "active" voters who are registered to vote reside in Clark County and are 18 years of age or older on Election Day will be mailed a ballot.

.....

Voted Mail Ballot Postmark and Receiving Deadlines

Voted mail ballots sent through the Post Office must be: (1) Mailed in the postage-paid return envelope provided specifically for you, showing your name and address, and you must also sign the outside of that envelope before mailing it *do not put your ballot in another voter's return envelope*; (2) Postmarked on or before Election Day; and (3) Received by the Election Department on or before by 5:00 p.m. on the fourth day after Election Day.

<https://www.clarkcountynv.gov/government/departments/elections/services/mb.php>

40. The official election mail ballot envelopes used in Clark County during the 2024 primary election likewise stated they "MUST BE POSTMARKED ON OR BEFORE ELECTION DAY":



CLARK COUNTY
ELECTION DEPARTMENT
PO BOX 3810
LAS VEGAS, NV 89127-1910

RETURN SERVICE REQUESTED

OFFICIAL MAIL BALLOT VOTE

Vote your ballot and enclose it in the envelope provided. Sign the declaration on the back of the envelope.

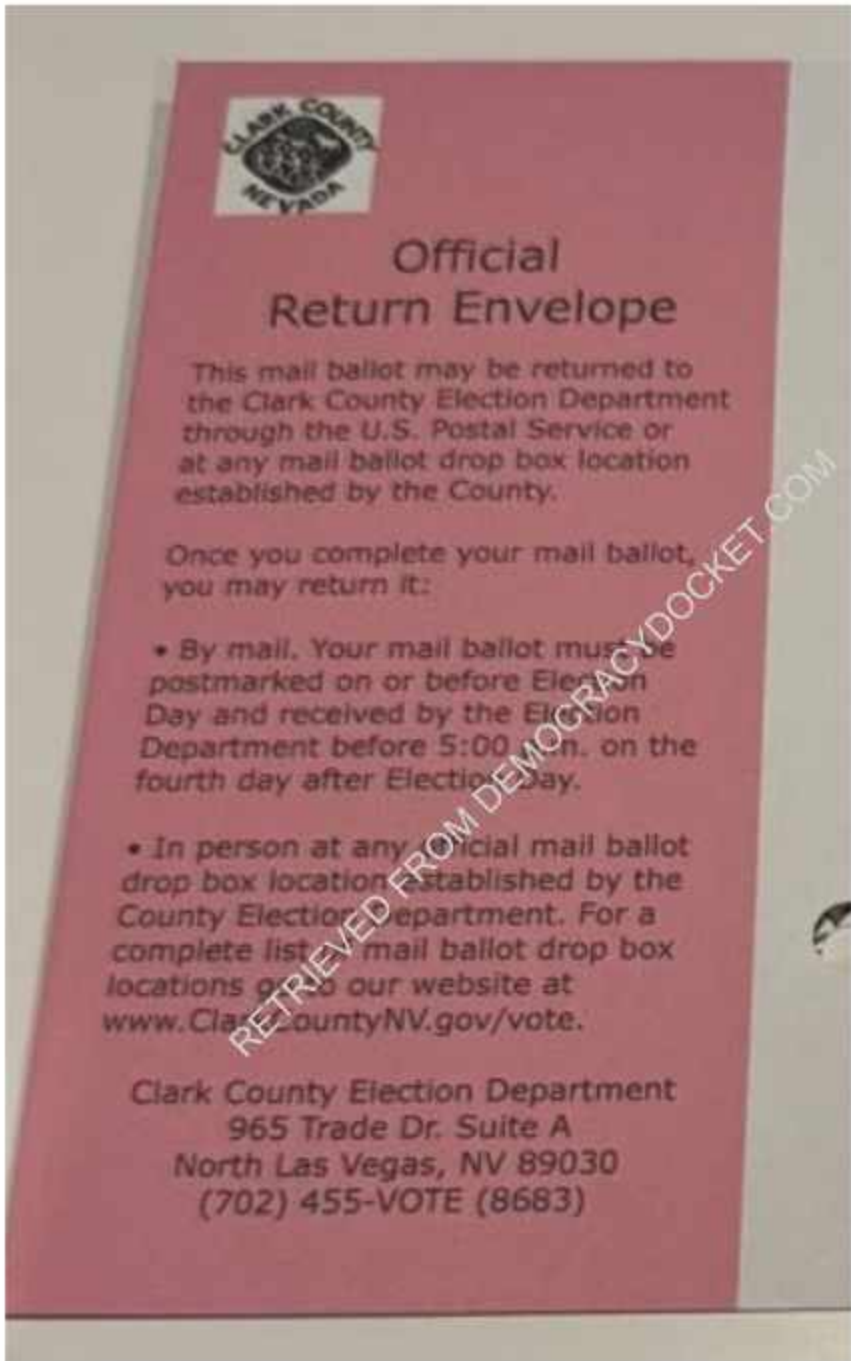


DO NOT DISCARD:

OFFICIAL ELECTION BALLOT
MUST BE POSTMARKED ON OR BEFORE
ELECTION DAY AND RECEIVED BY THE ELECTION
DEPARTMENT NOT LATER THAN 5:00 PM ON
THE FOURTH DAY FOLLOWING THE ELECTION
PREPAID POSTAGE ENVELOPE IS PROVIDED.

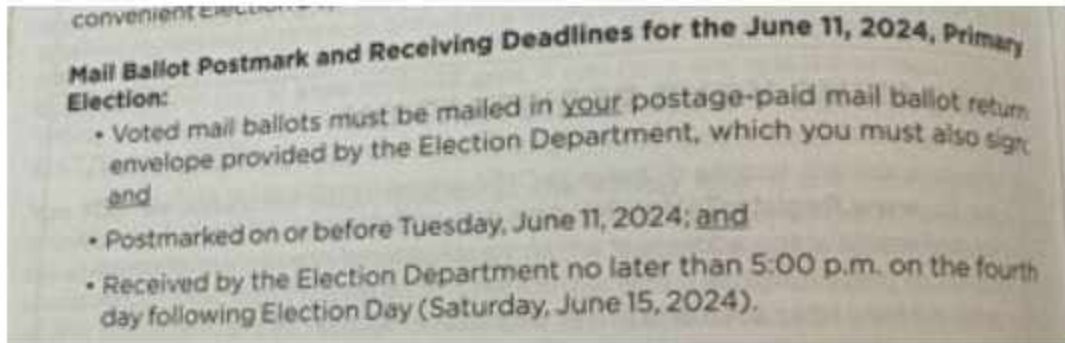
