

REC'D & FILED ✓
2025 AUG 29 AM 10:32
WILLIAM COSTELLO
CLERK
BY Handwritten

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.

Plaintiff,

vs.

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

Defendants,

and

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

Defendant-Intervenor.

Case No.: 24-OC-001531B

Dept. No.: I

**ORDER GRANTING IN PART
AND DENYING IN PART
MOTIONS TO DISMISS**

THIS MATTER comes before the Court on the following:

- *Motion to Dismiss* filed by the DEMOCRATIC NATIONAL COMMITTEE and NEVADA STATE DEOMCRATIC PARTY on October 4, 2024;
- *Opposition to Motion to Dismiss* filed by Plaintiffs on October 28, 2024 in response to the DEMOCRATIC NATIONAL COMMITTEE and NEVADA STATE DEMOCRATIC PARTY's *Motion to Dismiss*;

///

- *Reply in Support of Motion to Dismiss* filed by the DEMOCRATIC NATIONAL COMMITTEE and NEVADA STATE DEOMCRATIC PARTY on November 5, 2024;
- *Secretary of State's Motion to Dismiss* filed by FRANCISCO AGUILAR, Nevada Secretary of State, on December 2, 2024, as modified by the *Errata to Secretary of State's Motion to Dismiss* filed March 14, 2025;
- *Opposition to Secretary of State's Motion to Dismiss* filed by Plaintiffs on December 18, 2024;
- *Secretary of State's Reply in Support of Motion to Dismiss* filed December 23, 2024;
- *Brief of Amici Curiae in Support of Defendant Francisco Aguilar's Motion to Dismiss* filed by order of the Court on December 27, 2024;
- *NAACP Tri-State Conference of Idaho-Nevada-Utah's Motion to Dismiss* ("NAACP Motion") filed January 17, 2025;
- *Opposition to NAACP Tri-State Conference of Idaho-Nevada-Utah's Motion to Dismiss* filed by Plaintiffs on February 3, 2025;
- *Reply in Support of Motion to Dismiss by NAACP Tri-State Conference of Idaho-Nevada-Utah* filed February 7, 2025.
- *Secretary of State's Supplemental Brief on Unawardable Relief* filed on March 14, 2025;
- *Defendants Democratic National Committee and Nevada State Democratic Party's Supplemental Brief in Support of Motion to Dismiss* filed on March 17, 2025;
- *Plaintiffs' Supplemental Memorandum of Law Regarding Remedies and NRCP 12(b)(5) Motions to Dismiss* filed March 18, 2025; and

\\

\\

\\

- *Defendant Intervenor's Joinder to Defendants' Democratic National Committee and Nevada State Democratic Party's Supplemental Brief in Support of Motion to Dismiss and Secretary of State's Supplemental Brief on Unawardable Relief* filed March 21, 2025.

A hearing on the above-referenced motions ("*Motions*") was held on March 5, 2025. Present for the Plaintiffs was Brian Hardy, Esq. of MARQUIS AURBACH. Present for Defendant, FRANCISCO AGUILAR, Nevada Secretary of State was Laena St-Jules, Senior Deputy Attorney General of the OFFICE OF THE NEVADA ATTORNEY GENERAL. Present for Defendants, DEMOCRATIC NATIONAL COMMITTEE and NEVADA STATE DEMOCRATIC PARTY, was Bradley Schrager, Esq. of BRAVO SCHRAGER LLP and David Fox, Esq. of ELIAS LAW GROUP LLP. Present via audio/visual connection for Defendant-Intervenor, NAACP TRI-STATE CONFERENCE OF IDAHO-NEVADA-UTAH, was Robert Double, Esq. of MAYER BROWN LLP and Amira Matta, Esq. of FREE SPEECH FOR PEOPLE. Present for *Amicus Curiae*, the AMERICAN CIVIL LIBERTIES UNION OF NEVADA, was Sadmira Ramic, Esq. and Kenneth Parreno, Esq. Having considered the parties' filings and the arguments of counsel, the Court rules as follows:

