

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

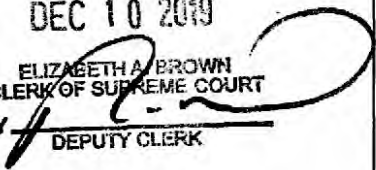
JEFFERY MULHALL,
Appellant,
vs.

THE EXECUTIVE DEPARTMENT OF
THE STATE OF NEVADA, GOVERNOR
BRIAN SANDOVAL, AND FORMER
GOVERNORS; STEVEN WOLFSON,
CLARK COUNTY DISTRICT
ATTORNEY; ATTORNEY GENERAL OF
THE STATE OF NEVADA ADAM
LAXALT; THE LEGISLATURE OF THE
STATE OF NEVADA; PATRICIA "PAT"
SPEARMAN; MOISES "MD" DENIS;
"TICK" SEGERBLOM; KELVIN
ATKINSON; JOYCE WOODHOUSE;
NICOLE CANNIZZARO; DAVID
PARKS; PATRICIA FARLEY; BECKY
HARRIS; YVANNA D. CANCELA;
AARON D. FORD; JOSEPH "JOE" P.
HARDY, M.D.; JULIA RATTI; DON
GUSTAVSON; HEIDI S. GANSERT;
BEN KIECKHEFER; JAMES A.
SETTLEMAYER; SCOTT T.
HAMMOND; PETE GOICOECHEA;
MICHAEL ROBERSON; MARK A.
MANUENDO; DANIELE MONROE-
MORENO; JOHN HAMBRICK;
NELSON ARAUJO, JR.; RICHARD
MCARTHUR; BRITTNEY MILLER;
WILLIAM MCCURDY, II; DINA NEAL;
JASON FRIERSON; STEVE YEAGER;
CHRIS BROOKS; OLIVIA DIAZ; JAMES
OHRENSCHALL; PAUL ANDERSON;
TYRONE THOMPSON; RICHARD A.
CARRILLO; CHRIS EDWARDS; ELLEN
SPIEGEL; OZZIE FUMO; KEITH F.
PICKARD; MELISSA A. WOODBURY;
AMBER JOINER; JILL TOLLES; LISA

No. 77695-COA

FILED

DEC 10 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

KRASNER; TERESA BENITZ-THOMPSON; EDGAR FLORES; LESLEY ELIZABETH COHEN; MICHAEL SPRINKLE; RICHARD "SKIP" DAY; IRA HANSEN; JOHN ELLISON; SHANNON BILBRAY-AXELROD; JUSTIN WATKINS; JAMES OSCARSON; JIM MARCHANT; ROBIN L. TITUS; JIM WHEELER; AL KRAMER; SANDRA JAUREGUI; IRENE BUSTAMENTE ADAMS; PAST LEGISLATURES; THE JUDICIAL DEPARTMENT OF THE STATE OF NEVADA; THE SUPREME COURT OF THE STATE OF NEVADA; THE COURT OF APPEALS OF THE STATE OF NEVADA, JUDGE JUSTICES, RON PARRAGUIRRE; JAMES W. HARDESTY; MICHAEL L. DOUGLAS; MICHAEL A. CHERRY; MARK GIBBONS; KRISTINA PICKERING; LIDIA STIGLICH; MICHAEL GIBBONS; JEROME TAO; ABBI SILVER; AND PAST JUDGES AND JUSTICES OF THE SUPREME COURT OF THE STATE OF NEVADA, THE STATE OF NEVADA EX RE. REAL PARTIES IN INTEREST,
Respondents.

ORDER OF AFFIRMANCE

Jeffery Mulhall appeals from a district court order dismissing a civil action with prejudice. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

In a complaint and demand for a jury trial filed on March 21, 2018, Mulhall claimed the 1951 enactment of Senate Bill No. 182 was unconstitutional because it allowed Nevada Supreme Court justices to sit

on the Commission for Revision and Compilation of Nevada Laws. He reasoned the Nevada Revised Statutes (NRS) have been invalid since 1951 and all criminal convictions obtained since that time are unconstitutional. And he asked the district court to declare Senate Bill No. 182 presumptively and facially unconstitutional and to enjoin the respondents and their officers, employees, and agents from enforcing laws derived from Senate Bill No. 182.

