

1 W. Chris Wicker [NSB No. 1037]
2 Jose A. Tafoya [NSB No. 16011]
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Reno, NV 89511-1149
6 Tel: (755) 688-3000
7 wwicker@woodburnandwedge.com
8 jtafoya@woodburnandwedge.com

REC'D & FILED

2025 JAN 17 PM 3:50

WILLIAM SCOTT HOEN
CLERK

BY 
DEPUTY

5 MAYER BROWN LLP
6 Lee H. Rubin (*pro hac vice* pending)
7 Two Palo Alto Square, Suite 300
8 3000 El Camino Real
9 Palo Alto, CA 94306-2112
10 (650) 331-2000
11 lrubin@mayerbrown.com
12 Rachel J. Lamorte (*pro hac vice* pending)
13 1999 K Street, N.W.
14 Washington, D.C. 20006-1101
15 Telephone: (202) 263-3000
16 rlamorte@mayerbrown.com
17 Robert C. Double III (*pro hac vice* pending)
18 333 South Grand Avenue, 47th Floor
19 Los Angeles, CA 90071
20 (213) 229-9500
21 rdouble@mayerbrown.com

22 FREE SPEECH FOR PEOPLE
23 Amira Mattar (*pro hac vice* pending)
24 John Bonifaz (*pro hac vice* pending)
25 Courtney Hostetler (*pro hac vice* pending)
26 48 N. Pleasant Street, Suite 304
27 Amherst, MA 01002
28 (617) 224-0234

Attorneys for NAACP Tri-State Conference of Idaho-Nevada-Utah

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

24 ZENAIDA DAGUSEN, an individual;
25 REPUBLICAN NATIONAL COMMITTEE;
26 NEVADA REPUBLICAN PARTY; and
27 DONALD J. TRUMP FOR PRESIDENT 2024,
28 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 NATIONAL ASSOCIATION FOR THE
9 ADVANCEMENT OF COLORED PEOPLE,

10 Intervenor-Defendant.

11 **NAACP TRI-STATE CONFERENCE OF IDAHO-NEVADA-UTAH'S MOTION TO**

12 **DISMISS**

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 Motion to Dismiss.

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

21 DATED this 17th day of January, 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 AND BACKGROUND

3 The Court should reject Plaintiffs' attempt to unlawfully remove thousands of eligible
4 Nevadans from the voter registration roll. Plaintiffs Nevada Republican Party, Donald J. Trump for
5 President 2024, Inc., and Zenaida Dagusen request a permanent injunction requiring the Nevada
6 Secretary of State ("the Secretary") to purge from the voter roll individuals whose citizenship
7 cannot be verified by a range of mostly unspecified categories of information allegedly held by
8 state and federal agencies. Compl. at Prayer (lists "information regarding citizenship status" or
9 "non-citizenship" held by the Department of Homeland Security (including the Systematic Alien
10 Verification for Entitlements or "SAVE" database), Nevada courts related to jury-duty eligibility,
11 the Nevada Department of Motor Vehicles (the "DMV"), "and other state agencies"). In proffering
12 a solution in search of a problem, Plaintiffs fail to state a claim upon which relief can be granted
13 because their requested relief, if implemented, would violate the U.S. and Nevada Constitutions
14 and the National Voter Registration Act ("NVRA").

15 Plaintiffs' requested relief threatens to ensnare eligible voters by removing them from the
16 voter registration roll, particularly naturalized citizen voters, due to the flawed and unreliable nature
17 of the data on which Plaintiffs would have the Secretary rely. To justify the substantial burden the
18 requested relief would impose on eligible voters, Plaintiffs offer "evidence" of illegal voting by
19 noncitizens. *See* Compl. ¶¶ 56–63, 66–77, 82–89. But these allegations are illusory and patently
20 insufficient, even at the pleading stage, to justify the relief requested. Importantly, this evidence
21 has already been roundly debunked or is facially noncredible. Indeed, voter roll maintenance
22 programs of the type requested by Plaintiffs have been deemed unreliable for inaccurately flagging
23 and removing eligible voters. Plaintiffs' citation to the failed efforts by other states, coupled with
24 their apparent lack of careful consideration for how the Secretary would effect his duties, belie their
25 true intent. This is not a case about voter roll hygiene; it is about abusing the voter roll maintenance
26 process to disenfranchise potentially thousands of eligible voters.

