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8 *Attorneys for Defendant Nevada Secretary of State
and Francisco Aguilar in his official capacity*

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

13 ZENAIDA DAGUSEN, an individual, *et al.*, Case No.: 24 OC 00153 1B

14 Plaintiffs, Dept. No. I

15 vs.

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

18 Defendants,

19 NAACP TRI-STATE CONFERENCE OF
20 IDAHO-NEVADA-UTAH

21 Intervenor Defendants

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

23 Defendant Francisco Aguilar, in his official capacity as Nevada Secretary of State
24 ("Secretary"), hereby files his Motion to Dismiss Plaintiffs Republican National Committee
25 ("RNC"), Nevada Republican Party ("NVGOP"), Donald J. Trump for President 2024, Inc.
26 ("Trump Campaign" and together with RNC and NVGOP, "Organizational Plaintiffs"), and
27 Zenaida Dagusen's First Amended Complaint ("Amended Complaint").

28 ...

This Motion is made and based upon the following Memorandum of Points and Authorities and the papers and pleadings on file.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This lawsuit is part of a campaign to judicially wrest control of Nevada’s list maintenance procedures from Nevada’s duly elected elections representatives in favor of Plaintiffs and their policy judgments. Plaintiffs’ allegations continue to stack speculation on guesswork and request relief this Court has already determined it cannot grant as it would “supplement the Secretary of State’s statutory obligations.” Ord. Granting in Part and Denying in Part, at 9. In doing so, Plaintiffs bypassed statutorily prescribed processes in favor of seeking judicial intervention to encroach on the Secretary of State’s exercise of authority.

Plaintiffs' Amended Complaint asks this Court to reject the principle that Nevada's elected representatives are best situated to enact policy regarding list maintenance and instead requests the Court to substitute its own judgment. In their request for relief, Plaintiffs' attempt to have this Court compel the Secretary of State to take action by enacting regulations related to voter roll maintenance. This type of judicial micromanagement of the function of a coordinate branch is outside of the Court's role and would be a violation of the separation of powers doctrine. The Amended Complaint should be dismissed.

II. LEGAL STANDARDS

“The separation of powers; the independence of one branch from the others; the requirement that one department cannot exercise the powers of the other two is fundamental in our system of government.” *Galloway v. Truesdell*, 83 Nev. 13, 19, 422 P.2d 237, 242 (1967). “Generally, the legislature may not confer or impose powers non-judicial in character upon the judiciary.” *Id.* at 83 Nev. 23, 422 P.2d at 244.

A complaint that fails to state a claim upon which relief can be granted is due to be dismissed pursuant to NRCP 12(b)(5). The pleading must be liberally construed, and all

1 factual allegations in the complaint accepted as true. *See Buzz Stew, LLC v. City of N. Las*
2 *Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Nevertheless, a plaintiff's
3 allegations must be legally sufficient to constitute the elements of the claims asserted.
4 *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267 P.3d 771, 774 (2011).
5 Dismissal is also warranted pursuant to NRCP 12(b)(1) and 12(h)(3) "when a lack of subject
6 matter jurisdiction is apparent on the face of the complaint." *See Craig v. Donnelly*, 135
7 Nev. 37, 39, 439 P.3d 413, 415 (Ct. App. 2019) (citations omitted).

8 **III. ARGUMENT**

9 **A. The Relief Sought by Plaintiffs Infringes on Nevada's Separation of
10 Powers.**

11 "The separation of powers doctrine is the most important foundation for preserving
12 and protecting liberty by preventing the accumulation of power in any one branch of
13 government." *Berkson v. LePome*, 126 Nev. 492, 498, 245 P.3d 560, 564 (2010). Nevada's
14 separation of powers provision, contained in Article 3, Section 1(1) of the Nevada
15 Constitution, provides that:

16 "[t]he powers of the Government of the State of Nevada shall be
17 divided into three separate departments, —the Legislative, —the
18 Executive and the Judicial; and no persons charged with the
19 exercise of powers properly belonging to one of these
departments shall exercise any functions, appertaining to either
of the others, except in the cases expressly directed or permitted
in this constitution."

