Susan Herron (Complainant)

Closing Brief

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STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

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

Closing Brief

COMPLAINANT SUSAN HERRON, by and through her undersigned counsel of record ALEX VELTO, ESQ. of REESE RING VELTO, PLLC, hereby submits this Closing Brief:

I. Introduction

This case is not about whether a public employer may investigate misconduct. It may. This case is about what happens when the machinery of an investigation is set in motion not by evidence of wrongdoing, but by the political and personal hostility of elected officials toward an employee they viewed as disloyal.

Susan Herron worked for IVGID for approximately twenty-four years. She rose to Director of Administrative Services, served on the senior management team, supervised employees, handled public-records responsibilities, and acted as an institutional resource to successive general managers. Before November 2023, she had never been disciplined, investigated, placed on a performance plan, or accused of misconduct. Her performance was consistently rated excellent or above expectations.

Then came the effort to recall Trustees Sara Schmitz and Matthew Dent. Herron signed the recall petitions in her personal capacity. As a commissioned Nevada notary, she also notarized affidavits for petition circulators, just as she had routinely notarized documents for members of the public throughout her career. She used her own stamp, logbook, and supplies. She charged no fee. She did not campaign on District time or use District resources to advance the recall. Her husband separately contributed to the recall committees. None of those activities affected Herron's merit, fitness, or performance as a public employee. They were lawful political activities and affiliations of the precise kind NRS 288.270(1)(f) protects.

The evidence shows what followed. On November 8, 2023, Schmitz personally asked IVGID's Information Technology Director, Mike Gove, for the Barracuda audit log of one employee: Herron. Gove sent it directly to Schmitz, copying Interim General Manager Mike Bandelin. Schmitz then forwarded it to Bobby Magee, who was not Herron's supervisor, with the terse message: "Mike got it." Ex. 1, JOINT-0002. There was no written employee complaint. There was no reported data breach. There was no security incident, operational emergency, or allegation from a public-records requester. There was only a trustee's targeted request for the audit trail of a politically identified employee.

Six days later, IVGID removed Herron from every function of her job. On November 14, 2023, Herron was ordered off work, stripped of all supervisory and professional duties, barred from District files and systems, required to surrender her laptop and keys, directed not to communicate about the investigation, and required to remain available for immediate recall. Ex.

3, JOINT-0021. IVGID did not tell Herron what she was accused of doing. It did not identify who had complained. It did not identify a policy she supposedly violated. It did not provide a timeline. And it did not include the assurance required by IVGID's own policy that the leave was non-disciplinary.

That omission was not incidental. It was the defining feature of the process. Herron repeatedly asked what she had allegedly done and received no answer. She remained suspended for approximately fourteen weeks. She was not contacted by the investigator for more than two months. She was not interviewed until February 1, 2024—more than eleven weeks after IVGID removed her. When the process finally ended, the result was what the people who understood the system had believed from the beginning: no misuse, no misconduct, and no policy violation.

The hearing transformed those facts from allegations into admissions. IVGID's witnesses confirmed the central irregularities. Bandelin admitted that no written complaint existed, that he did not believe Herron had misused Barracuda when the investigation began, that access could have been removed while Herron continued her other duties, and that IVGID failed to provide the notice contemplated by its policies. Gove testified that Herron possessed Barracuda access for public-records work, that he had never observed misuse, that access could be disabled in approximately two minutes, and that the core comparison could have been completed in a matter of hours. Feore, and other witnesses, confirmed that no safety concern required Herron's exclusion, that Herron was the only employee she recalled being placed on leave without being told why, and that the investigation ultimately found no misuse, misconduct, or policy violation. 2 Tr. 43:4–61:20, 94:10–119:5, 128:10–163:17.

IVGID did not begin with a defined allegation and select a proportionate interim measure. It suspended Herron first and developed the investigation afterward. It imposed the most complete and isolating option even though the system expert and the interim general manager did not believe misconduct had occurred. It withheld the allegation, ignored its ordinary safeguards, delayed consulting the key technical witness for approximately nine weeks, and continued the suspension far beyond the period IVGID witnesses described as normal.

The motive evidence came largely from IVGID management. Winquest described trustee pressure to review Herron's email activity because she was believed to be assisting political opponents. Magee described repeated pressure for discipline, requests for "creative ways" to remove Herron, and proposed personnel actions directed at employees associated with the recall. In his contemporaneous August 2024 email, he characterized that pressure as "political retribution" for "sign[ing] a recall petition" and refused to participate in "manufactured disciplinary actions." Ex. 10; 1 Tr. 208:13–216:6, 253:1–261:18.

IVGID's investigator also examined whether the recall and the trustees' relationship with Herron were connected to the investigation's genesis. Feore reported that there was "no love lost," that the trustees were critical of Herron, and that Schmitz was profoundly frustrated with employees who participated in the recall. Gove further testified that Schmitz's initiating concern focused on whether Herron could access Schmitz's own communications. That evidence supports political motivation and, independently, non-merit personal distrust under NRS 288.270(1)(f). 2 Tr. 93:1–94:2, 108:1–109:3, 149:12–151:21.

The record also supports the statute's independent alternative: personal reasons. Gove testified that Schmitz's initiating concern was whether Herron could see Schmitz's own email and whether Herron had accessed a communication Schmitz considered confidential. 2 Tr. 93:1–94:2, 108:1–109:3. Feore testified to the poor personal relationship between Herron and the trustees. Thus, even apart from the recall, the evidence shows that Schmitz's personal distrust and hostility toward Herron—reasons unrelated to Herron's merit or fitness—helped drive the process. NRS 288.270(1)(f) prohibits both political and personal discrimination, and the Board may find either or both.

The question before the Board is therefore narrow but important: did political or non-merit personal reasons materially motivate IVGID's decision to subject Herron to this complete, prolonged, and procedurally irregular suspension? The resulting question is whether political or non-merit personal reasons materially motivated the complete, prolonged, and procedurally irregular suspension; the record answers that question in Herron's favor.

II. Background and Scope of Hearing

The Board's July 17, 2024, order left for hearing the claim under NRS 288.270(1)(f), including whether the investigation and leave constituted actionable discrimination motivated by political or personal reasons. The Board subsequently denied Herron's request for compensatory damages. At hearing, Herron withdrew the requested salary adjustment, and her June 1, 2026, voluntary separation eliminated reinstatement as a requested remedy. Herron therefore seeks only the restorative and prospective relief described below. Order Denying Motion to Dismiss (July 17, 2024); Order Denying Request for Compensatory Damages at 2–3 (May 28, 2026); 1 Tr. 180:1–181:21, 192:5–19; 2 Tr. 181:1–14.

The hearing further narrowed relief. Herron withdrew the proposed salary-increase remedy, and the Board confirmed that withdrawal. 1 Tr. 180:1-181:21, 192:5-19. Herron also testified that her IVGID employment ended June 1, 2026, through the District's voluntary early-separation program. 1 Tr. 24:9-17; 2 Tr. 181:1-14. Reinstatement is therefore not requested.

Finally, this brief observes the evidentiary rulings made at hearing. Exhibit 18 was excluded and is not relied upon. Exhibit 21 is relied upon only in the redacted form admitted on Day 2. Exhibit 4 was admitted over the hearsay objection; its evidentiary weight is discussed below. At the close of the hearing, the Board confirmed that Exhibits 1-17 and 19-37, Exhibits 39-54, and Exhibit 57 were admitted, with Exhibit 21 redacted; Exhibit 38 was not offered and Exhibit 55 was not admitted. 2 Tr. 188:1-189:15.

III. Questions presented to the Board

1. Whether Herron proved that political activity, political affiliation, or non-merit personal reasons were a motivating factor in IVGID's decision to impose and maintain the complete fourteen-week suspension?
2. Whether IVGID proved that it would have imposed the same suspension, with the same duration and procedural departures, absent those prohibited considerations, and what restorative relief is appropriate under NRS 288.110?

IV. Proposed findings of facts

1. Herron worked for IVGID for approximately twenty-four years, progressing to Director of Administrative Services and serving on the senior management team. 1 Tr. 39:20-41:21.
2. Before November 2023, Herron's performance was consistently rated excellent or above expectations, and she had never been disciplined, investigated, placed on a performance plan, or given a written warning. 1 Tr. 41:20-42:24.
3. Herron also served as an elected director of the North Lake Tahoe Fire Protection District and had been repeatedly elected by the community. 1 Tr. 43:15-44:3.
4. Herron was a commissioned Nevada notary and routinely notarized documents for District patrons and community members, including permits, affidavits, certificates, and other documents. 1 Tr. 44:4-45:11; Ex. 19.

5. During the 2023 recall effort against Trustees Schmitz and Dent, Herron notarized affidavits of circulators for both petitions. She used her own stamp, log, and supplies, charged no fee, and performed the services as part of the District's ordinary public-service practice. 1 Tr. 45:12-49:11; Ex. 20.

6. Herron signed the recall petitions in her personal capacity. Other IVGID employees also signed. 1 Tr. 49:12-17.

7. Trustee Schmitz actively opposed the recall campaign and complained about recall proponents using District free-speech areas and approaching golfers. District counsel warned that asking staff to prevent the recall proponents' activity could create an improper perception. Ex. 21, JOINT-0098-0099.

8. Winquest, a former IVGID general manager, considered Herron a high-performing employee and had authorized her Barracuda access for public-records work. 1 Tr. 246:1-249:24.

9. Winquest experienced pressure from Trustees Schmitz and Dent concerning Herron, including a request to examine her email activity based on a belief that she was assisting political opposition. He declined to conduct an unbounded search without proper direction. 1 Tr. 253:1-261:18.

10. Gove, IVGID's IT Director, gave Herron access to Barracuda so she could perform email searches in response to public-records requests. 1 Tr. 79:22-82:9; 2 Tr. 104:5-105:12.

