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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

**MOTION FOR PRELIMINARY
INJUNCTION**

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 motion for preliminary injunction against Defendants
3 Francisco Aguilar, in his official capacity as Nevada Secretary of State; the State of
4 Nevada; Cari-Ann Burgess, in her official capacity as the Washoe County Registrar
5 of Voters; Jan Galassini, in her official capacity as the Washoe County Clerk; Lorena
6 Portillo, in her official capacity as the Clark County Registrar of Voters; and Lynn
7 Marie Goya, in her official capacity as the Clark County Clerk. This motion is made
8 based on the points and authorities below, the Amended Complaint on file, and any
9 oral argument or evidence the Court may entertain at any hearing.

10 **NATURE OF THE CASE**

11 Plaintiffs seek to enforce one critical component of Nevada's post-election day
12 counting of ballots: the requirement that mail ballots received after election day bear
13 a postmark. Nevada law requires that mail ballots received by 5:00 pm on the fourth
14 day after the election be postmarked "on or before" election day in order to count. NRS
15 293.269921(1). The law contains a limited caveat allowing mail ballots to count if "the
16 date of the postmark cannot be determined" as long as those ballots are received by
17 5:00 pm on the third day after the election. NRS 293.269921(2). The postmark
18 requirement is a critical safeguard that enables Nevada to offer a post-election day
19 ballot receipt deadline, because the requirement ensures that ballots received after
20 election day were not mailed after election day. That is why Nevada is one of many
21 states requiring mail ballots received after election day to be postmarked on or before
22 election day.

23 But the Nevada Secretary of State and some County Clerks and Registrars in
24 Nevada have adopted a policy and practice of disregarding the statute's postmark
25 requirement. On May 29, 2024, the Secretary of State's office issued a Memorandum
26 stating: "[A] mail ballot that has no visible postmark should be interpreted to have
27 an indeterminate postmark, and therefore should be accepted if it has been received
28 by the clerk by mail not later than 5 p.m. on the third day following the election."

1 During the June 11, 2024 primary election, officials in Clark and Washoe Counties
2 did in fact disregard the postmark requirement, failing to check mail ballots received
3 in the three days following election day for postmarks. Indeed, the counties
4 apparently did not enforce the requirement that ballots received on the fourth day
5 following the election be postmarked on or before election day.

6 Plaintiffs seek preliminary injunctive relief prohibiting Nevada officials from
7 counting mail ballots received after election day that lack a postmark, in accordance
8 with the plain language of NRS 293.269921(1)-(2). Such relief is warranted because
9 Plaintiffs will suffer irreparable harm if such ballots are allowed to count in the
10 upcoming November 2024 general election. The counting of ballots that are invalid
11 under state law will harm the electoral prospects and competitive standing of
12 Plaintiffs' candidates and dilute the voting power of Plaintiffs' members. Once the
13 election occurs, this harm is irreparable. An injunction serves the public interest
14 because compliance with the postmark requirement ensures that only those late-
15 arriving mail ballots with evidence of having been mailed on or before election day
16 will count and promotes confidence in the integrity of the election.

17 **BACKGROUND**

18 **A. Nevada Statutory Scheme for Late-Arriving Mail Ballots.**

19 There are numerous opportunities to vote in Nevada, including by mail. A mail
20 ballot may be returned in person, deposited in a ballot drop box, or returned by mail.
21 Nevada provides for mail ballots to be sent to all active registered voters who do not
22 opt out of receiving a ballot by mail, and Nevada includes postage pre-paid return
23 envelopes for returning mail ballots. Am. Compl. ¶¶ 34-35.

24 Since 2020, Nevada law has provided that mail ballots may be counted if there
25 is evidence they were mailed on or before election day but were not received by the
26 clerk or registrar until after election day. (Prior to 2020, Nevada law did not permit
27 the counting of any absent ballots received in the mail after election day. *See* NRS
28 293.317 (2019)). These late-arriving ballots are subject to strict limits, as would be

1 expected for the counting of additional ballots received after the election has been
2 completed and the polls have closed.

3 The law states:

4 [I]n order for a mail ballot to be counted for any election,
5 the mail ballot must be ... Mailed to the county clerk, and:
6 (1) Postmarked on or before the day of the election; and (2)
7 Received by the clerk not later than 5 p.m. on the fourth
8 day following the election.

