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9
10 DISTRICT COURT
CLARK COUNTY, NEVADA

11 FREDERICK H. KRAUS, JOEY PAULOS,)
PUBLIC INTEREST LEGAL)
12 FOUNDATION,)
13)
Petitioners,)
14)
vs.)
15 LORENA S. PORTILLO, in her official)
capacity as Clark County Registrar of Voters,)
16)
Respondents.)
17)

Case No: A-24-896151-W
Dept No: 16

18 **MOTION TO DISMISS THE PETITION FOR WRIT OF MANADMUS**

19
20 COMES NOW Defendant, Lorena Portillo, in her capacity as the Clark County
21 Registrar of Voters, by and through STEVEN B. WOLFSON, District Attorney, by Lisa
22 Logsdon, County Counsel, and moves this Honorable Court for its order dismissing
23 Petitioner's Petition for Writ of Mandamus ("Petition").

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1 This Motion is based upon the pleadings and papers on file herein, the following
2 Points and Authorities, the attached declaration and the oral arguments of counsel at the time
3 of hearing in this matter, if any.

4 DATED this 15th day of August, 2024.

5 STEVEN B. WOLFSON
6 DISTRICT ATTORNEY

7 By: /s/Lisa V. Logsdon

8 LISA V. LOGSDON
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13 Attorney for Respondent
14 LORENA S. PORTILLO

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. INTRODUCTION

17 On June 3, 2024, seven (7) days before the June primary election, which was held on
18 June 11, 2024, the Clark County Registrar of Voters, Lorena Portillo (“ROV”) received a
19 letter from the Public Interest Legal Foundation (“PILF”) demanding that the ROV
20 determine whether various commercial addresses provided by PILF are accurate and, if not,
21 make appropriate corrections. The letter stated, “[w]e request that you conduct your
22 investigation and make any **appropriate corrections** to the voter roll by **June 17, 2024.**”

23 **Emphasis added.** When the ROV received the letter the ROV was in the middle of
24 conducting the primary election. Early voting began in Clark County on May 25, 2024 and
25 ran through June 7, 2024. Additionally, the ROV presented the elections results to Clark
26 County Board of County Commissioners for certification on June 21, 2024. Rather than
27 allowing the ROV sufficient time to respond to the Petitioners’ lengthy demand, the
28 Petitioners improperly filed this Petition on June 25, 2024, demanding that the ROV
investigate certain addresses on the voter registration roll based on NRS 293.530, which
provides that a county clerk *may* use any reliable and reasonable means available to correct
portions of the statewide voter registration list which are relevant to the county clerk and to

1 determine whether a registered voter’s current residence is other than that indicated on the
2 voter’s application to register to vote.

3 The Petition must be denied because the Petitioner has failed to state a claim upon
4 which relief can be granted as the Petition seeks to enforce a statute (NRS 293.530), which is
5 discretionary, and the Petitioner has an adequate alternative remedy in the challenge
6 procedures in NRS 293.353 and NRS 293.547. The Court should also dismiss the Petitioner
7 because the ROV did complete an investigation into the 90 addresses provided.

8 II. ARGUMENTS

9 A. Writ of Mandamus Cannot Compel a Discretionary Act.

10 A petition should be dismissed under NRCP 12(b)(5) for failure to state a claim if there
11 are no set of facts, which, if true would entitle the petitioner to relief. *Buzz Stew, LLC v. City*
12 *of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). “A writ of mandamus is
13 available to compel the performance of an act which the law requires as a duty resulting from
14 an office, trust or station, ... or to control an arbitrary or capricious exercise of discretion.”
15 *Barnes v. Eighth Jud. Dist. Ct.*, 103 Nev. 679, 682 (1987). A petition for mandamus will only
16 be granted when the petitioner has a clear right to the relief requested and there is no plain,
17 speedy and adequate remedy in the ordinary course of law. While there is an exception to the
18 foregoing rule that mandamus can be appropriate if the discretion is manifestly abuse or that
19 discretion is exercised arbitrary or capriciously. *Round Hill Gen. Improvement Dist. v. Newan*,
20 97 Nev. 601, 637 P.2d 534 (1981).

