FILED
December 17, 2025
State of Nevada
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

SUSAN HERRON Complainant, vs. INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT Respondent.	Case No. 2024-015 **FIFTH AMENDED NOTICE OF HEARING**

TO: Complainant, by and through her attorney, Alex Velto, Esq., of Reese Ring Velto, PLLC; and

TO: Respondent, by and through its attorney, Nick D. Crosby, Esq., of Marquis Aurbach.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE pursuant to NRS 233B.121(2), that the Government Employee-Management Relations Board ("Board") will conduct a hearing in the above-captioned matter:

PANEL

This case has been assigned to Panel A. Pursuant to NAC 288.271(3), Chair Brent C. Eckersley, Esq. shall be the Presiding Officer. The other panel members are Vice Chair Michael Urban, Esq. and Board Member Jerry Keating.

DATES AND TIMES OF HEARING

Tuesday, February 17, 2026; continuing Wednesday, February 18, 2026; and Thursday, February 19, 2026. The hearing will start at 8:00 a.m. on all three days.

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LOCATION OF HEARING

The hearing will be held in the Carl Dodge Conference Room, which is located on the fourth floor of the Nevada State Business Center, 3300 W. Sahara Avenue, Suite 490, Las Vegas, NV 89102. The hearing will also be held virtually using TEAMS. Subject to change, the panel members, the Commissioner and the Deputy Attorney General assigned to the agency will be present in person. The attorneys of record, witnesses, and court reporter will be present via TEAMS. If the court reporter is not attending in person at a physical location but will be present online, the Complainant shall work with the court reporter to ensure that the court reporter will also be able to use TEAMS.

Preliminary motions will be heard at the beginning of the hearing. The Panel may deliberate and take possible action on this case after the hearing has concluded.

DETAILS REGARDING EVENTS PRIOR TO THE HEARING

1. Pursuant to NAC 288.273, the EMRB Commissioner will hold a prehearing conference on **Friday, January 16, 2026, at 10:00 a.m.** The prehearing conference will be held using TEAMS, and the Board Secretary will send the TEAMS link to the attorneys of record prior to the prehearing conference.

2. At the prehearing conference an attempt will be made to formulate or simplify the issues; obtain admissions of fact which will avoid unnecessary proof; discuss proposed exhibits which were exchanged between the parties at least 5 days before the date of the prehearing conference (if any); limit the number of witnesses; and establish any other procedure which may expedite the orderly conduct and disposition of the proceedings.

Exhibits

3. The parties shall submit four (4) sets of tagged and indexed joint and/or separate exhibits to be received by the EMRB, 3300 W. Sahara Avenue, Suite 490, Las Vegas, Nevada 89102, no later than **February 12, 2026**.

4. The parties will also need to submit an electronic version of the exhibits, along with an exhibit index also by **February 12, 2026**. Please do not send the exhibits as one document but save each exhibit as its own pdf file. Arrangements for the means of transmittal shall be made with the Board Secretary.

5. Please note that the number of sets of exhibits to be received by the EMRB is in addition to any sets of exhibits that may be used by the attorneys of record. Each attorney shall also be responsible for having a set of exhibits at the designated location for its witnesses.

6. For ease of reference, please numerically bate-stamp all exhibit pages and include a designation for each party presenting the exhibit (e.g. HERRON 0001; if designating it as a joint exhibit, JOINT 0001).

Subpoenas

7. Unless otherwise excused by the Chair for good cause, all subpoena requests must be submitted to the EMRB no later than one week prior to the hearing or by **February 10, 2026**.

DETAILS OF HEARING

1. The legal authority and jurisdiction for this hearing are based upon NRS 288.110, NRS 288.280 and the Nevada Administrative Code, Chapter 288.

2. The time allotted for the hearing shall be sixteen (16) hours for the Complainant and eight (8) hours for the Respondent, not including the time for cross-examination.

3. The Complainant shall be responsible for retaining a certified court reporter to take verbatim notes of the proceedings. Pursuant to NAC 288.370, the cost of reporting shall be shared equally by the parties. The Board shall be furnished with an electronic copy of the transcript so taken.

STATEMENT OF ISSUES INVOLVED

Based upon the prehearing statements filed in this matter, and pursuant to NRS 233B.121(2)(d), the issues to be addressed at the hearing are identified as follows:

Complainant's Statement of Issues

Whether IVGID engaged in prohibited discriminatory conduct under NRS 288.270(1)(f) by:

1. Subjecting Ms. Herron to a politically motivated investigation and 14-week administrative leave without notice of allegations, in retaliation for her protected political activities related to the recall efforts against Trustees Schmitz and Dent.

2. Allowing Trustees Schmitz and Dent to engage in an ongoing pattern of harassment, retaliation, and attempts to force Ms. Herron's termination based on her protected political affiliations and activities.

3. Creating a hostile work environment designed to force Ms. Herron to choose between enduring continued politically motivated harassment or resignation/early retirement.

Respondent's Statement of Issues

1. Whether Complainant suffered an adverse employment action.

2. Whether conduct that falls short of an adverse employment action is sufficient to trigger the protections afforded under Nevada revised Statutes 288.270(1)(f).

3. Whether placing an employee on paid administrative leave pending the outcome an internal investigation qualifies as an adverse employment action for purposes of determining whether there has been a violation of Nevada Revised Statutes 288.270(1)(f).

4. Assuming Complainant demonstrates she suffered an adverse employment action, were the actions of the Respondent for legitimate, non-discriminatory reasons.

5. Whether Respondent discriminated against Complainant because of political or personal reasons or affiliations in violation of Nevada Revised Statutes 288.270(1)(f).

6. Assuming Complainant makes a *prima facie* showing of discrimination under Nevada Revised Statute 288.270(1)(f), did Respondent prove by a preponderance of the evidence that the same action would have taken place absent the alleged protected conduct.

This Fourth Amended Notice of Hearing will further serve as notice to all parties herein that, upon conclusion of the hearing or as otherwise necessary to deliberate toward a decision on the complaint, the Board may move to go into closed session pursuant to NRS 288.220(5).

DATED 17th day of December 2025.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY _____
MARISU ROMUALDEZ ABELLAR
Commissioner

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 17th day of December 2025, I served a copy of the foregoing **FIFTH AMENDED NOTICE OF HEARING** by mailing a copy thereof, postage prepaid to:

Alex Velto, Esq.
Reese Ring Velto, PLLC.
200 S. Virginia Street
Suite 655
Reno, NV 89501

Nick D. Crosby, Esq.
Marquis Aurbach
10001 Park Run Drive
Las Vegas, NV 89145

Kelly Valadez

KELLY VALADEZ
Executive Assistant

Susan Herron (Complainant)

Complaint

Jason D. Guinasso, Esq. (SBN# 8478)
GUINASSO LAW, LTD.
5371 Kietzke Lane
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Telephone: (775) 993-8899
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Jason@guinassolaw.com
Attorney for Complainant

FILED
May 3, 2024
State of Nevada
E.M.R.B.
2:15 p.m.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

SUSAN HERRON,

Complainant,

v.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT,

Respondent.

Case Number: 2024-015

COMPLAINT

COMPLAINANT, SUSAN HERRON, by and through her undersigned counsel of record JASON D. GUINASSO, ESQ. of GUINASSO LAW, LTD., pursuant to NRS 288.110 (2) and NAC 288.200, hereby files this complaint as follows:

JURISDICTION

1. Pursuant to NRS 288.110 (2) the Nevada Government Employee-Management Relations Board ("EMRB") has jurisdiction to hear complaints arising out of the interpretation of, or performance under, the provisions of NRS Chapter 288.

2. Pursuant to NRS 288.110 (2), and NAC 288.200, SUSAN HERRON seeks relief for violations of NRS Chapter 288.

3. This Complaint is timely pursuant to NRS 288.110(4) because it is within "6 months after the occurrence which is the subject of the complaint or appeal."

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PARTIES

4. Complainant, Susan Herron is a local government employee of Incline Village General Improvement District as defined by NRS 288.050. Ms. Herron has been employed by Incline Village General Improvement District since 2003. Currently, Ms. Herron is employed by Incline Village General Improvement District as the Director of Administrative Services. Pursuant to NRS 288.138, Ms. Herron is a supervisory employee, and pursuant to NRS 288.132, Ms. Herron is an administrative employee. For purposes of these proceedings, Ms. Herron's address is: c/o Jason D. Guinasso, Esq., GUINASSO LAW, LTD., 5371 Kietzke Lane, Reno, NV 89511, telephone number: (775) 993-8899.

5. Respondent, Incline Village General Improvement District ("IVGID") is a local government employer as defined by NRS 288.60. IVGID's address is 893 Southwood Boulevard, Incline Village, Nevada 89451, and its telephone number is (775) 832-1100.

FACTUAL ALLEGATIONS
(Statement of Facts)

6. Susan Herron has been employed by IVGID since 2003.

7. In addition to working for IVGID she is a resident and active member of the Incline Village Crystal Bay community.

8. As a resident of the Incline Village Crystal Bay community, she has a right to vote in the local government elections and participate in any campaign efforts she chooses in her personal capacity.

9. On or about, June 16, 2023, the political action committee, The Committee to Recall IVGID Trustee Matthew Dent, filed a Petition to Recall Trustee Matthew Dent on the basis that the Committee to Recall alleged Trustee Matthew Dent was not adequately representing the community of Incline Village and Crystal Bay.

10. On that same date, the political action committee, The Committee to Recall IVGID Trustee Sara Schmitz, filed a Petition to Recall Trustee Sara Schmitz on the basis that the

Committee to Recall alleged Trustee Sara Schmitz was not adequately representing the community of Incline Village and Crystal Bay community.

11. On June 23, 2023, two new petitions were reissued by the political action committees, The Committee to Recall IVGID Trustee Matthew Dent, and The Committee to Recall IVGID Trustee Sara Schmitz.

12. On July 27, 2023, Susan Herron's husband, Mark Herron contributed $1,250.00 to the political action committee, "The Committee to Recall IVGID Trustee Matthew Dent."

13. On September 27, 2023, Susan Herron's husband, Mark Herron contributed $1,250.00 to the political action committee, "The Committee to Recall IVGID Trustee Sara Schmitz."

14. On November 27, 2023, the Committee to Recall IVGID Trustee Matthew Dent filed its Recall Contributions and Expenses Report with the Nevada Secretary of State wherein the monetary contribution of Mark Herron made on July 27, 2023, was reflected. This report is a public record.

15. On November 27, 2023, The Committee to Recall IVGID Trustee Sara Schmitz filed its Recall Contributions and Expenses Report with the Nevada Secretary of State wherein the monetary contribution of Mark Herron made on September 27, 2023, was reflected. This report is a public record.

16. Trustee Dent and Trustee Schmitz publicly and privately complained about Ms. Herron's presumed involvement in the effort to recall them.

17. Trustee Dent and Trustee Schmitz also complained publicly and privately about Ms. Herron's association with members of the community supporting the recall against them.

18. Trustee Dent and Trustee Schmitz expressed their displeasure with Susan Herron providing Notarial services to the individuals who sought out her services for their recall petitions and even went so far as to seek out who paid for Susan Herron's Notarial supplies and bond [Ms. Herron pays for all her own supplies and bonds which is well known].

19. Then Director of Finance Bobby Magee, who is now the District's General Manager, was provided by Sara Schmitz an email containing a CSV file. This is important for three reasons – (1) then Director of Finance Bobby Magee was NOT Susan Herron's supervisor rather he was her equal as a member of the Senior Team; (2) then Director of Finance Bobby Magee had been employed with the Incline Village General Improvement District for approximately 6 months; and (3) this same CSV file was the basis for Susan Herron's placement on paid administrative leave.

20. On November 14, 2023, Susan Herron was abruptly and without any explanation or notice placed on paid administrative leave pending an investigation into "allegations".

21. There was no written complaint against Ms. Herron.

22. Ms. Herron was not informed of the allegations against her when she was placed on leave even though she asked.

23. Upon information and belief, the adverse employment action against Ms. Herron was initiated and encouraged by Trustees Sara Schmitz and Matthew Dent and then Interim Director of Finance Bobby Magee.

24. The adverse employment action was unlawful, blatant harassment, and inappropriate retaliation against Ms. Herron for exercising her Constitutional right to free association, free speech, and freedom to participate in the recall effort during the summer of 2023.

25. Being placed on leave and investigated caused Ms. Herron severe emotional distress and caused her to fear that Trustees Sara Schmitz and Matthew Dent were attempting to use their positions as Trustees to have her terminated in retaliation for supporting the recall efforts against them.

26. Ms. Herron was placed on leave for 14 weeks.

27. This is the first time an employee of IVGID has ever been placed on leave pending an investigation without being put on notice regarding what was being investigated.

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28. As stated above, Ms. Herron was only told that she had been placed on administrative leave pending an investigation into "allegations."

29. As stated above, Ms. Herron was not informed, at the time of being placed on paid administrative leave, what the allegations included, who made the allegations, or what evidence existed to support the allegations and the related adverse employment action.

30. Ms. Herron requested: (a) Identification of the person(s) who made the complaint that resulted in Ms. Herron being placed on administrative leave and investigated; (b) identification and production of all evidence provided in support of the complaint, if any; and (c) a detailed written explanation as to why it took so long to secure an investigator and complete the investigation.

31. Ms. Herron was never informed of what the "allegations" being investigated included, until she met with IVGID's outside investigator, Paul J. Anderson, for an investigative interview on February 1, 2024, which was conducted via Zoom and at which Ms. Herron was present and her attorney, Jason Guinasso, was also present.

32. Mr. Anderson was surprised she had not been informed about the allegations as well and gave Ms. Herron the option of rescheduling the interview. However, Ms. Herron proceeded with the interview in good faith because she had not violated any law or policy and had not otherwise engaged in misconduct.

