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11 ATTORNEYS FOR WASHOE COUNTY  
12 REGISTRAR OF VOTERS

13  
14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
15  
16 **IN AND FOR THE COUNTY OF WASHOE**

17 \* \* \*

18 FREDERICK H. KRAUSE; PUBLIC  
19 INTEREST LEGAL FOUNDATION,

Case No.: CV24-01051

20 Petitioners,

Dept. No.: 4

21 vs.

22 CARRIE-ANN BURGESS, in her capacity as  
23 Washoe County Interim Registrar of Voters,

24 Respondent,

25 and

26 FRANCISCO V. AGUILAR, in his official  
capacity as Nevada Secretary of State,

Intervenor-Respondent.

**WASHOE COUNTY REGISTRAR OF VOTERS'**

**MOTION TO QUASH SUBPOENA**

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1 The Washoe County Registrar of Voters (the Registrar)<sup>1</sup>, by and through undersigned  
2 counsel, moves to quash the subpoena served on Andrew McDonald on November 27, 2024,  
3 requiring his appearance and testimony before this Court on December 19, 2024, at 1:30 p.m.  
4 Exhibit 1. This motion is brought pursuant to NRCP 45(c)(3)(A)(iv) and is based on the following  
5 memorandum of points and authorities, the attached exhibit, all documents on file herein, and any  
6 other evidence the Court may deem appropriate to consider in this matter.

## 7 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 8 **I. Introduction**

9 Approximately eight months ago, Petitioners submitted a list of addresses to the Registrar  
10 requesting that she “conduct [an] investigation” into the addresses they provided “and make  
11 appropriate corrections to the voter roll.” *Petition*, Ex. A at 1. When the Registrar did not  
12 undertake the demanded investigation, Petitioners initiated this action seeking extraordinary relief  
13 compelling the Registrar to investigate the addresses they provided. *Petition* at 45 ¶ 1.

14 The Petition has been fully briefed, with the Registrar and Nevada Secretary of State filing  
15 a joint opposition to the Petition on October 28, 2024, and Petitioners filing a reply on November  
16 7, 2024. Although WDCR 12(5) allows decisions to be rendered on the briefs, in this case “the  
17 Court [found] it appropriate to exercise its discretion and order oral arguments to be set to hear  
18 the parties’ arguments.” *Order dated 10/10/24* at 3. Petitioners filed an Application for Setting,  
19 and oral arguments are scheduled to occur on December 19, 2024.

### 20 **II. Legal Argument**

21 A court can quash or modify a subpoena on timely motion if the subpoena subjects a person  
22 to undue burden. NRCP 45(c)(3)(A)(iv). The relevancy of the information sought by the subpoena  
23 has been considered by many courts in weighing whether a subpoena creates an undue burden.  
24 *See Travelers Indem. Co. v. Metropolitan Life Insur. Co.*, 229 F.R.D. 111, 113 (D.Conn.2005);

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25  
26 <sup>1</sup> Cari-Ann Burgess is on leave from her position as Washoe County Interim Registrar of Voters. Because she is  
sued in her official capacity only, the County notes that Andrew McDonald, Deputy Registrar of Voters, is currently  
fulfilling the duties of the Registrar of Voters in the absence of the Interim Registrar.

1 *U.S. v. International Business Machines Corp.*, 83 F.R.D. 97, 106 (S. D. New York 1979);  
2 *Goodyear Tire Rubber Co. v. Kirk's Tire & Auto Servicenter*, 211 F.R.D 658, 663 (D.Kan.2003).

3 The subpoena served on Andrew McDonald seeking his testimony at the December 19,  
4 2024, hearing should be quashed. Oral arguments are set to occur, not an evidentiary hearing.  
5 *Order dated 10/10/24* at 3. Requiring a person to appear to testify pursuant to a subpoena at a  
6 hearing where the presentation of evidence is not contemplated is an undue burden as the witness's  
7 appearance is entirely irrelevant.

### 8 **III. Conclusion**

9 The subpoena ordering Andrew McDonald to appear at the upcoming oral arguments on  
10 December 19, 2024, should be quashed. The hearing is not an evidentiary hearing; subpoenaing  
11 a witness to appear at a hearing set only for oral arguments creates an undue burden.

