

1 CAMPBELL & WILLIAMS
 2 DONALD J. CAMPBELL, ESQ, (1216)
 3 djc@cwlawlv.com
 4 J. COLBY WILLIAMS, ESQ. (5549)
 5 jcw@cwlawlv.com
 6 700 South 7th Street
 Las Vegas, Nevada 89101
 Telephone: (702) 382-5222
 Facsimile: (702) 382-0540

7 CONSOVOY MCCARTHY PLLC
 8 WILLIAM S. CONSOVOY, ESQ.*
 9 Virginia Bar No. 47704
 will@consovoymccarthy.com
 10 THOMAS R. MCCARTHY, ESQ.*
 11 Virginia Bar No. 47145
 tom@consovoymccarthy.com
 12 TYLER R. GREEN, ESQ.*
 13 Utah Bar No. 10660
 tyler@consovoymccarthy.com
 14 CAMERON T. NORRIS, ESQ.*
 15 Virginia Bar No. 91624
 cam@consovoymccarthy.com
 16 1600 Wilson Boulevard, Suite 700
 Arlington, Virginia 22209
 Telephone: (703) 243-9423

17 **Application for admission
 pro hac vice forthcoming*

18 **UNITED STATES DISTRICT COURT**
 19 **DISTRICT OF NEVADA**

21 DONALD J. TRUMP FOR PRESIDENT,
 22 INC.; REPUBLICAN NATIONAL
 23 COMMITTEE; and NEVADA
 REPUBLICAN PARTY,

24 Plaintiffs,

25 v.

26 BARBARA CEGAVSKE, in her official
 capacity as Nevada Secretary of State,

27 Defendant.

No.

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

1 Plaintiffs Donald J. Trump for President, Inc., the Republican National Committee, and the
2 Nevada Republican Party bring this action to challenge Assembly Bill 4—a bill passed on Sunday,
3 August 2, 2020, during the 32nd Special Session of the Nevada Legislature. Plaintiffs allege as
4 follows:

5 **INTRODUCTION**

6 1. Every American who is eligible to vote should be able to freely do so. Robust
7 participation in our biennial elections strengthens the Nation’s civic fibers, allowing the United
8 States of America to retain its place as the world’s preeminent constitutional republic. Thus,
9 Republicans have always supported efforts to make it easier for voters to cast their ballot. At the
10 same time, however, the electoral process cannot function properly if it lacks integrity and results
11 in chaos. Put simply, the American people must be able to trust that the result is the product of a
12 free and fair election.

13 2. Nevada’s recently enacted election laws—collectively, AB4—fall far short of this
14 standard. On a straight-party-line vote taken on a Sunday afternoon, the Nevada Legislature passed
15 a 60-page, single-spaced bill first introduced shortly after noon the previous Friday. AB4 adds more
16 than 25 new election-related sections to the Nevada Revised Statutes and amends more than 60
17 others. Many of those provisions will undermine the November election’s integrity. Some go
18 beyond that, crossing the line that separates bad policy judgments from enactments that violate
19 federal law or the United States Constitution.

20 3. Hence this lawsuit. Our elections must occur under valid laws. Under the U.S.
21 Constitution, states have broad discretion to decide how to conduct their elections. But their election
22 laws must comply with the higher law of the U.S. Constitution and with federal laws enacted under
23 it.

24 4. Exercising its constitutional power under the Elections Clause and the Electors
25 Clause, Congress has established a uniform, national day to elect members of Congress and to
26 appoint presidential electors. *See* 2 U.S.C. §§ 1, 7; 3 U.S.C. §1. AB4 contravenes those valid federal
27 laws by requiring elections officials to accept and count ballots received after Election Day *even*
28 *when* those ballots lack objective evidence that voters cast them on or before Election Day. In short,

1 AB4 effectively postpones and prolongs Nevada’s 2020 general election past the Election Day
2 established by Congress.

3 5. Other provisions in AB4 lack clear standards to guide the actions of county and city
4 officials administering certain parts of Nevada’s elections. AB4 thus will result in the State treating
5 Nevada voters differently based on nothing more than their county of residence. That disparate
6 treatment violates their Fourteenth Amendment right to the equal protection of the laws.

7 6. The combined effect of those problems, and others described below, will be to dilute
8 the votes of some Nevada voters, thereby infringing their right to vote under the Fourteenth
9 Amendment.

10 7. New York’s June 2020 primary election confirms that these are not hypothetical
11 concerns. “Elections officials in New York City widely distributed mail-in ballots for the primary
12 on June 23.” Jesse McKinley, *Why the Botched N.Y.C. Primary Has Become the November*
13 *Nightmare*, N.Y. Times (Aug. 3, 2020), <https://nyti.ms/3fvDrhx>. “Now, nearly six weeks later, two
14 closely watched congressional races remain undecided, and major delays in counting a deluge of
15 400,000 mail-in ballots and other problems are being cited as examples of the challenges facing the
16 nation as it looks toward conducting the November general election during the pandemic.” *Id.* Yet
17 as those very problems unfolded, Nevada’s Democratic leadership still introduced and passed AB4
18 on a weekend, straight-party-line vote. No one should be surprised that such a process produced
19 legislation bearing constitutional flaws.

20 8. For all these reasons and those alleged below, AB4 is illegal and must be enjoined.

21 **JURISDICTION AND VENUE**

22 9. This Court has subject matter jurisdiction because this action arises under the
23 Constitution and laws of the United States. 28 U.S.C. §§1331 & 1343.

24 10. Venue is proper because a substantial part of the events giving rise to the claims
25 occurred in this District, and the Defendants reside in this District. *Id.* §1391.

26 **PARTIES**

27 11. Plaintiff Donald J. Trump for President, Inc. is the principal committee for President
28 Donald J. Trump’s reelection campaign.

1 12. Plaintiff Republican National Committee (RNC) is a national political party with its
2 principal place of business at 310 First Street S.E., Washington D.C., 20003.