11. Before November 2023, neither Gove nor another knowledgeable IT official told Herron that her access or use was improper. 1 Tr. 82:1-9.

12. On November 8, 2023, Schmitz directly requested Herron's Barracuda audit log from Gove. Gove sent it to Schmitz, copied Bandelin, and Schmitz forwarded it to Magee with the message "Mike got it." Ex. 1, JOINT-0001-0002; 2 Tr. 92:19-95:16.

13. Schmitz's initiating concern was whether Herron could see Schmitz's own email and whether controls prevented Herron from seeing emails Schmitz believed she should not see. The stated reason for obtaining the audit log was Schmitz's suspicion that Herron had seen one of Schmitz's confidential communications. 2 Tr. 93:1-94:2, 108:1-109:3.

14. No public-records request or written misconduct complaint accompanied the November 8 request. Gove did not file a complaint against Herron and did not believe she had misused Barracuda. 2 Tr. 94:10-96:2, 104:5-24.

15. Gove had not received a similar trustee request for another individual employee's audit log. 2 Tr. 105:23-106:2.

16. The audit log recorded search activity but did not establish the purpose of each search. Many entries were consistent with public-records work, and the entries could be compared to pending and completed public-records requests. Ex. 2; 2 Tr. 111:1-123:20.

17. Magee later compared the activity to public-records work and concluded that the treatment of Herron was unfair and not supported by actual misuse. 1 Tr. 223:20-225:20.

18. On November 14, 2023—six days after the audit log was sent—Bandelin and Feore placed Herron on paid administrative leave. Ex. 3.

19. The leave removed Herron from all work, supervisory duties, District systems, files, and documents; required surrender of her laptop and keys; required confidentiality and availability for recall; and placed the notice in her personnel file. Ex. 3; Ex. 4, JOINT-0022.

20. The November 14 notice did not state any allegation, identify a complainant, identify a policy concern, provide an expected duration, or state that the leave was not disciplinary. Ex. 3.

21. Herron asked why she was being investigated and was not told. 1 Tr. 82:10-85:23; Ex. 4.

22. No written complaint against Herron was produced or identified. Bandelin testified there was no filed complaint he received; Feore confirmed no written complaint existed. 2 Tr. 43:4-46:4, 177:21-178:6.

23. Bandelin learned of the concern through Gove and Magee relaying that Schmitz thought there might be misuse. Gove and Magee themselves did not report established misconduct. 2 Tr. 44:22-46:4.

24. At the time he initiated the investigation, Bandelin did not believe Herron had misused the system or engaged in misconduct. 2 Tr. 52:14-53:21.

25. Gove had told Feore before the leave that he did not believe Herron had misused Barracuda. 2 Tr. 104:5-24.

26. IVGID could have disabled Herron's Barracuda access while allowing her to perform her many other duties. Gove could disable access within approximately two minutes, and HR saw no reason the investigation required complete removal. 2 Tr. 94:10-95:16, 139:1-11.

27. No workplace-violence, safety, evidence-destruction, or operational emergency required Herron's physical exclusion. Feore's only comparable paid leave in eight years involved a workplace-violence concern; no such concern existed here. 2 Tr. 128:10-130:8.

28. IVGID's policy required an administrative-leave notice to state that leave was not disciplinary. The November 14 notice did not comply. Ex. 41, JOINT-0318; 2 Tr. 55:10-56:10, 145:8-24.

29. Under IVGID's definition, Herron's temporary paid separation pending investigation was a suspension. Ex. 51, JOINT-0387. Bandelin and Feore agreed. 2 Tr. 60:16-61:20, 139:12-142:10.

30. IVGID's policy required notice of the reason and an opportunity to respond before a suspension. Herron received neither. Ex. 41, JOINT-0315-0316; 1 Tr. 169:13-172:1; 2 Tr. 57:13-60:6, 139:12-142:10.

31. Bandelin acknowledged that he should have provided the reason, that doing so would have been extremely appropriate, and that the process was inadequate. He acted on behalf of IVGID. 2 Tr. 54:14-60:6.

32. Feore testified that, in her experience, employees placed on leave were generally told the reason and Herron was the only known exception. 2 Tr. 130:9-132:24.

33. Herron was initially told the investigation would take about one month. Ex. 4, JOINT-0023. Typical IVGID investigations took days to approximately three weeks or one month. 2 Tr. 159:12-160:24.

34. IVGID suspended Herron before the outside investigator was formally retained. Maupin Cox was formally retained on November 17, 2023, three days after the November 14 suspension. Ex. 5.

35. The investigator did not meet with Gove—the system expert needed to explain the audit log—until January 23, 2024, approximately nine weeks after the suspension began. Gove testified that, with the audit log and public-records requests, he could perform the core comparison in a couple of hours, not fourteen weeks. 2 Tr. 100:21-102:20, 118:15-119:5.

36. Herron remained suspended for approximately fourteen weeks, from November 14, 2023 to February 26, 2024. Exs. 3-4.

37. For much of the suspension Herron received no substantive update and no allegation. Her contemporaneous log records unanswered calls and continued uncertainty. Ex. 4, JOINT-0023-0026.

38. The outside investigator did not interview Herron until February 1, 2024, more than eleven weeks after the suspension began. Ex. 4, JOINT-0026.

39. During the interview, the investigator asked about Herron's recall activity, including whether she signed a recall petition and whether her husband contributed. 1 Tr. 91:1-94:24.

40. In interviewing Feore about the genesis of the investigation, Anderson asked about Schmitz's and Dent's relationships with Herron and whether the investigation had anything to do with the recall. Feore reported that there was "no love lost," that the trustees were critical of Herron, and that she believed Schmitz was profoundly frustrated with District employees who participated in the recall. 2 Tr. 149:1-151:21.

41. On February 21, 2024, IVGID informed Herron that the investigation was complete and no misconduct was found. Ex. 4, JOINT-0027.

42. Feore confirmed that the final result was no misuse, no misconduct, and no policy violation. 2 Tr. 163:5-17.

43. After Herron returned, she filed an internal complaint alleging harassment and retaliation. Ex. 34. IVGID's policy required prompt investigation and notice of a determination. Ex. 46; Ex. 48, JOINT-0358.

44. The internal complaint was not promptly completed, and Herron was not given a final determination during the period established at hearing. Ex. 9; 2 Tr. 142:11-144:23.

45. Magee, while serving as general manager, experienced repeated trustee pressure to discipline or remove employees identified with the recall effort. Ex. 10; 1 Tr. 199:3-216:6.

46. Magee described requests for "creative ways" to get Herron out, repeated daily pressure for disciplinary action, and efforts to identify Herron in budget or restructuring discussions. 1 Tr. 208:13-216:6.

47. In a contemporaneous August 8, 2024 email, Magee characterized the personnel pressure as political retribution and instructed trustees to stop attempting to manipulate him into manufactured disciplinary actions. Ex. 10, JOINT-0044.

48. Schmitz knew which employees signed recall petitions and expressed that such employees should not expect her to do nothing. 1 Tr. 199:3-201:11, 225:7-20.

49. The Barracuda scrutiny was not an isolated episode. Around the same period, Schmitz—and, according to Herron, Dent—caused an inquiry into whether IVGID owned or paid for Herron's notary materials after she notarized recall circulator affidavits; no wrongdoing was identified. After the recall, Herron also experienced repeated hostile treatment of her Board work. The notary episode was an inquiry rather than a formal outside investigation, but it corroborates the pattern of recall-related scrutiny. 1 Tr. 61:22-64:14, 75:17-76:18; 2 Tr. 65:14-66:20.

50. After Herron returned and was cleared, Schmitz requested all emails sent by Herron during Magee's vacation. Ex. 13, JOINT-0056.

51. Bandelin believed, during the relevant period, that direction from the Board chair and vice chair should be followed. 2 Tr. 26:17-29:3.

52. Bandelin testified that Trustees Dent and Schmitz intervened too much in personnel matters and connected Resolution 1911 to the need to reset trustee boundaries. 2 Tr. 29:9-35:23; Ex. 50.

53. Bandelin further admitted that Schmitz and Dent told him to "do something" negative concerning Herron's employment and that he would treat a chair's request to investigate an employee as a directive to be followed after consulting counsel. 2 Tr. 83:3-87:17.

54. Winquest testified that Dent and Schmitz had been a minority voting bloc, but after Trustee Tullock joined they formed a Board majority and generally voted in unison. Tullock did not demand Herron's termination, but the majority structure gave the trustees practical institutional influence over the general manager. 1 Tr. 255:4-256:2.

55. No evidence established that Herron actually misused Barracuda, violated an IT rule, compromised confidential material, or performed inadequately.

56. At the leave meeting, IVGID proposed telling coworkers that Herron was absent on FMLA, family leave, or because of a family emergency rather than because she had been placed on administrative leave. Herron objected and asked that the District tell the truth. Her contemporaneous log recorded the same exchange. Ex. 4, JOINT-0022; 1 Tr. 84:1-85:5, 142:5-10. This contemplated cover explanation confirms that the removal carried stigma and required concealment; it was not treated as an ordinary paid absence.

57. IVGID paid Herron's salary and benefits during the suspension, but she lost all ability to perform her position, supervise staff, use District systems, exercise her professional responsibilities, and maintain her ordinary status within the organization for fourteen weeks.

58. Considering the protected activity, Schmitz's personal concern about her own email, the targeted audit request, the six-day timing, the absence of a complaint, the decisionmakers' disbelief of misconduct, the total suspension, the available less restrictive alternative, the suspend-first chronology, the acknowledged policy departures, the extraordinary duration, the investigator's express examination of recall motive, the no-misconduct result, and the continuing trustee pressure, Herron's political activity and affiliations and, independently or alternatively, non-merit personal distrust and animus were motivating factors in IVGID's treatment of her.

59. IVGID did not prove that it would have imposed the same complete fourteen-week suspension, without notice and with the same procedural departures, absent Herron's protected political activity and affiliations and the non-merit personal reasons operating in the process.

