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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 DONALD J. TRUMP FOR PRESIDENT,  
INC.; REPUBLICAN NATIONAL  
11 COMMITTEE; and NEVADA  
REPUBLICAN PARTY,

12 Plaintiffs,

13 vs.

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

16 Defendant.

Case No. 2:20-cv-01445

**DEFENDANT SECRETARY OF STATE  
BARBARA CEGAVSKE'S  
MOTION TO DISMISS**

17  
18 Defendant Barbara Cegavske, in her capacity as Nevada Secretary of State, by and  
19 through counsel, Aaron D. Ford, Attorney General, Gregory L. Zunino, Deputy Solicitor  
20 General, and Craig Newby, Deputy Solicitor General, hereby moves to dismiss Plaintiffs'  
21 Amended Complaint (ECF No. 29). Dismissal is sought pursuant to Rule 12(b)(1) of the  
22 Federal Rules of Civil Procedure because Plaintiffs have failed to satisfy Article III's  
23 standing and ripeness requirements, thus divesting the Court of jurisdiction over their  
24 claims.

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1 **POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs filed their original Complaint on August 4, 2020 (ECF No. 1). Defendant  
4 Secretary of State Barbara Cegavske (Secretary) filed a Motion to Dismiss their  
5 Complaint on August 10, 2020 (ECF No. 10), arguing that Plaintiffs lack standing to  
6 challenge Nevada’s vote-by-mail election system. Instead of responding to the Motion to  
7 Dismiss, Plaintiffs filed an Amended Complaint on August 20, 2020 (ECF No. 29). But it  
8 fares no better, and it, too, must be dismissed for the reasons stated below.

9 Indeed, the debate over voting by mail now dominates the 24-hour news cycle.  
10 Advocates for vote-by-mail legislation argue that it is necessary to fully enfranchise  
11 voters and mitigate the public health threat posed by the current pandemic. Opponents  
12 argue that vote-by-mail processes are vulnerable to voter fraud. These competing  
13 arguments amount to a public policy debate, not a legal debate. And when this case is  
14 stripped of the legal jargon and litigious tone, it becomes clear that the Amended  
15 Complaint (ECF No. 29) presents a simple policy disagreement about how best to balance  
16 voter access concerns against election integrity concerns.

17 Of course, there is value in public debate about the policy wisdom of vote-by-mail  
18 election systems.<sup>1</sup> But any assertion that the legislation will substantially increase voter  
19 fraud is speculative. Consequently, the debate about vote-by-mail should be carried out  
20 in a non-judicial forum, allowing the Secretary to use critical public resources to ensure a  
21 free and fair 2020 election, rather than be consumed by discord. Avoiding generalized  
22 policy disputes is precisely what the standing requirement of Article III, § 2 of the U.S.  
23 Constitution requires.

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27 <sup>1</sup> In fact, the Secretary opposed the legislation at issue in this case due, in part, to  
28 the high cost of mailing ballots to all active, registered voters while simultaneously  
standing up a significant number of physical polling locations relative to previous  
elections.

1 For example, other states, such as Utah, Colorado, Oregon, Hawaii and  
2 Washington have adopted vote-by-mail election processes. Utah Code Ann. § 20A-3a-302;  
3 Colo. Rev. Stat. § 1-5-401; Ore. Rev. Stat. § 254.465; Hawaii Stat. § 11-101; Rev. Code of  
4 Wash. 29A.40.010. And Florida, among many other states,<sup>2</sup> has adopted a no-excuse  
5 absentee system whereby any voter may cast a vote by mail after having simply  
6 requested a paper ballot. Fl. Stat. § 101.62. Given the fears surrounding the pandemic,  
7 these voting systems have great potential to prompt widespread voting by mail in the  
8 2020 general election, whether by absentee ballot or vote-by-mail processes.

9 In this lawsuit, President Donald J. Trump draws a distinction between absentee  
10 voting, which he apparently finds unobjectionable, and vote-by-mail election systems  
11 (ECF No. 29 at ¶ 41). Without evidence, he claims that vote-by-mail systems are  
12 vulnerable to voter fraud because of how voters receive their paper ballots. According to  
13 the President, the voter's affirmative request for an absentee ballot allows election  
14 officials to verify the identity of the voter, while a ballot mailed unsolicited to a voter can  
15 be intercepted by fraudsters (ECF No. 29 at ¶43). This speculative assertion about ballot  
16 interception ignores the processes that are in place to verify a person's identity after the  
17 person returns the ballot to election officials. Given Nevada's processes for verifying voter  
18 identity at the polls, the distinction between absentee voting and vote-by-mail is  
19 meaningless. Indeed, this case is unique among other lawsuits filed by President Trump  
20 around the country because it challenges the constitutionality of legislation, not  
21 administrative action or executive orders. Here, the legislation is consistent in all  
22 materials respects with the laws of the other vote-by-mail states mentioned above.

23 Recently enacted by Assembly Bill No. 4 of the 32nd (2020) Session of the Nevada  
24 Legislature (AB 4), Nevada's vote-by-mail processes replace the "mailing precincts" that  
25 were implemented for the 2020 primary election. *Compare* NRS §§ 293.343-.355 *with* AB  
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27 <sup>2</sup> The website of the National Conference of State Legislatures lists twenty-nine  
28 states in addition to Florida as offering no-excuse absentee voting. See  
<https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>, last accessed on August 10, 2020.

1 4 at §§ 2-27. Further complicating election preparation, the Republican National  
2 Committee (RNC) and the Nevada Republican Party (NVGOP) have joined this litigation.  
3 Collectively, Trump, Inc., the RNC and the NVGOP (Plaintiffs) allege that the votes of  
4 Republican voters will be unconstitutionally diluted by Nevada's vote-by-mail election  
5 processes (ECF No. 29 at ¶¶ 6, 31, 32, 34, 102, 125, 140, 154, 168 and 169). Additionally,  
6 Plaintiffs allege that a lack of uniformity in Nevada's election processes and procedures  
7 will cause differential treatment of voters, thus violating their rights under the Equal  
8 Protection Clause (ECF No. 29 at ¶¶ 5, 30, 35-37, 100, 101, 125, 135-137, 140, 141, 149-  
9 151, 154, 155, 161-163). Finally, Plaintiffs allege that Nevada law conflicts with federal  
10 law by changing the date of the national Election Day, as established by 2 U.S.C. §§ 1, 7,  
11 and 3 U.S.C. § 1 (ECF No. 29 at ¶¶ 94-97, 104-123).

