

1 AARON D. FORD  
Attorney General  
2 GREGORY L. ZUNINO, Bar No. 4805  
Deputy Solicitor General  
3 CRAIG A. NEWBY, Bar No. 8591  
State of Nevada  
4 100 N. Carson Street  
Carson City, Nevada 89701-4717  
5 (775) 684-1237  
[glzunino@ag.nv.gov](mailto:glzunino@ag.nv.gov)  
6 [cnewby@ag.nv.gov](mailto:cnewby@ag.nv.gov)

7 *Attorneys for Barbara Cegavske*

8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 JILL STOKKE, an individual, CHRIS  
PRUDHOME, an individual, MARCHANT  
11 FOR CONGRESS, RODIMER FOR  
CONGRESS,

12 Plaintiffs,

13 vs.

14 SECRETARY OF STATE BARBARA  
CEGAVSKE, in her official capacity, and  
15 CLARK COUNTY REGISTRAR OF  
VOTERS JOSEPH P. GLORIA, in his  
16 official capacity,

17 Defendants.  
18

Case No. 2:20-cv-02046-DJA

**OPPOSITION TO PLAINTIFFS’  
EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

19 Defendant Barbara Cegavske in her official capacity as Nevada Secretary of State, by and  
20 through counsel of record Gregory L. Zunino, Deputy Solicitor General and Craig A. Newby, Deputy  
21 Solicitor General hereby submit this opposition to Plaintiffs’ Motion.

22 DATED this 6th day of November, 2020.

23 AARON D. FORD  
Attorney General  
24 By: Craig A. Newby  
25 GREGORY L. ZUNINO, Bar #4805  
Deputy Solicitor General  
26 CRAIG A. NEWBY, Bar #8591  
Deputy Solicitor General  
27 Tel: (775) 684-1237  
[gzunino@ag.nv.gov](mailto:gzunino@ag.nv.gov)  
[cnewby@ag.nv.gov](mailto:cnewby@ag.nv.gov)

28 *Attorneys for Defendant Barbara Cegavske, in her  
official capacity as Nevada Secretary of State*

1 Secretary of State Barbara Cegavske opposes Plaintiffs' Emergency Motion for  
2 Temporary Restraining Order and Preliminary Injunction. The Secretary's opposition is  
3 made and based upon all matters of record herein, the Memorandum of Points and  
4 Authorities submitted herewith, and upon such oral arguments as the court may allow at  
5 the time of hearing of this matter.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Premised on purported violations of Nevada statute that were rejected in Nevada  
9 state district court and pending before the Nevada Supreme Court, Plaintiffs seek  
10 emergency relief from this federal court to stop Clark County's continued processing and  
11 counting of mail ballots. Instead of attempting to surmise how the Nevada Supreme  
12 Court would resolve Nevada law, this court should abstain from considering this case.

13 Even if this court chose to undertake an independent examination of Nevada law,  
14 nothing proffered by Plaintiffs requires injunctive relief. "A preliminary injunction is an  
15 extraordinary remedy never awarded as of right." *Winter v. Natural Res. Def. Council,*  
16 *Inc.*, 555 U.S. 7, 24 (2008). Here, the *Winter* factors, specifically Plaintiffs' unevidenced,  
17 unmeritorious legal arguments and the weighing of the public interest and the equities do  
18 not support granting injunctive relief.

19 **II. REVIEW OF THE EMERGENCY MOTION AND THE UNDERLYING**  
20 **COMPLAINT**

21 In their complaint, Plaintiffs Jill Stokke, Chris Prudhome, Marchant for Congress  
22 and Rodimer for Congress make unsupported allegations pertaining to Clark County's  
23 conduct of the 2020 election. *See* Compl. at ¶ 11.<sup>1</sup> In this motion, Plaintiffs make two sets  
24 of allegations.

25 First, Plaintiff Stokke alleges that someone else cast her mail vote without her  
26 knowledge, a potential felony under Nevada Revised Statute 293.775, when she  
27

---

28 <sup>1</sup> Plaintiffs have not proffered evidence for these allegations and do not merit a  
response until or unless they do so.

1 attempted to early vote.<sup>2</sup> The Secretary of State’s Office independently investigated Ms.  
2 Stokke’s complaint. Rather than affirm that she had not submitted the mail ballot in  
3 writing (effectively challenging the prior vote) to receive a provisional ballot, Ms. Stokke  
4 refused because she did not feel she could implicate someone else for a crime. Instead of  
5 addressing this allegation on one ballot, Ms. Stokke seeks to stop all continued use of the  
6 Agilis machine on an emergency basis for Clark County in its entirety. This is absurd and  
7 must be rejected by this court.

