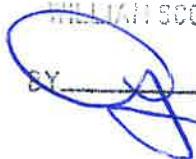


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24 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
25 **IN AND FOR CARSON CITY**

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

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

Plaintiffs,

v.

1 FRANCISCO AGUILAR, in his official
2 capacity as NEVADA SECRETARY OF
3 STATE, DEMOCRATIC NATIONAL
4 COMMITTEE, NEVADA STATE
5 DEMOCRATIC PARTY,

6 Defendants,

7 and

8 NAACP Tri-State Conference of Idaho-
9 Nevada-Utah,

10 Intervenor-Defendant.

11 **REPLY IN SUPPORT OF MOTION TO DISMISS BY INTERVENOR-DEFENDANT**
12 **NAACP TRI-STATE CONFERENCE OF IDAHO-NEVADA-UTAH**

13 Pursuant to Nevada Rule of Civil Procedure 12(b)(5), Intervenor-Defendant NAACP Tri-
14 State Conference of Idaho-Nevada-Utah (“Tri-State NAACP”), by and through undersigned
15 counsel, hereby files this Reply in Support of NAACP Tri-State Conference of Idaho-Nevada-
16 Utah’s Motion to Dismiss.

17 This Motion is made and based upon the following Memorandum of Points and Authorities,
18 all pleadings and papers on file, including without limitation (i) motions to dismiss filed by
19 Defendants Democratic National Committee and Nevada State Democratic Party on October 3,
20 2024, and the Nevada Secretary of State on December 2, 2024, and (ii) the Brief of *Amici Curiae*
American Civil Liberties Union of Nevada and Protect Democracy in Support of Defendant
Francisco Aguilar’s Motion To Dismiss on December 5, 2024, and any oral argument the Court
sees fit to allow at a hearing on this matter.

21 DATED this 7th day of February, 2025.

22 By: 
23 W. Chris Wicker [NSB No. 1037]

24
25 *Attorneys for Intervenor-Defendant NAACP Tri-
26 State Conference of Idaho-Nevada-Utah*

27

28

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

As explained in Tri-State NAACP’s motion to dismiss, Plaintiffs’ Complaint seeks an order requiring the Nevada Secretary of State to conduct “list maintenance” to purge from Nevada’s voter roll individuals whose citizenship cannot be verified by a range of categories of information.¹ Mot. at 1–2. Plaintiffs’ Complaint fails to state a claim under Nevada Rule of Civil Procedure 12(b)(5) because they have not alleged facts sufficient to support their requested relief and, if implemented, the relief would violate the U.S. and Nevada Constitutions and the National Voter Registration Act (“NVRA”). *Id.* 2–10. Plaintiffs do not seriously contend that their allegations are sufficient or contest the substance of these violations of the law, instead arguing only that this Court’s consideration of these arguments is “premature” and that Tri-State NAACP’s arguments are “unsubstantiated.” Opp’n at 5–6. But this lacks merit. Nevada pleading standards are clear; to defeat a motion to dismiss, Plaintiffs must show that some “set of facts . . . if true, would entitle [them] to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 181 P.3d 670, 672 (2008). It is plain from the face of the Complaint that Plaintiffs have failed to do so. Accordingly, this Court should grant Tri-State NAACP’s motion to dismiss.

ARGUMENT

I. Plaintiffs Have Not Met The Required Pleading Standard.

At bottom, Plaintiffs have not set forth facts sufficient to state a claim that entitles them to the relief they seek. Plaintiffs' Complaint must be dismissed "if it appears beyond a doubt that [they] could prove no set of facts which, if true, would entitle [them] to relief." *Id.* Under Nevada law, Plaintiffs are held to their allegations, including requested relief. *See Beadles v. Rodriguez*, (attached hereto as **Exhibit 1**) 548 P.3d 428 (Nev. 2024) (unpublished disposition), *cert. denied*, No. 24-346, 2024 WL 5011717 (U.S. Dec. 9, 2024) (dismissing a complaint alleging various

¹ Plaintiffs insinuate in their Opposition brief that Tri-State NAACP's motion to dismiss comes as a surprise because "the NAACP affixed a proposed answer to Plaintiffs' Complaint, which it presumably planned to file upon being granted the right to intervene." Opp'n at 2. Tri-State NAACP, however, signaled its intent to file a motion to dismiss upon being granted the right to intervene in its motion to intervene. Tri-State NAACP's Mot. to Intervene, at 4 n.3. Tri-State NAACP attached an answer to its motion to intervene because it was required to attach a proposed pleading to its motion under NRCP 24(c).

