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**IN THE FIRST JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

PROGRESSIVE LEADERSHIP ALLIANCE  
OF NEVADA,

Plaintiff,

vs.

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

Defendant.

Case No.:

Dept. No.:

**COMPLAINT FOR DECLARATORY  
& INJUNCTIVE RELIEF**

Arbitration Exemption: Declaratory  
and Injunctive Relief

COMES NOW Plaintiff Progressive Leadership Alliance of Nevada, by and through its undersigned counsel, and files this Complaint against Defendant Barbara Cegavske, and alleges and petitions this Court as follows:

**SUBJECT-MATTER JURISDICTION**

1. This Court has jurisdiction to hear Plaintiff's claims under NRS 233B.110, as well as NRS 33.010, 30.030, and 30.040, and Article 6, Section 6 of the Nevada Constitution, because this is a proceeding for a declaratory judgment challenging the validity of a regulation issued by

1 the Secretary of State on the ground that the regulation violates constitutional and statutory  
2 provisions and exceeds the Secretary of State's statutory authority, and for associated preliminary  
3 and permanent injunctive relief.

#### 4 **INTRODUCTION**

5 2. On August 26, 2022, the Secretary of State issued a temporary regulation that  
6 authorizes county clerks to abandon, in whole or in part, the electronic and mechanical voting  
7 systems that have served Nevada well for many years. In their place, the temporary regulation  
8 authorizes county clerks to engage in the hand counting of ballots—for all races, for only some  
9 races, or even for only some precincts. Perhaps worse, while the temporary regulation also  
10 establishes procedures by which such hand counts must be conducted, it exempts from those  
11 procedures hand counts that are conducted in parallel with machine counts, rather than as the  
12 primary method of counting votes.

13 3. The temporary regulation threatens to unleash electoral chaos. In recent elections,  
14 all votes cast in Nevada have been tabulated using mechanical or electronic systems shown to the  
15 State of Nevada and the U.S. Election Assistance Commission to be accurate. But under the  
16 temporary regulation, some votes may be counted using hand-counting methods that have not been  
17 shown to be reliable, and votes cast in different counties, different precincts, or different contests  
18 may be counted very differently.

19 4. The temporary regulation therefore deprives Nevadans of their constitutional and  
20 statutory rights to a “uniform, statewide standard for counting and recounting all votes accurately  
21 as provided by law.” Nev. Const. art. 2, § 1A(10); *see also* NRS 293.2546(5). It also violates the  
22 Secretary of State's statutory duty to use only voting systems that “[m]eet[] or exceed[] the  
23 standards for voting systems established by the United States Election Assistance Commission,  
24 including, without limitation, the error rate standards.” NRS 293.2696(5). And it violates the U.S.  
25 Constitution's Equal Protection Clause by treating different votes differently and providing too  
26 little guidance to ensure uniform and accurate vote-counting.

27 5. The court should therefore declare that the temporary regulation is invalid and grant  
28 associated preliminary and permanent injunctive relief.

1 VENUE

2 6. Venue is proper in the First Judicial District Court of Nevada under NRS 233B.110,  
3 because this is a proceeding for a declaratory judgment alleging that a regulation interferes with,  
4 impairs, and threatens to interfere with or impair, the legal rights or privileges of Plaintiff, and  
5 under NRS 13.020, because this is an action against a public official in her official capacity for  
6 actions that occurred, in whole or in part, in Carson City.

7 PARTIES

8 7. Plaintiff Progressive Leadership Alliance of Nevada is a non-profit organization  
9 that was founded in 1994 to bring together diverse and potentially competing organizations into  
10 one cohesive force for social and environmental justice in Nevada. Plaintiff is a coalition of more  
11 than thirty member groups throughout Nevada. Many of those member groups, in turn, have  
12 individual members of their own, including many individual Nevada voters.

13 8. As part of its mission, Plaintiff emphasizes civic engagement, combats voter  
14 suppression, and seeks to ensure that all eligible Nevada voters have their votes counted. Plaintiff  
15 is particularly focused on empowering and ensuring that Nevada's historically marginalized  
16 voters, including voters of color and young voters, are not denied their fundamental right to vote.  
17 Those voters, unfortunately, have historically been those most likely to be the target of voter  
18 suppression efforts, including harassment and voter intimidation.

19 9. Defendant Barbara Cegavske is the Secretary of State for the State of Nevada. She  
20 is sued in her official capacity.

21 10. The Secretary of State is the "Chief Officer of Elections for this State" and  
22 "responsible for the execution and enforcement of . . . all . . . provisions of state and federal law  
23 relating to elections in this State." NRS 293.124(1). The Secretary of State "shall adopt such  
24 regulations as are necessary to carry out" that responsibility. NRS 293.124(2). The Secretary of  
25 State's regulations must "not [be] inconsistent with the election laws of this state."  
26 NRS 293.247(1).



1 **FACTUAL ALLEGATIONS**

2 **A. Nevada law requires a uniform, statewide vote-counting standard.**

3 11. For many years, Nevada counties have counted votes using mechanical voting  
4 systems, defined as “any system of voting whereby a voter may cast a vote” either “[o]n a device  
5 which mechanically or electronically compiles a total of the number of votes cast for each  
6 candidate and for or against each measure voted on,” or “[b]y marking a paper ballot which is  
7 subsequently counted on an electronic tabulator, counting device or computer.” NRS 293B.033.  
8 Since 1975, Nevada statutes have expressly provided that “[a]t all statewide, county, city and  
9 district elections of any kind held in this State, ballots or votes may be cast, registered, recorded  
10 and counted by means of a mechanical voting system.” NRS 293B.050.

