



IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDY MICHAEL THOMPSON,
Appellant,
vs.
FRANCISCO V. AGUILAR, IN HIS
OFFICIAL CAPACITY AS NEVADA
SECRETARY OF STATE; AND
LORENA S. PORTILLO, IN HER
OFFICIAL CAPACITY AS CLARK
COUNTY REGISTRAR OF VOTERS,
Respondents.

No. 93319

*ORDER DISMISSING APPEAL IN PART
AND AFFIRMING IN PART*

This is an appeal from district court orders denying a motion for a preliminary injunction and denying declaratory relief, injunctive relief, and a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Hon. Jacqueline M. Bluth, Judge.

Appellant Andy Michael Thompson petitioned the district court for declaratory, injunctive, and mandamus relief, arguing that Nevada's election processes in place for the 2026 election violate NRS 293.2696. The district court denied Thompson's motion for a preliminary injunction, and Thompson appealed. The district court later denied the remaining relief, prompting Thompson to file an amended notice of appeal.

Because the district court has since resolved the underlying action, the appeal from the order denying a preliminary injunction has merged with the appeal from the final order. *See, e.g., In re W.N& Marjorie T. Connell Living Tr.*, 133 Nev. 137, 142, 393 P.3d 1090, 1094 (2017) (recognizing that an

appeal from preliminary injunction merges with an appeal from a final judgment). Thus, the appeal from the order denying a preliminary injunction is moot and must be dismissed. *Id.*

In the appeal from the final judgment, Thompson contends NRS 293.2696 requires Nevada to use an election process that permits a voter to verify and correct the voter's ballot before the vote is cast and before the vote is counted. Thompson argues that the district court erred in interpreting the statute otherwise. NRS 293.2696 provides, in relevant part:

The Secretary of State and each county and city clerk shall ensure that each voting system used in this State:

. . . .

(2) Allows each voter to verify privately and independently the votes selected by the voter on the ballot before the ballot is cast and counted;

(3) Provides each voter with the opportunity, in a private and independent manner, to change the ballot and to correct any error before the ballot is cast and counted, including, without limitation, the opportunity to correct an error through the issuance of a replacement ballot if the voter is otherwise unable to change the ballot or correct the error.

We review a district court's interpretation of a statute de novo. *Marquis & Aurbach v. Eighth Jud. Dist. Ct.*, 122 Nev. 1147, 1156, 146 P.3d 1130, 1136 (2006). "When interpreting a statute, [our] primary goal is to give effect to the Legislature's intent in enacting it." *Willson v. First Jud. Dist. Ct.*, 140 Nev. 62, 65, 547 P.3d 122, 129 (Ct. App. 2024) (citation modified).

All 17 counties in Nevada use Ballot Marking Devices (BMD) that have been approved by the federal government. An election worker provides the registered voter with a voter card, which the voter inserts into a BMD equipped with a privacy screen. The voter then makes selections on the ballot

and has two opportunities to review those selections before the BMD prints the ballot on paper. Once the voter confirms the ballot is correct, the BMD prints the ballot on paper, and the voter is given another opportunity to review the printed ballot. If the voter decides corrections are needed, the voter informs an election worker, who will place the printed ballot in the spoiled ballot envelope, and the voter restarts the process. Once satisfied with the printed ballot, the voter inserts the printed ballot into the tabulator. The tabulator beeps twice to indicate that it has accepted the ballot and the vote has been successfully cast.

In NRS 293.2696, “cast and counted” is a term of art referring to the point at which a voter inserts a ballot into the tabulator. *See Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Cmty. Ass’n*, 137 Nev. 516, 521, 495 P.3d 492, 497-98 (2021) (recognizing that terms of art are construed according to their established meaning, rather than the ordinary meaning of their individual words). Nevada adopted the phrase “cast and counted” from the Help America Vote Act (HAVA) as part of legislation implementing HAVA’s requirements. HAVA provides that each voting system shall

permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is *cast and counted* . . . [and] provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is *cast and counted*.

52 U.S.C. § 21081(a)(1)(A)(i), (ii) (emphasis added). When HAVA was being discussed in Congress, Representative Robert Ney described the bill as providing voters with “the opportunity to check for errors and verify the accuracy of their ballot in privacy before it is cast.” 148 Cong. Rec. 20315 (2002). Representative Ney further stated HAVA was an “[i]mprovement of ballot review procedures, whereby voters would be allowed to review ballots

and correct errors before casting their votes.” 148 Cong. Rec. 20318 (2002). Even though Congress used the phrase “cast and counted,” these statements suggest that Congress intended to ensure voters could verify and correct their ballots before casting them, not to require a separate opportunity between casting and counting. Nevada’s current election process satisfies that requirement.

Further, Thompson’s interpretation of NRS 293.2696 would produce an unreasonable result. We interpret statutory schemes to avoid unreasonable results. *AZG Ltd. P’ship v. Dickinson Wright PLLC*, 141 Nev., Adv. Op. 37, 574 P.3d 929, 933 (2025); *Platte River Ins. Co. v. Jackson*, 137 Nev. 773, 778, 500 P.3d 1257, 1262 (2021). The record indicates that the voter’s ballot is cast and counted between the time the voter inserts the ballot into the tabulator and the time the tabulator beeps twice.¹ Thus, casting and counting occur virtually simultaneously, leaving no point between those acts when the voter could verify and correct the ballot. Interpreting NRS 293.2696 to require a delay between when a ballot is cast and when it is counted so that a voter may again verify and correct their ballot would impose an impracticable condition on Nevada’s election process. Given the near-simultaneous nature of casting and counting, the opportunity to verify and correct the ballot before inserting it into the tabulator satisfies the purpose of NRS 293.2696.

¹To the extent Thompson contends the district court abused its discretion by refusing to admit or consider Thompson’s expert declarations, the record shows that the district court expressly considered those declarations.

Thus, having considered the parties' arguments, we

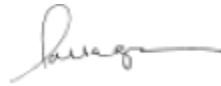
ORDER the appeal from the district court order denying a preliminary injunction DISMISSED, and the district court order denying declaratory relief, injunctive relief, and mandamus relief AFFIRMED.



Herndon, C.J.



Pickering, J.



Parraguirre, J.



Bell, J.



Stiglich, J.



Cadish, J.



Lee, J.

cc: Attorney General/Carson City
Clark County District Attorney/Civil Division
Andy Michael Thompson
Hon. Jacqueline M. Bluth, District Judge
Eighth District Court Clerk