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# IN THE FIRST JUDICIAL DISTRICT COURT

1. **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

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1. REPUBLICAN NATIONAL COMMITTEE; NEVADA
2. REPUBLICAN PARTY; DONALD **J.**
3. TRUMP FOR PRESIDENT 2024, INC.; SCOTT JOHNSTON

8

1. **V.**
2. FRANCISCO AGUILAR, in his official
3. capacity as Nevada Secretary of State; State of NEVADA; CARI-ANN
4. BURGESS, in her official capacity as
5. the Washoe County Registrar of Voters; JAN GALASSINI, in her
6. official capacity as the Washoe County
7. Clerk; LORENA PORTILLO, in her official capacity as the Clark County
8. Registrar of Voters; LYNN MARIE
9. GOYA, in her official capacity a Clark County Clerk.

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Case No.:

Dept. No.:

# COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Arbitration Exemption: Declaratory and Injunctive ief

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

# NATURE OF THE CASE

1. 1. Nevada law permits the counting of some ballots received by mail after
	1. election day, within time limits established by the Nevada legislature. This lawsuit
	2. seeks to enforce one critical component of Nevada's post-election day counting of
	3. ballots: the requirement that mail ballots received after election day but lacking a
	4. postmark are not counted, as set forth in NRS 293.269921(1)-(2).
	5. 2. This lawsuit is necessary because the Nevada Deputy Secretary of State
	6. for Elections recently testified that this key safeguard of Nevada law will be ignored
	7. in upcoming elections and that mail ballots *without a postmark* will be counted if
	8. received up to 3 days after election day. *See* Deputy Secretary of State for Elections
	9. Mark Wlaschin, testimony before Nevada Advisory Committee on Perspiratory
	10. Democracy, April 23, 2024, available at 4/23/2024 - Secretary of State -Advisory Committee
	11. on Participatory Democracy - YouTube (starting at 1:30:09).
	12. 3. Counting non-postmarked mail ballots i permitted by Nevada law,
	13. which allows late-arriving mail ballots to be cou
	14. the ballot is accompanied by a valid postmar

only two circumstances: (1) i ating it was mailed on or before

* 1. election day, or (2) the ballot has a postma "the date of the postmark cannot be
	2. determined." Legibly postmarked b are counted if received four days after
	3. election day. NRS 293.269921(1). ots bearing postmarks with dates that are
	4. illegible or otherwise canno determined are appropriately given a shorter
	5. timeframe of three days. 93.269921(2).
	6. 4. In enacti recently amending) section 293.269921, the Nevada
	7. legislature has ma olicy judgments about which mail ballots received after
	8. election day may be counted. In closely contested elections (and all elections), care
	9. must be taken to ensure that ballots cast after election day cannot be counted. Indeed,
	10. it is axiomatic to fair elections that once the time for voting has ended, no interested
	11. party can add new votes to the mix. The unfairness and opportunity for changing the
	12. valid results of an election are self-evident.
	13. 5. Plaintiffs seek a declaration and injunction to ensure that Nevada voters
	14. will have confidence that only those late-arriving mail ballots with evidence of having
1. been mailed on or before election day will be counted, as the Nevada legislature
2. intended when it required the presence of a postmark before such late-arriving mail
3. ballots may be counted.

|  |  |  |
| --- | --- | --- |
| 4 |  | **JURISDICTION AND VENUE** |
| 5 | 6. | This Court has jurisdiction to hear Plaintiffs' claims and to grant |
| 6 | declaratory | and injunctive relief pursuant to NRS 295.061, 30.030, 30.040, and |
| 7 | 33.010. |  |
| 8 | 7. | Venue is proper under NRS 13.020 and 13.040 because this action is |

1. against a public officer, certain Defendants are located within the instant judicial
2. district, the acts complained of herein occurred within the i ant judicial district,
3. and the relief Plaintiff seeks would be granted from 1 the instant judicial
4. district.