12 None of these claims gives rise to a cognizable injury, as required by Article III's  
13 standing requirement, because none is accompanied by factual allegations supporting a  
14 reasonable inference that a person's vote will actually be diluted as a result of the  
15 processes and procedure under scrutiny in Nevada. None of the claims gives rise to a  
16 cognizable injury for the additional reason that none is accompanied by factual  
17 allegations supporting a reasonable inference that Nevada voters will be subject to  
18 differential treatment.<sup>3</sup> Furthermore, because their claims lack legal merit, Plaintiffs  
19 cannot meet Article III's standing requirement even if they were to make yet another  
20 amendment to their original complaint. To the extent Plaintiffs' equal protection claims  
21 suggest that Nevada will experience unforeseeable problems with election administration  
22 at the local level, these claims are not ripe for review. Additionally, because the claims  
23 seek to have this Court impose upon Nevada a top-down system of election  
24 administration, they are barred by the Tenth Amendment and principles of federalism.

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25 <sup>3</sup> As discussed below, Plaintiffs lack standing because they speculate, without  
26 factual support, that various administrative problems will arise during the 2020 general  
27 election due to discretionary decisions by election officials. Though it is conceivable that  
28 some administrative challenges may arise during the 2020 election, as they do in every  
election, Plaintiffs' claims cannot reasonably be stated with any factual specificity until  
after the election. For this reason, their claims fail both the standing and ripeness  
requirements of Article III.

1           **A. Summary of Allegations and Defenses.**

2           Plaintiffs challenge specified sections of AB 4 as they relate to the 2020 general  
3 election. Plaintiffs are not Nevada voters, but they clearly seek to represent Nevada  
4 Republican voters by way of this lawsuit (ECF No. 29 at ¶¶ 14-20). They allege five  
5 causes of action.

6           **Count I** argues that section 20(2) of AB 4 is preempted by federal law (ECF No. 29  
7 at ¶¶ 104-123). As discussed below, section 20(2) has a companion provision that  
8 predates the enactment of AB 4. NRS § 293.317. Plaintiffs concede that state law governs  
9 election processes for federal elections unless preempted by Congressional enactment  
10 (ECF No. 29 at ¶¶ 22 and 23). Section 20(2) establishes a presumption that a mailed  
11 ballot received within 3 days after the election was cast on or before the date of the  
12 election if the ballot envelope bears no postmark. Plaintiffs argue that section 20(2)  
13 conflicts with federal law because it effectively pushes back national Election Day. Even  
14 if this strained reading of federal law were correct, which it is not, section 20(2) has  
15 caused no injury to Plaintiffs yet, if ever.

16           **Count II** argues that sections 11 and 12 of AB 4 violate the Equal Protection  
17 Clause because they treat rural voters differently than urban voters. Sections 11 and 12  
18 do this, according to Plaintiffs, by affording urban voters more physical polling places on a  
19 per capita basis (ECF No. 29 at ¶¶ 100, 124-138). But sections 11 and 12 require only  
20 that a *minimum* number of physical polling locations be placed in each of Nevada's  
21 counties. Sections 11 and 12 do not preclude local election officials in the rural counties  
22 from establishing a greater number of physical polling places than the required  
23 minimums. Far from discriminating against rural voters, sections 11 and 12 give local  
24 elections officials the flexibility to adapt to rural needs and conditions. Sections 11 and  
25 12 have caused no injury to Plaintiffs yet, because there is no evidence or allegation that  
26 rural election officials will fail to establish physical polling places sufficient in number to  
27 meet the needs of in-person voters.

28

1           **Count III** argues that section 22 of AB 4 violates the Equal Protection Clause  
2 because it gives local election officials too much discretion to “establish procedures for the  
3 processing and counting of mail ballots” (ECF No. 29 at ¶¶ 101, 139-152). Plaintiffs  
4 speculate that local election officials will adopt counting and processing rules that differ  
5 significantly from those adopted by their colleagues in other counties, thus subjecting  
6 voters to arbitrary treatment in the aggregate. Far from subjecting voters to arbitrary  
7 treatment in the aggregate, section 22 facilitates uniformity in the application of statutes  
8 that might otherwise have a remote potential to burden or disenfranchise voters in  
9 certain counties or localities. Section 22 facilitates uniformity in the application of the  
10 law by giving local elections officials the flexibility to adapt to local needs and conditions  
11 as they administer Nevada’s election statutes. Section 22 has caused no injury to  
12 Plaintiffs.

13           **Count IV** argues that section 25 of AB 4 violates the Equal Protection Clause  
14 because it provides a vague directive to local elections officials regarding the obligation to  
15 discard two ballots that have been folded together in a single envelope (ECF No. 29 at ¶¶  
16 102, 153-164). As with their claim in Count III, Plaintiffs speculate that local election  
17 officials will, from one county to the next, apply inconsistent standards for determining  
18 whether to discard or accept certain ballots received in the mail under rare and unusual  
19 circumstances. As discussed below, section 25 has an obscure companion provision that  
20 predates the enactment of AB 4 by sixty years. NRS § 293.363. As a practical matter,  
21 section 25 will rarely if ever result in the acceptance of two ballots that are folded  
22 together in a single envelope. Accordingly, it does not yet pose a threat of vote dilution.  
23 Moreover, Plaintiffs do not complain that section 25 has the potential to disenfranchise  
24 voters who improperly enclose two or more ballots in a single envelope. Section 25 has  
25 caused no injury to Plaintiffs.

26           **Count V** alleges that sections 11, 12, 20(2), 22 and 25, when considered together in  
27 light of a modification to an existing criminal prohibition against using ballot couriers,  
28 see AB 4 at § 21, collectively present a threat of vote dilution (ECF No. 29 at ¶¶ 165-171).

1 Plaintiffs speculate that these sections of AB 4 increase the risk of voter fraud, thereby  
2 diluting “honest” votes (ECF No. 29 at ¶ 168). Plaintiffs fail to acknowledge, however,  
3 that existing provisions of Nevada law provide ample deterrents to, and protections  
4 against, voter fraud. Plaintiffs’ objections to AB 4 are based upon policy arguments, not  
5 constitutional infirmities in state law. Sections 11, 12, 20(2), 21, 22 and 25 have caused  
6 no injury to Plaintiffs.

