

No. 85434

IN THE SUPREME COURT OF THE STATE OF NEVADA

PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA

Appellant,

vs.

BARBARA CEGAVSKE, in her official capacity as Nevada Secretary of State,

Respondent.

On Appeal from the First Judicial District Court of the State of
Nevada Case No. 22-OC-000101-1B

**RESPONDENT BARBARA CEGAVSKE'S
ANSWERING BRIEF**

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STATEMENT OF THE ISSUES

1. Is this case moot, where no county has or ever will submit a required plan under a temporary regulation to substitute the hand counting of ballots to replace machine tabulation for calculating its election results?

2. Did the District Court abuse its discretion by denying Appellant Progressive Leadership Alliance of Nevada (“PLAN”) a preliminary injunction against a temporary regulation governing the hand counting of ballots where there is no evidence that the 2003 Nevada Legislature banned the hand counting of ballots and there is no evidence that PLAN would suffer any hardships or harms?

STATEMENT OF THE CASE

On August 26, 2022, the Secretary of State adopted a temporary regulation establishing requirements for conducting a hand count of ballots as the primary method of determining the vote.¹ Counties that intended to use hand counting as the primary method of counting votes were required to comply with the Regulation, including its requirement to submit a plan for the hand count no later than 30 days before the election.² The deadline to submit such a plan for the upcoming November 8, 2022 election was October 9, 2022, but no county submitted such a plan. As a temporary regulation, the Regulation will expire on November 1, 2023, prior to the

¹ See JA049-62 (hereinafter referred to as the “Regulation”).

² JA050-52 at § 3; JA056 at §7(3).

Next general election.³ As set forth in further detail below, the Secretary submits that PLAN's case is moot and should be immediately dismissed.

PLAN sued the Secretary of State challenging the Regulation and moved for a preliminary injunction prohibiting the Secretary of State from authorizing or permitting counties to engage in hand counting.⁴ The District Court correctly denied the preliminary injunction based on, among other things, a finding that hand counting is permitted in Nevada.⁵

The Regulation established safeguards to ensure the accuracy of the vote in the event a county used hand counting to determine the vote. Based on existing law, the District Court correctly found that PLAN had no likelihood of success on the merits of its argument that the Regulation authorizes hand counting where it is otherwise not allowed. Moreover, PLAN cannot establish irreparable harm because no county has submitted a plan for a hand count. Under such circumstances, the District Court's order denying a preliminary injunction should be affirmed.

STATEMENT OF FACTS

I. Nevada's Voting Method Laws and Rules

Nevada statute does not prohibit hand counting of ballots.

³ See NRS 233B.063(3).

⁴ JA014; JA033-45.

⁵ JA095-99.

Voting is permitted by “mechanical voting system,”⁶ which is “a system of voting whereby a voter may cast a vote” (1) “[o]n a device which mechanically or electronically compiles a total of the number of votes cast for each candidate and for or against each measure voted on” or (2) “[b]y marking a paper ballot which is subsequently counted on an electronic tabulator, counting device or computer.”⁷

However, use of a mechanical voting system is optional, not mandatory. Since 1985, Nevada statute has provided that “[a]t all statewide, county, city and district elections of any kind held in this State, ballots or votes *may* be cast, registered, recorded and counted by means of a mechanical voting system.”⁸ Nothing previously prohibited hand counting.

Currently, each Nevada county uses mechanical voting systems as the method to determine election results.⁹ Vote tabulation by mechanical voting machine varies with the method of voting. Following signature verification, mail ballots are machine tabulated.¹⁰ For in-person voting, voters vote on an electronic voting machine, with the vote data physically transferred from the electronic voting machine onto a tabulation computer.¹¹

⁶ NRS 293B.050.

⁷ NRS 293B.033.

⁸ NRS 293B.050 (emphasis added).

⁹ See JA085 at ¶ 2.

¹⁰ *Id.* at ¶ 3.

¹¹ *Id.* at ¶ 4.