8 Second, Plaintiff Prudhome, alleges that he was an observer for the Trump  
9 Campaign and a credentialed member of the media at the same time. *See* Prudhome Decl.  
10 at ¶ 2 (Trump observer), ¶4 (media).<sup>3</sup> Nevada statute specifically distinguishes observers  
11 from the media. NRS 293.274(3). Further, Nevada statute does not authorize observers or  
12 media to take pictures of the ballot counting. Instead, should the county record or  
13 photograph ballot counting, a registered voter may submit a request for any such  
14 recording or photograph. NRS 293B.353(3). After not being allowed to be a Trump  
15 observer and media at the same time, Prudhome alleges that Clark County staff told him  
16 “they would be counting for an hour and a half,” but “after just a few minutes, they  
17 ordered all of us observers out.” *Id.* at ¶ 6. He does not allege that the tabulation  
18 continued without observers that evening.<sup>4</sup> Based on that unstated and unsupported  
19 allegation, Prudhome seeks an injunction to “be required to allow meaningful access to  
20  
21  
22

---

23 <sup>2</sup> Voting twice also violates Nevada statute. *See* NRS 293.780.

24 <sup>3</sup> Per internet research, Mr. Prudhome is the president of Sunvision Strategies, a  
25 firm that works on political and corporate strategies and strategic communications. He  
26 also works to engage millennials and minorities in the voting process and has appeared  
27 frequently on Fox News Channel. *See* <https://www.foxnews.com/person/p/chris-prudhome>

28 <sup>4</sup> Plaintiffs’ counsel makes additional allegations pertaining to Mr. Prudhome  
without specifying how he would have “personal knowledge” of these items. *See* Mot. at  
3:11-20. None of these allegations, such as an attempted denial of “entry to the office,”  
screens being “all turned off and faced away from him,” or election officials asking “law  
enforcement to remove him from the building,” were attested to by Mr. Prudhome  
himself.

1 the ballot counting process.” Mot. at 8:1-3. Clark County has already agreed to provide  
 2 additional access, as part of a voluntary dismissal of a Nevada state court case.<sup>5</sup>

3 It is under these extraordinary circumstances that Plaintiffs seek extraordinary  
 4 injunctive relief premised on this court’s interpretation of Nevada statute. The court  
 5 should abstain from doing so. Alternatively, Plaintiffs fail to meet their evidentiary  
 6 burden to obtain extraordinary relief.

### 7 **III. STANDARD OF REVIEW**

8 “A preliminary injunction is an extraordinary remedy never awarded as of right.”  
 9 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Plaintiffs otherwise  
 10 correctly identify that they “must establish” four factors, including a likelihood of success  
 11 on the merits.

### 12 **IV. LEGAL ANALYSIS**

#### 13 **A. Plaintiffs are Highly Unlikely to Succeed on their Speculative** 14 **Claims, which Lack a Factual or Legal Basis<sup>6</sup>**

15 First, Plaintiffs do not have a valid Elections Clause claim because Clark County’s  
 16 use of the Agilis machine complies with Nevada statute. Section 22(2)(a) of Assembly Bill  
 17 4 specifically allows Clark County’s registrar to authorize “mail ballots to be processed  
 18 and counted by electronic means.” Section 23 does not specify by what method “the clerk  
 19 or an employee in the office of the clerk shall check the signature used for the mail  
 20 ballot,” only that the first step shall be to “check the signature used for the mail ballot  
 21 against all signatures of the voter available in the records of the clerk.” This is exactly  
 22 what Clark County does with its use of the Agilis machine. The state district court  
 23 rejected this identical argument, finding it meritless. *See* October 29 Order at 12:20-24, a  
 24 true and correct copy of which is attached hereto as **Exhibit B**.

---

25 <sup>5</sup> A true and correct copy of the Nevada Supreme Court filing is attached hereto as  
 26 **Exhibit A**.

27 <sup>6</sup> Plaintiffs also contend that there is no adequate legal remedy. Mot. at 6:18-23.  
 28 Not true. Plaintiff Stokke has an adequate remedy at law pertaining to her vote –  
 challenging the purportedly fraudulent valid under Nevada statute. Similarly, Plaintiff  
 Prudhome has additional access to observe vote counting, based on the pending status of  
 the Nevada state court case.

1 As addressed in the state court matter, the Agilis machine conducts this initial  
2 review, matching signatures approximately 30% of the time. The state district court,  
3 following a day-long evidentiary hearing, found “[n]o evidence was presented of any Agilis  
4 errors or inaccuracies.” **Ex. B** at 4:14. “No evidence was presented that there is any  
5 indication of any error in Clark County’s Agilis signature match rate.” *Id.* at 4:14-16.<sup>7</sup>  
6 One unpursued ballot challenge by Ms. Stokke does not change this determination. The  
7 remaining 70% proceed through a detailed human review process that complies with  
8 Nevada law and has not been challenged by Plaintiffs in this case.

