

In the  
Supreme Court of the State of Nevada

FRANCISCO V. AGUILAR, in his  
official capacity as NEVADA  
SECRETARY OF STATE,

Petitioner,

vs.

WASHOE COUNTY BOARD OF  
COUNTY COMMISSIONERS,  
CLARA ANDRIOLA, in her  
official Capacity as WASHOE  
COUNTY COMMISSIONER,  
MICHAEL CLARK, in his official  
Capacity as WASHOE COUNTY  
COMMISSIONER, and JEANNE  
HERMAN, in her official Capacity  
as WASHOE COUNTY  
COMMISSIONER,

Respondents.

Case No.: 88965

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**MOTION OF THE DEMOCRATIC NATIONAL COMMITTEE  
FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT  
OF PETITION FOR A WRIT OF MANDAMUS**

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Pursuant to Rule 29(c) of the Nevada Rules of Appellate Procedure (“NRAP”), the Democratic National Committee hereby moves for leave to file a brief as *amicus curiae* in support of Secretary of State Francisco Aguilar’s Petition for Writ of Mandamus. The proposed brief is being submitted with this Motion.

This Motion is made and based on the papers and pleadings on file herein, the Points and Authorities submitted herewith, and any further evidence and argument as may be adduced at a hearing on this matter.

Dated this 22nd day of July, 2024.

**BRAVO SCHRAGER LLP**

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## IDENTITY AND INTERESTS OF THE AMICUS CURIAE

Proposed *amicus curiae* the Democratic National Committee (“DNC”), as the principal party committee of the United States Democratic Party, has a strong interest in this matter. The DNC supports the election of Democrats to all levels of political office, from the school board to the Oval Office, by mobilizing voters across the Nation. Its focus includes reducing barriers to voting by ensuring voters are not kept from registering to vote, improperly removed from the voter rolls, or otherwise disenfranchised.

The DNC also brings a unique perspective based on its vast experience with the efforts of certain groups to undermine public confidence in our elections. The DNC participated in many of the numerous lawsuits filed in 2020, in which parties sought to cast doubt on election systems, nullify the lawful votes of millions of Americans, and overturn election results. The DNC is also monitoring efforts to sow doubt about election results in advance of the 2024 presidential election. That experience allows the DNC to provide insight into attempts to cast doubt over our elections and otherwise disrupt our electoral processes.

## REASONS WHY AN AMICUS BRIEF IS DESIRABLE

A court may, in its discretion, “grant leave to appear as amicus if the information offered is timely and useful.” *League to Save Lake Tahoe v. Tahoe Reg’l Plan. Agency*, No. 3:09-CV-478-RCJ-RAM, 2011 WL 3847185, at \*15 (D. Nev. Aug. 30, 2011), *vacated and remanded on other grounds*, 497 F. App’x 697 (9th Cir. 2012) (quoting *Long v. Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999)); *see also* NRAP 29(f) (court may grant leave to file amicus brief more than seven days after opening brief is filed, in its discretion).

Proposed *amicus*’ brief offers additional points and perspectives not addressed by the parties. The DNC monitors litigation filed across all fifty states that concerns or potentially affects the administration of elections and voting rights more generally. The DNC has a deep understanding of county canvassing and certification processes across the Nation, the applicable laws and their history, and interpretation of those laws by courts throughout the country. For all these reasons, the DNC has unique information and perspective that can help this Court interpret and apply the laws at issue in this matter.

The DNC's proposed brief addresses two issues. First, it explains the impact that county-level delays in canvassing or certification would have on general election deadlines. Second, it argues the Board does not have discretion to decline to canvass and to certify election results; Nevada law provides ample opportunity to raise concerns about the conduct of an election, but the county certification process is not one of them. The language of the relevant statutes, the broader statutory scheme, and the historical context in which the law was adopted all support this conclusion. The DNC is familiar with the scope of the arguments presented by the parties and will not unduly repeat arguments raised by the parties.

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## CONCLUSION

The undersigned respectfully requests the Court grant the DNC's Motion for Leave to File Brief as *Amicus Curiae*. A proposed brief is attached hereto as Exhibit A.

Dated this 22nd day of July, 2024.

