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

13 LILITH BARAN, an individual;

14 Plaintiff,

15 v.

16 CARI ANN BURGESS, individually and in her
17 official capacity as Registrar of Voters; MIKKI
18 HUNTSMAN, individually and in her capacity as
19 city clerk for the City of Reno; CITY OF RENO
20 NEVADA, a political subdivision of the state of
21 Nevada; WASHOE COUNTY REGISTRAR OF
22 VOTERS, a government agency; ERIC BROWN,
23 individually and in his official capacity as
24 Washoe County Manager; ALEXIS HILL,
25 individually and in her official capacity as
26 Chairwoman of the Washoe County Board of
27 Commissioners; WASHOE COUNTY, a political
28 subdivision of the state of Nevada; FRANCISCO
AGUILAR, individually and in his official
capacity as Secretary of State; NEVADA
SECRETARY OF STATE, a political subdivision
of the state of Nevada; NEVADA ATTORNEY
GENERAL; a political subdivision of the state of
Nevada; AARON FORD, individually and in his
capacity as Nevada Attorney General; DOES I
through X; and ROE BUSINESS ENTITIES I
through X, inclusive,

Defendants.

Case No.

Dept. No.

**EX PARTE MOTION FOR PRELIMINARY
INJUNCTION ON ORDER SHORTENING
TIME**

[HEARING REQUESTED]

HUTCHINGS LAW GROUP
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LAS VEGAS, NV 89101

1 COMES NOW, Plaintiff LILITH BARAN, by and through her counsel of record, Mark H.
2 Hutchings, Esq. and John B. Lanning, Esq. of the law firm Hutchings Law Group, and hereby moves
3 this Court for a Preliminary Injunction upon the facts and argument set forth herein.

4 This Motion is made and based upon the attached Memorandum of Points and Authorities, the
5 Declaration of John B. Lanning, Esq., the attached exhibits, and such argument and evidence as may
6 be presented at the hearing on this Motion.

7 Dated: June 26, 2024.

HUTCHINGS LAW GROUP

/s/ John B. Lanning

8
9 By: _____
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**DECLARATION OF JOHN B. LANNING, ESQ. IN SUPPORT OF
PLAINTIFF’S EX PARTE MOTION FOR A PRELIMINARY INJUNCTION ON AN ORDER
SHORTENING TIME**

I, John B. Lanning, Esq., hereby declare as follows:

1. I am over the age of 18, an attorney licensed to practice before all of the courts of the State of Nevada, and an associate attorney with Hutchings Law Group.

2. I represent the Plaintiff in the above-captioned matter, Lilith Baran.

3. I have personal knowledge of the facts set forth below based upon my review of the publicly recorded documents in this matter, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

4. I make this declaration in support of Plaintiff’s *Ex Parte* Motion for Preliminary Injunction on an Order Shortening Time.

5. This Motion seeks to enjoin Defendants CARI ANN BURGESS, WASHOE COUNTY REGISTRAR OF VOTERS, MIKKI HUNTSMAN, CITY OF RENO, ERIC BROWN, ALEXIS HILL, WASHOE COUNTY, FRANCISCO AGUILAR, NEVADA SECRETARY OF STATE, NEVADA ATTORNEY GENERAL, and AARON FORD (hereinafter collectively referred to as “Defendants”) from moving, destroying, modifying, or otherwise altering any of the ballots cast in the June 11, 2024 election; requiring Defendants to comply with NRS 293.391; and requiring Defendants to perform the recount requested by Plaintiff via a hand recount of all ballots and Voter-Verified Paper Trial (VVPAT) receipts; and requiring Defendants to permit observers to be present at this recount.

6. My office has reached out to Defendant Cari Ann Burgess/Defendant Mikki Huntsman via email in an attempt to resolve this matter without Court intervention. In that email, a true and correct copy of which is attached as **Exhibit 1**, Plaintiff requested that Defendants stipulate and agree to conducting a hand recount of the votes cast in accordance with NRS 293.404. Defendant has not responded to this email.

