



Republican
National
Committee

Ronna R. McDaniel
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May 20, 2020

Via email to AGCOMPLAINT@ag.nv.gov

The Honorable Aaron D. Ford
Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

Re: Request for investigation of potential Nevada open public meeting violation and election irregularities

Dear Attorney General Ford:

Nevadans rightly prize honest and fair elections, as well as transparency in governmental decision making. Unfortunately, recent deeply troubling events in Clark County have placed both of those interests under attack. On behalf of the Republican National Committee and the Nevada Republican Party, I ask you to investigate under NRS 241.039 whether those events violated Nevada's open public meeting law, and to investigate under NRS 293.840 whether the consequences of Clark County's decisions have violated Nevada's election laws.

I. Background

In response to the COVID-19 pandemic, Secretary of State Barbara Cegavske announced in March 2020 that the June 9 primary would be an all-mail election. As you know, the Democratic National Committee and the Nevada State Democratic Party—together with a handful of related entities and individual plaintiffs—were not content with the Secretary's plan. They sued her; the head elections officials in Clark, Washoe, and Elko Counties; and you in the First Judicial District Court in Carson City. *See Corona et al. v. Cegavske et al.*, No. CV 20-OC-00064-1B.

The Republican National Committee and Nevada Republican Party intervened as defendants because the plaintiffs there challenged long-standing, common-sense Nevada laws expressly designed to further Nevada’s constitutional interest in “preserv[ing] the purity of elections.” Nev. Const. art. 2, § 6. As relevant here, plaintiffs wanted the defendants to mail ballots to all inactive voters—hundreds of thousands of persons the state has good reason to believe no longer live at their last voting address. They wanted to eliminate the way the defendants verify an absentee voter’s identity; under plaintiffs’ plan, no longer could Defendants match the signature on the voter’s ballot envelope to the signature on the voter’s registration. And they wanted to eliminate the ban on ballot harvesting, meaning unsupervised third parties with no relationship to the voter could collect and submit those ballots. Because you are a defendant in that case, those claims are no doubt familiar to you.

And you’ll also be familiar with the troubling circumstances that gave rise to this complaint. In response to the plaintiffs’ motion for a preliminary injunction, the Clark County District Attorney’s Office filed on behalf of the Clark County Registrar of Voters a joinder that states: “*At the direction of local county officials*, the Clark County Registrar of Voters is setting up two additional election day voting sites and will mail absent ballots to all registered voters, including inactive voters, at additional expense.” (Emphasis added.) A copy of the joinder is attached for your reference.

The italicized text leaves no doubt: Some unspecified Clark County officials voluntarily decided after the suit was filed on April 16—but before the joinder was filed on May 4—to yield to part of the plaintiffs’ demands. Yet between those two dates, the only advertised County Commission meeting where commissioners could have discussed those decisions occurred on Tuesday, April 21, 2020. And the agenda for that meeting provides no evidence that the commissioners addressed issues of additional in-person voting places or mail-in ballots during it. *See* Agenda (Apr. 21, 2020), bit.ly/2AK4lDB. That is not surprising; under NRS 241.020 the agenda for the April 21 meeting was required to have been posted three working days before the meeting—or by April 16, the same day the *Cegavske* action was filed against Clark County. *See also* Rory Appleton, *New Clark County election plan decision shrouded in mystery*, Las Vegas Review-Journal (May 6, 2020), bit.ly/2WIGBYU.

The Clark County commissioners’ decision to capitulate behind closed doors is bad enough, but that harm is compounded by the significant monetary costs of these secret changes. Ms. Lorena Portillo, Assistant Registrar of Voters of Clark County, affirmed in an affidavit that the cost for additional printers to be delivered and programed will be \$138,997.50; the cost for mailing the additional ballots will be \$184,738.01; and that “[b]ased on past experience, at least 90% of those” additional ballots “will come back as undeliverable.” In other words, the additional costs Clark County taxpayers will incur based on the direction that Mr. Gloria received from unnamed county officials exceeds \$300,000, with more than \$166,000 to be spent on mailings that even county officials expect will not reach their intended recipient.

