SUPPLEMENTAL APPENDIX

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EXHIBIT 1

Nevada State Democratic Party v. Nevada Green Party, et al., Case No. 24 OC 001017 1B (First Judicial Dist. Nev.), Exhibit to Secretary of State's Reply to Brief in Opposition to Plaintiff's First Amended Complaint

DECLARATION OF MARK WLASCHIN

I, MARK WLASCHIN, declare as follows:

1. I am the Deputy Secretary of State for Elections. I make this declaration based on personal knowledge.

2. I have access to the "SOS Elections Division" email at nvelect@sos.nv.gov.

3. Attached as Exhibit 2 to the Secretary of State's Reply Brief in Opposition to Plaintiff's First Amended Complaint is a true and correct copy of an email sent by Heather Hardy, an employee of the Secretary of State, to the Nevada Green Party at nvgreenparty@gmail.com on July 10, 2023, and copied to the SOS Elections Division email.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18 day of July, 2024.

Mark Wlaschin

EXHIBIT 2

Nevada State Democratic Party v. Nevada Green Party, et al., Case No. 24 OC 001017 1B (First Judicial Dist. Nev.), Exhibit to Secretary of State's Reply to Brief in Opposition to Plaintiff's First Amended Complaint

From: Heather Hardy
To: nvgreenparty@gmail.com
Cc: SOS Elections Division
Subject: RE: Ballot Access Petition
Date: Monday, July 10, 2023 9:23:05 AM

Good morning,

We have received the Nevada Green Party's ballot access petition. You may now begin collecting signatures.

Please keep in mind:

- The petition must have **10,095** valid signatures, per NRS 293.1715(2)(c).
- Of those signatures collected, **2,524** must be from each of Nevada's four Congressional districts, per NRS 293.1715(5)
- The signatures must be submitted to each County Clerk no later than **May 18, 2024.**

For additional information you can locate the Secretary of State's Minor Party Qualification Guide here.

If you have any question, please let me know.

Thank you,

Heather Hardy
Program Officer 3, CAPS – Elections Division
Office of Secretary of State Francisco V. Aguilar
101 North Carson Street, Suite 3
Carson City, NV 89701
(775) 684-7126
hardyh@sos.nv.gov

From: SOS Elections Division <nvelect@sos.nv.gov>
Sent: Monday, July 10, 2023 9:02 AM
To: Heather Hardy <hardyh@sos.nv.gov>
Subject: FW: Ballot Access Petition

Heather Hardy
Program Officer 3, CAPS – Elections Division
Office of Secretary of State Francisco V. Aguilar
101 North Carson Street, Suite 3
Carson City, NV 89701
(775) 684-7126
hardyh@sos.nv.gov

From: Nevada GreenParty <nvgreenparty@gmail.com>
Sent: Monday, July 10, 2023 8:57 AM
To: SOS Elections Division <nvelect@sos.nv.gov>
Subject: Ballot Access Petition

The Nevada Green Party is a recognized Minor Party in the state of Nevada, as proved by our "Notice of Continued Existence" and your receipt thereof.

We are seeking Ballot Access and have completed the Ballot Access Petition form, to the best of our ability.

Please review our "Ballot Access Petition" form and inform us as to whether or not it meets the Secretary of State's approval.

Our "Ballot Access Petition" is included in the attached document.

Thank you,

–

Nevada Green Party Co-Chairs
Margery Hanson
&
Daniel Alves

Historian/Co-Treasurer
Andrea Warzlow

Clark County At Large Member
Daniel Alves

Nye County At Large Member
Robert Hanson

GPNV HQ
775-298-6847

NVGreenParty@gmail.com
Nevada Green Party Website
Nevada Green Party on Facebook
Nevada Green Party on Twitter
Nevada Green Party on LinkedIn

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 89186

NEVADA STATE DEMOCRATIC PARTY,
Appellant,

v.

NEVADA GREEN PARTY; FRANCISCO V. AGUILAR IN HIS OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE,
Respondents.

RESPONDENT NEVADA GREEN PARTY'S ANSWERING BRIEF

On appeal from the First Judicial District Court, Carson City, Nevada
The Honorable Kristin N. Luis, Department II
District Court Case No. 24 OC 00107 1B

KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
P.O. Box 4628
Carson City, NV 89702
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Email: kbenson.esq@gmail.com
Attorney for Respondent
Nevada Green Party

RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Respondent Nevada Green Party is a Nevada Minor Political Party. Kevin Benson, Esq. is the only attorney who will appear for the Green Party on appeal, and was also the only attorney who appeared for the Green Party below.

Dated this 28th day of August, 2024.

KEVIN BENSON, ESQ.
Nevada State Bar No. 9970
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Carson City, NV 89702
Telephone: (775) 600-2119
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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The Democratic Party brought a challenge to the Nevada Green Party's qualifications for ballot access pursuant to NRS 293.174. Its original complaint alleged that only certain circulator affidavits were invalid because they were "altered." Although the original complaint was timely filed, the Democratic Party filed an amended complaint three weeks after the deadline in NRS 293.174. The amended complaint alleges that *all* the circulator affidavits are invalid because they lack a statement that the circulator believes each signer to be a registered voter in his or her county of residence. The Democratic Party had access to all of the information necessary to bring this claim prior to the statutory deadline, but it failed to do so. Did the district court err when it found that the new claim was nevertheless timely because it relates back to the original complaint?

2. All of the circulator affidavits in this case are missing a statement that the circulator believes each signer to be a registered voter in his or her county of residence. The counties verified the signatures, which includes checking whether a signer is a registered voter in that county. Based on the counties' results, the Secretary of State found that the petition had a sufficient number of valid signatures and therefore declared that the Green Party qualified for ballot access. Did the district court correctly hold that the affidavits substantially complied with the law despite the missing statement?

STATEMENT OF THE CASE

NRS 293.174 allows challenges to the qualifications of a minor party to place its candidates on the ballot, but such challenges, and all supporting documentation, must be filed no later than 5 p.m. on the second Monday in June. That deadline fell on June 10, 2024.

The Democratic Party timely filed its original complaint on June 10, 2024. (1 AA 0001). The only allegations in the original complaint regarding the circulator affidavits were that certain, but not all, affidavits were invalid because they were "altered." (1 AA 0003, ¶¶ 12, 13, 14; 1 AA 0004, ¶21).

Three weeks later, on July 1, 2024, the Democratic Party filed its First Amended Complaint. (1 AA 0119). The First Amended Complaint alleged that *all* of the circulator affidavits are invalid because they all lack a statement that the circulator believes "that each person who signed was at the time of signing a registered voter in the county of his or her residence." (1 AA 0124). It also repeats the original allegations that certain circulator affidavits are invalid because they were "altered." (1 AA 0121-23, ¶¶ 12, 13, 14, 19, 25).

