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WILLIAM SCOTT HOEN
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8

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

12 NEVADA REPUBLICAN PARTY,
13 Plaintiff,

14 vs.

15 STATE OF NEVADA; FRANCISCO
AGUILAR, in his official capacity as
16 Nevada Secretary of State

17 Defendants.

Case No.: 23OC000511B
Dept. No. I

18 **NOTICE OF ENTRY OF ORDER**


19 **TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**

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1 YOU, AND EACH OF YOU, please take notice that an Order Denying Motion for
2 Preliminary Injunction was entered in the above-entitled matter on July 21, 2023. A copy
3 of said Order is attached hereto as Exhibit 1.

4 DATED this 25th day of July 2023

5 AARON D. FORD
6 Attorney General

7 By: 
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney General,
3 and that on this 25th day of July 2023, I served a true and correct copy of the foregoing
4 **NOTICE OF ENTRY OF ORDER**, by placing said document in the U.S. First Class
5 Regular Mail, postage prepaid, addressed to:

6 Sigal Chattah, Esq.
7 CHATTAH LAW GROUP
8 5875 S. Rainbow Blvd. #204
9 Las Vegas, NV 89118
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13 Aaron D. Van Sickle

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Exhibit 1

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Exhibit 1

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2023 JUL 21 PM 1:20

WILLIAM SCOTT HOEN
CLERK

BY  DEPUTY

8
9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR CARSON CITY**

11
12 NEVADA REPUBLICAN PARTY,
13 Plaintiff,

14 vs.

15 STATE OF NEVADA; FRANCISCO
AGUILAR, in his official capacity as
16 Nevada Secretary of State

17 Defendants.

Case No.: 23OC000511B

Dept. No. I

18 **ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION**

19 On June 2, 2023, Plaintiff the Nevada Republican Party ("NV GOP") filed a Motion
20 for Preliminary Injunction ("Motion"). On June 16, 2023, Defendants the State of Nevada
21 and Francisco Aguilar, in his official capacity as Nevada Secretary of State, filed an
22 Opposition to the Motion. On June 26, 2023, the NV GOP filed a Reply in Support of the
23 Motion. On July 7, 2023, the NV GOP filed a Supplemental Authority in Support of its
24 Motion. July 10, 2023, the Court heard oral argument on the Motion. Sigal Chattah, Esq.
25 argued on behalf of the NV GOP. Deputy Attorney General Laena St-Jules argued on
26 behalf of Defendants. The Court, having considered the Motion and all briefing thereon
27 and the arguments of counsel, DENIES the Motion.

28 ///

1 **I. BACKGROUND**

2 Through its Motion, the NV GOP seeks a preliminary injunction barring Defendants
3 from enforcing provisions of Assembly Bill 126, adopted by the 81st Legislative Session
4 (“AB 126”). Those provisions provide for a presidential preference primary election (“PPP
5 election”) and are codified in NRS 298.600–720. Under the PPP election rules, candidates
6 qualified to be a major political party’s nominee for President of the United States may
7 choose to participate in the PPP election process. NRS 298.660. The rules require a PPP
8 election, paid for by the State, to be held on the first Tuesday in February of each
9 presidential election year if two or more qualified candidates of a major political party file
10 declarations of candidacy with the Secretary of State between October 1 and October 15 of
11 the year preceding the PPP election. NRS 298.650–660; NRS 298.710. If no qualified
12 candidate or only one qualified candidate from a major political party files a declaration of
13 candidacy, no PPP election will be held for that major political party. NRS 298.650(2). The
14 results of any PPP election are not binding on any major political party.

15 The NV GOP claimed in its Motion and Complaint that the PPP election process
16 violates its and its members’ First and Fourteenth Amendment freedom of association
17 rights because it would preclude the NV GOP from using alternative methods to select its
18 presidential nominee. At the hearing on the Motion, the NV GOP conceded that the PPP
19 election process would not bind the NV GOP in its selection of its presidential nominee and
20 the NV GOP would still be able to select its nominee through a caucus. However, the NV
21 GOP argued that a non-binding PPP election is still unconstitutional and should therefore
22 be enjoined. The NV GOP has failed to establish its entitlement to a preliminary
23 injunction, and the Motion is therefore denied.

