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16 **UNITED STATES DISTRICT COURT**

17 **DISTRICT OF NEVADA**

18 FAIR MAPS NEVADA, a Nevada political
19 action committee, SONDRA COSGROVE,
20 DOUGLAS GOODMAN, and ROBERT
21 MCDONALD

22 Plaintiffs,

23 vs.

24 BARBARA CEGAVSKE, in her official
25 capacity as Nevada Secretary of State,
26 JOSEPH P. GLORIA, in his official capacity
27 as Clark County Registrar of Voters, DEANNE
SPIKULA, in her official capacity as Washoe
County Registrar of Voters, KRISTINA
JAKEMAN, in her official capacity as Elko
County Clerk, SADIE SULLIVAN, in her
official capacity as Lander County Clerk,
LACEY DONALDSON, in her official
capacity as Pershing County Clerk-Treasurer,
VANESSA STEVENS, in her official capacity
as Storey County Clerk-Treasurer, NICHOLE
BALDWIN, in her official capacity as White
Pine County Clerk, SANDRA MERLINO, in
her official capacity as Nye County Clerk,
TAMMI RAE SPERO, in her official capacity
as Humboldt County Clerk, KATHY LEWIS,
in her official capacity as Douglas County
Clerk-Treasurer, LINDA ROTHERY, in her
official capacity as Churchill County Clerk-
Treasurer, LACINDA ELGAN, in her official
capacity as Esmeralda County Clerk-Treasurer,

Case Number:
3:20-cv-00271-MMD-WGC

**OPPOSITION TO PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION (ECF NO. 2)**

1 LISA C. LLOYD, in her official capacity as
2 Lincoln County Clerk, LISA HOEHNE, in her
3 official capacity as Eureka County Clerk,
4 CHRISTOPHER NEPPER, in his official
5 capacity as Mineral County Clerk-Treasurer,
6 NIKKI BRYAN, in her official capacity as
7 Lyon County Clerk-Treasurer, and AUBREY
8 ROWLATT, in her official capacity as Carson
9 City Clerk-Recorder,

10 Defendants.

11 Defendants Kristina Jakeman, Sadie Sullivan, Lacey Donaldson, Vanessa Stevens,
12 Nichole Baldwin, Sandra Merlino, Tammi Rae Spero, Kathy Lewis, Linda Rothery, Lacinda
13 Elgan, Lisa C. Lloyd, Lisa Hoehne, Christopher Nepper, and Nikki Bryan (collectively the
14 “Rural County Defendants”), by and through the law firm of Marquis Aurbach Coffing,
15 hereby submit their Opposition to Plaintiffs’ Motion for Preliminary Injunction (ECF 2).
16 This Opposition is made and based upon the papers and pleadings on file herein, the
17 following Memorandum of Points and Authorities, and any oral argument allowed at the
18 time of hearing:

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 Whether seeking signatures for a constitutional initiative or seeking to recall the
22 governor,¹ groups such as the Plaintiff are coming out of the woodwork to attempt to bypass
23 the constitutionally mandated signature requirements and statutory time periods by citing to
24 COVID-19 and the related restrictions implemented by the State of Nevada to assure the
25 safety of its residents. Simply put, the constitutionally mandated signature requirements and
26 statutory time periods required by the State of Nevada are reasonable and the mere prospect
27

¹ See *Fight for Nevada v. Cegavske*, United States District Court, District of Nevada Case No: 2:20-cv-00837-RFB-EJY.

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1 that the Plaintiffs or any other aggrieved party may fall short of this requirement does not
2 relieve them of their obligations.²

3 **II. STATEMENT OF THE CASE**

4 In recent months, the United States has faced an unprecedented public health crisis,
5 with a highly infectious virus spreading throughout the country. President Trump declared a
6 national emergency on March 13, 2020 and much of the American population has been
7 subject to “stay at home” orders issued by their local governments in a concerted effort to
8 slow the spread of the virus. Nevadans became subject to these same restrictions when the
9 Governor ordered all Nevadans to stay home and all non-essential business to close for a
10 period of time. However, that time is now beginning to end. Nevadans are gradually and
11 safely getting back to work and moving forward.

12 Certain groups and organizations have sought to capitalize on the effects of the virus.
13 One such organization is Plaintiff - Fair Maps Nevada. Plaintiff readily acknowledges that,
14 pursuant to the Nevada State Constitution, in order to qualify for inclusion on the November
15 2020 ballot, their initiative petition must be signed “by a number of registered voters equal
16 to 10 percent or more of the number of voters who voted at the last preceding general
17 election in not less than 75 percent of the counties in the State, but the total number of
18 registered voters signing the initiative petition shall be equal to 10 percent or more of the
19 voters who voted in the entire State at the last preceding general election.”³ Nev. Const. art.
20 19, § 2(2).

23 ² See *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 204 (2008) (explaining that the
24 signature requirement “requires persons to demonstrate a significant modicum of support before
25 allowing them access to the general-election ballot, lest [the process] become unmanageable.”); see
26 also *Jenness v. Fortson*, 403 U.S. 431 (1971); *Norman v. Reed*, 502 U.S. 279, 295 (1992) (approving
requirement of approximately two percent of the electorate); *American Party of Tex. v. White*, 415
U.S. 767, 783 (approving requirement of one percent of the vote cast for Governor in the preceding
general election).

27 ³ See Plaintiffs’ Motion at 4:4-12.

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1 Further, it is undisputed that NRS 295.056(3) establishes the date by which the
 2 proponent of an initiative petition must submit petition documents for verification to the
 3 county clerks. All parties also acknowledge that deadline is the fifteenth day after the
 4 primary election – June 24, 2020.⁴ However, other than merely reciting the history of the
 5 COVID-19 virus, Plaintiffs provide very little in the form of substantive facts. While
 6 Plaintiffs affirm they filed their Initiative Petition (the “Petition”) on November 4, 2019,⁵
 7 they wholly fail to detail what efforts were undertaken from that date through the filing of
 8 their Motion to try and gather signatures. There is nothing identifying what efforts they
 9 undertook during the months prior to any COVID-19 restrictions. There is no mention of
 10 how many signatures they currently have or additional signatures they will need to meet the
 11 constitutional requirements. Rather, Plaintiffs bypass providing this Court with any facts
 12 and thrust themselves upon this Court claiming nothing more than conclusory statements.

