IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA HOSPITAL ASSOCIATION, A NEVADA NONPROFIT COOPERATION CORPORATION; RENOWN REGIONAL MEDICAL CENTER, D/B/A RENOWN REGIONAL MEDICAL CENTER, A NEVADA NONPROFIT CORPORATION; RENOWN SOUTH MEADOWS MEDICAL CENTER, D/B/A RENOWN SOUTH MEADOWS MEDICAL CENTER, A NEVADA NONPROFIT CORPORATION; RENOWN SOUTH MEADOWS MEDICAL CENTER, D/B/A RENOWN REHABILITATION HOSPITAL, A NEVADA NONPROFIT CORPORATION; PRIME HEALTHCARE SERVICES RENO, LLC, D/B/A SAINT MARY'S REGIONAL MEDICAL CENTER, A NEVADA NONPROFIT CORPORATION; NORTH VISTA HOSPITAL, LLC, D/B/A NORTH VISTA HOSPITAL, A NEVADA FOREIGN LIMITED LIABILITY COMPANY; BOULDER CITY HOSPITAL, INC., D/B/A BOULDER CITY HOSPITAL, A NEVADA NONPROFIT CORPORATION; AND DIGNITY HEALTH, D/B/A ST. ROSE DOMINICAN HOSPITAL, A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION,
Appellants,
vs.
STATE OF NEVADA; AARON D. FORD, ATTORNEY GENERAL OF THE STATE

No. 84991

23-36135

OF NEVADA, IN RE EX OFFICIO STATUS AS THE OFFICE OF THE ATTORNEY GENERAL; LEGISLATURE OF THE STATE OF NEVADA; HONORABLE STEVE SISOLAK, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF NEVADA; AND HEALTH SERVICES COALITION,
Respondents.

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a preliminary injunction, denying a motion to amend the first amended complaint, and granting a motion to dismiss a complaint challenging the constitutionality of Senate Bill 329. First Judicial District Court, Carson City; James E. Wilson, Judge.

Senate Bill 329 (SB 329) is codified in the Nevada Unfair Trade Practices Act as NRS 598A.440. SB 329 prohibits health care providers from placing certain restrictions or requirements in their contracts with insurers—such as incentivizing a covered person to use specific providers—designating such conduct as a restraint on trade. Nevada Hospital Association and several other healthcare providers (hereinafter "NHA") sued the Attorney General, the Nevada Legislature, and then-Governor Steve Sisolak for declaratory relief and a preliminary and permanent injunction, arguing that SB 329 violated (1) the Equal Protection and Due Process clauses of the Nevada and U.S. Constitutions, (2) the Nevada Constitution's prohibition against invalid special or local laws, (3) Wharton's Rule, and (4) the dormant Commerce Clause. NHA also moved for a preliminary injunction on similar grounds.

After NHA filed an amended complaint, the Governor, the Attorney General, and the Legislature filed motions to dismiss and oppositions to the preliminary injunction motion. Health Services Coalition then intervened as a defendant, joining the motions to dismiss. NHA filed oppositions to these motions. In opposing the Legislature's motion to dismiss, NHA also included an alternative countermotion to amend its first amended complaint. The district court issued an order and final judgment ultimately denying injunctive relief, denying NHA's motion to amend the complaint once more, and dismissing NHA's amended complaint. It denied a motion to alter or amend the judgment thereafter. NHA appeals the dismissal of its complaint only insofar as it challenged SB 329 as violating the dormant Commerce Clause.[1]

Standard of review

We review a district court's order granting a motion to dismiss for failure to claim under NRCP 12(b)(5) de novo. *Benko v. Quality Loan Serv. Corp.*, 135 Nev. 483, 486, 454 P.3d 1263, 1266 (2019). Under Nevada's notice-pleading standard, we "liberally construe the pleadings for sufficient facts that put the defending party on adequate notice of the nature of the claim and relief sought." *Harris v. State*, 138 Nev., Adv. Op. 40, 510 P.3d 802, 807 (2022) (quoting *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992)) (internal quotation marks omitted); *see also Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985) (using prior federal notice-pleading standard announced in *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957)). Sufficient factual allegations that support a given legal claim are thus central to surviving a motion to dismiss,

[1]NHA is not challenging the denial of injunctive relief or its ability to amend the complaint once more.

notwithstanding this liberal pleading standard. *See Harris,* 138 Nev., Adv. Op. 40, 510 P.3d at 807. Conclusory statements of law will fail. *See Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004) (noting that "the court is not required to accept legal conclusions cast in the form of factual allegations" (quoting *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994))); *see also Dep't of Tax'n v. Eighth Judicial Dist. Court*, 136 Nev. 366, 369, 466 P.3d 1281, 1284 (2020) (looking to federal caselaw as guidance in interpreting Nevada's procedural rules).

