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10 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**
 11 **CARSON CITY**

13 CITIZEN OUTREACH FOUNDATION,
 14 *et al.*,

Plaintiffs,

vs.

16 SCOTT HOEN, *et al.*,

Defendants

and

18 FRANCISCO V. AGUILAR, in his official
 20 capacity as Nevada Secretary of State,

21 Intervenor-Respondent.

Case No. 24 EW 00020 1B

Dept. No. I

23 ~~PROPOSED~~ ORDER GRANTING MOTION TO INTERVENE AS RESPONDENT

24 Proposed Intervenor-Respondent Francisco V. Aguilar, in his official capacity as
 25 Nevada Secretary of State ("Secretary" or "Secretary Aguilar"), filed a Motion to Intervene
 26 as Respondent ("Motion"). The Court, having considered the Motion and all briefing
 27 thereon, GRANTS the Motion.

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1 **I. BACKGROUND**

2 Under Nevada law, an “elector or other reliable person” can challenge a voter’s
3 registration by submitting an affidavit to a county clerk stating that the registrant has
4 “(1) moved outside of the boundaries where he or she is registered . . . , with the intention
5 of remaining there for an indefinite time and with the intention of abandoning his or her
6 residence in the county where registered;” and (2) “[e]stablished residence in some other
7 state, territory or foreign country, or in some other county of this state, naming the place.”
8 NRS 293.535. On September 20, 2024, Petitioners Citizen Outreach Foundation and
9 Charles Muth filed a Petition for Writ of Mandamus Pursuant to NRS 293.535 and
10 NRS 293.530 for Respondents to Notify the Registrants of the Challenge and Follow the
11 Requirements of NRS 293.530 (“Petition”). Petitioners allege that they have “submitted
12 and filed properly processed challenges” to voters registered in Carson City and Storey
13 County. Pet. ¶¶ 1, 16, 31, 32. They seek, among other relief, a writ of mandamus compelling
14 Respondents Scott Hoen, in his official capacity as Carson City Clerk-Treasurer, and Jim
15 Hindle, in his official capacity as Storey County Clerk, to process the challenges. Pet.
16 Prayer for Relief.

17 The Secretary seeks, pursuant to NRCP 24, to intervene as a matter of right, or in
18 the alternative, permissively. The Secretary is Nevada’s “Chief Officer of Elections,” and is
19 “responsible for the execution and enforcement of the provisions of title 24 of NRS and all
20 other provisions of state and federal law relating to elections in this State.”
21 NRS 293.124. His responsibilities include coordination of the State’s responsibilities under
22 the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20509, which extends to
23 voter roll maintenance, *id.* § 20507. Further, NRS 293.675 requires that the Secretary
24 “establish and maintain a centralized, top-down database that collects and stores
25 information related to the . . . the registration of electors from all the counties in [Nevada],”
26 among other requirements. NRS 293.675(1). County and city clerks must electronically
27 enter voter registration information into the Secretary’s central database and “[p]rovide
28 [him] with information concerning the voter registration of the county . . . and other

1 reasonable information requested by [him] in the form required by [him] to establish or
2 maintain the statewide voter registration list.” NRS 293.675(4); *see also* NAC 293.412.
3 Then, the Secretary uses voter registration information collected from each county or city
4 “to create the official statewide voter registration list . . . in consultation with each county
5 and city clerk.” NRS 293.675(2).

6 II. STANDARD OF LAW

7 NRCP 24 governs intervention in state-court actions, including in mandamus
8 proceedings.¹ A movant may intervene either as of right under NRCP 24(a) or permissively
9 under NRCP 24(b). Textually, NRCP 24 and Federal Rule of Civil Procedure 24 are
10 virtually identical and thus “equivalent.”² “[B]ecause the Nevada Rules of Civil Procedure
11 are based in large part upon their federal counterparts,” this Court may draw upon federal
12 cases interpreting the equivalent federal rule as “strong persuasive authority” in applying
13 NRCP 24. *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002)
14 (per curiam) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776
15 (1990)); *see Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 668–69 (1978) (per curiam).

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

22 Although “[d]etermining whether an applicant has met these four requirements is
23 within the district court’s discretion,” *id.*, courts “construe the Rule ‘broadly in favor of
24 proposed intervenors’ . . . because ‘a liberal policy in favor of intervention serves both
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26 ¹ 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).

27 ² *Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 668–69 (1978) (per curiam) (recognizing that
28 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’s note to 2019 amendment (“The amendments conform Rule 24 to FRCP 24[.]”).

1 efficient resolution of issues and broadened access to the courts,” *Wilderness Soc’y v. U.S.*
2 *Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (brackets and citation omitted).

