

2490
AARON D. FORD
Attorney General
LAENA ST. JULES (Bar No. 15156)
Senior Deputy Attorney General
DEVIN A. OLIVER (Bar No. 16773C)
Deputy Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
T: (775) 684-1265
(775) 684-1234
E: lstjules@ag.nv.gov
doliver@ag.nv.gov

Attorneys for Proposed Intervenor-Respondent Secretary of State

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

FREDERICK H. KRAUS, PUBLIC
INTEREST LEGAL FOUNDATION,

Case No. CV24-01051
Dept. No. 4

Petitioners,

vs.

CARRIE-ANN BURGESS, in her official
capacity as Washoe County Interim
Registrar of Voters,

Respondent.

MOTION TO INTERVENE AS RESPONDENT

Proposed Intervenor-Respondent Francisco V. Aguilar, in his official capacity as Nevada Secretary of State, moves to intervene as a respondent in this above-titled action under Nevada Rule of Civil Procedure 24 (“Motion”).¹

This Motion is based on the Memorandum of Points and Authorities below, the

¹ The Secretary moves to intervene by and through counsel Nevada Attorney General Aaron D. Ford, Senior Deputy Attorney General Laena St-Jules, and Deputy Attorney General Devin A. Oliver.

exhibits attached hereto, all papers and pleadings on file, and any oral argument this Court allows at a hearing on this matter.

POINTS AND AUTHORITIES

I. INTRODUCTION

Proposed Intervenor-Respondent Francisco V. Aguilar (the “Secretary” or “Secretary Aguilar”) moves to intervene in this lawsuit under Nevada Rule of Civil Procedure 24.²

Petitioners lodge this lawsuit to force Respondent Cari-Ann Burgess, the Washoe County (the “County”) Interim Registrar of Voters, to flout state and federal election laws governing voter registration list³ procedures. Specifically, Petitioners want to bypass procedural safeguards and compel Burgess to “investigate” certain addresses and potentially purge the County’s voter rolls—a demand based on third-party information that is neither sworn nor verified.⁴ There is no statutory requirement for Burgess or any other county clerk in Nevada to do so under these circumstances. *See* NRS 293.530. Instead, Petitioners must base their challenges to voters’ eligibility upon sworn statements, personal knowledge, and specific grounds only at specific times. *See* NRS 293.535, 293.547. Even if NRS 293.530 required such action by clerks “by May 1, 2024,” as Petitioners demanded of Respondent Burgess,⁵ doing so would cause Nevada to violate the National Voter Registration Act of 1993 (“NVRA”) by removing voters from voter rolls less than 90 days before an election for federal office. *See* 52 U.S.C. § 20507(c)(2)(A).

² If the Court grants the Secretary’s Motion, the Secretary intends to file a Rule 12(b) motion to dismiss the Petition on grounds of failure to state a claim and lack of subject-matter jurisdiction. However, because Rule 24(c) requires a proposed intervenor to attach a proposed pleading to the motion, the Secretary has attached a proposed answer as **Exhibit 1** to this Motion.

³ For purposes of this Motion, the Secretary uses the terms “voter registration list” and “voter rolls” interchangeably.

⁴ A purge of voters from Nevada’s voter rolls appears to be a key objective in Petitioners’ litigation strategy, despite clearly prescribed state-law procedures and the National Voter Registration Act of 1993’s clear limits on when and how states can remove voters from rolls. Petitioners do not merely seek an “investigation of known commercial addresses.” Pet. ¶ 36. Instead, by problematizing state law that “has recently expanded voting by mail,” Petitioners make clear in their April 11, 2024, letter to Burgess that she should also “make any appropriate corrections to the voter roll by May 1, 2024,” and that “[a]ction is needed prior to mailing out ballots for the June primary election.” Pet. Ex. A at 1; *see also id.* at ¶ 32.

⁵ Pet. Ex. A. at 1.

1 It is Secretary Aguilar’s job—and, in fact, his mandatory duty—to ensure that these
2 election statutes are enforced and followed uniformly throughout the State. Petitioners,
3 however, target one county (for now) and seek to upend the Secretary’s faithful application
4 of Nevada’s election laws, lawful administration of the State’s election process, and
5 compliance with federal voters’ rights laws. In other words, this lawsuit threatens to
6 prevent the Secretary from complying with his duties as Nevada’s “Chief Officer of
7 Elections.” NRS 293.124; Nev. Const. art. 15, § 2. Given these palpable threats to the
8 Secretary’s statewide interests—interests the Secretary himself is best positioned to
9 protect—intervention is necessary as a matter of right under NRCP 24(a)(2).
10 Alternatively, permissive intervention is warranted under NRCP 24(b)(2) because the
11 Petition turns on state election statutes that the Secretary, as a state governmental officer,
12 must administer.

