

FRANCISCO V. AGUILAR

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Deputy Secretary for Elections

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By Email and Certified Mail

Jason Guinasso

Russell J. Carr

5371 Kietzke Lane

Reno, Nevada 89511

jguinasso@hutchlegal.com

rcarr@hutchlegal.com

Re: Appeal of Verification of Signatures for Petition to Recall Sara Schmitz

Messrs. Guinasso and Carr,

We write in response to your Appeal of Verification of Signatures (“Appeal”) for Petition to Recall Sara Schmitz (“Petition”). Upon receiving the Appeal, the Secretary of State initiated an investigation pursuant to NRS 293.12793(2)(b). Based on that investigation, we find that the Petition is insufficient.

I. Background

On June 22, 2023, a notice of intent was filed to recall Sara Schmitz as a member of the Incline Village General Improvement District (“IVGID”) Board of Trustees pursuant to NRS 306.015. Between that time and 90 days thereafter (September 15, 2023), 2,229 signatures¹ were submitted in connection with the Petition. 1,801 valid signatures were needed to declare the petition sufficient. *See* Nev. Const. Art. 2 § 9.

The Washoe County Registrar of Voters conducted signature verification on the submitted signatures, and on October 23, 2023, submitted a signature verification noting less than 1,801 valid signatures for the Petition. On October 24, 2023, the Secretary of State provided notification that the total number of signatures submitted was less than 100 percent and the Petition was insufficient. This Appeal and the Secretary of State’s investigation followed.

¹ As discussed further below, while the Washoe County Registrar of Voters reported 2,193 submitted signatures, we believe an additional 36 signatures should have been included.

As part of its investigation, the Secretary of State identified 36 additional signatures that the Secretary of State believes should have been put through the verification process. The Washoe County Registrar of Voters appears not to have accepted those signatures because the notarization for those signatures lacked a notary public stamp. *See* NRS 306.030(2); NAC 293.182(2)(b); NRS 240.0044(2); NRS 240.1655(1)(d). The analysis below includes consideration of those additional 36 signatures.

The Secretary of State investigated all of the Petition signatures that the Washoe County Registrar of Voters rejected or did not put through the verification process. The Secretary of State did not, however, investigate signatures that the Washoe County Registrar of Voters accepted, and it is therefore possible that there are signatures that were improperly validated. While the Secretary of State coordinated with the Washoe County Registrar of Voters to obtain relevant documentation and information, the Secretary of State reviewed each rejected or non-verified signature *de novo*.

II. Analysis

Of the 558 signatures rejected or not verified, the Secretary of State concludes that, at a minimum, 482 signatures were properly rejected. The Petition therefore still falls short of the 1,801 valid signatures needed to be sufficient. A chart of the Secretary of State's determinations is attached. We explain below our evaluation criteria.

A. Voting in the 2020 IVGID General Election

Pursuant to Article 9, Section 2 of the Nevada Constitution, only individuals who voted in the 2020 IVGID general election were eligible to sign the Petition. Washoe County reported 7,204 individuals voted in the 2020 IVGID general election, and we obtained the names of 7,202 of those individuals. While we were not able to obtain the remaining two names in time for this response, even assuming two individuals were improperly rejected for failure to vote in the 2020 IVGID general election, that would not alter the conclusions of our investigation.

We note that we only considered voter registration as of the 2020 IVGID general election. The Secretary of State believes considering registration status at the time of the signing of the petition would be inconsistent with Article 9, Section 2 of the Nevada Constitution. *See Strickland v. Waymire*, 126 Nev. 230, 241 235 P.3d 605, 613 (2010).

