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10 **Attorney for Proposed Intervenor**  
11 **David Gibbs Et Al**

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

9 ERIC JENG, an individual,  
10  
11 Plaintiff,  
12 vs.

)  
)  
) Case No: ~~22-OCC00231~~  
) Dept. No: II  
)  
)

22 OC 00023 1B

13 BARBARA CEGAVSKE, in her official  
14 capacity as NEVADA SECRETARY OF  
15 STATE,  
16 Defendants.

) **MOTION TO INTERVENE AS A**  
) **PARTY OF INTEREST**  
)  
)  
)  
)

17 **PARTY IN INTEREST DAVID GIBB'S MOTION TO INTERVENE AS A PARTY IN**  
18 **INTEREST**

19 COMES NOW, DAVID GIBBS, individually and on behalf of REPAIR THE VOTE  
20 POLITICAL ACTION COMITTE (hereinafter "PAC"), by and through the undersigned attorney  
21 of record, SIGAL CHATTAH, ESQ., of CHATTAH LAW GROUP, who hereby submit the  
22 following MOTION TO INTERVENE as a party in interest. Proposed Intervenor David G.  
23 Gibbs individually and on behalf of Repair the Vote PAC, is the signatory of the Petition filed  
24 under NRS 295.009 as the Petition Filer.  
25

1 David G. Gibbs, individually and on behalf of REPAIR THE VOTE PAC hereby  
2 requests that the Court grant him leave to intervene as a party in interest as of right pursuant to  
3 Nevada Rule of Civil Procedure 24(a)(2).

4 **INTRODUCTION**

5 The litigation *sub judice* involves a Complaint for Declaratory Relief and Injunctive  
6 Relief challenging Referendum Petition R-01-2022, filed against Nevada Secretary of State  
7 Barbara Cegavske. Proposed Intervenor David G. Gibbs, was omitted from the action as a  
8 Defendant either individually and/or on behalf of REPAIR THE VOTE PAC.  
9

10 REPAIR THE VOTE PAC filed a Referendum Petition entitled “Referendum on the  
11 Provision Related to Changes in Voting Provisions from Assembly Bill 321 of the 2021  
12 Legislative Session “ See Exhibit “A”. This Motion to Intervene is brought to allow David G.  
13 Gibbs individually and on behalf of REPAIR THE VOTE PAC to participate in this action.

14 **STATEMENT OF FACTS**

15 On or about January 28, 2022, Intervenor DAVID G. GIBBS, on behalf of the REPAIR  
16 THE VOTE PAC, filed Referendum Petition R-01-2022 with the Nevada Secretary of State.

17 The Petition challenges portions of Assembly Bill 321, which the Governor signed into  
18 law on June 2, 2021, among other matters, decriminalizing mail in ballots and what is known as  
19 ballot harvesting.<sup>1</sup>  
20

21  
22  
23 <sup>1</sup> AB 321 Sec. 9. 1. “[E]xcept as otherwise provided in subsection 2, at the request of a voter whose mail  
24 ballot has been prepared by or on behalf of the voter, a person authorized by the voter may return the mail ballot  
25 on behalf of the voter by mail or personal delivery to the county clerk, or any ballot drop box established in  
the county, pursuant to section 8 of this act”.  
Formerly, NRS 293.353 entitled Marking and return of mailing ballot by voter; voting in person after receipt of  
mailing ballot; penalty made it a class E Felony for any person to return a mailing ballot other than the registered  
voter to whom the ballot was sent or, at the request of the voter, a member of the family of that voter.

1 The Petition further seeks to repeal sections of AB 321 related to mail in ballot  
2 procedures in Nevada including but not limited to 1) County and City Clerk procedures for  
3 sending out mail in ballots; 2) Ballot Harvesting; and 3) counting mail ballots with questionable  
4 postmarking.

5 The Initiative Petition drew the Complaint on file herein with a failure to include as a Co-  
6 Defendant neither the PAC or the individual acting on its behalf as a necessary party for  
7 participation and adjudication of the matter.

