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8
9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11
12 * * *

13 ROBERT BEADLES, an individual,

14 Plaintiff,

Case No. CV23-01341

15 vs.

Dept No. D9

16 JAMIE RODRIGUEZ, in her official
17 capacity as Registrar of Voters and in her
personal capacity; the WASHOE COUNTY
18 REGISTRAR OF VOTERS, a government /
agency; ERIC BROWN in his official
19 capacity as WASHOE COUNTY
MANAGER and in his personal capacity,
20 ALEXIS HILL in her official capacity as
CHAIRWOMAN OF WASHOE
21 COUNTY BOARD OF
COMMISSIONERS and in her personal
22 capacity; WASHOE COUNTY, a political
subdivision of the State of Nevada, and
23 DOES I-X; and ROE CORPORATIONS I-
X.

24 Defendants.

25 **MOTION TO DISMISS**

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1 Defendants, by and through counsel, Deputy District Attorney Lindsay Liddell,
2 hereby move to dismiss the Complaint. This Motion is based on NRCP 12(b)(5) and the
3 following Memorandum of Points and Authorities.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 Through this lawsuit, Plaintiff Robert Beadles (“Beadles”) is attempting to
7 weaponize the Nevada Constitution and Nevada Election Law to seek the removal of
8 Washoe County representatives who have not dogmatically adhered to his personal
9 interpretation of election law. While long on conjecture, his Complaint fails state a claim
10 upon which relief can be granted.

11 Beadles seeks to oust Washoe County Commissioner Alexis Hill (“Commissioner
12 Hill”), Washoe County Manager Eric Brown (“Manager Brown”), and Washoe County
13 Registrar of Voters Jamie Rodriguez (“Ms. Rodriguez”) from their respective positions
14 serving Washoe County. Beadle’s allegations that County representatives failed to fulfill the
15 duties of their respective offices is nothing more than Beadle’s objections to the lawful
16 discretionary choices the County made to run an election, which differs from Beadle’s
17 personal and politically charged preferences regarding how an election should be
18 conducted. Using state law and the Nevada Constitution, he attempts to state a claim based
19 on three “petitions” Defendants allegedly ignored. He also seeks various relief detached
20 from any cause of action.

21 Beadles’s First Cause of Action regarding unanswered “petitions” fails as a matter
22 of law. Beadles alleges his rights under the Nevada Constitution and Nevada Voters’ Bill of
23 Rights were violated when the Defendants did not respond to his November 23, 2022
24 Statement of Contest. *Compl.* at 6–7, Ex. 2. However, Nevada law requires a Statement of
25 Contest to be submitted to the clerk of the district court; there is no legal duty for any of
26 the named Defendants to respond. *See* NRS 293.413. Beadles alleges the same rights were

1 violated when Defendants did not respond to complaints regarding the elections process
2 that he allegedly provided on November 18, 2022,¹ and December 1, 2022. *Compl.* at 6–7,
3 Ex. 1, Ex. 3. However, Nevada law requires those complaints to be submitted to the
4 Nevada Secretary of State, not a county representative. NRS 293.2546(11); NAC 293.025.
5 Beadles cannot state a claim regarding Defendants’ failure to respond to his “petitions”
6 because Defendants had no legal obligation to respond.

7 Second, Beadles’s claim to remove Commissioner Hill, Manager Brown, and Ms.
8 Rodriguez from their positions is fatally flawed. He relies in part on NRS 266.430, a statute
9 wholly inapplicable to counties. He also fails to articulate a legally sufficient claim on
10 which relief can be granted under NRS 283.440. He fails to identify any malfeasance or
11 nonfeasance of a legal duty sufficient to implicate the quasi-penal and extraordinary
12 remedy of removal. Additionally, NRS 283.440 should be applied only to elected officials,
13 with no claim against Manager Brown nor Ms. Rodriguez arising thereunder. As such, no
14 citation to appear is necessary, and the claim should be dismissed with prejudice.

15 Beadles fails to sufficiently allege any set of facts that support a viable legal theory on
16 which the requested relief could be granted and, accordingly, the Complaint should be
17 dismissed with prejudice in its entirety. This lawsuit is nothing more than Beadles’s quest to
18 condemn the guiltless.

19 **II. STANDARD OF REVIEW**

20 A claim may be dismissed for “failure to state a claim upon which relief can be
21 granted.” NRCPP 12(b)(5). On a Rule 12(b)(5) dismissal, the Court must liberally construe
22 the pleadings and accept all allegations as true. *Buzz Stew, LLC v. City of N. Las Vegas*, 124
23 Nev. 22, 227–28, 181 P.3d 670, 672 (2008). Dismissal is appropriate if the allegations fail
24

25 ¹ Exhibit 1 is dated November 17, 2022, but Beadles inadvertently references a November 18, 2022 date.
26 For clarity, it will be referred to herein as the November 18, 2022 Petition to remain consistent with Beadles’s
Complaint.