20 Under the doctrine, each "governmental department in which each respective
21 [executive, legislative, and judicial] power is vested ... has—by virtue of its mere
22 constitutional existence—*inherent authority* 'to accomplish or put into effect,' *i.e.*, to carry
23 out, the department's basic functions." *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163
24 P.3d 428, 439–40 (2007) (citing *Galloway*, 83 Nev. at 21, 422 P.2d at 243). In other words,
25 the doctrine is designed to ensure no department "become a subordinate branch of
26 government" and it does so by giving each department "inherent power to 'administer its
27 own affairs' and 'perform its duties[.]'" *Halverson*, 123 Nev. at 261, 163 P.3d at 439 (citing
28 *Blackjack Bonding v. City of Las Vegas Municipal Ct.*, 116 Nev. 1213, 1218,

1 14 P.3d 1275, 1279 (2000)). Nevada has been especially prudent in keeping judicial powers
2 separate from other branches. *Berkson*, 126 Nev. at 499, 245 P.3d at 565. Plaintiffs
3 requested relief plainly asks this Court to encroach on the Secretary of State's and the
4 Nevada Legislature's constitutional authority and implies matters that are textually
5 committed to the political branches of the Government.

6 **1. Plaintiffs' Requested Relief is Clearly Committed to the
Secretary.**

7
8 Plaintiffs seek an order compelling Defendants to "implement, conduct, and
9 maintain systematic and routine list maintenance that appropriately verifies that
10 registered voters are U.S. citizens." First Amend. Compl., at Prayer for Relief. Asking for
11 such relief is, as this Court has recognized, seeking "to judicially supplement the Secretary
12 of State's statutory obligations." Ord. Granting in Part and Denying in Part, at 9.
13 Specifically, Plaintiffs contend that this relief is permissible per NRS 293.675(1) which
14 states "[t]he Secretary of State shall establish and maintain a centralized, top-down
15 database that collects and stores information related to the preregistration of persons and
16 the registration of electors from all the counties in this State."

17 However, Plaintiffs fail to consider that, although the Secretary of State is required
18 by law to maintain a list of eligible voters, the methods by which such maintenance occurs
19 is within the discretion of the Secretary of State unless expressly mandated by statute
20 passed by the Legislature. *See* NRS 293.124(2) ("The Secretary of State shall adopt such
21 regulations as are necessary to carry out the provisions of this section."). Accordingly, the
22 delegation of authority granted to the Secretary of State includes both duties expressly
23 established by the Legislature, and discretionary powers to administer those duties,
24 provided such discretion is not otherwise limited by law.

25 The Nevada Constitution textually indicates the duties of the Secretary of State as
26 "keep[ing] a true record of the Official Acts of the Legislative and Executive Departments
27 of the Government, and shall when required, lay[ing] the same and all matters relative
28 thereto, before either branch of the Legislature." Nev. Const. Art. 5, Sec. 20. Additionally,

1 the Constitution indicates “[t]he Secretary of State . . . shall perform such other duties as
2 may be prescribed by law.” Nev. Const. Art. 5, Sec. 22. The phrase “as prescribed by law”
3 textually refers to laws enacted by the Nevada Legislature, which is supported by the
4 separation of powers doctrine indicating the Legislature’s exclusive role in prescribing
5 laws. Nev. Const. Art. 3, Sec. 1. This doctrine ensures that the Legislature, as the
6 lawmaking body, is responsible for enacting laws that fulfill constitutional requirements.
7 Accordingly, this Court correctly determined that Plaintiffs requested relief is beyond the
8 scope of what can be granted to the Plaintiffs. Ord. Granting in Part and Denying in Part, at 9.

2. The Legislature Reserved General List Maintenance to the Secretary of State, Limiting Individuals to Statutory Challenges.