The Green Party filed its Brief in Opposition on July 11, 2024. (2 AA 0248). The Democratic Party filed its Reply on July 18, 2024. (2 AA 0376). In its Reply the Democratic Party identified, for the first time, which specific petition documents it alleged were invalid, the reason, and the number of signatures

affected. (2 AA 0401-05). The district court granted leave for the Green Party to file a sur-reply, which it did on July 26, 2024. (3 AA 0499).

The district court held that the circulator affidavits substantially complied with the law, even though they did not contain a statement that the circulator believed each signer to be a registered voter of his or her county of residence. (10 AA 2258). The district court also held that the Democratic Party failed to demonstrate that the petition was insufficient due to various alleged problems with certain petition documents. (10 AA 2255). In particular, it found that almost all of the alleged "alterations" to the circulator affidavits were simply corrections to obvious clerical mistakes. (10 AA 2254-55). Therefore it held that these affidavits substantially complied with the law and the petition still qualifies. (*Id.*)

STATEMENT OF FACTS

The Nevada Green Party is a minor political party that has been in continual existence in Nevada since at least 2020. (2 AA 0275). To obtain ballot access for the 2024 general election, the Green Party was required to obtain 10,095 valid signatures. NRS 293.1715(2)(c); (2 AA 0286). These signatures must be apportioned evenly amongst the four petition districts, meaning the Green Party must obtain at least 2524 valid signatures in each petition district. (*Id.*)

Prior to circulating it, the Green Party filed its petition for ballot access for the 2024 general election with the Secretary of State's Office via email on July 10,

2023. (2 AA 0275; 0311; 2 AA 0474). On the same day, an employee of the Secretary of State's office responded to the Green Party by email, and noted that the form the Green Party submitted did not contain a space at the top of the document for the petition district. (2 AA 0311). The employee attached a minor party ballot access form, and emailed this form to the Green Party. The employee wrote: "Please use the documents attached to begin collecting signatures." (*Id.*)

The form provided by the Secretary of State's Office to the Green Party contains the circulator affidavit for initiatives and referenda, instead of the circulator affidavit for minor party ballot access petitions. (2 AA 0319). The petition form in the 2024 Minor Party Qualification Guide also contains the wrong circulator affidavit. (2 AA 0296).

The incorrect affidavit was used on all of the petition documents that the Green Party submitted. (3 AA 0493). The incorrect affidavit form in the Minor Party Qualification Guide is marked "EL506 (rev. 4/2023)" in the lower left corner. (2 AA 0296). The incorrect affidavit form that was emailed to the Green Party by the Secretary of State's office is marked "EL506 Revised: 7/5/2023." (2 AA 0319). The Green Party did not use the form from the Guide; it used the form that was emailed to it by the Secretary of State's office. (See e.g., 1 AA 0070-105; 1 AA 0239-242; 2 AA 0244-47; 3 AA 0522-55).

NAC 293.182 provides that the minor party ballot access circulator affidavit must be in substantially the following form:

> I, _____ (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that I believe each person who signed was at the time of signing a registered voter in the county of his or her residence; and (6) that the number of signatures affixed thereon is _____.

The affidavit used by the Green Party lacks the fifth statement: "that I believe each person who signed was at the time of signing a registered voter in the county of his or her residence." (3 AA 0493).

The Green Party circulated the petition and obtained a total of 29,584 signatures, submitting the following number of signatures in each petition district: District 1: 7826; District 2: 5214; District 3: 7510; District 4: 9034. (3 AA 0494). The Secretary of State notified the county clerks and registrars of voters that the raw count of signatures was sufficient, and therefore directed the clerks and registrars to proceed with verification of the signatures pursuant to NRS 293.1277. (1 AA 0056).

The clerks and registrars verified the signatures pursuant to NRS 293.1277, which includes a random sampling process when more than 500 signatures are submitted. (3 AA 0494). The random sampling method checks each signature in

the sample to determine whether the signer is a registered voter of that county, among other things. (2 AA 0329-39). Since no petition is perfect, the clerks inevitably find some invalid signatures. (*See id.*) The clerks derive a validity rate based on the number of valid vs. invalid signatures in the sample, and then apply that rate to the raw number of signatures to determine the total number of valid signatures. (*Id.*). This is the ordinary method by which the State determines whether a petition qualifies for the ballot, and it applies to both minor party ballot access petitions and to statewide initiatives and referenda. NRS 293.1277(1).

After reviewing all the counties' certificates of results, the Secretary of State determined that the Green Party had submitted 14,821 valid signatures. (2 AA 0348; 3 AA 0494). Since that number exceeds 10,095, the minimum number of required signatures, the Secretary of State declared that the Green Party qualified for ballot access for the 2024 general election. (2 AA 0348).

The Democratic Party makes numerous assertions about various other alleged errors with the petition documents. Opening Brief, pp. 4-5. For example, while it is true that a signer wrote their name at the top of a petition document where the party name should have been, that is on the second page of the document. (2 AA 462). The first page of that document has the Green Party name written in at the top. (2 AA 461). Thus this does not show that a "white label" or blank petition was being circulated. Similarly, the Democratic Party asserts:

"'Republican' was written in where the Green Party name should be." Opening Brief, p. 5, citing (2 AA 438). But the document shows that "Nevada Green Party" was pre-printed at the top, and someone hand-wrote "Republican" next to it. (2 AA 438). There is no indication that this in any way misled any signers or otherwise created any problems with that petition document. Next, the Democratic Party asserts that "one circulator purported to obtain signatures in Clark County and Washoe County on the same day…." Opening Brief, p. 5. While that may be difficult, it is not impossible. In any event, all of these alleged problems are immaterial because, as the district court found, even if all of the signatures on these documents were thrown out, the petition would still have a sufficient number of valid signatures to qualify. (10 AA 2255).

SUMMARY OF THE ARGUMENT

The Democratic Party's claim that all of the circulator affidavits are invalid because they are missing a certain statement is untimely, therefore the district court lacked jurisdiction. The original complaint alleged only that certain (not all) circulator affidavits were invalid because they were allegedly "altered." The claim alleged in the First Amended Complaint, that all of the circulator affidavits are invalid because they lack a certain statement, is an entirely new and different basis

for relief. It therefore does not relate back to the original complaint and is barred by the statutory deadline for bringing such claims.

The district court correctly placed the burden of proof on the Democratic Party because it is the party that is challenging the Secretary of State's determination that the petition is sufficient.

The circulator affidavits substantially comply with the law even though they are missing a statement that the circulator believes each signer to be a registered voter in his or her county of residence. Contrary to the Democratic Party's arguments, the absence of a required attestation in a circulator affidavit does not automatically render the affidavit defective. First, this statement is not an "essential matter" because it relates to the signer's voter registration status, which is something the county clerks specifically check when verifying the signatures. Nor is this statement required for initiatives or referenda, even though all the same signature and signature verification requirements apply to those petitions.