LEGAL STANDARD

The *Motions* are based on NRCP 12(b)(5) which prompt dismissal of any claim for relief which fails "to state a claim upon which relief can be granted." In this context, the *Complaint for Declaratory and Injunctive Relief* ("*Complaint*") must be liberally construed, meaning all factual allegations must be accepted as true and inferences drawn in Plaintiffs' favor. *Facklam v. HSBC Bank USA*, 133 Nev. 497, 498, 401 P.3d 1068, 1070 (2017). A motion to dismiss under NRCP 12(b)(5) for failure to state a claim should not be granted unless it appears beyond a doubt plaintiffs could prove no set of facts that would entitle them to relief. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). That stated, a plaintiff's allegations must be legally sufficient to constitute the elements of the claims asserted. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267 P.3d 771, 774 (2011). Additionally, a court is not obliged

1 to defer to improperly drawn legal conclusions couched as factual allegations. *ARNS Fund, LLC*
2 *v. Bank of Am., N.A.*, 2025 Nev. Unpub. LEXIS 97 (Docket No. 87662) (Feb. 14, 2025).

3 ANALYSIS

4 I. Standing

5 Nevada law “generally requires the same showing of injury-in-fact, redressability, and
6 causation that federal cases require for Article III standing.” *National Assoc. of Mut. Ins. Cos. v.*
7 *Dep’t of Bus. & Indus., Div. of Ins.*, 139 Nev. Adv. Rep. 3, 524 P.3d 470, 476 (Docket No.
8 82951) (Feb. 16, 2023) (citations omitted). Thus, Plaintiffs are required to establish they have “(1)
9 suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant,
10 and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578
11 U.S. 330, 338 (2016). However, at the pleading stage, the plaintiff still enjoys favorable judicial
12 deference as to factual allegations insofar as they inform the issue of standing. *Cal. Rest. Ass’n v.*
13 *City of Berkeley*, 89 F.4th 1094, 1100 (9th Cir. 2024) (amended op.) (quoting *Pennell v. City of*
14 *San Jose*, 485 U.S. 1, 7 (1988)).

15 Plaintiffs have alleged a cognizable injury in the *Complaint*. Most directly, Zenaida
16 Dagusen, the individual plaintiff (“Individual Plaintiff”), claims her vote is being diluted. As to
17 the organizational plaintiffs, the Republican National Committee, Nevada Republican Party and
18 Donald J. Trump for President 2024 (“Organizational Plaintiffs”), they also allege sufficient injury
19 to meet the requirements of Article III standing. The nature of their alleged injury is not as direct
20 as that of the Individual Plaintiff. They have allegedly suffered and are threatened with future
21 competitive harm in the election process. They also claim the circumstances will require them to
22 divert resources from their primary mission to address the issue. These allegations and reasonable
23 inferences support a plausible argument that both the Individual Plaintiff and Organizational
24 Plaintiffs have suffered an injury that is traceable to the conduct of the Secretary of State and may
25 be redressed by a favorable decision in this case. Therefore, the Court concludes that Plaintiffs
26 have standing.

27 \\\

28 \\\

1 **II. Failure to State a Claim**

2 The *Complaint* asserts four legal grounds for relief: Equal Protection; Substantive Due
3 Process; Right to Vote under Nevada Constitution; and NRS 293.675. With respect to the claims
4 which are based on Equal Protection and Substantive Due Process, the *Complaint* meets the
5 minimum standard required under NRCP 12(b)(5). However, in regard to the claims asserted
6 under Article II, Section 1 of the Nevada Constitution and NRS 293.675, the Court finds the
7 *Complaint* fails to state a claim upon which relief may be granted, even accepting all factual
8 allegations as true and drawing all inferences in favor of the Plaintiffs.