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1 41. Likewise, the inner official return envelope for the 2024 primary election
2 stated that mail ballots “must be postmarked on or before Election Day”:



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4 42. The sample ballot provided by Clark County for the 2024 primary
5 election also stated that voted mail ballots “must be ... [p]ostmarked on or before

1 Tuesday, June 11, 2024” (the date of the election).



2
3 **B. Nevada Officials Ignore the Postmark Requirement.**

4 43. On April 23, 2024, the Deputy Secretary of State for Elections, Mark
5 Wlaschin, testified before the Nevada Legislature’s Advisory Committee on
6 Participatory Democracy that Nevada’s policy and practice is to count mail ballots
7 “without a postmark” if they are received within three days of election day. See
8 Deputy Secretary of State for Elections Mark Wlaschin, Testimony Before Nevada
9 Advisory Committee on Participatory Democracy, April 23, 2024, available at
10 [4/23/2024 - Secretary of State - Advisory Committee on Participatory Democracy - YouTube](https://www.youtube.com/watch?v=OmQ8SSH1XFI)
11 [\(starting at 1:30:09\). https://www.youtube.com/watch?v=OmQ8SSH1XFI](https://www.youtube.com/watch?v=OmQ8SSH1XFI)

12 44. The Secretary of State participates or sends a designee to participate in
13 the Advisory Committee on Participatory Democracy, which was created pursuant to
14 NRS Chapter 225.

