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

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

14 Plaintiff,

15 vs.

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

19 Defendant.

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

OPPOSITION TO MOTION TO
INTERVENE AS DEFENDANT BY
NAACP TRI-STATE CONFERENCE OF
IDAHO-NEVADA-UTAH

20 Plaintiffs ZENAIDA DAGUSEN, an individual and the REPUBLICAN NATIONAL
21 COMMITTEE, the NEVADA REPUBLICAN PARTY, and DONALD J. TRUMP FOR
22 PRESIDENT 2024, INC. (collectively, "Plaintiffs") hereby submit the following Opposition to the
23 Motion to Intervene as Defendant (the "Motion") by NAACP Tri-State Conference of Idaho-
24 Nevada-Utah ("NAACP").

25 ///

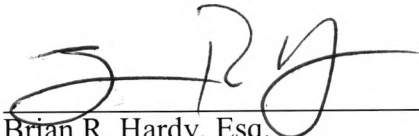
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This Opposition is based upon the following Memorandum of Points and Authorities, the pleadings and papers on file herein and any oral argument allowed at a hearing on this matter.

Dated this 14th day of November, 2024.

MARQUIS AURBACH

By 

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The NAACP proposed intervenors have no right to help the Nevada Secretary of State (the
4 “State”), nor the Democratic National Committee (“DNC”), nor the Nevada State Democratic
5 Party (collectively with the DNC, the “Democratic Defendants”) litigate this case. Adding a fourth
6 defendant to this case serves no purpose other than to complicate the litigation, delay proceedings,
7 inflate expenses, and encumber the parties and the Court with more filings. The NAACP does not
8 have valid interests that will be impaired by this case. Additionally, the State and Democratic
9 Defendants are collectively more than well-equipped to handle this case and advance the purported
10 interests that the NAACP claims to represent and be at risk in this case. The Court should thus
11 deny the Motion.

12 **II. LEGAL STANDARD**

13 Nevada courts allow, under certain circumstances, both intervention as a matter of right
14 (*i.e.*, mandatory intervention), and permissive intervention. *See* NRCPC 24. In this case, the NAACP
15 has moved for intervention as a defendant as a matter of right, and in the alternative, intervention
16 on a permissive basis.

17 Intervention as a matter of right may be granted on two distinct bases pursuant to NRCPC
18 24(a)(1) and NRCPC 24(a)(2). The NAACP has moved for intervention as a matter of right based
19 upon the latter basis. Under NRCPC 24(a)(2), a party “has a right to intervene in an action where it
20 ‘shows that (1) it has a sufficient interest in the subject matter of the litigation, (2) its ability to
21 protect its interest would be impaired if it does not intervene, (3) its interest is not adequately
22 represented, and (4) *its application is timely.*” *See, e.g., Las Vegas Police Protective Ass'n, Inc. v.*
23 *Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 138 Nev. Adv. Op. 59, 515 P.3d 842, 846 (2022).

24 Permissive intervention similarly may be granted on two distinct bases pursuant to NRCPC
25 24(b)(1)(A) and NRCPC 24(b)(1)(B). The NAACP has moved, in the alternative, for permissive
26 intervention based upon the latter basis. Under NRCPC 24(b)(1)(B), a party may intervene that “has
27 a claim or defense that shares with the main action a common question of law or fact.” *See id.* In

1 making the *discretionary* decision to allow (or not allow) permissive intervention, a court “must
2 consider whether the intervention will unduly delay or prejudice the adjudication of the original
3 parties’ rights.” *See* NRCP 24(b)(3).

4 **III. LEGAL ARGUMENT**

5 **A. THE NAACP DOES NOT HAVE A RIGHT TO INTERVENE IN THIS
6 CASE**

7 **1. The NAACP Does Not Have Legally Protectable Interests at Stake in
8 This Case**

9 The NAACP carries the burden of showing that all requisite elements of its request to
10 intervene as a matter of right are met. *See, e.g., United States v. Alisal Water Corp.*, 370 F.3d 915,
11 919 (9th Cir. 2004). “Failure to satisfy any one of the requirements is fatal to the application, and
12 [the court] need not reach the remaining elements if one of the elements is not satisfied.” *Id.* at
13 950. One such required element the NAACP carries the burden of establishing is showing that they
14 have an interest relating to this case. And on this point, the NAACP proffers two distinct interests
15 that they allege are at issue in this case: (1) “interest in advancing the fundamental constitutional
16 right of its members and constituents to vote, free from unlawful interference and intimidation”¹
17 and (2) “voter registration, voter education, and get-out-the-vote and ballot-cure activities” that
18 “ensure eligible Nevada voters, particularly voters in traditionally disenfranchised communities,
19 can exercise their right to vote.”²

20 Importantly, an intervenor’s asserted interests must be “legally protected” and
21 “significant,” and cannot be “undifferentiated” or “generalized.” *Alisal Water*, 370 F.3d at 920. In
22 this case, the NAACP’s proffered interests are not only “generalized” but highly speculative and
23 hypothetical, such that intervention should be swiftly denied.
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26 ¹ *See* Motion at pg. 5.