Chapter 293 of the Nevada Revised Statutes governs elections in Nevada. In addition to maintaining the standards and processes for voting, Chapter 293 also includes governance for the process by which a person's eligibility to vote may be challenged in Nevada. *See* NRS 293.303; NRS 293.535. Under Nevada law, voters can contribute to list maintenance by challenging a registrant's voter eligibility. *Id.* But the Nevada Legislature has carefully circumscribed their role to ensure that Nevada complies with federal law and protects against disenfranchisement of eligible voters. *See, e.g.*, Leg. History of Assembly Bill 619, 1995 Leg., 68th Sess. At 81–82, 98–99 (Nev. 1995) (conforming NRS 293.530 and 293.535 to the requirements of the NVRA), Leg. History of Assembly Bill 652, 1991 Leg., 66th Sess. at 22 (discussion of abusive challenges).

Specifically, NRS 293.303 outlines grounds for challenges to voter eligibility, as well as the procedures election officials must follow when a challenge is made, and the consequences for the challenged voter depending on the response to the challenge. *See* NRS 293.303(a) (“A person applying to vote may be challenged [o]rally by any registered voter of the precinct upon the ground that he or she is not the person entitled to vote as claimed or has voted before at the same election.”).

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11

1 NRS 293.535 further governs challenges to existing voter registrations, including
2 those based on allegations that a registrant is not a U.S. citizen or has abandoned their
3 residence in the county.

4 This statutory structure reflects a deliberate legislative choice to vest systemic list
5 maintenance authority in the Secretary of State, while limiting individual voters to narrow
6 challenges based on personal knowledge. This division of responsibility reinforces the
7 Legislature's textual commitment of executive functions to the Secretary and preserves the
8 constitutional separation of powers.

9 However, Plaintiff Dagusen is unsatisfied with her statutorily designated ability to
10 challenge specific individuals in her precinct who she believes are ineligible for registering
11 to vote in her individual capacity. Instead of utilizing the defined legislative procedure,
12 Plaintiff asks this Court to adopt her preferred list of maintenance procedures. In doing
13 so, she invites the judiciary to override the Legislature's policy choices and usurp the
14 Secretary's discretionary authority. As such, the relief she seeks cannot be imposed.

15 **3. The Legislature Has Delegated Administrative Rulemaking
16 Regarding List Maintenance to the Secretary and Provided a
17 Process for Seeking Regulatory Amendments.**

18 The Legislature empowered the Secretary of State to adopt regulations necessary to
19 carry out his duties under Chapter 293 of the Nevada Revised Statutes. NRS 293.124.
20 Pursuant to this authority, the Secretary of State has already adopted regulations
21 regarding the checking of the statewide voter registration list. These include NAC 293.462,
22 which specifically governs the maintenance and verification of the statewide voter
23 registration list and outlines the duties of the Secretary of State to ensure the accuracy and
integrity of voter registration records.

24 Plaintiffs request here amounts to a request for a judicial amendment to NAC
25 293.462. But the Legislature has authorized a process for people seeking regulatory
26 amendments which Plaintiffs' complaint bypasses and fails to acknowledge. Chapter 233B
27 defines the Nevada Administrative Procedure Act, which is intended to "establish
28 minimum procedural requirements for the regulation-making and adjudication procedure

1 of all agencies of the Executive Department of the State Government and for judicial review
2 of both functions.” NRS 233B.020. Notably, the Secretary of State is not exempted from
3 the provisions of the Nevada Administrative Procedure Act as it is an executive department
4 office. *See NRS 233B.038, and Nev. Const. Art. 5, Sec. 20.*

5 Pursuant to NRS 233B.100(1), “[a]ny interested person may petition an agency
6 requesting the adoption, filing, amendment or repeal of any regulation and shall
7 accompany the petition with relevant data, views and arguments.” Plaintiffs essentially
8 ask this Court to compel a regulatory amendment. However, the Legislature created this
9 statutory pathway for those seeking regulatory amendments. But Plaintiffs instead ran to
10 Court seeking to essentially amend the regulations, in hopes of quickly imposing their
11 preferred processes. Such a request for judicial intervention would usurp the Secretary of
12 State’s general rulemaking authority in this area and circumvent the Legislatures
13 prescribed process for input, in violation of those branches’ “inherent power to ‘administer
14 [their] own affairs[,]’” *Halverson*, 123 Nev. at 261, 163 P.3d at 439.

