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CASE NO: A-20-824971-W
Department 31

5 Attorneys for Plaintiff/Petitioner Ross Miller
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8 **EIGHTH JUDICIAL DISTRICT COURT**
CLARK COUNTY, NEVADA

9 ROSS MILLER, and individual,
10
11 Plaintiff/Petitioner,

12 vs.

13 CLARK COUNTY BOARD OF
COMMISSIONERS, a local government
14 entity; and DOES I-X, inclusive,
15 Defendant.

Case No.:

Dept.:

ELECTION-RELATED ACTION

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT
OF MANDAMUS AND PROHIBITION**

(Exempt from Arbitration- Declaratory/
Injunctive Relief Requested)

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18 For his Complaint and Petition, Plaintiff ROSS MILLER (“Plaintiff/Petitioner”) alleges as
19 follow:

20 **INTRODUCTION**

21 1. This is an action by a candidate for Clark County Commission, District C, who
22 undisputedly received the most votes from ballots cast for the seat in District C during the 2020
23 General Election yet is being deprived of the office due to the unlawful actions of the Clark County
24 Board of Commissioners (hereinafter “Board”). That Board’s actions are beyond its constitutional
25 limitations and in direct transgression of the textually clear and precise legislatively enacted
26 statutory scheme governing elections in Nevada.

27 2. Upon the final counting of all the ballots for the District C election,
28 Plaintiff/Petitioner received seventy-six thousand five hundred eighty-six (76,586) as compared to

1 for District C of the Clark County Commission.

2 7. Defendant CLARK COUNTY BOARD OF COMMISSIONERS is and was at all
3 times relevant hereto a constitutionally created Nevada local government entity, that refused to
4 certify the votes in the 2020 General Election for the Clark County Commission, District C race,
5 and unlawfully voted for a new election for Clark County Commission, District C.

6 **BACKGROUND**

7 **A. Plaintiff/Petitioner Files And Wins The Democratic District C Primary Election**

8 8. Clark County, Nevada, is divided into separate districts with each having its own
9 elected representative on the Board.

10 9. The term of the Commissioner for District C expired at the end of 2020 and became
11 open for the November 2020 General Election.

12 10. Plaintiff/Petitioner filed as the Democratic Party candidate, prevailed in the primary
13 election and then proceeded to the General Election against a Republican opponent.

14 11. Stavros Anthony, not a party herein, was the Republican opponent in the General
15 Election.

16 **B. Plaintiff/Petitioner Wins Most Votes In The General Election**

17 12. The 2020 General Election for Nevada had a variety of federal and state offices that
18 involved contested races, including President of the United States, three Congressional seats,
19 multiple state legislative seats, countywide judicial seats and other state and local offices.

20 13. All voters were permitted to cast a ballot for President, while the remaining offices
21 were restricted to voters from designated geographical districts. A total of nine hundred seventy-
22 two thousand five hundred ten (972,510) votes were cast in Clark County for the office of President.

23 14. The voting procedure did not vary according to the race. Votes could be cast by in
24 person early voting at various locations throughout the county, by the use of drop off boxes, through
25 use of the mail and in person on election day at their designated precinct,

26 15. The Clark County Commission had four contested races on the ballot for the General
27 Election, including District C. One hundred fifty-threes thousand one hundred sixty-two (153,162)
28 votes were cast for that district. Plaintiff/Petitioner had ten (10) more votes cast for him than his

1 opponent did.

2 **C. “Discrepancies” Give Registrar “Doubt” as to “Margin Of Victory”**

3 16. The Registrar is responsible for overseeing and managing the integrity of the election
4 voting process, including, but not limited to, insuring that only those who are eligible to vote will
5 have their vote counted and that the “one vote” limitation pertains.

6 17. On information and belief, the Registrar and his staff collected and published all the
7 data from the General Election.

8 18. On information and belief, as part of the process, the Registrar and his staff record
9 and publish each voter’s participation in the general election using rosters in each precinct.

10 19. On information and belief, the Registrar and his staff have in place systems and
11 procedures for insuring and auditing the accuracy and validity of mail-in ballots, counting of ballots,
12 tracking of signatures, cancelled voter check-ins or check-in errors.

