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9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
10 **IN AND FOR THE COUNTY OF WASHOE**

11 ROBERT BEADLES, an individual;  
12 RICHARD H. LEE, an individual; JEFF  
13 LOFY, an individual; CAROLYN  
14 SULLIVAN, an individual; PAMELA JO  
15 SORENSON, an individual; BETTY  
16 THIESSEN, an individual; MICHAEL  
17 KICH, an individual; DAVID  
18 CHAMBERLAIN, an individual; JILL  
19 RANSOM, an individual; LOUISA  
20 CRAVIOTTO, an individual; SIAVOSH  
21 SHAMSHIRPOURIAN, an individual;  
22 PENNY L. BROCK, an individual;  
23 JAMES M. BENTHIN, an individual;  
24 STACEY SAMPSON, an individual;  
25 LESTER K. COOPER, an individual;  
26 KEN KASTERKO, an individual;  
WAYNE CATES, an individual; J.S.  
MCELHINNEY, III, an individual; D.E.  
FERREL, an individual; SEAN  
GALLAGHER, an individual; GALIN  
BROOKS, an individual; THOMAS  
HUFFORD, an individual; DELIA  
WHITE, an individual; JASON RAND  
LOWE, an individual; RICHARD  
SANDOZ, an individual; VALERIE  
WHARTON, an individual,

27 Plaintiffs,

28 v.

CASE NO.: CV22-00661

DEPT. NO.: 4

**PLAINTIFFS' EX PARTE  
APPLICATION FOR A TEMPORARY  
RESTRAINING ORDER TO  
CONDUCT MEANINGFUL VOTER  
OBSERVATION IN WASHOE  
COUNTY, NEVADA ON ORDER  
SHORTENING TIME PURSUANT TO  
WDCR 11**

1 BARBARA CEGAVSKE, in her official  
2 capacity as Nevada Secretary of State;  
3 DEANNA SPIKULA, in her official  
4 capacity as Registrar of Voters for  
5 Washoe County, Nevada; DOES I-X,  
6 inclusive; and ROE CORPORATIONS I-  
7 X, inclusive,

Defendants.

8 Plaintiffs, by and through their attorneys of record, ADAM R. FULTON, ESQ. and  
9 LOGAN WILLSON, ESQ., of the law firm of JENNINGS & FULTON, LTD., hereby moves  
10 this court pursuant to NRS § 33.010 *et seq.*, for a Temporary Restraining Order (“TRO”) to  
11 conduct meaningful voter observation in Washoe County, Nevada.

12 This Application is made and based upon the papers and pleadings on file herein, the  
13 Memorandum of Points and Authorities, the Declaration of Adam R. Fulton, Esq., the  
14 attached exhibits, and any oral argument the Court will permit at the hearing on this matter.

15 Dated: April 28th, 2022

**JENNINGS & FULTON, LTD.**

16 By: /s/ Adam R. Fulton

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28

**DECLARATION OF ADAM R. FULTON IN SUPPORT OF APPLICATION FOR  
TEMPORARY RESTRAINING ORDER ON ORDER SHORTENING TIME**

STATE OF NEVADA           )  
  ) ss:  
COUNTY OF CLARK        )

ADAM R. FULTON, ESQ., being first duly sworn does depose and say:

1. I am duly licensed to practice law in the State of Nevada and am a partner with the law firm of Jennings & Fulton, Ltd., counsel for Plaintiffs in the above-entitled matter.

2. I have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will do so if called upon.

3. I request that Plaintiffs' Ex Parte Application be heard on shortened time because Nevada's primary election will be taking place on Tuesday, June 14, 2022 (the "Primary Election"), with early in-person voting beginning on May 28, 2022, and this matter seeks to redress and enforce meaningful voter observation of elections in Washoe County, Nevada.

4. Nevada's General Election will be taking place on Tuesday, November 8, 2022 (the "General Election").

5. On March 21, 2022, Plaintiffs sent a letter to Defendant Deanna Spikula, the Washoe County Registrar of Voters, in an effort to address their concerns with regard to their statutory right to meaningfully observe the upcoming elections. *See* Exhibit 1.

6. In the March 21, 2022 letter, Plaintiffs outlined a number of reasonable accommodations that would enable observers to meaningfully observe the ballot processing without interfering with the process. *Id.*

7. Defendant Spikula has responded and Plaintiffs have replied, however, Defendant Spikula failed to address many of Plaintiffs concerns with regard to their statutory right to meaningfully observe the upcoming elections and to observe the ballot processing to ensure that meaningful observation is allowed. *See Exhibits 2-3.*

8. Given the fast-approaching Primary Election, coupled with the lack of response or efforts to address the previous issues preventing meaningful observation, Plaintiffs were forced to file the Complaint and the present Application to protect their rights and to ensure the integrity of the upcoming elections.

9. Damage to Plaintiffs will be irreparable if meaningful voter observation does not take place during the Primary Election, the General Election, and future elections in Nevada.

10. Plaintiffs have and will continue to suffer irreparable injury and loss of their right to be meaningfully observe Washoe County elections, giving rise to the need for this Temporary Restraining Order.

11. I will personally cause courtesy copies of the Application to be served upon Defendants at their last known addresses. These efforts are to give notice that Plaintiffs are requesting this immediate and extraordinary relief.

12. This request for an Order Shortening Time is made in good faith and without improper motive.

13. Pursuant to NRS § 53.045, I declare under penalty of perjury under the State of Nevada that the foregoing is true and correct.

/s/ Adam R. Fulton, Esq.  
ADAM R. FULTON, ESQ.

## MEMORANDUM OF POINTS & AUTHORITIES

### I. INTRODUCTION

This Ex Parte Application is necessary because Plaintiffs have requested to exercise their statutory right to meaningfully observe the upcoming elections with no substantive response from Defendants. *See* Exhibits 1-3. For months following the November 3, 2020 election (“2020 Election”), numerous cases were filed across the country alleging election misconduct, fraud, and impropriety across the board. Throughout the initial voting process and the ensuing recounts and audits, numerous allegations of improper ballot counts arose. Part of those allegations centered on the fact that many jurisdictions failed to provide the general public “meaningful observation” of the ballot counting process, and Washoe County was no exception.