8 The Nevada Rules of Civil Procedure and the Local Rules of this Court do not require to  
9 attempt to meet and confer with the other Parties prior to filing this Motion.  
10

### 11 LEGAL ARGUMENT

12 NRCP 24 entitled Intervention provides

13 a) Intervention of Right. On timely motion, the court must permit anyone to intervene  
14 who:

15 (1) is given an unconditional right to intervene by a state or federal statute; or

16 (2) claims an interest relating to the property or transaction that is the subject of the  
17 action, and is so situated that disposing of the action may as a practical matter impair or impede  
18 the movant's ability to protect its interest, unless existing parties adequately represent that  
19 interest.

20 "[I]ntervention is the requisite method for a nonparty to become a party to a  
21 lawsuit." *United States ex rel. Eisenstein v. City of N.Y.*, 556 U.S. 928, 933, 129 S. Ct. 2230, 173  
22 L. Ed. 2d 1255 (2009) (citation omitted).

23 Repair the Vote PAC meets the criteria for intervention as of right under Rule 24(a)  
24 because (1) it has a sufficient interest in the litigation's subject matter, (2) it could suffer an  
25

1 impairment of its ability to protect that interest if it does not intervene, (3) its interest is not  
2 adequately represented by existing parties, and (4) its application is timely. *See Hairr v. First*  
3 *Jud. Dist. Court, 132 Nev. Adv. Rep. 16, 368 P.3d 1198, 1200 (2016).*

4 On timely motion, the court must permit anyone to intervene who . . . claims an interest  
5 relating to the property or transaction that is the subject of the action, and is so situated that  
6 disposing of the action may as a practical matter impair or impede the movant's ability to protect  
7 its interest, unless existing parties adequately represent that interest. *Arakaki v. Cayetano, 324*  
8 *F.3d 1078, 1083 (9th Cir. 2003).*<sup>2</sup>

9  
10 Here, it is indisputable that REPAIR THE VOTE PAC has a specific interest in the  
11 dispute *sub judice* and has the right to protect its interest by intervening in this action, which they  
12 were intentionally omitted from.

13 **A. THE COURT SHOULD GRANT INTERVENTION AS OF RIGHT**

14 Upon filing of a timely Motion, Nevada Rule of Procedure 24(a)(2) requires that this  
15 Court “permit anyone to intervene who claims and interest relating to the property or transaction  
16 that is the subject of the action, and is so situated that disposing of the action may as a practical  
17 matter impair or impeded the movant’s ability to protect its interest unless existing parties  
18 adequately represent that interest.” *Id.*

19 As to adequacy of representation, the requirement of the Rule is satisfied if the applicant  
20 shows that representation of his interest “may be” inadequate; and the burden of making that  
21 showing should be treated as minimal. The final requirement of the test for intervention is  
22 “minimal,” and is satisfied so long as “the applicant can demonstrate that representation of its  
23

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24  
25 <sup>2</sup> It is appropriate to supplement the Nevada caselaw with relevant federal precedent because “[f]ederal cases interpreting the Federal Rules of Civil Procedure ‘are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.’” *Exec. Mgmt., Ltd. v. Tigor Title Ins. Co., 118 Nev. 46, 53 (2002) (quoting Las Vegas Novelty, Inc. v. Fernandez, 106 Nev. 113, 119 (1990)).*



1 interests ‘may be’ inadequate.” *Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647  
2 *F.3d 893, 898 (9th Cir. 2011)* *Lake Inv’rs Dev. Grp, Inc. v Egidi Dev. Grp.*, 715 *F.2d 1256,*  
3 *1261(7<sup>th</sup> Cir, 1983)* (quoting *Trbovich v United Mine Workers of America*, 404 U.S. 528, 538 *n*  
4 *10(1972)*).

5           When seeking intervention as of right under Nev. R. Civ. P. 24, an applicant must “(1)  
6 make timely application; (2) have an interest relating to the subject matter of the action; (3) be at  
7 risk that that interest will be impaired, ‘as a practical matter’, by the action’s disposition and (4)  
8 lack adequate representation of the interest by the existing parties.” *Arakaki v. Cayetano*, 324  
9 *F.3d 1078, 1083 (9th Cir. 2003)* (citing *Fed. R. Civ. P. 24(a)(2)*; *Nissei Sangyo Am. V United*  
10 *States 31 F.3d 435, 438 (7<sup>th</sup> Cir. 1994)*).

