

1 **Marquis Aurbach**
2 Brian R. Hardy, Esq.
3 Nevada Bar No. 10068
4 Harry L. Arnold, Esq.
5 Nevada Bar No. 15866
6 Nicholas M. Adams, Esq.
7 Nevada Bar No. 15859
8 10001 Park Run Drive
9 Las Vegas, Nevada 89145
10 Telephone: (702) 382-0711
11 Facsimile: (702) 382-5816
12 bhardy@maclaw.com
13 harnold@maclaw.com
14 nadams@maclaw.com
15 Attorneys for Plaintiff

REC'D & FILED
2024 DEC 18 PM 3:25
WILLIAM SCOTT HOEN
CLERK
BY *[Signature]*

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

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

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

16 Plaintiff,

17 vs.

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

22 Defendant.

**OPPOSITION TO SECRETARY OF
STATE'S MOTION TO DISMISS**

23 Plaintiffs ZENAIDA DAGUSEN, an individual and the REPUBLICAN NATIONAL
24 COMMITTEE, the NEVADA REPUBLICAN PARTY, and DONALD J. TRUMP FOR
25 PRESIDENT 2024, INC. hereby submit the following Opposition to Secretary of State's Motion
26 to Dismiss ("Opposition").

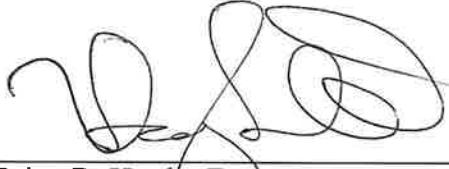
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1 This Opposition is based upon the following Memorandum of Points and Authorities, the pleadings
2 and papers on file herein and any oral argument allowed at a hearing on this matter.

3 Dated this 16th day of December, 2024.

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MARQUIS AURBACH

By 

Brian R. Hardy, Esq.
Nevada Bar No. 10068
Harry L. Arnold, Esq.
Nevada Bar No. 15866
Nicholas M. Adams, Esq.
Nevada Bar No. 15859
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Zenaida Dagusen (the “Individual Plaintiff”), the Republican National Committee and the Nevada Republican Party (the “Republican Party Plaintiffs”), and Donald J. Trump for President 2024 Inc. (collectively, “Plaintiffs”) have plausibly alleged claims in the Complaint under the Nevada Constitution and for declaratory judgment pursuant to NRS 30.040.

In the Motion to Dismiss (the “Motion”), Defendant Francisco Aguilar, in his official capacity as Nevada Secretary of State (“Secretary of State” or “Defendant”) requests that the Court not accept Plaintiffs’ factual allegations as true and decline to draw reasonable inferences in Plaintiffs’ favor. Ultimately, Defendant asks the Court to adopt a legal interpretation whereby no Nevada voter nor political entity has standing to bring a claim under the Nevada Constitution based on the failures of the Secretary of State to abide by his statutory duties as related to Nevada’s voter rolls. Plaintiffs’ Complaint alleges a severe issue in Nevada’s election process whereby Nevada voters are being disenfranchised through the votes of ineligible, noncitizen voters as a result of the Secretary’s noncompliance with his statutory duties.

Defendant's Motion evokes numerous factual disputes and extraneous evidence beyond the four corners of the Complaint, which are improper at this stage, as well as arguments which are plainly inapposite at a 12(b)(5) posture. Plaintiffs have pleaded valid claims under the Nevada Constitution upon which relief can be granted. The Secretary of State has failed to show that Plaintiffs can prove no set of facts which would entitle them to relief as to the subject claims. Therefore, Plaintiffs request that the Court deny the Motion in its entirety.

II. BRIEF STATEMENT OF FACTS¹

The Complaint details the recent history of the Nevada Secretary of State failing to ensure that noncitizens are not registered to vote. *See* Complaint, ¶¶56-90. Of note, Nevada's voter rolls contain thousands of noncitizens who voted in the 2020 election, and thousands more actively

¹ Plaintiffs incorporate and restate by reference herein Paragraphs 24-102 of the Complaint.

1 registered. *Id.* The problem of noncitizen voting has continued since the 2020 general election. *Id.*
2 Nevada's numbers of noncitizens registered to vote are higher than the national average, showing
3 that nearly 12 percent of noncitizen respondents included in the survey datasets for 2018 and 2022
4 had a voter-file match indicating that they were registered to vote. *Id.* Under the U.S. Census
5 Bureau's noncitizen population estimates, a conservative 4 percent registration rate among
6 noncitizens amounts to approximately 11,730 noncitizens registered to vote in Nevada in 2018;
7 11,587 noncitizens registered in 2020; and 11,220 noncitizens registered in 2022. *Id.* Evidence
8 shows that the Secretary's violations are highly correlated with dilution of eligible votes. *Id.* at
9 ¶92.