9 NRS 293.269921(1). Nevada law further provides that “[i]f a mail ballot is received
10 by mail not later than 5 p.m. on the third day following the election and the date of
11 *the postmark* cannot be determined, the mail ballot shall be deemed to have been
12 postmarked on or before the day of the election.” NRS 293.269921(2) (emphasis
13 added). Consistent with this statutory requirement, Nevada election materials
14 repeatedly inform voters that their ballots must be postmarked on or before election
15 day. Am. Compl. ¶¶ 39-42.

16 **B. Nevada Officials Ignore the Postmark Requirement.**

17 On April 23, 2024, the Deputy Secretary of State for Elections, Mark Wlaschin,
18 testified before the Nevada Legislature’s Advisory Committee on Participatory
19 Democracy that Nevada’s policy and practice is to count mail ballots “without a
20 postmark” if they are received within three days of election day. See Deputy Secretary
21 of State for Elections Mark Wlaschin, Testimony Before Nevada Advisory Committee
22 on Participatory Democracy, April 23, 2024, available at [4/23/2024 - Secretary of
23 State - Advisory Committee on Participatory Democracy - YouTube](#) (starting at
24 1:30:09). <https://www.youtube.com/watch?v=OmQ8SSH1XFI>

25 On May 29, 2024, the Nevada Secretary of State’s office issued a Memorandum
26 to all County Clerks and Registrars to disregard the statutory postmark requirement.
27 The Memorandum states: “[A] mail ballot that has no visible postmark should be
28 interpreted to have an indeterminate postmark, and therefore should be accepted if
29 it has been received by the clerk by mail not later than 5 p.m. on the third day
30 following the election.” Am. Compl. ¶ 45. According to the Memorandum, “it is the

1 intent of the Office of the Secretary of State that this guidance be submitted as a
2 regulation following the conclusion of the 2024 election cycle.” *Id.*

3 During the mail ballot counting process for the June 11, 2024 primary election,
4 observers representing the Republican National Committee and the Nevada
5 Republican Party personally observed officials in Clark County and Washoe County
6 count numerous mail ballots without a postmark received by the counties after
7 election day. Am. Compl. ¶ 46. See Decl. of Clark County Observer Alida Ceballos,
8 attached as **Exhibit 2**, and Decl. of Washoe County Observer Lori Croom, attached
9 as **Exhibit 3**. This practice was consistent with Clark County’s “Mail Ballot Process
10 Quick Guide,” it issued to all observers of the ballot processing and counting process.
11 Am. Compl. ¶ 47, attached as **Exhibit 4**. The document describes the process of ballot
12 intake, processing, and tabulation, but nowhere does it reference checking mail ballot
13 postmarks at any point in the process. Thus, the Republican Party observers
14 personally observed officials in Clark County and Washoe County systematically fail
15 to check for postmarks on mail ballots received after June 11, 2024 through 5:00 p.m.
16 on the third day after the primary (June 14, 2024). Am. Compl. ¶ 48.

17 Officials also did not even enforce the requirement that mail ballots received
18 on the *fourth* day following primary election day be postmarked on or before election
19 day. See Exs. 2, 3. The statutory exception for indeterminate postmarks expires at
20 5:00 pm on the third day after the election, so it should be standard practice for
21 officials to check postmark dates on ballots received on the fourth day. In Washoe
22 County, the Republican Party’s observers personally observed officials fail to check
23 for postmarks on mail ballots received on June 15, 2024, four days after the election.
24 In Clark County, the observers personally observed officials perform only a cursory
25 check of postmarks on ballots received on June 15. These observers further personally
26 observed that not a single ballot was rejected for lack of postmark or a postmark dated
27 after election day. Am. Compl. ¶¶ 47-48. The observers were not close enough to the
28 officials to verify that each of the ballots checked by Clark County officials on June

1 15 had a legible postmark showing a date on or before June 11. Consistent with the
2 lack of a step for checking postmarks in Clark County’s “Mail Ballot Process Quick
3 Guide,” it appears county officials did not enforce the postmark requirement at all,
4 even for ballots received after the deadline for counting mail ballots with
5 indeterminate postmarks.

