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

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

Plaintiffs,

v.

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

Defendants.

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

**DEFENDANTS DEMOCRATIC
NATIONAL COMMITTEE AND
NEVADA STATE DEMOCRATIC
PARTY'S SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION TO DISMISS**

1 At the March 5, 2025, hearing, the Court invited supplemental briefing on how the Court
2 should rule on the pending motions to dismiss if the Court concludes that it cannot order, and
3 Plaintiffs cannot as a matter of law obtain, the relief Plaintiffs seek in their Complaint. Under such
4 circumstances, the Court must dismiss the Complaint.

5 To survive dismissal under Nevada law, a “complaint need only set forth sufficient facts to
6 demonstrate the necessary elements of a claim for relief so *that the defending party has adequate*
7 *notice of the nature of the claim and relief sought.*” *Engelson v. Dignity Health*, 139 Nev. Adv.
8 Op. 58, 542 P.3d 430, 442 (2023) (emphasis added). Here, the Complaint is framed as a demand
9 for a specific set of injunctions and declaratory judgments, and that is the only relief that
10 Defendants have been placed on notice that Plaintiffs are seeking. It would therefore be improper
11 for the Court to deny dismissal on the theory that Plaintiffs might be able to get something else, as
12 Defendants have not had “adequate notice of” any other forms of relief, nor any opportunity to
13 address whether such hypothetical relief would, in fact, be available.

14 Federal cases under Federal Rule of Civil Procedure 12(b)(6), the text of which is identical
15 to Nevada Rule of Civil Procedure 12(b)(5), confirm that dismissal is appropriate if plaintiffs
16 cannot as a matter of law get the relief they seek. The U.S. Supreme Court has held under the
17 federal rule that where “the relief sought by [a plaintiff] is unavailable as a matter of law, the case
18 must be dismissed.” *Schweiker v. Chilicky*, 487 U.S. 412, 429 (1988); *see also Chilicky v.*
19 *Schweiker*, 796 F.2d 1131, 1134 (9th Cir. 1986) (making clear that the case involved “a motion to
20 dismiss under [Rule] 12(b)(6)”). The Supreme Court explained in *Schweiker* that Congress had
21 addressed the problem raised by the plaintiff’s complaint in a detailed administrative scheme, and
22 that “[w]hether or not we believe that its response was the best response, Congress is the body
23 charged with making the inevitable compromises required in the design of a massive and complex”
24 legislative scheme—there, welfare. *Id.* at 429. The Court therefore saw “no legal basis that would
25 allow us to revise its decision,” concluded that “the relief sought by respondents is unavailable as
26 a matter of law,” and held that the case was therefore properly dismissed under Rule 12(b)(6). All
27 of that is equally true, at the state level, in this case, where the Nevada legislature has prescribed

1 detailed provisions to govern voter list maintenance and simply has not required the procedures
2 that Plaintiffs demand. The result should therefore be the same—dismissal for failure to state a
3 claim.

4 *Schweiker* does not stand alone: other federal courts have similarly dismissed complaints
5 under Federal Rule 12(b)(6) after finding that plaintiffs are not entitled to the relief sought in their
6 complaints. In *Herrera-Castanola v. Holder*, 2011 WL 5877638 (D. Nev. Nov. 21, 2011), *aff’d*
7 *on other grounds*, 528 F. App’x 721 (9th Cir. 2013), for instance, where a plaintiff sought a
8 declaratory judgment that he was a U.S. citizen, the court determined this was not an available
9 remedy. Because “Congress, rather than the federal courts, is vested with exclusive authority over
10 naturalization,” it reasoned, a federal court could not “grant citizenship to Plaintiff.” *Id.* at *1. The
11 court accordingly held that “if the Court cannot grant the relief sought, the claims must be
12 dismissed,” and granted the defendants’ motion to dismiss because the court could not “grant the
13 relief sought by Plaintiff in his complaint.” *Id.* at *2. *See also, e.g., Helfrich v. PNC Bank, Ky.,*
14 *Inc.*, 267 F.3d 477, 482–83 (6th Cir. 2001) (directing dismissal of action with prejudice where
15 plaintiff sought money damages, which were disallowed under ERISA); *Pena v. U.S. Coast Guard*
16 *Seventh Dist.*, No. 18-23188-CIV, 2019 WL 5430709, at *4 (S.D. Fla. Oct. 2, 2019), *report and*
17 *recommendation adopted*, 2019 WL 5423733 (S.D. Fla. Oct. 23, 2019) (dismissing various claims
18 because relief sought was “unavailable as a matter of law”).

19 Moreover, courts have dismissed complaints for this reason even if they thought the
20 plaintiff could conceivably have sought some other form of relief. In *Fulcher v. Bennett*, No. CV-
21 20-00980-PHX-DWL, 2020 WL 7027559, at *4 (D. Ariz. Nov. 30, 2020), the court dismissed a
22 complaint for “failure to state a claim on which relief may be granted” under 28 U.S.C.
23 § 1915(e)(2), because it concluded that it could not “grant the requested” injunctive relief, even
24 though the factual allegations might otherwise have sufficed to allege a violation of law. *Fulcher*,
25 2020 WL 7027559, at *4; *see also Herrera-Castanola*, 2011 WL 5877638, at *1 (granting motion
26 to dismiss because court could not grant requested relief “no matter the . . . persuasiveness of the
27 fact situation”). The impermissibility of the requested relief is thus a sufficient and independent

1 reason to dismiss a complaint even where the complaint may have otherwise adequately pleaded
2 the elements of a claim. Notably, many of these cases granted dismissal *without* leave to amend.
3 *See Fulcher*, 2020 WL 7027559, at *5; *Helfrich*, 267 F.3d at 483.

4 * * *

5 For these reasons and those stated previously, the Court should dismiss the Complaint.

6 **AFFIRMATION**

7 Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that this
8 document does not contain the personal information of any person.

9 DATED this 14th day of March, 2025.

10 By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2025, a true and correct copy of this **SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO DISMISS** was served via electronic mail per agreement as follows:

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