

1 AARON FORD
Attorney General
2 Craig A. Newby (Bar No. 8591)
Deputy Solicitor General
3 Office of the Attorney General
555 E. Washington Ave., Ste. 3900
4 Las Vegas, NV 89101
(702) 486-3420 (phone)
5 (702) 486-3773 (fax)
cnewby@ag.nv.gov
6 *Attorneys for Executive Defendants*

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7 Affirmation pursuant to NRS 239B.030
The undersigned affirms that this
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9
10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE**
STATE OF NEVADA IN AND FOR CARSON CITY

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

Case No. 21 OC 00166 1B
Dept. No. II

**ORDER DENYING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

17 **Plaintiffs,**

18 vs.

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

24 **Defendants**

1 This matter is before the Court on Plaintiffs' February 1, 2022 Motion for
2 Preliminary Injunction (the "Motion") against Defendants STATE OF NEVADA, ex rel.,
3 THE HONORABLE STEPHEN SISOLAK, in his official capacity as Governor of the State
4 of Nevada; THE HONORABLE AARON FORD, in his official capacity as the Attorney
5 General of the State of Nevada; and THE HONORABLE BARBARA K. CEGAVSKE, in her
6 official capacity as Secretary of State of the State of Nevada (collectively "Executive
7 Defendants"). The Executive Defendants opposed the Motion on February 15, 2022 and
8 Plaintiffs replied on February 25, 2022.

9 At a virtual hearing the afternoon of March 9, 2022, the parties were represented as
10 follows:

11 Plaintiff Elko County	Rand J. Greenburg, Esq.
12 All Other Plaintiffs	Justin Townsend, Esq.
13 Executive Defendants	Craig A. Newby, Esq.
14 The Nevada Legislature	Bradley Scott Schragger, Esq.

15 The Court, having reviewed the papers and pleadings on file herein, and having
16 heard the arguments of the parties at hearing on the matter, good cause appearing
17 therefore, **DENIES** the Motion for the following reasons.

18 **I. Findings of Fact**

19 Plaintiffs challenge the legality of the Legislature's redistricting statute, Senate Bill
20 1 ("SB 1") (2021).

21 Approximately one month later than in past decennial cycles, the United State
22 Census Bureau released its 2020 Apportionment Results.¹ Per the Legislature's
23 redistricting website, usable results became available by September 2021.² As in any ten-
24 year period, population changes across Nevada necessitated redistricting and
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28 ¹ <https://www.census.gov/data/tables/2020/dec/2020-apportionment-data.html>.
² <https://www.leg.state.nv.us/Division/Research/Districts/Reapp/2021/>.

1 reapportionment, as fourteen Assembly districts and four Senate districts had total
2 population deviations exceeding 10%.³

3 Subsequently, the Legislature convened a Committee to Conduct an Investigation
4 into Matters Relating to Reapportionment and Redistricting in Nevada in preparation for
5 what is now known as the 33rd Special Session of the Nevada Legislature.⁴ During that
6 session, the Legislature passed SB 1, which the Governor signed on November 16, 2021.⁵

7 Plaintiffs filed suit the next day, November 17, 2021.⁶ Plaintiffs did not serve the
8 original complaint, which named the Secretary as sole Defendant. Subsequently, on
9 January 1, 2022, SB 1 became effective for state legislative districts.⁷

10 On January 19, 2022, Plaintiffs filed their First Amended Complaint. In relevant
11 part, Plaintiffs added Elko County as a Plaintiff, and added the Governor and the Attorney
12 General as additional defendants, while reiterating the same disagreements with SB 1's
13 state redistricting plan as from the original complaint.

14 Finally, on February 1, 2022, Plaintiffs filed their motion, for a preliminary
15 injunction acknowledging that "[c]andidacy declaration forms for all those who seek
16 election in 2022 to represent Legislative Districts are currently due between March 7, 2022
17 and March 18, 2022" pursuant to NRS 293.177(1)(b).⁸ Applying statutory residency
18 deadlines, this requires candidates to reside in their Legislative districts by February 15,
19 2022.⁹ The motion was not accompanied by a request to expedite consideration or a motion
20 for an order shortening time.