13 The reality is the relief sought by the Plaintiffs will create a significant burden on the
 14 Defendants.⁶ Under the current deadlines, there are approximately eight weeks from the
 15 deadline to submit signatures for a petition until the time the ballots need to be completed
 16 and sent to military personnel.⁷ During this limited 8-week period, and in addition to
 17 performing all of the other functions associated the Rural County Defendants positions,
 18 signatures need to be verified to determine sufficiency, the State will need to form
 19 committees to draft arguments for and against the petition and arguments need to be written

23 ⁴ *Id.* at 4:14-20.

24 ⁵ *Id.* at 3:22-23.

25 ⁶ *See* Declaration of Kathy Lewis In Support Of Opposition To Motion For Preliminary Injunction
 26 (“Lewis Dec.”).

27 ⁷ *Id.* at ¶¶ 5-6.

1 and vetted.⁸ Simply put, shortening the established time frame is unreasonable and
 2 untenable.⁹

3 **III. LEGAL STANDARD**

4 Federal Rule of Civil Procedure 65 governs preliminary injunctions. “An injunction
 5 is a matter of equitable discretion’ and is ‘an extraordinary remedy that may only be
 6 awarded upon a clear showing that the plaintiff is entitled to such relief.’” *Earth Island Inst.*
 7 *v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (quoting *Winter v. Nat. Res. Def. Council*, 555
 8 U.S. 7, 22, 32 (2008)). This relief is “never awarded as of right.” *Alliance for the Wild*
 9 *Rockies v. Cottrell*, 623 F.3d 1127, 1131 (9th Cir. 2011). To qualify for a preliminary
 10 injunction, a plaintiff must satisfy four requirements: (1) a likelihood of success on the
 11 merits; (2) a likelihood of irreparable harm; (3) that the balance of equities favors the
 12 plaintiff; and (4) that the injunction is in the public interest. *See Winter*, 555 U.S. at 20.

13 But this is not a normal case. Rather than merely requesting a preliminary injunction
 14 to “preserve the status quo,” *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808 (9th
 15 Cir. 1963) (stating “[i]t is so well settled as not to require citation of authority that the usual
 16 function of a preliminary injunction is to preserve the status quo.”), Plaintiffs seek a
 17 mandatory injunction to *change* the status quo. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th
 18 Cir. 2015) (stating “a mandatory injunction goes well beyond simply maintaining the
 19 status quo pendente lite and is particularly disfavored.”) (*internal citations omitted*). Here,
 20 Plaintiffs want to alter Nevada law and compel Defendants to take burdensome, affirmative
 21 actions that cannot be undone.

22 Mandatory injunctions are “particularly disfavored” and, thus, “trigger a higher
 23 standard.” *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994); 42 *Am. Jur. 2d*
 24 *Injunctions* §6. Courts should deny a request for a mandatory injunction “unless the facts

26 ⁸ *Id.* at ¶¶ 6-13.

27 ⁹ *Id.*

1 and law clearly favor the moving party.” *Dahl v. HEM Pharmaceuticals Corp.*, 7 F.3d 1399,
 2 1403 (9th Cir. 1993). A mere “prima facie showing” will not do. 42 *Am. Jur. 2d Injunctions*
 3 §6 (citing *Garcia*, 786 F.3d 733). Because they are a “stern remedy,” courts “should
 4 exercise restraint and caution in providing this type of equitable relief,” *Leonard v.*
 5 *Stoebeling*, 728 P.2d 1358, 1363 (Nev. 1986), and require plaintiffs to show that, absent the
 6 mandatory injunction, “extreme or very serious damage will result,” 42 *Am. Jur. 2d*
 7 *Injunctions* §6.

8 Plaintiffs cannot satisfy this heightened standard—or even the normal standard for a
 9 preliminary injunction. They are not likely to succeed on the merits of any claim. And, the
 10 equities tilt decisively in Defendants’ favor. Accordingly, this Court should deny Plaintiffs’
 11 Motion.

12 **IV. ARGUMENT**¹⁰

13 **A. THIS COURT LACKS SUBJECT MATTER JURISDICTION.**

14 As this Court very recently noted, “the states’ police powers over matters of public
 15 health and safety and to act over the general welfare of their inhabitants is entrenched in the
 16 rights reserved to the state under the Tenth Amendment to the United States Constitution.”
 17 *Paher v. Cegavske*, 2020 WL 2089813, at *7 (D. Nev. Apr. 30, 2020) (citing *Reynolds v.*
 18 *Sims*, 377 U.S. 533, 554 (1964)). The Supreme Court has made it clear that “while the Equal
 19 Protection Clause provides a check on such state authority, our scrutiny will not be so
 20 demanding where we deal with matters resting firmly within a State’s constitutional

21 ¹⁰ Aside from inclusion in the caption and being identified as parties to the Action, there are no
 22 specific allegations plead against the Rural County Defendants. Rather, a simple reading of the
 23 claims in Plaintiffs’ Complaint evidence a dispute between the Plaintiffs and the Secretary - not the
 24 Rural County Defendants. Given that Plaintiffs’ claims fail to state a claim for relief against the
 25 Rural County Defendants, they should be summarily dismissed from the action. Moreover,
 26 Plaintiffs’ failure to a claim for relief is fatal to is motion for preliminary injunction. *See Villagrana*
 27 *v. Recontrust Co., N.A.*, No. 3:11-cv-00652-ECR-WGC, 2012 WL 1890236, at *7 (D. Nev. May 22,
 2012) (holding that a “preliminary injunction will not issue” where claims must be dismissed). Quite
 simply, this Court may deny preliminary injunctive relief given that the Rural County Defendants are
 likely to succeed on the merits of their defense. *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146,
 1158 (9th Cir. 2007) (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S.
 418, 429 (2006)).

