

## **APPENDIX**

## **APPENDIX**

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## APPENDIX A

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### IN THE SUPREME COURT OF THE STATE OF NEVADA

**No. 84324**

**[Filed December 15, 2022]**

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EVAN SCOTT GRANT,	)
Appellant,	)
vs.	)
THE STATE OF NEVADA	)
BOARD OF PAROLE	)
COMMISSIONERS; AND	)
CHRISTOPHER DERICCO,	)
Respondents.	)
	)

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#### *ORDER OF AFFIRMANCE*

This is a pro se appeal from a district court order dismissing a complaint for declaratory and injunctive relief. First Judicial District Court, Carson City; James E. Wilson, Judge.<sup>1</sup>

Appellant Evan Scott Grant filed a complaint for declaratory and injunctive relief in connection with respondent State Board of Parole Commissioners'

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<sup>1</sup> Having considered the pro se brief filed by appellant, we conclude that a response is not necessary, NRAP 46A(c), and that oral argument is not warranted, NRAP 34(f)(3). This appeal therefore has been decided based on the pro se brief and the record. *Id.*

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decision to deny him release on parole, alleging that several Nevada Administrative Code (NAC) regulations the Board uses in making parole decisions are unconstitutional or violate enabling statutes. The district court granted the Board's motion to dismiss Grant's complaint. As Grant's claims do not support a declaratory judgment or injunctive relief, we affirm the district court's dismissal.<sup>2</sup> *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (reviewing de novo an order granting a motion to dismiss under NRCP 12(b)(5)); *Kress v. Corey*, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948) (providing that, to obtain declaratory relief, a plaintiff must show (1) a justiciable controversy, (2) between persons with adverse interests, (3) where the party seeking declaratory relief has a legal interest in the controversy, and (4) the issue is ripe for judicial determination).

First, Grant argues that the Board improperly uses Nevada Department of Corrections (NDOC) crime severity levels in making parole determinations. Under NRS 213.10885(2)(a), the Board must consider crime severity in evaluating an inmate's probability of violating the law if parole is granted. However, as the

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<sup>2</sup> Grant contends that the order should be construed as a summary judgment because the motion to dismiss referenced Grant's criminal convictions and sentences, but consideration of such information does not convert the motion into one for summary judgment. See *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (providing that in the NRCP 12(b)(5) context, "the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint").

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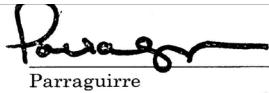
district court determined, that statute does not require that the Board use the crime severity levels in NRS 193.130 and NRS 193.153 (formerly NRS 193.330), as Grant argues. Thus, we perceive no error in the district court's conclusion that the Board may properly use the crime severity levels developed by the NDOC in the Board's risk assessment metric. Next, although Grant argues that NAC 213.518 violates NRS 213.10885 (requiring the Board to adopt NACs based on objective criteria) because it does not expressly state that the Board must consider parole factors objectively, NAC 213.518 lists objective criteria and the Board uses an objective process to consider parole. Thus, the district court properly dismissed Grant's claim for relief on this ground.

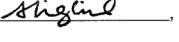
Next, Grant argues that several NACs violate Nevada Constitution article 4, sections 20 and 21, which require that laws have uniform application and prohibit local and special laws "for the punishment of crimes and misdemeanors," and that the Board violated NRS Chapter 233B by enacting regulations that violate these Constitutional provisions. The NACs apply equally to all prisoners eligible for parole, and they are not used to punish crimes. Therefore, the district court did not err in dismissing this claim. Next, Grant argues that the "district court erred in concluding that NRS 213.10885(2) affords the parole Board discretion to decide which 'other factors' are relevant, after codifying specific standards and criteria." Under NRS 213.10885(2), the Board must consider six specific factors and "all other factors which are relevant" to a parole determination. The statute does not mandate that the Board consider all factors outside those six

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unless it determines that those factors are relevant, and the district court properly rejected Grant's argument to the contrary.<sup>3</sup> Thus, as Grant's claims do not support a declaratory judgment or injunctive relief, we