7. Plaintiff has filed the required demand for recount pursuant to NRS 293.403 and once the estimated cost of the recount is determined, will deposit that sum.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioner Lilith “Lily” Baran is a progressive activist who ran in the election for Reno City
4 Council Ward 1. Ms. Baran ran a grassroots campaign and sought election to Reno City Council.
5 Ward 1 encompasses downtown Reno and the University district. Lily Baran ran on a progressive
6 platform and seeks a recount of the ballots cast in the election. The results of the election were
7 certified on Friday, June 21, 2024.¹ According to these certified results, Lily Baran received 837 votes
8 in total, accounting for 23.67% of the votes case. *See Exhibit 2* (Election Summary Report) at page 9.
9 Pursuant to these results, Ms. Baran was defeated by Frank Perez, who received 852 votes (24.10%)
10 and Kathleen Taylor who received 1,030 votes (29.13%). *Id.*

11 Based on the closeness of these election results, Ms. Baran seeks now to demand a recount,
12 pursuant to NRS 293.403. Specifically, there is reason to believe that Defendants are not complying
13 with Nevada Revised Statutes and/or Nevada Administrative Code provisions related to ballot
14 collection and storage. Further, there is reason to believe that after demand for recount is made,
15 Defendants will not conduct a hand recount and instead employ technology to conduct the recount.
16 The purpose of the instant Motion is to require Defendants to comply with NRS 293.391 and all other
17 applicable Nevada Revised Statutes. Additionally, Plaintiff seeks an Order from this Court requiring
18 that the recount be conducted by hand and not involve the use of any voting machines or other
19 technology.

20 **II. LAW & ARGUMENT**

21 Article 6, section 6 of the Nevada Constitution gives district courts the power and authority to
22 issue writs of injunction, which are equitable in nature. More specifically, Nevada law, through both
23 NRCPC 65 and NRS 33.010, authorizes the Court to enter injunctive relief either for a specified period
24 or perpetually to preclude a party from suffering irreparable harm. *See* NRS 33.010. The issuance of
25 mandatory and restrictive injunctions is a well-settled remedy in Nevada. *See City of Reno v. Metley*,
26 79 Nev. 49, 61, 378 P.2d 256, 262 (1963) (“It is settled beyond question that equity has jurisdiction in
27 a proper case to compel affirmative performance of an act as well as to restrain it, and that is its duty
28

¹<https://washoelife.washoecounty.gov/washoe-county/board-of-county-commissioners-certify-results-of-primary-election/>

1 to do so, especially where it is the only remedy which will meet the requirements of the case”); *see*
2 *also Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Memorial Gardens, Inc.*, 88 Nev. 1, 492
3 P.2d 1123 (1972); *Harmon v. Tanner Motor Tours of Nevada, Ltd.*, 79 Nev. 4, 377 P.2d 622 (1963).

4 The Nevada Legislature has authorized courts to enter injunctive relief in three circumstances,
5 provided in NRS 33.010 which specifically states:

6 An injunction may be granted in the following cases:

7 1. When it shall appear by the complaint that the plaintiff is entitled to the
8 relief demanded, and such relief or any part thereof consists in restraining the
9 commission or continuance of the act complained of, either for a limited period or
perpetually.

10 2. When it shall appear by the complaint or affidavit that the commission
11 or continuance of some act, during the litigation, would produce great or irreparable
injury to the plaintiff.

12 3. When it shall appear, during the litigation, that the defendant is doing or
13 threatens, or is about to do, or is procuring or suffering to be done, some act in violation
14 of the plaintiff’s rights respecting the subject of the action, and tending to render the
judgment ineffectual.

15 NRS 33.010. A preliminary injunction is the appropriate remedy when the moving party can
16 demonstrate that the nonmoving party’s conduct, if allowed to continue, will cause irreparable harm
17 for which compensatory relief is inadequate and that the moving party has a reasonable likelihood of
18 success on the merits. *Boulder Oaks Cmty. Ass’n v. B & J Andrews Enters, LLC*, 125 Nev. 397, 403,
19 215 P.3d 27, 31 (2009) (citing *University Sys. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100
20 P.3d 179, 187 (2004)). District Courts have discretion in deciding whether to grant a preliminary
21 injunction. *University Sys.*, 120 Nev. at 721. When determining whether to grant preliminary
22 injunctive relief, the Court should consider four (4) factors:
23

- 24 1. The threat of immediate, irreparable harm;
25 2. The likelihood that the party seeking a preliminary injunction will be successful
26 on the merits of the underlying action;
27 3. Whether the balance of interests weigh in favor of the party seeking the
preliminary injunction; and
28 4. Whether issuance of the preliminary injunction is in the public’s interest.