11 12. To be used in Nevada, mechanical voting systems, like any other voting systems,  
12 must “meet[] or exceed[] the standards for voting systems established by the United States Election  
13 Assistance Commission.” NRS 293B.063 (requirement for “mechanical voting system”); *see also*  
14 NRS 293.2696 (same requirement for “each voting system” used in Nevada, not restricted to  
15 *mechanical* voting systems).

16 13. Nevada law further requires that mechanical voting systems provide a printed paper  
17 record of all votes cast on the system, NRS 293B.082, and that such systems be tested for accuracy  
18 before the first day of early voting, immediately before the start of the official count, and within  
19 24 hours after the end of the official count, NRS 293B.150, .165, among many other safeguards.

20 14. Under one form of mechanical voting system, voters cast votes using paper ballots  
21 “by darkening a designated space on the ballot,” which are then read and counted by an electronic  
22 device. NRS 293.3677(2). Nevada statutes provide specific standards for counting votes cast using  
23 such a system. *See id.*

24 15. For any other “method of voting used in this state,” the Secretary of State “[s]hall  
25 adopt regulations establishing uniform, statewide standards for counting a vote cast” by that  
26 method, “including, *without limitation*, a vote cast on a mechanical recording device which directly  
27 records the votes electronically.” NRS 293.3677(3)(b) (emphasis added).



1       **B. Some groups have recently favored hand counting, but it is flawed.**

2           16.     In recent years, and particularly after the 2020 presidential election, some groups  
3 in Nevada and elsewhere have become suspicious of electronic voting systems. Those suspicions  
4 are unfounded. As the Secretary of State's office has explained, "[a]ll voting machines undergo  
5 extensive pre-election and post-election examinations to ensure they function as expected. The NV  
6 Gaming Control Board tests and certifies our systems. The post-election audits and recounts  
7 conducted in Nevada confirmed that the machines accurately tabulated the votes cast" in the 2020  
8 general election. Nevada Sec'y of State, Facts vs. Myths: Nevada 2020 Post-General Election at  
9 4, <https://www.nvsos.gov/sos/home/showpublisheddocument?id=9191> (last visited Aug. 30,  
10 2022).

11           17.     While there may be a role for hand recounts in close individual races, mechanical  
12 and electronic voting systems are *significantly more reliable* in tabulating the results of multiple  
13 contests on a single ballot than humans are. Studies of recounts have confirmed that electronic  
14 voting systems provide significantly more accurate initial vote counts than hand counting does. As  
15 one such study explained:

16                   We find . . . that vote counts originally conducted by computerized  
17 scanners were, on average, more accurate than votes that were  
18 originally tallied by hand. This finding should not be surprising,  
19 either to people who have administered elections or to those who  
20 have a grasp of the extension of automation into the workplace.  
Computers tend to be more accurate than humans in performing  
long, tedious, repetitive tasks. The demanding election night  
environment only drives a bigger wedge between human and  
machine performance.

21 Stephen Ansolabehere, Barry C. Burden, Kenneth R. Mayer, & Charles Stewart III, *Learning from*  
22 *Recounts*, 17 Elec. Law J. 100, 115 (2018), [https://www.liebertpub.com/doi/epdf/10.1089/](https://www.liebertpub.com/doi/epdf/10.1089/elj.2017.0440)  
23 [elj.2017.0440](https://www.liebertpub.com/doi/epdf/10.1089/elj.2017.0440) (last visited Aug. 30, 2022).

24           18.     Hand counting of multiple races on a single ballot is also exceptionally time  
25 consuming. It took Esmerelda County more than seven hours to hand count just 317 ballots from  
26 the June 14, 2022 primary. Ken Ritter, Gabe Stern, & Scott Sonner, *Last Nevada County Approves*  
27 *Primary Results After Hand Count* (June 25, 2022), [https://apnews.com/article/2022-midterm-](https://apnews.com/article/2022-midterm-elections-new-mexico-nevada-voting-presidential-652df50bc2b535d2303ddd4c5fda6ea5)  
28 [elections-new-mexico-nevada-voting-presidential-652df50bc2b535d2303ddd4c5fda6ea5](https://apnews.com/article/2022-midterm-elections-new-mexico-nevada-voting-presidential-652df50bc2b535d2303ddd4c5fda6ea5) (last

1 visited Aug. 30, 2022). Esmerelda County is the least populated county in Nevada, with just 729  
2 residents according to the 2020 census.

3 **C. The Secretary of State promulgated a temporary regulation authorizing hand**  
4 **counting.**

5 19. Despite these issues with hand counting ballots, on July 26, 2022, the Secretary of  
6 State issued notice of her intent to promulgate a temporary regulation authorizing counties to count  
7 ballots by hand for the 2022 general election. *See* Off. of the Sec’y of State, *Notice of Intent to Act*  
8 *Upon a Regulation* (July 26, 2022), [https://www.nvsos.gov/sos/home/showpublisheddocument/](https://www.nvsos.gov/sos/home/showpublisheddocument/10756/637945306319570000)  
9 [10756/637945306319570000](https://www.nvsos.gov/sos/home/showpublisheddocument/10756/637945306319570000) (last visited Aug. 30, 2022).

10 20. The Secretary of State held a workshop on her proposed temporary regulation on  
11 August 12, 2022, and a public hearing on August 26, 2022. At both the workshop and the public  
12 hearing, many commenters objected to the proposed temporary regulation, explaining that it is  
13 contrary to the Nevada Constitution and Nevada statutes. *See, e.g.*, Letter from Brennan Center for  
14 Justice et. al. to Mark Wlaschin (Aug. 12, 2022), [https://allvotingislocal.org/wp-content/uploads/](https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment_Proposed-Hand-Count-Regulations-8-12-22.pdf)  
15 [BCAVLACLUSS-Public-Comment\\_Proposed-Hand-Count-Regulations-8-12-22.pdf](https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment_Proposed-Hand-Count-Regulations-8-12-22.pdf).

