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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

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

Plaintiffs,

vs.

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

Defendants,

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

Intervenor Defendant.

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

OPPOSITION TO SECRETARY OF STATE'S MOTION TO DISMISS

Plaintiffs ZENAIDA DAGUSEN, an individual, and the REPUBLICAN NATIONAL COMMITTEE, the NEVADA REPUBLICAN PARTY, and DONALD J. TRUMP FOR PRESIDENT 2024, INC. (collectively, "Plaintiffs") hereby submit the following Opposition to the Defendant Francisco Aguilar, in his official capacity as Nevada Secretary of State's Motion to Dismiss (the "Motion").

///

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

Dated this 5th day of November, 2025.

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By _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION & SUMMARY

Defendant Francisco Aguilar, in his official capacity as Nevada Secretary of State (the "Secretary" or "NV SOS") has moved to dismiss Plaintiffs' First Amended Complaint filed on September 12, 2025 (hereinafter the "FAC"). The FAC pleads two claims for relief, equal protection under the Nevada Constitution (art. IV, § 21) ("Count I"), as well as due process under the Nevada Constitution (art. I, § 8) ("Count II"). The FAC pleads these two claims in materially the same manner as Plaintiff's original complaint filed on September 11, 2024, claims for which this Court already found survived NRCP 12(b)(5) scrutiny, per its August 29, 2025 order. The FAC does *not* attempt to re-plead the two claims in Plaintiffs' original complaint that this Court dismissed in the August 29, 2025 order.

Three motions to dismiss were filed in response to the original September 11, 2024 complaint, along with a joinder in support of dismissal. Plaintiffs opposed all three motions to dismiss. Following this extensive briefing, the Court held oral argument on all pending motions on March 5, 2025. After the hearing, the parties, at the Court's request, submitted supplemental briefing on the specific issue of whether it should or could dismiss claims under NRCP 12(b)(5) if it found that the requested relief (*i.e.*, remedies) was not viable as a matter of law, meaning the Court could never order the requested relief/remedies. This Court's August 29, 2025 order expressly indicates that it evaluated and considered this supplemental briefing.[1] In other words, there is simply no doubt that this Court evaluated and considered the issue of remedies in the context of the claims it expressly did *not* dismiss under NRCP 12(b)(5) – *i.e.*, Counts I and II of the FAC.

Notwithstanding the foregoing, the NV SOS, via its Motion, is trying to reargue and reconsider the issue of remedies in the context of NRCP 12(b)(5), despite this Court having already and very recently issued an order that considered this exact issue. More egregiously, the NV SOS

[1] *See* August 29, 2025 order, at pg. 2.

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further seeks to reargue and relitigate the threshold issues of standing, as well as whether Plaintiffs' equal protection and due process claims state a viable claim under a traditional 12(b)(5) analysis, despite these issues having also already been briefed, argued and ruled on by this Court. Simply put, and in light of the dearth of material differences between Plaintiffs' equal protection and due process claims as pleaded in the original complaint and FAC, the Secretary's Motion is barred by the law of the case doctrine and Local Rule 3.13. Even to the extent the doctrine/local rule does not apply, the Motion should be denied, as Counts I and II state viable claims for relief under NRCP 12(b)(5), and claims that this Court could absolutely and plausibly issue remedies for.

II. RELEVANT LEGAL STANDARDS

A. NRCP 12(B)(5) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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

B. REMEDIES IN THE CONTEXT OF NRCP 12(B)(5) MOTIONS

The plain language of NRCP 12(b)(5) states as follows: "failure to state a claim upon which relief can be granted." (emphasis added). NRCP 12(b)(5) does not state the converse of "failure to state relief upon which a claim can be stated" (emphasis added). Generally speaking, courts are reticent to grant a motion to dismiss for failure to state a claim on the basis of a purported lack of a remedies/deficient prayer for relief. *See, e.g., Rodriguez v. Serv. Emps. Int'l*, 755 F. Supp. 2d 1033, 1053 (N.D. Cal. 2010) ("Defendant does not, however, cite authority addressing whether it is appropriate to dismiss a complaint under Rule 12(b)(6) on the basis that the remedies sought in

it are unavailable. The Court concludes that it is not, **so long as some relief is available.**") (emphasis added); *Segura v. City of La Mesa*, 647 F. Supp. 3d 926, 942-43 (S.D. Cal. 2022) ("**A 'prayer for relief does not provide any basis for dismissal under Rule 12**.'" (emphasis added, citations omitted); *Summit Tech., Inc. v. High-Line Med. Instruments, Co.*, 933 F. Supp. 918, 927-28 (C.D. Cal. 1996) ("... a Rule 12(b)(6) motion 'will not be granted merely because [a] plaintiff requests a remedy to which he or she is not entitled.'" *Schwarzer, et al., Civil Procedure Before Trial* § 9:230. '**It need not appear that plaintiff can obtain the *specific* relief demanded as long as the court can ascertain from the face of the complaint that some relief can be granted**.'") (emphasis added, citation omitted).

