

IN THE SUPREME COURT OF THE STATE OF NEVADA

AMERICAN CIVIL LIBERTIES
UNION OF NEVADA, a domestic
nonprofit corporation; and
STEVEN BACUS, an individual,

Petitioners,

vs.

THE COUNTY OF NYE, a
governmental entity; and MARK
KAMPF, in his official capacity as
interim County Clerk,

Respondents.

Case No.:

Electronically Filed
Oct 17 2022 09:14 AM
Elizabeth A. Brown
Clerk of Supreme Court

**EMERGENCY PETITION FOR WRIT OF MANDAMUS
PURSUANT TO NRAP 21(a)(6)**

IMMEDIATE ACTION REQUESTED BY OCTOBER 21, 2022

Sadmira Ramic, Esq.
Nevada Bar No.: 15984
Christopher M. Peterson, Esq.
Nevada Bar No.: 13932
Sophia A. Romero, Esq.
Nevada Bar No.: 12446
**AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**

601 S. Rancho Dr., Suite B-11
Las Vegas, Nevada 89106
Telephone: (702) 366-1536
Facsimile: (702) 366-1331
Email: ramic@aclunv.org
Email: peterson@aclunv.org
Email: romero@aclunv.org

Counsel for Petitioners

NRAP 26.1 DISCLOSURE

In accordance with NRAP 26.1, the undersigned counsel of record for Plaintiff ACLU of Nevada certifies that there are no known interested parties other than the named Plaintiffs, and that there are no remaining undisclosed parties or individuals that must be disclosed pursuant the NRAP 26.1.

AMERICAN CIVIL LIBERTIES UNION OF NEVADA

/s/ Sadmira Ramic

Sadmira Ramic, Esq.

Nevada Bar No.: 15984

Christopher M. Peterson, Esq.

Nevada Bar No.: 13932

AMERICAN CIVIL LIBERTIES UNION OF NEVADA

601 South Rancho Drive, Suite B-11

Las Vegas, Nevada 89106

Telephone: (702) 366-1536

Facsimile: (702) 366-1331

Email: ramic@aclunv.org

Email: peterston@aclunv.org

Counsel for Petitioners

TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
ROUTING STATEMENT	1
STATEMENT OF THE ISSUES.....	3
STATEMENT OF FACTS	4
REASONS WHY A WRIT SHOULD ISSUE	13
I. Mandamus Standard.....	13
II. Nye County’s proposed hand counting process violates NRS 293.3606 and NRS 293.269935 as it would reveal election results prior to the time permitted.	15
III. Nye County’s plan to limit access to ADA touch screens to individuals with “special needs” violates the Help America Vote Act (HAVA) and Article 2, Section 1A of the Nevada Constitution.....	19
IV. Nye County’s proposed “stringent signature verification” procedure violates NRS 293.285, NRS 293.8874, and NRS 293.277.....	21
V. There is no plain, speedy and adequate remedy in the ordinary course of law for Petitioners in this matter.	24
CONCLUSION	27
VERIFICATION	viii
CERTIFICATE OF COMPLIANCE	ix
NRAP 27(e) CERTIFICATE	xi
CERTIFICATE OF SERVICE	xiv

TABLE OF AUTHORITIES

Constitutional Provisions

Nev. Const. art. 2 § 1A	1, 4, 19
Nev. Const. art. 2 § 1A(9)	20
Nev. Const. art. 6 § 4	2

Cases

<i>Briggs v. State</i> , No. 82443, 2021 Nev. Unpub. LEXIS 825 (Nev. Nov. 10, 2021) (unpublished)	13
<i>Business Computer Rentals v. State Treas.</i> , 114 Nev. 63, 953 P.2d 13 (1998)	26
<i>Child v. Lomax</i> , 124 Nev. 600, 188 P.3d 1103 (2008)	27
<i>D.R. Horton, Inc. v. Eighth Judicial Dist. Court</i> , 123 Nev. 468, 168 P.3d 731 (2007)	24
<i>Diaz v. Eighth Judicial Dist. Court</i> , 116 Nev. 88, 993 P.2d 50 (2000)...	26
<i>Garvin v. Ninth Judicial Dist. Court</i> , 118 Nev. 749, 59 P.3d 1180 (2002)	26
<i>Halcrow, Inc. v. Eighth Judicial Dist. Court of the State</i> , 129 Nev. 394, 302 P.3d 1148 (2013),	24
<i>Jeep Corp. v. Second Judicial Dist. Court</i> , 98 Nev. 440, 652 P.2d 1183 (1982)	14
<i>Lorton v. Jones</i> , 130 Nev. 51, 322 P.3d 1051 (2014)	14
<i>Miller v. Burk</i> , 124 Nev. 579, 188 P.3d 1112 (2008)	24, 25

<i>Salaiscooper v. Eighth Judicial Dist. Court</i> , 117 Nev. 892, 34 P.3d 509 (2001)	14
<i>Segovia v. Eighth Judicial Dist. Court</i> , 133 Nev. 910, 407 P.3d 783 (2017)	13
<i>State Office of the Attorney General v. Justice Court of Las Vegas Township</i> , 133 Nev. 78, 392 P.3d 170 (2017).....	2
<i>SW Gas Corp. v. Pub. Serv. Comm’n</i> , 92 Nev. 48, 546 P.2d 219 (1976) .	24
Statutes	
42 U.S.C § 15481.....	4, 19, 20
NRS 293. 3606(2)	17
NRS 293.2546(9)	20
NRS 293.269925(1)	15
NRS 293.269925(2)	15
NRS 293.269931	16
NRS 293.269931(3)	16, 17
NRS 293.269935	3, 15, 18
NRS 293.277	1, 4, 21, 23
NRS 293.285	1, 4, 21, 24
NRS 293.285(2)	23
NRS 293.3606	3, 15, 16, 18
NRS 293.3606(5)	16
NRS 293.363	18
NRS 293.363(1)	16

NRS 293.8874	1, 4, 21, 22
NRS 293.8874(1)	22
NRS 34.160	2, 14
NRS 34.170	2, 13, 14
NRS 34.200	12
NRS 34.280	12

Rules

NRAP 17(a)(12)	2
NRAP 17(a)(2)	1
NRCP 4(d)	12
NRCP 4(e)	12

Other Authorities

Election Assistance Commission, <i>Voluntary Voting System Guidelines</i> 2.0 (February 10, 2021), <i>available at</i> https://www.eac.gov/sites/default/files/TestingCertification/Voluntary_Voting_System_Guidelines_Version_2_0.pdf	18
Grace Gordon, et al., <i>Ballot Pre-processing Policies Explained</i> , Bipartisan Policy Center (September 7, 2022), https://bipartisanpolicy.org/explainer/ballot-pre-processing-explained/	17

ROUTING STATEMENT

This case is presumptively retained by the Supreme Court as it presents issues involving ballot or election questions. *See* NRAP 17(a)(2). Additionally, it raises questions of statewide public importance—(1) whether the verbal announcement of a selected candidate for each race from each ballot prior to the close of polls on election day, in the presence of the public, will result in the release of election results impacting local, state, and national elections in violation of state law; (2) whether the limiting access to touch screens complying with the Americans with Disabilities Act to individuals with “special needs” violates the Help America Vote Act (HAVA) and Article 2, Section 1A of the Nevada Constitution by impermissibly authorizing election workers to enquire about a voter’s disability or turn away otherwise eligible voters based on arbitrary decision-making thereby preventing them from voting in local, state, and national elections; and (3) whether Nye County’s proposed use of “stringent signature verifications” impermissibly prevents voters from proving their identity using methods described in NRS 293.285, NRS 293.8874, and NRS 293.277 and would ultimately invalidate their ballot or prevent them

from voting in local, state, and national elections. *See* NRAP 17(a)(12).

A writ of mandamus may be issued by the court “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person,” when there is no plain, speedy, and adequate remedy in the ordinary course.¹ The court will generally exercise its discretion to consider an extraordinary writ where an important legal issue that needs clarification is raised or to promote judicial economy and administration.² This Court has the authority to grant the writ relief requested herein pursuant to Article 6, Section 4 of the Constitution of the State of Nevada and NRS 34.330.

¹ “The writ may be issued by the Supreme Court ...to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person. When issued by a district court or a judge of the district court it shall be made returnable before the district court.” NRS 34.160; NRS 34.170.

² *State Office of the Attorney General v. Justice Court of Las Vegas Township*, 133 Nev. 78, 80, 392 P.3d 170, 172 (2017).

This case involves unprecedented departures from safe, accurate, and transparent democratic voting processes used by communities across Nevada in order to implement unlawful hand counting procedures as well as other unlawful administrations of the election. If these violations are permitted to proceed, and if not remedied before the start of early voting on October 22, 2022, the citizens of Nye County face the imminent risk of having their fundamental rights as voters infringed upon and not having their vote counted. These consequences extend beyond impacting Nye County and its voters, given that this election cycle involves local, state, and national elections. The time constraint, the inability to seek a remedy after the election, and the national impact of these issues warrant the Supreme Court's immediate attention.

STATEMENT OF THE ISSUES

1. Under NRS 293.3606 and NRS 293.269935, does Nye County's plan to announce from each ballot the candidate selected from each race, in the presence of the public, result in the release of election results in violation of Nevada law?

2. Under the 42 U.S.C § 15481 and Article 2, Section 1A of the Nevada, does Nye County's plan to limit access to touch screen voting machines to individuals with "special needs" violate federal and Nevada law by impermissibly authorizing election workers to enquire about a voter's disability or turn away otherwise eligible voters based on arbitrary decision making?
3. Under NRS 293.285, NRS 293.8874, and NRS 293.277, does Nye County's "stringent signature verification" process, requiring that voters provide identification if Nye County officials determine that their signature does not match their voter registration, impermissibly prevent voters from proving their identity using options permitted by Nevada law?

STATEMENT OF FACTS

On September 6, 2022, the Nye County Clerk's office officially announced its intention to use paper ballots and hand counting procedures for all ballots during the 2022 General Election.³ The announcement indicated that Nye County will "conduct a parallel

³ Pet'rs App., Vol. 1, APP0001.

electronic tabulation of the voted paper ballots along with a hand count of those ballots.”⁴ The announcement also stated that the hand count process will be performed by “citizen volunteers who are registered voters,” and that the hand count will be conducted Monday through Friday from October 25, 2022 and continuing through November 10, 2022.⁵

In addition to this official announcement, interim Nye County Clerk Mark Kampf presented to the Nye County Board of Commissioners on September 20, 2022, “Presentation regarding the paper ballot and hand-count process to be implemented for the Nye County General Election in November 2022.”⁶ The presentation, in sum

⁴ *Id.*

⁵ *Id.*

⁶ Nye County has not posted a transcript or minutes from the Board of County Commissioners meeting on September 20, 2020. The only public record to which Petitioners may cite, therefore, is a video recording that is available on the Nye County website. However, Petitioners have provided notations of the times in the video at which statements are made that are supportive of Petitioners’ allegations, so that the Court or staff may skip ahead to these moments in the video. Nye County Streaming Media Archive. *Board of County Commissioners Regular Meeting*. (Sept. 20, 2022), http://nyecounty.granicus.com/ViewPublisher.php?view_id=4

and substance, stated:

1. One ADA touch screen will be available at each polling location which will be “limited to those with special needs”;⁷
2. Tabulators (vote counters) will be used for all ballots;⁸
3. A parallel hand count process will be used;⁹
4. The hand count process will be live streamed by video camera;¹⁰
5. The hand count team will consist of a reader, a verifier, and three talliers to tally the results;¹¹
6. “Stringent signature verifications” will be used including requiring the voter to show an ID if their signature does not match and “no prompting of voter verification system;”¹² and
7. The hand count process, as well as “ADA compliance” listed under number one, are “stop gap measure[s] while researching alternative

(Presentation begins 1:48:10 and ends at 2:08:50); *see also* Petr’s App., Vol. 1, APP0003–0013.

⁷ Petr’s App, Vol. 1, APP0006.

⁸ Petr’s App, Vol. 1, APP0007.

⁹ *Id.*

¹⁰ Petr’s App, Vol. 1, APP0011.

¹¹ Petr’s App, Vol. 1, APP0009.

¹² Petr’s App, Vol. 1, APP0012

solutions.”¹³

During this presentation, Kampf provided additional details on the hand count process Nye County plans to use during the 2022 General Election, and explicitly stated that the process is “very locked in” with no changes to be made.¹⁴ According to Kampf, the counting of ballots will begin on October 25, 2022, and all paper ballots will first be run through a mechanical tabulator.¹⁵ Once the ballots are processed through the mechanical tabulator, all paper ballots will be hand counted. The hand counting team will conduct the count by having the “reader” read out loud the selected candidate for the race from a ballot, the “verifier” verifying that the ballot is being read aloud correctly, and three “talliers” will tally the votes simultaneously.¹⁶ After this process is done for one batch consisting of fifty ballots, the verifier, the reader, and the talliers will check the tallies to determine if they match.¹⁷ If there

¹³ Petr’s App., Vol. 1, APP0006.

¹⁴ *Board of County Commissioners Regular Meeting* (Sept. 20, 2022), *infra* 6, n. 6, at 2:07:12-2:07:20.

¹⁵ *Id* at 1:58:45-1:59:16.

¹⁶ *Id* at 1:56:25-1:56:53.

¹⁷ *Id* at 1:56:54-1:57:00.

is a match, all five team members will sign off to that effect.¹⁸ If there is a difference, a recount will be conducted on a special recount tally sheet.¹⁹ The process will be open to the public to view in person, and will also be live streamed so “people at home can become poll watchers.”²⁰

In light of the presentation and Kampf’s statements on September 20, 2022, several aspects of Kampf’s presented process remain unexplained. No information has been provided regarding: (1) how Kampf intends to define “special needs” to determine who may use the voting machine; (2) who will determine if an individual voter qualifies as having “special needs” under that definition; (3) what are the “stringent signature verifications” the election workers will use when matching signatures and deciding whether a voter’s ballot will be counted; (4) who will decide when the “stringent signature verifications” are required; and (5) how will the election workers be trained on these

¹⁸ *Id* at 1:57:01-1:57:21.

¹⁹ *Id* at 1:57:22-1:57:49.

²⁰ *Id* at 2:01:20-2:01:46.

“stringent signature verifications”.