Respondents filed a motion to dismiss the complaint pursuant to NRCPC 12(b)(5). They argued that Mulhall's petition should be dismissed with prejudice for the following reasons: He lacked standing to challenge the constitutionality of the NRS. The laws of Nevada are contained within the Statutes of Nevada and not the NRS. Courts have consistently rejected the argument that the NRS are void because Nevada Supreme Court justices sat on the Commission for Revision and Compilation of Nevada Laws. And Mulhall can only challenge the validity of his judgment of conviction through a petition for a writ of habeas corpus.

The district court found that Mulhall lacked standing to challenge the validity of the NRS as a matter of law and any attempt to amend his complaint would have been futile. The district court denied Mulhall's motion for leave to amend his complaint, and it granted the respondents' motion to dismiss the complaint. Mulhall claims on appeal that the district court erred by not establishing a scheduling order, allowing for discovery, and permitting his complaint to be amended. However, we first determine whether the district court erred by dismissing his complaint for lack of standing.

"We rigorously review a district court order granting an NRCPC 12(b)(5) motion to dismiss, accepting all of the plaintiff's factual allegations

as true and drawing every reasonable inference in the plaintiff's favor to determine whether the allegations are sufficient to state a claim for relief." *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014) (citing *Buzz Stew, L.L.C. v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008)). "A complaint should be dismissed for failure to state a claim 'only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.'" *Id.* (quoting *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672). We review the district court's legal conclusions de novo. *Id.*

We review the dismissal of a complaint for lack of standing under the same rigorous, de novo standard as dismissal for failure to state a claim upon which relief may be granted. *See Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 629, 218 P.3d 847, 850 (2009); *see also Shoen v. SAC Holding Corp.*, 122 Nev. 621, 634, 137 P.3d 1171, 1180 (2006) (observing that when a plaintiff lacks standing, it is appropriate to dismiss the complaint for failure to state a claim upon which relief may be granted). To establish standing, a plaintiff must show the occurrence of an injury that is "special," "peculiar," or "personal" to him and not merely a generalized grievance shared by all members of the public, *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016), or that the Legislature provided the people of Nevada with a statutory right that gives the plaintiff standing to sue, *Stockmeier v. State Dep't of Corrections*, 122 Nev. 385, 393, 135 P.3d 220, 226 (2006), *abrogated on other grounds by Buzz Stew*, 124 Nev. at 228 n.6, 181 P.3d at 672 n.6.

Mulhall claimed he had standing to bring his complaint "as a citizen of the United States of America, a citizen, resident of the State of Nevada, who realistically remains subject to, and threatened with

prospective deprivations of liberty under the same, as do other sovereigns, people of the State of Nevada.” However, we conclude this claim is merely a generalized grievance shared by members of the public and does not give rise to standing to challenge the constitutionality of the NRS. *See Schwartz*, 132 Nev. at 743, 382 P.3d at 894.

Mulhall also claimed he had standing to bring his complaint pursuant to Section 13 of Senate Bill No. 182. Section 13 provided, “Upon completion [of the Revised Laws of Nevada], ‘Revised Laws of Nevada,,’ may be cited as prima-facie evidence of the law in all of the courts of this state. Such evidence may be rebutted by proof that the same differ from the official Statutes of Nevada.” 1951 Nev. Stat., ch. 304, § 13, at 472. It has since been amended several times and is currently codified as NRS 220.170(3). We conclude the statutory right created by this section does not give rise to standing to challenge the constitutionality of the NRS. *See Stockmeier*, 122 Nev. at 393, 135 P.3d at 226.

We next consider whether the district court erred by denying Mulhall’s motion for leave to amend the complaint. “Under NRCP 15(a), leave to amend [a complaint], even if timely sought, need not be granted if the proposed amendment would be ‘futile.’” *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289, 357 P.3d 966, 973 (Ct. App. 2015). We conclude the district court properly determined that Mulhall’s amendments would have been futile. Mulhall could not establish standing to make a generalized challenge to the constitutionality of the NRS. And, even if he could establish standing to make a specific challenge to the constitutionality of the NRS under which he was convicted, he could not make that challenge in a civil complaint. *See NRS 34.724(2)(b)*.

Finally, we consider Mulhall's claim that the district court erred by not establishing a scheduling order and allowing for discovery. We conclude there was no error because Mulhall lacked standing to litigate his claim and the district court properly dismissed his complaint for failure to state a claim upon which relief could be granted.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Jeffery Mulhall
Attorney General/Las Vegas
Clark County District Attorney/Civil Division
Eighth District Court Clerk