

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAN BURDISH, A NEVADA REGISTERED VOTER AND MEMBER OF CITIZEN OUTREACH, A NEVADA NON-PROFIT ORGANIZATION; DEBBIE LANDIS, A NEVADA REGISTERED VOTER AND PRESIDENT OF ANGER IS BREWING, A TEA PARTY ORGANIZATION; CHARLES MUTH, A NEVADA REGISTERED VOTER AND PRESIDENT OF CITIZEN OUTREACH; AND JANINE HANSEN, A NEVADA REGISTERED VOTER AND THE EXECUTIVE DIRECTOR AND NATIONAL COMMITTEEMAN OF THE INDEPENDENT AMERICAN PARTY; AND OTHER NEVADA REGISTERED VOTERS SIMILARLY SITUATED,

Appellants,

vs.

ROSS MILLER, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF NEVADA; AND SCOTT ASHJIAN, IN HIS CAPACITY AS A CANDIDATE FOR U.S. SENATE,

Respondents.

DAN BURDISH, A NEVADA REGISTERED VOTER AND MEMBER OF CITIZEN OUTREACH, A NEVADA NON-PROFIT ORGANIZATION; DEBBIE LANDIS, A NEVADA REGISTERED VOTER AND PRESIDENT OF ANGER IS BREWING, A TEA PARTY ORGANIZATION; CHARLES MUTH, A NEVADA REGISTERED VOTER AND PRESIDENT OF CITIZEN OUTREACH; AND JANINE HANSEN, A NEVADA REGISTERED VOTER AND THE EXECUTIVE DIRECTOR AND NATIONAL COMMITTEEMAN OF THE INDEPENDENT AMERICAN PARTY; AND OTHER NEVADA REGISTERED VOTERS SIMILARLY SITUATED,

Petitioners,

No. 56795

FILED

OCT 06 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

No. 56893

vs.
ROSS MILLER, IN HIS OFFICIAL CAPACITY
AS SECRETARY OF STATE OF NEVADA,
Respondent,
and
SCOTT ASHJIAN, IN HIS CAPACITY AS A
CANDIDATE FOR U.S. SENATE, Real Party in
Interest.

ORDER DISMISSING APPEAL AND
PETITION FOR WRIT OF MANDAMUS

Docket No. 56795 is an appeal from a district court order denying appellants' request for injunctive relief in a ballot matter. First Judicial District Court, Carson City; James E. Wilson, Judge. Docket No. 56893 is an original petition for a writ of mandamus seeking to have respondent Ross Miller, as Nevada's Secretary of State, strike real party in interest Scott Ashjian's name from the November 2010 general election ballot.

The appeal was docketed in this court on September 10, 2010. On September 22, 2010, appellants filed a motion to expedite briefing. This court deferred ruling on appellants' motion and directed the parties to show cause why this appeal should not be dismissed as moot. On September 27, 2010, petitioners filed in this court a petition for a writ of mandamus. On that same date, this court directed the parties in the writ petition to show cause why the petition was not moot. The parties timely responded, as directed.

Appellants/petitioners contend that their appeal and writ petition are not moot because only a small percentage of absentee ballots and votes have been distributed and received by county registrars. They further contend that because early voting and election-day voting is done

electronically, the electronic ballots can easily be reprogrammed. Conversely, respondent Ross Miller, as Nevada's Secretary of State, asserts that the appeal and writ petition are moot because (1) absentee ballots for military and overseas voters have been distributed as required by 42 U.S.C. § 1973ff-1(a)(8); (2) over-the-counter absentee ballots have been given out and votes have been returned; (3) under NRS 293.309(3), any action that would prevent absentee ballots from issuing is moot and of no effect; and (4) this court has previously denied as moot a portion of a writ petition that sought to strike the names of term-limited candidates from the primary election ballots, as those ballots had already been printed. The Secretary of State also explains that the programming for early voting and election-day voting machines was completed on October 1, 2010; testing will generally be completed in all counties by October 11, and by statute, testing must be completed no later than October 15. Any changes to the ballots would require the voting machines to be reprogrammed and retested, jeopardizing this deadline. Respondent Scott Ashjian agrees that NRS 293.309(3) renders the appeal and writ petition moot.

