

1 Bradley S. Schrager, Esq. (NSB 10217)  
John Samberg, Esq. (NSB 10828)  
2 Daniel Bravo, Esq. (NSB 13078)  
**WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**  
3 3773 Howard Hughes Parkway, Suite 590 South  
Las Vegas, NV 89169  
4 (702) 341-5200/Fax: (702) 341-5300  
bschrager@wrslawyers.com  
5 jsamberg@wrslawyers.com  
dbravo@wrslawyers.com

6 David R. Fox, Esq. (*Pro Hac Vice*)  
7 Maya Sequeira, Esq. (*Pro Hac Vice Forthcoming*)  
Dan Cohen, Esq. (*Pro Hac Vice Forthcoming*)  
8 Makeba Rutahindurwa, Esq. (*Pro Hac Vice Forthcoming*)  
**ELIAS LAW GROUP LLP**  
9 10 G St. NE Suite 600  
Washington, DC 20002  
10 (202) 968-4511/Fax: (202) 968-4498  
dfox@elias.law  
11 msequeira@elias.law  
dcohen@elias.law  
12 mrutahindurwa@elias.law

13 *Attorneys for Plaintiff*

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

17 PROGRESSIVE LEADERSHIP ALLIANCE  
OF NEVADA,

18 Plaintiff,

19 vs.

21 BARBARA CEGAUSKE, in her official  
capacity as Nevada Secretary of State,

22 Defendant.

Case No.: 22 OC 00101 1B

Dept. No.: II

**NOTICE OF APPEAL**

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1 **NOTICE OF APPEAL**

2 PLEASE TAKE NOTICE that Plaintiff PROGRESSIVE LEADERSHIP ALLIANCE OF  
3 NEVADA by and through their attorneys of record, hereby appeals to the Supreme Court of the  
4 State of Nevada from the ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION  
5 entered on September 28, 2022, attached hereto as Exhibit 1.

6 **AFFIRMATION**

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

9 DATED this 28<sup>th</sup> day of September, 2022.

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

12 By: 

13 BRADLEY S. SCHRAGER, ESQ. (NSB 10217)  
14 JOHN SAMBERG, ESQ. (NSB 10828)  
15 DANIEL BRAVO, ESQ. (NSB 13078)  
16 3773 Howard Hughes Parkway, Suite 590 South  
17 Las Vegas, NV 89169  
18 (702) 341-5200/Fax: (702) 341-5300  
19 bschrager@wrslawyers.com  
20 jsamberg@wrslawyers.com  
21 dbravo@wrslawyers.com

22 DAVID R. FOX, ESQ. (*pro hac vice*)  
23 MAYA SEQUEIRA, ESQ. (*pro hac vice forthcoming*)  
24 DAN COHEN, ESQ. (*pro hac vice forthcoming*)  
25 MAKEBA RUTAHINDURWA, ESQ. (*pro hac vice forthcoming*)

26 **ELIAS LAW GROUP LLP**  
27 10 G St. NE Suite 600  
28 Washington, DC 20002  
(202) 968-4511/Fax: (202) 968-4498  
dfox@elias.law  
msequeira@elias.law  
dcohen@elias.law  
mrutahindurwa@elias.law

*Attorneys for Plaintiff*


1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 28<sup>th</sup> day of September, 2022, a true and correct copy of  
3 the foregoing **NOTICE OF APPEAL** was served upon all parties via electronic mailing to the  
4 following counsel of record pursuant to a written agreement among the parties and a courtesy  
5 copy to the JEA:

6 Craig A. Newby, Esq.  
7 Laena St Jules, Esq.  
8 **OFFICE OF THE ATTORNEY GENERAL**  
9 CNewby@ag.nv.gov  
10 LStJules@ag.nv.gov

Billie Shadron  
Judicial Assistant to  
Hon. Judge James E. Wilson  
BShadron@carson.org

11 *Attorney for Barbara Cegavske*

12 By   
13 Laura Simar, an Employee of  
14 WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
15 RABKIN, LLP

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# EXHIBIT 1

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# EXHIBIT 1

1 Bradley S. Schrage, Esq. (NSB 10217)  
John Samberg, Esq. (NSB 10828)  
2 Daniel Bravo, Esq. (NSB 13078)  
**WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**  
3 3773 Howard Hughes Parkway, Suite 590 South  
Las Vegas, NV 89169  
4 (702) 341-5200/Fax: (702) 341-5300  
bschrager@wrslawyers.com  
5 jsamberg@wrslawyers.com  
dbravo@wrslawyers.com

