**SUPREME COURT CASE NO. 71204**

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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DIANA V. ORROCK, BLAIN K. JONES, MARY ROONEY

Petitioners

vs.

THE HONORABLE MICHELLE LEAVITT, Eighth Judicial District Court of Clark County, Nevada

Respondent.

DAVID GARDNER, DERECK W. ARMSTRONG, AND NICHOLAS D. PHILLIPS, Real Parties in Interest,

Respondents.

And

The Clark County Registrar of Voters, JOE P. GLORIA, and the Clark County Clerk, LYNN GOYA, Real Parties in Interest,

Respondents.

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From the Eighth Judicial District Court, Clark County, Nevada
Case No.: A-16-739146-C

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# REPLY IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDAMUS

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**REPLY IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDAMUS**

Come now, the Petitioners, by and through their attorney, Joel F. Hansen Esq., and present their Reply in support of their Emergency Petition for Writ of Mandamus.

## I. PEOPLE WHO LIVE IN GLASS HOUSES SHOULDN'T THROW STONES; OR, THE EMPORER HAS NO CLOTHES

The Respondents complain that the Petitioners did not submit a transcript of the Proceedings in the lower Court, baldly claiming that "much of their argument relies upon their rendition of the testimony given before the District Court, and this Court is left largely to deal with exhibits filed . . . etc." This is simply an untrue statement. Petitioners' could not afford a transcript of the hearing, and therefore Mr. Hansen carefully crafted the Petition in such a way that every assertion of fact made in the Petition was supported by documents filed below or introduced into evidence. It should be noted that none of the testimony of Tony Dane is quoted, rather the Court is referred to his report. The same applies to the Petitioners. Although their testimony is referred to, the statement is immediately quoted from their Affidavits submitted with the Contest below. The other evidence cited here is from Col. Robert Frank (Ret.), and it was the subject of an offer of proof below, but all that is actually quoted is Col. Frank's written report.[1] In other words, there is nothing presented to this Court except it is verified with documents on file with the Court below, except one newspaper article which was published after the hearing below. The Court should contrast this with the liberties taken by both the County Respondents and the Candidate Respondents. Beginning at pg. 4 of the County's brief, starting at line 18, and not ending until pg. 8, line 9, the brief sets forth what allegedly happened in the Court below, without a shred of documentary evidence upon which these allegations are made. For example: Petitioners called the Registrar of Voters, and "were able to have him address every issue raised. . . ." (Pg. 4:18—5:2) How does this Court know that this happened? The Respondents , who have the resources to order a transcript, did not do so. Yet

[1] And it is respectfully here moved that this Court reverse the decision of the District Court not to allow Colonel Frank to testify and command her to allow his testimony.

Respondents have the gall to point the finger at the Petitioners, while they throw their stones and at the same time fill the bulk of their brief with unsubstantiated assertions about what happened below. Other glaring examples: "[I[t was established that Mr. Dane's basis for extrapolating possible error on the part of the County's voting system was grounded on an unofficial vote report. . . ." (Pg 5: 9—11) But nothing is cited to back up this bald statement. "Testimony was elicited at the hearing that Mr. Dane inappropriately relied on those numbers." (Pg.5: 19-20). (Q: Who elicited it? A: Unknown. Q: Where is said testimony transcribed and set before this Court? A: It isn't.) "The RPI's also established that the testing of the system used in the primary election did not end there." (Pg. 6: 8-9) Petitioners are wondering, as this Court should be, by whom this was established, how it was established, and what documents were used to establish it. Other assertions are made to appear credible by citing to the statutes which direct the Registrar to follow certain procedures. (Pg. 6: 9—15). Well, pardon us, but just because the statute says that the Registrar is supposed to follow certain procedures doesn't mean that those procedures were followed.

And even where the County Respondents have cited to Exhibits in their Appendix, none of these exhibits were put into evidence at the hearing. This is all new stuff, presented at this late date to this Court for the very first time!! Further, Respondents continue with this: "The Registrar testified that this test is conducted to ensure that the firmware. . . . All this evidence was presented to the District Court. . . . . and its accuracy . . . was not questioned by the Petitioners." (Pg.8: 1-6) Again, this Court has been presented with nothing except bald faced assertions by Counsel for the County that the Registrar so testified or that it was not questioned. This type of behavior is so pervasive and occupies such a vast majority of the Response that the whole county response ought to be stricken.