6 **C. Election Officials Intend to Ignore the Postmark Requirement**
7 **For the 2024 Nevada General Election.**

8 Nevada will hold a general federal election on November 5, 2024. In addition
9 to many local and state election matters, the general election will select presidential
10 and vice presidential electors and elect Representatives and a U.S. Senator from the
11 State. Under Nevada law, mail ballots “postmarked on or before” November 5, 2024,
12 and “[r]eceived by the clerk not later than 5 p.m.” on November 9, 2024, will be
13 counted. NRS 293.269921(1). Postmarked mail ballots whose postmark date “cannot
14 be determined” may be counted if received on or before 5 p.m. on November 8, 2024.
15 NRS 293.269921(2).

16 Consistent with Deputy Secretary Wlaschin’s testimony and the Secretary of
17 State office’s May 29, 2024 Memorandum, election officials in Nevada have counted
18 and will continue to count mail ballots that lack a postmark and are received by 5:00
19 p.m. on the third day following the election. Am. Compl. ¶¶ 48-50. Pursuant to this
20 policy, Nevada election officials intend to count mail ballots that lack a postmark and
21 are received on or before 5:00 p.m. on November 8, 2024. Election officials will also
22 likely continue to disregard the postmark requirement for mail ballots received on
23 the fourth day after election day.

24 USPS routinely delivers mail inside of three days within Nevada. For example,
25 the online Service Standard Map for first class mail originating in any Las Vegas zip
26 code shows the letter will be delivered to the Clark County Elections Department
27 within two days. Am. Compl. ¶¶ 56-57. It is therefore likely that mail ballots
28 deposited in the mail after election day could arrive at mail-ballot processing facilities

1 within the three-day deadline, and under the Defendants' policy, those untimely
2 ballots would be counted if they do not bear a postmark.¹

3 **LEGAL STANDARD**

4 Consistent with NRCP 65 and NRS 33.010, Plaintiffs seek a preliminary
5 injunction before the general election on November 5, 2024. "NRS 33.010(1)
6 authorizes a [preliminary] injunction when it appears from the complaint that the
7 plaintiff is entitled to the relief requested and at least part of the relief consists of
8 restraining the challenged act." *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans/or*
9 *Sound Gov't*, 120 Nev. 712, 12 721, 100 P.3d 179, 187 (2004). "Before a preliminary
10 injunction will issue, the applicant must show (1) a likelihood of success on the merits;
11 and (2) a reasonable probability that the non-moving party's conduct, if allowed to
12 continue, will cause irreparable harm for which compensatory damage is an
13 inadequate remedy. In considering preliminary injunctions, courts also weigh the
14 potential hardships to the relative parties and others, and the public interest." *Id.*
15 (quotation marks and citations omitted)."

16 **REASONS TO GRANT PRELIMINARY INJUNCTION**

17 **1. Plaintiffs are Likely to Succeed on the Merits.**

18 Plaintiffs are likely to succeed on the merits of their claims that (a) Defendants'
19 policy and practice of disregarding the postmark requirement violates NRS
20 293.269921(1)-(2), and that (b) the Secretary of State did not comply with
21 Administrative Procedure Act requirements in issuing the May 29, 2024
22 Memorandum.

¹ Separate and distinct from this lawsuit, Plaintiffs have challenged Nevada's counting of late-arriving mail ballots as violating federal law in the U.S. 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 remains pending and will not impact the state law issues raised in this complaint. Should the federal court issue relief that impacts the administration of NRS 293.269921(2), Plaintiffs will promptly notify the Court.

1 **a. Nevada law requires ballots received after election day to be**
2 **postmarked evincing mailing on or before election day.**

3 “[W]hen the language of a statute is plain and unambiguous, a court should
4 give that language its ordinary meaning and not go beyond it.” *Employers Ins. Co. of*
5 *Nev. v. Chandler*, 117 Nev. 421, 425, 23 P.3d 255, 258 (2001). Here, the statute could
6 not be clearer. In order for a mail ballot received after election day to count, it must
7 be “postmarked on or before the day of the election” and received by 5:00 pm on the
8 fourth day after the election. NRS 293.269921(1). However, if “the date of the
9 postmark cannot be determined,” the ballot is presumed postmarked by election day
10 and will count if received by 5:00 pm on the third day following the election. NRS
11 293.269921(2).