27 ² *Id.* at pg. 6.

1 As to the NAACP’s first proffered interest, *i.e.*, protecting the right of its members to vote,
2 the NAACP argues the following³: (a) it counts naturalized U.S. citizens among its ranks, (b)
3 Plaintiffs’ complaint seeks to remove non-citizens from Nevada’s voter rolls, (c) many non-
4 citizens become naturalized U.S. citizens each year, and (d) some of the identified “non-citizens”
5 in Plaintiffs’ action may in fact have become naturalized citizens in the interim, such that Plaintiffs’
6 efforts to remove non-citizens from the voter rolls may in fact remove naturalized U.S. citizens as
7 well, thus disenfranchising the NAACP’s membership. Clearly, this speculative, connect-the-dots
8 logic is exactly the type of “generalized” interest that is insufficient to sustain a request to
9 intervene.

10 Assuming, *arguendo*, that the ability of naturalized citizens to vote is even at stake in this
11 case (which it is not), the NAACP has failed to articulate how many of its members are even
12 naturalized citizens. It could be several hundred, or it could be a dozen or less. This Court has no
13 signpost for evaluating the degree to which the NAACP’s proffered interest is truly at stake –
14 making it rather generalized and undifferentiated. Additionally, the NAACP is effectively asking
15 this Court to speculate on the number of naturalized citizens who would be purportedly purged
16 from the voter rolls in the event Plaintiffs obtain their requested relief⁴ are the same, overlapping
17 naturalized citizens that it counts among its membership. But to even reach this speculative
18 conclusion, this Court would have to buy the equally speculative, unsubstantiated assertion that
19 naturalized citizens would even be removed at all from the voter rolls in the event Plaintiffs prevail
20 in the action. Simply put, none of the allegations in Plaintiffs’ Complaint, nor their requested
21 Prayer for Relief,⁵ would result in naturalized citizens being removed from the voter rolls. The
22 NAACP latches on to Plaintiffs’ reference to the December 2020 DMV file,⁶ and argues that

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³ See Motion at pgs. 3, 5-6.

25 ⁴ Something that Plaintiffs certainly do not concede would ever happen.

26 ⁵ See Complaint at pgs. 21-22.

27 ⁶ See Complaint at pgs. 10-11, ¶¶ 58-59.

1 Plaintiffs are seeking to disenfranchise the 6,136 individuals in said file who presented an
2 immigration document while obtaining a driver’s license, and are/were actively registered to vote.
3 Yet Plaintiffs do not make that specific request in the Complaint, and merely cite to this figure as
4 part of its larger argument (and its actual request for relief) that the Nevada Secretary of State
5 should be required to adopt and implement more rigorous, systemic processes for ensuring non-
6 citizens are not registered to vote.

7 The NAACP’s second proffered interest is even more speculative and unavailing. At best,
8 the NAACP offers an incredibly generalized, vague basis for how Plaintiffs prevailing in the
9 instant action would specifically impair its efforts to engage in “voter registration, voter education,
10 and get-out-the-vote and ballot-cure activities.”⁷ Indeed, regardless of whether non-citizens are
11 taken off Nevada’s voter rolls, and regardless of whether the Nevada Secretary of State is required
12 to implement more rigorous processes for verifying the eligibility of voters based on citizenship
13 status, the NAACP will still be free to pursue all of the aforementioned activities uninhibited and
14 to the same extent should Plaintiffs not prevail. Simply put, the NAACP has no valid interest in
15 pursuing any of these aforementioned activities in the context of non-citizen voters, making this
16 proffered interest incapable of independently sustaining a request to intervene in this case.

17 **2. The NAACP Has Not Made a “Compelling Showing” that the State**
18 **and Democratic Defendants’ Representation Will Be Inadequate**

19 In arguing that the State and Democratic Defendants do not adequately represent its
20 interests in this case, the NAACP fatally misapplies the governing legal standard. To be sure, the
21 NAACP is correct when it cites in its Motion case law suggesting that, by default, its burden is
22 “minimal” in the event it can demonstrate the representation of its interest might be inadequate.⁸
23 Yet where the NAACP falls short is suggesting that a divergence of interests automatically results
24 in an inadequacy of representation. Indeed, the NAACP argues that the State’s chief interest in this

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⁷ See Motion at pg. 7.