The district court properly dismissed the case under NRCP 12(b)(5) for failure to state a dormant-commerce-clause claim

The Commerce Clause provides that the Congress has the power to "regulate Commerce . . . among the several States." U.S. Const. art. I, § 8. Generally, the dormant Commerce Clause "denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." *Or. Waste Sys., Inc. v. Dep't of Env't Quality of State of Or.*, 511 U.S. 93, 98 (1994). A violation of this "dormant aspect" of the Commerce Clause can exist where a State statute either "facially discriminates against interstate commerce" or "unduly burden[s] interstate commerce." *Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 561, 170 P.3d 508, 515 (2007). In measuring whether a statute unduly burdens interstate commerce, we consider the criteria set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). *See Douglas Disposal*, 123 Nev. at 561, 170 P.3d at 515 (applying the *Pike* balancing test). Under *Pike*, a statute "advancing a legitimate local interest and applying equally to in-state and out-of-state (interstate) commerce will be upheld 'unless the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits.'" *Id.* at 561-62, 170 P.3d at 515 (quoting *Pike*, 397 U.S. at 142).

Thus, a complainant asserting a dormant Commerce Clause claim under *Pike* must set forth sufficient facts regarding the challenged statute's significant burden on interstate commerce. *See Harris*, 138 Nev., Adv. Op. 40, 510 P.3d at 811 (reversing dismissal under notice-pleading standards, in the context of civil rights complaint, based on the presence of "sufficient facts to put [the defendant] on notice of the . . . claim"). NHA argues that the complaint does so, under Nevada's notice-pleading standard, by citing to its statement "[b]ecause SB 329 burdens 'interstate commerce,' then it does violate the 'dormant commerce clause.'" We disagree.

The allegation that "SB 329 burdens interstate commerce," without more, fails to meet NRCP 8's notice-pleading standard and thus does not survive a NRCP 12(b)(5) motion. We have carefully reviewed NHA's first amended complaint, and it contains no allegations of fact as to the burden or burdens SB 329 imposes on interstate commerce. Even under *Conley*'s notice-pleading standard, "mere bald assertions that defendants' activities restrain interstate commerce generally, along with references to statutory language, are not substitutes for concrete allegations from which a not insubstantial effect on interstate commerce can be inferred." *See Valley Disposal v. Cent. Vt. Solid Waste*, 31 F.3d 89, 95-96 (2d Cir. 1994) (applying prior federal notice-pleading standard announced under *Conley v. Gibson*, 355 U.S. 41 (1957), in affirming dismissal of antitrust claim). While NHA suggests that its claim can stand on some set of hypothetical facts, Nevada's liberal notice-pleading standard requires something more than *no* facts. *See id.* at 95 ("None of these pleadings asserts 'any facts from which it is inferable that the defendants' activities, infected with the particular illegality alleged, are likely to have a substantial effect on interstate

commerce.'" (quoting *Furlong v. Long Island Coll. Hosp.*, 710 F.2d 922, 927 (2d Cir. 1983)); *see also Harris*, 138 Nev., Adv. Op. 40, 510 P.3d at 807. Thus, affirmance is warranted because NHA has failed to allege sufficient facts to support the *Pike* claim it advances on appeal.[2] *See Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("This court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason.").

For these reasons, we order the judgment of the district court AFFIRMED.

_____, J.
Cadish

_____, J.
Pickering

_____, J.
Bell

[2]Neither NHA's argument that the parties engaged on the merits of the dormant Commerce Clause claim below nor its argument on those merits save the complaint from its factual deficiencies. *See Brown v. City of Pocatello*, 229 P.3d 1164, 1171-72 (Idaho 2010) ("Our notice pleading standard requires more than a naked recitation of facts from which a hyper-vigilant attorney could possibly foresee the possibility of a given cause of action."). Nor did NHA ask this court to reverse and remand to seek leave to amend to cure the first amended complaint's factual insufficiency as to the dormant Commerce Clause claim.

cc: Hon. James E. Wilson, District Judge
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