V. Argument

A. Legal Standard

i. NRS 288.270(1)(f) prohibits political or personal discrimination by a local government employer

NRS 288.270(1)(f) makes it a prohibited practice for a local government employer or its designated representative to discriminate against an employee "because of political or personal reasons or affiliations." The provision is not limited to union activity and does not require an independently actionable constitutional tort. It protects public employees from employment decisions driven by political alignment, political association, and non-merit personal bias.

The Board has construed "personal reasons or affiliations" to include non-merit-or-fitness factors: dislike or bias based on a person's characteristics, beliefs, affiliations, or activities that do not affect fitness for the job. *Kilgore v. City of Henderson*, EMRB Item No. 550H, p.9 (2005). Herron's support for a recall, routine notarial assistance to petition circulators, political association with community members, and association with her husband's political participation do not bear on her merit or fitness as Director of Administrative Services.

The statute is disjunctive. The Board need not determine that recall activity was the exclusive motive, nor must it choose between political and personal causation where both are proved. Liability exists if either protected political activity or a non-merit personal reason was a motivating factor and IVGID fails to prove the same decision absent that factor. Accordingly, the Board may find political discrimination, personal discrimination, or both.

ii. Bisch *supplies the burden-shifting framework*

Nevada applies the *Transportation Management* test, as modified to require a burden of persuasion. *Bisch v. Las Vegas Metro. Police Dep't,* 129 Nev. 328, 340-42, 302 P.3d 1108, 1116-18 (2013). Herron must persuade the Board that protected political conduct or affiliation was a motivating factor in the challenged action. If she does, IVGID must prove by a preponderance of the evidence that it would have taken the same action even absent the protected conduct. Herron may then show that the employer's explanation is pretextual. *Id.*; *see also Reno Police Protective Ass'n v. City of Reno*, 102 Nev. 98, 101-02, 715 P.2d 1321, 1323-24 (1986).

Bisch illustrates both sides of the analysis. The employee there established a prima facie inference through political notoriety and unusual attention, but the employer proved a third-party complaint, a real investigation, and conduct that actually violated a rule; the employee's evidence of pretext remained speculative. 129 Nev. at 340-42. Here, the differentiating facts are the absence of a written or independent complaint, the decisionmakers' contemporaneous belief that no misuse occurred, the available access-control alternative, the procedural departures, the exceptional duration, the no-violation result, and direct evidence of political personnel pressure.

iii. Paid suspension can be an adverse action when its actual terms and circumstances materially burden the employee.

The Board's motion-to-dismiss order left the adverse-action question for the record at hearing. That was correct. A simple, brief paid leave used to preserve a legitimate investigation may not ordinarily be adverse. *See Jones v. SEPTA*, 796 F.3d 323, 326 (3d Cir. 2015) (abrogated on other grounds in *Russo v. Bryn Mawr Trust Company,* 2024 Wl 3738643). But paid status is not a categorical safe harbor. Courts recognize that a paid suspension may be actionable when accompanied by an exceptionally unreasonable or dilatory investigation, stigma, loss of professional responsibilities, or other material changes. *Joseph v. Leavitt*, 465 F.3d 87, 91-92 (2d Cir. 2006); *Davis v. Legal Servs. Ala., Inc.*, 19 F.4th 1261, 1266-67 (11th Cir. 2021).

The modern federal formulation is also instructive: an employee need show some harm concerning an identifiable term or condition of employment, not a judicially invented "significance" threshold. *Muldrow v. City of St. Louis*, 601 U.S. 346, 354-59 (2024). NRS 288.270(1)(f) should not be construed more narrowly than its text. Nevada permits the Board to draw guidance from federal labor and employment principles where statutory purposes align. *Truckee Meadows Fire Prot. Dist. v. Int'l Ass'n of Firefighters, Local 2487*, 109 Nev. 367, 376-77, 849 P.2d 343, 349-50 (1993).

The question is therefore factual: what did IVGID actually do to Herron, for how long, under what circumstances, and with what consequences for her work? A fourteen-week complete suspension, removal of all duties and authority, confiscation of work tools, isolation from staff, placement of the notice in a personnel file, silence about the allegation, and continued readiness obligations is not equivalent to being sent home for an afternoon with pay. Further, the investigation included asking about her political decisions and political affiliations.

iv. Circumstantial, temporal proximity, procedural irregularities, and other evidence are probative of the District's motive and pretext.

Political motive is rarely admitted in the sentence, "I am doing this because of your politics." The Board may infer motive from the whole record, including knowledge of protected activity, timing, targeted scrutiny, hostility toward the protected group, shifting explanations, departures from established procedures, disparate treatment, weak factual predicates, and continued action after the asserted concern is disproved. *Reno Police Protective Association* itself relied on disparate discipline and the implausibility of the employer's reason. 102 Nev. at 101-03.

O'Leary is instructive because the Board considered political fallout, an investigation used as pressure, irregular procedure, and a personnel process directed toward an employee's departure. *O'Leary v. Las Vegas Metro. Police Dep't,* EMRB Item No. 803 (2015). Herron need not prove identical facts. The point is that an investigation is not insulated merely because it is called an investigation; it can be the discriminatory action when it is initiated, structured, or prolonged for political reasons.

v. The Board's remedial authority is restorative and includes fees and costs.

If the complaint is well taken, NRS 288.110(2) authorizes the Board to order the respondent to refrain from the action complained of and to restore a benefit of which the aggrieved party was deprived. NRS 288.280 applies that remedial procedure to prohibited-practice controversies. NRS 288.110(6) separately authorizes reasonable costs, including attorneys' fees, to a prevailing party.

Consistent with the May 28, 2026, order, Herron does not request compensatory damages. The requested remedies instead correct the employment record, prevent adverse use of an unsupported investigation, communicate the statutory rule to those who exercise public power, and reimburse the cost of vindicating Chapter 288 rights.

B. Ms. Herron engaged in and was associated with protected political activity; as a result, she was subjected to an actionable adverse employment action.

This element is not genuinely disputed. Herron signed recall petitions against Schmitz and Dent. She expressed support when asked in the community. As a commissioned notary, she notarized the circulator affidavits for the petitions. Her husband separately contributed to both recall committees. Exs. 14-15, 19-20; 1 Tr. 44:4-53:25. These are political activities and affiliations in the ordinary meaning of NRS 288.270(1)(f).

The activity was lawful and unrelated to job fitness. Herron did not staff recall tables, use District equipment for campaigning, charge a notary fee, or refuse service based on viewpoint. She used her own notarial materials and followed the District's public-service practice. 1 Tr. 45:4-49:17. No witness identified performance harm caused by the activity. Under Kilgore, the activities are precisely the type of non-merit belief and affiliation the statute prevents an employer from using as an employment criterion.

IVGID's relevant actors knew the political context. Schmitz personally objected to recall activity on District property. Ex. 21. She knew employees had signed and later expressed disbelief that they would expect no consequence. 1 Tr. 199:3-201:11, 225:7-20. Bandelin knew Herron signed the recall and testified that Schmitz had discussed it. 2 Tr. 46:12-20. Winquest and Magee received trustee requests focusing on Herron in the context of political opposition. 1 Tr. 253:1-261:18, 218:13-225:20. Actual knowledge is therefore established independent of the excluded Exhibit 18.

In response to this position, IVGID emphasizes that Herron continued to receive salary and benefits. That fact narrows economic relief, but it does not erase the action. The District temporarily separated a senior director from service, stripped all duties and supervisory authority, cut off every file and system, confiscated her laptop and keys, barred her from the workplace, required confidentiality, kept her on call, and placed the notice in her personnel file. Ex. 3. IVGID's own definition calls that a suspension. Ex. 51; 2 Tr. 60:16-61:20.

Professional responsibility is itself a term and benefit of employment. Herron was not a fungible hourly worker with no assigned role. She was a twenty-four-year director, assistant to the general manager when needed, supervisor, public-records officer, and institutional resource. 1 Tr. 39:20-41:21. Removing all such responsibilities for fourteen weeks—while the general manager told her the organization missed her guidance—was a substantial alteration of her employment status even though payroll continued. Ex. 4, JOINT-0024.

And here, the duration and secrecy of the suspension made the suspension different than paid leave. The District's opening analogy to sending an employee home for an afternoon fails on the facts. This was fourteen weeks. Herron was told approximately one month, received little substantive information, was not contacted by the investigator for more than two months, and was not interviewed until the eleventh week. Ex. 4. Feore testified that ordinary investigations took days to a few weeks or about one month. 2 Tr. 159:12-160:24. A prolonged, unexplained suspension is exactly the type of "more" that distinguishes Joseph and Davis from the simple paid-leave cases.

The secrecy magnified the employment consequence. Herron did not know whether she was accused of accessing medical information, leaking records, campaigning on duty, or something else entirely. She could not answer an allegation, preserve targeted evidence, or explain her absence to staff. The leave letter's placement in the personnel file, without the policy-required non-disciplinary assurance, objectively created a cloud over her standing. That is a workplace consequence, not merely subjective offense.

IVGID's proposed explanation for Herron's sudden disappearance reinforces that conclusion. Herron testified—and her contemporaneous log records—that HR proposed telling coworkers she was on FMLA, family leave, or dealing with a family emergency. Herron objected and asked that IVGID truthfully say she had been placed on leave without being told why. Ex. 4, JOINT-0022; 1 Tr. 84:1-85:5, 142:5-10. The Board need not treat that exchange as an independent violation. It is probative because IVGID understood that the removal required concealment and could affect Herron's standing. An ordinary paid absence would not require an invented medical or family explanation.

C. <u>The investigation itself was part of an adverse action because it was used to remove and isolate Ms. Herron.</u>

IVGID argues that recognizing this claim would make every investigation actionable. It would not. The statute reaches discriminatory investigations, not neutral investigations as a class. Here, the investigation and suspension were inseparable: the investigation was the stated reason for removing Herron, and its unexplained duration prolonged the removal. The Board can find this particular process adverse without questioning the employer's general right to investigate genuine concerns.

