CITIZEN OUTREACH FOUNDATION

Putting the Public Back in Public Policy

TO: Cisco Aguilar, Nevada Secretary of State
FROM: Chuck Muth, President, Citizen Outreach Foundation
DATE: September 8, 2024

OPEN LETTER TO NEVADA SECRETARY OF STATE

Secretary Aguilar,

On August 27, 2024, you issued a private memorandum to Nevada's 17 County Clerks & Registrars providing "guidance" on "the 'personal knowledge' required to challenge a registered voter pursuant to NRS 293.535 and NRS 293.547."

The memorandum was issued without even the courtesy of a heads up to me and my organization – sponsor of the Pigpen Project to assist county clerks/registrars in cleaning up Nevada's voter rolls - despite knowing full well that we had submitted almost 4,000 such challenges on July 29, 2024.

I know that you knew we had submitted those challenges because we were fully transparent by copying your Deputy Secretary for Elections on all of those challenges.

Following my blog post on the morning of August 28 – after I obtained a copy of your memo – you called me while I was driving in rush hour traffic in downtown Los Angeles to discuss the matter.

Unfortunately, because I was driving, I was unable to review your memorandum while on the phone with you. Fortunately, I had the call on speaker phone and three witnesses overheard the conversation.

And what you told me not only didn't make sense, but it also didn't ring true. As I texted you a couple hours later after I had an opportunity to again review your memo…

"There is nothing in the memo that suggests the purpose of the memo was to ask clerks/registrars to consult with their DA's to see if they have a differing opinion from your office's interpretation of 'personal knowledge' as it pertains to Section 535 and forward their argument(s) to your office.

"It plainly and starkly declares that 'these challenges should be rejected.' No contrary opinions were requested or allowed.

"I don't know if you've been misled or I've been misled, but that memo, as written and distributed to the county clerks/registrars, is NOT what you described to me in our conversation."

Ten days later and I still have not received any response, other than a September 3, 2024, email from Nevada Attorney General Aaron Ford advising that "As counsel for the Secretary of State's Office, we request that you direct any further communications pertaining to Pigpen Project to this Office at the AGINFO@ag.nv.gov email address."

The attorney general is copied on this letter.

As a result of your August 27 memo, some of the clerks who had promptly and properly processed our challenges that were submitted on July 29, 2024, have since advised that, in light of your directive, they would no longer process subsequent challenges.

I've asked before and I'll ask again…

- Why do you want to keep voters who no longer live in Nevada on Nevada's Active voter rolls?

- Why should taxpayers have to pay to send mail-in ballots to voters who have moved to another state and, in some cases, have not only re-registered in their new state but have voted there?

- Why are you bending over backwards to block our organization from assisting the county clerks/registrars – who are overburdened as is – in fulfilling their obligation under the National Voter Registration Act of 1993 (NVRA) to "ensure that accurate and current voter registration rolls are maintained"?

Indeed, in two secretively issued memos from your office back in March and April, you advised the county clerks/registrars that their "routine list maintenance procedures already fulfill their obligations under both the National Voter Registration Act and NRS

293.530." You added that "additional actions from county clerks, including with respect to information received from an external party," were not required.

"A county clerk may receive information about a voter's change of address through an external party," you wrote in your March memorandum. You then suggested "that the county confirm information through independent sources, such as the United States Postal Service change of address information, which the Secretary of State can help coordinate."

In addition, 52 U.S. Code § 20507 states that election officials may meet the voter removal requirements under NVRA if "change of address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed."

In fact, as you know, the National Change of Address (NCOA) data file is exactly what we use to research our information. Therefore, it meets the stipulation of NRS 293.530 that the county clerks/registrars "use any reliable and reasonable means available…to determine whether a voter's current residence is other than that indicated on the voter's application to register to vote."

In your April memo, you took impeding our efforts to work with county clerks/registrars a step further by advising them that if they *did* choose to work with us, they could only do so if "approved by their respective board of commissioners" and that "absent approval by a county commission, no county clerk can conduct investigations contemplated under NRS 293.530(1)(b)."