33. On February 15, 2024, Ms. Herron sent a letter through her legal counsel to Mike Bandelin, then Interim General Manager for IVGID, placing Mr. Bandelin on notice that she had been on leave for over three months without any information concerning the status of the investigation, how long she should expect to remain on administrative leave, and the next steps in the process. It should be noted that one of the conditions of being on this administrative leave was that Ms. Herron had to be readily available to return to work upon request by IVGID.

34. Following the investigation, Ms. Herron also requested the investigator's report.

35. Ms. Herron's request was summarily denied three times and continues to be denied to this date as Ms. Herron filed a complaint with the Incline Village General Improvement District upon her return, for harassment and retaliation, in accordance with employee policies. To date, this complaint has only resulted in the interview of Ms. Herron by a Senior Human Resources professional.

36. Upon information and belief, the result of the investigation was a finding that Ms. Herron did not engage in any wrongdoing.

37. Despite there being no evidence of Ms. Herron violating a law or an IVGID policy, she was removed from work for over three months.

38. Putting Ms. Herron under investigation based on frivolous secret allegations was blatant retaliation against Ms. Herron by certain IVGID Trustees and a member of Staff who, upon information and belief, pushed for this investigation due to their angst over Ms. Herron's "political or personal reasons or affiliations," in violation of her rights under state law. *See* NRS 281.370(1) and (2); NRS 288.270(1)(f) (for local government employers) and NRS 288.270(2)(c) (for local government employees and employee organizations).

39. The administrative leave of absence and sham investigation initiated without knowing what Ms. Herron was being investigated for and who had initiated the complaint caused her emotional and mental harm, took a toll on her physical health and well-being, and caused irreparable harm and damage to her reputation and has otherwise had a chilling effect on Ms. Herron and other public employees efforts to engage in political activity, association, and free speech in opposition to the Trustees.

CLAIM FOR RELIEF
Discrimination because of Political or Personal Reasons or Affiliations
(Engaging in Prohibited Practices in violation of NRS 281.370(1) and (2), NRS 288.270 (1)(f), and NRS 288.280)

40. Susan Herron incorporates paragraphs 1-39 into this section of the Complaint as if fully set forth herein.

41. It is a prohibited practice for a local government employer or its designated representative to willfully discriminate against a public employee for "political or personal reasons or affiliations." *See* NRS 281.370(1) and (2); NRS 288.270(1)(f) (for local government employers) and NRS 288.270(2)(c) (for local government employees and employee organizations).

42. Under NRS 288.270 (1)(f), "It is a prohibited practice for a local government employer or its designated representative willfully to:[] Discriminate because of race, color, religion, sex, sexual orientation, gender identity or expression, age, physical or visual handicap, national origin or because of **political or personal reasons or affiliations**."

43. NRS 281.370 further provides that:

> 1. All personnel actions taken by state, county or municipal departments, housing authorities, agencies, boards or appointing officers thereof must be based solely on merit and fitness.
>
> 2. State, county or municipal departments, housing authorities, agencies, boards or appointing officers thereof shall not refuse to hire a person, discharge or bar any person from employment or discriminate against any person in compensation or in other terms or conditions of employment because of the person's race, creed, color, national origin, sex, sexual orientation, gender identity or expression, age, political affiliation or disability, except when based upon a bona fide occupational qualification.

44. The EMRB has adopted a formal definition of "personal reasons." *See Kilgore v. City of Henderson*, Item No. 550H (2005) (approved by the Nevada Supreme Court in *City of N. Las Vegas v. Glazier*, Case No. 50781 (unpublished 2010)). The EMRB, referencing Black's Law Dictionary, defined "personal reasons" as follows:

> Black's Law Dictionary defines "Personal" to mean "[appertaining to the person; belonging to an individual. . . " Black's Law Dictionary 702 (6th ed. 1991). Additionally, the term "political or personal reasons or affiliations" is preceded in NRS 288.270(1)(f) by a list of factors, "race, color, religion, sex, age, physical or visual handicap, national origin," that can best be described as "non-merit-or-fitness" factors, i.e., factors that are unrelated to any job requirement and not

> otherwise made by law a permissible basis for discrimination. The doctrine of *ejusdem generis* states that where general words follow an enumeration of particular classes of things, the general words will be construed as applying only to those things of the same general class as those enumerated. Black's Law Dictionary 357 (6th ed. 1991). **Thus, the proper construction of the phrase "personal reasons or affiliations" includes "non-merit-or-fitness" factors, and would include the dislike of or bias against a person which is based on an individual's characteristics, beliefs, affiliations, or activities that do not affect the individual's merit or fitness for any particular job**.

Id. (**emphasis supplied**). Since 2005, this has been the definitive definition of discrimination based upon personal reasons.

45. IVGID, at the direction of certain disgruntled Trustees and a member of Staff, engaged in prohibited practices by discriminating against Ms. Herron for "political or personal reasons or affiliations."

PRAYER FOR RELIEF

WHEREFORE, the Complainant respectfully requests the following relief:

1. For a finding in favor of Complainant and against Respondent on each and every claim of this Complaint.

2. For a determination that IVGID has violated NRS 281.370(1) and (2); NRS 288.270(1)(f), and NRS 288.270(2)(c) and engaged in prohibited practices by discriminating against Ms. Herron for "political or personal reasons or affiliations."

3. For an order directing IVGID to cease and desist from violating the rights of Susan Herron;

4. For an order that Complainant be reimbursed for attorney's fees and costs in this action; and

5. For such other and further relief as may be necessary or appropriate.

Dated this 3rd day of May, 2024.

GUINASSO LAW, LTD.

By: _____

Jason D. Guinasso, Esq. (SBN# 8478)
Attorney for Complainant

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200 (2), I caused a true and correct copy of the **COMPLAINT** to be served on the following individuals by depositing for mailing with postage prepaid via certified U.S. mail on this 3rd day of May, 2024:

Sara Schmitz, Chair
Incline Village General Improvement District
893 Southwood Boulevard
Incline Village, Nevada 89451
Certified U.S. Mail No. 9589 0710 5270 0568 6150 02

Courtesy Copy to:

Sergio Rudin, Esq.
Anne Branham, Esq.
Best Best & Krieger, LLP
500 Capitol Mall
Sacramento, California 95814
Sergio.rudin@bbklaw.com
anne.branham@bbklaw.com

Certified U.S. Mail No.: 9589 0710 5270 0568 6150 19

Attorneys for Incline Village General Improvement District

For Guinasso Law, Ltd.

IVGID(Respondent)

Respondent's Answer to Complaint

Marquis Aurbach
Nick D. Crosby, Esq.
Nevada Bar No. 8996
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
ncrosby@maclaw.com
Attorneys for Respondent

FILED
May 23, 2024
State of Nevada
E.M.R.B.
1:40 p.m.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

SUSAN HERRON, Complainant, vs. INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT Respondent.	Case No.: 2024-015

RESPONDENT'S ANSWER TO COMPLAINT

Respondent Incline Village General Improvement District ("Respondent"), by and through its attorney of record, Nick D. Crosby, Esq. of Marquis Aurbach, hereby files its Answer to Complainant's Complaint in the above-referenced matter.

1. In answering Paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 20, 21, 26, 30, 33, 34, 36, 41, 42 and 43 of Complainant's Complaint, Respondent admits the allegations contained therein.

2. In answering Paragraphs 23, 24, 37, 38, 39 and 45 of Complainant's Complaint, Respondent denies the allegations contained therein.

3. In answering Paragraphs 7, 12, 13, 16, 17, 18, 19, 22, 25, 27, 28 and 29 of Complainant's Complaint, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore, denies the same.

4. In answering Paragraph 40 of Complainant's Complaint, Respondent repeats and incorporates its prior responses.

MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

5. In answering Paragraph 31 of Complainant's Complaint, Respondent admits Complainant and her counsel met with an outside investigator, Paul Anderson, for an interview on or about February 1, 2024, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, and therefore, denies the same.

6. In answering Paragraph 32 of Complainant's Complaint, Respondent admits Complainant was given the option to reschedule the interview, but elected to proceed with the originally scheduled interview. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, and therefore, denies the same.

7. In answering Paragraph 35 of Complainant's Complaint, Respondent admits Complainant's request for the confidential investigative report of Anderson and that Complainant lodged a complaint, but denies the suggestion that the denial of release of the confidential report was unlawful and further denies the remaining allegations contained therein.

8. In answering Paragraph 44 of Complainant's Complaint, Respondent responds that the allegations call for a legal conclusion, as opposed to an admission or denial of fact.

9. Any allegation not specifically responded to above, is hereby denied.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. The Board is without jurisdiction to hear claims arising under Nevada Revised Statute 281.010 *et. seq*.

3. No private right of action exists under Nevada Revised Statute 281.370.

4. Nevada Revised Statute 288.280 does not create any substantive rights to aggrieved parties.

5. Respondent did not discriminate against Complainant for personal or political reasons or affiliations.

6. Complainant lacks standing.

7. Respondent did not take any adverse employment action against Complainant.

MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

8. Any action taken by the Respondent was not motivated by personal or political reasons or affiliations.

9. Any action taken by Respondent was for legitimate reasons and would have occurred in the absence of any alleged protected conduct.

2. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein, in so far as sufficient facts were not available after a reasonable inquiry upon the filing of this Respondent's Answer to Complainant's Complaint; therefore, this Respondent reserves the right to amend its answer to allege additional affirmative defenses if subsequent investigations so warrant.

PRAYER FOR RELIEF

WHEREFORE, Respondent prays for judgment against Complainant as follows:

1. That Complainant takes nothing by way of her Complaint and that the same be dismissed with prejudice;

2. 3. For an award of reasonable attorney fees and costs of suit; and

4. For any further relief as the Court deems to be just and proper.

Dated this 23rd day of May, 2024.

MARQUIS AURBACH

By *s/ Nick D. Crosby*
Nick D. Crosby, Esq.
Nevada Bar No. 8996
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Respondent

MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of May, 2024, I served a copy of the foregoing **RESPONDENT'S ANSWER TO COMPLAINT** upon each of the parties by depositing a copy of the same in a sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and addressed to:

Jason D. Guinasso, Esq.
5371 Kietzke Lane
Reno, NV 89511
Attorney for Complainant

and that there is a regular communication by mail between the place of mailing and the place(s) so addressed.

s/Sherri Mong
an employee of Marquis Aurbach

MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

Susan Herron (Complainant)

Prehearing Statement

Jason D. Guinasso, Esq. (SBN# 8478)
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Attorney for Complainant

FILED
November 7, 2024
State of Nevada
E.M.R.B.
3:31 p.m.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

SUSAN HERRON, Complainant, v. INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, Respondent.	Case Number: 2024-015

PRE-HEARING STATEMENT

Pursuant to the Commissioner's Order dated August 8, 2024, COMPLAINANT SUSAN HERRON, by and through her undersigned counsel of record JASON D. GUINASSO, ESQ. of GUINASSO LAW, LTD., pursuant to pursuant to NRS 288.273, hereby files this Pre-Hearing Statement in anticipation of the future hearing on this matter to be set for a date certain after the submission of this pre-hearing statement as follows:

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I. STATEMENT REGARDING WHETHER THIS MATTER SHOULD BE CONSOLIDATED WITH SHELIA LEIJON V. INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT; CASE NO. 2024-022.

While both Ms. Herron's and Ms. Leijon's cases involve allegations of political discrimination by IVGID under NRS 288.270(1)(f), consolidation would not serve the interests of justice or judicial economy. The cases should proceed separately for several compelling reasons:

First, Ms. Herron's case presents a unique factual pattern involving her role as Director of Administrative Services, her provision of notarial services to recall supporters, and IVGID's unprecedented action of placing her on administrative leave without notice of allegations. The specific evidence of political motivation - including the CSV file, the irregular involvement of Bobby Magee, and the coordinated campaign involving multiple members of management - requires focused examination of a distinct chain of events and decision-making process.

Second, the timeline and nature of retaliation against Ms. Herron is particularly egregious, with harassment intensifying after the Trustees survived their recall elections. This post-election escalation, including near-daily demands for disciplinary action and termination, represents a pattern of conduct specific to Ms. Herron's situation and her perceived role in the recall effort. The Board's ability to fully examine this pattern would be diluted if combined with another employee's distinct experiences.

Third, the witness testimony required to prove Ms. Herron's case involves detailed accounts from multiple IVGID officials regarding specific incidents, communications, and decisions unique to her situation. Many witnesses, including former General Manager Indra Winquest, IT Director Mike Gove, and various Trustees, will need to testify about events and documents particular to Ms. Herron's case. Consolidation would unnecessarily complicate the presentation of this evidence and potentially confuse the record.

Fourth, while both cases may involve similar legal theories under NRS 288.270(1)(f), the evidence supporting political motivation and pretext differs substantially between the two matters.

Ms. Herron's case includes unique evidence such as the misuse of her email search records, the unprecedented administrative leave without notice, and specific retaliatory actions taken by individual Trustees in response to her perceived support of the recall effort.

Finally, separate proceedings will allow for clearer development of the record regarding each employee's distinct experiences of political discrimination, facilitating more precise findings of fact and conclusions of law. This separation will also better serve the remedial purposes of NRS Chapter 288 by allowing the Board to craft relief specifically tailored to each employee's situation.

Therefore, while judicial economy generally favors consolidation of related cases, the unique aspects of Ms. Herron's experience of political discrimination warrant separate proceedings to ensure full and fair consideration of her claims.

II. STATEMENT OF ISSUES

A. Whether IVGID engaged in prohibited discriminatory conduct under NRS 288.270(1)(f) by:

1. Subjecting Ms. Herron to a politically-motivated investigation and 14-week administrative leave without notice of allegations, in retaliation for her protected political activities related to the recall efforts against Trustees Schmitz and Dent;
2. Allowing Trustees Schmitz and Dent to engage in an ongoing pattern of harassment, retaliation, and attempts to force Ms. Herron's termination based on her protected political affiliations and activities;
3. Creating a hostile work environment designed to force Ms. Herron to choose between enduring continued politically-motivated harassment or resignation/early retirement.