3 13. The RNC organizes and operates the Republican National Convention, which
4 nominates a candidate for President and Vice President of the United States.

5 14. The RNC represents over 30 million registered Republicans in all 50 states, the
6 District of Columbia, and the U.S. territories. It is comprised of 168 voting members representing
7 state Republican Party organizations, including three members who are registered voters in Nevada.

8 15. The RNC works to elect Republican candidates to state and federal office. In
9 November 2020, its candidates will appear on the ballot in Nevada for most federal and state
10 offices. In elections for the U.S. House of Representatives, for example, the Cook Political Report
11 lists two of Nevada’s four house races as “competitive,” with one of those as “likely Democratic”
12 and the other as “lean Democratic.”

13 16. The RNC has a vital interest in protecting the ability of Republican voters to cast,
14 and Republican candidates to receive, effective votes in Nevada elections and elsewhere. The RNC
15 brings this suit to vindicate its own rights in this regard, and in a representational capacity to
16 vindicate the rights of its members, affiliated voters, and candidates.

17 17. The RNC also has an interest in preventing AB4’s constitutionally problematic
18 changes to Nevada election law. Major or hasty changes confuse voters, undermine confidence in
19 the electoral process, and create incentive to remain away from the polls. Thus, AB4 forces the
20 RNC to divert resources and spend significant amounts of money educating Nevada voters on those
21 changes and encouraging them to still vote.

22 18. Plaintiff Nevada Republican Party (NVGOP) is a political party in Nevada with its
23 principal place of business at 2810 West Charleston Blvd. #69, Las Vegas, NV 89102. The Nevada
24 Republican Central Committee (NRCC) is the NVGOP’s governing body. The NVGOP and NRCC
25 exercise their federal and state constitutional rights of speech, assembly, petition, and association
26 to “provide the statutory leadership of the Nevada Republican Party as directed in the Nevada
27 Revised statutes,” to “recruit, develop, and elect representative government at the national, state,
28 and local levels,” and to “promote sound, honest, and representative government at the national,

1 state and local levels.” NRCC Bylaws, art. II, §§1.A-1.C.

2 19. The NVGOP represents over 600,000 registered Republican voters in Nevada as of
3 August 2020.

4 20. The NVGOP has the same interests in this case, and seeks to vindicate those interests
5 in the same ways, as the RNC.

6 21. Defendant Barbara Cegavske is the Secretary of State of Nevada. She serves “as the
7 Chief Officer of Elections” for Nevada and “is responsible for the execution and enforcement of
8 the provisions of title 24 of NRS and all other provisions of state and federal law relating to
9 elections in” Nevada. NRS 293.124. She is sued in her official capacity.

10 **BACKGROUND**

11 **I. State laws that set the time, place, and manner of elections for federal offices cannot 12 conflict with contrary federal law or with federal constitutional commands.**

13 22. The U.S. Constitution’s Elections Clause vests state legislatures with power to set
14 the time, place, and manner of congressional elections. U.S. Const., art. I, §4, cl. 1.

15 23. But the Elections Clause also reserves to “Congress” the power to “at any time by
16 Law make or alter such Regulations, except as to the Places of chusing Senators.” *Id.*

17 24. A law governs “‘the election’ of a Senator or Representative” when it “plainly
18 refer[s] to the combined actions of voters and officials meant to make a final selection of an
19 officeholder.” *Foster v. Love*, 522 U.S. 67, 71 (1997).

20 25. Exercising its constitutional power to pass laws governing elections for federal
21 offices, Congress has established one specific day as the uniform, national Election Day for
22 members of the United States House of Representatives and of the United States Senate. For both
23 offices, the “Tuesday next after the 1st Monday in November” is “the day for the election.” 2 U.S.C.
24 §7 (elections for members of the House of Representatives held on that day “in every even
25 numbered year”); *see also id.* §1 (Senators to be elected “[a]t the regular election held in any State
26 next preceding the expiration of the term for which any Senator was elected to represent such State
27 in Congress, at which a Representative to Congress is regularly by law to be chosen”).

28 26. The U.S. Constitution also vests in “Congress” the power to “determine the Time of

1 choosing the Electors” for the offices of President and Vice President. U.S. Const. art. II, §1, cl. 4.

2 27. Exercising that power, Congress has established that “[t]he electors of President and
3 Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in
4 November, in every fourth year succeeding every election of a President and Vice President.” 3
5 U.S.C. §1.

6 28. Combined, 2 U.S.C. §§1, 7, and 3 U.S.C. §1 establish the Tuesday after the first
7 Monday in November as the uniform, national Election Day for members of Congress and as the
8 uniform, national day for appointing electors for President and Vice President.

9 29. Those “uniform rules for federal elections” are both “binding on the States” and
10 superior to conflicting state law: “[T]he regulations made by Congress are paramount to those
11 made by the State legislature; and if they conflict therewith, the latter, so far as the conflict extends,
12 ceases to be operative.” *Foster*, 522 U.S. at 69 (quoting *Ex parte Siebold*, 100 U.S. 371, 384
13 (1879)). In other words, if a state law governing elections for federal offices “conflicts with federal
14 law,” that state law is “void.” *Id.* at 74.

15 30. State election laws must also comport with federal constitutional requirements. For
16 example, state election laws may not “deny to any person within” the state’s “jurisdiction the equal
17 protection of the laws.” U.S. Const. amend. XIV, §1.

18 31. According to the Supreme Court, the Fourteenth Amendment of the U.S.
19 Constitution protects the “the right of all qualified citizens to vote, in state as well as in federal
20 elections.” *Reynolds v. Sims*, 77 U.S. 533, 554 (1964). “Obviously included within the right to
21 [vote], secured by the Constitution, is the right of qualified voters within a state to cast their ballots
22 and have them counted.” *United States v. Classic*, 313 U.S. 299, 315 (1941). “[T]he right to have
23 the vote counted” means counted “at full value without dilution or discount.” *Reynolds*, 377 U.S.
24 at 555 n.29 (quoting *South v. Peters*, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)).