7 **B. Summary of AB 4.**

8 Due to the COVID-19 pandemic, the Nevada Legislature made changes to Nevada’s  
9 existing mail-in processes through its enactment of AB 4. These modest changes apply to  
10 an election occurring during a declared state of emergency or disaster, including the 2020  
11 general election. AB 4 at §§ 5 and 8. Prior to the pandemic, Nevada offered voters the  
12 ability to vote absentee without providing an excuse or justification. To cast a vote by  
13 mail, voters simply had to request an absentee ballot. NRS §§ 293.3038-.340.  
14 Additionally, voters in remote rural areas could be grouped together in “mailing  
15 precincts” and automatically mailed their paper ballots. NRS §§ 293.343-.355. For the  
16 2020 primary election, Nevada’s state and local election officials expanded mailing  
17 precincts to encompass the entire state. The decision to expand mailing precincts was the  
18 subject of a similar lawsuit asserting vote dilution as the source of alleged injuries to  
19 individual voters. In that case, Judge Miranda Du denied the voters’ request for a  
20 preliminary injunction. Judge Du denied the request for injunctive relief because the  
21 voters were unable to demonstrate their standing to challenge mail-in voting processes  
22 under a theory of vote dilution. *Paher v. Cegavske*, \_\_F. Supp.3d \_\_, 2020 WL 2089813, \*5  
23 (D. Nev. 2020). Judge Du described Nevada’s preparations for the 2020 primary election  
24 as follows:

25 Under the Plan, all active registered voters will be mailed an  
26 absentee ballot (mail-in ballot) for the primary election. If a  
27 voter is registered to vote at his or her current address, they  
28 need not take any further action to receive an absentee ballot. ...  
Nevada’s governing statutes provide for mailing precincts—  
specifically NRS §§ 293.343 through 293.355. Through these  
provisions, the Nevada Legislature has given the Secretary and

1 county clerks authority to mail ballots to registered voters  
2 rather than requiring voters to request those ballots through the  
absent ballot process.

3 *Id.* at \*2, \*3.

4 Little has changed since the *Paher* plaintiffs attempted to disrupt the 2020 primary  
5 election by advancing claims such as those at issue here. Although Nevada's vote-by-mail  
6 processes have now been enacted through legislation, as opposed to being implemented  
7 through administrative action, the details for the 2020 general election remain essentially  
8 the same as those for the 2020 primary election. Rather than approving another  
9 temporary expansion of mailing precincts for the 2020 general election, AB 4 simply  
10 directs local election officials to mail paper ballots to all active registered voters in the  
11 state whenever the Governor has declared a state of emergency or disaster. AB 4 at § 15.  
12 As a practical matter, AB 4 adopted a plan like that which had been used for the primary  
13 election. Plaintiffs parse what they perceive to be modifications that undermine the  
14 uniformity of election administration from one county to the next. These include sections  
15 11, 12, 20(2), 22 and 25 of AB 4 (ECF No. 29 at ¶¶ 5, 100, 101, 136, 149 and 161).

16 While they couch their lawsuit as a challenge to AB 4, Plaintiffs attack two  
17 provisions of existing Nevada law. Sections 20(2) and 25 already appeared in statute at  
18 NRS §§ 293.317 and .363. While NRS § 293.317 became effective on January 1, 2020, *see*  
19 Act of June 14, 2019, ch. 619, §§ 45 and 152, 2019 Nev. Stat. 4079 and 4144, the  
20 provisions of NRS § 293.363 date all the way back to 1960, *see* Act of March 14, 1960, ch.  
21 157, §131, 1960 Nev. Stat. 259. Respectively, these sections address the 3-day postal  
22 delivery presumption for ballots that bear no postmark, and the rare situation where two  
23 ballots are folded together in a single envelope. To support their nebulous argument that  
24 AB 4 increases the probability of voter fraud, Plaintiffs claim that these unremarkable  
25 provisions of *existing* law: (1) “provide[] no guidance or guardrails for the establishment of  
26 standards” (ECF No. 29 at ¶144), *see* NRS 293.363; and (2) “allow[] absent ballots to be  
27 cast after Election Day but still counted as lawfully cast votes in the 2020 general  
28



1 election” (ECF No. 29 at ¶ 119), *see* NRS 293.317. However, sections 20(2) and 25 of  
2 AB 4 merely duplicate the provisions of existing law, such that they are now applicable  
3 to affected elections in addition to regular elections. As duplicate provisions of existing  
4 law, they cannot logically be the source of an increased risk of fraud resulting from the  
5 enactment of AB 4.

6 Although sections 11, 12 and 22 are new, they do not increase or decrease the risk  
7 of voter fraud. They merely establish a minimum number of physical polling locations in  
8 each county (§§ 11 and 12), and give discretion to local election officials regarding the  
9 adoption of procedures for counting and processing paper ballots (§ 22). And section 25,  
10 which duplicates existing law, addresses the rare situation where two voters enclose their  
11 ballots in a single envelope. Ironically, sections 11, 12 and 22 have nothing to do with  
12 ballot verification, and section 25 is only tangentially related to ballot verification.  
13 Plaintiffs’ argument that these provisions increase the risk of voter fraud is based upon  
14 an unintelligible thread of causation which assumes that local election officials will not  
15 capably perform their jobs.

## 16 **II. STANDARD OF REVIEW**

17 Rule 12(b)(1) of the Federal Rules of Civil Procedure allows defendants to seek  
18 dismissal of a claim or action for a lack of subject matter jurisdiction. Dismissal under  
19 Rule 12(b)(1) is appropriate if the complaint, considered in its entirety, fails to allege facts  
20 on its face that are sufficient to establish subject matter jurisdiction. *In re Dynamic*  
21 *Random Access Memory (DRAM) Antitrust Litigation*, 546 F.3d 981, 984–85 (9th Cir.  
22 2008).

23 Although the defendant is the moving party in a motion to dismiss brought under  
24 Rule 12(b)(1), the plaintiff is the party invoking the court’s jurisdiction. As a result, the  
25 plaintiff bears the burden of proving that the case is properly in federal court.  
26 *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. General*  
27 *Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). Federal courts are courts of limited  
28 ...

1 jurisdiction. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). A federal  
2 court is presumed to lack jurisdiction in a case unless the contrary affirmatively appears.  
3 *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225  
4 (9th Cir. 1989). Thus, federal subject matter jurisdiction must exist at the time an action  
5 is commenced. *Mallard Auto. Grp., Ltd. v. United States*, 343 F. Supp. 2d 949, 952 (D.  
6 Nev. 2004).