1 to state a cognizable claim of relief when taken at “face value” and construed favorably on
2 behalf of the non-moving party. *Morris v. Bank of Am.*, 110 Nev. 1274, 1276, 886 P.2d 454,
3 456 (1994)(quoting *Edgar v. Wagner*, 101 Nev. 226, 227–28, 699 P.2d 110, 111–12 (1985)).

4 **III. BEADLES’ FIRST CAUSE OF ACTION FAILS TO STATE A**
5 **CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

6 Beadles first cause of action alleges that Defendants’ failure to respond to his
7 “petitions” amounts to a constitutional violation under the Nevada Constitution Article 1
8 Section 10, Article 2 Section 1A(11), Article 15 Section 2 and NRS 293.2546(11). *Compl.* at
9 ¶¶67–87. The “petitions” are comprised of two complaints about elections processes and
10 one Statement of Contest for the 2022 election. *Compl.* at ¶73; Exs. 1–3 to *Compl.*

11 As set forth below, Beadles fails to state a claim on which relief can be granted.
12 There is no legal obligation for any of the Defendants (Washoe County, Commissioner
13 Hill, Manager Brown, and Ms. Rodriguez) to respond to Beadles’s “petitions.” There is
14 likewise no obligation to “rectify” Beadles’s disapproval of County business.

15 **A. BEADLES FAILS TO STATE A CLAIM UNDER ARTICLE 1 SECTION**
16 **10 OF THE NEVADA CONSTITUTION.**

17 Beadles alleges that by not acknowledging and responding to the three documents
18 he and others allegedly submitted to Defendants, Defendants “deprived Plaintiff to have his
19 grievances heard as enshrined in Nev. Const. Art. 1 § 10.” *Compl.* at ¶75, ¶71.

20 Article One, Section Ten of the Nevada Constitution, titled “Right to assemble and
21 to petition,” provides: “The people shall have the right freely to assemble together to
22 consult for the common good, to instruct their representatives and to **petition the**
23 **Legislature** for redress of Grievances.” NEV. CONST. ART. 1 SEC. 10 (emph. added).

24 Beadles’s claim, specifically that Washoe County, Manager Brown, Commissioner
25 Hill, and Ms. Rodriguez did not respond to his complaints, does not give rise to a claim
26 under Article 1 Section 10 of the Nevada Constitution. Construing the Complaint broadly,

1 there are no facts alleged that, if true, demonstrate that Defendants impeded Plaintiff’s
2 right to assemble, to instruct his representatives, or to petition the Legislature. This claim
3 should be dismissed with prejudice.

4 **B. BEADLES FAILS TO STATE A CLAIM UNDER ARTICLE 2 SECTION**
5 **1A SUBSECTION 11 OF THE NEVADA CONSTITUTION OR UNDER**
6 **THE NEVADA VOTERS’ BILL OF RIGHTS.**

6 Beadles also alleges Defendants violated his rights under Article 2 Section 1A
7 Subsection 11 of the Nevada Constitution. *Compl.* at ¶72. Beadles claims he has a
8 “constitutional right to pose grievances” and have them resolved “fairly, accurately and
9 efficiently,” but Defendants ignored his complaints. *Compl.* at ¶45, ¶72, ¶75.

10 Article 2 Section 1A Subsection 11 provides that each registered voter in the State of
11 Nevada has the right “to have complaints about elections and election contests resolved
12 fairly, accurately and efficiently as provided by law.” This is codified in NRS 293.2546(11),
13 the Nevada Voters’ Bill of Rights.

14 The Nevada Secretary of State is the Chief Officer for Elections in the State. NRS
15 293.124. As Chief Officer for Elections, the Secretary of State is responsible for the
16 execution and enforcement of all provisions of NRS Title 24 (NRS Chapters 293–306), and
17 all other provisions of State and Federal law relating to elections in this State. *Id.*

18 Consistent with this framework, the Nevada Administrative Code provides that “[a]
19 person who wishes to file a complaint concerning an alleged violation of any provision of
20 Title 24 of NRS [NRS Chapters 293–306], must: 1. **Submit the complaint in writing to the**
21 **Secretary of State;** and 2. Sign the complaint.” NAC 293.025 (emph. added). The
22 obligation is on the Secretary of State to “resolve [the complaints] fairly, accurately and
23 efficiently as provided by law.” NRS 293.2546(11); NAC 293.025.

24 In addition to submitting complaints to the Secretary of State concerning any
25 alleged violation of NRS Title 24, any registered voter may contest the election of a
26 candidate by filing a Statement of Contest with the clerk of the district court. NRS

1 293.407. Again, this statute imposes no duty on a County, a County Commissioner, a
2 County Manager, or a Registrar of Voters.

3 Nothing in Nevada law required Defendants to respond to documents that, by law,
4 were required to be submitted to the Nevada Secretary of State or the district court. Even
5 if there was a duty, that duty would only be to resolve the complaint—not to respond or
6 “rectify” the alleged issue in the manner that the complainant prefers. The Complaint,
7 construed liberally and in favor of Beadles, fails to state a claim under Article 2 Section
8 1A(11) of the Nevada Constitution or NRS 293.2546(11). Accordingly, Beadles’s claim
9 under Article 2 Section 1A(11) should be dismissed with prejudice.