O'Leary confirms that a politically influenced investigative process can be part of a prohibited practice even when the employer uses personnel terminology rather than overt political language. Herron's proof is stronger in several respects: there was no independent written complainant, the knowledgeable IT official did not believe misconduct occurred, the initiating general manager did not believe misconduct occurred, and the final result confirmed no violation.

D. <u>Ms. Herron has established there were political motivations for being placed on leave.</u>

Temporal proximity alone is not conclusive, but six days is highly probative when combined with targeted action. The trustee who was the subject of Herron's protected activity asked for Herron's individual audit log; the log was forwarded outside Herron's supervisory chain; the employee was then completely suspended; and the record contains no intervening written complaint, security event, or newly discovered violation. Exs. 1-3.

The sequence is more probative because the decisionmakers did not believe the underlying misconduct occurred. Gove did not believe misuse occurred and told HR. Bandelin testified that he initiated the investigation to confirm Herron had not done what she was not supposed to do and did not believe she had engaged in misconduct. 2 Tr. 52:25-53:21, 104:5-24. An employer may investigate uncertainty, but choosing the harshest available interim measure despite contemporaneous disbelief is evidence that another motive was operating.

Further, Gove's testimony defined the original concern. Schmitz called to ask whether Herron could see Schmitz's own email and whether any controls prevented Herron from seeing emails Schmitz believed she should not see. When Gove explained that Herron had authorized access and that the archive did not exclude messages based on subject matter, Schmitz requested Herron's individual audit log. Gove understood that Schmitz suspected Herron had seen one of Schmitz's confidential communications. 2 Tr. 93:1-94:2, 108:1-109:3. The initiating event was therefore personal to Schmitz—not an HR complaint, a reported breach, or a systemwide security event.

That evidence independently satisfies the "personal reasons" branch of NRS 288.270(1)(f). Feore told the investigator there was "no love lost" between Herron and Schmitz or Dent, that the trustees were critical of Herron's work, and that the poor relationship may have arisen from resentment concerning Herron's promotion. 2 Tr. 149:9-150:5. Even if the Board were uncertain that recall activity was the predominant cause, a trustee's personal distrust of Herron, resentment of her role, and concern that she could view the trustee's communications are non-merit reasons unrelated to Herron's fitness. The statutory text permits—and this record supports—that alternative finding.

Additionally, Trustee Schmitz' hostility towards recall supporters supply show there was a political motivation to the District's conduct. Schmitz's concern was not limited to neutral management of facilities. Exhibit 21 shows her attempting to stop or restrict recall solicitation and being cautioned about the appearance created by involving staff. Ex. 21, JOINT-0098-0099. Her later statements, as recounted by Magee, treated senior employees' signatures as disloyalty and suggested consequences should follow. 1 Tr. 199:3-201:11, 225:7-20.

Magee's testimony and Exhibit 10 provide direct institutional evidence. He did not describe one misunderstood request. He described repeated, daily pressure; requests for discipline that did not affect District performance; proposed layoffs and reorganization directed at politically disfavored directors; and "creative ways" to get Herron out. 1 Tr. 208:13-216:6. He contemporaneously called the conduct political retribution and manufactured discipline. Ex. 10. That language supports the inference that the November investigation was not an isolated IT response but part of a broader personnel campaign.

Former General Manager Winquest established the pretexting targeting of Ms. Herron for political reasons. Winquest testified that Dent sought review of Herron's email activity because he believed she was using District resources to assist political opposition. Winquest refused an unbounded request absent proper Board direction. 1 Tr. 257:9-261:18. The later November 8 request to Gove accomplished through a less experienced interim structure what Winquest had resisted. This continuity is powerful circumstantial evidence: the political theory came first, the audit log was sought second, and the disciplinary machinery followed.

Perhaps most importantly, the investigator inquired into Ms. Herron's political affiliations. If the true issue were simply whether audit-log entries matched public-records requests, the central inquiry would have been technical and documentary. Yet the investigator asked Herron whether she signed a recall petition and whether her husband contributed. 1 Tr. 91:1-94:24. More importantly, he asked Feore about the "genesis" of the leave, the relationships between Herron and Schmitz and Dent, and whether the investigation had anything to do with the recall. Feore answered that there was "no love lost," that the trustees were critical of Herron, and that she believed Schmitz was profoundly frustrated with District employees who participated in the recall. 2 Tr. 149:1-151:21. IVGID's own investigative inquiry thus treated political motive as connected to the personnel action; this was not merely Herron's subjective theory after the fact.

A neutral employer satisfied that no misuse occurred would ordinarily close the issue. Instead, Herron returned to continued task diversion, renewed requests for her communications, and unresolved retaliation complaints. Exs. 9, 10, 13. Magee continued to resist trustee demands aimed at politically identified employees. This later conduct does not create a time-barred new claim; it corroborates the motive alleged in the timely Complaint and shows why record-clearing and prospective relief remain necessary.

E. IVGID has not established that it would have taken the same actions absent protected conduct.

IVGID's same-decision burden is not satisfied by showing that some investigation could have been reasonable. It must prove that it would have taken the same action: a complete suspension, imposed without notice, continued for fourteen weeks, under the same procedural departures, absent the protected political activity. *Bisch*, 129 Nev. at 340-42. The evidence does not support that proposition.

First, there was no independent complaint or established misconduct to trigger the action. In *Bisch*, an outside victim's mother initiated the complaint and the investigation uncovered conduct that actually violated a rule. Here, no written complaint existed. The supposed concern traveled from Schmitz through managers who themselves did not claim established misconduct. Bandelin described only a "thought of maybe." 2 Tr. 44:22-46:4. Gove, the system expert, did not believe misuse occurred. The factual trigger was therefore weaker than in Bisch, while the interim action was more sweeping.

Second, IVGID had alternative non-punitive methods to preserve the investigation. Every relevant witness agreed that access could be removed. Gove could disable it in roughly two minutes. 2 Tr. 94:10-95:16. Feore testified Herron could have remained at work without the access. 2 Tr. 139:1-11. Magee testified the same. 1 Tr. 206:14-207:5. No witness identified evidence that Herron would destroy records, intimidate witnesses, or bypass controls. This available alternative is not proof that management lacked discretion; it is proof that complete removal was not compelled by the stated IT concern.

Third, IVGID's comparators do not support the decision it made. Feore recalled only one other comparable paid leave in eight years, and that case involved workplace violence and safety. 2 Tr. 128:10-130:8. Herron presented no safety issue. The contrast shows that complete exclusion was reserved for materially different circumstances. IVGID offered no example of an employee with authorized system access, no complaint, no safety risk, and no initial belief of misconduct who was nonetheless removed for fourteen weeks without notice.

Fourth, IVGID suspended MS. Herrron first, then developed a record later. The chronology is incompatible with an urgent, technically compelled removal. IVGID suspended Herron on November 14. Maupin Cox was not formally retained until November 17. Exs. 3, 5. The investigator did not meet with Gove—the person needed to explain the system and audit log—until January 23, approximately nine weeks later, and did not interview Herron until February 1. 2 Tr. 100:21-102:20; Ex. 4, JOINT-0026. IVGID therefore imposed the complete exclusion before the outside investigation was formally underway and then waited most of the suspension to consult the system expert and the accused employee.

The technical explanation does not justify the remaining delay. Gove testified that, with the twenty-page audit log and the corresponding public-records requests, he could perform the core cross-reference in "[a] couple of hours." When asked, "Not 14 weeks?" he answered, "No." 2 Tr. 118:15-119:5. Feore likewise testified that ordinary IVGID investigations took days to approximately three weeks or one month. 2 Tr. 159:12-160:24. The record thus shows an immediate suspension followed by a delayed effort to understand the evidence—not a developed investigation that required immediate exclusion.

F. IVGID is responsible for the actions of its Trustees.

IVGID argues that individual trustees lacked formal authority to suspend or fire staff. Formal authority does not end the analysis. NRS 288.270(1)(f) applies to the local government employer and its designated representatives. IVGID acts through people. If trustees use their institutional positions to cause or influence management action, and management carries out that action, the employer cannot avoid responsibility by pointing to the organizational chart.

The factual record shows actual influence. Bandelin was an inexperienced interim general manager who believed direction from the chair and vice chair should be followed. 2 Tr. 26:17-29:3. He testified that trustees intervened too much in personnel matters. 2 Tr. 32:19-35:23. On redirect, he acknowledged that Schmitz and Dent told him to "do something" negative concerning Herron's employment and that he would treat a chair's request to investigate an employee as a directive. 2 Tr. 83:3-87:17. Gove sought authorization because he considered Schmitz's direct request improper and was essentially told to do what she asked. 2 Tr. 106:20-109:3. Magee described repeated efforts by trustees to dictate personnel outcomes and had to issue Exhibit 10 to resist them. The personnel action was therefore IVGID's action, influenced through IVGID's governance structure, regardless of which official signed the leave letter.

The voting structure made that influence practical, not theoretical. Winquest testified that Dent and Schmitz had operated as a minority bloc, but after Tullock joined they formed a Board majority and generally voted in unison. 1 Tr. 255:4-256:2. Tullock did not personally demand Herron's termination, and Herron does not allege that every common vote was retaliatory. The point is narrower: the trustees pressing personnel concerns possessed institutional power over the general manager and District agenda. IVGID's formal-authority defense therefore cannot sever causation.

The later Resolution 1911 is revealing in this limited evidentiary sense. It expressly required that the general manager and HR administer personnel matters without direct trustee intervention or influence. Ex. 50. A rule addressing a real governance problem does not absolve the District for the earlier period; it confirms why a cease-and-desist order and training are appropriate even though the individual trustees have since left office.