24 **II. LEGAL STANDARDS**

25 “[I]njunctive relief is extraordinary relief.” *Dep’t of Conservation & Nat. Res., Div.*
26 *of Water Res. v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). An applicant for a
27 preliminary injunction must show “(1) a likelihood of success on the merits; and (2) a
28 reasonable probability that the non-moving party’s conduct, if allowed to continue, will

1 cause irreparable harm for which compensatory damage is an inadequate remedy.” *Univ.*
2 *& Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d
3 179, 187 (2004). Additionally, courts “weigh the potential hardships to the relative parties
4 and others, and the public interest.” *Id.*

5 III. ANALYSIS

6 A. Likelihood of Success on the Merits

7 The NV GOP seeks injunctive, writ, and declaratory relief to preclude Defendants
8 from enforcing the PPP election provisions against it, or, in the alternative, a declaration
9 that the results of the PPP election are not binding against it. Compl. ¶¶ 24–41. The NV
10 GOP has small likelihood of success on the merits of its claims.

11 1. Required Joinder of Parties

12 NRCP 19(a)(1)(b)(i) requires joinder of a party where that party “claims an interest
13 relating to the subject of the action and is so situated that disposing of the action in the
14 person’s absence may . . . as a practical matter impair or impede the person’s ability to
15 protect the interest.” The PPP election applies to major political parties.¹ NRS 298.650.
16 There are two major political parties in Nevada: the NV GOP and the Democratic Party of
17 the State of Nevada (“NSDP”).² The NSDP has not been joined in this litigation.³

18 While the NV GOP only seeks relief to preclude Defendants from enforcing the PPP
19 election provisions against it specifically, the basis for the NV GOP’s requested relief is
20 that the PPP election statutes are unconstitutional. The Court would necessarily have to
21 determine whether the PPP election process is unconstitutional. And if the Court were to
22 find the PPP election process unconstitutional, that finding would apply equally to the
23 NSDP and affect its interests. Joinder of the NSDP is therefore required pursuant to NRCP
24 19.

25
26 ¹ NRS 293.128 sets out the procedure for a political party to qualify as a major political party. NRS 293.0655;
NRS 293.128.

27 ² See <https://www.nvsos.gov/sos/organized-political-parties> (last visited July 17, 2023).

28 ³ In its Order to Set Hearing and For Service, dated June 5, 2023, the Court ordered the Plaintiff to “serve a
copy of their [Complaint] and Motion for Preliminary Injunction upon . . . the Nevada Democratic party as a
[potential] indispensable party.”

1 “If the interest of the absent parties may be affected or bound by the decree, they
2 must be brought before the court, or it will not proceed to a decree.” *Univ. of Nev. v.*
3 *Tarkanian*, 95 Nev. 389, 396, 594 P.2d 1159, 1163 (1979); *see also Schwob v. Hemsath*, 98
4 Nev. 293, 294, 646 P.2d 1212, 1212 (1982) (“Failure to join an indispensable party is fatal
5 to a judgment . . .”). Because the NSDP has not been joined in this action, the Court will
6 not be able to enter a final order, and the Complaint will be subject to dismissal pursuant
7 to NRCP 12(b)(6). Consequently, as it stands, the NV GOP has little likelihood of
8 succeeding on the merits of its claims.

9 2. The NV GOP’s Claims

10 The core of the NV GOP’s lawsuit is that the PPP election process is an
11 unconstitutional infringement of the freedom of association.⁴ The First and Fourteenth
12 Amendments protect individuals’ rights to “gather in association for the purpose of
13 advancing shared belief” and for the “common advancement of political beliefs.” *Democratic*
14 *Party of United State v. Wisconsin ex rel. La Folette*, 450 U.S. 107, 121–22 (1981). Political
15 parties thus have the right to “identify the people who constitute the association” and “to
16 select a standard bearer who best represents the party’s ideologies and preferences.” *Eu v.*
17 *San Francisco Cty. Democratic Central Committee*, 489 U.S. 214, 224 (1989). Notably,
18 however, when a State gives a party a role in the election process, such as by allowing
19 parties to have their candidates appear with party endorsement on the general-election
20 ballot, the party’s rights to choose a candidate-selection process is circumscribed. *New York*
21 *State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 203 (2008). In such a case, “the State
22 acquires a legitimate governmental interest in ensuring the fairness of the party’s
23 nominating process, enabling it to prescribe what the process must be.” *Id.* A State
24 therefore does not unduly burden the freedom of association, for example, when it requires