21 The Court now finds and concludes as follows:

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23 ³https://www.leg.state.nv.us/Division/Research/Documents/PopDev_SEN_Esri2020.pdf
24 https://www.leg.state.nv.us/Division/Research/Documents/PopDev_ASM_Esri2020.pdf
(Senate);
(Assembly).

25 ⁴ <https://www.leg.state.nv.us/Division/Research/Districts/Reapp/2021/>.

26 ⁵ Am. Compl. at ¶ 1.

27 ⁶ Mot. at 3:3.

28 ⁷ Senate Bill 1 at Section 24(3)
(<https://www.leg.state.nv.us/App/NELIS/REL/33rd2021Special/Bill/8360/Text#>) (last
accessed Feb. 8, 2022).

⁸ Mot. at 3:6-7.

⁹ NRS 293.1755(1).

1 **II. Conclusions of Law**

2 To the extent better characterized as a finding of fact, any conclusion of law set forth
3 below is incorporated therein as a finding of fact.

4 **A. Standard of Review**

5 **1. Standard of Review for a Preliminary Injunction**

6 Injunctive relief is extraordinary relief.¹⁰ A “preliminary injunction is an
7 “extraordinary remedy that may only be awarded upon clear showing that the plaintiff is
8 entitled to such relief.”¹¹ A “preliminary injunction is available if an applicant can show a
9 likelihood of success on the merits and a reasonable probability the non-moving party’s
10 conduct, if allowed to continue, will cause irreparable harm.”¹² “The district court may also
11 weigh the public interest and the relative hardships of the parties in deciding whether to
12 grant a preliminary injunction.”¹³

13 Here, as set forth below, Plaintiffs cannot meet their extraordinary burden for
14 obtaining a preliminary injunction.

15 **2. Standard for Constitutionality and for Redistricting**

16 In Nevada, “[s]tatutes are presumed to be valid, and the burden is on the challenging
17 party to demonstrate that a statute is unconstitutional.”¹⁴ Moreover, Nevada courts
18 construe statutes, if reasonably possible, so as to be in harmony with the constitution.”¹⁵
19 Stated differently, Nevada courts “adhere to the precedent that every reasonable
20 construction must be resorted to, in order to save a statute from unconstitutionality.”¹⁶ As
21 a result, this Court must not invalidate a statute on constitutional grounds unless the
22 Statute’s invalidity appears “beyond a reasonable doubt.”¹⁷

23 ¹⁰ *Dep’t of Conservation & Nat. Res., Div. of Water Res. v. Foley*, 121 Nev. 77, 80, 109
24 P.3d 760, 762 (2005).

25 ¹¹ *Winter v. Nat. Res. Def’ Council, Inc.*, 555 U.S. 7, 22 (2008), *see also* NRS 33.010(1).

26 ¹² *Clark Cty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1149, 924 P.2d 716, 719 (1996).

27 ¹³ *Id.*

28 ¹⁴ *Cornella v. Justice Ct.*, 132 Nev. ___, 377 P.3d 97, 100 (2016) (internal quotation
marks omitted).

¹⁵ *Id.*

¹⁶ *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010) (internal quotation
marks omitted).

¹⁷ *Cauble v. Beemer*, 64 Nev. 77, 101 (1947).

1 The presumption of constitutionality is specifically true for reapportionment. In the
2 context of racial redistricting, for example, the Supreme Court has held that a legislature
3 is entitled to deference and presumed good faith. Redistricting “is primarily the duty and
4 responsibility of the State.”¹⁸ “[I]n assessing the sufficiency of a challenge to a districting
5 plan,” a court “must be sensitive to the complex interplay of forces that enter a legislature’s
6 redistricting calculus.”¹⁹ The “good faith of [the] state legislature must be presumed.”²⁰