25 32. Both direct denials and practices that otherwise promote fraud and dilute the
26 effectiveness of individual votes, thus, can violate the Fourteenth Amendment. *See id.* at 555
27 (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote
28 just as effectively as by wholly prohibiting the free exercise of the franchise.”).

1 33. “Every voter in a federal ... election, whether he votes for a candidate with little
2 chance of winning or for one with little chance of losing, has a right under the Constitution to have
3 his vote fairly counted, without its being distorted by fraudulently cast votes.” *Anderson v. United*
4 *States*, 417 U.S. 211, 227 (1974); *see also Baker v. Carr*, 369 U.S. 186, 208 (1962).

5 34. Fraudulent votes “debase[]” and “dilute” the weight of *each* validly cast vote. *See*
6 *Anderson*, 417 U.S. at 227. When it comes to “dilut[ing] the influence of honest votes in an
7 election,” whether the dilution is “in greater or less degree is immaterial”; it is a violation of the
8 Fourteenth Amendment. *Id.* at 226.

9 35. The Equal Protection Clause of the U.S. Constitution requires States to “avoid
10 arbitrary and disparate treatment of the members of its electorate.” *Charfauros v. Bd. of Elections*,
11 249 F.3d 941, 951 (9th Cir. 2001) (quoting *Bush v. Gore*, 531 U.S. 98, 105 (2000)); *see also Dunn*
12 *v. Blumstein*, 405 U.S. 330, 336 (1972) (“[A] citizen has a constitutionally protected right to
13 participate in elections on an equal basis with other citizens in the jurisdiction.”); *Gray v. Sanders*,
14 372 U.S. 368, 380 (1963) (“The idea that every voter is equal to every other voter in his State, when
15 he casts his ballot in favor of one of several competing candidates, underlies many of [the Supreme
16 Court’s] decisions.”).

17 36. “[T]reating voters differently” thus “violate[s] the Equal Protection Clause” when
18 the disparate treatment is the result of arbitrary, ad hoc processes. *Charfauros*, 249 F.3d at 954.
19 Indeed, a “minimum requirement for nonarbitrary treatment of voters [is] necessary to secure the
20 fundamental right” to vote. *Bush*, 531 U.S. at 105.

21 37. The use of “standardless” procedures can violate the Equal Protection Clause. *Bush*,
22 531 U.S. at 103. “The problem inheres in the absence of specific standards to ensure ... equal
23 application” of even otherwise unobjectionable principles. *Id.* at 106. Any voting system that
24 involves discretion by decisionmakers about how or where voters will vote must be “confined by
25 specific rules designed to ensure uniform treatment.” *Id.* at 106.

26 **II. Nevada law regulates the time, place, and manner of elections for federal offices.**

27 38. The Nevada Legislature has exercised its power under the Elections Clause to pass
28 laws regulating the time, place, and manner of elections for federal officers from Nevada. *See, e.g.,*

1 NRS Chapters 293, 298, 304.

2 39. For example, Nevada law regulates the administration of primary elections,
3 including setting rules for becoming a candidate for federal and state office and for how those
4 candidates qualify for the primary-election ballot. *See, e.g.*, NRS 293.175-293.190.

5 40. Nevada law also regulates the administration of general elections. Among other
6 things, Nevada law establishes at least five different ways that Nevadans may vote in a general
7 election: by in-person voting at the polls, NRS 293.270-293.307; by provisional ballot, NRS
8 293.3078-293.3086; by absent ballot voting, NRS 293.3088-293.340; by voting in mailing
9 precincts, NRS 293.343-293.355; and by early in-person voting, NRS 293.356-293.361. Nevada
10 law also establishes how ballots are to be counted and the returns are to be canvassed. NRS
11 293.3625-293.397.

12 41. Among those voting options, Nevadans historically have chosen overwhelmingly to
13 vote in person. Consider just the past two election cycles, where the Secretary's own data show that
14 9 of every 10 ballots cast have been in-person votes.

15 42. In Nevada's 2016 primary election, 89.49% of the total ballots cast were in-person
16 votes cast during early voting (50.53% of total ballots) or on Election Day (38.96% of total ballots).
17 Absent ballots constituted just 9.30% of total ballots cast, and the remaining 1.21% of total ballots
18 cast were mailing ballots. Office of Nev. Sec'y of State Barbara K. Cegavske, 2016 Primary
19 Election Turnout (June 23, 2016), <https://bit.ly/31dPyux>.

20 43. In Nevada's 2016 general election, 93.02% of the total ballots cast were in-person
21 votes cast during early voting (62.41% of total ballots) or on Election day (30.61% of total ballots).
22 Absent ballots constituted just 6.41% of total ballots cast, and the remaining 0.57% of total ballots
23 cast were mailing ballots. Office of Nev. Sec'y of State Barbara K. Cegavske, 2016 General
24 Election Turnout (Feb. 10, 2017), <https://bit.ly/3a0U9nS>.

25 44. Nevadans' overwhelming preference for voting in person remained unchanged two
26 years later. In Nevada's 2018 primary election, 92.1% of the total ballots cast were in-person votes
27 cast during early voting (47.75% of total ballots) or on Election Day (44.35% of total ballots).
28 Absent ballots constituted just 7.21% of total ballots cast, and the remaining 0.69% of total ballots

1 cast were mailing ballots. Office of Nev. Sec’y of State Barbara K. Cegavske, 2018 Primary
2 Election Turnout (July 10, 2018), <https://bit.ly/3fyX6NH>.

3 45. So too for Nevada’s 2018 general election. There, 91.04% of the total ballots cast
4 were in-person votes cast during early voting (56.80% of total ballots) or on Election day (34.24%
5 of total ballots). Absent ballots constituted just 8.57% of total ballots cast, and the remaining 0.39%
6 of total ballots cast were mailing ballots. Office of Nev. Sec’y of State Barbara K. Cegavske, 2018
7 General Election Turnout (Nov. 20, 2018), <https://bit.ly/31kS81E>.

