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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANDY MICHAEL THOMPSON, Plaintiff, vs. NEVADA SECRETARY OF STATE, Defendants	Case No. 2:25-CV-01284-CDS-EJY **NEVADA SECRETARY OF STATE'S OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND EXPEDITED HEARING**

Defendant the Nevada Secretary of State ("Secretary") hereby files this Opposition to Plaintiff Andy Michael Thompson's Motion for Temporary Restraining Order and Expedited Hearing ("Motion"). This Opposition is made and based upon the following Memorandum of Points and Authorities and the papers and pleadings on file.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Having had his frivolous State Court action dismissed, Plaintiff now blatantly violates the Rooker-Feldman Doctrine by seeking to have this Federal Court overturn his loss. Fortunately for this Court, Plaintiff's claims were already denied in litigation before Nevada's Eighth Judicial District. This case has no likelihood of success, and can be dismissed, allowing this Court to simply deny this motion as clearly violative of Rooker-

Feldman. This allows Plaintiff to continue to appeal his loss to the Nevada Supreme Court, the appellate court of his chosen venue. Alternatively, if this Court determines that it should look at the merits, Plaintiff still loses for the same reasons that he lost in Nevada State Court.

The Secretary is responsible for the execution and enforcement of the election laws, NRS 293.124(1), and that includes ensuring that the election laws relating to access to records are properly followed. The Secretary therefore seeks here to uphold his obligations, and to allow for the smooth administration of future elections. By his Motion, Plaintiff requests that the Court ignore that he cannot access relevant records. The Secretary asks, however, that the Court deny Plaintiff's Motion and confirm that county clerks[1] will not be forced to violate clear Nevada law.

Plaintiff purported to initiate this lawsuit as an election contest. (*See* ECF No. 1, pp. 2–5). This case is not, like Plaintiff's state court action before it, an election contest. Nevada law requires that an election contestant name as a defendant a candidate who won their election, but no such candidate has ever been named. *See* NRS 293.042, 293.407(2)(b)–(c). The time for filing an election contest for the 2024 general election is now well passed. *See* NRS 293.413(1).

This is critical. Because this is not an election contest, Plaintiff cannot access most of the materials he demands to be preserved. Following NRS 293.407–435's process would provide a contestant with an ability to inspect those records, but Plaintiff did not follow that process and can no longer do so. And there is no liberal construction that can transform this case into an election contest simply because Plaintiff is proceeding *Pro Se*; when it comes to procedural matters, "a pro se litigant cannot use his alleged ignorance as

[1] Clark County and Washoe County have created the position of registrar of voters in accordance with NRS 244.164(1). A registrar of voters "assume[s] all of the powers and duties vested in and imposed upon the county clerk of the county with respect to elections." NRS 244.164(2). As used in this Opposition, the term county clerks includes registrars of voters. *See* NRS 293.044. City clerks may also perform election administration functions. *See generally* NRS Chapter 293C. This Opposition focuses, however, on county clerks as they were the election officials primarily responsible for the conduct of the 2024 general election.

a shield to protect him from the consequences of failing to comply with basic procedural requirements." *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 225, 259 (2018). By failing to follow the statutory contest procedure, Plaintiff has created his own inability to access the records. His self-inflicted injury should not delay election administration.

Plaintiff has not met his burden of demonstrating that substantial evidence supports the issuance of a preliminary injunction. He has no likelihood of success on the merits: he does not have standing, he fails to state a claim, and he has not joined necessary parties. He also fails to establish that he would be irreparably harmed absent an injunction. The records he demands to be preserved generally are not in the Secretary's possession, custody, or control. And for those records that will be overwritten to facilitate the next elections—programs on voting machines[2]—Plaintiff cannot establish irreparable harm because he has no ability to access them.

Nor does the public interest warrant issuance of a preliminary injunction. County clerks must start preparing for elections now. Special elections could occur within months, and county clerks should be permitted to deploy any approved security update to their voting machines in advance. Further, the Legislature's prescribed process for records preservation should be upheld, and county clerks should not be put in the position of having to violate duly enacted preservation laws, potentially on pain of removal from office.

Notwithstanding all of this, should the Court decide that a preliminary injunction is appropriate, the Court should require Plaintiff to give a substantial bond. While Plaintiff does not provide enough detail in his Motion for the Court to "state" any injunction "terms specifically," Federal Rule of Civil Procedure 65(d)(1), the practical consequences of an injunction could see thousands of voting machines taken out of commission, with a need to be replaced to prepare for future elections. For just one types of voting machine used in Clark County and Washoe County alone, a bond of $26,531,312.50 would be appropriate.

[2] Nevada's election laws speak of mechanical recording devices and mechanical voting systems. *See generally* NRS Chapter 293B. For consistency with Plaintiff's choice of terminology, the Secretary refers to these here as "voting machines."

II. BACKGROUND

A. Election Administration in Nevada

Elections in Nevada are administered at both the State and local level. The Secretary is Nevada's Chief Officer of Elections with oversight responsibility for the election laws. NRS 293.124(1). He also has many specific responsibilities under the election law, *see, e.g.*, NRS 293.675(1) (Secretary to maintain statewide voter registration database), including responsibilities that directly inform county clerks' election work, *see, e.g.*, NRS 293.247(1) (Secretary to adopt regulations for the conduct of elections), 293.247(2) (Secretary to prescribe forms of declarations of candidacy and petitions), 293.250(1) (Secretary to prescribe form of ballots), 293.2504(1) (Secretary to provide elections training courses to county clerks).

