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AUBREY ROWLATT
CLERK

BY  DEPUTY

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

9 * * *

10 REV. LEONARD JACKSON,

11 Plaintiff,

12 vs.

13 FAIR MAPS NEVADA PAC, and
14 BARBARA CEGAVSKE, in her official
15 capacity as Nevada Secretary of State,

16 Defendants.

Case No. 19 OC 00209 1B

Dept. No. I

[PROPOSED] ORDER

17 **ORDER**

18 This matter having come before this Court pursuant to Plaintiff Reverend Leonard
19 Jackson's Complaint for Declaratory Relief ("Complaint") and Plaintiff's Opening Brief in
20 Support of Complaint for Declaratory and Injunctive Relief ("Opening Brief"), and having
21 considered Defendant Fair Maps Nevada PAC's ("Fair Maps") Answer and Answering Brief in
22 Response to Plaintiff's Opening Brief in Support of Complaint for Declaratory and Injunctive
23 Relief ("Answering Brief") and Plaintiff's Reply Brief in Support of Complaint for Declaratory
24 Relief ("Reply Brief") as well as the arguments of counsel at the hearing held December 23,
25 2019, the Court finds as follows:

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1 **PROCEDURAL BACKGROUND**

2 Fair Maps filed Initiative Petition #C-02-2019 (“Petition”) on November 4, 2019 to
3 amend the Nevada Constitution by adding a new section to the Nevada Constitution to establish
4 a redistricting commission to map electoral districts for members of the Nevada Senate, Nevada
5 Assembly, and Nevada’s delegation to the U.S. House of Representatives. The Petition includes
6 the following description of effect:

7 This measure will amend the Nevada Constitution to establish an
8 Independent Redistricting Commission to oversee the mapping of fair and
9 competitive electoral districts for the Nevada Senate, Nevada Assembly, and U.S.
10 House of Representatives.

11 The Commission will consist of seven Nevada voters, four who will be
12 appointed by the leadership of the Nevada Legislature, and three who are
13 unaffiliated with the two largest political parties who will be appointed by the
14 other four commissioners. Commissioners may not be partisan candidates,
15 lobbyists, or certain relatives of such individuals. All meetings of the Commission
16 shall be open to the public who shall have opportunities to participate in hearings
17 before the Commission.

18 The Commission will ensure, to the extent possible, that the electoral
19 districts comply with the United States Constitution, have an approximately equal
20 number of inhabitants, are geographically compact and contiguous, provide equal
21 opportunities for racial and language minorities to participate in the political
22 process, respect areas with recognized similarities of interests, including racial,
23 ethnic, economic, social, cultural, geographic, or historic identities, do not unduly
24 advantage or disadvantage a political party, and are politically competitive.

25 This amendment will require redistricting by the Commission beginning in
26 2023 and thereafter following each federal census.

27 Plaintiff filed his Complaint and the Opening Brief on November 26, 2019, in which he
28 argues that the Petition’s description of effect fails to comply with NRS 295.009(1)(b). More
specifically, he contends that description of the commission as independent and the description
of effect’s statement that the commission will oversee “the mapping of fair and competitive
electoral districts,” are materially misleading statements. Compl. ¶¶ 15 & 23. He also asserts
that the description of effect is deceptive and misleading because it fails to inform voters of a
specific practical effect of passage of the Petition—that the redistricting commission will “undo”
electoral maps generated by the Legislature in 2021 “thus potentially doubling the resources that
would otherwise be spent on redistricting following the 2020 census.” *Id.* at ¶¶ 30. Plaintiff’s
Complaint is limited to his challenge to the description of effect.

1 Fair Maps contends that the use of the term independent and the characterization of the
2 commission's objective of creating fair and competitive electoral districts is neither deceptive
3 nor misleading and amount to attacks on the policy reflected in the Petition and not the
4 description of effect. Ans. Br. 6-8. Fair Maps also contends that Plaintiff's claim that there will
5 be additional redistricting costs as a result of Petition is speculative and hypothetical and
6 therefore need not be addressed in the description of effect. *Id.* at 8-10.

7 **LEGAL STANDARDS**

8 Article 19, Section 2 of the Nevada Constitution enshrines the people's right to amend
9 the Nevada Constitution by initiative petition. Specifically it states that "the people reserve to
10 themselves the power to propose, by initiative petition, . . . amendments to this Constitution."
11 Nev. Const. art. 19, § 2(1). The Nevada Constitution further provides that the Legislature "may
12 provide by law for procedures to *facilitate* the operation thereof." *Id.* art. 19, § 5 (emphasis
13 added). In interpreting such laws, the courts "must make every effort to sustain and preserve the
14 people's constitutional right to amend their constitution through the initiative process."
15 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247
16 (2006).