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

9 III. ANALYSIS

10 A. Intervention Pursuant to NRCP 24(a)

11 As discussed below, the Secretary is entitled to intervene pursuant to NRCP 24(a).

12 1. Timeliness

13 The Secretary’s Motion is timely under NRCP 24(a). Petitioners filed their Petition
14 on September 20, 2024. This Motion follows just six days later, before any substantive
15 activity has occurred in the case. The Motion’s timing thus presents no delay or risk of
16 prejudice to the existing parties, especially when compared to prejudice the Secretary
17 would face if denied intervention.⁴

18 2. Significantly Protectable Interests That May Be Impaired

19 The Secretary also satisfies the next two requirements warranting rightful
20 intervention under Rule 24(a)(2) because he (1) has significantly protectable interests in
21 this action (2) that may be impaired by this action. In Nevada, a “significantly protectable
22 interest” is “one that is protected under law and bears a relationship to the plaintiff’s
23 claims.” *Am. Home Assurance Co.*, 122 Nev. at 1239, 147 P.3d at 1127 (quoting *S. Cal.*
24 *Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002)). If a proposed intervenor “would be

25 ³ See NRCP 24(b)(2), advisory committee’s note to 2019 amendment (“The [2019] amendments
26 conform [NRCP] 24 to FRCP 24, including the addition of [NRCP] 24(b)(2), which was not in the former
27 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).

28 ⁴ See *Am. Home Assurance Co.*, 122 Nev. at 1244, 147 P.3d at 1130; *Lawler*, 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).

1 substantially affected in a practical sense by the determination made in an action, he
2 should, as a general rule, be entitled to intervene.” *Sw. Ctr. Biological Diversity v. Berg*,
3 268 F.3d 810, 822 (9th Cir. 2001) (citation and quotation marks omitted). “Once an
4 applicant has established a significantly protectable interest in an action, courts regularly
5 find that disposition of the case may, as a practical matter, impair an applicant’s ability to
6 protect that interest.” *Venetian Casino Resort, LLC v. Enwave Las Vegas, LLC*, Case No.
7 2:19-cv-1197-JCM-DJA, 2020 WL 1539691, at *3 (D. Nev. Jan. 7, 2020) (citing *California*
8 *ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006)).

9 Secretary Aguilar has significantly protectable interests in this lawsuit’s subject
10 matter through his clear duty to “uphold Nevada’s Constitution, execute and enforce
11 Nevada’s election statutes, and administer Nevada’s election process.” *Miller v. Burk*,
12 124 Nev. 579, 588, 188 P.3d 1112, 1118 (2008) (citations omitted); *see also generally* Nev.
13 Const. art. II, §1A (voters’ bill of rights). Relevant here, the Secretary “must obtain and
14 maintain *consistency* in the application, operation, and interpretation of election laws.”
15 *Heller v. Legis. of State of Nev.*, 120 Nev. 456, 461, 93 P.3d 746, 750 (2004) (per curiam)

16 The Secretary has at least three compelling interests in voter registration list
17 procedures that Petitioners threaten to impair with this action. First, the Secretary must
18 ensure that, for purposes of maintaining voter rolls, all county clerks handle third-party
19 written challenges consistently and in accordance with NRS 293.530, NRS 293.535, and
20 the NVRA. Petitioners, through this action, threaten to practically impair this interest, *i.e.*,
21 lawful and consistent voter roll maintenance *statewide*.

22 Second, the Secretary has a significantly protectable interest in ensuring uniform
23 compliance with the statutory written-challenge process set forth in NRS 293.535. This
24 lawsuit could impact the orderly, objective, and nondiscriminatory resolution of written
25 challenges to voter registrations statewide.

26 Third, the Secretary oversees Nevada’s statewide voter registration database, *see*
27 NRS 293.675, and compliance with federal election laws, *see, e.g.*, 52 U.S.C. §§ 20507,
28 20509. The Secretary must ensure state and local compliance with the federal requirements

1 of the NVRA, which sharply limits a state’s ability to remove voters from its rolls.⁵ This
2 action may practically impair this interest, particularly as it could result in different
3 requirements for different counties across the State.

4 3. Adequate Representation of the Secretary’s Interests

5 Lastly, the Secretary’s rightful intervention is warranted because he cannot rely on
6 the existing parties to adequately represent his interests. “[T]he burden on proposed
7 intervenors in showing inadequate representation is minimal, and would be satisfied if
8 they could demonstrate that representation of their interests ‘may be’ inadequate.” *Hairr*
9 *v. First Jud. Dist. Ct.*, 132 Nev. 180, 185, 368 P.3d 1198, 1201 (2016) (citation omitted);
10 *accord Am. Home. Assurance Co.*, 122 Nev. at 1241, 147 P.3d at 1128. The Secretary meets
11 this “minimal” burden, thus warranting intervention under NRCP 24(a)(2).

