

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIGAL CHATTAH

Petitioners,

vs.

THE FIRST JUDICIAL DISTRICT
COURT, COUNTY OF CARSON
CITY, STATE OF NEVADA; AND
THE HONORABLE JAMES E.
WILSON, DISTRICT JUDGE,

Respondents,

and

BARBARA CEGAVSKE, in her
capacity as Nevada SECRETARY OF
STATE, JOHN T. KENNEDY, an
individual

Real Party in Interest.

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Sep 13 2022 01:38 p.m.
Supreme Court Docket No. 85298
Elizabeth A. Brown
Clerk of Supreme Court
District Court Case No.: 22OC00991B

**MOTION TO EXPEDITE APPEAL
AND BRIEFING SCHEDULE**

Petitioner SIGAL CHATTAH, by and through her Counsel, JOSEPH S. GILBERT, ESQ, requests this Court to grant this Motion to Expedite Appeal and Briefing Schedule pursuant to NRAP 2 to resolve the question of whether the disqualified candidate JOHN T. KENNEDY shall be removed from the Ballot of the November, 2022 General Elections or alternatively grant relief as further allowed in NRS 293.2045.

APPELLANT'S NRAP 27(E) CERTIFICATION

<u>Party</u>	<u>Counsel of Record on Appeal and at District Court</u>
SIGAL CHATTAH	Joey Gilbert Law JOEY GILBERT LAW 405 Marsh Ave Reno, Nevada 89509 Tel: (775) 284-7000
BARBARA CEGAVSKE	Office of Nevada Attorney General Craig Newby, Senior Deputy Attorney General Office of the Attorney General 3014 West Charleston Boulevard, Suite 150 Las Vegas, Nevada 89102 (702) 486-3420
JOHN T. KENNEDY	Nathan Lawrence, Esq. 2355 Red Rock St, Las Vegas, NV 89146 702) 564-1200

DATED this 13th day of September, 2022.

/s/ Joey Gilbert
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INTRODUCTION

This appeal involves a challenge to the District Court's determination of allowing a disqualified candidate for Attorney General to remain on the November, 2022 ballot despite his request to be removed and withdrawal from the race. Chattah respectfully requests that this Court, pursuant to NRAP 2, expedite its decision in this case in order to resolve this appeal prior to the September 29, 2022, deadline for the Nevada Secretary of State mailing out ballots.

STATEMENT OF FACTS

On November 6, 2018, current Attorney General Aaron D. Ford was elected as Nevada's Attorney General by a margin of half a percentage point and currently remains the Nevada Attorney General. On or about March 17, 2022, Plaintiff, Chattah, filed with the Secretary of State her Declaration of Candidacy for the Office of Attorney General, to run against incumbent Aaron Ford.

On June 16, 2022, Plaintiff prevailed in the Nevada Republican primary as the victor in the Attorney General race to proceed to the General Election against incumbent Ford.

Defendant Kennedy, filed his Declaration of Candidacy, on behalf of the Libertarian Party of Nevada, on March 10, 2022, with the Nevada Secretary of State.

To qualify for the office of Attorney General, the qualifications are found in NRS 228.010 *entitled* Qualifications which provides:

No person shall be eligible to the Office of Attorney General unless the person:

1. Has attained the age of 30 years at the time of such election;
2. Is a qualified elector and has been a citizen resident of this State for 3 years next preceding the election; and
3. Is a member of the State Bar of Nevada in good standing.

Plaintiff is a member in good standing with the State Bar of Nevada since 2002. Defendant Kennedy is not licensed nor has even been licensed as an attorney in the State of Nevada, nor is he a member of the State Bar in Nevada in good standing. This fact is stipulated and conclusive. Defendant Kennedy notified the Secretary of State at the time he filed his Declaration of Candidacy on March 10, 2022, that he was not a member of the State Bar of Nevada nor an attorney. A fact that remains disputed by Cegavske.

On July 26, 2022, Plaintiff notified Defendant Cegavske's office that Kennedy is not a member of the State Bar of Nevada by filing an Election Integrity Complaint. On same day, Plaintiff also notified Nevada Attorney General's office and provided the office of the Nevada Attorney General the Election Integrity Complaint.