G. IVGID's defenses fail.

First, that Ms. Herron was paid is not a complete defense to the claim. Continued pay means Herron cannot claim lost wages from the suspension. It does not mean she suffered no employment action. The statute prohibits discrimination, not only wage loss. IVGID's own policies defined the action as suspension and imposed procedural safeguards precisely because involuntary separation with pay affects employment. The Board should evaluate the actual status change, not a single payroll feature.

Second, an employer's right to investigate does not preclude the claim. Herron does not seek a rule preventing public employers from investigating credible concerns. She seeks application of the existing rule that an employer may not discriminate because of politics. A lawful tool can be used unlawfully. The issue is why this employee was selected, why this level of interim action was used, why ordinary safeguards were withheld, and why the process was prolonged.

Third, Neither the absence of an express admission nor the privilege applicable to the investigator's report defeats liability. Motive may be established through timing, procedural departures, the weakness of the asserted predicate, and contemporaneous evidence of political pressure. And Herron does not rely on the privileged report: Feore testified to the no-misconduct result, while the initiation, timing, witness sequence, interim measures, and management pressure were established through admitted documents and live testimony.

VI. Remedy request

The requested order should be precise, restorative, and consistent with the Board's prior rulings. Herron does not seek tort-style compensatory damages, the withdrawn salary increase, or reinstatement. She requests the following relief under NRS 288.110 and NRS 288.280.

First, the order should find that IVGID discriminated against Herron because of political or personal reasons or affiliations by using a targeted audit-log request and unsupported investigation as the basis for a complete and prolonged suspension, withholding ordinary notice and safeguards, and continuing politically influenced scrutiny after the no-misconduct result. A clear liability finding is the foundation for every other remedy and serves the public interest in a politically neutral civil service.

Second, the Board should order IVGID, its trustees, officers, managers, HR personnel, agents, and successors to cease and desist from discriminating against current or former employees because of lawful political activity, political association, support for or opposition to a recall, petition signing, campaign participation, lawful contributions, or non-merit personal affiliation. The order should also prohibit retaliation for filing or participating in this Chapter 288 proceeding.

Third, to the extent law and retention rules permit, IVGID should remove the November 14 leave letter and unsupported adverse references from the active personnel file. If retention is legally required, the materials should be segregated in a confidential file, marked non-disciplinary and not for adverse employment use, with access limited to legal retention and defense needs. This alternative respects record-retention obligations while restoring the employment benefit of an accurate, non-stigmatizing personnel record.

Fourth, IVGID should distribute and post for sixty days a notice, signed by the Board Chair and General Manager, stating that NRS 288.270(1)(f) prohibits discrimination because of political or personal reasons or affiliations; that employees may lawfully engage in political activity in their personal capacities subject to neutral workplace rules; that trustees may not use personnel processes for political retribution; and that IVGID will not retaliate for protected participation in EMRB proceedings. Within ninety days, IVGID should provide training to trustees, the general manager, HR leadership, and senior managers on NRS 288.270(1)(f), the chain of command for personnel matters, neutral handling of political activity, and the District's existing administrative-leave and complaint procedures. The training need not prescribe the outcome of future investigations. It should ensure that future decisions are based on documented job-related facts rather than political affiliation and that existing notice requirements are followed. IVGID should file a compliance declaration identifying the training date, attendees, and materials.

Fifth, NRS 288.110(6) authorizes reasonable costs, including attorneys' fees, to a prevailing party. Herron testified without contradiction that she incurred $62,753.10 in fees and costs through May 31, 2026. 2 Tr. 181:15-23. She also testified that prior counsel discounted approximately half of roughly $14,000 in earlier fees, demonstrating billing restraint rather than excess. 2 Tr. 182:14-18. The litigation required pleading, opposition to dismissal, extensive prehearing preparation, exhibit and witness development, briefing on remedies, and a two-day evidentiary hearing.

The Board should award $62,753.10 through May 31, 2026, plus reasonable supplemental fees and costs incurred for the hearing's final preparation, this closing brief, any fee application required by the Board, and compliance proceedings. If the Board prefers a separate lodestar submission, it should find entitlement now and permit Herron to submit contemporaneous billing records and a supporting declaration within fourteen days, followed by a short response and reply schedule.

VII. Conclusion

The record does not show a defined complaint followed by a proportionate investigation. It shows that a trustee requested Herron's individual audit log during a politically charged recall effort; six days later, IVGID removed Herron from all duties without identifying the allegation; the officials responsible for the system and the decision did not believe misuse had occurred; access could have been disabled in minutes; the process departed from IVGID's ordinary safeguards and continued for fourteen weeks; and the investigation found no misconduct.

Management witnesses also described sustained trustee pressure concerning employees associated with the recall, including pressure characterized contemporaneously as "political retribution" and "manufactured disciplinary actions." On this record, political or non-merit personal reasons materially motivated the challenged action, and IVGID did not prove that it would have imposed the same complete and prolonged suspension absent those considerations.

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The Board should find a violation of NRS 288.270(1)(f), order appropriate restorative and prospective relief, and award reasonable attorneys' fees and costs.

Dated this 15th day of July, 2026.

REESE RING VELTO, PLLC

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STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

SUSAN HERRON,

Complainant,

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

Respondent.

Case No.: 2024-015

RESPONDENT'S CLOSING BRIEF

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The District is entitled to an order concluding it did not commit a prohibited practice under Nevada Revised Statute chapter 288. The Complainant's claim fails for multiple independent reasons. First, Complainant did not suffer an adverse employment action. As a matter of law, administrative leave without pay pending an investigation is not an adverse action for purposes of employee discipline and this fact is fatal to Complainant's claim. Second, even if paid administrative leave were considered an adverse action (which it is not), Complainant failed to carry her burden of establishing that her political activity was a motivating factor in the District's decision to place her on paid administrative leave and conduct an independent investigation into allegations and concerns that Complainant violated District policies. Third, even if she met her prima facie showing that the District's actions were motivated by Complainant's protected activity, the District presented persuasive, credible evidence that it would have taken the same action in the absence of any protected activity and that the actions were legitimate and non-discriminatory. Accordingly, the District respectfully requests the EMRB dismiss the Complaint and enter an order in favor of the District.

II. ISSUES PRESENTED

A. COMPLAINANT'S STATEMENT OF ISSUES

1. Subjecting Complainant 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 Complainant's termination based on her protected political affiliations and activities.

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

B. RESPONDENT'S 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 of an internal investigation qualifies as an adverse employment action for purposes of determining whether there has been a violation of Nevada Revised Statute 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 Statute 288.270(1)(f).

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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.

III. STATEMENT OF FACTS

A. THE PARTIES.

Incline Village General Improvement District ("District") is a local government employer, as defined in Nevada Revised Statute 288.060. The District is governed by a Board which is comprised of five elected Trustees. (Trans., Day 1, p. 183:17-18). The Board does not have the authority to hire or fire District employees, save and except for the General Manager. (*See* Trans., Day 1 at p. 243:3-17). The District is responsible for water, sewer, solid waste, and recreation for the community of Incline Village, located at Lake Tahoe, Nevada, which includes community service venues, and recreation offerings, such as golf, skiing, pickleball, tennis, and a recreation center. (Trans., Day 1, p. 183:4-12) Susan Herron ("Complainant") worked for the District for approximately 24 years. (Trans., Day 1, p. 40:2-3). She started her employment with the District as the Assistant to the Executive Assistant, then applied and was selected for the position of Executive Assistant to the General Manager. (Trans., Day 1 at p. 40:6-10). Complainant then worked as a District Clerk before she was selected to be the Director of Administrative Services. (Id. at p. 40:10-13). Complainant's last day of employment with the District was June 1, 2026, after she voluntarily took advantage of the Early Separation Incentive Plan ("ESIP") that was offered to all eligible employees. (Id. at pp. 24:9-14; 115:10-14).

B. THE RECALL EFFORT

In the summer of 2023, recall petitions were filed against then IVGID Trustees Sara Schmitz ("Schmitz") and Matthew Dent ("Dent"). *See* **Exhibit 16**; *see also* **Exhibit 22**, ¶¶ 9-11. Complainant testified that as "part of her duties at IVGID" she would notarize "affidavits for lost unclaimed property," event permits, certificates of life, and "recall petitions" which Complainant characterized these documents as "routine items." (Trans., Day 1 at p. 44:9-16). Although she suggested in her testimony that recall petitions were "routine items" she notarized, she later

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admitted that the Dent and Schmitz recall petitions were the only ones she notarized in her entire tenure as a notary public. (Id. at pp. 47:22-24; 48:1-5; 121:11-19). Further, Complainant admitted that notarizing recall petitions was not a normal job duty, despite the fact she admitted she notarized the petitions during working hours. (Id. at p. 121:16-25).

Complainant provided notary services to people collecting signatures for the recall petitions and stated that she mostly provided notary services during her working hours and that it was "uncommon" for her to provide those services outside of her working hours at IVGID. (Id. at p. 45:7-19). During the hearing, Complainant produced her notary log but admitted that not a single person from the District asked to see her log. (Id. at p. 124:9-11). Though Complainant stated it was her opinion the District was aware she was notarizing recall petitions while on duty, she could not provide any evidence to support her opinion. (Id. at p. 124:12-14). Complainant tried to justify her belief that the District was aware she was notarizing petitions while on duty by stating that she believed "they saw these individuals come into the building." (Id. at p. 124:15-19). However, Complainant offered no testimony or evidence that Dent or Schmitz observed people getting recall petitions notarized, or any other member of the Board (or management) for that matter. (*See* id. at pp. 124:20-25; 125-127:1).