15 45. On May 29, 2024, the Nevada Secretary of State’s office issued a
16 Memorandum to all County Clerks and Registrars to disregard the statutory
17 postmark requirement. The Memorandum states: “[A] mail ballot that has no visible
18 postmark should be interpreted to have an indeterminate postmark, and therefore
19 should be accepted if it has been received by the clerk by mail not later than 5 p.m.
20 on the third day following the election.” **Exhibit 1** at 1. According to the
21 Memorandum, “it is the intent of the Office of the Secretary of State that this
22 guidance be submitted as a regulation following the conclusion of the 2024 election
23 cycle.” *Id.* at 2.

1 46. During the mail ballot counting process for the June 11, 2024 primary
2 election, observers representing the Republican National Committee and the Nevada
3 Republican Party personally observed officials in Clark County and Washoe County
4 count numerous mail ballots *without a postmark* received by the counties after
5 election day.

6 47. Clark County issued a document entitled “Mail Ballot Process Quick
7 Guide” to all observers of the ballot processing and counting process. Exhibit 2. The
8 document describes the process of ballot intake, signature verification, sorting and
9 separating, tray inspection, counting board, and tabulation, but nowhere does it
10 reference checking mail ballot postmarks at any point in the process. *Id.*

11 48. The Republican Party observers personally observed officials in Clark
12 County and Washoe County systematically fail to check for postmarks on mail ballots
13 received after June 11, 2024 through 5:00 p.m. on the third day after the primary
14 (June 14, 2024).

15 49. In Clark County, these observers personally observed Clark County
16 officials perform only a cursory check of postmarks on ballots received on Saturday,
17 June 15, 2024, the fourth day after June 11, 2024. These observers further personally
18 observed that not a single ballot was rejected for lack of postmark or a postmark post-
19 dating June 11, 2024. The observers were not close enough to the officials conducting
20 this check to verify that each of the ballots checked by Clark County officials on June
21 15, 2024, had a legible postmark showing a date on or before June 11, 2024.

22 50. In Washoe County, these observers personally observed Washoe County
23 officials fail to check for postmarks on mail ballots received on June 15, 2024.

24 **C. Election Officials Intend to Ignore the Postmark Requirement For**
25 **the 2024 Nevada General Election**

26 51. Nevada will hold a general federal election on November 5, 2024. In
27 addition to many local and state election matters, the general election will select
28 presidential and vice presidential electors and elect Representatives and a U.S.

