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SUPREME COURT CASE NO. \_\_\_\_\_

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

Electronically Filed  
Sep 08 2016 12:53 p.m.  
Tracy K. Lindeman  
Clerk of Supreme Court

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

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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**EMERGENCY PETITION FOR WRIT OF MANDAMUS**

---

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1  
2 **PETITION FOR WRIT OF MANDAMUS**

3 COME NOW, DIANA V. ORROCK, BLAIN K. JONES, and MARY J. ROONEY  
4 (hereinafter "Petitioners"), by and through their counsel, Joel F. Hansen, Esq. of Cooper Levenson,  
5 P.A., and hereby submit this Petition requesting issuance of a Writ of Mandamus pursuant to NRS  
6 34.250 through NRS 34.350 and NRAP 21. Petitioners respectfully petition this Honorable Court to  
7 issue a Writ of Mandamus to direct the Honorable Michelle Leavitt to vacate her Order denying the  
8 Petitioners/Contestants' request to order the County Clerk of Clark County and the Clark County  
9 Registrar of Voters to conduct an inspection of the voting system, in conjunction with the  
10 contestants, in order to verify whether there were malfunctions in the system concerning the  
11 Republican primary election conducted in Clark County on June 14, 2016 and in the early voting  
12 prior thereto, and specifically in Assembly Districts 9, 21, and 41, and to command her to issue an  
13 order to the Registrar of Voters and to the Clark County Clerk to grant the Petitioners' challenge to  
14 the election under NRS 293.410 through 293.413, to conduct an inspection of the voting system for  
15 that primary election in conjunction with the contestants in order to verify whether there were  
16 malfunctions in the system, and if so, what was their cause. And, if it is found that it is not possible  
17 to determine the outcome, then a new primary election should be ordered.  
18  
19

20 **I. RELIEF SOUGHT BY PETITIONERS**

21 1. A Writ of Mandamus to direct the Honorable Judge Michelle Leavitt to vacate her  
22 order denying the Petitioners' contest of the Republican primary conducted in June of 2016,  
23 specifically in regard to Assembly Districts 9, 21, and 41, and to command her to order the Clark  
24 County of Registrar of Voters, Joe P. Gloria, and if necessary, the Clark County Clerk, Lynn Goya,  
25 to conduct an inspection of the voting system, in conjunction with the Contestants/Petitioners, in  
26 order to verify whether there were malfunctions in the system, and if so, what was the cause. In  
27  
28

1 particular, the Petitioners/Contestants especially want to examine the paper printouts which were  
2 created at the time just before the voters cast their ballots on the voting machines provided.

3 **II. ISSUES PRESENTED**

4 1. Did the Honorable Judge Michelle Leavitt err in denying the Petitioners'/Contestants'  
5 Contests of the Republican primary election of June, 2016 in Clark County, Nevada, specifically in  
6 Assembly Districts 9, 21, and 41.  
7

8 **III. STATEMENTS OF FACTS**

9 All three of the consolidated cases are based upon the provisions of the NRS providing for a  
10 candidate to challenge an election under NRS 293.410 through 293.413, which provide that any  
11 candidate may contest an election by filing a statement with the Court that there was a *possible*  
12 malfunction of *any* voting or counting device. The Petitioners' Statements of Contest filed with the  
13 lower court are set forth in the Appendix as **Exhibit 1, Doc. Nos. 0001-0008; Exhibit 2, Doc. Nos.**  
14 **0019-0026; and Exhibit 3, Doc. Nos. 0038-0044.** All three Contestants filed their Statements of  
15 Contest with the lower court, as required by the statutory scheme for contesting an election.  
16

17 All three of these actions below rest upon virtually identical facts and the same statutes  
18 apply. NRS 293.413 states that any election contest shall be set for hearing by the Court not less  
19 than 5 days nor more than 10 days after the filing of the statement of contest, and that election  
20 contests shall take precedence over all other business of the court in order that results of elections  
21 shall be determined as soon as practicable.  
22

23 All three of the Petitioners filed their contests on 6/27/16 and were consolidated for hearing.  
24 The hearing was held on July 25, 2016.