We absolutely disagree with your interpretation of that provision.

An "investigation" would be something like what the Public Interest Legal Foundation did recently in Clark and Washoe counties as it related to commercial addresses where a voter was registered.

They identified commercial addresses. They then matched those addresses to addresses in the voter file. They then physically went to those addresses to see if they were indeed a commercial address with no residential component.

They then sent an investigator and a video crew to interview people at the address and ask if the voter lived there. If they didn't, they turned the information over to the Registrar of Voters for further investigation and appropriate action.

We were not asking the clerks to conduct any such sort of "investigations of registrations by census, by house-to-house canvass or by any other method." All we requested was that the clerks/registrars mail the confirmation postcards outlined in statute.

Mailing a postcard is not an "investigation."

Nevertheless, after thwarting our effort to work cooperatively with the county clerks/registrars on list maintenance under NRS 293.530, we were forced - at your direction in your April memo - to instead utilize the "challenge" processes as outlined in NRS 293.547 and 293.535.

We attempted to do so in Clark County using Section 547 challenges before the June 11 primary. However, our challenges were rejected on the ground that we didn't meet the "personal knowledge" requirement of the statute.

Again, we disagree with that decision but came to understand that the "personal knowledge" requirement for Section 535 challenges was worded differently.

While Section 547 requires "personal knowledge of the registered VOTER *(my emphasis)*," Section 535 requires "personal knowledge of the FACTS *(my emphasis)* set forth in the affidavit."

And for the record, there is no definition of "personal knowledge" by the Legislature in either section.

However, NAC 293.416, as it relates to NRS 293.547, states…

> *"As used in this section, 'personal knowledge' means that the person who files the challenge has firsthand knowledge through experience or observation of the facts upon each ground that the challenge is based."*

Now, I may not be a lawyer - and only have a high school diploma - however, I did get straight A's in "Plain English." So the following 10-point response arguing for why your August 27 memo is flawed and should be rescinded is admittedly from a layman's perspective.

1.) NRS 293.127 states that Title 24 relating to the conduct of elections "must be liberally construed to the end that…the real will of the electors is not defeated by any informality or by failure substantially to comply with the provisions of this title with

respect to the giving of any notice or the conducting of an election or certifying the results thereof."

The "real will of the electors" is defeated when ineligible voters cast ballots in an election, thus cancelling out the vote of an eligible voter and disenfranchising them.

Noteworthy, and deeply concerning, is the fact that your August 27 memo instructing clerks/registrars to reject our challenges doesn't claim that our submissions were inaccurate or unreliable, but on a comparatively trivial and disputed interpretation of the definition of "personal knowledge" as it applies to Section 535 (which I'll address in greater detail later in this letter).

We maintain that our challenges have more than "substantially" complied with the intent of the provisions of Title 24 and that your directive to reject them is clearly based on a technical "informality" that has no bearing on the facts set forth in my affidavits.

2.) While the NAC 293.416 definition of "personal knowledge" specifically applies to Section 547 challenges, Section 535 challenges are specifically NOT included in the code; a fact that you admitted to in your memo…

> *"While 'personal knowledge' is not explicitly defined under NRS 293.535 or implementing regulations, the Secretary views the term to mean the same thing in both statutes."*

Again, we disagree.

But for argument's sake, let's say they do. It doesn't matter. Because the "personal knowledge" a challenger must have for a Section 547 challenge is different from the "personal knowledge" a challenger must have for a Section 535 challenge.

Again, per statute, a Section 547 challenge must be "based on the personal knowledge of the registered voter" while a Section 535 challenge requires the challenger to state "that he or she has personal knowledge of the facts set forth in the affidavit" of challenge.

And the facts set forth in my challenges are that according to official voter registration data pulled directly from the Nevada Secretary of State's database - which we were approved to have access to on May 1, 2024 - shows the challenged voters are on the voter list while the official NCOA database, to which we also have authorized access, shows that they've moved from the address where they are currently registered.