Then, the Respondent County ends its argument with this:

> "Since the District Court heard evidence that the Registrar of Voters had, pursuant to Nevada law, already done the type of auditing that the Petitioners were requesting her to order, and

> further evidence that the Petitioners' allegations were based on faulty information, the District Court's determination on the weight of evidence should not be disturbed." (Pg. 8: 14-18).

This Court cannot rule in favor of the County on these arguments, because there is no proper evidence before this Court that any of this alleged testimony was ever presented to the District Court.

The Candidate Respondents stooped to the same improper tactics in their brief. "Elected Respondents believe that these election contests are little more than a convenient . . . front. . . . They did not trust the Clark County's election process. . . ." (Pg. 7: 11-14) Most bothersome is this wholly unsubstantiated assertion: " Petitioners did not make even a minimal factual showing that would justify a costly and time-consuming inspection of the voting record." (Pg. 7:5-7) How is the Supreme Court of Nevada supposed to evaluate the truth of that statement without a transcript? It is impossible for this Court to rule in favor of the Respondents' position without the Respondents having presented proper evidence in the Court below. A transcript was as available to the Respondents as to the Petitioners, but none was provided. The Respondents undocumented assertions should not be considered by this Court.

The Respondents continue: "And at no point during the voting and counting process were there any reports of any machine failures, irregularities, or complaints." This is one of the most egregious assertions of all, because it is made without placing evidence of any kind before this Court. How do the Respondents know this? Are they just making it up?[2] And neither can the Petitioners or this Court know it, or evaluate it, without any documentation. Again, this groundless statement should be stricken. [3] Other examples of unsupported allegations and assertions in the County's brief occur at pg. 8:20; and at Pg. 10:20—11:1-2.) ("There are no reports of any voters discovering or complaining that the selections they made on the voting machine differed from [the]

[2] This, as far as Counsel can recall, was even never mentioned below.

[3] Other examples of unsupported allegations and assertions in the County's brief: Pg. 8:20; and "There are no reports. . . . (Pg. 10:20—11:1-2.)

paper record they reviewed. . . .”). How do we know there are no such reports? How does the Court know it? We can’t, this court can’t, and thus no ruling can be based upon another bald assertion by Respondents.

The above shows that Respondents indeed are living in a glass house while throwing stones at the Petitioners—many of the “factual” stones they are throwing are based upon nothing but whimsical fancy and wishful thinking, rather than upon a transcript or document presented to this Court. In other words, the Emporer has no clothes, and neither do the County or the Respondent Candidates.

## II. THE EVIDENTIARY BURDEN WAS SUCCESSFULLY MET

### A. The Evidentiary Standard Requires Proof That There Was A Possible Voting Machine Malfunction.

The Respondents start out their brief by admitting as follows: “Judge Leavitt . . . after a nearly ten hour hearing, . . . ruled that Petitioners had not met their ***evidentiary burden of proving possible voting machine malfunctions*** that affected the election.” This statement of the evidentiary burden is true. NRS 293.410(2)(f) provides that one of the grounds for contesting an election is “that there was a possible malfunction of any voting or counting device.” One can search the contest statutes in vain to find any other evidentiary standard. The Contestants have the burden of proving that there is a possible voting machine malfunction. It’s very simple and straightforward. The Respondents contend later for a different evidentiary standard, but they never cite to any Court ruling or statute which changes the evidentiary standard set up by 293.410. We may ask, “Why would the legislature set such a fairly low standard?” The answer is simple: The voters have the right to expect and know that there aren’t malfunctions in the voting machines, either intentional, or caused by mechanical or electronic glitches, or caused by a cyberattack, or the voting system or anything else. This is similar to the criminal standard for conviction, only in reverse. We don’t convict anyone unless the evidence is “beyond a reasonable doubt” because we want to be

