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

11 PROGRESSIVE LEADERSHIP ALLIANCE
12 OF NEVADA,

13 Plaintiff,

14 vs.

15 BARBARA CEGAVSKE, in her official
16 capacity as NEVADA SECRETARY OF
STATE,

17 Defendant.

Case No. 22 OC 00101 1B

Dept. No. II

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[PROPOSED] ORDER DENYING
MOTION FOR PRELIMINARY
INJUNCTION

19 Plaintiff Progressive Leadership Alliance of Nevada ("PLAN") moved for a
20 preliminary injunction prohibiting Defendant Barbara Cegavske, in her official capacity as
21 Nevada Secretary of State ("Secretary"), from authorizing or permitting counties to engage
22 in hand counting. The Court, having considered PLAN's motion and all briefing thereon,
23 DENIES the motion for preliminary injunction.

24 **I. STATEMENT OF FACTS**

25 Nevada law does not prohibit hand counting of ballots. Voting is permitted by
26 "mechanical voting system," see NRS 293B.033, but use of a mechanical voting system is
27 optional, not mandatory. Since 1985, Nevada statute has provided that "[a]t all statewide,
28 county, city and district elections of any kind held in this State, ballots or votes may be

1 cast, registered, recorded and counted by means of a mechanical voting system.” NRS
2 293B.050 (emphasis added). Prior to this, nothing prohibited hand counting.

3 On August 26, 2022, the Secretary of State adopted regulations relating to
4 conducting a hand count of ballots (the “Regulation”). The Regulation applies to any city or
5 county conducting a hand count as the primary method for counting votes. *Id.* § 7(3). It
6 sets minimum standards for, among other things, two tallies of the vote, shift limitations,
7 tally standards, and tally team composition. *Id.* §§ 4(1), 4(3)(a), 5(3), 5(4), 11(1), 11(3)(a),
8 12(3), 12(4). If a city or county chooses to use hand counting as the primary method for
9 counting votes, it must submit a plan for conducting the hand count to the Secretary not
10 later than 30 days before the date of the election. *Id.* §§ 3, 10. If a city or county does not
11 comply with the Regulation, it may not use hand counting to determine its election results.
12 *See id.*

13 On August 31, 2022, PLAN filed a complaint for declaratory and injunctive relief
14 challenging the Regulation. On September 1, 2022, PLAN filed a motion for preliminary
15 injunction seeking to enjoin the Regulation.

16 II. STANDARD OF LAW

17 Injunctive relief is extraordinary relief. *Dep't of Conservation & Nat. Res., Div. of*
18 *Water Res. v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). A preliminary injunction is
19 an “extraordinary remedy that may only be awarded upon clear showing that the plaintiff
20 is entitled to such relief.” *Winter v. Nat. Res. Def' Council, Inc.*, 555 U.S. 7, 22 (2008); *see*
21 *also* NRS 33.010(1). A “preliminary injunction is available if an applicant can show a
22 likelihood of success on the merits and a reasonable probability the non-moving party’s
23 conduct, if allowed to continue, will cause irreparable harm.” *Clark Cty. Sch. Dist. v.*
24 *Buchanan*, 112 Nev. 1146, 1149, 924 P.2d 716, 719 (1996). Even where a plaintiff makes
25 those showings, a court may decline to order injunctive relief due to the potential hardship
26 on each party and considerations of the public interest. *Univ. & Cmty. Coll. Sys. v.*
27 *Nevadans for Sound Gov't*, 120 Nev. 712, 721 (2004). In cases like this one, where the party
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1 opposing injunctive relief is a government entity, the potential hardship and the public
2 interest considerations are merged. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