9 **A. Equal Protection**

10 The *Complaint* generally alleges the Secretary of State has failed to address potential voting
11 by individuals who are not United States citizens and, thereby, not legally eligible to vote in
12 Nevada. Accepting the allegations as true and drawing all reasonable inferences in favor of the
13 Plaintiffs, the *Complaint* plausibly articulates a claim that this circumstance has denied Plaintiffs
14 equal protection of the law in violation of Article IV, Section 21 of the Nevada Constitution. In
15 this regard, the Court finds *Reynolds v. Sims*, 377 U.S. 533 (1964), compelling authority favoring
16 the position of Plaintiffs. *See Armijo v. State*, 111 Nev. 1303, 1304 904 P.2d 1028, 1029 (1995)
17 “We have interpreted the standard of the Equal Protection Clause of the Nevada Constitution to be
18 the same as the federal standard....”) *Reynolds* was decided in the context of reapportionment. *Id.*
19 at 536-54. However, there is a reasonable nexus between discriminatory reapportionment and the
20 invalid voting alleged in this case. Namely, both result in the same harm: dilution of valid votes.
21 *Id.* at 555 (“The right to vote freely for the candidate of one’s choice is of the essence of a
22 democratic society, and any restrictions on that strike at the heart of representative government.
23 And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s
24 vote just as effectively as by wholly prohibiting the free exercise of the franchise.”) As such,
25 Plaintiffs’ Equal Protection claim in this case is within a fair reading of the broad sweep of
26 *Reynolds*. Therefore, as to this claim, the *Motions* will be denied.

27 **B. Substantive Due Process**

1 Next, Plaintiffs contend the circumstances alleged in the *Complaint* violate their right to
2 due process protected by Article I, Section 8 of the Nevada Constitution. As with the Equal
3 Protection Clause, the scope of Nevada’s substantive due process protection is coextensive with
4 that of the United States Constitution. *Southport Lane Equity II, LLC v. Downey*, 177 F. Supp. 3d
5 1286, 1290 (D. Nev. 2016) (noting Nevada’s Due Process Clause is “textually identical” to its
6 federal counterpart and “the Nevada Supreme Court reads the state clause as coextensive with the
7 federal clause” (citing *Wyman v. State*, 125 Nev. 592, 600-01, 217 P.3D 572, 578 (2009))).

8 Due Process protections may be triggered if an “election process itself reaches the point of
9 patent and fundamental unfairness.” *Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir. 1986); *see*
10 *Nolles v. State Comm. for Reorganization of Sch. Districts*, 524 F.3d 892, 898 (8th Cir. 2008) (“A
11 canvass of substantive due process cases related to voting rights reveals that voters can challenge
12 a state election procedure in federal court only in limited circumstances, such as when the
13 complained of conduct discriminates against a discrete group of voters, when election officials
14 refuse to hold an election though required by state law, resulting in a complete disenfranchisement,
15 or when the willful and illegal conduct of election officials results in fraudulently obtained or
16 fundamentally unfair voting results.”) (cleaned up). The *Motions* correctly explain that the
17 standard of “patent and fundamental unfairness” is a high bar which cannot be met with minor
18 irregularities and inadvertent mistakes. However, the question is necessarily one of degree and,
19 thereby, fundamentally factual in nature. As such, the claim is not suitable for a dismissal under
20 NCRP 12(b)(5).

21 Accepting the *Complaint*’s allegations as true and drawing reasonable inferences in
22 Plaintiffs’ favor, the *Complaint* adequately states a due process claim under the Nevada
23 Constitution upon which relief can be granted.

24 **C. Right to Vote**

25 Plaintiffs’ third claim is based on the right to vote articulated in Article II, Section 1 of the
26 Nevada Constitution. That provision states, in pertinent part:
27
28

1 All citizens of the United States (not laboring under the disabilities named
2 in this constitution) of the age of eighteen years and upwards, who shall have
3 actually, and not constructively, resided in the state six months, and in the district
4 or county thirty days next preceding any election, shall be entitled to vote for all
5 officers that now or hereafter may be elected by the people, and upon all questions
6 submitted to the electors at such election; provided, that no person who has been or
7 may be convicted of treason or felony in any state or territory of the United States,
8 unless restored to civil rights, and no person who has been adjudicated mentally
9 incompetent, unless restored to legal capacity, shall be entitled to the privilege of
10 an elector. There shall be no denial of the elective franchise at any election on
11 account of sex.