10 Vote dilution by noncitizen voting favors Democratic candidates and harms Republican
11 candidates. *Id.* at ¶97. Similarly, vote dilution by noncitizen voting disproportionately dilutes the
12 vote of the Individual Plaintiff as well as all Republican voters. *Id.* The Cooperative Election Study
13 cumulative data file shows that approximately 74 percent of individuals who identified themselves
14 as noncitizens indicated that they preferred the Democratic presidential candidate, while
15 approximately 20 percent indicated that they preferred the Republican presidential candidate. *Id.*
16 at ¶98. This suggests that for every 10 noncitizen votes cast, the Democratic party margin would
17 improve by about 5.374 votes. *Id.*

18 Comparing these statistics to the U.S. Census Bureau's estimate of the noncitizen voting-
19 age population shows that noncitizen voting can determine the outcome of close elections (fewer
20 than 2,000 votes). *Id.* at ¶99. The Census Bureau reports that Nevada has a noncitizen voting-age
21 population of 266,065, representing about 12.7% of the total voting-age population. *Id.* The
22 Cooperative Election Study thus suggests that Nevada can expect a voter turnout of about 3,731
23 noncitizens. *Id.* Given the partisan tendencies of noncitizens, that means the Democratic
24 presidential candidate can expect a marginal gain of about 2,005 votes over the Republican
25 presidential candidate. *Id.* The predicted vote dilution would drop significantly if Nevada began
26 verifying citizenship. *Id.* at ¶100. For example, these numbers show that if Nevada began verifying
27 citizenship through the SAVE program and jury information, the estimated number of noncitizens
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1 voting would drop from 3,731 to just 297. *Id.* That would in turn cut the marginal benefit to the
2 Democratic presidential candidate from 2,005 votes to 160 votes. *Id.*

3 **III. LEGAL STANDARD**

4 When considering an NRCP 12(b)(5) motion, factual allegations in the complaint are
5 accepted as true, while inferences in the complaint are drawn in favor of the plaintiff. *Facklam v.*
6 *HSBC Bank USA*, 133 Nev. 497, 498, 401 P.3d 1068, 1070 (2017). A plaintiff fails to state a claim
7 for relief only “if it appears beyond a doubt that [he] could prove no set of facts” that “if true ...
8 entitle [him] to relief.” *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d
9 670, 672 (2008). Under the notice-pleading standard, courts “liberally construe [the] pleadings”
10 for “sufficient facts” that put the “defending party” on “adequate notice of the nature of the claim
11 and relief sought.” *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223
12 (1992).

13 **IV. LEGAL ARGUMENT**

14 **A. PLAINTIFFS HAVE STANDING TO BRING THE INSTANT ACTION**

15 On a prefatory note, Plaintiffs remind the Court that “[w]hen ‘standing is challenged on
16 the basis of the pleadings,’” the Court “must ‘accept as true all material allegations of the
17 complaint’ and ‘construe the complaint in favor of the complaining party.’” *Cal. Rest. Ass’n v.*
18 *City of Berkeley*, 89 F.4th 1094, 1100 (9th Cir. 2024) (amended op.) (quoting *Pennell v. City of*
19 *San Jose*, 485 U.S. 1, 7 (1988)). At this stage, “general factual allegations of injury resulting from
20 the defendant’s conduct may suffice,” because the court must “presume that general allegations
21 embrace those specific facts that are necessary to support the claim.” *Lujan v. Defs. of Wildlife*,
22 504 U.S. 555, 561 (1992) (cleaned up).

23 Keeping in mind the above deferential pleading standard for standing, it becomes readily
24 apparent that Plaintiffs, including but not limited to the Individual Plaintiff, have alleged a
25 cognizable injury. Defendant’s Motion argues to the contrary, suggesting that “Plaintiffs do not
26 allege disproportionate weighting of a vote relative to others’ votes.” Yet that is exactly what
27 Plaintiffs have indeed alleged with respect to noncitizen voting. *See* Compl. at ¶¶ 91-102. In fact,
28

1 Plaintiffs have done so in considerable detail, and specifically alleged a “disproportionate” impact
2 of the Secretary of State’s failure to maintain the voter rolls as required under the NRS. *See id.* at
3 ¶ 98 (“...74 percent of individuals who identified themselves as noncitizens indicated that they
4 preferred the Democratic presidential candidate, while approximately 20 percent indicated that
5 they preferred the Republican presidential candidate.”).

6 The Individual Plaintiff in this case has alleged that *her* vote is being diluted, relevant
7 because “[t]here can be no question that a plaintiff who alleges that his right to vote has been
8 burdened by state action has standing to bring suit to redress that injury.” *Jud. Watch, Inc. v. King*,
9 993 F. Supp. 2d 919, 924 (S.D. Ind. 2012). The case law cited in Defendant’s Motion’s is
10 inapposite; Plaintiffs’ Complaint does not concern a single or even a handful of “improperly
11 counted” votes. Plaintiffs’ Complaint concerns and alleges *thousands* of potentially improperly
12 counted votes, which as set forth in the Complaint, are disproportionately counted against
13 Plaintiffs.

14 Defendant’s additional arguments concerning a purported lack of organizational standing
15 are similarly unavailing. Defendant first resorts to arguing that Plaintiffs’ theory of “competitive
16 harm” is too attenuated and speculative to be able to confer organizational standing. In other words,
17 Defendant suggests that the variety of data alleged in Plaintiffs’ Complaint lack sufficient
18 credibility to be able to allege a competitive harm. Yet again, Plaintiffs’ allegations in the
19 Complaint, including those used to confer standing, are entitled to judicial deference at the
20 pleading stage. *See Cal. Rest. Ass’n*, 89 F.4th at 1100. Overall, Defendant’s factual assertions
21 regarding the data Plaintiffs use to allege competitive farm present factual issues not appropriate
22 for resolution at this early juncture.