### **BRAVO SCHRAGER LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of July, 2024, a true and correct copy of MOTION OF THE DEMOCRATIC NATIONAL COMMITTEE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

By:  /s/ Dannielle Fresquez  
Dannielle Fresquez, an Employee of  
BRAVO SCHRAGER LLP

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# EXHIBIT A

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## NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies the following, pursuant to NRAP 26.1(a):

The Democratic National Committee has no parent corporations, and no publicly held corporations have ownership in it. It is represented by Bradley Schragger and Daniel Bravo of Bravo Schragger LLP. No other law firms have appeared for the *amicus* in this case or are expected to appear for the *amicus* in this Court.

Dated this 22nd day of July, 2024.

### **BRAVO SCHRAGER LLP**

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## STATEMENT OF INTEREST

Proposed *amicus curiae* the DNC respectfully submits this brief in support of Secretary of State Francisco Aguilar's Petition for Writ of Mandamus. The DNC is the oldest continuing party committee in the United States, dedicated to electing Democratic candidates to all levels of public office nationwide. To accomplish its mission, the DNC works with individual members and constituents across the country, including in Nevada, to mobilize voters and to ensure that they have access to the franchise. Its focus includes reducing barriers to voting by ensuring voters are not kept from registering to vote, improperly removed from the voter rolls, or otherwise disenfranchised. The DNC is composed of its chair, vice chairs, and more than 200 members elected by Democrats in every U.S. state and territory and the District of Columbia. The DNC also represents millions of voters scattered around the country, including many within Nevada.

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## INTRODUCTION

Nevada law is clear: County Boards of Commissioners are required to canvass and promptly to certify election results. This is a mandatory ministerial duty to report tabulation results. Boards do not have discretion to question, investigate, or decline to confirm the final vote tally. Enforcing this requirement now sets vital precedent that would clarify the role of county-level officials in advance of November's general election.

Allowing local officials to delay performing this ministerial duty invites chaos. Nevada administers its elections consistent with specific and tightly sequenced procedures set forth in state law. The deadlines relevant to presidential elections are particularly densely packed. If county officials delay their canvass, the election process is derailed at the very start, and other officials' ability to comply with state *and federal* law is compromised.

Issuing a writ of mandamus in this case is consistent with the statutory language, the historical context in which canvassing statutes arose, and countless decisions interpreting similar statutes in other jurisdictions nationwide. Importantly, issuing a writ of mandamus here

also confirms the legal requirements governing a critical step in the election process before November’s general election.

Resolving the issues raised by this case remains important despite the fact the Washoe County Board of Commissioners (the “Board”) has since reconsidered and corrected its initial failure to canvass the recounted primary election vote totals. The timelines and exigencies of the post-election procedures discussed in this brief make it abundantly clear the issues raised by the pending petition are capable of repetition but may evade review—at uniquely inopportune moments in the election calendar, no less. Therefore, the need for a declaration by the Court of the ministerial nature of a county board’s post-election duties is essential to the function of electoral democracy in Nevada, regardless of any contention that this specific proceeding is potentially moot. As such, and for the reasons set forth below, *amicus* the Democratic National Committee respectfully urges the Court to issue Petitioner’s requested writ.