27 Accordingly, Plaintiffs' complaint should be dismissed. Not only do Plaintiffs lack standing
28 and fail to state a claim for the reasons advanced by Defendants the Democratic National

1 Committee, the Nevada Democratic Party, and the Secretary in their separate motions to dismiss,
2 filed on October 3, 2024 and December 2, 2024, respectively, (hereinafter, “Defendants’
3 Motions”),¹ Plaintiffs’ complaint fails to state a claim because their requested relief would violate
4 the U.S. and Nevada Constitutions and the NVRA, and should be dismissed.

5 **LEGAL STANDARD**

6 Nevada Rule of Civil Procedure 12(b)(5) requires that a complaint be dismissed “if it
7 appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle
8 [the plaintiff] to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670,
9 672 (2008). In making such determination, “the [C]ourt may take into account matters of public
10 record, orders, items present in the record of the case, and any exhibits attached to the complaint
11 when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted.”
12 *Brelian v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

13 **ARGUMENT**

14 **I. Plaintiffs’ Allegations Do Not Justify the Undue Burden Their Requested Relief
15 Would Impose on Nevadans’ Right To Vote**

16 Plaintiffs’ complaint should be dismissed because their illusory allegations of noncitizen
17 voting do not justify their requested relief and would undermine the protections for Nevadans’ right
18 to vote afforded by the First and Fourteenth Amendments of the U.S. Constitution and Articles II
19 and IV of the Nevada Constitution.²

21 ¹ So as not to burden the Court with duplicative motion practice, Intervenor-Defendant Tri-State
22 NAACP respectfully refers the court to Defendants’ Motions and incorporates any arguments as
23 if expressly stated herein.

24 ² Article IV, Section 21 provides a right to equal protection that is equivalent to the Fourteenth
25 Amendment of the federal constitution, *Rico v. Rodriguez*, 121 Nev. 695, 703, 120 P.3d 812, 817
26 (2005), and accordingly, as did Plaintiffs (Compl. ¶ 105), Intervenor-Defendant relies on federal
27 cases interpreting the equal protection clause of the Nevada Constitution. Article II, Section 1
28 provides that “[a]ll citizens of the United States . . . of the age of eighteen years and upwards,
who shall have actually, and not constructively, resided in the state six months, and in the district
or county thirty days next preceding any election, shall be entitled to vote[.]” Further, under
Section 1A(9), “[e]ach voter who is a qualified elector under this Constitution and is registered to
vote . . . has the right . . . [t]o equal access to the elections system without discrimination,
including, without limitation, discrimination on the basis of race, age, disability, military service,
employment or overseas residence.” *See also* NRS 293.2546(9) (same).

1 “The right to vote is preservative of all rights and is of the most fundamental significance
2 under our constitutional structure.” *Election Integrity Project California, Inc. v. Weber*, 113 F.4th
3 1072, 1082 (9th Cir. 2024) (internal quotation marks and citations omitted). Where an election-
4 related practice impacts the right to vote, the *Anderson-Burdick* framework is used to determine
5 whether that impact is an undue burden. *See Anderson v. Celebreeze*, 460 U.S. 780, 788, 103 S. Ct.
6 1564, 1569–70 (1983); *Burdick v. Takushi*, 504 U.S. 428, 433, 112 S. Ct. 2059, 2063 (1992). Under
7 the framework, courts “consider the character and magnitude of the asserted injury” to the right to
8 vote and whether that injury is justified, and then weigh “the legitimacy and strength” of each
9 justification. *Anderson*, 460 U.S. at 789, 103 S. Ct. at 1570; *see also Busefink v. State*, 128 Nev.
10 525, 531–32, 286 P.3d 599, 604 (2012) (applying the *Anderson-Burdick* framework). Though this
11 framework typically applies to state action and, here, Plaintiffs are private parties requesting relief,
12 the state would ultimately be responsible for imposing the requested action. Thus, the *Anderson-*
13 *Burdick* framework applies.