Mark Herron, Complainant's husband, contributed to both committees seeking to recall Dent and Schmitz. (**Exhibit 14**, p. JOINT 62; **Exhibit 15**, p. JOINT 70). Mark Herron made the contributions in his name only and the public disclosure of the contributions did not occur until November 27, 2023. (**Exh. 14** at p. JOINT 60; **Exh. 15** at p. JOINT 69). Complainant admitted that she had no written evidence that anyone in the District was aware that her husband contributed to the campaigns prior to November 27, 2023 and could not offer evidence otherwise of her belief that the District was aware prior to November 27, 2023. (*See* id. at pp. 132:8-25; 133-136:1-19). The recall efforts were ultimately unsuccessful and terminated on or about March 22, 2024. (**Exhibit 17**).

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C. COMPLAINANT'S PAID ADMINISTRATIVE LEAVE AND THE DISTRICT'S INVESTIGATION.

In early November 2023, a concern arose that Complainant was using the District's email search system, Barracuda, for improper purposes. There was no formal, written complaint lodged with the District. (Trans., Day 2, p. 44:19-21). Then-interim General Manager Mike Bandelin ("Bandelin") testified that Bobby MaGee ("MaGee") told Bandelin that Schmitz expressed her concerns that the Complainant had engaged in misconduct and MaGee told Bandelin that the District should look into Complainant's activity on the Barracuda system. (Id. at pp. 44:22-25; 45-46:1).[1] Indeed, on November 8, 2023, Information Technology Director Mike Gove ("Gove") generated an audit log of Complainant's activity in the Barracuda system and forwarded it to Schmitz, per her request. (**Exhibit 1**, p. JOINT 2). Bandelin was copied on the email from Gove and Schmitz forwarded the activity log to Magee that same day stating, "Mike got it."[2] (Id.) Former Human Resources Director Erin Feore ("Feore") also testified that it was MaGee who made the complaint against Complainant. (Trans., Day 2 at p. 133:13-18). According to Feore's understanding of the situation, MaGee originally had concerns that Complainant disseminated information from the Finance Department and once he learned that Complainant had been given access to the Barracuda system and viewed the .csv activity log, MaGee "immediately" went to Bandelin and said "we have a problem." (Trans., Day 2 at p. 134:2-24).

Bandelin, as interim General Manager, inquired of IVGID's General Counsel as to how to address the concerns/allegations and determined that an investigation would be conducted. (Id. at pp. 43:10-25; 44:1). He explained that he wanted an outside firm to conduct the investigation because he wanted to "make sure there was a clear understanding that [Complainant] had not done what she was not supposed to do by using this system." (Id. at p. 53:1-12). Bandelin explained

[1] Bandelin also stated former IT Director Mike Gove ("Gove") told him about Schmitz' concerns, though Bandelin could not recall the specifics of Gove's comments in this regard. (Trans., Day 2 at p. 45:1-21).

[2] It is unclear which "Mike" Schmitz was referring to in her email – Bandelin (i.e., "Bandelin received the activity log) or Gove (i.e., Gove obtained the activity log).

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that, based upon his personal experiences with Complainant, he did not believe she would have misused the Barracuda system. (Id. at pp. 53:16-19; 72:10-20; 73:2-12).

On November 15, 2023, Complainant was called into a meeting with Bandelin and Feore. (*See* Trans., Day 1 at p. 83:2-7; *see also* **Exhibit 4**, p. JOINT 22). During that meeting, Complainant was given a letter notifying her that she was being placed on paid administrative leave pending the outcome of an investigation. (**Exhibit 3**). The letter advised Complainant that she would continue to receive her full salary and all benefits during her leave of absence, but that she was not permitted to perform her IVGID duties during that time. (Id.)

That same day, Feore reached out to attorney Paul Anderson ("Anderson") to inquire as to whether he was available to serve as an outside investigator on the matter. (**Exhibit 57**). On November 17, 2023, Anderson sent the District an engagement letter, retaining him and his firm as to the investigation into allegations of misconduct on the part of Complainant. (**Exhibit 5**). On December 18, 2023, Anderson sent the District a revision to the original engagement letter for the investigative services. (Id. at pp. JOINT 31-33). Complainant was not told why she was being placed on leave at the time she was given the letter and Feore testified this was upon the advice of general counsel and then again by Anderson. (Trans., Day 2 at pp. 131:25; 132:1-22). Feore explained the reason she was given as to why Complainant was not given notice of why she was being placed on paid leave:

> A. The concern was that if the allegations or suspicions that Ms. Herron was using her position improperly to notify members of the public of confidential information that they wouldn't otherwise have gotten through public records, that she could – I'm paraphrasing here, circle the wagons and impede the investigation, the integrity of the investigation.

(Id. at p. 132:3-9).

The Complainant was interviewed by Anderson on February 1, 2024. (*See* **Exhibit 4** at p. JOINT 26). Although Complainant was not told in the letter as to why she was being investigated and did not learn of the same until she met with Anderson, she clearly was aware beforehand that the investigation centered around her conducting unauthorized searches because she wrote on December 29, 2023 in her contemporaneous notes:

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Random thought – if this investigation is about me doing random searches, are you also investigating Gove who has stated, in a number of Sr Team meetings, so there were witnesses, that he knows stuff? Seems to me if it's only me, this supports retaliation.

(**Exhibit 4** at p. JOINT 25). When asked about this entry in her "journal" Complainant stated that no one (allegedly) told her this was the focus of the investigation, but rather "random searches" were the only thing she could think of that would be investigated because she was aware trustees had previously inquired about her email searches. (Trans., Day 1 at pp. 145:6-25; 146:1-4). Notably, Complainant testified that she was aware trustees had inquired of every General Manager about Complainant's email searches and Complainant confirmed these requests predated the recall petitions against Schmitz and Dent. (Id. at pp. 146:11-25; 147-148:1).

Anderson completed his investigation and found no policy violation or misconduct.[3] (Trans., Day 2 at p. 163:5-17). Though Complainant took issue with the length of time the investigation took to complete, Bandelin testified that the actual task and amount of data required for the investigation took much longer than he anticipated. (Trans., Day 2 at p. 74:6-11). Feore testified it took her "weeks" to conduct a sample review of the Barracuda searches and compare them to public records requests. (Trans., Day 2 at p. 161:3-14). Complainant was advised on February 21, 2024 that the investigation was complete and that she could return to work as soon as possible. (**Exhibit 4** at JOINT 37).

D. THE COMPLAINT.

Complainant filed her Complaint with the Employee Management Relations Board ("EMRB") on May 3, 2024. (**Exhibit 22**). In her Complaint, she alleges that she was discriminated against for personal or political reasons in violation of Nevada Revised Statute 288.270(1)(f). (Id. at ¶¶ 40-45).[4] Complainant alleged that the District placed her on administrative leave for political reasons based upon her involvement in the Dent and Schmitz recall petitions. (*See* id. at ¶¶ 16-45).

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[3] Complainant and her attorney requested a copy of Anderson's report, but the District (appropriately) asserted attorney-client communication/work-product privileges.

[4] Complainant also included Nevada Revised Statute 281.370(1) and (2), as well Nevada Revised Statute 288.280, but those aspects of the claim were dismissed by the EMRB upon the District's Motion to Dismiss.

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Specifically, Complainant alleged that her leave was based on her husband donating to the recall campaigns and her "presumed involvement in the effort to recall [Dent and Schmitz]." (Id. at ¶¶ 13-13, 16).

IV. LEGAL ARGUMENT

The Complainant's claim for political discrimination was not established by Complainant and should be dismissed. First, the Complainant did not suffer an adverse employment action, which is a necessary element to her claim and, even if she did, she failed to prove that her political activity was a motivating factor for any conceivable adverse action. Second, even if the EMRB were to conclude Complainant met her burden of establishing a prima facie claim, the District presented ample evidence that it would have taken the same action independent of the protected activity and that its actions were legitimate, non-discriminatory, and not mere pretext.

A. THE ENTIRETY OF COMPLAINANT'S CASE FAILS BECAUSE SHE DID NOT SUFFER AN ADVERSE EMPLOYMENT ACTION.

At the outset, the District argues that Complainant's discrimination claim under Nevada Revised Statute 288.270(1)(f) fails because she did not suffer any adverse employment action. Nevada Revised Statute 288.270 provides, in relevant part:

> **NRS 288.270 Employer or representative; employee or employee organization.**
>
> 1. It is a prohibited practice for a local government employer or its designated representative willfully to:
>
> . . .
>
> (f) 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.
>
> . . .

Nev. Rev. Stat. 288.270(1)(f). The Nevada Supreme Court has held that 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

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> 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 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 144 S.Ct 1455 (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

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> 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).

Here, the Complainant asserts that being placed on paid administrative leave constituted an adverse employment action and the same was for her perceived or actual participation in the recall efforts. Setting aside the evidentiary deficiencies in the merits of the claim, Complainant cannot maintain the claim because placement on paid administrative leave is not – as a matter of law – an adverse employment action. There is no question the Plaintiff was provided with all her benefits and wages while she was on her leave of absence, as she admitted as much at the hearing:

> **Q. And you continued to accrue your benefits, insurance, supplemental insurance, retirement benefits, correct?**
>
> A. Yes.
>
> **Q. And you were an exempt employee at the time – at the time, so you weren't eligible to (sic) any overtime compensation, correct?**
>
> A. Correct.

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Q. And you didn't lose any salary or benefits during the paid administrative leave?

A. Correct.

Q. So essentially, you got your full benefits, wages, and otherwise during this 14 weeks you were on paid administrative leave, but weren't required to come into the office and work every day or work from home?

A. Correct.

(Trans., Day 1 at pp. 139:7-25; 140:1). Complainant tried to assert she was not able to take a vacation while she was on paid administrative leave, but admitted in cross examination that the letter placing her on leave did not state she was unable to take vacation time, and admitted that she did not even ask to take a vacation (e.g., she was never denied a vacation request). (Id. at pp. 140:2-25; 141:1-25). As such, there can be no dispute that the Complainant did not suffer an adverse employment action, as a matter of law, and therefore the entirety of her claim fails.