7 Article III, § 2 of the U.S. Constitution states that the federal courts may only  
8 adjudicate “Cases” and “Controversies”. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555,  
9 559 (1992). The case-or-controversy requirement of Article III requires that Plaintiffs  
10 establish their “standing” as a jurisdictional prerequisite to the prosecution of this  
11 lawsuit. *Clapper v. Amnesty International USA*, 586 U.S. 398, 408 (2013). As Judge Du  
12 previously held, *see Paher*, 2020 WL 2089813, \*5, plaintiffs who express policy-based  
13 concerns about voter fraud do not typically have standing, in advance of an election, to  
14 pursue claims that that their votes will be diluted in violation of rights guaranteed by the  
15 Fourteenth Amendment. This is because such claims are “speculative, unsupported, and  
16 not particularized.” *Id.* At this early point in the election cycle, no votes have even been  
17 counted. Until the votes have been counted and the 2020 general election has run its  
18 course, it is impossible to know whether anyone’s vote will have been diluted. Plaintiffs  
19 imply that the election-integrity and anti-fraud measures in place for the 2020 general  
20 election are not sufficiently robust to prevent voter fraud (ECF No. 29 at ¶ 42). However,  
21 having failed to articulate an injury that is sufficiently concrete and particularized to  
22 justify a radical judicial intervention in the 2020 general election, Plaintiffs offer no good  
23 reason why the Court should entertain their causes of action.

24 Ultimately, the search for the proper balance between voter access and election-  
25 integrity considerations is a matter for policy makers and legislators, not federal courts.  
26 Plaintiffs’ Complaint should be dismissed on the ground that the Court lacks subject  
27 matter jurisdiction over their claims.

28 ...

1 **III. ARGUMENT**

2 **A. Plaintiffs Fail to Satisfy Basic Principles of Standing.**

3 Article III, § 2 empowers the federal judiciary to hear only “Cases” and  
4 “Controversies”, not policy debates. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559  
5 (1992). To demonstrate standing, Plaintiffs must articulate enough facts to show that  
6 their alleged injury is “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504  
7 U.S. at 560 (internal quotation marks and citations omitted). Additionally, they must  
8 show a “causal connection” between the alleged injury and the conduct about which they  
9 complain. *Id.* As a final matter, Plaintiffs may not offer mere speculation that a decision  
10 in their favor, namely a decision enjoining the implementation of AB 4, will redress the  
11 supposed vote dilution and disparate voter treatment that will occur if voters are  
12 permitted to cast their votes by mail. *Id.* at 561. *See also City of Los Angeles v. Lyons*, 461  
13 U.S. 95, 110–112 (1983).

14 According to Plaintiffs, it is a “common-sense conclusion” that increased voting by  
15 mail increases the probability of voter fraud (ECF No. 29 at ¶ 76). Yet, there is no  
16 evidence of voter fraud in other states that have increased voting by mail, even in these  
17 emotionally-charged, hyper-partisan times. Indeed, there are countless variables that  
18 can theoretically contribute to increased voter fraud in any given election. Consequently,  
19 standing must be based upon a particularized injury, not a presumed injury that is  
20 common to the electorate in general. The alleged injury in this case is hypothetical, not  
21 actual or imminent, and cannot possibly be traced from individual voters to increased  
22 vote-by-mail participation by the Nevada electorate.

23 Based upon past experience, and given Nevada’s long history of voting in person  
24 coupled with the significant number of physical polling places that will be open during  
25 early voting and on Election Day, *see* AB 4 at §§ 11 and 12, it is likely that the vast  
26 majority of Nevada voters will choose to surrender their paper ballots to poll workers and  
27 vote in person. This surrender process, described at section 18 of AB 4, undermines  
28 Plaintiffs’ argument that unsecured or discarded ballots will find their way into the hands

1 of fraudsters. Plaintiffs’ argument assumes that fraudsters will not only intercept  
2 unsecured and discarded ballots, but sign and deposit them in the mail in violation of  
3 multiple criminal prohibitions. This assumption is not the type of “fairly traceable”  
4 scenario that *Lujan* contemplates as a condition of standing. According to *Lujan*, “there  
5 must be a causal connection between the injury and the conduct complained of—the  
6 injury has to be fairly ... trace[able] to the challenged action of the defendant, and not ...  
7 th[e] result [of] the independent action of some third party not before the court.” 504 U.S.  
8 at 560-61 (brackets in original, quoting *Simon v. Eastern Ky. Welfare Rights*  
9 *Organization*, 426 U.S. 26, 41-42 (1976)). Here, the thread of causation between AB 4 and  
10 vote dilution is much too tenuous to support standing.

11 Additionally, the signature verification process described at section 23 of AB 4  
12 further undermines Plaintiffs argument that fraudulent votes will be accepted by poll  
13 workers even if their assumption about discarded ballots is given minimal credence. In  
14 summary, it is virtually impossible to predict with a reasonable degree of confidence, and  
15 there is no evidence from other states, that voting by mail will result in an statistically-  
16 significant increase in voter fraud. Far too many variables influence human behavior to  
17 warrant the Court’s pre-election intervention in the 2020 general election.

18 Finally, Plaintiffs must demonstrate standing separately for each form of relief  
19 sought. *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 185  
20 (2000). Plaintiffs seek injunctive and declaratory relief with respect to each of their five  
21 causes of action (ECF No. 29 at pp. 28-29). These are prospective remedies that assume  
22 voter fraud will occur specifically as the result of AB 4, and that it will impact discrete  
23 voters and not simply the electorate as a group. Cited repeatedly by Plaintiffs in support  
24 of their claims (ECF No. 29 at ¶¶ 35-37, 125, 123, 124, 140-142, 145, 146, 149, 154-156  
25 and 159-161), *Bush v. Gore* has little persuasive value because it was issued *per curiam*,  
26 indicating that it was fact specific. See 531 U.S. 98 (2000). Further, *Bush v. Gore*  
27 addressed a post-election situation, specifically the now infamous “hanging chad”  
28 situation, which was qualitatively different than any conceivable election outcome in

1 Nevada. *Id.* at 105-07. *Bush v. Gore* does not even remotely support Plaintiffs’ request for  
2 a pre-election order enjoining the distribution of mail-in ballots to Nevada’s voters.

