

1 Mark H. Hutchings, Esq.
Nevada Bar No. 12783
2 John B. Lanning, Esq.
Nevada Bar No. 15585

3 **HUTCHINGS LAW GROUP**
4 400 South 4th Street, Suite 550
5 Las Vegas, Nevada 89101
6 Phone: (702) 660-7700
7 Fax: (702) 552-5202
8 mhutchings@hutchingslawgroup.com
9 john@hutchingslawgroup.com
10 *Attorneys for Plaintiff*

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

13 PAUL WHITE, an individual;

14 Plaintiff,

15 v.

16 CARI ANN BURGESS, individually and in her
17 official capacity as Registrar of Voters;
18 WASHOE COUNTY REGISTRAR OF
19 VOTERS, a government agency; ERIC BROWN,
20 individually and in his official capacity as
21 Washoe County Manager; ALEXIS HILL,
22 individually and in her official capacity as
23 Chairwoman of the Washoe County Board of
24 Commissioners; WASHOE COUNTY, a political
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,

25 Defendants.

Case No. CV24-01442

Dept. No. 1

**EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER ON ORDER
SHORTENING TIME**

[HEARING REQUESTED]

26
27 COMES NOW, Plaintiff PAUL WHITE, by and through her counsel of record, Mark H.
28 Hutchings, Esq. and John B. Lanning, Esq. of the law firm Hutchings Law Group, and hereby moves

1 this Court for a Temporary Restraining Order preventing Defendants Cari Ann Burgess, Washoe
2 County Registrar of Voters, Eric Brown, Alexis Hill, Washoe County, Francisco Aguilar, Nevada
3 Secretary of State, Nevada Attorney General, and Aaron Ford, and any of them, from conducting the
4 recount of votes requested by Plaintiff prior to a ruling from this Court on Plaintiff's Motion for
5 Preliminary Injunction.

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

9 Dated: June 27, 2024.

HUTCHINGS LAW GROUP

/s/ John B. Lanning

10
11 By: _____
12 Mark H. Hutchings, Esq.
13 Nevada Bar No. 12783
14 John B. Lanning, Esq.
15 Nevada Bar No. 15585
16 400 South 4th Street, Suite 550
17 Las Vegas, Nevada 89101
18 Telephone: (702) 660-7700
19 Mhutchings@HutchingsLawGroup.com
20 John@HutchingsLawGroup.com
21 *Attorneys for Plaintiff*
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**AFFIDAVIT OF JOHN B. LANNING, ESQ. IN SUPPORT OF
PLAINTIFF’S *EX PARTE* MOTION FOR A TEMPORARY RESTRAINING ORDER ON AN
ORDER SHORTENING TIME**

I, John B. Lanning, Esq., being first duly sworn, on his oath, deposes and says 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, Paul White.

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 a Temporary Restraining Order on an Order Shortening Time.

5. This Motion seeks to Restrain Defendants CARI ANN BURGESS, WASHOE COUNTY REGISTRAR OF VOTERS, 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 conducting the recount of votes cast in the June 11, 2024 Primary Election prior to a ruling from this Court on Plaintiff’s *Ex Parte* Motion for a Preliminary Injunction on Order Shortening Time.

6. My office received an email correspondence from counsel for Defendant Cari Ann Burgess stating that the Washoe County Registrar of Voters intends to conduct the recount Sunday, June 30, 2024. *See Exhibit 1* (Emails with Washoe County DA) (“The observation room will be opened at 7 a.m. Sunday, June 30, 2024, and the recount will then commence”). Additionally, news reports claim to have received statements from Defendant Cari Ann Burgess that the recounts the Registrar “will begin the recounts Friday and finish over the weekend.” <https://mynews4.com/news/local/primary-not-over-yet-3-recounts-election-contest-filed-in-washoe-county-whats-next> .

7. Plaintiff has filed the required demand for recount and paid the estimated costs of the recount pursuant to NRS 293.403.

