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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.: 22 OC 001011B

Dept. No.: II

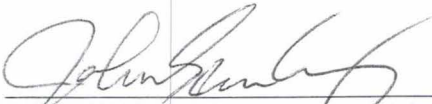
**MOTION FOR PRELIMINARY
INJUNCTION**

Pursuant to Nevada Rule of Civil Procedure 65, Plaintiff Progressive Leadership Alliance of Nevada moves for a preliminary injunction prohibiting the Secretary of State from authorizing or permitting counties to engage in hand counting, whether under the temporary regulation or otherwise, except as part of an election contest or recount under NRS 293.400 to .435, or as part of the testing of mechanical voting systems required under NRS Chapter 293B.

1 This Motion is based on the Memorandum of Points and Authorities below, any affidavits
2 and exhibits attached hereto, all papers and pleadings on file, and any oral argument this Court
3 sees fit to allow at the hearing on this matter.

4 DATED this 1st day of September, 2022.

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6 **RABKIN, LLP**

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INTRODUCTION

On August 26, 2022, the Secretary of State issued a temporary regulation that authorizes individual county clerks to abandon the mechanical voting systems that have served Nevada well for many years. In their place, the temporary regulation authorizes county clerks to engage in the hand-counting of ballots—for all races, for only some races, or even for only some precincts—either with or without checking the results against an electronic tabulator. Perhaps worse, while the temporary regulation establishes procedures by which hand counts must be conducted, it exempts hand counts that are conducted in parallel with machine counts, rather than as the primary method for counting votes. As a result, the temporary regulation alters Nevada’s electoral system from one in which all votes cast in Nevada are tabulated using mechanical systems shown to the State of Nevada and the U.S. Election Assistance Commission to be accurate, to one in which different votes—cast in different counties, different precincts, or different contests—may be counted differently, and by methods that have not been proven accurate.

Nevada law and the U.S. Constitution prohibits the Secretary from throwing Nevada’s fast-approaching 2022 general election into turmoil in this way. Nevada voters have a constitutional and statutory 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). The Secretary has a duty to adopt “uniform, statewide standards for counting a vote cast by each method of voting used in this State.” NRS 293.3677(3)(b). And the Secretary must “ensure that each voting system used in this State . . . [m]eets or exceeds the standards for voting systems established by the United States Election Assistance Commission, including, without limitation, the error rate standards.” NRS 293.2696(5). The temporary regulation violates those rights and duties by authorizing counties to use disparate combinations of hand and electronic counting, without any showing that hand counting meets the Election Assistance Commission’s standards. It also violates the U.S. Constitution’s Equal Protection Clause, by allowing for “arbitrary and disparate treatment [of] voters in . . . different counties” and the use of “varying standards to determine what was a legal vote.” *Bush v. Gore*, 531 U.S. 98, 107 (2000). The Court should preliminarily enjoin its use.

BACKGROUND

For many years, Nevada counties have counted votes using mechanical voting systems, defined as “any system of voting whereby a voter may cast a vote” either “[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 “[b]y marking a paper ballot which is subsequently counted on an electronic tabulator, counting device or computer.” NRS 293B.033. Since 1975, Nevada statutes have expressly 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.” NRS 293B.050. Apart from one separately regulated form of mechanical voting system, *see* NRS 293.3677(2), any other method of voting in Nevada requires the Secretary to “adopt regulations establishing uniform, statewide standards for counting a vote cast” by that method, “including, *without limitation*, a vote cast on a mechanical recording device which directly records the votes electronically.” NRS 293.3677(3)(b) (emphasis added).

