



September 30, 2024

VIA EMAIL

Dear Nevada Election Officials:

Campaign Legal Center (CLC) writes to provide you with information regarding how Nevada's county clerks and election officials can properly adjudicate frivolous challenges to voter eligibility under N.R.S. §§ 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.

To that end, CLC is concerned about the potential for mass voter eligibility challenges during the upcoming election, which have become increasingly common across the country.² In recent election cycles, partisan actors have relied on faulty databases to bring hundreds of thousands of challenges to voter eligibility across the nation.³ These

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

² See, e.g., Nick Corasaniti & Alexandra Berzon, *Trump's Allies Ramp Up Campaign Targeting Voter Rolls*, N.Y. Times (Mar. 3, 2024) <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html> (noting the recent wave of voter eligibility challenges in states such as Georgia, Michigan, and Nevada); David Gilbert, *Election Deniers are Ramping Up Efforts to Disenfranchise Voters*, Wired (Jul. 31, 2024) <https://www.wired.com/story/election-deniers-efforts-disenfranchise-voters/>.

³ See Robyn Sanders & Alice Clapman, *Protections Against Mass Challenges*, Brennan Ctr. for Just. (July 17, 2024), <https://www.brennancenter.org/our-work/research-reports/protections-against-mass-challenges-voter-eligibility>. One common database is Eagle AI, which experts have criticized for its frequent identification of eligible voters as ineligible. See Alice Clapman

databases attempt to match voter registration records with publicly available information, but that information is almost always incomplete or out of date, making the database matches unreliable.⁴ They also often improperly flag registered voters with the same name as ineligible individuals, voters who are temporarily staying in another place but remain qualified at the address at which they are registered, and households where some but not all residents have moved.⁵ As a result, mass challenge lists almost always include significant numbers of eligible voters who should not be removed from the rolls.⁶

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 2024 elections. We recognize that many election offices have lost their most experienced officials because of threats and volatility in the wake of the 2020 election and that this will be the first presidential election for new staff. We hope this letter will assist you as you provide guidance to your staff and volunteers regarding the rules for voter challenges and their responsibilities in dismissing challenges without cause, allowing your office to ensure a fair and orderly election, safeguard voters from intimidation, and minimize administrative disruption.

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,⁷ CLC provides the election law summary below to support your development of 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 establishes procedures for challenges to a voter's eligibility (1) in writing before voting begins⁸ and (2) orally when the challenged voter applies to vote.⁹ Each type of challenge is subject to various limitations, which we have detailed further below.

A. Pre-Election Challenges to Voter Registration

1. Challenges By the General Public

Nevada law permits pre-election challenges to voter eligibility made by signed affidavit on two narrow grounds.¹⁰ To make a valid challenge under this provision, the

& Andrew Garber, *A New Antidemocracy Tool*, Brennan Ctr. for Just. (Sept. 5, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/new-antidemocracy-tool>.

⁴ See Sanders & Clapman, *supra* note 3.

⁵ See *id.*

⁶ See *id.*

⁷ Nev. Const. Art. II, § 1 (detailing the rights of Nevada voters).

⁸ N.R.S. § 293.547.

⁹ *Id.* § 293.303.

¹⁰ *Id.* § 293.535.

challenger must allege (1) the voter is not a U.S. citizen, or (2) the voter has moved outside the county where they are registered to vote and is no longer considered a resident of the county for voting purposes.¹¹ An individual may only make this type of challenge in writing by affidavit containing specific facts showing the challenged voter’s ineligibility.¹²

When an individual may make this type of challenge depends on the ground. Challenges made on the basis of citizenship must be made no less than 30 days prior to a general election—or no later than October 6, 2024, for the 2024 General Election.¹³ Challenges based on residency have no time limitations under Nevada law, but the federal National Voter Registration Act (NVRA) prohibits state and local officials from processing those challenges and removing challenged voters from the rolls within 90 days prior to a federal election.¹⁴