1 Senator from the State.

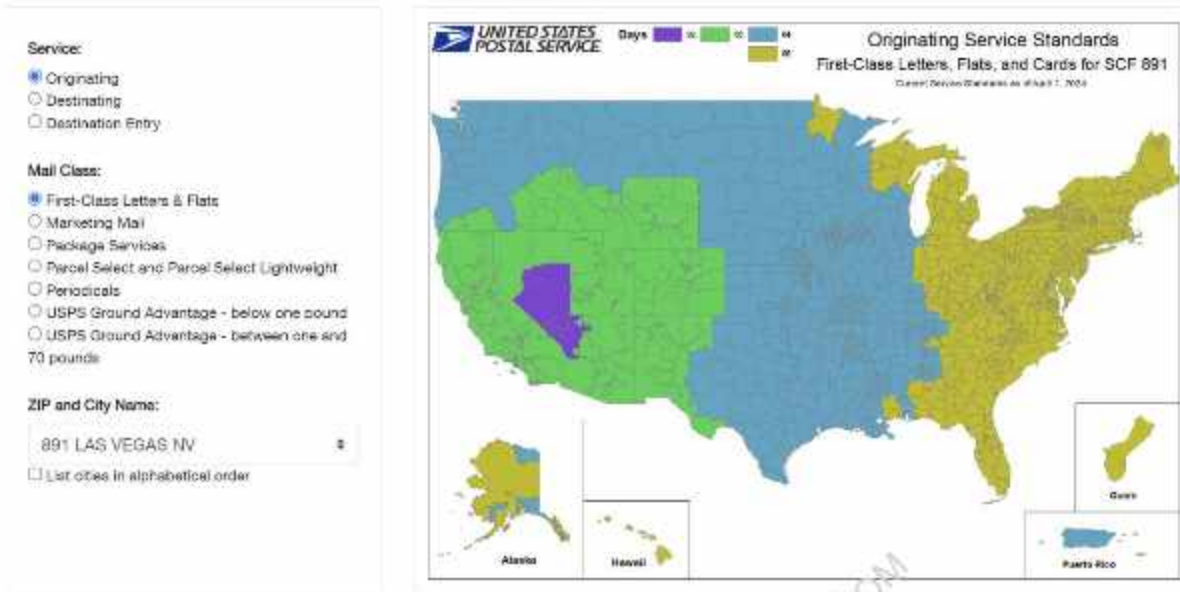
2 52. Under Nevada law, mail ballots “postmarked on or before” November 5,
3 2024, and “[r]eceived by the clerk not later than 5 p.m.” on November 9, 2024, will be
4 counted. NRS 293.269921(1).

5 53. Under Nevada law, postmarked mail ballots whose postmark date
6 “cannot be determined” may be counted if received on or before 5 p.m. on November
7 8, 2024. NRS 293.269921(2).

8 54. Consistent with Deputy Secretary Wlaschin’s testimony and the
9 Secretary of State office’s May 29, 2024 Memorandum, election officials in Nevada
10 have counted and will continue to count mail ballots that lack a postmark and are
11 received by 5 p.m. on the third day following the election. Election officials will count
12 mail ballots that lack a postmark and are received by 5 p.m. on November 8, 2024.

13 55. Nevada law permits the counting of a mail ballot received after election
14 day only if it bears a postmark indicating it was mailed on or before election day. The
15 law further provides that a mail ballot received after election day where “the date of
16 the postmark cannot be determined” will be counted if received within three days
17 after election day. This minor caveat to the law requiring mail ballots to be
18 postmarked on or before election day applies where the mail ballot envelope has a
19 postmark but the date of the postmark cannot be determined. It does not apply when
20 the mail ballot envelope lacks any postmark whatsoever. It would be absurd as well
21 as inconsistent for Nevada law to, on the one hand, specifically require a postmark
22 on mailed ballots while, on the other hand, permit the counting of ballots without any
23 postmark whatsoever.

24 56. USPS routinely delivers mail inside of three days within Nevada. For
25 example, the online Service Standard Map for first class mail originating in any Las
26 Vegas zip code shows the letter will be delivered to the Clark County Elections
27 Department within two days:
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57. It is therefore likely that mail ballots deposited in the mail after election day would arrive at mail-ballot processing facilities within the three-day deadline, and under the Secretary of State's erroneous legal interpretation, those untimely ballots would be counted if they do not bear a postmark.

58. A postmark is printed on mail received by the U.S. Postal Service (USPS) and indicates which USPS office accepted the mail, including the state, zip code, and date of mailing, often with markings indicating the postage has been canceled and cannot be reused.

59. Upon information and belief, some mail ballots will be received by Clark and Washoe County election officials after election day which lack any postmark.

60. As observed by observers representing the Republican National Committee and the Nevada Republican Party during the June 2024 primary election, the Defendants counted a substantial number of mail ballots received after election day through 5:00 p.m. on the third day after election day that lacked any postmark.

61. Based on these observers' observations, it appears that Defendants do not instruct or train any election workers to check for postmarks, legible or

1 indeterminate, for mail ballots received after election day through 5:00 p.m. on the
2 third day after the election.