1 8. This Order Shortening Time is necessary, given the fact that Defendants intend to
2 conduct the recount prior to a ruling from this Court on the Motion for Preliminary Injunction which
3 seeks clarification from this Court on the method by which said recount is to be conducted. There is a
4 legitimate question about the method by which the recount must be conducted. *See* Complaint;
5 Plaintiff's Ex Parte Motion for Preliminary Injunction on Order Shortening Time. This Motion must
6 be heard as soon as possible to restrain Defendants from conducting the Recount prior to hearing on
7 Motion for Preliminary Injunction. Accordingly, an Order shortening time is necessary.

8 9. Declarant makes this request in good faith and without intent to delay. Further, there is
9 no risk of material prejudice to Defendants.

10 I declare under penalties of perjury under the laws of the State of Nevada that the foregoing is
11 true and correct.

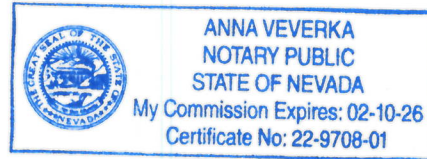
12 FURTHER AFFIANT SAY NAUGHT.

13 _____
14 JOHN B. LANNING, ESQ.
15 HUTCHINGS LAW GROUP
16 400 S. 4th Street, Suite 550
17 Las Vegas, Nevada 89101

18 Subscribed and sworn to before me, this 27th day of June, 2024.
19 [Notary Seal]

20 _____
21 *Anna Veverka*
22 [Signature of Notary]

23 _____
24 *Anna Veverka*
25 [Printed Name of Notary]
26 NOTARY PUBLIC
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28



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff ran in the primary election conducted in Washoe County on June 11, 2024. The
4 results of this election were certified by the Washoe Board of Commissioners on June 21, 2024.
5 Plaintiff sought to demand a recount. On June 25, 2024, Plaintiff demanded a recount as required by
6 NRS 293.403 and the next day paid the required estimated costs of the recount. On June 25, 2024
7 Plaintiff, through counsel, reached out to Defendant Cari Ann Burgess and informed her that Plaintiff
8 sought to demand a recount of the primary election results. *See Exhibit 1*. Plaintiff also requested
9 that Defendant Burgess stipulated to performing the recount by hand instead of via machine, as a
10 physical inspection of the ballots is required under NRS 293.404. *See id.* Defendant Burgess, through
11 counsel, refused to stipulate to Plaintiff's demand and informed Plaintiff the recount would be
12 conducted with machines. *Id.*

13 Based on Defendant Burgess' refusal to stipulate, Plaintiff filed his Complaint in the Second
14 Judicial District Court, seeking declaratory relief concerning the method and procedure for the
15 recount. Plaintiff also filed an Ex Parte Motion for Preliminary Injunction on Order Shortening Time
16 seeking clarification from this Court on the method of the recount and NRS 293.404 prior to the
17 commencement of the recount. Defendants have been served on June 27, 2024 with copies of the
18 Complaint and Motion for Preliminary Injunction.

19 Despite the fact that Plaintiff has sought clarification from this Court, Defendants have made
20 clear their intention to conduct and conclude the recount prior to any ruling from this Court. In email
21 correspondence, Defendant Burgess through counsel informed the undersigned that the recount would
22 commence on Sunday June 30, 2024. **Exhibit 1**. Additionally, Defendant Burgess has also made
23 statements to the media stating that the recount would begin on Friday and be completed over the
24 weekend. [https://mynews4.com/news/local/primary-not-over-yet-3-recounts-election-contest-filed-in-](https://mynews4.com/news/local/primary-not-over-yet-3-recounts-election-contest-filed-in-washoe-county-whats-next)
25 [washoe-county-whats-next](https://mynews4.com/news/local/primary-not-over-yet-3-recounts-election-contest-filed-in-washoe-county-whats-next). Based on these statements, Plaintiff now believes that Defendants are
26 seeking to conduct the recount in a manner that conflicts with the applicable Nevada Revised Statutes
27 prior to ruling from this Court on the Motion for Preliminary Injunction. This Motion follows to
28 restrain and prevent the Defendants from commencing the recount until such time as this Court can

1 rule on Plaintiff’s Ex Parte Motion for a Preliminary Injunction on Order Shortening Time.

