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Attorneys for Plaintiffs

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

JOHN KOENIG, an individual;
GREGORY T. HAFEN, II, an individual;
ELKO COUNTY, a political subdivision of
the State of Nevada; WILDE BROUGH, an
individual; BURT GURR, an individual;
REX STENINGER, an individual; SAM MORI,
an individual; TRACY MORI, an individual;
PETER M. MORI, an individual; TAMMY
MORI, an individual; JOHN ELLISON, an
individual; and WILLIAM O'DONNELL,
an individual,

Plaintiffs,

vs.

STATE OF NEVADA, *ex rel.*, THE HONORABLE
STEPHEN SISOLAK, in his official capacity as
Governor of the State of Nevada; THE
HONORABLE AARON FORD, in his official
capacity as the Attorney General of the State of
Nevada; and THE HONORABLE BARBARA K.
CEGAVSKE, in her official capacity as Secretary
of State for the State of Nevada,

Defendants.

_____ /

MOTION FOR PRELIMINARY INJUNCTION

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K. PETERSON
BY _____
DEPUTY

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MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, JOHN KOENIG, GREGORY T. HAFEN, II, ELKO COUNTY, WILDE BROUGH, BERT GURR, REX STENINGER, SAM MORI, TRACY MORI, PETER M. MORI, TAMMY MORI, JOHN ELLISON and WILLIAM O'DONNELL, by and through their respective counsel of record, hereby move for entry of a preliminary injunction. This Motion is made and based on the following Memorandum of Points and Authorities, together with the pleadings on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiffs are a group of individuals (the "Individual Plaintiffs") and Elko County, a political subdivision of the State of Nevada, all of whom allege harm as a result of the passing and enactment of Senate Bill ("SB") 1 on November 16, 2021 during the 33rd (2021) Special Session of the Legislature of the State of Nevada (the "Legislature"). SB 1 redrew maps for Nevada's Senate and Assembly Districts (collectively, "Legislative Districts").¹

By this action, Plaintiffs seek a declaration that the Legislative Districts created by SB 1 are invalid and seek an injunction prohibiting the Governor, Attorney General and Secretary of State from enforcing SB 1 and from calling, holding, supervising, or taking any action regarding Senate or Assembly elections based on the current Legislative Districts set forth in SB 1. Plaintiffs move here for a preliminary injunction maintaining the status quo while their action challenging the unconstitutional districts created by SB 1 is heard.

The redistricting process is on a tight time schedule this year because of the delayed release of the 2020 United States Census Data in August and September 2021 after the adjournment of the 81st (2021) Session of the Nevada Legislature. The map proponents had approximately 2-3 months to put their maps together. The Legislature knew the redistricting timing was a problem and delayed the 2022 judicial candidate filing time period from January to March 2022 in Assembly Bill 1 passed by the 33rd (2021) Special Session of the Nevada Legislature. The Legislative Districts were created in

¹ SB 1 also drew new maps of Nevada's Congressional Districts, but this suit concerns the validity of the Legislative Districts.

1 the 33rd (2021) Special Session of the Nevada Legislature called by the Governor on November 12,
2 2021, which lasted five days ending November 16, 2021. SB 1 was signed into law on November 16,
3 2021. Plaintiffs filed their action on November 17, 2021. The State was on notice there was a
4 challenge to SB 1 as the filing of the complaint received widespread media attention. The final maps
5 were not publicly released by the Legislative Counsel Bureau (“LCB”) until January 7, 2022.

6 Candidacy declaration forms for all those who seek election in 2022 to represent Legislative
7 Districts are currently due between March 7, 2022 and March 18, 2022. *See* NRS 293.177(1)(b). It
8 is imperative, therefore, that the status quo be maintained and the Legislative Districts created by SB
9 1 not go into effect during the pendency of this action, which is unlikely to be fully resolved prior to
10 the candidacy declaration period. Additionally, Plaintiffs request the Court consider entry of an order
11 to briefly delay the candidacy declaration period while this matter is resolved in order to allow for
12 elections to proceed in constitutionally redrawn Legislative Districts.