Clark County School District v. Buchanan, 112 Nev. 1146, 924 P.2d 716 (1996). As outlined herein,

1 each of the foregoing factors weighs heavily in Plaintiff’s favor and as such, a preliminary injunction
2 should be granted.

3 Here, Plaintiff is entitled to a preliminary injunction requiring Defendants to conduct the
4 recount in accordance with all applicable statutes. As outlined herein, multiple irregularities and
5 discrepancies have been reported concerning the election that occurred on June 11, 2024. Accordingly,
6 a hand count is required as the only method in which the recount can be accurately tabulated.
7 Additionally, a hand recount is required under NRS 293.403. NRS 293.404(b)(3) (Requiring that the
8 recount “include a count and inspection of all ballots, including rejected ballots”). Plaintiff is able to
9 show all four factors which are required to obtain a preliminary injunction. First, absent injunctive
10 relief, Plaintiff risks irreparable harm in the form of inaccurate election results and potential destruction
11 of evidence. Second, Plaintiff enjoys a strong likelihood of success in her underlying declaratory relief
12 action, as the Defendants are required under Nevada law to conduct the recount and store cast ballots
13 properly. Third, the balance of interests weighs in Plaintiff’s favor as she is simply seeking to ensure
14 the accuracy of the election results and force Defendants to comply with their statutory duties. Finally,
15 the public interest heavily favors injunctive relief, as the public has a strong interest in preserving the
16 integrity of the democratic process.

17 **A. Plaintiff Will Suffer Immediate, Irreparable Harm Absent Without an Injunction**

18 Absent injunctive relief, Plaintiff will imminent, irreparable harm for which compensatory
19 damages will not be an appropriate remedy. When bringing a Motion for Preliminary Injunction, the
20 movant must show actual or threatened injury, loss, or damage. *Berryman v. Int’l Brotherhood of*
21 *Electrical Workers*, 82 Nev. 277, 280, 416 P.2d 387, 388-89 (1996). However, where the damages
22 arising from harm are difficult to calculate, where other factors are met, an injunction is a proper
23 remedy. *Harmon v. Tanner Motor Tours of Nev. Ltd.*, 70 Nev. 4, 17 (1963) (injunction awarded where
24 difficulty in determining damages present). Injunctive relief is available to prevent future damage to a
25 claimant. *Chateau Vegas Wine, Inc. v. Southern Wine & Spirits of Am., Inc.*, 265 P.3d 680, 687 (Nev.
26 2011) (injunctive relief available to prevent damage to business reputation). Where a claimant seeks
27 to enforce the text of a statute, irreparable injury is presumed assuming other requirements are met.
28 *State ex rel. Office of the AG v. NOS Communs. Inc.*, 120 Nev. 65, 67-68 (2004) (holding AG entitled

1 to enjoinder of deceptive trade practices). Prospective loss of employment is an irreparable injury.
2 *Ottenheimer v. Real Estate Div.*, 91 Nev. 338, 342 (1975).

3 Here, Plaintiff will suffer irreparable harm if an injunction is not issued. This is because without
4 enjoinder, Plaintiff will be patently precluded from office. This is similar to the type of harm suffered
5 in *Ottenheimer*. Loss of opportunity to serve in public office is very similar to loss of opportunity to
6 serve through employment and this succinct harm should be recognized by the Court as an interest
7 deserving protection through injunction. Additionally, like *Harmon*, the damages will be difficult to
8 calculate if an injunction is not issued because of the loss of opportunity which Plaintiff will suffer.
9 Like in *NOS Communs. Inc.*, Plaintiff is statutorily entitled to a recount of votes. Thus, the inquiry
10 should focus primarily upon whether claimant can succeed on the merits of the case.