2 **II. LAW & ARGUMENT**

3 NRS 33.010 provides that an injunction, including a temporary restraining order, may be
4 granted, “[w]hen it shall appear by the complaint or affidavit that the commission or continuance of
5 some act, during the litigation, would produce great or irreparable injury to the plaintiff” or “[w]hen it
6 shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is
7 procuring or suffering to be done, some act in violation of the plaintiff’s rights respecting the subject
8 of the action, and tending to render the judgment ineffectual.” NRCP 65(b) further grants this Court
9 authority to “. . . issue a temporary restraining order without written or oral notice to the adverse party
10 or its attorney only if . . . specific facts in an affidavit or a verified complaint clearly show that
11 immediate and irreparable injury, loss, or damage will result to the movant before the adverse party
12 can be heard in opposition; and . . . the movant’s attorney certifies in writing any efforts made to give
13 notice and the reasons why it should not be required.” The decision regarding whether to grant a
14 temporary restraining order is in the sound discretion of the court and will only be overturned on appeal
15 upon a showing of an abuse of discretion or reliance on an erroneous legal standard. *See, e.g., Coronet*
16 *Homes v. Mylan*, 84 Nev. 435, 437, 442 P.2d 901, 902 (1968)(citing *Thorn v. Sweeney*, 12 Nev. 251
17 (1877)); *see also Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721,
18 100 P.3d 179, 187 (2004).

19 NRCP 65(b)(2) provides that:

20 Every temporary restraining order issued without notice must state the date and hour it
21 was issued; describe the injury and state why it is irreparable; state why the order was
22 issued without notice; and be promptly filed in the clerk’s office and entered in the
record. The order expires at the time after entry — not to exceed 14 days — that the
court sets

23 Further, NRCP 65(b)(3) provides that:

24 If the order is issued without notice, the motion for a preliminary injunction must be
25 set for hearing at the earliest possible time, taking precedence over all other matters
except hearings on older matters of the same character.

26 Finally, NRCP 65(c) provides that

27 The court may issue a . . . temporary restraining order only if the movant gives security
28 in an amount that the court considers proper to pay the costs and damages sustained by
any party found to have been wrongfully enjoined or restrained.

1 **A. Plaintiff Will Suffer Immediate, Irreparable Harm Absent a TRO**

2 Here, Plaintiff is seeking a Temporary Restraining Order prohibiting Defendants from
3 commencing with the recount until this Court can resolve the dispute between the parties concerning
4 the method and manner of that recount. Absent a Temporary Restraining Order, Plaintiff will
5 imminent, irreparable harm for which compensatory damages will not be an appropriate remedy. A
6 temporary restraining order to preserve the *status quo* is available where the movant shows that, “. . .
7 immediate and irreparable injury, loss, or damage will result to the movant before the adverse party
8 can be heard in opposition. NRCP 65(b)(1)(A); *see also State ex rel. Friedman v. Eighth Judicial Dist.*
9 *Court*, 81 Nev. 131, 134, 399 P.2d 632, 633 (1965). Here, the immediate and irreparable harm is the
10 fact that Defendants will proceed with their race to the finish line to complete the recount prior to any
11 ruling from this Court.