8 46. For Nevada’s 2020 primary election, however, all that changed. On March 24, 2020,
9 Secretary Cegavske announced that Nevada’s June 9, 2020, primary election would be an all-mail
10 election due to “the many uncertainties surrounding the COVID-19 pandemic.” *Secretary*
11 *Cegavske Announces Plan to Conduct the June 9, 2020 Primary Election by All Mail* (Mar. 24,
12 2020), <https://bit.ly/33mZt3p>. The Secretary directed county and city elections officials to mail
13 absent ballots to all active registered voters, who could return those ballots by mail in a postage-
14 prepaid envelope or by dropping the ballot in person at a designated county location. *See id.* But
15 the Secretary assured Nevadans that despite the move to an all-mail election, “at least one in-person
16 polling location will be available in each county for the June 9, 2020 primary election” to
17 “accommodate same-day voter registration” and to help “voters who have issues with the ballot
18 that was mailed to them.” *Id.*

19 47. Nearly a month later, the Democratic National Committee, the Nevada State
20 Democratic Party, related entities, and four individual Nevadans sued Secretary Cegavske, the
21 Clark County Registrar of Voters, the county clerks of Washoe and Elko Counties, and Nevada
22 Attorney General Aaron Ford in Nevada state court. *See Compl., Corona et al. v. Cegavske et al.*,
23 No. 20-OC-00064-I-B (1st Judicial Dist. Apr. 16, 2020). Those plaintiffs contended, among other
24 things, that the Secretary’s plan unconstitutionally burdened Nevadans’ right to vote. They sought
25 an order requiring elections officials (1) to open *more* in-person voting places, and (2) to mail
26 absent ballots not just to active registered voters but also to *inactive* voters—persons the State had
27 learned, principally from return-mail notices from the U.S. Postal Service, no longer lived at the
28 address where they had registered to vote. The Republican National Committee and the Nevada

1 Republican Party successfully intervened as defendants in the *Corona* case.

2 48. The plaintiffs in *Corona* moved for a preliminary injunction. Secretary Cegavske
3 and Attorney General Ford, the Washoe and Elko County Clerks, and the RNC and NVGOP
4 opposed the motion.

5 49. But on the day his opposition brief was due, the Clark County Registrar told the
6 plaintiffs and other parties that the Clark County Commission had instructed him both to open
7 additional in-person voting places in Clark County and to mail ballots to all Clark County active
8 *and inactive* registered voters.

9 50. After receiving notice of Clark County's concessions, the *Corona* plaintiffs
10 withdrew their motion for a preliminary injunction. And Clark County conducted the primary
11 election as it said it would.

12 51. The consequences of this hurried switch—from Nevada elections occurring 90% by
13 in-person voting to an all-mail election—should surprise no one. The *Las Vegas Review-Journal*
14 reported that, within the first week of voting in Nevada's first-ever all-mail primary, photographic
15 evidence surfaced of numerous ballots "tossed in trash cans and littering apartment mailbox areas"
16 in Clark County.

17 52. On May 8, 2020, one Clark County voter found "about a dozen ballots pinned to the
18 complex's bulletin board or otherwise thrown around." Over the next few days, he found many
19 more in nearby trash cans.

20 53. In a different apartment complex, another voter saw ballots "sticking out of
21 residents' mailboxes and 'at least a dozen' were sitting in nearby garbage cans."

22 54. Another resident received a ballot at her home addressed to her deceased mother.

23 55. A U.S. Postal Service worker serving the area witnessed the breadth of the problem.
24 She recounted that, over the course of multiple days, she saw an "influx of absentee ballots"—as
25 many as 100 in a single day—that were "no good," often because they had been sent to recipients
26 who had moved or died. "In all, she said there were thousands [of ballots] sitting in crates with no
27 additional safeguards and marked to be sent back to the county."

28 56. Nevada is not the only jurisdiction that experienced those types of problems after a

1 hurried switch to mail-in voting for its Spring 2020 elections.

2 57. The New Jersey media has reported that similar problems took root in Paterson, New
3 Jersey in the May 12 election for Second Ward City Council—the “first election in state history
4 that was contested only by mail-in voting.”

5 58. More than 800 mail-in ballots were set aside in Paterson due to suspicion that they
6 were gathered illegally.

7 59. Hundreds of mail-in ballots were collected from *single* mailboxes. In one case, 366
8 ballots were picked up from the same mailbox.

9 60. In some cases, “large quantities of mail-in ballots were fastened together with a
10 rubber-band and dropped at the same location.”

11 61. There have been reports of Paterson voters not receiving their ballots as well as
12 reports of “letter carriers leaving massive numbers of ballots in a bin at a particular apartment
13 building.”

14 62. In addition, one candidate reported that many people’s “votes were paid for and still
15 others who had no idea that they voted or who they voted for because someone filled out a mail-in
16 ballot for them.” Things are so bad that a court has temporarily blocked the winning candidate from
17 taking office. *See* Joe Malinconico, *Paterson councilman-elect charged with election fraud can’t*
18 *take office, judge rules*, Patterson Press (June 30, 2020), <https://njersy.co/3gsZarF>.

19 63. Those facts confirm the common-sense conclusion of the Commission on Federal
20 Election Reform—a bipartisan commission chaired by former President Jimmy Carter and James
21 Baker, and cited extensively by the U.S. Supreme Court—that absentee voting is “the largest source
22 of potential voter fraud.” *Building Confidence in U.S. Elections* 46, <https://bit.ly/3dXH7rU> (*Carter-*
23 *Baker Report*). Many well-regarded commissions and groups of diverse political affiliation agree
24 that “when election fraud occurs, it usually arises from absentee ballots.” Michael T. Morley,
25 *Election Emergency Redlines 2*, <https://bit.ly/3e59PY1> (Morley, *Redlines*). Such fraud is easier to
26 do and harder to detect. As one federal court put it, “absentee voting is to voting in person as a take-
27 home exam is to a proctored one.” *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004).