14 The *Anderson-Burdick* framework imposes a “means-end fit framework.” *Pub. Integrity
15 All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 (9th Cir. 2016) (en banc). In other words, “the
16 more severe the burden imposed” on the right to vote, “the more exacting [the Court’s] scrutiny”
17 to ensure that the state’s interests are tailored to the restriction at issue. *See Ariz. Libertarian Party
18 v. Hobbs*, 925 F.3d 1085, 1090 (9th Cir. 2019). While a state may justify “reasonable,
19 nondiscriminatory restrictions” by asserting “important regulatory interests,” *Burdick*, 504 U.S. at
20 434, 112 S. Ct. at 2063 (emphasis added), courts must still scrutinize the “legitimacy,” “strength,”
21 and “necessi[ty]” of election restrictions, *Anderson*, 460 U.S. at 789, 103 S. Ct. at 1570.
22 “Restrictions that block access to the ballot or impede individual voters or subgroups . . . in
23 exercising their right to vote” require greater scrutiny than “rules establishing an overall, generally
24 applicable electoral system.” *Pub. Integrity All.*, 836 F.3d at 1024 n.2; *see Obama for America v.
25 Husted*, 697 F.3d 423, 431 (6th Cir. 2012) (heightened scrutiny under *Anderson-Burdick* where
26 “particularly high” burden imposed on certain groups that disproportionately voted in early voting
27 period by state restrictions on in-person early voting).

28 Plaintiffs’ requested relief fails this “means-end fit framework.”

A. Plaintiffs' Requested Relief Severely Burdens the Right To Vote

Plaintiffs' requested relief, if implemented, would severely burden the right to vote of all Nevadans, while disproportionately affecting naturalized citizens.

*First, and most importantly, Plaintiffs' requested relief would subject potentially thousands of eligible Nevadan voters to removal from the voter roll. *Fish v. Schwab*, 957 F.3d 1105, 1130–33 (10th Cir. 2020) (“[T]he approximately 30,000 would-be voters disenfranchised in this case provide a concrete evidentiary basis to find that a *significant* burden was imposed by the DPOC requirement.”) (emphasis added); see also *Texas League of United Latin Am. Citizens (LULAC) v. Whitley*, No. SA-19-CA-074-FB, 2019 WL 7938511 (W.D. Tex. Feb. 27, 2019) (denying motion to dismiss, *inter alia*, claim that voter roll maintenance program which would remove ineligible voters from the voter rolls would unduly burden their right to vote). In addition, the relief will cause confusion among voters as they wonder whether they are registered to vote, need to confirm their eligibility, or otherwise engage in a process to ensure they can vote. See *Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 666 (6th Cir. 2016) (a restriction that was likely to cause voter confusion imposed a burden that was “not slight”).*

Second, this burden will fall more harshly on naturalized citizens because of the nature of the data on which Plaintiffs would have the Secretary rely in verifying the citizenship of voters already on the registration roll. *See* Compl. at Prayer (lists “information regarding citizenship status” or “non-citizenship” held by the Department of Homeland Security (including the Systematic Alien Verification for Entitlements or “SAVE” database), Nevada courts related to jury-duty eligibility, the Nevada Department of Motor Vehicles (the “DMV”), “and other state agencies.”). Citizenship verification requirements that rely on information held by the Department of Homeland Security (including the SAVE database) and DMV data necessarily flag naturalized citizens more than native-born citizens because the relevant information captures only naturalized citizens among the population of citizens.

The Department of Homeland Security generally does not have information about the citizenship of native born citizens. *United States v. Arizona*, 703 F. Supp. 2d 980, 997 n.9 (D. Ariz. 2010), *aff'd*, 641 F.3d 339 (9th Cir. 2011), *aff'd in part, rev'd in part and remanded*, 567 U.S. 387

1 (2012), and *aff'd in part, rev'd in part*, 689 F.3d 1132 (9th Cir. 2012). The SAVE database, likewise,
2 contains information about naturalized citizens, not native-born citizens, *see Mi Familia Vota v.*
3 *Fontes*, 719 F. Supp. 3d 929, 995 (D. Ariz. 2024) (explaining that while a similar program
4 “purport[s] to confirm the citizenship status of *all* voters, because SAVE requires an immigration
5 number,” it cannot apply to native born citizens) (emphasis added), and so use of such data would
6 inevitably flag naturalized citizens for citizenship verification. Similarly, DMV data reflects an
7 individual’s citizenship status at the time they obtained their driver’s license, permit, authorization,
8 or identification card, which, for noncitizens, are valid for varying terms. *See* NRS 483.290(7),
9 483.875(4) (license, permit, and identification card valid for one year or the time period for which
10 the individual is authorized to stay in the U.S.); NRS 483.291(6)(a) (driver authorization card
11 expires on fourth anniversary of holder’s birthday). There is no requirement that individuals update
12 their DMV information if they become a citizen. In 2022 alone, more than 10,000 Nevadans
13 became naturalized citizens.³ Accordingly, naturalized citizens will linger in DMV systems and
14 mistakenly be targeted for removal as noncitizens when native born citizens would not be subject
15 to such categorical exclusion.