Those are the facts. And I have personal knowledge of those facts as required by NRS 293.535. However, if you wish to dispute those facts you obviously have the same access to the same data our challenges are based upon that you can use to confirm the reliability of our information.

In addition, if any of the county clerks/registrars have any doubts as to the reliability of our information, NRS 293.5303 authorizes them to "enter into an agreement with the United States Postal Service or any person authorized by it to obtain data compiled by the United States Postal Service concerning changes of addresses of its postal patrons for use by the county clerk to correct the portions of the statewide voter registration list relevant to the county clerk."

Also, NRS 293.5307 states that if a county clerk/registrar enters into such an agreement, "the county clerk shall review each notice of a change of address filed with the United States Postal Service by a resident of the county and identify each resident who is a registered voter and has moved to a new address." They may then "mail a notice to each such registered voter and follow the procedures set forth in NRS 293.530."

In other words, the county clerks/registrars are allowed to do the exact same thing with the exact same information from the exact same source that we are even though THEY don't meet the definition of "personal knowledge" as you interpret it in telling them not to accept our challenges.

Again, the fact that we're following the exact same process – using USPS change of address data – that the clerks/registrars are allowed to use is definitive affirmation that our challenges are "substantially" compliant with the provisions of Title 24.

3.) In your August 27 memo you claim that "clarity on 'personal knowledge' can be found in the legislative history of prior amendments to NRS 293.547," specifically referencing AB 652 from the 1991 session which was proposed by then-Secretary of State Cheryl Lau.

At the risk of being redundant, I'll point out again that the "personal knowledge" requirements for Section 547 and Section 535 are materially different. It's not so much about what the definition of personal knowledge *is*, but what the challenger has personal knowledge *of*.

That said, you wrote…

> *"Comments considered by the Legislative Counsel Bureau (LCB) suggest the amendment was intended to root out voter challenges based on review of databases like Department of Motor Vehicles records. Ex. C at 7 to Minutes of the Nev. Legis. Assemb. Comm. on Legis. Functions & Elections (May 14, 1991). This commentary notes that challenges were increasingly filed based on comparison of DMV addresses against voter registration records, 'becom[ing] nothing short of intimidation,' and that the requirement of 'personal knowledge' was meant to preclude challenges based on such comparisons."*

But you didn't tell the full story.

First, you claim that the comments "suggest" the intent of the amendment. I've since read the full legislative history of AB 652 and my reading doesn't comport with your reading of the intent.

According to the minutes of a hearing on AB 652 conducted on May 14, 1991, Deputy Secretary of State for Elections Robert Elliott "explained the U.S. Postal Service's National Change of Address Program, which utilized the best information available to keep up with ever-moving voters."

That's the same postal service data we're using and the clerks/registrars are allowed to use today "for enhanced accuracy of voter registration address reporting."

At issue at the time was a proposed "pilot" program for Clark and Washoe counties that would allow them to "enter into an agreement with licensed vendors to have voter registration records updated."

"Next," the minutes recorded, "Mr. Elliott referred to Exhibit D, Sacramento County's report on its use of the National Change of Address Program. He highlighted how Sacramento's experience had clearly demonstrated the program's efficiency."

The minutes continue…

> *"In general, Mr. Elliott explained AB 652's impetus was the need to develop a program which monitored voter address changes in Clark and Washoe County. Based upon information Mr. Elliott had gleaned at conferences and from voter registration officials, this program was spreading quickly."*

Exhibit C, which you referenced, then goes on to include "Commentary" on specific portions of the bill, though the source of the comments is undisclosed in the record. But the nature of the comments "suggests" they were made by Mr. Elliott.

According to the testimony…

> *"Section 14 prohibits a polling place worker from challenging a voter based upon his residency unless a proper written challenge has been filed or the worker has personal knowledge regarding the voter's residency. This also prohibits personal knowledge from being based on DMV records."*

This doesn't "suggest" the intent of the bill. This testimony clearly shows the actual intent as it relates to challenges. It stipulates that challenges be based on EITHER "personal knowledge" OR "a proper written" statement.