21 The Petitioner seeks to enforce NRS 293.530, which states¹:

22 1. Except as otherwise provided in NRS 293.541:

23 (a) County clerks² *may* use any reliable and reasonable means available to
24 correct portions of the statewide voter registration list which are relevant to
25 the county clerk and to determine whether a registered voter’s current
26 residence is other than that indicated on the voter’s application to register to
27 vote.

26 ¹ The Petition also cites NRS 293.675 but fails to make any substantive arguments as to how the ROV as violated this
27 statute or how the Court can require the Clark County ROV to perform a statutory duty of the Nevada Secretary of State.
The Petition makes no allegation against the ROV as it related to NRS 293.675.

28 ² Clark County has appointed a Registrar of Voters in accordance with NRS 244.164(1). The Registrar of Voters
“assumes all the powers and duties vested in and imposed upon the county clerk of the county with respect to
elections...” NRS 244.162(2). As such, references to county clerk in NRS Chapter 293 have been assumed by the
Registrar of Voters.

1 (b) A county clerk *may*, with the consent of the board of county commissioners,
2 make investigations of registrations in the county by census, by house-to-
house canvass or by any other method. *Emphasis added.*

3 Clearly, the duties articulated in NRS 293.530 are discretionary for the ROV. Even if
4 the information provided by the Petitioner in its letter and Petition were reliable and reasonable
5 to determine whether a registered voter's current residence is other than what is indicated on
6 the voter's application, there is no duty for the ROV to investigate these assertions. This is
7 especially true, when the Petitioner demanded this investigation during a current election
8 period. While there is a recognized exception to the foregoing rule that mandamus can be
9 appropriate if the discretion is "manifestly abused" or that discretion is exercised arbitrarily or
10 capriciously. *Round Hill Gen. Improvement Dist. v. Newan*, 97 Nev. 601, 637 P.2d 534
11 (1981). Here, there is clearly no obvious abuse of discretion nor has the ROV acted arbitrary
12 or capriciously. The Petitioner gave the ROV fourteen (14) days to conduct an investigation
13 during a period of time that the Petitioner knew was one of the busiest times for the ROV,
14 during an election. In addition to the election day responsibilities of managing over a hundred
15 polling sites, the ROV is responsible to collecting and counting mail ballots returned by
16 Nevada voters. All mail ballots must be counted no later than 7 days after election day. NRS
17 293.269931. The Petitioner has provided no evidence that the ROV has acted arbitrary or
18 capricious in the exercise of her discretionary duties under NRS 293.530.

19 In addition to the Petitioner failing to meet any legal standard for the relief requested,
20 the Petitioner failed to provide an affidavit to support their claim as required by NRS 34.170.
21 For the above reasons, the Petition should be dismissed for a failure to state a claim upon such
22 relief can be granted.

23 **B. Petitioners Lacks Standing to Request Mandamus Relief.**

24 To have standing in a mandamus matter, the petitioner must demonstrate a beneficial
25 interest in obtaining the relief requested. *Heller v Legis. Of State of Nev.*, 120 Nev. 456.
26 460-61, 93 P.3d 746, 749 (2004). The court has found that beneficial interest to mean a
27 direct and substantial interest that falls within the zone of interests to be protected by the
28 legal duty asserted. As discussed above, the Petition lacked the affidavit required in NRS