28 64. “Absentee balloting is vulnerable to abuse in several ways.” For one, ballots are

1 sometimes “mailed to the wrong address or to large residential buildings” and “might get
2 intercepted.” *Carter-Baker Report* 46. For another, absentee voters “who vote at home, at nursing
3 homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to
4 intimidation.” *Id.* And “[v]ote buying schemes are far more difficult to detect when citizens vote
5 by mail.” *Id.* For example, “[i]ndividuals can sign and sell their absentee ballot,” or “[o]ne spouse
6 can coerce the other to sign the ballot and hand it over to them to vote fraudulently.”

7 65. This risk of abuse is magnified by the fact that “many states’ voter registration
8 databases are outdated or inaccurate.” Morley, *Redlines* 2.

9 66. A 2012 study from the Pew Center on the States—which the U.S. Supreme Court
10 cited in a recent case—found that “[a]pproximately 24 million—one of every eight—voter
11 registrations in the United States are no longer valid or are significantly inaccurate”; “[m]ore than
12 1.8 million deceased individuals are listed as voters”; and “[a]pproximately 2.75 million people
13 have registrations in more than one state.”

14 67. Similarly, a 2010 study by the Caltech/MIT Voting Technology Project found that
15 roughly 9% of listed registration records in the United States are invalid.” On top of those invalid
16 records, “in the typical state 1 in 65 records is duplicative, meaning that the same registrant is listed
17 multiple times.” The same study found that “[i]n the typical state, 1 in 40 counted votes in the 2008
18 general election cannot be matched to a registrant listed as having voted” and that “1 in 100 listed
19 registrants is likely to be deceased.”

20 68. Federal law recognizes those risks of voting by mail and thus requires certain first-
21 time voters to present identification. *See* 52 U.S.C. § 21083(b).

22 **III. In a special session on a weekend vote, the Nevada Legislature passes AB4.**

23 69. After Nevada’s June 2020 primary election, the *Corona* plaintiffs amended their
24 complaint. The plaintiffs’ new claims raised constitutional challenges to Nevada laws that banned
25 ballot harvesting—the process of third parties unrelated to a voter collecting and returning that
26 voter’s absent ballot. They also challenged the Nevada laws requiring election officials to verify a
27 voter’s signature on an absent ballot against the signature on the voter’s registration. The parties
28 conducted expedited discovery on those claims throughout July 2020 to prepare for a one-week

1 trial on them scheduled to begin on Monday, August 17, 2020.

2 70. On Friday, July 31, 2020, the Nevada Legislature convened its 32nd Special Session
3 in response to a call from Governor Sisolak.

4 71. One of the bills the Nevada Legislature considered during that special session was
5 Assembly Bill 4.

6 72. The Democratic majority in the Nevada Assembly introduced AB4 on the afternoon
7 of July 31, 2020. AB4 runs more than 60 single-spaced pages. Even so, the Assembly passed AB4
8 on a straight party-line vote mere hours after it was introduced.

9 73. AB4 then went to the Nevada Senate, which considered it near midnight on Friday,
10 July 31, 2020, and again on Saturday, August 1, 2020, before passing it on Sunday, August 2, 2020,
11 on a straight party-line vote.

12 74. Governor Sisolak signed AB4 into law on Monday, August 3, 2020.

13 75. AB4 contains 88 sections. Sections 2 through 29 enact entirely new provisions in
14 the Nevada Revised Statutes. Within those, Sections 2 through 27 create a new framework for
15 primary or general elections held during a declared emergency or state of disaster, defined under
16 AB4 as an “affected election.” AB4, §§5, 8. Sections 30 through 83, in turn, amend scattered
17 existing provisions of NRS Chapters 293 and 293C. Sections 84 through 88 appropriate money to
18 implement the bill and establish effective dates for its provisions.

19 76. Many of AB4’s provisions are head-scratching—particularly given the stark
20 irregularities in Nevada’s June 2020 primary election, and because AB4 changes so many election
21 laws so close to the 2020 general election. Indeed, Defendant herself recently acknowledged that
22 Nevada could (and should) successfully hold its 2020 general election without changing its election
23 laws. Barbara K. Cegavske, *Nevada’s voting laws do not need to be changed*, The Nevada
24 Independent (July 29, 2020), <https://bit.ly/30qA4UO>. But this lawsuit does not challenge AB4’s
25 wisdom (or lack thereof). *Cf. New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 209
26 (2008) (Stevens, J., concurring) (“The Constitution does not prohibit legislatures from enacting
27 stupid laws.”). Rather, this lawsuit challenges the parts of AB4 that violate the Constitution or
28 contradict federal law enacted under it, and that are thus invalid and must be enjoined.

1 77. First among AB4’s unconstitutional provisions is Section 20. It effectively delays
2 the day for electing members of Congress and for appointing presidential electors that Congress
3 has established in 2 U.S.C. §§1, 7 and 3 U.S.C. §1.

4 78. The “election” established in those federal statutes is “the combined actions of
5 voters and officials meant to make a final selection of an officeholder.” *Foster v. Love*, 522 U.S.
6 67, 71 (1997).

7 79. Section 20.2 “deem[s]” ballots “received by mail not later than 5 p.m. on the third
8 day following the election” “to have been postmarked on or before the day of the election” when
9 “the date of the postmark cannot be determined.”

10 80. But AB4 makes it likely that most mail ballots will lack a legible postmark showing
11 when voters mailed them. AB4 instructs county and city clerks to send mail ballots to voters along
12 with “a return envelope” that “must include postage prepaid by first-class mail.” AB4, §16.3. The
13 U.S. Postal Service generally does not apply postmarks to postage prepaid envelopes. *See* United
14 States Postal Serv., §1-1.3 Postmarks (“Postmarks are not required for mailings bearing a permit,
15 meter, or precanceled stamp for postage, nor to pieces with an indicia applied by various postage
16 evidencing systems.”), <https://bit.ly/3kftt7l>. So for the vast majority of mail ballots, election
17 officials will not be able to rely on a postmark date to determine when voters cast them because
18 most mail ballots will not have a postmark at all. Instead, the only objective indicator of whether
19 voters have timely cast their mail ballots before Election Day will be whether election officials
20 received them on or before Election Day.

