



MARQUIS AURBACH COFFING

DIRECT LINE: (702)207-6097
DIRECT FAX: (702) 382-5816
EMAIL: BHARDY@MACLAW.COM

ALBERT G. MARQUIS
PHILLIP S. AURBACH
AVECE M. HIGBEE
TERRY A. COFFING
SCOTT A. MARQUIS
JACK CHEN MIN JUAN
CRAIG R. ANDERSON
TERRY A. MOORE
GERALDINE TOMICH
NICHOLAS D. CROSBY
TYE S. HANSEEN
DAVID G. ALLEMAN
CODY S. MOUNTEER
CHAD F. CLEMENT
CHRISTIAN T. BALDUCCI

JARED M. MOSER
MICHAEL D. MAUPIN
KATHLEEN A. WILDE
JACKIE V. NICHOLS
RACHEL S. TYGRET
JORDAN B. PEEL
JAMES A. BECKSTROM
COLLIN M. JAYNE
ALEXANDER K.
CALAWAY
SCOTT W. CARDENAS
SUSAN E. GILLESPIE

JOHN M. SACCO [RET.]
LANCE C. EARL
WILLIAM P. WRIGHT
BRIAN R. HARDY
JENNIFER L. MICHELI
OF COUNSEL

October 25, 2020

Via email to counsel at GZunino@ag.nv.gov

Secretary of State
Attn: Barbara K. Cegavske
Nevada State Capitol Building
101 North Carson Street, Suite 3
Carson City, NV 89701

RE: Protecting the Legitimacy of Nevada's 2020 General Election

Dear Secretary Cegavske,

As you know, we represent Donald J. Trump for President, Inc. and the Nevada Republican Party. We seek your immediate intervention to protect the legitimacy of Nevada's 2020 general election. Every Nevadan has a sacred and Constitutional right to vote – and to ensure that his or her vote is not negated by a fraudulent or otherwise improper ballot. But that right is in danger because a Clark County official refuses to process and tabulate mail ballots in an open and transparent manner.

We filed an Emergency Petition for Writ of Mandamus (“Petition”) challenging certain of the election procedures utilized by Joseph P. Gloria, the Registrar of Voters for Clark County (“Registrar Gloria”). The Petition is now pending in the First Judicial District Court for Carson City and is set for hearing this coming Wednesday, October 28. But this matter cannot wait until then. By the time our Petition is adjudicated, many of the violations we are addressing will have occurred—and it will be too late to correct them. The People of Nevada need your help now.

This letter focuses on an issue of immediate urgency: Signature verification of mail ballots to ensure that every ballot counted in this election was properly cast. What is occurring in Clark County constitutes a grave violation not only of Assembly Bill 4, the emergency election legislation enacted in August (“AB4”), but also of the Nevada and United States Constitutions.

Specifically, Registrar Gloria has implemented an improper and, we believe, unlawful process that:

1. Fails to implement the signature verification procedure for mail ballots that expressly is required by AB4;
2. Fails to afford meaningful public observation of the mail ballot signature verification process;
3. Fails to afford an opportunity to challenge the decision of Registrar Gloria to count a mail ballot; and
4. Constitutes willful spoliation of evidence by permanently separating each mail ballot from the signature used for that mail ballot—thereby forever preventing review or adjudication of the statutory signature verification process.

This matter is of utmost urgency because Registrar Gloria’s improper and unlawful signature verification process is proceeding apace. Indeed, we understand that at least 200,000 mail ballots already have been processed in Clark County, and this is continuing on an hourly and daily basis. If you do not immediately put a temporary stop to this fundamental violation of the rights of Nevada citizens, the veracity of our election will be grievously and permanently undermined.

Section 23 of AB4 expressly requires that, with respect to each mail ballot received, “the clerk or an employee in the office of the clerk shall check the signature used for the mail ballot.” Although Section 22 generally permits “mail ballots to be processed and counted by electronic means,” any such electronic processing may not “conflict with the provisions of sections 2 to 27, inclusive, of this act.” Thus AB4 does not permit the use of a machine to check mail ballot signatures in circumvention of the express requirement in Section 23 that this critically important function be conducted manually by “the clerk or an employee in the office of the clerk.”

Registrar Gloria is violating this express statutory mandate by utilizing an Agilis Ballot Packing Sorting System (“Agilis System”) to check signatures used for mail ballots. This is improper. Worse, and as alleged in our Petition, Registrar Gloria has set the Agilis System to a far lower tolerance setting—just 40 percent—than that recommended by its manufacturer to guard against forgeries and other improper signatures. As a result, Clark County has identified mismatched signatures at a far lower rate than the mismatch rate in other counties. For example, Clark County’s mismatch rate is only about one-third the mismatch rate in Churchill County. This is highly suspicious on its face.

More than five decades ago, our Supreme Court held that election officials lack authority to undertake any action contrary to governing statute or regulation. *Kelly v. Murphy*, 79 Nev. 1 (1963). Any such unauthorized conduct is a “futile act” and thus void as a matter of law. *Id.* at 4. Accordingly, as AB4 expressly requires that mail ballot signatures be checked by “the clerk or an employee of the clerk,” Registrar Gloria’s use of the Agilis System purportedly to check mail

October 25, 2020

Page 3

ballot signatures has been futile. Simply put, there has been no valid and lawful verification of these signatures to date.

Moreover, even as to the unnaturally low number of signature mismatches identified by the Agilis System which then are manually checked ostensibly in the manner required by Section 23, Registrar Gloria has failed to afford any meaningful public observation of that process. This constitutes a serious violation of the Constitutional and statutory rights of Nevada citizens to ensure a proper and lawful election.

Further, Registrar Gloria has failed to afford the public an opportunity to challenge the decision of Registrar Gloria or his employees that the signature used for a mail ballot matches “all signatures of the voter available in the records of the clerk” as required by AB4 Section 23.1(a) – and, on that basis, count the mail ballot. Without a procedure to challenge these inherently subjective decisions the public is excluded from effective participation in this critically important process.

Finally, and perhaps most egregiously, Registrar Gloria has mandated that, once the signature for a mail ballot has been “checked”—whether by the Agilis System or the manual system required by Section 23—the signature used to verify the signed and authenticatable envelope is permanently and irretrievably separated from the ballot itself, thereby rendering retrospective review and possible adjudication effectively impossible. Registrar Gloria is well aware of our position and thus appears to be proceeding with the specific intention of harming our ability to review his oversight of this election. As a matter of law, therefore, Registrar Gloria’s deliberate spoliation of evidence creates a presumption that the evidence he willfully and improperly is destroying would have been harmful to him. *See, e.g., Bass-Davis v. Davis*, 122 Nev. 422 (2006).

Secretary Cegavske, the time to act is now. There will be no future opportunity to correct these serious legal violations and thereby preserve the sanctity of our election. Please exercise your authority as Secretary of State to safeguard our election by requiring Registrar Gloria to immediately cease and desist from any further signature verification of mail ballots unless and until the foregoing deficiencies are adequately and permanently rectified.

Sincerely,

MARQUIS AURBACH COFFING

A handwritten signature in black ink, appearing to read "B.R. Hardy". The signature is stylized with a large, looped initial "B" and a distinct "H" at the end.

Brian R. Hardy, Esq.

Cc: Joe Gloria via email to counsel at Mary-Anne.Miller@clarkcountyda.com