To no one's surprise, that's exactly what has happened. With the primary election still weeks away, media reports already have documented instances of absentee ballots appearing littered about apartment complexes in Las Vegas. In one complex, a resident found "about a dozen ballots pinned to the [apartment] complex's bulletin board or otherwise thrown around"—with "even more in trash cans." Rory Appleton, *Primary Underway, but Argument over Mail Election Continues*, Las Vegas Review-Journal (May 19, 2020), bit.ly/3cNOZvT. One postal worker even confirmed that she "received a ballot at her home address for her deceased mother." *Id.*; see also, e.g., Andrew O'Reilly, *Nevada's vote-by-mail primary stirs fraud concerns, as unclaimed ballots pile up: 'Something stinks here,'* Fox News (May 15, 2020), fxn.ws/2ZfC2ap. It takes little effort to imagine the ripe potential for election fraud when thousands of ballots are, in the words of one postal worker, "just sitting here." *Id.* Little wonder, then, that even local media are now calling on "Nevada's courts and election officials" to "reject" these "shenanigans." *Editorial: Democratic Lawsuit Seeks to Eliminate Signature Verification on Mail Ballots*, Las Vegas Review-Journal (May 17, 2020), bit.ly/2Xfu5iV.

II. Request for investigation

You have said that "[o]ur democracy can only function with meaningful transparency and accountability to our citizens." *Attorney General Ford Celebrates Passage of Government Transparency Bill*, NV.gov (June 13, 2019), http://ag.nv.gov/News/PR/2019/Attorney_General_Ford_Celebrates_Passage_of_Government_Transparency_Bill/. We agree. That is why, based on the facts above, we respectfully ask you to investigate under NRS 241.039 whether the Clark County Commissioners violated Nevada's open public meeting law when they decided, behind closed doors, to capitulate to the plaintiffs' demands. As you have explained, while meetings between the commissioners and their attorney can be exempt from the open meeting law, the law "does not permit a public body to *take action* in an attorney-client conference." Nev. Open Meeting Law Manual §3.05 (last updated Mar. 26, 2019), bit.ly/2ZkgDg4 (emphasis added). The Clark County Commission took costly, substantial action regarding the June primary without notifying, broadcasting, or allowing citizens to provide their input.

To be complete, your investigation should examine not only which unidentified county officials made the decision referred to in Clark County's joinder, but also when they made that decision, and whether they consulted with outside groups before doing so. The public has a right to know when and why the Commission decided to rewrite the Secretary's rules for Nevada's June 9 primary. Fortunately, your status as a defendant in *Cegavske* may give your investigation a head start. No doubt the governmental defendants in that case—including your office—exchanged emails throughout the weekend before Clark County filed its May 4 joinder. Some of those emails very likely disclose at least in part how Clark County's decision unfolded. But whether focused on those emails or not, time is of the essence; actions taken in violation of the public meeting law are void, NRS 241.036, yet the primary is scheduled for June 9.

In addition, you have authority to institute actions for a civil penalty against “any person who violates the provisions of” NRS Title 24. *See* NRS 293.840. The circumstances surrounding the mailing of absentee ballots to inactive voters raise troubling implications for the June 9 primary’s integrity. An untold number of unclaimed ballots are scattered around Clark County—everywhere from community message boards to garbage cans. We urge you to investigate whether local officials can maintain, and have maintained, the election’s integrity in these circumstances—and to institute actions for civil penalties against anyone who has violated any provision of NRS Title 24 to try to exploit these circumstances.

Nevadans are counting on you to keep the election fair and honest. We look forward to your prompt response.

Sincerely,

A handwritten signature in black ink that reads "Ronna McDaniel". The signature is written in a cursive, flowing style with a large initial "R".

Ronna McDaniel
RNC Chairwoman