10 **C. BEADLES FAILS TO STATE A CLAIM UNDER ARTICLE 15 SECTION**
11 **2 OF THE NEVADA CONSTITUTION.**

12 Article 15 Section 2 of the Nevada Constitution requires all members of the
13 legislature, and all officers, executive, judicial and ministerial, to take an oath before
14 performing the duties of their respective offices. The oath provides, in relevant part, that
15 the public officer will support, protect, and defend the Constitutions of the United States
16 and Nevada, and “will well and faithfully perform all duties of [their] office...” NEV.
17 CONST. ART. 15 SEC. 2.

18 Beadles alleges Defendants breached their duty under their oath because “[a]s of the
19 filing of this complaint, there has been no acknowledgement or response from the
20 Defendants regarding the underlying Petitions filed by Plaintiff.” *Compl.* at ¶75. As
21 previously demonstrated, responding to Beadles’s allegations of violations of elections laws
22 or elections challenges are not within the duties of Defendants’ offices. Plaintiff’s
23 assertions that “Defendants have thus perjured their oath of office” by not responding to
24 his complaints does not state a claim under Article 15 of the Nevada Constitution. This
25 claim should be dismissed with prejudice.

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1 **D. MANDAMUS AND EQUITABLE RELIEF ARE UNATTAINABLE.**

2 Within his first cause of action, Beadles alternatively pleads that mandamus relief
3 should issue to compel Defendants to respond to his grievances, and to “rectify” the issues
4 alleged in those grievances. *Compl.* at ¶86.

5 A Court may issue a writ “to compel the performance of an act which the law
6 especially enjoins as a duty resulting from an office, trust or station...” NRS 34.160.
7 “Mandamus is an extraordinary remedy which will not lie to control discretionary action,
8 unless discretion is manifestly abused or is exercised arbitrarily or capriciously.” *Mineral*
9 *Cnty. v. State, Dep't of Conserv.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001)(internal citations
10 and quotations omitted). “A manifest abuse of discretion is a clearly erroneous
11 interpretation of the law or a clearly erroneous application of a law or rule. *State Office of*
12 *the Atty. Gen. v. Justice Ct. of Las Vegas Twp.*, 133 Nev. 78, 80–81, 392 P.3d 170, 172
13 (2017)(internal citations and quotation marks omitted).

14 Writ relief is an extraordinary remedy that will only issue at the discretion of the
15 court. *State v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 118 Nev. 140, 146, 42 P.3d 233, 237
16 (2002). “[M]andamus will never issue, unless a clear, legal right to the relief sought is
17 shown.” *State v. Daugherty*, 48 Nev. 299, 231 P. 384, 385 (1924). Additionally, there is no
18 authority to grant equitable relief where the party has an adequate remedy at law. *Las Vegas*
19 *Valley Water Dist. v. Curtis Park Manor Water Users Ass'n*, 98 Nev. 275, 277, 646 P.2d 549, 550
20 (1982).

21 Here, there is no duty in law requiring any of the Defendants to respond to
22 Beadles’s petitions. NRS 293.2546(11); NAC 293.025. As such, there is no legal basis to
23 issue a writ to compel such a response, or to compel Defendants to “rectify” Beadles’s
24 perceived grievances. Moreover, Beadles ignored his available legal remedies to submit his
25 petitions to the Nevada Secretary of State and the clerk of the district court as provided
26 under Nevada’s election laws. NAC 293.025

1 Accordingly, Beadles’s request for a writ of mandamus and equitable relief in his
2 first cause of action should be dismissed with prejudice.

3 **E. DISCRETIONARY ACT IMMUNITY OTHERWISE PROHIBITS THE**
4 **FIRST CAUSE OF ACTION.**

5 Plaintiff allegedly submitted two complaints challenging the elections process and a
6 Statement of Contest to Defendants in 2022, and he has initiated this civil action because
7 Defendants did not respond to his allegations. Assuming arguendo that Plaintiff was able
8 to state a claim for relief, discretionary-function immunity serves as a bar to the cause of
9 action.

10 In relevant part, NRS 41.032 states that:

11 [N]o action may be brought under NRS 41.031 or against ... an officer
12 or employee of the State or any of its agencies or political subdivisions
13 which is:....

14 2. Based upon the exercise or performance or the failure to exercise or
perform a discretionary function or duty ... whether or not the
discretion involved is abused.

15 A two-part test is used to determine whether discretionary-function immunity under
16 NRS 41.032 applies to shield a defendant from liability.” *Clark Cnty. Sch. Dist. v. Payo*, 133
17 Nev. 626, 631 (2017). Under the two-part test, a government defendant is not liable if the
18 decision (1) involves an ‘element of individual judgment or choice,’ and (2) is ‘based on
19 considerations of social, economic, or political policy.’” *Id.* at 631–32 (citations omitted).