11 By way of preview, the government has taken the position that merely checking electronic data
12 is what is meant by “recount” under Nevada law. That position cannot be correct because it ignores
13 obvious statutory requirements that the “recount must include a count and inspection of all ballots,
14 including rejected ballots, and must determine whether all ballots are marked as required by law.” NRS
15 293.404(3). And to determine whether mail in ballots prepared by third parties are valid, the
16 government must physically inspect ballots to ascertain whether “the mail ballot has been marked and
17 signed on behalf of the voter.” NRS 293.269919(3). And mail in ballots must be physically examined
18 to determine whether they were postmarked “on the day of the election or before the polls close on the
19 day of the election. . . [.]” NRS 293.269923(2)(c)(2). In preparation of counting the ballots, the
20 government must clearly indicate “Excess ballots not counted” and the county clerk is required to keep
21 the ballots which were rejected for any cause. NRS 293.363(2)(b). Importantly, NRS 293.404(3)
22 requires a reexamination of “*all ballots, including rejected ballots, and must determine whether all*
23 *ballots are marked as required by law.*” (emphasis added). Critically, it is impossible to comply with
24 that statutory requirement absent a physical re-examination of the ballots through a hand recount.

25 In sum, Plaintiff will suffer irreparable harm if an injunction is not issued because Plaintiff will
26 suffer the deprivation of an interest in serving in public office. There is simply no way a mechanical
27 recount of the same votes that does not include a physical examination of ballots will result in anything
28 other than the same result. In reality, a mechanical shuffling of electronic information is not a recount

1 at all, it is an exercise in futility.

2 **B. Plaintiff is Likely to Succeed on Her Claim for Declaratory Relief**

3 Plaintiff's likelihood of success on the merits is strong and is based primarily on the clearly
4 articulated requirements of NRS Chapter 293. Plaintiff brought a single claim for relief in the
5 complaint: Declaratory Relief. Declaratory Relief is available when: (1) there exists a justiciable
6 controversy, that is, a claim of right is asserted against one who has an interest in contesting it; (2) the
7 controversy is between persons whose interests are adverse; (3) the party seeking declaratory relief has
8 a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial
9 determination. *Kress v. Corey*, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948). Declaratory Relief may be
10 asserted as an independent cause of action. *See* NRS 30.030 and NRS 30.040(1); *see also* *Boca Park*
11 *Marketplace Syndications Grp. v. HIGCO, Inc.*, 133 Nev. 923, 926, 407 P.3d 761, 764 (2017) (holding
12 declaratory relief can even be asserted as the sole cause of action).

13 A justiciable controversy exists if there is no advisory opinion sought, the issues are not moot,
14 and the claimant has standing to maintain the action, which is ripe for determination. *Flast v. Cohen*,
15 392 U.S. 83, 95 (1968). Here, a justiciable controversy exists because Plaintiff has demanded, and has
16 offered to stipulate to, a hand recount and physical inspection of all ballots. The purpose of the request
17 is obvious – a mechanical recount will be done from the same data set that yielded the original results
18 and will not include a re-examination of all ballots; whereas a hand recount will result in a re-inspection
19 of all of the ballots and may uncover votes incorrectly rejected or votes incorrectly counted for the
20 opponent. The government, inexplicably, has refused – despite there being no harm in conducting a
21 hand recount where Plaintiff is required by statute to pay the entire cost of the recount. *See Exhibit 1*.
22 Additionally, in the past, Defendants have conducted recounts via a simple mechanical retread that
23 does not actually examine the ballots.² Accordingly, a justiciable controversy exists concerning the
24 method the recount.

25 Next, the interests are adverse. Adverse interests exist where the interests are competing. *See*,
26 *Planned Parenthood Ass'n v. Fitzpatrick*, 401 F. Supp. 554 (D. Penn. 1975). Adverse interests exist

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28 ² <https://www.rgj.com/story/news/2022/06/30/joey-gilbert-forces-statewide-vote-recount-republican-governor-primary-race/7782347001/>

1 where there are present adverse effects presented by the non-movant’s conduct. *City of Los Angeles v.*
2 *Lyons*, 103 S.Ct. 1660, 1665 (1983). Here, Plaintiff seeks a recount by hand, and Defendants insist
3 upon a mechanical recount. Thus, the parties’ interests are adverse because each insists upon a distinct
4 method by which the recount must be performed. The government’s proposed course of conduct is
5 adverse to Plaintiff’s because the refusal to perform a physical examination and hand recount of the
6 ballots will prevent identification of improperly rejected ballots or ballots that were counted that
7 shouldn’t have been counted for the opposing candidate. Accordingly, the parties’ interest are adverse.

