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

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

Plaintiff,

vs.

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

Defendant.

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

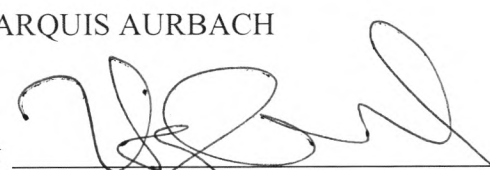
**OPPOSITION TO NAACP TRI-STATE
CONFERENCE OF IDAHO-NEVADA-
UTAH'S MOTION TO DISMISS**

Plaintiffs ZENAIDA DAGUSEN, an individual and the REPUBLICAN NATIONAL
COMMITTEE, the NEVADA REPUBLICAN PARTY, and DONALD J. TRUMP FOR
PRESIDENT 2024, INC. (collectively, "Plaintiffs") hereby submit the following Opposition to the
NAACP Tri-State Conference of Idaho-Utah's ("NAACP") Motion to Dismiss (the "Motion").

///

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

3 Dated this 31st day of January, 2025.

4
5 MARQUIS AURBACH
6 
7 By _____
8 Brian R. Hardy, Esq.
9 Nevada Bar No. 10068
10 Harry L. Arnold, Esq.
11 Nevada Bar No. 15866
12 Nicholas M. Adams, Esq.
13 Nevada Bar No. 15859
14 10001 Park Run Drive
15 Las Vegas, Nevada 89145
16 Attorney(s) for Plaintiff

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 The NAACP originally moved to intervene in this matter on October 31, 2024. In doing
20 so, the NAACP affixed a proposed answer to Plaintiffs' Complaint, which it presumably planned
21 to file upon being granted the right to intervene. Notwithstanding, upon this Court actually granting
22 the NAACP the right to intervene, the NAACP decided to file what is now the third motion to
23 dismiss (the fourth if one counts the ACLU's filed *amicus curiae* brief in support), rather than its
24 originally-intended Answer. In any event, the arguments advanced in the NAACP Motion do not
25 merit dismissal of the Complaint at the notice pleading stage, and are effectively repackaged
26 arguments that have already been fully briefed in the assortment of prior motion work currently
27 pending before this Court.

1 **II. BRIEF STATEMENT OF FACTS¹**

2 The Complaint details the recent history of the Nevada Secretary of State failing to ensure
3 that noncitizens are not registered to vote. *See* Complaint, ¶¶56-90. Of note, Nevada’s voter rolls
4 contain thousands of noncitizens who voted in the 2020 election, and thousands more actively
5 registered. *Id.* The problem of noncitizen voting has continued since the 2020 general election. *Id.*
6 Nevada’s numbers of noncitizens registered to vote are higher than the national average, showing
7 that nearly 12 percent of noncitizen respondents included in the survey datasets for 2018 and 2022
8 had a voter-file match indicating that they were registered to vote. *Id.* Under the U.S. Census
9 Bureau’s noncitizen population estimates, a conservative 4 percent registration rate among
10 noncitizens amounts to approximately 11,730 noncitizens registered to vote in Nevada in 2018;
11 11,587 noncitizens registered in 2020; and 11,220 noncitizens registered in 2022. *Id.* Evidence
12 shows that the Secretary’s violations are highly correlated with dilution of eligible votes. *Id.* at
13 ¶92.

14 Vote dilution by noncitizen voting favors Democratic candidates and harms Republican
15 candidates. *Id.* at ¶97. Similarly, vote dilution by noncitizen voting disproportionately dilutes the
16 vote of the Individual Plaintiff as well as all Republican voters. *Id.* The Cooperative Election Study
17 cumulative data file shows that approximately 74 percent of individuals who identified themselves
18 as noncitizens indicated that they preferred the Democratic presidential candidate, while
19 approximately 20 percent indicated that they preferred the Republican presidential candidate. *Id.*
20 at ¶98. This suggests that for every 10 noncitizen votes cast, the Democratic party margin would
21 improve by about 5.374 votes. *Id.*

22 Comparing these statistics to the U.S. Census Bureau’s estimate of the noncitizen voting-
23 age population shows that noncitizen voting can determine the outcome of close elections (fewer
24 than 2,000 votes). *Id.* at ¶99. The Census Bureau reports that Nevada has a noncitizen voting-age
25 population of 266,065, representing about 12.7% of the total voting-age population. *Id.* The
26