# PARTIES

1. 8. Plaintiff, the Republican Natio
2. committee of the Republican Party, as

mmittee (RNC), is the national d by 52 U.S.C. § 30101(14), with its

1. principal place of business at 310 Fi
2. 9. The RNC organize
3. which nominates a candidat

et S.E., Washington, DC 20003.

operates the Republican National Convention, sident and Vice President of the United States.

1. 10. The RNC r ents over 30 million registered Republicans in all 50
2. states, the District of bia, and the U.S. territories. It is comprised of 168 voting
3. members representing state Republican Party organizations, including three
4. members who are registered voters in Nevada.
5. 11. The RNC works to elect Republican candidates to state and federal office
6. in Nevada. In the November 2024 general election, Republican candidates will appear
7. on the ballot in Nevada for election to the Presidency, U.S. Senate, U.S. House of
8. Representatives, and state offices.
9. 12. The RNC has vital interests in protecting the ability of Republican
10. voters to cast, and Republican candidates to receive, effective votes in Nevada
11. elections and elsewhere.
12. 13. The RNC seeks to vindicate its own rights and represent the rights of
13. its members, affiliated voters, and candidates.
14. 14. The RNC has a strong interest in ensuring that elections in which it and
15. its candidates compete for votes are conducted in a legally structured competitive
16. environment.
17. 15. The RNC devotes significant resources to mail-ballot-chasing operations
18. and election integrity activities, including post-election day activities, such as
19. monitoring the processing and counting of mail ballots. If non-postmarked ballots
20. received after election day are counted, the RNC will have to devote resources to
21. ascertaining and ensuring that only ballots mailed by ele ay are counted.
22. 16. Plaintiff Nevada Republican Party (N P) is a political party m
23. Nevada with its principal place of business at 28 st Charleston Blvd. #69, Las
24. Vegas, NV 89102.
25. 17. The NVGOP exercises its f
26. speech, assembly, petition, and associ

al and state constitutional rights of "provide the statutory leadership of the

1. Nevada Republican Party as dire
2. develop, and elect representati

in the Nevada Revised statutes," to "recruit, overnment at the national, state, and local levels,"

1. and to "promote sound, ho
2. and local levels." NRC

and representative government at the national, state aws, art. II, §§1.A-1.C.

1. 18. The
2. Nevada.

P represents over 550,000 registered Republican voters in

1. 19. The NVGOP has the same interests as the RNC in vindicating its own
2. rights, preserving resources, and representing the rights of its members, affiliated
3. voters, and candidates.
4. 20. Plaintiff Donald J. Trump for President 2024, Inc. (Trump Campaign) is
5. the principal committee for President Donald J. Trump's campaign for President with
6. its headquarters in West Palm Beach, FL.
	1. 21. Donald J. Trump will be a candidate for President on the ballot for the
	2. 2024 Nevada general election (by and through presidential and vice presidential
	3. electors) and is a Republican affiliated with the RNC and NVGOP.
	4. 22. The Trump Campaign has the same interests in this case as the RNC
	5. and NVGOP with respect to the candidacy of President Trump and seeks to vindicate
	6. those interests in the same ways. The Trump Campaign intends to invest resources
	7. seeking voter support for the Nevada general election.
	8. 23. Plaintiff Scott Johnston is a 60-year resident of Nevada and a registered
	9. Nevada voter residing in Washoe County. He regularly votes in Nevada elections, and
	10. he plans to vote in the November 2024 general election, including for U.S. President,
	11. Senate, and the House of Representatives. Mr. Joh
	12. Republican, supports Republican candidates, and h
	13. Republican Party. He is a member of the Washo

is registered as a ered on behalf of the Republican Party Central

* 1. Committee, which is the governing body of the
	2. Johnston has also served as a precinct c
	3. since 2020, and a Nevada State Centr

oe County Republican Party. Mr.

1 for the Galena Forest Estates area

1 ee person since 2021.