1 34.170, which could have provided the Court with the required information regarding the
2 Petitioners beneficial interest protected by the legal duty that the Petitioners are asking the
3 Court to order the ROV to perform. But, even if the affidavit was included, the individual
4 Petitioners, Mr. Kraus and Mr. Paulos have failed to demonstrate any injury by the ROV's
5 failure to investigate these addresses. Outside of being registered voters in Nevada, the
6 Petition is absent of any direct impact to Mr. Kraus and Mr. Paulos of the ROV's alleged
7 failure to investigate commercial addresses. Just as Mr. Kraus and Mr. Paulos have no direct
8 and substantial interest in the discretionary actions of the ROV, PILF also lacks standings as
9 PILF's speculative concerns regarding voter registration rolls and the diversion of resources
10 fails to provide any legal basis for standing. The Petitioner's lack of standing warrants
11 dismissal of the Petition under either NRCP 12(b)(1) or NRCP 12(b)(5).

12 **C. Petitioner Fails to State a Claim as the National Voter Registration**
13 **Act Precludes Petitioner's Requested Relief to Make Corrections.**

14 To the extent, that the Petitioner's requested relief from the Court is to have the voter
15 registrations related to the identified commercial addresses removed from the voter
16 registration roll, such action is prohibited by the National Voter Registration Act ("NVRA").
17 The NVRA provides specific requirements that must met before a voter's registration can be
18 removed from the voter registration roll on the grounds that the voter's residence has
19 changed. *See* 52 U.S.C. § 20507(b). Furthermore, voter list maintenance programs to
20 remove ineligible voters from the official voter registration list must occur no later than 90
21 days prior to the date of any primary or general election for federal office. This 90-day
22 deadline applies to state list maintenance verification activities, such as general mailings and
23 door to door canvasses, which are like the discretionary actions permitted pursuant to NRS
24 293.530(1)(b). The NVRA requires any correction to the voter registration roll be made by
25 August 7, 2024.³ Therefore, the Petitioner's requested relief is barred by the NVRA, and the
26 Petition fails to state a claim upon which relief can be granted.

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³ August 7, 2024 is 90 days prior to November 5, 2024, the date for the general election.

1 **D. Petitioner Has Adequate Relief under NRS 293.535 or NRS 293.547.**

2 The Petitioner appears to argue that Nevada law does not allow voters to register to
3 vote using a business address. Pet. pg. 6. This is not accurate. NRS 293.486 states for the
4 purpose of pre-registering or registering to vote, the address at which the person actually
5 resides is the street address assigned to the location at which the person **actually resides**.
6 Emphasis added. There is no requirement in NRS 293.486 that the address provided be a
7 residential address or an address zoned or approve for residential living, just that the person
8 actually resides at the address. If the Petitioner seeks to challenge the actual residence of a
9 registered voter, the Petitioners have two avenues.

10 NRS 293.535 permits any elector or other reliable person to submit an affidavit based
11 on personal knowledge of the facts set forth in the affidavit to the county clerk stating that
12 the registrant is not a citizen of the United States or the registrant has moved outside the
13 boundaries of the county where he or she is registered to another county, state, territory or
14 foreign country with the intention of remaining there for an indefinite time and with the
15 intention of abandoning his or her residence in the county where registered and established
16 residence in some other state, territory or foreign country or in some other county of this
17 state, naming that place. Upon receipt of such affidavit the ROV shall notify the registrant in
18 the manner set forth in NRS 293.530 and enclose a copy of the affidavit. If the registrant
19 fails to respond or appear to vote within the required time, the county clerk shall cancel the
20 registration. NRS 293.535(2).

21 Additionally, a registered voter can challenge a voter is pursuant to NRS 293.547.
22 After the 30th day but not later than the 25th day before any election, a registered voter may
23 file a written challenge with the county clerk. A registered voter may file a written challenge
24 if he or she is registered to vote in the same precinct as the person whose right to vote is
25 challenged and the challenge is based on the personal knowledge of the registered voter.

26 While the Petition is unclear what the Petitioner wants the ROV to do with the results
27 of such a requested investigation, the Petitioners are not entitled to relief under the Petition
28 as the Petitioners have an adequate remedy under NRS 293.535 or NRS 293.547, to

1 challenge the residency of a voter, therefore, the Petition should be dismissed as there is an
2 adequate remedy in the ordinary course of law.