In recent years, and particularly following the 2020 presidential election, some groups in Nevada and elsewhere have become suspicious of electronic voting systems. Those suspicions are unfounded. The Secretary of State’s office itself has refuted them, explaining, “[t]he NV Gaming Control Board tests and certifies our systems. The post-election audits and recounts conducted in Nevada confirmed that the machines accurately tabulated the votes cast” in the 2020 general election. Nevada Sec’y of State, *Facts vs. Myths: Nevada 2020 Post-General Election* at 4, <https://www.nvsos.gov/sos/home/showpublisheddocument?id=9191> (last visited Aug. 31, 2022). Indeed, to be used in Nevada, all voting systems, must “meet[] or exceed[] the standards for voting systems established by the United States Election Assistance Commission.” NRS 293B.063. Nevada law further requires that mechanical voting systems provide a printed paper record of all votes cast on the system, NRS 293B.082, and that such systems be tested for accuracy before the first day of early voting, immediately before the start of the official count, and within 24 hours after the end of the official count, NRS 293B.150, NRS 293B.165, among many other safeguards.

In contrast, hand counting—the alternative to electronic voting systems—is time consuming and unreliable. Studies have found that “vote counts originally conducted by

1 computerized scanners were, on average, more accurate than votes that were originally tallied by
2 hand.” Stephen Ansolabehere, Barry C. Burden, Kenneth R. Mayer, & Charles Stewart III,
3 *Learning from Recounts*, 17 Elec. Law J. 100, 115 (2018), [https://www.liebertpub.com/doi/epdf/](https://www.liebertpub.com/doi/epdf/10.1089/elj.2017.0440)
4 [10.1089/elj.2017.0440](https://www.liebertpub.com/doi/epdf/10.1089/elj.2017.0440) (last visited Aug. 30, 2022). And as scholars have explained, “[t]his finding
5 should not be surprising,” because “[c]omputers tend to be more accurate than humans in
6 performing long, tedious, repetitive tasks” and “[t]he demanding election night environment only
7 drives a bigger wedge between human and machine performance.” *Id.* Hand counting multiple
8 contests on a single ballot is also exceptionally time consuming. It took Esmerelda County more
9 than seven hours to hand count just 317 ballots from the June 14, 2022 primary. Ken Ritter, Gabe
10 Stern, & Scott Sonner, *Last Nevada County Approves Primary Results After Hand Count* (June 25,
11 2022), Associated Press, [https://apnews.com/article/2022-midterm-elections-new-mexico-](https://apnews.com/article/2022-midterm-elections-new-mexico-nevada-voting-presidential-652df50bc2b535d2303ddd4c5fda6ea5)
12 [nevada-voting-presidential-652df50bc2b535d2303ddd4c5fda6ea5](https://apnews.com/article/2022-midterm-elections-new-mexico-nevada-voting-presidential-652df50bc2b535d2303ddd4c5fda6ea5) (last visited Aug. 31, 2022).

13 Despite these issues with hand counting ballots, the Secretary recently promulgated a
14 temporary regulation expressly authorizing county clerks to conduct a hand count for (1) all
15 contests on the ballot; (2) a specified number of contests on the ballots; or (3) a specified sample
16 of the precincts in the county. *See* 2nd Revised Temp. Regulation of the Sec’y of State § 2, **Exhibit**
17 **A** hereto. The regulation further directs that county clerks “may,” but need not, “use an electronic
18 tabulator to invalidate the results of the hand count.” *Id.* § 3. If counties wish to proceed with a
19 “hand count,” the temporary regulation requires them to submit a plan for doing so to the Secretary
20 at least 30 days before election day and to follow certain counting procedures. *Id.* §§ 3–6.