23 As to the other basis for organizational standing, diversion of resources, Plaintiffs’
24 Complaint alleged *both* current and future diversion of resources. *See* Complaint at ¶ 110. Yet
25 Defendant’s Motion characterizes this allegation as Plaintiffs “spending their way” into creating
26 standing via the instant action. Yet this self-serving characterization of Plaintiffs’ diverted
27 resources merely assumes that the only “diverted resources” are those that have been spent on the
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1 instant lawsuit. That is simply not what the Complaint alleges. At the pleading stage, Plaintiffs are
2 permitted to “broadly” allege diversion of resources. *See, e.g., Nat'l Council of La Raza v.*
3 *Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015). Defendant’s assumptions about what resources
4 have and have not been diverted do not carry the day for standing purposes.

5 Finally, as detailed above, the “organizational” Plaintiffs have sufficiently established that
6 its members “would otherwise have standing to sue in their own right,” rendering Defendant’s
7 associational standing argument as applied to them moot.

8 **B. PLAINTIFFS HAVE STATED CLAIMS UPON WHICH RELIEF MAY BE
9 GRANTED**

10 **1. Plaintiffs have plausibly alleged that permitting noncitizens to vote in
11 Nevada elections violates their right to equal protection under the law.**

12 Plaintiffs’ Complaint plausibly alleges that their right to equal protection under the law has
13 been violated through the Secretary of State’s violations of his statutory duties to ensure that only
14 citizens are registered to vote, thereby diluting the votes of the Individual Plaintiff and the
15 Republican Party Plaintiffs’ members. *See generally* Complaint, at ¶¶ 59-100. Defendant contends
16 that the claim fails as a matter of law and that Plaintiffs have not alleged that the maintenance of
17 voter rolls in Nevada results in the disparate treatment of “similarly situated persons,” nor
18 constitutes a “device designed to impose different burdens on different classes of person.” On the
19 contrary, that is precisely what Plaintiff have alleged. *See, e.g. id.* at ¶¶ 91-102. Plaintiffs have
20 stated a claim upon which relief can be granted that the Secretary of State’s violations of Nevada’s
21 statutes and permitting noncitizens to vote in Nevada elections violates their right to equal
protection under the law.

22 Article IV, Section 21 of the Nevada Constitution enshrines an equal protection principle
23 in the Nevada Constitution that “is the same as the federal standard.” *State Farm Fire & Gas Co.*
24 *v. All Elec., Inc.*, 99 Nev. 222, 224 (1983). The Fourteenth Amendment to the United States
25 Constitution prohibits states from “denyin[g] to any person within [their] jurisdiction the equal
26 protection of the laws.” U.S. Const. amend. XIV, § 1. Equal protection requires that States protect
27 the right of citizens “to have [their] vote counted at full value without dilution or discount.”

1 *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (quoting *South v. Peters*, 339 U.S. 276, 279 (1950)
2 (Douglas, J., dissenting). “[T]he right of suffrage can be denied by a debasement or dilution of the
3 weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the
4 franchise.” *Id.*

5 Noncitizen voting dilutes the votes of at least two distinct groups. First, every eligible voter
6 who casts a ballot in a given election is injured when their vote is diluted from a false tally. The
7 “impairment resulted from dilution by a false tally” is an injury unique to the voters included in
8 the tally for that specific election. *Baker v. Carr*, 369 U.S. 186, 208 (1962). Second, Republican
9 voters are uniquely injured when the Secretary of State fails to abide by Nevada law and purge
10 voter rolls of non-citizens. As alleged in the Complaint, the Secretary of State’s violations
11 expressly benefit Democrats. *See Complaint* at ¶¶ 91-102. This is certainly a cognizable injury, as
12 recognized by the United States Supreme Court. *See Rucho v. Common Cause*, 139 S. Ct. 2484
13 (2019) (finding dilution for partisan advantage to be a valid injury, but finding that partisan
14 redistricting cases presented nonjusticiable politician questions in federal courts).

15 Finally, even if Defendant’s position was correct as a matter of federal law, this Court has
16 the power to deviate from federal equal protection cases. “It is fundamental that state courts be left
17 free and unfettered by [federal courts] in interpreting their state constitutions.” *Minnesota v. Nat'l
18 Tea Co.*, 309 U.S. 551, 557 (1940). This would be the case to do so. Accordingly, the Court should
19 determine that Plaintiffs have stated an equal protection claim under the Nevada Constitution based
20 upon vote dilution caused by non-citizens voting.

21 **2. Plaintiffs have plausibly alleged that permitting noncitizens to vote in**
22 **Nevada elections violates their due process rights.**

23 Plaintiffs’ Complaint plausibly alleges that their due process rights have been violated by
24 the Secretary of State’s failure to abide by his statutory duties to maintain accurate voter rolls, and
25 that the Secretary of State’s failure has caused Nevada’s election processes to reach a point of
26 fundamental unfairness, including election outcomes being altered through illegitimate votes. *See*
27 *Complaint* at ¶¶ 112-117. The Court should allow this claim to proceed.