17 NRS 295.009(1)(b) provides that a petition must "[s]et forth, in not more than 200
18 words, a description of the effect of the initiative . . . if the initiative . . . is approved by the
19 voters." NRS 295.009(1)(b). The Nevada Supreme Court has noted that "[a] description of effect
20 serves a limited purpose to facilitate the initiative process," and that a description of effect
21 should be reviewed with an eye toward that limited purpose. *Educ. Initiative PAC v. Comm. to*
22 *Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013). Thus, while a description of
23 effect need not "delineate every effect that an initiative will have," it must be "a straightforward,
24 succinct, and nonargumentative statement of what the initiative will accomplish and how it will
25 achieve those goals." *Id.* at 38, 293 P.3d at 876. A description of effect cannot "be deceptive or
26 misleading." *Id.* at 42, 293 P.3d at 879.

27 In reviewing a description of effect, "it is inappropriate to parse the meanings of the
28 words and phrases used in a description of effect" as closely as a reviewing court would a

1 statutory text. *Id.* at 48, 293 P.3d at 883. Such an approach “comes at too high a price in that it
2 carries the risk of depriving the people of Nevada of their constitutional right to propose laws by
3 initiative.” *Id.* Thus, a reviewing court “must take a holistic approach” to the required analysis.
4 *Id.* “The opponent of a ballot initiative bears the burden of showing that the initiative’s
5 description of effect fails to satisfy this standard.” *Id.* at 42, 293 P.3d at 879.

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 In this case, the description of effect for the Petition does not meet the requirements of
8 NRS 295.009(1)(b). The description of effect could be argumentative or confusing or
9 misleading to voters as currently written. The description of effect does not adequately explain
10 to voters what is meant by the term “independent” or the phrase “fair and competitive.” The
11 Court further finds that the description of effect is inadequate in that it does not provide potential
12 signatories with enough information about the cost consequences of the Petition—specifically,
13 that it will result in the expenditure of state funds. *See, e.g., Nev. Judges Ass’n v. Lau*, 112 Nev.
14 51,59 (1996). The Petition also does not adequately inform voters that the Petition would result
15 in redistricting in 2023 after the Legislature has already drawn electoral districts after the 2020
16 Census.

17 The Court finds that the above-referenced deficiencies may be cured through the revised
18 description of effect provided herein. NRS 295.061(3) provides that “[i]f a description of the
19 effect of an initiative or referendum required pursuant to NRS 295.009 is challenged
20 successfully . . . and such description is amended in compliance with the order of the court, the
21 amended description may not be challenged.” NRS 295.061(3). Thus, the Court, in consultation
22 with the parties, identifies a new description of effect that satisfies the legal standard required by
23 NRS 295.061(3). This revised description of effect states:

24
25 “This measure will amend the Nevada Constitution to establish a redistricting
26 commission to map electoral districts for the Nevada Senate, Assembly, and U.S. House of
Representatives.

27 The Commission will have seven members, four who will be appointed by the leadership
28 of the Legislature, and three who are unaffiliated with the two largest political parties who will
be appointed by the other four commissioners. Commissioners may not be partisan candidates,

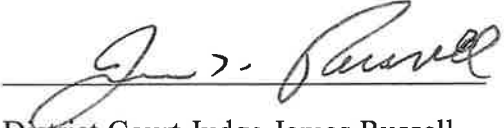
1 lobbyists, or certain relatives of such individuals. Commission meetings shall be open to the
2 public who shall have opportunities to participate in hearings.

3 The Commission will ensure, to the extent possible, that the districts comply with the
4 U.S. Constitution, have an approximately equal number of inhabitants, are geographically
5 compact and contiguous, provide equal opportunities for racial and language minorities to
6 participate in the political process, respect areas with recognized similarities of interests,
7 including racial, ethnic, economic, social, cultural, geographic, or historic identities, do not
8 unduly advantage or disadvantage a political party, and are politically competitive.

9 This amendment requires redistricting after each federal census, beginning in 2023,
10 which could replace maps drawn by the Legislature after the 2020 census, and will result in the
11 expenditure of state funds to fund the Commission.”

12 **IT IS THEREFORE ORDERED** and declared that the description of effect filed with
13 the Secretary of State on November 4, 2019 failed to satisfy the requirements of NRS
14 295.009(1)(b). Thus, any signatures collected on the Petition containing the description of effect
15 are invalid. However, Defendant Fair Maps may re-file an amended petition with the revised
16 description of effect as set forth by this Order, which cures all deficiencies raised by Plaintiff
17 and identified by the Court. Upon re-filing, the description of effect will have been amended in
18 compliance with this Order and be accorded the finality set forth in NRS 295.061(3) and shall
19 not be subject to further challenge. NRS 295.061(3).

20 Dated this 2 day of ^{January 2020} ~~December~~, 2019.

21 
22 District Court Judge James Russell

23 Respectfully submitted by:

24 MCDONALD CARANO LLP

25 By: _____/s/ Adam Hosmer-Henner_____
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 2 day of January 2020 I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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