**ORDER** the judgment of the district court AFFIRMED.<sup>4</sup>

, C.J.  
Parraguirre

, J.  
Stiglich

, Sr.J.  
Gibbons

cc: Hon. James E. Wilson, District Judge  
Evan Scott Grant  
Attorney General/Carson City  
Attorney General/Dep't of Public Safety/Carson City  
Carson City Clerk

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<sup>3</sup> We have considered all of Grant's additional arguments and conclude that they do not provide a basis for reversal. And insofar as Grant claims a liberty interest or due process rights in his parole hearing, he is mistaken. *See Anselmo v. Bisbee*, 133 Nev. 317, 318, 396 P.3d 848, 851, 850 (2017).

<sup>4</sup> The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

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## APPENDIX B

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**IN THE FIRST JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY**

**Case No. 21 OC 00158 1B**

**Dept. No. 2**

**[Filed February 1, 2022]**

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EVAN SCOTT GRANT, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 NEVADA BOARD OF )  
 PAROLE COMMISSIONERS, )

CHRISTOPHER DERICCO )  
                          )  
                          )  
Defendants.           )  
                          )  
\_\_\_\_\_

**ORDER GRANTING MOTION TO DISMISS  
COMPLAINT**

Before the Court is Defendants, the State of Nevada Board of Parole Commissioners and Chairman Christopher DeRicco<sup>1</sup> (collectively, the Parole Board), by and through their attorneys, Aaron D. Ford, Attorney General, and Kathleen Brady, Deputy Nevada Attorney General, Motion to Dismiss Complaint. For the reasons stated below, the Motion to Dismiss is granted.

**I. FINDINGS OF FACT**

In May of 2016, Plaintiff, Evan Scott Grant, an inmate housed at the Nevada Department of Corrections (NDOC), was convicted of two felony counts of attempted lewdness with a child under the age of 14.<sup>2</sup> He was sentenced to a special sentence of lifetime supervision and to an aggregate prison term of 4 to 16 years.

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<sup>1</sup> Grant cannot sue Chairman DeRicco in his official capacity in this state proceeding. *See* NRS 41.031; NRS 41.032.

<sup>2</sup> Although a district court generally may not consider matters outside of the pleadings when reviewing a motion to dismiss, the court “may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint.” *Breliant v. Preferred Equities Corp.*, 109 28 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

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The Parole Board heard Grant for parole on both sentences on February 20, 2020, and unanimously determined that parole should be denied.

On June 30, 2021, Grant submitted five NRS 233B.100 Petitions for the amendment or repeal of Board regulations to the Board, which requested amendments to and/or the repeal of NAC 213.512; NAC 213.514; NAC 213.516; NAC 213.518; and NAC 213.522.

On July 28, 2021, the Board heard Grant's petitions and declined to make any changes to its NACs except for NAC 213.518. The Parole Board initiated the rulemaking process and is currently amending NAC 213.518.

Grant filed his complaint for declaratory and injunctive relief, alleging that multiple Parole Board Nevada Administrative Codes (NACs) are in violation of the enabling statutes and the constitutional limitations of NRS Chapter 233B. Grant seeks the issuance of a declaratory judgment invalidating NAC 213.512, NAC 213.522, NAC 213.518, NAC 213.516, and NAC 213.514. He further seeks injunctive relief and seeks that the Parole Board be placed into a receivership.

## II. LEGAL STANDARD

In reviewing a motion to dismiss, this Court must accept all of the plaintiff's factual allegations as true and draw every reasonable inference in the plaintiff's favor to determine whether the allegations are sufficient to state a claim for relief. *Sanchez v. Wal-Mart Stores*, 125 Nev. 818, 823, 221 P.3d 1276, 1280

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(2009). “Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief.” *Stockmeier v. State, Dep’t of Corrections*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008) (internal quotation omitted).

