

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

AMERICAN CIVIL LIBERTIES UNION OF  
NEVADA, a domestic nonprofit corporation; and  
STEVEN BACUS, an individual,

Petitioners,

vs.

THE COUNTY OF NYE, a governmental entity; and  
MARK KAMPF, in his official capacity as interim  
County Clerk,

Respondents.

Electronically Filed  
Oct 19 2022 10:17 AM  
Elizabeth A. Brown  
Clerk of Supreme Court  
Case No. 85508

**RESPONDENTS' APPENDIX**

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**2nd REVISED TEMPORARY REGULATION OF  
THE SECRETARY OF STATE**

August 24, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted-material] is material to be omitted.

AUTHORITY: §§ 1, 2, and 4-7, NRS 293.124 and 293.3677; §§ 3 and 10, NRS 293.124, 293.247, 293.3677 and 293.404; §§ 8, 9 and 11-13, NRS 293.124 and 293C.369.

A REGULATION relating to elections; establishing requirements for conducting a hand count of ballots; and providing other matters properly relating thereto.

**Digest:**

Existing law requires the Secretary of State to adopt regulations establishing uniform, statewide standards for counting a vote cast using certain methods of voting and authorizes the Secretary of State to adopt regulations for counting votes cast using certain types of mechanical voting systems. (NRS 293.3677, 293C.369) This regulation sets forth various requirements for a hand count of the ballots.

**Section 7** of this regulation defines the term “hand count.”

**Sections 2 and 9** this regulation authorize a county or city clerk, in consultation with the governing body of the county or city, to conduct a hand count of the ballots voted in an election.

**Sections 3 and 10** of this regulation require a county or city clerk who is going to conduct a hand count to submit to the Secretary of State 30 days before the date of the election a plan for the hand count, which must include certain procedures for conducting the hand count, plans for the location and necessary equipment and personnel for the hand count, plans ensuring the security of the hand count and contingency plans to meet certain deadlines.

**Sections 4 and 11** of this regulation require a county or city clerk conducting a hand count to establish a sufficient number of hand count tally teams, which must consist of at least four election board officers, who must not all be of the same political party.

**Sections 5 and 12** of this regulation set forth the procedures required to tally the votes during the hand count.

**Sections 6 and 13** of this regulation: (1) set forth certain requirements for the writing devices used by the hand count tally team; and (2) prohibit the hand count tally team members from bringing their own writing devices into the physical location where the ballots will be hand counted.

**Section 1.** Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

**Sec. 2.** *1. Each county clerk may, in consultation with the board of county commissioners, conduct a hand count of the ballots voted in an election for:*

*(a) All contests on the ballot;*

*(b) A specified number of contests on the ballot, as determined by the county clerk; or*

*(c) A specified sample of the precincts in the county, as determined by the county clerk.*

*2. If a county clerk decides to conduct a hand count pursuant to subsection 1, the hand count must:*

*(a) Be conducted in accordance with the requirements of sections 2 to 6, inclusive, of this regulation;*

*(b) Be completed on or before the seventh day following the election; and*

*(c) Use the forms prescribed by the Secretary of State for tallying the results of the hand count.*

*3. A county clerk may use an electronic tabulator to validate the results of the hand count.*

*4. The Secretary of State will make the forms for tallying the results of the hand count available not less than 30 days before the date of the election.*

**Sec. 3.** *If a county clerk is going to conduct a hand count, the county clerk shall submit to the Secretary of State not later than 30 days before the date of the election a plan for conducting the hand count. The plan must include, without limitation:*

1. *A detailed description of how the hand count will be conducted in order to meet the applicable deadlines set forth in this chapter and title 24 of NRS for counting ballots.*
2. *The total number of election board officers and hand count tally teams that will be required to complete the hand count.*
3. *The work schedule for the hand count, which must not be more than 16 hours in a 24-hour period. There must not be more than two separate 8-hour shifts.*
4. *The physical location where the ballots will be hand counted and a scale diagram depicting the planned setup of the location.*
5. *An estimated list of any items necessary to conduct the hand count, which must include, without limitation:*
  - (a) *Whether all such items are currently in the possession of the county and, if not, the date by which any necessary items will be obtained by the county; and*
  - (b) *The estimated cost to the county to obtain the necessary items.*
6. *Any amendment to the plans for the observation of the hand count by the members of the public in accordance with section 1 of LCB File No. R108-21 and NRS 293B.353 and the plan submitted pursuant to NRS 293B.354.*
7. *The plans for ensuring the security of:*
  - (a) *The ballots consistent with the plan submitted pursuant to NAC 293B.040, as amended by section 8 of LCB File No. R091-21; and*
  - (b) *The election board officers who conduct the hand count.*
8. *A list of any outside vendors hired or who may be hired to consult or assist in the preparation or operation of the hand count.*

9. *A contingency plan for:*

- (a) Completing the counting of the ballots in the event the hand count will not be completed by the date required for the canvass of returns pursuant to NRS 293.387;*
- (b) Conducting any recount in accordance with NRS 293.404; and*
- (c) Completing any recount by the deadline set forth in NRS 293.405.*

*Sec. 4. 1. The county clerk shall establish a sufficient number of hand count tally teams to conduct the hand count. Each hand count tally team must consist of at least four election board officers, who must not be of the same political party, as follows:*

- (a) One election board officer known as the reading clerk to read the ballots;*
- (b) One election board officer known as the verification clerk to watch that the ballots are read correctly; and*
- (c) Two election board officers known as the tally clerks to separately record the votes on the appropriate tally form.*

*2. In addition to the election board officers appointed to a hand count tally team pursuant to subsection 1, the county clerk may appoint to a hand count tally team:*

- (a) One election board officer to supervise the overall conduct of the hand count, including, without limitation, tracking the progress of the hand count, ensuring compliance with the requirements of sections 2 to 6, inclusive, of this regulation and reporting any issues or concerns to the county clerk; and*
- (b) One election board officer to supervise and ensure compliance with the public observation of the hand count, including, without limitation, ensuring that the public is able to*

*observe the hand count and ensuring the public does not distract or interfere with the hand count tally team.*

*3. An election board officer assigned to work on a hand count tally team:*

*(a) May not work more than 8 hours in a 24-hour period; and*

*(b) Must wear medical style exam gloves at all times while working his or her shift.*

*4. Each hand count tally team must be positioned around a single table, with not less than 10 feet from the center of the table to the center of any other table containing a hand count tally team to reduce the risk of overhearing the other hand count tally team counting the ballots.*

*Sec. 5. 1. Before conducting a hand count of the ballots voted in an election, the election board officers must prepare to count the ballots in accordance with the requirements of NRS 293.363.*

*2. After the ballots are prepared for counting, the election board may use the electronic tabulator to calculate the results of the tally of the votes cast in a contest on the ballot.*

*3. A hand count of the ballots must be tallied not less than two times by the hand count tally team for each contest on the ballot that will be hand counted. The results of each tally of the ballots for each contest must match exactly. If the results do not match, the hand count must be conducted again until the results match one of the previous tallies.*

*4. In addition to the requirements of NRS 293.367 to 293.370, inclusive, each hand count tally team shall process the ballots in the following manner:*

*(a) For a primary election, the ballots must be sorted by political party and nonpartisan ballots to be tallied separately, with a Republican tally form, Democrat tally form and nonpartisan tally form.*

*(b) The ballots must be divided into separate stacks containing not more than 50 ballots per stack. Each stack must be read and tallied separately.*