25 ⁴ The NV GOP cites to the legislative history of Senate Bill 292 of the 81st Legislative Session (“SB 292”) as
26 support for its argument that the PPP election process is unconstitutional. However, legislative history is
27 only relevant where statutes are ambiguous, *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011),
28 and the NV GOP has not argued that AB 126 is ambiguous or provided any citation supporting the use of a
different statute’s legislative history to interpret it. The statutes repealed by SB 292 moreover differ
significantly from the challenged provisions of AB 126. The Court therefore finds no basis to consider SB
292’s legislative history in resolving this Motion.

1 a party to hold a primary election. *See Alaskan Indep. Party v. Alaska*, 545 F.3d 1173, 1180
2 (9th Cir. 2008) (holding that Alaska’s mandatory primary election was not an undue burden
3 on political parties’ associational rights). The Court in *Alaskan Indep. Party* further
4 articulated that direct primaries are beneficial to democracy and trump any interest a
5 political party has in designing its own rules for nominating candidates. *Id.* at 1178
6 (quoting *Lightfoot v. Eu*, 964 F.2d 865, 873 (9th Cir. 1992)).

7 Justice Kennedy, in a concurring opinion, summarized it best: “Encouraging citizens
8 to vote is a legitimate, essential, state objective; for the constitutional order must be
9 preserved by a strong, participatory democratic process.” *Cal. Democratic Party v. Jones*
10 530 U.S. 567, 587 (2000). In fact, the United States Supreme Court has held “it ‘too plain
11 for argument’ . . . that a State may require parties to use the primary format for selecting
12 their nominees.” *Id.* at 582. Although states cannot hold blanket primaries—where any
13 registered voter could vote for any candidate of any party for a given office—they can clearly
14 hold primaries to “assure that intraparty competition is resolved in a democratic fashion.”
15 (*Id.*)

16 Here, the NV GOP has failed to articulate a basis for finding the PPP election process
17 unconstitutional. The PPP election process does not limit the NV GOP’s ability to select
18 its own method for determining its candidate of choice. Moreover, major political party
19 candidates for President of the United States are free to decide whether to participate in a
20 PPP election, and voters are free to choose not to vote in a PPP election. The NV GOP also
21 has not identified any party rule or Nevada statute that is in conflict. There is,
22 consequently, no impact on any major political party’s candidate-selection process and no
23 burden on the freedom of association. To the extent there is a burden, it is slight and the
24 State’s legitimate interests (discussed in Section III.C below) justify the burden.

25 Even further, the NV GOP failed to present any relevant case law to support its
26 claims. The only case the NV GOP cited to support its position that primary elections are
27 unconstitutional was a 1996 trial court level case in Arizona that granted a preliminary
28 injunction that temporarily enjoined Arizona’s presidential preference election. *Arizona*

1 *State Democratic Committee v. Hull*, No. CV96-00909 (Maricopa County Super. Ct. Feb 1,
2 1996). However, when the Court inquired whether the NV GOP knew that Arizona utilized
3 presidential preference elections today, they conceded they did now know that. This
4 revealed the NV GOP failed to research their only supporting case law despite the case
5 being not a final determination on the merits, not binding authority, and later overturned
6 as Arizona continues to use presidential preference elections.

7 The NV GOP is therefore unlikely to succeed on the merits of its claims. The NV
8 GOP's claim for declaratory relief likely fails due to a lack of a justiciable controversy. *Doe*
9 *v. Bryan*, 102 Nev. 523, 525, 728 P.3d 443, 444 (1986). Because the PPP election is non-
10 binding and does not require the NV GOP, any candidate, or any voter to do anything, there
11 is likely no "concrete dispute admitting of an immediate and definitive determination of
12 the parties' rights." *Id.* (citation omitted).