3 **E. ROV Has Investigated the Addresses Provided, Therefore, the**
4 **Petition Should be Dismissed as Moot.**

5 The Petitioner requested that the Court order the ROV to investigate the commercial
6 addresses provided in the Petition. The ROV has already done so, therefore, the Petition is
7 moot. As explained above, the ROV was not able to investigate these addresses before the
8 Petitioner's arbitrary deadline of June 17, 2024 as the ROV was still conducting the primary
9 election, but the ROV and her staff have now completed an investigation into the addresses
10 provided by PILF and has made the following determinations: (a) 29 addresses were
11 confirmed as the voter's actual residence; (b) 19 addresses will require additional research
12 by the Election Department; (c) 16 addresses were previously identified by the Department
13 and the voters at those addresses were inactivated; (d) 12 addresses had no active or inactive
14 voters; (e) 9 addresses were connected to voided registrations; (f) 4 addresses the voters had
15 updated their voter registration; and (g) 1 address was typo. *See* Exhibit A, Declaration of
16 Lorena Portillo. While the ROV asserts it was not required to conduct this investigation
17 pursuant to NRS 293.530, the ROV did exercise its discretion in reviewing the addresses and
18 will take the appropriate action as required by federal and state law.

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III. CONCLUSION

The Petitioner has failed to state a claim upon which relief can be granted as a writ of mandamus cannot compel a discretionary act and even if such relief could be grant, the Petitioner’s request is moot, therefore, the ROV respectfully request the Court dismiss the Petition.

DATED this 15th day of August, 2024.

STEVEN B. WOLFSON
DISTRICT ATTORNEY

By: /s/Lisa V. Logsdon
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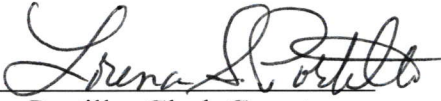
1 **EXHIBIT A**

2 **DECLARATION OF LORENA PORTILLO**

3 I, Lorena Portillo, declare under penalty of perjury that the following statements are true
4 and correct to the best of my knowledge, information and belief:

- 5 1. I am the Clark County Registrar of Voters.
- 6 2. As, the Registrar of Voters, I conduct list maintenance programs relating to the
7 registered voters of Clark County, in accordance with federal and state law.
- 8 3. On or about June 3, 2024, I received a letter from Logan Churchwell on behalf of the
9 Public Interest Legal Foundation requesting that my office immediately investigate a
10 list of addresses they submitted that are on the Nevada voter roll are accurate and if
11 not make corrections.
- 12 4. Currently, the National Voter Registration Act 90-day freeze was in place prohibiting
13 removal of names from the voter registration list based on list maintenance projects.
- 14 5. My staff has investigated the 90 addresses and made the following determinations:
- 15 (a) 29 addresses were confirmed as the voter's actual residence;
- 16 (b) 19 addresses will require additional research by the Election Department;
- 17 (c) 16 addresses were previously identified by the Department and the voters at
18 those addresses were inactivated;
- 19 (d) 12 addresses had no active or inactive voters;
- 20 (e) 9 addresses were connected to voided registrations;
- 21 (f) 4 addresses the voters had updated their voter registration; and
- 22 (g) 1 address was typo.

23 DATED this day 15 of August, 2024.

24 
25 _____
26 Lorena Portillo, Clark County
27 Registrar of Voters.
28

1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 I hereby certify that I am an employee of the Office of the Clark County District
3 Attorney and that on this 15th day of August, 2024, I served a true and correct copy of the
4 foregoing **MOTION TO DISMISS THE PETITION FOR WRIT OF MANADMUS**
5 (United States District Court Pacer System or the Eighth Judicial District Wiznet), by e-
6 mailing the same to the following recipients. Service of the foregoing document by e-mail is
7 in place of service via the United States Postal Service.

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