*(c) The reading clerk shall read from the ballot the choice of the voter as indicated by writing in the designated space on the ballot indicating the voter's intent, including, without limitation, a cross or check.*

*(d) After reading each ballot, the reading clerk shall lay the ballot face down on the table to distinguish the counted ballot from the uncounted ballots. After each stack of ballots are counted, the ballots must be tied with a string or bound with a paper clip or binder clip in a stack of not more than 50 ballots.*

*(e) The tally clerks shall:*

*(1) Tally the votes on the appropriate tally form, depending on whether the ballot has been cast in a primary or general election. If the election is a primary election, the tallied votes should be noted on the tally form for the applicable political party or the nonpartisan tally form.*

*(2) On the tally form, place a short perpendicular hash mark opposite the name of the candidate or ballot question voted for the first through fourth vote for the same candidate or ballot question.*



*(3) For every fifth vote for the same candidate or ballot question, place a horizontal hash mark through the previous four perpendicular hash marks. One of the tally clerks shall then clearly announce:*

*(I) The fifth vote throughout the course of the tally; and*

*(II) The total number of hash marks for each candidate or ballot question.*

*(f) If the tally clerks agree on the total number of hash marks for each candidate or ballot question after the total has been announced pursuant to paragraph (e), the tally clerks shall make a mark above the five hash marks to indicate that the count of both tally clerks matched.*

*(g) If the count of the tally clerks:*

*(1) Matches, the tallying must continue.*

*(2) Does not match, the reason for the discrepancy must be identified and corrected before the hand count tally team may continue tallying.*

*5. The Office of the Secretary of State may supervise or assist in a hand count of the ballots voted if requested by a county clerk, but the county clerk is the party responsible for the hand count.*

*Sec. 6. 1. The county clerk shall provide all writing devices to a hand count tally team conducting a hand count. No member of a hand count tally team may use or bring his or her own writing device to the physical location where the ballots will be hand counted.*

*2. The writing devices provided by the county clerk pursuant to subsection 1:*

*(a) Must be uniform in color and style;*

*(b) Must not write in blue or black ink; and*

*(c) Must not be pencils.*

**Sec. 7.** NAC 293.010 is hereby amended to read as follows:

293.010 As used in this chapter, unless the context otherwise requires:

1. "Ballot stock" means:

(a) The paper upon which a ballot is printed on which a voter directly indicates his or her vote; and

(b) The materials included with a mail ballot, including, without limitation, the mail ballot, return envelope, envelope or sleeve into which the mail ballot is inserted to ensure its secrecy and voter instructions.

2. "Department" means the Department of Motor Vehicles.

3. *"Hand count" means the process of determining the election results where the primary method of counting the votes cast for each candidate or ballot question does not involve the use of a mechanical voting system.*

4. "Mail ballot" has the meaning ascribed to it in NRS 293.0653.

~~{4-}~~ 5. "Results cartridge" means the cartridge of a mechanical recording device which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.

~~{5-}~~ 6. "Signature stamp" has the meaning ascribed to it in NRS 427A.755.

~~{6-}~~ 7. "Statewide voter registration list" has the meaning ascribed to it in NRS 293.111.

~~{7-}~~ 8. "Voter verifiable paper audit trail printer" or "VVPAT" means the device attached to a mechanical recording device and the paper it prints to record all votes cast by a voter for any and all candidates and for or against any and all measures, enabling that voter to visually verify that the mechanical voting system has accurately recorded the votes of the voter.

~~{8-}~~ 9. "Voting booth" means any place or compartment used to screen a voter from the observation of others.

~~{9-}~~ 10. "Vote center" means a polling place established by the county or city clerk, as applicable, pursuant to the provisions of NRS 293.3072 to 293.3075, inclusive, or 293C.3032 to 293C.3035, inclusive, as applicable, where any person entitled to vote by personal appearance in the county or city, as applicable, may do so on the day of the election.

**Sec. 8.** Chapter 293C of NAC is hereby amended by adding thereto the provisions set forth as sections 9 to 13, inclusive, of this regulation.

**Sec. 9. 1.** *Each city clerk may, in consultation with the governing body of the city, conduct a hand count of the ballots voted in a city election for:*

*(a) All contests on the ballot;*

*(b) A specified number of contests on the ballot, as determined by the city clerk; or*

*(c) A specified sample of the precincts in the city, as determined by the city clerk.*

**2.** *If a city clerk decides to conduct a hand count pursuant to subsection 1, the hand count must:*

*(a) Be conducted in accordance with the requirements of sections 9 to 13, inclusive, of this regulation;*

*(b) Be completed on or before the seventh day following the city election; and*

*(c) Use the forms prescribed by the Secretary of State for tallying the results of the hand count.*

**3.** *A city clerk may use an electronic tabulator to validate the results of the hand count.*

4. *The Secretary of State will make the forms for tallying the results of the head count available not less than 30 days before the date of the city election.*

**Sec. 10.** *If a city clerk is going to conduct a hand count, the city clerk shall submit to the Secretary of State not later than 30 days before the date of the city election a plan for conducting the hand count. The plan must include, without limitation:*

1. *A detailed description of how the hand count will be conducted in order to meet the applicable deadlines set forth in this chapter, chapter 293 of NAC and title 24 of NRS for counting ballots.*

2. *The total number of election board officers and hand count tally teams that will be required to complete the hand count.*

3. *The work schedule for the hand count, which must not be more than 16 hours in a 24-hour period. There must not be more than two separate 8-hour shifts.*

4. *The physical location where the ballots will be hand counted and a scale diagram depicting the planned setup of the location.*

5. *An estimated list of any items necessary to conduct the hand count, which must include, without limitation:*

(a) *Whether all such items are currently in the possession of the city and, if not, the date by which any necessary items will be obtained by the city; and*

(b) *The estimated cost to the city to obtain the necessary items.*

6. *Any amendment to the plans for the observation of the hand count by the members of the public in accordance with section 1 of LCB File No. R108-21 and NRS 293B.353 and the plan submitted pursuant to NRS 293B.354.*

7. *The plans for ensuring the security of:*

(a) *The ballots consistent with the plan submitted pursuant to NAC 293B.040, as amended by section 8 of LCB File No. R091-21; and*

(b) *The election board officers who conduct the hand count.*

8. *A list of any outside vendors hired or who may be hired to consult or assist in the preparation or operation of the hand count.*

9. *A contingency plan for:*

(a) *Completing the counting of the ballots in the event the hand count is not completed by the date required for the canvass of returns pursuant to NRS 293C.387;*

(b) *Conducting any recount in accordance with NRS 293.404; and*

(c) *Completing any recount by the deadline set forth in NRS 293.405.*

Sec. 11. 1. *The city clerk shall establish a sufficient number of hand count tally teams to conduct the hand count. Each hand count tally team must consist of at least four election board officers, who must not be of the same political party, as follows:*

(a) *One election board officer known as the reading clerk to read the ballots;*

(b) *One election board officer known as the verification clerk to watch that the ballots are read correctly; and*

(c) *Two election board officers known as the tally clerks to separately record the votes on the appropriate tally form.*

2. *In addition to the election board officers appointed to a hand count tally team pursuant to subsection 1, the city clerk may appoint to a hand count tally team:*

*(a) One election board officer to supervise the overall conduct of the hand count, including, without limitation, tracking the progress of the hand count, ensuring compliance with the requirements of sections 9 to 13, inclusive, of this regulation and reporting any issues or concerns to the city clerk; and*