darn sure that someone who is going to prison or to his death is guilty. This means that if there is a ***possibility*** that the Defendant is innocent, we don't convict. In other words, we don't take away fundamental human rights if there is a ***possibility*** that a decision to do so is wrong. The same goes for voting, a sacred democratic right of the citizens of Nevada and of the United States of America. If there is a ***possibility*** that there is a malfunction, then the legislature says that is enough to allow a physical audit of the election results by the parties in interest to make darn sure that the results are correct and that the votes cast by the citizens are properly counted and accounted for. This is the evidentiary standard, the Respondents have admitted that the Court so ruled, and the statute says it clearly.

**B. Petitioners Proved Their Case <u>Beyond</u> A Possibility**

The Respondents assert throughout their briefs that the Petitioners did not even meet this low standard of proof, but that is just clearly wrong. Plenty of evidence was put forth that there was a <u>possibility</u> that there had been a malfunction of some kind in the voting system. The affidavits of the Contestants show at the very least a possibility, and, indubitably beyond that a probability that there was a malfunction. Evidence they gathered during on the ground campaigning, volunteer get out the vote calling, and through exit polls of early voting all indicated that they should have won their elections. (See pg. 3 of Petitioners' brief, at lines 3 through 18.) They had hired a professional pollster, Tony Dane, and he concluded that there were indeed malfunctions in the voting system. His evidence will be discussed further below. And if Robert Frank had been allowed to testify, he would have shown that the Nevada election system is deeply flawed in that it is not adequately guarded from inside tampering and or outside cyberattacks, which could easily cause the equipment to malfunction.

In this regard, it is interesting to note that on the very day Counsel for the Petitioners began writing this Reply, October 8, 2016, the Las Vegas Review Journal carried in huge headlines on the front page this:

> **ELECTION CYBERATTACKS**
>
> **U.S. calls out Russia for breaches**
>
> **Move 'unprecedented across the board'**

The article states that the U.S. bluntly accused Russia on Friday of hacking American political sites and email accounts in an effort to interfere with the upcoming presidential election:

> This is a huge deal," said Michael Morell, the former deputy and acting director of the Central Intelligence Agency. "I can't think of any time in our history when we have blamed another government for trying to interfere in our elections. This is inprecedented across the board." . . . . "These thefts and disclosures are intended to interfere with the U.S. election process." . . . "***Election data systems in at least two states, Illinois and Arizona, also have been breached. Intelligence officials say some states have experienced scanning or probing of their election systems,*** which in most cases originated from servers operated by a Russian company." "Democratic Party officials learned in late April that their systems had been attacked when they discovered malicious software on their computers. Crowdstrike, a cybersecurity firm that investigated, said one of the groups . . . had previously ***infiltrated unclassified networks at the White House, the State Department, and the Joint Chiefs of Staff."***

See **Exhibit 12, Doc Nos. 286-287.**

A recent letter from the Congress of the United States, Signed by all of its leaders, is attached as **Exhibit 13, Doc No. 288**. The letter is directed to the president of the National Association of State Election Directors, and is dated Sept. 28, 2016. (After the hearing below.) It warns:

> Today, the states face the challenge of malefactors that are seeking to use cyberattacks to disrupt the administration of our elections. We urge the states to take full advantage of the robust public and private sector resources available to them to ensure that their network infrastructure is secure from attack.
>
> . . . .

> For over 200 years the states have overcome every challenge to ensure the smooth function of our democracy. We trust that you will take the steps necessary to meet the new challenges of the 21st century by securing your election systems against cyberattacks.

In view of this, there is one very simple way for the State of Nevada and the County of Clark to follow this excellent advice from the U.S. Congress: Direct the District Court to issue an order allowing the Petitioners, together with the Respondents, to audit the results of the elections in their districts.