3 As set forth below, PLAN does not meet the requirements for obtaining injunctive
4 relief.

5 III. ANALYSIS

6 A. Likelihood of Success on the Merits

7 PLAN is unlikely to succeed on the merits of its challenge to the Regulations.
8 Nothing in Nevada statute or law prohibits the use of hand counting. PLAN argues that
9 NRS 293.2696(5) precludes hand counting. That statute provides that all voting systems
10 must “[m]eet[] or exceed[] the standards for voting systems established by the United
11 States Election Assistance Commission, including, without limitation, the error rate
12 standards.” However, NRS 293.2696 was adopted in connection with the Help America
13 Vote Act (“HAVA”). HAVA defines a voting system as “the total combination of mechanical,
14 electromechanical, or electronic equipment,” and “the practices and associated
15 documentation” used for certain purposes. 52 U.S.C. § 21081(b). The Court interprets NRS
16 293.2696 within the context of HAVA. *See FDA v. Brown & Williamson Tobacco Corp.*, 529
17 U.S. 120, 133 (2000) (“It is a ‘fundamental canon of statutory construction that words of a
18 statute must be read in their context and with a view to their place in the overall statutory
19 scheme.”). NRS 293.2696(5)’s reference to voting systems only applies to mechanical,
20 electromechanical, or electronic voting systems, and does not bar the use of hand counting.

21 Furthermore, the right to a uniform, statewide standard for counting votes does not
22 require that cities and counties use only one sole method of counting votes. *See Nev. Const.*
23 *art. 2, § 1A(10); NRS 293.2546(10)*. The right to a uniform, statewide standard relates to
24 the determination of what qualifies as a vote. Nevada statute and regulation already
25 address how to determine whether a vote must be counted; for example, NRS 293.3677(2)(a)
26 specifies that “[a] vote must be counted if the designated space is darkened or there is a
27 writing in the designated space, including, without limitation, a cross or check.” Having
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1 some cities or counties use hand counting and others use mechanical voting systems does
2 not violate voters' right to a uniform, statewide standard for counting votes.

3 Finally, PLAN is unlikely to succeed on the merits of its Equal Protection claim
4 because it fails to show that the Regulation would in fact disenfranchise any voters.

5 Accordingly, PLAN has not established any likelihood of success on the merits of its
6 challenge to the Regulation.

7 **B. Irreparable Harm**

8 PLAN has not offered evidence that it will suffer irreparable harm absent a
9 preliminary injunction. There is no evidence that hand counting will be used as the
10 primary method of tabulating the votes in the November 2022 general election. As of today,
11 no counties have submitted a plan to do so in accordance with the Regulation.

12 **C. Balance of Equities and Public Interest**

13 The balance of equities and public interest does not favor PLAN. Cities and counties
14 may already use hand counting. The Regulation works to promote uniformity and accuracy
15 in the event hand counting is chosen as the primary method for counting the votes. If a
16 city or county does not comply with the Regulation, it may not use hand counting to
17 determine its election results. Without the Regulation, cities or counties may choose hand
18 counting without any of the Regulation's safeguards.

19 **IV. CONCLUSIONS OF LAW**

20 The Court has carefully considered and weighed the factors for granting a
21 permanent injunction. Nevada law does not preclude hand counts. The Regulation sets
22 minimum standards for hand counts and requires compliance with its terms if a city or
23 county will use hand counting to determine its election results. There is currently no
24 evidence that any city or county will use hand counting to determine its election results.

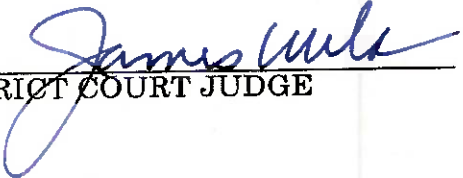
25 PLAN has not shown, under any standard of proof, that it is entitled to a preliminary
26 injunction. PLAN has failed to establish any likelihood of success on the merits, any
27 irreparable injury absent a preliminary injunction, or that the balance of equities and
28 public interest favor issuance of a preliminary injunction.

1 V. ORDER

2 The Court orders:

- 3 1. PLAN's motion for a preliminary injunction is denied.
- 4 2. The Secretary will serve a notice of entry of this order on all other parties and
- 5 file proof of such service within 7 days after the date the Court sent this order to the
- 6 Secretary's attorneys. *The oral argument hearing is vacated.*

7 DATED September 27, 2022.

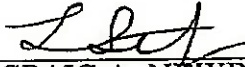
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9 DISTRICT COURT JUDGE

10 Respectfully submitted:

11 Dated this 21st day of September, 2022

12 AARON D. FORD
13 Attorney General

14 By: 

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on the 21st day of September, 2022, pursuant to party agreement, I served the foregoing document by emailing a true and correct copy to the following:

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