21 81. In addition, the U.S. Postal Service delivers the overwhelming majority of first-class
22 mail sent from a Clark County address to another Clark County address, or from a Washoe County
23 address to another Washoe County address, within one or two business days. That means mail sent
24 within Clark County or Washoe County on a Wednesday or Thursday will usually be received
25 within Clark County or Washoe County by the next Friday.

26 82. As a result, a ballot mailed in Clark or Washoe Counties in a state-provided, postage
27 prepaid first-class envelope on the Wednesday or Thursday after Election Day will likely be
28 received at the Clark County Registrar’s Office or Washoe County Clerk’s Office before 5:00 pm

1 on the Friday after the election without bearing a postmark. Under Section 20.2, those ballots must
2 be counted. Section 20.2 thus effectively extends the congressionally established Election Day.

3 83. Sections 11 and 12 of AB4 are also unconstitutional. Those sections set forth the
4 number of in-person polling places for early voting (Section 11) and vote centers for day-of-election
5 voting (Section 12). Under those sections, the number of in-person voting places a county must
6 establish is tied to the county's population, resulting in more in-person voting places per capita for
7 voters in urban counties than in rural counties. This disparate treatment of Nevada voters based on
8 county population violates rural voters' rights under the Equal Protection Clause.

9 84. Section 22 of AB4 is also unconstitutional. It provides that "the county or city clerk,
10 as applicable, shall establish procedures for the processing and counting of ballots." Beyond that
11 general instruction, it provides only that counties "[m]ay authorize mail ballots to be processed and
12 counted by electronic means." This lack of uniform standards to be applied across counties means
13 that Nevada counties will necessarily adopt different procedures for processing and counting
14 ballots, which could produce differences in rejection rates. This unequal, standardless treatment of
15 Nevada voters across counties constitutes an equal protection violation.

16 85. Finally, Section 25 of AB4 requires county or city clerks to count potentially
17 fraudulent or invalid ballots, thereby diluting the votes of honest citizens and depriving them of
18 their right to vote in violation of the Fourteenth Amendment. Section 25 provides that "[i]f two or
19 more ballots are found folded together to present the appearance of a single ballot, they must be
20 laid aside. If a majority of the inspectors are of the opinion that the mail ballots folded together
21 were voted by one person, the mail ballots must be rejected and placed in an envelope, upon which
22 must be written the reason for their rejection." But Section 25 establishes no standard by which the
23 inspectors should assess whether the ballots were voted by one person. Neither does Section 25
24 require inspectors to reject either of two or more ballots folded together when a majority of the
25 inspectors are of the opinion that the mail ballots were voted by *more than* one person. In that case,
26 Section 25 appears to contemplate that inspectors will count *all* of the ballots, even though at least
27 one of the voters has not complied with the bill's signature-verification process. This loophole
28 invites fraud, coercion, theft, or otherwise illegitimate voting that dilutes the votes of honest citizens

1 and deprives them of their right to vote in violation of the Fourteenth Amendment.

2 86. On March 12, 2020, Governor Sisolak declared a state of emergency in Nevada due
3 to COVID-19. That makes Nevada’s 2020 general election an “affected election” to which Sections
4 2 through 27 of AB4 apply. *See* AB4, §§5, 8.

5 **CAUSES OF ACTION**

6 **COUNT I**

7 **Violation of 3 U.S.C. §1, 2 U.S.C. §7, 2 U.S.C. §1; Elections Clause (U.S. Const. art. I, §4, cl. 1); Electors Clause (U.S. Const. art. II, §1, cl. 4); Supremacy Clause (U.S. Const. art. VI, §2)**

8 87. Plaintiffs incorporate all their prior allegations.

9 88. 3 U.S.C. §1 provides that “[t]he electors of President and Vice President shall be
10 appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth
11 year succeeding every election of a President and Vice President.”

12 89. 2 U.S.C. §7 provides that “[t]he Tuesday next after the 1st Monday in November, in
13 every even numbered year, is established as the day for the election, in each of the States and
14 Territories of the United States, of Representatives and Delegates to the Congress commencing on
15 the 3d day of January next thereafter.”

16 90. 2 U.S.C. §1 provides that, “[a]t the regular election held in any State next preceding
17 the expiration of the term for which any Senator was elected to represent such State in Congress,
18 at which election a Representative to Congress is regularly by law to be chosen, a United States
19 Senator from said State shall be elected by the people thereof for the term commencing on the 3d
20 day of January next thereafter.”

21 91. This trio of statutes “mandates holding all elections for Congress and the Presidency
22 on a single day throughout the Union.” *Foster v. Love*, 522 U.S. 67, 70 (1997).

23 92. The word “election” in 3 U.S.C. §1 means the “combined actions of voters and
24 officials meant to make a final selection of an officeholder.” *Foster*, 522 U.S. at 71.

25 93. It is the consummation of the process of electing an official.

26 94. By its terms then, 3 U.S.C. §1 requires that the 2020 general election be
27 consummated on Election Day (November 3, 2020).

28 95. A mail ballot is not a legal vote unless it is marked and cast on or before Election

1 Day. Whatever latitude state legislatures retain under federal law to define the process of casting
2 mail ballots through the U.S. Postal Service, they cannot create a process where ballots mailed *after*
3 Election Day can be considered timely.

4 96. Consistent with 3 U.S.C. §1, “the Voting Rights Act Amendments of 1970 require
5 that citizens be allowed to vote by absentee ballot in Presidential elections on or before the day of
6 the election.” *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 778 (5th Cir. 2000). *See* 52
7 U.S.C. §10502(d).

8 97. “The regulations made by Congress are paramount to those made by the State
9 legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be
10 operative.” *Foster v. Love*, 522 U.S. 67, 69 (1997). *See* U.S. Const. art VI, cl. 2 (Supremacy Clause).