After almost 3 weeks of inaction, following written inquiry by Chattah, on August 17, 2022, Defendant, Secretary of State issued a correspondence that Plaintiff's time to object to a candidate qualification had expired on April 5, 2022

under NRS 193.182 and refused to take further action.¹ Defendant Secretary of State failed under NRS 193.124 to enforce NRS 228.010, specifically to verify that Defendant Kennedy had in fact met the qualifications of NRS 228.010 to run for office, placing an onerous burden on Chattah to engage in such verification.

Having a disqualified candidate on mail in ballot poses a threat to the integrity of the election for the Office of Attorney General, and can compromise the margin of victory for qualified candidates in November, 2022.

NRS 293.2045 *entitled* Remedies in preelection actions challenging candidates who fail to meet qualifications for office; disqualification from taking office; removal from ballot or notification to voters at polling places; applicability provides as follows:

1. In addition to any other remedy or penalty provided by law, but except as otherwise provided in NRS 293.1265, if a court of competent jurisdiction finds in any preelection action that a person who is a candidate for any office fails to meet any qualification required for the office pursuant to the Constitution or laws of this State:

(a) **The name of the person must not appear on any ballot for the election for which the person filed a declaration of candidacy**, except that if the statutory deadline for making changes to the ballot has passed, the provisions of subsection 2 apply; and

(b) The person is disqualified from entering upon the duties of the office for which the person filed a declaration of candidacy.

2. If the name of a person who is disqualified from entering upon the duties of an office pursuant to subsection 1 appears on a ballot for the election because the statutory deadline for making changes to the ballot has passed, **the appropriate election officers shall post a sign at each polling place where the person's name will appear on the ballot informing**

¹ See EX 5 Appx SC 00068-00069

voters that the person is disqualified from entering upon the duties of the office.

3. The provisions of this section apply to any preelection action brought to challenge a person who is a candidate for any office on the grounds that the person fails to meet any qualification required for the office pursuant to the Constitution or laws of this State, including, without limitation, any action brought pursuant to NRS 281.050, 293.182 or 293C.186 or any action brought for:

- (a) Declaratory or injunctive relief pursuant to chapter 30 or 33 of NRS;
- (b) Writ relief pursuant to chapter 34 of NRS; or
- (c) Any other legal or equitable relief.

NRS 293.2045 does not contemplate the changes to Nevada's elections brought by AB 321, in 2021 allowing for Universal Mail In Ballots. In 2022, Nevada's Primary Election Results demonstrate that 266,057 (56.7%) percent of total voters voted by Mail In Ballots.² Therefore, the recourse allowable under NRS 293.2045 in posting signs at all polling locations would have no effect on a disqualified candidate appearing on mail in ballots, which would conclusively prejudice Chattah in the Attorney General race.³

Furthermore, Defendants, after given the opportunity by the District Court, failed to provide any evidence that mail in ballots have been printed. They also

² Voter Turnout - Nevada Secretary of State 2022 Primary Election Results (nv.gov)

³ It is significant to note that with the posting of signs in the precincts under NRS 293.2045, Stewart Mackie the disqualified candidate for Nevada Attorney General in the Democrat primary, still received 9,000 votes in the 2022 Democrat primary election.

failed to provide any evidentiary basis as to what an arbitrary \$179,520.00 costs include to Runbeck Election Services involved and most important failed to provide an explanation as to why Runbeck Election Services was not advised before August 22, 2022, despite being placed on notice on July 26, 2022, that a disqualified candidate should be removed from the ballot. In its determination, the Court relied on hearsay testimony from a deputy of the Secretary of State and no admissible-non-hearsay evidence from Runbeck Election Services to support any finding what \$179,520.00 would include.

Allowing a disqualified candidate remain on the ballot severely prejudices Plaintiff and the integrity of the election for the office of Nevada Attorney General. Most significant though is that the District Court failed to even allocate the remedy allowed in NRS 203.2045, placing signs and polling locations does nothing to preclude voters regardless of mail in ballots. The District Court denied any relief to Chattah.

ARGUMENT

The subject of this Motion addresses an important issue of law that requires clarification and considerations of sound judicial economy and administration militate in favor of granting briefing expeditiously.

