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

15
16 FRED KRAUS, PUBLIC INTEREST
17 LEGAL FOUNDATION,
18
19 *Petitioners,*

20 v.

21
22 CARRIE-ANN BURGESS, in her official
23 capacity as Washoe County Interim
24 Registrar of Voters,
25
26 *Respondent.*

Case No.: cv24-01051
Dept. No.: 4

**RESPONSE IN OPPOSITION TO
MOTION TO INTERVENE AS
RESPONDENT**

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1 Mr. Kraus and Public Interest Legal Foundation (“Petitioners”) respond to the Motion to
2 Intervene filed by Francisco V. Aguilar, in his official capacity as Nevada Secretary of State
3 (“Secretary”), and request denial of his motion.
4

5 INTRODUCTION

6 Petitioners admit that the Secretary, as Nevada’s chief election officer, has a duty and an
7 interest in maintaining a clean voter list. *See* NRS 293.124; 52 U.S.C. § 20509. Consequently, the
8 Secretary should request the court allow him to intervene as a Petitioner and the Petitioners have
9 no objection to that intervention. It makes little legal sense for the Secretary to request to
10 intervene as a Respondent and defend a Registrar refusing to look into seemingly inaccurate and
11 unlawful registrations at commercial addresses. *See* NRS 293.486(1). The Secretary admits he has
12 a mandatory duty “to ensure that these election statutes are enforced and followed uniformly
13 throughout the State.” *Secretary’s Mot. to Intervene as Resp’t* 3:1-2. Instead of supervising the
14 Washoe County Interim Registrar of Voters’ investigation into unlawful commercial addresses on
15 the Washoe County voter rolls, the Secretary seeks to defend a refusal to examine possible
16 failures to accurately maintain the voter roll as a Respondent. The Court should deny the
17 Secretary’s request to intervene as a Respondent and only permit him to intervene as a Petitioner.
18

19 ARGUMENT

20 **I. The Court Should Deny Intervention as of Right.**

21 Nevada Rules of Civil Procedure 24 sets out the requirements for intervention. The
22 Nevada Supreme Court specified that intervention as a right requires the establishment of four
23 elements:
24

- 25 (1) That it has a sufficient interest in the litigation’s subject matter; (2) that it could
26 suffer an impairment of its ability to protect that interest if it does not intervene; (3)
27 that its interest is not adequately represented by existing parties; and (4) that the
28 application is timely.

1 *Am. Home Assurance v Eight Jud. Dist. Ct. ex rel. County of Clark*, 147 P.3d 1120, 1126. (Nev.
2 2006). If a movant fails to establish any one of these factors, the Court may stop its analysis, and
3 the motion must be denied. *See Perry v Proposition 8 Off. Proponents*, 587 F.3d 947, 950 (9th
4 Cir. 2009) (holding that “[f]ailure to satisfy any one of the requirements is fatal to the application,
5 and [the court] need not reach the remaining elements if one of the elements is not satisfied.”)

6
7 **A. The Secretary Has No “Significantly Protectable Interest” in Maintaining
8 Inaccurate Voter Rolls.**

9 To intervene as a matter of right, the Secretary must claim an interest in the subject matter
10 of the suit, so that disposition of the suit may impair the Secretary’s ability to protect his legal
11 interest, unless the Secretary’s interest is adequately represented by the existing parties. *See*
12 *United States v. Alisal Water Corp.*, 370 F3d 915, 919 (9th Cir. 2004) (citing Fed. R. Civ. P.
13 24(a)(2)). The subject matter of this lawsuit is whether the Washoe County Interim Registrar of
14 Voters should examine and correct if appropriate likely commercial addresses on the Washoe
15 County voter rolls pursuant to her responsibilities under the Nevada Election Statutes.
16 Specifically, the Petitioners’ requested remedy is for the Washoe County Interim Registrar of
17 Voters to examine forty-eight commercial addresses where registrants appear to be registered
18 where they do not live. Petitioners concede the Secretary may intervene as a Petitioner to help
19 correct possible flaws on the voter rolls. *See* NRS 293.675. Petitioners do not concede, and
20 frankly do not understand, the Secretary’s choice to intervene to maintain a potentially malignant
21 status quo. Petitioners agree that the Secretary has a “clear duty to ‘uphold Nevada’s Constitution,
22 execute and enforce Nevada’s election statutes, and administer Nevada’s election process.’”
23 *Secretary’s Mot. to Intervene as Resp’t.* 9:13-14. The Secretary’s duty includes the responsibility
24 to oversee Washoe County election officials to ensure that all Nevada laws are being followed,
25 including NRS 293.486(1) which states that “for the purposes of preregistering or registering to
26 vote, the address at which the person actually resides is the street address assigned to the location
27
28

