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WASHOE COUNTY REGISTRAR OF VOTERS

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

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11 STANLEY WILLIAM PAHER, TERRESA
MONROE-HAMILTON, AND GARRY
12 HAMILTON,

13 Plaintiffs,

14 vs.

15 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State,
16 DEANNA SPIKULA, in her official capacity
as Registrar of Voters for Washoe County,

17 Defendants.
18

Case No. 3:20-CV-00243-MMD-WGC

**WASHOE COUNTY REGISTRAR OF
VOTERS' MOTION TO DISMISS
COMPLAINT**

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20 COMES NOW Defendant, Washoe County Registrar of Voters, Deanna Spikula, by and
21 through her attorney of record, Christopher J. Hicks, Washoe County District Attorney, and
22 Herbert B. Kaplan, Washoe County Deputy District Attorney, and hereby move to dismiss the
23 complaint (ECF #1) filed in this action.

24 This Motion is brought pursuant to the Federal Rules of Civil Procedure and is based on
25 the following Memorandum of Points and Authorities, and all the pleadings and papers on file
26 herein.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. ANALYSIS AND DISCUSSION**

3 **A. Procedural Background**

4 Plaintiffs filed a Complaint (ECF #1) asserting that the all-mail primary election
5 scheduled for June 9, 2020, is invalid. Plaintiffs simultaneously filed a motion for preliminary
6 injunction (ECF #2) in an attempt to prevent the Nevada Secretary of State and the Washoe
7 County Registrar of Voters from conducting the June 9, 2020, Nevada state and federal primary
8 election from proceeding under the “all-mail election” plan.

9 In the Complaint, Plaintiffs pray for the following relief:

- 10 1. Declare that the Plan violates the right to vote the First and Fourteenth
11 Amendments of the U.S. Constitution and Nev. Const. art 2, § 1. Article 1, §§ 8 and 9 of
the Nevada Constitution and strips safeguards against fraudulent votes that dilute legal
votes;
- 12 2. Declare that the Plan violates the right to vote under the First and Fourteenth
13 Amendments of the U.S. Constitution, as well as Article 2, § 1 of the Nevada
Constitution, because the Secretary and County Administrators’ Plan overrules and
replaces the legislator’s chosen manner of elections;
- 14 3. Declare that the Plan violates the right to vote under the Purcell Principle;
- 15 4. Declare that the Plan violates Article I, § 4 , cl. 1 of the U.S. Constitution;
- 16 5. Declare that the Plan violates the Voters’ right to a republican form of
government under Article IV, § 4 of the U.S. Constitution;
- 17 6. Preliminarily and permanently enjoin the Secretary and County Administrators
from conducting the Plan in violation of the Voters’ right to vote;
- 18 7. Preliminarily and permanently enjoin the Secretary and County Administrators
to implement the primary election in the manner the Nevada Legislature prescribed.

19 Complaint at pp. 12-13.

20 Plaintiffs also filed a motion to consolidate hearing on motion for preliminary injunction
21 with hearing on the merits. (ECF # 4) This Court granted that motion noting that “consolidation
22 will result in an expedited resolution of the case.” Minute Order (ECF #36).

23 The consolidated hearing was conducted on April 29, 2020. By way of the Order entered
24 on April 30, 2020, the Court specifically denied the motion for preliminary injunction. (ECF
25 #57) However, despite the fact that the hearing on the preliminary injunction was consolidated
26 with the hearing on the merits, the Court noted in its Order that “at the Hearing the Court

1 determined that a resolution on the merits of the case should be deferred given the Secretary's
2 position as to her right to assert Eleventh Amendment immunity. Such a deferral would not
3 affect the parties' ability to seek interlocutory appeal." Order (ECF #57) at p. 6, n. 4.

4 As a result, the complaint/merits technically has not been addressed despite the April 30,
5 2020 Order, which addressed the merits,¹ but deferred resolving the merits to afford the SOS to
6 assert Eleventh Amendment immunity, if the SOS chose to do so.

7 **B. Standard for Motion to Dismiss**

8 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
9 that fails to state a claim upon which relief can be granted. A motion to dismiss under FRCP
10 12(b)(6) tests the complaint's sufficiency. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578
11 (9th Cir. 1983). When considering a motion to dismiss, dismissal is appropriate only when the
12 complaint does not give the defendant fair notice of a legally cognizable claim and the grounds
13 on which it rests. *Bell Atl. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of a
14 cause of action with conclusory allegations is not sufficient, a plaintiff must plead facts showing
15 that a violation is plausible, not just possible. *Ashcroft v. Iqbal*, 566 U.S. 662 (2009)(citations
16 omitted). In considering whether the complaint is sufficient to state a claim, the court will take
17 all material allegations as true and construe them in the light most favorable to the plaintiff. *NL*
18 *Indus. Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). The court, however, is not required to
19 accept as true allegations that are merely conclusory, unwarranted deductions of fact, or
20 unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

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25 ¹ The Court specifically found that "Plaintiffs fail to establish the merits of each claim." Order (ECF #57) at p. 10, l.
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C. Court Has Already Found Plaintiffs Fail on the Merits

As set forth herein, the Court has already found that the Plaintiffs failed to establish the merits of each claim. To date, the SOS has not filed anything asserting Eleventh Amendment immunity. The Complaint must be dismissed based on the Court’s prior findings.

II. CONCLUSION

For the reasons set forth herein, Ms. Spikula urges the Court to dismiss this case, and grant such grant such other relief as it deems appropriate in the premises.

Dated this 11th day of May, 2020.

CHRISTOPHER J. HICKS
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ATTORNEYS FOR WASHOE COUNTY
REGISTRAR OF VOTERS, DEANNA SPIKULA

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that on this date, the foregoing was electronically filed with the Federal District Court by using the ECF System. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

James Bopp, Jr., Esq.

Danie Bravo, Esq.

Henry James Brewster, Esq.

Richard E. Coleson Esq.

Courtney Anne Elgart, Esq.

Marc Erik Elias, Esq.

Jonathan Hawley, Esq.

Abha Khanna, Esq.

Amanda L. Narog, Esq.

Craig A. Newby, Esq.

David C. O'Mara, Esq.

Bradley Scott Schrage, Esq.

Corrine L. Youngs, Esq.

Gregory Louis Zuning, Esq.

Dated this 11th day of May, 2020.

/s/ M. Coin

M. Coin