As for the testimony regarding DMV records that you referenced in your August 27 memo, here's the FULL commentary…

> *"Some situations have arisen in past elections where party representatives have merged addresses on records at the Department of Motor Vehicles with voter registration records and have challenged voters based upon their residency if there is any discrepancy in the addresses.*
>
> *"The problem is that voters may still be in the same precinct, they may not have changed their driver's license address, the lists at DMV may have been old, or the voter, while not being eligible to vote in a new precinct, may be eligible to vote in his old precinct. The bottom line is that DMV information is not reliable."*

So contrary to your assertion, the testimony does NOT suggest an intent to prohibit challenges based on personal knowledge of data but based on data from the DMV. Huge difference.

The commentary on the proposed language in AB 652 continues…

> *"In addition, a challenge may contain the name of only one person whose right to vote is being challenged. This changes the practice of attaching a computer printout to a challenge statement."*

In fact, the challenges I've filed contain the name of only one person whose right to vote was being challenged.

Indeed, throughout all of the legislative history as well as the adopted statute, the NCOA data was accepted to be reliable and the clerks were actually encouraged to use it. As we are. Again, substantially complying with the provisions of Title 24. Next…

> *"In addition, a voter who wishes to challenge another voter must have personal knowledge of the reason for challenge and may not base his challenge on information at DMV."*

Again, we have personal knowledge "of the reason" for challenging the voter and it is NOT based on DMV data. Next…

> *"Challenges have become nothing short of intimidation. When over 6,000 challenges are filed against voters in one county, something is wrong."*

First, I reject the notion that simply mailing a verification letter to a voter who, according to NCOA data, appears to have moved and is no longer eligible to vote at the address at which he or she is registered, amounts to "intimidation."

That said, the fact that over 30,000 individuals remain on the current Active voter registration rolls AFTER the "routine list maintenance" process was completed in August absolutely indicates that "something is wrong."

But the problem is not in our filing of challenges. And had you not discouraged the clerks/registrars from working with our organization on list maintenance requests last March, the situation likely wouldn't be so bad today and there wouldn't have been the need to file so many challenges.

The testimony on this subject concludes with…

> *"This change in procedure restores the original intent of challenging a voter based upon personal knowledge that the voter is not qualified to vote."*

This testimony doesn't "suggest" the intent of the legislation. It specifically declares that the "original intent" of the challenge provision was to have such challenges be "based upon personal knowledge that the voter is not qualified to vote." And we have that personal knowledge.

More importantly, the original language of the bill draft specifically stated that "the personal knowledge of the registered voter must not be based upon any information

obtained from the records *of the department of motor vehicles* (my emphasis) and public safety."

Again, we don't use DMV data. We use the same NCOA data that the clerks/registrars are authorized to use to determine whether a voter is qualified to vote based on legitimate questions of residency and registration.

4.) In his testimony, not only did Mr. Elliott reference Exhibit C, but he also referenced Exhibit D, which you left out of your August 27 memo.

Exhibit D was a written report authored by Dwight Beattie, Assistant Registrar of Voters for Sacramento County (CA), with regard to the use of NCOA data. Here are some relevant excerpts…

> *"Thanks to a new law in California, County Clerks and Registrars of Voters can interface their registration files with the U.S. Postal Service National Change of Address (NCOA) files to produce cleaner voter files.*

"…to produce cleaner voter files."

> *"In seeking this law, the following assumptions were made:*
>
> *1.) "The NCOA file would produce more accurate information than we could get from mailing cards to non-voters.*
>
> *2.) "Voters who voted in the last election would now be included in the address updating, so our complete file would be more accurate.*
>
> *3.) "There would be savings since we would not have to pay postage to mail cards to non-voters."*

Let me comment on these three assumptions before continuing…

a) Nevada's current "routine list maintenance" process by the counties relies mostly on returned cards rather than the NCOA database, which likely explains why so many "moved" voters were missed by the routine list maintenance program that was completed in August.

b) Because Nevada remains a high-transient state, a regular, ongoing process of using NCOA data to identify and notify moved voters that they need to update

their voter registrations would be more effective in assuring more accurate voter lists than the “routine list maintenance” mailing done only after an election.

c) And doing so would save taxpayers money by not automatically sending sample ballots and mail-in ballots to voters who have moved and are no longer eligible to vote from the address where they are registered.