13 The writ of prohibition claim is likely to fail because, as the NV GOP appears to
14 concede, there is an adequate remedy at law. NRS 34.330; Mot. at 5. The NV GOP argues
15 that a court may entertain a petition for a writ of prohibition where there is an adequate
16 remedy at law if there is an important issue of law that needs clarification. Mot. at 5-6
17 (quoting *State v. Second Judicial Dist. Court ex rel. Cnty. of Washoe*, 118 Nev. 609, 615, 55
18 P.3d 420, 423 (2002)). However, as discussed above, the PPP election process does not
19 impermissibly burden any constitutional right and there is likely no important legal issue
20 in need of clarification.

21 The NV GOP is also unlikely to succeed on its request for injunctive relief because
22 injunctive relief is a remedy, not a standalone cause of action. *State Farm Mut. Auto. Ins.*
23 *Co. v. Jafbros Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993) (explaining that the
24 "existence of a right violated is a prerequisite to the granting of an injunction" and "an
25 injunction will not issue 'to restrain an act which does not give rise to a cause of action'");
26 *Shell Oil Co. v. Richter*, 52 Cal. App. 2d 165, 168, 125 P.2d 930, 932 (Cal. App. 1942)
27 ("Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action
28 must exist before injunctive relief may be granted."). Because the NV GOP's declaratory

1 and writ relief claims likely fail and because there is no constitutional violation, injunctive
2 relief likely cannot be granted as a remedy.

3 Finally, for all claims, the NV GOP is unlikely to be able to establish standing. In
4 cases challenging the constitutionality of a statute, “a requirement of standing is that the
5 litigant personally suffer injury that can be fairly traced to the allegedly unconstitutional
6 statute.” *Elley v. Stephens*, 104 Nev. 413, 416, 760 P.2d 768 (1988). The NV GOP indicates
7 that its grievance is that the PPP election process would “interfere with a political party’s
8 processes for selecting presidential candidates.” Mot. at 6. But the PPP election process is
9 not binding on any major political party, and the NV GOP therefore likely cannot establish
10 a personal injury to support standing.

11 **B. Irreparable Harm**

12 The NV GOP argues that it would suffer irreparable harm if both a non-binding
13 primary and a binding caucus are held. The Court finds that while there may be some
14 minor confusion to the public, the benefits of holding a more inclusive primary for voters to
15 be able to state their preferences far outweigh those concerns. In short, the NV GOP has
16 failed to establish a reasonable probability of irreparable harm absent a preliminary
17 injunction.

18 **C. Public Interest and Hardship to the Parties**

19 Even if the NV GOP had established a likelihood of success on the merits and that
20 it would suffer irreparable harm, the Court may still decline the request for a preliminary
21 injunction based on the potential hardships to the parties and the considerations of the
22 public interest. *See Univ. & Comm. College Sys. of Nevada*, 120 Nev. at 721, 100 P.3d at
23 187. As discussed, the NV GOP has not identified any harm other than minor confusion
24 about the nomination process.

25 On the other hand, Defendants have identified public interests that weigh heavily
26 against a preliminary injunction. Those interests include that voting by ballot in a PPP
27 election provides voters with more security and confidence, preserves the overall integrity
28 of the election process, encourages voter participation including because votes may be cast

1 early and by mail and military-overseas ballot, simplifies the process, and elevates
2 Nevadans' voices by affording them the opportunity to declare primary election results
3 early on in the nationwide process. The Court finds the public interest is served by allowing
4 voters to have broader input in stating their preferences in a non-binding primary election.

5 Accordingly, the Court ORDERS that:

- 6 1. The NV GOP's Motion for Preliminary Injunction is denied; and
- 7 2. The Attorney General will serve a notice of entry of this order on all other
8 parties and file proof of such service within 7 days after the date the Court sends this order
9 to Defendants' attorneys.

10 DATED July 21, 2023

11 
12 DISTRICT COURT JUDGE

13 Respectfully submitted:

14 Dated this 20th day of July, 2023

15 AARON D. FORD
16 Attorney General

17 By: /s/ Laena St-Jules
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 21 day of July, 2023, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Laena St-Jules
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Carson City, NV 89701

Sigal Chattah
5875 S. Rainbow Blvd. #204
Las Vegas, NV 89118


Joshua P. La Bella, Esq.
Law Clerk, Dept. I

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