



October 26, 2022

Hon. Barbara K. Cegavske
Secretary of State
State of Nevada
101 N Carson Street Suite 3
Carson City, NV 89701

All Nevada County Clerks

VIA EMAIL

Dear Secretary Cegavske and Nevada County Clerks:

Campaign Legal Center (“CLC”) writes to provide you with information regarding how your offices can properly adjudicate of frivolous challenges to voter eligibility under NRS §§ 293.547 and 293.303 to minimize the burden on election administration and protect the rights of voters, including important guidance on limitations imposed on the adjudication of mass challenges by federal law.¹

CLC is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive, and accountable government. Consistent with that mission, we have worked with election officials across the nation to improve their administrative policies, protect the freedom to vote of citizens within their jurisdictions, and strengthen the democratic process.

¹ This letter is not legal advice; it is intended to present a summary of relevant Nevada and federal law.

To that end, CLC is concerned about the potential for mass eligibility challenges during the upcoming election, which have become increasingly common across the country.²

Mass eligibility challenges organized by partisan challengers and submitted with insufficient evidence risk disenfranchising eligible voters and causing unnecessary disruption to the orderly administration of the 2022 elections—particularly in counties with less experienced election officials. Reminding your staff and volunteers of the rules for voter challenges and their responsibilities in dismissing challenges without cause will ensure a fair and orderly election and will safeguard voters from intimidation.

To mitigate the potential harms to both voters and election administrators caused by baseless mass challenges and safeguard the right to vote as provided by the Nevada Constitution,³ CLC urges the Secretary and county clerks to develop uniform processes for adjudicating voter eligibility challenges, in compliance with the following requirements of Nevada and federal law.

I. Voter Challenges in Nevada

As you are aware, Nevada law permits challenges to a voter’s eligibility (1) in writing before voting begins⁴ and (2) orally when the challenged voter applies to vote.⁵ Each type of challenge is subject to various limitations, which we have detailed further below.

A. Written Challenges

Nevada law allows registered voters to challenge individual voters in their same precincts, but *only if* the challenger has personal knowledge that the challenged voter does not have the right to vote.⁶

These challenges must be filed with the county clerk “after the 30th day but not later than the 25th day before any election.” Because the Nevada General

² See, e.g., Nick Corasaniti & Alexandra Berzon, *Activists Flood Election Offices with Challenges*, N.Y. Times (Sept. 28, 2022) <https://www.nytimes.com/2022/09/28/us/politics/election-activists-voter-challenges.html?action=click&module=RelatedLinks&pgtype=Article> (noting the recent wave of voter eligibility challenges in states such as Michigan, Georgia, and Texas).

³ Nev. Const. Art. II, § 1 (detailing the rights of Nevada voters).

⁴ NRS 293.547.

⁵ NRS 293.303.

⁶ NRS 293.547(1). Acceptable grounds for a written challenge of a voter’s eligibility include the challenger’s personal knowledge that the challenged voter “does not belong to the political party designated upon the roster” or “does not reside at the residence for which the address is listed on the roster.”

Election is less than 25 days away,⁷ no new written challenges to voter eligibility may be accepted. **County clerks should thus disregard any written challenges they receive between now and November 8, 2022.**

By only considering challenges made before October 14 as required by Nevada law, election officials can avoid disenfranchising eligible voters and deter baseless challenges to voter eligibility.

B. Polling Place Challenges

In addition to the written challenges detailed above, Nevada law provides a process by which registered voters may orally challenge other voters applying to vote *in their same precinct*. Since the deadline has passed for county clerks to accept written challenges, these oral challenges are the only new incoming challenges that Nevada election officials may consider.⁸

1. *Permissible Grounds*

There are only two permissible grounds for an oral challenge to a voter's eligibility: that a challenged voter "is not the person entitled to vote as claimed" or that the challenged voted "has voted before."⁹ For example then, a challenger may *not* orally challenge a voter applying to vote for not residing at the address listed on their voter registration. Such a challenge based on a voter's residential address would have had to be filed as a written challenge before October 14, 2022.