12 Secretary Aguilar and Respondents do not have the same ultimate objective in this
13 litigation. “Adequate representation” does not simply exist when two government entities
14 share overlapping administrative duties or even the same goals in a case. *See Hairr*,
15 132 Nev. at 185–86, 368 P.3d at 1201–02.⁶ The Secretary’s interests are far broader in
16 regulatory and geographic scope, and not “subsumed” within Respondents’ objectives. *Id.*
17 The Secretary administers Nevada’s election processes, “execut[es] and enforc[es]”
18 Nevada’s election statutes “and all other provisions of state and federal law relating to
19 elections in this State,” and “adopt[s] regulations” giving effect to these laws. NRS 293.124.
20 These duties include, for example, ensuring compliance with the NVRA, wherein each state
21 must ensure that its general program to remove voters who have changed residence is
22 “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965,” among
23 other requirements. 52 U.S.C. §§ 20507(b)(1)-(2). Also, the Secretary must ensure “uniform,
24 nondiscriminatory” application of NRS 293.535 and 293.530—Nevada’s statutory means of
25 achieving NVRA compliance statewide—an objective that Respondents need not consider
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27 ⁵ See, e.g., 52 U.S.C. §§ 20507(a)(3)-(4), (b)(1)-(2), (c)(2)(A).

28 ⁶ See also *Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 748 (7th Cir. 2020) (stating that
if seeking the same outcome in a case is “all it takes to defeat intervention, then intervention as of right will
almost always fail” because a party must necessarily intervene “on one side of the ‘v.’ or the other”).

1 to the same extent. And as explained above, the Secretary must ensure consistent
2 interpretation and application of Nevada’s election laws, including NRS 293.530, 293.535,
3 and 293.547. Because Respondents need only maintain voter rolls for their respective
4 counties—practices that, if Petitioners prevail, would differ from other counties—their
5 representation of the Secretary’s statewide executive interests would be inadequate.

6 **B. Alternative Intervention Pursuant to NRCP 24(b)**

7 Courts also permit intervention by a governmental officer or agency in actions that
8 involve statutes and regulations administered by that officer or agency. NRCP 24(b)(2).
9 A government officer “administers” a statute or regulation when he “manages, directs, or
10 supervises” the application of the law at issue.⁷ As Nevada’s “Chief Officer of Elections,”
11 NRS 293.124, the Secretary is a state executive official who may intervene as a
12 governmental officer under NRCP 24(b)(2).⁸ Moreover, Petitioners squarely ground their
13 claims in Nevada election laws the Secretary must execute and enforce under NRS 293.124.
14 Petitioners seek a declaratory judgment that “Respondents are in violation of NRS 293.535
15 and NRS 293.530 [and NRS 293.675]” and “a writ of mandamus requiring Respondents to
16 notify each registrant subject to the challenges that have been filed . . . pursuant to
17 NRS 293.530” and 293.535. Pet. ¶¶ 36, 37, 42, 47; *id.* Prayer for Relief. Put simply,
18 Petitioners’ lawsuit solely focuses on the application of election laws that the Secretary
19 administers for NRCP 24(b)(2) purposes.⁹ Thus, permissive intervention is alternatively
20 warranted.

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27 ⁷ *McHenry v. Comm’r Internal Revenue*, 677 F.3d 214, 220–21 (4th Cir. 2012); *see also Lopez v. Monterey Cnty.*, 525 U.S. 266, 278 (1999) (defining the verb “administer”).

28 ⁸ *See generally* NRS chapter 255; *see also* Nev. Const., art. V, §§ 19, 20, 22.

⁹ *See Miller*, 124 Nev. at 588, 188 P.3d at 1118; *Heller*, 120 Nev. at 461, 93 P.3d at 750.

1 Accordingly, the Court ORDERS that:

2 1. State Defendants' Motion to Intervene as Respondent is granted; and

3 2. The Attorney General's Office will serve a notice of entry of this order on all
4 other parties and file proof of such service within 7 days after the date the Court sends this
5 order to the Secretary's attorneys.

6 IT IS SO ORDERED.

7 DATED September 27, 2024

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9 
10 DISTRICT COURT JUDGE

11 Respectfully submitted:

12 Dated this 26th day of September, 2024

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14 Attorney General

15 By: 

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