IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLICAN NATIONAL COMMITTEE; DONALD J. TRUMP FOR PRESIDENT 2024, INC.; NEVADA REPUBLICAN PARTY; AND SCOTT JOHNSTON,
Appellants,
vs.
FRANCISCO V. AGUILAR, IN HIS OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE; THE STATE OF NEVADA; LORENA PORTILLO; LYNN MARIE GOYA; CARI-ANN BURGESS; JAN GALASSINI; VET VOICE FOUNDATION; AND NEVADA ALLIANCE FOR RETIRED AMERICANS,
Respondents.

No. 89149

FILED

OCT 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

The Secretary of State's office, through testimony to the Legislature and a memorandum circulated to election officials, has interpreted NRS 293.269921(2) such that a mail ballot without a postmark that is received by 5 p.m. on the third day following the general election must be counted. Appellants Republican National Committee, Nevada Republican Party, Donald J. Trump for President 2024, Inc., and Scott

Johnston (collectively, the RNC) then sued respondents Secretary of State, the County Registrars of Voters for Washoe and Clark, and the County Clerks for Washoe and Clark (collectively, the State) seeking declaratory and injunctive relief. The RNC sought a preliminary injunction to prevent Nevada election officials from counting mail ballots without a postmark that are received after the general election. The district court granted a motion to intervene by respondents Nevada Alliance for Retired Americans and Vet Voice Foundation (collectively, Vet Voice Foundation), who opposed the RNC's motion. The State also opposed the motion. After a hearing, the district court denied the RNC's motion. The RNC now appeals, arguing that the district court erred in concluding the RNC lacked standing and in denying the RNC's motion for a preliminary injunction.

The RNC's standing

The RNC argues that it has standing under resource diversion and competitive injury standing theories.[1] We review de novo the district court's determination that the RNC lacks standing under either theory. *See Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) ("Standing is a question of law reviewed de novo.").

We first conclude the RNC did not demonstrate standing under a resource-diversion theory. *See La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010) ("An organization suing on its own behalf can establish an injury when it suffer[s] both a diversion of its resources and a frustration of its mission.")

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[1]The RNC has abandoned the associational and vote dilution standing theories it argued below, which the district court rejected. Because the basis for respondent Johnston's standing was vote dilution and the RNC has not pressed that theory on appeal, we do not address respondent Johnston's standing.

(internal quotation marks omitted). The RNC asserts that it currently expends significant resources on election monitoring, but it would need to expend additional resources to specifically monitor mail ballots received without postmarks. But the RNC already monitors elections. Accordingly, any additional resources it would expend would merely constitute "continuing ongoing activities" or "business as usual." *See Friends of the Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 942 (9th Cir. 2021) (holding that a diversion-of-resources injury cannot be established based on "continuing ongoing activities" or expenditures related to "business as usual"). Nor did the RNC allege the challenged action directly affects the RNC's core business activity. *Food & Drug Administration v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024) (emphasizing that challenged governmental actions must "directly affect[ ] and interfere[ ]" with a plaintiff's "core business activities" to establish a diversion-of-resources injury). Thus, the RNC lacks standing under a diversion-of-resources theory.

The RNC's argument related to competitive-injury standing, while strained, presents a closer call at this preliminary injunction stage, where no discovery has taken place. *See Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022) (holding that a political party can establish such standing "[i]f an allegedly unlawful election regulation makes the competitive landscape worse for a candidate or that candidate's party than it would otherwise be if the regulation were declared unlawful"); *Murthy v. Missouri*, 144 S. Ct. 1972, 1986 (2024) (holding that a plaintiff cannot rest on "mere allegations," when establishing standing at the preliminary injunction stage *after* discovery has taken place) (emphasis added)); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431-32 (2021) (assuming that

plaintiffs' allegations that defendants violated their obligations under the Fair Credit Report Act were correct in determining whether plaintiffs had been injured for standing purposes). Assuming, without deciding, that the RNC has demonstrated standing under a competitive-injury theory,[2] we nevertheless affirm the district court's order denying the RNC's motion for a preliminary injunction on the merits, as discussed below.[3]