13 II. BACKGROUND

14 a. The Secretary’s Executive Role as Nevada’s Chief Elections 15 Officer

16 As Nevada Secretary of State, Secretary Aguilar serves as “Chief Officer of Elections
17 for this State” and “is responsible for the execution and enforcement of the provisions of
18 title 24 of NRS and all other provisions of state and federal law relating to elections in this
19 State.” NRS 293.124. He is therefore “mandated to, among other things, uphold Nevada’s
20 Constitution, execute and enforce Nevada’s election statutes, and administer Nevada’s
21 election process.” *Miller v. Burk*, 124 Nev. 579, 588, 188 P.3d 1112, 1118 (2008) (citing Nev.
22 Const., art. 15, § 2; NRS 293.124; *Heller v. Legis. of State of Nev.*, 120 Nev. 456, 461, 93
23 P.3d 746, 750 (2004) (per curiam)). The Secretary “must obtain and maintain consistency
24 in the application, operation and interpretation of election laws.” *Heller*, 120 Nev. at 461,
25 93 P.3d at 750 (citing NRS 293.247). Under Nevada law, the Secretary must faithfully and
26 consistently enforce election laws across all Nevada counties.⁶

27 ⁶ See *Heller v. Legis. of State of Nev.*, 120 Nev. 456, 461, 93 P.3d 746, 750 (2004) (per
28 curiam) (“Nevada’s Legislature, by designating the Secretary [of State] as the chief officer
of elections, and by giving his office the authority to administer the state’s election process,

1 Relevant here, voter roll procedures fall squarely within the Secretary's executive
2 duties as Chief Officer of Elections; they also require the Secretary's oversight of county
3 clerks across the State. NRS 293.675, for example, requires that the Secretary "establish
4 and maintain a centralized, top-down database that collects and stores information related
5 to the preregistration of persons and the registration of electors from all the counties in
6 [Nevada]," among other requirements.⁷ County and city clerks must electronically enter
7 voter registration information into the Secretary's central database and "[p]rovide [him]
8 with information concerning the voter registration of the county . . . and other reasonable
9 information requested by [him] in the form required by [him] to establish or maintain the
10 statewide voter registration list."⁸ Under NRS 293.675, then, the Secretary uses voter
11 registration information collected from each county or city "to create the official statewide
12 voter registration list . . . in consultation with each county and city clerk."⁹

13 **b. Statutory Framework: Voter Roll Maintenance**

14 The Secretary administers overlapping state and federal statutes that govern how
15 county clerks¹⁰ handle external challenges to a voter's registration and, more broadly,
16 maintain a county's voter registration list. Together, these statutes require procedural
17 coordination and authorization among various local and state officials.

18 To start, county clerks may exercise limited discretion when using trustworthy
19 information to carry out routine list maintenance procedures. NRS 293.530(1)(a) gives

20
21 appears to have intended that the Secretary only have standing to seek enforcement of the
state's election laws.").

22 ⁷ NRS 293.675(1).

23 ⁸ *Id.* § 293.675(4); *see also* NAC 293.412 (requiring county clerks to maintain list
inactive voters on voter rolls and to provide information to the Secretary of State upon
request).

24 ⁹ NRS 293.675(2).

25 ¹⁰ The term "registrar of voters"—a county office existing only in Washoe and Clark
counties—is synonymous with "county clerk" for election administration purposes under
Title 24. *See* NRS 293.044 ("[W]henver the term 'county clerk' is used in this title it means
'registrar of voters' in those counties where such office has been created[.]"); *see also* NRS
26 244.164 (authorizing creation of the registrar of voters as an appointed office in counties
with 100,000 or more residents—an office that "shall assume all of the powers and duties
vested in and imposed upon the county clerk of the county with respect to elections"). For
27 purposes of this Motion, the Secretary will refer to Washoe County's Registrar of Voters
28 office as a "county clerk."

1 county clerks discretion to “use any reliable and reasonable means available to correct the
2 portions of the statewide voter registration list which are relevant to the county clerks and
3 to determine whether a registered voter’s current residence is other than that indicated on
4 the voter’s application to register to vote.” However, a clerk’s ability to use “reliable and
5 reasonable” information under NRS 293.530 largely hinges on whether that information is
6 sourced from government records or externally provided by private parties.¹¹ Further, even
7 if the information is deemed to be “reliable and reasonable,” a clerk must use it in ways
8 that are “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of
9 1965” when acting on a voter’s registration, as required under the NVRA. 52 U.S.C. §
10 20507(b)(1).

11 If a clerk receives information from a third party—a source that the clerk may decide
12 is neither reliable nor reasonable—NRS 293.530(1)(a) does not require additional action
13 from the clerk.¹² In fact, the statute *prohibits* the clerk from investigating or acting any
14 further on such third-party information without approval from her respective county’s
15 board of commissioners. NRS 293.530(1)(b) (“A county clerk may, *with the consent of the*
16 *board of county commissioners*, make investigations of registration in the county by census,
17 by house-to-house canvass or by any other method.”) (emphasis added).

18 ¹¹ Governmental records are routinely relied upon as reliable sources for the
19 information they contain, including for purposes of NRS 293.530. *See, e.g.*, NRS 293.5732,
20 293.5737 (permitting information collected by Nevada Department of Motor Vehicles to be
21 used “for the purpose of correcting the statewide voter registration list pursuant to NRS
22 293.530”); A.B. No. 432, 81st Session (Nev. 2021) (permitting information provided by
23 certain governmental agencies and tribes to be used for “purpose of correcting the statewide
24 voter registration list pursuant to NRS 293.530”); *see also* NRS 51.155 (public records
25 exception to Nevada’s hearsay rule); Fed. R. Evid. 803(8) (public records exception to
26 federal hearsay rule).

