


IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA STATE DEMOCRATIC
PARTY, A NEVADA POLITICAL PARTY
COMMITTEE,
Appellant,
vs.
NEVADA GREEN PARTY, A NEVADA
POLITICAL PARTY COMMITTEE; AND
FRANCISCO V. AGUILAR, IN HIS
OFFICIAL CAPACITY AS NEVADA
SECRETARY OF STATE,
Respondents.

No. 89186

FILED
SEP 06 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND
AND DIRECTING IMMEDIATE ISSUANCE OF REMITTITUR*

This is an appeal from a district court order denying declaratory and injunctive relief in an election matter. First Judicial District Court, Carson City; Kristin Luis, Judge.

Respondent Nevada Green Party (Green Party) is a certified minor political party in Nevada and wishes to place its candidates on the 2024 general election ballot. To gain ballot access, the Green Party circulated a petition and gathered signatures. However, the petition the Green Party circulated contained the circulator affidavit for initiative and referendum petitions, instead of the circulator affidavit for minor party ballot access. The affidavits are different. The circulators of minor party ballot access petitions must verify that they believe each person signing the petition is a registered voter in the county of his or her residence. That

verification is not required in the circulator affidavit for initiative and referendum petitions. Appellant, the Nevada State Democratic Party (Democratic Party), filed a timely challenge to the Green Party's petition and an amended complaint asserting that all the Green Party's signatures were invalid because of the incorrect circulator affidavit. The district court denied the Democratic Party's challenge, concluding first that the Democratic Party had the burden of proof and second that the Democratic Party failed to show that the Green Party had not substantially complied with the requirements for the circulator affidavit.

The district court properly considered the amended complaint

As an initial matter, we reject the Green Party's argument that the district court erred by considering the arguments raised in the amended complaint. NRS 293.174 provides that "[i]f the qualification of a minor political party to place the names of candidates on the ballot pursuant to NRS 293.1715 is challenged, all affidavits and documents in support of the challenge must be filed not later than 5 p.m. on the second Monday in June." The second Monday in June this year was June 10, 2024, the date the Democratic Party filed its complaint.

The amended complaint did not raise a new challenge to the Green Party's petition. It merely expanded upon the Democratic Party's argument as to why the petition was invalid. The original complaint asserted that "the Green Party's petition did not satisfy NRS 293.1715 or NRS 293.172 and is invalid," primarily because it did not include sufficient verified signatures. A provision in one of the referenced statutes requires a minor party's petition for ballot access to "[i]nclude the affidavit of the person who circulated the document verifying that the signers are registered voters in this State according to his or her best information and

belief.” NRS 293.172(1)(b). Thus, the original complaint had put the Green Party on notice that the Democratic Party may assert that the petition did not comply with the circulator affidavit requirements, including that the circulator verified the signers’ voter registration statuses. Accordingly, the amended complaint related back to the original complaint, and the district court properly considered the arguments raised in the amended complaint. *See* NRCPC 15(a)(1), (c) (permitting a party to amend its pleading and have the amendment relate back to the date of the original pleading if “the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading”).

The Green Party had the burden to prove substantial compliance

Next, we agree with the Democratic Party that the district court erred in placing the burden of proof on the Democratic Party to demonstrate that the Green Party did not substantially comply with the circulator affidavit requirements. The district court properly recognized that the initial burden of proof as to the petition’s invalidity falls on the challenger (here, the Democratic Party). *See, e.g., Helton v. Nev. Voters First PAC*, 138 Nev. 483, 485-86, 512 P.3d 309, 313 (2022) (placing the burden of proof on the challenger to an initiative petition). But the court failed to recognize that the Democratic Party met that initial burden by showing that the Green Party failed to comply with the circulator affidavit requirement. At that point the burden shifted to the Green Party to demonstrate substantial compliance. This burden shifting is appropriate because substantial compliance is a defense to the claim that a party did not comply with the law. *See, e.g., Delaware Cty v. Powell*, 393 N.E.2d 190, 191-92 (Ind. 1979) (describing substantial compliance as a defense and placing the burden of

proof on the defendant); *State, Dep't of Highway Safety & Motor Vehicles v. Wejebe*, 954 So.2d 1245, 1248-49 (Fla. Dist. Ct. App. 2007) (explaining that once a party proves a lack of compliance, the burden shifts to the other party to prove substantial compliance). Thus, we conclude the district court erred in placing the burden on the Democratic Party to prove the Green Party did not substantially comply with the statutory and regulatory requirements for circulator affidavits.