1 prerogatives.” *Gregory v. Ashcroft*, 501 U.S. 452, 462 (1991) (internal citations omitted).
 2 Further, “when a state chooses to give its citizens the right to enact laws by initiative, it
 3 subjects itself to the requirements of the Equal Protection Clause.” *Angle v. Miller*, 673 F.3d
 4 1122, 1127–28 (9th Cir. 2012).

5 The right to amend the Nevada Constitution squarely exists under the Nevada
 6 Constitution - *not the U.S. Constitution*. Similarly, the procedures governing any such
 7 amendment to the Nevada Constitution are administered under the Nevada Revised Statutes
 8 – not those of the federal government. While “[a]ll procedures used by a State as an
 9 integral part of the election process must pass muster against the charges of discrimination
 10 or of abridgment of the right to vote,” *Moore v. Ogilvie*, 394 U.S. 814, 818 (1969), it is
 11 undisputed that Nevada’s statutory deadlines pass such muster as they are neither
 12 discriminatory or an abridgment of the right to vote.

13 In this context, given the absence any discriminatory burdens upon rights existing
 14 under the First and Fourteenth Amendments, Plaintiffs’ request for injunctive relief amounts
 15 to nothing more than a demand that the Secretary take affirmative action to facilitate the
 16 exercise of a right granted under the Nevada Constitution. Therefore, this Court lacks
 17 subject matter jurisdiction over Plaintiffs’ claims. Whether the Nevada Constitution requires
 18 that state officials take affirmative steps to accommodate an initiative to amend the Nevada
 19 Constitution is a question for Nevada’s state district courts.¹¹

21 _____
 22 ¹¹ Further, the people's sovereign right to incorporate themselves into a state's lawmaking apparatus,
 23 by reserving for themselves the power to adopt laws and to veto measures passed by elected
 24 representatives, is a nonjusticiable political matter. *See Arizona State Legislature v. Arizona Indep.*
 25 *Redistricting Comm’n*, ___ U.S. ___, 135 S. Ct. 2652, 2673 (2015) (citing *Ashcroft*, 501 U.S.
 26 460(stating “[t]hrough the structure of its government ... a State defines itself as a sovereign.
 27 Arizona engaged in definition of that kind when its people placed both the initiative power and the
 AIRC's redistricting authority in the portion of the Arizona Constitution delineating the State's
 legislative authority.”) “When a state election law provision imposes only ‘reasonable,
 nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the
 State's important regulatory interests are generally sufficient to justify’ the restrictions.” *Burdick v.*
Takushi, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)); *see*
also Arizona Green Party v. Reagan, 838 F.3d 983, 988 (9th Cir. 2016).

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B. PLAINTIFFS DO NOT ENJOY A LIKELIHOOD OF SUCCESS ON THE MERITS.

Plaintiffs appear to argue that they have made enough claims (13 of them) such that at least one of them should be successful.¹² This spaghetti approach to pleading (throw it against the wall and see what sticks)¹³ is ineffective in overcoming their burden. In sum, Plaintiffs assert six claims questioning the the constitutionality of the Secretary following the Nevada Statutes and refusing to extend the statutory deadline for submitting the Petition for verification no later than June 24, 2020 and seven claims relating to the use of electronic means to circulate and sign the Petition.¹⁴

Plaintiffs strategically characterize their claims as follows:

Plaintiffs’ constitutional claims allege that the Secretary’s actions violate their right to engage in political speech by preventing them from circulating and qualifying the Initiative for the November ballot 2020 and further prevents them from voting on the Initiative in the November election. Plaintiffs claim that these actions violate the First and Fourteenth Amendments to the U.S. Constitution and various provisions of the Nevada Constitution, including Article 9, Section 1 (right to speech), Article 19, Section 2(1) (right to circulate an initiative petition), and Article 2, Section 1 (right to vote).¹⁵

However, the Secretary has done nothing but adhere to the relevant Nevada Revised Statutes. Plaintiffs’ own Motion readily acknowledges that:

NRS 295.056(3) establishes the date by which the proponent of an initiative petition must submit petition documents for verification to the county clerks. NRS 205.056(3). Where, as here, the initiative petition proposes an amendment to the Nevada State Constitution, the deadline is the fifteenth day after the primary election. *Id.* This year, that date falls on June 24, 2020 as Nevada’s primary is scheduled to be held on June 9. See *id.* Included with each document of the Initiative must be a circulator’s affidavit. NRS 295.0575. Pursuant to NRS 295.0575, the affidavit must, among other thing,

¹² See Plaintiffs Motion at 12:24-25.

¹³ See *Bennett v. Schmidt*, 153 F.3d 516, 518 (7th Cir. 1998) (stating that “[p]rolixity is a bane of the legal profession...”).

¹⁴ See Compl. ¶¶ 76-168.

¹⁵ See Plaintiffs’ Motion at 13:3-9.

1 affirm that the circulator “personally circulated the document,” and “the
2 signatures were affixed in the circulator’s presence.” NRS 295.0575(1), (5).¹⁶

3 Thus, any arguments that the Secretary’s *actions* violate any constitutional right is
4 really an argument that the application of the plain language of the statute violates their
5 constitutional rights. However, “[t]here is no First Amendment right to place an initiative
6 on the ballot.” *Angle*, 673 F.3d at 1133 (9th Cir. 2012) citing *Meyer v. Grant*, 486 U.S. 414,
7 424 (1988) (recognizing that “the power of the initiative is a state-created right”). The
8 initiative process, is a product of state law, not federal law. The question presented in *Angle*
9 was whether a statutory restriction on signature gathering may, consistent with the First
10 Amendment, disproportionately burden certain categories of speech or specific groups of
11 speakers. *See id.* While acknowledging that the Equal Protection Clause applies to the
12 initiative process, the Court declined to hold that the federal judiciary has the power to order
13 modifications to state initiative laws that are facially neutral and nondiscriminatory. In fact,
14 the Court upheld the Nevada ballot initiative process precisely because it is facially neutral
15 and nondiscriminatory. As the Court noted “it singles out no discrete or insular minority for
16 special treatment [and] also applies to all initiatives regardless of subject matter, not solely
17 to initiatives thought to be favored by a targeted segment of the population.” *Angle*, 673
18 F.3d at 1132 (citing *Gordon v. Lance*, 403 U.S. 1, 5 (1971) (internal quotations omitted).
19 Here, the challenged statutory provisions are issue are facially neutral and
20 nondiscriminatory.

