FILED
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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELE MERCER, Petitioner, vs. LORENA S. PORTILLO, IN HER OFFICIAL CAPACITY AS REGISTRAR OF VOTERS OF CLARK COUNTY, Respondent, and AMBER LYNN CANDELARIA, Real Party in Interest.	No. 93153

ORDER GRANTING PETITION FOR A WRIT OF MANDAMUS

This original, emergency petition for a writ of mandamus seeks an order directing respondent in her official capacity as the Clark County Registrar of Voters to not place real party in interest's name on the ballot for the Office of Judge of the Eighth Judicial District Court, Family Division, Department Z.[1] We directed respondent and real party in interest to file expedited answers to the petition, which we have since received.

Petitioner Michele Mercer currently serves as District Court Judge in Department Z of the Family Division, in the Eighth Judicial District Court. Mercer is seeking reelection. Candelaria submitted her declaration of candidacy for the Department Z district judge position by email and had her agent pay the filing fee on her behalf by the filing deadline. Mercer asserts Candelaria failed to comply with the filing requirements, and thus, Candelaria's name cannot appear on the ballot. We agree.

[1]Petitioner alternatively seeks a writ of prohibition restraining respondent from placing real party in interest's name on the ballot. We conclude a writ of mandamus is the more appropriate relief.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station. NRS 34.160; *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Whether a petition for extraordinary writ relief will be entertained rests within this court's sound discretion. *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). We may do so "if a petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law." *Freeman Expositions, LLC v. Eighth Jud. Dist. Ct.*, 138 Nev. 775, 777, 520 P.3d 803, 807 (2022); NRS 34.170.

Mercer has no plain, speedy, and adequate remedy at law to challenge Candelaria's compliance with filing requirements, as Clark County has indicated it will begin printing ballots soon. Further, we have recognized that cases involving election matters require expedited resolution. *See, e.g., generally We People Nev. v. Miller*, 124 Nev. 874, 892 n.58, 192 P.3d 1166, 1178 n.58 (2008) (noting the expedited nature of election cases). While seeking writ relief in the district court first is generally appropriate, this court has permitted writ relief to be sought from it in the first instance for election matters where timing issues otherwise would preclude relief. *See Miller v. Burk*, 124 Nev. 579, 588, 188 P.3d 1112, 1118 (2008) (exercising discretion to consider a writ petition in the first instance because the upcoming election and timing issues would preclude another adequate means of securing legal review). Additionally, while Candelaria claims this matter cannot be resolved absent development of the factual record, she does not point to outstanding factual issues. Instead, Candelaria claims this court would need to hear from Clark County Election Department employees. But included in the record before this court is an affidavit from the Election Department employee who dealt with Candelaria. Additionally, the Clark County Registrar of Voters had

the opportunity to file an answer to this writ petition and did not indicate there were factual issues needing to be resolved. Thus, we exercise our discretion to entertain this writ petition.

As relevant here, NRS 293.177(1) provides a judicial candidate's name may not appear on the ballot "unless the person named has filed a declaration of candidacy with the appropriate filing officer and paid the filing fee" not later than 5 p.m. on the second Friday after the first Monday in January. The Secretary of State's office adopted NAC 293.0604, which describes this filing process. NAC 293.0604 provides three methods for filing a declaration of candidacy:

> 1. A person may file a declaration of candidacy pursuant to NRS 293.177:
>
> (a) By submitting the notarized filing documents by mail;
>
> (b) In person; or
>
> (c) Virtually using a remote technology system if authorized by the appropriate filing officer.
>
> . . .
>
> 3. A filing officer is not responsible for notifying a person filing a declaration of candidacy of any errors in the filing documents or filing fee. If any errors in the filing documents or filing fee are not corrected by 5 p.m. on the deadline set forth in NRS 293.177 for filing a declaration of candidacy, the name of the person may not be printed on a ballot as a candidate.

The third method—a virtual meeting using a remote technology system—is described in NAC 293.0604(2). It requires, among other things, that the candidate hold the signed documents up during a virtual meeting. NAC 293.0604(2)(b). Candelaria did not participate in such a virtual meeting. Further NRS 293.065 defines "mail" as "the depositing of printed or written matter in a mailbox or post office for delivery by the United States Postal

Service." Under this definition, Candelaria did not mail her declaration of candidacy.

This court "will interpret a statute or regulation by its plain meaning unless the statute or regulation is ambiguous." *Home Warranty Adm'r. of Nev., Inc. v. Dep't of Bus. & Indus.*, 137 Nev. 43, 45, 481 P.3d 1242, 1246 (2021) (citation modified). "Under the whole-text canon, [this court] interpret[s] provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of the statutes." *Tough Turtle Turf, LLC v. Scott*, 139 Nev. 459, 462, 537 P.3d 883, 886 (2023) (citation modified). An omission is generally understood as an exclusion, *Urias v. First Jud. Dist. Ct.*, 141 Nev., Adv. Op. 24, 568 P.3d 576, 581 (2025), as recognized under the *expressio unius est exclusio alterius* canon. "The *expressio unius* canon applies only when circumstances support a sensible inference that the term left out must have been meant to be excluded." *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017) (citation modified).