16 21. On August 26, the Secretary of State nevertheless adopted the proposed temporary  
17 regulation, with only minor amendments from the initial proposed language that did not address  
18 commenters’ objections that the regulation is contrary to Nevada law. *See* 2nd Revised Temp.  
19 Regul. of the Sec’y of State, **Exhibit A** hereto.

20 22. The temporary regulation expressly authorizes county clerks “to conduct a hand  
21 count of the ballots voted in an election.” *Id.* § 2. It defines a “hand count” as “the process of  
22 determining the election results where the primary method of counting the votes cast for each  
23 candidate or ballot question does not involve the use of a mechanical voting system.” *Id.* § 7(3)  
24 (amending NAC 293.010). The temporary regulation authorizes county clerks to conduct a hand  
25 count for “[a]ll contests on the ballot,” “[a] specified number of contests on the ballot,” or “[a]  
26 specified sample of the precincts in the county.” *Id.* § 2. County clerks “may,” but need not, “use  
27 an electronic tabulator to validate the results of the hand count.” *Id.* § 3.  
28

1           23.     If counties wish to proceed with a “hand count,” the temporary regulation requires  
2 them to submit a plan for doing so to the Secretary of State at least 30 days before election day  
3 and to follow detailed counting procedures. *Id.* §§ 3–6. Among other things, counties must use  
4 four-person bipartisan counting teams of election board officers, counting using specified methods,  
5 on specified shifts, with specified forms of oversight and auditing. *See id.* The temporary  
6 regulation also imposes similar requirements on cities for city elections. *Id.* §§ 9–13.

7           24.     The temporary regulation will not, however, apply to all forms of hand counting.  
8 The Secretary of State specifically amended the initial proposed temporary regulation to restrict it  
9 to scenarios in which hand counting is the “*primary* method of counting the votes cast” in an  
10 election. *Id.* § 7 (amending NAC 293.010(3)) (emphasis added). Deputy Secretary of State Mark  
11 Wlaschin explained that the amendment means that, “[i]f a county election official decides they’re  
12 interested in conducting a hand count audit, or a hand count tabulation, but are going to use as the  
13 primary method of tabulation a mechanical system, then these regulations are in essence  
14 recommendations, but not required.” Sean Golonka, *State Adopts Regulation for Hand Counting*  
15 *Ballots, But It Won’t Affect Nye County*, Nev. Indep. (Aug. 26, 2022),  
16 [https://thenevadaindependent.com/article/state-adopts-regulation-for-hand-counting-ballots-but-](https://thenevadaindependent.com/article/state-adopts-regulation-for-hand-counting-ballots-but-it-wont-affect-nye-county)  
17 [it-wont-affect-nye-county](https://thenevadaindependent.com/article/state-adopts-regulation-for-hand-counting-ballots-but-it-wont-affect-nye-county) (last visited Aug. 30, 2022).

18           25.     As a result of the Secretary of State’s amendment to the temporary regulation, the  
19 temporary regulation allows counties to conduct hand counts without even following the  
20 procedures specified in the temporary regulation, so long as the hand count is not the “primary  
21 method” of counting votes. Nye County Clerk Mark Kampf has proposed to do just that, stating  
22 that he will engage in a “‘parallel tabulation’ process that involves running paper ballots through  
23 the typical mechanical tabulators and checking the results with an additional hand count of all  
24 ballots.” *Id.* Nye County therefore apparently intends to conduct a hand count of ballots in the  
25 2022 general election without complying with the procedures specified in the temporary  
26 regulation.



## LEGAL PRINCIPLES

26. The temporary regulation violates the Nevada Constitution and Nevada statutes and exceeds the Secretary of State's legal authority because it does not provide a uniform, statewide standard for accurately counting ballots, and because it purports to authorize hand counting as a voting system without first finding that it meets or exceeds the United States Election Assistance Commission's standards.

### **A. The temporary regulation violates Nev. Const. art. 2, § 1A(10) and NRS 293.2546(10).**

27. Under both the Nevada Constitution and the Nevada Revised Statutes, each registered voter "has the right . . . to a uniform, statewide standard for counting and recounting all votes accurately as provided by law." Nev. Const. art. 2, § 1A(10); *see also* NRS 293.2546(5) ("[E]ach voter has the right . . . [t]o have a uniform, statewide standard for counting and recounting all votes accurately.").

28. The temporary regulation violates those provisions.

29. The temporary regulation authorizes each individual county to choose to use hand counting either (1) not at all, (2) for all contests on all ballots, (3) for only some contests on all ballots, or (4) for only ballots in some precincts. Ex. A § 2(1), (2). Counties that choose to use hand counting in whole or in part may further choose whether to "use an electronic tabulator to validate the results of the hand count." *Id.* § 3. Because of the temporary regulation's restrictive definition of "hand count," counties may also choose to primarily use electronic tabulation, while conducting a hand count that is not subject to the temporary regulation's procedures at all.

30. The temporary regulation therefore expressly authorizes counties across Nevada to count votes in different ways, and even allows individual counties to count different votes differently, in direct violation of voters' rights to a "uniform, statewide standard" for counting votes accurately under Nev. Const. art. 2, § 1A(10) and NRS 293.2546(5).

### **B. The temporary regulation violates NRS 293.3677(3)(b).**

31. Nevada statutes provide that the Secretary of State "[s]hall adopt regulations establishing uniform, statewide standards for counting a vote cast by each method of voting used

1 in this State” other than optical-scan machines, which are separately regulated by statute.  
2 NRS 293.3677(3)(b).