*(b) One election board officer to supervise and ensure compliance with the public observation of the hand count, including, without limitation, ensuring that the public is able to observe the hand count and ensuring the public does not distract or interfere with the hand count tally team.*

*3. An election board officer assigned to work on a hand count tally team:*

*(a) May not work more than 8 hours in a 24-hour period; and*

*(b) Must wear medical style exam gloves at all times while working his or her shift.*

*4. Each hand count tally team must be positioned around a single table, with not less than 10 feet from the center of the table to the center of any other table containing a hand count tally team to reduce the risk of overhearing the other hand count tally team counting the ballots.*

*Sec. 12. 1. Before conducting a hand count of the ballots voted in a city election, the election board officers must prepare to count the ballots in accordance with the requirements of NRS 293C.362.*

*2. After the ballots are prepared for counting, the election board may use the electronic tabulator to calculate the results of the tally of the votes cast in a contest on the ballot.*

*3. A hand count of the ballots must be tallied not less than two times by the hand count tally team for each contest on the ballot that will be hand counted. The results of each tally of*

*the ballots for each contest must match exactly. If the results do not match, the hand count must be conducted again until the results match one of the previous tallies.*

*4. In addition to the requirements of NRS 293C.367 to 293C.372, inclusive, each hand count tally team shall process the ballots in the following manner:*

*(a) The ballots must be divided into separate stacks containing not more than 50 ballots per stack. Each stack must be read and tallied separately.*

*(b) The reading clerk shall read from the ballot the choice of the voter as indicated by writing in the designated space on the ballot indicating the voter's intent, including, without limitation, a cross or check.*

*(c) After reading each ballot, the reading clerk shall lay the ballot face down on the table to distinguish the counted ballot from the uncounted ballots. After each stack of ballots are counted, the ballots must be tied with a string or bound with a paper clip or binder clip in a stack of not more than 50 ballots.*

*(d) The tally clerks shall:*

*(1) Tally the votes on the tally form.*

*(2) On the tally form, place a short perpendicular hash mark opposite the name of the candidate or ballot question voted for the first through fourth vote for the same candidate or ballot question.*

*(3) For every fifth vote for the same candidate or ballot question place a horizontal hash mark through the previous four perpendicular hash marks. One of the tally clerks shall then clearly announce:*

*(1) The fifth vote throughout the course of the tally; and*

*(II) The total number of hash marks for each candidate or ballot question.*

*(e) If the tally clerks agree on the total number of hash marks for each candidate or ballot question after the total has been announced pursuant to paragraph (d), the tally clerks shall make a mark above the five hash marks to indicate that the count of both tally clerks matched.*

*(f) If the count of the tally clerks:*

*(1) Matches, the tallying must continue.*

*(2) Does not match, the reason for the discrepancy must be identified and corrected before the hand count tally team may continue tallying.*

*5. The Office of the Secretary of State may supervise or assist in a hand count of the ballots voted if requested by a city clerk, but the city clerk is the party responsible for the hand count.*

*Sec. 13. 1. The city clerk shall provide all writing devices to a hand count tally team conducting a hand count. No member of a hand count tally team may use or bring his or her own writing device to the physical location where the ballots will be hand counted.*

*2. The writing devices provided by the city clerk pursuant to subsection 1:*

*(a) Must be uniform in color and style;*

*(b) Must not write in blue or black ink; and*

*(c) Must not be a pencil.*



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

15 PROGRESSIVE LEADERSHIP ALLIANCE  
16 OF NEVADA,

17 Plaintiff,

18 vs.

19 BARBARA CEGAVSKE, in her official  
20 capacity as Nevada Secretary of State,

21 Defendant.

Case No.: 22-000001-1-B  
Dept. No.: II

**COMPLAINT FOR DECLARATORY  
& INJUNCTIVE RELIEF**

Arbitration Exemption: Declaratory  
and Injunctive Relief

22 COMES NOW Plaintiff Progressive Leadership Alliance of Nevada, by and through its  
23 undersigned counsel, and files this Complaint against Defendant Barbara Cegavske, and alleges  
24 and petitions this Court as follows:

25 **SUBJECT-MATTER JURISDICTION**

26 1. This Court has jurisdiction to hear Plaintiff's claims under NRS 233B.110, as well  
27 as NRS 33.010, 30.030, and 30.040, and Article 6, Section 6 of the Nevada Constitution, because  
28 this is a proceeding for a declaratory judgment challenging the validity of a regulation issued by

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1 the Secretary of State on the ground that the regulation violates constitutional and statutory  
2 provisions and exceeds the Secretary of State's statutory authority, and for associated preliminary  
3 and permanent injunctive relief.

#### 4 INTRODUCTION

5 2. On August 26, 2022, the Secretary of State issued a temporary regulation that  
6 authorizes county clerks to abandon, in whole or in part, the electronic and mechanical voting  
7 systems that have served Nevada well for many years. In their place, the temporary regulation  
8 authorizes county clerks to engage in the hand counting of ballots—for all races, for only some  
9 races, or even for only some precincts. Perhaps worse, while the temporary regulation also  
10 establishes procedures by which such hand counts must be conducted, it exempts from those  
11 procedures hand counts that are conducted in parallel with machine counts, rather than as the  
12 primary method of counting votes.

13 3. The temporary regulation threatens to unleash electoral chaos. In recent elections,  
14 all votes cast in Nevada have been tabulated using mechanical or electronic systems shown to the  
15 State of Nevada and the U.S. Election Assistance Commission to be accurate. But under the  
16 temporary regulation, some votes may be counted using hand-counting methods that have not been  
17 shown to be reliable, and votes cast in different counties, different precincts, or different contests  
18 may be counted very differently.

19 4. The temporary regulation therefore deprives Nevadans of their constitutional and  
20 statutory rights to a "uniform, statewide standard for counting and recounting all votes accurately  
21 as provided by law." Nev. Const. art. 2, § 1A(10); *see also* NRS 293.2546(5). It also violates the  
22 Secretary of State's statutory duty to use only voting systems that "[m]eet[] or exceed[] the  
23 standards for voting systems established by the United States Election Assistance Commission,  
24 including, without limitation, the error rate standards." NRS 293.2696(5). And it violates the U.S.  
25 Constitution's Equal Protection Clause by treating different votes differently and providing too  
26 little guidance to ensure uniform and accurate vote-counting.

27 5. The court should therefore declare that the temporary regulation is invalid and grant  
28 associated preliminary and permanent injunctive relief.

1 VENUE

2 6. Venue is proper in the First Judicial District Court of Nevada under NRS 233B.110,  
3 because this is a proceeding for a declaratory judgment alleging that a regulation interferes with,  
4 impairs, and threatens to interfere with or impair, the legal rights or privileges of Plaintiff, and  
5 under NRS 13.020, because this is an action against a public official in her official capacity for  
6 actions that occurred, in whole or in part, in Carson City.

7 PARTIES

8 7. Plaintiff Progressive Leadership Alliance of Nevada is a non-profit organization  
9 that was founded in 1994 to bring together diverse and potentially competing organizations into  
10 one cohesive force for social and environmental justice in Nevada. Plaintiff is a coalition of more  
11 than thirty member groups throughout Nevada. Many of those member groups, in turn, have  
12 individual members of their own, including many individual Nevada voters.