The Green Party did not substantially comply with the requirements for a circulator affidavit

The district court also erred when it concluded that the Green Party had substantially complied with the statutory and regulatory requirements for circulator affidavits. We generally review a determination of substantial compliance for an abuse of discretion. *Schleining v. Cap One, Inc.*, 130 Nev. 323, 330, 326 P.3d 4, 8 (2014). But here, we conclude that a mixed review standard applies because there are no relevant factual disputes and because the issue implicates legal issues—the interpretation and construction of the statute and regulation—that are generally reviewed de novo, *Pub. Emps.' Ret. Sys. of Nev. v. Reno Newspapers, Inc.*, 129 Nev. 833, 836, 313 P.3d 221, 223 (2013).

The parties agree that substantial, not strict, compliance applies here. See *Las Vegas Convention and Visitors Auth. v. Miller (LVCVA)*, 124 Nev. 669, 682-83, 191 P.3d 1138, 1147 (2008) (explaining that this court generally looks for substantial compliance in the election context); *Nevadans for Nev. v. Beers*, 122 Nev. 930, 947-48, 142 P.3d 339, 350-51 (2006) (providing that for initiative petitions, strict compliance is required for Constitutional provisions, whereas substantial compliance may be okay for statutory provisions). “The substantial-compliance standard recognizes performance as adequate where the reasonable purpose of a statute has

been met, even absent technical compliance with the statutory language.” *BMO Harris Bank, N.A. v. Whittemore*, 139 Nev., Adv. Op. 31, 535 P.3d 241, 245 (2023). Thus, “[c]ourts have defined substantial compliance as compliance with essential matters necessary to ensure that every reasonable objective of the statute is met.” *Williams v. Clark Cnty. Dist. Att’y*, 118 Nev. 473, 480, 50 P.3d 536, 541 (2002). We have recognized, however, that “the complete failure to meet a specific requirement of a statute will result in a lack of substantial compliance.” *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872, 265 P.3d 698, 700 (2011); *see also LVCVA*, 124 Nev. at 684, 191 P.3d at 1148.

The circulator affidavit used by the Green Party omitted a legally required element: the attestation that each signatory was a registered voter in the county of his or her residence. *See* NRS 293.172(1)(b), (d); NAC 293.182(2)(b). It would be error to say that one did not have to comply with this required element because the requirement arose out of a regulation. Regulations have the force of law. *See Kassebaum v. Dep’t of Corrs.*, 139 Nev., Adv. Op. 34, 535 P.3d 651, 656 (2023) (explaining that regulations adopted through the appropriate procedure “have the force and effect of law” (internal quotation marks omitted)). Thus, the Green Party was required to comply with both NRS 293.172 *and* NAC 293.182. Further, a failure to comply with such legal requirements typically results in a lack of substantial compliance, unless evidence is submitted to the contrary. *See LVCVA*, 124 Nev. at 683, 191 P.3d at 1147 (noting that in several Nevada cases “the complete failure to meet a specific requirement was found not to constitute substantial compliance”). For us to conclude otherwise would render the relevant portion of NRS 293.172 and NAC 293.182 nugatory. *See id.* at 686, 191 P.3d at 1149.

The circulator affidavits provide a level of fraud prevention that other procedures, such as validating a sample of signatures, cannot provide. *See, e.g., Sakonyi v. Lindsey*, 634 N.E.2d 444, 447 (Ill. App. Ct. 1994) (recognizing that “the circulator’s affidavit requirement is considered a meaningful and realistic method of eliminating fraudulent signatures and protecting the integrity of the political process”); *Larson v. Hazeltine*, 552 N.W.2d 830, 836 (S.D. 1996) (same); *Whitley v. Maryland State Bd. of Elections*, 55 A.3d 37, 53 (Md. Ct. App. 2012) (“The purpose of the circulator’s attestation is to assure the validity of the signatures and the fairness of the petition process, prevent fraud in the petition process, and provide an additional guarantee of trustworthiness to the signature of the voter.” (internal citations and quotation marks omitted)). Depending on how many signatures are gathered in a county, Nevada law permits the county clerk to validate the signatures using a sampling process. *See* NRS 293.1277(2) (providing that if more than 500 signatures have been gathered in the county, the county clerk may select a random sample of 500 signatures or 5 percent of the signatures, whichever is greater, to verify). Thus, in some Nevada counties, it is unlikely that county clerks would ever verify all the signatures. In those circumstances, the circulator’s attestation in the affidavit serves as the only level of fraud prevention for those signatures not included in the random sampling. *See Whitley*, 55 A.3d at 53-54 (discussing how a circulator’s affidavit serves as “an independent check on the validity of the petition signatures”).