25 At the hearing, all three of the Petitioners testified under oath that through personal  
26 experience on the ground, as they were campaigning, could tell that they were in the lead in their  
27  
28

1 various election contests. For example, in her Affidavit, See Appendix, **Exhibit 1-A, Doc. Nos.**

2 **0009-0012**, paragraphs 3 – 6 and 9, Mary Rooney stated:

- 3           3.       Our campaign in Assembly District 41 polled Republicans in our district as to what  
4                   were the most important issues for them in the upcoming election. The most  
5                   important issue was taxes. There is a lot of anger over the tax increases passed by the  
6                   2015 Legislature.
- 7           4.       This was confirmed as I campaigned and walked the district and spoke with over a  
8                   thousand voters. They overwhelmingly opposed the tax increases already passed and  
9                   were very vocal about not passing anymore. “No Tax Increases” was a cornerstone  
10                  message in my campaign and the vast majority of potential voters with whom I spoke  
11                  voiced their support for me over my opponent. In the 12 mailers my opponent sent  
12                  out, the word “tax” was not mentioned once!
- 13           5.       My campaign hired a professional pollster and conducted exit polling each day of  
14                  Early Voting. Our exit polling results were stratospheric. We consistently out polled  
15                  our opponent by huge margins.
- 16           6.       [But] When the [final] results were produced, my opponent led by 7% to 9%  
17                  consistently. There was little or no variation. This totally contradicts our exit polling  
18                  results. One would expect some variation in the percentages at various points of  
19                  reporting.
- 20           .....
- 21           9.       We had 7 volunteers including myself that did Get Out the Vote Calling. Every caller  
22                  indicated that when they made contact with any voter or potential voter, the vast  
23                  majority of them indicated that they had already voted for me or they were going to.

24           The individual Defendants named were the allegedly successful candidates for the various  
25           Assembly seats in question. The Petitioners were allegedly defeated in the Republic primary  
26           elections for the various assembly seats.

27           The necessary Defendants, the Clark County Clerk and the Clark County Registrar of Voters  
28           are also named in the Statement of Contest because the Clark County Clerk maintains the mailed-in  
29           ballots, rejected ballots, spoiled ballots, challenged lists, records printed on paper of voted ballots  
30           collected pursuant to NRS 293B.400, and stubs of the ballots used, enclosed and sealed in the vault  
31           of the County Clerk. See NRS 293.391(1). The Registrar of Voters reported the canvass to the  
32           County Commission and is responsible for the voting system used by the voters.

1           **A.     The grounds for the contests were as follows:**

2           Pursuant to NRS 293.401(f), there was a possible malfunction in the voting or counting  
3 devices used to record and tabulate the votes. (either accidental, negligent, or intentional.)

4           The various Petitioners/Contestants believe with good reason, that an inspection of the  
5 sealed, raw ballots and election machine records are unlikely to match the processed electronic  
6 summary reports for their various assembly districts. See the Affidavits of the Petitioners,  
7 Appendix, **“1-A, Doc. Nos. 0009-0012; 2-B, Doc. Nos. 0027-0031; and 2-C, Doc. Nos. 0045-0048,**  
8 **at paragraph 6”**.

9           On June 22, 2016, the Registrar of Voters for Clark County, Nevada, reported to the County  
10 Commission in his official capacity, that he had made significant changes to the Voting Systems  
11 used for the 2016 Primary Contests in Clark County, Nevada. The “Changes” made to the Voting  
12 Systems include the following: (1) an “upgrade” to the “outdated software;” (2) use of a new “early  
13 voting browser;” and (3) use of a new “mail-in-vote system” which he declared was “much easier for  
14 the voters to use and to tabulate the vote.” See Link posted from the County Commission website, of  
15 June 22, 2016, Registrar of voters report to the County Commission. See Appendix, **Exhibit 8, Doc.**  
16 **Nos. 0178-0183.**

17           The “Changes” made to the Voting Systems and described by the Registrar of Voters for  
18 Clark County were not previously disclosed to the Petitioners. Petitioners had no knowledge of the  
19 significant “Changes” to the Voting Systems until after the election and canvass. See Statements of  
20 Contest, paragraphs 9-11, Exhibit 1.