But the Secretary does not perform every election administration function. Instead, the election laws require county clerks to perform many administrative functions as well. As relevant here, for the 2024 general election, county clerks were responsible for establishing polling locations, distributing mail ballots, and tabulating and reporting votes. *See* NRS 293.0335 (county clerk to designate central counting place for the compilation of election returns), 293.217 (county clerk to appoint election board officers), 293.269911 (county clerk to prepare and distribute mail ballots), 293.269927 (county clerk to check mail ballots), 293.266929 (county clerk to appoint a mail ballot central counting board), 293.269931 (mail ballot central counting board to count mail ballots), 293.3072 (county clerk to establish polling locations for election day), 293.3561 (county clerk to establish polling locations for early voting), 293.3606 (appropriate boards to count early voting returns), 293.363 (counting board to count ballots), 293.460 (county clerk to fix compensation of counting board officers). And as further described below, county clerks are also responsible for maintaining and safeguarding specific election records.

B. Voting Machines in Nevada

Under Nevada law, boards of county commissioners may purchase and use voting machines for elections. *See* NRS 293B.105. Prior to purchase, however, the Secretary must

first approve the voting machine. NRS 293B.1045(1). Each of Nevada's 17 counties has purchased their own voting machines. Exhibit. 3, Wlaschin Decl. ¶ 3. And each of those machines has been approved by the Secretary. *Id.* ¶ 4.

For the Secretary to approve a voting machine, the voting machine must "meet or exceed the standards for voting systems established by the United States Election Assistance Commission" ("EAC"). NRS 293B.104. The EAC is required to provide for the accreditation of independent, non-federal laboratories qualified to test voting systems to Federal standards. *See* 52 U.S.C. § 20971(b). And the EAC must "provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories." 52 U.S.C. § 20971(a)(1). The software on Dominion Voting Systems, Inc.'s ("Dominion") voting machines used in Nevada for the 2024 general election was certified by an independent laboratory. Exhibit. 3, Wlaschin Decl. ¶ 4; *see also* Nev. Sec'y of State, Voting System, *available at* https://tinyurl.com/yn3d6myb (last visited May 27, 2025) (identifying use of Dominion Democracy Suite 5.17); EAC, Certificate of Conformance, Dominion Voting Systems, Democracy Suite 5.17, *available at* https://tinyurl.com/5b6zavu8. Further, the Secretary can only approve a voting machine after an examination by a person approved by the Secretary, and the Secretary's own independent examination. NRS 293B.1045. The Secretary's approval is also required before a voting system can be changed or improved. NRS 293B.1045(6).

In Clark County and Washoe County, a variety of voting machines are used to administer elections. For instance, and only by way of example, for the 2024 general election, both counties used:

> Dominion ImageCast X ("ICX") machines. Exhibit. 3, Wlaschin Decl. ¶ 5. These are the machines that in-person voters use to make their electoral selections. *Id.* ¶ 6. The Secretary received a quote from Dominion on May 27, 2025 to purchase one ICX for $4,097.50. *Id.* Clark County has 5,000 ICX machines, and Washoe County has 1,475. *Id.*

C. This Lawsuit

Plaintiff initiated this lawsuit against only the Secretary on July 15, 2025. However, this lawsuit follows his failed effort in state court, where he unsuccessfully sought to challenge the 2024 election. That lawsuit, filed in Nevada's Eighth Judicial District Court under case number A-24-906377-C, and now on appeal to the Nevada Supreme Court under case number 90846 unsuccessfully sought identical remedies. That lawsuit will generally be referred to as the "State Court Litigation."

Plaintiff initiated the State Court Litigation against only the Secretary on November 19, 2024. On December 23, 2024, Plaintiff filed an amended statement of contest ("Amended Contest"), again naming only the Secretary as a defendant. The Secretary moved to dismiss the Amended Contest on February 10, 2025, and the Court granted dismissal during a March 25, 2025, hearing. The Court also granted Plaintiff leave to file a third amended complaint, and Plaintiff filed his Third Amended Complaint and Demand for Jury Trial ("TAC") on May 9, 2025.

In his TAC, Plaintiff asserted three causes of action which encompass his claims here. Specifically, the second cause of action alleges a failure to preserve complete cast vote records, machine logs and other required election records, in violation of Nevada law and 52 U.S.C. § 20701, the identical issue behind each of his causes of action here. Unlike in the State Court Litigation, Plaintiff does not engage in wild speculation regarding the 2024 election, so this court is spared his ruminations on "algorithmic vote manipulation patterns", statistically impossibly voting behavior and "ballot decrement." However, without that speculation, his complaint is simply a request for a Federal Court to stop Nevada's Secretary of State from meeting its statutory obligation to approve requests to update voting software pursuant to NRS 293B.1045(6).

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III. STANDARD OF LAW

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Quiroga v. Chen,* 181 F.Supp.2d. 1226, 1228 (D.Nev. 2010)

> "[t]he proper legal standard for preliminary injunctive relief requires a party to demonstrate 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Stormans, Inc. v. Selecky,* 586 F.3d 1109, 1127 (9th Cir.2009)

In cases like this one, where the party opposing injunctive relief is a government official or entity, the potential hardship and the public interest considerations are merged. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Further, a preliminary injunction may only be issued "if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Federal Rule of Civil Procedure ("FRCP") 65(c).