The circulator’s attestation also provides an additional verification that is not addressed at all through the county clerk’s signature verification process. In particular, the attestation not only attests to the fact that the signatory is a registered voter in the county, but it also attests

to the fact that the signatory is a registered voter in the county of his or her residence. The sampling verification of signatures does not confirm whether a person is registered in the county of his or her residence. The county of residence is particularly relevant to a petition for minor party ballot access. Such a petition must bear a certain number of signatures from voters in each congressional district. NRS 293.1715. By requiring the petition circulator to attest that each signatory is registered to vote in the county of his or her residence, NRS 293.172 and NAC 293.182 provide some assurance that the petition complies with the requirements for minor party ballot access. Thus, the attestation missing from the Green Party's circulator affidavits serves an essential purpose, such that failure to include that attestation defeats the Green Party's substantial compliance argument.

The evidence presented by the Green Party was also insufficient to demonstrate that its circulators complied with the statutory and regulatory requirements despite the missing attestation in their affidavits. First, the declarations provided by some of the Green Party's circulators do not demonstrate substantial compliance in practice. Those declarations do not indicate that the circulators were asking signatories if they were a registered voter in the county of the signatory's residence. Second, the declaration from the CEO of a circulation company used by the Green Party merely demonstrates the company's best practices and procedures. It does not demonstrate what each employee circulator did when collecting signatures for the Green Party's petition. *LVCVA*, 124 Nev. at 687, 191 P.3d at 1150. Thus, the Green Party did not demonstrate substantial compliance with the circulator affidavit requirements in practice.

Lastly, the Green Party's failure to use the correct circulator affidavit cannot be excused by the Green Party's reliance on the sample petition received from the Secretary. A political party cannot demonstrate compliance with the law based on mistaken guidance received from a government entity when the "[g]overnment has a duty to correct any previous mistakes in enforcing the law it might have made." *See United States v. Undetermined Quantities of Clear Plastic Bags of an Article of Drug for Veterinary Use*, 963 F. Supp. 641, 646-47 (S.D. Ohio 1997) (explaining that a failure to properly enforce the law, does not waive the law). Further, permitting a minor party to be placed on the ballot when the party failed to comply with the legal requirements for such placement negates the requirements that were put in place for the public's benefit. *See, e.g., Reform Party of Ala. v. Bennett*, 18 F. Supp. 2d 1342, 1354 (M.D. Ala. 1998) (providing that a failure to enforce ballot-access laws not only harms voters but also violates the rights of political party that complied with the law in accessing the ballot). Thus, regardless of what it received from the Secretary, the Green Party still had a duty to comply with the legal requirements for circulator affidavits, and it did not do so.

Therefore, we conclude the record does not support the district court's finding that the Green Party substantially complied with the statutory and regulatory requirements that circulator affidavits on minor party ballot access petitions attest to the registration of the signers as voters in their county of residence.

The Green Party's rights are not violated

Lastly, we reject the Green Party's arguments that invalidating the signatures on its petition will violate its substantive due process and equal protection rights. We address each argument in turn.

Substantive due process

It is undisputed that minor political parties have a constitutional right to seek ballot access for their candidates. *Norman v. Reed*, 502 U.S. 279, 288 (1992). “Substantive due process protects certain individual liberties against arbitrary government deprivation regardless of the fairness of the state’s procedure.” *Eggleston v. Stuart*, 137 Nev. 506, 510, 495 P.3d 482, 489 (2021).

We acknowledge that a Secretary of State employee emailed a sample petition to the Green Party, including the incorrect circulator affidavit, which the Green Party then used. While the petition the Green Party originally submitted to the Secretary had the correct circulator affidavit, the petition had a different error: it did not include a blank space for the petition district. Thus, by email the Secretary’s employee notified the Green Party of that error and attached a form petition for the Green Party’s use, which included the space for the petition district. Unfortunately, the form petition inadvertently included the wrong circulator affidavit. A cursory review of the circulator affidavit by either the Secretary or the Green Party would have found this mistake. However, the emails between the Secretary’s office and the Green Party never discussed the circulator affidavit.