27 ¹ Plaintiffs incorporate and restate by reference herein Paragraphs 24-102 of the Complaint.
28

1 Cooperative Election Study thus suggests that Nevada can expect a voter turnout of about 3,731
2 noncitizens. *Id.* Given the partisan tendencies of noncitizens, that means the Democratic
3 presidential candidate can expect a marginal gain of about 2,005 votes over the Republican
4 presidential candidate. *Id.* The predicted vote dilution would drop significantly if Nevada began
5 verifying citizenship. *Id.* at ¶100. For example, these numbers show that if Nevada began verifying
6 citizenship through the SAVE program and jury information, the estimated number of noncitizens
7 voting would drop from 3,731 to just 297. *Id.* That would in turn cut the marginal benefit to the
8 Democratic presidential candidate from 2,005 votes to 160 votes. *Id.*

9 **III. LEGAL STANDARD**

10 When considering an NRCP 12(b)(5) motion, factual allegations in the complaint are
11 accepted as true, while inferences in the complaint are drawn in favor of the plaintiff. *Facklam v.*
12 *HSBC Bank USA*, 133 Nev. 497, 498, 401 P.3d 1068, 1070 (2017). A plaintiff fails to state a claim
13 for relief only “if it appears beyond a doubt that [he] could prove no set of facts” that “if true ...
14 entitle [him] to relief.” *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d
15 670, 672 (2008). Under the notice-pleading standard, courts “liberally construe [the] pleadings”
16 for “sufficient facts” that put the “defending party” on “adequate notice of the nature of the claim
17 and relief sought.” *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223
18 (1992).

19 **IV. LEGAL ARGUMENT**

20 The NAACP’s Motion advances two main arguments: (1) Plaintiffs’ requested relief
21 purportedly violates the *Anderson-Burdick* balancing framework, and would impose too severe of
22 a burden on the right to vote, and (2) Plaintiffs’ requested relief would purportedly violate Section
23 8(b) of the NVRA.

24 **A. THE NAACP’S REQUESTED APPLICATION OF THE *ANDERSON-*** 25 ***BURDICK* FRAMEWORK IS MISPLACED, AND PREMATURE**

26 The NAACP’s Motion tacitly concedes that the *Anderson-Burdick* framework does not
27 technically apply to the instant case at bar, as it does not involve any state action, and actually
28 involves the opposite, *i.e.*, private parties seeking to compel some type of state action. Prior to

1 delving into its application of the framework, the Motion seeks to quickly gloss over this threshold
2 requirement: “Though this framework typically applies to state action and, here, Plaintiffs are
3 private parties requesting relief, the state would ultimately be responsible for imposing the
4 requested action. Thus, the *Anderson-Burdick* framework applies.” See Motion at pg. 3. This
5 amounts to putting the cart before the horse, and engaging in naked speculation about what may
6 or may not happen as a result of the instant litigation.

7 In, *Anderson v. Celebrezze*, 460 U.S. 780, 782-83 (1983) (the “Anderson” half of the
8 *Anderson-Burdick* framework), the U.S. Supreme Court evaluated an action of the Ohio Secretary
9 of State that involved denying a candidate’s nominating petition as untimely. Similarly, in *Burdick*
10 *v. Takushi*, 504 U.S. 428, 430-32 (1992) (the “Burdick” half of the *Anderson-Burdick* framework),
11 the U.S. Supreme Court evaluated a prohibition enforced by the Hawaii Director of Elections on
12 write-in voting.

13 Yet in the instant case at bar, there is absolutely no state action at issue. Instead, it is alleged
14 state *inaction* that is at issue. The NAACP Motion nonetheless asserts that should Plaintiffs prevail
15 in this case, the “requested sanction” (*i.e.*, remedy) would involve state action, and hence an
16 analysis of the *Anderson-Burdick* framework is warranted and necessary at this time. Yet, as this
17 litigation is still in the pleading stage, discovery has yet to begin, and this Court has not issued any
18 dispositive ruling or fashioned any remedies, let alone remedies that require or compel state action,
19 the NAACP’s request to apply *Anderson-Burdick* is entirely premature and speculative. Only once
20 this Court actually compels the Nevada Secretary of State to take certain actions would *Anderson-*
21 *Burdick* potentially apply. But at this juncture, in which Plaintiffs have merely put the Nevada
22 Secretary of State on notice of its claims and requested relief, an *Anderson-Burdick* analysis is
23 simply not ripe for consideration by this Court.