Finally, an order granting an injunction or restraining order must "state the reasons why it issued"; "state its terms specifically"; and "describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." NRCP 65(d)(1). And an order granting an injunction would also need to be in writing to be effective. *See Nalder v. Eighth Jud. Dist. Ct.*, 136 Nev. 200, 208, 462 P.3d 677, 685 (2020) ("Generally, a 'court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective.'").

IV. ARGUMENT

A. Plaintiff has not Shown any Probability of Irreparable Harm

1. The Rooker-Feldman Doctrine Bars Plaintiff's Claims under Fed. R. Civ. P. 12(b)(1).

The Rooker-Feldman Doctrine precludes lower federal courts from reviewing state court judgments. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). Federal courts lack jurisdiction over claims that are "inextricably intertwined" with state court judgments. *Feldman*, 460 U.S. at 486–87. As succinctly defined by the Supreme Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,*

544 U.S. 280, 284, 125 S. Ct. 1517, 1521–22, 161 L. Ed. 2d 454 (2005), "The Rooker–Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, (2005). Here, Plaintiff is seeking federal review of the state court's dismissal of his Failure to Preserve Election Records Cause of Action. The Nevada State Court issued a judgment dismissing the State Court Litigation on June 18, 2025, ruling that Plaintiff had not filed a legitimate election contest, but "if the Court found that Plaintiff had filed a legitimate contest, **Plaintiff would not be allowed the access under the law to the data Plaintiff seeks to access**." [emphasis added] Eighth Judicial District Court's June 18, *Order on Motion to Dismiss* page 9, lines 16 – 19 Exhibit 4. Plaintiff's Motion's for Reconsideration of the June18, 2025 Order and for Preservation of Judicial Economy, Emergency Motion for Stay of Election Machine Overwrite, and Emergency Motion to Expedite Rulings on Pending Motions was denied on August 4, 2025. Exhibit 5, August 4 Order.

Plaintiff's claims here are all attempt to re-litigate the same issues and asks this Court to overturn the State Court's decision denying him access to voting machines after his complaint regarding identical facts was dismissed. Such an action is explicitly barred by Rooker-Feldman, which prohibits federal courts from hearing cases that seek to "undo" a state court judgment. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

2. This is not an Election Contest and Plaintiff's Ability to Inspect Records is Narrowly Circumscribed.

There is no common law right to contest an election; the right to contest an election must be created by state law. *See, e.g.*, *Rock v. Lankford*, 301 P.3d 1075, 1082 (Wyo. 2013) ("Such contests are regulated wholly by the constitutional or statutory provisions. They are not actions at law or suits in equity and were unknown to the common law."); *Dinwiddie v. Bd. of Cnty. Comm'rs of Lea Cnty.*, 103 N.M. 442, 445 (1985) (similar); *Taylor v. Roche*,

271 S.C. 505, 509 (1978) (similar); *see also* 29 C.J.S. Elections § 425 (2025); 26 Am. Jur. 2d Elections § 382 (2025).

The Nevada Legislature has provided a statutory process for election contests. Nevada law defines an election contest as "an adversary proceeding between a candidate for a public office who has received the greatest number of votes and any other candidate for that office or, in certain cases, any registered voter of the appropriate political subdivision, for the purpose of determining the validity of an election." NRS 293.042. As the Nevada Supreme Court has explained, the process for "contest[ing] an election based on errors in the conduct of an election" is set forth in "NRS 293.407–.435." *Anthony v. Miller*, 137 Nev. 276, 279, 488 P.3d 573, 575 (2021); *id.*, 137 Nev. at 281, 488 P.3d at 577 ("Once an election takes place and the voters have had the opportunity to vote, any challenge to the conduct of the election must proceed by way of an election contest brought pursuant to NRS 293.407–.435."). There is thus no standalone ability to contest an election based on NRS 293.410. NRS 293.410(2) identifies grounds upon which an election may be "contested," which necessarily incorporates the requirements of NRS 293.407. And under NRS 293.407, a statement of contest for an election contest must set forth "[t]he name of the defendant," and "[t]he office to which the defendant was declared elected." NRS 293.407(2); *see also* NRS 293.042.

To contest the 2024 general election, Plaintiff was required to file his contest within 14 days after the election since no recount was demanded, naming as a defendant a candidate who won their 2024 general election. *See* NRS 293.407(2), 293.413(1); He did not do so. As a result, this is not an election contest, and Plaintiff is limited in the records he can access as Nevada's election laws make clear that certain records are only available in the event of a contest. *See* NRS 293.391, 293B.155, 293B.170. The Legislature's election contest statutes ensure finality in elections with no undue delay, while simultaneously preserving candidates' and voters' abilities to meaningfully challenge the conduct of an election. Because "election contests draw courts into political matters," a "court must be ever mindful in an election contest that it has been delegated responsibility in a basically

political matter and is not free to create criteria that may, in its opinion, be more suitable than those the legislature has established." *Rock*,301 P.3d at 1082 (citation omitted).

a. The Plain Language of the Relevant Election Record Retention Statutes Establishes that Plaintiff cannot Access those Records

The plain language of NRS 293.391, 293B.155, and 293B.170 confirms that Plaintiff's ability to access records is narrowly limited. *See Sierra Nev. Adm'rs v. Negriev*, 128 Nev. 478, 481, 285 P.3d 1056, 1058 (2012) ("We construe a plain and unambiguous statute according to its ordinary meaning.").