21           Further, pursuant to 42 U.S.C. § 15481 *et seq.*, the Petitioners have the right to inspect and  
22 manually audit the sealed, raw vote. See United States Code, Chapter 42, Section 15481. See  
23 Exhibit 1-B, Doc Nos. 0013-0016.

24           ///  
25  
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1           **B.       The Electronically Processed Election Results Are Untrustworthy**

2           For the above-stated reasons, Petitioners believe that the electronically processed results  
3 reported for the 2016 Republican Primary in Assembly Districts 9, 31, and 41 cannot be trusted to  
4 accurately match the sealed election records and actual votes cast.  
5

6           The Petitioners believe there was a possible malfunction or malfunctions in the voting or  
7 counting devices used to record and tabulate the votes in Assembly Districts 9, 21, and 41 pursuant  
8 to NRS 293.410(f).

9           Petitioners believe that by jointly reviewing the sealed records and the Voting Systems, that  
10 it can be conclusively determined that a malfunction or some yet unknown cause occurred to the  
11 voting hardware, software, business processes and electronic reporting systems used by the State  
12 and/or Clark County to accept, create, record and remove votes.  
13

14           The Petitioners legitimate and demonstrable concerns about the Voting System integrity can  
15 only be resolved if the sealed, physical voting source records and data can be matched with the  
16 electronic summaries.

17           **C.       Under Nevada Law, Petitioners Have The Right To Inspect Physical Source**  
18                   **Data**

19           NRS 293.410(f) and NRS 293.391 allow for the inspection of the physical voting source  
20 data. Although the Defendants below should have had no objections to this validation process, they  
21 opposed it. NRS 293.391(4) and (5) state:

- 22           4.       A contestant of an election may inspect all of the material regarding that election  
23                   which is preserved pursuant to subsection 1 or 2, except the voted ballots.
- 24           5.       The voted ballots deposited with the county clerk are not subject to the inspection of  
25                   anyone, except in cases of a contested election, and then only by the judge, body or  
26                   board before whom the election is being contested, or by the parties to the contest,  
                  jointly, pursuant to an order of such judge, body or board.

27           Based upon NRS 293.410, Petitioners believe that this request is not a difficult or  
28 unreasonable action to clear up and verify any doubts of the integrity of the canvass and the entire



1 computer Voting System and procedures. All future candidates will benefit from this simple  
2 validation process of the Voting Systems.

3         The Statements of Contest made below are allowed pursuant to NRS 293.410. It is clear,  
4 pursuant to this Nevada law, that Petitioners have a right to an Order directing a manual and physical  
5 review of the actual recorded and tabulated votes and the Election System made in the Republican  
6 Primary for Assembly Districts 9, 21, and 41.  
7

8         In order to clear up the doubts and concerns about the integrity of the Voting System, neither  
9 the Clark County Clerk nor the Clark County Registrar of voters have any reasonable basis to object  
10 to a complete review of the Voting Systems, in particular the paper printouts shown to the voters  
11 before they cast their ballots.

12         The Clark County Election Department's stated Mission, Vision and Goals include, among  
13 other things: (1) Provide **transparent** operations that maximize voter confidence in the integrity and  
14 accountability of our election system; and (2) Striving to be the nation's leader in providing our  
15 community with election services that are **transparent**, efficient, and on the cutting edge of  
16 technology. *See* Clark County Election Department Mission-Vision-Goals statement on its website,  
17 see Appendix, **Exhibit "1C", Doc. Nos. 0018**. (Emphasis added). The Petitioners are seeking to  
18 hold the Clark County Registrar to his word. They want transparency to maximize voters' (and  
19 candidates') confidence in the integrity and accountability of our election system.  
20  
21

