IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

SIGAL CHATTAH, AN INDIVIDUAL,
Appellant
VS.
BARBARA K. CEGAVSKE, ET AL

No. 85302

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District FIRST Department II

County CARSON CITY Judge WILSON

District Ct. Case No. 22OC00991B

2. Attorney filing this docketing statement:

Attorney JOSEPH GILBERT Telephone 775 284-7000

Firm JOEY GILBERT LAW

Address 201 W. Liberty Street, Suite 210
Reno, Nevada 89501

Client(s) SIGAL CHATTAH

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney CRAIG NEWBY Telephone (702) 486-3420

Firm OFFICE OF ATTORNEY GENERAL

Address 3014 West Charleston Boulevard, Suite 150
Las Vegas, Nevada 89102

Client(s) BARBARA K. CEGAVSKE

Attorney NATHAN LAWRENCE Telephone (702) 564-1200

Firm LAWRENCE NATHAN ASSOCIATES

Address

540 East St. Louis Avenue

Las Vegas, Nevada 89104

Client(s)

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☒ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☐ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Petition for Writ of Mandamus/Prohibition denied

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

Action brought to have a disqualified candidate removed from the 2022 General Election ballot. The District Court in an order dated September 7, 2022, indicated that it would not enjoin the Nevada Secretary of State from printing General Election ballots with the name of the disqualified candidate on it, despite requests by said disqualified candidate to be removed from ballot and withdrawn from the race.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

(1) Did the district court abuse its discretion in concluding that NRS 293.182 precluded Chattah from obtaining an injunction against the Nevada Secretary of State to remove a disqualified candidate from the November ballot;

(2) Did the district court abuse its discretion imputing Defendant Cegavske ' s failure and responsibility to notify Kennedy of NRS 228.010 qualification to Chattah;

(3) Did the district court abuse its discretion in adjudicating that having a disqualified candidate on the November ballot would not result in irreparable harm to Chattah and that Chattah did not have a likelihood of success on the merits;

(4) Did the district court err in accepting hearsay evidence that despite the fact that ballots were not printed, the public was to assume financial obligation of ballot correction;

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☒ A ballot question

If so, explain: This matter is an issue of first impression as to the relief allowed under NRS 293.2045 and the failure to address universal mail in ballots post AB321.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This is a matter retained by the Nevada Supreme Court under NRAP (a)(2)-Cases involving ballot or election questions;

14. Trial. If this action proceeded to trial, how many days did the trial last? n/a

Was it a bench or jury trial? n/a

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from September 7, 2022

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served September 7, 2022

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing n/a

☐ NRCP 52(b) Date of filing n/a

☐ NRCP 59 Date of filing n/a

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Septeber 7, 2022

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☐ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☐ NRS 233B.150
☒ NRAP 3A(b)(3)	☐ NRS 703.376
☐ Other (specify)	

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(B)(3) allows for appeal from an order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

SIGAL CHATTAH, (Real Person)

BARBARA CEGAVSKE (Real Person)

JOHN T. KENNEDY (Real Person)

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

n/a

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Chattah brings this action under NRS 293.2045 regarding removal of a disqualified candidate from the 2022 General Election ballot.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

The appealed matter is a direct appeal under NRAP 3A(b)(3) only on the merit of denial of preliminary injunction.

(b) Specify the parties remaining below:

All Defendant parties remain below

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

This is an appeal taken from denial of a Motion for Preliminary Injunction

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Sigal Chattah	Joseph Gilbert
Name of appellant	Name of counsel of record
September 15, 2022	/s/ Joseph Gilbert
Date	Signature of counsel of record
Washoe County, NV	
State and county where signed	

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____ , _____ , I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this _____ day of _____ , _____

_____

Signature

EXHIBIT NO		**BATES**
EXHIBIT 1	COMPLAINT	SC0001-SC0010
EXHIBIT 2	APPLICATION FOR TRO	SC0011-SC0041
EXHIBIT 3	CEGAVSKE RESPONSE TO APPLICATION FOR TRO	SC0043-SC0063
EXHIBIT 4	WLASCHKIN DECLARATION	SC0064-SC0066
EXHIBIT 5	REPLY TO RESPONSE -TRO	SC0067-SC0072
EXHIBIT 6	NOTICE OF ENTRY OF ORDER	SC0073-SC0085

EXHIBIT "1"

COMP
JOSEPH S. GILBERT, ESQ.
Nevada Bar No.: 9033
JOEY GILBERT LAW
405 Marsh Ave.
Reno, Nevada 89509
Tel: (775) 284-7000
Fax: (775) 284-3809
Joey@joeygilbertlaw.com
Counsel for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

SIGAL CHATTAH, an individual, Plaintiff, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, JOHN T. KENNEDY, an individual Defendants.	Case No: 22 OC 00099 1B Dept No.: II **COMPLAINT**

COMPLAINT

COMES NOW, SIGAL CHATTAH, individually and as Nevada Republican Party Candidate for Nevada Attorney General, by and through the undersigned attorney of record, JOSEPH S. GILBERT, ESQ. of JOEY GILBERT LAW, who hereby submit the following COMPLAINT FOR RELIEF and allege against Defendants as follows:

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I.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear Plaintiff's claims pursuant to NRS 293.2045 and grant declaratory and injunctive relief pursuant to NRS 30.40 and 33.010.

2. Venue is proper under NRS 13.020 and 13.040 because this action is against a public officer for acting in her official capacity, and pursuant to NRS 293.2045.

II.

PARTIES

1. Plaintiff, SIGAL CHATTAH, a Nevada resident, is at all times mentioned herein the Republican Candidate for Nevada Attorney General and brings this action in accordance with NRS 293.2045.

2. At all times mentioned herein, Defendant BARBARA CEGAVSKE, is named herein in her official capacity as Nevada Secretary of State. As the Secretary of State, Cegavske is the Chief Office of Elections for Nevada and is responsible for the execution, administration, and enforcement of the state's election laws. *See* NRS 293.124.

3. At all times mentioned herein Defendant, JOHN T. KENNEDY, a purported Nevada resident, is the candidate running for Nevada Attorney General, designated with the Libertarian party filing his Declaration of Candidacy in ordinary course with the Nevada Secretary of State.

4. All of the acts or failures to act herein were duly performed by and attributable to all Defendants, each acting as agent, employee, or under the direction and/or control of the others. Said acts or failures to act were within the scope of said agency and/or employment and each of the Defendants and ratified the acts and omissions by the other Defendants. Whenever

and wherever reference is made in this Complaint to any acts by Defendants, such allegations and references shall also be deemed to mean the acts of each of the Defendants acting individually, jointly or severally.

5. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES I through XX, and ROE CORPORATIONS I through XX, inclusive, are unknown to Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as a DOE or ROE CORPORATION is responsible in some manner for the events and happenings herein referred to and damages caused proximately thereby to Plaintiff as herein alleged; that Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Defendants DOES I through XX and/or ROE CORPORATIONS I through XX, when same have been ascertained by Plaintiff together with appropriate charging allegations, and to join such Defendants in this action.

II.
GENERAL ALLEGATIONS

1. Plaintiff repleads and realleges all of the paragraphs in the preceding Claims for Relief and incorporates the same by reference as if fully set forth herein.

2. On November 6, 2018, current Attorney General Aaron D. Ford was elected as Nevada's Attorney General by a margin of .05 percent and currently remains the Nevada Attorney General.

3. On or about March 17, 2022, Plaintiff filed with the Secretary of State her Declaration of Candidacy for the Office of Attorney General, to run against the incumbent Aaron Ford.

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

5. Defendant JOHN T. KENNEDY, filed his Declaration of Candidacy, on behalf of the Libertarian Party of Nevada, in ordinary course with the Nevada Secretary of State.

6. Included in the Declaration of Candidacy is the following statement, to wit;

> "... that **I will not violate any election law** or any law defining and prohibiting corrupt and fraudulent practices in campaigns and elections in this State, that **I will qualify for the office if elected thereto**, including, but not limited to, complying with any litigation prescribed by the Constitution and laws of this Sate concerning the number of years or terms for which a person may hold the office; that I understand that knowingly and willfully filing a declaration of candidacy which contains a false statement is a crime punishable as a gross misdemeanor and also subjects me to a civil action disqualifying me from entering upon the duties of the office..." [*Emphasis added*]

7. 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.

8. That Plaintiff is a member in good standing with the State Bar of Nevada since 2002.

9. That Defendant KENNEDY is not licensed as an attorney in the State of Nevada, nor is he a member of the State Bar in Nevada in good standing, nor does he qualify to be a member in good standing with the State Bar of Nevada.

10. That on July 26, 2022, Plaintiff notified Defendant CEGAVSKE's office that Defendant KENNEDY is not a member of the State Bar of Nevada by filing an Election Integrity Complaint.

11. On same day, Plaintiff also notified Nevada Attorney General's office and provided the office of the Nevada Attorney General the Election Integrity Complaint.

12. That on August 17, 2022, Defendant, Secretary of State issue 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.

13. That Defendant Secretary of State failed in her obligations to verify that Defendant Kennedy had in fact met the qualifications of NRS 228.010 to run for office, placing an onerous burden on Plaintiff to engage in such verification.

14. That the office of Nevada Attorney General's was notified of the disqualification of Defendant KENNEDY and also refused to take any subsequent remedial measures thereon.

15. That as noted *supra*, in the 2018 election, the margin for victory was less than half a point.

16. That having a disqualified candidate on the 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.

17. 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 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.

18. That following complete lack of subsequent remedial measures taken by the Nevada Secretary of State and the office of the Attorney General over the course of three weeks after notice, Plaintiff has no other recourse than to bring this action for proper adjudication by the judiciary in accordance with NRS 293.2045.

19. That allowing a disqualified candidate remain on the ballot severely prejudices Plaintiff and the integrity of the election for the office of Nevada Attorney General.

III
FIRST CLAIM FOR RELIEF
(FRAUD)
(Against Defendant KENNEDY)

20. Plaintiff repleads and realleges all of the paragraphs in the preceding Claims for Relief and incorporates the same by reference as if fully set forth herein.

21. Defendant, JOHN T. KENNEDY, at no time relevant herein, was ever a licensed attorney with the State Bar of Nevada, disqualifying him from meeting the qualifications of NRS 228.010.

22. That Defendant intentionally and knowingly, with an utter disregard for the truth, signed a Declaration of Candidacy, without meeting the qualifications proscribed by law under

NRS 228.010, and further knowing that he would not meet the qualifications as proscribed, if elected.

23. That Defendant KENNEDY, knowingly and willfully filed a declaration containing the false statement that he qualifies for office under NRS 228.010, punishable as a gross misdemeanor and this civil action brought *sub judice*.