It would also reduce the POTENTIAL for voting fraud, which I assume is an objective we all share. But back to Mr. Beattie’s testimony…

> *“The NCOA maintains address changes for up to three years, while the local Post Office uses a time frame of 18 months for address changes, so we ‘rescued’ some persons from the ‘no forwarding address’ category. …*
>
> *“There are a number of rough spots in the process. … However, a line has to be drawn at some point since some people move so frequently that we will never catch up with them.*
>
> *“There were errors. A number of voters were placed at the wrong address because either one person in the family moved and checked ‘family’ instead of ‘individual” or ‘permanent’ instead of ‘temporary’ on the Postal Service’s change of address card, or because the person checked the correct box and the Postal Service entered the wrong information.”*

Yes, no system is perfect. Humans make mistakes. However, it’s important to note that no one is any longer “purged” simply upon a challenge. Instead, a challenge simply triggers the verification process.

I would also point out that Nevada now has same-day registration. So in the rare instance where an error might occur, there is a “fail safe” option for such a voter to preserve and exercise his or her right to vote right up to Election Day.

5.) In the Legislative history for AB 652 that you referenced, there’s also Exhibit F from the Democratic Party of Nevada.

In it the party stated that “we support this bill’s provision for automatic change of address using data obtained through the U.S. Postal Service,” noting that some voters “have forgotten that they need to contact the election department in order to change their address.”

The same continues to happen today.

The Democratic Party then added…

> *"A.B. 652 (Sec. 1-3) resolves this problem by instituting a fair means of automatically changing addresses of those who file a change of address with the post office when they move within a county. Those who move out of the county or state are purged from the voter file after proper notice, which is forwarded to them. We can support this kind of purge. …*
>
> *"Overall, this bill is a good piece of legislation that addresses the needs of registered voters, will increase voter participation, and protects the rights of voters in case of challenges."*

Again, the important point here is "after proper notice." No one is removed from the voter file simply for appearing on the NCOA list. The only action taken is the mailing of a verification postcard or letter.

6.) On page 5 of the minutes from a June 18, 1991, legislative hearing on the bill, a legislator – unknown because page 4 is not included in the legislative history - "recommended not overly restricting the challenge provisions," again suggesting legislative intent was to interpret provisions relating to challenges liberally, not restrictively.

In that same hearing, Mr. Elliott testified on the proposed change of address program, which was ultimately approved. He stated…

> *"The way this program came about was, a request made of our office to identify a program that would enable us to keep track of voters who are moving in our more transient communities, Washoe and Clark counties. …*
>
> *"We needed to find a way to update these people's addresses, get them re-precincted, if they moved out of the county they would be purged. If they moved out of the state they would be purged. This program does that…*
>
> *"California recently went through this change of address program. When somebody changes their address, they will make a change at the post office. The post office maintains those records for a period of at least 2 years, sometimes 4 (years).*

"The post office then licenses vendors, who do a computer-generated listing of all those changes of addresses in your particular area, by zip code, or whatever…

"A voter registration file could then be sent to the vendor, and that vendor would compare those addresses on the voter registration file with the names and addresses on the postal file, and if there's an identical match of name and previous address, that would be updated by the vendor."

This is essentially the exact same process used by the Pigpen Project to identify voters suspected of having moved from the address where they are registered.

In further testimony, "Senator Hickey stated the reason for the purges of registered voters was because of the high movement of people from their residences, and also because of the movement out of state."

Nothing has changed since then. If anything, the situation has gotten worse.