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## ARGUMENT

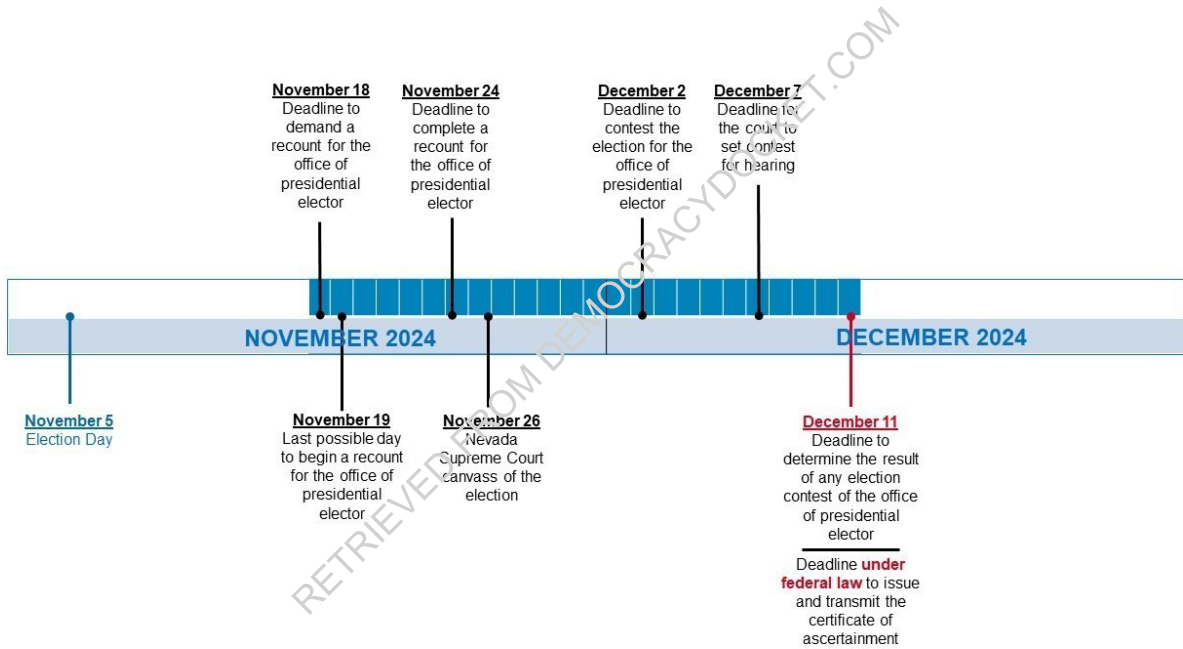
### I. **Statutory general election deadlines cannot accommodate county-level delays in canvassing or certification.**

The Board's actions threatened more than the outcome of Washoe County's primary results—they threatened the entire State's ability to timely certify election results. The Board's actions had no basis in law. County election officials—by design—have no authority to unilaterally halt the orderly administration of election processes by refusing to timely certify the results for fear of exactly this scenario: unqualified partisan officials usurping our election processes based on speculative concerns of election irregularities. *See* Section II.B *infra*. As Petitioners note, allowing the Board to refuse to canvass election results has the potential to “raise ... uncertainty regarding ... the content of a certificate of election or ascertainment.” Pet. at 16. But even more so than in a primary election, a county board's failure to canvass general election results in November “threatens profound disruption” to Nevada's statutorily-prescribed election process. *See id.*

Last year, the Nevada Legislature passed—and Governor Joe Lombardo approved—AB 192, which established specific procedures applicable to presidential elections. *See* AB192, 82nd Sess. (Nev. 2023)

(codified at NRS 293.424). The new law sets a series of deadlines for recount and contest proceedings, with an eye toward ensuring Nevada’s state executive is able to meet the federal deadline to issue a certificate of ascertainment appointing presidential electors, an essential step in the orderly resolution of presidential elections. NRS 293.424; 3 U.S.C. § 5.

These deadlines arrive in rapid succession beginning November 18:



Specifically, a candidate must demand a recount “on or before the 13th day following the election”—this year, Monday, November 18. NRS 293.424(1)(a)(1). Recounts must be commenced within one day after the demand is filed, and must be completed within five days. NRS 293.424(1)(b). Therefore, if a candidate demands a recount on the last

possible day (November 18), the recount must occur between November 19 and November 24, 2024.

Separately, the Nevada Supreme Court canvass occurs on the fourth Tuesday in November after the general election—this year, November 26. NRS 293.395(2). The deadline by which a candidate or voter must file a written statement of contest is specifically pegged to that canvass date, and (given various holidays) falls on December 2, 2024, this year. NRS 293.424(2)(a). The court must set the contest for hearing within five days.

This whole scheme is designed to ensure Nevada officials have sufficient time to comply with the federal deadline to submit a certificate of ascertainment. The Electoral Count Reform and Presidential Transition Improvement Act (“ECRA”) requires “the executive of each State” to issue a certificate of ascertainment of appointment of electors no later than six days before the meeting of the electors. 3 U.S.C. § 5(1). Federal law also prescribes the date on which the electors must meet: “the first Tuesday after the second Wednesday in December next following their appointment.” 3 U.S.C. § 7. This year, the electors are scheduled to meet on December 17, 2024. Nevada thus must issue its

certificate of ascertainment no later than December 11, 2024. NRS 293.424 pegs state proceedings to this deadline, requiring the court presiding over the contest to “determine the results of the contest before the deadline to issue and submit the certificate of ascertainment pursuant to 3 U.S.C. § 5 [i.e., December 11, 2024].” NRS 293.424(2)(c).<sup>1</sup>

Allowing county-level officials to disrupt the flow of election administration at the canvassing stage thus jeopardizes Nevada’s ability to comply with federal law. That is because a county board’s canvass of votes is the first in a series of steps required to confirm the results of an election. After a county board completes its canvass, the county clerk must create and certify an abstract of election results and transmit those results to the Secretary of State. NRS 293.387(3). That abstract is used in this Court’s canvass, which, as explained above, sets the contest timeline.