In order to bring a valid oral challenge against a fellow voter, the challenger must also "submit an affirmation that is signed under penalty of perjury" stating that the challenge is based on the challenger's personal knowledge.¹⁰ Election officers may not consider challenges in which the challenger does not sign such an affirmation.

2. *Processing*

If a challenger brings a valid oral challenge against a fellow voter in their precinct, an election board officer at the precinct must then issue an oath to the challenged voter, which must be set forth on a form by the Secretary of State's office and signed by the challenged voter under penalty of perjury.¹¹ If the challenge is on the grounds that the voter is not the person entitled to vote as claimed, the election official must issue the following oath: "I swear or

⁷ 25 days before Election Day 2022 was October 14, 2022.

⁸ NRS 293.303(1)(b) (emphasis added).

⁹ NRS.293.303(a).

¹⁰ NRS 293.303(1)(a).

¹¹ *Id.*

affirm under penalty of perjury that I am the person whose name is in this roster.”¹² If the challenge is on the grounds that the voter has already voted in the election, the correct oath is “I swear or affirm under penalty of perjury that I have not voted for any of the candidates or questions included on this ballot for this election.”¹³

Once a voter who has been orally challenged on the grounds that they are not the eligible voter that they claim to be executes the oath, they must also show photo identification or bring another adult to the polls who can show photo identification and swears under penalty of perjury that the challenged voter is who they claim to be.¹⁴ **A voter subject to an oral challenge may *only* be denied a ballot if they refuse to execute the oath or fail to produce proof that they are who they claim to be as detailed above.**

Regardless of the outcome of the challenge, an election board official must record on the challenge list the name of the challenged voter, the name of the voter who initiated the challenge, and the result of the challenge.¹⁵

By ensuring that all election officials strictly adhere to the above procedures governing oral voter challenges, county clerks, their staffs, volunteers, and poll workers can protect against chaos, disruption, and wrongful disenfranchisement while voting is underway.

II. Other Legal Requirements

As you know, both federal and Nevada law provide robust protection against voter intimidation and other forms of infringement on the fundamental right to vote. The process for responding to voter challenges—especially those conducted *en masse*—must therefore comply with all such federal and state laws, as well as the U.S. Constitution. As such, we want to reiterate that all Nevada election officials have the responsibility and discretion to protect Nevada voters from baseless and discriminatory challenges and ensure that the adjudication of all voter challenges complies with both state and federal law.

A. Racially Discriminatory Challenges

Organized challengers frequently target voters from marginalized communities in an attempt to intimidate or deter members of those

¹² NRS 293.303(2)(e).

¹³ NRS 293.303(2)(d).

¹⁴ NRS 293.303(8).

¹⁵ NRS 292.202(9).

communities from voting.¹⁶ Sustaining such discriminatory challenges could violate the U.S. Constitution and federal law. Taken together, the Equal Protection Clause of the Fourteenth Amendment¹⁷ and Section 2 of the Voting Rights Act¹⁸ prohibit the use of voting practices that result in citizens being denied equal access to the democratic process on account of “race, color, or membership in a language minority group.”¹⁹ Since these are often the exact groups targeted by discriminatory challenges, clerks and other local elections officials should consider carefully whether granting mass challenges brought before them would have the effect of unlawfully disadvantaging voters because of their race.

B. Voter Intimidation

Baseless mass challenges to voter eligibility could constitute voter intimidation, since such challenges are often made in bad faith to deter eligible citizens—including members of historically marginalized groups—from voting. Such voter intimidation is illegal under both federal and Nevada law.