During and following the 2020 Election, numerous individuals attempting to observe the process were prevented from doing so in any meaningful way. By way of example, the following scenarios occurred in Washoe County:

- a. Observers were placed in locations where the view of the ballot processing was obscured;
- b. In almost all instances, the observers were placed too far away from the ballot processing to be able to discern what was actually taking place;
- c. Aspects of the ballot processing took place in closed rooms and locations where observers were not allowed access;
- d. Boxes of ballots were moved between various locations without the observers having any opportunity to review the ballots or understand what stage in the counting process the ballots were in;
- e. In the minimal times where observers were theoretically in close enough proximity to observe, they were not afforded ample time to actually observe the process in any meaningful way;
- f. There was an insufficient number of ambassadors that were required to accompany observers to enable more than a few individuals to

1           meaningfully observe the ballot processing;

2           g. Observers were told information that conflicted with what they were  
3           seeing during the ballot processing; and

4           h. While observers could see that there were mechanical and/or program  
5           issues and errors with various pieces of technology in the ballot  
6           processing, they were unable to view any screens or understand the actual  
7           nature of the issues and errors, which rendered the observation  
8           meaningless.

9           There is no question that members of the general public are statutorily entitled to  
10          observe the ballot-counting activities pursuant to N.R.S. §§ 293B.330, 335, and 353, the  
11          aforementioned representative examples demonstrate that meaningful observation was not  
12          permitted.

13          Following the widespread unrest and questions surrounding the results of the 2020  
14          Election, the Nevada Legislature enacted the Nevada Voters' Bill of Rights codified under  
15          NRS § 293.2546. NRS § 293.2546(10) states that each voter has the right "to have a uniform,  
16          statewide standard for counting and recounting all votes accurately." While NRS § 293B.354  
17          outlines the requirements for allowing the general public to observe the ballot counting  
18          process, it is evident that without the requested Temporary Restraining Order, meaningful  
19          observation will not take place. With the upcoming Primary Election and General Election,  
20          despite a staggering number of complaints regarding the lack of meaningful observation of  
21          the 2020 Election, neither the State of Nevada nor Washoe County have redressed the  
22          concerns and issues raised. Simply being "in the same room" as the ballot processing  
23          operations does not equate to "meaningful observation" as required by law.

24          Plaintiffs' March 21, 2022 letter outlined a number of reasonable accommodations  
25          that would enable observers to meaningfully observe the ballot processing without  
26          interfering with the process, Plaintiffs received no substantive response. *See* Exhibits 1-3.  
27  
28

1 While a response was given on March 28, 2022, the response focused on the actual voting  
2 aspect of the 2020 Election. *See* Exhibit 2. Plaintiffs do not dispute the importance of  
3 allowing all appropriate persons to vote freely and without coercion, harassment, or anything  
4 of the like in the upcoming elections, and do not condone any interference with that process.

5  
6 However, a primary main concern regarding the lack of meaningful observation  
7 centers on the post-voting activities of confirming and counting the ballots. Additional issues  
8 outlined to Defendant Spikula were:

- 9  
10 a. The election officers routinely cherrypicked who would be allowed to  
"observe," with no reason or clarification given for their selection;  
11  
12 b. The vast majority of those allowed to "observe" were not even Washoe  
County residents, but rather attorneys from California and Washington  
13 State, again with no reason or explanation provided;  
14  
15 c. Washoe County residents were consistently pushed to the back of  
the observation area; and  
16  
17 d. The designated observation areas were behind chain-link fences 40-60  
feet away from the ballot counting activities, effectively rendering any  
18 "observation" meaningless.

19 *See* Exhibit 3. Given the fast-approaching Primary Election, coupled with the lack of a  
20 substantive response or efforts to address the previous issues preventing meaningful  
21 observation, Plaintiffs are forced to bring this matter to protect their rights and to ensure the  
22 integrity of the upcoming elections. Currently, all observers are required to execute the  
23 "Observation of Polling Place Acknowledgment (NAC 293.245)" form ("Observation  
24 Form"). The Observation Form identifies that observers are prohibited from:

- 25  
26 1. Talking to voters within the polling place;  
27 2. Using a mobile telephone or computer within the polling place;  
28 3. Advocating for or against a candidate, political party or ballot  
question;

4. Arguing for or against or challenging any decisions of the county or city election personnel; and;
5. Interfering with the conduct of voting.

See Exhibit 4. Notably, the Observation Form does not define what observers can do, leaving the poll workers and the observers entirely uninformed, naturally leading to conflict. Plaintiffs do not dispute that clear and definite rules and guidelines are absolutely necessary, Defendant Spikula's response does not reflect the recently adopted Voters' Bill of Rights, NRS 293.2546. As such, while the Voters' Bill of Rights is a meaningful step in corrective action given the grave mishandling of the 2020 Election, there is clearly no clear and definite standards of enforcing voter observation rights in Nevada requiring declaratory and injunctive relief from the Court.

## II. LEGAL STANDARD

It is proper for this Court to enter a temporary restraining order if the Court is concerned that the irreparable injury to Plaintiffs will continue or occur before a hearing on Plaintiffs' Application can be held. See Nevada Civil Practice Manual §28.03. A preliminary injunction may be issued if Plaintiffs demonstrate: (1) that they are likely to succeed on the merits, and (2) a reasonable probability of irreparable harm. *Dixon v. Thatcher*, 103 Nev. 414, 415 (1987); *Pickett v. Comanche Constr.* 108 Nev. 422, 426 (1992); *Dep't of Conservation & Natural Res. v. Foley*, 121 Nev. 77, 80 (2005).

NRS §33.010 and NRCP 65 generally delineate when it is appropriate to grant injunctive relief, and include the following scenarios:

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.



3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

NRS § 33.010.