11  
12           **A.       Intervenor’s Motion Is Timely**

13           First, Rule 24 requires that a motion to intervene be timely filed. This requirement  
14 “essentially sets out a reasonableness standard: potential intervenors need to be reasonably  
15 diligent in learning of a suit that might affect their rights, and upon so learning they need to act  
16 reasonably promptly.” *United States v. Alisal Water Corp.*, 370 *F.3d 915, 923 (9th Cir. 2004)*  
17 (quotation marks, citation omitted); see also *Garza v. County of Los Angeles*, 918 *F.2d 763, 777*  
18 (9<sup>th</sup> Cir. 1990) (intervention motion untimely where prospective intervenor delayed in moving  
19 for intervention even though she knew the lawsuit was pending and “that part of the relief  
20 sought” might adversely affect her interests) *Nissei Sangyo Am v United States*, 31 *F.3d 435, 438*  
21 (7<sup>th</sup> Cir. 1994)

22  
23           There has been exceptionally little time since Intervenor’s became aware of this case, and  
24 therefore it’s interest in it. This action was filed on February 18, 2022, and Intervenor’s bring  
25 this Motion a week, thereafter.

1           **B.     Repair the Vote Pac Has A Strong Interest in the Outcome of this Matter,**  
2           **since Intervenor filed the Initiative**

3           Second, Nev. R. Civ. P. Rule 24 requires that a movant “[c]laim an interest relating to the  
4 property or transaction that is the subject of the action, and [be] so situated that disposing of the  
5 action may as a practice matter impair or impeded the movant’s ability to protect its interest.  
6 *Nev. R. Civ. P. 24 (a)(2)*.

7           Whether an intervenor in a given case has a significant interest is a fact-specific inquiry,  
8 such that ‘comparison to other cases is of limited value’” see. *Ins. Co. of Hartsford v schipporeit,*  
9 *Inc. 69 F.3d 1377, 1381 (7<sup>th</sup> Cir. 1995)*. Accordingly, the intervenor must simply show “a direct,  
10 significant and legally protectable interest” that is unique from the parties in the case. *Keith v*  
11 *Daley, 764 F.2d 1265 (7<sup>th</sup> Cir, 1985)*.

12           Repair the Vote Pac, and David G. Gibbs are the parties who filed the Notice of Intent to  
13 Circulate Statewide Initiative or Referendum Petition. The Notice of Intent filed on January 28,  
14 2022 was signed by Gibbs on said day. The intent and interest of the initiative along with any  
15 type of evidence thereon is exclusive to the Intervenor, regardless of Defendants’ position.  
16

17           **C.     The PAC’s Interests Will be Impaired if Plaintiff Prevails in this Action**

18           When the disposition of a case will “as a practical matter foreclose rights of [a] proposed  
19 intervenor in a subsequent proceeding”, the proposed intervenor’s interest will be impaired.  
20 *Meridian Homes Corp. v Nicholas W. Prassas & Co., 683 F.d 201,204 (7<sup>th</sup> Cir. 1982)*.

21           Rule 24(a) requires applicants to demonstrate they will “either gain or lose by the direct  
22 legal operation and effect of the judgment which might be rendered in the suit between the  
23 original parties.” *Stephens v. First Nat’l Bank of Nev., 64 Nev. 292, 304–05, 182 P.2d 146, 151–*  
24 *52 (1947) (quoting Harlan v. Eureka Mining Co., 10 Nev. 92, 94–95 (1875))*.  
25

1 Here if Plaintiff prevails, it will have successfully precluded Repair the Vote Pac from  
2 participating in this action without intervention or protection of its interests. Repair the Vote  
3 PAC has a direct, significant and legally protectable interest that is unique from the parties in  
4 the case.

5 **D. Existing Parties Will Not Adequately Protect Repair the Vote PAC's**  
6 **Interests**

7 Adequacy of representation is determined by considering whether “(1) the interest of a  
8 present party is such that it will undoubtedly make all of a proposed intervenor’s arguments; (2)  
9 the present party is capable and willing to make such arguments; and (3) a proposed intervenor  
10 would offer any necessary elements to the proceeding that other parties would neglect.” *Arakaki*,  
11 *324 F.3d at 1086*. “When an applicant for intervention and an existing party have the same  
12 ultimate objective, a presumption of adequacy of representation arises,” and “a compelling  
13 showing should be required to demonstrate inadequate representation.” *Id.*

14 The Nevada Secretary of State has no interest in representing or making arguments on  
15 behalf of Repair the Vote PAC. The Secretary of State has no knowledge nor likely any interest  
16 in defending the Petition, its content or legality, and will likely divest itself from taking any  
17 extraordinary measures to protect it.