Second, as this Court recognized in *LVCVA v. Secretary of State*, 191 P.3d 1138, 124 Nev. 669 (Nev. 2008), substantial compliance can be established by evidence outside the four corners of the affidavit. Here, the circulator affidavits substantially comply with the law because the official verification process showed that the petition has a sufficient number of valid signatures from registered voters in the respective counties.

The Green Party has met every reasonable objective of Nevada's minor party ballot access laws. If the petition were to be invalidated at this point, it would be a violation of the Green Party's constitutional rights to due process and equal protection.

ARGUMENT

I. STATEMENT OF STANDARD OF REVIEW

Questions of law, including interpretation of case law, are reviewed *de novo*. *Martin v. Martin*, 520 P.3d 813 (Nev. 2022). This Court has applied the *de novo* standard of review in cases challenging an initiative petition's compliance with the single subject rule and description of effect requirement where there is no factual dispute. *See e.g.*, *Nevadans for Reprod. Freedom v. Washington*, 140 Nev., Adv. Op. 28, 546 P.3d 801, 806 (Nev. 2024); *Helton v. Nevada Voters First PAC*, 512 P.3d 309 (Nev. 2022).

Here, the district court's interpretation of NRS 293.174 and the case law is subject to *de novo* review. However, this case does not involve a challenge to an initiative's description of effect or compliance with the single subject rule, so the *de novo* standard of review applied in those cases does not apply here.

Instead, the district court's determination that the Green Party's circulator affidavits substantially complied with the law is reviewed for an abuse of discretion. *See Redl v. Heller*, 120 Nev. 75, 81, 85 P.3d 797, 800-01 (2004)

(applying abuse of discretion standard to Secretary of State's determination that corporate filings substantially complied with the relevant statutes).

II. THE DISTRICT COURT CORRECTLY PLACED THE BURDEN OF PROOF ON THE DEMOCRATIC PARTY

In the district court, this case involved two different questions of "substantial compliance." First: whether all of the circulator affidavits substantially comply with the law, even though they are missing a certain statement. *See* (10 AA 2257) (finding in the affirmative). Second: whether certain affidavits substantially comply with the law, even though they were "altered" by, for example, correcting clerical mistakes. *See* (10 AA 2255) (finding that the vast majority of the "altered" affidavits substantially comply with the law).

The district court correctly placed the burden of proof on the Democratic Party with respect to both of these questions, consistent with the reasoning in *LVCVA v. Secretary of State*, 191 P.3d 1138, 1147, 124 Nev. 669 (Nev. 2008). (10 AA 2229).

This case is similar to *LVCVA* in that there is no dispute that the wrong circulator affidavit was used on all of the petition documents. (3 AA 493). However, in virtually every other respect, this case is the opposite of *LVCVA*. In *LVCVA*, the court placed the burden of proof on the petition proponents. *Id.* at 1147. However, in *LVCVA*, the Secretary of State determined that the circulator

affidavits were defective and instructed the counties that no signatures could be counted as valid. 191 P.3d at 1142. On appeal, this Court stated that, "[a]s the parties challenging that determination, the proponents are properly allocated the burden of proving that the Secretary of State's decision was incorrect…." *Id.* at 1147.

In this case by contrast, the Secretary of State directed the counties to proceed with signature verification. (1 AA 0056). The counties did so, and returned verification results showing that the petition had a sufficient number of valid signatures of registered voters in each petition district. (3 AA 0494). Accordingly, the Secretary of State declared that the Green Party qualified for ballot access. (2 AA 0341).

Here, it is the Democratic Party that is challenging the Secretary's determination, therefore the district court correctly applied *LVCVA*'s reasoning in placing the burden of proof on the Democratic Party. There is a presumption that official duties are regularly performed. NRS 47.250(9). Furthermore, as the district court observed, the plaintiff typically has the burden of proving its case, and here the Democratic Party is the plaintiff and the challenger under NRS 293.174. (10 AA 2228).

The court in *LVCVA* also stated: "The burden is appropriately placed on the proponents in this case because they caused the situation when they failed to

review the current statutes and comply with their requirements." *Id.* The Democratic Party argues that this statement means that the Green Party should bear the burden of proof because it used the wrong circulator affidavit, even though the Secretary determined the petition was sufficient and it is the Democratic Party challenging that decision. Opening Brief, p. 10.

The district court properly rejected this argument (10 AA 2250), as should this Court. First, as discussed above, this case is the opposite situation from *LVCVA*, because here the clerks verified the signatures and the Secretary found that the petition was sufficient. Obviously this case is not "identical" to *LVCVA*, as the Democratic Party argues. *See* Opening Brief, p. 12.

Second, there is no indication that that statement in *LVCVA* was intended by the court to override or create an exception to the usual rule that the burden of proof is born by the plaintiff. Instead, that statement is at most only a rejection of the petition proponents' argument in that case that they were not at fault for using the wrong affidavit form because the Secretary's Initiative Guide was not up to date.[1] *LVCVA*, 191 P.3d at 1142-43, 1146-47.

[1] Assuming arguendo that "fault" is relevant in determining which party bears the burden of proof, this case is easily distinguishable from *LVCVA*. In *LVCVA*, the Initiative Guide expressly warned that it was not up to date and did not contain the changes made during the 2007 legislative session. 191 P.3d at 1143. The petition proponents ignored that warning and used the old forms in the guide, without reviewing the current law. *Id.* In this case, the *current* guide, the 2024 Minor Party Ballot Access Guide, contains the incorrect form. (2 AA 0296). But more

Third, NRS 293.174, which allows for challenges to the qualifications of a minor party for ballot access, requires all affidavits and documents in support of the challenge to be filed no later than 5 p.m. on the second Monday in June. This is very similar to NRS 295.061, which allows for description of effect and single subject challenges to initiatives and referenda and requires that "[a]ll affidavits and documents in support of the challenge must be filed with the complaint." NRS 295.061(2). In that context, this Court has consistently held that the party challenging the petition "bear[s] the burden of demonstrating that the measures are clearly invalid." *Las Vegas Taxpayer Comm. v. City Council*, 125 Nev. 17, 208 P.3d 429, 436, (2009); *Helton v. Nevada Voters First PAC*, 512 P.3d 309, 313 (Nev. 2022). Likewise, NRS 293.174 contemplates that the challenger must produce evidence in support of the challenge; i.e., that the challenger bears the burden of proof.