13 The Legislative Districts created by SB 1 are contrary to redistricting principles and an extreme
14 partisan gerrymander that unconstitutionally dilutes votes and prevents Nevada voters from electing
15 candidates of their choice. SB 1 deprives citizens and voters, such as the Individual Plaintiffs and all
16 others similarly situated, of the constitutional right to participate equally in the political process, to
17 join with others to advance political beliefs, and to choose their political representatives. SB 1
18 unconstitutionally packs and cracks voters in several districts in the State of Nevada, including without
19 limitation voters in Elko County, Nye County, and Washoe County as well as within other
20 communities of interest in and around those and other Nevada counties. SB 1 violates many of
21 Nevada’s constitutional criteria for redistricting as well as the Legislature’s own rules adopted for the
22 33rd (2021) Special Session. Therefore, the Court should maintain the status quo during the pendency
23 of this matter until there is a determination on the constitutionality of SB 1.

24 II.

25 LEGAL AUTHORITY

26 NRCP 65(a)(1) provides the Court may issue a preliminary injunction on notice to the adverse
27 parties. The Court should issue a preliminary injunction where the moving party can demonstrate that
28 it “enjoys a reasonable probability of success on the merits and that the defendant’s conduct, if allowed

1 to continue, will result in irreparable harm for which compensatory damage is an inadequate remedy.”
2 *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029 (1987).

3 Additionally, NRS 33.010 provides injunctive relief is appropriate in the following cases:

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

15 The granting of a preliminary injunction is a question addressed to the sound discretion of the
16 Court. *Univ. & Comt. Coll. Sys. of Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d
17 179, 187 (2004). In considering preliminary injunctions, “courts also weigh the potential hardships to
18 the relative parties and others, and the public interest.” *Id.*

19 III.

20 LEGAL ARGUMENT

- 21 1. **Plaintiffs and others similarly situated will suffer great and irreparable harm if the
22 status quo is not maintained during the pendency of this matter.**

23 The Individual Plaintiffs, registered Republican voters in the State of Nevada, together with
24 Elko County, seek to invalidate the Legislative Districts created by SB 1 on constitutional and other
25 grounds as more particularly set forth in the First Amended Complaint on file herein and hereby
26 incorporated by this reference. If SB 1 remains in effect, the voters of this state, including the
27 Individual Plaintiffs, the residents of Elko County, and the rest of the voters in the State will be
28 required to vote in the 2022 Nevada legislative election based on Legislative Districts created outside
the bounds of the law.

Article 2, Section 1 of the Nevada Constitution provides that qualified Nevada residents “shall
be entitled to vote for all officers that now or hereafter may be elected by the people.” While it does
not appear the Nevada Supreme Court has specifically addressed the question of whether restrictions
on the aforesaid constitutional right to vote might constitute irreparable harm, it has recognized a body

1 of federal case law which supports a conclusion that “[i]f harm is likely to occur in the future because
2 of a deprivation of a constitutional right, then a ripe case or controversy may exist” and the moving
3 party, to obtain immediate relief, must demonstrate only that “it is probable future harm will occur.”
4 *Resnick v. Nev. Gaming Comm’n*, 104 Nev. 60, 66, 752 P.2d 229, 233 (1988) (citing *Regional Rail*
5 *Reorganization Cases*, 419 U.S. 102, 143 (1974); *Pennsylvania v. West Virginia*, 262 U.S. 553, 593
6 (1923)).

7 Furthermore, other jurisdictions “routinely deem restrictions on fundamental voting rights
8 irreparable injury.” *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247
9 (4th Cir. 2014) (citing *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *Alternative*
10 *Political Parties v. Hooks*, 121 F.3d 876 (3d Cir. 1997); *United States v. City of Cambridge*, 799 F.2d
11 137, 140 (4th Cir. 1986); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986)).