NRS 293.391 requires county clerks to seal and place specified records in a vault after the canvass of the votes by the boards of county commissioners. The records must be "preserved for at least 22 months," and "destroyed immediately after the preservation period." NRS 293.391(1). This is consistent with Nevada's record retention policy. *See* Nev. State Library, Archives & Public Records Local Government Records Retention Schedules, at 129–36, *available at* https://nsla.nv.gov/ld.php?content_id=60238524. And it is also consistent with 52 U.S.C. § 20701, which requires retention of certain election records for 22 months.

The records that must be sealed and placed in a vault pursuant to NRS 293.391 include (1) voted ballots; (2) rejected ballots; (3) spoiled ballots; (4) challenge lists; (5) records printed on paper of voted ballots pursuant to NRS 293B.400; (6) reports prepared pursuant to NRS 293.269937; (7) stubs of ballots used; (8) records of voted ballots that are maintained in electronic form (i.e., CVRs); and (9) unused ballots. All of these records are only available for inspection in election contests. *See* NRS 293.391(4)–(5). By specifying that these sealed records placed in vaults are accessible in election contests, the Legislature has foreclosed any argument that Plaintiff in this non-contest action can access them. *See, e.g.*, *Harvey v. State*, 136 Nev. 539, 543, 473 P.3d 1015, 1019 (2020) ("We follow 'the maxim "*expressio unius est exclusio alterius,*" the expression of one thing is the exclusion of another.'"). The only records identified in NRS 293.391 that are deposited with a county clerk and that are generally available for inspection outside of a contest are

the "rosters containing the signatures of those persons who voted in the election," and the unsealed "tally lists." NRS 293.391(1), (3).

NRS 293B.155 and 293B.170 also strictly limit the inspection of programs on voting machines. After logic and accuracy testing is conducted on voting machines, a clerk must seal the voting machine programs "in an appropriate container." NRS 293B.155(3). The contents of that container "are not subject to the inspection of anyone except in the case of a contested election." NRS 293B.155(4). Following the election, the programs used must "be sealed, retained and disposed of in the manner provided in NRS 293.391 . . . for other ballots." As described above, materials sealed under NRS 293.391, including ballots, are not available for inspection except in an election contest. This is consistent with other states' statutes that limit access to certain election records only where statutorily authorized. *See Christenson v. Allen*, 264 Minn. 395, 401 (1963), *superseded by statute as recognized in Bergstrom v. McEwen*, 960 N.W. 2d 556 (Minn. 2021). ("If the legislature desired to provide for a recount of votes independent of an authorized election contest, . . . it could easily have done so . . . ."); *see also Sumner v. N.H Sec'y of State*, 168 N.H. 667, 671 (2016) (rejecting argument that "the right to vote includes the right to inspect ballots").

At bottom, these statutes serve "a protective purpose" and "should be liberally construed in order to effectuate the benefits intended to be obtained." *Cote H. v. Eighth Jud. Dist. Ct.*, 124 Nev. 36, 40, 175 P.3d 906, 908 (2008). The statutes protect against undue and belated challenges to the results of elections. The Legislature established specific election contest procedures, and winning candidates should not be subjected to challenges to their elections in perpetuity. Nor should election administrators be forced to delay election administration because a Plaintiff seeks to avoid following statutorily required procedures. Any conclusion that Plaintiff can access sealed records would necessarily and improperly nullify the protective purposes of the election records statutes.

b. Even if the Relevant Election Record Retention Statutes were Ambiguous, the Secretary's Interpretation of them Still Prevails.

Even if there were some ambiguities in the language of the election records statutes, the ambiguities should be resolved in favor of the interpretation advanced by the Secretary. To start, "if a statute is ambiguous, the construction placed thereon by other coordinate branches of government is entitled to deference." *See Indep. Am. Party of State v. Lau*, 110 Nev. 1151, 1155, 880 P.2d 1391, 1393 (1994). The Secretary's interpretation of the election records statutes would therefore be entitled to deference.

Further, legislative history confirms the Secretary's reading. *See Great Basin Water Network v. State Eng'r*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010) ("When a statute is ambiguous, this court determines the Legislature's intent by evaluating the legislative history and construing the statute in a manner that conforms to reason and public policy."). In amending NRS 293.391 in 2017 through Assembly Bill 418, the legislative history reflects a common understanding that specified records would only be available in an election contest.

For instance, Assemblyman James Ohrenschall and Senator Heidi Gansert confirmed that a manual inspection of ballots could occur only as part of an election contest. Senate Comm. on Legis. Operations & Elections Minutes, at 3 (79th Sess. May 3, 2017), *available at* https://tinyurl.com/yeyjhj6a ("[A] manual inspection can still happen, . . . but it would have to come as a result of an election challenge or contest." (Ohrenschall)); ("It also precludes inspection except if it is contested." (Gansert)). While rosters "are open to any elector," an individual who believes "somehow there has been machine error or a software malfunction" would not be able to generally inspect voted ballots and "records printed on paper of voted ballots." *See id.* at 4 (Ohrenschall); *see also id.* ("[A] contestant of an election may inspect all of the material regarding that election which is preserved pursuant to subsection 1 or 2 except the voted ballots." (Gansert)).