Rule 65 of the Nevada Rules of Civil Procedure governs preliminary injunctions and temporary restraining orders, and requires that a motion for temporary restraining order include "specific facts in an affidavit or a verified complaint [that] clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition," as well as written certification from the movant's attorney stating "any efforts made to give notice and the reasons why it should not be required." N.R.C.P. 65(b). However, "[t]he urgency of obtaining a preliminary injunction necessitates a prompt determination and makes it difficult to obtain affidavits from persons who would be competent to testify at trial." *Flynn Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) (*citing* 11 C. Wright and A. Miller, Federal Practice and Procedure, Civil, § 2949 at 471 (1973)). Thus, "[t]he trial court may give even inadmissible evidence some weight, when to do so serves the purpose of preventing irreparable harm before trial." *Id.*

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Specifically, a preliminary injunction may be issued if a plaintiff establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the plaintiff's favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Alternatively, the Ninth Circuit has held that district courts may issue an injunction if the first two elements are met and there are "serious

1 questions going to the merits” and there is “a hardship balance that tips sharply toward the  
2 plaintiff.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).  
3 Above all, a temporary restraining order “should be restricted to serving [its] underlying  
4 purpose of preserving the status quo and preventing irreparable harm just so long as is  
5 necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters*  
6 *& Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).  
7

### 8 **III. LEGAL ARGUMENT**

#### 9 **A. Plaintiffs Will Likely to Prevail on the Merits and Will Suffer Irreparable Harm** 10 **in the Absence of Temporary Relief**

11 In determining whether to grant injunctive relief, this Court need only “assess the  
12 plaintiff’s likelihood of success on the merits, not whether the plaintiff has actually  
13 succeeded on the merits...It is not the function of a preliminary injunction to decide the case  
14 on its merits, and the possibility that the party obtaining a preliminary injunction may not  
15 win on the merits at the trial is not determinative of the propriety or validity of the trial court’s  
16 granting the preliminary injunction.” *B.W. Photo Utilities v. Rep. Molding Corp.*, 280 F.2d  
17 806, 807 (9th Cir. 1960). Instead, “[t]o establish a substantial likelihood of success on the  
18 merits, [Plaintiff] must show a ‘fair chance of success.’” *In re Focus Media, Inc.*, 387 F.3d  
19 1077, 1086 (9th Cir. 2004), *quoting Republic of the Philippines v. Marcos*, 862 F.2d 1355 (9th  
20 Cir. 1988); *Southern Oregon Barter Fair v. Jackson County*, 372 F.3d 1128, 1136 (9th Cir.  
21 2004).  
22

23 Plaintiffs’ Complaint seeks two (2) claims for relief: 1) Declaratory Relief, and 2)  
24 Injunctive Relief. As set forth in the Complaint and herein, Plaintiffs submit that they will  
25 likely succeed on the merits of their claims against Defendants by demonstrating Plaintiffs  
26 are entitled to meaningfully observe the Primary Election and General Election as requested.  
27

28 ///

1       **1. Plaintiffs Will Prevail on Their Declaratory Relief Claim Enforcing Their**  
2       **Statutory Rights to Meaningfully Observe Elections**

3       Declaratory relief is available only if: (1) a justiciable controversy exists between  
4 persons with adverse interests, (2) the party seeking declaratory relief has a legally  
5 protectable interest in the controversy, and (3) the issue is ripe for judicial determination.  
6 *Knittle v. Progressive Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996) citing  
7 *County of Clark, ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756  
8 (1998).

9       The Nevada Supreme Court has held the court would not look beyond the statute  
10 itself when ascertaining meaning when the language of the statute is unambiguous. *City Plan*  
11 *Development, Inc. v. Office of Labor Com'r Dept. of Business and Industry*, 121 Nev. 419,  
12 434 (2005). The Nevada Supreme Court has also held the language of a statute should be  
13 given its plain meaning, not render words or phrases superfluous, and award meaning to all  
14 words and phrases. *Haney v. State*, 124 Nev. Adv. Op. No. 40, 47811 (2008) citing *Butler v.*  
15 *State*, 120 Nev. 879, 892-93 (2004). Moreover, in *State ex rel. Copeland v. Woodbury*, the  
16 Nevada Supreme Court stated, “[w]here a statute is clear, plain and unambiguous, we have  
17 repeatedly declared that there is no room for construction and the law must be followed  
18 regardless of results.” *Hickey v. Eighth Judicial Dist. Court In & For County of Clark*, 105  
19 Nev. 729, 734 (1989) citing 17 Nev. 337, 343 (1883).

20       Nevada’s Voters’ Bill of Rights, NRS 293.2546 ensures that all voters have the right  
21 to address complaints about elections and election contests resolved fairly, accurately and  
22 efficiently. The aforementioned observation issues during the 2020 Election identify the  
23 necessity to ensure fair, accurate, and meaningful voting observation during the 2022  
24 Primary Election.  
25  
26  
27  
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1 While several other states have adopted specific voter observation laws and  
2 guidelines, Nevada has not. As representative examples, various states have established rules  
3 for observing in-person voting, signature matching and mail ballot verification, and ballot  
4 counting, specifically Arizona, Florida, Georgia, Michigan, North Carolina, Ohio,  
5 Pennsylvania, and Wisconsin. Wisconsin permits any member of the public to observe  
6 elections. *See* W.S.A. 7.41. Michigan and Ohio have both party-appointed observers and  
7 nonpartisan observers. *See* M.C.L.A. 168.733, M.C.L.A. 168.730, and R.C. 3503.21.  
8 Michigan, for example, has party-appointed poll challengers but poll watchers can be any  
9 member of the public. *See* M.C.L.A. 168.733 and M.C.L.A. 168.730. Ohio, on the other  
10 hand, has poll watchers that are appointed by a political party and appointed by ballot  
11 initiative committees, which are committees that are formed to put an initiative on the ballot  
12 and then make it law. *See* R.C. 3503.21. Arizona and Georgia employ an oversight process  
13 by which poll watchers nominated by political parties can see the tabulation of ballot. Ohio  
14 appoints canvass observers by political party, but also employs ballot initiative committees  
15 whose members are not always formed via the parties. Florida, Michigan, North Carolina,  
16 Pennsylvania, and Wisconsin use a public oversight process, in which any person can witness  
17 the tabulation of the ballots.  
18  
19

