


IN THE SUPREME COURT OF THE STATE OF NEVADA

DREW J. RIBAR,
Petitioner,
vs.
WASHOE COUNTY; WASHOE
COUNTY REGISTRAR OF VOTERS
CARI-ANN BURGESS; AND STATE OF
NEVADA SECRETARY OF STATE
CISCO AGUILAR,
Respondents.

No. 88901

FILED
AUG 05 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This emergency pro se petition for a writ of mandamus seeks to compel Washoe County to hold a new primary election based on omissions to the sample ballot. In particular, petitioner Drew J. Ribar, a Republican candidate for state assembly in District 40, asserts that his name was left off the Washoe County primary election sample ballot, depriving the voters of due process and an opportunity to research the candidates' qualifications before the primary election. As directed, Ribar timely filed a supplement containing the documents necessary for this court's consideration of the petition, including the subject sample ballot, which omitted the names of both Ribar and his opponent, incumbent P.K. O'Neill. Respondents Secretary of State, Washoe County, and Washoe County Registrar timely filed an answer. Although no reply to the answer was authorized, we have considered Ribar's reply filed on July 15, 2024, to the extent it responds to the answer.

As Ribar points out, under the Nevada Constitution, Nevada voters have "the right . . . [t]o a sample ballot which is accurate, informative and delivered in a timely manner as provided by law." Nev. Const. art. 2,

§ 1A(7); *see also* NRS 293.2546(7) (legislative declaration of voters' rights). Here, it is uncontested that the race for Assembly District 40, including both candidates' names, was improperly omitted from the primary election sample ballot provided to Republican voters. *See* NRS 293.175(2) ("Candidates for partisan office of a major political party . . . must be nominated at the primary election."); NRS 293.257(1) ("The names of candidates for partisan offices who have designated a major political party in the declaration of candidacy must appear on the primary ballot of the major political party designated."); NRS 293.097(1) ("Sample ballot' means a document distributed by a county or city clerk upon which is included a list of the offices, candidates and ballot questions that will appear on a ballot.").

Nevertheless, respondents Secretary of State, Washoe County, and Washoe County Registrar assert that this writ petition must be denied, listing four reasons: (1) an available legal remedy in the form of a statutory election contest precludes writ relief; (2) Ribar failed to join the other Republican candidate for District 40, who received the most votes in the primary election and who would be affected by any writ directing a new primary election; (3) Ribar cannot demonstrate a beneficial interest in obtaining a new primary election; and (4) given the critical need for especially prompt action in election matters, Ribar filed this action too late—after the primary election had concluded—and the doctrine of laches thus precludes relief. With respect to the third ground, respondents assert that, when viewed in light of the vote counts in District 40 counties where no sample ballot irregularities are at issue, Ribar cannot demonstrate that he would benefit from a new primary election in Washoe County, as even if he received all of the votes there, the total votes for O'Neill in the other

counties would largely outnumber the total votes for Ribar. *See Buckner v. Lynip*, 22 Nev. 426, 435, 41 P. 762, 763 (1895) (recognizing the “principle applicable to all election contests” that the election may not be contested unless a different result may be reached).

DISCUSSION

A writ of mandamus may issue to compel an official to perform a legally required act. NRS 34.160; *see also Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 680, 476 P.3d 1194, 1196 (2020) (recognizing that a mandamus petitioner must show a legal right to the relief sought, that respondents have a clear legal duty to perform as requested, that the writ will be availing as a remedy, and that no plain, speedy, and adequate legal remedy exists (citing Thomas Carl Spelling, *A Treatise on Injunctions and Other Extraordinary Remedies* 1173 (2d ed. 1901))). Whether to issue extraordinary writ relief is solely within this court’s discretion, however, *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991), and it is petitioner’s burden to demonstrate that such relief is warranted, *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Having considered the parties’ arguments, we conclude that Ribar has not demonstrated that writ relief is available to compel respondents to issue a corrected sample ballot and hold a new primary election.

Although we acknowledge that the sample ballot provided to Republican voters was defective and that Ribar apparently attempted to remedy the issue prior to the primary election and the canvassing of the votes, no judicial action was instituted until after the primary election concluded, and Ribar raises no concerns with either the District 40 race or his name being omitted from the ballots voted in the primary election. With regard to the defective sample ballot, neither the Nevada Constitution nor any Nevada statute directs the county (or the Secretary of State) to hold a

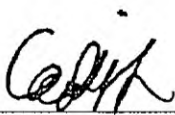
new election to remedy a defective sample ballot after the election has taken place.

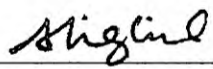
The legislature has provided for post-election relief in two instances. First, NRS 293.407-.435 govern election contests and provide grounds therefor. *See* NRS 293.410. The remedies specified for successful election contests do not include a new election, however. NRS 293.417; *see Anthony v. Miller*, 137 Nev. 276, 279, 488 P.3d 573, 576 (2021). And second, NRS 293.465 obligates the board of county commissioners to hold a new election in certain circumstances when voters are prevented from casting their vote. That statute “is not implicated” where “voters have the opportunity to participate in an election and are not prevented from voting.” *Anthony*, 137 Nev. at 280, 488 P.3d at 577. Here, the voters were not prevented from participating and voting within the meaning of NRS 293.465, *see id.* (recognizing that “the key purpose of requiring a new election when an election is prevented is to ensure the opportunity for voter participation in the election”), and Ribar has raised no challenge under that statute.

Ribar’s petition points to no clear legal duty to hold a new primary election that mandamus could compel respondents to undertake. *See generally Andrews v. State ex rel. Eskew*, 618 P.2d 398, 401 (Okla. 1980) (recognizing that mandamus will not issue to compel an election board to request a new election due to failure to preserve ballots for recount when the board had no statutory duty to do so); *Quinn v. Kehoe*, 305 N.Y.S.2d 701, 705 (Sup. Ct. 1969) (declining to issue mandamus to declare petitioner a successful candidate or to order a new election where no ministerial duty to do so existed). Further, to the extent Ribar seeks to compel respondents to place his name on a sample ballot even if no new primary election is held,

doing so would be unavailing and likely to confuse voters. *See Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) (discussing this court's duty to avoid addressing abstract propositions that cannot affect the legal rights of the parties before it). Accordingly, Ribar has not demonstrated that extraordinary relief is available to compel the relief sought, and we thus necessarily

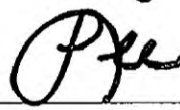
ORDER the petition DENIED.¹

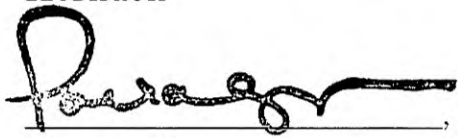

_____, C.J.
Cadish

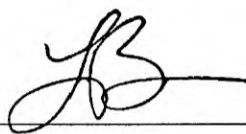

_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre


_____, J.
Bell

cc: Drew J. Ribar
Attorney General/Carson City
Washoe County District Attorney

¹Additionally, as respondents point out, Ribar failed to name O'Neill as a real party in interest to this petition, even though the relief sought would affect his interests. *See* NRAP 21(a)(2). In light of this order, however, Ribar's offer to amend the petition to include O'Neill is declined as moot.