Thus, there is no evidence that the email was anything but an unfortunate mistake or that the Secretary intended to mislead the Green Party. Further, the Secretary’s employee also directed the Green Party to The Minor Party Qualification Guide 2024, which contained guidance on the proper circulator affidavit and also included citations to the relevant laws, NRS 293.172 and NAC 293.182. The statute and regulation were readily available to the Green Party, and the Secretary did not prevent the

Green Party from complying with the requirements for circulator affidavits. If the Green Party had reviewed the petition before using it, it would have discovered the incorrect circulator affidavit as the Green Party was clearly aware of the legal requirements for the affidavit considering it had used the correct affidavit in its original petition. This is an unfortunate oversight on the part of both the Secretary and the Green Party. Thus, the Secretary's actions do not rise to the level of government infringement or an egregious governmental abuse that shocks the conscience for purposes of a substantive due process violation. *See Eggleston*, 137 Nev. at 510, 495 P.3d at 489 (explaining that substantive due process "does not protect against all government infringement, but is reserved for the most egregious governmental abuses against liberty or property rights, abuses that shock the conscience or otherwise offend judicial notions of fairness and that are offensive to human dignity" (internal quotation marks omitted)).

Equal protection

"The threshold question in equal protection analysis is whether a statute effectuates dissimilar treatment of similarly situated persons." *Rico v. Rodriguez*, 121 Nev. 695, 703, 120 P.3d 812, 817 (2005). The Green Party's equal-protection argument focuses on differences between the requirements for circulator affidavits that apply to minor party ballot access petitions and those that apply to initiative and referendum petitions.

We are not convinced that minor parties seeking ballot access and proponents of initiative or referendum petitions are similarly situated. The circulator affidavits that each must use are different because the petitions implicate different interests and legal requirements. For example, the circulator affidavit for initiative or referendum petitions includes an attestation that the signatories were given the opportunity to review the

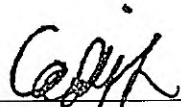
initiative or referendum. NRS 295.0575; *LVCVA*, 124 Nev. at. 686, 191 P.3d at 1149 (explaining that a signatory needs to have an opportunity to review the initiative or referendum to truly understand what they are supporting). The same is not required for minor party ballot access because the signatories are not being asked to put a substantive question on the ballot. And whereas Nevada law requires that a petition for minor party ballot access include signatures from a certain number of voters in each Congressional district, NRS 293.1715, there is no similar requirement for initiative or referendum petitions. The Green Party is more similarly situated to independent political party candidates, who must utilize similar circulator affidavits as minor political party candidates. Compare NRS 293.200(2) (requiring a circulator of a petition for an independent candidate's ballot access to attest that the signatures are from a "person registered to vote in that county"), with NRS 293.172(1)(b) (requiring a circulator of a petition for minor party ballot access to attest that "signers are registered voters in this State"). Accordingly, the Green Party has not demonstrated that invalidating the signatures it gathered because it used the wrong circulator affidavit results in an equal-protection violation.¹


The district court erred by denying the Democratic Party's request for declaratory and injunctive relief. The Green Party did not substantially comply with the requirements for circulator affidavits, and thus, the Green Party's signatures must be invalidated. See *LVCVA*, 124 Nev. at 690, 191 P.3d at 1152 (recognizing that invalidation of signatures is

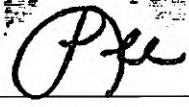
¹While the parties discuss the *Anderson/Burdick* framework adopted by the U.S. Supreme Court to determine the scrutiny that applies to election regulations, see *Arizona Democratic Party v. Hobbs*, 18 F.4th 1179, 1186 (9th Cir. 2021), the Green Party does not assert that NRS 293.172 or NAC 293.182 are unconstitutional under that framework.

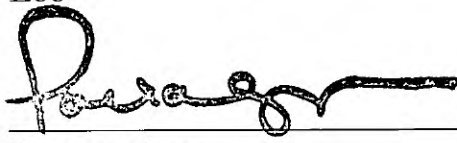
the appropriate remedy for a deficient circulator affidavit). Accordingly, we reverse the district court's order and remand for the district court to enter an order granting injunctive relief. Because of the expediency with which the parties need relief due to the impending deadline for changes to election ballots, we direct the clerk of this court to issue the remittitur immediately so that the district court may expeditiously comply with our mandate. See NRAP 41(b) (permitting the court to shorten the time for remittitur to issue).