* 1. 24. Defendant Francisco
	2. sued in his official capacity. H

guilar is the Nevada Secretary of State and is s "as the Chief Officer of Elections" for Nevada

* 1. and "is responsible for the ion and enforcement of the provisions of title 24 of
	2. NRS and all other pr 1 of state and federal law relating to elections in" Nevada.
	3. NRS §293.124.
	4. 25. Defendant State of Nevada is a political jurisdiction and State of the
	5. United States.
	6. 26. Defendant Cari-Ann Burgess is the Registrar of Voters for Washoe
	7. County. She is the county's chief election officer and is responsible for "establish[ing]
	8. procedures for the processing and counting of mail ballots" in Washoe County. NRS
	9. 293.269925(1); *see id.* 293.269911-.269937, 244.164. Defendant Burgess is sued in her
	10. official capacity.
		1. 27. Defendant Jan Galassini is the Washoe County Clerk. She is responsible
		2. for certifying the election results in Washoe County. NRS 293.393. Defendant
		3. Galassini is sued in her official capacity.
		4. 28. Defendant Lorena Portillo is the Registrar of Voters for Clark County.
		5. She is the county's chief election officer and is responsible for "establish[ing]
		6. procedures for the processing and counting of mail ballots" in Clark County. NRS
		7. 293.269925(1); *see id.* 293.269911-.269937, 244.164. Defendant Portillo is sued in her
		8. official capacity.
		9. 29. Defendant Lynn Marie Goya is the Clark County Clerk. She is
		10. responsible for certifying the election results m Clark County. NRS 293.393.
		11. Defendant Goya is sued in her official capacity.

## GENERAL ALLEGATI

* + 1. 30. Nevada citizens rely on consistent a
		2. free and fair elections. How mail ballots recei

ion of election rules to ensure er election day are counted is an

* + 1. issue of critical importance for the upcomi
		2. only have confidence in the fairnes

evada general election. The public will finality of the election if Nevada law

* + 1. requiring ballots to be voted and
		2. fully enforced.

## A. Nevada Statutory

sited in the mail on or before election day is

## for Late-Arriving Mail Ballots.

* + 1. 31. There are
		2. A mail ballot may be re
		3. by mail.

erous opportunities to vote in Nevada, including by mail. d in person, deposited in a ballot drop box, or returned

* + 1. 32. 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. 33. Since 2020, Nevada law has provided that ballots returned by mail may
		5. be counted provided there is evidence they were voted on or before election day but
		6. were not received by the clerk and recorder until after election day. (Prior to 2020,
1. Nevada law did not permit the counting of any absent ballots received in the mail
2. after election day. See NRS 293.317 (2019)). These late-arriving ballots are subject
3. to strict limits, as would be expected for the counting of additional ballots received
4. after the election has been completed and the polls have closed.
5. 34. Under Nevada law, **"[l]n** order for a mail ballot to be counted for any
6. election, the ballot must be ... [m]ailed to the county clerk," "postmarked on or before
7. the day of the election," and "[r]eceived by the clerk not later than 5 p.m. on the fourth
8. day following the election." NRS 293.269921(1).
9. 35. Nevada law further provides that "[i]f a mail ballot is received by mail
10. not later than 5 p.m. on the third day following the election and the date *of the*
11. *postmark* cannot be determined, the mail ballot shall emed to have been
12. postmarked on or before the day of the election." 293.269921(2) (emphasis
13. added).
14. **B. The 2024 Nevada General Election i**
15. **Mail Ballot Returns**

**ected to have Substantial**

1. 36. Nevada will hold a gen
2. addition to many local and state

deral election on November 5, 2024. In ion matters, the general election will select