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B. Whether IVGID's conduct constitutes discrimination based on "political or personal reasons or affiliations" under NRS 288.270(1)(f) as evidenced by:

1. The temporal connection between Ms. Herron's involvement in recall activities and the initiation of the investigation;
2. Trustees' public statements and actions demonstrating animus toward employees who supported the recall effort;
3. The unprecedented nature of placing an employee on extended administrative leave without notice of allegations;
4. The ongoing pattern of harassment and attempts to force Ms. Herron's termination after her return to work.

C. Whether IVGID can establish by a preponderance of evidence that:

1. It would have taken the same actions against Ms. Herron absent her protected political activities and affiliations;
2. The investigation and administrative leave were supported by legitimate, non-discriminatory reasons rather than political motivation;
3. The ongoing attempts to terminate Ms. Herron's employment are based on merit and fitness rather than political retaliation.

D. Whether the totality of IVGID's conduct warrants remedial action by the Board, including:

1. A cease and desist order prohibiting further politically-motivated harassment and retaliation;
2. Compensatory relief for emotional distress and damage to Ms. Herron's professional reputation;
3. Attorney's fees and costs pursuant to the Board's authority to remedy prohibited practices under NRS Chapter 288.

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III. SHORT STATEMENT OF COMPLAINANT SUSAN HERRON'S POSITION.

Complainant, Ms. Herron, a dedicated IVGID employee since 2003, has been subjected to a calculated campaign of political discrimination and retaliation that exemplifies precisely the type of conduct NRS 288.270(1)(f) was designed to prohibit. The evidence will establish that IVGID, through its Trustees and management, engaged in an unprecedented pattern of discriminatory conduct triggered by Ms. Herron's protected political activities related to recall efforts against Trustees Schmitz and Dent.

This discrimination manifested in three distinct but related ways.

First, IVGID subjected Ms. Herron to a 14-week administrative leave and investigation without notice of allegations - an extraordinary action never before taken against any IVGID employee. This investigation was initiated after Trustees learned of Ms. Herron's political associations and activities related to the recall effort, demonstrating clear retaliatory intent.

Second, Trustees Schmitz and Dent have engaged in an ongoing campaign of harassment and intimidation, including public statements refusing to work with staff who supported the recall, attempts to scrutinize Ms. Herron's notarial services to recall supporters, and repeated demands for her termination. This pattern of conduct continues to this day, with Trustee Schmitz making near-daily requests for disciplinary action against Ms. Herron.

Third, this coordinated pattern of politically-motivated harassment has created precisely the type of hostile work environment the EMRB recently recognized as actionable - one designed to force Ms. Herron to choose between enduring continued harassment or early retirement. The evidence will show that IVGID's actions were not based on merit or fitness, but rather were motivated by political animus and retaliation for Ms. Herron's protected activities.

IVGID cannot meet its burden of showing it would have taken these actions absent Ms. Herron's protected political activities. The investigation produced no evidence of wrongdoing, yet IVGID continues to withhold the investigator's report while allowing the harassment to continue. This ongoing conduct warrants immediate Board intervention to protect Ms. Herron's statutory

rights and prevent further politically-motivated retaliation.

Ms. Herron respectfully requests that the Board:

1. Find that IVGID engaged in prohibited discriminatory practices under NRS 288.270(1)(f);
2. Issue a cease and desist order prohibiting further politically-motivated harassment;
3. Award appropriate compensatory relief for emotional distress and reputational damage; and
4. Grant reasonable attorney's fees and costs.

IV. PROCEDURAL HISTORY

As stated above, the Complainant in this matter is Susan Herron ("Ms. Herron"). Ms. Herron is a local government employee of Incline Village General Improvement District as defined by NRS 288.050. The Respondent in this matter is Incline Village General Improvement District ("IVGID"), a local government employer as defined by NRS 288.60.

On May 3, 2024, Complainant Susan Herron filed her Complaint with the EMRB.

On May 3, 2024, the Respondent was timely served by certified mail confirmed received and signed for Attn: Sara Schmitz c/o IVGID on May 7, 2024 (Certified Mail No. 9414 7112 0620 4185 1183 31).

On May 23, 2024, Respondent, IVGID filed a Motion to Dismiss on the following grounds: 1) NRS 288.280 does not apply to discrimination claims; 2) the Board lacks jurisdiction to hear claims arising under NRS Chapter 281; and 3) Complainant's discrimination claim under NRS 288.270(1)(f) must be dismissed because Complainant did not suffer an adverse employment action claim.

Also, on May 23, 2024, Respondent, IVGID filed an Answer to the Complaint.

On June 17, 2024, Complainant, Susan Herron filed an Opposition to Respondent's Motion to Dismiss.

On June 27, 2024, Respondent, IVGID filed a Reply to Opposition to Motion to Dismiss.

On July 10, 2024, the matter of Respondent's Motion to Dismiss came before the State of

Nevada, Government Employee Management Relations Board (the Board) for consideration and decision.

On July 17, 2024, the Board filed its Order Denying Respondent's Motion to Dismiss En Banc. Further the Board ordered that the parties shall submit prehearing statements within 21 days after the Notice of Entry of Order.

On August 8, 2024, EMRB Commissioner Snyder entered his Commissioner's Order extending the time for the parties to file their pre-hearing statements in this matter making the new deadline November 7, 2024. Further, on October 21, 2024, in granting the extension of time for the parties to file their pre-hearing statements in the case Shelia Leijon v. Incline Village General Improvement District; Case No. 2024-022., Commissioner Snyder requested that in the parties' pre-hearing statements that the parties address why or why not this case should be consolidated with the case Shelia Leijon v. Incline Village General Improvement District; Case No. 2024-022.

V. STATEMENT OF FACTS

For over two decades, Susan Herron has served IVGID with distinction. Hired in 2003, Ms. Herron currently serves as Director of Administrative Services, holding both supervisory and administrative employee status under NRS 288.138 and 288.132, respectively. Throughout her career, Ms. Herron has maintained an unblemished employment record while also serving as an engaged resident of the Incline Village Crystal Bay community.

The events giving rise to this complaint reflect an escalating pattern of political retaliation that began with the June 2023 recall efforts and intensified after Trustees Dent and Schmitz survived the recall attempt. On June 16, 2023, two political action committees initiated recall efforts against IVGID Trustees Matthew Dent and Sara Schmitz, citing inadequate representation of the community. When the petitions needed to be reissued for technical reasons on June 23, 2023, the Trustees' response shifted from dismissive to openly hostile.

As both a resident and public servant, Ms. Herron maintained appropriate boundaries

between her professional duties and personal political rights. In her official capacity as a notary public, she provided routine notarial services to community members supporting the recall petitions - a standard function of her position that she had performed countless times before for various community needs. Meanwhile, exercising his separate right to political participation, Ms. Herron's husband, Mark Herron, made legal contributions to both recall committees: $1,250 to the Committee to Recall IVGID Trustee Matthew Dent on July 27, 2023, and $1,250 to the Committee to Recall IVGID Trustee Sara Schmitz on September 27, 2023. These contributions were properly reported in public filings with the Nevada Secretary of State on November 27, 2023.

The Trustees' response revealed their intent to weaponize their positions against perceived political opponents. Former General Manager Indra Winquest will testify that Trustee Dent made multiple requests for searches of Ms. Herron's emails, while Trustee Schmitz repeatedly demanded Ms. Herron's termination. The Trustees publicly declared they would refuse to work with any staff who supported the recall effort, creating a climate of fear among IVGID employees. They even launched a baseless investigation into Ms. Herron's notarial practices, demanding to know who paid for her supplies and bond - information that was not only public record but irrelevant to her provision of legally required notarial services.

The retaliation escalated dramatically on November 14, 2023, shortly after the Trustees' successful defeat of the recall effort. Director of Information Technology Mike Gove will testify that Trustee Schmitz specifically requested and received a CSV file containing Ms. Herron's email searches from the Barracuda Network - a system to which Ms. Herron had been granted access by Mr. Gove himself with the approval of former General Manager Winquest. Rather than following standard protocols for addressing any concerns about system access, Trustee Schmitz provided this file to then-Director of Finance Bobby Magee, who had been employed with IVGID for only six months and was not Ms. Herron's supervisor. Using this file as pretext, and now emboldened by their recall victory, IVGID placed Ms. Herron on administrative leave - an action unprecedented in IVGID's history. Former Diamond Peak General Manager Mike Bandelin, who was serving as

Interim General Manager at the time, has confirmed to Ms. Herron that he took this action at the direct request of Trustees Schmitz and Dent, who were now openly exercising their perceived mandate to purge political opponents.

The fourteen-week administrative leave was deliberately designed to maximize professional uncertainty and personal distress. Ms. Herron was required to remain available to return to work at a moment's notice while being kept entirely in the dark about the allegations against her. Director of Human Resources Erin Feore will testify about her role in coordinating the investigation and reviewing email searches before providing them to outside investigator Paul Anderson. When Mr. Anderson finally interviewed Ms. Herron on February 1, 2024, he expressed surprise that she had never been informed of the allegations against her. Despite Ms. Herron's full cooperation and the investigation finding no evidence of wrongdoing, IVGID continues to withhold the investigator's report, denying Ms. Herron's three formal requests for access - a pattern of information suppression that mirrors the Trustees' broader strategy of opacity and intimidation.

The harassment has not only continued but intensified since Ms. Herron's return to work, with the Trustees apparently emboldened by their electoral survival. Current General Manager Karen Crocker will testify that she receives almost daily requests from Trustee Schmitz to either write up or terminate Ms. Herron. These requests often explicitly reference Ms. Herron's perceived political disloyalty and association with recall supporters. Trustees Noble, Tonking, and Tulloch can testify about the coordinated efforts between Trustees to force Ms. Herron's resignation or early retirement, including explicit discussions about making her work environment untenable. Ms. Herron filed an internal complaint for harassment and retaliation in accordance with IVGID policies, but this has resulted in only a single interview by HR, with no meaningful action taken - demonstrating the administration's unwillingness to check the Trustees' retaliatory conduct.

The personal toll of this campaign has been severe. Mark Herron will testify about the devastating impact on his wife's physical and emotional health, including anxiety, sleeplessness, and depression. Community members regularly reach out to express concern about Ms. Herron's

treatment, compounding her professional humiliation. The hostile work environment has not only impacted Ms. Herron's health and professional reputation but has created a chilling effect on other employees' willingness to engage in protected political activities, with several staff members privately expressing fear of similar retaliation if they exercise their political rights.

This coordinated campaign of harassment and retaliation, which intensified after the Trustees' electoral victory, was clearly designed to punish Ms. Herron for her protected political activities and to force her resignation or early retirement. The timeline of events, supported by witness testimony and documentary evidence, demonstrates a clear pattern of escalating retaliation directly linked to Ms. Herron's exercise of her protected rights under NRS 288.270(1)(f). The post-election intensification of harassment particularly demonstrates that the Trustees viewed their victory as a mandate to punish perceived political opponents, transforming IVGID from a public service organization into a vehicle for personal vendettas.

VI. LAW AND ARGUMENT

A. LEGAL FRAMEWORK AND BURDEN OF PROOF

The EMRB has broad authority to remedy politically-motivated discrimination in public employment. Two key statutory provisions protect public employees like Ms. Herron from political retaliation. First, NRS 288.270(1)(f) explicitly prohibits local government employers from discriminating against employees "because of political or personal reasons or affiliations." Second, NRS 281.370 requires that all personnel actions be based "solely on merit and fitness" and prohibits discrimination based on "political affiliation."

The Nevada Supreme Court has established a burden-shifting framework for analyzing such claims. Under *Reno Police Protective Ass'n v. City of Reno*, 102 Nev. 98 (1986), as modified by *Bisch v. Las Vegas Metro Police Dep't.*, 302 P.3d 1108 (Nev. 2013), an employee must first present credible evidence supporting an inference that political or personal reasons motivated the employer's actions. Once established, the burden shifts to the employer to prove it would have taken the same actions absent the protected political activity. Notably, the employer's proffered

reasons must "pass the test of reasonableness in light of the factual circumstances and protected rights at issue." *Reno Police Protective Ass'n* at 101.

The EMRB has specifically defined "personal reasons" to include "non-merit-or-fitness factors" and "dislike of or bias against a person which is based on an individual's characteristics, beliefs, affiliations, or activities that do not affect the individual's merit or fitness for any particular job." *Kilgore v. City of Henderson*, Item No. 550H (2005), approved by *City of N. Las Vegas v. Glazier*, Case No. 50781 (2010).[1] This definition squarely encompasses IVGID's retaliatory conduct against Ms. Herron.

B. IVGID's Coordinated Campaign of Political Retaliation Exemplifies the Discriminatory Conduct NRS 288.270(1)(f) Was Designed to Prevent.

The evidence in this case presents a textbook example of political discrimination under NRS 288.270(1)(f), demonstrating both blatant retaliation for protected political activities and a calculated effort to force a long-serving employee's resignation through coordinated harassment. The timeline of events reveals not merely isolated incidents of political bias, but rather an escalating campaign of retaliation that intensified after Trustees Schmitz and Dent survived their recall elections.