It is so ORDERED.²


_____, C.J.
Cadish


_____, J.
Stiglich


_____, J.
Lee


_____, J.
Parraguirre


_____, J.
Bell

²We grant the August 30, 2024, motion for leave to file amicus brief in support of respondent.

HERNDON, J., with whom PICKERING, J., agrees, concurring in part and dissenting in part:

While I concur with the majority's conclusion that the district court erred by placing the burden of proof regarding substantial compliance on the Democratic Party, I respectfully dissent for two reasons. First, in my opinion, the Green Party demonstrated substantial compliance. Second, I am deeply concerned that our decision today excuses an egregious error by the Secretary of State's office that will result in a significant injustice and I am convinced that, under the circumstances presented in regard to that error, invalidating the signatures violates the Green Party's substantive due process rights.

The Green Party demonstrated substantial compliance

The majority's consideration of what is required for a circulator affidavit on a minor party petition for ballot access is too expansive. This court is limited to considering if the minor party substantially complied with the *statutory* requirements, which the Green Party did here. NRS 293.172(1)(b) requires a circulator affidavit "verifying that the signers are registered voters in this State according to his or her best information and belief and that the signatures are genuine and were signed in his or her presence." The statute does not require a circulator to attest that he or she believes each signatory is a registered voter in the county of the signatory's residence. The declarations provided by the Green Party demonstrate that the Green Party's circulators asked the signatories if they were residents of Nevada and registered voters. In addition to declarations from individual circulators, the Green Party also provided a declaration from the CEO of the petition circulation company the Green Party used. The CEO stated that he trained the circulators that worked for him to ask signatories if they

were registered voters in Nevada in the relevant congressional district. Furthermore, the signatories themselves listed their resident address next to their signatures, and the form each signatory signed listed the county and congressional district for the signatures affixed thereon. Accordingly, the Green Party met its burden of demonstrating substantial compliance with the statutory requirements for circulator affidavits on minor party petitions for ballot access.

The majority mistakenly extends the requirements for a circulator affidavit to include those provided by a regulation that was adopted to assist the Secretary of State in verifying signatures. It is only in the regulation, NAC 293.182, not the statute, that one finds the requirement that a circulator attest that the circulator believes each signatory is “a registered voter in the county of his or her residence.” It is an error to say that the requirement added by regulation is essential “to ensur[ing] that every reasonable objective of *the statute* is met.” *Williams v. Clark Cnty. Dist. Att’y*, 118 Nev. 473, 480, 50 P.3d 536, 541 (2002) (stating that substantial compliance is compliance with matters essential to the statute’s objective). There is no evidence that this additional attestation requirement added by regulation was meant to prevent fraud. In fact, it appears that it was merely meant to assist the Secretary of State and county clerk’s offices in verifying the signatures through the verification process. Furthermore, in a case involving federal races, a voter’s county of residence does not determine congressional district and so is not essential.

Additionally, the district court properly concluded that the independent verification of signatures gathered by the Green Party demonstrated substantial compliance. As this court noted in *Las Vegas Convention and Visitors Authority v. Miller (LVCVA)*, 124 Nev. 669, 687,

191 P.3d 1138, 1150 (2008), if sufficient signatures are verified, the purpose of the provision requiring a circulator provide attestations regarding the signatures gathered could be satisfied under a substantial compliance standard. Such verification did not occur in *LVCVA* because the Secretary of State there rejected the affidavits. But here, the Secretary of State accepted the affidavits and proceeded with its statistical verification of the signatures.

In a significantly similar case to the one before us now, the Supreme Court of Ohio concluded that verification of signatures renders a circulator's attestation nonessential. *State ex rel. Buchanon v. Stillman*, 231 N.E.2d 61, 62-63 (Ohio 1967). That matter involved an almost identical missing attestation in a circulator affidavit that required the circulator to attest that to the best of the circulator's knowledge the signer was qualified to sign the petition. *Id.* at 62. The court concluded that the attestation served the purpose of protecting the board of elections when the signatures were not verified, but that if the signatures were verified, the attestation "no longer serve[d] any useful purpose." *Id.* Similarly, here the missing attestation from the circulator affidavit protects the Secretary of State from placing a minor political party on the ballot that did not gather enough signatures in each congressional district. But by validating the signatures, the Secretary of State has chosen not to invoke the protection that attestation provides. Therefore, the necessity for the missing attestation becomes moot and, in line with what the *Stillman* court noted, it should not be allowed "to provide a weapon for those who desired to attack the petitions." *Id.* Accordingly, I conclude that the verification of the signatures gathered by the Green Party rendered noncompliance with any requirements created in NAC 293.182 inconsequential.

