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1 Case No. CV-1603028

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WHITE PINE COUNTY CLERK

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN

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AND FOR THE COUNTY OF WHITE PINE

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MICHAEL KNEESE

JEAN KNEESE

JED PEELER,

PETITIONERS,

NON-OPPOSITION TO PETITION

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VS.

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WHITE PINE COUNTY CLERK,

RESPONDENT.

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COMES NOW THE WHITE PINE COUNTY CLERK, Respondent, by and through its

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attorney, Michael A. Wheable, White Pine County District Attorney, and files this Non-Opposition

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to Petitioner's request seeking a Court Order to inspect certain voting records, on the basis of the

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attached Affidavit in support of this Motion, the Memorandum of Points and Authorities attached,

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and all the pleadings and evidence contained in the court file.

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Date: April 11, 2016

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Michael A. Wheable

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Michael A. Wheable

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White Pine County District Attorney

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801 Clark Street #3

Ely, Nevada 89301

District Attorney • White Pine County, Nevada
801 CLARK STREET, SUITE 3 • ELY, NEVADA 89301





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MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL BACKGROUND

Respondent stipulates to all the facts as alleged in Petition, and relies on them in its Non-Opposition.

LEGAL AUTHORITY

At the Outset, Respondent recognizes the general affect of a strict reading of NRS 293.391 which allows access to sealed records only by Court order *and* only in cases of election contest. NRS 293.391(5). However, Respondent believes that when read with other provisions of this chapter and subsequent chapters relating to Mechanical Voting Systems, such an interpretation leads to absurd results, and a general violation of the Legislative intent and the statutory policy identified in NRS 293.127:

- 1) **This title must be liberally construed to the end that:**
 - [...]
 - (c) The real will of the electors is not defeated by any informality or by failure substantially to comply with the provisions of this title [...].**

As was made abundantly clear in the Petition, the Petitioners explained that they are neither contesting the election results (NRS 293.407), or asking for an official recount (NRS 293.403). The nature of their request is to open and publically verify the accuracy of the voting machine results at their own cost, with no harm to the identity or privacy of the electorate. The Respondent's position is that only good will come from this Court's order granting access to these records. Either the Petitioners will discover that the system was accurate and concerned voters in White Pine County will be assured that there is integrity in our local system, or Petitioners will discover a flaw in the mechanical system that went undetected during the course of ordinary integrity audits. Either way, this process will ensure that "the real will of the electors" is protected.



1 The Court has the implied authority to order access to election records even after the time to
2 contest has expired. NRS 293.480. As briefly explained above, the provisions of NRS 293.391(5)
3 which limit access to records after the time for contest has expired, are in conflict with the
4 provision of NRS 293.480 which infers that there are limitations on inspection only “[u]ntil the
5 **time for contest has expired.**” NRS 293.480 (Emphasis added).

6 If the election records can only be inspected within a brief two week period following an
7 election, how could the voting citizenry organize a rational challenge to the results, hire an
8 attorney, or gather empirical data for a challenge? Why would the Clerk be required pursuant to
9 NRS 293.391(1) to maintain these records for 22 months, and have to publish a notice of
10 destruction to the general public prior to destroying the records? A statute should not be read to
11 make another provision in the same chapter meaningless. Yet, if NRS 293.391(5) is read to mean
12 records can only be inspected during a timely filed contest, maintaining records for 22 months and
13 notifying the public of destruction, when the public cannot do anything to act on that information,
14 are meaningless provisions.

15 Further, NRS 293.755(3) gives the District Attorney of any county the authority to
16 prosecute individuals for tampering with mechanical voting devices. If the only time these voting
17 machine records can be accessed is during an election contest, how would a prosecutor gain access
18 to inspect and gather evidence of these felonious crimes. How could law enforcement even know if
19 a crime occurred? Petitioners raise more than “probable cause” that a serious felony or other error
20 may have occurred, yet as this County’s Prosecutor, I am powerless to investigate lest this Court is
21 able and willing to grant petitions like Petitioner’s request here.

22 Finally, in LaPorta v. Broadbent, the Nevada Supreme Court interpreted NRS 293.465
23 liberally when it issued its writ of mandamus to a County Commission for a new election. (It is
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1 worth noting that there are NO timeframes for a remedy in NRS 293.465) The Court reasoned that
2 a malfunction in the voting machine prevented a fair election and opined that “[t]he fundamentals
3 of suffrage require that electors shall have the opportunity to participate in elections and that the
4 real will of the electors should not be defeated by errors in the conduct of an election.” LaPorta v.
5 Broadbent, 91 Nev. 27 (1975). Similarly, there is a real possibility that there was an error in voting
6 machines in this case, and while it is too late to order a new election, the time is right to protect the
7 integrity of the next. A writ of mandamus is not sought in this case, because it is not yet the proper
8 remedy.

9 CONCLUSION

10 While Respondent did not bring this action, Respondent has an affirmative duty to protect
11 the integrity of White Pine County election process. Petitioners have revealed serious facts, which
12 if true, warrant a Court Order despite any legislative oversight in providing a mechanism for
13 review. Voting is a fundamental right guaranteed by the Constitution and Nevada Statutes. Where
14 there may be mechanical or human error despite current mechanisms to prevent such, fraud, and/or
15 felonious criminal agency that interferes with this right, Petitioners, Respondent, and undersigned
16 acting as the District Attorney of White Pine County, should have an avenue to address, protect,
17 and uphold this sacred democratic principle. Respondent therefore, does not oppose this Petition.

18 Date: April 11, 2016

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20 Michael A. Wheable, Esq. #12518
21 White Pine County District Attorney
22 For Respondent White Pine County Clerk
23 801 Clark Street #3
24 Ely, Nevada 89301
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AFFIDAVIT OF MICHAEL A. WHEABLE


STATE OF NEVADA)
)
COUNTY OF WHITE PINE)

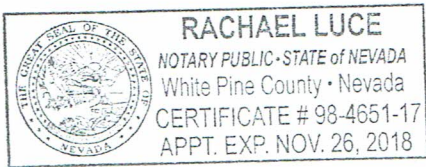
The undersigned Affiant makes this Affidavit under penalty of perjury and based upon personal knowledge, as to those matters asserted on information and belief, Affiant believes those assertions to be true.


Michael A. Wheable

SUBSCRIBED AND SWORN TO BEFORE ME

this 11th day of April, 2016.


Notary Public



District Attorney • White Pine County, Nevada
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I am an employee of the office of Michael A. Wheable and on the date below I served a copy of the foregoing Non-Opposition to Petition by delivering a copy via mail to

Petitioners:

Michael Kneese
Jean Kneese
1379 Mill Street
Ely, Nevada 89301

Jed Peeler
201 E. Ogden Avenue
Ely, Nevada 89301

Date: 4-11-10

Rachael Luce

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