24. That as a direct and proximate result of Defendants' fraud, Plaintiff has been damaged in an amount in excess of $15,000.00, the exact amount of which will be determined at trial.

25. That it has been necessary for Plaintiff to retain counsel to prosecute this action by reason of which she is entitled to reasonable attorney's fees.

IV.
SECOND CLAIM FOR RELIEF
(DECLARATORY RELIEF)
(Against All Defendants)

26. Plaintiff repleads and realleges all of the paragraphs in the preceding Claims for Relief and incorporates the same by reference as if fully set forth herein.

27. A genuine justiciable controversy exists relevant to the rights of Plaintiff, having a disqualified candidate appearing on the ballot in the General Election for the office of Nevada Attorney General.

28. Plaintiff seeks an order from this Court declaring Defendant KENNEDY's immediate disqualification from the ballot, under NRS 293. 2045(1)(a), and immediately removing him therefrom.

29. Plaintiff also seeks that each polling place shall post a sign where Defendant KENNEDY's name may appear on the ballot informing voters that he is disqualified from entering the upon the duties of the office in accordance with NRS 293.2045(b)(2).

30. That it has been necessary for Plaintiff to retain the services of legal counsel for which Plaintiff is entitled to recover such costs and expenses from Defendants.

V.
THIRD CLAIM FOR RELIEF
(INJUNCTIVE RELIEF)
(Against All Defendants)

31. Plaintiff repleads and realleges all of the paragraphs in the preceding Claims for Relief and incorporates the same by reference as if fully set forth herein

32. Plaintiff has suffered and will continue to suffer irreparable harm and damages by reason of the Defendants, and each of their, conduct, including but limited to, having Defendant KENNEDY's name on the ballot for the General Election on November 8, 2022 and there is no adequate remedy at law.

33. That Plaintiff seeks injunctive relief enjoining Defendant JOHN T. KENNEDY from appearing on the ballot for the 2022 General Election for the office of Nevada Attorney General.

34. That it has been necessary for Plaintiff to retain the services of legal counsel for which Plaintiff is entitled to recover such costs and expenses from Defendants.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

1. For punitive damages in an amount in excess of $15,000.00;

2. For a referral to the Carson City District Attorney office for knowingly and willfully filing a Declaration of Candidacy containing a false statement.

3. For compensatory damages in excess of $15,000.00;

4. For declaratory and injunctive relief.

5. For attorney's fees and costs of suit;

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5. For such other and further relief as this Honorable Court deems just and reasonable under the circumstances.

Dated this 24th day of August, 2022.

JOEY GILBERT LAW

By: /s/ Joseph Gilbert

Joseph S. Gilbert, Esq.
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JOEY GILBERT LAW
405 Marsh Ave
Reno, Nevada 89501
Tel: (775) 284-7000
Attorney for Plaintiff

EXHIBIT "2"

APP
JOSEPH S. GILBERT, ESQ.
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Counsel for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

SIGAL CHATTAH, an individual, Plaintiff, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, JOHN T. KENNEDY, an individual Defendants.	22OC00091B Case No: ~~22OC00091B~~ Dept No.: II

PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION AND RELATED RELIEF

COMES NOW, Plaintiff, SIGAL CHATTAH by and through her attorney of record, JOSEPH S. GILBERT, ESQ. of JOEY GILBERT LAW, and hereby moves this Court to issue a temporary restraining order and preliminary injunction pursuant to Rule 65 of the Nevada Rules of Civil Procedure retraining and preventing Defendants from taking the actions set forth below.

This Application and Motion is made and based upon N.R.C.P. 65, NRS 33.010, The Complaint and the Memorandum of Points and Authorities set forth herein, all Exhibits and the Affidavit attached hereto.

Dated this 26th day of August, 2022.

JOEY GILBERT LAW

By: /s/ J. Gilbert

Joseph S. Gilbert, Esq.
Nevada Bar No.: 9033
JOEY GILBERT LAW
405 Marsh Ave
Reno, Nevada 89501
Tel: (775) 284-7000
Attorney for Plaintiff

NOTICE OF MOTION ON ORDER SHORTENING TIME

PLEASE TAKE NOTICE that Plaintiff, will bring the foregoing Application for a Temporary Restraining Order and Motion for Preliminary Injunction on for hearing on the ____ day of _____, 2022 at the hour of _____a.m./p.m. in the above-entitled Court, or as soon thereafter as counsel may be heard.

Submitted by:

/s/ J. Gilbert

JOEY GILBERT LAW

DECLARATION OF SIGAL CHATTAH IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME

1. This Declaration is based on my own personal knowledge of the matters to which I am competent to testify. As to those statements made upon information and belief, I believe those statements to be true.

2. I am the Plaintiff in this matter.

3. This Application is made upon the basis that this Motion must be heard immediately as Defendants are in the process of printing ballots with a disqualified candidate appearing thereon as the candidate for Attorney General for the Libertarian Party.

4. This Declaration is in support of the subject Application is provided in accordance with NRCP 65(b).

5. The requirements are met under NRCP 65 to issue a TRO and hearing set in an expeditious manner as Plaintiff had requested this matter be resolved without proceeding to litigation a month ago.

6. Defendant John T. Kennedy does not meet the qualifications of NRS 228.010 requiring him to be a member in good standing with the State Bar of Nevada. Defendant Kennedy is not a lawyer in Nevada, immediately disqualified from serving as the Attorney General of the State.

7. Defendant Kennedy knowingly misrepresented he was qualified on his Declaration of Candidacy filed with the Secretary of State.

8. It is significant to note that the Secretary of State's office did not engage in verification of Kennedy's credentials with the State Bar of Nevada.

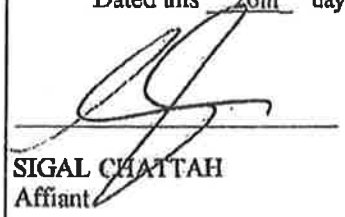
9. Despite being placed on Notice of Disqualification by filing a Complaint on July 26, 2022, the Secretary of State refused to resolve the matter and remove Defendant Kennedy from the ballot, instead issuing a correspondence that placed the burden to object to the qualifications of the candidate on myself.

7. That following passage of AB 321, universal mail in ballots will be issued and the remedy under NRS 293.2045, allowing for posting signs at polling locations will not affect those who will vote via mail in ballot, which will compromise the integrity of the election.

8. Due to the fact that mail in ballots are going to be in nine days, this Court must hear the matter in an expediter manner and enjoin the appearance of a disqualified candidate from the ballot.

11. Under NRS 53.045, I declare under penalty of perjury that the foraging is true and correct.

Dated this 26th th day of August, 2022.



SIGAL CHATTAH
Affiant

MEMORANDUM OF POINTS AND AUTHORITIES

I.

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 the incumbent Aaron Ford.

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

Defendant JOHN T. KENNEDY, filed his Declaration of Candidacy, on behalf of the Libertarian Party of Nevada, in ordinary course with the Nevada Secretary of State. Included in the Declaration of Candidacy is the following language and statement, to wit;

> "... that **I will not violate any election law** or any law defining and prohibiting corrupt and fraudulent practices in campaigns and elections in this State, that **I will qualify for the office if elected thereto**, including, but not limited to, complying with any litigation prescribed by the Constitution and laws of this Sate concerning the number of years or terms for which a person may hold the office; that I understand that knowingly and willfully filing a declaration of candidacy which contains a false statement is a crime punishable as a gross misdemeanor and also subjects me to a civil action disqualifying me from entering upon the duties of the office..." [*Emphasis added*]

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 as an attorney in the State of Nevada, nor is he a member of the State Bar in Nevada in good standing, nor does he qualify to be a member in good standing with the State Bar of Nevada.

On July 26, 2022, Plaintiff notified Defendant CEGAVSKE's office that Defendant KENNEDY is not a member of the State Bar of Nevada by filing an Election Integrity Complaint.[1] On same day, Plaintiff also notified Nevada Attorney General's office and provided the office of the Nevada Attorney General the Election Integrity Complaint.

On August 17, 2022, Defendant, Secretary of State issue 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.[2] Defendant Secretary of State failed in her obligations 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.

Additionally, the office of Nevada Attorney General's was notified of the disqualification of Defendant KENNEDY and also refused to take any subsequent remedial measures thereon. As noted *supra*, in the 2018 election, the margin for victory was less than half a point.

Having a disqualified candidate on the 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.

---

[1] See Complaint attached herein as Exhibit "1"

[2] See Secretary of State Correspondence attached hereto as Exhibit "2"

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 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.

Following the complete lack of subsequent remedial measures taken by the Nevada Secretary of State and the Office of the Attorney General over the course of three weeks after being placed on notice, Plaintiff has no other recourse than to bring this action for proper adjudication by the judiciary in accordance with NRS 293.2045. Allowing a disqualified candidate remain on the ballot severely prejudices Plaintiff and the integrity of the election for the office of Nevada Attorney General.

III.

LEGAL ARGUMENT

A. PLAINTIFF IS SUBJECT TO IMMEDIATE AND IRREPARABLE HARM AND DAMAGE AND IS THUS ENTITLED TO A TEMPORARY RESTRAINING ORDER.

A temporary restraining order should be issued pursuant to NRCP 65 where "it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the Plaintiff before the adverse party or that party's attorney can be hard in opposition." *NRCP 65(b).* Good cause for this application exists as Plaintiff is subject to suffering immediate and irreparable loss and damage as a result of Defendants' actions.

As the Secretary of State, Defendant Cegavske is the Chief Office of Elections for Nevada and is responsible for the execution, administration, and enforcement of the State's election laws. *See* NRS 293.124. She already knows that Mail In ballots are being printed in less than ten (10) days. She knows that following the passage of AB 321, every registered voter in Nevada will receive a Mail In ballot. She further ***already knows*** that a large percentage of individuals will likely be voting by Mail In ballot.

Put simply, Cegavske knows that having a disqualified on a Mail In ballot will have no recourse possible other than his removal for voters voting by mail. It is unfathomable that knowingly having a disqualified candidate on the ballot and a failure to take subsequent remedial measures to remove him therefrom is such a daunting task for the Chief officer of Elections in Nevada. It is further unfathomable that a qualified candidate is burdened with seeking Court intervention on such a simplistic measure to ensure election integrity be maintained in the State of Nevada.

B. A PRELIMNINARY INJUNCTION SHOULD BE GRANTED SINCE PLAINTIFF ENJOYS A REASONABLY PROBABILITY OF SUCCESS ON THE MERITS AND IS SUBJECT TO GREAT AND IRREPARABLE INJURY.

