



OFFICE OF THE ATTORNEY GENERAL
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July 18, 2024

Christopher G. Conway
Clerk of the Court
United States Court of Appeals
for the Seventh Circuit
219 South Dearborn Street
27th Floor
Chicago, Illinois 60604

Re: *Bost v. Illinois State Board of Elections*, No. 23-2644

Dear Mr. Conway:

Pursuant to Fed. R. App. P. 28(j), defendants-appellees the Illinois State Board of Elections and Bernadette Matthews, in her official capacity as Executive Director of the Board, write to notify the Court of a recent opinion relevant to the above-captioned appeal: the opinion in *RNC v. Burgess*, No. 3:24-cv-198, 2024 WL 3445254 (D. Nev. July 17, 2024), a copy of which is attached to this letter. *Burgess* supports our argument that plaintiffs here lack standing.

Burgess is substantively identical to this action. The plaintiffs in that case — political candidates and voters — brought suit to challenge a Nevada statute that directs election authorities to count mail-in ballots that are received up to four days after Election Day as long as they were mailed on or before Election Day. Slip op. at 1. Plaintiffs in *Burgess*, like plaintiffs here, argue that the Nevada deadline statute is preempted by federal statutes establishing a uniform national Election Day. *Id.* at 2.

The district court dismissed the *Burgess* complaint for lack of standing. It held (among other things) that the candidate plaintiffs' diversion-of-resources theory failed because they had not shown that any additional resources that they expended on counting mail-in ballots were traceable to "harms" flowing from Nevada's ballot receipt deadline. *Id.* at 9-10. And it held that the voter plaintiffs lacked standing

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because their theory of “vote dilution” could not support standing “when the alleged harm . . . equally affects all voters in a state.” *Id.* at 12-13.

As we have explained, AE Br. 11-24, plaintiffs’ complaint in this case fails for the same reasons. Plaintiffs lack standing, and the district court correctly dismissed the complaint on that ground. Its decision should be affirmed.

Respectfully submitted,

/s/ Alex Hemmer

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CERTIFICATE OF COMPLIANCE

I hereby certify that this letter complies with the word limitation set forth in Fed. R. App. P. 28(j) in that the body of the letter is 281 words.

/s/ Alex Hemmer
ALEX HEMMER

July 18, 2024

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

REPUBLICAN NATIONAL COMMITTEE,
et al.,

Plaintiffs,

v.

CAROL BURGESS, *et al.*,

Defendants.

Case No. 3:24-cv-00198-MMD-CLB

ORDER

I. SUMMARY

A few years ago, the Nevada legislature changed the deadlines by which county clerks' offices must receive mail ballots. See Act of June 2, 2021, ch. 248, §8, 2021 Nev. Laws 1213, 1214 (2021). Current law generally allows for mail ballots to be received up to four days after an election if they are mailed on or before the date of the election. See NRS § 293.269921. Republican organizations and voters¹ initiated this action to challenge this post-election mail ballot receipt deadline as unconstitutional and in violation of federal law. (ECF No. 1 ("Complaint").)

Pending before the Court are three motions to dismiss Plaintiffs' Complaint for a lack of Article III standing and for failure to state a claim. (ECF Nos. 59 (DNC), 60

¹Plaintiffs are the Republican National Committee ("RNC"); the Nevada Republican Party ("Nevada GOP"); Donald J. Trump for President 2024, Inc. ("Trump Campaign") (collectively, "Organizational Plaintiffs"); and Donald Szymanski, a registered Republican and Nevada voter. They are suing in their official capacities Washoe County Registrar of Voters Cari-Ann Burgess, Washoe County Clerk Jan Galassini, Clark County Registrar of Voters Lorena Portillo, Clark County Clerk Lynn Marie Goya, and Nevada Secretary of State Francisco Aguilar (collectively, "Government Defendants"). The Vet Voice Foundation, Nevada Alliance for Retired Americans ("NARA") (collectively, "Non-Profit Intervenors"), and the Democratic National Committee ("DNC") are intervenor-defendants. (ECF Nos. 56, 70.)

1 (Government), 71 (Vet Voice and NARA).²) The American Civil Liberties Union of Nevada
2 has also submitted a motion for leave to file an amicus curiae brief advising the Court on
3 the merits of Plaintiffs' claims. (ECF No. 76.) The Court finds that Plaintiffs lack standing
4 to challenge the Nevada mail ballot receipt deadline and dismisses this case for lack of
5 subject-matter jurisdiction.