The District anticipates Complainant will argue that the District's own policies demonstrate her paid leave constituted a suspension and, therefore, "discipline." But this argument fails because the technical reading of the policies does not comport with the pragmatic realities of employment law or this case.

IVGID Policy 12.5 states:

12.5 Administrative Leave During Disciplinary Proceedings

> By notifying an employee, the District may place an employee on administrative leave, with or without pay pending an investigation of alleged misconduct or performance deficiencies, prior to or during a disciplinary proceeding, or during the review of the employee's response to a proposed disciplinary action. The notice will include a statement that the leave is not a disciplinary action. An employee placed on administrative leave without pay who is later reinstated without disciplinary action being taken will be reimbursed for any pay lost during the administrative leave.

(**Exhibit 39**, p. JOINT 307). There is no dispute that the letter placing Complainant on paid administrative leave did not state that the leave was not disciplinary, but the omission of this technical requirement does not convert the paid leave into discipline. Indeed, Feore, who was the Director of Human Resources at the time, testified that not only was Complainant never disciplined, but that "[d]iscipline was never discussed." (Trans., Day 2 at pp. 176:4-9; 177:12-15).

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Complainant's argument in this regard is really the textbook definition of form over substance, in that she is attempting to argue that because her leave notice did not say the leave was not discipline, her paid leave was actually discipline. This is a hyper-technical reading and application the Policy, as the evidence clearly demonstrates that, at no time, did Complainant receive any discipline.

Likewise, Complainant's policy argument over the definition of "suspension" is unpersuasive to demonstrate Complainant was disciplined. Under the District's Progressive Discipline policy, "suspension" is defined as:

> 3. Suspension – Involuntary absence for a specified period of time not exceeding five (5) days. Generally, when a suspension is for disciplinary purposes, it is without pay. However, there may be instances where suspension is imposed with pay, such as when an employee is suspended with pay pending the results of an administrative investigation or given decision day.

(**Exhibit 41**, p. JOINT 315). The definitions section of the Personnel Policies also states that a "suspension" is the "temporary separation from service, with or without pay, of employee disciplinary reasons or pending investigation of an employee's conduct." (**Exhibit 51**, p. JOINT 387). "Disciplinary actions" is defined as, "A suspension (generally without pay), involuntary demotion, reduction in pay, discharge, written reprimand and/or verbal warning." (Id. at p. JOINT 383). Finally, under "Due Process" the policy states:

> Prior to taking disciplinary action involving suspension, reduction in pay, demotion or termination, the District will take action to ensure the employee is afforded due process. Due process in regard to employment-related disciplinary action includes making certain the employee is provided notice of the reason for disciplinary action and is given the opportunity to provide a response to the proposed disciplinary action prior to the suspensor/manager making a final decision regarding disciplinary action.

(Id. at p. JOINT 316-317).

While the District concedes the policy language is somewhat confusing, the focus and analysis must revolve around (1) the intent and realistic application of the policy; and (2) the facts of the case at bar. First, the evidence was unrefuted – Complainant was not "disciplined" and did not receive any discipline in her personnel file. "'Discipline' means "to punish.'" *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 900 (2002) (quoting *Webster's Third New International Dictionary* 645 (1968)). More pointedly, the EMRB found that "a disciplinary matter

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is one that is intended to punish an employee." *Jenkins v. Las Vegas Metropolitan Police Dep't*, Case No. A1-046020, Item No. 775A, *9 (Jan. 24, 2013). In this case, there was no discipline imposed, as explained *supra*. Moreover, there is no evidence to demonstrate that the District *intended* to discipline Complainant *vis a vis* the investigation or the paid leave of absence. In fact, the evidence presented during the hearing showed that the initiation of the investigation was to provide an independent opinion on Complainant's innocence, as explained by Bandelin:

> **Q. Why was Ms. Herron being investigated?**
>
> A. I – I wanted to have an outside firm investigate Susan Herron for what we spoke of briefly earlier of the – how – how do you say – of the thought or allegations from what I learned from Mr. Magee and Mike Gove that Susan may have been looking – using a system call Barracuda to review emails outside of the – what the software was deemed purpose – purposeful for a public records request. The investigation was – I prompted the investigation ***to be able to make sure that there was a clear understanding that Susan had not – done what she was not supposed to do by using this system.***

(Trans., Day 2 at pp. 52:25; 53:1-12) (emphasis added). Bandelin confirmed that, upon the advice or General Counsel, he initiated the investigation and approved the hiring of the outside investigator, Anderson. (*See* id. at pp. 43:18-25; 44:1-7). Bandelin confirmed in his testimony that Schmitz never told Bandelin to terminate Complainant and that he had no conversations with Schmitz prior to placing Complainant on paid administrative leave. (Id. at p. 46:5-11). If the District truly intended to punish/discipline Complainant, it could have placed her on unpaid leave at the start, not engage outside counsel to conduct an independent investigation, do its own investigation, sustain Complainant for violating policy, then terminate her. The District, however, *did the exact opposite* and took appropriate measures to investigate the allegations/concerns and arrive at an objective, fair conclusion. Indeed, Bandelin did not make the decision to open an investigation and place Complainant on paid leave in a vacuum – he sought advice of counsel and hired an outside investigator, which even Complainant's witnesses admitted was a best practice. (*See* Trans., Day 1 at p. 238 (Magee: "I would say so, yes. I – I would certainly engage in – in an outside investigator."); Trans., Day 1 at p. 272:17-24 (Windquest: Testified that one of the first things you do in the investigative process is engage legal counsel and typically follow counsel's advice). While Complainant could not possibly fathom how the District could possibly investigate

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her, the reality is that a concern was raised as to Complainant's use of the Barracuda system and the District took the appropriate action to investigate those concerns – no matter how meritless the concerns according to Complainant. To find otherwise (e.g., that employers cannot conduct investigations or place employees on paid administrative leave without inflicting an adverse employment action), would produce absurd results and effectively handcuff employers from conducting *any* investigation without the risk of generating an unfair labor practices complaint.

Additionally, application of the due process aspect of the policy in Complainant's case would make no sense. Again, the policy states that the employee must be given "notice of the reason for disciplinary action" and "the opportunity to provide a response to the proposed disciplinary action prior to the supervisor/manager making a final decision regarding disciplinary action." (**Exhibit 41** at p. JOINT 316-317). Again, there was no disciplinary action taken (or proposed) by the District and, therefore, the due process policy was not activated. Moreover, Feore testified that at the time Complainant was placed on administrative leave, the District did not even have a full understanding of the data contained in the .csv file *vis a vis* the public records requests and, as such, there was nothing for Complainant to respond to. (Trans., Day 2 at p. 177:2-11). Complainant also cannot persuasively argue that because she was not given advanced notice of why she was being placed on leave constituted an adverse employment action, as there is no policy of the District, nor law that mandates the same – something even Complainant admitted to. (Trans., Day 1 at p. 137:21-25).

Given the foregoing, the EMRB should find in favor of the District because Complainant was not exposed to an adverse employment action and, therefore, cannot even meet the most basic element of her prima facie claim. Complainant admitted she suffered no monetary loss, loss of benefits, or any other legal injury as a result of the investigation and there is no evidence the District's decision to investigate the Complainant and place her on leave was motivated by a desire to discipline Complainant. As such, it cannot be said she was disciplined or suffered an adverse action and the claim must be dismissed.

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B. EVEN IF PAID ADMINISTRATIVE LEAVE COULD LEGALLY BE CONSIDERED AN ADVERSE ACTION, COMPLAINANT FAILED MEET HER BURDEN OF PROVING A POLITICAL DISCRIMINATION CLAIM.

Notwithstanding the foregoing, Complainant failed to meet her burden of establishing that she was investigated and placed on paid administrative leave because of her political or personal affiliations or activities. As referenced above, in order to prove a claim under Nevada Revised Statute 288.270(1)(f), the Complainant must show that her protected activity was a motivating factor in the District's decision. *Bisch*, 129 Nev. at 340. "[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). If a complainant makes this initial showing, the burden shifts to the employer to demonstrate, by a preponderance of the evidence, that it would have taken the same course of action in the absence of the protected conduct. *Id.* at 340. At that point, the burden shifts back to the complainant to prove that the proffered, legitimate explanation was pretextual. *Id.* Here, Complainant's claim must be rejected.

First, the Complainant did not produce sufficient evidence to show that the District placed Complainant on paid administrative leave or conducted the investigation based on her protected activity. The Complaint identified the protected activity the Complainant believes was the motivating factors for the paid leave and investigation, to wit: (1) her perceived support for the recall petitions of Dent and Schmitz; and (2) her husband's financial contributions to the committees to recall these Trustees. (**Exhibit 22** at ¶¶ 14-19). The evidence showed that Schmitz' apparent dislike and negative treatment toward Complainant started well before the recall petitions were filed. Indeed, Windquest testified that Schmitz and Dent voiced their concerns and opposition about Complainant "from the day they got on the board," which was 2020. (Trans., Day 1 at p. 270:1-14). In fact, he admitted that Dent, Schmitz, and Tulloch expressed their displeasure with Complainant before she ever signed the recall petitions. (Trans., Day 1 at p. 275:3-8). Thus, any perceived animosity demonstrated by Schmitz and/or Dent could not have solely been attributed to the recall petition, as the evidence showed this perceived behavior existed some three years

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before the recall petitions were filed. Moreover, Magee testified that Schmitz was not only aggressive and demeaning to Complainant, but rather that Schmitz acted that way with "numerous people." (Trans., Day 1 at pp. 224:3-9; 236:9-22). While Complainant apparently would like to be the lone martyr in this respect, the evidence proved she was not unique in this respect.