However, certain counties have expressed interest in hand counts.¹² To promote best practices and uniformity for hand counting of ballots, the Secretary, as Nevada’s Chief Elections Officer, determined it was in the State’s interest to promulgate a temporary regulation relating to hand counts as the method of determining the election results.¹³

The Regulation establishes requirements “where the primary method of counting the votes” is a hand count.¹⁴ These include minimum standards, such as at least two tallies, the composition of tally teams, shift limitations for the tally teams, and tally standards.¹⁵ The Regulation also requires county clerks that will use hand counts as the primary method of counting the vote to submit a plan for conducting the hand count “not later than 30 days before the date of the election.”¹⁶ Absent such a plan to comply with the Regulation, no Nevada county can use hand counting as the method for determining the election results.¹⁷ The deadline to file a plan for conducting a hand count was October 9, 2022.

No county submitted a hand-count plan by the October 9, 2022 deadline, and PLAN offers no evidence to the contrary. With no such plan submitted, all Nevada

¹² PLAN’s Opening Brief references a potential effort by Nye County to implement a parallel tabulation process. Opening Br. at 6. Absent compliance with the temporary regulation at issue, only the mechanical voting system tabulation determines the election outcome.

¹³ See JA049-62.

¹⁴ *Id.* at § 7(3).

¹⁵ *Id.* at §§ 4, 5, 11, 12.

¹⁶ *Id.* at § 3.

¹⁷ *Id.*

counties will continue using mechanical voting systems to tabulate votes, as done most recently for the 2022 primary.

II. The Help America Vote Act

The 2003 Nevada Legislature adopted NRS 293.2696 to comply with the Help America Vote Act of 2002 (“HAVA”).¹⁸ In response to the 2000 Election, particularly the controversy as to how Florida counted certain punch card votes, Congress enacted HAVA, which mandated that voting systems for federal elections allow a voter to (1) verify the votes selected before the ballot is cast and counted; (2) provide the opportunity to change the votes or correct any error; and (3) provide the opportunity to correct any overvote for a particular office.¹⁹

However, HAVA did not prohibit paper ballot voting systems, which includes hand counting. HAVA specifically acknowledges that a “paper ballot voting system” could comply with its requirements for providing voters the opportunity to correct any overvote.²⁰ To the extent unclear, HAVA specifically mandated the protection of paper ballot voting systems:

(2) Protection of paper ballot voting systems

For purposes of subsection (a)(1)(A)(i), the term “verify” may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.²¹

¹⁸ Pub. L. 107–252, 116 Stat. 1706 (codified at 52 U.S.C. § 20901, *et seq.*).

¹⁹ 52 U.S.C. § 21081(a)(1)(A).

²⁰ 52 U.S.C. § 21081(a)(1)(B).

²¹ 52 U.S.C. § 21081(c)(2).

To receive federal funding to implement HAVA, Nevada had to submit a plan to “adopt voting system guidelines and processes which are consistent with the requirements of [52 U.S.C. § 21081].”²²

III. Nevada Adopts NRS 293.2696 to Comply with HAVA

It was in this federal context that the 2003 Nevada Legislature adopted NRS 293.2696. There, the Nevada Legislature adopted HAVA’s requirement that voting systems comply with the error rate standards established by the Federal Election Commission, which standards later were set by the Election Assistance Commission.²³ The Legislature did not evidence any intention to prohibit hand counting of ballots by passing NRS 293.2696. There is no discussion of NRS 293.2696 having such an impact. The Legislature did not amend other statutes, such as the discretionary language of NRS 293B.050 allowing for mechanical voting systems, to make them mandatory. This silence is consistent with HAVA’s protection of “paper ballot voting systems.”

HAVA’s subsequent implementation further confirms that NRS 293.2696 does not apply to the hand counting of paper ballots. HAVA defines a voting system as “the total combination of mechanical, electromechanical, or electronic

²² 52 U.S.C. § 21004(a)(4).

²³ Compare NRS 293.2696(5) with 52 U.S.C. § 21081(a)(5).

equipment” and “the practices and associated documentation” used for certain defined purposes.²⁴ Similarly, the Voting System Standards in effect at the time of HAVA and NRS 293.2696’s enactment defines “voting system” as “a combination of mechanical electromechanical, or electronic equipment. It includes the software required to program, control, and support the equipment that is used to define ballots; to cast and count votes; to report and/or display election results; and to maintain and produce all audit trail information.”²⁵ The updated version of the standards defines “voting system” similarly.²⁶ Neither definition addresses paper ballot voting systems, consistent with HAVA’s specific exclusion.