12 In all instances, a mail ballot received after election day requires a postmark
13 in order for it to count. The statute requires ballots to be postmarked on or before
14 election day, but it provides a limited exception for ballots where “the date of the
15 postmark cannot be determined.” *Id.* This exception still requires the existence of a
16 postmark on the ballot envelope, because the statute speaks in terms of “*the*
17 *postmark.*” *Id.* Moreover, the statute specifies the exact piece of information in “the
18 postmark” that must be indeterminate in order for the exception to apply: the
19 postmark’s “date.” There is simply no way to read subsection (2) of the statute to
20 excuse the postmark requirement altogether.

21 The Defendants’ policy and practice of counting mail ballots received after
22 election day that lack a postmark renders this entire framework meaningless and
23 cannot be squared with the plain language of the statute. When “conducting a plain
24 language reading” of a statute, courts must “avoid an interpretation that renders
25 language meaningless or superfluous.” *Nev. Dep’t of Corrs. v. York Claims Servs.*, 131
26 Nev. 199, 203, 348 P.3d 1010, 1013 (2015) (cleaned up). The Secretary’s interpretation
27 does just that. In treating a ballot with “no visible postmark” as having “an
28 indeterminate postmark” for purposes of NRS 293.269921(2), the Secretary’s
29 interpretation reads the postmark requirement out of the statute altogether. Am.

1 Compl. ¶ 45. A “plain language reading” of the statute cannot sustain the Secretary’s
2 interpretation. *Nev. Dep’t of Corrs.*, 131 Nev. at 203.

3 The statute is not ambiguous. *See id.* at 203-04 (a statute is ambiguous if it “is
4 subject to more than one reasonable interpretation”). But even if it were, it must be
5 interpreted “consistently with what reason and public policy would indicate the
6 Legislature intended.” *Id.* at 204 (citation omitted). Here, the Nevada Legislature
7 made a policy choice to extend the ballot-receipt deadline past election day for ballots
8 received through the mail. To ensure that such ballots were mailed by election day,
9 the Legislature imposed a requirement that they be postmarked on or before election
10 day. This basic safeguard is amply supported by reason and public policy. It protects
11 the security and integrity of the election by preventing ballots that are mailed after
12 election day from being counted. That is why numerous states with post-election day
13 ballot-receipt deadlines have postmark requirements. *See, e.g.*, Alaska Stat.
14 § 15.20.081(e), (h) (Alaska); D.C. Code Ann § 1-1001.05(a)(10A) (District of Columbia);
15 Kan. Stat. Ann. § 25-1132 (Kansas); Mass. Gen. Laws Ann. 54 § 93 (Massachusetts);
16 Miss. Code Ann. § 23-15-637(1)(a) (Mississippi); N.Y. Election Law § 8-412(1) (New
17 York); Ohio Rev. Code Ann. § 3509.05(D)(2) (Ohio); Tex. Election Code Ann. § 86.007
18 (Texas); Utah Code Ann. § 20A-3a-204(2)(a) (Utah); Va. Code 24.2-709(B) (Virginia);
19 W. Va. Code § 3-3-5(g)(2) (West Virginia). The Legislature made a minor exception to
20 count postmarked ballots in rare instances where the date of the postmark cannot be
21 determined—e.g., because the date is illegible. NRS 293.269921(2). But to read this
22 narrow exception to obliterate the postmark requirement entirely would not be
23 consistent with the Legislature’s intent.

24 Because Defendants’ policy and practice of counting non-postmarked ballots
25 received after election day violates NRS 293.269921(1)-(2), Plaintiffs are likely to
26 succeed on the merits of their claims.²

² Although the Secretary’s stated interpretation seems to require mail ballots received after 5:00 pm on the third day following the election to be postmarked on or

1 **b. The Memorandum Dated May 29, 2024 Violates the Nevada**
2 **APA.**

3 In the alternative, the Secretary has engaged in ad hoc rule-making without
4 following the requirements of the Nevada Administrative Procedures Act (“APA”).
5 The interpretation is a regulation within the meaning of NRS 233B.038(1)(a).