All of this proves one thing: That Colonel Bob Frank is right. His statements presage all of this, as shown in his affidavit and attached Exhibits. **See Exhibit 10, Doc. Nos. 188-277.**

> In general, electronic election systems of all types are known to be insecure, unreliable, and vulnerable to many types of fraud and corruption. Unlike most other business machines, election system machines have been found to be exceptionally easy to attack and vulnerable to malfunctions, tampering and fraud.
>
> . . . .
>
> And, if malicious code were to be illegally installed by anyone with access to one or more voting machines, scanners, person computers or memory cards, there appears to be no way for County or State employees to detect it or prevent it.
>
> Nevada's electronic elections components are claimed by county authorities to be "secure," but that simply cannot be true. There are official definitions of secure electronic devices. Election system components are not designed, certified or capable of becoming "Secure or Trusted" according to the Federal Government.
>
> Despite vigorous election manager claims to the contrary, and frequent demands for blind trust of the electronically manipulated tallies, both candidates and citizens are exposed to unreported machine failures, tampering and fraud. This management practice of operating in secrecy without independent audits or fraud examinations tends to create suspicions and stimulates the need for contests.
>
> Are there allegations that all races, or even most races in Nevada counties are believe to be untrustworthy? No, but there is national evidence that machines like those in use in Nevada are easily hacked and/or corrupted. Today, the only reliable way to verify any race in any county is for a district judge to order opening of the sealed election records for the race being contested, and to require a joint manual comparison with the electronic reports at County expense.

**See Exhibit 10, Doc. Nos. 189-190.**

The Brennan Center, whom Col. Frank is quoting, makes several recommendations in order to establish an effective auditing scheme. One of these is to **"Audit the Entire System, Not Just the Machines.** Another is **"Record and Publicly Release Numbers of Spoiled Ballots, Cancellations, Over-Votes and Under Votes**. [These audits] could be extremely helpful in uncovering software attacks and software bugs and point to problems in ballot design and instruction. See pg. 7 of Colonel Franks affidavit, **Exhibit 10, Doc. No. 194**.

If a voting machine or any of the computers which are used to tally the votes is hacked or corrupted by malwear, then there is a malfunction, and the report of Mr. Dane, discussed below, shows that there indeed was a malfunction.

Since the Petitioners have shown that there is a POSSIBILITY of some kind of a malfunction in the election systems in their districts, the District Court should have allowed them to conduct a physical audit in order to verify (or not) the accuracy of the reported election results. That is the main remedy the Petitioners are seeking—to do an audit as the statutes allow them to do when it is so ordered by a judge.

## III. THE ELECTION CONTEST IN WHITE PINE COUNTY IS INSTRUCTIVE

A similar election contest was brought in White Pine County in 2012 by republican primary election candidates when a homeless Las Vegas man who had done no campaigning and was unknown in White Pine County won the primary election. Although the Judge denied the petition because it was filed too late, he acknowledged that they could have contested the election under NRS 293.410(2)(f) if they had contested the election upon grounds of possible malfunction of any voting or counting device.

What is most interesting and helpful to Petitioners in the present case is that the District Attorney of White Pine County, Mr. Michael Wheable, did not oppose the Petition. He said the following highly significant words:

"If the election records can only be inspected within a brief two week period following an election, how could the voting citizenry organize a rational challenge to the results, hire an attorney, or gather empirical data for a challenge? Why would the Clerk be required pursuant to NRS 293.391(1) to maintain these records for 22 months, and have to publish a notice of destruction to the general public prior to destroying the records? A statute should not be read to make another provision in the same chapter meaningless. Yet, if RS 293.391(5) is read to mean records can only be inspected during a timely filed contest, maintaining records for 22 months and notifying the public of destruction, when the public cannot do anything to act on that information, are meaningless provisions.

Further, NRS 293.755(3) gives the District Attorney of any county the authority to prosecute individuals for tampering with mechanical voting devices. If the only time these voting machine records can be accessed is during an election contest, how would a prosecutor gain access to inspect and gather evidence of these felonious crimes. How could law enforcement even know if a crime occurred? Petitioners raise more than "probable cause" that a serious felony or other error may have occurred, yet as this County's Prosecutor, I am powerless to investigate lest this Court is able and willing to grant petitions like Petitioner's request here." "While Respondent did not bring this action, Respondent has an affirmative duty to protect facts, which if true, warrant a Court Order despite any legislative oversight in providing a mechanism for review. Voting is a fundamental right guaranteed by the Constitution and Nevada Statutes. Where there may be mechanical or human error despite current mechanisms to prevent such, fraud, and/or felonious criminal agency that interferes with this right, Petitioners, Respondent, and undersigned acting as the District Attorney of White Pine County, should have an avenue to address, protect, and uphold this sacred democratic principle. Respondent therefore, does not oppose this Petition."