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[1] The EMRB has adopted a formal definition of "personal reasons." *See Kilgore v. City of Henderson*, Item No. 550H (2005) (approved by the Nevada Supreme Court in *City of N. Las Vegas v. Glazier*, Case No. 50781 (unpublished 2010)). The EMRB, referencing Black's Law Dictionary, defined "personal reasons" as follows:

> Black's Law Dictionary defines "Personal" to mean "[appertaining to the person; belonging to an individual. . . " Black's Law Dictionary 702 (6th ed. 1991). Additionally, the term "political or personal reasons or affiliations" is preceded in NRS 288.270(1)(f) by a list of factors, "race, color, religion, sex, age, physical or visual handicap, national origin," that can best be described as "non-merit-or-fitness" factors, i.e., factors that are unrelated to any job requirement and not otherwise made by law a permissible basis for discrimination. The doctrine of *ejusdem generis* states that where general words follow an enumeration of particular classes of things, the general words will be construed as applying only to those things of the same general class as those enumerated. Black's Law Dictionary 357 (6th ed. 1991). **Thus, the proper construction of the phrase "personal reasons or affiliations" includes "non-merit-or-fitness" factors, and would include the dislike of or bias against a person which is based on an individual's characteristics, beliefs, affiliations, or activities that do not affect the individual's merit or fitness for any particular job.**

Id. **(emphasis supplied)**. Since 2005, this has been the definitive definition of discrimination based upon personal reasons.

From the moment the recall efforts began, the Trustees made their retaliatory intentions clear. They publicly declared they would refuse to work with any staff who supported the recall effort - a direct violation of NRS 288.270(1)(f)'s prohibition against discrimination based on political affiliations. Rather than respecting Ms. Herron's constitutional right to participate in local democratic processes, the Trustees immediately began searching for pretexts to target her. They scrutinized her routine provision of notarial services to recall supporters - services she had provided countless times before without question. They demanded investigations into who paid for her notarial supplies, despite this information being public record. Former General Manager Indra Winquest will testify that Trustee Dent made multiple requests for searches of Ms. Herron's emails, while Trustee Schmitz repeatedly demanded her termination - all before any alleged workplace misconduct.

The Trustees' retaliatory scheme reached new heights on November 14, 2023, shortly after their electoral victory. The sequence of events surrounding Ms. Herron's administrative leave demonstrates both the political motivation and the pretextual nature of IVGID's actions. Trustee Schmitz obtained a CSV file of Ms. Herron's email searches - searches conducted using system access properly granted by IT Director Mike Gove with prior management approval. Rather than following standard protocols for addressing any legitimate concerns, Trustee Schmitz bypassed normal channels to provide this file to then-Director of Finance Bobby Magee, who had neither supervisory authority over Ms. Herron nor sufficient tenure to understand IVGID's standard procedures. This irregular process culminated in an unprecedented action: placing Ms. Herron on administrative leave without notice of allegations - something never before done in IVGID's history.

The fourteen-week investigation that followed bears all the hallmarks of pretextual action designed to punish protected political activity. Ms. Herron was kept entirely in the dark about the allegations against her, a fact that even surprised the outside investigator, Paul Anderson, during his February 1, 2024 interview. Despite Ms. Herron's full cooperation and the investigation's

failure to find any wrongdoing, IVGID continues to withhold the investigator's report. This lack of transparency, coupled with the administration's failure to address Ms. Herron's internal harassment complaints, demonstrates that the investigation was never about legitimate workplace concerns but rather about punishing perceived political disloyalty.

Most tellingly, the harassment has intensified since Ms. Herron's return to work, with the Trustees apparently emboldened by their electoral survival. Current General Manager Karen Crocker will testify about receiving near-daily requests from Trustee Schmitz to discipline or terminate Ms. Herron. These ongoing demands for punitive action, despite the investigation finding no misconduct, reveal the true nature of IVGID's actions: a coordinated campaign to force Ms. Herron's resignation through persistent harassment.

Under the *Reno Police Protective Ass'n* framework, Ms. Herron has more than met her initial burden of showing that political reasons motivated IVGID's actions. The temporal connection between her political activities and the adverse actions, the unprecedented nature of the procedures used, the lack of any findings of wrongdoing, and the ongoing pattern of harassment create an overwhelming inference of political motivation. The burden thus shifts to IVGID to prove it would have taken the same actions absent Ms. Herron's protected political activities.

IVGID cannot meet this burden. Their proffered reasons fail the test of reasonableness given the factual circumstances and protected rights at issue. No legitimate workplace concern explains:

- Why Ms. Herron was placed on leave without notice of allegations;
- Why the investigation took fourteen weeks while producing no findings of misconduct;
- Why the investigator's report remains withheld;
- Why Trustee Schmitz continues to demand punitive action daily; or
- Why Ms. Herron's internal complaints remain unaddressed.

The inescapable conclusion is that IVGID has engaged in precisely the type of politically-motivated discrimination that NRS 288.270(1)(f) prohibits. Moreover, as the Board recently recognized, such discriminatory conduct need not result in formal adverse action to be actionable when it creates a hostile environment forcing an employee to choose between enduring harassment or resignation. The evidence shows that IVGID's conduct has created exactly such an environment, causing Ms. Herron significant emotional distress, damaging her professional reputation, and creating a chilling effect on other employees' willingness to exercise their protected rights.

This pattern of politically-motivated harassment demands Board intervention. Without action from this Board, IVGID's conduct will continue to force Ms. Herron to choose between her protected political rights and her career, while sending a clear message to other employees that political participation will be met with retaliation. Such a result would fundamentally undermine the protections guaranteed by NRS 288.270(1)(f) and chill the exercise of essential democratic rights by public employees throughout Nevada.

C. The Board Must Take Decisive Action to Remedy IVGID's Ongoing Discrimination and Prevent the Chilling of Protected Political Activity by Public Employees Throughout Nevada.

The Board's recent order in this case recognized that discriminatory conduct under NRS 288.270(1)(f) may be actionable even without formal adverse action when it creates a hostile environment forcing an employee to choose between harassment and resignation. Given the clear evidence of politically-motivated discrimination and IVGID's failure to demonstrate any legitimate basis for its actions, Ms. Herron respectfully requests:

1. Clear Evidence of Political Discrimination Warrants Comprehensive Findings Against IVGID, including a finding that IVGID engaged in prohibited discriminatory practices under NRS 288.270(1)(f) through:
    - The politically-motivated investigation and administrative leave;

- The creation of a hostile work environment; and
- The ongoing pattern of harassment and retaliation.

2. Immediate Relief is Necessary to Halt IVGID's Continuing Pattern of Retaliation, including an order directing IVGID to:
   - Immediately cease and desist all discriminatory and retaliatory conduct;
   - Produce the investigator's report;
   - Implement safeguards against future politically-motivated personnel actions; and
   - Remove all references to the pretextual investigation from Ms. Herron's personnel file.
3. Compensatory Damages and Attorney's Fees Are Essential to Make Ms. Herron Whole and Deter Future Violations, including:
   - Compensatory relief for:
     1. Emotional distress and mental anguish;
     2. Damage to professional reputation;
     3. Impact on physical health and well-being; and
   - Attorney's fees and costs pursuant to the Board's authority to remedy prohibited practices under NRS Chapter 288.

This relief is necessary not only to make Ms. Herron whole but to prevent IVGID's politically-motivated conduct from having a continued chilling effect on public employees' exercise of their protected rights. The Board should send a clear message that political retaliation has no place in Nevada's public workplaces.

V. WITNESSES

Ms. Herron will present testimony from the following witnesses to establish IVGID's pattern of political discrimination and retaliation. These witnesses will provide crucial evidence

of both the politically-motivated nature of IVGID's actions and the pretextual character of their stated justifications.

A. Core Fact Witnesses

1. **Susan Herron** (Director of Administrative Services), Complainant. Susan Herron will testify regarding:
   - Her twenty-year unblemished employment history with IVGID;
   - The proper separation maintained between professional duties and protected political activities;
   - The provision of routine notarial services to recall supporters, consistent with past practice;
   - The unprecedented nature of her administrative leave without notice of allegations;
   - The severe professional and personal impact of IVGID's retaliatory conduct; and
   - The ongoing nature of harassment and hostile work environment.
2. **Mark Herron** (Ms. Herron's Husband). Mr. Herron will testify regarding:
   - His legal political contributions to recall committees;
   - The devastating impact of IVGID's actions on Ms. Herron's physical and emotional health;
   - Community concern and outreach regarding Ms. Herron's treatment; and
   - The chilling effect on civic participation in Incline Village.

B. Evidence of Political Motivation and Coordination

3. **Former General Manager Indra Winquest**. Mr. Winquest will testify regarding:
   - Multiple requests from Trustee Dent for targeted searches of Ms. Herron's emails;

- Direct demands from Trustee Schmitz for Ms. Herron's termination;
- The connection between these demands and Ms. Herron's political activities; and
- The departure from standard IVGID personnel practices.

4. **Trustee Sara Schmitz.** Trustee Schmitz will testify regarding:
   - Her role as the primary architect of the retaliation campaign;
   - Public statements about refusing to work with recall supporters;
   - Direct coordination with Bobby Magee regarding the CSV file;
   - Ongoing demands for Ms. Herron's discipline or termination; and
   - The intensification of harassment after surviving the recall.
5. **Trustee Matthew Dent.** Trustee Dent will testify regarding:
   - Coordination with Trustee Schmitz on retaliatory actions;
   - Requests for email searches targeting Ms. Herron;
   - Public statements about recall supporters; and
   - Role in directing the administrative leave.

C. Evidence of Pretextual Investigation.

6. **Director of Information Technology Mike Gove.** Mr. Gove will testify regarding:
   - Proper authorization of Ms. Herron's Barracuda Network access;
   - Trustee Schmitz's irregular request for CSV file;
   - Standard protocols that were bypassed;
   - Documentation of proper procedures that should have been followed; and
   - Alternative methods available for addressing system access concerns.
7. **Former General Manager Bobby Magee.** Mr. Gove will testify regarding:
   - Receipt and handling of CSV file from Trustee Schmitz despite lack of supervisory authority;

- Coordination with Trustees on administrative leave decision; and
- Limited tenure and knowledge of IVGID procedures at time of actions.

8. **Diamond Peak GM Mike Bandelin**. Mr. Bandelin will testify regarding:
   - Direct confirmation that administrative leave was taken at Trustees' request;
   - Unprecedented nature of leave without notice of allegations; and
   - Communications regarding investigation timeline and process.

D. Evidence of Ongoing Harassment.

9. **Current General Manager Karen Crocker**. Ms. Crocker will testify regarding:
   - Daily requests from Trustee Schmitz for disciplinary action;
   - Continuing pattern of harassment and retaliation;
   - Documentation of improper interference with personnel matters; and
   - Impact on workplace environment and employee morale.
10. **Director of Human Resources Erin Feore**. Ms. Feore will testify regarding:
   - Review of email searches prior to investigation;
   - Coordination of investigator selection and engagement;
   - Receipt and handling of Ms. Herron's internal complaint;
   - Lack of response to harassment allegations; and
   - Documentation of ongoing retaliation attempts.
11. **Investigator Paul Anderson**. Mr. Anderson will testify regarding:
   - Surprise at Ms. Herron's lack of notice regarding allegations;
   - Focus on recall activities during investigation;
   - Findings that revealed no workplace misconduct; and
   - Content of report being withheld from Ms. Herron.

E. Evidence of Coordinated Campaign.

12. Trustee Dave Noble. Trustee Noble will testify regarding:

- Board discussions where Trustees Schmitz and Dent expressed animosity toward employees who supported the recall;
- Specific instances where personnel matters involving Ms. Herron were improperly raised during Board meetings and closed sessions;
- His firsthand observations of Trustee Schmitz's attempts to use Board authority to target Ms. Herron;
- The unprecedented nature of placing an employee on administrative leave without notice;
- The pressure placed on management to take action against Ms. Herron;
- The impact of this conduct on Board governance and IVGID operations; and
- The chilling effect on other employees' willingness to engage in protected political activities.

13. Trustee Michaela Tonking. Trustee Tonking will testify regarding:

- Her direct observations of Trustee Schmitz's daily interference with Ms. Herron's employment;
- Specific instances where Trustees Schmitz and Dent attempted to use the CSV file and email searches as pretext for disciplinary action;
- Board discussions where the motivation for targeting Ms. Herron was explicitly tied to recall activities;
- Her knowledge of how normal personnel procedures were bypassed in Ms. Herron's case;
- The pressure placed on successive General Managers (Winquest, Bandelin, Magee, and Crocker) to take action against Ms. Herron;

- The deterioration of the work environment after Trustees survived the recall; and
- The broader impact on employee morale and willingness to exercise protected rights.

14. Trustee Ray Tulloch. Trustee Tulloch will testify regarding:

- Direct knowledge of coordination between Trustees regarding Ms. Herron;
- Discussions of efforts to force resignation/retirement;
- First-hand observations of hostile work environment;
- Impact on IVGID operations and governance; and
- Pattern of targeting employees based on political activities.

Ms. Herron reserves the right to call additional witnesses, including those designated by Respondent IVGID, as necessary to establish IVGID's discriminatory conduct and its impact on protected political activities.

VII. DOCUMENTARY EVIDENCE

At this time, Complainant, Susan Herron anticipates that she will rely upon 10 exhibits, a list only is provided below. Ms. Herron reserves the right amend and or supplement these anticipated exhibits, to rely on exhibits submitted by the Respondent and to submit additional rebuttal evidence, if necessary.

Tentative Exhibit No.	Date	Document Description
1.	11/8/2023	Email from Mike Gove to Trustee Schmitz transmitting the CSV file and then email from Trustee Schmitz to Interim Finance Director Magee
2.	11/14/2023	Letter from Mike Bandelin placing S. Herron on a paid leave of absence.
3.	11/15/2023	Log of activities after being placed on leave of absence. (11/15/2023-2/26/2024)
4.	11/17/2023	November 17, 2023 document in which Mr. Bandelin engaged Maupin

5.	1/2/2024	January 2, 2024 document in which Mr. Bandelin engaged Maupin
6.	2/26/2024	February 26, 2024, HR Complaint from Susan Herron to Mike Bandelin and Erin Feore requesting an internal investigation
7.	2/15/2024	Letter from Jason Guinasso dated February 15, 2024 requesting documents
8.	3/2024	Incline Together March 2024 article – this is a public website.
9.	4/2/2024	April 2024 email from HR about internal investigation (Correspondence from the dates of 4/2/2024-4/26/2024)
10.	8/13/2024	August 13, 2024, email from Trustee Schmitz requesting my emails

VI. ESTIMATED TIME

Ms. Herron estimates that submission of evidence, examination of witnesses, and closing argument will take approximately four days.