1 at which the person actually resides.” The Secretary’s duty is not to blindly defend county
2 election clerks – but to execute and enforce Nevada’s election statutes. *See* NRS 293.124. Rather
3 than executing and enforcing the requirement of NRS 293.486(1), the Secretary is concerned
4 whether “[t]his lawsuit could torpedo any hope of orderly, objective and nondiscriminatory
5 resolution of written challenges to voter registration.” *Secretary’s Mot. to Intervene as Resp’t.*
6 10:16-17. That concern does not match the Petitioners limited requested relief here.
7

8 This case isn’t even about challenges. The relief Petitioners have requested is for the
9 Washoe County Interim Registrar of Voters to examine the facially problematic forty-eight
10 commercial addresses identified in the Petition. Such a careful examination is the epitome of an
11 orderly, objective, and nondiscriminatory request for relief. Yet, the Secretary seeks to appear on
12 the wrong side of this case.
13

14 **B. The Secretary’s Motion to Intervene Is not Timely.**

15 Without seeing an answer from the Respondent, the Secretary makes the inexplicable
16 statement that “Respondent Burgess does not adequately represent the Secretary’s Interests.”
17 *Secretary’s Mot. to Intervene as Resp’t.* 11:8-9. Both the Respondent and the Secretary are
18 synonymously tasked with ensuring the voter roll is accurate. *See* NRS 293.530(1)(a); NRS
19 293.486(1) and NRS 293.124. The Secretary makes the claim that their interests are not the same
20 “because the Secretary’s obligations are far broader in scope, both in terms of geography and
21 substance.” *Secretary’s Motion to Intervene as Resp’t.* 11:17-18. That offers little help to the
22 Secretary, lacks legal authority and is illogical. Nevada’s election laws apply equally to both the
23 Secretary and Washoe County’s election officials. NRS 293.675. The Secretary makes no effort
24 beyond this blanket statement to explain just exactly how the Respondent will not follow the
25 statute regarding any examination of improper commercial addresses that they are both to uphold.
26

27 To appropriately determine adequacy of representation, the court and the Secretary should
28

1 have the opportunity to read the Respondent’s answer. To claim inadequate representation **before**
2 an answer is filed is not a defensible position, *per se*. It demonstrates that the motion is
3 premature. The Secretary has made meritless assumptions in his claim of inadequate
4 representation. There is never an appropriate time for an intervention, early or late, where the
5 requirement of Nev. R. Civ. P. 24 cannot be met.
6

7 **II. The Court Should Deny the Secretary’s Request for Permissive Intervention as**
8 **Respondent.**

9 In the two paragraphs the Secretary uses to request permissive intervention, he fails to give
10 a reason. Being a governmental entity, standing alone, is not sufficient for intervention. The court
11 may permit a timely motion to intervene where the proposed intervenor “[h]as a claim or defense
12 that shares with the main action a common question of law or fact.” Nev. R. Civ. P 24(b)(3). The
13 Secretary does not, because he cannot yet, identify a defense he shares with the Respondent. If the
14 Secretary were forced to identify a shared defense with the Respondent, it is likely that he will
15 admit the Respondent’s representation of that shared defense is adequate in that both parties are to
16 correctly apply Nevada’s Election Statutes.
17

18 On the other hand the Secretary does indeed have a shared claim with the Petitioners –
19 ensuring that the voter roll is accurate. Because the Secretary has moved to intervene as a
20 Respondent, the requirements for permissive intervention as a respondent have not been met.
21 Oddly, the Secretary does meet the requirements for permissive intervention as a petitioner, and
22 the Petitioner would so concede.
23

24 **CONCLUSION**

25 For the foregoing reasons, this Court should deny the motion to intervene unless the
26 Secretary chooses to intervene as a petitioner.
27
28

1 **AFFIRMATION**
2 (Pursuant to NRS 239B.030)

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

5 Dated: July 1, 2024.
6 Respectfully submitted,

THE O'MARA LAW FIRM, P.C.

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CERTIFICATE OF SERVICE

I hereby certify on this 30th day of June, 2024, a true and correct copy of **RESPONSE IN OPPOSITION TO MOTION TO INTERVENE AS RESPONDENT** was served by electronically filing with the Clerk of the Court using the eFlex system and serving all parties with an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

Dated: July 1, 2024

By: /s/ David C. O'Mara
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