Challenges to voter eligibility must be based on personal knowledge and individualized to the challenged voter, meaning that they must contain “‘firsthand knowledge [gained] through experience or observation’ of the challenged individual’s eligibility status.”¹⁵ **Challenges based on a review of information available on public or private databases, such as EagleAI, or compilations of information do not meet the personal knowledge requirement and should be summarily rejected.**¹⁶ Making false statements in an affidavit challenging a voter’s eligibility could subject a challenger to harsh criminal penalties, including up to four years of incarceration and a fine up to \$5,000.¹⁷

The process for resolving a challenge made by affidavit depends on the basis for the challenge.¹⁸ For valid challenges made on the basis of the registered voter’s U.S. citizenship status, the county clerk must mail the challenged voter a notice of the challenge along with a copy of the affidavit via registered or certified mail with a return receipt.¹⁹ Once the return receipt has been filed with the county clerk, the challenged voter has 15 days to present evidence of their U.S. citizenship to the county clerk.²⁰ If the registered voter is unable to timely present proof of their citizenship, the voter’s registration will be cancelled.²¹

¹¹ *Id.* § 293.535(1).

¹² *Id.*; *see also id.* § 199.120 (describing criminal penalties for making false statements in an affidavit).

¹³ *Id.* § 293.535.

¹⁴ *See id.*; 52 U.S.C. § 20507(c)(2)(A).

¹⁵ Francisco V. Aguilar, Sec’y of State of Nev., Memo 2024-026 – Personal Knowledge at 3 (Aug. 27, 2024) [hereinafter “Personal Knowledge Memo”]; *see also* N.R.S. 293.535(1); Nev. Admin. Code 293.416.

¹⁶ Personal Knowledge Memo at 3.

¹⁷ *See* N.R.S. § 199.120 (“A person . . . who . . . [e]xecutes an affidavit or other instrument which contains a false statement before a person authorized to administer oaths or suborns any other person to do so . . . is guilty of perjury or subornation of perjury[.]”), 193.130(2)(d) (describing criminal penalties for perjury and other Class D felonies).

¹⁸ *See id.* § 293.535(2)-(3).

¹⁹ *Id.* § 293.535(3).

²⁰ *Id.*

²¹ *Id.*

An eligible voter whose registration is cancelled under this provision must be allowed to re-register to vote, including through Nevada’s same-day registration process, and cast a ballot in the first election in which they are registered.²²

Challenges made on the basis of a registered voter’s alleged change in address simply trigger the notice process detailed in N.R.S. § 293.530.²³ A voter’s registration may only be cancelled under this provision if the voter does not respond to a properly mailed notice and does not vote in at least one election in the period between the challenge and the second general election following the challenge.²⁴ This means that **no voter’s registration may be cancelled prior to the 2024 General Election solely on the basis of a residency challenge unless that challenge was received prior to the 2020 General Election.**²⁵

2. *Challenges By Electors Between October 6 and October 11, 2024*

During a short window before voting begins, Nevada law allows a registered voter to challenge the eligibility of another voter who is registered in their same precinct.²⁶ A pre-election challenge to voter registration must be made in writing and state the specific facts on which the challenge is based.²⁷ A valid challenge must be based on the challenger’s personal knowledge—meaning “firsthand knowledge through experience or observation of the facts upon each ground that the challenge is based.”²⁸ In other words, challenges may not be based on information from someone other than the challenger, including media, family members, friends or colleagues, and database matching programs.²⁹ Nevada law further prohibits challengers from bringing mass challenges in a single document.³⁰ Rather, **challenges may only be made to individual voters and county clerks must summarily reject “any challenge which contains more than one [voter registrant’s] name.”**³¹

In the 2024 general election, pre-election challenges to voter registration may only be filed with the county clerk between October 6 and October 11, 2024.³² Any pre-election challenges to a voter’s registration made after this five-day window are invalid on their face and must be summarily rejected.³³

²² See Francisco Aguilar, *Same-Day Registration*, Nev. Sec’y of State, <https://www.nv-sos.gov/sos/elections/election-information/same-day-registration>.