N.R.C.P. 65 and *NRS* 33.010, authorize the Court to grant injunctive relief in the commission or continuance of an act that products great and irreparable injury to the Plaintiff. In relevant part, *NRS* 33.010, provides that an injunction may be granted under the following circumstances:

> 1) When it shall appear by the complaint that the plaintiff is entitle to The relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period of perpetually.
> 2) When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to plaintiff.
> 3) When it shall appear, during the litigation that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.
>
> *NRS 33.010*

In *Sobol v. Capital Managment Consultants, Inc., 102 Nev. 444, 726 P.2d (1986)* the Nevada Supreme Court discussed the granting of preliminary injunctions and held:

> A preliminary injunction is 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 damages is an adequate remedy.
>
> *Id at 446.*

The Nevada Supreme Court has also permitted a reviewing court to consider the interest of public when considering an application for preliminary injunction, but certainly has never required such a consideration. *See, Clark County School District v. Buchanan, 112 Nev. 1145,*

1150, 924 P.2d 716, 719 (1996). In *Buchanan*, the Nevada Supreme Court stated, "the district court may also weigh the public interest and the relative hardships of the parties in deciding whether to grant a preliminary injunction. *Buchanon, 112 Nev. at 1150.*

As stated in *Buchanan*, neither the public's interest nor the hardships of the party are a required element for the granting of a preliminary injunction. *See, Id.* In the instances where the public's interest has been reviewed as part of a party's request for preliminary injunction, the public's interest has been directly impacted by the granting or denial of a preliminary injunction. *See, Id. (debate over the presence of a dog in the Clark County School District).* *See also, Ellis v. McDaniel, 95 Nev. 455, 459, 596 P.2d 222, 224-225 (1979)(availability to the public of an orthopedic surgeon's special skills despite the validity of a non-compete agreement).*

The Ninth Circuit in the past set forth two separate sets of criteria for determining whether to grant preliminary injunctive relief: Under the traditional test, a plaintiff must show: (1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases). The alternative test requires that a plaintiff demonstrate either a combination of probable success on the merits and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in his favor. *Taylor v. Westly, 488 F.3d 1197, 1200 (9th Cir. 2007).* "These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases." *Id.*

1. A Preliminary Injunction Is Warranted As Plaintiff Enjoys A Reasonable Likelihood Of Success On The Merits.

As stated above, Defendant does not meet the qualifications of NRS 228.010. There is no merit to any objections that he does. Nor is there any merit to forcing Chattah to engage in this

action when there should have been immediate action by both the Attorney General's office and Defendant Cegavske when Chattah placed them both on Notice of this disqualification.

Accordingly, Plaintiff enjoys a high likelihood of prevailing in this matter.

2. Plaintiff Will Suffer Irreparable Injury If An Injunction Is Not Granted.

The Supreme Court recently reiterated, however, that a plaintiff seeking an injunction must demonstrate that irreparable harm is "*likely*," not just possible. *Winter v. NRDC, 555 U.S. 7, 129 S. Ct. 365, 374-76, 172 L. Ed. 2d 249 (2008)* (rejecting the Ninth Circuits alternative "sliding scale" test). The Ninth Circuit has explicitly recognized that its "possibility" test was "definitively refuted" by *Winter*, and that "[t]he proper legal standard for preliminary injunctive relief requires a party to demonstrate 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" *Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter, 129 S. Ct. at 374)* (reversing a district court's use of the Ninth Circuit's pre-Winter, "sliding-scale" standard and remanding for application of the proper standard).

A recent Ninth Circuit ruling relying largely on the dissenting opinion in *Winter* parsed the language of *Winter* and subsequent Ninth Circuit rulings and ruled that the sliding scale test remains viable when there is a lesser showing of likelihood of success on the merits amounting to "serious questions," but not when there is a lesser showing of likelihood of irreparable harm. *See Alliance for the Wild Rockies v. Cottrell, 613 F.3d 960, 2010 WL 2926463, at 5-7 (9th Cir. 2010)*. As a preliminary matter, to the extent this interpretation of *Winter* is inconsistent with that in *Selecky*, *Selecky* controls. *See Miller v. Gammie, 335 F.3d 889, 899 (9th Cir. 2003)* (en banc) (holding that, in the absence of an intervening Supreme Court decision, only the en banc court may overrule a decision by a three-judge panel). In any case, the Supreme Court has made clear

that a movant must show both "that he is *likely* to succeed on the merits [and] that he is *likely* to suffer irreparable harm in the absence of preliminary relief . . . ." *Winter, 129 S. Ct. at 374 (citing Munaf v. Geren, 553 U.S. 674, 128 S. Ct. 2207, 2218-19, 171 L. Ed. 2d 1 (2008); Amoco Prod. Co. v. Gambell, 480 U.S. 531, 542, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987); Weinberger v. Romero-Barcelo, 456 U.S. 305, 311-12, 102 S. Ct. 1798, 72 L. Ed. 2d 91 (1982))* (emphases added). To satisfy *Winter*, the movant must show that he is "likely" to succeed on the merits. To the extent the *Cottrell* court meant to imply that its "serious questions" standard was a lesser standard than "likely," it is inconsistent with *Winter* and *Selecky*. The Court must reconcile the cases by interpreting the *Cottrell* "serious questions" requirement to be in harmony with the *Winter/Selecky* "likelihood" standard, not as being in competition with it. The movant must therefore show that there are serious questions as to the merits of the case such that success on the merits is likely. A claim can be weaker on the merits if it raises "serious questions" and the amount of harm the injunction will prevent is very great, but the chance of success on the merits cannot be weaker than "likely."

If the injunction is not granted, it is unquestionable that Plaintiff will suffer irreparable injury as Plaintiff has a vested interest in fair election process with only qualified candidates to remain on the ballot. The fact that a disqualified candidate remain on the ballot and even obtain one vote in his favor compromises the integrity of the election process.

3. The Balance Of The Hardships Favor Plaintiff .

While this Court is not required to consider the balance of hardship between the parties, as noted *supra*, in 2018, Ford won his election by approximately 5,000 votes in the Statewide

race for Nevada Attorney General against Republican Nominee Wes Duncan. The Third Party Candidate, Joel Hansen in 2018 received approximately 32,000 votes. [3]

It is not improbably that a Libertarian Candidate named John Kennedy will not receive votes and may in fact receive sufficient votes to create irreparable harm to the integrity of an election, if allowed to remain a disqualified candidate on the ballot.

C. THE COURT SHOULD REQUIRE A MINIMAL BOND.

N.R.C.P. 65(c) requires Plaintiff to post bond before the issuance of a Temporary Restraining Order. A minimal bond is sufficient in this case because the granting of a Temporary Restraining Order was the only option left for Plaintiff following a refusal by the Attorney General and Secretary of State to take subsequent remedial measures will placed on notice. Further, Defendant will not incur any damages herein as this is not a monetary action.

IV.

CONCLUSION

Plaintiff respectfully requests that this Court grant Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction and issue a Restraining Order precluding Defendants from allowing the disqualified candidate John T. Kennedy from remaining on the ballot.

Dated this 25th day of August, 2022.

JOEY GILBERT LAW

By: /s/ Joseph Gilbert

Joseph S. Gilbert, Esq.
Nevada Bar No.: 9033
JOEY GILBERT LAW
405 Marsh Ave
Reno, Nevada 89501

[3] Aaron Ford - Ballotpedia

Tel: (775) 284-7000
Attorney for Plaintiff

EXHIBIT "1"

STATE OF NEVADA
SECRETARY OF STATE
BARBARA K. CEGAVSKE

101 N. Carson St.
Carson City, NV 89701

Phone: 775-684-5705
Fax: 775-684-5718

nvelect@sos.nv.gov

www.nvsos.gov

For official use only:
Received by: _____
Date Received: _____
Complaint Type: _____
(Stamp here)

ELECTION INTEGRITY VIOLATION REPORT

The information you report on this form may be used to help us investigate violations of Nevada election laws. When completed, mail, email, or fax your form and supporting documents to the office listed above. Upon receipt, your complaint will be reviewed by a member of our staff. The length of this process can vary depending on the circumstances and information you provide with your complaint. The Office of the Secretary of State may contact you if additional information is needed.

INSTRUCTIONS: Please TYPE/PRINT your complaint in dark ink. You must write LEGIBLY. All fields MUST be completed.

SECTION 1.

COMPLAINANT INFORMATION Salutation: ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Your Name: Chattah (Last) Sigal (First) _____ (MI)

Your Organization, if any: _____

Your Address: 5875 S Rainbow Blvd #203 (Address) Las Vegas (City) NV (State) 89118 (Zip)

Your Phone Number: (702) 360-6200 (Home) (702) 494-7970 (Cell) _____ (Work) 7026436292 (Fax)

Email: Chattahlaw@gmail.com Call me between 8am-5pm at: ☐ Home ☑ Cell ☐ Work

SECTION 2.

TYPE OF COMPLAINT

- ☐ Campaign Practices
- ☐ Contributions / Expenses
- ☐ Voter Registration
- ☑ Other
- ☐ Voter Fraud
- ☐ Initiative / Referendum Petition
- ☐ Financial Disclosure Statement

Libertarian Candidate John Kennedy for Attorney General does not meet qualifications set in NRS 228.010

SC0027

SECTION 3.

COMPLAINT IS AGAINST

Please detail the nature of your complaint. Include the name and contact information (if known) of the individual, candidate, campaign, or group that is the subject of your complaint. Your complaint must also include a clear and concise statement of facts sufficient to establish that the alleged violation occurred. Any relevant documents or other evidence that support your complaint should be listed and attached. You may attach additional sheets if necessary.

John T Kennedy
1166 Slate Road, Wellington, NV, 89444
jtkennedy@gmail.com

NRS228.010 entitled Qualifications. provides that
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.

A review of the State Bar of Nevada confirms that Mr. Kennedy is not licensed in the State of Nevada, nor a member of good standing herein. See State Bar Docs included herein

SECTION 4.

Sign and date this form. The Secretary of State's Office cannot process any unsigned, incomplete, or illegible complaints. In order to resolve your complaint, we may send a copy of this form to the person or group about whom you are complaining.

I am filing this complaint to notify the Office of the Secretary of State of the activities of a particular candidate, campaign, individual or group. I understand that the information contained in this complaint may be used to establish violations of Nevada law in both private and public enforcement actions. I authorize the Office of the Secretary of State to send my complaint and supporting documents to the individual or group identified in this complaint.

By signing my name below, I certify under penalty of perjury that the information provided in this complaint is true and correct to the best of my knowledge.

Signature

Sigal Chattah
Print Name

7/26/22
Date (mm/dd/yyyy)

menu

Find a Lawyer

For the Public (https://nvbar.org/for-the-public/) : Find a Lawyer

Search Attorneys... (eg. last name, bar #, company or city) Search

Kennedy, Todd E.