NRS 33.010 permits the grant of an injunction only under limited circumstances. “A party seeking a preliminary injunction must show a likelihood of success on the merits of their case and that they will suffer irreparable harm without preliminary relief.” *Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 505, 422 P.3d 1238, 1241 (2018). Irreparable harm occurs when there is no adequate remedy at law. *Dep’t of Conservation & Natural Res., Div. of Water Res. v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). In assessing whether injunctive relief is warranted, courts “weigh the potential hardships to the relative parties and others, and the public interest.” *Univ. & Cnty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). “Statutes are cloaked with a presumption of validity and the burden is on the challenger to demonstrate that a statute is unconstitutional.” *State v. Eighth Judicial Dist. Court (Logan D.)*, 129 Nev. 492, 501, 306 P.3d 369, 376 (2013).

Declaratory relief may be appropriate “to declare rights, status and other legal relations.” NRS 630.030. However, declaratory relief is within the discretion of the court, which may refuse to enter a declaratory judgment if the judgment “would not terminate the uncertainty or controversy giving rise to the proceeding.” NRS 30.080. Moreover, “[t]he validity or

applicability of any regulation may be determined in a proceeding for a declaratory judgment in the district court in and for Carson City, or in and for the county where the plaintiff resides, when it is alleged that the regulation, or its proposed application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff.” NRS 233B.100(1). “The court shall declare the regulation invalid if it finds that it violates constitutional or statutory provisions or exceeds the statutory authority of the agency.” *Id.*

### **III. CONCLUSIONS OF LAW**

For the reasons stated below, the Complaint is hereby dismissed. Grant has not and cannot show that NAC 213.512, NAC 213.522, NAC 213.518, NAC 213.516, or NAC 213.514 violates constitutional or statutory provisions or exceeds the statutory authority of the Parole Board.

#### **A. The Parole Board Regulations Properly Use the NDOC Crime Severity Levels.**

Grant contends that NAC 213.512, NAC 213.522, and NAC 213.514(4) violate NRS 193.130, NRS 193.330 and NRS 213.10885(2) because it uses the crime severity level used by NDOC instead of the uniform crime severity level in NRS Chapter 193. However, the Legislature did not put any such limit on the Board. NRS 213.10885(2)(a) provides that the Board shall consider “all other factors which are relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued. The other factors the

Board considers must include, but are not limited to: (a) The severity of the crime committed; ....” Had it wanted to, the Legislature could have specified how the Board was to determine crime severity by pointing to particular statutes such as NRS 193.130 or NRS 193.330, but the Legislature chose to leave this determination to the Board’s discretion.

Courts typically do not read words into statutes. *See Aronsen v. Crown Zellerbach*, 662 F.2d 584, 590 (9th Cir.1981) (“It is consistent with the general principle of statutory construction that a court should not add language to an unambiguous statute absent a manifest error in drafting or unresolvable inconsistency.”); *Stanton Rd. Assoc. v. Lohrey Enters.*, 984 F.2d 1015, 1020 (9th Cir. 1993) (noting that the Supreme Court has instructed this Court that we lack the power to “read into the statute words not explicitly inserted by Congress”). Indeed, courts have “a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized. In addition, the court will not render any part of the statute meaningless ....” *Orion Portfolio Servs. 2, LLC v. Cty. of Clark ex rel. Univ. Med Ctr. of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010). “When the language of a statute is unambiguous, the courts are not permitted to look beyond the statute itself when determining its meaning.” *Westpark Owners’ Ass’n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007).

Grant argues that only the Legislature can determine the appropriate penalty for those who

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violate a criminal statute and that the maximum period of incarceration determines the severity of the offense. Under Nevada law, the Legislature sets the penalty for a criminal act through statute. This statutory penalty framework is then used by the district courts to sentence defendants within the parameters set by the Legislature. The Parole Board then determines whether discretionary early release may be granted within that penalty assessed by the Legislature as reflected in the sentence issued by the Court. The Parole Board does not and cannot extend Grant's sentence. Instead, the Parole Board's sole role in this process is to determine if early relief in the form of parole is appropriate. While the Parole Board considers the offense severity used during incarceration, it is only one consideration of many in "determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued." NRS 213.10885(2). Indeed, the Board also considers the sentence that is tied to the NRS Chapter 193 classifications for offenses when it considers whether to grant parole. NRS 213.10885(2)(f).