20 In this case, Defendants are being sued because they chose not to respond to
21 Plaintiff’s allegations of impropriety in the elections process following the 2022 election.
22 As detailed above, Defendants did not have a legal duty to respond to Plaintiff’s allegations
23 as State law requires allegations relating to the elections process to be submitted to the
24 Secretary of State and any challenge to the election is to be filed as a Statement of Contest
25 with the district court. NRS 293.2546(11); NRS 293.413; NAC 293.025. Because the
26 decision whether to respond to Beadles’s “petitions” was based the alleged failure to

1 perform a discretionary function, Defendants are entitled to discretionary act immunity.

2 **IV. THE COMPLAINT FAILS TO STATE A CLAIM FOR**
3 **REMOVAL UNDER NRS 266.430.**

4 Beadles’s Second Cause of Action demands Defendant Rodriguez’s removal from
5 her appointed position as Registrar of Voters, Defendant Brown’s removal from his
6 appointed position as Washoe County Manager, and Defendant Hill’s removal from her
7 elected position as Chair of the Washoe County Board of County Commissioners. The
8 Complaint cites NRS 283.440 and NRS 266.430 as a basis for removal.

9 As an initial matter, NRS 266.430 is a criminal statute that provides for the removal
10 of the mayor or any municipal officer of an incorporated city or town who is adjudged
11 guilty of nonfeasance, misfeasance or malfeasance. No private citizen “may institute
12 criminal proceedings independently.” *People for Ethical Operation of Prosecutors & Law Enft v.*
13 *Spitzer*, 267 Cal. Rptr. 3d 585 (2020), as modified (Sept. 8, 2020). “[I]n American
14 jurisprudence ... a private citizen lacks a judicially cognizable interest in the prosecution or
15 nonprosecution of another.” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

16 Here, Beadles has no standing to pursue any criminal penalty, and NRS 266.430 is
17 otherwise inapplicable to Defendants. Defendants are employed by Washoe County, not an
18 incorporated city or town, and this is a civil action. As such, NRS 266.430 is inapplicable
19 as a matter of law.

20 Beadles’s claim for removal under NRS 266.430 should be dismissed with prejudice.

21 **V. THE COMPLAINT FAILS TO STATE A CLAIM FOR REMOVAL**
22 **UNDER NRS 283.440.**

23 Removal “is an extreme and extraordinary measure, intended only for extreme and
24 extraordinary occasions.” *Jones v. Eighth Jud. Dist. Ct. of State*, 67 Nev. 404, 418, 219 P.2d
25 1055, 1062 (1950). “It is fraught with seriousness and a demand for extreme caution both

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1 from the standpoint of him who prefers the charge and him who listens and pronounces
2 judgment.” *Id.*

3 Nevada law provides a procedure for removal of certain public officers. NRS
4 238.440. A public officer “who refuses or neglects to perform any official act in the manner
5 and form prescribed by law, or who is guilty of any malpractice or malfeasance in office,
6 may be removed therefrom...” NRS 283.440(1). The burden of proof is beyond a
7 reasonable doubt. *Jones*, 67 Nev. at 418, 219 P.2d at 1062. Removals are summary
8 proceedings with no right to a jury trial. *Jones*, 67 Nev. at 418, 219 P.2d at 1062.

9 Beadles fails to state a cognizable claim for Defendants’ removal under NRS
10 283.440. Even applying NRS 283.440 to all Defendants, which it should not, Beadles fails
11 to identify a specific act of malfeasance or nonfeasance directly connected to a specific
12 legal duty tied to each Defendant. Notwithstanding, NRS 283.440 should be applied only
13 to elected officials as set forth below.

14 **A. BEADLES FAILS TO STATE A CLAIM FOR DEFENDANTS’**
15 **REMOVAL.**

16 To state a claim for removal, a person must verify under oath that the public officer:

- 17 (a) Has been guilty of charging and collecting illegal fees for
18 services rendered or to be rendered in the officer’s office;
- 19 (b) Has refused or neglected to perform the official duties
20 pertaining to the officer’s office as prescribed by law; or
- (c) Has been guilty of any malpractice or malfeasance in office.

21 NRS 283.440(2). Only when the complaint sets forth one of the above circumstances, the
22 court is required to cite the party charged to appear. *Id.* As set forth below, Beadles’s
23 Complaint falls short of allegations that warrant removal under NRS 283.440.

24 For malfeasance to warrant removal from office, “the act of malfeasance must have
25 a direct relation to and be connected with the performance of official duties.” *Jones*, 67 Nev.
26 at 408, 219 P.2d at 1057. “Malfeasance” is synonymous with “malpractice.” *Buckingham v.*

1 *Fifth Jud. Dist. Ct. in and for Mineral Cnty.*, 60 Nev. 129, 102 P.2d 632, 635 (1940).
2 “Malfeasance requires, at the very least, an allegation of knowledge that the act was
3 wrongful, if not a greater level of intent.” *Law v. Whitmer*, 136 Nev. 840, 2020 WL 7240299
4 at *19 (Nev. Dec. 8, 2020)(unpublished disposition).