Given HAVA’s protection of paper ballot voting systems, it is understandable that the Election Assistance Commission has not provided an analysis of the accuracy of hand counting of paper ballots generally or under any specific paper ballot voting system. Instead, consistent with the purpose and structure of HAVA, the Election Assistance Commission examines the efficacy of election machinery and technology.

²⁴ 52 U.S.C. § 21081(b).

²⁵ Federal Election Commission, Voting System Standards Volume I – Performance Standards (April 2002), at 10-11, available at https://www.eac.gov/sites/default/files/eac_assets/1/28/Voting_System_Standards_Volume_I.pdf (last visited Oct. 6, 2022).

²⁶ Election Assistance Commission, Voluntary Voting System Guidelines (2015), at 6-7, available at https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG.1.1.VOL.1.FINAL1.pdf (last visited Oct. 6, 2022).

SUMMARY OF THE ARGUMENT

PLAN's appeal challenging the Regulation is moot because no county has triggered the application of the Regulation's provisions for the November 2022 election by submitting a required plan and the Regulation will expire before the next elections in 2024.

Further, even if this appeal were not moot, PLAN has not demonstrated that the District Court abused its discretion when denying preliminary injunctive relief. The District Court correctly determined that PLAN failed to meet its burden of establishing a likelihood of success on the merits, irreparable harm, or that the balance of equities and public interest favored an injunction against the Regulation.

ARGUMENT

I. Standard of Review

On appeal, the district court's determination whether to grant a preliminary injunction "will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact."²⁷ Injunctive relief is extraordinary relief.²⁸ A "preliminary injunction is an "extraordinary remedy that may only be awarded upon *clear showing* that the

²⁷ *Attorney General v. NOS Commc 'ns*, 120 Nev. 65, 67, 84 P.3d 1052, 1053 (2004).

²⁸ *Dep't of Conservation & Nat. Res., Div. of Water Res. v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005).

Appellant is entitled to such relief.”²⁹ A “preliminary injunction is available if an applicant can show a likelihood of success on the merits and a reasonable probability the non-moving party’s conduct, if allowed to continue, will cause irreparable harm.”³⁰ Even where a party makes those showings, a court may decline to order injunctive relief due to the potential hardship on each party and considerations of the public interest.³¹ In cases like this one, where the party opposing injunctive relief is a government entity, the potential hardship and the public interest considerations are merged.³² Mandatory “injunctions are used to restore the status quo, to undo wrongful conditions.”³³ Nevada courts are cautioned to “exercise restraint and caution in providing this type of equitable relief.”³⁴

Here, PLAN cannot demonstrate that the district court abused its discretion, based its decision on an erroneous legal standard, or made clearly erroneous findings of fact. This appeal must be denied.

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²⁹ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (emphasis added); *see also* NRS 33.010(1).

³⁰ *Clark Cty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996).

³¹ *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

³² *Nken v. Holder*, 556 U.S. 418, 435 (2009).

³³ *Leonard v. Stoebling*, 102 Nev. 543, 550–51, 728 P.2d 1358, 1363 (1986).

³⁴ *Id.*

II. **This Appeal Is Moot because the Temporary Regulation Will Expire Before it Applies to any County**

Because the Regulation is temporary, it will expire on November 1, 2023.³⁵ The only election it therefore could potentially apply to is the upcoming November 8, 2022 general election.³⁶ The Regulation requires that any county that will use hand counting as the primary method of counting votes submit a plan for conducting the hand count no later than 30 days before the election.³⁷ The deadline for the November 2022 election was October 9, 2022. No county submitted such a plan. Consequently, the Regulation will never apply to how a Nevada county tabulates its votes.

Contrary to fact, PLAN argues that even if no county submits a hand count plan, “the temporary regulation remains significant because it allows [counties] to engage in hand counts alongside machine tabulation.”³⁸ The Regulation does no such thing. Nor is PLAN able to cite anything to support this conclusory—and incorrect—assertion.

³⁵ See NRS 233B.063(3).