21 The temporary regulation will not, however, apply to all forms of hand counting. The
22 Secretary specifically amended the initial proposed temporary regulation to restrict it to scenarios
23 in which hand counting is the “*primary* method of counting the votes cast” in an election. *Id.* § 7
24 (emphasis added). Deputy Secretary of State Mark Wlaschin has explained that the amendment
25 means that “[i]f a county election official decides they’re interested in conducting a hand count
26 audit, or a hand count tabulation, but are going to use as the primary method of tabulation a
27 mechanical system, then these regulations are in essence recommendations, but not required.” *See*
28 Sean Golonka, *State Adopts Regulation for Hand Counting Ballots, But It Won’t Affect Nye*

County, The Nev. Indep. (Aug. 26, 2022), <https://thenevadaindependent.com/article/state-adopts-regulation-for-hand-counting-ballots-but-it-wont-affect-nye-county> (last visited Aug. 30, 2022). As a result, Nye County Clerk Mark Kampf has stated that he will engage in a “parallel tabulation” process that involves running paper ballots through the typical mechanical tabulators and checking the results with an additional hand count of all ballots.” *Id.* Nye County therefore apparently intends to conduct a hand count of ballots in the 2022 general election without complying with the temporary regulation.

LEGAL STANDARD

“NRS 33.010(1) authorizes a[preliminary] injunction when it appears from the complaint that the plaintiff is entitled to the relief requested and at least part of the relief consists of restraining the challenged act.” *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). “Before a preliminary injunction will issue, the applicant must show (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party’s conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy. In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest.” *Id.* (quotation marks and citations omitted). Where, as here, a preliminary injunction will merely preserve the status quo, it “is normally available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the defendant’s conduct, if allowed to continue, will result in irreparable harm for which compensatory damage is an inadequate remedy.” *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987).

ARGUMENT

I. Plaintiff is likely to succeed on the merits of its claims.

Under NRS 233B.110(1), the Court “shall declare [a challenged] regulation invalid if it finds that it violates constitutional or statutory provisions or exceeds the statutory authority of the agency.” Plaintiff is likely to succeed in making that showing here.

A. Plaintiff has standing.

A plaintiff may challenge a regulation under NRS 233B.110(1) “when it is alleged that the

1 regulation, or its proposed application, interferes with or impairs, or threatens to interfere with or
2 impair, the legal rights or privileges of the plaintiff.” *Id.* Plaintiff meets this standard. Plaintiff is a
3 coalition of more than thirty member groups throughout Nevada, and many of those member
4 groups, in turn, have individual members of their own who are individual Nevada voters. Decl. of
5 L. Martin ¶ 4, **Exhibit B** hereto. As explained below, the temporary regulation threatens to violate
6 those voters’ express statutory and constitutional rights to a “uniform, statewide standard for
7 counting and recounting all votes accurately.” Nev. Const. art. 2, § 1A(10); *see also Stockmeier v.*
8 *Nev. Dep’t of Corr. Psych. Rev. Panel*, 122 Nev. 385, 393–94, 135 P.3d 220, 226 (2006) (“[W]here
9 the Legislature has provided the people of Nevada with certain statutory rights, we have not
10 required constitutional standing to assert such rights but instead have examined the language of
11 the statute itself to determine whether the plaintiff had standing to sue.”), *abrogated on other*
12 *grounds, Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6
13 (2008). And as a membership organization dedicated to protecting Nevadans’ voting rights,
14 Plaintiff is entitled to assert its members’ rights in this lawsuit. *Hunt v. Wash. State Apple Advert.*
15 *Corp.*, 432 U.S. 333, 343 (1977); *see also Hantges v. City of Henderson*, 121 Nev. 319, 322–23,
16 113 P.3d 848, 850 (2005) (statutes with a “protective purpose” must be liberally construed to
17 “confer[] standing” and thereby “effectuate the benefits intended to be obtained”).

18 **B. Plaintiff is excused from exhausting administrative remedies.**

19 NRS 233B.110(1) ordinarily requires a plaintiff to “first request[] the agency to pass upon
20 the validity of the regulation in question” before filing suit. But that requirement is no barrier to
21 Plaintiff’s suit here. Exhaustion of administrative remedies is not required either (1) “when the
22 issues ‘relate solely to the interpretation or constitutionality of a statute,’” or (2) where the pursuit
23 of administrative remedies would be futile. *Malecon Tobacco, LLC v. State*, 118 Nev. 837, 839,
24 59 P.3d 474, 476 (2002) (quoting *State v. Glusman*, 98 Nev. 412, 419, 651 P.2d 639, 644 (1982)).
25 Both exceptions apply here, so the administrative exhaustion requirement does not apply.