13 8. As part of its mission, Plaintiff emphasizes civic engagement, combats voter  
14 suppression, and seeks to ensure that all eligible Nevada voters have their votes counted. Plaintiff  
15 is particularly focused on empowering and ensuring that Nevada's historically marginalized  
16 voters, including voters of color and young voters, are not denied their fundamental right to vote.  
17 Those voters, unfortunately, have historically been those most likely to be the target of voter  
18 suppression efforts, including harassment and voter intimidation.

19 9. Defendant Barbara Cegavske is the Secretary of State for the State of Nevada. She  
20 is sued in her official capacity.

21 10. The Secretary of State is the "Chief Officer of Elections for this State" and  
22 "responsible for the execution and enforcement of . . . all . . . provisions of state and federal law  
23 relating to elections in this State." NRS 293.124(1). The Secretary of State "shall adopt such  
24 regulations as are necessary to carry out" that responsibility. NRS 293.124(2). The Secretary of  
25 State's regulations must "not [be] inconsistent with the election laws of this state."  
26 NRS 293.247(1).

1 **FACTUAL ALLEGATIONS**

2 **A. Nevada law requires a uniform, statewide vote-counting standard.**

3 11. For many years, Nevada counties have counted votes using mechanical voting  
4 systems, defined as “any system of voting whereby a voter may cast a vote” either “[o]n a device  
5 which mechanically or electronically compiles a total of the number of votes cast for each  
6 candidate and for or against each measure voted on,” or “[b]y marking a paper ballot which is  
7 subsequently counted on an electronic tabulator, counting device or computer.” NRS 293B.033.  
8 Since 1975, Nevada statutes have expressly provided that “[a]t all statewide, county, city and  
9 district elections of any kind held in this State, ballots or votes may be cast, registered, recorded  
10 and counted by means of a mechanical voting system.” NRS 293B.050.

11 12. To be used in Nevada, mechanical voting systems, like any other voting systems,  
12 must “meet[] or exceed[] the standards for voting systems established by the United States Election  
13 Assistance Commission.” NRS 293B.063 (requirement for “mechanical voting system”); *see also*  
14 NRS 293.2696 (same requirement for “each voting system” used in Nevada, not restricted to  
15 *mechanical* voting systems).

16 13. Nevada law further requires that mechanical voting systems provide a printed paper  
17 record of all votes cast on the system, NRS 293B.082, and that such systems be tested for accuracy  
18 before the first day of early voting, immediately before the start of the official count, and within  
19 24 hours after the end of the official count, NRS 293B.150, .165, among many other safeguards.

20 14. Under one form of mechanical voting system, voters cast votes using paper ballots  
21 “by darkening a designated space on the ballot,” which are then read and counted by an electronic  
22 device. NRS 293.3677(2). Nevada statutes provide specific standards for counting votes cast using  
23 such a system. *See id.*

24 15. For any other “method of voting used in this state,” the Secretary of State “[s]hall  
25 adopt regulations establishing uniform, statewide standards for counting a vote cast” by that  
26 method, “including, *without limitation*, a vote cast on a mechanical recording device which directly  
27 records the votes electronically.” NRS 293.3677(3)(b) (emphasis added).  
28



1       **B. Some groups have recently favored hand counting, but it is flawed.**

2       16.     In recent years, and particularly after the 2020 presidential election, some groups  
3 in Nevada and elsewhere have become suspicious of electronic voting systems. Those suspicions  
4 are unfounded. As the Secretary of State's office has explained, "[a]ll voting machines undergo  
5 extensive pre-election and post-election examinations to ensure they function as expected. The NV  
6 Gaming Control Board tests and certifies our systems. The post-election audits and recounts  
7 conducted in Nevada confirmed that the machines accurately tabulated the votes cast" in the 2020  
8 general election. Nevada Sec'y of State, Facts vs. Myths: Nevada 2020 Post-General Election at  
9 4, <https://www.nvsos.gov/sos/home/showpublisheddocument?id=9191> (last visited Aug. 30,  
10 2022).

11       17.     While there may be a role for hand recounts in close individual races, mechanical  
12 and electronic voting systems are *significantly more reliable* in tabulating the results of multiple  
13 contests on a single ballot than humans are. Studies of recounts have confirmed that electronic  
14 voting systems provide significantly more accurate initial vote counts than hand counting does. As  
15 one such study explained:

16               We find . . . that vote counts originally conducted by computerized  
17 scanners were, on average, more accurate than votes that were  
18 originally tallied by hand. This finding should not be surprising,  
19 either to people who have administered elections or to those who  
20 have a grasp of the extension of automation into the workplace.  
Computers tend to be more accurate than humans in performing  
long, tedious, repetitive tasks. The demanding election night  
environment only drives a bigger wedge between human and  
machine performance.

21 Stephen Ansolabehere, Barry C. Burden, Kenneth R. Mayer, & Charles Stewart III, *Learning from*  
22 *Recounts*, 17 Elec. Law J. 100, 115 (2018), [https://www.liebertpub.com/doi/epdf/10.1089/](https://www.liebertpub.com/doi/epdf/10.1089/elj.2017.0440)  
23 [elj.2017.0440](https://www.liebertpub.com/doi/epdf/10.1089/elj.2017.0440) (last visited Aug. 30, 2022).

24       18.     Hand counting of multiple races on a single ballot is also exceptionally time  
25 consuming. It took Esmerelda County more than seven hours to hand count just 317 ballots from  
26 the June 14, 2022 primary. Ken Ritter, Gabe Stern, & Scott Sonner, *Last Nevada County Approves*  
27 *Primary Results After Hand Count* (June 25, 2022), [https://apnews.com/article/2022-midterm-](https://apnews.com/article/2022-midterm-elections-new-mexico-nevada-voting-presidential-652df50bc2b535d2303ddd4c5fda6ea5)  
28 [elections-new-mexico-nevada-voting-presidential-652df50bc2b535d2303ddd4c5fda6ea5](https://apnews.com/article/2022-midterm-elections-new-mexico-nevada-voting-presidential-652df50bc2b535d2303ddd4c5fda6ea5) (last

1 visited Aug. 30, 2022). Esmerelda County is the least populated county in Nevada, with just 729  
2 residents according to the 2020 census.

3 **C. The Secretary of State promulgated a temporary regulation authorizing hand**  
4 **counting.**

5 19. Despite these issues with hand counting ballots, on July 26, 2022, the Secretary of  
6 State issued notice of her intent to promulgate a temporary regulation authorizing counties to count  
7 ballots by hand for the 2022 general election. *See* Off. of the Sec’y of State, *Notice of Intent to Act*  
8 *Upon a Regulation* (July 26, 2022), [https://www.nvsos.gov/sos/home/showpublisheddocument/](https://www.nvsos.gov/sos/home/showpublisheddocument/10756/637945306319570000)  
9 [10756/637945306319570000](https://www.nvsos.gov/sos/home/showpublisheddocument/10756/637945306319570000) (last visited Aug. 30, 2022).

10 20. The Secretary of State held a workshop on her proposed temporary regulation on  
11 August 12, 2022, and a public hearing on August 26, 2022. At both the workshop and the public  
12 hearing, many commenters objected to the proposed temporary regulation, explaining that it is  
13 contrary to the Nevada Constitution and Nevada statutes. *See, e.g.*, Letter from Brennan Center for  
14 Justice et. al. to Mark Wlaschin (Aug. 12, 2022), [https://allvotingislocal.org/wp-content/uploads/](https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment_Proposed-Hand-Count-Regulations-8-12-22.pdf)  
15 [BCAVLACLUSS-Public-Comment\\_Proposed-Hand-Count-Regulations-8-12-22.pdf](https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment_Proposed-Hand-Count-Regulations-8-12-22.pdf).