3 62. Further, while Clark County appears to check for postmarks on ballots
4 received on the fourth day after the election, its apparent failure to reject a single
5 ballot checked indicates that Clark County does not actually enforce the requirement
6 that ballots received on the fourth day after election day bear a legible postmark from
7 election day or before.

8 63. And Washoe County does not check for postmarks on ballots received on
9 the fourth day after the election, showing that Washoe County does not enforce the
10 requirement that ballots received on the fourth day after election day bear a legible
11 postmark from election day or before.

12 64. If Defendants are not ordered by this Court to count only those late-
13 arriving mail ballots that conform to the postmark requirement, then substantial
14 numbers of mail ballots will be counted after the 2024 general election even when
15 those ballots lack any postmark whatsoever, contrary to Nevada law.

16 **D. Plaintiffs necessarily rely on Nevada’s statutory ballot-counting**
17 **regime.**

18 65. The RNC, NVGOP, and Trump Campaign rely on provisions of Nevada
19 law in conducting their campaigns, which include resources allocated to the post-
20 election counting and certification processes.

21 66. For example, Nevada law guarantees Plaintiffs the right to be
22 represented on county mail ballot central counting boards. See NRS 293.269929(2)
23 (“The voters appointed as election board officers for the mail ballot central counting
24 board must not all be of the same political party.”). Nevada law also guarantees the
25 right to observe the handling and counting of mail ballots. See NRS 293.269931(1);
26 Nev. Admin. Code 293.322(3), (4); 356(1). Counting all ballots received within three
27 days after Election Day, including non-postmarked ballots, requires Plaintiffs and
28 their members to divert more time and money to post-election mail ballot activities.

1 See NRS 293.269931 (counting may continue up to “the seventh day following an
2 election”).

3 67. In addition, late-arriving ballots without a postmark are not valid under
4 state law, so counting them dilutes the weight of timely, valid ballots. For instance,
5 if 1,000 ballots without postmarks are counted, the weight of those valid ballots would
6 be diluted by the counting of those 1,000 unlawfully counted ballots.

7 68. Moreover, any votes deposited in the mail after the polls close on election
8 day would not be legally cast votes and should not be counted.

9 69. It is highly likely that the results of a close election could be changed by
10 the counting of non-postmarked ballots received after election day, including those
11 mailed after election day. For example, a Clark County Commission election was
12 decided by just 30 votes out of more than 150,000 cast in 2020. See Jordan Gartner,
13 *Clark County releases recount totals for District C race between Miller, Anthony*,
14 KTNV (Dec. 11, 2020). The defeated Republican candidate had a 2,700 vote lead on
15 election day that was reduced following post-election day counting. *Id.*

16 70. Dilution of honest votes, to any degree, by the counting of invalid votes
17 violates the right to vote and prevents the holding of a free and fair election.

18 71. Voting by mail is highly polarized by party, meaning the dilution of votes
19 on account of late-arriving mail ballots directly and specifically harms Plaintiffs. For
20 example, according to the MIT Election Lab, 46% of Democratic voters in the 2022
21 General Election mailed in their ballots, compared to only 27% of Republicans.
22 Charles Stewart III, *How We Voted in 2022*, at 10 <https://perma.cc/444Z-58ZY>.
23 Accordingly, late-arriving mail ballots that are counted will tend to
24 disproportionately favor Democrat candidates.

25 72. This trend continued for the 2024 primary election, where 74% of
26 Democrats cast ballots by mail as compared to 52% for Republican affiliated voters.
27 See, Eric Neugeboren, *Analysis: Nevada primary turnout down, but mail voting again*
28 *reigns supreme*, Nevada Daily Independent, 6/17/2024 available at

1 [https://thenevadaindependent.com/article/analysis-nevada-primary-turnout-down-](https://thenevadaindependent.com/article/analysis-nevada-primary-turnout-down-but-mail-voting-again-reigns-supreme)
2 [but-mail-voting-again-reigns-supreme](https://thenevadaindependent.com/article/analysis-nevada-primary-turnout-down-but-mail-voting-again-reigns-supreme)