24 **B. TO THE EXTENT THE *ANDERSON-BURDICK* FRAMEWORK EVEN**
25 **APPLIES AT THIS PREMATURE JUNCTION, THE NAACP’S**
26 **APPLICATION OF THE SAME FAILS TO MERIT DISMISSAL**

27 Even if this Court were to hold that *Anderson-Burdick* applies absent any state action, the
28 other glaring problem with using the framework is that it is incompatible with a NRCP 12(b)(5)

1 motion to dismiss analysis. The *Anderson* case arose out of a granted motion for summary
2 judgment. 460 U.S. at 783. Similarly, *Burdick* arose out of an entered preliminary injunction. 504
3 U.S. at 430-431. Yet the NAACP is requesting this Court apply *Anderson-Burdick* on a motion to
4 dismiss, without the benefit of any authenticated evidence, testimony or discovery. As such, this
5 Court is robbed of the necessary information to even perform an *Anderson-Burdick* analysis.

6 Nonetheless, the NAACP seeks to ameliorate this glaring issue by supplying this Court
7 with the necessary information on its own. The only problem is that such information is entirely
8 unsubstantiated, and candidly, merely unauthenticated arguments of counsel at this point. With
9 respect to the first half of its proffered *Anderson-Burdick* analysis (the purported burden on the right
10 to vote), the Motion makes the following key factual assertions:

- 11 • “Plaintiffs’ requested relief would subject potential thousands of eligible Nevadan
12 voters to removal from the voter roll.” Motion at pg. 4, lines 4-5.
- 13 • “... the relief will cause confusion among voters as they wonder whether they are
14 registered to vote, need to confirm their eligibility, or otherwise engage in a process
15 to ensure they can vote.” *Id.* at lines 11-13.
- 16 • “... this burden will fall more harshly on naturalized citizens because of the nature
17 of the data on which Plaintiffs would have the Secretary rely in verifying the
18 citizenship of voters on the registration roll.” *Id.* at lines 16-18.
- 19 • “... naturalized citizens will linger in DMV systems and mistakenly be targeted for
20 removal as noncitizens when native born citizens would not be subject to such
21 categorical exclusion.” Motion at pg. 5, lines 13-15.

22 There is absolute dearth of factual substantiation, or citation to the record (which of course,
23 at the pleading stage absent discovery, does not exist yet), to support any of these speculative
24 assertions. They are merely arguments of counsel at this point. And as this Court knows, any
25 inferences at the motion to dismiss stage are drawn in favor of Plaintiffs, not Defendants. *See, e.g.,*
26 *Facklam*, 133 Nev. at 498, 401 P.3d at 1070. With the NAACP having failed to sufficiently
27 establish the purported burden on the right to vote, it is unnecessary for this Court to entertain the
28

1 second prong of the *Anderson-Burdick* analysis (*i.e.*, whether the purported burden is justified or
2 not).

3 Even if this Court were to proceed to the NAACP’s argument on the second prong of
4 *Anderson-Burdick*, it would run into similar issues as the first prong, *i.e.*, unsubstantiated factual
5 assertions, invitations for this Court to weigh “evidence,” evaluate the credibility of “evidence,”
6 draw inferences in its favor (and not Plaintiffs’ favor as required), and overall various lines of
7 argument that are appropriate for perhaps a motion for summary judgment or at trial, but certainly
8 not a motion to dismiss. For example, the NAACP asserts in its Motion that “court after court has
9 found that similar programs to the one Plaintiffs would have the Secretary impose wrongfully
10 results in the removal of eligible, American citizens from the voter roll,” and thereafter cites a
11 litany of purportedly demonstrative case law. *See* Motion at pgs. 8-9. Yet the only thing that this
12 case law is demonstrative of is the fact that the instant case at bar is at a fundamentally different
13 procedural posture, that being, the notice pleading stage. Indeed, the cited *Virginia Coal. for*
14 *Immigrant Rts. v. Beals* case, No. 24-2071, 2024 WL 4601052, at *1 (4th Cir. Oct. 27, 2024),
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16 *States v. Fla.* case, 870 F. Supp. 2d 1346, 1347-48 (N.D. Fla. 2012), the district court evaluated
17 the request for a temporary restraining order. Motions for preliminary injunctions and temporary
18 restraining orders at least afford the court the benefit of a factual record, and the opportunity to
19 evaluate authenticated evidence (sometimes with the help of an evidentiary hearing). In this case,
20 and with respect to the Motion and where this case sits procedurally, this court does not have any
21 such similar benefits. Instead, it must necessarily constrain its analysis to the allegations set forth
22 in the Complaint, and upon drawing every inference in Plaintiffs’ favor, determine whether or not
23 their allegations set forth plausible claims.