On October 4, 2022, Petitioners first attempted to address these issues by filing an Emergency Petition for Writ of Mandamus Enjoining Nye County Interim Clerk from Implementing Proposed Unlawful Hand Counting Measures During the November 2022 General Election and Complaint for Declaratory and Injunctive Relief in the Fifth Judicial District Court.²¹ Mark Kampf was served with a copy of the Petition, and the District Court Cover Sheet, at 1520 E. Basin Ave., Pahrump, NV 89060 on October 4, 2022.²² Service was attempted on Nye County on October 4, 2022, on two separate occasions.²³ During the first attempt at service on Nye County, the process server was told that all service of process for Nye County goes to the Administrative Office located at a different address.²⁴ The process server attempted service on Nye County for the second time at the address given for the

²¹ Petr’s App, Vol. 1, APP0014-0041.

²² Petr’s App., Vol. 1, APP0042.

²³ Petr’s App., Vol. 1, APP0043-0044.

²⁴ Petr’s App., Vol. 1, APP0043.

Administrative Office.²⁵ The process server was told that Frank Carbone and Tim Sutton are the only individuals who can accept service of process for Nye County, and they would be unavailable all day because they were in a meeting.²⁶

Due to the two attempts at service and the urgency of the writ of mandamus, counsel for Petitioners reached out to Mr. Carbone and Mr. Sutton via email on October 5, 2022 to inquire about their availability to accept service of process.²⁷ Counsel for Petitioners received a reply on October 7, 2022, at 9:11 a.m. from Mr. Carbone stating that he will be available from 10:00 a.m. to 11:00 a.m. that morning.²⁸ The one-hour notice and the limited availability provided by Mr. Carbone, and the need to drive approximately an hour and fifteen minutes to Nye County from Clark County, made it nearly impossible to coordinate service of process with the process server for that time. Therefore, counsel for Petitioners requested that Mr. Carbone provide his availability for

²⁵ Petr's App, Vol. 1,. APP0044.

²⁶ *Id.*

²⁷ Petr's App, Vol. 1, APP0049-0050.

²⁸ Petr's App., Vol. 1, APP0049.

October 10, 2022 through October 12, 2022.²⁹ Mr. Carbone was served with a copy of the Petition and Complaint, and the District Court Cover Sheet, at 2100 E Walt Williams Dr., Pahrump, NV 89048 on October 10, 2022 based on the availability he provided.³⁰

A final order denying the Petitioners'/Plaintiffs' Emergency Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief was issued on October 12, 2022.³¹ At the time the court issued its order, no response was filed by the opposing parties, nor was a hearing date set for the case. In support of its order, the district court offered two bases for its denial: (1) that no certificate of service was filed indicating that Respondents were served with the Emergency Petition; and (2) that while the Petitioners had cited to Nye County Commission webpage where Mark Kampf's presentation was available, the Petitioners had not attached a copy of the presentation or a transcript from the Commission meeting to the petition.³² The district court

²⁹ *Id.*

³⁰ Petr's App., Vol. 1, APP0047.

³¹ Petr's App., Vol. 1, APP0051-0053.

³² Petr's App., Vol. 1, APP0051-0052.

offered no legal authority to support its position that any of these were sufficient grounds to warrant denial of the petition. Additionally, the order violated Nevada law and the Nevada Rules of Civil Procedure (NRCP).³³ Finally, the district court was required to provide a hearing, “whether the adverse party appear[ed] or not,” prior to ruling on the petition.³⁴ Even if Petitioners had a duty to attach a copy of the presentation and/or a transcript to the petition in addition to its citation, and to serve the opposing parties within eight days of filing its petition and complaint, such a duty would not warrant a denial of the petition and complaint as they would qualify as technical defects.³⁵

³³ See NRS 34.200 (authorizing the application for a writ of mandamus without any notice provided to adverse party); NRS 34.280 (requiring that service of writs be performed in the same manner as a summons in a civil action); NRCP 4(d) (Unless a defendant voluntarily appears or waives or admits service, a plaintiff must file proof of service with the court stating the date, place, and manner of service *no later than the time permitted for the defendant to respond to the summons*) (emphasis added); NRCP 4(e) (the summons and complaint must be served upon a defendant *no later than 120 days* after the complaint is filed, unless the court grants an extension of time under this rule) (emphasis added).

³⁴ NRS 34.200.

³⁵ This Court previously reversed the Fifth Judicial District Court’s judgment in which Judge Kimberly A. Wanker denied a petition for habeas corpus due to defects that are technical. The Court determined that the Petitioner should have been afforded the opportunity to cure

Considering the order dispositive, the district court closed the matter before the Fifth Judicial District without considering the substantive issues raised in the petition. Petitioners now seek relief from this Court, who has original jurisdiction, on the substantive issues of Petitioner’s petition.

REASONS WHY A WRIT SHOULD ISSUE

I. Mandamus Standard

Writ relief is an extraordinary remedy, and therefore, it is within the court’s sound discretion whether to grant such relief. ³⁶

“Extraordinary writ relief may be available where there is no ‘plain, speedy and adequate remedy in the ordinary course of law.’”³⁷

However, even when a legal remedy is available, this court may exercise its discretion to consider a writ petition when the petition presents a legal issue of statewide importance that needs clarification, and principles of judicial economy and public policy weigh in favor of

them. *See Briggs v. State*, No. 82443, 2021 Nev. Unpub. LEXIS 825 (Nev. Nov. 10, 2021) (unpublished).

³⁶ *Segovia v. Eighth Judicial Dist. Court*, 133 Nev. 910, 911, 407 P.3d 783, 785 (2017).

³⁷ *Id.* (quoting NRS 34.170 and NRS 34.330).

considering the petition.³⁸

A writ of mandamus may be issued by the court “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person,” when there is no plain, speedy, and adequate remedy in the ordinary course.³⁹ The court must examine each request for writ relief individually.⁴⁰

³⁸ *Lorton v. Jones*, 130 Nev. 51, 54, 322 P.3d 1051 (2014), *quoting* *Salaiscooper v. Eighth Judicial Dist. Court*, 117 Nev. 892, 34 P.3d 509 (2001).

³⁹ “The writ may be issued by ... a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person. When issued by a district court or a judge of the district court it shall be made returnable before the district court.” NRS 34.160; NRS 34.170.

⁴⁰ *Jeep Corp. v. Second Judicial Dist. Court*, 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982).

II. Nye County's proposed hand counting process violates NRS 293.3606 and NRS 293.269935 as it would reveal election results prior to the time permitted.

The Nevada Legislature has conferred a duty upon county clerks to follow certain procedures when administering elections. It has set clear mandates regarding the release of election results as well as procedures pertaining to the counting of ballots.

NRS 293.269925(1) vests the county clerk with the power to establish procedures for the processing and counting of mail ballots. NRS 293.269925(2) explicitly states that such procedures must not conflict with NRS 293.269935, among other state laws.

NRS 293.269935 states that no voting results of mail ballots may be released until all polling places are closed and all votes have been cast on the day of the election. Any person who disseminates to the public in any way information pertaining to the count of mail ballots before all polling places are closed and all votes have been cast on the day of the election is guilty of a misdemeanor. Similarly, NRS 293.3606 states that the returns for early voting must not be reported until after the polls have closed on election day. Any person who disseminates to the public information relating to the count of returns for early voting

before the polls close is guilty of a gross misdemeanor. Both statutes criminalize the dissemination of information pertaining to the results of the returns before all polling places close on election day and an individual engaging in such acts is guilty of, at minimum, a misdemeanor.⁴¹

When counting ballots, the process must be conducted in public, open to observation.⁴² Nevada permits the processing of ballots, in public, prior to election day in *only* the following circumstances:

1. Mail-ballots can be processed 15 days before the day of the election; and⁴³
2. The returns for early voting can be counted by the counting board starting at 8 a.m. on election day.⁴⁴

However, Nevada law is clear that the returns of these counts, for both mail-in ballots and early voting returns, ***must not*** be reported

⁴¹ See NRS 293.269931(3); NRS 293.3606(5).

⁴² See NRS 293.363(1): “When the polls are closed, the counting board shall prepare to count the ballots voted. The counting procedure must be public and continue without adjournment until completed.”

⁴³ NRS 293.269931.

⁴⁴ NRS 293.3606.

until the polls have closed on election day.⁴⁵

The current process, followed throughout the state and the country, uses mechanical voting systems, and its processing of ballots prior to the closing of polls on election day complies with both the public counting aspect of the law and not releasing *any* information pertaining to the count prior to the close of polls on election day. Compliance with both of these laws can be achieved simultaneously because mechanical tabulators are programmed not to produce sums until election night, and the results of the election are not printed until the closing of polls on election day.⁴⁶ As further assurance of compliance with these laws, federal law requires that all voting systems certified to the latest federal Voluntary Voting System Guidelines have the capability to process ballots *without* printing the tallies before polls close.⁴⁷

⁴⁵ NRS 293.269931(3): “No voting results of mail ballots may be released until all polling places are closed and all votes have been cast on the day of the election”; NRS 293. 3606(2): “The returns for early voting must not be reported until after the polls have closed on election day.”

⁴⁶ Grace Gordon, et al., *Ballot Pre-processing Policies Explained*, Bipartisan Policy Center (September 7, 2022), <https://bipartisanpolicy.org/explainer/ballot-pre-processing-explained/>.

⁴⁷ Election Assistance Commission, *Voluntary Voting System Guidelines 2.0*, at 57 (February 10, 2021), available at

Mr. Kampf's current process for hand counting will be public, as required by Nevada state law.⁴⁸ It involves a reader reading aloud the selected candidate for office, a verifier to assure that it is being read correctly and that the tallies are marked correctly, and three tallies to mark a tally for the vote.⁴⁹ However, Kampf's proposed plan does not and cannot comply with all provisions of state and federal law.

The "reader" verbally stating aloud the elected candidate of a particular office on the ballot will reveal election results prior to the time permitted in violation of NRS 293.269935 and NRS 293.3606. This is because observers of the hand counting will hear the selected candidate, as will viewers at home watching the live stream of the count. On the other hand, if Mr. Kampf decided to have the reader simply read the elected candidate to themselves, then such a process would not be considered "in public" as required by NRS 293.363. As

https://www.eac.gov/sites/default/files/TestingCertification/Voluntary_Voting_System_Guidelines_Version_2_0.pdf.

⁴⁸ Nye County Streaming Media Archive, *Board of County Commissioners Regular Meeting* (Sept. 20, 2022), <https://www.nyecountynv.gov/DocumentCenter/View/41992/Item35>, at 2:01:20-2:01:46.

⁴⁹ *Id* at 1:56:25-1:56:53.

such, Mr. Kampf's hand counting process violates Nevada state laws. These proposals also subject the "tally team volunteers" to criminal prosecution.

Mr. Kampf has acknowledged these violations, as it pertains to streaming the hand count live on camera, on the record at the Nye County Board of Commissioners meeting, but nonetheless determined that it is not an issue because it would be a "monumental task for anyone to be able to figure that out."⁵⁰

III. Nye County's plan to limit access to ADA touch screens to individuals with "special needs" violates the Help America Vote Act (HAVA) and Article 2, Section 1A of the Nevada Constitution.

Mr. Kampf's procedures for accessibility by elderly and disabled voters include one "ADA touch screen" at each polling location, satisfying HAVA's requirements in that manner. However, Mr. Kampf has either failed to take a deeper dive into the requirements of HAVA or has chosen to ignore them, as the plan to limit access to ADA touch screen to "those with special needs" violates HAVA's mandate that all voting systems be accessible to individuals with disabilities "in a

⁵⁰ *Id.* 2:07:39- 2:07:50.

manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.”⁵¹ Nevada’s Constitution provides similar requirements: “Each voter who is a qualified elector under this Constitution and is registered to vote [...] has the right: To equal access to the elections system without discrimination, including, without limitation, discrimination on the basis of race, age, disability, military service, employment or overseas residence.”⁵²

In order to limit the touch screens to those with “special needs,” poll workers will inevitably be required to assess whether a voter has such needs by either requesting proof or enquiring the voter about their disability. It is unclear what Mr. Kampf means when he says “special needs” as the framing of this language is not legally operative and is insufficiently vague. To the extent Mr. Kampf is referring to individuals with disabilities, such inquires violate the privacy of the voter. Separating voters with a disability from those voting on paper ballots,

⁵¹ 42 U.S.C § 15481.

⁵² Nev. Const. art. 2 § 1A(9). The language of Article 2 § 1A(9) of the Nevada Constitution was codified as part of the “Voter’s Bill of Rights” in NRS 293.2546(9).

and requiring them to take unnecessary steps to prove they have “special needs” does not create equal access to the elections system as poll workers determining whether someone has a disability, especially given that many disabilities are hidden, will result in qualified voters being turned away at the polls.

IV. Nye County’s proposed “stringent signature verification” procedure violates NRS 293.285, NRS 293.8874, and NRS 293.277.

The use of more “stringent signature verifications,” including “no prompting of voter verification information” and “requir[ing] identification if signature or verification fails,” conflict with the procedure for checking signatures mandated by the legislature under NRS 293.285, NRS 293.8874, and NRS 293.277.

Pursuant to NRS 293.8874, clerks are required to check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk.⁵³ If at least two employees in the office of the clerk believe there is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter, the clerk must contact the voter and ask the voter to confirm

⁵³ NRS 293.8874.

whether the signature used for the mail ballot belongs to the voter.⁵⁴

Nothing in this section authorizes the clerk to require an identification card if the signature fails.

In addition to outlining how verification of a signature is conducted, NRS 293.8874 also defines “reasonable question of fact,” and when a “reasonable question of fact” does not exist:

For purposes of subsection 1:

(a) There is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if the signature used for the mail ballot differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk.

(b) There is not a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if:

(1) The signature used for the mail ballot is a variation of the signature of the voter caused by the substitution of initials for the first or middle name or the use of a common nickname and it does not otherwise differ in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk; or

(2) There are only slight dissimilarities between the signature used for the mail ballot and the signatures of the voter available in the records of the

⁵⁴ NRS 293.8874(1).

clerk.

Pursuant to NRS 293.285(2), when it is determined that a voter's signature does not match at a polling location, the voter can prove their identity by any of the three options: 1) answering questions from the election board officer covering the personal data which is reported on the application to register to vote; *or* 2) providing the election board officer, orally or in writing, with other personal data which verifies the identity of the voter; *or* 3) providing the election board officer with proof of identification as described in NRS 293.277 other than the registration card issued to the voter.

If a voter elects to prove their identity by showing identification, any of the following are acceptable: 1) a driver's license; 2) an identification card issued by the Department of Motor Vehicles; 3) a military identification card; *or* 4) any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture.⁵⁵

Mr. Kampf's verification process is vague and does not provide explanations as to what "stringent signature verifications" entails. To

⁵⁵ NRS 293.277.

the extent that Mr. Kampf requires the registered voter to provide an identification card only, such a requirement would violate NRS 293.285.