6 **II. BACKGROUND**

7 For a mailed ballot to be counted in Nevada, it must be postmarked on or before
8 the day of an election and received by the county clerk before 5:00 p.m. on the fourth day
9 after the election. See NRS § 293.269921(1)(b). A mail ballot whose date of postmark
10 cannot be determined will be deemed timely if received no later than 5:00 p.m. on the
11 third day following the election. See *id.* at (2). Plaintiffs assert that these post-election
12 receipt deadlines contravene federal law establishing a uniform Election Day³ and thus
13 allow Nevada to count invalid votes, which violates the Fourteenth Amendment rights to
14 stand for office and to vote. They seek a declaratory judgement that Nevada's post-
15 Election Day mail ballot receipt deadline is unlawful, as well as injunctive relief prohibiting
16 the Government Defendants from counting mail ballots for federal office received after
17 Election Day in November 2024. (ECF No. 1 at 17.)

18 **III. DISCUSSION**

19 Defendants have filed three separate motions to dismiss Plaintiffs' claims, both for
20 lack of Article III standing and on the merits. (ECF Nos. 59, 60, 69.) Standing is a threshold
21 issue, so the Court will address these arguments first. See *Food & Drug Admin. v. All. for*
22 *Hippocratic Med.*, 602 U.S. 367, 378 (2024); *Lance v. Coffman*, 549 U.S. 437, 439 (2007)
23 ("Federal courts must determine that they have jurisdiction before proceeding to the
24 merits.").

25
26 ²The Court has reviewed the parties' responses and replies. (ECF Nos. 73, 74, 77,
27 78, 81, 87.) All Government Defendants have joined Aguilar's motion to dismiss and
28 response. (ECF Nos. 61, 63, 79, 82.)

³The Tuesday after the first Monday in November is the federal Election Day for
electing members of Congress and appointing presidential electors. See 2 U.S.C. § 7; 3
U.S.C. § 1.

1 To establish standing, Plaintiffs must clearly demonstrate that (1) they have
2 suffered, or will likely suffer, an injury in fact that is concrete, particularized, and actual or
3 imminent—not abstract, generalized, or speculative; (2) the injury was likely caused, or
4 will be caused, by Nevada’s post-election mail ballot receipt deadline; and (3) the injury
5 will likely be redressed by their requested relief. See *All. for Hippocratic Med.*, 602 U.S.
6 at 380-81; *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Plaintiffs advance
7 several theories to support their standing to challenge Nevada’s post-Election Day mail
8 ballot receipt deadline, each of which the Court addresses below but none of which meets
9 the threshold requirements of Article III.

10 **A. Threat to Electoral Prospects**

11 Candidates and political parties may possess ‘competitive standing’ stemming
12 from “their shared interest in ‘fair competition.’” *Mecinas v. Hobbs*, 30 F.4th 890, 898 n.3
13 (9th Cir. 2022). Plaintiffs asserting competitive standing in the Ninth Circuit have two
14 means through which they may fulfill the injury-in-fact requirement. First, they can allege
15 that they have been injured by the “potential loss of an election.” *Drake v. Obama*, 664
16 F.3d 774, 783 (9th Cir. 2011) (quoting *Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir.
17 1981)); accord *Townley v. Miller*, 722 F.3d 1128, 1135 (9th Cir. 2013). Or, alternatively,
18 their alleged injury may simply be that they are “forced to compete under the weight of a
19 state-imposed disadvantage,” in which case they need not show that the challenged law
20 “has changed (or will imminently change) the actual outcome of a partisan election.”
21 *Mecinas*, 30 F.4th at 899; accord *City of Los Angeles v. Barr*, 929 F.3d 1163, 1173 (9th
22 Cir. 2019) (“[The] inability to compete on an even playing field constitutes a concrete and
23 particularized injury.”). Organizational Plaintiffs cannot establish standing under either
24 avenue.