Preliminary injunction

"A preliminary injunction is proper where the moving party can demonstrate that it has a reasonable likelihood of success on the merits and that, absent a preliminary injunction, it will suffer irreparable harm for which compensatory damages would not suffice." *Posner v. U.S. Bank N.A. as Tr. for MASTR Asset Backed Sec. Tr. 2006-HE1, Mortg. Pass Through Certificates, Series 2006-HE1*, 140 Nev., Adv. Op. 22, 545 P.3d 1150, 1152 (2024) (internal quotation marks omitted)). This court reviews the denial

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[2]We note, however, that Nevada federal district courts have consistently rejected the RNC's standing under the theories it alleged on appeal. *See Republican Nat'l Comm. v. Burgess*, No. 3:24-CV-00198-MMD-CLB, 2024 WL 3445254, at *2-6 (D. Nev. July 17, 2024); *Donald J. Trump for President, Inc. v. Cegavske*, 488 F. Supp. 3d 993, 1003 (D. Nev. 2020). Most recently, a Nevada federal district court rejected the RNC's resource-diversion argument in *Republican National Committee v. Aguilar*, No. 2:24-CV-00518-CDS-MDC, 2024 WL 4529358, at *6-8 (D. Nev. Oct. 18, 2024). Because we ultimately reject the RNC's argument on the merits, we do not address the RNC's competitive-injury standing.

[3]We reject the State's argument that issue preclusion bars the RNC's challenge. *See Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (outlining the factors for issue preclusion to apply); *see also United States Golf Ass'n. v. Arroyo Software Corp.*, 81 Cal. Rptr. 2d 708, 713 (Ct. App. 1999) (concluding that issue preclusion does not apply "where there are changed conditions or new facts which did not exist at the time of the prior judgment"). And we similarly reject the State's argument that the Democratic Party was a necessary party below or that laches applies.

of a preliminary injunction for an abuse of discretion and any question of law de novo. *Id.*

Likelihood of success on the merits

The RNC argues that it demonstrated a likelihood of success on two issues. First, the RNC contends that it is likely to succeed on its argument that NRS 293.269921(2) precludes the counting of mail ballots received within three days after election day that are not postmarked. Second, the RNC argues that it was likely to succeed on its argument that the Secretary of State's memorandum interpreting NRS 293.269921 violated the notice and hearing requirements in the Nevada Administrative Procedure Act (APA).

Indeterminate postmarks under NRS 293.269921(2)

NRS 293.269921(2) provides that "[i]f a mail ballot is received by mail not later than 5 p.m. on the third day following the election and the date of the postmark cannot be determined, the mail ballot shall be deemed to have been postmarked on or before the day of the election." This court reviews issues of statutory construction de novo. *Pub. Emps.' Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 146, 179 P.3d 542, 548 (2008). We "first look to the plain language of a statute when interpreting a statutory provision." *Leigh-Pink v. Rio Props., LLC*, 138 Nev. 530, 536, 512 P.3d 322, 327 (2022). The court may look beyond the statute's plain language when that language is ambiguous, meaning that it "is susceptible to more than one reasonable interpretation." *Valenti v. State, Dep't of Motor Vehicles*, 131 Nev. 875, 879, 362 P.3d 83, 85 (2015).

NRS 293.269921(2) is susceptible to two reasonable interpretations. One interpretation, offered by the RNC, is that the mail ballot must have a postmark given that the provision applies "when the date *of the postmark* cannot be determined," NRS 293.269921(2) (emphasis

added). Under this interpretation, subsection 2 applies only where the mail ballot has a postmark but the date of the postmark cannot be determined because the postmark is "illegible" or "smudged."

The second interpretation, offered by the State and Vet Voice Foundation, is that subsection 2 applies to mail ballots without a postmark because in those circumstances, "the date" also "cannot be determined." Notably, in *Donald J. Trump for President, Inc. v. Cegavske*, the federal district court interpreted a previous, identical provision, concluding that it established "a presumption that a ballot was cast in time, as long as it is received by election officials before 5 p.m. on the third day after the election, *even if it lacks a postmark*." 488 F. Supp. 3d at 996 (emphasis added). And while our dissenting colleague notes that the Legislature could have clearly stated that it intended for subsection 2 to apply to mail ballots without postmarks, the converse is also true—if the Legislature meant for subsection 2 to apply only to "illegible" or "smudged" postmarks, it could have explicitly said that as well. Because the statute could therefore reasonably be interpreted in at least two ways, we look beyond the statute's plain language to determine the Legislature's intent. *See Valenti*, 131 Nev. at 879, 362 P.3d at 85 (providing that to resolve an ambiguity, this court will look at the legislative history to interpret the statute in a way that conforms with reason and public policy).