3 32. The temporary regulation violates NRS 293.3677(3)(b) because it does not  
4 establish a “uniform, statewide standard[]” for counting votes cast by paper ballot. Under the  
5 temporary regulation, some votes cast by paper ballot may be counted solely by electronic  
6 tabulator, others may be counted solely by hand, and still others may be counted by both methods.  
7 That discrepancy may occur both among different counties and within individual counties.

8 33. Moreover, the temporary regulation does not establish “uniform, statewide  
9 standards” even for those ballots that are counted by hand, because the temporary regulation leaves  
10 counties free to “use an electronic tabulator to validate the results of the hand count” or not, and  
11 entirely exempts hand counts from the procedures required by the regulation if counties do not  
12 intend to use the hand count as the “*primary* method of counting the votes cast.” Ex. A §§ 2(3),  
13 7(3). This is a further, independent violation of NRS 293.3677(3)(b).

14 **C. The temporary regulation violates NRS 293.2696(5).**

15 34. Nevada statutes further provide that “[t]he Secretary of State and each county and  
16 city clerk shall ensure that each voting system used in the state . . . [m]eets or exceeds the standards  
17 for voting systems established by the United States Election Assistance Commission, including,  
18 without limitation, the error rate standards.” NRS 293.2696(5).

19 35. The temporary regulation violates NRS 293.2696(5) because it authorizes the use  
20 of hand counting as a “voting system” in Nevada without any determination that the hand-counting  
21 system it authorizes “[m]eets or exceeds the standards for voting systems established by the United  
22 States Election Assistance Commission, including, without limitation, the error rate standards.”

23 36. NRS 293.2696(5) applies to *all* “voting systems”; it is not limited to “mechanical  
24 voting systems,” a defined term in Nevada law that includes electronic tabulation systems. *See*  
25 NRS 293B.033 (defining a “[m]echanical voting system” as “a system of voting whereby a voter  
26 may cast a vote . . . [on] a device which mechanically or electronically compiles a total of the  
27 number of votes cast for each candidate and for or against each measure voted on; or . . . [b]y  
28 marking a paper ballot which is subsequently counted on an electronic tabulator, counting device

1 or computer.”). Nevada law separately regulates “mechanical voting systems” and separately  
2 requires that they conform to these same standards. *See* NRS 293B.063 (“No *mechanical* voting  
3 system may be used in this State unless it meets or exceeds the standards for voting systems  
4 established by the United States Election Assistance Commission.” (emphasis added)).

5 37. Nevada law does not define “voting systems” as distinct from “mechanical voting  
6 systems.” But the plain meaning of “voting systems” includes the detailed hand-counting system  
7 established by the temporary regulation, which authorizes in considerable detail a specific means  
8 of counting paper ballots by hand.

9 38. The Election Assistance Commission’s “Voting System Standards” require that  
10 “[f]or each processing function” undertaken by a voting system, “the system shall achieve a target  
11 error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error  
12 rate in the test process of one in 500,000 ballot positions.” Election Assistance Comm’n, *Voting*  
13 *System Standards: Vol 1 – Performance Standards* at 3-51 (Apr. 2002), [https://www.eac.gov/sites/](https://www.eac.gov/sites/default/files/eac_assets/1/28/Voting_System_Standards_Volume_I.pdf)  
14 [default/files/eac\\_assets/1/28/Voting\\_System\\_Standards\\_Volume\\_I.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/28/Voting_System_Standards_Volume_I.pdf) (last visited Aug. 30,  
15 2022).

16 39. The Secretary of State adopted the temporary regulation without making any  
17 finding that the error rate for the hand-counting system authorized by the temporary regulation  
18 falls within the Election Assistance Commission’s standards, including the error-rate standards.

19 40. In fact, the temporary regulation does not require any procedure for assessing the  
20 error rate for the hand-counting system *at all*. Rather, it merely states that a county may—but need  
21 not—use an electronic tabulator to validate the results of the hand count.

#### 22 **D. The temporary regulation violates the Equal Protection Clause**

23 41. The U.S. Constitution’s Equal Protection Clause also requires uniform procedures  
24 for counting votes. Under the Equal Protection Clause, “[h]aving once granted the right to vote on  
25 equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote  
26 over that of another.” *Bush v. Gore*, 531 U.S. 98, 104–05 (2000). It is therefore unconstitutional  
27 for states to “accord[] arbitrary and disparate treatment to voters in . . . different counties,” and for  
28 counties to “use[] varying standards to determine what was a legal vote.” *Id.* at 107.



1       42.     The temporary regulation violates the Equal Protection Clause because it authorizes  
2 Nevada counties to count ballots in grossly divergent ways, and even authorizes individual  
3 counties to count different ballots differently, such as by counting ballots cast at only some  
4 precincts by hand. Ex. A § 2(1)(c).

5       43.     The Equal Protection Clause also prohibits vote-counting procedures that fail to  
6 provide “specific standards to ensure . . . equal application.” *Bush*, 531 U.S. at 106. The temporary  
7 regulation violates this aspect of the Equal Protection Clause as well, by excluding counties that  
8 conduct hand counts as a secondary method of counting votes from the temporary regulation, and  
9 thereby failing to provide any standards or requirements for such hand counts.

10                               **FIRST CLAIM FOR RELIEF**

11                               **(Declaratory Judgment under NRS 233B.110)**

12       44.     The preceding paragraphs are incorporated by reference herein.