24 **C. PLAINTIFFS’ REQUESTED RELIEF WOULD NOT VIOLATE NVRA**

25 As a secondary argument to its proffered *Anderson-Burdick* analysis, the NAACP argues
26 that Plaintiffs’ requested relief would result in disparate voter roll maintenance activity in violation
27 of Section 8(b) of the NVRA because of a purported, misplaced reliance on DHS and DMV data.
28

1 Motion at pgs. 9-10. The NAACP asserts that DHS and DMV data “necessarily flag naturalized
2 citizens more than native-born citizens because the relevant information relates only to naturalized
3 citizens.” Motion at pg. 10, lines 3-4. Apart from once again engaging in speculation as to what
4 the requested relief in this case will and will not look like, this line of argument impermissibly
5 asks the court, at the pleading stage, to make determinations ultimately reserved for the trier of
6 fact. Whether or not certain databases, to the extent they are incorporated into whatever relief may
7 or may not be issued, do in fact result in actionable, disparate treatment of certain types of voters,
8 is a determination to be made later by the trier of fact, with the benefit of a developed record. As
9 such, this secondary argument similarly does not merit dismissal of Plaintiffs’ Complaint at this
10 procedural juncture.

11 **V. CONCLUSION**

12 For all of the foregoing reasons, Plaintiffs request that the Court deny the Motion and enter
13 the proposed order affixed hereto.²

14 **AFFIRMATION**

15 **(Under NRS 239B.030)**

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

18 Dated this 31st day of January, 2025.

19 MARQUIS AURBACH

20 By 

21 Brian R. Hardy, Esq.
22 Nevada Bar No. 10068
23 Harry L. Arnold, Esq.
24 Nevada Bar No. 15866
25 Nicholas M. Adams, Esq.
26 Nevada Bar No. 15859
27 10001 Park Run Drive
28 Las Vegas, Nevada 89145
Attorney(s) for Plaintiff

27 ² Contrary to Local Rule 3.10, the NAACP filed its Motion without affixing any proposed order.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the OPPOSITION TO NAACP TRI-STATE CONFERENCE OF IDAHO-NEVADA-UTAH'S MOTION TO DISMISS was served on the 31st day of January, 2025 via email as follows:

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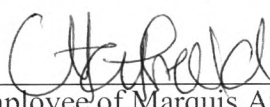
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Case No.: 24-OC-001531B
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**PROPOSED ORDER DENYING NAACP
TRI-STATE CONFERENCE OF IDAHO-
NEVADA-UTAH'S MOTION TO DISMISS**

20 **[PROPOSED ORDER]**

21 This matter came before the Court pursuant to NAACP Tri-State Conference of Idaho-
22 Nevada-Utah's (the "NAACP") Motion to Dismiss (the "Motion") Having considered the parties'
23 filings and the arguments of counsel, the Court rules as follows:

24 **BACKGROUND**

25 On January 17, 2025, the NAACP files a Motion to Dismiss the Complaint. Plaintiffs
26 ZENAIDA DAGUSEN, an individual and the REPUBLICAN NATIONAL COMMITTEE, the
27

1 NEVADA REPUBLICAN PARTY, and DONALD J. TRUMP FOR PRESIDENT 2024, INC.
2 (collectively, “Plaintiffs”) opposed the Motion.

3 **STANDARD OF LAW**

4 When considering an NRCP 12(b)(5) motion, factual allegations in the complaint are
5 accepted as true, while inferences in the complaint are drawn in favor of the plaintiff. *Facklam v.*
6 *HSBC Bank USA*, 133 Nev. 497, 498, 401 P.3d 1068, 1070 (2017). A plaintiff fails to state a claim
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11 and relief sought.” *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223
12 (1992).