3 73. In Nevada, voting by mail is even more polarized by party. For example,
4 in Nevada's 2020 general election, 60.3% of Democratic voters voted by mail,
5 compared to just 36.9% of Republican voters. See Nev. Sec'y of State, 2020 General
6 Election Turnout,
7 <https://www.nvsos.gov/sos/home/showpublisheddocument/9054/63742671953890000>
8 0. Likewise in the 2022 general election, 61.3% of Democrats and just 40% of
9 Republicans voted by mail. See Nev. Sec'y of State, 2022 General Election Turnout,
10 <https://www.nvsos.gov/sos/home/showpublisheddocument/11297/6381491715051700>
11 00.

12 74. Moreover, mail ballots from Democrat affiliated voters frequently arrive
13 late, in part because "Democratic get-out-the-vote drives—which habitually occur
14 shortly before election day—may delay maximum Democratic voting across-the-
15 board, and produce a 'blue shift' in late mail ballots." Ed Kilgore, Why Do the Last
16 Votes Counted Skew Democratic?, *Intelligencer* (Aug. 10, 2020),
17 [https://nymag.com/intelligencer/2020/08/why-do-the-last-votes-counted-skew-](https://nymag.com/intelligencer/2020/08/why-do-the-last-votes-counted-skew-democratic.html)
18 [democratic.html](https://nymag.com/intelligencer/2020/08/why-do-the-last-votes-counted-skew-democratic.html). Indeed, "even if Republicans and Democrats voted in person and by
19 mail at identical levels, Democrats tend to vote later, which in turn (particularly in
20 elections with heavy voting by mail) means early Republican leads in close races could
21 be fragile." *Id.*

22 75. Indeed, data from the Nevada Secretary of State's office and county
23 election offices indicates that there were approximately 50% more late-arriving
24 ballots from registered Democratic voters than registered Republican voters in both
25 the 2020 and 2022 general elections.

26 76. In the 2022 Nevada election for U.S. Senate, media reported that late-
27 arriving mail ballots favored the Democrat and helped swing the final election
28 results. See Jacob Solis, *Cortez Masto defeats Laxalt in Senate race, securing majority*

1 for Democrats, Nov. 12, 2022 The Nevada Independent, available at
2 [https://thenevadaindependent.com/article/cortez-masto-defeats-laxalt-in-senate-
4 race-securing-majority-for-democrats](https://thenevadaindependent.com/article/cortez-masto-defeats-laxalt-in-senate-
3 race-securing-majority-for-democrats) (“Cortez Masto’s delayed victory became clear
5 late Saturday after the extended process of counting mail ballots submitted through
6 the postal service and drop boxes through Election Day. ... Though Laxalt had led
7 Cortez Masto by as much as 23,000 votes on the morning following Election Day,
8 remaining mail ballots counted in urban counties through this week have favored
9 Cortez Masto by upwards of a 2-to-1 margin, erasing Laxalt’s lead by thousands of
10 votes with every update of the count.”)

11 77. In the Nevada 2024 primary elections, Democratic voters
12 disproportionately voted by mail as compared to Republican voters. Office of Nev.
13 Sec’y of State, 2024 Presidential Preference Primary Turnout: Cumulative
14 Presidential Preference Primary Election Turnout – Final (Feb. 20, 2024),
15 <https://www.nvsos.gov/sos/home/showpublisheddocument/13069/6384404454739700>
16 00 . There were also more Democratic mail ballots rejected for not being returned
17 correctly. See Office of Nev. Sec’y of State, 2024 Presidential Preference Primary
18 Turnout: Mail Ballot Information – Cumulative Totals (Feb. 20, 2024),
19 <https://www.nvsos.gov/sos/home/showpublisheddocument/13048/6384403264877000>
20 00

21 78. Accordingly, counting mail ballots received after election day which lack
22 any postmark specifically and disproportionately harms Republican candidates and
23 Republican voters.