12 Interpretation of this provision must begin with an evaluation of its plain language. *Mass*
13 *Land Acquisition, LLC v. First Jud. Dist. Ct.*, 140 Nev. Adv. Op. 67, 557 P.3d 493, 499 (Nev.
14 2024) (“To determine a constitutional provision’s meaning, we turn first to the provision’s
15 language.” (quoting *Miller v. Burk*, 124 Nev. 579, 590, 188 P.3d 1112, 1119-20 (2008)). If the
16 provision is unambiguous, there is no need to go further. *See, e.g., Nev. Pol’y Rsch. Inst., Inc. v.*
17 *Miller*, 140 Nev. Adv. Rep. 69 558 P.3d 319, 336 (Nev. 2024) (“Fidelity to the language employed
18 by the framers in drafting the constitution is the paramount concern in constitutional interpretation,
19 especially where the provision is unambiguous.” (*Herndon, J., concurring in part and dissenting*
20 *in part*)). The plain language of Article II, Section 1 protects the right of legally qualified
21 individuals to vote. However, the *Complaint* does not allege that eligible voters are being denied
22 their right to vote.

23 \\\

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

1 Nor is there any authority to support a conclusion that vote dilution violates this particular
2 provision of the Nevada Constitution. Plaintiffs cite *Reynolds* for that proposition. But that
3 stretches even the expansive language of *Reynolds* beyond the breaking point. The context of
4 *Reynolds* involved application of the federal Equal Protection Clause to the reapportionment
5 process. As such, it “must be understood as a narrow substantive right, conferred by the equal
6 protection clause, ‘of a person to vote on an equal basis with other voters.’” *Gamza v. Aguirre*,
7 619 F.2d 449, 453 (5th Cir. 1980) (citation omitted).

8 Plaintiffs ask the Court to interpret Nevada’s right to vote in a manner the plain language
9 does not support. Following such an interpretation would mean that a single irregularity in any
10 election, no matter how unintentional and no matter how inconsequential, would establish a
11 constitutional injury to every Nevadan who voted in the election. Inevitably, adoption of that
12 proposition would result in virtually all elections being decided by courts instead of voters. The
13 Court is confident Article II, Section 1 was not written with such a result in mind. Just like in
14 1864, an election today is a human process. Fairness is required. Perfection is not.

15 Plaintiffs fail to state a claim upon which relief can be granted in regard to their claim of
16 an Article II, Section 1 violation.

17 **D. NRS 293.675**

18 Plaintiffs last claim for relief seeks a declaratory judgment from this Court mandating the
19 Secretary of State to acquire and review certain government data and utilize it to remove Nevada
20 voter registrants who the data indicates were not United States citizens when the data was created.
21 The data Plaintiffs want the Secretary of State to use comes from (1) the United States Department
22 of Homeland Security’s Systematic Alien Verification for Entitlements program; (2) information
23 identifying individuals who have been excused from jury duty due to being non-citizens; and (3)
24 the Nevada Department of Motor Vehicles.

1 NRS 293.675 provides the platform for this claim. That statute charges the Secretary of
2 State with a duty to “maintain a centralized, top-down database that collects and stores information
3 related to the preregistration of persons and the registration of electors from all the counties in this
4 State.” NRS 293.675(1). The database is used to create the “statewide voter registration list”
5 which must be “regularly maintained to ensure the integrity of the registration process and the
6 election process.” NRS 293.675(2), (3)(i). The provision further delegates specific
7 responsibilities for particular maintenance tasks to county and city clerks, the Department of Motor
8 Vehicles, and the Secretary of State. With respect to the Secretary of State’s responsibilities, some
9 are permissive, *see* NRS 293.675(9)-(10), and some are mandatory. *See* NRS 293.675(1)-(3), (5),
10 (8). However, none of the specific responsibilities delegated to the Secretary of State by this
11 provision, permissive or mandatory, are what the *Complaint* seeks to compel. Rather, the
12 *Complaint* seeks to judicially supplement the Secretary of State’s statutory obligations. Plaintiffs
13 want this Court to go beyond the specific requirements of NRS 293.675 and mandate the specific
14 methods they advance to proactively verify citizenship status of voters on the statewide voter
15 registration list.

16 As a matter of public policy, the requests of Plaintiffs might be perfectly sound and
17 reasonable tools to improve the integrity of Nevada’s voter rolls. As such, the Legislature could
18 incorporate them into law. Even without specific legislative authority, there would not seem to be
19 anything to prevent the Secretary of State from employing the techniques and resources Plaintiffs
20 have identified. But the *Complaint* would have this Court compel the Secretary of State to do so.