With respect to voting machines, Legislative Counsel Bureau Counsel Kevin Powers and Deputy Secretary of State for Elections Wayne Thorley also confirmed that a judge could require their inspection in an election contest. Assembly Comm. on Legis. Operations & Elections Minutes, at 21–22 (79th Sess. Apr. 11, 2017), *available at*

https://tinyurl.com/zzk4ehnr ("Ultimately, if an election contest is filed and a judge determines that there is merit to that contest, the judge may require the election official or someone else to inspect the machine as part of the court proceedings." (Thorley)); (in an election contest, "the plaintiff candidate would have the opportunity to engage in discovery and inspect the machines and take deposition testimony." (Powers)). Plaintiff thus cannot access the records that are sealed and placed in a vault pursuant to NRS 293.391 and 293B.170.

3. Plaintiff has Failed to Establish by Substantial Evidence that an Injunction is Needed to Prevent Irreparable Harm.

Against this statutory backdrop, it is apparent that Plaintiff's requested relief must be denied. Plaintiff requests an injunction preventing the Secretary and all county election officials (none of whom he has named as parties) from "implementing the Dominion Voting System 5.20 update until forensic preservation of all 2024 election records is conducted." ECF 9 Motion at Page 4 – 9. This request reflects a fundamental misunderstanding of election administration in Nevada.

To start, Plaintiff provides no evidence of the imminent destruction of records. The Motion mentions cast vote records, but Plaintiff offers nothing to suggest that cast vote records for the 2024 general election are at risk. They must be stored in the county clerks' vaults. NRS 293.391(1). At best, the record in this case reflects that the Secretary has authorized counties to update their Dominion voting machines. Beyond that, however, Plaintiff offers no evidence that any record is in danger of destruction. He therefore has not carried his burden of showing any reasonable probability of irreparable harm as to any other record. *See Univ. & Cmty. Coll. Sys. of Nev.*, 120 Nev. at 721, 100 P.3d at 187. There is no evidence at all to support the issuance of an injunction as to any record unrelated to voting machines. *See Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018) (a moving party "must make a prima facie showing through substantial evidence that it is entitled to the preliminary relief requested").

The Plaintiff also disregards that the Secretary is not responsible for maintaining the identified records. Instead, the county clerks maintain those records. *See, e.g.*, NRS 293.391(1) ("records of voted ballots that are maintained in electronic form," i.e., CVRs), 293B.155 (voting machine programs), 293B.170 (same), 293B.365 (adjudication records); NAC 293B.022 (chain-of-custody logs), 293B.040 (similar); *see also* Exhibit 3, Wlaschin Decl. ¶ 8. No county clerk is a party, and the Court cannot bind them with an order in this action. The Court can only bind "the parties," "the parties' officers, agents, servants, employees, and attorneys"; and "other persons who are in active concert or participation with" them." Fed. R. Civ. P. 65(d)(2).

The county clerks are not in active concert or participation with the Secretary, however, because they are not abetting the Secretary or legally identified with him. *See Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 833 (2d Cir. 1930) (L. Hand, J.); *see also Texas v. Dep't of Labor*, 929 F.3d 205, 211 (5th Cir. 2019); *Nat'l Spiritual Assembly of Baha'is of U.S. Under Hereditary Guardianship, Inc v. Nat'l Spiritual Assembly of the Baha'is of the U.S. of Am., Inc.*, 628 F.3d 837, 848 (7th Cir. 2010).[3] In short, entering an order here would have no legal effect and would not prevent any supposed harm.

Finally, with respect to cast vote records and voting machine data and programs, those cannot be accessed in this non-contest action, as described above. *See* NRS 293.391, 293B.155, 293B.170. Plaintiff has no ability to access those records because he chose not to follow the proper procedure for contesting an election. Whether any of those records are modified or updated, there is no impact to Plaintiff because he cannot inspect them. There is thus no way for him to show any possibility of irreparable harm absent an injunction.

Plaintiff's requests essentially boil down to a single request that the Secretary not be permitted to authorize updates to voting machines. He has not provided "substantial evidence" to support issuance of a preliminary injunction for any other type of record. And with respect to voting machines, Plaintiff cannot access records on them because this is not

[3] *See Nelson v. Heer*, 121 Nev. 832, 834, 122 P .3d 1252, 1253 (2005) ("[F]ederal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules.").

an election contest. NRS 293.391, 293B.155, 293B.170.

Plaintiff is the master of his complaint. He chose not to follow the procedures for an election contest, he chose to proceed in State Court, and he cannot avoid the consequences simply because he is proceeding *Pro Se*. *Rodriguez*, 134 Nev. at 659, 428 P.3d at 259. Plaintiff's failure to follow the proper contest procedures is not a reason to grant an injunction. To grant an injunction, the Court must explain the reasons for its issuance, Fed. R. Civ. P. 65(d)(1)(A), and as part of that, the Court would need to conclude that Plaintiff could, in fact, access records on voting machines. Nevada law makes clear that he cannot. There is thus no way the Secretary approving updates to voting machines causes Plaintiff any harm, and the Court must deny the Motion.