## IV. ROBERT FRANK REPLIES TO THE MISLEADING TESTIMONY OF REGISTRAR GLORIA

Since the County chose to present to this Court the testimony of Clark County Registrar Gloria before the legislature (See Elected Respondents' Appendix Vol 1, pp ERA900001-00035), the Petitioners are left with no alternative but to respond to Mr. Gloria's very misleading testimony here. Col. Frank's second affidavit, with his responses and comments to the Registrar's testimony, are attached hereto as **Exhibit 11, Doc. Nos. 278-285**. Col. Frank's comments are sworn to in his affidavit, while Gloria was not sworn when he presented his comments to the legislature opposing making the Nevada election system more secure.

In response to Mr. Gloria's comments before the legislature stating that there have been no documented incidents related to the tabulation of votes or the accuracy of our system, Col. Frank replies:

[T]he election system has never allowed unsuccessful candidates or concerned citizens to successfully petition a Nevada Judge to order sealed record of questioned precincts to be compared to the electronic reports. But it is clear that is the only way the truth can be

> learned. [Gloria's] statement is deceptive because during every election cycle there are many reports of apparent voting machine malfunctioning ad "calibration" errors.

Col. Frank has painstakingly reviewed the entire set of comments by Reg. Gloria and responded to his misleading answers, and the Court is urged therefore to review **Exhibit 11, Doc. Nos. 279-285,** where this information is set forth. It shows that despite Mr. Gloria's exalted claims of perfection of the voting system in Clark County, it just isn't true. This is one of the reasons why Col. Frank should be accepted as an expert and his testimony allowed. He has excellent insight into the vulnerabilities of the system, and hasn't had the wool pulled over his eyes by Mr. Gloria, who is not an expert in computer systems, while Col. Frank has spent most of his life making sure that computer systems are safe and developing the technology to carry out that mission.

## V. EXPERT TONY DANE'S RESPONSE TO RESPONDENTS ARGUMENTS AGAINST HIS TESTIMONY IS CONTAINED IN HIS REPORT

Mr. Dane's report was placed into evidence below and is before this Court. Respondents are now attacking his testimony ***without*** a transcript, and therefore Petitioners have no choice but to present Mr. Dane's affidavit in response to the undocumented arguments of the Respondents.[1] Mr. Tony Dane has reviewed and responded to the Respondents undocumented arguments. His responses are set forth below, and in his affidavit, attached as **Exhibit 14, Doc. Nos. 289-291.**

Mr. Dane states in response to the Respondents' argument that exit polls are not enough, set forth in the Candidate brief at pg. 19, subsection "iii. Petitioners' exit polls are not enough" as follows:

> I made that point when I testified. The only purpose of the exit poll was to show that more investigation was needed. The exit polls were part of the report, but no conclusions were based on the exit polls. All conclusions were made on the inaccuracy of the county's reports. Anomalies on the reports that should not occur if a malfunction did not take place.
>
> Mr. Dane goes on to state in response to subsection iv. At pg. 20: "Mr. Dane's report and testimony should not have been allowed" as set forth below:

[1] Mr. Dane's signed affidavit will be presented to the Court as soon as it is available. He wrote what is stated herein, but he is in the East, and so his signature is not yet available.

1. They [Respondents] had the opportunity to *voir dire* my qualifications but did not.
2. They did state that I was no qualified, but never backed it up with any questions.
3. The Judge allowed me to testify as an expert, without objection. [2] They did challenge Bob Frank, and were successful in eliminating his testimony, they obviously knew how to object to an expert witness.
4. I was not a consultant to the petitioners. I was their pollster. And a vendor.
5. I have never been convicted of a crime, although the corrupt system has accused me in the past and failed.
6. I am a statistician. As such I analyze data. More importantly I analyze election data. Part of my job is to analyze abstracts and I've done this for 20 years. The Clark County Abstracts on these districts do not add up.