16 21. On August 26, the Secretary of State nevertheless adopted the proposed temporary  
17 regulation, with only minor amendments from the initial proposed language that did not address  
18 commenters’ objections that the regulation is contrary to Nevada law. *See* 2nd Revised Temp.  
19 Regul. of the Sec’y of State, **Exhibit A** hereto.

20 22. The temporary regulation expressly authorizes county clerks “to conduct a hand  
21 count of the ballots voted in an election.” *Id.* § 2. It defines a “hand count” as “the process of  
22 determining the election results where the primary method of counting the votes cast for each  
23 candidate or ballot question does not involve the use of a mechanical voting system.” *Id.* § 7(3)  
24 (amending NAC 293.010). The temporary regulation authorizes county clerks to conduct a hand  
25 count for “[a]ll contests on the ballot,” “[a] specified number of contests on the ballot,” or “[a]  
26 specified sample of the precincts in the county.” *Id.* § 2. County clerks “may,” but need not, “use  
27 an electronic tabulator to validate the results of the hand count.” *Id.* § 3.

1        23.     If counties wish to proceed with a “hand count,” the temporary regulation requires  
2 them to submit a plan for doing so to the Secretary of State at least 30 days before election day  
3 and to follow detailed counting procedures. *Id.* §§ 3–6. Among other things, counties must use  
4 four-person bipartisan counting teams of election board officers, counting using specified methods,  
5 on specified shifts, with specified forms of oversight and auditing. *See id.* The temporary  
6 regulation also imposes similar requirements on cities for city elections. *Id.* §§ 9–13.

7        24.     The temporary regulation will not, however, apply to all forms of hand counting.  
8 The Secretary of State specifically amended the initial proposed temporary regulation to restrict it  
9 to scenarios in which hand counting is the “*primary* method of counting the votes cast” in an  
10 election. *Id.* § 7 (amending NAC 293.010(3)) (emphasis added). Deputy Secretary of State Mark  
11 Wlaschin explained that the amendment means that, “[i]f a county election official decides they’re  
12 interested in conducting a hand count audit, or a hand count tabulation, but are going to use as the  
13 primary method of tabulation a mechanical system, then these regulations are in essence  
14 recommendations, but not required.” Sean Golonka, *State Adopts Regulation for Hand Counting*  
15 *Ballots, But It Won’t Affect Nye County*, Nev. Indep. (Aug. 26, 2022),  
16 [https://thenevadaindependent.com/article/state-adopts-regulation-for-hand-counting-ballots-but-](https://thenevadaindependent.com/article/state-adopts-regulation-for-hand-counting-ballots-but-it-wont-affect-nye-county)  
17 [it-wont-affect-nye-county](https://thenevadaindependent.com/article/state-adopts-regulation-for-hand-counting-ballots-but-it-wont-affect-nye-county) (last visited Aug. 30, 2022).

18        25.     As a result of the Secretary of State’s amendment to the temporary regulation, the  
19 temporary regulation allows counties to conduct hand counts without even following the  
20 procedures specified in the temporary regulation, so long as the hand count is not the “primary  
21 method” of counting votes. Nye County Clerk Mark Kampf has proposed to do just that, stating  
22 that he will engage in a “‘parallel tabulation’ process that involves running paper ballots through  
23 the typical mechanical tabulators and checking the results with an additional hand count of all  
24 ballots.” *Id.* Nye County therefore apparently intends to conduct a hand count of ballots in the  
25 2022 general election without complying with the procedures specified in the temporary  
26 regulation.

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1 in this State” other than optical-scan machines, which are separately regulated by statute.  
2 NRS 293.3677(3)(b).

3 32. The temporary regulation violates NRS 293.3677(3)(b) because it does not  
4 establish a “uniform, statewide standard[]” for counting votes cast by paper ballot. Under the  
5 temporary regulation, some votes cast by paper ballot may be counted solely by electronic  
6 tabulator, others may be counted solely by hand, and still others may be counted by both methods.  
7 That discrepancy may occur both among different counties and within individual counties.

8 33. Moreover, the temporary regulation does not establish “uniform, statewide  
9 standards” even for those ballots that are counted by hand, because the temporary regulation leaves  
10 counties free to “use an electronic tabulator to validate the results of the hand count” or not, and  
11 entirely exempts hand counts from the procedures required by the regulation if counties do not  
12 intend to use the hand count as the “*primary* method of counting the votes cast.” Ex. A §§ 2(3),  
13 7(3). This is a further, independent violation of NRS 293.3677(3)(b).

14 **C. The temporary regulation violates NRS 293.2696(5).**

15 34. Nevada statutes further provide that “[t]he Secretary of State and each county and  
16 city clerk shall ensure that each voting system used in the state . . . [m]eets or exceeds the standards  
17 for voting systems established by the United States Election Assistance Commission, including,  
18 without limitation, the error rate standards.” NRS 293.2696(5).

19 35. The temporary regulation violates NRS 293.2696(5) because it authorizes the use  
20 of hand counting as a “voting system” in Nevada without any determination that the hand-counting  
21 system it authorizes “[m]eets or exceeds the standards for voting systems established by the United  
22 States Election Assistance Commission, including, without limitation, the error rate standards.”

23 36. NRS 293.2696(5) applies to *all* “voting systems”; it is not limited to “mechanical  
24 voting systems,” a defined term in Nevada law that includes electronic tabulation systems. *See*  
25 NRS 293B.033 (defining a “[m]echanical voting system” as “a system of voting whereby a voter  
26 may cast a vote . . . [on] a device which mechanically or electronically compiles a total of the  
27 number of votes cast for each candidate and for or against each measure voted on; or . . . [b]y  
28 marking a paper ballot which is subsequently counted on an electronic tabulator, counting device

1 or computer.”). Nevada law separately regulates “mechanical voting systems” and separately  
2 requires that they conform to these same standards. *See* NRS 293B.063 (“No *mechanical* voting  
3 system may be used in this State unless it meets or exceeds the standards for voting systems  
4 established by the United States Election Assistance Commission.” (emphasis added)).

5 37. Nevada law does not define “voting systems” as distinct from “mechanical voting  
6 systems.” But the plain meaning of “voting systems” includes the detailed hand-counting system  
7 established by the temporary regulation, which authorizes in considerable detail a specific means  
8 of counting paper ballots by hand.

9 38. The Election Assistance Commission’s “Voting System Standards” require that  
10 “[f]or each processing function” undertaken by a voting system, “the system shall achieve a target  
11 error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error  
12 rate in the test process of one in 500,000 ballot positions.” Election Assistance Comm’n, *Voting*  
13 *System Standards: Vol 1 – Performance Standards* at 3-51 (Apr. 2002), [https://www.eac.gov/sites/](https://www.eac.gov/sites/default/files/eac_assets/1/28/Voting_System_Standards_Volume_1.pdf)  
14 [default/files/eac\\_assets/1/28/Voting\\_System\\_Standards\\_Volume\\_1.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/28/Voting_System_Standards_Volume_1.pdf) (last visited Aug. 30,  
15 2022).

16 39. The Secretary of State adopted the temporary regulation without making any  
17 finding that the error rate for the hand-counting system authorized by the temporary regulation  
18 falls within the Election Assistance Commission’s standards, including the error-rate standards.