27 ¹² NRS 293.530 requires action by a county clerk in two scenarios—cancellation or
28 inactivation of a voter’s registration—only after multiple requirements are satisfied
through a prescribed procedure. *See* NRS 293.530(1)(c) (providing that a clerk “shall cancel
the registration of a voter” after (1) the clerk mails a written notice to the voter, (2) the
voter fails to respond, (3) the voter’s registration information has not been automatically
updated, and (4) the voter has not appeared to vote in two successive general elections after
the notice date), (1)(g) (providing that the clerk “shall designate the voter as inactive” “[i]f
a voter fails to return the postcard mailed pursuant to paragraph (c) within 30 days”).
Further, NRS 293.675 simply requires clerks to electronically enter voter registration
information into the Secretary’s central database and provide the Secretary any county-
specific voter registration reasonably requested by him for statewide registration list
purposes. *Id.* § 293.675(4); *see also* NAC 293.412.

1 When a third party wishes to challenge a voter's registration on residence grounds,¹³
2 the Nevada Legislature has provided two clear statutory paths to bring such challenges to
3 a county clerk's attention. These processes, which Petitioners fail to cite or follow, are
4 outlined under two provisions: NRS 293.535 and 293.547. Under NRS 293.535, "any elector
5 or other reliable person" may "file[] an affidavit with the county clerk" that, based on the
6 challenger's personal knowledge, states that the challenged voter has moved outside the
7 county where she is registered to vote and has established residence elsewhere.¹⁴ If such
8 a written challenge is based on residence, the county clerk must notify the challenged
9 registrant "in the manner set forth in NRS 293.530," enclose a copy of the challenger's
10 affidavit, and wait for the registrant to either respond or fail to appear to vote during the
11 required time before acting any further.¹⁵ Similarly, NRS 293.547 allows a registered voter
12 to file a written challenge against another voter who is registered to vote in the challenger's
13 precinct.¹⁶ The written challenge must be based on the challenger's personal knowledge,
14 signed and verified by the challenger, and target a single individual.¹⁷

15 **c. Petitioners' Attempts to Remove Voters from Nevada's Voter**
16 **Rolls**

17 Instead of following the statutory paths described above, Petitioners raced to this Court
18 to file their Petition, after having sent a letter and some emails to the County's Registrar
19 of Voters office in April and May 2024. *See generally* Pet. Ex's. A & B. Petitioners bring
20 one count for relief based on Respondent Burgess's alleged "fail[ure] to investigate and
21 make corrections regarding known commercial addresses in violation of her duties to
22 maintain the voter registration list." Pet. ¶ 32. Petitioners seek both a "declaratory

23 ¹³ For voter registration purposes, "the address at which the person actually resides
24 is the street address assigned to the location at which the person actually resides" or,
25 alternatively, "if the person does not reside at a location that has been assigned a street
26 address, the address at which the person actually resides is a description of the location at
27 which the person actually resides." NRS 293.486(1), (2). However, "military, naval or civil
28 service" employees, spouses of those employees, students, and inmates do not "gain or lose
residence by reason of his or her presence or absence." *Id.* § 293.487.

¹⁴ *Id.* § 293.535(2).

¹⁵ *Id.*

¹⁶ *Id.* § 293.547(2).

¹⁷ *Id.* § 293.547(2)-(4).

judgment that Respondent is not in compliance with NRS 293.530 and 293.675” and “a writ of mandamus requiring Respondent to investigate known commercial addresses.” *Id.* ¶¶ 35, 36; Prayer for Relief.

III. STANDARD OF LAW

NRCP 24 governs intervention in state-court actions. A movant may intervene either as of right under NRCP 24(a) or permissively under NRCP 24(b).¹⁸ Textually, NRCP 24 and Federal Rule of Civil Procedure 24 are virtually identical and thus “equivalent.”¹⁹ “[B]ecause the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts,” this Court may draw upon federal cases interpreting the equivalent federal rule as “strong persuasive authority” in applying NRCP 24.²⁰

Here, NRCP 24(a)(2) governs intervention as a matter of right.²¹ To intervene as of right under NRCP 24(a)(2), “an applicant must meet four requirements: (1) that it has a sufficient interest in the litigation's subject matter, (2) that it could suffer an impairment of its ability to protect that interest if it does not intervene, (3) that its interest is not adequately represented by existing parties, and (4) that its application is timely.” *Am. Home Assurance Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006).

Though “[d]etermining whether an applicant has met these four requirements is within the district court’s discretion,” *id.*, courts “construe the Rule ‘broadly in favor of

¹⁸ NRCP 24 intervention has long been available to applicants in state-court mandamus proceedings. *See, e.g., Azbill v. Fisher*, 84 Nev. 414, 417, 442 P.2d 916, 917 (1968).

¹⁹ *Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 668-69 (1978) (per curiam) (recognizing that Nevada courts may look to the federal courts' interpretations of parallel federal rules for guidance); *accord Am. Home Assurance Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006); *see also* NRCP 24, advisory committee notes to 2019 amendment (“The amendments conform Rule 24 to FRCP 24[.]”).