Violation of the Green Party's substantive due process rights

I further conclude that invalidation of the signatures gathered by the Green Party under the circumstances presented violates the Green Party's substantive due process rights. The majority correctly notes that minor political parties have a constitutional right to seek ballot access for their candidates. *Norman v. Reed*, 502 U.S. 279, 288 (1992). "Substantive due process protects certain individual liberties against arbitrary government deprivation regardless of the fairness of the state's procedure." *Eggleston v. Stuart*, 137 Nev. 506, 510, 495 P.3d 482, 489 (2021). It would be fundamentally unfair to invalidate the Green Party's gathered signatures in light of the Secretary of State's arbitrary and incorrect direction to the Green Party to use the wrong form.

When the Green Party decided to circulate a petition for ballot access, it sent its petition to the Secretary of State's office. The Green Party's original petition included the proper circulator affidavit provided in NAC 293.182. An employee with the Secretary of State's office replied by email to the Green Party stating, in relevant part, "It appears the petition documents you may have are an older version. . . . Please use the documents attached to begin collecting signatures." The documents the employee attached contained the *wrong* circulator affidavit, specifically the one used for circulating initiative or referendum petitions, instead of the correct circulator affidavit for minor party petitions for ballot access. The Green Party was not merely provided an incorrect form, rather, they were affirmatively told by the Secretary of State's office that the correct form the Green Party originally provided in their petition was outdated and they were affirmatively directed by the Secretary of State's office to use the specific form provided by that office in moving forward with their petition.

The Green Party then utilized the documents sent by the Secretary of State's employee, as directed, and circulated a petition with a circulator affidavit that does not include the language provided in NAC 293.182.

This case is distinguishable from *LVCVA*. In that case, the Secretary of State's Guide had the incorrect information. 124 Nev. at 676, 191 P.3d at 1143. Here, the Secretary of State took an affirmative action by providing the Green Party with a form petition and directing the Green Party to use that form petition. It would be unreasonable to expect a minor party to thereafter double check the form petition provided by the Secretary of State, who is supposed to be the primary authority on elections in Nevada. The Green Party did not need to independently review NRS 293.172 and NAC 293.182 to ensure that the Secretary of State's information was correct. Even if the Green Party had determined that the form petition provided to it by the Secretary of State's office was incorrect, the Green Party would be placed in a legal limbo because it could not comply with the legal requirements for a circulator affidavit *and* the direction from the Secretary of State's office.

I disagree with the majority's characterization of the Secretary of State's error as an "unfortunate mistake." It is working a tremendous injustice and invalidating the signatures gathered by the Green Party on the form petition provided by the Secretary of State's office would be egregious and at the expense of the Green Party's constitutional rights. See *Eggleston*, 137 Nev. at 510, 495 P.3d at 489 (observing that a violation of an individual's substantive due process rights "is reserved for the most egregious governmental abuses against liberty or property rights" (internal quotation marks omitted)); *LVCVA*, 124 Nev. at 695-96, 191 P.3d at 1155 ("Generally, substantive due process analysis applies when state action is

alleged to unreasonably restrict an individual's constitutional rights." (internal quotation marks omitted)). It also shocks the conscience, offends judicial notions of fairness, and contributes to a distrust in the election process in Nevada. See *Eggleston*, 137 Nev. at 510, 495 P.3d at 489 (explaining that a substantive due process violation occurs when a governmental abuse "shock[s] the conscience or otherwise offend[s] judicial notions of fairness" (internal quotation marks omitted)). Thus, the invalidation of the Green Party's signatures gathered under these circumstances violates the Green Party's substantive due process rights.

Accordingly, I would affirm the district court's order denying the Democratic Party's request for declaratory and injunctive relief.


_____, J.
Herndon

I concur:


_____, J.
Pickering

cc: Hon. Kristin Luis, District Judge
Pisanelli Bice, PLLC
Attorney General/Carson City
Benson Law LLC
Ashcraft & Barr LLP
Carson City Clerk