19 40. In fact, the temporary regulation does not require any procedure for assessing the  
20 error rate for the hand-counting system *at all*. Rather, it merely states that a county may—but need  
21 not—use an electronic tabulator to validate the results of the hand count.

#### 22 **D. The temporary regulation violates the Equal Protection Clause**

23 41. The U.S. Constitution’s Equal Protection Clause also requires uniform procedures  
24 for counting votes. Under the Equal Protection Clause, “[h]aving once granted the right to vote on  
25 equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote  
26 over that of another.” *Bush v. Gore*, 531 U.S. 98, 104–05 (2000). It is therefore unconstitutional  
27 for states to “accord[] arbitrary and disparate treatment to voters in . . . different counties,” and for  
28 counties to “use[] varying standards to determine what was a legal vote.” *Id.* at 107.

1           42.     The temporary regulation violates the Equal Protection Clause because it authorizes  
2 Nevada counties to count ballots in grossly divergent ways, and even authorizes individual  
3 counties to count different ballots differently, such as by counting ballots cast at only some  
4 precincts by hand. Ex. A § 2(1)(c).

5           43.     The Equal Protection Clause also prohibits vote-counting procedures that fail to  
6 provide “specific standards to ensure . . . equal application.” *Bush*, 531 U.S. at 106. The temporary  
7 regulation violates this aspect of the Equal Protection Clause as well, by excluding counties that  
8 conduct hand counts as a secondary method of counting votes from the temporary regulation, and  
9 thereby failing to provide any standards or requirements for such hand counts.

10                               **FIRST CLAIM FOR RELIEF**

11                               **(Declaratory Judgment under NRS 233B.110)**

12           44.     The preceding paragraphs are incorporated by reference herein.

13           45.     NRS 233B.110(1) provides:

14                       The validity or applicability of any regulation may be determined in  
15 a proceeding for a declaratory judgment in the district court in and  
16 for Carson City . . . when it is alleged that the regulation, or its  
17 proposed application, interferes with or impairs, or threatens to  
18 interfere with or impair, the legal rights or privileges of the plaintiff.  
19 A declaratory judgment may be rendered after the plaintiff has first  
requested the agency to pass upon the validity of the regulation in  
question. The court shall declare the regulation invalid if it finds that  
it violates constitutional or statutory provisions or exceeds the  
statutory authority of the agency. . . .

20           46.     The temporary regulation impairs the legal rights or privileges of Plaintiff, its  
21 members, and its members’ members, which include many Nevada voters, by violating their  
22 statutory and constitutional rights “to a uniform, statewide standard for counting and recounting  
23 all votes accurately,” Nev. Const. art. 2, § 1A(10); *see also* NRS 293.2546(5), and their rights  
24 under the U.S. Constitution’s Equal Protection Clause.

25           47.     Plaintiff did not participate in the agency proceedings before the Secretary of State  
26 adopted the temporary regulation. But several other voting-rights groups did, and they raised many  
27 of the same statutory and constitutional objections to the temporary regulation that Plaintiff asserts  
28 in this Complaint. *See* Letter from Brennan Center for Justice et. al. to Mark Wlaschin (Aug. 12,

2022), [https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment\\_Proposed-Hand-Count-Regulations-8-12-22.pdf](https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment_Proposed-Hand-Count-Regulations-8-12-22.pdf) (last visited Aug. 30, 2022). The Secretary of State adopted the temporary regulation despite those objections.

48. Because the Secretary of State adopted the temporary regulation even after other groups raised the same objections that Plaintiff raises here, it would be futile for Plaintiff to “request the agency to pass upon the validity of the regulation in question.” NRS 233B.110(1). Plaintiff is therefore excused from exhausting its administrative remedies. *Malecon Tobacco, LLC v. State*, 118 Nev. 837, 839, 59 P.3d 474, 475–76 (2002) (“[E]xhaustion is not required when a resort to administrative remedies would be futile.”). Alternatively, exhaustion is not required because the issues in this case “relate solely to the interpretation or constitutionality of a statute.” *Id.* (quoting *State v. Glusman*, 98 Nev. 412, 419, 651 P.2d 639, 644 (1982)).

49. For the reasons given above, *supra* ¶¶ 26–43, the temporary regulation violates constitutional and statutory provisions, including Nev. Const. art. 2, § 1A(10), NRS 293.2546(5), NRS 293.2696(5), and the U.S. Constitution’s Equal Protection Clause, and exceeds the Secretary of State’s statutory authority to engage in rulemaking.

50. Consistent with the requirements of NRS 233B.110(3), Plaintiff will serve a copy of this Complaint on the Attorney General.

51. The Court should therefore declare the temporary regulation invalid.

## **SECOND CLAIM FOR RELIEF**

### **(Injunctive Relief)**

52. The preceding paragraphs are incorporated by reference herein.

53. Courts have authority “whenever necessary or proper” to grant “[f]urther relief based on a declaratory judgment or decree,” including injunctive relief. NRS 30.100. Thus, “[an] injunction c[an] pair with a declaratory judgment under NRS 233B.110.” *Smith v. Bd. of Wildlife Comm’rs*, No. 77485, 461 P.3d 164, 2020 WL 1972791, at \*3 (Nev. Apr. 23, 2020) (unpublished); *Aronoff v. Katleman*, 75 Nev. 424, 432, 345 P.2d 221, 225 (1959) (“[U]nder appropriate circumstances, a declaratory judgment may be coupled with injunctive relief.”).

1       54. Preliminary and permanent injunctive relief is appropriate to protect voters'  
2 constitutional and statutory rights "to a uniform, statewide standard for counting and recounting  
3 all votes accurately," Nev. Const. art. 2, § 1A(10); *see also* NRS 293.2546(5), which the temporary  
4 regulation and the Secretary of State's authorization of hand counting, both under and outside of  
5 the temporary regulation, threaten to impair.

6       55. The Court should therefore enjoin the Secretary of State from authorizing or  
7 permitting counties to engage in hand counting, whether under the temporary regulation or  
8 otherwise, except as part of an election contest or recount under NRS 293.400 to .435, or as part  
9 of the testing of mechanical voting systems required under NRS Chapter 293B.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for the following relief:

3 A. A declaratory judgment that the Secretary of State's temporary regulation  
4 authorizing the hand counting of ballots is invalid;

5 B. A preliminary and permanent injunction prohibiting the Secretary of State from  
6 authorizing or permitting counties to engage in hand counting, whether under the temporary  
7 regulation or otherwise, except as part of an election contest or recount under NRS 293.400 to  
8 .435, or as part of the testing of mechanical voting systems required under NRS Chapter 293B;  
9 and

10 C. Such other relief as the Court deems appropriate.

11 **AFFIRMATION**

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

14 DATED this 31th day of August, 2022.

15 **WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
16 RABKIN, LLP**

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

26 PROGRESSIVE LEADERSHIP ALLIANCE  
27 OF NEVADA,

28 Plaintiff,

vs.

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

Defendant.