22         **D. Expert Testimony Showed Malfunctions**

23         The Petitioners'/Contestants' expert witness, Tony Dane, showed conclusively that it is  
24 impossible for the voters to determine the outcome of these races without the sought for inspection,  
25 because of the errors and malfunctions which occurred. Although Mr. Dane's report is long and  
26 detailed, his summary accurately reflects what he found in his investigation. That summary states as  
27 follows:  
28

1           About Dane & Associates

2           Since 1997 Dane & Associates (D&A) has been conducting surveys on public opinion,  
3           political campaigns and exit polls. Dane & Associates has conducted surveys in several  
4           states including Nevada. We've conducted surveys for presidential, congressional, statewide,  
5           and non-political campaigns. Dane & Associates is well recognized in the State of Nevada,  
6           conducting over 750 surveys in this state over the past 19 years. Our clients include  
7           Presidential Candidates, Congressional Candidates, Governors, Attorney General Candidates,  
8           plus smaller races. Dane & Associates has conducted exit polling services for over 90% of  
9           the judges in Clark County. We specialize in data analysis.

10           Purpose

11           Dane and Associates was contacted to analyze Nevada Assembly Districts 09, 21, and 41 to  
12           see if any anomalies exist. If found, find an explanation if possible. Each Assembly District  
13           was analyzed by four different methods as explained in our Methodology.

14           Single anomalies are within the norms of an election. When they are compounded in a  
15           certain area more explanation is needed to determine what caused the anomaly.

16           Compounded Anomalies are usually caused by an error being made creating a domino effect  
17           on that area. Most common errors are malfunctions in the voting system.

18           .....

19           Summary

20           [In]All three of these races [we] conducted Exit Polls, in each of these races the sample size  
21           was sufficient to achieve a low margin of error. National polls will predict within a 3-4 point  
22           margin of error election results by polling between 12-14 hundred likely votes. The  
23           percentages of voters polled is several hundredths of a fraction of one percent. In this case  
24           the percentage of voters polled between 6.5 – 7.5%, plus the margin of error lowers even  
25           more when you are polling voters who have already voted, instead of likely voters. The  
26           margin of error on Exit Polls is less than 1%. Dane and Associates has conducted Exit Polls  
27           for over 10 years, and has called elections with a margin of error of a hundredth percent.  
28           When you compare these [assembly] races with the exit polls the results have no  
29           correspondence with each other. This is cause for concern, but by itself is not evidence of  
30           any malfunctions, but cause to investigate.

31           .....

32           Over/Under Vote: Under votes are not unusual and depending on the type of race and where  
33           it is placed on the ballot determines the number of under votes in a particular race. The  
34           higher a race is on the ballot the less under votes [are] received. In this case the United  
35           States Senate race was on the top of the ballot, followed by Congress. If there was a State  
36           Senate race in that district it would be next on the ballot followed by Assembly. Depending  
37           on the district Assembly would be either 3<sup>rd</sup> or 4<sup>th</sup> on the ballot. It is also noted that Primary  
38           Voters will have a less of an under vote in partisan races. In Clark County the races are

1 broken down into three voting types, Mail Ballots, Early Vote, and Election Day. An under  
2 vote of 2 per precinct is within the norms, but *in the Assembly Districts analyzed there were*  
3 *unusually high under voters.*

4 What is more concerning is the number of over votes. Over votes only occur by error and  
5 should never be counted. In a mail ballot an over vote can occur if the voter selects more  
6 than one candidate [in the same race], but the voting system should catch this error, and not  
7 count either of the votes selected by the voter. This would show up as an under vote, by not  
8 counting voter errors. *In this case those votes were counted, which shows a malfunction in*  
9 *the system.* When voting by machine, the voter cannot select more than one [candidate]  
10 voter, but yet, we have over votes on Election Day and Early Vote. The only way this is  
11 possible is a malfunction in the system.