20 Nevertheless, while Nevada has not implemented any form of voter observation, a  
21 justiciable controversy exists between the parties as the parties' dispute as to the scope of  
22 what observation is allowed. Plaintiffs seek the Court to declare the duties with respect to  
23 Plaintiffs' rights protected under Nevada law. Based on the lack of response or actions to  
24 address these issues to date, Defendants dispute Plaintiffs' claims. Therefore, an actual  
25 controversy exists relative to the legal duties and rights of the respective parties, which  
26 Plaintiffs request the Court to resolve. A declaration of rights, responsibilities and obligations  
27  
28

1 of the parties is essential to determine their respective obligations in connection with the  
2 parties' rights pursuant to meaningful voter observation. Plaintiffs have no true and speedy  
3 remedy at law of any kind. As such, Plaintiffs will likely prevail on their declaratory relief  
4 cause of action.

5 **B. The Balance of Equities Tips in Plaintiffs' Favor**

6 The granting, refusing or dissolving of an injunction is a matter of discretion. *Coronet*  
7 *Homes, Inc. v. Mylan*, 84 Nev. 435, 442 P.2d 901 (1968). Probably the most important  
8 consideration of the trial judge in deciding how to exercise that discretion is the relative  
9 interests of the parties – how much damage will the plaintiff suffer if the restraint is denied  
10 versus the hardship to the defendant if it is granted. *Home Finance Co. v. Balcom*, 61 Nev.  
11 301, 127 P. 2d 389 (1942). In exercising its discretion, the court should recognize that the  
12 general purpose of a preliminary injunction is for preservation of the *status quo* until a final  
13 determination on the merits can be made. *Continental Baking Company v. Katz*, 68 Cal. 2d  
14 512, 528 (1968).

15 The balancing aspect of the temporary restraining order analysis requires courts to  
16 weigh “the competing claims of injury and consider the effect on each party of the granting  
17 or withholding of the requested relief.” *Amoco Prod. Co. v. Village of Gambell, AK*, 480 U.S.  
18 531, 542 (1987). Finally, consistent with the underlying purpose of temporary restraining  
19 orders, issuance of this temporary restraining order will maintain the status quo. “[T]he status  
20 quo is the last uncontested status which preceded the pending controversy.” *Tanner Motor*  
21 *Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963).

22 In this case, Defendants will suffer only minimal harm as a result of the temporary  
23 restraining order. Although the issuance of a temporary restraining order will require  
24 Defendants to implement, oversee, and execute meaningful observation, is it Plaintiffs  
25 statutory right. On the other hand, if the temporary restraining order were not issued,  
26  
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1 Plaintiffs would be confronted with being limited to an undefined observation area if similar  
2 to 2020 Election. Without the temporary restraining order, Defendants would surely prevent  
3 meaningful voter observation during the Primary Election, General Election, and future  
4 elections in Washoe County, Nevada. Given the following scenarios that occurred during the  
5 2020 Election, Defendants should not be permitted to:

- 6 1) Observers were placed in locations where the view of the ballot processing  
7 was obscured;
- 8 2) In almost all instances, the observers were placed too far away from the ballot  
9 processing to be able to discern what was actually taking place;
- 10 3) Aspects of the ballot processing took place in closed rooms and locations  
11 where observers were not allowed access;
- 12 4) Boxes of ballots were moved between various locations without the observers  
13 having any opportunity to review the ballots or understand what stage in the  
14 counting process the ballots were in;
- 15 5) In the minimal times where observers were theoretically in close enough  
16 proximity to observe, they were not afforded ample time to actually observe  
17 the process in any meaningful way;
- 18 6) There was an insufficient number of ambassadors that were required to  
19 accompany observers to enable more than a few individuals to meaningfully  
20 observe the ballot processing;
- 21 7) Observers were told information that conflicted with what they were seeing  
22 during the ballot processing; and
- 23 8) While observers could see that there were mechanical and/or program issues  
24 and errors with various pieces of technology in the ballot processing, they  
25 were unable to view any screens or understand the actual nature of the issues  
26 and errors, which rendered the observation meaningless.

27 A temporary restraining order will restore the parties to the respective positions to  
28 ensure voter integrity in Nevada is maintained.

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1           **C. The Issuance of a TRO Benefits the Public's Interest**

2           “The public interest analysis for the issuance of [injunctive relief] requires [courts]  
3 to consider whether there exists some critical public interest that would be injured by the  
4 grant of preliminary relief.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138  
5 (9th Cir. 2011) (citation omitted). In this case, there is no such public interest that would be  
6 injured by the issuance of Plaintiffs’ requested injunctive relief. To the contrary, the integrity  
7 of Nevada elections would further support the public’s interest Nevada elections. It is  
8 imperative that Defendants be restrained from permitting meaningful observation of the  
9 Primary Election and General Election.  
10

11           **D. A Minimal Security Bond is Appropriate Under these Circumstances**

12           NRCP 65(d) mandates that “no restraining order or preliminary injunction shall issue  
13 except upon the giving of adequate security by the applicant, in such sum as the court deems  
14 proper, for the payment of such costs and damages as may be incurred or suffered by any  
15 party who is found to be wrongfully enjoined or restrained.” *See* NRCP 65(d). The purpose  
16 of the security is to enable the enjoined party to secure indemnification for his losses in the  
17 event it is determined he was wrongfully enjoined or restrained. As noted above, Defendants  
18 will suffer no harm as a result of an injunction as Plaintiffs merely seek to enforce a statutory  
19 right. Indeed, the public benefits from an injunction so the Court can determine the parties’  
20 rights and obligations under Nevada law. Thus, Defendants stand to suffer no appreciable  
21 losses, and a minimal security in the amount of \$500.00 is appropriate.  
22  
23