That the deadline to contest an election is separate from, and after, the deadline by which a candidate must request a recount makes sense.

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<sup>1</sup> Such a requirement is also consistent with state policy fixing a “short time limit [for contests] ... because it is important that such matters should be determined as speedily as possible for the public good.” *Crownover v. Millar*, 45 Nev. 81, 197 P. 817, 820 (1921).

A contest—not the canvass—is the appropriate and exclusive avenue through which a candidate may raise concerns about the way an election was conducted. County boards are not the appropriate entity to investigate alleged concerns about the conduct of an election—they lack the tools, staff, and resources to conduct such an investigation and, most importantly, lack the statutory authority to do so. Nor is the canvass the appropriate time in this sequence of post-election events to address alleged election official error, mistakes, or fraud. Election contests, which purposefully occur after all other phases of post-election administration, are specifically designed for that purpose. *See* Section II.B *infra*.

Nevada’s election code rests on the understanding that lower-level bodies will move expeditiously to meet their duty to canvass and certify election results. Any delay in canvassing and certifying would be profoundly disruptive.

## **II. The Board does not have discretion to delay the canvass and certification of an election.**

Nevada law makes promptly canvassing election results and preparing and transmitting the abstract of votes a mandatory legal duty for the Board and the county clerk. *See* NRS 293.387; NAC 293.365. That is clear from the text and structure of the applicable statutes.

Furthermore, it is clear from the broader scheme of Nevada election law as well as the history of the relevant statutory provisions, including a long line of cases from jurisdictions across the nation deciding nearly identical questions.

**A. Nevada election law confirms canvassing is mandatory.**

The plain text of the canvassing statutes makes clear that the board's duty to canvass the results is mandatory and ministerial.

As “soon as the returns from all the precincts and districts in any county have been received” by a county board of commissioners, the board “*shall* meet and canvass the returns,” NRS 293.387 (emphasis added). The canvass “*must* be completed” on or before the tenth day following the election. *Id.* (emphasis added). In cases where a county conducts a recount, the results of that recount “*must* be canvassed within 5 working days after the completion of the recount.” NAC 293.365(1) (emphasis added). The language of the law is strong and clear: the board “shall” canvass the results, and “must” complete the canvass by specified dates. *See State v. Martin*, 103 P. 840, 841 (Nev. 1909) (“[I]f an act of the Legislature directs a board to do a certain act upon the arising of a contingency, and it is not disputed that the conditions as intended by the



Legislature have arisen, and the statute vests no discretion in the board, it makes the act a ministerial one, and the board can be compelled to comply with the statute.”); *see also* NRS 0.025(1)(d) (“Except as otherwise expressly provided in a particular statute or required by the context ... ‘Shall’ imposes a duty to act.”). The law leaves no doubt. The Washoe County Board of Commissioners was obligated—as all county boards are—to meet, canvass the returns, and complete the certification by July 10 (five working days after the relevant recounts were completed on July 2). *See* Pet. at 16–21.

The duty to canvass is not only mandated by the statutory language, it makes good policy sense. And as discussed in Section II(B), *infra*, allowing county boards to delay the canvass and certification process would invite partisan manipulation and risk widespread and unjustified denial of Nevadans’ fundamental right to vote. The mandatory nature and timing of county-level canvassing and certification therefore plays a crucial role in the proper administration of an election and avoiding the disenfranchisement of Nevada voters.

The broader statutory context confirms this understanding. County canvassing of election results is but one part of the detailed and

sophisticated elections regime established by the Legislature. Indeed, Nevada's election code prescribes every step of the election administration system, from voter registration and casting and counting votes, to county canvassing and recounts, risk limiting audits, election contests, and, ultimately, state-level certification. Within this intricate, multi-step process, county canvassing serves a very specific purpose: to report the tabulated vote count. Once a statutorily-defined recount process (if any) is complete, the county boards must again timely canvass and report the election results. The primary (narrow) purpose of county canvassing and certification is to ensure that the aggregate tabulation is accurately reported and certified.