6 A “regulation” subject to the Nevada APA includes any agency “rule, standard,
7 directive or statement of general applicability which effectuates or interprets law or
8 policy, or describes the organization, procedure or practice requirements of any
9 agency.” NRS 233B.038. The Nevada Secretary of State is an agency. An agency
10 “makes a rule when it does nothing more than state its official position on how it
11 interprets a requirement already provided for and how it proposes to administer its
12 statutory function.” *Coury v. Whittlesea-Bell Luxury Limousine*, 102 Nev. 302, 305,
13 721 P.2d 375, 377 (1986); *Las Vegas Transit Sys., Inc. v. Las Vegas Strip Trolley*, 105
14 Nev. 575, 578, 780 P.2d 1145, 1146 (1989); *Dunning v. Nevada State Bd. of Physical*
15 *Therapy Examiners*, 132 Nev. 963 (2016) (policy of “general applicability” constitutes
16 regulation). The May 29 memorandum was sent to all county clerks and registrars
17 and was “provided for consistent and clear guidance regarding the interpretation of
18 NRS 293.269921(2).” The May 29 memorandum is described as “guidance” that is “to
19 be submitted as a regulation following the conclusion of the 2024 election cycle”. *Id.*

20 The memorandum was “a statement of general applicability that effectuated
21 agency policy” and therefore regulation and not mere interpretive ruling. *State Farm*
22 *Mut. Auto. Ins. Co. v. Comm’r of Ins.*, 114 Nev. 535, 544 (1998). It is blackletter law
23 that when “an agency engages in conduct that constitutes the making of a regulation,
24 it must adhere to the notice and hearing requirements set forth under NRS 233B.060
25 and 233B.061.” *Id.* at 724.

before election day, as the statute plainly requires, Clark County and Washoe
County appear to be disregarding that requirement as well. *See* Am. Compl. ¶¶ 49-
50. Plaintiffs are likely to succeed on the merits of their claim that this policy and
practice is inconsistent with NRS 293.269921(1).

1 It is undisputed that the Secretary implemented the regulation without notice
2 or hearing. *See S. Nevada Operating Engineers Contract Compliance Tr. v. Johnson*,
3 121 Nev. 523, 530 (2005) (“*Johnson*”). If NRS 293.269921(2) requires interpretation,
4 the Secretary must comply with the notice and hearing requirements of NRS
5 233B.040 or NRS 233B.060. The Nevada APA requires regulations to provide notice
6 and an opportunity for a hearing before the regulation becomes effective.

7 The APA “sets forth minimum procedural requirements, such as notice and a
8 hearing, when agencies engage in rulemaking activity” and “[t]he notice and hearing
9 requirements are not mere technicalities; they are essential to the adoption of valid
10 rules and regulations.” *Id.* at 531 (citation omitted). Consistent with the APA, when
11 “an agency engages in conduct that constitutes the making of a regulation, it must
12 adhere to the notice and hearing requirements set forth under NRS 233B.060 and
13 233B.061.” *Johnson*, 121 Nev. at 528. An agency “cannot act without notice and a
14 reasonable opportunity to be heard and must act within constitutional limits.”
15 *Checker, Inc. v. Pub. Serv. Comm’n*, 84 Nev. 623, 634 (1968). As a regulation, the May
16 29 memorandum is void for failure to comply with the notice and hearing
17 requirements of the APA. Indeed, the May 29 memorandum acknowledges the
18 regulatory nature of the Secretary’s interpretation when it states, “it is the intent of
19 the Office of the Secretary of State that this guidance be submitted as a regulation
20 following the conclusion of the 2024 election cycle.” Am. Compl. at ¶ 45.

21 Moreover, the May 29 memorandum—regardless of notice and hearing—
22 would be an invalid regulation contrary to and inconsistent with the statute at issue,
23 NRS 293.269921. Administrative agencies may not adopt regulations contrary to
24 statute and it “acts without authority when it promulgates a rule or regulation in
25 contravention of the will of the legislature as expressed in the statute, or a rule or
26 regulation that exceeds the scope of the statutory grant of authority.” *Scott v.*
27 *Angelone*, 771 F. Supp. 1064, 1066–67 (D. Nev. 1991), *aff’d*, 980 F.2d 738 (9th Cir.
28 1992); *see also Ruley v. Nevada Bd. of Prison Comm’rs*, 628 F. Supp. 108, 111 (D. Nev.