1. presidential and vice preside electors and elect Representatives and a U.S.
2. Senator from the State.
3. 37. Under N law, mail ballots "postmarked on or before" November 5,
4. 2024, and "[r]eceived the clerk not later than 5 p.m." on November 9, 2024, will be
5. counted. NRS 293.269921(1).
6. 38. Under Nevada law, postmarked mail ballots whose postmark date
7. "cannot be determined" will be counted if received on or before 5 p.m. on November
8. 8, 2024. NRS 293.269921(2).
9. 39. On April 23, 2024, the Deputy Secretary of State for Elections, Mark
10. Wlaschin, testified before the Nevada Legislature's Advisory Committee on
11. Participatory Democracy that Nevada's policy and practice is to count mail ballots
12. "without a postmark" if they are received within three days of election day. *See*
13. Deputy Secretary of State for Elections Mark Wlaschin, testimony before Nevada
14. Advisory Committee on Perspiratory Democracy, April 23, 2024, available at
15. 4/23/2024 - Secretary of State - Advisory Committee on Participatory Democracy - YouTube
16. (starting at 1:30:09).
17. 40. The Secretary of State participates or sends a designee to participate in
18. the Advisory Committee on Participatory Democracy, which was created pursuant to
19. NRS Chapter 225.
20. 41. Upon information and belief, consistent with Deputy Secretary
21. Wlaschin's testimony, election officials in Nevada have counted and will continue to
22. count mail ballots that lack a postmark and are received before 5 p.m. on the
23. third day following the election. Election officials wil mail ballots that lack a
24. postmark and are received on or before 5 p.m. on er 8, 2024.
25. 42. Nevada law permits the countin mail ballot received after election
26. day only if it bears a postmark indicating i mailed on or before election day. The
27. law further provides that a mail hallo 1 dafter election day where "the date of
28. the postmark cannot be determin 1 be counted if received within three days
29. after election day. This mi aveat to the law requiring mail ballots to be
30. postmarked on or before e day applies where the mail ballot envelope has a
31. postmark but the date postmark cannot be determined. It does not apply when
32. the mail ballot envel lacks any postmark whatsoever.
33. 43. USPS routinely delivers mail inside of three days within Nevada. For
34. example, the online Service Standard Map for first class mail originating in any Las
35. Vegas zip code shows the letter will be delivered to the Clark County Elections
36. Department within two days:

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* 1. 44. It is therefore possible, if not proba at mail ballots deposited in the
	2. mail after election day could arrive at mail- ot processing facilities within the
	3. three-day deadline, and under Dep ecretary Wlaschin's erroneous legal
	4. interpretation, those untimely hallo ould be counted if they do not bear a
	5. postmark.
	6. 45. A postmark is d on mail received by the U.S. Postal Service
	7. (USPS) and indicates w 1 PS office accepted the mail, including the state, zip
	8. code, and date of m often with markings indicating the postage has been
	9. canceled and cannot be reused.
	10. 46. Upon information and belief, some mail ballots will be received by Clark
	11. and Washoe County election officials after election day which lack any postmark.

## C. Plaintiffs necessarily rely on Nevada's statutory ballot-counting

* 1. **regime.**
	2. 47. The RNC, NVGOP, and Trump Campaign rely on provisions of Nevada
	3. law in conducting their campaigns, which include resources allocated to the post-
	4. election counting and certification processes.
		1. 48. For example, Nevada law guarantees Plaintiffs the right to be
		2. represented on county mail ballot central counting boards. See NRS 293.269929(2)
		3. ("The voters appointed as election board officers for the mail ballot central counting
		4. board must not all be of the same political party."). Nevada law also guarantees the
		5. right to observe the handling and counting of mail ballots. See NRS 293.269931(1);
		6. Nev. Admin. Code 293.322(3), (4); 356(1). Counting all ballots received within three
		7. days after Election Day, including non-postmarked ballots, requires Plaintiffs and
		8. their members to divert more time and money to post-election mail ballot activities.
		9. See NRS 293.269931 (counting may continue up to "the seventh day following an
		10. election").
		11. 49. In addition, late-arriving ballots without a
		12. counting them dilutes the weight of timely, valid ballo

ark are not valid, so instance, if 1,000 ballots

* + 1. are mailed after election day and then counte
		2. postmark, the valid votes on or before electio
		3. of those 1,000 unlawfully counted ballots.

Nevada because they lack a would be diluted by the counting

* + 1. 50. Any votes deposited in
		2. would not be legally cast votes and

ail after the polls close on election day not be counted.