The legislative history is consistent with the interpretation advanced by the State and Vet Voice Foundation. For example, during a hearing on the bill that would become NRS 293.269921, Assemblyman Andy Matthews asked Assemblyman Jason Frierson, the bill's sponsor, about the "postmark cannot be determined" provision: "I am wondering why you believe it is good policy for us to accept mail ballots where the postmark

date cannot be determined, and I am wondering if we know how often that happens where a ballot comes back without a postmark date." Hearing on AB 321 Before the Assemb. Comm. on Legis. Operations & Elections, 81st Leg., at 20-21 (Nev. April 1, 2021). In response, Assemblyman Frierson explained that the intent was to allow any ballots received within the specified period to be counted whether the envelopes "were not postmarked" or "the postmark was illegible, smudged, or otherwise damaged to where it could not be read":

> To the extent that there were envelopes *that were not postmarked* or the postmark was illegible, smudged, or otherwise damaged to where it could not be read—I think similar to the postmark requirement of three days—*any of those that came in within that same period of time would be counted* and anything that came in after that would not be counted.

Id. at 21 (emphases added). During a later meeting before the Nevada Senate Committee on Finance, Assemblyman Frierson also touched on the broader purpose of the bill, testifying that it was meant "to develop a system that continues to expand the freedom of Nevadans to vote." Meeting Before the Nev. Senate Comm. on Fin., 81st Session (May 29, 2021). Therefore, the State and Vet Voice Foundation's interpretation of NRS 293.269921(2) is consistent with Assemblyman Frierson's comments that AB 321's indeterminate postmark language encompasses ballots with no postmarks, and with AB 321's stated purpose of expanding voting rights. Thus, we conclude the legislative history supports an interpretation of NRS 293.269921(2) where mail ballots without postmarks are counted when received by 5 p.m. on the third day after the election.

Public policy also supports such an interpretation of NRS 293.269921(2). *See McKay v. Bd. of Supervisors of Carson City*, 102 Nev.

644, 651, 730 P.2d 438, 443 (1986) ("The entire subject matter and policy may be involved as an interpretive aid."). As explained in the legislative history, the purpose of the bill was "to expand the ways in which people vote," and make it easier for voters to exercise their freedom to vote. Hearing on AB 321 Before the Assemb. Comm. on Legis. Operations & Elections, 81st Leg., at 20-21 (Nev. April 1, 2021) (Assemblyman Frierson speaking); *see also Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 734, 100 P.3d 179, 195 (2004) (noting that NRS 293.127 (governing the construction of election laws) "expresses the state's public policy that election laws, enumerated in NRS Chapter 293, should be liberally construed to effectuate the will of the people" and that "time, place, or manner restriction[s]" must not work unreasonably, in light of the totality of the circumstances"). If a voter properly and timely casts their vote by mailing their ballot before or on the day of the election, and through a post office omission the ballot is not postmarked, it would go against public policy to discount that properly cast vote. *See Clark Cnty. v. City of Las Vegas*, 92 Nev. 323, 342, 550 P.2d 779, 792 (1976) (recognizing that "a voter has the constitutional right to have his vote given as much weight as any other vote and not to have his vote denied, debased, or diluted in any manner"). Indeed, there is no principled distinction between mail ballots where the postmark is "illegible" or "smudged" and those with no postmark—in each instance, the date the mail ballot was received by the post office cannot be determined. The Legislature has accounted for difficulties determining the date on which a small number of mail ballots were received by providing a short window during which these ballots will be "deemed to have been postmarked on or before the day of the election." NRS 293.269921(2).

We also conclude the RNC's argument that it is within a voter's control to ensure that their mail ballots are postmarked is insufficient to counter the strong public policy supporting the counting of properly cast votes. The RNC asserts that a voter can ensure their ballot is postmarked by visiting a post office in person and requesting a postmark from the postal service associate when dropping off their mail ballot. While this may be possible for some voters, it may not be for other groups, such as homebound voters or those who live significantly far away from a post office and thus cannot physically drop off their mail ballot in person. Nor does the statute impose such a burden on voters. And doing so would cut against the stated purpose of expanding, rather than limiting, voting rights. "[E]xamining the context and the spirit of the law or the causes which induced the Legislature to enact it," *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007), we therefore conclude that NRS 293.269921(2) permits the counting of mail ballots without postmarks that are received by mail before the deadline. Thus, the RNC failed to demonstrate a likelihood of success on the merits on this ground.