5 The Supreme Court of Utah analyzed a statute allowing removal for malfeasance in
6 office. *Madsen v. Brown*, 701 P.2d 1086, 1093 (Utah 1985). In a dissent, one Utah Supreme
7 Court Justice disagreed with the malfeasance finding, stating:

8 Removal is intended for those rare occasions when an official, because
9 he has committed an act so morally reprehensible or offensive to
10 accepted standards of honesty and integrity, shows himself to be an
11 unfit steward of the public trust... The purpose of the removal statutes
12 is not to authorize judicial removal of unpopular, disliked, or
13 thoughtless public officials. The election process is a sufficient remedy
14 in such cases. If the rule were otherwise, disgruntled citizens could use
the courts to nullify the results of an election, interfere in the
administration of governmental affairs to an intolerable extent, and
otherwise interfere with the political process. Vigorous, effective
municipal government can hardly thrive in such an environment.
Furthermore, reputable, civic-minded persons will be deterred from
agreeing to serve the public if their names can be so easily blackened.

15 *Id.* at 1094(citations omitted).

16 The other basis for removal is nonfeasance. NRS 283.440(2). “Omissions to act are
17 not acts of malfeasance...” *Buckingham*, 60 Nev. 129, 102 P.2d at 635. Acts of omission are
18 to be analyzed under the section: “refuse or neglect to perform any official act in the
19 manner and form as now prescribed by law...” *Id.* “Nonfeasance is the substantial failure to
20 perform a required legal duty. Misfeasance is the doing in a wrongful manner of that which
21 the law authorizes or requires him to do.” *Schumacher v. State ex rel. Furlong*, 78 Nev. 167,
22 172, 370 P.2d 209, 211 (1962). Only nonfeasance can establish that an officer “refused or
23 neglected” to perform an official act. *See id.*

24 In sum, the two relevant bases for removal are if an officer (1) “refused or neglected
25 to perform **official duties... as prescribed by law;**” or (2) is guilty of malfeasance. NRS
26 283.440(2)(emph. added). The officer must have substantially failed to perform their legal

1 duties or intentionally committed a wrongful act directly related to their duties. *Id.*; *Jones*,
2 67 Nev. at 408, 219 P.2d at 1057; *Schumacher*, 78 Nev. at 172, 370 P.2d at 211.

3 Where there is no official duty to act prescribed by law, there can be no removal. *See*
4 NRS 283.440(2); *Schumacher*, 78 Nev. at 172, 370 P.2d at 211, *citing Buckingham*, 60 Nev.
5 129, 102 P.2d at 635. In *Buckingham*, “the particular acts of omission were not required of
6 Buckingham as part of his duties as county treasurer and, thus, Buckingham did not refuse
7 or neglect to perform any official act in the manner and form prescribed by law.”
8 *Schumacher*, 78 Nev. at 172, 370 P.2d at 211 (citations omitted).

9 Beadles states generally, “Defendants... failed to fulfill the duties of their respective
10 offices as alleged herein.” *Compl.* at ¶91. Beadles identifies no specific duty for which
11 Defendants individually committed malpractice nor neglect. Beadles alleges that, “By
12 failing to address the Petitions, Defendants have each violated their oath to office, Nevada
13 Revised Statutes and Administrative Codes, and violated the Plaintiff’s constitutional
14 rights.” *Compl.* at ¶46. As set forth above, there is no specific duty requiring Defendants to
15 respond or address any of Beadles’s “petitions.” NRS 293.2546(11); NAC 293.025.

16 Beadles also states, “Defendants have additionally failed to address, correct, or
17 rectify the issues raised in the underlying Petitions, including but not limited to, (1)
18 updating and resolving the voter registration lists; (2) providing proper vote counting
19 mechanisms; (3) counting votes in secret; (4) inadequate signature verification; (5) illegal
20 function within the election system; (6) violations of election procedures as required under
21 Nevada law. [Exhibit 109].” *Compl.* at ¶91; *see also Compl.* at ¶¶46–51.

22 The Complaint does not state a claim for removal under NRS 283.440. Beadles does
23 not identify a specific legal duty for each of Commissioner Hill, Manager Brown, and Ms.
24 Rodriguez. Beadles’s disagreement with Washoe County’s election procedures does not rise
25 to the level of malfeasance or nonfeasance. Removals are limited to “extreme and
26 extraordinary occasions.” *Jones*, 67 Nev. at 418, 219 P.2d at 1062.