Bar #: 6014
Member since: 10/14/1996
Status: ATTORNEY Active

Company: Kennedy & Couvillier (http://www.kclawnv.com)
3271 E. Warm Springs Rd, Las Vegas, NV 89120
Phone: (702) 605-3440
Fax: (702) 625-6367
Email: tkennedy@kclawnv.com (mailto:tkennedy@kclawnv.com)
Law school: California Western, School of Law

Disciplinary Actions:

None.

Harmon Kennedy, Heather

Bar #: 11146
Member since: 10/14/2008
Status: ATTORNEY Inactive

Company: Harmon Kennedy PC (http://www.harmonkennedy.com)
233 Merchant St., Suite 120, Ambridge, PA 15003
Phone: (412) 501-3155
Email: heather@harmonkennedy.com (mailto:heather@harmonkennedy.com)
Law school: Drake University

Disciplinary Actions:

None.

Kennedy, Kirk T.

Bar #: 5032
Member since: 10/4/1993
Status: ATTORNEY Active

Company: Law Office of Kirk T Kennedy
815 S. Casino Center Blvd., Las Vegas, NV 89101
Phone: (702) 385-5534
Fax: (702) 385-1869
Law school: Cumberland School of Law

Disciplinary Actions:

1. **Type:** Order of transfer to 90 day Suspension
   Effective Date: 10/24/14
   Case Number: 65742
   [View Document] (https://www.nvbar.org/wp-content/uploads/Kennedy_Kirk_T_CGP_90_Days_Suspension_10_24_14_97e22c7436766ee2bf5654a54898cc25.pdf)
2. **Type:** Public Reprimand
   Filed: 02/26/16
   Case No. SG11-1193

Kennedy, Dennis L.

Bar #: 1462

Member since: 9/15/1975

Status: ATTORNEY Exempt

Active

Company: Bailey Kennedy, LLP (http://www.baileykennedy.com)

8984 Spanish Ridge Ave., Las Vegas, NV 89148

Phone: (702) 562-8820

Fax: (702) 562-8821

Email: dkennedy@baileykennedy.com (mailto:dkennedy@baileykennedy.com)

Law school: U. of Washington

Disciplinary Actions:

None.

Kennedy, Benjamin W.

Bar #: 9077

Member since: 10/20/2004

Status: ATTORNEY Active

Company: Dickinson Wright, PLLC (http://www.dickinson-wright.com)

100 W. Liberty St., Suite 940, Reno, NV 89501

Phone: (775) 343-7500

Fax: (775) 786-0131

Email: bkennedy@dickinsonwright.com (mailto:bkennedy@dickinsonwright.com)

Law school: University of Montana

Disciplinary Actions:

None.

Kennedy, Jr., James B.

Bar #: 9078
Member since: 10/20/2004
Status: ATTORNEY Active

Company: James Kennedy, P.L.L.C. (http://www.epinjury.com)
6216 Gateway Blvd. East, El Paso, TX 79905
Phone: (915) 544-5200
Fax: (915) 532-2423
Email: james@kennedyworksforyou.com (mailto:james@kennedyworksforyou.com)
Law school: Texas Tech University

Disciplinary Actions:

None.

Kennedy, William A.

Bar #: 9365
Member since: 4/20/2005
Status: ATTORNEY Suspended

Company: Law Office of William A. Kennedy
612 S. Third Street, Las Vegas, NV 89101
Phone: (702) 474-7000
Fax: (702) 474-4014
Email: attorneykennedy@gmail.com (mailto:attorneykennedy@gmail.com)

Law school : Washburn University

Disciplinary Actions:

1. **Type:** Suspension
   Case No.: 71326
   Effective Date: 02/27/17
   [View Document] (https://www.nvbar.org/wp-content/uploads/Pages-from-02-27-17-Notice-of-Service-to-the-Courts-William-Kennedy-71326.pdf)
2. **Type:** Suspension
   Case No.: 73805
   Effective Date: 2/23/18
   [View Document] (https://www.nvbar.org/wp-content/uploads/Pages-from-02-26-18-Ntc-to-Crts-Kennedy-W-73805.pdf)

Kennedy, Michael J.

Bar # : 10103
Member since: 1/12/2007
Status: ATTORNEY Active

Company: Law Offices of Michael Jerome Kennedy, PLLC
333 Flint Street, Reno, NV 89501
Phone : (775) 221-7100
Fax : (775) 221-7101
Email : michael@mjkennedylaw.com (mailto:michael@mjkennedylaw.com)
Law school : University of Minnesota

Disciplinary Actions:

None.

SC0034

John, Philip A.

Bar #: 10627
Member since: 10/16/2007
Status: ATTORNEY Active

Company: McCormick Barstow LLP (http://www.mccormickbarstow.com)
8337 West Sunset Road, Suite 350, Las Vegas, NV 89138
Phone: (702) 949-1100
Fax: (702) 949-1101
Email: philip.john@mccormickbarstow.com (mailto:philip.john@mccormickbarstow.com)
Law school: University of San Francisco

Disciplinary Actions:

None.

Kennedy, Fred W.

Bar #: 2269
Member since: 9/18/1974
Status: ATTORNEY Suspended

617 E Hoover, Las Vegas, NV 89101
Phone: (702) 496-5430
Fax: (702) 385-3225
Email: pkennedy54@aol.com (mailto:pkennedy54@aol.com)
Law school: California Western, School of Law

Disciplinary Actions:

1. **Type:** Order of Suspension
   Effective Date: 02/19/16
   Case Number: 67305
   [View Document] (https://www.nvbar.org/wp-content/uploads/Pages-from-03-10-16-Notice-to-Courts-Kennedy-Fred-67305.pdf)
2. **Type:** Public Reprimand
   Effective Date: 03/14/16
   Case No.: SG11-1345, SG12-1534 and SG13-1778
   [View Document] (https://www.nvbar.org/wp-content/uploads/Kennedy-Fred-W.-PU-03-14-16.pdf)

Kennedy, Dennis V.

Bar #: 2612
Member since: 3/12/1979
Status: ATTORNEY Suspended

Law school: U. of Washington

Disciplinary Actions:

None.

John, Douglas S.

Bar #: 8512
Member since: 9/25/2003
Status: ATTORNEY Active

Company: Frazer Ryan Goldberg & Arnold (https://www.frgalaw.com)
1850 N Central Avenue, #1800, PHOENIX, AZ 85004

SC0036

Phone: (602) 277-2010
Fax: (602) 277-2595
Email: djohn@frgalaw.com (mailto:djohn@frgalaw.com)
Law school: University of Arizona

Disciplinary Actions:

None.

Kennedy, Jack Edward

Bar #: 2127
Member since: 9/19/1977
Status: ATTORNEY Exempt
Inactive

853 Divot Drive, Fernley, NV 89408
Phone: (775) 742-4251
Fax: (775) 313-9636
Law school: McGeorge

Disciplinary Actions:

None.

Kennedy, Judy C.

Bar #: 11093
Member since: 10/14/2008
Status: ATTORNEY Inactive

EXHIBIT "2"

BARBARA K. CEGAVSKE
Secretary of State

STATE OF NEVADA

OFFICE OF THE
SECRETARY OF STATE

SCOTT W. ANDERSON
Chief Deputy Secretary of State

MARK A. WLASCHIN
Deputy Secretary for Elections

August 17, 2022

Sigal Chattah
chattahlaw@gmail.com

Via Email

Re: Alleged Violation of Nevada Revised Statutes
File C22-314 SOS

Dear Sigal Chattah,

The Secretary of State's office has finished its review of the Election Integrity Violation Reports received July 26, 2022. Specifically, the allegation asserted that John Kennedy is not qualified to run for Attorney General.

Preelection candidate qualification challenges must be made within the timeframe pursuant to NRS 293.182. The last day to challenge a candidate's qualification was April 5, 2022. See NRS 293.177, NRS 293.182 and NRS 293.202. Contests of candidate eligibility filed post-election are governed by the timelines in NRS 293.413.

NRS 293.182 Written challenges concerning qualifications of candidates; enforcement in preelection actions.

1. After a person files a declaration of candidacy to be a candidate for an office, and not later than 5 days after the last day the person may withdraw his or her candidacy pursuant to NRS 293.202, an elector may file with the filing officer for the office a written challenge of the person on the grounds that the person fails to meet any qualification required for the office pursuant to the Constitution or laws of this State. Before accepting the challenge from the elector, the filing officer shall notify the elector that if the challenge is found by a court to be frivolous, the elector may be required to pay the reasonable attorney's fees and court costs of the person who is being challenged.
2. A challenge filed pursuant to subsection 1 must:
(a) Indicate each qualification the person fails to meet;
(b) Have attached all documentation and evidence supporting the challenge; and
(c) Be in the form of an affidavit, signed by the elector under penalty of perjury.
3. Upon receipt of a challenge pursuant to subsection 1:
(a) The Secretary of State shall immediately transmit the challenge to the Attorney General.
(b) A filing officer other than the Secretary of State shall immediately transmit the challenge to the district attorney.
4. If the Attorney General or district attorney determines that probable cause exists to support the challenge, the Attorney General or district attorney shall, not later than 5 working days after receiving the challenge, petition a court of competent jurisdiction to order the person to appear before the court. Upon receipt of such a petition, the court shall enter an order directing the person to appear before the court at a hearing, at a time and place to be fixed by the court in the order, to show cause why the challenge is not valid. A certified copy of the order must be served upon the person. The court shall give priority to such proceedings over all other matters pending with the court, except for criminal proceedings.
5. If, at the hearing, the court determines by a preponderance of the evidence that the challenge is valid or that the person otherwise fails to meet any qualification required for the office pursuant to the Constitution or laws of this State, or if the person fails to appear at the hearing, the person is subject to the provisions of NRS 293.2045.

6. If, at the hearing, the court determines that the challenge is frivolous, the court may order the elector who filed the challenge to pay the reasonable attorney's fees and court costs of the person who was challenged.

The Secretary of State, as the Chief Election Officer for the State of Nevada, is responsible for enforcement of the election laws contained in Title 24 of the Nevada Revised Statutes. However, since your complaint was not lodged in accordance with NRS, the Secretary of State's office will take no action. As a result, no further action will be taken by this office and this file will be closed.

If you have any questions regarding this letter and the Secretary of State's determination in the matter, please contact the undersigned at (775) 684-7172 or sedwards@sos.nv.gov.