1 election law violations “because, taking all the factual allegations in the complaint as true . . . , he
2 can prove no set of facts that would entitle him to relief as pleaded”); *Sanchez ex rel. Sanchez v.*
3 *Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (affirming dismissal of a
4 complaint and noting “the allegations [in a complaint] must be legally sufficient to constitute the
5 elements of the claim asserted”).

6 Plaintiffs try to avoid dismissal by claiming that it is “premature and speculative” to
7 consider what relief they may obtain at the motion-to-dismiss stage. Opp’n at 5. But there is nothing
8 premature or speculative about the Court considering the relief Plaintiffs specifically ask for in their
9 Complaint—namely, a mass “maintenance” of the Nevada state voter roll, which, based on the
10 sources Plaintiffs themselves cite, would likely result in the removal of thousands of eligible voters
11 from the voter roll. *See* Compl. at 21–22; Mot. at 4. And Plaintiffs have no response to Tri-State
12 NAACP’s arguments that the facts they allege are insufficient to obtain their requested relief or that
13 such relief would lead to the unconstitutional and illegal removal of eligible voters from the voter
14 roll, which is fatal to their claims. Plaintiffs are required to sufficiently allege why that relief is
15 legally compelled by the claims they assert and, as described below, they have failed to do so.

16 **II. The *Anderson-Burdick* Framework Is Applicable at The Motion-to-Dismiss Stage
17 and Compels Dismissal Here.**

18 Plaintiffs do not contest the substance of Tri-State NAACP’s *Anderson-Burdick* argument.
19 In doing so, they concede that the relief they seek would severely burden Nevadans’ right to vote,
20 while disproportionately affecting naturalized citizens, and that their allegations do not justify such
21 burden. *See, e.g., Edwards v. Timeshare Liquidators*, No. A-18-776375-C, 2019 WL 7834620
22 (Nev. Dist. Ct. Jan. 9, 2019) (where non-moving party fails to oppose parts of a motion to dismiss
23 “the lack of an opposition is construed as an admission that the motion is meritorious and a consent
24 to granting the same”); *see also* Mot. at 4–9.

25 Instead, Plaintiffs insist that the *Anderson-Burdick* framework does not apply because
26 “there is absolutely no state action at issue.” Opp’n at 5. But for the Court to accept such an
27 argument, it would have to ignore that Plaintiffs are seeking to obtain injunctive and declaratory
28 relief that would require the Secretary of State to act. Compl. at 21–22. And Plaintiffs acknowledge

1 as much when they concede that *Anderson-Burdick* potentially would apply “once this Court
2 actually compels the Nevada Secretary of State to take certain actions.” Opp’n at 5.

3 Plaintiffs, therefore, appear to be arguing that the Court cannot consider whether the
4 requested relief is unconstitutional until after it grants such relief. But Plaintiffs cite no authority to
5 support this proposition, nor do they explain how the Court possibly could lack the power to
6 consider the constitutionality of an order before it is issued and why the Court and the parties should
7 be made to expend additional resources in potentially years-long litigation when the relief sought
8 is unconstitutional on the face of the Complaint.

9 Because the sole purpose of this lawsuit is to compel state action—action identified in the
10 Complaint—the *Anderson-Burdick* framework applies. And, despite Plaintiffs’ argument to the
11 contrary (Opp’n at 5–7), the framework is properly applied at the motion-to-dismiss stage. Courts
12 routinely do so, especially when, as here, the burdens and state interests are clear from the face of
13 the Complaint and the challenged state action (i.e., the use of unreliable databases for non-routine
14 voter roll maintenance) would, as a matter of law, pose an unconstitutional risk to eligible voters.
15 See, e.g., *Election Integrity Project Cal., Inc. v. Weber*, 113 F.4th 1072, 1085 (9th Cir. 2024)
16 (affirming dismissal and rejecting argument that the record must be developed before *Anderson-*
17 *Burdick* analysis because “[w]e routinely conduct the *Anderson/Burdick* analysis at the motion to
18 dismiss stage”); *Clark v. Weber*, 54 F.4th 590, 593 (9th Cir. 2022) (conducting *Anderson-Burdick*
19 analysis at the motion-to-dismiss stage and affirming dismissal); *Daunt v. Benson*, 999 F.3d 299,
20 313 (6th Cir. 2021) (affirming dismissal applying *Anderson-Burdick* and asserting that courts “have
21 not shied away from disposing of *Anderson-Burdick* claims at the motion-to-dismiss stage where a
22 plaintiff’s allegations failed as a matter of law” because where “the alleged severity of the burdens
23 imposed can be gleaned from the face of the challenged law and they can be weighed against the
24 asserted state interests, dismissal on the pleadings is warranted”) (internal quotations omitted).
25 Indeed, the Court can apply the *Anderson-Burdick* framework at this stage because Plaintiffs’
26 allegations “fail[] as a matter of law.” *Daunt*, 999 F.3d at 313.