Here, the district court correctly placed the burden of proof on the Democratic Party. However, the district court declined to apply the "clearly

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importantly, here the Green Party did not rely on the guide; it relied on a form that was directly sent to it by one of the Secretary's employees with the instruction: "Please use the documents attached to begin collecting signatures." (2 AA 0319, 0322; *see e.g.*, 1 AA 0070-105). There was no warning that the form might be wrong or that it was out of date, nor notice to the Green Party that it should double check the form against all the statutes and regulations. (2 AA 0322). Based on these facts, the district court correctly found that the Green Party relied on the form sent to it by the Secretary of State's office, and that it was not careless or negligent in doing so, unlike the petition proponents in *LVCVA*. (10 AA 2237).

invalid" standard because this case does not involve a challenge to the "substance" of the petition; i.e., its description of effect or compliance with the single subject rule. (10 AA 2229). Instead, the district court reasoned that *LVCVA* was more applicable because it dealt specifically with circulator affidavits. (10 AA 2229). It therefore held that the Democratic Party's burden was to show that the petition did not substantially comply with NRS 293.171 to 293.1725, in light of the Secretary of State's validation of signatures and the clerks' verification of residence and voter registration in that county. (10 AA 2229-30).

This Court should reaffirm its holding in *LVCVA* that the burden of proof lies with the party that is challenging the Secretary's determination as to whether a petition qualifies or not. Specifically, in cases like this, that would be the party bringing the challenge under NRS 293.174. The Court should also reaffirm that the challenger's burden of proof is to show that the petition is "clearly invalid." *See Taxpayer Commission*, 208 P.3d at 436 (adopting California's rule that the opponent of the petition must make a "compelling showing" that the petition is "clearly invalid.").

Reaffirming that this is the standard would remove any doubt that it is the challenger who must produce competent evidence to fully prove its claims. There is no burden-shifting analysis, as the Democratic Party appears to argue. *See* Opening Brief, p. 14. This is especially true with respect to its original claims that

certain circulator affidavits are defective for various reasons, such as being "altered." After the official verification process has shown the petition to be sufficient, the challenger must produce evidence that affirmatively demonstrates that the number of valid signatures is less than the required number of valid signatures in one or more petition districts. It is not enough for the challenger to merely show that *some* signatures are invalid, because no petition is perfect; there will always be some invalid signatures, especially where tens of thousands of signatures are required, such as in this case.

Similarly, where the challenge is to all of the affidavits on the basis that they all contain some alleged problem, and the Secretary has determined the petition to be sufficient, the burden remains on the challenger to demonstrate that the affidavits do not substantially comply with the law.[2] This gives effect to the presumption that the official verification was regularly performed (NRS 47.250(9)), and also gives proper deference to the constitutional rights of minor parties to seek ballot access. *See Norman v. Reed*, 502 U.S. 279, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992) (recognizing that the First and Fourteenth Amendments protect the rights of minor parties to seek ballot access); *see also LVCVA*, 191 P.3d

[2] Even though it was not required to do so, the Green Party has demonstrated that the affidavits substantially comply with the law, despite the missing statement, for the reasons discussed below.

at 1147 (holding that the substantial compliance standard accords proper deference to the people's initiative power).

III. THE DEMOCRATIC PARTY'S CLAIM THAT ALL THE CIRCULATOR AFFIDAVITS ARE DEFECTIVE IS UNTIMELY AND SHOULD HAVE BEEN DISMISSED FOR LACK OF JURISDICTION.

As the district court observed, the Democratic Party advanced two different claims in this case. (10 AA 2249). The first claim, alleged in the original complaint, was that the petition had an insufficient number of valid signatures because there were errors with various signatures and that certain circulator affidavits were "altered." (1 AA 0001-5). The second claim, alleged for the first time in the First Amended Complaint, is that *all* of the circulator affidavits are defective because they lack a statement that the circulator "believe[s] each person who signed was at the time of signing a registered voter in the county of his or her residence."[3] (1 AA 0119-0126).

[3] It appears that the Democratic Party is not challenging the district court's dismissal of its first claim based on its conclusion that the Democratic Party failed to meet its burden of proving that the petition lacked a sufficient number of valid signatures in one or more petition districts. (10 AA 2254-55). Instead, this appeal is limited to the second claim: that all of the circulator affidavits are defective because they are missing a certain statement. *See* Opening Brief, generally and pp. 1-2 (stating there are two issues on appeal, both of which relate to the statement missing from the circulator affidavits). Accordingly, the Green Party will not address the first claim.

A. The new challenge in the First Amended Complaint does not relate back to the original complaint and is therefore untimely.

NRS 293.174 allows for a challenge to the qualification of a minor political party, but that challenge and "all affidavits and documents in support of the challenge must be filed not later than 5 p.m. on the second Monday in June." The Democratic Party's original Complaint was timely filed on the deadline, June 10, 2024. (1 AA 0001). The challenge to all of the circulator affidavits based on the missing statement was raised for the first time in the FAC, which was filed on July 1, 2024. (1 AA 0119). The new challenge to all of the circulator affidavits is untimely under NRS 293.174 because this challenge raises an entirely different basis for relief, and therefore does not relate back to the original complaint under NRCP 15(c).

NRCP 15 states that an amendment relates back if the new claim "arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." NRCP 15(c). "NRCP 15(c) is to be liberally construed to allow relation back of the amended pleading where the opposing party will be put to no disadvantage." *Costello v. Casler*, 254 P.3d 631, 634, 127 Nev. Adv. Op. 36 (Nev. 2011). "On the other hand, where an amendment states a new cause of action that describes a new and entirely different source of damages, the amendment does not relate back, as the opposing party has not been put on notice concerning the facts in issue." *Frances v. Plaza Pacific Equities, Inc*., 847 P.2d 722, 109 Nev. 91

(Nev. 1993) (quoting *Nelson v. City of Las Vegas*, 99 Nev. 548, 556, 665 P.2d 1141, 1146 (1983).

The district court erred, for two reasons, when it held that the new claim challenging all the circulator affidavits related back to the original complaint and was therefore timely. (10 AA 2248-49). Appellate courts review the district court's application of the relation-back doctrine under Rule 15(c) *de novo*. *See Schneider v. McDaniel*, 674 F.3d 1144, 1148-49 (9th Cir. 2012) (applying FRCP 15(c)).

First, the district court held that the original Complaint was sufficient to put the Green Party on notice that the Democratic Party was alleging that the circulator affidavits "were defective and improper." (10 AA 2248). This conclusion is erroneous because it is based on a misreading of the allegations in the original Complaint. The original Complaint mentions the circulator affidavit five times. The first simply alleges that the petition documents submitted by the Green Party include the circulator's affidavit. (1 AA 0002, ¶ 8). All of the remaining four allegations state that some of the circulator affidavits were "altered." (1 AA 0003-4, ¶¶ 12-14, 21). The original Complaint did not allege that any affidavits were invalid for any reason other than being "altered." In short, the original Complaint did not state any facts that would put the Green Party on notice that the Democratic Party was challenging *all* the affidavits. Nor did it put the Green Party on notice that the basis for the challenge was that they lacked a certain statement. The district

court's conclusion that the original Complaint sufficiently put the Green Party on notice that the affidavits "were defective and improper" is therefore erroneous. *See Nelson*, 665 P.2d at 1146 (an amendment does not relate back where the opposing party "has not been put on notice of the facts in issue.").