1 Beadles does not and cannot identify any specific legal duty for Commissioner Hill.
2 *Jones*, 67 Nev. at 408, 219 P.2d at 1057 (requiring a specific official duty for malfeasance);
3 *Buckingham*, 60 Nev. 129, 102 P.2d at 635 (requiring a specific official duty for
4 nonfeasance). Commissioner Hill was elected to the Washoe County Board of County
5 Commissioners. The Board of County Commissioners has various powers to act on behalf
6 of their county, with certain limitations. *See* NRS 244.146. The Board may act in a meeting
7 with a quorum present. NRS 244.060(1). Commissioner Hill cannot act on her own; there
8 must be a majority vote of all county commissioners. *See* NRS 241.015(1). More
9 importantly, there are no specific official duties requiring an individual county
10 commissioner to act regarding elections. *See* NRS Chapter 244; NRS Chapter 293.
11 Commissioner Hill has neither committed malfeasance nor nonfeasance because there is no
12 official duty to act. Beadles’s claim against Commissioner Hill is baseless and should be
13 dismissed with prejudice.

14 Beadles does not and cannot identify any specific legal duty for Manager Brown. A
15 county manager serves at the pleasure of the board of county commissioners. NRS
16 244.125(2). A county manager has no specific duty regarding elections procedures. *See*
17 NRS 244.135. Manager Brown has neither committed malfeasance nor nonfeasance
18 because there is no official duty to act. The removal claim against Manager Brown should
19 be dismissed with prejudice.

20 Beadles does not and cannot identify any specific act of malfeasance or nonfeasance
21 for Ms. Rodriguez. Although Beadles makes conclusory allegations about the quality of
22 the list of registered voters, the manner and mechanisms used to county votes, and vague
23 overarching dissatisfaction with the elections process, he has never substantiated his claims
24 using the proper remedy, which is for submitting these complaints to the Secretary of State
25 for investigation, a hearing if appropriate, and resolution by the Chief Officer for Elections
26 in the State. *See* NAC 293.025; NAC 293.500–55. To circumvent that process, and instead

1 attempt to terminate a public employee using a summary proceeding, would result in a
2 miscarriage of justice. Beadles fails to allege the type of “extreme and extraordinary
3 occasions” that may warrant removal. *Jones*, 67 Nev. at 418, 219 P.2d at 1062. The removal
4 claim against Ms. Rodriguez should be dismissed with prejudice.

5 Having failed to state even one legally cognizable theory on which relief can be
6 granted, Beadles’s Complaint should be dismissed. No citation to appear is appropriate
7 because Beadles did not submit a complaint alleging malfeasance or nonfeasance. The
8 Court should dismiss the removal claim entirely with prejudice based on Beadles’s failure
9 to state a claim upon which relief can be granted.

10 **B. MANAGER BROWN AND MS. RODRIGUEZ ARE NOT “PUBLIC**
11 **OFFICERS” SUBJECT TO REMOVAL UNDER NRS 283.440.**

12 Nevada’s removal statute, NRS 283.440, should be interpreted to apply only to
13 elected officials. Because Manager Brown and Ms. Rodriguez are not elected officials,
14 Beadles cannot pursue their removal.

15 The title of NRS 283.440 states the section addresses “Removal of certain public
16 officers for malfeasance or nonfeasance; Procedure; appeal.” In Section 1, it states “Any
17 person who is now **holding** or who shall hereafter **hold any office...**” NRS
18 283.440(1)(emph. added). NRS Chapter 283 does not define “public officer” nor “hold any
19 office.” *See id.*

20 The language of NRS 283.440 is ambiguous as to whether it applies only to local
21 elected officials, or whether it includes public employees. *See Zohar v. Zbiegien*, 130 Nev.
22 733, 737, 334 P.3d 402, 405 (2014)(“when a statute is susceptible to more than one
23 reasonable interpretation, it is ambiguous...”). Ambiguity is resolved “by looking at the
24 statute’s legislative history and construing the statute in a manner that conforms to reason
25 and public policy.” *Id.* A statute should not be read “so as to produce absurd or
26 unreasonable results.” *Orion Portfolio Servs. 2, LLC v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S.*

1 Nev., 126 Nev. 397, 403, 245 P.3d 527, 531 (2010).

2 Legislative history for NRS 283.440 confirms that the removal provisions apply only
3 to elected officials. See *Exhibit 1, Min. of the Meeting of the Assembly Comm. on Gov. Affairs*, at
4 13–20, 80th Leg. (Nev. April 1, 2019); *Exhibit 2, Min. of the Meeting of the Senate Comm. on*
5 *Gov. Affairs*, at 13–24, 80th Leg. (Nev. May 3, 2019). NRS 283.440 was recently amended
6 by Assembly Bill 397 in 2019, to allow for removal based on Title VII violations. See *id.*

7 When first introducing Assembly Bill 397, Assemblywoman Teresa Benitez-
8 Thompson explained that the bill would allow for removal of “a local elected official” for
9 sexual harassment or discrimination. Ex. 1 at 13. “This bill seeks to establish accountability
10 **for elected officials** by giving the Nevada Equal Rights Commission the ability to make a
11 recommendation to impeach an **elected official** when he or she has demonstrated
12 egregious behavior. *Id.* at 14 (emph. added). Answering a question, she explained, “The
13 intent of the legislation, Assemblyman Elison, is to allow NERC to flow through their
14 normal process: bring in **the elected official**, and as she said, give them an additional tool
15 of recommendation up to impeachment.” *Id.* at 19 (emph. added).