27 Plaintiffs are also wrong that Tri-State NAACP’s arguments rely on “speculative” or
28 “unsubstantiated” assertions that “are merely arguments of counsel.” Opp’n at 6–7. Tri-State

1 NAACP’s arguments as to the burden of Plaintiffs’ requested relief are based on decisional law,
2 studies by the State of Nevada, and math. *See* Mot. at 2–8. These types of arguments have been
3 considered and accepted by courts at this stage of litigation when applying the *Anderson-Burdick*
4 framework time and again. Indeed, courts have applied “basic mathematical principles,” just as Tri-
5 State NAACP asks the Court to do here. *See Election Integrity Project Cal.*, 113 F.4th at 1087
6 (considering *Anderson-Burdick* claim at motion-to-dismiss stage and concluding that plaintiff’s
7 theory that the counting of “invalid . . . ballots standing alone have an unequal impact on only
8 certain voters, causing their votes to ‘carry less weight’ relative to all others, simply defies the
9 mathematical reality”); *see also Republican Nat'l Comm. v. Benson*, No. 1:24-CV-262, 2024 WL
10 4539309, at *14 (W.D. Mich. Oct. 22, 2024) (dismissing election law claims based on “unwarranted
11 factual inferences” derived from United States Census data), *appeal filed*, No. 24-1985 (6th Cir.
12 2024); Mot. at 7–8 (explaining that the figures and studies that Plaintiffs cite in their Complaint fail
13 to conform to even rudimentary statistical methods); *id.* at 1–2, 4 (the requested relief could result
14 in the removal of *thousands* of eligible voters from Nevada’s voter roll). And courts likewise are
15 empowered to consider “matters of public record, orders, items present in the record of the case,
16 and any exhibits attached to the complaint.” *Breliant v. Preferred Equities Corp.*, 109 Nev. 842,
17 847, 858 P.2d 1258, 1261 (1993).

18 Plaintiffs cannot escape that, even drawing all inferences in their favor, the Complaint fails
19 to state a claim because their requested relief based on speculative allegations of voting by
20 noncitizens is precluded by the First and Fourteenth Amendments of the U.S. Constitution and
21 Articles II and IV of the Nevada Constitution. “The right to vote is preservative of all rights and is
22 of the most fundamental significance under our constitutional structure.” *Election Integrity Project*
23 *Cal.*, 113 F.4th at 1082 (internal quotation marks and citations omitted). Accordingly, any injury
24 to the right to vote must be justified. *See Anderson v. Celebreeze*, 460 U.S. 780, 788, 103 S. Ct.
25 1564, 1569–70 (1983); *Burdick v. Takushi*, 504 U.S. 428, 433–34, 112 S. Ct. 2059, 2063 (1992).
26 Plaintiffs concede they cannot meet this standard, and this Court should dismiss Plaintiffs’ claims.
27
28

III. Plaintiffs' Requested Relief Would Violate the NVRA.

Plaintiffs also offer no substantive response to the fact that their requested relief would result in nonuniform, discriminatory removal of voters from the Nevada voter roll and, in doing so, concede that point. *See Edwards*, 2019 WL 7834620; *see also* Mot. at 9–10. Plaintiffs instead argue that the Court cannot find at this stage that their sought-after relief would violate Section 8(b) of the NVRA, claiming that “[w]hether or not certain databases, to the extent they are incorporated into whatever relief may or may not be issued, do in fact result in actionable, disparate treatment of certain types of voters, is a determination to be made later by the trier of fact[.]” Opp’n at 7–8. But this argument fails because the Court can consider the natural implications of Plaintiffs’ requested relief. And courts in fact grant motions to dismiss on the grounds that the requested relief would violate the NVRA. *See, e.g., Republican Nat'l Comm*, 2024 WL 4539309, at *13–14 (dismissing a complaint requesting that Michigan perform voter roll “maintenance” and noting that “[t]he NVRA obligates Michigan to ensure that any *eligible* applicant is registered to vote”) (internal quotations omitted).