³⁶ After the November 2022 election, the next elections will be in 2024. NRS 293.175(1) (primary elections held in even-numbered years); NRS 293.12755 (general elections held in even-numbered years).

³⁷ JA050-52 at § 3; JA056 at §7(3).

³⁸ Opening Br. at 6.

This Court reviews *de novo* whether a party has standing.³⁹ The Court’s duty is “to resolve actual controversies by an enforceable judgment.”⁴⁰ If a controversy does not exist, the case is moot and should be dismissed.⁴¹ “Cases presenting real controversies at the time of their institution may become moot by the happening of subsequent events.”⁴² That is what has happened here; the passing of the October 9, 2022 deadline with counties choosing not to submit hand count plans has rendered this case permanently moot.

The Court should dismiss this appeal as moot.⁴³

III. The District Court Correctly Determined that PLAN Was Unlikely to Succeed on the Merits of its Case

A. Nevada Law Does Not Prohibit the Hand Counting of Ballots

PLAN argues that the Regulation violates law because it authorizes hand counting where it is otherwise prohibited.⁴⁴ However, nothing in Nevada law prohibits hand counting. Since 1985, the Legislature has provided that “ballots or votes *may* be cast, registered, recorded, and counted by means of a mechanical voting system.”⁴⁵ Authorization for non-mechanical voting systems predates 1985

³⁹ *Nevada Pol’y Rsch. Inst., Inc. v. Cannizzaro*, 138 Nev. Adv. Op. 28, 507 P.3d 1203, 1207 (2022).

⁴⁰ *Personhood Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010).

⁴¹ *See id.*, 126 Nev. at 602, 604, 245 P.3d at 574, 575.

⁴² *Nat’l Collegiate Athletic Ass’n v. Univ. of Nevada, Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981).

⁴³ *Id.*, 97 Nev. at 58, 624 P.2d at 11 (“This court has frequently refused to determine questions presented in purely moot cases.”)

⁴⁴ *See* Opening Br. at 10-16.

⁴⁵ NRS 293B.050 (emphasis added).

and the Legislature has not amended Nevada statute to state that “ballots or votes *must* be cast, registered, recorded, and counted by means of a mechanical voting system.”

PLAN contends that the 2003 Legislature repealed the hand counting of ballots implicitly by passing NRS 293.2696(5).⁴⁶ PLAN does so by arguing that all voting systems must “[m]eet[] or exceed[] the standards for voting systems established by the United States Election Assistance Commission, including, without limitation, the error rate standards.”

However, NRS 293.2696 was not adopted by the 2003 Legislature in a vacuum; it was passed to comply with HAVA, which explicitly excluded “paper ballot voting systems” from its terms. As such, NRS 293.2696 must be interpreted within the context of HAVA.⁴⁷ There, HAVA defines a voting system as “the total combination of mechanical, electromechanical, or electronic equipment” and “the practices and associated documentation” used for certain defined purposes.⁴⁸ Federal standards similarly define voting systems standards applying *only* to voting systems that are mechanical, electromechanical, or electronic.⁴⁹ Federal regulators have not

⁴⁶ Opening Br. at 10-16.

⁴⁷ See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (“It is a ‘fundamental canon of statutory construction that words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’”).

⁴⁸ 52 U.S.C. § 21081(b).

⁴⁹ See *supra* at n. 25-26.

established error rates or standards for paper ballot election systems, consistent with the HAVA protection of those paper ballot election systems from HAVA's reach.

PLAN argues that NRS 293.2696's reference to voting systems should not be read consistently with HAVA's definition of voting systems because otherwise it would create a redundancy with NRS 293B.063.⁵⁰ Even if NRS 293.2696's reference to voting systems were read to include mechanical voting systems and hand counting as PLAN claims, NRS 293B.063 would still be redundant. PLAN's redundancy argument therefore adds nothing.

PLAN also argues that hand counting qualifies as a "voting system" under HAVA.⁵¹ But HAVA's definition of a voting system requires "mechanical, electromechanical, or electronic equipment."⁵² No such equipment need be used for hand counting ballots, and PLAN's argument therefore fails.