16 AB 397 addressed the deficit in remedies for an employee who is a victim of
17 harassment perpetrated by an elected official “because there is no way to remove **the**
18 **elected person.**” Ex. 2 at 13 (emph. added). Assemblywoman Teresa Benitez-Thompson’s
19 intern explained “The intent of A.B. 397 is to ensure elected officials are abiding by the
20 virtue of their office and maintaining the public trust...” *Id.* at 16.

21 Nevada courts have never applied NRS 283.440 to a public employee, even an
22 appointed high-level employee. See *Jones*, 67 Nev. 404, 219 P.2d 1055 (involving an elected
23 District Attorney); *Mason v. Gammick*, 133 Nev. 1047, 2017 WL 2945616 (June 26,
24 2017)(unpublished disposition)(involving an elected District Attorney); *Buckingham*, 60
25 Nev. 129, 102 P.2d 632 (involving elected County Clerk and County Treasurer);
26 *Schumacher*, 78 Nev. 167, 370 P.2d 209 (involving an elected County Assessor); *Gay v. Dist.*

1 *Ct. of Tenth Jud. Dist.in and for Clark Cnty.*, 41 Nev. 330, 171 P. 156 (1918)(involving an
2 elected Sheriff); *Adler v. Sheriff, Clark Cnty.*, 92 Nev. 436, 552 P.2d 334 (1976)(involving an
3 elected Sheriff); *Hawkins v. Eighth Jud. Dist. Ct., Clark Cnty.*, 67 Nev. 248, 216 P.2d 601, 605
4 (1950)(involving an elected District Attorney); *State of Nevada v. Culverwell*, 890 F.Supp. 933
5 (D. Nev. 1995)(involving elected County Commissioners and City Councilmembers).

6 The limited application to elected officials is logical. An appointed position, or
7 general public employee, may be removed or terminated by their employer. Public
8 employees also often have various collective bargaining rights and agreements. *See* NRS
9 Chapter 288. A citizen who disapproves of an employee cannot and should not be able to
10 unilaterally seek removal of that public employee. This would be absurd and unreasonable.
11 It was reasonable, however, for the Nevada Legislature to create a procedure for an elected
12 official's removal, and it did so in enacting NRS 283.440. Consistent with the legislative
13 intent, NRS 283.440 should not be permitted to be used as a mechanism for a member of
14 the public to remove a public employee with whom they are dissatisfied.

15 Here, neither Manager Brown nor Ms. Rodriguez are elected officers, and thus
16 neither are subject to removal proceedings under NRS 283.440. *See* NRS 244.135(1). The
17 County Manager, Manager Brown, is appointed by the Board of County Commissioners.
18 NRS 244.125(1). The Registrar of Voters, Ms. Rodriguez, is appointed by the Board of
19 County Commissioners. NRS 244.164(1). Manager Brown and Ms. Rodriguez serve at the
20 pleasure of the Washoe County Board of County Commissioners. *Id.*; NRS 244.125(2).

21 The Court should dismiss the removal claim against Manager Brown and Ms.
22 Rodriguez with prejudice. They are employees of Washoe County, not elected officials.
23 There is no basis to issue a citation to appear or otherwise hold a removal summary
24 proceeding. *See* NRS 283.440. Manager Brown and Ms. Rodriguez are not elected officials
25 and cannot be removed pursuant to NRS 283.440.

26 //

1 **VI. THE OFFICE OF THE REGISTRAR OF VOTERS IS NOT A**
2 **SUABLE ENTITY.**

3 Beadles improperly names as a Defendant, “Washoe County Registrar of Voters, a
4 government agency.” The Washoe County Registrar of Voters is not a political subdivision
5 of the State. It is a department of Washoe County. The Office of the Registrar of Voters is
6 immune from suit and should be dismissed with prejudice.

7 The State of Nevada waived immunity from civil actions on behalf of itself and the
8 political subdivisions of the State, subject to certain limitations. NRS 41.031. However,
9 “In the absence of statutory authorization, a department of the municipal government may
10 not, in the department name, sue or be sued.” *Wayment v. Holmes*, 112 Nev. 232, 237–38,
11 912 P.2d 816, 819 (1996). A department of a county is not a suable entity because it is not
12 political subdivision of the State of Nevada. *Id.*; see also *Schneider v. Elko Cnty. Sheriff’s*
13 *Dep’t*, 17 F. Supp. 2d 1162, 1165 (D. Nev. 1998)(dismissing suit against a county sheriff’s
14 department for lack of capacity to be sued). A county department is “immune from suit”
15 because it is not a suable entity. *Wayment*, 112 Nev. at 239, 912 P.2d at 820.