12 This Court should recognize the soundness of concluding deprivation of or infringement upon
13 the constitutional right to cast a vote in Nevada elections will cause irreparable harm. “Voting is the
14 beating heart of democracy” and a “fundamental political right, because it is preservative of all rights.”
15 *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1315 (11th Cir. 2019) (internal quotation
16 marks omitted) (alterations accepted).

17 Moreover, harm to the constitutional right to vote is irreparable because “once the election
18 occurs, there can be no do-over and no redress” for voters whose rights were violated. *League of*
19 *Women Voters of N.C.*, 769 F.3d at 247.

20 **2. Plaintiffs have a reasonable likelihood of success on the merits of their claims.**

21 Plaintiffs here request declaratory and injunctive relief under various provisions of the Nevada
22 and United States Constitutions as well as for deviations from redistricting norms. Plaintiffs are likely
23 to obtain the relief requested because SB 1 violates numerous redistricting principles, and also results
24 in extreme partisan gerrymandering, prohibited by the Nevada and United States Constitutions.

25 The Legislature adopted joint legislative rules for the 33rd Special Session, which provided
26 for “equality of representation” based upon certain population criteria for state legislative districts and
27 that the district boundaries created by a redistricting plan must follow the census geography. These
28 were the only redistricting requirements contained in the joint legislative rules adopted for the 33rd

1 Special Session. Companion to the requirement to follow the census geography are certain well
2 established redistricting principles which are generally to be followed to ensure equality of
3 representation. Those norms include the duties to create compact districts, keep communities of
4 interest together, respect county and other political subdivision boundaries, preserve the core of prior
5 districts, and avoid, where practicable, election contests between incumbents.² Statisticians have
6 created ways to measure many of these factors and those measures were available to the Legislature
7 when considering SB 1 as well as alternative proposals and counterarguments.

8 These rules and criteria are to be considered in conjunction with and they support the ideas
9 represented in constitutional redistricting mandates. Both the Nevada and United States Constitutions
10 contain provisions relevant to the Legislature's duty to update the Legislative Districts following every
11 decennial census.

12 The Nevada Constitutions has several provisions which directly address redistricting and
13 apportionment as well as other broadly applicable provisions. Article 1, Section 13 of the Nevada
14 Constitution provides: "Representation shall be apportioned according to population." Article 4,
15 Section 5 provides in relevant part:

16 It shall be the mandatory duty of the legislature at its first session after the
17 taking of the decennial census of the United States in the year 1950, and
18 after each subsequent decennial census, to fix by law the number of senators
19 and assemblymen, and apportion them among the several counties of the
20 state, or among legislative districts which may be established by law,
21 according to the number of inhabitants in them, respectively.

22 Article 15, Section 13 provides in relevant part:

23 The enumeration of the inhabitants of this State shall be taken under the
24 direction of the Legislature if deemed necessary . . . ; and these
25 enumerations, together with the census that may be taken under the
26 direction of the Congress of the United States . . . shall serve as the basis of
27 representation in both houses of the Legislature.

28 More broadly, Article 4, Section 21 of the Nevada Constitution provides that "all laws shall
be general and of uniform operation throughout the State." Article 1, Section 1 provides: "All men
are by Nature free and equal and have certain inalienable rights among which are those of enjoying

² This Court imposed several of these duties as mandates in the 2011 redistricting case, *Guy, et al v. Miller*, Case No. 11 OC 00042.

1 and defending life and liberty; Acquiring, Possessing and Protecting property and pursuing and
2 obtaining safety and happiness[.]” Article 1, Section 8(5) provides: “No person shall be deprived of
3 life, liberty, or property, without due process of law.” Article 1, Section 9 of the Nevada Constitution
4 provides in relevant part: “Every citizen may freely speak, write and publish his sentiments on all
5 subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge
6 the liberty of speech or of the press.” Article 1, Section 10 of the Nevada Constitution provides in
7 relevant part: “The people shall have the right freely to assemble together to consult for the common
8 good, to instruct their representatives and to petition the Legislature for redress of Grievances.”
9 Finally, Article 2, Section 1A outlines Rights of Voters, including equal access to the election system
10 without discrimination.