Mr. Dane continues to answer the Respondents' arguments which were presented under subparagraph b. on pg. 22 entitled "Mr. Dane's report is unreliable." The Court should consult the paragraphs marked by the Respondents as 1 through 6. These are Mr. Dane's responses: These were math equations.

1. Work files ***were*** included in the exhibits.
2. Simple math equations need no authority. The county's math does not equal their reports.
3. We did not rely on exit polls. We relied on:
   a. The county Database
   b. Election night results published by the county.
   c. County Published abstracts.
   d. We also looked at data the County Submitted as evidence and that didn't add up either.
4. The is a red herring. No baseline data is needed to check to see if the county's math added up.
5. This is another red herring. I am analyzing the actual election by precinct. Not my exit poll as they are claiming. Many precincts had no one voting by mail, some had 1 or 2. So when you are looking at the abstracts you are looking at how many people voted per precinct, and the way they voted either by mail, early or on election day. This has nothing to do with an exit poll which looks at the district as a whole. This also contradicts a previous allegation that I did not include back up in my report, because they know how many was polled for the exit poll.
6. This is another misinterpretation of the data. When you have a 75% swing from early voting to election day voting, targeted voters will not cause this swing unless it is in one direction. In this case the swing was going both ways. For example if precinct 1234 has in early voting Candidate A getting 365 votes and Candidate B getting 724 votes, then on election day in the same precinct Candidate A gets 521 votes and

[2] In this regard, the Court should recall that Mr. Dane has been working in the field of election polling and related fields for over 20 years, much of it in the state of Nevada. He makes a living doing exit polling and analyzing the results of elections, and so on. He is indeed an expert, according to all of the requirements set forth in *Hallmark v. Eldridge*, 124. Nev. 492, 189 P. 3d 646 (2008). The Court is well aware of those requirements and they will not be argued here.

Candidate be gets 142 votes but in the precinct next door the opposite happens, there is something wrong. This is not a case of the candidate targeting voters.

7. That was never said in the report. I only analyzed the Assembly races. I did not analyze other races going on in those districts.

Continuing on with his responses, Mr. Dane answers this argument: "v. Petitioners are actually alleging human malfeasance rather than machine malfunctions" set forth on pg. 24:

> That is not true. We concluded a malfunction took place. It really makes no difference if it is human or machine. It is a malfunction in the voting system.

Mr. Dane also states:

> Respondents try to state that this my report is based on my Exit Polls. This means they either didn't read the report or they just do not understand it. The exit polls are a symptom, but by its self proves nothing. My report is based on County Data. There are several points that prove a malfunction occurred, but the most obvious malfunction is **over votes.** An over vote occurs, when you have more votes in a precinct than you have voters. This is a possibility on mail ballots, but is impossible when using a machine. The Machine shouldn't allow an over vote, and if it does that is a malfunction. Just in the 2 districts analyzed there were several over votes. Just ONE is a malfunction.

Counsel Mr. Hansen would add:

We don't know exactly what malfunctions occurred. That is why Petitioners want to audit the election results, to find out what they were and what they were caused by. But the evidence presented shows that there is a very real possibility that were possible voting machine malfunctions that affected the election. If a person deliberately causes the machine to malfunction, then it is a malfunction. There is nothing in the statute that states that it has to be just a mechanical malfunction unaffected by human interference. This is a wakeup call to the County Registrar that there may be something rotten in the State of Nevada voting system that he arrogantly even is willing to accept as a "possibility." Nothing is perfect. There were possible errors. They needed to be checked out, audited, counted, investigated, understood, and efforts need to be made to prevent them in the future, if they indeed exist. The statute says that if they possibly exist, then the Petitioners have a right to audit the election results, if they show a possibility of (any type) of malfunction. That is what Petitioners want, and they have carried their burden of proof. And if the Court allows Mr. Frank's testimony and report, they will have carried it even further.