The Secretary of State's compliance with the APA

The RNC also argues that the district court erred by determining that the RNC did not demonstrate a likelihood of success on the merits because the Secretary of State's memorandum regarding NRS 293.369921(2) violates the APA's notice and hearing requirements. We disagree.

The Legislature has designated the Secretary of State as the Chief Officer of Elections. NRS 293.124(1). And the Legislature has authorized the Secretary of State to "provide interpretations and take other actions necessary for the effective administration of the statutes and regulations governing the conduct of primary, presidential preference

primary, general, special and district elections in this State." NRS 293.247(4). Relatedly, the Secretary of State is required to "prepare and distribute to each county and city clerk copies of . . . [i]nterpretations issued by the Secretary of State's Office." NRS 293.247(5)(b). Because the Secretary of State's memorandum is an interpretation of an election statute (NRS 293.269921) that the Secretary had authority to issue under NRS 293.247(4), it is not a "regulation" subject to the APA's procedural requirements. *See* NRS 233B.038(2)(h) (providing that "[a]n interpretation of an agency that has statutory authority to issue interpretations" is not a "regulation"); *S. Nev. Operating Eng'rs Cont. Compliance Tr. v. Johnson*, 121 Nev. 523, 528, 119 P.3d 720, 724 (2005) (explaining that when an agency makes a regulation, it must comply with the APA's notice and hearing requirements). Thus, the RNC failed to demonstrate a likelihood of success that the Secretary of State's interpretation of NRS 293.269921 violated the APA's procedural requirements.

Irreparable harm

Even if the RNC had demonstrated a likelihood of success on the merits, it failed to demonstrate it would suffer an irreparable harm warranting a preliminary injunction, and that an injunction would outweigh "the potential hardships to the relative parties and others, and the public interest." *See Posner,* 140 Nev., Adv. Op. 22, 545 P.3d at 1152 (internal quotation marks omitted) (providing that a party seeking a preliminary injunction must establish that "it will suffer irreparable harm for which compensatory damages would not suffice"); *Nevadans for Sound Gov't*, 120 Nev. at 721, 100 P.3d at 187 ("In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest."). We conclude that the RNC failed to meet its burden.

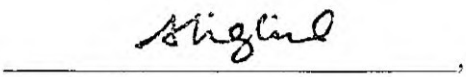
The RNC alleged that Republican voters vote by mail at a much lower percentage than Democratic voters. And thus, counting allegedly invalid mail ballots received after election day would benefit Democratic candidates at the expense of Republican candidates. The RNC's complaint identifies various sources supporting its assertion that the partisan lean of mail ballots would favor Democrats. But the RNC did not present evidence as to the partisan lean of mail ballots that do not have a postmark, which occurs as the result of random postal service omissions. And it further failed to present evidence that the 24 mail ballots received in Clark County after election day during the 2024 primary election without a postmark—the only mail ballots, statewide, that the RNC identified as received after election day without a postmark—impacted any race during that election cycle or that such ballots would impact any race in the 2024 general election.

The RNC also fails to demonstrate that the potential hardship to others and the public interest favors granting the preliminary injunction. "The public has an interest in the fair and orderly operation of elections, and the Supreme Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 609 (8th Cir. 2020) (internal quotation marks omitted). Rejecting timely mail ballots because of postal service omissions cuts against the strong public interest in exercising the right to vote. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (noting that the public has a "strong interest in exercising the fundamental political right to vote") (internal quotation marks omitted)). Notably, the RNC presented no evidence or allegations that counting mail ballots without postmarks under NRS 293.269921 would be subject to voter fraud, or that the election security measures currently in place are inadequate to

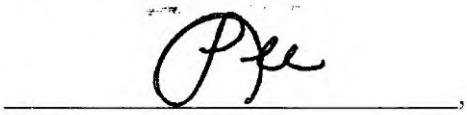
address its concerns regarding these ballots. Thus, because the RNC fails to demonstrate a likelihood of success on the merits and irreparable harm, we conclude the district court did not err by denying the RNC's motion for a preliminary injunction. We therefore