Dated this 7th day of November, 2024.

GUINASSO LAW, LTD.

By: _____

Jason D. Guinasso, Esq. (SBN# 8478)
Attorney for Complainant

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200 (2), I caused a true and correct copy of the **PRE-HEARING STATEMENT** to be filed with the EMRB and to be served on the following individuals by depositing for mailing with postage prepaid on this 7th day of November, 2024:

Marquis Aurbach
Nick D. Crosby, Esq.
Nevada Bar No. 8996
10001 Park Run Drive
Las Vegas, NV 89145
ncrosby@maclaw.com
Attorneys for Incline Village General Improvement District

For Guinasso Law, Ltd.

Susan Herron (Complainant)

Supplemental Prehearing Statement

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Attorney for Complainant

FILED
February 10, 2026
State of Nevada
E.M.R.B.
11:21 a.m.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

SUSAN HERRON, Complainant, v. INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, Respondent.	Case Number: 2024-015

SUPPLEMENTAL PRE-HEARING STATEMENT

COMPLAINANT SUSAN HERRON, by and through her undersigned counsel of record ALEX VELTO, ESQ. of REESE RING VELTO, PLLC, pursuant to pursuant to NRS 288.273, hereby files this Amended Pre-Hearing Statement in anticipation of the future hearing on this matter to be set for a date certain after the submission of this pre-hearing statement as follows:

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I. STATEMENT REGARDING WHETHER THIS MATTER SHOULD BE CONSOLIDATED WITH SHELIA LEIJON V. INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT; CASE NO. 2024-022.

While both Ms. Herron's and Ms. Leijon's cases involve allegations of political discrimination by IVGID under NRS 288.270(1)(f), consolidation would not serve the interests of justice or judicial economy. The cases should proceed separately for several compelling reasons:

First, Ms. Herron's case presents a unique factual pattern involving her role as Director of Administrative Services, her provision of notarial services to recall supporters, and IVGID's unprecedented action of placing her on administrative leave without notice of allegations. The specific evidence of political motivation - including the CSV file, the irregular involvement of Bobby Magee, and the coordinated campaign involving multiple members of management - requires focused examination of a distinct chain of events and decision-making process.

Second, the timeline and nature of retaliation against Ms. Herron is particularly egregious, with harassment intensifying after the Trustees survived their recall elections. This post-election escalation, including near-daily demands for disciplinary action and termination, represents a pattern of conduct specific to Ms. Herron's situation and her perceived role in the recall effort. The Board's ability to fully examine this pattern would be diluted if combined with another employee's distinct experiences.

Third, the witness testimony required to prove Ms. Herron's case involves detailed accounts from multiple IVGID officials regarding specific incidents, communications, and decisions unique to her situation. Many witnesses, including former General Manager Indra Winquest, IT Director Mike Gove, and various Trustees, will need to testify about events and documents particular to Ms. Herron's case. Consolidation would unnecessarily complicate the presentation of this evidence and potentially confuse the record.

Fourth, while both cases may involve similar legal theories under NRS 288.270(1)(f), the evidence supporting political motivation and pretext differs substantially between the two matters.

Ms. Herron's case includes unique evidence such as the misuse of her email search records, the unprecedented administrative leave without notice, and specific retaliatory actions taken by individual Trustees in response to her perceived support of the recall effort.

Finally, separate proceedings will allow for clearer development of the record regarding each employee's distinct experiences of political discrimination, facilitating more precise findings of fact and conclusions of law. This separation will also better serve the remedial purposes of NRS Chapter 288 by allowing the Board to craft relief specifically tailored to each employee's situation.

Therefore, while judicial economy generally favors consolidation of related cases, the unique aspects of Ms. Herron's experience of political discrimination warrant separate proceedings to ensure full and fair consideration of her claims.

II. STATEMENT OF ISSUES

A. Whether IVGID engaged in prohibited discriminatory conduct under NRS 288.270(1)(f) by:

1. Subjecting Ms. Herron to a politically-motivated investigation and 14-week administrative leave without notice of allegations, in retaliation for her protected political activities related to the recall efforts against Trustees Schmitz and Dent;
2. Allowing Trustees Schmitz and Dent to engage in an ongoing pattern of harassment, retaliation, and attempts to force Ms. Herron's termination based on her protected political affiliations and activities;
3. Creating a hostile work environment designed to force Ms. Herron to choose between enduring continued politically-motivated harassment or resignation/early retirement.

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B. Whether IVGID's conduct constitutes discrimination based on "political or personal reasons or affiliations" under NRS 288.270(1)(f) as evidenced by:

1. The temporal connection between Ms. Herron's involvement in recall activities and the initiation of the investigation;
2. Trustees' public statements and actions demonstrating animus toward employees who supported the recall effort;
3. The unprecedented nature of placing an employee on extended administrative leave without notice of allegations;
4. The ongoing pattern of harassment and attempts to force Ms. Herron's termination after her return to work.

C. Whether IVGID can establish by a preponderance of evidence that:

1. It would have taken the same actions against Ms. Herron absent her protected political activities and affiliations;
2. The investigation and administrative leave were supported by legitimate, non-discriminatory reasons rather than political motivation;
3. The ongoing attempts to terminate Ms. Herron's employment are based on merit and fitness rather than political retaliation.

D. Whether the totality of IVGID's conduct warrants remedial action by the Board, including:

1. A cease and desist order prohibiting further politically-motivated harassment and retaliation;
2. Compensatory relief for emotional distress and damage to Ms. Herron's professional reputation;
3. Attorney's fees and costs pursuant to the Board's authority to remedy prohibited practices under NRS Chapter 288.

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III. SHORT STATEMENT OF COMPLAINANT SUSAN HERRON'S POSITION.

Complainant, Ms. Herron, a dedicated IVGID employee since 2003, has been subjected to a calculated campaign of political discrimination and retaliation that exemplifies precisely the type of conduct NRS 288.270(1)(f) was designed to prohibit. The evidence will establish that IVGID, through its Trustees and management, engaged in an unprecedented pattern of discriminatory conduct triggered by Ms. Herron's protected political activities related to recall efforts against Trustees Schmitz and Dent.

This discrimination manifested in three distinct but related ways.

First, IVGID subjected Ms. Herron to a 14-week administrative leave and investigation without notice of allegations - an extraordinary action never before taken against any IVGID employee. This investigation was initiated after Trustees learned of Ms. Herron's political associations and activities related to the recall effort, demonstrating clear retaliatory intent.

Second, Trustees Schmitz and Dent have engaged in an ongoing campaign of harassment and intimidation, including public statements refusing to work with staff who supported the recall, attempts to scrutinize Ms. Herron's notarial services to recall supporters, and repeated demands for her termination. This pattern of conduct continues to this day, with Trustee Schmitz making near-daily requests for disciplinary action against Ms. Herron.

Third, this coordinated pattern of politically-motivated harassment has created precisely the type of hostile work environment the EMRB recently recognized as actionable - one designed to force Ms. Herron to choose between enduring continued harassment or early retirement. The evidence will show that IVGID's actions were not based on merit or fitness, but rather were motivated by political animus and retaliation for Ms. Herron's protected activities.

IVGID cannot meet its burden of showing it would have taken these actions absent Ms. Herron's protected political activities. The investigation produced no evidence of wrongdoing, yet IVGID continues to withhold the investigator's report while allowing the harassment to continue. This ongoing conduct warrants immediate Board intervention to protect Ms. Herron's statutory

rights and prevent further politically-motivated retaliation.

Ms. Herron respectfully requests that the Board:

1. Find that IVGID engaged in prohibited discriminatory practices under NRS 288.270(1)(f);
2. Issue a cease and desist order prohibiting further politically-motivated harassment;
3. Award appropriate compensatory relief for emotional distress and reputational damage; and
4. Grant reasonable attorney's fees and costs.

IV. PROCEDURAL HISTORY

As stated above, the Complainant in this matter is Susan Herron ("Ms. Herron"). Ms. Herron is a local government employee of Incline Village General Improvement District as defined by NRS 288.050. The Respondent in this matter is Incline Village General Improvement District ("IVGID"), a local government employer as defined by NRS 288.60.

On May 3, 2024, Complainant Susan Herron filed her Complaint with the EMRB.

On May 3, 2024, the Respondent was timely served by certified mail confirmed received and signed for Attn: Sara Schmitz c/o IVGID on May 7, 2024 (Certified Mail No. 9414 7112 0620 4185 1183 31).

On May 23, 2024, Respondent, IVGID filed a Motion to Dismiss on the following grounds: 1) NRS 288.280 does not apply to discrimination claims; 2) the Board lacks jurisdiction to hear claims arising under NRS Chapter 281; and 3) Complainant's discrimination claim under NRS 288.270(1)(f) must be dismissed because Complainant did not suffer an adverse employment action claim.

Also, on May 23, 2024, Respondent, IVGID filed an Answer to the Complaint.

On June 17, 2024, Complainant, Susan Herron filed an Opposition to Respondent's Motion to Dismiss.

On June 27, 2024, Respondent, IVGID filed a Reply to Opposition to Motion to Dismiss.

On July 10, 2024, the matter of Respondent's Motion to Dismiss came before the State of

Nevada, Government Employee Management Relations Board (the Board) for consideration and decision.

On July 17, 2024, the Board filed its Order Denying Respondent's Motion to Dismiss En Banc. Further the Board ordered that the parties shall submit prehearing statements within 21 days after the Notice of Entry of Order.

On August 8, 2024, EMRB Commissioner Snyder entered his Commissioner's Order extending the time for the parties to file their pre-hearing statements in this matter making the new deadline November 7, 2024. Further, on October 21, 2024, in granting the extension of time for the parties to file their pre-hearing statements in the case Shelia Leijon v. Incline Village General Improvement District; Case No. 2024-022., Commissioner Snyder requested that in the parties' pre-hearing statements that the parties address why or why not this case should be consolidated with the case Shelia Leijon v. Incline Village General Improvement District; Case No. 2024-022.

V. STATEMENT OF FACTS

For over two decades, Susan Herron has served IVGID with distinction. Hired in 2003, Ms. Herron currently serves as Director of Administrative Services, holding both supervisory and administrative employee status under NRS 288.138 and 288.132, respectively. Throughout her career, Ms. Herron has maintained an unblemished employment record while also serving as an engaged resident of the Incline Village Crystal Bay community.

The events giving rise to this complaint reflect an escalating pattern of political retaliation that began with the June 2023 recall efforts and intensified after Trustees Dent and Schmitz survived the recall attempt. On June 16, 2023, two political action committees initiated recall efforts against IVGID Trustees Matthew Dent and Sara Schmitz, citing inadequate representation of the community. When the petitions needed to be reissued for technical reasons on June 23, 2023, the Trustees' response shifted from dismissive to openly hostile.

As both a resident and public servant, Ms. Herron maintained appropriate boundaries

between her professional duties and personal political rights. In her official capacity as a notary public, she provided routine notarial services to community members supporting the recall petitions - a standard function of her position that she had performed countless times before for various community needs. Meanwhile, exercising his separate right to political participation, Ms. Herron's husband, Mark Herron, made legal contributions to both recall committees: $1,250 to the Committee to Recall IVGID Trustee Matthew Dent on July 27, 2023, and $1,250 to the Committee to Recall IVGID Trustee Sara Schmitz on September 27, 2023. These contributions were properly reported in public filings with the Nevada Secretary of State on November 27, 2023.

The Trustees' response revealed their intent to weaponize their positions against perceived political opponents. Former General Manager Indra Winquest will testify that Trustee Dent made multiple requests for searches of Ms. Herron's emails, while Trustee Schmitz repeatedly demanded Ms. Herron's termination. The Trustees publicly declared they would refuse to work with any staff who supported the recall effort, creating a climate of fear among IVGID employees. They even launched a baseless investigation into Ms. Herron's notarial practices, demanding to know who paid for her supplies and bond - information that was not only public record but irrelevant to her provision of legally required notarial services.

The retaliation escalated dramatically on November 14, 2023, shortly after the Trustees' successful defeat of the recall effort. Director of Information Technology Mike Gove will testify that Trustee Schmitz specifically requested and received a CSV file containing Ms. Herron's email searches from the Barracuda Network - a system to which Ms. Herron had been granted access by Mr. Gove himself with the approval of former General Manager Winquest. Rather than following standard protocols for addressing any concerns about system access, Trustee Schmitz provided this file to then-Director of Finance Bobby Magee, who had been employed with IVGID for only six months and was not Ms. Herron's supervisor. Using this file as pretext, and now emboldened by their recall victory, IVGID placed Ms. Herron on administrative leave - an action unprecedented in IVGID's history. Former Diamond Peak General Manager Mike Bandelin, who was serving as

Interim General Manager at the time, has confirmed to Ms. Herron that he took this action at the direct request of Trustees Schmitz and Dent, who were now openly exercising their perceived mandate to purge political opponents.