Further, Magee admitted under cross examination that neither Schmitz nor Dent ever told him that they wanted Herron fired because she signed the recall petitions. (Trans., Day 1 at p. 237:11-24). Bandelin testified that he was never told by Schmitz to fire Complainant and he also testified that he never had a conversation with Schmitz prior to placing Complainant on paid administrative leave. (Trans., Day 2 at p. 46:9-11). Complainant also admitted that other IVGID employees signed the recall petitions but, like her, none of those employees were fired. (Trans., Day 1 at p. 127:2-6). She initially testified that none of these other employees were even subject to an investigation, but then tried to downplay this testimony by stating she heard another employee, Tim Buxton, was "investigated" regarding his outside business interests; which according to Complainant was something the District had inquired about previously. (*See* Trans., Day 1 at pp. 128:1-25; 129:1-7). Complainant admitted, however, that she had no personal knowledge of the "investigation" and admitted that there was no outside investigator, to her knowledge, that was retained to conduct an investigation and, instead, likened it to an inquiry – much like when Complainant's notary status was inquired (not investigated) about. (*See* id. at pp. 128:6-22; 129:7-8). Though Complainant said she believed this Buxton inquiry was because he signed the recall petition, she did not even have any idea of when this alleged inquiry occurred. (Id. at p. 130:3-8).

Second, there is absolutely no evidence to demonstrate Complainant was placed on paid administrative leave and because of her husband's campaign contributions to the recall efforts. At the outset, the District directs the EMRB to the date of public disclosure of the contributions. The evidence was uncontroverted regarding the fact public disclosure of Mark Herron's political contributions to the recall campaigns occurred on November 27, 2023. **(Exhibits 14** and **15)**. Complainant was placed on paid administrative leave on November 14, 2023 **(Exhibit 3)** and the

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.csv file generated by Gove and sent to Bandelin, Schmitz, and Magee occurred on November 8, 2023 **(Exhibit 1)**. *All of these actions occurred before the public disclosure of the campaign contributions.* Thus, it is impossible for Complainant to link her husband's campaign contributions to her leave or the investigation. Moreover, Complainant's attempt to fabricate some plausible justification for her belief in this regard warrants no consideration. Specifically, when pressed with the reality that the date of disclosure of the contributions occurred after Complainant was placed on paid leave, she concocted a theoretical story that "someone on the [recall] committee probably blabbed it[.]" (Trans., Day 1 at p. 133:2-7). However, Complainant could not offer any more information as to who, specifically "blabbed" it, when it occurred, or who (other than the organizer of the recall effort) was even at this alleged meeting. (*See* id. at pp. 133:7-25; 134-136:1-15). Setting this aside, it would not make any sense for a party aligned with Schmitz or Dent to even be at a private meeting with the organizers and supporters of the recall effort and, again, Complainant had absolutely no evidence to even suggest anyone from the District was even present or aware. Also, it should be noted that there are no entries in Complainant's journal **(Exhibit 4)** indicating she was made aware of the District learning of the contributions – which is a piece of information she surely would have included in that journal if the same actually occurred.

Also, it should be noted that Complainant testified that Schmitz and Dent had problems with Complainant's performance at the District ***before*** the recall effort was underway:

> **Q. I believe you testified that Trustees Dent and Schmitz had some problems with your performance prior to –**
>
> A. Yes.
>
> **Q. So before any of the political issues related to the recall efforts for Trustees Dent and Schmitz, you testified that they had, Dent and Schmitz, had some issues or concerns with your performance in your role?**
>
> A. To the best of my knowledge, yes.
>
> **Q. And they did vocalize those opinions?**
>
> A. Not to me directly.
>
> **Q. To the general manager?**
>
> A. That is correct.

Q. And that is how it worked, right? They would vocalize to the general manager, at least?

A. That is correct.

(Trans., Day 1 at p. 114:4-20). This testimony was corroborated by Windquest, who testified Dent and Schmitz expressed their concerns about Complainant's performance starting as early as 2022. (Id. at pp. 270:1-6; 275:3-8). Similarly, Complainant testified that Schmitz' request to general managers to review Complainant's emails were "routine," occurred with every general manager Complainant worked for, and occurred prior to the recall effort. (*See* id. at pp. 146:5-25; 147:1-25; 148:1).

In fact, Windquest testified that Dent asked him about inquiring into Complainant's email activity because Dent was concerned that Complainant was using District resources for personal reasons and disclosing Board business to the community. (Id. at p. 270:15-23). Windquest testified this inquiry occurred in late 2022, early 2023 (e.g., before the recall effort) and admitted that it was against District policy to engage in political activity while on duty and/or using District email systems. (Id. at p. 271:3-12). He also admitted that if an employee was using District email for political activity or on work duty, the same would be a violation of policy. (Id. at p. 271:13-22).

Again, the Complainant's own testimony demonstrates that the perceived improper conduct on the part of Dent and/or Schmitz occurred prior to any recall effort and, as such, cannot serve as a basis to prove that the District (not the Trustees) placed Complainant on paid leave while it conducted an investigation because of Complainant's participation in the recall efforts.

Third, Complainant's testimony about her treatment by Schmitz upon her return from leave did not constitute an adverse employment action and, in fact, Complainant did not allege any such post-return actions in her Complaint. As such, the EMRB should not consider the same in this action. Nonetheless, to the extent the EMRB is inclined to entertain Complainant's allegations in this respect, it is clear that she suffered no adverse employment action.

For example, Complainant testified that Schmitz was harsh toward Complainant during public meetings and that she would be given tasks that were impossible to achieve. (*See* id. at p. 156:3-8). Complainant, in this regard, stated that she would produce a draft policy and Schmitz

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would take over for the Board and berate her and, when Complainant would make revisions to the draft policy, it would take multiple meetings for the Board to approve the policy. (Id. at p. 156:9-16). Confusingly, however, Complainant testified that it was not uncommon – generally – for the Board to take more than one meeting to approve a policy. (Id. at p. 156:17-22). That said, Complainant admitted that just because the Board did not "rubber stamp" Complainant's policies, that did not mean they were treating her adversely. (Id. at p. 158:11-14).

Next, Complainant took issue with the District's investigation of her harassment complaint she lodged almost immediately upon her return to work. (*See* id. at 164:5-8). First, it cannot be said the District did nothing in regard to the harassment complaint, because Complainant herself was interviewed (id. at p. 165:3-6) and the District's Human Resources department was in communication with Complainant regarding the status of the investigation, to include other interviews. (*See* **Exhibit 9**). However, the Complainant filed the instant Complaint with the EMRB a week after the District notified her that it was still investigating the claim. (Id. at p. 164:14-20). As such, the District was now put in the position that the exact allegations lodged in the harassment complaint were included in an action filed with the EMRB. It is not unreasonable for an employer to shift its focus of an internal investigation to defense of a lawsuit when both actions contain identical allegations.

Even if the EMRB were to find that Complainant made her prime facie case of political discrimination, the District presented evidence that its actions were legitimate and that it would have taken the same action absent the protected activity. Complainant admitted that, generally speaking, if the District had concern that someone was using the Barracuda system or looking at others' emails for an improper purpose (e.g., out of curiosity) that the same would be wrong and that the District would be correct in investigating such a concern:

> **Q. Did you ever use the Barracuda system or your access to everyone's emails to go look into other people's emails just for curiosity?**
>
> A. No.
>
> **Q. For anything unrelated to public records?**
>
> A. NO.

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Q. Would you agree that if you did that, that would have been wrong?

A. I would agree that that would have been wrong.

Q. Right. And if so – that was a concern or suspicion or an accusation that might possibly happen, the district would be okay in investigating to see if that –

A. Sure –

Q. Right? They don't – they don't need to just take your word that, I don't I would never do that, right?

A. Correct.

(Id. at pp. 167:16-25; 168:1-13). Considering Complainant was solely responsible for keeping track of public records requests for the District at the time (which consisted of an Excel spreadsheet and Word document only Complainant managed) at the very least an inquiry into the information on the .csv activity log was necessary. Further, Feore credibly testified the process of reviewing and comparing the data took her weeks to complete; so this was not some minor undertaking (despite Complainant's counsel to the contrary). Feore also testified that independent of any recall elections, the District would have taken the same action:

Q. Independent of that, so let's set aside a scenario where there's -- someone signs a recall petition. Had the – if the District were aware of an allegation that someone was going through people's emails without authority or improperly but with authority, would the District still have done an investigation?

A. ***Yes, absolutely.***

(Trans., Day 2 at p. 174:12-19) (emphasis added). In this respect, the evidence is unrefuted and there can be no question that initiating the investigation was for legitimate reasons. The true reason why Complainant believed the District took the action it took had nothing to do with her political activities. Instead, the real reason for Complainant's belief is her ego, as exemplified by her testimony at the hearing:

Q. And you felt *disrespected that someone at your tenure would be investigated,* right?

A. ***Correct.***

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(Trans., Day 1 at p. 165:13-16)(emphasis added). Complainant's grievance has nothing to do with her political activity but has everything to do with her ego and her admitted belief that because she had been at the District for so long, she was immune from inquiry and scrutiny by her employer – even if it involved an allegation of misconduct. As such, the District met its burden of proffering a legitimate, non-discriminatory reason for its actions and that it would have taken the same action irrespective of the Complainant's political activity.[5]

V. **CONCLUSION**

Given the foregoing, the District respectfully requests the EMRB deny Complainant's claim and issue a decision and order finding no violation of Nevada Revised Statute 288.270(1)(f). Complainant failed to prove her claim and, even if she met her burden of establishing a prima facie claim, the District met its burden of establishing that its actions were legitimate and that it would have taken the same action in the absence of the alleged protected activity.

Dated this 15th day of July, 2026.

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[5] It is worth pointing out that the Complainant cannot turn her husband's political contributions as her own protected activity and that she admitted that she did not consider notarizing recall petitions as political activity. (Trans., Day 1 at p. 136:21-23).

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 15th day of July, 2026, I served a copy of the foregoing **RESPONDENT'S BRIEFING REGARDING EMRB'S AUTHORITY TO AWARD DAMAGES** 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:

Alex Velto, Esq.
200 S. Virginia St., Ste. 655
Reno, NV 89501
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