Again, Plaintiffs cannot escape that even drawing all inferences in their favor, the Complaint fails to state a claim because their requested relief would violate Section 8(b) of the NVRA, which requires that any state voter roll maintenance program or activity “shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” 52 U.S.C. § 20507(b). In assessing whether a program violates this provision, courts consider whether the measure disproportionately impacts a particular group of voters. *See Mi Familia Vota v. Fontes*, 719 F. Supp. 3d 929, 999 (D. Ariz. 2024); *United States v. Florida*, 870 F. Supp. 2d 1346, 1350–51 (N.D. Fla. 2012). Because of the sources on which Plaintiffs would rely, it is inevitable that Plaintiffs’ requested relief will disproportionately affect naturalized citizens. *See* Mot. at 4–5, 9–10. Accordingly, they cannot state a lawful claim for their requested relief and this Court should dismiss Plaintiffs’ claims.

CONCLUSION

For the reasons stated above, the Court should dismiss the Complaint.

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DATED this 7th day of February, 2025.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Woodburn and Wedge, and that on the below date, I caused a true and correct copy of the ***REPLY IN SUPPORT OF MOTION TO DISMISS BY INTERVENOR-DEFENDANT NAACP TRI-STATE CONFERENCE OF IDAHO-NEVADA-UTAH*** to be served via E-Mail, to the following:

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DATED this 7th day of February, 2025.

John P. Burke

Mele D. Puletau

An employee of Woodburn and Wedge

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1	NV Supreme Court opinion in <i>Beadles v. Rodriguez</i>	3

EXHIBIT 1

EXHIBIT 1

Beadles v. Rodriguez

Supreme Court of Nevada

May 15, 2024, Filed

No. 87683

Reporter

2024 Nev. Unpub. LEXIS 398 *; 548 P.3d 428; 2024 WL 2200590

ROBERT BEADLES, AN INDIVIDUAL, Appellant, vs. JAMIE RODRIGUEZ, IN HER OFFICIAL CAPACITY AS REGISTRAR OF VOTERS AND IN HER PERSONAL CAPACITY; WASHOE COUNTY REGISTRAR OF VOTERS, A GOVERNMENT AGENCY; ERIC BROWN, IN HIS OFFICIAL CAPACITY AS WASHOE COUNTY MANAGER AND IN HIS PERSONAL CAPACITY; ALEXIS HILL, IN HER OFFICIAL CAPACITY AS CHAIRWOMAN OF WASHOE COUNTY BOARD OF COMMISSIONERS AND IN HER PERSONAL CAPACITY; AND WASHOE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Respondents.

Notice: NOT DESIGNATED FOR PUBLICATION. PLEASE CONSULT THE NEVADA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

PUBLISHED IN TABLE FORMAT IN THE PACIFIC REPORTER.

Subsequent History: US Supreme Court certiorari denied by [Beadles v. Rodriguez, 2024 U.S. LEXIS 4914 \(U.S., Dec. 9, 2024\)](#)

Judges: [*1] Stiglich, J., Pickering, J., Parraguirre, J.

Opinion

ORDER OF AFFIRMANCE

This is a pro se appeal from district court orders denying a motion to change venue and granting a motion to dismiss appellant's complaint.¹ First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Robert Beadles informed respondents that he believed there were election law violations in the 2020 election and there were continuing breaches of legal procedures.² When respondents did not directly respond to Beadles, he filed the underlying complaint alleging that (1) respondents violated [Nevada Constitution Article 1, Section 10](#); Article 2, Section 1A(11); Article 15, Section 2; and [NRS 293.2546\(11\)](#) by not responding to his allegations and (2) because of their failure to respond to his allegations, they should be removed from office.³ The district court denied Beadles' second motion to change venue and then granted respondents' motion to dismiss the complaint.

First, we conclude the district court did not manifestly abuse its discretion when it denied Beadles' request to change venue. See [Sicor, Inc. v.](#)

¹ Having considered the pro se brief, we conclude that a response is not necessary. [NRAP 46A\(c\)](#). This appeal, therefore, has been submitted for decision based on the pro se brief, the pro se amicus brief, and the record. See [NRAP 34\(f\)\(3\)](#).

² We permitted amicus to file a brief in support of Beadles but conclude that brief does not support a different result here, as that brief focused on the allegations presented to respondents, not on whether the district court erred in denying the motion to change venue or in granting the motion to dismiss the complaint.

³ While Beadles asserted other reasons outside of his complaint as bases for removing respondents from office, he did not include those allegations in his complaint, and the district court specifically said it could not consider his rogue exhibits filed in that court.