The plain language of NAC 293.0604 provides three ways a person may file a declaration of candidacy: (1) by mail, (2) in person, or (3) through a remote technology system. Candelaria did not utilize any of these three ways to file her declaration of candidacy. While Candelaria submits her filing by email was appropriate because an election department employee permitted her to do so, nothing in NAC 293.0604 permits filing by email or gives an election department employee discretion to authorize alternative filing methods.

NAC 293.0604 contains a list. "The *expressio unius* canon informs us that when a list is enumerated it may be presumed to be exhaustive unless otherwise provided." *Bolz v. Dist. of Columbia*, 149 A.3d 1130, 1140 (D.C. 2016) (citation modified); *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967); *see also, e.g., State v. Maestas*, 417 P.3d 774, 778 (Ariz. 2018)

(explaining that "when the legislature (or voters) expressly prescribes a list in a statute (or initiative), we assume the exclusion of items not listed" (citation modified)). There is no phrase like "without limitation" or "for example by," which would clearly indicate that the list in NAC 293.0604 is non-exhaustive. If the Secretary of State intended for the list to be non-exhaustive, it would have been easy to include language indicating so. Further, if the Secretary of State intended for a candidate to file a declaration of candidacy by email, the Secretary of State could have included "by email" in the list. *Urias*, 141 Nev., Adv. Op. 24, 568 P.3d at 581 (observing that an omission is generally understood as an exclusion).

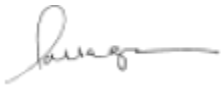
Thus, Candelaria's filing of her declaration of candidacy by email did not comply with the filing requirements outlined in NAC 293.0604. While Candelaria asserts her name can appear on the ballot because she substantially complied with NRS 293.177, Candelaria was required to comply with both NRS 293.177 and NAC 293.0604, as regulations have the force of law. *See Nev. State Democratic Party v. Nev. Green Party*, No. 89186, 2024 WL 4116388, at *2 (Nev. Sep. 6, 2024) (Order of Reversal and Remand and Directing Immediate Issuance of Remittitur) (recognizing that regulations have the force of law). Because Candelaria did not comply with the filing requirements, her name cannot appear on the ballot. *See* NAC 293.0604(3) (providing that "[i]f any errors in the filing documents or filing fee are not corrected by 5 p.m. on the deadline set forth in NRS 293.177 for filing a declaration of candidacy, the name of the person may not be printed on a ballot as a candidate"). Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing Lorena S. Portillo, in her official capacity as Registrar of Voters of Clark County, to not

place Amber Lynn Candelaria's name on the ballot for the Office of Judge of the Eighth Judicial District Court, Family Division, Department Z.



Pickering, J.



Parraguirre, J.



Bell, J.



Stiglich, J.



Cadish, J.



Lee, J.

HERNDON, C.J., dissenting:

Petitioners seeking extraordinary relief bear the burden of demonstrating that such relief is warranted. *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Because I am not persuaded petitioner Michele Mercer met that burden, I would deny this original petition for a writ of mandamus.

Under the circumstances presented, I have the same misgivings I discussed in *Nev. State Democratic Party v. Nev. Green Party*, No. 89186, 2024 WL 4116388 at *6 (Nev. Sept. 6, 2024) (Order of Reversal and Remand) (Herndon, J., concurring in part and dissenting in part). There, this court's decision excused "an egregious error by the Secretary of State's office that will result in a significant injustice." *Id.* We are presented with similar circumstances here.

Mercer currently serves as District Court Judge in Department Z of the Family Division, in the Eighth Judicial District Court. Mercer asserts that real party in interest Amber Candelaria did not file a valid declaration of candidacy for Department Z, despite the fact that Candelaria alleges she followed exactly the election office's guidance on how to remotely file a valid declaration of candidacy. Given the petition was filed in the first instance in this court and the expedited nature of this matter, there has been no opportunity for the district court to develop the factual record and the Clark County Election Department has declined to address with any specificity the conversations that office had with Candelaria, including what it did or did not instruct her to do.

Candelaria alleges she had reviewed the Clark County Election Department's 2026 Judicial Candidate Guide, which instructed that if a candidate could not file in person, the candidate could telephone the Election Department. According to Candelaria, she called the number provided and exchanged emails with Heather Kellam, the Election Program Supervisor at the Clark County Election Department. Kellam provided detailed directions; Candelaria followed those directions. Specifically, Kellam informed Candelaria she could email her notarized declaration of candidacy and have someone appear in person to pay the filing fee before the deadline. After Candelaria did so, Kellam confirmed receipt of those items and placed Candelaria's name on the list of judicial candidates.