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Cadish



_____, J.
Stiglich



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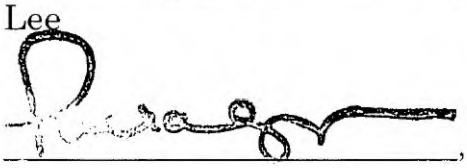
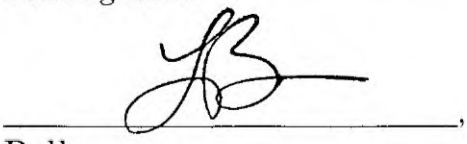
Lee



_____, J.
Parraguirre



_____, J.
Bell

HERNDON, J., concurring:

I concur with the majority in the result only, insofar as I agree that the appellants have made an insufficient showing that they will suffer irreparable harm in the absence of an injunction. I write separately because I depart from the majority's conclusion that NRS 293.269921(2) allows for the consideration and counting of mail ballots received after the date of the election that do not contain a postmark.

NRS 293.269921(2) is unambiguous and we therefore need look no further than the text itself. "When a statute is facially clear, this court will give effect to the plain meaning and not go beyond the plain meaning to determine the Legislature's intent." *Sonia F. v. Eighth Jud. Dist. Ct.*, 125 Nev. 495, 499, 215 P.3d 705, 707 (2009). We must "construe statues as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized." *Orion Portfolio Services 2 LLC v. County of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010). In section one, the statute is clear that a mail ballot must contain a postmark: "[I]n order for a mail ballot to be counted for any election, the mail ballot must be[ ] . . . [m]ailed to the county clerk, *and*[ ] [*p*]*ostmarked* on or before the day of the election[.]" NRS 293.269921(1)(b)(1) (emphasis added). In section two, the statute allows for an exception, but still requires the existence of a postmark: "If a mail ballot is received by mail not later than 5 p.m. on the third day following the election and the date *of the postmark* cannot be determined, the mail ballot shall be deemed to have been postmarked on or before the day of the election." NRS 293.269921(2) (emphasis added). The statute is clear: "of the postmark" requires the existence of a postmark and "cannot be determined" requires the postmark to be indeterminable—meaning, for example: smudged, obscured, illegible, or torn. Read together, the statute clearly and unambiguously requires the existence of a postmark. The exception cannot exist without the triggering event. In other words, a postmark cannot be indeterminable unless there is a postmark to begin with. To read otherwise contravenes the plain text of the statute; under no reading of the statute can we omit the requirement that a postmark must exist. We therefore need not inquire into the Legisature's intent when

drafting the statute. The majority's conclusion to the contrary runs afoul of our established statutory construction principles.

In the same vein, a "fundamental rule of statutory construction is that '[t]he mention of one thing implies the exclusion of another.'" *In re Estate of Prestie*, 122 Nev. 807, 814, 138 P.3d 520, 524 (2006) (alteration in original) (quoting *State v. Wyatt*, 84 Nev. 731, 734, 448 P.2d 827, 829 (1968) (Batjer, J., dissenting))). We will not read implied terms that the Legislature omitted into the statute, *Parsons v. Colts Mfg. Co. LLC*, 137 Nev. 698, 705, 499 P.3d 602, 608 (2021), and will avoid "statutory interpretation that renders language meaningless[.]" *Williams v. State Dep't of Corr.*, 133 Nev. 594, 596 402 P.3d 1260, 1262 (2017) (internal quotation marks omitted). We must "construe statutes to give meaning to all of their parts and language[.]" *Coast Hotels and Casinos, Inc. v. Nev. State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001).

NRS 293.269921's inclusion of a postmark requirement implies the exclusion of non-postmarked mail ballots. If the Legislature intended to include mail ballots that contained no postmark whatsoever, it would have done so. For example, the Legislature could have included language under NRS 293.269921(2) allowing for an exception of mail ballots with an indeterminable postmark *or* no postmark. But no such phrasing is found here. Instead, the statute is facially clear that a mail ballot must contain a postmark, with no mention of mail ballots that are void of a postmark altogether. The majority errs in reading in terms that the Legislature omitted to the detriment of the statute's plain text. If we were to take the majority's view, the "postmark" language in the statute would be superfluous and there would be no need for the language entirely. If the exception was meant to count mail ballots—regardless of any sort of

postmark, illegible or otherwise—that met the relevant time requirement, the mention of a postmark at all would be unneeded. That is, the language of the statute would simply except any mail ballot that was received by 5 p.m. within three days of the election with no mention of a postmark. But we must read the statute to give meaning to the phrase "postmark" and we must assume the omission of mail ballots void of a postmark was intentional. Any other application is illogical.