24           **IV. CONCLUSION**

25           Injunctive relief is appropriate relief to prevent further irreparable harm to Plaintiffs  
26 as Defendants have failed to confirm that Plaintiffs will be able to meaningfully observe  
27 Washoe County elections, specifically the Primary Election and General Election. The right  
28

1 to injunctive relief is not only expressly provided for by statute, but is otherwise established  
2 by the facts presented in this case. For these reasons, Plaintiffs are entitled to a TRO and  
3 preliminary injunction providing as follows:

4 i. Observers must be able to personally view that every step of the election is  
5 handled with transparency, integrity, and is done lawfully;

6 ii. Observers must be allowed to visually inspect each ballot to ensure each  
7 ballot is legally counted and processed by the Registrar of Voters' ("ROV") personnel.  
8 Observers be permitted within a two (2) foot radius of any ballot counting system or  
9 machine. For example, the signature(s) must match on the envelop, the ballot must be filled  
10 out properly, the correct form of ballot must be completed, each ballot must be counted and  
11 tallied properly and reported properly. Observers must be able to do this at the ROV  
12 headquarters, and any remote or central counting location through the entire election process;

13 iii. Two (2) Observers to be present at each drop box location from each political  
14 party to ensure there are no unauthorized dumping of ballots or illegal ballots processed;

15 iv. Two (2) Observers from each political party to be present at the EMS machine  
16 or any machine in where electronic votes are being tabulated or uploaded;

17 v. There must be paper records showing the data and content on each thumb  
18 drive and the upload to any tabulating machine must match what is documented to ensure  
19 accuracy;

20 vi. If any of the Two (2) Observers from each political party address any issue  
21 and cannot resolve the issue, he or she may ask the ROV staff to stop processing. The  
22 Observer must then address his/her challenge to the manager, supervisor, or lead;

23 vii. If for any reason, if an Observer from either political party is forced to be  
24 removed, they must be immediately replaced with another Observer from their respective  
25  
26  
27  
28



1 political party to ensure each party is properly represented;

2       viii. All Observers must pass background checks, be a resident of Washoe County,  
3 Nevada, be registered to vote in Washoe County, Nevada, and/or seek to participate in  
4 meaningful voter observation in Washoe County, Nevada;

5       ix. Each political party must submit a list of their Observers for each location and  
6 alternates regarding the same within seven (7) days before the 2022 Primary Election;

7       x. Any independent political party shall be entitled to the aforementioned;

8       xi. Each party, is defined as the chair of the respected parties central committee  
9 (ex: Washoe County Republican Central Committee would be responsible for the Republican  
10 observers);

11       xii. The ROV personnel will issue a badge to Observers, which they must wear  
12 while observing. Observers must return their badges each day before leaving the ROV;

13       xiii. The ROV will accommodate requests for observation and requests to enter  
14 and leave subject to the availability of ROV personnel;

15       xiv. All drop box locations, all counting areas, EMS areas, and all board rooms  
16 used for the 2022 Primary Election must be video-taped using video surveillance at all times.  
17 The video-surveillance must be of high quality and stored in a manner mutually agreed upon  
18 the ROV and both political parties;

19       xv. Provide the layout(s) of the ballot counting facility(ies) that depicts where the  
20 observers will be allowed to observe from;

21       xvi. Ensure that residents of Washoe County be given preference to observe over  
22 non-residents of the County or even the State; and

23       xvii. Any additional relief the Court deems necessary and appropriate.

24  
25  
26  
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28  
///

**AFFIRMATION**

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED: April 28th, 2022

**JENNINGS & FULTON, LTD.**

By: /s/ Adam R. Fulton, Esq.

ADAM R. FULTON, ESQ.

Nevada Bar No. 11572

afulton@jfnvlaw.com

LOGAN G. WILLSON, ESQ.

Nevada Bar No. 14967

logan@jfnvlaw.com

2580 Sorrel Street

Las Vegas, Nevada 89146

Telephone: (702) 979-3565

Facsimile: (702) 362-2060

*Attorneys for Plaintiffs*

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**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of JENNINGS & FULTON, LTD., and that on the 28th day of April, 2022, I caused a true and correct copy of the foregoing **PLAINTIFFS' EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER TO CONDUCT MEANINGFUL VOTER OBSERVATION IN WASHOE COUNTY, NEVADA ON ORDER SHORTENING TIME PURSUANT TO WDCR 11** to be served via personal service as follows:

BARBARA CEGAVSKE  
101 North Carson Street, Suite 3  
Carson City, Nevada 89701-3714  
*Defendant*

DEANNA SPIKULA  
1001 E. Ninth Street, Building A, Ste. 135  
Reno, NV 89512-2845  
*Defendant*

/s/ Misty Janati  
An Employee of JENNINGS & FULTON, LTD.

# EXHIBIT 1

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2580 SORREL STREET  
LAS VEGAS, NV 89146



TELEPHONE  
(702) 979-3565  
TELECOPIER  
(702) 362-2060

March 21, 2022

**Sent Via U.S. Certified Mail & E-mail:**

Washoe County Elections Department  
Attn: Deanna Spikula  
Registrar of Voters  
1001 E. Ninth Street, Building A, Ste. 135  
Reno, NV 89512-2845  
electionsdepartment@washoecounty.us

**RE: Public Observation of 2022 Primary Election Voting**

**Washoe County Registered Voters Requesting Public Observation of 2022 Primary Election Voting:**

Robert Beadles	Tom Bradshaw
Jason Chubb	Diane Irish
Liane Conway	Linda Turner
Laura Peterson	Olena Alexander
Donna Villarreal	Julie Lamm
Lynda Frieden	Terisia Kolesnick
Katriel J. Van Cleve	Ingrid Lubbers
Jim Lewis	Denise Lewis
Terri Keating	Tamea Kolesar
Elizabeth Parsons-Lenz	Davis Northnagel
Ramona Snyder	Karen Regan
Craig Newton	James Benthin
Deborah A. Sauk	William Anthony
Christine L. Van Cleve	Jay Van Cleve
Mark Sutton	James Lyon
Dawn Cooper	Cheryl Nash
Kathleen Allister	Daniel Salem
Melissa Lopez	Liane Conway
Susan McMurray	Linda Turner
Joel House	Jan Morris
Mark Leonard	Victoria Schneider
Peter Schneider	Darlene Ruedy
Pamela Darr	Jim Balboni
Claudia Fisher	Barbara Fleming
Catherine Ingham	Dorothy Webber
George Lee	Jeffrey Swift
Robert Devin	Dianne Wagner-Robak
Gail Anderson	Chris Hussar