21 The Secretary of State is Nevada’s Chief Officer of Elections. NRS 293.124. And the
22 Legislature directs the statutory authority and obligations of that office, as it has in NRS 293.675.
23 While the Secretary of State may be judicially compelled to perform specific duties required by
24 statute, this Court has no inherent authority to direct him on the particulars of how he is to maintain
25 the statewide voter registration list beyond what is required by statute. That authority is within his
26 discretion.

1 Further, the text and structure of NRS 293.675 leaves this Court no role in expanding the
2 responsibilities of the Secretary of State. In statutory interpretation, *expressio unius est exclusion*
3 *alterius* (The expression of one thing is the exclusion of the other.) See e.g., *Harvey v. State*, 136
4 Nev. 539, 543, 473 P.3d 1015, 1019 (Nev. 2020) (“We follow ‘the maxim “*expressio unius est*
5 *exclusion alterius*,” the expression of one thing is the exclusion of another.”) In NRS 293.675, the
6 Legislature identifies in granular detail data sources for maintenance of the statewide voter list.
7 This Court cannot interpret the Legislature’s silence on other sources and other methods as tacit
8 approval to judicially require other sources and methods as well.

9 For these reasons, Plaintiffs’ concerns regarding the sufficiency of NRS 293.675 may be
10 addressed by the Secretary of State or by the Legislature. They cannot be remedied through the
11 *Complaint* before this Court. Plaintiffs’ claim for declaratory relief must be dismissed under
12 NRCP 12(b)(5).

13 **III. Anderson-Burdick**

14 In *Anderson v. Celebrezze*, 460 U.S. 780, 782-83 (1983) (the “Anderson” half of the
15 *Anderson-Burdick* framework), the U.S. Supreme Court evaluated an action of the Ohio Secretary
16 of State that involved denying a candidate’s nominating petition as untimely. Similarly, in *Burdick*
17 *v. Takushi*, 504 U.S. 428, 430-32 (1992) (the “Burdick” half of the *Anderson-Burdick* framework),
18 the U.S. Supreme Court evaluated a prohibition enforced by the Hawaii Director of Elections on
19 write-in voting.

20 In its current procedural posture, there is no state action at issue in this case. The *NAACP*
21 *Motion* nonetheless asserts that should Plaintiffs prevail in this case, the remedy would involve
22 state action, so an analysis of the *Anderson-Burdick* framework at the pleading stage is warranted
23 and necessary. The Court does not agree. There are far too many variables and uncertainties to
24 allow for an informed decision on any *Anderson-Burdick* issue at this time. As such, the *NAACP*
25 *Motion* is not ripe for consideration by this Court.

26 \\\

27 \\\

28 \\\

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2

5

6

7
8
9
0
1
2

3
4
5
6
7
8

90

1
2

3

4
5
6
7
8

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on August 29, 2025, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Brian R. Hardy, Esq.
Harry L. Arnold, Esq.
Marquis Aurbach
10001 Park Run Drive
Las Vegas, NV 89145
Counsel for Plaintiffs

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
Bravo Schrager LLP
6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113

Aaron D. Ford, Attorney General
Gregory D. Ott,
Chief Deputy Attorney General
Edgar A. Pando, Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717
Counsel for Defendant Secretary of State

David R. Fox, Esq.
Elias Law Group, LLP
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
*Counsel for Defendants Democratic
National Committee and Nevada State
Democratic Party*

Sadmira Ramic, Esq.
American Civil Liberties Union of Nevada
4362 West Cheyenne Ave.
North Las Vegas, NV 89032

W. Chris Wicker, Esq.
Jose A. Tafoya, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511-1149

Kenneth Parreno
Protect Democracy Project
15 Main Street, Suite 312
Watertown, MA 02472
Counsel for Amici Curiae

Lee Rubin, Esq.
Mayer Brown LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, CA 94306-2112

Robert C. Double III, Esq.
Mayer Brown LLP
333 South Grand Avenue, 47th Floor
Los Angeles, CA 90071

Rachel J. Lamorte, Esq.
Mayer Brown LLP
1999 K. Street, NW
Washington, DC 20006-1101

John C. Bonifaz, Esq.
Free Speech for People
48 North Pleasant Street, Suite 304
Amherst, MA 01002

*Counsel for Defendant-Intervenor NAACP
Tri-State Conference of Idaho-Nevada-
Utah*


Julie Harkleroad

Judicial Assistant, Dept. 1