This court has a duty "to decide actual controversies by a judgment which can be carried into effect, and not give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it." University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) (internal quotation and citation omitted). In Docket No. 56795, appellants seek to have this court reverse the district court's order denying injunctive relief, and in Docket No. 56893, petitioners seek to have Ashjian's name

removed from all ballots. Thus, the issue is whether this court's judgment could be executed. The answer is no.

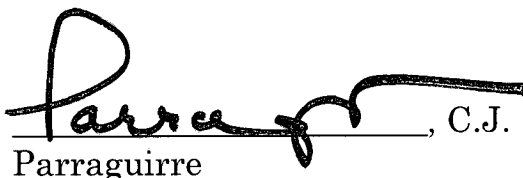
In compliance with Nevada and federal law, the printing of absentee ballots is complete, distribution has begun, and votes have been received. Specifically, absentee ballots for out-of-state voters must be prepared and ready for distribution no later than 40 days before the general election, which was September 23, 2010. NRS 293.309(2)(b). The Secretary of State has confirmed that some absentee ballots for out-of-state voters have been distributed and returned with votes, as have some over-the-counter absentee ballots. Further, the deadline to distribute absentee ballots to military and overseas voters was September 18, 2010. 42 U.S.C. § 1973ff-1(a)(8). Under NRS 293.309(3), any legal action that would prevent absentee ballots from being distributed "is moot and of no effect." Thus, under both state and federal statutes, no further changes to absentee ballots are possible. Consequently, the appeal and writ petition are moot. See Secretary of State v. Burk, 124 Nev. 579, 599 n.70, 188 P.3d 1112, 1125 n.70 (2008).

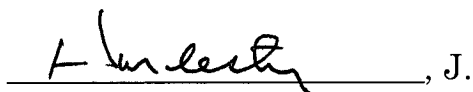
Additionally, as for the appeal, the district court did not entertain the merits of appellants' request for injunctive relief because the district court denied the request solely on the basis that appellants' challenge was barred by NRS 293.174's time limitation. Therefore, the only issue presented on appeal is whether the district court erred in applying NRS 293.174's time limitation to appellants' request for injunctive relief. If this court determined that the district court erred, the matter would be reversed and remanded to the district court for a consideration of the underlying case's merits. But any decision rendered by the district court would have no effect under NRS 293.309(3).

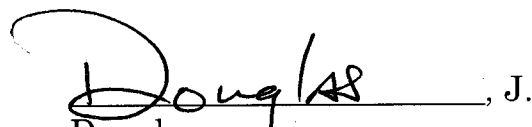
Likewise, any aggrieved party's challenge to the district court's final decision would be moot. See NRS 293.309(3).

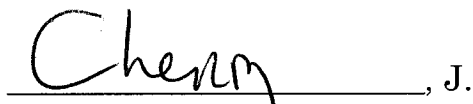
Accordingly, because the appeal and writ petition are moot, we hereby dismiss them.

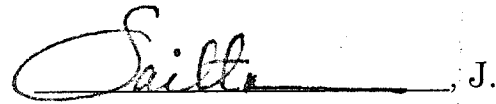
It is so ORDERED.¹


 , C.J.
Parraguirre

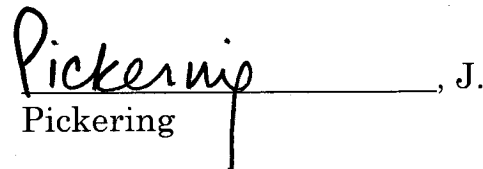
 , J.
Hardesty

 , J.
Douglas

 , J.
Cherry

 , J.
Saitta

 , J.
Gibbons

 , J.
Pickering

cc: Hon. James E. Wilson, District Judge
Mueller Hinds & Associates
Attorney General/Carson City
Allen Lichtenstein
Matthew M. Griffin
Carson City Clerk

¹In light of this order, we deny as moot appellants' September 22, 2010, motion to expedite briefing filed in Docket No. 56795.

We direct the clerk of this court to amend the caption in the writ petition, Docket No. 56893, to conform with this order's redesignation of respondent and real party in interest.