Grant contends that because NRS 213.10885 mandates consideration of the severity of the crime, the Legislature "did not vest in the defendants the power to look beyond Nevada's statutes, let alone defer to another State agency, to determine the severity of the crime." (citing *Galloway v. Truesdell*, 83 Nev. 13, 422 P.2d 237 (1967)).<sup>3</sup> However, this argument is belied by

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<sup>3</sup> Grant also relies on *Andersen v. Eighth Judicial District Court*, 135 Nev. 321, 448 P.3d 1120 (2019). However, the *Andersen* case

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the statutory language itself. NRS 213.10885(2)(a) provides that the Board shall consider “all other factors which are relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued” including “[t]he severity of the crime committed; ....” The plain language indicates that the Legislature did not constrain the Board in determining how the crime severity is to be considered. There is no indication in the statute that it would be impermissible

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only concerns “whether the offense of misdemeanor battery constituting domestic violence is a serious offense [versus a petty offense] such that the right to a jury trial is triggered.” *Andersen*, 135 Nev. at 321, 448 P.3d at 1122. Therein, the Nevada Supreme Court determined that in determining whether a particular offense is petty or serious, this “court must examine objective indications of the seriousness with which society regards the offense,” and provided that “[t]he best indicator of society’s views is the maximum penalty set by the legislature.” *Id.* at 323, 448 P.3d at 1123. *Anderson* does not support Grant’s assertion that the maximum period of incarceration is the determinator for the severity of the offense. Grant further cites to *English v. State*, 116 Nev. 828, 9 P.3d 60 (2000), arguing that the enhancement from a misdemeanor to a category C felony was an increase in the offense severity. While the *English* case does reference “the severity of the offense” in relation to felony and misdemeanors, it does not support Grant’s argument because it concerns the enhancements of crimes, not the discretionary decision of whether to grant parole. See *English*, 116 Nev. at 829-30, 9 P.3d at 60-61 (addressing “(1) whether convictions for battery constituting domestic violence occurring prior to January 1, 1998, may be used to enhance the penalty of a subsequent conviction for battery constituting domestic violence under NRS 200.485; and (2) whether the evidence of a prior misdemeanor conviction demonstrated its constitutional validity for enhancement purposes.”).

for the Board to utilize the crime severity designation used by NDOC during incarceration.

Moreover, the *Galloway* case is inapposite and concerns whether a state statute that “grants powers to, and imposes duties upon, District Judges that are non-judicial in character, not incidental to the Judicial function,” is an “unconstitutional and invalid delegation[] of ministerial powers and duties.” *Galloway*, 83 Nev. at 17, 422 P.2d at 240. In that case, the Court referred to the maximum of ‘*expressio Unius Est Exclusio Alterius*’, the expression of one thing is the exclusion of another, and provided that “[e]very positive direction contains an implication against anything contrary to it which would frustrate or disappoint the purpose of that provision.” *Id.* at 26, 422 P.2d at 246 (quotation omitted). The Court determined that the Constitution provided “limitations upon the powers that the legislature can grant to a District Court” and provided that “non-judicial functions cannot be imposed upon courts and judges unless expressly stated in the Constitution.” *Id.* at 27, 422 P.2d at 246. The Court explained that “courts must be wary not to tread upon the prerogatives of other departments of government or to assume or utilize any undue powers. If this is not done, the balance of powers will be disturbed and that cannot be tolerated for the strength of our system of government and the judiciary itself is based upon that theory.” *Id.* at 31, 422 P.2d at 249.