26 First, this action relates to the interpretation or constitutionality of a statute because it seeks
27 to enjoin Defendants from implementing an unlawful temporary regulation permitting hand
28 counting as the primary method of counting the votes cast in an election. *See Compl.* ¶¶ 31–37.

1 Exhaustion therefore is not required. *See Malecon Tobacco*, 118 Nev. at 839, 59 P.3d at 476; *see*
2 *also, e.g., TitleMax of Nev., Inc. v. State Dep't of Bus. & Indus., Fin. Inst. Div.*, No. 69807, 2017
3 WL 4464351, at *2 (Nev. Oct. 4, 2017) (“Exhaustion is not required here because [Plaintiff] sought
4 only the interpretation of statutes.”) (unpublished); *Chavez v. Bennett*, No. 81319, 2021 WL
5 2644771, at *2 (Nev. June 25, 2021) (“A statute challenged on its face is essentially a question of
6 law, and exhaustion is not required because an administrative agency’s decision ‘will rarely aid in
7 the ultimate judicial resolution of the claim.’”) (unpublished) (quoting *Malecon Tobacco*, 118 Nev.
8 at 840, 59 P.3d at 476). This makes sense. Plaintiff challenges the administrative agency as a matter
9 of law, so an administrative decision would do little to “aid in the ultimate judicial resolution of
10 the claim.” *Chavez*, 2021 WL 2644771, at *2.

11 Second, the pursuit of administrative remedies would be futile here. While Plaintiff did not
12 participate in the administrative process, other voting rights organizations did, and they
13 vociferously objected to the temporary regulation, making many of the same arguments that
14 Plaintiff makes here. *See* Letter From Brennan Center for Justice et. al. to Mark Wlaschin (Aug.
15 12, 2022), [https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-](https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment_Proposed-Hand-Count-Regulations-8-12-22.pdf)
16 [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
17 Secretary nevertheless adopted the proposed temporary regulation with only minor amendments
18 that did not address commenters’ objections. It would be futile for Plaintiff to “request[] the agency
19 to pass upon the validity of the regulation in question,” NRS 233B.110(1), where the Defendant
20 has already ignored or rejected the very concerns that Plaintiff raises. *See, e.g., Abarra v. State*,
21 131 Nev. 20, 24, 342 P.3d 994, 996 (2015) (finding prisoner met exhaustion requirement when
22 associate warden rejected the claims raised in prisoner’s grievance).

23 **C. The temporary regulation violates constitutional and statutory provisions**
24 **requiring “uniform, statewide” vote-counting methods.**

25 Under both the Nevada Constitution and the Nevada Revised Statutes, each registered voter
26 “has the right . . . to a uniform, statewide standard for counting and recounting all votes accurately.”
27 Nev. Const. art. 2, § 1A(10); *see also* NRS 293.2546(5). The Secretary of State is required to
28 “adopt regulations establishing uniform, statewide standards for counting a vote cast by each

1 method of voting used in this State” other than optical-scan machines, which are separately
2 regulated by statute. NRS § 293.3677(3)(b) (emphasis added).

3 The temporary regulation violates those provisions by imposing the antithesis of a
4 “uniform, statewide standard”: it authorizes each county to decide for itself whether to use hand
5 counting of ballots (1) not at all, (2) for all contests on all ballots, (3) for only some contests on all
6 ballots, or (4) for only ballots in some precincts. Ex. A § 2(1). Moreover, counties that choose to
7 hand count may also decide for themselves whether to validate those counts using an electronic
8 tabulator. *Id.* § 2(3). And while the temporary regulation includes detailed hand-counting
9 procedures, *id.* §§ 3–6, it leaves counties free to ignore those procedures and count however they
10 wish, so long as they use hand counting as a means of purportedly verifying electronic tabulations
11 rather than a “primary” tabulation method, *id.* § 7(3). If the temporary regulation remains in place,
12 and if the Secretary of State is allowed to authorize or permit counties to engage in hand counting,
13 different Nevada voters will therefore have their votes counted in drastically different ways,
14 despite their right to a “uniform, statewide standard,” and the Secretary’s duty to adopt regulations
15 providing for such a standard for all methods of voting in the State.