18 Absent the opportunity to intervene, Repair the Vote PAC’s interests almost certainly  
19 will not be adequately represented. Accordingly, Repair the Vote PAC is able to meet the  
20 “minimal burden” of showing that his interests are not already represented in this litigation.

21 First, Defendant’s interests are different and distinct from Repair the Vote PAC’s  
22 interests. As such, the Defendant is not likely to press fully all defenses available in this case.  
23 Nor is the Defendant likely to press against the factual assertions contained in the Complaint as  
24  
25

1 fully as they might. Repair the Vote PAC is unrestrained by constitutional concerns and can  
2 provide this Court with the full range of potential factual and legal defects in the Complaint.

3 Specifically, Repair the Vote PAC has reviewed the pleadings filed by the Parties. It is  
4 clear that Defendant will undoubtedly not make all the PAC's arguments; Nor is she capable and  
5 willing to make such arguments.

6 **B. IN THE ALTERNATIVE, THE COURT SHOULD GRANT PERMISSIVE**  
7 **INTERVENTION**

8 If the Court nonetheless determines that Repair the Vote PAC is not entitled to intervene  
9 as of right, it should grant permissive intervention. *Nev. R. Civ P. 24(b)*. Rule 24(b) authorizes  
10 the Court to grant permissive intervention to anyone who has a claim or defense that shares with  
11 the main action a common question of law or fact. A district Court has broad discretion to permit  
12 intervention. *Griffith v Univ Hosp. LLC, 249 F.3d 658, 662 (7<sup>th</sup> Cir. 2001)*. The Court must  
13 determine whether a proposed intervenor's claims and the main action share a common question  
14 of fact or law and then whether the intervention will unduly delay the litigation or prejudice the  
15 original parties. *Freedom from Religion Found., Inc. v. Geithner, 644 F.3d 836, 843 (9<sup>th</sup> Cir.*  
16 *2011)*. *Donnelly v. Glickman, 159 F.3d 405, 412 (9<sup>th</sup> Cir. 1998)*.

17  
18 Intervenor's proposed Answer includes defenses and legal arguments that rely on the  
19 same facts and legal claims set forth in the Complaint, permissive intervention is appropriate  
20 here. NRCP 24(b) permits intervention as follows:

21 (b) Permissive intervention. Upon timely application anyone may be permitted to  
22 intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an  
23 applicant's claim or defense and the main action have a question of law or fact in common. In  
24 exercising its discretion the court shall consider whether the intervention will unduly delay or  
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1 prejudice the adjudication of the rights of the original parties. Although provision Rule 24(b)(1)  
2 does not apply here, the remaining provisions of the rule support permissive intervention.

3 **A. Timeless and Delay**

4 In considering the timeliness of the intervention, the Court should consider the totality of  
5 circumstances. *NAACP v New York*, 413 U.S. 345, 366 (1973), including the length of time since  
6 the movant knew of its interest in the case, prejudice to the existing parties caused by any delay  
7 in intervening (but not delay caused by the intervention itself) prejudiced to the proposed  
8 intervenor, and the existence of any unusual circumstances, *United Nuclear Corp. v Cannon*, 696  
9 *F.2d 141, 143 (1<sup>st</sup> Cir. 1982)*

10  
11 As is stated above, Intervenor is filing this motion as soon as possible following the filing  
12 of the Complaint. Intervenor submits that any additional issues he intends to raise and litigate  
13 will cause no delay in this litigation.

14 The movant is not required to asset a separate or additional claim or defense in order to  
15 show commonality. Instead, permissive intervention is appropriate where the proposed  
16 “intervenor’s defense raises the same legal questions as the defense of the named Defendants.”  
17 *Miller v Silbermann*, 832 *F. Supp.* 663, 673 (S.D.N.Y 1993). Similarly, Repair the Vote PAC has  
18 a special interest in the resolution of this matter favoring Defendant. While, Cegavske’s and the  
19 PAC’s interests are different and distinct the legal issue is the same.

20  
21 **CONCLUSION**

22 For the foregoing reasons, the Court should grant David Gibbs and Repair the Vote  
23 PAC’s Motion to Intervene as of right, or in the alternative, permissively.