1 1986) (“agency may not make a rule or regulation that is out of harmony with or goes
2 beyond the scope of its statutory grant of authority”). For the reasons explained
3 above, NRS 293.269921 is unambiguous and does not permit the Agency to adopt a
4 regulation that requires mail ballots received after election day that lack a postmark
5 to be counted, or allow ballots to be counted that exhibit a postmark evincing a date
6 of mailing after election day.

7 The court has the authority to declare the regulation invalid for violation of
8 the procedural and substantive requirements of the Nevada Administrative
9 Procedure Act. See NRS 233B.110; and *State Bd. of Equalization v. Sierra Pac. Power*
10 *Co.*, 97 Nev. 461, 466, 634 P.2d 461, 464 (1981) (declaring regulation invalid for
11 failure to follow APA notice and hearing requirements).

12 **2. Plaintiffs Will Suffer Irreparable Harm in the Absence of a**
13 **Preliminary Injunction.**

14 Absent a grant of Plaintiffs’ motion, election officials will count non-postmarked
15 ballots received after election day in the upcoming November election. Plaintiffs will
16 suffer irreparable harm if Defendants are not enjoined from counting non-
17 postmarked ballots received after election day. In the election context, harms
18 sustained by violations of election law are irreparable if not enjoined prior to the
19 election occurring. “[O]nce the election occurs, there can be no do-over and no
20 redress,” making the injury “real and completely irreparable if nothing is done to
21 enjoin [the challenged] law.” *League of Women Voters of N. C. v. North Carolina*, 169
22 F.3d 224, 247 (4th Cir. 2014).

23 Here, “[t]he counting of votes that are of questionable legality threatens
24 irreparable harm.” *Carson v. Simon*, 978 F.3d 1051, 1061 (8th Cir. 2020). Plaintiffs
25 and their candidates have an interest “in ensuring that the final vote tally accurately
26 reflects the legally valid votes cast.” *Id.* at 1058. If allowed to stand, Defendants’
27 disregard of the postmark requirement will “foreclose[]” electoral opportunities for
28 Plaintiffs and their candidates that cannot be restored after the fact. *Brown v. Chote*,

1 411 U.S. 452, 457 (1973) (candidate opportunities “irreparably lost”); *see also Mecinas*
2 *v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022) (political party is harmed if “an allegedly
3 unlawful election regulation makes the competitive landscape worse for a candidate
4 or that candidate’s party than it would otherwise be if the regulation were declared
5 unlawful”); *id.* (recognizing injury “that results from being forced to participate in an
6 ‘illegally structure[d] competitive environment’”).

7 Tens of thousands of ballots are received after election day in Nevada. The
8 counting of non-postmarked ballots in violation of state law will affect the results of
9 Nevada elections, to the detriment of Republican candidates, because late-arriving
10 ballots are disproportionately cast by Democratic voters. Am. Compl. ¶¶ 70-78.
11 Indeed, ballots received after election day have swung elections in Democratic
12 candidates’ favor in recent election cycles. Am. Compl. ¶¶ 69, 76. Counting non-
13 postmarked ballots will continue to cause Plaintiffs and their candidates to lose
14 elections and force them to compete in a worse and unlawful “competitive landscape.”
15 *Mecinas*, 30 F.4th at 898. These harms are irreparable. *Carson*, 978 F.3d at 1061.

16 Additionally, Plaintiffs’ members and voters, including Mr. Scott Johnston,
17 will suffer dilution of their valid votes by counting invalid non-postmarked ballots
18 received after election day. Am. Compl. ¶¶ 67-71. Dilution of lawful votes by unlawful
19 votes is a cognizable injury to individual voting rights. *Baker v. Carr*, 369 U.S. 186,
20 207-09 (1962) (recognizing injury caused “from dilution by a false tally”); *Reynolds v.*
21 *Sims*, 377 U.S. 533, 555 (1964) (“[T]he right of suffrage can be denied by a debasement
22 or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting
23 the free exercise of the franchise.”); *Anderson v. United States*, 417 U.S. 211, 226
24 (1974) (“The right to an honest (count) is a right possessed by each voting elector, and
25 to the extent that the importance of his vote is nullified, wholly or in part, he has
26 been injured in the free exercise of a right or privilege secured to him by the laws and
27 Constitution of the United States.”). The harm to Plaintiffs’ voting rights is especially
28 acute because failure to enforce the postmark requirement will likely result in

1 counting ballots mailed after election day. Counting such ballots causes vote dilution
2 “no matter how small or great their number.” *Anderson*, 417 U.S. at 226. And this
3 harm to Plaintiffs’ voting rights is irreparable. *League of Women Voters*, 769 F.3d at
4 247; *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1310 (N.D. Ga. 2018).