This aforementioned judicial reticence is well-grounded in the fact that the course of discovery and the development of the record often has significant bearing not only on the alleged causes of actions, but also on the type of remedies reasonably available to a plaintiff, which is precisely why a plaintiff is often not even obligated to elect remedies until the time of trial, and can further amend the complaint during/after trial to conform with the eventual judgment. *See generally* NRCP 15(b); *see also United States v. Maricopa Cnty., Ariz.*, 915 F. Supp. 2d 1073, 1081-82 (D. Ariz. 2012) ("A 12(b)(6) motion to dismiss challenges the legal sufficiency of the pleadings, not the appropriateness of the relief sought... [A] motion for failure to state a claim properly addresses the cause of action alleged, not the remedy sought... **The scope of the relief must match the scope of the harm proven**.... **This will be determined after discovery."**) (emphasis added, citations and quotations omitted).

C. LOCAL RULE 3.13 & LAW OF THE CASE DOCTRINE

Local Rule 3.13(a) states that "[i]ssues once heard and disposed of will not be renewed in the same cause except by leave of court granted upon motion." Local Rule 3.13(a) further and relatedly states that this court "may grant leave to file a motion for reconsideration if it appears the court overlooked or misunderstood a material fact, or overlooked, misunderstood, or misapplied law that directly controls a dispositive issue." Motions for reconsideration of prior issues already ruled on are so disfavored that not only are such motions not even allowed absent first being

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granted leave of the court, but oppositions are furthermore not allowed "unless ordered by the court." *See* Local Rule 3.13(b).

With respect to the "law of the case doctrine," said doctrine refers to "a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (*i.e.*, established as law of the case) by that court or a higher one in earlier phases." *See Recontrust Co. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014) (cleaned up, citation omitted). The doctrine, which the United States Supreme Court has described as a "discretionary rule of practice," is based "upon sound policy that when an issue is once litigated and decided, that should be the end of the matter." *See United States v. U. S. Smelting Ref. & Min. Co.*, 339 U.S. 186, 198-99 (1950) (citation omitted).

The law of case doctrine, the rationale for which clearly underlies this Court's Local Rule 3.13, has been described by the Ninth Circuit as follows: "Although the law of the case rule does not bind a court as absolutely as res judicata, and should not be applied 'woodenly' when doing so would be inconsistent with 'considerations of substantial justice,' the discretion of a court to review earlier decisions should be exercised sparingly so as not to undermine the salutory policy of finality that underlies the rule." *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 833-34 (9th Cir. 1982) (cleaned up, citations omitted). Generally speaking, departure from a previous ruling of the court may be appropriate if any of the following applies: "1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3) the evidence on remand is substantially different; 4) other changed circumstances exist; or 5) a manifest injustice would otherwise result." *United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998) (citation omitted).

III. LEGAL ARGUMENT

The Secretary's Motion primarily advances the argument that "the relief sought by the plaintiffs infringes on Nevada's separation of powers." *See* Motion at pgs. 3-8. Within this large umbrella of argument, the NV SOS makes four sub arguments that (a) "Plaintiffs' requested relief is clearly committed to the secretary" (pgs. 4-5), (b) "the Legislature reserved general list maintenance to the Secretary of State, limiting individuals to statutory challenges" (pgs. 5-6), (c)

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"the legislature has delegated administrative rulemaking regarding list maintenance to the Secretary and provided a process for seeking regulatory amendments" (pgs. 6-7), and (d) "the relief sought infringes on legislative power" (pgs. 7-8).