3 *Bush v. Gore* is inapposite because Plaintiffs have identified no situation where  
4 election officials would conceivably be counting paper ballots, with perforations as  
5 indicators of candidate selection, while using no clear standards for evaluating the  
6 significance of those perforations. Indeed, Nevada’s elections officials universally employ  
7 electronic scanning equipment to evaluate candidate selections on paper ballots. *See* AB  
8 4 at § 22. There is no factual basis for Plaintiffs’ speculative assertion that election  
9 officials will use arbitrary methods of counting ballots or discarding ballots. Plaintiffs’  
10 Complaint should be dismissed on the ground that they have failed to demonstrate  
11 standing.

12 **B. Trump, Inc. Fails to Satisfy the Requirements for Organizational**  
13 **Standing.**

14 Despite the addition of new allegations in the Amended Complaint, plaintiff  
15 organization Trump, Inc. still fails to establish standing. As an organization, Trump, Inc.  
16 bears the burden of showing either direct standing based on an injury to the organization,  
17 or representative standing based on an injury to its members. *See, e.g., Havens Realty*  
18 *Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *Hunt v. Wash. State Apple Advertising*  
19 *Comm’n*, 432 U.S. 333, 342 (1977).

20 Trump, Inc. appears to assert a theory of direct standing based on a supposed  
21 injury to the organization, as opposed to the presidential candidate whom the  
22 organization represents (ECF No. 29 at ¶ 11). “An organization has ‘direct standing to  
23 sue [when] it show[s] a drain on its resources from both a diversion of its resources and  
24 frustration of its mission.’” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir.  
25 2013) (quoting *Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666  
26 F.3d 1216, 1219 (9th Cir. 2012)). The apparent mission of Trump, Inc., “the principal  
27 committee for President Donald J. Trump’s reelection campaign,” is to secure President  
28 Trump’s reelection (ECF No. 29 at ¶ 11) (“The committee spends resources . . . in Nevada

1 to encourage Nevadans to reelect the President.”)). However, the Amended Complaint  
2 fails to explain how AB 4 frustrates this mission.

3 In particular, there are no allegations that any supposed vote dilution will  
4 disadvantage the Trump campaign in the upcoming general election. An organization  
5 cannot establish direct standing by “simply choosing to spend money fixing a problem  
6 that otherwise would not affect the organization at all. It must instead show that it  
7 would have suffered some other injury if it had not diverted resources to counteracting  
8 the problem.” *Valle del Sol Inc.*, 732 F.3d at 1018 (quoting *La Asociacion de Trabajadores*  
9 *de Lake Forest v. Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010)). Even if the prospect  
10 of vote dilution and/or disparate treatment of voters were more than conjecture, the  
11 Amended Complaint contains no explanation as to why this disadvantages the Trump  
12 campaign and not the Biden campaign.

13 Insofar as Trump, Inc. suggests that it may have standing to sue in a  
14 representative capacity, it has failed to satisfy the requirements for representative  
15 standing. An organization has representative standing to “sue on behalf of its members  
16 when ‘its members would otherwise have standing to sue in their own right,’ and when  
17 ‘the interests it seeks to protect are germane to the organization’s purpose.’” *Sierra Club*  
18 *v. Trump*, 963 F.3d 874, 883 (9th Cir. 2020) (quoting *Hunt*, 432 U.S. at 343).<sup>4</sup> The  
19 Amended Complaint fails to identify any Trump, Inc. members with standing, and further  
20 fails to explain how Trump, Inc. is seeking to protect interests germane to its purpose of  
21 ensuring President Trump’s reelection. By its own admission, Trump Inc. does not  
22 represent Nevada voters. With a mission “to achieve its electoral and political goals” of  
23 reelecting President Trump (ECF No. 29 at ¶ 11), President Trump’s campaign  
24 organization represents Donald J. Trump and only Donald J. Trump. By definition, a  
25 campaign organization that serves as the “principal committee” for a candidate for federal  
26 office is simply a pot of money earmarked for the support of its namesake’s candidacy.

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27  
28 <sup>4</sup> There is also a third, prudential element: “neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members.” *Hunt*, 432 U.S. at 343; *Sierra Club*, 963 F.3d at 884 n.10.

1 See 52 U.S.C. § 30102. Since Trump, Inc. has not alleged any electoral or political  
2 disadvantage resulting from AB 4, the Court should dismiss Trump, Inc. from this action.

3 **C. Nevada’s Postmark Presumption Has Not Caused Plaintiffs**  
4 **an Injury.**

5 In Count I of the Complaint, Plaintiffs argue that section 20 of AB 4 conflicts with  
6 federal law in regards to the timing of Election Day (ECF No. 29 at ¶¶ 104-123). Section  
7 20 sets forth the timelines for when a mail ballot in an affected election will be counted,  
8 including those ballots which lack a legible postmark. Notably, the timelines in AB 4  
9 mirror those for mail ballots in normal elections,<sup>5</sup> and Plaintiffs did not challenge those  
10 provisions when they were adopted, nor do they challenge them now.

11 Section 20 requires mail ballots to be delivered by hand to the election official,  
12 dropped in a designated drop box, or mailed to the election official by the date of the  
13 election. *Id.* If a ballot has a legible postmark showing that it was mailed after Election  
14 Day, it will not be counted. *Id.* Subsection 2 provides a procedure to process ballots  
15 without a legible postmark, a situation that Plaintiffs assert may be more prevalent when  
16 a person mails an envelope where the postage was prepaid, as is the case with mail  
17 ballots. AB 4, § 20. Specifically, if a ballot without a determinable postmark is received  
18 by 5 p.m. on the third day following the election, it will “be deemed to have been  
19 postmarked on or before the day of the election.” *Id.*

20 Plaintiffs’ first cause of action challenges the straightforward and commonsense  
21 provisions of subsection 2, arguing that it *might* allow ballots mailed after Election Day to  
22 be counted. They base this speculative conclusion on the unsupported “estimated”  
23 delivery time of mail within counties in Nevada to “typically” be less than 3 days (ECF  
24 No. 29 at ¶ 118). Plaintiffs’ unsubstantiated assertions fail to show that they have  
25 suffered “an invasion of a legally protected interest” that is “concrete and particularized”  
26

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27  
28 <sup>5</sup> See NRS 293.317(2) (“If an absent ballot is received not more than 3 days after  
the day of the election and the date of the postmark cannot be determined, the absent  
ballot shall be deemed to have been postmarked on or before the day of the election.”).