15 **4. The Relief Sought Infringes on Legislative Power.**

16 In addition to seeking to compel the executive and regulatory power of the Secretary,
17 Plaintiffs are also seeking to usurp the law-making power of the Legislature by seeking a
18 judicially crafted rule akin to a statute. Even if “[a]s a matter of public policy, the requests
19 of Plaintiffs might be perfectly sound and reasonable tools to improve the integrity of
20 Nevada’s voter rolls[,]” *Ord. Granting in Part and Denying in Part*, at 9, the authority to
21 rewrite those statutes is committed to the State Legislature through the separation of
22 powers created in the Nevada constitution, *see Order Granting in Part and Denying in Part*,
23 at 9 (“As such, the Legislature could incorporate them into law.”); *see also* Nev. Const. Art.
24 4, Sec. 1. As described above, Plaintiffs here are seeking their preferred remedy through
25 the Court and bypassing the procedure already enacted by the Legislature for addressing
26 their issues. And if those procedures are insufficient, legislative amendment may be
27 necessary to provide Plaintiffs with their desired relief.

28 . . .

1 Though the legislative process can be lengthy, the relief sought by Plaintiffs is meant
2 to be in the hands of the legislative branches, and, more indirectly, the people of Nevada
3 not in the Courts.

4 To allow this Court to enforce judicial resolution of a claim clearly within the
5 prerogative of the Secretary of State's office and the Nevada legislature would undermine
6 the separation of powers dictated by the constitution. It is the duty of the Secretary of
7 State to determine what regulation should or should not be adopted to maintain the
8 legitimacy of elections in Nevada, and it is the duty of the Nevada legislature to impose
9 any appropriate limitations or requirements on that discretion. This Court's intervention
10 here would intrude on the Secretary's and Legislature's "inherent authority 'to accomplish
11 or put into effect,' *i.e.*, to carry out, [their] basic functions[,']" *Halverson*, 123 Nev. at 261,
12 163 P.3d at 439, and lead to the "accumulation of power in any one branch of government[,']"
13 *Berkson*, 126 Nev. at 498, 245 P.3d at 564. The separation of powers doctrine is meant to
14 prevent exactly that. For these reasons, the Court should dismiss Plaintiffs' remaining
15 claims.

16 **B. Defendants Reiterate and Preserve Prior Arguments.**

17 Defendants fully incorporate the arguments in the Secretary of State's first Motion
18 to Dismiss. For the Court's convenience, some of those arguments are highlighted
19 again below.

20 **1. Plaintiffs Do Not Have Standing**

21 As the Court has acknowledged, Nevada law "generally requires the same showing
22 of injury-in-fact, redressability, and causation that federal cases require for Article III
23 standing." Order Granting in Part and Denying in Part Motions to Dismiss, at 4 (citing
24 *Nat'l Assoc. of Mut. Ins. Cos. v. Dep't of Bus. & Indus., Div. of Ins.*, 524 P.3d 470, 476 (Nev.
25 2023) (citations omitted)). Defendants maintain that Plaintiffs have failed to make
26 that showing.

27 For her part, Dagusen (Individual Plaintiff) has failed to meet the injury-in-fact
28 requirement. Courts are clear: vote dilution of this nature is not a cognizable injury for

1 standing purposes. As a federal court in Nevada explained, because a Plaintiff like
2 Dagusen’s “purported injury of having their vote[] diluted due to ostensible election fraud
3 may be conceivably raised by any Nevada voter[,]” it “does not satisfy the requirement that
4 Plaintiff[] must state a concrete and particularized injury.” *Paher v. Cegauske*, 457 F. Supp.
5 3d 919, 926 (D. Nev. 2020); *see also Maryland Election Integrity, LLC v. Maryland State*
6 *Bd. of Elections*, 127 F.4th 534, 540 (4th Cir. 2025) (finding a “generalized injury” where
7 “[t]he vote dilution caused by the counting of an unknown number of invalid third-party
8 votes affects all voters in a State in the same way”).

9 The Organizational Plaintiffs also fail in their attempts to assert injuries as they
10 appear to assert several theories of injury, including competitive harm to Republican
11 presidential candidates, a diversion of resources, and associational standing. Each one fails.