V. There is no plain, speedy and adequate remedy in the ordinary course of law for Petitioners in this matter.

Whether an appeal is sufficiently adequate and speedy necessarily turns on the underlying proceedings' status, the types of issues raised in the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented.⁵⁶

This court has observed that, in entertaining an original proceeding in mandamus, it has the “power to protect the rights, interests, and franchises of the state, and the rights and interests of the whole people, to enforce the performance of high officials affecting the public at large[.]”⁵⁷ Accordingly, in *Miller v. Burk*, this court considered the timing of an upcoming election in exercising its discretion to proceed with a writ of mandamus.⁵⁸ In *Miller*, the court issued a writ of

⁵⁶ *Halcrow, Inc. v. Eighth Judicial Dist. Court of the State*, 129 Nev. 394, 302 P.3d 1148 (2013) quoting *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736 (2007).

⁵⁷ *SW Gas Corp. v. Pub. Serv. Comm’n*, 92 Nev. 48, 57 546 P.2d 219, 225 (1976) (internal quotation omitted).

⁵⁸ 124 Nev. 579, 588, 188 P.3d 1112, 1118 (2008).

mandamus to three county officials, directing them to exclude certain candidates' names from the 2008 general election ballot based on the term-limit amendment set forth in the state's constitution.⁵⁹ Importantly, the court issued its decision—denoting the timing of the upcoming election—over four months before the state's general election.

This case was originally filed in the Fifth Judicial District Court as an emergency petition due to important questions of law concerning the administration of the November 2022 election by Nye County and the close proximity to not only the election, but the October 25, 2022 time frame, which Mark Kampf has pinpointed as the day Nye County will start hand counting ballots.

Voting begins on October 22, 2022, and Mr. Kampf will begin counting ballots using unlawful hand counting measures on October 25, 2022. No remedy for the issues underlined herein could be provided after election day on November 8, 2022. The election at issue in *Miller* was months away, and here it is days. Consequently, an appeal is not a

⁵⁹ *Id.* at 599.

speedy remedy.⁶⁰

Additionally, the denial of the Petition and Complaint by the Fifth Judicial District Court was not rooted in the merits of the case, therefore an appeal would be an inadequate remedy as it will not permit this court to meaningfully review the issues presented.

VI. Even if there was an adequate remedy under law, a writ would still be warranted as the underlying issues are matters of state-wide importance.

Even if an appeal constituted a plain, speedy, and adequate remedy at law in this matter, a petition for extraordinary relief would be justified because this petition raises “an important issue of law [that] needs clarification and public policy is served by this court's invocation of its original jurisdiction.”⁶¹ Furthermore, under “circumstances evoking urgency or evincing matters of statewide importance, this [C]ourt, in recognizing situations creating a need for immediate intervention, has considered petitions for extraordinary relief, even

⁶⁰ See *Garvin v. Ninth Judicial Dist. Court*, 118 Nev. 749, 766 n. 76, 59 P.3d 1180 (2002) (“[S]everal time constraints render an appeal inadequate.”).

⁶¹ *Diaz v. Eighth Judicial Dist. Court*, 116 Nev. 88, 993 P.2d 50 (2000), quoting *Business Computer Rentals v. State Treas.*, 114 Nev. 63, 67, 953 P.2d 13, 15 (1998).

though a remedy at law was otherwise available to petitioner.” Election-related issues fall within this exception.⁶²

The underlying issues in this case are pure questions of law that involve Nye County voters’ fundamental right to vote and their right to have the results of the election not be released prior to the close of polls on election day. The unlawful hand counting process and administration of the November 2022 election as prescribed by Mark Kampf encompasses local, state, and national races which is of statewide importance and public policy will be served by its resolution.

CONCLUSION

Nye County and Mark Kampf have proposed significant changes to the administration of the November 2022 election. The changes violate Nevada state law, federal law, and the Nevada Constitution. Accordingly, the Court should issue a writ of mandamus finding that: 1)

⁶² *Child v. Lomax*, 124 Nev. 600, 604-06, 188 P.3d 1103, 1106-07 (2008) (stating in connection to a challenge to a single candidate’s eligibility, “[d]ue to the statewide significance of the question presented, a postelection challenge does not provide an adequate means to avoid impairing voter input”).

the verbal announcement of a selected candidate for each race of each ballot prior to the close of polls on election day, in the presence of the public, will result in the release of election results in violation of NRS 293.3606 and NRS 293.269935; 2) the limitation of ADA touch screens to individuals with “special needs” does not comply with the Help America Vote Act (HAVA) or Article 2, Section 1A of the Nevada Constitution because it impermissibly permits election workers to enquire about a voter’s disability or turn away otherwise eligible voters based on arbitrary decision-making; and 3) the use of “stringent signature verifications” violates NRS 293.285, NRS 293.8874, and NRS 293.277.

DATED this 14th day of October 2022.

Respectfully submitted:

**AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**

/s/ Sadmira Ramic

Sadmira Ramic, Esq.

Nevada Bar No.: 15984

**AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**

601 South Rancho Drive, Suite B-11

Las Vegas, Nevada 89106

Telephone: (702) 366-1536

Facsimile: (702) 366-1331
Email: ramic@aclunv.org
Counsel for Petitioners

VERIFICATION

I, Sadmira Ramic, declare as follows:

1. I am counsel for Petitioners ACLU of Nevada and Steven Bacus.
2. I verify that I have read the foregoing Emergency Petition and that the same is true of my own knowledge, except for matters state on information and belief, and as to those matters, I believe them true.
3. I declare under penalty of perjury under the law of the Nevada that foregoing is true and correct.

Executed this 14th day of October 2022, in Las Vegas, Nevada.

/s/ Sadmira Ramic

Sadmira Ramic, Esq.

Nevada Bar No.: 15984

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e), which requires that every assertion in the brief regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14 point Century Schoolbook.

The remainder of this page intentionally left blank.

Finally, I hereby certify that this brief complies with the type-volume limitations of NRAP 21(d) and 32(c)(2) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 5,436 words.

DATED this 14th day of October 2022.

Respectfully submitted:

**AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**

/s/ Sadmira Ramic

Sadmira Ramic, Esq.

Nevada Bar No.: 15984

Christopher M. Peterson, Esq.

Nevada Bar No.: 13932

Sophia A. Romero, Esq.

Nevada Bar No.: 12446

**AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**

601 South Rancho Drive, Suite B-11

Las Vegas, Nevada 89106

Telephone: (702) 366-1536

Facsimile: (702) 366-1331

Email: ramic@aclunv.org

Counsel for Petitioners

NRAP 27(e) CERTIFICATE

I, Christopher Peterson, declare as follows:

4. I am counsel for Petitioners ACLU of Nevada and Steven Bacus.
5. The telephone numbers and address of the attorneys for the parties are as follows:

For the ACLU of Nevada and Steven Bacus

Sadmira Ramic
NV Bar #15984
702.751.1483
ramic@aclunv.org
American Civil Liberties Union of Nevada
601 S. Rancho Dr., #B-11
Las Vegas, NV 89106

Christopher Peterson
NV Bar #13932
702.366.1902
peterson@aclunv.org
American Civil Liberties Union of Nevada
601 S. Rancho Dr., #B-11
Las Vegas, NV 89106

Sophia Romero
NV Bar N#12446
775.446.5546
romero@aclunv.org
American Civil Liberties Union of Nevada
601 S. Rancho Dr., #B-11
Las Vegas, NV 89106

For the County of Nye and Mark Kampf

Harry L. Arnold
702.207.6090
harnold@maclaw.com
Marquis Aurbach
10001 Park Run Dr.
Las Vegas, NV 89145

Brian R. Hardy
702.382.0711
bhardy@maclaw.com
Marquis Aurbach
10001 Park Run Dr.
Las Vegas, NV 89145

6. Emergency relief is proper because voting will begin in Nye County on October 22, 2022, and Mr. Kampf will begin implementing his proposed voting procedures on October 22, 2022 and the hand counting process on October 25, 2022. The proposed procedures violate the Nevada Constitution, Nevada election law, and federal election law. If Nye County and Kampf are not prevented from implementing their proposed procedures, it will result in immediate and irreparable harm to the voters of Nye County and the uniform implementation of statewide election processes.

7. Prior to filing this brief, I spoke by telephone with attorneys Harry L. Arnold and Brian R. Hardy on October 14, 2022. I explained

that this petition is substantively similar to that filed before the Fifth Judicial district both in the legal arguments and the relief sought. I sent Mr. Arnold and Mr. Hardy, via email, a digital copy of the foregoing petition and Petitioner's Appendix, Volume 1, on October 14, 2022, before they were filed.

8. I also contacted the Office of the Clerk of the Supreme Court of Nevada to notify it that the ACLU of Nevada would be filing this motion, in accordance with Nevada Rule of Appellate Procedure 27(e)(1), on behalf of petitioners.

Executed this 14th day of October 2022, in Las Vegas, Nevada.

/s/ Christopher Peterson
Christopher M. Peterson, Esq.
Nevada Bar No.: 13932

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2022, I electronically filed the foregoing **EMERGENCY PETITION FOR WRIT OF MANDAMUS PURSUANT TO NRAP 21(a)(6)** with the Nevada Supreme Court by using the appellate electronic filing system.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Harry L. Arnold
Marquis Aurbach
10001 Park Run Drive
Las Vegas, NV 89145

I further certify that a true and correct copy of this document was served by email to:

Harry L. Arnold
harnold@maclaw.com

Brian R. Hardy
bhardy@maclaw.com

/s/ Christopher Peterson

Christopher Peterson

An employee of the ACLU of Nevada

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.

AMERICAN CIVIL LIBERTIES UNION OF NEVADA,
Petitioner,

Electronically Filed
Oct 4, 2022 09:16 AM
Elizabeth A. Brown
Clerk of Supreme Court

v.

THE COUNTY OF NYE, et al.,
Respondent.

EMERGENCY PETITION FOR WRIT OF MANDAMUS
PURSUANT TO NRAP 21(a)(6)

PETITIONERS' APPENDIX, VOL. 1

SADMIRA RAMIC
Nevada Bar No.: 15984
CHRISTOPHER M. PETERSON
Nevada Bar No.: 13932
SOPHIA A. ROMERO
Nevada Bar No.: 12446
**AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**
601 South Rancho Drive, B-11
Las Vegas, Nevada 89106
Telephone: (702) 366-1536
Facsimile: (702) 366-1331
Email: ramic@aclunv.org
Email: peterston@aclunv.org
Email: romero@aclunv.org

*Counsel for Petitioners ACLU of
Nevada and Steven Bacus*

DOCUMENT	DATE	VOL	PAGE(S)
Affidavit of Attempted Service, County of Nye, October 4, 2022	10/4/2022	1	43–44
Affidavit of Attempted Service, Second Attempt, County of Nye, October 4, 2022	10/4/2022	1	45–46
Affidavit of Service, County of Nye, October 10, 2022	10/10/2022	1	47
Affidavit of Service, Mark Kampf, October 4, 2022	10/4/2022	1	42
Clerk's Office Announcing Paper Ballot and Hand-Count Procedures for General Election, September 6, 2022	9/6/2022	1	1
Declaration of American Civil Liberties Union of Nevada in Support of Writ of Mandamus, October 14, 2022	10/14/2022	1	56–58
Declaration of Sadmira Ramic in Support of Writ of Mandamus, October 14, 2022	10/14/2022	1	59–60
Declaration of Steven Bacus in Support of Writ of Mandamus, October 14, 2022	10/14/2022	1	54–55
Email exchange between Attorney Sadmira Ramic and Frank G. Carbone from October 5, 2022 and October 7, 2022	10/5/2022;1 0/7/2022	1	48–50
Emergency Petition for Writ of Mandamus Enjoining Nye County Interim County Clerk From Implementing Proposed Unlawful Hand Counting Measures During the November 2022 General Election and Complaint of Declaratory and Injunctive Relief, October 4, 2022	10/4/2022	1	14–41

DOCUMENT	DATE	VOL	PAGE(S)
Order Denying Writ of Mandamus, Declaratory Relief, Injunctive Relief, October 12, 2022	10/12/2022	1	51–53
Presentation titled “Nye County – 2022 General Election Process”, September 20, 2022	9/20/2022	1	2–13

Respectfully submitted,

/s/ Christopher Peterson
CHRISTOPHER PETERSON
Counsel for the Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2022, I electronically filed the foregoing Appendix with the Nevada Supreme Court by using the appellate electronic filing system.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Harry L. Arnold
Marquis Aurbach
10001 Park Run Drive
Las Vegas, NV 89145

I further certify that a true and correct copy of this document was served by email to:

Harry L. Arnold
harnold@maclaw.com

Brian R. Hardy
bhardy@maclaw.com

/s/ Christopher Peterson

Christopher Peterson

An employee of the ACLU of Nevada

Posted on: September 6, 2022

CLERK'S OFFICE ANNOUNCES PAPER BALLOT AND HAND-COUNT PROCEDURES FOR GENERAL ELECTION

NYE COUNTY, NV - September 6, 2022

Nye County Clerk Mark F. Kampf will administer the 2022 General Election using only paper ballots for both mail-in and at the polls, with provisions for ADA compliance.

The Clerk's Office will conduct a parallel electronic tabulation of the voted paper ballots along with a hand count of those ballots. While the tabulation is used to count the mail-in ballots currently, the electronic counting will be extended to the paper ballots voted at the polls. A hand count will also be performed on all the paper ballots (both mail-in and at the polls) as requested by the Nye County Board of Commissioners. All registration and verification processes both at the polls and for mail-in ballots will remain essentially the same.

On March 15th, the County Commission voted 5-0 to request the Nye County Clerk to consider administering the 2022 Primary and General elections using only paper ballots and hand-counting the paper ballots submitted by Nye County voters to ensure accuracy and transparency of the democratic voting process.

Since the hand count process will be performed by citizen volunteers who are registered voters, the Clerk is seeking help from registered voters from all political parties and non-partisan voters to participate in the process.

The hand count will be conducted weekdays during the period starting on October 25th to November 10th. Please go to the Nye County Clerk's [Elections website](#) here to obtain an application to volunteer to be part of the [hand-count team at this link](#).