1 and “actual or imminent, not conjectural or hypothetical,” and thus fail to establish an  
2 injury in fact. *Lujan*, 504 U.S., at 560 (internal quotation marks omitted).

3 Plaintiffs do not assert—nor can they—any personal injury to them by Nevada  
4 election officials deeming ballots without a determinable postmark and received by the  
5 third day after the election as having been postmarked by Election Day. *Id.* at n.1; *see*  
6 *also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (“A plaintiff must allege  
7 personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to  
8 be redressed by the requested relief.”). “A ‘concrete’ injury must be ‘*de facto*’; that is, it  
9 must actually exist.” *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_, \_\_\_, 136 S. Ct. 1540, 1548  
10 (2016) (citing *Black’s Law Dictionary* 479 (9th ed. 2009)). Abstract conjecture is not  
11 sufficient. *Id.* Plaintiffs’ argument that some completed ballots *may* be mailed after  
12 election day, *may* not be postmarked, *may* be received before 5 p.m. on the third day  
13 following election day, and then *may* somehow dilute the votes of Nevada voters—a group  
14 to which no Plaintiff belongs—does not demonstrate a concrete injury to anybody, and  
15 certainly not to Plaintiffs.<sup>6</sup>

16 There are any number of alternative hypothetical scenarios that are as likely, or  
17 more so, than Plaintiffs’ assertion of what *may* happen with respect to mail ballots in the  
18 2020 election. These alternatives underscore the speculative nature of their claims.  
19 Plaintiffs’ own assertion—unsupported by any authority—is that most mail sent from one  
20 address in a county to another address in that county will arrive in one to two days.  
21 Thus, Plaintiffs presumably admit the validity of ballots that are received within that  
22 window of time. There is no way to know before the election exactly how many ballots  
23 lacking an identifiable postmark will arrive on the third day after the election—the  
24 number may well be zero, in which case, under Plaintiffs’ own theory, no injury would

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25 <sup>6</sup> Indeed, if speculation about possible outcomes could be said to demonstrate  
26 concrete injuries, it must be noted that Plaintiffs’ suggested remedy has the potential to  
27 inflict injury by disenfranchising voters who timely cast their ballots. According to  
28 Plaintiffs’ own assertions and desired outcome, if a voter mails his completed ballot on  
election day and that ballot is not postmarked but is received by the election official  
within a day or two, as Plaintiffs assert it “typically” would, his vote would not be  
counted.



1 occur. To the extent engaging in speculation is entertained, it should be noted that this  
2 scenario appears more likely than one in which a vast number of ballots arrive on the  
3 third day after the election with no legible postmark: “[A]lthough the USPS does not  
4 generally postmark prepaid mail, the USPS has a longstanding policy of postmarking  
5 election mail, including absentee ballot return envelopes.” *Gallagher v. New York State*  
6 *Bd. of Elections*, No. 20 CIV. 5504 (AT), 2020 WL 4496849, at \*4 (S.D.N.Y. Aug. 3, 2020).

7 Further, “a person’s right to vote is individual and personal in nature,” and only  
8 “voters who allege facts showing disadvantage to themselves as individuals  
9 have standing to sue to remedy that disadvantage.” *Gill v. Whitford*, 585 U.S. \_\_\_, \_\_\_,  
10 138 S. Ct. 1916, 1929 (2018) (internal quotation marks omitted). Plaintiffs, who are  
11 entities, not individuals, will not be voting in any election, much less Nevada’s.

12 Even if Plaintiffs were allowed to pursue their speculative claims on behalf of  
13 actual Nevada voters, their professed concern about the “dilution” of votes is a general  
14 concern about the conduct of government, which cannot create standing to challenge  
15 subsection 2. *Paher*, 2020 WL 2089813, at \*5 (“Plaintiffs’ purported injury of having their  
16 votes diluted due to ostensible election fraud may be conceivably raised by any Nevada  
17 voter. Such claimed injury therefore does not satisfy the requirement that Plaintiffs  
18 must state a concrete and particularized injury.”).

19 Finally, none of the statutes or constitutional provisions relied upon by Plaintiffs  
20 confer any federal rights nor provide a private right of action to litigants. *See Alexander*  
21 *v. Sandoval*, 532 U.S. 275, 286-87 (2001) (“Like substantive federal law itself, private  
22 rights of action to enforce federal law must be created by Congress.”). Nor does the  
23 Supremacy Clause confer upon Plaintiffs the right to litigate an alleged conflict between  
24 section 20(2) of AB 4 and the federal laws setting the date of Election Day. *Armstrong v.*  
25 *Exceptional Child Care, Inc.*, 575 U.S. 320, 324-26 (2015) (“[T]he Supremacy Clause is not  
26 the source of any federal rights, and certainly does not create a cause of action.”).  
27 Accordingly, as Plaintiffs have no basis on which to pursue a claim based upon principles  
28 of federal preemption, Count I must be dismissed.

1           **D. Sections 11 and 12 of AB 4 Do Not Violate Equal Protection; They**  
2           **Simply Afford Local Election Officials the Discretion to Establish an**  
3           **Appropriate Number of Polling Locations in Their Respective**  
4           **Counties.**

5           In Count II of the Complaint, Plaintiffs argue that sections 11 and 12 of AB 4  
6           violate the Equal Protection Clause by requiring fewer polling places in rural counties  
7           than in urban counties. According to Plaintiffs, these sections “authorize disparate  
8           treatment of voters in rural counties with respect to the placement of polling places and  
9           vote centers for in person voting” (ECF No. 29 at ¶ 126). To the contrary, these provisions  
10          authorize election officials to establish as many polling places and vote centers as are  
11          necessary to comfortably accommodate the needs of voters in rural counties. The figures  
12          in question set a floor, not a ceiling, on the number of physical polling places that must be  
13          established in each county. This gives each of Nevada’s rural counties the flexibility to  
14          adjust to local conditions and circumstances without unnecessarily consuming public  
15          resources.

16          In a rural county, for example, there may be relatively predictable voter turnout  
17          from one election cycle to the next. In urban counties, the opposite may be true.  
18          Additionally, there may be a relatively large percentage of voters in rural counties who  
19          are already accustomed to voting by mail because of mailing precincts and consistent  
20          absentee voting. Population density, population growth, traffic congestion and other  
21          physical and geographic factors may also influence in-person voter turnout. Simply  
22          stated, in-person voter turnout may be more predictable in rural counties than in urban  
23          counties. In counties with more predictable turnout, the local election officials have a  
24          better grasp of the physical resources they will need to accommodate in-person turnout.  
25          It makes perfect sense that such counties would be subject to lower minimum  
26          requirements.