²⁰ *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (per curiam) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)); *see Lawler*, 94 Nev. at 626, 584 P.2d at 668-69.

²¹ NRCP 24(a)(2) provides that, “[o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.”

1 proposed intervenors’ . . . because ‘a liberal policy in favor of intervention serves both
2 efficient resolution of issues and broadened access to the courts,’” *Wilderness Soc’y v. U.S.*
3 *Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (brackets omitted) (quoting *United States*
4 *v. City of L.A.*, 288 F.3d 391, 397-98 (9th Cir. 2002)).

5 NRCP 24(b)(2) expressly allows government officers or agencies to intervene if an
6 existing party’s claim or defense is based on either “a statute or executive order
7 administered by the officer or agency” or “any regulation, order, requirement, or agreement
8 issued or made under the statute or executive order.”²² “In exercising its discretion, the
9 court must consider whether the intervention will unduly delay or prejudice the
10 adjudication of the original parties’ rights.” NRCP 24(b)(3).

11 The Secretary addresses each ground for intervention in turn.

12 **IV. ARGUMENT**

13 **a. The Secretary Satisfies all of NRCP 24(a)’s Requirements for** 14 **Rightful Intervention.**

15 **i. The Motion is Timely.**

16 First, the Secretary’s Motion is timely under NRCP 24(a). Petitioners filed their
17 petition on May 10, 2024. This Motion follows just one month later, before any substantive
18 activity has occurred in the case, and after the Secretary notified the parties by email of
19 his intention to intervene. Accordingly, the timing of this Motion presents no delay or risk
20 of prejudice to the existing parties, especially when compared to the prejudice the Secretary
21 would face if the Court denies intervention.²³

22 ²² NRCP 24(b)(2); *see also id.*, advisory committee note to 2019 amendment (“The
23 [2019] amendments conform [NRCP] 24 to FRCP 24, including the addition of [NRCP]
24 24(b)(2), which was not in the former Nevada rule. Intervention by government agencies
under the specified conditions should enable the relevant issues to be resolved in a single
action.”); *cf.* Fed. R. Civ. P. 24(b)(2) (virtually identical language as NRCP 24(b)(2)).

25 ²³ *See In re Guardianship of A.M.*, Case No. 59116, 2013 WL 3278878, at *3 (Nev.
26 May 24, 2013) (determining that motion to intervene was timely after “an examination of
27 ‘the extent of prejudice to the rights of existing parties resulting from the delay and then
weighing that prejudice against any prejudice resulting to the applicant if intervention is
denied” (quoting *Am. Home Assurance Co.*, 122 Nev. at 1244, 147 P.3d at 1130)); *Lawler*,
28 94 Nev. at 626, 584 P.2d at 669; *see also W. Expl. LLC v. U.S. Dep’t of Interior*, Case No.
3:15-cv-00491-MMD-VPC, 2016 WL 355122, at *2 (D. Nev. Jan. 28, 2016) (concluding that
motion to intervene was timely because movants filed less than two months after action

1 ii. **As Nevada’s Chief Elections Officer, the Secretary has**
2 **Significantly Protectable Interests that may be Impaired**
3 **by this Action.**

4 Additionally, the Secretary satisfies the next two requirements warranting rightful
5 intervention under Rule 24(a)(2) because he (1) has significantly protectable interests in
6 this action (2) that may be impaired by this action. In Nevada, a “significantly protectable
7 interest” is “one that is protected under law and bears a relationship to the plaintiff’s
8 claims.”²⁴ If a proposed intervenor “would be substantially affected in a practical sense by
9 the determination made in an action, he should, as a general rule, be entitled to
10 intervene.”²⁵ “Once an applicant has established a significantly protectable interest in an
11 action, courts regularly find that disposition of the case may, as a practical matter, impair
12 an applicant’s ability to protect that interest.”²⁶

13 Secretary Aguilar has significantly protectable interests in this lawsuit’s subject
14 matter through his clear duty to “uphold Nevada’s Constitution, execute and enforce
15 Nevada’s election statutes, and administer Nevada’s election process.”²⁷ Relevant here, the
16 Secretary “must obtain and maintain *consistency* in the application, operation, and
17 interpretation of election laws.”²⁸ Petitioners imply a litigation strategy that targets more
18 than a single county’s voter rolls; they have allegedly “devoted significant resources to

19 _____
20 commenced and less than a month after amended complaint filed); Wright & Miller, 7C
21 Fed. Prac. & Proc. Civ. § 1916 (3d ed. 2024) (recognizing that, “because a would-be [rightful]
22 intervenor may be seriously harmed if intervention [as of right] is denied, courts should be
23 reluctant to dismiss such a request for intervention [as of right] as untimely”; noting that
24 “if the intervention will not delay the termination of the litigation intervention ordinarily
25 will be allowed”) (collecting cases).

26 ²⁴ *Am. Home Assurance Co.*, 122 Nev. at 1239, 147 P.3d at 1127 (quoting *S. Cal.*
27 *Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002)); *cf. Sw. Ctr. Biological Diversity v.*
28 *Berg*, 268 F.3d 810, 818 (9th Cir. 2001) (“No specific legal or equitable interest need be
established. . . . It is generally enough that the interest asserted is protectable under some
law, and that there is a relationship between the legally protected interest and the claims
at issue.”) (cleaned up).