²³ N.R.S. § 293.535(2).

²⁴ *Id.* § 293.530.

²⁵ See *id.* §§ 293.530, 293.535.

²⁶ *Id.* § 293.547; Nev. Admin. Code 293.416.

²⁷ Nev. Admin. Code 293.416(1)(c)(6).

²⁸ *Id.* 293.416(3); see also Personal Knowledge Memo at 3.

²⁹ See *id.*; Alice Clapman, *Nevada: Limits on Voter Eligibility Challenges*, Brennan Ctr. for Justice (Jun. 10, 2024), <https://www.brennancenter.org/our-work/research-reports/nevada-limits-voter-eligibility-challenges>.

³⁰ See N.R.S. § 293.547(4).

³¹ *Id.*

³² *Id.* § 293.547(1) (providing that pre-election challenges may be made only “[a]fter the 30th day but not later than the 25th day before any election”).

³³ See *id.*

By only considering individualized challenges that are based on personal knowledge and made during the authorized periods, as required by Nevada law, election officials can avoid disenfranchising eligible voters and deter baseless challenges to voter eligibility.

3. *Processing*

Within five days of receiving a timely filed written challenge to a single voter's registration that is based on the challenger's personal knowledge, the county clerk must mail a notice to the challenged voter informing them that their right to vote has been challenged, but that they "are still registered and eligible to vote."³⁴ The clerk must also attach the challenge to the voter registration roster and notify the district attorney of the challenge.³⁵

A county clerk may only cancel a challenged voter's registration based on a pre-election challenge if: (1) the county clerk is ordered to do so by a court of competent jurisdiction following investigation by the district attorney and a proper court hearing; or (2) the voter does not vote in any election between the challenge being filed and the second general election following the challenge and does not respond to a properly executed written notice of the challenge.³⁶ Challenges based on change in residency may only be cancelled under the latter circumstance.³⁷

A challenged voter whose registration is not cancelled pursuant to a court order must be considered registered to vote in the election following the challenge.³⁸ When the voter appears at the polling place, they should be treated as a challenged voter and election officials should follow the procedure detailed below for in-person challenges to voter eligibility.³⁹

Once the challenge has been resolved, the county clerk must mail a notice containing the result of the challenge to the initiator of the challenge "as soon as practicable," but no later than 21 days after the election; such notice should include the name of the person being challenged (if known) and the result of the challenge.⁴⁰

B. Polling Place Challenges

During in-person voting, challenges are still limited to registered voters from the same precinct as the challenged voter.⁴¹ To make a challenge at the time of voting, a registered voter from the same precinct may orally challenge a voter's eligibility and then must submit a signed affirmation under penalty of perjury, attesting to their

³⁴ Nev. Admin. Code 293.418; N.R.S. § 293.547(5)(b).

³⁵ *Id.* § 293.547(5).

³⁶ *Id.* § 293.574(5)-(6).

³⁷ *See* 52 U.S.C. § 20507. This requirement is detailed further below.

³⁸ N.R.S. §§ 293.303, 293.547(5).

³⁹ *Id.* §§ 293.303, 293.547(5).

⁴⁰ *Id.* § 293.3035(1)-(2).

⁴¹ *Id.* § 293.303(1)(a).

challenge and its grounds.⁴² Election officers may not consider a challenge that lacks the signed affirmation.⁴³

Election Day challengers must cite one of two grounds available for ballot challenges: (1) allegation of prior voting in the same election, or (2) that the voter is not who they say they are.⁴⁴ **Election Day challenges to voter eligibility citing any other reason for ineligibility are invalid on their face and should be summarily rejected.**⁴⁵ This includes challenges based on a voter's race or ethnicity, primary language or ability to speak English, and alleged non-U.S. citizenship.