8 Thirdly, Plaintiff has a legally protectible interest in the results of the primary election for Reno
9 City Council Ward 1 that occurred on June 11, 2024. A legally protectible interest exists if the claimant
10 has “rights, duties or obligations” under law or contract. *See, Wells v. Bank of Nevada*, 90 Nev. 192,
11 197-98 (1974). Here, Plaintiff has a legally protectible interest in the recount. NRS 293.403.
12 Additionally, Plaintiff’s legally protectible interest extends to the manner in which the recount is
13 conducted. *See*, NRS 293.403-405. Indeed, Plaintiff seeks public office which is a legally protectible
14 interest. *See generally, Secretary of State v. Nevada State Legislature*, 120 Nev. 456 (2004).

15 Finally, the issues are ripe for judicial determination in that judicial determination must occur
16 before the commencement of the recount. Election challenges that seek resolution of procedural
17 defects are virtually always ripe for judicial review because “the question to be resolved is whether a
18 proposal has satisfied all constitutional and statutory requirements. . . [.]” *Herbst Gaming, Inc. v.*
19 *Heller*, 122 Nev. 877, 883 (2006) (in the context of pre-election review of ballot initiatives). Here,
20 Plaintiff seeks a judicial determination of the proper procedural mechanism for a recount conducted
21 pursuant to NRS 293.403-405. Thus, said issue is ripe for judicial determination.

22 Accordingly, Plaintiff has stated a claim for declaratory relief and given that Defendants are
23 simply being asked to conduct the recount in a fair and accurate manner; Plaintiff enjoys a strong
24 likelihood of success in the underlying declaratory relief action.

25 Plaintiff is requesting a hand recount of each ballot cast, counted, or rejected in the election
26 which occurred for Reno City Council Ward 1, on June 11, 2024. Absent an injunction requiring
27 Defendants to conduct the recount by hand, the recount will not be conducted by a hand recount.
28 However, a hand recount, or at a minimum a physical examination of all ballots, is required under

1 Nevada law. Specifically, NRS 293.404 provides that “[t]he recount must include a count and
2 inspection of all ballots, including rejected ballots, and must determine whether all ballots are marked
3 as required by law. . .” NRS 293.404(b)(3). This language necessarily requires that the recount include
4 a physical “by hand” inspection of each ballot. Nevada law requires a hand recount of the vote and
5 does not allow a re-count using the same machines that were originally used to count the votes. This
6 is because a recount necessarily includes a re-examination of all mail in ballots, absentee ballots,
7 election day drop offs, VVPAT receipts, and rejected ballots. Said re-examination requires an
8 “inspection of all ballots” to confirm whether they were “marked as required by law.” NRS 293.404(3).
9 Only a visual inspection of each physical ballot, performed during a hand-count, will allow the recount
10 board to confirm whether each ballot was marked as required by law. Additionally, the VVPAT
11 machines produce a paper receipt roll of all votes cast, whose purpose is verification of the accuracy
12 of the number of votes cast in the event of recount or challenge, which is further proof that where a
13 demand for recount is made, only a hand recount may be performed.

14 Notably, the phrase “All ballots must be recounted in the same manner in which the ballots
15 were originally tabulated” does not mean a machine recount. *See*, NRS 293.404(3). The government’s
16 position that this phrase mandates a machine recount is without basis. To “tabulate” means to organize
17 information into a table. It does not mean the method by which calculation occurs. The plain language
18 of NRS 293.404(3) requires that each category of ballot (mail-in, absentee, rejected, or in person vote)
19 must be separately tabulated when the recount is performed. The statute does not mandate, let alone
20 authorize a mechanical re-count using optical scanners or other mechanical devices. And other statutes
21 make plain that a mechanical recount is not permitted. Also, Nevada law does not allow the Recount
22 Board to simply use the thumb drive or other electronic data containing the Abstract of Votes as the
23 basis for the recalculation. Rather, Nevada law is clear that mail in ballots, absentee ballots, election
24 day drop off ballots, rejected ballots, and the VVPAT receipts must be kept secure in the vaults of the
25 county clerk so that they may be *physically inspected* in the event of a recount or challenge. NRS
26 293.391. Importantly, a hand recount of physical ballots is the only method by which a recount may
27 be lawfully performed.