Here, there is no such overreach. While NRS 213.10885 mandates consideration of the severity of the crime, its unambiguous terms do not require that the NRS Chapter 193 severity levels be utilized. The

Legislature's decision to word the statute the way in which it did belies Grant's argument that the Legislature intended to require that the NRS Chapter 193 designations to be used. Indeed, the statute does not contain a "positive direction" requiring the use of the NRS Chapter 193 classifications. While Grant points out that the Parole Board used the NRS Chapter 193 classifications prior to 2008, there is no requirement that it must revert back to its pre-2008 regulations. Instead, the Legislature gave the Board the flexibility to determine that it was appropriate to use the offense severity calculation conducted by the NDOC in its validated assessment of the individual. Grant tellingly fails to cite any law or other authority that provides that the Board cannot look to the validated NDOC assessment conducted pursuant to NRS 209.341 for the offense severity score.

**B. The Parole Board Properly Considers the Aggravating and Mitigating Factors.**

Grant next challenges NAC 213.518 and NAC 213.516. Grant contends that the Board's discretionary consideration of the NAC 213.518 aggravating and mitigating factors is contrary to and violates NRS 213.10885's mandate that the Board shall consider all relevant factors. Grant argues that only 5 of the NRS 213.516 initial assessment outcomes "authorize" consideration of the NAC 213.518 factors, 7 of the outcomes "grant parole" without consideration of the NAC 213.518 factors, and 3 of the outcomes "deny parole" without consideration of the NAC 213.518 factors.

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NRS 213.10885(2) provides, in pertinent part, that the Board shall consider:

all other factors which are relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued. The other factors the Board considers must include, but are not limited to:

- (a) The severity of the crime committed;
- (b) The criminal history of the person;
- (c) Any disciplinary action taken against the person while incarcerated;
- (d) Any previous parole violations or failures;
- (e) Any potential threat to society or to the convicted person; and
- (f) The length of his or her incarceration.

However, contrary to Grant's arguments, the plain language of this statute does not mandate that all NAC 213.518 factors are always relevant, it leaves that determination to the discretion of the Parole Board. The Parole Board determines which NAC 213.518 factors are "relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued." NRS 213.10885(2).

While the Board must always consider the factors outlined by the Legislature in NRS 213.10885 and NRS 213.1099, the Board retains discretion pursuant to NAC 213.518 to determine when consideration of the additional factors may be relevant. And while some of the NAC 213.518 aggravating and mitigating factors may need to be considered because of NRS 213.10885

and NRS 213.1099, not all are required to be considered in every case. While there may be some overlap, the Parole Board is only required to consider the factors enumerated in statute, and may consider additional factors to the extent that they are “relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued.” NRS 213.10885(2). As recognized by the Legislature, not all potential parolees are the same, the Board was tasked with establishing standards “for each type of convicted person,” which is exactly what the Board did in enacting its regulations.

Grant argues that the use of the word “shall” creates a protected liberty interest by substantively limiting the Board’s discretion. (Citing *Glim v. Wakinekona*, 461 U.S. 238 (1983); *Anselmo v. Bisbee*, 20 133 Nev. 317, 396 P.3d 848 (2017). However, *Olim* and its progeny does not support that there is a liberty interest here. In *Glim v. Wakinekona*, 461 U.S. 238, 249 (1983), the U.S. Supreme Court explained that “a State creates a protected liberty interest by placing substantive limitations on official discretion” but “[i]f the decisionmaker is not required to base its decisions on objective and defined criteria, but instead can deny the requested relief for any constitutionally permissible reason or for no reason at all, [ ] the State has not created a constitutionally protected liberty interest.” (Quotations omitted). The US Supreme Court then clarified in *Kentucky Dep’t of Corr. v. Thompson*, 490 U.S. 454, 462-63 (1989), that a State can create a protected liberty interest in a number of ways, most commonly by establishing “substantive predicates to

govern official decision-making” and “by mandating the outcome to be reached upon a finding that the relevant criteria have been met.” (Quotations omitted). The Court explained that it had “also articulated a requirement, implicit in [its] earlier decisions, that the regulations contain explicitly mandatory language, *i.e.*, specific directives to the decisionmaker that if the regulations’ substantive predicates are present, a particular outcome must follow, in order to create a liberty interest.” *Id.* (quotations omitted). The Court explained that “the use of explicitly mandatory language, in connection with the establishment of specified substantive predicates to limit discretion, forces a conclusion that the State has created a liberty interest.” *Id.* (quotations omitted).