In sum, NRS 293.269921(2) is clear and unambiguous that a mail ballot must contain a postmark and, therefore, any inquiry into the Legislature's intent is erroneous. We must read the statute as it is plainly written and resist reading terms into the statute that the Legislature omitted to ensure that the statutory language is meaningful. If the Legislature meant to include mail ballots void of a postmark, as the majority concludes, it would have done so. But it did not. And we cannot read into the statute exceptions that do not exist. To do so contravenes our well-established principles of statutory construction and interpretation.

Because I believe the majority errs in looking beyond the statute's plain text, I respectfully concur in the result only.

_____, J.
Herndon

PICKERING, J., concurring in the result only:

I join my colleagues in affirming the district court's order denying appellants' motion for a preliminary injunction. The parties offer competing interpretations of the postmark requirement in NRS 293.269921. While I agree with Justice Herndon that, by its plain terms, the statute

seems to say that a mailed ballot must have a postmark to be counted, that is not the argument the appellants make. Instead, they argue that, while mailed ballots that arrive on or before election day do not need a postmark to be counted, ballots that arrive in the four days following election day must have a postmark to be counted. While this reading of the statute has a plausible policy justification, it does not comport with the statute's plain text. *See* NRS 293.269921(1)(b)(1) (stating that, for a mail ballot to be counted, it "must be . . . [p]ostmarked"); NRS 293.269921(2) (addressing instances in which a mailed ballot arrives after the date of the election and "the date of *the postmark* cannot be determined") (emphasis added). It also conflicts with the Secretary of State's interpretation, issued May 29, 2024, which instructs that mailed ballots that do not have postmarks will be counted so long as they are received by the third day following election day.

This court reviews the district court's decision to deny a request for a preliminary injunction de novo as to questions of law and otherwise for abuse of discretion. *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015). Before a court issues a preliminary injunction, the moving party must show "a likelihood of success on the merits of their case and that they will suffer irreparable harm without preliminary relief." *Shores v. Global Experience Specialists, Inc.*, 134 Nev. 503, 505, 422 P.3d 1238, 1241 (2018). In deciding whether to grant preliminary injunctive relief, courts also "weigh the potential hardships to the relative parties and others, and the public interest." *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

I would affirm the district court's order denying the appellants' motion for a preliminary injunction for two reasons. First, while I share

Justice Herndon's concern with the majority's decision endorsing the Secretary of State's interpretation of NRS 293.269921, I am also not convinced that the appellants' reading is correct either. Under the appellants' interpretation, mailed ballots without postmarks that are received on or before election day would be counted, but those received after that date would not be counted unless they have postmarks. This is a distinction that NRS 293.269921 does not make. Our rules of statutory interpretation require adherence to the statute's plain text, absent ambiguity, which does not appear here. See *Redev. Agency of City of Sparks v. Nevada Lab. Comm'r*, 140 Nev., Adv. Op. 44, 551 P.3d 303, 309 (2024) ("absent ambiguity, a statute's plain text controls its interpretation"). Therefore, appellants have not sufficiently demonstrated a likelihood of success on the merits to warrant preliminary injunctive relief.

Second, and more importantly, it would not be in the public interest for this court to reverse the district court's denial of appellants' motion for preliminary injunctive relief this close to the election. With mailed ballots already sent to voters and early voting underway, clarity and consistency in election rules are of paramount importance. "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). For those reasons, the Supreme Cout has "repeatedly emphasized that . . . courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020); *see also Veasey v. Perry*, 574 U.S. 951, 952 (2014) (Ginsburg, J., dissenting).

It is not in the public interest to change the rules governing this election this close to election day. For this reason, while I disagree with the majority's reading of NRS 293.269921, I concur in the decision to affirm the district court's denial of preliminary injunctive relief.

Pickering, J.

Pickering

cc: Hon. James Todd Russell, District Judge
First & Fourteenth PLLC
Ashcraft & Barr LLP
Chattah Law Group
Attorney General/Carson City
Bravo Schrager, LLP
North Las Vegas City Attorney
Elias Law Group LLP/Wash DC
Washoe County District Attorney
Washoe County District Attorney/Civil Division
Clark County District Attorney/Civil Division
Carson City Clerk