6 David R. Fox, Esq. (*Pro Hac Vice*)  
7 Maya Sequeira, Esq. (*Pro Hac Vice Forthcoming*)  
Dan Cohen, Esq. (*Pro Hac Vice Forthcoming*)  
8 Makeba Rutahindurwa, Esq. (*Pro Hac Vice Forthcoming*)  
**ELIAS LAW GROUP LLP**  
9 10 G St. NE Suite 600  
Washington, DC 20002  
10 (202) 968-4511/Fax: (202) 968-4498  
dfox@elias.law  
11 msequeira@elias.law  
dcohen@elias.law  
12 mrutahindurwa@elias.law

13 *Attorneys for Plaintiff*

14 **IN THE FIRST JUDICIAL DISTRICT COURT**  
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19 vs.

21 BARBARA CEGAVSKE, in her official  
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Case No.: 22 OC 00101 1B

Dept. No.: II

**NOTICE OF ENTRY OF ORDER**

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**NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY GIVEN that an ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION was entered in the above-captioned matter on the 27th day of September, 2022. A true and correct copy of the ORDER is attached hereto as Exhibit 1.

**AFFIRMATION**

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

DATED this 28<sup>th</sup> day of September, 2022.

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

By: 

BRADLEY S. SCHRAGER, ESQ. (NSB 10217)  
JOHN SAMBERG, ESQ. (NSB 10828)  
DANIEL BRAVO, ESQ. (NSB 13078)  
3773 Howard Hughes Parkway, Suite 590 South  
Las Vegas, NV 89169  
(702) 341-5200/Fax: (702) 341-5300  
bschrager@wrslawyers.com  
jsamberg@wrslawyers.com  
dbravo@wrslawyers.com

DAVID R. FOX, ESQ. (*pro hac vice*)  
MAYA SEQUEIRA, ESQ. (*pro hac vice forthcoming*)  
DAN COHEN, ESQ. (*pro hac vice forthcoming*)  
MAKEBA RUTAHINDURWA, ESQ. (*pro hac vice forthcoming*)  
**ELIAS LAW GROUP LLP**  
10 G St. NE Suite 600  
Washington, DC 20002  
(202) 968-4511/Fax: (202) 968-4498  
dfox@elias.law  
msequeira@elias.law  
dcohen@elias.law  
mrutahindurwa@elias.law

*Attorneys for Plaintiff*

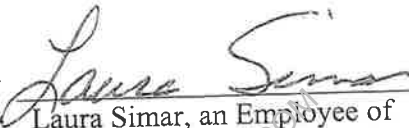
**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of September, 2022, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** was served upon all parties via electronic mailing to the following counsel of record pursuant to a written agreement among the parties and a courtesy copy to the JEA:

Craig A. Newby, Esq.  
Laena St Jules, Esq.  
**OFFICE OF THE ATTORNEY GENERAL**  
CNewby@ag.nv.gov  
LStJules@ag.nv.gov

Billie Shadron  
Judicial Assistant to  
Hon. Judge James E. Wilson  
BShadron@carson.org

*Attorney for Barbara Cegavske*

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

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# EXHIBIT 1

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# EXHIBIT 1

1 AARON FORD  
2 Attorney General  
3 Craig Newby, Esq. (Bar No. 8591)  
4 Deputy Solicitor General  
5 Laena St-Jules, Esq. (Bar No. 15156)  
6 Deputy Attorney General  
7 Office of the Attorney General  
8 555 E. Washington Ave, Ste. 3900  
9 Las Vegas, NV 89101  
10 (702) 486-3420 (phone)  
11 (702) 486-3773 (fax)  
12 cnewby@ag.nv.gov  
13 lstjules@ag.nv.gov

14 *Attorneys for Defendant*  
15 *Barbara Cegavske*

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

18 **PROGRESSIVE LEADERSHIP ALLIANCE**  
19 **OF NEVADA,**

20 **Plaintiff,**

21 **vs.**

22 **BARBARA CEGAVSKE, in her official**  
23 **capacity as NEVADA SECRETARY OF**  
24 **STATE,**

25 **Defendant.**

26 Case No. 22 OC 00101 1B

27 Dept. No. II

28 **[PROPOSED] ORDER DENYING**  
**MOTION FOR PRELIMINARY**  
**INJUNCTION**

29 Plaintiff Progressive Leadership Alliance of Nevada ("PLAN") moved for a  
30 preliminary injunction prohibiting Defendant Barbara Cegavske, in her official capacity as  
31 Nevada Secretary of State ("Secretary"), from authorizing or permitting counties to engage  
32 in hand counting. The Court, having considered PLAN's motion and all briefing thereon,  
33 DENIES the motion for preliminary injunction.