16 **B. Plaintiffs’ Allegations Do Not Justify These Burdens**

17 Because of this potential discriminatory impact, the Court should apply heightened scrutiny
18 to evaluate Plaintiffs’ allegations of non-citizen voting. Plaintiffs allege that their requested relief
19 is justified because of the number of noncitizens they claim have voted in Nevada elections, relying
20 on outdated DMV data and broadly discredited “evidence” of noncitizens voting. Compl. ¶¶ 56–
21 63, 88–89, 98–102. While “[t]here is no question about the legitimacy or importance of the State’s
22 interest in counting only the votes of eligible voters[,]” *Crawford v. Marion Cnty. Elect. Bd.*, 553
23 U.S. 181, 196, 128 S. Ct. 1610, 1619 (2008) (plurality opinion of Stevens, J.), that interest may not
24 be merely illusory. Without credible evidence of widespread voter fraud, courts “cannot conclude
25 those interests make it necessary to burden [voting] rights.” *See Schwab*, 957 F.3d at 1132–34
26 (holding that suspension or cancellation of more than 30,000 registration applications constituted
27

28 ³ *See Profiles on Naturalized Citizens: 2022 State*, Office of Homeland Security Statistics (Feb.
12, 2024), <https://ohss.dhs.gov/topics/immigration/naturalizations/profiles-naturalized-citizens>.

1 an undue burden after “the district court found essentially no evidence that the integrity of [the]
2 electoral process had been threatened, that the registration of ineligible voters had caused voter
3 rolls to be inaccurate, or that voter fraud had occurred”); *see also Paher v. Cegavske*, 457 F. Supp.
4 3d 919, 929 (D. Nev. 2020) (denying a motion for preliminary injunction partially because
5 “Plaintiffs’ overarching theory that having widespread mail-in vot[ing] makes the Nevada election
6 more susceptible to voter fraud seems unlikely”).

7 Plaintiffs’ allegations as to why these burdens should be imposed fall short. As a threshold
8 matter, Plaintiffs offer no explanation as to why the laws already in place to prevent noncitizens
9 from voting in Nevada are inadequate. Only U.S. citizens may vote in elections in Nevada, *see Nev.*
10 *Const. art. II, § 1A; NRS 293.485(1)*, and numerous safeguards exist to ensure that noncitizens do
11 not vote. Not only are individuals informed when they register that they must be U.S. citizens to do
12 so, the registration application requires the applicant to swear or affirm that they are a U.S. citizen.⁴
13 And noncitizens are deterred from unlawfully voting by incarceration, fines, and—mostly
14 importantly—being rendered inadmissible to the U.S. and deported for doing so. *See NRS*
15 *293.775(1); 18 U.S.C. § 611; 8 U.S.C. §§ 1182(a)(6)(C)(ii), (10)(D)*. Because of these serious
16 penalties, noncitizen voting in Nevada is incredibly rare. According to a study conducted by the
17 Brennan Center for Justice, in the 2016 election, “incidents of noncitizen voting alleged in. . .
18 Nevada . . . amount[ed] to, at most[,] .0003 . . . percent of ballots.”⁵

19 Nothing in Plaintiffs’ complaint credibly contradicts this. Plaintiffs offer as support:
20 (i) allegations of noncitizen voting raised in the years before the instant litigation, Compl. ¶¶ 56–
21 57, 62–63; (ii) four-year old DMV data allegedly showing “thousands of noncitizens on the voter
22 rolls,” Compl. ¶¶ 58–61; (iii) surveys and studies purportedly finding self-reported noncitizen
23 voting, Compl. ¶¶ 66–77, 88–89; and (iv) voter-purge programs in other states, Compl. ¶¶ 82–87.
24 But this claimed “evidence” is insufficiently concrete or credible to justify the burden on the right
25 to vote, and renders the complaint subject to dismissal, even on a motion to dismiss.