25 **1. Potential Loss of Election**

26 Any harm to Organizational Plaintiffs’ electoral success from the Nevada mail
27 ballot receipt deadline “arises from the government’s allegedly unlawful regulation” of a
28 third party: Nevada voters. *Lujan*, 504 U.S. at 562. Causation and redressability therefore

1 hinge on the response of those voters, “and perhaps on the response of others as well,”
2 to the deadline. *Id.* But Organizational Plaintiffs “cannot rely on speculation about the
3 unfettered choices made by independent actors” to establish standing. *All. for Hippocratic*
4 *Med.*, 602 U.S. at 383 (quotation marks omitted). Accordingly, regardless of whether the
5 potential loss of the November 2024 election due to the Nevada mail ballot receipt
6 deadline could fulfill the injury-in-fact requirement, Organizational Plaintiffs “have not
7 established that the *other* standing requirements are met.” *Townley*, 722 F.3d at 1135.

8 The causal link between counting mail ballots received after Election Day in
9 Nevada and Organizational Plaintiffs’ alleged electoral injuries is too speculative to
10 support standing. Plaintiffs argue that Democrats are more likely to vote by mail and to
11 vote later; thus, they are more likely to cast mail ballots that are received after Election
12 Day. (ECF No. 1 at 13.) Even if the first two points have been adequately pled—which is
13 not altogether clear⁴—it does not necessarily follow that mail ballots arriving after Election
14 Day will skew Democratic. And even if later-arriving mail ballots have favored Democrats
15 past elections, it is far from guaranteed that Nevada voters will behave similarly this
16 November. (ECF No. 1 at 13.) See *O’Shea v. Littleton*, 414 U.S. 488, 496-97 (1974)
17 (finding that, although past harm can have predictive value as to the likelihood of repeated
18 injury, the repetition of plaintiffs’ past injury was too speculative to support standing).
19 Nevadans exercise “broad and legitimate discretion” over whether, when, and how they
20 cast their ballots, and their choices will be informed by a cacophony of influences from

21
22 ⁴Democrats in Nevada have returned more mail ballots than Republicans in the
23 past two general elections (42.7% versus 29.2% of all mail ballots in 2022, and 46.2%
24 versus 26.2% in 2020), but around 27.6% of mail voters in each of those elections did not
25 identify as Democrats or Republicans. (ECF No. 1 at 13 (citing data from the Office of the
26 Nevada Secretary of State).) See *also* OFF. OF NEV. SEC’Y OF STATE BARBARA K.
27 CEGAVSKE, 2022 GENERAL ELECTION TURNOUT: CUMULATIVE ELECTION TURNOUT (2022),
28 <https://perma.cc/N7G7-RUQ9>; OFF. OF NEV. SEC’Y OF STATE BARBARA K. CEGAVSKE, 2020
GENERAL ELECTION TURNOUT (2020), <https://perma.cc/Z6F3-SM4N>. The partisan lean of
the unaffiliated mail ballots is unknown.

The claim that Democrats vote later is based on a 2020 magazine article’s
suggestion that “Democratic get-out-the-vote drives—which habitually occur shortly
before election day—may delay maximum Democratic voting across-the-board.” See Ed
Kilgore, *Why Do the Last Votes Counted Skew Democratic?*, INTELLIGENCER (Aug. 10,
2020), <https://perma.cc/R78D-3Q58>. Plaintiffs offer no more specific information about
the timing of mail voting in Nevada.

1 political parties, candidates, voter advocacy groups, media outlets, friends, family,
2 neighbors, and countless others. *Lujan*, 504 U.S. at 562. It is therefore “inherently
3 speculative” that mail ballots received in Nevada after Election Day will favor Democratic
4 candidates and that, if they do, such votes will be “sufficient in number to change the
5 outcome of the election to [Republicans’] detriment.” *Bognet v. Sec’y Commonwealth Pa.*,
6 980 F.3d 336, 351-52 (3d Cir. 2020), *cert. granted* 131 S. Ct. 2508 (2021) (dismissed as
7 moot). The effect of the Nevada mail ballot receipt deadline on electoral outcomes is “not
8 sufficiently predictable” to meet Article III’s causation requirement. *All. for Hippocratic*
9 *Med.*, 602 U.S. at 383.

