

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL YOHEY; KAREN LABARRY;
ELIZABETH SMITH; TED VERNES;
AND MARTIN CROWLEY,
Petitioners,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR CARSON CITY, AND THE
HONORABLE WILLIAM A. MADDOX,
DISTRICT JUDGE; EUREKA COUNTY
CLERK; AND CHURCHILL COUNTY
CLERK,

Respondents,

and

SEQUOIA VOTING SYSTEMS, INC.;
AND NEVADA SECRETARY OF STATE
DEAN HELLER,
Real Parties in Interest.

No. 48423

FILED

NOV 21 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order dismissing a petition for a writ of mandamus or alternatively, declaratory relief. Also, in view of the short timelines involved, petitioners ask this court to consider the merits of the petition dismissed by the district court, which challenges the Eureka and Churchill County Clerks' actions in requiring petitioners to pay, as part of the advance deposit for election recounts in the two counties, the fees of respondent Sequoia Voting Systems, Inc., the independent contractor that supplied Nevada's electronic voting machines and related equipment

under a contract with the Secretary of State. Answers were ordered and have been filed by the Churchill County Clerk, the Eureka County Clerk, the Secretary of State, and Sequoia Voting Systems, Inc.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,¹ or to control an arbitrary or capricious exercise of discretion.² The counterpart to the writ of mandamus, a writ of prohibition is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court.³ Generally, these writs will issue only when the petitioner has no plain, speedy and adequate remedy in the ordinary course of law.⁴ Further, mandamus and prohibition are extraordinary remedies, and whether a petition will be entertained is entirely within the discretion of this court.⁵ Petitioner bears the burden of demonstrating that this court's intervention by way of extraordinary relief is warranted.⁶

¹NRS 34.160; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

²Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

³NRS 34.320.

⁴Gumm v. State, Dep't of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005); NRS 34.170; NRS 34.330.

⁵Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith, 107 Nev. at 677, 818 P.2d at 851.

⁶Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).


Having reviewed the petition and the answers, we are not satisfied that this court's intervention is warranted. NAC 293.180(1)(a) provides that the estimated or actual cost of a recount "may include" a number of listed items, and NAC 293.180(1)(b) states that the recount cost "may not include" other items. Charges incurred for independent contractor services such as those provided by Sequoia are not listed in either provision. The phrase "may include" does not indicate that the list contained in NAC 293.180(1)(a) is exhaustive. Moreover, the purpose of NRS 293.405 is to permit the county to recover its actual costs for a recount in the event that the candidate seeking a recount does not prevail, so that the county is not required to expend public funds for the recount. Finally, the conclusion that Sequoia's charges could be included in the actual cost under NRS 293.405 but not in the estimate for the advance deposit under NRS 293.403 and NAC 293.180 would be absurd.⁷ We thus conclude that the county clerks properly included Sequoia's charges in their advance deposit estimates and deny this petition.⁸

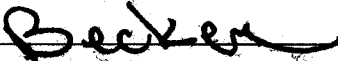
⁷See General Motors v. Jackson, 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995) (stating that "[a] statute should always be construed to avoid absurd results") (citing Moody v. Manny's Auto Repair, 110 Nev. 320, 325, 871 P.2d 935, 938 (1994)).

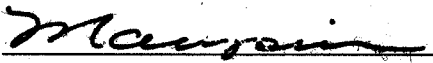
⁸We further conclude that our consideration of whether Sequoia's contract with the Secretary of State permits Sequoia to charge additional amounts for a recount is premature. It does not appear that the petitioners have standing to raise the issue unless and until any of them do not prevail in the recount. See Olson v. Iacometti, 91 Nev. 241, 245-46, 533 P.2d 1360, 1364 (1975); see also Davis v. Phoebe Putney Health Systems, Inc., 634 S.E.2d 452 (Ga. Ct. App. 2006); Illinois-American Water Co. v. City of Peoria, 774 N.E.2d 383 (Ill. Ct. App. 2002). If the petitioners prevail, then it appears that the counties would be the party with standing


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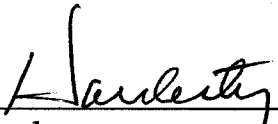
It is so ORDERED.⁹



_____, C.J.
Rose


_____, J.
Becker


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

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to raise the contract issues. Accordingly, we decline to address the contract issue at this time.

⁹The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.

cc: Hon. William A. Maddox, District Judge
Martin G. Crowley
George B. Grover
Attorney General George Chanos/Carson City
Churchill County District Attorney
Eureka County District Attorney
Guild, Russell, Gallagher & Fuller, Ltd.
Carson City Clerk