7 **B. Plaintiffs do not Establish a Likelihood of Success on the Merits**

8 Plaintiffs are unlikely to prevail on their claims, based on the Court’s reading of the
9 Nevada Constitution, relevant state statutes, and the United States Supreme Court’s
10 *Rucho v. Common Cause*²¹ opinion, which held that partisan redistricting claims non-
11 cognizable under the United States Constitution because there is no clear standard under
12 law to adjudicate those claims, unlike with one-person, one-vote jurisprudence for state
13 legislative districts beginning with *Reynolds v. Sims*.²²

14 Plaintiffs have not identified a clear standard for adjudicating partisan redistricting
15 claims within the Nevada Constitution, Nevada statute, or a Nevada Supreme Court
16 opinion, or that a cause of action exists under Nevada law for asserting such claims.
17 Without such standards existing under Nevada law, there is no basis to treat any Nevada-
18 specific claim different than how the United States Supreme Court treated these claims
19 under the United States Constitution. Accordingly, pursuant to *Rucho* and *N. Lake Tahoe*
20 *Fire Prot. Dist. v. Washoe Cnty. Comm’rs*,²³ Plaintiffs’ claims are non-justiciable, providing
21 nothing from which this court can find that Plaintiffs are likely to succeed on the merits.
22 This alone warrants denial of the motion.

23 **C. Equitable Factors Warrant Denial of the Motion**

24 Even if this court held that Plaintiffs were likely to succeed, “under certain
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26 ¹⁸ *Miller v. Johnson*, 515 U.S. 900, 915, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995).

27 ¹⁹ *Id.* at 915–916.

28 ²⁰ *Id.* at 915.

²¹ 139 S.Ct. 2484 (2019).

²² 377 U.S. 533, 571-77 (1964).

²³ 129 Nev. 682, 687-88 (2013).

1 circumstances, such as where an impending election is imminent and a State's election
2 machinery is already in progress, equitable considerations might justify a court in
3 withholding the granting of immediately effective relief in a legislative apportionment
4 case.”²⁴

5 Here, months have passed since this lawsuit was filed, this motion was submitted,
6 and this hearing. Without ascribing blame to any party, the Nevada 2022 “election
7 machinery is already in progress.” Defendants represented to the court at hearing that 88
8 state legislative candidates had already submitted their candidacy declarations in reliance
9 on the districts created by SB 1. As part of these declarations, candidates have had to reside
10 within those districts for a minimum of 30 days.²⁵ These candidates have paid their filing
11 fees and begun planning their campaigns for office, under the terms of SB 1. This Court
12 will not engage in late judicial tinkering with the Nevada election process, consistent with
13 the United States Supreme Court’s guidance in *Reynolds v. Sims* and as suggested by that
14 court when addressing 2022 redistricting cases based on its closeness to 2022 election,
15 because “[w]hen an election is close at hand, the rules of the road must be clear and
16 settled.”²⁶

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26 ²⁴ *Reynolds v. Sims*, 377 U.S. at 585.

27 ²⁵ NRS 293.1755(1).

28 ²⁶ *Merrill v. Milligan*, 595 U.S. ___, Case Nos. 21A375 and 21A376 at *4 (Feb. 7,
2022) (Kavanaugh, J. concurring), available at
https://www.supremecourt.gov/opinions/21pdf/21a375_d18f.pdf.

1 Under such circumstances, these equitable factors would warrant denial of the
2 Motion, even if there was any likelihood of success on the merits for Plaintiffs' claims.

3 **ORDER**

4 Good cause appearing, therefor.

5 1. **IT IS HEREBY ORDERED THAT** Plaintiffs' Motion for Preliminary
6 Injunction is **DENIED**.

7 3. **IT IS HEREBY FURTHER ORDERED THAT** the Executive Defendants'
8 attorneys, the Nevada Office of the Attorney General, will serve a notice of entry of this
9 Order on all other parties and file proof of such service within 7 days after the Court sends
10 this Order to said attorneys.

11 **IT IS SO ORDERED.**

12 DATED this 24 day of March, 2022.

13 
14 DISTRICT COURT JUDGE

15 Submitted by:

16 **AARON D. FORD**
17 **Attorney General**

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19 By: _____
20 **Craig A. Newby (Bar No. 8591)**
21 **Deputy Solicitor General**
22 ***Attorneys for Executive Defendants***
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