12 Voter Swing: The voter swing is a shift in the voting pattern. For example if you compare  
13 the early vote results with the final count you can see a swing in the vote if one exists. In this  
14 case the voter swing for all 3 races was below 5%, which is in the normal range. Dane &  
15 Associates enhanced the voter abstracts to analyze voter swing by precinct. These swings  
16 should be in the range of the final outcome, but wasn't. The swing was going in all  
17 directions, which makes no statical sense. If massive swings were taking place they would  
18 favor one candidate over the other, and show in the final outcome. *In this case it appears*  
19 *that the final outcome was predetermined, and numbers were just filled in to match the*  
20 *totals. These swings are only explained by a malfunction in the voting system.*

21 Election Reporting: Dane & Associates was asked to do an election analysis for an election  
22 night party. This analysis was recorded on YouTube. The YouTube recording recorded the  
23 Clark County Election Night Reporting. On the Clark County Website, each race is broken  
24 down by the number of precincts that reported numbers, and the total number of precincts in  
25 the district. It also shows the names of the candidates and the number of votes they have  
26 received along with percentage of votes received. *These reports should match the abstracts*  
27 *but do not.* First, the early voting numbers are off. Even though Election Night is not an  
28 official reporting, when these numbers are reconciled they should change the total but do not.  
*The totals are reached before all precincts are counted, which is impossible.*  
Mathematically when comparing the final report with the previous report, we should be able  
to figure out which precincts were the final ones counted, *a group of precincts does not exist*  
*to match the total reported. This is another example of a malfunction in the voting system.*

### 29 Conclusion

30 In analyzing all the data from Assembly Districts 09, 21, and 41, comparing to the Clark  
31 County Database and Clark County Abstracts, the votes cannot be reconciled to the final  
32 results. This is due to a voting malfunction in the system that crated a domino effect of  
33 errors on the district. Based on this information, *it will be impossible to determine the*  
34 *outcome of the race.*

35 The Clark County voting system needs to be checked prior to the General election in order to  
36 insure the voters of Clark County that their vote is counted correctly.

37 See Appendix, **Exhibit "4"**, Doc. Nos. 0058-061. (Emphasis added).

1 This report by an election analysis expert shows that there is not only a possibility that there  
2 was some type of a malfunction in the voting system, it shows that almost certainly there was some  
3 kind of a malfunction, either intentional or otherwise, in the final tally of the votes.

4 **E. Proffered Expert Testimony Would Have Shown That The Clark County**  
5 **Election System Is Woefully Insecure**

6 Judge Leavitt refused to allow the testimony of the Petitioners' expert witness, Colonel  
7 Robert E. Frank, USAF (Retired). Colonel Frank is an expert in the security of computer systems, as  
8 shown by his career experiences as set forth in the Appendix, **Exhibit 5, Doc. Nos. 0155-0157**. He  
9 has been a Department of Energy Software Development Leader, a Fortune 500 Executive Internet  
10 Product Developer, he served 22 years active duty in the Air Force in Computers, Logistics and  
11 Contracting, he had a three year assignment for a Logistics Systems Support in the Air Force, a two  
12 year assignment for Nuclear War Survivable Logistics System Design for NATO, for five years he  
13 was Corporate Executive for Open Systems, and for five years a Chief Scientist for E-Commerce at  
14 the Lawrence Livermore National Laboratory. In addition, he served as Senior Internet Security  
15 Systems Consultant for Wells Fargo Bank, and he is the Founder/CEO of Internet Secure  
16 Transactions Exchange Company.

17  
18  
19 Attorney for Petitioners, Mr. Joel F. Hansen, made an offer of proof to the court of what  
20 Colonel Frank's testimony would be. That offer of proof is essentially set forth in Appendix,  
21 **Exhibit 6, "Questions to Ask Secure Computer Expert Robert E. Frank", Doc. No. 0167**. Mr.  
22 Frank would have testified, as shown in Question No. 5 that he believes the weakest parts of  
23 Nevada's election system are unjustified secrecy, officials seeming to cover up obvious deficiencies  
24 and unwilling to allow inspection of voter records, no audit trails, no chain-of-custody records, and  
25 no independent audits. He would have testified that he is confident that the Nevada election system  
26 has been failing because otherwise, the election leaders would be certain that hard copy votes  
27 matched electronically processed reports. He thinks that Nevada election systems managers are  
28

1 reluctant to agree to a requested joint review process for fear of public reactions to such a cover up.  
2 In his opinion there is no other way to resolve the system integrity questions without conducting a  
3 joint review under court supervision because other options conclude corrupted data.