#### 12 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

15 Dated: December 9, 2024.

16 CHRISTOPHER J. HICKS  
17 District Attorney

18 By /s/ Elizabeth Hickman  
19 ELIZABETH HICKMAN  
20 Deputy District Attorney  
21 One South Sierra Street  
22 Reno, NV 89501  
23 (775) 337-5700

24 ATTORNEYS FOR CARI-ANN BURGESS  
25  
26

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, I certify that I am an employee of the Office of the District Attorney  
3 of Washoe County, over the age of 21 years and not a party to nor interested in the within action.  
4 I certify that on this date, I deposited for mailing in the U.S. Mails, with postage fully prepaid, a  
5 true and correct copy of the foregoing document in an envelope addressed to the following:

6 LAENA ST-JULES, ESQ.  
7 OFFICE OF THE ATTORNEY GENERAL  
8 100 NORTH CARSON STREET  
9 CARSON CITY, NV 89701

10 JOSEPH M. NIXON, ESQ.  
11 PUBLIC INTEREST LEGAL FOUNDATION  
12 107 S. WEST STREET, STE. 700  
13 ALEXANDRIA, VA 22314

14 ROBERT GOLAN-VILELLA, ESQ.  
15 ELIAS LAW GROUP, LLP  
16 250 MASSACHUSETTS AVE NW, STE. 400  
17 WASHINGTON, DC 20001

18 KAYLAN HUGHES LYTTLE-PHILLIPS, ESQ.  
19 PUBLIC INTEREST LEGAL FOUNDATION  
20 107 S. WEST STREET, STE. 700  
21 ALEXANDRIA, VA 22314

22 RICHARD A. MEDINA, ESQ.  
23 ELIAS LAW GROUP, LLP  
24 250 MASSACHUSETTS AVE NW, STE. 400  
25 WASHINGTON, DC 20001

26 I certify that on this date, the foregoing was electronically filed with the Second Judicial  
District Court by using the ECF System. Electronic service of the foregoing document shall be  
made in accordance with the Master Service List as follows:

DEVIN OLIVER, ESQ.

BRADLEY SHRAGER, ESQ.

DAVID O'MARA, ESQ.

Dated this 9th day of December, 2024.

\_\_\_\_\_  
/s/ N. Stapledon  
N. Stapledon

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EXHIBIT INDEX

No. of Pages  
5 Pages

Exhibit 1                      Subpoena

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EXHIBIT INDEX

# EXHIBIT 1

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# EXHIBIT 1

1 THE O'MARA LAW FIRM, P.C.  
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2 311 E. Liberty Street  
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3 775.323.1321  
david@omaralaw.net  
4 *Local Counsel for Petitioners*

5 J. Christian Adams\*  
Joseph M. Nixon\*  
6 Kaylan L. Phillips\*  
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8 (703) 745-5870  
adams@publicinterestlegal.org  
9 jnixon@publicinterestlegal.org  
kphillips@publicinterestlegal.org  
10 *Counsel for Petitioners*  
11 *\*Pro Hac Vice motions forthcoming*

12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN**  
13 **AND FOR THE COUNTY OF WASHOE**

14 FRED KRAUS, PUBLIC INTEREST  
LEGAL FOUNDATION,

15 *Petitioners,*

16 v.

17  
18 CARRIE-ANN BURGESS, in her official  
19 capacity as Washoe County Interim  
Registrar of Voters,

20 *Respondent.*

**Case No.: CV24-01051**

Dept. No.: 4

**SUBPOENA- WASHOE COUNTY  
REGISTRAR OF VOTERS**

21  
22 THE STATE OF NEVADA SENDS GREETINGS TO:

23 **Washoe County Registrar of Voters, Acting**  
24 **Andrew McDonald**  
25 **1001 E. 9<sup>th</sup> Street**  
**Reno, NV 89501**  
**775.328.3670**

26 **YOU ARE HEREBY COMMANDED**, that all and singular, business and other excuses  
27 being set aside, you appear to provide testimony and produce for inspection and photocopying the  
28

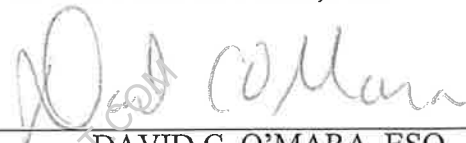
1 below listed documents on the December 19, 2024, at the hour of 1:30 p.m., at the Second Judicial  
2 District Court, Family Division located at 75 Court Street, Reno, NV 89501 in Department 4.