The fourteen-week administrative leave was deliberately designed to maximize professional uncertainty and personal distress. Ms. Herron was required to remain available to return to work at a moment's notice while being kept entirely in the dark about the allegations against her. Director of Human Resources Erin Feore will testify about her role in coordinating the investigation and reviewing email searches before providing them to outside investigator Paul Anderson. When Mr. Anderson finally interviewed Ms. Herron on February 1, 2024, he expressed surprise that she had never been informed of the allegations against her. Despite Ms. Herron's full cooperation and the investigation finding no evidence of wrongdoing, IVGID continues to withhold the investigator's report, denying Ms. Herron's three formal requests for access - a pattern of information suppression that mirrors the Trustees' broader strategy of opacity and intimidation.

The harassment has not only continued but intensified since Ms. Herron's return to work, with the Trustees apparently emboldened by their electoral survival. Current General Manager Karen Crocker will testify that she receives almost daily requests from Trustee Schmitz to either write up or terminate Ms. Herron. These requests often explicitly reference Ms. Herron's perceived political disloyalty and association with recall supporters. Trustees Noble, Tonking, and Tulloch can testify about the coordinated efforts between Trustees to force Ms. Herron's resignation or early retirement, including explicit discussions about making her work environment untenable. Ms. Herron filed an internal complaint for harassment and retaliation in accordance with IVGID policies, but this has resulted in only a single interview by HR, with no meaningful action taken - demonstrating the administration's unwillingness to check the Trustees' retaliatory conduct.

The personal toll of this campaign has been severe. Mark Herron will testify about the devastating impact on his wife's physical and emotional health, including anxiety, sleeplessness, and depression. Community members regularly reach out to express concern about Ms. Herron's

treatment, compounding her professional humiliation. The hostile work environment has not only impacted Ms. Herron's health and professional reputation but has created a chilling effect on other employees' willingness to engage in protected political activities, with several staff members privately expressing fear of similar retaliation if they exercise their political rights.

This coordinated campaign of harassment and retaliation, which intensified after the Trustees' electoral victory, was clearly designed to punish Ms. Herron for her protected political activities and to force her resignation or early retirement. The timeline of events, supported by witness testimony and documentary evidence, demonstrates a clear pattern of escalating retaliation directly linked to Ms. Herron's exercise of her protected rights under NRS 288.270(1)(f). The post-election intensification of harassment particularly demonstrates that the Trustees viewed their victory as a mandate to punish perceived political opponents, transforming IVGID from a public service organization into a vehicle for personal vendettas.

VI. LAW AND ARGUMENT

A. LEGAL FRAMEWORK AND BURDEN OF PROOF

The EMRB has broad authority to remedy politically-motivated discrimination in public employment. Two key statutory provisions protect public employees like Ms. Herron from political retaliation. First, NRS 288.270(1)(f) explicitly prohibits local government employers from discriminating against employees "because of political or personal reasons or affiliations." Second, NRS 281.370 requires that all personnel actions be based "solely on merit and fitness" and prohibits discrimination based on "political affiliation."

The Nevada Supreme Court has established a burden-shifting framework for analyzing such claims. Under *Reno Police Protective Ass'n v. City of Reno*, 102 Nev. 98 (1986), as modified by *Bisch v. Las Vegas Metro Police Dep't.*, 302 P.3d 1108 (Nev. 2013), an employee must first present credible evidence supporting an inference that political or personal reasons motivated the employer's actions. Once established, the burden shifts to the employer to prove it would have taken the same actions absent the protected political activity. Notably, the employer's proffered

reasons must "pass the test of reasonableness in light of the factual circumstances and protected rights at issue." *Reno Police Protective Ass'n* at 101.

The EMRB has specifically defined "personal reasons" to include "non-merit-or-fitness factors" and "dislike of or bias against a person which is based on an individual's characteristics, beliefs, affiliations, or activities that do not affect the individual's merit or fitness for any particular job." *Kilgore v. City of Henderson*, Item No. 550H (2005), approved by *City of N. Las Vegas v. Glazier*, Case No. 50781 (2010).[1] This definition squarely encompasses IVGID's retaliatory conduct against Ms. Herron.

B. IVGID's Coordinated Campaign of Political Retaliation Exemplifies the Discriminatory Conduct NRS 288.270(1)(f) Was Designed to Prevent.

The evidence in this case presents a textbook example of political discrimination under NRS 288.270(1)(f), demonstrating both blatant retaliation for protected political activities and a calculated effort to force a long-serving employee's resignation through coordinated harassment. The timeline of events reveals not merely isolated incidents of political bias, but rather an escalating campaign of retaliation that intensified after Trustees Schmitz and Dent survived their recall elections.

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[1] The EMRB has adopted a formal definition of "personal reasons." *See Kilgore v. City of Henderson*, Item No. 550H (2005) (approved by the Nevada Supreme Court in *City of N. Las Vegas v. Glazier*, Case No. 50781 (unpublished 2010)). The EMRB, referencing Black's Law Dictionary, defined "personal reasons" as follows:

> Black's Law Dictionary defines "Personal" to mean "[appertaining to the person; belonging to an individual. . . " Black's Law Dictionary 702 (6th ed. 1991). Additionally, the term "political or personal reasons or affiliations" is preceded in NRS 288.270(1)(f) by a list of factors, "race, color, religion, sex, age, physical or visual handicap, national origin," that can best be described as "non-merit-or-fitness" factors, i.e., factors that are unrelated to any job requirement and not otherwise made by law a permissible basis for discrimination. The doctrine of *ejusdem generis* states that where general words follow an enumeration of particular classes of things, the general words will be construed as applying only to those things of the same general class as those enumerated. Black's Law Dictionary 357 (6th ed. 1991). **Thus, the proper construction of the phrase "personal reasons or affiliations" includes "non-merit-or-fitness" factors, and would include the dislike of or bias against a person which is based on an individual's characteristics, beliefs, affiliations, or activities that do not affect the individual's merit or fitness for any particular job**.

Id. **(emphasis supplied)**. Since 2005, this has been the definitive definition of discrimination based upon personal reasons.

From the moment the recall efforts began, the Trustees made their retaliatory intentions clear. They publicly declared they would refuse to work with any staff who supported the recall effort - a direct violation of NRS 288.270(1)(f)'s prohibition against discrimination based on political affiliations. Rather than respecting Ms. Herron's constitutional right to participate in local democratic processes, the Trustees immediately began searching for pretexts to target her. They scrutinized her routine provision of notarial services to recall supporters - services she had provided countless times before without question. They demanded investigations into who paid for her notarial supplies, despite this information being public record. Former General Manager Indra Winquest will testify that Trustee Dent made multiple requests for searches of Ms. Herron's emails, while Trustee Schmitz repeatedly demanded her termination - all before any alleged workplace misconduct.

The Trustees' retaliatory scheme reached new heights on November 14, 2023, shortly after their electoral victory. The sequence of events surrounding Ms. Herron's administrative leave demonstrates both the political motivation and the pretextual nature of IVGID's actions. Trustee Schmitz obtained a CSV file of Ms. Herron's email searches - searches conducted using system access properly granted by IT Director Mike Gove with prior management approval. Rather than following standard protocols for addressing any legitimate concerns, Trustee Schmitz bypassed normal channels to provide this file to then-Director of Finance Bobby Magee, who had neither supervisory authority over Ms. Herron nor sufficient tenure to understand IVGID's standard procedures. This irregular process culminated in an unprecedented action: placing Ms. Herron on administrative leave without notice of allegations - something never before done in IVGID's history.

The fourteen-week investigation that followed bears all the hallmarks of pretextual action designed to punish protected political activity. Ms. Herron was kept entirely in the dark about the allegations against her, a fact that even surprised the outside investigator, Paul Anderson, during his February 1, 2024 interview. Despite Ms. Herron's full cooperation and the investigation's

failure to find any wrongdoing, IVGID continues to withhold the investigator's report. This lack of transparency, coupled with the administration's failure to address Ms. Herron's internal harassment complaints, demonstrates that the investigation was never about legitimate workplace concerns but rather about punishing perceived political disloyalty.

Most tellingly, the harassment has intensified since Ms. Herron's return to work, with the Trustees apparently emboldened by their electoral survival. Current General Manager Karen Crocker will testify about receiving near-daily requests from Trustee Schmitz to discipline or terminate Ms. Herron. These ongoing demands for punitive action, despite the investigation finding no misconduct, reveal the true nature of IVGID's actions: a coordinated campaign to force Ms. Herron's resignation through persistent harassment.

Under the *Reno Police Protective Ass'n* framework, Ms. Herron has more than met her initial burden of showing that political reasons motivated IVGID's actions. The temporal connection between her political activities and the adverse actions, the unprecedented nature of the procedures used, the lack of any findings of wrongdoing, and the ongoing pattern of harassment create an overwhelming inference of political motivation. The burden thus shifts to IVGID to prove it would have taken the same actions absent Ms. Herron's protected political activities.

IVGID cannot meet this burden. Their proffered reasons fail the test of reasonableness given the factual circumstances and protected rights at issue. No legitimate workplace concern explains:

- Why Ms. Herron was placed on leave without notice of allegations;
- Why the investigation took fourteen weeks while producing no findings of misconduct;
- Why the investigator's report remains withheld;
- Why Trustee Schmitz continues to demand punitive action daily; or
- Why Ms. Herron's internal complaints remain unaddressed.

The inescapable conclusion is that IVGID has engaged in precisely the type of politically-motivated discrimination that NRS 288.270(1)(f) prohibits. Moreover, as the Board recently recognized, such discriminatory conduct need not result in formal adverse action to be actionable when it creates a hostile environment forcing an employee to choose between enduring harassment or resignation. The evidence shows that IVGID's conduct has created exactly such an environment, causing Ms. Herron significant emotional distress, damaging her professional reputation, and creating a chilling effect on other employees' willingness to exercise their protected rights.

This pattern of politically-motivated harassment demands Board intervention. Without action from this Board, IVGID's conduct will continue to force Ms. Herron to choose between her protected political rights and her career, while sending a clear message to other employees that political participation will be met with retaliation. Such a result would fundamentally undermine the protections guaranteed by NRS 288.270(1)(f) and chill the exercise of essential democratic rights by public employees throughout Nevada.

C. The Board Must Take Decisive Action to Remedy IVGID's Ongoing Discrimination and Prevent the Chilling of Protected Political Activity by Public Employees Throughout Nevada.

The Board's recent order in this case recognized that discriminatory conduct under NRS 288.270(1)(f) may be actionable even without formal adverse action when it creates a hostile environment forcing an employee to choose between harassment and resignation. Given the clear evidence of politically-motivated discrimination and IVGID's failure to demonstrate any legitimate basis for its actions, Ms. Herron respectfully requests:

1. Clear Evidence of Political Discrimination Warrants Comprehensive Findings Against IVGID, including a finding that IVGID engaged in prohibited discriminatory practices under NRS 288.270(1)(f) through:
    - The politically-motivated investigation and administrative leave;

- The creation of a hostile work environment; and
- The ongoing pattern of harassment and retaliation.

2. Immediate Relief is Necessary to Halt IVGID's Continuing Pattern of Retaliation, including an order directing IVGID to:
    - Immediately cease and desist all discriminatory and retaliatory conduct;
    - Produce the investigator's report;
    - Implement safeguards against future politically-motivated personnel actions; and
    - Remove all references to the pretextual investigation from Ms. Herron's personnel file.
3. Compensatory Damages and Attorney's Fees Are Essential to Make Ms. Herron Whole and Deter Future Violations, including:
    - Compensatory relief for:
        1. Emotional distress and mental anguish;
        2. Damage to professional reputation;
        3. Impact on physical health and well-being; and
    - Attorney's fees and costs pursuant to the Board's authority to remedy prohibited practices under NRS Chapter 288.

This relief is necessary not only to make Ms. Herron whole but to prevent IVGID's politically-motivated conduct from having a continued chilling effect on public employees' exercise of their protected rights. The Board should send a clear message that political retaliation has no place in Nevada's public workplaces.

V. WITNESSES

Ms. Herron will present testimony from the following witnesses to establish IVGID's pattern of political discrimination and retaliation. These witnesses will provide crucial evidence

of both the politically-motivated nature of IVGID's actions and the pretextual character of their stated justifications.

A. Core Fact Witnesses

1. **Susan Herron** (Director of Administrative Services), Complainant. Susan Herron will testify regarding:
   - Her twenty-year unblemished employment history with IVGID;
   - The proper separation maintained between professional duties and protected political activities;
   - The provision of routine notarial services to recall supporters, consistent with past practice;
   - The unprecedented nature of her administrative leave without notice of allegations;
   - The severe professional and personal impact of IVGID's retaliatory conduct; and
   - The ongoing nature of harassment and hostile work environment.
2. **Mark Herron** (Ms. Herron's Husband). Mr. Herron will testify regarding:
   - His legal political contributions to recall committees;
   - The devastating impact of IVGID's actions on Ms. Herron's physical and emotional health;
   - Community concern and outreach regarding Ms. Herron's treatment; and
   - The chilling effect on civic participation in Incline Village.

B. Evidence of Political Motivation and Coordination

3. **Former General Manager Indra Winquest**. Mr. Winquest will testify regarding:
   - Multiple requests from Trustee Dent for targeted searches of Ms. Herron's emails;

- Direct demands from Trustee Schmitz for Ms. Herron's termination;
- The connection between these demands and Ms. Herron's political activities; and
- The departure from standard IVGID personnel practices.

4. **Trustee Sara Schmitz**. Trustee Schmitz will testify regarding:
   - Her role as the primary architect of the retaliation campaign;
   - Public statements about refusing to work with recall supporters;
   - Direct coordination with Bobby Magee regarding the CSV file;
   - Ongoing demands for Ms. Herron's discipline or termination; and
   - The intensification of harassment after surviving the recall.
5. **Trustee Matthew Dent**. Trustee Dent will testify regarding:
   - Coordination with Trustee Schmitz on retaliatory actions;
   - Requests for email searches targeting Ms. Herron;
   - Public statements about recall supporters; and
   - Role in directing the administrative leave.