Media: Please contact County Clerk Mark F. Kampf for all comments and interview requests.

mkampf@nyecountynv.gov or call 775-482-8134

NYE COUNTY AGENDA INFORMATION FORM

1

☐ Action
 ☒ Presentation
 ☐ Presentation & Action

Department: Nye County Clerk		Agenda Date:	
Category: Regular Agenda Item		September 20, 2022	
Contact: Mark F Kampf		Phone: 482-8127	Continued from meeting of:
Return to: Kelly L. Sidman	Location: Tonopah Clerk's Office		Phone: 482-8134
Action requested: (Include what, with whom, when, where, why, how much (\$) and terms) Presentation regarding the paper ballot and hand-count process to be implemented for the Nye County General Election in November 2022.			
Complete description of requested action: (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures) This will be a 10-15 minute presentation to brief the commission on the process being developed and to inform the public in attendance. Time will depend on questions from the board.			
Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.			
<u>Expenditure Impact by FY(s):</u> (Provide detail on Financial Form)			
<input type="checkbox"/> No financial impact			

Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal	Date
4.	Date	9. Comptroller	Date
5.	Date	10. County Manager	Date

Item#: 35

APP0002

Nye County – 2022 General Election Process

March 15, 2022, BOCC Meeting Agenda Item:

- “Nye County Clerk to consider administering the 2022 Primary and General elections using only paper ballots and hand-counting the paper ballots submitted by Nye County voters to ensure accuracy and transparency of the democratic voting process”
- Voted 5-0 to support this request
- Will be implemented with the 2022 General Election

Nye County – 2022 General Election Process

Implementation Plan Overview

- Use paper ballots at polls instead of touch screens
- One ADA touch screen at each poll for special needs
- Tabulators (vote counters) used for all ballots
- Parallel Hand Count process
- Transparency
- Strengthen check-in, signature and ballot controls

Nye County – 2022 General Election Process

Paper Ballots

- Mail-in ballots same as previously
- Identical paper ballot completed by the voter at the polls
- Voters will drop ballot in the secure box at polls
- Registration process like prior method
- Voter will sign a signature card and the signature screen.

Nye County – 2022 General Election Process

ADA Compliance

- Touch screens with ADA compliant accessibility
- Limited to those with special needs
- Stop gap measure while researching alternative solutions

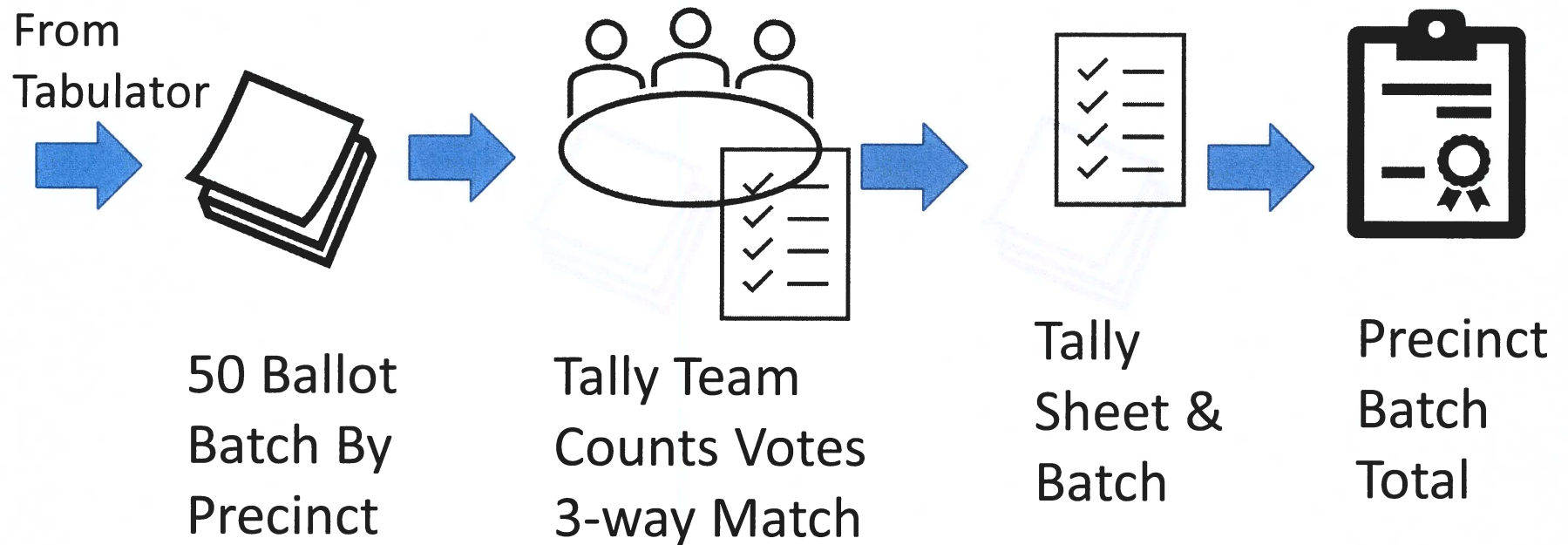
Nye County – 2022 General Election Process

Tabulation

- Same tabulation process for in-person paper ballots as currently for the mail-in ballots
- In-person ballots sent to Tabulation daily
- 50 ballot batch control log starts with the poll box and the mail receipt
- Stop gap measure while researching alternative solutions

Nye County – 2022 General Election Process

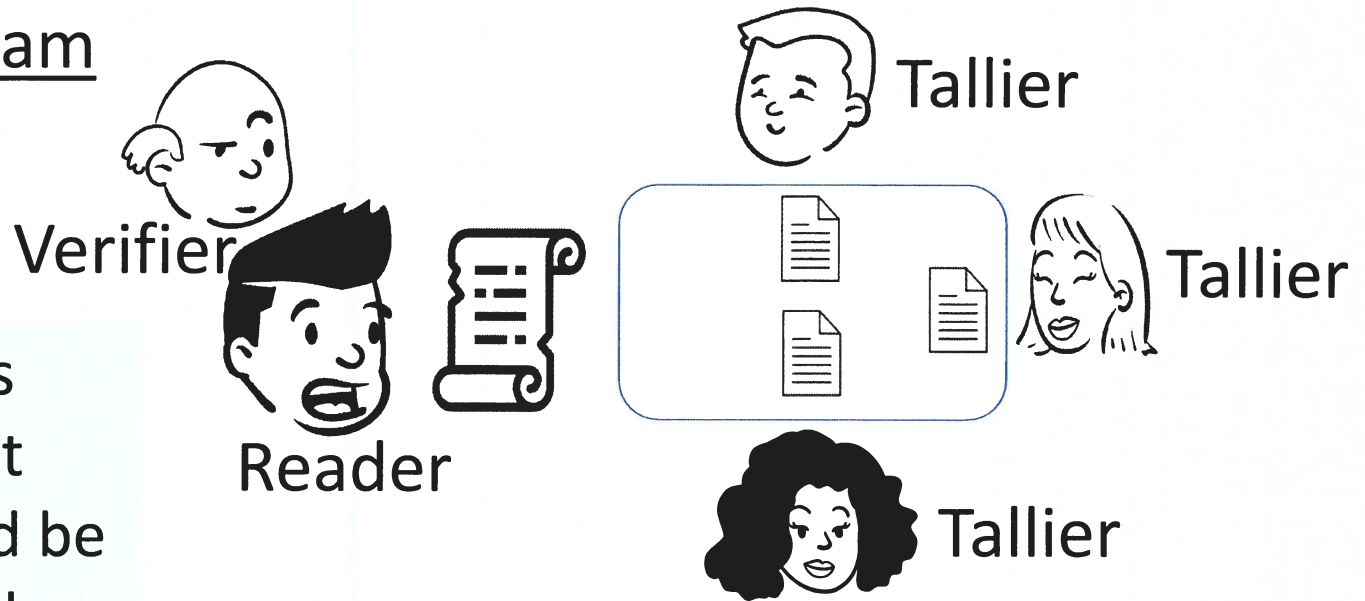
Hand Count Overview



Nye County – 2022 General Election Process

Hand Count Team

All three Talliers
votes by contest
must match and be
verified by Reader
and Verifier



Nye County – 2022 General Election Process

The Math

- 32,855 Active Voters
- 26,000 at 80% Voter Turnout (74.84% in 2020 General)
- 520 Batches at 50 Ballots per Batch
- Approximately 40 Batches Per Day (worse case scenario)
- Minimum 8 Teams at 5 Batches per Day Per Team
- Test counts indicate significantly more throughput
- Finish November 10th - remainder November 14th

Nye County – 2022 General Election Process

Transparency

- Video camera live streaming Hand Count
- Citizens become poll watchers at home

Nye County – 2022 General Election Process

Strengthening Controls

- Stringent signature verification
- No prompting of voter verification information
- Require identification if signature or verification fail
- All ballot handoffs to include ballot control documents with signatures required
- Adjudication to be consistent with State standards and between tabulation and hand-count

Nye County – 2022 General Election Process

Questions



DISTRICT COURT CIVIL COVER SHEET

Nye

County, Nevada

Case No. CV22-0503
(Assigned by Clerk's Office)

NYE COUNTY
RECEIVED
OCT - 4 2022

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Defendant(s) (name/address/phone):

ACLU of Nevada, 601 S. Rancho Dr. Suite B-11, Las Vegas, NV 89106

The County of Nye

Steven Bacus, 601 S. Rancho Dr. Suite B-11, Las Vegas, NV 89106

Interim County Clerk, Mark Kampf, 1520 E. Basln Ave., Pahrump, NV 89060

Attorney (name/address/phone):

Attorney (name/address/phone):

Sadmira Ramic, 601 S. Rancho Dr., Ste B-11, Las Vegas, NV 89106, 702.366.1226

Nye County District Attorney's Office, 1520 E. Basln Ave. #107, Pahrump, NV 89060

Christopher Peterson, 601 S. Rancho Dr., Ste B-11, Las Vegas, NV 89106, 702.366.1226

775.751.7080

Sophia Romero, 601 S. Rancho Dr., Ste B-11, Las Vegas, NV 89106, 702.366.1226

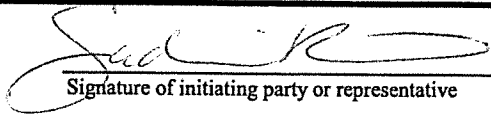
II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-20,000 <input type="checkbox"/> \$2,500 or less	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ	Other Civil Filing	
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input checked="" type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	

Business Court filings should be filed using the Business Court civil coversheet.

10/4/2022

Date


 Signature of initiating party or representative

See other side for family-related case filings.

1 WMAN

2 SADMIRA RAMIC, ESQ.

3 Nevada Bar No.: 15984

4 CHRISTOPHER M. PETERSON, ESQ.

5 Nevada Bar No.: 13932

6 SOPHIA A. ROMERO, ESQ.

7 Nevada Bar No.: 12446

8 AMERICAN CIVIL LIBERTIES

9 UNION OF NEVADA

601 South Rancho Drive, Suite B-11

Las Vegas, NV 89106

Telephone: (702) 366-1226

Facsimile: (702) 830-9205

Email: ramic@aclunv.org

Attorneys for Petitioners/Plaintiffs

FILED
FIFTH JUDICIAL DISTRICT

OCT - 4 2022

Nye County Clerk
Brittani Smith Deputy

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

AMERICAN CIVIL LIBERTIES UNION OF
NEVADA, a domestic nonprofit corporation; and
STEVEN BACUS, an individual,

Petitioners/Plaintiffs,

vs.

The COUNTY OF NYE, a governmental entity; and
MARK KAMPF, in his official capacity as interim
County Clerk,

Respondents/Defendants.

Case No.: CV22-0503

Department: |

HEARING REQUESTED

**ARBITRATION EXEMPTION
CLAIMED:**

Equitable and Extraordinary Relief
Requested

**EMERGENCY PETITION FOR WRIT OF MANDAMUS ENJOINING NYE COUNTY
INTERIM COUNTY CLERK FROM IMPLEMENTING PROPOSED UNLAWFUL
HAND COUNTING MEASURES DURING THE NOVEMBER 2022 GENERAL
ELECTION AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The Petitioners/Plaintiffs, AMERICAN CIVIL LIBERTIES UNION OF NEVADA
("ACLU of Nevada") (collectively referred to as "Petitioners") and STEVEN BACUS, an
individual, by and through counsel SADMIRA RAMIC, ESQ., CHRISTOPHER M. PETERSON,
ESQ., and SOPHIA A. ROMERO, ESQ., of the AMERICAN CIVIL LIBERTIES UNION OF

1 NEVADA, hereby bring this Petition for Writ of Mandamus (NRS Chapter 34) and Complaint for
2 declaratory (NRS Chapter 30) and injunctive relief (NRS Chapter 33). Petitioners are seeking an
3 order prohibiting Respondents/Defendants, the COUNTY OF NYE and interim County Clerk
4 MARK KAMPF (collectively referred to as “Respondents”)¹ from implementing its proposed
5 unlawful hand counting process (“Nye County- 2022 General Election Process”) which violates
6 both state and federal law. Specifically, Petitioners are requesting that this Court declare that: 1)
7 the verbal announcement of a selected candidate for each race of each ballot prior to the close of
8 polls on election day, in the presence of the public, will result in the release of election results in
9 violation of NRS 293.3606 and NRS 293.269935; 2) the limitation of touch screens complying
10 with the Americans with Disabilities Act to individuals with “special needs” does not comply with
11 the Help America Vote Act (HAVA) or Article 2, Section 1A of the Nevada Constitution because
12 it impermissibly permits election workers to enquire about a voter’s disability or turn away
13 otherwise eligible voters based on arbitrary decision making; and 3) the use of “stringent signature
14 verifications” violates NRS 293.8874 and NRS 293.277.
15
16

17 INTRODUCTION

18 On September 6, 2022, the Nye County Clerk’s office officially announced that it intended
19 to use paper ballots and hand counting procedures for all ballots during the 2022 General Election.²
20 The announcement indicated that Nye County will “conduct a parallel electronic tabulation of the
21 voted paper ballots along with a hand count of those ballots.” The announcement also stated that
22
23

24 ¹ NRS 12.105 State and local governmental agencies may be sued without naming members of their governing bodies;
25 service. Any political subdivision, public corporation, special district, or other agency of state or local government
26 which is capable of being sued in its own name may be sued by naming it as the party without naming the individual
27 members of its governing body in their representative capacity. In addition to any other method which may be provided
by statute or rule of court, service may be made upon the clerk or secretary of the political subdivision, corporation or
agency.

² Nye County Government Website. *Clerk’s Office Announces Paper Ballot and Hand Counting Procedures for
General Election*. <https://www.nyecountynv.gov/civicalerts.aspx?aid=1195>. Accessed September 20, 2022.

1 the hand count process will be performed by “citizen volunteers who are registered voters,” and
2 that the hand count will be conducted Monday through Friday from October 25, 2022 and
3 continuing through November 10, 2022.

