

April 10, 2020

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VIA EMAIL

Hon. Barbara Cegavske, Secretary of State
State Capitol Building
101 N. Carson Street, Suite 3
Carson City, NV 89701
Email: nvelect@sos.nv.gov

Re: *Policies Announced March 24, 2020*

Dear Secretary Cegavske:

First and foremost, we share your concern about the administration of the June 9 Nevada primary in light of the COVID-19 pandemic. We understand that certain changes are necessary to protect the voting public and those staffing in-person polling locations, but we write to express the Nevada State Democratic Party's concerns about certain aspects of the policies your office initially announced on March 24, 2020. Specifically, we strongly believe that, in their current form, certain of these policies violate the Nevada and United States Constitutions, as well as certain provisions of the Nevada election statutes and regulations. We hope that your office will amend certain aspects of the announced policies given our concerns in an effort (1) to ensure as many registered Nevada voters as possible can cast a completed ballot in the June primary, and (2) to avoid litigation on these issues. Our concerns are as follows:

1. ***Limiting in-person voting to just one polling place per county.*** Nevada voters have a proud tradition of voting in person either during the early voting period or on election day. For example, in the 2016 Nevada primary, 89.5% of Nevada voters cast their ballots in person. Similarly, just 9% of voters cast absentee ballots in the 2018 general elections. In other words, the vast majority of Nevada voters are not accustomed to voting by mail. While we appreciate that vote by mail will be the best option for most voters in this particular primary, we list the numbers from past elections to underscore that converting to an all-mail election in a matter of weeks represents a major departure for Nevada voters. Voting by mail is a sound system only when paired with meaningful opportunities to vote safely in person. This is particularly important considering the circumstances surrounding the current pandemic, which has already displaced many voters from the mailing addresses at which they are registered, meaning that they are unlikely to receive their ballots even when mailed to the correct addresses. Having only a single in-person location in each county poses certain risks and hardships to voters in various circumstances—voters in dense urban communities, for example, will be forced into

dangerously overcrowded polling places, while rural voters will have to travel unreasonable distances just to cast their ballots. To that end, we ask that your office require more than just one in-person vote center per county in the State's most populous counties as well as those with geographically distant population centers.

2. ***Mailing ballots only to “active” voters.*** Multiple provisions of the Nevada election statutes and regulations do not draw a distinction between active and inactive voters when requiring county clerks to send mail-in ballots to voters. To name just one example, when a county clerk designates certain precincts as “mailing” or “absent mailing precincts,” Nevada law provides that “the county clerk shall cause to be mailed to each registered voter in each mailing precinct and in each absent mailing precinct an official mailing ballot, and accompanying supplies.” Nev. Rev. Stat. § 293.345(1) (emphasis added). In other words, the election code does not make any artificial distinction with regard to registration status, and no discretion exists to limit sending mail ballots only to active voters for any reason whatsoever. The same should hold true for the upcoming primary. Additionally, treating voters differently on this basis also offends certain principles articulated in the Nevada and United States Constitutions. We ask that your office require mail-in ballots be sent to all registered voters in Nevada, not just those in an active status.
3. ***Voter Assistance Ban.*** Many Nevada voters will not be able to return their mail-in ballots themselves and do not have family members—or are separated from these family members because of social distancing—who can do so for them in accordance with Nevada Revised Statutes section 293.330(4). We ask that your office and the office of the Nevada Attorney General immediately announce a suspension of prosecutions under this statute for all elections for which mail-in balloting will be the primary means of voting in the state.
4. ***Signature Mismatch.*** Lay election officials have never had the necessary expertise to determine accurately whether a voter’s ballot signature matches the signature on her registration, and signature matching is not needed to ensure the integrity of the election. In an environment where the vast majority of Nevada voters will be casting a mail-in ballot for the first time, there is the real possibility that hundreds of thousands of Nevada voters could be disenfranchised due to the arbitrary determinations of these untrained officials. We ask that your office suspend ballot rejections under Nevada Revised Statutes sections 293.325 and 293.330(1).
5. ***Signature Cure Period.*** The announced seven-day cure period for voters who have their ballots rejected because of mismatched or missing signatures is inadequate, especially given the plan to contact these voters by mail. We ask that your office extend the period for curing missing signatures by at least two weeks.

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6. ***Ballot-Receipt Deadline.*** In 2019, the Nevada Legislature changed the election law to allow ballots that were postmarked by election day to be counted. *See Nev. Rev. Stat. § 293.317(1)(b).* Nevada Administrative Code section 293.217(1), however, continues to reflect a rule that ballots must be received by election day to be counted. To avoid confusion, we ask that your office rescind this inconsistent regulation promptly.

The June primary will be an unprecedented election for Nevada voters, and every decision by your office must be made with the goal of allowing the maximum number of registered Nevada voters to participate fully. We hope we can work collaboratively with your office on the above provisions.

Very truly yours,

/s/ Marc Erik Elias

Marc Erik Elias
Perkins Coie LLP

/s/ Bradley S. Schrager

Bradley S. Schrager
Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP

CC:

Aubrey Rowlett, Carson County Clerk
Linda Rothery, Churchill County Clerk
Joe P. Gloria, Clark County Registrar of Voters
Kathy Lewis, Douglas County Clerk
Kris Jakeman, Elko County Clerk
LaCinda "Cindy" Elgan, Esmeralda County Clerk
Lisa Hoehne, Eureka County Clerk
Tami Rae Spero, Humboldt County Clerk
Sadie Sullivan, Lander County Clerk
Lisa C. Lloyd, Lincoln County Clerk

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Nikki A. Bryan, Lyon County Clerk
Christopher Nepper, Mineral County Clerk/Treasurer
Sandra L. "Sam" Merlino, Nye County Clerk
Lacey Donaldson, County Clerk
Vanessa Stephens, Storey County Clerk
Deanna Spikula, Washoe Registrar of Voters
Nichole Baldwin, White County Clerk