## VI. THE PROCEDURE ASKED FOR BY PETITIONERS IS STATUTORIALY ALLOWED, WHATEVER ITS CALLED.

Respondents claim that all the Petitioners want is a recount. Not exactly. What they want is the relief they are entitled to under NRS 293.410 *et seq*. They want the Court to allow them to do an audit of the election results so that the Court can find from the evidence whether a person other than the defendant received the greatest number of votes; and if the Court does not declare some candidate elected, then the office is declared vacant. See NRS 293.420 (1) & (4). The statute goes on to say that ***a recount*** of the ballots can be made by opening the ballots and a recount being made in the presence of the parties or their representatives. NRS 293.423. The Court, in order to do this, can appoint a special master to preside over the proceedings. NRS 293.413.

Mr. Dane has stated in his report that he doesn't think it is possible, from the evidence available, to determine who won the election. See Petitioners' [1st] Appendix, **Exh. 4, Doc. No. 0072.**

But a recount may turn out to reveal that the other candidate won. So if the Judge determines that one or more of the Petitioners won, then that person should be the candidate at the general election. But since the general election is too close to redo the primary, now what. Well, the Petitioners will leave it up to this Court to fashion a remedy. Here are some suggestions as to what the Court can do if it is determined that one or more of the Petitioners won their primaries, or if the Court determines that it cannot tell, and declares the office void, then the lower Court can do one of these following things.

1. Schedule a new primary and a new general election after the general election in November, declaring the results of the general election void as to the Assembly Districts in question, due to the problem created by the malfunction in the voting system.

2. Declare the office of Assembly position vacant in that district(s), fill the vacancy as provided for by statute.

3. Leave the results of the election as they are, because if the Court does allow an audit of the election results, then the Petitioners will at least be able to be satisfied that the problem has been found an identified, and so if they run again, they will not be cheated out of their votes by malfunctioning machines, no matter whether they win or lose. They will have helped Nevada's voters know whether or not their election system is counting their votes without malfunctions, or at least they will know that there is a way to find these out, without just having to take the unchallenged word of Mr. Gloria.

4. Perhaps this Court will be more creative and come up with other ways to solve this dilemma.[3]

## VII. NO JUDGMENT FOR COSTS AND FEES CAN BE ENTERED AGAINST PETITIONERS

It is black letter law that the relief sought must be asked for in the Court below. *Slade v. Caesars Entm't Corp.*, 373 P.3d 74, 2016 Nev. LEXIS 442, 132 Nev. Adv. Rep. 36 (Nev. 2016). Respondents did not ask for Costs and Fees below, therefore the cannot ask for them here. That is to be determined by the District Court on remand.

## VIII. CONCLUSION

Petitioners only seek the relief they are entitled to under the statute. They have proven that there is a real possibility that there was or were malfunctions in the voting system, and that is all that they required to do, as admitted by the Respondents. Petitioners real goal is to make it possible for the voters of Nevada to know whether their votes are being accurately accounted for and counted.

/ / /

/ / /

/ / /

[3] The Petitioners recognize that options #1 and #2 are very difficult to be implemented and therefore state that whatever this Court rules as to options #1 and #2, what they desire most of all is for option #3 to take effect, so that a president may be set to aid Nevada in ensuing that the truth can be revealed regarding contested elections and possible malfunctions.

This is a sacred democratic right in our society. This Court should protect that right, and can do so under the statute now in force, NRS 293.410.

DATED this 10th day of October, 2016.

Respectfully Submitted:
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## CERTIFICATE OF COMPLIANCE

I hereby certify that I have read the Reply in Support of Emergency Petition for Writ of Mandamus 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 petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding the matters in the record to be supported by a reference to the page 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 petition in not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

COOPER LEVENSON, P.A.

BY: /s/ Joel F. Hansen

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## CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that on this 10th day of October, 2016, I served a copy of the foregoing PETITION FOR WRIT OF MANDAMUS as follows:

x Electronic Service - via the Court's electronic service system; and/or

□ U.S. Mail – By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

□ Facsimile – By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

□ Hand Delivery – By hand - delivery to the address listed below.

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