All four of these interrelated arguments – apart from all being precluded by the law of the case doctrine and Local Rule 3.13 – all miss the mark on the merits. The FAC simply does not request the type of relief of this Court that the Secretary claims will upend the separation of powers doctrine in Nevada. The NV SOS' Motion makes unreasonable extrapolations from the FAC and this Court's prior August 29, 2025 order so as to create a straw man to subsequently argue against. Notably, there is a complete dearth of reference in the Secretary's Motion to specific, concrete allegations of the FAC that the Secretary deems problematic or indicative of a purported separation of powers issue. At best, the Motion only presents a single, egregiously cherry-picked reference to the FAC's prayer for relief. The FAC's prayer for relief states that Plaintiffs are seeking "relief requiring the Secretary of State to implement, conduct and maintain systematic and routine list maintenance that appropriately verifies that registered voters are U.S. citizen, including but not limited to, **pursuant to and within the confines of NRS 293.675 *et seq***." (emphasis added). In other words, Plaintiffs' requested relief does not seek to go beyond the permissible bounds of statute, and as will be discussed in more detail below, is an entirely appropriate ask of this Court. Yet, and tellingly, the Secretary's Motion only offers a cherry-picked recitation of the prayer for relief that omits the above-bolded language. *See* Motion at pg. 4.

Overall, and in light of this Court's August 29, 2025 order, Plaintiffs merely seek to enforce the Secretary's statutory obligations as they are currently enshrined in the NRS, nothing more, nothing less. Although the NV SOS is correct that this Court previously noted in its August 29, 2025 order that it could not "judicially supplement the Secretary of State's statutory obligations,"[2] in the very same order (in fact, on the same page of said order), this Court also noted that the Secretary "may be judicially compelled to perform specific duties required by statute." *See* Ord.

[2] A conclusion that importantly, this Court drew in evaluating Plaintiffs' previous, now-dismissed fourth claim for declaratory relief, not the entire September 11, 2024 complaint.

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Granting in Part and Denying in Part, at 9, lines 22-25. And it is for this simple reason that the Motion must be denied, and this Court should not dismiss the FAC pursuant to NRCP 12(b)(5). To the extent there is disagreement among the parties as to what the specific required duties under the relevant statute are, and whether the Secretary is currently or sufficiently complying with the same, that is a conversation for another day, and not ripe for adjudication on a threshold NRCP 12(b)(5) motion. And it is importantly a conversation that would only be appropriate and ripe for adjudication following discovery. The Secretary's Motion, at this juncture, is seeking to put the cart before the horse.

A. THE SECRETARY'S MOTION, AND ALL OF ITS RENEWED ARGUMENTS THEREIN, ARE BARRED BY THE LAW OF THE CASE DOCTRINE AND LOCAL RULE 3.13

1. The Secretary's Arguments Relative to "Separation of Powers" are Recycled and Repackaged Arguments Regarding Remedies That this Court has Already Considered and Ruled On

The Secretary's prior December 2, 2024 motion to dismiss advanced the argument that "Plaintiffs' grievances about jury and SAVE data are better directed at the Legislature as the Legislature is best positioned to weigh the value of using those sources and the costs of doing so." *See* motion at pg. 11. Relatedly, the Secretary's March 14, 2025 supplemental brief on unawardable relief (*i.e.*, regarding remedies) cited to Ninth Circuit case law noting that "policy decisions 'require consideration of "competing social, political, and economic forces," which must be made by the People's "elected representatives, rather than by federal judges interpreting the basic charter of Government for the entire country."'" *See* brief at pg. 3 (citation omitted). In light of these arguments and in evaluating Plaintiffs' original, now dismissed fourth claim for relief (declaratory relief pursuant to NRS 293.675), this Court determined that that particular claim, as pleaded, would require the Court to go beyond the mandatory provisions of NRS 293.675 and impermissibly "judicially supplement" the same. *See* August 29, 2025 order at pg. 9. After making this determination, this Court concluded that it had "no inherent authority to direct [the Secretary] on the particulars of how he is to maintain the statewide voter registration list beyond what is

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required by statute. That authority is within [the Secretary's] discretion." *Id.* In other words, this Court essentially determined that the separation of powers barred the claim as void.

The NV SOS, via the instant Motion is effectively asking this Court to reconsider and expand its ruling and rationale relative to Plaintiffs' original fourth claim for relief, and apply it to Counts I and II in the FAC (*i.e.*, Plaintiffs' equal protection and due process claims). Yet, per the above, and in light of the briefing that was presented to the Court, this Court already evaluated and considered the potential applicability of the separation of powers doctrine to the instant action, and to potential remedies in particular – having even ordered supplemental briefing on the interplay between the viability of remedies and NRCP 12(b)(5). In other words, the arguments presented in the Secretary's Motion were clearly top of mind to the Court, and notwithstanding, Plaintiffs' equal protection and due process claims survived 12(b)(5) scrutiny. Keeping in mind Local Rule 3.13(a), the Secretary is unable to identify (and has not identified) any material fact that this Court purportedly overlooked, nor identified any purported misapplication of the law by this Court, that would remotely merit this Court reconsidering its prior ruling on Counts I and II. The record and the Court's August 29, 2025 order reflect the opposite, *i.e.*, that this Court considered all material facts and issues of law. Hence, the law of the case doctrine applies and bars the Motion, which also effectively seeks reconsideration without complying with Local Rule 3.13.