4 In addition to this official announcement, interim Nye County Clerk Mark Kampf gave a
5 presentation to the Nye County Board of Commissioners on September 20, 2022, titled
6 “Presentation regarding the paper ballot and hand-count process to be implemented for the Nye
7 County General Election in November 2022.”³ The presentation, in sum and substance, stated:

- 9 1. One ADA touch screen will be available at each polling location
10 which will be “limited to those with special needs”;
- 11 2. “Tabulators (vote counters) [will be] used for all ballots”;
- 12 3. A parallel hand count process will be used;
- 13 4. The hand count process will be live streamed by video camera;
- 14 5. The hand count team will consist of a reader, a verifier, and three
15 talliers to tally the results;
- 16 6. “Stringent signature verifications” will be used including requiring
17 the voter to show an ID if their signature does not match and “no
18 prompting of voter verification system;” and
- 19 7. The hand count process, as well as “ADA compliance” listed under
20 number one, are “stop gap measure[s] while researching alternative
21 solutions.”⁴

22 During this presentation, Kampf provided further details on the hand count process Nye
23 County plans to use during the 2022 General Election and explicitly stated that the process is “very
24 locked in” with no changes to be made. According to Kampf, the counting of ballots will begin on
25 October 25, 2022, and all paper ballots will first be run through a mechanical tabulator. Once the
26 ballots are processed through the mechanical tabulator, all paper ballots will be hand counted. The

27 ³ Minutes, Nye County Board of County Commissioners Meeting, Sept. 20, 2022.

⁴ Nye County Board of Commissioners. *Nye County Board of Commissioners Agenda*.
<https://www.nyecountynv.gov/DocumentCenter/View/41992/Item35>.

1 hand counting team will conduct the count by having the “reader” read out loud the selected
2 candidate for the race from a ballot, the “verifier” verifying that the ballot is being read aloud
3 correctly, and three “talliers” will tally the votes simultaneously. After this process is done for one
4 batch consisting of fifty ballots, the verifier, the reader, and the talliers will check the tallies to
5 determine if they match. If there is a match, all five team members will sign off to that effect. If
6 there is a difference, a recount will be conducted on a special recount tally sheet. The process will
7 be open to the public to view in person, and will also be live streamed so “people at home can
8 become poll watchers.”⁵

10 In light of the presentation and Kampf’s statements on September 20th, several aspects of
11 Kampf’s presented process remain unexplained and pose serious legal questions implicating rights
12 guaranteed under both Nevada and federal law. Outstanding questions include: (1) how Kampf
13 intends to define “special needs” to determine who may use the voting machine; (2) who will
14 determine if an individual voter qualifies as having “special needs” under that definition; (3) what
15 are the “stringent signature verifications” the election workers will use when matching signatures
16 and deciding whether a voter’s ballot will be counted; (4) who will decide when the “stringent
17 signature verifications” are required; and (5) how will the election workers be trained on these
18 “stringent signature verifications”.

20 These drastic departures from safe, accurate, and transparent democratic voting processes
21 stem from the Nye County Board of Commissioners’ call for the clerk of Nye County to “consider
22 administering the 2022 Primary and General elections using only paper ballots and hand-counting
23 the paper ballots.”⁶ Nonetheless, the implementation of this process cannot be permitted given that

26 ⁵ Minutes, Nye County Board of County Commissioners Meeting, Sept. 20, 2022.

27 ⁶ Minutes, Nye County Board of County Commissioners Meeting, Mar. 15, 2022.

1 reading aloud a chosen candidate prior to the close of polls on election day constitutes a release of
2 voting results in violation of NRS 293.3606 and NRS 293.269935, which not only prohibit such
3 action, but criminalize it. The need for such protections is prominent because release of such
4 information is vulnerable to misinformation and can act as a catalyst to dissuade voters who have
5 yet to cast their ballot from voting based on a possibly false sense that their vote may not matter.
6 Moreover, the limitations placed on voters with disabilities and the use of undefined “stringent
7 signature verifications” violate state law, the Nevada Constitution, and federal law.
8

9 Kampf’s proposals are a rushed attempt to circumvent democracy. With just weeks until
10 voting begins, the hand counting process will undoubtedly impede Nye County voters from
11 exercising their right to vote and unravel the election integrity protections currently in place.
12 Petitioners seek mandamus accordingly.

13 PARTIES

14 1. Petitioner/Plaintiff, STEVEN BACUS, is, and was at all times relevant herein, a resident
15 of the State of Nevada, County of Nye, Town of Pahrump. He is a registered voter in Nye County.
16

17 2. Petitioner/Plaintiff, the AMERICAN CIVIL LIBERTIES UNION OF NEVADA, is a
18 domestic nonprofit, non-partisan organization that works to defend and advance the civil liberties
19 and civil rights of all Nevadans operating in the State of Nevada.

20 3. Respondent/Defendant, COUNTY OF NYE, is a governmental entity.

21 4. Respondent/Defendant, MARK KAMPF, is the interim clerk of Nye County and is the
22 primary election administrator for Nye County.
23

24 JURISDICTION & VENUE

25 5. The transactions and occurrences that give rise to the Petitioners’ claims against
26 Respondents occurred in Nye County, Nevada.
27

1 6. This Court has the authority to grant the writ relief requested herein pursuant to NRS
2 34.160.

3 7. This Court has original subject matter jurisdiction over this request for declaratory and
4 injunctive relief under Article 6, Section 6, of the Constitution of the State of Nevada.⁷

5 8. Venue is proper in this Court pursuant to NRS 13.020 and 13.040 because the cause, or
6 some part thereof, arose in Nye County, Nevada. Additionally, Respondents operate and/or reside
7 in Nye County.
8

9 STANDING

10 9. A petitioner has standing in a proceeding on an extraordinary writ when the petitioner has
11 a “beneficial interest” in obtaining writ relief. “[A] beneficial interest sufficient to pursue a
12 mandamus action” is a “substantial interest that falls within the zone of interests to be protected
13 by the legal duty asserted.”⁸ In other words, the writ of mandamus must be denied if the petitioner
14 will gain no direct benefit from its issuance and suffer no direct detriment if it is denied.⁹
15

16 10. Petitioner Bacus has standing as a Nye County voter impacted by Nye County’s proposed
17 policies.

18 11. The citizens of Nye County, including the ACLU of Nevada’s members who reside in Nye
19 County, face the imminent risk of having their fundamental rights as voters infringed upon and not
20 having their vote counted. The ACLU of Nevada has standing in this matter because a) its members
21 would otherwise have standing to sue in their own right; b) the interests it seeks to protect are
22 germane to the organization’s purpose; and c) neither the claim asserted nor the relief requested
23
24
25

26 ⁷ See also NRS 30.030 (Uniform Declaratory Judgments Act).

27 ⁸ *Heller v. Legislature of State of Nev.*, 120 Nev. 456, 460- 61, 93 P.3d 746, 749 (2004) (citing *Lindelli v. Town of San Anselmo*, 111 Cal.App.4th 1099, 4 Cal.Rptr.3d 453, 461 (2003)).

⁹ *Id.* (citing *Waste Management v. County of Alameda*, 79 Cal.App.4th 1223, 94 Cal.Rptr.2d 740, 747 (2000)).

1 requires the participation of individual members in the lawsuit.¹⁰

2 STANDARD OF REVIEW – MANDAMUS

3 12. Writ relief is an extraordinary remedy, and therefore, it is within the court's sound
4 discretion whether to grant such relief.¹¹ "Extraordinary writ relief may be available where there
5 is no 'plain, speedy and adequate remedy in the ordinary course of law.'"¹²

6 13. However, even when a legal remedy is available, the court can "still entertain a petition for
7 writ 'relief where the circumstances reveal urgency and strong necessity.'"¹³

8 14. A writ of mandamus may be issued by the court "to compel the performance of an act
9 which the law especially enjoins as a duty resulting from an office, trust or station; or to compel
10 the admission of a party to the use and enjoyment of a right or office to which the party is entitled
11 and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or
12 person," when there is no plain, speedy, and adequate remedy in the ordinary course.¹⁴

13 15. The court must examine each request for writ relief individually.¹⁵

14 16. The court will generally exercise its discretion to consider an extraordinary writ where an
15 important legal issue that needs clarification is raised or to promote judicial economy and
16 administration.¹⁶

17
18
19
20 ¹⁰ "[W]e have recognized that an association has standing to bring suit on behalf of its members when: (a) its members
21 would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the
22 organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of
individual members in the lawsuit." *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343, 97 S.Ct.
2434, 53 L.Ed.2d 383 (1977). *Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, 992 F.3d 1299,
1316 (11th Cir. 2021)

23 ¹¹ *Segovia v. Eighth Judicial Dist. Court*, 133 Nev. 910, 911, 407 P.3d 783, 785 (2017).

24 ¹² *Id.* (quoting NRS 34.170 and NRS 34.330).

25 ¹³ *Id.* (quoting *Barngrover v. Fourth Judicial Dist. Court*, 115 Nev. 104, 111, 979 P.2d 216, 220 (1999)).

26 ¹⁴ "The writ may be issued by ... a district court or a judge of the district court, to compel the performance of an act
27 which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a
party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully
precluded by such inferior tribunal, corporation, board or person. When issued by a district court or a judge of the
district court it shall be made returnable before the district court." NRS 34.160; NRS 34.170.

¹⁵ *Jeep Corp. v. Second Judicial Dist. Court*, 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982).

¹⁶ *State Office of the Attorney General v. Justice Court of Las Vegas Township*, 133 Nev. 78, 80, 392 P.3d 170, 172
(2017).

1 17. When a petition for extraordinary relief involves a question of first impression that arises
2 with some frequency, the interests of sound judicial economy and administration favor
3 consideration of the petition.¹⁷

4 CLAIMS FOR RELIEF

5 **I. WRIT OF MANDAMUS**

6 18. Here, there is no plain, speedy and adequate remedy in the ordinary course of law.

7
8 19. There is no other method to challenge the unlawful process of counting ballots in Nye
9 County as presented and described by Kampf.

10 **A. The hand counting process violates NRS 293.3606 and NRS 293.269935 as it would** 11 **reveal election results prior to the time permitted.**

12 20. The Nevada Legislature has conferred a duty upon county clerks to follow certain
13 procedures when administering elections.

14 21. The Nevada Legislature has set clear mandates regarding the release of election results as
15 well as procedures pertaining to the counting of ballots.

16 22. NRS 293.269925(1) vests the county clerk with the power to establish procedures for the
17 processing and counting of mail ballots.

18 23. NRS 293.269925(2) explicitly states that such procedures must not conflict with
19 293.269935, among other state laws.

20
21 24. NRS 293.269935 states that no voting results of mail ballots may be released until all
22 polling places are closed and all votes have been cast on the day of the election. Any person who
23 disseminates to the public in any way information pertaining to the count of mail ballots before all
24 polling places are closed and all votes have been cast on the day of the election is guilty of a
25

26
27 ¹⁷*A.J. v. Eighth Judicial District Court in and for County of Clark*, 2017, 394 P.3d 1209, 133 Nev. 202, quoting *Cote*
H. v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, 124 Nev. 36, 175 P.3d 906 (2008).

1 misdemeanor.

2 25. Similarly, NRS 293.3606 states that the returns for early voting must not be reported until
3 after the polls have closed on election day. Any person who disseminates to the public information
4 relating to the count of returns for early voting before the polls close is guilty of a gross
5 misdemeanor.

6 26. Both statutes criminalize the dissemination of information pertaining to the results of the
7 returns before all polling places close on election day and an individual engaging in such acts is
8 guilty of, at minimum, a misdemeanor.¹⁸
9

10 27. When counting ballots, the process must be conducted in public, open to observation.¹⁹

11 28. Nevada permits the processing of ballots, in public, prior to election day in *only* the
12 following circumstances:

- 13 1. Mail-ballots can be processed 15 days before the day of the election;
14 and²⁰
15 2. the returns for early voting can be counted by the counting board
16 starting at 8 a.m. on election day.²¹

17 29. However, Nevada law is clear that the returns of these counts, for both mail-in ballots and
18 early voting returns, ***must not*** be reported until the polls have closed on election day.²²

19 30. The current process, followed throughout the state and the country, uses mechanical voting
20 systems, and its processing of ballots prior to the closing of polls on election day complies with
21 both the public counting aspect of the law and not releasing *any* information pertaining to the count
22

23
24 ¹⁸ See Nev. Rev. Stat. § 293.269931(3); Nev. Rev. Stat. § 293.3606(5).

25 ¹⁹ See Nev. Rev. Stat. § 293.363(1): “When the polls are closed, the counting board shall prepare to count the ballots
voted. The counting procedure must be public and continue without adjournment until completed.”

26 ²⁰ Nev. Rev. Stat. § 293.269931.

27 ²¹ Nev. Rev. Stat. § 293.3606.

²² Nev. Rev. Stat. § 293.269931(3): “No voting results of mail ballots may be released until all polling places are
closed and all votes have been cast on the day of the election”; Nev. Rev. Stat. § 293.3606(2): “The returns for early
voting must not be reported until after the polls have closed on election day.”

1 prior to the close of polls on election day.

2 31. Compliance with both of these laws can be achieved simultaneously because mechanical
3 tabulators are programmed not to produce sums until election night, and the results of the election
4 are not printed until the closing of polls on election day.²³

5 32. As further assurance of compliance with these laws, federal law requires that all voting
6 systems certified to the latest federal Voluntary Voting System Guidelines have the capability to
7 process ballots *without* printing the tallies before polls close.²⁴

8 33. Mr. Kampf's current process for hand counting will be public, as required by Nevada state
9 law.²⁵ It involves a reader reading aloud the selected candidate for office, a verifier to assure that
10 it is being read correctly and that the tallies are marked correctly, and three tallies to mark a tally
11 for the vote.²⁶

12 34. However, Kampf's proposed plan does not and cannot comply with all provisions of state
13 and federal law.

14 35. The "reader" verbally stating aloud the elected candidate of a particular office on the ballot
15 will reveal election results prior to the time permitted in violation of NRS 293.269935 and NRS
16 293.3606.

17 36. This is because observers of the hand counting will hear the selected candidate, as will
18 viewers at home watching the live stream of the count.

19 37. On the other hand, if Mr. Kampf decided to have the reader simply read the elected
20 candidate to themselves, then such a process would not be considered "in public" as required by
21 NRS 293.363.

22
23
24
25 ²³ Bipartisan Policy Center. "Ballot Pre-processing Policies Explained." [https://bipartisanpolicy.org/explainer/ballot-](https://bipartisanpolicy.org/explainer/ballot-pre-processing-explained/)
26 [pre-processing-explained/](https://bipartisanpolicy.org/explainer/ballot-pre-processing-explained/). Accessed on September 20, 2022.

27 ²⁴ Voluntary Voting System Guidelines 2.0, at 1.1.9-K (2020).

²⁵ Minutes, Nye County Board of County Commissioners Meeting, Sept. 20, 2022.

