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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

ZENAIDA DAGUSEN, an individual;
REPUBLICAN NATIONAL COMMITTEE;
NEVADA REPUBLICAN PARTY; and
DONALD J. TRUMP FOR PRESIDENT 2024,
INC.

Case No.: 24-OC-001531B
Dept. No.: 1

Plaintiff,

vs.

FRANCISCO AGUILAR, in his official capacity
as NEVADA SECRETARY OF STATE,
DEMOCRATIC NATIONAL COMMITTEE,
NEVADA STATE DEMOCRATIC PARTY

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM OF LAW REGARDING
REMEDIES AND NRCP 12(b)5 MOTIONS
TO DISMISS**

Defendant.

and

NAACP TRI-STATE CONFERENCE OF IDAHO-NEVADA- UTAH.

Defendant-Intervenor

Plaintiffs ZENAIDA DAGUSEN, an individual and the REPUBLICAN NATIONAL COMMITTEE, the NEVADA REPUBLICAN PARTY, and DONALD J. TRUMP FOR PRESIDENT 2024, INC. (collectively, “Plaintiffs”) hereby submit the following Supplemental Memorandum of Law Regarding Remedies and NRCP 12(b)5 Motions to Dismiss (the “Motions”).

MEMORANDUM OF LAW

The Democratic National Committee and the Nevada State Democratic Party (the “DNC Defendants”) filed a motion to dismiss on October 3, 2024. Francisco Aguilar (in his official capacity as Nevada Secretary of State) (“NV SOS”) filed a motion to dismiss on December 2, 2024. Finally, the NAACP Tri-State Conference of Idaho-Nevada-Utah (“NAACP”) filed a motion to dismiss on January 17, 2025.

The DNC Defendants' motion to dismiss does not substantively address the issue of remedies, nor the issue of availability of remedies, and instead focuses on whether Plaintiffs' complaint states a viable claim under NRCP 12(b)(5). The NV SOS' motion to dismiss does address the issue of standing, but primarily does so from the perspective of a purported "lack of injury," rather than a purported lack of remedies or non-redressability. The NAACP's motion to dismiss¹ is the only one of the three motions that substantively discusses remedies. This Court has allowed the parties to submit supplemental briefing on the issue of how it should rule on the pending motions in the event it accepts the NAACP's arguments regarding remedies.²

A. DISMISSAL UNDER NRCP 12(B)(5) FOR A PURPORTED LACK OF VIABLE REMEDIES WOULD BE UNWARRANTED AND PREMATURE AT THIS JUNCTURE

The NAACP's Motion was very clearly brought solely as a motion to dismiss under NRCP 12(b)(5) for failure to *state a claim*. The introduction and legal standard sections of the NAACP's motion make as much clear.

The plain language of NRCP 12(b)(5) states as follows: “failure to state a claim upon which relief can be granted.” NRCP 12(b)(5) does not state the converse of “failure to state relief upon which a claim can be stated” – which is essentially what the NAACP’s motion seeks to argue. Generally speaking, courts are reticent to grant a motion to dismiss for failure to state a claim on

¹ Filed notwithstanding the proposed answer it provided the Court while seeking intervenor status.

² With respect to the NAACP's arguments, as Plaintiffs noted in their opposition to the NAACP's motion, the requested application of the *Anderson-Burdick* framework, apart from being misplaced (given the lack of a challenged state action in this case), is premature (both the *Anderson* and *Burdick* cases concerned inapposite procedural scenarios not involving a motion to dismiss).

1 the basis of a purported lack of a remedies/deficient prayer for relief. *See, e.g., Rodriguez v. Serv.*
2 *Emps. Int'l*, 755 F. Supp. 2d 1033, 1053 (N.D. Cal. 2010) (“Defendant does not, however, cite

3 authority addressing whether it is appropriate to dismiss a complaint under Rule 12(b)(6) on the

4 basis that the remedies sought in it are unavailable. The Court concludes that it is not, so long as

5 some relief is available.”) (emphasis added); *Segura v. City of La Mesa*, 647 F. Supp. 3d 926,