2. <u>The Secretary's "Reserved" Arguments Regarding Standing and Failure to State a Claim Present Nothing New That Has Not Already Been Considered and Ruled on By This Court</u>

One might be inclined to treat the Secretary's request for this Court to reconsider its prior August 29, 2025 order with respect to the interplay between remedies and NRCP 12(b)(5) relief as an aberration. That is, perhaps the Motion attempts to, in good faith, raise new arguments relative to the separation of powers, remedies, and NRCP 12(b)(5) – yet, for the aforementioned reasons, it ultimately does not do so. Notwithstanding, any semblance of doubt as to the true intent of the Motion evaporates in the face of the Secretary's additional, secondary request for this Court

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to also reconsider assorted standing and other NRCP 12(b)(5) arguments[3] – all of which were already extensively argued and briefed by the parties hereto, and are similarly barred under the law of the case doctrine. Simply put, the NV SOS disagrees with this Court's August 29, 2025 order, and is effectively seeking reconsideration of the same via the instant Motion, but does not give this Court a material, substantive reason to do so, in contravention of Local Rule 3.13(a).

As to the threshold issue of standing, the Secretary's Motion fails to articulate any material change in circumstances that would plausibly merit or require reconsideration of its August 29, 2025 order on the issue. This Court does not have to take the undersigned's word that the NV SOS is simply seeking to re-raise arguments already considered and ruled on by this Court; it can look directly to the Motion itself, which says very matter-of-factly that "Defendants fully incorporate the arguments in the Secretary of State's first Motion to Dismiss." *See* Motion at pg. 8. Notwithstanding, and to the extent this Court entertains standing yet again (which it should not), Plaintiffs would incorporate and direct the Court to its prior arguments on this issue (*see* Plaintiffs' December 18, 2025 opposition at pgs. 5-7). And as this Court astutely noted in its August 29, 2025 order, Plaintiffs should enjoy "favorable judicial deference as to factual allegations insofar as they inform the issue of standing." *See* order at pg. 4.

Relatedly, the Secretary's restated arguments relative to whether Plaintiffs' equal protection and due process claims survive traditional 12(b)(5) scrutiny can and should be disregarded on their face for the same aforementioned, procedural reasons. To the extent this Court does not do so, Plaintiffs would restate and incorporate by reference the relevant arguments advanced in its December 18, 2024 opposition (at pgs. 7-10) and its October 28, 2024 opposition (at pgs. 5-9) relative to equal protection and due process. Relative to Count I (equal protection), the Secretary's Motion attempts to prescribe error to the Court purportedly not considering the unique apportionment context of *Reynolds v. Sims* (*see* Motion at pg. 11). Yet this Court, in its August 29, 2025 order, expressly did recognize and note that distinguishing fact, and still found

[3] *See* Motion at pgs. 8-12.

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Count I was "within a fair reading of the broad sweep of *Reynolds*." *See* order at pg. 5. And relative to Count II (due process), the Secretary's Motion tries to prescribe error to this Court not purportedly appreciating the applicable legal standard of "fundamental unfairness" in an election. *See* Motion at pgs. 11-12. Yet again, this Court did expressly recognize this standard, even commenting that it was undoubtedly a high bar, but nonetheless whether Plaintiffs could or would ultimately meet that bar was a factual issue that should proceed to discovery. *See* August 29, 2025 order at pg. 6.