5 **3. The Balance of Hardships and Public Interest Favor an**
6 **Injunction.**

7 The balance of hardships weighs strongly in Plaintiffs’ favor. On the one hand,
8 Plaintiffs face irreparable harm to their electoral prospects and competitiveness and
9 voting rights if the postmark requirement is not enforced. Indeed, because Plaintiffs
10 will suffer injury to their constitutional rights, “the balance of hardships tips
11 decidedly in the plaintiff’s favor.” *Greater Chautauqua Fed. Credit Union v. Marks*,
12 600 F. Supp. 3d 405, 433 (S.D.N.Y. 2022). Allowing the Secretary to continue to
13 implement his interpretation of NRS 293.269921 while this lawsuit proceeds it is also
14 likely to lead to voter confusion and administration of the November general election.
15 In contrast, the Secretary will suffer no harm if prohibited from implementing his
16 interpretation authorizing the illegal counting of non-postmarked ballots received
17 after election day. Defendants “cannot suffer harm from an injunction that merely
18 ends an unlawful practice.” *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015).
19 Enforcing the postmark requirement—in accordance with Nevada law and
20 Defendants’ own instructions to voters—will not require substantial alteration of
21 post-election day ballot processing, as it would simply add one additional checkpoint
22 for officials inspecting ballot envelopes. Granting Plaintiffs’ motion would simply
23 maintain the statutory status quo which requires that a ballot either be received by
24 election day or bear *some* postmark in order to be entitled to a three-day grace period.

25 Finally, there is “no public interest in the perpetuation of unlawful
26 [government] action.” *Washington v. DeVos*, 481 F. Supp. 3d 1184, 1197 (W.D. Wash.
27 2020) (quoting *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12
28 (D.C. Cir. 2016)). “To the contrary, there is a substantial public interest in having

1 governmental agencies abide by the ... laws that govern their existence and
2 operations.” *Id.* There is a particularly strong public interest in enforcing election
3 laws meant to safeguard the integrity of the electoral process. *See Purcell v. Gonzalez*,
4 549 U.S. 1, 4, 127 S. Ct. 5, 7 (2006) (“Confidence in the integrity of our electoral
5 processes is essential to the functioning of our participatory democracy.”).
6 Accordingly, there is a substantial public interest in requiring Defendants to comply
7 with the statutory postmark requirement.

8 **4. Plaintiffs Do Not Seek to Disrupt the June 11, 2024 Nevada**
9 **Primary Election.**

10 Plaintiffs note that they seek relief only as to the November 2024 general
11 election. Given that the June 11 primary election is in the process of canvassing,
12 Plaintiffs do not seek relief that would confuse or otherwise disrupt that election.

13 **Bond should be nominal**

14 Given the likelihood of success and the nominal (non-existent) harm to the
15 Defendants of an injunction requiring them to comply with statutory law, a nominal
16 bond of \$100 is appropriate.

17 **CONCLUSION**

18 For the reasons stated above, the Court should grant the Plaintiffs’ motion and
19 require a nominal bond, if any.

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2
3
4 **AFFIRMATION**

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

7 DATED this 3rd day of July, 2024.

8
9 ASHCRAFT & BARR LLP

10 By: 

11 Jeffrey F. Barr (Bar # 7269)

12 FIRST & FOURTEENTH PLLC

13 By: _____

14 Michael Francisco (pro hac vice forthcoming)

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16 *Counsel for Plaintiffs*

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24 By: _____

25 David A. Warrington* (pro hac vice forthcoming)

26 Gary M. Lawkowski* (pro hac vice forthcoming)

27 *Attorneys for Plaintiff Donald J. Trump for*
28 *President 2024, Inc.*

1 **CERTIFICATE OF SERVICE**

2 On the 3rd day of July 2024, I personally served a copy of the foregoing
3 MOTION FOR PRELIMINARY INJUNCTION by U.S. Mail to the following:

4 Bradley Schrager

5 Daniel Bravo

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