²⁵ *Berg*, 268 F.3d at 822 (quoting Fed. R. Civ. P. 24 advisory committee’s notes to
1966 amendment).

²⁶ *Venetian Casino Resort, LLC v. Enwave Las Vegas, LLC*, Case No. 2:19-cv-1197-
JCM-DJA, 2020 WL 1539691, at *3 (D. Nev. Jan. 7, 2020) (citing *California ex rel. Lockyer*
v. United States, 450 F.3d 436, 442 (9th Cir. 2006)).

²⁷ *Miller*, 124 Nev. at 588, 188 P.3d at 1118 (citations omitted); *see also generally*
Nev. Const. art. 2, §1A (voters’ bill of rights).

²⁸ *Heller*, 120 Nev. at 461, 93 P.3d at 750 (citing NRS 293.247) (emphasis added).

analyzing Nevada’s *statewide* voter list”—a database under the Secretary’s auspices—and have published videos and articles targeting Clark County’s voter rolls.²⁹

Specifically, the Secretary has at least three compelling interests in voter registration list procedures that Petitioners threaten to impair with this action. First, the Secretary must ensure that, for purposes of maintaining voter rolls, all county clerks handle external, third-party information consistently and in accordance with NRS 293.530 and the NVRA. Petitioners seek to practically impair this interest—*i.e.*, lawful and consistent voter roll maintenance *statewide*—by compelling individual *county* officials like Burgess to “investigate known commercial addresses.”³⁰ Petitioners ask the Court to force Burgess to misinterpret NRS 293.530 and violate it by using unsworn, unverified third-party information to “investigate” alleged commercial addresses without prior approval by the County’s board of commissioners. Petitioners’ litigation tactics won’t end at strong-arming Burgess; they likely will try their luck with other county clerks across the State.³¹

Second, the Secretary has a significantly protectable interest in ensuring uniform compliance with the statutory written-challenge processes set forth in NRS 293.535 and NRS 293.547. This lawsuit could torpedo any hope of orderly, objective, and nondiscriminatory resolution of written challenges to voter registrations. Instead of following these procedures, Petitioners aim to short-circuit these statutes and sow distrust toward Nevada’s elections. Moreover, if Petitioners prevail, a dangerous precedent may emerge in which county clerks are pressured to entertain allegations based on unsworn, unverified, and nebulously sourced information.

Third, the Secretary oversees Nevada’s statewide voter preregistration and registration database, *see* NRS 293.675, and compliance with federal election laws, *see, e.g.*, 52 U.S.C. §§ 20507, 20509. Critically, the Secretary must ensure state and local compliance

²⁹ Pet. ¶¶ 6, 7 (emphasis added).

³⁰ *Id.* ¶ 36.

³¹ The Petition cites recent efforts by Public Interest Legal Foundation (“PILF”) to “analyz[e] Nevada’s statewide voter list,” focusing on alleged “errors on Nevada’s statewide voter list in terms of mail ballots being sent to incorrect addresses. *Id.* ¶¶ 6, 7 (citing PILF video and written publications). All three cited publications target Clark County and alleged “errors” on its voter rolls. *Id.*

1 with the federal requirements of the NVRA, which sharply limits a state's ability to remove
2 voters from its rolls.³² This action may practically impair this interest in at least two ways.
3 First, if Petitioners prevail, Nevada's voter roll maintenance program would likely violate
4 the NVRA by either (i) removing voters from voter rolls during the statutory 90-day
5 "blackout" period preceding federal elections,³³ or (ii) removing voters in discriminatory or
6 non-uniform ways.³⁴ This action also may disrupt the productive working relationships
7 fostered between the Secretary and county clerks to lawfully administer Nevada's elections.

8 **iii. Respondent Burgess does not Adequately Represent the**
9 **Secretary's Interests.**

10 Lastly, the Secretary's rightful intervention is warranted because he cannot rely on
11 the existing parties to adequately represent his interests. In Nevada courts and the Ninth
12 Circuit, "the burden on proposed intervenors in showing inadequate representation is
13 minimal and would be satisfied if they could demonstrate that representation of their
14 interests 'may be' inadequate."³⁵ The Secretary meets this "minimal" burden, thus
15 warranting intervention as of right under Rule 24(a)(2).

16 The Secretary and Respondent Burgess do not have the same ultimate objective in
17 this litigation because the Secretary's obligations are far broader in scope, both in terms of
18 geography and substance. As the State's Chief Elections Officer, the Secretary administers
19 Nevada's election processes, "execut[es] and enforc[es]" Nevada's election statutes "and all
20 other provisions of state and federal law relating to elections in this State," and "adopt[s]
21 regulations" that give effect to these laws. NRS 293.124. For example, the Secretary's
22 enforcement duties include ensuring compliance with the NVRA. As mentioned above,

23 ³² See, e.g., 52 U.S.C. §§ 20507(a)(3)-(4) (listing four bases on which a state may
24 remove voters from rolls), (b)(1)-(2) (requiring any general program to remove voters to be
25 "uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965"),
(c)(2)(A) (prohibiting a state from removing certain ineligible voters through its general
removal program during the 90-day period before a federal primary or general election).