24 79. Harm from counting mail ballots lacking a postmark that are received
25 after election day is irreparable.

26 80. Separate and distinct from this lawsuit, Plaintiffs have challenged
27 Nevada’s counting of late-arriving mail ballots as violating federal law in the U.S.
28 District Court for the District of Nevada in a case captioned, *Republican National
Committee et al. v. Cari-Ann Burgess, et al*, No. 24-cv-00198 (D. Nev.). That case

1 remains pending and will not impact the state law issues raised in this complaint.
2 Should the federal court issue relief that impacts the administration of NRS
3 293.269921(2), Plaintiffs will promptly notify the Court.

4 **FIRST CAUSE OF ACTION**

5 **(Declaratory Judgment)**

6 81. The preceding paragraphs are incorporated by reference.

7 82. The Court has the authority to declare rights, status and other legal
8 rights of the parties, regardless of whether further relief could be had.

9 83. The facts and issues presented constitute a justiciable controversy, in
10 which the Plaintiffs assert a legally protected interest.

11 84. The controversy is ripe for determination.

12 85. Plaintiffs are entitled to relief under NRS 30.010 in the form of a
13 declaration that the policy and practice of counting of mail ballots received after
14 election day that lack a postmark violates NRS 293.269921(1)-(2).

15 **SECOND CAUSE OF ACTION**

16 **(Injunctive Relief)**

17 86. The preceding paragraphs are incorporated by reference.

18 87. The counting of mail ballots received after election day that lack a
19 postmark threatens to immediately deprive Plaintiffs and Plaintiffs' members of their
20 rights with respect to a fair election conducted in compliance with Nevada law.

21 88. Plaintiffs and Plaintiffs' members have no adequate remedy at law.

22 89. Without injunctive relief, Plaintiffs and Plaintiffs' members will suffer
23 irreparable harm for which compensatory damages are inadequate.

24 90. The RNC and NVGOP, the Trump Campaign, their members,
25 supporters, and voters, and Mr. Johnston have a significant interest in preventing
26 irreparable harm in upcoming elections that would result from counting mail ballots
27 received after election day that lack a postmark.

28 91. Courts have authority "whenever necessary and proper" to grant further

1 “relief based on a declaratory judgment or decree,” including injunctive relief. NRS
2 30.100. Thus, an injunction can pair with a declaratory judgment under NRS
3 233B.110.” *Smith v. Bd. of Wildlife Comm’rs*, 461 P.3d 164, (Nev 2020) (unpublished);
4 *Aronoff v. Katleman*, 75 Nev. 424, 432 (Nev. 1959) (“[U]nder appropriate
5 circumstances, a declaratory judgment may be coupled with injunctive relief.”).

6 92. Permanent injunctive relief is appropriate to protect voters’ rights to a
7 “uniform, statewide standard for counting and recounting all votes accurately.” Nev.
8 Const. art. 2 S 1A(10); *see also* NRS S 293.254 (5).

9 93. The Court should enjoin Defendants from counting mail ballots received
10 after election day that lack a postmark.

11 94. The Court should further enjoin Defendants from counting mail ballots
12 received after election day that bear a legible postmark from after election day.

13 **THIRD CAUSE OF ACTION**

14 **(Nevada Administrative Procedure Act)**

15 95. The preceding paragraphs are incorporated by reference.

16 96. The May 29, 2024 Memorandum is unlawful because it is contrary to the
17 plain text of Nevada statute, namely NRS 293.269921, which does not permit mail
18 ballots received after election day to be counted when they lack any postmark,
19 requires ballots to be postmarked on or before election day, and contains a limited
20 exception for mail ballots envelopes with a postmark where the date of the postmark
21 cannot be determined.

22 97. In the alternative, the Memorandum is unlawful because the Secretary
23 of State has engaged in ad hoc rulemaking contrary to the Nevada Administrative
24 Procedure Act (“APA”) under the guise of regulatory “guidance.”