B. ALTERNATIVELY, THIS COURT COULD PLAUSIBLY ISSUE RELIEF TO PLAINTIFFS ON COUNTS I AND II OF THE FAC WITHOUT OFFENDING THE SEPARATION OF POWERS

To the extent this Court does not deny the Motion on its face based on the law of the case doctrine, *i.e.*, based on the findings it already made in its August 29, 2025 order, the Motion should still be denied. For one, the Secretary's arguments relative to the separation of powers doctrine barring this Court from issuing any type of relief to Plaintiffs are entirely premature. Such arguments are essentially a variation of the NAACP Defendant's argument – rejected by this Court – that the "*Anderson-Burdick*" framework/test merits dismissal under NRCP 12(b)(5), since Plaintiffs' action would purportedly and impermissibly seek relief involving state action. This Court correctly and soundly rejected this line of argument, recognizing that it was entirely too early and premature – absent any discovery having been conducted, and the case being at the pleading stage – to make determinations about what potential future remedies could or would look like, and whether state action would be involved or not. *See* August 29, 2025 order at pg. 10 ("There are far too many variables and uncertainties to allow for an informed decision on any *Anderson-Burdick* issue at this time.").[4]

By this same token, there are far too many variables and uncertainties at this time for this Court to make determinations as to whether or not potential future remedies (relative to Counts I

[4] In contrast, when presented with specific potential remedies, such as mandating the use of juror forms in conducting voter roll maintenance, this Court was able to make determinations about the viability of said relief and whether it exceed what was required under NRS 293.675.

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and II in the FAC) would or would not offend the separation of powers doctrine. As this Court correctly observed in issuing the August 29, 2025 order, the Secretary "may be judicially compelled to perform specific duties required by statute." In other words, to the extent that discovery reveals the Secretary is not complying with one or more of its mandatory obligations under NRS 293.675 (*e.g.*, by not cross-referencing the statewide voter registration list with the records of the State Registrar of Vital Statistics *at least once per month* as required under subsection 8), and furthermore that this failure(s) has a nexus to Plaintiffs' asserted injury, Plaintiffs could plausibly be entitled to injunctive relief (as requested in its prayer for relief). After all, the Nevada Supreme Court, in rejecting a litigant's argument that requested relief impermissibly sought to compel a "discretionary act," has noted that "[p]erformance of a duty, enjoined upon an officer by law, without leaving him any discretion in its performance, may be compelled by mandamus, if there be no other adequate remedy." *Sw. Gas Corp. v. Pub. Serv. Comm'n of Nevada*, 92 Nev. 48, 54, 546 P.2d 219, 222 (1976). Simply put, the Secretary has certain mandatory obligations under NRS 293.675 with respect to voter roll maintenance, and it would not be violative of the separation of powers doctrine to compel the Secretary's compliance with said mandatory obligations. Indeed, the Nevada Legislature has expressly determined and made a policy determination that these mandatory obligations in NRS 293.675 further a compelling public policy interest. Hence, a judicial remedy that enforces the Secretary's compliance with the same does not usurp the prerogative of the Legislature, but rather comports with and ensures the will of the Legislature is not usurped by the executive branch of government (*i.e.*, the Secretary). In that regard, this Court would be furthering and protecting the separation of powers doctrine in Nevada.

IV. CONCLUSION

To be sure, the filing of the FAC afforded the Secretary the ability to respond in the form of whatever responsive pleading it deemed most appropriate. Yet, the need to file a responsive pleading in response to the FAC did not give the Secretary *carte blanche* to move to reconsider prior arguments already briefed extensively and argued by the parties, and ruled on by this Court, especially without articulating new facts or legal errors in this Court's August 29, 2025 analysis

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which would plausibly merit reconsideration (as required by the law of the case doctrine and Local Rule 3.13). Hence, and for all of the foregoing reasons, Plaintiffs request that the Court deny the Motion and enter the proposed order affixed hereto.[5]

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 5th day of November, 2025.

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[5] Contrary to Local Rule 3.10, the Secretary of State filed its Motion without affixing any proposed order.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **OPPOSITION TO SECRETARY OF STATE'S MOTION TO DISMISS** was served on the 5th day of November, 2025 via email as follows:

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

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

Plaintiffs,

vs.

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

Defendants,

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

Intervenor Defendant.

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

PROPOSED ORDER DENYING SECRETARY OF STATE'S MOTION TO DISMISS

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[PROPOSED ORDER]

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

BACKGROUND

On October 22,2025, the Secretary filed a Motion to Dismiss the Complaint. Plaintiffs ZENAIDA DAGUSEN, an individual and the REPUBLICAN NATIONAL COMMITTEE, the

NEVADA REPUBLICAN PARTY, and DONALD J. TRUMP FOR PRESIDENT 2024, INC. (collectively, "Plaintiffs") opposed the Motion.