6 942-43 (S.D. Cal. 2022) (“A ‘prayer for relief does not provide any basis for dismissal under

7 Rule 12.”” (emphasis added, citations omitted); *Summit Tech., Inc. v. High-Line Med. Instruments,*

8 Co., 933 F. Supp. 918, 927-28 (C.D. Cal. 1996) (“... a Rule 12(b)(6) motion ‘will not be granted

9 merely because [a] plaintiff requests a remedy to which he or she is not entitled.’” *Schwarzer, et*

10 *al., Civil Procedure Before Trial* § 9:230. ‘It need not appear that plaintiff can obtain the

11 specific relief demanded as long as the court can ascertain from the face of the complaint

12 that some relief can be granted.”” (emphasis added, citation omitted).

13 This aforementioned judicial reticence is well-grounded in the fact that the course of

14 discovery and the development of the record often has significant bearing not only on the alleged

15 causes of actions, but also on the type of remedies reasonably available to Plaintiffs, which is

16 precisely why Plaintiffs are often not even obligated to elect remedies until the time of trial, and

17 can further amend the complaint during/after trial to conform with the eventual judgment. *See*

18 *generally* NRCP 15(b); *see also United States v. Maricopa Cnty., Ariz.*, 915 F. Supp. 2d 1073,

19 1081-82 (D. Ariz. 2012) (“A 12(b)(6) motion to dismiss challenges the legal sufficiency of the

20 pleadings, not the appropriateness of the relief sought... [A] motion for failure to state a claim

21 properly addresses the cause of action alleged, not the remedy sought... The scope of the relief

22 must match the scope of the harm proven.... This will be determined after discovery.””

23 (emphasis added, citations and quotations omitted). In this case, Plaintiffs are seeking both

24 declaratory and injunctive relief, and it is entirely appropriate for this Court to reserve

25 determination, pending the development of a record and the course of discovery, as to what such

26 relief can and should look like in compliance with the law (and even taking into consideration the

27 concerns raised by the NAACP in its motion).

1 **B. IF THIS COURT DISMISSES BASED ON A LACK OF AVAILABLE**
2 **REMEDIES, SUCH DISMISSAL SHOULD BE *WITHOUT* PREJUDICE**
3 **AND LEAVE TO AMEND SHOULD BE GRANTED**

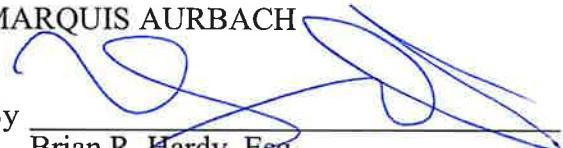
4 As this Court knows, leave to amend, especially during the early stages of litigation, should
5 be freely given. *See, e.g.*, NRCP 15(a)(2) (“The court should freely give leave when justice so
6 requires.”). Denying leave to amend and granting dismissal with prejudice should only be reserved
7 for truly extraordinary circumstances where the Court determines that there is no plausible relief
8 whatsoever that Plaintiffs could potentially be entitled to following the close of discovery.
9 Respectfully, even if this Court believes that dismissal is warranted at this very early juncture
10 based on the NAACP’s remedies arguments, such dismissal should be *without* prejudice and with
11 leave to amend, especially as the NAACP’s arguments regarding remedies are highly fact-specific
12 and fact-dependent, rather than rooted in a threshold question of law.

13 **AFFIRMATION**

14 **(Under NRS 239B.030)**

15 The undersigned does hereby affirm that the preceding document filed in the above
16 referenced matter does not contain the social security number of any person.

17 Dated this 14th day of March, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM OF LAW REGARDING REMEDIES AND NRCP 12(b)5 MOTIONS TO
DISMISS was served on the 14th day of March, 2025 via email as follows:

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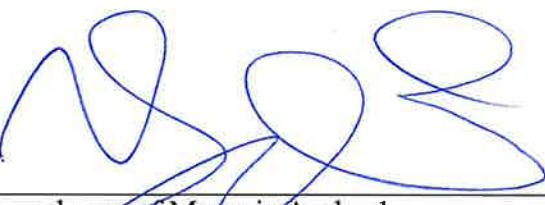
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