12 First, a competitive harm occurs when a party alleges the “potential loss of an
13 election,” *Drake v. Obama*, 664 F.3d 774, 783 (9th Cir. 2011) (citation omitted), or when a
14 party is “forced to compete under the weight of a state-imposed disadvantage,” *Mecinas v.*
15 *Hobbs*, 30 F.4th 890, 899 (9th Cir. 2022). In their attempt to allege competitive harm,
16 Plaintiffs inappropriately extrapolate conclusions from outdated, small surveys, making
17 their theory unacceptably speculative and insufficient. *See Bd. Of Pharmacy v. Cannabis*
18 *Equity & Inclusion Cnty.*, Case Nos. 85756, 86128, 2024 WL 3664464, at *1 (Nev. Aug. 5,
19 2024) (unpublished disposition) (“A speculative injury that ‘is merely apprehended or
20 feared’ is insufficient to establish justiciability.”); *see also* Secretary of State Motion to
21 Dismiss at 5-7 (explaining the problems with Plaintiffs’ calculations). Even if their
22 allegations regarding voting advantages were correct, it would not be enough to determine
23 any recent presidential election. *See RNC v. Burgess*, Case No. 3:24-cv-00198, 2024 WL
24 3445254, at *2 (D. Nev. July 17, 2024) (causation not established where it was speculative
25 that challenged votes would be “sufficient in number to change the outcome of the election
26 to [Republicans’] detriment”). They also fail to establish any state-imposed disadvantage,
27 as the same voter registration requirements and punishments for registering when
28 ineligible, *see* NRS 293.775(1), 293.800(4), apply to all. Even assuming arguendo that some

1 noncitizens *did* vote, the causal link between the Secretary’s actions and any supposed
2 competitive injury is too attenuated because it depends “on speculation about the
3 unfettered choices made by independent actors,” *i.e.*, voters. *See FDA v. All. For Hippocratic*
4 *Med.*, 602 U.S. 367, 383 (2024) (citation omitted).

5 Second, Plaintiffs also fail to claim direct organizational standing based on a theory
6 of a diversion of resources, as an organization “cannot spend its way into standing” by
7 diverting resources to oppose disfavored policies.” *Bd. of Pharmacy v. Cannabis Equity &*
8 *Inclusion Cnty.*, Case Nos. 85756, 86128, 2024 WL 3664464 at *3 (Nev. Aug. 5, 2024)
9 (quoting *All. for Hippocratic Med.*, 602 U.S. at 394-95). Instead, an organization must
10 “show it suffered a concrete injury that directly affected and interfered with its core
11 business activities.” *Id.* (citing *All. for Hippocratic Med.*, 602 U.S. at 393-94). Because the
12 Organizational Plaintiffs do not claim they are unable to continue their core activities, they
13 fail to “thread the needle to show how” the Secretary’s actions “directly affect[] or interfere[]
14 with [their] core” activities. *Id.* at *3, 4.

15 Finally, the Organizational Plaintiffs fail to establish associational standing because
16 they fail to show they have members who “would otherwise have standing to sue in their
17 own right.” *Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977).

18 **2. Plaintiffs Have Not Stated Any Claim.**

19 **a. Plaintiffs’ Equal Protection Claim Fails as a Matter of Law.**

20 Plaintiffs’ claim based on Nevada’s Equal Protection Clause, *see Am. Compl. ¶¶ 103-*
21 *11*, fails because such a claim requires showing a “dissimilar treatment of similarly situated
22 persons.” *See Rico v. Rodriguez*, 121 Nev. 695, 703, 120 P.3d 812, 817 (2005). Specifically,
23 a “vote dilution claim requires a showing of disproportionate voting power for some voters
24 over others” and cannot stand if “the effect that counting [some invalid] ballots had on the
25 relative voting power of all votes was the same.” *Election Integrity Project, Cal., Inc. v.*
26 *Weber*, 113 F.4th 1072, 1082 (9th Cir. 2024). In short—just as a plaintiff must allege a
27 unique harm to establish standing, *see supra* at Pg. 8–10—a plaintiff bringing an Equal
28 Protection claim must show that they are subject to disparate treatment compared to other voters.

