IN THE SUPREME COURT OF THE STATE OF NEVADA

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REV. LEONARD JACKSON, Appellant, vs. FAIR MAPS NEVADA PAC; AND BARBARA K. CEGAVSKE, IN HER OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE, Respondents.	Case No.: 80563 District Court Case No.: 19OC002091B

REPLY IN SUPPORT OF

MOTION TO DISMISS AND FOR SANCTIONS

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I. INTRODUCTION

This appeal is an outrageous misuse of the appellate process, for no other purpose but delay. Appellant obtained all of the relief requested at the district court, but still filed this frivolous appeal claiming to be aggrieved by his own victory. Appellant's Opposition[1] attempts to justify and normalize his prevailing-party appeal, but only highlights its lack of ultimate merit. Dismissal is required at this procedural stage because Appellant cannot establish standing to appeal.

Appellant sought injunctive and declaratory relief against the Petition's description of effect and successfully prevented the Petition from being placed on the ballot. Pursuant to NRS 295.061(3), Respondent filed an Amended Petition, Exhibit 1, in full compliance with the district court's findings and Order. Appellant can obtain no further relief through this appeal, but improperly seeks to gild the lily

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[1] Appellant's Opposition is untimely, and this Court would be justified in disregarding it. Appellant's responsive deadline was February 25, 2020 and Appellant's initial Opposition, filed on that last possible day, was rejected on February 26, 2020 as "in excess of pages" and commanding that it "must be accompanied by a motion for excess pages." *Notice*, Feb. 26, 2020. Rather than comply with the Court's Notice by filing a motion for excess pages, Appellant filed a modified Opposition on February 26, 2020 without permission or explanation. This document is untimely and unauthorized by the Court.

by adding superfluous findings of fact to the Order and to interminably delay the democratic process by challenging, on new grounds, the revised description of effect in the Amended Petition.

II. ARGUMENT

A. Appellant is a Prevailing, Not an Aggrieved Party.

Appellant raises three defenses to dismissal, claiming that the district court: (1) "exceeded its jurisdiction by rewriting the description of effect," (2) failed "to make findings of fact," and (3) wrote "a description that is inaccurate and misleading." Opp'n 1. Appellants' first position is devoid of any legal support and falters based on the plain language of the statute, which states that after a successful challenge to the description of effect, the description can be "amended in compliance with the order of the court." NRS 295.061(3). The applicable statutes *do not prohibit* the district court from rewriting a description of effect; rather, they explicitly contemplate that a description may be amended "in compliance" with the court's order. It makes no difference whether the revised description of effect is contained within the court's order or merely based on it. Respondent, not the district court, drafted and submitted the Amended Petition with a revised description of effect

to the Secretary of State. Exhibit 1. Furthermore, the district court found in Appellant's favor on every issue, took out every objectionable word, and added in everything that Appellant claimed was missing.

Second, Appellant is plainly wrong to claim that the district court failed to make findings of fact as those findings are clearly contained within the district court's order and are entirely favorable to Appellant. Mot. Ex. 3. Appellant cannot be aggrieved because he was and remains the prevailing party such that any absent findings are presumed to support him. *Fenkell v. Fenkell,* 86 Nev. 397 (1970) ("Any fact necessary to support the order is presumed to have been proven in the absence of an affirmative showing to the contrary.") The district court found that the Petition's description was misleading, in a decision no different than one cited favorably by Appellant from *Las Vegas Taxpayer Accountability v. City Council of Las Vegas*, 125 Nev. 165 (2009). Exhibit 2. Any omitted findings are presumed to support Appellant, who did not present any actual affidavits or evidence below.

Third, Appellant was required to include all challenges to the Petition with his first complaint. NRS 295.061(1). Appellant may not endlessly challenge each iteration of the description of effect. NRS

295.061(3) compels finality as the "amended description may not be challenged" after Appellant's successful lawsuit. *See Washoe Cty. v. Otto*, 128 Nev. 424, 431, 282 P.3d 719, 724 (2012) (quoting 73A C.J.S. Public Administrative Law and Procedure § 338 (2004) ("Since jurisdiction is dependent on statutory provisions, the extent of the jurisdiction is limited to that conferred by statute, and courts may lack jurisdiction under, or in the absence of, statutory provisions.")). The Court, however, need not interpret the statutory scheme or reach hypothetical standing questions as Appellant is not, in any sense, a party aggrieved by the Order at issue.

B. This Appeal is Frivolous and Warrants Sanctions.

Appellant states that the purportedly omitted findings of fact are important "for both the description of effect and the Petition itself" as the use of the term independent in the former would be "likewise false and misleading in the Petition itself." Opp'n 6. By this admission, Appellant, who has not and cannot yet challenge the "Petition itself," confirms that the appeal was filed for ulterior purposes by seeking a ruling to score political points in the future, not to resolve existing legal disputes about the description of effect. The Ninth Circuit has noted the

existence of "evidence tending to show that challenges by opponents have tied initiative petitions up in litigation for extended periods of time or that, in some cases, they have left the proponents without sufficient time to gather signatures in advance of the filing deadlines for a particular election cycle." *Pest Comm. v. Miller*, 626 F.3d 1097, 1109 (9th Cir. 2010). The description of effect requirement was upheld as it did not prevent "reasonably diligent ballot initiative and referenda proponents from gaining a place on the ballot." *Id.* Despite Respondent's unquestioned diligence, Appellant may functionally succeed in tying up the Petition in litigation by challenging the description of effect and then appealing from his successful challenge. Authorizing this appeal would impede Respondent's participation in the democratic process, but it would also call NRS 295.061's validity into question if a party can challenge every proposed description and can also indefinitely challenge descriptions revised in compliance with a court order.

III. CONCLUSION

For all of the reasons expressed herein and in the initial Motion, this Court should dismiss the appeal and impose appropriate sanctions.

Affirmation: Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: March 3, 2020.

McDONALD CARANO LLP

By */s/ Adam Hosmer-Henner*

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CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 27(d), I hereby certify that this Reply complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this Reply has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point font, Century Schoolbook style. I further certify that this Reply complies with the page limits of NRAP 27(d)(2) does not exceed 5 pages, calculated in accordance with the exclusions of NRAP 32(a)(7)(C).

Pursuant to NRAP 28.2, I hereby certify that I have read this Reply, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Reply complies with all applicable Nevada Rules of Appellate Procedure.

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I understand that I may be subject to sanctions in the event that this Reply is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: March 3, 2020.

McDONALD CARANO LLP

By */s/ Adam Hosmer-Henner*

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of McDONALD CARANO LLP and that on March 3, 2020, I served the foregoing document on the parties in said case by electronically filing via the Court's e-filing system, as follows:

Kevin Benson, Esq.
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DATED: March 3, 2020.

By */s/ Jill Nelson*
Jill Nelson

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