4 In his verified statement, Appendix, **Exhibit 5, Doc. Nos. 0168-0175A**. Colonel Frank points  
5 out that there have been at least two prior actions to open sealed election records under NRS 293.410  
6 *et seq.*

7  
8 Further, he states that in general, “electronic election systems of all types are known to be  
9 insecure, unreliable and vulnerable to many types of fraud and corruption. Unlike most of their  
10 business machines, election system machines have been found to be exceptionally easy to attack and  
11 vulnerable to malfunctions, tampering and fraud.” **See Doc. No. 0169.**

12  
13 Colonel Frank goes on to state that there appear to be no tools or procedure for election  
14 system workers to be able to verify machine integrity before, during, or after an election. In short,  
15 the candidate requested joint verification is both “fair and reasonable” to ensure the reported results  
16 can be acceptable.” **See Doc. No. 0169.**

17  
18 Colonel Frank continues, “election system managers sometimes claim their systems are  
19 highly secure because they design, audit, and control everything themselves in secret. But, that is  
20 wrongful thinking.” Continuing on, Colonel Frank states, “when Citizen Task Force for Voter  
21 Rights began its investigation into this Nevada case in 2014, it conducted a high level analysis of the  
22 Nevada election system and quickly discovered many serious system vulnerabilities to errors,  
23 tampering, and fraud.” **See Doc. No. 0171.**

24  
25 Furthermore, Colonel Frank states, “In my opinion, the Nevada election system is  
26 unacceptable until it implements independent audits aligned with public standards.” Colonel Frank  
27 quotes the New York Brennan Center Task Force which has worked for decades to become a global  
28 leader in systems security and auditing expertise. The Task Force stated in part “all of the major

1 electronic voting systems in use in the United States have serious security and reliability  
2 vulnerabilities.” Colonel Frank sets forth the conclusions of the Brennan Center which  
3 recommended an effective audit scheme that addresses the security questions as follows:

- 4 1. Use Transparent and Random Selection Processes for All Auditing Procedures;
- 5 2. Allow the Losing Candidate To Select Precinct(s) or Machine(s) To be Audited;
- 6 3. Place an Independent Person or Body in Charge of the Audits;
- 7 4. Implement Effective Procedures for Addressing Evidence of Fraud or Error;
- 8 5. Encourage Rigorous Chain of Custody Practices;
- 9 6. Audit a Minimum Percentage of Precincts or Machines for Each Election;
- 10 7. Record and Publicly Release Numbers of Spoiled Ballots, Cancellations, Over-votes  
and Under-votes;
- 11 8. Audit Entire System, Not Just the Machines; and
- 12 9. Increase Scrutiny in Close Elections.

13 **Doc. Nos. 0172-0174.**

14 As the Court can see by now, few if any of these recommendations by the Brennan Center  
15 are currently being faithfully implemented in Clark County, or anywhere else in Nevada for that  
16 matter.

17 Colonel Frank goes on to set forth his recommendations, which follow and expand on the  
18 Brennan Center’s recommendations quoted above. He states that accurate recounts of election results  
19 seem unattainable at the present, and insider tampering is possible due to insufficient background  
20 checks etc. In addition, external tampering threats exist because internal and external hardware and  
21 software inspections and testing cannot be conducted by county employees before, during, and after  
22 elections. Also, the locks on the voting machines appear easily defeated, and seal and tamper  
23 detection training for workers appear inadequate. Chain of custody records for storage and transport  
24 drivers and ballot handlers are not a part of the “Post-Election Audit process”, and election managers  
25 appear insufficiently trained and not held accountable for systems under their authority. **Doc. Nos.**  
26 **0174-0175.**

27 Colonel Frank concludes “Nevada election system statutes, policies, procedures,  
28 vulnerabilities and operating deficiencies urgently need to be inspected, repaired and/or replaced.