27 ⁸ *id*

1 case is “the fair and efficient administration of the electoral process,” while the Democratic
2 Defendants have a “partisan interest in protecting the rights of *Democratic* voters and candidates.”⁹

3 What the NAACP notably does *not* argue in its Motion is why/how these purportedly
4 divergent interests will actually result in “inadequate” representation, *i.e.*, the governing legal
5 standard. Seemingly, the NAACP wants this Court to make the illogical leap that a party with a
6 slightly divergent interest/rationale can never “adequately” represent the interests of another co-
7 party. Importantly, and tellingly left unsaid in the NAACP’s Motion, is the fact that when a
8 proposed intervenor shares the same “ultimate objective” as an existing party, the default
9 “minimal” showing standard is elevated to a “compelling showing” standard. *See Perry v.*
10 *Proposition 8 Off. Proponents*, 587 F.3d 947, 951 (9th Cir. 2009). And in this case, per its own
11 Exhibit 2 to its Motion, the NAACP is requesting that this Court “[d]ismiss the Complaint in its
12 entirety” and “[d]eny that Plaintiffs are entitled to any relief.”¹⁰ This requested relief sought by the
13 NAACP is clearly the functional equivalent of what the Democratic Defendants are seeking in this
14 case, given their pending motion to dismiss the *entirety* of Plaintiffs’ complaint.

15 Simply put, the NAACP has not sustained its burden of providing a “compelling showing”
16 as to why its interests will not be sufficiently represented by the State and in particular, the
17 Democratic Defendants. Indeed, the NAACP has not offered, even in the slightest, a single
18 reason/argument as to how it would approach this case differently than the Democratic Defendants.
19 It would be one thing if the NAACP was seeking to intervene and subsequently dismiss and/or
20 defend the case on a differing basis than the Democratic Defendants. But, the substance of the
21 NAACP’s proposed answer demonstrates that it is adequately represented by the Democratic
22 Defendants.

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⁹ *Id.* at pgs. 7-8.

27 ¹⁰ *See* Exhibit 2 to Motion at pg. 18 (Prayer for Relief).

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B. THE COURT SHOULD ALSO DENY PERMISSIVE INTERVENTION

The Court should also deny the NAACP’s alternatively-sought permissive intervention. To be sure, the NAACP, to be eligible for permissive intervention under NRCP 24(b)(1)(B), merely has to show a “claim or defense that shares with the main action a common question of law or fact.” Critically, being “eligible” for permissive intervention does not necessarily entitle one to permissive intervention as a matter of course. Allowing permissive intervention is undoubtedly a highly-discretionary decision in which the district court is afforded considerable deference. *See, e.g., Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180, 187-88, 368 P.3d 1198, 1202-03 (2016) (“A district court’s ruling on permissive intervention is subject to ‘particularly deferential’ review”) (citations omitted).

As part of this vast discretion, it is entirely appropriate and routine for a district court to evaluate whether the participation of the proposed intervenors would be superfluous/add anything new to the underlying substantive argument, or whether said intervenors’ interests are already appropriately represented. *See id.* (“As one court has observed, ‘[w]here he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention.’”) (citation omitted); *see also United States ex rel. Richards v. De Leon Guerrero v. De Leon Guerrero*, 4 F.3d 749, 756 (9th Cir. 1993) (denying permissive intervention on the basis of adequate representation via another party). In this case, the NAACP has woefully failed in this regard, and has not offered a substantive basis (beyond mere eligibility for permissive intervention) for adding a fourth defendant to this case.

IV. CONCLUSION

For all of the foregoing reasons, Plaintiffs request that the Court deny the Motion and enter the proposed order affixed hereto.¹¹

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¹¹ Contrary to Local Rule 3.10, the NAACP filed its Motion without affixing any proposed order.

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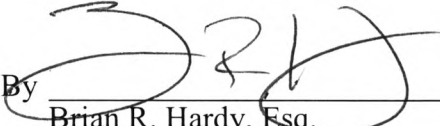
AFFIRMATION

(Under NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above referenced matter does not contain the social security number of any person.

Dated this 14th day of November, 2024.

MARQUIS AURBACH

By 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSITION TO MOTION TO INTERVENE AS DEFENDANT BY NAACP TRI-STATE CONFERENCE OF IDAHO-NEVADA-UTAH** was served on the 14th day of November, 2024 via email as follows:

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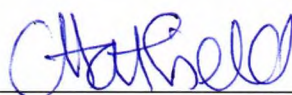
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