10 By the same logic, Organizational Plaintiffs have not shown that any harm to their
11 electoral prospects will “likely” be redressed by enjoining Nevada from counting ballots
12 received after Election Day. *Id.* at 380. This Court “cannot presume either to control or to
13 predict” how Nevada voters would respond if their mail ballots were required to arrive by
14 Election Day. *Lujan*, 504 U.S. at 562 (quoting *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615
15 (1989) (opinion of Kennedy, J.)). Some affected voters might choose to forgo voting
16 altogether, while others might decide to vote by different means. Still others might choose
17 to continue voting by mail, with varying degrees of success dependent upon their own
18 timing, the speed of the U.S. Postal Service, and a host of other factors. How this all
19 would play out for Republican candidates in Nevada this November is entirely uncertain.
20 Because it is “merely speculative” that requiring mail ballots to arrive earlier will affect
21 Republican electoral success, Organizational Plaintiffs have not met the redressability
22 requirement either. *Lujan*, 504 U.S. at 561 (quotation marks omitted).

23 Organizational Plaintiffs cannot claim competitive standing based upon the
24 Nevada mail ballot receipt deadline’s threats to Republican electoral prospects.

25 2. State-Imposed Disadvantage

26 Nor have Organizational Plaintiffs shown that the Nevada mail ballot receipt
27 deadline forces them to “compete under the weight of a state-imposed disadvantage.”
28 *Mecinas*, 30 F.4th at 899.

1 As a threshold matter, the Court disagrees with the contention that “being forced
2 to participate in an ‘illegally structured competitive environment,’” without more, is
3 sufficient to confer competitive standing. (ECF No. 1 at 12.) *Mecinas*, 30 F.4th at 898
4 (quoting *Shays v. Fed. Election Comm’n*, 414 F.3d 76, 87 (D.C. Cir. 2005)) (brackets
5 omitted). In each context in which the Ninth Circuit has recognized competitive standing
6 without assessing the actual effects of a policy on a plaintiff’s success in a competitive
7 process, it was not the mere illegality of the competitive environment but instead the
8 resultant unfair disadvantage from that illegality which constituted an injury in fact. See,
9 e.g., *Mecinas*, 30 F.4th at 899 (the DNC had standing to challenge a party-based ballot
10 ordering statute which constituted a “state-imposed disadvantage”); *Owen*, 640 F.2d at
11 1133 (candidate had standing to challenge the U.S. Postal Service giving his opponent a
12 preferential mailing rate which was “an unfair advantage in the election process”); *Barr*,
13 929 F.3d at 1173 (city had standing to challenge federal grant policy that rendered it
14 unable to compete for funding “on an even playing field”); *Planned Parenthood of Greater
15 Wash. & N. Idaho v. U.S. Dep’t of Health & Hum. Servs.*, 946 F.3d 1100, 1108-09 (9th
16 Cir. 2020) (nonprofit had standing to challenge grant-making criteria which “impermissibly
17 tilted the playing field” for federal funding against it); *Preston v. Heckler*, 734 F.2d 1359,
18 1365-66 (9th Cir. 1984) (candidate had standing to challenge federal hiring standards
19 which “deprived [her] of a fair opportunity to be evaluated for employment”). To hold
20 otherwise would contravene core tenets of the case-or-controversy requirement: plaintiffs
21 must suffer a concrete and particularized harm to have Article III standing, and a belief
22 that the government is acting illegally does not suffice. See *Lance*, 549 U.S. at 442; *All.
23 for Hippocratic Med.*, 602 U.S. at 381; *TransUnion LLC v. Ramirez*, 594 U.S. 413, 426
24 (2021) (“[Congress] may not simply enact an injury into existence, using its lawmaking
25 power to transform something that is not remotely harmful into something that is.”).

26 In the instant case, Organizational Plaintiffs have failed to establish that the
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28

1 Nevada mail ballot receipt deadline gives their Democratic opponents⁵ some “unfair
2 advantage in the election process,” *Owen*, 640 F.2d at 1133, or otherwise renders
3 Republicans unable to “compete on an even playing field,” *Barr*, 929 F.3d at 1173. Any
4 ‘advantage’ that Democrats may gain from the four-day grace period is one that appears
5 to be equally available to, but simply less often employed by, Republicans. (ECF No. 1 at
6 13.) *See also Bognet*, 980 F.3d at 351 (no competitive standing where plaintiffs did not
7 “explain how counting *more* timely cast votes would lead to a *less* competitive race”). In
8 other words, Republican candidates “face no harms that are unique from their electoral
9 opponents” when all Nevada voters are uniformly given greater access to the ballot box.
10 *Donald J. Trump for President, Inc. v. Cegavske*, 488 F. Supp. 3d 993, 1003 (D. Nev.
11 2020); *see also Bognet*, 980 F.3d at 351 (candidate suffered no particularized injury when
12 all candidates in the state were subject to the same rules); *cf. Mecinas*, 30 F.4th at 898-
13 99 (competitive standing where statute mandated that candidates in the incumbent
14 governor’s party would be listed first on ballots); *Owen*, 640 F.2d at 1132-33 (same, where
15 U.S. Postal Service gave incumbents a preferential mailing rate). Extending the timeline
16 for mail voting does not have particularized effects upon Organizational Plaintiffs.