Case No.: 22 OC 001011B

Dept. No.: II

**MOTION FOR PRELIMINARY  
INJUNCTION**

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

m/Prelim 9/1/22

JA 033

RA 029

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

4 DATED this 1st day of September, 2022.

5  
6 **WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
7 RABKIN, LLP**

8 By: 

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28



## INTRODUCTION

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

Nevada law and the U.S. Constitution prohibits the Secretary from throwing Nevada’s fast-approaching 2022 general election into turmoil in this way. Nevada voters have a constitutional and statutory right to a “uniform, statewide standard for counting and recounting all votes accurately as provided by law.” Nev. Const. art. 2, § 1A(10); *see also* NRS 293.2546(5). The Secretary has a duty to adopt “uniform, statewide standards for counting a vote cast by each method of voting used in this State.” NRS 293.3677(3)(b). And the Secretary must “ensure that each voting system used in this State . . . [m]eets or exceeds the standards for voting systems established by the United States Election Assistance Commission, including, without limitation, the error rate standards.” NRS 293.2696(5). The temporary regulation violates those rights and duties by authorizing counties to use disparate combinations of hand and electronic counting, without any showing that hand counting meets the Election Assistance Commission’s standards. It also violates the U.S. Constitution’s Equal Protection Clause, by allowing for “arbitrary and disparate treatment [of] voters in . . . different counties” and the use of “varying standards to determine what was a legal vote.” *Bush v. Gore*, 531 U.S. 98, 107 (2000). The Court should preliminarily enjoin its use.

## BACKGROUND

For many years, Nevada counties have counted votes using mechanical voting systems, defined as “any system of voting whereby a voter may cast a vote” either “[o]n a device which mechanically or electronically compiles a total of the number of votes cast for each candidate and for or against each measure voted on,” or “[b]y marking a paper ballot which is subsequently counted on an electronic tabulator, counting device or computer.” NRS 293B.033. Since 1975, Nevada statutes have expressly provided that “[a]t all statewide, county, city and district elections of any kind held in this State, ballots or votes may be cast, registered, recorded and counted by means of a mechanical voting system.” NRS 293B.050. Apart from one separately regulated form of mechanical voting system, *see* NRS 293.3677(2), any other method of voting in Nevada requires the Secretary to “adopt regulations establishing uniform, statewide standards for counting a vote cast” by that method, “including, *without limitation*, a vote cast on a mechanical recording device which directly records the votes electronically.” NRS 293.3677(3)(b) (emphasis added).

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

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

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

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

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

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

### 8 LEGAL STANDARD

9 “NRS 33.010(1) authorizes a[ preliminary] injunction when it appears from the complaint  
10 that the plaintiff is entitled to the relief requested and at least part of the relief consists of restraining  
11 the challenged act.” *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712,  
12 721, 100 P.3d 179, 187 (2004). “Before a preliminary injunction will issue, the applicant must  
13 show (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving  
14 party’s conduct, if allowed to continue, will cause irreparable harm for which compensatory  
15 damage is an inadequate remedy. In considering preliminary injunctions, courts also weigh the  
16 potential hardships to the relative parties and others, and the public interest.” *Id.* (quotation marks  
17 and citations omitted). Where, as here, a preliminary injunction will merely preserve the status  
18 quo, it “is normally available upon a showing that the party seeking it enjoys a reasonable  
19 probability of success on the merits and that the defendant’s conduct, if allowed to continue, will  
20 result in irreparable harm for which compensatory damage is an inadequate remedy.” *Dixon v.*  
21 *Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987).

### 22 ARGUMENT

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

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

#### 27 A. Plaintiff has standing.

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

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

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

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

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

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

11 Second, the pursuit of administrative remedies would be futile here. While Plaintiff did not  
12 participate in the administrative process, other voting rights organizations did, and they  
13 vociferously objected to the temporary regulation, making many of the same arguments that  
14 Plaintiff makes here. *See* Letter From Brennan Center for Justice et. al. to Mark Wlaschin (Aug.  
15 12, 2022), [https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-](https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment_Proposed-Hand-Count-Regulations-8-12-22.pdf)  
16 [Comment\\_Proposed-Hand-Count-Regulations-8-12-22.pdf](https://allvotingislocal.org/wp-content/uploads/BCAVLACLUSS-Public-Comment_Proposed-Hand-Count-Regulations-8-12-22.pdf) (last visited Aug. 30, 2022). The  
17 Secretary nevertheless adopted the proposed temporary regulation with only minor amendments  
18 that did not address commenters’ objections. It would be futile for Plaintiff to “request[] the agency  
19 to pass upon the validity of the regulation in question,” NRS 233B.110(1), where the Defendant  
20 has already ignored or rejected the very concerns that Plaintiff raises. *See, e.g., Abarra v. State*,  
21 131 Nev. 20, 24, 342 P.3d 994, 996 (2015) (finding prisoner met exhaustion requirement when  
22 associate warden rejected the claims raised in prisoner’s grievance).

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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**CONCLUSION**

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

**AFFIRMATION**

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

DATED this 1st day of September, 2022.

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

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**CERTIFICATE OF SERVICE**

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

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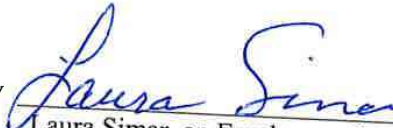
Judicial Assistant, Dept. 2

First Judicial District Court

Hon. Judge James E. Wilson

[BShadron@carson.org](mailto:BShadron@carson.org)

By



Laura Simar, an Employee of  
WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
RABKIN, LLP

**DECLARATION OF MARK KAMPF IN SUPPORT OF RESPONDENTS' ANSWER TO  
EMERGENCY PETITION FOR WRIT OF MANDAMUS PURSUANT TO NRAP  
21(a)(6)**

Mark Kampf declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.
2. I am the currently the Clerk of Nye County, Nevada.
3. With respect to the presentation I made to the Nye County Board of Commissioners on September 20, 2022, in no way did I intend to convey or suggest that Nye County will be asking voters about their "disability" or "special needs" prior to voters being allowed to use ADA touch screens. Instead, any voter who feels they need to use an ADA touch screen will be allowed to do so. The decision to do so will be left with the voters alone, and is in no way contingent on any questioning from poll workers. This is how I have trained my poll workers to date and this is how I plan to conduct the election.
4. Affixed to this declaration is a true and accurate representation of an email exchange I had with Mark Wlaschin of the Nevada Secretary of State's Office. Also affixed to this declaration is a true and accurate representation of the email attachment sent to me by Mr. Wlaschin as part of the same email exchange.
5. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/18/2022

DocuSigned by:  
*Mark Kampf*  
48DFEA5FCAD74B1...

Mark Kampf

**From:** Mark Wlaschin <[mwlaschin@sos.nv.gov](mailto:mwlaschin@sos.nv.gov)>  
**Sent:** Sunday, October 9, 2022 5:49 PM  
**To:** Mark Kampf <[mkampf@nyecountynv.gov](mailto:mkampf@nyecountynv.gov)>  
**Subject:** RE: Sheriff Bodycams for Video Recording and Observation of Count

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Mark,

Good evening. The IT question about the AWS server is a tricky one. The State has a massive (250+) questionnaire that a vendor must submit to satisfactorily before we can put anything in the Cloud. That being said, your IT likely has something similar though it would be good to double check. Ultimately we do not approve those sort of county specific IT decisions, but I appreciate you asking.

Regarding the videos and after discussing it with the DAGs, no issues on our end as long as the recordings are held until after the close of polls. Also, we're updating the counting observer form (EL711; attached) so that it has a reference to NRS 293.3606 and is also initialed so everyone understands they cannot release any "...information relating to the count of returns".

**NRS 293.3606 Returns; secrecy of ballots; disseminating information about count of returns before polls close prohibited; penalty.**

1. After 8 a.m. on election day, the appropriate board shall count in public the returns for early voting.
2. The returns for early voting must not be reported until after the polls have closed on election day.
3. The returns for early voting must be reported separately from the regular votes of the precinct, unless reporting the returns separately would violate the secrecy of the voter's ballot.
4. The county clerk shall develop a procedure to ensure that each ballot is kept secret.
5. Any person who disseminates to the public information relating to the count of returns for early voting before the polls close is guilty of a gross misdemeanor.