1. 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.⁴⁶ The voter must affirm their identity or that they have not cast a vote in this election.⁴⁷

If the challenge is based on the challenged voter's residence, that voter must provide proof of residence, in addition to executing the oath.⁴⁸ If the challenger alleges that the challenged voter is not who they say they are, the challenged voter must provide proof of their identity.⁴⁹

When a voter provides the required oaths and proof, if required, for each challenge listed above, a regular ballot must be issued to the challenged voter.⁵⁰ If a voter refuses to sign the oath or is unable to affirm their identity or that they have not already voted in the election, they must not be issued a ballot and be labeled as "challenged" on the roster.⁵¹

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

⁴² *Id.* § 293.303(1)(a).

⁴³ *Id.*

⁴⁴ *See id.*

⁴⁵ *See id.*

⁴⁶ *Id.* § 293.303(2).

⁴⁷ *Id.*

⁴⁸ *Id.* § 293.303(7).

⁴⁹ *Id.* § 293.303(8).

⁵⁰ *See id.* § 293.303(6).

⁵¹ *Id.* § 293.303(3).

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 in bulk—must therefore comply with all federal and state laws, as well as the U.S. Constitution. As such, all Nevada election officials have the responsibility 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 historically disenfranchised communities in an attempt to intimidate or deter members of those communities from voting.⁵² Sustaining such discriminatory challenges could violate the U.S. Constitution and federal law. Taken together, the Equal Protection Clause of the Fourteenth Amendment⁵³ and Section 2 of the Voting Rights Act⁵⁴ 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.”⁵⁵ Because these are often the exact groups targeted by mass challenges, 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, because such challenges are often made in bad faith to deter eligible citizens—including members of historically disenfranchised 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.⁵⁶ Additionally, several federal statutes impose civil liability for voter intimidation. 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.”⁵⁷ In 2016, a federal court determined that voter challenges that intentionally target geographic areas with a large percentage of racial or ethnic minorities and that had the purpose or effect of deterring qualified members of those minority groups from voting violated a

⁵² See, e.g., Nicolas Riley, *Voter Challenges*, Brennan Ctr. for Just. at 11-12 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf.

⁵³ U.S. Const. amend XIV, § 1.

⁵⁴ 52 U.S.C. § 10301.

⁵⁵ See *Guidance Under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, for Redistricting and Methods of Electing Government Bodies*, U.S. Dept. of Justice (Sept. 1, 2021), <https://www.justice.gov/opa/press-release/file/1429486/download>.

⁵⁶ 18 U.S.C. § 594.

⁵⁷ 52 U.S.C. § 10307(b).

court order in a case involving claims under Section 11(b).⁵⁸ Further, the U.S. Department of Justice has cautioned that challenges made with the intention of or that have the effect of intimidating a reasonable voter can violate Section 11(b).⁵⁹ And 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 their choice.⁶⁰

The Nevada Constitution also protects Nevadans’ right to “vote without being intimidated, threatened, or coerced.”⁶¹ 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.⁶² Impermissible intimidation under Nevada law includes “imped[ing] or prevent[ing] . . . by fraudulent contrivance, the free exercise of the franchise by any voter.”⁶³ Therefore, use of the challenge procedure to intimidate, coerce, or threaten eligible voters to prevent them from voting can be considered impermissible under Nevada law.

To ensure that baseless mass challenges do not unlawfully intimidate voters, each local election official should review their duties and responsibilities to ensure that only challenges made using the proper procedure and supported by sufficient and individualized evidence are considered and sustained. County clerks should also promptly refer incidents of voter intimidation, including baseless mass challenges, to the Nevada Attorney General’s Office⁶⁴ and U.S. Department of Justice (DOJ).⁶⁵

C. Uniform and Nondiscriminatory Standards

The U.S. Constitution and federal law require that each state and political subdivision use uniform, nondiscriminatory standards and processes for evaluating voter eligibility challenges.⁶⁶ Under the U.S. Constitution, counties in the same state are prohibited from “us[ing] varying standards to determine what [i]s a legal vote” when processing ballots in presidential elections.⁶⁷ Similarly, the NVRA mandates that any

⁵⁸ See *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, No. CV 81-03876, 2016 WL 6584915, at *2 (D.N.J. Nov. 5, 2016).