<b>Susan Mackie</b>	<b>Ellen Shaw</b>
<b>John Reyes</b>	<b>Maurice Washington</b>
<b>Jimmie Bratcher</b>	<b>Timothy Regan</b>
<b>Kimi Hinkel</b>	<b>Dinah Anderson-Maher</b>
<b>Janice Jones</b>	<b>Henry Van Mourik</b>
<b>Gerald Sudderth</b>	<b>Linda Shipley</b>
<b>Diana Buechler</b>	<b>Sierra Zambrano</b>
<b>Nicol Herris</b>	<b>Ariel Van Cleve</b>
<b>Pamela Sorenson</b>	<b>Betty Palmer</b>
<b>Joesph McElhinney</b>	<b>Lindsey Moser</b>
<b>Marcy Felch</b>	<b>Leroy Felch</b>
<b>Timothy Burk</b>	<b>Megan Lavoy</b>
<b>Matt Lavoy</b>	<b>Joesph Lavallee</b>
<b>Darla Lee</b>	<b>Paul Larson</b>
<b>Gary Butcher</b>	<b>Mary Graham</b>
<b>Wayne Gordon</b>	<b>Charles Lanham</b>
<b>Linda Smith</b>	<b>Scott Meyer</b>
<b>Victoria Myer</b>	<b>Fred Myer</b>
<b>Michael Fiannaca</b>	<b>Richard Wait</b>
<b>Barbara Queen</b>	<b>Diane Salgado</b>
<b>Adrienne Potter</b>	<b>Penny Brock</b>
<b>Sharilyn Bainter</b>	<b>Bill Bainter</b>
<b>Jeremy Knowles</b>	<b>Phil Harrison</b>
<b>Janice Hermesen</b>	<b>Oscar Williams</b>
<b>Janet Butcher</b>	<b>Valerie Fiannaca</b>
<b>Aaron Beadles</b>	<b>Nicole Beadles</b>
<b>Guy Tarvin</b>	<b>Brad Scobey</b>
<b>Ricci Rodriguez-Elkins</b>	<b>Jason Grove</b>
<b>Nicholas St Jon</b>	<b>Dave Chamberlin</b>
<b>Benjamin Hadden</b>	<b>Valerie White</b>
<b>Betty Thiessen</b>	<b>Tamaray Anderson</b>
<b>Suzie VanNess</b>	<b>John (Mike) Libke.</b>
<b>Stacey Piro</b>	<b>Murray Kane</b>
<b>Les Cooper</b>	<b>Christina Sherbrook</b>
<b>Denise Hollenbaugh</b>	<b>Dan Hollenbaugh</b>
<b>Karl Sweder</b>	<b>Craig Newton</b>
<b>Elaina McMahon</b>	<b>Brian McMahon</b>
<b>Truda Reynolds</b>	<b>John Nugent</b>
<b>Celine Nugent</b>	<b>Saundra Beretta</b>
<b>Robbie Mau</b>	<b>James Bentin</b>
<b>Julie Lamm</b>	<b>Tom Bradshaw</b>

Dear Ms. Spikula,

Please be advised that my firm represents the above-listed Washoe County, Nevada registered voters ("Clients") who seek the Washoe County Elections Department to enact effective, proper, and reliable voter observation during the 2022 Primary Election.

NRS 293.2546(10) provides that each voter has the right to have a uniform statewide standard for counting and recounting of all votes accurately. For this to take place, reliable observation must take place. Moreover, voters of Washoe County have addressed complaints during the 2020 General Election. Washoe County has failed to address its registered voters concerns regarding the same.

Nevada has since adopted its Voters' Bill of Rights, NRS 293.2546. All voters have the right to address complaints about elections and election contests resolved fairly, accurately and efficiently. The items addressed below identify the requested observation requirements to ensure fair, accurate, and efficient voting observation during the 2022 Primary Election.

Various states have established rules for observing in-person voting, signature matching and mail ballot verification, and ballot counting, specifically Arizona, Florida, Georgia, Michigan, North Carolina, Ohio, Pennsylvania, and Wisconsin. Wisconsin permits any member of the public to observe elections. *See* W.S.A. 7.41. Michigan and Ohio have both party-appointed observers and nonpartisan observers. *See* M.C.L.A. 168.733, M.C.L.A. 168.730, and R.C. 3503.21. Michigan, for example, has party-appointed poll challengers but poll watchers can be any member of the public. *See* M.C.L.A. 168.733 and M.C.L.A. 168.730. Ohio, on the other hand, has poll watchers that are appointed by a political party and appointed by ballot initiative committees, which are committees that are formed to put an initiative on the ballot and then make it law. *See* R.C. 3503.21.

Arizona and Georgia employ an oversight process by which poll watchers nominated by political parties can see the tabulation of ballot. Ohio appoints canvass observers by political party, but also employs ballot initiative committees whose members are not always formed via the parties. Florida, Michigan, North Carolina, Pennsylvania, and Wisconsin use a public oversight process, in which any person can witness the tabulation of the ballots.