B. Plaintiff has no Likelihood of Success on the Merits.

Plaintiff cannot succeed on his Complaint for three independent reasons. First, he does not have standing because he does not allege (let alone provide substantial evidence of) a cognizable injury-in-fact and/or that the Secretary's conduct caused any injury. Second, Plaintiff has not joined parties who are necessary based on their legally protected interests at issue in this litigation. Third, Plaintiff states no claim against the Secretary because there is no private right of action to enforce specified statutes, he cannot prove facts that would entitle him to relief, and/or he has not alleged any conduct by the Secretary that would tie the Secretary to the supposed violations.

1. Plaintiff Lacks Standing

Nevada "caselaw generally requires the same showing of injury-in-fact, redressability, and causation that federal cases require for Article III standing." *Nat'l Ass'n of Mut. Ins. Cos. v. Dep't of Bus. & Indus., Div. of Ins.*, 139 Nev. 18, 22, 524 P.3d 470, 476 (2023).[4] This means that Plaintiff bears the burden of establishing that he has "(1) suffered

[4] Nevada courts have not definitively resolved the issue of standing as one of subject matter jurisdiction (NRCP 12(b)(1)) or as a failure to state a claim (NRCP 12(b)(5)). *See Superpumper, Inc. v. Leonard*, 137 Nev. 429, 433 n.2, 495 P.3d 101, 106 n.2 (2021) (reserving question of "whether standing and subject matter jurisdiction are distinct principles"). Either way, Plaintiff lacks standing here, and his TAC cannot survive dismissal.

an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). And he must do so for each individual claim. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). Plaintiff has not done so and thus fails to establish he has any likelihood of success on the merits.

a. Plaintiff does not Establish a Cognizable Injury-In-Fact that is Fairly Traceable to the Secretary.

Plaintiff's claims for relief all stem from an alleged a violation of 52 U.S.C. § 20701 which mandates retention of all election records for 22 months. Complaint page 4-5. Plaintiff fails, however, to establish by substantial evidence either an injury-in-fact or causation.

b. Plaintiff Alleges at Best Only an Insufficient Generalized Grievance.

A Plaintiff may have standing to sue for an "informational injury," *see FEC v. Akins*, 524 U.S. 11, 24–25 (1998), but that first requires a right to the information, *see TransUnion LLC v. Ramirez*, 594 U.S. 413, 441 (2021). Plaintiff, however, has no right to access the records specified in 52 U.S.C. § 20701. Only the U.S. Attorney General or her representative may demand those records. *See* 52 U.S.C. § 20703. And only records demanded by the U.S. Attorney General or her representative can be compelled to be produced by a federal court. 52 U.S.C. § 20705. Further, apart from rosters and tally lists, none of the records identified in NRS 293.391 are accessible in this non-contest action. Plaintiff therefore cannot establish anything more than a generalized grievance relating to his allegations under 52 U.S.C. § 20701 and NRS 293.391. *See All. for Hippocratic Med.*, 602 U.S. at 395–96 (no standing for Plaintiffs asserting FDA was not properly collecting and disseminating information where plaintiffs did not "suggest[] that federal law requires FDA to disseminate such information upon request by members of the public").

c. Plaintiff does not Establish that the Secretary Caused his Supposed Injuries.

Plaintiff's Complaint also fails because the alleged injury is not traceable to the Secretary. 52 U.S.C. § 20701 imposes retention requirements on "officer[s] of election" or designated custodians who come into possession of relevant records and papers. Under Nevada law, the officers of elections tasked with retaining the pertinent voting materials required under 52 U.S.C. § 20701 are county clerks. *See* 52 U.S.C. § 20706; NRS 293.391. The same is true for records retained pursuant to NRS 293.391; they must be preserved by county clerks, not the Secretary. Plaintiff's sole allegation is that on July 18, 2025, the Secretary notified the vendor and 15 county officials that their change and modification requests were approved to install the 5.20 update on machines that are in their custody and control.

2. Plaintiff has not Joined a Necessary Party.

Fed. R. Civ. P. 19(a)(1)(B) requires joinder of a party where that party "claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may . . . as a practical matter impair or impede the person's ability to protect the interest." Pursuant to Fed. R. Civ. P. 12(b)(6), dismissal is appropriate for failure to join a party under Nev. R. Civ. P. 19. This is because the Court cannot enter a final judgment absent necessary parties. *Univ. of Nev. v. Tarkanian*, 95 Nev. 389, 396, 594 P.2d 1159, 1163 (1979) ("If the interest of the absent parties "'may be affected or bound by the decree, they must be brought before the court, or it will not proceed to a decree.'"'); *see also Schwob v. Hemsath*, 98 Nev. 293, 294, 646 P.2d 1212, 1212 (1982) ("Failure to join an indispensable party is fatal to a judgment and may be raised by an appellate court sua sponte.").

Parties are necessary when they have a right protected under the law or under a contract. *See, e.g.*, *Dawavendewa v. Salt Riger Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1157 (9th Cir. 2002) ("[A] party to a contract is necessary . . . to litigation seeking to decimate that contract."); *Shermoen v. United States*, 982 F.2d 1312, 1317 (9th Cir. 1992) (absent parties had interest in not having their "legal duties judicially

determined without consent").[5] Plaintiff requests relief including an order enjoining "all county election officials from implementing the Dominion Voting System 5.20 update…" ECF 9 Motion, page 4–9. As the state court noted in its order dismissing his claims, "Defendant is correct that the county registrars of voters that were responsible for actually maintaining the machines and running the election that are at issue in this asserted "contest" would also be proper parties given the relief sought, and that the counties here were actually relevant actors." Exhibit 4 District Court's June 18, 2025 Order, Page 8, lines 20–24. These requests cannot be granted absent additional, necessary parties.