13       45.     NRS 233B.110(1) provides:

14               The validity or applicability of any regulation may be determined in  
15 a proceeding for a declaratory judgment in the district court in and  
16 for Carson City . . . when it is alleged that the regulation, or its  
17 proposed application, interferes with or impairs, or threatens to  
18 interfere with or impair, the legal rights or privileges of the plaintiff.  
19 A declaratory judgment may be rendered after the plaintiff has first  
requested the agency to pass upon the validity of the regulation in  
question. The court shall declare the regulation invalid if it finds that  
it violates constitutional or statutory provisions or exceeds the  
statutory authority of the agency. . . .

20       46.     The temporary regulation impairs the legal rights or privileges of Plaintiff, its  
21 members, and its members’ members, which include many Nevada voters, by violating their  
22 statutory and constitutional rights “to a uniform, statewide standard for counting and recounting  
23 all votes accurately,” Nev. Const. art. 2, § 1A(10); *see also* NRS 293.2546(5), and their rights  
24 under the U.S. Constitution’s Equal Protection Clause.

25       47.     Plaintiff did not participate in the agency proceedings before the Secretary of State  
26 adopted the temporary regulation. But several other voting-rights groups did, and they raised many  
27 of the same statutory and constitutional objections to the temporary regulation that Plaintiff asserts  
28 in this Complaint. *See* Letter from Brennan Center for Justice et. al. to Mark Wlaschin (Aug. 12,

2022), [https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment\\_Proposed-Hand-Count-Regulations-8-12-22.pdf](https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment_Proposed-Hand-Count-Regulations-8-12-22.pdf) (last visited Aug. 30, 2022). The Secretary of State adopted the temporary regulation despite those objections.

48. Because the Secretary of State adopted the temporary regulation even after other groups raised the same objections that Plaintiff raises here, it would be futile for Plaintiff to “request the agency to pass upon the validity of the regulation in question.” NRS 233B.110(1). Plaintiff is therefore excused from exhausting its administrative remedies. *Malecon Tobacco, LLC v. State*, 118 Nev. 837, 839, 59 P.3d 474, 475–76 (2002) (“[E]xhaustion is not required when a resort to administrative remedies would be futile.”). Alternatively, exhaustion is not required because the issues in this case “relate solely to the interpretation or constitutionality of a statute.” *Id.* (quoting *State v. Glusman*, 98 Nev. 412, 419, 651 P.2d 639, 644 (1982)).

49. For the reasons given above, *supra* ¶¶ 26–43, the temporary regulation violates constitutional and statutory provisions, including Nev. Const. art. 2, § 1A(10), NRS 293.2546(5), NRS 293.2696(5), and the U.S. Constitution’s Equal Protection Clause, and exceeds the Secretary of State’s statutory authority to engage in rulemaking.

50. Consistent with the requirements of NRS 233B.110(3), Plaintiff will serve a copy of this Complaint on the Attorney General.

51. The Court should therefore declare the temporary regulation invalid.

## **SECOND CLAIM FOR RELIEF**

### **(Injunctive Relief)**

52. The preceding paragraphs are incorporated by reference herein.

53. Courts have authority “whenever necessary or proper” to grant “[f]urther relief based on a declaratory judgment or decree,” including injunctive relief. NRS 30.100. Thus, “[an] injunction c[an] pair with a declaratory judgment under NRS 233B.110.” *Smith v. Bd. of Wildlife Comm’rs*, No. 77485, 461 P.3d 164, 2020 WL 1972791, at \*3 (Nev. Apr. 23, 2020) (unpublished); *Aronoff v. Katleman*, 75 Nev. 424, 432, 345 P.2d 221, 225 (1959) (“[U]nder appropriate circumstances, a declaratory judgment may be coupled with injunctive relief.”).

1           54. Preliminary and permanent injunctive relief is appropriate to protect voters'  
2 constitutional and statutory rights "to a uniform, statewide standard for counting and recounting  
3 all votes accurately," Nev. Const. art. 2, § 1A(10); *see also* NRS 293.2546(5), which the temporary  
4 regulation and the Secretary of State's authorization of hand counting, both under and outside of  
5 the temporary regulation, threaten to impair.

6           55. The Court should therefore enjoin the Secretary of State from authorizing or  
7 permitting counties to engage in hand counting, whether under the temporary regulation or  
8 otherwise, except as part of an election contest or recount under NRS 293.400 to .435, or as part  
9 of the testing of mechanical voting systems required under NRS Chapter 293B.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for the following relief:

3 A. A declaratory judgment that the Secretary of State's temporary regulation  
4 authorizing the hand counting of ballots is invalid;

5 B. A preliminary and permanent injunction prohibiting the Secretary of State from  
6 authorizing or permitting counties to engage in hand counting, whether under the temporary  
7 regulation or otherwise, except as part of an election contest or recount under NRS 293.400 to  
8 .435, or as part of the testing of mechanical voting systems required under NRS Chapter 293B;  
9 and

10 C. Such other relief as the Court deems appropriate.

11 **AFFIRMATION**

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

14 DATED this 31th day of August, 2022.

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16 **RABKIN, LLP**

17 By: 

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# EXHIBIT A

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EXHIBIT A

**2nd REVISED TEMPORARY REGULATION OF  
THE SECRETARY OF STATE**

August 24, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§ 1, 2, and 4-7, NRS 293.124 and 293.3677; §§ 3 and 10, NRS 293.124, 293.247, 293.3677 and 293.404; §§ 8, 9 and 11-13, NRS 293.124 and 293C.369.

A REGULATION relating to elections; establishing requirements for conducting a hand count of ballots; and providing other matters properly relating thereto.

**Digest:**

Existing law requires the Secretary of State to adopt regulations establishing uniform, statewide standards for counting a vote cast using certain methods of voting and authorizes the Secretary of State to adopt regulations for counting votes cast using certain types of mechanical voting systems. (NRS 293.3677, 293C.369) This regulation sets forth various requirements for a hand count of the ballots.