3 IF YOU FAIL TO ATTEND, you will be deemed guilty of contempt of the Court and liable  
4 to pay all losses and damages caused by your failure to appear and in addition forfeit ONE  
5 HUNDRED DOLLARS (\$100.00) in addition thereto.

6 The undersigned does hereby affirm that the preceding document filed in the above-  
7 referenced matter does not contain the social security number of any person.

8 DATED: November 27, 2024.

THE O'MARA LAW FIRM, P.C.

9  
10 

DAVID C. O'MARA, ESQ

11 311 E. Liberty Street  
12 Reno, Nevada 89503  
13 775.323.1321  
14 [david@omaralaw.net](mailto:david@omaralaw.net)



1 STATE OF NEVADA )  
2 : ss.  
3 COUNTY OF WASHOE )

4 I hereby certify that I am over 18 years of age and not a party to nor interested in the  
5 proceeding in which this service is made. That I received this Subpoena on the \_\_\_\_\_ day of  
6 November, 2024, and personally served the same by delivering a copy to the witness at (state  
7 address) \_\_\_\_\_  
8 \_\_\_\_\_

9 on this \_\_\_\_\_ day of November, 2024.

10  
11 \_\_\_\_\_  
12 Signature of person making service

13  
14 \_\_\_\_\_  
15 Print name here  
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## NEVADA RULES OF CIVIL PROCEDURE

### (c) **Protection of Persons Subject to Subpoena.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court that issued the subpoena must enforce this duty and may impose an appropriate sanction — which may include lost earnings and reasonable attorney fees — on a party or attorney who fails to comply.

### (2) **Command to Produce Materials or Permit Inspection.**

#### (A) **Appearance Not Required.**

(i) A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(ii) If documents, electronically stored information, or tangible things are produced to the party that issued the subpoena without an appearance at the place of production, that party must, unless otherwise stipulated by the parties or ordered by the court, promptly copy or electronically reproduce the documents or information, photograph any tangible items not subject to copying, and serve these items on every other party. The party that issued the subpoena may also serve a statement of the reasonable cost of copying, reproducing, or photographing, which a party receiving the copies, reproductions, or photographs must promptly pay. If a party disputes the cost, then the court, on motion, must determine the reasonable cost of copying the documents or information, or photographing the tangible items.

(B) **Objections.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, or a person claiming a proprietary interest in the subpoenaed documents, information, tangible things, or premises to be inspected, may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The person making the objection must serve it before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made:

(i) the party serving the subpoena is not entitled to inspect, copy, test, or sample the materials or tangible things or to inspect the premises except by order of the court that issued the subpoena;

(ii) on notice to the parties, the objecting person, and the person commanded to produce or permit inspection, the party serving the subpoena may move the court that issued the subpoena for an order compelling production or inspection; and

(iii) if the court enters an order compelling production or inspection, the order must protect the person commanded to produce or permit inspection from significant expense resulting from compliance.

### (3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the court that issued a subpoena must quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires a person to travel to a place more than 100 miles from the place where that person resides, is employed, or regularly transacts business in person, unless the person is commanded to attend trial within Nevada;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies;

or

(iv) subjects a person to an undue burden.

(B) **When Permitted.** On timely motion, the court that issued a subpoena may quash or modify the subpoena if it requires disclosing:

(i) a trade secret or other confidential research, development, or commercial information; or

(ii) an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order an appearance or production under specified conditions if the party serving the subpoena:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

### (d) **Duties in Responding to a Subpoena.**

1           (1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

2           (A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

3           (B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4           (C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

5           (D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

6           (2) **Claiming Privilege or Protection.**

7           (A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

8                   (i) expressly make the claim; and

9                   (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

10           (B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

11           (e) **Contempt; Costs.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court that issued the subpoena. In connection with a motion for a protective order brought under Rule 26(c), a motion to compel brought under Rule 45(c)(2)(B), or a motion to quash or modify the subpoena brought under Rule 45(c)(3), the court may consider the provisions of Rule 37(a)(5) in awarding the prevailing person reasonable expenses incurred in making or opposing the motion.

12           [Amended; effective March 1, 2019.]