21 Plaintiffs also appear to attack the decisions of the Secretary in her official capacity.
22 The Secretary is “the Chief Officer of Elections.” NRS 293.124(1). She “is responsible for
23 the execution and enforcement of the provisions of title 24 of NRS and all other provisions
24 of state and federal law relating to elections in this State.” *Id.* The Secretary is also
25 empowered to “adopt such regulations as are necessary to carry out” these duties and on
26 “other matters [she] determine[s] necessary.” NRS 293.123(2); NRS 293.247(j). And she

27 ¹⁶ *Id.* at 4:13-20.

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1 can “may provide interpretations and take other actions necessary for the effective
2 administration of the statutes and regulations governing the conduct of primary, general,
3 special and district elections in this State.” NRS 293.247(4). The Secretary “is entitled to
4 deference” on these questions and, because her decision is “supported by substantial
5 evidence,” courts “will not disturb them.” *Nev. Pub. Emps. Ret. Bd. v. Smith*, 310 P.3d 560,
6 564 (Nev. 2013). Given the foregoing, this Court should afford deference to the decisions of
7 the Secretary in the performance of her elected duties.

8 Despite the foregoing, Plaintiffs argue this Court should invoke the balancing test
9 from the U.S. Supreme Court’s decisions in *Anderson v. Celebrezze*, 460 U.S. 780 (1983),
10 and *Burdick v. Takushi*, 504 U.S. 428 (1992). Under *Anderson-Burdick*, States can conduct
11 “substantial regulation of elections.” *Burdick*, 504 U.S. at 432 (emphasis added; quoting
12 *Storer v. Brown*, 415 U.S. 724 (1974)). It is a “flexible standard” that “reject[s] the
13 contention that any law imposing a burden on the right to vote is subject to strict scrutiny.”
14 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 903-04, 141 P.3d 1235,
15 1241 (2006). Contrary to Plaintiffs’ claim that the Defendants’ conduct will “prevent
16 Plaintiffs and other Nevada voters from voting on the Initiative in the November election,”¹⁷
17 an election law is not invalid because it prevents someone from voting or affects voting
18 rights. Every election law “is going to exclude, either de jure or de facto, some people from
19 voting; the constitutional question is whether the restriction and resulting exclusion are
20 reasonable given the interest the restriction serves.” *Griffin v. Roupas*, 385 F.3d 1128, 1130
21 (7th Cir. 2004) (emphasis added).

22 Under *Anderson-Burdick*, Plaintiffs must satisfy a two-step inquiry, bearing a heavy
23 burden at both steps. First, they must establish a cognizable burden on the right to vote
24 arising from the challenged law and the severity of that burden. *Timmons v. Twin Cities*
25 *Area New Party*, 520 U.S. 351, 358 (1997). Second, they must show that the burden
26

27 ¹⁷ See Plaintiffs’ Motion at 13:20-21.

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1 outweighs the State’s interest. *Id.* Only when an election law “subject[s]” voting rights “to
 2 ‘severe’ restrictions” does a court apply strict scrutiny and assess whether the law “‘is
 3 narrowly drawn to advance a state interest of compelling importance.’” *Burdick*, 504 U.S. at
 4 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). In contrast, election laws that
 5 “impose[] only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth
 6 Amendment rights of voters” are “‘generally’” justified by “‘the State’s important regulatory
 7 interests.’” *Burdick*, 504 U.S. at 433 (quoting *Anderson*, 460 U.S. at 788). After all, there is
 8 no constitutional right to be free from “the usual burdens of voting.” *Crawford v. Marion*
 9 *Cty. Election Bd.*, 553 U.S. 181, 198 (2008) (opinion of Stevens, J.).

10 So that courts can perform this balancing test, plaintiffs must introduce “evidence” to
 11 “quantify the magnitude of the burden” from the challenged laws. *Id.* at 200. “[T]he extent
 12 of the burden ... is a factual question on which the [plaintiff] bears the burden of proof,”
 13 *Democratic Party of Hawaii v. Nago*, 833 F.3d 1119, 1124 (9th Cir. 2016), and the plaintiff
 14 must “direct th[e] Court to ... admissible and reliable evidence that quantifies the extent and
 15 scope of the burden imposed by the” challenged law. *Common Cause/Ga. v. Billups*, 554
 16 F.3d 1340, 1354 (11th Cir. 2009). Courts generally treat the sufficiency of a State’s
 17 justification, however, as a “legislative fact,” that is accepted as true so long as it is
 18 reasonable. *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014) (*Frank I*); *see also*
 19 *Crawford*, 553 U.S. at 194-97. In fact, when responding to an *Anderson-Burdick* challenge,
 20 States can rely on “post hoc rationalizations,” can “come up with its justifications at any
 21 time,” and have no “limit[s]” on the type of “record [they] can build in order to justify a
 22 burden placed on the right to vote.” *Mays v. LaRose*, 951 F.3d 775, 789 (6th Cir. 2020).