1 Relying upon federal cases, Defendant assert that the Complaint fails to state a substantive
2 due process claim under the Nevada Constitution because substantive rights under the federal Due
3 Process Clause are implicated only in exceptional cases where a state's voting system is
4 fundamentally unfair and not a *de minimis* "garden variety election irregularity." Counter to
5 Defendant's arguments, the Complaint absolutely alleges fundamental unfairness in Nevada's
6 voting system, and that the safeguards placed on Nevada's voting system through statute are being
7 actively disregarded by the Secretary of State. Whether Nevada's election processes have reached
8 a point of fundamental unfairness, or "significant disenfranchisement," is a factual question not
9 appropriate for a 12(b)(5) analysis. As alleged in the Complaint, states across the nation are
10 removing noncitizens from voter rolls left and right, yet the Secretary of State refuses to adhere to
11 his statutory duties to do so in Nevada. Plaintiffs have alleged a patent and fundamental unfairness
12 which erodes the democratic process: noncitizens registered to vote in Nevada elections. Taking
13 the allegations in the complaint as true and drawing reasonable inferences in Plaintiffs' favor, it is
14 certainly not beyond a doubt that Plaintiffs could prove no set of facts which would entitle them
15 to relief on this claim.

16 As stated in the Motion, a voter's substantive rights under the due process clause are
17 implicated where a state's voting system if "fundamentally unfair." *Warf v. Bd. of Elections of*
18 *Green Cnty.*, 619 F.3d 553, 559 (6th Cir. 2010). "[C]ases justifying [judicial] intervention have
19 involved attacks 'upon the fairness of the official terms and procedures under which the election
20 was conducted.'" *Id.* (quoting *Griffin*, 570 F.2d at 1078). Under the "fundamentally unfair"
21 standard, a plaintiff must allege "broad-gauged, patent and fundamental unfairness that erode[s]
22 the democratic process." *See Nolles v. State Comm. for Reorganization of Sch. Districts*, 524 F.3d
23 892, 898 (8th Cir. 2008) ("A canvass of substantive due process cases related to voting rights
24 reveals that voters can challenge a state election procedure in federal court only in limited
25 circumstances, such as when the complained of conduct discriminates against a discrete group of
26 voters, when election officials refuse to hold an election though required by state law, resulting in
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1 a complete disenfranchisement, or when the willful and illegal conduct of election officials results
2 in fraudulently obtained or fundamentally unfair voting results.”) (cleaned up).

3 Overall, Plaintiffs allege conduct by the Secretary of State which discriminates against a
4 discrete group of voters, as well as the Secretary of State's willful failure to follow the law as
5 relates to Nevada's voter rolls. Many other states have recognized and corrected this serious
6 problem. This case concerns a fundamental, systemic issue with election integrity throughout the
7 state. Plaintiffs allege a systematic denial of equality in voting in Nevada elections, as well as a
8 fundamental unfairness in Nevada's elections caused by disproportionate debasement and dilution
9 of the votes of Individual Plaintiff and the Republican Party Plaintiffs' members by ineligible
10 voters. *See* Complaint at ¶¶ 91-102. At the very least, whether Nevada's election processes have
11 reached a point of fundamental unfairness is a factual question not appropriate for NRCP 12(b)(5)
12 dismissal.

13 Overall, Plaintiffs have alleged a serious statewide issue causing the election process itself
14 to reach the point of patent and fundamental unfairness. This Court cannot reasonably conclude
15 that it is beyond a doubt that Plaintiffs cannot prove any set of facts to support the claim. Accepting
16 the Complaint's allegations as true and drawing reasonable inferences in Plaintiffs' favor, the
17 Complaint states a due process claim under the Nevada Constitution upon which relief can be
18 granted.

3. Plaintiffs have plausibly alleged that permitting noncitizens to vote in Nevada elections violates their constitutional right to vote.

Plaintiffs have plausibly alleged that their right to vote under the Nevada Constitution has been and is being impaired by the Secretary of State's disregard for his duties in allowing noncitizens to vote. Article II, Section I of the Nevada Constitution guarantees that all eligible voters "shall be entitled to vote." *See* Complaint at ¶¶ 118-122. Defendant argues that Plaintiffs' right to vote claim fails despite the Complaint's allegations that Plaintiffs' votes are diluted by the votes of noncitizen voters because the state is not depriving or burdening the right to vote. *Id.* at ¶¶ 91-102.

1 Defendant's argument is fundamentally at odds with the Supreme Court's holding in
2 *Reynolds*, finding that included within the right to vote is the right of qualified voters to have their
3 vote counted at full value and without dilution or discount. Defendant argues though that *Reynolds*
4 cannot be cited for the proposition that vote dilution is encompassed within the right to vote. Yet
5 *Reynolds* clearly proscribed and repeatedly expressed concerns over vote dilution, including
6 dilution via the casting of illegal/illegitimate votes. *See, e.g.*, *Reynolds*, 377 U.S. 533, 555 (1964)
7 ("The right to vote can neither be denied outright, nor destroyed by alteration of ballots, **nor diluted**
8 **by ballot-box stuffing**") (emphasis added).

9 In effect, Defendant asks the Court to adopt a legal interpretation under which voters have
10 no recourse when the state permits ineligible voters to vote and dilute the votes of eligible and
11 properly registered voters. The Court should reject Defendant's novel assertion that noncitizens
12 voting in Nevada elections has *nothing* to do with the right to vote.

13 The United States Supreme Court held in *Reynolds* that the right to vote means more than
14 being permitted to cast a ballot. Included within the right to vote is the right of all Nevada citizens
15 to have their vote counted at full value and without dilution or discount. Plaintiffs have plausibly
16 alleged that the Secretary's acts are depriving them of the right to vote. Therefore, the Court should
17 deny Defendant's request to dismiss this claim.