16 **D. The temporary regulation violates the Secretary’s duty to ensure that all**
17 **voting systems exceed U.S. Election Assistance Commission standards.**

18 By statute, the Secretary of State and county officials must “ensure that each voting system
19 used in this State . . . [m]eets or exceeds the standards for voting systems established by the United
20 States Election Assistance Commission, including, without limitation, the error rate standards.”
21 NRS 293.2696(5). This requirement was adopted in 2003, after the 2000 presidential election
22 focused national attention on states’ use of outdated and unreliable counting methods. *See Nev.*
23 *Laws* 2003, c. 382, § 5. It mandates that all “voting systems” used in Nevada meet performance
24 standards promulgated by the Election Assistance Commission, a federal agency.

25 NRS 293.2696’s mandate applies to *all* “voting systems”—it is not limited to “mechanical
26 voting systems,” a defined term in Nevada law that includes electronic tabulation systems. *See*
27 *NRS* 293B.050. Nevada law separately regulates “mechanical voting systems” and requires that
28 they, too, conform to the same standards. *See NRS* 293B.063 (“No *mechanical* voting system may

1 be used in this State unless it meets or exceeds the standards for voting systems established by the
2 United States Election Assistance Commission.” (emphasis added)). And while Nevada law does
3 not define “voting system,” the detailed hand-counting procedures authorized by the temporary
4 regulation, which include the use of specified forms and writing devices, and detailed procedures,
5 *see* Ex. A § 2(2)(c), § 6, are a “voting system” under the phrase’s plain meaning.

6 When the Legislature adopted NRS 293.2696(5) in 2003, then-applicable Election
7 Assistance Commission standards required that “[f]or each processing function” undertaken by a
8 voting system, “the system shall achieve a target error rate of no more than one in 10,000,000
9 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot
10 positions.” Election Assistance Comm’n, *Voting System Standards: Vol. 1 – Performance*
11 *Standards* at 3-51 (Apr. 2002), https://www.eac.gov/sites/default/files/eac_assets/1/28/Voting_System_Standards_Volume_I.pdf (last visited Aug. 30, 2022). The current standards
12 impose a mathematically equivalent requirement. *See* U.S. Election Assistance Commission,
13 *Voluntary Voting System Guidelines: Vol. 1* at 79–80 (Version 1.1 2015), https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG.1.1.VOL.1.FINAL1.pdf (last visited Aug. 30, 2022).

16 In authorizing a hand-counting procedure in the temporary regulation, however, the
17 Secretary did not take any steps to determine whether that procedure would produce a sufficiently
18 low error rate to comply with the Election Assistance Commission’s error rate standards, as NRS
19 293.2696(5) requires. There is considerable reason for doubt. As explained above, studies have
20 shown that mechanical and electronic voting systems are significantly more reliable in tabulating
21 the results of multiple contests on a single ballot than humans are. Ansolabehere et al., *supra*, at
22 115. The temporary regulation, and any regulation or policy that authorizes or permits counties to
23 engage in hand counting, therefore violates the Secretary’s duty to ensure that all voting systems
24 meet Election Assistance Commission standards.

