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12 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND**
13 **FOR THE COUNTY OF CLARK**

14 FRED KRAUS, JOEY PAULOS, PUBLIC
15 INTEREST LEGAL FOUNDATION,

17 *Petitioners,*

19 v.

21 LORENA S. PORTILLO, in her official
22 capacity as Clark County Registrar of
23 Voters,

24 *Respondent.*

Case No.: A-24-896151-W

Dept. No.: 16

**RESPONSE IN OPPOSITION TO
SECRETARY AGUILAR'S MOTION TO
INTERVENE AS RESPONDENT**

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

4 INTRODUCTION

5 Petitioners admit that the Secretary, as Nevada’s chief election officer, has a duty and an
6 interest in maintaining a clean voter list. *See* NRS 293.124; 52 U.S.C. § 20509. Consequently, the
7 Secretary should request the court allow him to intervene as a Petitioner and the Petitioners have
8 no objection to that intervention. It makes little legal sense for the Secretary to request to
9 intervene as a Respondent and defend a Registrar refusing to look into seemingly inaccurate and
10 unlawful registrations at commercial addresses. *See* NRS 293.486(1). The Secretary admits he has
11 a mandatory duty “to ensure that these election statutes are enforced and followed uniformly
12 throughout the State.” *Secretary’s Mot. to Intervene as Resp’t* 2:20-212. Instead of supervising
13 the Clark County Registrar of Voters’ investigation into unlawful commercial addresses on the
14 Clark County voter rolls, the Secretary seeks to defend a refusal to examine possible failures to
15 accurately maintain the voter roll as a Respondent. The Court should deny the Secretary’s request
16 to intervene as a Respondent and only permit him to intervene as a Petitioner.

17 ARGUMENT

18 I. The Court Should Deny Intervention as of Right.

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

- 23 (1) [T]hat it has a sufficient interest in the litigation’s subject matter; (2) that it
24 could suffer an impairment of its ability to protect that interest if it does not
25 intervene; (3) that its interest is not adequately represented by existing parties; and
26 (4) that its application is timely.
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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 Clark County Registrar of Voters
14 should examine and correct if appropriate likely commercial addresses on the Clark County voter
15 rolls pursuant to her responsibilities under the Nevada Election Statutes. Specifically, the
16 Petitioners’ requested remedy is for the Clark County Registrar of Voters to examine ninety
17 commercial addresses where registrants appear to be registered where they do not live. Petitioners
18 concede the Secretary may intervene as a Petitioner to help correct possible flaws on the voter
19 rolls. *See* NRS 293.675. Petitioners do not concede, and frankly do not understand, the
20 Secretary’s choice to intervene to maintain a potentially malignant status quo. Petitioners agree
21 that the Secretary has a “clear duty to ‘uphold Nevada’s Constitution, execute and enforce
22 Nevada’s election statutes, and administer Nevada’s election process.’” *Secretary’s Mot. to*
23 *Intervene as Resp’t*. 9:6-7. The Secretary’s duty includes the responsibility to oversee Clark
24 County election officials to ensure that all Nevada laws are being followed, including NRS
25 293.486(1) which states that “for the purposes of preregistering or registering to vote, the address
26 at which the person actually resides is the street address assigned to the location at which the
27
28

1 person actually resides.” The Secretary’s duty is not to blindly defend county election clerks – but
2 to execute and enforce Nevada’s election statutes. *See* NRS 293.124. Rather than executing and
3 enforcing the requirement of NRS 293.486(1), the Secretary is concerned whether “[t]his lawsuit
4 could torpedo any hope of orderly, objective and nondiscriminatory resolution of written
5 challenges to voter registration.” *Secretary’s Mot. to Intervene as Resp’t.* 10:7-8. That concern
6 does not match the Petitioners’ limited requested relief here.
7

8 This case is not even about challenges. The relief Petitioners have requested is for the
9 Clark County Registrar of Voters to examine the ninety facially problematic commercial
10 addresses identified in the Petition. Such a careful examination is the epitome of an orderly,
11 objective, and nondiscriminatory request for relief. Yet, the Secretary seeks to appear on the
12 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 “... he cannot rely on the existing parties to adequately represent his interests.”
17 *Secretary’s Mot. to Intervene as Resp’t.* 11:3-4. Both the Respondent and the Secretary are tasked
18 with ensuring the voter roll is accurate. *See* NRS 293.530(1)(a); NRS 293.486(1) and NRS
19 293.124. The Secretary makes the claim that their interests are not the same “because the
20 Secretary’s obligations are far broader in scope, both in terms of geography and substance.”
21 *Secretary’s Motion to Intervene as Resp’t.* 11:10-11. That offers little help to the Secretary, lacks
22 legal authority, and is illogical. Nevada’s election laws apply equally to both the Secretary and
23 Clark County’s election officials. *See* NRS 293.675. The Secretary makes no effort beyond this
24 blanket statement to explain just exactly how the Respondent will not follow the statute regarding
25 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
28

1 should have the opportunity to read the Respondent’s answer. To claim inadequate representation
2 **before** 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)(1)(B).
13 The Secretary does not, because he cannot yet, identify a defense he shares with the Respondent.
14 If the Secretary were forced to identify a shared defense with the Respondent, it is likely that he
15 will admit the Respondent’s representation of that shared defense is adequate in that both parties
16 are to 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 **CONCLUSION**

24 For the foregoing reasons, this Court should deny the motion to intervene unless the
25 Secretary chooses to intervene as a petitioner.
26
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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 12, 2024.
6 Respectfully submitted,

THE O'MARA LAW FIRM, P.C.

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CERTIFICATE OF SERVICE

I hereby certify on this 12th day of July, 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 Odyssey eFileNV 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 12, 2024

By: /s/ David C. O'Mara
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