27          In summary, local election officials must have the discretion to establish an  
28          appropriate number of polling locations at or above the minimums described in sections  
29          11 and 12 of AB 4. It does not follow that smaller per-capita minimums will have a

1 disparate impact upon rural voters. Indeed, there is no inequity in setting a larger  
2 minimum requirement, on a per capita basis, in urban counties. This simply reflects a  
3 legislative determination that greater population density exacerbates the spread of the  
4 Coronavirus, while a wider distribution of polling locations and vote centers will tend to  
5 mitigate that spread. Clearly, there is a rational basis for setting higher minimum  
6 requirements in urban counties. For challenged voting statutes to have a rational basis,  
7 “all that is required is that the restrictions ‘bear some rational relationship to a legitimate  
8 state purpose.... [T]he Equal Protection Clause is offended only if the state's classification  
9 rests on grounds wholly irrelevant to the achievement of the State's objective.” *St. Louis*  
10 *County, Mo. v. City of Town and Country*, 590 F. Supp. 731, 738 (E.D. Mo. 1984)  
11 (brackets in original, quoting *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 70-71  
12 (1978)).

13 Plaintiffs’ preference for per-capita equality in polling location numbers is a  
14 misplaced oversimplification of a complex system of election administration, not to  
15 mention poor public policy. Nevada’s system of election administration is partially  
16 decentralized because it works for Nevada. There is no factual basis for Plaintiffs’  
17 assertion that sections 11 and 12 of AB 4 will have a disparate impact upon rural voters.  
18 Plaintiffs’ assume that local election officials will not capably perform their duty to  
19 establish an appropriate number of polling places in their respective counties. Insofar as  
20 they have offered no facts to support this assumption, Plaintiffs have failed to articulate a  
21 concrete and particularized injury. Count II of the Complaint must be dismissed on these  
22 grounds.

23 **E. Section 22 of AB 4 Does Not Violate Equal Protection; It Simply**  
24 **Affords Local Election Officials the Discretion to Adopt Counting**  
25 **and Processing Procedures that are Compatible with Local**  
26 **Resources.**

26 In Count III of the Complaint, Plaintiffs argue that section 22 of AB 4 violates the  
27 Equal Protection Clause because it gives local election officials too much discretion to  
28 adopt “standardless” procedures for counting and processing mailed ballots (ECF No. 29

1 at ¶ 141). As with the other equal protection claims, this claim assumes local elections  
2 officials will adopt arbitrary procedures that will dilute votes and subject different groups  
3 of voters to disparate treatment. Yet Plaintiffs have not identified a single fact to support  
4 their assumption. As a practical matter, Plaintiffs express a policy preference for a top-  
5 down, centrally-planned system of election administration (ECF No. 29 at ¶¶ 100-102).  
6 Nevada statutes, however, contemplate a significant role for county clerks in the  
7 administration of Nevada’s election laws, particularly with respect to the counting and  
8 processing of ballots. *See, e.g.*, NRS §§ 293.056 (submission of initiative and referendum  
9 petitions to county clerks), 293.1277 (verification of signatures by county clerks), 293.4689  
10 (maintenance of website by county clerk for public information relating to elections),  
11 293.5235 (preregistration and registration of voters by county clerks), 293.530 (authority  
12 of county clerks to correct statewide registration list), 293.3625-.397 (returns and  
13 canvass). Plaintiffs’ policy preference for top-down administration, and their request here  
14 for the Court to fundamentally alter Nevada’s system of election administration, conflicts  
15 at a high level with many provisions of state law in addition to section 22 of AB 4.

16 Moreover, Nevada’s existing statutes establish specific guidance and detailed  
17 standards for county clerks to follow when counting and processing mailed ballots. These  
18 statutes establish the necessary uniformity to ensure that voters are treated equally in all  
19 materials respects. *See* NRS §§ 393.363-.389. While Plaintiffs suggest that section 22 of  
20 AB 4 gives county clerks virtually unfettered discretion to decide how to count and  
21 process ballots, they conveniently ignore section 9 of AB 4. Subsection 1 of section 9  
22 states, “The provisions of any other statute or charter, ordinance, interpretation,  
23 regulation or rule governing the election which do not conflict with the provisions of  
24 sections 2 to 27, inclusive, of this act must be applied to the election, including, without  
25 limitation: [p]rovisions relating to ... conducting the election [] and [p]rovisions relating to  
26 the compilation and canvass of election returns and ties, recounts and contests of  
27 election.”

28 ...

1 Section 9 is important because it underscores the limited scope of section 22, which  
2 deals only with “procedures” for counting and processing ballots. Procedures exist to  
3 maximize efficiency in counting and processing ballots, including “by electronic means”.  
4 AB 4 at § 22(2)(a). Viewed in the proper context, section 9 does not give the county clerks  
5 the discretion to decide how or when to accept or reject a mailed ballot. Various  
6 provisions of statute already address that topic. Section 9 addresses automation for the  
7 simple reason that some counties may have more automation equipment than others for  
8 the processing and counting of mail ballots.

9 For example, urban counties may have the equipment to run all signatures on  
10 ballot return envelopes through a scanner to make a preliminary determination whether  
11 a signature on the ballot envelope matches the signature on file for the voter. An  
12 electronic flag would lead to a visual examination of signatures as the second step in the  
13 process. On the other hand, some counties may have to perform a visual examination of  
14 signatures as the first step in the signature verification process. Such a minor difference  
15 in procedures would have little if any potential to treat voters in a way that violates the  
16 Equal Protection Clause. To the extent that there exists some abstract potential for the  
17 disparate treatment of voters, it does not qualify as an injury in fact for purposes of  
18 Article III’s standing requirement. Accordingly, Count III of the Complaint must be  
19 dismissed.