B. Signature Date and Signature Submission Date

A petition must contain "the date that the petition was signed." NRS 306.020(4)(b). And signatures must be collected between the day the notice of intent was filed (here, June 22, 2023) and 90 days thereafter (here, September 15, 2023). NRS 306.015(3). Signatures collected from the day the notice of intent is filed through 45 days thereafter (here, August 5, 2023) must be submitted by 48 days after the day on which the notice of intent is filed (here, August 8, 2023). NRS 306.015(3)(a). Importantly, the Legislature has strictly required that "[i]f any such signature is not timely submitted to the filing officer pursuant to this paragraph, it shall be deemed that the signature is not valid." *Id.* Signatures collected between 46 and 90 days from the

day on which the notice of intent is filed (here, between August 6, 2023 and September 15, 2023) must be submitted on or before the 90th day after the notice of intent is filed. NRS 306.015(3)(b).

Signatures were rejected if they were collected during the first 45 days from the filing of the notice of intent but were not submitted by August 8, 2023. Additionally, signatures were rejected if the signature date was outside the 90-day signature period or was illegible or missing and therefore could not be verified as falling within the 90-days signature period. Notably, there is no provision in statute or regulation for curing signature dates.

C. Duplicate Signature

Signatures were rejected if they were duplicates of other accepted signatures in the Petition.

D. Withdrawal

A signer may request their name be removed from a petition by submitting a request in writing to the county clerk any time before signature verification is completed. NRS 306.015(6). We reviewed the withdrawal requests received by the Washoe County Registrar of Voters, and if we did not identify a written record confirming the request, we reviewed the signatures under the other criteria identified in this letter.

E. Address Mismatch

Recall petition signers are required to provide their residence addresses. NRS 306.020(4)(b); *see also* NRS 306.030(1). The Secretary of State considered the failure to include *any* address as a basis for rejection of a signature. *See Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 686, 191 P.3d 1138, 1149 (2008).

However, because the focus for a recall petition is on whether the signer voted in the election at which the officer was elected, Nev. Const. Art. 2, § 9, the Secretary of State considers the signer's address as a non-dispositive factor for determining whether the person who signed the petition is the same person who voted during the relevant election. An address can be useful to confirm identity, but the Secretary of State did not consider a discrepancy in a provided address as an independent basis for rejecting a signature for the Petition. As a result, we do not reach your assertion that the time provided for signers to cure discrepancies in provided address may not have been sufficient.

F. Signature

Pursuant to NRS 293.1277(5)-(6), signatures must be verified against a county clerk's records, including the signatures contained in applications to vote. We obtained from the Washoe County Registrar of Voters copies of signatures for signers whose signatures we found were not invalid based on the criteria described above. We conducted an independent analysis of those signatures to determine whether they matched.

We note that this letter is provided at the same time as a letter relating to your appeal of the verification of signatures for the petition to recall Matthew Dent. In your Appeal, you state that “it seems clearly erroneous that a statute would be applied in a manner whereby the same signer to two different petitions would have their signature rejected” where “the same signature was found valid for one Petition but not for the other.” We indeed found signatures valid for one petition but not for the other. We decline to speculate why signatures for the same person on two separate petitions would differ markedly.

We also decline your invitation to interpret NAC 293.185(1) as requiring a county clerk to provide an opportunity to cure a signature. NAC 293.185(1) is specific only to opportunities for curing address discrepancies, and we see no basis to impose a requirement that is not in statute or regulation.

G. Notarization

We considered 36 signatures that the Washoe County Registrar of Voters did not put through the verification process, apparently based on a lack of notary public stamp. Circulators must verify that signatures contained in the petition are true to the best of their knowledge and belief. NRS 306.030(2). Such verification must be done “before a person authorized by law to administer oaths.” *Id.* Furthermore, NAC 293.182(2)(b) provides a form of an affidavit to be attached to a petition which must be “substantially” complied with. We believe that the lack of notary public stamp is not fatal to the validity of the signatures. The Secretary of State verified that the notary public who signed the applicable Petition pages was registered with the Secretary of State and active as of the signing date.

III. Conclusion

In summary, the Secretary of State finds the Petition remains insufficient. No further action will be taken on the Appeal.

Sincerely,

Gabriel Di Chiara, Chief Deputy
Secretary of State

Encl.

Cc:

Washoe County Registrar of Voters
Sara Schmitz