13 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

14 The NAACP’s Motion advances two main arguments: (1) Plaintiffs’ requested relief
15 purportedly violates the *Anderson-Burdick* balancing framework, and would impose too severe of
16 a burden on the right to vote, and (2) Plaintiffs’ requested relief would purportedly violate Section
17 8(b) of the NVRA.
18

19 **I. THE NAACP’S REQUESTED APPLICATION OF THE ANDERSON-BURDICK**
20 **FRAMEWORK IS MISPLACED, AND PREMATURE**

21 The NAACP’s Motion tacitly concedes that the *Anderson-Burdick* framework does not
22 technically apply to the instant case at bar, as it does not involve any state action, and actually
23 involves the opposite, *i.e.*, private parties seeking to compel some type of state action. Prior to
24 delving into its application of the framework, the Motion seeks to quickly gloss over this threshold
25 requirement: “Though this framework typically applies to state action and, here, Plaintiffs are
26 private parties requesting relief, the state would ultimately be responsible for imposing the
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1 amounts to putting the cart before the horse, and engaging in naked speculation about what may
2 or may not happen as a result of the instant litigation.

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10 state *inaction* that is at issue. The NAACP Motion nonetheless asserts that should Plaintiffs prevail
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17 *Burdick* potentially apply. But at this juncture, in which Plaintiffs have merely put the Nevada
18 Secretary of State on notice of its claims and requested relief, an *Anderson-Burdick* analysis is
19 simply not ripe for consideration by this Court.

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21 **APPLIES AT THIS PREMATURE JUNCTION, THE NAACP’S APPLICATION**
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22 dismiss stage are drawn in favor of Plaintiffs, not Defendants. *See, e.g., Facklam*, 133 Nev. at 498,
23 401 P.3d at 1070. With the NAACP having failed to sufficiently establish the purported burden on
24 the right to vote, it is unnecessary for this Court to entertain the second prong of the *Anderson-*
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18 set forth in the Complaint, and upon drawing every inference in Plaintiffs’ favor, determine
19 whether or not their allegations set forth plausible claims.

20 **III. PLAINTIFFS’ REQUESTED RELIEF WOULD NOT VIOLATE NVRA**

21 As a secondary argument to its proffered *Anderson-Burdick* analysis, the NAACP argues
22 that Plaintiffs’ requested relief would result in disparate voter roll maintenance activity in violation
23 of Section 8(b) of the NVRA because of a purported, misplaced reliance on DHS and DMV data.
24 Motion at pgs. 9-10. The NAACP asserts that DHS and DMV data “necessarily flag naturalized
25 citizens more than native-born citizens because the relevant information relates only to naturalized
26 citizens.” Motion at pg. 10, lines 3-4. Apart from once again engaging in speculation as to what
27 the requested relief in this case will and will not look like, this line of argument impermissibly
28

1 asks the court, at the pleading stage, to make determinations ultimately reserved for the trier of
2 fact. Whether or not certain databases, to the extent they are incorporated into whatever relief may
3 or may not be issued, do in fact result in actionable, disparate treatment of certain types of voters,
4 is a determination to be made later by the trier of fact, with the benefit of a developed record. As
5 such, this secondary argument similarly does not merit dismissal of Plaintiffs' Complaint at this
6 procedural juncture.

7 Accordingly, for the reasons set forth above, **IT IS HEREBY ORDERED** and declared
8 that the NAACP Tri-State Conference of Idaho-Nevada-Utah's Motion to Dismiss is DENIED in
9 its entirety.

10 Brian R. Hardy shall serve a notice of entry of the order on all parties and file proof of such
11 service within 7 days after the date the Court sent the order to the attorney.

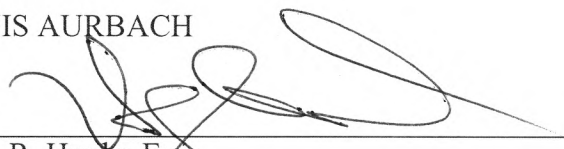
12 **IT IS SO ORDERED.**

13 Dated this _____ day of _____, 2025.

DISTRICT COURT JUDGE

18 Respectfully Submitted by:

19 MARQUIS AURBACH

20 By 

21 Brian R. Hardy, Esq.
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