* + 1. 51. It is possible tha results of a close election could be changed by the
		2. counting of ballots cast aft ion day.
		3. 52. Dilution st votes, to any degree, by the counting of late-cast votes
		4. violates the right to vo and prevents the holding of a free and fair election.
		5. 53. Voting by mail is highly polarized by party, meaning the dilution of votes
		6. on account of late-arriving mail ballots directly and specifically harms Plaintiffs. For
		7. example, according to the MIT Election Lab, 46% of Democratic voters in the 2022
		8. General Election mailed in their ballots, compared to only 27% of Republicans.
		9. Charles Stewart III, How We Voted in 2022, at 10 https://perma.cc/444Z-58ZY.
		10. Accordingly, late-arriving mail ballots that are counted will tend to
		11. disproportionately favor Democrat candidates.
			1. 54. In Nevada, voting by mail is even more polarized by party. For example,
			2. m Nevada's 2020 general election, 60.3% of Democratic voters voted by mail,
			3. compared to just 36.9% of Republican voters. *See* Nev. Sec'y of State, 2020 General
			4. Election Turnout, https://perma.cc/Z6F3-SM4N. Likewise in the 2022 general
			5. election, 61.3% of Democrats and just 40% of Republicans voted by mail. *See* Nev.
			6. Sec'y of State, 2022 General Election Turnout, https://perma.cc/N7G7-RUQ9.
			7. 55. Moreover, mail ballots from Democrat affiliated voters frequently arrive
			8. late, in part because "Democratic get-out-the-vote drives-which habitually occur
			9. shortly before election day-may delay maximum Democratic voting across-the­
			10. board, and produce a 'blue shift' in late mail ballots." Ed Kil ore, Why Do the Last

* + - 1. Votes Counted Skew Democratic?, Intelligenc (Aug. 10, 2020),
			2. https://perma.cc/R78D-3Q58. Indeed, "even if Repub i and Democrats voted in
			3. person and by mail at identical levels, Democra to vote later, which in turn
			4. (particularly in elections with heavy voting by means early Republican leads in
			5. close races could be fragile." *Id.*
			6. 56. Indeed, data from the Secretary of State's office and county
			7. election offices indicates that th
			8. ballots from registered Demo
			9. 2020 and 2022 general ele

ere approximately 50% more late-arriving voters than registered Republican voters in the

* + - 1. 57. In the 20 da election for U.S. Senate, media reported that late-
			2. arriving mail ballots avored the Democrat and helped swing the final election
			3. results. See Jacob Solis, *Cortez Masto defeats Laxalt in Senate race, securing majority*
			4. *for Democrats,* Nov. 12, 2022 The Nevada Independent, available at Cortez Masto defeats
			5. Laxalt in Senate race, securing majority for Democrats - The Nevada Independent ("Cortez Masto's
			6. delayed victory became clear late Saturday after the extended process of counting
			7. mail ballots submitted through the postal service and drop boxes through Election
			8. Day.... Though Laxalt had led Cortez Masto by as much as 23,000 votes on the
			9. morning following Election Day, remaining mail ballots counted in urban counties
1. through this week have favored Cortez Masto by upwards of a 2-to-1 margin, erasing
2. Laxalt's lead by thousands of votes with every update of the count.")
3. 58. In the Nevada 2024 primary elections, Democrat affiliated voters
4. disproportionately voted by mail as compared to Republican affiliated voters. Office
5. of Nev. Sec'y of State, 2024 Presidential Preference Primary Turnout: Cumulative
6. Presidential Preference Primary Election Turnout - Final (Feb. 20, 2024),
7. perma.cc/7USY-5NMY. There were also more Democrat affiliated mail ballots
8. rejected for not being returned correctly. *See* Office of Nev. Sec'y of State, 2024
9. Presidential Preference Primary Turnout: Mail Ballot Information - Cumulative
10. Totals (Feb. 20, 2024), perma.cc/7NTN-JV6L.
11. 59. Accordingly, counting mail ballots received a ection day which lack
12. any postmark specifically and disproportionately ha publican candidates and
13. Republican voters.
14. 60. Harm from counting mail ballot **1** g a postmark that are received
15. after election day is irreparable.
16. 61. Separate and distinct f 1 lawsuit, Plaintiffs have challenged
17. Nevada's counting of late-arriving 1 ballots as violating federal law in the U.S.
18. District Court for the Distric Nevada in a case captioned, *Republican National*
19. *Committee et al. v. Cari- rgess, et al,* No. 24-cv-00198 **(D.** Nev.). That case
20. remains pending and ot impact the state law issues raised in this complaint.
21. Should the federal court issue relief that impacts the administration of NRS
22. 293.269921(2), Plaintiffs will promptly notify the Court.