⁵⁹ See *Voter Registration List Maintenance: Guidance under Section 8 of the National Voter Registration Act*, 52 U.S.C. § 20507, U.S. Dept. of Justice at 3 (Sept. 2024), <https://www.justice.gov/crt/media/1366561/dl> [hereinafter “DOJ Guidance”].

⁶⁰ 42 U.S.C. § 1985(3).

⁶¹ Nev. Const. Art. II, § 1.

⁶² N.R.S. § 293.710.

⁶³ *Id.*

⁶⁴ 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.

⁶⁵ 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>.

⁶⁶ 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).

⁶⁷ *Id.* at 107.

voter registration list maintenance activity be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act[.]”⁶⁸ including “any list maintenance activity based on third party submissions.”⁶⁹ The U.S. Department of Justice has advised that numerous list maintenance methods commonly used in mass voter eligibility challenges might violate the NVRA, including “comparing voter files to outdated or inaccurate records or databases, taking action that erroneously affects a particular class of voters (such as newly naturalized citizens), or matching records based solely on first name, last name, and date of birth.”⁷⁰

The NVRA further mandates that election officials may not “systematically remove” ineligible voters from voter registration rolls within 90 days preceding an election for federal office.⁷¹ According to the U.S. Department of Justice, this restriction “applies to list maintenance programs based on third-party challenges derived from any large, computerized data-matching process.”⁷²

The Nevada Constitution likewise recognizes voters’ rights to a “uniform, statewide standard for counting and recounting votes accurately as provided by law.”⁷³

Local election officials 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 voter challenge processes can avoid the “arbitrary and disparate treatment” of challenged ballots that violates the U.S. Constitution.⁷⁴

D. Removals Based on Change of Address

The NVRA strictly regulates the process for removing a registered voter from the voter registration rolls based on suspected change of address, including when removals are triggered by mass eligibility voter challenges.⁷⁵ Election officials may only remove a voter from the list of registered voters based on change in residence when: (1) the voter confirms in writing that they have moved outside of the jurisdiction; or (2) election officials have satisfied the process outlined in Section 8(d)(2) of the NVRA.⁷⁶ The United States Department of Justice has cautioned that “[a] third-party submission—such as a submission of another individual’s information via an online portal or a challenge based solely on public database information—is not confirmation by the

⁶⁸ 52 U.S.C. § 20507(b).

⁶⁹ DOJ Guidance at 3.

⁷⁰ *Id.*

⁷¹ 52 U.S.C. § 20507(b)(1).

⁷² DOJ Guidance at 4.

⁷³ Nev. Const. art. II, § 1A.

⁷⁴ *Bush*, 531 U.S. at 104-05.

⁷⁵ *See* 52 U.S.C. § 20507(b); DOJ Guidance at 4-6.

⁷⁶ *See* 52 U.S.C. § 20507(b)-(d); DOJ Guidance at 4. The DOJ Guidance also provides detailed information on the requirements of Section 8(d)(2). *Id.* Election officials may only remove a voter under Section 8(d)(2) of the NVRA if that voter: (1) does not vote in any election between the date the notice was sent and the second general election following the notice; and (2) does not respond to the notice. 52 U.S.C. § 20507(d)(2).

registrant of a change of address.”⁷⁷ Consequently, **removing individuals from the list of registered voters due to suspected change of address on the basis of mass voter eligibility challenges alone likely violates the NVRA.**⁷⁸

* * *

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. Our hope is that this summary of the relevant law will 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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⁷⁷ DOJ Guidance at 4.

⁷⁸ *Id.* at 4-5.