17 Organizational Plaintiffs do not have competitive standing to challenge the Nevada
18 mail ballot receipt deadline.

19 **B. Diversion of Resources**

20 Organizational Plaintiffs may also have direct standing if they can establish that
21 the Nevada mail ballot receipt deadline frustrates their mission and causes them to “divert
22 resources in response to that frustration of purpose.” *Fellowship of Christian Athletes v.*
23 *San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 682 (9th Cir. 2023) (en banc)
24 (quoting *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 879 (9th Cir. 2022)).
25 “[M]erely continuing ongoing activities does not satisfy this requirement.” *Friends of the*
26

27 ⁵Plaintiffs repeatedly refer to Democratic candidates as their electoral opponents.
28 (ECF Nos. 1 at 12-13; 74 at 11-13, 17.) The Court will employ the same terms for the
sake of simplicity, while recognizing that other partisan groups are also running
candidates in the November 2024 election.

1 *Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 942 (9th Cir. 2021). Organizational
2 Plaintiffs must instead show that the Nevada mail ballot receipt deadline will cause them
3 to “expend[] additional resources that they would not otherwise have expended, and in
4 ways that they would not have expended them.” *Id.* (quoting *Nat’l Council of La Raza v.*
5 *Cegavske*, 800 F.3d 1032, 1040 (9th Cir. 2015)). According to Organizational Plaintiffs,
6 the Nevada mail ballot receipt deadline requires them to “spend money on mail ballot
7 chase programs and post-election activities,” as opposed to “in-person voting activities
8 and election-integrity measures.” (ECF No. 1 at 4-5.) Neither of these alleged additional
9 expenditures amounts is a cognizable diversion-of-resources injury.

10 **1. Chasing Mail Ballots Through Election Day**

11 Any diversion of resources to an Election Day ‘mail ballot chase’ program appears
12 to be nothing more than “business as usual” for Organizational Plaintiffs. *Friends of the*
13 *Earth*, 992 F.3d at 943. Organizational Plaintiffs claim that, by allowing voters to cast mail
14 ballots up through Election Day, Nevada law effectively requires them to divert funding
15 from corralling in-person voters on Election Day so that they can keep running mail ballot
16 collection operations. (ECF Nos. 1 at 11; 74 at 8.) The record is devoid of evidence,
17 however, that Organizational Plaintiffs would not round up mail ballots in substantially the
18 same manner if they were due at county clerks’ offices on Election Day instead of four
19 days later; they would just conduct those same activities a few days earlier in November
20 or over a shortened period of time. *See Trump for President v. Cegavske*, 488 F. Supp.
21 3d at 1001-02 (diversion of resources toward voter education efforts is not needed to
22 counteract voter confusion when a law extends the time for casting a ballot). Engaging in
23 the same mail ballot collection push with slightly different timing is a “continuation of
24 existing advocacy,” not an “affirmative diversion of resources.” *Friends of the Earth*, 992
25 F.3d at 943. Organizational Plaintiffs have not shown that having *more* time to conduct
26 the same mail ballot collection activities has caused them any concrete harm.

27 **2. Post-Election Activities**

28 Organizational Plaintiffs further maintain that the Nevada mail ballot receipt

1 deadline makes post-election mail ballot activities more time-consuming and expensive,
2 both by lengthening the timeframe during which mail ballots may be received and
3 complicating the mail ballot authentication process. (ECF No. 1 at 11.) Though these
4 activities may theoretically divert Organizational Plaintiffs' resources, they cannot
5 constitute a resource diversion injury because that additional time and money will not be
6 expended "*in response to*" some impediment to achieving Plaintiffs' mission posed by the
7 mail ballot receipt deadline. *Sabra*, 44 F.4th at 879 (emphasis added).