23 When plaintiffs try to establish a law’s burden on voting rights, “[z]eroing in on the
 24 abnormal burden experienced by a small group of voters is problematic at best, and
 25 prohibited at worst.” *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 631 (6th Cir.
 26 2016). Evidence that a law uniquely burdens one particular group does not justify enjoining
 27 the statute facially as to all voters. Rather, facial challenges like Plaintiffs’ fail when the

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1 challenged law “has a plainly legitimate sweep.” *Crawford*, 553 U.S. at 202. A challenged
 2 law clears that low threshold when its “broad application to *all* [of a State’s] voters ...
 3 imposes only a limited burden on voters’ rights.” *Id.* at 202-03, *see also id.* at 206 (Scalia, J.,
 4 concurring in judgment) (when assessing a burden’s severity, courts must look at the
 5 burden’s impact “categorically” upon all voters, without “consider[ing] the peculiar
 6 circumstances of individual voters”). Given the States’ “constitutional” power to “play an
 7 active role in structuring elections” and bring “order, rather than chaos,” to “the democratic
 8 process,” *Burdick*, 504 U.S. at 433, the “burden some voters face[]” from a challenged law
 9 cannot “prevent the state from applying the law generally,” *Frank v. Walker*, 819 F.3d 384,
 10 386 (7th Cir. 2016) (*Frank II*). “[H]igh hurdles for some persons” should be vindicated by
 11 those voters in as-applied challenges that seek relief for “those particular persons.” *Id.*

12 Our nation’s struggle with COVID-19, as unprecedented as it is, should not
 13 meaningfully change how courts apply *Anderson-Burdick*. A virus cannot make an
 14 otherwise constitutional law unconstitutional. While COVID-19 has dramatically changed
 15 Nevadans’ everyday lives, COVID-19 is “not [an] impediment created *by the State*.” *Bethea*
 16 *v. Deal*, 2016 WL 6123241, at *2 (S.D. Ga. Oct. 19, 2016) (emphasis added); *see id.* at *2-3
 17 (stressing the dearth of “any precedent that would constitutionally or statutorily mandate that
 18 Defendants provide an extension in the absence of any actual government action that
 19 burdens an individual’s right to vote”). States like Nevada have acted to protect the “right to
 20 vote during this global pandemic”. *Mays v. Thurston*, 2020 WL 1531359, at *2 (E.D. Ark.
 21 Mar. 30, 2020). “Any injury caused by Plaintiffs’ failing to take advantage of these available
 22 avenues to exercise their rights to vote are not caused by or fairly traceable to the actions of
 23 the State, but rather are caused by the global pandemic.” *Id.*

24 Even if non-state action factored into the *Anderson-Burdick* analysis, the ultimate
 25 outcome of that analysis would not change. COVID-19 affects *both* sides of the balance—
 26 the interests of the State and the burdens on the individual. True, COVID-19 has
 27 complicated many public activities. But, states also have “important interests ... in the wake

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1 of election emergencies”: they must “focus their resources on recovering from the
 2 emergency, ensuring the accuracy of voter registrations they have received, relocating
 3 polling places as needed, ensuring adequate staffing for the voting period, and otherwise
 4 minimizing the likelihood of errors or delays in voting.” Michael T. Morley, *Election
 5 Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks*, 67 EMORY L.J.
 6 545, 593 (2018). An “election emergency” should thus “seldom warrant” changes to election
 7 laws by judicial fiat. *Id.*; see, e.g., *Williams v. DeSantis*, No. 1:20-cv-67 (N.D. Fla. Mar. 17,
 8 2020)¹⁸ (declining to intervene in Florida’s ongoing primary election in the face of COVID-
 9 19); *Bethea*, 2016 WL 6123241 (declining to extend Georgia’s voter-registration deadline in
 10 the wake of Hurricane Matthew); *ACORN v. Blanco*, No. 2:06-cv-611 (E.D. La. Apr. 21,
 11 2006)¹⁹ (denying request “to extend the deadline for counting absentee ballots received by
 12 mail” in New Orleans in the wake of Hurricane Katrina). With these principles in mind,
 13 Plaintiffs are not likely to prevail.

14 As noted above, under *Anderson-Burdick*, Plaintiffs must satisfy a two-step inquiry.
 15 First, Plaintiffs must establish a cognizable burden on the right to vote arising from the
 16 challenged law and the severity of that burden. *Timmons*, 520 U.S. at 358. Second, Plaintiffs
 17 must show that the burden outweighs the State’s interest. *Id.* Only when an election law
 18 “subject[s]” voting rights “to ‘severe’ restrictions” does a court apply strict scrutiny and
 19 assess whether the law “‘is narrowly drawn to advance a state interest of compelling
 20 importance.’” *Burdick*, 504 U.S. at 434 (quoting *Norman*, 502 U.S. at 289). In contrast,
 21 election laws that “impose[] only ‘reasonable, nondiscriminatory restrictions’ upon the First
 22 and Fourteenth Amendment rights of voters” are “‘generally’” justified by “‘the State’s

23
 24
 25 ¹⁸ See *Williams v. DeSantis*, No. 1:20-cv-67 (N.D. Fla. Mar. 17, 2020), attached hereto as **Exhibit A**
 for the convenience of the Court.

26 ¹⁹ See *ACORN v. Blanco*, No. 2:06-cv-611 (E.D. La. Apr. 21, 2006), attached hereto as **Exhibit B** for
 27 the convenience of the Court.

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1 important regulatory interests.” *Burdick*, 504 U.S. at 433 (quoting *Anderson*, 460 U.S. at
2 788).

3 **First**, Plaintiffs are not challenging the law or the statutory requirements regarding
4 obtaining signatures to earn a place on the ballot. Rather, Plaintiffs complaint is that the
5 restrictions put into place to “flatten the curve” of the COVID-19 virus have created a
6 situation where they will be unable to collect the necessary signatures to comply with the
7 law. However, a virus cannot make an otherwise constitutional law unconstitutional. As
8 such, the “law” they appear to be challenging is not the initiative process, but rather, the
9 emergency restrictions and guidelines that were implemented to protect the health and safety
10 of the public. Moreover, these restrictions and guidelines “impose[] only ‘reasonable,
11 nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights” and are
12 reasonably justified by “‘the State’s important regulatory interests.’” *Burdick*, 504 U.S. at
13 433. Consequently, it appears Plaintiffs are merely upset that the circumstances they, and
14 the rest of the nation, are facing have made meeting the otherwise reasonable requirements a
15 little more difficult.