**Section 7** of this regulation defines the term “hand count.”

**Sections 2 and 9** this regulation authorize a county or city clerk, in consultation with the governing body of the county or city, to conduct a hand count of the ballots voted in an election.

**Sections 3 and 10** of this regulation require a county or city clerk who is going to conduct a hand count to submit to the Secretary of State 30 days before the date of the election a plan for the hand count, which must include certain procedures for conducting the hand count, plans for the location and necessary equipment and personnel for the hand count, plans ensuring the security of the hand count and contingency plans to meet certain deadlines.

**Sections 4 and 11** of this regulation require a county or city clerk conducting a hand count to establish a sufficient number of hand count tally teams, which must consist of at least four election board officers, who must not all be of the same political party.

**Sections 5 and 12** of this regulation set forth the procedures required to tally the votes during the hand count.

**Sections 6 and 13** of this regulation: (1) set forth certain requirements for the writing devices used by the hand count tally team; and (2) prohibit the hand count tally team members from bringing their own writing devices into the physical location where the ballots will be hand counted.



**Section 1.** Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

**Sec. 2. 1.** *Each county clerk may, in consultation with the board of county commissioners, conduct a hand count of the ballots voted in an election for:*

- (a) All contests on the ballot;*
- (b) A specified number of contests on the ballot, as determined by the county clerk; or*
- (c) A specified sample of the precincts in the county, as determined by the county clerk.*

**2.** *If a county clerk decides to conduct a hand count pursuant to subsection 1, the hand count must:*

- (a) Be conducted in accordance with the requirements of sections 2 to 6, inclusive, of this regulation;*
- (b) Be completed on or before the seventh day following the election; and*
- (c) Use the forms prescribed by the Secretary of State for tallying the results of the hand count.*

**3.** *A county clerk may use an electronic tabulator to validate the results of the hand count.*

**4.** *The Secretary of State will make the forms for tallying the results of the hand count available not less than 30 days before the date of the election.*

**Sec. 3.** *If a county clerk is going to conduct a hand count, the county clerk shall submit to the Secretary of State not later than 30 days before the date of the election a plan for conducting the hand count. The plan must include, without limitation:*

1. *A detailed description of how the hand count will be conducted in order to meet the applicable deadlines set forth in this chapter and title 24 of NRS for counting ballots.*
2. *The total number of election board officers and hand count tally teams that will be required to complete the hand count.*
3. *The work schedule for the hand count, which must not be more than 16 hours in a 24-hour period. There must not be more than two separate 8-hour shifts.*
4. *The physical location where the ballots will be hand counted and a scale diagram depicting the planned setup of the location.*
5. *An estimated list of any items necessary to conduct the hand count, which must include, without limitation:*
  - (a) *Whether all such items are currently in the possession of the county and, if not, the date by which any necessary items will be obtained by the county; and*
  - (b) *The estimated cost to the county to obtain the necessary items.*
6. *Any amendment to the plans for the observation of the hand count by the members of the public in accordance with section 1 of LCB File No. R108-21 and NRS 293B.353 and the plan submitted pursuant to NRS 293B.354.*
7. *The plans for ensuring the security of:*
  - (a) *The ballots consistent with the plan submitted pursuant to NAC 293B.040, as amended by section 8 of LCB File No. R091-21; and*
  - (b) *The election board officers who conduct the hand count.*
8. *A list of any outside vendors hired or who may be hired to consult or assist in the preparation or operation of the hand count.*

9. *A contingency plan for:*

- (a) Completing the counting of the ballots in the event the hand count will not be completed by the date required for the canvass of returns pursuant to NRS 293.387;*
- (b) Conducting any recount in accordance with NRS 293.404; and*
- (c) Completing any recount by the deadline set forth in NRS 293.405.*

*Sec. 4. 1. The county clerk shall establish a sufficient number of hand count tally teams to conduct the hand count. Each hand count tally team must consist of at least four election board officers, who must not be of the same political party, as follows:*

- (a) One election board officer known as the reading clerk to read the ballots;*
- (b) One election board officer known as the verification clerk to watch that the ballots are read correctly; and*
- (c) Two election board officers known as the tally clerks to separately record the votes on the appropriate tally form.*

*2. In addition to the election board officers appointed to a hand count tally team pursuant to subsection 1, the county clerk may appoint to a hand count tally team:*

- (a) One election board officer to supervise the overall conduct of the hand count, including, without limitation, tracking the progress of the hand count, ensuring compliance with the requirements of sections 2 to 6, inclusive, of this regulation and reporting any issues or concerns to the county clerk; and*
- (b) One election board officer to supervise and ensure compliance with the public observation of the hand count, including, without limitation, ensuring that the public is able to*



*observe the hand count and ensuring the public does not distract or interfere with the hand count tally team.*

*3. An election board officer assigned to work on a hand count tally team:*

*(a) May not work more than 8 hours in a 24-hour period; and*

*(b) Must wear medical style exam gloves at all times while working his or her shift.*

*4. Each hand count tally team must be positioned around a single table, with not less than 10 feet from the center of the table to the center of any other table containing a hand count tally team to reduce the risk of overhearing the other hand count tally team counting the ballots.*

*Sec. 5. 1. Before conducting a hand count of the ballots voted in an election, the election board officers must prepare to count the ballots in accordance with the requirements of NRS 293.363.*

*2. After the ballots are prepared for counting, the election board may use the electronic tabulator to calculate the results of the tally of the votes cast in a contest on the ballot.*

*3. A hand count of the ballots must be tallied not less than two times by the hand count tally team for each contest on the ballot that will be hand counted. The results of each tally of the ballots for each contest must match exactly. If the results do not match, the hand count must be conducted again until the results match one of the previous tallies.*