Federal law provides that anyone who “intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote” in a federal election has committed a federal crime.²⁰ Additionally, several federal statutes impose civil liability for voter intimidation. For example, Section 11(b) of the Voting Rights Act makes it unlawful to “intimidate, threaten, or coerce” another person, or attempt to do so, “for voting or attempting to vote” or “for urging or aiding any person to vote or attempt to vote.”²¹ And Section 2 of the Ku Klux Klan Act of 1871 makes it unlawful for “two or more persons to conspire to prevent by force, intimidation, or threat,” any voter from casting a ballot for the candidate of his or her choice.²²

The Nevada Constitution protects Nevadans’ right to “vote without being intimidated, threatened, or coerced.”²³ As such, it is a category E felony under Nevada law to “use or threaten to use any force, intimidation, coercion, violence, restraint or undue influence” to prevent a person from voting.²⁴ Of

¹⁶ See, e.g., Nicolas Riley, Brennan Ctr. for Just., *Voter Challenges* 11-12 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf.

¹⁷ U.S. Const. amend XIV, § 1.

¹⁸ 52 U.S.C. 10301

¹⁹ See U.S. Dept. of Justice, *Guidance Under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, for Redistricting and Methods of Electing Government Bodies* (Sept. 1, 2021) <https://www.justice.gov/opa/press-release/file/1429486/download>.

²⁰ 18 U.S.C. § 594.

²¹ 52 U.S.C. § 10307(b).

²² 42 U.S.C. § 1985(3).

²³ Nev. Const. Art. II, § 1.

²⁴ NRS 293.710.

particular note, impermissible intimidation under the Nevada law includes “imped[ing] or prevent[ing] . . . by fraudulent contrivance, the free exercise of the franchise by any voter.”²⁵

To ensure that baseless mass challenges do not unlawfully intimidate voters, each county clerk should review their duties and responsibilities to ensure that only challenges made using the proper procedure and supported by sufficient evidence are considered and sustained. County clerks should also not hesitate to refer incidents of voter intimidation, including baseless mass challenges, to the Nevada Attorney General’s Office²⁶ and U.S. Department of Justice (DOJ).²⁷

C. Uniform and Nondiscriminatory Standards

The Constitution requires that each state and political subdivision use uniform, nondiscriminatory standards and processes for evaluating voter eligibility challenges.²⁸ For example, in the 2000 presidential election, the Supreme Court found unconstitutional a process by which Florida counties “used varying standards to determine what was a legal vote[.]”²⁹

The Nevada Constitution likewise recognizes voters’ rights to a “uniform, statewide standard for counting and recounting votes accurately as provided by law.”³⁰

Municipal clerks should work to eliminate any meaningful divergence among them in the standards and processes used to evaluate voter challenges in different municipalities and replace them with uniform standards and processes. By doing so, Nevada’s voter challenge processes can avoid the “arbitrary and disparate treatment” of challenged ballots that violates the Constitution.³¹

²⁵ *Id.*.

²⁶ Reports of voter intimidation can be submitted to the Nevada Attorney General’s Office in writing at http://ag.nv.gov/Complaints/File_Complaint/ or by calling the office at 775-684-1100.

²⁷ The DOJ Civil Rights Division can be reached at 800-253-3931, and voter intimidation reports can be submitted online at <https://civilrights.justice.gov/report>. More information on DOJ’s resources to protect voting access can be found at <https://www.justice.gov/opa/pr/justice-department-releases-information-efforts-protect-right-vote>.

²⁸ *See* *Bush v. Gore*, 531 U.S. 98, 104 (2000) (finding that the lack of uniform standards across counties for when to count a ballot violates the Constitution’s Equal Protection Clause).

²⁹ *Id.* at 107.

³⁰ Nev. Const. art. II, § 1A.

³¹ *Bush*, 531 U.S. at 104-05.

By ensuring compliance with the processes, requirements, and limitations of Nevada's voter challenge laws, you can mitigate the potential harm and disruption caused by frivolous voter eligibility challenges. This summary of the relevant law should help you to prepare proactively to develop written procedures and policies for adjudicating such challenges and train your staff, volunteers, and election inspectors on the requirements of Nevada and federal law applicable to voter eligibility challenges.

Please do not hesitate to reach out with any questions. We stand ready to assist you in upholding federal and state law and protecting Nevadans' freedom to vote.

Sincerely,

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