STANDARDS OF LAW

I. NRCP 12(B)(5) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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

II. REMEDIES IN THE CONTEXT OF NRCP 12(B)(5) MOTIONS

The plain language of NRCP 12(b)(5) states as follows: "failure to state a claim upon which relief can be granted." (emphasis added). NRCP 12(b)(5) does not state the converse of "failure to state relief upon which a claim can be stated" (emphasis added). Generally speaking, courts are reticent to grant a motion to dismiss for failure to state a claim on the basis of a purported lack of a remedies/deficient prayer for relief. *See, e.g.*, *Rodriguez v. Serv. Emps. Int'l*, 755 F. Supp. 2d 1033, 1053 (N.D. Cal. 2010) ("Defendant does not, however, cite authority addressing whether it is appropriate to dismiss a complaint under Rule 12(b)(6) on the basis that the remedies sought in it are unavailable. The Court concludes that it is not, **so long as some relief is available.**") (emphasis added); *Segura v. City of La Mesa*, 647 F. Supp. 3d 926, 942-43 (S.D. Cal. 2022) ("**A 'prayer for relief does not provide any basis for dismissal under Rule 12**.'" (emphasis added, citations omitted); *Summit Tech., Inc. v. High-Line Med. Instruments, Co.*, 933 F. Supp. 918, 927-28 (C.D. Cal. 1996) ("… a Rule 12(b)(6) motion 'will not be granted merely because [a] plaintiff requests a remedy to which he or she is not entitled.'" *Schwarzer, et al., Civil Procedure Before*

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Trial § 9:230. '**It need not appear that plaintiff can obtain the *specific* relief demanded as long as the court can ascertain from the face of the complaint that some relief can be granted**.'") (emphasis added, citation omitted).

This aforementioned judicial reticence is well-grounded in the fact that the course of discovery and the development of the record often has significant bearing not only on the alleged causes of actions, but also on the type of remedies reasonably available to a plaintiff, which is precisely why a plaintiff is often not even obligated to elect remedies until the time of trial, and can further amend the complaint during/after trial to conform with the eventual judgment. *See generally* NRCP 15(b); *see also United States v. Maricopa Cnty., Ariz.*, 915 F. Supp. 2d 1073, 1081-82 (D. Ariz. 2012) ("A 12(b)(6) motion to dismiss challenges the legal sufficiency of the pleadings, not the appropriateness of the relief sought… [A] motion for failure to state a claim properly addresses the cause of action alleged, not the remedy sought… **The scope of the relief must match the scope of the harm proven**.... **This will be determined after discovery.**") (emphasis added, citations and quotations omitted).

III. LOCAL RULE 3.13 & LAW OF THE CASE DOCTRINE

Local Rule 3.13(a) states that "[i]ssues once heard and disposed of will not be renewed in the same cause except by leave of court granted upon motion." Local Rule 3.13(a) further and relatedly states that this court "may grant leave to file a motion for reconsideration if it appears the court overlooked or misunderstood a material fact, or overlooked, misunderstood, or misapplied law that directly controls a dispositive issue." Motions for reconsideration of prior issues already ruled on are so disfavored that not only are such motions not even allowed absent first being granted leave of the court, but oppositions are furthermore not allowed "unless ordered by the court." *See* Local Rule 3.13(b).

With respect to the "law of the case doctrine," said doctrine refers to "a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (*i.e.*, established as law of the case) by that court or a higher one in earlier phases." *See Recontrust Co. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014) (cleaned up,

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citation omitted). The doctrine, which the United States Supreme Court has described as a "discretionary rule of practice," is based "upon sound policy that when an issue is once litigated and decided, that should be the end of the matter." *See United States v. U. S. Smelting Ref. & Min. Co.*, 339 U.S. 186, 198-99 (1950) (citation omitted).

The law of case doctrine, the rationale for which clearly underlies this Court's Local Rule 3.13, has been described by the Ninth Circuit as follows: "Although the law of the case rule does not bind a court as absolutely as res judicata, and should not be applied 'woodenly' when doing so would be inconsistent with 'considerations of substantial justice,' the discretion of a court to review earlier decisions should be exercised sparingly so as not to undermine the salutory policy of finality that underlies the rule." *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 833-34 (9th Cir. 1982) (cleaned up, citations omitted). Generally speaking, departure from a previous ruling of the court may be appropriate if any of the following applies: "1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3) the evidence on remand is substantially different; 4) other changed circumstances exist; or 5) a manifest injustice would otherwise result." *United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998) (citation omitted).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Secretary's Motion primarily advances the argument that "the relief sought by the plaintiffs infringes on Nevada's separation of powers." *See* Motion at pgs. 3-8. Within this large umbrella of argument, the NV SOS makes four sub arguments that (a) "Plaintiffs' requested relief is clearly committed to the secretary" (pgs. 4-5), (b) "the Legislature reserved general list maintenance to the Secretary of State, limiting individuals to statutory challenges" (pgs. 5-6), (c) "the legislature has delegated administrative rulemaking regarding list maintenance to the Secretary and provided a process for seeking regulatory amendments" (pgs. 6-7), and (d) "the relief sought infringes on legislative power" (pgs. 7-8).