1 Secret self-inspections of electronic systems must not be acceptable in this complex world of cyber  
2 threats and rapidly expanding forms of vulnerable electronic nanotechnologies. Manual verifications  
3 of sealed election records will be needed unless or until truly secure systems are implemented.”

4 **Doc. Nos. 0174-0175.**

5  
6 Additionally, for the court’s information and in support of Colonel Frank’s report, an article  
7 from the Las Vegas Review Journal of Tuesday, August 30, 2016, is attached hereto as **Exhibit 7,**

8 **Doc. No. 0177.** The Court is asked to take judicial notice of it. It is entitled “FBI investigating  
9 hacks of state election systems” and it states in the article that:

10 The FBI is investigating a series of suspected foreign hacks of state election computer  
11 systems and websites, and has warned states to be on the alert for potential intrusions

12 . . . .

13 The FBI is requesting that states contact their Board of Elections and determine if any similar  
14 activity to their logs, both inbound and outbound, has been detected.

15 This article further demonstrates that it is imperative that the Contest of Election brought by  
16 the Petitioners be granted so that the election results in their races can be properly audited and  
17 verified.

18 **IV. WHY THIS WRIT NEEDS EMERGENCY ATTENTION**

19 NRS 293.420(4) states:

20 Whenever an election is annulled or set aside by the court, and the court does not declare  
21 some candidate elected, the certificate of election or the commission, if any has been issued,  
22 is void and the office is vacant.

23 As shown above, due to the numerous errors and anomalies in the election returns, it will be  
24 impossible to determine the outcome of the race. Thus, the District Judge should have determined  
25 that she could not declare some candidate elected at that time and she should have ordered an  
26 immediate audit of the election results, but instead, she denied the contestants any relief. As has  
27 been shown above, the Petitioners are entitled to relief by way of allowing them, along with the  
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1 Defendants, the County Registrar and the County Clerk to audit and inspect the records, pursuant to  
2 NRS 293.391(4) and (5). However, the date now is August 31, 2016, and the general election is  
3 scheduled for November 8, 2016, meaning that from the date of the filing of this Writ until the date  
4 of the election, only 68 days remain. If the Petitioners are to have any relief, the Court needs to issue  
5 its Writ immediately so that the inspection and audit can take place immediately, and if indeed it is  
6 determined from the inspection and audit that the results of the primary election in these districts are  
7 inconclusive, then another primary election must be held prior to the general election and then there  
8 must be time for the Registrar to prepare new ballots for the general election for those particular  
9 assembly districts. Therefore, this is indeed an emergency and must be handled in the most  
10 expeditious fashion possible.

11  
12 **V. CONCLUSION**

13  
14 NRS 293.410(f) sets the evidentiary standard for the granting of the Petitioners request to the  
15 lower court to grant them the opportunity to inspect and audit the election records. It states that if  
16 there was a “possible malfunction of any voting or counting device” they are entitled to contest the  
17 election. No other standard of proof is set forth in the statute. There is no doubt that the  
18 Petitioners/Contestants showed that there was a possible malfunction in the voting or counting  
19 devices, but by what means this occurred is not clearly known. It could have been accidental, caused  
20 by negligence, or caused by some intentional act or acts. Whatever the cause, it is certainly possible,  
21 according to the above evidence which was presented to the lower court and which has now been  
22 presented to this court, that something was wrong and mistaken about the outcome of the three  
23 Republican primaries in question.<sup>1</sup> All three candidates have set forth in their affidavits and testified  
24 under oath at the hearing that there was great anger over the tax increases passed by the 2015  
25 legislature, that they personally observed that the overwhelming number of voters opposed the tax  
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<sup>1</sup> Or, as Shakespeare observed, something is rotten in Denmark [Nevada?]



1 increase already passed by among others, their opponents, that their early voting exit polls showed  
2 they were consistently ahead, but that when election day came they all lost unexpectedly and  
3 inexplicably.

4 Mr. Dane's analysis shows that there were an unusually high number of under votes, that  
5 there were over votes which cannot be explained except by a malfunction in the system because the  
6 voting machines are not supposed to count over votes, and the voter swings which occurred on  
7 election day could only be explained by a malfunction in the voting system. Furthermore, the total  
8 number of votes were reached before all precincts were counted. It is easy to understand why Mr.  
9 Dane concluded that it was impossible to determine the outcome of those races.