*4. In addition to the requirements of NRS 293.367 to 293.370, inclusive, each hand count tally team shall process the ballots in the following manner:*

*(a) For a primary election, the ballots must be sorted by political party and nonpartisan ballots to be tallied separately, with a Republican tally form, Democrat tally form and nonpartisan tally form.*

*(b) The ballots must be divided into separate stacks containing not more than 50 ballots per stack. Each stack must be read and tallied separately.*

*(c) The reading clerk shall read from the ballot the choice of the voter as indicated by writing in the designated space on the ballot indicating the voter's intent, including, without limitation, a cross or check.*

*(d) After reading each ballot, the reading clerk shall lay the ballot face down on the table to distinguish the counted ballot from the uncounted ballots. After each stack of ballots are counted, the ballots must be tied with a string or bound with a paper clip or binder clip in a stack of not more than 50 ballots.*

*(e) The tally clerks shall:*

*(1) Tally the votes on the appropriate tally form, depending on whether the ballot has been cast in a primary or general election. If the election is a primary election, the tallied votes should be noted on the tally form for the applicable political party or the nonpartisan tally form.*

*(2) On the tally form, place a short perpendicular hash mark opposite the name of the candidate or ballot question voted for the first through fourth vote for the same candidate or ballot question.*

*(3) For every fifth vote for the same candidate or ballot question, place a horizontal hash mark through the previous four perpendicular hash marks. One of the tally clerks shall then clearly announce:*

*(I) The fifth vote throughout the course of the tally; and*

*(II) The total number of hash marks for each candidate or ballot question.*

*(f) If the tally clerks agree on the total number of hash marks for each candidate or ballot question after the total has been announced pursuant to paragraph (e), the tally clerks shall make a mark above the five hash marks to indicate that the count of both tally clerks matched.*

*(g) If the count of the tally clerks:*

*(1) Matches, the tallying must continue.*

*(2) Does not match, the reason for the discrepancy must be identified and corrected before the hand count tally team may continue tallying.*

*5. The Office of the Secretary of State may supervise or assist in a hand count of the ballots voted if requested by a county clerk, but the county clerk is the party responsible for the hand count.*

*Sec. 6. 1. The county clerk shall provide all writing devices to a hand count tally team conducting a hand count. No member of a hand count tally team may use or bring his or her own writing device to the physical location where the ballots will be hand counted.*

*2. The writing devices provided by the county clerk pursuant to subsection 1:*

*(a) Must be uniform in color and style;*

*(b) Must not write in blue or black ink; and*

*(c) Must not be pencils.*



**Sec. 7.** NAC 293.010 is hereby amended to read as follows:

293.010 As used in this chapter, unless the context otherwise requires:

1. "Ballot stock" means:

(a) The paper upon which a ballot is printed on which a voter directly indicates his or her vote; and

(b) The materials included with a mail ballot, including, without limitation, the mail ballot, return envelope, envelope or sleeve into which the mail ballot is inserted to ensure its secrecy and voter instructions.

2. "Department" means the Department of Motor Vehicles.

3. *"Hand count" means the process of determining the election results where the primary method of counting the votes cast for each candidate or ballot question does not involve the use of a mechanical voting system.*

4. "Mail ballot" has the meaning ascribed to it in NRS 293.0653.

~~{4.}~~ 5. "Results cartridge" means the cartridge of a mechanical recording device which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.

~~{5.}~~ 6. "Signature stamp" has the meaning ascribed to it in NRS 427A.755.

~~{6.}~~ 7. "Statewide voter registration list" has the meaning ascribed to it in NRS 293.111.

~~{7.}~~ 8. "Voter verifiable paper audit trail printer" or "VVPAT" means the device attached to a mechanical recording device and the paper it prints to record all votes cast by a voter for any and all candidates and for or against any and all measures, enabling that voter to visually verify that the mechanical voting system has accurately recorded the votes of the voter.

~~{8.}~~ 9. "Voting booth" means any place or compartment used to screen a voter from the observation of others.

~~{9.}~~ 10. "Vote center" means a polling place established by the county or city clerk, as applicable, pursuant to the provisions of NRS 293.3072 to 293.3075, inclusive, or 293C.3032 to 293C.3035, inclusive, as applicable, where any person entitled to vote by personal appearance in the county or city, as applicable, may do so on the day of the election.

**Sec. 8.** Chapter 293C of NAC is hereby amended by adding thereto the provisions set forth as sections 9 to 13, inclusive, of this regulation.

**Sec. 9. 1.** *Each city clerk may, in consultation with the governing body of the city, conduct a hand count of the ballots voted in a city election for:*

- (a) All contests on the ballot;*
- (b) A specified number of contests on the ballot, as determined by the city clerk; or*
- (c) A specified sample of the precincts in the city, as determined by the city clerk.*

**2.** *If a city clerk decides to conduct a hand count pursuant to subsection 1, the hand count must:*

*(a) Be conducted in accordance with the requirements of sections 9 to 13, inclusive, of this regulation;*

*(b) Be completed on or before the seventh day following the city election; and*

*(c) Use the forms prescribed by the Secretary of State for tallying the results of the hand count.*

**3.** *A city clerk may use an electronic tabulator to validate the results of the hand count.*

4. *The Secretary of State will make the forms for tallying the results of the head count available not less than 30 days before the date of the city election.*

*Sec. 10. If a city clerk is going to conduct a hand count, the city clerk shall submit to the Secretary of State not later than 30 days before the date of the city election a plan for conducting the hand count. The plan must include, without limitation:*

1. *A detailed description of how the hand count will be conducted in order to meet the applicable deadlines set forth in this chapter, chapter 293 of NAC and title 24 of NRS for counting ballots.*