13 20. On November 16, 2020, the Registrar announced to the Board that he found
14 “discrepancies” with regard to some or all of the processes set for in the paragraph above, contending
15 that he had no explanation as to why he could not resolve them.

16 21. Further, during that same hearing, the Registrar conceded that there were hundreds
17 of similar discrepancies that were discovered with regard to other races as well, separately and
18 independently of those related to District C.

19 22. The Registrar could not and did not attempt to address whether or not these
20 “discrepancies” impacted the outcome of the District C election results. Rather, he said that he had
21 a personal “doubt” as to whether Plaintiff/Petitioner’s ten vote “margin of victory is solid”.

22 23. Neither the Registrar, the District Attorney nor any Board Member spoke to or even
23 addressed the alternative probabilities that the “discrepancies” (1) may have had no impact on the
24 margin (2) may have resulted in Plaintiff/Petitioner’s margin of victory being even greater, or (3)
25 may have reduced the Plaintiff/Petitioner’s margin of victory but he still would have won.

26 24. Importantly, the Registrar opined that a recount would not turn out any differently
27 than the numerical results he reported for the District C election.

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1 **D. Assistant District Attorney Predicts What A Court Would Do**

2 25. The Assistant District Attorney in charge of the Civil Division of that office was
3 present and acting as legal advisor to the Board. Recognizing that the statutory procedure of NRS
4 293.400 *et seq.* would commence if the Board were to certify the election allowing the losing
5 opponent to resort to a judicial determination, if he wished to do so. Perhaps feeling clairvoyant or
6 projecting her personal opinion as to the appropriate judicial decision, she told the Board that a
7 judge would rule that a new election take place. She did so without further articulation as to how
8 these “discrepancies” would be characterized in NRS 293.400 *et seq.*

9 26. Other than the possible double voting, nothing said by the Registrar or the District
10 Attorney bespoke deliberate misconduct or fraud on anyone’s part.

11 27. The Assistant District Attorney did not mention that, in the absence of fraud or
12 deliberate misconduct, before a court could do so, NRS 293.410 (2)(c) would require that the
13 challenger bear the burden of proving that illegal or improper votes were cast and counted; or, legal
14 and proper votes were not counted; or a combination of the circumstances occurred in an amount
15 that is equal to or greater than the margin between the contestant and the defendant, or otherwise in
16 an amount sufficient to raise reasonable doubt as to the outcome of the election.

17 28. The Assistant District Attorney did not mention that in the absence of fraud or
18 deliberate misconduct, as an alternative, before a court could do so, NRS 293.410 (2)(d) would
19 require that the challenger bear the burden of proving that the election board, in conducting the
20 election or in canvassing the returns, made errors sufficient to change the result of the election as to
21 any person who has been declared elected.

22 29. The Assistant District Attorney did not mention that in the absence of fraud or
23 deliberate misconduct, as an alternative, before a court could do so, NRS 293.410 (2)(e) would
24 require that the challenger bear the burden of proving that the Plaintiff/Petitioner or any person
25 acting, either directly or indirectly, on behalf of the Plaintiff/Petitioner has given, or offered to give,
26 to any person anything of value for the purpose of manipulating or altering the outcome of the
27 election.

28 30. The Assistant District Attorney did not mention that in the absence of fraud or

1 deliberate misconduct, as an alternative, before a court could do so, NRS 293.410 (2)(f) would
2 require that the challenger bear the burden of proving that there was a malfunction of any voting
3 device or electronic tabulator, counting device or computer in a manner sufficient to raise reasonable
4 doubt as to the outcome of the election.

5 31. The Assistant District Attorney did not even mention the possibility that a court
6 would rule differently than she opined, nor did she advise the Board as to the quality and/or quantum
7 of evidence that would be needed for the challenger to prevail. Rather, she advised the Board that it
8 had the power and authority to refuse to certify and to order the new election without needing to
9 wait for a court to do so.

10 32. The Board then voted not to certify the District C election and called for a new
11 election to occur, directing the Registrar to report to it at its first meeting in December 2020.

12 **FIRST CLAIM FOR RELIEF**

13 (Declaratory Relief)

14 33. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs
15 above as though fully set forth herein.

16 34. A justiciable controversy arises as to the Clark County Board of Commissioners' has
17 a statutorily mandates duty and obligation to canvass the votes in the 2020 General Election for the
18 Clark County Commission, District C race, and instruct the Clark County Registrar to certify the
19 results.