1 But nothing in Plaintiffs complaint alleges that the Secretary’s actions are “a device
2 designed to impose different burdens on different classes of persons.” *Rico*, 121 Nev. at
3 703, 120 P.3d at 817. Allegedly counting a handful of noncitizen votes is meaningfully
4 different than the apportionment context of *Reynolds v. Sims*, 377 U.S. 533 (1964). In
5 *Reynolds*, plaintiffs alleged a “dilution of the weight of the votes of certain [] voters merely
6 because of where they resided[.]” 377 U.S. at 557 (citing *Gray v. Sanders*, 373 U.S. 368
7 (1963)). But Plaintiffs here do not allege vote dilution based “where they resided” or any
8 other unique factor like party-affiliation, race, or income. Even taking Plaintiffs’ pleadings
9 as wholly true, Plaintiffs’ and Plaintiffs’ members’ votes are cast and counted in the same
10 exact way as any other vote by an eligible Nevada resident. Their claim therefore fails
11 because “[t]he crux of a vote dilution claim is inequality of voting power—not diminishment
12 of voting power *per se*.” *Election Integrity Project, Inc.*, 113 F.4th at 1087.

13 **3. Plaintiffs’ Due Process Claim Fails as a Matter of Law.**

14 Plaintiffs’ second claim based on Nevada’s Due Process Clause, *see Am. Compl. ¶¶*
15 112-17, also must be rejected as it alleges only “garden variety election irregularities,” not
16 those that would render an election “fundamentally unfair.” *Soules v. Kauaians for Nukolii*
17 *Campaign Comm.*, 849 F.2d 1175, 1183 (9th Cir. 1988) (citation omitted). Such “garden
18 variety” irregularities that do not rise to a due process violation include “the counting of
19 some votes that were illegally cast[.]” *Election Integrity Project*, 113 F.4th at 1096.
20 Generally plaintiffs can only challenge state election procedures in “limited circumstances,”
21 such as “when the complained of conduct discriminates against a discrete group of voters,”
22 “when election officials refuse to hold an election though required by state law, resulting in
23 a complete disenfranchisement,” or “when the willful and illegal conduct of election officials
24 results in fraudulently obtained or fundamentally unfair voting results[.]” *Nolles v. State*
25 *Comm. for Reorganization of Sch. Dists.*, 524 F.3d 892, 898–99 (8th Cir. 2008)

26 None of those situations apply here. Again, there is no discrimination against a
27 discrete group of voters. The Secretary has in no way “refuse[d] to hold” a required election.
28 *Id.* And there are no fundamentally unfair voting results, as even the Plaintiffs’ alleged

1 "irregularity" is vanishingly small (3,731 votes out of over two million votes in the 2024
2 general election, or 0.18%). Even accepting Plaintiffs' allegations as true, they allege
3 nothing even approaching the "fundamental unfairness" necessary to maintain this claim.
4 See *Pettengill v. Putnam Cnty. R-1 Sch. Dist.*, 472 F.2d 121, 122 (8th Cir. 1973) (rejecting
5 claim based on improper counting 5.9% ballots cast); *Powell v. Power*, 436 F.2d 84, 85 n.1,
6 86 n.2 (2d Cir. 1970) (rejecting claim based on 5.0% votes cast). Because Plaintiffs fail to
7 plead "massive disenfranchisement" of voters or 'pervasive' counting of invalid ballots[,]"
8 they fail to establish a Due Process claim. *Election Integrity Project*, 113 F.4th at 1098
9 (citation omitted).

10 **IV. CONCLUSION**

11 For the foregoing reasons, the Court should dismiss Plaintiffs' First Amended
12 Complaint as requiring this court to violate the separation of powers enumerated in
13 Nevada's constitution.

14 Respectfully submitted this 22nd day October 2025,

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AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

Respectfully submitted this 22nd day October 2025,

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on October 22, 2025, I filed the foregoing document **Secretary of State's Motion to Dismiss**. A prepaid postage copy of this document has been placed in the U.S. mail to the following:

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