Respectfully,

Barbara K. Cegavske
Secretary of State

By:
Sandra Edwards
Compliance Investigator

[redacted]

[redacted]

[redacted]

[redacted]

From: John T. Kennedy <[redacted]>
Sent: Friday, August 26, 2022 3:12:55 PM (UTC-08:00) Pacific Time (US & Canada)
To: SOS Customer Service <sosmail@sos.nv.gov>
Subject: [redacted]

[redacted]

To Barbara Cegavske
Nevada Secretary of State,

I'm John Kennedy, the Libertarian Party candidate for Attorney General of Nevada. Today it came to my attention that I was not eligible to run for this office because I am not a member of the bar in Nevada. That being the case, I seek to withdraw my candidacy and be removed from the ballot. I have no intention of campaigning for an office I'm not eligible to run for.

I was unaware of this requirement until today. When I filed for my candidacy in your office I was interviewed by two members of your staff, one of whom asked me if I was a lawyer. I stated that I was not, but that it was my understanding that this was not a requirement to run for the office. She verbally confirmed to me that it was not a requirement.

John T. Kennedy
[redacted]

EXHIBIT "3"

AARON FORD
Attorney General
Craig Newby, Esq. (Bar No. 8591)
Deputy Solicitor General
Office of the Attorney General
555 E. Washington Ave, Ste. 3900
Las Vegas, NV 89101
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cnewby@ag.nv.gov

Attorneys for Defendant
Barbara Cegavske

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

SIGAL CHATTAH, an individual, Plaintiffs, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, JOHN T. KENNEDY, an individual Defendant.	Case No. 22 OC 00099 1B Dept. No. II

RESPONSE TO PLAINTIFF'S RENEWED APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION AND RELATED RELIEF

The Secretary of State submits the following response to Plaintiff's "Application for Temporary Restraining Order and Motion for Preliminary Injunction and Related Relief" (the "Application").

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Plaintiff waited several months to challenge Defendant Kennedy's candidacy, missing both the deadline to have the Secretary to address the challenge and the statutory deadline for finalizing the 2022 general election ballot. The Legislature has determined the relief available for belated, yet meritorious challenges under NRS 293.2045. The Secretary, if this court determines that such relief is warranted, does not oppose it.

However, to the extent Plaintiff seeks extra-statutory relief to require the reprinting of ballots more than one month after the July 22 deadline, the Secretary opposes it.

II. Factual Background

A. Background on the 2022 Election and Required Declaration of Candidacy

This election cycle, 1,227 candidates filed for Nevada elected office.[1] Each candidate submitted a declaration of candidacy swearing that they "will qualify for the office if elected thereto, including, but not limited to, complying with any limitation prescribed by the Constitution and laws of this State concerning the number of years or terms for which a person may hold the office."[2] Each candidate does so with the understanding that "knowingly and willfully filing a declaration of candidacy which contains a false statement is a crime punishable as a gross misdemeanor and also subjects me to a civil action disqualifying me from entering upon the duties of the office."[3]

The Secretary, as Nevada's Chief Elections Officer, reasonably relies on the candidates' truthfulness within their respective declarations of candidacy, checked by the competitive incentives of opposing candidates to seek disqualification of those who are not qualified.[4] This election cycle, the Secretary received two timely challenges, resulting in

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[1] *See* Wlaschin Decl. (8/29/2023) at ¶ 2, attached hereto as **Exhibit A.**

[2] NRS 293.177(2).

[3] *Id.*

[4] Plaintiff's own political consultant acknowledged this last weekend. *See* https://muthstruths.com/heres-whos-really-to-blame-for-ineligible-candidates-appearing-on-the-ballot/ (last accessed August 29, 2023); https://muthstruths.com/nevada-gop-establishment-bring-us-the-head-of-sigal-chattah-part-

the removal of two candidates from the 2022 election.[5] One was an unqualified candidate for the public office at issue in this case.[6] Plaintiff's allegation that the Secretary has affirmative "obligations to verify" candidacies does not cite to Nevada statute and is contrary to the existing structure of candidate declarations and challenges.[7]

B. The Libertarian Party's Candidate Filing, Including Defendant Kennedy

Similarly, for minor political parties, the Secretary reasonably relies upon filings by said political parties pursuant to Nevada statute. Defendant Kennedy is the Libertarian Party's candidate for Attorney General. NRS 293.1715(2) governs procedures for "minor political parties" such as the Libertarian Party to place candidates' names onto the ballot for the general election. Specifically, the "names of the candidates for partisan office of a minor political party must be placed on the ballot for the general election if the minor political party is qualified.[8] Among other requirements, the minor political party "must have filed a list of its candidates for partisan office ... with the Secretary of State."[9]

C. Defendant Kennedy's Declaration of Candidacy is Admittedly Inaccurate

Here, the Libertarian Party did such a filing for its candidates, including for Defendant Kennedy.[10] Further, Defendant Kennedy filed his declaration of candidacy.[11] Defendant Kennedy has now admitted that his declaration of candidacy is inaccurate because he is not a Nevada attorney in good standing.[12] Following Plaintiff's public

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ji/?fbclid=IwAR24gUjiFUxpPdluWIikEKmHi4-5p_alBzyivSdTnPy_zlRZUxqcik1Igvg&fbclid=IwAR24gUjiFUxpPdluWIikEKmHi4-5p_alBzyivSdTnPy_zlRZUxqcik1Igvg (acknowledging Plaintiff as a "new client") (last accessed August 29, 2022).

[5] *See* **Ex. A at ¶ 3.**

[6] *Id.*

[7] **Compl. at ¶ 13.**

[8] *Id.* (emphasis added).

[9] *Id.*

[10] A true and correct copy of the Libertarian Party filing is attached hereto as **Exhibit B.**

[11] A true and correct copy of Defendant Kennedy's declaration of candidacy is attached hereto as **Exhibit C.**

[12] *See* Kennedy E-Mail (8/26/2023), a true and correct copy of which is attached hereto as **Exhibit D.**

demands for absolute criminal prosecution,[13] Defendant Kennedy contends he did not know there was any such requirement.[14]

III. Standard of Review for Injunctive Relief

Injunctive relief is extraordinary relief.[15] A "preliminary injunction is an "extraordinary remedy that may only be awarded upon clear showing that the plaintiff is entitled to such relief."[16] A "preliminary injunction is available if an applicant can show a likelihood of success on the merits and a reasonable probability the non-moving party's conduct, if allowed to continue, will cause irreparable harm."[17] Even where a plaintiff makes those showings, a court may decline to order injunctive relief due to the potential hardship on each party and considerations of the public interest.[18] In cases like this one, where the party opposing injunctive relief is a government entity, the potential hardship and the public interest considerations are merged.[19]

Review of the factors demonstrate that Plaintiff cannot meet their extraordinary burden at this time.

IV. Legal Analysis

A. Plaintiff Missed the Deadline for Making an NRS 293.182 Challenge Addressable Directly by the Secretary

NRS 293.182 provided an April 5 deadline for anyone (including Plaintiff) to challenge Defendant Kennedy's candidacy to the Secretary, with potential referral and

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[13] *See* Chattah4Nevada Twitter posts (8/25/2023) (seeking the "absolute prosecution of Mr. Kennedy of a gross misdemeanor" by the current Attorney General). True and correct copies of these Chattah4Nevada Twitter posts are attached hereto as **Exhibit E.**

[14] **Ex. C.** The Secretary vigorously disputes Defendant Kennedy's additional allegations regarding staff statements made when Defendant Kennedy completed his candidate declaration. **Ex. A** at ¶ 7. While the Secretary does not believe this fact dispute needs to be resolved to adjudicate this Renewed Application, the Secretary is prepared to present staff declarations and testimony as needed to rebut Defendant Kennedy's further inaccurate statements.

[15] *Dep't of Conservation & Nat. Res., Div. of Water Res. v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005).

[16] *Winter v. Nat. Res. Def' Council, Inc.*, 555 U.S. 7, 22 (2008), *see also* NRS 33.010(1).

[17] *Clark Cty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1149, 924 P.2d 716, 719 (1996).

[18] *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721 (2004).

[19] *Nken v. Holder*, 556 U.S. 418, 435 (2009).

investigation by law enforcement. It is undisputed that Plaintiff made no such timely challenge.

Because no timely challenge was made, the Secretary lacked statutory authority to use the NRS 293.182 process to consider removing Defendant Kennedy from the 2022 election. In that context, the Secretary lacked authority to take any of the "subsequent remedial measures" Plaintiff desired because Plaintiff's challenge was untimely.[20] Any allegation made by the Application to the contrary is untrue and unlikely to succeed on the merits, such that it warrants injunctive relief.

B. Plaintiff may have the Ability to Seek NRS 293.2045 Relief from this Court, not the Secretary

Plaintiff now alternatively seeks relief in this case pursuant to NRS 293.2045, which provides a court of competent jurisdiction (not the Secretary nor any other official) the authority to award certain specific statutory relief.[21]

However, Plaintiff is limited in the NRS 293.2045 relief they can be awarded by this court, because Plaintiff missed the statutory deadline for revising the ballot for the general election.[22] That deadline was July 22, 2022, days before Plaintiff submitted her initial complaint to the Secretary[23] and more than one month before filing this lawsuit.[24]

Pursuant to the plain language of NRS 293.2045, if successful on this challenge, Plaintiff is eligible for the following relief:

- Defendant Kennedy should be "disqualified from entering upon the duties of the office for which [he] filed a declaration of candidacy."[25]
- The Secretary will ensure that "the appropriate election officers shall post a sign at each polling place where the person's name will appear on the ballot informing voters that the person is disqualified from entering upon the duties of the office."[26]

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[20] Compl. at ¶ 18.
[21] The Secretary does not take a position on the merits of the fraud claim against Defendant Kennedy or any potential referral for criminal investigation.
[22] *See* App. at 7:7-8 (immediately following bolded text).
[23] Compl. at ¶ 10.
[24] NRS 293.165(4).
[25] NRS 293.2045(1)(b).
[26] NRS 293.2045(2).

The Secretary does not oppose the imposition of this statutory relief only should the court deem it warranted.

C. Plaintiff does not have the Statutory Authority to Modify the Ballot Deadline, Making the Likelihood of Success Low on that Claim for Relief

However, to the extent sought here, Plaintiff is not entitled to an injunction forcing the Secretary to make changes to the ballot after the July 22 deadline. The Legislature has set forth the available relief for the situation Plaintiff alleges here and specifically precludes removing disqualified names from the ballot after this deadline.[27]

Similarly, the Legislature has set forth the relief allowed to qualified minor political parties had this challenge been made prior to the July 22 deadline. Specifically, had Plaintiff made a timely challenge, "the executive committee of the [Libertarian Party]" would have the statutory authority to designate a substitute candidate for Defendant Kennedy.[28] Plaintiff's belated challenge results in the Libertarian Party having no qualified candidate on the ballot for this statewide office.