By contrast, other steps in the election process—which occur both before and after county certification—address the possibility of election misconduct, election official error, tabulation mistakes, or similar concerns. These steps include voter registration, the risk-limiting audit process, and the election-contest process. *See, e.g.*, NRS 293.5742; NRS 293.394; NRS 293.407. Allowing county boards to delay the canvass and certification process because of alleged errors in the election or ballot tabulation entirely misapprehends the role of this process in the Nevada

election scheme. In particular, any alleged errors in the election or ballot tabulation can and should be addressed in an election contest proceeding should the affected candidate choose to file such a contest. *Anthony v. Miller*, 137 Nev. 276, 279, 488 P.3d 573, 576 (2021) (“[T]he Legislature has established a carefully delineated and accelerated procedure by which a candidate may challenge the conduct of the election, including any discrepancies or errors that may have affected the outcome of the election.”). NRS 293.407–435 sets forth a process by which a candidate may contest an election based on errors in the conduct of the election. See NRS 293.410(2). An election contest must be filed in the district court within a short time after the election results are certified, NRS 293.407; NRS 293.413(2), and must be heard by the district court in an expedited manner so that the “results of elections shall be determined as soon as practicable,” NRS 293.413(2). Elections may be contested based on allegations that, for example, legal and proper votes were not counted, illegal or improper votes were counted, or the election board erred “in conducting the election or in canvassing the returns.” NRS 293.410(2)(c)(3), (2)(d). Courts entertaining such proceedings have the authority to expedite discovery, compel the production of evidence by

subpoena and otherwise to employ the full power of the court to assist the parties' investigation of relevant factual information. If the district court finds in the election contest that a candidate other than the defendant received the greatest number of legal votes, then the court "shall declare that person elected or nominated." NRS 293.417(1).

This Court has made clear that the authority to decide contested elections has been entrusted to the *judiciary*—not county election boards or officials. In *Anthony v. Miller*, for example, an unsuccessful candidate in a 2020 Clark County race sought declaratory and injunctive relief requiring the Clark County Board of Commissioners to conduct a new election pursuant to NRS 293.465, a statute that requires county boards of commissioners to order new elections "[i]f an election is prevented ... by reason of the loss or destruction of the ballots ... ." 137 Nev. at 277–79. The candidate argued that an election is effectively "prevented" when errors in the conduct of the election make it impossible for the "will of the voters to be known." *Id.* at 278. This Court disagreed with that broad interpretation, and held that the only way to challenge election results is by filing an election contest in the district court pursuant to NRS 293.410. *Id.* at 278–81. The Court stated:

[T]he Legislature has seen fit to grant the *judiciary, not the Board*, the authority to decide such a contested county election. To interpret NRS 293.465 in the manner urged by Anthony—as requiring the Board to call for a new election when unexplained discrepancies exceed the margin of victory—would conflict with the election-contest framework. In other words, Anthony’s proffered interpretation would effectively give the Board the authority to decide certain challenges to an election, such as votes not being counted and errors in conducting the election, even though NRS 293.410 specifically provides for those challenges to be made to the district court.

*Id.* at 279 (emphasis added and citations omitted).

In short, county canvassing and certification is a mandatory clerical task and serves a particular purpose. Other parts of the election code—not the canvass process—provide avenues that are specifically tailored to address election misconduct, election official error, tabulation mistakes or similar concerns. And, “[o]nce an election takes place and the voters have had the opportunity to vote,” any challenge to the conduct of the election must proceed by way of an election contest in the judiciary. *Id.* at 281.

**B. History and current events support the Legislature’s decision to make canvassing non-discretionary.**

In mandating county boards canvass (and cause officials to certify) election results, the Nevada Legislature was hardly breaking new ground. To the contrary, the argument that election officials may exercise

discretion in whether to perform the ministerial duty to certify election results has been recognized for more than a century and around the country to be nothing more than an attempt to subvert elections. The logic of these cases applies with equal force today. In Nevada, county election boards have neither the tools, the staff, nor the expertise to conduct free-ranging independent investigations into allegations of electoral misconduct and they certainly are not qualified to resolve questions of law. Opening the door to such activity invites partisan manipulation of the results, delay, and chaos.