18 4. **Plaintiffs have plausibly alleged that the Secretary is failing to**
19 **maintain the voter rolls as required by Nevada law.**

20 Plaintiffs' fourth claim for relief is for declaratory judgment pursuant to NRS 30.040(1).
21 Plaintiffs allege in the Complaint that the Secretary has failed to fulfill his duties under NRS
22 293.675(3)(i), NRS 293.124(2), and NRS 293.675(2)(i), among others, by failing to conduct any
23 systematic or routine removal of noncitizens from the voter rolls. *See* Complaint at ¶¶ 123-128.

24 In the Motion, Defendant contends that the claim fails because Plaintiffs are improperly
25 seeking to compel the Secretary of State to assume duties and obligations under NRS 293.675
26 beyond what the statute requires. Defendant incorrectly argues that the list-maintenance protocols
27 in NRS 293.675 are exhaustive, which is simply not what the statute provides. NRS 293.675(3)(i)
28 provides that the Secretary of State's statewide voter registration list must be "regularly

1 maintained to ensure the integrity of the registration process and the election process.” This is an
2 independent duty. Yet Defendant argues that the duty is limited by NRS 293.675(5)-(8), which
3 would invert the statutory structure and render the “regularly maintained” clause a nullity. This
4 Court is obliged to refrain from interpreting the statute in a manner which would result in an absurd
5 outcome. *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599, 959 P.2d 519, 521 (1998) (“[W]hen
6 possible, the interpretation of a statute or constitutional provision will be harmonized with other
7 statutes or provisions to avoid unreasonable or absurd results.”)

8 Defendant’s argument also critically ignore that the Complaint alleges that the Secretary
9 of State is **failing** to comply with his statutorily prescribed duties. Even Defendant’s framing of
10 the relevant law was correct (which it is not), it would not provide a basis for dismissing Plaintiffs’
11 declaratory judgment claim. Plaintiffs have alleged that the Secretary has failed to meet his
12 obligations under NRS 293.675(3)(i) and NRS 293.124(2). While Defendant believes otherwise,
13 that is a question of fact. Plaintiffs have stated a claim for relief, and it cannot be said at this
14 juncture that Plaintiffs could not prove any set of facts entitling them to a declaratory judgment.

15 In sum, Plaintiffs have stated a viable NRS 30.040(1) declaratory judgment claim for relief.
16 Defendants has failed to show that Plaintiffs’ claim necessarily fails as a matter of law or that
17 Plaintiffs could prove no set of facts which would entitle them to declaratory relief. Accordingly,
18 the Court should allow the claim to proceed.

19 **V. CONCLUSION**

20 Plaintiffs request that the Court deny the Motion and enter the attached proposed order.

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AFFIRMATION

(Under NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above referenced matter does not contain the social security number of any person.

Dated this 16th day of December, 2024.

MARQUIS AURBACH

By

Brian R. Hardy, Esq.
Nevada Bar No. 10068
Harry L. Arnold, Esq.
Nevada Bar No. 15866
Nicholas M. Adams, Esq.
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10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSITION TO
SECRETARY OF STATE'S MOTION TO DISMISS** was served on the 16th day of December, 2024 via email as follows:

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

Laena St Jules
Senior Deputy Attorney General
100 N. Carson St.
Carson City, NV89701
lstjules@ag.nv.gov

Attorneys for Defendant Francisco V. Aguilar

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

Julie Harkleroad
Judicial Assistant to Hon. James R. Russell
First Judicial District Court, Dept. I
885 E. Musser St, Suite 3031
Carson City, NV 89701
jharkleroad@carson.org

Attorneys for Defendants Democratic National Committee and Nevada State Democratic Party

An employee of Marquis Aurbach

Page 14 of 14

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2 Brian R. Hardy, Esq.
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Case No.: 24-OC-001531B
Dept. No.: 1

PROPOSED ORDER DENYING
SECRETARY OF STATE'S MOTION TO
DISMISS

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

Defendant.

[PROPOSED ORDER]

21 This matter came before the Court pursuant to Secretary of State's Motion to Dismiss (the
22 "Motion") Having considered the parties' filings and the arguments of counsel, the Court rules as
23 follows:

BACKGROUND

25 On December 2, 2024, Defendant Francisco Aguilar, in his official capacity as Nevada
26 Secretary of State ("Defendant" or "Secretary of State") filed a Motion to Dismiss the Complaint.
27
28 Plaintiffs ZENAIDA DAGUSEN, an individual and the REPUBLICAN NATIONAL

1 COMMITTEE, the NEVADA REPUBLICAN PARTY, and DONALD J. TRUMP FOR
2 PRESIDENT 2024, INC. (collectively, “Plaintiffs”) opposed the Motion.

3 **STANDARD OF LAW**

4 When considering an NRCP 12(b)(5) motion, factual allegations in the complaint are
5 accepted as true, while inferences in the complaint are drawn in favor of the plaintiff. *Facklam v.*
6 *HSBC Bank USA*, 133 Nev. 497, 498, 401 P.3d 1068, 1070 (2017). A plaintiff fails to state a claim
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11 and relief sought.” *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223
12 (1992).