# FIRST CAUSE OF ACTION

## (Declaratory Judgment)

1. 62. The preceding paragraphs are incorporated by reference.
2. 63. The Plaintiffs seek declaratory relief that mail ballots received after
3. election day which lack a postmark shall not be counted.
4. 64. The Court has the authority to declare rights, status and other legal
	1. rights of the parties, regardless of whether further relief could be had.
	2. 65. The facts and issues presented constitute a justiciable controversy, in
	3. which the Plaintiffs assert a legally protected interest.
	4. 66. The controversy is ripe for determination.
	5. 67. Plaintiffs are entitled to relief under NRS 30.010 m the form of a
	6. declaration that says:
	7. a. Nevada law prohibits the counting of all mail ballots received after
	8. election day which lack a postmark; and
	9. b. Nevada law prohibits the counting of all mail ballots received after
	10. election day which do not bear evidence indicatin they were mailed on
	11. or before election day.
	12. 68. For the foregoing reasons, the counting o mail ballots received after
	13. election day that lack a postmark violates NRS 2 921(1)-(2).
	14. 69. Consistent with the requiremen NRS 233B.110(3), Plaintiffs will
	15. serve a copy of the Complaint on the Atto General.
	16. 70. The Court should theref are the policy and practice of counting
	17. mail ballots received after election that lacks a postmark to be invalid.

# SEC CAUSE OF ACTION

## (Injunctive Relief)

* 1. 71. The prec paragraphs are incorporated by reference.
	2. 72. The coun g of mail ballots received after election day which lack a
	3. postmark threatens to immediately deprive Petitioners and Petitioners' members of
	4. the rights with respect to a fair election conducted in compliance with Nevada law.
	5. 73. Plaintiffs and Plaintiffs' members have no adequate remedy at law.
	6. 74. Without injunctive relief, Plaintiffs and Plaintiffs' members will suffer
	7. irreparable harm for which compensatory damages are inadequate.
	8. 75. The RNC and NVGOP, the Trump Campaign, their members,
	9. supporters, and voters, and Mr. Johnston have a significant interest in preventing
1. harm that will be created in the upcoming elections by counting mail ballots received
2. after election day which lack a postmark.
3. 76. Courts have authority "whenever necessary and proper" to grant further
4. "relief based on a declaratory judgment or decree," including injunctive relief. NRS
5. 30.100. Thus, an injunction can pair with a declaratory judgment under NRS
6. 233B.110." *Smith v. Bd. of Wildlife Comm'rs,* 461 P.3d 164, (Nev 2020) (unpublished);
7. *Aronoff v. Katleman,* 75 Nev. 424, 432 (Nev. 1959) ("[U]nder appropriate
8. circumstances, a declaratory judgment may be coupled with injunctive relief.").
9. 77. Permanent injunctive relief is appropriate to protect voters rights to a
10. "uniform, statewide standard for counting and recounting all votes accurately." Nev.
11. Const. art. 2 S lA(l0); See also NRS S 293.2546 (5).
12. 78. The Court should enjoin Defendants fro 1 g mail ballots received
13. after election day which lack a postmark.

# PRAYER FOR F

1. **WHEREFORE,** Plaintiff prays for the owing relief:
2. A. A declaratory judgment that th and practice of counting of mail
3. ballots received after electio that lack a postmark violates NRS
4. 293.269921(1)-(2);
5. B. A permanent injunc i ohibiting Defendants from counting mail ballots
6. received after el day that lack a postmark, including for the November
7. 5, 2024, genera ection;
8. C. Plaintiffs' reasonable costs and expenses of this action, including attorneys'
9. fees; and
10. D. All other further relief that Plaintiffs may be entitled to. 25

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