25 **E. The regulation violates the U.S. Constitution’s Equal Protection Clause.**

26 The temporary regulation also violates the Equal Protection Clause by authorizing counties
27 in Nevada to count ballots differently, and even allowing diverging counting methods within
28 individual counties. “Having once granted the right to vote on equal terms, the State may not, by

1 later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531
2 U.S. at 104–05. It is therefore unconstitutional for states to “accord[] arbitrary and disparate
3 treatment to voters in . . . different counties,” and for counties to “use[] varying standards to
4 determine what was a legal vote.” *Id.* at 107; *see also League of Women Voters of Ohio v. Brunner*,
5 548 F.3d 463, 476 (6th Cir. 2008) (plaintiffs plausibly stated equal protection claim in alleging
6 Ohio’s voting system deprives its citizens of the right to vote or severely burdens that right
7 depending on where they live); *Black v. McGuffage*, 209 F. Supp. 2d 889, 899 (N.D. Ill. 2002)
8 (plaintiffs stated equal protection claim where votes in some counties were statistically less likely
9 to be counted than votes in other counties depending on local authorities’ choice of voting system
10 and the accuracy of that system); *Common Cause S. Christian Leadership Conf. of Greater L.A. v.*
11 *Jones*, 213 F. Supp. 2d 1106, 1109 (C.D. Cal. 2001) (denying judgment on the pleadings where
12 plaintiff alleged that Secretary of State’s permission for counties to adopt different voting
13 procedures was unreasonable and discriminatory). And the Equal Protection Clause prohibits vote-
14 counting procedures that fail to provide “specific standards to ensure . . . equal application.” *Bush*,
15 531 U.S. at 106.

16 By authorizing counties to count ballots in sharply different ways, and without any basis
17 for concluding that the hand-counting procedures being authorized are accurate, the temporary
18 regulation violates the Equal Protection Clause and puts Nevada voters at risk of
19 disenfranchisement depending on where they reside.

20 **II. Plaintiff will suffer irreparable harm if its application is denied.**

21 Absent a grant of Plaintiff’s motion, Nevada counties will count ballots in the fast-
22 approaching November election using a diversity of methods. At least one County Clerk has
23 already stated that he intends to conduct a hand-count of ballots in November. *See* Sean Golonka,
24 *How should Nevada hand count ballots? Nye County, state election officials disagree*, The Nev.
25 Indep. (Aug. 16, 2022), [https://thenevadaindependent.com/article/how-should-nevada-hand-](https://thenevadaindependent.com/article/how-should-nevada-hand-count-ballots-nye-county-state-election-officials-disagree)
26 [count-ballots-nye-county-state-election-officials-disagree](https://thenevadaindependent.com/article/how-should-nevada-hand-count-ballots-nye-county-state-election-officials-disagree) (last visited Aug. 30, 2022). Given that
27 the Secretary has expressly authorized hand counting, other counties are likely to do the same.
28

1 As explained above, use of non-uniform statewide standards for ballot counting violates
2 both the constitutional and statutory rights of Nevada voters, including of members of Plaintiffs'
3 member organizations. This violation is impossible to remedy after the election, and thus
4 constitutes irreparable harm. *See City of Sparks v. Sparks Mun. Ct.*, 129 Nev. 348, 357, 302 P.3d
5 1118, 1124 (2013); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1310 (N.D. Ga. 2018) (“[I]t is
6 axiomatic that there is no post hoc remedy for a violation of the right to vote.”). Allowing county
7 officials to move forward with these plans while this case is being adjudicated is also likely to lead
8 to issues with election administration and could affect the integrity of the election.

9 In contrast, the Secretary of State will suffer no harm if prohibited from implementing the
10 new temporary regulation or from authorizing or permitting hand counting until this case is
11 adjudicated. Granting Plaintiffs’ motion would simply maintain the status quo and the current
12 ballot-counting requirements for ballot counting, which involve machine counting that is more
13 accurate, less expensive, and less time consuming than hand-counting.

