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FIRST JUDICIAL DISTRICT COURT OF NEVADA

WILLIAM SCOTT HOEN
CLERK

CARSON CITY

BY

DEPUTY

MARGARET M. OSBORNE, individually,

Case No. 24 EW 00025 1B

Petitioner,

Dept. No. II

vs.

SCOTT HOEN, in his official capacity as
the Carson City Clerk *et al.*,

Respondents,

and

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

Intervenor-Respondent.

[PROPOSED] ORDER GRANTING MOTION TO INTERVENE AS RESPONDENT

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

I. BACKGROUND

Under Nevada law, a registered voter can challenge the registration of a voter registered in the same precinct by submitting a challenge "based on the personal knowledge of the registered voter." NRS 293.547. Petitioner claims that on October 9, 2024, she submitted nine such challenges to the Carson City Clerk-Registrar. Pet. for Writ of Mandamus ("Petition") at 2. She seeks, among other relief, a writ of mandamus compelling Respondents to take action on the challenges as set out in NRS 293.547. *Id.* at 11.

The Secretary seeks, pursuant to NRCP 24, to intervene as a matter of right, or in the alternative, permissively. The Secretary is Nevada's "Chief Officer of Elections," and

1 is “responsible for the execution and enforcement of the provisions of title 24 of NRS and
2 all other provisions of state and federal law relating to elections in this State.”
3 NRS 293.124. His responsibilities include coordination of the State’s responsibilities under
4 the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20509, which extends to
5 voter roll maintenance, *id.* § 20507. Further, NRS 293.675 requires that the Secretary
6 “establish and maintain a centralized, top-down database that collects and stores
7 information related to the . . . the registration of electors from all the counties in [Nevada],”
8 among other requirements. NRS 293.675(1). County and city clerks must electronically
9 enter voter registration information into the Secretary’s central database and “[p]rovide
10 [him] with information concerning the voter registration of the county . . . and other
11 reasonable information requested by [him] in the form required by [him] to establish or
12 maintain the statewide voter registration list.” NRS 293.675(4); *see also* NAC 293.412.
13 Then, the Secretary uses voter registration information collected from each county or city
14 “to create the official statewide voter registration list . . . in consultation with each county
15 and city clerk.” NRS 293.675(2).

16 II. STANDARD OF LAW

17 NRCP 24 governs intervention in state-court actions, including in mandamus
18 proceedings. A movant may intervene either as of right under NRCP 24(a) or permissively
19 under NRCP 24(b). Textually, NRCP 24 and Federal Rule of Civil Procedure 24 are
20 virtually identical and thus “equivalent.”¹ “[B]ecause the Nevada Rules of Civil Procedure
21 are based in large part upon their federal counterparts,” this Court may draw upon federal
22 cases interpreting the equivalent federal rule as “strong persuasive authority” in applying
23 NRCP 24. *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002)
24 (per curiam) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776
25 (1990)); *see Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 668–69 (1978) (per curiam).

26 ¹ *Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 668–69 (1978) (per curiam)
27 (recognizing that Nevada courts may look to the federal courts’ interpretations of parallel
28 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 NRCP 24(a)(2) governs intervention as a matter of right. To intervene as of right,
2 “an applicant must meet four requirements: (1) that it has a sufficient interest in the
3 litigation’s subject matter, (2) that it could suffer an impairment of its ability to protect
4 that interest if it does not intervene, (3) that its interest is not adequately represented by
5 existing parties, and (4) that its application is timely.” *Am. Home Assurance Co. v. Eighth*
6 *Jud. Dist. Ct.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006).

7 Although “[d]etermining whether an applicant has met these four requirements is
8 within the district court’s discretion,” *id.*, courts “construe the Rule ‘broadly in favor of
9 proposed intervenors’ . . . because ‘a liberal policy in favor of intervention serves both
10 efficient resolution of issues and broadened access to the courts,’” *Wilderness Soc’y v. U.S.*
11 *Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (brackets and citation omitted).

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

18 **III. ANALYSIS**

19 **A. Intervention Pursuant to NRCP 24(a)**

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

21 **1. Timeliness**

22 The Secretary’s Motion is timely under NRCP 24(a). Petitioner filed the Petition on
23 October 21, 2024. The Motion followed just one day later, before any substantive activity
24 has occurred in the case. The Motion’s timing thus presents no delay or risk of prejudice
25

26 ² See NRCP 24(b)(2), advisory committee’s note to 2019 amendment (“The [2019]
27 amendments conform [NRCP] 24 to FRCP 24, including the addition of [NRCP] 24(b)(2),
28 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).

1 to the existing parties, especially when compared to prejudice the Secretary would face if
2 denied intervention.³

3 2. Significantly Protectable Interests That May Be Impaired

4 The Secretary also 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.” *Am. Home Assurance Co.*, 122 Nev. at 1239, 147 P.3d at 1127 (quoting *S. Cal.*
9 *Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002)). If a proposed intervenor “would be
10 substantially affected in a practical sense by the determination made in an action, he
11 should, as a general rule, be entitled to intervene.” *Sw. Cir. Biological Diversity v. Berg*,
12 268 F.3d 810, 822 (9th Cir. 2001) (citation and quotation marks omitted). “Once an
13 applicant has established a significantly protectable interest in an action, courts regularly
14 find that disposition of the case may, as a practical matter, impair an applicant’s ability to
15 protect that interest.” *Venetian Casino Resort, LLC v. Enwave Las Vegas, LLC*, Case No.
16 2:19-cv-1197-JCM-DJA, 2020 WL 1539691, at *3 (D. Nev. Jan. 7, 2020) (citing *California*
17 *ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006)).