Second, the district court concluded that the First Amended Complaint "simply put forth more factual detail regarding the circulator affidavits [sic] flaws **to which Plaintiff gained access after it finally obtained all the Petitions** from the various county clerks and registrars." (10 AA 2248-49) (emphasis added). This conclusion is likewise erroneous because the record indisputably shows that the Democratic Party had access to the relevant facts before it filed its original Complaint. The appendix of exhibits to the original Complaint contains several petition documents, circulated in different counties, each of which bear the incorrect circulator's affidavit. (*See e.g.*, 1 AA 0070-105; 0109-10; 0117-18). The Democratic Party obviously examined the circulator affidavits before filing its original Complaint, because it alleged that some of them were invalid because they were "altered." (1 AA 0003-4, ¶¶ 12-14, 21). This shows that, contrary to the district court's conclusion, the Democratic Party had access to all the factual details it needed to bring its challenge to all of the affidavits in its original Complaint. It simply failed to do so. It cannot blame the counties or the Secretary of State for its failure to bring that claim before the deadline in NRS 293.174.

Furthermore, in an expedited case like this one, bringing an entirely new claim nearly three weeks after the statutory deadline is a serious delay. In fact, the Democratic Party's failure to timely bring this claim put the Green Party at a substantial disadvantage because it had very little time (10 calendar days) to try to investigate and prepare an entirely new defense, requiring different witnesses, evidence, and arguments. (2 AA 0276, ¶ 12). *Cf. Costello*, 254 P.3d at 634 (NRCP 15(c) is liberally construed when "the opposing party will be put to no disadvantage").

For these reasons, the district court erred when it concluded that the new challenge to all of the circulator affidavits was timely because it relates back to the original Complaint.

B. The deadline in NRS 293.174 is jurisdictional

NRS 293.174 allows for a challenge to the qualification of a minor political party, but that challenge and "all affidavits and documents in support of the challenge **must** be filed not later than 5 p.m. on the second Monday in June." (Emphasis added.)

A rule is jurisdictional if it speaks to the power of the court to act. *Kassebaum v. Nev. Dep't of Corr.*, 535 P.3d 651, 654 (Nev. 2023). Typically, jurisdictional rules contain mandatory language prescribing the time frame in which to invoke the court's power to adjudicate the matter. *Id.*

The deadline in NRS 293.174 is jurisdictional because it uses mandatory language and sets a specific date and time to file the challenge. The statute also specifies which court the challenge must be filed in, it requires the matter to be set within a short period of time, and it requires the court to give the case priority over other civil matters. NRS 293.174. All of these indicate that the deadline in NRS 293.174 is material and cannot be ignored or extended.

This Court should affirm the district court's dismissal of the Democratic Party's challenge to all of the circulator affidavits because that claim is untimely and the deadline in NRS 293.174 is jurisdictional. *See Saavedra-Sandoval v. Wal-Mart Stores*, 245 P.3d 1198, 1202 (Nev. 2010) (appellate courts will affirm the district court's decision if it reached the right result, albeit for a different reason). If this Court affirms the district court's decision on this basis, it is unnecessary to address any of the Democratic Party's other arguments on appeal. However, for the sake of completeness, the Green Party will address each of those contentions below.

IV. THE CIRCULATOR AFFIDAVITS SUBSTANTIALLY COMPLY WITH THE LAW.

In *LVCVA* the court held that "substantial compliance" is the proper standard for circulator affidavits. 191 P.3d at 1147. "Substantial compliance" means "compliance with essential matters necessary to ensure that every reasonable

objective of the statute is met." *Williams v. Clark County Dist. Atty*., 50 P.3d 536, 541, 118 Nev. 473 (Nev. 2002).

A. The absence of a required statement in a circulator affidavit does not, *ipso facto*, render the affidavit defective.

The Democratic Party is arguing that the fact that a required statement is missing from the affidavit necessarily and always means, as a matter of law, that the affidavit is "defective."[4] Opening Brief, pp. 13-16. According to the Democratic Party, if a required statement is missing from the document, that necessarily means that the statutory element is "completely absent" or has been "completely ignored." *See id.*; *LVCVA*, 191 P.3d at 1148.

But that is not the law. The court in *LVCVA* did not simply look at the circulator affidavit and hold that it was defective because two statements were missing. It instead analyzed whether the proponents "otherwise" established substantial compliance, including by looking at evidence outside the affidavit itself. *Id.* at 1149-51.

In *LVCVA*, one of the missing elements was a statement of the number of signatures on the petition document. *Id.* at 1150. The court noted that "had a

[4] Contrary to the Democratic Party's assertion (Opening Brief, p. 14), the Green Party obviously does not concede that every circulator affidavit is "legally defective," nor did the district court hold that in this case. The Green Party concedes, and the district court found, only that all of the circulator affidavits in this case are missing a statement required by NAC 293.182. (3 AA 0493).

sufficient number of signatures been verified, the purpose of that provision of the statute would perhaps have been adequately met to satisfy substantial compliance." *Id.* The court therefore recognized that substantial compliance can be achieved (i.e., the reasonable objectives of the statute are met) even where a statutorily required statement is missing from the affidavit.

In short, under Nevada law, a circulator affidavit that is missing a statement is not *ipso facto* defective, as the Democratic Party argues. To hold otherwise would, for all practical purposes, impose a strict compliance standard, which the court in *LVCVA* specifically rejected. *Id.* at 1146-47. The analysis in *LVCVA* demonstrates that courts can and must look beyond the four corners of the affidavit to determine whether substantial compliance exists.

B. The circulator affidavits in this case substantially comply with the law.

In this case, the only element that is missing from the affidavit is a statement that the circulator "believe[s] each person who signed was at the time of signing a registered voter in the county of his or her residence." (3 AA 0493). Unlike in *LVCVA*, here the county clerks and registrars did verify the signatures. (3 AA 0494). That process specifically includes checking that the signer is a registered voter of the county. NRS 293.1277(1), (2 AA 0328-339). On these facts, the

district court correctly concluded that the Green Party's petition substantially complied with the law.

First, the district court, consistent with *LVCVA*, 191 P.3d at 1149, considered whether the missing statement relates to an "essential matter." (10 AA 2256-57); *see Williams*, 50 P.3d at 541 (defining "substantial compliance" as compliance with "essential matters" that ensure the purpose of the statute is met). It correctly found that the missing statement does not relate to an "essential matter" because it is only a statement made on information and belief, and it goes directly to something that the clerks specifically check as part of the signature verification process. (10 AA 2256). Additionally, the statement is not required at all for initiative or referendum petitions, even though those petitions are subject to the same requirement that only registered voters of the county can sign the petition, and the signatures are verified in exactly the same way. NAC 295.025(1); NRS 293.1277(1). This further demonstrates that it is not an "essential matter." (10 AA 2257).