Senator Raggio later stated that "there should not be a restriction as to where a challenger lives, if he or she has personal knowledge of a voter not living where he or she is registered."

While that provision remains for Section 547 challenges, it is not a requirement to file a Section 535 challenge.

By directing the clerks/registrars to reject our lawfully filed challenges – which some, if not most, appear to be following – you're advising them to violate NRS 293.535 and opening them up to possible legal action.

I will also note here that NRS 293.547(5)(b) states that a county clerk/registrar shall mail a notice in the manner set forth in NRS 293.530 to the person whose right to vote has been challenged within 5 days after the challenge is filed.

I will further note that the "5 days" deadline is not specifically included for Section 535 challenges; however, in paraphrasing your own argument as it relates to personal knowledge, "there is no reason to think that the Legislature intended" the deadline for sending the notice "to differ across these two statutes, which are similar in content and context."

7.) Since you found it informative to research the legislative history of bills dealing with challenges to divine intent, I pulled the history for AB 619 in 1995 which was a bill

drafted for the purpose of conforming Nevada's election laws with the new National Voter Registration Act (NVRA).

The legislative history of AB 619 includes in Exhibit C a statement by then-Secretary of State Dean Heller which notes that "registrations can be cancelled – without the notice and inactive period – at the voter's request." He goes on to state that "The term 'at the voter's request' would include an instance in which the voter moves to another county or state and re-registers to vote."

The initial challenges I filed on July 29 were all of voters who, according to official government records, had moved to another state and re-registered in that state. In addition, just over 100 of those challenges were of individuals who not only appear to have re-registered in another state but had actually VOTED in the other state.

This is deeply concerning, as it opens that voter up to the possibility of being accused of "double voting" should they vote in their new state while someone who obtains their Nevada mail-in ballot unlawfully casts it.

In fact, back in April we filed an official Election Integrity Violation Report on just such a voter who not only appeared to have moved to and voted in the 2022 general election in Texas, but also in the 2022 general election in Nevada via mail-in ballot.

What we don't know is if the voter himself cast that mail-in ballot or if someone at his old address in Nevada obtained his ballot and fraudulently cast it in his name.

Your office has since advised me that the case has been closed but has yet, despite repeated requests, to advise me as to what action, if any, was taken at the conclusion of the investigation. **This is a critical piece of information to know, so I again request that your office provide the details of how this complaint was resolved and closed.**

8.) The legislative history for AB 619 also includes a hearing that was held on May 25, 1995. According to the minutes of that hearing, Assemblyman Bob Price raised the issue of "frivolous challenges" with then-Deputy Secretary of State Dale Erquiaga and asked "if there was any way to discourage frivolous challenges."

According to the minutes of the hearing…

> *"Mr. Erquiaga responded residency challenges could be changed and pointed out the affidavit was sworn under penalty of perjury, and if it was frivolous, there was*

a penalty for perjury which Mr. Erquiaga believed was a misdemeanor. Some challenges were not sworn, but with this one, someone could be put in the county jail if they had done it just to harass a voter."

In separate testimony on AB 619 provided by then-Clark County Clerk Kathryn Ferguson (Exhibit F), Ms. Ferguson asked if the language in the bill should "specify what conditions of personal knowledge are required on each type of affidavit, so that affiant is legally bound by the truth of his sworn statement."

We share the concern over frivolous challenges and have not made any. All of our challenges are based on what is considered to be reliable information provided by officially recognized government data files.

And while NRS 293.535 does not require that an affidavit of challenge be "sworn under penalty of perjury," I have nonetheless included just such a statement in each of the individual challenges I have filed, to wit…

"By signing my name below, as per NRS 293.535, I certify under penalty of perjury that I have 'personal knowledge of the facts set forth' in this affidavit and the information provided is true and correct to the best of my knowledge."

Again demonstrating that we are more than substantially complying with the provisions of Title 24.