13 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

14 **A. PLAINTIFFS HAVE STANDING TO BRING THE INSTANT ACTION**

15 On a prefatory note, “[w]hen ‘standing is challenged on the basis of the pleadings,’” this
16 Court “must ‘accept as true all material allegations of the complaint’ and ‘construe the complaint
17 in favor of the complaining party.’” *Cal. Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094, 1100 (9th
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23 apparent that Plaintiffs, including but not limited to the Individual Plaintiff, have alleged a
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1 of the Secretary of State's failure to maintain the voter rolls as required under the NRS. *See id.* at
2 ¶ 98 ("...74 percent of individuals who identified themselves as noncitizens indicated that they
3 preferred the Democratic presidential candidate, while approximately 20 percent indicated that
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5 The Individual Plaintiff in this case has alleged that *her* vote is being diluted, relevant
6 because "[t]here can be no question that a plaintiff who alleges that his right to vote has been
7 burdened by state action has standing to bring suit to redress that injury." *Jud. Watch, Inc. v. King*,
8 993 F. Supp. 2d 919, 924 (S.D. Ind. 2012). The case law cited in Defendant's Motion's is
9 inapposite; Plaintiffs' Complaint does not concern a single or even a handful of "improperly
10 counted" votes. Plaintiffs' Complaint concerns and alleges *thousands* of potentially improperly
11 counted votes, which as set forth in the Complaint, are disproportionately counted against
12 Plaintiffs.

13 Defendant's additional arguments concerning a purported lack of organizational standing
14 are similarly unavailing. Defendant first resorts to arguing that Plaintiffs' theory of "competitive
15 harm" is too attenuated and speculative to be able to confer organizational standing. In other words,
16 Defendant suggests that the variety of data alleged in Plaintiffs' Complaint lack sufficient
17 credibility to be able to allege a competitive harm. Yet again, Plaintiffs' allegations in the
18 Complaint, including those used to confer standing, are entitled to judicial deference at the
19 pleading stage. *See Cal. Rest. Ass'n*, 89 F.4th at 1100. Overall, Defendant's factual assertions
20 regarding the data Plaintiffs use to allege competitive farm present factual issues not appropriate
21 for resolution at this early juncture.

22 As to the other basis for organizational standing, diversion of resources, Plaintiffs'
23 Complaint alleged *both* current and future diversion of resources. *See* Complaint at ¶ 110. Yet
24 Defendant's Motion characterizes this allegation as Plaintiffs "spending their way" into creating
25 standing via the instant action. Yet this self-serving characterization of Plaintiffs' diverted
26 resources merely assumes that the only "diverted resources" are those that have been spent on the
27 instant lawsuit. That is simply not what the Complaint alleges. At the pleading stage, Plaintiffs are
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1 permitted to “broadly” allege diversion of resources. *See, e.g., Nat'l Council of La Raza v.*
2 *Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015). Defendant’s assumptions about what resources
3 have and have not been diverted do not carry the day for standing purposes.

4 Finally, as detailed above, the “organizational” Plaintiffs have sufficiently established that
5 its members “would otherwise have standing to sue in their own right,” rendering Defendant’s
6 associational standing argument as applied to them moot.

7 **B. PLAINTIFFS HAVE STATED CLAIMS UPON WHICH RELIEF MAY BE
GRANTED**

8 **1. Plaintiffs have plausibly alleged that permitting noncitizens to vote in
Nevada elections violates their right to equal protection under the law.**

9 Plaintiffs’ Complaint plausibly alleges that their right to equal protection under the law has
10 been violated through the Secretary of State’s violations of his statutory duties to ensure that only
11 citizens are registered to vote, thereby diluting the votes of the Individual Plaintiff and the
12 Republican Party Plaintiffs’ members. *See generally* Complaint, at ¶¶ 59-100. Defendant contends
13 that the claim fails as a matter of law and that Plaintiffs have not alleged that the maintenance of
14 voter rolls in Nevada results in the disparate treatment of “similarly situated persons,” nor
15 constitutes a “device designed to impose different burdens on different classes of person.” On the
16 contrary, that is precisely what Plaintiff have alleged. *See, e.g. id.* at ¶¶ 91-102. Plaintiffs have
17 stated a claim upon which relief can be granted that the Secretary of State’s violations of Nevada’s
18 statutes and permitting noncitizens to vote in Nevada elections violates their right to equal
19 protection under the law.

20 Article IV, Section 21 of the Nevada Constitution enshrines an equal protection principle
21 in the Nevada Constitution that “is the same as the federal standard.” *State Farm Fire & Gas Co.*
22 *v. All Elec., Inc.*, 99 Nev. 222, 224 (1983). The Fourteenth Amendment to the United States
23 Constitution prohibits states from “denyin[g] to any person within [their] jurisdiction the equal
24 protection of the laws.” U.S. Const. amend. XIV, § 1. Equal protection requires that States protect
25 the right of citizens “to have [their] vote counted at full value without dilution or discount.”
26 *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (quoting *South v. Peters*, 339 U.S. 276, 279 (1950))

1 (Douglas, J., dissenting). “[T]he right of suffrage can be denied by a debasement or dilution of the
2 weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the
3 franchise.” *Id.*

4 Noncitizen voting dilutes the votes of at least two distinct groups. First, every eligible voter
5 who casts a ballot in a given election is injured when their vote is diluted from a false tally. The
6 “impairment resulted from dilution by a false tally” is an injury unique to the voters included in
7 the tally for that specific election. *Baker v. Carr*, 369 U.S. 186, 208 (1962). Second, Republican
8 voters are uniquely injured when the Secretary of State fails to abide by Nevada law and purge
9 voter rolls of non-citizens. As alleged in the Complaint, the Secretary of State’s violations
10 expressly benefit Democrats. *See Complaint* at ¶¶ 91-102. This is certainly a cognizable injury, as
11 recognized by the United States Supreme Court. *See Rucho v. Common Cause*, 139 S. Ct. 2484
12 (2019) (finding dilution for partisan advantage to be a valid injury, but finding that partisan
13 redistricting cases presented nonjusticiable politician questions in federal courts).