This matter originated as a proceeding governed by the NRS 293.2045. As such, the Constitutional rights of all parties are at issue. The important issue of law

that needs clarification in this proceeding is whether NRS 293.2045(2) fails to provide the adequate relief necessary to ensure a fair election in the Nevada Attorney General race. Universal mail in ballots preclude any relief provided against voters who will have a disqualified candidate on their mail in ballot and will not be at polling locations to see any notices regarding disqualified candidate.

The District Court's ruling in this matter has wide-reaching public policy effects on how disqualified candidates are addressed with universal mail in ballots precluding disclosure of a disqualified candidate. If this issue is not immediately addressed by this Court, and this important issue of law is not immediately clarified, the integrity of the election will be compromised and a disqualified candidate will inevitably draw votes from qualified candidates on the ballot.

At the hearing on September 6, 2022, it was noted that Stewart MacKie, a disqualified candidate in the Democratic Primary Election had drawn 17,047 votes representing 12.3% from incumbent Aaron Ford, despite signs at precincts advising of his disqualification.⁴ Again, it is significant to note that in 2018, Aaron Ford won the General Election by 4,533 votes, almost 13,000 less votes than what Mackie received as a disqualified candidate in this past primary, with signs notifying voters of his disqualification at all voting precincts.

⁴ Nevada Other Democratic Primary Results | The Indianapolis Star (indystar.com)

Based on all of the foregoing, there is an important issue of law involved in this proceeding and considerations of sound judicial economy and administration militate in favor of granting this Motion to provide legal guidance to everyone, including current candidates and future candidates. This issue is one of first impression in Nevada, is an entirely legal issue, and there are no disputed factual issues. There is a strong public interest in an immediate resolution of this issue, and an urgent necessity to clarify and resolve this issue of law in the State of Nevada as the General Election is scheduled in 54 days.

There is no corresponding statute or rule specifically related to appeals of these types of challenges. However, the same purpose and policy applies. NRAP 2 provides:” On the court’s own or a party’s motion, the court may- to expedite its decision or for the other good cause-suspend any provision of these Rules in a particular case and order proceedings as the Court directs except as otherwise provided in Rule 26(b).

A. Expedited Review is necessary to resolve this appeal before the deadline of the 2022 General Election

The deadline before mail in ballots are mailed out to voters is September 29, 2022. Once the mail in ballots are received by voters, voters have until November 8, 2022 to have them postmarked and mailed. *See AB 321*.

Appellant makes this request based upon reasons of fairness. As stated *supra*, having a disqualified candidate whom requested to be removed from the

ballot, advised the Secretary of State at the time of his filing for Declaration of Candidacy on March 10, 2022 that he was not qualified under NRS 228.010 will unduly prejudice Chattah and compromise the integrity of election in the Attorney General race. Otherwise, the disqualified candidate Kennedy may in fact receive a number of votes to affect the outcome of the election which would inevitably result in a contested election and would create an even greater undue burden on the State and Chattah.

CONCLUSION

Based upon all of the foregoing, Appellant, respectfully requests that this Court expedite briefing and appeal on this matter, in order to resolve this appeal prior to the deadline for printing and distribution of mail in ballots.

DATED this 13th day of September, 2022.

/s/ Joey Gilbert
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AFFIDAVIT

STATE OF NEVADA)
COUNTY OF CLARK) ss.

JOSEPH GILBERT, being first duly sworn, deposes and says:

That he is a member of the law firm of the Joey Gilbert Law, attorneys for Petitioners in the above-entitled action, that he has read the above and foregoing, **Appellant's Motion for Expedited Briefing and Appeal**, knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

This verification is made pursuant to NRS 15.010.

DATED this 13th day of September, 2022.

/s/ Joseph S. Gilbert

JOSEPH S. GILBERT

CERTIFICATE OF SERVICE

The undersigned, an employee of JOEY GILBERT LAW, hereby certified that on the 13th day of September, 2022, she served a true and correct copy of the foregoing, **APPELLANT'S MOTION FOR EXPEDITED BRIEFING AND APPEAL**, via the Court's E-Flex Electronic Filing System to the following:

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