11 Similarly, the Fifth and Fourteenth Amendments to the United States Constitution prohibit the
12 enforcement of laws that infringe the privileges and immunities of United States citizens and guarantee
13 that the government shall not deprive any person of “life, liberty, or property, without due process of
14 law” and that it shall not deny any person equal protection of the laws.

15 Based on these state and federal constitutional mandates, Nevada voters are entitled to
16 Legislative Districts apportioned according to the state population, as derived from the 2020 United
17 States Census, thereby guaranteeing to Nevada residents the creation of Legislative Districts of
18 substantially equal population and Legislative Districts respecting county boundaries so that votes for
19 state senators and assemblymen cast in different Legislative Districts are given equal weight. These
20 provisions further guarantee that Nevada voters have a fair and equal opportunity to cast a meaningful
21 ballot for state senators and assemblymen, regardless of the Legislative Districts in which voters
22 reside, and that voters in more sparsely populated Legislative Districts or Counties will not be subject
23 to unlawful discrimination. The principles of compactness, keeping communities of interest together,
24 respecting county and other political boundaries, among others, are designed to aid the Legislature in
25 adhering to the foregoing constitutional mandates. American courts have recognized these principles
26 and have outlined criteria and strict guidelines state legislatures should consider so as not to violate
27 these redistricting principles. *See e.g., Stephenson v. Bartlett*, 562 S.E.2d 377, 383-84 (N.C. 2002)
28 (recognizing soundness of rule against dividing counties except where otherwise required to comply

1 with federal law); *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015)
2 (recognizing as traditional redistricting principles “compactness, contiguity, respect for political
3 subdivisions or communities defined by actual shared interests, incumbency protection, and political
4 affiliation.”) cited with favor on January 24, 2022 by *Singleton v. Merrill*, 2022 WL 265001 (N.D.
5 Ala. 2022) (entering a preliminary injunction and ordering the Alabama Legislature to redraw maps
6 to remedy unconstitutionally drawn congressional districts).

7 SB 1 fails to comply with these redistricting requirements. Further, in order to create artificial
8 Democratic advantages or to reduce natural Republican advantages in certain Legislative Districts,
9 the Legislature discarded constitutional requirements. SB 1 deprives the Individual Plaintiffs and all
10 similarly situated individuals of the rights outlined here, which are guaranteed by the Nevada and
11 United States Constitutions. SB 1 does not respect county or other political boundaries, created mostly
12 non-compact districts, is not uniformly applied throughout the State, violates constitutional guarantees
13 of equal protection causing harm to Plaintiffs, and divided several communities of interest ranging
14 from unnecessary divisions of small towns and voting precincts to dividing family ranches. As a result
15 of the reapportionment of Nevada’s Legislative Districts, the Individual Plaintiffs’ votes for state
16 senators and assemblymen will be unconstitutionally diluted and SB 1 is not uniformly applied
17 throughout the State.

18 The First Amended Complaint lays out several specific examples of SB 1’s violations of these
19 constitutional mandates and redistricting principles, some of which are repeated here for emphasis.
20 The following examples are reflected in the maps attached to the First Amended Complaint, which
21 are hereby incorporated by reference.

22 SB 1 splits five of Nevada’s seventeen counties. SB 1 splits rural Elko County into two
23 different Assembly and two different Senate Districts, essentially spanning the state from both east to
24 west and from north to south. One voting precinct in Elko County, Precinct 28, is divided between
25 two different Assembly and Senate Districts. A family cattle ranch in Elko County, the Mori cattle
26 ranch, is also split between two different Assembly and Senate Districts. Thus, family members and
27 ranching partners will not have the same representation in the Legislature, diluting (or, more
28 realistically, eliminating) their ability to unify and strengthen their political voice behind a single