14 Finally, even if Defendant’s position was correct as a matter of federal law, this Court has
15 the power to deviate from federal equal protection cases. “It is fundamental that state courts be left
16 free and unfettered by [federal courts] in interpreting their state constitutions.” *Minnesota v. Nat'l
17 Tea Co.*, 309 U.S. 551, 557 (1940). This would be the case to do so. Accordingly, Plaintiffs have
18 stated an equal protection claim under the Nevada Constitution based upon vote dilution caused
19 by non-citizens voting.

20 **2. Plaintiffs have plausibly alleged that permitting noncitizens to vote in**
21 **Nevada elections violates their due process rights.**

22 Plaintiffs’ Complaint plausibly alleges that their due process rights have been violated by
23 the Secretary of State’s failure to abide by his statutory duties to maintain accurate voter rolls, and
24 that the Secretary of State’s failure has caused Nevada’s election processes to reach a point of
25 fundamental unfairness, including election outcomes being altered through illegitimate votes. *See
26 Complaint* at ¶¶ 112-117.

27 Relying upon federal cases, Defendant assert that the Complaint fails to state a substantive
28 due process claim under the Nevada Constitution because substantive rights under the federal Due

1 Process Clause are implicated only in exceptional cases where a state's voting system is
2 fundamentally unfair and not a *de minimis* "garden variety election irregularity." Counter to
3 Defendant's arguments, the Complaint absolutely alleges fundamental unfairness in Nevada's
4 voting system, and that the safeguards placed on Nevada's voting system through statute are being
5 actively disregarded by the Secretary of State. Whether Nevada's election processes have reached
6 a point of fundamental unfairness, or "significant disenfranchisement," is a factual question not
7 appropriate for a 12(b)(5) analysis. As alleged in the Complaint, states across the nation are
8 removing noncitizens from voter rolls left and right, yet the Secretary of State refuses to adhere to
9 his statutory duties to do so in Nevada. Plaintiffs have alleged a patent and fundamental unfairness
10 which erodes the democratic process: noncitizens registered to vote in Nevada elections. Taking
11 the allegations in the complaint as true and drawing reasonable inferences in Plaintiffs' favor, it is
12 certainly not beyond a doubt that Plaintiffs could prove no set of facts which would entitle them
13 to relief on this claim.

14 As stated in the Motion, a voter's substantive rights under the due process clause are
15 implicated where a state's voting system is "fundamentally unfair." *Warf v. Bd. of Elections of*
16 *Green Cnty.*, 619 F.3d 553, 559 (6th Cir. 2010). "[C]ases justifying [judicial] intervention have
17 involved attacks 'upon the fairness of the official terms and procedures under which the election
18 was conducted.'" *Id.* (quoting *Griffin*, 570 F.2d at 1078). Under the "fundamentally unfair"
19 standard, a plaintiff must allege "broad-gauged, patent and fundamental unfairness that erode[s]
20 the democratic process." *See Nolles v. State Comm. for Reorganization of Sch. Districts*, 524 F.3d
21 892, 898 (8th Cir. 2008) ("A canvass of substantive due process cases related to voting rights
22 reveals that voters can challenge a state election procedure in federal court only in limited
23 circumstances, such as when the complained of conduct discriminates against a discrete group of
24 voters, when election officials refuse to hold an election though required by state law, resulting in
25 a complete disenfranchisement, or when the willful and illegal conduct of election officials results
26 in fraudulently obtained or fundamentally unfair voting results.") (cleaned up).

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1 Overall, Plaintiffs allege conduct by the Secretary of State which discriminates against a
2 discrete group of voters, as well as the Secretary of State's willful failure to follow the law as
3 relates to Nevada's voter rolls. Many other states have recognized and corrected this serious
4 problem. This case concerns a fundamental, systemic issue with election integrity throughout the
5 state. Plaintiffs allege a systematic denial of equality in voting in Nevada elections, as well as a
6 fundamental unfairness in Nevada's elections caused by disproportionate debasement and dilution
7 of the votes of Individual Plaintiff and the Republican Party Plaintiffs' members by ineligible
8 voters. *See* Complaint at ¶¶ 91-102. At the very least, whether Nevada's election processes have
9 reached a point of fundamental unfairness is a factual question not appropriate for NRCP 12(b)(5)
10 dismissal.

11 Overall, Plaintiffs have alleged a serious statewide issue causing the election process itself
12 to reach the point of patent and fundamental unfairness. This Court cannot reasonably conclude
13 that it is beyond a doubt that Plaintiffs cannot prove any set of facts to support the claim. Accepting
14 the Complaint's allegations as true and drawing reasonable inferences in Plaintiffs' favor, the
15 Complaint states a due process claim under the Nevada Constitution upon which relief can be
16 granted.