34 **I. STATEMENT OF FACTS**

35 Nevada law does not prohibit hand counting of ballots. Voting is permitted by  
36 "mechanical voting system," see NRS 293B.033, but use of a mechanical voting system is  
37 optional, not mandatory. Since 1985, Nevada statute has provided that "[a]t all statewide,  
38 county, city and district elections of any kind held in this State, ballots or votes *may* be

1 cast, registered, recorded and counted by means of a mechanical voting system." NRS  
2 293B.050 (emphasis added). Prior to this, nothing prohibited hand counting.

3 On August 26, 2022, the Secretary of State adopted regulations relating to  
4 conducting a hand count of ballots (the "Regulation"). The Regulation applies to any city or  
5 county conducting a hand count as the primary method for counting votes. *Id.* § 7(3). It  
6 sets minimum standards for, among other things, two tallies of the vote, shift limitations,  
7 tally standards, and tally team composition. *Id.* §§ 4(1), 4(3)(a), 5(3), 5(4), 11(1), 11(3)(a),  
8 12(3), 12(4). If a city or county chooses to use hand counting as the primary method for  
9 counting votes, it must submit a plan for conducting the hand count to the Secretary not  
10 later than 30 days before the date of the election. *Id.* §§ 3, 10. If a city or county does not  
11 comply with the Regulation, it may not use hand counting to determine its election results.  
12 *See id.*

13 On August 31, 2022, PLAN filed a complaint for declaratory and injunctive relief  
14 challenging the Regulation. On September 1, 2022, PLAN filed a motion for preliminary  
15 injunction seeking to enjoin the Regulation.

## 16 II. STANDARD OF LAW

17 Injunctive relief is extraordinary relief. *Dep't of Conservation & Nat. Res., Div. of*  
18 *Water Res. v. Foley*, 121 Nev. 77, 89, 109 P.3d 760, 762 (2005). A preliminary injunction is  
19 an "extraordinary remedy that may only be awarded upon clear showing that the plaintiff  
20 is entitled to such relief." *Winter v. Nat. Res. Def' Council, Inc.*, 555 U.S. 7, 22 (2008); *see*  
21 *also* NRS 33.010(1). A "preliminary injunction is available if an applicant can show a  
22 likelihood of success on the merits and a reasonable probability the non-moving party's  
23 conduct, if allowed to continue, will cause irreparable harm." *Clark Cty. Sch. Dist. v.*  
24 *Buchanan*, 112 Nev. 1146, 1149, 924 P.2d 716, 719 (1996). Even where a plaintiff makes  
25 those showings, a court may decline to order injunctive relief due to the potential hardship  
26 on each party and considerations of the public interest. *Univ. & Cmty. Coll. Sys. v.*  
27 *Nevadans for Sound Gov't*, 120 Nev. 712, 721 (2004). In cases like this one, where the party  
28

1 opposing injunctive relief is a government entity, the potential hardship and the public  
2 interest considerations are merged. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

3 As set forth below, PLAN does not meet the requirements for obtaining injunctive  
4 relief.

### 5 III. ANALYSIS

#### 6 A. Likelihood of Success on the Merits

7 PLAN is unlikely to succeed on the merits of its challenge to the Regulations.  
8 Nothing in Nevada statute or law prohibits the use of hand counting. PLAN argues that  
9 NRS 293.2696(5) precludes hand counting. That statute provides that all voting systems  
10 must "[m]eet[] or exceed[] the standards for voting systems established by the United  
11 States Election Assistance Commission, including, without limitation, the error rate  
12 standards." However, NRS 293.2696 was adopted in connection with the Help America  
13 Vote Act ("HAVA"). HAVA defines a voting system as "the total combination of mechanical,  
14 electromechanical, or electronic equipment," and "the practices and associated  
15 documentation" used for certain purposes. 52 U.S.C. § 21081(b). The Court interprets NRS  
16 293.2696 within the context of HAVA. See *FDA v. Brown & Williamson Tobacco Corp.*, 529  
17 U.S. 120, 133 (2000) ("It is a 'fundamental canon of statutory construction that words of a  
18 statute must be read in their context and with a view to their place in the overall statutory  
19 scheme.>"). NRS 293.2696(5)'s reference to voting systems only applies to mechanical,  
20 electromechanical, or electronic voting systems, and does not bar the use of hand counting.