16 Additionally, Plaintiffs have not provided any evidence to “quantify [] the magnitude
17 of the burden” placed on them. *Crawford*, 553 U.S. at 200. “[T]he extent of the burden ...
18 is a factual question on which the [plaintiff] bears the burden of proof,” *Nago*, 833 F.3d at
19 1124, and the plaintiff must “direct th[e] Court to ... admissible and reliable evidence that
20 quantifies the extent and scope of the burden imposed.” *Billups*, 554 F.3d at 1354. Here,
21 there is no evidence suggesting the Plaintiff would have been able to meet the constitutional
22 burden absent the restriction. Moreover, Plaintiffs have not shown what efforts they
23 undertook, despite any social distancing restrictions, to exercise their political speech and
24 circulate their Petition. Rather, based upon the lack of evidence provided, it appears the
25 Plaintiffs merely waited until the last minute and then decided to cry “foul” in the hopes of
26 judicially overcoming the constitutional requirement.

27

1 **Second**, Plaintiffs must show that the burden outweighs the State’s interest. Again,
 2 Plaintiffs are not challenging the statutory requirements regarding obtaining signatures to
 3 earn a place on the ballot. Rather, Plaintiffs complaint is that the burden of the health
 4 restrictions has made it difficult to collect signatures. However, any enhanced burden that
 5 stems from the health restrictions does not outweigh the State’s interest in maintaining its
 6 statutory deadlines for submission of signatures under NRS 294.056(3) or the plain language
 7 requirement that all the signatures be, among other things, “affixed in the circulator’s
 8 presence” under NRS 295.0575(5) to avoid fraud.²⁰

9 **C. THE EQUITIES WEIGH DECISIVELY AGAINST PLAINTIFFS.**

10 Even if this Court concludes that one of Plaintiffs’ claims has merit, it should deny
 11 preliminary relief at this time. A preliminary injunction “does not follow as a matter of
 12 course from a plaintiff’s showing of a likelihood of success on the merits.” *Benisek v.*
 13 *Lamone*, 138 S. Ct. 1942, 1943-44 (2018). It remains “an extraordinary remedy never
 14 awarded as of right,” and this Court has the right to deny one “[a]s a matter of equitable
 15 discretion.” *Id.* at 1943. Here, it must do so as Plaintiffs cannot show that they are “likely to
 16 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips
 17 in [their] favor, and that an injunction is in the public interest.” *Id.* at 1944. These equitable
 18 factors, as well as the “*Purcell* doctrine,” all favor Defendants.

19 **1. Plaintiffs will suffer no unique irreparable harm.**

20 Plaintiffs assert the conclusion they will suffer irreparable harm because, without a
 21 preliminary injunction, the “[p]recluding the inclusion of the Initiative on the November
 22 ballot will unconstitutionally infringe Plaintiffs’ right to engage in political speech by

23 _____
 24 ²⁰ Assuming, *arguendo*, that electronic signatures could be safely and securely obtained. Plaintiffs
 25 have failed to proffer how such signatures would be gathered. Are they really proposing a mass
 26 email blast sent out where any recipient could e-sign their petition and merely click a box affirming
 27 they reside in Nevada, are 18 years of age and have the opportunity to read the full text of the
 Petition? Not only is such a proposition ripe for fraud, how could an individual reasonably affirm,
 under oath, that such signatures were signed in their presence? In fact, there is nothing prohibiting
 Plaintiffs from utilizing electronic means to motivate and/or organize voters to meet with circulators
 to physically sign the petition.

1 circulating and, in the case of individual voters, voting on, an amendment to the Nevada
 2 Constitution.”²¹ This argument assumes that Plaintiffs have made a showing that the Petition
 3 was likely to gather a sufficient number of signatures, which they have not. *See State Farm*
 4 *Mut. Auto. Ins. Co. v. Jafbros Inc.*, 860 P.2d 176, 178 (Nev. 1993) (“[T]he existence of a
 5 right violated is a prerequisite to the granting of an injunction.”); *Democratic Nat’l Comm.*
 6 *v. Reagan*, 2018 WL 10455189, at *4 (D. Ariz. May 25, 2018) (“Because Plaintiffs are not
 7 likely to succeed on the merits of their appeal, they necessarily have not shown a likelihood
 8 of irreparable harm or a sharply favorable tip in the balance of hardships, especially
 9 considering their requested relief would upend rather than preserve the status quo.”).
 10 Simply put, Plaintiffs are in the same position as every other individual or group attempting
 11 to collect signatures for their cause.

12 **2. The balance of harms and public interest favor Defendants.**

13 “When the government is a party,” the balance of the equities and the public interest
 14 “merge.” *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken*
 15 *v. Holder*, 556 U.S. 418, 435 (2009)). Here, the “inability to enforce its duly enacted plans
 16 clearly inflicts irreparable harm on the State.” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17
 17 (2018). Adherence to the constitutionally and statutorily established plan is supported by
 18 weighty public interests that outweigh any burden on the Plaintiffs. *See Benisek*, 138 S. Ct.
 19 at 1944 (recognizing the public interest in “orderly elections”); *Bent Barrel, Inc. v. Sands*,
 20 373 P.3d 895 (Nev. 2011)(recognizing the “significant governmental interest in the public
 21 health and safety of the people in this state”).

22 The public interest is also disserved by courts imposing burdensome injunctions on
 23 state officials at this juncture, while they are trying to find the time, energy, and resources to
 24 address a public-health emergency.²² As one court recently put it, with “public election
 25

26 ²¹ *See* Plaintiffs’ Motion at 11:3-5.

27 ²² *See* Lewis Dec.

1 offices and volunteers ... stretched to the limit in this pandemic crisis,” the equities do not
 2 lie with any plaintiff who “calls for quick implementation of a systemic remedy” to
 3 statewide election procedures. *Black Voters Matter Fund v. Raffensperger*, 2020 WL
 4 2079240, at *4 (N.D. Ga. Apr. 30, 2020) “Although ... the COVID-19 pandemic constitutes
 5 an extraordinary circumstance that has resulted in profound dislocations, it is also a
 6 profound thing for a federal court to rewrite state election laws.” *Arizonans for Fair*
 7 *Elections v. Hobbs*, 2020 WL 1905747, at *3 (D. Ariz. Apr. 17, 2020).