Accordingly, Plaintiff is unlikely to succeed on the merits of its claim that the ballot modification deadline should be ignored.

D. The Public Interest, as Expressed by the Legislature, Warrants Denial of the Application

Even if Plaintiff was likely to succeed on the merits of the Application, this court may decline to order injunctive relief due to the potential hardship on each party and considerations of the public interest.[29]

When weighing the public interest, this court must consider Plaintiff's own inaction when determining whether extraordinary relief at great logistical expense and cost is warranted. Delay seeking injunctive relief warranted denial of it, implying it is not irreparable.[30] Here, basic due diligence by Plaintiff to bring a timely complaint would have

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[27] NRS 293.2045(1)(a).
[28] NRS 293.165(1).
[29] *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721 (2004).
[30] *See Oakland Tribune, Inc v. Chronicle Pub'g Co.*, 762 F.2d 1374, 1377 ("Plaintiff's long delay before seeking a preliminary injunction implies a lack of urgency and irreparable

prevented her asserted harm. Instead, without statutory support, Plaintiff claims it is the Secretary's job to investigate every candidate that already averred their candidacies are truthful and valid, even under threat of a potential gross misdemeanor.

Weighed against Plaintiff's harm is the definite and certain harm to Nevadans resulting from reformulating and reprinting ballots approved as to form more than one month ago.[31] The Secretary estimates that reformulating and reprinting ballots would cost approximately $2.7 million.[32] Further, the Legislature weighed this exact balance of harms between a candidate running against someone unqualified versus the Secretary's logistical time and costs when delineating relief available 1) before the ballot deadline and 2) after the ballot deadline. No good cause exists for undoing this weighing of the public interest here.

Finally, in the alternative, should Plaintiff convince this court to ignore the Legislature's directive as to reprinting ballots after the existing July 22 deadline, the same deadline should be extended to allow the Libertarian Party, should it wish, to exercise its NRS 293.165(1) rights to name a replacement candidate for this office.

V. CONCLUSION

Should the court determine the challenge has merit and that Plaintiff can seek such relief, the Secretary submits that the Legislature specified the appropriate relief in NRS 293.2405(1)(b) and NRS 293.2045(2), based on the untimeliness of Plaintiff's complaint relative to the statutory deadline for revising the general election ballot.

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harm."); *Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015); *Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (finding a 44-day delay in seeking injunctive relief to be "inexcusable").That reason alone justifies denying the TRO application.

[31] **Ex. A** at ¶ 8.

[32] *Id.*

In the alternative, should this court ignore the Legislature's prescribed statutory relief and consider modifying the July 22 ballot deadline for purposes of removing Defendant Kennedy, the same July 22 deadline should be modified for the Libertarian Party's statutory right to name a substitute, qualified candidate.

DATED this 31st day of August, 2022.

AARON D. FORD
Attorney General

By: *10950 for
Craig Newby, Esq. (Bar No. 8591)
Deputy Solicitor General
Attorneys for Defendant Barbara Cegavske

AFFIRMATION

Pursuant to NRS 239B.030/603A.040

The undersigned does hereby affirm that the preceding document does not contain *"Personal Information"* and agrees that upon filing of additional documents in the above matter, an Affirmation will be provided ONLY if the document contains a social security number (NRS 239B.030) or "personal information" (NRS 603A.040), which means a natural person's first name of first initial and last name in combination with any one or more of the following data elements:

1. Social Security number.
2. Drivers license number, driver authorization card number or identification card number.
3. Account number credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.
4. A medical identification number or a health insurance identification number.
5. A user name, unique identifier or electronic mail address in combination with a password, access code or security question and answer that would permit access to an online account.

The term does not include publicly available information that is lawfully made available to the general public.

DATED this 31st day of August, 2022.

AARON D. FORD
Attorney General

By: _____
Craig Newby, Esq. (Bar No. 8591)
Deputy Solicitor General
Attorneys for Defendant Barbara Cegavske

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on the 31st day of August, 2022, I deposited for mailing in the United States Mail, first-class postage prepaid, a true and correct copy of the foregoing document, addressed to the following:

JOSEPH S. GILBERT, ESQ.
405 Marsh Ave.
Reno, Nevada 89509
Attorney for Sigal Chattah

JOHN T. KENNEDY
1166 Slate Road
Wellington, NV 89444

An employee of the Office
of the Nevada Attorney General

EXHIBIT "A"

EXHIBIT "A"

AARON FORD
Attorney General
Craig Newby, Esq. (Bar No. 8591)
Deputy Solicitor General
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(702) 486-3773 (fax)
cnewby@ag.nv.gov

Attorneys for Defendant
Barbara Cegavske

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

SIGAL CHATTAH, an individual, Plaintiffs, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, JOHN T. KENNEDY, an individual Defendant.	Case No. 22 OC 00099 1B Dept. No. II

DECLARATION OF MARK WLASCHIN

I, MARK WLASCHIN, hereby state that the assertions of this declaration are true:

1. I have been the Deputy Secretary of State for Elections since October 2020. I make this declaration based on personal knowledge.

2. For the 2022 election cycle, 1,227 candidates filed for Nevada elected office, 135 of which filed with the Secretary of State.

3. In March and April 2022, the Secretary of State received challenges for two candidates. First, on March 31, 2022, the Secretary of State received a challenge to the candidacy of Nicole Sirotek, asserting that Ms. Sirotek failed to meet the qualifications to be a Republican candidate for State Assembly, District 33. That challenge resulted in the disqualification of Ms. Sirotek by order of the Fourth Judicial District Court of the State of Nevada, filed April 25, 2022. Second, by April 4, 2022, the Secretary of State had

received more than one challenge to the candidacy of Stuart Mackie, asserting that Mr. Mackie did not qualify to run for Attorney General because he was not a member of the State Bar in good standing. The challenge to Mr. Mackie resulted in his disqualification by order of the Third Judicial District Court of the State of Nevada, filed April 28, 2022.

4. The Libertarian Party submitted a list of its candidates for partisan office with the Secretary of State by filing dated March 7, 2022. A true and correct copy of that filing is attached to the Response to Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction and Related Relief ("Response") as **Exhibit B**.

5. John T. Kennedy filed with the Secretary of State a declaration of candidacy for the office of Attorney General for the 2022 Election, dated March 10, 2022. A true and correct copy of that declaration is attached to the Response as **Exhibit C**.

6. On August 26, 2022, the Secretary of State received an email from Mr. Kennedy. A true and correct copy of that email is attached to the Response as **Exhibit D**. In that email, Mr. Kennedy states, "When I filed for my candidacy in your office I was interviewed by two members of your staff, one of whom asked me if I was a lawyer. I stated that I was not, but that it was my understanding that this was not a requirement to run for the office. She verbally confirmed to me that it was not a requirement."

7. Following receipt of Mr. Kennedy's email, I investigated his allegations by speaking with the likely two staff members he described. I am not identifying them by name to preserve their personal privacy. Based on my initial investigation, the Secretary of State disputes Mr. Kennedy's statement in his August 26, 2022 email that any member of the Secretary of State's staff discussed candidate qualifications with him.

8. The deadline to make changes to the ballot across the state was between August 15 and August 22, 2022. Ballots and sample ballot proofs are already being printed to meet statutory deadlines.

9. Based on an examination of previous ballot expenditures, I estimate that reformulating and reprinting ballots would cost approximately $2.7 million.

Furthermore, I estimate that it would cost approximately $330,000 to mail a separate notice to mail ballot recipients notifying them of Mr. Kennedy's disqualification.

Pursuant to NRS 53.045, I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on this 31 day of August, 2022.

MARK WLASCHIN

EXHIBIT "B"

EXHIBIT "B"

LIBERTARIAN PARTY OF NEVADA

7 March 2022

Barbara Cegavske
Nevada Secretary of State
101 N. Carson Street, Suite 3
Carson City, Nevada 89701

Dear Ms. Cegavske & who it may concern with the Elections Division,
The Libertarian Party of Nevada has approved the following individuals to run for Partisan Public Offices:

United States Senate
Neil Scott
3150 Soft Breezes Dr., Apt. 1220
Las Vegas, Nevada 89128

United States Congressional District 1
Kenneth Cavanaugh
4800 Vegas Valley Dr., Trlr 179
Las Vegas, Nevada 89121

United States Congressional District 2
Darryl Baber
7259 Goldrush Dr.,
Ryndon, Nevada 89801

Lieutenant Governor
Javi Tachiquin
1484 Mary Jo Dr.
Gardnerville, Nevada 89460

Secretary of State
Ross Crane
9461 Ashlee Ridge Ave
Las Vegas, Nevada 89178

Treasurer
Bryan Elliott
10204 Orkiney Dr.
Las Vegas, Nevada 89144

Controller
Jed William Profeta
9068 National Park Dr.
Las Vegas, Nevada 89178

Attorney General
John T. Kennedy
1166 Slate Road
Wellington, Nevada 89444

State Senate District 9
Anna Sosnina
7379 Fort McDermitt Ave
Las Vegas, Nevada 89179

State Senate District 10
Christopher Cunningham
3150 W. Twain Ave, Apt 545
Las Vegas, Nevada 89103

State Senate District 16
Jeff Harper
375 Manciano Way
Reno, Nevada 89521

State Senate District 20
Brandon Mills
1319 Yucca St.
Boulder City, Nevada 89005

State Assembly District 2
Jason Bednarz
10008 Bow Ridge Ct.
Las Vegas, Nevada 89145

State Assembly District 5
Ron Morgan
1616 Cordoba Canyon St.
Las Vegas, Nevada 89117

LIBERTARIAN PARTY OF NEVADA

State Assembly District 10
Brandon Fenimore
3257 Pampas Pl.
Las Vegas, Nevada 89146

State Assembly District 20
Josiah L. LaRow
2050 Irwin Cir.
Las Vegas, Nevada 89119

State Assembly District 23
Mercy Manley
1296 Black Mountain Ct.
Boulder City, Nevada 89005

State Assembly District 26
Reed Mitchell
9792 Quartette Dr.
Reno, Nevada 89521

State Assembly District 30
Garrett McGeein
884 Glen Molly Dr.
Sparks, Nevada 89434

State Assembly District 35
Mindy Robinson
5620 Benevento Ct.
Las Vegas, Nevada 89141

State Assembly District 37
Marc Tedoff
9100 Ballad Ave
Las Vegas, Nevada 89129

State Assembly District 40
Samuel Toll
1757 Main St.
Gold Hill, Nevada 89440

State Assembly District 41
Sean McNamara
306 Maddelena Ave
Las Vegas, Nevada 89183

Clark County Commissioner District G
Jesse Welsh
942 Westminster Ave
Las Vegas, Nevada 89119

Washoe County Commissioner District 2
David Banuelos
4608 Neil Rd. #259
Reno, NV 89502

We certify the foregoing to be a true and correct list of Candidates chosen by the Libertarian Party of Nevada as prescribed by NRS and the LPN Bylaws.