9.) In Section III of your August 27 directive, you refer to the National Voter Registration Act of 1993 (NVRA) and wrote…

"The NVRA requires, among other things, that a state 'conduct a general program that makes a reasonable effort to remove the names' of voters who may be ineligible based on a change of residence. The general program must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.' One way to satisfy the general program requirement is to rely on change-of-address information supplied by the U.S. Postal Service (NCOA)."

As such, you acknowledge that reliance on NCOA data is acceptable for the purpose of ensuring, as per the NVRA, "that accurate and current voter registration rolls are maintained."

And this is exactly the same data we are relying on to file our challenges.

You go on to note the 90-day “blackout” period in which the county clerks/registrars may not use their “general program to remove voters who may have changed residence,” while acknowledging that the “90-day blackout period does not apply to removal actions based on individualized information.”

The challenges we have filed are not part of the county’s “general program to remove voters who may have changed addresses.” They are individualized challenges based on individualized information.

In fact, each individualized challenge specifically references the individual address where the challenged voters are currently listed as registered to vote, as well as the individual address where, according to NCOA data, the individual currently resides.

Therefore, the 90-day blackout period does not apply to Section 535 challenges.

One further note on this which reinforces the need for you to immediately rescind your August 27 directive to the county clerks/registrars advising them to reject our challenges…

As noted previously, a Section 535 challenge should be processed by the county clerk/registrar and the verification letter should be sent within 5 days of receipt of a challenge. At that point, the voter has 30 days to respond.

Because of the delay in processing our challenges caused by your directive, even if the challenge letters were sent out today, the deadline for responding will likely be after mail-in ballots are sent out.

However, while our challenges won’t prevent such ballots from being mailed, there’s still time for successful challenges to be recorded by the clerks/registrars who can “flag” those voters before Early Voting begins on October 19, 2024, as well as set aside any mail-in ballots they receive for resolution BEFORE they are counted.

In addition, I’ve obtained a copy of the verification letter sent out by Lander County to challenged voters. I assume the letters sent out by other counties are similar.

In the Lander County letter, the challenged voter has the option of affirming “under penalty of perjury that I resided at the residence for which the address is listed in the roster at the time I registered, and that I have since changed my residence and currently reside at the following address: (xxx).”

At the very least, any voter who returns such a confirmation letter/postcard stating they have moved out of state must have their registration cancelled, which means any mail-in ballot which might be received from that voter – or someone trying to unlawfully cast the ballot in their name - must not be counted.

And while it may not be anticipated that a large number of such submissions will be returned, even a small number can change the outcome of a close election, such as the 2020 Clark County commission race that was decided by just 15 votes out of over 153,000 cast.

Again, I can't stress enough the importance of the county clerks/registrars processing our challenges immediately.

10.) Lastly, let's address Section IV – "Conclusion" - of your August 27 directive. In it you wrote…

> *"Recently, individuals have submitted challenges based on their 'personal knowledge' obtained from their review of data from databases or compilations of information. It is the opinion of the Secretary of State that such challenges do not meet the requirement of 'personal knowledge' of facts supporting the challenge required by NRS 293.535 and 293.547. As the legislative history from 1991, noted above, confirms, review of databases and information compilations do not provide 'firsthand knowledge through experience or observation' of the challenged individual's eligibility status. County clerks who receive these challenges should reject them and instruct challengers that personal knowledge gained through firsthand experience or observation of the facts relating to a voter's eligibility is necessary to file a valid challenge under either statute. In the absence of such firsthand, personal knowledge showing a voter's eligibility, these challenges should be rejected."*

Your "opinion" that "review of databases and information compilations" does not meet the definition of "personal knowledge" appears to be contradicted by case law. Again, I'm not a lawyer, but here are my "Plain English" readings of three court decisions on this subject…

A.) In Kroll v. Incline Village, The Nevada Supreme Court ruled unanimously on November 10, 2014, that "a review of relevant business records can be the basis for personal knowledge in affidavits."

The court concluded that because the plaintiffs “gave affidavit testimony based on their review of IVGID business records, they had sufficient personal knowledge as required.”