24 Dated this 24<sup>th</sup> day of February, 2022

25  
CHATTAH LAW GROUP

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*s/ Sigal Chattah*  
SIGNAL CHATTAH, ESQ.  
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Las Vegas, Nevada 89118  
Tel: (702) 360-6200  
Attorney for Proposed Intervenor



**DECLARATION OF DAVID G. GIBBS**

1  
2 I, DAVID G. GIBBS, declare as follows:

3 1. I am submitting this Declaration in Support of Motion to Intervene,  
4 individually and on behalf of Repair the Vote PAC.  
5

6 2. On January 28, 2022, I signed and filed a Notice of Intent to Circulate  
7 Statewide Initiative or Referendum Petitions on behalf of Repair the Vote PAC.

8 3. This Notice was filed in reference to two matters, to wit: 1) Constitutional  
9 Amendment, Article 2 of the Nevada Constitution re: Voter Identification; and 2) Referendum  
10 to approve/disapprove selected provisions of Assembly Bill 321.  
11

12 4. This Motion to Intervene on behalf of Defendants is filed for the purposes of  
13 participating in the litigation of these cases, as Repair the Vote PAC was omitted from this  
14 litigation.

15 5. Repair the Vote PAC claims an interest relating to this litigation that is the  
16 subject of the action, and is so situated that disposing of the action may as a practical matter  
17 impairs or impede the PAC's ability to protect its interest, unless existing parties adequately  
18 represent that interest.  
19

20 6. Defendant Cegasvke in her capacity as Nevada Secretary of State has no vested  
21 interest in protecting the initiatives that are the subject of this litigation and it is likely that the  
22 PAC's interests will not be adequately represented accordingly.

23 7. This Motion was filed in a timely manner as the pending Complaint was filed  
24 on February 18, 2022.  
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26 8. Neither parties will suffer any prejudicial effect of the PAC's intervention in  
27 this action  
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9. Further Affiant sayeth naught.

Dated this 25th day of February, 2022



**DAVID G. GIBBS**

# EXHIBIT "A"

received  
Jan. 28, 2022

# NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

State of Nevada



Secretary of State Barbara K. Cegavske

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

**NAME OF PERSON FILING THE PETITION**

David G. Gibbs

**NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)**

1. David G. Gibbs

2.

3.

**NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)**

Repair the Vote

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X

Signature of Petition Filer

28 Jan 22

Date

**REFERENDUM ON THE PROVISION RELATED TO CHANGES IN VOTING PROVISIONS  
FROM ASSEMBLY BILL 321 OF THE 2021 LEGISLATIVE SESSION**

Explanation – Matter in *bolded italics* and matter in brackets [~~omitted material~~] is the material from the specified sections of Assembly Bill 321 to be considered for the approval or disapproval in this referendum.

The People of the State of Nevada do enact as follows:

**FULL TEXT OF THE PROPOSED MEASURE**

Section 1. Section 3 of Assembly Bill 321 of the 2021 Legislative Session:

*Sec. 3. 1. Except as otherwise provided in this section, the county clerk shall prepare and distribute to each active registered voter in the county and each person who registers to vote or updates his or her voter registration information not later than the 14 days before the election a mail ballot for every election. The county clerk shall make reasonable accommodations for the use of the mail ballot by a person who is elderly or disabled, including, without limitation, by providing, upon request, the absent ballot in 12-point type to a person who is elderly or disabled.*

*2. The county clerk shall allow a voter to elect not to receive a mail ballot pursuant to this section by submitting to the county clerk a written notice in the form prescribed by the county clerk which must be received by the county clerk not later than 60 days before the day of the election.*

*3. The county clerk shall not distribute a mail ballot to any person who:*

*(a) Registers to vote for the election pursuant to the provisions of NRS 293.5772 to 293.5887, inclusive; or*

*(b) Elects not to receive a mail ballot pursuant to subsection 2.*

*4. The mail ballot must include all offices, candidates and measures upon which the voter is entitled to vote at the election.*

*5. Except as otherwise provided in subsections 2 and 3, the mail ballot must be distributed to:*

*(a) Each active registered voter who:*

*(1) Resides within the State, not later than 20 days before the election; and*

*(2) Except as otherwise provided in paragraph (c), resides outside the State, not later than 40 days before the election.*