25 98. The Memorandum constitutes a regulation. NRS 233B.038.

26 99. The Secretary did not follow any of the procedural requirements of the
27 APA to properly promulgate the Memorandum as a regulation. NRS 233B.040 – NRS
28 233B.120.

1 100. The Secretary did not follow the procedure to designate the
2 Memorandum as an emergency regulation. NRS 233B.0613.

3 101. The Secretary was aware of the requirements of the APA because the
4 Memorandum itself states: "It is the intent of the Office of the Secretary of State that
5 this guidance be submitted as a regulation following the conclusion of the 2024
6 election cycle. To that end, if any Clerk identifies any means to improve this guidance,
7 please notify the Deputy for Elections prior to December 15, 2024."

8 102. A regulation cannot be promulgated as "guidance" in contravention of
9 the requirements of the APA.

10 103. Plaintiffs are entitled to relief under NRS 2233B.110 in the form of a
11 declaration that the Memorandum is invalid because it was not promulgated in
12 accordance with the procedural requirements of the APA.

13 104. Plaintiffs are entitled to an injunction that prohibits Defendants and
14 anyone with notice from enforcing the Memorandum. *State Farm Mut. Auto. Ins. Co.*
15 *v. Comm'r of Ins.*, 114 Nev. 535, 539, 958 P.2d 733, 735 (1998).

16 105. Consistent with the requirements of NRS 233B.110(3), Plaintiffs will
17 serve a copy of the Complaint on the Attorney General.

18
19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff prays for the following relief:

21 A. A declaratory judgment that the policy and practice of counting of mail
22 ballots received after election day that lack a postmark violates NRS
23 293.269921(1)-(2);

24 B. A preliminary and permanent injunction prohibiting Defendants from
25 counting mail ballots received after election day that lack a postmark,
26 including for the November 5, 2024, general election;

27 C. A preliminary and permanent injunction prohibiting Defendants from
28 counting mail ballots received after election day that bear a legible postmark

- 1 from after election day, including for the November 5, 2024, general election;
- 2 D. A declaratory judgment that the Memorandum dated May 29, 2024 with the
- 3 subject “Memo 2024-015 – Indeterminate Postmark” is an invalid regulation
- 4 as it was issued contrary to the requirements of the Nevada Administrative
- 5 Procedure Act;
- 6 E. An order requiring the Secretary of State to withdraw the Memorandum;
- 7 F. An order requiring the Secretary of State to instruct County Clerks and
- 8 Registrars not to count mail ballots received after election day that lack a
- 9 postmark;
- 10 G. An injunction prohibiting Defendants and anyone with Notice from enforcing
- 11 the Memorandum dated May 29, 2024 with the subject “Memo 2024-015 –
- 12 Indeterminate Postmark.”
- 13 H. Plaintiffs’ reasonable costs and expenses of this action, including attorneys’
- 14 fees; and
- 15 I. All other further relief that Plaintiffs may be entitled to.
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1 **AFFIRMATION**

2 The undersigned hereby affirm that the foregoing document does not contain
3 the social security number of any person.

4 DATED this 3rd day of July, 2024.

5 ASHCRAFT & BARR LLP

6 By:  _____
7
8 Jeffrey F. Barr (Bar # 7269)

9 FIRST & FOURTEENTH PLLC

10 By: _____
11 Michael Francisco (pro hac vice forthcoming)
12 Christopher O. Murray (pro hac vice forthcoming)
13 *Counsel for Plaintiffs*

14 SIGAL CHATTAH LAW OFFICES

15 By: _____
16 Sigal Chattah (Bar # 8264)
17 *Counsel for Plaintiff Nevada Republican Party*

18 DHILLON LAW GROUP

19 By: _____
20 David A. Warrington* (pro hac vice forthcoming)
21 Gary M. Lawkowski* (pro hac vice forthcoming)
22 *Attorneys for Plaintiff Donald J. Trump for*
23 *President 2024, Inc.*