8 **3. The *Purcell* principle prohibits Plaintiffs’ eleventh-hour request.**

9 When Plaintiffs ask federal courts to enjoin voting laws on an emergency basis they
 10 must “weigh, in addition to the harms attendant upon issuance or nonissuance of an
 11 injunction, *considerations specific to elections cases.*” *Purcell*, 549 U.S. at 5 (emphasis
 12 added). Nevada precedent incorporates federal precedents on injunctions, *see, e.g., Boulder*
 13 *Oaks Cmty. Ass’n v. B & J Andrews Enterprises, LLC*, 215 P.3d 27, 31 (Nev. 2009) (quoting
 14 *United States v. Nutri-cology, Inc.*, 982 F.2d 394, 397 (9th Cir. 1992)), so it’s no surprise
 15 that Nevada courts too have long disfavored the “unwarranted interference by the judicial
 16 department with the electoral franchise of the people of this state” attendant to eve-of-
 17 election judicial decrees, *Beebe v. Koontz*, 72 Nev. 247, 253-54, 302 P.2d 486, 490 (1956).
 18 Like Nevada, other States have also followed this so-called “*Purcell* principle” and have
 19 rejected emergency judicial changes to election laws. *See, e.g., Liddy v. Lamone*, 919 A.2d
 20 1276, 1288 (Md. 2007); *Dean v. Jepsen*, 2010 WL 4723433, at *7 (Conn. Super. Ct. Nov. 3,
 21 2010); *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 740
 22 N.W.2d 444, 454 (Mich. 2007).

23 Based on the non-interference principle animating these decisions, the U.S. Supreme
 24 Court customarily stays lower-court orders thrusting last minute election changes upon
 25 States. In this way, the Court “allow[s] the election to proceed without an injunction
 26 suspending [election] rules.” *Purcell*, 549 U.S. at 6. This practice is longstanding. *See, e.g.,*
 27 *Williams v. Rhodes*, 393 U.S. 23, 34-35 (1968) (denying relief because it would result in

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1 “serious disruption of [the] election process” and “confusion” for voters); *see also North*
2 *Carolina v. League of Women Voters of N.C.*, 574 U.S. 927 (2014); *Husted v. Ohio State*
3 *Conference of NAACP*, 573 U.S. 988 (2014); *Perry v. Perez*, 565 U.S. 1090 (2011).

4 The practice of granting stays to maintain the election-law status quo has
5 constitutional overtones. It ensures that voters, candidates, and political parties know and
6 adhere to the same neutral rules throughout the election process. As *Purcell* explained, this
7 stability and predictability promotes “[c]onfidence in the integrity of our electoral process,”
8 which “is essential to the functioning of our participatory democracy.” 549 U.S. at 4. In
9 short, “[a]ny change in the election process at this time would negatively impact and disrupt
10 the election process, which is already underway.” *Id.* The *Purcell* principle guards against
11 those very concerns and should by itself preclude the relief Plaintiffs seek.

12 **V. CONCLUSION**

13 Based upon the foregoing, the Rural County Defendants respectfully request this
14 Court deny Plaintiff’s Motion for Preliminary injunction.

15 Dated this 15th day of May, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION (ECF NO. 2)** with the Clerk of the Court for the United States District Court by using the court’s CM/ECF system on the 15th day of May, 2020.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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EXHIBIT A

Williams v. DeSantis
No. 1:20-cv-67 (N.D. Fla Mar 17, 2020)

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

ACACIA WILLIAMS, DREAM DEFENDERS,
NEW FLORIDA MAJORITY,
ORGANIZE FLORIDA, TERRIAYNA SPILLMAN,
RAY WINTERS, KATHLEEN WINTERS,
and BIANCA MARIA BAEZ

Plaintiffs,

v.

CASE NO. 1:20cv67-RH-GRJ

RON DESANTIS, in his official capacity
as Governor of the State of Florida,
LAUREL M. LEE, in her official capacity as
Florida Secretary of State, and FLORIDA
ELECTIONS CANVASSING COMMISSION,

Defendants.

ORDER DENYING A TEMPORARY RESTRAINING ORDER

The Florida presidential primary has been in progress through voting by mail and early in-person voting and is concluding with in-person voting today, Tuesday, March 17, 2020. At 9:29 p.m. on Monday, March 16, the plaintiffs filed this lawsuit seeking a fundamental alteration in the manner in which further voting will be conducted. At 11:16 p.m., the plaintiffs moved for a temporary restraining order

or preliminary injunction. The defendants have entered appearances but, not surprisingly, have not yet responded to the complaint or motion.

The factual basis for the lawsuit and motion is substantial: the ongoing covid-19 national healthcare emergency. Going to the polls may risk infection of individual poll workers and voters and thus may advance the spread of the disease, increasing the already-substantial risk that the nation's healthcare capacity will eventually be overrun. Responsible supervisors of elections can take steps to reduce but not eliminate the risk.

Some voters are at greater risk than others. And the steps that responsible individuals have already taken to reduce the risk of spreading the virus—for example, by leaving college campuses—will make it difficult or impossible for some to vote.

As a prerequisite to a temporary restraining order or preliminary injunction, a plaintiff must establish a substantial likelihood of success on the merits, that the plaintiff will suffer irreparable injury if the injunction does not issue, that the threatened injury outweighs whatever damage the proposed injunction may cause a defendant, and that the injunction will not be adverse to the public interest. *See, e.g., Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc).

At this hour, with voting in progress, a temporary restraining order would be adverse to the public interest. At least until the polls close, and under all the circumstances, it will be in the public interest to allow the Governor, Secretary of State, and Supervisors of Elections to perform their respective roles. The national healthcare emergency is not a basis to cancel an election, and the plaintiffs do not assert it is.

This order makes no ruling on the merits. The order also makes no ruling on whether the plaintiffs' claims will become moot when the polls close or will instead either support a claim for relief affecting this primary or be capable of repetition yet evading review. A separate order will be entered setting procedures going forward.

IT IS ORDERED:

The motion for a temporary restraining order is denied. The motion for a preliminary injunction remains pending and will be addressed through further procedures after the polls close.