26 ⁴ Nev. Sec’y State, State of Nevada, Voter Registration Application,
27 www.nvsos.gov/sosvoterregform/.

28 ⁵ Christopher Famighetti, Douglas Keith & Myrna Perez, *Noncitizen Voting: The Missing Millions*, Brennan Center for Justice (2017),
https://www.brennancenter.org/sites/default/files/publications/2017_NoncitizenVoting_Final.pdf.

1 For example, following allegations of noncitizen voting by the Nevada Republican Party in
2 2021, the then-Secretary launched an investigation “consum[ing] more than 125 hours of staff
3 time.”⁶ The Secretary’s investigation concluded that the Nevada Republican Party had massively
4 overreported the number of records “supporting” its allegations, that the Nevada Republican Party’s
5 allegations were “based largely upon an incomplete assessment of voter registration records and
6 lack of information concerning the processes by which these records are compiled and
7 maintained[,]” and that the Nevada Republican Party failed to raise “evidentiary support for the
8 contention that the 2020 general election was plagued by widespread voter fraud.”⁷

9 The four-year old DMV data that Plaintiffs rely on to support their claims of noncitizen
10 voting *now* are also noncredible. Plaintiffs allege that the data shows that certain registered voters
11 presented immigration documents to obtain a driver’s license or identification card, but that fact
12 provides little insight into such voters’ present day citizenship status. As described above, DMV
13 data reflects an individual’s citizenship status at the time they obtained their driver’s license, permit,
14 authorization, or identification card. Tens of thousands of Nevadans have naturalized as U.S.
15 citizens since that data was collected, and there is no requirement that such citizens immediately
16 update their citizenship status with the DMV, let alone ensure that stale DMV records have been
17 updated.⁸

18 Plaintiffs’ allegations related to the Cooperative Election Study (“CES”) are also not
19 credible. According to Plaintiffs, 4% of Nevadan survey-respondents indicated that they were
20 noncitizens and allegedly matched an individual in the voter file. Compl. ¶ 75. Plaintiffs claim that
21 this extremely small dataset is “representative of the State as a whole” and go on to make the
22 outrageous claim that a *conservative* extrapolation of the data—which, to be clear, reflects *one*,
23 *single* Nevadan among the 2017-2023 survey respondents, *see* Brief of *Amici Curiae* at 2-4—
24 suggests that *tens of thousands* of noncitizens are registered to vote, Compl. ¶ 77. Unfortunately
25 for Plaintiffs, the prediction errors that result from measuring low-frequency behavior in small
26

27 ⁶ Office of the Secretary of State of the State of Nevada, *Elections Integrity Violation Reports*
28 (Apr. 21, 2021), <https://www.nvsos.gov/sos/home/showpublisheddocument?id=9428>.

⁷ *Id.*

⁸ *See supra* note 3.

sample surveys is well documented, and lead to faulty inferences that CES authors have specifically cautioned against. *See Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 996, 108 S. Ct. 2777, 2790 (1988) (explaining that statistics may not be probative if based on a “small or incomplete data set[]”); *Morita v. S. Cal. Permanente Med. Grp.*, 541 F.2d 217, 220 (9th Cir. 1976) (“[S]tatistical evidence derived from an extremely small universe … has little predictive value and must be disregarded.”); *Stout v. Potter*, 276 F.3d 1118, 1123 (9th Cir. 2002) (“A sample involving 6 female applicants in a pool of 38 applicants is likely too small to produce statistically significant results.”).⁹ And, as noted above, an investigation by the Secretary of State found no evidence of widespread noncitizen voting in Nevada. *See supra* at p.7:1-8. Plaintiffs’ citations to commentary by activists, such as Jesse T. Richman and Hans von Spakovsky, fare no better. As Defendants Democratic National Committee and the Nevada Democratic Party, and *amici* American Civil Liberties Union of Nevada and Protect Democracy, point out, these experts’ opinions have been critiqued for being inconsistent and methodologically flawed by hundreds of experts in their field. October 3, 2024 Motion to Dismiss at 2, n.3; December 5, 2024 Brief of *Amici Curiae* at 5:1-11.