21 Furthermore, the right to a uniform, statewide standard for counting votes does not  
22 require that cities and counties use only one sole method of counting votes. See Nev. Const.  
23 art. 2, § 1A(10); NRS 293.2546(10). The right to a uniform, statewide standard relates to  
24 the determination of what qualifies as a vote. Nevada statute and regulation already  
25 address how to determine whether a vote must be counted; for example, NRS 293.3677(2)(a)  
26 specifies that "[a] vote must be counted if the designated space is darkened or there is a  
27 writing in the designated space, including, without limitation, a cross or check." Having  
28

1 some cities or counties use hand counting and others use mechanical voting systems does  
2 not violate voters' right to a uniform, statewide standard for counting votes.

3 Finally, PLAN is unlikely to succeed on the merits of its Equal Protection claim  
4 because it fails to show that the Regulation would in fact disenfranchise any voters.

5 Accordingly, PLAN has not established any likelihood of success on the merits of its  
6 challenge to the Regulation.

### 7 **B. Irreparable Harm**

8 PLAN has not offered evidence that it will suffer irreparable harm absent a  
9 preliminary injunction. There is no evidence that hand counting will be used as the  
10 primary method of tabulating the votes in the November 2022 general election. As of today,  
11 no counties have submitted a plan to do so in accordance with the Regulation.

### 12 **C. Balance of Equities and Public Interest**

13 The balance of equities and public interest does not favor PLAN. Cities and counties  
14 may already use hand counting. The Regulation works to promote uniformity and accuracy  
15 in the event hand counting is chosen as the primary method for counting the votes. If a  
16 city or county does not comply with the Regulation, it may not use hand counting to  
17 determine its election results. Without the Regulation, cities or counties may choose hand  
18 counting without any of the Regulation's safeguards.

## 19 **IV. CONCLUSIONS OF LAW**

20 The Court has carefully considered and weighed the factors for granting a  
21 permanent injunction. Nevada law does not preclude hand counts. The Regulation sets  
22 minimum standards for hand counts and requires compliance with its terms if a city or  
23 county will use hand counting to determine its election results. There is currently no  
24 evidence that any city or county will use hand counting to determine its election results.

25 PLAN has not shown, under any standard of proof, that it is entitled to a preliminary  
26 injunction. PLAN has failed to establish any likelihood of success on the merits, any  
27 irreparable injury absent a preliminary injunction, or that the balance of equities and  
28 public interest favor issuance of a preliminary injunction.

1 V. ORDER

2 The Court orders:


3 1. PLAN's motion for a preliminary injunction is denied.

4 2. The Secretary will serve a notice of entry of this order on all other parties and

5 file proof of such service within 7 days after the date the Court sent this order to the

6 Secretary's attorneys. *The oral argument hearing is vacated.*

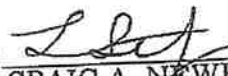
7 DATED September 27, 2022.

8   
9 DISTRICT COURT JUDGE

10 Respectfully submitted:

11 Dated this 21st day of September, 2022

12 AARON D. FORD  
13 Attorney General

14 By:   
15 CRAIG A. NEWBY (Bar No. 8591)  
16 Deputy Solicitor General  
17 LAENA ST-JULES (Bar No. 15156)  
18 Deputy Attorney General  
19 State of Nevada  
20 Office of the Attorney General  
21 100 North Carson Street  
22 Carson City, NV 89701-4717  
23 T: (775) 684-1100  
24 CNewby@ag.nv.gov  
25 LStJules@ag.nv.gov

26 *Attorneys for Defendant*

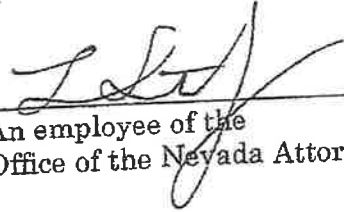
CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on the 21st day of September, 2022, pursuant to party agreement, I served the foregoing document by emailing a true and correct copy to the following:

Bradley S. Schragger, Esq.  
John Samberg, Esq.  
Daniel Bravo, Esq.  
WOLF, RIFKIN, SHAPIRO, SCHULMAN  
& RABKIN, LLP  
3773 Howard Hughes Parkway, Suite 590 South  
Las Vegas, Nevada 89169  
bschrager@wrslawyers.com  
dbravo@wrslawyers.com  
jsamberg@wrslawyers.com

David R. Fox, Esq.  
Maya Sequeira, Esq.  
Dan Cohen, Esq.  
Makeba Rutahindurwa, Esq.  
ELIAS LAW GROUP LLP  
10 G St. NE Suite 600  
Washington, DC 20002  
dfox@elias.law  
msequeira@elias.law  
dcohen@elias.law  
mrutahindurwa@elias.law

*Attorneys for Plaintiff*

  
An employee of the  
Office of the Nevada Attorney General