11 98. Section 20.2 of AB4 conflicts with 3 U.S.C. §1 by permitting absent ballots that
12 have not been postmarked to be counted if they are received by 5:00 pm three days after Election
13 Day (based on a presumption that those ballots were mailed on or before Election Day).

14 99. Absent ballots are mailed to the county clerk for the county in which the voter
15 resides.

16 100. Absent ballots are delivered by the U.S. Postal Service via First Class mail.

17 101. The estimated delivery time for First Class mail from one place in any Nevada
18 county to another place within the same county is typically less than three days.

19 102. Section 20.2 of AB4 thus allows absent ballots to be cast after Election Day but still
20 counted as lawfully cast votes in the 2020 general election.

21 103. Section 20.2 of AB4 is a particularly egregious violation of 3 U.S.C. §1 because it
22 allows for absentee ballots to be *cast* after Election Day.

23 104. Federal law thus preempts Section 20.2 of AB4.

24 105. Defendant has acted and will continue to act under color of state law to violate the
25 3 U.S.C. §1.

26 106. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
27 harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing
28 Section 20.2 of AB4.

COUNT II

Violation of the Equal Protection Clause (42 U.S.C. §1983)

107. Plaintiffs incorporate all their prior allegations.

108. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

109. Sections 11 and 12 of AB4 violate the right to vote of rural voters by inhibiting their ability to vote in person. More specifically, Sections 11 and 12 of AB4 authorize disparate treatment of voters in rural counties with respect to the placement of polling places and vote centers for in-person voting.

110. Section 11 of AB4 outlines three categories of counties based upon total county population and directs the county clerk in each county to provide for a particular number of polling places for early voting by personal appearance.

- a. In a county whose population is 700,000 or more, at least 35 polling places for early voting by personal appearance, which may be any combination of temporary or permanent polling places for early voting.
- b. In a county whose population is 100,000 or more but less than 700,000, at least 15 polling places for early voting by personal appearance, which may be any combination of temporary or permanent polling places for early voting.
- c. In a county whose population is less than 100,000, at least 1 permanent polling place for early voting by personal appearance.

111. Section 12 of AB4 outlines three categories of counties based upon total county population and directs the county clerk in each county to establish a particular number of polling places as vote centers for the day of the election.

- a. In a county whose population is 700,000 or more, [the county clerk] must establish

1 at least 100 vote centers for the day of the election.

2 b. In a county whose population is 100,000 or more but less than 700,000, [the county
3 clerk] must establish at least 25 vote centers for the day of the election.

4 c. In a county whose population is less than 100,000, [the county clerk] may establish
5 one or more vote centers for the day of the election.

6 112. Sections 11 and 12 discriminate against voters in rural counties by authorizing more
7 polling places and vote centers per capita in urban areas.

8 113. For example, data from the Secretary of State shows that there are 319,212
9 registered voters in Washoe County. AB4 authorizes a minimum of 15 polling places in Washoe
10 County, or at least 1 polling place for every 21,281 registered voters in Washoe County.

11 114. Several rural counties—where AB4 authorizes only 1 polling place each—have
12 substantially higher numbers of registered voters per polling place. For example, Lyon County (1
13 polling place per 40,816 registered voters) and Douglas County (1 polling place per 41,649
14 registered voters) have approximately twice as many registered voters per polling place as Washoe
15 County. Several other rural counties have substantially higher numbers of registered voters per
16 polling place than Washoe County: Carson City: 1 polling place per 37,624 registered voters; Elko
17 County: 1 polling place per 29,131 registered voters; Nye County: 1 polling place per 34,431
18 registered voters.

19 115. Similarly, AB4 authorizes a minimum of 25 vote centers in Washoe County, or at
20 least 1 vote center for every 12,768 registered voters.

21 116. Several rural counties—where AB4 authorizes only 1 vote center each—have
22 substantially higher numbers of people per vote center. For example, Lyon County: (1 vote center
23 per 40,816 registered voters), Douglas County (1 vote center per 41,649 registered voters), and
24 Carson City (1 vote center per 37,624 registered voters) all have approximately three times as many
25 registered voters per vote center as Washoe County. Several other rural counties have substantially
26 higher numbers of registered voters per vote center than Washoe County: Elko County: 1 vote
27 center per 29,131 registered voters; Nye County: 1 vote center per 34,431 registered voters;
28 Churchill County: 1 vote center per 15,987 registered voters.

1 117. By limiting their ability to cast ballots via in-person voting through reduced numbers
2 of polling places and vote centers, Sections 11 and 12 of AB4 engage in disparate treatment with
3 respect to rural voters.

4 118. “A citizen, a qualified voter, is no more nor no less so because he lives in the city or
5 on the farm. This is the clear and strong command of our Constitution’s Equal Protection Clause.”
6 *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). AB4 infringes “the basic principle of equality among
7 voters within a State ... that voters cannot be classified, constitutionally, on the basis of where they
8 live.” *Id.* at 560.

9 119. Sections 11 and 12 of AB4 thus violate the Equal Protection Clause.

10 120. Defendant has acted and will continue to act under color of state law to violate the
11 Equal Protection Clause of the Fourteenth Amendment.

12 121. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
13 harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing
14 Sections 11 and 12 of AB4.

15 **COUNT III**

16 **Violation of the Equal Protection Clause (42 U.S.C. §1983)**

17 122. Plaintiffs incorporate all their prior allegations.

18 123. “The right to vote is protected in more than the initial allocation of the franchise.
19 Equal protection applies as well to the manner of its exercise. Having once granted the right to vote
20 on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote
21 over that of another. It must be remembered that the right of suffrage can be denied by a debasement
22 or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free
23 exercise of the franchise.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

24 124. In particular, the Equal Protection Clause imposes a “minimum requirement for
25 nonarbitrary treatment of voters” and forbids voting systems and practices that distribute election
26 resources in “standardless” fashion, without “specific rules designed to ensure uniform treatment.”
27 *Bush v. Gore*, 531 U.S. 98, 105-06 (2000); *League of Women Voters of Ohio v. Brunner*, 548 F.3d
28 463, 477-78 (6th Cir. 2008).