And, finally, Plaintiffs’ claim that there is noncitizen voting in Nevada because other states have implemented mass voter purge programs targeting *suspected* noncitizens adds no weight or credibility to the allegation that there are *actual* incidents of noncitizen voting, either in those states or in Nevada. In addition, court after court has found that similar programs to the one Plaintiffs would have the Secretary impose wrongfully results in the removal of eligible, American citizens from the voter roll. *See, e.g., Va. Coalition for Immigrant Rights v. Beals*, No. 24-2071, 2024 WL 4601052, at *2 (4th Cir. Oct. 27, 2024) (“Appellants err in asserting that the district court ordered them to ‘restore approximately 1,600 noncitizens to the voter rolls.’ . . . What the district court actually found was that ‘neither the Court nor the parties . . . know’ that the people ‘removed from’ the voter rolls under the challenged program ‘were, in fact, noncitizens,’ and that at least some ‘eligible citizens . . . have had their registrations canceled and were unaware that this was even so.’”), *stay granted*, No. 24A407, 2024 WL 4608863 (U.S. Oct. 30 2024); *LULAC*, 2019 WL

⁹ *See* Brian Schaffner, Stephen Ansolabehere, & Marissa Shih, *Guide to the 2022 Cooperative Election Study* (Aug. 2023), at 22, available at <https://dataverse.harvard.edu/file.xhtml?fileId=7359254&version=4.0> (accessed Jan. 16, 2025).

1 7938511, at *1 (“Almost immediately upon sending the list [of alleged noncitizens on the voter
2 roll], the government had an ‘oops’ moment, realizing that 25,000 names should not have been
3 included. It appears this is a solution looking for a problem.”); *United States v. Florida*, 870 F.
4 Supp. 2d 1346, 1347–48 (N.D. Fla. 2012) (“There were major flaws in the [voter roll maintenance
5 program]. The Secretary compiled the list in a manner certain to include a large number of citizens.
6 At least insofar as shown by this record, the list included any person who (1) as a noncitizen,
7 obtained a driver’s license and accurately disclosed to the Department of Highway Safety and
8 Motor Vehicles that the person was not a citizen, (2) became a naturalized citizen, (3) registered to
9 vote, accurately disclosing to the Supervisor of Elections that the person was a citizen, and (4) had
10 not yet renewed the driver’s license and so had not updated DHSMV’s records to reflect the new
11 citizenship status.”).

12 Plaintiffs’ factual allegations are thus illusory and patently inadequate to justify the relief
13 requested. Each piece of “evidence” that Plaintiffs cite is facially unreliable, leaving them without
14 any factual support for the relief they are seeking. Accordingly, Plaintiffs’ plainly pretextual
15 justifications cannot outweigh the substantial burden the requested relief would impose on
16 Nevadans’ right to vote. Thus, Plaintiffs have failed to state a claim upon which relief can be
17 granted as granting Plaintiffs’ requested relief would unconstitutionally deny eligible, naturalized
18 citizens equal protection under the laws of Nevada and the United States.

19 **II. The Relief Requested Would Result in Nonuniform, Discriminatory Removal of
20 Voters from the Voter Roll in Violation of the NVRA**

21 Plaintiffs’ complaint should also be dismissed because their requested relief would violate
22 Section 8(b) of the NVRA, which requires that any state voter roll maintenance program or activity
23 “shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” 52
24 U.S.C. § 20507(b) (the “Uniformity Provision”). In assessing whether a program violates the
25 Uniformity Provision, courts consider whether the measure disproportionately impacts a particular
26 group of voters. *See Mi Familia Vota*, 719 F. Supp. 3d at 999; *United States v. Florida*, 870 F. Supp.
27 2d at 1350–51.