8 The Court first recognizes that Nevada's mail ballot receipt deadline may require
9 Organization Plaintiffs to devote more resources to poll watching and election-integrity
10 trainings. Adding an additional step to the mail ballot verification process could lengthen
11 the average processing time for each ballot, which in turn would require Organizational
12 Plaintiffs to hire poll watchers for more total hours than they otherwise would have.
13 Likewise, teaching poll watchers and members of mail ballot central counting boards to
14 check postmarks and determine whether they are legible could make their training more
15 time-consuming and expensive. Extending the receipt period for mail ballots might also
16 lengthen the ballot counting process,⁶ and the resources allocated to these activities
17 could be put toward campaigning or other critical programs.⁷

18 These additional expenditures appear to be made in pursuit of ensuring that ballots
19 are counted correctly. See NRS §§ 293.269921 (setting postmark and receipt deadlines
20 for mail ballots), 293.269933 (outlining how mail ballot central counting boards must
21

22 ⁶The Court assumes, without deciding, that this is a sufficiently imminent harm. *But*
23 see NRS § 293.269931(1) (stating that the Nevada "mail ballot central counting board
24 may begin counting the received mail ballots 15 days before the day of the election" and
"must complete the count of all mail ballots on or before the seventh day following the
election").

25 ⁷The Court is not fully convinced that Organizational Plaintiffs have adequately
26 pled that they have imminent plans to hold these trainings and hire poll workers. (ECF
27 No. 1 at 11 (stating that Plaintiffs have the right to engage in these activities, without
28 clearly alleging that they intend to engage in these activities in Nevada this November).)
While this could be a dispositive issue, Organizational Plaintiffs' underlying argument is
not meritorious and cannot be remedied by additional factual allegations. The Court will
thus resolve this dispute by addressing the merits of Organizational Plaintiffs' theory of
standing.

1 process mail ballots). However, Organizational Plaintiffs have made no allegations that
2 the Nevada mail ballot receipt deadline harms the integrity of the mail ballot counting
3 process, such as by increasing the risk of error or fraud. They merely allege that the
4 process itself is invalid. Organizational Plaintiffs therefore are not engaging in additional
5 poll watching and mail ballot counting activities to identify or counteract any harms from
6 the Nevada mail ballot receipt deadline. *Cf. Havens Realty Corp. v. Coleman*, 455 U.S.
7 363, 379 (1982) (non-profit had direct standing to challenge racial steering practices
8 which impeded its “efforts to assist equal access to housing” because it “had to devote
9 significant resources to identify and counteract” the discriminatory behavior); *Sabra*, 44
10 F.4th at 879-80 (Muslim civil rights organization had direct standing to challenge
11 Islamophobic materials that caused it to divert resources to “create a campaign correcting
12 the Islamophobic information”).

13 As a result, the causal chain is too attenuated to support Article III standing. Just
14 as physicians do not have standing to challenge the approval of a drug “simply because
15 more individuals might then show up . . . in doctors’ offices with follow-on injuries,”
16 organizations who train and hire poll watchers and ballot counters do not have standing
17 to challenge the expansion of access to mail voting merely because it might create more
18 work for them. *All. for Hippocratic Med.*, 602 U.S. at 391-92. Such a theory of standing
19 would be too expansive to “screen[] out plaintiffs who were not injured by” a challenged
20 law and ensure that courts are not “virtually continuing monitors of the wisdom and
21 soundness of government action.” *Id.* at 383-84 (quotation marks and citation omitted).

22 **C. Harm to Individual Voters: Vote Dilution**

23 Plaintiffs finally argue that parties, candidates, and voters all have standing to
24 challenge the Nevada mail ballot receipt deadline because it dilutes the relative weight of
25 their ballots, reduces Republican voting power, and sets different rules for in-person and
26 mail-in voting. (ECF No. 74 at 15-18.) None of these alleged injuries is cognizable.

27 **1. Associational Standing**

28 The Court regards vote dilution claims by Organizational Plaintiffs as requests for

1 associational standing on behalf of their members who vote in Nevada, as their
2 competitive standing arguments have already been rejected. An organizational plaintiff
3 has associational standing to sue on behalf of its members if: “(1) at least one of its
4 members would have standing to sue in his own right, (2) the interests the suit seeks to
5 vindicate are germane to the organization’s purpose, and (3) neither the claim asserted
6 nor the relief requested requires the participation of individual members in the lawsuit.”
7 *See Fellowship of Christian Athletes*, 82 F.4th at 681.