14 **III. The public interest requires granting Plaintiff’s motion.**

15 The public interest favors a preliminary injunction. The public has an interest in protecting
16 the right to vote and ensuring orderly administration of elections. *Mi Familia Vota v. Hobbs*, 977
17 F.3d 948, 954 (9th Cir. 2020); *see generally* NRS 293.2546 (“Legislative declaration of voters’
18 rights”). The movement toward hand counting ballots is based on entirely unfounded (and
19 repeatedly disproven) concerns of fraud associated with machine counting in the 2020 election.
20 *See, e.g.,* Riley Snyder, *Cegavske: No “Evidentiary Support” Among NV GOP Claims that 2020*
21 *Election Was Plagued by Widespread Fraud*, The Nev. Indep. (Apr. 21, 2021),
22 [https://thenevadaindependent.com/article/cegavske-no-evidentiary-support-among-nv-gop-](https://thenevadaindependent.com/article/cegavske-no-evidentiary-support-among-nv-gop-claims-that-2020-election-was-plagued-by-widespread-fraud)
23 [claims-that-2020-election-was-plagued-by-widespread-fraud](https://thenevadaindependent.com/article/cegavske-no-evidentiary-support-among-nv-gop-claims-that-2020-election-was-plagued-by-widespread-fraud) (last visited Aug. 31, 2022). There is
24 no public interest in the use of a less accurate method of vote counting that is contrary to Nevada
25 law.

26 ///

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1 **CONCLUSION**

2 For the reasons stated above, the Court should grant Plaintiff's Motion.

3 **AFFIRMATION**

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

6
7 DATED this 1st day of September, 2022.

8 **WOLF, RIFKIN, SHAPIRO, SCHULMAN &**
9 **RABKIN, LLP**

10 By: 

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Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 1st day of September, 2022, a true and correct copy of the
3 foregoing **MOTION FOR PRELIMINARY INJUNCTION** was served upon all parties via U.S.
4 Mail postage prepaid, Reno, Nevada and via electronic mailing to the following counsel of record
5 with a courtesy copy to the JEA:

6 Craig A. Newby, Esq.
7 Gregory D. Ott, Esq.
8 Laena St Jules, Esq.
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15 *Attorney for Barbara Cegavske*

Billie Shadron
Judicial Assistant, Dept. 2
First Judicial District Court
Hon. Judge James E. Wilson
BShadron@carson.org

16 By 

17 Laura Simar, an Employee of
18 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
19 RABKIN, LLP
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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 hand 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:

(1) 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.

EXHIBIT B

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EXHIBIT B

1
2 **IN THE FIRST JUDICIAL DISTRICT COURT**
3 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

4 PROGRESSIVE LEADERSHIP ALLIANCE
5 OF NEVADA,

6 Plaintiff,

7 vs.

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

10 Defendant.

Case No.: 22 OC 001011B

Dept. No.: II

11
12 **DECLARATION OF LAURA MARTIN**

13 Pursuant to NRS 53.045, I, LAURA MARTIN, hereby declare as follows:

14 1. I am over the age of 18, have personal knowledge of the facts stated in this
15 declaration, and can competently testify to their truth.

16 2. I am the Executive Director of Progressive Leadership Alliance of Nevada
17 ("PLAN").

18 3. PLAN is a non-profit organization that was founded in 1994 to bring together
19 diverse and potentially competing organizations into one cohesive force for social and
20 environmental justice in Nevada.

21 4. PLAN is a coalition of over thirty member groups throughout Nevada. Many of
22 those member groups have individual members of their own, including many Nevada voters.

23 5. As part of its mission, PLAN emphasizes civic engagement, engages in voter
24 registration efforts, pushes for expanded election administration policies, and works to oppose
25 voter suppression.

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1 6. PLAN is dedicated to protecting the right of the franchise for all eligible voters and
2 is particularly focused on ensuring that Nevada's historically marginalized voters, including voters
3 of color and young voters, are not denied their fundamental right to vote.

4 I declare under penalty of perjury under the law of the State of Nevada that the foregoing
5 is true and correct.

6 Executed on:

7 8/31/2022

8 (date)

Laura Martin

(signature)

Laura Martin

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