There is no allegation that Candelaria provided insufficient information in her filing documents or failed to pay the filing fee. In fact, no additional information or fees were necessary. As a result, I cannot say Mercer has demonstrated this court's extraordinary intervention is warranted.

"The right to hold public office is one of the valuable rights of citizenship." *Gilbert v. Breithaupt*, 60 Nev. 162, 165, 104 P.2d 183, 184 (1940). Given that foundational right, we have also proclaimed that any "[a]mbiguities are to be resolved in favor of eligibility to office." *Id.* In my view, removing Candelaria from the ballot under these conditions "shocks the conscience" and "offends judicial notions of fairness." *Nev. State Democratic Party*, 2024 WL 4116388 at *8 (Herndon, J., concurring in part and dissenting in part). Thus, whether Candelaria strictly complied with the statute or regulation, I believe she submitted sufficient information and fees to be placed on the ballot as a candidate.

Ultimately, the majority faults Candelaria for relying on information provided to her from the election office. However, in *State of Nev., Office of the Att'y Gen. v. State Bar of Nev.*, No. 72321, 2017 WL 2200621 (Nev. May 17, 2017) (Order Granting Petition), this court recognized that faulting the party who reasonably relied, to their detriment, on misinformation provided by a state agent was inappropriate. In that case, this court found that equity dictated a decision in favor of the party who had been harmed by the state agent's misrepresentations. *Id.* at *2. The same result should occur here. Candelaria should not be faulted, and punished, for trusting election officials, i.e., the people entrusted with helping the public navigate election procedures. *Nev. Pub. Emp. Ret. Bd. v. Byrne*, 96 Nev. 276, 280, 607 P.2d 1351, 1353 (1980) ("[A] citizen has a legitimate expectation that [a governmental agency] should deal fairly with him or her" and such agencies have "a most stringent duty to abstain from giving inaccurate or misleading advice"); *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 699-700, 191 P.3d 1138, 1158 (2008) (noting that when a governmental agency makes factual representations to a person seeking information, and the person relies on those

representations in pursuing a course of action, equitable relief may be appropriate).

I believe the majority again excuses an egregious error by government actors that may result in a violation of fundamental fairness. *See Nev. St. Democratic Party v. Nev. Green Party*, 2024 WL 4116388 at *7 (Herndon, J., concurring in part and dissenting in part) ("Substantive due process protects certain individual liberties against arbitrary government deprivation regardless of the fairness of the state's procedure." (quoting *Eggleston v. Stuart*, 137 Nev. 506, 510, 495 P.3d 482, 489 (2021)). This, I believe, will only further "contribute[ ] to a distrust in the election process in Nevada." *Id.* at *8.

Furthermore, this court "is not an appropriate forum in which to resolve disputed questions of fact." *Round Hill Gen. Improvement Dist. v. Newman,* 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (recognizing that "an appellate court is not an appropriate forum in which to resolve disputed questions of fact"); *see also State v. Rincon*, 122 Nev. 1170, 147 P.3d 233 (2006) ("This court does not act as a finder of fact."). Thus, the instant petition should have been directed to the district court as a fact-finding court constitutionally "invested with the power of mandamus." Nev. Const, art. 6, § 6; NRS 34.160. Adhering to the general rule that relief should first be sought in the district court is not merely a procedural nicety. Instead, it allows the parties to engage in limited discovery and the district court to make necessary findings of fact. *See Archon v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 823, 407 P.3d 702, 708-09 (2017) (observing that addressing an "issue not properly raised and resolved in district court does not promote sound judicial economy and administration, because the issue comes to us with neither a complete record nor full development of the supposed novel and important legal issue to be resolved").

In short, I believe there are several factual issues that should be developed surrounding the communication between Candelaria and the election officials before an informed decision can be made, and the district court is where that factual development should occur.

Lastly, I disagree that the "timing issues" this emergency petition presents warrant our extraordinary intervention. In fact, Mercer created those problems by not seeking relief first in the district court. *See State v. Cnty. of Douglas*, 90 Nev. 272, 276-77, 524 P.2d 1271, 1274 (1974) (noting that "this court prefers that such an application [for writ relief] be addressed to the discretion of the appropriate district court" in the first instance), *abrogated on other grounds by Attorney Gen. v. Gypsum Res.*, 129 Nev. 23, 33-34, 294 P.3d 404, 410-11 (2013). In other words, Mercer created the timing issue she is now utilizing to demand our extraordinary intervention. Additionally, there are remedies (e.g., signage at polling stations per NRS 293.3025(7)) that could be afforded to Mercer in the event the district court declares Candelaria ineligible after expedited factual development. When ordinary means are available, I do not believe this court should employ the extraordinary. Given that the district court has processes at its disposal to resolve this dispute, I would deny the petition. *See* NRS 34.170.

Therefore, for the reasons stated herein, I respectfully dissent.

Herndon, C.J.

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