10 Colonel Robert Frank's proffered testimony shows that Nevada's electronic voting system is  
11 insecure, unreliable, and vulnerable. While Petitioners are not alleging fraud, what they have shown  
12 is that there is a possibility, and have even shown that there is a good probability, that there was  
13 some type of malfunction in the voting devices used to tabulate the votes in the Republican primaries  
14 in Assembly Districts 9, 21, and 41. According to the statute, all they need to show is a possibility in  
15 order to be entitled to an order from the Court to be able to inspect and audit the physical voting  
16 records.

17 For these reasons, it is respectfully urged that this court issue its Writ to the Honorable  
18 Michelle Leavitt that she should vacate her prior order denying the Petitioners' Contests below, that  
19 instead she must grant Petitioners' requests, and that the Clark County Registrar of Voters, Joe P.  
20 Gloria, and the Clark County Clerk, Lynn Goya, be ordered to allow the Petitioners the power to  
21 inspect and audit the election returns as provided by NRS 293.391(4) and (5). In the alternative, if  
22 the Court is so inclined, due to the emergency nature of this Writ, that the Court order the Clark  
23 County Clerk and the Clark County Registrar to allow the above referred inspection and audit of the  
24 election results in all three races, Viz. Assembly District 9, 21, and 41. In addition, if it is  
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1 determined that it is impossible to ascertain the outcome of any of the three races, then the lower  
2 court must order that another primary election be held for the Assembly districts in question.

3 DATED this 1<sup>st</sup> day of September, 2016.

4  
5 Respectfully Submitted:  
6 COOPER LEVENSON, P.A.

7 BY: /s/ Joel F. Hansen  
8 JOEL F. HANSEN, ESQ.  
9 Nevada Bar No. 1876  
10 1835 Village Center Circle  
11 Las Vegas, NV 89134  
12 (702) 366-1125: office  
13 (702) 366-1857: facsimile  
14 Attorney for Petitioners

15 **POSTSCRIPT:**

16 Attached in the Appendix as **Exhibit "9"** is the proposed District Court Order which all  
17 counsel have agreed upon, which is awaiting signatures. It is being presented without  
18 signatures due to the emergency nature of this Petition, but will be forwarded to the Supreme  
19 Court as soon as it is signed by Judge Leavitt.  
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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read the Petition for Writ of Mandamus and to the best of my  
3 knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I  
4 further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in  
5 particular NRAP 28(e), which requires every assertion in the brief regarding the matters in the record  
6 to be supported by a reference to the page of the transcript or appendix where the matter relied on is  
7 to be found. I understand that I may be subject to sanctions in the event that the accompanying  
8 petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.  
9

10 COOPER LEVENSON, P.A.

11 BY: /s/ Joel F. Hansen  
12 JOEL F. HANSEN, ESQ.  
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18 Attorney for Petitioners  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5 (b), I hereby certify that on this 1<sup>st</sup> day of September, 2016, I served a  
3 copy of the foregoing PETITION FOR WRIT OF MANDAMUS as follows:

- 4 x Electronic Service - via the Court's electronic service system; and/or  
5  U.S. Mail – By depositing a true copy thereof in the U.S. mail, first class postage  
6 prepaid and addressed as listed below; and/or  
7  Facsimile – By facsimile transmission pursuant to EDCR 7.26 to the facsimile  
8 number(s) shown below and in the confirmation sheet filed herewith. Consent to  
9 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by  
10 facsimile transmission is made in writing and sent to the sender via facsimile within  
11 24 hours of receipt of this Certificate of Service; and/or  
12  Hand Delivery – By hand - delivery to the address listed below.

10 Steven B. Wolfson  
11 District Attorney  
12 CIVIL DIVISION  
13 By: Mary-Anne Miller  
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18 /s/ Lisa M. Sabin  
19 An Employee of Cooper Levenson, P.A.

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