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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF NEVADA**  
10 **UNLIMITED JURISDICTION**

11 GINA WILL,  
12 Contestant  
13 vs.  
14 ROB TRIBBLE,  
15 Defendant.

Case No. CU0000159

(Assigned to the Honorable Judge S.  
Robert Tice-Raskin - Department 6)

**CONTESTANT GINA WILL'S  
REPLY BRIEF**

Trial Date: October 31, 2022

Time: 9 a.m.

Dept: 6

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22 GREGORY DIAZ, in his official capacity  
as Nevada County Registrar of Voters;  
23 and ROES 1-25,

24 Real Parties in Interest.  
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1 **INTRODUCTION**

2 In short, Mr. Tribble’s opposition brief does not provide any factual or legal  
3 justification for him to be eligible to run for or serve in the important public office of  
4 Nevada County Auditor-Controller. The opposition brief does not object to Contestant’s  
5 description of the law or the facts, and does not challenge the opinion of the Association  
6 of County Auditors or Contestant’s expert. Instead, it tries to argue – with no legal  
7 citations or expert opinion – that someone whose only work experience in the last five  
8 years has been three part-time consulting gigs, two of which are for ventures which have  
9 no employees, no offices and no revenue, and none of which entail managing any  
10 employees or a budget, is qualified to oversee a multi-million dollar, essential County  
11 government organization. Mr. Tribble’s arguments are wrong, and the Court must  
12 intervene to stop this violation of the law and to protect the integrity of the County’s  
13 electoral system.

14 **RESPONSES TO OPPOSITION BRIEF ARGUMENTS**

15 1. **The Opposition Brief Admits that Mr. Tribble Has Not Had Any Recent**  
16 **Relevant Work Experience.**

17 The opposition brief touts Mr. Tribble’s work at “major corporations,” including  
18 Integral Systems and Rand, as the way he meets the requirements of section 26945(b), but  
19 also acknowledges that he held these positions years ago, well before the five-year  
20 window specified in the statute. What he did for these corporations and whether his job  
21 responsibilities at those corporations were similar to a county auditor’s office is irrelevant  
22 to the Court’s consideration of this election contest. The law is crystal clear that Auditor-  
23 Controller candidates must have recent comparable experience; Mr. Tribble’s only work  
24 during the past five years has been three, part-time consulting gigs which do not come  
25 close to meeting the requirements of the law. The court should ignore the references in  
26 the opposition brief to this prior work experience, and look only at his work experience  
27  
28

1 during the last five years.<sup>1</sup>

2 2. The Opposition Brief Ignores that Mr. Tribble’s Part-time Consulting Gigs  
3 Were Not **Similar to** a County Auditor’s Duties.

4 The opposition brief claims that Mr. Tribble’s part-time consulting gigs were  
5 “management positions” – but completely fails to acknowledge that the statute also  
6 requires the positions to “deal with fiscal responsibilities similar to” a county auditor.  
7 (Cal. Govt. Code section 26945(b).) The Association of County Auditors has outlined the  
8 myriad functions and duties of a county auditor, and Mr. Tribble admitted during his  
9 deposition that he has not performed any of these functions in his part-time consulting  
10 gigs. (Tribble Depo., 50:24-25; 57:19-60:4; 88:17-22; 104:1-106:5.)

11 The opposition brief is wrong when it claims that the statute does not require  
12 county auditor candidates to have worked on internal audits, financial statements or  
13 payroll. (Opp. brief, 5:18.) Quite to the contrary, the statute explicitly requires that the  
14 recent jobs held by candidates entail “fiscal responsibilities similar to” a county auditor.  
15 Mr. Tribble has not questioned the list of functions and duties outlined by the  
16 Association, and the Court should rely on the expertise and experience of the Association  
17 in order to conclude that Mr. Tribble has not performed such functions in the last five  
18 years and is therefore not eligible to serve in the office.

19 3. The Opposition Brief Claim that the Part-Time Consulting Gigs Constitute  
20 “**Management**” Is Nonsensical.

21 The opposition brief claims that the part-time consulting gigs constitute  
22 “management” because Mr. Tribble “managed” the company project and the patent  
23 project. (Opp. brief, 3:27.) Claiming that managing one’s own work is what the law  
24 intended is absurd. Of course Mr. Tribble managed his own work, but he did not manage

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25 <sup>1</sup>Government Code section 26945.1 highlights that the focus is on recent work  
26 experience. This section requires county auditors to take a certain number of continuing  
27 education hours every year in order to maintain their expertise in fiscal matters. A person  
28 who has not had recent experience in fiscal matters of course can not continue to build on  
this expertise.