1 candidate as they have been able to do for the last 64 years. Moreover, the Legislative Districts
2 dividing Elko County, Precinct 28, and the Mori cattle ranch span, in Senate District 14 and Assembly
3 District 32, from Elko County all the way to Washoe County and the northern California border, and,
4 in Senate District 19 and Assembly District 33, from Elko County all the way to Clark County and the
5 southern California border. Eureka County is also split between these districts. Some of Elko County,
6 all of which is rural, is joined with urban areas of Washoe County, communities with very little in
7 common and with very diverse and divergent political interests. Urban candidates and elected senators
8 and assemblymen from urban Washoe and Clark Counties, respectively, will have little understanding
9 of the rural interests of voters in Elko and Nye Counties. Thus, those rural voters' votes are diluted
10 and unequal, relative to voters in Districts that have preserved communities of interest and respected
11 county and other political boundaries. SB 1 unconstitutionally packs and cracks voters in Elko County
12 and Washoe County, in Elko County and Clark County, in Nye County and Clark County, and in other
13 districts in the State.

14 SB 1 splits the Washoe County residential communities of Somerset and Cold Springs/North
15 Valleys and places a portion of those communities in rural Legislative Districts stretching across the
16 State to Elko County. SB 1 also divides the student community of the University of Nevada Reno
17 between two different Senate Districts.

18 SB 1 splits rural Nye County into three Assembly Districts and the small Nye County town of
19 Pahrump into two Assembly Districts. Indeed, more than half of the town of Pahrump is being moved
20 into an Assembly District with an urban area of metropolitan Las Vegas and Clark County, the
21 residents of which have little to nothing in common with the rural residents of Pahrump and Nye
22 County.

23 Regarding compactness, SB 1 creates Legislative Districts that are, by and large, less compact
24 than more compact.³ For instance, 35 of the 42 Assembly Districts created by SB 1 have compactness
25 scores closer to 0 than 1, where 0 is not compact and 1 is optimally compact. A measure of unity of
26 communities of interest and political subdivisions shows unnecessarily high splitting of communities
27

28 ³ The metrics identified in this paragraph may be found, generally, at the Princeton University Gerrymandering Project
website: <https://gerrymander.princeton.edu>.

1 across the Legislative Districts – the split pair metric for Assembly Districts is 0.857 and for Senate
2 Districts is 0.802, where the metric ranges from 0 to 1 and the closer to 0, the better. Further, the
3 Legislative Districts are unnecessarily and excessively partisan, allowing an artificial Democratic
4 advantage of 14.3% in Assembly Districts and 11.9% in Senate Districts.

5 SB 1 fails to preserve communities of interest in, among others, Elko County, Nye County,
6 and Washoe County. SB 1 divides these counties into two or more districts with very distinct
7 demographics and communities of interest. On the other hand, SB 1 does preserve communities of
8 interest in many of Nevada’s counties by keeping counties together in one district or, in the case of
9 many of Clark County’s districts, keeping the districts small, compact, and within a single
10 demographic region.

11 Each of these examples and metrics demonstrate that the Legislature failed to adhere to its own
12 adopted joint rules for the 33rd Special Session and failed to follow the constitutional mandates
13 applicable to apportioning the Legislative Districts.

14 **3. Public interest and potential hardships of the parties weighs in favor of preliminary**
15 **injunctive relief and a delay, if necessary, of the 2022 candidate filing period.**

16 In *Reynolds v. Sims*, 377 U.S. 533 (1964), although the underlying dispute was based largely
17 on federal claims not at issue here, the United States Supreme Court provided useful guidance with
18 respect to a court’s consideration of whether to give injunctive relief relative to impending electoral
19 processes. That Court explained “once a State’s legislative apportionment scheme has been found to
20 be unconstitutional, it would be the unusual case in which a court would be justified in not taking
21 appropriate action to insure that no further elections are conducted under the invalid plan.” *Id.* at 585.
22 The Court acknowledged, however, “under certain circumstances, such as where an impending
23 election is imminent and a State’s election machinery is already in progress, equitable considerations
24 might justify a court in withholding the granting of immediately effective relief in a legislative
25 apportionment case, even though the existing apportionment scheme was found invalid.” *Id.* In
26 making that determination, the Supreme Court instructed that the deciding Court “should consider the
27 proximity of a forthcoming election and the mechanics and complexities of state election laws, and
28 should act and rely upon general equitable principles.” *Id.*; see also *Upham v. Seamon*, 456 U.S. 37,