C. Evidence of Pretextual Investigation.

7. Director of Information Technology Mike Gove. Mr. Gove will testify regarding:

- Proper authorization of Ms. Herron's Barracuda Network access;
- Trustee Schmitz's irregular request for CSV file;
- Standard protocols that were bypassed;
- Documentation of proper procedures that should have been followed; and
- Alternative methods available for addressing system access concerns.

7. **Former General Manager Bobby Magee**. Mr. Gove will testify regarding:
   - Receipt and handling of CSV file from Trustee Schmitz despite lack of supervisory authority;

- Coordination with Trustees on administrative leave decision; and
- Limited tenure and knowledge of IVGID procedures at time of actions.

8. **Diamond Peak GM Mike Bandelin**. Mr. Bandelin will testify regarding:
   - Direct confirmation that administrative leave was taken at Trustees' request;
   - Unprecedented nature of leave without notice of allegations; and
   - Communications regarding investigation timeline and process.

D. Evidence of Ongoing Harassment.

9. **Current General Manager Karen Crocker**. Ms. Crocker will testify regarding:
   - Daily requests from Trustee Schmitz for disciplinary action;
   - Continuing pattern of harassment and retaliation;
   - Documentation of improper interference with personnel matters; and
   - Impact on workplace environment and employee morale.
10. **Director of Human Resources Erin Feore**. Ms. Feore will testify regarding:
    - Review of email searches prior to investigation;
    - Coordination of investigator selection and engagement;
    - Receipt and handling of Ms. Herron's internal complaint;
    - Lack of response to harassment allegations; and
    - Documentation of ongoing retaliation attempts.
11. **Investigator Paul Anderson**. Mr. Anderson will testify regarding:
    - Surprise at Ms. Herron's lack of notice regarding allegations;
    - Focus on recall activities during investigation;
    - Findings that revealed no workplace misconduct; and
    - Content of report being withheld from Ms. Herron.

E. Evidence of Coordinated Campaign.

12. Trustee Dave Noble. Trustee Noble will testify regarding:

- Board discussions where Trustees Schmitz and Dent expressed animosity toward employees who supported the recall;
- Specific instances where personnel matters involving Ms. Herron were improperly raised during Board meetings and closed sessions;
- His firsthand observations of Trustee Schmitz's attempts to use Board authority to target Ms. Herron;
- The unprecedented nature of placing an employee on administrative leave without notice;
- The pressure placed on management to take action against Ms. Herron;
- The impact of this conduct on Board governance and IVGID operations; and
- The chilling effect on other employees' willingness to engage in protected political activities.

13. Trustee Michaela Tonking. Trustee Tonking will testify regarding:

- Her direct observations of Trustee Schmitz's daily interference with Ms. Herron's employment;
- Specific instances where Trustees Schmitz and Dent attempted to use the CSV file and email searches as pretext for disciplinary action;
- Board discussions where the motivation for targeting Ms. Herron was explicitly tied to recall activities;
- Her knowledge of how normal personnel procedures were bypassed in Ms. Herron's case;
- The pressure placed on successive General Managers (Winquest, Bandelin, Magee, and Crocker) to take action against Ms. Herron;

- The deterioration of the work environment after Trustees survived the recall; and
- The broader impact on employee morale and willingness to exercise protected rights.

14. Trustee Ray Tulloch. Trustee Tulloch will testify regarding:

- Direct knowledge of coordination between Trustees regarding Ms. Herron;
- Discussions of efforts to force resignation/retirement;
- First-hand observations of hostile work environment;
- Impact on IVGID operations and governance; and
- Pattern of targeting employees based on political activities.

15. Sheila Leijon. Former IVGID employee

- Knowledge of Trustees treatment of employees.
- Member of community who can speak to Ms. Herron's reputational damage.
- Aware of animosity and political motivation for Ms. Herron's discipline.

Ms. Herron reserves the right to call additional witnesses, including those designated by Respondent IVGID, as necessary to establish IVGID's discriminatory conduct and its impact on protected political activities.

VII. DOCUMENTARY EVIDENCE

At this time, Complainant, Susan Herron anticipates that she will rely upon 57 exhibits, a list only is provided below. Ms. Herron reserves the right amend and or supplement these anticipated exhibits, to rely on exhibits submitted by the Respondent and to submit additional rebuttal evidence, if necessary.

Tentative Exhibit No.	Date	Document Description
1.	11/8/2023	Email from Mike Gove to Trustee Schmitz transmitting the CSV file and then email from Trustee Schmitz to Interim Finance Director Bobby Magee

2.	11/8/2023	CSV file containing Ms. Herron's email searches from Barracuda Network (Audit Log sent to S. Schmitz 11/8/2023)
3.	11/14/2023	Letter dated 11/14/2023 from Mike Bandelin placing Susan Herron on leave of absence
4.	11/15/2023	Log of activities after being placed on leave of absence. (11/15/2023-2/26/2024) **Attorney-client privileged communication redacted**
5.	11/17/2023	Engagement Letter of Maupin Cox & LeGoy re investigative services, dated 11/17/2023 and revised engagement letter of Maupin Cox & LeGoy re investigative services dated 1/2/2024.
6.	2/15/2024	Letter dated 2/15/2024 from Jason Guinasso requesting Investigative Report (First Request)
7.	2/21/2024	Letter dated 2/21/2024 from Sergio Rudin to J. Guinasso re request for records related to Susan Herron
8.	2/22/2024	Letter from J. Guinasso to S. Rudin re: Request for Records of S. Herron (Second Request)
9.	4/2/2024	April 2024 email from HR about internal investigation (Correspondence from the dates of 4/2/2024 – 4/26/2024)
10.	8/8/2024	Email dated 8/8/2024 concerning S. Herron
11.	8/13/2024	IVGID NV Public Records Requests dated 8/13/2024
12.	8/13/2024	Email dated 8/13/2024 from Sara Schmitz requesting emails sent by S. Herron
13.	8/14/2024	Emails dated 8/14/2024 from IVGID Counsel re: S. Herron Emails
14.	11/27/2023	Nevada Secretary of State Filing dated 11/27/2023 for The Committee to Recall IVGID Trustee Sara Schmitz (Mark Herron political contributions $1,250 to Committee to Recall IVGID Trustee Sara Schmitz on 9/27/2023)
15.	6/16/2023	Nevada Secretary of State Filing dated 11/27/2023 for The Committee to Recall IVGID Trustee Matthew Dent (Mark Herron political contributions $1,250 to Committee to Recall IVGID Trustee Matthew Dent on 7/27/2023)
16.	6/30/2023	Article dated 6/30/2023–" Recall petitions filed against IVGID trustees Dent, Schmitz in response to recent board actions"
17.	3/18/2024	Article dated 3/28/2024 – "Recall Campaigns for IVGID Trustees Schmitz and Dent Officially Over"
18.	9/26/2023	Trustee Public Statements re: refusing to work with staff who supported recall effort
19.	12/8/2022	Ms. Herron's Nevada Notary Public Commission Documentation

20.	Various	Documentation of notarial services provided to recall supporters (standard function of position).
21.	8/7/2023	Email correspondence from 8/5/2023 – 8/7/2023: S. Schmitz to Josh Nelson re. use of beaches and golf courses for recall.
22.	5/3/2023	Complaint dated 5/3/2024 – Susan Herron v. IVGID
23.	5/23/2024	Answer dated 5/23/2024 – Respondent's Answer to Complaint
24.	5/23/2024	Motion to Dismiss dated 5/23/2024 – IVGIDS's Motion to Dismiss
25.	6/17/2024	Opposition dated 6/17/2024 – Herron's Opposition to Motion to Dismiss
26.	6/27/2024	IVGID's Reply to Opposition
27.	7/17/2024	Notice of Entry of Order Denying IVGID's Motion to Dismiss
28.	8/8/2024	Commissioner's Order dated 8/8/2024 – Extending time for prehearing statements
29.	12/10/2024	Notice of Hearing dated 12/10/2024 - EMRB
30.	03/27/2025	Second Amended Notice of Hearing
31.	06/02/2025	Order for Settlement Conference
32.	07/16/2025	Third Amended Notice of Hearing
33.	11/04/2025	Fourth Amended Notice of Hearing 11/04/2025
34.	02/26/2024	Internal HR Complaint filed by S. Herron on 02/26/2024
35.	01/08/2024	Email Correspondence From S. Schmitz to B. Magee
36.	12/03/2023	Documentation of changes to job duties and responsibilities
37.		Community Outreach Documentation - Expression of Concern about Ms. Herron's treatment.pdf
38.	09/19/2023	IVGID board packet - public comment made during board meeting 09/19/2023 re S. Herron
39.	04/01/2024	IVGID Administrative Leave Policy – Section 12.5
40.	04/01/2014	IVGID Staff Relations Policy and Personnel Files
41.	04/01/2014	IVGID Progressive Discipline Policy

42.	04/01/2014	IVGID IT Access and Usage Policies
43.	04/01/2014	IVGID Leave of Absence Without Pay Policy
44.	06/11/2025	IVGID Public Records Policy – Resolution Number 1918
45.	04/01/2014	IVGID Personnel File Policies Section 1.6
46.	04/01/2024	IVGID Harassment and Retaliation Complaint Procedures – Section 13
47.	04/01/2024	IVGID Performance Management Policy – Section 9
48.	04/01/2024	Relevant Portions of IVGID Employee Handbook
49.	04/01/2024	IVGID Health and Safety Policy – Section 14
50.	09/11/2024	IVGID Personnel Management Policy: Resolution 1911
51.	04/01/2014	IVGID's Definition of Terms n Personnel Policy
52.	06/12/2024	IVGID's Policy and Procedure Number 136 Concerning Access to District Property and the Use of District Facilities for Expression
53.	08/11/2021	Correspondence to the Board of Trustees – IVGID Policy 20.1.0
54.	01/11/2023	IVGID Whistleblower Procedure
55.	Various	Ms. Herron's Medical Records
56.	Various	Attorney's Fees and Costs Documentation
57.	11/15/2023	Email from E. Feore to Paul Anderson (M. Bandelin cc'd) re: outside investigation needed (no privilege per IVGID's counsel)

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VI. ESTIMATED TIME

Ms. Herron estimates that submission of evidence, examination of witnesses, and closing argument will take approximately four days.

Dated this 10th day of February 2026.

REESE RING VELTO, PLLC

By: */s/Alex Velto*

Alex Velto, Esq.
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alex@rrvlawyers.com

Attorney for Complainant

CERTIFICATE OF SERVICE

Pursuant to NAC 288.200 (2), I caused a true and correct copy of the **SUPPLEMENTAL PRE-HEARING STATEMENT** to be filed with the EMRB and to be served on the following individuals by depositing for mailing with postage prepaid on this 10th day of February 2026:

Marquis Aurbach
Nick D. Crosby, Esq.
Nevada Bar No. 8996
10001 Park Run Drive
Las Vegas, NV 89145
ncrosby@maclaw.com
Attorneys for Incline Village General Improvement District

/s/ Rachael L. Chavez
For Reese Ring Velto, PLLC.

IVGID (Respondent)

Respondent's Prehearing Statement

Marquis Aurbach
Nick D. Crosby, Esq.
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Attorneys for Respondent

FILED
November 7, 2024
State of Nevada
E.M.R.B.
3:33 p.m.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

SUSAN HERRON, Complainant, vs. INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT Respondent.	Case No.: 2024-015

RESPONDENT'S PREHEARING STATEMENT

Respondent Incline Village General Improvement District ("Respondent" or "IVGID"), by and through its attorney of record, Nick D. Crosby, Esq. of Marquis Aurbach, hereby files its Prehearing Statement in the above-captioned matter.

I. STATEMENT OF FACTS

A. THE PARTIES.

Complainant Susan Herron ("Complainant") worked as the Director of Administrative Services for the Incline Village General Improvement District ("Respondent") and was an employee of Respondent for over 20 years. Complainant was a local government employee as defined in Nevada Revised Statutes 288.050. The Respondent is a local government employer, as defined in Nevada Revised Statutes 288.060, as was established pursuant to Nevada Revised Statutes Chapter 318 and chartered to provide water, sewer, trash and recreation services for the Incline Village and Crystal Bay communities in Lake Tahoe.

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B. THE INVESTIGATION.

On January 23, 2023, Complainant was given full access to Respondent's Barracuda email system for purposes of responding to public records requests propounded pursuant to Nevada's Public Records Act ("NPRA"), Nevada Revised Statutes Chapter 239. The approval of full access to Barracuda was given by former IVGID General Manager Indra Winquest ("Winquest") and was facilitated by IVGID Director of Information Systems and Technology, Mike Gove ("Gove"). Importantly, only two people (aside from Complainant) were aware Complainant was granted full access to the Barracuda system.

In the latter part of October 2023, a concern was raised Complainant was possibly abusing her Barracuda access privileges by conducting searches of entire email boxes/accounts for various administrators of Respondent, as well as the email boxes/accounts of some of Respondent's Board of Trustees. The concern was the searches did not correspond with public records requests made at or about the same time as the searches performed by Complainant, and therefore, the searches were done for personal purposes.

On November 14, 2023, Complainant was placed on paid administrative leave pending the outcome of an internal investigation. Notice of the paid administrative leave was made via a letter prepared by Interim General Manager Mike Bandelin ("Bandelin") and advised Complainant she would remain in full-pay status during the pendency of the investigation, to include receipt of all her benefits and accruals, as though she was actively working. The notice also advised Complainant she might be contacted by an outside investigator and her cooperation was required.

The following day, the Respondent contacted an outside attorney investigator for purposes of retaining his services to conduct the investigation. The investigator was formally retained on November 17, 2023 to conduct the investigation, but due to the complex nature of the information at issue and the ability of Respondent to access and provide the information to the investigator in a workable format, there was some delay in starting the investigation. Specifically, the investigator experienced pragmatic challenges due to the enormity of the documents and entries associated with the searches conducted by Complainant between January 23, 2023 and November 14, 2023.