Treatises going back to 1897 opine that it is “well-established” that election officials’ duty to certify election results is a “ministerial” and “mandatory” duty that affords “no discretionary or judicial power.” Lauren Miller & Will Wilder, *Certification and Non-Discretion: A Guide to Protecting the 2024 Election*, 35 *Stan. L. & Pol’y Rev.* 1, 31 (2024) (quoting George W. McRary, *A Treatise on the American Law of Elections*, 153 § 229 (4<sup>th</sup> ed. 1897)). For instance, in *Tanner v. Deen*, the Georgia Supreme Court held that certain county superintendents’ refusal to certify an election was subject to mandamus, and ordered the lower court to issue a writ of mandamus requiring the superintendents to certify the

election results. 108 Ga. 95, 101–02 (1899). Rejecting the superintendents’ contention that the returns of a certain precinct were invalid, the court noted that “most, if not all, the points made against the validity of these returns involved questions of law only.” *Id.* at 101. And because the superintendents “were not selected for their knowledge of the law,” they therefore had no authority to make legal determinations as to the validity of any election returns. *Id.* The same is true here: the Board members were not “selected for their knowledge of the law” because investigating and adjudicating legal issues is not within their scope of responsibilities. *Id.* Instead, Nevada’s election code explicitly entrusts *the courts* with resolution of election contests.

Similarly, in *Leary v. Jones*, the Colorado Supreme Court addressed whether election officials were required to certify results even though they had allegedly tallied 1,163 ballots from a precinct in which only 365 people voted. 51 Colo. 185, 188 (1911). Despite this alleged inconsistency, the court held the election officials had a mandatory “duty to complete the remainder of their work by certifying the result (which was purely a ministerial duty).” *Id.* at 192. In particular, the court added, the election officials “had no right to refuse because of their claim (if true) that there

were irregularities, frauds, and illegal votes in the ballot box” because “[t]hat was not a question at this stage of the procedure for them to determine.” *Id.* Rather, “[t]hat question should have been left for the courts.” *Id.*

*Tanner* and *Leary* are just two examples reflecting the consensus that had already formed across the country by the early 1900s. There are innumerable others. *See, e.g., Lewis v. Marshall Cnty. Comm’rs*, 16 Kan. 102, 108 (1876) (“[The canvassing board’s] duty is almost wholly ministerial. It is to take the returns as made to them from the different voting precincts, add them up, and declare the result. Questions of illegal voting, and fraudulent practices, are to be passed upon by another tribunal.”); *Kisler v. Cameron*, 39 Ind. 488, 490–91 (1872) (“The duty imposed is ministerial. It is not within their province to consider or determine any questions relative to the validity of the election held or of the votes received by the persons voted for.” (citation and quotation marks omitted)); *People ex rel. Fuller v. Hilliard*, 29 Ill. 413, 422 (1862) (“These officers are clothed with no discretionary duty . . . They are not allowed to reject any returns, or to decide upon their validity, if, on the face, they are made in compliance with the law, and in the form



prescribed by the statute.”); *Stearns v. State*, 100 P. 909, 911 (Okla. 1909) (“The duty of the city council to canvass the returns as made to them by the election boards of the different precincts in the city is purely ministerial . . . To determine whether the votes of [a] precinct had been falsely and fraudulently counted and returned, as charged, would have required . . . a judicial proceeding which the canvassing board has no power to undertake.” (collecting authorities)); *State v. Steers*, 44 Mo. 223, 227–28 (1869) (“Here is no discretion given—no power to pass upon and adjudge whether votes are legal or illegal—but the simple ministerial duty to cast up and award the certificate to the person having the highest number of votes.”).

This nationwide judicial consensus is easy to understand: “[T]he risk that the certifying officers would seek to manipulate the results or otherwise abuse their power outweighed any thought that they could play a helpful role in investigating elections.” Miller & Wilder, *supra*, at 30. Thus, courts across the country have expressly acknowledged that giving election officials the discretion to refuse certification would both threaten to disenfranchise voters and “create[] opportunities for election fraud” on

the part of those officials. *Id.* at 29 (emphasis added). As the Missouri Supreme Court explained in *State v. Steers*:

To allow a ministerial officer arbitrarily to reject returns at his mere caprice or pleasure is to infringe or destroy the rights of parties . . . The exercise of such a power is subversive of the rights of the citizen, and dangerous and fatal to the elective franchise.