1 44 (1982) (noting only the necessity to hold an imminent and in process election would justify not
2 immediately enjoining the enforcement of an almost certainly invalid redistricting plan).

3 Moreover, it is well settled that this Court has inherent authority to “require valid
4 reapportionment or to formulate a valid redistricting plan” and is, indeed, specifically encouraged to
5 do so by the United States Supreme Court where redistricting fails to adhere to constitutional
6 mandates. *Scott v. Germano*, 381 U.S. 407, 409 (1965).

7 Here, Nevada’s 2022 election is almost ten months away. *See* NRS 293.12755 (setting general
8 election on first Tuesday after the first Monday of November in even-numbered years). The primary
9 election is currently scheduled for June 14, 2022, more than four months away, with early voting to
10 begin just a couple of weeks earlier on May 28, 2022. NRS 293.175; NRS 293.3568. The soonest
11 pertinent electoral date to be concerned with is the candidate filing period, which is March 7 to 18,
12 2022 and is more than one month away. NRS 293.177(1)(b). There is no legal basis to conclude that
13 “imminent” means months away and, therefore, no necessity to hold the 2022 election pursuant to the
14 invalid Legislative Districts created by SB 1. *See Singleton v. Merrill*, 2022 WL 265001 at 76 (N.D.
15 Ala. 2022).

16 The Court should also consider that any imminency arguments Defendants might make here
17 should be outweighed by the delay in receiving Census data, calling a special legislative session and
18 producing the final Legislative District maps under SB 1. The official Legislative District maps
19 created pursuant to SB 1 were not finalized by the LCB until on or about January 7, 2022 and the
20 larger, poster size, individual District maps and the *2021 Nevada Redistricting: Overview Maps and*
21 *Statistical Tables* publication produced by the LCB Research Division were not available until the
22 week of January 10, 2022.

23 Moreover, any brief delay of the candidate filing period (or any other statutory election date
24 or deadline) this Court may order to allow for appropriate constitutional corrective action to the
25 Legislative Districts should be of little concern to Defendants. The Legislature was able to enact SB
26 1 in a special session that lasted only five days. Appropriate constitutional corrective action can
27 certainly be accomplished just as quickly and might require a delay of the candidate filing period only
28 briefly, if at all. Public interest in upholding the Nevada and United States Constitutions and affording

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1 every Nevada voter an equal voice unquestionably weighs in favor of immediate injunctive relief so
2 the State can get redistricting right.

3 IV.

4 CONCLUSION

5 For the reasons given herein, Plaintiffs respectfully request the Court grant this motion and
6 maintain the status quo during the pendency of these proceedings.

7 AFFIRMATION

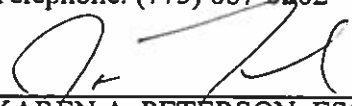
8 The undersigned does hereby affirm that the preceding document **DOES NOT** contain the
9 social security number of any person.

10 DATED this 1st day of February, 2022.

11 TYLER J. INGRAM
12 ELKO COUNTY DISTRICT ATTORNEY
13 RAND J. GREENBURG, ESQ.
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- Hand-delivery
- Electronic Transmission
- Federal Express, UPS, or other overnight delivery
- E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

as follows:

Nevada Attorney General's Office
100 North Carson Street
Carson City, NV 89701
(Counsel for all Defendants)

DATED this 1st day of February, 2022.



NANCY FONTENOT

4869-1932-8012, v. 1