In Nevada, counties may purchase and use voting machines. *See* NRS 293B.105. For those voting machines that have already been approved by the Secretary, *see* NRS 293B.1045(1), counties would have a statutorily protected interest in using them for future elections, *see* Nev. Sec'y of State, Voting System, *available at* https://tinyurl.com/yn3d6myb (last visited May 27, 2025) (identifying voting machines approved as of February 2024). As a result, and because Plaintiff in his Motion has taken issue with the use of Dominion voting machines, *see* ECF 9 Motion at 2, counties that have purchased Dominion voting machines would be necessary parties whose absence from this litigation requires dismissal under Nev. R. Civ. P. 12(b)(6).

Further, at a minimum, Dominion would have a legally protected interest in its voting machines. Plaintiff's request for a forensic audit would impair Dominion's ability to protect against disclosure of proprietary information. *See, e.g.*, NRS 600A.030(5) (defining trade secret), 600A.070 (requiring courts to preserve, by reasonable means, the secrecy of an alleged trade secret in civil and criminal actions). The Secretary further understands Dominion to have preserved its interest in its proprietary information through its contracts. *See* Exhibit 3, Wlaschin Decl. ¶ 9; Ex. 1, Dominion Voting System Acquisition Agreement § 5.6 (Prohibited Acts). Accordingly, Plaintiff's failure to join Dominion also

[5] *See Nelson*, 121 Nev. at 834, 122 P .3d at 1253 ("[F]ederal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules.").

necessitates dismissal under Fed. R. Civ. P. 12(b)(6), and Plaintiff cannot establish a likelihood of success on the merits.

3. Plaintiff Fails to State any Claim.

a. There is no Private Right of Action for 52 U.S.C. § 20701 and Plaintiff cannot Prove Facts that would Entitle Him to Relief.

Plaintiff alleges violations of record retention statutes under Federal law (52 U.S.C. § 20701). ECF 1, page 4-5.

Plaintiff cannot bring his second claim under 52 U.S.C. § 20701 because there is no private right of action to enforce it. *See, e.g.*, *Soudelier v. Office of Sec'y of State, La.*, Case No. 22-30809, 2023 WL 7870601, at *3 (5th Cir. Nov. 15, 2023); *Fox v. Lee*, Case No. 4:18cv529-MW/CAS, 2019 WL 13141701, at *1 (N.D. Fla. Apr. 2, 2019). "Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). To determine whether Congress created a private right of action, a court begins with a statute's "text and structure." *See id.* at 288. "Statutes that focus on the person regulated rather than the individuals protected create 'no implication of an intent to confer rights on a particular class of persons.'" *Id.* at 289 (citation omitted). That is the case with 52 U.S.C. § 20701, which focuses on persons regulated.

More fundamentally, though, even if there were a private right of action under 52 U.S.C. § 20701, Plaintiff still fails to state a claim that the Secretary violated those statutes. As discussed in § IV.A.1, *supra*, county clerks retain the voting records that are pertinent to this lawsuit, not the Secretary. Plaintiff's claims are thus subject to dismissal because he fails to include allegations that are "legally sufficient to constitute the elements of the claim asserted." *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009).

Dismissal is also appropriate because Plaintiff cannot prove any "set of facts, which, if true, would entitle [him] to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). As discussed in § IV.A.1, *supra*, Plaintiff cannot obtain the

records he would need to prove that there has been a violation of either 52 U.S.C. § 20701. The election contest statutes operate to ensure that candidates and voters are afforded an expedient way to challenge the results of an election, while also ensuring the finality of results. *See Anthony*, 137 Nev. at 281, 488 P.3d at 477 ("Once an election takes place and the voters have had the opportunity to vote, any challenge to the conduct of the election must proceed by way of an election contest brought pursuant to NRS 293.407–.435."). Plaintiff cannot short circuit the Legislature's design through this action.

C. The Public Interest Warrants Denial of the Motion.

Plaintiff's requests, which essentially boil down to a request that the Secretary be enjoined from authorizing updates to voting machines, have drastic consequences. The Dominion update at issue is an EAC-certified update for, among other things, security purposes. *See* Exhibit 3, Wlaschin Decl. ¶ 10; Exhibit 2, EAC Certificate of Conformance, Dominion Voting Systems & Democracy Suite 5.20 at 2. There is no public interest in preventing security updates to voting systems.

Further, the State Court Litigation has already been pending for over six months. The Secretary's coordination with county clerks to conduct mock elections to ensure the security and smooth operation of future elections has already been impacted. *See* Ex. 3, Wlaschin Decl. ¶ 13. One mock election scheduled for June 23 to June 27, 2025 was impacted because one of the participating counties, Churchill County did not use voting machines in order to maximize Plaintiff's ability to have a court rule on his motions in the State Court Litigation. This decreased the benefits of the mock election in Churchill County. Another mock election is taking place between August 4 to August 8, 2025. *Id.* These mock elections will be run on voting machines,[6] and to ensure the best possible outcome, the mock elections should be run after voting machines are updated. *Id.*

Second, the next election in Nevada may happen at an unpredictable time. While the next regularly scheduled election will be the June 9, 2026 primary election, NRS 293.175(1),

[6] A mock election is only run on a handful of ICX machines. *See* Ex. 3, Wlaschin Decl. ¶ 13.