20 **F. Section 25 Does Not Violate Equal Protection; It Has Virtually No**  
21 **Potential to Result in the Disparate Treatment of Voters.**

22 In Count IV of the Complaint, Plaintiff argue that section 25 of AB 4 violates the  
23 Equal Protection Clause because it contains a vague directive to county clerks about when  
24 to discard ballots that have been folded together in a single envelope (ECF No. 29 at ¶¶  
25 157-160). For purposes of an affected election, section 25 merely duplicates the provisions  
26 of NRS § 293.363. This statute, which has been in effect since 1960, *see* §131, 1960 Nev.  
27 Stat. 259, indicates that local election officials must discard paper ballots that have been  
28 folded together in a single envelope unless they can determine that the ballots were voted

1 by two different voters. As a practical matter, the ballots themselves will rarely if ever  
2 have markings to suggest that they were voted by two different people, spouses or  
3 roommates for example, because the ballots do not include signature lines or places to  
4 include personal identifiers. For obvious reasons, mailed ballots do not contain signature  
5 lines or personal identifiers because signatures and personal identifiers would wholly  
6 eliminate ballot secrecy. Therefore, unless the return envelope contains two signatures  
7 on the single signature line, the folded-together ballots will be universally discarded.

8 Although it is conceivable that two persons might fold their ballots together in a  
9 single envelope and affix their signatures to the signature line of the return envelope, it is  
10 highly improbable. Indeed, the degree of probability is so low that it can scarcely qualify  
11 as an injury for purposes of Article III's standing requirement. Accordingly, Count IV of  
12 the Complaint must be dismissed.

13 **G. Plaintiffs Speculative Claims Do Not Become Any Less Speculative**  
14 **When Considered in Their Entirety.**

15 In Count V of the Complaint, Plaintiffs cobble together Counts I through IV to  
16 support their argument that AB 4 violates the right to vote by diluting "honest" votes  
17 (ECF No. 29 at ¶¶ 166-169). As discussed above, the central premise for this argument is  
18 that vote-by-mail processes increase the likelihood of voter fraud. The subtext of the  
19 argument is that various provisions of AB 4, identified above, exacerbate the alleged  
20 problem. Ironically, Counts I through IV of the Complaint, which address the supposed  
21 objectionable provisions of AB 4, are wholly unrelated to Plaintiffs' arguments about how  
22 ballots will be discarded and then intercepted by fraudsters before the ballots ever reach  
23 the polls (ECF No. 29 at ¶¶ 53-62). To the contrary, the provisions of AB 4 to which  
24 Plaintiffs object relate to the processes and procedures that election officials will apply  
25 after the ballots have already reached the polls. Because the identified processes and  
26 procedures do not make it any more or less likely that election officials will mistakenly  
27 accept a person's ballot that has been intercepted and cast by an imposter, the basis for  
28 Count V is virtually incomprehensible.

1           Furthermore, the injury alleged in Count V is no less speculative than the injuries  
2 alleged in Counts I through IV. The speculation continues unabated in Count V because  
3 Count V is simply an amalgamation of Counts 1 through IV. Each is highly speculative  
4 standing alone, and no less speculative when considered together. In short, four  
5 multiplied by zero equals zero, not four.

6           The gist of County V is that Plaintiffs demand greater uniformity in Nevada's  
7 election processes and procedures. But they do not explain how the alleged lack of  
8 uniformity will dilute votes, other than to speculate that local elections officials might  
9 apply arbitrary standards when they receive, examine, count and process mailed ballots.  
10 In addition to not meeting Article III's standing requirement, Plaintiffs predictions about  
11 the conduct of poll workers are not ripe for review. "This type of review threatens the  
12 kind of abstract disagreements over administrative policies ... that the ripeness doctrine  
13 seeks to avoid." *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 736 (1998) (internal  
14 citations and quotation marks omitted). "Where a dispute hangs on future contingencies  
15 that may or may not occur ... it may be too "impermissibly speculative" to present a  
16 justiciable controversy." *In re Coleman*, 560 F.3d 1000, 1005 (9<sup>th</sup> Cir. 2009) (internal  
17 citations and quotations marks omitted). Accordingly, all of Plaintiffs' claims fail to  
18 satisfy Article III's ripeness requirement for essentially the same reasons that they fail to  
19 satisfy the standing requirement. *See Wolfson v. Brammer*, 616 F.3d 1045, 1058 (2010)  
20 ("Whether framed as an issue of standing or ripeness, the inquiry is largely the same:  
21 whether the issues presented are definite and concrete, not hypothetical or abstract.")  
22 (internal citations and quotations marks omitted).

23           Finally, to the extent that Plaintiffs seek an order imposing greater uniformity  
24 upon Nevada's election processes and procedures, their claims are barred by the Tenth  
25 Amendment and principles of federalism. "[T]he Tenth Amendment confirms that the  
26 power of the Federal Government is subject to limits that may, in a given instance,  
27 reserve power to the States." *New York v. United States*, 505 U.S. 144, 156 (1992). And,  
28 as Plaintiffs concede, "The U.S. Constitution's Elections Clause vests state legislatures

1 with power to set the time, place, and manner of congressional elections. U.S. Const., art.  
2 I, §4, cl. 1.” (ECF No. 29 at ¶ 22). Likewise, the Presidential Electors Clause gives the  
3 States’ the authority to prescribe the manner of selecting presidential electors. U.S.  
4 Const., art. II, §1, cl. 2. Indeed, the Presidential Electors Clause “gives the States far-  
5 reaching authority over presidential electors, absent some other constitutional  
6 constraint.” *Chiafalo v. Washington*, \_\_U.S.\_\_, 140 S. Ct. 2316, 2323 (2020).

7 Although an act of Congress may supersede state election laws as applied to federal  
8 elections, *see Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 9 (2013),  
9 Plaintiffs have identified no federal statutes that would supersede sections 11, 12, 22 and  
10 25 of AB 4. Nor have they made a persuasive argument that section 20 conflicts with  
11 federal law regarding the timing of Election Day.

12 For the reasons detailed above, the Complaint must be dismissed.

#### 13 **IV. CONCLUSION**

14 Plaintiffs ask this Court to scrutinize the policy wisdom of choices made by the  
15 Nevada Legislature during its 32nd (2020) Session. These choices were made amid a  
16 pandemic in preparation for the 2020 general election. Absent a concrete and  
17 particularized injury to Plaintiffs, the Court has no jurisdiction to intervene in election  
18 preparations. Because Plaintiffs have failed to plead facts from which one might  
19 reasonably infer that an injury is actual and imminent, not hypothetical, the Court  
20 should dismiss their claims for lack of jurisdiction.

21 DATED this 24th day of August, 2020.

22 AARON D. FORD  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 24th day of August, 2020, I filed with this Court's CM/ECF electronic filing system, **DEFENDANT SECRETARY OF STATE BARBARA CEGAVSKE'S MOTION TO DISMISS**, and served the following by electronically address listed below and any others who have petitioned this Court to participate:

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