Hutchison, 127 Nev. 904, 911, 266 P.3d 608, 613 (2011) (stating that this court reviews the denial of a motion to change venue for a manifest abuse of discretion). Beadles originally filed this action in the Second Judicial District Court and was successful in having venue [*2] changed from that court. But instead of transferring the matter to the Third Judicial District Court as requested by Beadles, the Second Judicial District Court concluded that the issues with venue could be alleviated by transfer to the First Judicial District Court, which would be a more convenient forum for witnesses than the Third Judicial District Court. Thereafter, considering the factors laid out in *National Collegiate Athletic Association v. Tarkanian*, 113 Nev. 610, 612, 939 P.2d 1049, 1051 (1997), the First Judicial District Court concluded that Beadles failed to demonstrate a need to change venue once again. The record on appeal supports the district court's conclusion that Beadles did not demonstrate a reasonable likelihood that an impartial trial could not be had in the First Judicial District Court. *Id. at 612, 939 P.2d 1051* (explaining that a change of venue may be necessary when there is a reasonable likelihood that an impartial trial is not possible in that venue). Thus, we affirm the district court's order denying Beadles' motion to change venue.

Second, we conclude the district court properly granted respondents' motion to dismiss the complaint because, taking all the factual allegations in the complaint as true and drawing every inference in favor of Beadles, he can prove no set of facts [*3] that would entitle him to relief as pleaded. See *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (reviewing de novo a district court's dismissal of a complaint under *NRCP 12(b)(5)*). Further, we conclude the district court did not abuse its discretion in denying Beadles' alternative request for a writ of mandamus on the same grounds. See *Koller v. State*, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006) (stating that this court reviews a district court's denial of mandamus relief for an abuse of discretion).

Article 1, Section 10 of the Nevada Constitution guarantees the right to assemble and petition the Legislature. There are no set of facts that could prove a violation of that constitutional right based on respondents' failure to respond directly to Beadles' allegations.

Article 2, Section 1A, Subsection 11 of the Nevada Constitution and *NRS 293.2546(11)* permit a voter "[t]o have complaints about elections and election contests resolved . . . as provided by law." Thus, the law permits a voter to file a complaint with the Secretary of State's office, *NAC 293.025*, or with the clerk of the district court, *NRS 293.407*. These laws do not establish that respondents had a duty to respond to Beadles' allegations. Additionally, because the constitutional provision is not self-executing, it does not establish a private right of action. See *Mack v. Williams*, 138 Nev., Adv. Op. 86, 522 P.3d 434, 441-42 (2022) (explaining that a private right of action to enforce the Nevada Constitution is permitted if the constitutional provision [*4] is self-executing). Thus, no set of facts could prove that respondents violated *Nevada Constitution, Article 2, Section 1A, Subsection 11* or *NRS 293.2546(11)* by not responding to Beadles.

Article 15, Section 2 of the Nevada Constitution requires all public officers to take an oath to support the Constitution and faithfully perform the duties of their office. Because none of respondents' duties of their offices required them to respond to allegations regarding elections, Beadles can prove no set of facts demonstrating respondents violated this constitutional provision.

Regarding Beadles' cause of action for removal of respondents from office, there is also no set of facts that would warrant relief as pleaded by Beadles. Beadles' reliance on *NRS 266.430* is misplaced because that statute provides for the removal of the mayor or a municipal officer of an incorporated city or town and none of the respondents fall into those categories. While *NRS 283.440* provides a procedure for the removal of certain public officers for malfeasance or nonfeasance, as discussed

above, because none of the respondents had a duty to respond to Beadles' allegations, he can prove no set of facts, as pleaded, to demonstrate respondents' malfeasance or nonfeasance.⁴ Thus, we conclude the district court properly granted respondents' motion to dismiss the [*5] complaint, and accordingly we

ORDER the judgment of the district court AFFIRMED.⁵

/s/ Stiglich, J.

Stiglich

/s/ Pickering, J.

Pickering

/s/ Parraguirre, J.

Parraguirre

End of Document

⁴To the extent Beadles is attempting to rely on the allegations of election law violations and breaches of legal procedures that he reported to respondents to demonstrate malfeasance or nonfeasance, his complaint does not allege removal is necessary because of those allegations, and those allegations would be best raised through a complaint filed with the Secretary of State. *NAC 293.025*.

⁵Beadles appears to argue in his brief that the district court abused its discretion by awarding respondents their attorney fees. The record before this court demonstrates that the district court withdrew that order and Beadles has not thereafter appealed from another order regarding attorney fees.