The Nevada Supreme Court in *Anselmo* made it clear that parole consideration is a statutory right in Nevada and not a liberty interest. In *Anselmo*, the Court determined that “[g]enerally, an inmate does not have any protectable due process or liberty interest in release on parole, unless that right is created by state statute.” *Anselmo v. Bisbee*, 133 Nev. 317, 318, 396 P.3d 848, 849 (2017). The Court provided that “[g]iven the clear discretionary language of Nevada’s parole statute, this court has consistently held that Nevada inmates have no protectable liberty interest in release on parole.” *Id.* The Court then determined that, “[n]onetheless, eligible Nevada inmates do have a **statutory right** to be considered for parole by the Board.” *Id.* (emphasis added). The Court determined that “[w]hen the Board clearly misapplies its own internal guidelines in assessing whether to grant parole, this court cannot say that the inmate received

the consideration to which they are statutorily entitled.” *Id.* The Court in *Anselmo* then pointed out that while there is a statutory right under NRS 213.140 for an eligible inmate to be considered for parole, “the release … of a person on parole … is an act of grace of the State. No person has a right to parole ....” *Id.* (quoting NRS 213.10705).

In evaluating whether the statutory right to be considered for parole was impacted in *Anselmo*, the Nevada Supreme Court looked to the South Carolina case of *Cooper v. South Carolina Department of Probation, Parole & Pardon Services*, 661 S.E.2d 106 (S.C. 2008), which provided that “[i]f a Parole Board deviates from or renders its decision without consideration of the appropriate criteria, we believe it essentially abrogates an inmate’s right to parole eligibility ....” *Anselmo*, 133 Nev. at 322, 396 P.3d at 852. The Nevada Supreme Court then explained that “while the decision to grant or deny parole is not generally reviewable, the Board is still obligated to act within established parameters.” *Id.* at 322-23, 396 P.3d at 852-53. The Parole Board acts within its statutory parameters through the regulations that it set up to address the different types of inmates. These regulations have been vetted and approved by the Legislature through the enactment process and meet all statutory requirements.

Grant further provides that the standards created pursuant to NRS 213.10885 must be objective and, because NAC 213.158 does not state how the NAC 213.518 factors are to be considered, NAC 213.518 is not objective resulting in subjective NAC 213.518 factor

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consideration by the Board. Grant alleges that this provision accordingly violates NRS 213.10885's mandate.

NRS 213.10885(1) provides that “[t]he Board shall adopt by regulation specific standards for each type of convicted person to assist the Board in determining whether to grant or revoke parole” that “must be based upon objective criteria for determining the person’s probability of success on parole.” The standards adopted by the Board pursuant to this statute are objective. Objective has been defined as “[o]f, relating to, or based on externally verifiable phenomena, as opposed to an individual’s perceptions, feelings, or intentions.” Black’s Law Dictionary, objective (11th ed. 2019). Whereas, subjective means “[b]ased on an individual’s perceptions, feelings, or intentions, as opposed to externally verifiable phenomena.” Black’s Law Dictionary, subjective (11th ed. 2019). The standards contained in the NACs are all objective, none are based on perceptions, feelings or intentions and they are all externally verifiable. *See* NAC 213. Grant tellingly fails to argue that any specific portions of the regulations are subjective.

Instead, Grant argues that the NACs do not indicate “how” consideration of the factors occurs. However, the NACs do indicate how consideration occurs. Under the NACs, the Board first assesses the severity of the offense and the risk of re-offense. NAC 213.512; NAC 213.514. The Board then creates an initial assessment of whether to grant or deny parole. NAC 213.516. The Board then uses that initial assessment in conjunction with the factors contained in

NRS 213.1099 and NRS 213.10885 and the permissive factors in NAC 213.518 to determine whether to grant parole. NAC 213.518.