2. *The total number of election board officers and hand count tally teams that will be required to complete the hand count.*

3. *The work schedule for the hand count, which must not be more than 16 hours in a 24-hour period. There must not be more than two separate 8-hour shifts.*

4. *The physical location where the ballots will be hand counted and a scale diagram depicting the planned setup of the location.*

5. *An estimated list of any items necessary to conduct the hand count, which must include, without limitation:*

(a) *Whether all such items are currently in the possession of the city and, if not, the date by which any necessary items will be obtained by the city; and*

(b) *The estimated cost to the city to obtain the necessary items.*

6. *Any amendment to the plans for the observation of the hand count by the members of the public in accordance with section 1 of LCB File No. R108-21 and NRS 293B.353 and the plan submitted pursuant to NRS 293B.354.*



7. *The plans for ensuring the security of:*

*(a) The ballots consistent with the plan submitted pursuant to NAC 293B.040, as amended by section 8 of LCB File No. R091-21; and*

*(b) The election board officers who conduct the hand count.*

8. *A list of any outside vendors hired or who may be hired to consult or assist in the preparation or operation of the hand count.*

9. *A contingency plan for:*

*(a) Completing the counting of the ballots in the event the hand count is not completed by the date required for the canvass of returns pursuant to NRS 293C.387;*

*(b) Conducting any recount in accordance with NRS 293.404; and*

*(c) Completing any recount by the deadline set forth in NRS 293.405.*

Sec. 11. 1. *The city clerk shall establish a sufficient number of hand count tally teams to conduct the hand count. Each hand count tally team must consist of at least four election board officers, who must not be of the same political party, as follows:*

*(a) One election board officer known as the reading clerk to read the ballots;*

*(b) One election board officer known as the verification clerk to watch that the ballots are read correctly; and*

*(c) Two election board officers known as the tally clerks to separately record the votes on the appropriate tally form.*

2. *In addition to the election board officers appointed to a hand count tally team pursuant to subsection 1, the city clerk may appoint to a hand count tally team:*

*(a) One election board officer to supervise the overall conduct of the hand count, including, without limitation, tracking the progress of the hand count, ensuring compliance with the requirements of sections 9 to 13, inclusive, of this regulation and reporting any issues or concerns to the city clerk; and*

*(b) One election board officer to supervise and ensure compliance with the public observation of the hand count, including, without limitation, ensuring that the public is able to observe the hand count and ensuring the public does not distract or interfere with the hand count tally team.*

*3. An election board officer assigned to work on a hand count tally team:*

*(a) May not work more than 8 hours in a 24-hour period; and*

*(b) Must wear medical style exam gloves at all times while working his or her shift.*

*4. Each hand count tally team must be positioned around a single table, with not less than 10 feet from the center of the table to the center of any other table containing a hand count tally team to reduce the risk of overhearing the other hand count tally team counting the ballots.*

*Sec. 12. 1. Before conducting a hand count of the ballots voted in a city election, the election board officers must prepare to count the ballots in accordance with the requirements of NRS 293C.362.*

*2. After the ballots are prepared for counting, the election board may use the electronic tabulator to calculate the results of the tally of the votes cast in a contest on the ballot.*

*3. A hand count of the ballots must be tallied not less than two times by the hand count tally team for each contest on the ballot that will be hand counted. The results of each tally of*

*the ballots for each contest must match exactly. If the results do not match, the hand count must be conducted again until the results match one of the previous tallies.*

*4. In addition to the requirements of NRS 293C.367 to 293C.372, inclusive, each hand count tally team shall process the ballots in the following manner:*

*(a) The ballots must be divided into separate stacks containing not more than 50 ballots per stack. Each stack must be read and tallied separately.*

*(b) The reading clerk shall read from the ballot the choice of the voter as indicated by writing in the designated space on the ballot indicating the voter's intent, including, without limitation, a cross or check.*

*(c) After reading each ballot, the reading clerk shall lay the ballot face down on the table to distinguish the counted ballot from the uncounted ballots. After each stack of ballots are counted, the ballots must be tied with a string or bound with a paper clip or binder clip in a stack of not more than 50 ballots.*

*(d) The tally clerks shall:*

*(1) Tally the votes on the tally form.*

*(2) On the tally form, place a short perpendicular hash mark opposite the name of the candidate or ballot question voted for the first through fourth vote for the same candidate or ballot question.*

*(3) For every fifth vote for the same candidate or ballot question place a horizontal hash mark through the previous four perpendicular hash marks. One of the tally clerks shall then clearly announce:*

*(I) The fifth vote throughout the course of the tally; and*



*(II) The total number of hash marks for each candidate or ballot question.*

*(e) If the tally clerks agree on the total number of hash marks for each candidate or ballot question after the total has been announced pursuant to paragraph (d), the tally clerks shall make a mark above the five hash marks to indicate that the count of both tally clerks matched.*

*(f) If the count of the tally clerks:*

*(1) Matches, the tallying must continue.*

*(2) Does not match, the reason for the discrepancy must be identified and corrected before the hand count tally team may continue tallying.*

*5. The Office of the Secretary of State may supervise or assist in a hand count of the ballots voted if requested by a city clerk, but the city clerk is the party responsible for the hand count.*

*Sec. 13. 1. The city clerk shall provide all writing devices to a hand count tally team conducting a hand count. No member of a hand count tally team may use or bring his or her own writing device to the physical location where the ballots will be hand counted.*

*2. The writing devices provided by the city clerk pursuant to subsection 1:*

*(a) Must be uniform in color and style;*

*(b) Must not write in blue or black ink; and*

*(c) Must not be a pencil.*