Finally, PLAN claims that HAVA's underlying purpose establishes that hand counting is not permitted. The purpose of HAVA was (1) "[t]o establish a program to provide funds to States to replace punch card voting systems," (2) "to establish the Election Assistance Commission," and (3) "to establish minimum election administration standards."⁵³ The purpose does not include precluding the use of hand

⁵⁰ Opening Br. at 12.

⁵¹ Opening Br. at 13.

⁵² 52 U.S.C. § 21081(b).

⁵³ Pub. L. 107-252, 116 Stat. 1706.

counting. If it had, Congress could have stated so explicitly, including by defining voting systems to include methods of casting or tabulating votes other than through mechanical, electromechanical, or electronic equipment.

The 2003 Legislature neither discussed eliminating hand counting of paper ballots when considering NRS 293.2696 nor amended NRS 293B.050 to require the use of mechanical voting systems. Because there is no prohibition on hand counting of ballots under Nevada law, the district court correctly found that PLAN is unlikely to succeed on the merits that the Secretary exceeded her authority by adopting the Regulation.

B. The Regulation Does Not Create a Non-Uniform Standard for What Qualifies as a Vote

PLAN contends that the right to a uniform, statewide standard for counting votes⁵⁴ precludes the use of hand counting.⁵⁵ The District Court correctly determined, however, that the right applies to the determination of what qualifies as a vote and does not establish a requirement that all counties use the same method of counting votes.⁵⁶ Both the *Bush v. Gore* decision and HAVA's language reflect that the right to a uniform, statewide standard for counting votes concerns determining voter intent.

⁵⁴ See NEV. CONST. art. 2, § 1A(10); NRS 293.2546(10).

⁵⁵ Opening Br. at 16-18.

⁵⁶ See JA097-98.

In *Bush v. Gore*, the Supreme Court focused on the lack of uniformity across Florida counties for determining voter intent and whether to count a vote.⁵⁷ The lack of uniform rules meant that there was an unequal evaluation of ballots because different standards could be used to determine how to interpret marks, holes, or scratches on cardboard or paper.⁵⁸ However, the Supreme Court was *not* addressing whether “local entities, in the exercise of their expertise, may develop different systems for implementing elections.”⁵⁹ Consistent with this focus, HAVA requires states to “adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote.”⁶⁰ This provision “requires some basic level of consistency in the way election officials interpret whether a particular type of ballot marking is a valid expression of voter intent.”⁶¹

Nevada’s right to a uniform, statewide standard for counting votes similarly does not require uniformity of vote counting method. Questions of how to determine whether a vote must be counted are addressed by statute and regulation, such as specifying that “[a] vote must be counted if the designated space is darkened or there

⁵⁷ 531 U.S. 98, 106 (2000).

⁵⁸ *Id.*

⁵⁹ *Id.* at 109.

⁶⁰ 52 U.S.C. § 21081(a)(6).

⁶¹ *State of New Mexico ex rel. League of Woman Voters v. Herrera*, 145 N.M. 563, 568, 203 P.3d 94, 99 (2009).

is a writing in the designated space, including, without limitation, a cross or check.”⁶²

PLAN argues that the fact that statute and regulation specify how to determine what qualifies as a vote means that the right to a uniform, statewide standard for counting the vote is impermissibly rendered surplus.⁶³ The Nevada Constitution and NRS 293.2546(10) establish the right to a uniform, statewide standard, but do not provide the details of what standard to apply; other regulations and statutes provide the details. The established right is necessary to ensure that the implementing laws and rules can be challenged if they do not, in fact, provide a uniform standard for determining what qualifies as a vote. There is no surplusage.

PLAN does not contend that the Regulation imposes different standards for determining whether to count a vote, such as if there is an overvote. The Regulation promotes uniformity in counting votes. It sets minimum standards for hand counts that will ensure votes are counted in a standardized manner. The Regulation does not violate Nevada’s right to a uniform, statewide standard for counting votes.

C. The Regulation Does Not Violate the Equal Protection Clause

The District Court correctly determined that PLAN’s Equal Protection Clause challenge was not likely to succeed.⁶⁴ As addressed above, PLAN’s presumption

⁶² NRS 293.3677(2)(a).

⁶³ Opening Br. at 17-18.