B.) In Vote v. United States, it was argued that Debra Vahe’s affidavit did not meet the “personal knowledge” requirement of Federal Rule of Civil Procedure 56(e) “since Vahe’s declarations are based upon her review of the IRS computer-generated files.”

The court noted that such an interpretation of personal knowledge “would bar almost all affidavits in these sorts of cases since most affidavits are based upon a review of a taxpayer’s records.”

As such, the court concluded that “Vahe’s affidavit complies with Rule 56(e) in that it is based upon her personal familiarity with plaintiff’s case and her review of plaintiff’s file.”

C.) In Washington Cent. R. Co. v. National Mediation Bd., an argument was made that a declaration made by William Gill - which was “based on Gill’s review of the files and records” - be rejected on the ground that “because Mr. Gill did not personally participate in activities he describes, his declaration fails to meet the personal knowledge requirement of Rule 56(e).”

The court acknowledged that “an affidavit or declaration…must be made on personal knowledge,” however, it also determined that personal knowledge “is not strictly limited to activities in which the declarant has personally participated” and “can come from review of the contents of files and records.”

The court determined that “Gill has personal knowledge and that personal knowledge comes from his review of the records and files” while characterizing the objection to Mr. Gill’s declaration/affidavit as “meritless.”

The court further noted “there is no dispute that the NMB (National Mediation Board) is a government agency,” just as there’s no dispute that the United States Postal Service is a government agency.

“Accordingly,” the court wrote, “the records are presumed admissible unless the opposing party can make a showing that they are untrustworthy.”

In the NVRA, NRS, and in your own directives, I have found no indication that change-of-address data provided by the United States Postal Service is considered “untrustworthy.”

CONCLUSION

We recognize the limitations and work burden our clerks/registrars are operating under with limited resources, especially during an election season.

We also acknowledge and recognize the difficulties posed by individuals and “external parties” who have not taken time to learn the complicated, convoluted, and often-contradictory statutes, codes, processes, and procedures before filing challenges.

But that’s not us.

We have gone above and beyond what is required to more than “substantially” comply with the provisions of Title 24 and NRS 293 in our efforts to assist the county clerks/registrars in fulfilling their obligation “to ensure that accurate and current voter registration rolls are maintained.”

And we’ve attempted to communicate and seek information, guidance, and advice from your office to assure that our efforts are “by the book,” only to be ignored or rebuffed.

Back in February, you issued a statement maintaining that “Nevada runs some of the most secure, accessible and transparent elections in the country, and we're dedicated to ensuring voters are confident in that.”

However, your efforts over the past nine months to discourage and impede our ability to assist the clerks/registrars in assuring our elections are secure from individuals who have become ineligible to vote in Nevada elections does not engender confidence.

In addition, your refusal to openly and expeditiously communicate and work with our organization on these matters while issuing private memos that have a direct effect on our efforts without even notifying us, let alone consulting and discussing the matters with us in advance, is anything but “transparent.”

If there are raised any doubts about the integrity of any elections in Nevada in November that turn out to be close, it won’t be because of “right-wing election deniers” but because of your actions to thwart the legitimate efforts of our organization to assist with the obviously flawed current system of identifying and removing ineligible voters from the Active voter rolls.

But there’s still time for you to do the right thing.

If you have ANY doubts or ANY concerns about our efforts and how they're conducted, I am more than happy to provide you with the information. Otherwise, I will conclude by again asking you to rescind your directive to reject our properly filed challenges immediately so they can be processed before Early Voting begins.

On the other hand, if you continue to insist on impeding our ability to participate in the process of ensuring "that accurate and current voter registration rolls are maintained" under Sections 530, 535, and 547, please advise as to exactly how we SHOULD be proceeding.

The security and integrity of our elections depends on it.

cc: Nevada County Clerks & Registrars
Dan Burdish, COO, Citizen Outreach Foundation
David O'Mara, Esq.
Brian Hardy, Esq.
Office of the Governor
Office of the Attorney General
Nevada State Sen. Jeff Stone
Nevada State Assemblywoman Jill Dickman