1 any employees, did not manage an organization’s budget, did not manage any divisions  
2 and did not manage part of an organization, or an organization’s P&L. (Tribble Depo.,  
3 58:9-12; 59:1-8; 116:22-24.) The opposition brief also ignores that the definition of the  
4 term “management” includes “the collective body of those who manage or direct an  
5 enterprise.” Because the part-time consulting gigs did not entail any management  
6 responsibilities, they by definition do not meet the statutory requirements.

7 4. The Opposition Brief’s Definition of the Term “**Position**” is Far Too Broad.

8 The opposition brief claims that the law does not require the recent positions held  
9 by county auditor candidates to constitute employment, or to be full-time, or even to be  
10 paid. The opposition brief thereby effectively argues that three years of part-time,  
11 volunteer work as an independent contractor qualifies someone to run a multi-million  
12 dollar organization with hundreds of employees. Mr. Tribble does not provide any legal  
13 citations or expert opinion to support this argument.

14 Although the law does not explicitly use the terms “job,” “full-time” or  
15 “compensated,” the words and legislative intent of the law strongly imply full-time, paid  
16 employment. Specifically, the law says that county auditor candidates must have “served  
17 in” a position “in a” public agency, private firm or nonprofit organization on a  
18 “continuous” basis. A person can only really serve in a position on a continuous basis if  
19 he or she has a full-time, paid job.

20 In any case, Mr. Tribble does not point to any references in the legislative history  
21 of section 26945(b) or any other materials which supports the position that part-time  
22 consulting gigs count as “positions.”<sup>2</sup> Requiring county auditor candidates to have full-

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23  
24 <sup>2</sup>Although it seems clear that the Legislature intended county auditor candidates to  
25 have worked as a employee on a full-time basis at a public agency, private firm or  
26 nonprofit organization when adding subsection (b) to the law, it may be possible that full-  
27 time work for three plus years as a high-level consultant to upper management of a public  
28 agency, private firm or nonprofit organization, perhaps at a large national consulting firm  
such as a Bain or Boston Consulting Group, may satisfy subsection (b). This factual  
scenario, however, is not before the court in this case.

1 time, paid job experience in a comparable organization relates directly back to the  
2 underlying public policy purpose of subsection (b): to make certain that county auditor  
3 candidates have recent work experience which is relevant to their duties if elected. Mr.  
4 Tribble of course has no such recent, relevant work experience.

5 5. The Opposition Brief Overstates the Effect of the Election Results on this  
6 Election Contest.

7 The opposition brief claims that the Court must defer to the outcome of the  
8 election – but again, does not provide any court cases or other materials to support this  
9 claim. Just because Mr. Tribble garnered more than 50 percent of the vote does not mean  
10 that he is legally eligible to take the office. In short, voters do not have the right to elect  
11 someone who is not qualified for the particular office, whether because the candidate  
12 does not reside within the applicable jurisdiction (Cal. Govt. Code section 1770(e)), is not  
13 18 years old (Cal. Gov. Code section 34904), or because – as is the case here – the  
14 candidate does not possess the requisite academic background or professional experience  
15 required by statute for the particular office. A person who does not meet these  
16 Constitutional or statutory requirements is not legally permitted to serve in the office,  
17 regardless of the vote count.

18 Courts have been willing on numerous occasions to remove someone from office  
19 or from the ballot when it is determined that he or she does not meet the qualifications for  
20 that office. (See, e.g., Daniels v. Tergeson (1989) 211 Cal.App.3d 1204 [court removed  
21 elected Tuolumne County Supervisor from office because he did not meet the registered  
22 voter requirement]; Rawls v. Zamora (2003) 107 Cal.App.4th 1110 [court disqualified  
23 write-in candidate for Santa Clara County Sheriff because he did not meet statutory law  
24 enforcement qualifications]; Boyer v. County of Ventura (2019) 33 Cal.App.5th 49 [court  
25 removed Ventura County Sheriff candidate from ballot because he did not meet statutory  
26 law enforcement qualifications].)

27 Similarly, the California Attorney General has approved numerous quo warranto  
28 actions against public officials who did not meet the qualifications for the office. (See,