9 Second, Plaintiffs are unlikely to succeed on their Equal Protection claim. Nevada  
10 statute (namely Section 22 of Assembly Bill 4) allows each county clerk to decide whether  
11 or how to use “electronic means” to process ballots. This makes perfect sense in Nevada,  
12 which has two urban counties and fifteen rural counties, allowing each to determine what  
13 works best for their citizens. This constitutes a rational basis for the Nevada Legislature  
14 to empower each county to decide whether to use electronic means. Under rational basis  
15 review, legislation is presumed to be valid and will be sustained “if there is a rational  
16 relationship between the disparity of treatment and some legitimate governmental  
17 purpose.” *Heller v. Doe*, 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993).  
18 Nevada need not “produce evidence to sustain the rationality of a statutory classification,”  
19 rather, “[t]he burden is on the one attacking the legislative arrangement to *negative every*  
20 *conceivable basis* which might support it.” *Id.* (emphasis added). Assembly Bill 4 clearly  
21 complies with rational basis review. Further, as this Court has already concluded, a  
22 speculative prospect of voter fraud or vote dilution does not constitute an injury sufficient  
23 to confer standing upon a plaintiff or petitioner who alleges a violation of the Equal  
24

---

25 <sup>7</sup> To be clear, Plaintiffs in the state court case challenged the scan resolution issue  
26 also raised by Plaintiffs in this case. *Compare* Compl. at ¶ 14 (scanning resolution  
27 allegation) with Nevada Supreme Court Emergency Motion (Nov. 3, 2020) at 8 (same), a  
28 true and correct copy of which is attached hereto as **Exhibit C**. Plaintiffs’ counsel in this  
case is Petitioners’ counsel in the state court case. Finally, the state court determined at  
the evidentiary hearing that one of Petitioners’ attorneys knew Clark County intended to  
use the Agilis machine in advance of the general election. **Ex. B** at 4:5-6.

1 Protection Clause. *See Donald J. Trump for President, Inc.*, 2020 WL 5626974 at \* 7;  
2 *Paher*, 457 F.Supp.3d at 926-27.

3 Third, Plaintiffs are unlikely to succeed on their ballot-counting access claim. As  
4 alleged by Plaintiff Prudhome, at most, he was denied less than 90 minutes of access to  
5 ballot counting. Further access has been supplied by Clark County in accordance with the  
6 Nevada state district court case.

7 **B. The Balance of Other *Winters* Factors Weigh Strongly Against**  
8 **Injunctive Relief**

9 The other *Winters* factors favor denial of injunctive relief in this case. First,  
10 Plaintiffs’ consideration of the relative harms relies completely on the assumption that  
11 Defendants are not complying with Nevada statute. Mot. at 7:1-4. The lack of merits has  
12 already been addressed.

13 Second, no consideration is given to the harms Defendants suffer from Plaintiffs’  
14 creation of unnecessary additional processing. Specifically, at the state court evidentiary  
15 hearing, the court found “that if Clark County is not allowed to continue using Agilis the  
16 county will not meet the canvass deadline.” **Ex. B** at 4:17-20. Further, Section 23(4) of  
17 Assembly Bill 4 requires rejected signatures to be cured by November 12. Plaintiffs’  
18 proposed delay effectively eliminates voters’ ability to cure any potential issues with their  
19 otherwise valid mail ballots, effectively disenfranchising them.

20 Third, enfranchising Nevada voters is in the public interest, particularly where  
21 Plaintiffs offer no evidence outside of one voter who refuses to challenger what she  
22 contends was her fraudulent ballot. Voting is at the heart of Nevada’s government and  
23 evidence, rather than unsupported assertions, should be required to stop the counting of  
24 valid Nevada ballots.

25 ...  
26 ...  
27 ...  
28 ...

1 **V. CONCLUSION**

2 Nothing proffered by Plaintiffs as evidence warrants the extraordinary relief they  
3 seek. Accordingly, the emergency motion must be denied.

4 Dated this 6<sup>th</sup> day of November 2020.

5 AARON D. FORD  
6 Attorney General


7 By: Craig A. Newby  
8 GREGORY L. ZUNINO, Bar #4805  
9 Deputy Solicitor General  
10 CRAIG A. NEWBY, Bar #8591  
11 Deputy Solicitor General  
12 State of Nevada  
13 Nevada State Attorney General  
14 100 N. Carson Street  
15 Carson City, Nevada 89701  
16 Tel: (775) 684-1237  
17 [gzunino@ag.nv.gov](mailto:gzunino@ag.nv.gov)  
18 [cnewby@ag.nv.gov](mailto:cnewby@ag.nv.gov)

19 *Attorneys for Defendant Barbara Cegavske, in her*  
20 *official capacity as Nevada Secretary of State*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF MAILING**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 6th day of November, 2020, I filed with this Court’s CM/ECF electronic filing system, **MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**, parties associated with this case will be served by this Court’s electronic notification system.

  
An employee of the Office  
of the Attorney General