44 Mo. at 228. Likewise, in *Lehman v. Pettingell*, the Colorado Supreme Court cautioned that imbuing election boards with the discretion to refuse certification “would enable canvassing boards, through design or incompetency[,] to temporarily, at least, defeat the will of the people.” 39 Colo. 258, 264 (1907). And in *Stearns v. State*, the Oklahoma Supreme Court issued a similar warning:

To permit canvassing boards who are generally without training in the law . . . to look elsewhere than to the returns for a reason or excuse to refuse to canvass the same and adjudicate and determine questions that may be presented aliunde, often involving close legal questions, would afford temptation and great opportunity for the commission of fraud. In close elections the boards swayed by local prejudice or interest could easily find some excuse or have supplied to them some excuse to refuse to canvass the returns, and the means of the people to have the vote canvassed and the result of the election declared would be destroyed. If alleged frauds in conducting and holding an election and making returns thereof to the extent of improperly counting 89 votes furnishes to a canvassing board an excuse to refuse to canvass the returns, it may refuse to do so when an allegation of one fraudulent vote is made, and in general elections each county

canvassing board of the state might thus be turned into a contesting court, and the entire election machinery would become blocked and useless for the purpose for which it was created.

100 P. at 911.

Simply put, courts have long recognized that giving election boards and other election officials discretion in certifying election results would allow them to “assume[] a power dangerous to the citizen, and fatal to the elective franchise.” *Hilliard*, 29 Ill. at 422–23; *see also* *People ex rel. Blodgett v. Bd. of Town Canvassers of Coeymans*, 19 N.Y.S. 206, 207–08 (N.Y. Sup. Ct. 1892) (“[T]o permit [canvassers] to refuse to canvass because of mistake or fraud . . . would be subversive of our entire scheme of elections.”). As such, courts have invariably and emphatically refused to place such power in the hands of canvassing and certifying officials.

Courts have continued throughout our modern history to embrace this foundational principle that canvassing and certification is a ministerial duty. *See, e.g.,* *Martinez v. Slagle*, 717 S.W.2d 709, 711 (Tex. App. 1986) (“Mandamus is the proper remedy for compelling an election official to perform a duty required by law. This includes the ministerial duty to canvass election returns.”) (citations omitted)); *Ex Parte Krages*, 689 So.2d 799, 805 (Ala. 1997) (noting “[t]he duty to canvass election

returns and certify a winner is ministerial in nature” and explaining that, in a situation where the law required a municipal governing body to canvass election returns and issue a certificate of election, “the judiciary may not order a municipal governing body to disobey or disregard its clearly expressed statutory duty”).<sup>2</sup>

Indeed, in Arizona, in 2022, the Cochise County Board of Supervisors refused to certify the results of the County’s midterm

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<sup>2</sup> See also *In re Sarauw*, 67 V.I. 563, 570–71 (2017) (no provision of law “grants the Board of Elections the power to unilaterally refuse to certify the results of a duly-called election simply because it believes that the election was unnecessary, or that certification may result in confusion” . . . “certification of the special election within the statutorily-mandated fifteen days is clearly a ministerial act that the Board of Elections lacks the discretion to simply postpone”); *Goff v. Kimbrel*, 849 P.2d 914, 917 (Colo. Ct. App. 1993) (stating that “[t]he canvass of the election returns entails summarizing all the returns from the election judges’ and then certifying the results of the election” and “the canvassing board had a duty to certify the election results as they were certified by the election judges on the returns, and since its canvassing duties are ministerial in nature, mandamus is proper when a canvassing board refused to perform its duty to certify an election.”); *Lamb v. Hammond*, 308 Md. 286, 303–304, 518 A.2d 1057 (1987) (concluding that state constitution did not preclude jurisdiction over action based “upon a timely complaint that canvassing officials have improperly refused to canvass votes that were lawfully cast,” and that “the appropriate court . . . may inquire into the matter, determine whether the administrative officials have carried out their ministerial duties in accordance with the law, and, if they have not, command them to do so,” because this exercise of jurisdiction was “complementary” of legislature’s jurisdiction over election contests under state elections clause).

