

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CURTIS LUNDY DOWNING,
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
OHRENCHALL; PAUL ANDERSON;
TYRONE THOMPSON; RICHARD A.
CARRILLO; CHRIS EDWARDS; ELLEN
SPIEGEL; OZZIE FUMO; KEITH
PICKARD; MELISSA A. WOODBURY;
AMBER JOINER; JILL TOLLES; LISA

No. 77901-COA

FILED

AUG 07 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

KRASNER; TERESA BENITZ-THOMPSON; EDGAR FLORES; LESLEY ELIZABETH COHEN; MICHAEL C. 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; 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 REL, REAL PARTIES IN INTEREST,
Respondents.

ORDER OF AFFIRMANCE

Curtis Lundy Downing appeals from a district court order dismissing a complaint in a civil action and denying a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Downing—who is incarcerated—filed a complaint for declaratory and injunctive relief claiming in relevant part that the 1951

enactment of Senate Bill No. 182 (S.B. 182) was unconstitutional because it allowed Nevada Supreme Court justices to sit on the Commission for Revision and Compilation of Nevada Laws. He reasoned that the Nevada Revised Statutes (NRS) have therefore been invalid since 1951 and that all criminal convictions obtained since that time are unconstitutional. Accordingly, Downing requested that the district court declare S.B. 182 unconstitutional and enjoin the respondents and their officers, employees, and agents from enforcing laws derived from S.B. 182. He also filed a petition for a writ of mandamus in the same district court case setting forth largely the same arguments and naming then-Governor Brian Sandoval as respondent. The district court dismissed Downing's complaint and denied his petition for a writ of mandamus for lack of standing, reasoning that Downing's interest in having the entirety of the NRS declared invalid is a general interest common to all members of the public and therefore insufficiently personal for purposes of standing. This appeal followed.

We review an order dismissing a complaint for failure to state a claim *de novo*. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Our review is rigorous, with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissal for failure to state a claim is appropriate "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.* at 228, 181 P.3d at 672.

A plaintiff's lack of standing "justifies dismissal of the complaint for failure to state a claim." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 634, 137 P.3d 1171, 1180 (2006), *abrogated on other grounds by Chur v. Eighth Judicial Dist. Court*, 136 Nev., Adv. Op. 7, 458 P.3d 336 (2020). 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. Nev. Dep’t of Corr. Psychological Review Panel*, 122 Nev. 385, 393, 135 P.3d 220, 226 (2006), *overruled on other grounds by Buzz Stew*, 124 Nev. at 228 n.6, 181 P.3d at 672 n.6.

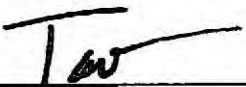
We agree with the district court that Downing’s claimed interest in ensuring the enforcement of the Nevada Constitution by having the entirety of the NRS declared invalid is merely a generalized interest common to all members of the public and does not give rise to standing in this matter.¹ *See Schwartz*, 132 Nev. at 743, 382 P.3d at 894. And Downing does not contend on appeal that any statute provides him with standing, nor has our own research revealed any. *See Stockmeier*, 122 Nev. at 393, 135 P.3d at 226; *see also Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that issues not raised on appeal are deemed waived). Moreover, we reject Downing’s argument that genuine

¹For similar reasons, we discern no abuse of discretion in the district court’s denial of Downing’s petition for a writ of mandamus. *See Republican Attorneys Gen. Ass’n v. Las Vegas Metro. Police Dep’t*, 136 Nev. 28, 30, 458 P.3d 328, 331 (2020) (“We review a district court’s order denying a petition for a writ of mandamus for an abuse of discretion.”). To establish standing to file such a petition, “a party must show a direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted.” *Heller v. Nev. State Leg.*, 120 Nev. 456, 461, 93 P.3d 746, 749 (2004) (internal quotation marks omitted). In light of the generalized nature of his grievance, Downing has failed to identify “a direct and substantial interest” sufficient to sustain his petition. *See id.*

issues of material fact remain, as the district court did not consider matters outside the pleadings or grant summary judgment; rather, it dismissed Downing's complaint solely on the basis of the allegations therein. *Compare* NRCP 12(b)(5) *with* NRCP 56. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Stefany Miley, District Judge
Curtis Lundy Downing
Attorney General/Las Vegas
Eighth District Court Clerk

²Insofar as Downing raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal. Additionally, we note that the supreme court previously denied Downing's motion requesting that the justices of that court recuse themselves, *see Downing v. Exec. Dep't*, Docket No. 77901 (Order Denying Motion, March 6, 2019), and he did not file a motion seeking the recusal or disqualification of the judges of this court.