16 Accordingly, the claims against the Washoe County Registrar of Voters office
17 should be dismissed with prejudice.

18 **VII. THE RELIEF REQUESTED IS OTHERWISE**
19 **UNOBTAINABLE.**

20 **A. PUNITIVE DAMAGES ARE UNAVAILABLE.**

21 Nevada law prohibits awards of punitive damages against government entities and
22 employees. NRS 41.035(1). “An award may not include any amount as exemplary or
23 punitive damages.” *Id.*

24 In the present case, Beadles alleges he is entitled to punitive damages. As a matter of
25 law, he is not. Accordingly, this Court should dismiss with prejudice his request for punitive
26 damages.

1 **B. MONETARY DAMAGES AND EQUITABLE RELIEF ARE**
2 **UNAVAILABLE FOR REMOVAL ACTIONS.**

3 In a removal action under NRS 283.440, “[t]he remedy is removal from office
4 Nothing in the statutes allows for recovery of damages by the complainant against the
5 officer.” *Armstrong v. Reynolds*, 2:17-cv-02528-APG-CWH, 2019 WL 1062364 at *8 (D. Nev.
6 Mar. 6, 2019), *aff’d in part, rev’d in part and remanded*, 22 F.4th 1058 (9th Cir. 2022). There is
7 no private claim for malfeasance. *Id.*

8 Here, Beadles improperly seeks injunctive relief regarding elections procedures in
9 his removal claim. Even if the claim were viable, injunctive relief is unavailable. Removal is
10 the only available remedy. If any removal claims survive the instant Motion, the Court
11 should dismiss with prejudice Beadles’s request for injunctive relief on that claim.

12 **C. BEADLES’S MISCELLANEOUS RELIEF IS INAPPROPRIATE AND**
13 **UNOBTAINABLE.**

14 In his “Demand for Relief,” Beadles asks the Court to “strike down NRS
15 293.269935(2) and 293.3606(4) to allow public inspection of ballots.” *Compl.* at p. 16. He
16 asks that the Court prohibit Defendants from “using any voting and tabulation machines
17 for elections,” and asks for general monetary damages in excess of \$15,000. *Id.* He asks that
18 the Court require Defendants to use paper ballots, “[e]njoin the Defendants and make the
19 digitized vote tally database (Microsoft SQL) open for public inspection,” require
20 Defendants disclose applicant name and credentials, prohibit Defendants from using QR
21 codes, “halt” Defendants’ expenditure of “unapproved and unsafe equipment and
22 software.” *Id.* He also requests that the Court require Defendants “take into account and
23 redress all elections issues that Plaintiff puts on the table, no shying away.” *Id.* at p. 15.

24 The Court “cannot recognize a remedy absent an underlying cause of action.”
25 *Badillo v. American Brands, Inc.*, 117 Nev. 34, 41, 16 P.3d 435, 440 (2001). “Altering common
26 law rights, creating new causes of action, and providing new remedies for wrongs is

1 generally a legislative, not a judicial, function.” *Id.* 117 Nev. at 42, 16 P.3d at 440.

2 Here, Beadles asks this Court to award him various relief that is not connected to
3 any cause of action. This is inappropriate, but the requested relief also highlights the fact
4 that Beadles’s complaint is not based on violations of law but rather his disagreement
5 regarding what elections laws and procedures should be. Beadles cannot commandeer
6 Washoe County’s elections procedures. There is no legally tenable avenue for Beadles to
7 obtain the relief requested above. The Court should dismiss Beadles’s miscellaneous
8 requests for relief.

9 **VIII. CONCLUSION**

10 Based on the foregoing, Defendants respectfully request an order dismissing
11 Beadles’s Complaint in its entirety with prejudice. There is no viable claim regarding
12 Defendant’s failure to respond to Beadles’s “petitions,” because Defendants have no legal
13 obligation to respond. He likewise cannot unilaterally remove an elected County
14 Commissioner and two employees with whom he disagrees. Beadles fails to identify a
15 specific official duty to set forth a viable claim of malfeasance or nonfeasance that would
16 warrant removal. The Complaint is no more than a conspiracy theorist’s wishlist—Beadles
17 seeks to remove those who do not agree with him, to control the County’s election
18 procedures, to “strike down” election laws, and use this court to legitimize his unfounded
19 claims. That is not how the judicial system nor elections systems operate in the State of
20 Nevada. Dismissal with prejudice is appropriate.

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 15th day of August 2023.

CHRISTOPHER J. HICKS
District Attorney

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CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, the foregoing was electronically filed with the United States District Court. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

ROBERT BEADLES

Dated this 15th day August, 2023.

/s/ S. Haldeman
S. Haldeman

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INDEX OF EXHIBITS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
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19
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Exhibit 1 Min. of the Meeting of the Assembly Comm. on Gov. Affairs
80th Leg. (Nev. April 1, 2019);..... 10 pages

Exhibit 2 Min. of the Meeting of the Senate Comm. on Gov. Affairs
80th Leg. (Nev. May 3, 2019)..... 14 pages