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Thus, the investigator was not able to start the investigation until after January 10, 2023.

The investigator interviewed four witnesses, including Complainant, starting January 23, 2024 and continuing through February 16, 2024. Following the completion of the investigation, Complainant was returned to work by Responded.

C. THE COMPLAINT.

On May 3, 2024, Complainant filed her Complaint in this matter, alleging the following cause of action: Discrimination because of Political of Personal Reasons or Affiliations in violation of Nevada Revised Statute 281.370(1), 288.270(1)(f) and 288.280. Respondent filed a Motion to Dismiss and, on July 17, 2024, the Board issued its Order, granting in part and denying in part the Motion to Dismiss. After the Order, the following portions of the claim reaming for consideration by the Board: whether Respondent discriminated against the Complainant for political or personal reasons or affiliations in violation of Nevada Revised Statute 288.270(1)(f).

II. STATEMENT OF ISSUES AND LAW TO BE DETERMINED BY THE BOARD

1. Whether Complainant suffered an adverse employment action?

2. Whether conduct that falls short of an adverse employment action is sufficient to trigger the protections afforded under Nevada Revised Statutes 288.270(1)(f)?

3. Whether placing an employee on paid administrative leave pending the outcome an internal investigation qualifies as an adverse employment action for purposes of determining whether there has been a violation of Nevada Revised Statutes 288.270(1)(f)?

4. Assuming Complaint demonstrates she suffered an adverse employment action, were the actions of the Respondent for legitimate, non-discriminatory reasons?

5. Whether Respondent discriminated against Complainant because of political or personal reasons or affiliations in violation of Nevada Revised Statutes 288.270(1)(f)?

6. Assuming Complaint makes a prima facie showing of discrimination under Nevada Revised Statute 288.270(1)(f), did Respondent prove by a preponderance of the evidence that the same action would have taken place absent the alleged protected conduct?

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III. LEGAL ARGUMENT

A. THE COMPLAIANT DID NOT SUFFER AN ADVERSE EMPLOYMENT ACTION.

Complainant's claim for discrimination based upon personal or political reasons fails because the Complainant did not suffer an adverse employment action. Nevada Revised Statute 288.270(1)(f) prevents a local government employer or its representative from willfully discriminating for, *inter alia*, political or personal reasons or affiliations. The Nevada Supreme Court has held that in order for a claimant to assert a claim for discrimination under this statute:

> [a]n aggrieved employee must make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision. Once this is established, the burden of proof shifts to the employer to demonstrate by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct. The aggrieved employee may then offer evidence that the employer's proffered "legitimate" explanation is pretextual and thereby conclusively restore the inference of unlawful motivation.

Bisch v. Las Vegas Metro Police Dept., 129 Nev. 328, 340, 302 P.3d 1108. 1116 (2013) (quoting *Reno Police Protective Ass'n*, 102 Nev. at 101-102 (additional citations omitted)). The *Bisch* court went on to hold that "it is not enough for the employee to simply put forth evidence that is capable of being believed; rather, this evidence must actually be believed by the fact finder." *Id.* (citing *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 276-78 (1994). In the context of a claim for discrimination for political or personal reasons or affiliations, "this presupposes that the employee has also produced some evidence of an adverse employment action taken by the employer against the employee." *Ducas v. Las Vegas Metro. Police Dept.*, Case No. 2015-003, Item No. 812 *6 (Feb. 4, 2016).

As a matter of law, a paid suspension is not an adverse employment action. Indeed, the Eleventh Circuit recently stated:

> Whether suspension with pay can rise to the level of an adverse employment action in discrimination cases appears to be an issue of first impression in this Circuit. Many of our sister circuits, however, have already addressed the issue.
>
> No circuit has held that a simple paid suspension, in and of itself, constitutes an adverse employment action. *See Joseph v. Leavitt*, 465 F.3d 87 (2d Cir. 2006) (holding that paid leave there did not constitute an adverse employment action but leaving open the possibility that a paid suspension or accompanying investigation carried out in an exceptionally unreasonable or dilatory way may constitute an

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> adverse employment action); *Jones v. Se. Pa. Transp. Auth.*, 796 F.3d 323 (3d Cir. 2015) (same); *Von Gunten v. Maryland*, 243 F.3d 858 (4th Cir. 2001) *abrogated on other grounds by Burlington N.*, 548 U.S. at 68, 126 S.Ct. 2405 (holding that, categorically, paid suspension or leave is not an adverse employment action); *Breaux v. City of Garland*, 205 F.3d 150 (5th Cir. 2000) (same); *Peltier v. United States*, 388 F.3d 984 (6th Cir. 2004) (same); *Nichols v. S. Ill. Univ.-Edwardsville*, 510 F.3d 772 (7th Cir. 2007) (same); *Pulczinski v. Trinity Structural Towers, Inc.*, 691 F.3d 996 (8th Cir. 2012) *1267 (same); *Haddon v. Exec. Residence at White House*, 313 F.3d 1352 (Fed. Cir. 2002) (same).

Davis v. Legal Services Alabama, Inc., 19 F.4th 1261, 1266-67 (11th Cir. 2021) *cert. denied* 2024 WL 1839097 (Apr. 29, 2024). In agreeing with the sister circuit courts, the Eleventh Circuit held:

> A paid suspension can be a useful tool for an employer to hit "pause" and investigate when an employee has been accused of wrongdoing. And that is particularly so in a case like this one—where the employee under investigation is in charge of all the employees who are the witnesses. As a practical matter, employers cannot expect employees to speak freely to investigators when the person under investigation is looking over their shoulders. Employers should be able to utilize the paid-suspension tool in good faith, when necessary, without fear of Title VII liability.

Id. at 1267. In the context of a claim for unconstitutional denial of due process for a government employee, the Ninth Circuit held that placing the employee on paid administrative leave did not deprive the subject employee of her constitutionally protected property interest. *See Gravitt v. Brown*, 74 Fed. Appx. 700, 703-04 (9th Cir. 2003) (unpublished). Even in the case cited in the Complaint, *Kilgore v. City of Henderson Police Dept.*, Case No. A1-045763, in Item No. 550C, the Board, in granting a motion for preliminary injunction, ordered the City "to maintain status quo ante as of [the date the complainant was terminated]" and, in a subsequent decision, the Board approved the City's decision to keep the complainant on administrative leave with pay and benefits pursuant to the status quo ante order until the completion of the underlying arbitration and proceedings before the Board. *Id.* and Item No. 550E. Thus, while not presented with the specific issue of whether a paid administrative leave order constitutes an adverse employment action, the Board has tacitly found the same does not, by virtue of Item No. 550E in *Kilgore*. Moreover, the Federal District Court for Nevada, in an unpublished opinion, found a plaintiff failed to provide any case establishing that being investigated by an employer amounted to an adverse employment action. *See Peterson v. Washoe Cnty.*, 2010 WL 1904475 *3 (D. Nev. 2010).

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Here, the alleged adverse employment action asserted in the Complaint is Complainant was placed on paid administrative leave. (Compl. at ¶¶ 29 and 39). Because placement to a paid administrative leave status is not, as a matter of law, an adverse employment action, Complainant cannot prevail on her claim under Nev. Rev. Stat. 288.270(1)(f).

B. EVEN IF PAID LEAVE DURING AN INVESTIGATION CONSTITUTED AN ADVERSE EMPLOYMENT ACTION, RESPONDENT DID NOT DISCRIMINATE AGAINST COMPLAINANT.

Setting aside the legal fact that being placed on paid administrative leave pending an investigation is not an adverse employment action, Complainant's claim fails nonetheless because the Respondent had a legitimate, non-discriminatory basis for placing Complainant on paid leave. Indeed, as noted above, a review of Complainant's access to the Barracuda system raised a concern Complainant was abusing her authority or misusing the access granted to her. The concern was Complainant was accessing the *entire* email boxes of members of the administrative team, as well as those of certain Trustees. Because the tracking of public records request was somewhat out of step with the District logs showing the Complainant's searches and access to records, the initial concern was Complainant was accessing those email accounts for purposes unrelated to her official job duties. Out of an abundance of caution and fairness to Complainant, the Respondent retained an outside investigator to conduct an investigation to determine whether Complainant had violated any policy or rules through her Barracuda access. Ultimately, the Respondent determined there was not sufficient evidence to conclude Complainant had committed any violations of District policy. To date, other than the allegations in Complainant's complaint, there is also no evidence Complainant was singled out or investigated based upon her political efforts toward the recall of Trustees Schmitz and Dent. While Complainant may *perceive* the investigation was instituted because of her political activity, the facts simply do not support such a conclusion. Moreover, the fact the investigation took over three months to complete was not because of any action or inaction on the part of the Respondent, and certainly was not done with the intent or purpose to harm Complainant. Instead, the delay was a function of trying to compile the Barracuda information in a workable, readable, digestible format so *the investigator* could interpret the information. Simply

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stated, Respondent merely conducted an investigation into concerns Complainant abused her authority and continued to pay Complainant her full compensation package the entire time. This is hardly sufficient to characterize the prudent actions of an employer and government agency in investigating potential misconduct as violative of Nevada Revised Statutes 288.270(1)(f).

IV. PENDING OR ANTICIPATED ADMINISTRATIVE, JUDICIAL OR OTHER PROCEEDINGS

Respondent is not aware of any pending or anticipated administrative, judicial or other proceedings regarding Complainant.

V. RESPONDENT'S POSITION ON CONSOLIDATION.

In an October 21, 2024 email from the Commissioner, it was requested the parties include a statement about whether this action should be consolidated with Case No. 2024-022. Respondent objects to consolidating this matter with Case No. 2024-022. Although the Board is not bound by the Rules of Civil Procedure, the Rules offer guidance on this issue. Rule 42 states, in relevant part:

> **Rule 42. Consolidation; Separate Trials**
>
> (a) Consolidation. If actions before the court involve a common question of law or fact, the court may:
>
> (1) join for hearing or trial any or all matters at issue in the actions;
>
> (2) consolidate the actions; or
>
> (3) issue any other orders to avoid unnecessary cost or delay.

Nev. R. Civ. P. 42(a).

The Nevada Supreme Court has noted the similarity between the federal and state rule and, accordingly, has looked to federal decisions interpreting the federal rule on consolidation. *See, e.g., Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 286, 163 P.3d 462, 468 (2007). The threshold question regarding consolidation is whether the actions involve common questions of law or fact. Nev. R. Civ. P. 42(a). If common questions of law or fact are present, consolidation is warranted where, on balance, the savings of time and effort that consolidation will produce are greater than any inconvenience, delay, confusion, or prejudice that may result. *Huene v. U.S.*, 743

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F.2d 703, 704 (9th Cir. 1984). Factors to be weighed in determining the propriety of consolidation include whether there are overlapping parties, similar claims based on common facts and transactions, and whether the case will involve the same discovery. *U.S. v. Dentsply Int'l, Inc.*, 190 F.R.D. 140, 143 (D. Del. 1999) (internal citations omitted); 9 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2384 (3d ed. 2011).

The Respondent objects to consolidation, and there is no basis for consolidation. In this case, the only real overlap with Case No. 2024-022 is the Respondent. While Case No. 2024-022 asserts the same causes of action, it involves a different complainant, completely different factual allegations. Nowhere in the complaint in Case 2024-022 does Complainant argue she was placed on paid leave or subject to an internal investigation because of discriminatory conduct. Consolidating the two matters will not reduce the time needed to conduct the respective hearings, as the cases present different issues with different witnesses (though there will surely be some witnesses who testify in both) and the risk of prejudice to Respondent far outweighs any concept of judicial economy. Moreover, there is no risk of inconsistent decisions because, as noted in the Orders denying the Motions to Dismiss, there are factual disputes which require consideration by the Board. If the cases are consolidated, the Respondent will be prejudiced by the Board receiving evidence designed to make Respondent look bad which, in the aggregate, will be compounded and likely be conflated (e.g., evidence unique to Case 2024-022 could be used in this case, when it has nothing to do with the allegations).

VI. LIST OF WITNESSES

1. Mike Bandelin
   IVGID
   c/o Marquis Aurbach
   10001 Park Run Drive
   Las Vegas, Nevada 89145

This witness is expected to testify about the facts and circumstances surrounding the allegations made in the Complaint, as well as the Respondent's defenses thereto.

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2. Erin Feore
IVGID
c/o Marquis Aurbach
10001 Park Run Drive
Las Vegas, Nevada 89145

This witness is expected to testify about the facts and circumstances surrounding the allegations made in the Complaint, as well as the Respondent's defenses thereto.

3. Mike Gove
IVGID
c/o Marquis Aurbach
10001 Park Run Drive
Las Vegas, Nevada 89145

This witness is expected to testify about the facts and circumstances surrounding the allegations made in the Complaint, as well as the Respondent's defenses thereto.

Respondent reserves the right to call any witness(es) identified by Complainant.

VII. ESTIMATED TIME FOR HEARING

Respondent estimates it will take one full day to present its case in chief.

Dated this 7th day of November, 2024.

MARQUIS AURBACH

By *s/ Nick D. Crosby*
Nick D. Crosby, Esq.
Nevada Bar No. 8996
10001 Park Run Drive
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Attorney(s) for Respondent

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CERTIFICATE OF MAILING

I hereby certify that on the 7th day of November, 2024, I served a copy of the foregoing **RESPONDENT'S PREHEARING STATEMENT** upon each of the parties by depositing a copy of the same in a sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and addressed to:

Jason D. Guinasso, Esq.
5371 Kietzke Lane
Reno, NV 89511
Attorney for Complainant

and that there is a regular communication by mail between the place of mailing and the place(s) so addressed.

s/Sherri Mong
an employee of Marquis Aurbach

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