Nevada's voters enjoy the right to recall an elected official and elect a new one at a special election. A recall can be commenced by filing a petition signed by a sufficient number of voters. *See* NRS 306.015; Nev. Const. art. 2 § 9. Depending on how quickly petition signatures can be gathered, a petition may proceed to signature verification within 90 days after the petition is initially filed. *See* NRS 306.015, 306.035(3)(b). From there, signature verification can take up to approximately 30 days. *See* NRS 293.1276(1), 293.1277(1). And for a petition that qualifies, a special election must be had within 20 to 30 days, excluding Saturdays, Sundays and holidays, of notice of the petition's sufficiency by the Secretary. NRS 306.040(1), (4). This means that we may be only a few short months away from an election where voting machines will be used. In fact, the Deputy Secretary of State for Elections has already learned that individuals have recently asked three county clerks about initiating the recall process. A recall petition has been filed in Mineral County and signatures are currently being collected. This effort may result in a special election if sufficient signatures are collected. Ex. 3, Wlaschin Decl. ¶ 14.

The public interest favors permitting the Secretary to approve security updates to voting machines to allow counties to meet their obligations to hold special elections, using the most up-to-date systems. It is in the public's interest to allow the Secretary and county clerks to begin the arduous task of updating the many thousands of voting machines across the State expeditiously.

Further, the Legislature has designed the election contest process to allow for candidates and voters to meaningfully challenge elections. The process advances the public interest by establishing the finality of elections. Plaintiff failed to follow the process for initiating an election contest, and it is his own actions that have resulted in his inability to access the records at issue here. It is not in the public interest to stall election administration simply because Plaintiff chose not to initiate this lawsuit properly to accomplish his goals.

Nor is it in the public interest to cast doubt on the election records retention laws. If the Court were to enter an injunction against updates to voting machines, the Court

would be concluding that county clerks may be required to provide private parties access to election records that are sealed, in violation of NRS 293.391 and 293B.170. This could potentially result in actions for the county clerks' removal, as public officers who are guilty of malpractice or malfeasance in office, or who "refuse[] or neglect[] to perform the official duties pertaining" to their office may be subject to removal proceedings. *See* NRS 283.440. An order requiring county clerks to violate Nevada law could have enormous downstream consequences for dedicated public servants trying to faithfully execute the election laws.

Balanced against all of this, Plaintiff cannot show that the public interest favors delaying updates to voting machines he has no ability to inspect.

D. If the Court Intends to Issue an Injunction the Court should Require Plaintiff to Post a Substantial Bond.

The court may only issue a preliminary injunction "if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). This means that "the bond [must] be filed before the order is made." *State ex rel. Friedman v. Eighth Jud. Dist. Ct.*, 81 Nev. 131, 134, 399, P.3d 632, 633 (1965) (citation omitted). In the event the Court intends to grant Plaintiff's requested injunction, the Court should require Plaintiff to file a bond. Plaintiff does not provide any specifics on which voting machines he demands be preserved, but preservation would essentially require that the voting machines be taken out of commission and replaced. Assuming, for instance, that Plaintiff seeks preservation of ICX machines used in Clark County and Washoe County, *see* Mot. at 2, he should be required to post a bond of $26,531,312.50. That would be $4,097.50 for each of Washoe County and Clark County's 6,475 X ICX machines. *See* Exhibit 3, Wlaschin Decl. ¶¶ 6. If Plaintiff seeks preservation of additional voting machines, the bond should be further increased. Subject to further information from Plaintiff on his specific demands, the Secretary requests the opportunity to provide supplemental briefing on an appropriate bond should the Court be inclined to grant an injunction.

V. CONCLUSION

Granting a preliminary injunction here would require the Court to conclude that Plaintiff has a reasonable probability of harm despite his losing a nearly identical action in State Court in June. While he has appealed that action to the Nevada Supreme Court, the Rooker-Feldman doctrine prohibits this Court from overturning the state court's dismissal. Nevada's laws prohibit access to many of the election records at issue, and notwithstanding that Plaintiff has failed to provide substantial evidence of any harm. Further, the Court would need to conclude that Plaintiff is likely to succeed on the merits of his claims, even though Plaintiff has failed to support by substantial evidence that he has standing or that he has stated a claim, and even though Plaintiff has failed to join necessary parties. The Court would also need to reduce any injunction to a written order that "state[s] the reasons why it issued"; "state[s] its terms specifically"; and "describe[s] in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." *See* Fed. R. Civ. P. 65(d)(1). And the Court would have to consider and require an appropriate bond before issuing the injunction.

However, for the reasons detailed above, no injunction is appropriate here, and Plaintiff's Motion should be denied.

DATED this 7th day of August 2025.

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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 August 7, 2025, I filed the foregoing document NEVADA SECRETARY OF STATE'S OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND EXPEDITED HEARING via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically. A prepaid postage copy of this document has been placed in the U.S. mail to the following:

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In Pro Per

/s/ *Mark Cryer*
AG Legal Secretary

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