20 35. A justiciable controversy has arisen as to the Clark County Board of Commissioners'
21 right to *sua sponte* conduct a new election. That is, Plaintiff asserts that the Clark County Board of
22 Commissioners violated well established governing statutory law and, by deliberately refusing to
23 certify the election results in accordance with that governing statutory scheme, the Clark County
24 Board of Commissioners exceeded its authority by voting to hold a special election for Clark County
25 Commission, District C

26 36. This dispute is between parties whose interests are adverse and is ripe for
27 adjudication.

28 37. A judicial declaration of the parties' rights is necessary to avoid any further dispute

1 between the parties in connection with the election.

2 38. Plaintiff has been forced to hire an attorney to prosecute this action and therefore
3 seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

4 **SECOND CLAIM FOR RELIEF**

5 (Injunctive Relief)

6 39. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
7 above as though fully set forth herein.

8 40. Injunctive relief is appropriate to restrain a local governing authority from exceeding
9 its authority under the law.

10 41. Plaintiff is entitled to an injunction preventing the disenfranchisement of voters and
11 requiring the Clark County Board of Commissioners to immediately canvass the votes and certify
12 the results in the 2020 General Election for the Clark County Commission, District C race.

13 42. Unless the Clark County Board of Commissioners' actions are restrained by
14 temporary and permanent injunctive relief, Plaintiff will be irreparably harmed.

15 43. Plaintiff has been forced to hire an attorney to prosecute this action and therefore
16 seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

17 **THIRD CLAIM FOR RELIEF**

18 (Writ of Mandamus)

19 44. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
20 above as though fully set forth herein.

21 45. Pursuant to NRS 293.387, it is the Board's non-discretionary, ministerial duty to
22 canvass the returns and cause the Registrar to certify the results.

23 46. The Clark County Board of Commissioners exceeded its authority when it refused to
24 canvass the votes and certify the results in the 2020 General Election for the Clark County
25 Commission, District C race.

26 47. The Clark County Board of Commissioners also exceeded its authority when it voted
27 to hold a special election for Clark County Commission, District C.

28 48. Accordingly, the Clark County Board of Commissioners should be compelled by the

1 Court to canvass the votes and order the Clark County Board of Commissioners to certify the results
2 in the 2020 General Election for the Clark County Commission, District C race.

3 49. Plaintiff has been forced to hire an attorney to prosecute this action and therefore
4 seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

5 **FOURTH CLAIM FOR RELIEF**

6 (Writ of Prohibition)

7 50. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
8 above as though fully set forth herein.

9 51. The Clark County Board of Commissioners exceeded its authority when it refused to
10 canvass the votes and certify the results in the 2020 General Election for the Clark County
11 Commission, District C race.

12 52. The Clark County Board of Commissioners also exceeded its authority when it voted
13 to hold a special election for Clark County Commission, District C.

14 53. Accordingly, the Court should restrain the Clark County Board of Commissioners
15 from going forward with the planned special election for Clark County Commission, District C.

16 54. Plaintiff has been forced to hire an attorney to prosecute this action and therefore
17 seeks recovery of his attorneys' fees and court costs as permitted under Nevada law.

18 **WHEREFORE**, Plaintiff prays for judgment as follows:

19 1. For an order declaring that:

20 a. The Clark County Board of Commissioners exceeded its authority when it
21 refused to canvass the votes and certify the results in the 2020 General
22 Election for the Clark County Commission, District C race;

23 b. The Clark County Board of Commissioners also exceeded its authority when
24 it voted to hold a special election for Clark County Commission, District C;

25 2. For an injunction preventing the special election for Clark County Commission,
26 District C, from going forward and compelling the Clark County Board of Commissioners to
27 canvass the votes and certify the results in the 2020 General Election for the Clark County
28 Commission, District C race;

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VERIFICATION

I, ROSS MILLER, hereby declare that I am the Plaintiff/Petitioner in the above-captioned action and that I have read the foregoing VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDAMUS AND PROHIBITION and am competent to testify that the same is true of my own knowledge or I have gained such knowledge from a review of the relevant document and records. As for those matters stated on information and belief, I believe them to be true under the penalty or perjury.

DATE 11/17/20


ROSS MILLER