1 e.g., 82 Ops.Cal.Atty.Gen. 154 (1999) [Lawsuit may proceed to remove Cal-OSHA Board  
2 member because he lacked a background in management]; 105 Ops.Cal.Atty.Gen. 111  
3 (2022) [Lawsuit may proceed to remove Alameda County Board of Supervisors member  
4 because he did not meet residency requirement];105 Ops.Cal.Atty.Gen. 126 (2022)  
5 [Lawsuit may proceed to remove Los Angeles City Council member because his  
6 appointment violated the three-term limitation in the City Charter]; 104  
7 Ops.Cal.Atty.Gen. 58 (2021) [Lawsuit may proceed to remove Orange County Board of  
8 Education member because he held two incompatible public offices simultaneously]; 101  
9 Ops.Cal.Atty.Gen. 16 (2018) [Lawsuit may proceed to remove Dixon City Council  
10 member because he did not meet the residency requirement]; 97 Ops.Cal.Atty.Gen. 1  
11 (2014) [Lawsuit may proceed to remove Saugus School District Trustee because he did  
12 not meet residency requirement]; 95 Ops.Cal.Atty.Gen. 43 (2012) [Lawsuit may proceed  
13 to remove Arrowbear Park County Water District Board member because he did not meet  
14 residency requirement]; 90 Ops.Cal.Atty.Gen. 82 (2007) [Lawsuit may proceed to remove  
15 San Francisco Board of Supervisors member because he did not meet the residency  
16 requirement]; 86 Ops.Cal.Atty.Gen. 82 (2003) [Lawsuit may proceed to remove member  
17 on the governing board of the Pleasant Ridge Union Elementary School District because  
18 he did not meet the residency requirement].)

19 6. County Auditor-Controller's Office Requires Specialized Experience and  
20 Expertise, Which Mr. Tribble Does Not Have.

21 The Nevada County Auditor-Controller's office has a budget of \$2,426,104,  
22 fourteen employees in four divisions, and the Auditor-Controller oversees the accounting  
23 and reporting for the County's \$330 million budget. The office is required by law to  
24 produce numerous financial reports on a quarterly and annual basis, and millions of  
25 dollars in federal and state funding is contingent on the accuracy and timeliness of the  
26 Auditor-Controller's work. Mr. Tribble did not manage any employees in his three recent  
27 consulting gigs; he did not prepare quarterly or annual reports in order to comply with  
28 federal and state regulations; he did not supervise, hire, train or fire any employees; and

1 he did not conduct audits of or otherwise oversee an organization’s revenues or expenses.  
2 He is not qualified to perform this important public function.

3 A recent decision by a Court of Appeal—discussing how important it is for  
4 candidates for county sheriff to have the specific professional experience outlined in Cal.  
5 Govt. Code section 24004.3 [setting out sheriff candidate qualification  
6 requirements]—provides the clear rationale for not allowing Mr. Tribble to take office:

7 We are quick to observe a commonsense reason why  
8 appellant cannot prevail. Experience is the best  
9 teacher. This is true whether you are a plumber, a  
10 teacher, a doctor, or a lawyer. It also applies to being  
11 the elected sheriff of a county where there are several  
12 hundred deputy sheriffs and several hundred \*53  
13 nonsworn personnel to supervise. It does not matter  
14 how intelligent you are or if you are acting in good  
15 faith. There is a good reason why the Legislature has  
16 imposed an experience requirement. To get a “feel” for  
17 law enforcement, i.e., coming to a true understanding  
18 of it, you must learn about it in the field by doing it.  
19 The People of California have been well served by  
20 personnel who have worked their way up the chain of  
21 command to leadership. Such personnel have years of  
22 practical experience. (Boyer, supra at p. 52.)

23 The Legislature and the Nevada County Board of Supervisors decided to require  
24 candidates for county auditor to have recent, substantive, relevant work experience in a  
25 comparable organization for the same reason: to make certain that the people taking on  
26 this position have a true understanding of what the position entails, and that they have  
27 significant practical experience in overseeing fiscal matters at a large organization.

### 28 CONCLUSION

Because Mr. Tribble has not held senior fiscal management positions whose duties  
are similar to a county auditor for three consecutive years of the last five years, Contestant  
reiterates her request that the Court declare him ineligible for the office and declare Ms.  
Will the winner. Mr. Tribble’s opposition brief – devoid of expert opinion and legal  
citations – does not provide any factual or legal justification for challenging this  
conclusion.

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Respectfully submitted,

THE SUTTON LAW FIRM

Dated: 10/21/2022

By: James R. Sutton *mc*  
James R. Sutton  
Attorneys for CONTESTANT GINA WILL

1 **PROOF OF SERVICE**

2 I am employed in the City and County of San Francisco, State of California. I am over the  
3 age of eighteen years and not a party to the within action. My business address is 150 Post Street,  
Suite 405, San Francisco, CA 94108.

4 On October 21, 2022, I served true and correct copies of the following documents:

5 **CONTESTANT GINA WILL'S REPLY BRIEF**

6 on the following parties and/or their counsel in this action:

7 John D. Maxey, Esq. Counsel for Defendant ROB TRIBBLE  
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11 Katharine Elliott, Esq. Counsel for Real Party in Interest GREGORY DIAZ,  
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15  X  (VIA E-MAIL) I emailed the documents to the parties and/or their counsel as listed above.

16 I declare under penalty of perjury under the laws of the State of California that the above is  
17 true and correct.

18 Executed on October 21, 2022 at Maui, Hawaii.

19 /S/ Bradley W. Hertz  
20 Bradley W. Hertz

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27 **PROOF OF SERVICE**