26 ³³ See *id.* § 20507(c)(2)(A).

27 ³⁴ See *id.* §§ 20507(b)(1)-(2).

28 ³⁵ *Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180, 185, 368 P.3d 1198, 1201 (2016) (quoting
Araraki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003)); accord *Am. Home. Assurance*
Co., 122 Nev. at 1241, 147 P.3d at 1128 (recognizing that a movant's burden to prove
inadequacy of representation is "minimal").

1 under the NVRA, each “State” must ensure that its general program to remove voters who
2 have changed residence is “uniform, nondiscriminatory, and in compliance with the Voting
3 Rights Act of 1965,” among other requirements.³⁶ Also, the Secretary must ensure
4 “uniform, nondiscriminatory” application of NRS 293.530—Nevada’s statutory means of
5 achieving NVRA compliance statewide—an objective that the County need not consider
6 locally. Similarly, Nevada law mandates that the Secretary ensure consistent
7 interpretation and application of Nevada’s election laws, including NRS 293.530, 293.535,
8 and 293.547. Because Respondent Burgess need only maintain voter rolls for a single
9 county—practices that, if Petitioners prevail, would differ from all other counties—her
10 representation of the Secretary’s statewide executive interests may be inadequate.

11 **b. Alternatively, the Secretary Satisfies Rule 24(b)’s Requirements**
12 **for Permissive Intervention as a State Governmental Officer.**

13 Under Rule 24(b)(2), courts may permit intervention by a governmental officer or
14 agency in actions that involve statutes and regulations administered by that officer or
15 agency.³⁷ For purposes of Rule 24(b)(2), federal courts have concluded that a government
16 officer “administers” a statute or regulation when he “manages, directs, or supervises” the
17 application of the law at issue.³⁸

18 ³⁶ 52 U.S.C. §§ 20507(b)(1)-(2); *see id.* § 20502(4) (defining the term “State” to “
19 mean[] a State of the United States and the District of Columbia” for NVRA purposes).

20 ³⁷ *See* NRCP 24(b)(2) (allowing state or federal government officers or agencies
21 timely intervene “if a party’s claim or defense is based on . . . a statute or executive order
22 administered by the officer or agency” or “any regulation, order, requirement, or agreement
23 issued or made under the statute or executive order”); *id.* advisory committee notes to 2019
24 amendment (“The amendments conform [NRCP] 24 to FRCP 24, including the addition
25 of [NRCP] 24(b)(2), which was not in the former Nevada rule. Intervention by government
26 agencies under the specified conditions should enable the relevant issues to be resolved in
27 a single action.”); *cf.* Fed. R. Civ. P. 24(b)(2) (virtually identical to Nev. R. Civ. P. 24(b)(2));
28 *Nuesse v. Camp*, 385 F.2d 694, 704-05 (D.C. Cir. 1967) (“The amendment [adding FRCP
24(b)(2)] was added to avoid exclusionary constructions where public officials seek
permission to intervene, and the amendment in effect expands the concept of ‘claim or
defense’ insofar as intervention by a governmental agency or officer is concerned. It is
perhaps more accurate to say that it considers the governmental application with a fresh
and more hospitable approach.”) (cleaned up).

³⁸ *McHenry v. Comm’r Internal Revenue*, 677 F.3d 214, 220-21 (4th Cir. 2012)
(concluding that, for FRCP 24(b)(2) purposes, a territorial government’s mere “interest in
the IRS’s [federal] policies in enforcing the U.S. Tax Code provisions” does not amount to
administrative control over the federal tax code provisions at issue); *see also Lopez v.*
Monterey Cnty., 525 U.S. 266, 278 (1999) (defining the verb “administer” to mean “to

1 For reasons discussed above (*see supra* § III.a), the Secretary's Motion is timely
2 because it will not unduly delay or prejudice the existing parties' rights; he also cannot rely
3 on Respondent Burgess to adequately protect his interests. As Nevada's "Chief Officer of
4 Elections," NRS 293.124, the Secretary is a state executive official who may intervene as a
5 governmental officer under Rule 24(b)(2).³⁹ Moreover, Petitioners squarely ground their
6 claims in Nevada election statutes that the Secretary must execute and enforce under NRS
7 293.124. Petitioners "seek a declaratory judgment that Respondent is not in compliance
8 with NRS 293.530 and NRS 293.675" and "a writ of mandamus requiring Respondent to
9 investigate known commercial addresses" under those statutes. Pet. ¶¶ 35, 36. Put simply,
10 Petitioners' lawsuit solely focuses on the application of election statutes that the Nevada
11 Secretary of State administers for Rule 24(b)(2) purposes.⁴⁰ Accordingly, the Secretary
12 alternatively requests that this Court grant intervention under Rule 24(b)(2).