Katharine Banuelos
Secretary, Libertarian Party of Nevada

State of Nevada
County of Washoe
This instrument was acknowledged
before me on
03-07-2022 by Katharine E. Banuelos

(signature of notarial officer)

EXHIBIT "C"

EXHIBIT "C"

2022 Election

State of Nevada Declaration of Candidacy of

John T. Kennedy

For the Office of

Attorney General

Minor Political Party - Partisan Office *Secretary of State Barbara K. Cegavske*

STATE OF NEVADA

COUNTY OF Carson City

For the purpose of having my name placed on the official ballot as a candidate for the Libertarian Party nomination for the office of Attorney General, I, the undersigned John T. Kennedy, do swear or affirm under penalty of perjury that I actually, as opposed to constructively, reside at [redacted], in the City or Town of Wellington, County of Douglas, State of Nevada; that my actual, as opposed to constructive, residence in the State, district, county, township, city or other area prescribed by law to which the office pertains began on a date at least 30 days immediately preceding the date of the close of filing of declarations of candidacy for this office; that my telephone number is [redacted], and the address at which I receive mail, if different than my residence, is ; that I am registered as a member of the Libertarian Party; that I am a qualified elector pursuant to Section 1 of Article 2 of the Constitution of the State of Nevada; that if I have ever been convicted of treason or a felony, my civil rights have been restored; that I have not, in violation of the provision of NRS 293.176, changed the designation of my political party or political party affiliation on an official application to register to vote in any state since December 31 before the closing filing date for this election; that I generally believe in and intend to support the concepts found in the principles and policies of that political party in the coming election; that if nominated as a candidate of the Libertarian Party at the ensuing election, I will accept that nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practices in campaigns and elections in this State; that I will qualify for the office if elected thereto, including, but not limited to, complying with any limitation prescribed by the Constitution and laws of this State concerning the number of years or terms for which a person may hold the office; that I understand that knowingly and willfully filing a declaration of candidacy which contains a false statement is a crime punishable as a gross misdemeanor and also subjects me to a civil action disqualifying me from entering upon the duties of the office; and that I understand that my name will appear on all ballots as designated in this declaration.

John T. Kennedy

Signature of candidate for office

John T. Kennedy

Designation of name to appear on ballot

John T. Kennedy

Designation of name to appear on certificate of election

jtkennedy@gmail.com

E-mail address (optional)

Subscribed and sworn or affirmed to before me this 10th day of the month of March of the year 20 22

John T. Kennedy

Name of Candidate

Kristen Rhynes

Notary Public or other person authorized to administer an oath

EL103b
NRS 293.177
Revised: 2/10/2022

EXHIBIT "D"

EXHIBIT "D"

[redacted]

[redacted]

[redacted]

[redacted]

From: John T. Kennedy <[redacted]>
Sent: Friday, August 26, 2022 3:12:55 PM (UTC-08:00) Pacific Time (US & Canada)
To: SOS Customer Service <sosmail@sos.nv.gov>
Subject: [redacted]

To Barbara Cegavske
Nevada Secretary of State,

I'm John Kennedy, the Libertarian Party candidate for Attorney General of Nevada. Today it came to my attention that I was not eligible to run for this office because I am not a member of the bar in Nevada. That being the case, I seek to withdraw my candidacy and be removed from the ballot. I have no intention of campaigning for an office I'm not eligible to run for.

I was unaware of this requirement until today. When I filed for my candidacy in your office I was interviewed by two members of your staff, one of whom asked me if I was a lawyer. I stated that I was not, but that it was my understanding that this was not a requirement to run for the office. She verbally confirmed to me that it was not a requirement.

John T. Kennedy
[redacted]

EXHIBIT "4"

AARON FORD
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Attorneys for Defendant
Barbara Cegavske

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

SIGAL CHATTAH, an individual, Plaintiffs, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, JOHN T. KENNEDY, an individual Defendant.	Case No. 22 OC 00099 1B Dept. No. II

DECLARATION OF MARK WLASCHIN

I, MARK WLASCHIN, hereby state that the assertions of this declaration are true:

1. I have been the Deputy Secretary of State for Elections since October 2020. I make this declaration based on personal knowledge.

2. This declaration is made in support of the Secretary's supplemental response to Plaintiff's Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction, and is attached thereto as **Exhibit C**.

3. I am informed of the request for additional information pertaining to the costs and logistics associated with adding information to be included with mail ballot mailings pertaining to Defendant Kennedy's ineligibility for office, notwithstanding the lateness of this challenge.

4. Each Nevada county contracts for mail ballots to be printed by outside vendors, who then print and mail the assembled mail ballots to active registered Nevada voters within that county.

5. Understanding the urgency of this request, I have inquired with each Nevada county on this question.

6. Additionally, I understand that certain Nevada counties contract with Runbeck Election Services for mail ballot services.

7. Runbeck Election Services provided me an estimate of $179,520 without tax and shipment for providing such an insert for Clark County, Carson City, Humboldt County, White Pine County, and maybe Nye County.

8. The deadline Runbeck Election Services has for doing such an insert for said counties is no later than Wednesday, September 7th.

9. Washoe County provided me with an estimate of $30,909.06 to put a notice in its mail ballots from its mail ballot vendor.

10. For Elko County, I was informed that they would not have information to respond to my request until next week.

11. For Lincoln County, I was informed that they did not information from their vendor with which to respond to my request until next week.

12. In short, on the Friday prior to the Labor Day Weekend, it is not possible for the Secretary to know whether all Nevada counties could timely add the additional sheet with information to each mail ballot, and, if so, what the approximate cost would be. Pursuant to NRS 53.045, I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on this 2nd day of September, 2022.

/s/Mark Wlaschin
MARK WLASCHIN

EXHIBIT "5"

RPLY
JOSEPH S. GILBERT, ESQ.
Nevada Bar No.: 9033
JOEY GILBERT LAW
405 Marsh Ave.
Reno, Nevada 89509
Tel: (775) 284-7000
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Joey@joeygilbertlaw.com
Counsel for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

SIGAL CHATTAH, an individual, Plaintiff, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, JOHN T. KENNEDY, an individual Defendants.	Case No: 22OC00091B Dept No.: II

PLAINTIFF'S REPLY TO RESPONSE TO APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION AND RELATED RELIEF

COMES NOW, Plaintiff, SIGAL CHATTAH by and through her attorney of record, JOSEPH S. GILBERT, ESQ. of JOEY GILBERT LAW, and hereby submits the foregoing Reply to Response Motion for temporary restraining order and preliminary injunction pursuant to Rule 65 of the Nevada Rules of Civil Procedure retraining and preventing Defendants from taking the actions set forth below.

This Reply and the Memorandum of Points and Authorities set forth herein, all Exhibits and any oral arguments to be made at the time of hearing.

Dated this 6th day of September, 2022.

JOEY GILBERT LAW

By: /s/ 14593
Roger O'Donnell, Esq. for
Joseph S. Gilbert, Esq.
Nevada Bar No.: 9033
JOEY GILBERT LAW
405 Marsh Ave
Reno, Nevada 89501
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Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants' Response to Plaintiff's request attempt to shift the burden of NRS 293.124 on Chattah. NRS 293.124[1] specifically states that the Secretary of State is responsible for the execution and enforcement of state laws relating to elections in this state, including NRS 228.010, which requires a candidate for Nevada Attorney General to be a member of the State Bar of Nevada in good standing. It is conclusive at this time that Defendant John T. Kennedy is neither.

Further, this Court required Defendants to provide proof of costs to modify the mail in ballots. It is most significant to note that nowhere in Wlaschkin's Affidavit does he confirm that the ballots have been printed. They have not. In fact, there is also no evidence of any contract or payment to have the ballots printed yet, allowing the modification of the ballots easily without the State incurring unnecessary costs.

Most important though is the fact that Defendants have known since Chattah filed her Complaint on July 26, 2022 that Kennedy was a disqualified candidate. Wlashkins Affidavit specifically states that the time to make the changes to the ballot was between August 15 and August 22, 2022, almost a month after the Secretary of State was placed on notice of Kennedy's disqualification and chose to ignore it.

NRS 293.124 obligated the Secretary of State to make the changes to the ballot after being placed on notice that Kennedy was disqualified under NRS 228.010. She chose to do

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[1] **NRS 293.124 Secretary of State to serve as Chief Officer of Elections; regulations.**

1. The Secretary of State shall serve as the Chief Officer of Elections for this State. As Chief Officer, the Secretary of State is responsible for the execution and enforcement of the provisions of title 24 of NRS and all other provisions of state and federal law relating to elections in this State.

2. The Secretary of State shall adopt such regulations as are necessary to carry out the provisions of this section.

neither and now seeks to shift the burden of inaction on a Candidate that is not deputized to enforce election laws under NRS .124.

NRS 293.2045 PROVIDES NO ADEQUATE REMEDY FOR CHATTAH[2]

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.[3] 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.

Accordingly, the only remedy to ensure that a contested election does not occur due to a disqualified candidate appearing on every mail in ballot in Nevada and unfairly prejudicing a qualified candidate, is to simply have him removed from the ballot.

CONCLUSION

At this juncture, Defendants provided no proof that the mail in ballots have been printed. They have known of the disqualified candidate since July 26, 2022, and refused to modify the ballot, eliminating the disqualified candidate between August 15-22, 2022, pursuant to their own deadline.

It is only Defendant Cegavske's obligation as Nevada Secretary of State to enforce all election laws including candidate disqualification under NRS 293.124. The failure to enforce NRS 228.010 lies solely at the hands of Defendant Cegavske.

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[2] NRS 293.2045 (b)(2) provides "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 voters that the person is disqualified from entering upon the duties of the office.**

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

Plaintiff respectfully requests that this Court grant Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction and issue a Restraining Order precluding Defendants from allowing the disqualified candidate John T. Kennedy from remaining on the ballot and appearing on mail in ballots. As noted *supra*, the alternative would simply compromise the integrity of the election, unfairly prejudice a qualified candidate running for office and guarantee an election contest following the General Election.

Dated this 6th day of September, 2022.

JOEY GILBERT LAW

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EXHIBIT "6"

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

SIGAL CHATTAH, an individual, Plaintiff, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, JOHN T. KENNEDY, an individual Defendants.	Case No: 22OC00091B Dept No.: II

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 7th day of September, 2022, the Court entered an Order Denying Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction and Related Relief. A copy of said Order is attached hereto.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain

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the social security number of any person.