This case is therefore like *Redl v. Secretary of State*, 120 Nev. 75, 85 P.3d 797, 801 (Nev. 2004). In that case the corporate revival statute required filing a list of directors, but the respondent only filed a list of officers instead. *Id.*, 85 P.3d at 800. This Court held that the filing substantially complied with the law because the

list officers satisfied all of the essential elements to meet the purposes of the statute, despite the fact that the list of directors was missing. *Id.* at 801.

In this case, district court's decision could have ended once it concluded that the missing statement did not relate to an "essential matter." But it nevertheless analyzed whether substantial compliance was achieved, assuming *arguendo* that the missing statement did relate to an essential matter. (10 AA 2257). It correctly held that the affidavits substantially comply with the law because the signatures have been verified by the county clerks, and this satisfies all reasonable objectives of the statute. (10 AA 2258). This Court should therefore affirm.

C. The Democratic Party's arguments that the affidavits do not substantially comply with the law lack merit.

The Democratic Party asserts that the circulator affidavits do not substantially comply with the law for various reasons. *See* Opening Brief, pp. 12-21. Each of these arguments will be addressed in turn.

First, the Democratic Party argues that the circulator affidavits are "materially false" because they contain a statement that each signer was given a chance to review the full text of the act or resolution on which the initiative or referendum is demanded. Opening Brief, p. 14. This argument assumes that each of the circulators subjectively understood the legal difference between the various types of petitions, and that the "full text of the act or resolution" referred to

something other than the petition itself. Moreover, the statement is not material because it is not required for minor party ballot access petitions.

Second, the Democratic Party takes issue with the district court's conclusion that the missing statement does not relate to an "essential" matter. It argues that the missing statement is "essential" because it "is the only attestation that requires the circulator confirm that they actually talked to the signer themselves." Opening Brief, pp. 16-17. However, this is not true. The affidavit includes statements that the circulator "personally circulated" the petition and that each of the signatures were affixed in the circulator's presence. (3 AA 0493). These statements attest that the circulator talked with real signers, as opposed to forging or tracing signatures on the petition, which the Democratic Party baselessly implies.

The Democratic Party also asserts that the missing statement in this case is essential because it "prevent[s] fraud," similar to the statement of the number of signatures on the petition. Opening Brief, p. 17. It argues that a "county clerk verifying traced signatures does nothing to satisfy NAC 293.182's purpose of preventing fraud." *Id.* The statement regarding the number of signatures on the document is designed to deter fraud by preventing additional signatures from being added after the circulator's affidavit is notarized. *LVCVA*, 191 P.3d at 1149. There is no evidence in this case that any signatures were forged or traced or that there were "signature parties" like those described in *LVCVA*. Nor does the Democratic

Party explain how a statement regarding the circulator's belief about a signer's voter registration status would do anything to prevent fraud that is different from the other statements in the affidavit. Its strained argument, if anything, only underscores the fact that the missing statement does not relate to an "essential" matter.

Third, the Democratic Party argues that this case is indistinguishable from *LVCVA* because one of the missing statements in that case was the number of signatures on the documents, but the ability of the clerks to verify that number "did not save" those affidavits. Opening Brief, p. 17. However, this case is easily distinguishable from *LVCVA*. First, there were two missing statements in *LVCVA*, and the court expressly struck down the affidavits based on failure to comply with the other one: that each signer was given a chance to review the full text of the measure before signing. *LVCVA*, 191 P.3d at 1150. Second, in this case the clerks actually did verify the signatures, whereas they did not in *LVCVA*. *Id.* at 1142, 1150.

Fourth, the Democratic Party takes issue with the district court's conclusion that the missing statement is not "essential" because it is not required at all for initiatives or referenda. Opening Brief, p. 18. It argues only very generally that the Legislature and the Secretary of State can prescribe different requirements for different types of petitions. *Id.* That is certainly true where there is an actual

difference such that it makes sense to have different requirements. But minor party ballot access petitions and initiatives and referenda are subject to the exact same requirement that only registered voters of the county can sign a document designated for that county (NAC 295.025(1)), and the signatures are verified in the same way. NRS 293.1277.

The Democratic Party does not explain why the missing statement is so important to minor party ballot access petitions that its absence automatically makes the petition void, yet at the same time, that statement is never required for initiatives and referenda. Nor does it explain the relevancy of the case it cites, *McKay v. Bd. of Supervisors*, 102 Nev. 644, 650, 730 P.2d 438, 442 (1986), for the proposition that "It is ordinarily presumed that the [L]egislature, by deleting an express portion of a law, intended a substantial change in the law." There is no indication that the statement was ever required for initiatives and referenda. If it had been, and it was subsequently deleted, that would only further show that it is not "essential."

Fifth, the Democratic Party argues that the district court improperly relied on dicta from *LVCVA* where the court noted that "had a sufficient number of signatures been verified, the purpose of that provision of the statute [requiring a statement of the number of signatures on the document] would perhaps have been adequately met to satisfy substantial compliance. *LVCVA*, 191 P.3d at 1149

(parenthetical added). Opening Brief, p. 18. The Democratic Party argues that the court in *LVCVA* itself "closed the door" to this possibility when it stated "to hold that the complete absence of these elements sufficed for substantial compliance would render their inclusion in the statute nugatory – thus violating a basic principle of statutory construction." *Id*.; Opening Brief, p. 19.

However, it is the Democratic Party that is misreading *LVCVA*. That statement was made in the context of the petition proponents' argument "that the statute's purposes were adequately served by the information in the affidavits they provided…." *Id.* at 1147. In other words, the proponents were arguing that the two missing statements were duplicative of other information provided in the affidavits. The court rejected that argument because it found that neither of the missing elements were satisfied by the other statements in the affidavit: i.e., that the circulator personally circulated the document and saw the signatories sign it. *Id.* Consequently, the court concluded that those elements were "essential matters" that were not duplicative of other statements in the affidavit, and that finding substantial compliance despite "the complete absence of these elements" would nullify their addition to the statutory requirements. *Id.*

But that was not the end of the analysis. In fact, the very next heading, just one sentence away, reads: "The proponents did not *otherwise* establish substantial compliance." *Id.* at 1149 (emphasis added). The Democratic Party misinterprets

"complete absence" to mean simply that the statement is absent from the affidavit. That is not how the court in *LVCVA* used that term; it clearly understood "complete absence" to mean that the element was *both* missing from the affidavit *and* also that the statute's purpose was not "otherwise" met. Accordingly, even though a required statement is missing from the affidavit, if substantial compliance is demonstrated in some other way, by definition the purpose of that statutory element has been met and its inclusion in the statute is not rendered nugatory.

Sixth, the Democratic Party argues that the evidence does not support the district court's conclusion that the Green Party relied on the form given to it by the Secretary of State's office. Opening Brief, p. 19. It also argues that this is essentially estoppel against the Secretary of State, which it asserts is foreclosed by *LVCVA*. *Id.* However, this is not an estoppel case. The Green Party never asserted estoppel against the Secretary of State, because the Secretary of State determined that the petition was sufficient, and the Green Party is not challenging that decision. The Green Party's reliance on the form given to it by the Secretary of State is relevant to the Green Party's due process argument and to the district court's conclusion that the burden of proof is properly on the Democratic Party because, unlike the petition proponents in *LVCVA*, the Green Party was not solely at fault for failing to use the correct affidavit.