²⁶ *Id.*

1 38. As such, Mr. Kampf's hand counting process violates Nevada state laws. Oddly, these
2 proposals also subject the "tally team volunteers" to criminal prosecution.

3 39. Mr. Kampf has acknowledged these violations, as it pertains to streaming the hand count
4 live on camera, on the record at the Nye County Board of Commissioners meeting, but nonetheless
5 determined that it is not an issue because it would be a "monumental task for anyone to be able to
6 figure that out."²⁷

7
8 **B. The limitation of ADA touch screens to individuals with "special needs" violates**
9 **the Help America Vote Act (HAVA) and Article 2, Section 1A of the Nevada**
10 **Constitution.**

11 40. Mr. Kampf's procedures for accessibility by elderly and disabled voters include one "ADA
12 touch screen" at each polling location, satisfying HAVA's requirements in that manner.

13 41. However, Mr. Kampf has either failed to take a deeper dive into the requirements of HAVA
14 or has chosen to ignore them, as the plan's limitation of the ADA touch screen to "those with
15 special needs" violates HAVA's mandate that all voting systems be accessible to individuals with
16 disabilities "in a manner that provides the same opportunity for access and participation (including
17 privacy and independence) as for other voters."²⁸

18 42. Nevada's Constitution provides similar requirements: "Each voter who is a qualified
19 elector under this Constitution and is registered to vote [...] has the right: To equal access to the
20 elections system without discrimination, including, without limitation, discrimination on the basis
21 of race, age, disability, military service, employment or overseas residence."²⁹³⁰

22 43. In order to limit the touch screens to those with "special needs," poll workers will inevitably
23 be required to assess whether a voter has such needs by either requesting proof or enquiring the
24

25 ²⁷ *Id.*

26 ²⁸ 42 U.S.C § 15481.

27 ²⁹ Nev. Const. Article 2 § 1A(9).

³⁰ The language of Article 2 § 1A(9) of the Nevada Constitution was codified as part of the "Voter's Bill of Rights" in NRS 293.2546(9).

1 voter about their disability.

2 44. It is unclear what Mr. Kampf means when he says “special needs” as the framing of this
3 language is not legally operative and is insufficiently vague.

4 45. To the extent Mr. Kampf is referring to individuals with disabilities, such inquires violate
5 the privacy of the voter. Separating voters with a disability from those voting on paper ballots, and
6 requiring them to take unnecessary steps to prove they have “special needs” does not create equal
7 access to the elections system as poll workers determining whether someone has a disability,
8 especially given that many disabilities are hidden, will result in qualified voters being turned away
9 at the polls.
10

11 **C. The use of “stringent signature verifications” violate NRS 293.8874 and NRS**
12 **293.277.**

13 46. The use of more “stringent signature verifications,” including “no prompting of voter
14 verification information” and “requir[ing] identification if signature or verification fails,” conflict
15 with the procedure for checking signatures mandated by the legislature under NRS 293.8874 and
16 NRS 293.277.

17 47. Pursuant to NRS 293.8874, clerks are required to check the signature used for the mail
18 ballot against all signatures of the voter available in the records of the clerk.³¹
19

20 48. If at least two employees in the office of the clerk believe there is a reasonable question of
21 fact as to whether the signature used for the mail ballot matches the signature of the voter, the clerk
22 must contact the voter and ask the voter to confirm whether the signature used for the mail ballot
23 belongs to the voter.³²

24 49. Nothing in this section authorizes the clerk to require an identification card if the signature
25
26

27 ³¹ Nev. Rev. Stat. § 293.8874

³² Nev. Rev. Stat. § 293.8874(1).

1 fails.

2 50. In addition to outlining how verification of a signature is conducted, NRS 293.8874 also
3 defines “reasonable question of fact,” and when a “reasonable question of fact” does not exist:

4 For purposes of subsection 1:

5 (a) There is a reasonable question of fact as to whether the
6 signature used for the mail ballot matches the signature of the voter
7 if the signature used for the mail ballot differs in multiple,
8 significant and obvious respects from the signatures of the voter
9 available in the records of the clerk.

10 (b) There is not a reasonable question of fact as to whether the
11 signature used for the mail ballot matches the signature of the voter
12 if:

13 (1) The signature used for the mail ballot is a variation of
14 the signature of the voter caused by the substitution of initials for
15 the first or middle name or the use of a common nickname and it
16 does not otherwise differ in multiple, significant and obvious
17 respects from the signatures of the voter available in the records of
18 the clerk; or

19 (2) There are only slight dissimilarities between the
20 signature used for the mail ballot and the signatures of the voter
21 available in the records of the clerk.

22 Nev. Rev. Stat. § 293.8874.

23 51. Pursuant to NRS 293.277, a registered voter can prove their identity, including when an
24 election worker determines that the voter’s signature does not match the signature on the voter’s
25 application to register to vote, by providing any of the following: 1) the individual’s voter
26 registration card; 2) a driver’s license; 3) an identification card issued by the Department of Motor
27 Vehicles; 4) a military identification card; or 5) any other form of identification issued by a
governmental agency which contains the voter’s signature and physical description or picture.

52. To the extent that Mr. Kampf requires the registered voter to provide a Nevada
identification card only, such a requirement would violate NRS 293.277.

53. Mr. Kampf’s verification process is vague and does not provide explanations as to what
“stringent signature verifications” entails.

II. DECLARATORY JUDGMENT

54. Alternatively,³³ under the Nevada Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, this Court has the power to declare the rights, status and other legal relations of the parties whether or not further relief is or could be claimed, and a declaration may be either affirmative or negative in form and effect, and such declarations have the force and effect of a final judgment or decree.³⁴

55. More specifically, with respect to contracts, statutes, and other writings, NRS 30.040(1) provides:

Any person interested under a deed, written contract or other writings constituting a contract, or whose rights, status, or other legal relations are affected by statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

56. The provisions of the Act are to be liberally construed and administered, and are intended to be remedial, in order to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.³⁵

57. Such declarations have the force and effect of a final judgment or decree.³⁶

58. This matter satisfies the four elements that must be met for declaratory relief to be granted, as described below.³⁷

59. The facts stated above herein reveal a justiciable controversy in which a claim of right is asserted against one who has an interest in contesting it.

³³ See NRCP 8(a)(3).

³⁴ See NRS 30.030.

³⁵ See NRS 30.140.

³⁶ NRS 30.030.

³⁷ *Kress v. Corey*, 65 Nev. 1, 25–26, 189 P.2d 352, 364 (1948).

1 60. The controversy is between persons whose interests are adverse.

2 61. Steven Bacus has a legally protectable interest in the controversy.

3 62. The ACLU of Nevada, specifically its Nye County membership, has a legally protectable
4 interest in the controversy.

5 63. The issue involved in the controversy is ripe for determination as Kampf has repeatedly
6 stated that the election process described herein is final and will be implemented for the November
7 2022 election.

8 64. Petitioners hereby incorporate paragraphs 20- 53, above, as if fully set forth herein.

9 65. As such, Petitioners are requesting that this Court declare that: 1) the verbal announcement
10 of a selected candidate for each race of each ballot prior to the close of polls on election day, in
11 the presence of the public, will result in the release of election results in violation of NRS 293.3606
12 and NRS 293.269935; 2) the limitation of ADA touch screens to individuals with "special needs"
13 does not comply with the Help America Vote Act (HAVA) or Article 2, Section 1A of the Nevada
14 Constitution because it impermissibly permits election workers to enquire about a voter's disability
15 or turn away otherwise eligible voters based on arbitrary decision making; and 3) the use of
16 "stringent signature verifications" violates NRS 293.8874 and NRS 293.277.
17

18 **III. INJUNCTIVE RELIEF**

19 66. Injunctive relief is a historical equitable remedy that has been codified in Nevada law at
20 NRS 33.010.
21

22 67. NRS 33.010 states that an injunction may be granted:
23

24 When it shall appear by the complaint that the plaintiff is
25 entitled to the relief demanded, and such relief or any part
26 thereof consists in restraining the commission or
27 continuance of the act complained of, either for a limited
period or perpetually.

1 When it shall appear by the complaint or affidavit that the
2 commission or continuance of some act, during the
3 litigation, would produce great or irreparable injury to the
4 plaintiff.

5 When it shall appear, during the litigation, that the defendant
6 is doing or threatens, or is about to do, or is procuring or
7 suffering to be done, some act in violation of the plaintiff's
8 rights respecting the subject of the action, and tending to
9 render the judgment ineffectual.

10 68. As discussed above, Petitioners/Plaintiffs are entitled to relief regarding the unlawful
11 processes for the November 2022 election and do not have other adequate remedies at law.

12 69. Failing to grant injunctive relief will cause irreparable injury to Petitioners/Plaintiffs
13 because as registered voters of Nye County, the "hand counting process for the general election in
14 November 2022" will undeniably impede their right to vote and their right to have the results of
15 the election not be released prior to the close of polls on election day.

16 70. This violation is impossible to remedy after the election.

17 71. Petitioners/Plaintiffs request injunctive relief, preventing Nye County from implementing
18 the "Nye County- 2022 General Election Process" and to utilize the same procedures used during
19 the November 2020 general election or the June 2022 primary election.

20 **REQUEST FOR RELIEF**

21 WHEREFORE, Petitioners, Steven Bacus and the ACLU of Nevada ask for the following relief:

- 22 A. A Writ of Mandamus finding that: 1) the verbal announcement of a selected candidate
23 for each race of each ballot prior to the close of polls on election day, in the presence
24 of the public, will result in the release of election results in violation of NRS 293.3606
25 and NRS 293.269935; 2) the limitation of ADA touch screens to individuals with
26 "special needs" does not comply with the Help America Vote Act (HAVA) or Article
27 2, Section 1A of the Nevada Constitution because it impermissibly permits election

1 workers to enquire about a voter's disability or turn away otherwise eligible voters
2 based on arbitrary decision making; and 3) the use of "stringent signature verifications"
3 violates NRS 293.8874 and NRS 293.277.

4 B. All equitable declaratory relief and/or statutory declaratory relief that arises from or is
5 implied by the facts, whether or not specifically requested, including but not limited to
6 a declaration that: 1) the Petitioners/Plaintiffs are entitled to writ/injunctive relief; 2)
7 the verbal announcement of a selected candidate for each race of each ballot prior to
8 the close of polls on election day, in the presence of the public, will result in the release
9 of election results in violation of NRS 293.3606 and NRS 293.269935; 3) the limitation
10 of ADA touch screens to individuals with "special needs" does not comply with the
11 Help America Vote Act (HAVA) or Article 2, Section 1A of the Nevada Constitution
12 because it impermissibly permits election workers to enquire about a voter's disability
13 or turn away otherwise eligible voters based on arbitrary decision making; 4) the use
14 of "stringent signature verifications" violates NRS 293.8874 and NRS 293.277; and 5)
15 Mark Kampf must not conduct the November 2022 general election using the "Nye
16 County- 2022 General Election Process."

17 C. All equitable injunctive relief that arises from or is implied by the facts, whether or not
18 specifically requested, including an injunction enjoining and prohibiting Mark Kampf
19 from implementing the "Nye County- 2022 General Election Process".

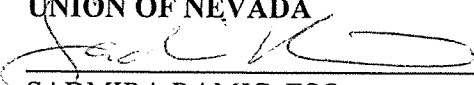
20 D. Award Petitioners their reasonable attorney's fees and costs incurred in this action as
21 provided by NRS 18.010; and

22 E. Such other and further relief as the court deems just and equitable.
23
24
25
26
27

1 Dated this 4th day of October 2022.

2 This document does not contain the Social Security
3 number of any person. Pursuant to NRS 53.045, I
4 declare under penalty of perjury that the foregoing
is true and correct.

5 **AMERICAN CIVIL LIBERTIES**
6 **UNION OF NEVADA**

7 
SADMIRA RAMIC, ESQ.

Nevada Bar No. 15984

8 CHRISTOPHER M. PETERSON, ESQ.

Nevada Bar No. 13932

9 SOPHIA A. ROMERO, ESQ.

Nevada Bar No.: 12446

10 601 South Rancho Drive, Suite B-11

11 Las Vegas, NV 89106

12 Telephone: (702) 366-1226

13 Facsimile: (702) 366-1331

Email: ramic@aclunv.org

14 *Attorneys for Petitioners/Plaintiffs*

EXHIBIT 1

1 **DECL**

2 SADMIRA RAMIC, ESQ.

3 Nevada Bar No.: 15984

4 CHRISTOPHER M. PETERSON, ESQ.

5 Nevada Bar No.: 13932

6 SOPHIA A. ROMERO, ESQ.

7 Nevada Bar No.: 12446

8 **AMERICAN CIVIL LIBERTIES**

9 **UNION OF NEVADA**

601 South Rancho Drive, Suite B-11

Las Vegas, NV 89106

Telephone: (702) 366-1226

Facsimile: (702) 830-9205

Email: ramic@aclunv.org

Attorneys for Petitioners/Plaintiffs

10 **FIFTH JUDICIAL DISTRICT COURT**

11 **NYE COUNTY, NEVADA**

12 AMERICAN CIVIL LIBERTIES UNION OF
13 NEVADA, a domestic nonprofit corporation; and
14 STEVEN BACUS, an individual,

15 Petitioners/Plaintiffs,

16 vs.

17 The COUNTY OF NYE, a governmental entity;
18 and MARK KAMPF, in his official capacity as
19 interim County Clerk,

20 Respondents/Defendants.

Case No.:

Department:

21 **DECLARATION OF THE ACLU OF NEVADA**

22 I, Athar Haseebullah on behalf of the ACLU of Nevada, under penalty of perjury declare:

- 23 1. I am over the age of 18 and I am competent to testify.
- 24 2. I am the Executive Director of the ACLU of Nevada (ACLUNV).
- 25 3. I have personal knowledge of the facts set forth in this declaration.
- 26
- 27

- 1 4. I make this declaration in support of the Petition for Writ of Mandamus and Complaint
2 for Declaratory and Injunctive Relief.
- 3 5. ACLUNV is a non-partisan organization that works to defend and advance the civil
4 liberties and civil rights of all Nevadans.
- 5 6. As the guardian of civil liberties of all Nevadans for over 55 years, ACLUNV has more
6 than 4,000 members in the state of Nevada, including ACLUNV members who reside
7 in Nye County.
- 8 7. ACLUNV remains an organization that represents the rights and interests of voters
9 throughout Nevada, including ACLUNV members who are residents of Nye County
10 and who vote in Nye County elections.
- 11 8. Plaintiff Steven Bacus is an ACLUNV member.
- 12 9. Protecting voting rights, the interest underlying the matter herein, remains germane to
13 our purpose.
- 14 10. ACLUNV is a critical representative for those whose voting rights are impacted via
15 government efforts to interfere with these critical rights. Neither the claim nor the relief
16 herein requires the participation of ACLUNV members.
- 17 11. ACLUNV works to ensure all eligible Nevada voters have the opportunity to cast their
18 vote, that their vote is counted accurately, and that any actions related to elections
19 comply with federal and Nevada state law.
- 20 12. ACLUNV represents our membership, which includes members who are voters with
21 disabilities, many of which are not visible disabilities, and who will suffer harm based
22 on the proposals brought by Nye's interim clerk.
- 23
24
25
26
27

1 13. ACLUNV represents our membership, which includes members who are likely to be
2 election workers in Nye County and who will be forced into unlawful action based on
3 the proposals brought by Nye's interim clerk.