*(b) Each active registered voter who registers to vote after the dates set for distributing mail ballots pursuant to paragraph (a) but who is eligible to receive a mail ballot pursuant to subsection 1, not later than 13 days before the election.*

*(c) Each covered voter who is entitled to have a military-overseas ballot transmitted pursuant to the provisions of chapter 293D of NRS or the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301 et seq., not later than the time required by those provisions.*

*6. In the case of a special election where no candidate for federal office will appear on the ballot, the mail ballot must be distributed to each active registered voter not later than 15 days before the special election.*

*7. Any untimely legal action which would prevent the mail ballot from being distributed to any voter pursuant to this section is moot and of no effect.*

Section 2. Section 4 of Assembly Bill 321 of the 2021 Legislative Session:

*Sec. 4. 1. Except as otherwise provided in subsection 2, section 3 of this act and chapter 293D of NRS, the county clerk shall send to each active registered voter by first-class mail, or by any class of mail if the Official Election Mail logo or an equivalent logo or mark created by the United States Postal Service is properly placed:*

*(a) A mail ballot;*

*(b) A return envelope;*

*(c) An envelope or sleeve into which the mail ballot is inserted to ensure its secrecy; and*

*(d) Instructions.*

(e) Submits or has previously submitted a written request for an absent ballot that is signed by the registered voter before a notary public or other person authorized to administer an oath;

(f) Requests an absent ballot in person at the office of the county clerk;

Section 7. Section 51 of Assembly Bill 321 of the 2021 Legislative Session:

Sec. 51. 1. *Except as otherwise provided in this section, the city clerk shall prepare and distribute to each active registered voter in the city and each person who registers to vote or updates his or her voter registration information not later than the 14 days before the election a mail ballot for every election. The city clerk shall make reasonable accommodations for the use of the mail ballot by a person who is elderly or disabled, including, without limitation, by providing, upon request, the mail ballot in 12-point type to a person who is elderly or disabled.*

2. *The city clerk shall allow a voter to elect not to receive a mail ballot pursuant to this section by submitting to the city clerk a written notice in the form prescribed by the city clerk which must be received by the city clerk not later than 60 days before the day of the election.*

3. *The city clerk shall not distribute a mail ballot to any person who:*

(a) *Registers to vote for the election pursuant to the provisions of NRS 293.5772 to 293.5887, inclusive; or*

(b) *Elects not to receive a mail ballot pursuant to subsection 2.*

4. *The mail ballot must include all offices, candidates and measures upon which the voter is entitled to vote at the election.*

5. *Except as otherwise provided in subsections 2 and 3, the mail ballot must be distributed to:*

(a) *Each active registered voter who:*

(1) *Resides within the State, not later than 20 days before the election; and*

(2) *Except as otherwise provided in paragraph (b), resides outside the State, not later than 40 days before the election.*

(b) *Each active registered voter who registers to vote after the dates set for distributing mail ballots pursuant to paragraph (a) but who is eligible to receive a mail ballot pursuant to subsection 1, not later than 13 days before the election.*

(c) *Each covered voter who is entitled to have a military-overseas ballot transmitted pursuant to the provisions of chapter 293D of NRS or the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301 et seq., not later than the time required by those provisions.*

6. *In the case of a special election where no candidate for federal office will appear on the ballot, the mail ballot must be distributed to each active registered voter not later than 15 days before the special election.*

7. *Any untimely legal action which would prevent the mail ballot from being distributed to any voter pursuant to this section is moot and of no effect.*

Section 8. Section 52 of Assembly Bill 321 of the 2021 Legislative Session:

Sec. 52. 1. *Except as otherwise provided in subsection 2, section 51 of this act and chapter 293D of NRS, the city clerk shall send to each active registered voter by first-class mail, or by any class of mail if the Official Election Mail logo or an equivalent logo or mark created by the United States Postal Service is properly placed:*

(a) *A mail ballot;*

(b) *A return envelope;*

(c) *An envelope or sleeve into which the mail ballot is inserted to ensure its secrecy; and*

(d) *Instructions.*

2. *In sending a mail ballot to an active registered voter, the city clerk shall use an envelope that may not be forwarded to an address of the voter that is different from the address to which the mail ballot is mailed.*

3. *The return envelope must include postage prepaid by first-class mail if the active registered voter is within the boundaries of the United States, its territories or possessions or on a military base.*