Furthermore, the district court's conclusion is supported by substantial evidence in the record. The affidavit of Margery Hanson, the Co-Chair of the Nevada Green Party, states that the Secretary of State's Office sent her the form and instructed the Green Party to use that form. (2 AA 0275)(Hanson declaration); (2 AA 0311)(email from Secretary of State); (2 AA 0318-19)(form sent by the Secretary of State). As the Stipulated Facts state (3 AA 0493), and the petition documents themselves show (see e.g., 3 AA 0565-0659), the Green Party in fact did use the form that it was instructed to use by the Secretary of State's office. Thus it obviously relied on the form it received from the Secretary of State, and it relied on the instructions to "use the documents attached to begin collecting signatures." (2 AA 0311). This evidence also supports the district court's conclusion that the Green Party was not negligent or careless like the petition proponents in *LVCVA*, who simply failed to consult the new version of the laws despite explicit warnings that the forms in the Initiative Guide did not include recent legislative changes. Here, the Green Party directly corresponded with the Secretary of State's office and was told to use the form it provided, but due to a mistake by the Secretary, that form contained the wrong circulator affidavit.

Finally, the district court's conclusion that the Green Party "attempted to at least partially comply with the requirement in practice" (10 AA 2217) is also supported by substantial evidence. The evidence shows that the Green Party

circulators asked potential signers if they were Nevada registered voters. (2 AA 0276, 0346, 0350-61) *See* NRS 293.172(1)(b) (requiring the circulator to state that he or she believes the signers "are registered voters in this State"). The Democratic Party is correct in that this evidence does not show that the circulators specifically asked signers if they were a "registered voter in the county of his or her residence." *See* NAC 293.182(2)(b) (prescribing the form of the circulator affidavit). But even so, this evidence supports the district court's conclusion that the Green Party "*attempted* to at least *partially* comply." (10 AA 2217) (Emphasis added.) This is in contrast to the petition proponents in *LVCVA* who apparently made no effort whatsoever to train circulators to count the number of signatures on the document, nor to give each signer a chance to read the full text of the measure. 191 P.3d at 1143; *see also id.* at 1148 ("Thus, typically, failure to even attempt to comply with a statutory requirement will result in a lack of substantial compliance.").

The Democratic Party argues that this evidence is not good enough because it does not show "how each circulator actually obtained signatures," citing *LVCVA*, 191 P.3d at 450.[5] Opening Brief, p. 20. First, this is irrelevant because the district

[5] To the extent the Democratic Party is arguing that substantial compliance requires declarations from all the circulators, or at least from a sufficient number to qualify the petition in each petition district, the Court should reject that argument. First, on the specific facts of this case, "curing" affidavits are not necessary, because the clerks have already verified that a sufficient number of signers are registered voters in their respective counties. Second, as a general matter, given the very short timeframe in which these types of cases must be decided, it is simply not realistic

court did not conclude that *every* circulator for the Green Party *fully* complied with the statute in practice. It only concluded that the Green Party attempted to partially comply. Second, *LVCVA* is distinguishable because the evidence in that case apparently consisted only of the affidavit of the CEO of the signature gathering company that generally stated the procedures each circulator was expected to follow. 191 P.3d at 1150-51. The problem was that the CEO has no personal knowledge of what the circulators actually did. *Id.* at 1151. Here, there are affidavits from Ms. Hanson and Mr. Ciaffone regarding how circulators were trained, and there are also affidavits from numerous circulators themselves to corroborate that they did in fact ask each signer if they were a Nevada registered voter. (2 AA 0276, 0346, 0350-61).

For these reasons, the Court should reject the Democratic Party's arguments that the circulator affidavits did not substantially comply with the law, and it should affirm the district court's decision.

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to require a petition proponent to obtain declarations from most if not all circulators. This timing problem was further exacerbated in this case because the Democratic Party did not bring its claim that *all* the circulator affidavits were invalid due to the missing statement until it filed its First Amended Complaint on July 1, 2024, three weeks after the statutory deadline to file challenges in NRS 293.174. This left the Green Party with only 10 calendar days to respond to that claim, and as Ms. Hanson explained, "it is difficult, if not impossible" to contact many of the circulators in that short period of time. (2 AA 0276).

V. INVALIDATING THE GREEN PARTY'S PETITION WOULD VIOLATE ITS RIGHTS TO DUE PROCESS AND EQUAL PROTECTION.

As applied to the unique facts of this case, invalidating the Green Party's petition at this point in time would violate its constitutional rights. The district court did not address these arguments because it found the petition to be sufficient. (10 AA 2258). Similarly, if this Court agrees with the district court's decision, it need not reach the constitutional issues. However, if it disagrees, this Court should nevertheless affirm the district court's decision to avoid a violation of the Green Party's rights to due process and equal protection.

A. Invalidating the petition now would violate the Green Party's due process rights.

The Secretary of State is required by law to "prescribe the forms for … any petition which is filed pursuant to the election laws of this State." NRS 293.247(2). The Secretary failed to carry out this duty by prescribing a form for minor party ballot access that contains the wrong circulator affidavit. (2 AA 0318-19) Further, the Secretary of State's office directly instructed the Green Party to use that incorrect form. (2 AA 0311).

The Green Party has a constitutional right to seek access to the ballot for its candidates. *Norman v. Reed*, 502 U.S. 279, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992). "Generally, substantive due process analysis applies when state action is alleged to unreasonably restrict an individual's constitutional rights." *LVCVA*, 191 P.3d at

1155 (internal quotations and citations omitted). Substantive due process protects constitutional rights where the state action "shocks the conscious" and offends judicial notions of fairness. *Eggleston v. Stuart*, 495 P.3d 482 (Nev. 2021).

Here, the Green Party substantially complied with all applicable election laws to qualify for ballot access. It gathered more than a sufficient number of signatures, and these signatures have been verified by the counties. That verification process specifically includes checking whether the signer is a registered voter of that county. The only reason the statement to that effect is missing from the circulator affidavit is because the Green Party used the form that it was instructed to use by the Secretary of State's office, and that form contains the wrong circulator affidavit. On these facts, to now hold that all of those signatures are invalid would violate the Green Party's constitutional rights.