election by the statutorily imposed deadline, and were ultimately compelled to follow the law by court order. *See Arizona All. of Retired Ams., Inc. et al. v. Hobbs*, Nos. CV202200352, CV202200553, Slip op. at 1–2 (Ariz. Super. Ct. Jan. 27, 2023); *see also* Jen Fifield, *Cochise County officials who refused to certify the 2022 election are being investigated by the AG*, AZ Mirror, Oct. 30, 2022, <https://azmirror.com/2023/10/30/cochise-county-officials-who-refused-to-certify-the-2022-election-are-being-investigated-by-the-ag/>.

The logic of these cases rings even truer this election season. In the aftermath of the 2020 general election, courts across the country (including here in Nevada) rejected lawsuits that were filed in an attempt to cast doubt on our election systems, nullify the lawful votes of millions of Americans, and overturn election results.<sup>3</sup> Efforts to cast doubt on our election processes continue today.<sup>4</sup> Inserting the discretion of election

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<sup>3</sup> *See Results of Lawsuits Regarding the 2020 Elections*, CAMPAIGN LEGAL CTR., <https://campaignlegal.org/results-lawsuits-regarding-2020-elections> (visited July 19, 2024); *see also, e.g., Law v. Whitmer*, 136 Nev. 840, 477 P.3d 1124 (2020); *Anthony*, 137 Nev. at 279; *Stokke v. Cegavske*, No. 20-cv-2046 (D. Nev. 2020); *Marchant v. Gloria*, No. A-20-824884-W (Nev. Dist. Ct. 2020); *Becker v. Gloria*, No. A-20-824878-W (Nev. Dist. Ct. 2020); *Arrington v. Gloria*, No. A-20-825149-W (Nev. Dist. Ct. 2020); *Rodimer v. Gloria*, No. A-20-825130-W (Nev. Dist. Ct. 2020).

<sup>4</sup> *See, e.g.,* Nick Mordowanec, *Trump Already Claiming Interference*

boards and county officials into the ministerial duty to canvass election results would only sow more chaos. County officials do not, and should not, have the ability to halt elections and disenfranchise voters based on unfounded concerns about election irregularities. See April Corbin Girnus, *Refusal to certify Washoe County election results meant to sow distrust, advocates warn*, NEVADA CURRENT, July 10, 2024, <https://nevadacurrent.com/2024/07/10/refusal-to-certify-washoe-county-election-results-meant-to-sow-distrust-advocates-warn/> (Washoe County District Attorney counseled board members they had a legal duty to canvass, but should ultimately “vote (their) conscience” in determining whether to canvass). Amicus the DNC urges this Court to follow this well-established principle of election administration, consistently recognized

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*in 2024 Election*, NEWSWEEK, May 17, 2023, <https://www.newsweek.com/trump-already-claiming-interference-2024-election-1800976>. Notably, this is not the first time Washoe County election officials have flouted mandatory duties to declare election results. In 2022, Washoe Commissioner Jeanne Herman—Respondent here—refused to certify election results, claiming she had seen problems on livestream cameras showing the ballot-counting process. See Mark Robinson et al., *Nevada’s most populous counties Washoe and Clark, certify election results*, RENO GAZETTE J., Nov. 18, 2022, <https://www.rgj.com/story/news/politics/elections/2022/11/18/p-rotesters-demand-hand-count-outside-washoe-county-vote-canvass/69661191007>. She was outvoted by the county’s other commissioners, and the election results were certified. See *id.*

by courts throughout our nation's history, that local election commissions must follow their mandatory duty to canvass.

## CONCLUSION

Based on the above, the DNC respectfully urges this Court to grant the Petition for a Writ of Mandamus.

Dated this 22nd day of July, 2024.

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1. I certify that this Brief complies with the formatting requirements of NRAP. 32(a)(4), the typeface requirements of NRAP. 32(a)(5) and the type style requirements of NRAP. 32(a)(6) because it has been prepared in a proportionally-spaced typeface, size 14, Century Schoolbook.

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3. Finally, I hereby certify that I have read this Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP. 28(e)(1), which requires every assertion in the Brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying Brief is not in conformity



with the requirements of the Nevada Rules of Appellate Procedure.

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