4. *Before sending a mail ballot to an active registered voter, the city clerk shall record:*

(a) *The date the mail ballot is issued;*



1 **ANS**  
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10 Attorney for Proposed Intervenor  
11 *David Gibbs Et Al*

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

14 ERIC JENG, an individual, )  
15 )  
16 Plaintiff, ) Case No:22DC00023-B  
17 vs. ) Dept No.: II  
18 ) [PROPOSED ANSWER]  
19 BARBARA CEGAVSKE, in her official )  
20 capacity as NEVADA SECRETARY OF )  
21 STATE, )  
22 Defendants. )  
23 )  
24 )  
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26 **INTERVENORS' ANSWER TO COMPLAINT**

27 COME NOW, Defendant/Intervenor DAVID G. GIBBS individually and on behalf of  
28 REPAIR THE VOTE PAC by and through the undersigned attorney of record, SIGAL  
29 CHATTAH, ESQ., of CHATTAH LAW GROUP who hereby answer Plaintiffs as intervenor  
30 follows:

- 31 1. Defendants admit paragraphs 1, 2 and 5,7, 11 of Plaintiffs' Complaint.



1 Defendants allege that the Plaintiff failed to mitigate their damages.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 That it has been necessary of the Defendants to employ the services of an attorney to  
4 defend the action and a reasonable sum should be allowed Defendants for attorney's fees,  
5 together with costs of suit incurred herein.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 Rescission bars enforcement of any agreement between Plaintiff and Defendants.

8 **NINTH AFFIRMATIVE DEFENSE**

9 Pursuant to NRCF 11, as amended, all possible affirmative defenses may not have been  
10 alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the  
11 filing of Defendants' Answer, and therefore, Defendants reserve the right to amend this Answer  
12 to allege additional affirmative defenses if subsequent investigation warrants.

13 **TENTH AFFIRMATIVE DEFENSE**

14 Plaintiff's allegations are barred by the doctrine of laches.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 Plaintiff have waived the right to bring the Defendants herein and to assert the claims  
17 herein.

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 Plaintiff allegations are barred by the Statute of Frauds

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 Plaintiff are estopped from bringing the claims and allegations in the Plaintiff Complaint.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

1 At all times mentioned there was, has been and continues to be a material failure of  
2 consideration on the part of Plaintiff herein, as a consequence of which failure this answering  
3 Defendants' duty of performance has been discharged.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 This answering Defendants are informed and believe, and thereon allege, that Plaintiff  
6 herein lacks standing to bring said action against this answering Defendants.

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

8 No justiciable controversy exists between Plaintiffs and Defendants.

9 **SEVENTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiffs have released and discharged Defendant from any liability by virtue of  
11 Plaintiff's own acts or omissions.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 Plaintiff's allegations as set forth in the Complaint misstates the terms and conditions of  
14 an agreement between the parties.

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 Plaintiff has failed to cure procedural prerequisites prior to commencing this suit.

17 **TWENTIETH AFFIRMATIVE DEFENSE**

18 Defendants deny each and every allegation of Plaintiff's Complaint not specifically  
19 admitted or otherwise pleaded herein.

20 **TWENTY FIRST AFFIRMATIVE DEFENSE**

21 Plaintiff's claims are barred by the Statute of Limitations and/or Statute of Repose.

22 WHEREFORE, Defendants pray as follows:  
23  
24  
25



**IAFD**

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Attorney for Proposed Intervenor  
*David Gibbs Et Al*

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


ERIC JENG, an individual,  
  
Plaintiff,  
  
vs.  
  
BARBARA CEGAVSKE, in her official  
capacity as NEVADA SECRETARY OF  
STATE,  
  
Defendants.

)  
)  
) Case No:22 OCC00231  
) Dept. No: II  
)  
)  
) **INITIAL APPEARANCE FEE**  
) **DISCLOSURE**  
)  
)  
)  
)

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

DAVID G GIBBS	Defendant	\$218.00
TOTAL REMITTED:		\$218.00

Dated this 15 day of February, 2022

CHATTAH LAW GROUP  
  
\_\_\_\_\_  
SIGAL CHATTAH, ESQ.  
Nevada Bar No.: 8264  
CHATTAH LAW GROUP  
5875 S. Rainbow Blvd #204  
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Attorney for Defendant