Grant argues that because “there is currently no objective standard to consider NAC 213.518 factors, NAC 213.560 [sic] and NRS 213.10885(7)(a) are moot as no subjective deviation is possible because the current consideration process is purely subjective.” However, this is not what the statute requires. NRS 213.10885(1) provides that “[t]he Board shall adopt by regulation specific standards for each type of convicted person ... based upon objective criteria for determining the person’s probability of success on parole.” (Emphasis added). Nowhere does this require identical assessments for all inmates.

### **C. The Parole Board’s Regulations Do Not Violate the Nevada Constitution.**

Grant further argues that NAC 213.512, NAC 213.522, NAC 213.518, NAC 213.516, and NAC 213.514(4) violate the prohibitions contained in the Nevada Constitution Article 4, Sections 20 and 21 against special laws for the punishment of crimes and misdemeanors. However, these regulations are general laws with uniform operation throughout the state to all offenders on parole. The Nevada Supreme Court has provided that a “law is general if it is operative alike upon all persons similarly situated,” or, stated another way, “when it applies equally to all persons embraced in a class founded upon some natural, intrinsic, or constitutional distinction.” *City of Fernley v. State, Dep’t of Tax*, 132 Nev. 32, 45, 366 P.3d 699, 708 (2016) (quotations omitted). This is exactly the case here, the

regulations promulgated by the Parole Board apply to all parolees in this state equally. These regulations cannot be classified as local laws that operate “over a particular locality instead of over the whole territory of the State.” *Id.* (quotations omitted).

Likewise, the Parole Board’s regulations are not special laws that “confer[] particular privileges or imposes peculiar disabilities, or burdensome conditions in the exercise of a common right; upon a class of persons arbitrarily selected, from the general body of *those who stand in precisely the same relation to the subject of the law.*” *Id.* (quotation omitted) (emphasis in the original). The Parole Board regulations do not arbitrarily treat different parolees differently and utilize the offense severity developed by NDOC through a validated process. *See* NRS 209.341.

#### **D. Amendment Would Be Futile.**

Because Grant’s claims against the Parole Board fail as a matter of law, amendment of the Complaint would be futile. “If a complaint is dismissed for failure to state a claim, leave to amend should be granted unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). Leave to amend is not required where permitting further amendment to the pleadings would be futile. *See Deveraturda v. Globe Aviation Sec. Servs.*, 454 F.3d 1043, 1049-50 (9th Cir. 2006). In this case, Grant cannot correct the defect in the Complaint or state a claim for relief as a matter of law.

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Therefore, good cause appearing,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss Grant's Complaint is GRANTED. The Complaint is hereby dismissed with prejudice.

IT IS SO ORDERED.

DATED this 1 day of February, 2022.

s/\_\_\_\_\_  
DISTRICT COURT JUDGE

Submitted By:

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By: s/  
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**APPENDIX C**

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**IN THE SUPREME COURT  
OF THE STATE OF NEVADA**

**No. 84324**

**[Filed January 17, 2023]**

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EVAN SCOTT GRANT, )  
Appellant, )  
vs. )  
THE STATE OF NEVADA )  
BOARD OF PAROLE )  
COMMISSIONERS; AND )  
CHRISTOPHER DERICCO, )  
Respondents. )  
\_\_\_\_\_ )

*ORDER DENYING REHEARING*

Rehearing denied. NRAP 40(c).

It is so ORDERED.

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*Stiglich*, C.J.  
Stiglich

*Parraguirre*, J.  
Parraguirre

*Gibbons*, Sr. J.  
Gibbons

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App. 24

cc: Hon. James E. Wilson, District Judge  
Evan Scott Grant  
Attorney General/Carson City  
Attorney General/Dep't of Public Safety/Carson City  
Carson City Clerk