17 3. **Plaintiffs have plausibly alleged that permitting noncitizens to vote in**
18 **Nevada elections violates their constitutional right to vote.**

19 Plaintiffs have plausibly alleged that their right to vote under the Nevada Constitution has
20 been and is being impaired by the Secretary of State's disregard for his duties in allowing
21 noncitizens to vote. Article II, Section I of the Nevada Constitution guarantees that all eligible
22 voters "shall be entitled to vote." *See* Complaint at ¶¶ 118-122. Defendant argues that Plaintiffs'
23 right to vote claim fails despite the Complaint's allegations that Plaintiffs' votes are diluted by the
24 votes of noncitizen voters because the state is not depriving or burdening the right to vote. *Id.* at
25 ¶¶ 91-102.

26 Defendant's argument is fundamentally at odds with the Supreme Court's holding in
27 *Reynolds*, finding that included within the right to vote is the right of qualified voters to have their
28 vote counted at full value and without dilution or discount. Defendant argues though that *Reynolds*

1 cannot be cited for the proposition that vote dilution is encompassed within the right to vote. Yet
2 *Reynolds* clearly proscribed and repeatedly expressed concerns over vote dilution, including
3 dilution via the casting of illegal/illegitimate votes. *See, e.g., Reynolds*, 377 U.S. 533, 555 (1964)
4 (“The right to vote can neither be denied outright, nor destroyed by alteration of ballots, ***nor diluted***
5 ***by ballot-box stuffing***”) (emphasis added).

6 In effect, Defendant asks the Court to adopt a legal interpretation under which voters have
7 no recourse when the state permits ineligible voters to vote and dilute the votes of eligible and
8 properly registered voters. The Court rejects Defendant’s novel assertion that noncitizens voting
9 in Nevada elections has *nothing* to do with the right to vote.

10 The United States Supreme Court held in *Reynolds* that the right to vote means more than
11 being permitted to cast a ballot. Included within the right to vote is the right of all Nevada citizens
12 to have their vote counted at full value and without dilution or discount. Plaintiffs have plausibly
13 alleged that the Secretary’s acts are depriving them of the right to vote.

14 **4. Plaintiffs have plausibly alleged that the Secretary is failing to**
maintain the voter rolls as required by Nevada law.

15 Plaintiffs’ fourth claim for relief is for declaratory judgment pursuant to NRS 30.040(1).
16 Plaintiffs allege in the Complaint that the Secretary has failed to fulfill his duties under NRS
17 293.675(3)(i), NRS 293.124(2), and NRS 293.675(2)(i), among others, by failing to conduct any
18 systematic or routine removal of noncitizens from the voter rolls. *See* Complaint at ¶¶ 123-128.

19 In the Motion, Defendant contends that the claim fails because Plaintiffs are improperly
20 seeking to compel the Secretary of State to assume duties and obligations under NRS 293.675
21 beyond what the statute requires. Defendant incorrectly argues that the list-maintenance protocols
22 in NRS 293.675 are exhaustive, which is simply not what the statute provides. NRS 293.675(3)(i)
23 provides that the Secretary of State’s statewide voter registration list **must** be “regularly
24 maintained to ensure the integrity of the registration process and the election process.” This is an
25 independent duty. Yet Defendant argues that the duty is limited by NRS 293.675(5)-(8), which
26 would invert the statutory structure and render the “regularly maintained” clause a nullity. This
27 Court is obliged to refrain from interpreting the statute in a manner which would result in an absurd
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1 outcome. *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599, 959 P.2d 519, 521 (1998) (“[W]hen
2 possible, the interpretation of a statute or constitutional provision will be harmonized with other
3 statutes or provisions to avoid unreasonable or absurd results.”)

4 Defendant’s argument also critically ignore that the Complaint alleges that the Secretary
5 of State is **failing** to comply with his statutorily prescribed duties. Even Defendant’s framing of
6 the relevant law was correct (which it is not), it would not provide a basis for dismissing Plaintiffs’
7 declaratory judgment claim. Plaintiffs have alleged that the Secretary has failed to meet his
8 obligations under NRS 293.675(3)(i) and NRS 293.124(2). While Defendant believes otherwise,
9 that is a question of fact. Plaintiffs have stated a claim for relief, and it cannot be said at this
10 juncture that Plaintiffs could not prove any set of facts entitling them to a declaratory judgment.

11 In sum, Plaintiffs have stated a viable NRS 30.040(1) declaratory judgment claim for relief.
12 Defendants has failed to show that Plaintiffs’ claim necessarily fails as a matter of law or that
13 Plaintiffs could prove no set of facts which would entitle them to declaratory relief.

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1 Accordingly, for the reasons set forth above, **IT IS HEREBY ORDERED** and declared
2 that the Secretary of State's Motion to Dismiss is DENIED in its entirety.

3 Brian R. Hardy shall serve a notice of entry of the order on all parties and file proof of such
4 service within 7 days after the date the Court sent the order to the attorney.

5 IT IS SO ORDERED.

6 Dated this _____ day of _____, 2024.

DISTRICT COURT JUDGE

10 | Respectfully Submitted by:

MARQUIS AURBACH

By John
Brian R. Hardy, Esq.
Nevada Bar No. 10068
Harry L. Arnold, Esq.
Nevada Bar No. 15866
Nicholas M. Adams, Esq.
Nevada Bar No. 15859
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Plaintiff