28 In the past, Washoe County officials appear to have failed to comply with this statutory

1 requirement of a physical inspection during recount procedures. Specifically, during a previous
2 primary election cycle a recount was requested by defeated gubernatorial candidate Joey Gilbert, the
3 recount was not conducted by a physical inspection of the ballots, but rather by simply running ballots
4 through the voting machines.³ The government has made plain in email correspondence preceding this
5 motion that in the current instance they intend to use the same process used during the Gilbert recount.
6 Plaintiff is requesting this Court issue an Injunction requiring the Defendants to conduct the recount
7 via a physical inspection of the ballots, i.e. a “hand recount” because it is required by NRS
8 293.404(b)(3).

9 Furthermore, as discussed below, there is serious reason to doubt the accuracy of the election
10 which was conducted on June 11, 2024. Notably, 2 out of 5 county commissioners had enough doubt
11 in the election results to vote *against* certification of the vote.⁴ The Canvass of Vote was only certified
12 via the votes of the remaining 3 commissioners, 2 of which were conflicted to the extent they were
13 voting to certify their own reelection. Attached as **Exhibit 3** are numerous affidavits filed under oath,
14 by election workers, observers, and other individuals reporting serious issues with the voting machines
15 used on June 11, 2024. Specifically, these individuals reported two (2) key violations of Nevada
16 election law. First, despite the fact that the election machines in the tabulation rooms are supposed to
17 be a closed-circuit system, the affidavits of the observers report they witnessed an “Albert Sensor” in
18 the form of a flash drive plugged into the tabulation machines which are capable of transmitting and
19 receiving data. *See Exhibit 3*. Additionally, these individuals identified observing a requirement from
20 Washoe County that all mail in ballots be signed on the outside of the envelope. This requirement is
21 in violation of Nevada’s voter privacy laws (NRS 293.2696). *Id.* All of the statements included in
22 Exhibit 3 were signed by individuals with firsthand knowledge under penalty of perjury. The affidavits
23 included in Exhibit 3 are just a sample of those in Plaintiff’s possession which total over 30, but a
24 selection of only 5 are attached hereto in the interest of brevity.

25 In addition to the violations outlined in **Exhibit 3**, additional issues occurred with the election
26

27 ³ <https://www.rgj.com/story/news/2022/06/30/joey-gilbert-forces-statewide-vote-recount-republican-governor-primary-race/7782347001/>

28 ⁴ <https://washoelife.washoecounty.gov/washoe-county/board-of-county-commissioners-certify-results-of-primary-election/> (noting the Board certified the Canvass of Vote by a 3-2 vote in favor of Certification).

1 on June 11, 2024. Specifically, attached hereto as **Exhibit 4** are signed statements of election workers,
2 observers, and other individuals who under penalty of perjury reported that the Washoe County election
3 results were tabulated in violation of Nevada law. NRS 293.363 provides that ballots cannot be counted
4 on election day until “the polls are closed.” Yet, according to the sworn statements in **Exhibit 4**,
5 Defendant Francisco Aguilar specifically instructed poll workers to begin tabulating election results
6 prior to the closing of polls. *See Exhibit 4.*

7 Finally, Plaintiff has been apprised of information which calls into question the results of the
8 election which occurred on June 11, 2024. First, she has been informed by numerous individuals that
9 they believe their votes were not counted because their ballots had been rejected. *See Exhibit 5*
10 (Declaration of Lilith Baran) at ¶5. Further, Plaintiff has also been informed that some 400 individuals
11 residing at the Cares homeless shelter in downtown reno voted, but all ballots were rejected for some
12 unknown reason. *Id.* at ¶6. Additionally, Plaintiff has identified five (5) individuals who claim to have
13 been registered to vote, have received mail in ballots, and never voted. These individuals reside in
14 Washoe County, and are David Tullgren, his wife, and three (3) other members of his household.
15 Despite never voting, these individuals claim that searches via the “check your ballot” page of the
16 Washoe County election websites shows that all 5 of these individuals who did not vote, in fact voted.
17 Plaintiff will provide a supplement to this Motion with affidavits from these individuals as soon as
18 possible.

