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8
9 **IN THE SECOND JUDICIAL DISTRICT COURT**
10 **OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE**

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12 * * *

13 ROBERT BEADLES, an individual,
14 Plaintiff,
15 vs.

Case No. CV23-01341
Dept No. D9

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

24 Defendants.

25 **OPPOSITION TO MOTION TO COMPEL COURT TO ISSUE CITATIONS**
26 **AGAINST DEFENDANTS**

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1 Defendants, by and through counsel, Deputy District Attorney Lindsay Liddell,
2 hereby oppose the Motion to Compel Court to Issue Citations Against Defendants filed by
3 Plaintiff Robert Beadles (“Beadles”) on August 13, 2023. This Opposition is based on the
4 following Memorandum of Points and Authorities and all papers and pleadings on file
5 with this Court.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Beadles filed a Motion to Compel this Court to issue citations to appear. He argues
9 the Court is required to issue citations for County Commissioner Alexis Hill
10 (“Commissioner Hill”), County Manager Eric Brown (“Manager Brown”), and Registrar
11 of Voters Jamie Rodriguez (“Ms. Rodriguez”) to appear for the removal claim.

12 NRS 283.440 only requires a citation to appear and for the court to hold a summary
13 proceeding where there are allegations of malfeasance or nonfeasance warranting removal.
14 The Complaint falls short of any such allegations, containing only conclusory statements
15 regarding Beadles’s disapproval of Defendants’ lawful policy decisions.

16 Defendants already appeared in this case. Defendants filed a Motion to Dismiss
17 because Complaint fails to state a claim for removal under NRS 283.440. For ease of
18 reference, relevant portions of the Motion to Dismiss are below. A citation to appear and
19 any formal proceeding for removal are unwarranted because the Complaint does not
20 actually allege a basis for removal. The Motion to Compel should be denied.

21 **II. 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’ REMOVAL.**

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

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

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

23 For malfeasance to warrant removal from office, “the act of malfeasance must have
24 a direct relation to and be connected with the performance of official duties.” *Jones*, 67 Nev.
25 at 408, 219 P.2d at 1057. “Malfeasance” is synonymous with “malpractice.” *Buckingham v.*
26 *Fifth Jud. Dist. Ct. in and for Mineral Cnty.*, 60 Nev. 129, 102 P.2d 632, 635 (1940).

1 “Malfeasance requires, at the very least, an allegation of knowledge that the act was
2 wrongful, if not a greater level of intent.” *Law v. Whitmer*, 136 Nev. 840, 2020 WL 7240299
3 at *19 (Nev. Dec. 8, 2020)(unpublished disposition).

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

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

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

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

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

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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 OFFICERS”**

11 **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

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1 unreasonable results.” *Orion Portfolio Servs. 2, LLC v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S.*
2 *Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010).

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

8 When first introducing Assembly Bill 397, Assemblywoman Teresa Benitez-
9 Thompson explained that the bill would allow for removal of “a local elected official” for
10 sexual harassment or discrimination. *Min. of the Meeting of the Assembly Comm. on Gov.*
11 *Affairs*, at 13–20, 80th Leg. (Nev. April 1, 2019) at p. 13. “This bill seeks to establish
12 accountability **for elected officials** by giving the Nevada Equal Rights Commission the
13 ability to make a recommendation to impeach an **elected official** when he or she has
14 demonstrated egregious behavior. *Id.* at p. 14 (emph. added). Answering a question, she
15 explained, “The intent of the legislation, Assemblyman Elison, is to allow NERC to flow
16 through their normal process: bring in **the elected official**, and as she said, give them an
17 additional tool of recommendation up to impeachment.” *Id.* at p. 19 (emph. added).

18 AB 397 addressed the deficit in remedies for an employee who is a victim of
19 harassment perpetrated by an elected official “because there is no way to remove **the**
20 **elected person.**” *Min. of the Meeting of the Senate Comm. on Gov. Affairs*, at pp. 13–24, 80th
21 Leg. (Nev. May 3, 2019) at p. 13 (emph. added). Assemblywoman Teresa Benitez-
22 Thompson’s intern explained “The intent of A.B. 397 is to ensure elected officials are
23 abiding by the virtue of their office and maintaining the public trust...” *Id.* at p. 16.

24 Nevada courts have never applied NRS 283.440 to a public employee, even an
25 appointed high-level employee. *See Jones*, 67 Nev. 404, 219 P.2d 1055 (involving an elected
26 District Attorney); *Mason v. Gammick*, 133 Nev. 1047, 2017 WL 2945616 (June 26,

1 2017)(unpublished disposition)(involving an elected District Attorney); *Buckingham*, 60
2 Nev. 129, 102 P.2d 632 (involving elected County Clerk and County Treasurer);
3 *Schumacher*, 78 Nev. 167, 370 P.2d 209 (involving an elected County Assessor); *Gay v. Dist.*
4 *Ct. of Tenth Jud. Dist.in and for Clark Cnty.*, 41 Nev. 330, 171 P. 156 (1918)(involving an
5 elected Sheriff); *Adler v. Sheriff, Clark Cnty.*, 92 Nev. 436, 552 P.2d 334 (1976)(involving an
6 elected Sheriff); *Hawkins v. Eighth Jud. Dist. Ct., Clark Cnty.*, 67 Nev. 248, 216 P.2d 601, 605
7 (1950)(involving an elected District Attorney); *State of Nevada v. Culverwell*, 890 F.Supp. 933
8 (D. Nev. 1995)(involving elected County Commissioners and City Councilmembers).

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

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

24 The Court should dismiss the removal claim against Manager Brown and Ms.
25 Rodriguez with prejudice. They are employees of Washoe County, not elected officials.
26 There is no basis to issue a citation to appear or otherwise hold a removal summary

1 proceeding. *See* NRS 283.440. Manager Brown and Ms. Rodriguez are not elected officials
2 and cannot be removed pursuant to NRS 283.440.

3 **III. CONCLUSION**

4 The Motion to Compel Court to Issue Citation Against Defendants should be
5 denied. Defendants have already appeared, and filed a Motion to Dismiss. The Complaint
6 does not state a legal basis for Commissioner Hill, Manager Brown, or Ms. Rodriguez's
7 removal under NRS 283.440. As such, no further appearance nor hearing is required.

8 AFFIRMATION PURSUANT TO NRS 239B.030

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

11 Dated this 17th day of August 2023.

12 By /s/ Lindsay L. Liddell
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