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I. THE SECRETARY'S MOTION, AND ALL OF ITS RENEWED ARGUMENTS THEREIN, ARE BARRED BY THE LAW OF THE CASE DOCTRINE AND LOCAL RULE 3.13

A. SEPARATION OF POWERS

The Secretary's prior December 2, 2024 motion to dismiss advanced the argument that "Plaintiffs' grievances about jury and SAVE data are better directed at the Legislature as the Legislature is best positioned to weigh the value of using those sources and the costs of doing so." *See* motion at pg. 11. Relatedly, the Secretary's March 14, 2025 supplemental brief on unawardable relief (*i.e.*, regarding remedies) cited to Ninth Circuit case law noting that "policy decisions 'require consideration of "competing social, political, and economic forces," which must be made by the People's "elected representatives, rather than by federal judges interpreting the basic charter of Government for the entire country."'" *See* brief at pg. 3 (citation omitted). In light of these arguments and in evaluating Plaintiffs' original, now dismissed fourth claim for relief (declaratory relief pursuant to NRS 293.675), this Court determined that that particular claim, as pleaded, would require the Court to go beyond the mandatory provisions of NRS 293.675 and impermissibly "judicially supplement" the same. *See* August 29, 2025 order at pg. 9. After making this determination, this Court concluded that it had "no inherent authority to direct [the Secretary] on the particulars of how he is to maintain the statewide voter registration list beyond what is required by statute. That authority is within [the Secretary's] discretion." *Id.* In other words, this Court essentially determined that the separation of powers barred the claim as void.

The NV SOS, via the instant Motion is effectively asking this Court to reconsider and expand its ruling and rationale relative to Plaintiffs' original fourth claim for relief, and apply it to Counts I and II in the FAC (*i.e.*, Plaintiffs' equal protection and due process claims). Yet, per the above, and in light of the briefing that was presented to the Court, this Court already evaluated and considered the potential applicability of the separation of powers doctrine to the instant action, and to potential remedies in particular – having even ordered supplemental briefing on the interplay between the viability of remedies and NRCP 12(b)(5). Keeping in mind Local Rule 3.13(a), the Secretary is unable to identify (and has not identified) any material fact that this Court purportedly

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overlooked, nor identified any purported misapplication of the law by this Court, that would remotely merit this Court reconsidering its prior ruling on Counts I and II. The record and the Court's August 29, 2025 order reflect the opposite, *i.e.*, that this Court considered all material facts and issues of law. Hence, the law of the case doctrine applies and bars the Motion, which also effectively seeks reconsideration without complying with Local Rule 3.13.

B. STANDING AND OTHER NRCP 12(B)(5) ARGUMENTS

One might be inclined to treat the Secretary's request for this Court to reconsider its prior August 29, 2025 order with respect to the interplay between remedies and NRCP 12(b)(5) relief as an aberration. Yet, any semblance of doubt as to the true intent of the Motion evaporates in the face of the Secretary's additional, secondary request for this Court to also reconsider assorted standing and other NRCP 12(b)(5) arguments[1] – all of which were already extensively argued and briefed by the parties hereto, and are similarly barred under the law of the case doctrine. Simply put, the NV SOS disagrees with this Court's August 29, 2025 order, and is effectively seeking reconsideration of the same via the instant Motion, but does not give this Court a material, substantive reason to do so.

As to the threshold issue of standing, the Secretary's Motion fails to articulate any material change in circumstances that would plausibly merit or require reconsideration of its August 29, 2025 order on the issue. And as this Court noted in its August 29, 2025 order, Plaintiffs should enjoy "favorable judicial deference as to factual allegations insofar as they inform the issue of standing." *See* order at pg. 4. Relatedly, the Secretary's restated arguments relative to whether Plaintiffs' equal protection and due process claims survive traditional 12(b)(5) scrutiny can and should be disregarded on their face in light of the law of the case doctrine. Furthermore, this Court finds merit in Plaintiffs' arguments advanced in their December 18, 2024 opposition (at pgs. 7-10) and their October 28, 2024 opposition (at pgs. 5-9) relative to equal protection and due process. Relative to Count I (equal protection), the Secretary's Motion attempts to prescribe error to this

[1] *See* Motion at pgs. 8-12.