It is well evidenced that a meaningful observation of the 2020 General Election did not take place. My Clients request Washoe County adopt the following Election Observer Guidelines and General Rules for Observers:

- Observers must be able to personally view that every step of the election is handled with transparency, integrity, and is done lawfully;
- Observers must be allowed to physically inspect each ballot to ensure each ballot is legally counted and processed by the Registrar of Voters' ("ROV") personnel. Observers be permitted within a two (2) foot radius of any ballot counting system or machine. For example, the signature(s) must match on the envelop, the ballot must be filled out properly, the correct form of ballot must be completed, each ballot must be counted and tallied properly and reported properly. Observers must be able to do this

at the ROV headquarters, and any remote or central counting location through the entire election process;

- Two (2) Observers to be present at each drop box location from each political party to ensure there are no unauthorized dumping of ballots or illegal ballots processed;
- Two (2) Observers from each political party to be present at the EMS machine or any machine in where electronic votes are being tabulated or uploaded;
- There must be paper records showing the data and content on each thumb drive and the upload to any tabulating machine must match what is documented to ensure accuracy;
- If any of the Two (2) Observers from each political party address any issue and cannot resolve the issue, he or she may ask the ROV staff to stop processing. The Observer must then address his/her challenge to the manager, supervisor, or lead;
- If for any reason, if an Observer from either political party is forced to be removed, they must be immediately replaced with another Observer from their respective political party to ensure each party is properly represented;
- All Observers must pass background checks, be a resident of the Washoe County, Nevada, and be registered to vote in Washoe County, Nevada;
- Each political party must submit a list of their Observers for each location and alternates regarding the same within seven (7) days before the 2022 Primary Election;
- Any independent political party shall be entitled to the aforementioned;
- Each party, is defined as the chair of the respected parties central committee (ex: Bruce Parks of the Washoe County Republican Central Committee would be responsible for the Republican observers);
- The ROV personnel will issue a badge to Observers, which they must wear while observing. Observers must return their badges each day before leaving the ROV;
- The ROV will accommodate requests for observation and requests to enter and leave subject to the availability of ROV personnel; and
- All drop box locations, all counting areas, EMS areas, and all board rooms used for the 2022 Primary Election must be video-taped using video surveillance at all times. The video-surveillance must be of high quality and stored in a manner mutually agreed upon the ROV and both political parties.

As NRS 293.274(1) provides that members of the public may be poll watchers, surely the aforementioned are within the scope and breadth of NRS 293.274. Please confirm within five (5) days of receipt of this correspondence that Washoe County Washoe County Elections Department will implement the aforementioned.

Sincerely,

*/s/ Adam Fulton, Esq.*  
Adam Fulton, Esq.



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Cami Pulsipher  
2580 SORREL ST  
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USPS CERTIFIED MAIL



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Washoe County Elections Department  
Attn Deanna Spikula  
1001 E 9TH ST BLDG A  
RENO NV 89512-2845

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USPS History	Departed USPS Regional Facility, March 24, 2022, 5:21 pm, RENO NV DISTRIBUTION CENTER Arrived at USPS Regional Facility, March 24, 2022, 12:59 pm, RENO NV DISTRIBUTION CENTER Departed USPS Regional Facility, March 23, 2022, 8:34 am, LAS VEGAS NV DISTRIBUTION CENTER Arrived at USPS Regional Facility, March 22, 2022, 7:21 pm, LAS VEGAS NV DISTRIBUTION CENTER Accepted at USPS Origin Facility, March 22, 2022, 6:06 pm, LAS VEGAS, NV 89146 Shipping Label Created, USPS Awaiting Item, March 21, 2022, 11:29 pm, LAS VEGAS, NV 89146

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# EXHIBIT 2

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Christopher J. Hicks  
District Attorney

One South Sierra Street  
Reno, Nevada 89501

775.328.3200  
washoecounty.us/da

March 28, 2022

Adam Fulton, Esq.  
Jennings & Fulton  
2580 Sorrel Street  
Las Vegas, NV 89146

*Re: Public Observation of 2022 Primary Election Voting*

Dear Mr. Fulton:

I am the Deputy District Attorney assigned to the Washoe County Registrar of Voters' Office. I have reviewed your March 25, 2022 correspondence regarding observation of the 2022 primary election. This will constitute our response.

First and foremost, the Registrar of Voters is tasked with running the election. Having been given specific duties, the Registrar intends to perform those duties to the best of her abilities, as a fair, transparent election with the highest degree of integrity is always the Registrar's goal.

Observers, as you acknowledge, are not, and cannot be, limited to your group of individuals. Any member of the general public is entitled to observe. NAC 293.245. Obviously, we cannot accommodate every member of the general public observing at once. Accordingly, we set reasonable limitations on the area in which observers may be located, as well as behavior of observers.

Each observer will be required to, before observing, sign an acknowledgment in the form prescribed by the Secretary of State stating that the person, during the time the person observes the conduct of voting the person is prohibited from:

- (1) Talking to voters within the polling place;
- (2) Using a mobile telephone or computer within the polling place;
- (3) Advocating for or against a candidate, political party or ballot question;
- (4) Arguing for or against or challenging any decisions of county or city election personnel; and
- (5) Interfering with the conduct of voting.

NAC 293.245(2).

In addition, observers also are specifically prohibited from photographing or recording the physical act of voting. NRS 293.274.

As to the number of observers at any given time in any polling location, pursuant to NAC 293.245(6), we will designate an area to observe election activities at each polling location. Observers must remain in the designated areas to observe the activities conducted at the polling place without interfering with the voting. The designated area will allow for meaningful observation, but it will not "be located in an area that would allow an observer to infringe on the privacy and confidentiality of the ballot of the voter." NAC 293.245(6). While election observers may exist in the background, poll workers must be afforded the ability to assist voters if the voter is having trouble casting the ballots. NRS 293.2546.

As you acknowledge in your letter, observers may be removed from the polling place by the Registrar or her staff for violating any provision of title 24 of NRS or any of the foregoing provisions. However, the Registrar is hopeful that the observers will be the productive part of the process they can be and that removing an observer does not become necessary.

I do want to stress that interference with the conduct of the election cannot be tolerated. Please also be aware that voter intimidation is illegal under both state and federal law. In fact, it is a category E felony, carrying a minimum sentence of one year and a maximum sentence of four years in prison. Again, it is our sincere hope that we do not experience any such conduct during the upcoming election.