1 125. The Supreme Court has instructed that the “formulation of uniform rules” is
2 “necessary” because the “want of” such rules may lead to “unequal evaluation of ballots.” *Bush v.*
3 *Gore*, 531 U.S. 98, 106 (2000).

4 126. Section 22 of AB4 requires each “county or city clerk” (as applicable) to “establish
5 procedures for the processing and counting of mail ballots.”

6 127. Section 22 of AB4 provides no guidance or guardrails of any kind for the
7 establishment of “procedures for the processing and counting of mail ballots.”

8 128. Section 22 thus violates the “minimum requirement for nonarbitrary treatment of
9 voters” by authorizing “standardless” procedures for the processing and counting of mail ballots,
10 without “specific rules designed to ensure uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06
11 (2000).

12 129. Further, Section 22 provides no “minimal procedural safeguards” to protect against
13 the “unequal evaluation” of mail ballots. *Bush v. Gore*, 531 U.S. 98, 109 (2000).

14 130. Section 22 of AB4 instructs each county or city clerk that they “may authorize mail
15 ballots to be processed and counted by electronic means.”

16 131. Nevada’s counties thus have the option of processing and counting mail ballots by
17 either electronic means (of any kind, apparently) or manually.

18 132. Section 22 thus expressly authorizes Nevada’s counties to “use[] varying standards
19 to determine what [i]s a legal vote,” contrary to the Equal Protection Clause. *Bush v. Gore*, 531
20 U.S. 98, 107 (2000).

21 133. Section 22 of AB4 thus violates the Equal Protection Clause.

22 134. Defendant has acted and will continue to act under color of state law to violate the
23 Equal Protection Clause of the Fourteenth Amendment.

24 135. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
25 harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing
26 Section 22 of AB4.

COUNT IV

Violation of the Equal Protection Clause (42 U.S.C. §1983)

136. Plaintiffs incorporate all their prior allegations.

137. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

138. In particular, the Equal Protection Clause imposes a “minimum requirement for nonarbitrary treatment of voters” and forbids voting systems and practices that distribute election resources in “standardless” fashion, without “specific rules designed to ensure uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06 (2000); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477-78 (6th Cir. 2008).

139. The Supreme Court has instructed that the “formulation of uniform rules” is “necessary” because the “want of” such rules may lead to “unequal evaluation of ballots.” *Bush v. Gore*, 531 U.S. 98, 106 (2000).

140. Section 25 of AB4 provides that “[i]f two or more mail ballots are found folded together to present the appearance of a single envelope,” and “a majority of the inspectors are of the opinion that the mail ballots folded together were voted by one person, the mail ballots must be rejected.” §25.2.

141. Section 25 provides no guidance or guardrails of any kind for the establishment of standards “a majority of inspectors” should apply to determine whether “the mail ballots folded together were voted by one person.”

142. Section 25 thus violates the “minimum requirement for nonarbitrary treatment of voters” by authorizing “standardless” procedures for determining the validity of multiple ballots within a single envelope, without “specific rules designed to ensure uniform treatment.” *Bush v. Gore*, 531 U.S. 98, 105-06 (2000).

1 143. Further, Section 25 provides no “minimal procedural safeguards” to protect against
2 the “unequal evaluation” of multiple ballots within a single envelope. *Bush v. Gore*, 531 U.S. 98,
3 109 (2000).

4 144. Section 25 thus will result in Nevada’s counties “us[ing] varying standards to
5 determine what [i]s a legal vote,” contrary to the Equal Protection Clause. *Bush v. Gore*, 531 U.S.
6 98, 107 (2000).

7 145. Section 25 of AB4 thus violates the Equal Protection Clause.

8 146. Defendant has acted and will continue to act under color of state law to violate the
9 Equal Protection Clause of the Fourteenth Amendment.

10 147. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
11 harm to their constitutional rights unless Defendant is enjoined from implementing and enforcing
12 Section 25 of AB4.

13 **COUNT V**
14 **Violation of the Right to Vote (42 U.S.C. §1983)**

15 148. Plaintiffs incorporate all their prior allegations.

16 149. AB4, which upends Nevada’s election laws and requires massive changes in
17 election procedures and processes, makes voter fraud and other ineligible voting inevitable.

18 150. AB4 requires counties to accept and count ballots received after Election Day—
19 including ballots that may have been mailed after Election Day. §§20.1(b)(2), 20.2. It establishes a
20 disparate number of in-person places for early voting and Election Day voting throughout Nevada
21 based on a county’s population, resulting in fewer in-person voting places for rural voters. §§11,
22 12. It fails to establish uniform statewide standards for processing and counting ballots, §22, or for
23 determining whether multiple ballots received in one envelope must be rejected, §25. It also
24 authorizes ballot harvesting. §21.

25 151. The combined effect of those problematic provisions is to dilute Nevadans’ honest
26 votes. Dilution of honest votes, to any degree, by the casting of fraudulent or illegitimate votes
27 violates the right to vote. *Reynolds*, 377 U.S. at 555; *Anderson*, 417 U.S. at 226-27; *Baker*, 369
28 U.S. at 208.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONSOVOY MCCARTHY PLLC
WILLIAM S. CONSOVOY, ESQ.*
Virginia Bar No. 47704
THOMAS R. MCCARTHY, ESQ.*
Virginia Bar No. 47145
TYLER R. GREEN, ESQ.*
Utah Bar No. 10660
CAMERON T. NORRIS, ESQ.*
Virginia Bar No. 91624
1600 Wilson Boulevard, Suite 700
Arlington, VA 22209
Telephone: (703) 243-9423
will@consovoymccarthy.com
tom@consovoymccarthy.com
tyler@consovoymccarthy.com
cam@consovoymccarthy.com

**Application for admission
pro hac vice forthcoming*