DATED this 7th day of September, 2022.

JOEY GILBERT LAW

By: /s/ [illegible] 14593
for Joseph S. Gilbert, Esq.
Nevada Bar No.: 9033
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify I am an employee of JOEY GILBERT LAW, and on the below date, I served the foregoing document on the parties set forth below by:

____ via the Court's Electronic Filing Service;
_x__ by placing the original, or a true copy thereof, in a sealed envelope placed for mailing in the USPS, in Reno, NV, postage prepaid, following ordinary business practices;
_____ via facsimile (Fax) to
__x__ via email to - CNewby@ag.nv.gov & nlawrence@vegascase.com
_____ via overnight delivery
_____ personal delivery

to the following:

Craig Newby, Esq.
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

Nathan Lawrence, Esq.
Gallian Welker, & Beckstrom, LC
540 E. St., Louis Ave.
Las Vegas, NV 89104

DATED this 7th day of September, 2022.

JOEY GILBERT LAW

Employee

2022 SEP -7 AM 10:35

BY

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

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SIGAL CHATTAH, an individual, Plaintiff, v BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE; JOHN T. KENNEDY, an individual, Defendants.	CASE NO. 22 OC 00099 1B DEPT. 2

ORDER DENYING RENEWED APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION AND RELATED RELIEF

PROCEDURAL BACKGROUND

Before the Court is Sigal Chattah's Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction and Related Relief, Secretary of State Barbara Cegavske's response and supplemental response, and Chattah's reply. Defendant, John T. Kennedy, did not file a response. The Court held three conferences with counsel Joseph S. Gilbert, Esq. for Sigal Chattah, Craig Newby, Esq. for Secretary of State Cegavske, and Nathan Lawrence, Esq. for John T. Kennedy. The parties consented to the Court determining the request for a temporary restraining order on the pleadings and papers submitted by the Court and the arguments made during the conferences, and without an evidentiary hearing.

ISSUES

Has Chattah shown that she is entitled to a temporary restraining order?

Has Chattah shown that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to her?

Has Chattah shown that during the litigation, the Secretary of State is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of Chattah's rights respecting her general election race, and tending to render the judgment ineffectual?

FINDINGS OF FACT

The following facts are undisputed.

Chattah is a candidate for attorney general in the upcoming general election.

On March 10, 2022 John T. Kennedy filed his declaration of candidacy for the office of attorney general as a member of the Libertarian Party. The legislature, in NRS 293.177(2), established the language for the declaration of candidacy. As part of his Declaration Kennedy swore or affirmed under penalty of perjury "that [he] will qualify for the office if elected thereto." To qualify for the office of attorney general a candidate must be at least 30 years old, be a qualified elector (defined by the Nevada Constitution in Article 2, section 1 as: a citizen of the United States; who shall have actually, and not constructively, resided in Nevada six months; and in the district or county 30 days next preceding any election; not convicted of treason or felony in any state or territory of the United States, unless restored to civil rights; and not have been adjudicated mentally incompetent, unless restored to legal capacity); a citizen resident of Nevada for 3 years, and a member of the State Bar of Nevada in good standing. NRS 228.010(3). Kennedy is not a member of the State Bar of Nevada in good standing so he does not qualify for the office of attorney general.

On July 26, 2022 Chattah filed with the Secretary of State's Office an Election Integrity Complaint in which she stated that Kennedy is not qualified to be attorney general because he is not a member of the State Bar of Nevada. Under NRS 293.165(4) "no change may be made on the ballot for the general election after 5 p. m. on the fourth Friday in July of the year in which the general election is held." The fourth Friday in July was the 22nd.

Preelection candidate qualification challenges must be filed not later than 5 days after the last day the person may withdraw his candidacy under NRS 293.182(1). A withdrawal of candidacy must be submitted within 7 days, excluding Saturdays, Sundays and holidays, after the last day for filing. NRS 293.182(1). The last day for filing is the second Friday after the first Monday in March. NRS 293.177(1)(b).

The timeline is:

March 10, 2022	Kennedy filed his declaration of candidacy
March 25, 2022	Last day to file declaration of candidacy
April 5, 2022	Last day to withdraw candidacy
April 11, 2022	Last day to file preelection candidate qualification challenges
July 22, 2022	Deadline for changing the ballot
July 26, 2022	Chattah filed preelection candidate qualification challenge

Chattah filed her preelection candidate qualification challenge 105 days after the statutory deadline for challenges, and 4 days after the deadline to change the general election ballot.

ANALYSIS

Chattah blames the Secretary of State for failing to investigate Kennedy's qualifications and cites NRS 293.124 to support her argument. NRS 293.124(1)

provides: "The Secretary of State shall serve as the Chief Officer of Elections for this State. As Chief Officer, the Secretary of State is responsible for the execution and enforcement of the provisions of title 24 of NRS . . . ."

The Secretary countered that the legislature intended that electors file qualification challenges and cited NRS 293.182 for support. That statute provides in pertinent part:

> 1. After a person files a declaration of candidacy . . . an elector may file with the [Secretary of State] a written challenge of the person on the grounds that the person fails to meet any qualification required for the office . . . .
>
> 2. A challenge filed pursuant to subsection 1 must:
>
> (a) Indicate each qualification the person fails to meet;
>
> (b) Have attached all documentation and evidence supporting the challenge; and
>
> (c) Be in the form of an affidavit, signed by the elector under penalty of perjury.
>
> 3. Upon receipt of a challenge pursuant to subsection 1:
>
> (a) The Secretary of State shall immediately transmit the challenge to the Attorney General.
>
> . . .

The Court agrees with the Secretary. Under NRS 293.177(1) a candidate must file a declaration of candidacy on a form that must include, under penalty of perjury, that, among other things, the candidate "will qualify for the office if elected thereto." Kennedy did that in this case. The statutes do not expressly or implicitly require the Secretary of State to investigate every qualification of every candidate, or any qualification of any candidate. Under NRS 293.182(1) an elector may file a qualification challenge and under 293.182(3) the Secretary of State's obligation is to process, not investigate, the challenge.

The legislature, in NRS 293.2045(2), established the procedure for handling a disqualified candidate's name on the ballot. Under that statute if the name appears on a ballot 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 voters that the person is disqualified from entering upon the duties of the office." NRS 293.2045(2) addresses ballots cast at polling places, it does not address mail ballots. But NRS 293.2045(3), which applies in "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" including, without limitation, any action brought for declaratory or injunctive relief or any other legal or equitable relief. Chattah is seeking injunctive relief.

Under NRS 33.010, and injunction may be granted:

> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
>
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
>
> 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

There are four factors the Court must consider in deciding whether injunctive relief is appropriate: (1) the threat of irreparable harm; (2) the relative interests of the parties; (3) the moving party's likelihood of success on the merits; and (4) the interest of the public. NRS 33.010, NRCP 65, and *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 587 P.2d 1329 (1978).

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(1) The threat of irreparable harm

If mail voters know that Kennedy is disqualified and votes for Kennedy will not be counted, those voters may vote for Chattah, but Chattah has not shown, under any standard of proof, that having Kennedy's name on the ballot will negatively affect the outcome of her attorney general race, the allegation is speculation.

The irreparable harm factor is also affected by the fact that Chattah filed her preelection candidate qualification challenge 105 days after the statutory deadline, and 4 days after the deadline to change the general election ballot. A timely challenge by Chattah could have avoided the present scenario.

(2) The relative interests of the parties

Chattah has an interest in having voters informed that Kennedy is disqualified and that a vote for Kennedy will not be counted, so electors can decide which, if any, qualified candidate to vote for.

The Secretary of State has an interest in having candidates and electors timely comply with election statutes. The Secretary of State has an interest in not spending taxpayer dollars to correct a failure of a party to timely file preelection candidate qualification challenges. If the Court orders the Secretary to direct the county elections officials to print on the mail ballot, or include an insert with mail ballots, under the facts and circumstances of this case, there will be no incentive for a candidate or any elector to comply with the statutes by timely filing a preelection candidate qualification challenge because they will be able to file an action for an injunction up to 105 days after the preelection candidate qualification challenge deadline and up to 4 days after the deadline for changing the ballot.

(3) The moving party's likelihood of success on the merits

It is not reasonably likely that Chattah will prevail on her request to take Kennedy's name off the ballot, or in the alternative, to include a notice of Kennedy's

disqualification with the mail ballots because of her extremely late filing of her preelection candidate qualification challenge.

(4) The interest of the public

The public has an interest in having every legally cast ballot counted. Every elector has an interest in knowing who the candidates are. A disqualified candidate is not a candidate, so failure to give notice to mail voters that Kennedy is disqualified affects those voters' interests in knowing who the candidates are and that a vote for Kennedy will not be counted.

The public has an interest in having the Secretary of State, candidates and electors comply with the election statutes. The public has an interest in not paying for ballot corrective action caused by a very late filing of a preelection candidate qualification challenge.

CONCLUSIONS OF LAW

The Court has carefully considered and weighed the factors for granting a restraining order.

The fact that Chattah filed her preelection candidate qualification challenge 105 days after the deadline and 4 days after the deadline for changing the ballot undermines her request for a restraining order.

Chattah has not shown, under any standard of proof, that she is entitled to a temporary restraining order.

Chattah has not shown, under any standard of proof, that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to her.

Chattah has not shown, under any standard of proof, that during the litigation, the Secretary of State is doing or threatens, or is about to do, or is procuring or suffering

to be done, some act in violation of Chattah's rights respecting her general election race, and tending to render the judgment ineffectual.

THE COURT ORDERS:

Sigal Chattah's Application and Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction and Related Relief is denied.

If a party wants an evidentiary hearing on the request for a preliminary injunction he or she must file and serve an immediate request to set a hearing and include in the request a specific description of the facts the party believes are relevant and disputed.

September 7, 2022.

James E. Wilson, Jr.
District Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 7 day of September 2022, I served a copy of this document by placing a true copy in an envelope addressed to:

Joseph S. Gilbert, Esq. 405 Marsh Ave. Reno, NV 89509 joey@joeygilbertlaw.com	Craig Newby, Esq. Office of the Attorney General 555 E. Washington Ave., Ste. 3900 Las Vegas, NV 89101 cnewby@ag.nv.gov Nathan Lawrence, Esq. GALLIAN WELKER & BECKSTROM, L.C. 540 East St. Louis Ave. Las Vegas, NV 89104 nlawrence@vegascase.com tbarrick@vegascase.com

the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.

Billie Shadron
Judicial Assistant

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on the 7 day of September 2022, I served a copy of this document by placing a true copy in an envelope addressed to:

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