13 V. CONCLUSION

14 For the reasons above, the Secretary respectfully requests that the Court grant his
15 motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit
16 him to intervene under Rule 24(b)(2).⁴¹

17
18
19
20
21
22
23 manage the affairs of," "to direct or superintend the execution, use, or conduct of," "to
24 manage (affairs, a government, etc.)," "have executive charge of," and "[t]o manage or
25 conduct" something); Black's Law Dictionary (11th ed. 2019) ("To provide or arrange
(something) officially as part of one's job <courts administer justice>[.]").

26 ³⁹ See generally NRS chapter 255 (listing the Secretary of State's duties and
authorities as state executive official); see also Nev. Const., art. 5, §§ 19, 20, 22.

27 ⁴⁰ See *Lopez*, 525 U.S. at 278; *Miller*, 124 Nev. at 588, 188 P.3d at 1118; *Heller*, 120
Nev. at 461, 93 P.3d at 750.

28 ⁴¹ Alternatively, the Secretary requests the Court's permission "to submit briefs on
determinative issues as amici curiae." *Hairr*, 132 Nev. at 188, 368 P.3d at 1203 (citations
omitted).

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

DATED this 17th day of June 2024.

/s/ Laena St. Jules
LAENA ST. JULES (Bar No. 15156)
Senior Deputy Attorney General
DEVIN A. OLIVER (Bar No. 16773C)
Deputy Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
T: (775) 684-1265
(775) 684-1234
E: lstjules@ag.nv.gov
doliver@ag.nv.gov

Attorneys for Intervenor

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

/s/ Susan L. Messina
an employee of the Nevada Office of the
Attorney General

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	[PROPOSED] Answer to Petition for Writ of Mandamus	7

EXHIBIT 1

*SECRETARY OF STATE'S (PROPOSED) ANSWER TO
PETITION FOR WRIT OF MANDAMUS*

RETRIEVED FROM DEMOCRACYDOCKET.COM

1130

AARON D. FORD

Attorney General

LAENA ST. JULES (Bar No. 15156)

Senior Deputy Attorney General

DEVIN A. OLIVER (Bar No. 16773C)

Deputy Attorney General

State of Nevada

Office of the Attorney General

100 North Carson Street

Carson City, Nevada 89701-4717

T: (775) 684-1265

(775) 684-1234

E: lstjules@ag.nv.gov

doliver@ag.nv.gov

Attorneys for Proposed Intervenor Secretary of State

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

FREDERICK H. KRAUS, PUBLIC
INTEREST LEGAL FOUNDATION,

Petitioners,

vs.

CARRIE-ANN BURGESS, in her official
capacity as Washoe County Interim
Registrar of Voters,

Respondent,

and

FRANCISCO V. AGUILAR, in his Official
Capacity as NEVADA SECRETARY OF
STATE

Intervenor-Respondent.

Case No. CV24-01051

Dept. No. 4

**SECRETARY OF STATE'S (PROPOSED) ANSWER TO
PETITION FOR WRIT OF MANDAMUS**

Intervenor-Respondent Francisco V. Aguilar, in his official capacity as Nevada
Secretary of State ("Secretary of State"), by and through his attorneys, submits this Answer

1 to Petitioners' Petition for Writ of Mandamus Pursuant to NRS 34.160 for Washoe County
2 Registrar of Voters to Determine Whether Commercial Addresses on Voter Roll Are
3 Accurate as Required by NRS 293.530 ("Petition") as follows:

4 **NATURE OF THE CASE**

5 1. The Secretary of State denies the allegations in Paragraph 1 because the
6 quoted text is a selective, inaccurate, and incomplete recitation of NRS 293.675.

7 2. The Secretary of State admits that Paragraph 2 accurately quotes NRS
8 293.530(1)(a).

9 3. The Secretary of State admits that Petitioners purport to seek a writ of
10 mandamus, but denies that they are entitled to it. Paragraph 3 otherwise contains legal
11 contentions, characterizations, conclusions, and opinions to which no response is required.
12 To the extent a response is required, the Secretary of State denies the allegations in
13 Paragraph 3.

14 **PARTIES**

15 4. The Secretary of State lacks knowledge and information sufficient to form a
16 belief as to the truth of the allegations contained in Paragraph 4 and therefore denies them.

17 5. The Secretary of State admits that Petitioner Public Interest Legal
18 Foundation, Inc. is incorporated and based in Virginia. The Secretary of State otherwise
19 lacks knowledge and information sufficient to form a belief as to the truth of the remaining
20 allegations contained in Paragraph 5 and therefore denies them.

21 6. The Secretary of State lacks knowledge and information sufficient to form a
22 belief as to the truth of the allegations contained in Paragraph 6 and therefore denies them.

23 7. The Secretary of State lacks knowledge and information sufficient to form a
24 belief as to the truth of the allegations contained in Paragraph 7 and therefore denies them.
25 Paragraph 7 also contains legal contentions, characterizations, conclusions, and opinions
26 to which no response is required. To the extent a response is required, denied.

27 8. The Secretary of State admits that Respondent Burgess currently serves as
28 the Interim Registrar of Voters for Washoe County. The Secretary of State, however,

1 otherwise denies the allegations in Paragraph 8 because the quoted text is a selective,
2 inaccurate, and incomplete recitation of NRS 244.164 and NRS 293.503.