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Court purportedly not considering the unique apportionment context of *Reynolds v. Sims* (*see* Motion at pg. 11). Yet this Court, in its August 29, 2025 order, expressly did recognize and note that distinguishing fact, and still found Count I was "within a fair reading of the broad sweep of *Reynolds*." *See* order at pg. 5. And relative to Count II (due process), the Secretary's Motion tries to prescribe error to this Court not purportedly appreciating the applicable legal standard of "fundamental unfairness" in an election. *See* Motion at pgs. 11-12. Yet again, this Court did expressly recognize this standard, even commenting that it was undoubtedly a high bar, but nonetheless whether Plaintiffs could or would ultimately meet that bar was a factual issue that should proceed to discovery. *See* August 29, 2025 order at pg. 6.

II. ALTERNATIVELY, THIS COURT COULD PLAUSIBLY ISSUE RELIEF TO PLAINTIFFS ON COUNTS I AND II OF THE FAC WITHOUT OFFENDING THE SEPARATION OF POWERS

Putting aside procedural issues relative to the law of the case doctrine and Local Rule 3.13, the Secretary's arguments relative to the separation of powers doctrine barring this Court from issuing any type of relief to Plaintiffs are entirely premature. Such arguments are essentially a variation of the NAACP Defendant's argument – rejected by this Court – that the "*Anderson-Burdick*" framework/test merits dismissal under NRCP 12(b)(5), since Plaintiffs' action would purportedly and impermissibly seek relief involving state action. This Court previously rejected this line of argument, recognizing that it was entirely too early and premature – absent any discovery having been conducted, and the case being at the pleading stage – to make determinations about what potential future remedies could or would look like, and whether state action would be involved or not. *See* August 29, 2025 order at pg. 10 ("There are far too many variables and uncertainties to allow for an informed decision on any *Anderson-Burdick* issue at this time.").[2]

[2] In contrast, when presented with specific potential remedies, such as mandating the use of juror forms in conducting voter roll maintenance, this Court was able to make determinations about the viability of said relief and whether it exceed what was required under NRS 293.675.

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By this same token, there are far too many variables and uncertainties at this time for this Court to make determinations as to whether or not potential future remedies (relative to Counts I and II in the FAC) would or would not offend the separation of powers doctrine. As this Court observed in issuing the August 29, 2025 order, the Secretary "may be judicially compelled to perform specific duties required by statute." In other words, to the extent that discovery reveals the Secretary is not complying with one or more of its mandatory obligations under NRS 293.675 (*e.g.*, by not cross-referencing the statewide voter registration list with the records of the State Registrar of Vital Statistics *at least once per month* as required under subsection 8), and furthermore that this failure(s) has a nexus to Plaintiffs' asserted injury, Plaintiffs could plausibly be entitled to injunctive relief (as requested in its prayer for relief). After all, the Nevada Supreme Court, in rejecting a litigant's argument that requested relief impermissibly sought to compel a "discretionary act," has noted that "[p]erformance of a duty, enjoined upon an officer by law, without leaving him any discretion in its performance, may be compelled by mandamus, if there be no other adequate remedy." *Sw. Gas Corp. v. Pub. Serv. Comm'n of Nevada*, 92 Nev. 48, 54, 546 P.2d 219, 222 (1976). Simply put, the Secretary has certain mandatory obligations under NRS 293.675 with respect to voter roll maintenance, and it would not be violative of the separation of powers doctrine to compel the Secretary's compliance with said mandatory obligations. Indeed, the Nevada Legislature has expressly determined and made a policy determination that these mandatory obligations in NRS 293.675 further a compelling public policy interest. Hence, a judicial remedy that enforces the Secretary's compliance with the same does not usurp the prerogative of the Legislature, but rather comports with and ensures the will of the Legislature is not usurped by the executive branch of government (*i.e.*, the Secretary). In that regard, this Court would be furthering and protecting the separation of powers doctrine in Nevada.

ORDER

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

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

IT IS SO ORDERED.

Dated this _____ day of _____, 2025.

_____
DISTRICT COURT JUDGE

Respectfully Submitted by:

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By _____

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