First, such an outcome would be fundamentally unfair, and therefore violate the Green Party's substantive due process rights. *See Bennett v. Yoshina*, 140 F.3d 1218 (9th Cir. 1998) (an election violates due process if it is conducted in a manner that is "fundamentally unfair"). Once again, this case is distinguishable from *LVCVA*. In *LVCVA,* the petition proponents used an old form that lacked two required statements in the affidavit, despite explicit warnings in the Initiative and Referendum Guide that the election laws had been changed in the last legislative session and the guide had not been updated to reflect those changes. 191 P.3d at

1143, 1158. Also, in *LVCVA* the Secretary did not make any representations to the petition proponents. *Id.* at 1158. Here, the Secretary prescribed a form for the current 2024 election cycle, but that form contains the wrong affidavit. (2 AA 0295-96). Also, the Secretary of State's office directly communicated with the Green Party, attached the form, and specifically instructed the Green Party to use the attached form, which contains the wrong affidavit. (2 AA 0311). The Green Party reasonably relied on the form sent to it by the Secretary. To invalidate the signatures based on the Secretary's error in that form would violate due process.

B. Invalidating the petition because of the missing statement would violate the Green Party's constitutional right to equal protection.

Striking the signatures because of the missing statement would violate the Green Party's equal protection rights by treating it less favorably than organizations that circulate statewide initiatives or referenda. Minor parties petitioning for ballot access and groups submitting initiative or referendum petitions are similarly situated because: (1) both groups are circulating a petition seeking access to the general election ballot; (2) they both must obtain signatures from all petition districts; (3) they both are subject to the same requirement that only registered voters of the county designated on the petition document can sign it (*see* NRS 293.172(1)(b) (minor party petitions NAC 295.025(1) (initiatives and referenda)) and, (4) the signatures on both types of petitions are verified in the

same way, including checking that the signer is a registered voter of the relevant county. NRS 293.1277(1).

Yet, despite all these similarities, circulator affidavits for initiatives and referenda are not required to contain the statement that the circulator believes the signer to be a registered voter in his or her county of residence. *See* NAC 295.020 (setting forth the circulator affidavit form for initiatives and referenda). Invalidating a minor party ballot access petition simply because it lacks that statement, even though the clerks have verified the signatures, would treat the Green Party less favorably than initiative petition circulators, in violation of equal protection. *See Clean-Up '84 v. Heinrich*, 590 F. Supp. 928, 931 (M.D. Fla. 1984) (finding that candidates petitioning for ballot access and initiative petitioners were similarly situated for purposes of the fee required to verify signatures and holding that it violated equal protection to charge one group more than the other).

The Secretary of State argued below that minor parties and initiative or referendum proponents are not similarly situated because initiatives and referenda are limited to a "single subject." (2 AA 0465-67). The Secretary argued that placing a minor candidate on the ballot for multiple offices is not a "single subject." This argument is unavailing. It is immaterial whether a single issue is being presented because the statement that is missing in this case relates only to whether the signers are registered voters of their county of residence. It has nothing

to do with the content of the petition or the type of petition. Thus the pertinent facts are that both groups are seeking access to the ballot, and both must a certain number of valid signatures of registered voters to do so. Both are subject to the same requirement that only registered voters of the county can sign the petition, and signatures on both types of petitions are verified in exactly the same way. There is no distinction whatsoever between the two groups with respect to the missing statement at issue in this case. That the groups might be different for other purposes is irrelevant.

C. No state interest justifies treating minor parties differently than initiative petition proponents.

Under the *Anderson/Burdick* balancing test, courts address challenges to election laws on a "sliding scale" – "the more severe the burden imposed, the more exacting our scrutiny; the less severe, the more relaxed our scrutiny..." *Ariz. Libertarian Party v. Hobbs*, 925 F.3d 1085, 1091 (9th Cir. 2019).

On the facts of this case, enforcing the requirement that the circulator swear or affirm that they believe the signers to be registered voters of the county of their residence would impose a severe burden on the Green Party's ballot access rights. This is because it would disqualify the Green Party from placing its candidates on the ballot even though the official signature verification process shows that it in fact obtained a sufficient number of valid signatures of registered voters. That

requirement is therefore subject to strict scrutiny: it must be narrowly tailored to advance a compelling state interest. *Id.*

No state interest, let alone a compelling one, justifies striking the signatures because of that missing statement. The statement is not even required for initiative or referendum petitions. And here, as discussed above, the counties have verified the signatures, including checking voter registration, and found them to be sufficient. Therefore, on the facts of this case, the missing statement serves little to no purpose and is not necessary to the orderly administration of Nevada's elections.

The Secretary argued that there is a rational basis for requiring the statement for minor party ballot access petitions, but not for initiative petitions. The Secretary argues that, while initiatives and referenda "may be lengthy and indicate to a voter that more inquiry is warranted and the petition relates to a change in law, a minor party petition is comparatively short and may not suggest to a potential signer that it relates to elections and may only be signed by registered voters." (2 AA 0467).

This argument must be rejected because common sense indicates that exactly the opposite is true. A short, simple petition that clearly states it is for "ballot access" for a "minor political party" obviously "relates to elections" and it is much more likely that people will understand that only registered voters can sign

it. This is in contrast to initiatives and referenda, which are issue petitions. For example: should the right to abortion be enshrined in the Nevada Constitution? Should government-issued identified be required to vote? Various "petitions" to express support or opposition to myriad issues are available to sign, but these are not actual initiatives or referenda. *See e.g.*, Change.org (allowing anyone to create an online "petition" on virtually any issue). Thus it is *less* likely that a person would understand that an initiative or referendum petition "relates to elections" and can only be signed by registered voters. In short, there is no justification, not even a rational basis, to require the statement regarding a signer's voter registration for minor parties seeking ballot access but not for those circulating initiatives or referenda.

As the court in *Clean-up '84* recognized, "denial of ballot access to a candidate has a profound effect on his supporters and their right to vote." 590 F. Supp. at 933. It also stated that the impact of denying ballot access to initiative petitions is even greater, because it would deny voters a power expressly reserved to them in the state constitution. *Id.* Likewise here, directly changing Nevada's statutes or constitution through the initiative process is just as important a right as the right of a minor party to seek ballot access. Thus there is no justification for requiring minor parties' petitions to contain the statement that the circulator believes the signers to be registered voters of their counties of residence, and not

require the same statement from initiative petitioners. Just like in *Clean-Up '84*, there is a "complete failure to justify the distinction." *Id.* Accordingly, to invalidate the Green Party's petition due to the missing statement would violate equal protection by treating it less favorably than similarly situated groups that have qualified initiatives for the ballot.

In sum, the Green Party has met every reasonable objective of Nevada's minor party ballot access laws and the petition has been certified as sufficient through the official verification process. To invalidate the petition now would unconstitutionally deprive the Green Party of its right to place its candidates' names on the ballot.

CONCLUSION AND RELIEF SOUGHT

For the foregoing reasons, the Green Party respectfully requests that this Court affirm the district court's decision.

CERTIFICATE OF COMPLIANCE

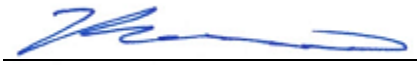
1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 11,080 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th day of August, 2024.



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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed and served the foregoing Respondent's Answering Brief, to all parties as follows:

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