In sum, the Registrar intends to work with any and all observers in an effort to ensure reasonable, meaningful access to all observers. If any perceived misconduct is observed by the observers, we would ask that the individual bring this observation to the attention of the designated Registrar of Voters' staff. It is our hope to address these issues swiftly to ensure an election of the highest integrity, just as we have done in the past.

If you have any questions or comments, please feel free to contact me.

Sincerely,

CHRISTOPHER J. HICKS  
District Attorney

By 

Herbert B. Kaplan  
Deputy District Attorney

HBK/cat

# EXHIBIT 3

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March 29, 2022

**Sent Via E-Mail Only:**

Herbert B. Kaplan, Esq.  
Deputy District Attorney, Washoe County  
One South Sierra St.  
Reno, NV 89501

**Re: Public Observation of 2022 Primary Election Process**

Dear Mr. Kaplan:

Thank you for your letter of March 28, 2022, however, additional clarification is needed to ensure that the requisite meaningful observation is provided.

As a preliminary matter, your response focuses on the actual voting aspect of the election. My clients appreciate and understand the importance of allowing all appropriate persons to vote freely and without coercion, harassment, or anything of the like in the upcoming elections, and do not condone any interference with that process.

My clients' main concern regarding the lack of meaningful observation centers on the post-voting activities of confirming and counting the ballots. Following the 2020 presidential election, there were numerous claims of misconduct, mishandling, and lack of meaningful observation in the ballot counting process in Washoe County and across the country.

When many of my clients attempted to exercise their statutory right to meaningfully observe the ballot counting, they were met with the following hurdles (this list is not intended to be all-inclusive, but rather a representative sampling):

- The election officers routinely cherrypicked who would be allowed to "observe," with no reason or clarification given for their selection;
- The vast majority of those allowed to "observe" were not even Washoe County residents, but rather attorneys from California and Washington State, again with no reason or explanation provided;
- Washoe County residents were consistently pushed to the back of the observation area; and
- The designated observation areas were behind chain-link fences 40-60 feet away from the ballot counting activities, effectively rendering any "observation" meaningless.

My clients are trying to avoid a repeat of the above and similar issues at the upcoming primary and general elections this year. To that end, **please confirm whether or not the following processes will be allowed/provided for:**

1. Observers must be able to personally view that every step of the election is handled with transparency, integrity, and is done lawfully;
2. Observers must be allowed to physically inspect each ballot to ensure each ballot is legally counted and processed by the Registrar of Voters' ("ROV") personnel. Observers be permitted within a two (2) foot radius of any ballot counting system or machine. For example, the signature(s) must match on the envelop, the ballot must be filled out properly, the correct form of ballot must be completed, each ballot must be counted and tallied properly and reported properly. Observers must be able to do this at the ROV headquarters, and any remote or central counting location through the entire election process;
3. Two (2) Observers to be present at each drop box location from each political party to ensure there are no unauthorized dumping of ballots or illegal ballots processed;
4. Two (2) Observers from each political party to be present at the EMS machine or any machine in where electronic votes are being tabulated or uploaded;
5. There must be paper records showing the data and content on each thumb drive and the upload to any tabulating machine must match what is documented to ensure accuracy;
6. If any of the Two (2) Observers from each political party address any issue and cannot resolve the issue, he or she may ask the ROV staff to stop processing. The Observer must then address his/her challenge to the manager, supervisor, or lead;
7. If for any reason, if an Observer from either political party is forced to be removed, they must be immediately replaced with another Observer from their respective political party to ensure each party is properly represented;
8. All Observers must pass background checks, be a resident of the Washoe County, Nevada, and be registered to vote in Washoe County, Nevada;
9. Each political party must submit a list of their Observers for each location and alternates regarding the same within seven (7) days before the 2022 Primary Election;
10. Any independent political party shall be entitled to the aforementioned;
11. Each party, is defined as the chair of the respected parties central committee (ex: Bruce Parks of the Washoe County Republican Central Committee would be responsible for the Republican observers);
12. The ROV personnel will issue a badge to Observers, which they must wear while observing. Observers must return their badges each day before leaving the ROV;

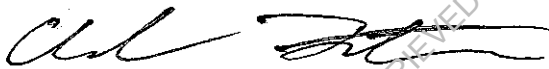
13. The ROV will accommodate requests for observation and requests to enter and leave subject to the availability of ROV personnel;
14. All drop box locations, all counting areas, EMS areas, and all board rooms used for the 2022 Primary Election must be video-taped using video surveillance at all times. The video-surveillance must be of high quality and stored in a manner mutually agreed upon the ROV and both political parties;
15. Layout(s) of the ballot counting facility(ies) that depict where the observers will be allowed to observe from will be provided and available to the general public prior to the Primary Election; and
16. Residents of Washoe County be given preference to observe over non-residents of the County or the State.

If any of the foregoing are not going to be provided and/or allowed, please advise in writing within five (5) days of this letter so that my clients can evaluate whether further legal action will be necessary to protect their rights to meaningfully observe.

My clients appreciate your assistance in ensuring that all parties involved are on the same page in terms of the plan for allowing Washoe residents to observe the ballot counting process. We are hopeful that by addressing these concerns now rather than waiting until the primary election process begins, we can work towards a reasonable accommodation plan to ensure the integrity of the upcoming elections.

Sincerely,

**JENNINGS & FULTON, LTD.**





# EXHIBIT 4

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# Observation of Polling Place Acknowledgment (NAC 293.245)

State of Nevada



Secretary of State Barbara K. Cegavske

In accordance with NAC 293.245, I, \_\_\_\_\_, by signing this form, hereby acknowledge that during the time I observe the conduct of voting I am prohibited from the following activities:

1. Talking to voters within the polling place;
2. Using a mobile telephone or computer within the polling place;
3. Advocating for or against a candidate, political party or ballot question;
4. Arguing for or against or challenging any decisions of the county or city election personnel;  
and;
5. Interfering with the conduct of voting.

I further acknowledge that I may be removed from the polling place by the county or city clerk for violating any provisions of Title 24 of the Nevada Revised Statutes or any of the restrictions described herein.

**X**

Signature

Date