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9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR CARSON CITY**

11 ZENAIDA DAGUSEN, an individual, *et al.*,
12 Plaintiffs,

Case No.: 24 OC 00153 1B
Dept. No. I

13 vs.

14 FRANCISCO AGUILAR, in his official
15 capacity as Nevada Secretary of State, *et al.*,
16 Defendants,

17 and
18 NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
19 Intervenor-Defendant.

20 **SECRETARY OF STATE'S SUPPLEMENTAL BRIEF ON**
21 **UNAWARDABLE RELIEF**

22 Defendant Francisco Aguilar, in his official capacity as Nevada Secretary of State
23 ("Secretary"), hereby files this supplemental brief in response to the Court's invitation to
24 do so at the March 5, 2025 hearing in this matter.

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. INTRODUCTION**

27 At the March 5, 2025 hearing in this matter on the Defendants' and Intervenor-
28 Defendant's motions to dismiss, the Court invited the parties to submit supplemental

1 briefing on whether dismissal is warranted if a plaintiff only demands relief that cannot
2 be awarded. In short, a plaintiff seeking only relief that cannot be awarded would not
3 have standing. A necessary component of standing is that a plaintiff have an injury that
4 is likely to be redressed by a favorable decision. But where there is no relief that a court
5 can award, there is no likelihood that a plaintiff's injury would be redressed, and the
6 plaintiff does not have standing. Dismissal would therefore be required.

7 **II. ARGUMENT**

8 Nevada "caselaw generally requires the same showing of injury-in-fact, redressability,
9 and causation that federal cases require for Article III standing." *Nat'l Ass'n of Mut. Ins. Cos.*
10 *v. Dep't of Bus. & Indus., Div. of Ins.*, 524 P.3d 470, 476 (Nev. 2023).¹ This means that Plaintiffs
11 bear the burden of establishing that they have "(1) suffered an injury in fact, (2) that is fairly
12 traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a
13 favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

14 With respect to the third factor, "[r]edressability requires that the court be able to afford
15 relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect
16 of the opinion *explaining* the exercise of its power." *Haaland v. Brackeen*, 599 U.S. 255, 294
17 (2023) (citation omitted). Redressability thus "requires an analysis of whether the court has
18 the power to right or to prevent the claimed injury." *Republic of Marshall Islands v. United*
19 *States*, 865 F.3d 1187, 1199 (9th Cir. 2017) (citation omitted). Courts must determine whether
20 the relief a plaintiff seeks "is both (1) substantially likely to redress their injuries; and (2)
21 within the district court's power to award." *Juliana v. United States*, 947 F.3d 1159, 1170 (9th
22 Cir. 2020). This is logical because if a court cannot grant relief, a plaintiff cannot establish
23 that their injury will likely be redressed by a favorable decision. If a plaintiff "can hope for

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¹ Nevada courts have not definitively resolved the issue of standing as one of subject
26 matter jurisdiction (NRCP 12(b)(1)) or as a failure to state a claim upon which relief can be
27 granted (NRCP 12(b)(5)). *See Superpumper, Inc. v. Leonard*, 137 Nev. 429, 433 n.2,
28 495 P.3d 101, 106 n.2 (2021) (reserving question of "whether standing and subject matter
jurisdiction are distinct principles"). To the extent that standing is properly assessed as
part of the requirement to state a claim upon which relief can be granted, that would
support that NRCP 12(b)(5) requires dismissal where a plaintiff has not pled relief that can
be granted.

1 nothing more than an opinion, . . . they cannot satisfy Article III,” *Haaland*, 864 F.3d at 294,
2 and dismissal is appropriate.

3 Dismissal for lack of standing therefore may be appropriate where, for example, a
4 plaintiff requests relief requiring the government to implement a plan to address an alleged
5 injury. In *Juliana*, the Ninth Circuit found that the plaintiffs failed to establish
6 redressability when they requested “an injunction ordering the government to implement
7 a plan to ‘phase out fossil fuel emissions and draw down excess atmospheric
8 [carbon dioxide].’” 947 F.3d at 1165, 1171. This was because such an order “would
9 subsequently require the judiciary to pass judgment on the sufficiency of the government’s
10 response to the order,” and impermissibly force a court to “substitute [its] own assessment
11 for the Executive’s [or Legislature’s] predictive judgments on such matters.” *Id.* at 1172.
12 And this was despite the plaintiffs requesting only implementation of a plan without
13 specific requirements that avoided the problem that policy decisions “require consideration
14 of ‘competing social, political, and economic forces,’ which must be made by the People’s
15 ‘elected representatives, rather than by federal judges interpreting the basic charter of
16 Government for the entire country.’”² *Id.* (citation omitted).

17 Thus, if the Court determines that it cannot award the relief Plaintiffs seek,
18 dismissal would be appropriate for lack of standing.

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25 ² The Nevada Constitution recognizes similar principles through its separation of
26 powers clause. *See Nev. Const. Art. 3, § 1(1)*. Indeed, “[t]he division of powers is probably
27 the most important single principle of government declaring and guaranteeing the liberties
28 of the people.” *N. Lake Tahoe Fire v. Washoe Cnty. Comm’rs*, 129 Nev. 682, 687, 310 P.3d
583, 587 (2013) (citation omitted). For that reason, “controversies are precluded from
judicial review when they ‘revolve around policy choices and value determinations
constitutionally committed for resolution to the legislative and executive branches’” under
the political question doctrine. *Id.* (citation omitted).

III. CONCLUSION

For the foregoing reasons, and for the reasons described in the motions to dismiss, the Court should dismiss the Complaint.

DATED this 14th day of March, 2025.

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By

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 14th day of March, 2025, I served a true and correct copy of the foregoing **SECRETARY OF STATE'S SUPPLEMENTAL BRIEF ON UNAWARDABLE RELIEF** by electronic mail addressed to:

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