3 9. Paragraph 9 contains legal contentions, characterizations, conclusions, and
4 opinions to which no response is required. To the extent a response is required, denied.

5 10. Admitted.

6 **JURISDICTION AND VENUE**

7 11. Paragraph 11 contains legal contentions, characterizations, conclusions, and
8 opinions to which no response is required.

9 12. Paragraph 12 contains legal contentions, characterizations, conclusions, and
10 opinions to which no response is required. To the extent a response is required, the
11 Secretary of State admits that, based on the allegations pleaded in the Petition, venue is
12 proper.

13 **GENERAL FACTUAL ALLEGATIONS**

14 13. The Secretary of State denies the allegations in Paragraph 13 because the
15 quoted text is a selective, inaccurate, and incomplete recitation of NRS 293.675.

16 14. The Secretary of State denies the allegations in Paragraph 14 because the
17 quoted text is a selective, inaccurate, and incomplete recitation of NRS 293.530.

18 15. The Secretary of State denies the allegations in Paragraph 15 because the
19 quoted text is a selective, inaccurate, and incomplete recitation of NRS 293.486.

20 16. The Secretary of State denies the allegations in Paragraph 16 because the
21 quoted text is a selective, inaccurate, and incomplete recitation of NRS 293.507.

22 17. Admitted.

23 18. The Secretary of State denies the allegations in Paragraph 18 because the
24 quoted text is a selective, inaccurate, and incomplete recitation of NRS 293.505.

25 19. Exhibit A to the Petition speaks for itself. The Secretary of State otherwise
26 lacks knowledge and information sufficient to form a belief as to the truth of the allegations
27 contained in Paragraph 19 and therefore denies them.

28 20. The Secretary of State lacks knowledge and information sufficient to form a

1 belief as to the truth of the allegations contained in Paragraph 20 and subparagraphs
2 therein and therefore denies them.

3 21. Exhibit B to the Petition speaks for itself. The Secretary of State lacks
4 knowledge and information sufficient to form a belief as to the truth of the allegations
5 contained in Paragraph 21 and therefore denies them.

6 22. Exhibit B to the Petition speaks for itself. The Secretary of State lacks
7 knowledge and information sufficient to form a belief as to the truth of the allegations
8 contained in Paragraph 22 and therefore denies them.

9 23. Exhibit B to the Petition speaks for itself. The Secretary of State lacks
10 knowledge and information sufficient to form a belief as to the truth of the allegations
11 contained in Paragraph 23 and therefore denies them.

12 24. Exhibit B to the Petition speaks for itself. The Secretary of State lacks
13 knowledge and information sufficient to form a belief as to the truth of the allegations
14 contained in Paragraph 24 and therefore denies them.

15 25. Exhibit B to the Petition speaks for itself. The Secretary of State lacks
16 knowledge and information sufficient to form a belief as to the truth of the allegations
17 contained in Paragraph 25 and therefore denies them.

18 26. Exhibit B to the Petition speaks for itself. The Secretary of State lacks
19 knowledge and information sufficient to form a belief as to the truth of the allegations
20 contained in Paragraph 26 and therefore denies them.

21 27. Exhibit B to the Petition speaks for itself. The Secretary of State lacks
22 knowledge and information sufficient to form a belief as to the truth of the allegations
23 contained in Paragraph 27 and therefore denies them.

24 28. Paragraph 28 contains legal contentions, characterizations, conclusions, and
25 opinions to which no response is required. To the extent a response is required, denied.
26 The Secretary of State otherwise lacks knowledge and information sufficient to form a
27 belief as to the truth of the allegations contained in Paragraph 28 and therefore denies
28 them.

1 supplement his affirmative defenses as additional facts concerning defenses become
2 known.

3 Accordingly, the Secretary of State asserts the following affirmative defenses:

- 4 i. Petitioners lack standing to pursue their claims.
- 5 ii. Petitioners' claims are barred by the doctrine of laches.
- 6 iii. Petitioners' claims are preempted or otherwise barred by the National
7 Voter Registration Act of 1993.
- 8 iv. Petitioners fail to state a claim on which relief can be granted.
- 9 v. Petitioners fail to plead facts showing a clear legal right to the
10 extraordinary remedy of mandamus.
- 11 vi. Petitioners are not entitled to a writ of mandamus because they have an
12 alternate, adequate legal remedy available to them.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, the Secretary of State respectfully requests that this Court:

- 15 1. Deny that Petitioners are entitled to any relief;
- 16 2. Dismiss the Petition in its entirety, with prejudice; and
- 17 3. Grant such other and further relief as the Court may deem just and proper.

18 DATED this 17th day of June, 2024.

19 Respectfully Submitted By:

20 AARON D. FORD
Attorney General

21 By: /s/ Laena St. Jules

22 LAENA ST. JULES (Bar No. 15156)
Senior Deputy Attorney General
23 DEVIN A. OLIVER (Bar No. 16773C)
Deputy Attorney General
24 State of Nevada
Office of the Attorney General
25 100 North Carson Street
Carson City, Nevada 89701-4717
26 T: (775) 684-1265
E: lstjules@ag.nv.gov
27 doliver@ag.nv.gov

28 *Attorneys for Proposed Intervenor-Respondent Secretary of State*