19 Based on the foregoing, Plaintiff will indeed suffer imminent irreparable harm without a
20 preliminary injunction. First, absent an order from this court, the recount will be conducted using
21 mechanical methods which will not include a physical reexamination of all of the various types of
22 ballots, as required by law. Second, there are serious reasons to doubt the accuracy of the results
23 certified on June 21, 2024. Observers reported witnessing Albert flash drives plugged into tabulation
24 equipment which are capable of transmitting and receiving data, in violation of Nevada law. **Exhibit**
25 **3.** Observers also reported that ballots were counted prior to the close of the polls, again in violation
26 of Nevada law. **Exhibit 4.** Finally, the Plaintiff herself has been informed and believes that numerous
27 ballots cast were rejected for unknown reasons, including some 400 ballots cast by the residents of the
28 Cares homeless shelter. Accordingly, there is no way to ensure accurate results in the June 11, 2024

1 election for Reno City Council Ward 1 without a manual, hand recount and inspection of all votes cast.
2 Absent an Order from this Court, this manual hand recount will not occur.

3 **C. The Balance of Interests Favors Plaintiff**

4 Here, absent an injunction, there is serious risk of harm to Plaintiff, and the general public.
5 Notably, the interest in accurate election results. Given the irregularities and discrepancies outlined in
6 Exhibits 3 through 5, there is serious question regarding the accuracy of the results that were certified
7 on June 21, 2024. Granting Plaintiffs injunction and requiring a hand recount will ensure that the
8 results are accurate. On the other hand, there is no risk to Defendants. Pursuant to statute, the costs
9 associated with the recount must be deposited by Plaintiff. Plaintiff will deposit this amount, whatever
10 it is, to fully cover the cost of the recount, including any additional costs that may be associated with
11 manually performing the recount by hand. Therefore, there is no risk to Defendants as they will not
12 bear any costs associated with the recount. Additionally, Defendants are all public servants, who at
13 least in theory, should have the same interest in ensuring accurate election results.

14 **D. The Public Interest Strongly Favors Injunctive Relief**

15 The Public has an interest in free and fair elections conducted in a transparent, verifiable manner
16 with accurate results. The entire foundation of the American Democracy is premised on the assumption
17 that election results will accurately reflect the will of the people. Thus, the legislature has provided a
18 method by which candidates may request a recount of the votes cast to ensure those results were in fact
19 accurate. The United States Supreme Court has held that “protecting public confidence in elections is
20 deeply important—indeed, critical—to democracy.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d
21 1312 (11th Cir. 2019) (citing *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197, 128 S. Ct.
22 1610, 170 L. Ed. 2d 574 (2008)). Here, Plaintiff is simply seeking an injunction requiring a recount
23 done by means which will ensure that the election results certified on June 21, 2024, are in fact accurate.
24 This is “deeply important” to the democratic process and thus in the public interest.

25 **E. No Bond is Required**

26 The express purpose of posting a security bond is to protect a party from damages incurred as
27 a result of a wrongful injunction, not from damages existing before the injunction was issued. *See*
28 *NRCP 65; Glenn Falls Ins. v. First Nat’l Bank*, 83 Nev. 196, 427 P.2d 1 (1967). Here, Plaintiff is

1 required by statute to deposit the full cost of the recount prior to the recount commencing. NRS
2 293.403(1)(b). This amount will be paid by Plaintiff and satisfies any bond requirement necessary to
3 protect Defendants.

4 **III. CONCLUSION**

5 For the reasons set forth herein, Plaintiff respectfully requests this Court issue a Preliminary
6 Injunction, requiring that Defendants conduct the recount of votes cast in the Reno City Council Ward
7 1 election via manual, hand recount and otherwise comply with all applicable Nevada Revised Statutes
8 and Administrative Code sections.

9 Dated: June 26, 2024.

HUTCHINGS LAW GROUP

/s/ John B. Lanning

By: _____

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**SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA**

AFFIRMATION

Pursuant to NRS 239B.030

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

Dated: June 26, 2024.

HUTCHINGS LAW GROUP

/s/ John B. Lanning

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