⁶⁴ JA098.

that Nevada statute prohibits hand counting of ballots is wrong. Notably, an Equal Protection challenge in Nevada has already failed where there was “no evidence that any vote that should lawfully not be counted has been or will be counted” and there was “no evidence of any injury, direct or indirect, to themselves or any other person or organization as a result of the different procedures.”⁶⁵ Nothing in the record requires a different ruling as to the Regulation.

Instead, the Secretary had a significant interest in implementing the Regulation to ensure uniformity in the event a county chose hand counting of ballots for determining its election results. The Regulation seeks to address common concerns with hand counts, such as requiring the provision of a plan at least 30 days in advance of the election demonstrating how any such count would meet existing statutory deadlines for election results, ballot security, avoiding worker fatigue, and the use of multiple tallies.⁶⁶ PLAN failed to meet its burden of showing that it was likely to succeed on the merits of its claim because the Regulation would in fact disenfranchise any voters. Without the Regulation, county efforts to use hand counting may not be uniform.

⁶⁵ *Kraus v. Cegavske*, No. 20 OC 00142 1B, 2020 WL 8340238, at *4 (Nev. Dist. Ct. Oct. 29, 2020).

⁶⁶ JA049-62

IV. The District Court Correctly Determined that Appellant Was Unlikely to Suffer Irreparable Harm

As discussed above, PLAN has offered no evidence that any county will conduct a hand count in accordance with the Regulation, such that it would suffer any harm. The Regulation will expire before it can apply to any county. In addition to mootness, this precludes any harm to PLAN.

Nevertheless, PLAN attempts to manufacture harm by arguing that the Regulation somehow authorizes counties to perform a parallel hand count process.⁶⁷ Notably, PLAN does not provide a single citation to the Regulation in support of this assertion. That is because the Regulation does no such thing. Nor would an injunction of the Regulation preclude a county from conducting a parallel hand count. PLAN's request for an injunction is a request for legislation, not a request for judicial resolution of legal issues.⁶⁸

PLAN also argues that it would not have enough time to challenge a county's use of hand counting as the primary method of counting votes because the Regulation only requires plans to be submitted 30 days before the election.⁶⁹ This

⁶⁷ Opening Br. at 20-21.

⁶⁸ The Secretary notes that there is a pending legal challenge to the Nye County "parallel counting" plan before the Fifth Judicial District Court. *See American Civil Liberties Union of Nevada et al. v. Nye County et al.*, Case No. CV22-0503 (Nev. Dist. Ct. Oct. 4, 2022). That case is the appropriate forum for addressing the legality of Nye County's proposed plan, subject to appellate review by this Court.

⁶⁹ Opening Br. at 21.

ignores that counties would begin preparations to switch to a hand count well before submitting the plan. More crucially, however, this argument depends on the language of the Regulation, which as discussed, will expire. Denial of the injunction does not result in harm to PLAN or anyone else.

V. The District Court Correctly Determined that the Balance of Equities and Public Interest Favored Denial of the Injunction

As described above, the district court correctly found that “[c]ities and counties may already use hand counting.”⁷⁰ Had a county decided to conduct a hand count as the primary method of counting the vote, the Regulation would have promoted uniformity and accuracy. No county would have been able to conduct a hand count to determine its election results if it did not comply with the Regulation. Absent the Regulation, counties would have been able to choose hand counting without any of the Regulation’s safeguards. The balance of equities and the public interest do not favor PLAN.

⁷⁰ JA098.

CONCLUSION

This case is moot and should be dismissed. Alternatively, this court should affirm the District Court's denial of a preliminary injunction, concluding that PLAN has not met its burden to obtain such extraordinary relief.

Dated this 11th day of October, 2022.

AARON D. FORD
Attorney General

By: /s/ Craig Newby
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 pt. font and Times New Roman; or

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or

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Dated this 11th day of October, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing RESPONDENT BARBARA CEGAVSKE'S ANSWERING BRIEF in accordance with this Court's electronic filing system and consistent with NEFCR 9 on this 11th day of October, 2022.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

I further certify that any of the participants in the case that are not registered as electronic users will be mailed the foregoing document by First-Class Mail, postage prepaid.

/s/ Lucas Combs

An employee of the
Office of the Attorney General