4 *I declare under penalty of perjury that the foregoing is true and correct.*
5

6 Dated October 2, 2022.

7 

8 _____
9 Athar Haseebullah, Esq.
10 Executive Director
11 American Civil Liberties Union of Nevada
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

EXHIBIT 2

DECL

SADMIRA RAMIC, ESQ.
Nevada Bar No.: 15984
CHRISTOPHER M. PETERSON, ESQ.
Nevada Bar No.: 13932
SOPHIA A. ROMERO, ESQ.
Nevada Bar No.: 12446
**AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**
601 South Rancho Drive, Suite B-11
Las Vegas, NV 89106
Telephone: (702) 366-1226
Facsimile: (702) 830-9205
Email: ramic@aclunv.org
Attorneys for Petitioners/Plaintiffs

**FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA**

AMERICAN CIVIL LIBERTIES UNION OF
NEVADA, a domestic nonprofit corporation; and
STEVEN BACUS, an individual,

Case No.:

Department:

Petitioners/Plaintiffs,

vs.

The COUNTY OF NYE, a governmental entity; and
MARK KAMPF, in his official capacity as interim
County Clerk,

Respondents/Defendants.

**DECLARATION OF STEVEN BACUS IN SUPPORT OF PETITION FOR WRIT OF
MANDAMUS ENJOINING NYE COUNTY INTERIM COUNTY CLERK FROM
IMPLEMENTING PROPOSED UNLAWFUL HAND COUNTING MEASURES
DURING THE NOVEMBER 2022 GENERAL ELECTION AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

I, Steven Bacus, under penalty of perjury declare:

1. I am over the age of 18 and I am competent to testify.
2. I have personal knowledge of the facts set forth in this declaration.

3. I make this declaration in support of the Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief.
4. I am, and was at all times relevant hereto, a resident of the State of Nevada, County of Nye, Town of Pahrump.
5. I am lawfully registered to vote in Nye County.
6. I intend to vote during the general election in November 2022.
7. I have an interest in using a mechanical voting system to cast my vote for the general election in November 2022.
8. I am concerned with the potential release of election results prior to the close of polls on election day, including the contents of my own ballot.

I declare under penalty of perjury that the foregoing is true and correct.

Dated October 3, 2022.

DocuSigned by:
STEVEN BACUS
08B452859B1F440
Steven Bacus

FILED
FIFTH JUDICIAL DISTRICT

OCT - 4 2022

Nye County Clerk
Brittani Smith Deputy

IAFD

SADMIRA RAMIC, ESQ.
Nevada Bar No.: 15984
CHRISTOPHER M. PETERSON, ESQ.
Nevada Bar No.: 13932
SOPHIA A. ROMERO, ESQ.
Nevada Bar No.: 12446
**AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**
601 South Rancho Drive, Suite B-11
Las Vegas, NV 89106
Telephone: (702) 366-1226
Facsimile: (702) 830-9205
Email: ramic@aclunv.org
Attorneys for Plaintiff

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

AMERICAN CIVIL LIBERTIES UNION OF
NEVADA, a domestic nonprofit corporation; and
STEVEN BACUS, an individual,

Petitioners/Plaintiffs,

vs.

The COUNTY OF NYE, a governmental entity; and
MARK KAMPF, in his official capacity as interim
County Clerk,

Respondents/Defendants.

Case No.: CV22-0503

Dept. No.: 1

**INITIAL APPEARANCE FEE
DISCLOSURE
(NRS CHAPTER 19)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
parties appearing in the above-entitled action as indicated below:

American Civil Liberties Union of Nevada (ACLUNV) \$245.00

Steven Bacus \$30.00

TOTAL REMITTED: \$275.00

1
2 DATED this 4th Day of October, 20 22
3
4

5 

6 SADMIRA RAMIC, ESQ

Nevada Bar No. 15984

7 SOPHIA A. ROMERO, ESQ

Nevada Bar No. 12446

8 CHRISTOPHER M. PETERSON, ESQ.

Nevada Bar No. 13932

9 **AMERICAN CIVIL LIBERTIES**

10 **UNION OF NEVADA**

601 South Rancho Drive, Suite B-11

11 Las Vegas, NV 89106

12 Telephone: (702) 366-1226

13 Facsimile: (702) 366-1331

14 Email: ramic@aclunv.org

15 *Attorneys for Plaintiff*
16
17
18
19
20
21
22
23
24
25
26

AFFT

American Civil Liberties Union of Nevada
Sadmira Ramic, Esq.
601 S. Rancho Dr. Suite B-11
Las Vegas, NV 89106
State Bar No.: 15984
Attorney(s) for: Petitioners/Plaintiffs

**FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA**

**American Civil Liberties Union of Nevada, a domestic nonprofit
corporation; et al.**

vs

The County of Nye, a governmental entity; et al.

Plaintiff(s)

Defendant(s)

Case No.: **CV22-0503**

Dept. No.: I

Date:

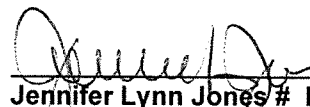
Time:

AFFIDAVIT OF SERVICE

I, Jennifer Lynn Jones, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: District Court Civil Cover Sheet: Emergency Petition for Writ of Mandamus Enjoining Nye County Interim County Clerk from Implementing Proposed Unlawful Hand Counting Measures During the November 2022 General Election and Complaint for Declaratory and Injunctive Relief on the 4th day of October, 2022 and served the same on the 4th day of October, 2022 at 1:20pm by serving the Defendant(s), Mark Kampf, in his official capacity as interim County Clerk by personally delivering and leaving a copy at 1520 E. Basin Ave., Pahrump, NV 89060 with Brittani Smith as Deputy Clerk an agent lawfully designated by statute to accept service of process.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 4th day of October, 2022.



Jennifer Lynn Jones # R-2018-02711

Legal Process Service License # 604

WorkOrderNo **2206907**



1 **AFFT**

American Civil Liberties Union of Nevada
 Samira Ramic, Esq.
 601 S. Rancho Dr., Suite B-11
 Las Vegas, NV 89106
 State Bar No.: 15984
 Attorney(s) for: Petitioners/Plaintiffs

**FIFTH JUDICIAL DISTRICT COURT
 NYE COUNTY, NEVADA**

Case No.: CV22-0503

American Civil Liberties Union of Nevada, a domestic nonprofit
 corporation; et al.

Dept. No.: I

vs

Plaintiff(s)

Date:

The County of Nye, a governmental entity; et al.

Time:

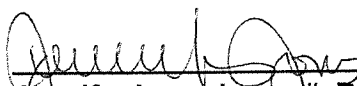
Defendant(s)

**AFFIDAVIT OF
 ATTEMPTED SERVICE**

I, Jennifer Lynn Jones, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within District Court Civil Cover Sheet; Emergency Petition for Writ of Mandamus Enjoining Nye County Interim County Clerk from Implementing Proposed Unlawful Hand Counting Measures During the November 2022 General Election and Complaint for Declaratory and Injunctive Relief on the 4th day of October, 2022 and attempted to effect service on The County of Nye, a governmental entity at 1520 E. Basin Ave., #107, Pahrump, NV 89060 as follows:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
10/04/2022	1:22 pm	As above	Address corresponds to the Nye County District Attorney's office. Affiant spoke to an employee (white male, 60's, 6'02", 210 lbs., grey hair), who said that all service of process for Nye County goes to the Administration Office (2100 E. Walt Williams Dr., Suite 100, Pahrump, NV 89048).

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 4th day of October, 2022.



Jennifer Lynn Jones # R-2018-02711

Legal Process Service License # 604

WorkOrderNo 2209906 **APP0043**



AFFT
 ACLU of Nevada
 Sadmira Ramic, Esq.
 601 S. Rancho Dr., Suite B-11
 Las Vegas, NV 89106
 State Bar No.: 15984
 Attorney(s) for: Petitioners/Plaintiffs

**FIFTH JUDICIAL DISTRICT COURT
 NYE COUNTY, NEVADA**

American Civil Liberties Union of Nevada, a domestic nonprofit corporation; et al.
vs
The County of Nye, a governmental entity; et al.

Plaintiff(s)

Defendant(s)

Case No.: **CV22-0503**

Dept. No.: **I**

Date:

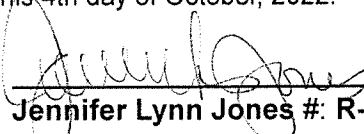
Time:

**AFFIDAVIT OF
 ATTEMPTED SERVICE**

I, Jennifer Lynn Jones, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within District Court Civil Cover Sheet; Emergency Petition for Writ of Mandamus Enjoining Nye County Interim County Clerk from Implementing Proposed Unlawful Hand Counting Measures During the November 2022 General Election and Complaint for Declaratory and Injunctive Relief on the 4th day of October, 2022 and attempted to effect service on The County of Nye, a governmental entity at 2100 E. Walt Williams Dr., Suite 100, Pahrump, NV 89048 as follows:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
10/04/2022	1:40 pm	As above	Address corresponds to the Nye County Administration office. Affiant spoke to Annie (white female, 30's, 5'09", 150 lbs., brown hair), she said that only Frank Carbone or Tim Sutton can accept service of process. She said no one else is authorize to accept legal documents for the county and that Mr. Carbone and Mr. Sutton were going to be in a meeting all day today.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 4th day of October, 2022.



Jennifer Lynn Jones #: R-2018-02711

Legal Process Service License # 604

WorkOrderNo 226906 **APP0044**



1 **AFFT**

2 American Civil Liberties Union of Nevada
 3 Samira Ramic, Esq.
 4 601 S. Rancho Dr., Suite B-11
 5 Las Vegas, NV 89106
 6 State Bar No.: 15984
 7 Attorney(s) for: Petitioners/Plaintiffs

8 **FIFTH JUDICIAL DISTRICT COURT**
 9 **NYE COUNTY, NEVADA**

Case No.: CV22-0503

10 American Civil Liberties Union of Nevada, a domestic nonprofit
 11 corporation; et al.

Dept. No.: I

vs

Plaintiff(s)

Date:

12 The County of Nye, a governmental entity; et al.

Time:

Defendant(s)

13 **AFFIDAVIT OF**
 14 **ATTEMPTED SERVICE**

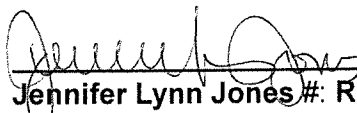
15 I, Jennifer Lynn Jones, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the
 16 within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under
 17 license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the
 18 social security number of any person. That the affiant received the within District Court Civil Cover Sheet; Emergency
 19 Petition for Writ of Mandamus Enjoining Nye County Interim County Clerk from Implementing Proposed Unlawful Hand
 20 Counting Measures During the November 2022 General Election and Complaint for Declaratory and Injunctive Relief on
 21 the 4th day of October, 2022 and attempted to effect service on The County of Nye, a governmental entity at 1520 E. Basin
Ave., #107, Pahrump, NV 89060 as follows:

<u>Date</u>	<u>Time</u>	<u>Address</u>
10/04/2022	1:22 pm	As above

Outcome

Address corresponds to the Nye County District Attorney's office. Affiant spoke to an employee (white male, 60's, 6'02", 210 lbs., grey hair), who said that all service of process for Nye County goes to the Administration Office (2100 E. Walt Williams Dr., Suite 100, Pahrump, NV 89048).

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 4th day of October, 2022.



Jennifer Lynn Jones #: R-2018-02711

Legal Process Service License # 604

WorkOrderNo 2209906 APP0045



AFFT
 ACLU of Nevada
 Sadmira Ramic, Esq.
 601 S. Rancho Dr., Suite B-11
 Las Vegas, NV 89106
 State Bar No.: 15984
 Attorney(s) for: Petitioners/Plaintiffs

**FIFTH JUDICIAL DISTRICT COURT
 NYE COUNTY, NEVADA**

American Civil Liberties Union of Nevada, a domestic nonprofit corporation; et al.
vs
The County of Nye, a governmental entity; et al.

Plaintiff(s)

Defendant(s)

Case No.: **CV22-0503**

Dept. No.: **I**

Date:

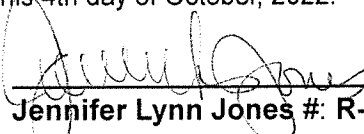
Time:

**AFFIDAVIT OF
 ATTEMPTED SERVICE**

I, Jennifer Lynn Jones, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within District Court Civil Cover Sheet; Emergency Petition for Writ of Mandamus Enjoining Nye County Interim County Clerk from Implementing Proposed Unlawful Hand Counting Measures During the November 2022 General Election and Complaint for Declaratory and Injunctive Relief on the 4th day of October, 2022 and attempted to effect service on The County of Nye, a governmental entity at 2100 E. Walt Williams Dr., Suite 100, Pahrump, NV 89048 as follows:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
10/04/2022	1:40 pm	As above	Address corresponds to the Nye County Administration office. Affiant spoke to Annie (white female, 30's, 5'09", 150 lbs., brown hair), she said that only Frank Carbone or Tim Sutton can accept service of process. She said no one else is authorize to accept legal documents for the county and that Mr. Carbone and Mr. Sutton were going to be in a meeting all day today.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 4th day of October, 2022.



Jennifer Lynn Jones #: R-2018-02711

Legal Process Service License # 604

WorkOrderNo 226306 **APP0046**



1 **AFFT**

2 American Civil Liberties Union of Nevada
3 Sadmira Ramic, Esq.
4 601 S. Rancho Dr. Suite B-11
5 Las Vegas, NV 89106
6 State Bar No.: 15984
7 Attorney(s) for: Petitioners/Plaintiffs

8 **FIFTH JUDICIAL DISTRICT COURT**
9 **NYE COUNTY, NEVADA**

10 **American Civil Liberties Union of Nevada, a domestic nonprofit**
11 **corporation; et al.**

12 **vs**

Plaintiff(s)

13 **The County of Nye, a governmental entity; et al.**

Defendant(s)

Case No.: **CV22-0503**

Dept. No.: I

Date:

Time:

14 **AFFIDAVIT OF SERVICE**

15 I, Jessica Dawn Mayer, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of
16 the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604,
17 and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of
18 the: District Court Civil Cover Sheet; Emergency Petition for Writ of Mandamus Enjoining Nye County Interim
19 County Clerk from Implementing Proposed Unlawful Hand Counting Measures During the November 2022
20 General Election and Complaint for Declaratory and Injunctive Relief on the 7th day of October, 2022 and
21 served the same on the 10th day of October, 2022 at 9:00 am by serving the Defendant(s), The County of Nye, a
22 governmental entity by personally delivering and leaving a copy at Nye County Administration Office, 2100 E. Walt
23 Williams Dr., Suite 100, Pahrump, NV 89048 with Frank Carbone as County Chair an agent lawfully designated by
24 statute to accept service of process.