(Added to NRS by [1993, 2172](#); A [1995, 2627, 2781](#); [1997, 668, 671, 2783](#); [1999, 695, 3553](#)

Please let me know if that helps.

Mark A. Wlaschin

Deputy Secretary of State for Elections  
Office of Secretary of State Barbara K. Cegavske  
101 North Carson Street, Suite 3  
Carson City, Nevada 89701  
(775) 684-5720  
[mwlaschin@sos.nv.gov](mailto:mwlaschin@sos.nv.gov)

**From:** Mark Kampf <[mkampf@nyecountynv.gov](mailto:mkampf@nyecountynv.gov)>  
**Sent:** Thursday, October 6, 2022 7:41 AM  
**To:** Mark Wlaschin <[mwlaschin@sos.nv.gov](mailto:mwlaschin@sos.nv.gov)>  
**Subject:** Sheriff Bodycams for Video Recording and Observation of Count

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Mark,

We are looking to implement paragraph 1 and 2 below. We will be using the Sheriff's body cameras which qualify as secure evidentiary material. However, the videos are stored on the GETAC Government AWS Cloud. We plan to release the footage after the polls close.

My questions are:

Is there any issue regarding storage on this AWS server?

Item 1 provides for the public to view the counting of the ballots at the central counting place. Is there a conflict here with the potential for release of results should an observer leak information on the portion of the count they observed?

As always, I appreciate your insight.

Mark

**NRS 293B.353 Clerk to allow members of general public to observe counting of ballots at central counting place; members of general public allowed to photograph or otherwise record counting of ballots; request for photograph or recording of counting of ballots.**

1. The county or city clerk shall allow members of the general public to observe the counting of the ballots at the central counting place if those members do not interfere with the counting of the ballots.
  2. The county or city clerk may photograph or record or cause to be photographed or recorded on audio tape or any other means of sound or video reproduction the counting of the ballots at the central counting place.
  3. A registered voter may submit a written request to the county or city clerk for any photograph or recording of the counting of the ballots prepared pursuant to subsection 2. The county or city clerk shall, upon receipt of the request, provide the photograph or recording to the registered voter at no charge.
- (Added to NRS by [1995,2785](#))



**Mark F. Kampf**  
Nye County Clerk  
[mkampf@nyecountynv.gov](mailto:mkampf@nyecountynv.gov)

**Tonopah Office**  
**P.O. Box 1031**  
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# State of Nevada

Secretary of State Barbara K. Cegavske

Processing and Counting of  
Ballots Observer Acknowledgment  
(NRS 293B.353, NRS 293.0335,  
NAC 293/R098-21/R108-21)

In accordance with the Nevada Revised Statute (NRS) 293B.353 and 293.0335, and Nevada Administrative Code 293 Chapter 293/R098-21/R108-21 I, \_\_\_\_\_, by signing this form and placing my initials next to each provision, hereby acknowledge that during the time I observe the processing and counting of ballots at the central counting place:

\_\_\_\_\_: I am prohibited from:

1. Talking to workers within the central counting place other than the county or city clerk or a person designated by the county or city clerk to address questions from observers;
2. Using a mobile telephone or computer within the central counting place;
3. Advocating for or against a candidate, political party or ballot question;
4. Interfering with the statutory duties of county or city election personnel; and
5. Interfering with the processing and counting of ballots.

\_\_\_\_\_: I may be removed from the central counting place by the county or city clerk for violating any provision of title 24 of the NRS or any of the provisions described above.

\_\_\_\_\_: The county or city clerk may:

- a. Limit the number of persons in the central counting place who are observing the processing and counting of ballots for reasons of public safety or to protect voter privacy or maintain order.
- b. Remove from a central counting place a person observing the processing and counting of ballots for violating any provision of title 24 of NRS or any of the provisions described above.

\_\_\_\_\_: A person observing the processing and counting of ballots at the central counting place may remain in an area designated by the county or city clerk without interfering with the processing and counting of ballots. The designated area must allow for meaningful observation, but must not be located in an area that would allow an observer to infringe on the privacy and confidentiality of the ballot of a voter.

\_\_\_\_\_: A person observing the processing and counting of ballots at a central counting place must wear a name tag denoting the person's full name.



Fifth Judicial District Court - Nye County  
Case Summary

Run: 10/18/2022  
10:30:33

Page 1

**Case #:** CV22-0503  
**Judge:** WANKER, KIMBERLY  
**Date Filed:** 10/04/2022 **Department:**  
**Case Type:** Writ of Mandamus

**Attorney(s)**

**Plaintiff**

AMERICAN CIVIL LIBERTIES UNION OF NEVADA, A

RAMIC, SADMIRA

**Plaintiff**

BACUS, STEVEN

RAMIC, SADMIRA

**Defendant**

THE COUNTY OF NYE, A GOVERNMENTAL ENTITY

NYE DISTRICT ATTORNEY OFFICE

**Defendant**

MARK KAMPF, IN HIS OFFICAL CAPACITY AS INTE

NYE DISTRICT ATTORNEY OFFICE

**Fees:**

Date Assessed:	Fee	Total	Paid	Waived	Outstanding
10/04/2022	INDIGNT	\$15.50	\$15.50	\$0.00	\$0.00
10/04/2022	ELDERLY	\$9.50	\$9.50	\$0.00	\$0.00
10/04/2022	LAWLIB	\$30.00	\$30.00	\$0.00	\$0.00
10/04/2022	CGENERA	\$29.00	\$29.00	\$0.00	\$0.00
10/04/2022	DRUGCRT	\$10.00	\$10.00	\$0.00	\$0.00
10/04/2022	CRTIMP	\$99.00	\$99.00	\$0.00	\$0.00
10/04/2022	CRTSEC	\$20.00	\$20.00	\$0.00	\$0.00
10/04/2022	STCIVIL	\$32.00	\$32.00	\$0.00	\$0.00
10/04/2022	DCTTECH	\$8.00	\$8.00	\$0.00	\$0.00
10/04/2022	ELDERLY	\$5.00	\$5.00	\$0.00	\$0.00
10/04/2022	INDIGNT	\$2.00	\$2.00	\$0.00	\$0.00
10/04/2022	STTECH	\$10.00	\$10.00	\$0.00	\$0.00
10/04/2022	RETJUDG	\$5.00	\$5.00	\$0.00	\$0.00

**Filings:**

Date	Filing
10/04/2022	CASE FILED 10/04/2022 CASE NUMBER CV22-0503
10/04/2022	JUDGE WANKER, KIMBERLY: ASSIGNED
10/04/2022	PAYMENT \$275.00 RECEIPT #12920
10/04/2022	EMERGENCY PETITION FOR WRIT OF MANDAMUS ENJOINING NYE COUNTY INTERIM COUNTY CLERK FROM IMPLEMENTING PROPOSED UNLAWFUL HAND COUNTING MEASURES DURING THE NOVEMBER 2022 GENERAL ELECTION AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (ARBITRATION EXEMPTION CLAIMED)
10/04/2022	INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)
10/12/2022	ORDER DENYING WRIT OF MANDAMUS, DECLARATORY RELIEF, INJUNCTIVE RELIEF
10/12/2022	AMENDED CERTIFICATION OF SERVICE