12 Absent a Temporary Restraining Order, Defendants will, as they have expressed their intent to
13 do, complete the recount over the weekend. *See Exhibit 1*; [https://mynews4.com/news/local/primary-](https://mynews4.com/news/local/primary-not-over-yet-3-recounts-election-contest-filed-in-washoe-county-whats-next)
14 [not-over-yet-3-recounts-election-contest-filed-in-washoe-county-whats-next](https://mynews4.com/news/local/primary-not-over-yet-3-recounts-election-contest-filed-in-washoe-county-whats-next). This will result in
15 immediate, irreparable harm to Plaintiff who will be deprived of a recount by the means prescribed by
16 NRS 293.404. Defendants are aware of Plaintiff’s Complaint and Motion for Preliminary Injunction.
17 Instead of waiting for direction from this Court on the manner and method of recount, Defendants are
18 seeking to subvert Plaintiff’s Complaint and complete the recount prior to intervention from this Court
19 and any ruling on the Preliminary Injunction. Accordingly, a Temporary Restraining Order is
20 necessary to restrain Defendants and prevent them from conducting the Recount until such a time as
21 the Court can hear Plaintiff’s Motion for a Preliminary Injunction and issue an order on the method
22 and manner of the recount.

23 **B. There is a High Likelihood of Success on the Merits of Plaintiff’s Claims**

24 Here, the analysis for the likelihood of success on the merits of Plaintiff’s claims is the same
25 analysis put forth in Subsection II.B of Plaintiff’s Ex Parte Motion for a Preliminary Injunction on
26 Order Shortening Time. *See Plaintiff’s Ex Parte Motion for Preliminary Injunction on Order*
27 *Shortening Time* at p.10 line 2 through page 14 line 23. As set forth therein and incorporated herein
28 by reference, Plaintiff’s likelihood of success on the merits is strong and is based primarily on the

1 clearly articulated requirements of NRS Chapter 293. In sum, a justiciable controversy exists between
2 the parties concerning the requirements of NRS 293.404(3). Defendants have taken the position that
3 despite the requirement for an “inspection of the ballots,” the recount need only be conducted via a
4 machine recount. Plaintiff takes the position that an inspection of the ballots requires a hand recount.
5 Furthermore, there is significant reason to doubt the accuracy of the results certified on June 21, 2024.
6 Accordingly, Plaintiff enjoys a high likelihood of success on his claim for declaratory relief. A more
7 in-depth analysis of Plaintiff’s likelihood of success is included in Plaintiff’s Ex Parte Motion for
8 Preliminary Injunction on Order Shortening Time at p.10 line 2 through page 14 line 23, which has
9 been omitted herein for the sake of brevity.

10 **C. The TRO Sought by Plaintiff is Warranted, With Minimal Bond**

11 NRCP 65(c) requires Plaintiff to post security “in such sum as the court deems proper, for the
12 payment of such costs and damages as may be incurred or suffered by any party who is found to have
13 been wrongfully enjoined or restrained.” Here, the restraint of Defendants ability to conduct the
14 recount pending a hearing on Plaintiff’s Motion for Preliminary Injunction, even if it were ultimately
15 found wrongful, would not result in any damage beyond *de minimus* inconvenience to Defendants. As
16 noted previously, Plaintiff has already furnished Defendants with the full estimated cost of the recount,
17 as required by statute. As such, a minimal bond in the amount of \$100 is appropriate for issuance of
18 the temporary restraining order sought hereby.

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1 **III. CONCLUSION**

2 For the reasons set forth herein, and the facts set forth in the affidavit of John B. Lanning, Esq.
3 attached hereto and the Verified Complaint on file in this matter, Plaintiff's *Ex Parte* Motion for
4 Temporary Restraining Order should be granted pending a hearing on Plaintiffs Motion for Preliminary
5 Injunction pursuant to NRCPC 65(b)(3).

6 Dated: June 27, 2024.

HUTCHINGS LAW GROUP

/s/ John B. Lanning

By: _____

Mark H. Hutchings, Esq.
Nevada Bar No. 12783
John B. Lanning, Esq.
Nevada Bar No. 15585
400 South 4th Street, Suite 550
Las Vegas, NV 89101
Telephone: (702) 660-7700
Attorneys for Plaintiff

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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

By: _____

Mark H. Hutchings, Esq.
Nevada State No. 12783
John B. Lanning, Esq.
Nevada Bar No. 15585
400 South 4th Street, Suite 550
Las Vegas, NV 89101
Telephone: (702) 660-7700
Attorneys for Plaintiff