8 The Trump Campaign cannot establish associational standing on behalf of Nevada
9 voters because the Campaign does not allege that it has any members who live or vote
10 in Nevada. (ECF No. 1 at 5.) Regardless of whether an individual voter *could* have
11 standing under the theories Plaintiffs advance, the Trump Campaign has not established
12 that it has a potentially qualifying member in the first place. Moreover, the purpose of the
13 Trump Campaign—electing Donald J. Trump to public office—is not “germane” to
14 vindicating individual voting rights. *See Fellowship of Christian Athletes*, 82 F.4th at 681.
15 Nevada voters may be a means through which the Trump Campaign achieves its
16 purpose; however, Nevadans’ individual interests in their voting rights are “wholly distinct”
17 from the interests of the Campaign. *Trump for President v. Cegavske*, 488 F. Supp. 3d at
18 999 (explaining that the Trump Campaign is only “a reserve of funds set aside for that
19 campaign”); *accord Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899,
20 915 (M.D. Pa. 2020), *aff’d sub nom. Donald J. Trump for President, Inc. v. Sec’y of Pa.*,
21 830 F. App’x 377 (3d Cir. 2020).

22 The associational standing of the RNC and Nevada GOP does not suffer from the
23 same defects. *See Trump for President v. Cegavske*, 488 F. Supp. 3d at 999. Both groups
24 stated that they have members who are registered to vote in Nevada and “vital interests
25 in protecting the ability of Republican voters to cast . . . effective votes in Nevada
26 elections.” (ECF No. 1 at 4-5.) But the Court rejects their associational standing argument
27 for the reasons stated below.

28 ///

2. Individual Standing

The Court will now turn to whether Szymanski and the individual members of the RNC and Nevada GOP (collectively, “Voter Plaintiffs”) have standing to sue in their own right under the theory of vote dilution.

Vote dilution has been repeatedly rejected by federal courts, including this Court, as an insufficient injury in fact to support standing when the alleged harm is predicated upon the counting of illegitimate or otherwise invalid ballots and equally affects all voters in a state. See, e.g., *Paher v. Cegavske*, 457 F. Supp. 3d 919, 926 (D. Nev. 2020); *Trump for President v. Cegavske*, 488 F. Supp. 3d at 1000; *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 711-12 (D. Ariz. 2020); *Bognet*, 980 F.3d at 352-60; *Wood v. Raffensperger*, 981 F.3d 1307, 1314-15 (11th Cir. 2020); *O’Rourke v. Dominion Voting Sys., Inc.*, No. 21-1161, 2022 WL 1699425, at *2 (10th Cir. May 27, 2022), *cert. denied*, 143 S. Ct. 489 (2022); *Feehan v. Wis. Elections Comm’n*, 506 F. Supp. 3d 596, 609-10 (E.D. Wis. 2020); *Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 731-33 (N.D. Ill. 2023); *Moore v. Circosta*, 494 F. Supp. 3d 289, 312-13 (M.D.N.C. 2020); *Martel v. Condos*, 487 F. Supp. 3d 247, 253 (D. Vt. 2020). But see *Green v. Bell*, No. 3:21-CV-00493-RJC-DCK, 2023 WL 2572210, at *4-5 (W.D.N.C. Mar. 20, 2023) (vote dilution and loss of confidence in elections were concrete injuries where violations of the National Voter Registration Act allegedly allowed ineligible persons to vote).

Today’s holding is no different. Just because the number of actual Nevadan voters is smaller than the population of all eligible voters in the state does not mean that the undifferentiated dilution of each vote cast in Nevada is a particularized injury. Counting ballots received after Election Day does not specifically disadvantage any one voter, “even if the error might have a ‘mathematical impact on the final tally and thus on the proportional effect of every vote.’” *Wood*, 981 F.3d at 1314 (quoting *Bognet*, 980 F.3d at 359-60); see also *Moore*, 494 F. Supp. 3d at 312-13. Reductions in individual voting power from counting ‘late’ mail ballots are felt equally by all voters in Nevada and do not present “an individual and personal injury of the kind required for Article III standing.” *Gill*

1 v. *Whitford*, 585 U.S. 48, 68 (2018). Voter Plaintiffs cannot avoid this conclusion “by
2 describing one group of voters as ‘those who lawfully vote in person and submit their
3 ballots on time’ and the other group of voters as those whose mail-in ballots arrive after
4 Election Day.” *Bognet*, 980 F.3d at 358 (ellipses and parentheses omitted).