18 Secretary Aguilar has significantly protectable interests in this lawsuit’s subject
19 matter through his clear duty to “uphold Nevada’s Constitution, execute and enforce
20 Nevada’s election statutes, and administer Nevada’s election process.” *Miller v. Burk*,
21 124 Nev. 579, 588, 188 P.3d 1112, 1118 (2008) (citations omitted); *see also generally*
22 Nev. Const. art. II, §1A (voters’ bill of rights). Relevant here, the Secretary “must obtain
23 and maintain *consistency* in the application, operation, and interpretation of election laws.”
24 *Heller v. Legis. of State of Nev.*, 120 Nev. 456, 461, 93 P.3d 746, 750 (2004) (per curiam)

25 The Secretary has at least three compelling interests in voter registration list
26 procedures that Petitioner threatens to impair with this action. First, the Secretary must

27 ³ See *Am. Home Assurance Co.*, 122 Nev. at 1244, 147 P.3d at 1130; *Lawler*, 94 Nev.
28 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 ensure that, for purposes of maintaining voter rolls, all county clerks handle third-party
2 written challenges consistently and in accordance with NRS 293.530, NRS 293.547, and
3 the NVRA. Petitioner, through this action, threatens to practically impair this interest,
4 *i.e.*, lawful and consistent voter roll maintenance *statewide*.

5 Second, the Secretary has a significantly protectable interest in ensuring uniform
6 compliance with the statutory written-challenge process set forth in NRS 293.547.
7 This lawsuit could impact the orderly, objective, and nondiscriminatory resolution of
8 written challenges to voter registrations statewide.

9 Third, the Secretary oversees Nevada's statewide voter registration database,
10 *see* NRS 293.675, and compliance with federal election laws, *see, e.g.*, 52 U.S.C. §§ 20507,
11 20509. The Secretary must ensure state and local compliance with the federal
12 requirements of the NVRA, which sharply limits a state's ability to remove voters from its
13 rolls.⁴ This action may practically impair this interest, particularly as it could result in
14 different requirements for different counties across the State.

15 3. Adequate Representation of the Secretary's Interests

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

23 The Secretary and Respondents do not have the same ultimate objective in this
24 litigation. "Adequate representation" does not simply exist when two government entities
25 share overlapping administrative duties or even the same goals in a case. *See Hairr*,
26 132 Nev. at 185–86, 368 P.3d at 1201–02.⁵ The Secretary's interests are far broader in

27 ⁴ *See, e.g.*, 52 U.S.C. §§ 20507(a)(3)-(4), (b)(1)-(2), (c)(2)(A).

28 ⁵ *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

1 regulatory and geographic scope, and not “subsumed” within Respondents’ objectives. *Id.*
2 The Secretary administers Nevada’s election processes, “execut[es] and enforc[es]”
3 Nevada’s election statutes “and all other provisions of state and federal law relating to
4 elections in this State,” and “adopt[s] regulations” giving effect to these laws. NRS 293.124.
5 These duties include, for example, ensuring compliance with the NVRA, wherein each state
6 must ensure that its general program to remove voters who have changed residence is
7 “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965,” among
8 other requirements. 52 U.S.C. §§ 20507(b)(1)-(2). Also, the Secretary must ensure
9 “uniform, nondiscriminatory” application of NRS 293.547 and 293.530—Nevada’s statutory
10 means of achieving NVRA compliance statewide—an objective that Respondents need not
11 consider to the same extent. And as explained above, the Secretary must ensure consistent
12 interpretation and application of Nevada’s election laws, including NRS 293.530, 293.535,
13 and 293.547. Because Respondents need only take action with respect to voter rolls for
14 Carson City—a practice that, if Petitioner prevails, would differ from other counties—their
15 representation of the Secretary’s statewide executive interests would be inadequate.

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

17 Courts also permit intervention by a governmental officer or agency in actions that
18 involve statutes and regulations administered by that officer or agency. NRCP 24(b)(2).
19 A government officer “administers” a statute or regulation when he “manages, directs, or
20 supervises” the application of the law at issue.⁶ As Nevada’s “Chief Officer of Elections,”
21 NRS 293.124, the Secretary is a state executive official who may intervene as a
22 governmental officer under NRCP 24(b)(2).⁷ Moreover, Petitioner squarely grounds her
23 claims in Nevada election laws the Secretary must execute and enforce under NRS 293.124.
24 Petitioner seeks “a writ of mandamus compelling Respondents to process the challenges
25 and provide notice to the registrant pursuant to NRS 293.547 and NRS 293.530”; and
26 intervention, then intervention as of right will almost always fail” because a party must
27 necessarily intervene “on one side of the ‘v.’ or the other”).

28 ⁶ *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”).

⁷ See generally NRS chapter 255; see also Nev. Const., art. V, §§ 19, 20, 22.

1 declarations that "Respondent HOEN is in violation of NRS 293.547 and NRS 293.530" and
2 "Respondent Woodbury is in violation of NRS 293.547." Pet. at 11. Put simply, Petitioner's
3 lawsuit solely focuses on the application of election laws that the Secretary administers for
4 NRCP 24(b)(2) purposes.⁸ Thus, permissive intervention is alternatively warranted.

5 Accordingly, the Court ORDERS that:

- 6 1. State Defendants' Motion to Intervene as Respondent is granted; and
- 7 2. The Attorney General's Office will serve a notice of entry of this order on all
8 other parties and file proof of such service within 7 days after the date the Court sends this
9 order to the Secretary's attorneys.

10 IT IS SO ORDERED.

11 DATED October 23, 2024

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14 _____
DISTRICT COURT JUDGE

15 Respectfully submitted:
16 Dated this 22nd day of October, 2024

17 AARON D. FORD
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28 ⁸ See *Miller*, 124 Nev. at 588, 188 P.3d at 1118; *Heller*, 120 Nev. at 461, 93 P.3d at 750.