25 Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

26
27
28
29
30 I declare under penalty of perjury under the law of the State of
31 Nevada that the foregoing is true and correct. Executed on this
32 10th day of October, 2022.

33
34 

35 Affiant – Jessica Dawn Mayer #R-2019-05740
36 Legal Process Service - License # 604

WorkOrderNo 2206906



From: [Frank G. Carbone](#)
To: [Sadmira Ramic](#)
Subject: RE: ACLUNV Follow-up re: attempted service
Date: Friday, October 7, 2022 11:08:20 AM

This Message Is From an Untrusted Sender
You have not previously corresponded with this sender.

Yes

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Sadmira Ramic <ramic@aclunv.org>
Date: 10/7/22 10:07 AM (GMT-08:00)
To: "Frank G. Carbone" <fgcarbone@co.nye.nv.us>
Subject: Re: ACLUNV Follow-up re: attempted service

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Is the County office located at 2100 E Walt Williams Dr., Pahrump, NV 89048?

From: Frank G. Carbone <fgcarbone@co.nye.nv.us>
Sent: Friday, October 7, 2022 9:59 AM
To: Sadmira Ramic <ramic@aclunv.org>
Subject: RE: ACLUNV Follow-up re: attempted service

I will be in the county office Monday 0900 I have meetings that start at 10:00AM.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Sadmira Ramic <ramic@aclunv.org>
Date: 10/7/22 9:31 AM (GMT-08:00)
To: "Frank G. Carbone" <fgcarbone@co.nye.nv.us>
Cc: NyeAdmin <NyeAdmin@co.nye.nv.us>, Athar Haseebullah <haseebullah@aclunv.org>
Subject: RE: ACLUNV Follow-up re: attempted service

APP0048

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Mr. Carbone,

Could you please provide your availability Monday (10/10/'22) through Wednesday (10/12/'22)?

The one-hour notice and small window of time provided for your availability makes it nearly impossible for us to coordinate with the process server.

Thank you,

Sadmira Ramic

From: Frank G. Carbone <fgcarbone@co.nye.nv.us>

Sent: Friday, October 7, 2022 9:11 AM

To: Sadmira Ramic <ramic@aclunv.org>

Subject: RE: ACLUNV Follow-up re: attempted service

I'm going to be at the admin office from 10:am to 11:00

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Sadmira Ramic <ramic@aclunv.org>

Date: 10/5/22 2:46 PM (GMT-08:00)

To: "Frank G. Carbone" <fgcarbone@co.nye.nv.us>, NyeAdmin <NyeAdmin@co.nye.nv.us>

Cc: Athar Haseebullah <haseebullah@aclunv.org>

Subject: ACLUNV Follow-up re: attempted service

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good afternoon,

Our process server recently attempted to serve the County of Nye with an Emergency Petition for Writ of Mandamus and a Complaint for Declaratory and Injunctive Relief (among other related documents) in relation to a lawsuit filed by the ACLU of Nevada in the Fifth Judicial District Court on 10/4/'22. The process server attempted service on two separate occasions:

1. On 10/4/'22 at 1:22 p.m., she attempted to serve the documents at the Nye County District Attorney's Office located at 1520 E. Basin Ave. #107, Pahrump, NV 89060. She spoke to "an employee (white male, 60s, 6'02", 210 lbs., grey hair, who said that all service of process for Nye County goes to the Administration Office located at 2100 E. Walt Williams Dr., Suite 100, Pahrump, NV 89048. "
2. On 10/4/'22 at 1:40 p.m., she attempted to serve the documents at the Nye County Administration Office located at 2100 E. Walt Williams Dr., Suite 100, Pahrump, NV 89048.

APP0049

She spoke with Annie “(white female, 30s, 5’09”, 150 lbs., brown hair) who said that only Frank Carbone or Tim Sutton can accept service of process. She said no one else is authorized to accept legal documents for the county and that Mr. Carbone and Mr. Sutton were going to be in a meeting all day today.”

Given these attempts, could you please provide your availability to accept service?

Thank you,

Sadmira Ramic, Esq. (*she/her*)

Voting Rights Attorney

ACLU of Nevada

Phone: 702-366-1536

Direct: 702-830-9205

Fax: 702-366-1331

601 S. Rancho Drive, Suite B-11 | Las Vegas, Nevada 89106

FILED
FIFTH JUDICIAL DISTRICT

OCT 12 2022

Judy Ayotte County Clerk
Deputy

1 CASE NO. CV22-0503
2 DEPT. 1

3
4 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5
6 IN AND FOR THE COUNTY OF NYE

7 AMERICAN CIVIL LIBERTIES UNION
8 OF NEVADA, a domestic nonprofit
9 corporation; and STEVEN BACUS,
an individual,

10 Petitioners/Plaintiffs,

11 vs.

12 The COUNTY OF NYE, a governmental
13 Entity; and MARK KAMPF, in his official
14 capacity as interim County Clerk

15 Respondents/Defendants.
16 _____/

**ORDER DENYING WRIT OF
MANDAMUS, DECLARATORY
RELIEF, INJUNCTIVE RELIEF**

17 On October 4, 2022, Petitioners/Plaintiffs American Civil Liberties Union of
18 Nevada (ACLU), and Steven Bacus (Bacus), filed an Emergency Petition seeking (1) a
19 Writ of Mandamus, (2) a Declaratory Judgment; and/or (3) a Preliminary Injunction.

20 The ACLU and Bacus claim that the process and procedures outlined by Interim
21 Nye County Clerk Mark Kampf (Kampf) for conducting the 2022 General Election in
22 Nye County violates the Nevada Constitution and federal and state law.

23 The crux of the argument against the Nye County process and procedures
24 consists of alleged representations made by Kampf in his verbal presentation to the
25 Nye County Board of County Commissioners at the September 20, 2022, BOCC
26 meeting.
27
28

Fifth Judicial District Court
ESMERALDA AND NYE COUNTIES





1 All Nye County BOCC meetings are streamed live and are recorded.
2 Recordings can be obtained from Nye County for individual agenda items.
3 Unfortunately, the Petitioners/Plaintiffs did not provide a copy of Kampf's presentation
4 with their Emergency Petition. Instead, a footnote in the Emergency Petition
5 references the September 20, 2022, agenda item.
6

7 This Court's review of Kampf's verbal presentation is critical to analyzing the
8 various issues raised in the Emergency Petition. Yet neither a written transcript nor a
9 recording was provided to the Court of said presentation. It is unreasonable for
10 Petitioners/Plaintiffs to require the Court to access the September 20, 2022, BOCC
11 meeting from the Nye County website and watch a 7 hour and 23 minute video to find
12 Kampf's presentation. As the Seventh Circuit Court of Appeals observed in the now
13 famous maxim, "[j]udges are not like pigs, hunting for truffles buried in briefs." United
14 States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991). It is not the Court's obligation to
15 search through the internet references presented in the Emergency Petition to locate
16 the information Petitioners/Plaintiffs want the Court to review.
17

18 It should also be noted that while Petitioners/Plaintiffs seek a preliminary
19 injunction, there is no certificate of service in the file, indicating
20 Respondents/Defendants were served with the Emergency Petition. Moreover, no
21 explanation has been provided to the Court as to why Petitioners/Respondents need a
22 Court decision without giving the Respondents/Defendants proper notice of the same.
23

24 Based upon the forgoing, Petitioners/Plaintiffs relief is DENIED.

25 DATED this 12th day of October 2022.

26
27 
28 KIMBERLY A. WANKER
DISTRICT JUDGE

Fifth Judicial District Court
ESMERALDA AND NYE COUNTIES



CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 11TH day of October 2022, she mailed vis US mail (email or hand delivery) copies of the foregoing **ORDER** to the following:

- Sadmira Ramic, Esq.
American Civil Liberties
Union Of Nevada
601 South Rancho Drive, Suite B-11
Las Vegas, NV 89106
Facsimile: (702) 830-9205
Email: ramic@aclunv.org
- Nye County Board of County Commissioners
Pahrump, NV 89060
(Hand Delivered)
- Mark Kampf, Nye County Clerk
Pahrump, NV 89060
(Hand Delivered)
- Nye County District Attorney
Pahrump, NV 89060
(Hand Delivered)

Christel Raimondo
CHRISTEL RAIMONDO, JEA to
DISTRICT JUDGE

AFFIRMATION

The undersigned hereby affirms that this Court Order does not contain the social security number of any person.

Christel Raimondo
CHRISTEL RAIMONDO, JEA to
DISTRICT JUDGE

**DECLARATION OF STEVEN BACUS IN SUPPORT OF WRIT OF
MANDAMUS**

I, Steven Bacus, under penalty of perjury declare:

1. I am over the age of 18 and I am competent to testify.
2. I have personal knowledge of the facts set forth in this
declaration.
3. I make this declaration in support of the Petition for Writ of
Mandamus.
4. I am, and was at all times relevant hereto, a resident of the
State of Nevada, County of Nye, Town of Pahrump.
5. I am lawfully registered to vote in Nye County.
6. I intend to vote during the general election in November 2022.
7. I have an interest in using a mechanical voting system to cast
my vote for the general election in November 2022.

///

///

///

///

///

8. I am concerned with the potential release of election results
prior to the close of polls on election day, including the contents
of my own ballot.

I declare under penalty of perjury that the foregoing is true and correct.

Dated October 14, 2022.

DocuSigned by:
STEVEN BACUS
08B452859B1F440...

Steven Bacus

**DECLARATION OF AMERICAN CIVIL LIBERTIES UNION IN
SUPPORT OF WRIT OF MANDAMUS**

I, Athar Haseebullah, under penalty of perjury declare:

1. I am over the age of 18 and I am competent to testify.
2. I am the Executive Director of the American Civil Liberties Union (ACLU) of Nevada.
3. I have personal knowledge of the facts set forth in this declaration.
4. I make this declaration in support of the Petition for Writ of Mandamus.
5. ACLU of Nevada is a non-partisan organization that works to defend and advance the civil liberties and civil rights of all Nevadans.
6. As the guardian of civil liberties of all Nevadans for over 55years, ACLU of Nevada has more than 4,000 members in the state of Nevada, including ACLU of Nevada members who reside in Nye County.
7. ACLU of Nevada is an organization that represents the rights and interests of voters throughout Nevada, including ACLU of

Nevada members who are residents of Nye County and who vote in Nye County elections.

8. Plaintiff Steven Bacus is an ACLU of Nevada member.
9. Protecting voting rights, the interest underlying herein, remains germane to our purpose.
10. ACLU of Nevada is a critical representative for those whose voting rights are impacted via government efforts to interfere with these critical rights. Neither the claim nor the relief herein requires the participation of ACLU of Nevada members.
11. ACLU of Nevada works to ensure that all eligible Nevada voters have the opportunity to cast their vote, that their vote is counted accurately, and that any actions related to elections comply with federal and Nevada state law.
12. ACLU of Nevada represents our membership, which includes members who are voters with disabilities, many of which are not visible disabilities and who will suffer harm based on the proposals brought by Nye's interim clerk.
13. ACLU of Nevada represents our membership, which includes members who are likely to be election workers in Nye

County and required to perform unlawful actions based on the
election procedures proposed by Nye's interim clerk.

I declare under penalty of perjury that the foregoing is true and correct.

Dated October 14, 2022.



Athar Haseebullah, Esq.
Executive Director
American Civil Liberties Union of Nevada

**DECLARATION OF SADMIRA RAMIC IN SUPPORT OF WRIT
OF MANDAMUS**

I, Sadmira Ramic, under penalty of perjury declare:

1. I am over the age of 18 and I am competent to testify.
2. I am an attorney at the ACLU of Nevada (ACLUNV).
3. I have personal knowledge of the facts set forth in this declaration.
4. I make this declaration in support of the Petition for Writ of Mandamus.
5. I filed a petition for writ of mandamus enjoining the Nye County Interim County Clerk from implementing proposed unlawful hand counting measures during the November 2022 general election and a complaint for declaratory and injunctive relief on Oct. 4, 2022, in the 5th Judicial District Court.
6. In accordance with Nev. Rule of Civil Procedure 5(b)(4), which is applicable to Petitions for a Writ of Mandamus in district court, under Nev. Rev. Stat. 34.300, I then instructed a process server to serve respondent Nye County in that matter.
7. The process server attempted to serve Nye County on October 4, 2022 at 1:22pm, at 1520 E. Basin Ave. #107 Pahrump, NV 89060, but was told that nobody at the location could receive service, and to go to the administrative office at 2100 E. Walt Williams Drive Suite 100 Pahrump, NV 89048.
8. The process server attempted to serve Nye County on October 4, 2022 at 1:40pm at 2100 E. Walt Williams Drive Suite 100 Pahrump, NV 89048, but was told that only two persons could receive service and that both were in a meeting all day and therefore unavailable.
9. I emailed Frank G. Carbone and Tim Sutton on October 5, 2022 at 2:46 p.m. requesting to know when Nye County could be served.

10. Tim Sutton did not respond to my email.
11. Frank G. Carbone did not respond to my email until October 7, 2022 at 9:11 a.m. The time he provided was in just under an hour from 10 a.m. on that same date.
12. I informed Frank G. Carbone via email that this was too short notice, and requested that he provide a time Nye County could accept service between Monday Oct. 10, 2022 and Wednesday Oct. 12, 2022.
13. Frank G. Carbone replied with a time, and Nye County was served by process server on Monday October 10, 2022 at 9 a.m.
14. The 5th Judicial District Court denied the petition for writ of mandamus on the morning of October 12, 2022.
14. I received the affidavit of service for Nye County from the process server after the 5th Judicial District Court had issued its order, later on October 12, 2022.
15. I sent the abovementioned October 10, 2022 proof of service, as well as October 4, 2022 proof of service on respondent Mark Kampf via certified mail to the 5th Judicial District Court on October 14, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Dated October 14, 2022.

/s/ Sadmira Ramic

Sadmira Ramic