28

1 Plaintiffs' requested relief has a disproportionate impact on naturalized citizens. As
2 described above, citizenship verification requirements that rely on information held by DHS
3 (including the SAVE database) and DMV data necessarily flag naturalized citizens more than
4 native-born citizens because the relevant information relates only to naturalized citizens. Because
5 of this issue, federal district courts in Florida and Texas have found violations of the Uniformity
6 Provision where citizenship checks of individuals already on the voter registration rolls required
7 comparison of drivers' license records and voter registration records because driver's license data
8 is likely to erroneously flag a large number of naturalized citizens based on outdated information.
9 *See United States v. Florida*, 870 F. Supp. 2d at 1350 (finding secretary of state's list maintenance
10 program "probably ran afoul" of section 8 because its "methodology made it likely that the properly
11 registered citizens who would be required to respond and provide documentation would be
12 primarily newly naturalized citizens"); *LULAC*, 2019 WL 7938511, at *1 (finding discriminatory
13 impact where over 90,000 "perfectly legal naturalized Americans were burdened with what the
14 Court finds to be ham-handed and threatening correspondence from the state" as a result of a voter
15 roll maintenance program relying on driver's license and personal identification card data, which
16 "exemplifie[d] the power of government to strike fear and anxiety and to intimidate the least
17 powerful among us").¹⁰ Reliance on SAVE data for such a list maintenance program (*i.e.*, to purge
18 registered voters) similarly targets naturalized citizens because native citizens cannot be subject to
19 an additional citizenship check under the SAVE system. *Mi Familia Vota*, 719 F. Supp. 3d at 999
20 (invalidating provision requiring election officials to conduct monthly verifications using SAVE
21 database because the SAVE program, by design, allows searches only for naturalized citizens).

22 Plaintiffs' requested relief would thus mandate the Secretary of State to treat registered
23 voters in a non-uniform and discriminatory manner in violation of Section 8(b) of the NVRA.

24 **CONCLUSION**

25 For the reasons stated above, the Court should dismiss the complaint.

26

27

28 ¹⁰ *See also* December 5, 2024 Brief of *Amici Curiae* at 2-4 (citing U.S. Dep't of Justice, *NVRA List Maintenance Guidance* (Sept. 2024)).

AFFIRMATION

Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that this document does not contain the personal information of any person. Pursuant to FJDCR 3.6, the undersigned further affirms that when any additional documents are filed by the undersigned, an affirmation will be provided only if the document does contain personal information.

DATED this 17th day of January, 2025.

WOODBURN AND WEDGE

By:

W. Chris Wicker [NSB No. 1037]
Jose A. Tafoya [NSB No. 16011]
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, NV 89511-1149
Tel: (775) 688-3000
Fax: (775) 688-3088
wwicker@woodburnandwedge.com
itafoya@woodburnandwedge.com

MAYER BROWN LLP

Lee Rubin (*pro hac vice* pending)
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, CA 94306-2112
(650) 331-2000
lrubin@mayerbrown.com

Rachel J. Lamorte (*pro hac vice* pending)
1999 K Street, NW
Washington, DC 20006-1101
(202) 263-3000
rlamorte@mayerbrown.com

Robert C. Double III (*pro hac vice* pending)
333 South Grand Avenue, 47th Floor
Los Angeles, CA 90071
(213) 229-9500
rdouble@mayerbrown.com

FREE SPEECH FOR PEOPLE

Amira Mattar (*pro hac vice* pending)
John Bonifaz (*pro hac vice* pending)
Courtney Hostetler (*pro hac vice* pending)
48 N. Pleasant Street, Suite 304

1 Amherst, MA 01002
2 (617) 244-0234
3 amira@freespeechforpeople.org
4 ibonifaz@freespeechforpeople.org
5 chostetler@freespeechforpeople.org

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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 ***NAACP TRI-STATE CONFERENCE OF IDAHO-NEVADA-UTAH'S MOTION TO DISMISS*** to be served via Electronic-Mail, to the following:

Brian R. Hardy, Esq.
Harry L. Arnold, Esq.
MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, NV 89145
bhardy@maclaw.com
harnold@maclaw.com
Attorneys for Plaintiffs

Laena St Jules, Esq.
Senior Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701
lstjules@ag.nv.gov

Julie Harkleroad
Judicial Assistant to Hon. Woodbury
First Judicial District Court, Dept. I
JHarkleroad@carson.org

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
BRAVO SCHRAGER LLP
6675 S. Tenaya Way, Ste. 200
Las Vegas, NV 89113
bradley@bravoschrager.com
daniel@bravoschrager.com

David R. Fox, Esq.
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Ste. 400
Washington, D.C. 20001
dfox@elias.law

Attorneys for Defendants Democratic National Committee and Nevada State Democratic Party

DATED this 17th day of January, 2025.

M. Duran
An employee of Woodburn and Wedge