5 Nor can framing vote dilution in terms of Republican voting power in Nevada render
6 the injury particularized. Partisan vote dilution can, of course, confer standing when the
7 injury “arises from the particular composition of the voter’s *own* district, which causes his
8 vote . . . to carry less weight than it would carry in another, hypothetical district.” *Gill*, 585
9 U.S. at 67 (emphasis added). In contrast, a *statewide* detriment to the Voter Plaintiffs’
10 collective interests in Republican representation is not sufficiently particularized to confer
11 standing. See *id.* at 68. The Nevada mail ballot receipt deadline does not have an
12 “individual and personal” effect on the voting power of Republican voters; it neither
13 undermines their access to the polls nor disproportionately diminishes the weight of their
14 votes relative to other Nevada voters. *Id.* at 67; see also *Toth v. Chapman*, No. 1:22-CV-
15 00208, 2022 WL 821175, at *7 (M.D. Pa. Mar. 16, 2022). Any remaining theory of partisan
16 vote dilution boils down to the fact that Democrats have used an equally available process
17 for casting ballots more often. (ECF No. 1 at 13.) That Democrats’ mail ballots are
18 counted, and that this inherently reduces Republicans’ political power in the state, is an
19 incognizable generalized grievance about the “composition and policymaking” of elected
20 officials. *Gill*, 585 U.S. at 68.

21 The existence of different rules for mail and in-person voting likewise is not an
22 injury in fact. Voter Plaintiffs do not assert that the difference in voting regulations has
23 harmed them in some concrete way. Now that the Court has rejected their theories of
24 vote dilution, the sole remaining alleged harm is that mail ballots received after Election
25 Day are “necessarily invalid” under federal law but can still be counted. (ECF No. 1 at 16.)
26 Even assuming Plaintiffs are correct on the merits, the “only injury [they] allege is that the
27 law . . . has not been followed.” *Lance*, 549 U.S. at 442. This is “precisely the kind of
28 undifferentiated, generalized grievance about the conduct of government” that the

1 Supreme Court refuses to recognize as an injury in fact. *Id.* As “Article III does not
2 contemplate a system where 330 million citizens can come to federal court whenever they
3 believe that the government is acting contrary to the Constitution or other federal law,”
4 Voter Plaintiffs have not established that they have standing to challenge Nevada’s mail
5 ballot receipt deadline. *All. for Hippocratic Med.*, 602 U.S. at 382.

6 None of Plaintiffs’ theories of standing meets the threshold requirements of Article
7 III, and consequently the Court does not have subject-matter jurisdiction over this case.
8 See *City of Oakland v. Lynch*, 798 F.3d 1159, 1163 (9th Cir. 2015). Article III thus leaves
9 the “crucial” decision as when mail ballots must be received in Nevada “to the political
10 processes, where democratic debate can occur and a wide variety of interests and views
11 can be weighed.” *All. for Hippocratic Med.*, 602 U.S. at 380 (quotation marks omitted).

12 The Government Defendants’ and Non-Profit Intervenor’s motions to dismiss are
13 granted as to Plaintiffs’ standing. All other motions are denied as moot for lack of subject-
14 matter jurisdiction.

15 **IV. CONCLUSION**

16 The Court notes that the parties made several arguments and cited several cases
17 not discussed above. The Court has reviewed these arguments and cases and
18 determines that they do not warrant discussion, as they do not affect the outcome of the
19 motions before the Court.

20 It is therefore ordered that the Government Defendants’ and Non-Profit
21 Intervenor’s motions to dismiss (ECF Nos. 60, 69) are granted under Federal Rule of Civil
22 Procedure 12(b)(1) because Plaintiffs have failed to demonstrate that the Court has
23 standing to exercise jurisdiction over this case.

24 It is further ordered that the DNC’s motion to dismiss (ECF No. 59) and the
25 American Civil Liberties Union of Nevada’s motion for leave to file an amicus curiae brief
26 (ECF No. 76) are denied as moot because the Court lacks subject-matter jurisdiction to
27 resolve them.

28 The Clerk of Court is directed to close this case and enter judgment accordingly.

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DATED THIS 17th Day of July 2023.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2024, I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

All participants in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Alex Hemmer
ALEX HEMMER

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