SO ORDERED on March 17, 2020.

s/Robert L. Hinkle
United States District Judge

EXHIBIT B

Acorn v. Blanco
No. 2:06-cv-611 (E.D. La Apr 21, 2006)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

GERALD WALLACE, ET AL.

CIVIL ACTION
NO. 05-5519
SECTION B(2)

VERSUS

KATHLEEN BLANCO, GOVERNOR, STATE OF
LOUISIANA, ET AL.

AND

MICHAEL TISSERAND, ET AL.

CIVIL ACTION
NO. 05-6487
SECTION B(1)

VERSUS

KATHLEEN BLANCO, GOVERNOR, STATE OF
LOUISIANA, ET AL.

AND

ASSOCIATION OF COMMUNITIES FOR REFORM
NOW, ET AL.

CIVIL ACTION
NO. 06-611
SECTION B(1)

VERSUS

KATHLEEN BLANCO, GOVERNOR, STATE OF
LOUISIANA, ET AL.

ORDER AND REASONS

Before the Court is ACORN Plaintiffs' (Plaintiffs) request¹
for this Court to extend the deadline for counting absentee

¹Plaintiffs' request came to the Court via fax on April 18, 2006. Defendants responded via letter on April 19, 2006, to which Plaintiffs replied on April 20, 2006. All correspondence will be simultaneously filed into the record.

ballots received by mail to occur on or before April 26, 2006, as opposed to doing so under existing law's election day deadline of April 22, 2006. For the reasons that follow, and to allow expedited consideration and resolution per parties' request, **IT IS ORDERED** that Plaintiffs' proposed extension is **DENIED**.

DISCUSSION

Plaintiffs contend deficiencies in the absentee ballot process will likely disenfranchise large numbers of displaced Orleans Parish voters. They contend absentee voters' requests for ballots can take as long as five to six days to process. Plaintiffs base this on information available on the Louisiana Secretary of State's Web site and anecdotal evidence from community organizations. Their proffered evidence consists of rank speculation and unsupported, conclusory allegations, grounded in part upon information about displaced persons who are not registered as Orleans Parish voters; displaced persons who have cancelled or suspended registrations and are thus not qualified to vote; or displaced first-time voters who registered to vote by mail and whose registration did not fall within the window provided by state law allowing first-time voters to vote by mail. "[U]nsupported allegations or affidavits setting forth 'ultimate or conclusory facts and conclusions of law' are insufficient" to substantiate Plaintiffs' claims that harm will likely result and court intervention is necessary to address this

speculative harm. *Galindo v. Precision Am. Corp.*, 754 F.2d 1212, 1216 (5th Cir. 1985)(discussing the use of affidavits in the context of summary judgment); *Ramon v. Cont'l Airlines*, No. 04-20983, 2005 U.S. App. LEXIS 23533, at **3-4 (5th Cir. Oct. 31, 2005)(noting the district court was within its discretion in striking affidavits containing nothing but legal conclusions).

Further, the issues raised herein do not rise to the level of constitutional² or Voting Rights Act violations. Plaintiffs challenge deficiencies in the process, noting that the deadlines set by the State do not allow voters who request absentee ballots by April 18, 2006, or displaced voters who request absentee ballots by the extended deadline of April 21, 2006, sufficient time to obtain and return a ballot by the April 22, 2006, deadline, violating voters' rights protected under Section 2 of the Voting Rights Act. It is ironic that a step taken by the State, apparently to allow as many displaced voters as possible the ability to request and receive an absentee ballot, by post or by fax, is now being challenged as having the exact opposite effect.

²The Court notes Plaintiffs would have to show discriminatory intent or purpose to show a constitutional violation of the Fourteenth or Fifteenth Amendment. See *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 481-82 (1997). Plaintiffs fail to allege any facts that would allow such a conclusion. Accordingly, the Court addresses Plaintiffs' allegations only under the Voting Rights Act.

The 1982 amendments to the Voting Rights Act replaced the intent test with a results test. *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 477-79 (1997)(discussing the 1982 amendments and noting the Section 2 results test). Under the new test, plaintiffs in a Section 2 case must show that based on the totality of circumstances, the electoral process is not equally open to participation by the members of a racial minority in that its members have less opportunity than other members of the electorate to participate in the political, electoral process. *Id.* at 479. Plaintiffs have simply failed to make that showing. Plaintiffs have shown at best that those voters, regardless of race, who waited until the last opportunity to request an absentee ballot may not be able to return that ballot on time, or may incur additional costs in order to do so. That is not enough for this Court to find a disparate impact, and thus a Voting Rights Act or constitutional violation.

Current statistics support this Court's conclusion that there is no disparate impact. Current statistics show more than 20,000 voters have voted by absentee ballot or by early voting at a parish registrar's office. Brian Thevenot, *Officials Go All-out to Safeguard Vote*, TIMES PICAYUNE, Apr. 21, 2006, at National p.1. "The racial breakdown of those voters -- 65 percent black, 32 percent white, and 3 percent other -- closely mirrors the breakdown of registered voters citywide." *Id.*

We should remember that our evacuation emanated from a natural disaster that ravaged our beloved City, casting thousands of our fellow citizens across the face of America. Hurricane Katrina (and Rita) crossed all divides, human-made and others. Due in large part to one of the three cases, state officials working with plaintiff-attorneys in that case made wide-reaching, beneficial changes in election laws to ameliorate the impact from these storms on displaced registered voters. To say their efforts will "disenfranchise" minority voters is disingenuous. For the first time in modern history, thousands of our registered voters were able to vote in a city election outside of the city limits. Despite argument that African-American voters would be less inclined to vote absentee than white voters, an overwhelming majority of absentee ballots were cast by African-American voters in this election. Moreover, the comparative percentages of early black-white ballots tracked voter registration rolls. These examples further evidence an extraordinary work in progress. Good causes are not promoted by degrading embellishments. Ideologies are not overcome by replacing them with other ideologies. Justice must be indivisible.

New Orleans, Louisiana, this 21st day of April, 2006.



UNITED STATES DISTRICT JUDGE